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7 CFR Pa

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AGENCY:
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ACTION: F

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Rules and Regulations

Federal Register
Vol. 52, No. 145
Wednesday, July 29, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1956

Debt Settlement

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its debt settlement regulations by increasing the approval authority for FmHA officials. It will authorize the State Director to approve a cancellation of Chapter 7 bankruptcies regardless of the amount. Also, to raise the State Director's approval authority on all other debt settlements when the outstanding balance of the indebtedness involved less the amount of a compromise or adjustment offer is less than $250,000. This action is necessary because the regulations presently only allow debts of $150,000 or less to be approved by the State Director, and anything greater must be approved by the Administrator. The intended effect of this action is to reduce the large volume of debt settlements submitted to the Administrator.

EFFECTIVE DATE: July 29, 1987.

FOR FURTHER INFORMATION CONTACT: Thomas Baden, Senior Loan Officer, Farm Real Estate and Production Division, FmHA, Room 5443, South Building, Washington, DC 20250, Telephone (202) 475–4006.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be exempt from those requirements because it involves only internal Agency management. FmHA determines that settlement of debts (including principal, interest, and other charges) in cases of Chapter 7 discharge in bankruptcy may be approved by a State Director regardless of the amount. Also to raise the State Director's approval authority on all other debt settlements when the outstanding balance of the indebtedness (including principal, interest, and other charges) involved less the amount of a compromise or adjustment offer is less than $250,000, and anything greater must be approved by the Administrator.

It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contracts, notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking since it involves only internal Agency management and publication for comment is unnecessary.

This activity impacts the following programs listed in the Catalog of Federal Domestic Assistance under numbers:

10.404 Emergency Loans
10.406 Farm Operating Loans
10.407 Farm Ownership Loans
10.410 Very Low and Low Income Housing Loans
10.411 Rural Housing Site Loans
10.416 Soil and Water Loans
10.417 Very Low-Income Housing Repair Loans and Grants

Rural Housing Site Loans (10.411) and Soil and Water Loans (10.410) are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. The other programs are excluded from intergovernmental consultation.

This document has been reviewed in accordance with FmHA Instruction 1940–G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not needed.

Lists of Subjects in 7 CFR Part 1956

Accounting, Loan programs—Agriculture, Rural areas.

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1956—DEBT SETTLEMENT

1. The authority citation for Part 1956 is to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 31 U.S.C. 3711; 7 CFR 2.23; 7 CFR 2.70.

Subpart B—Debt Settlement—Farmer Programs and Single Family Housing

2. Section 1956.58 is amended by revising paragraph (a) to read as follows:

§ 1956.58 Approval or rejection.

* * * * *

(a) *Approval authority.* Subject to this subpart, the compromise, adjustment, cancellation, or chargeoff of debts will be approved or rejected:

(1) Except as provided in paragraph (a)(2) of this section, by the State Director when the outstanding balance of the indebtedness involved in the settlement less the amount of a compromise or adjustment offer is less than $250,000 (including principal, interest, and other charges).

(2) The State Director may approve the cancellation of debts discharged in a chapter 7 bankruptcy in accordance with § 1956.70(b)(3) of this subpart regardless of the amount of the outstanding indebtedness.

(3) By the Administrator or designee when the outstanding balance of the indebtedness involved in the settlement less the amount of a compromise or adjustment offer is $250,000 or more (including principal, interest, and other charges).

* * * * *

Dated: June 26, 1987.

Vance L. Clark,
Administrator, Farmers Home Administration.

[FR Doc. 87–17131 Filed 7–28–87; 8:45 am]
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Animal and Plant Health Inspection Service

9 CFR Part 75

[Docket No. 87–066]

Contagious Equine Metritis (CEM); Areas Released From Quarantine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that removed quarantine provisions for areas in Kentucky and Missouri that were under quarantine because of the existence of contagious equine metritis (CEM). We are also removing the restrictions on the interstate movement of horses and other equidae from and through these areas. This action is necessary because there is no longer any known risk of spreading CEM to other areas.

EFFECTIVE DATE: August 28, 1987.

FOR FURTHER INFORMATION CONTACT: Dr. C.A. Gipson, VS, APHIS, USDA, Room 826, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8321.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule published in the **Federal Register** and effective March 11, 1987 (52 FR 7403–7405, Docket Number 86–104), we amended the regulations concerning CEM by removing areas in Kentucky and Missouri from quarantine provisions because CEM no longer exists. We did not receive any comments, which were required to be filed on or before May 11, 1987. The facts presented in the interim rule still provide a basis for the amendment.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

This document relieves unnecessary restrictions on the interstate movement of horses and other equidae because there is no risk of spreading contagious equine metritis. As a result of this rule, the equine industry can move animals without the additional certification required by quarantine regulations, and the owners of nine premises that had been quarantined can use the formerly quarantined areas in normal day-to-day operations.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V).

List of Subjects in 9 CFR Part 75

Animal diseases, Contagious equine metritis, Dourine, Equine, Equine infectious anemia, Horses, Quarantine, Transportation.

PART 75—COMMUNICABLE DISEASES IN HORSES, ASSES, PONIES, MULES, AND ZEBRAS

Accordingly, we are adopting as a final rule without change, the interim rule that amended 9 CFR Part 75 and that was published at 52 FR 7403–7405 on March 11, 1987.

Authority: 21 U.S.C. 111–113, 115, 117, 120, 121, 123–126, 134–134(h); 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 24th day of July 1987.

J.K. Atwell,

Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 87–17132 Filed 7–28–87; 8:45 am]

BILLING CODE 3410-34-M

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9 CFR Part 78

[Docket No. 87–081]

Brucellosis Regulations; Correction

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Technical amendment.

SUMMARY: We are correcting an error in the brucellosis regulations in § 78.41(b) concerning the classification of Georgia as having Class A status.

EFFECTIVE DATE: October 14, 1986.

FOR FURTHER INFORMATION CONTACT: Dr. Jan D. Huber at (301) 436–5965.

SUPPLEMENTARY INFORMATION:

Background

Before publication of the final rule, Georgia was classified as having Class A status. However, Georgia was inadvertently omitted from the State/area classification list, § 78.41(b) of the regulations, when the final rule was published September 12, 1986 (51 FR 32574–32600, Docket No. 85–132; FR Doc. 86–20491, page 32596, third column, § 78.41, paragraph (b)). Therefore, we are correcting the regulations published September 12 to reflect Georgia as having Class A status.

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

Accordingly, 9 CFR Part 78 is corrected as follows:

PART 78—BRUCELLOSIS

1. The authority citation for Part 78 continues to read as follows:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 78.41 [Amended]

2. Section 78.41, paragraph (b), is amended by inserting "Georgia" immediately after "Colorado".

Done in Washington, DC, this 24th day of July 1987.

J. K. Atwell,

Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 87–17134 Filed 7–28–87; 8:45 am]

BILLING CODE 3410-34-M

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9 CFR Parts 92 and 94

[Docket No. 87–071]

Change in Disease Status of Chile Because of Foot-and-Mouth Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the regulations by removing Chile from the list of countries free of rinderpest and foot-and-mouth disease. This action is necessary because the existence of foot-and-mouth disease has been confirmed in Chile. The effect of this action prohibits the importation into the United States from Chile of cattle, sheep, or other ruminants; swine; and the fresh, chilled, or frozen meats of those animals.

EFFECTIVE DATE: August 28, 1987.

FOR FURTHER INFORMATION CONTACT: Dr. Harvey Kryder, Import-Export and Emergency Planning Staff, VS, APHIS,

USDA, Room 809, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8695.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule published in the Federal Register on March 17, 1987 (52 FR 8436–8437, Docket Number 87–043) and effective March 13, we amended the regulations by removing Chile from the list of countries declared free of rinderpest and foot-and-mouth disease. Comments were required to be filed on or before May 18, 1987. We received one comment in support of the interim rule. The facts presented in the interim rule still provide a basis for the amendment.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

No importations of animals and products that are prohibited entry by this action—other than importations of llamas and alpacas—occurred during a 9-month period from June 29, 1983, to March 26, 1984, when Chile was recognized as free of foot-and-mouth disease. During that period, a total of 299 llamas and alpacas entered the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V).

List of Subjects

9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

9 CFR Part 94

African swine fever, Animal diseases, Exotic newcastle disease, Foot-and-mouth disease, Fowl pest, Garbage, Hog cholera, Imports, Livestock and livestock products, Meat and meat products, Milk, Poultry and poultry products, Rinderpest, Swine vesicular disease.

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 7 CFR 2.17, 2.51, and 371.2(d).

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), NEWCASTLE DISEASE (AVIAN PNEUMOENCEPHALITIS), AFRICAN SWINE FEVER, AND HOG CHOLERA: PROHIBITED AND RESTRICTED IMPORTATIONS

Authority: 7 U.S.C. 147a, 150ee, 161, 162, 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, and 134f; 42 U.S.C. 4331; 4332; 7 CFR 2.17, 2.51, and 371.2(d).

Accordingly, we are adopting as a final rule without change, the interim rule that amended 9 CFR Parts 92 and 94, and that was published at 52 FR 8436–8437 on March 17, 1987.

Done in Washington, DC, this 24th day of July, 1987.

J.K. Atwell,

Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 87–17133 Filed 7–28–87; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86–NM–188–AD; Amdt. 39–5692]

Airworthiness Directives: Airbus Industrie Models A300 and A310 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A300 and A310 series airplanes, which requires replacement of the nose landing gear drag strut upper attachment pin. This amendment is prompted by reports of pins which were found to be improperly manufactured. This condition, if not corrected, could result in failure of the pin and collapse of the nose landing gear.

EFFECTIVE DATE: September 3, 1987.

ADDRESSES: The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Centreda, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM–113; telephone (206) 431–1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, which requires replacement of the nose landing gear drag strut upper attachment pin on certain Airbus Industrie Model A300 and A310 series airplanes, was published in the Federal Register on September 29, 1986 (51 FR 34473).

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

Both commenters recommended extending the proposed compliance time from 600 landings to 2,000 landings. This would be consistent with the schedule given in the manufacturer's revised service bulletin, and operators have already established work schedules consistent with this data. The FAA concurs and has determined that no adverse impact on the safety of flight will be incurred by extending the proposed compliance time from "within the next 600 landings" to "within the next 2,000 landings." The final rule has been revised accordingly.

The cost estimate has been revised to reflect a decrease in the number of manhours required to accomplish the modification, and to include the cost for

required parts, based on the manufacturer's comments. Revision 1 to Service Bulletin A300–32–374, and Revision 2 to Service Bulletin A300–32–2023, which contain corrections and clarifications of previous service bulletins, have been cited in the final rule. These service bulletin revisions impose no additional adverse economic impact or additional burden on the operators.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes mentioned above.

It is estimated that 60 airplanes of U.S. registry will be affected by this AD, that it will take approximately 7 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Parts are estimated to be $3,300 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $214,800.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because of the minimal cost of compliance per airplane ($3,580). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation Safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449 January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Airbus Industrie: Applies to Airbus Industrie Model A300 and A310 airplanes listed in Airbus Industrie Service Bulletins A300–32–374, Revision 1, dated July 15, 1986, and A310–32–2023, Revision 2, dated February 20, 1987, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent collapse of the nose landing gear due to failure of the drag strut upper attachment pin, accomplish the following:

A. Prior to the accumulation of 16,000 landings or within the next 2,000 landings, whichever occurs later, replace the nose landing gear drag strut upper attachment pin in accordance with Airbus Industrie Service Bulletin A300–32–374, Revision 1, dated July 15, 1986 (applicable to Model A300 airplanes), or A310–32–2023, Revision 2, dated February 20, 1987 (applicable to Model A310 airplanes).

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Centreda, Avenue Didier Daurat, 31700 Blagnac, France. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective September 3, 1987.

Issued in Seattle, Washington, on July 21, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87–17102 Filed 7–28–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 86–NM–189–AD; Amdt. 39–5623]

Airworthiness Directives: Airbus Industrie Model A300 B2 and B4 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Airbus Industrie Model A300 B2 and B4 series airplanes, which requires inspections for cracks in the wing top skin stringers joint at rib 9. This amendment is prompted by fatigue testing by the manufacturer, which has shown the development of cracks in this joint. This condition, if not corrected, could render the wing incapable of carrying required loads.

EFFECTIVE DATE: September 4, 1987.

ADDRESSES: The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Centreda, Avenue Didier Daurat, 31700 Blagnac France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM–113; telephone (206) 431–1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, which requires inspections for cracks in the top wing stringer joint at rib 9 on Airbus Industrie Model A300 B2 and B4 series airplanes, was published in the **Federal Register** on September 29, 1986 (51 FR 34474).

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the only comment received.

The commenter requested the threshold times be changed to increase the proposed compliance period from 90 days to 3,800 cycles in order to allow the inspection to be scheduled at a main base. The FAA does not concur with this change; however, paragraph D. of the final rule does contains provisions for individual operators to adjust the compliance time if the adjustment provides an acceptable level of safety and is approved by FAA.

The commenter also stated that the threshold times reflected in the proposed rule were more restrictive than those recommended by the manufacturer, and cited Airbus Industrie Service Bulletin A300–58–077, Revision 1, dated December 15, 1979, as setting threshold times of 20,000 cycles for B2 airplanes and 17,000 cycles for B4 airplanes. The FAA does not concur and notes that the commenter's statement is incorrect. The threshold times indicated in Service Bulletin A300–58–077 relate, not to the inspections required by

paragraph A. of the AD, but to the optional modification described in paragraph C.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 15 airplanes of U.S. registry will be affected by this AD, that it will take approximately 200 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $120,000.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Model A300 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation Safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Airbus Industrie: Applies to Model A300 B2 and B4 series airplanes, certificated in any category. To prevent the development of cracks which can lead to wing skin failure, accomplish the following within 90 days after the effective date of this AD, or upon reaching the threshold indicated below, whichever occurs later, unless already accomplished:

A. Inspect for cracks in the top skin of each wing at the level of rib 9 between front and rear spars, prior to the accumulation of 17,000 landings for B2 series airplanes, and prior to the accumulation of 14,200 landings for B4 series airplanes, in accordance with the accomplishment instructions of Airbus Industrie (AI) Service Bulletin A300-57-118, Revision 1, dated March 29, 1984. Thereafter, repeat the inspections at intervals not to exceed 7,600 landings.

B. If cracks are found during the inspections required by paragraph A., above, follow procedures described in Paragraph 1.C.(5) of AI Service Bulletin A300-57-118, Revision 1, dated March 29, 1984.

C. Incorporation of AI Modification 2089, as described in Airbus Service Bulletin A300-57-077, Revision 1, dated December 15, 1979, which replaces clearance fit HI-LOK bolts with taperlock bolts, constitutes terminating action for the inspection requirements of this AD.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the inspections required by this AD.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Centreda, Avenue Didier Daurat, 31700 Blagnac, France. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective September 4, 1987.

Issued in Seattle, Washington, on July 21, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87-17103 Filed 7-28-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-NM-38-AD; Amdt. 39-5686]

Airworthiness Directives: CASA Model C-212 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to CASA Model C-212 series airplanes, which requires installation of an artificial stall warning (ASW) system. This amendment is prompted by reports that inadequate natural stall warning may exist on CASA Model C-212 airplanes. This condition, if not corrected, could result in an inadvertent stall condition.

EFFECTIVE DATE: August 31, 1987.

ADDRESSES: The applicable service information may be obtained from Construcciones Aeronauticas S.A., Getafe, Madrid, Spain. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur D. Scholes, Standardization Branch, ANM-113; telephone (206) 431-1979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, which requires installation of an artificial stall warning system on CASA Model C-212 series airplanes, was published in the **Federal Register** on April 10, 1987 (52 FR 11664).

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter concurred with the NPRM in its entirety.

Several commenters stated that there was no need for an artificial stall warning system (ASW) on this airplane for various reasons, as follows:

a. Pilot training emphasis would be sufficient to prevent stall condition.

b. It should not be required because of a stricter interpretation by the FAA of the rules related to stall warning requirements.

c. There have been no accidents or other problems reported due to lack of stall warning.

d. There is adequate speed margin between operational speeds and stall speeds to make inadvertent stall improbable.

The FAA does not concur with the commenters. The FAA has found through service experience that the probability of encountering an inadvertent stall is sufficiently high, even with due consideration given to pilot training and operating speeds, to warrant a minimum level of adequate advance warning for impending stall. This level of stall warning is considered the minimum for safe operation as defined in Federal Aviation Regulation (FAR) 25.207. The interpretation of the rules related to stall warning requirements has not changed since 1974 when the CASA C-212 was certificated. The first indication to the FAA of

inadequate natural stall warning occurred during the FAA flight evaluation in March 1984, which precipitated a further FAA flight evaluation review in March 1987. Both flight evaluations concluded that the natural stall warning is inadequate and fails to meet the minimum safety requirement as specified in FAR 25.207(c), as follows: "The stall warning must begin at a speed exceeding the stalling speed [i.e., the speed at which the airplane stalls or the minimum speed demonstrated, whichever is applicable, under the provisions of § 25.201(d)] by seven percent or at any lesser margin if the stall warning has enough clarity, duration, distinctiveness, or similar properties."

Although there have been no reported accidents or incidents directly attributed to lack of adequate stall warning, this, in itself, is not considered a sufficient basis for concluding that an AD should not be issued to correct inadequate stall warning. The FAA agrees that normal operational speeds are well above the stall speeds; however, this does not protect against an inadvertent stall at speeds below normal. Adequate stall warning margins must be present in all configurations to prevent inadvertent aircraft stall under all foreseeable operating conditions. The FAA, therefore, disagrees with the comments that a stall warning system is not needed, and has determined that an airworthiness directive to require installation of an ASW system is appropriate.

Four commenters also expressed concern that the estimated costs for parts and labor, as proposed in the NPRM, were much less than it would actually cost to install an ASW system, and that these costs were out of proportion to any possible safety enhancement value. The manufacturer's distributing company, CASA USA, provided further cost estimates for the ASW system kit of $5,000 per airplane, an increase of manhours required to complete the installation to 63 hours per airplane, and a minimum of .5 hours of flight test time per airplane, for a total estimate cost to install the ASW system of $7,770 per airplane. These new estimated cost figures have been incorporated into the economic impact statement of this document.

The FAA does not concur that the risk associated with inadequate stall warning, which would be minimized by the installation of an ASW system, is not worth the required cost. Safety is the paramount concern in this issue, and cannot be dismissed solely because of financial considerations.

CASA USA also commented that, according to the manufacturer, the required parts could not be available sooner than November 1987. The FAA has considered this information and concurs that additional time is necessary to obtain and install required parts. The final rule has been revised to reflect a compliance date of January 31, 1988. The FAA has determined that this revision will not have a significant impact on the safety of flight.

Since issuance of the proposal, CASA issued Service Bulletin 212–31–12, dated May 12, 1987, which describes the installation of an artificial stall warning system. The final rule has been revised to reflect installation of an ASW system in accordance with the CASA service bulletin as an acceptable means of complying with the requirements of this AD.

After careful review of the available data, including the comments discussed above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously noted.

It is estimated that 40 airplanes of U.S. registry will be affected by this AD, that it will take approximately 63 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Estimated cost for parts is $5,000 per airplane, and estimated time for flight test is .5 hour at $250 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $310,800.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because of the minimal cost of compliance per airplane ($7,770). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

CASA: Applies to all Model C–212 series airplanes, including Indonesian manufactured C–212's Serial Numbers 64N and 73N, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent inadvertent stalls, accomplish the following:

A. Prior to January 31, 1988, install an artificial stall warning system in accordance with CASA Service Bulletin S/B 212–31–12, dated May 12, 1987, or other manner approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to Construcciones Aeronauticas S.A., Getafe, Madrid, Spain. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective August 31, 1987.

Issued in Seattle, Washington, on July 16, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87–17098 Filed 7–28–87; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 86-NM-157-AD; Amdt. 39-5687]

Airworthiness Directives: Lockheed-California Company Model L-188A and L-188C Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Lockheed Model L-188A and L-188C series airplanes, which requires structural inspections and repairs or replacements, as necessary, to assure continued airworthiness. This amendment is prompted by a structural reevaluation which has identified certain structural details likely to develop fatigue cracks as these airplanes continue in operational service. This condition, if not corrected, could result in a compromise of the structural integrity of these airplanes.

DATE: Effective August 31, 1987.

ADDRESSES: The applicable service information may be obtained from Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Order Administration, Dept. 65-33, U-33, B-1. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. William Roberts, Aerospace Engineer, Airframe Branch, ANM-121L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6319.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulation to include a new airworthiness directive (AD), which requires structure inspection and repair on certain Lockheed Model L-188A & L-188C series airplanes to assure continued airworthiness, was published in the **Federal Register** on August 18, 1986 (51 FR 29475).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The manufacturer made three comments:

a. Statements in the preamble to the NPRM that referred to the Lockheed L-188's "design life goal" are incorrect, since the airplane does not have an operational life, as such. The manufacturer states that "when an adequate maintenance program is observed (including Supplemental Inspection Document (SID) recommendations), the Electra may be operated as long as an operator considers it to be a financially viable operation." The FAA agrees with the comment; however, no change to the final rule is necessary.

b. The final rule should be changed to require the use of both the original issue of Lockheed Report No. 29428, dated January 16, 1984, as well as Revision A, dated May 14, 1986, since Revision A is not complete within itself. The FAA concurs that Revision A is not complete within itself, and has revised the paragraph A. of the final rule to reflect both the original issue and Revision A.

c. The economic analysis should be changed to indicate that it would take 500 manhours *per operator* to prepare the program revision and not 500 manhours *per airplane*. The FAA agrees to the clarification as suggested, and the economic analysis has been changed accordingly.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously mentioned.

Approximately 60 airplanes of U.S. registry and 13 U.S. operators will be affected by this AD. It is estimated that it will take approximately 500 manhours per operator, at an average labor cost of $40 per manhour, to incorporate of the Supplemental Inspection Document (SID) into the FAA-approved maintenance program. Based on these figures, the total cost impact on U.S. operators to implement the requirements of this AD is estimated to be $260,000.

It will take approximately 250 manhours per airplane per year, at an average labor cost of $40 per manhour, to accomplish the inspections required by this AD. Based on these figures, the annual recurring cost of inspections to U.S. operators is estimated to be $800,000.

Based on the above figures, the total cost impact of this AD on U.S. operators is estimated to be $860,000 for the first year, and $800,000 for each year thereafter.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities, because few, if any, Model L-188 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Lockheed-California Company: Applies to Lockheed Model L-188A and L-188C airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To ensure the continuing structural integrity of these airplanes, accomplish the following:

A. Within one year after the effective date of this AD, incorporate a revision into the FAA-approved maintenance inspection program which provides no less than the requirements specified for the structurally significant details listed in Section III C. of Lockheed Report No. LR29428, dated January 16, 1984, and Revision A, dated May 14, 1986, or later revision approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

B. Cracks found in the structurally significant details as a result of the supplemental inspections required by paragraph A., above, must be repaired before further flight in accordance with an FAA-approved method.

C. Special Flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a base to accomplish the requirements of this AD.

D. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Order Administration, Dept. 65-33, U-

33, B-1. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This amendment becomes effective August 31, 1987.

Issued in Seattle, Washington, on July 16, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87-17099 Filed 7-28-87; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 399

[Docket No. 60464-6064]

Electronic Computers: Change in GLV Dollar Value Limit

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: Supplement No. 1 to § 399.1 of the Export Administration Regulations (the Commodity Control List) identifies those items subject to Department of Commerce export controls. This rule amends entry 1565A of the Commodity Control List (electronic computers and "related equipment") by revising the "GLV $ Value Limit"—the maximum net value of a commodity covered by 1565A that may be exported under General License GLV. The GLV limit for 1565A is raised from $1,000 to $5,000 for exports to destinations in Country Groups T and V.

EFFECTIVE DATE: This rule is effective July 29, 1987.

FOR FURTHER INFORMATION CONTACT: John Black or Patricia Muldonian, Office of Technology and Policy Analysis, Export Administration, Telephone: (202) 377-2440. For questions of a technical nature regarding electronic computers and related equipment, contact Joseph Westlake, Computer Systems Technology Center, Export Administration, Telephone: (202) 377-4344.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedures Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule also is exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Written comments (six copies) should be submitted to: Vincent Greenwald, Office of Technology and Policy Analysis, Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule does not contain a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.).*

List of Subjects in 15 CFR Part 399

Exports, Reporting and recordkeeping requirements.

Accordingly, Part 399 of the Export Administration Regulations (15 CFR Parts 368 through 399) is amended as follows:

PART 399—[AMENDED]

1. The authority citation for Part 399 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 97-145 of December 29, 1981 and Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223, 50 U.S.C. 1701 *et seq.;* E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 (October 2, 1986); E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

§ 399.1 [Amended]

2. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1565A is amended by revising the GLV $ Value Limit to read "$5,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations."

Dated: July 24, 1987.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 87-17203 Filed 7-28-87; 8:45 am]

BILLING CODE 3510-DT-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Futures Commission Merchants; Financial Early Warning System

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission") has adopted an amendment to its financial rules for futures commission merchants ("FCMs") to add another element to the financial early warning system. The amendment requires an FCM to notify its designated self-regulatory organization ("DSRO") and the Commission immediately when it determines an account it is carrying to be undermargined by an amount that exceeds its adjusted net capital. This amendment is intended to enhance the effectiveness of the financial early warning system, the basic objective of which is, as the Commission has stated on several occasions, to afford the Commission and the appropriate industry self-regulatory organizations sufficient advance notice of an FCM's financial problems to allow the necessary protective action to be taken to insure the safety of the FCM itself, the FCM's customer funds and the integrity of the marketplace.

EFFECTIVE DATE: August 28, 1987.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel, or Gary C. Miller, Assistant Chief Accountant, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission proposed to add another element to the financial early warning system when it proposed to make permanent the pilot program for exchange trading of options on non-agricultural futures contracts. 50 FR 35247 (August 30, 1985). The Commission noted in that release that it had recently proposed capital rule amendments in response to the failure of Volume Investors Corporation. 50 FR 35247, 35253–54.[1] The Commission stated its belief that "the problems at Volume Investors might have been detected earlier, and perhaps mitigated, had immediate notice of very substantial margin calls made by Volume to a group of accounts under common financial control been given to exchange or Commission personnel." 50 FR 35247, 35254. The Commission further stated that in a situation similar to that of Volume Investors, where an account becomes undermargined by such a magnitude that a default thereon would cause the FCM to become under capitalized, the FCM's DSRO and the Commission should be made aware of the undermargined status as soon as possible. The Commission therefore proposed Rule 1.12(f)(3) as an addition to the financial early warning system to require an FCM to notify its DSRO and the Commission immediately when it determines an account it is carrying to be undermargined by an amount that exceeds its excess adjusted net capital.

II. Comments on the Proposal

Five commenters addressed the Commission's proposed addition to the financial early warning system. The principal industry trade association representing FCMs supported the Commission proposal by stating:

> The proposed amendment to Regulation 1.12 is a useful addition to the early warning system already in place under the Commission regulations. The utilization of a DSRO's surveillance capabilities heightens the level of policing compliance with capital requirements. Thus, proposed subparagraph 1.12(f)(3) is both appropriate and feasible given capitalization requirements.

Four contract markets addressed this proposal. One contract market stated that the proposal "is a matter to be addressed principally by the FCM community." As noted above, the FCM community, through its trade association, supported the proposal. Another contract market stated that it "concurs with the Commission's objective in proposing this rule and agrees with the Commission that the DSRO should be notified when a margin call exceeds an FCM's adjusted net capital." This contract market noted, however, that certain large banks and other firms had established relatively thinly-capitalized subsidiaries for the primary purpose of clearing the parent firm's trades and as a result, margin calls to the parent frequently exceed the subsidiary's capitalization. The contract market recommended that some accommodation be made for such situations. Another contract market suggested that the proposal be implemented on a trial basis and the results studied before it is adopted permanently. Only one contract market expressed firm opposition to the proposal.

III. The Amended Rule

The Commission has carefully considered the comments received on the proposed addition to the financial early warning system and has determined to adopt Rule 1.12(f)(3) with certain changes to the proposal. The undermargined amount in an account must exceed the FCM's *entire* adjusted net capital, not simply the amount of excess adjusted net capital. Further, a DSRO may grant an exemption from the new rule to an FCM with respect to any particular account on a continuous basis provided the DSRO documents the reasons for granting such an exemption and continues to monitor any such account. Under that provision, subsidiary firms set up to clear a parent company's trades which believe that the new element of the early warning system will be unduly burdensome may seek relief.

Under the new rule, an immediate telephone call is encouraged, to be followed by telegraphic notice. The notification to the Commission should be directed to the Division of Trading and Markets. The rule applies generally to individual accounts and not to all of a firm's accounts on a cumulative basis. However, the rule also provides that if any person has an interest of 10 percent or more in ownership or equity in, or guarantees, more than one account, or guarantees an account in addition to his own account, the undermargined amounts of such accounts must be combined and notice must be given to the DSRO and the Commission if the combined undermargined amounts exceed the firm's adjusted net capital.

The Commission wishes to emphasize that Rule 1.12(f)(3) is intended, as are the other provisions of the financial early warning system, to allow protective action to be taken, and should not cause a firm to delay issuing a margin call. The Commission also wishes to emphasize, however, that the triggering event is the determination of undermargined status, rather than the issuance of a margin call, and thus an FCM cannot circumvent the rule merely by postponing the issuance of a margin call.

The Commission further notes that the industry trade association and one of the contract markets which generally supported proposed Rule 1.12(f)(3) also included in their suggested alternatives to the Commission's August 5, 1985 financial rule proposals, referred to in footnote 1 above, certain modifications to the financial early warning system. The Commission is aware that there are efforts underway to develop a uniform industry proposal for a risk-based minimum financial requirement for FCMs. If such a proposal were also to include any suggestions for amendments to the financial early warning system, the Commission would carefully review such suggestions and to take any further appropriate action.

IV. Other Matters

A. Regulatory Flexibility Act

When the Commission proposed Rule 1.12(f)(3), the Chairman certified, on behalf of the Commission, that the proposed amendment would not, if adopted, have a significant economic impact on a substantial number of small entities. 50 FR 35247, 35255. Since the amendment is being adopted as proposed, the amendment is in compliance with the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.* (1982)) based on the Chairman's prior certification.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 ("Act"), 44 U.S.C. 3501 *et. seq.* (1982), imposes certain requirements on federal agencies (including the Commission) in conjunction with their conducting or sponsoring any collection of information as defined by the Act. In compliance with the Act, the Commission previously submitted this rule in proposed form to the Office of Management and Budget, as a portion of the package of rule amendments which were proposed in order to change the status of the non-agricultural commodity options program from pilot to permanent. 50 FR 35247 (August 30, 1985). This final rule is less stringent than the rule proposed at that time. Copies of the OMB appsoved information-collection package (3038–0024) which contains this rule may be

[1] The Commission's resolution of those other capital rule proposals, which were originally published at 50 FR 31612 (August 5, 1985), is discussed in a Federal Register release published separately.

obtained from Bob Neal, Office of Management and Budget, Room 3220, NEOB, Washington, DC 20503, (202) 395–7340.

List of Subjects in 17 CFR Part 1

Futures commission merchants, Minimum financial requirements, Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 4c, 4f, 4g and 8a thereof, 7 U.S.C. 6c, 6f, 6g, and 12a, the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for Part 1 continues to read as follows:

Authority: Sections 2(a)(1), 4, 4a, 4b, 4c, 4d, 4e, 4f, 4g, 4h, 4i, 4j, 4k, 4l, 4m, 4n, 4o, 5, 5a, 6(a), 6(b), 6b, 6c, 8, 8a, 8c, 12, 15, 17 and 20 of the Commodity Exchange Act, 7 U.S.C. 2, 2a, 4, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h,6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 19, 21, and 24.

2. Section 1.12 is amended by adding paragraph (f)(3) to read as follows:

§ 1.12 Maintenance of minimum financial requirements by futures commission merchants and introducing brokers.

* * * * *

(f) * * *

(3) Whenever a registered futures commission merchant determines that an account which it is carrying is undermargined by an amount which exceeds the futures commission merchant's adjusted net capital determined in accordance with § 1.17, the futures commission merchant must give immediate telegraphic notice of such a determination to the designated self-regulatory organization and the principal office of the Commission at Washington, DC. This paragraph (f)(3) shall apply to any account carried by the futures commission merchant, whether a customer, noncustomer, omnibus or proprietary account. For purposes of this paragraph (f)(3), if any person has an interest of 10 percent or more in ownership or equity in, or guarantees, more than one account, or has guaranteed an account in addition to his own account, all such accounts shall be combined. A designated self-regulatory organization may grant an exemption from the provisions of this paragraph to a futures commission merchant with respect to any particular account on a continuous basis provided the designated self-regulatory organization documents the reasons for granting such an exemption and continues to monitor any such account.

* * * * *

Issued in Washington, DC, July 23, 1987 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87-17123 Filed 7-28-87; 8:45 am]

BILLING CODE 6351-01-M

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17 CFR Part 1

Debit/Deficit Accounts

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission") has adopted an amendment to its financial rules for futures commission merchants ("FCMs") regarding the treatment of an unsecured account that either contains a ledger balance and open trades which, when combined, liquidate to a deficit, or contains a debit ledger balance only ("debit/deficit account") for purposes of an FCM's computation of its adjusted net capital. The Commission's rules currently allow an FCM to treat a debit/deficit account as a current asset until the close of business on the business day following the date on which the deficit or debit ledger balance originated. The Commission had proposed to eliminate this one-day grace period, but has instead determined to adopt an alternative suggested by a commenter which would preserve the one-day grace period unless the account had been in debit/deficit status on the previous business day and the debit/deficit status had not been redressed but is augmented the following business day.

EFFECTIVE DATE: August 28, 1987.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel, or Gary C. Miller, Assistant Chief Accountant, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission proposed various amendments to the minimum financial requirements for FCMs and introducing brokers ("IBs") following the financial failure of Volume Investors Corporation, which had been an FCM and a clearing member of the Commodity Exchange, Inc. 50 FR 31612 (August 5, 1985). The proposed rule amendments were intended to: (1) Clarify the treatment to be accorded to securities included in current assets, whether or not such securities are subject to repurchase agreements, and also clarify the treatment of repurchase agreements; (2) require FCMs to calculate a concentration charge in computing their adjusted net capital; (3) change the treatment of debit/deficit accounts; and (4) clarify the requirements for and the treatment of a guaranteed account. The Commission stated its belief that "recent market developments indicate the need for enhanced financial requirements so that FCMs and IBs will be better able to withstand adverse market movements without harm to themselves, their customers and other market participants." *Id.*[1]

After the Commission issued its proposals, the Securities and Exchange Commission ("SEC") proposed amendments to its rules concerning repurchase agreements. 51 FR 32658 (September 15, 1986). The SEC recently adopted those amendments. 52 FR 22295 (June 11, 1987). The Commission has stated that it will defer to the SEC with respect to the treatment of repurchase agreements. 50 FR 49859, 49860 (December 5, 1985). The CFTC's financial rules incorporate the SEC's financial rules in this area by reference. *See, e.g.*, 17 CFR 1.17(b)(1) and (c)(5)(v) (1987). The Commission's proposal to require FCMs to calculate a concentration charge in computing their adjusted net capital is being held in abeyance pending the submission of an industry alternative which is expected to contain a risk-based minimum capital requirement. The Commission today is separately reproposing to clarify the requirements for and the treatment of a guaranteed account. The fourth proposal published on August 5, 1985 was to change the treatment of debit/deficit accounts and the Commission has determined to adopt that proposal in a modified form in response to an alternative suggested by certain commenters as more fully discussed below.

II. The Debit/Deficit Account Proposal and Comments Thereon

The Commission proposed to amend Rule 1.17(c)(2)(i) (17 CFR 1.17(c)(2)(i)

[1] The Commission initially allowed sixty days for comments by interested persons on the proposals. Several comment period extensions were granted. 50 FR 39133 (September 27, 1985); 50 FR 45831 (November 4, 1985); 50 FR 44859 (December 5, 1985) and 51 FR 7285 (March 3, 1986). Ninety-two commenters submitted a total of 116 separate written comments on the proposals.

(1987)) to require that an FCM exclude from its current assets any account which is in a debit or deficit status as of the close of business on the day the account reaches that status, without allowing a one-day grace period as at present, on the theory that it is anomalous to count a negative amount as a credit. Although two commenters supported this proposal, there was substantial negative reaction. Most of the objections raised concerned operational difficulties. A majority of the commenters pointed out that the Federal Reserve's wire system for transferring funds closes prior to the closing of all futures markets, which would make it impossible to obtain funds from debit/deficit customers in those late-closing markets, even assuming there were an on-line tracking system to inform FCMs of all debit/deficit accounts as soon as trading closed. It was further noted by several commenters that FCM accounting systems are not set up with real-time tracking but instead accounts are processed overnight. Thus it is not until the following morning that FCMs receive a summary of customer accounts as of the close of business on the preceding business day, making it impossible for an FCM to know which customers are in a debit/deficit situation as of the day the event occurs. Certain commenters noted that funds received late in the day may not be posted into a customer's account until the following day, and certain commenters stated that international customers may be unable to wire funds by the close of the U.S. business day due to time zone differences.

There were two other major objections to the debit/deficit proposal. First, certain commenters stated that the proposal did not take into consideration an FCM's credit policies, *i.e.*, determinations made as to which customers will be allowed to go into a debit/deficit situation based on their financial standing and history of meeting margin calls and alleviating a debit/deficit condition. Second, certain commenters pointed out that current bankruptcy laws dissuade customers from keeping excess margin at their FCM, thus increasing the likelihood of accounts falling into a debit/deficit situation.

Other commenters suggested alternatives with respect to debit/deficit accounts. Ten commenters suggested that the rules should continue to allow the one-day grace period unless the account in question had been undermargined on the day prior to its reaching debit/deficit status, and two commenters would allow the one-day grace period unless the account in question had been in debit/deficit status the previous day. The Commission had indicated in its December 5, 1985 comment period extension notice that the former alternative may have merit. 50 FR 49859, 49860.

III. The Amended Rule

The Commission has determined to adopt the latter, less stringent alternative referred to in the prior paragraph, which would preserve the one-day grace period for a debit/deficit account unless the account had been in debit/deficit status on the previous business day and the debit/deficit status had not been redressed but is augmented the following business day. Therefore, if an account is in deficit by $10,000 at the close of Business Day 1 and there are further adverse market movements amounting to another $10,000 on Business Day 2, the one-day grace period would still apply with respect to the additional $10,000 loss suffered on Business Day 2 so long as at least $10,000 had been received by the FCM from the customer on Business Day 2 to satisfy the deficit which occurred at the close of Business Day 1. If the *total* deficit of Business Day 1 were not satisfied through the deposit of new funds on Business Day 2, however, because less than $10,000 was deposited with the FCM by the customer, the account would have to be excluded by the FCM from its current assets in computing its adjusted net capital. The Commission recognizes that current methods of account clearing and the limits of the Federal Reserve's wire transfer system present substantial operational problems to its August 5, 1985 proposal in this area. The Commission believes that the amendment to Rule 1.17(c)(2)(i) which it has adopted will sharpen to a certain extent the difference in treatment between debit/deficit accounts and undermargined accounts and that this is appropriate due to the substantially greater risk to an FCM from the former and the fact that a debit/deficit account frequently will have been undermargined for some time. The Commission further believes that the amendment accommodates the operational concerns raised by commenters as well as the objections to the proposal regarding an FCM's credit policies. The Commission wishes to reiterate, however, that the exclusion from current assets of debit/deficit accounts is not intended as a substitute for firms attempting to collect the proper margin for all accounts. The Commission also notes that no grace period is allowed where the FCM knows or should know that the debit or deficit is uncollectible, since Rule 1.17(c)(2)(vi) (17 CFR 1.17(c)(2)(vi) (1987)) requires an FCM to exclude from current assets any asset doubtful of collection or realization less any reserves established therefor. The Commission further reminds FCMs that the amendment does not alter the requirement that FCMs cover debit/deficit amounts from their own funds in order to maintain sufficient funds in segregation to cover those customer accounts which would liquidate to a positive equity. *See* Commission Rules 1.22 and 1.23 (17 CFR 1.22 and 1.23 (1987)).

IV. Other Matters

A. Regulatory Flexibility Act

When the Commission proposed to amend the debit/deficit account rule and to make other financial rule changes on August 5, 1985, the Chairman certified, on behalf of the Commission, that the proposed new rules and rule amendments would not, if adopted, have a significant economic impact on a substantial number of small entities. 50 FR 31619–20. Since the amendment which has been adopted to the debit/deficit account rule is less stringent than the proposal, the amendment is in compliance with the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.* (1982)) based on the Chairman's prior certification.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (Act), 44 U.S.C. 3501 *et. seq.* (1982), imposes certain requirements on federal agencies (including the Commission) in conjunction with their conducting or sponsoring any collection of information as defined by the Act. In compliance with the Act, the Commission submitted this rule in proposed form to the Office of Management and Budget as a portion of the package of financial rule amendments which were proposed following the collapse of Volume Investors Corporation. 50 FR 31612 (August 5, 1985). This final rule will not affect the reporting and recordkeeping burden on FCMs and IBs. Copies of the OMB approved information collection

package (3038–0024) which contains this rule may be obtained from Bob Neal, Office of Management and Budget, Room 3220, NEOB, Washington, D.C. 20503, (202) 395–7340.

List of Subjects in 17 CFR Part 1

Futures commission merchants, Minimum financial requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 4c, 4f, 4g, and 8a thereof, 7 U.S.C. 6c, 6f, 6g, and 12a, the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for Part 1 continues to read as follows:

Authority: Sections 2(a)(1), 4, 4a, 4b, 4c, 4d, 4e, 4f, 4g, 4h, 4i, 4j, 4k, 4l, 4m, 4n, 4o, 5, 5a, 6(a), 6(b), 6b, 6c, 8, 8a, 8c, 12, 15, 17 and 20 of the Commodity Exchange Act, 7 U.S.C. 2, 2a, 4, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 19, 21, and 24.

2. Section 1.17 is amended by revising paragraph (c)(2)(i) to read as follows:

§ 1.17 Minimum financial requirements for futures commission merchants and introducing brokers.

* * * * *

(c) * * *

(2) * * *

(i) Exclude any unsecured commodity futures or option account containing a ledger balance and open trades, the combination of which liquidates to a deficit or containing a debit ledger balance only: *Provided, however,* Deficits or debit ledger balances in unsecured customers', non-customers', and proprietary accounts, which are the subject of calls for margin or other required deposits may be included in current assets until the close of business on the business day following the date on which such deficit or debit ledger balance originated providing that the account had timely satisfied, through the deposit of new funds, the previous day's debit or deficits, if any, in its entirety.

* * * * *

Issued in Washington, DC July 23, 1987 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–17129 Filed 7–28–87; 8:45 am]

BILLING CODE 8351-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 201, 203, and 234

[Docket No. N–87–1698; FRL–2352]

Mortgage Insurance; Changes to the Maximum Mortgage Limits for Single Family Residences, Condominiums and Manufactured Homes and Lots

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of revisions to FHA maximum mortgage limits for high-cost areas.

SUMMARY: This notice amends the listing of areas eligible for "high-cost" mortgage limits under certain of HUD's insuring authorities under the National Housing Act by (1) revising the limits for Cumberland County, Maine, and New London County, Connecticut and (2) adding the mortgage limits for York County, Maine. Mortgage limits are adjusted in an area when the Secretary determines that middle- and moderate-income persons have limited housing opportunities because of high prevailing housing sales prices.

EFFECTIVE DATE: July 29, 1987.

FOR FURTHER INFORMATION CONTACT: For single family: Morris Carter, Director, Single Family Development Division, Room 9270, telephone (202) 755–6720.

For manufactured homes: Christopher Peterson, Director, Office of Manufactured Housing and Regulatory Functions, Room 9158, telephone (202) 755–5210. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

The National Housing Act (NHA) 12 U.S.C. (1710–1749) authorizes HUD to insure mortgages for single family residences (from one- to four-family structures), condominiums, manufactured homes, manufactured home lots, and combination manufactured home lots. The NHA, as amended by the Housing and Community Development Amendments of 1980 and the Housing and Community Development Amendments of 1981, permits HUD to increase the maximum mortgage limits under most of these programs to reflect regional differences in the cost of housing. In addition, sections 2(b) and 214 of the NHA provide for special high-cost limits for insured mortgages in Alaska, Guam and Hawaii.

On May 22, 1984, the Department published a revised list of areas eligible for "high-cost" mortgage limits, which contained several new features (see 49 FR 21520). First, there was no separate listing for condominium units, since these limits are now the same as those for other one-family residences. Second, the listing included instructions on how to compute the high-cost limits for combination manufactured homes and lots and individual lots, and specified the special high-cost amounts for manufactured homes, combination manufactured homes and lots and individual lots insured in Alaska, Guam and Hawaii. Third, it made changes to the list based on a new definition of "metropolitan area".

On October 1, 1986 (51 FR 34961), the Department published its annual complete listing of areas eligible for "high-cost" mortgage limits under certain of HUD's insuring authorities under the National Housing Act and the applicable limits for each area.

This Document

Today's document (1) revises the high-cost mortgage amounts for Cumberland County, Maine, and New London County, Connecticut and (2) adds high cost mortgage limits for York County, Maine.

These amendments to the high-cost areas listing appear in two parts. Part I explains high-cost limits for loans insured under Title I of the National Housing Act. Part II lists changes for single family residences insured under sections 203(b) or 234(c) of the National Housing Act.

National Housing Act High Cost Mortgage Limits

I. Title I: Method of Computing Limits

A. *Section 2(b)(1)(D). Combination manufactured home and lot (excluding Alaska, Guam and Hawaii):* To determine the high-cost limit for a combination manufactured home and lot loan, multiply the dollar amount in the "one family" column of Part II of this list by .80. For example, New London County, Connecticut has a one-family limit of $90,000. The combination home and lot loan limit for New London is $90,000 × .80 or $72,000.

B. *Section 2(b)(1)(E): Lot only (excluding Alaska, Guam and Hawaii):* To determine the high-cost limit for a lot loan, multipy the dollar amount in the "one-family" column of Part II of this list by .20. For example, New London County, Connecticut has a one-family

limit of $90,000. The lot-only limit for New London County is $90,000 × .20 or $18,000.

C. *Section 2(b)(2). Alaska, Guam and Hawaii limits:* The maximum dollar limits for Alaska, Guam and Hawaii may be 140% of the statutory loan limits set out in section 2(b)(1).

Accordingly, the dollar limits for Alaska, Guam and Hawaii are as follows:

1. For manufactured homes: $56,700. ($40,500 × 140%).

2. For combination manufactured homes and lots: $75,600. ($54,000 × 140%).

3. For lots only: $18,900 × ($13,500 140%).

II. Title II: Updating of FHA Sections 203(b), 234(c) and 214 Area Wide Mortgage Limits

REGION I.—HUD FIELD OFFICE—HARTFORD, CT

Market area designation and local	1-family and condo unit	2-family	3-family	4-family
New London County	$90,000	$101,300	$122,550	$142,850

REGION I.—HUD FIELD OFFICE—BANGOR, ME

Market area designation and local	1-family and condo unit	2-family	3-family	4-family
York County, ME	$81,500	$91,800	$111,650	$129,950
Cumberland County, ME	$80,750	$90,950	$110,500	$127,500

Date: May 18, 1987.

Thomas T. Demery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 87-17256 Filed 7-28-87; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 09-87-18]

Special Local Regulations: 1987 Spirit of America Offshore Grand Prix, Lake Michigan

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special Local Regulations are being adopted for the Third Annual Spirit of America Offshore Grand Prix which is to be conducted on Lake Michigan off of Grand Haven, MI, on the 15th of August, 1987. The regulations are needed to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATES: These regulations become effective and terminate on 15 August, 1987.

FOR FURTHER INFORMATION CONTACT: CWO Gerald M. Trackim, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522-4420.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rule making has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received by the Commander, Ninth Coast Guard District, until 24 June, 1987, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

This has been an annual event for the past two years and no negative comments concerning it have been received.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Because of the short duration of these regulations, their economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary.

Since the impact of these regulations is expected to be minimal the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The drafters of this regulation are CWO Gerald M. Trackim, project officer, Officer of Search and Rescue and LCDR C. V. Mosebach, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The Spirit of America Offshore Grand Prix will be conducted on Lake Michigan off of Grand Haven, MI, on 15 August, 1987. It is sponsored by the Grand Isle Marina and is well known to boaters and residents of this area. This event will have an estimated 50 plus power boats with an expected 7,000 spectator craft which could pose hazards to navigation in the area. In order to provide for the safety of life and property, the Coast Guard will restrict vessel movement prior to and during this event within this section of Lake Michigan. Coast Guard patrol vessels will be located at strategic locations around the regulated area to stop vessel traffic.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended to add a temporary § 100.35-0918 to read as follows:

§ 100.35-0918 Spirit of America Offshore Grand Prix, Lake Michigan

The following area will be closed to vessel navigation or anchorage, except for spectator areas to be designated by the Coast Guard Patrol Commander (U.S. Coast Guard Group Muskegon, Muskegon, Michigan), from 10:00 A.M. (local time) until 3:00 P.M. (local time) on 15 August, 1987.

(a) *Regulated Area.* That portion of Lake Michigan enclosed by the following coordinates: 43 degrees 13 minutes 00.0 seconds North, 86 degrees 23 minutes 12.0 seconds West to the Muskegon Breakwater Light (LL 17915); then south along the shoreline to Port Sheldon Breakwater Light (LL 18320) to 42 degrees 53 minutes 42.0 seconds North, 86 degrees 14 minutes 48.0 seconds West to origin.

(b) *Special Local Regulations.* (1) Vessels desiring to transit the restricted area may do so only with the prior approval of the Patrol Commander and when so directed by that officer. The Patrol Commander may be contacted on

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channel 16(156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Vessels will be operated at a no wake speed and in a manner which will not endanger participants in the event or any other craft. These rules shall not apply to participants, or vessels of the patrol in the performance of their assigned duties.

(2) No vessel shall anchor or drift in the area restricted to navigation.

(3) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signalled shall stop and shall comply with the orders of the Patrol Vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) All persons in charge of, or operating vessels in the area covered by the above Special Local Regulations are required to promptly obey the directions of the Patrol Commander and the men acting under his instructions in connection with the enforcement of these Special Local Regulations.

(5) This section is effective from 10:00 AM (EDT) until 3:00 PM (EDT) on August 15, 1987.

Dated: July 21, 1987.

A.M. Danielsen,

Rodm., U.S. Coast Guard Commander, Ninth Coast Guard District.

[FR Doc. 87-17199 Filed 7-28-87; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[COTP Galveston, TX Regulation 87-02]

Security Zone Regulations; Galveston Channel, Galveston, TX

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a security zone in the slip between Galveston Wharves Piers 36 and 37. The zone is needed to safeguard the vessel moored in the slip against destruction or loss from sabotage or other subversive acts, accidents, or other causes of a similar nature. Entry into this zone is prohibited unless authorized by the Captain of the Port, Galveston, TX.

EFFECTIVE DATES: This regulation becomes effective on 20 August 1987 at approximately 12:01 A.M. CDT. It terminates 21 August 1987 when the vessel departs Galveston unless sooner terminated by the Captain of the Port Galveston, TX.

FOR FURTHER INFORMATION CONTACT: LCDR Robert H. Warman, Coast Guard Marine Safety Office Galveston, TX, 409-766-3639.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent destruction or loss to the ship moored in the slip between Galveston Wharves Piers 36 and 37. In addition, the Security Zone involves a military affairs function and is exempt from the requirements of 5 U.S.C. 553.

Drafting Information

The drafters of this regulation are LCDR R.H. Warman, project officer for the Captain of the Port, and LCDR J.J. Vallone, project attorney, Eighth Coast Guard District Legal Office.

Discussion of Regulation

The event requiring this regulation will occur between 20 and 21 August 1987 while a vessel is moored in the slip between Galveston Wharves Piers 36 and 37 during a joint field service exercise. The Security Zone is in the national interest and is justified to help protect military resources and aid in military readiness. This regulation is issued pursuant to 50 U.S.C. 191 as set out in the authority citation for all of Part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, Subpart D of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 33 CFR 160.5.

2. A new § 165.T830 is added to read as follows:

§ 165.T830 Security Zone: Galveston, TX.

(a) *Location.* The following area is a security zone: A Security Zone is established 20 August 1987 in the slip between Galveston Wharves Piers 36 and 37.

(b) *Effective Date.* This regulation becomes effective when the vessel moors in the slip between Galveston Wharves Piers 36 and 37. It terminates 22 August 1987 when the vessel departs Galveston unless sooner terminated by the Captain of the Port Galveston, TX.

(c) *Regulations.* In accordance with the general regulations in § 165.33 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Galveston, TX. Section 165.33 also contains other general requirements.

Dated: July 9, 1987.

R.W. Mason,

Captain, U.S. Coast Guard, Captain of the Port Galveston, TX.

[FR Doc. 87-17200 Filed 7-28-87; 8:45 am]

BILLING CODE 4910-14-M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 87-3]

Compulsory License for Cable Systems

AGENCY: Library of Congress, Copyright Office.

ACTION: Final regulations.

SUMMARY: The Copyright Office of the Library of Congress is issuing a final regulation to update its regulations concerning the cable compulsory license. By this "housekeeping" action the Office will delete 37 CFR 201.11 and amend 37 CFR 201.17, so that the Copyright Office's regulations conform with recently passed legislation and rate adjustments issued by the Copyright Royalty Tribunal. The amendments are not substantive, and merely clarify and update information given in the regulations so that such information is accurate.

EFFECTIVE DATE: July 29, 1987.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, DC 20559, Telephone (202) 287-8380.

SUPPLEMENTARY INFORMATION: On August 22, 1986, Congress amended the Copyright Act of 1976 to eliminate the requirement in 17 U.S.C. 111(d)(1) that cable systems file notices of identity and signal carriage complement. *See* Pub. L. No. 99-397 (1986). By this action, the Copyright Office deletes the portion of its regulations at 37 CFR 201.11 that concerns the filing of such notices. Because § 201.11(a)(3), which defines a

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"cable system," and § 201.11(a)(4), which defines when an FM radio signal is "generally receivable," have continued relevance in the context of the Office's cable compulsory license regulations as a whole, those regulations are being transferred, unchanged, to § 201.17, that concerns the operation of the cable compulsory license.

This action also updates § 201.17 to conform with technical changes in the statement of account forms issued by the Copyright Office and gives current rates and gross receipts ceilings, so that the information reflects the 1985 inflationary rate adjustment made by the Copyright Royalty Tribunal. (50 FR 18480) (May 1, 1985).

The amendments are purely of a "housekeeping" nature, are are not substantive, and do not change the Copyright Office's interpretation of section 111 of the Copyright Act.

List of Subjects in 37 CFR Part 201

Cable television, Cable compulsory license, Copyright Office.

Final Regulations

In consideration of the foregoing, Part 201 of CFR 37, Chapter II is amended in the manner set forth below.

PART 201—[AMENDED]

A. The authority citation for Part 201 continues to read in part as follows:

Authority: Sec. 702, 90 Stat. 2541; 17 U.S.C. 702.

* * * * *

§ 201.11 [Amended]

B. Section 201.11 is amended as follows:

1. Paragraphs (a)(1), (a)(2), and (a)(5) of § 201.11 are removed in their entirety.

2. Paragraph (a)(3) of § 201.11 is transferred to § 201.17 and is redesignated as 201.17(b)(2), as further described in amendment C.1. below.

3. Paragraph (a)(4) of § 201.11 is transferred to § 201.17 and is redesignated as 201.17(b)(4), as further described in amendment C.2. below.

4. Paragraphs (b), (c), (d), (e), and (f) of § 201.11 are removed in their entirety.

5. The heading for § 201.11 is removed and the section number is reserved.

§ 201.17 [Amended]

C. Section 201.17 is amended as follows:

1. Paragraph (b)(2) of § 201.17 is amended by adding the definition transferred from former § 201.11(a)(3), and reads as did former § 201.11(a)(3).

* * * * *

2. Paragraph (b)(4) of § 201.17 is amended by adding the definition transferred from former § 201.11(a)(4), and reads as did former § 201.11(a)(4).

* * * * *

3. Paragraph (b)(7) of § 201.17 is amended by removing the phrase "and § 201.11 of these regulations."

* * * * *

4. Paragraph (d)(2) (i) and (ii) of § 201.17 is revised to read as follows:

* * * * *

(d) * * *

(2) * * *

(i) Form SA1–2—"Short Form" for use by cable systems whose semiannual gross receipts for secondary transmission total less than $292,000; and

(ii) Form SA3—"Long Form" for use by cable systems whose semiannual gross receipts for secondary transmission total $292,000 or more.

* * * * *

5. Paragraph (e)(2) of § 201.17 is amended by removing the reference to footnote 8, and removing footnote 8 in its entirety.

* * * * *

6. Paragraph (e)(9) of § 201.17(vii) is amended by removing the phrase "Form CS/SA–1 or Form CS/SA–2" and inserting in lieu thereof the phrase "Form SA1–2".

* * * * *

7. Paragraph (e)(12) of § 201.17 is amended by removing the phrase "$41,500 or less" and inserting in lieu thereof the phrase "$75,800 or less".

* * * * *

8. Paragraph (e)(14)(iii)(E) of § 201.17 is revised to read as follows:

* * * * *

(e) * * *

(14) * * *

(iii) * * *

(E) A declaration of the veracity of the statements of fact contained in the Statement of Account and the good faith of the person signing in making such statement of fact.

* * * * *

9. Paragraph (g) of § 201.17 is amended in its last sentence by removing the phrase "or (ii) 0.799 of 1 percent" and inserting in lieu thereof "or (ii) 0.893 of 1 percent.

* * * * *

10. The introductory text of paragraph (h)(2) of § 201.17 is revised to read as follows:

* * * * *

(h) * * *

(2) A cable system filing Form SA3 shall compute its royalty fee in the following manner:

* * * * *

11. The introductory text of paragraph (h)(3) of § 201.17 is revised to read as follows:

* * * * *

(h) * * *

(3) A cable system whose semiannual gross receipts for secondary transmissions totalled $214,000 or more during the period January 1, 1983, through June 30, 1983, shall compute its royalty fee for carriage during that period in the following manner:

* * * * *

12. Paragraph (h)(4)(iv) is removed in its entirety.

* * * * *

13. Paragraph (j)(5) is removed in its entirety.

* * * * *

Dated: July 9, 1987.

Ralph Oman,

Register of Copyrights.

Approved:

Daniel J. Boorstin,

The Librarian of Congress.

[FR Doc. 87–17121 Filed 7–28–87; 8:45 am]

BILLING CODE 1410–09–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–4–FRL–3236–1; AL–018]

Approval and Promulgation of Implementation Plans; Alabama Stack Height Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, EPA is approving revisions to the Alabama state implementation plan (SIP) submitted to EPA on September 26, 1986. Alabama has revised its SIP to include regulations for good engineering practice stack height. These regulations are equivalent to EPA requirements promulgated at Part 51 of Chapter I, Title 40 of the Code of Federal Regulations.

DATES: This action will be effective on September 28, 1987, unless notice is received within 30 days that adverse or critical comments will be submitted.

ADDRESSES: Copies of the materials submitted by Alabama may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

Air Programs Branch, Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365
Alabama Department of Environmental Management, 1751 Federal Drive, Montgomery, Alabama 36109.

FOR FURTHER INFORMATION CONTACT: Beverly T. Hudson, EPA Region IV, Air Programs Branch at above listed address, telephone (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: In the Federal Register of July 8, 1985 (50 FR 27892), EPA published final regulations to implement section 123 of the Clean Air Act (CAA), which regulates the manner in which dispersion of pollutants from a source may be considered in setting emission limitations. Pursuant to these regulations and the Clean Air Act Amendments of 1977, all states were required to (1) review and revise, as necessary, their state implementation plans (SIPs) to include provisions that limit stack height credit and dispersion techniques in accordance with the revised regulations, and (2) review all existing emission limitations to determine whether these limitations have been affected by stack height credits above GEP or any other dispersion techniques. For any limitations so affected, states were to prepare revised limitations consistent with their revised SIPs. All SIP revisions and revised emission limits were to be submitted to EPA within nine months of promulgation.

Subsequently, EPA issued detailed guidance on carrying out the necessary reviews. For the review of emission limitations, states were to prepare inventories of stacks greater than 65 meters in height and sources with emissions of sulfur dioxide (SO_2) in excess of 5,000 tons per year. These limits correspond to the *de minimis* GEP stack height and the *de minimis* SO_2 emission exemption from prohibited dispersion techniques. These sources were then to be subjected to detailed review for conformance with the revised regulations. State submissions were to contain an evaluation of each stack and source in the inventory.

On September 26, 1986, the Alabama Department of Environmental Management submitted SIP revisions for good engineering practice stack height. Since the State formally revised its SIP, a public hearing on the stack height regulations and new source review was held on July 31, 1986.

Alabama's regulations (16.3.3) limit the amount of stack height or dispersion credit (dispersion techniques) a source can claim in the process of establishing its emission limitation. Dispersion techniques include the use of stack heights greater than 65 meters and use of other techniques to increase the dispersion of emissions rather than continuously reducing emissions from a source. These regulations do not limit the physical stack height of any source, or the actual use of dispersion techniques at a source, nor do they require any specific stack height for any source. Instead, they set limits on the maximum credit for stack height and other dispersion techniques to be used in ambient air modeling for the purpose of setting an emission limitation and calculating the air quality impact of a source. Sources are modeled at their actual physical stack height unless that height exceeds their GEP stack height. The regulations apply to all stacks not in existence on December 31, 1970, and all dispersion techniques implemented since December 31, 1970. The regulation applies to both new and existing sources, thereby satisfying requirements for state new source review regulations at 40 CFR 51.164 [old 51.18(1)).

Alabama has adopted definitions corresponding to EPA's GEP regulations. The State's regulations define a number of specific terms, including "excessive concentration," "dispersion techniques" and "nearby." Alabama's revisions bring their existing regulations into conformance with the federal stack height rule.

Final Action

EPA has reviewed the submittal and found it to be in conformance with EPA's stack height requirements. Therefore, EPA is today approving Alabama's regulations on stack height.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial issue and anticipates no adverse comments. This action will be effective 60 days from the date of this Federal Register notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective September 28, 1987.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 28, 1987. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

Under 5 U.S.C. § 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Incorporation by reference.

Note.—Incorporation by reference of the Alabama State Implementation Plan was approved by the Director of the Federal Register on July 1, 1982.

Dated: July 21, 1987.

Lee M. Thomas,

Administrator.

Subpart B, Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLAN

Subpart B—Alabama

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.50 is amended by adding paragraph (c)(46) as follows:

§ 52.50 Identification of plan.

* * * * *

(c) * * *

(46) Stack height regulations were submitted to EPA on September 26, 1986, by the Alabama Department of Environmental Management.

(i) Incorporation by reference.

(A) Letter of September 26, 1986, from the Alabama Department of Environmental Management, transmitting stack height regulations.

(B) Section 16.3.3, Stack Heights, of the Alabama air pollution control rules and regulations, which was adopted on September 16, 1986, by the Alabama Environmental Management Commission.

(ii) Other material—none.

[FR Doc. 87-16950 Filed 7-28-87; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 52

[A-10-FRL-3238-8]

Approval and Promulgation of Implementation Plans; Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today approves a revision to the Oregon State Implementation Plan which allows regional air pollution authorities to adopt a fee schedule that is different than that set by the Oregon Department of Environmental Quality (ODEQ). This involves a revision to the Oregon Administrative Rules Chapter 340, Division 20, Section 165.

DATES: This action will be effective on September 28, 1987, unless notice is received before August 28, 1987, that someone wishes to submit adverse or critical comments. If such notice is received, EPA will open a formal 30 comment period on this action.

ADDRESSES: Copies of materials submitted to EPA may be examined during normal business hours at the following locations:

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460
Air Programs Branch (10A-87-3), Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101
Department of Environmental Quality, Yeon Building, 811 SW., 6th Street, Portland, OR 97204.

Comments should be addressed to: Laurie M. Kral, Air Programs Branch, AT-092, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: David C. Bray, Air Programs Branch, AT-092, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone (206) 442-4253, FTS: 399-4253.

SUPPLEMENTARY INFORMATION:

I. Background

The Oregon Revised Statutes (ORS) 468.535 establish the general functions of regional air authorities and explain their powers and limitations. Included in the general functions are the responsibility of issuing permits, as well as the contents, fees and uses of such permits. ORS 468.555 allows the Oregon Environmental Quality Commission (EQC) to authorize, by rule, the issuance of permits by regional authorities.

Oregon Administrative Rules (OAR) 340-20-165 authorizes local permit programs, pursuant to ORS 468.555. However, current regulations do not allow the regional air authorities to establish their own fee schedule. Before a regional authority could be allowed to amend the permit fee schedule for its own jurisdiction, specific authorization from the EQC needed to be provided by rule. After a public hearing within the Lane County Air Pollution Authority's jurisdiction, the proposed rule change was adopted by EOC on March 14, 1986, and was then submitted to the EPA for approval on May 23, 1986.

II. EPA Action

Today EPA approves the revision to the OAR Chapter 340, Division 20, Section 165, allowing the regional air quality authorities to establish permit fees different from those of the Oregon Department of Environmental Quality.

III. Administrative Review

The public should be advised that this action will be effective 60 days from the date of this Federal Register notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments on any or all of the revisions approved herein, the action on these revisions will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action on those revisions and another will begin a new rulemaking by announcing a proposal of the action on these revisions and establish a comment period.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under 5 U.S.C. 605(b), I certify that this revision will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 28, 1987. This action may not be challenged later in proceedings to enforce its requirements (see 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping requirements, Incorporation by reference.

Dated: July 21, 1987.

Lee M. Thomas,

Administrator.

Note.—Incorporation by reference of the Implementation Plan for the State of Oregon was approved by the Director of the Office of Federal Register on July 1, 1982.

Title 40, Part 52, Subpart MM, of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart MM—Oregon

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.1970 is amended by adding paragraph (c)(80) to read as follows:

§ 52.1970 Identification of Plan.

* * * * *

(c) * * *

(80) On May 23, 1986, the State of Oregon Department of Environmental Quality submitted a new paragraph (12), of OAR 340-20-165 "Fees", as a revision to the State Implementation Plan. This paragraph allows regional air pollution authorities to set a permit fee schedule for sources within their jurisdiction.

(i) Incorporation By Reference.

(A) Letter dated May 23, 1986, from the State of Oregon Department of Environmental Quality to EPA Region 10. Oregon Administrative Rule, Chapter 340, Division 20, Section 340-20-165 "Fees", paragraph (12), adopted by the Environmental Quality Commission on March 14, 1986.

[FR Doc. 87-16953 Filed 7-28-87; 8:45 am]

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40 CFR Parts 60 and 61

[A-6-FRL-3239-7]

National Emission Standards for Hazardous Air Pollutants; Mississippi: Delegation of Authority; Tennessee; Delegation of Authority to Nashville/Davidson County; Partial Revocation of Delegation of Authority

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation.

SUMMARY: On July 30, 1986, the State of Mississippi requested delegation of authority for the implementation and enforcement of certain standards in 40 CFR Part 60 (Standards of Performance

for New Stationary Sources) and 40 CFR Part 61 (National Emission Standards for Hazardous Air Pollutants) that had been promulgated and revised as of June 25, 1986. On September 22, 1986, the NSPS and NESHAP standards that had been promulgated since June 25, 1986, were delegated to Mississippi. The NSPS and NESHAP standards which were revised as of June 25, 1986, were delegated on December 19, 1986 (listed in the "Supplementary Information").

On December 17, 1986, the Metropolitan Health Department of Nashville/Davidson County requested delegation of one NSPS category. This was delegated to them on January 28, 1987.

EPA delegated to the State of Tennessee the authority to administer the NSPS category Subpart VV, Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry on August 14, 1985. EPA has since revoked the delegation of Subpart VV to Tennessee.

DATE: The effective dates of the delegations are: Nashville/Davidson County, Tennessee, January 28, 1987; Mississippi, December 19, 1986. The date of the delegation revocation for Tennessee is June 1, 1987.

ADDRESSES: Copies of the requests for delegation of authority and EPA's letters of delegation of authority and revocation of delegation of authority may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region IV—Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365

Metropolitan Health Department, Air Pollution Control Division, 311—23rd Avenue, North, Nashville, Tennessee 37203

Bureau of Pollution Control, Mississippi Department of Natural Resources, Post Office Box 10385, Jackson, Mississippi 39209

Division of Air Pollution Control, Tennessee Department of Public Control, 4th Floor, Customs House, 701 Broadway, Nashville, Tennessee 372190

FOR FURTHER INFORMATION CONTACT: Rosalyn D. Hughes of the EPA Region IV Air Programs Branch, at the above address and telephone number (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: Sections 101, 111(c)(1) and 112(d)(1) of the Clean Air Act authorize EPA to delegate authority to implement and enforce the standards set out in 40 CFR Part 60, Standards of Performance for New Stationary Sources (NSPS) and 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants (NESHAP).

On July 30, 1986, the State of Mississippi requested redelegation of authority of NSPS for Subpart I (*Hot Mix Asphalt Facilities*), Subpart N (*Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973*), Subpart BB (*Kraft Pulp Mills*), Subpart MM (*Automobile and Light-Duty Truck Surface Coating*), Subpart TT (*Metal Coil Surface Coating*), Subpart VV (*Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry*), Subpart JJJ (*Petroleum Dry Cleaners*), and Subpart KKK (*Equipment Leaks of VOC from Onshore Natural Gas Processing Plants*), and NESHAP Subpart V (*Equipment Leaks (Fugitive Emission Sources)*).

After a thorough review of the request, the Regional Administrator determined that such a delegation was appropriate for these source categories with all the conditions set forth in the delegation letter of November 20, 1981, and we delegated them to Mississippi on December 19, 1986.

The Metropolitan Health Department of Nashville/Davidson County requested delegation of authority of NSPS Subpart Db (Industrial-Commercial-Institutional Steam Generating Units) on December 17, 1986. After a thorough review of the request, the Regional Administrator determined that such a delegation was appropriate for this source category with all the conditions set forth in the delegation letters dated May 25, 1977, and February 20, 1986. Sources in Nashville/Davidson County subject to the requirements of Subpart Dd of 40 CFR Part 60 as of January 28, 1987, will be under the jurisdiction of Metropolitan Health Department of Nashville/Davidson County.

On August 14, 1985, EPA delegated to the State of Tennessee the authority to administer NSPS Subpart VV (Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry). It has since come to EPA's attention that Tennessee's NSPS regulation is not yet State-effective. EPA was in error in delegating authority for Subpart VV to Tennessee. Therefore, as of June 1, 1987, EPA has revoked Tennessee's authority to administer Subpart VV of the NSPS.

I certify, pursuant to 5 U.S.C. 605(b), that these delegations will not have a significant impact on a substantial number of small entities.

The Office of Management and Budget has exempted this rule from the requirement of section 3 of Executive Order 12291.

Authority: Sections 111 and 112 of the Clean Air Act (42 U.S.C. 7411 and 7412).

Dated: July 15, 1987.

Joe R. Franzmathes,

Acting Regional Administrator.

[FR Doc. 87–17183 Filed 7–28–87; 8:45 am]

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40 CFR Part 180

[PP 7F3535/R904; FRL–3229–9]

Pesticide Tolerance for Daminozide

AGENCY: Environmental Protection Agency (EPA)

ACTION: Final rule.

SUMMARY: This document continues the tolerance of 20 parts per million (ppm) for residues of the plant growth regulator daminozide (butanedioic acid mono (2,2-dimethylhydrazide)) in or on the raw agricultural commodity apples through January 31, 1989. This regulation to continue the maximum permissible level for residues of daminozide in or on the commodity apples was requested by Uniroyal Chemical Company, Inc.

EFFECTIVE DATE: Effective on July 29, 1987.

ADDRESS: Written objections, identified by the document control number [PP 7F3535/R904] may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Room M–3708, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMTION CONTACT:

By mail, Robert Taylor, Product Manager (PM) 25, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Rm. 245, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–1800).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of June 17, 1987 (52 FR 23077), that announced that Uniroyal Chemical Company, Inc., 74 Amity Road, Bethany, CT 06525, had submitted pesticide petition 7F3535 proposing the extension of the tolerance for residues of the plant growth regulator daminozide in or on the raw agricultural commodity apples at 20 ppm. The petition was submitted under section 408(d)(1) and 408(m) of the Federal Food, Drug, and Cosmetic Act (FFDCA). The existing tolerance was established on January 16, 1987 (52 FR 1909), when EPA modified the tolerance in 40 CFR 180.240 for residues of

daminozide in or on the raw agricultural commodity apples by reducing the tolerance from 30 ppm to 20 ppm. The existing tolerance would expire on July 31, 1987, unless extended.

There were no comments received in response to the notice of filing.

Daminozide is a controversial chemical. Although it appears to have substantial benefits, its potential oncogenic risk is under ongoing investigation by the Agency. It is now the subject of litigation; in *Nader v. EPA*, No. 87–7103, the U.S. Court of Appeals for the Ninth Circuit has been asked to review EPA's denial of a petition to revoke all daminozide tolerances and to order EPA to revoke such tolerances.

As stated in the January 1987 final rule, the reported results of certain oncogenicity studies on daminozide, and on its impurity and hydrolysis product unsymmetrical dimethyl-hydrazine, or UDMH (also known as 1,1-dimethylhydrazine), indicate that these substances caused increased incidence of cancer in laboratory animals under the test conditions. However, audits and reviews of these studies have revealed that some of the studies yielded equivocal results and that the other studies have serious flaws or shortcomings in the test methodology and documentation. These facts have led EPA to conclude that the existing studies, singly or in combination, are inadequate to serve as the basis for regulatory action against daminozide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq.

The FIFRA Scientific Advisory Panel (SAP) reviewed the studies and held a public meeting on September 26, 1985, on daminozide. The SAP review was occasioned by EPA's referral to it of a draft Position Document 2/3/4 proposing, pursuant to section 6(b) of FIFRA, to issue a notice of intent to cancel the registrations of daminozide products for food uses. FIFRA requires that (except in circumstances not relevant here) EPA must refer a notice of intent to cancel to the SAP for review before publishing the notice. The SAP was established by Congress in 1975 under section 25 of FIFRA, 7 U.S.C. 136w, to provide for review by non-EPA scientists of proposed Agency actions as a result of Congressional "concern for adequate scientific data as a basis for decision making," H.R. Rep. No. 94–497, 94th Cong., 1st Sess., p. 29, Sept. 19, 1975.

At that SAP meeting, EPA and Uniroyal presented sharply divergent expert views about the validity of the oncogenicity studies. After its review of the studies and critiques, the SAP concluded that, while some of the studies (those performed by Toth et al.) "give rise to concern about the possible oncogenicity of daminozide," the data are inadequate to allow a qualitative risk assessment of the oncogenic potential of daminozide, i.e., an assessment of how likely it is that daminozide in fact increases the incidence of cancer. The SAP also found that the data are inadequate to allow a quantitative risk assessment.

With respect to UDMH, the SAP found that a recent inhalation study (conducted by Haun et al.) provides some evidence of potential oncogenicity, but that discrepancies in the study require further clarification. The SAP found use of these data to evaluate dietary risk to be questionable. (A subsequent EPA audit of the inhalation study concluded that it is unusable for regulatory purposes because the source and chemical composition of the test substance could not be determined from the underlying records of the study and because the boiling point of the chemical that was used as the test substance was reported to be some 40 degrees Centigrade higher than that of UDMH.)

The conclusions of the SAP were critical to EPA's decision to initiate a cancellation action on the basis of the existing oncogenicity data. Those conclusions showed that the acknowledged major defects in the key studies were viewed as much more significant by the SAP than they had been by EPA staff. This fact was of great practical importance to the Agency.

Under FIFRA section 6, upon publication of a notice of intent to cancel, the registrant has the right to demand a formal evidentiary hearing before an administrative law judge. In such a hearing, Congress has provided that the proponent of continued registration has the ultimate burden of persuading the deciding official that the benefits of use of the pesticide outweigh the risks of such use. But EPA has the initial burden of going forward with the evidence, i.e., the burden of presenting a prima facie case that the risks of use of a pesticide outweigh the benefits of such use.

It was clear to EPA that had it chosen to proceed with issuance of a notice of intent to cancel, a hearing would have been requested and cancellation would have been vigorously contested. At such a hearing it would have been the Agency's duty to come forward with sufficient creditable evidence to constitute a prima facie case for cancellation. If the data on oncogencity were not viewed as creditable, it would be difficult for EPA to meet its threshhold burden of establishing a prima facie case. Even if this initial burden were met, serious questions about the significance of the oncogenicity data would make it much easier for the proponents of continued registration to sustain their ultimate burden of persuading the decisionmaker that the benefits of daminozide use outweigh the risks.

In deciding whether to issue a notice of intent to cancel, the Agency must consider the benefits as well as the risks of the pesticide, and must consider other risk-reduction actions as alternatives to cancellation. FIFRA section 6(b). It is also proper for the Agency to consider matters such as allocation of scarce resources and likelihood that use of those resources in a particular proceeding will result in success.

In view of the flaws in the oncogenicity studies, the extreme degree of disagreement among qualified experts on their meaning and reliability, the SAP's conclusions that the various oncogenicity studies were unusable for regulatory purposes and should be repeated, the information before the Agency on the benefits of daminozide use in apple production (see, e.g., pages III–7 through III–16 of the Draft PD 2/3/4), and the resultant substantial possibility that an attempt to cancel the registrations of daminozide products might not succeed, the Agency in January 1986 exercised its discretion not to proceed with issuance of a notice of intent to cancel at that time. Instead, the Agency deferred its decision on the cancellation issue until the registrant, Uniroyal, had submitted new, well-conducted studies to assess the toxicity of, and amount of human exposure to, daminozide and UDMH. Uniroyal by then had under way an oncogenicity study on daminozide, and the Agency ordered it to conduct similar studies on UDMH pursuant to FIFRA section 3(c)(2)(B), to submit progress reports, and to submit the final results when the studies are completed.

It is EPA's policy to coordinate its actions regarding the revocation of tolerances for pesticide chemicals under the FFDCA with its actions regarding the cancellation of corresponding registrations of pesticides under FIFRA. In 1982, EPA published a Statement of Policy on this subject (47 FR 42956; Sept. 29, 1982) which, among other things, reflects the joint understanding of the Food and Drug Administration, the Department of Agriculture, and EPA that EPA ordinarily will not revoke a tolerance until the corresponding registration(s) have been cancelled, nor until the end of any period provided by the final cancellation order for use of

existing stocks of the pesticide (47 FR 42958; Sept. 29, 1982). That document also states that EPA will issue a notice of proposed rulemaking to revoke a tolerance at the time EPA issues a notice of intent to cancel a corresponding registration, so that a final rule revoking a tolerance, if appropriate, can be issued at the time the associated registrations are cancelled (or shortly thereafter).

The underlying basis of the 1982 policy statement is that a food producer ordinarily should be able to assume correctly that using a pesticide on a crop in accordance with an EPA-approved FIFRA registration will not result in the seizure of the crop as failing to conform with a tolerance regulation issued by EPA under FFDCA. EPA continues to believe that this policy is correct, and it has not been challenged.

The 1982 policy statement did not discuss what EPA's policy would be with respect to tolerances for a pesticide chemical in the event that the associated FIFRA registrations were suspended under FIFRA section 6(c) pending the outcome of a cancellation hearing. However, EPA's policy is that it will modify or revoke a tolerance for such a pesticide chemical if, and to the extent that, it appears to the Agency that such action is appropriate in view of the findings that led to the suspension action and the criteria in the FFDCA.

As discussed in the January 1987 rule, the Agency imposed extensive data requirements including four oncogenicity studies, mutagenicity studies, metabolism studies, and extensive residue monitoring studies, on the registrant of daminozide products, Uniroyal Chemical Co. Until such time as the Agency has considered data from these studies and determined what, if any, action is appropriate to take against daminozide registrations under FIFRA section 6, the 1982 policy statement and the logic underlying it provide a strong argument that the tolerance for daminozide residues should not be revoked at this time.

However, in the meantime, the Agency has taken other regulatory measures to reduce exposure to daminozide pending receipt of the additional data. In particular, the Agency approved a label amendment which reduced the application rate for daminozide on apples, and the registrant committed to including a use advisory in every bag of the end-use product, Alar, recommending that daminozide-treated apples not be sold for processing into sauce. Based on available residue data and the reduced application rates, the Agency also reduced the tolerance on apples from 30 ppm to 20 ppm, with an expiration date of July 31, 1987. The Agency proposed to reassess the 20 ppm tolerance for apples, based on new residue data due in May 1987.

The registrant has not submitted the required field trials and a petition proposing continuance of the tolerance at 20 ppm. Based on review of the submitted data and other relevant material, the Agency does not expect residues of daminozide in or on apples, resulting from its registered uses, to exceed the current tolerance of 20 ppm.

Crop field trials were conducted in Washington, Pennsylvania, New York, Michigan, and North Carolina. A total of 35 samples of apples were collected. Apple varieties included Red Delicious, Golden Delicious, Jonathan, McIntosh, Early and Jersey Mac, Paula Red, Gravenstein, Viking and Stayman. Treatment rates were 2.55 lbs ai/A or 3.4 lbs ai/A (1X maximum rate). Apples were harvested 35, 48, 49, 50 and 60 days after treatment.

At the lower application rate, residues of daminozide in or on apples ranged from <1 ppm to 10 ppm. Preharvest intervals for these apples were 35 to 60 days. At the higher application rate, in apples harvested at 49 and 50 days after treatment, daminozide residues ranged from <1 to 5 ppm; there was one high value of 19 ppm in apples harvested at 60 days after treatment. The average for all samples was 4 ppm.

A Food and Drug Administration (FDA) Fiscal Year 1986 monitoring study reported that apples contained up to 0.6 ppm daminozide. Recent Uniroyal market basket survey results showed levels of daminozide in or on apples ranging from <0.01 ppm to 12 ppm, with average residues of 1 ppm.

Residues of UDMH in or on apples in the submitted field trials ranged from <1 parts per billion (ppb) to 27 ppb, with an average of 7 ppb. The FDA monitoring data showed UDMH residues in or on apples at <5 ppb; the Uniroyal market basket survey results showed UDMH residues in or on apples ranged from <1 ppb to 23 ppb with average residues of 3 ppb. Maximum residues of UDMH in apple juice and apple sauce found in the market basket survey were 112 ppb and 228 ppb, respectively, with average residues of 33 ppb in apple juice and 44 ppb in apple sauce. These values, as expected, are significantly lower than a worst-case prediction of about 1 ppm (1,000 ppb) based on the assumption of tolerance level residues (20 ppm) in all apples used for processing, and the use of the highest factor for conversion of daminozide to UDMH of 6.2 percent found in a processing study.

An analytical method, spectrophotometry (Method I in Pesticide Analytical Manual, Volume II), is available for enforcement purposes.

The final report of a Uniroyal oncogenicity study on daminozide is scheduled to be submitted to EPA in August 1988; a recently submitted report stated that the interim sacrifice of animals from that test showed no increased incidence of tumors in dosed animals as compared to control animals. By the summer of 1988, the results of 12-month interim sacrifices from the UDMH oncogenicity studies will have been submitted. EPA expects to have completed its evaluation of these data by December 1988. By that time, EPA also will have received and reviewed a wide range of new data on dietary residues and metabolism. Accordingly, EPA deems it appropriate to provide that the tolerance established by this final rule shall expire on January 31, 1989, so that the tolerance may be modified as appropriate on the basis of the data then at hand.

Based on the information considered by the Agency, EPA has concluded that a tolerance level of 20 ppm for residues of daminozide in or on apples is the appropriate level to cover possible residues that may result from use of daminozide in accordance with label directions. Furthermore, EPA has concluded that a tolerance at that level during the period ending January 31, 1989, is adequate to protect the public health, taking into account information on the possible toxicity of daminozide and UDMH, the level and duration of exposure to the substances that may result from consuming apples and other foods and the importance of daminozide to the availability of apples, an important food commodity.

Any person adversely affected by this regulation extending the 20 ppm tolerance for residues of daminozide on apples may, within 30 days after publication of this regulation in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above, and may as a part of such objections request a hearing on factual issues associated with such objections. Objections should specify the provisions of the regulation deemed objectionable and the ground for the objections. If a hearing is requested, the request must state the factual issues to be addressed in the hearing.

In the event that objections or requests for a hearing are filed, this tolerance rule will remain effective until issuance of any order resulting from such objections or requests. Section 408(d)(4), FFDCA.

Executive Order 12291

Under Executive Order 12291, the Agency must determine whether a regulatory action is "major" and, therefore, subject to the requirements of a Regulatory Impact Analysis. The Agency has determined that this regulatory action is not a major regulatory action, i.e., it will not have an annual effect on the economy of at least $100 million, will not cause a major increase in prices, and will not have a significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises.

This rule has been reviewed by the Office of Management and Budget as required by E.O. 12291.

Regulatory Flexibility Act

This rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.*), and it has been determined that it will not have a significant impact on a substantial number of small businesses, small governments, or small organizations.

Measures to reduce dietary exposure to daminozide were put in place by the beginning of the 1986 growing season; as a result, residues of daminozide in legally treated applies are not expected to exceed the reduced tolerance level of 20 ppm.

Accordingly, it is certified that this regulatory action does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 22, 1987.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.246 is amended in paragraph (b) by revising the entry for apples in the table therein, to read as follows:

§ 180.246 Daminozide; tolerances for residues.

* * * * *

(b) * * *

Commodities	Parts per million	Expiration date
Apples	20.0	Jan. 31, 1988.

[FR Doc. 87–17184 Filed 7–28–87; 8:45 am]

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FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6758]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The third date ("Susp.") listed in the third column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646–2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet the statutory requirement for compliance with program regulations (44 CFR Part 59 et seq.). Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in Section 2 of the Flood Disaster

Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date [1]
Region I				
Massachusetts: Wareham, town of, Plymouth County	255223	July 10, 1970, Emerg.; May 28, 1971, Reg.; Aug. 4, 1987, Susp	Aug. 4, 1987	Aug. 4, 1987.
Vermont: Grafton, town of, Windham County	500129	Oct. 25 1977, Emerg.; Aug. 4, 1987, Reg.; Aug. 4, 1987, Susp	do	Do.
Region II				
New York: Watertown, city of, Jefferson County	360354	July 7, 1975, Emerg.; Oct. 15, 1985, Reg.; Aug. 4, 1987, Susp	do	Do.
Region III				
Virginia:				
Gloucester County, Unincorporated areas	510071	Mar. 25, 1974, Emerg.; Aug. 4, 1987, Reg.; Aug. 4, 1987, Susp	do	Do.
Irvington, town of, Lancaster County	510221	Aug. 18, 1975, Emerg.; Aug. 4, 1987, Reg.; Aug. 4, 1987, Susp	do	Do.
Tappahannock, town of, Essex County	510049	June 3, 1974, Emerg.; Aug. 4, 1987, Reg.; Aug. 4, 1987, Susp	do	Do.
Region IV				
South Carolina: Nichols, town of, Marion County	450144	July 21, 1975, Emerg.; Aug. 4, 1987, Reg.; Aug. 4, 1987, Susp	do	Do.
Region V				
Illinois: Kirkland, village of, DeKalb County	170186	Feb. 14, 1975, Emerg.; Aug. 4, 1987, Reg.; Aug. 4, 1987, Susp	do	Do.
Michigan: Standish, town of, Arenac County	260017	May 25, 1973, Emerg.; Aug. 4, 1987, Reg.; Aug. 4, 1987, Susp	do	Do.
Ohio:				
Strasburg, village of, Tuscarawas County	390631	Nov. 8, 1974, Emerg.; Aug. 4, 1987, Reg.; Aug. 4, 1987, Susp	do	Do.
Sugarcreek, village of, Tuscarawas County	390546	Jan. 23, 1979, Emerg.; Aug. 4, 1987, Reg.; Aug. 4, 1987, Susp	do	Do.
Region VI				
Arkansas:				
Piggott, city of, Clay County	050035	May 5, 1975, Emerg.; Aug. 4, 1987, Reg.; Aug. 4, 1987, Susp	do	Do.
Van Buren, city of, Crawford County	050053	Jan. 16, 1974, Emerg.; Nov. 16, 1977, Reg.; Aug. 4, 1987, Susp	do	Do.
Texas: Denton, city of, Denton County	480194	Feb. 18, 1972, Emerg.; Aug. 1, 1979, Reg.; Aug. 4, 1987, Susp	do	Do.
Region VII				
Iowa: Clear Lake, city of, Cerro Gordo County	190059	Aug. 7, 1975, Emerg.; Aug. 4, 1987, Reg.; Aug. 4, 1987, Susp	do	Do.
Region IX				
California:				
Rio Vista, city of, Solano County	060371	June 13, 1975, Emerg.; May 19, 1981, Reg.; Aug. 4, 1987, Susp	do	Do.
Madera County, unincorporated areas	060170	Mar. 3, 1972, Emerg.; Aug. 4, 1987, Reg.; Aug. 4, 1987, Susp	do	Do.
Region X				
Oregon: Lake Oswego, city of, Clackamas County	410018	Mar. 18, 1975, Emerg.; Aug. 4, 1987, Reg.; Aug. 4, 1987, Susp	do	Do.
Region II—Minimal Conversions				
New York:				
Franklin, village of, Delaware County	360199	Aug. 8, 1975, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp	Aug. 1, 1987	Aug. 1, 1987.
Schenevus, village of, Otsego County	361359	Oct. 20, 1975, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp	do	Do.
Schoharie, village of, Schoharie County	361061	Sept. 11, 1975, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp	do	Do.
Stamford, village of, Delaware County	360213	Aug. 7, 1975, Emerg.; Aug. 1, 1987, Reg.; Aug 1, 1987, Susp	do	Do.
Region III				
Pennsylvania:				
Annin, township of, McKean County	421850	Aug. 7, 1974, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp	do	Do.
Cherry, township of, Sullivan County	422058	Jan. 28, 1975, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp	do	Do.
Forkston, township of, Wyoming County	422199	Oct. 15, 1975, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp	do	Do.
North Branch, township of, Wyoming County	422203	Sept. 7, 1977, Emerg.; Aug. 1, 1987, Susp.; Aug. 1, 1987, Susp	do	Do.
Oswayo, township of, Potter County	421982	Apr. 29, 1975, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp	do	Do.
Pittsfield, township of, Warren County	422125	Feb. 18, 1975, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp	do	Do.
Roseville, borough of, Tioga County	420828	Feb. 17, 1981, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp	do	Do.
Shrewsbury, township of, Sullivan County	422066	Aug. 22, 1975, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp	do	Do.
West Hemlock, township of, Montour County	421925	July 25, 1975, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp	do	Do.
West Virginia:				
Albright, town of, Preston County	540161	June 23, 1975, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp	do	Do.
Brandon Mills, town of, Preston County	540162	May 22, 1975, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp	do	Do.
Grafton, city of, Taylor County	540190	June 12, 1975, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp	do	Do.
Grant County, unincorporated areas	540038	Oct. 22, 1975, Emerg.; Aug. 1, 1987, Reg.; Aug 1, 1987, Susp	do	Do.
Hampshire County, unincorporated areas	540226	Jan. 16, 1976, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp	do	Do.
Hendricks, town of, Tucker County	540185	Aug. 7, 1975, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp	do	Do.
Newburg, town of, Preston County	540268	June 6, 1975, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp	do	Do.
Pandowhi, town of, Preston County	540269	Nov. 24, 1975, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp	do	Do.
Terra Alta, town of, Preston County	540257	Sept. 3, 1975, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp	do	Do.
Wardensville, town of, Hardy County	540245	Apr. 17, 1975, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp	do	Do.
Region IV				
Alabama:				
Castleberry, town of, Conecuh County	010050	June 7, 1976, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp	do	Do.
Washington County, unincorporated areas	010302	Jan. 12, 1976, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp	do	Do.
Kentucky: Bath County, unincorporated areas	210006	Aug. 23, 1985, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp	do	Do.
North Carolina: Conway, town of, Northampton County	370174	June, 1975, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp	do	Do.

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State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date [1]
Region V				
Indiana: Petersburg, city of, Pike County	180199	Mar. 6, 1975, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp.	do.	Do.
Ohio:				
Hicksville, village of, Defiance County	390145	July 7, 1975, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp.	do.	Do.
Huron County, unincorporated areas	390770	Aug. 3, 1979, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp.	do.	Do.
Loudonville, village of, Ashland and Holmes Counties	390009	July 22, 1975, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp.	do.	Do.
Monroeville, village of, Huron County	390263	Aug. 6, 1975, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp.	do.	Do.
Ottoville, village of, Putnam County	390473	June 2, 1975, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp.	do.	Do.
Perrysville, village of, Ashland County	390730	April 6, 1976, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp.	do.	Do.
Roswell, village of, Tuscarawas County	390613	July 28, 1977, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp.	do.	Do.
Smithville, village of, Wayne County	390629	July 16, 1975, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp.	do.	Do.
Stockport, village of, Morgan County	390423	May 30, 1975, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp.	do.	Do.
Region VI—Minimal Conversions				
Louisiana:				
Killian, village of, Livingston Parish	220355	Oct. 28, 1977, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp.	do.	Do.
Richland Parish, unincorporated areas	220154	May 14, 1973, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp.	do.	Do.
New Mexico: Otero County, unincorporated areas	350044	Aug. 7, 1975, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp.	do.	Do.
Oklahoma:				
Fort Towson, town of, Choctaw County	400329	June 1, 1976, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp.	do.	Do.
Kinta, city of, Haskell County	400071	Oct. 4, 1976, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp.	do.	Do.
Marshall, town of, Logan County	400306	Aug. 13, 1976, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp.	do.	Do.
Okemah, city of, Okfuskee County	400429	Aug. 1, 1977, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp.	do.	Do.
Stonewall, town of, Pontotoc County	400177	Mar. 12, 1976, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp.	do.	Do.
Taft, town of, Muskogee County	400126	June 24, 1976, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp.	do.	Do.
Texas				
Anthony, town of, El Paso County	480604	Oct. 4, 1974, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp.	do.	Do.
Blum, city of, Hill County	480350	June 11, 1980, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp.	do.	Do.
Boeque County, unincorporated areas	480251	May 4, 1976, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp.	do.	Do.
Childress, city of, Childress County	480125	June 18, 1975, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp.	do.	Do.
Eastland, city of, Eastland County	480304	June 10, 1975, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp.	do.	Do.
Grandfalls, city of, Ward County	480643	July 7, 1975, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp.	do.	Do.
Le Flors, city of, Gray County	480256	July 7, 1975, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp.	do.	Do.
Meridian, city of, Boeque County	480053	June 4, 1975, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp.	do.	Do.
Roaring Springs, city of, Motley County	480498	Feb. 12, 1976, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp.	do.	Do.
Rotan, city of, Fisher County	480224	Aug. 7, 1975, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp.	do.	Do.
Seminole, city of, Gaines County	480240	Oct. 7, 1975, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp.	do.	Do.
Sterling, city of, Sterling County	480578	July 28, 1975, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp.	do.	Do.
Toyah, city of, Reeves County	480539	Sept. 2, 1975, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp.	do.	Do.
New Mexico: Mora County, unincorporated areas	350043	Oct. 22, 1975, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp.	do.	Do.
Region VII				
Iowa:				
Ellsworth, city of, Hamilton County	190136	Dec. 29, 1975, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp.	do.	Do.
Inwood, city of, Lyon County	190598	Aug. 18, 1976, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp.	do.	Do.
What Cheer, city of, Keokuk County	190176	Jan. 28, 1976, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp.	do.	Do.
Kansas: Garnett, city of, Anderson County	200005	Aug. 15, 1975, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp.	do.	Do.
Missouri: Elvins, city of, St. Francois County	290322	July 11, 1975, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp.	do.	Do.
Region IV—Minimal Conversions				
North Carolina: Henderson, city of, Vance County	370367	Apr. 13, 1976, Emerg.; Aug. 4, 1987, Reg.; Aug. 4, 1987, Susp.	Aug. 4, 1987.	Aug. 4, 1987.
Tennessee: Portland, city of, Sumner County	470187	Feb. 14, 1972, Emerg.; Aug. 4, 1987, Reg.; Aug. 4, 1987, Susp.	do.	Do.
Region V				
Illinois: South Jacksonville, village of, Morgan County	170519	Sept. 8, 1976, Emerg.; Aug. 4, 1987, Reg.; Aug. 4, 1987, Susp.	do.	Do.
Michigan: Howell, city of, Livingston County	260441	Dec. 8, 1975, Emerg.; Aug. 4, 1987, Reg.; Aug. 4, 1987, Susp.	do.	Do.
Ohio: Russells Point, village of, Logan County	390342	June 25, 1975, Emerg.; Aug. 4, 1987, Reg.; Aug. 4, 1987, Susp.	do.	Do.
Region VI				
Oklahoma: Stilwell, city of, Adair County	400001	Nov. 14, 1975, Emerg.; Aug. 4, 1987, Reg.; Aug. 4, 1987, Susp.	do.	Do.
Texas: Somervell County, unincorporated areas	481186	Sept. 11, 1979, Emerg.; Aug. 4, 1987, Reg.; Aug. 4, 1987, Susp.	do.	Do.
Region VII—Minimal Conversions				
Iowa:				
Adel, city of, Dallas County	190103	July 30, 1975, Emerg.; Aug. 4, 1987, Reg.; Aug. 4, 1987, Susp.	do.	Do.
Carlisle, city of, Warren and Polk Counties	190274	Dec. 17, 1974, Emerg.; Aug. 4, 1987, Reg.; Aug. 4, 1987, Susp.	do.	Do.
Elgin, city of, Fayette County	190139	June 18, 1975, Emerg.; Aug. 4, 1987, Reg.; Aug. 4, 1987, Susp.	do.	Do.
Fertile, city of, Worth County	190321	Mar. 19, 1976, Emerg.; Aug. 4, 1987, Reg.; Aug. 4, 1987, Susp.	do.	Do.
Fort Atkinson, city of, Winneshiek County	190264	Aug. 21, 1975, Emerg.; Aug. 4, 1987, Reg.; Aug. 4, 1987, Susp.	do.	Do.
Missouri: Warsaw, city of, Benton County	290030	Aug. 25, 1975, Emerg.; Aug. 4, 1987, Reg.; Aug. 4, 1987, Susp.	do.	Do.

[1] Certain Federal assistance no longer available in special flood hazard areas.
Code for reading fourth column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 87-17125 Filed 7-28-87; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 64

[Docket No. FEMA 6759]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the third column of the table.

ADDRESSEE: Flood insurance policies for property located in the communities listed can be obtained from any licensed

property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 457, Lanham, Maryland 20706, Phone: (800) 638-7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the last column of the table. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of eligible communities.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
Michigan: Hendricks, township of, Mackinac County	260606-New	June 5, 1987, Emerg	
New York: Montebello village of, Rockland County	361617-New	do	
Oklahoma: Cleveland County, unincorporated areas	400475	June 8, 1987, Emerg	
New York:			
Chazy, town of, Clinton County	361310	Apr. 14, 1976, Emerg; May 19, 1987, Reg.; May 19, 1987, Susp.; June 2, 1987, Rein	May 19, 1987.
Highlands, town of, Orange County	361251	June 9, 1975, Emerg.; May 19, 1987, Reg.; May 19, 1987 Susp.; June 2, 1987, Rein	Do.
Tennessee: Covington, city of, Tipton County	470189D	Jan. 15, 1975, Emerg.; Mar. 18, 1987, Reg.; Mar. 18, 1987, Susp.; June 8, 1987, Rein.	Mar, 1987.
Minnesota: Motley, city of, Morrison County	270300	June 12, 1987, Emerg	Sept. 18
Ohio: Roaming Shores, village of, Ashtabula County	390995	do	
Texas:			
Coolidge, city of, Limestone County	480911	do	June 11, 1976.
Trophy Club, [1] town of, Denton County	481606-New	June 12, 1987, Emerg.; June 12, 1987, Reg	
North Carolina: Swain County,[2] unincorporated areas	370227B	Feb. 3, 1980, Emerg.; July 17, 1986, Reg.; July 17, 1986, Susp.; June 12, 1987, Rein	July 17, 1986.
New York: Highland Falls, village of, Orange County	361458	July 2, 1974, Emerg.; May 19, 1987, Reg.; May 19, 1987, Susp.; June 12, 1987, Rein	May 19, 1987.
Texas:			
Palmer, city of, Ellis County	480209	June 15, 1987, Emerg	Aug. 13, 1976.
Pecan, city of, Ellis County	480745	do	Nov. 5, 1976.
California: West Hollywood, city of, Los Angeles County	060720	do	
Tennessee: Ripley, town of, Lauderdale County	470100	Jan. 23, 1975, Emerg.; May 19, 1987, Reg.; May 19, 1987, Susp.; June 15, 1987, Rein.	May 19, 1987.
Missouri: Gasconade, city of, Gasconade County	2901428	June 27, 1975, Emerg.; Dec. 18, 1984, Reg.; Dec. 18, 1984, Susp.; June 23, 1987, Rein.	Dec. 18, 1984.
New York:			
Chesterfield, town of, Essex County	360284	May 9, 1977, Emerg.; May 4, 1987, Reg.; May 4, 1987, Susp.; June 23, 1987, Rein	May 4, 1987.
Otsego, town of, Otsego County	361276	Jan. 21, 1976, Emerg.; June 1, 1987, Reg.; June 1, 1987 Susp.; June 23, 1987, Rein	June 1, 1987.
Springfield, town of, Otsego County	361280	May 5, 1976, Emerg.; June 1, 1987, Reg.; June 1, 1987, Susp.; June 23, 1987, Rein	June 1, 1987.
North Carolina: Bridgeton,[3] town of, Craven County	370436	Oct. 19, 1973, Emerg.; May 4, 1987, Reg	May 4, 1987.
West Virginia: Petersburg, town of, Grant County	540029	Apr. 18, 1975, Emerg.; June 18, 1987, Reg.; June 18, 1987, Susp.; June 26, 1987, Rein.	June 18, 1987.
Pennsylvania: Harford,[3] township of, Susquehanna County	422081	Nov. 2, 1976, Emerg.; Sept. 1, 1986, Reg; Sept. 1, 1986, Susp.; June 30, 1987, Rein	Sept. 1, 1986.
Region I			
Connecticut:			
New Milford, town of, Litchfield County	090049	June 4, 1987, suspension withdrawn	June 4, 1987.
West Hartford, town of, Hartford County	095082	do	Do.
Maine: Gouldsboro, town of, Hancock County	230283	do	Do.
Massachusetts:			
Canton, town of, Norfolk County	250235	do	Do.
Dover, town of, Norfolk County	250236	do	Do.
Randolph, town of, Norfolk County	250251	do	Do.
New Hampshire:			
Warner, town of, Merrimack County	330123	do	Do.
Region II			
New York: Webster, town of, Monroe County	360436	do	Do.
Region IV			
Florida:			
Hamilton County, unincorporated areas	120101	do	Do.
Madison county, unincorporated areas	120149	do	Do.
Georgia: Jefferson, city of, Jackson County	130112	do	Do.

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State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
Region VIII			
Colorado:			
Basalt, town of Eagle and Pitkin Counties	080032	do	Do.
Pitkin County, unincorporated areas	080287	do	Do.
Snowmass Village, town of, Pitkin County	080312	do	Do.
North Dakota:			
Center, township of, Richland County	380648	do	Do.
Wahpeton, city of, Richland County	380105	do	Do.
Barnes County unincorporated areas	380339	do	Do.
Region IX			
California:			
Fontana, city of, San Bernardino County	060274	do	Do.
Madera, city of, Madera County	060172	do	Do.
Region I			
Connecticut: Sherman, town of, Fairfield County	090166	June 16, 1987, suspension withdrawn	June 16, 1987.
Massachusetts:			
Methuen, town of, Essex County	250093	do	Do.
Norton, town of, Bristol County	250060	do	Do.
Taunton, city of, Bristol County	250066	do	Do.
Region II			
New Jersey: Randolph, township of, Morris County	340258	do	Do.
New York:			
Carmel, town of, Putnam County	360869	do	Do.
Philipstown, town of, Putnam County	361925	do	Do.
Region III			
Maryland: Prince George's County, unincorporated areas	245208	do	Do.
Region V			
Indiana: Lagro, town of, Wabash County	180268	do	Do.
Region VI			
Texas: Montgomery County, unincorporated areas	480483	do	Do.
Region IX			
California:			
Lodi, city of, San Joaquin County	060300	do	Do.
Moreno Valley, city of, Riverside County	060711	do	Do.
Oceanside, city of, San Diego County	060294	do	Do.
Palmdale, city of, Los Angeles County	060144	do	Do.
Region X			
Washington: Rockford, town of, Spokane County	530191	do	Do.
Region III—Minimal Conversions			
Pennsylvania:			
Anthony, township of, Montour County	421232	June 1, 1987, suspension withdrawn	June 1, 1987.
Bingham, township of, Potter County	421873	do	Do.
Clara, township of, Potter County	421974	do	Do.
Genesee, township of, Potter County	421877	do	Do.
Menno, township of, Mifflin County	421691	do	Do.
Overfield, township of, Wyoming County	422586	do	Do.
Ulysses, township of, Potter County	421991	do	Do.
Union, township of, Mifflin County	421693	do	Do.
Region IV—Minimal Conversions			
North Carolina:			
Fair Bluff, town of, unincorporated areas	370367	do	Do.
McAdenville, town of, Gaston County	370101	do	Do.
Murfreesboro, town of, Hertford County	370419	do	Do.
Rutherford County, unincorporated areas	370217	do	Do.
Wilkesboro, town of, Wilkes County	370259	do	Do.
Region V			
Michigan: Worth, township of, Sanilac County	260296	do	Do.
Wisconsin:			
Hillsboro, city of, Vernon County	550455	do	Do.
Somerset, village of, St. Croix County	550386	do	Do.
Region V—Minimal Conversions			
Wisconsin: Taylor, village of, Jackson County	550180	do	Do.
Region VII			
Iowa: Union, city of, Hardin County	190142	do	Do.
Kansas: Tescott, village of, Ottawa County	200258	do	Do.
Region VIII			
Montana: Whitehall, town of, Jefferson County	300129	June 4, 1987, suspension withdrawn	June 4, 1987.
Region III—Minimal Conversions			
Pennsylvania: Dushore, borough of, Sullivan County	422010	June 18, 1987, suspension withdrawn	June 18, 1987.

[1] The Town of Trophy Club has adopted by reference Denton County's Flood Insurance Study and accompanying Flood Insurance Rate Maps and any revisions thereto for floodplain management purposes.

[2] Minimal Conversions.

[3] Formerly under Craven County's Application.

The city of West Hollywood, California was enrolled into the Emergency Program of the NFIP on *June 15, 1987*. The City's FIRM became effective on *June 18, 1987*. The city's conversion date to the Regular Program is also *June 18, 1987*. All records should be amended in order to reflect the conversion date.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension; Rein.—Reinstatement.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 87-17126 Filed 7-28-87; 8:45 am]

BILLING CODE 6718-03-M

VOL 52 ISS 145 JL 29 1987 UMI

FEDERAL MARITIME COMMISSION

46 CFR Part 502

[Docket No. 87-7]

Implementation of the Equal Access to Justice Act in Commission Proceedings

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: This rule implements the Equal Access to Justice Act, as revised, and provides for the award of attorney fees and other expenses to certain parties who prevail over the Federal Government in certain proceedings before the Commission.

EFFECTIVE DATE: August 28, 1987.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5740.

SUPPLEMENTARY INFORMATION: The Equal Access to Justice Act ("EAJA"), Pub. L. No. 96-481, 94 Stat. 2325, was reauthorized and amended by Pub. L. No. 99-80, 99 Stat. 183, on August 5, 1985. "Model Rules" implementing EAJA were promulgated on May 6, 1986 by the Administrative Conference of the United States ("ACUS"). 51 FR 16659 (May 6, 1986). The EAJA and the Model Rules provide for the award of attorney fees and other expenses to certain parties who prevail over the Federal Government in certain administrative proceedings.

On April 15, 1987, the Federal Maritime Commission ("Commission" or "FMC") published a proposed rule (52 FR 12208) to implement the EAJA and track the Model Rules.[1] Two comments on the proposed rules were received.

The Asia North America Eastbound Rate Agreement ("ANERA") suggests that the rule be clarified to take account of the unique nature of the parties regularly appearing before the Commission. Specifically, ANERA proposes that the rule include the term "conferences" as an eligible applicant referenced in § 502.501(d)(2)(v), which now reads:

> (v) Any other partnership, corporation, association, unit of local government, or organization with a net worth of not more than $7 million and not more than 500 employees.

The Commission agrees with ANERA that "conferences" are "associations" within the meaning of § 502.501(d)(2)(v) and could be eligible for an award of attorney fees and other expenses under the EAJA and this rule, if other requirements are met. At the same time, however, the Commission believes that it is not necessary to add a specific provision in the final rule to so provide. *See* section 3(7) of the Shipping Act of 1984, 46 U.S.C. app. 1702(7). There are other unique entities which have been or could be parties to Commission proceedings and which could be eligible applicants under this rule, such as a "joint service," which might be an association, corporation or partnership. The Commission cannot here list every potential type of party to its proceedings but, when questions arise, will rely on the generic language of § 502.501(d)(2)(v).

ACUS noted that the FMC's proposed rule follows closely its Model Rules and that the departures from the Model Rules "appear to be sensible adaptations of the model to the specific requirements of Federal Maritime Commission practice." However, ACUS further comments:

> Both the summary and preamble of your document [proposed rules] appear to state that the rules apply to the award of attorney fees to parties who prevail over the government in court proceedings (although the rules themselves do not state this). Since, under 28 U.S.C. 2812(d)(3), the courts themselves are to make EAJA awards in cases before them, the only part of these rules that might apply to court proceedings would be the provision for payment of awards by the agency (section 502.503(j)). You may wish to note this in the document publishing your final rules, in order to avoid any confusion.

The Commission notes and adopts ACUS' suggested clarification, which does not go to the rule itself, but to language in the Summary and Supplementary Information which accompanied the rule. If there is any type of court proceeding, such as for enforcement of a subpoena under 46 U.S.C. app. 1713(c), which might be "in connection with" a Commission adjudication under 5 U.S.C. 504(a)(1), and, at the same time, may not be covered by 28 U.S.C. 2812(d)(3), the rule, at § 502.501(c)(2), provides a vehicle for addressing that situation on a case-by-case basis.

Accordingly, the Commission adopts the proposed rule as final, without change.

This rule is not a "major rule" for the purposes of Executive Order 12291 of February 27, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small business entities.

List of Subjects in 46 CFR Part 502

Administrative practice and procedure.

Therefore, for the foregoing reasons, Part 502 of Title 46 of the Code of Federal Regulations is amended as follows:

PART 502—[AMENDED]

1. The Authority Citation for Part 502 is revised to read as follows:

> **Authority:** 5 U.S.C. 504, 551, 552, 553, 559; 12 U.S.C. 1141j(a); 18 U.S.C. 207; 26 U.S.C. 501(c)(3); 46 U.S.C. app. 817, 820, 821, 826, 841a, 1114(b), 1705, 1707-1711, 1713-1716; and E.O. 11222 of May 8, 1965 (30 FR 6469).

2. Paragraph (a) of § 502.74 is revised to read as follows:

§ 502.74 Replies to pleadings, motions, applications, etc.

(a)(1) Except as provided under Subpart V of this part, a reply to a reply is not permitted.

(2) Except as otherwise provided respecting answers (§ 502.64), shortened procedure (Subpart K of this part), briefs (§ 502.221), exceptions (§ 502.227), replies to petitions for attorney fees under the Equal Access to Justice Act (§ 502.503(b)(1)), and the documents specified in paragraph (b) of this section, any party may file and serve a reply to any written motion, pleading, petition, application, etc., permitted under this part within fifteen (15) days after the date of service thereof, unless a shorter period is fixed under § 502.103.

* * * * *

Subpart V—[Redesignated as Subpart W]

3. Subpart V, containing § 502.991, is redesignated as "Subpart W".

4. A new Subpart V is added to read as follows:

Subpart V—Implementation of the Equal Access to Justice Act in Commission Proceedings

Sec.

502.501 General provisions.
502.502 Information required from applicants.
502.503 Procedures for considering petitions.

[1] The Commission recently published a final rule, effective on April 2, 1987, which governs the award of attorney fees in certain reparation proceedings under section 11 of the Shipping Act of 1984, 46 U.S.C. app. 1710. *See* Attorney's Fees in Reparation Proceedings, Docket No. 86-27, 52 FR 6330 (March 3, 1988).

Subpart V—Implementation of the Equal Access to Justice Act in Commission Proceedings

§ 502.501 General provisions.

(a) *Purpose.* The Equal Access to Justice Act, 5 U.S.C. 504 ("EAJA"), provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called "adversary adjudications") before the Federal Maritime Commission ("the Commission"). An eligible party may receive an award when it prevails over an agency, unless the agency's position was substantially justified or special circumstances make an award unjust. The rules in this subpart describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that the Commission will use to make them.

(b) *When EAJA applies.* EAJA applies to any adversary adjudication:

(1) Pending or commenced before the Commission on or after August 5, 1985;

(2) Commenced on or after October 1, 1984, and finally disposed of before August 5, 1985, provided that an application for fees and expenses, as described in § 502.502 of this subpart, has been filed with the Commission within 30 days after August 5, 1985; or

(3) Pending on or commenced on or after October 1, 1981, in which an application for fees and other expenses was timely filed and was dismissed for lack of jurisdiction.

(c) *Proceedings covered.* (1)(i) EAJA applies to adversary adjudications conducted by the Commission under this part. These are adjudications under 5 U.S.C. 554 in which the position of this or any other agency of the United States, or any component of any agency, is presented by an attorney or other representative who enters an appearance and participates in the proceeding.

(ii) Any proceeding in which the Commission may prescribe a lawful present or future rate is not covered by the Act.

(iii) Proceedings to grant or renew licenses are also exclude , but proceedings to modify, suspend, or revoke licenses are covered if they are otherwise "adversary adjudications."

(2) The Commission's failure to identify a type of proceeding as an adversary adjudication shall not preclude the filing of an application by a party who believes the proceeding is covered by the EAJA; whether the proceeding is covered will then be an issue for resolution in proceedings on the application.

(3) If a proceeding includes both matters covered by EAJA and matters specifically excluded from coverage, any award made will include only fees and expenses related to covered issues.

(d) *Eligibility of applicants.* (1) To be eligible for an award of attorney fees and other expenses under EAJA, the applicant must be a party to the adversary adjudication for which it seeks an award. The term "party" is defined in 5 U.S.C. 551(3). The applicant must show that it meets all conditions of eligibility set out in this section and § 502.502.

(2) The types of eligible applicants are:

(i) An individual with a net worth of not more than $2 million;

(ii) The sole owner of an unincorporated business who has a net worth of not more than $7 million, including both personal and business interests, and not more than 500 employees;

(iii) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(iv) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with not more than 500 employees; and

(v) Any other partnership, corporation, association, unit of local government, or organization with a net worth of not more than $7 million and not more than 500 employees.

(3) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the proceeding was initiated.

(4) An applicant who owns an unincorporated business will be considered as an "individual" rather than a "sole owner of an unincorporated business" if the issues on which the applicant prevails are related primarily to personal interests rather than to business interests.

(5) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant, under the applicant's direction and control. Part-time employees shall be included on a proportional basis.

(6) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual corporation or other entity that directly or indirectly controls or owns a majority of the voting shares or other interests of the applicant, or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interests, will be considered an affiliate for purposes of this subpart, unless the adjudicative officer determines that such treatment would be unjust and contrary to the purposes of EAJA in light of the actual relationship between the affiliated entities. In addition, the adjudicative officer may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(7) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

(e) *Standards for awards.* (1) A prevailing applicant may receive an award for fees and expenses incurred in connection with a proceeding or in a significant and discrete substantive portion of the proceeding, unless the position of the agency over which the applicant has prevailed was substantially justified. The position of the agency includes, in addition to the position taken by the agency in the adversary adjudication, the action or failure to act by the agency upon which the adversary adjudication is based. The burden of proof that an award should not be made to an eligible prevailing applicant is on agency counsel.

(2) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding or if special circumstances make the award sought unjust.

(f) *Allowable fees and expenses.* (1) Awards will be based on rates customarily charged by the persons engaged in the business of acting as attorneys, agents and expert witnesses, even if the services were made available without charge or at the reduced rate to the applicant.

(2) No award for the fee of an attorney or agent under this subpart may exceed $75.00 per hour. No award to compensate an expert witness may exceed the highest rate at which the Commission pays expert witnesses. However, an award may also include the reasonable expenses of the attorney, agent, or witness as a separate item, if the attorney, agent or witness ordinarily charges clients separately for such expenses.

(3) In determining the reasonableness of the fee sought for an attorney, agent or expert witness, the adjudicative officer shall consider the following:

(i) If the attorney, agent or witness is in private practice, his or her customary fees for similar services, or, if an employee of the applicant, the fully allocated costs of the services;

(ii) The prevailing rate for similar services in the community in which the attorney, agent or witness ordinarily performs services;

(iii) The time actually spent in the representation of the applicant;

(iv) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(v) Such other factors as may bear on the value of the services provided.

(4) The reasonable cost of any study, analysis, engineering report, test project or similar matter prepared on behalf of a party may be awarded, to the extent that the charge for the services does not exceed the prevailing rate for similar services, and the study or other matter was necessary for preparation of applicant's case.

(g) *Awards against other agencies.* If an applicant is entitled to an award because it prevails over another agency of the United States that participates in a proceeding before the Commission and takes a position that is not substantially justified, the award or an appropriate portion of the award shall be made against that agency.

§ 502.502 Information required from applicants.

(a) *Contents of petition.* (1) An application for an award of fees and expenses under EAJA shall be by petition under § 502.69 of this part, shall clearly indicate that the application is made under EAJA, and shall identify the applicant and the proceeding (including docket number) for which an award is sought. The application shall show that the applicant has prevailed and identify the position of an agency or agencies that the applicant alleges was not substantially justified. Unless the applicant is an individual, the application shall also state the number of employees of the applicant and describe briefly the type and purpose of its organization or business.

(2) The petition shall also include a statement that the applicant's net worth does not exceed $2 million (if an individual) or $7 million (for all other applicants, including their affiliates). However, an applicant may omit this statement if:

(i) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(ii) It states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)).

(3) The petition shall state the amount of fees and expenses for which an award is sought.

(4) The petition may also include any other matters that the applicant wishes the Commission to consider in determining whether and in what amount an award should be made.

(5) The petition shall be signed by the applicant or an authorized officer or attorney of the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application is true and correct.

(b) *Net worth exhibit.* (1) Each applicant except a qualified tax-exempt organization or cooperative association must provide with its petition a detailed exhibit showing the net worth of the applicant and any affiliates (as defined in § 502.501(d)(6) of this subpart) when the proceeding was initiated. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this subpart. The adjudicative officer may require an applicant to file additional information to determine its eligibility for an award.

(2) Ordinarily, the net worth exhibit will be included in the public record of the proceeding. However, an applicant that objects to public disclosure of information in any portion of the exhibit and believes there are legal grounds for withholding it from disclosure may submit that portion of the exhibit directly to the adjudicative officer in a sealed envelope labeled "Confidential Financial Information," accompanied by a motion to withhold the information from public disclosure. The motion shall describe the information sought to be withheld and explain, in detail, why it falls within one or more of the specific exemptions from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552(b)(1)–(9), why public disclosure of the information would adversely affect the applicant, and why disclosure is not required in the public interest. The material in question shall be served on counsel representing the agency against which the applicant seeks an award, but need not be served on any other party to the proceeding. If the adjudicative officer finds that the information should not be withheld from disclosure, it shall be placed in the public record of the proceeding. Otherwise, any request to inspect or copy the exhibit shall be disposed of in accordance with the Commission's established procedures under the Freedom of Information Act under §§ 503.31–503.43 of this chapter.

(c) *Documentation of fees and expenses.* The petition shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, engineering report, test, project or similar matter, for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in connection with the proceeding by each individual, a description of the specific services performed, the rates at which each fee has been computed, any expenses for which reinbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. The adjudicative officer may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

(d) *When a petition may be filed.* (1) A petition may be filed whenever the applicant has prevailed in the proceeding or in a significant and discrete substantive portion of the proceeding, but in no case later than 30 days after the Commission's final disposition of the proceeding.

(2) For purposes of this subpart, final disposition means the date on which a decision or order disposing of the merits of the proceeding or any other complete resolution of the proceeding, such as a settlement or voluntary dismissal, becomes final and unappealable, both within the Commission and to the courts.

(3) If review or reconsideration is sought or taken of a decision as to which an applicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy. When the United States appeals the underlying merits of an adversary adjudication to a court, no decision on an application for fees and other expenses in connection with that adversary adjudication shall be made until a final and unreviewable decision is rendered by the court on the appeal or until the underlying merits of the case have been finally determined pursuant to the appeal.

§ 502.503 Procedures for considering petitions.

(a) *Filing and service of documents.* (1) Any petition for an award or other pleading or document related to a petition shall be filed and served on all parties to the proceeding in the same manner as other pleadings in the proceeding, except as provided in § 502.502(b)(2) (confidential financial information).

(2) The petition and all other pleading or documents related to the petition will be referred to an Administrative Law Judge to initially decide the matter as adjudicative officer.

(b) *Reply to petition.* (1) Within 30 days after service of a petition, counsel representing the agency against which an award is sought may file a reply to the petition. Unless counsel requests an extension of time for filing or files a statement of intent to negotiate under paragraph (b)(2) of this section, failure to file a reply within the 30-day period may be treated as a consent to the award requested.

(2) If agency counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing a reply for an additional 30 days, and further extension may be granted by the adjudicative officer upon request by agency counsel and the applicant.

(3) The reply shall explain in detail any objections to the award requested and identify the facts relied on in support of counsel's position. If the reply is based on any alleged facts not already in the record of the proceeding, agency counsel shall include with the reply either supporting affidavits or a request for further proceedings under paragraph (f) of this section.

(c) *Response to reply.* Within 15 days after service of a reply, the applicant may file a response. If the response is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the response either supporting affidavits or a request for further proceedings under paragraph (f) of this section.

(d) *Comments by others parties.* Any party to a proceeding other than the applicant and agency counsel may file comments on an application within 30 days after it is served, or on a reply, within 15 days after it is served. A commenting party may not participate further in proceedings on the application unless the adjudicative officer determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

(e) *Settlement.* The applicant and agency counsel may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding, or after the underlying proceeding has been concluded in accordance with the rules of this subpart pertaining to settlement. If a prevailing party and agency counsel agree on a proposed settlement of an award before a petition is filed, the petition shall be filed with the proposed settlement.

(f) *Further proceedings.* (1) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or agency counsel, or on his or her own initiative, the adjudicative officer may order further proceedings, such as an informal conference, oral argument, additional written submissions or, as to issues other than substantial justification (such as the applicant's eligibility or substantiation of fees and expenses), pertinent discovery or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible. Whether or not the position of the agency was substantially justified shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought.

(2) A request that the adjudicative officer order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

(g) *Decision.* The adjudicative officer shall serve an initial decision on the application within 60 days after completion of proceedings on the application. The decision shall include written findings and conclusions on the applicant's eligibility and status as a prevailing party, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the agency's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust. If the applicant has sought an award against more than one agency, the decision shall allocate responsibility for payment of any award made among the agencies, and shall explain the reason for the allocation made.

(h) *Commission review.* Either the applicant or agency counsel may seek review of the initial decision on the fee application, or the Commission may decide to review the decision on its own initiative, in accordance with § 502.227 of this part. If neither the applicant nor agency counsel seeks review and the Commission does not take review on its own initiative, the initial decision on the application shall become a final decision of the Commission 30 days after it is issued. Whether to review a decision is a matter within the discretion of the Commission. If review is taken, the Commission will issue a final decision on the application or remand the application to the adjudicative officer for further proceedings.

(i) *Judicial review.* Judicial review of final Commission decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

(j) *Payment of award.* (1) (i) An applicant seeking payment of an award shall submit to the comptroller or other disbursing officer of the paying agency a copy of the Commission's final decision granting the award, accompanied by a certification that the applicant will not seek review of the decision in the United States courts.

(ii) The agency will pay the amount awarded to the applicant within 60 days.

(2) Where the Federal Maritime Commission is paying agency, the application for payment of award shall be submitted to: Office of Budget and Financial Management, Federal Maritime Commission, Washington, DC 20573.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 87-17180 Filed 7-28-87; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-296]

Radio Broadcasting Services; Roscommon, MI; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects an erroneous date in the Final Rule (Report and Order) in this proceeding concerning an FM allotment to Roscommon, Michigan.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheurle, Mass Media Bureau, telephone (202) 634–6530.

SUPPLEMENTARY INFORMATION: On June 24, 1987, at 52 FR 23659, the Commission published a Final Rule in this proceeding concerning an FM Allotment to Roscommon, Michigan. Inadvertently, the date on which the window period will close for filing applications was stated as being August 31, 1987. The correct date is September 2, 1987.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–17163 Filed 7–28–87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 70645–7085]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustment and request for comments.

SUMMARY: NOAA announces an adjustment to recreational ocean salmon management measures from the Queets River to Leadbetter Point, Washington. The adjustment modifies the areas closed to recreational salmon fishing. The Director, Northwest Region, NMFS (Regional Director), has determined, in consultation with representatives of the Pacific Fishery Management Council (Council), the Oregon Department of Fish and Wildlife (ODFW), and the Washington Department of Fisheries (WDF), that the adjustment is necessary to conform to the chinook quotas established in the preseason announcement of 1987 management measures. This action is intended to extend the recreational season.

EFFECTIVE DATES: Modification of the closed area for the recreational fishery from the Queets River to Leadbetter Point, Washington, is effective at 900 hours local time, July 27, 1987. Comments on this notice will be received until August 11, 1987.

ADDRESS: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, NMFS, BIN C15700, 7600 Sand Point Way NE., Seattle, WA 98115–0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the same address.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten, (Regional Director) at 206–526–6150.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries are codified at 50 CFR Part 661. Management measures for 1987 were effective on May 1, 1987 (52 FR 17264, May 6, 1987). The 1987 recreational fishery for all salmon species north of Cape Falcon, Oregon, is divided into three subareas. The recreational season in all three subareas began on June 28 and will continue through the earliest of September 24, attainment of subarea chinook or coho quotas, or attainment of overall troll and recreational chinook or coho quotas for the area between Cape Falcon, Oregon, and the U.S.-Canada border.

For the subarea from the Queets River to Leadbetter Point (central subarea), the area from 0 to 3 nautical miles offshore was closed under preseason regulations. Recent inseason adjustments changed the area closed to recreational fishing, the subarea chinook quota, and the daily bag limit (52 FR 25605, July 8, 1987; 52 FR 27560, July 22 1987). The subarea currently has quotas of 27,750 chinook and 74,300 coho salmon; the daily bag limit is 2 fish, only 1 of which may be a chinook; and the area from 0 to 10 miles offshore is closed to recreational fishing.

According to the best available information, landings in the central subarea through July 19 total 17,300 chinook and 13,400 coho salmon. About 62 percent of the subarea chinook quota has been taken, compared with only 18 percent of the subarea coho quota. The highest proportion of chinook has been in catches north of the entrance to Grays Harbor and in near-shore areas south of Grays Harbor. Unless further inseason action is taken to slow the catch of chinook, the fishery will close upon attainment of its chinook quota with a large portion of its coho quota unharvested.

NOAA therefore issues this notice to adjust the recreational salmon fishery in the exclusive economic zone (EEZ) from the Queets River to Leadbetter Point, Washington, by establishing modified closed areas for recreational fishing as follows:

(1) The area inside a line projected from the western end of the Grays Harbor south jetty southwesterly along the Red Buoy Line to the GH Buoy (46°51′54″ N. latitude; 124°14′20″ W. longtitude), then due west along 46°51′54″ N. latitude to the western boundary of the EEZ, then north to 47°31′42″ N. latitude, then due east to the mouth of the Queets River.

(2) The area inside a line projected from the western end of the Grays Harbor south jetty southwesterly along the Red Buoy Line to the GH Buoy (46°51′54″ N. latitude; 124°14′20″ W. longitude), then due west along 46°51′54″ N. latitude to 6 nautical miles offshore (46°51′54″ N. latitude; 124°15′42″ W. longitude), then southerly 6 miles west of the coastline to 46°38′10″ N. latitude, then due east to Leadbetter Point.

This notice does not apply to treaty Indian fisheries or to other fisheries which may be operating in this or other areas.

The Regional Director consulted with representatives of the Council, ODFW, and WDF regarding this inseason adjustment for the recreational fishery from the Queets River to Leadbetter Point, Washington. The WDF representative confirmed that Washington will manage recreational fishery in State waters adjacent to this area of the EEZ in accordance with this Federal action.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

(16 U.S.C. 1801 *et seq.*)

Dated: July 24, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

[FR Doc. 87–17253 Filed 7–27–87; 10:41 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 52, No. 145
Wednesday, July 29, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

Almonds Grown in California; Administrative Rules and Regulations Concerning Crediting for Marketing Promotion and Paid Advertising Expenditures

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would change administrative rules and regulations established under the Federal marketing order for California almonds to: (1) Allow handlers of California almonds to receive credit against their annual advertising assessments for their unreimbursed media expenditures for advertising in any foreign market pursuant to a contract with the California Department of Food and Agriculture; (2) add Australia, Korea, New Zealand, People's Republic of China, Philippines, and Taiwan to a list of foreign markets where handler media expenditures for brand advertising of almonds are eligible for credit; (3) delete a limitation which provides that credit for media expenditures for brand advertising in a foreign market shall not exceed 20 percent of a handler's advertising assessments or $500,000 for each crop year, whichever is greater; and (4) extend the date by which handlers must submit documented proof in order to receive credit for the distribution of sample package of almonds to charitable or educational outlets. These changes would give handlers additional flexibility in meeting their assessment obligations.

DATE: Comments must be received by August 28, 1987.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2085, South Building, Washington, DC 20250–0200. Comments should reference the date and page number of this issue of the Federal Register and will be available for public inspection in the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: James M. Scanlon, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250–0200; telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under Exective Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act" and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

It is estimated that 105 handlers of almonds under the marketing order for California almonds would be subject to regulation during the course of the current season. There are approximately 7,500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2 (1985)) as those having average annual gross revenues for the last three years of less than $100,000, and agricultural service firms have been defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California almonds may be classified as small entities.

The proposal would provide handlers additional time to submit documentation in support of claims for credit for the distribution of sample packages of almonds to charitable or educational outlets and, thereby, provide a uniform method for filing claims for all marketing promotion and paid advertising activities. Therefore, it is the Agency's view that the proposal would relieve restrictions on handlers and, thus, would not impose any additional costs to handlers.

Based on the above, the Administrator of the AMS has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the information collection provision that is included in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB). It is not effective until OMB approval has been obtained.

This proposal would revise § 981.441 of Subpart—*Administrative Rules and Regulations* issued under marketing agreement and Order No. 981 (7 CFR Part 981), both as amended, regulating the handling of almonds grown in California. The order is effective under the Act. The proposal is based on unanimous recommendations of the Almond Board of California (Board), which is responsible for local administration of the order, and upon other available information.

Section 981.41(c) of the order provides that the Board, with the approval of the Secretary, may allow handlers to receive credit for their direct marketing promotion expenditures, including paid advertising, against their annual advertising assessments. That paragraph also provides that a handler shall not receive credit for allowable expenditures that would exceed that portion of such handler's assessment obligation which is designated for marketing promotion, including paid advertising. Section 981.41(e) provides that before crediting is undertaken, and once a recommendation is received from the Board, the Secretary shall prescribe appropriate rules and regulations as are necessary to effectively administer provisions for creditable advertising expenditures.

Section 981.441 currently prescribes rules and regulations to regulate the crediting of payments to advertising media, for distribution of sample packages of almonds to charitable and educational outlets, for promotional materials purchased from the Board, and

for certain costs related to mail order promotions. The proposal would revise § 981.441(c)(4), concerning crediting of payments to advertising media in foreign markets, and § 981.441(d)(1)(i), concerning the distribution of sample packages of almonds to charitable or educational outlets.

Section 981.441(c)(4)(i) currently prescribes credit for a handler's unreimbursed media expenditures for advertising in any foreign market pursuant to a contract with the Foreign Agricultural Service (FAS), U.S. Department of Agriculture, provided the advertisements meet requirements provided for in § 981.441. This proposal would revise § 981.441(c)(4)(i) to also allow handlers credit for such expenditures pursuant to a contract with the California Department of Food and Agriculture (CDFA). In 1986, the CDFA initiated a program similar to the FAS export assistance program, whereby the CDFA contributes funds to handler projects to promote agricultural commodities abroad. The proposal would allow credit only for those funds contributed by handlers themselves and not reimbursed by the CDFA. Also, credit would only be allowed for handler funds used for paid media advertising.

Section 981.441(c)(4)(ii) currently allows a handler to receive credit for media expenditures for brand advertising in 16 foreign countries. This credit is in addition to the previously discussed credit for advertising pursuant to a contract with the FAS. The total of this additional foreign credit may not exceed 20 percent of a handler's advertising assessments or $500,000 for each crop year, whichever is greater. The 16 countries are Great Britain, France, Italy, West Germany, Denmark, Belgium, Ireland, Luxembourg, the Netherlands, Sweden, Norway, Finland, Switzerland, Singapore, Hong Kong, and Japan. Such claims for credit must be substantiated by applicable rate cards. The relevant administrative provisions of this section applicable to domestic advertising also apply to the crediting of advertising in these countries.

It is proposed to revise § 981.441(c)(4)(ii) to add Australia, Korea, New Zealand, People's Republic of China, Philippines, and Taiwan to the list of 16 foreign countries where a handler's media expenditures for advertising may receive foreign advertising credit. It is believed that standard schedules of rates for media advertising are available for these countries to allow the Board to substantiate claims for credit as reasonable and appropriate. These countries are increasingly important markets for California almonds, and handler's should be encouraged to develop the market potential in these countries through advertising.

It is also proposed to revise § 981.441(c)(4)(ii) by deleting the limitation which provides that credit for media expenditures for brand advertising in designated foreign markets shall not exceed 20 percent of a handler's advertising assessments or $500,000 for each crop year, whichever is greater. Thus, handlers would be eligible for 100 percent of their brand advertising media expenditures in designated foreign markets subject to limitations applicable to credit for domestic advertising.

Many handlers market all or most of their crop in export. While most handlers incur an annual advertising assessment of less than $500,000 and are, therefore, not limited in the amount of credit they may receive for foreign brand advertising, a few handlers are limited. This change would give all handlers opportunities to receive credit for brand advertising in foreign markets which are comparable to opportunites for credit in domestic markets.

Section 981.441(d)(1)(i)(F) currently provides that no credit shall be granted for the distribution of sample packages containing one-half ounce or less of almonds to charitable or educational outlets without receipt by the Board of acceptable proof of distribution. This proof shall consist of a signed statement from the organization to which sample package were distributed, on that organization's letterhead, stating: (1) The name and address of the handler from whom the packages were received; (2) the date of receipt; (3) the volume of packages received; (4) how such packages will be used; and (5) a statement that such packages will not be used for resale. This proof must be submitted to the Board no later than July 15 of the crop year succeeding the crop year during which the packages are distributed and for which credit is requested except as provided in § 981.441(b). Section 981.441(b) provides that a handler may receive credit up to a maximum of 40 percent of such handler's annual advertising obligation for expenditures for advertisements published, broadcast, or displayed and other marketing promotion activities (including the distribution of sample packages) conducted no later than December 31 of the succeeding crop year if the required documentation is submitted to the Board no later than the following January 31. The crop year under the order is the 12 months from July 1 to the following June 30, inclusive.

It is proposed to revise § 981.441(d)(1)(i)(F) to give handlers until October 15 to submit documented proof of their distribution of sample packages. Handlers would be required to file preliminary claims on ABC Form 31 on or before July 15 of the succeeding crop year, stating that proof of distribution would be submitted as expeditiously as possible, but no later than October 15. Handlers would have until October 15 to file final claims on ABC Form 31 with the appropriate proof of distribution. The proposal would not affect the 40 percent deferment provided for in § 981.441(b).

This change would require handlers to file claims for credit for the distribution of sample packages at the same time and in the same manner as claims for credit for advertising expenditures and costs related to mail order promotions. The proposal would correct a previous oversight to ensure that filing procedures for claiming credit for various types of authorized marketing promotion and paid advertising activities are uniform.

List of Subjects in 7 CFR Part 981

Marketing agreements and orders, Almonds, California.

For the reasons set forth in the preamble, 7 CFR Part 981 is proposed to be amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

Subpart—Administrative Rules and Regulations

1. The authority citation for 7 CFR Part 981 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Amend § 981.441 by revising paragraphs (c)(4)(i), (c)(4)(ii), and (d)(1)(i)(F) to read as follows:

§ 981.441 Crediting for marketing promotion including paid advertising.

* * * * *

(c) * * *

(4) * * *

(i) For a handler's unreimbursed media expenditures for advertising in any foreign market pursuant to a contract with the Foreign Agricultural Service, U.S. Department of Agriculture, and/or the California Department of Food and Agriculture, provided the advertisements meet the requirements of

paragraphs (c) (2) and (3) of this section and the limitations of paragraphs (c)(5) (i) and (ii) of this section.

(ii) For a handler's media expenditures for brand advertising in Australia, Belgium, Denmark, Finland, France, Great Britian, Hong Kong, Ireland, Italy, Japan, Korea, Luxembourg, the Netherlands, New Zealand, Norway, Philippines, People's Republic of China, Singapore, Sweden, Switzerland, Taiwan, and West Germany, credit shall be allowed when claims are substantiated by applicable rate cards. The provisions of this section applicable to domestic advertising shall also apply to the crediting of advertising in these markets.

* * * * *

(d) * * *

(1) * * *

(i) * * *

(F) Handlers must file claims with the Board in order to receive credit for the distribution of sample packages. Except as provided in paragraph (b) of this section, no credit shall be granted unless a preliminary claim is filed on or before July 15 of the succeeding crop year and a final claim is filed on or before October 15 of the succeeding crop year. Each preliminary claim must be filed on an ABC Form 31 (claim for advertising credit), stating that proof of distribution will be submitted as expeditiously as possible, but no later than October 15. If this preliminary claim is not filed on or before July 15, there will be no consideration of the claim under any circumstances. Each final claim must be submitted on ABC Form 31 and accompanied by appropriate proof of performance. This proof shall consist of a signed statement from the organization to which sample packages were distributed, on that organization's letterhead, stating:

(1) The name and address of the handler from whom the packages were received;

(2) The date of receipt;

(3) The volume of packages received;

(4) How such packages will be used; and

(5) A statement that such packages will not be used for resale.

* * * * *

Dated: July 21, 1987.

Ronald L. Cioffi,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 87-17032 Filed 7-28-87; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL RESERVE SYSTEM

12 CFR Part 227

[Reg. AA; Docket No. R-0606]

Unfair or Deceptive Acts or Practices; Application for Exemption From the State of California

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of intent to make an exemption determination.

SUMMARY: The Board has received from the state of California an application for an exemption from § 227.14 of the Board's Credit Practices Rule, Regulation AA (Unfair or Deceptive Acts or Practices). The rule prohibits banks from entering into consumer credit obligations that contain certain prohibited provisions, from using a certain late-charge practice, and from obligating a cosigner prior to providing a required notice explaining the cosigner's obligations. The Board is publishing notice of the California application, with an opportunity for public comment, in accordance with § 227.16(b) of Regulation AA. That section provides that the exemption procedures detailed in Appendix B to Regulation Z (Truth in Lending, 12 CFR Part 226) will be followed in applications for an exemption from the Credit Practices Rule.

DATE: Comments must be received on or before September 2, 1987.

ADDRESS: Comments should be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, or delivered to the Mail Services courtyard entrance, on 20th Street between C Street and Constitution Avenue, NW., Washington, DC between 8:45 a.m. and 5:15 p.m. weekdays. Comments should include a reference to Docket No. R-0606. Comments may be inspected in Room B-1122 between 8 45 a.m. and 5:15 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Adrienne D. Hurt, Staff Attorney, Division of Consumer and Community Affairs, at (202) 452-2412; for the hearing impaired *only*, contact Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf (TDD) at (202) 452-3544.

SUPPLEMENTARY INFORMATION:

(1) Background

In April 1985 the Board adopted the Credit Practices Rule, 12 CFR Part 227 (50 FR 16695), thereby amending Regulation AA, Unfair or Deceptive Acts or Practices. The Board's rule, which became effective on January 1, 1986, followed the adoption by the Federal Trade Commission (FTC) of its Credit Practices Rule in March 1984 (49 FR 7740).[1] The Board's rule applies to all banks and their subsidiaries. Staff guidelines designed to aid banks in complying with the Credit Practices Rule were issued in November 1985 (50 FR 47036). The first update to the guidelines was issued in October 1986 (51 FR 39640).

The Credit Practices Rule prohibits banks from entering into any consumer credit obligation that contains a confession of judgment clause, a waiver of exemption, an assignment of wages, or a nonpossessory, nonpurchase money security interest in certain household goods; and it prohibits the enforcement of these provisions in a consumer credit obligation purchased by a bank. The rule also prohibits a practice known as "pyramiding" of late charges: A bank is barred from assessing multiple late charges based on a single delinquent payment that is subsequently paid. In addition, the rule prohibits a bank from misrepresenting a cosigner's liability and requires the bank to give a cosigner, before the person becomes obligated in a consumer credit transaction, a disclosure notice that explains the nature of the cosigner's obligations and liabilities under the contract.

Compliance with the Board's Credit Practices Rule is provided through administrative enforcement (including compliance examinations and investigations). Noncompliance with the rule may involve actions under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), including cease and desist orders and the imposition of penalties up to $1,000 per day for violation of an order.

(2) California's Exemption Application

The state of California, through its Attorney General, has applied to the Board for an exemption from § 227.14 of the Board's Credit Practices Rule. The

[1] Under sections 18(a)(1)(B) and 5(a)(1) of the Federal Trade Commission Act (FTC Act), the FTC is authorized to promulgate rules that define and prevent "unfair or deceptive acts or practices" in or affecting commerce with respect to extensions of credit to consumers. Section 18(f) of the FTC Act provides that whenever the FTC promulgates a rule prohibiting practices which it has deemed to be unfair or deceptive, the Board, with certain limited exceptions, must adopt a substantially similar rule prohibiting such practices by banks. The Federal Home Loan Bank Board (FHLBB) is also required under section 18(f) to adopt a rule substantially similar to that of the FTC for institutions that are members of the Federal Home Loan Bank Board System; the FHLBB did so in May 1985 (50 FR 19325), with its rule also taking effect on January 1, 1986.

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application contains copies of provisions of California's Business and Professions Code and California's Civil Code and a comparison of the cosigner provision of the Board's Credit Practices Rule and the relevant California statutory provisions. The application gives information about the public enforcement activities of the consumer law section of the Attorney General's office and of the 58 county district attorney offices, and about the California Banking Department's examination and enforcement activities.[2]

The Board's rule (§ 227.16) states that, in applications for an exemption from its Credit Practices Rule, the procedures to be followed are the same as those detailed in Appendix B to Regulation Z (Truth in Lending, 12 CFR Part 226) for exemptions from that regulation. Accordingly, the Board is publishing notice of California's application for an exemption determination. This notice summarizes the exemption application and includes a comparison of the relevant provisions of California law and the Board's Credit Practices Rule. In order to expedite final action on the exemption request, there will be a 30-day comment period. Subject to the Board's Rules Regarding Availability of Information (12 CFR Part 261), copies of the California application are available from the Board in Washington and from the Federal Reserve Bank of San Francisco.

Section 227.16 of the Board's Credit Practices Rule provides that if a state applies for an exemption, the exemption may be granted if the Board determines that: (1) There is a state requirement or prohibition in effect that applies to any transaction to which the Credit Practices Rule applies: and (2) the state requirement or prohibition affords a level of protection to consumers that is substantially equivalent to, or greater than, the protection afforded by the Board's rule. If the Board makes that determination, the prohibition or requirement in the Board's rule will not be in effect, to the extent specified by the Board, for as long as the state effectively administers and enforces the state law requirement or prohibition. The effect of an exemption is that in that state any bank or bank subsidiary that is subject to the Board's rule will be subject solely to state law and enforcement, with one exception. An exemption would not apply to federally-chartered institutions.

Applicable state law provisions need not be the same as the comparable federal requirement in order to meet the rule's "substantially equivalent" standard. Variations, however, should not deprive consumers of the protections provided by federal law. The analysis also focuses on the ways in which the state demonstrates a commitment to enforcement and administration of the state's law; factors such as staffing, training activities, examination and administrative procedures' and other indicators of enforcement efforts may be considered, as well as the existence under state law of any private right of action by aggrieved consumers.

(3) A Comparison of California Law and the Board's Credit Practices Rule

The state of California asserts that certain provisions of California's Business and Professions Code (section 17200 et seq. and section 17500 et seq.) and California's Civil Code (section 1799.90 et seq.) afford greater protection to consumers than does the cosigner provision of the Board's Credit Practices Rule, and that an exemption should therefore be granted by the Board for as long as the California provisions remain in effect. A comparison of the relevant provisions of California law (as described by the California exemption application) and the cosigner provision of the Board's rule is set forth below.

A. Cosigner Notice Requirements

1. Coverage

Section 1799.91(a) of the California Civil Code requires a creditor that obtains the signature of more than one person on a consumer credit contract to deliver (before a person becomes obligated on the contract) a cosigner notice to any person who signs the contract and does not in fact receive any of the money, property or services which are the subject of the contract, unless the persons are married to each other. A creditor is defined as any person or entity that enters into or arranges for consumer credit contracts in the ordinary course of business (Civil Code section 1799.90(b)). Consumer credit contracts are obligations primarily for personal, family or household purposes which are to be paid on a deferred basis. They include retail installment contracts and accounts, conditional sales contracts, credit extensions that are unsecured or secured by personal property, and credit extensions, however secured, that are arranged by real estate brokers or made by consumer finance lenders (Civil Code section 1799.90(a)). California Civil Code section 1799.99 mandates that the cosigner notice be given in other transactions, other than consumer credit contracts as defined by state law, that are subject to the Board's Credit Practices Rule as well as the rules of the FTC and the FHLBB. A creditor in California must also give each person signing the consumer credit contract a copy of the debt instrument, security agreement, and any other document evidencing that person's obligation (Civil Code section 1799.93(b)).

The Credit Practices Rule requires a bank to provide a cosigner with a written notice of his or her obligation before the cosigner becomes obligated for an extension of consumer credit (§ 227.14(b)). A bank is not required to give a cosigner copies of the documents evidencing the obligation. Any consumer credit transaction (other than for the purchase of real property) made primarily for personal, family or household use is covered by the rule (§ 227.12(a)).

2. Content of the Notice

Under the Board's Credit Practices Rule, a bank must provide the prescribed disclosure statement to the cosigner, or one that is substantially similar (§ 227.14(b)). The notice must be clear and conspicuous. It can be contained on the document evidencing the credit obligation or on a separate document.

The California cosigner notice is identical to the notice contained in § 227.14(b) of the Board's Credit Practices Rule. The notice must be in at least 10-point type and can be placed on the contract or other documents establishing liability or on a separate document (Civil Code section 1799.91(a)). If the notice is contained on a separate document it can also include an identification of the consumer and the consumer credit contract to which it refers, the date, and the consumer's acknowledgement of receipt (Civil Code section 1799.92(b); *see also* Board Staff Guidelines, Q14(b)–9). A Spanish language translation of the notice is required to accompany the English version, and if the contract is written in still another language the notice must be translated into that language (Civil Code section 1799.91 (a), (b); *see also* Board Staff Guidelines, Q14(b)–16 and 17).

3. Definition of Cosigner

Under the Board's rule, any natural person who assumes liability for the obligation of a consumer, without

[2] The state of California submitted similar applications to the FTC and to the FHLBB, in order to obtain exemptions from the cosigner provisions of the credit practices rules of those agencies. The California exemption request to the FTC has been published in the **Federal Register** for public comment. 51 FR 30875 (1986) No final determination by the FTC has as yet been made. To date no action has been taken by the FHLBB.

receiving goods, services or money in return for the obligation, is a cosigner. In the case of an open-end credit obligation, a cosigner is a natural person who assumes liability without receiving the contractual right to obtain extensions of credit on an open-end account (§ 227.12(b)(1)). A person who merely pledges property to secure a consumer credit obligation is not a cosigner for purposes of the Board's rule (Board Staff Guidelines, Q12(b)–5).

The California Civil Code does not provide a specific definition of cosigner: however, section 1799.91 requires that the disclosure notice be given to each person, except a spouse, who signs a consumer credit contract and does not in fact receive the money, property or services that are the subject of the contract. A person who pledges collateral to secure a consumer credit obligation (even without assuming personal liability) is, therefore, entitled to receive a disclosure notice under California law.

4. Cosigning Spouses

The Board's rule requires that a cosigner notice be given to all persons who fall within the cosigner definition, including spouses. California law excludes spouses from receipt of a cosigner notice.

Under California law, all real property situated in California and all personal property acquired during marriage is deemed to be community property (Civil Code section 5110). A spouse's share of community property generally will be liable for the other spouse's debts whether or not both spouses undertake a credit obligation (Civil Code section 5120.110). A married person in California may have separate property in addition to community property. Separate property may consist of property acquired before the marriage or through gift or inheritance (Civil Code sections 5107, 5108). This separate property is not liable for the debts incurred by a spouse unless the debts are incurred to obtain the "necessities of life" (Civil Code sections 5120.130(b), 140(a)(1)). As a result, when a nonapplicant spouse cosigns a spouse's obligation, in addition to community property, that spouse's separate property becomes available to satisfy the debt in the event of default.

California's Attorney General asserts in the state's exemption application that California law does not require a creditor to give a cosigner notice to a spouse because the notice would be a misleading statement of legal responsibilities under California's marital property law.

The Attorney General maintains that giving a spouse the cosigner notice may potentially mislead the spouse to conclude that if he or she does not sign the credit obligation, he or she will not be liable for the spouse's debt, even though California's marital property law provides otherwise. California states that the cosigner notice would have to be modified substantially to reflect accurately California's marital property law; and believes that such modifications would be so complex as to undermine the notice's effectiveness in explaining the consequences of cosigning an obligation.

The Attorney General also maintains that a cosigning spouse subject to California law would generally not fall within the Board's definition of a cosigner. Money or property acquired by either spouse on the credit of community property or the personal credit of either spouse is presumed to be community property.[8] Both spouses are legally entitled to enjoy, use, manage and control community property. (*See* Cal. Civ. Code section 5125.) Therefore, both spouses would be entitled to the proceeds of the credit obligation. Under the Board's rule, a cosigner notice need only be given to a person who assumes liability without receiving money, property or services. Consequently, the California Attorney General argues that as long as community property assets are available to a bank to satisfy an obligation, even if a nonapplicant spouse were also to obligate his or her separate property by cosigning a spouse's obligation, a bank in California would not be required to give the Board's cosigner notice to the cosigning spouse. The Attorney General suggests that in California the situation in which the Board's cosigner notice would have to be given to a nonapplicant spouse (where no community property is being relied upon to satisfy a debt) is virtually nonexistent.

B. Misrepresentation of Cosigner Liability

Under the Credit Practices Rule, it is a deceptive act or practice for a bank to misrepresent the nature and extent of a cosigner's liability to any person in connection with an extension of credit to consumers (§ 227.14(a)(1)).

Misrepresentation of cosigner liability is not specifically prohibited by California law. Section 17500 of the California Business and Professions Code does, however, prohibit a person from disseminating untrue or misleading statements in order to induce the public into entering into an obligation. This section has been interpreted by California case law to include actions by financial institutions. In addition, California case law has held that proof of actual deception, intent of the disseminator, knowledge of the consumer's reliance on the statement, or damages are unnecessary to establish a violation of the section.

Section 17200 of the California Business and Professions Code prohibits a wide range of business practices constituting unfair competition. Unfair competition is defined to include unlawful, unfair, or fraudulent business practices. These prohibitions have been interpreted by California case law to protect consumers as well as businesses from the prohibited practices.

C. Remedies and Enforcement

Compliance with the provisions of the Credit Practices Rule is provided through administrative enforcement, including periodic compliance examinations and investigations. Failure to comply with the cosigner provision of the Board's rule is deemed an unfair or deceptive act or practice. The rule does not per se alter the obligation between the bank and the cosigner. No private right of action is provided under the Board's Credit Practices Rule. Noncompliance may result in administrative actions under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), including the issuance of cease and desist orders and the imposition of penalties of up to $1,000 per day for violation of an order.

To assure compliance with the state law provisions affecting cosigners, California states that it relies on the private remedy and public enforcement, through the state's unfair business practices law, by various prosecutorial agencies. If a creditor fails to comply with the California cosigner requirements, the creditor is barred from bringing any action or enforcing any security interest against a person entitled to receive notice who did not in fact receive any of the money, property or services involved in the contract (Civil Code section 1799.95).

California courts are empowered to issue injunctive relief, order restitution, and fashion any appropiate equitable order to redress the dissemination of untrue or misleading statements and any unlawful business practice. An action for an injunction, restitution, and other equitable relief may be brought by the Attorney General, any of the 58 district

[8] The state cites Civil Code section 5110 and case law in support of this position. *See In re marriage of Fischer*, 78 Cal. App. 3d 550, 561, 146 Cal. Rptr. 561 (1978); *Ford* v. *Ford*, 276 Cal. App. 2d 9, 12–13, 80 Cal. Rptr. 435 (1969).

attorneys, and local prosecutors. The Attorney General, the district attorneys, and certain local prosecutors can obtain a mandatory civil penalty of up to $2500 for a violation of each of the statutes. In addition, these agencies may seek a civil penalty of up to $6,000 per day for each violation of an injunction issued pursuant to Business and Professions Code sections 17203 and 17535. Section 17204 and 17535 provide that actions for injunctive relief may also be brought by any person acting for the interests of itself, its members or the general public. Thus, California case law has held that individuals and organizations have standing to redress violations of these provisions even if they were not directly aggrieved by the violations.

(4) Comments Requested

Interested persons are invited to submit written comments on the state of California's application for an exemption from § 227.14 of the Board's Credit Practices Rule. The Board solicits comment on whether the provisions of California law affecting cosigners affords a level of protection to consumers that is substantially equivalent to, or greater than, the protections afforded by the cosigner provision of the Board's rule. In particular, the Board solicits comment on the following:

- Whether excluding spouses from receipt of a cosigner notice, under the California law, adversely affects the level of protection afforded married persons in light of the state's community property law.
- Whether the provisions of California law on unfair competition and misleading statements afford consumers a level of protection that is substantially equivalent to, or greater than, the provision of the Board's rule concerning misrepresentation of cosigner liability.
- Whether the remedy for violation of the California provisions affecting cosigners affords consumers a level of protection that is substantially equivalent to, or greater than, that afforded by the Board's rule.
- Whether California administers and enforces its laws, as they relate to cosigners of consumer credit obligations, effectively.

After the close of the comment period, based upon its own analysis and a review of the comments received, the Board will make its final determination on the exemption request. Notice of the final action will be published in the Federal Register.

List of Subjects in 12 CFR Part 227

Banks, Banking, Consumer protection, Credit, Federal Reserve System, Finance.

Board of Governors of the Federal Reserve System, July 23, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-17103 Filed 7-28-87; 8:45 am]

BILLING CODE 6210-01-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701, 703, and 721

Organization and Operations of Federal Credit Unions; Investment and Deposit Activities; and Federal Credit Union Insurance and Group Purchasing Activities

AGENCY: National Credit Union Administration.

ACTION: Proposed rule.

SUMMARY: The NCUA Board proposes to amend its regulations on Investments in and Loans to Credit Union Service Organizations (12 CFR 701.27), FCU Ownership of Fixed Assets (12 CFR 701.36), Investment and Deposit Activities (12 CFR Part 703), and Federal Credit Union Insurance and Group Purchasing Activities (12 CFR Part 721) by revising the definition of the term "immediate family member" as used therein and by adding a new definition, "senior management employee," to those provisions of its regulations. The purpose of this proposal is to narrow the scope of the rules as they relate to potential conflicts of interest by credit union directors, committee members, employees, and their immediate family members. This proposal would provide consistency between these regulations and the final rule on member business loans issued by the NCUA Board on April 9, 1987.

DATE: Comments must be received on or before September 21, 1987.

ADDRESS: Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Steven R. Bisker, Assistant General Counsel, at the above address or telephone: (202) 357-1030.

SUPPLEMENTARY INFORMATION:

Background

On April 9, 1987, the NCUA Board issued final rules relating to member business loans made by federally-insured credit unions, and to preferential treatment and prohibited fees on business and other loans. *See*, 52 FR 12365 (April 16, 1987). Those final rules defined the phrase "immediate family member" to mean "a spouse or other family member living in the same household" as a credit union official or senior management employee of a credit union. (12 CFR 701.21(c)(8), 701.21(d)(5), and 701.21(h)(1)(iv).) The phrase "senior management employees" was, in turn, defined to mean a credit union's chief executive officer, any assistant chief executive officers, the chief financial officer, and, in the case of prohibitions on business loans, any compensated director. (12 CFR 701.21(c)(8) and 701.21(h)(3).) The use of these definitions narrowed the application of the prohibition portions of the lending rules in order to avoid unnecessarily interfering with the ability of family members of credit union officials to do business with and provide services to a credit union, and yet should effectively eliminate conflicts of interest. The principal concern is with those officials that have the authority to make or influence decisions that can affect their pecuniary interest.

At the time the NCUA Board adopted the new lending rule amendments, it noted that it would review other provisions of its rules and regulations where the term "immediate family members" appears and consider revisions to make the use of the term consistent. (*See*, 52 FR 12365 at 12366.) Where appropriate, this would also include adding a definition of the term "senior management employees." The Board has done so and is now proposing amendments to the following sections of its rules: § 701.27 (c) and (d), credit union service organizations; § 701.36 (b) and (e), fixed assets; § 703.2 and 703.4, investment and deposit activities; and § 721.2(c), insurance and group purchasing activities.

Discussion

All of the rules proposed for amendment relate to potential conflicts of interest by credit union directors, committee members, employees, and their immediate family members. Section 701.27(d)(6) involves the prohibition on the receipt by such individuals of any salary, commission, investment income, or other income or compensation from a CUSO, either directly or indirectly, or from any person being served through the CUSO. Section 701.36 (e) concerns the prohibition (except if prior written NCUA approval is obtained) on the acquisition or lease of the credit union's premises from such individuals directly or from corporations

or partnerships in which they have a 10 percent or more ownership interest. Section 703.4 (e) prohibits the receipt by such individuals of pecuniary consideration in connection with the making of an investment or deposit by the credit union. And, lastly, § 721.2 (c) precludes such individuals from receiving any compensation or benefit, directly or indirectly, in conjunction with any insurance or group purchasing activity.

In each instance, the conflict of interest sought to be eliminated exists where the individuals involved are in a position of authority in the credit union so as to influence or make decisions that can affect their pecuniary interest. Most employees do not, as a practical matter, have such power. Therefore, the risk that a decision will be based on self-interest instead of the interest of the credit union is not readily present with lower level employees. Typically, only those employees in senior management, such as the manager, assistant manager, or comptroller, are in positions to make decisions or to influence decisions. The NCUA Board is proposing to amend §§ 701.27(d)(6), 701.36(e), 703.4(e), and 721.2(c) by substituting "senior management employee" for "employees" wherever the term appears. Additionally, the term "senior management employee" will be defined in each of these Sections consistent with the definition in the recently amended lending rule (§ 701.21(c)(8)).

These proposed rules will also revise the definition of "immediate family member" in §§ 701.27(b)(3), 701.36(b)(6), 703.2(i), and 721.2(c), to include only a spouse and other relatives living in the same household. Those commenting on the definition, as it was proposed in the business lending rule, asserted that the list of relatives included in the definitions (i.e., spouse, child, parent, grandchild, grandparent, brother or sister, or spouse of any such individual) was overly broad and unwarranted and the Board recognizes that this may also be the case with the current rules that it now proposes to amend. The prohibition has proven to be particularly onerous for credit unions located in small communities where the likelihood of a credit union involving itself with an immediate family member, as currently defined, is significant. Again, provided that all transactions and dealings with the family members, who would be excluded from the definition as proposed, are conducted at arm's length and in the best interest of the credit union, the Board believes that the overall effect of the amendments can be beneficial to credit unions. In this regard, the Board requests comments on whether the amendments should specifically include requirements regarding the arm's length nature of transactions and the best interest of the credit union.

Request for Comments

In addition to comments on the amendments contained in this proposal and as requested above, the Board is interested in receiving comments on whether the individual amendments should also specify additional employee positions that are related to the credit union activity covered by each particular regulation.

Although the proposed amendments are designed to narrow the scope of the applicability of the various conflicts of interest provisions, the Board is concerned that there may be employee positions that, because of the nature of the job performed, should still be subject to conflict of interest proscriptions even though the particular employee may not be senior management or have general decisionmaking authority. For example, the current lending rule includes loan officers in the list of credit union personnel covered in the provision on prohibited fees. (§ 701.21(c)(8).) In a similar fashion, then, should the amendment to § 703.4, prohibited activites regarding investments and deposits, specifically apply to employees responsible for making credit union investments and deposits even though they may not be considered senior management employees? As another example, should employees responsible for the daily operations of a credit union's insurance and group purchasing activities be included in the prohibited fees section of Part 721 (§ 721.1(c)) if they are not senior management employees or make no decisions as to what types of services the credit union offers? Similar situations may also arise regarding CUSO's and fixed assets. The inclusion of specified positions in conjunction with the amendments now proposed would still narrow the applicability of the various sections since the current regulations apply to all employees. Comments are specifically requested in this area.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board has determined and certifies that the proposed amendments, if adopted, will not have a significant economic impact on a substantial number of small credit unions (primarily those under $1 million in assets). Further, these proposed rules relax certain prohibitions and limitations. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

The proposed changes do not impose any additional paperwork requirements.

List of Subjects in 12 CFR Parts 701, 703, and 721

Credit unions, Senior management employees, Immediate family members.

By the National Credit Union Administration Board on July 15, 1987.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA proposes to amend its regulations as follows:

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

1. The authority citation for Part 701 continues to read as follows:

Authority: 12 U.S.C. 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789, and 1798.

2. Section 701.27 is amended by revising paragraph (c)(3) and by adding paragraph (c)(5) to read as follows:

§ 701.27 Investments in and loans to credit union service organizations.

* * * * *

(c) * * *

(3) *Immediate family member* means a spouse or other family member living in the same household.

* * * * * *

(5) *Senior management employee* means the credit union's chief executive officer (typically this individual holds the title of President or Treasurer/Manager), any assistant chief executive officers (e.g., Assistant President, Vice President or Assistant Treasurer/Manager) and the chief financial officer (Comptroller).

* * * * *

3. Section 701.27(d)(6) is amended by removing, in the first sentence after the words "officials of, or", the words "are employed by" and by inserting in lieu thereof the words "senior management employees of." The second sentence is amended by removing the word "employee" after the words "official or" and by inserting in lieu thereof the words "senior management employee."

4. Section 701.36 is amended by revising paragraphs (b)(6), and (e)(1)–(3) and by adding paragraph (b)(8) to read as follows:

§ 701.36 FCU ownership of fixed assets.

* * * * *

(b) * * *

(6) *Immediate family member* means a spouse or other family member living in the same household.

* * * * *

(8) *Senior management employee* means the credit union's chief executive officer (typically this individual holds the title of President or Treasurer/Manager), any assistant chief executive officers (e.g., Assistant President, Vice President or Assistant Treasurer/Manager) and the chief financial officer (Comptroller).

* * * * *

(e) * * *

(1) A director, member of the credit committee or supervisory committee, official, or senior management employee of the Federal credit union, or immediate family member of any such individual.

(2) A corporation in which any director, member of the credit committee or supervisory committee, official, or senior management employee, or immediate family member of any such individual, is an officer or director, or has a stock interest of 10 percent or more.

(3) A partnership in which any director, member of the credit committee or supervisory committee, official, or senior management employee, or immediate family member of any such individual is a general partner, or a limited partner with an interest of 10 percent or more.

PART 703—INVESTMENT AND DEPOSIT ACTIVITIES

5. The authority citation for Part 703 continues to read as follows:

Authority: 12 U.S.C. 1757(7), 1757(8), 1766(a) and 1789(a)(11).

6. Section 703.2 is amended by revising paragraph (i), redesignating paragraphs (p), (q), (r), (s) and (t) as paragraphs (q), (r), (s), (t) and (u) and by adding a new paragraph (p) as follows:

§ 703.2 Definitions.

* * * * *

(i) *Immediate family member* means a spouse or other family member living in the same household.

* * * * *

(p) *Senior management employee* means the credit union's chief executive officer (typically this individual holds the title of President or Treasurer/Manager), any assistant chief executive officers (e.g., Assistant President, Vice President or Assistant Treasurer/Manager) and the chief financial officer (Comptroller).

* * * * *

§ 703.4 [Amended]

7. Section 703.4(e) is amended by adding after the words "committee members and", the words "senior management."

PART 721—FEDERAL CREDIT UNION INSURANCE AND GROUP PURCHASING ACTIVITIES

8. The authority citation for Part 721 is revised to read as follows:

Authority: 12 U.S.C. 1757(16), 1766 and 1789.

9. Section 721.2 is amended by revising paragraph (c) to read as follows:

§ 721.2 Reimbursement.

* * * * *

(c) No director, committee member, or senior management employee of a Federal credit union or any immediate family member of any such individual may receive any compensation or benefit, directly or indirectly, in conjuction with any activity under this regulation. For purposes of this section, "immediate family member" means a spouse or other family member living in the same household; and "senior management employee" means the credit union's chief executive officer (typically this individual holds the title of President or Treasurer/Manager), any assistant chief executive officers (e.g., Assistant President, Vice President or Assistant Treasurer/Manager) and the chief financial officer (Comptroller).

[FR Doc. 87-16639 Filed 7-28-87; 8:45 am]

BILLING CODE 7535-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-86-AD]

Airworthiness Directives: British Aerospace Model BAe-146 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive (AD), applicable to certain British Aerospace Model BAe-146 airplanes, which would require modification of the Direct Current (DC) electrical distribution control system. This action is prompted by a report of an unanticipated failure mode of the DC busbar system, which resulted in the discharge of the battery without warning, and subsequent loss of both the Essential DC and Emergency DC busbars.

DATES: Comments must be received no later than September 18, 1987.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-86-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace, Inc., Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-86-AD, 17900 Pacific

Highway South, C-68966, Seattle, Washington 98168.

Discussion

The British Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition which may exist on British Aerospace Model BAe-146 airplanes. An incident was reported where the battery discharged without warning, causing the loss of both the Essential DC and Emergency DC busbars. It was determined that the auto cutout control allowed the Emergency DC bus to backfeed the Essential DC bus by the battery when the DC bus tie contactor was closed. Once the battery was depleted, power to the Essential DC and Emergency DC busbars was lost. British Aerospace issued BAe-146 Service Bulletin 24-30-00757A, Revision 1, dated September 5, 1986, which describes modification of the DC power distribution by deleting 2 wires and adding 3 wires to the auto cutout control. The CAA classified the service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom, and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require modification of the DC power distribution in accordance with the service bulletin previously mentioned.

It is estimated that 15 airplanes of U.S. registry would be affected by this AD, that it would take approximately 1 manhour per airplane to accomplish the required action, and that the average labor cost would be $40 per manhour. The estimated cost for parts is $75 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $1,725.

For the reasons discussed above, the FAA has determined that this document (1) Involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($115). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

British Aerospace (BAe): Applies to Model BAe-146 series airplanes listed in BAe Service Bulletin 24-30-00757A, Revision 1, dated September 5, 1986, certificated in any category. Compliance is required within 6 months after the effective date of this AD, unless previously accomplished.

To prevent battery depletion and subsequent loss of Essential DC and Emergency DC busbars accomplish the following:

A. Modify the DC power distribution in accordance with British Aerospace BAe-146 Aircraft Modification Service Bulletin 24-30-00757A, Revision 1, dated September 5, 1986.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to British Aerospace Inc., Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on July 21, 1987.

Frederick M. Isaac,
Acting Director, Northwest Mountain Region.

[FR Doc. 87-17097 Filed 7-28-87; 8:45 am]
BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-NM-82-AD]

Airworthiness Directives: British Aerospace Viscount Model 700, 800, and 810 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to all Viscount Model 700, 800, and 810 series airplanes, that would require eddy current and visual inspections of the rib and wing upper surface at wing station 257. This proposal is prompted by three reports of cracks. This problem has been attributed to fatigue cracking. This condition, if not corrected, could result in failure of the wing.

DATES: Comments must be received no later than August 19, 1987.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-82-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, Seattle Aircraft Certification Office, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such

written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM–103), Attention: Airworthiness Rules Docket No. 87–NM–82–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

The United Kingdom Civil Aviation Authority (CAA), which is the airworthiness authority of Great Britain, has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of fatigue cracks found in the wing upper surface on Viscount Model 700/800/810 series airplanes.

There have been three reports of cracks, due to fatigue, initiating from the rearmost vertical bolt hole associated with the attachment of the outboard engine top nacelle fitting. These cracks, if allowed to propagate, could result in failure of the wing.

British Aerospace (BAe) issued Alert Preliminary Technical Leaflets (PTL) 316 and 185, Issues 1, both dated October 23, 1986, which describe procedures for inspection for cracks of the wing on all Viscount 700/800/810 series airplanes. The CAA has classified these PTL's as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require eddy current and visual inspections of the wing in accordance with the British Aerospace Alert PTL's previously mentioned. The eddy current inspections may be deferred if a specified rib modification is performed. Any cracks found would be required to be repaired before further flight in a manner approved by the FAA.

It is estimated that 12 airplanes of U.S. registry would be affected by this AD, that it would take approximately 60 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $28,800.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($2,400). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

British Aerospace: Applies to all Model Viscount 700/800/810 series airplanes which have accumulated more than 10,000 landings, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent failure of the wing due to cracking, accomplish the following:

A. Within 25 landings after the effective date of this AD:

1. Visually inspect the wing upper surface and end rib in accordance with applicable British Aerospace Preliminary Technical Leaflet No. 185 or No. 316, both dated October 23, 1986. Repeat this inspection at intervals not to exceed 25 landings.

2. Eddy current inspect the wing in accordance with applicable British Aerospace Preliminary Technical Leaflet No. 185 or No. 316, both dated October 23, 1986. Repeat this inspection at intervals not to exceed 1,500 landings.

B. Any cracks found as a result of the inspections required by paragraph A., above, must be repaired prior to further flight in a manner approved by the FAA.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

D. Eddy current inspections may be deferred for 15,000 landings after incorporation of Modification D3292 or Modification FG2172, as applicable.

All persons affected by this proposal who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on July 21, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87–17100 Filed 7–28–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket Number 87–ANE–23]

Airworthiness Directives; Pratt & Whitney (PW) JT8D–209, 217, –217A, –217C, and –219 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that would require initial and repetitive inspection of low pressure turbine (LPT) third stage vane anti-rotation pins and modification of the LPT case assembly on certain PW JT8D–200 series engines. The proposed AD is needed to detect fractured anti-rotation pins which could result in turbine vane rotation and subsequent uncontained engine failures.

DATES: Comments must be received on or before September 22, 1987.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Federal Aviation Administration, New England Region, Office of the Regional Counsel, Attention: Rules Docket Number 87–ANE–23, 12 New England Executive Park, Burlington, Massachusetts 01803 or delivered in duplicate to Room 311 at the above address.

Comments delivered must be marked: "Docket Number 87–ANE–23".

Comments may be inspected at the New England Region, Office of the Regional Counsel, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable service bulletins (SB's) may be obtained from Pratt & Whitney, Publication Department, P.O. Box 611, Middletown, Connecticut 06457.

A copy of the SB's is contained in Rules Docket Number 87–ANE–23, in the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Jim Jones, Engine Certification Branch, ANE–141, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273–7121.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, at the address given above, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 87–ANE–23". The postcard will be date/time stamped and returned to the commenter.

The FAA has determined that fracture of all LPT third stage vane anti-rotation pins on JT8D–200 series engines can result in rotation of the vane clusters, severing of the rear turbine case, liberation of the vane clusters and penetration of the engine cowl. Investigation and analysis have indicated that creep of the anti-rotation pin material combined with vane twist due to thermal transients can result in anti-rotation pin fracture. There have been three events where fracture of all of the LPT third stage vane anti-rotation pins caused engine failures. Two of the failures were uncontained, one of which caused engine cowl damage.

A new anti-rotation pin design with a higher strength material and a modification of the LPT case assembly has been developed by the manufacturer.

The proposed AD would require initial and repetitive radiographic isotope inspection of LPT third stage vane anti-rotation pins and modification of the LPT case assembly on JT8D–209, –217, –217A, –217C, and –219 turbofan engines.

This proposed AD would also require reporting of the inspection results to the FAA. Those findings will be evaluated to determine if they are consistent with the engineering analysis upon which the AD is founded, or whether further inspections or other actions are needed.

Since this condition is likely to exist or develop on other engines of the same type design, the proposed AD would require initial and repetitive radiographic isotope inspection of LPT third stage vane anti-rotation pins in accordance with PW Alert Service Bulletin 5753, Revision 1, dated July 24, 1987. The proposed AD would also require modification of the LPT case assembly at the next LPT module disassembly in accordance with PW Service Bulletin (SB) 5751, dated June 15, 1987.

Conclusion

The FAA has determined that this proposed regulation involves approximately 500 (domestic) PW JT8D–200 series engines at an approximate cost of 1.5 million dollars for the first year. It has also been determined that few, if any, small entities within the meaning of the Regulatory Flexibility Act will be affected since this proposed regulation affects only operators using aircraft in which JT8D–200 series engines are installed, none of which are believed to be small entities. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT**".

List of Subjects in 14 CFR Part 39

Engines, Air Transportation, Aircraft, Aviation Safety, Incorporation by Reference.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.85.

§ 39.13 [Amended]

2. By adding to Section 39.13 the following new airworthiness directive (AD):

Pratt & Whitney: Applies to Pratt & Whitney (PW) JT8D–209, –217, –217A, –217C, and –219 turbofan engines.

Compliance is required as indicated, unless already accomplished.

To prevent low pressure turbine (LPT) case penetration as a result of anti-rotation pin failures, accomplish the following:

(a) Radiographic isotope inspect LPT modules installed in JT8D–200 series turbofan engines that incorporate Tinidur (AMS 5637.) anti-rotation pins. Engines with new or refurbished (in accordance with the Accomplishment Instructions of paragraph 2.A.(2)(a) of PW SB 5751, dated June 15, 1987) LPT case assemblies that have incorporated PW SB 5711, Revision Number 3, dated April 1, 1987 and have been concurrently assembled with new LPT third stage vane antirotation pins (Tinidur or Inco 901) are not required to meet the initial and repetitive inspection requirements of this paragraph. Engines requiring the inspection must be inspected in accordance with the Accomplishment Instructions contained in PW Alert Service Bulletin (ASB) 5753, Revision Number 1, dated July 24, 1987, in accordance with the following schedule:

(1) PW JT8D–209 engines with 9,300 total cycles in service (CIS) or more on the effective date of this AD; inspect within 2,500 CIS from the effective date of this AD. Thereafter, reinspect in accordance with the requirements of the table below.

(2) PW JT8D–209 engines with less than 9,300 total CIS on the effective date of this AD; inspect before the accumulation of 9,300 total CIS, or within 2,500 CIS from the effective date of this AD, whichever occurs later. Thereafter, reinspect in accordance with the requirements of the table below.

(3) PW JT8D–217 engines with 7,300 total CIS or more on the effective date of this AD; inspect within 700 CIS from the effective date of this AD. Thereafter, reinspect in accordance with the requirements of the table below.

(4) PW JT8D–217 engines with less than 7,300 total CIS on the effective date of this AD; inspect before the accumulation of 7,300 total CIS, or within 700 CIS from the effective date of this AD, whichever occurs later. Thereafter, reinspect in accordance with the requirements of the table below.

(5) PW JT8D–217A engines with 3,300 total CIS or more on the effective date of this AD; inspect within 900 CIS from the effective date of this AD. Thereafter, reinspect in accordance with the requirements of the table below.

(6) PW JT8D–217A engines with less than 3,300 total CIS on the effective date of this AD; inspect before the accumulation of 3,300 total CIS, or within 900 CIS from the effective date of this AD, whichever occurs later. Thereafter, reinspect in accordance with the requirements of the table below.

(7) PW JT8D–217C/–219 engines with 4,200 total CIS or more on the effective date of this AD; inspect within 1,000 cycles from the effective date of this AD. Thereafter, reinspect in accordance with the requirements of the table below.

(8) PW JT8D–217C/–219 engines with less than 4,200 total CIS on the effective date of this AD; inspect before the accumulation of 4,200 total CIS, or within 1,000 CIS from the effective date of this AD, whichever occurs later. Thereafter, reinspect in accordance with the requirements of the table below.

THIRD STAGE ANTI–ROTATION PIN REINSPECTION TABLE

Number of fractured, missing, or bent pins	Maximum CIS until reinspection	
	JT8D–209	JT8D–217/ 217A/ 217C/219
0	7,800	1,700
1	6,640	1,610
2	6,280	1,525
3	5,920	1,440
4	5,560	1,355
5	5,200	1,265
6	4,840	1,180
7	4,480	1,090
8	4,120	1,005
9	3,760	920
10	3,400	830
11	3,040	745
12	2,680	660
13	2,320	570
14	1,960	485
15	1,600	400

(b) Remove from service prior to further flight, PW JT8D–209, –217, –217A, –217C, and –219 engines with 44 fractured, missing, or bent LPT third stage vane anti-rotation pins found during the inspection of paragraph (a) above.

(c) Remove from service within 10 CIS, PW JT8D–209, –217, –217A, –217C, and –219 engines with 16 or more but less than 44 fractured, missing or bent LPT third stage vane anti-rotation pins, found during the inspection of paragraph (a) above.

(d) Modify prior to return to service, in accordance with the Accomplishment Instructions of PW SB 5751 dated June 15, 1987, those engines removed from service in accordance with paragraphs (b) and (c) above.

(e) Modify prior to return to service, in accordance with the Accomplishment Instructions of PW SB 5751, dated June 15, 1987, PW JT8D–209, –217, –217A, –217C, and –219 engines inspected in accordance with paragraph (a) above at an engine shop visit, and found with 15 or more fractured, missing, or bent LPT third stage vane anti-rotation pins.

(f) Modify PW JT8D–209, –217, –217A, –217C, and –219 engine LPT modules (including LPT modules from those engines referred to in paragraph (a) that were not required to meet the initial and repetitive inspection requirements) at the next LPT module disassembly after the effective date of this AD in accordance with the Accomplishment Instructions of PW SB 5751, dated June 15, 1987.

(g) Report the following information in writing within 30 days from the date of the inspection to the Manager, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, Telex Number 949301 FAANE BURL:

(1) Inspection date.
(2) Engine serial number (S/N).
(3) LPT module S/N.
(4) Engine total time and cycles (if estimate, so note).
(5) LPT module total time and cycles (if estimate, so note).
(6) Number of third stage pins:
(i) Fractured.
(ii) Missing.
(iii) Bent.

Notes.—(1) For the purpose of this AD, LPT module disassembly occurs when the LPT rotor is separated from the LPT case and vane assembly.

(2) Shop visit is defined as the input of an engine to a repair shop where the subsequent engine maintenance entails:

(a) Separation of a major engine flange (lettered or numbered) other than flanges mating with major sections of the nacelle or reverser. Separation of flanges purely for purposes of shipment, without subsequent internal maintenance, is not a "shop visit."

(b) Removal of a disk, hub, or spool.

Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

Upon request, an equivalent means of compliance may be approved by the Manager, Engine Certification Office, Aircraft Certification Division, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Engine Certification Office, New England Region, may adjust the compliance times specified in this AD.

Should this proposed rule be adopted, the FAA will request the approval of the Federal Register to incorporate by reference the manufacturer's service bulletins identified and described in this document.

Issued in Burlington, Massachusetts, July 16, 1987.

Jack A. Sain,
Acting Director, New England Region.

[FR Doc. 87–17104 Filed 7–28–87; 8:45 am]
BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 87–NM–89–AD]

Airworthiness Directives: Short Brothers PLC, Model SD3–60 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive (AD), applicable to certain Short Brothers Model SD3–60 series airplanes, that would require removal or modification of the left-hand garment bag stowage unit introduced by Modification 7063. The stowage unit extends into the aisle and, if not corrected, could be an impediment to evacuation during an emergency.

DATES: Comments must be received no later than September 18, 1987.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM–103), Attention: Airworthiness Rules Docket No. 87–NM–89–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Short Brothers PLC, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202–3702. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization

Branch, ANM–113; telephone (206) 431–1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM–103), Attention: Airworthiness Rules Docket No. 87–NM–89–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition which may exist on certain Short Brothers PLC, Model SD3–60 airplanes. The introduction of a left-hand garment bag stowage unit (Modification 7063) reduces the aisle width from 20 inches to 19 inches between the rear row of seats and the aft exits. This reduction in aisle width could hinder or restrict evacuation in the event of an emergency. Modification 7063, does not meet width of aisle requirements as defined by FAA Part 25.815 and British Civil Air Regulations (BCAR) D4–3.

Short Brothers has issued two service bulletins which address this unsafe condition: Service Bulletin SD360–25–34, dated December 1986, describes procedures for removal of the stowage unit; the CAA has declared this service bulletin as mandatory. Service Bulletin SD360–25–35, dated March 1987, describes a modification to the left-hand garment bag stowage that reduces the size of the garment bag stowage unit; this reduction permits the aisle width to remain at 20 inches, which allows sufficient room to evacuate the airplane.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require removal or modification of the left-hand garment bag stowage, Modification 7063, in accordance with a previously mentioned service bulletin.

It is estimated that 34 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $2,720.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($80). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Short Brothers PLC: Applies to Model SD3–60 airplanes equipped with a lefthand garment bag stowage unit (Modification 7063), certificated in any category. Compliance required within 90 days after the effective date of this AD, unless previously accomplished.

To remove a restriction to aisle width, due to the left-hand garment bag stowage unit, accomplish the following:

A. Remove the left-hand garment bag stowage unit, in accordance with Short Brothers, Service Bulletin SD360–25–34, dated December 1986, or modify the left-hand garment bag stowage unit, in accordance with Short Brothers Service Bulletin SD360–25–35, dated March 1987.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Short Brothers PLC, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202–3702. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on July 21, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87–17101 Filed 7–28–87; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Minimum Financial and Related Requirements for Futures Commission Merchants

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is proposing to amend its rules relating to minimum financial requirements for futures commission

merchants ("FCMs"). The proposed new rule would clarify the requirements for and the treatment of a guaranteed account. The Commission also is proposing a uniform format for guarantee agreements. The Commission believes that this rule would simply mandate prudent business practices and codify existing interpretations relating to guaranteed accounts.

DATE: Comments must be received on or before September 28, 1987.

ADDRESS: Comments must be sent to: Commodity Futures Trading Commission, Secretariat's Office, 2033 K St., NW., Washington, DC 20581. Reference should be made to Proposed Rule 1.64.

FOR FURTHER INFORMATION CONTACT: Robert H. Rosenfeld, staff attorney or Lawrence B. Patent, Associate Chief Counsel, Division of Trading and Markets at the above address. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION:

I. Introduction

On August 5, 1985, the Commission published proposed amendments to the minimum and related requirements for futures commission merchants ("FCMs") and introducing brokers (50 FR 31612). These proposals, which resulted from a Commission authorized staff review of possible improvements to the Commission's financial integrity rules, were the subject of extensive public comment.[1] Due to the complexity of the issues raised by that initial proposal, the need to consider carefully the various alternatives suggested by commenters and the subsequent adoption by Congress of legislation concerning the treatment of government securities, the Commission has now determined to address separately the rules initially proposed in 1985. Accordingly, this **Federal Register** release discusses solely proposed rule 1.64 concerning the treatment of guaranteed accounts by FCMs.

II. Proposed Rule 1.64

A. Initial Proposal

In proposed rule 1.64, the Commission had proposed that an FCM could not consider an account to be guaranteed unless a written guarantee agreement governing such an account is filed with the FCM, together with an opinion of counsel stating that the guarantee agreement is sufficient to be a binding guarantee under applicable local law. *See* 50 FR 31612, 31619 (August 5, 1985). The proposed rule also provided that if a guaranteed account becomes undermargined, the existence of a guarantee agreement, standing alone, would not be sufficient to alleviate the guaranteed account's undermargined status. Such an account's undermargined status could only be alleviated by accruals on, or a reduction of, open positions, or by the deposit of additional funds. The rule also provided that if the FCM had prior written authorization of the guarantor, and there was sufficient excess margin in the guarantor's account, the FCM could transfer funds from the guarantor's account to the guaranteed account. Unless and until any of those actions were taken, however, the guaranteed account would remain undermargined. There would be similar treatment if a guaranteed account were in debit or deficit status.

Certain commenters supported aspects of this proposal, even if they had specific objections, and one firm indicated that it was already in compliance with what was being proposed. The main concern with the proposal was that FCMs would have the additional expense of obtaining an opinion of counsel for all guarantee agreements, even though this would not assure the legality of the agreements. (The commenters included sole FCMs, FCM/broker-dealers, contract markets, a trade association and an accounting firm.) Numerous commenters also stated that adverse tax consequences could result; that is, that potentially a gift tax could be applied to the transfer of funds from the guarantor. Commenters also were concerned with the operational problem of accounting for ownership of funds which had been transferred, claiming that this would require an FCM to maintain a subsidiary bookkeeping system which would create unnecessary complexity and the opportunity for errors to be made. Several commenters noted that this could be further complicated if there were multiple guarantors of the same account, and one commenter wondered whether funds would be transferred back to the guarantor if the guaranteed account were restored to financial health. Certain commenters stated that an FCM should have wider discretion with respect to guaranteed accounts as to whether an opinion of counsel is needed and whether it is necessary to transfer funds from the guarantor.

In the December comment period extension notice (50 FR 49859 (December 5, 1985)), the Commission indicated that there may be merit to the suggested alternatives to the guaranteed accounts proposal that an escrow-type account be established for use by a guarantor for its guaranteed accounts to eliminate the need for transferring funds and that a uniform guarantee agreement be developed that would be legally valid in all jurisdictions to eliminate the need for opinions of counsel. Several FCM/broker-dealers, a sole FCM, two contract markets, two trade associations, and an accounting firm supported these alternatives. One other alternative raised by a commenter would allow excess funds in the guarantor's account to cover a debit or deficit in a guaranteed account for five days without requiring a transfer of funds.

B. Current Proposal

In response to these comments, the Commission has determined to propose different procedures from those described in its original rule proposal. First, in order to alleviate the requirement of and expense of obtaining an opinion of counsel concerning the validity of the guarantee agreement, the Commission is proposing to adopt as an Appendix to Part 1 of its regulations, a model guarantee agreement that contains, among other items, a provision which waives any defense to the effectiveness of the agreement.[2] The model guarantee agreement was drafted to operate as a limited guarantee covered only by the excess net equity in a guarantor's account. Parties will remain free, of course, to tailor the specific extent of the guarantee as they deem appropriate.

Second, upon due consideration of the comments, the Commission believes that it can eliminate the requirement that excess net equity in a guarantor's account must, in the first instance, always be actually transferred to an undermargined guaranteed account. In lieu thereof, proposed Rule 1.64 would permit the FCM, in its discretion, either to treat the excess net equity in a guarantor's account as covering an undermargined amount or to transfer funds from the guarantor's account to the guaranteed account. By allowing the

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[1] In response to requests by several contract markets, an industry trade association and on the Commission's own initiative, the Commission subsequently extended the comment period on the proposal. *See* 51 FR 7285 (March 3, 1986), 50 FR 49859 (Dec. 5, 1985), 50 FR 45831 (November 4, 1985) and 50 FR 39133 (Sept. 27, 1985). The Commission noted that it did not foreclose the possiblity of treating each of the various financial rule proposals separately, or from determining based upon all comments submitted that two or more of the proposed rules may be considered together.

[2] Such a provision waiving defenses would eliminate litigation, expense and delays in the event of bankruptcy. *See e.g.*, Notz v. Berg, No. 86 C 4036, (N.D. Ill. Dec. 31, 1986) (memorandum opinion and order) (guaranty agreement held valid and enforceable under the Commodity Exchange Act).

FCM to treat a guarantor's excess net equity as meeting the margin requirements of a guaranteed account, the Commission believes that the additional expenses, operational problems and possible gift tax consequences noted by the commenters can be eliminated or alleviated, without compromising the firm's financial exposure. The reproposed rule would still, however, require an actual transfer of funds from the guarantor's account to the guaranteed account to alleviate a debit or deficit status in the guranteed account. The Commission specifically requests comment as to whether an alternative procedure could be developed with respect to guranteed accounts in a debit or deficit status, such as transfer to a separate account under the FCM's control.

The Commission recognizes that, by its very nature, a guarantee agreement is a consensual document. Thus, in specific instances, the model agreement drafted by the Commission may not address the particular needs of individual FCMs and guarantors. One response to this has been incorporated into the model agreement—a statement that parties may include additional provisions as they deem to be necessary which are not generally inconsistent with a continuing guarantee which is valid until expressly revoked as provided therein as against the guarantor notwithstanding the insolvency or change in condition of the account guaranteed or the carrier thereof. The Commission requests comments on whether such a guarantee agreement would be generally honored under local law.

The Commission also requests comment on whether an actual transfer of funds should be required to cover undermargined accounts after some grace period to prevent disputes and attendant potential litigation as to the validity of such agreements which can be viewed as contingent obligations at the point when their use would be needed to assure the appropriate distribution of available funds among customers. Commenters should also address any adverse capital consequences of permitting such guarantees without attendant transfers of funds, whether funds need only be transferred if an actual deficit occurs, and how the accounting for and compliance with the guarantee procedures suggested would be capable of being obtained.

III. Other Matters

A. Regulatory Flexibility Act

The new rules and rule amendments proposed herein would affect principally FCMs and contract markets. The Commission has determined previously that FCMs and contract markets are not "small entities" for purposes of the Regulatory Flexibility Act ("RFA") (5 U.S.C. 601 *et seq.* (1982)) and that the requirements of the RFA do not, therefore, apply to FCMs and contract markets. 47 FR 18618 (April 30, 1982).

Accordingly, pursuant to Section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Chairman hereby certifies, on behalf of the Commission, that the proposed new rule and Appendix contained in this proposal will not, if adopted, have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 ("PRA"), 44 U.S.C. 3501 *et seq.* (1982), imposes certain requirements on federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information as defined by the PRA, such as reporting or recordkeeping requirements. In compliance with the PRA, the Commission has submitted this proposed rule and its associated information collection requirements to the Office of Management and Budget ("OMB").

Proposed Rule 1.64 was previously proposed (50 FR 31612, August 5, 1985) and submitted to OMB. Due to revisions to that submission, the Commission is now reproposing this rule.

Persons wishing to comment on the information which would be required by this proposed rule should contact Bob Neal, Office of Management and Budget, Room 3228, NEOB, Washington, DC 20503, (202) 395-7340. Copies of the information collection submission to OMB are available from Joseph G. Salazar, CFTC Clearance Officer, 2033 K Street NW., Washington, DC 20581, (202) 254-9735.

List of Subjects in Part 17 CFR Part 1

Futures commission merchants, Guaranteed accounts, Guarantee agreements, Minimum financial requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 4c, 4f, 4g and 8a thereof, 7 U.S.C. 6c, 6f, 6g and 12a, the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for Part 1 continues to read as follows:

Authority: Sections 2(a)(1), 4, 4a, 4b, 4c, 4d, 4e, 4f, 4g, 4h, 4i, 4j, 4k, 4l, 4m, 4n, 4o, 5, 5a, 6(a), 6(b), 6b, 6c, 8, 8a, 8c, 12, 15, 17 and 20 of the Commodity Exchange Act, 7 U.S.C. 2, 2a, 4, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 8, 9, 12, 12a, 12c, 13a, 13a-1, 16, 19, 21 and 24.

2. A new § 1.64 is proposed to be added to read as follows:

§ 1.64 Guaranteed accounts.

(a) No account carried by a futures commission merchant shall be considered guaranteed by anyone other than the beneficial owner of such an account unless a written guarantee agreement governing such an account is filed with the futures commission merchant. Such written guarantee agreement must be substantially in the form of the agreement included as Appendix C to Part 1 of these regulations.

(b) If a guaranteed account becomes undermargined, the undermargined status can only be alleviated by accruals on open positions, by a reduction of open positions, by the existence of sufficient excess net equity in the guarantor's account, or by the deposit of additional funds, which can include, with prior written authorization of the guarantor and sufficient excess net equity in the guarantor's account, a transfer of funds from the guarantor's account to the guaranteed account.

(c) If a guaranteed account contains a ledger balance and open trades, the combination of which liquidates to a deficit, or contains a debit ledger balance only, the existence of a guarantee agreement, as described in paragraph (a) of this section, does not constitute security for such deficit or debit ledger balance for purposes of § 1.17(c)(2)(i). Without prior written authorization of the guarantor other than this guarantee agreement and sufficient excess net equity in the guarantor's account, the futures commission merchant may transfer funds from the guarantor's account to

the guaranteed account to alleviate the deficit or debit ledger balance.

3. A new Appendix C is proposed to be added to Part 1 of the Commission's regulations to read as follows:

Appendix C—Model Account Guaranty Form

Continuing Guaranty for Payment of Account Obligations

In consideration of [FCM's full name] ("FCM") accepting, at the request of [guarantor customer's name] ("Guarantor"), the commodity trading account(s) of [guaranteed customer name], Guarantor and FCM agree as follows:

1. Undertaking of Guarantor

[Guarantor] promises to pay immediately to FCM, under conditions described below, funds equal to the full amount of all outstanding commodity interest obligations arising out of the following accounts of [Guaranteed customer's name] ("Guaranteed Accounts"):

Name of account	Identification No.	Limit (in dollars)
[Guarantor customer's name]:		
.....	.....	$
.....	.....	$
.....	.....	$

Guaranteed account name	Identification No.[1]
.....	.....
.....	.....
.....	.....

[1] Insert name & identification number if then known, otherwise attach as schedule "A" and insert *See Schedule "A"*.

2. Continuing Guarantee

Guarantor agrees that this is a continuing guaranty of all commodity interest obligations arising from the Guaranteed Account(s) up to $———— which shall continue in full force and effect until expressly revoked in writing as described below.

3. Payment-Authorization to Withdraw & Transfer Account Funds

a. The following accounts are Guarantor Accounts:

b. The term "Excess Net Equity" shall mean the amount of equity, cash, securities or other customer property on deposit in the Guarantor Account(s) which is in excess of any amount owed to the FCM by the Guarantor.

c. If [*guaranteed account customer*] does not fully pay any obligation arising out of the Guaranteed Account(s) when demanded by FCM, Guarantor unconditionally authorizes FCM, irrespective of any change in condition of the [guaranteed account customer], at FCM's discretion either to treat such Excess Net Equity as meeting the obligation of the Guaranteed Account or to withdraw such Excess Net Equity from the Guarantor Account(s) to the extent of such unpaid obligation and to deposit such funds in the Guaranteed Account(s).

4. Default by FCM

In the event of a default, insolvency or bankruptcy of the FCM, Guarantor agrees and acknowledges that the duly appointed court receiver or trustee in bankruptcy or any interim trustee unconditionally may withdraw from the Guarantor Account(s), and deposit into the Guaranteed Account(s), any Excess Net Equity to pay any outstanding obligation of the Guaranteed Account(s). Guarantor hereby waives any right of demand or notice by such receiver, a trustee or interim trustee, any claim contesting the authority to order such withdrawal and deposit, and any claim or defense that this Agreement is invalid.

In the event of a transfer of accounts pursuant to § 1.17(a)(4), a self-regulatory organization may call the guarantee if the transferor FCM carrying the guaranteed account refuses. If so, the self-regulatory organization will be treated for all purposes hereof as if it were a successor of the FCM.

5. Treatment of Payments

Guarantor agrees that upon the rightful withdrawal and deposit of funds pursuant to paragraphs (3) or (4), FCM (or a receiver, trustee or interim trustee) may treat such funds as property of the [*guaranteed account customer*]. Guarantor further agrees to waive any property claim against the FCM (or any successor in interest of the FCM, or any receiver, trustee or bankruptcy trustee) arising from such funds to the extent such funds are actually applied to satisfy a deficit or undermargined amount in the guaranteed accounts.

6. Revocation

This guaranty will be revoked 24 hours after the actual receipt by FCM during business hours of Guarantor's written notice of revocation except as to amounts already committed or transferred prior thereto.

7. Waiver of Notice and Defenses

Guarantor hereby waives notice of acceptance of this guarantee, all defenses to the effectiveness of this agreement as well as any notice or demand other than expressly provided for in this agreement. [Parties may include additional provisions not inconsistent herewith as deemed necessary such as, but not limited to, clauses concerning assignment, limitations of liability, resolution of disputes, attorney's fees, etc.]

Dated ———————, 19——

Guarantor

Guarantor's Address

FCM

FCM's Address

Note.—All signatures must be duly notarized by a licensed notary public. Persons signing agreement must have the legal authority to bind the Guarantor. If the Guarantor is a corporation, such authority must be documented by a certified resolution of its board of directors.

Issued by the Commission on July 23, 1987, in Washington, DC.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87-17130 Filed 7-28-87; 8:45 am]

BILLING CODE 6351-01-M

17 CFR Part 1

Fees for Rule Enforcement and Financial Reviews

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commission periodically reviews the fees contained in its regulations in order to adjust fees to reflect current cost data. The staff has recently reviewed the Commission's actual costs for Rule Enforcement and Financial Reviews and has determined that the formula for fees for this service should be changed so that the fee for each exchange is a percentage of the actual three-year average annual cost of reviewing the exchange.

DATES: Comment Deadline: August 28, 1987.

FOR FURTHER INFORMATION CONTACT: Gerry Smith, Office of the Executive Director, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, telephone number 202-254-3090.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Futures Trading Act of 1982 (Pub. L. 97-444, 96 Stat. 2294, 2326, January 11, 1983) amended Section 26 of the Futures Trading Act of 1978 (7 U.S.C. 16a) to add specific authority for the Commission.

to promulgate, after notice and opportunity for hearing, a schedule of appropriate fees to be charged for services rendered and

activities and functions performed by the Commission in conjunction with its administration and enforcement of the Commodity Exchange Act: *Provided*, That the fees for any specified service or activity or function shall not exceed the actual cost thereof to the Commission.

The Conference Report accompanying the legislation (H.R. Rep. No. 964, 97th Cong. 2d Sess. 57 (1982)) states that "the conferees intend that the fee schedule addressed by the Conference substitute be strictly limited to Commission activities directly related to" eight enumerated Commission functions including "contract market and registered futures association rule enforcement reviews and financial reviews."

On January 8, 1985, the Commission promulgated a final schedule of fees for contract market and rule enforcement reviews. 50 FR 928. Under this schedule, the fee for each exchange has been based on both the trading volume of the exchange and the number of contracts traded on the exchange. In developing the schedule of fees, the Commission prospectively estimated that both of these factors had a direct effect on the amount of time Commission staff spent conducting reviews of each exchange. 49 FR 22827, 22828 (June 1, 1984).

Now that the Commission has had several years of experience with this fee schedule, it has determined that the existing formula is not reflecting actual review costs as accurately as had been expected. In particular, although no exchange has been charged more than its average annual cost of being reviewed by the Commission, the larger exchanges have been bearing an unexpectedly large percentage of the total fees charged each year in comparison to the actual distribution of the Commission's review costs. Also, the Commission's total fee recovery, expressed as a percentage of actual review costs, has fallen significantly each year. In FY 1985, the Commission recovered 69% of its actual costs, but this figure fell to 64% in FY 1986, and, under the current formula, would be only 53% in FY 1987.

In light of these developments, the Commission is now proposing to revise the formula by which the annual rule enforcement review and financial review fee is computed. Specifically, the Commission proposes to adopt the suggestion of some of the commenters on its original fee proposal and base the fee for each exchange on the actual Commission review costs incurred with respect to that exchange. 50 FR 929 (January 8, 1985).

The fee would still be based on the Commission's actual average annual review costs over a three-year period. However, the fee for each exchange would be a flat percentage of these review costs and would not directly depend on the volume or number of contracts traded on the exchange. A 65% figure has been selected to keep total recovery under the new formula equivalent, in percentage terms, to the recovery in FY 1985 and FY 1986.

II. Computation of Fees

In calculating the actual cost of rule enforcement and financial reviews, the Commission first determines personnel costs by extracting data from the agency's Budget Account Code (BAC) system. Employees of the Commission record the time spent on rule enforcement and financial reviews under the BAC system. The Commission then adds an overhead factor for benefits, including retirement, insurance and leave, based on a government-wide standard, and an overhead factor for general and administrative costs, such as space, equipmnent and utilities. The overhead figure is derived by computing the percentage of Commission appropriations spent on these non-personnel items.

As noted in its last review of actual costs (*see* 51 FR 21149, June 11, 1986), the Commission applied a total overhead factor of 45% to costs incurred through FY 1984. Subsequently, the overhead factor was changed in accordance with OMB Circular A–76. Therefore, for the purpose of calculating the FY 1987 fees, a 45% overhead factor is applied to personnel costs for FY 1984, whereas for the FY 1985 and FY 1986 personnel costs, 98% and 104% overhead factors are applied, respectively.

The FY 1985 overhead factor consists of 55% for government-wide benefits and leave and 43% for CFTC non-personnel costs. In FY 1986, these calculations were 55% and 49%. The Commission anticipates minor annual fluctuations in its overhead calculations, due to changes in government-wide benefits and in the percentage of Commission appropriations applied to non-personnel costs from year to year.

Once the total personnel costs and overhead for reviewing each exchange have been determined, the costs for FY 1984, FY 1985 and FY 1986 are averaged to calculate the average annual cost for reviewing each exchange over the three-year period.[1] Under the proposed rule, this figure is then multiplied by 65% and rounded to the nearest multiple of $100 to arrive at the proposed fee for each exchange.

The cost and fee information for each exchange follows:

	Actual avg. costs FY 1984–FY 1986	FY 1987 fee under current rule	FY 1987 fee under proposed rule
Chicago Board of Trade [1]	$166,592	$166,000	$108,300
Chicago Mercantile Exchange	153,828	104,000	100,000
Commodity Exchange, Inc	76,832	35,000	50,000
Coffee, Sugar & Cocoa Exchange	58,767	18,000	38,200
New York Mercantile Exchange	84,576	22,000	55,000
New York Cotton Exchange	80,454	14,000	52,300
Kansas City Board of Trade	43,017	11,000	28,000
New York Futures Exchange	55,243	12,000	35,900
Minneapolis Grain Exchange	30,820	8,000	20,000
Philadelphia Board of Trade	2,034	5,000	1,300
Amex Commodities Corp	4,399	5,000	2,900
Total	$756,663	$400,000 (53%)	$491,900 (65%)

[1] The Chicago Board of Trade, the MidAmerican Exchange and the Chicago Rice and Cotton Exchange are combined solely for the purpose of determining the amount of rule enforcement review fees.

III. Regulatory Flexibility Act

The changes proposed in this release affect contract markets (also referred to as "exchanges"). The Commission has previously determined that contract markets are not "small entities" for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, 47 FR 18618 (April 30, 1982). Therefore, the requirements of the Regulatory Flexibility Act do not apply to contract markets. Accordingly, the Chairman, on behalf of the Commission, certifies that the fees proposed herein do not have a

[1] It should be noted that some variations in fees from one year to the next may occur due to the timing of full scope versus limited scope audits. The Commission may consider using four-year averages in the future in order to minimize fluctuations in fees from year to year.

significant economic impact on a substantial number of small entities.

List of Subjects in 17 CFR Part 1

Contract market rule reviews, contract market financial reviews, Fees.

For the reasons set out in the preamble, Title 17, Part 1, Appendix B, is proposed to be amended as set forth below.

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for Part 1 is revised to read as follows:

Authority: 7 U.S.C. 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 18a, 19, 21 and 24 unless otherwise noted.

2. Paragraph (b) of Appendix B is revised to read as follows:

Appendix B—Fees for Contract Market Rule Enforcement Reviews and Financial Reviews

* * * * *

(b) The Commission shall compute the annual fee for each board of trade by computing the actual average annual cost to the Commission of conducting rule enforcement and financial reviews of that board of trade over the preceding three fiscal years, then multiplying that amount by 65% and rounding to the nearest multiple of $100.

* * * * *

Issued in Washington, DC on July 23, 1987, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87-17197 Filed 7-28-87; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 17, 19, 170, 194, and 197

[Notice No. 634]

Taxpaid Distilled Spirits Used in Manufacturing Products Unfit for Beverage Use

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) proposes amendment and recodification of regulations on taxpaid distilled spirits used to manufacture nonbeverage products. The regulations in 27 CFR Part 197 (Drawback on Distilled Spirits Used in Manufacturing Nonbeverage Products) are proposed to be recodified as a new part, designated 27 CFR Part 17. In conjunction with the recodification, a number of changes to the drawback regulations are proposed. The regulations in 27 CFR Part 170, Subpart U (Manufacture and Sale of Certain Compounds, Preparations, and Products Containing Alcohol) are proposed to be distributed between Part 19 and the new Part 17. Minor conforming amendments would be required in 27 CFR Part 194. Significant changes from current regulations are discussed below under "SUPPLEMENTARY INFORMATION."

DATES: Comment date: Comments must be submitted on or before October 27, 1987.

ADDRESS: Please submit all comments to: Chief, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385, Attention: C:R:F.

Copies of the proposed regulations and the written comments will be available for public inspection during normal business hours at: ATF Reading Room, Office of Public Affairs and Disclosure, Room 4406, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Steven C. Simon, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms, Room 6237, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC 20226; (202) 566-7626.

SUPPLEMENTARY INFORMATION:

Significant Changes

Adoption of Rulings. The holdings of current Revenue Rulings and ATF Rulings are reflected in the proposed regulations, as follows: Rev. Rul. 55-689, 1955-2 CB 729 (§ 17.187); Rev. Rul. 56-239, 1956-1 CB 715 (§ 17.135); Rev. Rul. 56-314, 1956-2 CB 1023 (§ 17.137); Rev. Rul. 56-335, 1956-2 CB 1024 (§ 17.181); Rev. Rul. 56-336, 1956-2 CB 1023 (§ 17.182); Rev. Rul. 56-367, 1956-2 CB 1026 (§ 17.135(b)(2)); Rev. Rul. 56-394, 1956-2 CB 1021 (§ 17.152(c)); Rev. Rul. 56-395, 1956-2 CB 1025 (§ 17.186); Rev. Rul. 58-350, 1958-2 CB 974 (§ 17.136); Rev. Rul. 63-87, 1963-1 CB 384 (§§ 17.11: definition of "food products," and 17.133(c)); Rev. Rul. 69-138, 1969-1 CB 327 (§§ 17.126(b) and 17.152 (a), (c), and (d)); ATF Rul. 73-1, 1973 ATF CB 85 (§ 17.133(b)); ATF Rul. 74-2, 1974 ATF CB 27 (§ 17.76); ATF Rul. 76-17, 1976 ATF CB 85 (§§ 17.151 and 17.152(b)); ATF Rul. 76-19, 1976 ATF CB 86 (§§ 17.169 and 17.185); ATF Rul. 77-27, 1977 ATF CB 185 (§ 17.122); and ATF Rul. 82-7, 1982-2 QB 46 (§ 17.11: definition of "medicines").

Rev. Rul. 57-369, 1957-2 CB 948, will be adopted in the instructions to the revised ATF Form 5530.5 (formerly Form 1678). Rev. Rul. 58-317, 1958-1 CB 586, is not reflected in the proposed regulations, because it is obsolete, iso-alcoholic elixir having been removed from the National Formulary. Rev. Rul. 58-428, 1958-2 CB 975, is also not reflected in the proposed regulations, because the repeal of 26 U.S.C. 5062 has removed its authority. The holding of ATF Rul. 81-6, 1981-4 QB 24, is proposed to be modified in § 17.183 (see discussion below).

Form number changes. The prescribed form entitled "Formula and Process for Nonbeverage Products" is being revised and renumbered from 1678 to 5530.5. This will not require resubmission of any formulas previously approved on Form 1678. Similarly, the form number of the "Bond for Drawback Under 26 U.S.C. 5131" is being changed from 1730 to 5530.3, but this will not require resubmission of any bonds previously approved.

Alternate methods or procedures. A new section (§ 17.4) is proposed to be added to provide for the employment of alternate methods or procedures, if approved by the Director pursuant to a showing of good cause.

Delegations of authority. Authority to perform certain functions under Part 17 may be delegated from time to time by the Director, through delegation orders, to subordinate officials. This possibility is reflected in the definition of "Director" in § 17.11 by addition of the words "or his delegate." Further, the ATF Alcohol and Tobacco Laboratory is specified as the recipient of certain documents, such as formulas, in §§ 17.121, 17.122, 17.126, 17.131, 17.132, and 17.136. This will permit expeditious administration of regulations. Accordingly, a new definition of "Alcohol and Tobacco Laboratory," giving its address, is provided in § 17.11. The existing delegation, to the regional director (compliance), of authority to approve or disapprove claims is also codified in the new regulations (§ 17.142).

Public Law 96-598. Proposed regulations in this document would implement Section 8 of Pub. L. 96-598, 94 Stat. 3488, effective January 1, 1980, which added 26 U.S.C. 5010. This section of law allows distilled spirits tax credit for certain wines and flavors contained in a distilled spirits product. Pub. L. 96-598 affects manufacturers of nonbeverage products, because it requires a change in the method of calculating drawback on distilled spirits derived from wines and flavors.

Current regulations in §§ 197.5 (definition of "distilled spirits") and 197.105 (eligibility for drawback) specify that wine and flavors content are not distilled spirits and therefore are ineligible for drawback. To determine drawback under current regulations, it is necessary to know the percentage of the alcohol that is derived from wines or flavors (§ 197.130(e)).

Under Pub. L. 98–598, the presence of wine or flavors content alters the effective rate at which tax is to be paid. Under 26 U.S.C. 5134(a), the drawback rate is $1 less than the rate at which tax was paid or determined. Therefore, under Pub. L. 98–598, as implemented by these proposed regulations, knowledge of the effective rate at which tax was paid, taking into account the § 5010 credit, is necessary in order to determine the drawback rate. For distilled spirits containing no wine or flavors content, the effective tax rate would be the same as the rate specified in 26 U.S.C. 5001. Proposed sections affected by this change are: §§ 17.11 (definitions of "distilled spirits" and "effective tax rate"), 17.141, 17.146(a)(2) ("properly taxpaid," rather than "fully taxpaid" as in § 197.109(b)), 17.147, 17.162–164, and 17.167.

Revised definition of "distilled spirits." Current regulations in § 197.5 define "distilled spirits" to include only such spirits as have been "fully taxpaid or tax determined at the distilled spirits rate." For consistency with other ATF regulations, these proposed regulations define "distilled spirits" in § 17.11 as that term is defined in Chapter 51 of the Internal Revenue Code of 1954 (26 U.S.C. 5002(a)(8)). When taxpaid or tax determined distilled spirits are specifically intended, the proposed regulations use "taxpaid spirits" or "taxpaid distilled spirits." (See also new definition of "taxpaid" in § 17.11.)

Other new definitions. For clarity, new definitions of "approved," "CFR," "eligible," "month," "person," "proof gallon," "quarter," "recovered spirits," and "this chapter" are also proposed to be added in § 17.11.

Retention of special tax stamps. Current regulations in § 197.47a do not specify a time period for retention of special tax stamps. These proposed regulations (§ 17.55) would make the retention period the same as for other required records and documents (generally 3 years). The retention period for the list of multiple business locations, which is 2 years under current regulations in § 197.28, would also be made the same as for other documents (§ 17.31).

Transfer of functions. This document reflects the transfer of certain functions, relating to processing of tax returns and claims, from the Internal Revenue Service to the Bureau of Alcohol, Tobacco and Firearms. Sections affected are: §§ 17.11, 17.31–34, 17.41–42, 17.51–54, 17.61–62, 17.71, 17.73, 17.92, 17.94, 17.142, and 17.147.

Amount of bond for monthly claims. Current § 197.107 was issued in 1955, when ATF practice was to inspect all drawback claimants at least quarterly. The bond requirement was worded in such a way that if a monthly claimant were inspected more frequently than quarterly, his bond needed only to be sufficient to cover the drawback claimed between inspections. Presently, on-site inspections are conducted much less frequently. No claimant is ever regularly inspected as frequently as quarterly. Therefore, the concept that the amount charged against a bond might be reduced within a quarter, due to frequent inspections, has become obsolete. Proposed § 17.102 reflects this. Bonds for monthly claims must be sufficient to cover the total amount of drawback that will be claimed during any quarter. It is not anticipated that this change will affect the required bond coverage of any current monthly claimant.

Time for filing formulas. Language in § 17.121 (formerly § 197.95), respecting time for filing formulas, is proposed to be revised to more clearly express the statutory requirement of 26 U.S.C. 5131–5134. Both formula and claim are required to be filed within the statutory period of "6 months next succeeding the quarter in which the distilled spirits covered by the claim were used" (26 U.S.C. 5134(b)). However, if there is doubt about the eligibility of a product for drawback, it is preferable that the formula be filed and approved before commencement of manufacture.

Formulas for use at more than one plant. The revised ATF Form 5530.5 (formerly Form 1678) will permit a manufacturer to file a single formula for use at more than one plant, if the plants at which the formula is to be used are listed on the form. This planned change is reflected in § 17.121. If, subsequent to approval of the formula, the manufacturer wishes to begin using that formula at additional plants, it is proposed in § 17.125(b) to permit him to do so upon filing a copy of the formula with the regional director(s) (compliance) for the region(s) in which such additional plants are located. ATF anticipates that this proposed procedure will be much simpler than the present one for manufacturers with more than one plant, but suggestions for further simplification are welcome.

Adoption of formulas. The limitation of present § 197.99 to adoption of "approved" formulas has been modified in proposed § 17.125 to also allow adoption of intermediate product formulas. Adoption of a company's own formulas for use at another plant, as well as adoption by a parent company of the formulas of a wholly owned subsidiary, and vice versa, would be permitted under the proposed regulations. When adopting a predecessor's formulas, it is proposed that the notice of adoption need only list the serial numbers of the adopted formulas (not their names and dates of approval, as in current § 197.99).

Formulas for intermediate products. Current regulations do not explicitly require formulas to be submitted for intermediate products, though generally this has been done anyway. These proposed regulations (§ 17.126) would require formulas to be submitted on ATF Form 5530.5 (formerly 1678) for intermediate products, unless the formula for an intermediate product is expressed as part of the approved formula for the nonbeverage product(s) in which the intermediate will be used.

Self-manufactured ingredients optionally treated either as intermediate products or as unfinished nonbeverage products. An intermediate product may freely be used in any nonbeverage product whose formula calls for its use, and may be accumulated and kept "on hand" indefinitely. Consequently, it is common for several batches of an intermediate product to be combined in one storage receptacle, and for less (or more) than a full batch of such a product to be used to produce a batch of a finished nonbeverage product. These common practices are for the convenience of manufacturers. However, one result of these practices is that, if spirits are lost or recovered in the manufacture of the intermediate product, it would be difficult or impossible to calculate the correct proportion of such lost or recovered spirits that would be attributable to a given batch of finished nonbeverage product. For this reason, current regulations (§§ 197.118–119) generally do not permit drawback to be claimed on spirits lost or recovered in the manufacture of intermediate products. (In the case of such recovered spirits, drawback may be claimed, but only if the spirits are subsequently reused in the manufacture of a nonbeverage product.) These restrictions are necessary for protection of the revenue, and in most cases they present no difficulty to manufacturers.

However, in some instances, manufacture of an intermediate product requires consumption of significant quantities of spirits that are not ultimately contained in that intermediate product, and the inability to claim drawback on such spirits has posed a hardship to the manufacturers. Therefore, such manufacturers have been permitted to resubmit their formulas to show production of the intermediate product as an integral part of the formula for the related nonbeverage product. If this is done, the former "intermediate product" would henceforth be regarded as an unfinished nonbeverage product; consequently, spirits necessarily consumed (or recovered) in its manufacture would be regarded as consumed (or recovered) in the manufacture of a nonbeverage product and would be eligible for drawback.

This procedure avoids the revenue jeopardy previously described, because, under the procedure, each batch of the unfinished product would be restricted to use in a specific batch of a predetermined nonbeverage product and would have to be so used within the time period specified in the approved nonbeverage formula.

In order to make the availability of this procedure known to manufacturers who necessarily consume (or who recover) spirits in the manufacture of intermediate products, the procedure is described in §§ 17.127 and 17.185 of these proposed regulations. The proposed regulations offer manufacturers the option of designating their self-manufactured alcoholic ingredients as either "intermediate products" or "unfinished nonbeverage products." There are advantages and disadvantages that would go with either choice.

The advantage of designating an ingredient as an "unfinished nonbeverage product" would be that spirits recovered or consumed in the manufacture of the ingredient would be eligible for drawback in the same way as other spirits recovered or consumed in the manufacture of nonbeverage products. The disadvantages of this designation would be: (1) Each batch of the ingredient must be used within a limited time in a specific batch of a predetermined nonbeverage product. (The production of the ingredient and of the finished nonbeverage product would be recorded in a single, unified batch record.) (2) The ingredient could not be transferred as an intermediate product under ATF Rul. 76–19 (§ 17.185(b) of the proposed regulations). (This latter restriction is due to the necessity of a single, unified batch record, which must be maintained at the place of production.)

Conversely, the advantages of designating an ingredient as an "intermediate product" would be freedom to accumulate several batches, to store them indefinitely, and to use them indiscriminately in the manufacture of any nonbeverage product whose formula calls for their use. Further, ingredients designated as "intermediate products" may be transferred to another branch or plant of the same manufacturer under §§ 17.169 and 17.185. For manufacturers who already have intermediate product formulas on file, another advantage of choosing the "intermediate product" designation is that no new formula or procedural changes would be required. But the disadvantage of that designation is that spirits lost in production of the intermediate product may not be claimed for drawback.

Subpart U of 27 CFR Part 170. Subpart U of Part 170 provides exemption from special tax and qualification requirements for manufacturers and sellers of certain products that are unfit for beverage use. Subpart U is a very old regulation, dating back to the days before nonbeverage drawback, when the requirements relating to processing of distilled spirits were quite different from what they are today. Consequently, it is proposed that Subpart U of Part 170 be thoroughly redrafted. Some material would be eliminated, either as unnecessary or as covered by other regulations. Material related exclusively to drawback manufacturers would be incorporated in the proposed Part 17. The remaining material would be relocated into Subpart E of Part 19. Conforming amendments would be made in Subpart C of Part 194. Section 170.613(a)(6) ("Salted wines") is being dealt with in a separate document. Sections in Part 17 containing language from Subpart U of Part 170 are: §§ 17.132–133 and 17.168.

Submission of quantitative formulas. The purpose of this proposed change is to strengthen requirements respecting submission of formulas for nonbeverage drawback products. Current regulations allow the use of formulas prescribed by the United States Pharmacopeia (U.S.P.), the National Formulary (N.F.), or the Homeopathic Pharmacopoeia of the United States (H.P.U.S.) without the prior filing and approval of quantitative formulas. This procedure has been allowed because of the descriptive nature of these formulas and their consistency over the years. Presently, however, the N.F. and U.S.P. are deleting their requirements for specific quantities of ingredients in some of their formulas, except for the active ingredients. Such non-descriptive formulas may not be useful for regulatory purposes, since alcohol is usually a vehicle rather than an active ingredient and is therefore not stated as a specific quantity within such formulas. Drawback of distilled spirits tax under 26 U.S.C. 5134 is claimed and allowed on exact amounts of alcohol used in the manufacture of nonbeverage products according to the quantity specified in the approved formula.

Therefore, the proposed regulations are worded such that ATF could require submission of quantitative formulas on ATF Form 5530.5 (formerly 1678), Formula and Process for Nonbeverage Products, for preparations which appear in the N.F., U.S.P., or H.P.U.S. whenever it is determined that such submission is necessary to maintain control over alcohol used and to insure that the products meet the statutory requirements for drawback eligibility. The list of preparations for which approval of quantitative formulas would be required under this proposal would be published as an ATF ruling in the ATF Bulletin. The section affected by this change is § 17.132. Current requirements are found or referred to in §§ 197.5 (definition of "time distilled spirits are used"), 197.95, 197.96, 197.109(d), and 197.115.

U.S.P., N.F., and H.P.U.S. preparations; drawback approval. Current regulations do not state that preparations listed in the U.S.P., N.F., and H.P.U.S. are automatically approved for drawback, though some have assumed so due to the exemption of such products from the formula filing requirement in § 197.96. To clarify this issue so that manufacturers may properly plan, these proposed regulations state that formulas listed in the U.S.P., N.F. and H.P.U.S. are presumed to be approved for drawback, except as otherwise provided by regulation or ATF ruling. However, alcohol, U.S.P.; alcohol and dextrose injection, U.S.P.; tincture of ginger, H.P.U.S.; and all H.P.U.S. preparations made at dilutions weaker than "4X" (one part in 10,000) are declared fit for beverage use. (See § 17.132.)

H.P.U.S preparations. Current regulations exempt preparations listed in the Homeopathic Pharmacopoeia of the United States (H.P.U.S.) from the requirement for filing of formulas (§ 197.96), but this exemption does not entail automatic approval for drawback. The statutory standard of "unfit for beverage purposes" must still be

enforced (26 U.S.C. 5131(a)). Manufacturers of H.P.U.S. products, in accordance with homeopathic practice, often dilute the active ingredients in large quantities of alcohol and water, so that the resulting product is fit for beverage purposes. Such products cannot be approved for drawback. The ATF Laboratory has determined that even for H.P.U.S. products containing poisonous materials (e.g. digitalis and belladonna), dilutions of greater than "4x" (i.e. one part in 10,000) would be fit for beverage use. Therefore, it has been ATF's position to deny drawback for H.P.U.S. products diluted to greater than "4x." These proposed regulations would reflect this position in § 17.132(b). At the same time, the proposed regulations would also permit manufacturers of dilute H.P.U.S. products to contest the presumption of beverage fitness by submitting appropriate evidence that the product is unfit for beverage use.

Determination of beverage unfitness. Proposed new § 17.134 is meant to clarify the procedure used by ATF to determine whether any product, for which a formula is submitted for approval, is fit or unfit for beverage use. It is hoped that manufacturers will utilize this procedure themselves to identify products that are clearly fit for beverage use. The last sentence of proposed § 17.134 (adapted from current §§ 170.615 and 170.618) makes it clear that drawback approval may be revoked if a product is found being used or sold for beverage purposes.

Manufacturers who are also users of denatured alcohol. Pursuant to section 5214(a)(1) of the Internal Revenue Code of 1954, no tax is paid on denatured spirits. Therefore, it would be conducive to fraud on the revenue for a single manufacturer to produce the same product out of both specially denatured alcohol and taxpaid alcohol on which drawback may be claimed. Proposed new § 17.135(a) prohibits this practice.

Compliance with Food and Drug Administration requirements. Proposed new § 17.136 specifies that products shall not be considered to be medicines, medicinal preparations, food products, flavors, or flavoring extracts if they would violate the bans or restrictions of the U.S. Food and Drug Administration applicable to such products. This reflects a longstanding ATF policy that has been expressed in Rev. Rul. 56–350 and in the following Industry Circulars: 62–33, 70–12, 72–8, 72–28, 72–29, 73–6, and 76–17. ATF will not consider a product to be approved for drawback if FDA has banned the product or any of its ingredients. Authority for this regulation comes from 26 U.S.C. 5131, which limits drawback to products which are medicines, medicinal preparations, food products, flavors, or flavoring extracts, and from 26 U.S.C. 5132, which authorizes ATF to prescribe reasonable regulations for the enforcement of that limitation.

Claims for credit by manufacturers of nonbeverage products. There are some business entities that are both manufacturers of nonbeverage products and proprietors of distilled spirits plants. For such entities, it may be more convenient to claim nonbeverage drawback in the form of a credit which may be used to offset distilled spirits taxes owed by the distilled spirits plant. Therefore, proposed § 17.142(b) would permit such a procedure.

Changes in supporting data requirements. The requirements for supporting data which accompany claims are proposed to be greatly simplified to eliminate information not necessary to the processing of drawback claims. Revenue Procedure 64–32 (1964–2 CB 951), which prescribed a format for supporting data, would be made obsolete. The new format—which need not be copied verbatim so long as all the information is included—is printed in the regulations (§ 17.147). The most significant proposed changes to the supporting data are simplification of the distilled spirits account and elimination of detailed information on receipt of spirits, production and use of intermediate products, and use of finished products.

Gains in spirits received or on hand. Under current regulations, when the manufacturer's gauge of spirits received in a tank car or tank truck differs from the taxpayment gauge by more than 0.2%, the receiving gauge must be recorded in the manufacturer's records as the quantity received (§ 197.130a(a)). This is based on the assumption that if the discrepancy is that great, the receiving gauge is more likely to be accurate. However, current regulations do not explicitly require that if the amount of spirits received by a manufacturer *exceeds* the amount taxpaid, the difference must be deducted from the manufacturer's claim. Nevertheless, such deduction has been required by ATF inspectors, who have similarly required deduction for any gain disclosed by physical inventory of distilled spirits. Deduction is appropriate in these circumstances, since a gain indicates either receipt of ineligible (nontaxpaid) spirits or an excessive claim in a previous period. Therefore, these proposed regulations state that manufacturers shall deduct, from the drawback claimed for the applicable period, an amount reflecting any inventory gain of eligible spirits and any excess of spirits received over the amount that was taxpaid. (See §§ 17.147(b)(3), 17.162(d), and 17.167(a).)

Public Law 98–369. This document reflects certain changes made by Pub. L. 98–369 (Deficit Reduction Act of 1984). Those changes are: (1) Addition of 26 U.S.C. 5206(d) (relating to obliteration of marks), (2) imposition of a $1,000 penalty for nonfraudulent violations of drawback law and regulations, and (3) increase in the distilled spirits tax rate. Sections affected are: §§ 17.147(c), 17.148, 17.162–164, and 17.184.

Changes in recordkeeping requirements. Certain items which are proposed to be deleted from the supporting data have been incorporated into the records required by Subpart H of Part 17 (formerly Subpart H of Part 197) to be maintained at each nonbeverage premises. Certain currently required records which are duplicative of the information provided by the supporting data have been deleted from the proposed Subpart H. Additional records on the usage of nonbeverage products are proposed to be required, to verify that such products were manufactured in the amount claimed (see § 17.166). The holding of Industry Circular 79–5 with respect to records of raw materials and finished products has been clarified and incorporated in the proposed regulations (see §§ 17.164 and 17.165). Recordkeeping requirements for recovered alcohol, currently in § 170.617(c), are incorporated in proposed § 17.166. New language is proposed to be added in § 17.161 to emphasize the important point that a manufacturer's normal business records (including invoices and cost accounting records) are acceptable for ATF purposes if they contain the required information. ATF anticipates that, in most situations, no records besides these normal business records need be maintained for purposes of compliance with these proposed regulations.

Use of commercial invoices. A new provision is proposed to be added in § 17.163 (currently § 197.130b) to require manufacturers to obtain commercial invoices or other documentation received when spirits are purchased from wholesale and retail liquor dealers. This new requirement will help provide evidence of taxpayment of the spirits.

Physical inventories. Current regulations do not clearly specify the frequency of physical inventories, although arguably §§ 197.116–119 require such inventories every claim period for distilled spirits, recovered spirits, and intermediate products.

These proposed regulations specify that the "on hand/in-process" figures in the supporting data must be verified by physical inventories at the end of each period for which a claim is filed. The proposed regulations also would authorize the regional director (compliance) to require physical inventories of nonbeverage products and raw ingredients whenever he deems such inventories to be necessary to ensure compliance with regulations. (See § 17.167.)

Records retention. Section 17.170 (currently § 197.133) would be amended to extend the records retention period from 2 years to 3 years, as in other ATF regulations. The purpose of this change is to ensure that records will be available to support any action that may be taken within the period of the statute of limitations prescribed by 26 U.S.C. 6531. This section of law prescribes a 3-year statute of limitations for most offenses; but for certain offenses involving fraud or willful violation, the statute of limitations is 6 years. Therefore, as in other ATF regulations, these proposed regulations contain a provision that would permit the regional director (compliance) to require a manufacturer to retain his records for a longer period, not to exceed an additional 3 years.

Inspection of records. In addition to the records specifically required by these regulations, ATF officers are authorized under 26 U.S.C. 5133 (as delegates of the Secretary) to inspect any records "bearing upon the matters required to be alleged" in drawback claims. This important principle is reiterated in the regulations in new § 17.171.

In carrying out this authority, ATF will continue, as in the past, to protect proprietary information. For example, the production records in § 17.164 do not require greater detail as to ingredients than is shown on ATF Form 5530.5. If some secret ingredients of a formula are referred to in general terms on its Form 5530.5—e.g. "essential oils"—then the required production record for that product need only show the quantity of "essential oils" used in the production of each batch. If circumstances should require an ATF officer to examine other records, § 17.171 would not provide authority for copies of master formulas to be made without the consent of the proprietor.

The law, in 18 U.S.C. 1905 and 26 U.S.C. 7213, imposes criminal penalties on any ATF officer who makes unauthorized disclosure of confidential business information coming to him in the course of his employment. Further restrictions on disclosure are found in 26 U.S.C. 6103, which generally prohibits unauthorized disclosure of returns and return information. "Returns" and "return information" are defined in that section to include drawback claims and the records and reports which support them.

Disposition of material from which alcohol can be recovered. ATF Ruling 81–8 provided a liberalized procedure for the disposition of spent vanilla beans, under which the beans may be treated by the manufacturer with any material that he finds suitable to make recovery of potable alcohol impractical. The manufacturer is not required to obtain prior approval from ATF. In broadening this rule, to make it applicable to the disposition of any material from which alcohol can be recovered, ATF has concluded that prior approval should be obtained for the use of new materials. Consequently, proposed § 17.183 lists the materials that have already been authorized to be added to spent vanilla beans—for which no further authorization is needed—and requires approval of a written application if other materials are proposed to be added to such beans, or if other substances from which alcohol can be recovered are proposed to be disposed of.

DISTRIBUTION TABLE FOR PART 197

Old section	New section
Subpart A	
§ 197.1	§ 17.1.
§ 197.2	§ 17.2.
§ 197.3	§ 17.3.
Subpart B	
§ 197.5: (generally)	§ 17.11.
"Director of the Service Center".	Deleted; unnecessary.
"District Director"	Deleted; unnecessary.
"Time distilled spirits used".	§ 17.152(a).
"Used"	§ 17.151.
"Year"	Deleted; unnecessary.
Subpart C	
§ 197.25	§ 17.21.
§ 197.26	§ 17.22.
§ 197.27	§ 17.23.
§ 197.28	§ 17.31.
§ 197.29	§ 17.32.
§ 197.29a	§ 17.41.
§ 197.29b	§ 17.42.
§ 197.29c	§ 17.43.
§ 197.30	§ 17.33.
§ 197.31	§ 17.34.
Subpart D	
§ 197.40	§ 17.51.
§ 197.40a	§ 17.52.
§ 197.41	§ 17.54.
§ 197.42	§ 17.53.

DISTRIBUTION TABLE FOR PART 197—Continued

Old section	New section
§ 197.43	§ 17.61.
§ 197.46	§ 17.62.
§ 197.47	§ 17.63.
§ 197.47a	§ 17.55.
§ 197.48	§ 17.71.
§ 197.49	§ 17.72.
§ 197.50	§ 17.73.
§ 197.51	§ 17.74.
§ 197.52	§ 17.81.
§ 197.53	§ 17.82.
§ 197.54	§ 17.83.
§ 197.55	§ 17.91.
§ 197.56	§ 17.92.
§ 197.57	§ 17.93.
§ 197.58	§ 17.94.
§ 197.59	§ 17.95.
Subpart E	
§ 197.65	§ 17.101 (up to last sentence).
§ 197.66	§ 17.103.
§ 197.67	§ 17.105.
§ 197.68	§ 17.104.
§ 197.69	§ 17.106.
§ 197.70	§ 17.144 (2nd sentence).
§ 197.71	§ 17.101 (last sentence).
§ 197.72	§ 17.107.
§ 197.73	§ 17.108.
§ 197.75	§ 17.111.
§ 197.76	§ 17.112.
§ 197.77 (except last sentence).	§ 17.113.
§ 197.77 (last sentence).	Covered by § 17.108 (last sentence).
§ 197.79	Covered by § 17.111.
§ 197.80	§ 17.114.
Subpart F	
§ 197.95 (sentences 1–2, 6, 8–9).	§ 17.121.
§ 197.95 (sentences 3 and 4).	§ 17.131.
§ 197.95 (5th sentence).	§ 17.137.
§ 197.95 (7th sentence).	§ 17.122.
§ 197.95 (last sentence).	Will be covered by revised ATF Form 5530.5.
§ 197.96	§ 17.132(a).
§ 197.97	§ 17.123.
§ 197.98	§ 17.124.
§ 197.99	§ 17.125(a).
Subpart G	
§ 197.105	§ 17.141.
§ 197.106 (up to proviso).	§ 17.142(a).
§ 197.106 (proviso, except next-to-last sentence).	§ 17.143.
§ 197.106 (next-to-last sentence).	§ 17.146(b).
§ 197.107 (except first and last sentences).	§ 17.102.
§ 197.107 (first and last sentences).	§ 17.144 (first and last sentences).

DISTRIBUTION TABLE FOR PART 197—Continued

Old section	New section
§ 197.108	§ 17.145.
§ 197.109	§ 17.146(a).
§ 197.110	§ 17.147(a).
§ 197.111	§ 17.147(c), Part I.
§ 197.112–113	§ 17.162(a).
§ 197.114	§ 17.162(b).
§ 197.115	§ 17.147(c), Part III.
§ 197.116 (except last sentence).	§ 17.147(c), Part II (column (a)).
§ 197.116 (last sentence); also § 197.117 (2nd sentence), § 197.118 (2nd sentence), and § 197.119 (2nd sentence).	§§ 17.147(b)(6) and 17.167(a).
§ 197.117 (first sentence).	§ 17.147(c), Part II (column (c)).
§ 197.117 (3rd and 4th sentences).	§ 17.153(b).
§ 197.117 (last sentence).	§ 17.153(c).
§ 197.118 (first sentence).	§ 17.147(c), Part II (column (b)).
§ 197.118 (last sentence).	§ 17.153(a).
§ 197.119 (first sentence).	Deleted; covered by § 17.147(c), Part II (column (d)) and § 17.164(a).
§ 197.119 (last sentence).	§ 17.155.
Subpart H	
§ 197.130 (introduction).	§ 17.161 (first sentence).
§ 197.130(a)–(d)	Covered by § 17.162(a)–(c).
§ 197.130(e)–(g)	§ 17.164(a).
§ 197.130(n)–(j)	§ 17.166(a).
§ 197.130a(a)	§ 17.162(d).
§ 197.130a(b)	§ 17.164(b).
§ 197.130b	§ 17.163 (a) and (c).
§ 197.131	§ 17.166(c).
§ 197.132 (except last clause).	§ 17.161 (from 2nd sentence to end).
§ 197.132 (last clause).	Covered by § 17.171.
§ 197.133 (except last sentence).	§ 17.170.
§ 197.133 (last sentence).	§ 17.171.

DERIVATION TABLE FOR PART 17

New section	Source
Subpart A	
§ 17.1	§ 197.1.
§ 17.2	§ 197.2.
§ 17.3	§ 197.3.
§ 17.4	New.
Subpart B	
§ 17.11: (generally)	§ 197.5.
"Alcohol and Tobacco Laboratory".	New.
"Approved"	New.
"CFR"	New.
"Effective tax rate"	New.
"Eligible"	New.
"Food products"	Rev. Rul. 63–87.
"Medicines"	ATF Rul. 82–7.
"Month"	New.
"Proof gallon"	New.
"Quarter"	New.
"Taxpaid"	New.
Subpart C	
§ 17.21	§ 197.25.
§ 17.22	§ 197.26.
§ 17.23	§ 197.27.
§ 17.31	§ 197.28.
§ 17.32	§ 197.29.
§ 17.33	§ 197.30.
§ 17.34	§ 197.31.
§ 17.41	§ 197.29a.
§ 17.42	§ 197.29b.
§ 17.43	§ 197.29c.
Subpart D	
§ 17.51	§ 197.40.
§ 17.52	§ 197.40a.
§ 17.53	§ 197.42.
§ 17.54	§ 197.41.
§ 17.55	§ 197.47a.
§ 17.61	§ 197.43.
§ 17.62	§ 197.46.
§ 17.63	§ 197.47.
§ 17.71	§ 197.48.
§ 17.72	§ 197.49.
§ 17.73	§ 197.50.
§ 17.74	§ 197.51.
§ 17.75	New.
§ 17.76	ATF Rul. 74–2.
§ 17.81	§ 197.52.
§ 17.82	§ 197.53.
§ 17.83	§ 197.54.
§ 17.91	§ 197.55.
§ 17.92	§ 197.56.
§ 17.93	§ 197.57.
§ 17.94	§ 197.58.
§ 17.95	§ 197.59
Subpart E	
§ 17.101	§§ 197.65 and 197.71.
§ 17.102	§ 197.107 (except first and last sentences).
§ 17.103	§ 197.66.
§ 17.104	§ 197.68.
§ 17.105	§ 197.67.
§ 17.106	§ 197.69.
§ 17.107	§ 197.72.
§ 17.108	§ 197.73.
§ 17.111	§§ 197.75 and 197.79.
§ 17.112	§ 197.76.
§ 17.113	§ 197.77.
§ 17.114	§ 197.80.
Subpart F	
§ 17.121	§ 197.95 (sentences 1–2, 6, 8–9).
§ 17.122	§ 197.95 (7th sentence) and ATF Rul. 77–27.
§ 17.123	§ 197.97.
§ 17.124	§ 197.98.
§ 17.125(a)	§ 197.99.
§ 17.125(b)	New.
§ 17.126(a)	New.
§ 17.126(b)	Rev. Rul. 69–138.
§ 17.127	New.
§ 17.131	§ 197.95 (3rd and 4th sentences).
§ 17.132(a)	§ 197.96.
§ 17.132(b)	§ 170.616.
§ 17.133	§ 170.613(a)(7)–(9), Rev. Rul. 63–87 and ATF Rul. 73–1.
§ 17.134	New.
§ 17.135	Rev. Ruls. 56–239 and 56–367.
§ 17.136	Rev. Rul. 58–350.
§ 17.137	§ 197.95 (5th sentence) and Rev. Rul. 56–314.
Subpart G	
§ 17.141	§ 197.105.
§ 17.142(a)	§ 197.106 (up to proviso) and ATF Order 1100.95A.
§ 17.142(b)	New.
§ 17.143	§ 197.106 (proviso, except next-to-last sentence).
§ 17.144	§§ 197.70 and 197.107 (first and last sentence).
§ 17.145	§ 197.108.
§ 17.146	§§ 197.106 (next-to-last sentence) and 197.109.
§ 17.147	§§ 197.110–119 and Rev. Proc. 64–32.
§ 17.148	New.
§ 17.151	§ 197.11 ("Used").
§ 17.152(a)	§ 197.11 ("Time distilled spirits are used").
§ 17.152(b)	ATF Rul. 76–17.
§ 17.152(c)	Rev. Ruls. 56–394 and 69–138.
§ 17.152(d)	Rev. Rul. 69–138.
§ 17.153	§ 197.117 (last 3 sentences) and 197.118 (last sentence).
§ 17.154	§ 197.11 ("Intermediate products").
§ 17.155	§ 197.119 (last sentence).
Subpart H	
§ 17.161	§§ 197.130 (introduction) and 197.132 (except last clause).
§ 17.162(a)	§§ 197.112–113 and 197.130(a)–(d).

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DERIVATION TABLE FOR PART 17—Continued

New section	Source
§ 17.162(b)	§§ 197.114 and 197.130(a)–(d).
§ 17.162(c)	New.
§ 17.162(d)	§ 197.130a(a).
§ 17.163(a) and (c)	§ 197.130b.
§ 17.163(b)	New.
§ 17.164	§§ 197.130(e)–(g) and 197.130a(b).
§ 17.165	Industry Circular 79–5.
§ 17.166(a)	§ 197.130(h)–(i).
§ 17.166(b)	New.
§ 17.166(c)	§ 197.131.
§ 17.167(a)	§§ 197.116–119.
§ 17.167(b)	Industry Circular 79–5.
§ 17.168	§ 170.617(c).
§ 17.169	New.
§ 17.170	§ 197.133 (except last sentence).
§ 17.171	§ 197.132 (last two clauses), § 197.133 (last sentence) and Industry Circular 79–5.
Subpart I	
§ 17.181	Rev. Rul. 56–335.
§ 17.182	Rev. Rul. 56–336.
§ 17.183	ATF Rul. 81–8.
§ 17.184	New.
§ 17.185(a) and (c)	New.
§ 17.185(b)	ATF Rul. 76–19.
§ 17.186	Rev. Rul. 56–395.
§ 17.187	Rev. Rul. 55–689.

Opportunity for Public Comment

Interested persons who wish to participate in the rulemaking process are invited to address written comments or suggestions to the Chief, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044–0385, within 90 days after the date of publication of this notice in the **Federal Register**. Comments are particularly sought concerning records or other proposed requirements that go beyond what would normally be kept in the course of good business practice (except if such additional requirements are necessary for revenue protection). For example, do the proposed requirements for accounting for "intermediate products" reflect the ordinary accounting methods for such products? Is the term "intermediate product"—as defined and used in the proposed regulations—obsolete or inaccurate? Is there a better or simpler way to keep track of the alcohol and other ingredients as they move through the manufacturing process toward their destination in the finished nonbeverage product?

Any person who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his/her request, in writing, within the 90-day period. However, the Bureau reserves the right to determine, in the light of all the circumstances, whether a public hearing should be held. Copies of the proposed changes and all public comments received are available for public inspection from 8:30 a.m. to 5:00 p.m. in Room 4406, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW, Washington, DC.

Executive Order 12291

In compliance with Executive Order 12291 of February 17, 1981, the Bureau has determined that this proposal is not a major rule since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are applicable to this proposal. An initial regulatory flexibility analysis has been prepared and reads as follows.

Initial Regulatory Flexibility Analysis for Recodification of Nonbeverage Drawback Regulations (27 CFR 197)

Rationale for Agency Action

The law (26 U.S.C. 5131–5134) authorizes a drawback of internal revenue tax on alcohol used in the manufacture of certain nonbeverage products. This drawback shall be granted by the Department of the Treasury on receipt of a proper claim. To determine whether a claim is proper, regulations may require certain records to be kept and reports to be submitted by those claiming drawback, in order to establish their eligibility. That is, it must be shown that the alcohol on which drawback is claimed: (1) Was actually used, (2) was used in the manufacture of the particular products for which drawback is authorized, and (3) was originally taxpaid.

The regulations dealing with nonbeverage drawback are therefore issued under this primary rationale: to protect the revenue. However, this rationale is modified by a secondary rationale, which is: To require only those items of information to be submitted or to be recorded which are actually necessary to establish eligibility for drawback. With respect to those items required to be submitted to the Bureau of Alcohol, Tobacco and Firearms, only those should be submitted which are actually used to maintain control over the approval of claims. With respect to those records required to be maintained at the claimant's premises, the claimant's own record system should be utilized at all possible times to avoid duplication.

Objective and Legal Basis for the Proposed Rule

A. *Objective basis.* The objective basis of these proposed regulations is that a dual control system is used to verify the propriety of claims: Initially, a sampling procedure in the regional office is used to screen the claims before they are paid; subsequently, periodic field inspections at the manufacturing premises provide the opportunity to audit more detailed records.

At the regional offices, not every item on every report would be checked every time; however, a sufficient number must be checked in order to insure that there is no likelihood of fraud. Those reports which are checked must contain sufficient information to reveal undisguised fraud and/or honest mistakes. The information submitted should also permit detection of any problems which would result in scheduling an on-site inspection sooner than would otherwise be planned.

During on-site inspections, ATF officers examine original batch records to verify compliance with approved formulas. A physical inventory is taken and records are examined to see whether they agree with the inventory. If necessary, a claim adjustment may be required.

B. *Legal basis.* The legal basis of these regulations is found in 26 U.S.C. 5131–5134 and 7805. These laws give the Secretary of the Treasury broad discretion to enact regulations, but the regulations must be limited to the function of revenue protection. Treasury Department Order No. 120–01 (dated June 6, 1972, effective July 1, 1972) delegated to the Bureau of Alcohol, Tobacco and Firearms the function of prescribing and administering such regulations.

C. *Estimate of number of small entities affected and types.* It is estimated that this document will affect about 500 small entities which use taxpaid alcohol to manufacture nonbeverage products.

Detailed Estimate and Description of the Reporting, Recordkeeping and Compliance Requirements Anticipated

A. *Reporting requirements.* The most significant reporting requirements of this document pertain to: The amount of taxpaid alcohol received, the amount of each product produced, the amount of taxpaid alcohol used and the product in which used, the amount of alcohol recovered (if any), the amount of tax claimed as drawback, the amount of alcohol on hand at the beginning and end of each claim period, and an explanation of any discrepancies disclosed by physical inventory. These items must be reported whenever a claim is submitted. Other reports which are required less frequently include: statements of formula and process (which are necessary to establish that the products being manufactured are of the types for which drawback is authorized under law), bonds and consents of surety in the case of claimants filing monthly claims, samples of the product if needed to determine its nonbeverage character, a special tax return and registration (required by 26 U.S.C. 5131–5132), an application for an employer identification number in order to identify the special taxpayer, and information relating to any changes in the location or control of the business. If no drawback is claimed, then none of the requirements need be complied with. The reporting requirements affect all classes of nonbeverage drawback manufacturers. Some knowledge of chemistry may be helpful in preparing the required formulas for submission, and an elementary knowledge of bookkeeping would be needed to maintain the required accounts for submission.

B. *Recordkeeping requirements.* The recordkeeping requirements of this regulation are designed to be supplementary to the reporting requirements. The records support and amplify the statements given in the required reports. Ultimately, the purpose is to facilitate verification of the amount of drawback claimed. No particular form of record is required; rather, the records may be kept in any format, so long as the information is clearly expressed. For the most part, these required records are merely ordinary business records which the manufacturer would normally maintain in the course of his business. However, it is still necessary for regulations to specify that these records must be kept; because otherwise a claimant under investigation might falsely claim that he does not keep the records, and if there were no requirement for the records to be kept, then it would be difficult to prove any violation against such a person. The records which this regulation requires claimants to keep are: copies of the reports submitted, records of disposition of nonbeverage products, records of raw materials received, accounting for recovered alcohol, invoices of purchases, evidence of taxpayment, and batch records of ingredients used in each production batch. The regional director (compliance) may also require a manufacturer to keep inventory records of raw materials and nonbeverage products. All classes of nonbeverage drawback manufacturers are affected by these recordkeeping requirements. An elementary knowledge of bookkeeping would be needed to prepare and record the prescribed accounts.

C. *Compliance requirements.* The compliance requirements of this regulation are: to retain the special tax stamp at the place of business as evidence of payment of special tax; to observe the statutory time restriction for filing of claims (6 months following the close of the quarter within which the alcohol was used); to retain the required records for a period of at least 3 years; to obliterate taxpayment marks on emptied containers of distilled spirits (as required by 26 U.S.C. 5206); to use intermediate products, and alcohol recovered from nonbeverage products, for no purpose other than to manufacture nonbeverage products; to transfer intermediate products to no one except another branch or plant of the same manufacturer; to refrain from transferring unfinished nonbeverage products to any other premises; and to refrain from selling or transferring any recovered alcohol or material from which alcohol can be recovered. All classes of nonbeverage drawback manufacturers would be affected by these requirements. No special skills would be needed for compliance.

Conflicting, Duplicative or Overlapping Federal Rules

Some of the requirements of these regulations may overlap requirements of the Internal Revenue Service. The reason for this is that the Internal Revenue Service requires certain financial and cost accounting records in order to establish income tax liability, and in some cases the same information may be required by this part in order to establish eligibility for drawback of excise tax. In case of such overlap, the proprietor would not be required to keep two separate sets of records; the same set of records could suffice to meet the requirements of both ATF and IRS regulations. There would be no additional burden, because these records are merely those which anyone would keep in the ordinary course of business. The Food and Drug Administration may also require certain records which duplicate or overlap the records required by these regulations. Such FDA records would also satisfy the ATF requirement, due to the fact that these proposed regulations do not specify any particular format for the records, so long as the information is clearly presented and available to ATF inspectors.

Alternatives

A. *Multitiering.* This concept was not used because the large majority or manufacturers of nonbeverage products are small entities. Consequently, the requirements of the proposed regulations were specifically designed in consideration of the needs of small establishments. Larger establishments should also be able to comply with these requirements without particular difficulties.

B. *Simplification of requirements.* The requirements as they are proposed are felt to be at the minimum. These requirements are necessary in order to protect the revenue and detect fraud against the Treasury. In most cases, of course, no fraud exists. But the requirements must be imposed equally on all claimants, so that if and when fraud exists, it will be detected. This is the statutory mandate of 26 U.S.C. 5232.

C. *Performance standards.* This concept was utilized as much as possible. For example, a standard format for "supporting data" reports is presented—*but not required.* (Any desired format may be used if it provides the necessary information.) Similarly, the required records also may be kept in any convenient format. However, the needs of the Government, with respect to expeditious processing of claims and taxpayments, mandated prescription of specific forms for submission of drawback claims and payment of special tax. A specific form is also prescribed for formula submission, in order to facilitate communication concerning the formula among the applicable ATF offices as well as between ATF and the claimant. A special regulations section authorizes variation from most requirements if good cause can be shown for a variation.

D. *Exemption of small entities.* The law does not authorize exemption of any entity from the requirements.

Paperwork Reduction Act

The requirements to collect information proposed in this notice have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35. Comments relating to ATF's compliance with 5 CFR Part 1320 ("Controlling Paperwork Burdens on the Public") should be submitted to: Office of Information and Regulatory Affairs, Attention: ATF Desk Officer, Office of Management and Budget, Washington, DC 20503.

List of Subjects

27 CFR Parts 17 and 197

Alcohol and alcoholic beverages, Authority delegations, Claims, Drugs, Excise taxes, Foods, Spices and flavorings, Surety bonds, Reporting and recordkeeping requirements.

27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Claims, Chemicals, Customs duties and inspection, Electronic fund transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and Containers, Reporting and recordkeeping requirements, Research, Spices and flavorings, Surety bonds, Security measures, Stills, Transportation, U.S. possessions, Vinegar, Warehouses, Wine.

27 CFR Part 170

Alcohol and alcoholic beverages, Authority delegations, Claims, Customs duties and inspection, Disaster assistance, Excise taxes, Labeling, Liquors, Penalties, Reporting and recordkeeping requirements, Surety bonds, Wine.

27 CFR Part 194

Alcohol and alcoholic beverages, Authority delegations, Beer, Claims, Excise taxes, Exports, Labeling, Liquors, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Wine.

Drafting Information.

The principal drafter of this document was Steven C. Simon of the Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms.

Issuance

Accordingly, it is proposed that Title 27 of the Code of Federal Regulations be amended as follows:

Paragraph A. Title 27 CFR Part 17 is added to read as follows:

PART 17—DRAWBACK ON TAXPAID DISTILLED SPIRITS USED IN MANUFACTURING NONBEVERAGE PRODUCTS

Subpart A—General Provisions

Sec.
17.1 Scope of regulations.
17.2 Forms prescribed.
17.3 Incorporations by reference.
17.4 Alternate methods or procedures.

Subpart B—Definitions

17.11 Meaning of terms.

Subpart C—Special Tax

17.21 Payment and rates of special tax.
17.22 Special tax for each place of business.
17.23 Time for payment of special tax.

Special Tax Returns

17.31 Filing of return and payment of special tax.
17.32 Completion of ATF Form 5630.5.
17.33 Signature of returns on ATF Form 5630.5.
17.34 Verification of returns.

Employer Identification Number

17.41 Requirement for employer identification number.
17.42 Application for employer identification number.
17.43 Execution of Form SS-4.

Subpart D—Special Tax Stamps

17.51 Issuance of stamps.
17.52 Distribution of stamps for multiple locations.
17.53 Correction of errors on stamps.
17.54 Lost or destroyed stamps.
17.55 Retention of special tax stamps.

Change in Location

17.61 General.
17.62 Failure to register.
17.63 Certificates in lieu of lost stamps.

Change in Control

17.71 General.
17.72 Right of succession.
17.73 Failure to register.
17.74 Certificates in lieu of lost stamps.
17.75 Formation of partnership or corporation.
17.76 Addition or withdrawal of partners.

Change in Name or Style

17.81 General.
17.82 Change in capital stock.
17.83 Sale of stock.

Adjustment or Refund of Special Tax

17.91 Change to higher rate.
17.92 Change to lower rate.
17.93 Absence of liability, refund of special tax.
17.94 Filing of refund claim.
17.95 Time limit for filing refund claim.

Subpart E—Bonds and Consents of Sureties

17.101 General.
17.102 Amount of bond.
17.103 Bonds obtained from surety companies.
17.104 Deposit of collateral.
17.105 Filing of powers of attorney.
17.106 Consents of surety.
17.107 Strengthening bonds.
17.108 Superseding bonds.

Termination of Bonds

17.111 General.
17.112 Notice by surety of termination of bond.
17.113 Extent of release of surety from liability under bond.
17.114 Release of collateral.

Subpart F—Formulas and Samples

17.121 Product formulas.
17.122 Amended or revised formulas.
17.123 Statement of process.
17.124 Samples.
17.125 Adoption of formulas and processes.
17.126 Formulas for intermediate products.
17.127 Self-manufactured ingredients treated optionally as unfinished nonbeverage products.

Approval of Formulas

17.131 Formulas on ATF Form 5530.5.
17.132 U.S.P., N.F., and H.P.U.S. preparations.
17.133 Food product formulas.
17.134 Determination of unfitness for beverage purposes.
17.135 Use of specially denatured alcohol (S.D.A.).
17.136 Compliance with Food and Drug Administration requirements.
17.137 Formulas disapproved for drawback.

Subpart G—Claims for Drawback

17.141 Drawback.
17.142 Claims.
17.143 Notice for monthly claims.
17.144 Bond for monthly claims.
17.145 Date of filing claim.
17.146 Information to be shown by the claim.
17.147 Supporting data.
17.148 Allowance of claims.

Spirits Subject to Drawback

17.151 Use of distilled spirits.
17.152 Time of use of spirits.
17.153 Recovered spirits.
17.154 Spirits contained in intermediate products.
17.155 Spirits consumed in manufacturing intermediate products.

Support H—Records

17.161 General.
17.162 Receipt of distilled spirits.
17.163 Evidence of taxpayment of distilled spirits.
17.164 Production record.
17.165 Receipt of raw ingredients.
17.166 Disposition of nonbeverage products.
17.167 Inventories.
17.168 Recovered spirits.

17.169 Transfer of intermediate products.
17.170 Retention of records.
17.171 Inspection of records.

Subpart I—Miscellaneous Provisions

17.181 Exportation of medicinal preparations and flavoring extracts.
17.182 Drawback claims by druggists.
17.183 Disposition of recovered alcohol and material from which alcohol can be recovered.
17.184 Distilled spirits container marks.
17.185 Requirements for intermediate products and unfinished nonbeverage products.
17.186 Transfer of distilled spirits to other containers.
17.187 Discontinuance of business.

Authority: 5 U.S.C. 552; 26 U.S.C. 5131–5134, 5143, 5146, 5206, 5273, 6065, 6091, 6108, 6402, 6511, 6676, 7213, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Subpart A—General Provisions

§ 17.1 Scope of regulations.

The regulations in this part apply to the manufacture of medicines, medicinal preparations, food products, flavors, and flavoring extracts that are unfit for beverage use and are made with taxpaid distilled spirits. The regulations cover the following topics: obtaining drawback of internal revenue tax on distilled spirits used in the manufacture of nonbeverage products; the payment of special (occupational) taxes in order to be eligible to receive drawback; and bonds, claims, formulas and samples, losses, and records to be kept pertaining to the manufacture of nonbeverage products.

§ 17.2 Forms prescribed.

(a) The Director is authorized to prescribe all forms, including bonds and records, required by this part. All of the information called for in each form shall be furnished as indicated by the headings on the form and the instructions on or pertaining to the form. In addition, information called for in each form shall be furnished as required by this part.

(b) "Public Use Forms" (ATF Publication 1322.1) is a numerical listing of forms issued or used by the Bureau of Alcohol, Tobacco and Firearms. This publication may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(c) Requests for forms should be mailed to the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153.

§ 17.3 Incorporations by reference.

(a) "The United States Pharmacopeia (Twenty-first Revision, Official from January 1, 1985) and The National Formulary (Sixteenth Edition, Official from January 1, 1985)," published together as "The USP and NF Compendia," are incorporated by reference in this part. This incorporation by reference was approved by the Director of the Federal Register. This publication may be inspected at the Office of the Federal Register, Room 8401, 1100 L Street NW., Washington, DC, and is available from the United States Pharmacopeial Convention, Inc., 12601 Twinbrook Parkway, Rockville, Maryland 20852. (See § 17.132.)

(b) "The Homeopathic Pharmacopoeia of the United States" (Volume I, 8th Edition, 1979) is incorporated by reference in this part. This incorporation by reference was approved by the Director of the Federal Register. This publication may be inspected at the Office of the Federal Register, Room 8401, 1100 L Street NW., Washington, DC, and is available from the American Institute of Homeopathy, 1500 Massachusetts Avenue NW., Suite 40, Washington, DC 20005. (See § 17.132.)

(Pub. L. 89–554, 80 Stat. 383, as amended (5 U.S.C. 552(a))

§ 17.4 Alternate methods or procedures.

(a) *General.* The Director may approve the use or an alternate method or procedure in lieu of a method or procedure prescribed in this part if he finds that—

(1) Good cause has been shown for the use of the alternate method or procedure;

(2) The alternate method or procedure is within the purpose of, and consistent with the effect intended by, the method or procedure prescribed by this part, and affords equivalent security to the revenue; and

(3) The alternate method or procedure will not be contrary to any provision of law, and will not result in any increase in cost to the Government or hinder the effective administration of this part.

(b) *Application.* A letter of application to employ an alternate method or procedure shall be submitted to the regional director (compliance) for transmittal to the Director. The application shall specifically describe the proposed alternate method or procedure, and shall set forth the reasons therefor.

(c) *Approval.* No alternate method or procedure shall be employed until the application has been approved by the Director. The Director shall not approve any alternate method relating to the giving of any bond or to the assessment, payment, or collection of any tax. The manufacturer shall, during the period of authorization, comply with the terms of the approved application and with any conditions thereto stated by the Director in his approval. Authorization for any alternate method or procedure may be withdrawn by written notice from the Director whenever in his judgment the revenue is jeopardized, the effective administration of this part is hindered, or good cause for the authorization no longer exists. The manufacturer shall retain, in the records required by § 17.170, any authorization given by the Director under this section.

Subpart B—Definitions

§ 17.11 Meaning of terms.

As used in this part, unless the context otherwise requires, terms have the meanings given in this section. Words in the plural form include the singular, and vice versa, and words indicating the masculine gender include the feminine. The terms "includes" and "including" do not exclude things not listed which are in the same general class.

Alcohol and Tobacco Laboratory. The Alcohol and Tobacco Laboratory, Bureau of Alcohol, Tobacco and Firearms, 1401 Research Boulevard, Rockville, Maryland 20850.

Approved, or approved for drawback. Used with reference to products and their formulas, means that drawback may be claimed on eligible spirits used in such products in accordance with this part.

ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any function relating to the administration or enforcement of this part.

CFR. The Code of Federal Regulations.

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, DC 20226; or his delegate.

Distilled spirits, or spirits. That substance known as ethyl alcohol, ethanol, spirits, or spirits of wine in any form (including all dilutions and mixtures thereof, from whatever source or by whatever process produced).

Effective tax rate. The tax imposed on distilled spirits products by 26 U.S.C. 5001 or 7652, less the credit authorized by 26 U.S.C. 5010 for the wine or flavors content of such products.

Eligible, or eligible for drawback. Used with reference to spirits, means taxpaid spirits which have not yet been used in nonbeverage products.

Filed. Subject to the provisions of 26 CFR 301.7502–1 through 301.7503–1, a claim for drawback or other document or payment submitted under this part is generally considered to have been

"filed" when it is received by the office of the proper Government official; but if an item is mailed timely, then the United States postmark date is treated as the date of filing.

Food products. Includes food adjuncts, such as preservatives, emulsifying agents, and food colorings, which are manufactured and used, or sold for use, in food.

Intermediate products. Products which (1) are made with taxpaid distilled spirits, (2) have been disapproved for drawback, and (3) are made by the manufacturer exclusively for his own use in the manufacture of nonbeverage products approved for drawback. Ingredients treated as unfinished nonbeverage products under § 17.127 are not considered to be intermediate products.

Medicines. Includes laboratory strains and reagents for use in medical diagnostic procedures.

Month. A calendar month.

Nonbeverage products. Medicines, medicinal preparations, food products, flavors, or flavoring extracts, which are manufactured using taxpaid distilled spirits, and which are unfit for use for beverage purposes.

Person. An individual, trust, estate, partnership, association, company, or corporation.

Proof gallon. A gallon of liquid at 60 degrees Fahrenheit, which contains 50 percent by volume of ethyl alcohol having a specific gravity of 0.7939 at 60 degrees Fahrenheit (referred to water at 60 degrees Fahrenheit as unity), or the alcoholic equivalent thereof.

Quarter. A 3-month period beginning January 1, April 1, July 1, or October 1.

Recovered spirits. Taxpaid spirits that have been salvaged, after use in the manufacture of a product or ingredient, so that the spirits are reusable.

Regional director (compliance). The principal ATF regional official responsible for administering regulations in this part.

Special tax. The special (occupational) tax on manufacturers of nonbeverage products, imposed by 26 U.S.C. 5131.

Taxpaid. When used with respect to distilled spirits, this term shall mean that all taxes imposed on such spirits by 26 U.S.C. 5001 or 7652 have been determined or paid as provided by law.

Tax year. The period from July 1 of one calendar year through June 30 of the following year.

This chapter. Chapter I of Title 27 of the Code of Federal Regulations.

Total annual use. The total quantity of taxpaid distilled spirits (proof gallons), which are used in the manufacture of nonbeverage products during a tax year.

U.S.C. The United States Code.

Subpart C—Special Tax

§ 17.21 Payment and rates of special tax.

Each person who uses taxpaid distilled spirits in the manufacture or production of nonbeverage products shall pay special tax in order to be eligible to receive drawback on the spirits so used. Special tax rates, set by 26 U.S.C. 5131(b), are as follows: $25 per tax year for total annual use not exceeding 25 proof gallons; $50 per tax year for total annual use not exceeding 50 proof gallons; or $100 per tax year for total annual use of more than 50 proof gallons. If a claim is filed covering taxpaid distilled spirits used during the preceding tax year, and special tax has not been paid for the preceding tax year, then special tax for the preceding tax year shall be paid in the appropriate amount. Special tax, based upon estimated use, may be paid in advance of actual use. Adjustments of the special tax where improperly paid are made in accordance with §§ 17.91–17.95. The manufacturer is not required to pay the special tax if he does not claim drawback.

§ 17.22 Special tax for each place of business.

A separate special tax shall be paid for each place where distilled spirits are used in the manufacture or production of nonbeverage products, if a claim is filed for drawback of tax on distilled spirits so used at each such place.

§ 17.23 Time for payment of special tax.

Special tax shall be paid before a claimant is eligible to receive drawback. Regardless of the portion of a tax year covered by a claim, the full annual special tax of $25, $50, or $100, as the case may be, shall be paid.

Special Tax Returns

§ 17.31 Filing of return and payment of special tax.

(a) *General.* Drawback claimants shall file returns on ATF Form 5630.5, Annual Special Tax Registration and Return, together with payment of the tax due. The return and payment shall be filed with ATF in accordance with instructions on the form.

(b) *Multiple locations.* If a taxpayer is subject to special tax for the same time period at two or more places under § 17.22, the taxpayer shall file one special tax return on Form 5630.5 (prepared in the manner prescribed in §§ 17.32–34), with payment of the tax to cover all such places. (Separate returns are required if different time periods are involved.) The return with tax shall be filed with ATF in accordance with instructions on the form. In addition, the taxpayer shall prepare, in duplicate, a list identifying his name, address, employer identification number, class of tax, and period covered by the return. The list shall show, by States, the name (and trade name, if any) and address of each place (including the taxpayer's principal place of business, or principal office, if subject to special tax) for which special tax is being paid. The taxpayer shall file the original of the list together with the return, and shall retain the copy at his principal office for the period specified in § 17.170.

(68A Stat. 752, as amended (26 U.S.C. 6091))

§ 17.32 Completion of ATF Form 5630.5.

Special tax returns, ATF Form 5630.5, may be obtained from the regional director (compliance) and shall state, in the spaces provided, the following:

(a) The true name of the taxpayer, which may be followed by the words "trading as" and the trade name under which the business is conducted.

(b) The employer identification number (see §§ 17.41–1743).

(c) The exact location of the place of business, by building number and street name, or, if either of these do not exist, some particularization in addition to the post office address. In the case of one return for multiple locations, as provided in § 17.31(b), the location to be shown on the Form 5630.5 shall be that of the taxpayer's principal place of business (or principal office in the case of a corporate taxpayer).

(d) The kind of business carried on.

(e) Except in the case of a corporation, the true names of all persons having a proprietary interest in the business. While it is not necessary that the names of all persons having a proprietary interest in the business appear on the special tax stamp, the names shall be disclosed on the return, Form 5630.5.

§ 17.33 Signature of returns on ATF Form 5630.5.

The return of an individual proprietor shall be signed by the proprietor; the return of a partnership shall be signed by a general partner; and the return of a corporation shall be signed by a corporate officer. In each case, the person signing the return shall designate his capacity, as "individual owner," "member of partnership," or, in the case of a corporation, the title of the officer. Receivers, trustees, assignees, executors, administrators, and other legal representatives who continue the business of a bankrupt, insolvent, deceased person, etc., shall indicate the fiduciary capacity in which they act. No

return executed by a person as agent is acceptable unless a power of attorney authorizing the person to act in this capacity is filed with the regional director (compliance).

§ 17.34 Verification of returns.

The taxpayer shall verify each return on ATF Form 5630.5 by a written declaration that it is made under the penalties of perjury.

(68A Stat. 749 (26 U.S.C. 6065))

Employer Identification Number

§ 17.41 Requirement for employer identification number.

The employer identification number of the taxpayer who has been assigned such a number shall be shown on each ATF Form 5630.5, including amended Forms 5630.5, filed pursuant to the provisions of this part. Failure of the taxpayer to include his employer identification number on Form 5630.5 may result in assertion and collection of the penalty specified in § 70.105 of this chapter.

(Secs. 1(a), (b), Pub. L. 87-397, 75 Stat. 828 (26 U.S.C. 6109, 6676))

§ 17.42 Application for employer identification number.

(a) An employer identification number is assigned pursuant to application on IRS Form SS-4, Application for Employer Identification Number, filed by the taxpayer. Form SS-4 may be obtained from any office of the Internal Revenue Service.

(b) Each taxpayer who files a return on ATF Form 5630.5 shall make application on IRS Form SS-4 for an employer identification number, unless he has already secured such a number or made application for one. This application on Form SS-4 shall be filed on or before the seventh day after the date on wnich his first return on Form 5630.5 is filed.

(c) Each taxpayer shall make application for and shall be assigned only one employer identification number, regardless of the number of places of business for which the taxpayer is required to file Form 5630.5.

(Sec. 1(a), Pub. L. 87-397, 75 Stat. 828 (26 U.S.C. 6109))

§ 17.43 Execution of Form SS-4.

The taxpayer shall prepare and file the application on IRS Form SS-4, together with any supplementary statement, in accordance with instructions on the form and applicable regulations of the Internal Revenue Service. The application shall be signed by—

(a) The individual, if the applicant is an individual;

(b) The president, vice president, or other principal officer, if the applicant is a corporation;

(c) A responsible and duly authorized member or officer having knowledge of its affairs, if the applicant is a partnership or other unincorporated organization; or

(d) The fiduciary, if the applicant is a trust or estate.

(Sec. 1(a), Pub. L. 87-397, 75 Stat. 828 (26 U.S.C. 6109))

Subpart D—Special Tax Stamps

§ 17.51 Issuance of stamps.

Each manufacturer of nonbeverage products, upon filing a properly executed return on ATF Form 5630.5, together with the proper tax payment in the full amount due, shall be issued a special tax stamp designated "Manufacturer of Nonbeverage Products." This special tax stamp shall not be sold or otherwise transferred to another person (except as provided in §§ 17.71 and 17.72). If the Form 5630.5 with tax covers multiple locations, the taxpayer shall be issued one appropriately designated stamp for each location listed in the attachment to Form 5630.5 required by § 17.31(b), but showing, as to name and address, only the name of the taxpayer and the address of the taxpayer's principal place of business (or principal office in the case of a corporate taxpayer).

§ 17.52 Distribution of stamps for multiple locations.

On receipt of the special tax stamps, the taxpayer shall verify that he has one stamp for each location listed in his copy of the attachment to ATF Form 5630.5 required by § 17.31(b). He shall designate one stamp for each location and shall type on it the trade name (if different from the name in which the stamp was issued) and address of the business conducted at the location for which the stamp is designated. He shall then forward each stamp to the place of business designated on the stamp.

§ 17.53 Correction of errors on stamps.

(a) *Single location.* On receipt of a special tax stamp, the taxpayer shall examine it to ensure that the name and address are correctly stated. If an error has been made, the taxpayer shall return the stamp to ATF at the address shown thereon, with a statement showing the nature of the error and setting forth the proper name or address. On receipt of the stamp and statement, the data shall be compared with that on ATF Form 5630.5, and if an error on the part of ATF has been made, the stamp shall be corrected and returned to the taxpayer. If the Form 5630.5 agrees with the data on the stamp, the taxpayer shall be required to file a new Form 5630.5, designated "Amended Return," disclosing the proper name and address.

(b) *Multiple locations.* If an error is discovered on a special tax stamp obtained under the provisions of § 17.31(b), relating to multiple locations, and if the error concerns any of the information contained in the attachment to Form 5630.5, the taxpayer shall return the stamp, with a statement showing the nature of the error and the correct data, to his principal office. The data on the stamp shall then be compared with the taxpayer's copy of the attachment to Form 5630.5, retained at his principal office. If the error is in the name and address and was made by the taxpayer, the taxpayer shall correct the stamp and return it to the designated place of business. If the error was made in the attachment to Form 5630.5, the taxpayer shall file with ATF an amended Form 5630.5 and an amended attachment with a statement showing the error.

§ 17.54 Lost or destroyed stamps.

If a special tax stamp is lost or accidentally destroyed, the taxpayer shall immediately notify the regional director (compliance). On receipt of this notification, the regional director (compliance) shall issue to the taxpayer a "Certificate in Lieu of Lost or Destroyed Special Tax Stamp." The taxpayer shall keep the certificate available for inspection in the same manner as prescribed for a special tax stamp in § 17.55.

§ 17.55 Retention of special tax stamps.

Taxpayers shall keep their special tax stamps at the place of business covered thereby for the period specified in § 17.170, and shall make them available for inspection by any ATF officer during business hours.

(Title II, sec. 201, Pub. L. 85-859, 72 Stat. 1348 (26 U.S.C. 5146))

Change in Location

§ 17.61 General.

A manufacturer who, during a tax year for which special tax has been paid, moves his place of manufacture to a place other than that specified in his special tax stamp, shall register the change with ATF within 30 days after he moves into the new premises, by executing a new return on ATF Form 5630.5, designated as "Amended Return." This Amended Return shall set forth the time of the move and the address of the new location. The

taxpayer shall also surrender his special tax stamp to ATF, for endorsement of the change in location.

(Title II, sec. 201, Pub. L. 85–859, 72 Stat. 1374 (26 U.S.C. 5143))

§ 17.62 Failure to register.

A person who moves his place of manufacture and fails to register the move with ATF, as required by § 17.61, shall pay a new special tax for the new location if a claim for drawback is filed on distilled spirits used at the new location during the tax year for which the original special tax was paid.

§ 17.63 Certificates in lieu of lost stamps.

The provisions of §§ 17.61 and 17.62 apply to certificates issued in lieu of lost or destroyed special tax stamps.

Change in Control

§ 17.71 General.

Certain persons, other than the person who paid the special tax, may qualify for succession to the same privileges granted by law to the taxpayer, to cover the remainder of the tax year for which the special tax was paid. Those who may qualify are specified in § 17.72. To secure these privileges, the successor or successors shall file with ATF, within 90 days after the date on which the successor or successors assume control, a return on ATF Form 5630.5, showing the basis of the succession.

§ 17.72 Right of succession.

Under the conditions set out in § 17.71, persons listed below have the right of succession:

(a) The surviving spouse or child, or executor, administrator, or other legal representative of a taxpayer.

(b) A husband or wife succeeding to the business of his or her living spouse.

(c) A receiver or trustee in bankruptcy, or an assignee for the benefit of creditors.

(d) The members of a partnership remaining after the death or withdrawal of a general partner.

§ 17.73 Failure to register.

A person eligible for succession to the privileges of a taxpayer, in accordance with §§ 17.71 and 17.72, who fails to register his succession with ATF, as required by § 17.71, shall pay a new special tax if a claim for drawback is filed by him on distilled spirits used during the tax year for which the original special tax was paid.

§ 17.74 Certificates in lieu of lost stamps.

The provisions of §§ 17.71–73 apply to certificates issued in lieu of lost or destroyed special tax stamps.

§ 17.75 Formation of partnership or corporation.

If one or more persons who have paid special tax form a partnership or corporation, as a separate legal entity, to take over the business of manufacturing nonbeverage products, the new firm or corporation shall pay a new special tax in order to be eligible to receive drawback.

§ 17.76 Addition or withdrawal of partners.

(a) *General partners.* When a business formed as a partnership, subject to special tax, admits one or more new general partners, the new partnership shall pay a new special tax in order to be eligible to receive drawback. Withdrawal of general partners is covered by § 17.72(d).

(b) *Limited partners.* Changes in the membership of a limited partnership, which require amendment of the certificate but not dissolution of the firm, are not changes that incur liability to additional special tax.

Change in Name or Style

§ 17.81 General.

A person who paid special tax is not required to pay a new special tax by reason of a mere change in the trade name or style under which the business is conducted, nor by reason of a change in management which involves no change in the proprietorship of the business.

§ 17.82 Change in capital stock?

A new special tax is not required by reason of a change of name or increase in the capital stock of a corporation, if the laws of the State of incorporation provide for such changes without creating a new corporation.

§ 17.83 Sale of stock.

A new special tax is not required by reason of the sale or transfer of all or a controlling interest in the capital stock of a corporation.

Adjustment or Refund of Special Tax

§ 17.91 Change to higher rate.

A manufacturer of nonbeverage products who pays a special tax of $25 per tax year, and has filed or intends to file a claim or claims for drawback covering taxpaid distilled spirits in excess of 25 proof gallons used during the tax year for which the special tax was paid, shall pay special tax of $50 or $100, as the case may be, and obtain a stamp for the correct amount. On payment of the special tax at the higher rate, the manufacturer may surrender the special tax stamp showing payment of $25, with a claim for refund filed in accordance with § 17.94. Similar procedure governs a manufacturer of nonbeverage products who pays special tax of $50 and has filed or intends to file claim for drawback covering taxpaid distilled spirits used in excess of 50 proof gallons.

(68A Stat. 791 (26 U.S.C. 5402))

§ 17.92 Change to lower rate.

A manufacturer of nonbeverage products who pays special tax of $100 or $50 per tax year, and, during the tax year for which the special tax was paid, files claim or claims for drawback covering the use of not more than 50 or 25 proof gallons of taxpaid distilled spirits, may file a claim for refund in the amount of the difference between the special tax paid and the special tax due. The refund claim shall be filed in accordance with § 17.94.

(68A Stat. 791 (26 U.S.C. 6402))

§ 17.93 Absence of liability, refund of special tax.

The special tax paid may be refunded if it is established that the taxpayer did not file a claim for drawback for the period covered by the special tax stamp. If claim for drawback is filed, the special tax may be refunded if no drawback is paid or allowed for the period covered by the stamp.

§ 17.94 Filing of refund claim.

Claim for refund of special tax shall be filed on ATF Form 2635 (5620.8), Claim—Alcohol, Tobacco and Firearms Taxes. The claim shall be filed with the regional director (compliance) for the region in which the place of manufacture is located. The claim shall set forth in detail sufficient reasons and supporting facts to inform the regional director (compliance) of the exact basis of the claims. The special tax stamp shall be attached to the claim.

(68A Stat. 791 (26 U.S.C. 6402))

§ 17.95 Time limit for filing refund claim.

A claim for refund of special tax shall not be allowed unless filed within three years after the payment of the tax.

(68A Stat. 808 (26 U.S.C. 6511))

Subpart E—Bonds and Consents of Sureties

§ 17.101 General.

Bond shall be filed by each person claiming drawback on a monthly basis. Persons who claim drawback on a quarterly basis are not required to file bonds. Bonds shall be prepared and executed on ATF Form 5530.3, Bond for Drawback Under 26 U.S.C. 5131, in accordance with the provisions of this part and the instructions printed on the

form. The bond requirement of this part shall be satisfied either by bonds obtained from authorized surety companies or by deposit of collateral security. Regional directors (compliance) are authorized to approve all bonds and consents of surety required by this part.

§ 17.102 Amount of bond.

The bond shall be a continuing one, in an amount sufficient to cover the total drawback to be claimed on spirits used during any quarter. However, the amount of any bond shall not exceed $200,000 nor be less than $1,000.

§ 17.103 Bonds obtained from surety companies.

(a) Bond may be obtained from any surety company authorized by the Secretary of the Treasury to become surety on Federal bonds. Surety companies so authorized are listed in the current revision of Department of the Treasury Circular 570 (Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies), and subject to such amendatory circulars as may be issued from time to time. Bonds obtained from surety companies are also governed by the provisions of 31 U.S.C. 9304, and 31 CFR Part 223. A bond executed by two or more surety companies is the joint and several liability of the principal and the sureties; however, each surety company may limit its liability in terms upon the face of the bond in a definite, specified amount. This amount shall not exceed the limitations prescribed for each surety company by the Secretary, as stated in Department of the Treasury Circular 570. If the sureties limit their liability in this way, the total of the limited liabilities shall equal the required amount of the bond.

(b) Department of the Treasury Circular No. 570 is published in the **Federal Register** annually as of the first workday in July. As they occur, interim revisions of the circular are published in the **Federal Register**. Copies of the circular may be obtained from: Surety Bond Branch, Financial Management Service, Department of the Treasury, Washington, DC 20226.

(Sec. 1, Pub. L. 97–258, 96 Stat. 1047 (31 U.S.C. 9304))

§ 17.104 Deposit of collateral.

Except as otherwise provided by law or regulations, bonds or notes of the United States, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States, may be pledged and deposited by principals as collateral security in lieu of bonds obtained from surety companies. Deposit of collateral security is governed by the provisions of 31 U.S.C. 9303, and 31 CFR Part 225.

(Sec. 1, Pub. L. 97–258, 96 Stat. 1046 (31 U.S.C. 9301, 9303))

§ 17.105 Filing of powers of attorney.

(a) *Surety companies.* The surety company shall prepare and submit with each bond, and with each consent to changes in the terms of a bond, a power of attorney authorizing the agent or officer who executed the bond or consent to act in this capacity on behalf of the surety. The regional director (compliance) who is authorized to approve the bond may, when he considers it necessary, require additional evidence of the authority of the agent or officer to execute the bond or consent. The power of attorney shall be prepared on a form provided by the surety company and executed under the corporate seal of the company. If the power of attorney submitted is other than a manually signed original, it shall be accompanied by certification of its validity.

(b) *Principal.* The principal shall execute and file with the regional director (compliance) an ATF Form 1534 (5000.8), Power of Attorney, in accordance with the instructions on the form, for every person authorized to execute bonds on behalf of the principal.

(Sec. 1, Pub. L. 97–258, 96 Stat. 1047 (31 U.S.C. 9304, 9306))

§ 17.106 Consents of surety.

The principal and surety shall execute on ATF Form 1533 (5000.18), Consent of Surety, any consents of surety to changes in the terms of bonds. Form 1533 (5000.18) shall be executed with the same formality and proof of authority as is required for the execution of bonds.

§ 17.107 Strengthening bonds.

Whenever the amount of a bond on file and in effect becomes insufficient, the principal may give a strengthening bond in a sufficient amount, provided the surety is the same as on the bond already on file and in effect; otherwise a superseding bond covering the entire liability shall be filed. Strengthening bonds, filed to increase the bond liability of the surety, shall not be construed in any sense to be substitute bonds, and the regional director (compliance) shall not approve a strengthening bond containing any notation which may be interpreted as a release of any former bond or as limiting the amount of either bond to less than its full amount.

§ 17.108 Superseding bonds.

(a) The principal on any bond filed pursuant to this part may at any time replace it with a superseding bond.

(b) Executors, administrators, assignees, receivers, trustees, or other persons acting in a fiduciary capacity continuing or liquidating the business of the principal, shall execute and file a superseding bond or obtain the consent of the surety or sureties on the existing bond or bonds.

(c) When, in the opinion of the regional director (compliance), the interests of the Government demand it, or in any case where the security of the bond becomes impaired in whole or in part for any reason whatever, the principal shall file a superseding bond. A superseding bond shall be filed immediately in case of the insolvency of the surety. If a bond is found to be not acceptable or for any reason becomes invalid or of no effect, the principal shall immediately file a satisfactory superseding bond.

(d) A bond filed under this section to supersede an existing bond shall be marked by the obligors at the time of execution, "Superseding Bond." When such a bond is approved, the superseded bond shall be released as to transactions occurring wholly subsequent to the effective date of the superseding bond, and notice of termination of the superseded bond shall be issued, as provided in § 17.111.

Termination of Bonds

§ 17.111 General.

Bonds on ATF Form 5530.3 shall be terminated by the regional director (compliance), as to liability on drawback allowed after a specified future date, in the following circumstances:

(a) Pursuant to a notice by the surety as provided in § 17.112.

(b) Following approval of a superseding bond, as provided in § 17.108.

(c) Following notification by the principal of his intent to discontinue the filing of claims on a monthly basis.

However, the bond shall not be terminated until all outstanding liability under it has been discharged. Upon termination, the regional director (compliance) shall mark the bond "canceled," followed by the date of cancellation, and shall issue a notice of termination of bond. A copy of this notice shall be given to the principal and to each surety.

§ 17.112 Notice by surety of termination of bond.

A surety on any bond required by this part may at any time, in writing, notify the principal and the regional director (compliance) in whose office the bond is on file that he desires, after a date named, to be relieved of liability under the bond. The date shall not be less than 60 days after the date the notice is received by the regional director (compliance). The surety shall deliver one copy of the notice to the principal and the original to the regional director (compliance). The surety shall also file with the regional director (compliance) an acknowledgment or other proof of service on the principal.

§ 17.113 Extent of release of surety from liability under bond.

Unless the notice prescribed by § 17.112 is withdrawn, in writing, before the date named in it, the notice shall take effect on that date. The rights of the principal as supported by the bond shall be terminated as of that date, and the surety shall be relieved from liability for drawback allowed on and after that date. Liability for drawback allowed prior to the date named in the surety's notice shall continue until the claims for such drawback have been properly verified by the regional director (compliance) according to law and this part.

§ 17.114 Release of collateral.

The release of collateral security pledged and deposited to satisfy the bond requirement of this part is governed by the provisions of 31 CFR Part 225. When the regional director (compliance) determines that there is no outstanding liability under the bond, and is satisfied that the interests of the Government will not be jeopardized, the security shall be released and returned to the principal.

(Sec. 1, Pub. L. 97-258, 96 Stat. 1046 (31 U.S.C. 9301, 9303))

Subpart F—Formulas and Samples

§ 17.121 Product formulas.

Except as provided in §§ 17.132 and 17.182, manufacturers shall file quantitative formulas for all preparations for which they intend to file drawback claims. These formulas shall be sent to the Alcohol and Tobacco Laboratory on ATF Form 5530.5, Formula and Process for Nonbeverage Products. Formulas shall be filed with the Alcohol and Tobacco Laboratory no later than 6 months after the end of the quarter in which taxpaid distilled spirits were first used to manufacture the product for purposes of drawback. Formulas shall state the quantity of each ingredient, and shall separately state the quantity of spirits to be recovered or to be consumed as an essential part of the manufacturing process. If a formula covers manufacture of the same product at more than one location, each such location shall be shown on Form 5530.5. The formulas shall be serially numbered by the manufacturer, commencing with number 1 and continuing thereafter in numerical sequence. New formulas for use at several plants shall be given a single number, which shall be the highest number next in sequence at any of those plants. One copy of each Form 5530.5 (for each place of manufacture listed thereon) shall be returned to the manufacturer. The formulas returned to manufacturers shall be filed in serial order at each place of manufacture listed thereon and shall be made available to ATF officers for examination in the investigation of drawback claims.

§ 17.122 Amended or revised formulas.

Amended or revised formulas are generally considered to be new formulas and shall be numbered accordingly. However, minor changes may be made to a current formula on ATF Form 5530.5 with retention of the original formula number, if approval is obtained from the Director. In order to obtain approval to make a minor formula change, the person holding the Form 5530.5 shall submit a letter of application to the Alcohol and Tobacco Laboratory, indicating the formula change and requesting that the proposed change be considered a minor change. Each such application shall clearly identify the original formula by number, date of approval, and name of product. The application shall indicate whether the product is, has been, or will be used in alcoholic beverages, and shall specify whether the proposed change is intended as a substitution or merely as an alternative for the original formula. No changes may be made to current formulas without specific ATF approval in each case.

§ 17.123 Statement of process.

The regional director (compliance) may at any time require any person claiming drawback under the regulations in this part to file a statement of process, in addition to that required by ATF Form 5530.5, as well as any other data necessary for consideration of the claim for drawback. When such additional data are required, the statement of process shall be submitted with copies of the commercial labels used on the finished products.

§ 17.124 Samples.

The Director, or the regional director (compliance), may at any time require any person claiming drawback or submitting a formula for approval under the regulations in this part to submit a sample of each nonbeverage or intermediate product for analysis. If the product is manufactured with a mixture of oil or other ingredients, the composition of which is unknown to the claimant, a 1-ounce sample shall be submitted with the sample of finished product when so required.

§ 17.125 Adoption of formulas and processes.

(a) *Adoption of predecessor's formulas.* If there is a change in the proprietorship of a nonbeverage manufacturer and the successor desires to use the predecessor's formulas, the successor may, in lieu of submitting new formulas in his own name, adopt any or all of the formulas of his predecessor by filing a notice of adoption with the regional director (compliance). The notice shall be filed with the first claim relating to any of the adopted formulas. The notice shall list the adopted formulas by serial number, and shall state that the products will be manufactured in accordance with the adopted formulas and processes. The manufacturer shall retain a copy of the notice with the related formulas.

(b) *Adoption of manufacturer's own formulas.* A manufacturer's own formulas may be adopted for use at another of the manufacturer's plants. Furthermore, a wholly owned subsidiary may adopt the formulas of the parent company, and vice versa. The procedure for such adoption shall be by filing a photocopy of each formula to be adopted with the regional director (compliance) for each region in which the manufacturer plans to use the adopted formula. The photocopy shall show the signature of the approving ATF official, and shall be filed no later than the time of filing of the first claim relating to the adopted formula.

§ 17.126 Formulas for intermediate products.

(a) The manufacturer shall submit a formula on ATF Form 5530.5 to the Alcohol and Tobacco Laboratory for each self-manufactured ingredient made with taxpaid spirits and intended for the manufacturer's own use in nonbeverage products, unless the formula for any such ingredient is fully expressed as part of the approved formula for each nonbeverage product in which that ingredient is used, or unless the formula for the ingredient is contained in one of

the pharmaceutical publications listed in § 17.132.

(b) Upon receipt of Form 5530.5 covering a self-manufactured ingredient made with taxpaid spirits, the formula shall be examined under § 17.131. If the formula is approved for drawback, the ingredient shall be treated as a finished nonbeverage product for purposes of this part, rather than as an intermediate product, notwithstanding its use by the manufacturer. (For example, see § 17.152(d).) If the formula is disapproved for drawback, the ingredient may be treated as an intermediate product in accordance with this part. Requirements pertaining to intermediate products are found in § 17.185(b).

§ 17.127 Self-manufactured ingredients treated optionally as unfinished nonbeverage products.

A self-manufactured ingredient made with taxpaid spirits, which otherwise would be treated as an intermediate product, may instead be treated as an unfinished nonbeverage product, if the ingredient's formula is fully expressed as a part of the approved formula for the nonbeverage product in which the ingredient will be used. A manufacturer desiring to change the treatment of an ingredient from "intermediate product" to "unfinished nonbeverage product" (or vice versa) may do so by resubmitting the applicable formula(s) on ATF Form 5530.5. Requirements pertaining to unfinished nonbeverage products are found in § 17.185(c).

Approval of Formulas

§ 17.131 Formulas on ATF Form 5530.5.

Upon receipt by the Alcohol and Tobacco Laboratory, formulas on ATF Form 5530.5 shall be examined and, if found to be medicines, medicinal preparations, food products, flavors, or flavoring extracts which are unfit for beverage purposes and which otherwise meet the requirements of law and this part, they shall be approved for drawback. If the formulas do not meet the requirements of the law and regulations for drawback products, they shall be disapproved.

§ 17.132 U.S.P., N.F., and H.P.U.S. preparations.

(a) *General.* Except as otherwise provided by regulation or ATF ruling, formulas for compounds in which alcohol is a prescribed ingredient, which are stated in the current revisions or editions of the United States Pharmacopoeia (U.S.P.), the National Formulary (N.F.), or the Homeopathic Pharmacopoeia of the United States (H.P.U.S.), shall be considered as approved formulas and may be used as formulas for drawback products without the filing of ATF Form 5530.5.

(b) *Exceptions.* Alcohol (including dehydrated alcohol), U.S.P.; alcohol and dextrose injection, U.S.P.; and tincture of ginger, H.P.U.S., have been found to be fit for beverage use and are disapproved for drawback. Further, all attenuations of other H.P.U.S. products diluted beyond one part in 10,000 ("4X") are also disapproved for drawback, unless the manufacturer receives approval for a formula submitted on ATF Form 5530.5 in accordance with this subpart. The formula shall be submitted with a sample of the product and a statement explaining why it should be classified as unfit for beverage use. (For incorporations by reference, see § 17.3.)

§ 17.133 Food product formulas.

Formulas for nonbeverage food products on ATF Form 5530.5 may be approved if they are unfit for beverage purposes. Examples of food products that have been found to be unfit for beverage purposes are stated in paragraphs (a) through (c) of this section:

(a) *Sauces.* Sauces, or syrups consisting of sugar solutions and liquors, in which the alcohol content is not more than 12 percent by volume and the sugar content is not less than 60 grams per 100 cubic centimeters.

(b) *Brandied fruits.* Brandied fruits consisting of solidly packaged fruits, either whole or segmented, and liquors not exceeding the quantity and alcohol content necessary for flavoring and preserving. Generally, brandied fruits will be considered to have met these standards if the alcohol in the liquid portion does not exceed 23 percent by volume, and the liquid portion does not exceed 45 percent of the volume of the container.

(c) *Other food products.* Food products such as mincemeat, plum pudding, and fruit cake, where only sufficient liquor is used for flavoring and preserving; and ice cream and ices where only sufficient liquor is used for flavoring purposes. Also food adjuncts, such as preservatives, emulsifying agents, and food colorings, that are unfit for beverage purposes and are manufactured and used, or sold for use, in food.

§ 17.134 Determination of unfitness for beverage purposes.

The Director has responsibility for determining whether products are fit or unfit for beverage purposes within the meaning of 26 U.S.C. 5131. This determination may be based either on the content and description of the ingredients as shown on ATF Form 5530.5, or on organoleptic examination. In such examination, samples of products may be diluted with water to an alcoholic concentration of 15% and tasted. Sale or use for beverage purposes may indicate fitness for beverage use.

§ 17.135 Use of specially denatured alcohol (S.D.A.).

(a) *Use of S.D.A. in nonbeverage or intermediate products*—(1) *General.* Except as provided in paragraph (b) of this section, the use of S.D.A. and taxpaid spirits in the same product by a nonbeverage manufacturer is prohibited where drawback of tax is claimed.

(2) *Alternative formulations.* No formula for a product on ATF Form 5530.5 shall be approved for drawback under this subpart if the manufacturer also has on file an approved ATF Form 1479–A or Form 5150.19, Formula for Article Made With Specially Denatured Alcohol or Rum, pertaining to the same product.

(b) *Use of S.D.A. in ingredients*—(1) *Purchased ingredients.* Generally, purchased ingredients containing S.D.A. may be used in nonbeverage or intermediate products. However, such ingredients shall not be used in medicinal preparations or flavoring extracts intended for internal human use, where any of the S.D.A. remains in the finished product.

(2) *Self-manufactured ingredients.* Self-manufactured ingredients may be made with S.D.A. and used in nonbeverage or intermediate products, so long as—

(i) No taxpaid spirits are used in manufacturing such ingredients; and

(ii) All S.D.A. is recovered or dissipated from such ingredients prior to their use in nonbeverage or intermediate products.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1372, as amended (26 U.S.C. 5273))

§ 17.136 Compliance with Food and Drug Administration requirements.

ATF will not consider a product to be a medicine, medicinal preparation, food product, flavor, or flavoring extract if its formula would violate a ban or restriction of the U.S. Food and Drug Administration (FDA) pertaining to such products. If FDA bans or restricts the use of any ingredient in such a way that further manufacture of the product in accordance with that formula would violate the ban or restriction, then the manufacturer shall be required to change the formula and resubmit it to the Alcohol and Tobacco Laboratory.

§ 17.137 Formulas disapproved for drawback.

A formula may be disapproved for drawback either because it does not prescribe appropriate ingredients in sufficient quantities to make the product unfit for beverage use, or because the product is neither a medicine, a medicinal preparation, a food product, a flavor, nor a flavoring extract. The formula for a disapproved product may be used as an intermediate product formula under § 17.126. No drawback will be allowed on distilled spirits used in a disapproved product, unless that product is later used in the manufacture of an approved nonbeverage product. In the case of a product that is disapproved, any further use or disposition of such a product, other than as an intermediate product in accordance with this part, subjects the manufacturer to the qualification requirements of Parts 1 and 19 of this chapter.

Subpart G—Claims for Drawback

§ 17.141 Drawback.

Upon the filing of a claim as provided in this subpart, drawback shall be allowed to any person who meets the requirements of this part. Drawback shall be paid at the rate specified by 26 U.S.C. 5134 on each proof gallon of distilled spirits on which the tax has been properly paid or determined at the distilled spirits rate and which have been used in the manufacture of nonbeverage products. The drawback rate is $1.00 less than the effective tax rate. Drawback shall only be allowed to the extent that the claimant can establish, by evidence satisfactory to the regional director (compliance), the actual quantity of taxpaid or tax-determined distilled spirits used in the manufacture of the product, and the effective tax rate applicable to those spirits. Special tax as a manufacturer of nonbeverage products shall be paid before drawback is allowed.

§ 17.142 Claims.

(a) *General.* The manufacturer shall file claim for drawback with the regional director (compliance) for the region in which the place of manufacture is located. A separate claim shall be filed for each place of business. Each claim shall pertain only to distilled spirits used in the manufacture or production of nonbeverage products during any one quarter of the tax year. Unless the manufacturer is eligible to file monthly claims (see §§ 17.143 and 17.144), only one claim may be filed for each quarter. The regional director (compliance) has the authority to approve or disapprove claims. Claims shall be filed on ATF For;s 2635 (5620.8), Claim—Alcohol— and Tobacco Taxes.

(b) *Manufacturers who are also proprietors of distilled spirits plants.* If a manufacturer of nonbeverage products is owned and operated by the same business entity that owns and operates a distilled spirits plant, the manufacturer's claim for drawback may be filed for credit on ATF Form 2635 (5620.8). When the claim is approved, the distilled spirits plant may use the claim as an adjustment decreasing the taxes due in Schedule B of ATF Form 5000.24, Excise Tax Return. This procedure may be utilized only if the manufacturer of nonbeverage products and the distilled spirits plant have the same employer identification number.

§ 17.143 Notice for monthly claims.

If the manufacturer has notified the regional director (compliance), in writing, of his intention to file claims on a monthly basis instead of a quarterly basis, and has filed a bond in compliance with the provisions of this part, claims may be filed monthly instead of quarterly. The election to file monthly claims shall not preclude a manufacturer from filing a single claim covering an entire quarter, or a single claim covering just two months of a quarter, or two claims (one of them covering one month and the other covering two months). An election for the filing of monthly claims may be withdrawn by the manufacturer by filing a notice to that effect, in writing, with the regional director (compliance).

§ 17.144 Bond for monthly claims.

Each person intending to file claims for drawback on a monthly basis shall file with the regional director (compliance) an executed bond on ATF Form 5530.3, conforming to the provisions of Subpart E of this part. A monthly drawback claim shall not be allowed until bond coverage in a sufficient amount has been approved by the regional director (compliance). When the limit of liability under a bond given in less than the maximum amount has been reached, further drawback on monthly claims shall not be allowed until a strengthening or superseding bond in a sufficient amount is furnished.

§ 17.145 Date of filing claim.

Quarterly claims for drawback shall be filed with the regional director (compliance) within six months after the quarter in which the distilled spirits covered by the claim were used in the manufacture of nonbeverage products. Monthly claims for drawback may be filed at any time after the end of the month in which the distilled spirits covered by the claim were used in the manufacture of nonbeverage products, but shall be filed not later than the close of the sixth month succeeding the quarter in which the spirits were used.

§ 17.146 Information to be shown by the claim.

(a) The claim shall set forth the following:

(1) Whether the special tax has been paid.

(2) That the distilled spirits on which drawback is claimed were properly taxpaid or tax-determined at the distilled spirits rate.

(3) That the distilled spirits on which the drawback is claimed were used in the manufacture of nonbeverage products.

(4) Whether the nonbeverage products were manufactured in compliance with quantitative formulas approved under Subpart F of this part. (If not, attach explanation.)

(5) That the data submitted in support of the claim are correct.

(b) The manufacturer shall identify the month or months covered by the claim. The regional director (compliance) may require the manufacturer to separate the necessary data into the individual months covered by the claim.

§ 17.147 Supporting data.

(a) *General.* Each claim for drawback shall be accompanied by supporting data presented according to the format in paragraph (c) of this section (or according to any other suitable format which provides the same information). If certain lines or columns are not applicable to a manufacturing operation, then such lines or columns may be omitted. Quantities of spirits shall be shown in proof gallons; quantities of nonbeverage products shall be shown in wine gallons (except for nonliquid products).

(b) *Specific instructions.* The following instructions refer to the format presented in paragraph (c) of this section:

(1) Separate accounts under Part II shall be maintained for spirits taxpaid at different effective tax rates. However, spirits reported in column (c) may be combined in a single account, since such spirits are ineligible for drawback.

(2) In Part II, line 1, spirits "in process" are spirits contained in unfinished intermediate products or unfinished nonbeverage products, prior to the time of use of the spirits as determined under the principles of

§ 17.152. Spirits in process are distinguished by the source of the spirits; thus, spirits in process would appear in column (a) if the spirits had not been previously used, but would appear in column (d) if the spirits had come from intermediate products. No distinction is required between spirits "on hand" and spirits "in process."

(3) Any gain reported in columns (a), (b), or (d) of line 5 of Part II shall be reflected by an equivalent deduction from the amount of drawback claimed. Such a gain shall not be offset by losses in other columns.

(4) In column (b) of Part III, if a formula was adopted from another plant under § 17.125(b), the name of the plant at which the formula was first approved shall be shown in addition to the formula number. (If such an adopted formula was originally approved for use at more than one plant, only the plant listed in item 8 of the approved ATF Form 5530.5 need be shown.)

(5) If spirits taxpaid at more than one effective tax rate were used during the claim period in one nonbeverage product, then the number of proof gallons at each drawback rate shall be shown separately by subdividing columns (d) and (e) of Part III. (The drawback rate is $1.00 less than the effective tax rate.)

(6) Part IV shall contain a certification that the physical inventories required by § 17.167 were taken, and an explanation of any discrepancies in the distilled spirits account (Part II) disclosed thereby.

(c) *Format.*

BILLING CODE 4810-31-M

Supporting Data for Drawback Under 27 CFR Part 17

Name of Claimant _____

Address _____

_____

Period covered (Check one)

____ Quarter ____ Month

Ending _____

PART I - IDENTIFICATION OF SPECIAL TAX STAMP

Control Number (a)	Rate of Special Tax (b)	Expiration Date (c)

PART II - DISTILLED SPIRITS ACCOUNT (PROOF GALLONS)

Effective Tax Rate _____ (if other than $12.50/proof gallon)

	Eligible Spirits Not Previously Used in Intermediate or Nonbeverage Products (a)	SPIRITS RECOVERED: In the Manufacture of Intermediate Products (Eligible) (b)	SPIRITS RECOVERED: In the Manufacture of Nonbeverage Products (Ineligible) (c)	Eligible Spirits Content of Intermediate Products (d)
1. On Hand/In Process, Start of Period				
DURING PERIOD: 2. Received				
DURING PERIOD: 3. Recovered				
DURING PERIOD: 4. Produced				
5. Gain Disclosed by Closing Inventory				
6. Total to Account for (Add Lines 1-5)				
DURING PERIOD: 7. Used in Nonbeverage Products				
DURING PERIOD: 8. Used in Intermediate Products				
DURING PERIOD: 9. Otherwise Used (Not Subject to Drawback)				
10. Loss Disclosed by Closing Inventory				
11. On Hand/In Process, End of Period				
12. Total Accounted for (Add Lines 7-11)				

PART III - PRODUCTION OF NONBEVERAGE PRODUCTS

INFORMATION FROM ATF F 5530.5: Name and Description of Product (a)	Formula Number (or "NF," "USP," or "HPUS") (b)	Ineligible Recovered Spirits Used (proof gallons) (c)	ELIGIBLE SPIRITS USED: Amount (proof gallons) (d)	ELIGIBLE SPIRITS USED: Drawback Rate (if other than $11.50/proof gallon) (e)	Finished Product Produced (wine gallons) (f)
1.					
2.					
3.					

PART IV - ADDITIONAL AND EXPLANATORY INFORMATION

BILLING CODE 4810-31-C

§ 17.148 Allowance of claims.

(a) *General.* Except in the case of fraudulent noncompliance, no claim for drawback shall be denied for a failure to comply with either 26 U.S.C. 5131–5134 or the requirements of this part, if the claimant establishes that spirits on which the tax has been paid or determined were in fact used in the manufacture of medicines, medicinal preparations, food products, flavors, or flavoring extracts, which were unfit for beverage purposes.

(b) *Penalty.* Noncompliance with the requirements of 26 U.S.C. 5131–5134 or of this part subjects the claimant to a civil penalty of $1,000 for each separate claim item, or the amount claimed on that item, whichever is less, unless the claimant establishes that the noncompliance was due to reasonable cause.

(c) *Reasonable cause.* Reasonable cause will be accepted as a defense to a civil penalty where a claimant establishes it exercised ordinary business care and prudence, and still was unable to comply with the statutory and regulatory requirements. Mere ignorance of law or regulations shall not be considered to be reasonable cause.

(Sec. 452, Pub. L. 98–369, 98 Stat. 819 (26 U.S.C. 5134(c))

Spirits Subject to Drawback

§ 17.151 Use of distilled spirits.

Distilled spirits are considered to have been used in the manufacture of a product under this part if the spirits are consumed in the manufacture, are incorporated into the product, or are determined by ATF to have been otherwise utilized as an essential part of the manufacturing process. However, spirits lost by causes such as spillage, leakage, breakage or theft, prior to or during the process of manufacture, are not considered to have been used in the manufacture of a product.

§ 17.152 Time of use of spirits.

(a) *General.* Distilled spirits shall be considered used in the manufacture of a product as soon as that product contains all the ingredients called for by its formula.

(b) *Spirits used in an ion exchange column.* Distilled spirits used in recharging an ion exchange column, the operation of which is essential to the production of a product, shall be considered to be used when the spirits are entered into the manufacturing system in accordance with the product's formula.

(c) *Products requiring additional processing or treatment.* Further manipulation of a product, such as aging or filtering, subsequent to the mixing together of all of its ingredients, shall not postpone the time when spirits are considered used, as determined under the principle in paragraph (a) of this section. This is true even if at the time of use there has not yet been a final determination of alcoholic content by assay. If, however, it is later found necessary to add more distilled spirits to standardize the product, such added spirits shall be considered as used in the period during which they were added.

(d) *Nonbeverage products used to manufacture other products.* Nonbeverage products may be used to manufacture other nonbeverage (or intermediate) products. However, such subsequent usage of a nonbeverage product shall not affect the time when the distilled spirits contained therein are considered used. When distilled spirits are used in the manufacture of a nonbeverage product, the time of use shall be determined by when that product first contains all of its prescribed ingredients, and such use shall not be determined by the time of any subsequent usage of that product in another product.

§ 17.153 Recovered spirits.

(a) *Recovery from intermediate products.* Eligible spirits recovered in the manufacture of intermediate products are not subject to drawback until such recovered spirits are used in the manufacture of a nonbeverage product. (However, see § 17.127 with respect to optional treatment of ingredients as unfinished nonbeverage products, rather than as intermediate products.) Spirits recovered in the manufacture of intermediate products shall be reused only in the manufacture of intermediate or nonbeverage products.

(b) *Recovery from nonbeverage products.* Distilled spirits recovered in the manufacture of a nonbeverage product are considered as used in the manufacture of that product and, if eligible, are subject to drawback when so used. Upon recovery, such spirits may be reused in the manufacture of nonbeverage products, but shall not be reused for any other purpose. When reused, such recovered distilled spirits are not again eligible for drawback and shall not be used in the manufacture of intermediate products.

(c) *Cross references.* For additional provisions respecting the recovery of distilled spirits and related recordkeeping requirements, see §§ 17.168 and 17.183.

§ 17.154 Spirits contained in intermediate products.

Spirits contained in an intermediate product are not subject to drawback until that intermediate product is used in the manufacture of a nonbeverage product.

§ 17.155 Spirits consumed in manufacturing intermediate products.

Spirits consumed in the manufacture of an intermediate product—which are not contained in the intermediate product at the time of its use in nonbeverage products—are not subject to drawback. Such spirits are not considered to have been used in the manufacture of nonbeverage products. However, see § 17.127 with respect to optional treatment of ingredients as unfinished nonbeverage products, rather than as intermediate products.

Subpart H—Records

§ 17.161 General.

Each person claiming drawback on taxpaid distilled spirits used in the manufacture of nonbeverage products shall maintain records showing the information as required in this subpart. No particular form is prescribed for the records required by this subpart, but the data required to be shown shall be clearly recorded and organized to enable ATF officers to trace each operation or transaction, monitor compliance with law and regulations, and verify the accuracy of each claim. Ordinary business records, including invoices and cost accounting records, are acceptable if they show the required information or are annotated to show any such information that is lacking. The records shall be kept complete and current at all times, and shall be retained by the manufacturer at the place covered by the special tax stamp for the period prescribed in § 17.170.

§ 17.162 Receipt of distilled spirits.

(a) *Distilled spirits received in tank cars, tank trucks, barrels, or drums.* For distilled spirits received in tank cars, tank trucks, barrels, or drums the manufacturer shall record, with respect to each shipment received—

(1) The date of receipt;

(2) The name and address of the person from whom received;

(3) The serial number or other identification mark (if any) of the tank car, tank truck, barrel, or drum;

(4) The name of the producer or warehouseman who paid or determined the tax;

(5) The effective tax rate (if other than $12.50 per proof gallon); and

(6) The kind, quantity, and proof of the spirits.

(b) *Distilled spirits received in bottles.* For distilled spirits received in bottles, the manufacturer shall record—

(1) The date of receipt;

(2) The name and address of the seller;

(3) The serial number of each case, if the bottles are received in cases;

(4) The name of the bottler;

(5) The effective tax rate (if other than $12.50 per proof gallon); and

(6) The kind, quantity, and proof of the spirits.

(c) *Distilled spirits received by pipeline.* For distilled spirits received by pipeline, the manufacturer shall record—

(1) The date of receipt;

(2) The name of the producer or warehouseman who paid or determined the tax;

(3) The effective tax rate (if other than $12.50 per proof gallon); and

(4) The kind, quantity, and proof of the spirits.

(d) *Determination of quantity.* At the time of receipt, each manufacturer shall determine (preferably by weight) and record the exact number of proof gallons of distilled spirits received. However, if the spirits are received in a tank car or tank truck and the result of the manufacturer's gauge of the spirits is within 0.2 percent of the number of proof gallons reported on the invoice covering the tax determination of the spirits, then the number of proof gallons reported on the invoice may be recorded as the quantity received. Nevertheless, the receiving gauge shall be noted on the record of receipt. If, for any shipment, the amount recorded in the manufacturer's records as the quantity received is greater than the amount shown on the invoice as taxpaid, a deduction equivalent to the excess shall be made from the amount of drawback claimed in the manufacturer's claim covering that period—or, if no claim is filed for that period, in the manufacturer's next claim. Losses in transit that exceed the 0.2 percent limitation provided in this paragraph shall be determined and noted on the record of receipt. Such losses shall not be recorded as distilled spirits received.

§ 17.163 Evidence of taxpayment of distilled spirits.

(a) *Shipments from distilled spirits plants.* A serially numbered commercial invoice or shipping document shall be obtained from the supplier with each shipment of taxpaid spirits from the bonded premises of a distilled spirits plant, and shall be kept by the manufacturer as evidence of taxpayment of the spirits. Each such invoice or shipping document shall bear a certification as to taxpayment by an agent or employee of the person who paid (or determined) the tax, as required by Part 19 of this chapter, and shall show the effective tax rate (if other than $12.50 per proof gallon) applicable to the shipment.

(b) *Purchases from wholesale and retail liquor dealers.* Manufacturers shall obtain commercial invoices or other documentation pertaining to purchases of distilled spirits made from wholesale and retail liquor dealers (including such operations when conducted in conjunction with a distilled spirits plant).

(c) *Imported spirits.* For imported spirits that were taxpaid through Customs, evidence of such taxpayment (such as Customs Forms 7501 and 7505, receipted to indicate payment of tax, and the certificate of wine content and flavors content, if applicable) shall be secured from the importer and retained by the manufacturer.

§ 17.164 Production record.

(a) *General.* Each manufacturer shall keep a production record for each batch of intermediate product and for each batch of nonbeverage product. The production record shall be an original record made at the time of production by a person having actual knowledge thereof. The record shall show the name and formula number of the product, the quantities of all ingredients used in the manufacture of the batch (including both eligible and ineligible spirits), the date when spirits were used in the manufacture of the batch (see § 17.152), the effective tax rate applicable to those spirits (if other than $12.50 per proof gallon), the quantity of product produced, and the alcohol content thereof. If the product was properly manufactured in compliance with a formula submitted on ATF Form 5530.5 or exempt from such submission under § 17.132, the production record need only show the usage of those ingredients which are listed in the product's formula, and the actual quantities of such ingredients used. If drawback is claimed on spirits consumed as an essential part of the manufacture of a nonbeverage product, but not contained in that product when completed, then the production record shall show the quantity of spirits so consumed in manufacture of each batch. If any product is produced by a continuous process rather than by batches, the production record shall pertain to the total quantity of that product produced during each claim period.

(b) *Determining quantity of distilled spirits used.* Each manufacturer shall accurately determine, by weight or volume, and record in his production records the number of proof gallons of all distilled spirits used. When the quantity used is determined by volume, adjustments shall be made if the temperature of the spirits is above or below 60 degrees Fahrenheit. A table for correction of volume of spirituous liquors to 60 degrees Fahrenheit, Table 7 of the "Gauging Manual," is available. See Subpart E of Part 30 of this chapter and § 30.67. Losses after receipt due to leakage, spillage, evaporation, or other causes not essential to the manufacturing process shall be accurately recorded in the manufacturer's permanent records at the time such losses are determined.

§ 17.165 Receipt of raw ingredients.

For raw ingredients destined to be used in nonbeverage or intermediate products, the manufacturer shall record, for each shipment received —

(a) The date of receipt;

(b) The quantity received; and

(c) The identity of the supplier.

§ 17.166 Disposition of nonbeverage products.

(a) *Shipments.* For each shipment of nonbeverage products, the manufacturer shall record —

(1) The formula number of the product;

(2) The date of shipment;

(3) The quantity shipped; and

(4) The identity of the consignee.

(b) *Other disposition.* For other dispositions of nonbeverage products, the manufacturer shall record —

(1) The type of disposition;

(2) The date of disposition; and

(3) The quantity of each product so disposed of.

(c) *Exception.* The manufacturer need not keep the records required by paragraphs (a) and (b) of this section for any nonbeverage product which either—

(1) Contains less than 3 percent of distilled spirits by volume, or

(2) Is sold by the producer directly to the consumer in retail quantities.

However, when needed for protection of the revenue, the regional director (compliance) may at any time require the keeping of these records upon at least five days' notice to the manufacturer.

§ 17.167 Inventories.

(a) *Distilled spirits.* The "on hand/in process" figures reported in Part II of the supporting data required by § 17.147 shall be verified by physical inventories

taken as of the end of each claim period for which a claim is filed. Spirits taxpaid at different effective tax rates shall be inventoried separately. Details of the inventories (when taken, by whom taken, subtotals for each product inventoried) shall be retained with the manufacturer's records. The manufacturer shall explain in Part IV of the supporting data any discrepancy between the amounts on hand as disclosed by physical inventory and the amounts indicated by the manufacturer's records. Any gain in eligible spirits disclosed by inventory requires a deduction from the claim with which the inventory is reported (see § 17.147(b)(3)). If no claim is filed, then no physical inventory is required for that claim period.

(b) *Raw ingredients and nonbeverage products.* When necessary for ensuring compliance with regulations and protection of the revenue, the regional director (compliance) may require a manufacturer to take physical inventories of finished nonbeverage products, and/or raw ingredients intended for use in the manufacture of nonbeverage or intermediate products. The results of such inventories shall be recorded in the manufacturer's records. Any discrepancy between the amounts on hand as disclosed by physical inventory and such amounts as indicated by the manufacturer's records shall also be recorded with an explanation of its cause.

§ 17.168 Recovered spirits.

Each manufacturer intending to recover distilled spirits under the provisions of this part shall notify the regional director (compliance) of his intention to do so and shall advise him of where the operations will be conducted. The manufacturer shall keep a record of the distilled spirits recovered and the subsequent use to which such spirits are put. The record shall show—

(a) The date of recovery;

(b) The commodity or process from which the spirits were recovered;

(c) The amount (proof gallons) of distilled spirits recovered;

(d) The amount (proof gallons) of recovered distilled spirits reused;

(e) The commodity in which the recovered distilled spirits were reused; and

(f) The date of reuse.

§ 17.169 Transfer of intermediate products.

If intermediate products are transferred as permitted by § 17.185, supporting records of such transfers shall be kept at the shipping and receiving plants, showing the date and quantity transferred.

§ 17.170 Retention of Record.

Each manufacturer shall retain for a period of not less than 3 years all records required by this part, a copy of all claims and supporting data filed in support thereof all commercial invoices or other documents evidencing taxpayment or tax-determination of domestic spirits, all documents evidencing taxpayment of imported spirits, and all bills of lading received which pertain to shipments of spirits. In addition, a copy of each formula submitted on ATF Form 5530.5 shall be retained at each factory where the formula is used, for not less than 3 years from the date of filing of the last claim for drawback under the formula. A copy of an approval to use an alternate method or procedure shall be retained as long as the manufacturer empoys the method or procedure, and for 3 years thereafter. Further, the regional director (compliance) may require these records, forms, and documents to be retained for an additional period of not more than 3 years in any case where he deems such retention to be necessary or advisable for protection of the revenue.

§ 17.171 Inspection of records.

All of the records, forms, and documents required to be retained by § 17.170 shall be kept at the place covered by the special tax stamp and shall be readily available during the manufacturer's regular business hours for examination and copying by ATF officers. At the same time, any other books, papers, records or memoranda in the possession of the manufacturer, which have a bearing upon the matters required to be alleged in a claim for drawback, shall be available for inspection by ATF officers.

(Sec. 5133, 68A Stat. 623 (26 U.S.C. 5133); sec. 201, Pub. L. 85–859, 72 Stat. 1348 (26 U.S.C. 5146))

Subpart I—Miscellaneous Provisions

§ 17.181 Exportation of medicinal preparations and flavoring extracts.

Medicinal preparations and flavoring extracts, approved for drawback under the provisions of this part, may be exported subject to 19 U.S.C. 1313(d), which authorizes export drawback equal to the entire amount of internal revenue tax found to have been paid on the domestic alcohol used in the manufacture of such products. (Note: Export drawback is not allowed for imported alcohol under this provision of customs law.) Claims for such export drawback shall be filed in accordance with the applicable regulations of the U.S. Customs Service. Such claims may cover either the full rate of tax which has been paid on the alcohol, if no nonbeverage drawback has been claimed thereon, or else the remainder of the tax if nonbeverage drawback under 26 U.S.C. 5134 has been or will be claimed.

§ 17.182 Drawback claims by druggists.

Drawback of tax under 26 U.S.C. 5134 is allowable on taxpaid distilled spirits used in compounding prescriptions by druggists who have paid the special tax prescribed by 26 U.S.C. 5131. The prescriptions so compounded shall be shown in the supporting data by listing the first and last serial numbers thereof. The amount of taxpaid spirits used in each prescription need not be shown, but such prescriptions shall be made available for examination by ATF officers. If refills have been made of prescriptions received in a previous quarter, their serial numbers shall be recorded separately. Druggists claiming drawback as authorized by this section are subject to all the applicable requirements of this part, except those requiring the filing of quantitative formulas.

§ 17.183 Disposition of recovered alcohol and material from which alcohol can be recovered.

(a) *General.* Manufacturers of nonbeverage products shall not sell or transfer recovered alcohol to any other premises. Further, material from which alcohol can be recovered shall not be sold or transferred unless the alcohol has been removed or an appropriate substance has been added to prevent recovery of residual alcohol. Material from which alcohol can be recovered may also be destroyed on the manufacturer's premises by a suitable method. Except as provided in paragraph (b) of this section, prior written approval shall be obtained from the regional director (compliance) as to the adequacy, under this section, of any substance proposed to be added or of any proposed method of destruction.

(b) *Spent vanilla beans.* Spent vanilla beans containing residual alcohol may be destroyed on the manufacturer's premises by burning, or they may be removed from those premises after treatment with sufficient kerosene, mineral spirits, rubber hydrocarbon solvent, or gasoline to prevent recovery of residual alcohol, without specific approval from the regional director (compliance).

§ 17.184 Distilled spirits container marks.

All marks required by Part 19 of this chapter shall remain on containers of taxpaid distilled spirits until the contents are emptied. Whenever such a container is emptied, such marks shall be completely obliterated.

(Sec. 454, Pub. L. 98–369, 98 Stat. 820 (26 U.S.C. 5206(d)))

§ 17.185 Requirements for intermediate products and unfinished nonbeverage products.

(a) *General.* Self-manufactured ingredients made with taxpaid spirits may be accounted for either as intermediate products or as unfinished nonbeverage products. The manufacturer may choose either method of accounting for such self-manufactured ingredients (see § 17.127). However, his choice of method determines the requirements that will apply to those ingredients, as prescribed in paragraphs (b) and (c) of this section.

(b) *Intermediate products.* Intermediate products shall be used exclusively in the manufacture of nonbeverage products. Intermediate products may be accumulated and stored indefinitely and may be used in any nonbeverage product whose formula calls for such use. Intermediate products shall be manufactured by the same entity that manufactures the finished nonbeverage products. Intermediate products shall not be sold or transferred between separate and distinct entities. However, they may be transferred to another branch or plant of the same manufacturer, for use there in the manufacture of approved nonbeverage products. For the purposes of this section, the phrase "separate and distinct entities" includes parent and subsidiary corporations, regardless of any corporate (or other) relationship, and even if the stock of both the manufacturing firm and the receiving firm are owned by the same persons.

(c) *Unfinished nonbeverage products.* An unfinished nonbeverage product shall only be used in the particular nonbeverage product for which it was manufactured, and shall be entirely so used within the time limit stated in item 7 of the approved ATF Form 5530.5. Spirits dissipated or recovered in the manufacture of unfinished nonbeverage products shall be regarded as having been dissipated or recovered in the manufacture of nonbeverage products. Spirits contained in such unfinished products shall be accounted for in the supporting data under § 17.147 and inventoried under § 17.167 as "in process" in nonbeverage products. Production of unfinished nonbeverage products shall be recorded as part of the production records for the applicable nonbeverage products. Unfinished nonbeverage products shall not be transferred to other premises.

§ 17.186 Transfer of distilled spirits to other containers.

A manufacturer may transfer taxpaid distilled spirits from the original package to other containers at any time for the purpose of facilitating the manufacture of products unfit for beverage use. Containers into which distilled spirits have been transferred under this section shall bear a label identifying their contents as taxpaid distilled spirits, and shall be marked with the serial number of the original package from which the spirits were withdrawn.

§ 17.187 Discontinuance of business.

A nonbeverage product manufacturer who discontinues business may sell his entire stock of taxpaid distilled spirits on hand in a single sale without qualifying as a wholesaler under Part 1 of this chapter or paying special tax as a liquor dealer under Part 194 of this chapter. The manufacturer likewise may return the distilled spirits to the person from whom purchased, or he may destroy the spirits or give them away.

Paragraph B. The regulations in 27 CFR Part 19 are amended as follows:

PART 19—[AMENDED]

1. The authority citation for Part 19 is revised to read as follows:

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5041, 5061, 5062, 5066, 5101, 5111–5113, 5171–5173, 5175, 5176, 5178–5181, 5201–5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271, 5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

2. The table of sections is amended to reflect the addition of §§ 19.51 and 19.52 and the related undesignated center heading, and the removal of § 19.69, as follows:

* * * * *

Subpart D—Administrative and Miscellaneous Provisions

Activities Not Subject to this Part

19.51 Recovery and reuse of denatured spirits in manufacturing processes.
19.52 Use of taxpaid distilled spirits to manufacture products unfit for beverage use.

Authorities of the Director

* * * * *

19.69 [Reserved]

* * * * *

3. A new undesignated center heading and two new sections, §§ 19.51–52, are added. Section 19.51 contains the material formerly found in § 19.69, while § 19.52 contains material formerly round in Subpart U of 27 CFR Part 170. As added, the new undesignated center heading and §§ 19.51 and 19.52 read as follows:

Activities Not Subject to this Part

§ 19.51 Recovery and reuse of denatured spirits in manufacturing processes.

The following persons are not, by reason of the activities listed below, subject to the provisions of this part, but they shall comply with the provisions of Part 20 of this chapter relating to the use and recovery of spirits or denatured spirits:

(a) Manufacturers who use denatured spirits, or articles or substances containing denatured spirits, in a process wherein any part or all of the spirits, including denatured spirits, are recovered.

(b) Manufacturers who use denatured spirits in the production of chemicals which do not contain spirits but which are used on the permit premises in the manufacture of other chemicals resulting in spirits as a by-product.

(c) Manufacturers who use chemicals or substances which do not contain spirits or denatured spirits (but which were manufactured with specially denatured spirits) in a process resulting in spirits as a by-product.

(Sec 201, Pub. L. 85–859, 72 Stat. 1372, as amended (26 U.S.C. 5271))

§ 19.52 Use of taxpaid distilled spirits to manufacture products unfit for beverage use.

(a) *General.* Apothecaries, pharmacists, and manufacturers are not required to qualify as processors under 26 U.S.C. 5171 before manufacturing or compounding the following products, if the tax has been paid or determined on all of the distilled spirits contained therein:

(1) Medicines, medicinal preparations, food products, flavors, and flavoring extracts, conforming to the standards for approval of nonbeverage drawback products found in §§ 17.131–17.137 of this chapter, whether or not drawback is actually claimed on those products. Except as provided in paragraph (c) of this section, a formula need not be submitted if drawback is not desired.

(2) Patented, patent, and proprietary medicines that are unfit for use for beverage purposes.

(3) Toilet, medicinal, and antiseptic preparations and solutions that are unfit for use for beverage purposes.

(4) Laboratory reagents, stains, and dyes that are unfit for use for beverage purposes.

(5) Flavoring extracts, syrups, and concentrates that are unfit for use for beverage purposes.

(b) *Products classed as liquors.* Products specified under Part 17 of this chapter as being fit for beverage use are held to be liquors. Bitters, patent medicines, and similar alcoholic preparations which are fit for beverage purposes, although held out as having certain medicinal properties, are also classed as liquors. Such products are required to be manufactured on the bonded premises of a distilled spirits plant, and are subject to the provisions of this part.

(c) *Formulas and samples; when required.* On request of the Director, or when in doubt as to the classification of a product, the manufacturer shall submit to the Director the formula for and a sample of the product for examination to verify the manufacturer's claim of exemption from qualification requirements.

(d) *Change of formula; when required.* If the regional director (compliance) finds at any time that any product manufactured under this section as an unfit product is being used for beverage purposes, or for mixing with beverage liquors other than by a processor, he shall notify the manufacturer to desist from manufacturing the product until the formula is changed to make the product not susceptible of beverage use and the change is approved by the Director. However, the provisions of this paragraph shall not prohibit the use of unfit products in small quantities for flavoring drinks at the time of serving for immediate consumption. Where, pursuant to notice, the manufacturer does not desist, or the formula is not so modified as to make the product unsusceptible of beverage use, the manufacturer shall immediately qualify as a processor.

(Sec. 805, Pub. L. 96–39, 93 Stat. 275, 276 (26 U.S.C. 5002, 5171))

§ 19.69 [Removed]

4. Section 19.69 is removed.

Paragraph C. The regulations in 27 CFR Part 170 are amended as follows:

PART 170—[AMENDED]

1. The authority citation for Part 170 is revised to read as follows:

Authority: 26 U.S.C. 5001, 5064, 5202, 5291, 5301, 5362, 7805; 31 U.S.C. 9304, 9306.

2. The table of sections is revised to reflect the removal of Subpart U, as follows:

* * * * *

170.311 Penalties.

Subparts P–Y—[Reserved]

Subpart Z—Regulations Respecting Wine and Wine Products Rendered Unfit for Beverage Use

* * * * *

§§ 170.611 through 170.618 [Removed]

3. Subpart U, consisting of §§ 170.611 through 170.618, is removed.

Paragraph D. The regulations in 27 CFR Part 194 are amended as follows:

PART 194—[AMENDED]

1. The authority citation for Part 194 is revised to read as follows:

Authority: 5 U.S.C. 552; 26 U.S.C. 5001, 5002, 5111–5124, 5124, 5142, 5143, 5145, 5146, 5202, 5206, 5207, 5301, 5352, 5555, 5613, 5681, 5691, 6001, 6011, 6061, 6065, 6071, 6091, 6109, 6311, 6314, 6402, 6511, 6601, 6621, 6651, 6657, 6676, 7011, 7805.

§ 194.33 [Amended]

§ 194.191 [Amended]

2. The cross references in §§ 194.33(b) and 194.191(a) are amended to conform to the other amendments made by this document, by replacing the words "Part 170" with the words "§ 19.52."

PART 197—[REMOVED]

Paragraph E. Title 27 CFR Part 197 is removed.

Signed: June 9, 1987.

W.T Drake,

Acting Director.

Approved: July 6, 1987.

Francis A. Keating II,

Assistant Secretary (Enforcement and Operations).

[FR Doc. 87–16960 Filed 7–28–87; 8:45 am]

BILLING CODE 4310–31–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

Permanent State Regulatory Program for Illinois

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for a public comment period on its intention to remove one condition of the Secretary of Interior's approval of the Illinois permanent regulatory program (hereinafter referred to as the Illinois program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Condition 913.11(c) concerned the use of siltation structures other than sedimentation ponds in Illinois. This notice sets forth the times and locations that the Illinois program is available for public inspection and the comment period during which interested persons may submit written comments on the removal of condition 913.11(c).

DATES: Written comments, data, or other relevant information relating to the removal of condition 913.11(c) not received on or before 4:00 P.M. August 28, 1987 will not necessarily be considered.

ADDRESSES: Written comments should be mailed or hand-delivered to James Fulton, Director, Springfield Field Office, Office of Surface Mining, 600 East Monroe Street, Room 20, Springfield, Illinois 62701.

Copies of the Illinois program and all written comments received in response to this notice will be available for review at the OSMRE Field Office listed above and at the OSMRE and State regulatory authority offices listed below, Monday through Friday, 8:30 a.m. to 4:00 p.m., excluding holidays.

Office of Office of Surface Mining, Reclamation and Enforcement, Room 5131, 1100 L Street NW., Washington, DC 20240.

Illinois Department of Mines and Minerals, Land reclamation Division, 227 South Seventh Street, Room 201, Springfield, Illinois 62706.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Fulton, Director, Springfield Field Office, Office of Surface Mining Reclamation and Enforcement, 600 E. Monroe Street, Springfield, Illinois 62701; Telephone: (217) 492–4495.

SUPPLEMENTARY INFORMATION: The Illinois program was conditionally approved by the Secretary of the Interior on June 1, 1982. Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the condition of approval of the Illinois program can be found in the June 1, 1982 **Federal Register** (47 FR 23858—23883).

In accepting the Secretary's conditional approval, Illinois agreed to satisfy condition 913.11(c) by June 1, 1983. The deadline has been extended several times by mutual agreement between the Secretary and the State as

the result of Federal and State litigation which would impact the condition.

OSMRE's September 26, 1983 rulemaking established new requirements for siltation structures (48 FR 43956). At 30 CFR 816.46(b)(2) and 817.46(b)(2), OSMRE required that all surface drainage from a disturbed area be passed through a siltation structure. In Section 816.46(a) and 817.46(b)(2), OSMRE defined a siltation structure to be a sedimentation pond, a series of sedimentation ponds or other treatment facility. Other treatment facilities were defined in those sections to include any that have a point source discharge and are used to prevent additional contribution of suspended solids to stream flow or runoff outside the permit area. This requirement was adopted in order to implement Sections 515(b)(10)(B) and 516(b)(9)(B) of the Act, which mandate the use of the "best technology currently available (BTCA)" to prevent additional contributions of suspended solids to streamflow or runoff outside the permit area.

At the time of Illinois program approval sediment ponds alone were considered as BTCA.

Condition 913.11(c) was imposed to require that Illinois would not utilize provisions in the Illinois program which allowed for alternatives to sediment ponds under the Illinois definition of sediment control structure.

The United States District Court for the District of Columbia on July 15, 1985 ruled that the September 26, 1983 preamble to the Federal rule failed to articulate a reason for requiring siltation structures in every instance.

The District Court noted that evidence in the OSMRE record pointing to negative impacts of siltation structures was dismissed without reasoned analysis. The Court stated further that in the face of recognized problems, OSMRE failed to support the statement that siltation ponds were BTCA. Based upon these findings the Federal rules were remanded by the the District Court.

As a result of the definition of BTCA contained in Section 701.5 of the Federal rules is controlling. That definition clearly indicates that BTCA is to be determined by the regulatory authority on a case-by-case basis.

The Illinois definition of BTCA is the same as Section 701.5 of the Federal regulations.

The full text of Illinois rule 1816.42(a)(1) which required the imposition of condition 913.11(c) follows:

Section 1816.42 Hydrologic balance: Water quality standards and effluent limitations. (a)(1) All surface drainage from the disturbed area shall be passed through a siltation structure or series of siltation structures before leaving the permit area. Siltation structures and treatment facilities shall be maintained until the quality of the untreated drainage from the disturbed area meets the applicable State and Federal water quality requirements for the receiving streams; the operator completes backfilling, grading and drainage control on the disturbed area; and permanent species of vegetation have been established on the disturbed area. When the siltation structure is removed, the area from which it is removed shall be graded and vegetated.

As a result of the remand and interpretation by the United States District Court of the relationship between siltation structures and BTCA, OSMRE believes Illinois rules are consistent with the Federal rules and condition of approval 913.11(c) can therefore be removed. The current Illinois rules provide for the use of siltation structures which result in outflows that meet applicable effluent standards.

The Director now seeks public comment on the removal of condition 913.11(c) and the implementation of the Illinois rule 1816.42(a)(1).

Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that pursuant to section 702(d) of SMCRA 30 U.S.C. 1292(d) no environmental impact statement need be prepared for this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from section 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action OSMRE is exempt from the requirement to prepare a Regulatory Impact Analysis and this action does not require regulatory review by OMB.

The Department of the Interior has determined that the removal of this condition would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 801 et seq.). This change would not impose any new requirements: rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act.* This removal of this condition does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 913

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: July 17, 1987.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 87-17218 Filed 7-28-87; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 917

Reopening of the Public Comment Period on a Modification to the Kentucky Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Reopening of comment period.

SUMMARY: OSMRE is reopening the public comment period on the substantive adequacy of certain program amendments submitted by the Commonwealth of Kentucky to modify the Kentucky permanent regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments pertain to stream buffer zones and backfilling and grading of underground mine face-up areas.

This notice sets forth the times and locations that the Kentucky program and the proposed amendments are available for public inspection and the comment period during which interested persons may submit written comments on the proposed program elements.

DATES: Written comments not received on or before August 31, 1987, will not necessarily be considered.

ADDRESSES: Written comments should be mailed or hand deliverd to: W. Hord Tipton, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504.

FOR FURTHER INFORMATION CONTACT: W. Hord Tipton, Director, Lexington, Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504; Telephone: (606) 233-7237.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Availability of Copies

Copies of the Kentucky program, the proposed modifications to program, and all written comments received in response to this notice will be available for review at the OSMRE Offices and the Office of the State regulatory authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays.

Lexington Field Office, Office of Surface Mining, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504;

Office of Surface Mining Reclamation and Enforcement, Room 5315A, 1100 L Street NW., Washington, DC 20240;

Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow Road, Hudson Hollow Office Park, Frankfort, Kentucky 40601.

Pursuant to 30 CFR 732.17(h)(2)(ii), each requestor may receive, free of charge, one single copy of the proposed amendment by contacting OSMRE's Lexington Field Office listed under "**ADDRESSES.**"

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanation in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Lexington, Kentucky Field Office will not necessarily be considered and included in the Administrative Record for the final rulemaking.

II. Background on the Kentucky State Program

On April 13, 1982, the Secretary approved the Kentucky program. The approval was effective upon publication of the notice of conditional approval in the May 18, 1982 **Federal Register** (47 FR 21404–21435). Information pertinent to the general background on the Kentucky State Program, including the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Kentucky program can be found in the May 19, 1982 **Federal Register** notice. Subsequent actions concerning the conditittions of approval and program amendments are identified at 30 CFR 917.11, 917.15, 917.16 and 917.17.

III. Submission of Program Amendments

On February 27, 1987, the Kentucky Natural Resources and Environmental Protection Cabinet (NREPC) submitted to OSMRE, pursuant to 30 CFR 732.17, certain revisions to the Kentucky regulatory program (Administrative Record No. KY–730). The revisions were intended to address the required amendments at 30 CFR 917.16(d), concerning stream buffer zones and underground mine face-up areas.

On March 27, 1987, OSMRE announced receipt of the rules and opportunity for public comment and a public hearing (52 FR 9890). The public comment period closed April 27, 1987. The public hearing scheduled for April 21, 1987, was not held because no one requested an opportunity to testify.

On June 11, 1987, OSMRE sent a letter to Kentucky outlining some concerns with the proposed amendments and offering an opportunity for Kentucky to submit additional modification to or explanation of its rules. On July 10, 1987, Kentucky submitted modified amendments along with additional explanation (Administrative Record No. KY–743). The concerns expressed in OSMRE's letter and addressed in Kentucky's resubmission are listed briefly below:

1. OSMRE was concerned that the proposed Kentucky rules at 405 16:060 and 18:060 section 11(1)(b) would protect only against long-term effects on water quantity or quality of intermittent or perennial streams, while the Federal rules at 30 CFR 816.57(a)(1) and 817.67(a)(1) do not distinguish between short-term and long-term effects.

2. OSMRE was concerned that the proposed Kentucky rules at 405 KAR 16:060 and 18:060 section 11(1)(c) which protect against "long-term detrimental effects on other valuable environmental resources, as determined by the cabinet," may be less effective than the Federal rules at 30 CFR 816.57(a)(1) and 817.57(a)(1) which do not restrict consideration of adverse environmental effects to the long term and do not modify the term "environmental resources."

3. OSMRE required assurance that the amended rules would apply to all permits approved on or after the effective date of OSMRE approval.

Kentucky's resubmission contains modifications and explanations intended to address OSMRE's concerns. Therefore, OSMRE is reopening the public comment period for fifteen days to allow public comment on the proposed program amendments as modified. Comments should specifically address the issues of whether the amendments are in accordance with SMCRA and no less effective than its implementing regulations.

List of Subjects in 30 CFR Part 917

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: July 24, 1987.

Arthur W. Abbs,

Acting Assistant Director, Program Policy.

[FR Doc. 87–17219 Filed 7–28–87; 8:45 am]

BILLING CODE 4310–05–M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 202

[Docket RM 87–4]

Registration and Deposit of Computer Screen Displays; Public Hearing

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of public hearing.

SUMMARY: This notice is issued to inform the public that the Copyright Office of the Library of Congress is reviewing its registration and deposit practices for computer screen displays. The Office will examine current policies and practices, and will specifically consider two questions; first, whether or not the Office should register any screen displays separately from the underlying computer programs that generate them; and, second, what the Office should require as the deposit if any registration is made for screen displays either separately or as part of a computer program. This notice invites participation in a public hearing intended to elicit comments, views, and information that will assist the Office in this review of its registration procedures. Written comments are also solicited. The Office particularly invites comment from or participation by computer programming experts and professors of law and computer science.

DATES: The hearing will be held on September 9, 1987 in Washington, DC. Anyone desiring to testify should contact the Office of the General Counsel, Copyright Office at (202) 287–8380 by August 28, 1987. Ten copies of written statements should be submitted to the Copyright Office by 4:00 p.m. on September 4, 1987, if possible, and in any case no later than September 9, 1987. Written comments are also invited by October 9, 1987, from persons who do not wish to testify.

ADDRESSES: Hearing location: The hearing will be held on September 9, 1987 in the Mumford Room of the James Madison Memorial Building, LM–649, sixth floor, Library of Congress, First and Independence Avenue, SE., Washington, DC, beginning at 9:30 a.m.

BEST COPY AVAILABLE

Ten copies of written statements, supplementary statements, or comments should be submitted as follows:

If sent by mail: Library of Congress, Department 100, Washington, DC 20540.

If delivered by hand: Office of the General Counsel, Copyright Office, James Madison Memorial Building, Room 407, First and Independence Avenue, SE., Washington, DC.

All requests to testify should clearly identify the individual or group desiring to testify.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, DC 20559, (202) 287–8380.

SUPPLEMENTARY INFORMATION: Original computer programs are works of authorship protected by copyright, whether they are in high level computer language (source code) or machine language (object code), *Williams Electronics, Inc.* v. *Artic International, Inc.*, 685 F.2d 870 (3d Cir. 1982); and, since 1964, the Copyright Office has registered computer programs as literary works. Section 101 of the Copyright Act of 1976, title 17 of the United States Code, defines a computer program as "a set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result." Copyright registration is made for original computer programs in the literary work classification upon submission of an appropriate application, fee, and deposit copies identifying the work. In general, the first 25 pages or the equivalent and the last 25 pages or the equivalent of computer source code should be deposited in seeking registration. 37 CFR 202.20(c)(2)(vii).

The Copyright Act also provides that "[i]n no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work." 17 U.S.C. 102(b).

The courts have held in several videogame cases that pictorial and graphic screen displays can be copyrighted as audiovisual works, independently of the computer program that generates them. *M. Kramer Manufacturing Co., Inc.* v. *Andrews*, 783 F.2d 421 (4th Cir. 1986); *Williams Electronics, Inc.* v. *Artic International, Inc.*, 685 F.2d 870 (3d Cir. 1982); *Stern Electronics, Inc.* v. *Kaufman*, 669 F.2d 852 (2d Cir. 1982).

Consistent with these videogame precedents, the Copyright Office has registered separately pictorial screen displays that meet the ordinary standard of original, creative authorship. Under present practices, however, the Office does not register separately textual screen displays, reasoning that there is no authorship in ideas, or the format or arrangement of text, and that any literary authorship in the screen display would presumably be covered by the underlying computer program—itself a literary work.

Judicial decisions are split on the copyrightability of screen displays and lend no clear guidance. One court has held that protection of computer programs extends only to source and object code and not to input formats. *Synercom Technology, Inc.* v. *University Computing Company*, 462 F.Supp. 1003 (N.D. Tex. 1978). Others have protected the structure, sequence and organization of business-related programs, including the text and artwork of their audiovisual displays. *Broderbund Software, Inc.* v. *Unison World, Inc.*, 648 F.Supp. 1127 (N.D. Cal. 1986); *Whelan Associates, Inc.* v. *Jaslow Dental Laboratory, Inc.*, 797 F.2d 1222 (3d Cir. 1986). Most recently, in *Digital Communications Associates, Inc.* v. *Softklone Distributing Corp.*, Civ. No. 86–128–A ¶ 26,088 Copyright Law Rptr. (CCH) (N.D. Ga. 1987), a court held the copyright in a computer program does not extend to the screen displays, but also held valid a separately registered menu screen based on compilation of terms.

The Office is receiving an increased number of claims to register textual and pictorial screen displays separate from the underlying programs that generate them. These claims present registration issues about which the Office must make registration determination pursuant to its examination function under the Copyright Act, 17 U.S.C. 410. The Office must decide whether or not to register. If we register, we must develop practices covering acceptable statements of claims on the applications and the nature of acceptable deposit material. The Office currently processes applications regarding computer screen displays in accordance with the practices noted above. It is aware that screen displays involve complex issues, and is concerned about the validity of current registration practices in light of the *Digital Communications* case, especially.

The Office is considering modification of existing practices. For example, we have considered expanding the deposit requirement for computer programs to allow the optional deposit of material covering the screen displays explicitly, whether the display is pictorial or textual. Before making any adjustments of registration practices, the Office concluded that it should receive public comment and elicit information about the computer screen displays.

Accordingly, the Copyright Office will hold a public hearing on September 9, 1987 for the purpose of eliciting comment on the proper procedures for the registration, if appropriate, and deposit of computer screen displays.

The Office would like to receive as much information as possible about the science and art of generating screen displays by operating a computer. For this reason we particularly solicit comment from computer programming experts about the creation of computer programs and screen display materials, and the relationship between the program and the material displayed. We also solicit comment from law professors and other members of the public about the range of legal issues involved in registration and deposit of computer screen displays. Comments are specifically invited in the following areas:

(1) Should a screen display be registered separately from the underlying computer program that generates it under any circumstances?

(2) If the response to question one is yes, specify the circumstances under which separate registration should be made.

(3) Should a distinction be made between the registration of a textual and a pictorial display?

(4) What should be the appropriate deposit if any registration is made, either as part of a computer program registration or separately?

(5) What is the relationship between a computer program and the generation of a screen display? Describe the technology and methods of creating the displays.

(6) Can completely different computer program codes produce a substantially similar screen display? Explain the technology. Discuss the degree of similarity.

(7) How will our registration decisions affect the public interest in encouraging the development of new and improved computer programs. Will this interest be helped or hurt?

Dated: July 16, 1987.

Ralph Oman,

Register of Copyrights.

Daniel J. Boorstin,

The Librarian of Congress.

[FR Doc. 87–17122 Filed 7–28–87; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 7E3467/P428; FRL-3239.3]

Pesticide Tolerance for Benomyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for the combined residues of the fungicide benomyl and its metabolites in or on the raw agricultural commodity pistachios. The proposed regulation to establish a maximum permissible level for residues of the fungicide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR–4).

DATE: Comments, identified by the document control number [PP 7E3467/P428], must be received on or before August 28, 1987.

ADDRESS:

By mail, submit written comments to: Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460

In person, bring comments to: Room 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Inforamtion not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Donald R. Stubbs, Emergency Response and Minor Use Section (TS–767C), Registration Division, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Office location and telephone number: Room 716H, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703)–557–1806.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 7E3467 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR–4 Project and the Agricultural Experiment Station of California.

This petition requested that the Agency, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the combined residues of the fungicide benomyl (methyl 1-[butylcarbamoyl]-2-benzimidazolecarbamate) and its metabolites containing the benzimidazole moiety (calculated as benomyl) in or on the raw agricultural commodity pistachios at 0.2 part per million (ppm). The petitioner proposed that this use of benomyl on pistachios be limited to California based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance were:

1. A 2-year dog feeding study with a no-observed-effect level (NOEL) of 500 ppm (12.5 milligrams (mg)/kilogram (kg) of body weight (bw)/day).

2. A 2-year rat feeding study with a NOEL of 2,500 ppm (125 mg/kg bw/day, highest dose tested). There were no oncogenic effects observed under the conditions of the study at feeding levels of 100, 50, and 2,500 ppm (equivalent to 5, 25, and 125 mg/kg/day).

3. A three-generation rate reproduction study with no effect on reproductive performance up to 100 ppm (5.0 mg/kg bw/day).

4. Benomyl has been shown to cause teratogenic effects in rats (microphthalmia) and mice (cleft palate, supernumerary ribs, subnormal vertebral centrum). The NOEL's for teratogenic effects are established at 30 mg/kg/day for rats and 50 mg/kg/day for mice.

A comprehensive review of the data available for benomyl was conducted in connection with the rebuttable presumption against registration (RPAR) for the chemical, which was published in the **Federal Register** of December 6, 1977 (42 FR 61788). This presumption was based on information indicating that benomyl posed the risks of mutagenicity (point mutation and nondisjunction), spermatogenic depression and teratogenic effects, acute toxicity to aquatic organisms, and significant population reduction in nontarget organisms. In the **Federal Register** of August 30, 1979 (44 FR 51166), the Agency published a Preliminary Notice of determination, which concluded that benomyl continued to pose the risks noted above with the exception of point mutations and significant population reductions in nontarget organisms. In the Notice and the accompanying Position Document 2/3, the Agency weighed the risks and benefits of use together, and determined that certain modifications to the terms and conditions of use were necessary to reduce the risks of use to aplicators.

The Agency's position concerning the RPAR issues with benomyl was published in the **Federal Register** of October 20, 1982 (47 FR 46747). In the Notice of Determination Concluding the Rebuttable Presumption Against Registration (PD–4) for benomyl, the Agency determined that the benefits of benomyl use exceed the risk of use if a dust mask is used when mixing and loading for aerial application. Registrants are required to amend their product labels to require use of a dust mask for persons who mix and load benomyl for aerial application.

Subsequent to these findings, the Agency received oncogenicity studies for benomyl using CD–1 mice and its major metabolite methyl 2–benzimidate carbamate (MBC) using CD–1 mice, SPF Swiss mice and HOE NMRKf mice. The Agency has completed review of the oncogenicity studies and concludes that benomyl and MBC tested positive for oncogenicity (liver tumors) in CD–1 mice. MBC also tested positive for oncogenicity in SPF Swiss mice but not in HOE NMRKf mice.

The Agency has classified benomyl as a Group C carcinogen (possible human carcinogen) based on the following considerations:

1. The oncogenic responses observed with benomyl and its metabolite MBC were confined to the mouse liver.

2. The 2–year rat feeding study was negative for oncogenic effects.

3. The liver tumors produced by benomyl and MBC were observed in two genetically related strains of mice (CD–1 and SPF Swiss); live tumors were not observed in HOE NMRKf mice.

4. Benomyl and MBC produced weak mutagenic effects consistent with spindle poison activity rather than gene mutation or DNA repair activity.

The Agency has completed a preliminary risk assessment from dietary exposure resulting from registered and proposed uses of benomyl. The upper limit to the oncogenic, lifetime risk resulting from the worst-case dietary exposure to previously published tolerances is estimated to be 7.52 X 10–5. The incremental dietary risk from tolerance level residues of benomyl on pistachios would not change the upper limit, oncogenic risk calculation. Margins of safety (MOS) for teratogenicity from dietary exposure from current uses would amount to 761, and the MOS for pistachios is 34,884. The MOS for reproductive effects (damage to spermatogonia and seminal vesicles) resulting from existing tolerances and the proposed use of benomyl is 1,717.

The acceptable daily intake (ADI), based on the three-generation rat reproduction study (NOEL of 100 ppm, or 5.0 mg/kg/day) and using a 100-fold safety factor, is calculated to be 0.05 mg/kg of body weight (bw)/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 3.0 mg/day. The theoretical maximum residue contribution (TMRC) from existing uses of benomyl based on the average 1.5-kg daily diet of a 60-kg adult is calculated to be 1.9735 mg/day. The current action will increase the TMRC by 0.00009 mg/day (0.005 percent). Published tolerances utilize 65.78 percent of the ADI; the current action will utilize an additional 0.003 percent.

The nature of the residues is adequately understood and adequate analytical methods, flurometric spectrometry or liquid chromatography employing an ultra-violet detector, are available in the Pesticide Analytical Manual, Volume II (PAM–II), for enforcement purposes. Secondary residues are not expected in meat or milk from the proposed use since pistachios are not an animal feed item. There are currently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency, the tolerance established by amending 40 CFR 180.294 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal, Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 7E3467/P428]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: July 20, 1987.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.294 is amended by adding and alphabetically inserting the raw agricultural commodity pistachios in paragraph (b), to read as follows:

§ 180.294 Benomyl; tolerances for residues.

* * * * *

(b) * * *

Commodities	Parts per million
Pistachios	0.2

* * * * *

[FR Doc. 87–17165 Filed 7–28–87; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 5E3269/P426; FRL-2239-2]

Pesticide Tolerance for Oxyfluorfen

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that tolerances be established for residues of the herbicide oxyfluorfen and its metabolites in or on the raw agricultural commodities broccoli, cabbage, and cauliflower. The proposed regulation to establish a maximum permissible level for residues of the herbicide in or on the commodities was requested in a petition submitted by the Inter-regional Research Project No. 4 (IR–4).

DATE: Comments, identified by the document control number [PP 5E3269/P426], must be received on or before (August 13, 1987).

ADDRESS:

By mail, submit written comments to: Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

In person, bring comments to: Room 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Donald R. Stubbs, Emergency Response and Minor Use Section (TS–767C), Registration Division, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460,

Office location and telephone number: Room 716H, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557–1806.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 5E3269 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR–4 Project and the Agricultural Experiment Stations of Florida, Hawaii, Illinois, Maryland, North Carolina, Tennessee, Virginia and the U.S. Department of Agriculture.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of tolerances for residues of the herbicide oxyfluorefen [2-chloro-1-(3-ethoxy-4-nitrophenoxy)-4-(trifluoromethyl)benzene] and its metabolites containing the diphenyl ether linkage in or on the raw agricultural commodities broccoli, cabbage, and cauliflower at 0.05 part per million (ppm).

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerances are sought. The toxicological data considered in support of the proposed tolerances include:

1. A 20-month mouse chronic feeding/ocogenicity study with a no-observed-effect level (NOEL) of 2 ppm (equivalent to 0.3 milligram (mg) per kilogram (kg) of body weight (bw)) per day and a lowest effect level (LEL) of 20 ppm (increased absolute liver weight and nonneoplsastic histological lesions). The Cancer Assessment Group (CAG) was asked to evaluate the oncogenic potential of oxyfluorfen. CAG requested a 90-day mouse study be performed as an estimate to determine the maximum tolerated dose (MTD). Subsequently, it was determined that toxicological concerns were not considered sufficient to regulate oxyfluorfen as an oncogen, and oxyfluorfen received unconditional registration by the Agency.

2. A 2-year dog feeding study with a NOEL of 100 ppm (equivalent to 2.5 mg/kg/day).

3. A rat oral lethal dose LD50 greater than 5.0 grams (g)/kg.

4. A rabbit teratology study with no observed teratogenic effect at 30 mg/kg.

5. A rat teratology study with no observed terata at 1,000 mg/kg of bw (highest dose tested) and a fetotoxic NOEL of 100 mg/kg.

6. A three-generation rat reproduction study with a NOEL of 10 ppm (equivalent to 0.5 mg/kg of bw).

7. A 2-year rat chronic feeding/oncogenicity study with a NOEL of 40 ppm (equivalent to 2.0 mg/kg of bw) and no oncogenic potential observed under the conditions of the study at feeding levels of 2, 40, and 880 (highest dosage level raised to 1,600 ppm at 57 of the test).

8. A rat cytogenetic test (technical), negative; two Ames assays (technical), one positive and one negative; an Ames assay (purified oxyfluorfen), negative; an Ames assay (polar fraction), positive, Unscheduled DNA Synthesis (UDS) assays (polar fraction), negative; host mediated assay (technical, negative; unscheduled DNA synthesis (UDS) assay (technical), negative and mouse lymphoma assays, negative for purified oxyfluorfen and positive for the technical.

The acceptable daily intake (ADI), based on the chronic mouse feeding study NOEL of 0.3 mg/kg/day (2.0 ppm) and using a 100-fold safety factor, is calculated to be 0.003 mg/kg of body weight (bw)/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 0.18 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg daily diet is calculated to be 0.0006574 mg/kg/day; the current action will increase the TMRC by 0.0000113 mg/kg/day (1.7 percent). Published tolerances utilize 21.91 percent of the ADI; the current action will utilize an additional 0.38 percent.

There are no regulatory actions pending against this pesticide. Oxyfluorfen was the subject of a Rebuttable Presumption Against Registration (RPAR); one of the solvents used in the production of technical oxyfluorfen, perchloroethylene (PCE), has been shown to produce liver tumors in mice. In the Notice of Determination published in the **Federal Register** of June 23, 1982 (47 FR 27118), the Agency concluded that potential benefits from use of oxyfluorfen outweigh risks from PCE, provided oxyfluorfen products are produced with no more than 200 ppm PCE contaminant. The producer of oxyfluorfen has verified that oxyfluorfen formulations contain a maximum of 200 ppm PCE.

The nature of the residues is adequately understood and an adequate analytical method, gas chromatography, is available in the Pesticide Analytical Manual, Volume II (PAM–II), for enforcement purposes. There are currently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency the tolerance established by amending 40 CFR 180.381 would protect the public health. No secondary residues in meat, milk, poultry, or eggs are expected since broccoli, cabbage, and cauliflower are not considered livestock feed commodities. Therefore, it is proposed that the tolerances be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 15 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act. As provided for in the Administrative Procedure Act (5 U.S.C. 553(d)(3)), the comment period time is shortened to less than 30 days because of the necessity to expeditiously provide a means for control of weeds infesting these commodities.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 5E3269/P426]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: July 20, 1987.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a

2. Section 180.381 is amended by adding and alphabetically inserting the raw agricultural commodities broccoli, cabbage, and cauliflower in paragraph (a), to read as follows:

§ 180.381 Oxyfluorfen; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Broccoli	0.05
Cabbage	0.05
Cauliflower	0.05
* * * * *	

[FR Doc. 87-17166 Filed 7-28-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

46 CFR Part 586

[Docket No. 87-11]

Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Colombia Trade

AGENCY: Federal Maritime Commission.

ACTION: Notice of discontinuance.

SUMMARY: The Federal Maritime Commission discontinues this proceeding and withdraws proposed rule.

DATE: This action is effective July 29, 1987.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5740.

SUPPLEMENTARY INFORMATION: By a "Notice of Proposed Rulemaking" ("Proposed Rule") published on May 29, 1987 (52 FR 20119), the Commission instituted this proceeding under section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876, in response to a petition filed by O.N.E. Shipping, Ltd. ("O.N.E."), *Petition of O.N.E. Shipping, Ltd. for Issuance of Regulations to Adjust and Meet Conditions Unfavorable to Shipping in the Foreign Trade of the United States*, and a subsequent amended petition, Amendment to Petition of O.N.E. Shipping, Ltd. for Relief Under Section 19 of the Merchant Marine Act, 1920. The petitions alleged that the cargo preference laws of the Government of Colombia had damaged O.N.E.'s financial position by excluding O.N.E. from the U.S./Colombia liquid bulk trade.

The Proposed Rule would suspend the tariffs of Flota Mercante Grancolombiana, a Colombian-flag carrier, in the United States/Colombia trade unless authorized status is obtained from the Commission. The effect of the Proposed Rule would be to adjust or meet any unfavorable conditions by imposing burdens on a Colombian-flag carrier equal to those imposed on O.N.E. by Colombian laws and regulations. Interested persons were invited to submit comments on the Proposed Rule no later than July 24, 1987.

By letter dated July 17, 1987, O.N.E. has now withdrawn its petitions and requested the Commission to discontinue this proceeding. O.N.E. indicates that the Government of Colombia has assured it and the United States Government

that O.N.E. will be provided free access to the unreserved portion of the United States-Colombia liquid bulk trade, and that O.N.E. will be free to participate on the same terms and conditions as all other carriers, including Colombian-flag carriers and their associated carriers in the carriage of the unreserved cargoes.

Further, O.N.E. advises that the Government of Colombia made a commitment to work with O.N.E. "in order to eliminate any ambiguities in Colombian regulations which would prevent or hinder implementation of the assurances described above." Finally, O.N.E. requests that the time period for commenting on the Proposed Rule be suspended pending Commission disposition of this matter.

Given the Colombian Government's assurances to O.N.E. which led to O.N.E.'s stated withdrawal of its petitions and the fact that the Commission based its Proposed Rule and remedies therein on these petitions, there does not appear to be any need for further action on those petitions or the imposition of sanctions at this time. The Commission therefore shall discontinue this proceeding and withdraw its Proposed Rule.

This action is taken without prejudice to the Commission instituting a new proceeding under Section 19 should conditions in the United States/Colombia trade warrant.

Therefore, it is ordered, that this proceeding is discontinued and the Proposed Rule withdrawn.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 87-17095 Filed 7-28-87; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[Gen. Docket No. 86-337]

An Automatic Transmitter Identification System for Radio Transmitting Equipment; Correction

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; correction.

SUMMARY: On July 15, 1987, at 52 FR 26538, the Commission published a Notice of Proposed Rule Making (FCC 87-213) in the captioned proceeding. This document corrects the comment/replay comment dates.

DATES: The correct dates are October 7, 1987 and November 6, 1987, respectively.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: John R. Hudak, Chief, Signal Analysis Branch (202) 632-6977.

William J. Tricarico,

Secretary.

[FR Doc. 87-17167 Filed 7-28-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 67

[CC Docket No. 80-286]

Allocation Procedures for Category 3, Local Dial Switching

AGENCY: Federal Communications Commission.

ACTION: Order extending time to file comments.

SUMMARY: This action extends the time for interested parties to file comments in response to the Federal-State Joint Board Order inviting Comments and Request for Data. *Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board* CC Docket No. 80-286, 52 FR 25263 (July 6, 1987). That Order invited interested parties to file comments on or before July 31, 1987 and reply comments on or before August 21, 1987, regarding the separations procedures applicable to Category 3, Central Office Equipment (COE), Local Dial Switching Equipment.

This Order requested comments and data on the appropriate allocation factor for this category, including the possible use of switched minutes of use (SMOU). This extension is in response to a petition from the United States Telephone Association which contends that an extension of time would enable more companies to respond to the data request and would ensure that such responses contain more reliable data.

DATES: The comment period is extended to September 1, 1987. The reply period is extended to September 30, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Tom Quaile, Audits Branch, Accounting and Audits Division, Common Carrier Bureau, (202) 632–7500.

Federal Communications Commission.

Gerald Brock,

Chief, Common Carrier Bureau.

[FR Doc. 87–17165 Filed 7–28–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 69

[CC Docket No. 87–215; FCC 87–208]

Enhanced Service Providers; Exemption Charges

AGENCY: Federal Communications Commission (FCC).

ACTION: Proposed rule.

SUMMARY: This Notice proposes to eliminate the exemption from interstate access charges currently allowed enhanced service providers.

DATES: Comments are due on or before August 24, 1987, and reply comments are due on or before September 14, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Ruth Milkman, tele: (202) 632–4047.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking* in Common Carrier Docket 87–215, FCC 87–208, Adopted June 10, 1987, and Released July 17, 1987.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rulemaking

1. In this *Notice of Proposed Rulemaking (NPRM)*, we are proposing to eliminate the exemption from interstate access charges currently permitted enhanced service providers. In the *First Reconsideration Order* in the access charge proceeding in 1983, the Commission decided to exempt enhanced service providers and certain other users of local exchange access from the payment of interstate access charges. In the pre-access charge environment, enhanced service providers and WATS resellers were paying local business exchange service rates for their interstate access, rather than the higher amounts assessed to MTS and WATS through division of revenues and settlements. In 1983, the Commission decided that the immediate imposition of interstate access charges on enhanced service providers and resellers could affect their ability to provide service during the time that they were adjusting to the new access charge rules. Consequently, the Commission granted enhanced service providers, as well as resellers, a temporary exemption from the payment of interstate access charges.

2. In Common Carrier Docket No. 86–1, the Commission eliminated the access charge exemptions for resellers. The Commission said that concerns about rate shock may justify a temporary, but not a permanent, exemption. In Docket 86–1, the Commission also said that the elimination of the exemptions for resellers would result in a more economically rational and equitable pricing scheme.

3. This NPRM proposes to eliminate the exemption from access charges permitted to enhanced service providers. Enhanced service providers, like facilities-based interexchange carriers and resellers, use the local network to provide interstate services. To the extent that they are exempt from access changes, the other users of exchange access pay a disproportionate share of the costs of local exchange that access charges are designed to cover. The NPRM tentatively concludes that the temporary period during which an access charge exemption was appropriate has lapsed.

4. The Notice proposes that the application of access charges to enchanced service providers become effective on January 1, 1988.

5. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure, or record retention requirements, and will not increase or decrease burden hours imposed on the public.

6. The Commission has previously determined that the formal provisions of the Regulatory Flexibility Act are not applicable to proceedings to adopt or revise access charge rules because local exchange carriers, the parties directly subject to the access charge rules, do not fall within the Act's definition of a small entity. While we have not applied the formal procedures of the Regulatory Flexibility Act in this proceeding, we have considered and will consider the effects of the rule changes on enhanced service providers, some of which are small businesses, and we will consider the impact of rule changes upon small telephone companies.

Procedural Matters

7. Pursuant to 47 U.S.C. 154(i), 154(j), 201–05, 218, and 403, and 5 U.S.C. 553, notice is hereby given of the proposed adoption of new or modified rules.

8. All interested persons MAY FILE comments on the issues and proposals discussed herein not later than August 24, 1987 and replies may be filed not later than September 14, 1987. In accordance with the provisions of § 1.419 of the Commission's Rules, 47 CFR 1.419, an original and five copies of all statements, briefs, comments, or replies shall be filed with the Federal Communications Commission, Washington, DC, 20054, and all such filings will be available for public inspection in the Docket Reference Room at the Commission's Washington, DC office. In reaching its decision, the Commission may consider information and ideas not contained in filings, provided that such information is reduced to writing and placed in the public file, and provided that the fact of the Commission's reliance on any such information or ideas is noted in the Order.

9. For purposes of this nonrestricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted until the time a public notice is issued stating that a substantial disposition of the matter is to be considered in a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever occurs earlier. In general, an *ex parte* presentation is any written or oral communications (other than formal written comments, pleadings, and oral arguments) between a person outside the Commission and a Commissioner or

a member of the Commission's staff that addresses the merits of the proceeding.

10. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation, and that written summary must be served on the Commission's Secretary for inclusion into the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that Secretary has been served, and must also state by docket number the proceeding to which it relates. *See generally*, Section 1.1231 of the Commission's Rule, 47 CFR 1.1231.

List of Subjects in 47 CFR Part 69

Communications common carriers; Reporting and recordkeeping requirements; Telephone.

Proposed Rule Changes

Part 69 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 69—ACCESS CHARGES

1. The authority citation for Part 69 continues to read as follows:

Authority: Secs. 4, 201, 202, 203, 205, 218, 403, and 410 of the Communications Act as amended; 47 U.S.C. 154, 201, 202, 203, 205, 218, 403, and 410.

2. Section 69.2 is amended by revising paragraphs (m) and (gg), and adding a new paragraph (nn), to read as follows:

§ 69.2 Definitions.

* * * * *

(m) "End user" means any customer of an interstate or foreign telecommunications service that is not a carrier or an enhanced service provider except that a carrier other than a telephone company or an enhanced service provider shall be deemed to be an "end user" when such carrier or enhanced service provider uses a telecommunications service for administrative purposes and a person or entity that offers telecommunications services exclusively as a reseller shall be deemed to be an "end user" if all resale transmissions offered by such reseller originate on the premises of such reseller;

* * * * *

(gg) "Access minutes' or "access minutes of use" is that usage of exchange facilities in interstate or foreign service for the purpose of calculating chargeable usage. On the originating end of an interstate or foreign call, usage is to be measured from the time the originating end user's call is delivered by the telephone company and acknowledged as received by the interexchange carrier or enhanced service provider's facilities connected with the originating exchange. On the terminating end of an interstate or foreign call, usage is to be measured from the time the call is received by the end user in the terminating exchange. Timing of usage at both the originating and terminating end of an interstate of foreign call shall terminate when the calling or called party disconnects, whichever event is recognized first in the originating and terminating end exchanges, as applicable.

* * * * *

(nn) "Enhanced service provider" means a person providing "enhanced services" as defined in Section 64.702(a) of these rules.

3. Section 69.5 is amended by revising paragraph (b) to read as follows:

§ 69.5 Persons to be assessed.

* * * * *

(b) Carrier's carrier charges shall be computed and assessed upon all interexchange carriers or enhanced service providers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services or enhanced services.

* * * * *

4. Section 69.105 is amended by revising paragraphs (a) and (c) to read as follows:

§ 69.105 Carriers common line.

(a) A charge that is expressed in dollars and cents per access minute of use shall be assessed upon all interexchange carriers or enhanced service providers that use local exchange common line facilities for the provision of interstate or foreign telecommunications services or enhanced services.

* * * * *

(c) Any interexchange carrier or enhanced service provider providing interstate or foreign telecommunications services or enhanced services shall receive a credit for Carrier Common Line charges to the extent that it resells services for which these charges have already been assessed (*e.g.*, MTS or MTS-type service of other common carriers).

5. Section 69.106 is amended by revising paragraph (a) to read as follows:

§ 69.106 Line termination.

(a) A charge that is expressed in dollars and cents per access minute shall be assessed upon all interexchange carriers or enhanced service providers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services or enhance services.

* * * * *

6. Section 69.107 is amended by revising paragraph (a) to read as follows:

§ 69.107 Local switching.

(a) Charges that are expressed in dollars and cents per access minute of use shall be assessed upon all interexchange carriers or enhanced service providers that use local exchange switching facilities for the provision of interstate or foreign telecommunication or enhanced services.

* * * * *

7. Section 69.108 is amended by revising paragraph (a) to read as follows:

§ 69.108 Intercept.

(a) A charge that is expressed in dollars and cents per access minute of use shall be assessed upon all interexchange carriers or enhanced service providers that use local exchange switching facilities for the provision of interstate or foreign telecommunications or enhanced services.

* * * * *

9. Section 69.111 is amended by revising paragraph (a) to read as follows:

§ 69.111 Common transport.

(a) A charge that is expressed in dollar and cents per access minute shall be assessed upon all interexchange carriers or enhanced service providers that use switching or transmission facilities that are apportioned to the Common Transport element for purposes of apportioning net investment.

* * * * *

10. Section 69.112 is amended by revising paragraphs (b)(1) and (c) to read as follows:

§ 69.112 Dedicated transport.

* * * * *

(b) Appropriate subelements shall be established for the use of interface arrangements. Charges for such subelements shall be assessed and computed as follows: (1) Such charges shall be assessed upon all interexchange

carriers or enhanced service providers for the interface arrangements they use to provide interstate or foreign telecommunications or enhanced services;

* * * * *

(c) A charge for the use of voice grade transmission facilities shall be assessed upon interexchange carriers or enhanced service providers that use such facilities to provide interstate or foreign telecommunications or enhanced services. Such charges shall be expressed in dollars and cents per unit of capacity. Total units of capacity provided to an interexchange carrier or enhanced service provider shall be measured by ascertaining the number of conversations that could be transmitted simultaneously without producing blocking in the dedicated transport facilities. The capacity unit charge for carriers that offer MTS shall be weighted by a distance factor that reflects the airline distance between the entry switch and the interexchange facility. The capacity unit charged for other carriers or enhanced service providers shall be weighted by a distance factor that reflects the lesser or least of the airline distance between the entry switch and such carrier or enhanced service provider's interexchange facility or the airline distance between the entry switch and any interexchange facility of carriers that offer MTS that is located within 5 miles of such carrier or enhanced service provider's interexchange facility.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-17166 Filed 7-28-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-131]

Unlimited-time Operation by Existing AM Daytime-only Radio Broadcast Stations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; Extension of comment reply comment period.

SUMMARY: This action grants a motion for extension of time for filing comments and reply comments in response to the *Notice of Proposed Rule Making* in MM Docket No. 87-131 (Unlimited-time Operation by Existing AM Daytime-only Radio Broadcast Stations), 52 FR 20431, June 1, 1987. The Clear Channel Broadcasting Service (CCBS) requested that the deadline for filing comments be extended for two weeks to enable consulting engineering firms to complete various studies necessary for the filing of comments. WGN Continental Broadcasting Company filed in support of the extension. The Commission concluded that an extension of time was reasonably necessary to facilitate the completion of the subject studies. However, because of the importance of completing action in this proceeding promptly, the Commission extended the filing dates for ten days rather than the two weeks as had been requested.

DATES: Comments are now due by July 27, 1987 and replies by August 10, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Louis C. Stephens, Mass Media Bureau, (202) 254-3394.

SUPPLEMENTARY INFORMATION: The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

William H. Johnson,

Acting Chief, Mass Media Bureau.

[FR Doc. 87-17168 Filed 7-28-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-264, RM-5729]

Radio Broadcasting Services; Live Oak, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by WNER Radio, Inc., licensee of Station WQHL(FM), Live Oak, Florida, proposing to substitute Class Channel 251 for Channel 251C1 at Live Oak, and to modify its license to specify the new channel.

DATES: Comments must be filed on or before September 11, 1987, and reply comments on or before September 28, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Neal J. Friedman, Pepper and Corazzini, 200 Montgomery Building, 1776 K Street, NW., Washington, DC 20006. (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making MM Docket No. 87-264, adopted July 9, 1987, and released July 20, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules govening permissible *ex parte* contact.

For information regarding proper filing procedures for comments See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-17169 Filed 7-28-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-273, RM-5822]

Radio Broadcasting Services; Ormond-By-The-Sea, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests

comments on a petition for rule making filed by Miller Management Group, Inc., which proposes to allot Channel 239A to Ormond-By-The-Sea, Florida, as a first FM service.

DATES: Comments must be filed on or before September 14, 1987, and reply comments on or before September 29, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Richard E. Wiley, Wiley, Rein and Fielding, 1776 K Street, NW., Washington, DC 20006, (counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making MM Docket No. 87–273 adopted July 9, 1987, and released July 24, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules govening permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch Policy and, Rules Division, Mass Media Bureau.

[FR Doc. 87–17170 Filed 7–28–87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87–263, RM–5676]

Radio Broadcasting Services; Biddeford, ME

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by WYJY, Inc. proposing the substitution of Channel 232B1 for 232A at Biddeford, Maine, and modification of the license of FM Station WYJY–FM, to specify operation on Channel 232B1. Canadian concurrence is required for the allocation of Channel 232B1 at Biddeford.

DATES: Comments must be filed on or before September 11, 1987, and reply comments on or before September 28, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 29554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Richard J. Hayes, Jr., 1359 Black Meadow Road, Greenwood Plantation, Spotsylvania, Virginia 22553, (Counsel for the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–263, adopted July 9, 1987, and released July 20, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–17171 Filed 7–28–87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87–262, RM–5727]

Radio Broadcasting Services; Newberry, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests on a petition filed by Jack St. Andre, proposing the substitution of FM Channel 229C2 for Channel 228A at Newberry, Michigan, and modification of the license for Station WNBY to specify Channel 229C2. Canadian concurrence is required for the allotment of this channel.

DATES: Comments must be filed on or before September 11, 1987, and reply comments on or before September 28, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Steven J. Pena, Gurman, Kurtis & Blask, Chartered, 1730 M Street, NW., Suite 700, Washington, DC 20036, (Counsel for the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–262, adopted July 9, 1987, and released July 20, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed

Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-17172 Filed 7-28-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-261, RM-5719]

Radio Broadcasting Services; Taylorsville, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests on a petition filed by Blakeney Communications, Inc., proposing the substitution of Channel 240C2 for Channel 240A at Taylorsville, Mississippi, and modifications of the license for Station WBBN(FM) at Taylorsville to specify the higher class of channel. This proposal could provide a first wide coverage area station to Taylorsville. This proposal is contingent on Station WLPR, Channel 241 Mobile, Alabama relocating and modifying its facilities in accordance with its construction permit to full Class C standards.

DATES: Comments must be filed on or before July 9, 1987, and reply comments on or before July 20, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Fisher, Wayland, Cooper & Leader, 1255 23rd Street, NW., Suite 800, Washington, DC 20037, (Counsel for the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-261, adopted July 9, 1987, and released July 20, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-17173 Filed 7-28-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-257, RM-5853]

Radio Broadcasting Services; Wendover, NV

AGENCY: Federal Communication Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Rita Taylor to allocate Class C Channel 272 to Wendover, Nevada, as the community's first local FM service. Channel 272 can be allocated to Wendover in compliance with the Commission's minimum distance separation requirements. However, since Wendover is not listed in the 1980 U.S. Census, petitioner is requested to provide further information to show that the area is a "community" for allotment purposes. Absent such a showing, the allotment may not be made.

DATE: Comments must filed on or before September 14, 1987, and reply comments on or before September 29, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Howard M. Liberman, Esq., Arter & Hadden, 1919 Pennsylvania Avenue, NW., Washington, DC 20006 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-257, adopted July 9, 1987, and released July 21, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-17174 Filed 7-28-87; 8:45 am]

BILLING CODE 6713-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 70845-7095]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Sercvie (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustments and request for comments.

SUMMARY: NOAA announces inseason adjustments of the commercial fishery for all salmon species in the exclusive economic zone (EEZ) from Cape Falcon, Oregon, to the Queets River, Washington, to ensure that the subarea chinook salmon quota is not exceeded. The inseason adjustments (1) close an area from 3–10 miles offshore from North Head to the Queets River; (2) shorten the initial three-day opening to two days, July 25 and July 26; (3) change the closed period from Juy 28–30 to July 27–29; and (4) extend Conservation Zone 2, at the mouth of the Columbia River, to 10 nautical miles for this fishery. The adjustments are necessary to conform to the preseason announcement of 1987 mangement measures. This action is intended to ensure conservation of chinook salmon.

EFFECTIVE DATE: These inseason adjustments are effective at 0001 hours local time, July 25, 1987, until modified or rescinded. Comments on this closure will be received until August 7, 1987.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, NMFS, BIN C1570, 7600 Sand Point Way NE., Seattle, WA 98115–0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the same address.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten at (206) 526–6150.

SUPPLEMENTARY INFORMATION: Management measures for 1987 were effective on May 1, 1987 (52 FR 17284, May 6, 1987). The 1987 commercial fishery for all salmon species from the Queets River, Washington, to Cape Falcon, Oregon, was established as July 25 through July 27, and July 31 through the earlier of attainment of subarea quotas of either 15,000 chinook or 121,200 coho salmon.The subarea chinook quota was raised subsequently to 17,600 fish because of an under-quota chinook harvest in the May, 1987 commercial all-except-coho fishery (52 FR 24296, June 30, 1987).

Based on the best available information, the current ratio of chinook to coho salmon in the area is approximately .9 chinook to 1.0 coho. Because of this ratio, the troll fishery scheduled to begin July 25 will close upon attainment of its chinook quota with a large portion of its coho quota unharvested unless inseason adjustments are made to slow the harvest of chinook salmon until the proportion of chinook salmon availble in the area decreases. The highest proportion of chinook to coho salmon is in northern, near-shore areas at this time.

Accordingly, NOAA issues this notice to (1) close the area from 3–10 nautical miles offshore from North Head to the Queets River; (2) shorten the initial three-day opening to two days, July 25 and July 26, 1987; (3) change the closed period to July 27 through July 29; and (4) change the boundaries of Conservation Zone 2 for this fishery as follows:

Conservation Zone 2 is the ocean area surrounding the Columbia River mouth bounded by a line extended for 10 nautical miles due west from North Head along 46°18'00" N. latitude to 124°19'00" W. longitude, then southeasterly 150° True to 124°13'00" W. longitude and 46°11'06" N. latitude, then due east to the Columbia River Sea Buoy (46°11'06" N. latitude and 124°11'00" W. longitude), then northeasterly along the Red Buoy Line to the tip of south jetty.

Unless further inseason action is taken, the fishery will reopen as scheduled on July 31, 1987, if there are sufficient chinook left in the quota for at least one day's fishing. This notice does not apply to other fisheries which may be operating in this or other areas.

The Director, Northwest Region, MNFS (Regional Director), has determined that without these inseason adjustments the commercial subarea quota of 17,600 chinook salmon would be caught and the fishery closed before the majority of the coho quota could be harvested. This determination was made in consultation with the Chairman of the Pacific Fishery Management Counsil and representatives of the Oregon Department of Fish and Wildlife (ODFW) and the Washington Department of Fisheries (WDF) regarding these inseason adjustments. The ODFW and WDF representatives confirmed that Oregon and Washington will manage the commercial fishery for all salmon species in state waters adjacent to this subarea of the EEZ in accordance with this notice.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

(16 U.S.C. 1801 *et seq.*)

Dated July 24, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.

[FR Doc. 87–17254 Filed 7–24–87; 4:39 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 52, No. 145
Wednesday, July 29, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

July 24, 1987.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

- Farmers Home Administration

7 CFR Part 1951 Subpart L, Servicing Cases Where Unauthorized Loan or Other Financial Assistance was Received—Farmers Programs
On Occasion
Farms; Businesses or other for- profit; Small Businesses or organizations; 1,180 responses; 1,180 hours; not applicable under 3504(h)
Jack Holston, (202) 382–9736.

- Farmers Home Administration

7 CFR Part 1951 Subpart M, Servicing Cases Where Unauthorized Loan or Other Financial Assistance was Received—Single Family Housing
On Occasion
Individuals or households; Non-profit institutions; 2,150 responses; 2,125 hours; not applicable under 3504(h)
Jack Holston, (202) 382–9736.

- Farmers Home Administration

7–CFR Part 1951, Subpart N, Servicing Cases Where Unauthorized Loan or Other Financial Assistance was Received—Multiple Family Housing
On occasion
Individuals or households; State or local governments; Farms; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 700 responses; 800 hours; not applicable under 3504(h)
Jack Holston, (202) 382–9736

- Farmers Home Administration

7–CFR Part 1951, Subpart O, Servicing Cases Where Unauthorized Loan or Other Financial Assistance was Received—Community and Business Programs
On occasion
State or local governments; Non-profit institutions; 10 responses; 10 hours; not applicable under 3504(h)

Revision

- Federal Crop Insurance Corporation

Field Inspection and Claim for Indemnity
On occasion
Individuals or households; Farms; 103,261 responses; 25,810 hours; not applicable under 3504(h)
Karen Wakeham, (202) 447–6795

- National Agricultural Statistics Service

Farm Labor Survey
Quarterly
Farms; Businesses or other for-profit; 45,140 responses; 11,328 hours; not applicable under 3504(h)
Larry Gambrell, (202) 447–7737.

Jane A. Benoit,
Departmental Clearance Officer.

[FR Doc. 87–17236 Filed 7–28–87; 8:45 am]
BILLING CODE 3410–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–030]

Large Power Transformers From France; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request by the petitioner, the Department of Commerce has conducted an administrative review of the antidumping finding on large power transformers from France. The review covers one manufacturer of this merchandise to the United States and the period June 1, 1983 through May 31, 1985.

There were no shipments to the United States during the period June 1, 1983 through May 31, 1984. The manufacturer failed to respond to our questionnaire for the period June 1, 1984 through May 31, 1986. The Department has preliminarily determined to assess dumping duties using best information available for any entries during the period June 1, 1984 through May 31, 1986.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: July 29, 1987.

FOR FURTHER INFORMATION CONTACT: Laurie A. Lucksinger or David P. Mueller, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–1130/2923.

SUPPLEMENTARY INFORMATION:

Background

On September 20, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 36888) the final results of

its last administrative review of the antidumping finding on large power transformers from France (37 FR 11772, June 14, 1972). The petitioner, Westinghouse Electric Corporation, requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published notices of initiation of the antidumping duty administrative review on July 9, 1986 (51 FR 24884) and July 17, 1986 (51 FR 25923). The Department has now conducted these administrative reviews in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS") by January 1, 1988. In view of this, we will be providing both the appropriate *Tariff Schedule of the United States Annotated* ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are shipments of large power transformers ("transformers"); that is, all types of transformers rated 10,000 KVA (kilovolt-amperes) or above, by whatever name designated, used in the generation, transmission, distribution, and utilization of electric power. The term "transformers" includes, but is not limited to, shunt reactors, autotransformers, rectifier transformers, and power rectifier transformers. Not included are combination rectifier-transformer units, commonly known as rectiformers, if the entire integrated assembly is imported in the same shipment and entered on the same entry and the assembly has been ordered and invoiced as a unit, without a separate price for the transformer portion of the assembly. Transformers covered by this finding are currently classifiable under items 682.0755, 682.0765, and 682.0775 of the Tariff Schedules of the United States Annotated. These products are currently classifiable under HS item numbers 8504.22.00, 8504.23.00, 8504.34.00, 8504.40.00, 8504.50.00, and 8505.50.00.

The review covers one exporter of French large power transformers to the United States, Alsthom-Atlantique ("Alsthom"), and the period June 1, 1983 through May 31, 1986.

Preliminary Results of the Review

Alsthom made no shipments of large power transformers during the period June 1, 1983 through May 31, 1984. We did not receive a response to our questionnaire for the period June 1, 1984 through May 31, 1986.

We preliminarily determine to assess antidumping duties by using the best information available for the latter period. Our preliminary results are as follows:

Period	Margin (percent)
6/1/83 – 5/31/84	[1] 1.82
6/1/84 – 5/31/86	72.85

[1] No shipments during the period.

Interested parties may request disclosure and/or an administrative protective order within 5 days after the date of publication of this notice. Any requests for a hearing must be made within 8 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday thereafter. Interested parties may also submit written comments on these preliminary results within 30 days of the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided by section 751(a)(1) of the Tariff Act and based on the above margins, a cash deposit rate of estimated antidumping duties 72.85 percent shall be required for all shipments by Alsthom of large power transformers from France. For any future entries of this merchandise from a new exporter or manufacturer not covered in this prior administrative reviews, whose first shipments occurred after May 31, 1986 and who is unrelated to any previously reviewed firm, a cash deposit of 1.82 percent on large power transformers shall be required. These deposit requirements are effective for all shipments of French large power transformers entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675 (a)(1)) and section 353.53a of the Commerce Regulations (19 CFR 353.53a).

Dated: July 23, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary Import Administration.

[FR Doc. 87–17230 Filed 7–28–87; 8:45 am]

BILLING CODE 3510–DS–M

National Bureau of Standards

National Voluntary Laboratory Accreditation Program

AGENCY: National Bureau of Standards, Commerce.

ACTION: Publication of NVLAP Directory Supplement.

SUMMARY: The National Bureau of Standards (NBS) announces laboratory accreditation actions taken during the second quarter of 1987.

FOR FURTHER INFORMATION CONTACT: Harvey W. Berger, Manager, Laboratory Accreditation, ADMIN A531, National Bureau of Standards, Gaithersburg, MD 20899 (301) 975–4016.

SUPPLEMENTARY INFORMATION: This supplement to the 1986–87 NVLAP Directory of Accredited Laboratories (NBSIR 87–3519) is published pursuant to section 7.6(b) of the National Voluntary Laboratory Accreditation Program (NVLAP) Procedures (15 CFR 7.6(b)).

The following table summarizes NVLAP accreditation actions for the period April 1, 1987, through June 30, 1987.

	TIM	CTS	CAR	STD	ACO	CPL	DOS	SEA	ECT	Totals
Initial accreditations			1		1		2			+4
Terminations	1	2								-3
870630 Balance	37	25	21	9	8	6	48	1	15	171

The laboratories awarded initial accreditations are:

Carpet: Sponge Cushion, Morris, IL, Donald E. Barkley, 815–942–2300
Acoustics: Acoustic Systems, Acoustical Research Facility, Austin, TX, David Nelson, 512–444–1961
Dosimetry: Portland General Electric, Portland, OR, Norman C. Dyer, 503–556–3713, ICN Dosimetry Services, Costa Mesa, CA, S. Nemecek, 714–545–0100.

The laboratories whose accreditation was terminated are:

Insulation: Wise, Janney, Elstner, Assoc., Northbrook, IL
Concrete: Lincoln-Devore, Colorado Springs, CO, Philippine Geoanalytics, Manila, Philippines.
TIM—Insulation LAP
CTS—Construction Testing Services LAP (formerly Concrete LAP)
CAR—Carpet LAP
ACO—Acoustical Testing Services LAP
STO—Stove LAP
CPL—Commercial Products LAP (Paint, Paper, Mattresses)
DOS—Dosimetry LAP
SEA—Seals and Sealants LAP
ECT—Electromagnetic Compatibility and Telecommunications

Ernest Ambler,
Director.

Dated: July 23, 1987.

[FR Doc. 87–17124 Filed 7–28–87; 8:45 am]
BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

Approval of the Proposed Amendment To Incorporate the Chesapeake Bay Critical Areas Protection Program Act and Amending Regulations Into the Maryland Coastal Management Program (MCMP)

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management (OCRM), Department of Commerce.

ACTION: Approval of amendment.

SUMMARY: Notice is hereby given that the Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration (NOAA), on behalf of the Secretary of Commerce, approved on July 24, 1987 an amendment to the Maryland Coastal Management Program (MCMP) pursuant to the authority contained in section 306(g) of the Coastal Zone Management Act of 1972, as amended (CZMA), 16 U.S.C. 1455(g), and implementing regulations at 15 CFR 923.81. The amendment includes the incorporation of the Chesapeake Bay Critical Areas Protection Program Act (Chapter 794–1984), the Criteria for Local Critical Area Program Development adopted pursuant to the Chesapeake Bay Critical Area Act (CBCAA), Code of Maryland Regulations (COMAR 14.15.01–11) and the Laws amending the CBCAA: (i) Quorum Requirement (Chapter 601–1986); (ii) Growth allocation (Chapter 602–1986); (iii) Intra-Family Transfers (Chapter 603–1986); and (iv) Impervious Surfaces (Chapter 604–1986).

Approval of this amendment activities the responsibility of Federal agencies and persons applying for Federal licenses and financial assistance for activities affecting the Maryland coastal zone to be consistent with the Program pursuant to the Federal consistency provisions of the Coastal Zone Management Act as of the date of approval. Further information on the responsibilities of affected Federal agencies and applicants for Federal licenses and permits in this regard may be found in 15 CFR Part 930.

A copy of the findings made by the Director in determining that this program amendment meets the requirements of the Coastal Zone Management Act may be obtained upon request from the Office of Ocean and Coastal Resource Management.

Inquiries regarding this program should be addressed to: Mr. Joseph A. Uravitch, Regional Manager, South Atlantic and Gulf Regions, Office of Ocean and Coastal Resource Management, 1825 Connecticut Avenue NW., Washington, DC 20235, (202) 673–5138.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: July 24, 1987.

James P. Blizzard,
Acting Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 87–17213 Filed 7–28–87; 8:45 am]
BILLING CODE 3510–08–M

COMMISSION ON CIVIL RIGHTS

California Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the California Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 12:00 p.m. on August 12, 1987, at the Sheraton Town House, 2961 Wilshire Boulevard, Los Angeles, California 90010. The purpose of the meeting is to develop program plans and to receive a briefing on the status of the U.S. Commission on Civil Rights and its regional operations.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Helen Hernandez or Philip Montez, Director of the Western Regional Division (213) 894–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 20, 1987.

Susan J. Prado,
Acting Staff Director.

[FR Doc. 87–17137 Filed 7–28–87; 8:45 am]
BILLING CODE 6335–01–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products From Pakistan

July 24, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on August 3, 1987. For further information contact Pamela Smith, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 535–9481. For information on embargoes and quota re-openings, please call (202) 377–3715.

Background

Under section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and in accordance with the terms of the exchange of notes dated May 20, 1987 and June 11, 1987, which provide that a new agreement shall enter into force beginning on January 1, 1987 and extending through December 31, 1991, the Governments of the United States has decided to control imports for

certain cotton and man-made fiber textile products in Group I Categories 313, 315, 331, 334, 335, 336, 338, 339, 340, 341, 342, 347/348, 351, 352, 363, 369–D; cotton textile products in Categories 300, 301, 310–312, 314, 316–330, 332, 333, 337, 345, 349, 350, 353–362 and 369–0, as a group (Group II), and individual Categories 317, 319, 320, 337, 350 and 369–S within Group II; man-made fiber textile products in Categories 631, 634, 636, 638/639, 640, 641, 647/648, 659 and 666; and individual Categories 369–R and 635, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Accordingly, in the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption and withdrawal from warehouse for consumption, of cotton and man-made fiber textile products in the foregoing categories, produced or manufactured in Pakistan and exported during twelve-month period which began on January 1, 1987 and extends through December 31, 1987, in excess of the designated limits.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provision.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

July 24, 1987

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to exchange of notes dated May 20, 1987 and June 11, 1987, signed by the Governments of the United States and Pakistan; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on August 3, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987, in excess of the following restraint limits:

Category	12-mo restraint limit
Group I:	
313	64,000,000 sq Yds.
315	49,000,000 sq Yds.
331	650,000 doz prs.
334	38,500 doz.
335	50,000 doz.
336	131,079 doz.
338	2,700,000 doz.
339	650,000 doz.
340	140,255 doz.
341	242,513 doz.
342	60,000 doz.
347/348	315,574 doz.
351	40,000 doz.
352	200,000 doz.
363	25,500,000 numbers.
369–D[1]	2,000,000 pounds of which not more than 750,000 pounds shall be in pile dish towels—TSUSA 366.1720, 366.1740, 366.2020, 366.2040, 366.2420, and 366.2440.
Group II:	
300, 301, 310–312, 314, 316–330, 332, 333, 337, 345, 349, 350, 353–362, 369–0[2] and 369–S[3], as a group.	60,000,000 sq yds equiv.
317	6,000,000 sq yds.
319	4,500,000 sq yds.
320	6,000,000 sq yds.
337	30,000 doz.
350	25,000 doz.
369–S	650,000 pds.
Group III:	
631	450,000 doz prs.
634	37,500 doz.
636	60,000 doz.
638/639[4]	200,000 doz.
640	62,500 doz.
641	90,000 doz.
647/648	425,000 doz.
659	150,000 pds.
666	2,500,000 pds.
369–R[5]	15,000,000 pds.
635	16,849 doz.

[1] In Category 369, only dish towels in TSUSA numbers 665.6615, 366.1720, 366.1740, 366.2020, 366.2040, 366.2420, 366.2440 and 366.2860.

[2] In Category 369, all TSUSA numbers except those for dish towels in 665.6615, 366.1720, 366.1740, 366.2020, 366.2040, 366.2420, 366.2440 and 366.2860; bar mops in 366.1955 and shop towels in 366.2840.

[3] In Category 369, shop towels in TSUSA number 366.2840.

[4] The conversion factor for Categories 638 and 639 and 639 is 15.5.

[5] In Category 369, bar mops in TSUSA number 366.1955.

In carrying out this directive, entries of cotton and man-made fiber textile products in the foregoing categories, with the exception of Catgegories 634, 635, 636, 638/639, 640, 641, 647/648, 659 and 666, produced or manufactured in Pakistan, which have been exported to the United States on and after January 1, 1986 and extending through December 31, 1986, shall, to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during that period. In the event the levels of restraint established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter.

In carrying out the above directions, the Commissioner of Customs should construe entry into the Untied States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–17205 Filed 7–28–87; 8:45 am]

BILLING CODE 3510-DR-M

Export Visa Arrangement and Exempt Certification Requirements for Textiles and Textile Articles of Cotton, Man-Made Fiber, Silk Blends and Other Vegetable Fibers Produced or Manufactured in Pakistan

July 24, 1987.

The Chairman of the Committee for the Information of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, and amended, has issued the directive published below to the Commissioner of Customs to be effective on August 3, 1987. For further information contact Pamela Smith, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, DC, (202) 377–4212.

Background

A CITA directive dated May 27, 1983 (48 FR 25257), as amended on June 2, 1987 (52 FR 21611) established an export visa arrangement and exempt certification for certain cotton, man-

made fiber, silk blend and other vegetable fiber textiles and textile articles, produced or manufactured in Pakistan.

The Governments of the United States and Pakistan have agreed to further amend the existing export visa arrangement and exempt certification requirement to include the following amended list of part-category designations:

Category	Description
369-D	Dishtowels.
369-R	Cotton terry bar mops.
369-S	Sheetsheets.
369-O	Other.
631-W	Work gloves.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

July 24, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of May 27, 1983, as amended on June 2, 1987, issued to you by the Chairman, Committee for the Implementation of Textile Agreements, which established export visa and exempt certification requirements for certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Pakistan.

Effective on August 3, 1987 and until further notice, the existing export visa arrangement and exempt certification requirement established by the directive of May 27, 1983, as amended, are hereby further amended to include the following amended list of part-category designations:

369-D	369-O	631-W
369-R	369-S	

Accordingly, you are directed to prohibit, effective for shipments of cotton and man-made fiber textile products entered for consumption or withdrawn from warehouse for consumption into the Customs territory of the United States (i.e., the 50 States, the District of Columbia and the Commonwealth of Puerto Rico) on or after August 3, 1987, which have been produced or manufactured in Pakistan and exported on and after August 3, 1987 from Pakistan for which the Government of Pakistan has not issued an appropriate visa with the correct subpart category designation (e.g., 369-D). The part-category designations are as follows:

Category	TSUSA Nos.
369-D	365.6615, 366.1720, 366.1740, 366.2020, 366.2040, 366.2420, 366.2440 and 366.2860.
369-R	366.1955.
369-S	366.2640.
369-O	All remaining TSUSAs in Category 369.
631-W	704.3215, 704.6525, 704.6550, and 704.9000.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-17204 Filed 7-28-87; 8:45 am]

BILLING CODE 3510-DR-M

DELAWARE RIVER BASIN COMMISSION

Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, August 5, 1987 beginning at 9:30 a.m. in Room 334 of the offices of the Department of Environmental Conservation at 50 Wolf Road, Albany, New York. The hearing will be part of the Commission's regular business meeting which is open to the public.

The subjects of the hearing will be as follows:

Proposed Amendment to the Comprehensive Plan and Administrative Manual—Rules of Practice and Procedure. Notice was given in the June 30, 1987 **Federal Register**, Vol. 52, No. 125, that the Commission would hold a public hearing on August 5, 1987 to receive comments on proposed amendments to its Comprehensive Plan and Rules of Practice and Procedure in relation to penalties and settlements in lieu of penalties. Pursuant to the provisions of Delaware River Basin Compact §14.17, Penal Sanctions, the Commission is now proposing administrative procedures applicable where the Commission has information that there has been a violation or attempted violation of the Compact or any of its rules, regulations, or orders. The proposed amendments address notice to possible violators, records for decision-making, adjudicatory hearings, factors to be applied in assessing the amounts of penalties, enforcement, settlement by agreement in lieu of penalty and penalty suspension or modification. Written comments received by the Commission by the close of business on August 21 will be included in the hearing record.

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact:

1. *City of New Castle D-78-71 CP RENEWAL.* An application for the renewal of a ground water withdrawal project to supply up to 21.6 million gallons (mg)/30 days of water to the applicant's distribution system from Well No. 4. Commission approval on November 30, 1983 was limited to three years and has expired. The applicant requests that the total withdrawal from all wells remain limited to 48 mg/30 days. The project is located near the City of New Castle, New Castle County, Delaware.

2. *Audubon Water Company D-80-73 CP.* A well water supply project to serve portions of Lower Providence Township, Montgomery County, Pennsylvania. Designated as Well No. 13, the new facility was expected to yield 300,000 gallons per day (gpd), and has been pumped on a long-term basis in excess of 120,000 gpd. The well will continue to be used to increase pressure in the system and for fire protection.

3. *American Argo Corporation D-81-13 RENEWAL.* An application for the renewal of a ground water withdrawal project to supply up to 6.9 mg/30 days of water to the applicant's industrial facility from Well Nos. 3 and 5. Commission approval on August 5, 1982 was limited to five years and will expire unless renewed. The applicant requests that the total withdrawal from all wells remain limited to 6.9 mg/30 days under emergency conditions. The project is located in North Manheim Township and Schuylkill Haven Borough, Schuylkill County, Pennsylvania.

4. *Borough of Quakertown D-82-4 CP (Revision 2).* An application to increase total ground water withdrawals from the Borough of Quakertown's municipal water supply wells by 59,000 gpd (from 31.80 to 33.57 mg/30 days). By increasing ground water pumpage from Well Nos. 11 and 13, and decreasing the pumpage from Well Nos. 12, 14 and 15, there

would be a decrease in ground water withdrawal of 48,000 gpd from the Beaver Run Watershed. The wells are located in or near the Borough of Quakertown, Bucks County, and are in the Southeastern Pennsylvania Ground Water Protected Area.

5. *Mount Laurel Municipal Utilities Authority D–84–36 CP.* A revised application for a sewage treatment project to serve Mount Laurel Township in Burlington County, New Jersey. The existing Hartford Road STP will be modified to eliminate odor problems and to remove 90 percent BOD_5 and TSS from an average waste flow of 2.4 million gallons per day (mgd). Treated effluent will discharge to the Rancocas Creek in Mount Laurel Township, Burlington County.

6. *Coastal Eagle Point Oil Company D–86–15.* A revised application for approval of a ground water decontamination project to withdraw up to 4.32 mg/30 days of water from the applicant's new Well No. RW–1, 0.43 mg/30 days from new Well No. 147–2 and to retain the existing withdrawal limit from all wells of 232 mg/30 days. Water withdrawn will be directed to the applicant's existing wastewater treatment facility and discharged to the Delaware River. The project is located in West Deptford Township, Gloucester County, New Jersey.

7. *Township of Falls Authority D–86–17 CP.* An application for revision of the Comprehensive Plan to include expansion of the existing Falls Township Authority Sewage Treatment Plant from 3.2 mgd secondary treatment to 5.0 mgd tertiary treatment. The existing facility is located at Newportville Road and Ford Road in Bristol Township, Bucks County, Pennsylvania. Treated effluent will continue to be discharged to Neshaminy Creek, 350 feet downstream of the existing point of discharge. The expanded plant is designed to serve projected flows through the year 2010.

8. *Willingboro Municipal Utilities Authority D–86–28 CP.* An application to replace the withdrawal of water from Well No. 7 in the applicant's water supply system which has become an unreliable source of supply and also to approve existing Well No. 9 which was placed into service without Commission approval. The applicant requests that the withdrawal from replacement Well No. 10 be limited to 77.8 mg/30 days, and that the total withdrawal from all wells remain limited to 300 mg/30 days. The project is located in Willingboro Township, Burlington County, New Jersey.

9. *Upper Merion Municipal Utilities Authority D–87–13 CP.* An application to expand the Matsunk Water Pollution Control Center located a half mile south of the Pennsylvania Turnpike Schuylkill River Bridge in Upper Merion Township, Montgomery County. The 2.5 mgd plant will be expanded to treat an average annual flow of 5.5 mgd. The proposed plant is designed to provide secondary treatment of predominantly domestic waste through the year 1997. The facility will continue to serve only portions of Upper Merion Township and West Conshohocken Borough in Montgomery County, and part of Tredyffrin Township in Chester County. Treatment plant effluent will continue to be discharged to Frog Run approximately 0.3 miles from its confluence with the Schuylkill River.

10. *Colonial Pipeline Company D–87–17.* A revision of the previously submitted application for an oil pipeline crossing of the Delaware River to now locate the proposed pipeline no more than 200 feet downstream from the existing Colonial pipeline. The proposed 30-inch diameter pipeline will continue to be sited between New Castle County, Delaware and Logan Township, Gloucester County, New Jersey. Other than the change of location, the project remains the same as described in an earlier Public Notice.

11. *Upper Montgomery Joint Authority D–87–28 CP.* An application to expand and upgrade a 0.72 mgd sewage treatment plant to provide high quality secondary treatment of 2.5 mgd from domestic sources. The proposed plant is designed to process the projected year 2010 flow from residents in Pennsburg, Red Hill, and East Greenville Boroughs, plus Upper Hanover Township, all within Montgomery County, Pennsylvania. The facility is located off Route 663 in Upper Hanover Township. The applicant proposes to install several units to remove phosphorus. Treatment plant effluent will continue to be discharged to Green Lane Reservoir. However, the expanded flow will be conveyed by a parallel, 18 inch diameter outfall line.

12. *Telford Borough Authority D–87–30 CP.* An application for a wastewater treatment plant upgrading and expansion project to serve portions of Franconia Township in Montgomery County, plus parts of West Rockhill and Hilltown Townships in Bucks County, as well as Telford Borough in both counties. The 0.66 mgd secondary treatment plant is located off Fourth Street in Franconia Township, Pennsylvania. The proposed project is specifically designed to provide ammonia nitrogen and phosphorus removal for an average flow of 0.95 mgd. The plant is designed to serve an equivalent population of over 7,400 persons through the year 2000. Treatment plant effluent will continue to discharge to Indian Creek through the existing outfall.

13. *Baldwin Hardware Corporation D–87–32.* A revision of the previously submitted application for a ground water decontamination project to now include both the proposed increased ground water withdrawal from 2.37 mg/30 days to 15.13 mg/30 days for the ground water decontamination program, and the resulting increase in wastewater discharge from 0.25 to 0.475 mgd. New treatment facilities will be added to treat the contaminated ground water pumped from the wells. The final discharge to the Schuylkill River will meet all regulations; however, prior to dilution with the cooling water, the treatment plant effluent may exceed Commission guidelines. The project is located in the City of Reading, Berks County, Pennsylvania.

14. *Pennsylvania Department of Transportation D–87–39 CP.* An application seeking modification of the Comprehensive Plan, approval under Section 3.8 and a special permit (use of floodway), for an 800-foot long portion of Interstate-476 (the "Blue Route") that will pass through Smedley Park (Springfield and Nether Providence Townships, Delaware County, Pennsylvania). While highway projects are normally exempt from DRBC review, the segment crossing Smedley Park is subject to DRBC review, because the park is included in the DRBC Comprehensive Plan.

15. *American Dredging Company D–87–47.* An application to mechanically dredge up to 300,000 cubic yards of materials from the tidal Delaware River at Camden, New Jersey in order to construct and operate a berthing facility for the applicant's proposed hopper dredge. The project will consist of the construction of two breasting dolphins, a ten-foot wide steel grated trestle, and dredging to provide approach channels capable of accommodating a 20-foot draft vessel. The applicant proposes to dredge to a depth of 25 feet below mean low water outshore of the approachway pier. The dredged area will be approximately 2300 feet long and extend up to 800 feet outshore from the mean high water line. The proposed pipe pile-supported, "T" shaped approachway pier will extend approximately 200 feet outshore of the high water line, and will be up to 50 feet wide to provide sufficient berthing for the hopper dredge. The project site is located at the American Dredging Company Yard at Cooper's Point.

16. *Warminster Municipal Authority D–87–49 CP.* An application for approval of a ground water withdrawal project to supply up to 15.0 mg/30 days of water during periods of normal precipitation and 9.75 mg/30 days during dry periods to the applicant's public water supply system from new Well No. 37, and to increase the existing withdrawal limit from all wells to a maximum of 120.9 mg/30 days. The project is located in Warwick Township, Bucks County in the Southeastern Pennsylvania Ground Water Protected Area.

17. *Carneys Point Township Sewerage Authority D–87–50 CP.* An application to upgrade and expand the sewage treatment plant located 1,500 feet west of Virginia Avenue inland from Helms Cove at Carneys Point Township, Salem County, New Jersey. The existing primary treatment plant is designed to process an average flow of 1.0 mgd. The proposed high quality secondary treatment plant is designed to process the year 2005 flow of 1.3 mgd from a projected population of 8,670 persons. The plant will continue to serve only Carneys Point Township. Treatment plant effluent will continue to discharge through the existing outfall to the Delaware River Estuary in Water Quality Zone 5.

18. *Bedminster Municipal Authority D–87–61 CP.* An application for a ground water withdrawal project from Well Nos. 2 and 9 to supply 2.0 mg/30 days of water for domestic use and for fire protection for a development of 288 residences. Well Nos. 2 and 9 were formerly used by Stonebridge Water Company. The project is located in Bedminster Township, Bucks County, in the Southeastern Pennsylvania Ground Water Protected Area.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact David B. Everett concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Public Information Notice

Water Quality Program

The Commission is preparing its water quality program for the fiscal year ending September 30, 1988. Notice of this action is given in accordance with the requirements of the Federal Clean Water Act, as amended. The proposed program will involve a variety of activities in the areas of planning, surveillance, compliance monitoring, regional coordination, use attainability assessment, wasteload allocations and public participation. While the proposed program is not subject to public hearing by the Commission, it is available for examination and review by interested individuals at the Commission's offices upon request. The public review and comment period will end August 8, 1987. Contact Seymour P. Gross at the Commission.

Susan M. Weisman,

Secretary.

July 21, 1987.

[FR Doc. 87–17138 Filed 7–28–87; 8:45 am]

BILLING CODE [illegible]

DEPARTMENT OF ENERGY

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement; European Atomic Energy Community and Japan

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 3160) notice is hereby given of a proposed "subseqent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD.EU (JA)–94, for the retransfer from Japan to the Federal Republic of Germany of two fission counters containing a total of 0.40 grams of uranium enriched to 93.15 percent in the isotope uranium-235 for use in the study of neutron flux measurements in high temperature gas cooled reactors.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subseqent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: July 23, 1987.

David B. Waller,

Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 87–17231 Filed 7–28–87; 8:45 am]

BILLING CODE 6450–01–M

Proposed Subsequent Arrangement; European Atomic Energy Community and Spain

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subseqent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of American and the Government of Spain concerning Civil Uses of Atomic Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approved of the following retransfer:
RTD/EU (SP)–17, for the retransfer of 52 kilograms of uranium enriched to 19.95 percent in the isotope uranium-235 from Spain to Nukem, Hanau, the Federal Republic of Germany, for use in the manufacture of fuel elements with reduced U-235 enrichments for material test reactors.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: July 23, 1987.

David B. Waller,

Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 87–17232 Filed 7–28–87; 8:45 am]

BILLING CODE 6450–01–M

Proposed Subsequent Arrangement; European Atomic Energy Community and Sweden

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Sweden concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer:

RTD/EU(SW)–74, for the retransfer from Sweden to Belgonucleaire, Dessel, Belgium, of 2,000 kilograms of uranium containing 4 kilograms of uranium-235 for fabrication of mixed plutonium-uranium fuel elements for Kernkraftwerk Brunsbuttel (KKB), in the Federal Republic of Germany.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that his subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: July 23, 1987.

David S. Wallar,

Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 87–17233 filed 7–28–87; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 87–16–NG]

Order Granting Blanket Authorization To Import Natural Gas From Canada; Peoples Natural Gas Co.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of order granting blanket authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Peoples Natural Gas Company (Peoples) blanket authorization to import natural gas from Canada. The order issued in ERA Docket No. 87–16–NG authorizes Peoples to import up to 200 Bcf over a two-year period for its own system use.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA–076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 22, 1987.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87–17117 Filed 7–28–87; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 87–33–NG]

Application To Import Natural Gas From Canada; SEMCO Energy Services, Inc.

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of application for blanket authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on June 29, 1987, of an application filed by SEMCO Energy Services, Inc. (SEMCO), for blanket authorization to import Canadian natural gas for short-term and spot market sales in the United States. Authorization is requested to import up to 400 Bcf for a two-year term beginning on the date of the first delivery. The gas would be sold on a short-term or spot basis to U.S. purchasers including pipelines, local distribution companies, and commercial and industrial end-users. SEMCO would import gas for its own account or act as a broker for U.S. purchasers as well as Canadian suppliers. The specific terms of each import and sale would be negotiated on an individual basis, including price and volumes. SEMCO intends to utilize existing pipeline facilities at Emerson, Manitoba or any other border crossing, for transportation of the volumes imported. The firm proposes to submit quarterly reports giving details of individual transactions within 30 days following each calendar quarter.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than August 28, 1987.

FOR FURTHER INFORMATION CONTACT:

Allyson Reilly, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9394

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586–6667.

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–0478. They must be filed no later than 4:30 p.m. e.d.t., August 28, 1987.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. A request to file additional written comments should

explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of SEMCO's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076-A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 23, 1987.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-17118 Filed 7-28-87; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 87-15-NG]

Order Granting Blanket Authorization To Import Natural Gas From Canada; Spot Market Corp.

AGENCY: Economic Regulatory Administration Department of Energy.

ACTION: Notice of order amending blanket authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order to Spot Market Corporation (SMC) amending its existing blanket authorization to import natural gas from Canada. The order issued in ERA Docket No. 87-15-NG increases the maximum amount of gas that SMC may import for sale in the domestic spot market from 100 Bcf over a period of two years to 300 Bcf over the same term.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 22, 1987.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-17119 Filed 7-28-87; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Changes to DOE Energy Information Reporting and Record-Keeping Requirements

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of changes to the inventory of energy information reporting and record-keeping requirements.

SUMMARY: The Energy Information Administration (EIA) of the Department of Energy (DOE) hereby gives notice to respondents and other interested parties of changes to the inventory of current information collections as defined in the Paperwork Reduction Act of 1980 (Pub. L. 96-511), for which EIA is responsible. DOE management and procurement assistance collections, which are the responsibility of the Office of Management and Administration, are no longer included in these notices.

During the third quarter of fiscal year 1987 (April 1, 1987 through June 30, 1987), changes were made to the October 1, 1986 inventory of DOE information collections, which was published in the **Federal Register**, 51 FR 37958 (October 27, 1986). Changes made during the first quarter were published in the **Federal Register**, 52 FR 4519 (February 12, 1987), and changes made during the second quarter were published in 52 FR 12584 (April 17, 1987). The third quarter changes are listed below, and include new information collections approved by the Office of Management and Budget (OMB), collections extended, reinstated, discontinued or allowed to expire, and changes to continuing information collections. For each new requirement, requirement extension, or requirement reinstatement, the current DOE control or form number, the title, the OMB control number, and the OMB approval expiration date are listed by the DOE sponsoring office. For the list of discontinued requirements, the discontinued date is shown instead of the expiration date. If applicable, the appropriate Code of Federal Regulations citation is also listed. For revised information collections, a brief summary of the type of revision is noted. Information collections not utilizing structured forms are designated by an asterisk (*) placed to the right of the control or form number.

FOR FURTHER INFORMATION CONTACT: Etta Harris, EI-73, Energy Information Administration, Mail Stop 1H-023, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2165.

Information on the availability of single, blank information copies of those collections utilizing structured forms may be obtained by contacting the National Energy Information Center, EI-231, Forrestal Building, U.S. Department of Energy, Washington, DC 20585, (202) 586-8800.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. 93-275, Federal Energy Information Administration Act of 1974, (15 U.S.C. 764(a), 764(b), 772(b) and 790(a)).

Issued in Washington, DC, July 23, 1987.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

NEW DOE ENERGY INFORMATION COLLECTIONS APPROVED BY OMB

DOE No.	Title	OMB control No.	Expiration date	CFR citation
	Federal Energy Regulatory Commission			
FERC-590*	Wellhead Pricing: Pricing Audit	19020147	07/31/89	

*Does not utilize a structured form.

BEST COPY AVAILABLE

DOE Energy Information Collections Extended

DOE No.	Title	OMB Control No.	Expiration date	CFR Citation
	Energy Information Administration			
EIA-14	Refiners' monthly cost report	19050125	09/30/87	
EIA-176	Annual report of natural and supplemental gas supply and disposition	19050147	12/31/87	
EIA-182	Domestic crude oil first purchase report	19050143	09/30/87	
EIA-191	Underground natural gas storage report	19050026	12/31/87	
EIA-627	Annual quantity and value of natural gas report	19050122	12/31/87	
EIA-782A	Monthly petroleum product sales report	19050141	09/30/87	
EIA-782B	Reseller/retailer's monthly petroleum product sales report	19050139	09/30/87	
EIA-782C	Monthly report of petroleum products sold into states for consumption	19050140	09/30/87	
EIA-856	Monthly foreign crude oil acquisition report	19050156	09/30/87	
EIA-857	DOE monthly report of natural gas purchases and deliveries to consumers.	19050157	12/31/87	
	Federal Energy Regulatory Commission			
FERC-11	Natural gas Pipeline Company monthly statement	19020032	06/30/90	18 CFR 260.
FERC-542*	Gas pipeline rates: initial rates, rate change, and PGA tracking (Re: Revisions to the purchased gas adjustment regulations) RM86-14.	19020070	02/29/88	18 CFR 154.38, 154.61-154.67.
FERC-558*	Format of contract summary for applications for certificates of public convenience and necessity.	19020109	07/31/90	18 CFR 250.5, 157.24(a).
FERC-559*	Independent producer rate change or initial billing statement	19020036	06/30/90	18 CFR 250.14, 154.92 (a) & (b), 154.94 (f) & (h).
FERC-583*	Hydroelectric fees and annual charges	19020136	09/30/87	18 CFR 11.20,-22, .24, 131.70, 11.01-11.04, 11.06.
	International Affairs and Energy Emergencies			
IE-400	Survey of surplus natural gas supplies	19010269	12/31/87	

* Does not utilize a structured form.

Reinstated DOE Energy Information Collection

DOE No.	Title	OMB Control No.	Expiration date	CFR Citation
	Federal Energy Regulatory Commission			
EIA-714(1)	Annual electric power system report	19020140	03/31/88	

DOE Energy Information Collections Discontinued or Allowed to Expire

DOE No.	Title	OMB Control No.	Discontinued date	CFR Citation
	Energy Information Administration			
EIA-141	National survey of fuel purchases for vehicles—purchase log and supplementary questionnaire.	19050068	05/31/87	
EIA-429	National survey of fuel purchases for vehicles—background questionnaire.	19050086	05/31/87	
	Federal Energy Regulatory Commission			
FERC-579	State implementation of PURPA 210—cogeneration and small power production.	19020133	03/31/87	18 CFR 292.401.

CHANGES IN CONTINUING DOE ENERGY INFORMATION COLLECTIONS

DOE Nos. as previously listed	Changes
Energy Information Administration	
EIA-457A/G	Minor modifications to survey and approved through 5/31/90.
Federal Regulatory Commission	
FERC-2, FERC-2A, FERC-500*, FERC-505*, FERC-516*, FERC-530*, FERC-531*, FERC-537*, FERC-542*, FERC-549*, FERC-582*.	Changes in regulations.

*Does not utilize a structured form.

[FR Doc. 87-17234 Filed 7-28-87; 8:45 am]
BILLING CODE 6450-01-M

Western Area Power Administration

Final Allocation Criteria and Allocations of Capacity and Associated Energy From the Parker-Davis Project

AGENCY: Western Area Power Administration, Department of Energy.

ACTION: Notice of final allocation criteria and allocations of capacity and associated energy from the Parker-Davis project.

SUMMARY: The Boulder City Area Office of the Western Area Power Administration (Western) published the "Proposed Allocation Criteria and Allocations of Capacity and Associated Energy from the Parker-Davis Project" in the **Federal Register** (52 FR 7014) on March 6, 1987. A public information forum was held in Las Vegas, Nevada, on March 16, 1987, and a public comment forum was held at the same location on March 23, 1987. Written comments were accepted at the Boulder City Area Office until April 6, 1987. Western has reviewed and considered each comment received. The Supplementary Information section, which follows, provides Western's responses to all the major comments, criticisms, and alternatives offered on the proposed allocations. After review of the comments, Western has determined that the final allocations of capacity and associated energy from the Parker-Davis Project, as published herein, are appropriate. Based upon these final allocations, Western will initiate contract negotiations for capacity and associated energy from the Parker-Davis Project.

DATES: These final allocation criteria and allocations of capacity and associated energy are effective August 28, 1987.

ADDRESSES: For further information concerning these final allocations, contact: Mr. Earl Hodge, Acting Assistant Area Manager for Power Marketing, Boulder City Area Office, Western Area Power Administration, P.O. Box 200, Boulder City, NV 89005, (702) 477-3255.

SUPPLEMENTARY INFORMATION: The power to be allocated from the Parker-Davis Project was specified in the Conformed General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects (Conformed Criteria) published in the **Federal Register** (49 FR 50582) on December 28, 1984. The Conformed Criteria provided for the reservation of capacity and associated energy to existing Parker-Davis Project contractors upon receipt of an application. Also, the Conformed Criteria identified an additional amount of capacity and associated energy (Additional Power) as being available for allocation after May 31, 1987.

In the January 18, 1985, **Federal Register** (50 FR 2717), Western requested applications for the capacity and associated energy to be available after June 1, 1987, from the Parker-Davis Project. Western reviewed the applications received and published the proposed allocation criteria and allocations of capacity in the **Federal Register** (52 FR 7014) on March 6, 1987. Interested parties were invited to submit comments to Western concerning the proposed Parker-Davis Project allocation criteria and allocations.

Comments were received on the proposed allocation criteria and the specific proposed allocations of Parker-Davis Project capacity and associated energy. The comments and Western's responses are as follows.

Discussion on Comments Received

Gila River Indian Community

Western proposed no allocation to the Gila River Indian Community (Community) because it did not own and operate a utility system and did not have utility responsibility. The Community commented that it is actively taking the necessary preliminary steps in acquiring the on-reservation portion of the San Carlos Irrigation Projects (SCIP) Electric Utility System, and intends to take ownership of the system in the future. The Community further commented it needs to secure contracted power resources before it can obtain financing for the acquisition, and that it would be willing to temporarily assign its allocation to SCIP until such time that the acquisition was complete.

The Community comments are directed to one of the additional factors contained in the allocation criteria which required an applicant to have utility status as of March 6, 1987. Western adopted this factor in light of the small amount of Additional Power available for allocation from the Parker-Davis Project and the large number of qualified applicants. The Community has not provided information that it meets this factor; therefore, no allocation has been granted to the Community.

City of Vernon

The City of Vernon commented that Western's allocation to existing Parker-Davis Project contractors was directly contrary to Western's proposed decision (with respect to Vernon not being eligible to receive an allocation of power because it will receive power from Western after 1987) to ensure the widespread use of the Federal resource. The City of Vernon requests that Western allocate Parker-Davis Project power to it because the Federal allocation it is receiving satisfies a very small amount of its power requirements.

Western's allocation to existing Parker-Davis Project contractors did not increase their allocation. Western only substituted a nonwithdrawable resource for a withdrawable resource. Western believes that the criteria for the allocation of the Additional Power to new customers were reasonable and insure the widespread use of the resource. No changes have been made to the criteria as a result of comments from the City of Vernon.

City of Needles

The City of Needles (Needles) inquired as to the date that contract negotiations would begin.

Western will initiate contract negotiations with the allottees after the allocations set forth herein are published. The effective date of the allocations is 30 days after publication of this notice in the **Federal Register**.

Needles also pointed out that the energy amounts calculated from the kilowatthour per kilowatt ratio provided in the proposed allocation would not be the same as the amounts designated to be available to Needles in the

Conformed Criteria. Needles requested that the power contract should reflect the amounts specified in the Conformed Criteria.

Western agrees with Needles. The power contract will reflect the amounts specified in the Conformed Criteria.

Intermountain Consumer Power Association (ICPA), Garkane Power Association, Inc. (Garkane), and Dixie-Escalante Rural Electric Association, Inc. (Dixie-Escalante)

ICPA commented that it submitted an application on behalf of its individual members serving loads located within the Boulder City marketing area, specifically in behalf of Dixie-Escalante and Garkane. ICPA requested that these members be considered for a Parker-Davis Project allocation. Garkane and Dixie-Escalante also submitted comments on their own behalf and requested an additional allocation for the Arizona portion of their service area. They contend that the determination by Western that a major portion of their service area is outside the Boulder City marketing area as described in the Conformed Criteria is not consistent with other allocations made by Western and is unwarranted. They state that they are sharing upper basin power with Arizona customers; therefore, they are entitled to an allocation of lower basin power. They also contend that they should have been previously advised of the intention of Western to deny its Arizona application in time for them to alert their Arizona customers to make an application on their own behalf. They further stated that Western utilized some additional factors to allocate the Parker-Davis Project power which were never part of the adopted criteria and questioned Western in applying the other "Federal resources" criteria.

Part V of the Conformed Criteria specified that Parker-Davis Project power would be allocated in a specific order of priority. The first order of priority was "preference entities within the Boulder City marketing area." The **Federal Register** notice (50 FR 2717) requesting applications for power from Boulder City Area Projects specified that "new applicants and existing Parker-Davis Project contractors are requested to apply for the Parker-Davis Project capacity and energy allocations as provided in the Conformed Criteria (Part V)."

Western believes that this was clear notice that Western would be looking at entities within the Boulder City marketing area as first priority applicants for Parker-Davis Project power. Western believes that ICPA, Garkane, and Dixie-Escalante are not within the Boulder City marketing area, and therefore are not first priority applicants. Since all available Parker-Davis Project power has been allocated to entities within the Boulder City marketing area, neither ICPA, Garkane, nor Dixie-Escalante will receive an allocation.

Furthermore, Western proposed in the March 6, 1987, **Federal Register** notice to utilize four additional factors in the Parker-Davis Project allocation in order to "narrow the field" to a reasonable number of applicants. Western considered other Federal resources in order to identify qualified applicants which did not have any contracts with Western for Federal power. In adopting and applying these criteria, Western has been able to allocate a reasonable amount of power to entities without contracts with Western. Both Garkane and Dixie-Escalante have allocations of other Federal resources. Under the criteria established by Western for the allocation of Parker-Davis Project power, ICPA, on behalf of Garkane and Dixie-Escalante, or the entities on their own behalf, will not be allocated Parker-Davis Project power.

Electrical District No. 8 (ED–8)

ED–8 commented that it is similar to other districts and military installations in respect to its utility ownership and responsibilities. ED–8 stated that it is empowered with the legal authority and responsibilities of owning, operating, and contracting for its electric utility system and to provide power to its customers. ED–8 further stated that the criteria applied were not previously adopted by Western and do not serve as a reasonable classification for distinguishing among potential beneficiaries of Federal resources, and are contrary to historical administrative policies of Western. ED–8 recommended that Western consider the load, load growth, type of load serviced, and the Federal hydropower and water entitlements of each applicant. ED–8 specifically requested that Western adopt a criteria which allocates power to those districts with customers who do not have an entitlement to Central Arizona Project water.

As explained previously, Western utilized the "utility status as of the date of the **Federal Register** notice" factor to narrow the field of qualified applicants in order to allocate the small amount of Additional Power. ED–8 has not provided evidence that it had utility status by the date of the publication of the March 6, 1987, **Federal Register** notice. Being empowered with the legal authority and responsibility of owning and operating an electric utility system is not the same as actually owning and operating a system. Western believes that the "utility status" factor, as well as the other additional factors applied, were appropriate for the allocation of the small amount of Additional Power available from the Parker-Davis Project. Western does not believe that an allocation criterion based on water rights is appropriate for the Parker-Davis Project.

Department of Energy, Nevada Operations Office (DOE/NTS)

DOE/NTS requested that Western reconsider the proposed denial of an allocation to DOE/NTS in light of the information provided regarding the transmission path available from a Parker-Davis Project designated point-of-delivery to DOE/NTS facilities. DOE/NTS indicated that it has an agreement with Valley Electric Association (VEA) that provides DOE/NTS with the right to 13.5 MW of transmission capacity on the VEA 138–kV line between Amargosa Substation (a Parker-Davis Project point-of-delivery) to Jackass Flats Substation. DOE/NTS and VEA have already discussed a modification in the existing agreement to provide for the delivery by VEA of a Parker-Davis Project power delivery. DOE/NTS further states that the power would enter the power system owned by DOE/NTS, consisting of a 100-mile 138-kV transmission loop and a 34.5-kV distribution system, at Jackass Flats Substation.

DOE/NTS has provided additional information that it can meet the criteria, particularly the criteria regarding its ability to receive the power at a Parker-Davis Project designated point-of-delivery. Therefore, Western has modified the proposed allocations of Parker-Davis Project Additional Power to include an allocation to DOE/NTS. As a result, each of the proposed allocations of Additional Power have been decreased by a small amount.

Conclusion

After review and analysis of the comments received, Western has determined that no new information has been presented that would warrant any change in the four additional proposed allocation factors. The final allocations set forth in this notice are based upon the Conformed Criteria and the four additional factors. DOE/NTS originally was not selected for a proposed allocation because there was not sufficient information in the application with regard to the transmission path that would be utilized to deliver the power to DOE/NTS. DOE/NTS has now

provided sufficient information regarding the transmission path that would be utilized by DOE/NTS. Therefore, the Parker-Davis Project proposed allocation of Additional Power to new contractors was modified to include DOE/NTS. As a result of the modification, all proposed new contractors have had their proposed allocations of Additional Power reduced to accommodate the allocation to DOE/NTS.

Executive Order 12291

The Department of Energy has determined that this allocation is not a major rule because the allocation does not meet the criteria of section 1(b) of Executive Order 12291 (46 FR 13193) dated February 17, 1981. Western has an exemption from sections 3, 4, and 7 of Executive Order 12291.

Regulatory Flexibility Act

Pursuant to Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*), each agency, when required to publish a notice of a public rule, shall prepare for public comments an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In this instance, the allocation criteria and allocations relate to electric services provided by Western. Under section 601(b) of the Regulatory Flexibility Act of 1980, services are not considered "rules" within the meaning of the Act; therefore, Western believes that no flexibility analysis is required.

National Environmental Policy Act

Pursuant to the National Environmental Policy Act of 1969 and the Department of Energy regulations published in the **Federal Register** on February 23, 1982 (47 FR 7976), as amended, Western evaluated the potential for environmental impact of the Boulder City General Consolidated Power Marketing Criteria or Regulations for the Boulder City Area Projects (Environmental Assessment No. DOE-EA-204). On May 2, 1983, the Department of Energy executed a Finding of No Significant Impact for that proposal. Allocation Criteria for the Parker-Davis Project were addressed in the Conformed Criteria.

The Criteria Environmental Assessment addressed the impact of the offer of Additional Power from the Parker-Davis Project. Western has evaluated the Conformed Criteria to determine if this action is a significant action in the context of the National Environmental Policy Act and has determined that the allocation will not lead to any significant environmental impacts.

Additional Information

The following materials relative to the proposed allocation of Parker-Davis Power are available for inspection at the Boulder City Area Office:

1. Copies of comments received concerning the proposed allocation criteria and allocations of capacity and associated-energy from the Parker-Davis Project.
2. Reporter's transcript of proceedings, public comment forum on proposed allocations of power from the Parker-Davis Project, March 12, 1987.
3. Reporter's transcript of proceedings, public information forum on proposed allocations of power from the Parker-Davis Project, March 23, 1987, and copy of graphics used in the presentation.
4. Letter dated March 12, 1987, from Western to all Parker-Davis Project Interested Parties, concerning corrections to the March 6, 1987, **Federal Register** notice.
5. **Federal Register** notice (52 FR 7104) dated March 6, 1987, publishing the "Notice of Proposed Allocation Criteria and Allocations of Capacity and Associated Energy from the Parker-Davis Project."
6. Applications received requesting Parker-Davis Project capacity and associated energy.
7. **Federal Register** notice (49 FR 50582) dated December 28, 1984, publishing the "Conformed General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects."
8. **Federal Register** notice (50 FR 2717) dated January 18, 1985, publishing the "Request for Applications for Power from Boulder City Area Projects."
9. Environmental Assessment of General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects, Western Area Power Administration, April 1983 (DOE EA-0204, as supplemented by an economic study dated June 1987).

Allocations

These final allocations are made in accordance with the Department of Energy Organization Act (42 U.S.C. 7101, *et seq.*), the Federal power marketing authorities contained in Reclamation laws (43 U.S.C. 371, *et seq.* and all acts amendatory thereof or supplementary thereto), and the acts specifically applicable to the Parker-Davis Project. The final allocations include the allocation of power reserved for existing Parker-Davis Project contractors and the allocation of Additional Power available from the Parker-Davis Project after June 1, 1987. The allocations of Additional Power (including DOE/NTS) are based on the methodology published in the **Federal Register** (52 FR 7014) on March 6, 1987, as follows:

1. Withdrawing an amount from the existing Parker-Davis Project contractors with withdrawable capacity (equal to one-half of their existing withdrawable capacity) and allocating the same amount of nonwithdrawable capacity to those contractors.
2. Allocating nonwithdrawable additional capacity, in an amount equal to 1,000 kilowatts plus a proportionate share of any balance remaining, to eligible new applicants which do not have contracts with Western.
3. Allocating withdrawable Additional Power (released by allocating nonwithdrawable capacity to existing contractors) according to the following methodology. For each season, Western divided the amount of nonwithdrawable Additional Power to be allocated to each eligible new applicant by the total amount of nonwithdrawable Additional Power to be allocated to all the eligible new applicants. The resulting quotient for each eligible new applicant was then multiplied by the total amount of withdrawable Additional Power available for allocation in each season. That product is the amount of withdrawable Additional Power to be allocated to each applicant in each season.

The final allocations of capacity from the Parker-Davis Project after June 1, 1987, are shown in the following table 1:

Table 1.—Parker-Davis Project

[Capacity (kilowatts) Allocation]

Allottee [3]	Winter Season [2]			Summer Season [1]		
	Withdrawable	Non-withdrawable	Total	Withdrawable	Non-withdrawable	Total
APPA:						
AEPCO	-0-	18,400	18,400	-0-	23,000	23,000
Mesa	-0-	8,000	8,000	-0-	10,450	10,450
CRIR	-0-	5,940	5,940	-0-	6,900	6,900
CRC (NV)	2,355	38,655	41,010	3,950	53,000	56,950
DOE/NTS	419	1,759	2,178	707	1,537	2,244
Edwards AFB	590	14,040	14,630	967	17,318	18,285
ED-1	407	1,708	2,115	717	1,558	2,275
ED-3	1,058	1,057	2,115	1,462	1,463	2,925
FMIT	-0-	1,200	1,200	-0-	1,970	1,970
Fredonia	258	1,084	1,342	497	1,080	1,577
George AFB	339	1,421	1,760	633	1,374	2,007
IID	-0-	26,300	26,300	-0-	32,550	32,550
Luke/Gila Bend AFB:						
Luke AFB	430	1,805	2,235	702	1,525	2,227
Gila Bend AFB	76	319	395	124	270	394
Navy-Marine Air Station	345	1,450	1,795	690	1,477	2,157
Needles	-0-	4,064	4,064	-0-	5,100	5,100
Nellis AFB	506	2,124	2,630	910	1,977	2,887
Norton AFB	453	1,900	2,353	808	1,755	2,563
Papago Tribal Authority	453	1,900	2,353	910	1,977	2,887
SRP	-0-	22,500	22,500	-0-	31,700	31,700
SCIP	590	12,540	13,130	967	16,218	17,185
Thatcher	-0-	250	250	-0-	350	350
WMI&DD	297	2,148	2,445	450	2,650	3,100
Wickenburg	294	1,236	1,530	579	1,258	1,837
YID	-0-	780	780	-0-	960	960
YPG	590	3,490	4,080	967	4,268	5,235
Total	9,450	176,070	185,530	16,030	226,485	242,515

[1] March-September.
[2] October-February.
[3] See Appendix A.

As provided in the Conformed Criteria, the associated energy from the Parker-Davis Project, on or after June 1, 1987, will be equal to 3,441 kilowatthours per kilowatt in the summer season and 1,703 kilowatthours per kilowatt in the winter season. Each contractor's energy allocation will be based on these seasonal kilowatthour per kilowatt ratios.

The Parker-Davis Project withdrawable capacity and associated energy is power that is reserved for United States priority use, but not presently needed. When priority-use power is requested, Western will substantiate that the power to be withdrawn will be used for the purposes specified in the Conformed Criteria and then, upon a 2-year written advance notice, Western may withdraw the necessary amount of power on a pro rata basis. Withdrawals of power may be made until the total amount of power reserved for priority-use purposes is fully withdrawn.

In the event that a contractor or potential contractor fails to place power under contract within a reasonable period, to be determined by Western, in accordance with the terms and conditions offered by Western or fails to have the means to receive the power at a Parker-Davis Project designated point-of-delivery within 1 year from the date of this **Federal Register** notice, unless Western specifically agrees otherwise in writing, the amounts of power released by such failure will be reallocated by Western in accordance with the Conformed Criteria.

Upon publication of these final allocations, new contracts will be negotiated with existing and new allottees for the power contract period to end September 30, 2007.

Issued at Golden, Colorado, July 15, 1987.

William H. Clagett,

Administrator.

Appendix A.—Parker–Davis Project Allottees

APPA	Arizona Power Pooling Association, Arizona.
AEPCO	Arizona Electric Power Cooperative, Inc. Arizona.
Mesa	City of Mesa, Arizona.
CRIR	Bureau of Indian Affairs, Colorado River Indian Reservation, Arizona, California.
CRC	Colorado River Commission of Nevada, Nevada.
DOE/NTS	United States Department of Energy, Nevada Test Site, Nevada.
Edwards AFB	Edwards Air Force Base, California.
ED-1	Electrical District No. 1, Arizona.
ED-3	Electrical District No. 3, Arizona.
FMIT	Fort Mohave Indian Tribe, Arizona.
Fredonia	City of Fredonia, Arizona.
George AFB	George Air Force Base, California.
IID	Imperial Irrigation District, California.
Luke/Gila Bend AFB.	Luke Air Force Base and Gila Bend Air Force Base, Arizona.

APPENDIX A.—PARKER-DAVIS PROJECT ALLOTTEES—Continued

Navy-Marine Air Station.	Navy-Marine Air Station, Arizona.
Needles	City of Needles, California.
Nellis AFB	Nellis Air Force Base, Nevada.
Norton AFB	Norton Air Force Base, California.
Papago Tribal Authority.	Papago Tribal Utility Authority, Arizona.
SRP	Salt River Project, Arizona.
SCIP	San Carlos Irrigation Project, Arizona.
Thatcher	Town of Thatcher, Arizona.
WMI&DD	Wellton-Mohawk Irrigation and Drainage District, Arizona.
Wickenburg	Town of Wickenburg, Arizona.
YID	Yuma Irrigation District, Arizona.
YPG	Department of the Army, Yuma Proving Ground, Arizona.

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ENVIRONMENTAL PROTECTION AGENCY

[FRL-3239-1]

Proposed General NPDES Permit for Private Domestic Discharges in East Baton Rouge Parish in the State of Louisiana

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of proposed general NPDES permit.

SUMMARY: The Regional Administrator of Region VI has tentatively decided to prepare a draft general NPDES Permit for certain dischargers who treat private domestic wastes. When issued, this general NPDES Permit will establish effluent limitations, standards, prohibitions, and other conditions on these discharges. The facilities to be covered by this permit are located in East Baton Rouge Parish within the State of Louisiana.

This draft general permit is based on the administrative record available for public review in Region VI of the Environmental Protection Agency (EPA). The fact sheet sets forth the principal facts and the significant factual, legal and policy questions considered in the development of the draft permit. A copy of the draft permit is reprinted below.

DATE: Interested persons may submit comments of the draft general permit and administrative record no later than August 28, 1987.

ADDRESS: Comments should be sent to: Ms. Ellen Caldwell (6W-PS), U.S. Environmental Protection Agency, Region VI, Allied Bank Tower, 1445 Ross Avenue, Dallas, Texas 75202-2733.

FOR FURTHER INFORMATION CONTACT: Ellen Caldwell at (214) 655-7190.

Fact Sheet and Supplementary Information

I. Background

A. General Permits

Section 301(a) of the Clean Water Act (the Act) provides that the discharge of pollutants is unlawful except in accordance with a National Pollutant Discharge Elimination System (NPDES) Permit. In the past, such permits have generally been issued to individual dischargers. However, EPA's regulations authorize the issuance of general permits to categories of dischargers (40 CFR 122.28). EPA may issue a single, general permit to a category of point sources located in the same geographic area whose discharges warrant similar pollution control measures. The Regional Administrator (with delegation to the Water Management Division Director) is authorized to issue a general permit if there are a number of point sources operating in a geographic area that:

1. Involve the same or substantially similar types of operations;
2. Discharge the same types of wastes;
3. Require the same effluent limitations or operating conditions;
4. Require the same or similar monitoring requirements; and
5. In the opinion of the Director, are more appropriately controlled under a general permit than under individual permits.

As is the case of individual permits, violations of any condition of a general permit constitutes a violation of the Act and subjects the discharger to the penalties specified in section 309 of the Act. Any owner or operator authorized by a final general permit may be excluded from coverage by applying for an individual permit. This request may be made by submitting a NPDES permit application, together with reasons supporting the request, no later than October 27, 1987. New facilities may apply for an individual permit or for the general permit when submitting their application.

The Regional Administrator may require any person authorized to discharge by a final general permit to apply for and obtain an individual permit. In addition, any interested person may petition the Regional Administrator to take this action. However, an individual permit will not be issued for any point source covered by a general permit unless it can be demonstrated that inclusion under a general permit is clearly inappropriate. The Regional Administrator may consider the issuance of individual permits according to the criteria in 40 CFR 122.28(b)(2). These criteria include:

1. The discharge(s) is a significant contributor of pollution;
2. The discharger is not in compliance with the terms and conditions of the general permit;
3. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;
4. Effluent limitation guidelines are subsequently promulgated for the point sources covered by the general permit;
5. A Water Quality Management Plan containing requirements applicable to such point sources is approved; and
6. The requirements listed in 40 CFR 122.28(a) and identified in the previous paragraphs are not met.

B. Request to be Covered by the General Permit

Operators of private domestic discharger sources located within the permit area must make a written request to the Regional Administrator that they be covered by this general permit. Unless otherwise notified in writing by the Regional Administrator within thirty (30) days after submission of its request, operators requesting coverage will be authorized to discharge under this general permit.

Operators of existing facilities must submit their written request within forty-five (45) days of issuance of the final permit. New dischargers must submit the written request fourteen (14) days prior to commencement of discharge within the general permit area. All requests shall include the name and legal address of the operator, the location and the name of the receiving stream(s).

Operators who fail to request coverage will not be authorized to discharge under the general permit. Operators who fail to request coverage under either this general permit or an individual permit may be subject to an enforcement action by EPA for discharging without a permit.

Operators requesting to be covered by this general permit shall notify the Regional Administrator of any prior application for an individual permit or issued individual permit and shall identify any NPDES number which was assigned to the application or individual permit.

C. Expiration Date

This NPDES general permit shall expire five (5) years from the effective date of the permit or for coverage of a facility under the general permit upon

termination of discharge and closure of the facility.

D. Water Quality Based Effluent Limitations

The Louisiana Department of Environmental Quality, Office of Water Resources, has promulgated area wide policies which update the Water Quality Management Plan for all sanitary waste treatment facilities which discharge in East Baton Rouge Parish, Louisiana.

The area wide policy which updates the Water Quality Management Plans is:

1. All facilities which are built, modified, or upgraded after September 30, 1986, having a design capacity (flow) of 100,000 gallons per day (gpd) or greater, will be limited as follows:

BOD_5 10 mg/1 (avg)/15 mg/1 (max)
TSS 15 mg/1 (avg)/23 mg/1 (max)
NH_3–N 5 mg/1 (avg)/10 mg/1 (max)

Those facilities as above, greater than 25,000 gpd and less than 100,000 gpd design capacity (flow) will be limited at:

BOD_5 10 mg/1 (avg)/15 mg/1 (max)
TSS 15 mg/1 (avg)/23 mg/1 (max)

2. All facilities existing as of September 30, 1986 must upgrade to the above treatment levels by October 1, 1991.

3. Disinfection will be required.

4. Limitations for facilities of or less than 25,000 gpd capacity (flow) will be decided on a case-by-case basis.

E. Technology Based Effluent Limitations

Best professional judgment (BPJ) for best conventional pollutant control technology (BCT) is based on secondary standards under 40 CFR 133.102(c) for pH within the range of 6.0 to 9.0 standard units; and based on secondary standards under 40 CFR 133.102(a)(1) for total suspended solids and biochemical oxygen demand (5-day) daily average of 30 mg/1; and based on secondary standards under 40 CFR 133.102(a)(2) for total suspended solids and biochemical oxygen demand (5-day) daily maximum of 45 mg/1. However, under BPJ total suspended solids limitations of 90 mg/1 daily average and 135 mg/1 daily maximum are allowed for BCT for facilities in which waste stabilization ponds are the primary treatment.

BPJ for BCT is based on established State and EPA conditions for private domestic and POTW facilities for bacteria limitations for fecal coliform of 200/100 ml (monthly log mean) and 400/100 ml (daily maximum).

This permit applies only to facilities with design capacities (flows) greater than 2500 gpd.

F. Monitoring and Reporting Requirements

For facilities with a design flow of greater than 2,500 gpd and less than 10,000 gpd monitoring for flow, total suspended solids, biochemical oxygen demand (5-day), fecal coliform and pH is required once per quarter. For facilities with design flows of 10,000 gpd and no greater than 25,000 gpd, monitoring is required once per month. For facilities with design flows greater than 25,000 gpd and less than 100,000 gpd, monitoring for flow is required once per week and monitoring for the other parameters is required once per month. For facilities with design flows of 100,000 gpd or greater, flow monitoring is required 5/week and monitoring for the other parameters is required once per week.

Part II.C.4. ("Reporting of Monitoring Results") of the draft permit requires that certain monitoring results be summarized and reported on Discharge Monitoring Reports (DMR) Forms (EPA No. 3320–1) on an annual basis. Part 11.D.6. ("Twenty-Four Hour Reporting") requires that any unanticipated bypass and any upset that exceeds any effluent limitation in the permit must be reported within 24 hours. Also, any noncompliance which may endanger human health or the environment should be reported.

II. The Nature of Discharges From Private Domestic Sources

The source of wastewater discharges from private domestics is sanitary sewage which is amenable to biological treatment. There are no toxic or priority pollutants present.

III. Conditions in the General Permit

A. Geographic Areas and Covered Facilities

The draft permit, when issued, will authorize discharges from facilities at various locations within East Baton Rouge Parish, Louisiana, to various storm sewers, tributaries, stream segments and river basins. The permit will be applicable only to private domestic discharges which have direct discharges to "waters of the United States" as defined in 40 CFR 122.2 and are therefore subject to the requirements of Sections 301 and 402 of the Act.

B. Private Domestic Discharges

The facilities covered by this permit are dischargers of domestic wastes. These facilities are not publicly owned treatment works (POTW) as defined under 40 CFR 122.2. Within East Baton Rouge Parish there is a significant number of private domestic dischargers which are covered by recently revised area wide policies of the Louisiana Department of Environmental Quality for discharges into Water Quality Management Segments 0401, 0402 and 0403. The nature of effluents from these facilities involves the same type of operations, discharge of the same types of wastewater, and the same effluent limitations and monitoring requirements. Therefore, these facilities are more appropriately controlled by a general permit. In addition, the general permit will eliminate or reduce, for the Agency, the time consuming process of drafting and issuing individual permits and similarly eliminate, for the dischargers, the regulatory burden of applying for and obtaining individual permits.

IV. Other Legal Requirements

A. State Certification

Under section 401(a)(1) of the Act, EPA may not issue a NPDES permit until the State in which the discharge will originate, grants or waives certification to ensure compliance with appropriate requirements of the Act and State law, including water quality standards. Region VI has requested the State of Louisiana to certify this draft general permit.

B. Water Quality Standards

Section 301(b)(1)(C) of the Act requires that NPDES permits contain limitations necessary to meet water quality standards established pursuant to State law or regulation or any other Federal law or regulation, or required to implement any applicable water quality standard established pursuant to the Act. This draft general permit contains effluent limitations which meet the requirements of section 301(b)(1)(C) including the applicable water quality standards of Louisiana as provided in the Water Quality Management Plan as referenced in Section 1.B. of this Fact Sheet.

C. Endangered Species Act

In accordance with 16 U.S.C. 1531 et seq. section 7 of the Act and implementing regulations (50 CFR Part 402), I hereby certify that this general NPDES permit will not impact an endangered species.

D. Duty to Provide Information

The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish

to the Director, upon request, copies of records required to be kept by this permit.

E. Planned Changes

The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility.

F. Transfers

This permit is nontransferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Clean Water Act.

G. Economic Impact (Executive Order 12291)

The Office of Management and Budget (OMB) has exempted this action from the review requirements of Executive Order 12291 pursuant to section 8(b) of that order.

H. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities in this draft general permit under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The information collection requirements of this permit have already been approved by the Office of Management and Budget in submissions made for the NPDES permit program under the provisions of the Clean Water Act.

I. The Regulatory Flexibility Act

After review of the facts presented in the notice printed above, I hereby certify, pursuant to the provisions of 5 U.S.C. 605(b), that this general NPDES permit will not have a significant impact on a substantial number of small entities. Moreover, the permits reduce a significant administrative burden on regulated sources.

Dated: July 21, 1987.

Robert E. Layton Jr., P.E.,

Regional Administrator, Region VI.

Authorization To Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq.; the "Act"), within East Baton Rouge Parish, Louisiana, operators engaged in the generation of private domestic wastes with design flows greater than 2,500 gpd are authorized to discharge to various storm sewers, tributaries, stream segments and river basins, which are waters of the United States as defined in 40 CFR 122.2, in accordance with effluent limitations, monitoring requirements and other conditions set forth in Parts I, II, and III hereof.

Operators within the general permit area must make a written notification to the Regional Administrator that they intend to be covered by this general permit (See Part III.B.)

This permit shall become effective on _____.

This permit and the authorization to discharge shall expire at midnight, _____.

Myron O. Knudson,

Director, Water Management Division (6W).

Part I—Requirements for NPDES Permits

Section A. Effluent Limitations and Monitoring Requirements

Outfall 101

During the period beginning the effective date and lasting through the expiration date, the permittee is authorized to discharge from Outfall 101—treated sanitary wastes from private domestic facilities with design flows of greater than 2,500 gpd and less than 10,000 gpd.

Such discharges shall be limited and monitored by the permittee as specified below:

Effluent characteristic	Discharge limitations, units (specify)	
	Daily Avg	Daily Max
Flow (MGD)	(*1)	(*1)
Total suspended solids.	30 mg/l(*4)	45 mg/l(*4)
Biochemical oxygen demand (5-day).	30 mg/l	45 mg/l
Fecal coliform	200/100 ml(*3).	400/100 ml

Effluent characteristic	Monitoring requirements	
	Measurement frequency	Sample type
Flow (MGD)	1/Quarter(*2)	Estimate.
Total suspended solids.	1/Quarter	Grab.
Biochemical oxygen demand (5-day).	1/Quarter	Grab.
Fecal coliform	1/Quarter	Grab.

(*1) Report.
(*2) When discharge occurs.
(*3) Monthly log mean.
(*4) For facilities in which waste stabilization ponds are the primary treatment, 90 mg/l daily average and 135 mg/l daily maximum.

Outfall 101

The pH shall not be less than 6.0 standard units nor greater than 9.0 standard units and shall be monitored 1/quarter by grab sample.

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location(s): At the point of discharge from the treatment plant.

Part I.—Requirements for NPDES Permits

Section A. Effluent Limitations and Monitoring Requirements

Outfall 201

During the period beginning the effective date and lasting through the expiration date, the permittee is authorized to discharge from Outfall 201—treated sanitary wastes from private domestic facilities with design flows of 10,000 gpd to 25,000 gpd.

Such discharges shall be limited and monitored by the permittee as specified below:

Effluent characteristic	Discharge limitations, units (specify)	
	Daily Avg	Daily Max
Flow (MGD)	(*1)	(*1)
Total suspended solids.	30 mg/l(*4)	45 mg/l(*4)
Biochemical oxygen demand (5-day).	30 mg/l	45 mg/l
Fecal coliform	200/100 ml(*3).	400/100 ml

Effluent characteristic	Monitoring requirements	
	Measurement frequency	Sample type
Flow (MGD)	1/Month(*2)	Estimate.
Total suspended solids.	1/Month	Grab.
Biochemical oxygen demand (5-day).	1/Month	Grab.
Fecal coliform	1/Month	Grab.

(*1) Report.
(*2) When discharge occurs.
(*3) Monthly log mean.
(*4) For facilities in which waste stabilization ponds are the primary treatment, 90 mg/l daily average and 135 mg/l daily maximum.

Outfall 201

The pH shall not be less than 6.0 standard units nor greater than 9.0 standard units and shall be monitored 1/month by grab sample.

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location(s): At the point of discharge from the treatment plant.

Part I.—Requirements for NPDES Permits

Section A. Effluent Limitations and Monitoring Requirements

Outfall 301

During the period beginning the effective date and lasting through the expiration date, the permittee is authorized to discharge from Outfall 301—treated sanitary wastes from private domestic facilities wth design flows greater than 25,000 gpd and less than 100,000 gpd.

Such discharges shall be limited and Monitored by the permittee as specified below:

Effluent characteristic	Discharge limitations, units (specify)	
	Daily Avg.	Daily Max.
Flow (MGD)	(*1)	(*1).
Total suspended solids.	30 mg/l(*5)	45 mg/l(*5).
	15 mg/l(*2)	23 mg/l(*2).
Biochemical oxygen demand (5-day).	30 mg/l	45 mg/l.
	10 mg/l (*2)	15 mg/l(*2).
Fecal coliform	200/100 ml(*4).	400/100 ml.

Effluent characteristic	Monitoring requirements	
	Measurement frequency	Sample type
Flow (MGD)	1/Week(*3)	Estimate.
Total suspended solids.	1/Month	Grab.
Biochemical oxygen demand (5-day).	1/Month	Grab.
Fecal coliform	1/Month	Grab.

(*1) Report.
(*2) Applicable to facilities schedule (a) from the permit effective date for facilities which were built, modified or upgraded after September 30, 1986, or schedule (b) by October 1, 1991, for facilities existing as of September 30, 1986.
(*3) When discharge occurs.
(*4) Monthly log mean.
(*5) For facilities in which waste stabilization ponds are the primary treatment, 90 mg/l daily average and 135 mg/l daily maximum.

Outfall 301

The pH shall not be less than 6.0 standard units nor greater than 9.0 standard units and shall be monitored 1/month by grab sample.

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location(s): At the point of discharge from the treatment plant.

Part I.—Requirements for NPDES Permits

Section A. Effluent Limitations and Monitoring Requirements

Outfall 401

During the period beginning the effective date and lasting through the expiration date, the permittee is authorized to discharge from Outfall 401—treated sanitary wastes from private domestic facilities with design flows of 100,000 gpd or greater.

Such discharges shall be limited and monitored by the permittee as specified below:

Effluent characteristic	Discharge limitations units (specify)	
	Daily Avg	Daily Max
Flow (MGD)	(*1)	(*1)
Total Suspended Solids.	30 mg/l(*5)	45 mg/l(*5)
	15 mg/l(*2)	23 mg/l(*2)
Biochemical Oxygen Demand (5-day).	30 mg/l	45 mg/l
	10 mg/l(*2)	15 mg/l(*2)
Ammonia (as N)	5 mg/l(*2)	10 mg/l(*2)
Fecal coliform	200/100 ml(*4).	400/100 ml

Effluent characteristic	Monitoring requirements	
	Measurement frequency	Sample type
Flow (MGD)	3/Week(*3)	Instantaneous.
Total suspended solids.	1/Week	Grab.
Biochemical oxygen demand (5-day).	1/Week	Grab.
Ammonia (as N)	1/Week	Grab.
Fecal coliform	1/Week	Grab.

(*1) Report.
(*2) Applicable to facilities schedule (a) from the permit effective date for facilities which were built, modified or upgraded after September 30, 1986, or schedule (b) by October 1, 1991, for facilities existing as of September 30, 1986.
(*3) When discharge occurs.
(*4) Monthly log mean.
(*5) For facilities in which waste stabilization ponds are the primary treatment, 90 mg/l daily average and 135 mg/l daily maximum.

Outfall 401

The pH shall not be less than 6.0 standard units nor greater than 9.0 standard units and shall be monitored 1/week by grab sample.

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location(s): At the point of discharge from the treatment plant.

Section B. Other Discharge Limitations

There shall be no discharge of floating solids or visible foam in other than trace amounts.

Section C. Permit Area

The area covered by this general permit includes all areas within East Baton Rouge Parish, Louisiana.

Section D. Schedule of Compliance

The permittee shall achieve compliance with the effluent limitations specified for discharges in accordance wth the requirements of Section A of Part I.

Part II.—Standard Conditions for NPDES Permits

Section A. General Conditions

1. Duty to Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

2. Penalties for Violations of Permit Conditions

The Clean Water Act provides that any person who violates sections 301, 302, 306, 307, 308, 318, or 405 or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of the Act is subject to a civil penalty not to exceed $25,000 per day for each violation provided that a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation. The Act also provides for criminal penalties.

3. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause including, but not limited to, the following:

a. Violation of any terms or conditions of this permit;

b. Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts;

c. A change in any condition that requires either a temporary or a permanent reduction or elimination of the authorized discharge; or,

d. A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination.

The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

This permit shall be modified, or alternatively, revoked and reissued, to comply with any applicable effluent standard or limitation issued or approved under section 301 (b)(2)(C), and (D), 304(b)(2), and 307(a)(2) of the Clean Water Act, if the effluent standard or limitation so issued or approved:

a. Contains different conditions or is otherwise more stringent than any effluent limitation in the permit; or

b. Controls any pollutant not limited in the permit.

The permit as modified or reissued under this paragraph shall also contain any other requirements of the Act then applicable.

4. Civil and Criminal Liability

Except as provided in permit conditions on "Bypassing" section B, paragraph 4.b. and "Upsets" section B, paragraph 5.b., nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance.

5. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under section 311 of the Clean Water Act.

6. State Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation under authority preserved by section 510 of the Clean Water Act.

7. Property Rights

The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State, or local laws or regulations.

8. Severability

The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

9. Definitions

The following definitions shall apply unless otherwise specified in this permit:

a. "Daily Average" discharge limitation means the highest allowable average of discharges over a calendar month, calculated as the sum of all discharges measured during a calendar month divided by the number of discharges measured during that month.

b. "Daily Maximum" discharge limitation means the highest allowable discharge during the calendar month.

c. The term "mg/l" shall mean milligrams per liter or parts per million (ppm).

Section B. Operation and Maintenance of Pollution Controls

1. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

2. Need to Halt or Reduce not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

3. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

4. Bypass of Treatment Facilities

a. Definitions. (1) "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

(2) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

b. Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of section B, paragraphs 4.c. and 4.d. of this section.

c. Notice. (1) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.

(2) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in section D, paragraph 6 (24-hour notice).

d. Prohibition of bypass. (1) Bypass is prohibited, and the Director Administrator may take enforcement action against a permittee for bypass, unless:

(a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and,

(c) The permittee submitted notices as required under section B, paragraph 4.c.

(2) The Regional Administrator may approve an anticipated bypass, after considering its adverse effects, if the Regional Administrator determines that it will meet the three conditions listed above in section B, paragraph 4.d.(1).

5. Upset Conditions

a. Definition. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

b. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of section B, paragraph 5.c. are met. No

determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

c. Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(1) An upset occurred and that the permittee can identify the cause(s) of the upset;

(2) The permitted facility was at the time being properly operated;

(3) The permittee submitted notice of the upset as required in section D, paragraph 6.

(4) The permittee complied with any remedial measures required under section B, paragraph 3.

d. Burden of proof. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

6. Removed Substances

Solids, sludges, filter backwash, or other pollutants removed in the course of treatment or control of wastewaters shall be disposed of in a manner such as to prevent any pollutant from such materials from entering navigable waters.

Section C. Monitoring and Records

1. Representative Sampling

Samples and measurements taken as required herein shall be representative of the volume and nature of the monitored discharge.

2. Monitoring Procedures

Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit.

3. False Statements

Any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or by both.

4. Reporting of Monitoring Results

Monitoring results obtained during the previous 12 months shall be summarized and reported on a Discharge Monitoring Report (DMR) Form (EPA No. 3320–1). The annual average reported shall be the average for the twelve months of the highest sample for each month. The highest daily maximum sample taken during the reporting period shall be reported as the daily maximum concentration.

The first report is due on the 28th day of the 13th month from the day this permit first becomes applicable to a permittee. Signed and certified copies of these and other reports required herein, shall be submitted to EPA and to the State at the following addresses:

Director Water Management Division (6W), Region VI, U.S. Environmental Protection Agency, P.O. Box 50625, Dallas, Texas 75250

J. Dale Givens, Assistant Secretary for Water, Office of Water Resources, Louisiana Department of Environmental Quality, P.O. Box 44091, Baton Rouge, Louisiana 70804–4091

5. Additional Monitoring by the Permittee

If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR Part 136 or as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR. Such increased monitoring frequency shall also be indicated on the DMR.

6. Averaging of Measurements

Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Regional Administrator in the permit.

7. Retention of Records

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report, or application. This period may be extended by request of the Regional Administrator at any time.

8. Record Contents

Records of monitoring information shall include:

a. The date, exact place, and time of sampling or measurements;

b. The individual(s) who performed the sampling or measurements;

c. The date(s) analyses were performed;

d. The individual(s) who performed the analyses;

e. The analytical techniques or methods used; and,

f. The results of such analyses.

9. Inspection and Entry

The permittee shall allow the Regional Administrator, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

a. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

d. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

Section D. Reporting Requirements

1. Planned Changes

The permittee shall give notice to the Regional Administrator as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

a. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR 122.29(b) [48 FR 14153, April 1, 1983, as amended at 49 FR 38046, September 26, 1984]; or

b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under 40 CFR 122.42(a)(1) [48 FR 14153, April 1, 1983, as amended at 49 FR 38046, September 26, 1984].

2. Anticipated Noncompliance

The permittee shall give advance notice to the Regional Administrator of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

3. Transfers

This permit is not transferable to any person except after notice to the Regional Administrator. The Regional Administrator may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Clean Water Act.

4. Monitoring Reports

Monitoring results shall be reported at the intervals and in the form specified in Section C, paragraph 5 (Monitoring).

5. Compliance Schedules

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date. Any reports of noncompliance shall include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled requirement.

6. Twenty-Four Hour Reporting

The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause, the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. The Regional Administrator may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

The following shall be included as information which must be reported within 24 hours:

a. Any unanticipated bypass which exceeds any effluent limitation in the permit.

b. Any upset which exceeds any effluent limitation in the permit.

c. Violation of a maximum daily discharge limitation for any of the pollutants listed by the Regional Administrator in Part III of the permit to be reported within 24 hours.

7. Other Noncompliance

The permittee shall report all instances of noncompliance not reported under section D, paragraphs 4, 5, and 6, at the time monitoring reports are submitted. The reports shall contain the information listed in section D, paragraph 6.

8. Changes in Discharges of Toxic Substances

The permittee shall notify the Regional Administrator as soon as it knows or has reason to believe:

a. That any activity has occurred or will occur which would result in the discharge, in a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the "notification levels" described in 40 CFR 122.42(a)(1) i and ii.

b. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the "notification levels" described in 40 CFR 122.42(a)(2) i and ii.

9. Duty to Provide Information

The permittee shall furnish to the Regional Administrator, within a reasonable time, any information which the Regional Administrator may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Regional Administrator upon request, copies of records required to be kept by this permit.

10. Signatory Requirements

All applications, reports, or information submitted to the Regional Administrator shall be signed and certified.

a. All permit applications shall be signed as follows:

(1) For a corporation—by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:

(i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions for the corporation, or

(ii) The manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(2) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively.

(3) For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes:

(i) The chief executive officer of the agency, or

(ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

b. All reports required by the permit and other information requested by the Regional Administrator shall be signed by a person described above or by a duly authorized representative of that person.

A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described above.

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and,

(3) The written authorization is submitted to the Regional Administrator.

c. Certification. Any person signing a document under this section shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false

information, including the possibility of fine and imprisonment for knowing violations.

11. Availability of Reports

Except for data determined to be confidential under 40 CFR Part 2, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the office of the Director. As required by the Clean Water Act, the name and address of any permit applicant or permittee, permit applications, permits, and effluent data shall not be considered confidential.

Section E. Notification Requirements

1. Commencement of Operations

Written notification of commencement of operations, including the legal name and address of the discharger and the name commonly assigned to the facility shall be submitted:

a. Within 45 days of the effective date of this permit by operators whose facilities are discharging into the general permit area on the effective date of the permit.

b. Fourteen days prior to the commencement of discharge by operators whose facilities commence discharge subsequent to the effective date of this permit.

2. Termination of Operations

Operators shall notify the Regional Administrator upon the permanent termination of discharges from their facilities.

Section F. Additional General Permit Conditions

1. When the Regional Administrator May Require Application for an Individual NPDES Permit

The Regional Administrator may require any person authorized by this permit to apply for and obtain an individual NPDES permit when:

(a) The discharge(s) is a significant contributor of pollution;

(b) The discharger is not in compliance with the conditions of this permit;

(c) A change has occurred in the availability of the demonstrated technology or practices for the control or abatement of pollutants applicable to the point sources;

(d) Effluent limitation guidelines are promulgated for point sources covered by this permit;

(e) A Water Quality Management Plan containing requirements applicable to such point source is approved;

or

(f) The point source(s) covered by this permit no longer:

(1) Involve the same or substantially similar types of operations;

(2) Discharge the same types of wastes;

(3) Require the same effluent limitations or operating conditions;

(4) Require the same or similar monitoring;

and

(5) In the opinion of the Regional Administrator, are more appropriately controlled under a general permit than under individual NPDES permits.

The Regional Administrator may require any operator authorized by this permit to apply for an individual NPDES permit only if the operator has been notified in writing that a permit application is required.

2. When an Individual NPDES Permit may be Requested

(a) Any operator authorized by this permit may request to be excluded from the coverage of this general permit by applying for an individual permit. The operator shall submit an application together with the reasons supporting the request to the Regional Administrator no later than (90 days after the publication).

(b) When an individual NPDES permit is issued to an operator otherwise subject to this general permit, the applicability of this permit to the owner or operator is automatically terminated on the effective date of the individual permit.

(c) A source excluded from coverage under this general permit solely because it already has an individual permit may request that its individual permit be revoked, and that it be covered by this general permit. Upon revocation of the individual permit, this general permit shall apply to the source.

Part III.—Other Conditions

A. Private Domestic Treatment Works means any device or system which is (a) used to treat domestic wastes and (b) is not a "POTW" as defined under 40 CFR 122.2.

B. Operators requesting to be covered by this general permit shall notify the Regional Administrator of any prior application for an individual permit or issued individual permit and shall identify any NPDES number which was assigned to the application or individual permit. Operators who have applied for but have not been issued an individual NPDES permit, and not wishing to be covered by this general permit, shall also notify the Regional Administrator of the NPDES number for the prior application and shall be required to reapply for an individual, NPDES permit.

C. With notification, operators requesting to be covered by this general permit shall report 1) the design flow of the facility and identify the outfall and schedule (where applicable) to their facilities, i.e., Outfall 101, Outfall 201, Outfall 301 schedule (a), Outfall 301 schedule (b), Outfall 401 schedule (a) or Outfall 401 schedule (b); and 2) identify if waste stabilization ponds are the primary treatment.

[FR Doc. 87-17056 Filed 7-28-87; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

July 21, 1987.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearanace under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on these submissions contact Terry Johnson, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on these information collections should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0212
Title: Section 73.2080, Equal Employment Opportunity Program
Action: Revision
Respondents: Broadcast stations
Frequency of Response: Recordkeeping requirement
Estimated Annual Burden: 11,703 Recordkeepers; 608,556 Hours
Needs and Uses: Section 73.2080 requires that each broadcast station shall establish, maintain and carry out a program to assure equal opportunity in every aspect of a broadcast station's policy and practice. This rule section provides that equal opportunity in employment shall be afforded by all broadcast stations to all qualified persons, regardless of race, color, religion, national origin or sex. The data is used by broadcast licensee in preparation of its EEO Program (FCC 396) submitted with its application for renewal of license.

OMB Number: None
Title: Broadcast Station Annual Employment Report
Form Number: FCC 395–B
Action: New collection
Frequency of Response: Annually
Estimated Annual Burden: 11,000 Responses; 9,680 Hours
Needs and Uses: Filing is required by all licensees and permittees of AM, FM, TV, Low Power TV, and international broadcast stations. The data is used to assess compliance with the Commission's fair employment requirements, and identifies the respondent's staff by gender, race, color and/or national origin in each of nine major job categories.

OMB Number: 3060–0113
Title: Broadcast Equal Employment Opportunity Program Report
Form Number: FCC 396
Action: Revision
Frequency of Response: Every 5 years for TV; every 7 years for radio
Estimated Annual Burden: 345 Responses; 1,035 Hours
Needs and Uses: Filing is required by all licensees of AM, FM, TV, Low Power TV, and international stations with five or more full-time employees when applying for renewal. The report describes the station's program for recruitment, hiring, and promotion. Training information is optional. The data is used to review and assess the licensee's policies and practices, and compliance with the Commission's fair employment requirements.

OMB Number: 3060–0120
Title: Broadcast Equal Employment Opportunity Model Program Report
Form Number: FCC 396–A
Action: Revision
Frequency of Response: Upon application
Estimated Annual Burden: 2,753 Responses; 2,753 Hours
Needs and Uses: Filing is required with applications for authority to construct a new broadcast station, to obtain assignment of the construction permit or license of such a station, or to acquire control of an entity holding such a permit or license. An equal employment opportunity program must be established by any station proposing five or more full-time employees. The data is used to assess the applicant's proposal to ensure compliance with the Commission's fair employment requirements.

Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 87–17176 Filed 7–28–87; 8:45 am]
BILLING CODE 6712–01–M

Common Carrier Services; Federal-State Joint Board Proceedings

In the Matters of Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, FCC 87–222, CC Docket No. 80–286.

Determination of Interstate and Intrastate Usage of Feature Group A and Feature Group B Access Service, FCC 87–223, CC Docket No. 85–124.

Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers in the Contiguous States and Alaska, Hawaii, Puerto Rico and Virgin Islands, FCC 87–224, CC Docket No. 83–1376.

Order

Adopted: June 24, 1987.
Released: July 8, 1987.
By the Commission:

1. On April 17, 1987, Mark S. Fowler the Chairman of the Federal Communications Commission resigned his position. Pursuant to secton 410(c) of the Communications Act of 1934,[1] Chairman Fowler had served as Chairman of the Federal-State Joint Board in CC Dockets 80–286, 85–124, and 83–1376.

2. Federal Communications Commissioner Dennis R. Patrick was appointed as the new Chairman of the Commission and assumed his responsibilities as Chairman on April 18, 1987. Therefore, pursuant to section 410(c), Chairman Dennis R. Patrick has served as Chairman of the Federal-State Joint Board in CC Dockets 80–286, 85–124, and 83–1376 since that date.

3. Accordingly, it is ordered that Dennis R. Patrick, Chairman of the Federal Communications Commission serve as Chairman of the Federal-State Joint Board in the above-mentioned proceedings.

Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 87–17162 Filed 7–28–87; 8:45 am]
BILLING CODE 6712–01–M

[DA–87–905]

Specialized Mobile Radio Service, Frequencies To Be Available For Reassignment

The following channels were recently recovered from licensees who failed to meet the Commission's loading or construction requirements and will be available for reassignment to trunked Specialized Mobile Radio (SMR) applicants. They were previously licensed at the coordinates indicated and are available at any location within the geographic area which will protect exising SMR systems pursuant to Rules 90.362 and 90.621.

865–860./1375 MHx, Santa Barbara, CA, 34–31–36 North, 119–58–39 West
856/860.1125 MHz Santa Barbara, CA, 34–31–36 North, 119–35–39 West
856/860.0625 MHz, Vandenberg AFB, CA, 34–49–27 North, 120–30–06 West
856/860.6625 MHz, Westwego, LA, 29–54–36 North, 90–11–48 West
856/860.5375 MHz, New Indrial, CA, 36–22–04 North, 120–38–31 West
856/860.0875 MHz, Lebec, CA, 34–54–10 North, 118–54–15 West
856/860.6625 MHz, San Antonio, TX, 29–30–28 West, 98–34–09 West
864. 0875, 864.5375, 864.9875, 865.4375 & 865.8875 MHz, Syracuse, NY, 43–02–38 North, 76–09–09 West.

Pursuant to the Public Notice of January 6, 1986, Mimeo No. 1805 these channels will be available for reassignment on August 13, 1987. All applications received before August 13, 1987 will be dismissed. The first application received after the channels become available for reassignment opens the filing window. The window stays open only for the day on which the first application is received. *All applications MUST reference the date and DA number of this Public Notice in order to be considered for these frequencies.*

There is a $30.00 fee required for each application filed. All checks should be made payable to the FCC. Applications should be mailed to: Federal Communications Commission, 800 Megahertz Service, P.O. Box 360416M, Pittsburgh, PA 15251–6416. Applications may also be filed in person between 9:00 AM and 3:00 PM at the following address: Federal Communications Commission, c/o Mellon Bank, Three Mellon Bank Center, 525 William Penn Way, 27th Floor, Room 153–2713, Pittsburgh, PA 15259, Attention: (Wholesale Lockbox Shift Supervisor).

For further information, refer to Public Notice of January 6, 1986 or contact Riley Hollingsworth or Betty Woolford (202) 632–7125 of the Private Radio Bureau's Land Mobile and Microwave Division.

Federal Communications Commission
William J. Tricarico,
Secretary.
[FR Doc. 87–17178 Filed 7–28–87; 8:45 am]
BILLING CODE 6712–01–M

[1] 47 U.S.C. 410(c) (1988).

[RM-5811]

Freeze on Applications to Amend TV Table of Allotments

AGENCY: Federal Communications Commission.

ACTION: Order; Freeze on applications to amend TV table of allotments and construction permit applications for currently vacant allotments.

SUMMARY: The action taken herein temporarily freezes the TV Table of Allotments in or around certain metropolitan areas. Consequently, no new petitions to amend the Table will be accepted, and no applications for vacant allotments in the Table will be accepted. However, applications already on file to amend the Table or for vacant allotments will continue to be processed normally, and applications mutually exclusive with TV applications already announced as acceptable for filing on "cut-off" lists may be tendered. The Commission determined that this action was necessary in order to preserve the future possibility of allotting additional spectrum to existing television broadcasters for use with advanced television systems.

EFFECTIVE DATE: July 16, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Terry L. Haines, Policy and Rules Division, Mass Media Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of the Cities Affected by this Freeze

New York, NY
Los Angeles, CA
Chicago, IL
Philadelphia, PA
San Francisco, CA
Boston, MA
Detroit, MI
Dallas-Ft. Worth, TX
Washington, DC
Houston, TX
Cleveland, OH
Pittsburgh, PA
Seattle-Tacoma, WA
Miami, FL
Atlanta, GA
Minneapolis-St. Paul, MN
Tampa-St. Petersburg, FL
Saint Louis, MO
Denver, CO
Sacramento-Stockton, CA
Indianapolis, IN
Hartford-New Haven, CT
Portland, OR
Milwaukee, WI
Cincinnati, OH
Kansas City, MO
Charlotte, NC
Nashville, TN
Columbus, OH
New Orleans, LA

Federal Communications Commission.
William J. Tricarico,
Secretary.

[FR Doc. 87-17179 Filed 7-28-87; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 217-010051-013.
Title: Mediterranean Force Majeure Agreement.
Parties:
Compania Transatlantica Espanola (Spanish Line)
Costa Container Line
Farrell Lines, Inc.
Italia di Vanigazione, S.p.A.
Jugolinija
Lykes Bros. Steamship Co., Inc.
A.P. Moller Maersk Line
Sea-Land Service, Inc.
Zim Israel Navigation Co., Inc.

Synopsis: The proposed amendment would add Nedlloyd Lijnen, B.V. as a member of the agreement. The parties have requested a shortened review period.

Agreement No.: 202-010689-026.
Title: Transpacific Westbound Rate Agreement.
Parties:
American President Lines, Ltd.
Hanjin Container Lines, Ltd.
Hyundai Merchant Marine Co., Ltd.
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
Mitsui O.S.K. Lines, Ltd.
A.P. Moller-Maersk Line
Neptune Orient Lines, Ltd.
Nippon Yusen Kaisha, Ltd.
Sea-Land Service, Inc.
Showa Line, Ltd.
Yamashita-Shinnihon Steamship Co., Ltd.
Orient Overseas Container Line, Inc.

Synopsis: The proposed amendment would permit a party taking independent action (IA), subsequent to its original notice of IA, to elect to state an expiration date originally overlooked. It would also allow "following" IAs to adopt such expiration dates.

Agreement No.: 203-010977-004.
Title: Hispaniola Discussion Agreement.
Parties:
United States Atlantic and Gulf/Hispaniola Steamship Freight Association
Zim Israel Navigation Co. (Zim)
Seaboard Caribe Ltd.
Overseas Transport International Corp.
R.B. Kirkconnell & Bro. Ltd.

Synopsis: The proposed amendment would alter the scope of Zim's participation in the agreement to more accurately reflect their service in the agreement trade. The parties have requested a shortened review period.

Agreement No.: 208-011139.
Title: Europact.
Parties:
North Europe-United States Pacific Freight Conference
North Europe-U.S. Gulf Freight Association
North Europe-U.S. Atlantic Conference

Synopsis: The proposed agreement would permit the parties to meet and otherwise to communicate and to agree upon rates, tariffs, practices and conditions of service in the trade from ports and points in the United Kingdom, Ireland, Scandinavia and Northern Europe to U.S. ports and points in the forty-eight contiguous states. Adherence to any agreement reached would be voluntary. The parties would also be authorized to take independent action immediately upon notice.

Agreement No.: 208-011140.
Title: Amercorde.
Parties:
Pacific Coast European Conference
Gulf-European Freight Association
U.S. Atlantic-North Europe Conference

Synopsis: The proposed agreement would permit the parties to meet and otherwise to communicate and to agree upon rates, tariffs, practices and conditions of service in the trade to

ports and points in the United Kingdom, Ireland, Scandinavia and Northern Europe from U.S. ports and points in the forty-eight contiguous states. Adherence to any agreement reached would be voluntary. The parties would also be authorized to take independent action immediately upon notice.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: July 24, 1987.

[FR Doc. 87-17161 Filed 7-28-87; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 87-16]

Filing of Complaint and Assignment; Halliburton Co. v. Dansk Steamship Lines and Peter Peterson

Notice is given that a complaint filed by Halliburton Company ("Halliburton") against Dansk Steamship Lines and its President, Peter Peterson ("Dansk") was served July 22, 1987. Halliburton alleges that Dansk has violated section 10(b)(1) Shipping Act of 1984, 46 U.S.C. app. 1709(b)(1), by charging, demanding, collecting, or receiving greater compensation for the transportion of certain commodities than the rates shown in Dansk's applicable tariff.

This proceeding has been assigned to Administrative Law Judge Joseph N. Ingolia ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by July 22, 1988, and the final decision of the Comnission shall be issued by November 22, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 87-17006 Filed 7-28-87; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Application to Engage de Novo in Permissible Nonbanking Activities; Clintonville Bancshares, Inc., et al.

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage de novo, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 20, 1987.

A. Federal Reserve Bank of Chicago (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Clintonville Bancshares, Inc.*, Clintonville, Wisconsin; to engage *de novo* in selling insurance annuities to customers pursuant to § 225.25(b)(8)(vi) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 23, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-17109 Filed 7-28-87; 8:45 am]

BILLING CODE 6210-01-M

Formations of; Acquisitions by; and Mergers of Bank Holding Companies; Dominion Bankshares Corp., et al.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and section 225.14 of the Board's Regulation Y (12 C.F.R. 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 21, 1987.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Dominion Bankshares Corporation*, Roanoke, Virginia; to merge with UNB Corporation, Fayetteville, Tennessee, and thereby indirectly acquire Union National Bank, Fayetteville, Tennessee.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *First Park County Bancshares, Inc.*, Livingston, Montana; to become a bank holding company by acquiring 100 percent of the voting shares of First National Park Bank in Livingston, Livingston, Montana. Comments on this application must be received by August 17, 1987.

Board of Governors of the Federal Reserve System, July 23, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-17110 Filed 7-28-87; 8:45 am]

BILLING CODE 6210-01-M

Acquisitions of Shares of Banks or Bank Holding Companies; Gary L. Kelley et al.

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 13, 1987.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Gary L. Kelley*, Minatare, Nebraska; to acquire 100 percent of the voting shares of Minatare State Company, Minatare, Nebraska, and thereby indirectly acquire The Minatare State Bank, Minatare, Nebraska.

2. *Sumner Schlenk*, Selden, Kansas; to acquire 10 percent of the voting shares of Selden Investments, Inc., Selden, Kansas, and thereby indirectly acquire Selden State Bank, Selden, Kansas.

Board of Governors of the Federal Reserve System, July 23, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-17111 Filed 7-28-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Cancer Control Grant Review Committee, National Cancer Institute, on August 3-4, 1987, Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852.

This meeting will be open to the public on August 3, from 7:30 p.m. to 9:00 p.m. and 8:00 a.m. to 9:30 a.m. August 4, to review administrative details and other cancer control review issues. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, the meeting will be closed to the public on August 4 from approximately 9:30 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning inndividuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide information of the meeting and rosters of committee members, upon request.

Dr. Carolyn Strete, Executive Secretary, Cancer Control Grant Review Committee, National Cancer Institute, Westwood Building, Room 810, National Institutes of Health, Bethesda, Maryland 20892 (301/496-2378) will furnish substantive program information.

This notice is being published less than 15 days prior to the meeting because of the difficulty of coordinating the attendance of members due to unforeseen conflicting schedules.

Dated: July 27, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 17349 Filed 7-28-87; 8:53 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management, Alaska

[AK-965-4213-15; F-14880-E]

Alaska Native Claims Selection; Kikiktagruk Inupiat Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Kikiktagruk Inupiat Corporation for approximately 1 acre. The lands involved are in the vicinity of Kotzebue, Alaska.

Kateel River Meridian

T. 15 N., R. 18 W., (Unsurveyed)
Sec. 2, fractional, those lands formerly within ANCSA Sec. 3(e) application F-23136, excluded from Interim Conveyance No. 644, dated September 2, 1982.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the *Tundra Times*. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until August 28, 1987, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Virginia M. Ezell,

Acting Chief, Branch of Northwest Adjudication.

[FR Doc. 87-17139 Filed 7-28-87; 8:45 am]

BILLING CODE 4310-JA-M

[CA-050-05-4333-12]

Closure of Public Lands in the Cache Creek ACEC Lake and Yolo Counties, CA

SUMMARY: In cooperation with the California State Department of Fish & Game, and under authority of 43 CFR 8364.1, the Bureau of Land Management is designating a vehicular closure of public lands and trails within the Cache Creek ACEC (Area of Critical Environmental Concern), located in Lake and Yolo Counties, California, and an additional area of Tule elk habitat improvements located just outside of the ACEC in Lake County.

All vehicular use except for any existing public access, any administrative access, or any use associated with prior valid existing rights are prohibited year-round.

DATES: This closure is effective on July 29, 1987.

SUPPLEMENTARY INFORMATION: The purpose of this closure is to protect sensitive wildlife and archaeological values found in the Cache Creek ACEC from damage caused by four-wheel drive and other off-road-vehicles. In addition, trespass and vandalism of private property adjacent to this vehicular closure area have been a constant problem because the only access to the public lands in the majority of the ACEC is through private property.

The ACEC includes all public lands ½ mile on either side of Cache Creek in T.12N, R.4W; T.12N., R.5W.; T.13N., R.5W; T.13N., R.6W, Mt. Diablo Meridian; and all public lands ½ mile on either side of the North Fork of Cache Creek downstream of the State Highway 20 overcrossing in T.13N, R.6W, Mt. Diablo Meridian. The vehicular closure will also apply to any future land acquisitions by the Bureau within the ACEC. The Tule elk habitat improvements covered by this closure consist of two water impoundments and approximately 150 acres of brush-to-grass conversions and are located in T.13N., R.6W, Sec. 5, 7, 8, and 9, Mt. Diablo Meridian.

Excepted areas and certain activities within the ACEC in which this vehicular closure does not apply include access on existing public roads (Lang's Peak and Perkins Creek Ridge roads), any administrative type uses occurring throughout the ACEC including monitoring, studies, and law enforcement patrols; or any valid existing rights such as mining claims or other leases.

This closure is consistent with the Rocky Creek/Cache Creek Wilderness Study Area Final Environmental Impact Statement, and the Cache Creek ACEC Management plan.

Copies of a map showing the designated closure areas are available from the Bureau of Land Management Office, 555 Leslie Street, Ukiah, California 95482.

FOR FURTHER INFORMATION CONTACT: Gregg Mangan, Bureau of Land Management, 555 Leslie Street, Ukiah, California 95482. Phone (707) 462-3873.

Date: July 21, 1987.

Al Wright,

Ukiah District Manager.

[FR Doc. 87-17140 Filed 7-28-87; 8:45 am]

BILLING CODE 4310-40-M

[WY-920-07-4111-15; W-60420]

Proposed Reinstatement of Terminated Oil and Gas Lease; Campbell County, WY

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease W-60420 for lands in Campbell County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-60420 effective October 1, 1986, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 87-17141 Filed 7-28-87; 8:45 am]

BILLING CODE 4310-22-M

[WY-920-07-4111-15; W-78159]

Proposed Reinstatement of Terminated Oil and Gas Lease; Natrona County, WY

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3 (a) and (b)(1), a petition for reinstatement of oil and gas lease W-78159 for lands in Natrona County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-78159 effective June 1, 1987, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 87-17142 Filed 7-28-87; 8:45 am]

BILLING CODE 4310-22-M

[WY-920-07-4111-15; W-84812]

Proposed Reinstatement of Terminated Oil and Gas Lease; Natrona County, WY

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3 (a) and (b)(1), a petition for reinstatement of oil and gas lease W-84812 for lands in Natrona County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-84812 effective June 1, 1987, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 87-17144 Filed 7-28-87; 8:45 am]

BILLING CODE 4310-22-M

[WY-920-07-4111-15; W-88020]

Proposed Reinstatement of Terminated Oil and Gas Lease; Natrona County, WY

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3 (a) and (b)(1), a petition for reinstatement of oil and gas lease W-88020 for lands in Natrona County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16 2/3 percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this Federal Register notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-88020 effective June 1, 1987, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarabis,

Chief, Leasing Section.

[FR Doc. 87-17145 Filed 7-28-87; 8:45 am]

BILLING CODE 4310-22-M

[WY-920-07-4111-15; W-78879-L]

Proposed Reinstatement of Terminated Oil and Gas Lease; Johnson County, WY

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease W-78879-L for lands in Johnson County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this Federal Register notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-78879-L effective November 1, 1986, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarabis,

Chief, Leasing Section.

[FR Doc. 87-17143 Filed 7-28-87; 8:45 am]

BILLING CODE 4310-22-M

[NM-030-07-4410-06]

Intent To Prepare Resource Management Plan Amendment; White Sands Resource Area, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to Prepare the White Sands Resource Management Plan Amendment for McGregor Range and invitation to participate in identification of the issue.

SUMMARY: The Bureau of Land Management (BLM), Las Cruces District, New Mexico, is initiating the preparation of a Resource Management Plan (RMP) Amendment, which will include an Environmental Impact Statement (EIS), for the McGregor Range area in Otero County in south-central New Mexico. The plan amendment will guide BLM programs and management practices on McGregor Range.

The public is invited to contribute to the planning process, beginning with participation in the identification of issues. Scoping meetings for public input will be held in Las Cruces, Timberon, and Alamogordo, New Mexico and in El Paso, Texas.

DATE: Comments relating to the identification of issues will be accepted until August 31, 1987.

ADDRESS: Comments should be sent to: Willis Bird, Team Leader, Bureau of Land Management, Las Cruces District, White Sands Resource Area, 1800 Marquess Street, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT: Bob Alexander, Area Manager, or Willis Bird, Team Leader, White Sands Resource Area, (505) 525-8228.

SUPPLEMENTARY INFORMATION: The planning area will include the 608,384-acre McGregor Range area in Otero County, New Mexico. A map showing the area is available in the White Sands Resource Area Office.

The single planning issue proposed for the White Sands RMP Amendment is as follows: To what degree will public use of the resources of McGregor Range be Allowed? Public use of McGregor Range is limited by conditions and restrictions necessary for military uses of the land or the purposes stated in the Military Lands Withdrawal Act of 1986 (Pub. L. 99-606). For resources and uses under BLM's administration and control, the RMP Amendment will consider the degree of public use of those resources.

The RMP Amendment will be developed by an interdisciplinary team consisting of a Team Leader, Technical Coordinator, Writer-Editor, Range Conservationist, Realty Specialist, Wildlife Biologist, Geologist, Outdoor Recreation Planner, Fire Management Specialist, Archaeologist, and Socio-Economist. Additional technical support will be provided by other specialists as needed. The RMP Amendment will be developed in coordination with the Department of the Army.

Public participation activities during the planning process will include consultation with affected users and other agencies, meetings with interested groups and individuals, mail outs, media notices, Federal Register notices, public meetings, and distribution of the draft and the final amendment and EIS for comments.

Four public scoping meetings will be held to obtain public input on resource management concerns on McGregor Range. The public scoping meetings will be held at the following times and locations:

August 18, 1987, 1:30 p.m., BLM District Office, 1800 Marquess Street, Las Cruces, New Mexico.

August 19, 1987, 7 p.m., Basement Conference Room, City Hall, No. 2 Civic Center Plaza, El Paso, Texas.

August 20, 1987, 7 p.m., Timberon Lodge Annex, Timberon, New Mexico.

August 21, 1987, 1:30 p.m., Chamber of Commerce, 1301 White Sands Blvd., Alamogordo, New Mexico.

Complete records of the planning process will be available for public review at the White Sands Resource Area Office at the address above.

Dated: July 23, 1987

Robert L. Shultz,

Acting State Director.

[FR Doc. 87-17107 Filed 7-28-87; 8:45 am]

BILLING CODE 4310-FB-M

[CO-940-07-4220-11; C-033334]

Proposed Continuation of Withdrawal; Colorado

July 20, 1987.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Forest Service, U.S. Department of Agriculture, proposes that the order which withdrew lands for an indefinite period of time for use as various recreation areas and campgrounds, be modified and the withdrawal be continued for 20 years insofar as it affects 218.11 acres of National Forest System land. The land will remain closed to surface entry and mining, but not to mineral leasing.

DATE: Comments should be received within 90 days of publication date.

ADDRESS: Comments should be addressed to State Director, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 303–236–1768.

The Forest Service, U.S. Department of Agriculture, proposes that the existing withdrawal made by Public Land Order 2553, dated December 11, 1961, as amended, for an indefinite period of time, be modified to expire in 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, insofar as it affects the following identified lands:

Sixth Principal Meridian

Arapaho National Forest

Horseshoe Campground

T. 2 S., R. 78 W., unsurveyed,
Beginning at corner No. 1, from which the section corner common to sections 13, 14, 23, and 24, T. 2 S., R. 78 W., 6th P.M., Colorado, bears S. 17° 30' E., 11,400 ft.
From corner No. 1, by metes and bounds, N. 78° W., 400 ft., to corner No. 2; N. 25° W., 240 ft., to corner No. 3; S. 86° E., 504 ft., to corner No. 4; S. 2° W., 257 ft., to corner No. 1, the place of beginning.

New Mexico Principal Meridian

San Juan National Forest

East Fork Campground

T. 36 N., R. 1 E.,
Sec. 7, SE¼NW¼NW¼ and NE¼SW¼NW¼.

Cimarron Campground

T. 38 N., R. 3 W.,
Sec. 8, NE¼SE¼SW¼ and S½SE¼SW¼.

First Fork Campground

T. 36 N., R. 4 W.,
Sec. 28, SE¼SW¼;
Sec. 33, N½NE¼NW¼.

Thompson Park Campground

T. 36 N., R. 12 W.,
Sec. 28, S½S½SW¼SW¼;
Sec. 29, SE¼SE¼SE¼SE¼;
Sec. 32, NE¼NE¼NE¼NE¼;
Sec. 33, that portion of NW¼NW¼ north of U.S. Highway 160.

Gunnison National Forest

Pitkin Recreation Area

T. 50 N., R. 4 E.,
Sec. 10, lots 5 and 6.

The areas described aggregate 218.11 acres in Archuleta, Grand, Gunnison, Hinsdale, and La Plata Counties.

The purpose of this withdrawal is for the administration and protection of various recreation areas and campgrounds. No change is proposed in the purpose or segregative effect of the withdrawal. The land will continue to be withdrawn from surface entry and mining, but not from mineral leasing.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with this proposed action may present their views in writing to this office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be modified and continued and, if so, for how long. Notice of the final determination will be published in the Federal Register. The existing withdrawal will continue until such determination is made.

Richard D. Tate,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87–17146 Filed 7–28–87; 8:45 am]

BILLING CODE 4310–JB–M

Geological Survey

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202–395–7340.

Title: NAWQA Program Interviews

Abstract: Respondents supply information on type of data they have collected and would be willing to share which would be useful to the National Water-Quality Assessment (NAWQA) program. This information allows the Bureau to determine what type of data have already been collected in order to prevent duplication of effort

Bureau Form Number: None

Frequency: Once only

Description of Respondents: Various major water science and water management agencies

Annual Responses: 23

Annual Burden Hours: 138

Bureau Clearance Officer: Geraldine A. Wilson, 703–648–7300.

Date: July 13, 1987.

Philip Cohen,

Chief Hydrologist.

[FR Doc. 87–17252 Filed 7–28–87; 8:45 am]

BILLING CODE 4310–31–M

Minerals Management Service

Development Operations Coordination Document; Chevron U.S.A. Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Chevron U.S.A. Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 5542, block 98, Ship Shoal Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on July 20, 1987. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Service Office located on the 10th Floor of the State Land and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

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FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that is is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: July 21, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87–17147 Filed 7–28–87; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Intention To Negotiate Concession Contract

Pursuant to the provisions of section 5 of the Act of October 9, 1965, 16 U.S.C. 20, public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with Libbey Memorial Physical Medicine Center, Inc., authorizing it to continue to provide hydrotherapy, physical therapy, health spa and physical fitness facilities and services for the public at Hot Springs National Park, Arkansas, for a period of ten (10) years from January 1, 1988 through December 31, 1997.

This contract renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act under 516 DM6 Appendix 7.4 A(6), and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which will expire by limitation of time on December 31, 1987, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Superintendent, Hot Springs National Park, P.O. Box 1860, Hot Springs National Park, Arkansas 71901, telephone number (501) 624–3383, for information as to the requirements of the proposed contract.

John E. Cook,

Regional Director, Southwest Region.

[FR Doc. 87–17248 Filed 7–28–87; 8:45 am]

BILLING CODE 4310-70-M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk, Officer, Washington, DC 20503, telephone 202–395–7340.

Title: Application for Blaster Certification in Federal Program States and on Indian Lands

Abstract: This information is being collected to ensure that the qualification of applicants for blaster certification is adequate. This information will be used to determine the eligibility of the applicant. The affected public will be only those blasters who want to be certified by OSMRE

Bureau Form Number: OSM–74

Frequency: On Occasion

Description of Respondents: Blasters

Annual Responses: 500

Annual Burden Hours: 763

Bureau clearance officer: Darlene Grose-Boyd, (202) 343–5447.

Date: July 13, 1987.

Carson W. Culp,

Assistant Director, Budget and Administration.

[FR Doc. 87–17148 Filed 7–28–87; 8:45 am]

BILLING CODE 4310-05-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–379 and 380 (Preliminary)]

Certain Brass Sheet and Strip From Japan and The Netherlands

AGENCY: International Trade Commission.

ACTION: Institution of preliminary antidumping investigations and scheduling of a conference to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigations Nos. 731–TA–379 and 380 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan and the Netherlands of certain brass sheet and strip,[1] provided for in item 612.39 of the Tariff Schedules of the United States, that are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must

[1] For purposes of these investigations the term "certain brass sheet and strip" refers to brass sheet and strip, other than leaded brass and tin brass sheet and strip, of solid rectangular cross section over 0.006 inch but not over 0.188 inch in thickness, in coils or cut to length, whether or not corrugated or crimped, but not cut, pressed, or stamped to nonrectangular shape, provided for in items 612.3960, 612.3962, and 612.3966 of the Tariff Schedules of the United States Annotated (TSUSA). The chemical compositions of the products under investigation are currently defined in the Copper Development Association (C.D.A.) 200 series or the Unified Numbering System (U.N.S.) C20000 series. Products whose chemical compositions are defined by other C.D.A. or U.N.S. series are not covered by these investigations.

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complete preliminary antidumping investigations in 45 days, or in these cases by September 3, 1987.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's rules of practice and procedure, Part 207, subparts A and B (19 CFR Part 207), and Part 201, subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: July 20, 1987.

FOR FURTHER INFORMATION CONTACT: Tedford Briggs (202–523–4612), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202–724–0002. Information may also be obtained via electronic mail by calling the Office of Investigations' remote bulletin board system for personal computers at 202–523–0103. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–523–0161.

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to petitions filed on July 20, 1987, by counsel on behalf of American Brass, Buffalo, NY; Bridgeport Brass Corp., Indianapolis, IN; Chase Brass & Copper Co., Solon, OH; Hussey Copper, Ltd., Leetsdale, PA; The Miller Company, Meriden, CT; Olin Corp.—Brass Group, East Alton, IL; and Revere Copper Products, Inc., Rome, NY; domestic producers of brass sheet and strip, and on behalf of International Association of Machinists and Aerospace Workers, Washington, DC; International Union, Allied Industrial Workers of America (AFL–CIO), Milwaukee, WI; Mechanics Educational Society of America (Local 56), Rome, NY; and United Steelworkers of America (AFL–CIO/CLC), Pittsburgh, PA.

Participation in the investigations.—Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference.—The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 9:30 a.m. on August 12, 1987, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Tedford Briggs (202–523–4612) not later than August 7, 1987, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions.—Any person may submit to the Commission on or before August 17, 1987, a written statement of information pertinent to the subject of the investigations, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with section 201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: July 23, 1987.

[FR Doc. 87–17221 Filed 7–28–87; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731–TA–367–370 (Final)]

Color Picture Tubes From Canada, Japan, the Republic of Korea, and Singapore

AGENCY: International Trade Commission.

ACTION: Institution of final antidumping investigations and scheduling of a hearing to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations Nos. 731–TA–367–370 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Canada, Japan, the Republic of Korea, and Singapore of color picture tubes, provided for in items 684.96 and 687.35 of the Tariff Schedules of the United States (TSUS),[1] that have been found by the Department of Commerce, in preliminary determinations, to be sold in the United States at less than fair value (LTFV).[2] Commerce will make its final LTFV determinations on or before November 12, 1987 (see section 735(a) of the act (19 U.S.C. 1673d(a))),[3] and the

[1] For purposes of these investigations, color picture tubes are defined as cathode ray tubes suitable for use in the manufacture of color television receivers or other color entertainment display devices intended for television viewing. Color picture tubes imported separately are provided for in item 687.35 of the TSUS; color picture tubes may also be imported as part of color television receiver kits or as part of incomplete television receiver assemblies, provided for in item 684.96 of the USUS.

[2] In its preliminary determinations, Commerce did not cover imports directly from Japan of color picture tubes imported as part of color television receiver kits, provided for in item 684.96 of the TSUS, and did not cover imports from the Republic of Korea of color picture tubes imported as part of color television receiver kits or as part of incomplete television receiver assemblies, provided for in item 684.96 of the TSUS.

[3] Commerce has given the Commission informal notice concerning the date of November 12, 1987, for its final determinations. Commerce's formal notice concerning the November 12, 1987, date will published in the **Federal Register**.

Commission will make its final injury determinations by December 22, 1987 (see section 735(b) of the act (19 U.S.C. 1673d(b))).

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's rules of practice and procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: June 30, 1987.

FOR FURTHER INFORMATION CONTACT: George L. Deyman (202–523–0481), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–523–0161.

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that imports of color picture tubes from Canada, Japan, the Republic of Korea, and Singapore are bring sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigations were requested in a petition filed on November 26, 1986, by the International Association of Machinists and Aerospace Workers; the International Brotherhood of Electrical Workers; the International Union of Electronic, Electrical, Technical, Salaried & Machine Workers, AFL–CIO–CLC; the United Steelworkers of America, AFL–CIO; and the Industrial Union Department, AFL–CIO, all of Washington, DC. Collectively, these labor unions represent employees of four of the five U.S. producers of color picture tubes. In response to the petition the Commission conducted preliminary antidumping investigations and, on the basis of information developed during the course of those investigations, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of color picture tubes from Canada, Japan, the Republic of Korea, and Singapore (52 FR 2450, January 22, 1987).

Participation in the investigations.—Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21 days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to § 207.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff report.—A public version of the prehearing staff report in these investigations will be placed in the public record on November 3, 1986, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing.—The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on November 19, 1987, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on November 9, 1987. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on November 13, 1987, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is November 13, 1987.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions.—All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing breif must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on November 25, 1987. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before November 25, 1987.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission rules (19 CFR 201.6).

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: July 21, 1987.

[FR Doc. 87–17222 Filed 7–28–87; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–260]

Commission Decision Not To Review Initial Determination Terminating One Respondent; Certain Feathered Fur Coats and Pelts, and Process for the Manufacture Thereof

AGENCY: International Trade Commission.

ACTION: Nonreview of initial determination terminating the above-captioned investigation as to one respondent.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to

review an initial determination (ID) granting a joint motion to terminate the investigation as to respondent Papadopouli Kevrekidis (Papadopouli) on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Randi S. Field, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–563–0261.

SUPPLEMENTARY INFORMATION: On November 10, 1986, David Leinoff and David Leinoff, Inc. (Leinoff), filed a section 337 complaint with the Commission alleging unfair methods of competition and unfair acts in the importation and sale of certain feathered fur coats and pelts. Based on that complaint, the Commission instituted the above-captioned investigation. The notice of investigation referred to the following unfair acts: (1) Alleged infringement of claim 1 of U.S. Letters Patent 3,760,424 (the '424 patent), owned by Leinoff and (2) alleged manufacture abroad by a process which, if practiced in the United States, would infringe claim 5 of the '424 patent, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States. 51 FR 46944 (December 29, 1986). The Commission's notice of investigation listed eleven respondents which were alleged to be in violation of section 337.

On June 11, 1987 complaints and respondent Papadopouli Kevrekidis filed a joint motion (Motion No. 260–16) to terminate the investigation as to Papadopouli on the basis of a settlement agreement.

On June 25, 1987, the presiding administrative law judge (ALJ) issued an ID (Order No. 18) granting joint Motion No. 260–16 and terminating the investigation as to Papadopouli on the basis of the settlement agreement.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rules 210.53–.55 (19 CFR 210.53–.55).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–1626. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: July 21, 1987.

[FR Doc. 87–17223 Filed 7–28–87; 8:45am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–255]

Commission Decision To Extend the Deadline for Determining Whether To Review Final Initial Determination; Certain Garment Hangers

AGENCY: International Trade Commission.

ACTION: Extension of deadline for deciding whether to review final initial determination.

SUMMARY: Notice is hereby given that the Commission has determined to extend until August 13, 1987, the deadline by which it must decide whether to review the final initial determination (ID) issued by the presiding administrative law judge (ALJ) in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Charles H. Nalls, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–1626.

SUPPLEMENTARY INFORMATION: On June 17, 1987, the presiding ALJ issued his final ID finding that is no violation of section 337 in the importation and sale of certain garment hangers. The original deadline for deciding whether to review the ALJ's final ID was August 3, 1987.

This action is taken under authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1377) and § 210.53(h) of the Commission's Rules of Practice and Procedure (19 CFR 210.53(h)).

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street, NW., Washington, DC 20436, telephone 202–523–0161. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: July 23, 1987.

[FR Doc. 87–17224 Filed 7–28–87; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–252]

Denial of Motion for Reconsideration; Certain Heavy-Duty Mobile Scrap Shears

AGENCY: International Trade Commission.

ACTION: Denial of a motion (Motion No. 252–25–C) for reconsideration of the Commission's determination in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Jack M. Simmons, III, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0493. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at 202–724–0002.

SUPPLEMENTARY INFORMATION: On May 19, 1987, complainant LaBounty Manufacturing, Inc. (LaBounty), moved, pursuant to Commission rule 211.57(a), 19 CFR 211.57(a), "to set aside in whole" the Commission's final action in this investigation. The Commission's final action was its determination of no violation of the section on the basis of there being no infrengement of the patent in controversy.

This motion alleges, in essence, that (1) respondents did not comply with a discovery order, as demonstrated by newly discovered evidence that goes to the merits of the case, requiring reconsideration, and (2) the newly discovered evidence demonstrates that certain statements made by respondents and their counsel contained material misrepresentations of fact, which were, by implication, relied upon by the complainant to its detriment during the investigation. The motion was opposed by respondnets Dudley Shearing Machine Manufacturing Co., Ltd., and Dudley Shearing (Charlotte), Inc., and by the Commission investigative attorney.

Because Commission rule 211.57, 19 CFR 211.57, which deals with the modification or dissolution of final Commission action, is applicable only to final affirmative determinations, the motion was denied. *Certain Vacuum Bottles*, Commission investigation No. 337–TA–108, Action and Order, issued May 17, 1983.

The Commission also determined not to institute a new investigation on its own motion. Whether considered under the rubric of "newly discovered evidence," analogous to Federal Rule of Civil Procedure (FRCP) 60(b)(2), or fraud on the Commission, analogous to FRCP

60(b)(3), LaBounty's factual showing is not sufficient to demonstrate that the newly discovered evidence is material to the Commission's determination of noninfringement. LaBounty has not explained how, in its view, the newly discovered evidence might lead to a new result in any issue under investigation. LaBounty is not precluded from filing a new complaint with the Commission.

Copies of the Commission's action and order and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 4:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161.

By order of the Commission.

Issued: July 20, 1987.

Kenneth R. Mason,

Secretary.

[FR Doc. 87–17225 Filed 7–28–87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. TA–603–10]

Industrial Forklift Trucks

AGENCY: International Trade Commission.

ACTION: Institution of a preliminary investigation under section 603(a) of the Trade Act of 1974 (19 U.S.C. 2482(a)) and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission has instituted a preliminary investigation under section 603(a) of the Trade Act of 1974 for the purpose of gathering information relevant to the question of whether certain firms supporting a petition for relief filed under section 201 of the Trade Act of 1974 (19 U.S.C. 2251) with respect to imports of certain industrial forklift trucks are "representative of an industry" within the meaning of section 201(a)(1) of the Trade Act.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 206, Subparts A and B (19 CFR Part 206), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: July 20, 1987.

FOR FURTHER INFORMATION CONTACT: Lawrence Rausch (202–523–0300), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–523–0161.

SUPPLEMENTARY INFORMATION:

Background.—On June 5, 1987, Yale Materials Handling Corporation filed a petition under section 201 of the Trade Act of 1974 seeking relief in the form of import restrictions with respect to imports of certain industrial forklift trucks. Several domestic producers of such trucks filed letters supporting Yale's petition, but several others indicated opposition, and others did not indicate either support or opposition to the petition. Those firms supporting the petition accounted for substantially less than 50 percent of domestic production of such industrial forklift trucks in 1986, and those firms in opposition to the petition accounted for a greater share of 1986 production than those firms supporting the petition.

In view of this information and certain other information furnished by the petitioner and other interested parties, the Commission, on July 1, 1987, rejected the petition as not providing a sufficient basis for determining that petitioner and supporting producers were "representative of an industry" within the meaning of section 201(a)(1) of the Trade Act of 1974. At the same time, the Commission determined that it would explore the feasibility of instituting a preliminary investigation under section 603(a) of the Trade Act for the purpose of gathering additional information relevant to the question of whether the firms supporting the petition are "representative of an industry."

Section 603(a) of the Trade Act authorizes the Commission "In order to expedite the performance of its functions . . . [to] conduct preliminary investigations . . ." The Commission anticipates that it will complete this investigation by September 18, 1987. The Commission will announce at the conclusion of its investigation what additional action, if any, it plans to take on this matter.

Scope of the investigation—In this investigation relating to industrial forklift trucks, the Commission plans to gather additional information relating to domestic production, shipments, employment, producing facilities, domestic content, imports by domestic producers, and plans by domestic producers to source such trucks from non-U.S. sources. The Commission asks that interested parties in their submissions and testimony at the public hearing furnish any information relevant to these subjects and, in addition, address the issue of what standards the Commission should apply in determining what entity or entities are "representative of an industry" within the meaning of section 201(a)(1) of the Trade Act.

Participation in the investigation.—Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than ten (10) days after publication of this notice in the **Federal Register.** Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) of the rules (19 CFR 201.16(c)), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on September 2, 1987, at the U.S. International Trade Commission Building, 701 E Street NW, Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on August 20, 1987. Parties will be contacted after that date regarding time allocations for the hearing. Written submissions must be submitted not later than the close of business on September 4, 1987. Confidential material should be filed in accordance with the procedures described below.

Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions.—As mentioned, parties to this investigation may file written submissions by September 4,

1987. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before September 4, 1987. A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired shall be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and results for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: This preliminary investigation is being instituted pursuant to section 603(a) of the Trade Act of 1974 (19 U.S.C. 2482(a)) and § 201.7 of the Commission's rules of practice and procedure (19 CFR 201.7). This notice is published pursuant to § 201.10 of the Commission's rules (19 CFR 201.10).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: July 23, 1987.

[FR Doc. 87-17226 Filed 7-28-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 701-TA-285 (Final)]

Industrial Phosphoric Acid From Belgium

AGENCY: International Trade Commission.

ACTION: Termination of investigation.

SUMMARY: On July 7, 1987, the U.S. Department of Commerce published notice in the **Federal Register** of a negative final determination of subsidies in connection with the subject investigation. Accordingly, pursuant to § 207.20(b) of the Commission's Rules of Practice and Procedure (19 CFR 207.20(b)), the countervailing duty investigation concerning industrial phosphoric acid from Beligium (investigation No. 701-TA-285 (Final)) is terminated.

EFFECTIVE DATE: July 17, 1987.

FOR FURTHER INFORMATION CONTACT: Ilene Hersher (202-523-46167), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-523-0161.

Authority: This investigation is being terminated under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 201.10 of the Commission's rules (19 CFR 201.10).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: July 21, 1987.

[FR Doc. 87-17227 Filed 7-28-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-261]

Commission Decision Not To Review Initial Determination Amending Complaint and Notice of Investigation; Certain Ink Jet Printers Employing Solid Ink

AGENCY: International Trade Comission.

ACTION: Nonreview of an initial determination amending the complaint and notice of investigation to add allegations of infringement a patent.

FOR FURTHER INFORMATION CONTACT: Charles H . Nalls, Esq., Office of General Counsel, U.S. International Trade Commission, tel. 202-523-1626.

Authority: Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and § 210.53 of the Commission's Rules of Practice and Procedure (19 CFR 210.53).

SUPPLEMENTARY INFORMATION: On May 19, 1987, complainants E/D Venture, Imaging Solutions, Inc., and Dataproducts Corporation filed a motion (Motion No. 261-20) to amend the complaint and notice of investigation to add an allegation of infringement of U.S. Letters Patent 4,667,206. Respondent Howtek, Inc opposes the motion. On June 23, 1987, the presiding administrative law judge (ALJ) issued an ID (Order No. 10) granting Motion No. 261-20 to amend the complaint and notice of investigation. No petitions for review were filed nor were any Government agency comments received.

Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW. Washington, DC 20436, telephone 202-523-0161.

Hearing-impaired individuals are advised that information concerning this investigation can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: July 21, 1987.

[FR Doc. 87-17228 Filed 7-28-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-263]

Commission Determination Not To Review Initial Determination Joining Respondent; Certain Office Filing Cabinets

AGENCY: International Trade Commission.

ACTION: Nonreview of an initial determination (ID) joining a respondent to the investigation.

SUMMARY: Notice is hereby given that the Commission has determined not to review the presiding administrative law judge's (ALJ) ID amending the complaint and notice of investigation to join Compania Internacional De Muebles De Acero (CIMA) of Mexico as a respondent in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Paul R. Bardos, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0375.

SUPPLEMENTARY INFORMATION: On May 26, 1987, complainant Supreme Equipment & Systems Corporation moved to amend the complaint and notice of investigation (Motion 263-11) to add CIMA as a respondent to the investigation. The ALJ issued an ID granting the motion on June 25, 1987. No petitions for review of the ID nor comments from other government agencies have been received.

Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: July 21, 1987.

[FR Doc. 87-17229 Filed 7-28-87; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Lodging of Consent Order Pursuant to Clean Water Act; Empire Plating Co. Inc., et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on July 8, 1987, a proposed Consent Order in *United States* v. *Empire Plating Co. Inc., et al.*, Civil Action No. C 85-1580 was lodged with the United States District Court for the Northern District of Ohio. The proposed Consent Order concerns discharge of pollutants from defendant's electroplating plant into the Northeast Ohio Regional Sewer District. The proposed Consent Order requires the defendant to install pollution control equipment to treat its effluent prior to discharge, to monitor and sample this effluent, and to pay a $75,000 civil penalty.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Order. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Empire Plating Co. Inc., et al.*, D.J. Ref. 90-5-1-1-2261A.

The proposed Consent Order may be examined at the office of the United States Attorney, Suite 500, 1404 East Ninth Street, Cleveland, Ohio 44144 and at the Region V Office of Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the Consent Order may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Order may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.00 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87-17217 Filed 7-28-87; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Resource Conservation and Recovery Act; Post and Lumber Preserving Co. et al.

In accordance with Department policy, 28 CFR 50-7, notice is hereby given that on July 16, 1987, a proposed consent decree in *United States of America and the State of Florida* v. *Post and Lumber Preserving Company, Inc.*, Civil Action No. TCA 84-7334, was lodged with the United States District Court for the Northern District of Florida. The complaint was filed by the United States seeking the imposition of injunctive relief and civil penalties under the Resource Conservation and Recovery Act against Post and Lumber Preserving Company, Inc., at its wood-preserving facility in Quincy, Florida. The State of Florida's Complaint in intervention alleged that the company violated the Florida Resource Recovery and Management Act in the operation of its wood-preserving facility.

The consent decree provides that Post and Lumber will close its surface impoundment and a container storage area pursuant to plans approved by the Environmental Protection Agency and the State of Florida, provide post-closure care and establish a trust fund for post-closure care, conduct groundwater monitoring, and pay a civil penalty of $5,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20430, and should refer to *United States and the State of Florida* v. *Post and Lumber Preserving Company, Inc.*, D.J. Ref. 90-7-1-270.

The proposed consent decree may be examined at the office of the United States Attorney, 227 North Bronough Street, Tallahasee, Florida 32301 and at the Region IV office of the Environmental Protection Agency, 345 Courtland Street N.E., Atlanta, Georgia 30365. Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Dapartment of Justice, Room 1517, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. Copies of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

In requesting a copy, please enclose a check in the amount of $1.40 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87-17157 Filed 7-28-87; 8:45 am]

BILLING CODE 4410-01-M

Office of the Attorney General

Certification; Tenth Circuit; Colorado, Utah, Wyoming, Montana, and Idaho

The Attorney General pursuant to section 303 of the Bankruptcy Judges, United States Trustees, and Family Farmer Act of 1986, Pub. L. No. 99-554, hereby certifies to the United States Court of Appeals for the Tenth Circuit on this date that, in the region specified in paragraph 581(a)(19) of title 28, United States Code, composed of the federal judicial districts for the states of Colorado, Utah, and Wyoming, and those portions of Yellowstone National Park in the states of Montana and Idaho, the amendments made by section 113 and subtitle A of title II of the Act and section 1930(a)(6) of title 28, United States Code, will apply 30 days after this date as to all cases commenced under chapters 7, 11, 12, or 13 of title 11, United States Code, on or after November 26, 1986. The amendments will also apply in cases commenced prior to November 26, 1986, one year after this certification, unless a final report and account of the administration of the estate required under section 704 of title 11, United States Code, has been filed, or a plan has been confirmed under section 1129, 1225, or 1325 of title 11.

The amendments cited above implement the United States Trustee system in the region and also impose quarterly fees in chapter 11 cases commenced on or after November 26, 1986. The implementation of the United States Trustee system and the imposition of quarterly fees in those chapeter 11 cases commenced prior to November 26, 1986, in which a plan has not been confirmed, will become effective one year after the date of this certification.

The United States Trustee presently serving for the the district of Colorado is

responsible, pursuant to section 301(a) of the Act, for implementing the amendments made by the Act in the region hereby certified.

Dated: July 22, 1987.

Edwin Meese III,

Attorney General.

[FR Doc. 87-17151 Filed 7-28-87; 8:45 am]

BILLING CODE 4410-01-M

U.S. Trustee System, Judicial Second Circuit

The Attorney General pursuant to section 303 of the Bankruptcy Judges, United States Trustees, and Family Farmer Act of 1986, Pub. L. No. 99-554, hereby certifies to the United States Court of Appeals for the Second Circuit on this date that, in the region specified in paragraph 581(a)(2) of title 28, United States Code, composed of the federal judicial districts for the states of Connecticut, New York, and Vermont, the amendments made by section 113 and subtitle A of title II of the Act and section 1930(a)(6) of title 28, United States Code, will apply 30 days after this date as to all cases commenced under chapter 7, 11, 12, or 13 of title 11, United States Code, on or after November 26, 1986. The amendments will also apply in cases commenced prior to November 26, 1986, one year after this certification, unless a final report and account of the administration of the estate required under section 704 of title 11, United States Code, has been filed, or a plan has been confirmed under section 1129, 1225, or 1325 of title 11.

The amendments cited above implement the United States Trustee system in the region and also impose quarterly fees in chapter 11 cases commenced on or after November 26, 1986. The implementation of the United States Trustee system and the imposition of quarterly fees in those chapter 11 cases commenced prior to November 26, 1986, in which a plan has not been confirmed, will become effective one year after the date of this certification.

The United States Trustee presently serving for the Southern District of New York is responsible, pursuant to section 301(a) of the Act, for implementing the amendments made by the Act in the region hereby certified.

Date: July 21, 1987.

Edwin Meese, III,

Attorney General.

[FR Doc. 87-17216 Filed 7-28-87; 8:45 am]

BILLING CODE 4410-01-M

Certification; Third Circuit; Delaware, New Jersey, and Pennsylvania

The Attorney General pursuant to section 303 of the Bankruptcy Judges, United States Trustees, and Family Farmer Act of 1986, Pub. L. No. 99-554, hereby certifies to the United States Court of Appeals for the Third Circuit on this date that, in the region specified in paragraph 581(a)(3) of title 28, United States Code, composed of the federal judicial districts for the states of Delaware, New Jersey, and Pennsylvania, the amendments made by section 113 and subtitle A of title II of the Act and section 1930(a)(6) of title 28, United States Code, will apply 30 days after this date as to all cases commenced under chapter 7, 11, 12, or 13 of title 11, United States Code, on or after November 26, 1986. The amendments will also apply in cases commenced prior to November 26, 1986, one year after this certification, unless a final report and account of the administration of the estate required under section 704 of title 11, United States Code, has been filed, or a plan has been confirmed under section 1129, 1225, or 1325 of title 11.

The amendments cited above implement the United States Trustee system in the region and also impose quarterly fees in chapter 11 cases commenced on or after November 26, 1986. The implementation of the United States Trustee system and the imposition of quarterly fees in those chapter 11 cases commenced prior to November 26, 1986, in which a plan has not been confirmed, will become effective one year after the date of this certification.

The United States Trustee presently serving for the districts of Delaware and New Jersey is responsible, pursuant to section 301(a) of the Act, for implementing the amendments made by the Act in the region hereby certified.

Dated: July 22, 1987.

Edwin Meese III,

Attorney General.

[FR Doc. 87-17152 Filed 7-28-87; 8:45 am]

BILLING CODE 4410-01-M

Certification; Eleventh Circuit; Florida, Georgia, Puerto Rico, and Virgin Islands

The Attorney General purusant to section 303 of the Bankruptcy Judges, United States Trustees, and Family Farmer Act of 1986, Pub. L. No. 99-554, hereby certifies to the United States Court of Appeals for the Eleventh Circuit on this date that, in the region specified in paragraph 581(a)(21) of title 28, United States Code, composed of the federal judicial districts for the states of Florida and Georgia, the Commonwealth of Puerto Rico, and the Virgin Islands, the amendment made by section 113 and subtitle A of title II of the Act and section 1930(a)(6) of title 28, United States Code, will apply 30 days after this date as to all cases commenced under chapter 7, 11, 12, or 13 of title 11, United States Code, on or after November 26, 1986. The amendments will also apply in cases commenced prior to November 26, 1986, one year after this certification, unless a final report and account of the administration of the estate required under section 704 of title 11, United States Code, has been filed, or a plan has been confirmed under section 1129, 1225, or 1325 of title 11.

The amendments cited above implement the United States Trustee system in the region and also impose quarterly fees in chapter 11 cases commenced on or after November 26, 1986. The implementation of the United States Trustee system and the imposition of quarterly fees in those chapter 11 cases commenced prior to November 26, 1986, in which a plan has not been confirmed, will become effective one year after the date of this certification.

The United States Trustee to be appointed for that region is responsible, purusant to section 301(a) of the Act, for implementing the amendments made by the Act in the region hereby certified.

Dated: July 22, 1987.

Edwin Meese III,

Attorney General.

[FR Doc. 87-17153 Filed 7-28-87; 8:45 am]

BILLING CODE 4410-01-M

Certification; Seventh Circuit; Illinois and Wisconsin

The Attorney General purusant to section 303 of the Bankruptcy Judges, United States Trustees, and Family Farmer Act of 1986, Pub. L. No. 99-554, hereby certifies to the United States Court of Appeals for the Seventh Circuit on this date that, in the region specified in paragraph 581 (a)(11) of title 28, United States Code, Composed of the federal judicial districts for the Northern District of Illinois and the State of Wisconsin, the amendment made by section 113 and subtitle A of title II of the Act and section 1930 (a)(6) of title 28, United States Code, will apply 30 days after this date as to all cases commenced under chapter 7, 11, 12, or 13 of title 11, United States Code, on or after November 26, 1986. The

amendments will also apply in cases commenced prior to November 26, 1986, account one year after this certification, unless a final report and account of the administration of the estate required under section 704 of title 11, United States code, has been filed, or a plan has been confirmed under section 1129, 1225, or 1325 of title 11.

The amendments cited above implement the United States Trustee system in the region and also impose quarterly fees in chapter 11 cases commenced on or after November 26, 1986. The implementation of the United States Trustee system and the imposition of quarterly fees in those chapeter 11 cases commenced prior to November 26, 1986, in which a plan has not been confirmed, will become effective one year after the date of this certification.

The United States Trustee presently serving for the Northern District of Illinois is responsible, pursuant to section 301 (a) of the Act, for implementing the amendments made by the Act in the region hereby certified.

Date: July 22, 1987.

Edwin Meese III,

Attorney General.

[FR Doc. 87-17154 Filed 7-28-87; 8:45 am]

BILLING CODE 4410-01-M

Certification; Tenth Circuit; Kansas, New Mexico, and Oklahoma

The Attorney General pursuant to section 303 of the Bankruptcy Judges, United States Trustees, and Family Farmer Act of 1986, Pub. L. No. 99-554, hereby certifies to the United States Court of Appeals for the Tenth Circuit on this date that, in the region specified in paragraph 581(a)(20) of title 28, United States Code, Composed of the federal judicial districts for the states of Kansas, New Mexico, and Oklahoma, the amendments made by section 113 and subtitle A of title II of the Act and section 1930(a)(6) of title 28, United States Code, will apply 30 days after this date as to all cases commenced under chapter 7, 11, 12, or 13 of title 11, United States Code, on or after November 26, 1986. The amendments will also apply in cases commenced prior to November 26, 1986, account one year after this certification, unless a final report and account of the administration of the estate required under section 704 of title 11, United States code, has been filed, or a plan has been confirmed under section 1129, 1225, or 1325 of title 11.

The amendments cited above implement the United States Trustee system in the region and also impose quarterly fees in chapter 11 cases commenced on or after November 26, 1986. The implementation of the United States Trustee system and the imposition of quarterly fees in those chapter 11 cases commenced prior to November 26, 1986, in which a plan has not been confirmed, will become effective one year after the date of this certification.

The United States Trustee presently serving for the the district of Colorado is responsible, pursuant to section 301 (a) of the Act, for implementing the amendments made by the Act in the region hereby certified.

Dated: July 22, 1987.

Edwin Meese III,

Attorney General.

[FR Doc. 87-17155 Filed 7-28-87; 8:45 am]

BILLING CODE 4410-01-M

Certification; Fourth Circuit; Maryland, South Carolina, Virginia, West Virginia, and the District of Columbia

The Attorney General pursuant to section 303 of the Bankruptcy Judges, United States Trustees, and Family Farmer Act of 1986, Pub. L. No. 99-554, hereby certifies to the United States Court of Appeals for the Fourth Circuit on this date that, in the region specified in paragraph 501 (a)(4) of title 28, United States Code, composed of the federal judicial districts for the states of Maryland, South Carolina, Virginia, and West Virginia, and the District of Columbia, the amendments made by section 113 and subtitle A of title II of the Act and section 1930 (a)(6) of title 28, United States Code, will apply 30 days after this date as to all cases commenced under chapter 7, 11, 12, or 13 of title 11, United States Code, on or after November 26, 1986. The amendments will also apply in cases commenced prior to November 26, 1986, one year after this certification, unless a final report and account of the administration of the estate required under section 704 of title 11, United States Code, has been filed, or a plan has been confirmed under section 1129, 1225, or 1325 of title 11.

The amendments cited above implement the United States Trustee system in the region and also impose quarterly fees in chapter 11 cases commenced on or after November 26, 1986. The implementation of the United States Trustee system and the imposition of quarterly fees in those chapter 11 cases commenced prior to November 26, 1986, in which a plan has not been confirmed, will become effective one year after the date of this certification.

The United States Trustee presently serving for the District of Columbia and the Eastern District of Virginia is responsible, pursuant to section 301 (a) of the Act, for implementing the amendments made by the Act in the region hereby certified.

Dated: July 22, 1987.

Edwin Meese III,

Attorney General.

[FR Doc. 87-17156 Filed 7-28-87; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Controlled Substances; Proposed Aggregate Production Quotas for 1988

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of proposed aggregate production quotas for 1988.

SUMMARY: This notice proposes initial 1988 aggregate production quotas for controlled substances in Schedules I and II of the Controlled Substances Act.

DATE: Comments or objections should be received on or before August 28, 1987.

ADDRESS: Send comments or objections to the Administrator, Drug Enforcement Administration, 1405 I Street NW., Washington, DC 20537, Attn: DEA Federal Register Representative.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, DC 20537, (202) 633-1366.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (21 U.S. Code 826) requires that the Attorney General Establish aggregate production quotas for all controlled substances listed in Schedules I and II. This responsibility has been delegated to the Administrator of the Drug Enforcement Administration by § 0.100 of Title 28 of the Code of Federal Regulations.

The quotas are to provide adequate supplies of each substance for: (1) The estimated medical, scientific, research, and industrial needs of the United States; (2) lawful export requirements; and (3) the establishment and maintenance of reserve stocks.

In determining the below listed proposed 1988 aggregate production quotas, the Administrator considered the following factors: (1) Total actual 1986 and estimated 1987 and 1988 net disposals of each substance by all manufacturers; (2) estimates of

inventories of each substance and of any substance manufactured from it and trends in accumulation of such inventories; (3) estimates of change in legitimate medical needs; and (4) projected demand as indicated by procurement quota applications which were filed pursuant to Section 1303.12 of Title 21 of the Code of Federal Regulations.

Pursuant to § 1303.23(c) of Title 21 of the Code of Federal Regulations, the Administrator of the Drug Enforcement Administration will in early 1988 adjust individual manufacturing quotas allocated for the year based upon 1987 year-end inventory and actual 1987 disposition data supplied by quota applicants for each basic class of Schedule I or II controlled substance.

Based upon consideration of the above factors, the Administrator of the Drug Enforcement Administration hereby proposes that aggregate production quotas for 1988 for the following controlled substances, expressed in grams of anhydrous acid or base, be established as follows:

BASIC CLASS

	Proposed 1988 quotas
Schedule I:	
2,5-Dimethoxyamphetamine	13,500,000
Lysergic acid diethylamide	6
3,4-Methylenedioxyamphetamine	5
3,4-Methylenedioxymethamphetamine	10
Tetrahydrocannabinols	20,000
Psilocyn	2
Psilocybin	2
Normorphine	3
Schedule II:	
Alfentanil	3,500
Amobarbital	0
Amphetamine	371,000
Cocaine	700,000
Codeine (for sale)	38,277,000
Codeine (for conversion)	4,340,000
Diacetylmorphine	1,418,000
1,400,000 grams for the production of levodesoxyephedrine for use in a noncontrolled, nonprescription product and 18,000 grams for the production of methamphetamine.	
Dextropropoxyphene	74,075,000
Dihydrocodeine	582,000
Diphenoxylate	1,090,000
Ecgonine (for conversion)	650,000
Fentanyl	8,100
Hydrocodone	2,380,000
Hydromorphone	198,000
Levorphanol	16,000
Meperidine	10,719,000
Methadone	1,581,000
Methadone intermediate (4-cyano-2-dimethyl-amino-4,4-diphenylbutane)	1,886,000
Methamphetamine (for conversion)	1,920,000
Methylphenidate	2,317,000
Mixed alkaloids of opium	7,000
Morphine (for sale)	3,148,000
Morphine (for conversion)	62,643,000
Opium (tinctures, extracts, etc. expressed in terms of USP powdered opium)	1,527,000
Oxycodone (for sale)	2,122,000
Oxycodone (for conversion)	5,200
Oxymorphone	2,500
Pentobarbital	11,737,000
Phencyclidine	31
Phenmetrazine	0
Phenylacetone (for conversion)	1,020,000
1-Piperidinocyclohexanecarbonitrile (for conversion)	20

BASIC CLASS—Continued

	Proposed 1988 quotas
Secobarbital	1,573,000
Sufentanil	450
Thebaine	5,116,000

All interested persons are invited to submit their comments and objections in writing regarding this proposal. A person may object to or comment on one of the above-mentioned substances without filing comments or objections regarding the others. Comments and objections should be submitted to the Administrator, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attn: DEA Federal Register Representative, and must be received by August 28, 1987. If a person believes that one or more issues raised by him warrant a hearing, he should so state and summarize the reasons for his belief.

In the event that comments or objections to this proposal raise one or more issues which the Administrator finds warrant a hearing, the Administrator shall cause such hearing to be convened pursuant to the provisions of Title 21 of the Code of Federal Regulations, § 1303.31(a).

Pursuant to section (3)(c)(3) and 3(e)(2)(C) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

The Administrator hereby certifies that this matter will have no significant impact upon small entities within the meaning of and intent of the Regulatory Flexibility Act, 5 U.S. Code, 601, et seq. The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international commitments of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substances.

John C. Lawn,

Administrator, Drug Enforcement Administration.

Dated: July 20, 1987.

[FR Doc. 87-17202 Filed 7-28-87; 8:45 am]

BILLING CODE 4410-09-M

Importation of Controlled Substances; Application, Sigma Chemical Co.

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(h)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on May 19, 1987, Sigma Chemical Company, 3500 Dekalb Street, St. Louis, Missouri 63178, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Methadone (9250)	II
Pethidine (meperidine) (9230)	II

A maximum of 25 grams for each of the above listed substances will be imported annually and will be utilized in researcher or analytical studies.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than August 28, 1987.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e) and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e) and (f) are satisfied.

Dated: July 23, 1987.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 87-17112 Filed 7-28-87; 8:45 am]

BILLING CODE 4410-09-M

LIBRARY OF CONGRESS

Copyright Office

Cable Compulsory License; Policy Decision Concerning Federal Communications Commission Action Amending List of Major Television Markets

[Docket No. RM 85-2]

AGENCY: Copyright Office, Library of Congress.

ACTION: Policy decision.

SUMMARY: The Copyright Office has determined that television signals entitled to mandatory carriage status under the FCC's former must carry rules pursuant to an FCC market redesignation order (revising the list of major television markets in 47 CFR 76.51) are to be treated as local signals for purposes of the cable compulsory license of section 111 of the Copyright Act.

EFFECTIVE DATE: July 29, 1987.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, DC 20559, telephone: (202) 287-8380.

SUPPLEMENTARY INFORMATION:

1. Background

Section 111 of the Copyright Act of 1976, title 17 of the United States Code, establishes a compulsory licensing system under which cable systems may make secondary transmissions of copyrighted works. Under this system, a large cable system. *i.e.*, a system having gross receipts above a designated level (presently $292,000 per semiannual accounting period), is generally required to calculate its royalty payments, in part, on the basis of the number of signals of primary transmitters it carries beyond the transmitters' local service areas, i.e., "distant signals." In the case of a television braodcast station, the "local service area of a primary transmitter" is defined in section 111(f) of the 1976 Act as comprising "the area in which such station is entitled to insist upon its signal being retransmitted by a cable system pursuant to the rules, regulations, and authorizations of the Federal Communications Commission in effort on April 15, 1976. . ."

Section 76.51 of the regulations of the Federal Communications Commission ("FCC") in effect on April 15, 1976 contains a list of the major television markets and their designated communities. This list was first published by the FCC in its 1972 cable rulemaking proceeding. *See Cable Television Report and Order*, 36 FCC 2d 143, 220 (1972). In adopting this list, the FCC was concerned that the table of major television markets remain stable in order to allow plans and investment to go forward with confidence and to avoid any disruptive impact on the viewing public. *Id.* at 173.

Under the FCC rules in effect on April 15, 1976, a cable system operator would look to this major market list as one of the criteria for determining which television broadcast stations are subject to mandatory carriage. For example, under former section 76.61(a)(4) of the FCC rules, where a cable system serves a community that is located in whole or in part within a major television market, the cable system may, or upon appropriate request of the broadcast station must, carry the signals of "[t]elevision broadcast stations licensed to other designated communities of the same television market. . ." 47 76.61(a)(4)(1976). Further, before repeal by the FCC of its distant signal carriage rules (*see Report and Order in Docket Nos. 20988 and 21284*, 79 FCC 2d 663 (1980)), the existence of a cable system within a major television market would subject it to a specific market quota of distant signals. 47 CFR 76.61(b)(1979).

In view of the close relationship between specific rules of the FCC and the cable compulsory licensing system in the copyright law, Congress authorized the Copyright Royalty Tribunal to adjust the royalty rates for cable systems where certain changes are made in the FCC rules. Section 801(b)(2)(B) of the 1976 Act provides that the Tribunal may, upon receipt of a petition filed under section 804, adjust the cable royalty rates "[i]n the event that the rules and regulations of the [FCC] are amended . . . to permit the carriage by cable systems of additional television broadcast signals beyond the local service area of such signals . . . " 17 U.S.C. 801(b)(2)(B)(1986). In accordance with this provision, the Tribunal acted in 1982 to adjust the cable compulsory license rates following repeal of the FCC's distant signal carriage and syndicated exclusivity rules. *See Adjustment of the Royalty Rates for Cable Systems*, 47 FR S2146-S2159 (November 19, 1982). Under these adjusted rates, in certain instances, cable systems must compute 3.75 per centum of their gross receipts for each distant signal equivalent ("DSE") or any fraction thereof. *See* 37 CFR 306.2(c)(1984). Pursuant to section 801(b)(2)(B) of the 1976 Act, this rate adjustment does not apply to any DSE represented by: (i) Carriage of any signal permitted under the rules and regulations of the FCC in effect on April 15, 1976 or the carriage of the same type (that is, independent, network, or noncommercial educational) substituted for such permitted signal, or (ii) a television broadcast signal first carried after April 15, 1976, pursuant to an individual waiver of the rules and regulations of the FCC, as such rules and regulations were in effect on April 15, 1976.

On January 17, 1985, the FCC amended its list of major television markets in section 76.51 of its rules to include Melbourne and Cocoa, Florida in the Orlando-Daytona Beach, Florida hyphenated market. *See* 50 FR 2565-2570 (January 17, 1985); *Report and Order in MM Docket No. 84-11 RM 4557*, 102 FCC2d 1062 (released Jan. 11, 1985; adopted Nov. 21, 1984). This final rule raised questions concerning the interplay between the FCC "must-carry" rules that were in effect at that time for cable systems in major television markets, the calculation of royalties under the cable compulsory licensing system in section 111 of the Copyright Act of 1976, and the role of the Copyright Royalty Tribunal in adjusting royalty rates for cable systems following certain FCC rule changes.

In deciding to amend its list of major television markets in former § 76.61, the FCC noted the copyright concerns of Micro Cable Communications Corp. and Group W, who argued in comments to the rulemaking that the list amendment would cause certain cable systems to be in the undesirable position of being required to carry certain signals and pay copyright royalties for their carriage at the 3.75 percent and syndicated exclusively surcharge rates. Systems might be in this position if the Copyright Act definition of local signals, which incorporates by reference the FCC rules of *1976*, also requires reference to the major television market list in effect on April 15, 1976.

The FCC concluded that such would not be the case, and that after its rule change, "the Melbourne and Cocoa stations are considered local for purposes of the Copyright Act." 50 FR 2570. The FCC reasoned that "[a]lthough additional stations will henceforth be able to insist on mandatory signal carriage, that is a consequence of the market situation, not of a change in the Commission's rules in effect on April 15,

1976." *Id.* The FCC analogized the major television market list amendment to a determination by the Commission that a particular station is significantly viewed under § 76.54 of its rules.

A representative of Group W Cable, Inc. formally requested, by letter dated February 19, 1985, that the Copyright Office open a public proceeding in which the copyright issues of the FCC's final rule amending the list of major television markets in § 76.71 of its rules could be addressed. It was stressed that the issues involved in the Florida case concerned the FCC, cable operators and copyright owners. It was also noted that, in addition to the Melbourne-Cocoa, Florida decision, the FCC made comparable changes in a California major market,[1] and that more than 400 additional petitions to change the major television market list were pending at the FCC.

The Copyright Office agreed that the copyright consequences of the FCC's decision to redefine two of the markets in the FCC's list of major television markets at 47 CFR 76.51 should be addressed in a public proceeding, and initiated a Notice of Inquiry on that topic. *See* 50 FR 14725–14726 (April 15, 1985). Specifically, the Copyright Office invited comment on the following questions and related issues:

1(a). What is the impact on the copyright law of a change by the FCC in the major television market list, which has the effect for FCC purposes of making a formerly "distant" signal a "local" must-carry signal? (b) How should the 1982 cable rate adjustment (both the 3.75% rate and the syndicated exclusivity surcharge) be applied in these changed circumstances? (c) Is the FCC correct in its assumption that § 76.61 of its rules is unchanged by the amendment to the list of major television markets and that, although a cable system may be required under § 76.61(a)(4) to carry additional stations after the change in § 76.51(b)(55), it is a "consequence of the market situation, not of a change in the Commission's Rules in effect in April 15, 1976?"

2. Should a distinction be drawn between the copyright consequences of any amendments to the list of major television markets in § 76.51 and any changes in the stations deemed significantly viewed under § 76.54 of the FCC rules after April 15, 1976?

3(a). If the amendment made in § 76.51(b)(55) of the FCC rules to include Melbourne and Cocoa, Florida in the Orlando-Daytona Beach market would have expanded the former signal carriage quota of a cable system in Melbourne or Cocoa, to permit the system to carry an additional independent television broadcast station beyond the local service area of that station as defined in section 111(f), is the Copyright Royalty Tribunal, upon request of a petition filed under section 804 of Title 17 U.S.C., authorized to institute a proceeding to determine whether an adjustment in the royalty rates under section 111 should be made to accommodate this amendment? (b) Alternatively, since the FCC *eliminated* the distant signal rules in 1981, has the Tribunal already addressed the impact of any FCC changes in the "distant signal" rules, including changes in the major television market list, pursuant to 17 U.S.C. 801(b)(2)(B), in its 1982 cable rate adjustment.

4. What action, if any should the Copyright Office take to clarify the issues raised by FCC charges in the major television market list?

2. Summary of the Comment Record

The comment period was held open until May 15, 1985, and twelve comments were received from the following commentators: HBI Acquisition Corp. ("HBI"), the National Cable Television Association, Inc. ("NCTA"), Jones Intercable, Inc. ("Jones Intercable"), Southern Broadcasting Corporation ("Southern"), Micro Cable Communications Corp. ("Micro-Cable"), Centel Cable Television ("Centel"), Group W Cable, Inc. ("Group W"), the Federal Communications Commission ("FCC"), the Motion Picture Association of America ("MPAA"), the National Association of Broadcasters ("NAB"), the Association of Independent Television Stations, Inc. ("INTV"), and Tele-Communications, Inc. ("TCI"). These commentors unanimously agree that in assessing the copyright issues involved in this proceeding, the Copyright Office should adopt the FCC's determination that its final rule including Melbourne and Cocoa, Florida in the Orlando-Daytona Beach hypenated market does not constitute a change in the FCC's rules in effect on April 15, 1976, and should treat signals in the newly defined market that are local for communications purposes as local for purposes of computing copyright royalties as well.

a. Responses to Question 1a.

In reaching the above conclusion, commentators presented several different arguments which generally respond to Question 1(a) posed in the Copyright Office's Notice of Inquiry.

(i) Legislative History

Several [2] commentators argue that the legislative history to the Copyright Act of 1976, in its explanation of the definition of "local service area" in section 111(f), indicates that the FCC major market list found at 47 CFR 76.51 is not frozen to its April 15, 1976 status for purposes of determining the local service area of a particular cable system and the copyright royalties owed by the system. These commentators refer to the House Report that states:

> Under FCC rules and regulations this so-called "must carry" area is defined based on the market size and position of cable systems in 47 CFR 76.57, 76.59, 76.61, and 76.63.
>
> H.R. Rep. No. 1496, 94th Cong. 2d Sess. 99 (September 3, 1976) (hereinafter cited as "House Report"). The commentators argue that only the specific rules listed in this quotation were intended to be frozen to their April 15, 1976 status for purposes of determining what are distant signals for computing copyright royalty fees. "Local" signals for copyright purposes would thus include signals required to be carried by cable systems situated in "major television markets," however that term is defined in current FCC regulations. The FCC's change in the major market list is merely a procedural change, and should not have a substantive effect on cable systems' copyright liabilities.

Commentators [3] also argue that the FCC's addition of Melbourne and Cocoa to the Orlando-Daytona Beach hyphenated market is not the type of rule change which Congress would consider to be a decrease or increase in a local service area which would materially affect the royalty fee payments provided in the legislation.[4] Therefore, they contend, the Orlando-Daytona Beach market should not be frozen to its status as of April 15, 1976 insofar as the FCC's recent economic redefinition of the market it concerned.

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[1] The FCC amended the list of major television markets in section 76.51(6)(72) of its rules by adding Visalia, Hanford, and Clovis, California to the existing Fresno, California market. 50 FR 7915–7918 (Feb. 27, 1985); *Report and Order in MM Docket No. 84–439 RM–4602; RM 4823; RM–4843,* FCC–85–59, slip. op. (released Feb. 14, 1985; adopted Jan. 30, 1985).

[2] NCTA, Centel, and INTV.

[3] NCTA, Centel, INTV, Jones Intercable, and Group W.

[4] The House Report states:

> The definition [of "local service area"] is limited . . . to the FCC rules in effect on April 15, 1976. The purpose of this limitation is to insure that any subsequent rule amendments by the FCC that either increase or decrease the size of the local service area for its purposes do not change the definition for copyright purposes. The Committee believes that any such change for copyright purposes, which would materially affect the royalty fee payments provided in the legislation, should only be made by an amendment to the statute.
>
> House Report at 99.

(ii) Copyright Policy

Several commentators [5] also argue that the FCC's conclusion that must-carry signals in redesignated markets are local for both FCC and copyright purposes is consistent with the underlying basis of the Copyright Act's distinction between "local" and "distant" signals. Congress distinguished local from distant signals for purposes of copyright royalty calculation because it determined that cable carriage of broadcast television programming within station's local market has no impact on the ability of the copyright owner to exploit the retransmitted works in a distant market,[6] and therefore poses no threat to copyright owners. The FCC's market redesignation order reflects the FCC's determination that the communities involved are all part of a single televison market for economic purposes. As such, the FCC's distinction between distant and local signals tracks the Copyright Act's distinction, and is consistent with the copyright law. This argument, commentators contend, is bolstered by the fact that the standard used by the FCC today to determine what constitutes a single market is the same as it was when the FCC created the top 100 market list.[7]

(iii) Communications Policy

Micro Cable refers to FCC policy as further support for the argument that a change to the list of designated major market communities can be viewed as merely a procedural event with no substantive importance and therefore no effect on copyright treatment of cable royalties. Micro-Cable argues that the FCC has treated hyphenated markets in both major markets and smaller markets similarly; as such, Micro-Cable contends that a redesignation of a major market by the FCC should be treated in the same manner as a redesignation of a smaller market. Micro-Cable points out that in a smaller market the FCC gives must-carry status to television stations licensed to other communities which are "generally considered to be part of the same smaller television market," as decided on the facts of each case and determined by industry practices as reflected by national audience rating services. Micro-Cable analogizes that, because as no rule change is involved when a new station becomes part of an existing smaller-market, likewise, the substantive rule has not changed in the case of a major market redesignation and the FCC's decision merely recognizes that certain communities qualify as part of a hyphenated market.

(iv) Fairness

A common theme running through the various arguments raised in the comments was the issue of fairness. Though they are without legal or other support on this count, commentators are adamant that it would be unjust for the Copyright Office to interpret the Copyright Act so as to require cable systems to pay royalties for signals that are must-carry signals under the then existing FCC regulations.

Micro-Cable argues that it may be assumed that Congress was aware that new television stations could go on the air in the vicinity of cable systems and would be local, and further, that "Congress never intended a situation to arise where one Federal Agency requires conduct by a regulated party and another Federal Agency penalizes that party for the conduct." Group W Cable, Inc. argues that, as a policy matter, "references in the Copyright Act to the FCC's must carry rules were not intended to work bizarre copyright results whenever the FCC alters rules which affect mandatory carriage."

(v) Public Interest

INTV contends that if the Copyright Office were to reject the FCC's interpretation that FCC amendments to the list of market designations at 47 CFR 76.51 do not constitute changes to the FCC's must-carry rules, the result of affected cable systems having to pay increased copyright royalties for carriage of must-carry signals would be "inimical to the public interst in having access to free, advertiser and public-supported local television programming via cable without having to pay unnecessary additional charges."

b. Response to Question 1(b)

Commentators agree that signals which are newly designated as local signals for FCC purposes pursuant to the FCC's major market list change should not be subject to the 3.75% rate or the syndicated exclusivity surcharge. The prevailing argument for the conclusion is a reiteration of the commentators' basic position. They claim that because the signals in the newly designated portion of the market are subject to mandatory carriage they should be considered local signals, and local signals are not subject to the 3.75 fee or the syndicated exclusivity surcharge. They argue alternatively that even if the signals would be considered distant signals for copyright purposes (i.e. because there was a rule change effected by the FCC's Order and the Copyright Act freezes the definition of local signals to the 1976 market list in § 76.51 of the FCC rules), the fact that the signals are subject to mandatory carriage is enough to give the signals the status of "permitted" signals under section 801 of the Copyright Act, so that they would not be subject to the 1982 cable rate adjustment.

Jones Intercable reasons that it is reasonable to assume advertisers and copyright owners will generally consider the new communities in the major market as part of the hyphenated market and that, consequently, copyright holders will be compensated for the carriage of these signals into these markets by royalty payments made pursuant to the compulsory license mechanism in general without application of the 1982 rate adjustment.

Group W contends that because there is no controlling language in the Copyright Act, the applicability of the 1982 cable rate adjustment to the signals newly added by the FCC to the major market list depends upon the treatment which the FCC would have afforded the signals if its distant signal and syndicated exclusivity rules were in effect today. Group W concludes that a system once located outside all major markets and later included within a major market would have been treated by the FCC as any other system operating within a major market. Therefore, pursuant to the FCC's former rules, cable operators should be able to carry two additional distant signals into newly designated portions of a major market at the non-3.75% rate. Group W also concludes that signals already carried on cable systems in the newly expanded market would have been exempted from the syndicated exclusivity rules on a grandfathered basis, and therefore such signals are exempt from the syndicated exclusivity surcharge.

c. Response to Question 1(c)

The commentators all answered this question in the affirmative, for reasons generally discussed in response to Question 1(a). Several commentators emphasized that the FCC's change in its § 76.51 list is not the type of substantive change referred to in section 111(f) or 801(b) of the Copyright Act, and therefore is not a change that can trigger a CRT rate adjustment proceeding. Jones Intercable contrasts the change in the major market list with the circumstances of the CRT's 1982 cable rate adjustment, characterizing the latter as being a response to an extreme change in the "overall plan under which the

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[5] NCTA, Group W, NAB, INTV, and TCI.

[6] *See* House Report at 90.

[7] *See Report and Order in MM Docket No. 84-111*, 50 FR 2585, para. 17 (Jan. 17 1985).

Commission classified local and distant signals," and therefore an appropriate situation to trigger CRT rate adjustment.

The FCC comments that the Commission adopted the § 76.51 list based on prime-time household rankings. It explains that the purpose of adopting that list was to delineate various television markets by size so as to tailor mandatory carriage rules according to market size and that it is necessary to revise its market designation where appropriate to reflect contemporary market circumstances. The FCC reiterates that, in revising the list, it did not effect a change in the basic mandatory carriage regime under § 76.61.

d. Responses to Question 2

All commentators agree that there is no legal distinction between the copyright consequences of an amendment to the major market list and a change in the list of stations deemed significantly viewed under the FCC's former rules. NCTA argues that both situations "merely involve the application of existing rules to new facts rather than a change in the rules themselves." Jones Intercable argues that the policy considerations underlying both situations are the same because in each, the status of signals being carried on a cable system changes by virtue of changed factual circumstances. The only difference is that stations which become "significantly viewed" attain that status by virtue of changed viewing habits within a TV market, and stations which become part of a major market achieve that status by virtue of a new commonality of interest coupled with geographic proximity with a major market.

TCI addresses the fact that the modification of a station's significantly viewed status results not from a revision of, or amendment to, a Commission rule, but from the May 1972 revisions to Appendix B of the FCC's *Cable Television Report and Order*, 36 FCC2d 1 (1972), *recon. granted in part* 36 FCC2d 236 (1972). TCI argues that since section 76.54 of the FCC rules incorporates by reference the list of significantly viewed stations, "a change in that list is clearly akin to and no more than a list of § 76.51." In a footnote TCI suggests that it is likely that the list of significantly viewed stations was put into an appendix rather than in the rules themselves merely because the list is 42 pages long. TCI concludes that it would be reasonable to treat a change in the FCC's major market list similarly to a change in the significantly viewed status of a particular station for copyright royalty purposes.

Commentators noted other situations that might be deemed analogous to the FCC's amendment of the major market list in which the FCC's carriage rules are not changed. Several commentators[8] likened a major market redesignation to a situation in which the licensing by the FCC of a new television station causes changes in a cable system's market designation and must-carry obligations. Jones Intercable likens it to a situation in which a station's grade B contour is expanded or contracted. None of these situations is considered a rule change for copyright purposes.

e. Responses to Questions 3(a) and 3(b)

The five commentators that replied to this question [9] all expressed the belief that the CRT is not authorized to entertain a petition for adjustment of the royalty rates applicable to signals that newly become must-carry signals in a particular hyphenated market pursuant to the FCC's redesignation of its major television market list. The commentators generally argue that it is outside the CRT's authority under section 804(b)(2)(B) to adjust the rates in this instance because the FCC's market redesignation is not an amendment to the rules and regulations of the FCC to permit the carriage by cable systems of additional television broadcast signals beyond the local service area of the primary transmitter of such signals, as is required by section 801(b)(2)(B) to trigger the CRT's rate adjustment authority.

TCI and Jones Intercable add that even assuming that the FCC's market redesignation order is a rule change as contemplated by section 801(b)(2)(B), the CRT has discretion to entertain a petition for rate adjustment, and the Tribunal would be acting in accordance with its powers and the mandate of Congress in declining to undertake any study for the purposes of adjustment based on "so minor a modification of the Commission's rules," or in finding that no rate adjustment was warranted because of the policy underlying the FCC's amendment to its major market listing.

The NCTA contends that since the FCC completely eliminated its distant signal carriage restrictions as of June 24, 1981, the redesignation of a market has no effect whatever on the number of distant signals that a cable system may carry under the FCC's rules. Since the CRT considered the impact of the FCC's decision to repeal all of its distant signals rules in November 1982, there is no basis for further adjustments under section 801(b)(2)(B). Jones Intercable disagrees with this argument and notes that if the FCC had generally amended its rules to increase the 35 mile zone so that signals formerly deemed distant were to henceforth be considered local, the CRT would have the right to determine whether the royalty rate should be adjusted.

f. Responses to Question 4

The commentators suggest two general courses of action for the Copyright Office to take in response to the Notice of Inquiry here at issue. The predominantly-held view is that the Copyright Office should adopt as policy the view that signals entitled to mandatory carriage as a result of an FCC market redesignation order are to be treated as local signals for cable compulsory license purposes, and that the Copyright Office should accept any new market status for cable systems that is established by the FCC. This position would be based upon the premise that there is no rule change effected when the FCC amends its major television market list in § 76.51 of the FCC regulations. INTV more specifically suggests that the Copyright Office clarify that under the Copyright Act, local signals include signals which are required by the FCC to be carried by cable systems situated in "major television markets," however that term is defined in existing FCC regulations.

The second suggested alternative is that the Copyright Office adopt a neutral position on the status of signals affected by market redesignation orders, and accept without question Statements of Account which designate signals entitled to mandatory carriage as local regardless of their status prior to the market redesignation.

3. Recent Developments in Must-Carry Regulation

July 19, 1985, the U.S. Court of Appeals for the D.C. Circuit issued a decision in *Quincy Cable TV, Inc. v. FCC*, 768 F2d 1434 (D.C. Cir. July 19, 1985), *cert. den. sub nom. National Association of Broadcasters v. Quincy Cable TV, Inc.*, 106 S Ct 2889 (June 9, 1986), holding that in their then existing form the FCC's mandatory carriage rules contravened the First Amendment. In a footnote of the opinion, the court states that by invalidating the must carry rules on First Amendment grounds, the court does not suggest that they may not continue to serve the function of being a reference point for determining where a local signal ends and a distant signal

[8] NCTA, Jones Intercable, Micro-Cable, and TCI.
[9] NCTA, Jones, Centel, Group W, and TCI.

begins for purposes of computing royalty fees under section 111 of the Copyright Act. *Id.* at 40, n. 42.

In accordance with the *Quincy* decision, the FCC suspended enforcement of the must carry rules, effective July 19, 1985. "Suspended Enforcement of Certain Sections of 47 CFR Part 76," 50 FR 38003 (September 10, 1985). In response to petitioning members of the public, the Commission adopted a combined Notice of Inquiry and Notice of Proposed Rulemaking on November 14, 1985, to consider the matter of amending the mandatory signal carriage rules for cable systems in accordance with the *Quincy* court's decision. 50 FR 48232. Pursuant to that rulemaking proceeding, on March 26, 1987 the FCC adopted a new regulatory program for cable systems that includes interim must-carry rules that will expire at the end of a five year transition period. *Memorandum Opinion and Order in MM Docket No. 85-349*, FCC 87-105, 62 Rad Reg 2d (P&F) 1251 (released May 1, 1987). The new rules went into effect on June 10, 1987.

The *Quincy* decision and its regulatory aftermath at the FCC have had a great impact on the practical significance of the issue raised in this Inquiry. Since July 19, 1985, and the nonenforcement of the former must carry rules, the FCC's major market list has only had limited significance under the FCC's cable regulatory scheme, and has been relevant only with respect to FCC rules that do not relate to a determination of local service areas under the copyright law. Under the must carry rules adopted on March 26, 1986, a television station's market status is immaterial in the determination of mandatory carriage. Thus, it would appear that the FCC will no longer make redesignations of the list, because the list does not affect cable systems' must-carry obligations. Accordingly, whether a change in the major television market is a rule change for purpose of determining copyright royalties will probably affect only the determination of local signal status for cable systems located in the Orlando-Daytona-Melbourne market and the Fresno-Visalia-Hanford-Clovis market.

4. Policy Decision

Having reviewed the Copyright Act of 1976 and its legislative history concerning the definition of local service area in section 111(f) of the Act, as well as the views presented during the comment period of the Inquiry and the current developments in cable communications law, the Copyright Office formally adopts the view that signals entitled to mandatory carriage status under the FCC's former must carry rules as a result of an FCC market redesignation order are to be treated as local signals for purposes of the cable compulsory license. This position is necessarily based upon the interpretations that (1) Congress did not intend § 76.51 to be frozen to its April 15, 1976 status for purposes of determining cable systems' local service area and copyright royalty fees; and (2) when the FCC amends its major television market list in 47 CFR 76.51, there has been no substantive rule change effected so as to impact calculation of cable copyright royalties.

The Copyright Office adopts the above interpretation based on the legislative history of the Copyright Act, as summarized in part 2.a.(1) of this Notice. The commentators representing the cable industry, the broadcast industry and the copyright owners were unanimous, moreover, in urging the Copyright Office to adopt this view. Finally, the changes in the FCC's must-carry rules following the *Quincy* decision have essentially mooted the subject of this Notice. When this inquiry began the Copyright Office had concerns about enlargement of the class of local signals under the Copyright Act due to the approximately 400 petitions for market redesignation at that time pending at the FCC. However, it would appear that this policy concern is now eliminated because under the FCC's amended must-carry rules, the major market list is not determinative of must-carry status, and it is unlikely that a large number of market redesignations will be effected by the FCC in the future.

Dated: July 16, 1987.

Ralph Oman,

Register of Copyrights.

Approved.

Daniel J. Boorstin,

The Librarian of Congress.

[FR Doc. 87-17123, Filed 7-28-87; 8:45 am]

BILLING CODE 1410-07-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 30-16055, License No. 34-19089-01]

Order Modifying License, Effective Immediately, and Demand for Information; Advanced Medical Systems, Inc.

I.

Advanced Medical Systems, Inc. (AMS or licensee) One Factory Row, Geneva, OH, is the holder of Byproduct Material License No. 34-19089-01 issued by the Nuclear Regulatory Commission (the NRC) pursuant to 10 CFR Part 30. The license authorizes possession and use of 150,000 curies of cobalt-60 as solid metal, 150,000 curies of cobalt-60 in sealed sources, and 40,000 curies of cesium-137 in the manufacture, installation and servicing of radiography and teletherapy devices. The license further authorizes the installation, servicing, maintenance, and dismantling of radiography and teletherapy units. The license, originally issued on November 2, 1979, was renewed on June 25, 1986, with an expiration date of October 31, 1988. A timely renewal application has been submitted.

II.

Licensee's teletherapy source fabrication facility is located at 1020 London Road in Cleveland, Ohio ("the London Road facility" or "facility"). Based on surveys conducted in October 1985 and August 1986, contamination and radiation levels at the London Road facility have been found to be excessive and increasing.

On October 21-24, 1985, at the request of the NRC staff, representatives of the Radiological Site Assessment Program of Oak Ridge Associated Universities (ORAU) performed an evaluation of the fire protection and operational radiation safety problems at the London Road facility. In addition, ORAU performed confirmatory measurements and onsite/offsite sampling to determine the radiological status of the site and the immediate environment.

On February 20, 1986, NRC Region III representatives met with representatives of AMS at the London Road facility. The meeting included a discussion of the findings and recommendations in ORAU's evaluation report and a discussion of immediate actions that should be taken to protect the public health and safety. Among the concerns expressed by NRC representatives at the meeting were excessive contamination throughout the facility, excessive accumulation of radioactive material, a high potential for serious personnel exposure if operations continue as in the past, and decontamination costs estimated at approximately $1 million with no firm commitment from AMS that funding will be available.

On March 7, 1986, the NRC staff requested that AMS submit plans to clean up its radioactive waste, decontaminate its hot cell area, and decontaminate its solid and liquid waste storage areas in the basement of the London Road facility. On April 16, 1986 AMS submitted a letter to the NRC on

the status of its cleanup or radioactive waste and a general statement about plans for obtaining a contract for decontamination. The NRC staff informed AMS by letter dated May 6, 1986 that its April 16 response was inadequate. On May 29, 1986 AMS submitted a letter to the NRC indicating the status of its radioactive waste cleanup and providing further general statements about plans to contract for decontamination. Attached to the letter was a generic decontamination plan with no specific schedules for cleanup.

Due to AMS' failure to submit an adequate decontamination plan for the London Road facility as requested in March 1986 by the NRC staff, the NRC on June 25, 1986 issued Amendment No. 8 to AMS' license requiring AMS to submit, within 60 days, a decontamination plan for the facility (License Condition No. 15.A) and a copy of a contract for decontamination by a qualified health physics organization.

On July 24, 1986 AMS submitted to the NRC a contract with Rad Services, Inc. to perform decontamination of the London Road facility. The contract contained a schedule for providing the decontamination plan.

On September 5, 1986, Amendment No. 9 was issued extending the time under the AMS license for submittal of the decontamination plan to the NRC. On September 10, 1986, AMS submitted to the NRC a decontamination plan date September 8, 1986 (Plan), with schedules for decontamination of the London Road facility.

On October 23, 1986 the NRC issued Amendment No. 10 to the AMS License. Pursuant to that license amendment and Conditions 16 and 19.E of AMS' current license, the initiation of decontamination activities at the London Road facility was required, in accordance with the Plan, by December 22, 1986. Conditions 15.A, 19.C, and 20 in Amendment 10 incorporate AMS' commitments to redesign, reconstruct, and upgrade its facility.

By letter dated December 23, 1986, a day after the decontamination implementation deadline, AMS requested that Condition 16 "be placed in abeyance to be reconsidered following reconciliation of the [NRC's] suspension Order of October 10, 1986." The October 10th Order suspended AMS' authority under its license to install, service, maintain, or dismantle radiography or teletherapy units. The NRC responded, by letter dated February 11, 1987, that it does not consider the Order to be a basis for modification of the license and that any relaxation of the time frames of AMS' decontamination effort must be submitted as an application for a license amendment.

By letter dated March 20, 1987, AMS requested that Condition 16 be revised to provide that AMS shall initiate decontamination of the London Road facility, in accordance with its Plan, by March 1, 1988. AMS cited lack of available profits frm its business, due to the suspension of AMS' service license from October 16, 1986, until February 2, 1987, as the basis for its request. AMS stated, "We anticipate that profits, necessary to resolve the accumulated deficit since October 10, 1986 and to provide sufficient profits to finance continuation of the decontamination program, will be available, at the earliest, by March 1, 1988." Region III staff discussed the March 20, 1987, proposal with AMS staff during a site visit on April 2, 1987. Subsequent to that visit, AMS supplemented the March 20, 1987, request with a letter dated April 10, 1987, proposing an alternative schedule for implementation of the decontamination program, which would still defer initiation of decontamination of the most contaminated areas until March 1, 1988, contingent upon profitability of the company. To date, AMS has not made substantial progress on any of the decontamination activities pursuant to the Plan required under its license.

III.

ORAU's site evaluation of the AMS London Road facility in October 1985 and surveys performed by RAD Services, Inc, an AMS contractor, in August 1986 indicate that a general degradation of radiological conditions has continued, resulting in a significant potential for unnecessary radiation exposures for workers at this facility as evidenced by the following:

1. In the basement, general area radiation levels have remained very high (500–10,000 mR/hr); contamination levels have increased significantly (from 40,000 dpm/100 cm^2 to 1,500,000 dpm/100 cm^2). The liquid waste room general area is on the order of 300 R/hr with some areas as high as 1000 R/hr.

2. On the first floor, general area radiation levels in the Isotope Shop Area (ISA) showed substantial increases from 1985 to 1986 (up to 400% increase). The ISA showed levels of 1.5—54.0 mR/hr in 1985, and 2.0—180.0 mR/hr in 1986 (the *average* radiation level in the ISA, a relatively high traffic area, was 15 mR/hr). Contamination levels have increased from a maximum of 90,000 dpm/100 cm^2 in 1985 to 500,000 dmp/100 cm^2 in 1986. Radiation levels in the hot cell have been measured at 80 R/hr during routine maintenance procedures and irradiated pellet deliveries. The hot cell entry area (decontamination room) is extremely contaminated due to recent source manufacturing operations and accumulation of solid radioactive waste. A licensee survey performed on April 2, 1987 during an NRC site visit revealed gross floor contamination in excess of 1,000,000 dpm/100 cm^2.

3. The area of concern on the second floor is the cell machinery/filter room, which houses the exhaust ventilation system, cell-crane equipment, and back-up power supplies. The exposure rate outside the restricted area exhaust ventilation room exceeds 80 mR/h in some areas due to contamination on the HEPA filter. During the 1985 ORAU audit, the exposure rate at the hot cell filter was 3.0 R/h. These exposure rates are excessive, and severaly limit the time accessibility to this room for routine maintenance (filter exchange, generator and battery checks, etc.). The filter room and surrounding areas are locked and controlled as restricted areas.

IV.

Despite repeated efforts by the NRC to get AMS to take steps to initiate meaningful decontamination efforts at the facility and modify the facility to minimize contamination, AMS has failed to take such steps and there is no assurance that AMS will initiate meaningful decontamination effort by March 1988. Notwithstanding the issuance of license amendments requiring initiation of decontamination, redesign, reconstruction, and upgrading of the facility, to date efforts have been minimal and contamination and radiation levels remain excessive and are increasing.

On the basis of the above and after NRC review of licensee activities onsite, it is apparent that since December 22, 1986, AMS has been operating and continues to operate in noncompliance with Conditions 15.A, 16, 19.C, 19.E and 20 of its license in that it has failed to initiate the required activities at the London Road facility. Consequently, the NRC lacks reasonable assurance that decontamination, redesign, reconstruction and upgrading of the licensee's London Road facility will be initiated and completed in an orderly and timely fashion to assure that the health and safety of the public, including licensee's employees, will be protected. Accordingly, the public health, safety and interest require that those efforts commence forthwith. For these reasons and pursuant to 10 CFR 2.201(c), no prior notice is required.

V.

In view of the foregoing, and pursuant to sections 81, 161b, 161i, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR Part 30, it is hereby ordered, effective immediately, that License No. 34–19089–01 is modified as follows:

A. By August 31, 1987, AMS shall commence decontamination of the London Road facility in accordance with License Condition Nos. 16 and 19.E of its license.

B. Decontamination of the London Road facility shall be accomplished in accordance with the schedule described in sections 4.0.1 through 4.0.10 of the Plan submitted with AMS' letter dated September 10, 1986, with completion dates keyed to a program initiation date of August 31, 1987.

C. By August 31, 1987, AMS shall commence the redesign, reconstruction, and upgrading of the London Road facility and the other activities required by License Condition Nos. 15.A, 19.C and 20, specifically the plan described in the attachment to AMS' letter dated May 29, 1986.

D. The activities required in C above shall be accomplished in accordance with the schedule described in the attachment to AMS' letter dated May 29, 1986, with completion dates keyed to a program initiation date of August 31, 1987.

VI

The licensee or any other person adversely affected by this Order may request a hearing within twenty days of its issuance. Any answer to this Order or request for hearing shall be submitted to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies shall also be sent to the Assistant General Counsel for Enforcement at the same address and the Regional Administrator, NRC Region III, 799 Roosevelt Road, Glen Ellyn, Illinois 60137. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which the petitioner's interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d). Upon the failure of the licensee to answer or request a hearing within the specified time, this Order shall be final without further proceedings. An answer to this order or a request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is requested by the licensee or a person whose interest is adversely affected, the Commission will issue an order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

VII

While alleged lack of profits does not excuse noncompliance with the conditions of an NRC license, lack of financial ability to comply with NRC requirements may require further NRC action. Therefore, further information is needed to determine whether the Commission can have reasonable assurance that in the future the licensee will conduct its activities in accordance with the Commission's requirements and expeditiously conduct required decontamination, redesign, reconstruction, and upgrading of its facilities and programs.

Accordingly, to determine whether the license should be modified, suspended or revoked, or other enforcement action taken to ensure compliance with NRC regulatory requirements, the licensee is required to submit to the Regional Administrator, Region III, the following information in writing and under oath or affirmation, pursuant to sections 161c and 182 of the Atomic Energy Act of 1954, as amended, and 10 CFR Part 30:

A. Provide within 30 Days of receipt of this Order:

1. Copies of AMS' annual financial statements, including but not limited to, balance sheets showing all assets and liabilities and profit and loss statements, for the previous three years.

2. Copies of AMS' quarterly financial statements, including but not limited to, balance sheets showing all assets and liabilities and profit and loss statements, for the previous four quarters.

3. Copies of AMS' annual federal tax returns for the previous three years.

4. A listing of the names of all owners of record of the stock of AMS owning at least 10% of the stock, indicating each owner's address and the number of shares owned.

5. A listing of any planned or proejcted AMS fabrication of teletherapy or radiography sources for domestic or foreign use within the next 6 months, including the number and activity of the sources to be produced and anticipated date of production.

B. Provide a report every 30 days beginning October 15, 1987 addressing:

1. The progress that has been made toward carrying out the Plan during the past calendar month and the radiation dose received by each worker. In the event that a milestone date set forth in the licensee's May 29, 1986 or September 10, 1986 letters, as modified by this Order, is not met during the period covered by the report, the report shall indicate: (1) The date by which the licensee expects to accomplish the activity, (2) the reason for the licensee's failure to meet the milestone date, and (3) the impact that the failure to meet the milestone date will have on the Plan and schedule.

2. The actions under the Plan that the licensee expects to accomplish within the next 30 days.

3. The financial resources available to the licensee during the period covered by-the report, including but not limited to revenue, costs and expenses, net losses or profits, and sums expended during the period on decontamination of the London Road facility.

For the Nuclear Regulatory Commission.

Dated at Bethesda, Maryland this 23d day of July 1987.

James M. Taylor,

Deputy Executive Director for Regional Operations.

[FR Doc. 87–17220 Filed 7–28–87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 11003919]

Solicitation of Public Comments on License Applications Seeking Authorization to Import Uranium From South Africa; Braunkohle Transport, USA

On June 11, 1987, published at 52 FR 23091 (June 17, 1987), the Nuclear Regulatory Commission issued an Order inviting the parties to the Commission proceeding as well as members of the public to comment on issues raised by eight license applications. These applications, if granted, would authorize the import of uranium of South African-origin into the United States. The initial round of public comments were to be submitted to the Commission by July 13, 1987. Reply comments were to be submitted by July 28, 1987.

At the request of the Atlas Corporation the period for filing reply comments has been extended to August 4, 1987.

Issued at Washington, DC, this 23d day of July 1987.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 87–17250 Filed 7–28–87; 8:45 am]

BILLING CODE 7590-01-M

Bi-weekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular bi-weekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This bi-weekly notice includes all notices of amendments issued, or proposed to be issued from July 6, 1987 through July 17, 1987. The last bi-weekly notice was published on July 15, 1987 (52 FR 26580).

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 28, 1987, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S.

Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Arizona Public Service Company, et al., Docket No. STN 50-528, Palo Verde Nuclear Generating Station (PVNGS), Unit 1, Maricopa County, Arizona

Date of amendment request: May 28, 1987

Description of amendment request: The proposed amendment consists of the following proposed changes to the Technical Specifications (Appendix A to Facility Operating License No. NPF-41 for PVNGS, Unit 1).

Technical Specification 3.3.3.2 addresses the limiting condition for operation for the incore detectors used to measure the spatial neutron flux distribution of the reactor core. The proposed changes would modify part b. of this specification to require the incore detection system to have a minimum of six tilt estimates, with at least one at each of three levels, in lieu of a minimum of two quadrant symmetric incore detector locations per core quadrant. In order to assure that this proposed change does not permit operation with a large number of failures, part a. of the specification would be changed to also require the incore detection system to have 75% of all detectors, with at least one detector in each quadrant at each level.

Technical Specifications 3/4.9.1 and 3/4.10.1 provide the required boron concentration conditions during refueling, and the shutdown margin requirements for measuring control element assembly worth, respectively. Each of the specifications provides an action statement which requires a minimum boration flowrate of 40 gpm of a solution containing 4000 ppm boron whenever the limiting conditions for operation are not met. The proposed amendment would change this flowrate to a minimum of 26 gpm. The change is being proposed to be consistent with the values used in the previously reviewed design of the plant and with the values currently included in Specifications 3.1.1.1, 3.1.1.2 and 4.1.2.2.

All of the above proposed changes would make those portions of the Technical Specifications consistent with the Technical Specifications previously reviewed and approved by the staff for PVNGS, Units 2 and 3 (Appendix A to Facility Operating License Nos. NPF-51 and NPF-65, respectively).

Basis for Proposed No Significant Hazards Consideration Determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

A discussion of the proposed changes, as they relate to these standards is presented below.

Standard 1 - Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change to Specification 3.3.3.2 does not alter the design of the facility. The change is being proposed so that operation of the incore detection system is consistent with the design of the system, as well as with the data base and uncertainties presented in the report, "Evaluation of Uncertainty in the Nuclear Power Peaking Measured By the Self-Powered, Fixed In-core Detector System" (CENPD-153-P, Rev. 1-P-A), which presents the evaluation of the system.

The proposed changes to Specifications 3/4.9.1 and 3/4.10.1 do not alter the current design or operation of the facility. The only change being proposed is to make the charging flowrate consistent with the values used in the previously reviewed design of the plant and with the values currently included in Specifications 3.1.1.1, 3.1.1.2 and 4.1.2.2.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Standard 2 - Create the Possibility of a New or Different Kind of Accident from any Accident Previously Evaluated.

None of the proposed changes affect the design of the plant or how the facility is operated. The changes are being proposed to be consistent with plant design and with related specifications. Therefore, the changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Standard 3 - Involve a Significant Reduction in a Margin of Safety.

None of the proposed changes involve a significant reduction in a margin of safety since they only involve changes to correct errors and to provide consistency within the Technical Specifications and with plant design.

Accordingly, the Commission has proposed to determine that the above changes do not involve a significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004.

Attorney for licensees: Mr. Arthur C. Gehr, Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85007.

NRC Project Director: George W. Knighton

Arizona Public Service Company, et al., Docket Nos. STN 50-528 and STN 50-529, Palo Verde Nuclear Generating Station (PVNGS), Units 1 and 2, Maricopa County, Arizona

Date of amendment request: June 24, 1987

Description of amendment request: The proposed amendments consist of a proposed change to the Technical Specifications (Appendix A to Facility Operating License Nos. NPF-41 and

NPF-51 for PVNGS, Units 1 and 2, respectively).

Technical Specification 3.7.1.3 defines the limiting condition for operation for the condensate storage tank (CST), which provides the primary source of demineralized water for the auxiliary feedwater system. The proposed change would revise the required minimum level in the CST from 23 feet to an indicated level of 25 feet, and would make that portion of the Technical Specifications consistent with the Technical Specifications previously reviewed and approved by the staff for PVNGS, Unit 3 (Appendix A to Facility Operating License No. NPF-65).

Basis for Proposed No Significant Hazards Consideration Determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

A discussion of the proposed change, as it relates to these standards is presented below.

Standard 1 - Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change would revise the CST level in Specification 3.7.1.3 to ensure that an inventory of 300,000 gallons is available in the CST. The 300,000 gallon inventory is required, in the event of a total loss of offsite power, to ensure that enough water is available after event initiation to maintain the plant in hot standby conditions for four hours and then accomplish a natural circulation cooldown to conditions which allow the initiation of the shutdown cooling system. The current CST level of 23 feet does not ensure an inventory of 300,000 gallons under all circumstances. No other previously evaluated accident is affected by this proposed change. Therefore, the proposed change will not involve a significant increase in the probability or the consequences of any accident previously evaluated.

Standard 2 - Create the Possibility of a New or Different Kind of Accident from any Accident Previously Evaluated.

The proposed change would not make any changes to plant design or operation, or change the operation of any plant equipment. The only change would be the level in the CST to ensure a sufficient inventory of water. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Standard 3 - Involve a Significant Reduction in a Margin of Safety.

As stated previously, the proposed change would not change plant or equipment design, or plant operation. The change would only correct an error in Specification 3.7.1.3. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Accordingly, the Commission has proposed to determine that the above change does not involve a significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004.

Attorney for licensees: Mr. Arthur C. Gehr, Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85007.

NRC Project Director: George W. Knighton

Boston Edison Company Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: April 30, 1987.

Description of amendment request: The proposed change to the Technical Specifications would remove the requirement for "immediate and daily thereafter" surveillances of redundant equipment when Emergency Core Cooling System (ECCS) components are inoperable.

Basis for proposed no significant hazards consideration determination: In its application, the licensee provided an analysis concerning the issue of no significant hazards consideration. Based on this analysis, the licensee determined that the proposed amendment did not represent a significant hazard consideration. The reasons for this determination were:

(1) it did not involve a significant increase in the probability or consequences of an accident since removal of the immediate and daily surveillance requirements would be beneficial in that, the increased surveillance frequency resulted in the premature wear of active system components;

(2) because the proposed amendment keeps, during normal operations, the redundant systems in a state identical to that assumed in the Pilgrim accident analysis, it will not create the possibility of a new or different kind of accident; and

(3) the amendment will not involve a significant reduction in the margin of safety since the revised requirements provide assurance of equipment operability.

The staff has reviewed the evaluation provided by the licensee and agrees with the determinations. Hence, the staff has made a proposed determination that this application for amendment involves no significant hazard consideration.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Attorney for licensee: W. S. Stowe, Esq., Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Project Director: V. Nerses.

Boston Edison Company Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: May 20, 1987.

Description of amendment request: The proposed amendment to the Technical Specifications: (1) adds a timer to the automatic depressurization system (ADS) surveillance criteria in Table 3.2.B; (2) adds a test to a manual inhibit switch; (3) changes the Bases to reflect the modification to the plant and Technical Specfications.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for determining whether a proposed amendment involves a significant hazard consideration (48 FR 14870). An example of an amendment that is not likely to involve a significant hazards consideration is "(ii) A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications: for example, a more stringent surveillance requirement."

Because the proposed amendment would add the requirements to survey the ADS timer, and test the manual inhibit switch, the staff considers these additional limitations. Therefore, the changes are similar to example (ii).

Based on the above, the staff has made a proposed determination that the application for amendment involves no significant hazards considerations.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

BEST COPY AVAILABLE

Attorney for licensee: W. S. Stowe, Esq., Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Project Director: V. Nerses.

Boston Edison Company Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: May 22, 1987.

Description of amendment request: The proposed amendment would revise the Trip Function for the Startup Transformer Loss of Voltage devices. The changes would clarify existing Technical Specification functions and settings. They include: (1) deleting the reference to 3094 volts with 18 seconds time delay from Table 3.2.B; (2) removing a footnote which refers to the Trip Function for the Startup Transformer Loss of Voltage device; and (3) deleting the references to individual relay numbers. The proposed changes are administrative in nature in that they are being made to eliminate requirements that are not necessary because of plant modifications and to reduce the possibility of confusion. No changes are being made that will alter the safety-related functions or setpoints of the subject devices.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870) of amendments that are not likely to involve significant hazards consideration. One example of an amendment which would not involve a significant hazards consideration is: "(i) A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature."

The proposed amendment will eliminate requirements that are not necessary because of plant modifications and that will reduce confusion. Also, they are administrative in nature and, therefore, similar to example (i). Hence, the staff has determined that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Attorney for licensee: W. S. Stowe, Esq., Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Project Director: V. Nerses.

Boston Edison Company Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: June 1, 1987.

Description of amendment request: The proposed amendment request would revise the Technical Specifications to: (1) change the reactor vessel low-pressure operability requirements for high-pressure coolant injection (HPCI) and reactor core isolation cooling (RCIC) from 104 psig to 150 psig; (2) clarify the requirements for when HPCI and RCIC will be operable; and (3) revise the Bases for the core spray and low pressure coolant injection subsystems to clarify assumptions regarding the core spray system that were made in the accident analysis.

Basis for proposed no significant hazards consideration determination: As part of its amendment request the licensee provided a determination that the proposed changes involved no significant hazards. The basis for this determination was:

(1) The amendment would not increase the probability or consequences of an accident which was previously analyzed since the safety analyses performed for Pilgrim by General Electric take no credit for the HPCI or RCIC below 150 psig.

(2) The possibility of a new or different kind of accident would not be created because (a) the Pilgrim safety analyses do not take credit for HPCI and RCIC operation below 150 psig; (b) isolation of HPCI and RCIC on low steamline pressure will not be affected; and (c) the proposed amendment does not involve a plant design change; and

(3) There is not a significant reduction in a margin of safety because operability of HPCI and RCIC below 150 psig is not required by the Pilgrim safety design bases.

The staff has reviewed the determination made by the licensee and based on this review concurs with the findings that no significant hazards consideration exists. Therefore, the staff has made a proposed determination that this application for amendment involves no significant hazards consideration.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Attorney for licensee: W. S. Stowe, Esq., Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Project Director: V. Nerses.

Boston Edison Company Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: June 2, 1987.

Description of amendment request: The proposed amendment would revise the Technical Specifications to:

(1) revise and reformat Table 3.2.C into two new Tables 3.2.C-1 and 3.2.C-2, with associated notes to improve clarity and reduce the possibility of confusion. Additionally, operability requirements for rod block actuation instrumentation are added and operability requirements for APRM Upscale and Inoperative trip functions and revised to make the Technical Specifications more consistent with the FSAR;

(2) revise Technical Specification 3.2.C.1 to include references to new Technical Specification Tables 3.2.C-1 and 3.2.C-2;

(3) move the specification which permits the minimum operable channels for the rod block monitor trip function to be reduced by one for maintenance and/or testing is from Technical Specification 3.2.C.2 to new Table 3.2.C-1;

(4) add Footnote 4 to Table 3.2.C-1 to ensure that the special SRM operability requirements during core alterations contained in Technical Specification 3.10 are referenced;

(5) revise Technical Specification Table 4.2.C to include the instrument test and calibration requirements for the additional trip functions added to Tables 3.2.C-1 and 3.2.C-2;

(6) revise the notes for Tables 4.2.A through 4.2.G on Technical Specification Page 67 to remove a statement from Note 3 that inadvertently conflicted with the calibration frequencies specified on Table 4.2.C; and

(7) revise Technical Specification Bases 3.2 to correct the Technical Specification reference for the APRM and IRM downscale trip setpoints.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for determining whether a significant hazard consideration exists by providing certain examples (48 FR 14870) of amendments that are considered not likely to involve significant hazards consideration. Two of these examples are: "(i) A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature," and "(ii) A change that constitutes an additional limitation, restriction, or

control not presently included in the technical specifications: for example, a more stringent surveillance requirement."

With the exception of item (5), all of the changes are administrative in nature and are similar to example (i). Item (5) places an additional requirement in the Technical Specifications and is therefore similar to example (ii). Hence, the staff has determined that the proposed changes involve no significant hazards consideration.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Attorney for licensee: W. S. Stowe, Esq., Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Project Director: V. Nerses.

Carolina Power & Light Company, Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: August 28, 1985, as supplemented May 15, 1987.

Description of amendment request: The original amendment request, dated August 28, 1985, was initially noticed in the **Federal Register** on September 25, 1985 (50 FR 38911). The proposed amendment would change the Technical Specifications (TS) for Brunswick Steam Electric Plant, Units 1 and 2, relative to the operability requirements for the rod block monitor (RBM) in TS Section 3.1.4.3 and in Tables 3.3.4-1 and 4.3.4-1. The original amendment request proposed to set the limit for operability of both RBM channels in operational condition 1 when thermal power is greater than or equal to 35% of rated thermal power. The current TS require operability when thermal power is greater than the preset level of the rod worth minimizer (RWM) and rod sequence control system (RSCS). After discussions with the NRC staff, the licensee, by letter dated May 15, 1987, submitted a revision to the original amendment request of August 28, 1985. The proposed revised amendment would lower the RBM operability threshold to 30% of rated thermal power.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards in 10 CFR 50.92 and has determined the following:

(1) The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because the change is merely a clarification of the existing requirement. Currently, the applicability requirement for the RBM is that it be operable when thermal power is greater than the preset power level of the RWM and RSCS. This power level is normally preset between 25 and 30 percent. The proposed change permanently fixes the power level above which the RBM must be operable.

(2) The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated for the same reasons discussed in (1) above.

(3) The proposed amendment does not involve a significant reduction in a margin of safety. No actual plant operating set points will be changed as a result of the proposed TS. Currently, the level at which the RBM is required to be operable can be increased by merely increasing the preset power level of the RWM and RSCS. Therefore, the change further restricts the applicability of the RBM by specifying a value above which it must be operable. The proposed change is consistent with the values set forth in the GE BWR/4 Standard Technical Specifications.

Based on the above reasoning, the licensee has determined that the proposed amendment does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis.

Based on this review, the staff, therefore, proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Attorney for licensee: Thomas A Baxter, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Elinor G. Adensam

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: June 1, 1987

Description of amendment request: The proposed license amendment will revise Technical Specifications (TS) 3.19 and 4.13 pertaining to snubbers by replacing them in their entirety with technical specifications which are largely consistent with the NRC model Standard Technical Specifications (STS) and which are more consistent with current industry guidelines such as NRC Generic Letter 84-13.

Basis for proposed no significant hazards consideration determination: In accordance with 10 CFR 50.92, the licensee has reviewed the proposed changes and has concluded that they do not involve a significant hazards consideration in that these changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed. There are no physical changes to the plant as a result of the proposed changes; therefore, previously analyzed accidents are not affected.

2. Create the possibility of a new or different kind of accident from any previously analyzed. The proposed amendment changes only address surveillance and operability requirements. As such, there are no hardware modifications associated with these changes and consequently no new failure modes associated with these changes.

3. Involve a significant reduction in a margin of safety. The more restrictive requirement for surveillance and operability of the snubbers will reduce the possibility of a loss of safety system with snubbers.

The staff has reviewed the licensee's determination that the proposed license amendment involves no significant hazards consideration and agrees with the licensee's analyses. Accordingly, the staff proposes to determine that the proposed license amendment does not involve a significant hazards consideration.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry and Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: Cecil O. Thomas

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: May 29, 1987, as supplemented July 6, 1987

Description of amendment request: The proposed amendment would revise the Technical Specifications to permit an extension of the maximum surveillance interval limits for various systems and components to allow certain refueling surveillance tests to be performed during the 1987 refueling outage. The licensee has requested that the Technical Specifications be modified on a one-time basis to extend the 3.25 total time interval limit, over three consecutive surveillance intervals, to allow testing to be performed during the scheduled 1987 refueling/maintenance outage rather than requiring a special plant shutdown solely to perform these tests. The earliest surveillance test would have to be performed as early as September 1987. The 1987 refueling outage is scheduled to begin November 1987.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee provided the following analysis:

... consistent with the Commission's criteria in 10 CFR 50.92, we have determined that the proposed change does not involve a significant hazards consideration because the operation of Indian Point Unit No. 2 (IP-2) in accordance with this change would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change would extend the 3.25 surveillance interval to allow certain tests to be performed during 1987 (cycle 7/8) refueling outage. The earliest date for performing an affected surveillance test is September 5, 1987. Our safety assessment determination is based on the next refueling and maintenance outage to start on approximately November 1, 1987 Therefore, the maximum extension for any single surveillance item is for a duration of less than two (2) months in 58.5 months. This represents an extension of just 3% above the 3.25 surveillance interval limit. Even with the extension, all of the surveillance tests for the equipment in Table 1 would be performed within the single allowable Technical Specification interval between two tests, i.e. 18 months plus 25%. As a result of our review of previous test results we have concluded that there is no reason to expect significant safety-related component failures during the extension period. Therefore, there is no significant reduction in the overall reliability of the IP-2 reactor protection system and engineered safety features. Thus, the ability of the component to perform its intended safety function during the extension period will be maintained to at least an equivalent level as currently provided by the Technical Specification for a maximum single surveillance interval. Since the proposed surveillance interval extension does not involve any physical change in plant equipment and would not affect the capability of the current instrumentation and components of IP-2 to perform their intended function, there would be no significant effect on the potential initiating mechanisms or the consequences of an accident. Therefore, the proposed change would not significantly increase the probability or consequences of an accident.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change only extends for certain tests the maximum 3.25 surveillance interval limit. The extension is of a short duration and within the single permissible Technical Specification interval limit. In order to more fully evaluate the present test interval extension request, the results of previous surveillance tests were reviewed for the purpose of determining if there was any reason to expect significant safety-related component failures during the proposed extension period. The evaluation considered the potential impact that prior tests of the components would have on the equipment and its required performance assumed in the FSAR transient and accident analysis. The result of that evaluation indicates that there is no reason to expect any increase in affected safety-related component failures during the extension period and that due to the redundancy and diversity of the IP-2 safety systems, there would be no significant reduction in the overall reliability of the IP-2 protection systems associated with the requested surveillance test interval. Thus, the level of equipment performance would be at least equivalent to that currently provided by the Technical Specifications for a maximum surveillance interval between any two tests.

The proposed change would not impact any component, system or structures not described in FSAR and would not create a new or increased potential for interacting with components, systems or structure which are described in the FSAR. Thus, since the change would introduce no physical modification and has been determined to have no deleterious effect on system reliability, operation and safety, it could not create the possibility of a new or different kind of accident.

(3) Involve a significant reduction in a margin of safety. The safety significance of extending the 3.25 surveillance limit is associated with extending a 58.5 month interval by a maximum of 2 months and the confidence that the affected component or system will continue to perform their intended function during the period where the tests would be deferred. All of the surveillance items listed in Table 1 will be due prior to the next refueling outage solely because of the 3.25 maximum combined surveillance limit. The tests listed will all be performed within the single permissible Technical Specification surveillance interval limit of 18 months + 25%. In addition, the results of previous surveillance tests of the components which are the subject of the requests were evaluated to determine if there was any reason to expect a significant increase in safety related failures during the extended surveillance intervals. The evaluation considered the potential impact that prior tests would have on the licensing basis of IP-2 and concluded that due to the redundancy and diversity of the reactor protection system and engineered safety features actuation system, there would be no significant reduction in the overall reliability of IP-2 protection system associated with the extension of the surveillance interval and thus, no impact on the licensing basis of IP-2. For all the affected tests, assurance that the quality of the component and its ability to perform will be maintained during the extension period is at least equivalent to that level currently provided by the Technical Specification for a maximum surveillance interval (i.e., 18 months + 25%).

Furthermore, the maximum extension for any single surveillance item listed in Table 1 is for a period of less than two

(2) months in 58.5 months (3.25 times the nominal 18 month surveillance interval). This represents an extension of 3% with regard to the 3.25 surveillance interval limit. Thus, the requested extension is not significant with regard to the surveillance interval limit, and compares favorably with the alternatives of a plant shutdown or placing the plant in an operational risk, either of which could result in a reactor trip and plant transient. Thus, it is concluded that the operation of IP-2 with the proposed change would not involve a significant reduction in a margin of safety.

Based on the above, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003

NRC Project Director: Robert A. Capra, Acting Director

Duke Power Company, et al., Docket No. 50-414, Catawba Nuclear Station, Unit 2, York County, South Carolina

Date of amendment request: June 19, 1987

Description of amendment request: The proposed amendment would revise License Condition 2.C.(8)(a) of Catawba Unit 2 Facility Operating License, NPF-52, to allow an extension of time for the resolution of the accumulator tank instrumentation issue. The extension of time would be for one complete cycle of operation. The modified License Condition 2.C(8)(a) would then read "Prior to startup following the second refueling outage, Duke Power Company shall provide qualified accumulator discharge instrumentation." The above issue is related to Generic Letter 82-33, Supplement 1 to NUREG-0737, regarding Requirements for Emergency Response Capabilities. It was also discussed in Section 7.5.2 of Supplement 5 to the Catawba Safety Evaluation Report (NUREG-0954) and is currently under additional staff review because of its generic implications.

The primary function of the accumulator pressure or level instrumentation is to monitor the pre-accident status of the accumulators to assure that the passive safety system is in a ready state to serve its safety function. The licensee stated that the accumulator tank level or pressure are not referenced in any emergency procedure covering design basis events which may cause a harsh environment. No operator actions in these procedures are based on accumulator indications. Therefore, the licensee concluded that extension of the date for upgrading the accumulator pressure or level instrumentation until startup following the second refueling outage does not involve any adverse safety considerations.

A two operating cycle extension for Catawba Unit 1 was approved by amendment 15, issued on October 6, 1986, to Facility Operating License NPF-35. The requested one cycle extension for Catawba Unit 2 would put both Units on approximately the same schedule for resolution of this issue and would allow the NRC staff additional time to complete its generic review.

Basis for proposed no significant hazards consideration determination: The Commission has provided certain examples (51 FR 7744) of actions likely to involve no significant hazards considerations. The request involved in this case does not match any of those examples. However, the staff has reviewed the licensee's request for the above amendment and determined that should this request be implemented, it would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed extension of time needed to upgrade the accumulator discharge level or pressure would not affect the capability of the current instrumentation, as it exists at the facility, to provide pre-accident monitoring of the status of the cold-leg accumulators and as such has no effect on the cause mechanism or the consequences of an accident.

Also, it would not (2) create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed extension would not affect any mechanism that causes accidents and would not change the operation of the facility.

Finally, it would not (3) involve a significant reduction in a margin of safety because the current instrumentation, as it exists at the facility, is fully qualified for its intended function of pre-accident monitoring of the cold-leg accumulators.

Accordingly, the Commission has determined that the above change in volves no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: B. J. Youngblood

Duquesne Light Company, Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of amendment request: August 22, 1986 and supplemented by letter dated April 16, 1987

Description of amendment request: The hydrogen recombiners were modified during the fifth refueling outage. When testing the recombiners, the licensee determined that the required Technical Specification flow through the recombiners could not be obtained with the containment at normal operating vacuum. The resultant investigation determined that the weight loaded 2-inch swing check valves inside containment on both the recombiner suction and discharge lines offered too high a resistance to flow for the new blower.

In order to support recombiner operation, a plant modification was required. The modification was performed under the provisions of 10 CFR 50.59. The in-containment check valves on the suction lines have been removed and new check valves have been installed downstream of the two outside containment isolation valves and upstream of the containment vacuum pumps.

New ball valves have been installed on the recombiner discharge piping to serve as new containment isolation valves. These valves have been installed as close to the existing outside containment isolation valves as possible and still permit leak testability. The inside containment isolation valves (check valves) have had their internals removed. Their containment isolation function has been transferred to the new isolation valves.

The proposed amendment would revise the containment isolation valves listed in Table 3.6-1 to reflect the modification of the valve configuration for the hydrogen recombiner discharge piping.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously

evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The modification to the hydrogen recombiner system has been completed. The modification was performed to permit the hydrogen recombiners to continue to perform their function. The licensee stated that the new design satisfies 10 CFR 50, Appendix A, GDC 54 and GDC 56. Therefore, since the new design performs the same containment isolation function as the current design, the new design will not affect the probability of occurrence or the consequences of an accident previously evaluated.

The new valve configuration will perform the same function as the previous design. Additionally, during each refueling, the penetration piping through to the containment isolation valves would be pressure tested as part of the Type C testing program. The piping between the containment wall and the isolation valves is designed to withstand a pressure of 150 psig and has been tested to 65 psig, while the calculated peak LOCA pressure is 38.5 psig. Thus, there is sufficient margin between design pressure and expected accident pressure. Therefore, the new valve configuration does not create the possibility of a new or different kind of accident from any accident previously analyzed.

There has been no change in design acceptance criteria in terms of containment isolation and performance of the hydrogen recombiner system. Therefore, there is no reduction of safety margin involved.

In conclusion, the staff proposes to determine the requested amendment as involving no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: John F. Stolz

Duquesne Light Company, Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of amendment request: October 29, 1986, supplemented by letter dated June 2, 1987

Description of amendment request: This is a renotice of a proposed amendment published on December 17, 1986 (51 FR 45199). That notice is incorporated by reference.

The supplement dated June 2, 1987 added proposed requirements regarding actions to be taken if a pressurizer code safety valve discharges liquid water from a water solid pressurizer due to an overpressure event. The plant would be required to be shut down after such an event and the affected valve be inspected for potential damage. This action statement reflects the commitment specified in the staff's report on Beaver Valley Unit 1 safety/relief valves, dated November 10, 1986.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing certain examples (51 FR 7751). One of these examples of actions involving no significant hazards considerations is example (ii), which is "a change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications." The requested amendment matches this example and the staff, therefore, proposes to determine that the requested amendment involves no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: John F. Stolz

Duquesne Light Company, Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of amendment request: July 1, 1987

Description of amendment request: The proposed amendment would revise the Technical Specifications to provide clarification and correction regarding control room habitability operability as follows:

(1) A footnote would be added to Section 3.7.7.1 to permit the emergency air bottles, which serve the Unit 1-Unit 2 shared control room, be isolated for up to 8 hours for performance of instrumentation and control systems testing. The same footnote is in Unit 2's Technical Specifications; its omission in the Unit 1 Technical Specifications is an administrative error. Without this clarifying footnote, Unit 1 will likely be required to shutdown per specification 3.0.3 whenever the air bottle instrumentation and control systems are being tested by Unit 2 personnel. Such unplanned shutdown is not the intent of the subject specification.

(2) Sections 4.7.7.1.1, 4.7.7.1.2 and 4.7.7.2 - the footnote referring to Unit 2 entering Mode 4 is no longer applicable since the event already took place. Deletion of the footnote is an editorial change.

(3) Section 4.7.7.1.2 - The limit of pressure drop for the combined HEPA filters and charcoal absorber banks would be corrected to comply with the manufacturer's recommendations.

(4) Section 4.7.7.2 - The footnote applying to a one-time air bottle discharge test would be deleted since the test was done. This is an editorial change.

(5) Section 3/4.9.15 - The heading would be changed to "Refueling Operations." This is an editorial change.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing certain examples (51 FR 7751). One of these examples of actions involving no significant hazards considerations is example (i), which is "a purely administrative change to technical specifications; for example, a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature." The requested changes all match this example and the staff, therefore, proposes to determine that the requested amendment involves no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: John F. Stolz

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-366, Edwin I. Hatch Nuclear Plant, Unit 2, Appling County, Georgia

Date of amendment request: December 7, 1983, May 4, 1984, December 18, 1985, April 4, 1986, and January 5, 1987, supplementing a submittal of September 27, 1982.

Description of amendment request: These submittals provide additional information and data in support of changes to the Technical Specifications (TS) proposed by the September 27, 1982, submittal that was noticed in the Federal Register on November 23, 1983 (48 FR 52812). The January 5, 1987

submittal provides a commitment to provide plant procedures that require periodic building settlement measurements and that provide settlement limits and actions to be taken if these limits are reached.

Basis for proposed no significant hazards consideration determination: These submittals do not change the September 27, 1982 request which was previously noticed (48 FR 52812) as stated above. In that notice, it was stated that the Commission has made a proposed determination that the application for amendment to the TS involves no significant hazards consideration. Since the supplemental submittals do not change the September 27, 1982 request for amendment, they do not affect the previous determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Attorney for licensee: Bruce W. Churchill, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: B.J. Youngblood

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: June 18, 1987

Description of amendment request: The proposed amendment describes organizational changes of the non-plant divisions of GPU Nuclear Corporation. The amendment would be reflected as changes to the corporate organization chart and relevant text in the Technical Specifications, and consists of replacing pages 6-3, 6-9, and Figure 6-1 with revised information.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee stated that the proposed changes do not involve a significant hazards consideration because:

The proposed change is similar to Example (i) of the "Amendments not Likely to Involve Significant Hazards Consideration" from the **Federal Register** Vol. 48, No. 67 at 14870 on April 6, 1983.

This change is an administrative change in the corporate organization. As such, this TSCR does not involve significant hazards consideration as stated below.

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The Corporate organization was never determined to be an initiator of any accident previously evaluated in the SAR. Even so, the probability of occurrence or the consequences for any previously evaluated accident are not modified by this change as the functions and responsibilities of affected groups remain essentially unchanged.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

The reorganization does not in itself modify or change an operating parameter for any safety related component. Therefore, this activity does not increase the probability of occurrence or consequence of an equipment malfunction.

This activity modifies in part the Corporate organization by grouping the Nuclear Safety Assessment, Licensing and Long Range Planning functions into one Division. By this arrangement, the organization can provide an independent focus on the issue of safety, and the prioritication of plant modifications. Furthermore, the reorganization does not change the technical resources previously established to perform the quality assurance, radiological & environmental control, training and security functions.

(3) Involve a significant reduction in a margin of safety.

This change does not reduce the margin of safety which was defined in the SAR. The reorganization was a managerial change to increase the awareness of nuclear safety within the organization by the realignment of functional responsibilities. The functions and responsibilities of the functional groups affected by the reorganization remain as described in the Licensing Basis Documents.

The staff concurs with the licensee's assessment and proposes to determine that the requested amendment involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126

Attorney for licensee: Earnest L. Blake, Jr., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: September 12, 1986.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) to reduce the main steam line isolation trip setpoint and allowable value for main steam line flow-high; reduce the reactor core isolation cooling system (RCIC) isolation trip setpoint and allowable value for RCIC system steam line flow-high; and modify a footnote regarding the deter-mination of the final setpoint for the RCIC system isolation trip setpoint and allowable value for residual heat removal (RHR)/RCIC system steam line flow-high.

The proposed amendment would modify the TSs as follows:

(1) Table 3.3.2-2, item 2.d., would be changed to reduce the current main steam line isolation actuation trip setpoint of less than or equal to 173 psid and allowable value of less than or equal to 178 psid for main steam line flow-high for all four main steam lines (MSLs) to a set of values for each steam line. These proposed values are MSL Flow Line A-High less than or equal to 146 psid (trip setpoint) and less than or equal to 151 psid (allowable value); MSL Flow Line B-High less than or equal to 156 psid (trip set-point) and less than or equal to 161 psid (allowable value); MSL Flow Line C-High less than or equal to 153 psid (trip setpoint) and less than or equal to 158 psid (allowable value); MSL Flow Line D-High less than or equal to 164 psid (trip setpoint) and less than or equal to 169 psid (allowable value). The double asterisk footnote that indicates that the current setpoint is a preliminary setpoint would be deleted because the proposed setpoints are based on data taken during the startup test program.

(2) Table 3.3.2-2, item 5.a., would be changed to reduce the current reactor core isolation cooling (RCIC) system isolation actuation trip setpoint of less than or equal to 222 inches of water and allowable value of less than or equal to 230.5 inches of water for RCIC steam line flow-high. The proposed values are less than or equal to 127 inches of water (trip setpoint) and less than or equal to 135.5 inches of water (allowable value). The double asterisk footnote that indicates that the current setpoint is a preliminary setpoint would be deleted because the proposed setpoints are based on data taken during the startup test program.

(3) The double asterisk footnote applicable to item 5.l., Table 3.3.2-2,

would be changed to indicate that the final setpoint is to be determined during testing prior to operation in the steam condensing mode following the NRC's approval to operate in that mode (see license condition 5.a). Any required change to this setpoint is to be submitted to the NRC within 90 days of test completion.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee addressed the above three standards in the amendment application.

(1) Reduce the current MSL isolation actuation trip setpoint for MSL flow-high. With regard to the three standards, the licensee states:

A. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated because the setpoint revisions are more conservative than the initial setpoints and are based on startup test data as required by the plant Technical Specifications. This change does not involve a design change or physical change to the plant, and therefore, does not increase the probability of a undetectable break in the Main Steam Line.

Thus, there is no increase in the probability or consequences of any accident previously evaluated.

B. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated because the setpoint revisions are more conservative than the initial setpoints and are within the bounds of the design basis and the assumption of the accident analysis. These setpoint revisions do not involve a design change or physical change, and therefore, do not alter the single failure design of the instrumentation.

Thus, no new accident scenario is introduced by these revised and more conservative setpoints.

C. The proposed change does not involve a significant reduction in a margin of safety because these setpoint revisions are more conservative and reflect actual startup test data as required by the plant Technical Specifications. These setpoints are within the bounds of the design basis and the assumptions of the accident analysis.

Thus, no margin of safety is reduced.

(2) Reduce the current RCIC system isolation actuation trip setpoint for RCIC steam line flow-high. With regard to the three standards, the licensee states:

A. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated because the setpoint revisions are more conservative than the initial setpoints and are based on startup test data as required by the plant Technical Specifications. This change does not involve a design change or physical change to the plant, and therefore, does not increase the probability of an undetectable leak in the RCIC system.

Thus, there is no increase in the probability or consequences of any accident previously evaluated.

B. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated because the setpoint revisions are more conservative than the initial setpoints and are within the bounds of the design basis and the assumptions of the accident analysis. These setpoint revisions do not involve a design change or physical change, and therefore, do not alter the single failure design of the instrumentation.

Thus, no new accident scenario is introduced by these revised and more conservative setpoints.

C. The proposed changed does not involve a significant reduction in a margin of safety because these setpoint revisions are more conservative and reflect actual startup test data as required by the plant Technical Specifications. These setpoints are within the bounds of the design basis and the assumptions of the accident analysis.

Thus, no margin of safety is reduced.

(3) Change the double asterisk footnote applicable to item 5.l. of Table 3.3.2-2. With regard to the three standards, the licensee states:

A. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated because the change is purely administrative in nature and reflects a condition already established in the operating license.

B. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated because the setpoints are based upon design calculations which have not been changed.

C. The proposed change does not involve a significant reduction in a margin of safety because the current setpoints are within the bounds of the design basis and the assumptions of the accidents analysis.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the analysis.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Attorney for licensee: Troy B. Conner, Jr., Esq., Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Jose A. Calvo

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: June 5, 1987.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) to: (1) increase the allowable average drywell air temperature; (2) increase the temperature limit in the main steam tunnel; and (3) increase the main steam tunnel temperature isolation actuation instrumentation setpoints. These changes are being requested because of the temperature indications being received in the drywell during the summer season and because of the temperatures experienced in the main steam tunnel during normal power operation. The proposed amendment would modify the TSs as follows:

(1) TS 3.6.2.6 would be changed to raise the allowable drywell average air temperature from 140° F to 145° F.

(2) Table 3.7.8-1 of the TSs would be changed to raise the allowable temperature limit for the main steam tunnel (north) from 122° F to 135° F.

(3) Table 3.3.2-2 of the TSs would be changed to raise the trip setpoints and allowable values for: (a) the main steam tunnel - south high area temperature for main steam line (MSL) isolation logic from 142° F to 148° F (trip setpoint) and 145.3° F to 151.3° F (allowable value); (b) the main steam tunnel-north high area temperature for MSL isolation, reactor water cleanup (RWCU) system isolation, and reactor core isolation cooling (RCIC) system isolation from 135° F to 141° F (trip setpoint) and 142.5° F to 148.5° F (allowable value); and (c) the main steam tunnel high differential temperature for MSL isolation, RWCU system isolation, and RCIC system isolation from 51° F to 57° F (trip setpoint) and 55° F to 61° F (allowable value).

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a

margin of safety. The licensee addressed the above three standards in the amendment application.

(1) Raise the allowable drywell average air temperature. With regard to the three standards, the licensee states:

a. No significant increase in the probability or the consequences of an accident previously evaluated results from this change because:

Raising the average drywell area temperature to 145° F is bounded by the temperature range of 100° F to 145° F previously analyzed in the FSAR. The initial temperature (145° F) was originally used and will not exceed the maximum drywell temperature of 330° F. The maximum display temperature reading of the redundant drywell atmosphere temperature monitors is 440° F on a class 1E power supply.

b. This change would not create the possibility of a new or different kind of accident from any accident previously evaluated because:

No new equipment, control logic, or setpoint changes have been added or altered. Reviews have been performed to ensure that existing design of equipment and structures can withstand the higher normal operating temperatures. Equipment qualification and qualified life of equipment has been revised as necessary. A review of the accident analysis indicates that the peak pressure is not changed.

c. This change would not involve a significant reduction in the margin of safety because:

The basis of the Technical Specification 3/4.6.2.6, "Drywell Average Air Temperature", is to ensure that peak drywell temperature does not exceed 330° F during LOCA conditions. FSAR 6.2.1.1.1.5 states that the design basis LOCA for drywell temperature is a small high energy line break, and as stated in FSAR 6.2.1.1.3.1.2, the accident analysis was considered for a range of acceptable initial normal conditions shown in Table 6.2-3a to be 100° F to 145° F for average temperature. Additionally, drywell and containment responses during the LOCA are not affected and remain as analyzed.

The proposed amendment, as discussed above, has not changed the system design, function and operation contained in the FSAR and therefore, will not increase the probability or the consequences of a previously evaluated event and will not create a new or different event. Also, the results of this proposed change are clearly within all acceptable criteria with respect to system components and design requirements. The ability to perform as described in the FSAR is maintained and therefore, the proposed change does not result in a significant reduction in the margin of safety. GSU proposes that no significant hazards are involved.

(2) Raise the allowable temperature limit for the main steam tunnel-north. With regard to the three standards, the licensee states:

a. No significant increase in the probability or the consequences of an accident previously evaluated results from this change because:

The maximum temperature and pressure used in the qualification of equipment in the main steam tunnel-north is not affected by revising the maximum temperature to 135° F. Therefore, the equipment remains within the previously analyzed regions and does not change the results as identified in the Safety Analysis for the main steam line break outside containment.

b. This change would not create the possibility of a new or different kind of accident from any accident previously evaluated because:

No new equipment, or control logic changes have been added or altered. Reviews have been performed to ensure that existing design of equipment and structures can withstand the higher normal operating temperatures. Equipment qualification and qualified life of equipment has been revised as necessary. A review of the accident analysis indicates that the peak temperature and pressure used for equipment qualification are not changed by the proposed amendment.

c. This change would not involve a significant reduction in the margin of safety because:

The proposed change does not affect the performance requirements contained in the Technical Specification Limiting Conditions for Operation. The peak temperature and pressure used in the qualification of equipment in the main steam tunnel-north is not affected by revising the technical specification temperature limit to 135° F. Therefore, the margin of safety has not been significantly decreased.

The proposed amendment, as discussed above, has not changed the system design, function or operation contained in the FSAR and therefore, will not increase the probability or the consequences of a previously evaluated event and will not create a new or different event. Also, the results of the change are clearly within all acceptable criteria with respect to system components and design requirements. As a result, the ability to perform as described in the FSAR is maintained. Therefore, the proposed change does not significantly reduce the margin of safety. GSU proposes that no significant hazards are involved.

(3) Main Steam tunnel temperature isolation actuation instrumentation setpoints. With regard to the three standards, the licensee states:

a. No significant increase in the probability or the consequences of an accident previously evaluated results from this change because:

The temperature setpoints are predicted on an equipment area temperature rise equivalent to a 25 gpm steam leakage rate. The proposed change involved is that the initial area temperature used in the setpoint calculation is now the originally predicted *maximum* normal operating temperature instead of the predicted *average* normal operating temperature. This will reduce the ability of the temperature monitors to isolate a 25 gpm leak during the winter months but it will also reduce the likelihood of spurious isolations during normal full power operation in the summer months. Considering the above, and the fact that the current temperature monitor setpoint has a high chance of inadvertent MSIV, RCIC or RWCU isolations, this change will not result in a significant or unwarranted increase in the probability or consequences of an accident. This change is consistent with the original design basis in that the isolation trip setpoints be based upon an area temperature rise equivalent to RCPB leakage into the monitored areas of 25 gpm. The results of the MSL break outside containment analysis have not been altered with regard to peak temperature, pressure or offsite doses and remain the bounding case for offsite doses.

b. This change would not create the possibility of a new or different kind of accident from any accident previously evaluated because:

No hardware changes are involved and the system function and purpose remain unchanged. The proposed isolation setpoints will still isolate the affected systems prior to crack propogation as postulated in the analysis.

c. This change would not involve a significant reduction in the margin of safety because:

This change is consistent with the original design basis and the Technical Specification basis. The effectiveness of the temperature monitoring instrumentation to mitigate the consequences of an accident (i.e., automatically isolate a small leak at an early stage) has not been significantly reduced.

A degree of area temperature monitoring ability is sacrificed for increased plant availability. However, inadvertent and unnecessary MSIV isolations impose plant transients which create a safety risk in and of themselves. This change is an appropriate compromise between the two. The main steam line circumferential break outside containment still bounds the offsite dose calculations. Therefore, the margin of safety has not been significantly reduced. Additionally, temperature leak detection is a backup to the high flow leak detection system used in the main steam line break outside containment analyses.

Since the proposed amendment does not change any previously revised and approved description or safety analysis as described in the FSAR nor does it create the possibility of a new or different type of accident or significantly reduce the margin of safety, GSU proposes that no significant hazards are involved.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussions, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room Location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Attorney for licensee: Troy B. Conner, Jr., Esq., Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Jose A. Calvo

Indiana and Michigan Electric Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendments request: January 16, 1987, as supplemented June 25, 1987

Description of amendments request: The proposed amendments would revise the Technical Specifications for the emergency diesel generators to improve and maintain reliability (per Generic Letter 84-15 issued July 2, 1984), change a number of related Technical Specifications to improve clarity and correct errors, and revise the emergency battery loads testing to allow simulated connected loads during tests. This application was originally noticed on February 26, 1987 (52 FR 5857).

Basis for proposed no significant hazards consideration determination: The Commission's standard for determining whether a significant hazards consideration exists is as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Generic Letter 84-15 on the subject "Proposed Staff Actions to Improve and Maintain Diesel Generator Reliability," established new requirements that would reduce the risk of core damage from station blackout events by, among other things, changes to the technical specifications which support a desired diesel generator reliability goal. The licensee proposes to adopt many of the technical specification changes which were determined by the NRR as risk reduction actions. The additional proposal dated June 25, 1987 adds surveillances for water removal, oil sampling and storage tank sampling. The proposed changes, therefore, should reduce the probabilities and consequences of accidents previously analyzed and should increase the margin of safety. The proposed changes will not place the plant in a new or unanalyzed condition, therefore, the changes will not create a new or different kind of accident from any previously analyzed.

The licensee also proposes to change a number of related Technical Specifications to improve clarity and correct errors. Several changes were made to reflect plant design and to make the two Units' Technical Specification alike. There are also a number of editorial changes and error corrections. All of these changes are administrative in nature and do not change the probabilities or consequences of any previously analyzed accidents. The changes reflect plant design similarities and correct errors; therefore, there is no change to plant operation which would result in a new or different kind of accident. The corrections and clarifications will not result in a reduction in any margin of safety.

In amendments 86 and 72 for Unit Nos. 1 and 2, respectively, the licensee was granted approval to test the battery capacities with simulated loads using a load bank in place of the actual loads using the static inverters. The surveillance requirement being changed is to determine the condition of the battery; a separate surveillance test is required for determining the performance discharge through actual battery loads. The use of a load bank which simulates actual loads should not affect the test nor would it significantly increase the probabilities or consequences of any previously analyzed accident. While the battery is connected to the load bank during testing, the battery cannot affect other systems or components which are required to be operable. Therefore, the change would not create a new or different kind of accident from any previously analyzed.

The batteries will continue to be capacity tested on the same frequency; only the method of loading the batteries is changed. Since the change will not impact the batteries in the modes when the batteries are required to be operable, the change will not affect the ability of the batteries to perform their safety function. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

On the basis of the above consideration, the staff proposes to find that the changes do not involve a significant hazards consideration.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: David L. Wigginton, Acting.

Mississippi Power & Light Company, System Energy Resources, Inc., South Mississippi Electric Power Association, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: June 3 and June 22, 1987

Description of amendment request: The June 3, 1987 application for license amendment requested changes to Grand Gulf Nuclear Unit 1 Technical Specification (TSs) regarding the definition of core alteration and snubber test sample size. The June 22, 1987 letter provided additional information regarding the snubber test sample size. This notice addresses only the changes regarding snubber test sample size. Surveillance Requirement 4.7.4.e in the Grand Gulf Unit 1 TSs identifies three sample plans for testing snubbers and requires that snubbers shall be functionally tested in accordance with one of the three plans. Sample Plan No. 1 would be changed by decreasing from 10% to 5% the number of additional snubbers that would need to be tested for each snubber in the initial test sample that failed to meet specified functional test criteria.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided an analysis about the issue of no significant hazards consideration in its request for a license amendment. The licensee has concluded with appropriate bases, that the proposed amendment satisfies the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards consideration. The NRC staff has made a preliminary review of the licensee's submittal. A summary of staff's review follows.

All snubbers (except those on nonsafety-related systems) are required by the TSs to be operable in Operational Conditions 1, 2, and 3. Operability of these snubbers helps to ensure that the structural integrity of the reactor coolant

system and all other safety-related systems will be maintained during and following a seismic or other event initiating dynamic loads. In order to ensure operability of these snubbers, surveillance tests are performed using visual inspections and functional tests. The surveillance test frequency is based on maintaining a constant level of snubber protection and is not affected by this proposed technical specification change. To provide assurance of snubber functional reliability, functional tests are required to be performed in accordance with one of three test sample plans. These three test sample plans are specified in Surveillance Requirement 4.7.4.e and summarized below:

Sample Plan No. 1

Functionally test 10% of the total number of snubbers and test an additional 10% of the snubbers for each snubber that fails to meet specified test criteria.

Sample Plan No. 2

Functionally test a sample of the snubbers and determine additional testing for failed snubbers on the basis of TS Figure 4.7.4-1. This figure requires testing of an additional sample equal to one-half the initial sample size for each snubber that fails the test.

Sample Plan No. 3

Functionally test an initial sample of the snubbers and test an additional sample equal to one-half the initial sample size for each snubber that fails the test.

The proposed change affects Test Sample Plan No. 1 by changing the additional test requirement from 10% to 5%. The additional test requirement of 10% in the present TSs was accepted by the NRC as a conservative requirement in the absence of a suitable snubber failure data base. Subsequently, the Committee on Operation and Maintenance of Nuclear Power Plant Components of the American Society of Mechanical Engineers (ASME) has developed a sampling plan which requires that for each failed snubber in the initial test sample, additional snubbers to be tested should equal one-half of the number of snubbers in the initial test sample. The ASME plan is based on the accumulation of snubber performance data throughout snubber life-time. The NRC staff has found the ASME plan to be acceptable in its safety evaluation of a similar change to the snubber sample plan in the Duane Arnold TSs (NRC letter to Iowa Electric Light and Power Company dated March 12, 1985).

The proposed change does not involve a significant increase in the probability of an accident previously evaluated because snubbers are restraints that help to mitigate the consequences of a seismic event or other dynamic loading event and they are not involved in the initiation of an accident. The proposed change does not involve a significant increase in the consequences of an accident previously evaluated because the proposed additional testing requirement of 5% for Sample Plan No. 1 will provide adequate detection capability for snubber failures based on snubber failure data. The ability to detect snubber failures ensures that dynamic restraints are functional and that the consequences of an accident will not be significantly increased.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated because snubbers are not involved in the initiation of an accident.

The proposed change does not involve a significant reduction in a margin of safety because the proposed change reduces unnecessary conservatism in Sample Plan No. 1 and results in requirements for additional testing that are similar to those in Sample Plan Nos. 2 and 3. The proposed change is based on snubber failure data and provides adequate assurance that snubber failures will be detected using Sample Plan No. 1. The proposed change for Sample Plan No. 1 makes the additional testing requirement consistent with Sample Plan Nos. 2 and 3. Sample Plan Nos. 2 and 3 presently require that an additional sample equivalent to one-half of the initial sample size be tested for each snubber which does not meet the functional test acceptance criteria.

Accordingly, for the reasons cited above, the Commission proposes to determine that the proposed change in snubber surveillance testing does not involve a significant hazards consideration.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154

Attorney for licensee: Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036

NRC Project Director: Lester S. Rubenstein

Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: June 22, 1987.

Description of amendment request: The proposed amendment would revise Sections 3.4 and 4.4 of the Technical Specifications in order to implement the requirements of 10 CFR Part 50, Section 50.62, specifically, Paragraph 50.62(c)(4), which addresses the standby liquid control system (SLCS). Paragraph 50.62(c)(4) requires a standby liquid control system with a minimum flow capacity and boron content equivalent in control capacity to 86 gallons per minute of 13 weight percent sodium pentaborate solution.

Basis for proposed no significant hazards consideration determination: The proposed changes to the Technical Specifications have been evaluated by the licensee to determine whether they constitute a significant hazards consideration as required by 10 CFR Part 50, Section 50.91 using the standards provided in Section 50.92. This evaluation is provided below:

The proposed amendment would revise the Technical Specifications to incorporate the requirements of the Anticipated Transients Without Scram (ATWS) Rule for the Standby Liquid Control System (SLCS). The modifications to the SLCS necessary to meet the ATWS Rule, and reflected in the proposed changes, in no way detract from the ability of the SLCS to meet its original design basis. The proposed changes, with a slight increase in the minimum pump flow rate and a doubling of the naturally occurring isotope, Boron-10, in the boron portion of the Sodium Pentaborate, result in being able to achieve shutdown in approximately half the required time. Therefore, this change has no effect on the probability or consequences of an accident previously evaluated or the ability of the SLCS to deal with that accident.

The changes which are being made to comply with the ATWS Rule, are reflected in the proposed license amendment and do not require any mechanical modifications to the SLCS. The changes being made are in the enrichment of the Boron-10 in the Sodium Pentaborate. Boron-10 is a naturally occurring stable isotope and no degradation of the enrichment level will occur over time. Additionally, surveillance requirements have been added to the proposed revison to the technical specifications to provide assurance of continued high system reliability of the SLCS. Other borated solution characteristics, such as concentration, are within the ranges where they have performed satisfactorily in the past. This method of compliance was chosen specifically because of its minimum impact on the SLCS. Therefore, these changes result in no new or different kind of accident from any accident previously evaluated.

The proposed Technical Specifications have deleted no requirement previously contained in the Technical Specifications for the SLCS. The ability of the SLCS to meet its original design basis has been improved by reducing the time needed to achieve shutdown. In addition, operating under the proposed Technical Specifications results in meeting the requirements of the ATWS Rule. The proposed changes will not, therefore, involve a reduction in the margin of safety.

The Commission has reviewed the licensee's evaluation and concurs with their conclusions.

In addition, the Commission has provided guidance concerning the application of the Standards for determining whether a significant hazards consideration exists by providing certain examples in 10 CFR 50.92.

The changes proposed herein are representative of example (vii). They are changes to conform a license to changes in the regulations, where the license changes result in very minor changes to facility operations clearly in keeping with the regulations.

Based on the information provided, the staff proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: David L. Wigginton, Acting.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: August 5, 1986 as supplemented November 24, 1986, March 31, April 15, June 22, and July 1, 1987.

Description of amendment request: The proposed amendment would change the Technical Specifications by adding the Inadequate Core Cooling Instrumentation (ICCI) which is required by Item II.F.2 of NUREG-0737, "Clarification of TMI Action Plan Requirements", November 1980. The function of the ICCI is to enhance the ability of the plant operator to diagnose the approach to the existence of, and the recovery from inadequate core cooling. This amendment request was previously noticed on September 10, 1986 (51 FR 32278).

During the review of the amendment request, Omaha Public Power District (the licensee) has responded to staff requests for additional details for certain items; and, in addition, made some corrections to the original submittal. The submittals since the original notice and a description of the information contained follows:

1. November 24, 1986 - This submittal provided changes to the Technical Specifications to account for two concerns of the staff. First was that the time limit in the Limiting Conditions for Operations, were more lenient than the Standard Technical Specifications, and the second concern involved an inconsistency between the format of the Standard Technical Specifications as compared to Fort Calhoun's Technical Specifications.

2. March 31, 1987 - This submittal provided the required number of channels to be operable or action should be taken to submit a special report. In addition, the number of days/hours were specified for allowing in restoring the inoperable channel(s) to operable status or initiating an alternate means of determining subcooled margin, or initiating a plant shutdown.

3. April 15, 1987 - This submittal provided an oversight of the licensee to require a Special Report pertaining to inoperable channels of the post-accident monitoring instrumentation.

4. June 22, 1987 - This submittal was requested by the staff to incorporate all the changes that have been discussed with the licensee into one package. All the changes are addressed in the above three submittals.

5. July 1, 1987 - This submittal superseded the June 22, 1987 submittal in its entirety because a page was missing from this package. To rectify the error, the July 1, 1987 package was submitted with all the changes and the missing page.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exist (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from an accident previously evaluated; (3) or involve a significant reduction in a margin of safety.

The staff has performed a preliminary review of the licensee's submittals and agrees that the proposed changes meet the criteria of 10 CFR 50.92(c) because:

(1) The ICCI system is neither credited nor required in the mitigation of any previously evaluated accident and is not relied upon for reactor trip or initiation of any plant safety systems. Therefore, the proposed changes do not affect the probability or consequences of any accident previously evaluated.

(2) Although the ICCI is utilized in the Emergency Operating Procedures for corroboration of selected indications, no change to operating procedures are involved; therefore, no new path is created that may lead to a new or different kind of accident. The proposed changes are intended solely to enhance the ability of the operator to manage accidents and transients by providing the operators with additional corroborative information.

(3) The specific purpose of these changes is to enhance accident and transient monitoring capability. This will make it possible to operate within the margin of safety previously analyzed with a greater degree of confidence and will not affect the magnitude of the safety margin in a positive or negative way.

In addition, the Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (51 FR 7751) of amendments that are considered not likely to involve significant hazards considerations. Example (ii) relates to a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications, e.g., a more stringent surveillance requirement. The proposed changes are representative of Example (ii) in that it is an addition to the post-accident monitoring instrumentation required by the staff's Post TMI Action Plan. Accordingly, the Commission proposes to determine that the requested changes to the Fort Calhoun Technical Specifications involves no significant hazards considerations.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Attorney for licensee: LeBoeuf, Lamb, Leiby, and MacRae, 1333 New Hampshire Avenue, NW., Washington, DC 20036

NRC Project Director: Jose A. Calvo

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment request: October 29, 1986

Description of amendment request: The proposed amendments would revise the Diablo Canyon Nuclear Power Plant combined Technical Specifications for Units 1 and 2 to delete certain requirements that presently exist in Technical Specification 3.4.8, "Reactor Coolant System, Specific Activity." The proposed deletions would include the following:

(1) The requirement to place the reactor in a subcritical condition with Tavg less than 500° F if the specific activity of the reactor coolant is greater than 1 microcurie/gram dose equivalent I-131 but less than the allowable limit curve, as shown in Technical Specification 3.4.8, after 800 hours of cumulative operating time, under these circumstances, in any consecutive 12-month period.

(2) The requirement to prepare and submit a Special Report to the Nuclear Regulatory Commission when the reactor coolant specific activity exceeds 1 microcurie/gram dose equivalent I-131 for 500 hours in any consecutive 6-month period.

Technical Specification 6.9.1.4 would be amended such that when the limits of Technical Specification 3.4.8 are exceeded, the required information pertaining to the iodine spiking event would be included in the Annual Report.

The Bases for Technical Specification 3.4.8 would be amended to delete the reference to restricting reactor operation with more than 800 hours of dose equivalent I-131 above the specified limits. Also, the reference to making a Special Report after 500 hours of iodine spiking events would be deleted.

The proposed changes to Technical Specification 3.4.8 and associated Bases, and Technical Specification 6.9.1.4 would be in accordance with Generic Letter 85-19, "Reporting Requirements on Primary Coolant Iodine Spikes." In Generic Letter 85-19, the NRC determined that the requirement to bring a unit subcritical with Tavg less than 500° F is unnecessary if coolant iodine activity levels exceed certain levels for 800 hours in a 12-month period. Also, the special reporting requirements for dose equivalent iodine activity levels that exceed limits would be included in the Annual Report.

The proposed changes would not alter the value of the dose equivalent iodine concentration and gross activity concentration Technical Specification limits.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined that the proposed changes will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed changes would not affect the accident analysis, and the limits for reactor coolant dose equivalent I-131 would remain the same. The Technical Specification requirement to shut down the plant if coolant iodine activity limits are exceeded is an operating restriction that is no longer necessary based on a demonstration of successful operating experience, as indicated in Generic Letter 85-19.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes would not necessitate physical alteration of the plant or changes in parameters governing normal plant operation.

(3) Involve a significant reduction in the margin of safety because the proposed Technical Specification revisions would not change the present gross activity limit or dose equivalent I-131 limits.

Accordingly, the licensee has determined that the proposed changes to the Technical Specifications involve no significant hazards considerations.

The NRC staff has reviewed the proposed amendments and the licensee's determination and finds it acceptable. Therefore, the staff proposes to determine that the proposed amendments involve no significant hazards consideration.

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Attorneys for licensee: Richard R. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120 and Bruce Norton, Esq., c/o Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Project Director: George W. Knighton

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment request: November 5, 1986 (Reference LAR 86-07, Rev. 1)

Description of amendment request: The proposed amendments would revise the Diablo Canyon Nuclear Power Plant combined Technical Specifications for Units 1 and 2 to delete Table 3.8-2, "Containment Penetration Conductor Overcurrent Protective Devices," from Technical Specification 3.8.4.2, to add a footnote to Technical Specification 3/4.8.4.2 to indicate that the list of devices will be maintained and controlled at the Diablo Canyon Plant, and to supplement Bases 3/4.8.2 to provide record retention aspects of the device list consistent with 10 CFR 50.71(c). The record retention aspects would require a list to be available at the Diablo Canyon Plant of those circuit limiting fault devices whose current exceeds the penetration rating. This list would be used to identify the devices for which the operability and surveillance requirements of Technical Specification 3/4.8.4.2 would be applied.

Supplement No. 8 to the NRC Safety Evaluation Report for Diablo Canyon required redundant containment penetration fault current protective devices to be installed prior to completion of the first refueling outage. These devices were installed on Unit 2 and are presently included in the Technical Specifications. Installation of the Unit 1 devices was also completed prior to the end of the first Unit 1 refueling outage.

The proposed changes would delete Table 3.8-2, "Containment Penetration Conductor Overcurrent Protective Devices," from the Technical Specifications. The list would be maintained at the Diablo Canyon Plant to identify those devices for which the operability and surveillance requirements of Technical Specification 3/4.8.4.2 are to be applied. This action is similar to that required for snubbers as described in Generic Letter 84-13 and does not degrade compliance with Technical Specification 3/4.8.4.2. Technical Specification 3/4.8.4.2 will continue to require that the containment penetration conductor overcurrent protective devices be operable and

demonstrated operable, with appropriate actions to be taken if the devices are inoperable.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from and accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined that the proposed revision would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed changes are administrative in nature in that removing the protective devices list from the Technical Specifications and administratively maintaining the list at the Diablo Canyon Plant neither reduces the existing protective device operability requirements nor affects the accident analyses.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes provide for the list of containment penetration conductor overcurrent protective devices to be maintained and controlled at the Diablo Canyon Plant rather than in the Technical Specifications and, therefore, do not necessitate physical alteration of the plant or changes in parameters governing normal plant operation.

(3) Involve a significant reduction in the margin of safety because the proposed changes are administrative, do not degrade the existing operability and surveillance requirements of the protective devices, and do not affect accident analyses.

Accordingly, the licensee has determined that the proposed change to the Technical Specifications involves a no significant hazards consideration.

The NRC staff has reviewed the proposed amendment request and the licensee's determination and finds it acceptable. Therefore, the staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Attorneys for licensee: Richard R. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120 and Bruce Norton, Esq., c/o Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Project Director: George W. Knighton

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of amendment request: March 23, 1987

Description of amendment request: The proposed amendment would revise the Limerick Unit 1 Technical Specifications (TSs) to include a consideration of wind speed during verification of reactor enclosure secondary containment integrity. The current TS surveillance requirement states that the reactor enclosure secondary containment integrity shall be demonstrated at least once per 18 months by operating one standby gas treatment subsystem for one hour and maintaining greater than or equal to 0.25 inch of vacuum water gauge in the reactor enclosure secondary containment at a flow rate not exceeding 1250 cfm. The requested TS amendment adds the phrase "...with wind speeds of less than or equal to 7.0 mph as measured on the wind instrument on Tower 1 elevation 30' or, if that instrument is unavailable, Tower 2 elevation 159'." In addition, it is requested that the bases for TS Section 3/4.6.5 be amended to include a discussion of reactor enclosure secondary containment leakage and meteorological conditions. The proposed change will provide clarification that the leakage criteria corresponds to meteorological conditions consistent with the assumptions utilized in the design basis offsite dose analysis (less than or equal to 7.0 mph wind speed).

Basis for proposed no significant hazards consideration determination: The Commission has provided standards (10 CFR 50.92) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided an analysis of each of the above criteria for the amendment request and has determined that the proposed amendment does not constitute a significant hazards consideration in that it would not:

(i) involve a significant increase in the probability or consequences of an accident previously evaluated. The addition of the wind speed to the Surveillance Requirement in TS Section 4.6.5.1.1.c.2 does not increase the probability of the Loss of Coolant Accident previously evaluated in FSAR Section 15.6. The consequences of the accident are not increased because the proposed wind condition is one of the assumptions included in the current FSAR analysis.

(ii) create the possibility of a new type of accident or a different kind of accident from any accident previously evaluated. Including the wind speed in the Surveillance Requirement serves to make the TS consistent with the Loss of Coolant Accident evaluated in FSAR Section 15.6. No new or different kinds of accidents are created by the consideration of wind speed.

(iii) involve a significant reduction in the margin of safety. The addition of the wind speed to the Surveillance Requirement of TS Section 4.6.5.1.1.c.2 provides consistency with the assumptions for the analysis of the accident evaluated in FSAR Section 15.6. Therefore, there is no effect on margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff has made a proposed determination that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Portland General Electric Company et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: April 29, 1987

Description of amendment request: The proposed amendment would provide editorial corrections and changes to the Administrative Controls section of the Trojan Technical Specifications.

More specifically: (a) The referenced amendment number at the bottom of Page 6-6 would be changed to correct a typographical error; (b) Section 6.5.1.6, Item f., the term "reportable occurrences" would be changed to "reportable events;" (c) Section 6.8.2 would delete its applicability to temporary changes; (d) Section 6.8.3, Item C., would change the title of "Nuclear Projects Quality Assurance Program for Operations" to "Nuclear Quality Assurance Program"; and (e) Section 6.9.1.5.3 would be revised to correct a typographical error.

Basis for proposed no significant hazards consideration determination: 10 CFR 50.92 states that a proposed amendment will not involve a significant hazards consideration if the proposed amendment does not: (i) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (ii) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (iii) Involve a significant reduction in a margin of safety. The Commission has also provided guidance concerning the application of these standards by providing certain examples (March 6, 1986, 51 FR 7751). An example of an amendment that is considered not likely to involve a significant hazards considerations is Example (i) A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature.

The proposed changes to Page 6-6 and Section 6.9.1.5.3 correct a typographical error, and the changes to Section 6.5.1.6 and 6.8.3 simply revise a title and terminology to provide consistency within the Technical Specification. The proposed change to Section 6.8.2 corrects an error since temporary changes are explicitly controlled by an existing Technical Specification, Section 6.8.3.

The staff has reviewed the licensee's no significant hazards analysis and concurs with their conclusions. As such, the staff proposes to determine that the requested changes do not involve a significant hazards consideration.

Local Public Document Room location: Multnomah County Library, 801 S. W. 10th Avenue, Portland, Oregon 97205

Attorney for licensee: J. W. Durham, Senior Vice President, Portland General Electric Company, 121 S. W. Salmon Street, Portland, Oregon 97204

NRC Project Director: George W. Knighton

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego, New York

Date of amendment request: March 6, 1987

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) to accomplish the following:

(a) Add new TS that provide the option of using either a 12-inch line (with valve number 27 MOV-120) or a 6-inch line (with valve number 27 MOV-121) for inerting and deinerting the primary containment. For the 12-inch line, the TS would also ensure that the integrity of the Standby Gas Treatment System (SBGTS) is maintained if a Loss of Coolant Accident (LOCA) occurs by limiting the maximum pressure drop across the High Efficiency Particulate Absolute (HEPA) filters. The 6-inch line, currently used for inerting and deinerting, requires no restrictions to prevent overpressurization of the HEPA filters. Use of the 12-inch line would reduce the time required for these operations.

(b) Clarify the existing TS regarding inoperable containment isolation valves. This would provide greater assurance of containment isolation by more specifically describing actions to be taken in the event an isolation valve becomes inoperable. The proposed change would require that at least one isolation valve be operable in each affected penetration that is open, and, either restoring the inoperable valve(s) to operable status within 4 hours, or isolating each affected penetration within 4 hours.

(c) Add new TS that limit the maximum angle of opening for the containment vent and purge valves to ensure their operability during a design basis LOCA, and to reduce the closure times specified in the existing TS for these valves. The proposed change also would ensure that the containment vent and purge valves would be opened only for specified safety related reasons.

In addition, an editorial change has been made to TS page 183 for purposes of clarification.

Basis for proposed no significant hazards consideration determination: In accordance with the Commission's Regulations in 10 CFR 50.92, the Commission has made a determination that the proposed amendment involves no significant hazards considerations. To make this determination the staff must establish that operation in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

Operation in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated because:

(a) The proposed revisions, on the contrary, would ensure the integrity and operability of the SBGTS if a LOCA occurs during inerting or deinerting the primary containment. This assurance would be provided when the 6-inch line is used because the corresponding maximum flow is such that the delta P across the HEPA filter would remain within the design limits. The proposed change would also provide assurance of integrity and operability of the SBGTS when the 12-inch line is used by imposing additional limitations on the operation of the system that would limit the delta P across the HEPA filter.

(b) The proposed revisions would assure the operability and integrity of the vent and purge valves during a design basis LOCA. To ensure that these valves would close against LOCA loads, the proposed change would impose new restrictions which limit the maximum angle of opening. The proposed changes would also revise valve closure times to provide adequate margin to ensure closure within calculated limiting time values.

(c) The proposed revisions would provide greater assurance of containment isolation in the event of an accident by imposing new restrictions on isolation and restoration of inoperable valves to operable status.

Similarly, because the proposed revisions represent additional restrictions and limitations intended to provide greater assurance of containment isolation and of the operability and integrity of the SBGTS and containment vent/purge valves under LOCA conditions, the proposed revisions cannot create the possibility of a new or different kind of accident, nor involve a significant reduction in margin of safety.

Since the application for amendment involves proposed changes that are encompassed by the criteria for which no significant hazards consideration exists, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Penfield Library, State

University College of Oswego, Oswego, New York.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra, Acting Director

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: May 7, 1987

Description of amendment request: The proposed amendment would revise the Technical Specifications with regard to the Fuel Storage Building (FSB) Emergency Ventilation System. The upper and lower bypass dampers of the ventilation system are being replaced by manual isolation devices. This replacement is intended to enhance system operation and ensure a proper seal. The proposed changes to the Technical Specification are being requested to clarify operation of the ventilation system.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee made the following analysis of these changes:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

The probability of a fuel handling accident is not affected by this proposed change. However, the probability and consequences of a release to the atmosphere due to a fuel handling accident are in fact reduced. Air from the FSB Emergency Ventilation System will be discharged through the HEPA filters and charcoal adsorbers during all fuel handling operations, or the evolutions that could result in a radioactive release from irradiated fuel, thereby ensuring no direct release to the atmosphere.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Automatic isolation of the bypass assembly is required to protect against a potential fission product release to the atmosphere during a fuel handling accident. However, with the installation of these manual isolation devices the need for automatic isolation is no longer required. With these isolation devices installed, air flow is directed through the HEPA filters and charcoal adsorbers, thus ensuring no direct release to the atmosphere. Therefore, with the proper procedural controls, which the Authority is incorporating into IP-3's procedures, the need for automatic isolation of the bypass assembly is precluded. This proposed amendment, therefore, does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

The proposed amendment does not involve a significant reduction in a margin of safety. The margin of safety is actually increased as a result of the proposed amendment since air from the FSB Emergency Ventilation System will be discharged through the HEPA filters and charcoal adsorbers at all times during fuel handling operations. Since the fuel handling accident analysis in the FSAR does not credit the existence of charcoal adsorbers, the change in no way reduces the safety margin established by current accident analysis.

Based on the above, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019

NRC Project Director: Robert A. Capra, Acting Director

Public Service Company of Colorado, Docket No. 50-267, Fort St. Vrain Nuclear Generating Station, Plattesville, Colorado

Date of amendment request: June 25, 1987 (P-87124)

Description of amendment request: These proposed changes to the Fort St. Vrain Technical Specifications concern LCO 4.1.9, Minimum Helium Flow and Maximum Core Region Temperature Rise, and a proposed new Technical Specification, SR 5.1.8, which incorporates the associated surveillance requirements. Minimum helium flow and maximum core region temperature rise are specified at low power levels to assure that reactor safety limits are not violated. The associated surveillance requirements assure compliance with the LCO by specifying the frequency at which compliance is verified.

Earlier notices concerning these changes were published on January 20, 1984 at 49 FR 3352, and December 17, 1986 at 51 FR 45218.

Basis for proposed no significant hazards consideration determination: This Technical Specification specifies minimum allowable total flow and maximum allowable region temperature rise to assure that flow stagnation or reversal does not occur and thus, that excessive fuel temperature is prevented. These limits are necessary between 0 percent and approximately 25 percent power because the core power-to-flow ratio limits of Safety Limit 3.1 and the region outlet temperature mismatch limits of Specification LCO 4.1.7 do not, by themselves, preclude the adverse flow conditions. At higher power levels, the power-to-flow and region outlet temperature limits are sufficient to preclude excessive fuel temperatures and fuel failure.

The proposed Specification corrects errors in the original analysis, includes allowances for explicit uncertainties associated with thermal power and total circulator flow (instrument errors) measurements, and makes the assumptions consistent with plant operation. In addition, minimum coolant flow curves were added for 1 to 10 orifice valves more open than the equal flow position. Curves were also added for maximum region temperature rise when either no orifice valve is less than 6 percent open or less than 8 percent open. These additional curves facilitate the transition from equal flow orifice positions to equal region outlet temperature orifice positions. Minimum coolant flow curves were also added for reduced helium density conditions since the lower densities result in smaller helium buoyancy effects.

The proposed flow and temperature limits are significantly more restrictive than the corresponding limits in the existing Technical Specification. The new curves that have been added to permit operation when up to 10 orifice valves are further open than the equal flow position, have the same degree of conservatism that is included in the equal flow position curves. In determining the total circulator flow requirements, it was assumed that any orifice valve further open was full open and the total circulator flow requirements were increased so that the

minimum flow in any coolant channel would not be less than that required when all orifice valves are set for equal flow. The same philosophy was applied when generating the new curves to limit the maximum region temperature rise when the orifice valves are set at any position, but no orifice valve is either less than 6 percent open or less than 8 percent open.

The applicability of the proposed Specification has been limited when the reactor is in the shutdown mode to that condition when the calculated bulk core temperature is greater than 760 degrees F. This excludes the case when the amount of thermal energy from fission product decay is sufficiently low to prevent the average core temperature from exceeding 760 degrees F even if there is no helium coolant flow. The expected gas coolant temperatures at full power are 760 degrees F (core inlet and upper plenum) and 1460 degrees F (core outlet and steam generator inlet). The upper plenum internal components, including the control rod drive and orifice assemblies and thermal barrier, have been designed to be consistent with this temperature environment.

Consequently, limiting the calculated bulk core temperature during a primary coolant flow termination to 760 degrees F would conservatively ensure that both the core and prestressed concrete reactor vessel internals would be protected when the primary coolant flow is resumed.

In summary, our evaluation of significant hazards considerations is as follows: (1) FSAR accident analyses have been reviewed to determine the effect, if any, of this change on these analyses. Since the proposed changes increase the minimum flow requirements and decrease the allowable region temperature rise, they preclude flow stagnation or reversal, and there is no adverse impact on any accident previously analyzed in the FSAR; (2) The proposed Technical Specification change does not involve any modification of plant systems, equipment, or structures. The only changes to plant operating procedures are to ensure compliance with the revised limits. Thus, these changes would not create a new or different type of accident than any previously evaluated; and (3) A review of the margins of safety associated with this Technical Specification confirms that the margins of safety are not reduced by this change. In fact, the new limits represent a significant increase in the minimum flow required and a significant decrease in the allowed temperature rise. Both of these changes provide additional assurance that excessive fuel temperatures are prevented.

Based on the above evaluation, the staff proposes to determine that operation of Fort St. Vrain in accordance with the proposed changes will not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in any margin of safety. Accordingly, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration. Local Public Document room location: Greeley Public Library, City Complex Building, Greeley, Colorado

Attorney for licensee: Bryant O'Donnell, Public Service Company of Colorado, P.O. Box 840, Denver, Colorado 80201-0840

NRC Project Director: Jose A. Calvo

South Carolina Electric and Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, South Carolina

Date of amendment request: March 28, 1987

Description of amendment request: The amendment would revise Technical Specification Table 3.12-1, "Radiological Environmental Monitoring Program, Virgil C. Summer Nuclear Station." These changes would reduce the total number and control number of continuous air sampling locations, add a control water sample location, and reduce the number of food product indicator locations.

These changes are based on Technical Specification Bases Section 3/4.12, which states in part, that "...program changes may be initiated based on operation experience."

Basis for proposed no significant hazards consideration determination: The Technical Specification (TS) requirement is for 5 indicator and 2 control continuous air sampling stations. The radiological environmental surveillance program has routinely included 11 to 14 continuous air sampling stations, 2 to 3 of which have been control stations.

Plans are to reduce the total number of continuous air sampling locations to one less than the current minimum number required by TS. In conjunction with this program reduction is a requested change in the required number of control locations from 2 to to 1. A review of baseline and operational data indicates that the elimination of one control location will not adversely impact the ability to discern station operational effects from macro-regional effects. That fact was further emphasized while monitoring the Chernobyl event. Should similar global events or releases from V. C. Summer Nuclear Station (VCSNS) occur, portable air samplers can be deployed. Those units are maintained in a calibrated operational status at the Environmental Lab. The control location to be maintained is in Columbia, 25 miles southeast of VCSNS (Site 17). The control location to be deleted is near Newberry, 28 miles west of VCSNS (Site 19).

The TS requirement for drinking water does not include a control sample location. A finished water sample from an unaffected water supply (control) with a requirement for monthly composite sampling is to be added. The type and frequency of analysis will be identical to that required for the 2 indicator samples. The control water sampler will be maintained at the Lake Murray Water Treatment Facility, 14 miles south-southeast of VCSNS and on an unaffected water shed (Site 39).

The TS requirement for food products is for 3 broadleaf vegetation samples grown in the 3 nearest offsite locations for highest calculated annual averaged ground level D/Q values. A change from 3 to 2 indicator locations is requested. Gardens will be maintained at locations 1 mile, east-southeast (Site 6) and 1.5 miles, east-northeast (Site 8), respectively. These locations have consistently remained the highest relative deposition (D/Q) locations with real potential for offsite exposures as revealed in the annual land use census and meteorological monitoring activities conducted since 1978. The present food products requirement is compensatory in nature due to the lack of a dairy within five miles. Given the exiguousness of the dairy industry in the region, the stability of land use (pulpwood production in the Southern Sectors), the lack of nearby residences in the Southern Sectors and the continuing requirement to establish sampling of the media should land use change, relief from that requirement is requested.

The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92 (c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously

evaluated; or (2) create the possibility of a new or different kind of accident from accidents previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined that the requested amendment does not involve significant hazards considerations for the following reasons:

1. The changes would not involve a significant increase in the probability or consequences of an accident previously evaluated. Neither the elimination of sampling locations nor the addition of sampling locations has bearing on the possibility or consequences of an accident or on South Carolina Electric and Gas Company's (SCE&G) ability to monitor offsite accident conditions. Analytical data obtained from indicator or control locations with respect to accident conditions provides after-the-fact information.

Since SCE&G's ability to provide additional post accident sampling has been established in the Emergency Plan and implementing procedures, the proposed changes do not involve an increase in the probability or consequences of an accident.

2. The changes would not create the possibility of a new or different kind of accident from any accident previously evaluated. Environmental surveillance activities are conducted offsite and cannot create the possibility of a new or different kind of accident.

3. The changes would not involve a significant reduction in a margin of safety. The margin of safety is not affected by the addition or by the deletion of a control sampling location. Baseline data are on record, should the need arise, to determine plant effluent effects.

Furthermore, the annual requirement to assess land use and potential for exposure, via the land use census and meteorological data, supports this determination. With respect to the deletion of the vegetation sample location, 3 years of operational experience show that only two sectors consistently remain the highest D/Q Sectors. Gardens located in these sectors and maintained by SCE&G provide adequate means to assess plant impacts on the environment and population. The Plant Emergency Plan and implementing procedures provide a mechanism for additional sampling should accident conditions occur. Therefore, elimination of a third routine location not having a high D/Q value does not significantly reduce a margin of safety.

The staff has reviewed the licensee's determination and finds it acceptable. Accordingly, the Commission proposes to determine that this change does not involve significant hazards considerations.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180

Attorney for licensee: Randolph R. Mahan, South Carolina Electric and Gas Company, P.O. Box 764, Columbia, South Carolina 29218

NRC Project Director: Elinor G. Adensam

South Carolina Electric and Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, South Carolina

Date of amendment request: March 31, 1987

Description of amendment request: The amendment would remove all fire protection requirements from the Technical Specifications (TS). Also, TS 6.5.1.6, "Plant Safety Review Committee (PSRC) Responsibilities" will be revised to include the fire protection program and its revisions. Finally, a requirement will be added to license condition 2.C.(18) which states that, "The licensee may make changes to the approved fire protection program without prior approval of the Commission only if those changes would not adversely affect the ability to achieve and maintain safe shutdown in the event of a fire." These changes are consistent with the recommendations contained in NRC Generic Letter 86-10, "Implementation of Fire Protection Requirements."

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Fire Protection Evaluation Report (FPER) will be incorporated by reference into Chapter 9 of the Final Safety Analysis Report (FSAR) and the fire protection requirements will be removed from the TS. The V. C. Summer Fire Protection Program will then be completely described and controlled through the FSAR/FPER and Station Administrative procedures.

The staff has determined that the requested amendment: (1) would not involve a significant increase in the probability or consequences of an accident previously evaluated because no changes to the Fire Protection Program are being made, and (2) would not create the possibility of a new or different kind of accident from any accident previously evaluated because no physical plant changes are made by this amendment. Also, the amendment (3) would not involve a significant reduction in the margin of safety because any change to the Fire Protection Program will still be subject to a controlled review process.

Accordingly, the Commission proposes to determine that these changes do not involve significant hazards considerations.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180

Attorney for licensee: Randolph R. Mahan, South Carolina Electric and Gas Company, P.O. Box 764, Columbia, South Carolina 29218

NRC Project Director: Elinor G. Adensam

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment requests: April 17, 1987 (TS 87-07)

Description of amendment requests: Tennessee Valley Authority proposes to amend the Sequoyah Nuclear Plant Units 1 and 2 Technical Specifications to revise Tables 3.3-7 and 4.3-4, "Seismic Monitoring Instrumentation." The proposed changes would correct the specified measurement range of four seismic recorders, the specified location of four seismic monitors and one recorder, and the surveillance requirements on three seismic monitors and one recorder.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, about the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis.

The elevations given in technical specification 3.3.3.3, tables 3.3-7 and 4.3-

4, for seismic monitors O-XR-52-82, O-XR-52-83, and O-XR-52-84 are in error. They are inconsistent with the as-built configurations and with other design drawings, which give the correct values. The proposed amendment would correct the erroneous values and put them in agreement with the actual elevation values and the values found in those design drawings.

Also, table 4.3-4 of technical specification 3.3.3.3 states that a channel functional test is not necessary for monitor O-XR-52-86. However, American Nuclear Society Standard 2.2 requires that a channel functional test be performed on all active instruments (instruments that require an outside power source) in six-month intervals (page B-10, Table 1). According to contract 76K6-820172, instrument O-XR-52-86 was requisitioned with an uninterruptible power supply. Also, cognizant plant personnel have given confirmation that instrument O-XR-52-86 does contain a switch and is in fact an active instrument, in agreement with the contract. Therefore, table 4.3-4 of technical specification 3.3.3.3 is amended to read SA (semiannual) for the channel functional test.

Another amendment that needs to be made to table 4.3-4 is the inclusion of a seismic trigger in the channel calibrations of instruments 0-XT-52-75A, O-XT-52-75B, an O-XR-52-77. As the table identifies, these instruments are time-history accelerographs. In the definition of a time-history accelerograph in American Nuclear Society Standard 2.2, page B-5, a trigger is included as a component of the instrument. This necessitates the inclusion of the trigger under the channel calibration heading of table 4.3-4 for these instruments.

Finally, the measurement range of instruments O-XR-52-86, -87, -88, and -89 is incorrectly specified. In paragraph four of the recommendation for award, memorandum number 1, of contract 76K6-820172, the contractor identified that the upper measurement range of recorder O-XR-52-86 is 32g, in disagreement with the value of 90g given in table 3.3-7. This was apparently an oversight in the original technical specifications. In addition, all replacement reeds for all four monitors render the upper measurement value at 32g because of present vendor specifications. To facilitate the inevitable incorporation of replacement reeds and/or replace instruments (the upper value of which is also 32g), Table 3.3-7 should be corrected to read 32g. This value is still many times greater than the maximum expected seismic activity for Sequoyah. The proposed change would enter the correct value in Table 3.3-7 of technical specification 3.3.3.3.

(1) Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed corrections do not result in a change in current plant configuration. Rather, they correct table entries in a technical specification for hardware currently installed in the plant. Therefore, the proposed corrections entail no increase in the probability or consequences of an accident that has been previously evaluated.

(2) Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed changes do not affect normal operating procedures or emergency operating instructions for the plant. The one change in operating limits that results from the corrections is the lowering of the upper limit on the measurement range of response-spectrum recorders to 32g. As stated in paragraph four of the recommendation for award, memorandum number 1, of contract 76K6-820172, this limit is still many times greater than the maximum expected g level for Sequoyah. Therefore, the proposed technical specification change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Does the proposed amendment involve a significant reduction in margin of safety?

No. The proposed corrections actually increase the overall safety of the plant by correcting typographical errors, establishing a stricter maintenance schedule for the monitors, and giving the true measurement range of seismic instrumentation. Therefore, the proposed corrections do not involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analyses. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: John A. Zwolinski

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri.

Date of amendment request: June 18, 1987.

Description of amendment request: The proposed amendment would revise the definition of the fully withdrawn shutdown and control rod position from 228 steps to 225 steps or higher.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee has provided the following analysis of no significant hazards considerations using the Commission's standards.

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. Repositioning the rod banks at 225 steps or higher for fully withdrawn has been evaluated to have negligible impact on power distributions, shutdown margin, accident peaking factors and rodworths, or departure from nucleate boiling ratio (DNBR) margin. Sufficient margin exists between calculated safety parameters and safety limits to accommodate slight variations in calculated values over previous analyses. Repositioning the rod banks will reduce localized wear, extend life, and decrease any consequences or possibility of malfunction.

The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated. There are no new failure modes associated with repositioning the rod banks. A design change or a new plant system is not required. The rods continue to meet their functional requirements, and operation of the current system is unaltered.

The proposed change does not involve a significant reduction in a margin of safety. Callaway has sufficient margin between calculated safety parameters

and safety limits to accommodate slight variations in parameters due to repositioning the rods. There is no significant reduction in the shutdown margin, peaking factors, or DNBR margin.

Based on the previous discussions, the licensee concluded that the proposed amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated; does not create the possibility of a new or different kind of accident from any accident previously evaluated; and does not involve a reduction in the required margin of safety. The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis.

The staff, therefore, proposes to determine that the licensee's request does not involve a significant hazards consideration.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251 and the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: David L. Wigginton, Acting.

Wolf Creek Nuclear Operating Corporation, Kansas Gas and Electric Company, Kansas City Power & Light Company, Kansas Electric Power Cooperative, Inc., Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: June 29, 1987.

Description of amendment request: The proposed amendment request revises Wolf Creek Generating Station (WCGS) Technical Specification Table 3/4.3.1, Reactor Trip System Instrumentation, in accordance with the requirements of Generic Letter 85-09.

Basis for proposed no significant hazards consideration determination: In accordance with the requirements of 10 CFR 50.92, the licensee has submitted the following no significant hazards determination:

In response to the NRC requirements issued in Generic Letter 85-09, the following revisions are being made to Technical Specification 3/4.3.1:

ACTION 12 is being added to Table 3.3-1. This action statement corresponds to Functional Unit 19 (Reactor Trip Breakers) and allows continued plant operation for up to 48 hours with one of the diverse trip features inoperable. The proposed Reactor Trip Breaker surveillances will serve to independently verify the operability of the shunt and undervoltage trip features. There is a high degree of confidence that the remaining operable trip feature would be capable of initiating a reactor trip within the allowed 48 hours.

Table Notation 11 of Table 4.3-1 has been revised to verify the operability of the undervoltage and shunt trip circuits for Functional Unit 1 (Manual Reactor Trip). This notation will also verify the OPERABILITY of the Bypass Breaker trip circuits.

Table Notation 14 is being added to Table 4.3-1. This notation corresponds to Functional Unit 19 (Reactor Trip Breaker). The proposed notation requires that the TRIP ACTUATING DEVICE OPERATIONAL TEST shall independently verify the OPERABILITY of the undervoltage and shunt trip attachments of the Reactor Trip Breakers.

Table 4.3-1 is being revised to add Functional Unit 21 (Reactor Trip Bypass Breaker). This Functional Unit requires a TRIP ACTUATING DEVICE OPERATIONAL TEST (TADOT). Table Notation 15 requires a local manual shunt trip prior to placing the breaker in service. Table Notation 16 requires an automatic undervoltage trip.

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. These changes are being proposed to comply with NRC requirements issued in Generic Letter 85-09. These changes serve to ensure the reliable operation of the Reactor Trip Breakers without unnecessarily compromising their overall availability. An allowed outage time of 48 hours is established for the loss of one diverse trip feature (undervoltage or shunt trip attachment). This is consistent with the requirements of the proposed surveillances (Table Notations) to independently verify the OPERABILITY of the undervoltage and shunt trip attachments, their associated circuits, and the bypass breakers. Thus the temporary inoperability of one of the diverse trip features would not significantly affect the capability of initiating a reactor trip within the allowed 48 hours. The proposed changes do not significantly affect the ability of the Reactor Trip Breakers to perform their safety function.

The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated. There are no new failure modes or mechanisms associated with the proposed changes. These changes do not involve any modification to the operational limits or physical design of the involved systems. The changes establish an ACTION statement allowed outage time based upon confidence in the operability of diverse features and appropriate surveillance requirements in accordance with NRC requirements.

The proposed changes do not involve a significant reduction in a margin of safety. These changes do not affect any Technical Specification margin of safety. The capability of the Reactor Trip Breakers to perform their safety function is not significantly affected by the proposed Technical Specification revision.

The Commission has established guidance concerning the determination of whether a significant hazards consideration exists by providing certain examples (51 FR 7751) of amendments not likely to involve a significant hazards consideration. The proposed Technical Specification 3/4.3.1 conforms to NRC example (ii) "A change that constitutes an additional limitation, restriction or control not presently included in the technical specifications, e.g., a more stringent surveillance requirement."

Based on the above discussions it has been determined that the requested Technical Specification revisions do not involve a significant increase in the probability or consequences of an accident or other adverse condition over previous evaluations; or create the possibility of a new or different kind of accident or condition over previous evaluations; or involve a significant reduction in a margin of safety. Therefore, the requested license amendment does not involve a significant hazards condition.

Based on the previous discussion, the licensee concluded that the proposed amendment request does not involve a significant increase in the probability of a new or different kind of accident from any accident previously evaluated; nor involve a significant reduction in the required margin of safety. The NRC staff has reviewed the licensee's no significant hazards considerations determination and agrees with the licensee's analysis. The staff has, therefore, made a proposed determination that the licensee's request does not involve a significant hazards consideration.

Local Public Document Room location: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Jose A. Calvo

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices because time did not allow the Commission to wait for this bi-weekly notice. They are repeated here because the bi-weekly notice lists all amendments proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the Federal Register on the day and page cited. This notice does not extend the notice period of the original notice.

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of amendment request: May 21, 1987

Brief description of amendment: Millstone Unit No. 1 Technical Specification (TS) change request to reflect Reload 11/Cycle 12 operation. The proposed changes will amend the current minimum critical power ratio (MCPR) linear heat generation rate (LHGR) and maximum average planar linear heat generation rate (MAPLHGR) due to reload of 196 new (unirradiated) General Electric Type 6E8 x 8EB (GE-8B) fuel assemblies.

Date of publication of individual notice in Federal Register: July 2, 1987 (52 FR 25099).

Expiration date of individual notice: August 3, 1987.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of amendment request: May 22, 1987

Brief description of amendment: The amendment would revise Sections 3.4, 4.4, and the associated Bases of the Technical Specifications (TS) in accordance with the licensee's application for amendment dated May 22, 1987. These changes are being proposed to ensure compliance with the ATWS rule (10 CFR 50.62) which requires all BWRs to have a standby liquid control system (SLCS) with a minimum flow capacity equivalent to 86 gpm of 13 weight percent sodium pentaborate solution. At Millstone Unit 1, the equivalent flow capacity, as clarified in Generic Letter 85-03, "Clarification of Equivalent Control Capacity for Standby Liquid Level Control Systems," dated January 28, 1985, will be achieved by utilizing B-10 enriched sodium pentaborate. The minimum SLCS system parameters being proposed are: pump flow rate of 40 gpm; solution concentration of at least 11%; solution volume of at least 1850 gallons; and a minimum B-10 enrichment of 50 atom percent.

Date of publication of individual notice in Federal Register: July 2, 1987 (52 FR 25097).

Expiration date of individual notice: August 3, 1987.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the Federal Register as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Arkansas Power & Light Company, Docket No. 50-313, Arkansas Nuclear One, Unit 1, Pope County, Arkansas

Date of application for amendment: May 6, 1987.

Brief description of amendment: The amendment grants a one time exception from the provisions of Section 3.8.15 for the period of July 13, 1987 thru August 12, 1987. The exception allows the auxiliary building crane to handle a spent fuel shipping cask containing six spent fuel rods.

Date of issuance: July 10, 1987.

Effective date: July 10, 1987.

Amendment No.: 107

Facility Operating License No. DPR-51. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: May 14, 1986 (52 FR 18297) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 10, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: October 1, 1986, as supplemented March 13, March 19, April 17 and May 4, 1987.

Brief description of amendments: These amendments (1) modify TS 3/4.1.3, "Movable Control Assemblies" by lengthening the response time and increasing the maximum reactor thermal power limit for control element assembly misalignments of greater than fifteen inches and (2) extend the response time for containment purge valves isolation on a containment radiation-high signal as specified in TS Table 3.3-5, "Engineered Safety Features Response Times," to less than or equal to seven seconds. In addition, several administrative changes were made.

The supplements to the October 1, 1986 submittal did not affect the proposed TS changes noticed in the Federal Register on January 28, 1987 and did not affect the staff's proposed no significant hazards consideration.

Date of issuance: July 7, 1987

Effective date: July 7, 1987

Amendment Nos.: 127 and 109

Facility Operating License Nos. DPR-53 and DPR-69. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: January 28, 1987 (52 FR 2872)

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The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 7, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Boston Edison Company Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: January 19, 1987, as supplemented on February 25, 1987

Brief description of amendment: The amendment revises Technical Specification 4.7.B.2.a by reducing the differential pressure criteria for replacing filters in the Control Room High Efficiency Air Filtration (CRHEAF) System from 8 to 6 inches of water.

Date of issuance: June 23, 1987

Effective date: 30 days from date of issuance

Amendment No.: 101

Facility Operating License No. DPR-35: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: May 6, 1987 (52 FR 16941) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 23, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: March 9, 1987

Brief description of amendment: Revises Technical Specifications to reflect current organization.

Date of issuance: July 10, 1987

Effective date: July 10, 1987

Amendment No.: 114

Facility Operating License No. DPR-23: Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: April 22, 1987 (52 FR 13333) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 10, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: December 31, 1986

Brief description of amendment: This license amendment modifies Technical Specification 3.20, "Reactor Coolant System Flow, Temperature and Pressure," and Technical Specification Figure 2.2-2 to include revised three-loop operation safety limits and reactor coolant system (RCS) flow rate requirements based upon the results of loop flow measurements conducted during the Cycle 14 (current cycle) startup. By letter dated August 7, 1986, Connecticut Yankee Atomic Power Company (CYAPCo) has administratively prohibited three-loop operation at the Haddam Neck Plant until the revised safety limits, based on the lower measured loop flow rates, have been reviewed and approved by the staff.

Date of issuance: July 6, 1987

Effective date: July 6, 1987

Amendment No.: 91

Facility Operating License No. DPR-61: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: January 28, 1987 (52 FR 2879). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 6, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 124 Broad Street, Middletown, Connecticut 06457.

Florida Power and Light Company, Docket No. 50-335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of application for amendment: February 28, 1986, as supplemented November 14, 1986 and April 15, 1987

Brief description of amendment: The amendment changes the expiration date of Facility Operating License No. DPR-67 from July 1, 2010 to March 1, 2016.

Date of Issuance: July 8, 1987

Effective Date: July 8, 1987

Amendment No.: 82

Facility Operating License No. DPR-67: Amendment revised the Facility Operating License.

Date of initial notice in Federal Register: March 26, 1986 (51 FR 10451 at 10458) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 8, 1987, and in and Environmental Assessment dated May 29, 1987 (52 FR 21634).

No significant hazards consideration comments received: No.

Additional information was provided by the licensee subsequent to the notice in the Federal Register. The information provided further bases for approval of the amendment and did not alter our proposed determination of No Significant Hazards Consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virgina Avenue, Ft. Pierce, Florida.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-321, Edwin I. Hatch Nuclear Plant, Unit 1, Appling County, Georgia

Date of application for amendment: May 8, 1987

Brief description of amendment: The amendment adds a new Technical Specification to require analysis for Boron-10 concentration prior to startup from each refueling outage.

Date of issuance: July 7, 1987

Effective date: July 7, 1987

Amendment No.: 142

Facility Operating License No. DPR-57: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: June 3, 1987 (52 FR 20800) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 7, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Dates of applications for amendments: September 5, 1984, August 20, 1985, and January 7, 1986, as supplemented June 26, 1986

Brief description of amendments: The amendments modify the Technical Specifications by adding limiting conditions for operation, trip setpoints, and surveillance requirements for the monitors which provide the high radiation closure signals to the containment purge and vent valves.

Date of issuance: July 14, 1987

Effective date: July 14, 1987

Amendment Nos.: 143 and 78

Facility Operating License Nos. DPR-57 and NPF-5. Amendments revised the Technical Specifications.

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Dates of initial notices in **Federal Register:** November 21, 1984 (49 FR 45952), September 25, 1985 (50 FR 38915) and May 21, 1986 (51 FR 18683). The June 26, 1986 submittal furnished additional information which did not affect the staff's initial determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 14, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Mississippi Power & Light Company, System Energy Resources, Inc., South Mississippi Electric Power Association, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: March 19, 1987

Brief description of amendment: The amendment changes Technical Specification Section 6, "Administrative Controls" to reflect changes in the management of licensing activities, emergency planning, plant engineering, Unit 2 construction, training, accounting, plant security, records, office services, plant technical support, and industrial safety.

Date of issuance: July 7, 1987

Effective date: July 7, 1987

Amendment No. 33

Facility Operating License No. NPF-29: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 22, 1987 (52 FR 13339) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 7, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154

Mississippi Power & Light Company, System Energy Resources, Inc., South Mississippi Electric Power Association, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: April 8, 1987

Brief description of amendment: This amendment deletes License Condition 2.C.(20) which prohibited placement of irradiated fuel in the GGNS-1 spent fuel storage pool prior to completion of modifications to the standby service water system. Modifications to the standby service water system have been completed.

Date of issuance: July 7, 1987

Effective date: July 7, 1987

Amendment No: 34

Facility Operating License No. NPF-29: This amendment revised the License.

Date of initial notice in **Federal Register:** June 3, 1987 (52 FR 20802) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 7, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station Unit No. 3, Town of Waterford, Connecticut

Date of application for amendment: January 5, 1987

Brief description of amendment: The amendment revises the Technical Specification Section 3.4.1.3 and Bases Section 3/4.4.1 to change the Limiting Condition for Operation (LCO) regarding the number of reactor coolant loops in operation during hot shutdown conditions. Section 3.4.1.3 is revised to incorporate the requirement to have two reactor coolant pumps operating in Mode 4 when the reactor trip breakers are closed.

Date of issuance: July 9, 1987

Effective date: July 9, 1987

Amendment No.: 7

Facility Operating License No. NPF-49: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 25, 1987 (52 FR 9578) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 9, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Northern States Power Company, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota

Date of application for amendments: April 13, 1987.

Brief description of amendments: The amendments changed the technical specifications (TS) by revising the hot channel factors F_q and $F_{\Delta H}$ that are used in the analysis to establish the power distribution limits of the technical specifications.

Date of issuance: July 8, 1987.

Effective date: July 8, 1987.

Amendment Nos.: 81 and 74.

Facility Operating License Nos. DPR-42 and DPR-60: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 20, 1987 (52 FR 18970 at 18982) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 8, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Environmental Conservation Library, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota.

NRC Project Director: David L. Wigginton, Acting.

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendment: September 29, 1986 as revised April 6, 1987

Brief description of amendment: These amendments changed the Technical Specifications for Susquehanna Steam Electric Station, Units 1 and 2 to correct an omission in the Technical Specifications by providing an Action Statement in Section 3.3.3. In a letter dated April 6, 1987, the licensee withdrew a part of their request contained in the September 29, 1986 submittal dealing with note (g) to Table 3.3.3-1. Accordingly, we have not acted on that part of the request.

Date of issuance: July 2, 1987

Effective date: July 2, 1987

Amendment Nos: 66 and 37

Facility Operating License Nos. NPF-14 and NPF-22: These amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 17, 1986 (51 FR 45212) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 2, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of application for amendment: January 13, 1987, as supplemented on March 25 and April 9, 1987

Brief description of amendment: This amendment changed the Technical Specifications (TSs) to permit the completion of the physical modifications, testing and other actions to facilitate connection of the standby gas treatment system (SGTS) to the refueling area. The changes to the TS will enable establishment of the operability of the SGTS service to the refueling area in response to License Condition 2.C(14).

Date of issuance: July 8, 1987

Effective date: The license amendment is effective upon initial entry into either Operational Condition 3 or 2 during startup following the first refueling outage.

Amendment No: 6

Facility Operating License No. NPF-39: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 8, 1987 (52 FR 11367) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 8, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Power Authority of The State of New York, Docket No. 50-286, Indian Point Unit No. 3, Westchester County, New York

Date of application for amendment: February 9, 1987

Brief description of amendment: The amendment modifies the definition of Tube Inspection to reflect the definition recommended in Generic Letter 85-02. In addition it deletes the historical references to the tube plugging limit of 63% degradation which was valid for Cycle 4 only. Table 4.9-1 is revised to reflect that a defective tube may be repaired by plugging or sleeving. Additionally, the Bases for Section 4.9 has been revised and updated to provide new information for wastage-type defects. The February 9, 1987 submittal requested that the Technical Specifications be revised to permit the resumption of power operation without prior NRC approval subsequent to a steam generator inspection whose results have been classified as C-3 (i.e., all tubes were inspected per the provisions of Table 4.9-1 of the Technical Specifications). This portion of the amendment is being denied.

Date of issuance: July 7, 1987

Effective date: July 7, 1987

Amendment No.: 76

Facilities Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 6, 1987 (52 FR 16953). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 7, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Power Authority of The State of New York, Docket No. 50-286, Indian Point Unit No. 3, Westchester County, New York

Date of application for amendment: May 21, 1987

Brief description of amendment: The amendment revises the Technical Specifications to allow an Integrated Leak Rate Test of less than 24 hours in accordance with the NRC approved methodology contained in BN-TOP-1, Revision 1. The licensee requested to also include reference testing in accordance with other NRC methodologies has not been incorporated because there are currently no other approved methodologies applicable to Indian Point 3.

Date of issuance: July 13, 1987

Effective date: July 13, 1987

Amendment No.: 77

Facility Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 10, 1987 (52 FR 22013) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 13, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Power Authority of The State of New York, Docket No. 50-286, Indian Point Unit No. 3, Westchester County, New York

Date of application for amendment: March 6, 1987

Brief description of amendment: The amendment changes the Indian Point 3 Technical Specifications relative to the Reactor Vessel Level Indication System (RVLIS). The purpose of the proposed changes is to incorporate the appropriate limiting conditions for operation and the surveillance requirements for RVLIS. The installation of RVLIS is being implemented in accordance with the requirements of NUREG-0737, Item II.F.2 "Instrumentation for Detection of Inadequate Core Cooling." Editorial changes are also included.

Date of issuance: July 13, 1987

Effective date: July 13, 1987

Amendment No.: 78

Facilities Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 22, 1987 (52 FR 13347) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 13, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Public Service Company of Colorado, Docket No. 50-267, Fort St. Vrain Nuclear Generating Station, Platteville, Colorado

Date of amendment request: July 22 and December 5, 1986

Brief description of amendment: The amendment changed certain administrative controls under which Fort St. Vrain is operated. The staff still has unresolved concerns regarding the proposed changes for the Plant Operations Review Committee.

Date of issuance: July 13, 1987.

Effective date: July 13, 1987.

Amendment No.: 56

Facility Operating License No. DPR-34: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 8, 1986 (51 FR 36103) and January 28, 1987 (52 FR 2889). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 13, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Greeley Public Library, City Complex Building, Greeley, Colorado

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: March 13, 1987, as supplemented March 26, 1987

Brief description of amendment: This amendment reduces the maximum isolation times for the secondary

containment ventilation automatic isolation dampers.

Date of issuance: July 7, 1987
Effective date: July 7, 1987
Amendment No: 6
Facility Operating License No. NPF-57: This amendment revised the Technical Specifications.
Date of initial notice in Federal Register: (52 FR 13348) April 22, 1987 The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 7, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: February 17, 1987, as supplemented by letter dated May 12, 1987. The May 12, 1987 letter furnished additional information which did not affect the staff's preliminary evaluation.

Brief description of amendment: The amendment revised Technical Specification Table 3.3.3-2 to reflect the replacement of the inverse time delay voltage relays with solid-state relays and to correct an editorial error.

Date of issuance: July 7, 1987
Effective date: July 7, 1987
Amendment No: 7
Facility Operating License No. NPF-57: This amendment revised the Technical Specifications.
Date of initial notice in Federal Register: March 25, 1987 (52 FR 9583) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 7, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: December 17, 1986
Brief description of amendment: This amendment changes Technical Specifications pertaining to administrative changes in the licensee's Engineering organization and the Electric Transmission and Distribution organization.

Date of issuance: July 10, 1987
Effective date: July 10, 1987
Amendment No.: 23
Facility Operating License No. DPR-18: Amendment revised the Technical Specifications.
Date of initial notice in Federal Register: February 11, 1987 (52 FR 4417) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 10, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: April 18 and June 24, 1986 and January 13, 1987.

Brief description of amendment: The amendment implements technical specifications for the independent testing of the undervoltage and shunt trip attachments of the reactor trip breakers, testing of the bypass breakers and independent testing of the control room manual switch contacts and wiring.

Date of issuance: July 8, 1987.
Effective date: July 8, 1987.
Amendment No.: 75.
Facility Operating License No. DPR-43: Amendment revised the Technical Specifications.
Date of initial notice in Federal Register: May 21, 1986 (51 FR 18699) and May 20, 1987 (52 FR 18990). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 8, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301

Dated at Bethesda, Maryland this 23rd day of July, 1987.

For the Nuclear Regulatory Commission
Steven A. Varga,
Director, Division of Reactor Projects I/II
Office of Nuclear Reactor Regulation

[FR Doc. 87-17079 Filed 7-28-87; 8:45 am]
BILLING CODE 7590-01-D

[Docket No. 50-320]

Meeting of the Advisory Panel for the Decontamination of Three Mile Island, Unit 2 GPU Nuclear Corporation

Notice is hereby given pursuant to the Federal Advisory Committee Act that the Advisory Panel for the Decontamination of Three Mile Island Unit 2 (TMI-2) will be meeting on August 12, 1987, from 7:00 p.m. to 10:00 a.m. at the Holiday Inn, 23 S. Second Street, Harrisburg, Pennsylvania. The meeting will be open to the public.

At this meeting, the Panel will receive a status report on the progress of defueling from the licensee, General Public Utilities Nuclear Corporation. Representatives of the NRC will summarize the recently issued final supplement to the Programmatic Environmental Impact Statement dealing with the licensee's plans for the disposal of the accident-generated water. Members of the public will be given the opportunity to address the Panel.

Further information on the meeting may be obtained from Dr. Michael T. Masnik Three Mile Island Cleanup Project Directorate, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301-492-9445.

Dated July 24, 1987.

For the Nuclear Regulatory Commission.
John C. Hoyle,
Advisory Committee Management Officer.

[FR. Doc. 87-17251 Filed 7-28-87; 8:45 am]
BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Notice of Information Collection Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, Chapter 35), this notice announces a request to extend a public information collection. Civil Service Retirement System retirees, survivor annuitants, and former spouses of retirees use one of the following forms to enroll, change enrollment or cancel enrollment in the Federal Employees' Health Benefits Program: OPM Form 2809 O/P, Health Benefits Registration Form (PEHBP); OPM Form 2809-Y, Health Benefits Enrollment Change Form for Civil Service Retirement System Annuitants; OPM Form 2809-EZ1, Enrollment Change Form and Brochure Request Form; and OPM Form 2809-EZ2, Enrollment Change Form. It is estimated that 285,500 individuals will respond annually for a total burden of 35,688 hours. For copies of this proposal call William C. Duffy, Agency Clearance Officer, on (202) 632-7714.

DATE: Comments on this proposal should be received within 10 working days from the date of this publication.

ADDRESSES: Send or deliver comments to—

William C. Duffy, Agency Clearance Officer, Office of Personnel Management, 1900 E Street, NW., Room 6410, Washington, DC 20415

and

Richard Eisinger, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3002, New Executive Office Building, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: James L. Bryson, (202) 632–5472.

U.S. Office of Personnel Management.

James E. Colvard,

Deputy Director.

[FR Doc. 87–17158 Filed 7–28–87; 8:45 am]

BILLING CODE 6325–01–M

Information Collection for OMB Review

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, Chapter 35), this notice announces a collection of information from the public that has been submitted to OMB for clearance. It will be a blanket clearance to cover information collected from applicants, deans and references in the selection of Presidential Management Interns to comply Executive Order 12364 signed by President Reagan on May 24, 1982. We estimate 2350 respondents will expend 1400 burden hours annually to file these forms. For copies of this proposal, call William C. Duffy, Agency Clearance Officer, on (202) 632–7714.

DATE: Comments on this proposal should be received within 10 working days from the date of this publication.

ADDRESSES: Send or deliver comments to—

William C. Duffy, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street, NW., Room 6410, Washington, DC 20415

and

Richard Eisinger, Information Desk Officer, Office of Information and Regulatory Affairs, New Executive Office Building, Office of Management and Budget, Room 3002, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Bates, (202) 632–0496.

U.S. Office of Personnel Management.

James E. Colvard,

Deputy Director.

[FR Doc. 87–17159 Filed 7–28–87; 8:45 am]

BILLING CODE 6325–01–M

Proposed Extension of Standard Form 113–A

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44 U.S. Code Chapter 35), this notice announces a request submitted to Office of Management and Budget (OMB) for renewal to continue to collect data on the Monthly Report of Federal Civilian Employment (SF 113–A). The information that is collected monthly provides a timely count of Government-wide employment, payroll, turnover, and employment ceiling-related data. Uses of the date include monthly reporting to OMB and publishing the bimonthly *Federal Civilian Workforce Statistics—Employment and Trends;* answering data requests from the Congress, White House, other Federal agencies, the media, and the public; providing ceiling-related employment counts required by OMB; and serving as benchmark data for quality control of the Central Personnel Data File. The number of responding agencies is 130. The report is submitted 12 times a year. The total number of person-hours required to prepare and transmit the reports annually is estimated at 3,120. For copies of the clearance package, call William C. Duffy, Agency Clearance Officer, on (202) 632–7714.

DATE: Comments on this proposal should be received within 30 working days from date of this publication.

ADDRESSES: Send or deliver comments to:

Mr. William C. Duffy, Agency Clearance Officer, U.S. Officer of Personnel Management, 1900 E Street, NW., Room 6410, Washington, DC 20415

and

Mr. Richard Eisinger, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3201, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: May Eng, (202) 632–4920.

U.S. Office of Personnel Management.

James E. Colvard,

Deputy Director.

[FR Doc. 87–17160 Filed 7–28–87; 8:45 am]

BILLING CODE 6325–01–M

Establishment of the Director's Task Force on the Combined Federal Campaign

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice; establishment of Task Force.

This notice is published in accordance with the provisions of section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) and advises of the establishment of the Director's Task Force on the Combined Federal Campaign. The Director of the Office of Personnel Management has determined that establishment of this Task Force is in the public interest.

Designation

Director's Task Force on the Combined Federal Campaign.

Purpose

The purpose of the Task Force will be to study the Combined Federal Campaign in order to provide the Director with a number of alternatives for the future of the Campaign.

FOR FURTHER INFORMATION CONTACT: The Office of General Counsel, OPM, is the organization within the agency sponsoring this Task Force. For additional information, contact Mr. Hugh Hewitt, General Counsel, OPM, on (202) 632–4632.

U.S. Office of Personnel Management.

Constance Horner,

Director, OPM.

[FR Doc. 87–17094 Filed 7–28–87; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–24714; File No. SR–Amex–87–19]

Self-Regulatory Organizations; Filing and Accelerated Approval of Proposed Rule Change by the American Stock Exchange, Inc. Relating to AUTO-EX Procedures

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 10, 1987, the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange has amended its procedures relating to its AUTO-EX system to permit automatic execution through the system of certain orders in competitively traded options.

The text of the proposed rule change is available at the Office of the Secretary, American Stock Exchange, Inc. and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

In December 1985, the Exchange implemented a pilot program for the automatic execution of certain options, confined initially to index options on the Major Market Index ("XMI"), which was approved by the Commission on a permanent basis in August 1986.[1] This automatic system—"AUTO-EX"—enables member firms to route public customers' market and marketable limit orders through the AUTOAMOS system to be executed against the best bid or offer at the time the order is entered. The AUTO-EX system ensures that customers' orders on the book retain priority over orders in the crowd.

In September 1986, the Exchange received Commission approval to extend the AUTO-EX pilot for the automatic execution of certain orders to institutional Index options ("XII") and in March 1987, the Exchange received Commission approval to expand the use of AUTO-EX in emergency situations involving high volume in particular equity options.[2]

The Exchange is proposing to extend further its AUTO–EX program on a case-by-case basis for a ninety-day pilot period to accommodate competitive trading situations, including trading in dually-traded equity options. Application of the Exchange's AUTO–EX system to such competitive situations will permit the Exchange to provide member firms and their customers with the execution efficiencies and limit order protection inherent in the AUTO–EX system to orders in dually-traded stock options, for example, that may be subject to execution through automatic execution systems on other exchanges. The Exchange believes that this expansion of its AUTO–EX system is necessary for it to remain competitive with other marketplaces and to attract sufficient order flow to enable the maintenance of viable markets.

(2) Basis

The proposed rule change is intended to facilitate the execution of orders in competitive options trading situations (*e.g.*, dually-traded equity options) through the Exchange's AUTO–EX system. The Amex believes the proposed rule change is therefore consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it is designed to promote just and equitable principles of trade and to protect investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition, but rather is aimed at enhancing competition between marketplaces.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The American Stock Exchange, Inc. has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act, because the Exchange would like to commence execution of orders immediately through AUTO–EX in order to address competitive options trading situations currently existing with respect to dually-listed stock options that may be subject to executions through automatic execution systems on other exchanges. The Exchange has stated that immediate implementation of these procedures will permit orders in competitive options trading situations to benefit from the execution and operational efficiencies of the AUTO–EX system, while maintaining the priority of orders on the limit order book.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a securities exchange, and in particular, the requirements of section 6 and the rules and regulations thereunder. The Commission believes that the proposed rule change will benefit public customers by affording them a more efficient means than was previously available at the Amex to execute small orders in a select group of equity options. In addition, the Commission notes that the operation of AUTO–EX in these options will not negatively effect public customer limit orders, because these orders will not be bypassed by the operation of AUTO–EX, but rather will receive the customary limit order protection afforded public customer orders placed on the book.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in that the Exchange previously has demonstrated the operational efficiencies of AUTO–EX for an extended period. In addition, the Commission expects that orders for individual options will similarly benefit from the efficiencies of the system, and orders on the limit order book will continue to receive appropriate protection. Moreover, the Commission previously has solicited comments on AUTO–EX on three separate occasions, one of which specifically covered its application to options on individual stocks, and has not received any adverse comment on AUTO–EX or its usage in options on individual securities. Finally, the Commission's approval is limited to a ninety day pilot period. If the Amex decides to seek to make the program permanent, the Commission expects that the Amex will file a separate rule filing.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and

[1] *See* SEC Release No. 34–22610, dated November 8, 1985, approving SR–Amex–85–29 (the pilot program), and SEC Release No. 23544, dated August 20, 1986, approving SR–Amex–86–16 on a permanent basis as to XMI options.

[2] *See* SEC Release No. 34–24228, dated March 25, 1987, approving SR–Amex–87–4.

arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 19, 1987.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change referenced above be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 17, 1987.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-17237 Filed 7-28-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24720; File No. SR-CBOE-87-28]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Filing and Immediate Effectiveness of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 25, 1987 the Chicago Board Options Exchange, Inc. ("Exchange") filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

First, pursuant to Exchange Rule 2.22, the Exchange revises its trade match fees as follows. If year-to-date volume equals or exceeds 690,000 contracts per day at the end of any quarter during fiscal year 1988, trade match fees will be reduced by 1¢ for the following quarter only. Similarly, if year-to-date volume equals or exceeds 760,000 contracts per day at the end of any quarter during fiscal year 1988, trade match fees will be reduced by 2¢ for the following quarter only. If year-to-date volume reaches or exceeds 690,000 contracts at the end of the fourth quarter, no fee reductions will be made during the first quarter of fiscal year 1989.

Second, the Exchange will not charge Order Book Official fees for OEX [1] market and limit orders placed in the Exchange's public customer order book before the opening and executed during the opening. Matching customer orders in the book before opening rotation begins will facilitate the opening process and speed the completion of the OEX opening rotation.

As the foregoing rule change is concerned solely with Exchange fees, it has become effective immediately pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 under the Act. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned, self-regulatory organization. All submissions should refer to file number SR-CBOE-87-28 and should be submitted by August 19, 1987.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

[1] OEX is the Exchange symbol for the Standard & Poor's 100 Index option contract.

Dated: July 20, 1987.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-17238 Filed 7-28-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24724; File No. SR-MCC-87-4]

Self-Regulatory Organizations; Midwest Clearing Corp.; Procedures Manual for Midwest Clearing Corporation's (MCC) Automated Customer Account Transfer Service (ACATS)

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 12, 1987 the Midwest Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Attached as Exhibit A is a copy of the Procedures Manual for Midwest Clearing Corporation's (MCC) Automated Customer Account Transfer Service (ACATS).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change consists of procedures and record layout specifications for MCC's proposed ACATS service. The procedures are intended to guide MCC Participants and service bureaus in comparing and settling account transfers.

The ACATS service is an input, comparison and settlement service for

customer account transfers between one brokerage firm and another. The service will allow MCC/MSTC Participants to compare and settle account transfers with MCC/MSTC Participants and participants of other clearing corporations providing an ACATS service.

The proposed rule change is consistent with section 17A of the Securities Exchange Act of 1934 in that it is designed to provide for the prompt and accurate clearance and settlement of securities transactions and foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions by providing an efficient mechanism for the transfer of customer securities accounts with participants of registered clearing agencies.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MCC does not believe that the proposed rule change will impose any burdens on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to seciton 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 19, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 21, 1987.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87–17239 Filed 7–28–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–24718; File No. SR–NASD–87–8]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

The National Association of Securities Dealers, Inc. ("NASD") filed on February 10, 1987, and amended on April 14, 1987, a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder to revise Schedule D to the NASD By-Laws, which governs the operation of the NASDAQ System. In addition to making certain organizational and editorial changes, the revision updates Schedule D to reflect current NASDAQ practice and procedure and incorporates certain material that now appears in the NASDAQ Symbol Directory and other NASD notices and publications.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 24579, June 10, 1987) and by publication in the **Federal Register** (52 FR 23117, June 17, 1987). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: July 20, 1987.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87–17240 Filed 7–28–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–24723; File No. SR–NYSE–87–21]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange, Inc.; Automated Bond System Fees

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 14, 1987, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule changes as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is revising subscriber fees for its Automated Bond System (ABS). These new fees will be charged commencing September 1, 1987.

Annual Fees

- Subscription (one terminal, one controller, one printer)..... $13,000
- Terminals 2 to 5 (each)..... 8,000
- Terminals 6 and above (each)..... 3,000
- Floor terminals (each)..... 4,000
- Additional Equipment
  - —Controllers (each)..... 2,000
  - —Printers (each)..... 2,500
  - —Telephone Lines [1] (each)..... 1,000
- Port Charges [2] (each)..... 3,000
- Service Calls (Per Terminal)..... 250

The Exchange has established a new Computer-to-Computer service—a direct computer interface to the NYSE computer facilities by ABS subscribers. The Exchange is proposing the following fees:

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[1] ABS subscribers located in the geographic area of New York City south of Chambers Street are charged for each telephone line in excess of the number of controllers they lease. All other subscribers pay communication costs directly to the communications carrier.

[2] This charge applies to ABS subscribers using their own terminals, and is levied per each activated NYSE controller port.

Annual Fee for Printer Services.....$5,000

Yearly order ranges [1]	Usage fees per order entered
1 to 25,000	0.30
25,001 to 50,000	.20
50,001 to 100,000	.10
100,001+	.05

[1] The usage fee and annual fee will be billed monthly on a prorated basis. To illustrate the proposed Computer-to-Computer usage fee, assume that an ABS subscriber has entered 50,500 orders into the system through the Computer-to-Computer service for the year. The firm would be billed at $.30 per order for the first 25,000 orders, $7,500; $.20 per order for the second 25,000 orders, $5,000; and $.10 per order for the remaining 500 orders, $50; a total charge of $12,550.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Section A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In 1977, the Exchange established pricing based upon ABS equipment provided to ABS subscribers. The basic service package consisted of two terminals, one controller, and one printer. A firm could also subscribe to additional terminals and printers.

The schedule was revised in 1981 to include a "mini service" (one terminal, one controller, and one printer) and to increase the base rates by 8% (see Schedule A).

Effective September 1, 1987, the Exchange is restructuring its annual ABS fees to provide new, more flexible subscription arrangements which recognize differences between firms using ABS through NYSE supplied hardware and firms using ABS through other hardware. The fee schedule for the new Computer-to-Computer service establishes prices commensurate with ABS subscriber use. Implementation of these fees will more reasonably allocate ABS subscriber fees.

The statutory basis under the Securities Exchange Act of 1934 (the "Act") is section 6(b)(4) and its requirement that a national securities exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. The persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number SR–NYSE–87–21 and should be submitted by August 19, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

July 20, 1987.

Fixed Income Markets

ABS Pricing Schedule

Annual fees	Yearly	
	1977	Current [1]
• Mini-Service 1 Terminal Display 1 Controller 1 Printer	$—	$13,000
• Basic Service 2 Terminal Displays 1 Controllers 1 Printer	20,000	21,600
• Terminals 3 & 4 (each)	7,500	8,100
• Terminals 5 & 6 (each)	5,000	5,400
• Terminals 7 & Above (each)	3,500	3,780
• Floor Terminals (each)	3,500	3,780
• Additional Printers	2,100	2,270
• Relocations (Per Terminal)	450	250

[1] As amended in 1981.

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BILLING CODE 8010–01–M

[Release No. 34–24725; File No. SR–OCC–86–10]

Self-Regulatory Organizations; Options Clearing Corp. Order Approving Proposed Rule Change to Facilitate Direct Membership of Canadian Securities Firms

On May 9, 1986, the Options Clearing Corporation ("OCC"), filed a proposed rule change (File No. SR–OCC–86–10) under section 19(b) of the Securities Exchange Act of 1934 ("Act"). The proposal generally would allow qualifying non-U.S. clearing members [1] to elect a special membership status in OCC enabling them to participate directly in OCC so long as they comply with the financial reporting and

[1] The term, "Non-U.S. Clearing Member," ("NCM") is defined in OCC By-Law Article I, Section 1 (rrr). Although OCC currently allows foreign institutions to become OCC members, those members must comply with U.S. financial standards (*e.g.*, the Commission's Uniform Net Capital Rule and financial reporting requirements; Generally Accepted Auditing Standards; and Generally Accepted Accounting Principles).

financial responsibility standards of their home country. The proposal opens the new special membership status only to Canadian securities firms at this time. OCC amended the proposed rule change on July 2, 1986. The Commission published notice of the proposal, as amended, in the Federal Register on August 7, 1986.[2] No public comments were received. For the reasons discussed below, the Commission has determined to approve the proposed rule change.

I. Description of the Proposal

The proposal would create a new type of membership status at OCC for Canadian firms.[3] the proposal also would amend OCC Rules to authorize OCC to establish special financial standards and reporting requirements for Canadian members. As discussed below, the proposal would add Interpretations and Policies ("I&Ps") to OCC's rules that would set out financial standards and reporting requirements for exempt Canadian members. Those requirements include: minimum net capital requirements; financial reports, audited generally in accordance with Canadian accounting standards; and notice of changes in financial, operational or regulatory condition.

1. Minimum Capital Requirements

The proposal authorizes OCC to specify special initial and continuous minimum ratios of net capital to aggregate indebtedness for Canadian members.[4] The proposal would implement that general authority by modifying OCC's financial requirements for new and continuing Canadian members. A Canadian firm that has conducted securities business for more than 12 months before its admission into OCC membership initial "net free capital"[5] of $150,000 (U.S.) and an amount of additional capital as specified by OCC's membership committee. The Canadian member, however, generally would not be required to maintain net free capital greater than 10% of its "adjusted liabilities."[6] A Canadian firm that has conducted business for less than 12 months prior to admission into OCC would be required to maintain an initial net free capital of not less than 10% of its adjusted liabilities for the greater of three months after its admission into OCC or 12 months after it began conducting business. After this initial period, each Canadian member would be required to maintain the amount of minimum net free capital specified for equivalent-sized members of the Investment Dealers Association of Canada ("IDAC") plus and additional amount required by OCC.[7] Each Canadian member would be required to compute its net free capital and adjusted liabilities daily.[8]

2. Financial Reports

OCC's proposal would authorize OCC to adjust its financial reporting and audit requirements for Canadian members.[9] Under new OCC Rules, those members would be required to file with OCC such financial reports at such times as OCC may specify. OCC also at any time could require them to file financial reports on a more frequent basis, or to file such other reports or financial statements containing additional information in such form or detail as may be prescribed by OCC.

Specifically, the proposal requires each Canadian member to file with OCC a copy of its Capital Report when it files the report with Canadian regulatory authorities.[10] The fiscal year-end Capital Report filed with OCC must be audited by an independent public accounting firm in accordance with Canadian generally accepted auditing standards and, in addition, must be accompanied by a supplemental report prepared by the auditor on any material inadequacies of the Canadian member. The proposal also would require each Canadian member to file with OCC a copy of its Joint Industry Monthly Financial Report ("JIMF Report")[11] within 30 calendar days of the end of the month (except with respect to those two months for which it has filed a Capital Report).

3. Special Surveillance Requirements

The proposed rule change would tailor OCC's "early warning system" to the modified financial requirements of Canadian members.[12] Under new OCC Rule 303(b), a Canadian member would be required to inform OCC promptly (and always before 3:00 p.m. Central Time of the next business day) when it has: (1) Violated the financial responsibility or customer property protection rules or regulations of its non-U.S. regulatory organization (*e.g.* IDAC or Ontario Securities Commission requiremnts);[13] (2) received a notice

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[2] Securities Exchange Act Release No. 23487 (July 31, 1986), 51 FR 28468.

[3] Specifically, Article I, section 1(rrr) of OCC's By-Laws would be amended to expand the definition of "Non-U.S. Securities Firm" to include an exempt non-U.S. clearing member. It also would add the term "Canadian Clearing Member" and define it as an NCM with its principal place of business in Canada and formed and operated under the laws of Canada or a province thereof.

OCC has indicated that it will consider expanding the availability of exempt non-U.S. clearing member status to other non-U.S. securities firms in the future. Such an expansion would require OCC to file a proposed rule change with the Commission under section 19(b) of the Act.

[4] OCC Rule 301 requires each "regular-way" (*i.e.*, U.S. and non-exempt non-U.S.) OCC clearing member to meet several financial requirements. The clearing member must have an initial "net capital" or not less than $150,000 and 12.5% of its "aggregate indebtedness." Moreover, the aggregate principal amount of the clearing member's subordination agreements other than those that do not qualify as equity capital under Rule 15c3–1(d) under the Act [17 CFR 240.15c3–1(d)] must not initially exceed 70% of the clearing member's debt-equity ratio. Finally, if the clearing member operates under alternative net capital requirements, then its initial net capital must total at least 5% of its aggregate debit items. *See* Rule 15c3–1 for definitions of the terms "net capital" and "aggregate indebtedness" and Exhibit A to Rule 15c3–3(a) under the Act [17 CFR 240.15c3–2(a)] for a definition of the term "aggregate debit items."

[5] "Net free capital" is a term of art in the Canadian Broker-dealer regulatory scheme. Its components are listed in the Joint Regulatory Financial Questionnaire and Report ("JRFQ Report" or "Capital Report") (*i.e.*, total active assets, amounts receivable on demand under a stand-by subordinated loan agreement, noncurrent debt under mortgages on real estate owned by the firm and liquid capital). As discussed below, Canadian broker-dealers must file Capital Reports with Canadian regulatory authorities twice a year.

[6] "Adjusted liabilities" also is a Canadian term of art, and its components, which include outstanding purchase commitments and total liabilities, are set out in the Capital Report.

[7] IDAC is a non-governmental association consisting of most of the major Canadian securities firms. IDAC's objectives include self-regulation of members and fostering a favorable environment for saving and investing. *See* IDAC Constitution, Section 2.

[8] Section 100.2 of IDAC's By-Laws requires IDAC members to maintain at least $75,000 (Canadian) of net free capital, plus a percentage of adjusted liabilities as determined by a sliding scale. As the size of the broker-dealer's adjusted liabilities increases, the ratio of required net free capital to adjusted liabilities decreases. Under the formula, large broker-dealers often may maintain an amount of net free capital under the 6.66% requirement for U.S. broker-dealers. Canadian members would not be allowed to maintain a percentage of net free capital lower than 5% of adjusted liabilities.

[9] OCC rules generally required all OCC clearing members (except Canadian members) to file with OCC monthly and quarterly financial reports required pursuant to Rule 17a–5 under the Act (17 CFR 240.17a–5) and a copy of its annual report prepared in accordance with Rule 17a–5. Clearing members exempt from Rule 17a–5 under paragraph (d) of that Rule also must prepare and file with OCC an annual report of financial condition, prepared in accordance with generally accepted U.S. auditing standards by a firm of independent public accountants satisfactory to OCC.

[10] The JRFQ Report is filed twice a year with Canadian financial regulatory authorities, at the end of the fiscal year and at the end of another month during the year.

[11] The JIMF Report is a monthly financial report similar to the Commission's FOCUS report and filed with Canadian regulatory authorities.

[12] This system is designed to provide OCC with early warning of clearing members experiencing financial or operational distress. *See* OCC Rule 303.

[13] In addition, under proposed OCC Rule 1103(b), any NCM also would need to notify OCC

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from that organization (a) alleging a violation of those rules or regulations, (b) informing the firm to take corrective action without which those rules or regulations may be violated, or (c) informing the firm that it has triggered an early warning parameter in those rules or regulations; or (3) experienced another adverse event as OCC may specify. In addition, every Canadian member must notify OCC whenever its net free capital falls below the greater of $150,000 (U.S.) [14] or 120% of the amount of net free capital required under IDAC requirements (together, the "Minimum Requirement").

4. Business Restrictions

The proposal authorizes OCC to restrict the business of Canadian members in certain ways. First, the proposal would extend OCC's general authority to restrict members' activities to cover Canadian members.[15] The proposal also would enable OCC to restrict the activity of a Canadian member when OCC is given notice of any of the events specified in the proposal. Second, proposed OCC Rule 304(c) [16] would authorize OCC to specify modified restrictions on distributions of funds for a Canadian member. The proposal also would enable OCC to prohibit the member from withdrawing funds from a subordinated loan account [17] if the withdrawal would cause its net free capital to fall below the Minimum Requirement. OCC also would restrict the member from withdrawing funds from a partnership account if the account is included in net free capital and would prohibit the member from paying dividends or effecting distributions to stockholders, partners or employees if such withdrawal or payment would cause net free capital to fall below the Minimum Requirement.

II. OCC's Rationale for the Proposal

According to OCC, the proposal is designed to permit non-U.S. securities firms to participate in OCC directly so long as they comply with their home country's financial reporting and financial responsibility standards, provided that those standards yield substantially equivalent protection for investors and other market participants. OCC believes that the proposal should facilitate internationalization of the U.S. securities markets.

OCC in particular intends the proposal to facilitate direct OCC membership of Canadian securities firms.[18] OCC states that several Canadian firms have expressed interest in joining OCC but would not do so because OCC would require them, like all other clearing members, to prepare a complete set of financial reports in accordance with U.S. accounting and auditing standards and Commission requirements, in addition to the comprehensive financial reports that they already prepare for Canadian regulatory authorities. OCC believes that those Canadian standards are sufficient to enable Canadian securities firms to become clearing members when combined with other aspects of the proposal and the features of OCC's safeguarding scheme. OCC believes that the data contained in the JIMF and JRFQ Reports,[19] its ability to convert that data to U.S. formats, and its authority to obtain additional data will be sufficient to monitor Canadian member compliance with OCC financial requirements.

III. Discussion

For the reasons discussed below, the Commission is approving OCC's proposal. The Commission believes that OCC's proposal is consistent with section 17A of the Act in that it should promote the prompt and accurate clearance and settlement of options transactions while safeguarding funds and securities in OCC's custody and control, or for which it is responsible.

OCC's proposal is novel. It marks the first time that a registered clearing agency has proposed to allow non-U.S. securities firms to participate directly in the National Clearance and Settlement System ("National System") under financial reporting and responsibility standards of their home country. As noted above, the proposal initially applies only to Canadian firms. Currently, non-U.S. firms can become direct OCC members, but only if they comply with U.S. financial reporting and financial responsibility standards.

To ensure that OCC receives prompt, accurate and complete information concerning Canadian members, OCC has entered into information sharing arrangements with the Toronto Stock Exchange ("TSE") and IDAC. Under those arrangements, OCC requires each Canadian member that is also a TSE or IDAC member to authorize the TSE or IDAC to communicate with OCC and to supply any necessary data concerning the member to OCC.[20] This authorization will be required of each Canadian member before it begins active operation as a participant in OCC. In addition, the TSE and IDAC also have agreed to allow OCC to make available to the Commission any relevant data regarding financial or operational difficulties of the Canadian member.[21] The Commission believes that this arrangement should provide OCC with an independent source of information concerning the financial and operational condition of Canadian members and the capability to verify essential financial and other information reported by it to OCC. The Commission also believes that the proposal represents another important step toward cooperation among international securities regulators.[22]

Even though the proposal allows Canadian members to operate pursuant to Canadian financial responsibility and recordkeeping requirements (while requiring other clearing members to

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immediately if it is suspended or expelled from membership by its non-U.S. regulatory organization or any securities exchange.

[14] OCC will use the best interbank foreign exchange bid, adjusted daily, in converting Canadian dollars to U.S. dollars.

[15] To evaluate whether a Canadian member is complying with OCC's financial requirements and whether to take protective action under OCC Rule 305, OCC, under new OCC Rule 310(c), could determine to convert its financial information into a form consistent with the accounting concepts and principles of Rule 15c3-1. OCC has developed computer programs to convert Canadian reports to the Rule 15c3-1 format, *i.e.*, FOCUS report format.

[16] OCC Rule 304 restricts clearing members from making certain distributions. A clearing member may not, unless it has prior written authorization from OCC, withdraw funds from any subordinated loan account if that withdrawal would trigger OCC's early warning system under OCC Rule 303. Clearing members also are prohibited from withdrawing funds from certain partnership accounts and providing a dividend or distribution to a partner, stockholder or employee if that action causes the net capital of the clearing member to fall below $150,000 or if it would be inconsistent with Rule 15c3-1.

[17] OCC uses the term "subordinated loan" as it is used in Appendix D of Rule 15c3-1.

[18] Canadian firms registered as U.S. broker-dealers or required to be registered as such will not be eligible for the special OCC membership status.

[19] OCC believes that it has sufficient expertise to evaluate JIMF and JRFQ Reports and to monitor changes in Canadian requirements concerning the format and content of those Reports. OCC has agreed to notify the Commission of any material changes in the information currently available through the JIMF and JRFQ Reports.

[20] *See, e.g.*, letter from Michael D. Weiner, Vice President, OCC, to Jonathan Kallman, Assistant Director, Division of Market Regulation, dated April 30, 1987.

[21] *See* letter from Andrew G. Kniewasser, President, IDAC, to Michael D. Weiner, Vice President/Deputy General Counsel, OCC, dated April 2, 1987; and letter from Keith E. Boast, Vice President, TSE, to Michael D. Weiner, Vice President/Deputy General Counsel, OCC, dated February 12, 1987.

[22] OCC represents that it is close to reaching a similar agreement with the Montreal Stock Exchange and that it is seeking an agreement with the Vancouver Stock Exchange. OCC represents that it will not allow any Canadian firm to participate unless such an agreement is in place with a firm's designated Canadian regulatory authority.

operate pursuant to U.S. net capital and recordkeeping requirements), the Commission believes that any difference in treatment, on balance, is consistent with the Act. The Act requires a registered clearing agency to balance several competing interests. First, under section 17A(b)(3)(B), a clearing agency must provide National System services to a broad community of participants. Second, under section 17A(b)(3)(F) of the Act, a clearing agency may not create rules that permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency. Finally, section 17A(b)(4) of the Act allows the clearing agency to limit or deny admission, under appropriate standards concerning, for example, financial responsibility, operational capability standards, experience and competence.[23]

The Commission believes that OCC's proposal meets these statutory objectives while at the same time recognizing the diverse interests of the evolving international securities markets. Although Canadian members would operate under standards that are not identical to other clearing members, those standards are substantially similar to the requirements for domestic clearing members.[24] Moreover, Canadian members would be subject to other increased responsibilities. For example, Canadian members would have increased reporting duties under OCC's "early warning system." [25]

OCC's rules also authorize OCC to raise a specific clearing member's margin deposit requirements [26] and clearing fund contribution requirements [27] in the event that OCC determines that the clearing member's financial situation warrants such action.

The Commission also believes that the proposal's limited approach to international expansion is appropriate. By limiting exempt non-U.S. clearing members status to qualifying Canadian securities firms, OCC, in effect, will be creating a limited pilot program to gain experience with the new membership status and adjusted safeguards.[28] This experience should help to ensure that OCC will continue to satisfy its obligations under the Act if it decides to propose expanding the availability of exempt non-U.S. clearing member status to other securities firms.

The Commission notes that OCC's proposal defines a Canadian clearing member to mean an OCC member formed and operating under the laws of Canada, or a province thereof, with its principal place of business in Canada. The Commission and OCC interpret that language to mean a firm generally doing business in Canada and using OCC membership to further legitimate Canadian business activity. Accordingly, the proposal would be available for firms or activity not primarily Canadian in nature.

Finally, the Commission believes that the proposal will promote the prompt and accurate clearance and settlement of options transactions by Canadian securities firms.[29] As discussed more fully in Release No. 22123, by facilitating direct OCC participation by Canadian securities firms, the proposal should reduce the possibilities of transmission errors, eliminate fees for intermediary services and increase the speed and efficiency of effecting, clearing and settling options transactions.

IV. Conclusion

For the foregoing reasons, the Commission believes that OCC's proposal (File No. SR–OCC–86–10) is consistent with section 17A of the Act and the rules and regulations thereunder in that it is designed to promote the prompt and accurate clearance and settlement of options transactions and the safeguarding of funds and options related thereto.

It is therefore ordered, pursuant to section 19(b) of the Act, that OCC's proposed rule change (File No. SR–OCC–86–10) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 21, 1987.

Shirley E. Hollis,

Assistant Secretary.

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[Release No. 34–24722; File No. SR-Phlx-87–20]

Self-Regulatory Organizations; Proposed Rule Change By the Philadelphia Stock Exchange, Inc.; Relating to the Creation of a Utility Index

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 10, 1987 the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange ("PHLX" or "Exchange") hereby proposes to trade options on the Utility Index. These options will be traded pursuant to current PHLA rules governing the trading of index options. (See particularly, PHLA Rules 1000A through 1103A, and generally, PHLX Rules 1000 through 1070.)

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[23] OCC acts as a creditor to its participants and interposes itself between members on each trade as part of its services. Conditions to admission allow OCC to assure itself that members will meet their obligations and help protect OCC from financial risk.

[24] Other registered clearing agencies use separate standards for broker-dealer members and bank members.

[25] Canadian members must perform daily computations of net free capital and adjusted liabilities and report to OCC promptly if net free capital falls below certain minimum levels. OCC's proposal adjusts OCC's "early warning system" to trigger on the occurrence of this and a number of other events under Canadian regulatory schemes. In addition, OCC has expanded its authority over certain business decisions of Canadian members that could impair OCC's financial protection. For example, OCC can restrict distribution of certain funds and can prohibit certain payments by Canadian members. To facilitate OCC's analysis of financial data, OCC will be able to choose to convert that information into the form required under U.S. law and practice. Moreover, OCC, as discussed above, has entered into information sharing arrangements with Canadian regulatory authorities to allow it to verify independently essential financial and other information concerning a Canadian member.

[26] *See* OCC Rule 600.

[27] *See* OCC Rule 1001.

[28] In this regard, the Commission notes that it has a longstanding history of cooperative regulatory initiatives with the Canadian regulatory authorities. *See, e.g.*, letter from Ermanno Pascutto, Director, OSC, to Richard G. Ketchum, Director, Division of Market Regulation, and Gary Lynch, Director, Division of Enforcement, dated September 24, 1985; letter from Richard G. Ketchum, Director, Division of Market Regulation, and Gary Lynch, Director, Division of Enforcement, to Ermanno Pascutto, Director, OSC, dated September 24, 1985. Accordingly, the Commission's decision to approve this proposal is based, in part, on its confidence—in view of the history of cooperation and similarity of regulatory approach—that the Canadian regulatory structures are substantially equivalent to the otherwise applicable U.S. regulatory structures and that OCC's information sharing arrangements will be respected.

[29] *See* Securities Exchange Act Release No. 22123 (June 6, 1985), 50 FR 24853 (June 13, 1985) for a brief description of the less efficient process that non-U.S. securities firms must use a clear and settle their U.S. options transactions.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis, for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose or and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to establish a PHLX Utility Index comprising 20 common stocks of listed companies that are primarily involved in electric power generation (a list of the specific stocks, together with their price, market value and weight in the index as of June 4, 1987, is attached as *Exhibit A).* These stocks include some of the largest and most widely-held of the utility stocks; all currently possess significant dividend yields.[1]

The proposed index's contract specifications are as follows:

Ticker Symbol: UTY.

Underlying Index: The Utility Index is a capitalization-weighted index composed of 20 of the most highly capitalized common stock issues of listed American electric utility companies.

To compute the Utility Index the following formula is used:

$$\frac{MV(1)+MV(2)+MV(3)\ldots MV(N)}{BMV} \times 100\text{-Index Value}$$

where:
MV = (Price X Shares Outstanding) for the instant computation, summed for all issues.
BMV = Summation (Closing Price X Shares Outstanding) for the day prior to the start of the Index calculation.

The current market value of each component issue is multiplied by the number of outstanding shares. The resulting market values are added to determine the current aggregate market value of the issues in the Index. To compute the current Index value, the aggregate market value is divided by the base market value and multiplied by 100. The value of the Utility Index was set to equal 200 on May 1, 1987.

To account for changes in capitalization of any of the component issues resulting from mergers, acquisitions, listings, substitutions, etc., the base market value will be adjusted periodically. The following formula is used to make such adjustments:

$$NBMV = \frac{OBMV \times NMV}{OMV}$$

where:
NBMV = new base market value.
OBMV = old base market value.
NMV = new market value.
OMV = old market value.

Adjustments in value of the Index which are necessitated by the addition and/or deletion of an issue from the Index are made by adding and/or subtracting the market value (price × shares outstanding) of the relevant issue(s).

The Utility Index value will be updated dynamically at least every minute during the trading day. The PHLX has retained Bridge Data, Inc. to compute and do all necessary maintenance of the Index. Pursuant to PHLX Rule 1100A, updated Index values will be disseminated and displayed by means of primary market prints reported over the Consolidated Last Reporting System and the facilities of the Options Price Reporting Authoriy. The Index value will also be available on broker-dealer interrogation devices to subscribers of the option information.

Unit of Trading: Each options contracts will represent $100, the Index multiplier, times the Index value. For example, an Index value of 200 will result in a dollar contract value of $20,000 ($100 × 200).

Exercise Price: Exercise price will be set at five point intervals in terms of the current value of the Index. Additional exercise prices will be added in accordance with PHLX Rule 1012(a)(iii).

Aggregate Exercise Price: The aggregate exercise price is found by multiplying the Index multiplier ($100) by the exercise price.

Expiration Cycles: The PHLX will trade consecutive and cycle month series pursuant to PHLX Rule 1101A.

Premium Quotations: Premiums will be expressed in terms of dollars and fractions of dollars pursuant to PHLX Rule 1033A. For example, a bid or offer of 1½ will represent a premium per options contract of $150 (1½ × 100).

Position and Exercise Limits: The PHLX will employ position and exercise limits pursuant to PHLX Rule 1001A(b)(i) and 1002A, respectively.

Replacement of Stocks in Index: If there has been any material and substantial change in the character of any stock in the Index caused by delisting, merger, acquisition or otherwise, the Exchange will take appropriate steps to delete this stock from the Index and substitute another stock which possesses characteristics similar to the original character of the deleted stock.

As the PHLX will only trade a European-style option contract on this Index, the PHLX also proposes and amendment to PHLX Rule 1006A (additions are italicized):

Rule 1006A Other Restrictions and Options Transactions and Exercises

With respect to index options, restrictions on exercise may be in effect until the opening of business on the last trading day before the expiration date. *With respect to the Utility Index, the Exchange shall only offer a European option on said index for which restrictions on exercise will be in effect until the last trading day prior to expiration.* With respect to Value Line index European option contracts, restrictions on exercise will be in effect until the last trading day prior to expiration.

* * * * *

The proposed rule change is consistent with section 6(b)(5) of the Securities Exchange Act of 1934, which provides in part that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practice, to facilitate transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

[1] The Utility Index will be designated as a narrow-based index.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments on the proposed rule change were neither solicited not received. The proposed rule change was discussed with, and approved by, the Options and Executive Committees of the PHLX.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to file number SR-Phlx-87-20 and should be submitted by August 19, 1987.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: July 20, 1987.

Shirley E. Hollis,

Assistant Secretary.

Exhibit A

The Philadelphia Stock Exchanges Utility Index Composition

Security symbol	Company name	Market value ($1,000's)	Percent of index value
AEP	American Electric Power Co	$5,225,445	6.18
CX	Centerior Energy Co	2,191,800	2.58
CWE	Commonwealth Edison Company	6,825,225	8.04
ED	Consolidated Edison of N.Y	5,138,670	6.06
DTE	Detriot Edison Company	2,493,390	2.94
D	Dominion Resources Inc	3,978,385	4.69
DUK	Duke Power Company	4,403,625	5.19
FPL	FPL Group Inc	3,955,464	4.66
HOU	Houston Industries Inc	3,740,385	4.41
NMK	Niagara Mohawk Power Corp	1,986,578	2.34
NU	Notheast Utilities	2,499,387	2.95
OEC	Ohio Edison Company	3,078,013	3.63
PCG	Pacific Gas and Electric Co	7,571,582	8.92
PPW	Pacificorp	2,426,347	2.86
PE	Philadelphia Electric	3,839,447	4.52
PEG	Public Service Entrpse. Group	5,118,395	6.03
SCE	Southern Calif. Edison Co	6,886,003	8.11
SO	Southern Company	6,553,019	7.72
TXU	Texas Utilities Company	4,497,831	5.30
UEP	Union Electirc Company	2,450,976	2.89
Total		$84,860,002	100

[FR Doc. 87-17243 Filed 7-28-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15695; 812-6799]

Central Bank for Cooperatives and Certain District Banks for Cooperatives; Notice of Application

July 27, 1987

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("the 1940 Act").

Applicants: Central Bank for Cooperatives and certain District Banks for Cooperatives, i.e., Columbia Bank for Cooperatives, Jackson Bank for Cooperatives, Louisville Bank for Cooperatives, St. Louis Bank for cooperatives and Wichita Bank for Cooperatives.

Relevant 1940 Act Sessions: Exemption requested under Section 6(c) and 6(e) from all provisions of the 1940 Act, other than Sections 26 (with certain exceptions), 36, 37 and (to the extent necessary to implement the foregoing sections) 38 through 53 thereof.

Summary of Application: Applicants seek an order exempting each trust ("Trust") established and to be established by the Applicants, each Trust to hold a note guaranteed by the Rural Electrification Administration evidencing loans used to refinance borrowings from the Federal Financing Bank, in connection with the issuance of certificates by the Trust to Applicants and their subsequent resale to the public by Applicants.

Filing Date: The application was filed on July 21, 1987 and amended on July 24, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on the application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on August 12, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, c/o Carl F. Lyon of Mudge Rose Guthrie Alexander & Ferdon, 180 Maiden Lane, New York, NY 10038.

FOR FURTHER INFORMATION CONTACT: Fran Pollack, Staff Attorney (202) 272-3024 or Karen L. Skidmore, Special Counsel (202) 272-3023, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is availabe for a fee from either the SEC's Public Reference Branch in person or the

SEC's commercial copier, (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations:

1. Each of the Applicants is a federally chartered instrumentality of the United States established pursuant to Sections 2 and 30 of the Farm Credit Act of 1933, as amended, as part of the Farm Credit System (the "System"). The System is a network of borrower-owned cooperatives organized to provide loans to farmers and their marketing and supply cooperatives.

The System consists of twelve Farm Credit Districts that cover the continental United States as well as Alaska, Hawaii, and Puerto Rico. Each district has a Federal land bank, a Federal intermediate credit bank, and a bank for cooperatives. In addition, a thirteenth bank for cooperatives, the Central Bank for Cooperatives, located in Denver, Colorado, participates with other banks for cooperatives in loans that exceed district lending limits. The Applicants make loans to agricultural, aquatic, and rural utility cooperatives and provide financial services to cooperatives engaged in international trade. Such loans supplement the loan programs of the Rural Electrification Administration ("REA") of the United States Department of Agriculture.

The System is regulated by the Farm Credit Administration, an independent regulatory agency of the United States Government, which was reorganized and strenghtened as recently as 1985 when the Farm Credit Amendments Act of 1985, 99 Stat. 1578, P.L. 99–205 was enacted. As government corporations, the Applicants are subject to the Government Corporation Control Act. See 31 U.S.C. 9101 *et seq.*

2. In order to ease financial burdens on certain cooperatives by permitting them to take advantage of lower interest rates. Congress in October 1986 passed legislation (the "New Bill") amending the Rural Electrification Act (the "RE Act") to permit these cooperatives to prepay existing borrowings (the "FFB Loans") from the Federal Financing Bank of the United States Treasury ("FFB"), without repayment penalty or fees, through the issuance of REA-guaranteed notes to private lenders. REA has promulgated regulations implementing this legislation (the "Regulations"), which directs REA to formulate eligibility criteria specifying entities that could be lenders and ensuring that at least $2.0175 billion of such refinancings occur by September 30, 1987.

Because of concerns that issuance by the cooperatives of debt guaranteed by REA directly to the public would adversely affect the Treasury's own funding operations, the Regulations limit the number of separate notes that any cooperative may issue in a particular refinancing, restrict assignment of the REA guarantee, and require that each noteholder (i) be subject to credit examination and supervision by Federal or state authorities and satisfy applicable regulatory requirements for licensing, lending and loan requirements, (ii) have a minimum net worth or other credit support in the amount of $50 million, or (iii) be a trust administered by a person in either of the foregoing categories.

3. Applicants, in conjunction with Smith Barney, Harris Upham & Co. Incorporated and Manufacturers Hanover Trust Company, have formulated a program consistent with the New Bill and the Regulations which they believe will permit rural electric cooperatives to refinance their FFB Loans in accordance with the New Bill and the Regulations at competitive rates reflecting the smallest possible spread over benchmark Treasury obligations. REA and Applicants have agreed upon the basic structure of the refinancing transactions and Applicants anticipate that REA will approve that structure. Although REA is currently reviewing certain of the terms of the refinancings for both the Applicants and other lenders, the final resolution of which may not take place until the actual closing of the refinancing, Applicants do not anticipate any change in the basic structure or other terms which could require additions to or modifications of the application. Such approval will be evidenced only by the execution of the REA guarantee of a Private Note and representatives of REA have advised Applicants that they will promptly review the necessary documents and expect to be able to issue the REA guarantee on a timely basis.

As of April, 1987, applications from twenty cooperatives had been received by REA and REA has approved seven cooperatives. Of these, Arizona Electric Power Cooperative has chosen Applicants' program to refinance its entire FFB debt while Cajun Electric Power Cooperative has chosen Applicants' program for one-half of its FFB debt. All representations and conditions in the application will apply to transactions under this structure involving any rural electric cooperative which refinances its FFB Loans under the program described in the application.

4. Under Applicant' program, one or more Trusts will be established by an Applicant for each cooperative intending to prepay FFB loans (A "Cooperative"). The trustee of each Trust (the "Trustee") will be a commercial bank having capital and surplus of at least $50,000,000. An Applicant will make loans (the "Private Loans") to the Cooperative, the proceeds of which will immediately be used to prepay the Cooperative's FFB Loans being refinanced. Such Applicant will direct the Cooperative to issue each note evidencing a Private Loan (a "Private Note") to a separate Trust, which will issue to that Applicant certificates representing the entire beneficial interest in the trust (the "Certificates"). The Trustee will be the "noteholder" for the purpose of the Regulations. Applicant will qualify the Trust Agreements under the Trust Indenture Act of 1939.

5. To the extent an Applicant holds the Certificates, the Private Note will bear interest at a variable rate reflecting Applicant's cost of funding the loan. The Applicants intend to resell these Certificates either contemporanously with the making of the Private Loan or anytime thereafter, in public offerings or in private placements, at which time the rates on the associated Private Note will be reset to equal the fixed rate on the Certificates, increased by an amount equal to the servicing fee and expense reimbursement referred to below. The Certificate rate will be fixed as the lowest rate acceptable to the marketplace that would permit the Certificates to be resold by an Applicant at par. Scheduled payments on the Private Notes will thus at all times be sufficient to satisfy the scheduled payments on the Certificates plus any amounts of servicing fees or other costs payable to the servicer. Applicants would expect to resell the Certificates promptly, unless they could not be sold bearing rates within the interest rate ceiling described below or if it is believed that long-term rates would improve in the future and it is desired to delay fixing the rate until that time.

6. In order to insure that the Cooperative (and REA as its creditor) will derive significant benefit from the refinancing of FFB Loans, the Regulations require that the interest rate on the Private Notes always be at least 50 basis points lower than the weighted average interest rate borne by the FFB Loans that were repaid at the time of repayment. Since there is no assurance that an Applicant will be able to obtain funding enabling it to carry or to resell the Certificates within this cap, each Applicant in acquiring the Certificates subject to this limitation is assuming an exposure to interest rate fluctuations which benefits the Cooperative and REA.

7. With the exception discussed below, each Trust's sole investment activity will consist of receiving the Private Note and issuing the Certificates

on the day of its formation and thereafter collecting payments on the Note. The assets of each Trust will consist of a single Private Note evidencing one Private Loan. In order to obtain the best rates by matching maturities to particular market segments, separate Certificates having sequential maturities will be offered through separate Trusts (i.e., Trust would receive a Private Note payable by the Cooperative in installments in years 6–10, a second would receive a Private Note payable by that Cooperative in years 11–16, etc). The Trustee will not be authorized to modify the right to receive payments on the Certificates or take any action that would reduce the principal amount or interest rate on the Private Note without consent of the Certificateholders. No Trust would ever issue any security other than a single class of Certificates or hold more than a single Private Note or, except for the incidental temporary investment pending distribution to Certificateholders of payments received on its Private Note described below, engage in any investment activity following its formation. Defaults with respect to one Private Note would not permit acceleration by the holder of any other Private Note. The Trust would not acquire any assets in substitution for the Private Note, or sell the Private Note except in connection with the repayment of the Certifciates in full and the termination of the Trust (which will occur when the Private Note and thus the Certificates have been paid off).

8. REA will endorse on each Private Note a guarantee (the "REA Guarantee") of the timely payment of principal and interest on such Private Note. The REA Act provides that the REA Guarantee is a full faith and credit obligation of the United States. REA will be required to pay the Trust the amount of any principal and interest not paid when due on a Private Note within five business days of notice from the servicer of such default. Although the Private Note will be secured by a mortgage on all the Cooperative's assets (the "REA Mortgage"), all rights under the mortgage with respect to the Private Note will be held by REA and will not inure to the benefit of any Applicant, the Trust or any holder of Certificates.

9. An Applicant will contract with REA and each Trust to service the Private Loan in a manner complying with the REA Act and the Regulations. An Applicant, as servicer, will handle the billing of Private Loan payments from the Cooperative and will notify REA promptly of any default under the Private Loan and of adverse developments affecting the Cooperative, but payments on the Private Note will be made directly to the Trustee and not to an Applicant. An Applicant, as servicer, will prepare for distribution to Certificateholders regular semiannual reports concerning distributions on the Certificates and its fees, as well as tax information required by Certificateholders. No less often than annually, an independent public accountant will audit the books and records of each Trust. Upon completion, copies of the auditor's reports will be provided to the Trustee.

10. An Applicant, as servicer, will be compensated out of payments on the Private Note in excess of the scheduled payments to be distributed to Certificateholders. It is presently estimated that the regular servicing fee (out of which Applicant will pay the Trustee's fees and expenses) will total not more than approximately 10 basis points annually with respect to the principal amount of the Private Note. An Applicant, as servicer, may also receive directly from the Cooperative or reimbursement for costs incurred by it in connection with the offering of the Certificates and enforcement of the Private Note and REA Guarantee. To the extent these amounts are received from the Trust, the Cooperative will be obligated to pay amounts equal to such costs as additional interest (guaranteed by REA) on the Private Note (subject to certain limitations), so that such reimbursement will not reduce distributions to Certificateholders. However, REA has indicated that it would not approve including costs incurred in connection with the issuance of Certificates to investors in the guaranteed interest rate until the time of offering of the Certificates and then only if it determines that such costs cannot be paid directly by the Cooperative from funds then on hand. Further, REA has indicated at this time that certain future enforcement related costs will be paid directly by the Cooperative. An Applicant may not resign as servicer, but may be removed by the Trustee or the Certificateholders following certain defaults or events of bankruptcy relating to the servicer. The insolvency of the Trustee or an Applicant will not affect the Certificateholders' rights, because an Applicant will not hold any Trust assets and assets held in a fiduciary capacity by the Trustee should not be subject to claims of the Trustee's general creditors. Even if the Internal Revenue Service or a state tax authority were to claim successfully that a Trust is a taxable entity (and Applicants do not believe it is), the Certificateholders should receive their back-to-back government guaranteed payments because an Applicant will indemnify the Trust for any resulting taxes under present law.

11. An Applicant may resell the Certificates either in private placements pursuant to Section 4(2) of, or in underwritten public offerings registered under, the Securities Act of 1933 ("Securities Act"), or possibly in distributions exempt from registration because they will come to rest outside the United States (provided that the subject securities are offered and sold outside the United States and to non-U.S. persons without registration under the Securities Act in reliance upon an opinion of U.S. counsel that registration is not required and that no single offering of Certificates both within and outside the United States will be made without registration of all such Certificates under the Securities Act without obtaining a no-action letter permitting such offering or otherwise complying with applicable standards then governing such offerings). In all cases, Applicants will adopt agreements and procedures reasonably designed to prevent such debt securities from being offered or sold in the United States or to U.S. persons (except as U.S. counsel may then advise is permissible). Applicants anticipate that the Certificates will be marketed principally to financial institutions, and expects that the Certificates issued by each Trust will receive the highest investment grade rating ("AAA or "Aaa") from at least two nationally recognized statistical rating organizations not affiliated with any Applicant or the Trusts.

12. Each Certificate will represent a fractional undivided interest in a Trust. The Certificates will be issued in denominations of $1,000 or multiples thereof, and will not be divisible into Certificates with original principal amounts below that figure. The Certificates will be transferable, and may be listed on a national securities exchange. Payments on the Certificates will represent simply pass-throughs of payments received by the Trustee on the private Note held by the Trust. Interest on both the Private Note and the Certificates will be payable semiannually and principal payments on both the Private Note and the Certificates will be payable annually (as is customary for sinking funds with respect to corporate debt securities) for the period during which the Private Note and the Certificates amortize.

13. The Certificates will be prepaid at any time the Private Note is prepaid. It

is anticipated that the Private Notes will be prepayable at the Cooperative's option in whole (but not in part), generally after a no-call period, at premiums declining each year until such premiums equal zero. Although the payment of principal, interest and premium in the event a Cooperative elects to prepay the Private Note will not be covered by the REA Guarantee, the Cooperative will be required to accompany its notice of prepayment (to be given 30 days in advance in order to permit the Trustee in turn to notify Certificateholders of the impending retirement of the Certificates) with a cash deposit equal to the amounts that will be due on the Private Note at the time of prepayment, thus assuring that funds will be available at that time. Pending application, these funds will be invested in obligations issued by the United States or in repurchase agreements in the manner described below. In view of the safety of these investments, Applicants believe that the consequences of the fact that the REA Guarantee does not cover prepayments are not significant.

14. With the exception referred to in the preceding paragraph, all payments on the Certificates will have back-to-back Private note obligations which are supported by the full faith and credit of the United States. If the Cooperative defaults in making its payments or in its other obligations to REA, REA has the option either to pay under the REA Guarantee principal and interest as they fall due on the Private Note, to proceed against the Cooperative and to assume the Cooperative's obligations under the Private Note or, if the Cooperative could at that time make an optional prepayment of the Private Note, optionally to prepay or purchase the Private Note at the same premium as would then be applicable to a prepayment by the Cooperative. The Trustee (or an Applicant, acting as servicer, as its agent), and not the individual Certificateholders, will enforce payments due on the Private Note and the REA Guarantee. However, a specified percentage of Certificateholders may direct the time, method and place of conducting any remedy available to the Trustee or an Applicant, subject to customary indenture exceptions. The Trustee may not resign until the Trust is liquidated and the proceeds distributed to Certificateholders unless a successor Trustee has been designated and has accepted such trusteeship.

15. Scheduled distributions on the Certificates will be made several days (currently anticipated to be 11 calendar days in the case of regular payments of principal and interest) following the corresponding payment on the Private Note. This interval will allow time for an Applicant to notify REA if there is a default by the Cooperative in making a payment on the Private Note and to permit the five business days before REA is obligated to make a payment under the guarantee to elapse before the payment date on the Certificates. As a consequence, if the Cooperative defaults, the full faith and credit guarantee payment will fall due before the scheduled payment on the Certificates. As indicated above, if a Cooperative elects to prepay a Private Loan, distributions on the Certificates will be made 30 days after advance receipt of the amounts to be prepaid, thus permitting notice of the resulting distribution to be given to Certificateholders.

16. During these periods pending distribution (twice annually for 11 days and not more than one additional period of 30 days for any Trust in connection with a prepayment), payments on the Private Note received by the Trust will be invested by it at the direction of an Applicant in (i) obligations issued by the United States (and supported by its full faith and credit) or (ii) repurchase agreements with respect to such obligations, overcollateralized on a basis so that there will not be a reduction in the ratings of the Certificates. All such investments must mature before the next scheduled distribution date on the Certificates. The obligations collateralizing the repurchase agreements in question would be marked to market on a daily basis and kept in the possesison of the Trustee or in its control through book-entry, unless the rating agencies indicate that this is not necessary to maintain the Certificates' rating and the Commission or its staff has indicated it will not object to other arrangements. The repurchase agreements would satisfy the conditions set forth in the Staff's letters dated January 25, April 17 and June 19, 1985, to Matthew Fink, Esq., and applicants believe on the advice of counsel that they would be considered "repurchase agreements" for purposes of Section 559 of the Bankruptcy Code permitting liquidation of such agreements without regard to the stay or avoiding provisions of the Bankruptcy Code (except as set forth therein). Assuming all amounts then due on the Private Notes have been paid in full, any yield on these investments will be turned over to the Cooperative (or to REA to the extent of any unreimbursed payments on the REA Guarantee). Such yield will not flow through to Certificateholders or increase their return on their investment, and the disclosure document will make this clear to prospective Certificateholders.

Applicants' Legal Conclusions:

17. The requested order is necessary or appropriate in the public interest because Congress has acted to encourage prepayment of the FFB Loans with private capital, the basic structure proposed has been agreed upon by REA and Applicants and accommodates the government's concerns about issuance of federally guaranteed debt directly to the public and the investment activity of the Trusts will be very limited.

18. The requested order is consistent with the protection of investors because the limited intended activity of the Trusts and the extreme safety of the assets they will hold obviate the need for the complex regulatory safeguards of the Act.

19. The requested order is consistent with the purposes fairly intended by the policy and provisions of the Act because the Trusts' operations will not lend themselves to the abuses against which the Act is directed.

Applicants' Conditions: If the requested order is granted, the Applicants agree that the Trusts will be subject to the following conditions:

1. To be subject pursuant to Section 6(e) of the Act to Sections 26 (with the following exception), 36, 37 and (to the extent necessary to implement the foregoing sections) 38 through 53 of the Act. They will not be subject to the provisions of Section 26(a)(2) of the Act to the extent they are inconsistent with the servicer compensation arrangements (including the scheduled servicing fee and reimbursements for certain expenses) described in the application, which Applicants believe are fair and reasonable in light of the function each Applicant, as servicer, undertakes. Applicants assert that Certificateholders will receive a fixed return which will not be affected by this compensation, since the Cooperative will be required to pay additional interest on the Private Note (covered by the REA Guarantee) to provide funds for this compensation, which in any event (except for the scheduled servicing fee) is subordinated to payment of all amounts then due on the Certificates.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-17206 Filed 7-27-87; 12:10 pm]

BILLING CODE 8010-01-M

[File No. 81-738]

Application and Opportunity for Hearing; San Diego Solar Concepts II, Ltd.

July 23, 1987.

Notice is hereby given that San Diego Solar Concepts II, Ltd. ("Applicant") has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act"), for an order exempting Applicant from the registration requirements of section 12(g) of the 1934 Act.

For a detailed statement of the information presented, all persons are referred to the application which is on file at the offices of the Commission in the Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

Notice is further given that any interested person not later than August 17, 1987, may submit to the Commission in writing his views or any substantial facts bearing on the application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert.

Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponement thereof. At any time after that date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-17244 Filed 7-28-87; 8:45 am]

BILLING CODE 8010-01-M

[File No. 81-746]

Application and Opportunity for Hearing; Thirteen Star Partners, Ltd.

July 23, 1987

Notice is hereby given that Thirteen Star Partners, Ltd. ("Applicant") has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended, (the "1934 Act") for an order exempting Applicant from the registration requirements of section 12(g) of the 1934 Act.

For a detailed statement of the information presented, all persons are referred to the application which is on file at the offices of the Commission in the Public Reference Room, 450 Fifth Street NW. Washington, DC 20549.

Notice is further given that any interested person not later than August 17, 1987, may submit to the Commission in writing his views or any substantial facts bearing on the application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert.

Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponement thereof. At any time after that date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-17245 Filed 7-28-87; 8:45 am]

BILLING CODE 8010-01-M

[File Nos. 81-730, 81-731 and 81-732]

Application and Opportunity for Hearing; Zond Windsystem Partners, Ltd; Series 85-A, Series 85-B and Series 85-C

July 23, 1987.

Notice is hereby given that Zond Windsystem Partners, Ltd. ("Applicant") has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended, (the "1934 Act") for an order exempting Applicant from the registration requirements of section 12(g) of the 1934 Act with respect to the equity securities of three limited partnerships.

For a detailed statement of the information presented, all persons are referred to the application which is on file at the offices of the Commission in the Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

Notice is further given that any interested person not later than August 17, 1987, may submit to the Commission in writing his views or any substantial facts bearing on the application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street NE., Washington, DC 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert.

Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponement thereof. At any time after that date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-17246 Filed 7-28-87; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2285]

Ohio; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on July 17, 1987, I find that Crawford, Marion, Morrow and Richland Counties in the State of Ohio constitute a disaster loan area because of severe storms and flooding occurring on or about July 1, 1987. Eligible persons, firms, and organizations may file applications for physical damage until the close of business on September 17, 1987, and for economic injury until the close of business on April 18, 1988, at: Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Floor, Atlanta, Georgia 30308, or other locally announced locations.

The interest rates are:

Homeowners with credit available elsewhere	8.000%
Homeowners without credit available elsewhere	4.000%
Businesses with credit available elsewhere	8.000%
Businesses without credit available elsewhere	4.000%
Businesses (EIDL) without credit available elsewhere	4.000%
Other (non-profit organizations including charitable and religious organizations)	9.500%

The number assigned to this disaster is 228506 for physical damage and for economic injury the number is 653800.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Date: July 20, 1987.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 87-17194 Filed 7-28-87; 8:45 am]

BILLING CODE 8025-01-M

[License No. 01/02-0052]

Filing of an Application for Transfer of Ownership and Control; Northeastern Capital Corp.

Notice is hereby given that an application has been filed with the Small Business Administation (SBA), pursuant to the Regulations governing small business investment companies (13 CFR 107.601 (1987)), for the transfer of ownership and control of Northeastern Capital Corporation, 61 High Street, East Haven, Connecticut 06512, a Federal Licensee under the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 *et seq.*). The proposed transfer of ownership and control of Northeastern Capital Corporation, which was licensed on March 8, 1961, is subject to the prior written approval of SBA.

It is proposed that BNH Bancshares, Inc., will acquire all of the issued and outstanding capital stock of Northeastern Capital Corporation into a wholly-owned subsidiary of BNH Bancshares, Inc., formed for the purposes of the proposed transaction. Northeastern Capital Corporation will be the surviving corporation of this merger and upon consummation of the merger, will be a wholly-owned subsidiary of BNH Bancshares, Inc.

The proposed officers, directors and sole shareholder are as follows:

Name and address	Title or relationship	Percent of ownership
Joseph V. Ciaburri, 110 Anesonia Road, Woodbridge, CT 06525.	President, director	
Louis W. Mingione, 33 Harbor Avenue, Madison, CT 06443.	Executive director	
Lawrence M. Liebman, 49 Tumblebrook Road, Woodbridge, CT 06525.	Secretary, director	
David E. Greenberg, 56 Acorn Avenue, New Haven, CT 06515.	Director	
Leonard A. Fasano, 30 Mansfield Drive, Apt. 805, Northford, CT 06472.	do	
Gary B. Garofalo, 5132 Rockwood Parkway, NW, Washington, DC 20016.	do	
George M. Demer, 37 Tumblebrook Road, Woodbridge, CT 06525.	do	
Vicent A. Romei, 57 Dogwood Circle, Woodbridge, CT 06525.	do	
Stanley Scholochn, 14 Oak Hill Lane, Woodbridge, CT 06525.	do	
Martin R. Anastasio, 8 Stonewall Lane, Woodbridge, CT 06525.	do	
BNH Bancshares, Inc., 209 Church Street, New Haven, CT 06510.	Sole Shareholder	100

BNH Bancshares, Inc., is a one-bank holding company organized under the laws of the State of Connecticut.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed management, and the probability of successful operations under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act of 1958, as amended, and the SBA Rules and Regulations.

Notice is given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed transfer of ownership and control to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street NW., Washington, DC 20416.

A copy of the Notice will be publised in a newspaper of general circulation in New Haven, Connecticut.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: July 20, 1987.

[FR Doc. 87-17195 Filed 7-28-87; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/02-0507]

Issuance of a Small Business Investment Company License; Pyramid Investors, Inc.

On March 12, 1987, a notice was published in the **Federal Register** (52 FR 7981) stating that an application has been filed by Pyramid Investors, Inc., New York, New York with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1987)) for a license as a small business investment company.

Interested parties were given until close of business April 12, 1987, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/02-0507 on June 26, 1987, to Pyramid Investors, Inc. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: July 20, 1987.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 87-17196 Filed 7-28-87; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements Submitted to OMB on July 24, 1987

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation on July 24, 1987, to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

FOR FURTHER INFORMATION CONTACT: John Chandler, Annette Wilson, or Cordelia Shepherd, Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366-4735, or Gary Waxman or Sam Fairchild, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503, (202) 395-7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial, approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities. OMB also

considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the **FOR FURTHER INFORMATION CONTACT** paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the **FOR FURTHER INFORMATION CONTACT** paragraph set forth above. If you anticipate submitting comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB on July 24, 1987.

DOT No: 2939
OMB No: 2115–0016
Administration: U.S. Coast Guard
Title: Characteristics of Liquid Chemicals Proposed for Bulk Water Movement

Need for Information: This information collection requirement is needed to enforce the laws and regulations for the safe transportation of hazardous materials by water.

Proposed Use of Information: Coast Guard evaluates the information to determine the kind and degree of precaution needed to protect the vessel, operating personnel, and public.

Frequency: On occasion
Burden Estimate: 300 hours
Respondents: Chemical manufacturers
Form(s): CG–4355

DOT No: 2940
OMB No: 2132–0530
Administration: Urban Mass Transportation Administration
Title: Nondiscrimination on the Basis of Handicap in Programs Receiving Financial Assistance from the Department of Transportation

Need for Information: The information is needed to ensure that recipients of DOT financial assistance do not discriminate against handicapped and elderly persons.

Proposed Use of Information: The data will be used to ensure that recipients are complying with statutory provision concerning transportation services for elderly and handicapped persons.

Frequency: Annually and Triennially.
Burden Estimate: 2,067 hours.
Respondents: State/local Government and Public Transit Authorities.
Form(s): None.

DOT No.: 2941.
OMB No: 2115–0504.
Administration: U.S. Coast Guard.
Title: Tank Vessel Examination Letter, Certificate of Compliance, Boiler/Pressure Vessel Repairs, Cargo Gear Records and Shipping Records.

Need for Information: This information is needed to enable the Coast Guard to fulfill its responsibilities of ensuring maritime safety.

Proposed Use of Information: Coast Guard uses this information as a means to indicate compliance with safety standards and regulations.

Frequency: On occasion.
Burden Estimate: 22,202 Hours.
Respondents: Some owners/operators of large merchant vessels and all foreign-flag tankers calling at U.S. ports.
Form(s): CG–840S–1 and CG–840S–2.

DOT No.: 2942.
OMB No.: 2115–0006.
Administration: U.S. Coast Guard.
Title: Application for License as Officer, Operator or Staff Officer.

Need for Information: This information collection requirement is necessary for Coast Guard to ensure adherence to the numerous maritime statutes governing the issuance and renewal of licenses for merchant seamen.

Proposed Use of Information: Coast Guard will use this information to determine if applicants meet the qualifications to be examined for a license or a license renewal. It is also used to maintain up-to-date records, to obtain information concerning license transactions; to provide information to the Maritime Administration for use in developing personnel forecast which are used to develop budgets; to develop information requested by Congress; to project manpower needs; and to provide information to law enforcement agencies for criminal or civil law enforcement agencies.

Frequency: On occasion.
Burden Estimate: 41,602 hours.
Respondents: Applicants for License.
Form(s): CG–866.

DOT No.: 2943.
OMB No.: 2115–0017.
Administration: U.S. Coast Guard.
Title: Application for Approval for Marine Event.

Need for Information: This information collection requirement is needed to provide effective control over regattas and marine parades performed on navigable waters of the U.S.

Proposed Use of Information: Coast Guard uses the information to evaluate the impact of the event on the environment and to determine the type and degree of supervision or assistance needed to protect other life and property in the area.

Frequency: On occasion.
Burden Estimate: 4,000 hours.
Respondents: Applicants for marine parades or regattas.
Form(s): CG–4423.

DOT No.: 2944.
OMB No.: 2115–0557.
By: U.S. Coast Guard.
Title: Advance Notice of Vessel Arrival and Departure and Waiver.

Need for Information: This information collection requirement is needed to safeguard the United States against destruction, loss, or injury from sabotage or other subversive acts, accidents, or other causes of similar nature, of vessels, harbors, and waterfront facilities. It is further needed to establish, operate, and maintain vessel traffic services.

Proposed Use of Information: Coast Guard uses this information for (1) vessel traffic supervision; (2) oil and hazardous substance spill; (3) firefighting contingency planning; (4) controlling vessels from Warsaw Pact nations and vessels from nations not permitted to enter U.S. waters or certain U.S. ports; (5) controlling free flag vessels carrying Communist country nationals in the crews; and (6) targeting certain type vessels for examination. It is also used to determine if a waiver of the regulations can be granted.

Frequency: On occasion
Burden Estimate: 51,447 hours
Respondents: Vessel Operators
Form(s): None

DOT No: 2945
OMB No: 2115–0035
By: U.S. Coast Guard
Title: Defect/Compliance Report: Campaign Update Report

Need for Information: Coast Guard needs this information collection requirement to determine if manufacturers of recreational boats and associated equipment are complying with the statutory requirement.

Proposed Use of Information: Coast Guard uses this information to evaluate: (1) the severity of defects and failures to comply with regulations; (2) the danger presented to the public by the defects or failures to comply; (3) corrective action proposed by a manufacturer. This information is also used to monitor the progress of notifications and recalls undertaken by manufacturers.

BEST COPY AVAILABLE

Frequency: On occasion
Burden of Estimate: 397 hours
Respondents: Recreational boat and associated equipment manufacturers
Form(s): CG–4917, CG–4918

DOT No: 2946
OMB No: 2115–0042
Administration: U.S. Coast Guard
Title: Certificate of Discharge to Merchant Seamen

Need for Information: This information collection requirement is needed to provide merchant seamen with a document of evidence of sea service to determine eligibility for various benefits.

Proposed Use of Information: The seaman and Coast Guard uses the information to establish sea service time and qualifications for issuing original documents or upgrading existing documents. It is also used to develop maritime sea service statistics.

Frequency: On occasion
Burden Estimate: 16,100 hours
Respondents: Merchant Seaman
Form(s): CG–718A

DOT No: 2947
OMB No: 2133–0015
Administration: Maritime Administration
Title: Trustees Annual Supplemental Certification

Need for Information: To approve or disapprove banks and trust companies for participation in MARAD's ship financing programs.

Proposed Use of Information: To determine whether the bank or trust company continues to qualify financially and otherwise act as a trustee under certain ship financial guarantees.

Frequency: On occasion
Burden Estimate: 53 hours
Respondents: Banks and Trust companies
Form(s): MA–580

DOT No: 2948
OMB No: 2120–0043
Administration: Federal Aviation Administration
Title: Recording of Aircraft Conveyances and Security Documents

Need for information: Financing instutitions need the information for proper lien protection

Proposed Use of Information: Approval is needed for security conveyances such as mortgages, submitted by the public for recording against aircraft, engines, propellers, and spare parts locations.

Frequency: On occasion
Burden Estimate: 62,467 hours
Respondents: Anyone who wants to record an aircraft conveyance or security document
Form(s): AC Form 8050–41

DOT No: 2949
OMB No: 2120–0024
Administration: Federal Aviation Administration
Title: Dealer's Aircraft Registration Certificate Application

Need for Information: To determine eligibility of applicant to receive dealer's aircraft registration certificate.

Proposed Use of Information: To issue dealers aircraft registrations to persons engaged in manufacturing, distributing, or selling aircraft.

Frequency: On occasion
Burden Estimate: 464 hours
Respondents: Aircraft manufacturers, dealers, distributors
Form(s): AC Form 8050–5

DOT No: 2950
OMB No.: 2115–0542
Administration: U.S. Coast Guard
Title: Station Bill

Need for Information: This information is needed to provide an efficient means of disseminating information to all personnel as to their duties, duty station and signals used in an emergency and during emergency drills.

Proposed Use of Information: This information is used to ensure that personnel are familiar with their duties in cases of emergency and to reduce the likelihood of personnel injuries during any such emergencies.

Frequency: On occasion
Burden Estimate: 1,700 hours
Respondents: Owners/operators of fixed, manned OCS facilities
Forms:

DOT No: 2951
OMB No: New
Administration: Research & Special Programs Administration
Title: Reporting Unsafe Conditions on Gas and Hazardous Liquid Pipelines and Liquefied Natural Gas Facilities

Need for Information: To implement P.L. 99–516, with goal of preventing unsafe conditions from becoming incidents or accidents.

Proposed Use of Information: To monitor corrective actions proposed for reported unsafe conditions.

Frequency: On occasion
Burden Estimate: 31,675 hours
Respondents: 2,500 operators of gas and hazardous liquid pipelines
Forms: No forms proposed, but format and content of report to be prescribed by regulation.

DOT No: 2952
OMB No.: 2127–0047
Administration: National Highway Traffic Safety Administration
Title: 49 CFR Part 580—Odometer Disclosure Statement

Need for Information: To deter odometer roll backs and to accomplish successful litigation

Proposed Use of Information: The Odometer Disclosure Statements required by 15 U.S.C. 1988 are used by motor vehicle purchasers to determine the condition and value of the vehicles they buy. They are also used as evidence in criminal and civil actions for proving violations of the Truth in Mileage Act.

Frequency: On occasion.
Burden Estimate: 296,961 hours.
Respondents: 35,920,000.
Forms: None.

DOT No: 2953.
OMB No: New.
Administration: Federal Aviation Administration.
Title: Data Link Application Survey.

Need for Information: To ensure that Data Link applications are not developed in a vacuum, but reflect the actual cockpit and ATC environment and to ascertain degree of user acceptance of Data Link services currently in development.

Proposed Use of Information: The information will be used to prioritize service development and availability in accordance with user demand; to provide opportunity for the aviation community to suggest additonal Data Link services.

Frequency: Survey, once per respondent
Burden Estimate: 160 hours
Respondents: Individuals
Forms: Questionnaire

DOT No: 2954
OMB No: 2127–0049
Administration: National Highway Traffic Safety Administration
Title: 49 CFR Part 575—Consumer Information Regulations (Excluding UTQGS)

Need for Information: To provide safety information to new motor vehicle purchasers.

Proposed Use of Information: These regulations establish a system by which information on the performance and safety features on new motor vehicles is made to vehicle purchasers, and to rescind stopping distance data disseminated to first purchasers of motor vehicles.

Frequency: On occasion
Burden Estimate: 429 hours
Respondents: 30 manufacturers
Forms: None

DOT No: 2955
OMB No: 2115–0110

Administration: U.S. Coast Guard
Title: Vessel Documentation
Need for Information: This information collection is needed to establish a vessel's (1) nationality, (2) eligibility to engage in a particular employment, and (3) eligibility to become an object for a preferred ship's mortgage.
Proposed Use of Information: The Coast Guard uses this information to make eligibility determinations. The Internal Revenue Service uses this information in determining eligibility for investment tax credits and the like.
Frequency: On occasion
Burden Estimate: 58,591 hours
Respondents: Owners/builders of yacht and commercial vessels weighing at least 5 tons
Forms: CG–1258, 1261, 1280, 1322, 1340, 1358, 4593

DOT No: 2956
OMB No: 2115–0528
Administration: U.S. Coast Guard
Title: Financial Responsibility for Water Pollution
Need for Information: This information collection requirement is needed to ensure that the statutory requirements of 33 USC 1321(p) are complied with.
Proposed Use of Information: Coast Guard uses the information to ensure that owners and operators of vessels over 300 gross registered tons, using U.S. waters, have established evidence of financial responsibility as contained in the statute.
Frequency: On occasion
Burden Estimate: 1884 hours
Respondents: Owners/operators of vessels over 300 tons
Form(s): CG–5358–8, CGHQ–5358–10

DOT No: 2957
OMB No: 2120–0065
Administration: Federal Aviation Administration
Title: (New) Airports Grants Program (Old) Airport Development Aid Program-Planning Grant Program (ADAP/PGP)
Need for Information: The FAA needs to collect the information in order to administer the airports grants program.
Proposed Use of Information: The information is used to determine eligibility, and assure proper use of Federal funds and assure project accomplishment.
Frequency: Parts are annually and quarterly, and on occasion
Burden Estimate: 280,337 hours
Respondents: Airport sponsors
Form(s): FAA Forms 5100–60, –61, –62, –63, –100

Issued in Washington, DC., July 24, 1987.
Richard B. Chapman,
Acting Director of Information Resource Management.
[FR Doc. 87–17235 Filed 7–28–87 8:45 am]
BILLING CODE 4910–62–M

[Order 87–7–50; Docket 44844]

Application of Brian Thompson Air Service for Certificate Authority Under Subpart Q

AGENCY: Department of Transportation.
ACTION: Notice of Order to Show Cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Brian Thompson Air Service fit and awarding it a certificate of public convenience and necessity to engage in interstate and overseas scheduled air transportation.

DATES: Persons wishing to file objections should do so no later than August 6, 1987.

ADDRESSES: Objections and answers to objections should be filed in Docket 44844 and addressed to the Documentary Services Division (C–55, Room 4107), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Carol A. Woods, Air Carrier Fitness Division (P–56, Room 6420), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC, (202) 366–2340.

Dated: July 21, 1987.
Matthew V. Scocozza,
Assistant Secretary for Policy and International Affairs.
[FR Doc. 87–17136 Filed 7–28–87; 8:45 am]
BILLING CODE 4910–62–M

Coast Guard

[CGD 87–050]

Lower Mississippi River Waterway Safety Advisory Committee Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92–403; 5 U.S.C. App I) notice is hereby given of a meeting of the Lower Mississippi River Waterway Safety Advisory Committee. The meeting will be held on Tuesday, August 18, 1987, in the 29th Floor Boardroom of the World Trade Center, 2 Canal Street, New Orleans, LA. The meeting is scheduled to begin at 9:00 a.m. and end at 12:00 noon. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Minutes of the April 21, 1987, meeting.
3. Report of Coast Guard Headquarters action on draft Notice of Proposed Rulemaking for VTS New Orleans with Eighth Coast Guard District response.
4. Discussion of Inland Radar Observer requirements.
5. Discussion of midstream mooring facility at Kaiser Aluminum and Chemical Corp., Chalmette, LA.
6. Update of old business: a. Progress in obtaining Light Operator Positions.
b. VTS New Orleans Surveillance Expansion Project.
c. Gretna Light television camera installation.
d. Committee charter renewal.
7. Adjournment.

The purpose of this Advisory Committee is to provide consultation and advice to the Commander, Eighth Coast Guard District on all areas of maritime safety affecting this waterway.

Attendance is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Commander V. O. Eschenberg, USCG, Executive Secretary, Lower Mississippi River Waterway Safety Advisory Committee, c/o Commander, Eighth Coast Guard District Room 1341, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130–3396, telephone number (504) 589–6901.

Dated: July 13, 1987.
Peter J. Rots,
Rear Admiral, U.S. Coast Guard.
[FR Doc. 87–17201 Filed 7–28–87; 8:45 am]
BILLING CODE 4910–14–M

Federal Highway Administration

Environmental Impact Statement: Jefferson County, WI

AGENCY: Federal Highway Administration (FHWA), DOT.
ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway improvement in Jefferson County, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Ms. Jacki Lawton, Environmental Coordinator, Federal Highway Administration, 4502 Vernon Boulevard, Madison, Wisconsin 53705–4905. Telephone (608) 264–5987.

SUPPLEMENTARY INFORMATION: An EIS will be prepared in cooperation with the Wisconsin Department of Transportation for transportation improvements to State Trunk Highway (STH) 26 in Jefferson County, Wisconsin. The study area is located north of the Rock/Jefferson County line at the City of Fort Atkinson. The project begins at approximately the Groeler Road/STH 26 intersection in the Town of Koshkonong and proceeds northerly to just north of the County Trunk Highway (CTH) "K"/STH 26 interesection in the Town of Jefferson, a distance of about five miles. Planning, environmental, and location engineering studies are underway to develop transportation improvement alternatives including: (1) The no-build alternative, (2) Reconstruction of the existing roadway or other roadways through the City of Fort Atkinson, and (3) a bypass to the east or west of Fort Atkinson.

The section of STH 26 under study has a number of accidents due to its inadequate capacity and heavy traffic. Severe congestion in downtown Fort Atkinson contributes to a poor level of service and disruption to the business and residential community.

Agency coordination and scoping activities will begin soon and will involve agencies that are indentified as having an interest in or jurisdiction by law regarding the proposed action. Agencies will be notified by mail of the date of formal scoping meeting.

In addition, coordination will continue with local units of government private interest groups, and local citizens, including public meetings and a formal public hearing.

To ensure that a full range of issues related to this proposed action are addressed, and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Issued on July 22, 1987.

Frank M. Mayer,

Division Administrator, Madison, Wisconsin.

[FR Doc. 87-17149 Filed 7-28-87 8:45 am]

BILLING CODE 4910-22-M

UNITED STATES INFORMATION AGENCY

1988-89 Fulbright Teacher Exchange Program

The United States Information Agency announces the 1988-89 Fulbright Teacher Exchange Program. Applications are invited from elementary and secondary school teachers and administrators and college faculty to teach in schools or colleges, or to attend seminars abroad under the Mutual Educational and Cultural Exchange (Fulbright) Act of 1961. Not all categories of applicants are eligible for exchange or seminar positions with all countries.

Eligibility requirements include: (1) U.S. citizenship; (2) bachelor's degree; (3) three years of full-time teaching experience for seminar positions; (4) current full-time employment in appropriate subject areas and at appropriate teaching level for which application is made; and, (5) fluency in foreign languages for certain non-English speaking countries. Participating countries are announced on a tentative basis: Argentina; Australia; Belgium/Luxembourg; Brazil; Canada; Chile; Colombia; Cyprus; Denmark; Federal Republic of Germany; Finland; France; Hungary; Iceland; Italy; Mexico; the Netherlands; Norway; Panama; the Philippines; South Africa; Switzerland; and the United Kingdom.

Usually, U.S. and foreign teachers exchange teaching positions for one academic year. U.S. and foreign teachers continue to receive salaries from their home institutions.

A limited number of one-way teaching assignments are also available. In addition, seminars are presently planned in Italy and the Netherlands.

Participants in seminars may be provided with transportation, room, board, and/or tuition, depending upon the program.

Applications for the 1988-89 competition must be submitted by October 15, 1987. The application packet is disseminated in August and September. Further information should be requested from the: Fulbright Teacher Exchange Program E/ASX, United States Information Agency, 301 Fourth Street SW., Washington, DC 20547, (202) 458-2555.

Dated: July 21, 1987.

Jeanne J. Smoot,

Director, Office of Academic Programs.

[FR Doc. 87-17150 Filed 7-28-87; 8:45 am]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains an extension and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Elaina Norden, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 Days of this notice.

Dated: July 22, 1987.

By direction of the Administrator

Raymond S. Blunt

Director, Office of Program Analysis and Evaluation.

Extension

1. Department of Veterans Benefits
2. Employment Questionnaire
3. VA Form 21-4140
4. This information is used to verify the continued eligibility to receive 100% compensation based on individual unemployability
5. On occasion
6. Individuals or households
7. 45,480 responses
8. 3,790 hours
9. Not applicable

1. Department of Veterans Benefits
2. Supplement to Equal Opportunity Compliance Review Report
3. VA Form 27-6734a
4. This information is needed from postsecondary schools below college level to determine compliance with equal opportunity statutes as required of schools receiving Federal funds
5. On occasion
6. Individuals or households
7. 204 responses
8. 102 hours
9. Not applicable

[FR Doc. 87-17206 Filed 7-28-87; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 145
Wednesday, July 29, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, July 29, 1987.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

PPPA Protocol Revisions

The staff will brief the Commission on response to comments received on an ANPR concerning protocol revisions and on options for revisions to the child and adult testing protocols for poison prevention packaging.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301-492-6800.

Sheldon D. Butts,
Deputy Secretary.
July 24, 1987.

[FR Doc. 87-17270 Filed 7-27-87; 12:22 pm]
BILLING CODE 6355-01-M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, July 30, 1987.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

Methylene Chloride: Final Rule

The Commission will consider a final rule that, if issued, would declare products which contain methylene chloride to be hazardous substances under section 3(a) of the Federal Hazardous Substances Act.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207 301-492-6800.

Sheldon D. Butts,
Deputy Secretary.
July 24, 1987.

[FR Doc. 87-17271 Filed 7-27-87; 12:22 pm]
BILLING CODE 6355-01-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Monday, July 27, 1987 at 2:00 p.m.

PLACE: Room 117, 701 E Street NW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints:
   Certain Metallic Balloons (Docket Number 1401).
5. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523-0161.

Stephen McLaughlin,
Acting Secretary.
July 20, 1987.

[FR Doc. 87-17247 Filed 7-24-87; 4:23 pm]
BILLING CODE 7020-02-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of July 27, August 3, 10, and 17, 1987.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of July 27

Wednesday, July 29

10:00 a.m.
Briefing on Medical Use of Radioisotopes and the Medical Misadministration Rule (Public Meeting)
2:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, July 31

10:00 a.m.
Discussion of Pending Investigations (Closed—Ex. 5 & 7)

Week of August 3—Tentative

Tuesday, August 4

9:30 a.m.
Briefing on the Management of "Greater Than Class C Low Level Wastes" and the LLW Program (Public Meeting)
2:00 p.m.
Briefing on Performance of New Plants (Public Meeting)

Wednesday, August 5

10:00 a.m.
Briefing on Staff Response to Recommendations of the Materials Safety Review Group (Public Meeting)
2:00 p.m.
Briefing on the Status of B&W Reassessment (Public Meeting)

Thursday, August 6

2:00 p.m.
Periodic Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of August 10—Tentative

Tuesday, August 11

2:00 p.m.
Briefing on Final Plan for NUREG-0956 Uncertainty Areas (Source Term) (Public Meeting) (Tentative) (Postponed from July 21)

Thursday, August 13

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of August 17—Tentative

No Commission Meetings

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: Robert McOsker, (202) 634-1410.

Robert B. McOsker,
Office of the Secretary.
July 23, 1987.

[FR Doc. 87-17249 Filed 7-24-87; 4:32 pm]
BILLING CODE 7590-01-M

Corrections

Federal Register
Vol. 52, No. 145
Wednesday, July 29, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

National Park Service

Availability of Supplemental Environmental Assessment; Huntley Meadows Park, Fairfax County, VA

Correction

In notice document 87-16314 appearing on page 27265 in the issue of Monday, July 20, 1987, the heading to the document should have read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 36

[Docket No. 25206; Notice No. 87-2]

Noise Standards; Aircraft Type and Airworthiness Certification; SFAR 27; Fuel Venting and Exhaust Emission Requirements for Turbine Engine Powered Airplanes; Noise and Emission Standards for Aircraft Powered by Advanced Turboprop (Propfan) Engines; Reopening of Comment Period

Correction

In proposed rule document 87-16335 beginning on page 27304 in the issue of Monday, July 20, 1987, make the following correction:

On page 27305, in the third column, in the second from the last line, "Filed 7-7-87" should read "Filed 7-17-87".

BILLING CODE 1505-01-D

federal register

Wednesday
July 29, 1987

Part II

Information Security Oversight Office

32 CFR Part 2001
National Security Information; Final Rule

INFORMATION SECURITY OVERSIGHT OFFICE

32 CFR Part 2001

National Security Information

AGENCY: Information Security Oversight Office (ISOO).

ACTION: Final rule.

SUMMARY: This amendment to 32 CFR Part 2001 Subpart D establishes a new minimum standard for the storage of Top Secret information in locations outside the United States.

EFFECTIVE DATE: July 29, 1987.

FOR FURTHER INFORMATION CONTACT: Rudolph Waddy, Program Analyst, ISOO. Telephone: 202 535–7257.

SUPPLEMENTARY INFORMATION: ISOO is increasing the minimum standard for the protection of Top Secret information stored outside the United States. Part 2001 is issued pursuant to section 5.2(b)(1) of Executive Order 12356. ISOO has coordinated this amendment with the National Security Council and those agencies that will be primarily affected by it.

List of Subjects in 32 CFR Part 2001

Classified information, Executive orders, Information, National Security information, Security equipment, Security information.

23 CFR Part 2001 is amended as follows:

PART 2001—NATIONAL SECURITY INFORMATION

1. The authority citation for 32 CFR Part 2001 continues to read:

Authority: Sec. 5.2(b)(1) of E.O. 12356.

Subpart D—Safeguarding

2. Section 2001.43(a)(1) is revised to read as follows:

§ 2001.43 Storage [4.1(b)].

* * * * *

(a) *Minimum requirements for physical barriers*—(1) *Top Secret.* Top Secret information shall be stored in a GSA-approved security container with an approved, built-in, three-position, dial-type changeable combination lock; in a vault protected by an alarm system and response force; or in other types of storage facilities that meet the standards for Top Secret established under the provisions of § 2001.41. For Top Secret information stored outside the United States, one or more of the following supplementary controls is required:

(i) The area that houses the security container or vault shall be subject to the continuous protection of guard or duty personnel;

(ii) Guard or duty personnel shall inspect the security container or vault at least once every two hours; or

(iii) The security container or vault shall be controlled by an alarm system to which a force will respond in person within 15 minutes.

In addition, heads of agencies shall prescribe those supplementary controls deemed necessary to restrict unauthorized access to areas in which such information is stored both within and outside the United States.

* * * * *

Steven Garfinkel,

Director, Information Security Oversight Office.

July 24, 1987.

[FR Doc. 87–17196 Filed 7–28–87; 8:45 am]

BILLING CODE 6820-KC-M

federal register

Wednesday
July 29, 1987

Part III

Department of Education

34 CFR Part 644

Educational Opportunity Centers Program; Final Regulations

VOL 52 ISS 145 JL 29 1987 UMI

DEPARTMENT OF EDUCATION

34 CFR Part 644

Educational Opportunity Centers Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations for the Educational Opportunity Centers (EOC) Program. These amendments are needed to implement the changes made in the statute authorizing the EOC Program, Title IV–A–4 of the Higher Education Act of 1965 (HEA) by the Higher Education Amendments of 1986, Pub. L. 99–498.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the U.S. Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Dr. Daniel Davies, Division of Student Services, U.S. Department of Education, L'Enfant Plaza, P.O. Box 23772, Washington, DC 20026–3772. Telephone: (202) 732–4804.

SUPPLEMENTARY INFORMATION:

Background

The Educational Opportunity Centers (EOC) Program is authorized by Title IV–A–4 of the HEA. Under the program, the Secretary awards grants to enable grantees to provide eligible participants with information and assistance in applying for admission to institutions of postsecondary education and in applying for financial assistance to attend those institutions.

Explanation of Changes

The amended HEA eliminated the cost sharing requirement for the EOC Program and revised the definitions of a "veteran" and "first-generation college student." The latter definition was amended to address the situation where the student regularly resided with, and was supported by, only one parent. Section 646.6(b) has been revised to accommodate these two definitions.

Waiver of Notice of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)), and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, since these amendments incorporate only statutory or structural changes, public comment could have no effect on the content of the regulations. Therefore, the Secretary has determined that publication of a proposed rule is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B).

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these final regulations would not have a significant economic impact on a substantial number of small entities. These regulations are technical in nature, and amend existing regulations which have been previously determined not to have any significant impact on a substantial number of small entities.

Paperwork Reduction Act of 1980

These regulations have been examined under the Paperwork Reduction Act of 1980, and have been found to contain no information collection requirements.

Assessment of Educational Impact

The Secretary has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 644

Colleges and universities, Education, Disadvantaged students, Education of handicapped.

(Catalog of Federal Domestic Assistance Number 84.066—Educational Opportunity Centers Program).

Dated: July 13, 1987.

William J. Bennett,

Secretary of Education.

The Secretary amends Part 644 of Title 34 of the Code of Federal Regulations to read as follows:

PART 644—[AMENDED]

1. The authority citation of Part 644 is revised to read as follows:

Authority: 20 U.S.C. 1070d–1c.

§ 644.4 [Removed]

2. Section 644.4 is removed.

3. In § 644.6, paragraph (b) is amended by adding definitions of "first-generation college students" and "low-income individual" and revising the definition of "veteran" to read as follows:

§ 644.6 Definitions that apply to the Educational Opportunity Centers Program.

* * * * *

(b) * * *

"First-generation college student" or a "potential first-generation college student means—

(1) An individual both of whose parents did not complete a baccalaureate degree; or

(2) In the case of any individual who regularly resided with and received support from only one parent, an individual whose only such parent did not complete a baccalaureate degree.

* * * * *

"Low-income individual" means an individual whose family's taxable income did not exceed 150 percent of the poverty level in the calendar year preceding the year in which the individual participates in the project. Poverty level income is determined by using criteria of poverty established by the Bureau of the Census, U.S. Department of Commerce.

* * * * *

"Veteran" means a person who served on active duty—

(1) For a period of more than 180 days, any part of which occurred after January 31, 1955, and was discharged or released therefrom under conditions other than dishonorable; or

(2) After January 31, 1955, and was discharged or released therefrom because of a service connected disability.

* * * * *

§ 644.10 [Amended]

3. In § 644.10(b), the reference to a "Special Services project" is revised to read "Student Support Services project".

4. Section 644.20 is amended by adding a new paragraph (c) to read as follows:

§ 644.20 Assurances.

* * * * *

(c) An applicant shall submit as part of its application an assurance that at least two-thirds of the participants to be served by the project will be low-income individuals who are, or will be, first-generation college students.

* * * * *

§ 644.42 [Removed]

(5) Section 644.42 is removed.

[FR Doc. 87–17208 Filed 7–28–87; 8:45 am]

BILLING CODE 4000-01-M

federal register

Wednesday
July 29, 1987

Part IV

Department of Education

34 CFR Part 658

Undergraduate International Studies and Foreign Language Program; Final Regulations

VOL 52 ISS 145 JL 29 1987 UMI

DEPARTMENT OF EDUCATION

34 CFR Part 658

Undergraduate International Studies and Foreign Language Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Undergraduate International Studies and Foreign Language Program regulations in accordance with the provisions contained in the Higher Education Amendments of 1986, Pub. L. 99–498. These regulations will broaden the types of projects and activities the Secretary may fund under the program.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Joseph Belmonte, Acting Deputy Director, Center for International Education, U.S. Department of Education, 400 Maryland Avenue, SW, (Room 3054, ROB–3), SW., Washington, DC 20202. Telephone: (202) 732–3304.

SUPPLEMENTARY INFORMATION:

A. Background

The Undergraduate International Studies and Foreign Language Program is authorized under Title VI, section 604 of the Higher Education Act of 1965, as amended. The program is designed to provide grants to institutions of higher education, combinations of those institutions, and public and private nonprofit agencies and organizations, including professional and scholarly associations, to strengthen and improve undergraduate instruction in international studies and foreign languages in the United States.

B. Explanation of Changes

The Secretary is amending these regulations to implement the new statutory provisions in the Higher Education Amendments of 1986. These changes are as follows:

(1) The word "comprehensive" is deleted in § 658.10 (a), (b), and (c), in the introductory text to § 658.11, and in § 658.32 (b)(2)(i) and (c)(2)(ii).

(2) Section 658.11(g) is amended to insert, before the word "teacher", the phrase "pre-service and in-service."

C. Waiver of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to publish regulations in proposed form and to offer interested parties the opportunity to comment on the proposed regulations. However, because these new regulations reflect only statutory changes, the Secretary has determined that publication of this document as a proposed rule for public comment is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B).

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Paperwork Reduction Act of 1980

These final regulations do not contain any information collection requirements and are therefore not subject to the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) which govern those requirements.

Regulatory Flexibility Act Certification

The Secretary certifies that these final regulations would not have a significant economic impact on a substantial number of small entities. These regulations are technical in nature, and amend existing regulations which have been determined previously not to have any significant impact on a substantial number of small entities.

Assessment of Educational Impact

The Secretary has determined that the regulations in this document would not require transmission of information that is gathered by, or is available from, any other agency or authority of the United States.

List of Subjects in 34 CFR Part 658

Colleges and Universities, Education, Grant Programs—education, International education.

(Catalog of Federal Domestic Assistance Number 84.016, Undergraduate International Studies and Foreign Language Program)

Dated: July 13, 1987.

William J. Bennett,

Secretary of Education.

The Secretary amends Part 658 of Title 34 of the Code of Federal Regulations as follows:

PART 658—UNDERGRADUATE INTERNATIONAL STUDIES AND FOREIGN LANGUAGE PROGRAM

1. The authority citation for Part 658 is revised to read as follows:

Authority: 20 U.S.C. 1124, unless otherwise noted.

§ 658.10, § 658.11 and § 658.32 [Amended]

2. In Part 658, remove the word "comprehensive" in the following places:

(a) § 658.10(a), (b) introductory text, and (c) introductory text.

(b) § 658.11, introductory text.

(c) § 658.32(b)(2)(i), and (c)(2)(ii).

3. In § 658.11, paragraph (g) is revised to read as follows:

§ 658.11 What projects and activities may a grantee conduct under this program?

* * * * *

(g) Developing an international dimension in pre- and in-service teacher training; and

* * * * *

[FR Doc. 87–17209 Filed 7–28–87; 8:45 am]

BILLING CODE 4000-01-M

Wednesday
July 29, 1987

Part V

Department of Education

34 CFR Part 660

International Research and Studies Program; Final Regulations

federal register

VOL 52 ISS 145 JL 29 1987 UMI

DEPARTMENT OF EDUCATION

34 CFR Part 660

International Research and Studies Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the International Research and Studies Program regulations to conform the regulations to changes made to the statute governing the program, section 606 of the Higher Education Act of 1965, as amended (HEA), by the Higher Education Amendments of 1986, Pub. L. 99–498. These regulations will clarify and increase the types of projects and activities the Secretary may fund under the program.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Joseph Belmonte, Acting Deputy Director, Center for International Education, U.S. Department of Education, 400 Maryland Avenue SW. (Room 3054, ROB–3), Washington, DC 20202. Telephone: (202) 732–3304.

SUPPLEMENTARY INFORMATION:

A. Background

The International Research and Studies Program is authorized under section 606 of the Higher Education Act. The program is designed to enhance the international academic programs of American educational institutions through research and through the development of instructional materials concerning modern foreign languages and areas not commonly taught in such institutions.

B. Explanation of Changes

Before being amended, the statute authorizing the International Research and Studies Program cited three specific types of fundable research and studies. The Higher Educational Amendments of 1986 added a fourth, research and studies on the application of proficiency tests and standards across all areas of foreign language instruction and classroom use, and these activities have been added to § 660.1 and § 660.10. In addition, the Higher Education Amendments of 1986 authorized, as an allowable activity, the publication of specialized materials developed as a result of research conducted under this program, and § 660.10 has been amended accordingly.

Waiver of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232 (b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on the proposed regulations. However, the enactment of the Higher Education Amendments of 1986 requires the Secretary to revise certain program provisions. Since these regulations merely implement statutory amendments and do not establish substantive policy, the Secretary finds that publication of a proposed rule is unnecessary and contrary to the public interest under 5 U.S.C 553(b)(B).

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these final regulations would not have a significant economic impact on a substantial number of small entities. These regulations are technical in nature, and amend existing regulations which have been determined previously not to have any significant impact on a substantial number of small entities.

Paperwork Reduction Act of 1980

These final regulations do not contain any information collection requirements and are therefore not subject to the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) which govern those requirements.

Assessment of Educational Impact

The Secretary has determined that the regulations in this document would not require transmission of information that is gathered by, or is available from, any other agency or authority of the United States.

List of Subjects in 34 CFR Part 660

Colleges and universities, Education, Grant Programs—education, International research.

(Catalog of Federal Domestic Assistance Number 84.017: International Research and Studies Program)

Dated: July 13, 1987.

William J. Bennett,

Secretary of Education.

The Secretary amends Part 660 of Title 34 of the Code of Federal Regulations as follows:

PART 660—THE INTERNATIONAL RESEARCH AND STUDIES PROGRAM

1. The authority citation for Part 660 is revised to read as follows:

Authority: 20 U.S.C. 1125, unless otherwise noted.

2. In § 660.1, the word "and" is deleted at the end of paragraph (b), paragraph (c) is revised and redesignated as paragraph (d), and a new paragraph (c) is added to read as follows:

§ 660.1 What is the International Research and Studies Program?

* * * * *

(c) Research on the application of proficiency tests and standards across all areas of foreign language instruction and classroom use; and

(d) The development and publication of specialized materials for use in providing instruction and evaluation or for use in training individuals to provide instruction and evaluation.

(Authority: 20 U.S.C. 1125)

3. In § 660.10, paragraph (b) and the introductory text of paragraph (c) are revised to read as follows:

§ 660.10 What activities does the Secretary assist?

* * * * *

(b) Research and studies—

(1) On more effective methods of instruction in modern foreign languages, area studies, or related fields;

(2) To evaluate competency in those foreign languages, area studies, or related fields; or

(3) On the application of proficiency tests and standards across all areas of foreign language instruction and classroom use.

(c) The development and publication of specialized materials—

* * * * *

[FR Doc. 87–17210 Filed 7–28–87; 8:45 am]

BILLING CODE 4000-01-M

Federal Register

Wednesday
July 29, 1987

Part VI

Department of Education

34 CFR Part 661

Business and International Education Program; Final Regulations

VOL 52 ISS 145 JL 29 1987 UMI

DEPARTMENT OF EDUCATION

34 CFR Part 661

Business and International Education Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Business and International Education Program final regulations in accordance with the provisions contained in the Higher Education Amendments of 1986, Pub. L. 99-498. These regulations will broaden the types of projects and activities the Secretary may fund under the program.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Joseph Belmonte, Acting Deputy Director, Center for International Education, U.S. Department of Education, 400 Maryland Avenue, SW., (Room 3054, ROB-3), Washington, DC 20202. Telephone: (202) 732-3304.

SUPPLEMENTARY INFORMATION:

A. Background

The Business and International Education Program is authorized under Title VI, part B of the Higher Education Act of 1965, as amended (HEA). The program is designed to promote linkages between institutions of higher education and American businesses engaged in international economic activity.

B. Explanation of Changes

Before being amended by the Higher Education Amendments of 1986, Pub. L. 99-498, section 612(b) of the HEA listed nine specific fundable activities. The Higher Education Amendments of 1986 added a tenth activity to the list, internships overseas for foreign language students, and that activity has been added to the list of activities in § 661.10(j).

C. Waiver of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to publish regulations in proposed form and to offer interested parties the opportunity to comment on the proposed regulations. However, because these new regulations reflect only statutory changes, the Secretary has determined that publication of this document as a proposed rule for public comment is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B).

Executive Order 12291

The regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Paperwork Reduction Act of 1980

The final regulations do not contain any information collection requirements and are therefore not subject to the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) which govern those requirements.

Regulatory Flexibility Act Certification

The Secretary certifies that these final regulations would not have a significant economic impact on a substantial number of small entities. These regulations are technical in nature, and amend existing regulations which have been determined previously not to have any significant impact on a substantial number of small entities.

Assessment of Educational Impact

The Secretary has determined that the regulations in this document would not require transmission of information that is gathered by, or is available from, any other agency or authority of the United States.

List of Subjects in 34 CFR Part 661

Colleges and universities, Education, Educational study programs, Grant programs, International Education.

(Catalog of Federal Domestic Assistance Number 84.153: Business and International Education Program)

Dated: July 1, 1987.

William J. Bennett,

Secretary of Education.

The Secretary amends Part 661 of Title 34 of the Code of Federal Regulations as follows:

PART 661—BUSINESS AND INTERNATIONAL EDUCATION PROGRAM

1. The authority citation for Part 661 is revised to read as follows:

Authority: 20 U.S.C. 1130-1130b, unless otherwise noted.

2. In § 661.10, the word "and" after paragraph (h) and the period after paragraph (i) are removed, "; and" is added after paragraph (i), and a new paragraph (j) is added to read as follows:

§ 661.10 What activities does the Secretary assist under this program?

* * * * *

(j) The establishment of internships overseas to enable foreign language students to develop their foreign language skills and their knowledge of foreign cultures and societies.

(Authority: 20 U.S.C. 1130-1130b)

[FR Doc. 87-17211 Filed 7-28-87; 8:45 am]

BILLING CODE 7000-01-M

federal register

Wednesday
July 29, 1987

Part VII

Environmental Protection Agency

40 CFR Part 418

Fertilizer Manufacturing Point Source Category; Effluent Limitations Guidelines; Final Rule

VOL 52 ISS 145 JL 29 1987 UMI

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 418

[FRL 3225-4]

Fertilizer Manufacturing Point Source Category; Effluent Limitations Guidelines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule amends the applicability of the best practicable control technology currently available (BPT), the best available technology economically achievable (BAT), and the best conventional pollutant control technology (BCT) effluent limitations guidelines for the phosphate subcategory of the fertilizer manufacturing point source category. It excludes wet-process phosphoric acid processes that were under construction either on or before April 8, 1974, at plants located in the State of Louisiana from those effluent limitations guidelines. National Pollutant Discharge Elimination System (NPDES) permits for those processes will be developed on a case-by-case basis and will be based on technology-based requirements as determined by the best professional judgment (BPJ) of EPA and on applicable state water quality standards. The currently effective new source performance standards (NSPS) for the phosphate subcategory are not affected by this final rule.

DATES: This final rule is effective on July 31, 1987. This final rule shall be considered issued for purposes of judicial review at 1:00 p.m. Eastern time on July 29, 1987. Under section 509(b)(1) of the Clean Water Act, as amended, judicial review of this final rule can be made only by filing a petition for review in the United States Court of Appeals within 120 days after the rule is considered issued for purposes of judicial review.

ADDRESSES: The administrative record for this final rule is available for review in EPA's Public Reference Unit, Room 2404 (EPA Library), 401 M Street, SW., Washington, DC and at the EPA Region VI Office, Allied Bank Tower, 1445 Ross Avenue, Dallas, Texas 75202–2733. The EPA public information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Southworth, Industrial Technology Division (WH–552), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, Telephone: (202) 382–7150.

SUPPLEMENTARY INFORMATION:

Overview

This preamble describes the legal authority, background, and other aspects of the final rule. The abbreviations, acronyms, and other terms used in the preamble are defined in Appendix A.

Organization of this Preamble

I. Legal Authority
II. Scope of this Rulemaking
III. Background
IV. Alternative No Discharge Technologies Considered for the Final Rule
V. Final Amendment to the Regulation
VI. Public Participation and Response to Major Comments
VII. Availability of Technical Information
VIII. Effective Date
IX. Office of Management and Budget Review
X. List of Subjects
Appendix A—Abbreviations, Acronyms, and Other Terms Used in this Preamble

I. Legal Authority

This final rule is promulgated under authority of sections 301, 304, 307, 308, and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, as amended, 33 U.S.C. 1251 *et seq.*), and section 306(c) of the Water Quality Act of 1987, Pub. L. 100–4.

II. Scope of this Rulemaking

This final rule amends the applicability of the BPT, BAT, and BCT effluent limitations guidelines for the phosphate subcategory in the fertilizer manufacturing point source category. The rule excludes wet-process phosphoric acid processes that were under construction either on or before April 8, 1974, at plants located in Louisiana from those effluent limitations guidelines. Technology-based limitations in the National Pollutant Discharge Elimination System (NPDES) permits for the wet-process phosphoric acid processes at the Louisiana plants will be developed on a case-by-case basis and will be based on the best professional judgement (BPJ) of EPA. New source performance standards for the phosphate subcategory are not affected by this final rule.

III. Background

A. EPA Regulation

On April 8, 1974, EPA promulgated effluent limitations guidelines, pretreatment standards, and new source performance standards for wet-process phosphoric acid manufacturing processes (39 FR 12836). Those effluent limitations guidelines and standards were amended on May 19, 1976 (41 FR 20582) and on August 29, 1979 (44 FR 50742). Processes subject to the effluent limitations guidelines and standards are in the phosphate subcategory of the fertilizer manufacturing point source category.

Included in the effluent limitations guidelines for the phosphate subcategory are limitations based on the application of the best practicable control technology currently available (BPT) and limitations based on the application of the best available technology economically achievable (BAT) for wet-process phosphoric acid processes (40 CFR 418.12 and 418.13). EPA promulgated effluent limitations guidelines for wet-process phosphoric acid processes based on the application of the best conventional pollutant control technology (BCT) on August 29, 1979 (44 FR 50742, 40 CFR 418.17). The BCT effluent limitations guidelines were amended on June 2, 1980 (45 FR 37199).

The BPT effluent limitations guidelines require no discharge of process wastewater pollutants except that process wastewater may be discharged after treatment from a runoff facility designed, constructed, and operated to maintain a surge capacity equal to the volume of runoff from the 10-year, 24-hour storm event. The BAT and BCT effluent limitations guidelines also require no discharge of process wastewater pollutants except that process wastewater may be discharged after treatment from a runoff facility designed, constructed, and operated to maintain a surge capacity equal to the volume of runoff from the 25-year, 24-hour storm event. For all three guidelines, wastewater must be treated and discharged whenever the water level in the runoff facility equals or exceeds the midpoint level of the facility's surge capacity. The discharge from a runoff facility must meet the limitations for total phosphorus, fluoride, and total suspended solids in the guidelines.

B. Wet-Process Phosphoric Acid Processes

In the wet-process phosphoric acid process, phosphate rock is mixed with sulfuric acid to produce phosphoric acid, which is then processed into phosphate fertilizer. Approximately five tons of gypsum, a by-product of the wet-process phosphoric acid process are generated for each ton of phosphoric acid produced. Generally, the gypsum is disposed of as a waste.

At most plants, gypsum is disposed of on the land. It is pumped to a stack as a slurry. The transport water in the slurry

drains off the stack to a runoff facility and is usually recycled to the manufacturing process along with any storm water runoff from the stack. The gypsum remains on the stack permanently. A water balance for this disposal method is maintained by reuse of the transport water in the manufacturing process and by solar evaporation of water in the slurry pond on top of the gypsum stack and in the runoff facility. Because the transport water in the gypsum slurry is recycled to the manufacturing process, wet-process phosphoric acid processes do not discharge process wastewater as long as precipitation is not greater than evaporation. When the precipitation exceeds evaporation, the water that cannot be recycled to the manufacturing process is discharged after treatment.

There are four plants with wet-process phosphoric acid processes in Louisiana: Agrico Chemical Co. at Donaldsonville; Arcadian Corp. (formerly Allied Corp.) at Geismar; Beker Industries Corp. at Taft; and Freeport Chemical Corp. at Uncle Sam. All four plants are located on the Mississippi River between New Orleans and Baton Rouge. Wet-process phosphoric acid production operations at these plants began between 1966 and 1974. The plants use the wet-process phosphoric acid manufacturing process for which the effluent limitations guidelines were promulgated. The annual production rate of phosphoric acid for the four plants ranges from 160,000 tons for the smallest plant to 750,000 tons for the largest plant. These rates are within the range of production rates typical of plants in the rest of the industry.

C. Review of Regulation

As previously mentioned, the BPT, BAT, and BCT effluent limitations guidelines for the phosphoric subcategory require no discharge of process wastewater pollutants, except under certain conditions, for wet-process phosphoric acid processes. The technology basis for the guidelines is recycle of the wastewater, stacking of gypsum on the land, and two stage lime treatment of any discharge from a runoff facility.

In response to petitions from industry, EPA proposed on July 25, 1984 (49 FR 29977), to withdraw the effluent limitations guidelines for the wet-process phosphoric acid processes at the Louisiana plants. EPA based the proposed withdrawal on the premise that the original technology basis (i.e., land disposal of gypsum) for the effluent limitations guidelines was not available and economically achievable for all four Louisiana plants. In addition, the Agency was unable to identify any other available and economically achievable no discharge technology that could be used as the technology basis for the effluent limitations guidelines for the wet-process phosphoric acid processes at the four Louisiana plants at the present time.

On March 12, 1986, the Agency published a Notice of Availability and Request for Comments and a Notice of Public Hearing in the Federal Register (51 FR 8520). This notice announced the availability of new data for the review of the BPT, BAT, and BCT effluent limitations guidelines for the four plants and requested comments on those data. The notice also announced a public hearing on the proposed amendment and on draft NPDES permits for the wet-process phosphoric acid processes at the four plants in Louisiana.

EPA has reviewed and considered the numerous and varied public comments on the proposal and held public hearings on the proposal in April 1986. Some commenters agreed with the proposal to withdraw the effluent limitations guidelines while others argued that the effluent limitations guidelines are achievable and should not be withdrawn. Subsequent to the proposal, the Agency received additional information from the Louisiana plants on the period of time the plants could stack gypsum on available land and on the costs of treating the discharge from a runoff facility.

In February 1987, Congress enacted Pub. L. 100-4—The Water Quality Act of 1987 (the "WQA"). Section 306(c) of the WQA requires EPA to issue NPDES permits for the wet-process phosphoric acid processes at the Louisiana plants by August 4, 1987. The statute does not specify the effluent limitations that are to be included in the permits, but provides that the permits be issued pursuant to section 402(a)(1)(B) of the Act. Section 402(a)(1)(B) provides for the issuance of permits, prior to the promulgation of applicable regulations, that include "such conditions as the Administrator determines are necessary to carry out the provisions of this Act." Traditionally, in cases where no nationally applicable regulations exist, EPA has relied on the language in what is now section 402(a)(1)(B) to issue permits with effluent limitations based on the permit authority's best professional judgment ("BPJ") of what is required to meet the Act's technology-based requirements.

Section 306(c) of the WQA further specifies that it: (1) Does not require the Administrator to permit the discharge of gypsum; (2) does not affect the procedures and standards applicable to issuing permits; (3) and does not affect the authority of the state to deny or condition certification of the permits.

EPA is thus confronted with a statutory duty to issue NPDES permits for the wet-process phosphoric acid processes at the Louisiana plants by August 4, 1987. EPA is convinced that it is appropriate to issue those permits on a case-by-case basis, rather than base the permits on nationally-applicable effluent limitations guidelines. The WQA's mandate to issue permits under section 402(a)(1)(B) of the Act indicates Congress' intent that EPA establish permit limitations for the wet-process phosphoric acid processes at the four Louisiana plants on a BPJ basis. Moreover, EPA has some doubt that the current effluent limitations guidelines are economically achievable for the Louisiana plants. For example, some plants state that they can not continue to meet the no discharge requirement in the guidelines because they do not have enough land to stack gypsum for an extended period. The Agency could not identify any other technology that could be used as the basis for the no discharge requirement in the guidelines at this time. In addition, current information suggests that some of the plants may not be able economically to achieve the requirement in the guidelines to treat the discharge from a runoff facility.

EPA also prefers to regulate the wet-process phosphoric acid processes at the Louisiana plants on a BPJ basis, rather than by a national regulation, because the plants are located close to each other and are subject to regulation by the same permitting authority (EPA Region VI). Although the Agency did consider establishing a separate subcategory for the Louisiana plants, there are enough differences among the plants (particularly in the amount of land available to stack gypsum) that effluent limitations guidelines for all of the plants based on a single best available technology economically achievable are not appropriate. Finally, given the short time-frame that EPA has to issue the permits, the Agency believes it is better to devote resources to the development of case-by-case technology-based limitations based on BPJ rather than use those resources to develop new effluent limitations guidelines for the wet-process phosphoric acid processes at the Louisiana plants.

Therefore, EPA considers it preferable to develop the technology-based limitations for the wet-process phosphoric acid processes at the

Louisiana plants on a case-by-case basis. In each case, the limitations in the permits will be based on a determination of the best available technology economically achievable for a plant. The permits will also include more stringent conditions if necessary to comply with state water quality standards. Those permits, which will be issued by EPA Region VI, will be subject to an administrative review separate from the administrative review for this final amendment. EPA emphasizes that withdrawal of the guidelines does not necessarily mean the Louisiana plants will be allowed to discharge gypsum to the Mississippi River.

IV. Alternative No Discharge Technologies Considered for the Final Regulation

For reasons discussed above, EPA has decided to withdraw the effluent limitations guidelines for the wet-process phosphoric acid processes at the Louisiana plants and not to issue new guidelines for these processes. However, during the review of the current effluent limitations guidelines for the phosphate subcategory, the Agency considered other technologies that might be used as the technology basis for the no discharge requirement in the guidelines for the wet-process phosphoric acid processes at the four Louisiana plants. They are:

1. Barge gypsum either up or down the Mississippi River to an alternative site for land disposal.
2. Transport gypsum via a pipeline to an alternative site for land disposal.
3. Truck gypsum to an alternative site for land disposal.
4. Reuse the gypsum.
5. Stabilize the gypsum stacks using either fly ash, cement, or lime.
6. Dispose of the gypsum slurry by underground injection.
7. Stack gypsum in the wetlands adjacent to the plants.
8. Barge gypsum to the Gulf of Mexico for ocean disposal.

The Agency concluded that none of these alternatives are both technically and economically feasible as the technology basis for the no discharge requirement for the four Louisiana plants at this time. Alternatives 1 through 3 are not economically feasible. The other alternatives are not feasible for the reasons discussed below.

Several options were investigated for the reuse of gypsum (Alternative 4). They include: (a) To construct roads, (b) to condition soil, (c) to construct levees, and (d) to produce the sulfuric acid used in the phosphoric acid production process. Options a and b appear to be feasible with some constraints. However, even if gypsum could be used for those purposes, the demand for gypsum is not high enough to use all of the gypsum produced by the Louisiana plants.

Based on the results of a preliminary investigation, the U.S. Army Corps of Engineers (COE) advised EPA that gypsum probably will be unsuitable for levee construction. The COE found that a gypsum synthetic aggregrate was inferior to the material currently used in rock dikes (i.e., shell) because of the rapid deterioration of the aggregrate in water. They also found that gypsum most likely would not be cost-effective as a construction material for sand core levees because of the distance that gypsum would have to be hauled to the construction site.

Reuse of gypsum to produce sulfuric acid has been demonstrated in other countries. If the Louisiana plants decided to install the equipment to produce sulfuric acid, that installation most likely could not be completed within the next five years. Even if the equipment was installed, the plants would still have to dispose of a large amount of material that remains after the sulfuric acid is produced.

Alternatives 5 and 6 are not technically feasible. Stabilization of the gypsum stacks requires large quantities of material and increases the weight of the gypsum stack thus increasing the likelihood of more gypsum stack failures. Gypsum slurry injected underground most likely would plug the underground injection zone and result in negative environment impacts.

Alternative 7 would be to stack gypsum in the wetlands adjacent to the Louisiana plants. The stacking of gypsum in an environmentally sensitive area would require a permit under either section 402 or section 404 of the Clean Water Act. EPA cannot determine now whether such a permit would be issued or what requirements the permit would contain if it was issued.

Alternative 8 (ocean disposal of the gypsum) would require a permit under the Marine Protection, Research, and Sanctions Act (MPRSA), 33 U.S.C. 1401, et seq. No permit has ever been issued to dump materials such as gypsum into the ocean. In addition, there is no approved site for ocean disposal of these types of materials. Furthermore, section 104(i) of the MPRSA includes special requirements for issuance of a permit for materials with low levels of radioactivity, which may include the gypsum generated in the wet-process phosphoric acid processes at the Louisiana plants. Section 104(i) requires that an applicant for such a permit must submit a detailed Radioactive Material Disposal Impact Assessment. That section also states that EPA may not issue a permit for ocean dumping of such material unless and until Congress passes a joint resolution that authorizes EPA to issue the permit. At this time, EPA's regulations do not contain requirements for site designation, packaging, and site-monitoring for ocean disposal of low level radioactive waste. However, the Agency is in the process of revising the ocean dumping regulation, which should be proposed by the end of 1987. For these reasons, EPA has concluded that ocean disposal is most likely not an available alternative for the technology basis for the no discharge requirement for the Louisiana plants. The Agency notes, however, that if a permit were issued and if an approved site were available within 100 miles of the mouth of the Mississippi River, the estimated cost for this alternative expressed in terms of dollars per ton of phosphoric acid produced would be sufficiently close to the estimated profit per ton of phosphoric acid produced to suggest that this alternative may be economically achievable on a case-by-case basis.

V. Final Amendment to the Regulation

A. BPT, BAT, and BCT Effluent Limitations Guidelines

For the reasons set forth above, EPA is withdrawing the applicability of the BPT, BAT, and BCT effluent limitations guidelines for the phosphate category to wet-process phosphoric acid processes that were under construction either on or before April 8, 1974, at plants in Louisiana. NPDES permits will be written for those processes on a case-by-case basis and will be based on technology-based requirements as determined by the best professional judgment of EPA and on applicable state water quality standards. EPA's Region VI issued the draft NPDES permits for those processes and will develop final NPDES permits after considering comments on the draft permits from the public and from the State and local governments.

B. New Source Performance Standards

The existing new source performance standards (NSPS) for the phosphate subcategory are not affected by this final rule. New wet-process phosphoric

acid processes at plants in Louisiana must comply with the NSPS promulgated in 1974.

VI. Public Participation and Response to Major Comments

Industry and the public participated in the development of this final amendment to the phosphate subcategory effluent limitations guidelines. Following publication of the proposed guideline amendment in the Federal Register on July 25, 1984, the Agency provided the technology support documents for the proposal in the administrative record for the proposed amendment. A copy of the record was made available to the public at EPA's Headquarters in Washington, DC and at EPA's Region VI office in Dallas, Texas. The Agency also notified the public in a Federal Register notice dated March 12, 1986, about a public hearing on the proposed guideline amendment that was held on April 10, 1986, in Baton Rouge, Louisiana. In response to requests from the public, EPA held a second public hearing on the proposed amendment on April 11, 1986, in New Orleans, Louisiana.

The Agency received 56 letters with comments on the proposed guideline amendment during the comment period for the proposal. Approximately half of the letters supported the proposed guideline amendment and approximately one-third opposed the proposal amendment. The remainder of the letters either requested a second public hearing on the proposal or provided information.

The Agency received approximately 60 comments on the proposed guideline amendment during and after the public hearings in 1986. Most of those comments opposed the proposed amendment.

The comments that supported the proposed guideline amendment include: (1) The proposal prevents groundwater contamination because the plants no longer would have to stack gypsum on the land, (2) the proposal prevents waste of wetland and farmland because gypsum would not have to be stacked on the land, and (3) the proposal prevents the plants from closing because they have no more land for the disposal of gypsum. These comments imply that if the regulation is amended the four Louisiana plants could discharge the gypsum instead of stacking it on land. The Agency's proposed guideline amendment did not authorize the discharge of gypsum. It would have excluded the wet-process phosphoric acid processes from the current requirements in the effluent limitation guidelines, which would have allowed EPA to develop a BPJ permit for each plant.

The major issues raised by the commenters who opposed the proposed guideline amendment are: (1) Reuse should be used as the technology basis for no discharge of process wastewaters, (2) the Agency does not have legal authority to change the regulation and (3) exempting the Louisiana plants from the regulation gives them a competitive advantage. The Agency's responses to those comments are presented below.

Comments were also received at the public hearings concerning the water quality impacts of the draft NPDES permits. EPA Region VI will respond to those comments as part of the process to develop the final permits for the Louisiana plants.

A. Reuse

As previously mentioned, reuse of gypsum was considered as an alternative to achieve no discharge of process wastewater pollutants. However, the reuse options are either not feasible at this time or can not be used to dispose of the quantities of gypsum generated by the Louisiana plants. For these reasons, EPA concluded that reuse can not be used as the technology basis for a generally-applicable no discharge requirement at this time. Reuse may be considered in the future when reissuing BPJ NPDES permits for the wet-process phosphoric acid processes at the Louisiana plants.

B. Legal Authority

Some commenters argued that EPA does not have the legal authority to exclude the wet-process phosphoric acid processes at the Louisiana plants from the regulation and issue the plants permits based on BPJ. EPA does not believe that the Clean Water Act requires the wet-process phosphoric acid processes at the Louisiana plants to be regulated according to nationally-promulgated effluent limitations guidelines. The Agency has the discretion to choose the appropriate regulatory approach for the four Louisiana plants. Moreover, in section 306(c) of the WQA, Congress specified that those plants be regulated by case-by-case permits. As required by the Clean Water Act, those permits will contain effluent limitations based on appropriate technology-based requirements and on applicable state water quality standards. This final rule does not exempt the wet-process phosphoric acid processes at the Louisiana plants from any substantive or procedural statutory requirements imposed by the Clean Water Act.

C. Competitive Advantage

Some commenters indicated that the four Louisiana plants would gain a competitive advantage if they were excluded from the regulation. The withdrawal of the effluent limitations guidelines does not confer either a competitive advantage or competitive disadvantage. Even though the four plants would not have to comply with the regulation, they would have to comply with the technology-based BPJ permits for those plants. Thus, the competitive advantage question cannot be answered until the requirements in the individual permits are known.

VII. Availability of Technical Information

The major documents for this final amendment to the phosphate subcategory effluent limitations guidelines are: (1) *Technical Support Document—No Discharge Alternatives for Wet-Process Phosphoric Acid Processes at Louisiana Plants* (U.S. EPA, Washington, DC, July 1987), (2) *Economic Impact Analysis for Amendment to the Phosphate Fertilizer Effluent Guidelines,* (U.S. EPA, Washington, DC, July 1987), and (3) *Response to Public Comments on the Proposed Amendment to the Phosphate Subcategory Effluent Limitations Guidelines,* (U.S. EPA, Washington, DC, July 1987).

Copies of these documents are available for public review at the EPA Public Information Reference Unit, Room 2404 (EPA Library), 401 M Street, SW., Washington, DC and at the EPA Region VI Office, Allied Bank Tower, 1445 Ross Avenue, Dallas, Texas 75202–2733. The Administrative Record for this final rule is available for review at the Headquarters Public Information Reference Unit and at the EPA Region VI office. The EPA public information regulation (40 CFR Part 2) allows the Agency to charge a reasonable fee for copying.

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VIII. Effective Date

As noted above, this final rule is effective on July 31, 1987. This allows EPA Region VI to issue BPJ permits for the Louisiana plants within the time frame specified in section 306(c) of the WQA.

Under the Administrative Procedure Act (the "APA"), publication of a substantive rule must be made not less than 30 days before the effective date. However, the APA exempts from that requirement "a substantive rule which grants or recognizes an exemption or relieves a restriction" 5 U.S.C. 553(d)(1). Today's final rule falls within this exemption.

IX. Office of Management and Budget Review

This final rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Written comments made by OMB are in the Administrative Record for the final rule.

List of Subjects in 40 CFR Part 418

Fertilizer manufacturing, Phosphoric acid manufacturing, Water pollution control, Wastewater treatment and disposal.

Dated: July 24, 1987.

Lee M. Thomas,

Administrator.

Appendix A—Abbreviations, Acronyms, and Other Terms Used in This Preamble

Act—The Clean Water Act, as amended.

Agency—The U.S. Environmental Protection Agency.

BAT—The best available technology economically achievable under section 304(b)(2) of the Act.

BCT—The best conventional pollutant control technology, under section 304(b)(4) of the Act.

BPJ—Best professional judgment.

BPT—The best practical control technology currently available under section 304(b)(1) of the Act.

Clean Water Act—The Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 *et seq.*) as amended by the Clean Water Act of 1977 (Pub. L. 95–217), as further amended.

NPDES Permit—A National Pollutant Discharge Elimination System permit issued under section 402 of the Act.

NSPS—New source performance standards under section 306 of the Act.

WQA—The Water Quality Act of 1987, Pub. L. 100–4.

For the reasons set forth in the preamble, 40 CFR Part 418 is amended as follows:

PART 418—FERTILIZER MANUFACTURING POINT SOURCE CATEGORY

1. The authority citation for Part 418 is revised to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

2. Section 418.10 is revised to read as follows:

§ 418.10 Applicability; description of the phosphate subcategory.

The provisions of this subpart are applicable to discharges resulting from the manufacture of sulfuric acid by sulfur burning, wet-process phosphoric acid, normal superphosphate, triple superphosphate, and ammonium phosphate, except that the provisions of §§ 418.12, 418.13, and 418.17 shall not apply to wet-process phosphoric acid processes that were under construction either on or before April 8, 1974, at plants located in the State of Louisiana.

[FR Doc. 87–17315 Filed 7–28–87; 8:45 am]

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federal register

Wednesday
July 29, 1987

Part VIII

Legal Services Corporation

45 CFR Part 1612

Restrictions on Lobbying and Certain Other Activities; Final Rule and Request for Comments

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LEGAL SERVICES CORPORATION

45 CFR Part 1612

Restrictions on Lobbying and Certain Other Activities

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: On January 30, 1987, LSC's Board of Directors approved an amended version of Part 1612 of its regulations for final publication. A revised rule was necessary because the Corporation's FY 1987 appropriations acts (Pub. L. 99–500 and 99–591) prohibited the expenditure of LSC funds to implement or enforce either the 1984 or 1986 versions of Part 1612. The general purpose and effect of the amended Rule 1612 is to clarify restrictions on certain activities of legal services programs. These latest revisions principally address four areas of concern: Payment of dues to advocacy groups, recordkeeping, participation in programs with groups that lobby, and the use of private funds.

Congress has been given the fifteen-day notice required by section 606 of Pub. L. 99–180. This revision of Part 1612 will go into effect thirty days after publication in the Federal Register.

EFFECTIVE DATE: August 28, 1987.

FOR FURTHER INFORMATION CONTACT: Timothy B. Shea, General Counsel, 400 Virginia Avenue SW., Washington, DC 20024–2751, (202) 863–1823.

SUPPLEMENTARY INFORMATION: Notice of reconsideration of the final rule, as published on August 1, 1986, was published in the Federal Register on November 7, 1986 (51 FR 40422). Interested parties were given 30 days, until December 8, 1986, in which to submit comments. A total of 45 comments, 37 of which were timely, were received and considered by the Corporation. The comments were received from recipient program directors, state bar organizations, the American Bar Association and the academic community. Public comment was heard by the LSC Board's Operations and Regulations Committee on December 15, 1986, and on January 29, 1987. On January 29, the full Board considered and approved the final rule for publication.

In revising the regulation, which governs the array of legal services available to needy members of our communities, the purpose of the Board has been to clarify what programs can do, consistent with Congressional intent, in *bona fide* representation of eligible clients. To that end, the Board has, through the regulatory process, attempted to explicate and apply certain statutory restrictions. The significant changes effected by the regulation are summarized below. Excepting those parts of the Rule that have been eliminated or amended by the Board's action on January 29, 1987, and are discussed, *infra*, explanation of provisions of Part 1612, as set forth in the Preamble to the Final Rule published in the August 1, 1986 Federal Register (51 FR 27539–27548), is *pro tanto* retained and is herein incorporated by reference. Those sections of the 1986 Preamble which are no longer applicable are the discussions of: (1) The use of LSC funds to maintain separate offices, *see* 51 FR 27542; (2) the payment of dues with LSC funds, *id.* at 27542; (3) transportation costs, *id.* at 27543; (4) attendance at coalition meetings, *id.* at 27543; (5) the documentation requirements for § 1612.5 (c), (e) and (f), including discussion of the content of a client's retainer form and reports to a recipient's Board on the exhaustion of appropriate judicial and administrative relief, *id.* at 27543–27544; (6) the restrictions on the use of LSC funds for dissemination of publications to the public at large or eligible clients generally, *id.* at 27545; (7) the restrictions on organizing, but only to the extent that the discussion would exclude the organization of clients' councils, *id.* at 27546–27547; (8) timekeeping requirements, *id.* at 27547; and (9) private funds, but only to the extent that the discussion fails to recognize that the LSC Board has added three additional exceptions to the prohibition on using private funds for lobbying, *id.* at 27548.

The entire Rule, as revised, is republished for clarity and ease of use.

Section 1612.1 Definitions

The definition of "legislative activities" in § 1612.1(g) was amended to exclude adjudicatory proceedings or negotiations involving the *bona fide* representation of an eligible client with respect to a particular application, claim, or case.

The definition of "publicity and propaganda" in paragraph (m) has a brief amendment. The words "an indirect" have been changed to "amounts to a direct". The Corporation will, of course, be required to decide on a case-by-case basis whether the circumstances surrounding the communication, when taken as a whole, reasonably amount to a direct suggestion to the public to take part in proscribed activities. The words "pending or proposed" have been inserted before "legislation" in order that the language in the regulation more fully conform to that in the appropriations act.

The last sentence in the definition of prohibited "publicity or propaganda" has been added to clarify its scope. Excluded from the prohibition is neutral reporting of the content, status, or effect on eligible clients of pending or proposed legislation. The term "neutral reporting" has been added to make clear that advocacy reporting is not allowed. For instance, a newsletter article that appears to be fairly neutral in its report of legislation becomes prohibited advocacy if the reader is told how to contact his representative or the committee dealing with the legislation. Information on how to support or oppose legislation is also considered advocacy.

Section 1612.2 Legal Assistance Activities

The phrase "[e]xcept as hereinafter provided" refers to § 1612.13 which controls how private funds may be used.

Section 1612.3 Legislative Activity in General

This section delineates those activities which may not be funded with LSC money. Paragraph (a) which proscribed the use of funds to maintain separate offices for the sole purpose of engaging in political or legislative activities was deleted as unnecessary.

Former paragraph (b), now paragraph (a), was changed to allow the payment of dues to organizations which engage in, *inter alia*, political or legislative activities, provided the dues are not used to engage in legislative activities for which LSC funds cannot be directly used. The recipient retains the burden to show with appropriate documentation that LSC funds have not been improperly used. The prohibition in this paragraph does not apply to dues paid to certain bar associations such as national, state, and local bars that have a general purpose and general membership. This definition precludes payments to special interest bar associations such as the Federalist Society, the Republican National Lawyers' Association, or the National Legal Aid and Defender Association.

Paragraph (b), formerly paragraph (c), prohibits the use of LSC funds to pay the transportation costs to legislative or administrative proceedings except for a limited number of persons. LSC funds may be used to pay the transportation costs for recipient employees or law students, but only if they are directly engaged in permissible activities.

In order for employees to have their transportation paid for, they must be actually engaged in permitted legislative or administrative representation. Nevertheless, a new provision has been added making it permissible to use LSC funds to pay for transportation costs for employees if they are being trained to handle administrative adjudicatory proceedings, even if they are not actively involved in the proceedings.

Funds made available by the Corporation may also be used to pay transportation costs for the client and the client's family when necessary and appropriate. If is necessary and appropriate to use LSC funds to pay transportation costs, for example, when the client has an elderly parent or dependent children who cannot be left alone at home while the client attends the proceedings. This provision does not mean that any family member may have his costs paid for merely because the member is related to the client.

A suggestion that "lay advocates" have their transportation costs paid for was rejected, because the term is too vague.

Paragraph (f), formerly paragraph (g), was amended to focus on the purpose of the meeting, rather than the principal purpose of the coalition. If the principal purpose of a coalition meeting is to discuss or engage in legislative or political activities, program funds may not be used.

Section 1612.5 Permissible Activities on Behalf of Eligible Clients

The requirement in § 1612.5(b) that the program director document the need for relief to an eligible client has been deleted as unnecessary paperwork. Recipients are left to determine how best to properly prove compliance.

In paragraph (c) "eligible" was inserted before "client" to clarify that a client, in order to receive assistance from a program, must be "eligible" according to the requirements of Part 1611. A suggestion to drop the word "current" before "eligible client" was rejected. Language was also inserted adding "that client's" before "specific and distinct legal problems" in order to insure that the legal problems communicated are those of a specific, current, eligible client.

The type of testimony allowed before a legislative committee under this paragraph was broadened from testimony on the specific legal problems of the client to testimony *relating to* the legal problems of the client. The change accommodates the reality that when a person testifies before a legislative committee, it is difficult to limit the scope of inquiry.

The documentation requirements of paragraph (c) have also been changed. The requirement that the project director or chief executive make a prior determination that certain qualifications have been met to justify a communication under this paragraph has been changed to require the official's written approval after having determined that the delineated criteria have been met. This language better tracks the language in the appropriations act. One of the criteria to be considered has been moved from § 1612.5(e)(5) to § 1612.5(c)(3).

Several documentation requirements were deleted in paragraph (e). Still required are: (1) Preservation of the content of written communications, (2) the director's written approval of the communications, and (3) the client's retainer form. The information required in the retainer form has also been changed. Prior language required a statement by the client in his own words explaining the interest for which he seeks assistance. There was concern that the requirement would interfere with the attorney/client relationship. Because LSC experience has indicated that the retainer forms do not play a significant role in a monitoring effort, the provision has been amended to require only that the legal interest be identified by the client.

In paragraph (f) subsection (1) the requirement that the periodic reports to the governing body include a report on the exhaustion of appropriate judicial and administrative relief has been deleted to eliminate paperwork. The substantive requirement mandated by the appropriations act that judicial and administrative relief be explored and exhausted remains. If the Corporation should question a certain action, proof of judicial and administrative exhaustion may be required. The Boards of local programs are still encouraged to require such documentation.

In paragraph (g) the definition of "private relief bill" has been expanded to include a private relief bill "as defined by the legislative body to which the communication is addressed." This additional language recognizes that there are at least two types of private relief bills. One type provides for the direct compensation for claims against the government in cases where there is no other remedy. The second type waives sovereign immunity so that a citizen can take his case to court. Of course, LSC recognizes that an individual legislature may otherwise define bills affording private relief.

Two new subsections have been added to paragraph (h). Subsection (4) allows an employee to participate in meetings or serve on committees of bar associations as long as the participation does not include grassroots lobbying. Here, "bar associations" includes only those associations allowed under § 1612.3(a); that is, national, state and local bars that have a general purpose and general membership.

Subsection (5) allows a lawyer, pursuant to his duty to fully inform his client, to tell his client that he has a right to communicate with public officials.

Section 1612.6 Permissible Activities Undertaken Pursuant to Request of Public Officials

In paragraph (c) the words "specific concern" were added before the word "regulation". This use of this term is meant to indicate those instances where a public official requests information on a specific subject. This provision, for instance, excludes a request for information on a broad area such as the housing needs of the poverty population, but allows a response to a request for information on a specific issue such as whether public subsidy of low-rent housing or public subsidy of private home ownership is more costly. The intent of § 1612.6 is to allow informational responses by recipients. It is not the intent to allow recipient employees to become staff researchers for legislative offices.

Section 1612.7 Grassroots Lobbying

In paragraph (b), subsection (5) the word "allocable" replaces "incident". "Allocable" is considered to be a better accounting term. Paragraph (b) identifies the persons to whom communications paid for out of LSC funds may be sent. They may be sent to the Corporation, recipients, recipient staff and board members, private attorneys representing eligible clients, and eligible clients currently being represented on a matter directly related to the legislation. They may not be sent to the public at large or to eligible clients generally, unless all references in the communication to pending or proposed legislation are incidental to the topic of publication. A reference to legislation would not ordinarily be considered incidental if a newsletter discusses proposed agency regulations for many pages. On the other hand, an article that explains over several pages how agency hearings are held may correctly include a reference of several paragraphs to pending or proposed legislation that would change the procedure. However, if the incidental reference falls within the definition of "publicity and propaganda", it is a prohibited communication under this section.

Section 1612.10 Organizing

The last sentence in paragraph (a) has been added to make clear that the organizational provisions do not prohibit informational meetings among legal services staff. Getting people together to discuss common problems and concerns about different areas of law is not organizing, it is informational. Also, the prohibitions do not apply to organizations composed exclusively of eligible clients formed for the sole purpose of advising a legal services program about the delivery of legal services. Such an organization is a clients' council. Although the LSC Act prohibits organizing, it also encourages eligible client contribution and for years recipients have been permitted to organize clients' councils.

Section 1612.11 Accounting

All references to timekeeping and timekeeping requirements have been deleted. Although the Board has consistently expressed the view that timekeeping documentation should be required for documentation purposes, the Board decided to delete the requirements and will review the issue at a later date. The burden is still on recipients, however, to establish that all of their expenditures are proper. As a practical matter, this may require keeping time records.

Section 1612.12 Enforcement

The last sentence in § 1612.12(b) has been deleted. Instead, the reference to the Corporation's authority to recover costs under section 1630 has been integrated into the first sentence.

Section 1612.13 Private Funds

Consistent with its past policy and its understanding of pertinent statutory provisions, the Corporation believes, fundamentally, that private funds provided for the provision of legal assistance and LSC funds should be subject to the same restrictions. However, the Board has been persuaded to allow certain exceptions to this principle and to permit private funds to be used in the instances delineated in paragraphs (b), (c) and (d). Paragraph (b) allows a recipient to engage in certain legislative activities, but only if assistance is requested by a current eligible client. The recipient may not solicit the client. The legislative activities engaged in by the recipient must also be necessary to the provision of advice and representation to the client with respect to the client's legal rights and responsibilities. Thus, the recipient may bring the client's legal matter to a public official's attention, discuss solutions to the legal problem with the politician, write speeches, and work on committee reports. Grassroots lobbying is not, however, allowed under this provision.

Paragraph (c) allows a recipient to use private funds to pay reasonable annual dues to section 501(c)(3) organizations as long as the funds are not used for purposes prohibited by the Act and regulations adopted pursuant thereto.

Paragraph (d) allows the use of private funds to pay for publications that contain references to proposed or pending legislation. The two restrictions on the use of LSC funds for such publications delineated in § 1612.7 are not applicable here. Publications may be circulated to the public at large and to eligible clients generally, and references to pending or proposed legislation are not limited to being incidental to the topic of the publication. However, the publication may not contain any publicity or propaganda.

List of Subjects in 45 CFR Part 1612

Legal services, Restrictions on certain activities, Lobbying.

For the reasons set out in the preamble, 45 CFR Part 1612 is revised as follows:

PART 1612—RESTRICTIONS ON LOBBYING AND CERTAIN OTHER ACTIVITIES

Sec.

1612.1 Definitions.
1612.2 Legal assistance activities.
1612.3 Legislative activities in general.
1612.4 Legislative and administrative lobbying.
1612.5 Permissible activities on behalf of eligible clients.
1612.6 Permissible activities undertaken pursuant to request of public officials.
1612.7 Grassroots lobbying.
1612.8 Public demonstrations and activities.
1612.9 Training.
1612.10 Organizing.
1612.11 Accounting.
1612.12 Enforcement.
1612.13 Private funds.

Authority: Secs. 1006(b)(5), 1007(a) (5), (6) and (7), 1011, 1006(e), Legal Services Corporation Act of 1974, *as amended* (42 U.S.C. 2996e(b)(5), 2996f(a) (5), (6) and (7), 2996j, 2996g(e)); Pub. L. 95–431, 92 Stat. 1021; Pub. L. 96–68, 93 Stat. 416; Pub. L. 96–536, 94 Stat. 3166; Pub. L. 97–161, 96 Stat. 22; Pub. L. 97–377, 96 Stat. 1874; Pub. L. 98–166, 97 Stat. 1071; Pub. L. 98–160, 99 Stat. 1185.

§ 1612.1 Definitions.

(a) "Adjudicatory proceeding", as used in this part, means a proceeding by a Federal, State, or local agency, commission, authority or government corporation which makes a determination that is of particular rather than general applicability, that affects private rights or interests, and that results in a final disposition, whether affirmative, negative, injunctive, or declaratory in form. The term does not include rulemaking but does include licensing.

(b) "Administrative lobbying", as used in this part, means any personal service, advertisement, telegram, telephone communication, letter, printed or written matter, or other device, intended or designed to influence any decision by a Federal, State or local official, agency, commission, authority or government corporation.

(c) "Administrative representation", as used in this part, means administrative lobbying carried out on behalf of an eligible client.

(d) "Grassroots lobbying", as used in this part, means publicity or propaganda intended or designed to support or defeat legislation pending before Congress or before State, county, or municipal legislative bodies, including any commission, authority or government corporation with rulemaking authority, or intended or designed to influence any decision by a Federal, State, county, or municipal administrative body or intended or designed to influence any decision by the electorate on a measure submitted to it for a vote.

(e) "Legal assistance activities", as used in this part, means any activity—

(1) Carried out during working hours or while on official travel;

(2) Using resources provided by the Corporation or a recipient, directly or through a subrecipient; or

(3) That, in fact, provides legal advice or representation to an eligible client.

(f) "Legislation", as used in this part, means any action or proposal for action by Congress, by a State legislature, or by any other body of governmental, municipal or local officials, whether elected or appointed, (including any commission, authority or government corporation with rulemaking authority) formulating a rule for the future or formulating a statement of general or particular applicability and future effect which is designed to implement, interpret, or prescribe law or public policy. The term includes, but is not limited to, action on bills, constitutional amendments, rules, regulations, the ratification of treaties and intergovernmental agreements, approval of appointments and budgets, adoption of resolutions not having the force of law, and approval or disapproval of actions of the executive. It does not include those actions of a legislative body which adjudicate the rights of individuals under existing laws (such as

action taken by a local council sitting as a Board of Zoning Appeals).
"Legislature" as used herein does not include any Indian Tribal Council.

(g) "Legislative activities", as used in this part, means administrative, legislative, and grassroots lobbying and liaison activities; but does not include adjudicatory proceedings or negotiations directly involving a client's legal rights or responsibilities with respect to a particular application, claim or case.

(h) "Legislative lobbying", as used in this part, means any personal service, advertisement, telegram, telephone communication, letter, printed or written matter, or any other device directly or indirectly intended to influence any Member of Congress or any other Federal, State or local elected nonjudicial official—

(1) In connection with any Act, bill, resolution or similar legislation;

(2) In connection with any referendum, initiative, constitutional amendment, or any similar procedure of the Congress, any State legislature, any local council, or any similar governing body acting in a legislative capacity. The term "similar procedure" as used in this part refers to legislative consideration of matters which by law must be determined by a vote of the electorate or matters relating to the structure of government itself, such as reapportionment;

(3) In connection with inclusion of any provision in a legislative measure appropriating funds to, or defining or limiting the functions or authority of, the recipient or the Corporation; or

(4) In connection with the conduct of oversight proceedings concerning the recipient or the Corporation.

(i) "Legislative representation", as used in this part, means legislative lobbying carried out on behalf of an eligible client.

(j) "Liaison activities", as used in this part, means activities designed to facilitate administrative, legislative, or grassroots lobbying, and includes, but is not limited to, such activities as attending legislative sessions or committee hearings, gathering information regarding pending legislation, and analyzing the effect of pending legislation.

(k) "Political activities", as used in this part, means those activities intended either to influence the making, as distinguished from the administration, of public policy or to influence the electoral process. Political activities include favoring or opposing current or proposed public policy and also include administrative, legislative, and grassroots lobbying.

(l) "Public policy", as used in this part, means an overall plan embracing the general goals and acceptable procedures of any governmental body. Public policy includes but is not limited to statutes, rules, and regulations already enacted by a governmental body.

(m) "Publicity or propaganda", as used in this part, means any oral, written or electronically transmitted communication or any advertisement, telegram, letter, article, newsletter, or other printed or written matter or device which contains a direct suggestion, or, when taken as a whole, amounts to a direct suggestion to the public at large or to persons outside of the recipient program (other than a client or group of clients currently represented by a recipient with regard to a matter directly related to the legislation, or their counsel or co-counsel) to contact public officials in support of or in opposition to pending or proposed legislation, or to contribute to or participate in any demonstration, march, rally, fundraising drive, lobbying campaign, letter writing or telephone campaign for the purpose of influencing the course of such legislation. "Publicity or propaganda" does not include communications which are limited solely to neutral reporting of the content or status of pending or proposed legislation or the effect which such legislation may have on eligible clients or on their legal representation; provided, however, that such communications may not provide information about whom to contact or how to support or oppose such pending or proposed legislation.

(n) "Rulemaking", as used in this part, means an agency process for formulating, amending, or repealing legislation.

§ 1612.2 Legal assistance activities.

Except as hereinafter provided, the provisions of this part shall apply to all legal assistance activities carried out with funds made available by the Legal Services Corporation or private entities.

§ 1612.3 Legislative activities in general.

No funds made available by the Corporation shall be used to—

(a) Pay dues exceeding $100 per recipient per annum to any organization (other than a bar association), a purpose or function of which is to engage in political or legislative activities unless such dues are not used to engage in legislative activities for which LSC funds cannot be directly used. The burden shall be on each recipient to demonstrate through appropriate documentation that the prohibitions of this subparagraph have not been violated.

(b) Pay for transportation to legislative or administrative proceedings of persons other than employees, or law students directly engaged in the activities permitted under this section or witnesses entering appearances in such proceedings on behalf of clients of the recipient, except that this does not prohibit transportation of the client and the client's family where necessary and appropriate; this paragraph does not authorize payment of transportation expenses for employees not actually engaged in permitted legislative or administrative representation, unless they are being trained in how to handle administrative adjudicatory proceedings.

(c) Pay, in whole or in part, for the conduct of, or transportation to, an event if a primary purpose of the expenditure is to facilitate political or legislative activities or any activity which would be prohibited if conducted with funds made available by the Corporation;

(d) Pay for administrative or related costs associated with any activity prohibited by this part;

(e) Knowingly assist others to engage in legislative or political activities; provided, however, that this paragraph shall not be construed to prohibit the administrative or legislative representation permitted by § 1612.5; or

(f) Attend meetings of coalitions if a principal purpose of the meeting is to discuss or engage in legislative or political activities.

§ 1612.4 Legislative and administrative lobbying.

(a) None of the funds made available by the Legal Services Corporation may be used to pay for legislative lobbying as defined in § 1612.1(h)(2), (3), and (4).

(b) None of the funds made available by the Legal Services Corporation may be used to pay for legislative lobbying as defined in § 1612.1(h)(1) or for administrative lobbying as defined in § 1612.1(b), except as provided in §§ 1612.5 and 1612.6.

§ 1612.5 Permissible activities on behalf of eligible clients.

(a) An employee of a recipient may provide administrative representation for an eligible client in an adjudicatory proceeding or in negotiations directly involving that client's legal rights or responsibilities with respect to a particular application, claim or case.

(b) Notwithstanding anything in this part to the contrary, an employee of a recipient may provide legal assistance to a current eligible client in a rulemaking proceeding, consistent with

the practices of the particular administrative official or body, on a particular application, claim or case directly involving the client's legal rights or responsibilities.

(c) An employee of a recipient may, upon the request of a current eligible client or clients, communicate directly with Federal, State or local elected officials for the sole purpose of bringing that client's specific and distinct legal problems to the attention of such officials. This provision authorizes written or oral communications notifying public officials or legislative committees of the client's problems and of the legal obstacles to the client's obtaining judicial or administrative relief; testimony before pertinent legislative committees relating to the legal problems of the client; or the provision of a legal analysis of the client's problems to officials. It does not authorize publicity or propaganda or any efforts to persuade members of the public to support or oppose the proposed legislation. Such communications may be made only if the project director or chief executive of such recipient has given prior written approval for such communications after having determined:

(1) That the client or each such client is in need of relief that can be provided by the official or the legislative body with which the official is associated;

(2) That appropriate judicial and administrative relief has been exhausted; and

(3) That such communications are not the result of participation in a coordinated effort to communicate with elected officials on the subject matter.

(d) No employee shall solicit a client for the purpose of making legislative or administrative representation possible.

(e) In connection with each communication authorized by paragraph (c) of this section, the project director shall maintain the following documentation:

(1) The content of each such communication if the communication is in writing;

(2) The director's written approval of such communication;

(3) A retainer in the form specified in § 1611.8, setting forth the specific legal interest of each client as identified by the client at whose request the communication was undertaken.

(f) The governing body of a recipient shall adopt a policy to guide the director of the recipient in determining when to approve a communication to a Federal, State or local official under paragraph (e) of this section. The policy adopted shall:

(1) Consistent with restrictions on disclosure of confidential information imposed by applicable law, require periodic reports to the governing body on the communications approved;

(2) Ensure that staff does not solicit requests or undertake communications with elected officials nor participate in a coordinated effort to provide communications on a particular subject;

(3) Require that, in determining the amount of effort to be expended in preparing the communication, the director take into account the recipient's priorities in resource allocation.

(g) Notwithstanding the prohibition in paragraph (c) of this section of communications to elected officials that do more than bring a problem to the official's attention, a project director may approve communications to elected officials requesting introduction of specific "private relief bills" as defined by the legislative body to which the communication is addressed, or, if not defined, for purposes of this part means bills allowing specifically named persons or groups to make or to be compensated for claims against a government for which there is no other remedy. The documentation required under paragraph (e) of this section shall be maintained in connection with such communications.

(h) Nothing in this or any other section is intended to prohibit an employee from—

(1) Communicataing with a governmental agency for the purpose of obtaining information, clarification, or interpretation of the agency's rules, regulations practices, or policies;

(2) Informing a current client about a new or interpretation of the agency's rules, regulations, practices, or policies.

(2) Informing a current client about a new or proposed statute, executive order, or administrative regulation consistent with the provisions of § 1612.7;

(3) Communicating directly or indirectly with the Corporation for any purpose;

(4) Participating in meetings or serving on committees of bar associations, provided such participation does not include grassroots lobbying; or

(5) Informing a client of the client's right to communicate directly with an elected official.

§ 1612.6 Permissible activities undertaken pursuant to request of public officials.

(a) To the extent compatible with meeting the demands for client service and priorities set by the recipient pursuant to Part 1620 of these regulations or to the extent compatible with the provision of support services to recipients relating to the delivery of legal assistance, an employee may respond to a request from a governmental agency, elected official, legislative body, committee, or member made to the employee or to a recipient to testify, draft, or review legislation, or to make representations to such agency, official, body, committee, or member on a specific matter. This exception for responses to officials does not authorize communication with anyone other than the requesting party or an agent or employee of such party.

(b) No employee of the recipient shall, directly or indirectly, solicit or arrange a request from an official to testify or otherwise make representations in connection with legislation.

(c) Recipients shall adopt procedures and forms to document compliance with this section. Such documentation shall include contemporaneous documentation by the recipient which states the type of representation or assistance requested by the public official and identifies the specific concern, regulation, legislation, or executive or administrative order to be addressed.

§ 1612.7 Grassroots lobbying.

(a) No funds made available by the Corporation or by private entities shall be used for grassroots lobbying.

(b) No funds made available by the Corporation or by private entities shall be used to support the preparation, production, or dissemination of any article, newsletter, or other publication or written matter or other form of mass communication which contains any reference to proposed or pending legislation unless—

(1) The publication does not contain any publicity or propaganda;

(2) The publication does not contain directions on how to lobby generally or on particular legislation;

(3) The recipient's project director, or his or her designee, has reviewed each publication produced by the recipient prior to its dissemination for conformity to these regulations;

(4) The recipient provides a copy of any such material produced by the recipient to the Corporation within 30 days after publication; and

(5) Such funds are used only for costs allocable to the preparation, production, or dissemination of such publications to the Corporation, recipients, recipient staff and board members, private attorneys representing eligible clients, and eligible clients currently represented by a recipient with regard to a matter directly related to the legislation; but if the recipient circulates

the publication to the public at large, or eligible clients generally, any reference to pending or proposed legislation must be incidental to the topic of the publication.

§ 1612.8 Public demonstrations and activities.

(a) While carrying out legal assistance activities and while using resources provided by the Corporation, by private entities or by a recipient, directly or through a subrecipient, no person shall—

(1) Participate in any public demonstration, picketing, boycott, or strike, except as permitted by law in connection with the employee's own employment situation; or

(2) Encourage, direct, or coerce others to engage in such activities, or otherwise usurp or invade the rightful authority of a client to determine what course of action to follow.

(b) While carrying out legal assistance activities and while using resources provided by the Corporation, by private entities, or by a recipient, directly or through a subrecipient, no person shall at any time engage in or encourage others to engage in—

(1) Any rioting or civil disturbance;

(2) Any activity in violation of an outstanding injunction of any court of competent jurisdiction;

(3) Any other illegal activity; or

(4) Any intentional identification of the Corporation or any recipient with any political activity.

(c) Nothing in this section shall prohibit an attorney from—

(1) Informing and advising a client about legal alternatives to litigation or the lawful conduct thereof; or

(2) Taking such action on behalf of his client as may be required by his professional responsibilities or applicable law of any State or other jurisdiction.

§ 1612.9 Training.

(a) No funds made available by the Corporation or by private entities may be used for the purpose of supporting or conducting training programs that—

(1) Advocate particular public policies; or

(2) Encourage or facilitate political activities, labor or antilabor activities, boycotts, picketing, strikes or demonstrations, or the development of strategies to influence legislation or rulemaking; or

(3) Disseminate information about such policies or activities.

(b) To the extent compatible with meeting the demands for client service and priorities set by the recipient pursuant to Part 1620 of these regulations or to the extent compatible with the provision of support services to recipients relating to the delivery of legal assistance, nothing in this section shall be construed to prohibit any training of attorneys or paralegal personnel necessary for preparing them—

(1) To provide adequate legal assistance to eligible clients;

(2) To advise any eligible client as to the nature of the legislative process in general as opposed to discussing a lobbying strategy for a particular bill;

(3) To inform any eligible client of his rights under any statute, order or regulation already enacted, or about the meaning or significance of particular bills; or

(4) To understand what activities are permitted or prohibited under relevant laws and regulations.

(c) No funds made available by the Corporation or by private entities may be used to pay for participation by any person or organization in training with regard to political or legislative activities, except for adjudicatory proceedings, or with regard to areas in which program involvement is prohibited pursuant to the provisions of the Act, of other applicable Federal law, or of Corporation regulations, guidelines or instructions.

§ 1612.10 Organizing.

(a) No funds made available by the Corporation or by private entities may be used to initiate the formation, or to act as an organizer of any association, federation, labor union, coalition, network, alliance, or any similar entity. No funds may be employed for any communication or any meeting to advocate that anyone organize or join any organization. The term "communication" does not include advice given an individual client during the course of legal consultation. This paragraph shall not be construed to apply to informational meetings attended primarily by persons engaged in the delivery of legal services at which information about new developments in poverty law and pending cases or matters are discussed and shall not apply to organizations composed exclusively of eligible clients formed for the sole purpose of advising a legal services program about the delivery of legal services.

(b) To the extent compatible with meeting the demands for client service and priorities set by the recipient pursuant to Part 1620 of these regulations or to the extent compatible with the provision of support services to recipients relating to the delivery of legal assistance, this section shall not be interpreted to prevent recipients and their employees from providing legal advice or assistance to eligible clients who desire to plan, establish or operate organizations, such as by preparing articles of incorporation and by-laws.

§ 1612.11 Accounting.

(a) Recipients shall maintain separate records documenting the expenditure of funds for legislative activities. These records shall document the direct and indirect expenses, and the sources of the funds supporting all legislative activities, regardless of the sources of the funds employed.

(b) Recipients shall submit quarterly reports describing their legislative activities conducted pursuant to these regulations, together with such supporting documentation as specified by the Corporation, consistent with restrictions on disclosure of confidential or privileged information imposed by applicable law of any state or other jurisdiction. The Corporation may at any time specify the form in which these reports are to be submitted.

§ 1612.12 Enforcement.

(a) The Corporation shall have authority—

(1) To suspend or terminate the employment of an employee of the Corporation who violates the provisions of this part; and

(2) To impose such sanctions as are appropriate (including but not limited to recovery of questioned costs) for the enforcement of this regulation against a recipient which fails to ensure that its employees refrain from activities proscribed by the Act or by this part.

(b) The Corporation shall have authority in accordance with the procedures set forth in Parts 1606, 1618, 1623, 1625 and 1630 of these regulations to recover costs, suspend or terminate financial assistance, or deny refunding to a recipient which fails to ensure that its employees refrain from activities proscribed by the Act or by this part.

(c) A recipient shall—

(1) Advise employees about their responsibilities under this part; and

(2) Establish procedures for determining whether an employee has violated a provision of this part; and shall establish a policy, a copy of which shall be transmitted to the Corporation, for determining the appropriate sanction to be imposed for a violation, including—

(i) Administrative reprimand if a violation is found to be minor and unintentional, or otherwise affected by mitigating circumstances;

(ii) Suspension and termination of employment; and

(iii) Other sanctions appropriate for the enforcement of this regulation; and

(3) Inform the Office of Monitoring, Audit, and Compliance within 30 days of imposing any sanction on any person for violation of this part; and

(4) Make available to the Corporation the records of its investigation of any allegation of violations whether or not any sanctions were imposed. Such records shall be submitted on a quarterly basis to the Office of Monitoring, Audit, and Compliance.

§ 1612.13 Private funds.

(a) A recipient may use funds provided by private sources to engage in legislative or administrative lobbying if a government agency, elected official, legislative body, committee, or member thereof is considering a measure directly affecting activities under the Act of the recipient or the Corporation.

(b) A recipient may use private funds to engage in legislative activities (except for grassroots lobbying) at the request of a current eligible client of a recipient, to the extent such activities are necessary to the provision of legal advice and representation with respect to such client's legal rights and responsibilities, but no recipient shall solicit a client for the purpose of making such representation possible.

(c) A recipient may use private funds to pay reasonable annual dues to organizations which are tax exempt under section 501(c)(3) of the Internal Revenue Code, provided, however, that such funds may be used only for purposes otherwise permitted by the Act and all regulations adopted pursuant thereto.

(d) Private funds provided for the provision of legal assistance to eligible clients may be used to support the preparation, production, or dissemination of any article, newsletter, or other publication or written matter or other form of mass communication which contains references to proposed or pending legislation so long as the publication does not contain any publicity or propaganda.

Timothy B. Shea,

General Counsel.

[FR Doc. 87-17347 Filed 7-28-87; 9:41 am]

BILLING CODE 6820-36-M

LEGAL SERVICES CORPORATION

45 CFR Part 1612

Restrictions on Lobbying and Certain Other Activities

AGENCY: Legal Services Corporation.

ACTION: Request for comments.

SUMMARY: Part 1612 is published as a final rule elsewhere in this issue with an effective date of August 28, 1987. However, LSC intends to consider further the rule's restrictions on the use private funds set out in § 1612.13. Comments on § 1612.13 are, therefore, requested.

DATE: Comments on § 1612.13 should be submitted on or before August 28, 1987. Comments may be sent to the Office of General Counsel, Legal Services Corporation, 400 Virginia Avenue SW., Washington, DC 20024–2751, (202) 863–1823.

FOR FURTHER INFORMATION CONTACT: Timothy B. Shea, General Counsel, (202) 863–1823.

SUPPLEMENTARY INFORMATION: Elsewhere in this issue Part 1612 is published as final in the **Federal Register.** Section 1612.13 of that rule deals with the permissible uses of private funds by LSC recipients.

As explained in the preamble to the final rule, the Corporation fundamentally believes that private funds provided for the provision of legal assistance should be subject to the same restrictions as LSC funds. However, as a result of its deliberations, the Board has been persuaded to allow four exception to this principle which are set out in paragraphs (a)–(d). Pursuant to a recent Congressional request, the LSC Board intends to further consider comments on the private funds issue. Comments should be submitted to the Corporation on or before thirty days after the publication of this request for comments in the **Federal Register.**

Timothy B. Shea,

General Counsel.

[FR Doc. 87–17348 Filed 7–28–87; 9:41 am]

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AGENCY:
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Rules and Regulations

Federal Register
Vol. 52, No. 146
Thursday, July 30, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 401

[Doc. No. 0145A]

General Crop Insurance Regulations; Hybrid Sorghum Seed, Oat, Rye, Almond, Wheat and Barley Endorsements; Wheat and Barley Winter Coverage Options; Late Planting Agreement Option; and Prevented Planting Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) issues a new Part 401 in Chapter IV of Title 7 of the Code of Federal Regulations (CFR), effective for the 1988 and succeeding crop years, to contain one set of crop insurance regulations and a master policy of insurance applicable to all such regulations now contained in over 40 individual policies to cover insurance on that many different crops.

The intended effect of this rule is to provide a standard set of regulations and a master policy for insuring most crops authorized under the provisions of the Federal Crop Insurance Act, as amended, that will substantially reduce: (1) The time involved in amendment or revision; (2) the necessity of the present repetitious review process; and (3) the volume of paperwork processed by FCIC.

FCIC also adds ten new sections to be known as 401.101 (Wheat Endorsement), 401.102 (Wheat Winter Coverage Option), 401.103 (Barley Endorsement), 401.104 (Barley Winter Coverage Option), 401.105 (Oat Endorsement), 401.106 (Rye Endorsement), 401.107 (Late Planting Agreement Option), 401.108 (Prevented Planting Endorsement), 401.109 (Hybrid Sorghum Seed Endorsement), and 401.110 (Almond Endorsement), effective for the 1988 and succeeding crop years, containing the provisions for insuring hybrid sorghum seed, wheat, barley, oats, almonds, and rye, and the provisions for Late Planting Agreement and Prevented Planting. FCIC has proposed to amend 7 CFR Parts 418, 419, 427, 429, and 439 (52 FR 25015; 25381–25384) so that they are effective only through the 1987 crop year by separate document. The authority for the promulgation of this rule is the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: July 30, 1987.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is April 1, 1992.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

FCIC has published over 40 policies to cover insurance on that many different crops. Many of the regulations and policies contain identical language, which, if changed requires that over 40 different policies be changed, both in the Code of Federal Regulations (CFR) and the printed policy language. This repetition of effort is both inefficient and expensive. FCIC, therefore, issues in 7 CFR Part 401, one set of regulations and one master policy which will contain that language which is identical in most of the policies and regulations.

As revisions on individual policies are necessary, FCIC will publish a "crop endorsement" which will contain the language of the policy unique to that crop, and any exceptions to the master policy language necessary for that crop. When an endorsement is published in a section to Part 401, effective for a subsequent crop year, the present policy contained in a separate part of Chapter IV will be revoked at the end of the crop year then in effect and later removed and reserved.

Simultaneously with the issuance of a new 7 CFR Part 401, General Crop Insurance Regulations, FCIC also issues ten sections to be known as 401.101, 401.102, 401.103, 401.104, 401.105, 401.106, 401.107, 401.108, 401.109, and 401.110 (Wheat Endorsement; Wheat Winter Coverage Option; Barley Endorsement; Barley Winter Coverage Option; Oat Endorsement; Rye Endorsement; Late Planting Agreement Option; Prevented Planting Endorsement; Hybrid Sorghum Seed Endorsement; and Almond Endorsement; respectively), effective for the 1988 and succeeding crop years, containing the provisions for insuring hybrid sorghum seed, wheat, barley, oats, almonds, and rye, and applicable options, and provisions for late planting and prevented planting insurance.

With this final publication of 7 CFR Part 401 and §§ 401.101, 401.102, 401.103, 401.104, 401.105, 401.106, 401.107, 401.108,

401.109, and 401.110, the provisions for insuring wheat, barley, oats, rye, almonds, and winter coverage options for wheat and barley, and the provisions for late planting and prevented planting insurance contained therein will supersede those provisions contained in 7 CFR Parts 418, 419, 427, 429, 439, and 442 (the Wheat, Barley, Oat, Rye, Almond, and Prevented Planting Insurance regulations, respectively), and 7 CFR Part 400, Subpart A (the Late Planting Agreement Option), effective with the beginning of the 1988 crop year.

The provisions contained in the Prevented Planting Endorsement (7 CFR Part 442) apply to several crops not included in § 401.108 herein, therefore, the provisions of 7 CFR Part 442 will not be terminated until all crops covered by those provisions are transferred as endorsements to 7 CFR Part 401.

The provisions for insuring wheat and barley under the winter coverage option are new for the 1988 crop year and are being offered for the first time as adjuncts to the wheat and barley crop insurance endorsements.

The provisions contained in § 401.109, Hybrid Sorghum Seed Endorsement, are new and provide procedures for insuring hybrid sorghum seed for the first time.

In establishing the General Crop Insurance Regulations, FCIC has incorporated general insurance and policy provisions, presently found in all separately issued crop insurance regulations under 7 CFR Chapter IV, into 7 CFR Part 401.

Several new additions to the general insurance policy are found in § 401.8, as follows:

1. *Partnerships:* This issue is addressed in section 2.d. of the policy and provides that, unless the application clearly indicates that insurance is requested for a partnership or joint venture, insurance will cover only the crop share of the person making application for insurance. If insurance for a partnership or joint venture is requested, all general partners must be listed on the application.

2. *Dual Coverage:* Section 2.i. of the policy provides that you must not obtain any other crop insurance under the Federal Crop Insurance Act (Multiple Peril Crop Insurance Policy or Federal Crop Insurance Policy) on your share of the insured crop. More than one policy on your share may result in FCIC voiding the policies and collecting the premium. If we determine that the violation was inadvertent, the policy with the earliest date of application will be the one in force and all other policies will be void. However, the insured is still permitted to obtain other hail and fire insurance not issued under the Act.

3. *Food Security Act:* Although your violation of a number of federal statutes including the Federal Crop Insurance Act may cause cancellation, termination, or voidance of your insurance contract, FCIC includes cautionary language in section 2.j. of the policy to make all insureds aware that loss of crop insurance will result from violation of the provisions of the Food Security Act (the Act), referred to as the sodbuster, swampbuster, and controlled substance provisions, with respect to producing crops on highly erodible land or converted wetlands, or producing controlled substance crops. If you are found to be in violation of these provisions, we are required by the Act to cancel your insurance policy for the crop year in which the violation occurred, resulting in you losing all crop insurance benefits for that year. We will recover any and all money paid to you or received by you and your premium will be refunded.

4. *Interest Calculation on Non-Premium Debts:* Section 6.b. of the policy is rewritten to charge interest on non-premium debts in accordance with 31 U.S.C. 3717.

5. *Claim for Damages:* Section 9.1. of the policy describes the obligations of FCIC with respect to payment of damages (compensatory, punitive, or other), attorney fees, or other charges in connection with any claim for indemnity under FCIC's exemption from punitive and other damages which are not available in suits against FCIC. No policy of insurance either issued or reinsured by FCIC, will be the basis of a claim for damages which the FCIC would not be liable for unless the claimant establishes that the claim is based on the failure of a company selling FCIC insurance, or a company whose policies are reinsured by FCIC, or agents of those companies, to properly follow FCIC instructions and procedures, or unless the companies or agents were acting outside the scope of their authority.

6. *Meaning of Terms:* Section 17 of the policy, while incorporating and explaining terminology generally found in all present policies for crop insurance, now includes a variety of additional terms which should be noted by the insured for purposes of clarity and clear understanding of the policy provisions. Of particular note in section 17 are the conditions for the further division of the insurance unit according to applicable guidelines provided by the actuarial table on file in the service office. Crop endorsements may provide that the unit may be divided into more than one unit if you agree to pay additional premium as provided for by the actuarial table, and abide by certain conditions for each proposed unit.

7. *Dates, Reports, and Notices:* Special notations are contained in section 21 of the policy for the information of the insured regarding important dates which should be met under the policy, required reports which must be filed to comply with insurance provisions, and special notices which must be submitted to FCIC in order to be eligible for the program's benefits.

In adding each new endorsement for wheat, barley, oats, almonds, and rye as outlined below, FCIC has made several changes in the provisions for insuring each crop. Additional minor editorial changes have been made to improve compatibility with the new general crop insurance policy. These changes do not affect meaning or intent of the provisions.

The Wheat Endorsement (Section 401.101)

The principal changes in contract provisions contained in the wheat endorsement are as follows:

1. Section 1.—Add a provision to specify that wheat destroyed in order to comply with an ASCS program will not be insured. This provision is added to prevent insurance from attaching to wheat not intended for harvest as grain but for grazing and eventual destruction to comply with an ASCS program.

2. Section 4.—Provide that insurance will begin on each unit or portion of a unit. This change is made to avoid instances when delayed planting of part of a unit until after the final planting date would prevent insurance from attaching on timely planted acreage.

3. Section 5.—Add unit division guidelines and add a clause to specify that division of units may result in the insured paying additional premium for guideline unit division in accordance with actuarial studies which show an increased risk when units are divided.

4. Section 7.—Clarify that appraised production to be counted on irrigated acreage will include production lost due to inadequate irrigation not caused by an insurable cause of loss. This change will eliminate continued problems associated with the determination of production to count when there is inadequate irrigation. The number of green garlic bulblets allowed for quality adjustment has been reduced from 6 to 2. This special grade change is made in accordance with the changes in the U.S. grain standards.

5. Section 8.—Change the cancellation and termination dates to April 15 in Big Horn, Fremont, Hot Springs, Park, and Washakie counties, Wyoming.

6. Section 10.—Add definitions for "Adequate stand" and "Harvest."

The Barley Endorsement (Section 401.103)

The principal changes in contract provisions contained in the barley endorsement are as follows:

1. Section 1.—Add a provision to specify that barley destroyed in order to comply with an ASCS program will not be insured. This provision is added to prevent insurance from attaching to barley not intended for harvest as grain but for grazing and eventual destruction to comply with an ASCS program.

2. Section 4.—Provide that insurance will begin on each unit or portion of a unit. This change is made to avoid instances when delayed planting of part of a unit until after the final planting date would prevent insurance from attaching on timely planted acreage.

3. Section 5.—Add unit division guidelines and add a clause to specify that division of units may result in the insured paying additional premium for guideline unit division in accordance with actuarial studies which show an increased risk when units are divided.

4. Section 7.—Clarify that appraised production to be counted on irrigated acreage will include production lost due to inadequate irrigation not caused by an insurable cause of loss. This change will eliminate continued problems associated with determination of production to count when there is inadequate irrigation.

5. Section 10.—Add definitions for "Adequate stand" and "Harvest."

The Oat Endorsement (Section 401.105)

The principal changes in contract provisions contained in the oat endorsement are as follows:

1. Section 1.—Remove silage and hay as insurable under the oat policy. Add a provision to specify that oats destroyed in order to comply with an ASCS program will not be insured. This provision is added to prevent insurance from attaching to oats not intended for harvest as grain but for grazing and eventual destruction to comply with an ASCS program.

2. Section 4.—Provide that insurance will begin on each unit or portion of a unit. This change is made to avoid instances when delayed planting of part of a unit until after the final planting date would prevent insurance from attaching on timely planted acreage.

3. Section 5.—Add unit division guidelines and add a clause to specify that division of units may result in the insured paying additional premium for guideline unit division in accordance with actuarial studies which show an increased risk when units are divided.

4. Section 7.—Clarify that appraised production to be counted on irrigated acreage will include production lost due to inadequate irrigation not caused by an insurable cause of loss. This change will eliminate continued problems associated with determination of production to count when there is inadequate irrigation.

5. Section 10.—Add definitions for "Adequate stand" and "Harvest."

The Rye Endorsement (Section 401.106)

The principal changes in contract provisions contained in the rye endorsement are as follows:

1. Section 1.—Add a provision to require mechanical incorporation of the seed into the soil.

2. Section 4.—Provide that insurance will begin on each unit or portion of a unit. This change is made to avoid instances when delayed planting of part of a unit until after the final planting date would prevent insurance from attaching on timely planted acreage.

3. Section 5.—Add unit division guidelines and add a clause to specify that division of units may result in the insured paying additional premium for guideline unit division in accordance with actuarial studies which show an increased risk when units are divided.

4. Section 6.—Add a provision requiring a producer to provide written notice if the rye is to be harvested for silage or hay.

5. Section 7.—Clarify that appraised production to be counted on irrigated acreage will include production lost due to inadequate irrigation not caused by an insurable cause of loss. This change will eliminate continued problems associated with determination of production to count when there is inadequate irrigation.

6. Section 8.—Change the Cancellation and Termination dates to September 30 for all states.

7. Section 10.—Add definitions for "Adequate stand" and "Harvest."

The Late Planting Agreement Option (Section 401.107)

The provisions contained in 7 CFR Part 400, Subpart A, the Late Planting Agreement Option, are duplicated herein in order to become effective when elected by producers under the endorsements for those crops which are eligible for the Late Planting Agreement Option.

In adding provisions for late planting as a new § 401.107 herein, no changes are made to the provisions (contained in 7 CFR Part 400, Subpart A), and only minor editorial changes have been made to provide compatibility with the new general crop insurance policy.

The Prevented Planting Endorsement (Section 401.108)

The provisions contained in 7 CFR Part 442, the Prevented Planting Endorsement, are duplicated herein in order to become effective when elected by producers under the endorsements for those crops which are eligible for the Prevented Planting Endorsement.

In adding provisions for prevented planting as a new section 401.108 herein, no changes are made to the provisions and only minor editorial changes have been made to provide compatibility with the new general crop insurance policy.

The Hybrid Sorghum Seed Endorsement (Section 401.109)

The provisions of the Hybrid Sorghum Seed Endorsement are herein offered for the first time, effective for the 1988 crop year.

The Hybrid Sorghum Seed Endorsement is designed to complement the grain sorghum program already in effect while providing insurance coverage in certain areas where hybrid grain sorghum seed is produced.

The Almond Endorsement (Section 401.110)

The principal changes in contract provisions contained in the almond endorsement are as follows:

1. Section 3.—Change the acreage reporting date from December 31 to January 15. The sales closing date is December 31. The December 31 acreage reporting date did not allow any time between sales closing and acreage reporting.

2. Section 5.—Change the date insurance attaches from December 11 to January 1. This date is changed because in the 1988 policy insurance attached for the next crop year before the cancellation date.

3. Section 6.—Add unit division guidelines and add a clause to specify that division of units may result in the insured paying additional premium for guideline unit division in accordance with actuarial studies which show an increased risk when units are divided.

4. Section 10.—Replace the definition of "contiguous land" with "non-contiguous land." Non-contiguous land is used as a criterion for unit division

5. Section 10.—Redefine "total meat pounds" to include rejects.

On Friday, June 12, 1987, FCIC published a notice of proposed rulemaking in the **Federal Register** at 52 FR 22476, to issue a new Part 401 in Chapter IV of Title 7, Code of Federal

Regulations for the purpose of providing a standard set of regulations and a master policy for insuring most crops authorized under the provisions of the Federal Crop Insurance Act, as amended, effective for the 1988 and succeeding crop years. In addition, FCIC also added ten new sections to be known as 401.101 (Wheat Endorsement), 401.102 (Wheat Winter Coverage Option), 401.103 (Barley Endorsement), 401.104 (Barley Winter Coverage Option), 401.105 (Oat Endorsement), 401.106 (Rye Endorsement), 401.107 (Late Planting Agreement Option), 401.108 (Prevented Planting Endorsement), 401.109 (Hybrid Sorghum Seed Endorsement), and 401.110 (Almond Endorsement), effective for the 1988 and succeeding crop years, containing the provisions for insuring hybrid sorghum seed, wheat, barley, oats, almonds, and rye, and the provisions for Late Planting Agreement and Prevented Planting. FCIC will propose to amend the title of 7 CFR Part 400, Subpart A; 7 CFR Parts 418, 419, 427, 429, 439, and 442, so that they are effective only through the 1987 crop year by separate document.

The public was given 30 days in which to submit written comments, data, and opinions on this proposed rule. FCIC received nine comments on its proposed rule: One from the California Almond Growers Exchange, six from Kansas wheat producers, one from a Member of Congress and one from the American Farm Bureau Federation. FCIC addresses these comments as follows:

1. The comment by the California Almond Growers Exchange addressed its concern about the appropriateness of the unit division guidelines for almonds. Commenter recommends growers have the option of applying for separate coverage on any acreage for which they maintain separate records. It is commenter's view that the requirement that land be non-contiguous in order to be divided into units is overly restrictive.

The comment assumes that a change has been made in requirements for unit division. However, unit requirements for almonds have not changed since the inception of the almond insurance program. Only non-contiguous land for which separate production records have been provided is eligible for unit division. The unit division guidelines for almonds does provide for separate coverage on any acreage for which the insured maintains separate records and such acreage is located on non-contiguous land. The comment does not necessitate a change in the proposed rule.

2. The six comments by the wheat producers, which were identical in content, and the comment by the one Member of Congress expressed concern in regard to premium surcharges for guideline unit division. The commenters pointed out that the loss ratio for wheat in Kansas for the period 1948 through 1984 was .79 and for all insurance in Kansas for the period 1948 through 1985 was .88. They indicated that unit division was allowed during this period.

The actuarial studies conducted by the Corporation show that the loss ratio is greater when units are divided under unit division guidelines. Since losses increase when units are divided the rates must be adjusted to reflect that increase in order to meet the statutory requirement that the program be actuarially sound. The question to be addressed by the Corporation is whether to spread that increase over all policies (as has been the practice to this time), or whether to charge that increase only to those producers who receive the benefit and cause the increase (those who divide units). The Corporation has determined that the rate increase should be borne by those who use that provision of the policy. Therefore this provision of the wheat endorsement has not been changed.

The second concern of the commenters is on the provision which makes a crop planted on land on which a crop has not been planted and harvested in at least one of the three previous years ineligible for crop insurance. The commenters point out that this provision would make crops following alfalfa or clover ineligible for insurance.

FCIC agrees that the policy language should be changed to allow insurance for perennial crop rotations. Therefore, section 2.(e)(11) of the general crop insurance policy has been changed to reflect that acreage previously in a soil conserving legume crop will be insurable.

3. The comment from the American Farm Bureau Federation addressed the provision in the general policy calling for an interest rate on past due premium payments of 1¼% per month. They thought that at the present cost of money to the Treasury, this rate was somewhat excessive and that by placing a rate in the policy, we were requiring periodic review to determine if the rate properly reflects the costs of money to the Corporation. At the same time they recognized that some interest rate penalty may be necessary to encourage payment of premium when due. They suggested a monthly rate of 1½ times the interest rate established by the Secretary of the Treasury.

The Corporation has determined not to adopt this suggestion. Although the present interest rate of 1¼% per month (15% per annum) is higher than the Renegotiation Board Rate set semi-annually by the Secretary of the Treasury (now 8.6725% per annum) the FCIC rate takes into consideration the length of time that the insured does not pay any interest. Under the policy, the premium is due and payable at the time insurance attaches (usually when the crop is planted). However, interest does not start to accrue until one month after the billing date (the billing date is usually around harvest time). The FCIC rate takes into account this interest-free period for those producers who choose to delay the payment of their premium past the time allowed by the contractual terms. If FCIC followed the normal insurance practice, it would collect the premium at the time insurance attaches. If the Corporation decided to finance the insurance, it could charge interest from that date at the Renegotiation Board Rate and assess a late charge as a penalty to encourage payment after the credit period.

The Corporation is required to periodically review all of its regulations and contracts including the interest rate provision. The rate was reduced recently from 18% to 15% per annum. One of the basis for this reduction was the reduction in the cost of money to the Corporation.

The present method of establishing the rate of interest has the further advantage of advising the insured, at the time of application of the rate of interest which will be charged. The rate in the policy is the rate used by the Corporation for the crop year when insurance attached and does not change in response to the Treasury rate. It is readily available to the insured and does not change every six months in response to an index over which the insured has no control.

The Corporation periodically reexamines its premium collection procedure. Should the philosophy of this procedure change at a later date, the interest collection rate and procedure will form a part of that change.

Therefore, with the exception of the change in section 2.(e)(11) as noted above, minor changes to clarify the meaning or intent of some policy provisions and editorial changes, the proposed rule is adopted as final.

Since policy changes must be on file by July 30, 1987, good cause is shown for making this rule effective in less than 30 days.

List of Subjects in 7 CFR Part 401

Crop insurance, Wheat endorsement, Wheat endorsement (Winter Coverage

Option), Barley endorsement, Barley endorsement (Winter Coverage Option), Oat endorsement, Rye endorsement, Late planting agreement option, Prevented planting endorsement, Hybrid sorghum seed endorsement, and Almond endorsement.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation (FCIC) adds a new Part 401, effective for the 1988 and subsequent contract years, as follows:

PART 401—GENERAL CROP INSURANCE REGULATIONS—REGULATIONS FOR THE 1988 AND SUBSEQUENT CONTRACT YEARS

Sec.

401.1 Applicability.
401.2 Availability of federal crop insurance.
401.3 Premium rates, production guarantees or amounts of insurance, coverage levels, and prices at which indemnities shall be computed.
401.4 OMB control numbers.
401.5 Creditors.
401.6 Good faith reliance on misrepresentation.
401.7 The contract.
401.8 The application and policy.
401.9–401.100 [Reserved]
401.101 Wheat endorsement.
401.102 Wheat (Winter Coverage Option).
401.103 Barley endorsement.
401.104 Barley (Winter Coverage Option).
401.105 Oat endorsement.
401.106 Rye endorsement.
401.107 Late planting agreement option.
401.108 Prevented planting endorsement.
401.109 Hybrid sorghum seed endorsement.
401 110 Almond endorsement.

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

§ 401.1 Applicability.

The provisions of this part are applicable only to crops for which a crop endorsement is published as a section to 7 CFR Part 401 and then only for the crops and crop years designated by the applicable section.

§ 401.2 Availability of federal crop insurance.

(a) Insurance shall be offered under the provisions of this section on the insured crop in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended (the Act). The crops and counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

(b) The insurance is offered through two methods. First, the Corporation offers the contract contained in this part directly to the insured through agents of the Corporation. Those contracts are specifically identified as being offered by the Federal Crop Insurance Corporation. Second, companies reinsured by the Corporation offer contracts containing substantially the same terms and conditions as the contract set out in this part. These contracts are clearly identified as being reinsured by the Corporation.

(c) No person may have in force more than one contract on the same crop for the crop year, whether insured by the Corporation or insured by a company which is reinsured by the Corporation

(d) If a person has more than one contract under the Act outstanding on the same crop for the same crop year, all such contracts shall be voided for that crop year and the person will be liable for the premium on all contracts, unless the person can show to the satisfaction of the Corporation that the multiple contract insurance was inadvertent and without the fault of the person.

(e) If the multiple contract insurance is shown to be inadvertent and without the fault of the insured, the contract with the earliest application will be valid and all other contracts on that crop for that crop year will be cancelled. No liability for indemnity or premium will attach to the contracts so cancelled.

(f) The person must repay all amounts received in violation of this section with interest at the rate contained in the contract for delinquent premiums.

(g) An insured whose contract with the Corporation or with a company reinsured by the Corporation under the Act has been terminated because of violation of the terms of the contract is not eligible to obtain multi-peril crop insurance under the Act with the Corporation or with a company reinsured by the Corporation unless the insured can show that the default in the prior contract was cured prior to the sales closing date of the contract applied for or unless the insured can show that the termination was improper and should not result in subsequent ineligibility

(h) All applicants for insurance under the Act must advise the agent, in writing, at the time of application, of any previous applications for insurance under the Act and the present status of any such applications or insurance.

§ 401.3 Premium rates, production guarantees or amounts of insurance, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees or amounts of insurance, coverage levels, and prices at which indemnities shall be computed for the insured crop which will be included in the actuarial table on file in the applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect an amount of insurance or a coverage level and price from among those contained in the actuarial table for the crop year.

§ 401.4 OMB control numbers.

OMB control numbers are contained in Subpart H to Part 400 in Title 7 CFR.

§ 401.5 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 401.6 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the crop insurance contract, whenever:

(a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation:

(1) Is indebted to the Corporation for additional premiums; or

(2) Has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and

(b) The Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds that:

(1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice;

(2) Said insured relied thereon in good faith; and

(3) To require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Requests for relief under this section must be submitted to the Corporation in writing.

§ 401.7 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the crop as provided in the policy and the crop endorsement. The contract shall consist of the application, the policy, the crop endorsement and any amendments thereto, and the county actuarial table. Changes made in the contract shall not affect its continuity from year to year. No indemnity shall be paid unless the insured complies with all terms and conditions of the contract. The forms referred to in the contract are available at the applicable service offices.

§ 401.8 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation must be made by any person who wishes to participate in the program, to cover such person's share in the insured crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable sales closing date on file in the service office.

(b) The Corporation may reject or discontinue the acceptance of applications in any county or of any individual application upon its determination that the insurance risk is excessive. The Manager of the Corporation is authorized in any crop year to extend the sales closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the Federal Register upon the Manager's determination that no adverse selectivity will result during the extended period. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in previous policies and regulations issued by FCIC, a contract in the form provided for in this section will come into effect as a continuation of the contract issued under such prior regulations, without the filing of a new application.

(d) The application is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37 and 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Crop Insurance Policy are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

General Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.)

Note.—This is a contract with the Federal Crop Insurance Corporation, a United States Government agency. The terms of the contract are published in the Federal Register under the provisions of the Federal Register Act (44 U.S.C. 1501), and may not be waived or varied in any way by the Crop Insurance Agent or any other agent or employee of FCIC.

Agreement to insure: We will provide the insurance described in this policy and the applicable endorsement in return for the premium and your compliance with *ALL* provisions of the crop insurance contract. If a conflict exists between the terms of this policy and the crop endorsement, the terms of the crop endorsement control.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us," and "our" refer to the Federal Crop Insurance Corporation. Unless the context indicates otherwise, use of the plural form of a word includes the singular and use of the singular form of the word includes the plural.

Terms and Conditions

1. Causes of loss.

a. You are insured only against unavoidable loss of production directly caused by specific causes of loss contained in the crop endorsement.

b. We do not insure against any loss caused by:

(1) The neglect, mismanagement, or wrongdoing by you, any member of your family or household, your tenants, or employees;

(2) The failure to follow recognized good farming practices for the insured crop;

(3) Water contained by any governmental, public, or private dam or reservoir project;

(4) Flooding of any unit subject to a flood or water flowage easement;

(5) Flooding of any unit located between any body of water and a primary flood control structure for that body of water;

(6) Failure or breakdown of irrigation equipment or facilities;

(7) Failure to carry out a good irrigation practice for the insured crop;

(8) Any cause not specified in the crop endorsement as an insured cause of loss; or

(9) Any other cause set out as an uninsured cause of loss in the crop endorsement.

2. Crop, acreage, and share insured.

a. The crop insured is the crop specified in the crop endorsement and no other, which is planted for harvest as the insured crop, which is grown on insurable acreage, and for which a guarantee or amount of insurance and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year is the insurable acreage as designated by the actuarial table, which is planted to the insured crop and in which you have a share (as reported by you or as determined by us, whichever we elect).

c. The insured share is your share as landlord, owner-operator, or tenant in the insured crop at the time insurance attaches. However, only for the purpose of determining the amount of indemnity, your share will not exceed your share at the earlier of:

(1) The time of loss; or

(2) The beginning of harvest.

d. Unless the application clearly indicates that insurance is requested for a partnership or joint venture, insurance will cover only the crop share of the person making application for insurance.

e. We do not insure any acreage:

(1) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(2) Which is irrigated and an irrigated practice is not provided by the actuarial table or the crop endorsement (you may elect to insure irrigated acreage on a non-irrigated basis by reporting it as non-irrigated on the acreage report and adjusting the basis used to establish your guarantee accordingly);

(3) Which is destroyed, it is practical to replant to the insured crop, but the insured crop is not replanted;

(4) Initially planted after the final planting date, unless we allow and you agree in writing on our form, to coverage reduction (the Late Planting Option applies only on selected crops);

(5) Of a volunteer crop;

(6) Planted to a type or variety of the crop not established as adapted to the area or excluded by the actuarial table;

(7) Planted with a crop other than the insured crop;

(8) Which does not meet rotation requirements required by the crop endorsement or actuarial table;

(9) Of a second crop following any crop (insured or uninsured) harvested in the same crop year unless specifically permitted by the crop endorsement or the actuarial table;

(10) Used for wildlife protection or management;

(11) On which a crop has not been planted and harvested in at least one of the three previous crop years, unless it is determined the acreage has been in a soil conserving legume; or

(12) Which has been strip mined.

f. If insurance is provided for an irrigated practice, we will insure as irrigated, and you must report as irrigated, only the acreage for which you have adequate facilities and water, at the time insurance attaches, to carry out a good irrigation practice for the insured crop.

g. Acreage which is planted for the development or production of hybrid seed or for experimental purposes is not insured, unless permitted by the crop endorsement or unless we agree, in writing, to insure such acreage.

h. We may restrict the amount of acreage which we will insure to the amount allowed under any acreage limitation program established by the United States Department of Agriculture if we advise you of that limit prior to the time insurance attaches.

i. You must not obtain any other crop insurance under the Federal Crop Insurance

Act (Multiple Peril Crop Insurance Policy or Federal Crop Insurance Policy) on your share of the insured crop. More than one policy on your share will result in our voiding the policies and collecting the premium from you unless the violation of this provision is found by us to have been inadvertent. If we determine that the violation was inadvertent, the policy with the earliest date of application will be the one in force and all other policies will be void. Nothing in this paragraph prevents the insured from obtaining other hail and fire insurance not issued under the Act and which is subject to the provisions of section 9 hereof.

j. Although your violation of a number of federal statutes including the Federal Crop Insurance Act may cause cancellation, termination, or voidance of your insurance contract, you are specifically directed to the provisions of Title XII of the Food Security Act of 1985 (Pub. L. 99–198) and the regulations promulgated thereunder, generally referred to as the sodbuster, swampbuster, and controlled substance provisions. Your insurance policy will be cancelled if you are determined to be in violation of these provisions. We will recover any and all monies paid to you or received by you and your premium will be refunded.

3. Report of acreage, share, and practice (acreage report).

You must report on our form:

a. All insured and uninsured acreage of the crop in the county in which you have a share;

b. The practice; and

c. Your share at the time insurance attaches.

The insurable practices are contained in the actuarial table. You must designate separately any acreage which is not insurable. The report must indicate if you do not have a share of the insured crop in the county. This report must be submitted each year on or before the acreage reporting date for the crop for the county. This report may be used as the basis to determine your premium and indemnity or we may compute premiums and indemnities on the acreage, share, and practice which is determined to have actually been in existence. If you do not submit this report by the reporting date, we may elect to determine, by unit, the insured acreage, share, and practice or we may deny liability on any unit. Because underreporting of acreage and share would have the effect of reducing your premium and any indemnity which may be due, you may not revise your report after the reporting date except with our approval. Errors in reporting units may be corrected by us to conform to applicable guidelines at the time of adjusting a loss.

4. Production guarantees, coverage levels or amounts of insurance, and prices for computing indemnities.

a. The production guarantees or amounts of insurance, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. Coverage level 2 will apply if you do not elect a coverage level.

c. You may change the amount of insurance or coverage level and price election on or before the sales closing date for the crop year.

d. You must report production to us for the previous crop year by the earlier of the acreage reporting date or 45 days after the sales closing date for the current crop year (See section 21).

If you do not provide the required production report, we will assign a yield for the previous crop year. The yield assigned by us will not be more than 75% of the yield used by us to determine your guarantee for the previous crop year. The production report or assigned yield will be used to compute your production history for the purpose of determining your guarantee for the current crop year. If you have filed a claim for any crop year, the production used to determine the indemnity payment will be the production report for that year.

5. Annual premium.

a. The annual premium is earned and payable at the time insurance attaches.

b. If you are eligible for a premium reduction based on your experience under previous crop policies, you may retain that experience under certain conditions as set out in the crop endorsement.

c. Your premium payment, plus any accrued interest, will be considered delinquent if any amount due us is not paid on or before the termination date specified in the crop endorsement.

6. Amounts due us.

a. Interest will accrue at the rate of one and one-fourth percent (1¼%) simple interest per calendar month, or any part thereof, on any unpaid premium balance due us. For the purpose of premium amounts due us, the interest will start on the first day of the month following the first premium billing date.

b. For the purpose of any other amounts due us, such as repayment of indemnities found not to have been earned, interest will start on the date that notice is issued to you for the collection of the unearned amount. Interest and penalties will be charged in accordance with 31 U.S.C. 3717 and 4 CFR 102.13. The penalty for accounts more than 90 days past due (31 U.S.C. 3717(e)(2)) is six percent (6%) per annum. Interest on any amount due us found to have been received by you because of fraud, misrepresentation or presentation by you of a false claim will start on the date you received the amount with the 6% penalty beginning 90 days after the notice of amount due is issued to you. This interest is in addition to any other amount found to be due under any other federal criminal or civil statute.

c. All amounts paid will be applied first to reduction of accrued interest, then to reduction of the principal balance.

d. If we determine that it is necessary to contract with a collection agency or to employ an attorney to assist in collection, you agree to pay all of the expenses of collection. Those expenses will be paid before the application of any amounts to interest or principal.

e. Any amount due us may be deducted from any indemnity payment due you or from any replanting payment, or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies and from any amounts due you from any other United States Government Agency.

7. Insurance period.

Insurance attaches on each unit or part of a unit when the insured crop is planted or on the calendar date for the beginning of the insurance period if specified in the crop endorsement, and ends at the earliest of:

(a) Total destruction of the insured crop on the unit;

(b) Harvest of the unit;

(c) Final adjustment of a loss on a unit; or

(d) The calendar date for the end of the insurance period contained in the crop endorsement.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) You want our consent to replant the insured crop damaged by an insured cause of loss;

(b) During the period before harvest the insured crop on a unit is damaged by an insured cause of loss and you decide not to further care for or harvest any part of it;

(c) You want our consent to put the acreage to another use; or

(d) After consent to put acreage to another use is given, additional damage due to an insured cause of loss occurs.

Insured acreage may not be put to another use until we have appraised the insured crop and given written consent. We will not consent to another use if the insured crop can be replanted. You must notify us when such acreage is replanted or put to another use.

(2) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If a loss is anticipated by you on any unit within 15 days of or during harvest, notice of probable loss must be given to us within 72 hours of your discovery. A representative sample of the unharvested insured crop, as required by the crop endorsement, must remain unharvested for a period of 15 days from the date of notice unless we give you written consent to harvest the sample.

(4) In addition to the notices required by this section, if you intend to claim an indemnity on any unit, a notice of loss must be given not later than 10 days after the earliest of:

(a) Total destruction of the insured crop on the unit;

(b) Harvest of the unit; or

(c) The calendar date for the end of the insurance period.

b. You may not destroy and replant any of the insured crop on which you intend to claim a replanting payment, until we give written consent.

c. You must obtain written consent from us before you destroy any of the insured crop which is not harvested.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the insured crop on the unit;

(2) Harvest of the unit; or

(3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production and, if applicable, the value received for the insured crop on the unit and that any loss of production or value has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit in accordance with the applicable crop endorsement and the actuarial table.

d. If the information reported by you on the acreage report results in a lower premium than the premium determined to be due on the basis of the share, acreage, practice or type determined to actually exist, the guarantee on the unit will be computed on the information contained in the acreage report but all production from insurable acreage, whether or not reported as insurable, will count against the guarantee.

e. The total production to be counted for a unit will include all production determined in accordance with the crop endorsement.

f. The amount of production of any unharvested insured crop may be determined on the basis of our field appraisals conducted after the end of the insurance period.

g. If you elect to exclude hail and fire as insured causes of loss and the insured crop is damaged by hail or fire, appraisals will be made in accordance with the applicable Form FCI–78 or FCI–78–A, "Request To Exclude Hail and Fire."

h. If allowed by the crop endorsement, a replanting payment may be made on an insured crop replanted after we have given consent and the acreage replanted is at least the lesser of 20 acres or 20 percent of the insured acreage for the unit (as determined on the final planting date).

(1) No replanting payment will be made on [illegible]

(a) On which our appraisal establishes that production will exceed the level set by the crop endorsement;

(b) Initially planted prior to the date established by the actuarial table; or

(c) On which one replanting payment has already been allowed for the crop year.

(2) The replanting payment per acre will be your actual cost for replanting, but will not exceed the amount determined in accordance with the crop endorsement.

If the information reported by you on the acreage report results in a lower premium than the premium determined to be due based on the acreage, share, practice or type determined actually to have existed, the replanting payment will be reduced proportionately.

i. You must not abandon any acreage to us.

j. Any suit against us for an indemnity must be brought in accordance with the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial of the claim is received by you.

k. An indemnity will not be paid unless you comply with all policy provisions.

l. Under no circumstances will we be liable for the payment of damages (compensatory, punitive, or other), attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. (State and local laws to the contrary are not applicable to this insurance contract.) We will pay simple interest computed on the net indemnity ultimately found to be due by us or by the final judgment of a court of competent jurisdiction, from and including the 61st day after the date you sign, date and submit to us the properly completed FCIC claim form. Interest will be paid only if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the Federal Register semiannually on or about January 1 and July 1 of each year and will vary with each publication.

m. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after insurance attaches for any crop year, any indemnity will be paid to the person determined to be beneficially entitled thereto.

n. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance. (For the purpose of this subsection, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.)

10. Concealment or fraud.

We may void the insurance contract on all crops without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to this or any other contract with us. The voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to the applicable indemnity. The transfer must be on our form and approved by us. Both you and the person to whom you transfer your interest are jointly and severally liable for the payment of the premium. The transferee has all rights and responsibilities under the contract consistent with the transferee's interest.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year. The assignment must be on our form and will not be effective until approved in writing by us. The assignee may submit all notices and forms required to protect the insurance contract and to claim an indemnity.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such right. If we pay you for your loss, then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to farm.

You must keep records of the harvesting, storage, shipment, sale, or other disposition of all the insured crop produced on each unit, and separate records including the same information for production of the crop from any uninsured acreage. The records must be kept for three years from the end of the crop year to which they pertain. Failure to keep and maintain such records may result in: (a) Cancellation of the contract for that crop year; (b) assignment of production to units by us; or (c) a determination that no indemnity is due, whichever we elect. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Contract term, cancellation, and termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. If the amount is paid by deduction from an indemnity or other U.S. Department of Agriculture payment, the date of payment:

(1) If deducted from an indemnity, will be the date you sign the properly completed claim form; or

(2) If deducted from a payment under another program administered by the United States Department of Agriculture, will be the date both such other payment and setoff are approved.

d. The cancellation and termination dates are contained in the crop endorsement.

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

f. The contract will terminate if no premium is earned for three consecutive years.

16. Contract changes.

We may change any terms and provisions of the contract from year to year. If your price election or amount of insurance at which

indemnities are computed is no longer offered, the actuarial table will provide the price election or amount of insurance which you are conclusively presumed to have elected unless you elect a different price election or amount of insurance prior to the sales closing date. All contract changes will be available at your service office by the contract change date contained in the crop endorsement. Acceptance of changes will be conclusively presumed in the absence of notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of the crop insurance contract:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the amounts of insurance or production guarantees, coverage levels or amounts of insurance, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding crop insurance in the county.

b. "ASCS" means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

c. "ASCS farm serial number" means the number assigned to the farm by the ASCS County Office Committee.

d. "County" means the county shown on the application and any additional land located in a local producing area bordering on the county as shown by the actuarial table.

e. "Crop endorsement" means the endorsement to the policy contained in this part which sets forth the terms and conditions of insurance applicable to the named crop.

f. "Crop year" means the period within which the crop is normally grown and will be designated by the calendar year in which the insured crop is normally harvested.

g. "Harvest" (Defined in the crop endorsement).

h. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

i. "Insured" means the person who submitted the application accepted by us and does not extend to any other person having a share or interest in the crop such as a partnership, landlord, or any other person unless specifically indicated on the application and accepted by us.

j. "Insured crop" means the crop insured under the provisions of the applicable crop endorsement.

k. "Loss ratio" means the ratio of indemnity to premium.

l. "Person" means an individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State or a political subdivision or agency of a State.

m. "Production report" means previous year yield information including planted acreage and harvested production, reported by you, that is supportable by written verifiable records from a buyer of the insured crop or by measurement of farm stored production.

n "Section" means a unit of measure under the rectangular survey system describing a tract of land usually one mile square and generally containing approximately 640 acres.

o. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

p. "Tenant" means a person who rents land from another person for a share of the crop or a share of the proceeds therefrom.

q. "Unit" means all insurable acreage of the crop in the county on the date insurance attaches for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another specific entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the insured crop on such land will be considered as owned by the lessee. Land which would otherwise be one unit may, in certain instances, be divided according to guidelines contained in the applicable crop endorsement or by written agreement with us. Units will be determined when the acreage is reported but may be adjusted to reflect the actual unit structure when adjusting a loss; however, no further division may be made at loss adjustment time. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

r. "Verifiable records" mean documents indicating a quantity of production or acreage determined by us, other government agencies, buyers, processors, packers, storage facilities or other third parties acceptable to us. The documents must include the name of the producer and entity making the measurement, the date of the measurement, and the crop type, class, or variety.

18. Descriptive Headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations (7 CFR Part 400, Subpart J).

20. Notices

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

21. Dates, Reports, and Notices

To preserve your rights under this insurance contract you are required to file a number of reports and notices with us by certain dates. The actual content requirements and time limits of those reports and notices are set out elsewhere in this contract and you must refer to those sections for those requirements.

As a convenience to you and without limitation on our rights under this contract, a short description of most of the dates, reports and notices have been compiled in this section. Omission of any date, report or notice, or any of the requirements thereof, from this section does not relieve you of the requirement to comply with the terms of this contract. (Note that certain specific crops may require other notices and reports because of their individual characteristics. You are referred to the crop endorsement for any such requirements.)

a. "Acreage report"—A report required by section 3 of this contract. This report contains, in addition to other information, the report of the insured's share of all acreage of an insured crop in the county whether insurable or uninsurable and must be filed prior to the final acreage reporting date contained in the actuarial table for the county for the crop insured.

b. "Another use, Notice of"—The written notice required when an insured wishes to put acreage to another use (See: Section 8).

c. "Application"—A form required by Subpart D of Part 400 of 7 CFR and each individual program regulation. The application for insurance form must be completed and filed in the service office prior to the sales closing date (contained in the actuarial table) of the initial insurance year for each crop year for which an insurance endorsement is requested by the insured.

d. "Assignment of indemnity"—A transfer of contract rights, made on our form, and effective when approved by us. It is the arrangement whereby you assign your right to an indemnity payment to any party of your choice for the crop year.

e. "Billing date"—The first date upon which an insured is billed for insurance coverage and which generally falls at or near harvest time. Interest accruing on any unpaid premium balance attaches 30 days after the billing date.

f. "Cancellation date"—The date on or before which the insured or the Corporation may cancel the insurance policy for the subsequent crop year by giving written notice.

g. "Claim for indemnity." (See: Section 9)—A claim made by the insured for damage or loss to an insured crop and submitted to the Corporation not later than 60 days after the earliest of:

(1) Total destruction of the insured crop on the unit;

(2) Harvest of the unit; or

(3) The calendar date for the end of the insurance period.

h. "Claim for indemnity, Notice of"—The loss notice required to be given by the insured not later than 10 days after certain occurrences (See: Section 8).

i. "Contract change date"—The date by which FCIC makes any contract changes available for inspection in the service office (See: Section 10).

j. "Damage, notice of"—See: Probable loss, Notice of.

k. "Earliest planting date"—The earliest date established for planting the insured crop and qualifying for a replant payment (See: Actuarial Table and Section 9.h.(1)(b)).

l. "End of insurance period, Date of"—The date upon which the insured's crop insurance coverage ceases (See: Section 7).

m. "Insurance attaches, Date"—The date insurances attaches on the crop, generally after planting is completed or the calendar date in the crop endorsement (See: Section 7).

n. "Intent to abandon, Notice of"—The written notice to the Corporation by the insured indicating that because of damage from an insured cause, the insured has decided to no longer care for or harvest any part of the crop.

o. "Late planting agreement"—Available on selected crops. An amendment to the insurance contract which allows an insured whose planting has been delayed, to insure a crop planted after the final planting date in exchange for a reduction in coverage.

p. "Probable loss, notice of"—A written notice required to be filed in the service office whenever an insured believes that the insured crop has been damaged to the extent that a loss is probable (See: Section 8).

q. "Production report"—A written record showing the insured's annual production and used to determine the yield guarantee. (See: Section 4). The report contains previous year yield information including planted acreage and harvested production. This report must be supported by written records from a warehouseman or buyer of the insured crop or by measurement of farm stored production.

r. "Replanting, Notice of completion"—The notice required to be given by the insured to the Corporation when replanting is completed (See: Section 8).

s. "Reporting date"—The acreage reporting date (contained in the Actuarial Table) by which you are required to report all your insurable and uninsurable acreage in the county in which you have a share and your share at the time insurance attaches.

t. "Sales closing date"—The date contained in the actuarial table on file in the respective service office which sets out the final date when an application for insurance may be filed.

u. "Termination date"—The date upon which the Corporation may cancel the insurance policy for non-payment of premium.

§ 401.9–401.100 [Reserved]

§ 401.101 Wheat Endorsement.

The provisions of the Wheat Crop Insurance Endorsement for the 1988 and subsequent crop years are as follows:

Federal Crop Insurance Corporation

Wheat Endorsement

1. Insured Crop

a. The crop insured will be wheat planted for harvest as grain.

b. In addition to the wheat not insurable in section 2 of the general crop insurance policy, we do not insure any wheat:

(1) If the seed has not been mechanically incorporated into the soil;

(2) If the seed is planted where an established grass or legume exists unless we agree, in writing, to insure such wheat; or

(3) Destroyed or put to another use in order to comply with other U.S. Department of Agriculture programs.

c. A late planting agreement will be available for all spring-planted wheat and for fall-planted wheat only where insurance is not offered for spring-planted wheat.

2. Causes of Loss

The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

a. Adverse weather conditions;

b. Fire;

c. Insects;

d. Plant disease;

e. Wildlife;

f. Earthquake;

g. Volcanic eruption; or

h. If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

3. Annual Premium

a. The annual premium amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1984 crop year under the terms of the experience table contained in the wheat policy for the 1985 crop year, you will continue to receive the benefit of the reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1990 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1985 crop year;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

4. Insurance Period

In lieu of the provisions in section 7 of the general crop insurance policy the following will apply:

a. Insurance attaches on each unit or part of a unit when the wheat is planted except that:

(1) In counties with an April 15 cancellation date, insurance will attach on fall-planted wheat on April 16 following planting if it is determined that there is an adequate stand on this date to produce a normal crop;

(2) If you have optional winter coverage in effect, or if optional winter coverage is provided in the county and you purchase such coverage before the winter wheat sales closing date, insurance will attach at the time of planting; or

(3) If optional winter coverage is provided in the county and you fail to purchase such coverage and it is determined that there is an adequate stand on the spring final planting date to produce a normal crop, insurance will attach on the spring final planting date.

b. Insurance ends on each unit at the earliest of:

(1) Total destruction of the wheat;

(2) Combining, threshing, harvesting for silage or hay, or removal from the field;

(3) Final adjustment of a loss; or

(4) The following dates of the calendar year in which wheat is normally harvested:

(a) Alaska, September 25;

(b) All other states, October 31.

5. Unit Division

Wheat acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one unit if you agree to pay additional premium as provided by the actuarial table and if for each proposed unit:

a. You maintain written, verifiable records of planted acreage and harvested production for at least the previous crop year and production reports based on those records are filed to obtain an insurance guarantee; and

b. Acreage planted to insured wheat is located in separate, legally identifiable sections (except in Florida) or, in the absence of section descriptions (and in all of Florida), the land is identified by separate ASCS Farm Serial Numbers, provided:

(1) The boundaries of the sections or ASCS Farm Serial Numbers are clearly identified and the insured acreage is easily determined; and

(2) The wheat is planted in such a manner that the planting pattern does not continue into the adjacent section or ASCS Farm Serial Number; or

c. The acreage planted to the insured wheat is located in a single section or ASCS Farm Serial Number and consists of acreage on which both an irrigated and nonirrigated practice are carried out, provided:

(1) Wheat planted on irrigated acreage does not continue into nonirrigated acreage in the same rows or planting pattern; and

(2) Planting, fertilizing and harvesting are carried out in accordance with recognized good dryland and irrigated farming practices for the area.

If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units to be combined.

6. Notice of Damage or Loss

a. In addition to the notices required in section 8 of the general crop insurance policy, in case of damage or probable loss you must give us written notice if you want to harvest the wheat for silage or hay. After such notice is given, we will appraise the potential grain production. If we are unable to do so before harvest, you may harvest the crop provided representative samples are left for appraisal purposes. For purposes of this section and section 8 of the general crop insurance policy the representative sample of the unharvested crop must be at least 10 feet wide and the entire length of the field.

b. A replant payment is available under this endorsement only in those counties where a Wheat Winter Coverage Option is available and only if the insured has elected the Wheat Winter Coverage Option. The replant payment will be the actual cost of replanting not to exceed the lesser of 20 percent of the production guarantee or 3 bushels multiplied by the price election multiplied by your share.

7. Claim for Indemnity

a. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of wheat to be counted (see subsection 7.b.);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

b. The total production (bushels) to be counted for a unit will include all harvested and appraised production.

(1) Mature wheat production which otherwise is not eligible for quality adjustment will be reduced .12 percent for each .1 percentage point of moisture in excess of 13.5 percent; or

(2) Mature wheat production which, due to insurable causes, has a test weight of less than 53 pounds per bushel or, as determined by a grain grader licensed by the Federal Grain Inspection Service or licensed under the United States Warehouse Act contains more than 10 percent damaged kernels, or more than 12 percent shrunken and broken kernels, or which grades garlicky, smutty or ergoty, will be adjusted by:

(a) Dividing the value per bushel of the insured wheat by the price per bushel of U.S. No. 2 wheat which does not grade garlicky, smutty, or ergoty; and

(b) Multiplying the result by the number of bushels of such wheat.

The applicable price for No. 2 wheat will be the local market price on the earlier of the day the loss is adjusted or the day the insured wheat is sold.

(3) Any harvested production from other volunteer plants growing in the wheat will be counted as wheat on a weight basis.

(4) Appraised production to be counted will include:

(a) Potential production lost due to uninsured causes and failure to follow recognized good wheat farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause; and

(c) Any unharvested production.

(5) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of wheat becomes general in the county and is reappraised by us;

(b) Further damaged by an insured cause and is reappraised by us; or

(c) Harvested.

8. Cancellation and Termination Dates

The cancellation and termination dates are:

State and county	Cancellation date	Termination date
All Alaska Counties except those listed below; Alamosa, Conejos, Costilla, Rio Grande, and Saguache Counties, Colorado; Maine; Minnesota; Daniels, Roosevelt, Sheridan, and Valley Counties, Montana; New Hampshire; North Dakota; Corson, Walworth, Edmunds, Faulk, Spink, Beadle, Jerauld, Aurora, Douglas, and Bon Homme Counties, South Dakota and all South Dakota Counties north and east thereof; Vermont; and Trempealeau, Jackson, Wood, Portage, Waupaca, Outagamie, Brown, and Kewaunee Counties, Wisconsin and all Wisconsin Counties north and west thereof; Big Horn, Fremont, Hot Springs, Park, and Washakie Counties, Wyoming.	Apr. 15	Apr. 15.
All other Colorado Counties except those listed below; all Iowa Counties except those listed below; Kansas; Nebraska; New Mexico; Oklahoma; Texas; all other Wisconsin Counties and all other states except those listed below.	Sept. 30	Sept. 30.
Archuleta, Custer, Delta, Dolores, Eagle, Garfield, Grand, La Plata, Mesa, Moffat, Montezuma, Montrose, Ouray, Pitkin, Rio Blanco, Routt, and San Miguel Counties, Colorado; Connecticut; Plymouth, Cherokee, Buena Vista, Pocahontas, Humboldt, Wright, Franklin, Butler, Black Hawk, Buchanan, Delaware, and Dubuque Counties, Iowa and all Iowa Counties north thereof; Massachusetts; all other Montana Counties; New York; Rhode Island; all other South Dakota Counties; and all other Wyoming Counties.	Sept. 30	Nov. 30.
Matanuska-Susitna County, Alaska; Arizona; California; Idaho; Nevada; Oregon; Utah; and Washington	Oct. 31	Nov. 30.

9. Contract Changes

The date by which contract changes will be available in your service office is December 31 preceding the cancellation date for counties with an April 15 cancellation date and June 30 preceding the cancellation date for all other counties.

10. Meaning of Terms

a. "Adequate stand" means a sufficient population of plants to produce at least the yield used to determine the guarantee.

b. "Harvest" means combining or threshing, or cutting for hay or silage.

§ 401.102 The Winter Coverage Option for Wheat.

The Winter Coverage Option for wheat is available in the following counties and states beginning in the 1988 crop year:

South Dakota

Bennett	Hughes
Brule	Hyde
Buffalo	Jackson
Butte	Jones
Stanley	Tripp
Charles Mix	Lawrence
Custer	Lyman
Dewey	Meade
Fall River	Mellette
Sully	Ziebach
Gregory	Pennington
Haakon	Perkins
Hand	Potter
Harding	Shannon
Todd	

The provisions of the Winter Coverage Option for Wheat for the 1988 and subsequent crop years are as follows:

Federal Crop Insurance Corporation

Wheat Endorsement—Winter Coverage Option

(This is a continuous Option)

Insured's Name _____
Address _____
Contract No. _____
Crop Year _____
Identification No. _____
SSN _____
Tax _____

In consideration of the additional premium as set by the Actuarial Table (FCI–35), the insurance provided is attached to and made part of the Wheat Endorsement subject to the following terms and conditions:

1. You must have a wheat endorsement.

2. Coverage under this option for fall-planted wheat will begin at the time of planting and will end on the spring final planting date for wheat in the county.

3. When there is not an adequate stand on the spring final planting date to produce the farm unit production guarantee, you have the option to:

a. Continue to provide sufficient care for the insured wheat crop through harvest;

b. Replant all destroyed acreage to a spring variety of wheat and receive a replanting payment in accordance with subsection 9.h. of the general crop insurance policy and subsection 6.b. of the wheat endorsement; or

c. Accept our appraisal of the production to count, destroy the remaining crop on the acreage and be paid any indemnity due under the terms of the general crop insurance policy and the wheat endorsement.

4. In case of damage to the wheat under this option, you must provide us with written notice prior to the spring final planting date for wheat.

Insured's Signature _____
Date _____
Agent's Signature _____
Date _____

§ 401.103 Barley Endorsement.

The provisions of the Barley Endorsement for the 1988 and subsequent crop years are as follows:

Federal Crop Insurance Corporation

Barley Endorsement

1. Insured Crop

a. The crop insured will be barley planted for harvest as grain. A mixture of barley with either oats or wheat or both planted for harvest as grain may also be insured if provided by the actuarial table. The production from such mixture will be considered as barley on a weight basis.

b. In addition to the barley not insurable in section 2 of the general crop insurance policy, we do not insure any barley:

(1) If the seed has not been mechanically incorporated into the soil;

(2) If the seed is planted where an established grass or legume exists unless we agree, in writing, to insure such barley; or

(3) Destroyed or put to another use in order to comply with other U.S. Department of Agriculture programs.

c. A late planting agreement will be available for all spring-planted barley and for fall-planted barley only where insurance is not offered for spring-planted barley.

2. Causes of Loss

The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

a. Adverse weather conditions;
b. Fire;
c. Insects;
d. Plant disease;
e. Wildlife;
f. Earthquake;
g. Volcanic eruption; or
h. If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

3. Annual Premium

a. The annual premium amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1984 crop year under the terms of the experience table contained in the barley policy for the 1985 crop year, you will continue to receive the benefit of the reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1990 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1985 crop year;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

4. Insurance Period

In lieu of the provisions in section 7 of the general crop insurance policy the following will apply:

a. Insurance attaches on each unit or part of a unit when the barley is planted except that:

(1) In counties with an April 15 cancellation date, insurance will attach on fall-planted barley on April 16 following planting if it is determined that there is an adequate stand on this date to produce a normal crop;

(2) If you have optional winter coverage in effect, or if optional winter coverage is provided in the county and you purchase such coverage before the winter barley sales closing date, insurance will attach at the time of planting; or

(3) If optional winter coverage is provided in the county and you fail to purchase such coverage, and it is determined that there is an adequate stand on the spring final planting date to produce a normal crop, insurance will attach on the spring final planting date.

b. Insurance ends on each unit at the earliest of:

(1) Total destruction of the barley;

(2) Combining, threshing, harvesting for silage or hay, or removal from the field;

(3) Final adjustment of a loss; or

(4) The following dates of the calendar year in which barley is normally harvested:

(a) Alaska, September 25;

(b) All other states, October 31.

5. Unit Division

Barley acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one unit if you agree to pay additional premium as provided for by the actuarial table and if for each proposed unit:

a. You maintain written, verifiable records of planted acreage and harvested production for at least the previous crop year and production reports based on those records are filed to obtain an insurance guarantee; and

b. Acreage planted to insured barley is located in separate, legally identifiable sections (except in Florida) or, in the absence of section descriptions (and all of Florida), the land is identified by separate ASCS Farm Serial Numbers, provided:

(1) The boundaries of the sections or ASCS Farm Serial Numbers are clearly identified and the insured acreage is easily determined; and

(2) The barley is planted in such a manner that the planting pattern does not continue into the adjacent section or ASCS Farm Serial Number; or

c. The acreage planted to the insured barley is located in a single section or ASCS Farm Serial Number and consists of acreage on which both an irrigated and nonirrigated practice are carried out, provided:

(1) Barley planted on irrigated acreage does not continue into nonirrigated acreage in the same rows or planting pattern; and

(2) Planting, fertilizing and harvesting are carried out in accordance with recognized good dryland and irrigated farming practices for the area.

If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units to be combined.

6. Notice of Damage or Loss

a. In addition to the notices required in section 8 of the general crop insurance policy, in case of damage or probable loss you must give us written notice if you want to harvest the barley for silage or hay. After such notice is given, we will appraise the potential grain production. If we are unable to do so before harvest, you may harvest the crop provided representative samples are left for appraisal purposes. For the purposes of this section and Section 8 of the general crop insurance policy, the representative sample of the unharvested crop must be at least 10 feet wide and the entire length of the field.

b. A replant payment is available under this endorsement only in those counties where a Barley Winter Coverage Option is available and only if the insured has elected the Barley Winter Coverage Option. The replant payment will be the actual cost of replanting not to exceed the lesser of 20 percent of the production guarantee or 3 bushels multiplied by the price election multiplied by your share.

7. Claim for Indemnity

a. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of barley to be counted (see subsection 7.b.);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

b. The total production (bushels) to be counted for a unit will include all harvested and appraised production.

(1) Mature barley production which otherwise is not eligible for quality adjustment will be reduced .12 percent for each .1 percentage point of moisture in excess of 14.5 percent; or

(2) Mature barley production which, due to insurable causes, has a test weight of less than 40 pounds per bushels or, as determined by a grain grader licensed by the Federal Grain Inspection Service or licensed under the United States Warehouse Act contains: less than 85 percent sound barley; more than 8 percent damaged kernels; more than 35 percent thin barley; more than 5 percent black barley; or grades smutty, garlicky, or ergoty, will be adjusted by:

(a) Dividing the value per bushel of the insured barley by the price per bushel of U.S. No. 2 barley which does not grade smutty, garlicky, or ergoty; and

(b) Multiplying the result by the number of bushels of such barley.

The applicable price for No. 2 barley will be the local market price on the earlier of the day the loss is adjusted or the day the insured barley is sold.

(3) Any harvested production from other volunteer plants growing in the barley will be counted as barley on a weight basis.

(4) Appraised production to be counted will include:

(a) Potential production lost due to uninsured causes and failure to follow recognized good barley farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause; and

(c) Any unharvested production.

(5) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of barley becomes general in the county and is reappraised by us;

(b) Further damaged by an insured cause and is reappraised by us; or

(c) Harvested.

8. Cancellation and Termination Dates

The cancellation and termination dates are:

State and county	Cancellation date	Termination date
Kit Carson, Lincoln, Elbert, El Paso, Pueblo, Las Animas Counties, Colorado and all Colorado Counties south and east thereof; Connecticut; Kansas; Massachusetts; and New York.	Sept. 30	Nov. 30.
New Mexico except Taos County; Oklahoma; Missouri; Illinois; Indiana; Ohio; Pennsylvania; New Jersey; and all states south and east thereof	Sept. 30	Sept. 30.
Arizona; California; Clark and Nye Counties, Nevada	Oct. 31	Nov. 30.
All other Colorado Counties; all other Nevada Counties; Taos County, New Mexico, and all other states	Apr. 15	Apr. 15.

9. Contract Changes

The date by which contract changes will be available in your service office is December 31 preceding the cancellation date for counties with an April 15 cancellation date and June 30 preceding the cancellation date for all other counties.

10. Meaning of Terms

a. "Adequate stand" means a sufficient population of plants to produce at least the yield used to determine the guarantee.

b. "Harvest" means combining, threshing, or cutting for hay or silage.

§ 401.104 Winter Coverage Option for Barley.

The Winter Coverage Option for Barley is not available in any counties for the 1988 crop year.

The provisions of the Winter Coverage Option for Barley for the 1988 and subsequent crop years are as follows:

Federal Crop Insurance Corporation

Barley Endorsement—Winter Coverage Option

(This is a continuous Option)

Insured's Name _____
Address _____
Contract No. _____
Crop Year _____
Identification No. _____
SSN _____
Tax _____

In consideration of the additional premium as set by the Actuarial Table (FCI–35), the insurance provided is attached to and made part of the Barley Endorsement subject to the following terms and conditions:

1. You must have a barley endorsement.

2. Coverage under this option for fall-planted barley will begin at the time of planting and will end on the spring final planting date for barley in the county.

3. When there is not an adequate stand on the spring final planting date to produce the farm unit production guarantee, you have the option to:

a. Continue to provide sufficient care for the insured barley crop through harvest;

b. Replant all destroyed acreage to a spring variety of barley and receive a replanting payment in accordance with subsection 9.h. of the general crop insurance policy, and subsection 6.b. of the Barley Endorsement; or

c. Accept our appraisal of the production to count, destroy the remaining crop on the acreage and be paid any indemnity due under the terms of the general crop insurance policy and the barley endorsement.

4. In case of damage to the barley under this option, you must provide us with written notice prior to the spring final planting date for barley.

Insured's Signature _____
Date _____
Agent's Signature _____
Date _____

§ 401.105 Oat Endorsement.

The provisions of the Oat Crop Insurance Endorsement for the 1988 and subsequent crop years are as follows:

Federal Crop Insurance Corporation

Oat Endorsement

1. Insured Crop

a. The crop insured will be oats planted for harvest as grain and grain mixtures in which oats are the predominant grain.

b. In addition to the oats not insurable in section 2 of the general crop insurance policy, we do not insure any oats:

(1) If the seed has not been mechanically incorporated into the soil;

(2) If the seed is planted where an established grass or legume exists unless we agree, in writing, to insure such oats; or

(3) Destroyed or put to another use in order to comply with other U.S. Department of Agriculture programs.

c. A late planting agreement will be available for all spring-planted oats where insurance is offered and for fall-planted oats only where insurance is not offered for spring-planted oats.

2. Causes of Loss

The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

a. Adverse weather conditions;
b. Fire;
c. Insects;
d. Plant disease;
e. Wildlife;
f. Earthquake;
g. Volcanic eruption; or
h. If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general policy.

3. Annual Premium

a. The annual premium amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1984 crop year under the terms of the experience table contained in the oat policy for the 1985 crop year, you will continue to receive the benefit of the reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1990 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1985 crop year;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

4. Insurance Period

In lieu of the provisions in section 7 of the general crop insurance policy, the following will apply:

a. Insurance attaches on each unit or part of a unit when the oats are planted except that, in counties with an April 15 cancellation date, insurance on fall-planted oats attaches on April 16 following planting if it is determined that there is an adequate stand on April 16 to produce a normal crop.

b. Insurance ends on each unit at the earliest of:

(1) Total destruction of the oats;

(2) Combining, threshing, harvesting for silage or hay, or removal from the field;

(3) Final adjustment of a loss; or

(4) The following dates of the calendar year in which oats are normally harvested:

(a) Alaska, September 25;

(b) All other states, October 31.

5. Unit Division

Oat acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one unit if you agree to pay additional premium as provided for by the actuarial table and if for each proposed unit:

a. You maintain written, verifiable records of planted acreage and harvested production for a least the previous crop year and production reports based on those records are filed to obtain an insurance guarantee; and

b. Acreage planted to insured oats is located in separate, legally identifiable sections (except in Florida) or, in the absence of section descriptions (and in all of Florida) the land is identified by separate ASCS Farm Serial Numbers, provided:

(1) The boundaries of the sections or ASCS Farm Serial Numbers are clearly identified

and the insured acreage is easily determined; and

(2) The oats are planted in such a manner that the planting pattern does not continue into the adjacent section or ASCS Farm Serial Number; or

c. The acreage planted to the insured oats is located in a single section or ASCS Farm Serial Number and consists of acreage on which both an irrigated and a nonirrigated practice are carried out, provided:

(1) Oats planted on irrigated acreage do not continue into nonirrigated acreage in the same rows or planting pattern; and

(2) Planting, fertilizing and harvesting are carried out in accordance with recognized good dryland and irrigated farming practices for the area.

If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units to be combined.

6. Notice of Damage or Loss

In addition to the notices required in section 8 of the general crop insurance policy, in case of damage or probable loss you must give us written notice if you want to harvest the oats for silage or hay. After such notice is given, we will appraise the potential grain production. If we are unable to do so before harvest, you may harvest the crop provided representative samples are left for appraisal purposes. For purposes of this section and Section 8 of the general crop insurance policy the representative sample of the unharvested crop must be at least 10 feet wide and the entire length of the field.

7. Claim for Indemnity

a. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of oats to be counted (see subsection 7.b.);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

b. The total production (bushels) to be counted for a unit will include all harvested and appraised production.

(1) Mature oat production which otherwise is not eligible for quality adjustment will be reduced .12 percent for each .1 percentage point of moisture in excess of 14.0 percent; or

(2) Mature oat production which, due to insurable causes, has a test weight of less than 27 pounds per bushel or, as determined by a grain grader licensed by the Federal Grain Inspection Service or licensed under the United States Warehouse Act, contains less than 80 percent sound oats or is smutty, garlicky, or ergoty, will be adjusted by:

(a) Dividing the value per bushel of the insured oats by the price per bushel of U.S. No. 2 oats which do not grade smutty, garlicky, or ergoty; and

(b) Multiplying the result by the number of bushels of such oats. The applicable price for No. 2 oats will be the local market price on the earlier of the day the loss is adjusted or the day the insured oats are sold.

(3) Any harvested production from other volunteer plants growing in the oats will be counted as oats on a weight basis.

(4) Appraised production to be counted will include:

(a) Potential production lost due to uninsured causes and failure to follow recognized good oat farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause; and

(c) Any unharvested production.

(5) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of oats becomes general in the county and is reappraised by us;

(b) Further damaged by an insured cause before the acreage is put to another use and is reappraised by us; or

(c) Harvested.

8. Cancellation and Termination Dates

The cancellation and termination dates are:

State and county	Cancellation and termination date
Alabama; Arkansas; Florida; Georgia; Louisiana; Mississippi; New Mexico except Taos County; North Carolina; Oklahoma; South Carolina; Tennessee; Texas; and Patrick, Franklin, Fitzsylvania, Campbell, Appomattox, Fluvanna, Buckingham, Louisa, Spotsylvania, Caroline, Essex, and Westmoreland Counties, Virginia and all counties east thereof.	Sept. 30.
Arizona; California except Del Norte, Humboldt, Lassen, Modoc, Plumas, Shasta, Siskiyou, and Trinity Counties.	Oct. 31.
All other California counties; Taos County, New Mexico; all other Virginia counties and all other states.	Apr. 15.

9. Contract Changes

The contract change date is December 31 preceding the cancellation date for counties with an April 15 cancellation date and June 30 preceding the cancellation date for all other counties.

10. Meaning of Terms

a. "Adequate stand" means a sufficient population of plants to produce at least the yield used to determine the guarantee.

b. "Harvest" means combining, threshing or cutting for hay or silage.

§ 401.106 Rye Endorsement.

The provisions of the Rye Crop Insurance Endorsement for the 1988 and subsequent crop years are as follows:

Federal Crop Insurance Corporation

Rye Endorsement

1. Insured Crop

a. The crop insured will be rye planted for harvest as grain.

b. In addition to the rye not insurable in section 2 of the general crop insurance policy, we do not insure any rye:

(1) If the seed has not been mechanically incorporated into the soil;

(2) If the seed is planted where an established grass or legume exists unless we agree, in writing, to insure such rye; or

(3) Destroyed or put to another use in order to comply with other U.S. Department of Agriculture programs.

c. A late planting agreement will be available for all spring-planted rye where insurance is offered and for fall-planted rye only where insurance is not offered for spring-planted rye.

2. Causes of Loss

The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

a. Adverse weather conditions;

b. Fire;

c. Insects;

d. Plant disease;

e. Wildlife;

f. Earthquake;

g. Volcanic eruption; or

h. If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

3. Annual Premium

a. The annual premium amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1984 crop year under the terms of the experience table contained in the rye policy for the 1985 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1990 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1985 crop year;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

4. Insurance Period

The calendar date for the end of the insurance period is October 31 of the year in which the rye is normally harvested.

5. Unit Division

Rye acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one unit if you agree to pay additional premium as provided by the actuarial table and if for each proposed unit:

a. You maintain written, verifiable records of planted acreage and harvested production for at least the previous crop year and production reports based on those records are filed to obtain an insurance guarantee; and

b. The acreage planted to insured rye is located in separate, legally identifiable sections or, in the absence of section descriptions, the land is identified by

separate ASCS Farm Serial Numbers, provided:

(1) The boundaries of the sections or ASCS Farm Serial Numbers are clearly identified and the insured acreage is easily determined; and

(2) The rye is planted in such a manner that the planting pattern does not continue into the adjacent section or ASCS Farm Serial Number; or

c. The acreage planted to the insured rye is located in a single section or ASCS Farm Serial Number and consists of acreage on which both irrigated and nonirrigated practices are carried out, provided:

(1) Rye planted on irrigated acreage does not continue into nonirrigated acreage in the same rows or planting pattern; and

(2) Planting, fertilizing and harvesting are carried out in accordance with recognized good dryland and irrigated farming practices for the area.

If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units to be combined.

6. Notice of Damage or Loss

In addition to the notices required in section 8 of the general crop insurance policy, in case of damage or probable loss you must give us written notice if you want to harvest the rye for silage or hay. After such notice is given, we will appraise the potential grain production.

If we are unable to do so before harvest, you may harvest the crop provided representative samples are left for appraisal purposes. For purposes of this section and section 8 of the general crop insurance policy the representative sample of the unharvested crop must be at least 10 feet wide and the entire length of the field.

7. Claim for Indemnity

a. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of rye to be counted (see subsection 7.b.);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

b. The total production (bushels) to be counted for a unit will include all harvested and appraised production.

(1) Mature rye production which otherwise is not eligible for quality adjustment will be reduced .12 percent for each .1 percentage point of moisture in excess of 16 percent; or

(2) Mature rye production which, due to insurable causes, has a test weight of less than 52 pounds per bushel or, as determined by a grain grader licensed by the Federal Grain Inspection Service or licensed under the United States Warehouse Act, contains: more than 7 percent damaged kernels; more than 25 percent thin rye; or is smutty, garlicky, or ergoty, will be adjusted by:

(a) Dividing the value per bushel of the insured rye by the price per bushel of U.S. No. 2 rye which does not grade smutty, garlicky, or ergoty; and

(b) Multiplying the result by the number of bushels of such rye. The applicable price for No. 2 rye will be the local market price on the earlier of the day the loss is adjusted or the day the insured rye is sold.

(3) Any harvested production from other volunteer plants growing in the rye will be counted as rye on a weight basis.

(4) Appraised production to be counted will include:

(a) Potential production lost due to uninsured causes and failure to follow recognized good rye farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause; and

(c) Any unharvested production.

(5) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of rye becomes general in the county and is reappraised by us;

(b) Further damaged by an insured cause and is reappraised by us; or

(c) Harvested.

8. Cancellation and Termination Dates

The cancellation and termination date for all states is September 30.

9. Contract Changes

The date by which contract changes will be available in your service office is June 30 preceding the cancellation date.

10. Meaning of Terms

a. "Adequate stand" means a sufficient population of plants to produce at least the yield used to determine the guarantee.

c. "Harvest" means combining, threshing, or cutting for hay or silage.

§ 401.107 Late Planting Agreement Option.

(a) *General.* The provisions contained in the Late Planting Agreement Option, are a duplication of 7 CFR Part 400, Subpart A, with minor editorial changes to provide compatibility with the General Crop Insurance Regulations (7 CFR Part 401), and become effective when elected by producers on the crop insurance endorsements herein which are eligible for the Late Planting Agreement Option.

(b) *Availability of the Late Planting Agreement.* The Late Planting Agreement will be offered under the provisions contained in 7 CFR Part 401, within limits prescribed by and in accordance with the Federal Crop Insurance Act, as amended 9 U.S.C. 1501 *et seq.*), only on those crops identified in section 4 of this subpart. All provisions of the applicable endorsement for the insured crop apply, except those provisions which are in conflict with this subpart.

(c) *Definitions.* For the purposes of the Late Planting Agreement Option:

(1) "Final planting date" means the final planting date for the insured crop contained in the actuarial table on file in the service office.

(2) "Late Planting Agreement" means that agreement executed by the final planting date, between the FCIC and the insured whereby the insured elects, and FCIC provides, insurance on acreage planted for up to 20 days after the applicable final planting date. The production guarantee applicable on the final planting date will be reduced on the acreage planted after the final planting date by 10 percent for each 5 days that the acreage is planted after the final planting date.

(3) "Production guarantee" means the guaranteed amount of production under the provisions of the applicable endorsement for crop insurance (sometimes expressed in amounts of insurance).

(d) *Responsibilities of the insured.* The insured is solely responsible for the completion of the Late Planting Agreement Option and for the accuracy of the data provided on that Agreement. The provisions of this subpart do not relieve the insured of any responsibilities under the provisions of the insurance endorsement.

(e) *Applicability to crops insured.* The provisions of this subpart will be applicable to the provisions for insuring crops under the following FCIC endorsements:

401.101	Wheat Endorsement
401.103	Barley Endorsement
401.105	Oat Endorsement
401.106	Rye Endorsement

The Late Planting Agreement will be available in all counties in which the Corporation offers insurance on these crops (but the Late Planting Agreement is not available on fall-planted crops in all counties).

(f) The provisions of the Late Planting Agreement are as follows:

U.S. DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Late Planting Agreement

Insured's Name _____
Address _____
Contract No. _____
Crop Year _____
Crop _____

Notwithstanding the provisions of section 2 of the General Crop Insurance Regulations (7 CFR 401) regarding the insurability of crop acreage initially planted after the final planting date on file in the service office, I elect to have insurance provided on acreage planted within twenty days after such date. Upon my making this election, the production guarantee or amount of insurance, whichever is applicable, will be reduced ten percent for each five days or portion thereof that the acreage is planted after the final planting date. Each ten percent reduction will be applied to the production guarantee or

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amount of insurance applicable on the final planting date.

The premium will be computed based on the guarantee or amount of insurance applicable on the final planting date; therefore, no reduction in premium will occur as a result of my election to exercise this option.

If planting continues under this Agreement after the acreage reporting date on file in the service office, the acreage reporting date will be extended to five days after the completion of planting the acreage to which insurance will attach under this Agreement.

Insured's Signature _____
Date _____
Corporation Representative's Signature and Code Number _____
Date _____

§ 401.104 Prevented Planting Endorsement.

(a) The provisions contained in the Prevented Planting Endorsement are a duplication of 7 CFR Part 442, with minor editorial changes made to provide compatibility with the General Crop Insurance Regulations (7 CFR Part 401), and become effective when elected by producers on the crop insurance endorsements therein which are eligible for the Prevented Planting Endorsement.

(b) The provisions of the prevented planting endorsement are as follows:

Federal Crop Insurance Corporation

Prevented Planting Endorsement

A prevented planting crop insurance endorsement on the qualifying crop will be available to all insureds having a qualifying crop insurance endorsement under the provisions of this Part and who participate in the ASCS Acreage Reduction Program or Set-aside Program. This endorsement is not continuous. Application must be made annually for the prevented planting endorsement not later than the sales closing date established by the actuarial table for the applicable qualifying crop.

(THIS IS AN ANNUAL ELECTION TO BE MADE BY THE INSURED BEFORE THE DATE SPECIFIED IN SECTION 10.)

AGREEMENT TO INSURE: We will provide the insurance described in this endorsement in return for the premium and your compliance with all applicable provisions.

1. Applicable provisions.

All provisions of the qualifying crop insurance endorsement and the prevented planting crop insurance application not in conflict with this endorsement are applicable.

2. Causes of loss.

a. This insurance is against your being unavoidably prevented from planting insurable acreage to the qualifying crop or any other non-conserving crop during the insurance period. (You are required to plant to another non-conserving crop during the insurance period after you know or should have known that it is no longer feasible to plant the qualifying crop and you are not prevented from planting the other non-conserving crop by an insurable cause.) You must be prevented from planting by drought, flood, or other natural disaster which occurs within the insurance period. Limitations, exceptions, or exclusions on the causes insured against may be contained in the actuarial table.

b. We will not insure against any prevention of planting:

(1) If your failure to plant was due to a cause other than those listed in subsection 2.a.; or

(2) If most producers in the surrounding area in similar circumstances were able to plant the qualifying crop or any other non-conserving crop.

3. Acreage and share insured.

a. The acreage insured for each crop year will be the cultivated acreage in the county intended to be planted for harvest to the qualifying crop, in which you have a share, as reported by you or as determined by us, whichever we elect, and for which a premium rate is provided by the actuarial table.

b. The insured share is your share as landlord, owner-operator or tenant in the qualifying crop if the crop had been planted at the time insurance attaches. However, only for the purpose of determining the amount of indemnity, your share will not exceed your share on the prevented planting date.

c. Unless otherwise specified by the actuarial table, we will not insure any acreage unless you have a valid crop insurance endorsement for the current crop year on the qualifying crop and the acreage is insurable under that endorsement.

d. You must participate in the ASCS acreage reduction or set-aside program for the qualifying crop in the applicable crop year on at least one farm which is part of the insured unit under this endorsement.

4. Report of acreage, share, type, and practice.

You must report on our form:

a. All the cultivated acreage intended for planting to the qualifying crop in the county in which you have a share;

b. The intended type and practice; and

c. Your share at the time of reporting.

You must designate separately any cultivated acreage that is intended for planting to the qualifying crop that is not insurable. This report must be submitted not later than the sales closing date for the qualifying crop. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the reporting date, we may elect to determine the insured acreage and share or we may deny liability on the unit. Any report submitted by you may be revised only upon our approval.

5. Amounts of insurance and coverage levels.

a. The amount of insurance per acre is computed by multiplying the qualifying crop yield guarantee times the price election selected for the qualifying crop, times 0.35.

b. The coverage level is the same as that selected under your crop insurance endorsement for the qualifying crop.

6. Annual premium.

a. The annual premium is earned and payable on the date insurance attaches. The amount is computed by multiplying the amount of insurance per acre times the premium rate, times the insured acreage, times your share.

b. Interest will accrue at the same rate and terms on any unpaid premium balance as on the qualifying crop insurance endorsement.

7. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payment due you or from any replanting payment, or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its agencies, and from any amount due you from any other United States Government Agency.

8. Insurance period.

In lieu of section 7 of the general policy, prevented planting insurance attaches on the sales closing date of the qualifying crop insurance endorsement for the crop year and ends at the earlier of:

a. Planting of the insured acreage to the qualifying crop or any other non-conserving crop; or

b. The prevented planting date.

9. Notice of damage or loss and claim for indemnity.

a. If you are prevented from planting the insured acreage and expect to claim an indemnity on the unit, you must give us notice in writing not later than five days after the prevented planting date.

b. Any claim for indemnity must be submitted to us on our form prior to the time a claim is or should be filed for the qualifying crop.

c. We will not pay any indemnity unless you:

(1) Establish that any prevention of planting on insured acreage was directly caused by one or more of the insured causes during the insurance period for the crop year for which the indemnity is claimed; and

(2) Furnish all information we require concerning the loss.

d. The indemnity will be determined for the unit by:

(1) Multiplying the insured acreage times the amount of insurance as determined in section 5 of this endorsement;

(2) Subtracting therefrom the amount obtained by multiplying the planted acreage, times the amount of insurance; and

(3) Multiplying this result by your share.

e. We may reject any claim for indemnity if you fail to comply with any of the requirements of this section.

10. Life of contract: Cancellation and termination.

a. This endorsement will be in effect only for the crop year specified on the application and may not be canceled by you for such crop year.

b. This endorsement may be renewed for each succeeding crop year if:

(1) You apply and report your intended acreage for planting not later than the sales closing date of the qualifying crop; and

(2) The qualifying crop insurance endorsement is not cancelled or terminated for the crop year.

11. Meaning of terms.

For the purposes of prevented planting crop insurance:

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a. "Cultivated acreage intended for planting" means land that was ready or, except for insured causes, could have been made ready for planting, but does not include land:

(1) On which a perennial forage crop is being grown or on which the qualifying crop or other non-conserving crop was planted prior to the prevented planting acreage reporting date; or

(2) Which was not or would not have been planted to comply with any other United States Department of Agriculture or State programs or for any other reason.

b. "Farm" means the land which is designated by ASCS under a single farm serial number.

c. "Insurable acreage" means the land classified as insurable by us for the qualifying crop and shown as such by the actuarial table.

d. "Non-conserving crop" means any crop planted for harvest as food, feed, or fiber.

e. "Planted acreage" means the insurable acreage:

(1) Planted to the qualifying crop or any non-conserving crop during the insurance period; or

(2) Which could have been planted to the qualifying crop or any non-conserving crop during the insurance period.

f. "Prevented planting date" means the latest final spring planting date established by the crop actuarial tables for any insurable crop in the county, except tobacco, plus any extended date or final planting date offered under any late planting agreement option. (In areas where there are no spring planting dates, we will use the latest final fall planting date.)

g. "Qualifying crop" means the ASCS program crop (barley, corn, cotton, ELS Cotton, grain sorghum, oats, rice, or wheat) which is also insured.

h. "Unit" means all insurable acreage in the county which you intend for planting to the qualifying crop prior to the prevented planting date for the crop year at the time insurance first attaches under this endorsement for the crop year. The unit will be determined when the acreage is reported.

i. "Yield guarantee" means the result of multiplying your yield for the qualifying crop by your coverage level for that crop.

§ 401.109 Hybrid Sorghum Seed Endorsement.

The provisions of the Hybrid Sorghum Seed Endorsement for the 1988 and subsequent crop years are as follows:

Federal Crop Insurance Corporation

Hybrid Sorghum Seed Endorsement

1. Insured crop.

a. The crop insured will be female grain sorghum which is:

(1) Planted for harvest and the production is intended for use as commercial seed to produce grain sorghum, forage sorghum, or sorghum sudan; and

(2) Grown under a written contract executed with a seed company before the acreage reporting date.

b. An instrument in the form of a "lease" under which you retain control of the acreage on which the insured crop is grown and which provides for delivery of the crop under certain conditions and at a stipulated price will be treated as a contract under which you have a share in the crop.

c. In addition to the female grain sorghum not insurable in section 2 of the general crop insurance policy, we do not insure any female grain sorghum:

(1) In rows planted with a mixture of female and male plants;

(2) Planted for any purpose other than for commercial seed;

(3) Grown under a contract with any seed company and that seed company refuses to provide us with the records we require to determine the dollar value per bushel of seed production for each hybrid variety; or

(4) Destroyed or put to another use in order to comply with other U.S. Department of Agriculture programs.

2. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Insects;

(4) Plant disease;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8 Failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

b. In addition to the causes of loss not insured against in section 1 of the general crop insurance policy we will not insure against any loss of production due to:

(1) The use of unadapted, incompatible, or genetically deficient male or female seed;

(2) Deficiencies determined during grow-out of a sample of the insured seed crop, including inadequate purity or poor vigor;

(3) Failure to follow the grower provisions of the contract executed with the seed company;

(4) Frost or freeze after the date set by the actuarial table;

(5) Inadequate germination of the hybrid seed crop even though such inadequate germination was a direct result of an insured cause of loss unless inspected and accepted by us before harvest is completed; or

(6) Failure to plant the male seed at a time sufficient to assure adequate pollination of the female plants.

3. Report of acreage, share, type, and practice (acreage report).

In addition to the information required in section 3 of the general crop insurance policy for the acreage report, you must report the crop type.

4. Annual premium.

The annual premium amount is computed by multiplying the amount of insurance per acre times the premium rate, times the insured acreage, times your share at the time of planting.

5. Insurance period.

In addition to the provisions in section 7 of the general crop insurance policy the following will apply:

a. Insurance attaches on each unit or part of a unit when both the male plant seed and the female plant seed are completely planted in accordance with the production management practices of the seed company.

b. The calendar date for the end of the insurance period is November 30 of the crop year.

6. Unit division.

Female grain sorghum acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one unit if you agree to pay additional premium if required by the actuarial table, and if for each proposed unit:

a. You maintain written, verifiable records of planted acreage and harvested production for at least the previous crop year; and

b. The acreage planted to insured female grain sorghum is located in separate legally identifiable sections, or in the absence of section descriptions, the land is identified by separate ASCS Farm Serial Numbers, provided:

(1) The boundaries of the sections or ASCS Farm Serial Numbers are clearly identified and the insured acreage is easily determined; and

(2) The female grain sorghum is planted in such a manner that the planting pattern does not continue into the adjacent section or ASCS Farm Serial Number.

If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units to be combined.

7. Notice of damage or loss.

In addition to the notices required in section 8 of the general crop insurance policy, in case of damage or probable loss you must give us written notice of probable loss at least 15 days before the beginning of harvest if you anticipate a germination rate of less than 80 percent on any unit. For purposes of section 8 of the general crop insurance policy the representative sample of the unharvested crop must be at least 10 feet wide and the entire length of the field.

8. Claim for indemnity.

a. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the amount of insurance per acre;

(2) Subtracting from this product the sum of:

(a) The dollar amount obtained by multiplying seed production to count for each type and variety by the respective dollar value per bushel determined by us; plus

(b) The dollar amount obtained by multiplying non-seed production to count by the local market price of such production on the earlier of the date the loss is adjusted or the date such production is sold; and

(c) Multiplying this result by your share.

b. The total production to be counted for a unit will include all harvested and appraised seed and all harvested and appraised non-seed production.

(1) Total seed production to be counted will include:

(a) All production delivered to and accepted by the seed company;

(b) All production with a germination rate of 80 percent or more as determined by a certified seed test conducted from a cleaned sample taken at the time of delivery to the seed company or, if the mature production is appraised, at the time of appraisal; and

(c) All harvested and appraised production which does not qualify under (a) or (b) above because of damage caused by uninsured causes or the failure to follow grower provisions of the contract executed with the seed company.

(2) Total non-seed production to be counted will include all production that does not qualify as seed production.

(3) Appraised production to be counted will include:

(a) Potential production lost due to uninsured causes and failure to follow recognized good hybrid sorghum seed farming practices;

(b) Potential production lost due to failure to follow the grower provisions of the contract executed with the seed company;

(c) Not less than the dollar amount of insurance for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause; and

(d) Any unharvested production.

c. Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(1) Not put to another use before harvest of hybrid sorghum seed becomes general in the county and is reappraised by us;

(2) Further damaged by an insured cause and is reappraised by us; or

(3) harvested.

d. To determine the quantity of mature production, seed and non-seed production will be:

(1) Adjusted .12 percent for each .1 percentage point of moisture to 13.0 percent; and

(2) Measured at 56 pounds of production equaling one bushel.

e. When records of seed production provided by the seed company have been adjusted to a basis of 13.0 percent moisture and 56 pound test weight, (d) above will not apply for harvested production and the records of the seed company will be used to determine the amount of indemnity if such production records are based on the same moisture and test weight criteria used to determine the dollar value per bushel of seed production.

9. Cancellation and termination dates.

The cancellation and termination dates are April 15.

10. Contract changes.

The date by which contract changes will be available in your service office is December 31 preceding the cancellation date.

11. Production reporting.

The production reporting provision contained in section 4 of the general crop insurance policy will not be applicable to this contract.

12. Meaning of terms.

For the purposes of hybrid sorghum seed crop insurance:

a. "Adjusted Average Yield" means an expected yield level for a specific variety, in bushels per acre, determined by us and used to establish the value of seed production for the purpose of determining the amount of indemnity.

b. "Commercial Seed" means the offspring produced by crossing two individual seeds of different genetic character. The resultant offspring is the product intended for use on a commercial basis by an agricultural producer to produce a field crop type for grain sorghum, forage sorghum, or sorghum sudan.

c. "Female Plants" mean the plants grown for the purpose of producing commercial seed and from which the commercial seed is harvested.

d. "Grow-out" means the growing of a sample of the hybrid sorghum seed crop to determine progeny characteristics.

e. "Harvest" means combining, threshing, or picking of the seed and non-seed production.

f. "Inadequate germination" means less than 80 percent of the seed produced from female plants germinated as determined by a warm test using clean seed.

g. "Male Plants" mean the plants grown for the purpose of shedding pollen on female plants.

h. "Seed Company" means a company which contracts with a grower to produce or grow plants for the production of hybrid seed.

i. "Type" means grain sorghum, forage sorghum, or sorghum sudan.

j. "Variety" means the seed produced from a pair of genetically identifiable parents.

§ 401.110 Almond Endorsement.

The provisions of the Almond Crop Insurance Endorsement for the 1988 and subsequent crop years are as follows:

Federal Crop Insurance Corporation

Almond Endorsement

1. Insured Crop.

a. The crop insured will be almonds.

b. In addition to the almonds not insurable in section 2 of the general crop insurance policy, we do not insure any almonds:

(1) Which are not irrigated; or

(2) On which the trees on the sales closing date have not reached the seventh growing season after being set out unless we agree in writing to insure such acreage.

c. Insurance may attach only by written agreement with us on any acreage with less than 90 percent of a stand, based on the original planting pattern.

2. Causes of loss.

The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

a. Adverse weather conditions;

b. Fire;

c. Wildlife;

d. Earthquake;

e. Volcanic eruption;

f. Direct Mediterranean Fruit Fly damage; or

g. Failure of the irrigation water supply due to an unavoidable cause occurring after insurance attaches;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

3. Report of acreage, share, and practice (acreage report).

The date by which you must annually submit the acreage report described in section 3 of the general crop insurance policy is January 15.

4. Annual premium.

a. The annual premium amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share on the date insurance attaches.

b. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1984 crop year under the terms of the experience table contained in the almond policy for the 1985 crop year, you will continue to receive the benefit of the reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1990 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1985 crop year;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

5. Insurance period.

Insurance attaches for each crop year on January 1. The calendar date for the end of the insurance period is November 30 of the calendar year in which the almonds are normally harvested.

6. Unit division.

Almond acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one unit if you agree to pay additional premium if required by the actuarial table and if for each proposed unit:

a. You maintain written, verifiable records of acreage and harvested production for at least the previous crop year and production reports based on those records are filed to obtain an insurance guarantee; and

b. The acreage of insured almonds is located on non-contiguous land.

If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units to be combined.

7. Claim for indemnity.

a. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of almonds to be counted (see subsection 7.b.);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

b. The total production (total meat pounds) to be counted for a unit will include all harvested and appraised production.

(1) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to

uninsured causes and failure to follow recognized good almond farming practices:

(b) Not less than the guarantee for any acreage which is abandoned damaged solely by an uninsured cause, or destroyed by you without our consent; and

(c) Any appraised production on unharvested acreage.

(2) Any appraisal we have made on insured acreage will be considered production to count unless such appraised production is:

(a) Further damaged by an insured cause and is reappraised by us; or

(b) Harvested.

(3) Almonds which cannot be marketed due to insurable causes will not be considered production.

8. Cancellation and termination dates.

The cancellation and termination dates are December 31.

9. Contract changes.

The date by which contract changes will be available in your service office is August 31 preceding the cancellation date.

10. Meaning of terms.

a. "Direct Mediterranean Fruit Fly damage" means the actual physical damage to the almonds which causes such almonds to be considered unmarketable and will not include unmarketability of such almonds as a result of a quarantine, boycott, or refusal to accept the almonds by any entity without regard to the actual physical damage to such almonds.

b. "Harvest" means the removal of the almonds from the orchard.

c. "Non-contiguous Land" means land which is not touching at any point, except that land which is separated by only a public or private right-of-way will be considered contiguous.

d. "Total Meat Pounds" means the total pounds of good almond meats (whole, chipped and broken, and inshell meats) and rejects, except those resulting from insurable causes as determined by us. Unshelled almonds will be converted to meat pounds.

Done in Washington, DC, on July 13, 1987.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 87-17255 Filed 7-29-87; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 1065

Milk in the Nebraska-Western Iowa Marketing Area; Temporary Revision of Diversion Limitation Percentage

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Temporary revision of rules.

SUMMARY: This action temporarily relaxes for the months of July and August 1987 the limit on how much milk not needed for fluid (bottling) use may be moved directly from farms to nonpool manufacturing plants and still be priced under the Nebraska-Western Iowa order. The revision is made in response to a request by a cooperative association representing a substantial number of producers supplying the market in order to prevent uneconomic movements of milk.

EFFECTIVE DATE: July 30, 1987.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, 202-447-7183.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Temporary Revision of Diversion Limitation Percentage: Issued July 7, 1987; published July 10, 1987 (52 FR 26016).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

This temporary revision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the provisions of § 1065.13(d)(4) of the Nebraska-Western Iowa order.

Notice of proposed rulemaking was published in the Federal Register (52 FR 26016) concerning a proposed increase in the amount of milk that may be moved directly from producer farms to nonpool manufacturing plants for the months of July and August 1987. The public was afforded the opportunity to comment on the proposed notice by submitting written data, views and arguments by July 17, 1987. No comments opposing the proposed temporary revision were received.

Statement of Consideration

After consideration of all relevant material, including the proposal set forth in the aforesaid notice and other available information, it is hereby found and determined that the diversion limitation percentage set forth in § 1065.13(d) should be increased by 10 percentage points from the present 50 percent to 60 percent for the months of July and August 1987. The order's diversion limits were revised temporarily from 50 to 60 percent for the months of May through August 1986, from 40 to 60 percent for the months of September through December 1986, and from 40 to 55 percent for the months of January through March 1987.

Pursuant to the provisions of § 1065.13(d), the diversion limitation percentages set forth in § 1065.13(d) (2) and (3), respectively, may be increased or decreased up to 20 percentage points during any month. Such changes may be made to encourage additional needed milk shipments to pool distributing plants or to prevent uneconomic shipments merely for the purpose of assuring that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

National Farmers Organization (NFO), a cooperative association which represents producers supplying the Nebraska-Western Iowa market, requested that for the months of July and August 1987, the percentage of allowable diversions be increased 10 percentage points.

The basis of the cooperative's request is that for the period in question, the order provisions require more milk to move through pool plants than is necessary to meet the fluid, or bottling, requirements of the market. NFO stated that a decline of approximately one percent per year in Class I sales under the Nebraska-Western Iowa order has been accompanied by a reduction in the demand of pool plants for producer milk supplies. According to the cooperative, the percentage of producer milk used in Class I under the order was only 33 percent for the month of May 1987, and can be expected to decline during the summer months, particularly in July and August. As a consequence, NFO stated, the amount of producer milk surplus to the Nebraska-Western Iowa market's Class I needs during those months can be expected to be well in excess of 60 percent of the milk pooled.

According to NFO, the milk surplus to the fluid needs of the market must be diverted to manufacturing facilities. In order to comply with the order's present diversion limits, the cooperative states that the required percentage of its members' milk must be delivered to pool plants. However, a significant amount of its members' milk is not needed at pool plants, but must be received first at a pool plant in order to qualify for pooling, then reloaded and transshipped to a nonpool plant to be used. NFO stated

that such uneconomic milk shipments would be necessary for the months of July and August 1987 if the milk of its member producers customarily pooled under the Nebraska-Western Iowa order is to continue to be priced under the order and receive the benefits of such pricing. The proposed temporary increase of the diversion limits is necessary to prevent uneconomic shipments merely for the purpose of assuring that dairy farmers historically associated with the market will continue to have their milk priced under the order.

It appears that some relaxation of the order's diversion limits would be appropriate. The percentage of producer milk used in Class I in the Nebraska-Western Iowa market during July and August 1986 averaged approximately 35 percent. Milk production would have to decline considerably from the previous year's level to justify a requirement that 50 percent of all producer milk pooled under the order be delivered to pool plants. It appears that a reasonable limit on diversions of producer milk to nonpool plants for the period in question would be 60 percent of the producer milk pooled by a handler.

Without the temporary revision, milk of some dairy farmers would first have to be received at a pool plant to qualify it for pooling rather than being shipped directly from the farm to nonpool manufacturing plants for surplus use. The order's present diversion limits would result in costly and inefficient movements of milk. It is concluded that the relaxation of the diversion limits by 10 percentage points for the months of July and August 1987 will prevent uneconomic movements of milk through pool plants merely for the purpose of qualifying it as producer milk under the order, but will assure that an adequate supply of milk will be available to pool distributing plants.

It is hereby found and determined that 30 days' notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

(a) This temporary revision is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area for the months of July and August 1987;

(b) This temporary revision does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of the proposed temporary revision was given interested parties and they were afforded opportunity to file written data, views, or arguments concerning this temporary revision.

Therefore, good cause exists for making this temporary revision effective upon publication of this notice in the **Federal Register**.

List of Subjects in 7 CFR Part 1065

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, that in paragraphs (d) (2) and (3) of § 1065.13, the provision "50 percent" is revised to "60 percent" for the months of July and August 1987.

PART 1065—[AMENDED]

The authority citation for 7 CFR Part 1065 continues to read as follows:

Authority: (Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674)).

Signed at Washington, DC, on July 27, 1987.

Edward T. Coughlin,

Director, Dairy Division.

[FR Doc. 87–17319 Filed 7–29–87; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1076

Milk in the Eastern South Dakota Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action suspends for the months of August 1987 through February 1988 certain provisions of the Eastern South Dakota milk order. The provisions suspended relate to the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. Suspension of the provisions was requested by a cooperative association representing most of the producers supplying the market. The suspension is needed to prevent uneconomic movements of milk.

EFFECTIVE DATE: July 30, 1987.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–7183.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Notice of Proposed Suspension: Issued June 26, 1987; published July 2, 1987 (52 FR 25020).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under the criteria contained therein.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and of the order regulating the handling of milk in the Eastern South Dakota marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on July 2, 1987 (52 FR 25020) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon. No comments opposing the proposed suspension were received.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that for the months of August 1987 through February 1988 the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1076.13, paragraphs (c) (2) and (3).

Statement of Consideration

This action removes for the months of August 1987 through February 1988 the limit on the amount of producer milk that a cooperative association or other handler may divert from pool plants to nonpool plants. The suspension was requested by Land O'Lakes, Inc. (LOL), an association of producers that handles most of the market's reserve milk supplies.

The order now provides that a cooperative association may divert up to 35 percent of its total member milk received at all pool plants or diverted therefrom during the months of August through February. Similarly, the operator of a pool plant may divert up to 35 percent of its receipts of producer milk (for which the operator of such plant is the handler during the month) during the months of August through February.

The suspension is necessary to assure the continued participation in the marketwide pool of producers

historically associated with the Eastern South Dakota market. Operation of the 35-percent diversion limit during August through February would require LOL to deliver 65 percent of its milk to pool plants. According to the cooperative's estimates, only 45 to 55 percent of its milk will be needed at distributing plants. Without suspension of the diversion limit, the balance of LOL's members' milk would have to be delivered to a supply plant, unloaded, reloaded and then shipped to other plants merely to qualify the milk for pooling. The additional handling and hauling costs would be incurred by LOL and its member producers, with no offsetting benefits to other market participants.

In comments filed in support of the proposed suspension, LOL stated that requiring the full 65 percent of its milk to be delivered to pool plants would serve no useful purpose other than demonstrating the availability of a reserve supply of milk for Class I use. The cooperative argued that because the reserve milk will not be needed for Class I use, the requirement should be suspended.

In view of these circumstances, it is concluded that the diversion limits in the Eastern South Dakota milk order should be suspended for the months of August 1987 through February 1988 to ensure the orderly marketing of milk supplies. The suspension will prevent uneconomic movements of some milk through pool plants merely for the purpose of qualifying it for producer milk status under the order.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that without extensive unnecessary and expensive hauling and handling substantial quantities of milk from producers who regularly supply the market otherwise would be excluded from the marketwide pool, thereby causing a disruption in the orderly marketing of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. No comments were filed in opposition to this action.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1076

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the aforesaid provisions of § 1076.13 of the Eastern South Dakota order are hereby suspended for the months of August 1987 through February 1988, as follows:

PART 1076—MILK IN THE EASTERN SOUTH DAKOTA MARKETING AREA

1. The authority citation for Part 1076 continues to read as follows:

Authority: (Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674).

§ 1076.13 [Amended]

2. In § 1076.13, paragraphs (c) (2) and (3) are suspended for the months of August 1987 through February 1988.

Signed at Washington, DC on July 27, 1987.

Karen K. Darling,

Deputy Assistant Secretary, Marketing & Inspection Services.

[FR Doc. 87-17320 Filed 7-29-87; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 154, 375, and 382

[Docket No. RM87-3-002 et al.]

Annual Charges Under the Omnibus Budget Reconciliation Act of 1986; Granting of Rehearing for Further Consideration

Issued: July 27, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final Rule; Order Granting Rehearing Solely for the Purpose of Further Consideration.

SUMMARY: On May 29, 1987, the Federal Energy Regulatory Commission (Commission) issued a final rule amending its regulations to establish annual charges as required by Section 3401 of the Omnibus Budget Reconciliation Act of 1986. Numerous entities have filed petitions for rehearing of that final rule. In this order, the Commission grants rehearing of its decision solely for the purpose of giving further consideration to the petitions for rehearing.

EFFECTIVE DATE: July 27, 1987.

FOR FURTHER INFORMATION CONTACT: Roland M. Frye, Jr., Office of the General Counsel, Producer Regulation Division, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357–8315.

SUPPLEMENTARY INFORMATION:

Order Granting Rehearing Solely for the Purpose of Further Consideration

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On June 29, 1987, the Commission received numerous petitions for rehearing [1] of the Commission's Order No. 472 issued May 29, 1987, in this proceeding.[2] In that order, the Commission promulgated regulations governing the computation and assessment of annual charges as required by Section 3401 of the Omnibus Budget Reconciliation Act of 1986.[3] The petitioners for rehearing raise numerous issues concerning the equitable, statutory and constitutional soundness of Order No. 472. In order to afford additional time for consideration of these issues, the Commission grants rehearing of Order No. 472 for the limited purpose of further consideration. This order is effective on the date of issuance. This action does not constitute a grant or denial of the petition on their merits, either in whole or in part. As provided in Rule 713(d) of the Commission's Rules of Practice and Procedure,[4] the Commission will

[1] The Commission has received timely petitions for rehearing from the following entities: Eureka Pipe Line Co., National Transit Co., Columbia Gas Transmission Corp., Columbia Gulf Transmission Co., United Distribution Cos., Connecticut Natural Gas Corp., National Fuel Gas Distribution Corp., Phillips Petroleum Co., Interstate Natural Gas Assoc. of America, Consolidated Gas Transmission Corp., Texas Eastern Transmission Corp., ANR Pipeline Co., Colorado Interstate Gas Co., League of Small Pipelines, Central Illinois Public Service Co., Arizona Public Service Co., Texas Utilities Electric Co., Edison Electric Institute, Houston Lighting & Power Co., Southern Company Services, Inc. (the Southern Co., Alabama Power Co., Georgia Power Co., Gulf Power Co., Mississippi Power Co., and Southern Electric Generating Co.), Blackstone Valley Electric Co., Boston Edison Co., Central Vermont Public Service Corp., Eastern Edison Co., El Paso Electric Co., EUA Power Corp., Florida Power Corp., Montaup Electric Co., Northern States Power Co., Public Service Co. of Indiana, Inc., Public Service Co. of New Hampshire, and Wisconsin Electric Power Co.

The Commission also received a petition for rehearing filed out of time by Edison Electric Institute on June 30, 1987.

[2] "Annual Charges Under the Omnibus Budget Reconciliation Act of 1986," Final Rule, Order No. 472, 52 FR 21,263 (June 5, 1987), III FERC Stats. & Regs. ¶ 30,748, 39 FERC ¶ 61,208, *clarified,* Order No. 472–A, 52 FR 23,860 (June 24, 1987), 39 FERC ¶ 61,316.

[3] Act of October 21, 1986, Pub. L. No. 99–509, Title III, Subtitle e, section 3401, 1986 U.S. Code Cong. & Ad. News (100 Stat.) 1874, 1899–91 (to be codified at 42 U.S.C. 7178), I FERC Stats. & Regs. ¶ 8253.

[4] 18 CFR 385.713(d) (1987).

entertain no answers to the petitions for rehearing.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-17306 Filed 7-29-87; 8:45 am]

BILLING CODE 6717-01-M

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18 CFR Parts 201, 282, 284, 292, 375, 381 and 385

[Docket No. RM87-28-000 et al.; Order No. 478]

Repeal of Incremental Pricing Regulations and Termination of Pending Incremental Pricing Dockets

Issued: July 27, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is terminating its incremental pricing program under the Natural Gas Policy Act of 1978 (NGPA). On May 21, 1987, President Reagan signed enrolled bill H.R. 1941, "[t]o repeal and amend certain sections of the Powerplant and Industrial Fuel Use Act of 1978" (Pub. L. No. 100-42, 101 Stat. 310 (1987)). This law repealed Title II (Incremental Pricing) of the NGPA.

With the repeal of incremental pricing, the Commission revokes its regulations under Title II of the NGPA (18 CFR Part 282) and makes conforming changes to parts 201, 284, 292, 375, 381 and 385 of its regulations. Congress provided a limited continuing effect of the Commission's incremental pricing rules to permit the flowthrough of incremental surcharges that incurred before enactment. For this reason, the revocation of the Commission's incremental pricing regulations will take effect as of January 1, 1988. In addition, the Commission terminates six pending rulemaking dockets which relate to incremental pricing.

EFFECTIVE DATE: This rule will become effective July 30, 1987.

FOR FURTHER INFORMATION CONTACT: Roger E. Smith, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8530.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

Repeal of Incremental Pricing Regulations, Docket No. RM87-28-000;

Petition of Process Gas Consumers Group, *et al.*, for Rulemaking Suspending or Reducing Incremental Pricing for Industrial Boiler Fuel Users or Exempting Such Users from the Phase I Incremental Pricing Program, Docket No. RM86-11-000;

Petition for Rulemaking by Air Products and Chemicals, Inc., *et al.*, to Eliminate or Suspend Incremental Pricing, Docket No. RM86-4-000;

Incremental Pricing; Rule Adopting Revised Alternative Fuel Price Ceilings for the State of Kentucky, Docket No. RM81-9-000;

Incremental Pricing; Agricultural Uses; Interim Rule under the Natural Gas Policy Act of 1978, Docket No. RM80-75-000;

Permanent Rule Defining Agricultural Uses Exempt from Incremental Pricing under the Natural Gas Policy Act of 1978, Docket No. RM80-28-000; and

Alternative Fuel Price Ceilings for Incremental Pricing under the Natural Gas Policy Act of 1978, Docket No. RM79-21-000.

Order No. 478

Issued July 27, 1987.

I. Introduction

In this final rule, the Federal Energy Regulatory Commission (Commission) revokes its incremental pricing regulations (18 CFR Part 282) under Title II of the Natural Gas Policy Act of 1978 (NGPA) as of January 1, 1988. The Commission also terminates six pending rulemaking dockets that either implemented, or proposed to implement, incremental pricing. In particular, the Commission terminates three interim rules, withdraws one notice of proposed rulemaking (NOPR) and denies two petitions for rulemaking.

II. Background

On May 21, 1987, President Reagan signed enrolled bill H.R. 1941, "[t]o repeal and amend certain sections of the Powerplant and Industrial Fuel Use Act of 1978."[1] In addition to repealing the natural gas-burning restrictions in the Act,[2] this law repealed Title II (Incremental Pricing) of the Natural Gas Policy Act of 1978 (NGPA).[3]

The Commission was given the responsibility to implement Title II of the NGPA. Several rulemakings were undertaken, regulations were promulgated, and an incremental pricing program was implemented. Congress also provided in section 206 of the NGPA statutory exemption from incremental pricing for residences, schools, hospitals, small industrial boiler fuel users, and agricultural users. The Commission implemented these exemptions by rule, and was given the authority in section 206(d) of the NGPA to establish other exemptions from incremental pricing.

In general, Title II (sections 201-208) of the NGPA[4] required interstate pipelines and local distribution companies to pass through certain portions of their natural gas acquisition costs to industrial users in the form of surcharges. Section 201 of the NGPA directed that the surcharge be absorbed by large industrial facilities burning natural gas as a boiler fuel.[5] Section 204 provided that the price that those facilities would pay for gas was equivalent to the price they would pay for fuel oil or other alternative fuels which the industrial boiler fuel facilities were capable of burning. However, the surcharges could not raise the ultimate cost of gas to the user above the cost of alternative fuels. The Commission was required by section 204(e) of the NGPA to establish ceilings on the incremental gas costs charged to incrementally priced users, based on the alternative fuel costs in each region designated by the Commission.

III. Discussion

With the repeal of Title II of the NGPA, the Commission is terminating its incremental pricing programs. However, Congress provided for a limited continuing effect of the Commission's incremental pricing rules to permit the flowthrough of incremental surcharges that incurred before enactment.[6] For this reason, the Commission is revoking its incremental pricing regulations as of January 1, 1988. The regulations will remain in effect until January 1, 1988 to the extent necessary to allow the flowthrough of costs and surcharges which incurred before enactment. As of January 1, 1988, the Commission revokes all its regulations under Title II of the NGPA (18 CFR Part 282) and makes conforming changes to Parts 201, 284, 292, 375, 381 and 385 of its regulations. In addition, the Commission terminates three interim rules, withdraws one notice of proposed rulemaking, and denies two petitions for rulemaking.

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[1] Powerplant and Industrial Fuel Use Act of 1978, Amendments, Pub. L. No. 100-42, 101 Stat. 310 (1987) (to be codified at 15 U.S.C. 3341).

[2] 42 U.S.C. 8301-8483 (1982).

[3] 15 U.S.C. 3341-3348 (1982).

[4] *Id.*

[5] 15 U.S.C. 3341(b) (1982).

[6] Section 2 of Pub. L. No. 100-42 provides:

(b) Limited Continuing Effect of Rules.—A rule promulgated by the Federal Energy Regulatory Commission, under Title II of the Natural Gas Policy Act of 1978 shall continue in effect only with respect to the flowthrough of costs incurred before the enactment of this section, including any surcharges based on such costs.

A. The Commission's Incremental Pricing Regulations (18 CFR Part 282)

The Commission's incremental pricing regulations are contained in 18 CFR Part 282. The Commission is removing Part 282 in its entirety to reflect the repeal of Title II (incremental pricing) of the NGPA by Pub. L. No. 100–42. Parts 201, 284, 292, 375, 381 and 385 of the Commission's regulations are also revised to conform to this change in law.

Part 201 contains a uniform system of accounts for natural gas companies subject to the NGPA.[7] Accounts 191, 192 and 805.2 dealt with incremental pricing. With the repeal of incremental pricing, the determination of whether to include incremental gas costs or incremental pricing surcharges in Account 191—"Unrecovered Purchased Gas Costs" is no longer necessary. Similarly, Account 192.1—"Unrecovered Incremental Gas Costs," Account 192.2—"Unrecovered Incremental Surcharges," and Account 805.2—"Incremental Gas Cost Adjustments" are revoked as unnecessary.

Part 284 covers certain sales and transportation of natural gas under the NGPA.[8] Subpart G of Part 284 deals with blanket certificates that authorize transportation by pipelines on behalf of others. In addition, subpart G governs services by local distribution companies. In particular, § 284.224 deals with transportation, sales and assignments by local distribution companies that are served by interstate pipelines. Section 284.224(e)(3) contains a provision relating to incremental pricing. The Commission removes § 284.224(e)(3) in its entirety.

Part 292 of the Commission's regulations[9] contains regulations under sections 201 and 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA).[10] The regulations relate to small power production and cogeneration facilities. Section 292.203 sets forth general requirements for qualification under Sections 201 and 210 of PURPA. Section 292.205 sets forth general criteria for qualifying cogeneration facilities. Section 292.203(b)(2) provides that cogeneration facilities must qualify under § 292.205(c) to be exempted from incremental pricing. Section 292.205(c) allows certain cogeneration facilities using natural gas to be exempted from incremental pricing. Since this rule is no longer necessary, the Commission is removing §§ 292.203(b)(2) and 292.205(c) from its regulations. For the same reasons, the Commission is also removing Subpart E of Part 292 of its regulations,[11] which allowed certain cogeneration facilities to be exempted from incremental pricing.

Part 375 contains general provisions regarding the Commission.[12] Subpart C of Part 375 covers delegations of authority from the Commission to various staff officials. Section 375.307 concerns delegations to the Director of the Office of Pipeline and Producer Regulation (Director). Section 375.307(1) delegates to the Director the authority to compute the monthly incremental price thresholds pursuant to section 203(c) of the NGPA. It is no longer necessary to compute the monthly price thresholds and the Commission therefore removes § 375.307(1) from its regulations.

Part 381 relates to fees charged by the Commission for various services and benefits provided by the Commission. Subpart D of Part 381 concerns fees applicable to the NGPA.[13] The Commission amends § 381.401 to reflect the repeal of incremental pricing.

Part 385 of the Commission's regulations contains rules of practice and procedure.[14] Subpart K covers petitions for adjustments under the NGPA. Section 385.1101(a)(2) provides that subpart K applies to Commission proceedings held in accordance with section 206(d) of the NGPA (exemptions from incremental pricing). The Commission removes § 385.1101(a)(2) in its entirety.

B. Alternative Fuel Price Ceilings (RM79–21–000 and RM81–9–000)

The repeal of incremental pricing obviates the need for the Commission to calculate alternative fuel price ceilings each month. The publication of the price ceilings for June, 1987 will be the last publication of these ceilings. For this reason, the Commission revokes two interim rules that relate to alternative fuel price ceilings for state regions and terminates those dockets.

In particular, an interim rule that revised the methodology for calculating the monthly alternative fuel price ceilings for state regions is revoked and the docket terminated.[15] This interim rule was never made final but continued in effect and required that the alternative fuel price ceiling for each of the 48 contiguous state regions should be the lower of either the ceiling calculated for that state or the ceiling calculated for the multistate region in which the state is located.[16]

Similarly, an interim rule that revised the alternative fuel price ceilings for the State of Kentucky for December 1980 and January 1981 is also revoked and the docket terminated.[17] The Commission notes that the interim rule in Docket No. RM81–9–000 is terminated on a prospective basis. The fuel price ceilings revised by Docket No. RM81–9–000 remain in effect with respect to the flowthrough of costs incurred before May 21, 1987, including surcharges based on such costs.

C. Agricultural Use Exemption (RM80–75–000 and RM80–28–000)

Section 206(b) of the NGPA provided an "agricultural use" exemption from incremental pricing. The Commission implemented section 206(b) by prescribing a number of rules. With the repeal of Title II of the NGPA there is no longer any need to define agricultural use or to promulgate regulations for the agricultural use exemption in section 206(b) of the NGPA. As discussed more fully below, the Commission terminates the interim rule in Docket No. RM80–75–000 and terminates that docket, and withdraws the notice of proposed rulemaking in Docket No. RM80–28–000.

1. Rule Clarifying "Agricultural Use" (RM80–75–000)

Section 282.202(a) of the Commission's regulations defined the term "agricultural use" for the purpose of the agricultural use exemption from incremental pricing in section 206(b) of the NGPA. The Commission issued an interim rule in Docket No. RM80–75–000 to clarify the scope of § 282.202(a) of its incremental pricing regulations.[18]

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[7] 18 CFR Part 201 (1987).
[8] 18 CFR Part 284 (1987).
[9] 18 CFR Part 292 (1987).
[10] Pub. L. No. 95–617, 92 Stat. 3117 (1978).
[11] 18 CFR 292.501–03 (1987).
[12] 18 CFR Part 375 (1987).
[13] 18 CFR Part 381 (1987).
[14] 18 CFR Part 385 (1987).
[15] "Alternative Fuel Price Ceilings for Incremental Pricing Under the Natural Gas Policy Act of 1978," 46 FR 15,406 (Mar. 6, 1981); FERC Stats. & Regs. [Regulations Preambles 1977–1981] ¶ 30,239 (Mar. 2, 1981). (Docket No. RM79–21–000).
[16] The collection of data, the application of the formula, and publication of the ceilings are performed by the Energy Information Administration (EIA) in accordance with Commission direction.
[17] "Incremental Pricing: Rule Adopting Revised Alternative Fuel Price Ceilings for the State of Kentucky," 46 FR 2036 (Jan. 8, 1981); FERC Stats. & Regs. [Regulations Preambles 1977–1981] ¶ 30,221 (Dec. 24, 1980). (Docket No. RM81–9–000).
[18] "Agricultural Uses Exemption; Interim Rule Amending Commission's Regulations under the Natural Gas Policy Act of 1978," 45 FR 67,270 (October 9, 1980); FERC Stats. & Regs. [Regulations Preambles 1977–1981] ¶ 30,195 (October 6, 1980).

Since a definition of "essential agricultural uses" is no longer necessary to implement incremental pricing, the Commission revokes the interim rule and terminates Docket No. RM80-75-000.

2. Proposed Rule on "Agricultural Use" (RM80-28-000)

On March 6, 1980, the Commission issued a notice of proposed rulemaking (NOPR) in Docket No. RM80-28-000.[19] This docket dealt with the "agricultural use" exemption in section 206 of the NGPA.

On May 7, 1980, the Commission issued a final rule relating to incremental pricing that made it unnecessary for the Commission to promulgate a final rule in RM80-28-000.[20] Docket No. RM80-28-000 remains an open docket. In light of the repeal of incremental pricing, the Commission is now withdrawing the NOPR and terminating Docket No. RM80-28-000.

D. Petitions for Rulemaking to Suspend or Eliminate Incremental Pricing (RM86-4-000 and RM86-11-000)

On December 6, 1985, and on June 3, 1986, two industrial groups filed petitions seeking the elimination or suspension of incremental pricing under Title II of the NGPA.[21] The Commission is denying these petitions for rulemaking because the Commission no longer has the authority to promulgate such rules. The legislative repeal of incremental pricing affords petitioners the relief they were seeking from the Commission administratively.

E. Prospective Application of the Final Rule and Filing Requirements

The Commission notes that this final rule has prospective application only. In repealing Title II of the NGPA, Congress provided for a limited continuing effect of the incremental pricing rules to permit completion of the flowthrough of incremental surcharges incurred before enactment. Some pipelines will have incremental costs that accrued prior to May 21, 1987 (the date on which Pub. L. No. 100-42 was enacted) which are awaiting pass through. In order to permit these costs to be properly accounted for and passed through, the Commission is revoking its incremental pricing regulations as of January 1, 1988. Upon completion of cost flowthrough of all incremental costs incurred before enactment, an affected pipeline may then eliminate the accounting practices and associated accounts applicable to Title II as described in this rule.

Natural gas companies are required to file gas "tariffs" with the Commission. The tariff is a compilation, in book form, of all the effective rate schedules of a particular natural gas company, and a copy of each form of service agreement.[22] The Commission will not require the pipelines to make a separate filing to remove the incremental pricing tariff language from its tariff. Instead, the Commission will require the pipelines to remove the applicable tariff language as a part of their next scheduled PGA filing after January 1, 1988.

IV. Notice and Comment and Effective Date

The Administrative Procedure Act (APA) requires that a notice of proposed rulemaking be published in the Federal Register and that an opportunity for comment be provided when an agency promulgates regulations. Notice and comment are not required under the Administrative Procedure Act (APA) when the rulemaking involves "interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice."[23]

Generally, a rule becomes effective not less than 30 days after publication in the Federal Register. A rule may become effective sooner if it is an interpretative rule, a statement of policy, or if the agency finds good cause to make it effective sooner.[24]

The Commission was responsible for implementing the incremental pricing program. Congress has repealed incremental pricing and revoked the Commission's authority to implement that program. This final rule terminates six pending rulemaking dockets related to the Commission's incremental pricing program and revokes the Commission's regulations under Title II of the NGPA. In so doing, this final rule simply sets forth and explains that which the Congressional repeal of incremental pricing requires. The revocation of the Commission's incremental pricing regulations will take effect on January 1, 1988. The termination of the rulemaking dockets will become effective upon publication in the Federal Register.

List of Subjects

18 CFR Part 201

Natural gas, Reporting and recordkeeping requirements, Uniform System of Accounts.

18 CFR Part 282

Intergovernmental relations, Natural gas, Reporting and recordkeeping requirements, Uniform System of Accounts.

18 CFR Part 284

Continental shelf, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 292

Electric power plants, Electric utilities, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

18 CFR Part 381

Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 385

Administrative practice and procedure, Pipelines, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission revokes Part 282 and amends Parts 201, 282, 284, 292, 375, 381

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[19] The proposal in RM80-28-000 would have exempted an agricultural use from being incrementally priced only if the Commission determined that there was no economically practicable or reasonably available alternative fuel for the agricultural use. The proposal, however, provided no alternative fuel or feedstock test for the Commission to use in making such a determination. Thus, RM80-28-000, if adopted by itself, would have made all agricultural uses subject to incremental pricing surcharges. The Commission therefore promulgated a companion proposal, RM80-29-000, that would have provided a one-year delay in the effectiveness of the proposed rule in RM80-28-000. The combined effect of the two proposals would have been to exempt all agricultural uses from incremental pricing until May of 1981. "Permanent Rule Defining Agricultural Uses Except from Incremental Pricing under the Natural Gas Policy of 1978 and Rule Exempting Agricultural Uses from Incremental Pricing Surcharges," 45 FR 15,563 (Mar. 11, 1980); FERC Stats. & Regs. [Proposed Regulations 1977-1981] ¶ 32,050 (Mar. 6, 1980).

[20] *See* "Section 206(d) Rule Exempting Agricultural Uses from Incremental Pricing Surcharges," 45 FR 33,601 (May 20, 1980), FERC Stats. & Regs. [Regulations Preambles 1977-1981] ¶ 30,136 (May 7, 1980).

[21] On December 6, 1985, Air Products and Chemicals, Inc., ASARCO, Inc., Armstrong World Industries, Inc., Dow Corning Corporation, Inspiration Consolidated Copper Company, Kennecott Corporation, Magnet Copper Company and Stauffer Chemical Company (Air Products, *et al.*) filed a petition with the Commission in Docket No. RM86-4-000 for a rulemaking to eliminate or suspend incremental pricing surcharges. On June 3, 1986, the Process Gas Consumers Group, the American Iron and Steel Institute, the Chemical Manufacturers Association, and the Association of Businesses Advocating Tariff Equity (Process Gas, *et al.*) petitioned the Commission in Docket No. RM86-11-000 for a rulemaking to suspend or reduce incremental pricing, or to exempt industrial boiler fuel users from incremental pricing surcharges.

[22] 18 CFR 154.14 (1987).

[23] 5 U.S.C. 553(b)(A) (1982)

[24] 5 U.S.C. 553(d) (1982).

and 385, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 201—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR NATURAL GAS COMPANIES SUBJECT TO THE PROVISIONS OF THE NATURAL GAS ACT

1. The authority citation for Part 201 is revised to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142.

2. In Part 201, Account 191—Unrecovered purchased gas costs, is amended by revising paragraph (A) to read as follows:

A. This account shall include purchase gas costs related to Commission approved purchased gas adjustment clauses when such costs are not included in the utility's rate schedule on file with the Commission. This account shall also include such other costs as authorized by the Commission.

* * * * *

3. In Part 201, Account 192.1—Unrecovered incremental gas costs, is removed in its entirety.

4. In Part 201, Account 192.2—Unrecovered incremental surcharges, is removed in its entirety.

5. In Part 201, Account 805.2—Incremental gas cost adjustments, is removed in its entirety.

PART 282—[REMOVED]

6. Part 282 is removed in its entirety.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

7. The authority citation for Part 284 is revised to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982), as amended; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142.

§ 284.224 [Amended]

8. Section 284.224(e)(3) is removed in its entirety and paragraphs (4) through (6) are redesignated as paragraphs (3) through (5) respectively.

PART 292—REGULATIONS UNDER SECTIONS 201 AND 210 OF THE PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978 WITH REGARD TO SMALL POWER PRODUCTION AND COGENERATION

9. The authority citation for Part 292 is revised to read as follows:

Authority: Electric Consumers Protection Act of 1986, Pub. L. No. 99–495; Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Federal Power Act, 16 U.S.C. 791a–825r (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982), as amended, unless otherwise noted.

10. Section 292.203(b)(2) is removed in its entirety and § 292.203(b) is revised to read as follows:

§ 292.203 General requirements for qualification.

* * * * *

(b) *Cogeneration facilities.* A cogeneration facility, including any diesel and dual-fuel cogeneration facility, is a qualifying facility if it:

(1) Meets any applicable operating and efficiency standards specified in § 292.205 (a) and (b); and

(2) Meets the ownership criteria specified in § 292.206.

* * * * *

11. Section 292.205 is amended by removing paragraph (c) in its entirety and redesignating paragraph (d) as paragraph (c); and redesignated paragraph (c) is revised to read as follows:

§ 292.205 Criteria for qualifying cogeneration facilities.

* * * * *

(c) *Waiver.* The Commission may waive any of the requirements of paragraphs (a) and (b) of this section upon a showing that the facility will produce significant energy savings.

Subpart E—[Removed]

12. Part 292, Subpart E, Qualification of Cogeneration Facilities for Incremental Pricing Exemption, consisting of §§ 292.501 through 292.503, is removed in its entirety.

PART 375—THE COMMISSION

13. The authority citation for Part 375 continues to read as follows:

Authority: Electric Consumers Protection Act of 1986, Pub. L. No. 99–495; Department of Energy Organization Act, 42 U.S.C. 7101–7532, E.O. 12009, 3 CFR 1978 Comp., p. 142; Administrative Procedure Act, 5 U.S.C. 553; Federal Power Act, 16 U.S.C. 791–828c, as amended; Natural Gas Act, 15 U.S.C. 717–717w, as amended; Natural Gas Policy Act of 1978, 15 U.S.C. 3301 *et seq.*; Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601 *et seq.*, as amended.

14. Section 375.307 is amended by removing paragraph (l) in its entirety and redesignating paragraphs (m) through (w) as paragraphs (l) through (v).

PART 381—FEES

15. The authority citation for Part 381 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Natural Gas Act, 15 U.S.C. 717–717w (1982); Federal Power Act, 16 U.S.C. 791–828c (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982); Interstate Commerce Act, 49 U.S.C. 1–27 (1976).

16. Section 381.401 is revised to read as follows:

§ 381.401 Adjustments.

The fee established for an application for adjustment under section 502(c) of the NGPA is $3,500. Such fee must be submitted in accordance with Subpart A of this part and § 385.1104.

PART 385—RULES OF PRACTICE AND PROCEDURE

17. The authority citation for Part 385 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Administrative Procedure Act, 5 U.S.C. 551–557 (1982); Independent Offices Appropriations Act 31 U.S.C. 9701 (1982); Federal Power Act, 16 U.S.C. 791–825r (1982); Natural Gas Act, 15 U.S.C. 717–717w (1982); Natural Gas Policy Act, 15 U.S.C. 3301–3432 (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982); Interstate Commerce Act, 49 U.S.C. 1–27 (1976), unless otherwise noted.

18. Section 385.1101(a) is revised to read as follows:

§ 385.1101 Applicability (Rule 1101).

(a) *Proceedings to which applicable.* Except as provided in paragraph (b) of this section, this subpart applies to proceedings of the Commission held in accordance with section 502(c) of the NGPA to provide for adjustments of:

(1) Commission rules, and

(2) Commission orders having the applicability and effect of a rule as defined in section 551(4) of title 5 of the United States Code (5 U.S.C. 551(4)) and issued under the NGPA, except orders

issued under sections 301, 302, and 303 of the NGPA.

* * * * *

[FR Doc. 87-17307 Filed 7-29-87; 8:45 am]
BILLING CODE 6717-01-M

18 CFR Part 271

[Docket No. RM80-53]

Natural Gas Policy Act; Maximum Lawful Prices and Inflation Adjustment Factors

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order of the Director, OPPR.

SUMMARY: Pursuant to the authority delegated by 18 CFR 375.307(k), the Director of the Office of Pipeline and Producer Regulation revises and publishes the maximum lawful prices prescribed under Title I of the Natural Gas Policy Act (NGPA) for the months of August, September, and October, 1987. Section 101(b)(6) of the NGPA requires that the Commission compute and publish the maximum lawful prices before the beginning of each month for which the figures apply.

EFFECTIVE DATE: August 1, 1987.

FOR FURTHER INFORMATION CONTACT: Richard P. O'Neill, Director, OPPR, (202) 357-8500.

Issued: July 24, 1987.

In the matter of publication of prescribed maximum lawful prices under the Natural Gas Policy Act of 1978.

Section 101(b)(6) of the Natural Gas Policy Act of 1978 (NGPA) requires that the Commission compute and make available maximum lawful prices and inflation adjustments prescribed in Title I of the NGPA before the beginning of any month for which such figures apply.

Pursuant to this requirement and § 375.307(k) of the Commission's regulations, which delegates the publication of such prices and inflation adjustments to the Director of the Office of Pipeline and Producer Regulation, the maximum lawful prices for the months of August, September, and October, 1987, are issued by the publication of the price tables for the applicable quarter. Pricing tables are found in § 271.101(a) of the Commission's regulations. Table I of § 271.101(a) specifies the maximum lawful prices for gas subject to NGPA sections 102, 103, 105(b)(3),106(b)(1)(B), 107(c)(5), 108 and 109. Table II of § 271.101(a) specifies the maximum lawful prices for sections 104 and 106(a) of the NGPA. Table III of § 271.102(c) contains the inflation adjustment factors. The maximum lawful prices and the inflation adjustment factors for the periods prior to August, 1987 are found in the tables in §§ 271.101 and 271.102.

List of Subjects in 18 CFR Part 271

Natural gas.

Richard P. O'Neill,

Director, Office of Pipeline and Producer Regulation.

PART 271—[AMENDED]

1. The authority citation for Part 271 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101 et seq.; Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432; Administrative Procedure Act, 5 U.S.C. 553.

§ 271.101 [Amended]

2. Section 271.101(a) is amended by inserting the maximum lawful prices for August, September, and October, 1987 in Tables I and II as follows:

* * *

TABLE I.—NATURAL GAS CEILING PRICES

[Other than NGPA §§ 104 and 106(a)]

Subpart of part 271	NGPA section	Category of gas	Aug. 1987	Sept. 1987	Oct. 1987
Maximum lawful price per MMBtu for deliveries in:					
B	102	New Natural Gas, Certain OCS Gas [4]	$4.630	$4.650	$4.690
C	103(b)(1)	New Onshore Production Wells [5]	3.210	3.220	3.231
E	105(b)(3)	Intrastate Existing Contracts	4.520	4.546	4.572
F	106(b)(1)(B)	Alternative Maximum Lawful Price for Certain Intrastate Rollover Gas [1].	1.837	1.843	1.849
G	107(c)(5)	Gas Produced from Tight Formations [3]	6.420	6.440	6.462
H	108	Stripper Gas	4.958	4.990	5.022
I	109	Not Otherwise covered	2.659	2.668	2.677

[1] Section 271.602(a) provides that for certain gas sold under an intrastate rollover contract the maximum lawful price is the higher of the price paid under the expired contract, adjusted for inflation or an alternative Maximum Lawful Price specified in this Table. This alternative Maximum Lawful Price for each month appears in this row of Table I. Commencing January 1, 1985, the price of some intrastate rollover gas is deregulated. (See Part 272 of the Commission's regulations.)

[2] [Reserved]

[3] The maximum lawful price for tight formation gas is the lesser of the negotiated contract price or 200% of the price specified in Subpart C of Part 271. The maximum lawful price for tight formation gas applies on or after July 16, 1979. (See § 271.703 and § 271.704.)

[4] Commencing January 1, 1985, the price of natural gas finally determined to be new natural gas under section 102(c) is deregulated. (See Part 272 of the Commission's regulations.)

[5] Commencing January 1, 1985, and July 1, 1987, the price of some natural gas finally determined to be natural gas produced from a new, onshore production well under section 103 is deregulated. (See Part 272 of the Commission's regulations.) Thus, for all months succeeding June 1987 publication of a maximum lawful price per MMBtu under NGPA section 103(b)(2) is discontinued.

TABLE II.—NATURAL GAS CEILING PRICES: NGPA §§ 104 AND 106(A)

[Subpart D, Part 271]

Category of natural gas and type of sale or contract	Aug. 1987	Sept. 1987	Oct. 1987
Maximum lawful price per MMBtu for deliveries made in:			
Post-1974 gas [2], All producers	$2.659	$2.668	$2.677
1973–1974 Biennium gas:			
Small producer	2.247	2.254	2.261
Large producer	1.717	1.723	1.729
Interstate Rollover gas, All producers	.988	.991	.994
Replacement contract gas or recompletion gas:			
Small producer	1.260	1.264	1.268
Large producer	.969	.972	.975
Flowing gas:			
Small producer	.640	.642	.644
Large producer	.540	.542	.544
Certain Permian Basin gas:			
Small producer	.750	.752	.754
Large producer	.668	.668	.670
Certain Rocky Mountain gas:			
Small producer	.750	.752	.754
Large producer	.640	.642	.644
Certain Appalachian Basin gas:			
North subarea contracts dated after 10-7-69	.609	.611	.613
Other contracts	.564	.566	.568
Minimum rate gas [1] All producers	.332	.333	.334

[1] Prices for minimum rate gas are expressed in terms of dollars per Mcf, rather than MMBtu.
[2] This price may also be applicable to other categories of gas. (See §§ 271.402, 271.602)

§ 271.102 [Amended]

3. Section 271.102(c) is amended by inserting the inflation adjustment for the months of August, September, and October 1987.

TABLE III.—INFLATION ADJUSTMENT

Month of delivery 1987	Factor by which price in preceding month is multiplied
August	1.00327
September	1.00327
October	1.00327

[FR Doc. 87-17214 Filed 7-29-87; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Lincomycin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by the Upjohn Co. providing for safe and effective use of a Type B medicated feed to make Type C feeds for chickens and swine.

EFFECTIVE DATE: July 30, 1987.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV-128), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4317.

SUPPLEMENTARY INFORMATION: The Upjohn Co., Kalamazoo, MI 49001, is sponsor of NADA 97-505 which provides for use of Lincomix® 20 and 50 (20- and 50-gram-per-pound lincomycin Type A articles) for manufacturing Type C medicated broiler and swine feeds. Upjohn has filed a supplement to the NADA that provides for use of a 10-gram-per-pound lincomycin Type B feed also for the purpose of manufacturing Type C broiler and swine feeds. The Type C feeds are for use in accordance with 21 CFR 558.325(c) (1) and (2) (i) through (iv). The supplemental NADA is approved and 21 CFR 558.325(a)(1)(iv) is added to reflect the approval.

Approval of this supplement is an administrative action that did not require generation of new effectiveness or safety data. Therefore, a freedom of information summary (pursuant to 21 CFR 514.11(e)(2)(ii)) is not required.

The agency has determined under 21 CFR 25.24(d)(1)(iii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment

nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 558.325 is amended by adding new paragraph (a)(1)(iv) to read as follows:

§ 558.325 Lincomycin.

(a) * * *

(1) * * *

(iv) 10 grams per pound as in paragraphs (c)(1) and (2) (i) through (iv) of this section.

* * * * *

Dated: July 17, 1987.

Richard A. Carnevale,

Acting Associate Director, Office of New Animal Drug Evaluation Center for Veterinary Medicine.

[FR Doc. 87-17284 Filed 7-29-87; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tylosin and Sulfamethazine

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the new animal drug regulations to reflect approval of a new animal drug application (NADA) filed for Pennfield Chemical Corp. providing for making of Type A medicated articles containing 5, 10, 20, or 40 grams per pound each of tylosin and sulfamethazine. The Type A medicated articles are for making Type B and C medicated feeds for use in swine.

EFFECTIVE DATE: July 30, 1987.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1414.

SUPPLEMENTARY INFORMATION: Pennfield Chemical Corp., 14040 Industrial Rd., Omaha, NE 68137, is the sponsor of NADA 140-681 submitted on its behalf of Blanco Products Co. The NADA provides for the manufacture of Type A medicated articles containing 5, 10, 20, or 40 grams per pound each of tylosin (as tylosin phosphate) and sulfamethazine to make Type B and C medicated feeds for use in swine. The Type B medicated feeds are to make Type C medicated feeds. The resulting Type C medicated feeds are for use in maintaining weight gains and feed efficiency in the presence of atrophic rhinitis, lowering the incidence and severity of *Bordetella bronchiseptica* rhinitis, prevention of swine dysentery (vibrionic), and control of swine pneumonias caused by bacterial pathogens (*Pasteurella multocida* and/or *Corynebacterium pyogenes*). The NADA is approved and 21 CFR 558.630(b)(10) is amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

§ 558.630 [Amended]

2. Section 558.630 *Tylosin and sulfamethazine* is amended in paragraph (b)(10) by inserting numerically the number "053389."

Dated: July 23, 1987.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 87-17286 Filed 7-29-87; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 200, 203, 204, 213, 220, 221, 222, 226, 227, 234, 235, 237, and 240

[Docket No. R-87-1294; FR-1928]

Single Family Mortgage Insurance on Hawaiian Home Lands

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of effective date.

SUMMARY: On March 16, 1987, a final rule was published (52 FR 8064) to implement section 247 of the National Housing Act, authorizing FHA insurance of mortgages executed by native Hawaiians on one- to four-family residences located on Hawaiian home lands. The effective date note in that rule indicated that the Department had to complete a number administrative steps before the rule could be made effective but that it would publish a notice in the **Federal Register** stating the actual effective date of the rule. This notice announces the effective date of that rule.

EFFECTIVE DATE: The effective date is August 1, 1987.

FOR FURTHER INFORMATION CONTACT: John Coonts, Acting Director, Insured Single Family Housing, Department of Housing and Urban Development, Room 9266, 451 Seventh Street SW., Washington, DC 20410-8000, telephone (202) 755-3046. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The U.S. Department of Housing and Urban Development (HUD) has now executed a memorandum of understanding with the Department of Hawaiian Home Lands of the State of Hawaii (DHHL), covering the operation of this program of FHA mortgage insurance for residences located on Hawaiian home lands. The necessary note and mortgage instruments have been prepared, and FHA processing instructions have been issued. HUD is now prepared to work with DHHL and mortgagees to process

requests for mortgage insurance in this program.

Authority: Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: July 27, 1987.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 87-17351 Filed 7-29-87; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 132

[CGD 83-039]

Vessel Financial Responsibility for Pollution Liability; Correction

AGENCY: Coast Guard, DOT.

ACTION: Final rule; Correction.

SUMMARY: On October 11, 1983 the Coast Guard published a rule which requires vessels to prove financial responsibility in case there is a pollution incident. The appendix shows various forms, one of which, CG-5358-2 (6-83), appearing at 48 FR 46214 contains an error. This document corrects the error.

FOR FURTHER INFORMATION CONTACT: Bruce P. Novak, Deputy Executive Secretary, Marine Safety Council, U.S. Coast Guard (G-CMC/21), Washington, DC 20593 or by calling (202) 267-1477.

SUPPLEMENTARY INFORMATION: The first paragraph of Form CG-5358-2 (6-83) appearing at 48 FR 46214 reads, "The amount of liability insured herein is $300 per gross ton or $25,000, whichever is greater, per vessel, in any one incident." It is clear elsewhere in the rule and in the form itself that the liability amount is $250,000, not $25,000. This error has only recently been recognized. Accordingly, this document corrects that $25,000 figure to read $250,000. The figure appears on page 518 of 33 CFR Parts 1 to 199 (33 CFR Part 132) in the first column, 14 lines down in the first paragraph of the form.

In accordance with the foregoing, the following correction is made in CGD 83-039 published in the Federal Register on October 11, 1983 (48 FR 46214).

In the first full paragraph of the first column on page 46214, line 14 which reads "gross ton or $25,000 whichever is greater, per" is revised to read as follows: "gross ton or $250,000, whichever is greater, per".

Dated: July 24, 1987.

J.W. Kime,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 87-17356 Filed 7-29-87; 8:45 am]

BILLING CODE 4910-14-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

45 CFR Part 1179

Claims Collection; Salary Offset

AGENCY: National Endowment for the Humanities.

ACTION: Final regulation.

SUMMARY: These regulations implement the collection procedures of the Debt Collection Act of 1982, Pub. L. 97-365, codified in 5 U.S.C. 5514, which authorize the federal government to collect debts owed by a federal employee to the United States through salary offset.

EFFECTIVE DATE: This final rule is effective July 30, 1987.

FOR FURTHER INFORMATION CONTACT: Tracy J. Joselson, Attorney/Advisor, 1100 Pennsylvania Avenue NW., Washington, DC 20506, (202) 786-0322.

SUPPLEMENTARY INFORMATION: Under the Debt Collection Act of 1982, when the head of a federal agency determines that an employee of an agency is indebted to the United States or is notified by a head of another federal agency that an agency employee is indebted to the United States, the employee's debt may be offset against his or her salary. Certain due process rights must be afforded to an employee before salary offset deductions begin. As is required by the Debt Collection Act of 1982, this regulation is consistent with salary offset regulations issued by the Office of Personnel Management on July 3, 1984, 49 FR 27470, codified in 5 CFR Part 550, Subpart K.

On June 2, 1987, the National Endowment for the Humanities published in the **Federal Register**, 52 FR 20628, a proposed regulation to collect through salary offset debts that are owed by federal employees to the federal government. Public comments regarding the proposed regulation were invited. There were no comments submitted by members of the public. The National Endowment for the Humanities is therefore adopting the language in the proposed regulation. Several additions reflect the suggestions of the Office of Personnel Management. The final rule contains the additions and revisions described below:

Section 1179.5(a)(2) has been revised to permit an employee to show good cause for failing to meet the filing date to petition for a hearing before salary offset commences.

Section 1179.7(d) has been added so that unliquidated debts may be offset against any financial payment due to separated employee, including but not limited to final salary payment on leave in accordance with 31 U.S.C. 3716.

Section 1179.8(a) has been revised to state that deductions to liquidate an employee's debt will by the method and in the amount stated in the Chairperson's notice of intention to offset as provided in section 1179.4.

Section 1179.11 has been added to provide that an involuntary payment of a debt collected under these regulations will not be construed as a waiver of any rights an employee may have by law.

Section 1179.12 has been added to charge interest, penalties, and administrative costs related to collection of the debt.

Paperwork Reduction Act

Under section 3518 of the Paperwork Reduction Act of 1980, 5 CFR 1320.3(c) the information collection provisions contained in this regulation are not subject to review and approval by the Office of Management and Budget.

Executive Order 12291

This rule has been reviewed and determined not to be a "major rule" as defined in Executive Order 12291 dated February 17, 1981 because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) A major increase in costs or prices for consumers, individuals, industries, federal, state, or local government agencies, or geographic regions; or (3) Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

This rule applies only to individual federal employees. It will have no "significant economic impact upon a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act, Pub. L. 96-354, 5 U.S.C. 605(b). Accordingly, no regulatory flexibility analysis is required.

List of Subjects in 45 CFR Part 1179

Administrative offset, Administrative practice and procedures, Claims, Debt

collection, Government employees, Wages.

For the reasons set out in the preamble, Part 1179 of Title 45 of the Code of Federal Regulations is added as follows:

PART 1179—SALARY OFFSET

Sec.

1179.1 Purpose and scope.
1179.2 Definitions.
1179.3 Applicability.
1179.4 Notice requirements.
1179.5 Hearing.
1179.6 Written decision.
1179.7 Coordinating offset with another federal agency.
1179.8 Procedures for salary offset.
1179.9 Refunds.
1179.10 Statute of limitations.
1179.11 Nonwaiver of rights.
1179.12 Interest, penalties, and administrative costs.

Authority: 5 U.S.C. 5514, Executive Order 11809 (redesignated Executive Order 12107), and 5 CFR 550 subpart K.

§ 1179.1 Purpose and scope.

(a) This regulation provides procedures for the collection by administrative offset of a federal employee's salary without his/her consent to satisfy certain debts owed to the federal government. These regulations apply to all federal employees who owe debts to the National Endowment for the Humanities (NEH) and to current employees of the National Endowment for the Humanities who owe debts to other federal agencies. This regulation does not apply when the employee consents to recovery from his/her current pay account.

(b) This regulation does not apply to debts or claims arising under:

(1) The Internal Revenue Code of 1954, as amended, 26 U.S.C. 1 *et seq*;

(2) The Social Security Act, 42 U.S.C. 301 *et seq*;

(3) The tariff laws of the United States; or

(4) Any case where a collection of a debt by salary offset is explicitly provided for or prohibited by another statute.

(c) This regulation does not apply to any adjustment to pay arising out of an employee's selection of coverage or a change in coverage under a federal benefits program requiring periodic deductions from pay if the amount to be recovered was accumulated over four pay periods or less.

(d) This regulation does not preclude the compromise, suspension, or termination of collection action where appropriate under the standards implementing the Federal Claims Collection Act 31 U.S.C. 3711 *et seq*. 4 CFR Parts 101 through 105 45 CFR Part 1177.

(e) This regulation does not preclude an employee from requesting waiver of an overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774 or 32 U.S.C. 716 or in any way questioning the amount or validity of the debt by submitting a subsequent claim to the General Accounting Office. This regulation does not preclude an employee from requesting a waiver pursuant to other statutory provisions applicable to the particular debt being collected.

(f) Matters not addressed in these regulations should be reviewed in accordance with the Federal Claims Collection Standards at 4 CFR 101.1 *et seq*.

§ 1179.2 Definitions.

For the purposes of the part the following definitions will apply:

"Agency" means an executive agency as is defined at 5 U.S.C. 105 including the U.S. Postal Service, the U.S. Postal Commission, a military department as defined at 5 U.S.C. 102, an agency or court in the judicial branch, an agency of the legislative branch including the U.S. Senate and House of Representatives and other independent establishments that are entities of the Federal government.

"Chairperson" means the Chairperson of the National Endowment for the Humanities or the Chairperson's designee.

"Creditor agency" means the agency to which the debt is owed.

"Debt" means an amount owed to the United States from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales or real or personal property, overpayments, penalties, damages, interests, fines, forfeitures, (except those arising under the Uniform Code of Military Justice) and all other similar sources.

"Disposable pay" means the amount that remains from an employee's federal pay after required deductions for social security, federal, state or local income tax, health insurance premiums, retirement contributions, life insurance premiums, federal employment taxes, and any other deductions that are required to be withheld by law.

"Hearing official" means an individual responsible for conducting any hearing with respect to the existence or amount of a debt claimed, and who renders a decision on the basis of such hearing. A hearing official may not be under the supervision or control of the Chairperson of the National Endowment for the Humanities.

"Paying Agency" means the agency that employes the individual who owes the debt and authorizes the payment of his/her current pay.

"Salary offset" means an administrative offset to collect a debt pursuant to 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his/her consent.

§ 1179.3 Applicability.

(a) These regulations are to be followed when:

(1) The National Endowment for the Humanities is owed a debt by an individual currently employed by another federal agency;

(2) The National Endowment for the Humanities is owed a debt by an individual who is a current employee of the National Endowment for the Humanities; or

(3) The National Endowment for the Humanities employs an individual who owes a debt to another federal agency.

§ 1179.4 Notice requirements.

(a) Deductions shall not be made unless the employee is provided with written notice signed by the Chairperson of the debt at least 30 days before salary offset commences.

(b) The written notice shall contain:

(1) A statement that the debt is owed and an explanation of its nature, and amount;

(2) The agency's intention to collect the debt by deducting from the employee's current disposable pay account;

(3) The amount, frequency proposed beginning date, and duration of the intended deduction(s);

(4) An explanation of interest, penalties, and administrative charges, including a statement that such charges will be assessed unless excused in accordance with the Federal Claims Collections Standards at 4 CFR 101.1 *et seq*.;

(5) The employee's right to inspect, request, or receive a copy of government records relating to the debt;

(6) The opportunity to establish a written schedule for the voluntary repayment of the debt;

(7) The right to a hearing conducted by an impartial hearing official;

(8) The methods and time period for petitioning for hearings;

(9) A statement that the timely filing of a petition for a hearing will stay the commencement of collection proceedings;

(10) A statement that a final decision on the hearing will be issued not later

than 60 days after the filing of the petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceedings;

(11) A statement that knowingly false or frivolous statements, representations, or evidence may subject the employee to appropriate disciplinary procedures;

(12) A statement of other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made; and

(13) Unless there are contractual or statutory provisions to the contrary, a statement that amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee.

§ 1179.5 Hearing.

(a) Request for hearing (1) An employee must file a petition for a hearing in accordance with the instructions outlined in the agency's notice to offset. (2) A hearing may be requested by filing a written petition addressed to the Chairperson of the National Endowment for the Humanities stating why the employee disputes the existence or amount of the debt. The petition for a hearing must be received by the Chairperson no later than fifteen (15) calendar days after the date of the notice to offset unless the employee can show good cause for failing to meet the deadline date.

(b) Hearing procedures. (1) The hearing will be presided over by an impartial hearing official. (2) The hearing shall conform to procedures contained in the Federal Claims Collection Standards 4 CFR 102.3(c). The burden shall be on the employee to demonstrate that the existence or the amount of the debt is in error.

§ 1179.6 Written decision.

(a) The hearing official shall issue a written opinion no later than 60 days after the hearing.

(b) The written opinion will include: a statement of the facts presented to demonstrate the nature and origin of the alleged debt; the hearing official's analysis, findings and conclusions; the amount and validity of the debt, and the repayment schedule.

§ 1179.7 Coordinating offset with another Federal agency.

(a) The Endowment as the creditor agency. (1) When the Chairperson determines that an employee of a federal agency owes a delinquent debt to the National Endowment for the Humanities, the Chairperson shall as appropriate:

(i) Arrange for a hearing upon the proper petitioning by the employee;

(ii) Certify in writing that the employee owes the debt, the amount and basis of the debt, the date on which payment is due, the date the Government's right to collect the debt accrued, and that Endowment regulations for salary offset have been approved by the Office of Personnel Management;

(iii) If collection must be made in installments, the Chairperson must advise the paying agency of the amount or percentage of disposable pay to be collected in each installment;

(iv) Advise the paying agency of the actions taken under 5 U.S.C. 5514(b) and provide the dates on which action was taken unless the employee has consented to salary offset in writing or signed a statement acknowledging receipt of procedures required by law. The written consent or acknowledgment must be sent to the paying agency;

(v) If the employee is in the process of separating, the Endowment must submit its debt claim to the paying agency as provided in this part. The paying agency must certify any amounts already collected, notify the employee, and send a copy of the certification and notice of the employee's separation to the creditor agency. If the paying agency is aware that the employee is entitled to Civil Service Retirement and Disability Fund or similar payments, it must certify to the agency responsible for making such payments the amount of the debt and that the provisions of this part have been followed; and

(vi) If the employee has already separated and all payments due from the paying agency have been paid, the Chairperson may request unless otherwise prohibited, that money payable to the employee from the Civil Service Retirement and Disability Fund or other similar funds be collected by administrative offset.

(b) The Endowment as the paying agency. (1) Upon receipt of a properly certified debt claim from another agency, deductions will be scheduled to begin at the next established pay interval. The employee must receive written notice that the National Endowment for the Humanities has received a certified debt claim from the creditor agency, the amount of the debt, the date salary offset will begin, and the amount of the deduction(s). The National Endowment for the Humanities shall not review the merits of the creditor agency's determination of the validity or the amount of the certified claim. (2) If the employee transfers to another agency after the creditor agency has submitted its debt claim to the National Endowment for the Humanities and before the debt is collected completely, the National Endowment for the Humanities must certify the total amount collected. One copy of the certification must be furnished to the employee. A copy must be furnished the creditor agency with notice of the employee's transfer.

§ 1179.8 Procedures for salary offset.

(a) Deductions to liquidate an employee's debt will be by the method and in the amount stated in the Chairperson's notice of intention to offset as provided in § 1179.4. Debts will be collected in one lump sum where possible. If the employee is financially unable to pay in one lump sum, collection must be made in installments.

(b) Debts will be collected by deduction at officially established pay intervals from an employee's current pay account unless alternative arrangements for repayment are made.

(c) Installment deductions will be made over a period not greater than the anticipated period of employment. The size of installment deductions must bear a reasonable relationship to the size of the debt and the employee's ability to pay. The deduction for the pay intervals for any period must not exceed 15% of disposable pay unless the employee has agreed in writing to a deduction of a greater amount.

(d) Unliquidated debts may be offset against any financial payment due to a separated employee including but not limited to final salary payment or leave in accordance with 31 U.S.C. 3716.

§ 1179.9 Refunds.

(a) The National Endowment for the Humanities will refund promptly any amounts deducted to satisfy debts owed to the NEH when the debt is waived, found not owed to the NEH, or when directed by an administrative or judicial order.

(b) The creditor agency will promptly return any amounts deducted by NEH to satisfy debts owed to the creditor agency when the debt is waived, found not owed, or when directed by an administrative or judicial order.

(c) Unless required by law, refunds under this subsection shall not bear interest.

§ 1179.10 Statute of Limitations.

If a debt has been outstanding for more than 10 years after the agency's right to collect the debt first accrued, the agency may not collect by salary offset unless facts material to the

Government's right to collect were not known and could not reasonably have been known by the official or officials who were charged with the responsibility for discovery and collection of such debts.

§ 1179.11 Non-waiver of rights.

An employee's involuntary payment of all or any part of a debt collected under these regulations will not be construed as a waiver of any rights that employee may have under 5 U.S.C. 5514 or any other provision of contract law unless there are statutes or contract(s) to the contrary.

§ 1179.12 Interest, penalties, and administrative costs.

Charges may be assessed for interest, penalties, and administrative costs in accordance with the Federal Claims Collection Standards, 4 CFR 102.13.

Dated: July 24, 1987.

Lynne V. Cheney,

Chairman, National Endowment for the Humanities.

[FR Doc. 87-17293 Filed 7-29-87; 8:45 am]

BILLING CODE 7536-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1042

[Ex Parte No. MC-65 (Sub-7)]

Passenger Motor Carrier Superhighway and Deviation Rules

AGENCY: Interstate Commerce Commission.

ACTION: Removal of rules.

SUMMARY: The Commission removes rules in Subpart A of 49 CFR Part 1042, setting forth special procedures for obtaining motorbus superhighway and deviation operating authority. The rules allowed certificated regular-route motorbus operators to conduct operations between authorized points over alternative (or deviation) routes. The rules are now unnecessary in view of liberalized passenger application standards.

EFFECTIVE DATE: August 29, 1987.

FOR FURTHER INFORMATION CONTACT:
Richard R. Hartley, (202) 275-7786
or
Andrew L. Lyon, (202) 275-7691.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357.

Environmental and Energy Considerations

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

The Commission certifies that the elimination of the Passenger Motor Carrier Superhighway and Deviation Rules, Subpart A of 49 CFR Part 1042, will not have a significant economic impact on a substantial number of small entities because carriers currently can obtain the same type of authority expeditiously through the standard application procedures.

List of Subjects in 49 CFR Part 1042

Buses, Motor carriers.

Decided: July 20, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

Final Rules

Part 1042 of Title 49 of CFR is amended as follows:

1. The authority citation for Subpart B of Part 1042 is removed and a new authority citation for Part 1042 is added to read as follows:

Authority: 49 U.S.C. 10101, 10321, and 10922, and 5 U.S.C. 553.

2. The heading of Part 1042 is revised to read as follows:

PART 1042—MOTOR CARRIERS OF PROPERTY ROUTING REGULATIONS

Subpart A—[Removed]

3. Subpart A—Motor Carriers of Passengers is removed in its entirety.

Subpart B—[Amended]

4. The heading of Subpart B—Motor Carriers of Property, is removed.

[FR Doc. 87-17304 Filed 7-29-87; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Part 1043

[Ex Parte No. MC-5 (Sub-No. 8)]

Property Broker Security for the Protection of the Public

AGENCY: Interstate Commerce Commission.

ACTION: Correction to interim rules and request for comment.

SUMMARY: At 52 FR 27351, July 21, 1987, the Commission adopted procedures for property brokers to file other evidence of security as an alternative to filing a surety bond, Form BMC-84. This permits a broker to file evidence of financial responsibility in the form of an acceptable trust agreement or other security in the amount required under 49 CFR 1043.4. The interim rules contained errors which this notice corrects by reprinting § 1043.4 in full.

FOR FURTHER INFORMATION CONTACT:
Alice K. Ramsay, (202) 275-0854
Heber P. Hardy, (202) 275-7148

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission decision. To obtain a copy of the full decision, write to the Office of the Secretary, Room 2215, 12th & Constitution Avenue, NW., Washington, DC 20423, or call (202) 275-7428.

Noreta R. McGee,

Secretary.

The notice printed at 52 FR 27351, July 21, 1987, is corrected by correctly revising § 1043.4 to read as follows:

PART 1043—SURETY BONDS AND POLICIES OF INSURANCE

§ 1043.4 Property broker surety bond or other security.

(a) *Security.* A property broker must have a surety bond or other security in effect for $10,000. The Commission will not issue a property broker license until a surety bond or other security for the full limits of liability prescribed herein is in effect. The broker license shall remain in effect only as long as a surety bond or other security remains in effect and shall ensure the financial responsibility of the broker.

(b) *Evidence of security.* Evidence of a surety bond must be filed using the Commission's prescribed Form BMC-84. Other security may be evidenced by the filing of an agreement with a financial institution, licensed or qualified to do business in a state or the District of Columbia, establishing a trust fund in the amount of $10,000. The surety bond or the trust fund shall ensure the financial responsibility of the broker by providing for payments to shippers or motor carriers if the broker fails to carry out its contracts, agreements, or arrangements for the supplying of transportation by authorized motor carriers.

(c) *Trust fund agreement provisions.* The trust fund agreement must include, but not be limited to, the following provisions:

(1) The names and addresses of all trustees and the nature of any

relationship to the broker must be disclosed;

(2) Payments from the trust fund must be made up to the limit of protection ($10,000), regardless of financial responsibility or lack thereof or insolvency or bankruptcy of the broker;

(3) Payments must be made exclusively and directly to shippers or motor carriers that are parties to contracts, agreements, or arrangements for authorized motor carrier service arranged by the broker;

(4) Protection afforded shippers and motor carriers must continue until all legally cognizable claims have been settled or until the fund has been exhausted, whichever comes first; and

(5) If the trust fund is drawn upon, the broker must, within 30 days, replenish the fund up to $10,000, and the trustee (trustees) must give written notice forthwith to the Commission of all lawsuits filed, judgments rendered, and payments made under the trust agreement and, of any failure by the broker to replenish the fund is required.

(d) *Cancellation.* The trust fund agreement filed with the Commission will remain in effect until cancelled. It may be cancelled as evidence of other security as contemplated in § 1043.4(a) above only upon 30 days' written notice by the trustee (trustees) to the Commission. The notice period commences upon receipt of the notice at the Commission's Washington, DC office. The notice must state that the trust fund agreement is cancelled as other security, without qualification, on a specified date at least 30 days after the notice is received at the Commission's office.

[FR Doc. 87-17080 Filed 7-29-87; 8:45 am]
BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 52, No. 146
Thursday, July 30, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-326; RM-5323, RM-5568, RM-5592]

Television Broadcasting Services; Utica, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document makes a preliminary finding that VHF Television Channel 4 should be allocated to Utica, New York as that community's fourth local service in response to a petition for rule making filed by Mohawk Valley Telecasters, Inc. In addition, this document determines that a counterproposal filed by Mohawk Valley Broadcasters, Inc., to allocate that channel to Ilion, New York and a counterproposal filed by Mohawk-Hudson Council on Educational Television to allocate that channel to Albany, New York and to reserve it for noncommercial educational use should be denied. The Utica allotment is contingent on the outcome of orders directed to Buffalo Broadcasting Company, Inc., and to Group W Television, Inc. to show cause why the authorizations or co-channel Television Stations WIVB, Buffalo, New York, and WBZ, Boston, Massachusetts, should not be modified to reflect offset changes required by the allotment to Utica.

DATES: Comments must be filed on or before September 8, 1987 and reply comments on or before September 23, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: James R. Meehan, President, Mohawk Valley Telecasters, Inc., P.O. Box 327 (Stanley Road), Cazenovia, NY 13035 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Joel Rosenberg, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order to Show Cause, MM Docket No. 86-326, adopted June 26, 1987, and released July 17, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, *all ex parte* contacts are prohibited in Commission proceedings, such as this one, which involved channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420

List of Subjects in 47 CFR Part 74
Television broadcasting.

Federal Communications Commission
Bradley P. Holmes,
Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-17175 Filed 7-29-87; 8:45 am]
BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 52. No. 146
Thursday July 30. 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

National Commission on Dairy Policy; Advisory Committee Meeting

Pursuant to provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), a notice is hereby given of the following committee meeting.

Name: National Commission on Dairy Policy.

Time and Place: Monday, August 3: Howard Johnson Motor Lodge, White River Junction, VT; Tuesday, August 4: Radisson Hotel, 60 Battery St., Burlington, VT 05401.

Status: Open.

Matters To Be Considered

On August 3, the Commission will hold a public hearing to receive testimony on the dairy price support program, new dairy technologies, and the influence of the program and technologies on the family farm. The meeting on August 4 is expected to review the public hearing, discuss Commission matters with the Executive Director, and discuss background materials related to the dairy industry.

Written Statements May Be Filed Before or After the Meeting With

Contact person named below.

Contact Person for More Information

Mr. Jeffrey Lyon, Assistant Director, National Commission on Dairy Policy, 1401 New York Avenue NW., Suite 1100, Washington. DC 20005, (202) 638–6222.

Signed at Washington, DC, this 20th day of July 1987.

David R. Dyer,

Executive Director, National Commission on Dairy Policy.

[FR Doc. 87–17278 Filed 7–29–87; 8:45 am]

BILLING CODE 3410-05-M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Texas Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Texas Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 5:00 p.m., on August 14, 1987, at the Houston Marriott by the Galleria, 1750 West Loop South, Houston, Texas 77027. The purpose of the meeting is to obtain information on civil rights issues relating to the employer sanctions provisions of the new immigration reform law in Texas.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Adolfo Canales or Philip Montez, Director of the Western Regional Division (213) 894–3437 (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 24, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87–17279 Filed 7–29–87; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by Ronald Lafferty From an Objection by the New Jersey Department of Environmental Protection

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Dismissal of appeal.

SUMMARY: On October 17, 1986, Ronald Lafferty filed a Notice of Appeal with the Secretary of Commerce under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1456(c)(3)(A), and the Department of Commerce's implementing regulations, 15 CFR Part 930, Subpart H. The appeal was taken from an objection by the New Jersey Department of Environmental Protection (NJDEP) to Mr. Lafferty's construction of a bulkhead and dumping of fill material in a wetland in Avalon, New Jersey, without a Corps of Engineers permit.

By letter dated May 28, 1987, counsel for Mr. Lafferty informed the Secretary that NJDEP and Mr. Lafferty had resolved the matter and Mr. Lafferty was accordingly withdrawing his appeal. In light of receipt of this letter, the Secretary has dismissed the appeal for good cause pursuant to 15 CFR 930.128. Mr. Lafferty is barred from filing another appeal from the State's objection to the aforementioned activities.

FOR FURTHER INFORMATION CONTACT: Stephanie S. Campbell, Attorney/Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue NW., Washington, DC 20235, 202/673–5200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Administration)

Dated: July 24, 1987.

James W. Brennan,

Acting General Counsel.

[FR Doc. 87–17303 Filed 7–29–87; 8:45 am]

BILLING CODE 3510-08-M

Revisions to the Rhode Island Coastal Management Program Under Coastal Zone Management Act

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management, Commerce.

ACTION: Notice of approval of amendment.

SUMMARY: Notice is hereby given that on May 2, 1986, the Director of the Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA) approved Amendment No. 2 to the federally-approved Rhode Island Coastal Area

BEST COPY AVAILABLE

Management Program (RICMP). The change incorporates: (1) The State of Rhode Island Coastal Resources Management Program (RICRMP) amended June 28, 1983 and amended December 13, 1984. This document will replace Chapters 1–5 of the original Rhode Island Coastal Management Program which received Federal approval May 12, 1978. (2) Relevant sections of the State Guide Plan Overview adopted by the State Planning Council September 13, 1984. (3) The Salt Pond Region Special Area Management Plan adopted December 1984. The amendment necessitates a revised description of the Coastal Boundary which was in section 3 of Appendix C to the original Rhode Island Coastal Management Program. This approval was made pursuant to Section 306 of the Coastal Zone Management Act of 1972 (CZMA), as amended (16 U.S.C. 1451 et seq.), and NOAA regulations on Amendments to Approved State Management Programs, 15 CFR 923.80–923.82 (March 28, 1979).

Notice of the Director's preliminary decision to approve the amendment was published on March 28, 1986 in the **Federal Register**. A 30-day comment period was provided, and one response was received which provided no objection. A copy of the findings made by the Director that this Amendment meets the requirements of the CZMA may be obtained from the Office of Ocean and Coastal Resource Management. Inquiries regarding the RICMP and the findings should be addressed to: James P. Burgess, Chief, Coastal Programs Division, Universal South Building, Room 724, 1825 Connecticut Avenue NW., Washington, DC 20235, (202) 673–5158.

In accordance with section 307 of the CZMA, Federal agencies are required to conduct their activities in the coastal zone consistent to the maximum extent practicable with the RICMP, as amended, as of the time of the Director's approval. The Federal consistency requirements are fully explained at 15 CFR Part 930 (June 25, 1979). To determine how these requirements are applied in Rhode Island, Federal agencies should contact Grover Fugate, Executive Director, Coastal Resources Management Council, Stedman Office Building, Tower Hill Road, Wakefield, R.I. 02879, (401) 277–2476.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: July 24, 1987.

James P. Blizzard,

Acting Director, Office of Ocean and Coastal Resources Management.

[FR Doc. 87–17195 Filed 7–29–87; 8:45 am]

BILLING CODE 3510-08-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to: Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Patent Licensing Specialist, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

Department of Agriculture

SN 6–683,284 (4,670,384)
Diagnostic Reagent for Swine Trichinosis
SN 6–861,770 (4,671,114)
Accoustical Detection of Hidden Insects
SN 7–042,033
Trap Gun
SN 7–042,920
Persistent Attractants for the Mediterranean Fruit Fly, the Method of Preparation and Method of Use
SN 7–050,450
Acetate Selected *Bacillus thuringiensis* and the Method of Use
SN 7–050,451
Monoclonal Antibodies to Crystal Protein of *Bacillus thuringiensis* subspecies *israelensis*
SN 7–054,562
Partially Deamidated Oilseed Proteins and Process for the Preparation Thereof

Department of Commerce

SN 6–868,483 (4,672,851)
Acoustic Evaluation of Thermal Insulation
SN 6–879,543 (4,675,132)
Polyunsaturated Fatty Acids From Fish Oils
SN 7–044,021
Confocal Scanning Laser Microscope Having No Moving Parts
SN 7–048,848
Inclined Contact Recirculating Roller Bearing

Department of Health and Human Services

SN E–121–87
Chemical Differentiating Agents
SN E–191–87
Diagnostic Test For Creutzfeldt-Jakob Disease
SN 6–630,578 (4,677,678)
Active Hearing Protectors
SN 6–672,451 (4,670,394)
Isloation and Culture of Adrenal Medullary Endothelial Cells Producing Blood Clotting Factor VIII: C
SN 6–792,836 (4,670,467)
A Method of Controlling Graft Versus Host Reaction
SN 6–889,501 (4,673,678)
Water Soluble Derivatives of Fredericamycin A
SN 7–004,008
Method of Treating Psychotic Illness
SN 7–018,999
Method For Identifying Carriers Of An Extra Dosage of Amyloid Gene Associated With Alzheimer's Disease
SN 7–019,000
Malarial Immunogen
SN 7–019,001
A cDNA Clone Encoding Brain Amyloid of Alzheimer's Disease
SN 7–030,526
Binary Drugs Derived From Functionalized Congeners
SN 7–043,827
3'-Cyano-2',3'-Dideoxythymidine as a Therapeutic Composition
SN 7–044,346
Dielectric Phantom Material
SN 7–048,148
Small Peptides Which Inhibit Binding To T–4 Receptors and Act As Immunogens
SN 7–048,537
Cultivation of Functionally Intact Hair Follicles
SN 7–051,313
One-Step Tray Test for Release of Soluble Mediators and Apparatus Therefore
SN 7–055,008
Immunotherapeutic Method of Treating Respiratory Disease
SN 7–058,381
Autocrine Motility Factors in Cancer Diagnosis and Management
SN 7–058,387

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Recombinant Vaccinia Virus Encoding Cytochromes P–450

Department of Interior

SN 6–909,851 (4,663,893)
End Deflector for Abrasive Water Jet Slot Cutter

Department of the Air Force

SN 6–025,603 (4,654,489)
Special Purpose Bellows Assembly
SN 6–615,503 (4,661,296)
Selection of Data From Busses for Test
SN 6–645,389 (4,649,065)
Cryogenic Glass-to-Metal Seal
SN 6–719,792 (4,648,124)
Apparatus for Locating Passive Intermodulation Interference Sources
SN 6–738,817 (4,649,059)
Photoionization Technique for Growth of Metallic Films
SN 6–742,826 (4,654,586)
Digital Phase Meter Apparatus
SN 6–745,970 (4,653,062)
Chemical Oxygen-Iodine Laser
SN 6–746,900 (4,651,957)
Large Capacity Tow/Release Apparatus
SN 6–749,366 (4,652,898)
Modulation Doped GaAs/AlGasAs Field Effect Transistor
SN 6–751,393 (4,653,509)
Guided Trephine Samples for Skeletal Bone Studies
SN 6–752,787 (4,654,582)
Transient Test of Suspension Electronics for Gyroscope
SN 6–779,401
A Process for Making Bulk Heavy Metal Fluoride Glasses
SN 6–782,335 (4,647,330)
Hybrid Single Crystal Optic Fibers by Growth Solution
SN 6–791,950 (4,648,307)
Electronically Compensated Pressure Dilution Demand Regulator
SN 6–792,099 (4,650,733)
Low Impedance Filter Battery With Effective Electrolyte Seal
SN 6–792,373 (4,647,759)
Fire Control Apparatus for a Laser Weapon
SN 6–793,812 (4,653,909)
Sinusoidal Determination of Limiting Optical Resolution
SN 6–796,125 (4,650,416)
NF_3 Combustor for Cylindrical Laser
SN 6–822,946 (4,654,661)
Two Fault Tolerant Transmitter Activator
SN 6–824,998 (4,651,114)
Pulse Repetition Modulator Apparatus
SN 6–825,107 (4,654,808)
Double Sideband Generation with Serrodyne Modulators
SN 6–831,908 (4,652,339)
CCD Gate Definition Process
SN 6–868,807
Separable Hinge With Self Retaining Hinge Pin
SN 6–903,361
Brush and Commutator Segment Torquer Motor
SN 6–927,021
Variable Analog Delay Line
SN 6–936,879
A Method To Produce Metal Matrix Composite Articles From Alpha-Beta Titanium Alloys
SN 6–947,574
Miniature High Voltage Solid State Relay
SN 7–013,619
Wire Container
SN 7–017,399
Wire Container
SN 7–018,245
Silicon Nitride Whisker Reinforced Glass Matrix Composites
SN 7–024,489
Ventable Survivable Heat Pipe Vapor Chamber Spacecraft Radiator
SN 7–024,490
Compressor Blade Clearance Measurement System

Department of the Army

SN 6–394,661 (4,659,708)
Anti-Leishmanial Lepidine Derivatives
SN 6–904,085 (4,665,173)
2-Acetyl- and 2-Propionylpyridine Selenosemicarbazones
SN 7–000,893
Modified Hepatitis A Virus

[FR Doc. 87–17280 Filed 7–29–87; 8:45 am]
BILLING CODE 3810–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission of Public Information Collection Requirement to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information:

(1) Type of submission;

(2) Title of Information Collection and applicable OMB Control Number and Form Number;

(3) Abstract statement of the need for and the uses to be made of the information collected;

(4) Type of Respondent;

(5) An estimate of the number of responses;

(6) An estimate of the total number of hours needed to provide the information;

(7) To whom comments regarding the information collection are to be forwarded; and

(8) The point of contact from whom a copy of the proposed information collection may be obtained.

This information collection is as follows:

(1) Revising an approved collection.

(2) "Statutory Compensation Prohibitions and Reporting Requirements Relating to Certain Former DoD Employees", 0704 0277, and DD Form 1787, when forwarded by Contractor letter.

(3) Part 3 of the DoD FAR Supplement (DFARS) and the clause at DFARS 52.203–7002, Statutory Compensation Prohibitions and Reporting Requirements Relating to Certain Former Department of Defense (DoD) Employees, require contractors to report annually concerning compensation provided to former DoD employees and are made subject to a liquidated damages assessment in the event compensation is knowingly provided to certain former officials in violation of law. This coverage implements a statutory prohibition that a major defense contractor (i.e., one awarded contracts aggregating $10 million or more during the previous government fiscal year) may not offer or provide compensation either directly or indirectly to certain former DoD officials who, within two years prior to their separation from DoD, had certain procurement responsibilities with respect to the contractor.

(4) Business Firms.

(5) Responses of 1,000.

(6) Burden hours of 100,000.

ADDRESSES: (7) Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302, telephone (202)746–0933.

FOR FURTHER INFORMATION CONTACT: (8) A copy of the information collection proposal may be obtained from Mr. Vitiello, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302, telephone (202)746–0933.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 24, 1987.

[FR Doc. 87–17273 Filed 7–29–87; 8:45 am]
BILLING CODE 3810–01–M

Submission of Public Information Collection Requirement to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information:

(1) Type of submission;

(2) Title of Information Collection and applicable OMB Control Number and Form Number;

(3) Abstract statement of the need for and the uses to be made of the information collected;

(4) Type of Respondent;

(5) An estimate of the number of responses;

(6) An estimate of the total number of hours needed to provide the information;

(7) To whom comments regarding the information collection are to be forwarded; and

(8) The point of contact from whom a copy of the proposed information collection may be obtained.

This information collection is as follows:

(1) Reinstatement of a previously approved collection for which approval has expired.

(2) "Acquisition of Computer Resources" 0704–0254.

(3) The required reporting requirements from the clauses at 252.270 are required for the acquisition of computer resources.

(4) Business Firms.

(5) Responses of 6,362.

(6) Burden hours of 127,240.

ADDRESSES: (7) Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302, telephone (202) 746–0933.

FOR FURTHER INFORMATION CONTACT: (8) A copy of the information collection proposal may be obtained from Mr. Vitiello, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302, telephone (202) 746–0933.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 24, 1987.

[FR Doc. 87–17274 Filed 7–29–87; 8:45 am]

BILLING CODE 3810-01-M

Meeting of the Defense Science Board Task Force on Defense Mapping Agency

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Defense Mapping Agency will meet in closed session on September 10–11, October 27–28, and December 2–3, 1987 at DMA Hydrographic/ Topographic Center, Washington, DC.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will study the Defense Mapping Agency and ascertain whether or not the mechanisms exist within DMA to meet the needs of weapons systems developers and operators with respect to resources, capabilities, and procedures.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II (1982)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 24, 1987.

[FR Doc. 87–17275 Filed 7–29–87; 8:45 am]

BILLING CODE 3810-01-M

Meeting of the Defense Science Board Task Force on Image Recognition Systems

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Image Recognition Systems will meet in closed session on September 2–3, 1987 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will study the current status and probable near- to medium-term development of computer-based image recognition systems with emphasis on the potential for further development in "smart weapons," especially those for attacking ground vehicles.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

July 27, 1987.

[FR Doc. 87–17276 Filed 7–29–87; 8:45 am]

BILLING CODE 3810-01-M

Performance Review Board; Membership Appointments

AGENCY: Defense Mobilization Systems Planning Activity, DOD.

ACTION: Announce membership of Performance Review Board.

SUMMARY: This notice announces the appointment of the members of the Performance Review Board (PRB) of the Defense Mobilization Systems Planning Activity. The publication of PRB membership is required by 5 U.S.C. 4314(c)(4).

The Performance Review Board provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance and performance awards to the Director.

DATE: August 1, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Robert H. Oppenheimer, Resource Management and Support Services, Defense Mobilization Systems Planning Activity, c/o OASD (FM&P), Correspondence & Control Division, The Pentagon, Room 3E–759, Washington, DC 20301, (703) 756–2249.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following register constitutes members of the Defense Mobilization Systems Planning Activity PRB who will serve one-year renewable terms effective August 1, 1987: Mr. Kenneth E. deGraffenreid; Brigadier General Paul A. Maye; Dr. Michael L. Ioffredo; Dr. William T. Marquitz; Mr. Keven C. Moody; Mr. John W. Beach.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 27, 1987.

[FR Doc. 87–17272 Filed 7–29–87; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

July 24, 1987.

The USAF Scientific Advisory Board Ad Hoc Committee on Minuteman III Penetration Aids will conduct closed meetings at the Pentagon, Washington DC on August 17, 18 and 19, 1987 from 8:00 a.m. to 5:00 p.m. each day.

The purpose of these meetings is to review, discuss and evaluate the effectiveness of penetration aids being developed for the Minuteman III.

These meetings concern matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202-697-8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 87-17281 Filed 7-29-87; 8:45 am]

BILLING CODE 3910-01-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Lower Creek Flood Control Project, Caldwell County, NC

AGENCY: Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: 1. The proposed project is authorized under section 205 of the 1948 Flood Control Act, as amended. The proposed project consists of a 7-foot-bottom-width channel beginning on Lower Creek at Complex Street and extending upstream to Virginia Street (4,300 feet), a 60-foot-bottom-width channel from Virginia Street upstream to Harrisburg Drive (2,600 feet), and a 50-foot-bottom-width channel from Harrisburg Drive to the confluence of Zacks Fork Creek (5,500 feet). The bottom width of Zacks Fork Creek would be widened to 40 feet from its mouth upstream to Hickory Boulevard, a distance of 3,900 feet. The excavation would be riprapped from the C&NW Railroad upstream, for distance of 4,800 feet.

Only channel widening alternatives are economically feasible. Because of concern for environmental impacts, bench channel alternatives are receiving primary consideration. In areas where constrictions from buildings or rock occur, trapezoidal channels may be necessary. Alternatives to the proposed project which will be analyzed include different channel configurations and different channel widths and lengths. Also being considered is the no action alternative.

3a. All private interests and Federal, State, and local agencies having an interest in the project are hereby notified or the initiation of detailed project studies and are invited to comment at this time. The scoping process for the project is being initiated and will involve all known interested parties.

3b. The significant issues to be analyzed in the DEIS are as follows: (1) Impacts to aquatic resources and water quality of Lower Creek; (2) impacts to wildlife and vegetation in the riparian zone; (3) impacts to the aesthetics of the project area; (4) impacts to cultural resources; (5) impacts to endangered species; (6) impacts to recreation in the project area; and (7) impacts on the future economic growth of the project area.

3c. The lead agency for this study is the U.S. Army Engineer District, Wilmington. The study is being cost shared through direct payment and in-kind services by the State of North Carolina and the city of Lenoir.

3d. The DEIS is being prepared in accordance with the requirements of the National Environmental Policy Act of 1969, as amended, and will address the project's relationship to all other applicable Federal and State laws and Executive Orders.

4. A scoping letter requesting input to the study will be sent to all known interested parties. No formal scoping meetings are currently planned; however, the identification of any signficant issues relating to the project by others will result in coordination with appropriate interests as needed.

5. The Draft Environmental Impact Statement for the project is currently scheduled for distribution to the public in March 1989.

ADDRESS: Questions about the proposed action and reports should be directed to Mr. William Adams, Environmental Resources Branch, U.S. Army Engineer District, Wilmington, Post Office Box 1890, Wilmington, North Carolina 28402-1890, telephone: (919) 343-4748 or FTS 671-4748.

Dated: July 20, 1987.

Paul W. Woodbury,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 87-17325 Filed 7-29-87; 8:45 am]

BILLING CODE 3710-GN-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. FP-84]

Extension of Comment Period; Central Maine Power Co.'s Application for a Presidential Permit

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Extension of comment period on application by Central Maine Power Co. for a permit to construct, connect, operate and maintain electric transmission facilities at the international border between the United States and Canada.

SUMMARY: On July 6, 1987, the Economic Regulatory Administration (ERA) published a notice in the **Federal Register** (52 FR 25291) announcing receipt of an application by Central Maine Power Co. for a Presidential permit to construct electric transmission facilities at the international border between the United States and Canada. Because of possible confusion caused by misprinting of the applicant's name in the index of the **Federal Register** on that day, the period for public comment on this application is being extended.

FOR FURTHER INFORMATION CONTACT:

Anthony J. Como, Economic Regulatory Administration (RG-22), Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-5935

Lise Courtney M. Howe, Office of General Counsel (GC-41), Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-2900.

SUPPLEMENTARY INFORMATION: On June 8, 1987, Central Maine Power Co. applied to the ERA, pursuant to Executive Order 10485, for a Presidential permit to construct, connect, operate and maintain electric transmission facilities at the international border between the United States and Canada. This application was noticed in the **Federal Register** on July 6, 1987 (52 FR 25291). Because of an error in printing, the **Federal Register** index for that item incorrectly listed the applicant as Central Mining Power Co.

The original notice announced a 30-day comment period ending on August 5, 1987. The ERA is concerned that this error in the index entry may have been a source of confusion to potentially interested parties. Therefore, the period for comment, protest and intervention on this application is being extended.

Any person desiring to be heard or to protest this application for a Presidential permit should file a petition to intervene or protest with the ERA, Room GA–093, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, in accordance with §§ 385.211 or 385.214 of the Rules of Practice and Procedure (18 CFR 385.211, 385.214).

Any such petitions and protests should be filed on or before August 31, 1987. Protests will be considered by ERA in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application will be made available, upon request, for public inspection and copying at the Department of Energy's Freedom of Information Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC from 8:00 a.m. to 4:00 p.m., Monday through Friday.

Issued in Washington, DC on July 23, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87–17324 Filed 7–29–87; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL COMMUNICATIONS COMMISSION

Petitions for Clarification and Reconsideration of 1985 Annual Access Tariff and Terms and Conditions Order Filed; Consolidated Pleading Cycle Established

July 13, 1987.

On March 9, 1987, the Commission released a Memorandum Opinion and Order, In the Matter of Annual 1985 Access Tariff Filings, CC Docket No. 86–125, Phase II, FCC 87–50 (*Terms and Conditions Order*). A summary of the *Terms and Conditions Order* was published in the **Federal Register** on May 5, 1987. See 52 FR 16388 (May 5, 1987).

On April 8, 1987, MCI Telecommunications Corporation (MCI) initially filed its petition for clarification or, in the alternative, reconsideration of part of that *Order*. MCI re-filed its petition on June 4, 1987. On April 9, 1987 the GTE Service Corporation (GTOC) filed a petition for partial reconsideration of the *Terms and Conditions Order*, while on June 5, New York Telephone Company and New England Telephone and Telegraph Company (NYNEX) filed a petition for reconsideration of the *Order*.

In its petition, MCI requests clarification or, in the alternative, reconsideration of the Commission's decision to permit local exchange carriers (LECs) to participate in an Order and Billing Forum, which includes industry representatives, in order to comply with the Commission's requirement that LECs provide adequate and appropriate billing information to interexchange carriers.

The GTOCs seek reconsideration of the requirement that LECs refund presubscription change charges and minimum monthly usage charges (MMUCs) found unlawful in the *Terms and Conditions Order*. Specifically, the GTOCs contend that, in the absence of an accounting order, the Commission is not authorized to require LECs to refund these charges. NYNEX makes this same argument with respect to the MMUC refund requirement.

Issues raised in the above-referenced petitions will be considered in a consolidated proceeding. Copies of these petitions are available for inspection in the Commission's Tariff Division, 1919 M Street, Room 518, and may be obtained from the Commission's contract copier, International Transcription Service, Inc., Suite 140, 2100 M Street, NW., Washington, DC 20036. Parties wishing to file oppositions to the petitions for reconsideration must make such filings within 15 days after this public notice is published in the Federal Register. Replies to those oppositions are due 10 days after the deadline for filing oppositions.

For further information, contact Jacqueline E. Holmes, Tariff Division, Common Carrier Bureau at (202) 632–6917.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–17177 Filed 7–29–87; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

Appointment of Receiver; Freedom Savings and Loan Association, Tampa, FL

Notice is hereby given that pursuant to the authority contained in section 406(c)(2) of the National Housing Act, as amended, 12 U.S.C. section 1729(c)(2) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Freedom Savings and Loan Association, Tampa, Florida on July 23, 1987.

Dated: July 24, 1987.

By the Federal Home Loan Bank Board.

John M. Buckley, Jr.,

Secretary.

[FR Doc. 87–17342 Filed 7–29–87; 8:45 am]

BILLING CODE 6720-01-M

Acceptance of Appointment of Receiver; Freedom Savings and Loan Association, Tampa, FL

Notice is hereby given that the Circuit Court of the State of Florida for the County of Hillsborough has confirmed the appointment by the Comptroller of the State of Florida ("Comptroller") of a receiver for Freedom Savings and Loan Association, Tampa, Florida ("Association"), and that, pursuant to the authority contained in section 406(c)(1) of the National Housing Act, as amended, 12 U.S.C. section 1729(c)(1) (1982), and as directed by the Federal Home Loan Bank Board, the Federal Savings and Loan Insurance Corporation accepted the tender of the Comptroller, pursuant to § 722.474 of the Florida Revised Statutes, of appointment as receiver for the Association for the purpose of liquidation, effective July 23, 1987.

Dated: July 24, 1987.

By the Federal Home Loan Bank Board

John M. Buckley, Jr.,

Secretary.

[FR Doc. 87–17343 Filed 7–29–87; 8:45 am]

BILLING CODE 6720-01-M

[No. AC–641]

Final Action; Approval of Conversion Application; First Federal Savings Bank and Trust, Pontiac, MI

Date: July 24, 1987.

Notice is hereby given that on June 30, 1987, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of First Federal Savings Bank and Trust, Pontiac, Michigan, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent, at the Federal Home Loan Bank of Indianapolis, 1350 Merchants Plaza, South Tower, 115 West Washington Street, Indianapolis, Indiana 46204.

By the Federal Home Loan Bank Board
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 87-17336 Filed 7-29-87; 8:45 am]
BILLING CODE 6720-01-M

[No. AC-643]

Final Action; Approval of Conversion Application; Inter Federal Savings Bank Chattanooga, TN

Date: July 24, 1987.

Notice is hereby given that on July 13, 1987, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Inter Federal Savings Bank, Chattanooga, Tennessee, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Cincinnati, 2000 Atrium TWO, Cincinnati, Ohio 45202.

By the Federal Home Loan Bank Board
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 87-17337 Filed 7-29-87; 8:45 am]
BILLING CODE 6720-01-M

[No. AC-644]

Final Action; Approval of Conversion Application; Morsemere Federal Savings and Loan Association, Fort Lee, NJ

Date: July 24, 1987.

Notice is hereby given that on July 17, 1987, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Morsemere Federal Savings and Loan Association, Fort Lee, New Jersey, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of New York, One World Trade Center, Floor 103, New York, New York 10048.

By the Federal Home Loan Bank Board
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 87-17338 Filed 7-29-87; 8:45 am]
BILLING CODE 6720-01-M

[No. AC-639]

Final Action; Approval of Conversion Application; Newton Savings and Loan Association, Newton, NJ

Date: July 20, 1987.

Notice is hereby given that on July 9, 1987, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Newton Savings and Loan Association ("Newton") New Jersey, for permission to convert to the stock form of organization pursuant to a voluntary supervisory conversion.

By the Federal Home Loan Bank Board
John F. Ghizzoni,
Assistant Secretary
[FR Doc. 87-17339 Filed 7-29-87; 8:45 am]
BILLING CODE 6720-01-M

[No. AC-640]

Final Action; Approval of Conversion Application; Southeast Federal Savings Bank, Rossville, GA

Date: July 20, 1987.

Notice is hereby given that on July 30, 1987, the General Counsel of the Director of the Office of Regulatory Policy, Oversight and Supervision, and the Director of the Office of District Banks, or their respective designees, acting pursuant to delegated authority, approved the application of Southeast Federal Savings Bank, Rossville, Georgia ("Southeast"), for permission to convert to the stock form of organization pursuant to a voluntary supervisory conversion, the application of Bankers First Corporation, Augusta, Georgia to acquire Southeast by merger with Interim Southeast Federal Savings Bank, Rossville, Georgia, and various applications related thereto.

By the Federal Home Loan Bank Board
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 87-17340 Filed 7-29-87; 8:45 am]
BILLING CODE 6720-01-M

[No. AC-642]

Final Action; Approval of Conversion Application; Yardley Savings Association, Yardley, PA

Date: July 24, 1987.

Notice is hereby given that on July 15, 1987, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Yardley Savings Association, Yardley, Pennsylvania, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552 and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Pittsburgh, One Riverfront Center, Twenty Stanwix Street, Pittsburgh, Pennsylvania 15222-4893.

By the Federal Home Loan Bank Board
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 87-17341 Filed 7-29-87; 8:45 am]
BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

Application To Engage de Novo in Permissible Nonbanking Activities; Bank of New England Corp.

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that

outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 21, 1987.

A. Federal Reserve Bank of Boston (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Bank of New England Corporation*, Boston, Massachusetts; to engage *de novo* through its subsidiary CBT Acceptance Corporation, New York, New York, in provision of floor plan and other asset based financing to automobile dealers pursuant to § 225.25(b)(1)(iv) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 24, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-17260 Filed 7-29-87; 8:45 am]

BILLING CODE 6210-01-M

Acquisitions of Companies Engaged in Permissible Nonbanking Activities; BTB Corp. et al.

The organizations listed in this notice have applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than August 21, 1987.

A. Federal Reserve Bank of Boston (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *BTB Corporation*, Boston, Massachusetts; to acquire Raymond C. Green and Company, Inc., Boston, Massachusetts; and thereby engage in directly making, acquiring or servicing loans or other extensions of credit for its own account or for the account of others, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Marshall & Ilsley Corporation*, Milwaukee, Wisconsin; to acquire Software Development Corporation, Fort Lauderdale, Florida; and thereby engage in data processing activities, pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 24, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-17261 Filed 7-29-87; 8:45 am]

BILLING CODE 6210-01-M

Formation of, Acquisition by, or Merger of Bank Holding Companies; SB&T Corp.

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than August 21, 1987.

A. Federal Reserve Bank of Atlanta (Robert A. Heck, Vice President), 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *SB&T Corporation*, Smyrna, Georgia; to become a bank holding company be acquiring 100 percent of the voting shares of Smyrna Bank and Trust Company, Smyrna, Georgia.

Board of Governors of the Federal Reserve System, July 24, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-17262 Filed 7-29-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 87N-0248]

Drug Export; Antibody to Hepatitis B Surface Antigen (Mouse-Monoclonal) VIRGO™ (HBSAG) ELISA Test Kit

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Electro-Nucleonics, Inc., has filed an application requesting approval for the export of the biological product Antibody to Hepatitis B Surface Antigen (Mouse-Monoclonal) VIRGO™ (HBsAg) ELISA Test Kit to the Netherlands, Belgium, Switzerland, New Zealand,

Australia, Canada, West Germany, and the United Kingdom.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs and biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Rudolf Apodaca, Center for Drugs and Biologics (HFN–310), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8063.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99–660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs and biological products that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Electro-Nucleonics Inc., 7101 Riverwood Dr., Columbia, MD 21046–1297, has filed an application requesting approval for the export of the biological product Antibody to Hepatitis B Surface Antigen (Mouse-Monoclonal) VIRGO™ (HBsAg) ELISA Test Kit to the Netherlands, Belgium, Switzerland, New Zealand, Australia, Canada, West Germany, and the United Kingdom. This product is intended to detect Hepatitis B Surface Antigen. The application was received and filed in the Center for Drugs and Biologics on June 15, 1987, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by August 10, 1987, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99–660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drugs and Biologics (21 CFR 5.44).

Dated: July 17, 1987.

Daniel L. Michels,

Director, Office of Compliance, Center for Drugs and Biologics.

[FR Doc. 87–17265 Filed 7–29–87; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

July 23, 1987.

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202–395–7340.

Title: Training Progress Report, 25 CFR Part 276.

Abstract: Native Americans and vocational education individuals participating in the adult vocational training program are required to make satisfactory progress in training. Failure to meet this requirement due to reasons within the individual's control may result in termination from the training program.

Bureau Form Number: BIA–8242.

Frequency: Execption Reporting.

Description of Respondents: Adult Vocational Training Programs/ Institutions.

Annual Responses: 1,075.

Annual Burden Hours: 89.

Bureau clearance officer: Cathie Martin, 202–343–3577.

Hazel E. Elbert,

Deputy to the Assistant Secretary, Indian Affairs (Tribal Services).

[FR Doc. 87–17283 Filed 7–29–87; 8:45 am]

BILLING CODE 4310–02–M

Advisory Committee for Exceptional Children; Meeting

This notice is published in accordance of authority delegated by the Secretary of the Interior to the Assistant Secretary of Indian Affairs by 209 DM 8.

In accordance with section 612(7) of Pub. L. 94–142, as amended by section 5(a) of Pub. L. 94–142, Education of the Handicapped Act, the Bureau of Indian Affairs, Advisory Committee for Exceptional Children will meet August 13–15, 1987 in Tulsa, Oklahoma at the Sheraton Kensington, 1902 E. 21st Street, 8:30 A.M.–5:00 P.M.

The purpose of the meeting will be to investigate the unmet needs of handicapped Indian children, to discuss the application process for the Bureau of Indian Affairs' Special Education Program, review the Bureau of Indian Affairs' State Plan for Special Education. Discuss Education of the Handicapped Amendments of 1986 (Pub. L. 99–457). Discuss proposed rule for Federal Advisory Committees, install new members, elect officers and to plan for the next fiscal year.

The meeting is open to the public. Any member of the public can file a written statement concerning the matters discussed with the Bureau of Indian Affairs, Branch of Exceptional Education, 1951 Constitution Avenue, NW., Room 4659, Code 523, Washington DC 20245, within 30 days after the meeting.

Any additional information about the meeting can be obtained from Ms. Marie J. Emery, Bureau of Indian Affairs, Main Interior Building, Room 4644, telephone number (202) 343–6675.

Ronal D. Eden,

Deputy to the Assistant Secretary/Director—Indian Affairs (Indian Education Programs).

[FR Doc. 87–17296 Filed 7–29–87; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[CA-060-07-4333-10]

California; El Centro Resource Area Notice of Plan Approval, Imperial Sand Dunes Recreation Area Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Approval of the Imperial Sand Dunes Recreation Area Management Plan, California Desert District, El Centro Resource Area, Imperial County, California.

SUMMARY: Notice is hereby given that the final Imperial Sand Dunes Recreation Area Management Plan and Environmental Assessment has been approved by the Bureau of Land Management (BLM). The plan outlines BLM's management program through the year 2000 for the 184,000-acre recreation area, located in east-central Imperial County, California.

Approval of the plan culminates a 2½ year planning process which began with public issue identification workshops held in Yuma, Arizona and El Centro, San Diego, and Riverside, California in April 1985. A planning workbook was distributed to the public in May 1985. Workshop and workbook comments were utilized in development of a draft plan and environmental assessment which was released for 60 days of public review in October 1986. A total of 28 letters of comment were received on the draft plan. These comments were considered in development of the final plan.

The plan outlines over 200 specific recreation management prescription for the Imperial Sand Dunes. Key features of the plan (not necessarily listed in order of priority) include:

1. A coordinated funding strategy organized around five funding levels.
2. Linkage of major development actions with actual use levels and monitored resource condition.
3. Phased acquisition and development of access to allow optimum utilization of available California Desert Plan Multiple Use Class I (intensive use) areas for off-highway vehicle (OHV) recreation as demand increases.
4. Phased development of basic sanitation (toilets and trash) and parking facilities in zones of concentrated camping use (Class I).
5. Adoption of supplementary rules and an educational program to promote public safety.
6. A public education program to increase appreciation of sensitive resources.
7. Phased implementation of a sensitive species baseline study and monitoring program, in conjunction with a habitat management plan to be completed in 1987.
8. Development of an OHV access corridor to link portions of the Buttercup Valley Open Area bisected by the All-American Canal and Interstate Highway 8. The connection will link the Grays Well and Gordons Well Class I areas.
9. Phased increases in staffing for operation, maintenance, and patrol, linked to the level of development and use.
10. Implementation of measures to protect the wilderness suitability of two wilderness study areas.
11. Acquisition of undeveloped state and private inholdings to improve manageability and protect sensitive resources.
12. Adoption of management prescriptions to insure compatibility of recreation and other uses.

The plan proposes adoption of an amendment to the California Desert Plan to change the multiple-use classification of Sec. 6, T. 12 S., R. 16 E., SBM, from "Unclassified" to "Class L" west of the Coachella Canal and to "Class I" east of the Coachella Canal. This section (880 acres) is located in the Mammoth Wash area. The proposed class changes reflect existing use and are consistent with designation of adjacent public lands.

A draft plan proposal to change the OHV designation of 4,300 acres of sand dunes in the South Ogilby area (south of Interestate 8 and east of the All-American Canal) from "Limited to Existing Routes" to "Open" has been deleted from the final plan. The proposal was deleted because of information on sensitive resources and public concerns expressed in comments on the draft plan.

DATE: The decision to approve the plan and environmental assessment is effective on the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Copies of the final Imperial Sand Dunes Recreation Area Management Plan and Environmental Assessment are available from the Bureau of Land Management, El Centro Resource Area, 333 South Waterman Avenue, El Centro, California 92243, 619–352–5842. Hours: 7:45 a.m. to 4:30 p.m., Monday through Friday. Specific questions concerning the plan and environmental assessment should be directed to Steve Nelson, Outdoor Recreation Planner.

Dated: July 21, 1987.

H.W. Riecken,

Acting District Manager.

[FR Doc. 87–17289 Filed 7–29–87; 8:45 am]

BILLING CODE 4310–40–M

[CO–070–07–4341–01]

Grand Junction District Multiple Use Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Grand Junction District Multiple Use Advisory Council Meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 94–579 that a meeting of the Grand Junction District Advisory Council will be held on Wednesday, September 9, 1987 and Thursday, September 10, 1987.

SUPPLEMENTARY INFORMATION: The meeting on Wednesday, September 9, will be held at the Grand Junction District Office, 764 Horizon Drive, Grand Junction, Colorado 81506 from 1–5 p.m. A public comment period is scheduled for 4 p.m.

On Wednesday, September 10, beginning at 8 a.m., the Council will tour several sites in the Grand Junction Resource Area

The full-day field trip is open to the public; however, transportation will only be provided for Council members.

Bruce Conrad,

District Manager, Grand Junction District.

[FR Doc. 87–17328 Filed 7–29–87; 8:45 am]

BILLING CODE 4310–JB–M

[OR–050–4322–02; GP7–256]

District Grazing Advisory Board Meeting; Prineville District Office

ACTION: Correction of the date of the District Grazing Advisory Board Meeting

The meeting will begin at 10:00 a.m. on August 12, 1987, instead of August 13, 1987. The location remains the same.

Ronald W. Van Dorsalen,

Acting District Manager.

July 24, 1987.

[FR Doc. 87–17335 Filed 7–29–87; 8:45 am]

BILLING CODE 4310–33–M

[NM–060–07–4341–02]

Roswell District Grazing Advisory Board Meeting.

AGENCY: Bureau of Land Management, Interior.

ACTION: Roswell District Grazing Advisory Board Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Roswell District Grazing Advisory Board.

DATE: Wednesday, August 26, 1987, beginning at 10 a.m. A public comment period will be held following the last agenda item.

Location: BLM Roswell District Office, 1717 West Second St., Roswell, NM 88201

FOR FURTHER INFORMATION CONTACT: David L. Mari, Associate District Manager, or Terry Keim, Acting Public Affairs Specialist, Bureau of Land Management, P.O. Box 1397, Roswell, NM 88201, (505) 622-9042.

SUPPLEMENTARY INFORMATION: The proposed agenda will include: (1) Pilot Productivity Program; (2) Proposed Changes in Grazing Regulations; (3) Sage Ram Proposal; (4) Road Policy; (5) Sikes Act; (6) FY 88 Range Improvement Projects. The meeting is open to the public. Interested persons may make oral statements to the Council during the public comment period or may file written statements. Anyone wishing to make an oral statement should notify the Associate District Manager by August 17, 1987. Summary minutes will be maintained in the District Office and will be available for public inspection during regular business hours within 30 days following the meeting. Copies will be available for the cost of duplication.

David L. Mari,

Associate District Manager.

[FR Doc. 87-17285 Filed 7-29-87; 8:45 am]

BILLING CODE 4310-FB-M

[ID-040-4322-02]

Salmon District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting of the Salmon District Grazing Advisory Board.

SUMMARY: The Salmon District of the Bureau of Land Management (BLM) announces a forthcoming meeting of the Salmon District Grazing Advisory Board.

DATE: The meeting will be held on Wednesday, September 9, 1987, at the Salmon Distict Office, Bureau of Land Management, Conference Room, Highway 93 South, Salmon, Idaho 83467. The meeting will begin at 10:00 a.m.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with Pub. L. 92-463. The meeting is open to the public; public comments on agenda items will be accepted from 1:00 to 1:30 p.m. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, P.O. Box 430, Salmon, Idaho 83467, by September 3, 1987.

The agenda items are: (1) Discussion of the use of 8100 funds, (2) Review the process for ordering, storing and using Advisory Board materials, (3) Advisory Board checking account, (4) Advisory Board/District Manager policy on cost sharing of new projects, (5) Rangeland Monitoring Update, and (6) Project prioritization and planning.

Summary minutes of the meeting will be kept in the District Office and will be available for public inspection and reproduction during business hours (7:45 a.m. to 4:30 p.m.) within 30 days after the meeting.

For further information, contact: Jerry W. Goodman, District Manager, Bureau of Land Management, Salmon District Office, P.O. Box 430, Salmon, ID 83467.

Dated: July 20, 1987.

Robert W. Heidemann,

Associate District Manager.

[FR Doc. 87-17286 Filed 7-29-87; 8:45 am]

BILLING CODE 4310-22-M

Proposed Reinstatement of a Terminated Oil and Gas Lease; Alaska State Office

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease AA-48228-AS has been received covering the following lands:

Fairbanks Meridian, Alaska

T. 18 S., R. 2 W.,
Sec. 27 SE¼ NW¼.
(40 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16 ⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from November 1, 1986, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA-48228-AS as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposed to reinstate the lease, effective November 1, 1986, subject to the terms and conditions cited above.

Dated: July 24, 1987

Kay F. Kletka,

Chief, Branch of Mineral Adjudication.

[FR Doc. 87-17327 Filed 7-29-87; 8:45 am]

BILLING CODE 4310-JB-M

[WY-920-07-4111-15; W-80543-A]

Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3 (a) and (b)(1), a petition for reinstatement of oil and gas lease W-80543-A for lands in Campbell County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessees have agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessees have paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessees have met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-80543-A effective October 1, 1986, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 87-17328 Filed 7-29-84; 8:45 am]

BILLING CODE 4310-22-M

[WY-920-07-4111-15; W-78782]

Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease W-78782 for lands in Crook County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice.

The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-78782 effective September 1, 1986, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 87-17329 Filed 7-29-87; 8:45 am]

BILLING CODE 4310-22-M

[WY-060-07-4212-14; W-66738]

Realty Action; Competitive Sale of Public Lands in Goshen County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Competitive Sale of Land Parcels in Goshen County, Wyoming.

SUMMARY: The Bureau of Land Management (BLM) has determined that the lands described below are suitable for public sale. BLM is required to receive fair market value for the land sold and any bid for less than fair market value will be rejected. The BLM may accept or reject any and all offers, or withdraw any land or interest in the land for sale if the sale would not be consistent with FLPMA or other applicable law. This disposal action is consistent with the Platte River Resource Area's Resource Management Plan. These lands were never classified pursuant to the Classification and Multiple Use Act.

Detailed bidding instructions and other sale details are available on request at the BLM, Platte River Resource Area Office, P.O. Box 2420, Mills, Wyoming 82644 (phone (307) 261-5006). Failure to submit a bid in accordance with these detailed instructions may result in rejection of the bid.

Parcels:

Serial No.	Legal description	Acreage	Appraised value
W-66738	T. 21 N., R. 61 W., 6th P.M. Section 1: Lot 2	40.31	$2,300

The lands described are hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action.

The sale, to be held on September 23, 1987 will be conducted by competitive bidding, and each parcel will be offered by a sealed bid process. If any parcels fail to sell, the land will continue to be reoffered for sale under the competitive bidding process. Reappraisals of the parcels will be made periodically to reflect the current market value. If the value of the parcel(s) change(s), it/they will be published and the land will remain open for competitive bidding. A more detailed description of the competitive bidding process is available from the Platte River Resource Area Office.

A bid will also constitute an application for conveyance of those mineral interests offered for conveyance in the sale. The mineral interests being offered have no known mineral values. At the time of the sale, the purchaser will be required to pay a $50.00 nonreturnable filing fee (in addition to their bid) for all unreserved mineral interests.

The patent for all parcels will include reservations for ditches and canals, coal, oil and gas to the United States. All parcels will be subject to valid existing rights to include existing oil and gas leases. A detailed description of these reservations is available from the above address.

SUPPLEMENTARY INFORMATION: For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments on the sale to the District Manager, Casper District Office, 1701 East "E" Street, Casper, Wyoming 82601. Any adverse comments to the sale will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of adverse comments or in the absence of any action by the State Director, this realty action will become final.

Date: July 23, 1987.

Leslie A. Olver,

Acting Casper District Manager.

[FR Doc. 87-17330 Filed 7-29-87; 8:45 am]

BILLING CODE 4310-22-M

[WY-060-07-4212-14]

Realty Action; Modified Competitive Sale of Public Lands in Goshen County, WY.

AGENCY: Bureau of Land Management, Interior.

ACTION: Modified Competitive Sale of Land Parcels in Goshen County, Wyoming.

SUMMARY: The Bureau of Land Management (BLM) has determined that the lands described below are suitable for public sale. BLM is required to receive fair market value for the land sold and any bid for less than fair market value will be rejected. The BLM may accept or reject any and all offers, or withdraw any land or interest in the land for sale if the sale would not be consistent with FLPMA or other applicable law. This disposal action is consistent with the Platte River Resource Area's Resources Management Plan. These lands were never classified pursuant to the Classification and Multiple Use Act.

Detailed bidding instructions and other sale details are available on request at the BLM, Platte River Resource Area Office, P.O. Box 2420, Mills Wyoming 82644 (phone (307) 261-5006). Failure to submit a bid in accordance with these detailed instructions may result in rejection of the bid.

Parcels

Serial No.	Legal description	Acreage	Appraised value
W-66722	T. 23 N., R. 62 W., 6th P.M. Section 29: W½SW¼. Section 32: NE¼.	240	$33,125
W-66720	T. 24 N., R. 64 W., 6th P.M. Section 27: SE¼NW¼.	40	1,300
W-66742	T. 23 N., R. 63 W., 6th P.M. Section 7: SE¼SW¼, S½N½SE¼, S½SE¼.	160	9,050

The lands described are hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action.

The sale, to be held on September 23, 1987 will be conducted by modified competitive bidding, and each parcel will be offered by a sealed bid process to adjoining landowners, The apparent high bidder will be required to submit evidence of adjoining landownership before the high bid can be accepted or terminated. If any parcels fail to sell, the land will be reoffered for sale under a competitive bidding process. Reappraisals of the parcels will be made periodically to reflect the current market value. If the value of the parcel(s) change(s), it/they will be published and the land will remain open for competitive bidding. A more detailed description of the competitive bidding process is available from the Platte River Resource Area Office.

A bill will also constitute an application for conveyance of those mineral interests offered for conveyance in the sale. The mineral interests being offered have on known mineral values. At the time of the sale, the purchaser

will be required to pay a $50.00 nonreturnable filing fee (in addition to their bid) for all unreserved mineral interests.

The patent for all parcels will include reservations for ditches and canals, coal, oil and gas to the United States. All parcels with be subject to valid existing rights to include existing oil and gas leases. A detailed description of these reservations is available from the above address.

SUPPLEMENTARY INFORMATION: For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments on the sale of the District Manager, Casper District Office, 1701 East "E" Street, Casper, Wyoming 82601. Any adverse comments to the sale will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any adverse comments or in the absence of action by the State Director, this realty action will become final.

Dated: July 23, 1987.

Leslie A. Olver,

Acting Casper District Manager.

[FR Doc. 87-17331 Filed 7-29-87; 8:45 am]

BILLING CODE 4310-22-M

[UT-060-07-4410-12]

Final Decision on Plan Amendment; Grand Resource Area, Utah

July 21, 1987

AGENCY: Bureau of Land Management, Moab, Utah, Interior.

ACTION: Final Decision on Plan Amendment for Grand Resource Area Resource Management Plan.

SUMMARY: Notice is given to the public that the Bureau of Land Management has made a final decision to amend the Grand Resource Area Resource Management Plan. The plan amendment changes the management actions found at page 20 by the addition of the following statement:

"Allow changes in kind of livestock on those allotments which would be suitable for either or both kinds of livestock (sheep or cattle) or where resources would benefit by changing to a kind of livestock not currently authorized."

DATES: Protests on the plan amendment may be filed within 30 days of this date. This decision will become final 60 days from this date, allowing for consistency review by the Governor of Utah, provided protests are not received or inconsistencies identified by the Governor.

ADDRESSES: Protests on the plan amendment shall be sent to Director, Bureau of Land Management, 18th and C Street NW., Washington, DC 20240. The environmental assessment prepared for the plan amendment is available at the Grand Resource Area, P.O. Box M, Moab, Utah 84532.

FOR FURTHER INFORMATION CONTACT: Colin P. Christensen, Grand Resource Area Manager, (801) 259-8193.

Lee C. Chamberlain,

Acting District Manager.

[FR Doc. 87-17290 Filed 7-29-87; 8:45 am]

BILLING CODE 4310-DQ-M

[AA-220-07-4322-02; FR Doc. 86-18167]

Livestock Grazing Environmental Impact Statements—Fiscal Year 1988

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: As required by the Court Order in *Natural Resources Defense Council, Inc., et al.*, v. *Morton, et al.*, Civil Action No. 1983-73, this notice identifies five Resource Management Plans (RMP) and associated environmental impact statements (EIS's) covering the effects of livestock grazing which are scheduled for completion by the Bureau of Land Management during Fiscal Year 1988.

FOR FURTHER INFORMATION CONTACT: Billy Templeton, Chief, Division of Rangeland Resources, Bureau of Land Management, 18 & C Street NW., (Premier Building, Room 909) Washington, DC 20240 (202/653-9193).

SUPPLEMENTARY INFORMATION: In accordance with the Court Order in *Natural Resources Defense Council Inc., et al.*, v. *Morton et al.*, Civil Action No. 1983-73, the following described EIS's involving 4,042,000 acres of public lands are scheduled for completion during Fiscal Year 1988.

RESOURCE MANAGEMENT PLANS/GRAZING EIS'S

[Public Land in Thousands of Acres]

EIS name	Acres	Description
Socorro RMP (Jornada)	114	An area in south-central New Mexico within the Las Cruces District and the Socorro Resource Area.
San Rafael	1,526	An area in south-central Utah within the Moab District and San Rafael Resource Area.
Pony Express RMP Utah county part.	110	An area in north-western Utah within the Salt Lake District and Pony Express Resource Area.

RESOURCE MANAGEMENT PLANS/GRAZING EIS'S—Continued

[Public Land in Thousands of Acres]

EIS name	Acres	Description
Cody	1,013	An area in north-western Wyoming within the Worland District and Cody Resource Area.
Medicine Bow	1,269	An area in south-eastern Wyoming within the Rawlins District and Medicine Bow Resource Area.

Dated: July 27, 1987.

Guy E. Baier,

Assistant Director, Land and Renewable Resources.

[FR Doc. 87-17263 Filed 7-29-87; 8:45 am]

BILLING CODE 4310-84-M

[AA-830-07-4111-02]

Information Collection Submitted for OMB Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20505, telephone 202-395-7340.

Title: Sundry Notices and Reports on Wells

Abstract: Data submitted by oil and gas lessees and operators is used for agency approval of modifications of an existing well

Bureau Form Number: 3160-5

Frequency: On occasion

Description of Respondents: Oil and Gas lessees and operators

Annual Responses: 4,000

Annual Burden Hours: 1,666

Bureau Clearance Officer: Rick Iovaine 202-653-8853.

Date: July 17, 1987.

George F. Brown,

Deputy Assistant Director, Energy and Mineral Resources.

[FR Doc. 87-17264 Filed 7-29-87; 8:45 am]

BILLING CODE 4310-84-M

[WY-920-07-4111-15; W-86695]

Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

Pursuant to the provisions of Pub. L. 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease W–86695 for lands in Sweetwater County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $7 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this Federal Register notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–86695 effective November 1, 1986, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 87–17287 Filed 7–29–87; 8:45 am]

BILLING CODE 4310-22-M

[AZ–020–07–4212–13; A–22764]

Public Land Exchange; Mohave County, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction of Notice of Realty Action.

SUMMARY: The Notice of Realty Action published for private exchange A–22764 and appearing in the **Federal Register** on June 10, 1987 on page 22005, Volume 52, No. 111, is hereby amended to correct the legal description of private lands to be acquired from James E. and Lois M. Briggs. The correct description is as follows:

Gila and Salt River Meridian, Arizona

T. 22 N., R. 19 W.,
Sec. 5, lots 1–4;
Sec. 7, lots 1–4, N½NE¼, E½W½;
Sec. 17, all.
T. 22 N., R. 20 W.,
Sec. 13, SE¼;
Sec. 25, all.
T. 23 N., R. 19 W.,
Sec. 29, all;
Sec. 31, all;
Sec. 33, all.
Containing 3,959.68 acres, more or less.

FOR FURTHER INFORMATION CONTACT: Mike Berch of the Bureau of Land Management, Kingman Resource Area Office, 2475 Beverly Avenue, Kingman, Arizona 86401; Telephone 602/757–3161.

Date: July 23, 1987.

Henri R. Bisson,

District Manager.

[FR Doc. 87–17288 Filed 7–29–87; 8:45 am]

BILLING CODE 4310-32-M

Minerals Management Service

Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Chevron U.S.A. Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 2181, Blocks 56 (portion) and 57 (portion), South Pass Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Harvey and Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on July 23, 1987. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: July 24, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87–17333 Filed 7–29–87; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Prosposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Forest Oil Corporation has submitted a DOCD describing the activities it proposes of conduct on Lease OCS–G 8434, Block 190, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on July 23, 1987. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of

Mexco OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 4487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert, Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit, Telephone (504) 736-2876.

SUPPLEMENTARY INFORMATION: The purposes of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, the Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: July 24, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-17334 Filed 7-29-87; 8:45 am]

BILLING CODE 4310-MR-M

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Gulf of Mexico Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the availability of environmental documents prepared for OCS mineral proposals on the Gulf of Mexico OCS.

SUMMARY: The Minerals Management Service (MMS), in accordance with Federal Regulations (40 CFR 1501.4 and 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Environmental Assessments (EAs) and Findings of No Significant Impact (FONSIs), prepared by the MMS for the following oil and gas activities proposed on the Gulf of Mexico OCS. This listing includes all proposals for which FONSIs were prepared by the Gulf of Mexico in the 3-month period preceding this Notice.

Activity/operator	Location	Date
Shell Offshore Inc., thirteen exploratory wells; SEA No. R-2073.	Destin Dome Area, Blocks 22, 65, and 199; Leases OCS-G 6324, 6326, and 6343, respectively; 54 miles southwest of Panama City, Florida.	May 6, 1987.
Chevron U.S.A. Inc.; structure removal; SEA No. ES/SR 87-007.	Ship Shoal Area, Block 108; Lease OCS 0814; 17 miles south of Terrebonne Parish, Louisiana.	May 13, 1987.
Tenneco Oil Company; revision of two exploratory wells; SEA No. R-1791.	Pensacola Area, Block 948; Lease OCS-G 6261; 24 miles south of the Florida coast.	May 27, 1987.
Chevron U.S.A. Inc.; revision of one exploratory well; SEA No. R-1802.	Destin Dome Area, Block 56; Lease OCS-G 5406; 25 miles south of Santa Rosa Island, Florida.	June 4, 1987.
Tenneco Oil Exploration and Production; Platform A removal; SEA No. ES/SR 87-003.	South Timbalier Area, Block 59; Lease OCS-G 2977; 17 miles south of Lafourche Parish, Louisiana.	June 18, 1987.

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about EAs and FONSIs prepared for activities on the Gulf of Mexico OCS are encouraged to contact the MMS office in the Gulf of Mexico OCS Region.

FOR FURTHER INFORMATION CONTACT: Public Information Unit, Information Services Section, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394, Telephone (504) 736-2519.

SUPPLEMENTARY INFORMATION: The MMS prepares EAs and FONSIs for proposals which relate to exploration for and the development/production of oil and gas resources on the Gulf of Mexico OCS. The EAs examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA section 102(2)(C). A FONSI is prepared in those instances where the MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA. This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

Dated: July 23, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-17332 Filed 7-29-87; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination; Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Sonat Exploration Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 2038, Block 231, Lease OCS-G 3537, Block 232, and Lease OCS-G 4100, Block 239, East Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on July 22, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Mineral Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/

Development Plans Unit; Telephone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised §250.34 of Title 30 of the CFR.

Dated: July 22, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87–17291 Filed 7–29–87; 8:45 am]

BILLING CODE 4310-MR-M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202–395–7340.

Title: State Reclamation Grants 30 CFR Part 888.

Abstract: States and Indian tribes participating in the Abandoned Mined Lands Reclamation Program are required to assist in the development of the annual submission of projects by providing the information required by section 405(f) of the Surface Mining Control and Reclamation Act. This information is used in the preparation of requests for appropriation of monies for State reclamation grants.

Bureau Form Number: None.

Frequency: Annually.

Description of Respondents: State Regulatory Authorities and Indian Tribes.

Annual Responses: 28.

Annual Burden Hours: 1,120.

Bureau clearance officer: Darlene Grose-Boyd (202) 343–5447.

Dated: July 15, 1987.

Carson W. Culp,

Assistant Director, Budget and Administration.

[FR Doc. 87–17292 Filed 7–29–87; 8:45 am]

BILLING CODE 4310-05-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the A.I.D. Research Advisory Committee meeting on September 14 and 15, 1986 at the Pan American Health Organization Building, 525 23rd Street, NW., Washington, DC, Conference Room 'C'. The Committee will discuss policy issues in the areas of nutrition, safeguards for biotechnology activities in agriculture projects, and health research in the Science and Technology Bureau.

The meeting will begin at 9:00 a.m. each day and will adjourn at 5:30 p.m. on September 14 and 12:00 p.m. on September 15. The meeting is open to the public. Any interested persons may attend, may file written statements with the Committee before or after the meeting, or may present oral statements in accordance with procedures established by the Committee and to the extent the time available for the meeting permits. Dr. Curtis R. Jackson, Director, Office of Research and University Relations, Bureau for Science and Technology, is designated as the A.I.D. representative at the meeting. It is suggested that those desiring more specific information contact Dr. Jackson, 1601 N. Kent Street, Arlington, Virginia 22209 or call area code (703) 235–8929.

Date: July 20, 1987.

Curtis R. Jackson,

A.I.D. Representative, Research Advisory Committee.

[FR Doc. 87–17282 Filed 7–29–87; 8:45 am]

BILLING CODE 8116-01-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31082]

Exemption Acquisition and Operation, Certain Lines of Burlington Northern Railroad Co.; Kiamichi Railroad Co., Inc.

Kiamichi Railroad Company, Inc. (KRR) has filed a notice of exemption to acquire and operate Burlington Northern Railroad Company's lines between Lakeside, OK (milepost 620.25) and Hope, AK (milepost 805.87) including branch lines between Antlers, OK (milepost 540.32) and Paris, TX (milepost 585.05), and incidental trackage rights between Lakeside, OK (milepost 620.25) and Madill, OK (milepost 604.74).[1] Comments must be filed with the Commission and served on: Deborah A. Phillips; Weiner, McCaffrey, Brodsky & Kaplan, P.C., Suite 800, 1350 New York Avenue, NW., Washington, DC 20005–4797, (202) 628–2000 and Lawrence M. Stroik; Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, Texas 76102, (817) 878–2370. This transaction will also involve the issuance of securities by KRR which will be a Class III carrier. The issuance of these securities is an exempt transaction under 49 U.S.C. 1175.1 (51 FR 4928 (February 10, 1986)).

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.[2]

Decided: July 23, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87–17192 Filed 7–29–87; 8:45 am]

BILLING CODE 7035-01-M

[1] The Railway Labor Executives' Association filed an unsupported request for labor protection, claiming that this transaction is subject to the mandatory labor protection provisions of 49 U.S.C. 11347. Since this transaction involves an exemption from 49 U.S.C. 10901, only a showing of exceptional circumstances will justify the imposition of labor protective conditions. The request is denied, because the requisite showing has not been made. *See Class Exemption—Acq. & Oper. of R. Lines under 49 U.S.C. 10901*, 1 I.C.C.2d 810 (1985).

[2] By decision served July 22, 1987, the Commission denied several petitions to stay the effective date of this exemption.

[Finance Docket No. 27590 (Sub-No. 1)]

Approval of the Pooling of Car Service With Respect to Flat Cars; Trailer Train Co., et al.

AGENCY: Interstate Commerce Commission.

ACTION: Institution of proceeding.

SUMMARY: The Commission is instituting a proceeding to consider the application of Trailer Train Company (Trailer Train) and certain railroads under 49 U.S.C. 11342 to amend the Pooling Agreement and Form A Car Contract approved by the Commission in *American Rail Box Car Co.—Pooling*, 347 I.C.C. 862 (1974).

DATES: Verified statements supporting or opposing the application must be filed by Ausust 31, 1987. Verified replies must be filed by September 14, 1987.

ADDRESSES: Send pleadings, referring to Finance Docket No. 27590 (Sub-No. 1) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Applicants' representatives: Paul R. Duke, Covington & Burling, 1201 Pennsylvania Avenue, NW., P.O. Box 7566, Washington, DC 20044

Robert J. Williams, William A. Callison, Trailer Train Company, 101 North Wacker Drive, Chicago, IL 60606

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245.

SUPPLEMENTARY INFORMATION: The following railroads are applicants in this proceeding: The Atchison, Topeka and Santa Fe Railway Company; Burlington Northern Railroad Company; Chicago and North Western Transportation Company; Consolidated Rail Corporation; CSX Transportation, Inc.; The Denver and Rio Grande Western Railroad Company; Florida East Coast Railway Company; Grand Trunk Western Railroad Company; Illinois Central Gulf Railroad Company; The Kansas City Southern Railway Company; Missouri-Kansas-Texas Railroad Company; Missouri Pacific Railroad Company; Norfolk and Western Railway Company; Richmond, Fredericksburg and Potomac Railroad Company; St. Louis Southwestern Railway Company; Soo Line Railroad Company; Southern Railway Company; and Union Pacific Railroad Company.

The railroad applicants and Trailer Train are seeking approval of, and authorization from, the Commission for a fifteen-year extension of the arrangement for the pooling of flatcar service approved by the Commission in 1974. The extension, which has been assented to by all of the participants in the pooling, is part of an agreement among the railroad applicants and Trailer Train for a realignment of the ownership interests in Trailer Train held by the various railroads. Applicants allege that the extension is required to ensure the continuation of Trailer Train's operations for the foreseeable future.

Interested persons may submit verified statements by the dates set forth above. Copies of the application and the supporting verified statements can be examined in the Commission's Public Docket File, Room 1221, in Washington, DC. Copies may also be obtained from applicants' representatives.

Applicants assert that the requested Commission action will not significantly affect either the quality of the human environment or energy conservation. Any opposing statement may include a statement indicating the presence or absence of any impact of the requested Commission action on energy conservation, energy efficiency, or the environment. If any such impacts are alleged, the statement must be accompanied by supporting data, indicating the nature and degree of the anticipated impact.

Decided: July 24, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceeding.

Noreta R. McGee,

Secretary.

[FR Doc. 87–17193 Filed 7–29–87; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–6 (Sub-No. 291), Docket No. AB–8 (Sub-No. 18), Docket No. AB–52 (Sub-No. 53)]

Burlington Northern Railroad Co., The Denver & Rio Grande Western Railroad Co., and the Atchison, Topeka and Santa Fe Railway Co., Abandonment in Denver and Jefferson Counties, CO; Findings

The Commission has found that the public convenience and necessity permit the abandonment by Burlington Northern Railroad Company, The Denver & Rio Grande Western Railroad Company, and The Atchison, Topeka and Santa Fe Railway Company of a jointly-owned line of railroad, known as the REMACO line, between milepost 0.00 near Denver and milepost 6.52 near Lakewood, a distance of 6.52 miles in Denver and Jefferson Counties, Co.

An abandonment certificate will be issued authorizing this abandonment unless, within 10 days after this publication, the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicants no later than 10 days from publication of this Notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 Part CFR 1152.

Decided: July 13, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Commissioner Andre concurred. Vice Chairman Lamboley dissented with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 87–17305 Filed 7–29–87; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

Evaluation of Candidate Lubricants for Use With Fluorocarbon-134a as Refrigerant in Mobile Air Conditioning Systems; Motor Vehicle Manufacturers Assoc. of the United States, Inc.

Notice is hereby given that, pursuant to section 6(a) to the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.*, written notice has been filed by the Motor Vehicle Manufacturers Association of the United States, Inc. ("MVMA") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the joint venture and (2) the nature and objectives of the joint venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the joint venture, and its general area of planned activities, are given below.

The parties to the venture are the members of MVMA (American Motors Corporation, Chrysler Corporation, Ford Motor Company, General Motors Corporation, Honda of America Mfg., Inc., M.A.N. Truck & Bus Corporation, Navistar International Transportation Corp., PACCAR Inc., Volkswagen of

America, Inc., and Volvo North America Corporation) and the United States Environmental Protection Agency.

The United States Environmental Protection Agency is considering regulation of refrigerants currently employed in mobile air conditioning (A/C) systems because of the possibility that these refrigerants may damage stratospheric ozone.

One of the most promising substitutes for CFC–12 used in A/C systems is a substance containing no chlorine, known as FC–134a (tetrafluoroethane). This refrigerant has been made available only in laboratory quantities to date, but appears to have the proper physical and thermodynamic properties to allows its substitution in present A/C systems with some engineering adjustments. Its chemical properties also appear favorable, indicating a reactivity in the lower atmosphere that makes it much less likely to present a danger to the stratospheric ozone.

The objective of the research program is to identify one or more lubricants which are soluble in FC–134a, or other compounds with closely similar properties to FC–134a, and which will function according to predetermined performance standards in a mobile A/C system under typical operating conditions.

A list of desirable properties for candidate lubricants will be complied with special consideration of:

- Solubility as a function of temperature;
- Refrigerant/lubricant viscosity and lubricity;
- Chemical stability/metals compatibility;
- Copper plating potential;
- Elastomer/plastic compatibility;
- Desiccant compatibility/performance;
- Cost and ease of production.

Lubricants satisfying the screening criteria will be identified and made available to potential users in quantities sufficient for further testing under actual vehicle use conditions.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 87–17321 Filed 7–29–87; 8:45 am]

BILLING CODE 4410–01–M

Identification and Evaluation of Elastomers for Hose Connections in a Mobile Air Conditioning System Using CFC–22 or Similar Substances as Refrigerant; Motor Vehicle Manufacturers of the United States, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.*, written notice has been filed by the Motor Vehicle Manufacturers Association of the United States, Inc. ("MVMA") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the joint venture and (2) the nature and objectives of the joint venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the joint venture, and its general area of planned activities, are given below.

The parties to the venture are the members of MVMA (American Motors Corporation, Chrysler Corporation, Ford Motor Company, General Motors Corporation, Honda of America Mfg., Inc., M.A.N. Truck & Bus Corporation, Navistar International Transportation Corp., PACCAR Inc., Volkswagen of America, Inc., and Volvo North America Corporation) and the United States Environmental Protection Agency.

The United States Environmental Protection Agency is considering regulation of refrigerants currently employed in mobile air conditioning (A/C) systems because of the possibility that these refrigerants may damage stratospheric ozone.

A potential alternative refrigerant, CFC–22 (chlorodifluoromethane), would require a complete redesign of the A/C system because of its higher vapor pressure and different thermodynamic operating range. It would also require development of a new lubricant and a new hose material, because elastomers presently in use are known to be quite permeable to CFC–22, leading to its unacceptably rapid loss from the system through connecting hoses.

The objective of the research project is the identification of hose materials that would be suitable for use with CFC–22, or other substitutes for CFC–12 with similar properties, as the refrigerant in an automotive A/C system.

The materials should be chemically compatible with CFC–22, capable of withstanding operating conditions of high pressure and temperature in a system using CFC–22, and minimize losses of refrigerant and prevent absorption of water into the system. Samples of candidate elastomeric hose materials will be obtained and subjected to a number of qualification tests. Physical and chemical tests of hose samples first will be carried out with a baseline system, using CFC–22 and current elastomers and with several CFC–22/lubricant mixtures. Once these baseline responses have been esfablished, testing will be performed, including:

- Elastomer slab testing for chemical compatibility (swelling, shrinkage, solvent action, plasticizer extraction, hardness, etc.);
- Behavior under pressure (burst/yield pressures);
- High and low temperature behavior;
- Aging effects;
- Flexibility characteristics;
- Permeation of refrigerant and moisture;
- Ease of fastening onto metal tubing and durability of such a connection.

To the extent possible, lubricant manufacturing cost and feasibility will be assessed. Materials that respond favorably to chemical and physical screening will be provided in adequate quantities for further testing under actual vehicle use conditions.

Joseph H. Widmar,

Director of Operation, Antitrust Division.

[FR Doc. 87–17323 Filed 7–29–87; 8:45 am]

BILLING CODE 4410–01–M

NAHB Research Foundation; Smart House Project

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), the NAHB Research Foundation, Inc. ("NAHB") has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission on June 30, 1987 disclosing (1) the identifies of additional parties to the Smart House Project and (2) the nature and objectives of the Smart House Project. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to single damages under specified circumstances. Pursuant to section 6(b) of the Act, the identifies of current and additional parties to the Smart House Project, and its general areas of planned activity, are given below.

The Smart House Project is a joint venture project that will be implemented in a series of stages by separate agreements at each stage. The following parties have signed agreements to fund or otherwise participate in the first stage organizational activities:

AMP, Incorporated
Apple Computer, Inc.
Arco Solar, Inc.
AT&T Technologies, Inc.
Bell Northern Research Ltd.

Bose Corporation
BrinTec Corporation
Broan Mfg. Co., Inc.
Burndy Corporation
Carrier Corporation
Challenger Electrical Equipment Corp.
Dukane Corporation
E.I. DuPont de Nemours & Company (Inc.)
Emerson Electric Co.
Gas Research Institute
General Electric Company
Honeywell Inc.
Johnson Controls
Kohler Company
Landis & Gyr Metering, Inc.
Lennox Industries Inc.
NAHB Research Foundation, Inc.
National Semiconductor Corporation
NOMA Incorporated
North American Philips Consumer Electronics Corp., on its own behalf and on behalf of Signetics Corporation
Onan Corporation
Pass & Seymour Incorporated
Robertshaw Controls Company
Schlage Lock Company
Scott Instruments Corporation
Scovill Inc.
Shell Sevelopment Company (Division of Shell Oil Company)
Siemens-Allis, Inc.
Slater Electric, Inc.
Smart House Development Venture, Inc.
Smart House, L.P.
Sola Basic Industries, Inc.
Southwire Company
Square D Company
Systems Control, Inc.
Whirlpool Corporation
The Wiremold Company

The following entities ae serving as advisors to the venture:

AgipPetroli
American Gas Association
Baltimore Gas & Electric Company
Bell Canada
Bell Communications Research, Inc.
The Bell Telephone Company of Pennsylvania
Boston Edison Company
Copper Development Association Inc.
The Dayton Power and Light Company
Detroit Edision Company
Duke Power Company
Electric Power Research Institute
Gas Research Institute
Home Builders Institute
Hydro Quebec
National Assoication of Home Builders
Oklahoma Gas & Electric Company
Ontario Hydro
Potomac Electric Power Company
Professional Builder
Southern California Edison Company
Southwestern Bell Telephone Company
U.S. Dept. of Housing & Urban Dev.
Virginia Electric and Power Company
Washington Gas Light Company
Wisconsin Electric Power Company

The Smart House Project will engage in activities the purpose of which will be to develop a coordinated home control and energy distribution system containing integral telecommunications and advanced safety features. The project is intended to design and develop a set of compatible products, including integrated power and signal cabling to tie home electrical products into a single power and communications network; communications-capable appliances, heating and cooling equipment, utility meters and home electrical and electronic products; electric power conditioning and conversion equipment; controllers and software to make logical decisions, issue control instructions, and regulate the distribution of energy, information and instructions throughout the network; monitoring and control devices to detect and neutralize malfunctions in energy distribution within the home; telephone and CATV interfaces to allow information to be passed to and from the home over telephone and CATV lines; and input and output devices with which users can control and receive information from the network and the devices attached to it.

On June 14, 1985 NAHB filed its original notification pursuant to section 6(a) of the Act. On September 13, 1985, January 9, 1986, April 25, 1986, July 30, 1986, December 16, 1986, and April 3, 1987, NAHB filed additional written notifications. The Department of Justice published notices in the **Federal Register** in response to these additional notifications on October 10, 1985 (50 FR 41428), on January 28, 1986 (51 FR 3520), On May 16, 1986 (51 FR 18049), on August 28, 1986 (51 FR 30724), January 15, 1987 (52 FR 1673), and on May 8, 1987 (52 FR 17490), respectively.

The principal business address of the Smart House Project is P.O. Box 1627, Rockville, Maryland 20850.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 87-17322 Filed 7-29-87; 8:45 am]

BILLING CODE 4410-01-M

LEGAL SERVICES CORPORATION

Grant Awards for Expansion and Development of Law School Civil Clinical Programs; St. Louis University, et al.

AGENCY: Legal Services Corporation.

ACTION: Announcement of grant awards.

SUMMARY: The Legal Services Corporation (LSC) hereby announces its intention to award grants to twenty-five (25) law school clinical programs to assist LSC-eligible clients with their civil legal cases. Pursuant to the Corporation's announcement of funding availability in Volume 52, No. 90, page 17649, of the **Federal Register** of May 11, 1987, a total of $1,107,157 will be awarded to the following schools:

Name of school	Amount
1. St. Louis University	$50,000
2. University of Nebraska	[illegible]
3. University of North Dakota	[illegible]
4. University of North Carolina	[illegible]
5. University of Maine	[illegible]
6. University of Michigan	[illegible]
7. SUNY/Buffalo	[illegible]
8. McGeorge School of Law	[illegible]
9. William Mitchell College of Law	50,000
10. Southern Illinois University	46,600
11. Yeshiva University	[illegible]
12. Loyola University	[illegible]
13. Lewis & Clark College	[illegible]
14. Texas Southern University	[illegible]
15. Yale University	[illegible]
16. Villanova University	50,000
17. Thomas M. Cooley Law School	[illegible]
18. University of Denver	[illegible]
19. Stetson University	35,000
20. Catholic University of America	[illegible]
21. Brooklyn Law School	[illegible]
22. Valparaiso University	[illegible]
23. Gonzaga University	[illegible]
24. University of Utah	[illegible]
25. Willamette University	[illegible]
Total	1,107,157

These one-year grants are awarded pursuant to authority conferred by sections 1006(a)(1)(B) and 1006(a)(3) of the Legal Services Corporation Act of 1974, as amended. This public notice is issued pursuant to section 1007(F) of this Act, with a request for comments and recommendations within a period of thirty (30) days from date of publication of this notice. Grant awards will not become effective and grant funds will not be distributed prior to expiration of this thirty-day period.

DATE: All comments and recommendations must be received by the Program Development and Substantive Support Division of the Legal Services Corporation within thirty (30) calendar days of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Charles T. Moses III, Legal Services Corporation, Program Development and Substantive Support, 400 Virginia Avenue SW., Washington, DC 20024-2751, (202) 863-1837.

SUPPLEMENTARY INFORMATION: The purpose of these grants is to augment existing direct service delivery provided to LSC eligible clients. By helping to develop and expand law school clinics, the Corporation educates law students to the problems of poor persons. These clinics encourage future lawyers to become interested in the provision of

legal services to poor persons, acting either as legal aid attorneys or through *pro bono* or reduced fee efforts as members of the private bar.

Charles W. Jarvis,

Vice President.

[FR Doc. 87-17350 Filed 7-29-87; 8:45 am]

BILLING CODE 8025-01-M

NATIONAL SCIENCE FOUNDATION

Forms Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

Agency Clearance Officer: Herman G. Fleming, (202) 357-9520

OMB Desk Officer: Vartkes Broussalian, (202) 395-3084

Title: Fellowship Application and Grant Forms

Affected Public: Individuals

Number of Responses: 7,000 responses; total of 84,000 burdens hours.

Abstract: The National Science Foundation Act, Section 10, states that, "The Foundation is authorized to award scholarships and fellowships for scientific study." These applications provide information used to identify some of the Nation's most talented science personnel for award or support for further study.

Dated: July 24, 1987.

Herman G. Fleming,

NSF Reports Clearance Officer.

[FR Doc. 87-17312 Filed 7-29-87; 8:45 am]

BILLING CODE 7555-01-M

Committee Management; Establishment

The Deputy Director of the National Science Foundation has determined that the establishment of the Advisory Committee for Science and Technology Centers Development is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF) and other applicable law. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of Committee: Advisory Committee for Science and Technology Centers Development

Purpose: To provide advice, recommendations and oversight concerning support for research, research-related activities and the development of science and technology research centers.

M. Rebecca Winkler,

Committee Management Officer.

July 27, 1987.

[FR Doc. 87-17310 Filed 7-29-87; 8:45 am]

BILLING CODE 7555-01-M

Committee Management; Establishment

The Assistant Director for Geosciences has determined that the establishment of the United States Antarctic Program Safety Review Panel is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF) and other applicable law. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of Committee: United States Antarctic Program (USAP) Safety Review Panel

Purpose: In response to concerns expressed by the Director of the National Science Foundation. The Panel is being established to review the adequacy of the Foundation's programmatic direction and management of safety in the U.S. Antarctic Program.

M. Rebecca Winkler,

Committee Management Officer.

July 27, 1987

[FR Doc. 87-17311 Filed 7-29-87; 8:45 am]

BILLING CODE 7555-01-M

Division of Ocean Sciences; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Ocean Sciences Research.

Date and Time: August 17-21, 1987

Place: The Mayflower Hotel (8/18-20), 1127 Connecticut Avenue NW., Washington, DC 20036, Rooms: South Carolina, North Carolina, New Jersey, Marilyn, and National Science Foundation (8/17/21), Rooms: #642 on 8/17, #643 on 8/21.

Type of Meeting: Closed.

Contact Person: Dr. Michael R. Reeve, Head Ocean Sciences Research Section, Room 611, National Science Foundation, Washington, DC 20550, Telephone (202) 357-9600.

Summary Minutes: May be obtained form the Contact Person at the above address.

Purpose of Meeting: To provide advice and recommendations concerning support for research in oceanography.

Agenda: Closed—To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

July 27, 1987.

[FR Doc. 87-17313 Filed 7-29-87; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-255]

Issuance of Amendment to Provisional Operating License; Consumers Power Co.

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 105 to Provisional Operating License No. DPR-20, issued to Consumers Power Company (the licensee), which revised the license for operation of the Palisades Plant (the facility) located in Van Buren County, Michigan. The amendment is effective as of the date of its issuance.

The license amendment provides Technical Specifications applicable to an expanded storage capability for spent fuel at Palisades Plant. This expansion is to be accomplished by installing new storage racks in approximately one-half of the spent fuel pool. The modification will increase the spent fuel storage capacity of Palisades from 798 to 882 fuel assemblies, thus allowing a full core discharge capability for two fuel cycles (Cycle 8 and Cycle 9), longer than with existing racks. The spent fuel storage pool will be divided into two regions. Region I contains the existing storage racks which have a nominal center-to-center spacing of 10.25 inches and is designed to accommodate non-irradiated, fuel. Region II will contain the new racks which have a nominal center-to-center spacing of 9.17 inches. Placement of fuel in Region II is restricted by burnup and enrichment limits.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Prior

Hearing in connection with this action was published in the **Federal Register** on November 18, 1986, 51 FR 41711. No request for a hearing or petition for leave to intervene was filed following this notice.

Also, in connection with this action, the Commission prepared an Environmental Assessment dated July 24, 1987, and Notice of Environmental Assessment and Finding of No Significant Impact was published in the **Federal Register** on July 20, 1987 (52 FR 27267).

For further details with respect to this action, see (1) the application for amendment dated February 20, 1986, supplemented by submittals dated April 16 and 24, July 24, October 16 and December 19, 1986, and April 23, 1987, (2) Amendment No. 105 to License No. DPR–20, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Van Zoeren Library, Hope College, Holland, Michigan 49423. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Bethesda, Maryland, this 24th day of July, 1987.

Thomas V. Wambach,

Project Manager, Project Directorate III–1, Division of Reactor Projects—III, IV, V & Special Projects.

[FR Doc. 87–17314 Filed 7–29–87; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A, B, and C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Leesa Martin, (202) 632–6817.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on June 23, 1987 (52 FR 23617). Individual authorities established or revoked under Schedule A, B, or C between June 1, 1987, and June 30, 1987, appear in a listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

Schedule A

The following exception was revoked:

Department of the Air Force

Schedule A authority for one position of chief of engineering, GM–855–13, in Detachment 2, 2762 Logistics Squadron (Special), Air Force Logistics Command (AFLC) in Greenville, Texas. Authority is revoked because it is no longer needed. Effective June 10, 1987.

Schedule B

No Schedule B exceptions were established or revoked during June.

Schedule C

The following exceptions were established:

Department of Agriculture

One Confidential Assistant to the Administrator, Agricultural Stabilization and Conservation Service. Effective June 4, 1987.

One Executive Assistant to the Administrator, Agricultural Stabilization and Conservation Service. Effective June 5, 1987.

One Private Secretary to the Deputy Under Secretary for Small Community and Rural Development. Effective June 30, 1987.

Department of Commerce

One Congressional Liaison Specialist to the Director of Congressional Affairs, International Trade Administration. Effective June 5, 1987.

One Director of Congressional Affairs to the Assistant Secretary and Commissioner of Patents and Trademarks. Effective June 5, 1987.

One Special Assistant to the Deputy Assistant Secretary for Congressional Affairs. Effective June 19, 1987.

One Confidential Assistant to the Assistant Secretary for Tourism Marketing. Effective June 29, 1987.

Department of Defense

One Special Assistant for SDI to the Assistant Secretary of Defense (Legislative Affairs). Effective June 5, 1987.

One Special Assistant to the Assistant Secretary of Defense (Legislative Affairs). Effective June 19, 1987.

Department of Education

One Director, Interagency Operations Staff, to the Deputy Under Secretary for Intergovernmental and Interagency Affairs. Effective June 4, 1987.

One Confidential Assistant to the Chief of Staff, Counselor to the Secretary. Effective June 9, 1987.

One Confidential Assistant to the Director, Office of Bilingual Education and Minority Languages Affairs. Effective June 15, 1987.

One Director, Legislative Liaison Staff to the Deputy Assistant Secretary for Legislation. Effective June 17, 1987.

One Director, Student and Family Education Rights and Privacy Staff, to the Deputy Under Secretary for Management. Effective June 18, 1987.

One Special Assistant to the Assistant Secretary for Postsecondary Education. Effective June 18, 1987.

One Special Assistant to the Assistant Secretary for Special Education and Rehabilitative Services. Effective June 22, 1987.

One Special Assistant to the Assistant Secretary for Vocational and Adult Education. Effective June 22, 1987.

One Confidential Assistant to the Deputy Assistant Secretary for Policy and Planning, Office of Educational Research and Improvement. Effective June 22, 1987.

One Special Assistant to the Deputy Assistant Secretary for Legislation. Effective June 22, 1987.

One Staff Assistant to the Deputy Under Secretary for Management. Effective June 23, 1987.

One Special Assistant to the Director, Intergovernmental Affairs. Effective June 29, 1987.

Department of Energy

One Confidential Assistant (Secretary) to the Assistant Secretary for Fossil Energy. Effective June 4, 1987.

One Staff Assistant to the Deputy Assistant Secretary for Energy Emergencies. Effective June 15, 1987.

One Staff Assistant to the Under Secretary. Effective June 22, 1987.

One Confidential Assistant (Secretary) to the Assistant Secretary for Fossil Energy. Effective June 24, 1987.

Department of Health and Human Services

One Special Assistant to the Director, Office of Public Affairs, Office of Human Development Services. Effective June 29, 1987.

One Special Assistant to the Assistant Secretary for Human Development Services. Effective June 29, 1987.

BEST COPY AVAILABLE

Department of Housing and Urban Development

One Executive Assistant to the General Counsel. Effective June 1, 1987.

Department of the Interior

One Confidential Assistant to the Secretary. Effective June 15, 1987.

One Assistant to the Director, and Deputy Director, Office of External Affairs. Effective June 18, 1987.

Department of Justice

One Confidential Assistant to the Director, Asylum Policy and Review Unit, Office of Legal Policy. Effective June 4, 1987.

One Attorney-Advisor (Senior Special Assistant) to the Assistant Attorney General, Civil Division. Effective June 9, 1987.

One Confidential Assistant to the Director, Office of Liaison Services. Effective June 17, 1987.

One Confidential Assistant to the Assistant Attorney General, Office of Justice Programs. Effective June 18, 1987.

Department of Labor

One Special Assistant to the Assistant Secretary for Occupational Safety and Health. Effective June 10, 1987.

One Staff Assistant to the Associate Deputy Under Secretary for Intergovernmental Affairs. Effective June 18, 1987.

One Executive Assistant to the Assistant Secretary, Employment Standards Administration. Effective June 29, 1987.

One Assistant to the Secretary's Regional Representative. Effective June 29, 1987.

One Special Assistant to the Administrator, Wage and Hour Division, Employment Standards Administration. Effective June 30, 1987.

Department of State

One Secretary (Typing) to the U.S. Permanent Representative to the Organization of American States. Effective June 17, 1987.

One Staff Assistant to the Ambassador and U.S. Negotiator on Strategic Nuclear Arms. Effective June 19, 1987.

Department of Transportation

One Special Assistant to the Assistant Secretary for Public Affairs. Effective June 12, 1987.

One Congressional Liaison Officer to the Director, Office of Congressional Affairs. Effective June 15, 1987.

Department of the Treasury

One Assistant Director, Travel and Special Event Services, to the Director, Special Operations Division. Effective June 5, 1987.

One Director of Scheduling to the Assistant Secretary for Public Affairs and Public Liaison. Effective June 9, 1987.

One Executive Assistant to the Deputy Secretary of the Treasury. Effective June 15, 1987.

ACTION

One Staff Assistant to the Associate Director for Legislative, Public, and Intergovernmental Affairs. Effective June 23, 1987.

Administrative Conference of the United States

One Senior Special Assistant to the Chairman. Effective June 22, 1987.

Administrative Office of the U.S. Courts

One Public Information Officer to the Legislative and Public Affairs Officer. Effective June 8, 1987.

One Supervisory Attorney-Adviser (Legislative)/Deputy Legislative and Public Affairs Officer to the Legislative and Public Affairs Officer. Effective June 5, 1987.

Arms Control and Disarmament Agency

One Secretary (Steno) to the United States Representative to the Conference on Disarmament. Effective June 1, 1987.

One Secretary (Steno) to the Director. Effective June 19, 1987.

One Secretary (Typing) to the Director. Effective June 26, 1987.

Commission on Civil Rights

One Special Assistant to a Commissioner. Effective June 9, 1987.

One Deputy General Counsel to the General Counsel. Effective June 15, 1987.

One Special Assistant to a Commissioner. Effective June 26, 1987.

Environmental Protection Agency

One Special Assistant to the Assistant Administrator for Research and Development. Effective June 4, 1987.

Equal Employment Opportunity Commission

One Legislative Affairs Specialist to the Director of Communications and Legislative Affairs. Effective June 19, 1987.

One Media Contact Specialist (Bilingual) to the Director of Communications and Legislative Affairs. Effective June 29, 1987.

Federal Communications Commission

One Confidential Staff Assistant to the Chief, Office of Plans and Policy. Effective June 22, 1987.

Federal Mediation and Conciliation Service

One Executive Assistant to the Director. Effective June 8, 1987.

One Staff Assistant to the Director. Effective June 10, 1987.

Federal Trade Commission

One Director, Office of Congressional Relations, to the Chairman. Effective June 22, 1987.

General Services Administration

One Executive Assistant to the Assistant Administrator for Operations. Effective June 5, 1987.

Government Printing Office

One Administrative Assistant to the Public Printer. Effective June 22, 1987.

National Transportation Safety Board

One Special Assistant to a Member. Effective June 9, 1987.

Office of Management and Budget

One Legislative Assistant to the Associate Director for Legislative Affairs. Effective June 17, 1987.

One Secretary to the Associate Director. Effective June 30, 1987.

Office of Science and Technology Policy

One Confidential Secretary to the Director. Effective June 4, 1987.

Small Business Administration

One Confidential Assistant to the Chief of Staff. Effective June 4, 1987.

One Confidential Assistant to the Administrator. Effective June 4, 1987.

United States Tax Court

Four Trial Clerks to Judges. Effective June 23, 1987.

Authority: 5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P. 218.

U.S. Office of Personnel Management.

James E. Colvard,

Deputy Director.

[FR Doc. 87-17259 Filed 7-29-87; 8:45 am]

BILLING CODE 6325-01-M

PANAMA CANAL COMMISSION

Privacy Act of 1974; Systems of Records

AGENCY: Panama Canal Commission.

ACTION: New Systems of Records.

SUMMARY: The Panama Canal Commission is maintaining nine new systems of records called: PCC/AE–1, Executive Personnel Financial Disclosure Reports; PCC/AMTE–2, Equity Adjustment; PCC/FMAC–10, Estate Files; PCC/FMAP–2, Payroll

Deduction System for Court Ordered Wage Garnishments; PCC/FMCL–1, Travel and Transportation Claims; PCC/GCCL–1, Marine Accident/Miscellaneous General Claims; PCC/MRNP–1, Pilot Training Program; PCC/PRAA–1, Adverse Actions Files; and PCC/PRCL–1, Injury Claims. Descriptions of these systems are published below.

DATES: Written comments by any member of the public concerning the intended routine uses of the information in the new systems are invited. To be considered, comments must be received by August 31, 1987. If no comments requiring modification of the routine uses are received, the routine uses will become effective August 31, 1987.

ADDRESS: Comments should be addressed to Thomas C. Duty, Agency Records Officer, Chief, Administrative Services Division, Panama Canal Commission, APO Miami 34011–5000. Mark all comments by the intended symbol of the particular system (PCC/____).

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Fuller, Assistant to the Secretary for Commission Affairs, Panama Canal Commission, 2000 L Street NW., Washington, DC 20036 (Telephone: 202–634–6441).

SUPPLEMENTARY INFORMATION: In accordance with the provisions of the Panama Canal Act of 1979, Pub. L. 96–70, 93 Stat. 452, and the Panama Canal Treaty of 1977, the Canal Zone Government was disestablished and the Panama Canal Company was replaced by the Panama Canal Commission on October 1, 1979. The treaty and its mandated functions brought about the creation of new systems of records. On January 7, 1983, this agency last published in the **Federal Register** the complete Privacy Act Systems of Records. Due to continuing reorganization and the introduction of new functions to the agency, nine new systems of records have come into existence since that last publication. Notice of the existence and character of the systems has been given to Office of Management and Budget.

The Claims Branch of this agency, which was formerly covered under PCC/FMAK–1, was disestablished in 1984 and that Branch's functions were transferred to various offices within the Commission. This resulted in four Privacy Act Systems of records (PCC/FMCL–1, Travel and Transportation Claims; PCC/GCCL–1, Marine Accident/Miscellaneous General Claims; PCC/FMAC–19, Estate Files; and PCC/PRCL–1, Injury Claims).

The Adverse Actions unit was transferred to the Office of Personnel Administration. The result is a new system of record, PRAA–1.

The other four new systems of records (PCC/AE–1, Executive Personnel Financial Disclosure Reports; PCC/AMTE–2, Equity Adjustment; PCC/FMAP–2, Payroll Deduction System for Court Ordered Wage Garnishments; and PCC/MRNP–1, Pilot Training Program) were created as a result of the introduction of new functions to the agency.

The text of the new systems of records maintained by the Panama Canal Commission appears below preceded by the prefatory statement of general routine uses applicable to all systems.

Dated: July 16, 1987.

Thomas C. Duty,

Chief, Administrative Services Division, Agency Records Officer, Panama Canal Commission.

1. The prefatory statement has been modified by incorporating nonsubstantive editorial changes to 35 CFR Part 10, Appendix A (1), (3), (4), (6), as suggested by the Office of Information and Regulatory Affairs, Office of Management and Budget.

The Prefatory Statement of General Routine Uses (35 CFR Part 10, Appendix A)

Information about an individual which is maintained in any system of records under the control of the Panama Canal Commission is subject to disclosure, as a routine use of such information, to any of the following persons or agencies under the circumstances described:

1. Information indicating a violation or potential violation of law (whether civil, criminal, or regulatory in nature, and whether involving a statute or regulation or a rule, or order issued pursuant thereto) may be referred to an appropriate federal, state, local or foreign agency responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation or order, where there is an indication of a violation or potential violation of the statute, rule, regulation or order and the information disclosed is relevant to the matter.

2. Information which has a bearing on matters which may be in dispute may be disclosed in the course of presenting evidence or argument to a court or administrative tribunal, a judicial official, or counsel for a party in connection with litigation or administrative proceedings in which the agency, or its officers or employees, are or may become involved.

3. Information may be provided to persons or agencies from whom information is solicited, to the extent necessary to elicit facts which may be relevant to a financial audit or an agency decision to hire or retain an employee, issue a security clearance, award a contract, grant a license, or other benefits.

4. Information may be disclosed to a federal agency, in response to its request in a particular case or in a category of cases, in connection with that agency's (a) decision in a personnel matter; (b) financial audits and accounting; (c) issuance of a security clearance; (d) investigation of an individual employed or formerly employed by the Panama Canal Commission (or its predecessors); or (e) decision to award a contract, grant a license, or other benefit.

5. Information may be supplied in response to an inquiry from a Member of Congress on behalf of an individual or, at any stage of the legislative coordination and clearance process, to the Office of Management and Budget in connection with the review of private relief legislation.

6. Information contained in licenses or certifications issued by the agency (including the former Panama Canal Company/Canal Zone Government) to professional employees (such as architects, canal pilots, attorneys, engineers, medical practitioners and teachers) of the agency may be released to professional licensing, certification or other regulatory boards or commissions. Disclosure pursuant to this routine use shall be limited to the names and types of license or certifications, dates of issuance, and dates of expiration, if appropriate.

7. To the extent necessary for implementation of the Panama Canal Treaty of 1977 and related agreements, information may, upon approval by the Agency Records Officer (Chief, Administrative Services Division) or that official's designee, be disclosed to officials of the Government of the Republic of Panama and to U.S. Government agencies which, under the Treaty, assumed functions formerly performed by the Panama Canal Company or the Canal Zone Government.

2. New Systems of Records.

PCC/AMTE–2

SYSTEM NAME:

Equity Adjustment Records, PCC/AMTE–2.

SYSTEM LOCATION:

Original applications and logs are maintained in the Employee and Cargo Documentation Section, Bldg. 5140, Diablo, Republic of Panama; Equity Adjustment travel related data is maintained on index cards in the Transportation Services Branch, Bldg. 5140, Diablo, Republic of Panama; Payroll related computer printouts, magnetic tapes and disks are maintained in the Payroll Branch, Bldg. 725, Balboa, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Panama Canal Commission employees who have applied for Equity Adjustment package benefits.

CATEGORIES OF RECORDS IN THE SYSTEM:

Determinations of employee's eligibility for, or entitlement to the Equity Adjustment. Consists of employee application showing name, I.P., citizenship, place of employment, work location, employment status, grade, title, marital status, spouse's citizenship, spouse's place of employment, employee Panama Canal Commission Service Date, military status, primary residence address, local mailing address, other supporting documents as may be required by the Panama Canal Commission to determine eligibility for equity adjustment, and endorsements from the Office of Personnel Administration, and Housing Management Branch, and the Assistant Director, Policy Development.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 1206 of the Panama Canal Act of 1979 (Pub. L. 96–70, 93 Stat. 456); 5 U.S.C. 5728; 5 U.S.C. 5912; decision of the Board of Directors of July 12, 1984; and decision of the Executive Committee of the Board of Directors of September 12, 1984; Panama Canal Administration and Regulations Part 112 and Panama Canal Personnel Manual Part 572.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine uses paragraphs in prefatory statements or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Original Equity Adjustment application forms, logs, indexes and printouts are kept in locked file cabinets inside a secured office area. Magnetic tapes/disks and computer printouts are maintained in secured office areas. Access to and use of these records are limited to those individuals whose official duties require such access.

RETRIEVABILITY:

Retrievable by employee's name I.P. number, control number and status code by roll and gang (agency worksite location code).

SAFEGUARDS:

Paper records are kept in locked file cabinets when not in use. Access to and use of these records are limited to those individuals whose official duties require such access.

RETENTION AND DISPOSAL:

Original application forms to be retained ten years by the Administrative Services Division from date of application. Computer disks and magnetic tapes retained by Payroll Branch for six years.

SYSTEM MANAGER(S) AND ADDRESS:

Supervisor, Employee and Cargo Documentation Section, Administrative Services Division, Panama Canal Commission, APO Miami 34011–5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Panama Canal Commission, APO Miami 34011–5000. Rules are published in CFR 35 Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either or addressees designated in Notification Procedure, preceding. Requests for automated records may be addressed to Chief, Payroll Branch, Panama Canal Commission, APO Miami 34011–5000.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

PCC Application Form No. 77 (Equity Adjustment) submitted by employee, back-up correspondence, information from employee's official Personnel Folder, housing records, computer-generated documents including PCC Master payroll system, and travel/transportation related records.

PCC/AE–1

SYSTEM NAME:

Executive Personnel Financial Disclosure Reports, PCC/AE–1.

SYSTEM LOCATION:

Office of Executive Administration, Administration Building, Balboa Heights, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Panama Canal Commission employees designated in Part C of the Employee Code of Conduct, passed by the Board of Directors of the Panama Canal Commission on July 22, 1980, and other employees described in 5 CFR Part 734, Subpart B.

CATEGORIES OF RECORDS IN THE SYSTEM:

Report by current employees and prospective candidates covering their personal financial interests.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. Appendix 201–212; 5 CFR Part 734; 22 U.S.C. 3611, 3622; Articles III and X of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To defer conflicts of interest and indentify potential conflicts of interest through a systematic review of the financial holdings of current and prospective covered employees. See general routine use paragraphs in prefatory statement or in 35 CFR Part 10 Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Papers in sealed envelopes.

RETRIEVABILITY:

Filed by name of individual.

SAFEGUARDS:

Store in file cabinet with combination lock. Access to and use of these records are limited to those individuals whose official duties require such access.

RETENTION AND DISPOSAL:

Copies of reports are retained and are available to the public for a period of six years after receipt of the report, except in the case of an individual who filed a report as a presidential nominee and was not subsequently confirmed by the Senate, the report is retained and available to the public for a period of one year after the individual is no longer under Senate consideration. Unless needed in an ongoing investigation, reports are disposed of by burning or shredding at the end of the respective six and one year periods.

SYSTEM MANAGER(S) AND ADDRESS:

Designated Agency Ethics Official, Panama Canal Commission, APO Miami 34011–5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the Designated Agency Ethics Official or the Agency Records Officer, Panama Canal Commission, APO Miami 34011–5000. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of the addressees designated in Notification Procedure, preceding.

CONTESTING RECORD PROCEDURES:

See procedures published at 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

From reporting employee.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None, except such reports as the President of the United States determines should not be available to the public under 5 CFR 734.603(b).

PCC/FMAC–10

SYSTEM NAME:

Estate files, PCC/FMAC–10.

SYSTEM LOCATION:

Agents Accounts Branch, Building 725, Balboa, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons making or filing claims for unpaid compensation due deceased employees of the former Canal agencies and the Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains information or documents needed to audit and settle claims for amounts due estates of deceased employees. The records consist of documentation giving rise to the claim, claimant's or individual's name and relationship of immediate family, address, identification number, occupation, date of birth, date of death, payroll information and other materials placed into the record to perfect the claim and relating to the actions, decisions or determinations made by the Agency.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in a record from this system may be furnished to the claimant and other parties of interest in connection with the audit and settlement of claims, such as the Office of Personnel Management for furnishing information for compensation payments to beneficiaries.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claimant's number.

SAFEGUARDS:

Records maintained in lockable file cabinets in office locked when not in use. Access to and use of these records are limited to those individuals whose official duties require such access.

RETENTION AND DISPOSAL:

Disposal not authorized. Retention period pending submission of SF 115 to National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Agents Accounts Branch, Panama Canal Commission, APO Miami 34011–5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Panama Canal Commission, APO Miami 34011–5000. Rules are published in 5 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedure, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

PCC/FMAP–2

SYSTEM NAME:

Payroll Deduction System for Court Ordered Wage Garnishments.

SYSTEM LOCATION:

Payroll Branch, Building 725, Balboa, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Panama Canal Commission employees who have been ordered by the courts to pay alimony and/or child support by wage garnishment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained by the Payroll Branch of court ordered wage garnishments for alimony and child support of Panama Canal Commission employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1103(b)(2)(A), 5 CFR Part 110 and Pub. L. 98–378.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To provide information regarding alimony and child support in compliance with an order of a court of competent jurisdiction.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Court furnished affidavits, General Counsel rulings and deduction schedules are maintained in file folders.

RETRIEVABILITY:

Filed alphabetically by name and identification number.

SAFEGUARDS:

Stored in metal file cabinets in building locked when not in use. Access to and use of these records are limited to those individuals whose official duties require such access.

RETENTION AND DISPOSAL:

Destroy when three years old.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Payroll Branch, Panama Canal Commission, APO Miami 34011–5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Panama Canal Commission, APO Miami 34011–5000. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to any of the addressees designated in Notification Procedure, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Information obtained from court ordered affidavits and general counsel rulings.

PCC/FMCL–1

SYSTEM NAME:

Travel and Transportation Claims, PCC/FMCL–1.

SYSTEM LOCATION:

Agents Accounts Branch, Building 725, Balboa, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons making or filing claims against the former Canal agencies and the Commission for travel and transportation expenses.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains information or documents needed to audit and settle claims for travel and transportation expense reimbursement, and personal property loss and/or damage for shipment of household goods. The records consist of documentation of the circumstances giving rise to the claim and basis of the claim, claimant's or individual's name, names and relationship of immediate family, address, identification number, occupation, date of birth, when, where and how the loss or damage to property occurred relative to shipment of household goods, travel orders and other travel information, and various other materials placed into the record to perfect the claim and relating to the actions, decisions, or determinations made by the Agency.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 5581 et seq., 5701 et seq.; 22 U.S.C. 3611 and 3721; 31 U.S.C. 3701, 3711, 3717–3718, 3721; 46 U.S.C. 1300 et seq.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information or a record from this system may be furnished to and information acquired from federal, state, local or foreign agencies, the claimant and other parties of interest in connection with the audit and settlement of claims and demands by or against the former Canal agencies, and the Commission, such as the following:

1. Layers representing claimants or the agency.

2. Labor unions representing claimants.

3. Contractors who furnish services to the Panama Canal Commission such as the packing, crating, and transportation of household goods and personal effects of employees under recruitment and repatriation.

4. Consultants who furnish services to the Panama Canal Commission, i.e., doctors, engineers, management firms, etc.

5. Transportation companies such as airlines, steamship companies, railroads, buses, and car rental agencies who furnish services to the Panama Canal Commission.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed alphabetically by name of claimant.

SAFEGUARDS:

Records are maintained in lockable file cabinets and computer and word processor system in office locked when not in use. Data is on magnetic tape which requires a restricted password to gain access. Access to use the system and its records is limited to employees whose official duties require such access. Magnetic tapes and disks are secured in a locked storage area and are only accessible to individuals engaged in adjudicating travel and transportation claims.

RETENTION AND DISPOSAL:

Disposal not authorized. Retention period pending further discussion with National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Agents Accounts Branch, Panama Canal Commission, APO Miami 34011–5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Panama Canal Commission, APO Miami 34011–5000. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in arising from the operation of the Panama Canal or related facilities and appurtenances; loss of or damage to personal property sustained by employees incident to Government service.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3761, 3771–3777, 31 U.S.C. 3721.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information or a record from this system may be disclosed to federal, state, local or foreign agencies, the claimant and other parties of interest in connection with the audit and settlement of claims and demands by or against the former Canal agencies and the Commission.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by name of claimant.

SAFEGUARDS:

Records maintained in lockable file cabinets in office which is locked after office hours. Access to and use of these records are limited to those individuals whose official duties require such access.

RETENTION AND DISPOSAL:

Disposal not authorized. Retention period pending submission of SF 115 to National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Supervisory General Claims Examiner, Office of General Counsel, Panama Canal Commission, APO Miami 34011–5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Panama Canal Commission, APO Miami 34011–5000. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedure, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Claimants (Panama Canal Commission employees, third parties) attorneys representing claimants, agency administrative reports, hospital reports, insurance company reports and motor vehicle traffic reports/Court Resolutions.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system which is investigatory material or would reveal the identity of confidential sources is exempted from certain subsections of 5 U.S.C. 552(a) and from the procedures for access and contest set forth in the Agency's regulations. See 35 CFR 10.22.

PCC/MRNP–1

SYSTEM NAME:

Employee Training Development Records, PCC/MRNP–1.

SYSTEM LOCATION:

Office of Assistant Marine Director for Maritime Traning, Bldg. 729 and Bldg. 29-X, Balboa, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Panama Canal Commission pilots in training, pilot understudies, towboat masters and towboat engineers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records on training and development of current and former employees participating in the Marine Bureau training programs for pilot, pilot understudy, towboat master and towboat engineer.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3811 (Supp III 1979); Article III of the Panama Canal Treaty of 1977; 35 CFR Part 105.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general Routine Use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, cards and individual forms.

RETRIEVABILITY:

Filed alphabetically by name.

SAFEGUARDS:

Stored in metal file cabinets in building locked when not in use.

Access to and use of these records are limited to those individuals whose official duties require such access.

RETENTION AND DISPOSAL:

Paper records manually maintained. Trainee enrollment, examination records and transit/watch record logs retained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Marine Director (Maritime Training), Panama Canal Commission, APO Miami 34011–5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Panama Canal Commission, APO Miami 34011–5000. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURE:

Requests should be addressed to either of addressees designated in Notification Procedure, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Employees in pilot and towboat training programs.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system which is testing or examination material is exempted from certain subsections of 5 U.S.C. 552(a) and from the procedures for access and contest set forth in the Agency's regulations. See 35 CFR 10.22.

PCC/PRAA–1

SYSTEM NAME:

Adverse Action Files, PCC/PRAA–1

SYSTEM LOCATION:

Adverse Actions Unit, Quarters 779–B, Balboa, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Panama Canal Commission who have recived a notice of adverse action decision and non-bargaining unit PCC employees who have filed a final-stage grievance or disciplinary action appeal.

CATEGORIES OF RECORDS IN THE SYSTEM:

Log sheets of adverse actions effected; case files of appeals of adverse actions to the Administrator and to the Merit Systems Protection Board; case files of final-stage grievance or disciplinary action appeal.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1302, 3301, 3302, Chapters 75 and 77; 5 CFR Part 752, 771, 1201; 35 CFR Subpart I: Articles III and X of Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See General Routine Use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Log sheets are filed by fiscal year; case files are filed alphabetically by name of employee.

SAFEGUARDS:

Stored in lockable metal file cabinets in building locked when not in use. Access to and use of these records are limited to those individuals whose official duties require such access.

RETENTION AND DISPOSAL:

Log sheet files are retained permanently. Grievance and disciplinary-action appeal files are disposed of 3 years after closing of the case; adverse-action appeal files are disposed of 4 years after closing of the case. Disposal is by shredding or burning.

EXCEPTIONS: SOME CASE FILES OF THE PRECEDENTIAL NATURE ARE RETAINED BEYOND RETENTION PERIOD FOR STUDY AND REFERENCE.

SYSTEM MANAGER(S) AND ADDRESS:

Personnel Director, Office of Personnel Administration, Panama Canal Commission, APO Miami 34011–5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Record Officer, Panama Canal Commission, APO Miami 34011–5000. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedure, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Individuals to whom the record pertains; officials of the Canal agencies; witnesses; official documents related to the appeal or grievance; and others involved in the grievance or appeal procedure.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system which is investigatory material or would reveal the identity of confidential sources is exempted from certain subsections of 5 U.S.C. 552(a) and from the procedures for access and contest set forth in the Agency's regulations. See 35 CFR 10.22.

PCC/PRCL–1

SYSTEM NAME:

Injury Claims (FECA) Files, PCC/PRCL–1.

SYSTEM LOCATION:

Injury Claims (FECA) Office, Bldg. 780, Balboa, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees or former employees making or filing claims against the former Canal agencies and Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains information or documents needed to adjudicate claims for illness, or death resulting from the performance of duty. The records consist of documentation of the circumstances giving rise to claim and basis of the claim; claimant's or individual's name; names and relationships of immediate family; address, telephone number, identification number, occupation, date of birth; when, and how the individual was injured, the nature and extent of injury, medical treatment, diagnosis and prognosis, payroll information; investigative autopsy, accident and medical reports, and various other materials placed into the record to perfect the claim and relating to the actions, decisions or determinations made by the agency.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 8101 et seq.; Pub. L. 96–70; Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information or a record from this system may be furnished to, and acquired from, federal, state, local or foreign agencies, the claimant and other parties of interest in connection with the audit and settlement of claims and demands by or against the former Canal agencies, and the Commission, such as the following:

1. Physicians and medical facilities for the purposes of medical treatment, examination, opinion and evaluation of claimants.
2. Lawyers representing claimants or the agency.
3. Labor unions representing claimants.
4. National Safety Council and Occupational Safety and Health Administration for safety purposes.
5. Department of Labor for guidance on a particular case and appeals to the Employees' Compensation Appeals Board.
6. Social Security Administration for verification of earnings record of beneficiaries under the Federal Employees' Compensation Act.
7. Office of Personnel Management for furnishing record of compensation payments to beneficiaries under the Federal Employees' Compensation Act.

Also see general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders; computer and word processor stored data.

RETRIEVABILITY:

Filed alphabetically by name of claimant, etc.

SAFEGUARDS:

Records are maintained in lockable file cabinets and computer and word processor system in office locked during other than office hours. Access to and use of these records are limited to those individuals whose official duties require such access.

RETENTION AND DISPOSAL:

Disposal not authorized. Retention period pending further discussion with National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Occupational Health Division, Panama Canal Commission, APO Miami 34011–5000.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Panama Canal Commission, APO Miami 34011–5000. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedure, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system which is investigatory material or would reveal the identity of confidential sources is exempt from certain subsections of 5 U.S.C. 552(a) and from the procedures for access and contest set forth in the Agency's regulations. See 35 CFR 10.22.

[FR Doc. 87–17297 Filed 7–29–87; 8:45 am]

BILLING CODE 3640-04-M

PENSION BENEFIT GUARANTY CORPORATION

Request for Extension of Approval Under the Paperwork Reduction Act of Information Collection Request No. 1212–0030

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Supplemental notice of request for OMB extension of approval.

SUMMARY: On June 11, 1987, the Pension Benefit Guaranty Corporation published a notice in the **Federal Register** (52 FR 22403) advising the public that it has requested approval by the Office of Management and Budget for an extension of the expiration date of a currently approved information collection request (1212–0030) without any change in the substance or in the method of collection. Current approval of the information collection is scheduled to expire on July 31, 1987. The information collection, which is not contained in a regulation, is a survey of insurance company rates for pricing annuity contracts that is conducted under the auspices of the American Council of Life Insurance. The effect of this document, is to provide information supplemental to that contained in the earlier notice.

ADDRESSES: All written comments on the request for extension (at least three copies) should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Pension Benefit Guaranty Corporation, 3208 New Executive Office Building, Washington, DC 20503. The request will be available for public inspection at the PBGC Communications and Public Affairs Department, Suite 7100, 2020 K Street, NW., Washington, DC 20006, between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Corporate Policy and Regulations Department (35400), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202–778–8850 (202–778–8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The title of the information collection for which extension of approval is requested is: Survey of Nonparticipating Single Premium Group Annuity Rates.

The Pension Benefit Guaranty Corporation (PBGC) has promulgated regulations prescribing actuarial valuation methods and assumptions to be used in determining the actuarial present value of benefits under single-

employer plans that terminate and under multiemployer plans that undergo mass withdrawal of contributing employers. The PBGC calculates interest rates under those regulations each month. In order that the rates may reflect current conditions in the investment and annuity markets, the PBGC gathers data from those markets that are used in setting the rates. The Survey of Nonparticipating Single Premium Group Annuity Rates is necessary to provide the PBGC with information about the annuity market so that its rates will reflect conditions in that market. The information gathered through the survey is used by the PBGC in determining those rates.

The survey is directed at member companies of the American Council of Life Insurance (ACLI) that have volunteered to participate. The survey is conducted quarterly. The PBGC estimates that the total annual burden of responding to the survey is 39 hours.

Issued at Washington, DC, this 23rd day of July 1987.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 87-17300 Filed 7-29-87; 8:45 am]

BILLING CODE 7708-01-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

July 24, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Montedison S.P.A.
American Depositary Shares (Ordinary ADS) Representing 10 Ordinary Shares of Par Value Italian Lire 1000 (File No. 7-0287)
Best Buy Co.
Common Stock, $.10 Par Value (File No. 7-0288)
Americus Trust for IBM Shares Units (File No. 7-0289)
Americus Trust for IBM Shares Primes (File No. 7-0290)
Americus Trust for IBM Shares Scores (File No. 7-0291)
Eldon Industries, Inc. (Del.)
Common Stock, $1.00 Par Value (File No. 7-0292)

These securities are listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 14, 1987 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commisison, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-17316 Filed 7-29-87; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

July 24, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stock:

UniLever, N.V.
Ordinary Shares (File No. 7-0286)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 14, 1987 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-17317 Filed 7-29-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24431]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

July 23, 1987.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 17, 1987 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified by any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

The Southern Co., et al. (70-7289)

The Southern Company ("Southern"), a registered holding company, and its wholly-owned, non-utility subsidiary companies, The Southern Investment Group, Inc., both located at 64 Perimeter Center East, Atlanta, Georgia 30346, and Southern Electric International, Inc. ("SEI"), 100 Ashford Center North, Suite 400, Atlanta, Georgia 30338 (collectively, the "Subsidiaries"), have filed an application-declaration under section 6(a), 7, 9(a), 10 and 12 of the Act.

Southern proposes to commit to the Subsidiaries up to $125 million through December 31, 1996, and thereafter to the extent of any debt incurred or

guaranteed on or prior to such date, through capital contributions, purchases of capital stock, loans, and guarantees of nonaffiliate loans to the Subsidiaries, or related financial guarantees on recourse liabilities, and to act, on behalf of the Subsidiaries, as surety, guarantor or indemnitor in an aggregate amount of up to $500 million through December 31, 1996, provided that any guarantees outstanding at that date shall continue until expiration or termination according to their terms. Until further authorized, SEI will not perform work under contracts with currently effective Southern guarantees or indemnifications of sureties in excess of $300 million at any one time outstanding.

The Subsidiaries propose through December 31, 1996 to invest, directly or indirectly, up to $125 million in cogeneration, qualifying facilities under the Public Utilities Regulatory Policies Act ("PURPA"), located within the United States, and other PURPA qualifying facilities, power production and energy management and recovery facilities located within the service territories of Southern's operating subsidiaries or within the service territories of the members of the Southeastern Electric Reliability Council, or within other areas hereafter allowed by law or applicable regulation. The Subsidiaries will not incur or guarantee any debt which matures more than 30 years after the date of issue, or which bears an interest rate in excess of the greater of the prime rate on the date incurred or guaranteed, plus three percentage points, or the United States Treasury securities rate for a comparable term on the date incurred or guaranteed, plus five percentage points.

The Subsidiaries request authorization for any corporation, partnership, joint venture or other business entity, in which the Subsidiary invests or through which the Subsidiary acquires an interest in a project, to itself engage in financing through project financing, short-term and long-term borrowings from third parties or from the facility's owners or sponsors, or any other means and in such amounts as may be deemed appropriate.

Pennsylvania Electric Company, et al. (70-7404)

Pennsylvania Electric Company ("Penelec") a wholly owned subsidiary of General Public Utilities Corporation, a registered holding company, and Nineveh Water Company ("Nineveh"), a wholly-owned subsidiary of Penelec, both located at 1001 Broad Street, Johnstown, New Jersey 15907, have filed an application pursuant to section 9(a) and 10 of the Act.

Penelec proposes to lease oil and gas rights to approximately 3,737 acres, including approximately 2,124 acres held as a tenant-in-common with New York State Electric and Gas Corporation ("NYSEGC"), and Nineveh proposes to lease oil and gas rights to approximately 673 acres, all located in Western Pennsylvania, to Doran & Associates, Inc. for a term of 5 years and as long thereafter as oil and gas production is being undertaken.

The respective leases provide for the payment to the lessors of royalties, annual delay rentals until commercial production commences, annual royalties for shut-in wells, and the right of the lessors to receive 250,000 cubic feet of gas annually from each well at no cost for their own use, or for sale to lessee. Penelec and Nineveh anticipated their investment of capital or employees' time in connection with the leasing transaction will not exceed $250,000.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-17313 Filed 7-29-87; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 04/04-0075]

Surrender of License; First Union Capital Corp.

Notice is hereby given that First Union Capital Corporation (FUCC), 924 B Street, North Wilkesboro, North Carolina 28674 has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (Act). FUCC was licensed by the Small Business Administration on May 2, 1962. Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on July 15, 1987, and accordingly, all rights, privileges, and franchises therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: July 22, 1987.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 87-17302 Filed 7-29-87; 8:45 am]

BILLING CODE 8025-01-M

[License No. 09/09-0312]

Filing of an Application for an Exemption Under the Conflict of Interest Regulation; First American Capital Funding, Inc.

Notice is hereby given that First American Capital Funding, Inc. (First American), 38 Corporate Park, Suite B, Irvine, CA 92714, a Federal Licensee under the Small Business Investment Act of 1958, as amended (the Act), has filed an application with the Small Business Administration (SBA) pursuant to the SBA Rules and Regulations governing small business investment companies (13 CFR 107.903(b) (1987)) for an exemption from the provisions of the cited Regulations.

Subject to SBA approval, First American proposes an equity investment in Delta Savings Bank (Delta), 8860 Bolsa Avenue, Westminster, CA 92683, of up to $200,000. The aforementioned funds will be used to increase Delta's private capital.

The conflict of interest arises because Messrs. Kiet Van Chau, Son Hung Luu, and Luu TranKiem are directors of both Delta and First American. Thus, Delta is deemed to be an Associate of First American under § 107.3(f) of the Regulations. Therefore, the proposed transaction falls within the purview of § 107.903(b)(1) of the Regulations and requires prior written approval of SBA.

Notice is hereby given that any interested person may, not later than (15) days from the date of publication of this Notice, submit written comments on the proposed transaction to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in the Irvine, California area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: July 24, 1987.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 87-17301 Filed 7-29-87; 8:45 am]

BILLING CODE 8025-01-M

TENNESSEE VALLEY AUTHORITY

Information Collection Under Review by the Office of Management and Budget

AGENCY: Tennessee Valley Authority.

ACTION: Information collection under review by the Office of Management and Budget (OMB).

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), as amended by Pub. L. 99–591.

Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Desk Officer for the Tennessee Valley Authority, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Telephone: (202) 395–7313.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, 100 Lupton Building, Chattanooga, TN 37401; (615) 751–2524.

Type of request: Regular submission.

Title of information collection: Energy Conservation Program Participant Questionnaire.

Frequency of use: On occasion.

Type of affected public: Individuals or households.

Small businesses or organizations affected: No.

Federal budget functional category code: 271.

Estimated number of annual responses: 9,660.

Estimated total annual burden hours: 542.

Need for and use of information: The purpose of this voluntary questionnaire is to collect information describing the people who participate in TVA energy conversation programs. The answers to these questions will be used by TVA to evaluate the effectiveness of existing residential energy programs and to help structure future programs.

John W. Thompson,

Manager of Corporate Services, Senior Agency Official.

[FR Doc. 87–17294 Filed 7–29–87; 8:45 am]

BILLING CODE 8120–01–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: July 24, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: 8606
Type of Review: New Collection
Title: Nondeductible IRA Contributions, IRA Basis, and Nontaxable IRA Distributions
Description: Internal Revenue Code section 408(o) allows taxpayers to elect to make nondeductible contributions to individual retirement plans. This section also requires taxpayers to report to the Service certain information regarding nondeductible contributions.
Respondents: Individuals or households
Estimated Burden: 1,531,816 hours

OMB Number: 1545–0062
Form Numbers: 3903 and 3903F
Type of Review: Revision
Title: Moving Expenses and Foreign Moving Expense
Description: Internal Revenue Code section 217 requires itemization of various allowable moving expenses. Internal Revenue Code section 274(n) limits certain meal expenses to 80%. Forms 3903 and 3903F are filed with Form 1040 by individuals who moved their personal residences to support their deductions. The data is used to help verify that the moving expense claimed is proper.
Respondents: Individuals or households
Estimated Burden: 1,167,559 hours

OMB Number: 1545–0091
Form Number: 1040X
Type of Review: Revision
Title: Amended U.S. Individual Income Tax Return
Description: Form 1040X is used by individuals to claim a refund of income taxes, pay additional income taxes, or designate a dollar to a presidential election campaign fund. The information is needed to help verify that the individual has correctly figured his or her income tax.
Respondents: Individuals or households, Farms, Businesses or other for-profit, Small businesses or organizations
Estimated Burden: 4,276,164 hours

OMB Number: 1545–0171
Form Number: 4469
Type of Review: Extension
Title: Computation of Excess Medicare Tax Credit (Hospital Insurance Benefits Tax Credit)
Description: The maximum hospital insurance benefits that may be imposed on an employee is set by law. Form 4469 is used by railroad employee representatives and qualified U.S. Government employees to figure their credit for excess hospital insurance benefits tax. The information collected is used to verify the taxpayer is entitled to the credit.
Respondents: Individuals or households
Estimated Burden: 333 hours

OMB Number: 1545–0172
Form Number: 4562
Type of Review: Revision
Title: Depreciation and Amortization
Description: Form 4562 is used by taxpayers to claim a deduction for depreciation and/or amortization on their income tax return. The form also contains questions taxpayers are required to answer pertaining to automobiles and other "listed property" (Internal Revenue Code section 280F).
Respondents: Individuals or households, Farms, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations
Estimated Burden: 11,435,690 hours

OMB Number: 1545–0803
Form Number: 5074
Type of Review: Revision
Title: Allocation of Individual Income Tax to Guam or Northern Mariana Islands (NMI)
Description: Form 5074 is used by U.S. citizens or residents as an attachment to Form 1040 when they have $50,000 income from U.S. sources and $5,000 from Guam or Northern Mariana Islands. The data is used by IRS to allocate income tax due to Guam or NMI as required by 26 U.S.C. 7654.
Respondents: Individuals or households
Estimated Burden: 20 hours

OMB Number: 1545–0869
Form Number: None
Type of Review: Extension
Title: Federal Grants Not Includible in Income in Certain Cases
Description: The regulations relate to information needed to verify the propriety of the exclusion from gross income of those amounts received by the individual taxpayer as a scholarship or grant under a Federal program which requires the recipient to perform future service as a Federal employee.
Respondents: Individuals or households
Estimated Burden: 1,000 hours
Clearance Officer: Garrick Shear, (202) 566–6150, Internal Revenue Service,

Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20305

[redacted]

Departmental Reports Management Officer.

[FR Doc. 87–17287 Filed 7–29–87; 8:45 am]

[redacted]

VOL 52 ISS 146 JL 30 1987 UMI

Sunshine Act Meetings

Federal Register
Vol. 52, No. 146
Thursday, July 30, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY CREDIT CORPORATION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 52 FR 27105, July 17, 1987.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:00 a.m., July 24, 1987.

STATUS: Open.

CHANGED TIME AND DATE OF MEETING: 2:00 p.m., July 23, 1987.

MATTERS TO BE CONSIDERED:

1. Special Meeting of November 19, 1986.
2. Memorandum re: Public Law 480 Commodity Credit Corporation Foreign Debt Exposure.
3. Memorandum re: Update of Commodity Credit Corporation (CCC)-Owned Inventory.
4. Docket BCP-137a re: Barley, Corn, Oats, Rye and Sorghum Loan and Purcahse, Payment, and Production Adjustment Programs for the 1986 and Subsequent Crops.
5. Docket BCP-72a re: Cotton Loan, Payment, and Production Adjustment Programs for the 1986 and Subsequent Crops (Extra Long Staple).
6. Docket BCP-72a re: Cotton Loan, Payment, and Production Adjustment Programs for the 1986 and Subsequent Crops (Upland).
7. Docket BCP-66a re: Honey Loan and Purchase Program for the 1986 and Subsequent Crops.
8. Docket BCP-98a re: Milk Price Support Program for the 1985-86 and Subsequent Marketing Years.
9. Docket XCP-33a re: Rice Loan and Purchase, Payment, and Protection Adjustment Program for the 1985-1986 Marketing Year and Subsequent Crops.
10. Docket BCP-105 re: Soybean Loan and Purchase Program for the 1986 and Subsequent Crops.
11. Docket BCP-2a re: Wheat Loan and Purchase, Payment and Production Adjustment Program for the 1986 and Subsequent Crops.
12. Docket BCP-101a & BCP-176a re: Wool and Mohair Payment Programs for the 1986-1990 Marketing Years.
13. Resolution WCP-154a, Amendment 3 re: Ratification of Uniform Grain Storage Agreement (UGSA) Docket.
14. Resolution CZ-266, Resolution No. 24, Amendments 1 & 2 re: Ratification of Commodities Available for Pub. L. 480 During Fiscal Year 1987.
15. Resolution re: Ratification of Targeted Export Assistance—Foreign Market Development Projects for Fiscal Year 1988.
16. Resolution re: Ratification of Sale of Commodity Credit Corporation Dairy Products for Export for Fiscal Year 1986 and 1987.

CONTACT PERSON FOR MORE INFORMATION: James V. Hansen, Secretary, Commodity Credit Corporation, Room 3603 South Building, U.S. Department of Agriculture, Post Office Box 2415, Washington, DC 20013; telephone (202) 475-5490.

Date: July 24, 1987.

James V. Hansen,
Secretary, Commodity Credit Corporation.

[FR Doc. 87-17374 Filed 7-28-87; 11:41 am]

BILLING CODE 3410-05-M

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NO.: 87-16853.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, July 30, 1987, 10:00 a.m.

CHANGE IN MEETING: The open meeting scheduled for this date was cancelled.

DATE AND TIME: Tuesday, August 4, 1987, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, August 6, 1987, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Eligibility Report for Candidates to Receive Presidential Primary Matching Funds.
Proposed Revisions to 11 CFR 110.3-110.6.
Routine Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Marjorie W. Emmons,
Secretary of the Commission.

[FR Doc. 87-17408 Filed 7-28-87; 3:02 pm]

BILLING CODE 6715-01-M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m.—August 5, 1987.

PLACE: Hearing Room One—1100 L Street, NW., Washington, DC 20573.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Docket No. 84-38—Ariel Maritime Group, Inc., et al.—Supplemental Initial Decision—Consideration of the Record.
2. Docket No. 83-2—New Orleans Steamship Association v. Plaquemines Port, Harbor and Terminal District—Motion for Clarification or Modification of Order.
3. Docket No. 86-31—New Orleans Steamship Association v. Plaquemines Port, Harbor and Terminal District—Motion to Strike Tariff.
4. Special Docket No. 1553—Application of Lykes Bros. Steamship Co., Inc. for the Benefit of World Food Programme—Initial Decision.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523-5725.

[FR Doc. 87-17397 Filed 7-28-87; 1:10 pm]

BILLING CODE 6730-01-M

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Thursday, July 30, 1987 at 2:00 p.m.

PLACE: Room 117, 701 E Street, NW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Petitions and Complaints:
   Certain Electronic Chime Modules (Docket Number 1402).
2. Inv. 731-TA-342 and 346 (Final) (Tapered Roller Bearings from Italy and Yugoslavia)—briefing and vote.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523-0161.

Stephen McLaughlin,
Acting Secretary.

July 24, 1987.

[FR Doc. 87-17368 Filed 7-28-87; 10:24 am]

BILLING CODE 7020-02-M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of August 3, 1987:

A closed meeting will be held on Tuesday, August 4, 1987, at 2:30 p.m. An open meeting will be held on Thursday,

August 6, 1987, at 10:00 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Fleischman, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, August 4, 1987, at 2:30 p.m., will be:

Formal order of investigation.
Institution of an administrative proceeding of an enforcement nature.
Institution of injunctive actions.
Settlement of injunctive action.
Regulatory matter regarding financial institution.

The subject matter of the open meeting scheduled for Thursday, August 6, 1987, at 10:00 a.m., will be:

1. Consideration of whether to issue final rules amending Regulation S–K, Form 20–F and the codification of Financial Reporting Policies governing the disclosure of the effects of inflation and other changes in prices. These amendments would delete references to Statement of Financial Accounting Standard ("SFAS") No. 33, which was superseded by SFAS No. 89. These rule amendments do not affect the current requirements in Item 303 or Regulation S–K for registrants to include, where material, a discussion in Management's Discussion and Analysis of the impact of inflation and other changes in prices on their financial statements. For further information, please contact James Bradow at (202) 272–2130.

2. Consideration of whether to propose for public comment amendments to Form N–1A, the registration form for open-end management investment companies, under the Investment Company Act of 1940 and the Securities Act of 1933 and publish related revisions to the staff guidelines for Form N–1A. The amendment would (1) require mutual funds to consolidate all expense-related information in a table located near the front of the prospectus, and (2) expand the narrative disclosure requirements regarding Rule 12b–1 plans. For further information, please contact John McGuire at (202) 272–2107.

3. Consideration of whether to propose changes in Forms 10–K and 10–Q that would require registrants, after reasonable inquiry, to provide information not filed in Form 3 and 4 reports required during the reporting period and identify any of their directors, officers, or ten percent security holders that have failed to file all of their Form 3 and 4 reports required during the reporting period in a timely manner.

Copies of the Form 3 and 4 would be required to be sent to the registrant to aid its monitoring of such filings. In addition, the Commission will consider proposing to condition the safe harbor of Rule 144 upon the seller having filed all required Forms 3 and 4 in a timely manner during the 12 months preceding filing of Form 144 and any sales pursuant to the Rule. Form 144 would be amended to include a positive representation concerning the seller's compliance with section 16(a) of the Securities Exchange Act of 1934. For further information, please contact Brian Lane at (202) 272–2589.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Douglas Michael at (202) 272–2467.

Jonathan G. Katz,
Secretary.
July 24, 1987.

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Corrections

Federal Register
Vol. 52, No. 146
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This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 57

Grants for Advanced Nurse Training Programs

Correction

In rule document 87-16508 beginning on page 27345 in the issue of Tuesday, July 21, 1987, make the following corrections:

1. On page 27345, under **EFFECTIVE DATE**, the reference to "§ 57.2504(c)(14) and (c)(15)" should read "§ 57.2504(c)(12) and (c)(13)".

2. On page 27346, in the first column, in item 4, in the second and third lines, "specifying Department regulations" should read "specifying additional Department regulations".

3. On page 27346, in the second column, amendatory instruction 2 should read "The authority for Subpart Z is revised to read as follows:".

§ 57.2506 [Corrected]

4. On page 27347, in the first column, in § 57.2506(a)(1) introductory text, in the fourth line, "specialists" should read "specialties".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-040-07-4212-12; A 22435 and A 22436]

Realty Action; Exchange of Public Land in Graham, Greenlee, Cochise and Pinal Counties, AZ, and Cancellation of Segregation

Correction

In notice document 87-16227 beginning on page 27063 in the issue of Friday, July 17, 1987, make the following corrections:

1. On page 27064, in the first column, under "T. 13 S., R. 29 E.," in the first line, "25-38" should read "25-28".

2. On the same page, in the third column, under "T. 6 S., R. 24 E.," in the second and third lines, "NW¼, SW¼" should read "NW¼SW¼".

3. On page 27065, in the first column, under "T. 7 S., R. 24 E.," the 17th line should read "Sec. 12, W½SW¼".

4. On the same page, in the same column, under the same entry, in the 19th line, after "S½NW¼" insert "N½SW¼".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

Addition of Five National Wildlife Refuges to the Lists of Open Areas for Migratory Game Bird, Upland Game, and Big Game Hunting, and One to the List for Sport Fishing

Correction

In rule document 87-16780 beginning on page 27811 in the issue of Friday, July 24, 1987, make the following correction:

On page 27815, in the first column, in amendatory instruction 2, in the second line, "revising" should read "removing".

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federal register

Thursday
July 30, 1987

Part II

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Grants and Cooperative Agreements; Law Enforcement Handling of Juvenile Offenders; Notice of Issuance of a Solicitation for Applications

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Grants and Cooperative Agreements; Law Enforcement Handling of Juvenile Offenders

AGENCY: Office of Juvenile Justice and Delinquency Prevention (OJJDP), Justice.

ACTION: Notice of issuance of a solicitation for applications to develop a program to improve law enforcement handling of serious juvenile offenders.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP), pursuant to section 224(a)(5) and 224(a)(2) of the Juvenile Justice and Delinquency Prevention Act, is sponsoring a comprehensive development initiative to assess, develop, test and disseminate information on prototypical approaches for law enforcement handling of serious juvenile offenders, placing particular emphasis on those involved in illegal drug use, sales and trafficking.

The purpose of this development initiative is to identify the problems police agencies confront in handling serious juvenile offenders, and to identify, develop and test model decision-making policies and procedures to improve law enforcement identification, screening and referral of serious juvenile offenders, especially those who are drug-involved; as well as to improve strategies for diverting non-serious offenders. Law enforcement officers often explain that they lack well-defined policies and procedures for handling juvenile offenders. Moreover, they do not routinely receive feedback on the results of their disposition decisions. Of particular concern is the handling of juvenile offenders who are being used in the distribution and trafficking of narcotics. The field lacks sound information on the effectiveness of enforcement identification and screening procedures for determining whether there is evidence of illegal drug use or sales, and for making an appropriate referral for different types of youth. OJJDP proposes to address this issue by sponsoring this development effort which will include:

—Identification and assessment of law enforcement strategies for handling serious juvenile offenders particularly those who are involved in illegal drug use, sales, or trafficking;
—Development of prototype decision-making policies and procedures based on existing screening practices and referral options typically available to law enforcement;
—Development of training and technical assistance material that promote the experimental implementation of the prototype screening and disposition decision-making criteria;
—Testing of the effectiveness of the prototypes (models) for improving law enforcement handling of serious juvenile offenders; and
—Dissemination of program products and results.

Eligibility: Public agencies and private not-for-profit organizations which can demonstrate the capability to conduct a development program, and deliver training and technical assistance in the area of law enforcement handling of serious juvenile offenders are invited to submit applications to enter into a cooperative agreement with OJJDP. OJJDP will select the applicant which presents the most cost-effective approach, and which best demonstrates the organizational capability, knowledge of and experience in applied research or program evaluation in the area of juvenile or criminal justice, and juvenile substance abuse research. The project period for this program is three (3) years. Up to $400,000 has been allocated for the first budget period of 24 months. Based on successful completion of the first budget period, a one-year non-competing continuation award is anticipated. Applicants are encouraged to present cost-competitive proposals.

FOR FURTHER INFORMATION CONTACT: Barbara Allen-Hagen, Research and Program Development Division, (202/724-5929), or Ben Shapiro, Special Emphasis Division, (202/724-8491), OJJDP, 633 Indiana Avenue, NW., Washington, DC 20531.

SUPPLEMENTARY INFORMATION:

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I. Introduction And Background

Law enforcement serves as the gate keeping agency for the majority of juveniles who are involved in the juvenile justice system. Most youth who are arrested once or twice never come to the attention of the system again. A small percentage of juveniles develop lengthy arrest records before referral to court, and some continue to compile arrest records even after court intervention. Clearly, law enforcement agencies handle most offenders very effectively. Most law enforcement agencies, however, do not have clearly specified policies and procedures for handling juveniles and do not keep and analyze information to systematically relate case handling decisions to outcome. Well-informed, consistent, predictable responses to juveniles by law enforcement are likely to immediately deter many and to reduce the number of juveniles who become chronic offenders.

Over the past 25 years, American youth culture has been greatly influenced by the ready availability and relative low cost of illegal drugs. Drug trafficking and abuse have become issues of national scope and importance. More than 65,000 youth were arrested in 1985 for drug violations. Many more alleged offenders were probably involved in illegal drug use or sales. Last year, the United States Congress passed the Anti-Drug Abuse Act to strengthen Federal efforts in this area. Locally, police, lawmakers, educators, clergy, parents, and citizen groups are working together to initiate effective prevention, treatment, and enforcement strategies.

Traditionally, law enforcement resources have been directed toward reducing the supply of illegal drugs and have, thus, focused heavily on adult traffickers.

Recently, as traffickers have begun using juveniles as couriers in their operations, and as demand reduction has become an equal priority with supply reduction, law enforcement agencies have been given increased responsibility for responding to the problem of juvenile offenders involved in illegal drug use or sales. In light of these new demands, the Office of Juvenile Justice and Delinquency Prevention is sponsoring this development initiative to identify the problems that law enforcement officers face generally in handling juvenile offenders, and to identify, develop, and test model decision-making strategies to improve law enforcement handling of serious juvenile offenders, with particular emphasis upon those juveniles who regularly use or sell illegal drugs, or who are involved in narcotics trafficking. In order to improve law enforcement handling of serious offenders, it is necessary to address the decision-making process for all juveniles who come to the attention of the police and develop strategies for diverting non-serious offenders.

Over the years, law enforcement operations with regard to juvenile offenders have been guided by inconsistent or vague rules and procedures, affected in varying degrees

by prevailing community standards, State and local laws, the availability of intervention and treatment referral agencies, departmental policy and priorities, prosecutorial practices, and judicial philosophy. Officers often state that they do not have well-defined criteria for identifying, screening, and disposing of juvenile offenders. Moreover, they do not routinely receive feedback on the results of their disposition decisions. The identification of successful law enforcement strategies for handling serious juvenile offenders, particularly those involved in use or sale of illegal drugs, and the dissemination of this information will, therefore, be a critical element in strengthening the juvenile justice system's ability to respond effectively to the serious juvenile offender.

II. Program Goals And Objectives

A. Goals

1. To develop prototypical/model decision-making policies and procedures for handling juveniles involved in various types of serious offenses, with emphasis on those involved in illegal drug use or sales;

2. To provide the capability to selected localities to implement and test the effects of alternative policies and procedures for handling serious juvenile offenders; and,

3. To disseminate prototypical decision-making policies and procedures for the improved handling of serious juvenile offenders, especially those offenders involved in illegal drug use or sales.

B. Objectives

1. Assess existing information on the characteristics of juveniles; assess existing identification and screening policies and procedures, particularly those related to illegal drug use, and types of dispositions currently used by law enforcement; and develop criteria for identifying effective policies and procedures for handling serious offenders and for diverting non-serious offenders.

2. Develop prototypical (model) strategies based on the assessment of current law enforcement policies and practices regarding juvenile offenders;

3. Develop a dissemination strategy and training and technical assistance materials to transfer the prototypes to selected sites; and,

4. Test the prototypes (Applicants are advised that this stage of the development initiative will not be funded during the initial budget period; however, the testing of the prototypes at selected sites is one of the primary objectives of this initiative).

III. Program Strategy

OJJDP planning and program development activities are guided by a framework which specifies four sequential phases: research, development, demonstration and dissemination. The framework guides the decision-making process regarding the funding of future phases of the program.

This is a development initiative. The purpose of the development phase is to develop prototypes/models and to determine their effectiveness through a controlled testing process. The program will be conducted in four discrete incremental stages. The stages consist of: (1) An assessment of the issues law enforcement officers are confronted with in handling serious juvenile offenders and current policies and practices; (2) the design of prototype decision-making policies and procedures which embody the alternatives typically available to law enforcement and includes a comprehensive description of the development, implementation and operation of prototypical approaches; (3) the development of a training and technical assistance package in order to provide intensive training to test sites which are implementing the prototypes; and, (4) testing of the prototypes.

All technical portions of the program will be guided by recommendations of an advisory committee established specifically for the program. The advisory committee will provide comments and recommendations regarding the strategies and activities of the law enforcement handling of juvenile offenders, especially those involved in illegal drug use and sales. It may be necessary to change or supplement advisory committee members for different stages of the program; however, the objective will be to select technical and subject matter experts capable of addressing issues related to each of the program stages. The advisory committee members should have combined expertise in areas of law enforcement, juvenile substance abuse, research and evaluation, and training and technical assistance development and delivery.

Each stage of the incremental program development process detailed below is designed to result in a complete and publishable product (e.g., final assessment report) and a dissemination strategy to inform the field of the development of the program, and the results and products of each stage. A decision is made at the completion of each stage, based on availability of funds, and the quality and utility of the products, whether to invest additional funds to complete the current stage or terminate the program.

Stage 1—Assessment

The first stage of the program consists of assessing existing information on law enforcement handling of juveniles, and on-site assessments of current law enforcement strategies for handling those youth. The purpose of the literature review and the program review is to develop recommendations for developing and testing the effectiveness of prototypical decision-making policies and procedures for handling serious juvenile offenders, and for diverting non-serious offenders.

The recipient will conduct a comprehensive review of research results and law enforcement information in order to identify the characteristics of juveniles who come to the attention of the police. This review will include definition of the target population, sources of referral, identification and screening policies and procedures, and the types of dispositions currently used by law enforcement for different types of youth. Based on the literature review, criteria will be developed to select jurisdictions for on-site review of identification, screening and disposition policies and procedures.

The recipient will develop criteria for selection of sample jurisdictions to be reviewed. The jurisdictions should be diverse with respect to the following factors: geographical location, urban/rural/suburban, ethnic minority populations, state/local drug enforcement statutes, state/local prosecutorial and judicial practices, and the availability of drug abuse treatment programs. Issues involved in testing the effects of alternative decision-making policies and procedures for handling juvenile offenders must also be identified and discussed. Other issues that can affect decision-making policies and procedures that must be addressed during the assessment stage include:

—State and local statutes regarding juvenile offenses, especially drug offenses, and age range of juvenile court jurisdiction over delinquency;
—Law enforcement definitions of serious and non-serious offenders/offenses;
—Availability and perceived utility of intervention and treatment referral agencies;
—Law enforcement policies regarding use of discretion for the following: nonintervention; temporary assistance for those seeking or obviously needing assistance (e.g., persons in an

inebriated state); voluntary referral without arrest; mandatory referral by statute; custody and release; and custody and formal referral to appropriate juvenile authority;
—Prevailing departmental priorities and practices regarding the enforcement of drug offense laws, particularly laws relating to juveniles involved in illegal substance use and sales;
—Impact of prosecutorial discretion and judicial case precedents in a given jurisdiction on police practices;
—Prevailing judicial philosophy regarding juvenile offenders;
—Prevailing community standards with regard to juvenile behavior and to drug violations in particular; and
—The extent of juvenile involvement in narcotics trafficking.

The literature and program reviews should provide the basis for refining the goals and objectives of the program. Specifically, they should identify key issues regarding effective law enforcement responses to juveniles, especially those involved in illegal drug use or sales. They should also identify those identification, screening, and disposition strategies most appropriate for inclusion in the model test program suitable for experimental testing in multiple jurisdictions. The recipient will recommend specific strategies to be used as a basis for prototype development and testing. In addition, the recipient will be responsible for proposing preliminary testing design guidelines for the testing stage.

After completing the reviews, as well as a draft report on the review of existing information and current policies and procedures, the recipient will convene a group of law enforcement practitioners and researchers to review the results of the assessment and consider the utility and feasibility of the recommendations for developing decision-making prototypes. The recipient will then incorporate the recommendations of the workshop participants in the final assessment document.

Activities

The major activities of this stage are:
- Establishment of program advisory committee;
- Development of the assessment plan;
- Review of the literature;
- Development of criteria for identifying effective strategies;
- Identification and description of existing policies and procedures;
- Development of preliminary testing design guidelines;
- Preparation of assessment report; and
- Development and implementation of a dissemination strategy.

Products

The major products for this stage are:
1. Assessment plan—specifying each step of the assessment process in detail;
2. Draft and final report which include:
—Literature review;
—Descriptions of operational strategies;
—Recommendations for developing prototypical/model decision-making policies and procedures;
—Design guidelines for testing prototypes; and
3. Dissemination strategy to inform the field of the development of the program, and the products and results of this stage.

Stage 2—Prototypes: Policies and Procedures

Upon successful completion of Stage 1, and with the approval of OJJDP, the recipient will develop prototype designs for the development, implementation and operation of law enforcement decision-making policies and procedures for screening and handling serious juvenile offenders. It is recognizable that the prototype decision-making policies and procedures will need to address the handling of all juveniles who come to the attention of the police in order to focus on identification, screening and disposition of serious offenders. The prototypes will be designed to enable police agencies to systematically test the effects of using different identification, screening and/or dispositions for juvenile offenders. Emphasis will be placed on recognition and handling of illegal drug use and sales. The prototype designs will be accompanied by detailed policy and procedures manuals. The activities and products of this stage will be based on the information generated as a result of the assessment. Appropriate technical and subject matter expertise will be utilized to design the prototypes which will be based, in part, on the operational programs described in the preceding stage.

The prototype design and related policies and procedures will provide guidance regarding: definition and identification of the target population; sources of referral; screening policies and procedures and types of dispositions currently used by law enforcement for target population youth; evaluation; funding; monitoring; staffing; management and administration; program design; relationship to primary components of the juvenile justice system; evaluation of program effectiveness; and implementation schedule and procedures. This information will become part of a training and technical assistance package for dissemination to state and local juvenile correction agencies and policymakers involved in allocating funds to the various components of the juvenile justice system.

Activities

The major activities of this stage are:
—Preparation of a plan for developing the prototypes and related policies and procedures;
—Development of the prototypes and related policies and procedures;
—Participation and review by the advisory committee; and
— Development and implementation of a dissemination strategy.

Products

The products to be completed during this stage are:
1. Plan for prototype development, specifying in detail the approach and activities to be undertaken for each step of this stage, and the projected costs on a monthly basis;
2. Draft and final prototype design(s) and related policies and procedures manual(s); and
3. Dissemination strategy to inform the field of the development of the program, and the products and results of this stage.

Stage 3—Training and Technical Assistance Development

Upon successful completion of stage 2, and with the approval of the OJJDP, the recipient will transfer the prototype design(s), including policies and procedures, into a training and technical assistance package. Comprehensive training manuals that outline the major issues and prototypical approaches to law enforcement handling of serious juvenile offenders must be developed to encourage and facilitate implementation of the prototype decision-making policies and procedures. They should address policymakers and law enforcement officials involved in resource allocation and program development and who would direct the implementation of the prototypical program(s). The manual must be designed for a formal training setting, and for independent use in jurisdictions that do not participate in the formal training sessions. Therefore, each manual should include a complete description of the prototype decision-making policies and procedures. The manual should contain instructions and supplementary materials for trainers to

facilitate presentation, and ensure understanding and successful adaptation and implementation of the prototypes. The training manual will then be submitted to OJJDP in draft for approval.

Activities

The major activities of this stage are:

—Preparation of a plan for developing the training and technical assistance package;
—Development of the training and technical assistance materials;
—Recruitment and preparation of the training and technical assistance personnel;
—Testing of the training curriculum manual;
—Participation and review by the advisory committee; and
—Development and implementation of a dissemination strategy which may include workshops or seminars for law enforcement personnel.

Products

The products to be completed during this phase are:

1. Plan for the development of the training and technical assistance package;
2. Identification of training and technical assistance personnel;
3. Draft and final training and technical assistance package—including the training curriculum manual and information materials; and,
4. Dissemination strategy to inform the field of the development of the program, and the products and results of this stage, which may include workshops or seminar for law enforcement personnel.

Stage 4—Prototype Implementation and Testing

While a decision to test the prototype designs will be made during or following completion of the prototype development stage, the applicant is expected to explain the methods and approaches that would be employed to implement this stage. As noted, funds for this stage will be provided through non-competing continuation awards. In order to ensure the applicant's understanding of the entire development effort, the initial application must address and explain the implementation and coordination of all four stages of the initiative (i.e., assessment, prototype development, training and technical assistance development, and testing).

This stage of the program consists of a test, in selected jurisdictions, of the prototypes developed in stage two. The prototypes will vary in terms of the types of identification screening and disposition policies and procedures for handling serious juvenile offenders, especially those involved in illegal drug use or sales. The purpose would be to determine what types of law enforcement, screening procedures and dispositions are most effective for different types of serious offenders, as well as for diverting non-serious offenders. The recipient will be required to assist the OJJDP in developing a solicitation to make awards to test sites. It will also be required to provide intensive training and technical assistance to help the test sites implement the prototypes on an experimental basis. Finally, the recipient will be expected to work cooperatively with an independent evaluator to ensure the integrity of the data collection and feedback activities.

Activities

The major activities of this stage are:

—Development of recommendations for a program announcement to select test sites;
—Assistance to OJJDP in review and selection of test sites;
—Provision of intensive training and technical assistance to test sites regarding the implementation of prototypes on an experimental basis;
—Development of procedures for working cooperatively with the program evaluator, particularly in the areas of data collection and feedback; and,
—Development and implementation of a dissemination strategy.

Products

The major products for this stage are:

1. Recommendations for the program announcement for test sites;
2. Plan for providing training and technical assistance to test sites; and
3. Dissemination strategy to inform the field of the development of the program, and the products and results of this stage.

IV. Dollar Amount and Duration

Up to $400,000 has been allocated for the initial award. One cooperative agreement will be awarded competitively, with an initial budget period of 24 months. It is anticipated that this program will entail three years of program activities (i.e., a three year project period), and consist of four stages (assessment, prototype development: policies and procedures, training and technical assistance, and testing). The initial award will provide support for stages one through three. Supplemental funds will be allocated for an additional budget period.

Funds for a non-competing continuation award (i.e., an additional budget period within the approved three year project period) may be withheld for justifiable reasons. They include: (1) The results do not justify further program activity; (2) the recipient is delinquent in submitting required reports; (3) adequate grantor agency funds are not available to support the project; (4) the recipient has failed to show satisfactory progress in achieving the objectives of the project or otherwise failed to meet the terms and conditions of the award; (5) the recipient's management practices have failed to provide adequate stewardship of grantor agency funds; (6) outstanding audit exceptions have not been cleared; and (7) any other reason which would indicate that continued funding would not be in the best interest of the Government.

A separate agency will be selected competitively to perform the evaluation of the selected prototypes/models. Organizations which receive funds under this award will not be eligible to compete for the evaluation.

V. Eligibility Requirements

Applications are invited from public agencies and not-for-profit private organizations. Applicant organizations may choose to submit joint proposals with other eligible organizations as long as one organization is designated in the application as the applicant and any co-applicants are designated as such. The applicant must demonstrate experience in the following areas in order to be eligible for consideration:

A. Experience in the conduct of experimental designs and implementation of national surveys; and,

B. The development and delivery of training or technical assistance related to law enforcement and to juvenile substance abuse.

Applicants must also demonstrate that they have the management and financial capability to effectively implement a project of this size and scope. Applicants who fail to demonstrate that they have the capability to manage this program will be ineligible for funding consideration.

VI. Application Requirements

All applicants must submit a completed Standard Form 424, Application for Federal Assistance (SF 424), including a program narrative, a detailed budget, and a budget narrative. All applications must include the following information outlined in this section VII of the solicitation in Part IV, Program Narrative of the application.

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The Program Narrative of the application should not exceed 70 double-spaced pages in length.

In submitting applications which contain more than one organization, the relationships among the parties must be set forth in the application. As a general rule, organizations which describe their working relationship in the development of products and the delivery of services as primarily cooperative or collaborative in nature will be considered co-applicants. In the event of a co-applicant submission, one co-applicant must be designated as the payee to receive and disburse project funds and be responsible for the supervision and coordination of the activities of the other co-applicants. Under this arrangement, each organization would agree to be jointly and severally responsible for all project funds and services. Each co-applicant must sign the SF-424 and indicate their acceptance of the conditions of joint and several responsibility with the other co-applicants.

Applications which include non-competitive contracts for the provision of specific services must include a sole source justification for any procurement in excess of $10,000.

In addition to the requirements specified in the instructions for the preparation of Standard Form 424, the following information must be included in the application:

A. Organizational Capability—Applicants must demonstrate that they are eligible to compete for this cooperative agreement on the basis of eligibility criteria established in section V. of this solicitation.

1. Organizational Experience—Applicants must concisely describe their organizational experience with respect to the eligibility criteria specified in section V. above. Applicants must demonstrate how their organizational experience and capabilities will enable them to achieve the goals and objectives of this initiative. Applicants are invited to append one example of prior work products of similar nature to their application.

2. Financial Capability—In addition to the assurances provided in Part V, Assurances (SF-424), applicants must also demonstrate that their organization has or can establish fiscal controls and accounting procedures which assure that Federal funds available under this agreement are disbursed and accounted for properly. Applicants who have not previously received federal funds will be asked to submit a copy of the Office of Justice Programs (OJP) Accounting System and Financial Capability Questionnaire (OJP Form 7120/1).

Copies of the form will be provided in the application kit and must be prepared and submitted along with the application. Other applicants may be requested to submit this form. All questions are to be answered regardless of instructions (section C.I.B. note). The CPA certification is required only of those applicants who have not previously received Federal funding.

B. Program Goals—A succinct statement of your understanding of the goals and objectives of the program should be included. The application should also include a problem statement and a discussion of the potential contribution of this program to the field.

C. Program Strategy—Applicants should describe the proposed approach for achieving the goals and objectives of the program. A discussion of how each of the four stages of the program would be accomplished should be included.

D. Program Implementation Plan—Applicants should prepare a plan which outlines the major activities involved in implementing the program, describes how they will allocate available resources to implement the program, and how the program will be managed.

The plan must also include an annotated organizational chart depicting the roles and describing the responsibilities of key organizational/functional components; and a list of key personnel responsible for managing and implementing the four major elements of the program. Applicants must present detailed position descriptions, qualifications, and selection criteria for each position. Applicants should also provide recommendations for program advisory committee members. This documentation and individuals' resumes may be submitted as appendices to the application.

E. Time-Task Plan—Applicants must develop a time-task plan for the 24-month project period, clearly identifying major milestones and products. This must include designation of organizational responsibility and a schedule for the completion of the tasks and products identified in section III and indicate the anticipated cost schedule per month for the entire project period.

F. Products—Applicants must concisely describe the interim and final products of each stage of the program, and must address the purpose, audience, and usefulness to the field of each product.

G. Program Budget—Applicants shall provide a 24 month budget with a detailed justification for all costs, including the basis for computation of these costs. Applicants should include a budget estimate to complete the balance of the program. Applications submitted by co-applicants and/or those containing contract(s) must include detailed budgets for each organization's expenses. The budget should include funds for a four person advisory committee to meet four times during the first 24 month budget period.

VII. Procedures and Criteria for Selection

All applications will be evaluated and rated based on the extent to which they meet the following weighted criteria. In general, all applications received will be reviewed in terms of their responsiveness to the minimum program application requirements, organizational capability, technical soundness, and thoroughness and innovativeness in responding to strategic issues in project implementation. Applications will be evaluated by a peer review panel according to OJJDP Competition and Peer Review Policy, 28 CFR Part 34, Subpart B, published August 2, 1985 at 50 FR 31366-31367. The selection criteria and their point values (weights) are as follows:

A. Organizational capability (20 points).

1. The extent and quality of organizational experience in the areas of law enforcement, juvenile substance abuse, conduct of experiments, and coordination of juvenile related research, training, or technical assistance which have been national in scope. (10 points)

2. Adequate fiscal controls and accounting procedures to ensure that the applicant can effectively implement a project of this size and scope, and to ensure the proper disbursal and accounting of Federal funds. (10 points)

B. Soundness of the proposed strategy—(30 points)—Understanding of the nature of the program area and the soundness of the approach to each stage of the program development process for meeting the goals and objectives; and the potential utility of proposed products.

C. Quaifications of project staff (20 points).

1. The qualifications of staff identified to manage and implement the program including staff to be hired through contracts. (10 points)

2. The clarity and appropriateness of position descriptions, required qualifications and selection criteria relative to the specific functions set out in the Implementation Plan. (10 points)

D. Clarity and appropriateness of the program implementation plan (15 points)—Adequacy and appropriateness of the activities, and the project

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management structure; and the feasibility of the time-task plan.

E. Budget (15 points)—Completeness, reasonableness, appropriateness and cost-effectiveness of the proposed costs, in relationship to the proposed strategy and tasks to be accomplished.

Applications will be evaluated by a peer review panel. The result of the peer review will be a relative aggregate ranking of applications in the form of "Summary Rating." These will ordinarily be based on numerical values assigned by individual peer reviewers. Peer review recommendations, in conjunction with the results of internal review and any necessary supplementary review, will assist the Administrator in considering competing applications and in selection of the application for funding. The final award decision will be made by the OJJDP Administrator.

VIII. Submission Requirements

All applicants responding to this solicitation should be aware of the following requirements for submission:

1. Organizations which plan to respond to this announcement are requested to submit written notification of their intent to apply to OJJDP by August 21, 1987. Such notification should specify: the name of the applicant organization, mailing address, telephone number, and primary contact person. In the event that organizations intend to apply as co-applicants, each of the co-applicants are to provide the above information. The submission of this notification is optional. It is requested to assist OJJDP in estimating the workload associated with the review of applications and for notifying potential applicants of any supplemental information related to the preparation of their applications.

2. Applicants must submit the original signed application and three copies to OJJDP. The necessary forms for applications (Standard form 424) will be provided upon request.

Applications must be received by mail or hand delivered to the OJJDP by 5:00 p.m. EST on September 4, 1987. Those applications sent by mail should be addressed to OJJDP, U.S. Department of Justice, 633 Indiana Avenue, N.W., Washington, DC 20531. Hand delivered applications must be taken to the OJJDP, Room 742, 633 Indiana Avenue, NW., Washington, DC between the hours of 8:00 a.m. and 5:00 p.m. except Saturday, Sundays or Federal holidays.

3. The OJJDP will notify applicants in writing of the receipt of their application. Subsequently, applicants will be notified by letter as to the decision made regarding whether or not their submission will be recommended for funding. It is anticipated that the grant may be awarded as early as September, 1987.

IX. Civil Rights Compliance

A. All recipients of OJJDP assistance including any contractors, must comply with the non-discrimination requirements of the Juvenile Justice and Delinquency Prevention Act of 1974 as amended: Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973 as amended; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; and the Department of Justice Non-Discrimination Regulations (28 CFR Part 42, Subparts C, D, E, and G).

B. In the event a Federal or State court of Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin, or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office of Civil Rights Compliance (OCRC) of the Office of Justice Programs.

C. Applicants shall maintain such records and submit to the OJJDP upon request timely, complete and accurate data establishing the fact that no person or persons will be or have been denied or prohibited from participation in, benefits of, or denied or prohibited from obtaining employment in connection with any program activity funded in whole or in part with funds made available under this program because of their race, national origin, sex, religion, handicap or age. In the case of any program under which a primary recipient of Federal funds extends financial assistance to any other recipient or contracts with any other person(s) or group(s), such other recipient, person(s) or group(s) shall also submit such compliance reports to the primary recipients as may be necessary to enable the primary recipient to assure its civil rights compliance obligations under any award.

Dated: July 24, 1987.

Verne L. Speirs,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 87-17258 Filed 7-29-87; 8:45 am]

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Part III

Environmental Protection Agency

Monthly Status Report for March 1987; Premanufacture Notices

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-53095; FRL-3234-8]

Premanufacture Notices; Monthly Status Report for March 1987

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substances Control Act (TSCA) requires EPA to issue a list in the **Federal Register** each month reporting the premanufacture notices (PMNs) and exemption requests pending before the Agency and the PMNs and exemption requests for which the review period has expired since publication of the last monthly summary. This is the report for March 1987.

Nonconfidential portions of the PMNs and exemption requests may be seen in the Pubic Reading Room NE-G004 at the address below between 8:00 a.m and 4:00 p.m., Monday thru Friday, excluding legal holidays.

ADDRESS: Written comments, identified with the document control number "[OPTS-53095]" and the specific PMN and exemption request number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. L-100, 401 M Street, S.W., Washington, D.C. 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-613, 401 M Street, S.W., Washington, D.C. 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The monthly status report published in the **Federal Register** as required under section 5(d)(3) of TSCA (90 Stat. 2012 (15 U.S.C. 2504)), will identify: (a) PMNs received during March; (b) PMNs received previously and still under review at the end of March; (c) PMNs for which the notice review period has ended during March; (d) chemical substances for which EPA has received a notice of commencement to manufacture during March; and (e) PMNs for which the review period has been suspended. Therefore, the March 1987 PMN Status Report is being published.

Dated: July 8, 1987.

Denise Devoe,

Acting Director, Information Management Division.

Premanufacture Notices Monthly Status Report March 1987

I. 209 Premanufacture Notices and Exemption Requests Received During the Month

PMN No.			
P 87-721	P 87-786	P 87-851	P 87-901
P 87-722	P 87-787	P 87-852	P 87-902
P 87-723	P 87-788	P 87-853	P 87-903
P 87-724	P 87-789	P 87-854	P 87-904
P 87-725	P 87-790	P 87-855	P 87-905
P 87-726	P 87-791	P 87-856	P 87-906
P 87-727	P 87-792	P 87-857	P 87-907
P 87-728	P 87-793	P 87-858	P 87-908
P 87-729	P 87-794	P 87-859	P 87-909
P 87-730	P 87-795	P 87-860	P 87-910
P 87-731	P 87-796	P 87-861	P 87-911
P 87-732	P 87-797	P 87-862	P 87-912
P 87-733	P 87-798	P 87-863	P 87-913
P 87-734	P 87-799	P 87-864	Y 87-119
P 87-735	P 87-800	P 87-865	Y 87-120
P 87-736	P 87-801	P 87-866	Y 87-121
P 87-737	P 87-802	P 87-867	Y 87-122
P 87-738	P 87-803	P 87-868	Y 87-123
P 87-739	P 87-804	P 87-869	Y 87-124
P 87-740	P 87-805	P 87-870	Y 87-125
P 87-741	P 87-806	P 87-871	Y 87-126
P 87-742	P 87-807	P 87-872	Y 87-127
P 87-743	P 87-808	P 87-873	Y 87-128
P 87-744	P 87-809	P 87-874	Y 87-129
P 87-745	P 87-810	P 87-875	Y 87-130
P 87-746	P 87-811	P 87-876	Y 87-131
P 87-747	P 87-812	P 87-877	Y 87-132
P 87-748	P 87-813	P 87-878	Y 87-133
P 87-749	P 87-814	P 87-879	Y 87-134
P 87-750	P 87-815	P 87-880	
P 87-751	P 87-816	P 87-881	
P 87-752	P 87-817	P 87-882	
P 87-753	P 87-818	P 87-883	
P 87-754	P 87-819	P 87-884	
P 87-755	P 87-820	P 87-885	
P 87-756	P 87-821	P 87-886	
P 87-757	P 87-822	P 87-887	
P 87-758	P 87-823	P 87-888	
P 87-759	P 87-824	P 87-889	
P 87-760	P 87-825	P 87-890	
P 87-761	P 87-826		
P 87-762	P 87-827		
P 87-763	P 87-828		
P 87-764	P 87-829		
P 87-765	P 87-830		
P 87-766	P 87-831		
P 87-767	P 87-832		
P 87-768	P 87-833		
P 87-769	P 87-834		
P 87-770	P 87-835		
P 87-771	P 87-836		
P 87-772	P 87-837		
P 87-773	P 87-838		
P 87-774	P 87-839		
P 87-775	P 87-840		
P 87-776	P 87-841		
P 87-777	P 87-842		
P 87-778	P 87-843		
P 87-779	P 87-844		
P 87-780	P 87-845		
P 87-781	P 87-846		
P 87-782	P 87-847		
P 87-783	P 87-848		
P 87-784	P 87-749		
P 87-785	P 87-850		

II. 187 Premanufacture Notices Received Previously and Still Under Review at the End of the Month

PMN No.	
P 87-532	P 87-564
P 87-533	P 87-565
P 87-534	P 87-566
P 87-535	P 87-567
P 87-536	P 87-568
P 87-537	P 87-569
P 87-538	P 87-570
P 87-539	P 87-571
P 87-540	P 87-572
P 87-541	P 87-573
P 87-542	P 87-574
P 87-543	P 87-575
P 87-544	P 87-576
P 87-545	P 87-577
P 87-546	P 87-578
P 87-547	P 87-579
P 87-548	P 87-580
P 87-549	P 87-581
P 87-550	P 87-582
P 87-551	P 87-583
P 87-552	P 87-584
P 87-553	P 87-585
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P 87-713
P 87-714
P 87-715
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P 87-717
P 87-718
P 87-719

III. 124 Premanufacture Notices and Exemption Requests for Which the Notice Review Period has Ended During the Month. (Expiration of the Notice Review Period Does Not Signify That the Chemical Had Been Added to the Inventory.)

FMN No.

P 85-463
P 86-304
P 86-530
P 86-531
P 86-532
P 86-533
P 86-940
P 86-1481
P 86-1659
P 86-1743
P 86-1744
P 87-133
P 87-178
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Y 87-105
Y 87-106
Y 87-107
Y 87-108
Y 87-109
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Y 87-111
Y 87-112
Y 87-113
Y 87-114
Y 87-115
Y 87-116
Y 87-118

IV. 55 Chemical Substances for Which EPA Has Received Notices of Commencement To Manufacture

PMN No.	Identity/generic name	Date of commencement
P 84-113	Generic name: Substituted aromatic polymer	Feb. 9, 1987.
P 84-114	Generic name: Substituted aromatic polymer	Feb. 10, 1987.
P 84-814	Generic name: Polysubstituted polyol	Aug. 5, 1985.
P 85-1389	Generic name: Fluoro polyaryl ether ketone	Feb. 7, 1987.
P 86-73	Generic name: Methyl glucoside, C_{12}-C_{18} fatty esters	Feb. 12, 1987.
P 86-90	Generic name: Poly (vinyl ester co-un saturated dicarboxlylic acid ester coolefin).	Feb. 16, 1987.
P 86-202	Generic name: Inorganic vanadium compound	Feb. 9, 1987.
P 86-203	Generic name: Inorganic vanadium compound	Feb. 9, 1987.
P 86-370	Generic name: Alkyl fluoroalkyl siloxane	Feb. 9, 1987.
P 86-453	Generic name: Fluorinated alkyl silane	Feb. 9, 1987.
P 86-454	Generic name: Fluoroalkylsiloxane hydrolyzate	Feb. 9, 1987.
P 86-606	Generic name: Poly(siloxyurea)	Feb. 2, 1987.
P 86-607	Generic name: Poly(silylurethanesiloxy urea)	Feb. 11, 1987.
P 86-713	Generic name: Alkyl cycloalkenyl alkanedioate	June 23, 1986.
P 86-860	Generic name: Hydrocarbon resin	Feb. 17, 1987.
P 86-904	Generic name: Polymer of alkly methacrylates and substituted methacrylamide	Feb. 20, 1987.
P 86-958	Generic name: Polyperfluoroalkyl acrylate	Feb. 25, 1987.
P 86-1043	Generic name: Monosubstitutedalkoxyaminotriazine	Feb. 3, 1987.
P 86-1044	Generic name: Monosubstitutedalkoxyaminotriazine	Feb. 9, 1987.
P 86-1110	Generic name: Cycloalkylbutyrolactone	Nov. 12, 1986.

IV. 55 Chemical Substances for Which EPA Has Received Notices of Commencement To Manufacture—Continued

PMN No.	Identity/generic name	Date of commencement
P 86-1141	Generic name: Alkyl anhydride adduct	Oct. 20, 1986.
P 86-1153	Generic name: Polyamide precursor	Jan. 23, 1987.
P 86-1179	Generic name: Styrenated acrylic methacrylic polymer	Feb. 16, 1987.
P 86-1246	Generic name: Amino functional polysiloxane	Feb. 3, 1987.
P 86-1249	Generic name: Amino functional polysiloxane cross linker	Feb. 17, 1987.
P 86-1254	Generic name: Amine neutralized alkyl phosphate	Jan. 19, 1987.
P 86-1255	Generic name: Amine neutralized alkyl phosphate	Jan. 19, 1987.
P 86-1327	Generic name: Non-paintable silicone wax	Feb. 7, 1987.
P 86-1500	Generic name: Dihydroxyalkyl alkanoic acids, polymer with alkanediisocyanate, 1,6 hexanediol and 2-hydroxyethyl ester of 2-propenoic acid.	Feb. 11, 1987.
P 86-1559	Generic name: Diethylenetriamine, polymer with an alkyl diacid, a monocyclic anhydride, and a quaternized substituted alkyl diamine.	Feb. 23, 1987.
P 86-1653	Generic name: Hydroxylated alkyl ether sultaine	Feb. 25, 1987.
P 86-1710	Generic name: Crosslinked poly(acrylic acid)	Feb. 7, 1987.
P 86-1716	Generic name: Substituted triazine azo naphthalenesulfonic acid	Feb. 9, 1987.
P 86-1757	Generic name: Poly(vinyl ester co-unsaturated dicarboxylic acid ester coolefin	Feb. 23, 1987.
P 86-1776	Generic name: Polymer of phthalic anhydride, 2,2,4-trimethyl-1,3-pentanediol, 2,2'-oxybis (ethanol), (2-ethyl hexanol, trimethylolpropane.	Mar. 9, 1987.
P 87-7	Generic name: Styrenated acrylic methacrylic polymer	Dec. 31, 1986.
P 87-19	Generic name: Substituted sulfocarbopolyolcyclyazo-sulfophenyl amino heteromonocyclic amino carbomonocyclic disulfonic acid, sodium salt.	Feb. 20, 1987.
P 87-41	Generic name: Substituted heteromonocyclyl-carbomonocyclic thio benzindol	Feb. 17, 1987.
P 87-42	Generic name: Substituted heteromonocyclyl-biscarbomonocyclic thiobenzindol	Feb. 17, 1987.
P 87-101	Generic name: Silicones and siloxanes, methylhydrogen, methyl polymer with silsesquioxanes	Mar. 1, 1987.
P 87-117	Generic name: Modified trioxyaluminum alkanoate	Jan. 26, 1987.
P 87-123	Generic name: Polyether modified carbodimide	Feb. 11, 1987.
P 87-127	Generic name: Sodium salt of a (substitute heteromonocyclic amino-sulfophenyl)azo-(substituted disulfocarbo monocyclic poly-sulfonic acid.	Feb. 11, 1987.
P 87-141	Generic name: Aminohydroxy substituted benzenesulfonamide	Feb. 23, 1987.
P 87-230	Generic name: Polyurethane intermediate	Feb. 16, 1987.
P 87-231	Generic name: Cresol blocked isocyanate	Feb. 16, 1987.
P 87-238	Generic name: Disubstituted methanecne	Feb. 16, 1987.
P 87-239	Generic name: Polyaromatic ketone	Feb. 16, 1987.
P 87-240	Generic name: Ester-imide	Feb. 17, 1987.
P 87-241	Generic name: Imide	Feb. 17, 1987.
Y 86-80	Generic name: Oil modified alkyd resin	Sept. 30, 1986.
Y 86-106	Generic name: Polymer from alkane diols, alkanedioic	Mar. 4, 1987.
Y 86-216	Generic name: Polyether block polyamide copolymer	Feb. 26, 1987.
Y 87-78	Generic name: Polyamide-imide polymer	Feb. 2, 1987.
Y 87-85	Generic name: Polyester	Feb. 23, 1987.

V. 25 Premanufacture Notices for Which the Period Has Been Suspended

PMN No	
P 85-1006	P 87-318
P 86-48	P 87-322
P 86-382	P 87-328
P 86-528	P 87-360
P 86-1548	P 87-361
P 86-1650	P 87-400
P 86-1881	P 87-401
P 86-1882	P 87-402
P 87-288	P 87-403
P 87-311	P 87-405
P 87-312	P 87-762
P 87-313	P 87-773
P 87-314	

[FR Doc. 87-16320 Filed 7-29-87; 8:45 am]

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federal register

Thursday
July 30, 1987

Part IV

Department of Education

34 CFR Parts 764, 765, and 766

Drug-Free Schools and Communities Program—Training and Demonstration Grants to Institutions of Higher Education, and Federal Activities Grants Program—General Provisions; Training and Demonstration Grants to Institutions of Higher Education; and Federal Activities Grants Program; Final Regulations

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DEPARTMENT OF EDUCATION

34 CFR Parts 764, 765, and 766

Drug-Free Schools and Communities Program—Training and Demonstration Grants to Institutions of Higher Education, and Federal Activities Grants Program—General Provisions; Training and Demonstration Grants to Institutions of Higher Education; and Federal Activities Grants Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues regulations for the implementation of the Drug-Free Schools and Communities Program—Training and Demonstration Grants to Institutions of Higher Education, and Federal Activities Grants Program—General Provisions; Training and Demonstration Grants to Institutions of Higher Education; and Federal Activities Grants Program. These programs support education, prevention, personnel training, and curriculum demonstration activities consistent with the purpose of the Drug-Free Schools and Communities Act of 1986.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: John H. Burkett, Secretary's Discretionary Fund, U.S. Department of Education, 400 Maryland Avenue SW., Room 1011, Washington, DC 20202, (202) 732–3500.

SUPPLEMENTARY INFORMATION: On October 27, 1986, the President signed into law the Anti-Drug Abuse Act of 1986. Subtitle B of Title IV of this Act, the Drug-Free Schools and Communities Act of 1986 (Act), provides for strong Federal leadership in establishing effective drug and alcohol abuse education and prevention programs. Section 4131 authorizes grants to institutions of higher education for personnel training and curriculum demonstration grants, and section 4132 authorizes Federal activities, some of which will be carried out through grants consistent with the purpose of the Act. These regulations are divided into three parts: 34 CFR Parts 764, 765, and 766. Part 764 contains the general provisions applicable to both Parts 765 and 766. Regulations for training and curriculum demonstration grants to institutions of higher education are found in Part 765, while Part 766 contains the regulations for the Federal Activities Grants Program. These regulations do not implement section 4131(d) of the Act which authorizes grants for drug abuse education and prevention programs for students enrolled in institutions of higher education. The Secretary is implementing section 4131(d) of the Act separately.

On April 23, 1987, the Secretary published a notice of proposed rulemaking (NPRM) for the Drug-Free Schools and Communities Program—Training and Demonstration Grants to Institutions of Higher Education, and Federal Activities Grants Program—General Provisions; Training and Demonstration Grants to Institutions of Higher Education; and Federal Activities Grants Program in the **Federal Register** (52 FR 13608).

A summary of the major provisions was included in the NPRM. There are no significant differences between these final regulations and the NPRM. Minor changes have been made to simplify and clarify the language in the regulations. During the 30-day comment period two comments were received. The following is a summary of these comments and the Secretary's response.

What Must a Project Emphasize?

Comment: One commenter suggested broadening the phrase "detect and discipline students using or selling drugs or alcohol" in sections 765.30 and 766.30 in order to recognize the various means that exist for emphasizing the authority of school administrators and teachers.

Discussion: The Secretary believes that if schools are to be successful in their mission of educating our children, the schools must be drug-free so that effective teaching and learning can take place. Communities must emphasize that school administrators and teachers have the authority to identify and discipline students using or selling drugs or alcohol or both, in order to secure and maintain this drug-free school environment.

Changes: The Secretary has clarified §§ 765.30 and 766.30 by substituting the word "identify" for "detect" in the phrase "detect and discipline" in order to permit school administrators and teachers maximum flexibility in implementing this requirement.

What Parties Are Eligible for a Grant Under This Program?

Comment: One commenter questioned why profit-making organizations are not eligible to apply for grants under the Federal Activities Grants Program.

Discussion: The authorization for this program, section 4132 of the Act, does not specify eligible parties for awards under this program. Therefore, the decision as to which parties are eligible is within the discretion of the Secretary.

The Secretary has, consistent with the purpose of the program to carry out drug abuse education and prevention activities in elementary and secondary schools, established the following as eligible parties: State educational agencies (SEAs), local educational agencies (LEAs), institutions of higher education (IHEs), and other nonprofit agencies, organizations, and institutions. As indicated by the priorities established in § 765.4 of these regulations, this program focuses on school and community-based activities designed to serve elementary and secondary school students directly.

In addition, all applicants funded under this program must meet certain post-award conditions established in § 766.30 of these regulations to ensure that activities are carried out in schools and communities for the direct benefit of students. The Secretary believes that awards to those eligible applicants established in these regulations will be the most effective means of funding school and community-based drug and alcohol abuse education and prevention programs.

Changes: None.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Assessment of Educational Impact

In the NPRM the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Parts 764, 765, and 766

Colleges and universities, Drug abuse, Education, Elementary and secondary education, Grant programs—education, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.184, Drug-Free Schools and Communities Program)

Dated: July 13, 1987.

William J. Bennett,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations by adding new Parts 764, 765, and 766 to read as follows:

PART 764—DRUG-FREE SCHOOLS AND COMMUNITIES PROGRAM—TRAINING AND DEMONSTRATION GRANTS TO INSTITUTIONS OF HIGHER EDUCATION, AND FEDERAL ACTIVITIES GRANTS PROGRAM—GENERAL PROVISIONS

Subpart A—General

Sec.

764.1 What is the Drug-Free Schools and Communities Program—Training and Demonstration Grants to Institutions of Higher Education, and Federal Activities Grants Program?
764.2 What types of awards does the Secretary make under this program?
764.3 What regulations apply to this program?
764.4 What definitions apply to this program?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

764.20 How does the Secretary evaluate unsolicited applications?
764.21 How does the Secretary ensure distribution and diversity of projects?
764.22 May the Secretary restrict the use of funds for equipment under this program?

Subpart D—What Conditions Must Be Met by a Grantee?

764.30 What must project materials state regarding illicit drug use?

Authority: 20 U.S.C. 4641 and 4642, unless otherwise noted.

§ 764.1 What is the Drug-Free Schools and Communities Program—Training and Demonstration Grants to Institutions of Higher Education, and Federal Activities Grants Program?

This program provides assistance for drug and alcohol abuse education and prevention projects as described in 34 CFR Parts 765 and 766.

(Authority: 20 U.S.C. 4641, 4642)

§ 764.2 What types of awards does the Secretary make under this program?

(a) The Secretary may award grants and cooperative agreements under this program, depending upon the intended nature of the relationship between the recipient and the Department.

(b) The Secretary evaluates applications for cooperative agreements using the same procedures and criteria as those used to evaluate applications for grants.

(Authority: 20 U.S.C. 4641, 4642)

§ 764.3 What regulations apply to this program?

(a) Except as provided in paragraph (b) of this section, the following regulations apply to the Drug-Free Schools and Communities Program—Training and Demonstration Grants to Institutions of Higher Education, and Federal Activities Grants Program:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions That Apply to Department Regulations), and Part 78 (Education Appeal Board).

(2) The regulations in Parts 764, 765, and 766.

(b) The regulations referred to in paragraph (a) of this section do not apply to contracts awarded under this program or to projects carried out directly by the Secretary.

(Authority: 20 U.S.C. 4641, 4642)

§ 764.4 What definitions apply to this program?

(a) *Definitions in the Drug-Free Schools and Communities Act.* The following terms used in these regulations are defined in section 4141 of the Drug-Free Schools and Communities Act:

Drug abuse education and prevention
Consortium (except as used in Part 765)
Illicit drug use
Institution of higher education
State

(b) *Definitions in EDGAR.* The following terms used in these regulations are defined in 34 CFR Part 77:

Applicant
Application
Award
Budget
Department
EDGAR
Facilities
Fiscal Year
Grant
Local educational agency
Private
Project
Public
Secretary
State educational agency

(c) *Other definitions.* The following definitions also apply:

"Act" means the Drug-Free Schools and Communities Act of 1986.

"Limited enrollment," as used in Part 765, means an enrollment of no more than 500 full- and part-time students.

"Consortium," as used in Part 765, means a group of private or public institutions of higher education.

"Regional Center" means a regional drug abuse education and prevention center authorized by section 4135 of the Act.

(Authority: 20 U.S.C. 4641, 4642, 4661)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 764.20 How does the Secretary evaluate unsolicited applications?

(a) The Secretary may fund an application that was not solicited under an application notice (referred to in this section as an unsolicited application) if—

(1) The application furthers the purposes and objectives of the program;

(2) The applicant meets all requirements for funding under the program;

(3) The application rates high enough to deserve selection based on the selection criteria and any other statutory or regulatory requirements that apply to the program; and

(4) Selection of the application will not have an adverse impact on the amount of funds available under this program.

(b) The Secretary may refuse to consider an unsolicited application that meets a priority established for that fiscal year.

(c) Notwithstanding the provisions of 34 CFR 75.100, the Secretary may fund an unsolicited application without publishing an application notice in the Federal Register.

(d) In evaluating an unsolicited application, the Secretary assigns the reserved 15 points under § 765.20(b) and § 766.20(b) to the selection criteria at § 765.21(f) and § 766.21(f) (Contribution to improving the quality of drug and alcohol abuse education and prevention activities) so that the maximum number of possible points for each of these criteria is 40.

(Authority: 20 U.S.C. 4641, 4642)

§ 764.21 How does the Secretary ensure distribution and diversity of projects?

The Secretary may select applications other than those most highly rated for funding if doing so would improve—

(a) The geographic distribution of projects funded;

(b) The diversity of activities or projects funded; or

(c) Under Part 765, equitable participation of private and public institutions of higher education.

including community and junior colleges.

(Authority: 20 U.S.C. 4641, 4642)

§ 764.22 May the Secretary restrict the use of funds for equipment under this program?

The Secretary may restrict the amount of funds made available through a grant or cooperative agreement under this program that may be used to purchase equipment.

(Authority: 20 U.S.C. 4641, 4642)

Subpart D—What Conditions Must Be Met by a Grantee?

§ 764.30 What must project materials state regarding illicit drug use?

Any materials produced or distributed with funds made available under the Act must reflect the message that illicit drug use is wrong and harmful.

(Authority: 20 U.S.C. 4664)

PART 765—DRUG FREE SCHOOLS AND COMMUNITIES PROGRAM—TRAINING AND DEMONSTRATION GRANTS TO INSTITUTIONS OF HIGHER EDUCATION

Subpart A—General

Sec.

765.1 What is the Drug-Free Schools and Communities Program—Training and Demonstration Grants to Institutions of Higher Education?
765.2 What parties are eligible for a grant under this program?
765.3 What types of projects does the Secretary assist under this program?
765.4 How does the Secretary establish priorities for this program?
765.5 What regulations apply to this program?
765.6 What definitions apply to this program?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

765.20 How does the Secretary evaluate an application?
765.21 What selection criteria does the Secretary use?

Subpart D—What Conditions Must Be Met By a Grantee?

765.30 What must a project emphasize?

Authority: 20 U.S.C. 4641, unless otherwise noted.

Subpart A—General

§ 765.1 What is the Drug-Free Schools and Communities Program—Training and Demonstration Grants To Institutions of Higher Education?

The Drug-Free Schools and Communities Program—Training and Demonstration Grants To Institutions of Higher Education supports grants to institutions of higher education (IHEs) for personnel training and for curriculum demonstrations in drug and alcohol abuse education and prevention.

(Authority: 20 U.S.C. 4641)

§ 765.2 What parties are eligible for a grant under this program?

The Secretary may award grants under this program to IHEs and consortia of IHEs only.

(Authority: 20 U.S.C. 4641)

§ 765.3 What types of projects does the Secretary assist under this program?

The Secretary may fund projects that—

(a) Provide preservice training and instruction of teachers and other personnel in the field of drug abuse education and prevention in elementary and secondary schools;

(b) Provide inservice training and instruction of teachers and other personnel in the field of drug abuse education and prevention in elementary and secondary schools;

(c) Provide summer institutes and workshops to instruct teachers and other personnel in the field of drug abuse education and prevention in elementary and secondary schools;

(d) Carry out research and demonstration programs for teacher training and retraining in drug abuse education and prevention;

(e) Provide training for law enforcement officials, judicial officials, community leaders, parents, and government officials in drug abuse education and prevention; or

(f) Demonstrate model programs, coordinated with local elementary and secondary schools, for the development and implementation of quality drug abuse education curricula.

(Authority: 20 U.S.C. 4641)

§ 765.4 How does the Secretary establish priorities for this program?

(a) The Secretary selects priorities by taking into consideration unmet national needs for drug abuse education and prevention.

(b) The Secretary may select as a priority one or more, or a combination, of the types of projects listed in § 765.3. The Secretary may limit any priority to a particular education level, type of substance abuse, or any combination.

(c) In addition to selecting priorities under paragraph (b) of this section, the Secretary may give priority to projects that—

(1) Implement cooperative programs with local law-enforcement agencies, the courts, and other community resources;

(2) Involve parents, teachers, and school administrators in preventing drug and alcohol use by students, through activities such as educating those parents, teachers, and school administrators about the causes, symptoms, and effects of drug use; or

(3) Are proposed by IHEs with limited enrollments.

(d) In making awards for the types of projects described in § 765.3 (a), (b), and (c), the Secretary may give priority to applications which provide for coordinated and collaborative efforts between SEAs, LEAs, and the Regional Centers.

(e) In making awards for the type of projects described in § 765.3(f), the Secretary gives priority to joint projects involving faculty of IHEs and teachers in elementary and secondary schools and community representatives in the practical application of the findings of educational research and evaluation, and the integration of research into drug abuse education and prevention programs.

(Authority: 20 U.S.C. 4641)

§ 765.5 What regulations apply to this program?

The following regulations apply to the Drug-Free Schools and Communities Program—Training and Demonstration Grants to Institutions of Higher Education:

(a) The regulations in 34 CFR Part 764.

(b) The regulations in 34 CFR Part 765.

(Authority: 20 U.S.C. 4641)

§ 765.6 What definitions apply to this program?

The definitions in 34 CFR 764.4 apply to this part.

(Authority: 20 U.S.C. 4661)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 765.20 How does the Secretary evaluate an application?

(a) For each competition, the Secretary evaluates an application submitted under this program on the basis of the selection criteria in § 765.21.

(b) The Secretary awards up to 100 points for these criteria, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section.

(c) Subject to paragraph (d) of this section, the maximum possible points for each criterion is indicated in parentheses.

(d) For each competition, as announced through a notice published in

the Federal Register, the Secretary distributes the reserved 15 points among the criteria in § 765.21.

(Authority: 20 U.S.C. 4641)

(Approved by the Office of Management and Budget under control number 1850–0605)

§ 765.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria in evaluating each application:

(a) *Plan of operation.* (20 Points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective;

(5) For an applicant proposing training, the extent to which the applicant demonstrates familiarity with available training materials; and

(6) For an applicant proposing curriculum development, the completeness of the plan to review and analyze extant materials and information related to drug and alcohol abuse education and prevention in order to avoid duplication, and the extent to which the materials to be developed will be tested and revised as needed.

(b) *Quality of key personnel.* (15 Points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project; and

(iii) The time that each person referred to in paragraphs (b)(1) (i) and (ii) of this section will commit to the project.

(2) To determine personnel qualifications under paragraph (b)(1) of this section, the Secretary considers experience and training in fields related to the objectives of the project, as well as other qualifications that relate to the quality of the project.

(c) *Budget and cost-effectiveness.* (5 Points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (10 Points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project;

(2) To the extent possible, are objective and produce data that are quantifiable; and

(3) Enhance the potential for effectively disseminating information and replicating the project.

Cross-reference. See 34 CFR 75.590 Evaluation by the grantee.

(e) *Applicant's commitment and capacity.* (10 Points) The Secretary considers the extent of the applicant's commitment to the project, its capacity to continue the project, and the likelihood that it will continue the project or similar activities when Federal assistance ends.

(f) *Contribution to improving the quality of drug and alcohol abuse education and prevention activities.* (25 Points) The Secretary reviews each application to determine the extent to which the project will contribute to improving the quality of drug and alcohol abuse education and prevention activities. The Secretary considers—

(1) The appropriateness of the means by which the applicant identified the needs to be addressed by the project, and the extent to which the applicant involved school officials, parents, law-enforcement officials, and other community leaders where appropriate in identifying these needs;

(2) The extent to which the project's objectives apply to these needs and incorporate research findings likely to improve the quality of drug and alcohol abuse education and prevention programs;

(3) The extent to which those objectives form the basis of the proposed activities and the extent to which those activities are designed to demonstrate successful techniques for improving the quality of drug and alcohol abuse education and prevention programs;

(4) The extent and magnitude of the benefits likely to be gained by the applicant or by the recipients of services from meeting the project's objectives;

(5) The means by which the project meets the priorities established under § 765.4; and

(6) The likelihood that the project will result in a model or the provision of other information, including evidence of effectiveness, that could be used by others to solve drug and alcohol abuse problems.

(7) The extent of the applicant's plans for disseminating this model or information to others.

(Authority: 20 U.S.C. 4641)

(Approved by the Office of Management and Budget under control number 1850–0605)

Subpart D—What Conditions Must Be Met By a Grantee?

§ 765.30 What must a project emphasize?

A project must emphasize and provide for the maintenance of an orderly, secure, and drug and alcohol free school environment that is conducive to learning, including emphasis on the authority of teachers and school administrators to identify and discipline students who are using or selling drugs and/or alcohol.

(Authority: 20 U.S.C. 4641)

PART 766—DRUG-FREE SCHOOLS AND COMMUNITIES PROGRAM—FEDERAL ACTIVITIES GRANTS PROGRAM

Subpart A—General

Sec.

766.1 What is the Drug-Free Schools and Communities Program— Federal Activities Grants Program?
766.2 What parties are eligible for a grant under this program?
766.3 What types of projects does the Secretary assist under this program?
766.4 How does the Secretary establish priorities for this program?
766.5 What regulations apply to this program?
766.6 What definitions apply to this program?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

766.20 How does the Secretary evaluate an application?
766.21 What selection criteria does the Secretary use?

Subpart D—What Conditions Must Be Met By a Grantee?

766.30 What must a project emphasize and include?

Authority: 20 U.S.C. 4642, unless otherwise noted.

Subpart A—General

§ 766.1 What is the Drug-Free Schools and Communities Program—Federal Activities Grants Program?

The Drug-Free Schools and Communities Program—Federal Activities Grants Program supports model development, dissemination, technical assistance, and curriculum

development activities for drug and alcohol abuse education and prevention.

(Authority: 20 U.S.C. 4642)

§ 766.2 What parties are eligible for a grant under this program?

The Secretary may award grants under this program to State educational agencies (SEAs), local educational agencies (LEAs), institutions of higher education (IHEs), and other nonprofit agencies, organizations, and institutions.

(Authority: 20 U.S.C. 4642)

§ 766.3 What types of projects does the Secretary assist under this program?

The Secretary may fund projects that—

(a) Facilitate the use of appropriate means for communicating to students the dangers of drug use and alcohol abuse, including research on, and development of effective communication programs, and demonstration of programs which effectively communicate the dangers of drug use and alcohol abuse to students;

(b) Develop curriculum materials for drug abuse education and prevention programs in elementary and secondary schools;

(c) Disseminate curriculum materials for drug abuse education and prevention programs in elementary and secondary schools; or

(d) Provide technical assistance to SEAs, LEAs, and intermediate education agencies in the selection and implementation of drug abuse education and prevention curricula, approaches, and programs that address most effectively the needs of the elementary and secondary schools served by these agencies.

(Authority: 20 U.S.C. 4642)

§ 766.4 How does the Secretary establish priorities for this program?

(a) The Secretary selects priorities by taking into account unmet national needs for drug abuse education and prevention programs.

(b) The Secretary may select as a priority one or more, or a combination, of the types of projects listed in § 766.3. The Secretary may limit any priority to a particular educational level, type of substance abuse, or any combination of these levels or types.

(c) In addition to selecting priorities under paragraph (b) of this section, the Secretary may give priority to projects that—

(1) Implement cooperative programs with local law enforcement officials, judicial officials, community leaders, and government officials; or

(2) Involve parents and school personnel in preventing drug and alcohol abuse by students, through activities such as educating parents and school personnel about substance abuse and how it may be prevented, detected, and treated.

(Authority: 20 U.S.C. 4642)

§ 766.5 What regulations apply to this program?

The following regulations apply to the Drug-Free Schools and Communities Program—Federal Activities Grants Program:

(a) The regulations in CFR Part 764.

(b) The regulations in CFR Part 766.

(Authority: 20 U.S.C. 4642)

§ 766.6 What definitions apply to this program?

The definitions in 34 CFR 764.4 apply to this program.

(Authority: 20 U.S.C. 4661)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 766.20 How does the Secretary evaluate an application?

(a) For each competition, the Secretary evaluates an application submitted under this program on the basis of the selection criteria in § 766.21.

(b) The Secretary awards up to 100 points for these criteria, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section.

(c) Subject to paragraph (d) of this section, the maximum possible points for each criterion is indicated in parentheses.

(d) For each competition, as announced through a notice published in the Federal Register, the Secretary distributes the reserved 15 points among the selection criteria in § 766.21.

(Authority: 20 U.S.C. 4642)

(Approved by the Office of Management and Budget under control number 1850-0604)

§ 766.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria in evaluating each application:

(a) *Plan of operation.* (20 Points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program; and

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective.

(b) *Quality of key personnel.* (15 Points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project; and

(iii) The time that each person referred to in paragraphs (b)(1) (i) and (ii) of this section will commit to the project.

(2) To determine personnel qualifications under paragraph (b)(1) of this section, the Secretary considers experience and training in fields related to the objectives of the project, as well as other qualifications that relate to the quality of the project.

(c) *Budget and cost-effectiveness.* (5 Points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (10 Points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project;

(2) To the extent possible, are objective and produce data that are quantifiable; and

(3) Enhance the potential for effectively disseminating information and replicating the project.

Cross-reference. See 34 CFR 75.590 Evaluation by the grantee.

(e) *Applicant's commitment and capacity.* (10 Points) The Secretary considers the extent of the applicant's commitment to the project, its capacity to continue the project, and the likelihood that it will continue the project or similar activities when Federal assistance ends.

(f) *Contribution to improving the quality of drug and alcohol abuse education and prevention activities.* (25 Points) The Secretary reviews each application to determine the extent to which the project will contribute to improving the quality of drug and alcohol abuse education and prevention activities. The Secretary considers—

(1) The appropriateness of the means by which the applicant identified the needs to be addressed by the project,

and the extent to which the applicant involved school officials, parents, law-enforcement officials, and other community leaders where applicable in identifying these needs;

(2) The extent to which the project's objectives apply to these needs and incorporate research findings likely to improve the quality of drug and alcohol abuse education and prevention programs;

(3) The extent to which the project's objectives form the basis of the proposed activities and the extent to which those activities are designed to demonstrate successful techniques for improving the quality of drug and alcohol abuse education and prevention programs;

(4) The extent and magnitude of the benefits likely to be gained by the applicant or by the recipients of services from meeting the project's objectives;

(5) The means by which the project meets the priorities established under § 766.4; and

(6) The likelihood that the project will result in a model or other information, including evidence of effectiveness, that could be used by others to solve drug and alcohol abuse problems.

(7) The extent of the applicant's plans for disseminating this model or information to others.

(Authority: 20 U.S.C. 4642)

(Approved by the Office of Management and Budget under control number 1850–0804)

Subpart D—What Conditions Must Be Met By a Grantee?

§ 766.30 What must a project emphasize and include?

(a) A project must emphasize—

(1) The maintenance of an orderly, secure, and drug-free school environment that is conducive to learning, including emphasis on the authority of teachers and school administrators to identify and discipline students using or selling drugs or alcohol or both; and

(2) A firm policy aimed at eliminating the sale or use of drugs and alcohol on school premises, enforcing disciplinary procedures and practices, and teaching students that drug use is both wrong and harmful.

(b) A project must include—

(1) An initial assessment of the current drug and alcohol problem in the school or schools on which the project is to focus, including the number of students who use drugs, the grade level of students who use drugs, and the type of drugs used by the students; and

(2) Procedures for monitoring throughout the project the drug and alcohol problem in that school or schools, including the number of students who use drugs, the grade level of students who use drugs, and the type of drugs used by the students.

(Authority: 20 U.S.C. 4642)

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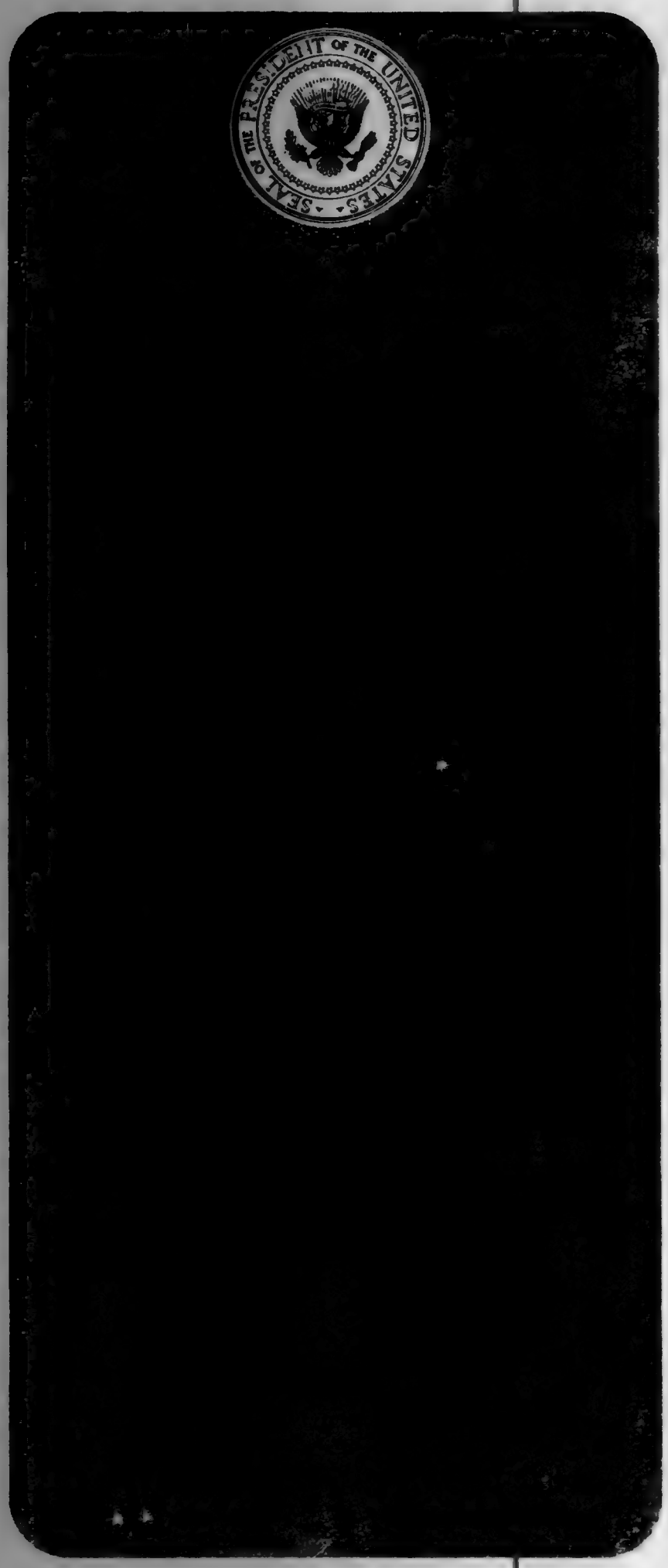

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Rules and Regulations

Federal Register
Vol. 52, No. 147
Friday, July 31, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

Tobacco Inspection; Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: These regulations modify the Official Standard Grades for flue-cured tobacco to more accurately describe tobacco as it presently appears at the marketplace. This modification will: (1) Revise the definition of nested tobacco to specifically include a lot arranged so that tobacco in the lower portion of the lot is distinctly inferior to the tobacco in the top portion, and (2) delete the wrapper group, which contains the grades A1L—Choice Quality Lemon Wrappers and A1F—Choice Quality Orange Wrappers which have been determined to be no longer necessary.

EFFECTIVE DATE: July 31, 1987.

FOR FURTHER INFORMATION CONTACT: Lionel S. Edwards, Director, Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, DC 20250, telephone: (202) 447–2567.

SUPPLEMENTARY INFORMATION: A notice was published July 6, 1987, (52 FR 25235) that the Department was considering a modification of the Official Standard Grades for Flue-Cured Tobacco, U.S. Types 11–14 and Foreign Type 92, pursuant to the authority contained in the Tobacco Inspection Act of 1935, as amended (49 Stat. 731; 7 U.S.C. 511 *et seq.*).

The following modifications were proposed: (1) To revise the definition of nested to include specifically any lot of tobacco consisting of distinctly different grades, qualities or conditions which is arranged so that the layers in the bottom portion are distinctly inferior in grade to the tobacco in the top portion, and (2) delete the wrapper group which contains the grades A1L—Choice Quality Lemon Wrappers and A1F—Choice Quality Orange Wrappers because tobacco characteristic of these grades has not appeared in the marketplace during the past 5 marketing seasons. A period of 15 days was provided for interested parties to comment on the proposed modifications.

Two comments were received, one favoring the proposal as published and one favoring deletion of the wrapper grades but opposing the revision of the definition of nested. It was suggested that the revised definition is unnecessary because lots consisting of different grades or groups of different colors are covered under current rules and definitions of mixed groups and mixed color. The comment illustrates the desirability of the proposed clarification. Some variation in grade, quality or condition within any particular lot of tobacco is normal. There are many provisions in the official standards, including those for mixed color and mixed groups, which describe variation within a lot and which establish tolerance levels. However, a lot of tobacco which is not merely non-uniform but which has been arranged to conceal inferior tobacco would be regarded as nested under the old definition as well as the revised definition. The revision does not make a substantive change but merely clarifies the definition of nested so that there can be no doubt that it includes any lot of tobacco which consist of different grades, qualities or conditions not mixed together but arranged with the same kinds together and with the inferior tobacco in the bottom portion of the lot. Accordingly, the suggestion is not adopted in this final rule.

This final rule has been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be "nonmajor" because they do not meet any of the criteria established for major rules under the Executive Order. Initial review of the regulations contained in 7 CFR Part 29 for need, currentness, clarity and effectiveness has been completed.

Additionally, in conformance with the provisions of Pub. L. 96–354, the Regulatory Flexibility Act, full consideration has been given to the potential economic impact upon small business of this final rule. The changes made by this final rule will have any adverse effects. The Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities. Compliance with these revisions will not impose substantial direct economic costs, recordkeeping, or personnel workload changes on small entities, and will not alter the market share or competitive positions of small entities relative to large businesses.

It is also found and determined that it is impractical, unnecessary, and contrary to the public interest to delay the effective date of this rule for 30 days after publication in the Federal Register. This final rule is made effective upon publication so that the revisions will be in place for the entire 1987 marketing season, which begins on July 28, 1987, and in order to allow the Commodity Credit Corporation to establish and announce the flue-cured price supports by grade prior to the opening of the marketing season.

Therefore, after consideration of comments on the proposal and other relevant information, the Department hereby adopts the regulations as proposed.

List of Subjects in 7 CFR Part 29

Administrative practices and procedures, Tobacco.

Accordingly, the Department hereby amends the regulations under the Tobacco Inspection Act contained in 7 CFR Part 29, Subpart C, as follows:

PART 29—TOBACCO INSPECTION

1. The authority citation for §§ 29.1001 to 29.1225 continues to read as follows:

Authority: Sections 29.1001 to 29.1225 are issued under sec. 14, 49 Stat. 734, as amended (7 U.S.C. 511m); sec. 213, 97 Stat. 1149 (7 U.S.C. 511r).

2. Section 29.1026 is revised to read as follows:

§ 29.1026 Group.

A division of a type covering closely related grades based on certain characteristics which are related to stalk position, body, or the general quality of the tobacco. Groups in Flue-

cured, U.S. Types 11–14, and Foreign Type 92 are: Leaf (B), Smoking Leaf (H), Cutters (C), Lugs (X), Primings (P) Mixed (M), Nondescript (N), and Scrap (S).

3. Section 29.1037 is revised to read as follows:

§ 29.1037 Nested.

Any lot of Types 11–14 tobacco which has been loaded, packed or arranged to conceal tobacco of inferior grade, quality or condition. Nested includes: (a) Any lot of tobacco which contains injured or other inferior tobacco, any of which cannot be readily detected upon inspection because of the way the lot is packed or arranged; (b) Any lot of tobacco which consists of distinctly different grades, qualities or conditions and which is stacked or arranged with the same kinds together so that the tobacco in the lower portions of the lot is distinctly inferior in grade, quality or condition from the tobacco in the top portion of the lot.

§ 29.1161 [Removed and Reserved]

4. Section 29.1161 is removed and reserved.

§ 29.1181 [Amended]

5. In § 29.1181, the heading and text of the chart headed "2 Grades of Wrappers" are removed.

§ 29.1225 [Amended]

6. In § 29.1225, under the heading "Groups", the text "A-Wrappers" is removed.

Dated: July 29, 1987.

J. Patrick Boyle,

Administrator, Agricultural Marketing Service.

[FR Doc. 87–17563 Filed 7–30–87; 8:45 am]

BILLING CODE 3410-02-M

Federal Grain Inspection Service

7 CFR Part 810

Official U.S. Standards for Grain; Correction

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Final rule; correction.

SUMMARY: The Federal Grain Inspection Service (Service) is correcting errors contained in the preamble and the regulatory text of the Official U.S. Standards for Grain which appeared in the **Federal Register** under document number 87–14827 on June 30, 1987 (52 FR 24414).

EFFECTIVE DATE: June 30, 1987.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., Information Resources Staff, USDA, FGIS, Room 1661 South Building, 1400 Independence Avenue, SW., Washington, DC 20250, telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION: The Service published this final rule to the Official U.S. Standards for Grain to revise the format, establish new rounding procedures, replace the term "weevily" with "infested," and revise various portions of the barley standards. The changes made to this final rule were effective on June 30, 1987, except for barley protein testing services which will be available upon request beginning May 1, 1988.

Accordingly, the errors contained in the Official U.S. Standards for Grain published on June 30, 1987 (52 FR 24414) are corrected as follows:

1. On page 24418, second column, line 27, change "800.106" to "810.106".

2. On page 24418, third column, line 10, change "800.106" to "810.106".

3. On page 24419, third column, Subpart L, one line below § 810.2203, change "Grades and Grades Requirements" to "Grades and Grade Requirements".

§ 810.104 [Corrected]

4. On page 24420, second column, § 810.104(b), line 19, insert after the word "of" the words "smut in barley and"; change the last word "is" to "are"; and add at the end of the paragraph the sentence "All other percentages are reported in tenths percent."

§ 810.202 [Corrected]

5. On page 24421, second column, remove the semicolon at the end of line 23; and in line 24 change the word "contain" to "contains".

6. On page 24422, first column, first line, change "Federal Grain Inspection Service" to "American Malting Barley Association".

§ 810.204 [Corrected]

7. On page 24422, § 810.204, footnote 1, listed under the table, remove the words "Includes heat-damaged kernels" at the beginning of the footnote statements.

§ 810.205 [Corrected]

8. On page 24422, § 810.205, footnote 1, listed under table, change "stored" to "scored".

§ 810.206 [Corrected]

9. On page 24422, § 810.206, fourth column in the table, under the heading of Damaged kernels (percent) for the Grade U.S. No. 1, change "0.2" to "2.0".

10. On page 24422, § 810.206, eighth column in table, under the heading Thin Barley (percent) for the Grade U.S. No. 4, change "5.0" to "35.0".

11. On page 24422, § 810.206, under U.S. Sample grade, paragraph (b), line 3, change "cocklebur (Xanthium) ssp.)" to "cocklebur (Xanthium spp.)".

§ 810.402 [Corrected]

12. On page 24423, first column, § 810.402 (a), line 5, insert the word "sample" after the word "sieved".

§ 810.404 [Corrected]

13. On page 24423, § 810.404, second column in the table, change the heading "Minimum test weight per bushel (percent)" to "Minimum test weight per bushel (pounds)".

§ 810.403 [Corrected]

14. On page 24423, third column, § 810.403. line 2, insert "waxy corn" before the word "flint".

§ 810.405 [Corrected]

15. On page 24424, first column, line 4 third word, change "of" to "or".

§ 810.1402 [Corrected]

16. On page 24427, second column, under paragraph (d), at the end of the definition for dockage remove the words "and that cannot be recovered by properly rescreening or recleaning."; and add a period after the word "sorghum."

17. On page 24427, third column, line 18, change the first word "and" to "the"; and change the fifth word "that" to "which".

§ 810.1604 [Corrected]

18. On page 24428, § 810.1604, under U.S. Sample grade, item (b), change the word "that" to "which".

§ 810.2002 [Corrected]

19. On page 24429, second column, below table, § 810.2002, line 6, change "insert-bored" to "insect-bored".

§ 810.2004 [Corrected]

20. On page 24430, § 810.2004, within the table, which reads:

"U.S. Sample grade—
(a) Does not meet the requirements for the grades U.S. Nos. 1, 2, 3, of f; or"

Is correctly revised to read:

"U.S. Sample grade—
U.S. Sample grade is triticale that:
(a) Does not meet the requirements for the grades U.S. Nos. 1, 2, 3, or 4; or"

§ 810.2203 [Corrected]

21. On page 24431, § 810.2203, line 3, change "other classes" to "wheat of other classes".

Dated: July 27, 1987.
W. Kirk Miller,
Administrator.
[FR Doc. 87-17378 Filed 7-30-87; 8:45 am]
BILLING CODE 3410-EN-M

7 CFR Part 910

[Lemon Reg. 572]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule with request for comments.

SUMMARY: Regulation 572 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 353,000 cartons during the period August 2 through August 8, 1987. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 572 (§ 910.872) is effective for the period August 2–8, 1987. Comments due August 20, 1987.

ADDRESS: Interested persons are invited to submit written comments concerning the possible impact of volume regulations on small entities. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2085, South Building, Washington, DC 20250–0200. Comments should reference the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular working hours.

FOR FURTHER INFORMATION CONTACT: James M. Scanlon, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact on small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act (the "Act", 7 U.S.C. 601–674), as amended, and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

At the beginning of each marketing year, the Lemon Administrative Committee (committee) submits a marketing policy to the Department which discusses, among other things, the potential use of volume and/or size regulations for the ensuing season. The Committee's 1987–88 season marketing policy contemplated the use of volume regulation this season. The U.S. Department of Agriculture reviewed that policy with respect to administrative requirements and regulatory alternatives in order to determine if the use of volume regulations would be appropriate.

Lemons regulated under Marketing Order No. 910 are grown in California and Arizona. For marketing order purposes, the production area is divided into three districts: District 1, representing Central California; District 2, representing Southern California; and District 3, representing Arizona and the desert area of California. In recent seasons, District 2 has accounted for around 49 percent of total production, District 1 about 12 percent, and District 3 around 40 percent. The estimated production for the 1987–88 crop season is 46,913 cars (1 car equals 1,000 cartons, 1 carton equals 37½ pounds).

The three basic outlets for California-Arizona lemons are the domestic fresh, export, and processing markets. The domestic fresh market is fairly static, receiving around 14,000–15,000 cars per year unless unusual conditions occur. Quantities utilized in the export market have ranged from 7,000 to 10,000 cars in the past four years. Exports vary depending on factors such as the amount of competitive supplies, foreign monetary exchange rates, quality, quantity, and trade practices. The processing market is basically a residual outlet. Estimated crop utilization for the 1987–88 season is 15,250 cars for domestic fresh markets, 10,000 cars export, with the remaining 21,663 to processed and other outlets.

The California-Arizona lemon industry is characterized by a large number of growers that cover a large geographical area. The exact number of growers is not presently known, but estimates are that this number is in the range of 2,000 to 2,500. An actual number is difficult to obtain, due to the various types of entities involved in growing lemons. For example, one grower may be involved in several different legal entities; either as an individual or with others. It is therefore difficult to ascertain if such an entity constitutes one or several growers. There is also a lack of complete information regarding all the entities themselves. In addition, there are approximately 65 handlers of California-Arizona lemons in the regulated area.

Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2 (1985)) as those having average annual gross revenues for the last three fiscal years of less than $100,000 and agricultural service firms, which includes handlers, are defined as those whose gross annual receipts are less than $3,500,000. The majority of California-Arizona lemon producers and handlers may be characterized as small producers and handlers.

Volume regulations issued under the authority of the Act and Marketing Order No. 910 are intended to provide benefits to both producers and consumers. Producers benefit in areas such as increased grower returns and improved market conditions. Reduced fluctuations in supplies and prices result from pre-planned shipping levels, resulting in a more stable market. Consumers are assured of a steady supply of lemons in the market throughout the marketing season.

Benefits and costs of issuing regulations are difficult to quantify, as indicated in various studies regarding effects of marketing orders and criteria for measuring the effects. Although the information currently available to AMS is limited, the known costs to growers of implementing the regulations appear to be significantly offset when compared to potential benefits of regulation.

The reporting and recordkeeping requirements under M.O. 910 are incurred by handlers of lemons. However, handlers in turn may require individual growers to utilize certain reporting and recordkeeping practices to enable handlers to carry out their functions. Costs incurred by the handlers in connection with recordkeeping and reporting requirements may be passed on to growers.

If volume regulations were not to be used for the 1987–88 season, it is likely that most of these reporting and recordkeeping functions would still be carried out. The method of calculating the quantities of lemons for fresh shipments by handlers for any given week is based on information gathered over several previous weeks' time. Therefore, there is an incentive to keep

and maintain records in anticipation of future implementation of regulation.

Based on consideration of the conditions that exist in the lemon industry at this time, the Administrator of the AMS has determined that the issuance of weekly volume regulations will not have a significant economic impact on a substantial number of small entities.

The Fruit and Vegetable Division of the AMS, however, encourages the submission of comments on economic impacts on small entities from all interested parties. USDA's position on this certification of the regulatory action will be further evaluated in view of the applicable comments received.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Act. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This action is consistent with the marketing policy for 1987–88. The committee met publicly on July 28, 1987, at Los Angeles, California to consider the current and prospective conditions of supply and demand and unanimously recommended (with two abstentions) a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the market is fair.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the Act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—[AMENDED]

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.872 is added to read as follows:

§ 910.872 Lemon Regulation 572.

The quantity of lemons grown in California and Arizona which may be handled during the period August 2 through August 8, 1987, is established at 353,000 cartons.

Dated: July 29, 1987.

Ronald L. Cioffi,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 87-17578 Filed 7-30-87 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF ENERGY

10 CFR Part 753

Uranium Enrichment Late Payment Charges

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The U.S. Department of Energy (DOE) is announcing its decision to change the method of assessing interest charges for overdue uranium enrichment customer accounts. This change will raise the late payment charge due DOE. The proposed new interest charge applicable only to uranium enrichment customers accounts will be Treasury's current value of funds rate plus 6 percent pro rata on a daily basis. The additional 6 percent charge will not go into effect until five business days after payment is due. However, if the payment is due between September 15 and September 30, the additional 6 percent charge will go into effect the first day the payment is late.

The primary reason for this change is to motivate customers to pay on time and reduce uncertainty in DOE's estimate of revenue collections.

EFFECTIVE DATE: August 31, 1987.

FOR FURTHER INFORMATION CONTACT: Robert Knipp, Office of Marketing and Business Operations (NE–32), Washington, DC 20545, (301) 353–5841; and Lawrence Leiken, Attorney for Office of General Counsel (GC–31), Washington, DC 20585, (202) 586–6975.

SUPPLEMENTARY INFORMATION:

I. Introduction

The current late payment charge applicable to all DOE accounts including uranium enrichment customers is tied to the Treasury's current value of funds rate and was established in a **Federal Register** notice, 46 FR 21408, April 10, 1981. The Treasury Funds rate is an annualized percentage rate determined by the Treasury and represents the average of the current value of funds to the Treasury for a recent 3-month period. In that notice of April 10, 1981, it was stated that interest should be collected on all overdue accounts in order for the Federal Government to manage its accounts receivable more efficiently. At that time, the quarterly publishing of the Treasury Funds rate was deemed a good barometer of current economic conditions. The use of the rate would enable the Government to recoup the approximate value that has been lost by the delayed receipt of funds.

In the recent history of uranium enrichment revenue collections, it has been determined that the use of the Treasury's current value of funds rate for setting the late payment charge has not been adequate to ensure timely payment of customer accounts. The late payment charge (i.e., Treasury Funds rate) is currently at 7 percent. Over the last few years, the rate has been relatively low compared to the Public Utility Bond Rates. Thus, enrichment customers may view the Department's late payment charge as an attractive source of financing compared to the rates available to them through private sources.

To the extent that DOE's late payment rate encourages customers to delay payments, it contributes to the Federal deficit. Additionally, the Department attempts to maintain its enrichment budget outlays within the level of revenues estimated to be collected each fiscal year. If there is uncertainty about revenue collections, then enrichment outlays may have to be reduced to reflect this uncertainty. The only significant program vehicle available to the Department for reducing outlays is to reduce power purchases which can cause a drop in production to uneconomical levels. The lost production must be replaced in later years when the cost of production is estimated to increase significantly due to escalation, economies of scale, and existing power contract commitments. As the typical annual customer delivery is worth over $10 million, the programmatic impact of late payments from even a single customer can be

significant, penalizing customers who have paid on time.

II. Background

On February 10, 1987, DOE proposed a change in the method of assessing interest charges for overdue uranium enrichment customer accounts. 52 FR 4151. DOE requested written comments on the proposal by March 12, 1987, and provided for a public hearing which was held on March 5, 1987.

DOE received nine written comments in response to the Notice of Proposed Rulemaking from major United States utilities located throughout the country. These comments have provided DOE with a full and thorough rulemaking record, containing the points of view of all interested persons. DOE has considered all the comments carefully in its deliberations and has modified its proposal where appropriate.

In the following section DOE describes the comments which it has received and the revisions in the proposal to respond to some of those comments.

III. Revised Late Payment Charge

A. Section 763.1

Section 763.1 provides that the late payment charge for uranium enrichment customers will be the current Treasury Funds rate plus 6 percent pro rata.

Several customers indicated that the increased late charges should not be due until several days after payment was due. Comments were also received discussing the fact that occasional and unavoidable late payments by customers that normally pay on time should not be treated the same as customers that are habitually late for prolonged periods.

In response to these comments and in recognition of the fact that a majority of the customers make a "good faith" effort to pay their bills on time, DOE has decided to modify the proposed rule which appeared in the **Federal Register** notice of February 10, 1987.

Whereas the original proposed late payment charge was the current value of funds rate plus 6 percent pro rata on a daily basis starting on the first day the payment was late, the final rule provides that the additional 6 percent charge will not go into effect for the first 5 days after payment is due. However, due to the particular needs of the uranium enrichment program to receive all revenues due before the end of the fiscal year, if the payment is due between September 15 and September 30, the 6 percent additional charge will be assessed beginning on the first day the payment is late.

Additionally, to allow customers to prepare themselves for the new change, the rulemaking will not go into effect until August 31, 1987.

Commenters raised other issues with respect to the proposal. Several indicated that late charges should be negotiated with each customer rather than applied on a uniform basis. Others contend that adding 6 percent to the Treasury rate would be excessively high. In addition, legal issues were raised such as whether the proposed late charge would permit DOE to recover more than the cost of providing enrichment services or whether enrichment customers may be charged a different late fee from other DOE customers.

After careful consideration DOE has determined that it is more appropriate to establish a uniform policy for late charges through rulemaking than to negotiate on a customer by customer basis. A key factor considered in this decision is that the great majority of customers pay on a timely basis and will not be directly impacted by the change in late charges. Moreover, the additional 5 day grace period applicable during most of the year will in most instances insulate customers from the higher charge when those customers are only a day or two late.

DOE disagrees with the view that the new late charge is excessively high. As explained previously, the Treasury rate has been relatively low compared to the Public Utility Bond Rates. See 52 FR 4153, February 10, 1987. Only a 1 or 2 percent increase in the late charge would not change that relationship. DOE believes that the 6 percent increase will be adequate to provide an incentive for all customers to pay DOE on time rather than to use its late charge as an alternative form of financing.

DOE rejects the suggestion that the increase in the late charge represents a deviation from the cost recovery provision in the Atomic Energy Act. The measure is not designed to enhance revenues but merely to assure cost recovery and to allocate costs fairly. When revenues total less than outlays, a debt results which is passed on to all enrichment customers. DOE believes that it is inequitable to pass on the costs and risks of nonpayment to customers who pay on a timely basis.

Finally, DOE believes that it has adequate authority to establish a new late charge for enrichment customers. While traditionally a single late charge has been applicable to all DOE customers, there is no legal requirement of uniformity with respect to late charges. Departures from the Treasury rate are not unprecedented. In fact, DOE disposal contracts under the Nuclear Waste Policy Act also provide for late payment charges based on Treasury's current value of funds rate plus 6 percent.

The applicable legal requirements peculiar to the enrichment program fully support development of a separate late charge methodology for enrichment. These include the cost recovery mandate applicable only to uranium enrichment which appears at section 161(v) of the Atomic Energy Act and subsequent legislation which requires that the Secretary establish a separate account for uranium enrichment. For example, the Energy and Water Development Appropriations Act for the fiscal year ending September 30, 1986 provides as follows:

> [t]hat revenues received by the Department for the enrichment of uranium . . . shall be retained and used for the specific purpose of offsetting costs incurred by the Department in providing uranium enrichment services. . . .[1]

IV. Procedural Matters

A. Review Under Executive Order 12291

Executive Order 12291, 46 FR 13191, February 19, 1981, requires an agency to prepare a regulatory impact analysis for any major rule. DOE has determined that this does not constitute a "major rule," as defined in the Executive Order, because: (1) The late payment charge increase applicable to uranium enrichment customers will not directly result in the level of impact necessary to meet the definition of a "major rule;" and (2) in keeping with the purpose and intents of the Executive order, the late payment charge increase applicable to uranium enrichment customers will not increase the regulatory burdens on American society. The Office of Management and Budget has reviewed and commented on this rule.

B. Review Under the Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, DOE certifies that the proposal will not have a significant economic impact on a substantial number of small entities because: (1) The proposed late payment charge applicable to uranium enrichment customers will not directly result in the level of impact required to meet the standard set forth in the Regulatory Flexibility Act; (2) to the extent the proposed late payment charge increase applicable to uranium enrichment customers may have any direct impact, such impact will not be

[1] See also section 111(b)(2) of the Energy Reorganization Act of 1974, 42 U.S.C. 5821(b)(2).

adverse to small entities; and (3) the number of small entities that may be affected by the proposed late payment charge increase applicable to uranium enrichment customers is not large enough to meet the standard set forth in the Regulatory Flexibility Act.

C. Paperwork Reduction Act

The late payment charge increase for uranium enrichment customers does not directly provide for the collection of new information. DOE will submit the collection of any new information requests concerning the rulemaking amendments to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501.1 *et seq.*, and the procedures implementing that Act, 5 CFR 1320.1. *et seq.*

D. National Environmental Policy Act

The Department of Energy has determined that this rulemaking clearly will have no effect on the quality of the human environment. Since the rulemaking is not a major Federal action significantly affecting the quality of the human environment, neither an Environmental Assessment nor an Environmental Impact Statement is required.

List of Subjects in 10 CFR Part 763

Uranium.

For the reasons set out in the preamble, Chapter III of Title 10 of the Code of Federal Regulations is amended as set forth below.

Issued in Washington, DC on 28 July 1987.

James W. Vaughan, Jr.,

Acting Assistant Secretary for Nuclear Energy.

Chapter III of Title 10 of the Code of Federal Regulations is amended by adding a new Part 763 to read as follows:

PART 763—URANIUM ENRICHMENT LATE PAYMENT CHARGES

Authority: Sec. 161(v) of the Atomic Energy Act, as amended, 68 Stat. 943, 42 U.S.C. 2201(v).

§ 763.1 Uranium enrichment late payment charges.

The late payment charge for uranium enrichment customers will be the current Treasury Funds rate plus 6 percent pro rata on a daily basis. The additional 6 percent charge will not go into effect until five business days after payment is due. However, if the payment is due between September 15, and September 30, the additional 6 percent charge will go into effect the first day the payment is late.

[FR Doc. 87-17443 Filed 7-30-87; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL RESERVE SYSTEM

12 CFR Parts 207, 220, 221 and 224

Securities Credit Transactions; List of Marginable OTC Stocks; Regulations G, T, U, and X

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; Determination of Applicability of Regulations.

SUMMARY: The List of Marginable OTC Stocks is comprised of stocks traded over-the-counter (OTC) that have been determined by the Board of Governors of the Federal Reserve System to be subject to the margin requirements under certain Federal Reserve regulations. The List is published four times a year by the Board as a guide for lenders subject to the regulations and the general public. This document sets forth additions to or deletions from the previously published List effective May 12, 1987 and will serve to give notice to the public about the changed status of certain stocks.

EFFECTIVE DATE: August 11, 1987.

FOR FURTHER INFORMATION CONTACT: Peggy Wolffrum, Research Assistant, Division of Banking Supervision and Regulation, (202)–452–2781. For the hearing impaired *only*, Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf (TDD), (202)–452–3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Set forth below are stocks representing additions to or deletions from the Board's List of Marginable OTC Stocks. A copy of the complete List incorporating these additions and deletions is available from the Federal Reserve Banks. This List supersedes the last complete List which was effective May 12, 1987. (Additions and deletions for that List were published at 52 FR 15941, May 1, 1987). The current List includes those stocks that meet the criteria specified by the Board of Governors in Regulations G, T, U, and X (12 CFR Parts 207, 220, 221 and 224, respectively). These stocks have the degree of national investor interest, the depth and breadth of market, and the availability of information respecting the stock and its issuer to warrant regulations in the same fashion as exchange-traded securities. The List also includes any stock designated under an SEC rule as qualified for trading in the national market system (NMS Security). Additional OTC stocks may be designated as NMS securities in the interim between the Board's quarterly publications. They will become automatically marginable at broker-dealers upon the effective date of their NMS designation. The names of these stocks are available at the Board and the Securities and Exchange Commission and will be incorporated into the Board's next quarterly List.

The requirements of 5 U.S.C. 553 with respect to notice and public participation were not followed in connection with the issuance of this amendment due to the objective character of the criteria for inclusion and continued inclusion on the List specified in 12 CFR 207.6 (a) and (b), 220.17 (a) and (b), and 221.7 (a) and (b). No additional useful information would be gained by public participation. The full requirements of 5 U.S.C. 553 with respect to deferred effective date have not been followed in connection with the issuance of this amendment because the Board finds that it is in the public interest to facilitate investment and credit decisions based in whole or in part upon the composition of this List as soon as possible. The Board has responded to a request by the public and allowed a two-week delay before the List is effective.

List of Subjects

12 CFR Part 207

Banks, Banking, Credit, Federal Reserve System, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 220

Banks, Banking, Brokers, Credit, Federal Reserve System, Margin, Margin requirements, Investments, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 221

Banks, Banking, Credit, Federal Reserve System, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 224

Banks, Banking, Borrowers, Credit, Federal Reserve System, Margin, Margin requirements, Reporting and recordkeeping requirements, Securities.

Accordingly, pursuant to the authority of sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. sections 78g and 78w), and in accordance with 12 CFR 207.2(k) and 207.6(c) (Regulation G), 12 CFR 220.2(s) and 220.17(c) (Regulation T), and 12 CFR 221.2(j) and 221.7(c) (Regulation U), there is set forth below a listing of deletions from and additons to the Board's List:

Deletions From List

Stocks Removed for Failing Continued Listing Requirements

Advanced Tobacco Products, Inc.
$.01 par common
American Restaurants Corporation
No par common
ANAC Holding Corporation
15.25% cumulative, exchangeable preferred
Bluefield Supply Company
$2.00 par common
Chargit, Inc.
$.01 par common
Computer Resources, Inc.
No par common
Energy Conversion Devices, Inc.
Warrants (expire 09–30–87)
First Federal of the Carolinas F.A.
$1.00 par convertible, preferred
GNI, Inc.
No par common
Edward Hines Lumber Co.
$10.00 par common
International Mobile Machine Corporation
$.10 par convertible, preferred
Kloss Video Corporation
$.20 par common
American Land Cruisers, Inc.
Warrants (expire 05–04–89)
American Surgery Centers Corporation
$.001 par common
Banc One Corporation
Series A, convertible, preferred
Chapman Energy, Inc.
$1.20 par convertible, preferred
Columbia Savings and Loan Association (California)
Warrants (expire 05–15–93)
Di Giorgia Corporation
12% convertible, subordinated debentures
Financial Security Savings and Loan Association (Florida)
Class A, $2.50 par common
First of America Bank Corporation
$11.00 par cumulative, convertible preferred
Great American Bancorp
No par common
Home Intensive Care, Inc.
$.01 par cumulative, convertible preferred
Investors Savings Bank (Virginia)
Series A, $.95 par cumulative convertible, preferred
North American Ventures, Inc.
Warrants (expire 05–09–91)
Oliver's Stores, Inc.
$.01 par common
Palm Springs Savings Bank
$2.50 par common
P & F Industries, Inc.
Warrants (expire 05–18–87)
Walker Telecommunications Corporation
Warrants (expire 04–05–90)

Stocks Removed for Listing on a National Securities Exchange or Being Involved in an Acquisition

American Businessphones, Inc.
No par common
Amwest Insurance Group, Inc.
No par common
Auxton Computer Enterprises, Inc.
$.01 par common
Bancserve Group, Inc.
$5.00 par common
Burnham Pacific Properties, Inc.
No par common
Catalyst Energy Development Corporation
$.10 par common
Chicago Pacific Corporation
$.01 par common
Cobanco, Inc.
No par common
Conifer Group, Inc., The
$1.00 par common
Davis Water and Waste Industries, Inc.
$1.00 par common
Faraday Laboratories, Inc.
$.01 par common
American Land Cruisers, Inc
$.01 par common
Anchor Glass Container Corporation
$.01 par common
Bamberger Polymers, Inc.
$.01 par common
Baron Data Systems
$.10 par common
Cambridge Royalty Company
$1.00 par common
Chemlawn Corporation
No par common
Coast R.V., Inc.
No par common
Color Systems Technology Inc.
$.15 par common
Data Architects, Inc.
$.01 par common
Dual-Lite, Inc.
No par common, $.01, stated value
Federal National Mortgage Association
Warrants (expire 02–25–01)
First Data Management Company, Inc.
$1.00 par common
Gulf Broadcast Company
$.10 par common
High Plains Oil Corporation
$.10 par common
Instinet Corporation
$.25 par capital
Joule, Inc.
$.01 par common
KMW Systems Corporation
$.10 par common
Meditrust Corporation
No par shares of beneficial interest
Norris Oil Co.
$.001 par common
Old National Bancorporation
$5.00 par common
Pacific Southwest Airlines
$.25 par common
Paxar Corporation
$.10 par common
Pro-Med Capital, Inc.
$.01 par common
Quincy Co-Operative Bank, The (Massachusetts)
$.10 par common
RLI Corporation
$1.00 par common
Galoob, Lewis Toys, Inc.
No par common
Gray & Company Public Communications International, Inc.
$.01 par common
Houston Oil Fields Company
Series C, 1.375% cumulative convertible, preferred
Intrawest Financial Corp.
$10.00 par common
Kent Electronics Corporation
No par common
Lane Company, Inc., The
$5.00 par common
Monfort of Colorado, Inc.
$1.00 par common
North Carolina Federal Savings and Loan Association
$.01 par common
Orbanco Financial Services Corporation
No par common
Par Pharmaceutical, Inc.
$.01 par common
Philips' Gloeilampen-Fabrieken, N.V.
Common New York Shares, Nfl 10 par value
Progressive Corporation, The
$1.00 par common
Riedel Environmental Technologies, Inc.
$.01 par common
Shelby Williams Industries, Inc.
$.10 par common
Staff Builders, Inc.
$.10 par common
Thermedics Inc.
$.10 par common
Town & Country Jewelry Manufacturing Corporation
$.01 par common
Union Federal Savings and Loan Association (California)
No par common
Valley Utah Bancorporation
No par common
Ziyad Inc.
No par common
Telesis Systems Corporation

$.10 par common
Thermo Process Systems, Inc.
$.10 par common
U.S. Design Corporation
$.03 par common
United Telecontrol Electronics Inc.
$.10 par common
Wright, William E. Company
$.50 par common

Additions to the OTC Margin List

A & W Brands, Inc.
$.01 par common
Action Auto Stores, Inc.
No par common
Advanced Marketing Services, Inc.
$.001 par common
Aldus Corporation
$.01 par common
Allcity Insurance Company
$1.00 par common
Alpha 1 Biomedicals, Inc.
$.001 par common
Alpharel, Inc.
No par common
Amerford International Corporation
$.05 par common
American Credit Card Telephone Company
$.01 par common
American Pacific Corporation
$.10 par common
Amplicon, Inc.
$.01 par common
ATN, Inc.
No par common
Attwoods, PLC
American Depository Receipts
Autospa Corporation
$.01 par common
Avery, Inc.
$.01 par common
Bando McGlocklin Capital Corporation
$.0667 par common
Barr Laboratories, Inc.
$.01 par common
Beazer, C. H. (Holdings) PLC.
American Depository Receipts
Berry Petroleum Company
Class A, $.01 par common
Big O Tires, Inc.
$.02 par common
Boys Markets, Inc.
$.01 par common
Brajdas Corporation
$.10 par common
Brandywine Savings & Loan Association (Pennsylvania)
$1.00 par common
Brougher Insurance Group, Inc.
No par common
Budget Rent a Car Corporation
$.01 par common
Cabot Medical Corporation
No par common, Warrants (expire 01-16-89)
Cal Rep Bancorp, Inc.
$1.00 par common
Calgon Carbon Corporation
$.01 par common
California Biotechnology, Inc.
Warrants (expire 12-31-91)
Cardinal Federal Savings Bank (Kentucky)
$1.00 par common
Care Plus, Inc.
$.01 par common, Class A, warrants (expire 08-13-90)
Carme, Inc.
$.0001 par common
Cash America Investments, Inc.
$.10 par common
Cato Corporation, The
Class A, $.33-⅓ par common
Cavalier Homes, Inc.
$.10 par common
Century Bancorp, Inc.
Class A, $1.00 par common
Chalone, Inc.
No par common
Checkrobot, Inc.
$.01 par common
Chemex Pharmaceuticals, Inc.
Warrants (expire 05-29-88)
Citipostal, Inc.
$.04 par common
Citizens Bank (North Carolina)
$2.50 par common
CK Federal Savings and Loan Association (North Carolina)
$1.00 par common
CMS Advertising, Inc.
$.01 par common
CMS Enhancements, Inc.
$.001 par common
Commerce Bancorp, Inc.
Series B, no par cumulative convertible preferred
Commodore Environmental Services, Inc.
$.10 par common
Costco Wholesale Corporation
$7-¼% convertible subordinated debentures
CSC Industries, Inc.
$.10 par common
Cumberland Federal Savings Bank (Kentucky)
$1.00 par common
Data Measurement Corporation
$.01 par common
Data Technology Corporation
$.001 par common
Dataflex Corporation
No par common
Davox Corporation
$.01 par common
Delphi Information Systems, Inc.
$.10 par common
Designs, Inc.
$.01 par common
Devcon International Corporation
$.10 par common
Digital Microwave Corporation
$.01 par common
Discovery Associates, Inc.
$.001 par common
Diversco, Inc.
$.01 par common
Donegal Group Inc.
$1.00 par common
Doskocil Companies, Inc.
$.40 par common
Downey Designs International, Inc.
$.01 par common
EA Engineering, Science & Technology, Inc.
$.01 par common
Easco Hand Tools, Inc.
$.01 par common
ECAD, Inc.
$.01 par common
Electrolux AB
Class B, American Depository Receipts
Elmwood Federal Savings Bank (Pennsylvania)
$1.00 par common
Empire Savings & Loan Association (New Jersey)
$.01 par common
Empire-Orr, Inc.
$.01 par common
Enex Resources Corporation
$.01 par common
Environmental Treatment & Technologies Corporation
8% convertible subordinated debentures
Envirosafe Services, Inc.
$.01 par common
Enzon, Inc.
$.01 par common, Warrants (expire 02-15-89)
Equitex, Inc.
$.001 par common
Essef Corporation
No par common
Falcon Oil & Gas Company, Inc.
$.01 par common
Fidelity Federal Savings Bank (Indiana)
$.01 par common
Finest Hours, Inc.
No par common
First Bancorp (North Carolina)
$5.00 par common
First Charter Corporation
$5.00 par common
First Federal of Western Pennsylvania
$1.00 par common
First Federal Savings & Loan Association of Salt Lake City (Utah)
$1.00 par common
First Federal Savings & Loan Association of Wooster
$1.00 par common
First Federal Savings & Loan of East Hartford (Connecticut)
$.01 par common
First Federal Savings Bank of Georgia
$1.00 par common
First Fidelity Bankcorp, Inc. (West Virginia)
$1.24 par common
First Financial Savings Association F.A. (Ohio)

$1.00 par common
First Golden Bancorporation
$1.00 par common
First National Bank Corp. (Michigan)
$3.125 par common
First of America Bank Corporation
Series E, convertible preferred; Series G, 9% convertible preferred
First Republic Bankcorp, Inc. (California)
$.01 par common
First Savings and Loan Association of Penns Grove (New Jersey)
$.01 par common
First Savings Bank, F.S.B. (New Mexico)
$1.00 par common
First Women's Bank, The (New York)
$5.00 par common
Fisher Transportation Services, Inc.
$.00001 par common
Freymiller Trucking, Inc.
$.01 par common
Gainsco, Inc.
$.01 par common
Gateway Federal Savings & Loan Association Ohio
$.01 par common
General Sciences Corporation
$.01 par common
Germantown Saving Bank (Pennsylvania)
$.10 par common
Giant Bay Resources, Ltd.
No par common
Gish Biomedical, Inc.
No par common
Gold Company of America
Depository units of limited partnership interest
Graphic Packaging Corporation
$.01 par common
Greater New York Savings Bank, The
$1.00 par common
Griffith Consumer Company
$.01 par common
Groff Industries, Inc.
$.50 par common
Hako Minuteman, Inc.
No par common
Hamptons Bancshares, Inc.
$4.00 par common
Harleysville National Corporation
$1.00 par common
Healthcare Compare Corporation
$.01 par common
Heritage Financial Corporation
$.90 par cumulative convertible preferred
Higby's, J., Inc.
$.01 par common
Hospital Staffing Services, Inc.
$.001 par common
Hosposable Products, Inc.
Class A, Warrants (expire 01-07-90)
HWC Distribution Corporation
$.01 par common
Integon Corporation
$1.00 par common
Intelligent Electronics, Inc.
$.01 par common
Interactive Technologies, Inc.
Warrants (expire 03-06-91)
Interfund Corporation
$.01 par common
International Broadcasting Corporation
$.001 par common
International Genetic Engineering, Inc.
No par common
International Microelectronic Products, Inc.
$.001 par common
International Mobile Machines Corporation
$.10 cumulative convertible preferred
Interspec, Inc.
$.001 par common
Itel Corporation
Class B, Series C, $1.00 par convertible preferred
J.P.M. Industries, Inc.
No par common
Jay Jacobs, Inc.
$.01 par common
KMS Industries, Inc.
$.01 par common
Komag, Incorporated
$.01 par common
LDI Corporation
$.01 par common
Lectec Corporation
$.01 par common
Lincoln Bancorp
No par common
Liposome Technology, Inc.
$.0001 par common
Magma Copper Company
Class B, $.01 par common
Marsam Pharmaceuticals, Inc.
$.01 par common
Maryland Federal Savings & Loan Association
$1.00 per common
Masco Industries, Inc.
6% convertible subordinated debentures
Mayfair Industries, Inc.
$.01 par common
McClain Industries, Inc.
No par common
Medmaster Systems, Inc.
$.01 par common, Warrants (expire 07-10-91)
Meridian Insurance Group, Inc.
No par common
Metropolitan Bancorp, Inc.
$5.00 par common
Metropolitan Consolidated Industries, Inc.
$.10 par common
Michael Foods, Inc.
$.01 par common
Microage, Inc.
$.01 par common
Microcom, Inc.
$.001 par common
Midwest Communications Corporation
$.01 par common
Multi-Local Media Corporation
$.01 par common
Mycogen Corporation
$.001 par common
Nellcor, Inc.
$.001 par common
New Jersey Steel Corporation
$.01 par common
North Star Universal, Inc.
$.25 par common
Northern Trust Corporation
Series B, $6.25 cumulative convertible preferred
Northwest Illinois Bancorp, Inc.
$5.00 par common
Nycor, Inc.
$1.00 par common
$1.00 par convertible exchangeable preferred
One Price Clothing Stores, Inc.
$.01 par common
Organogenesis, Inc.
$.01 par common
Osicom Technologies, Inc.
$.01 par common
Pacific Dunlop Limited
American Depository Receipts
Pacific International Services Corp.
No par common
Pentair, Inc.
$.10 cumulative convertible preferred
Peoples Savings Bank F.S.B. (Michigan)
$1.00 par common
Pharmatec, Inc.
$.03 par common
Phonemate, Inc.
$.10 par common
PHP Healthcare Corporation
$.01 par common
Pioneer Federal Savings & Loan Association (Virginia)
Series A, $1.00 par cumulative convertible preferred
Plains Resources, Inc.
$.02 par common
Proffitt's, Inc.
$.10 par common
Prospect Park Savings and Loan Association (New Jersey)
$1.00 par common
Quality Food Centers, Inc.
$.001 par common
Railroadmen's Federal Savings & Loan Association of Indianapolis
$.01 par capital
Raleigh Federal Savings Bank (North Carolina)
$1.00 par common
Raritan Bancorp, Inc.
$.01 par common
Regency Cruises, Inc.
$.001 par common
Rexworks, Inc.
$.12 par common
Rights Management Consultants, Inc.
$.01 par common
Roadway Motor Plazas, Inc.
$.01 par common

Ross Cosmetics Distribution Centers, Inc.
$.01 par common
Sahlen & Associates, Inc.
$.001 par common, Warrants (expire 1989)
Samna Corporation
$.01 par common
Schult Homes Corporation
No par common, Warrants (expire 03–01–91)
Schwartz Brothers, Inc.
$.10 par common
Security Savings and Loan Association (New Jersey)
$1.00 par common
Sensor Control Corporation
$.0008 par common
Sequent Computer Systems, Inc.
$.01 par common
Sharper Image Corporation
$.01 par common
Somerset Group, Inc., The
No par common
South Atlantic Financial Corporation
$.01 par common
Southold Savings Bank (New York)
$1.00 par common
Southstate Bank for Savings (Massachusetts)
$.10 par common
Southwall Technologies, Inc.
$.001 par common
St. Paul Bancorp, Inc.
$.01 par common
Sunresorts Ltd. N.V.
$.01 par common
Tecogen, Inc.
$.10 par common
Telecast, Inc.
$.01 par common
Texcel International, Inc.
$.001 par common
Topps Company, Inc., The
$.01 par common
Two Pesos, Inc.
$.01 par common
U.S. Minerals Exploration Company
No par common
Ungermann-Bass, Inc.
6–7/8% convertible subordinated debentures
United Bankshares, Inc. (West Virginia)
$2.50 par common
United Coasts Corporation
$.01 par common
Valley Capital Corporation
$1.00 par common
Vanderbilt Gold Corporation
$.10 par common
Vertex Communications Corporation
$.10 par common
VMS Strategic Land Trust
No par shares of beneficial interest
Washington Bancorp, Inc. (New Jersey)
$.10 par common
Washington Federal Savings Bank (Oregon)
$1.00 par common
Washington Federal Savings Bank (Washington, D.C.)
$.01 par common
Waterhouse Investor Services, Inc.
$.01 par common
Wellman, Inc.
$.001 par common
Westwood One, Inc.
$6.75% convertible subordinated debentures
Wolverine Exploration Company
No par common, Class A, Warrants (expire 12–31–93)
York Research Corporation
$.01 par common

By order of the Board of Governors of the Federal Reserve System acting by its Director of the Division of Banking Supervision and Regulation pursuant to delegated authority (12 CFR 265.2(c)(18)), July 27, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–17364 Filed 7–30–87; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 370

[Docket No. 70528–7128]

Exports to the Federated States of Micronesia and the Republic of the Marshall Islands

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: Export Administration is revising the Export Administration Regulations to reflect the newly independent status of the Republic of the Marshall Islands and the Federated States of Micronesia. Formerly, these areas were part of the Trust Territories of the Pacific Islands and no license was required for shipments from the United States to these areas. The Republic of the Marshall Islands and the Federated States of Micronesia are now included in Country Group V and shipments from the United States to these countries now require export licenses, either general or validated. This final rule also clarifies that the Northern Mariana Islands are now a commonwealth of the United States and are no longer part of the Trust Territories of the Pacific Islands..

EFFECTIVE DATE: July 31, 1987.

FOR FURTHER INFORMATION CONTACT: John Black, Regulations Branch, Export Administration, Telephone: (202) 377–2440.

SUPPLEMENTARY INFORMATION:

Background

In 1947 the United Nations charged the United States with trusteeship of the area known as the Trust Territories of the Pacific Islands. The Trust Territories included the Caroline Islands, the Marshall Islands, the Palau Islands, the Northern Mariana Islands, and other smaller islands. The relationship between the United States and the Trust Territories has been based upon the International Trusteeship System of the United Nations Charter.

In response to the desires of the peoples of the Trust Territories, the United States entered into political status negotiations with representatives of the peoples of the Federated States of Micronesia (representing all the areas of the Trust Territories except the Marshall Islands, the Palau Islands, and the Northern Mariana Islands) and the Republic of the Marshall Islands. These negotiations resulted in the "Compact of Free Association" signed by the United States and the Federated States of Micronesia (FSM) and the Republic of the Marshall Islands (RMI) on October 1, 1982 and June 25, 1983, respectively. The Compact of Free Association was then approved by majorities of the peoples of FSM and RMI in United Nations-observed plebiscites conducted on June 21, 1983 and September 7, 1983, respectively. The Republic of the Marshall Islands and the Federated States of Micronesia finally became independent countries in free association with the United States on October 21, 1986, and November 3, 1986, respectively. Although FSM and RMI rely on the United States for foreign policy guidance and national defense, they each administer their own domestic affairs.

In 1975 the people of the Northern Mariana Islands voted to become a commonwealth of the United States when the Trust Territory was dismantled. Thus, on November 5, 1986, the Northern Mariana Islands formally became the Commonwealth of the Northern Mariana Islands and the residents became citizens of the United States. The Trust Territories of the Pacific Islands now consist of only the Palau Islands.

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or

final Regulatory Impact Analysis has to be or will be prepared.

2. This rule does not contain a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

3. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to John Black, Office of Technology and Policy Analysis, Room 1622, Export Administration, International Trade Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 370

Exports, Reporting and recordkeeping requirements.

Accordingly, Part 370 of the Export Administration Regulations is amended as follows:

PART 370—[AMENDED]

1. The authority citation for 15 CFR Part 370 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 97–145 of December 29, 1981, and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223, 50 U.S.C. 1701 *et seq.*; E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 (October 2, 1986); E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

2. Section 370.4 is revised to read as follows:

§ 370.4 Shipments to territories, dependencies, and possessions of the United States, and to Trust Territories.

No license is required for shipments from the United States to the Commonwealth of Puerto Rico or the commonwealth of the Northern Mariana Islands (which does not include Guam, an island possession of the United States), or any territory, dependency, or possession of the United States as listed in *Schedule C-E, Classification of Country and Territory Designations for U.S. Export Statistics*, issued by the Bureau of the Census. Nor is a license required for shipments to the Trust Territory of the Pacific Islands (*i.e.* Palau).

Dated: July 28, 1987.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 87–17412 Filed 7–30–87; 8:45 am]

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15 CFR Part 375

[Docket No. 70606–7106]

Substitution of Form ITA–629P for the PRC End-User Certificate

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: On December 27, 1985 (50 FR 52900–52912), Export Administration issued a final rule implementing several amendments to the Export Administration Regulations (15 CFR Parts 368–399). Among these amendments was the establishment of a People's Republic of China (PRC) End-User Certificate. This Certificate must accompany license applications to export or reexport to the PRC commodities valued at more than $5,000 and identified by the code letter "A" on the Commodity Control List (Supplement No. 1 to § 399.1).

Some exporters have been unsure about when use of the PRC End-User Certificate is mandatory and when Form ITA–629P (Statement by Ultimate Consignee and Purchaser) may be substituted for it. This rule amends § 375.6 of the Regulations by specifically enumerating the types of transactions for which a Form ITA–629P may be substituted for the PRC End-User Certificate. This rule also adds a provision that the inclusion of the title of the contract and contract number on the Certificate is optional.

EFFECTIVE DATE: This rule is effective July 31, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Muldonian or John Black, Office of Technology and Policy Analysis, Export Administration, Telephone: (202) 377–2440.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to Vincent Greenwald, Office of Technology and Policy Analysis, Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared."

4. This rule contains collection of information requirements under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The Statement by Ultimate Consignee and Purchaser, Form ITA–629P, has been approved by the Office of Management and Budget under control number 0625–0136.

List of Subjects in 15 CFR Part 375

Exports, Reporting and recordkeeping requirements.

Accordingly, the Export Administration Regulations (15 CFR Parts 368–399) are amended as follows:

PART 375—[AMENDED]

1. The authority citation for Part 375 is revised to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

2. Section 375.6 is amended by removing the last sentence of paragraph (a), revising paragraph (b)(1), and adding a paragraph (c) reading as follows:

§ 375.6 People's Republic of China End-User Certificate.

* * * * *

(b) * * *

(1) Title of contract and contract number (optional);

(c) *Substitution of Form ITA–629P.* A Form ITA–629P (Statement by Ultimate Consignee and Purchaser) may be substituted for the PRC End-User Certificate under the following conditions:

(1) The commodity to be exported is described in an Advisory Note for Country Groups QWY on the Commodity Control List;

(2) The commodity to be exported is for demonstration only and will be returned to the U.S.;

(3) The commodity to be exported is for servicing previously exported equipment and is valued at $50,000 or less; or

(4) The Chinese do not issue an End-User Certificate because the end-user is not a Chinese entity.

Dated: July 27, 1987.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 87–17386 Filed 7–30–87; 8:45 am]

BILLING CODE 3510–DT–M

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15 CFR Parts 376, 379 and 399

[Docket No. 70643–7143]

Export Controls on Equipment and Technical Data Related to Nuclear Weapons Delivery Systems (Missile Systems)

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: With the concurrence of the Department of State, the Department of Commerce is establishing foreign policy export controls on certain types of equipment and related technical data that could be used in the development and production of missiles capable of delivering nuclear weapons. These controls are intended to limit the proliferation of such missiles around the world, to increase regional stability, and to publicly convey the United States' firm resolve to address an issue of mounting concern. They implement policies relating to non-proliferation of delivery systems that are also being implemented by several of our allies (Canada, the Federal Republic of Germany, France, Italy, Japan, and the United Kingdom). No new export license requirements are imposed on commodities by this Rule; all the commodities covered by this Rule already require a license for national security reasons. However, new validated license requirements are imposed for certain technical data covered by this Rule. The licensing policy on export of commodities and technical data that are controlled for foreign policy reasons by this Rule will be to consider applications on a case-by-case basis to determine whether such exports would contribute significantly to proliferation of such systems, except that applications that involve equipment for the manufacture of certain munitions items, controlled under ECCN 2018A on the Commodity Control List (Supplement No. 1 to 15 CFR 399.1), will generally be denied.

EFFECTIVE DATE: August 7, 1987.

FOR FURTHER INFORMATION CONTACT: Bruce Webb, Capital Goods Technology Center, Office of Technology and Policy Analysis, (OTPA), Telephone: (202) 377–3806); Eugene Christiansen, Capital Goods and Production Materials Branch, Office of Export Licensing: (202) 377–0894; Export Administration, Washington, DC 20230.

SUPPLEMENTARY INFORMATION: The United States, Canada, the Federal Republic of Germany, France, Italy, Japan, and the United Kingdom are major manufacturers and suppliers of missile-related hardware and technical data. Following multilateral negotiations, these countries have each established a common set of guidelines for export controls on missile-related hardware and technical data and a common specific listing of the commodities and technical data to be controlled. This international effort to control the spread of equipment and technical data related to strategic missiles will limit the risks of nuclear proliferation by controlling transfers that could contribute to the development and production of nuclear weapons delivery systems.

The United States Government intends to approach other foreign governments that produce missile-related commodities and technical data, to persuade them to adhere to the missile technology guidelines. This will be done to further ensure that there is no significant foreign availability of the controlled commodities or technical data.

In accordance with section 6 of the Export Administration Act of 1979, as amended, following preliminary consultation with the Congress and industry, the Foreign Policy Report regarding these controls was submitted to Congress on April 15, 1987.

Other aspects of the policy regarding nuclear weapons delivery systems are being administered under the International Traffic in Arms Regulations of the U.S. Department of State.

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Written comments (six copies) should be submitted to: Joan Maguire, Regulations Branch, Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections

603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule involves a collection of information subject to the requirements of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* This collection was approved by the Office of Management and Budget under control number 0625–0001.

List of Subjects

15 CFR Parts 376 and 399

Exports, Reporting and recordkeeping requirements.

15 CFR Part 379

Computer technology, exports, Reporting and recordkeeping requirements, Science and technology.

Accordingly, Parts 376, 379 and 399 of the Export Administration Regulations (15 CFR Parts 368 through 399) are amended as follows:

1. The authority citation for Part 376 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 97–145 of December 29, 1981, and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

2. The authority citations for Parts 379 and 399 continue to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 97–145 of December 29, 1981, and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223, 50 U.S.C. 1701 *et seq.*; E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985), as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 (October 2, 1986); E.O. 12571, October 27, 1986 (51 FR 39505, October 29, 1986).

PART 376—[AMENDED]

3. Section 376.18 is added to read as follows:

§ 376.18 Equipment and related technical data used in the development of missiles capable of delivering nuclear weapons.

In support of U.S. foreign policy to limit the proliferation of missiles that are capable of delivering nuclear weapons, an individual validated license is required to export certain equipment and technical data related to the development and production of such nuclear-capable missiles to Country Groups QSTVWYZ. The specific commodities appear within ECCNs 2018, 1118, 1131, 1133, 1302, 1357, 1361, 1362, 1385, 1460, 1485, 1501, 1516, 1517, 1518, 1519, 1522, 1529, 1531, 1564, 1565, 1568, 1587, 1595, 1715, and 1801.

(a) *Definition.* The term "missiles capable of delivering nuclear weapons" is defined as rocket systems (including ballistic missile systems, space launch vehicles, and sounding rockets) and unmanned air vehicle systems (including cruise missile systems, target drones, and reconnaissance drones) capable of delivering at least a 500 kilogram (kg) payload to a range of at least 300 kilometers (km).

(b) *Licensing policy.* Applications to export the commodities and related technical data subject to this policy will be considered on a case-by-case basis to determine whether the export would make a significant contribution to proliferation of missiles capable of delivering nuclear weapons. Applications involving those commodities controlled under this section that are classified under ECCN 2018A on the Commodity Control List (Supplement No. 1 to § 399.1) and related technical data will generally be denied.

(1) In reviewing license applications subject to the missile technology controls, the following factors are among those considered to determine what action should be taken on individual applications:

(i) The assessment of the end-use;

(ii) The significance of the export in terms of the potential development of missiles capable of delivering nuclear weapons;

(iii) The capabilities and objectives of the missile and space programs of the recipient country;

(iv) The non-proliferation credentials of the importing country; and

(v) The types of assurances or guarantees against use for nuclear weapons delivery purposes or proliferation given in a particular case.

(2) License applications involving contracts entered into prior to April 15, 1987, will be considered on a case-by-case basis consistent with applicable national security licensing criteria or other applicable controls. Such license applications must be accompanied by documentation sufficient to establish the existence of a contract.

(c) Commodities and technical data controlled under this section are not eligible for special licenses.

PART 379—[AMENDED]

4. In § 379.4, the word "and" that appears at the end of paragraph (d)(19) is removed; paragraph (d)(20) is redesignated as paragraph (d)(21) and new paragraph (d)(20) is added to read as follows:

§ 379.4 General License GTDR: Technical Data under Restriction.

* * * * *

(d) *Restrictions applicable to all destinations except Canada.* * * *

(20) Technical data for the design and production of commodities that are controlled for nuclear weapons delivery reasons (see § 376.18 and Supplement No. 4 of this part), including related software; and

* * * * *

5. Supplement No. 4 to Part 379 is amended by adding a new paragraph (4) to read as follows:

Supplement No. 4—Additional Specifications for Certain Data Requiring a Validated License to All Destinations Except Canada

* * * * *

(4) Technical data, including software, for the design and production of commodities that are listed below in numerical order by their respective Export Control Commodity Number. The commodities and related design and production technical data are controlled for nuclear weapons delivery reasons (see § 376.18).

ECCN 2018A: Specialized machinery, equipment, and gear for producing rocket systems (including ballistic missile systems, space launch vehicles, and sounding rockets) and unmanned air vehicle systems (including cruise missile systems, target drones, and reconnaissance drones) capable of delivering nuclear weapons (as defined in § 376.18(a)), their propulsion systems and components, and pyrolytic deposition and densification equipment.

ECCN 1118A: Production equipment for the development or production of rocket propellants.

ECCN 1131A: Pumps used in propulsion systems and related components as follows: Pumps (except vacuum pumps), having all flow contact surfaces made of 90 percent or more tantalum, titanium or zirconium, either separately or combined, and when designed to operate in vibrating environments of more than 12g rms between 20 Hz and 2000 Hz, except when such surfaces are made of materials containing more than 97 percent and less than 99.7 percent titanium.

ECCN 1133A: Valves used in propulsion systems and related components as follows: Servo valves designed for flow rates of 24 liters per minute or greater at a pressure of 250 bars, and having flow contact surfaces made of 90 percent or more tantalum, titanium or zirconium, either separately or combined, and when designed to operate in vibrating environments of more than 12g rms between 20 Hz and 2000 Hz, except when such surfaces are made of materials containing more than 97 percent and less than 99.7 percent titanium.

ECCN 1302A: Specially designed nozzles for producing pyrolitically derived materials formed on a mould, mandrel or other substrate from precursor gases that decompose in the 1,573 K (1,300 °C) to 3,173 K (2,900 °C) temperature range at pressures of

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133.3 Pa to 79.995 kPa. (Commodities described in this entire entry.)

ECCN 1357A: Equipment for the production of fibers covered by ECCN 1763A, or their composites as follows, and specially designed components and accessories therefor. (Commodities described in this entire entry.)

ECCN 1361A: Commodities described in entire entry, except for paragraph (e) under the "List of Wind Tunnels Controlled by ECCN 1361A."

ECCN 1362A: Vibration test equipment. (Commodities described in this entire entry.)

ECCN 1365A: Specially designed production equipment for gyroscopes (gyros), accelerometers and inertial equipment controlled by ECCN 1485A. (Commodities described in this entire entry.)

ECCN 1460A: Commodities described in paragraphs (c), and (d) as applicable to (c), under the "List of Nonmilitary Equipment Controlled by ECCN 1460A" for lightweight turbojet and turbofan engines (including turbocompound engines) that are small and fuel efficient.

ECCN 1485A: Commodities described in this entire entry (Note: Department of State, Office of Munitions Control, has jurisdiction over certain inertial system technical data (see Interpretation 21 of Supplement No. 1 to § 399.2)).

ECCN 1501A: Commodities described in paragraphs (b) (2) through (5) and (c) under the "List of Navigation, Direction Finding, Radar and Airborne Communication Equipment Controlled by ECCN 1501A" for launch and ground support equipment, including precision tracking systems usable for complete rocket systems and unmanned air vehicle systems described in § 376.18(a).

ECCN 1516A: Commodities described in paragraph (c) under the "List of Receivers and Specialized Parts and Accessories Controlled by ECCN 1516A" for telemetering and telecontrol equipment usable for: 1. Complete rocket systems and unmanned air vehicle systems described in § 376.18(a); and 2. launch and ground support of the above systems.

ECCN 1517A: Commodities described in paragraph (c) under the "List of Radio Transmitters and Components Controlled by ECCN 1517A" for telemetering and and telecontrol equipment usable for: 1. Complete rocket systems and unmanned air vehicle systems described in § 376.18(a); and 2. launch and ground support of the above systems.

ECCN 1518A: 1. Telemetering and telecontrol equipment usable for: 1. Complete rocket systems and unmanned air vehicle systems described in § 376.18(a); and 2. launch and ground support of the above systems.

ECCN 1519A: Commodities described in paragraph (c) under the "List of Equipment Controlled by ECCN 1519A" for single- and multi-channel communications transmission equipment as follows: 1. Telemetering and telecontrol equipment usable with complete rocket systems and unmanned air vehicle systems described in § 376.18(a), and 2. precision tracking systems for the above systems.

ECCN 1522A: Commodities described in paragraphs (b) and (c) under the "List of Lasers and Laser Systems Controlled by ECCN 1522A" as follows: 1. Test and alignment equipment for flight control systems usable in complete rocket systems and unmanned air vehicle systems described in § 376.18(a); and 2. precision tracking systems for the above systems.

ECCN 1529A: 1. Commodities described in paragraph (a) under the "List of Equipment Controlled by ECCN 1529A" for launch and ground support equipment useble for complete rocket systems and unmanned air vehicle systems described in § 376.18(a); and 2. commodities described in paragraph (b)(4) under the List when part of a test system described in ECCN 1361A or 1362A.

ECCN 1531A: Commodities described in paragraphs (a) and (c) through (e) under the "Illustrative List of Frequency Synthesizers Controlled by ECCN 1531A" as follows: 1. Avionics equipment usable in complete rocket systems and unmanned air vehicle systems described in § 376.18(a); 2. Vibration test equipment (ECCN 1362A) and wind tunnels (ECCN 1361A); and 3. Launch and ground support equipment usable for the systems described in § 376.18(a).

ECCN 1564A: A–D converters described in paragraph (d)(2)(D)(m)(1) under the "List of Electronic Component Assemblies, Sub-Assemblies, Printed Circuit Boards, and Microcircuits Controlled by ECCN 1564A" when usable in systems described in § 376.18(a) and having any of the following characteristics: Rated for continuous operation at temperatures from below −45 °C to above 55 °C; designed to meet military specifications for ruggedized equipment, or modified for military use; or designed for radiation resistance.

ECCN 1565A: 3. Specially designed analog computers or specially designed hybrid (combined analog/digital) computers that are described in paragraphs (c) through (d), and (h) as applicable to (d), under the "List of Electronic Computers and Related Equipment Controlled by ECCN 1565A" for modeling, simulation, or design integration of the following: Complete rocket systems and unmanned air vehicle systems described in § 376.18(a); and 2. Technical data for analog or digital computers and related equipment that provide special capabilities as described in paragraphs (a), (b), and (f) under the "List of Electronic Computers and Related Equipment Controlled by ECCN 1565A."

ECCN 1568A: A–D converters described in paragraph (k) under the "List of Equipment Controlled by ECCN 1568A" when usable in systems described in § 376.18(a) and having any of the following characteristics: Rated for continuous operation at temperatures from below −45 °C to above 55 °C; designed to meet military specifications for ruggedized equipment, or modified for military use; or designed for radiation resistance.

ECCN 1587A: Commodities described in paragraph (c) under the "List of Characteristics of Quartz Crystals and Assemblies Thereof Controlled by ECCN 1587A" when usable as launch and ground support equipment.

ECCN 1595A: Gravity meters (gravimeters), gravity gradiometers and specially designed components therefor, designed or modified for airborne or marine use, and having a static or operational accuracy of one milligal or better, with a time to steady-state registration of two minutes or less.

ECCN 1715A: Propellants and constituents as follows: High energy density fuels such as Boron Slurry, having an energy density of 40 x 10^6 joules/kg or greater.

ECCN 1801A: Propellants and constituents as follows: Polymeric substances, specifically: 1. Carboxy-terminated polybutadiene (CTPB), and 2. hydroxy-terminated polybutadiene (HTPB).

PART 399—[AMENDED]

6. In Supplement No. 1 to § 399.1 (the Commodity Control List), add a new paragraph reading *"Technical Data: Exports of certain related technical data require a validated license to all destinations except Canada (see § 379.4(d)(20))"* after the *"Special Licenses Available"* paragraph for the following entries:

A. In Group 0—Metal-Working Machinery: ECCN 2018;

B. In Group 1—Chemical and Petroleum Equipment: ECCNs 1118 and 1131, and 1133;

C. In Group 3—General Industrial Equipment: ECCNs 1302, 1357, 1361, 1362, and 1385;

D. In Group 5—Electronics and Precision Instruments: ECCNs 1516, 1517, 1519, 1522, 1529, 1531, 1564, 1565, 1568, 1587, and 1595;

E. In Group 7—Chemicals, Metalloids, Petroleum Products and Related Materials: ECCN 1715; and

F. In Group 8—Rubber and Rubber Products: ECCN 1801.

7. In Supplement No. 1 to § 399.1 (the Commodity Control List), add a new paragraph reading *"Technical Data: Exports of related technical data require a validated license to all destinations except Canada (see § 379.4(d) (5) and (20)). The Department of State, Office of Munitions Control, has jurisdiction over certain inertial system technical data (see Interpretation 21 of Supplement No. 1 to § 399.2)"* after the *"Special Licenses Available"* paragraph for the following entry: In Group 4—Transportation Equipment: ECCN 1485.

8. In Supplement No. 1 to § 399.1 (the Commodity Control List), add a new paragraph reading *"Technical Data: Exports of related technical data require a validated license to all destinations except Canada (see § 379.4(d) (3), (5), and (20))"* after the *"Special Licenses Available"* paragraph for the following entries: In Group 5—Electronics and Precision Instruments: ECCNs 1501, 1518.

9. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 0 (Metal-Working Machinery),

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ECCN 2018A is amended by revising the *"Reason for Control"* paragraph to read as follows:

2018A Specialized machinery, equipment, gear, and specially designed parts and accessories therefor, specially designed for the examination, manufacture, testing, and checking of arms, appliances, machines, and implements of war.

* * * * *

Reason for Control: National security; foreign policy. Foreign policy controls include controls on specialized machinery, equipment, and gear for producing rocket systems (including ballistic missile systems, space launch vehicles, and sounding rockets) and unmanned air vehicle systems (including cruise missile systems, target drones, and reconnaissance drones) capable of delivering nuclear weapons (as defined in § 376.18(a)), their propulsion systems and components, and pyrolytic deposition and densification equipment.

* * * * *

10. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 1 (Chemical and Petroleum Equipment), ECCNs 1118A, 1131A and 1133A are amended by revising the *"Reason for Control"* paragraphs of those entries to read as set forth below. In addition, the *"G–COM Eligibility"* paragraph of ECCN 1133A and the *"Special Licenses Available"* paragraphs of 1131A and 1133A are revised to read as set forth below.

1118A Equipment for the production of military explosives and solid propellants.

* * * * *

Reason for Control: National security; foreign policy. Foreign policy controls apply to production equipment for the production of rocket propellants.

* * * * *

1131A Pumps (except vacuum pumps listed under Entry 1129A) having any of the characteristics in paragraph (a) and (b) of the List below, and specially designed parts and accessories therefor.

* * * * *

Reason for Control: National security; nuclear non-proliferation; foreign policy. National security and nuclear non-proliferation controls apply to commodities defined in paragraphs (a) and (c) of the List below. Foreign policy controls apply only to pumps used in propulsion systems and related components that are described in paragraphs (b), and (c) as applicable to (b), of the List below for nuclear weapons delivery purposes as follows: Pumps (except vacuum pumps), having all flow contact surfaces made of 90 percent or more tantalum, titanium or zirconium, either separately or combined, and when designed to operate in vibrating environments of more than 12g rms between 20 Hz and 2000 Hz, except when such surfaces are made of materials containing more than 97 percent and less than 99.7 percent titanium.

Special Licenses Available: None available for commodities defined in paragraph (a) of the List below nor for commodities under foreign policy controls for nuclear weapons delivery purposes (§ 376.18(c)). See Part 373 for special licenses available for other commodities defined in ECCN 1131A.

* * * * *

1133A Valves, cocks and pressure regulators having all flow contact surfaces made of 90 percent or more tantalum, titanium, or zirconium, either separately or combined, except when such surfaces are made of materials containing more than 97 percent and less than 99.7 percent titanium; and specially designed parts and accessories therefor.

* * * * *

G–COM Eligibility: Commodities that meet technical specifications described in the Advisory Note under this entry regardless of end-use, subject to the prohibitions contained in § 371.2(c). This license does not apply to those commodities controlled for foreign policy reasons.

* * * * *

Reason for Control: National security; foreign policy. Foreign policy controls only apply to valves used in propulsion systems and related components for nuclear weapons delivery purposes as follows: Servo valves designed for flow rates of 24 liters per minute or greater at a pressure of 250 bars, and having flow contact surfaces made of 90 percent or more tantalum, titanium or zirconium, either separately or combined, and when designed to operate in vibrating environments of more than 12g rms between 20 Hz and 2000 Hz, except when such surfaces are made of materials containing more than 97 percent and less than 99.7 percent titanium.

Special Licenses Available: None for commodities under foreign policy controls for nuclear weapons delivery purposes (§ 376.18(c)). See Part 373 for special licenses available for other commodities defined in ECCn 1133A.

* * * * *

11. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), ECCNs 1302A, 1357A, 1361A, 1362A, and 1385A are amended by revising the *"Reason for Control"* paragraphs of those entries to read as set forth below. In addition, the *"Special Licenses Available"* paragraphs of ECCN 1361A and 1385A are revised to read as set forth below.

1302A Specially designed nozzles for producing pyrolitically derived materials formed on a mould, mandrel or other substrate from precursor gases that decompose in the 1,573K (1,300 °C) to 3,173K (2,900 °C) temperature range at pressures of 133.3 Pa to 19.995 kPa.

* * * * *

Reason for Control: National security; foreign policy. Foreign policy controls apply for nuclear weapons delivery purposes.

* * * * *

1357A Equipment for the production of fibers covered by ECCN 1763A, or their composites as follows, and specially designed components and accessories therefor.

* * * * *

Reason for Control: National security; foreign policy. Foreign policy controls apply for nuclear weapons delivery purposes.

* * * * *

1361A Test facilities and equipment for the design or development of aircraft or gas turbine aero-engines; and specially designed components, and accessories therefor.

* * * * *

Reason for Control: National security; foreign policy. Foreign policy controls apply to this entry, except for paragraph (e) of the List below, for nuclear weapons delivery purposes.

Special Licenses Available: None available for commodities under foreign policy controls for nuclear weapons delivery purposes (§ 376.18(c)). See Part 373 for special licenses available for other commodities defined in ECCN 1131A.

* * * * *

1362A Vibration test equipment.

* * * * *

Reason for Control: National security; nuclear non-proliferation; foreign policy. Foreign policy controls apply to vibration test equipment for nuclear weapons delivery purposes.

* * * * *

1385A Specially designed production equipment for compasses, gyroscopes (gyros), accelerometers and inertial equipment controlled by ECCN 1485A.

* * * * *

Reason for Control: National security; foreign policy. Foreign policy controls apply for nuclear weapons delivery purposes to specially designed production equipment for gyroscopes (gyros), accelerometers and inertial equipment controlled by ECCN 1485A (commodities described in this entire entry).

Special Licenses Available: None available for commodities under foreign policy controls for nuclear weapons delivery purposes (§ 376.18(c)). See Part 373 for special licenses available for other commodities defined in ECCN 1385A.

* * * * *

12. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 4 (Transportation Equipment), ECCNs 1460A and 1485A are amended by revising the "*Reason for Control*" and "*Special Licenses Available*" paragraphs of those entries to read as follows:

1460A Aircraft and helicopters, aero-engines, and aircraft and helicopter equipment.

* * * * *

Reason for Control: National security; foreign policy. Foreign policy controls apply for nuclear weapons delivery purposes to paragraphs (c), and (d) as applicable to (c), of the List below for lightweight turbojet and turbofan engines (including turbocompound engines) that are small and fuel efficient.

Special Licenses Available: None for commodities defined in paragraphs (a) and (b) of the List below nor for commodities under foreign policy controls for nuclear weapons delivery purposes (§ 376.18(c)). See Part 373 for special licenses available for other commodities defined in ECCN 1460A.

* * * * *

1485A Compasses, gyroscopes (gyros), accelerometers and inertial equipment and specially designed components therefor. (See also ECCN 1385A.)

* * * * *

Reason for Control: National security; foreign policy. Foreign policy controls apply for nuclear weapons delivery purposes.

Special Licenses Available: None available for commodities defined in paragraphs (f), (g), (h), and (i) of the List below. None available for commodities under foreign policy controls for nuclear weapons delivery purposes (§ 376.18(c)). See Part 373 for special licenses available for other commodities defined in ECCN 1485A.

* * * * *

13. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCNs 1501A, 1516A, 1517A, 1518A, 1519A, 1522A, 1529A, 1531A, 1564A, 1565A, 1568A, 1587A, and 1595A are amended by revising the *"Reason for Control"* paragraphs of those entries to read as set forth below. In addition, the *"Special Licenses Available"* paragraphs of those ECCNs, except for 1516A, are revised to read as set forth below.

1501A Navigation, direction finding, radar and airborne communication equipment.

* * * * *

Reason for Control: National security; foreign policy. Foreign policy controls apply to: 1. Paragraphs (a), (b)(1), and (c)(1) for Libya; and 2. nuclear weapons delivery non-proliferation controls. Nuclear weapons delivery non-proliferation controls apply to commodities described in paragraphs (b) (2) through (5) and (c) of the List below for launch and ground support equipment, including precision tracking systems usable for complete rocket systems and unmanned air vehicle systems described in § 376.18(a).

Special Licenses Available: None available for commodities under foreign policy controls for nuclear weapons delivery purposes (§ 376.18(c)). See Part 373 for special licenses available for other commodities defined in ECCN 1501A.

* * * * *

1516A Receivers, and specially designed components and accessories therefor. (For instruments using time compression of the input signal or FFT techniques associated with receivers, see ECCN 1522A(b)(4).

* * * * *

Reason for Control: National security; foreign policy including crime control and nuclear weapons delivery non-proliferation controls. Nuclear weapons delivery non-proliferation controls apply to commodities described in paragraph (c) under the List below for telemetering and telecontrol equipment usable for: 1. Complete rocket systems and unmanned air vehicle systems described in § 376.18(a); and 2. launch and ground support of the above systems.

* * * * *

1517A Radio transmitters, except radio relay communications equipment (for which see ECCN 1520A), and specially designed components therefor.

* * * * *

Reason for Control: National security; foreign policy. Foreign policy controls only apply to commodities described in paragraph (c) of the List below for telemetering and telecontrol equipment usable for: 1. Complete rocket systems and unmanned air vehicle systems described in § 376.18(a); and 2. launch and ground support of the above systems.

Special Licenses Available: None available for commodities under foreign policy controls for nuclear weapons delivery purposes (§ 376.18(c)). See Part 373 for special licenses available for other commodities defined in ECCN 1517A.

1518A Telemetering and telecontrol equipment suitable for use with aircraft (piloted or pilotless) or space vehicles, and test equipment specially designed for such equipment, except equipment specially designed to be used for remote control of toys such as model planes and boats and having electric field strength of not more than 200 microvolts per meter at a distance of 500 meters; and specially designed parts and accessories therefor. (Specify by name and model number.)

* * * * *

Reason for Control: National security; foreign policy. Foreign policy controls apply for nuclear weapons delivery non-proliferation purposes. Nuclear weapons delivery non-proliferation controls apply to: 1. Telemetering and telecontrol equipment usable for: 1. Complete rocket systems (including ballistic missile systems, space launch vehicles, and sounding rockets) and unmanned air vehicle systems (including cruise missile systems, target drones, and reconnaissance drones) capable of delivering at least a 500 kg payload to a range of at least 300 km; and 2. launch and ground support of the above missiles.

Special Licenses Available: None available for commodities under foreign policy controls for nuclear weapons delivery purposes (§ 376.18(c)). See Part 373 for special licenses available for other commodities defined in ECCN 1518A.

* * * * *

1519A Single- and multi-channel communications transmission equipment, including terminal, intermediate amplifier or repeater equipment and multiplex busses and multiplex equipment used for communications within or between communication or other equipment and systems by line, cable, optical fiber or radio means, and associated modems and multiplex equipment.

* * * * *

Reason for Control: National security; foreign policy. Foreign policy controls apply for nuclear weapons delivery purposes to single- and multi-channel communications transmission equipment described in paragraph (c) under the List below as follows: 1. Telemetering and telecontrol equipment usable with complete rocket systems and unmanned air vehicle systems described in § 376.18(a); and 2. precision tracking systems usable for the above systems.

Special Licenses Available: None available for commodities controlled under foreign policy controls for nuclear weapons delivery purposes (§ 376.18(c)). See Part 373 for special licenses available for other commodities defined in ECCN 1519A.

* * * * *

1522A Lasers and laser systems including equipment containing them.

* * * * *

Reason for Control: National security; nuclear non-proliferation; foreign policy. Foreign policy controls apply for nuclear weapons delivery non-proliferation purposes to commodities that are described in paragraphs (b) and (c) under the List below as follows: 1. Test and alignment equipment for flight control systems usable in the systems described in § 376.18(a); and 2. precision tracking systems usable with the above systems.

Special Licenses Available: Special licenses are *not* available for equipment of the following description: Machine tools containing or designed to contain lasers described in ECCN 1522A; single aperture lasers with an output greater than one thousand Joules per nanoseconds; and tunable diode lasers. Special licenses are also not available for commodities under foreign policy controls for nuclear weapons delivery purposes (§ 376.18(c)). See Part 373 for special licenses available for other commodities defined in ECCN 1522A.

* * * * *

1529A Electronic measuring, calibrating, counting, testing, or time interval measuring equipment, whether or not incorporating frequency standards.

* * * * *

Reason for Control: National security; nuclear non-proliferation; foreign policy. Paragraphs (g) and (h) of the List below are controlled for national security and nuclear non-proliferation reasons. Foreign policy controls apply for nuclear weapons delivery purposes to: 1. Commodities described in paragraph (a) under the List below for launch and ground support equipment usable for complete rocket systems and unmanned air vehicle systems described in § 376.18(a); and 2. commodities described in paragraph (b)(4) under the List below when part of a test system described in ECCN 1361A or 1362A.

Special Licenses Available: Certain items under paragraph (b)(4) of the List below are excluded from special licenses—see 1529, Supplement No. 1 to Part 373. No special licenses are available for commodities under foreign policy controls for nuclear weapons delivery purposes (§ 376.18(c)). See Part 373 for special licenses available for other commodities defined in ECCN 1529A.

* * * * *

1531A Frequency synthesizers.

* * * * *

Reason for Control: National security; foreign policy. Foreign policy controls apply to nuclear weapons delivery non-proliferation controls on commodities described in paragraphs (a) and (c) through (e) as follows: 1. Avionics equipment usable in complete rocket systems and unmanned air vehicle systems described in § 376.18(a); 2. Vibration test equipment (ECCN 1362A) and wind tunnels (ECCN 1361A); and 3. launch and ground support equipment usable for the systems described in § 376.18(a).

Special Licenses Available: None available for commodities under foreign policy controls for nuclear weapons delivery purposes (§ 376.18(c)). See Part 373 for special licenses available for other commodities defined in ECCN 1531A.

* * * * *

1564A Electronic component assemblies, sub-assemblies, printed circuit boards, substrates and microcircuits, including packages therefor.

* * * * *

Reason for Control: National security; foreign policy. Foreign policy controls apply to A–D converters described in paragraph (d)(2)(D)(m)(1) under the List below for nuclear weapons delivery purposes and having any of the following characteristics: Rated for continuous operation at temperatures from below −45 °C to above 55 °C; designed to meet military specifications for ruggedized equipment, or modified for military use; or designed for radiation resistance.

Special Licenses Available: None available for commodities under foreign policy controls for nuclear weapons delivery purposes (§ 376.18(c)). See Part 373 for special licenses available for other commodities defined in ECCN 1564A.

* * * * *

1565A Electronic computers, "related equipment," equipment or systems containing electronic computers; and specially designed components and accessories for these electronic computers and "related equipment".

* * * * *

Reason for Control: National security; foreign policy; nuclear non-proliferation. Foreign policy controls include nuclear weapons delivery non-proliferation controls on: 1. Specially designed analog computers or specially designed hybrid (combined analog/digital) computers that are described in paragraphs (c), (d), and (h) as applicable to (d), under the List below. Controls apply when these computers are combined with specially designed software, for modeling, simulation, or design integration of the following: complete rocket systems and unmanned air vehicle systems described in § 376.18(a); 2. analog or digital computers and related equipment that contain design features as described in paragraphs (a), (b), and (f) under the List below; and 3. digital computers used as ancillary equipment for test facilities and equipment that are controlled by ECCNs 1361A and 1362A for nuclear weapons delivery non-proliferation purposes.

Special Licenses Available: None available for electronic computers exceeding a processing data rate of 20 million bits per second, except as noted below. None available for commodities under foreign policy controls for nuclear weapons delivery purposes (§ 376.18(c)). Electronic computers, analog or digital (including digital differential analyzers), are excluded from the Project License procedure.

* * * * *

1568A Equipment as defined in the List below.

* * * * *

Reason for Control: National security; nuclear non-proliferation; foreign policy. Nuclear non-proliferation controls apply to paragraphs (b), (d), (f), (g), (j), (k), and (m) of the List below. (Nuclear non-proliferation controls do not apply to those countries listed in Supp. No. 2 or 3 to Part 373.) Foreign policy controls apply to A–D converters described in paragraph (k) for nuclear weapons delivery non-proliferation purposes when usable in systems described in § 376.18(a) and having any of the following characteristics: Rated for continuous operation at temperatures from below −45 °C to above 55 °C; designed to meet military specifications for ruggedized equipment, or modified for military use; or designed for radiation resistance.

Special Licenses Available: None available for commodities under foreign policy controls for nuclear weapons delivery purposes (§ 376.18(c)). See Part 373 for special licenses available for other commodities defined in ECCN 1568A.

* * * * *

1587A Quartz crystals and assemblies thereof in any stage of fabrication (i.e., worked, semi-finished or mounted).

* * * * *

Reason for Control: National security; foreign policy. Foreign policy controls only apply to commodities described in paragraph (c) under the List below when usable as launch and ground support equipment.

Special Licenses Available: None available for commodities under foreign policy controls for nuclear weapons delivery purposes (§ 376.18(c)). See Part 373 for special licenses available for other commodities defined in ECCN 1587A.

* * * * *

1595A Gravity meters (gravimeters), gravity gradiometers and specially designed components therefor, *except gravity meters for land use having static accuracies of 100 microgal or less accurate, and land gravity meters of the Worden type.*

* * * * *

Reason for Control: National security; foreign policy. Foreign policy controls apply for nuclear weapons delivery purposes to gravity meters (gravimeters), gravity gradiometers and specially designed components therefor, designed or modified for airborne or marine use, and having a static or operational accuracy of one milligal or better, with a time to steady-state registration of two minutes or less.

Special Licenses Available: None available for commodities under foreign policy controls for nuclear weapons delivery purposes (§ 376.18(c)). See Part 373 for special licenses available for other commodities defined in ECCN 1595A.

* * * * *

14. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), ECCN 1715A is amended by revising the *"Reason for Control"* and *"Special Licenses Available"* paragraphs to read as follows:

1715A Boron, as described in this entry.

* * * * *

Reason for Control: National security; nuclear non-proliferation; foreign policy. Nuclear controls do not apply to paragraphs (c) (2) and (3). Foreign policy controls apply for nuclear weapons delivery purposes to propellants and constituents as follows: high energy density fuels such as Boron Slurry, having an energy density of 40×10^6 joules/kg or greater.

Special Licenses Available: None available for paragraphs (a), (b) and (c)(1) of the List below. None available for commodities under foreign policy controls for nuclear weapons delivery purposes (§ 376.18(c)). See Part 373 for special licenses available for other commodities defined in ECCN 1715A.

* * * * *

15. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 8 (Rubber and Rubber Products), ECCN 1801A is amended by revising the *"Reason for Control"* and *"Special Licenses Available"* paragraphs to read as follows:

1801A Synthetic rubber.

* * * * *

Reason for Control: National security; foreign policy. Foreign policy controls apply for nuclear weapons delivery purposes to propellants and constituents as follows: Polymeric substances, specifically: 1. Carboxy-terminated polybutadiene (CTPB), and 2. hydroxy-terminated polybutadiene (HTPB).

Special Licenses Available: None available for commodities under foreign policy controls for nuclear weapons delivery purposes (§ 376.18(c)). See Part 373 for special licenses available for other commodities defined in ECCN 1801A.

* * * * *

Dated: July 27, 1987.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 87-17299 Filed 7-30-87; 8:45 am]

BILLING CODE 3510-DT-M

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15 CFR Parts 385 and 399

[Docket No. 70635-7136]

Export Controls on Certain Chemicals to Iran, Iraq, Syria and Worldwide Destinations

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Department of Commerce is imposing foreign policy controls on the export of certain chemicals to prevent their use in chemical warfare. Five chemicals will be controlled to all destinations except 18 industrialized nations and the export of eight other chemicals will be added to those already controlled to Iran, Iraq, and Syria. The five chemicals being controlled worldwide are: Dimethyl methylphosphonate, methyl phosphonyldichloride, methyl phosphonyldifluoride, phosphorous oxychloride, and thiodiglycol.

The eight additional chemicals being controlled to Iran, Iraq, and Syria are N,N-diisopropylaminoethane-2-thiol; N,N-diisopropylaminoethyl-2-chloride; dimethyl phosphite (dimethyl hydrogen phosphite); 3-hydroxy-1-methylpiperidine; phosphorous trichloride; 3-quinuclidinol; thionyl chloride; and trimethyl phosphite.

The licensing policy on exports of the chemicals being added by this rule will be to deny licenses to Iran, Iraq, and Syria unless the export is being made pursuant to a contract entered into before July 6, 1987.

Dimethyl phosphite, methyl phosphonyldichloride, and 3-quinuclidinol are also already controlled to all Country Groups for national security reasons.

The purpose of the worldwide foreign policy control on the five chemicals is to prevent their use in chemical warfare and to harmonize U.S. export controls with the controls of the 18 industrialized nations. The 18 industrialized nations are Australia, Belgium, Canada, Denmark, the Federal Republic of Germany, France, Greece, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Switzerland, and the United Kingdom. Because they already have controls,

these countries are excepted from the U.S. licensing controls being imposed on the five chemicals. The policy on export of these five chemicals to destinations other than Iran, Iraq, Syria, and Country Groups S and Z will be to generally approve licenses.

These regulations will restrict access by Iran, Iraq and Syria to U.S.-origin chemicals for use in chemical warfare, while publicly conveying U.S. opposition to the use of chemical weapons. The regulations are issued in consultation with the Department of State and in compliance with the requirements of the Export Administration Act of 1979, as amended (the Act). The foreign policy report to Congress regarding the imposition of the controls, which is required by section 6 of the Act, was submitted on July 6, 1987.

EFFECTIVE DATE: July 31, 1987.

FOR FURTHER INFORMATION CONTACT: Jim Seevaratnam, Capital Goods Technology Center, Office of Technology and Policy Analysis, Department of Commerce, Washington, DC 20230, Telephone: (202) 377–2279.

SUPPLEMENTARY INFORMATION

Savings Clause

Shipments of dimethyl methylphosphonate, methyl phosphonyldifluoride, phosphorous oxychloride, and thiodiglycol to Country Groups T & V, except Iran, Iraq, or Syria, that were removed from general license authorizations as a result of this regulation and were on dock for lading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export pursuant to actual orders for export before August 14, 1987, may be exported under the previous general license provisions up to and including August 28, 1987. Any such commodity not actually exported before midnight August 28, 1987, requires a validated export license.

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Written comments (six copies) should be submitted to: Joan Maguire, Regulations Branch, Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule mentions a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This collection of information has been approved by the Office of Management and Budget under control number 0625–0001.

List of Subjects

15 CFR Part 385

Communist countries, Exports, Iran, Iraq, Syria.

15 CFR Part 399

Exports, Iran, Iraq, Recordkeeping and reporting requirements, Syria.

Accordingly, Parts 385 and 399 of the Export Administration Regulations (15 CFR Parts 368–399) are amended as follows:

1. The authority citation for 15 CFR Parts 385 and 399 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1958); Pub. L. 95–223, 50 U.S.C. 1701 *et seq.*; E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985), as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 (October 2, 1986); E.O. 12571, October 27, 1986 (51 FR 39505, October 29, 1986).

PART 385—[AMENDED]

2. In § 385.4, paragraph (e) is revised to read as follows:

§ 385.4 Country Groups T & V.

* * * * *

(e) *Iran, Iraq, and Syria.* In support of U.S. foreign policy, and particularly U.S. policies of opposing prohibited use of chemical weapons and maintaining neutrality in the Iran/Iraq war and of promoting a mediated end to that war, an individual validated license is required to export from the United States N,N-diisopropylaminoethane-2-thiol, N,N-diisopropylaminoethyl-2-chloride, dimethylamine, dimethylamine hydrochloride, dimethyl phosphite (dimethyl hydrogen phosphite), ethylene chlorohydrin (chloroethanol), 3-hydroxy-1-methylpiperidine, phosphorous trichloride, potassium fluoride, 3-quinuclidinol, thionyl chloride, and trimethyl phosphite to Iran, Iraq, and Syria. Applications for validated licenses will be considered on a case-by-case basis. Applications will generally be denied where there is reason to believe that these chemicals will be used in producing chemical weapons or will otherwise be devoted to chemical warfare purposes. However, applications for export of dimethylamine, dimethylamine hydrochloride, ethylene chlorohydrin (chloroethanol), and potassium fluoride to Syria will generally be approved when the export is in performance of a contract or agreement entered into before April 28, 1986. Applications for export of N,N-diisopropylaminoethane-2-thiol; N,N-diisopropylaminoethyl-2-chloride; dimethyl phosphite (dimethyl hydrogen phosphite); 3-hydroxy-1-methylpiperidine; phosphorous trichloride; 3-quinuclidinol; thionyl chloride; and trimethyl phosphite to Iran, Iraq, and Syria will generally be approved when the export is in performance of a contract or agreement entered into before July 6, 1987. In the absence of a contract as described above, applications to export chemicals listed in this section to Iran, Iraq, or Syria will generally be denied. The reexport provisions of 15 CFR Part 374 and the provisions of § 376.12 are not applicable to the foreign policy controls covered by paragraph (e) of this section. However, the export of these commodities from the United States to any destination with knowledge that they will be reexported, directly or indirectly, in whole or in part, to Iran, Iraq or Syria is prohibited without a validated license.

PART 399—[AMENDED]

3. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids,

Petroleum Products and Related Materials), ECCN 4707B is amended by revising the *Reason for Control* paragraph to read as follows:

4707B (a) Chemicals, as described in this entry; (b) Synthetic organic agricultural chemicals, as described in this entry.

Controls for ECCN 4707B

* * * * *

Reason for Control: National security. Foreign policy controls also apply to dimethyl phosphite (dimethyl hydrogen phosphite) and 3-quinuclidinol for export to Iran, Iraq, and Syria and methyl phosphonyldichloride for export to all destinations except Australia, Belgium, Canada, Denmark, the Federal Republic of Germany, France, Greece, Ireland, Italy, Japan, Luxemburg, the Netherlands, New Zealand, Norway, Portagal, Spain, Switzerland, and the United Kingdom.

* * * * *

4. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), a new entry 4798B is added (in numerical order, disregarding the first digit), to read as follows:

4798B Dimethyl methylphosphonate, methyl phosphonyldifluoride, phosphorous oxychloride, and thiodiglycol.

Controls for ECCN 4798B

Unit: Report in "$ value."

Validated License Required: All destinations except Australia, Belgium, Canada, Denmark, the Federal Republic of Germany, France, Greece, Ireland, Italy, Japan, Luxemburg, the Netherlands, New Zealand, Norway, Portugal, Spain, Switzerland, and the United Kingdom.

GLV $ Value Limit: $0 for all destinations.

Processing Code: CM

Reason for Control: Foreign policy.

Special Licenses Available: None.

Special Foreign Policy Controls: This validated licensing requirement is maintained for all destinations except those countries cited above to prevent diversion to Iran, Iraq, and Syria for use in chemical warfare. Applications for export to Iran, Iraq, and Syria will be denied.

5. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), ECCN 5799D is amended by replacing the "D" in the ECCN heading and "Controls for ECCN 5799D" heading with "C", and by revising the *Validated License Required* and *Reason for Control* paragraphs to read as follows:

5799C Other chemicals, chemical materials and products, plastic materials, regenerated cellulose, artificial resins, and miscellaneous related materials and products, n.e.s., except those listed in Supp. No. 1 to § 399.2, Interpretation 24.

Controls for ECCN 5799C

* * * * *

Validated License Required: Country Groups QSWYZ, Afghanistan and the People's Republic of China. A validated license also is required for export of N,N-diisopropylaminoethane-2-thiol; N,N-diisopropylaminoethyl-2-chloride; dimethylamine hydrochloride; 3-hydroxy-1-methylpiperidine; and trimethyl phosphite to Iran, Iraq, and Syria.

* * * * *

Reason for Control: National security; foreign policy. Foreign policy controls apply only to exports of N,N-diisopropylaminoethane-2-thiol; N,N-diisopropylaminoethyl-2-chloride; dimethylamine hydrochloride; 3-hydroxy-1-methylpiperidine; and trimethyl phosphite to Iran, Iraq, and Syria.

* * * * *

6. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), ECCN 6799G is amended by revising the *Validated License Required* paragraph to read as follows:

6799G Chemicals, chemical materials and products, plastic materials, regenerated cellulose, artificial resins, and miscellaneous related materials and products, n.e.s., listed in Supp. No. 1 to § 399.2, Interpretation 24.

Controls for ECCN 6799G

* * * * *

Validated License Required: Country Groups SZ, *except that a validated license is not required for exports to Libya (Country Group S) of medicines and medical products.* A validated license also is required for exports of dimethylamine, ethylene chlorohydrin (chloroethanol), phosphorous trichloride, potassium fluoride, and thionyl chloride to Iran, Iraq, and Syria.

* * * * *

7. In Supplement No. 1 to § 399.2, in Interpretation 24, in the list entitled "Organic Chemicals," the entry for "thiodiglycol" is removed, and in the list entitled "Inorganic Chemicals, Elements, Acids, Oxides, Hydroxides, Peroxides, and Halogen Salts," the entry "phosphorus oxychloride" is removed and footnotes are added to the entries "phosphorous trichloride" and "thionyl chloride" to read as set forth below.

* * * * *

Interpretation 24: Chemicals

* * * * *

Inorganic Chemicals, Elements, Acids, Oxides, Hydroxides, Peroxides, and Halogen Salts

* * * * *

Phosphorous trichloride [1]

* * * * *

Thionyl chloride [2]

* * * * *

Dated: July 27, 1987.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 87-17298 Filed 7-30-87; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 74

[Docket No. 83C-0127]

Confirmation of Effective Date for D&C Red No. 9; Identity

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of July 7, 1987, for the final rule that amended the color additive regulations to modify the manufacturing process for D&C Red No. 9.

EFFECTIVE DATE: Effective date confirmed: July 7, 1987.

FOR FURTHER INFORMATION CONTACT: Gerad L. McCowin, Center for Food Safety and Applied Nutrition (HFF-330), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5676.

SUPPLEMENTARY INFORMATION: In the Federal Register of June 5, 1987 (52 FR 21302), FDA amended 21 CFR Part 74 of the color additive regulations in 21 CFR 74.1309 by revising paragraph (a) to clarify the removal of excess soluble barium in the manufacture of D&C Red No. 9.

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[1] A validated license is required for export of phosphorous trichloride to Iran, Iraq, and Syria

[2] A validated license is required for export of thionyl chloride to Iran, Iraq, and Syria

FDA gave interested persons until July 6, 1987, to file objections or requests for a hearing. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA concludes that the final rule published in the **Federal Register** of June 5, 1987, should be confirmed.

List of Subjects in 21 CFR Part 74

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the June 5, 1987, final rule. Accordingly, the amendments promulgated thereby became effective July 7, 1987.

Dated: July 27, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87–17372 Filed 7–30–87; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Parts 74 and 82

[Docket No. 83N–0009]

FD&C Blue No. 2; Termination of Stay and Establishment of Effective Date

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is terminating the stay and establishing the effective date of the final rule permanently listing FD&C Blue No. 2 as a color additive for use in food and ingested drugs. The regulations had been stayed by the filing of objections.

DATE: This document terminates the stay of, as well as establishes the effective date of July 31, 1987, for, 21 CFR 74.102, 74.1102, and 82.102.

FOR FURTHER INFORMATION CONTACT: Geraldine E. Harris, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–426–9483.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 4, 1983 (48 FR 5252), FDA published a final rule that amended the color additive regulations by permanently listing FD&C Blue No. 2 for use in food and ingested drugs. The final rule added new § 74.102 (21 CFR 74.102) to allow for the use of FD&C Blue No. 2 in coloring foods except where standards of identity preclude such use. Additionally, the final rule amended the color additive regulations by revising § 74.1102 (21 CFR 74.1102) to conform the identity to § 74.102(a)(1) and to allow for the use of FD&C Blue No. 2 as a color additive for use in ingested drugs and to conform the specification for this use to § 74.102(b). The final rule also amended § 82.102 (21 CFR 82.102) by conforming the identity and specifications to the requirements of § 74.102 (a)(1) and (b) respectively.

In the **Federal Register** of April 29, 1983 (48 FR 19364), FDA announced that it had received objections and a request for a hearing on those objections. Because of the objections, under section 701(e)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 371(e)(2)), the regulations (48 FR 5252) that permanently listed FD&C Blue No. 2 were stayed pending the agency's review of the objections. FDA stayed the effectiveness of §§ 74.102, 74.1102, and 82.102 in the April 29, 1983, final rule (see 48 FR 19365).

In the **Federal Register** of November 7, 1983 (48 FR 51145), the Commissioner of Food and Drugs announced the Commissioner's decision to grant a formal evidentiary public hearing in accordance with 21 CFR Part 12 to Public Citizen's Health Research Group pursuant to its timely objection and request for a hearing.

In the **Federal Register** of March 16, 1987 (52 FR 8113), FDA published a notice announcing the availability of the Commissioner's decision on the petition seeking permanent listing of FD&C Blue No. 2 as a color additive for general use in food and ingested drugs. In that decision, the Commissioner determined that FD&C Blue No. 2 has been shown to be safe for these uses.

Because the Commissioner has taken final action upon the objections, the effectiveness of the final rule is no longer stayed by the provisions of section 701(e)(2) of the act. Thus, the Commissioner hereby terminates the stay of the regulations and establishes the effective date of July 31, 1987, for the regulations.

On June 2, 1987, the Health Research Group filed a petition for review of the Commissioner's decision with the United States Court of Appeals for the District of Columbia Circuit. However, the filing of this petition for review does not affect the effective date for the regulation. The Commissioner's decision and the notice of availability inadvertently omitted a reference to the effective date. The Commissioner is hereby amending the order to make clear that the effective date is July 31, 1987.

List of Subjects

21 CFR Part 74

Color additives, Foods, Drugs.

21 CFR Part 82

Color additives, Foods, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701(e), 706 (b), (c), and (d), 70 Stat. 919 as amended, 74 Stat. 399–403 (21 U.S.C. 371(e), 376 (b), (c), and (d)) and under the authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), the stay of effectiveness of §§ 74.102, 74.1102, and 82.102 is terminated. Accordingly, the amendments promulgated thereby become effective July 31, 1987.

Dated: July 27, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87–17370 Filed 7–30–87; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 09–87–11]

Special Local Regulations; Stroh's Montreux Detroit Jazz Festival Fireworks, Detroit River

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Stroh's Montreux Detroit Jazz Festival Fireworks Display. This event will be held on the Detroit River on September 3, 1987 from 9:45 P.M. to 10:15 P.M. In case of inclement weather, the event will be held on September 4, 1987. The regulations are needed to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATES: These regulations are effective from 7:00 P.M. on September 3, 1987, to 11:00 P.M. on September 4, 1987.

FOR FURTHER INFORMATION CONTACT: CWO Gerald M. Trackim, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522–3982.

SUPPLEMENTARY INFORMATION: On June 8, 1987 the Coast Guard published a notice of proposed rule making in the **Federal Register** for these regulations (52

FR 21604). Interested persons were requested to submit comments and no comments were received.

Drafting Information

The drafters of this regulation are CWO Gerald M. Trackim, project officer, Office of Search and Rescue and LCDR C.V. Mosebach, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The Stroh's Montreux Detroit Jazz Festival Fireworks Display will be conducted on the Detroit River on September 3, 1987. This event will have falling ash and debris and an unusually large concentration of spectator boats which could pose hazards to navigation in the area. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (U.S. Coast Guard Group, Detroit, MI).

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectator craft into the area for the duration of the event. This should have a favorable impact on commercial facilities providing services to the spectators. Any impact on commercial traffic in the area will be negligible.

Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended to add a temporary § 100.35–0911 to read as follows:

§ 100.35–0911 Stroh's Montreux Detroit Jazz Festival Fireworks Display, Detroit River.

(a) *Regulated Area.* (1) The following area will be closed to vessel navigation or anchorage for vessels of 65 feet in length or greater from 7:00 P.M.(local time) until 11:00 P.M. on September 3, 1987:

The U.S. waters of the Detroit River between the Ambassador Bridge and the downstream end of Belle Isle.

(2) The following portion of the Detroit River will be closed to all vessel traffic, from 8:00 P.M.(local time) until 11:00 P.M. on September 3, 1987:

The area bound on the south by the International Boundary, on the west by 083 degrees 03 minutes West, on the east by 083 degrees 02 minutes West, and the north by the U.S. shoreline.

(b) *Special Local Regulations.* (1) Vessels under 65 feet shall begin clearing the shipping channels at 11:00 P.M. local or when the fireworks display ends, whichever comes first.

(2) Fireworks barges will be moved to positions in the Detroit River after 6:30 P.M. on September 3, 1987, and will be removed immediately after the fireworks display. The barges will be located within 950 feet of the U.S. riverbank opposite each of the following landmarks: Cobo Hall, Veterans Memorial Bldg., and the Ford Auditorium. Vessel masters shall pass with caution. Each barge will be marked in accordance with rule 30 of the Inland Rules of the road for a vessel at anchor, and a fixed white light on each corner of the barges will be shown at night and an orange buoy with horizontal white bands will mark each special mooring.

(3) If the weather on September 3, 1987 is inclement, the fireworks display and the river closure will be postponed until 7:00 P.M. to 11:00 P.M. on September 4, 1987. If postponed, notice will be given on September 3, 1987 over the U.S. Coast Guard Radio Net.

(4) Vessels desiring to transit the restricted area may do so only with prior approval of the Patrol Commander and when so directed by that officer. The Patrol Commander may be contacted on channel 16 (156.8 MHz) by the call sign "Coast Guard Patrol Commander". Vessels will be operated at a "no wake" speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. These rules shall not apply to participants in the event or vessels of the patrol, in the performance of their assigned duties.

(5) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with the orders of the Patrol Vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(6) This section is effective from 7:00 P.M on September 3, 1987, to 11:00 P.M. on September 4, 1987.

Dated: July 22, 1987.

A.M. Danielsen,

RADM, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 87–17354 Filed 7–30–87; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[CCGD9 87–06]

Safety Zone; Lake Michigan Waters Offshore at Michigan City, the Michigan City Entrance Channel and Washington Park Marina

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a Safety Zone for the Lake Michigan waters offshore of Michigan City, IN, the Michigan City entrance channel, and Washington Park Marina. Within the Safety Zone, the Commander, Ninth Coast Guard District may restrict or prohibit movement of vessels and control other maritime activities. This rule will promote the safety of Pan American Games competitors, ancillary personnel, and spectators.

EFFECTIVE DATE: This temporary regulation is effective from August 1, 1987 through and including August 16, 1987.

FOR FURTHER INFORMATION CONTACT: Commander Francis X. Owens or Lt(jg) George H. Burns III, Marine Safety Division, 1240 East Ninth Street, Cleveland, Ohio 44199–2060, (216) 522–3994.

SUPPLEMENTARY INFORMATION: On Friday, May 29, 1987, the Coast Guard published a notice of proposed rule making in the Federal Register for these regulations (52 FR 20113). Interested persons were requested to submit comments and one comment was received.

Drafting Information

The drafters of these regulations are Commander Dallas G. Schmidt, project officer, Marine Safety Office Chicago, and Commander Michael A. Leone, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Comments

The single comment received was from Marine Safety Office Chicago, and addressed harbor congestion and the safety of swimmers in the area.

On the subject of harbor congestion, it was suggested that a statement be included within the Final Rule that specified additional limitations to be imposed on harbor traffic. This recommendation is considered to be repetitive. The Coast Guard already has sufficient authority to control any traffic situation that may develop.

The expected increase in Michigan City vessel traffic will represent a threat to skin divers, snorkelers and scuba divers. Vessels will transit improperly marked or unmarked diving sites, endangering the divers. Marked dive sites will be obstructions within the Safety Zone. This point is agreed with and § 165.T0906(c)(8) has been added to this regulation. This regulation is issued pursuant to 33 U S.C. 1225 and 1231 as set out in the authority citation for all of Part 165.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The regulation is of limited duration, limits access to certain areas without denying access to those who require it, and will not adversely affect commercial traffic. Since the impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation, Lake Michigan waters offshore Michigan City, Indiana, the Michigan City entrance channel, and Washington Park Marina.

Final Regulations

In consideration of the foregoing, the Coast Guard proposes to temporarily amend Part 165 of Title 33, Code of Federal Regulations as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1 6.04–6 and 160 5.

2. Section 165.T0906 is added to read as follows:

§ 165.T0906 Lake Michigan waters offshore of Michigan City, IN, the Michigan City Entrance Channel and Washington Park Marina.

(a) *Effective dates.* Unless otherwise indicated in an individual subsection below, this temporary regulation is effective from August 1, 1987 through and including August 18, 1987.

(b) *Regulated areas.* All waters and waterfront facilities within the following boundaries constitute a Safety Zone:

(1) The water area in Lake Michigan beginning at latitude 41°51'00" N., longitude 87°02'00" W.; thence east to latitude 41°51'00" N., longitude 86°52'00" W.; thence south to the intersection of longitude 86°52'00" W. and the natural shoreline; thence along the natural shoreline and structures, across the Michigan City, Indiana channel entrance, to the intersection of latitude 41°43'00" N. and the natural shoreline; thence west to latitude 41°43'00" N., longitude 87°02'00" W.; thence north to the starting point; and

(2) All navigable waters and waterfront facilities within the Michigan City channel area bounded on the north by the Michigan City channel entrance and on the east by the western edge of the Franklin Street bridge.

(c) *Regulations.* The regulations listed below apply to all Pan American Games yachting events.

(1) No vessels, other than participants, U.S. Coast Guard operated or employed small craft, public vessels, state and local law enforcement agency vessels and event committee boats shall remain in or enter those portions of the Pan American Games race areas which lie within Lake Michigan during the periods set forth for each event, unless cleared for such entry by a Coast Guard official.

(i) Pan American Games Race Areas:

(A) Area Alpha: Area Alpha will be bounded by the following coordinates:

Center—latitude 41°45.1' N.; longitude 86°55.8' W.
North—latitude 41°46.0' N.
South—latitude 41°44.4' N.
East—longitude 86°54.7' W.
West—longitude 86°56.5' W.

(B) Area Bravo: Area Bravo will be bounded by the following coordinates:

Center—latitude 41°46.5' N.; longitude 86°59.1' W.
North—latitude 41°48.1' N.
South—latitude 41°44.8' N.
East—longitude 86°56.4' W.
West—longitude 87°01.5' W.

(C) Area Charlie: Area Charlie will be bounded by the following coordinates:

Center—latitude 41°48.5' N.; longitude 86°54.8' W.
North—latitude 41°50.3' N.
South—latitude 41°46.6' N.
East—longitude 86°52.6' W.
West—longitude 86°57.0' W.

(D) Area Delta: Area Delta will be bounded by the following coordinates:

Center—latitude 41°46.0' N.; longitude 86°54.0' W.
North—latitude 41°46.7' N.
South—latitude 41°45.2' N.
East—longitude 86°52.8' W.
West—longitude 86°55.0' W.

(ii) Competition period: Approximately 8:00 a.m. to 4:00 p.m. daily, August 9, 1987 to August 18, 1987, inclusive.

(iii) Buoys, stake boats, and Coast Guard spectator control boats will mark the actual race courses within each designated race area.

(2) Between August 1 and August 18, 1987, no person may set fishing gear, nets, marker buoys or similar obstructions within the area of the defined Safety Zone. Any such obstructions shall be removed by their owners prior to August 1, 1987 and shall not be re-set until after August 18, 1987.

(3) When hailed by Coast Guard or Coast Guard Auxiliary vessels patrolling the Safety Zone, vessels shall come to an immediate stop. Vessels shall comply with all directions of Coast Guard official and local law enforcement authorities.

(4) No vessel may approach within 100 yards of a competition vessel.

(5) No vessel may approach within ¼ mile of the race course within each race area.

(6) No vessel may block, loiter in, or impede the through transit of vessels in the Michigan City channel entrance, channel, and Washington Park marina.

(7) Additional safety and crowd control restrictions during Pan American Games race periods may be imposed as circumstances require. These restrictions will be announced in the Local Notice to Mariners and by Marine Safety Broadcasts.

(8) No person may engage in any skin diving, scuba diving, or snorkeling within the defined Safety Zone, except with the permission of the Commander, Ninth Coast Guard District.

Dated: July 22, 1987.

A.M. Danielsen,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 87–17355 Filed 7–30–87; 8:45 am]
BILLING CODE 4910-14-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 334

Restricted Area; Rhode Island Sound Off Newport, RI

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The Corps of Engineers is establishing a naval restricted area in the Atlantic Ocean, Rhode Island Sound, approximately 4 nautical miles due south of Lands End in Newport, Rhode Island. The purpose of the restricted area is a practice minefield for U.S. Navy training.

EFFECTIVE DATE: August 31, 1987.

ADDRESS: USACE, CECW-OR, Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph T. Eppard or Mr. Sam Collinson at (202) 272-1783.

SUPPLEMENTARY INFORMATION: The U.S. Navy has requested the Corps of Engineers to establish a restricted area in the waters of Rhode Island Sound. The Navy will use the area as a practice minefield 2-3 days each training session, 10-15 times a year. During these training sessions no vessels or other watercraft will be allowed to enter the restricted area. The Navy will limit its use of the area during the time period of July 1 to mid-October each year to allow maximum public access to the area. The practice minefield will consist of six inert drill mines and concrete sonar target within the designated area. The sonar target will be permanently located in the extreme northeast corner within the designated drill minefield area. The six drill mines will be steel with all internal mechanisms and explosives removed and concrete filled. Drill mines will be removed from the designated area within 72 hours after each minehunting training exercise.

Notes

1. The Department of the Army has determined that notice of proposed rulemaking in this instance is unnecessary and impractical for the following reasons:

(a) A military function is involved in the proposal, since the United States Navy intends to establish a practice minefield in the designated area and conduct mine detection and mine sweeping exercises there.

(b) Vessels will be able to pass freely through the area except during the exercises, and the Navy is required to give mariners suitable notice 6 to 8 weeks before an exercise begins.

(c) A public notice advising interested parties of the proposed activity has already been issued as part of the public interest review of the proposal by the Corps of Engineers. After publication of the notice the Navy met with persons who objected to the placement of a minefield in the area and satisfied those objections by making changes to the proposal.

2. This regulation is issued with respect to a military function of the Defense Department and provisions of E.O. 12291 do not apply.

3. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 33 CFR Part 334

Navigation, Waterways, Transportation.

For the reasons set forth in the preamble, Title 33, Chapter II, Part 334 is amended as follows:

PART 334—DANGER ZONES AND RESTRICTED AREA REGULATIONS

1. The authority citation for Part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Section 334.78 is added to read as follows:

§ 334.78 Rhode Island Sound, Atlantic Ocean, approximately 4.0 nautical miles due south of Lands End in Newport, Rhode Island; restricted area for naval practice minefield

(a) *The area.* The open waters of Rhode Island Sound approximately 4.0 nautical miles due south of Lands End, Newport, Rhode Island, within an area bounded as follows: Beginning at latitude 41°20'29" N., longitude 71°19'54" W.; thence 2000 yards easterly to latitude 41°20'29" N., longitude 71°18'34" W.; thence 3000 yards southerly to latitude 41°18'57" N., longitude 71°18'34" W.; thence 2000 yards westerly to latitude 41°18'57" N., longitude 71°19'54" W.; thence 3000 yards northerly to the point of beginning.

(b) *The regulations.* (1) No vessels or other watercraft will be allowed to enter the designated area during minefield training.

(2) The practice minefield will consist of six inert drill mines each 16 inches in diameter and 5 feet long and one concrete sonar target 48 inches in diameter and 48 inches high located within the designated area. The sonar target will be permanently located in the extreme northeast corner within the designated drill minefield area. The six drill mines will be steel with all internal mechanisms and explosives removed and concrete filled. Drill mines will be removed from the designated area within 72 hours after each minehunting training exercise.

(3) Training activities will be limited to minehunting operations using only onboard sonar. Neither variable depth sonar devices or mechanical minesweeping operations will be utilized in the area.

(4) Training periods will be 2-3 days in length and 10-15 times a year, however during the time period July 1-mid-October, minehunting exercises will be held to minimum.

(5) Notice to mariners will be issued 6-8 weeks in advance of a scheduled practice exercise by the Commander, U.S. Naval Base, Newport, Rhode Island.

(6) The regulations of this section shall be enforced by the Commander, U.S. Naval Base, Newport, Rhode Island, and such agencies as he/she may designate.

Date: July 1, 1987.

John S. Doyle, Jr.,

Acting Assistant Secretary of the Army (Civil Works).

[FR Doc. 87-17391 Filed 7-30-87; 8:45 am]

BILLING CODE 3710-92-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 201-8

[FIRMR Amdt. 10]

Implementation of Federal Information Processing Standards (FIPS) and a Federal Telecommunications Standard (FED-STD) in the Federal Information Resources Management Regulation (FIRMR)

AGENCY: Information Resources Management Service, GSA.

ACTION: Final rule.

SUMMARY: This regulation updates FIRMR provisions by implementing four Federal Information Processing Standards (FIPS) and one Federal Telecommunications Standard (FED-STD) to provide associated standard terminology that shall be used in requirements documents, including solicitations, as applicable. FIPS 120, 121, 123, 125, and FED-STD 1005A (changed from original issuance) are added to the FIRMR. In addition, the requirement statements for FIPS 14-1 and 111 are changed. The intended

effect of this regulation is to enhance economy and efficiency in the acquisition of automatic data processing and telecommunications resources (information resources).

EFFECTIVE DATE: September 29, 1987.

FOR FURTHER INFORMATION CONTACT: Mary B. Anderson, Regulations Branch (KMPR), Information Resources Management Service, telephone (202) 566–0194 or FTS, 566–0194.

SUPPLEMENTARY INFORMATION: 1. Four new sections, with implementation provisions, including solicitation requirements statements, are being added to FIRMR Part 201–8 in order to implement the following new standards: FIPS 120, 121, 123, and 125. In addition, three sections are being changed in order to update FED–STD 1005 to 1005A and to change the standard terminology of FIPS 14–1 and 111. The changes being made are explained in the following paragraphs.

a. Section 201–8.105–6 is amended to remove the reference to FIPS 15 and update the reference for FIPS 1–1 to 1–2 in the solicitation standard terminology.

b. Section 201–8.105–37 is amended to incorporate the waiver procedures of FIPS 60–2 into the solicitation standard terminology for FIPS 111.

c. Section 201–8.105–43 is added to incorporate FIPS PUB 121, Videotex/Teletext Presentation Level Protocol Syntax (North American PLPS).

d. Section 201–8.106–6 is added to incorporate FIPS PUB 120, Graphical Kernel System (GKS).

e. Section 201–8.106–7 is added to incorporate FIPS PUB 123, Specification for a Data Descriptive File for Information Interchange (DDF).

f. Section 201–8.107–6 is added to incorporate FIPS PUB 125, MUMPS Programming Language.

g. Section 201–8.112–4 is revised to add FED–STD 1005A, Telecommunications: Coding and Modulation Requirements for 2,400 Bit/Second Modems, replacing FED–STD 1005.

2. A notice of proposed rulemaking for this amendment was published in the **Federal Register** (52 FR 3671, February 5, 1987) indicating the availability of the proposed final rule for review and comment by interested parties. All comments received have been considered.

3. The General Services Administration (GSA) has determined that this rule is not a major rule for purposes of Executive Order 12291 of February 17, 1981. GSA decisions are based on adequate information concerning the need for and the consequences of the rule. The rule is written to ensure maximum benefits to Federal agencies. This Governmentwide management regulation will have little or no cost effect on society. Therefore, the rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

List of Subjects in 41 CFR Part 201–8

Computer technology, Telecommunications, Information resources activities, and Standards for information resources.

PART 201–8—IMPLEMENTATION AND USE OF FEDERAL STANDARDS

1. The table of contents for Part 201–8 is amended by adding and revising the following entries and the authority citation for the part is revised to read as follows:

201–8.105–43 FIPS PUB 121, Videotex/Teletext Presentation Level Protocol Syntax (North American PLPS).
201–8.106–6 FIPS PUB 120, Graphical Kernel System (GKS).
201–8.106–7 FIPS PUB 123, Specification for a Data Descriptive File for Information Interchange (DDF).
201–8.107–6 FIPS PUB 125, MUMPS Programming Language.
201–8.112–4 FED–STD 1005A, Telecommunications: Coding and Modulation Requirements for 2,400 Bit/Second Modems.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c) and Sec. 101(f), 100 Stat. 1783–345; 40 U.S.C. 751(f).

2. Section 201–8.105–6 is amended to revise the requirement statement, to read as follows:

§ 201–8.105–6 FIPS PUB 14–1, Hollerith Punched Card Code.

* * * * *

(b) The standard terminology for use in requirements documents, including solicitations, is:

Punched Card Equipment—Code (May 87 FIRMR)

All punching or reading equipment utilizing 12-row 3¼-inch-wide rectangular hole punched cards used in data processing, communications, and similar operations must be capable of punching or reading the Code for Information Interchange, FIPS PUB 1–2 in the hole pattern specified in FIPS PUB 14–1, Hollerith Punch Card Code.

(End of requirement statement)

3. Section 201–8.105–37 is amended to revise the requirement statement, to read as follows:

§ 201–8.105–37 FIPS PUB 111, Storage Module Interfaces (With Extensions for Enhanced Storage Module Interfaces).

* * * * *

(d) The standard terminology for use in requirements documents, including solicitations, is:

Storage Module Interfaces (With Extensions for Enhanced Storage Module Interfaces) (MAY 87 FIRMR)

Unless a waiver is granted following the waiver procedures specified in FIPS 60–2, ADP systems and disk storage subsystems that may result from this requirement may conform to FIPS PUB 111 as an alternative to FIPS PUBS 60–2, 61–1, and either 63–1 or 97, for those instances where FIPS 60–2 would otherwise be applicable. At the option of the Government, the correct operation of these systems' conforming interfaces must be verified before the acceptance of all applicable ADP equipment.

(End of requirement statement)

4. Section 201–8.105–43 is added, to read as follows:

§ 201–8.105–43 FIPS PUB 121, Videotex/Teletext Presentation Level Protocol (North American PLPS).

(a) FIPS PUB 121 defines the data syntax for user by OSI presentation layer protocols and the semantics for use at the application layer in videotex and teletext applications. It is based upon the American National Standard Code for Information Interchange (ASCII) and is intended for use in Federal information processing systems, communications systems, and associated videotex and teletext equipment.

(b) The standard applies to the representation of pictorial information and associated alphanumeric text at the interface between host computers and videotex terminals or between teletext data and teletext decoders. FIPS PUB 121 adopts the technical specifications contained in the American National Standard, ANSI X3.110–1983, ANS Videotex/Teletext Presentation Level Protocol (North American PLPS).

(c) The standard terminology for use in requirements documents, including solicitations, is:

Applicability of FIPS PUB 121, Videotex/Teletext Presentation Level Protocol (North American PLPS) (May 87 FIRMR)

All equipment and services acquired to accept, process, store, transmit, or interchange pictorial information and/or associated alphanumeric text that is required to be displayed or printed on videotex or teletext terminals shall comply with the requirements set forth in FIPS PUB 121.

(End of requirement statement)

5. Section 201–8.106–6 is added, to read as follows:

§ 201–8.106–6 FIPS PUB 120, Graphical Kernel System (GKS).

(a) FIPS PUB 120 specifies a library of subroutines which can be incorporated within a program to produce and manipulate two-dimensional pictures. It allows graphics applications programs to be transported between installations. FIPS PUB 120 adopts the technical specifications contained in American National Standard, ANSI X3.124–1985, Computer Graphics—Graphical Kernel System (GKS). Although this standard was not developed specifically for the printing/graphics arts industry or highly interactive applications, it may be used in these applications whenever desirable.

(b) The standard terminology for use in requirements documents including solicitations, is:

Applicability of FIPS PUB 120, Graphical Kernel System (GKS) (May 87 FIRMR)

All two-dimensional graphics libraries/packages to be used as a programming interface to application programs offered as a result of a requirement in this requirements document shall comply with FIPS PUB 120.

(End of requirement statement)

6. Section 201–8.106–7 is added, to read as follows:

§ 201–8.106–7 FIPS PUB 123, Specification for Data Descriptive File for Information Interchange (DDF).

(a) FIPS PUB 123 specifies media-independent and system-independent file and record formats for the interchange of information between compatible and non-compatible computer systems. It adopts ANSI/ISO 8211–1985, Specification for a Data Descriptive File for Information Interchange (DDF).

(b) FIPS PUB 123 contains a number of considerations and recommendations which should be carefully reviewed before determining its applicability to a given solicitation. When FIPS PUB 123 is applicable, one of three interchange levels must be included in the standard terminology, based on the agency's determination of its current and future data interchange needs. These interchange levels, included in FIPS PUB 123, range from elementary data fields with non-hierachical structures (level 1) to compound data fields with descriptions of hierarchical structures (level 3).

(c) The standard terminology for use in requirements documents, including solicitations, is:

Applicability of FIPS PUB 123, Specification for a Data Descriptive File for Information Interchange (DDF) (May 87 FIRMR)

When computer application programs or systems are developed or acquired as a result of the requirements of which this is a part and where the interchange of large volumes of data are required between compatible as well as non-compatible systems, the developed application or acquired system shall comply with the level [insert level here] specifications defined in FIPS PUB 123.

(End of requirement statement)

7. Section 201–8.107–6 is added, to read as follows:

§ 201–8.107–6 FIPS PUB 125, MUMPS Programming Language.

(a) FIPS PUB 125 specifies the use of American National Standard MUMPS, ANSI/MDC X11.1–1984, as a FIPS.

(b) The standard terminology for use in requirements documents, including solicitations, is:

Applicability of FIPS PUB 125, Acquisition of MUMPS Language Compilers (May 87 FIRMR)

MUMPS compilers offered as a result of the requirements of which this is a part shall implement MUMPS (FIPS PUB 125), as well as any additional language elements as specified elsewhere in this requirements document [insert reference here].

(End of requirement statement)

8. Section 201–8.112–4 is revised, to read as follows:

§ 201–8.112–4 FED–STD 1005A, Telecommunications: Coding Modulation Requirement for 2,400 Bit/Second Modems.

(a) FED–STD 1005A establishes coding and modulation requirements for 2,400 bit/second modems owned or leased by the Federal Government for use over analog transmission channels other than those derived from high frequency radio facilities. It is based upon techniques described in CCITT Recommendations V.22 bis, V.26, and V.26 bis. This standard is to facilitate interoperability between telecommunications facilities and systems of the Federal Government.

(b) FED–STD 1005A shall be used by all Federal Agencies in the design and procurement of 2,400 bit/second modems for use with switched or dedicated 4kHz channels with the following exception: Secure (encrypted) voice terminals conforming to North Atlantic Treaty Organization (NATO) Standardization Agreement 4291 may deviate from the requirements of this standard.

(c) The standard terminology for use in requirements documents, including solicitations, is:

Applicability of FED–STD 1005A, Telecommunications: Coding Modulation Requirement for 2,400 Bit/Second Modems (May 87 FIRMR)

All nondiversity 2400 bit per second modems offered as a result of this requirement for use with 4kHz channels derived from either switched or dedicated lines shall comply with FED–STD 1005A.

(End of requirement statement)

Dated: July 1, 1987

T.C. Golden,

Administrator of General Services.

[FR Doc. 87–17393 Filed 7–30–87; 8:45 am]

BILLING CODE 6820–25–M

VETERANS ADMINISTRATION

48 CFR Parts 801, 802, 805, 806, 808, 813, 814, 815, 819, 833, 836, 842 and 852

Acquisition Regulations Concerning the Competition in Contracting Act

AGENCY: Veterans Administration.

ACTION: Final rule.

SUMMARY: This rule implements the CICA (Competition in Contracting Act) and the FAC (Federal Acquisition Circular) 84–5. The CICA, as implemented by the FAR (Federal Acquisition Regulation) significantly changes the acquisition process. Specifically, a formalized justification and approval process is prescribed for noncompetitive acquisitions; notice requirements for synopsizing in the Commerce Business Daily are established; each agency is required to establish a "Competitive Advocacy" program; an annual report to Congress regarding enhancing competition is required; and major revisions were made to protest procedures. This regulation prescribes necessary procedures and policies for implementing these various CICA provisions.

EFFECTIVE DATE: July 31, 1987.

FOR FURTHER INFORMATION CONTACT: Chris A. Figg, Chief, Policy Division, Office of Procurement and Supply (91), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2334.

SUPPLEMENTARY INFORMATION: The Veterans Administration published an interim final rule implementing the Competition in Contracting Act (CICA) on pages 23065–23073 of the **Federal Register** on June 25, 1986. The interim final rule is amended by revising legal and technical review requirements for proposed contracts and by adding a new provision emphasizing the need to publish acquisition policies pursuant to the Small Business and Federal Procurement Competition Enhancement Act. These additional changes, which were not included in the interim final

rule, are internal VA management policies and therefore do not require public comment.

When the interim final rule was published, the VA provided a comment period for interested persons. The VA received two comments in support of the rule; and one comment from the Office of Management and Budget (OMB) which pointed out the need to process "justification and approval" documents even if the contract is authorized by statute. The final rule incorporates OMB's recommendation.

Other revisions to the interim final rule include changes in the legal and technical review requirements for proposed contracts, addition of requirements for public rulemaking and other technical corrections.

This final rule has been reviewed in conjunction with Executive Order 12291, Federal Regulation, and has been determined not to be a "major rule" as defined therein.

Because this final rule does not come within the term "rule" as defined in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601(2)), it is not subject to the requirements of that Act. In any case, this change will not have a significant impact on a substantial number of small entities because the provisions implement the requirements of the CICA as set forth by the FAR. The provisions are primarily internal procedures which will not impact the private sector.

This final rule requires no additional information collection or recordkeeping requirements upon the public.

List of Subjects in 48 CFR Parts 801, 802, 805, 806, 808, 813, 814, 815, 819, 833, 836, 842, and 852

Government procurement.

Approved: June 24, 1987.

Thomas K. Turnage,

Administrator.

Accordingly, the interim final rule amending 48 CFR, Chapter 8, Parts 801, 802, 805, 806, 808, 813, 814, 815, 819, 833, 836, 842 and 852 which was published at 51 FR 23065–23073 on June 25, 1986, is adopted as a final rule with the following changes:

1. The authority citation for Parts 801, 802, 805, 806, 808, 813, 814, 815, 819, 833, 836, 842 and 852 continues to read as follows:

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

PARTS 801, 802, 815, and 833 [AMENDED]

2. In 48 CFR Parts 801, 802, 815, and 833 all references to "Office of Construction" are revised to read "Office of Facilities".

PART 801—VETERANS ADMINISTRATION ACQUISITION REGULATIONS SYSTEM

3. Section 801.301 is amended by adding paragraph (c) to read as follows:

801.301 Policy.

* * * * *

(c) As required by the Small Business and Federal Procurement Competition Enhancement Act (Pub. L. 98–577), any acquisition policy, form or procedure must be published in the **Federal Register** for public comment if it has:

(1) A significant effect beyond the internal procedures of the agency issuing the procurement policy, regulation, procedure or form, or

(2) A significant cost or administrative impact on contractors or offers.

Any facility or Central Office element having or proposing to issue a policy, form or procedure requiring public comment shall arrange for the necessary **Federal Register** publication through the Director, Office of Procurement and Supply (91).

4. In section 801.602–70, (a)(4)(ii) is removed and paragraphs (a)(4)(iii) through (a)(4)(xi) are redesignated as (a)(4)(ii) through (a)(4)(x), respectively; paragraphs (b) and (d) are revised and paragraph (i) is added to read as follows:

801.602–70 Legal/technical review requirements to be met prior to contract execution.

* * * * *

(b) The following categories of proposed contractual actions require the concurrence of the General Counsel:

(1) Contract modifications, terminations (including final decision (cure) letters), disputes and claims in excess of $25,000.

(2) Contract modifications granting a time extension of more than 20 days.

(3) Assignment of claims.

(4) Proposed awards to other than the low evaluated bidder/offeror.

* * * * *

(d) Utility construction and connection contracts which are developed in the Office of Facilities and cost $50,000 or more will be reviewed by the General Counsel and the Director, Office of Facilities.

* * * * *

(i) If a change order (unilateral agreement) is essential for the logical process of the contract, the Office of Procurement and Supply (93B) shall be called prior to issuing the document. (This requirement does not apply to change orders issued by the Office of Facilities.)

5 a. In 801.602–71, paragraph (b)(1) is amended by removing "(vi)" and adding, in its place, "(v)".

b. In 801.602–71, paragraph (b)(2) is amended by removing "(vii)" and "(viii)" and adding, in their place, "(vi)" and "(vii)" respectively.

c. In 801.602–71, paragraph (b)(3) is amended by removing "(ix)" and adding, in its place, "(viii)".

d. In section 801.602–71, paragraphs (a) and (b)(5) are revised to read as follows:

801.602–71 Processing contracts for legal/technical review.

(a) All competitively awarded solicitations requiring legal and/or technical review will have such reviews completed prior to opening of bids or proposals. The contracting officer will fully evaluate technical and legal review comments prior to opening bids or proposals. Potential bidders/offerors will be advised of changes to the solicitation by amendment and afforded sufficient time for evaluation prior to opening of bids or offers.

(b) * * *

(5) Proposed facility-level modification specified in 801.602–70(b) will be forwarded by the contracting officer directly to the Director, Facilities Engineering Service (085). The Director, Facilities Engineering Service (085), will review the submissions and forward them to the General Counsel (025) through the Director, Office of Procurement and Supply (93B).

* * * * *

6 a. In 801.602–72, paragraph (a) is amended by removing the word "a" and adding, in its place, the word "one".

b. In section 801.602–72, paragraph (d) is revised to read as follows:

801.602–72 Documents to be submitted for legal review.

* * * * *

(d) For contract modifications described in 801.602–70(b) and 801.602–71(b)(5) and (d):

(1) A draft of the proposed modification. This shall be prepared on an SF (Standard Form) 30, Amendment of Solicitation/Modification of Contract, and shall specify the exact language to be used. Changes in work, time and cost must be specifically described;

(2) A statement describing the need for the changed work. This should also be accompanied by any backup documentation, including a copy of the general statement of work in the original contract plus any existing contract language which will be modified. Include a statement that the work covered by the proposed modification is

or is not within the original scope of the contract, setting forth fully the facts considered in reaching the conclusion;

(3) A statement containing an analysis on what necessitated the modification, e.g., design error, technical change, medical center requirements;

(4) The COTR's (contracting officer's technical representative) technical evaluation of the proposed change;

(5) For construction modifications and, where applicable for A/E (architect-engineer) modifications, a copy of drawings which the COTR has marked up to delineate the proposed changed work. If appropriate, include a copy of the pertinent technical specifications. Whenever a proposed contract modification involves numerous changes to drawings and specifications for a Central Office project, the drawings and specifications will be available for review in the office of the Project Director;

(6) Costing information including:

(i) The contractor's cost proposal in the format required by the contract.

(ii) The COTR's independent cost evaluation.

(iii) The A/E's independent cost evaluation.

(iv) Contracting officer's PNM (Price Negotiation Memorandum) in accordance with VAAR 815.808. For Office of Facilities contracts, the PNM may be submitted by either the contracting officer or COTR.

(v) For A/E contracts, a listing of the fees awarded in the original contract and previous modifications.

(vi) For A/E working drawing contracts, a statement regarding the actual or estimated cost of the original construction and any estimated change to the overall project cost as a result of the proposed modification.

(vii) Any other relevant costing information, such as independent market research, which was or will be used as negotiation criteria.

(7) A concurrence on the memorandum from the appropriate office indicating that funds are available or a statement concerning the actions which must be taken to secure the required funds; and

(8) The names and telephone numbers of the contracting officer and COTR.

PART 806—COMPETITION REQUIREMENTS

806.302-5 [Amended]

7a. In 806.302-5, paragraph (a) is amended by removing the words "38 U.S.C." and "not required" and adding, in their place, the words "38 U.S.C. 4101" and "still applicable", respectively.

b. In 806.302-5, paragraph (b) is amended by removing the words "not required" and adding, in their place, the words "still applicable".

PART 808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

8. In 808.304-1, paragraph (b) introductory text, the first sentence is revised to read as follows:

808.304-1 GSA long-term contracts.

* * * * *

(b) The request will be submitted to General Services Administration, Public Building Service, Public Utilities Service Division (PPU), Washington, DC 20405.

* * *

* * * * *

9. Section 808.307-2 is revised to read as follows:

808.307-2 Precontract review by GSA.

Except as provided in FAR 8.307-3, proposed utility procurements meeting the criteria of FAR 8.307-1 will be forwarded to the General Services Administration, Public Building Service, Public Utilities Service Division (PPU), Washington, DC 20405.

PART 813—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

813.103 [Amended]

10. In section 813.103, paragraph (a) is amended by removing "41 U.S.C. 253(c)" and "(815.507-70)" and adding, in their place, "41 U.S.C. 253(g)" and "(815.7001)", respectively.

11. Section 813.506-70 is revised to read as follows:

813.506-70 Oral purchase orders.

Oral purchase orders, when considered advantageous to the Veterans Administration, may be used for transactions not in excess of $2,500. This limitation does not apply to delivery orders against existing contracts, e.g., delivery orders against FSS Contracts. The transaction will be assigned a purchase order number and receipt documentation will be obtained on the copies of the purchase request utilized as a property voucher and receiving report. Documentation as to competition will be in accordance with FAR 13.106c.

PART 814—USE OF SEALED BIDDING

11. In section 814.404-1, the first sentence of paragraph (b) revised to read as follows:

814.404-1 Cancellation of invitations after opening.

* * * * *

(b) The authority to approve cancellation of invitations for bid after opening and the authority to approve the acquisition after cancellation as provided in FAR 14.404-1(e) is delegated to the head of the contracting activity. * * *

PART 833—PROTESTS, DISPUTES, APPEALS

13. In section 833.103, paragraph (d) is revised to read as follows:

833.103 Protests to the agency.

* * * * *

(d) *Letter to protester.* When a protest has been lodged with the contracting officer and has been subsequently denied by the contracting officer, the letter to the protester along with copies to interested parties detailing the contracting officer's reasons for denying the protest will conclude with the following statement, naming the appropriate VA officials:

Should you disagree with this decision, you may file an appeal with*_____. Any such appeal must be received within 10 working days after receipt of this letter. In the alternative, you may file an appeal with the General Accounting Office (GAO) at the following address: General Counsel, General Accounting Office, Washington, DC 20548, ATTN: Procurement Law Control Group. Any GAO appeal must be filed within 10 workdays of this formal notification of or actual or constructive knowledge of initial adverse agency action (as determined in 4 CFR 21.0(e)). It should be noted that if you file an appeal with the Director, Office of Procurement and Supply or the Director, Office of Facilities, you may waive your right of further appeal to the Comptroller General at a later date.

14. In section 833.104, the last sentence of paragraph (c) is revised to read as follows:

833.104 Protests to GAO.

* * * * *

(c) * * * When the VA receives from GAO, *within ten calendar days after award,* a notice of protest filed directly with GAO, and it is determined by the head of the contracting activity pursuant to FAR 33.104(c)(2) that contract performance should be authorized, the written findings will first be approved by the Director, Office of Procurement and Supply (93B) (or the Director, Office of Facilities, as appropriate), and the GAO must be notified as required by FAR 33.104(c)(3).

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*The Director, Office of Procurement and Supply (93B), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420 or (for contracts awarded by the Office of Facilities), Director, Office of Facilities (08), 811 Vermont Avenue, NW., Washington, DC 20420.

15. Section 833.106 is revised to read as follows:

833.106 Solicitation provision.

The contracting officer shall insert the VAAR provision 852.233–2, Service of Protest (July 1985) (Deviation FAR 52.233–2) and VAAR provision 852.233–70, Protest Content (March 1987) in all solicitations other than small purchases.

16. In § 833.211, the paragraph following the introductory text of paragraph (c) and the first paragraph following the introductory text of paragraph (d) are amended by adding the following sentence at the end of each paragraph to read as follows:

833.211 Contracting officer's decision.

* * * * *

(c) * * *

* * * The address of the Board is 810 Vermont Avenue, NW., Washington, DC 20420.

(d) * * *

* * * The address of the Board is 810 Vermont Avenue, NW., Washington, DC 20420.

* * * * *

PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

17. In section 852.233–2, the footnote designated** is revised to read as follows:

852.233–2 Service of protest.

* * * * *

**For all contracts, except those awarded by the Office of Facilities, insert the Director, Office of Procurement and Supply (93B), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420.

18. Section 852.233–70 is added to read as follows:

852.233–70 Protest content.

As prescribed in 833.106, insert the following provision in solicitations for other than small purchases:

Protest Content (Jan 1987)

(a) Any protest filed by an interested party shall:

(1) Include the name, address, and telephone number of the protester;

(2) Identify the solicitation and/or contract number;

(3) Include an original signed by the protester or his/her representative, and at least one copy;

(4) Set forth a detailed statement of the legal and factual ground of the protest including copies of relevant documents;

(5) Specifically request a ruling of the individual upon whom the protest is served; and

(6) State the form of relief requested.

(b) Failure to comply with the above may result in dismissal of the protest without further consideration.

(End of Provision)

3. In section 852.236–88, the introductory text is amended by adding a sentence at the end, the clause to paragraph (a) is amended by revising paragraphs (b) and (c) and adding paragraph (d); and the clause to paragraph (b) is amended by revising paragraphs (b) and (c) and the last sentence of paragraph (g) to read as follows:

852.236–88 Contract changes.

* * * The clauses are a result of an approved FAR deviation pursuant to Subpart 801.4.

(a) Applicable to changes costing over $500,000: * * *

* * * * * *

(b) When the necessity to proceed with a change does not allow sufficient time to negotiate a modification or because of failure to reach an agreement, the contracting officer may issue a change order instructing the contractor to proceed on the basis of a tentative price based on the best estimate available at the time, with the firm price to be determined later. Furthermore, when the change order is issued, the contractor shall submit a proposal for cost of changes in work within 30 calendar days.

(c) The contracting officer will consider issuing a settlement by determination to the contract, if the contractor's proposal required by paragraphs (a) and (b) of this clause is not received within 30 calendar days, or if agreement has not been reached.

(d) Bond premium adjustment, consequent upon changes ordered, will be made as elsewhere specified at the time of final settlement under the contract and will not be included in the individual change.

(End of Clause)

(b) Applicable to changes costing $500,000 or less: * * *

* * * * * *

(b) When the necessity to proceed with a change does not allow sufficient time to negotiate a modification or because of failure to reach an agreement, the contracting officer may issue a change order instructing the contractor to proceed on the basis of a tentative price based on the best estimate available at the time, with the firm price to be determined later. Furthermore, when the change order is issued, the contractor shall submit a proposal for cost of changes in work within 30 calendar days.

(c) The contracting officer will consider issuing a settlement by determination to the contract, if the contractor's proposal required by paragraphs (a) and (b) of this clause is not received within 30 calendar days, or if agreement has not been reached.

* * * * *

(g) * * * The contractor's fee is limited to the net increase to contractor of subcontractors' portions cost computed in accordance herewith.

* * * * *

[FR Doc. 87–17207 Filed 7–30–87; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 567

[Docket No. T84–01; Notice 12]

Technical Amendment; Certification of Compliance With Vehicle Theft Prevention Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Technical amendment.

SUMMARY: This agency has discovered that it inadvertently omitted a phrase from the vehicle certification requirements when it amended those requirements in connection with the new Federal motor vehicle theft prevention standard. That statute that required the agency to promulgate the vehicle theft prevention standard also requires that all 1987 *and subsequent* model year vehicles be certified as complying with the theft prevention standard. However, the amendments to the vehicle certification regulation that were made in connection with the vehicle theft prevention standard only require vehicle manufacturers to certify that their 1987 model year passenger vehicles comply with the motor vehicle theft prevention standard. The agency inadvertently omitted the phrase "and subsequent model years" from the amendment to the vehicle certification regulation. This notice corrects that error.

EFFECTIVE DATE: July 31, 1987.

FOR FURTHER INFORMATION CONTACT: Stephen Kratzke, Office of Chief Counsel, NHTSA, 400 Seventh Street SW., Washington, DC 20590, (202–366–2992).

SUPPLEMENTARY INFORMATION: To carry out the mandates of Title VI of the Motor Vehicle Information and Cost Savings Act (added to that Act by the Motor Vehicle Theft Law Enforcement Act of 1984 (the Theft Act; Pub. L. 98–547)), NHTSA published a final rule on

October 24, 1985; 50 FR 43166. This final rule established a new Federal motor vehicle theft prevention standard and made corresponding changes to the vehicle certification regulation (49 CFR Part 567).

One of the sections of Title VI, codified at 15 U.S.C. 2026(c)(1), reads as follows: "Every manufacturer of a motor vehicle subject to the [Federal motor vehicle theft prevention] standard . . . shall furnish at the time of delivery of such vehicle . . . a certification that such vehicle . . . conforms to the applicable motor vehicle theft preention standard." Further, 15 U.S.C. 2023(d) makes clear that, except for a specified exemption procedure, the agency "may not render the standard inapplicable to any line which at any time has been subject to the standard." These statutory provisions clearly require the theft prevention standard to apply to all subject car lines from one model year to the next, unless and until the statute is amended, and require that manufacturers continue to certify compliance from one model year to the next.

To implement these statutory requirements, the notice of proposed rulemaking for this subject proposed to amend 49 CFR 567.4(g)(5) by adding a subparagraph that would apply to all passenger cars manufactured on or after the effective date of the theft prevention standard. Such a requirement would have clearly required all 1988 and subsequent model year cars covered by the theft prevention standard to be certified as complying. However, the certification provisions adopted in the final rule reads as follows:

§ 567.4(g)(5)(ii) In the case of *1987 model year* passenger cars manufactured on or after April 24, 1986, the expression "safety, bumper, and theft prevention" shall be substituted in the statement for the word "safety". (Emphasis added)

A literal reading of this language suggests that *only* 1987 model year vehicles must be certified as complying with the theft prevention standard. The rule was intended to specify that these requirements apply to 1987 *and subsequent* model year passenger cars manufactured on or after April 24, 1986, but this emphasized language was inadvertently omitted from the final rule. This amendment corrects that error, by amending Part 567 to specify that 1987 and subsequent model year passenger cars must be certified as complying with the theft prevention standard.

To repeat, passenger car manufacturers are required by law to certify that their 1988 and subsequent model year cars manufactured after April 24, 1986, comply with the requirements of the Federal motor vehicle theft prevention standard, regardless of the requirements specified in 49 CFR Part 567. This statutory obligation to certify compliance is self-executing and therefore *not* predicated on the agency issuing a regulation. Hence, the vehicle manufacturers have a statutory responsibility to certify compliance with the theft prevention standard for 1988 and subsequent model year passenger cars, whether or not this correction is made. Accordingly, this correction would not impose any additional responsibilities on vehicle manufacturers. It would only ensure that *all* of a vehicle manufacturer's certification responsibilities are set forth in Part 567. Accordingly, the NHTSA finds for good cause that notice and opportunity for comment on this correction are unnecessary. Based on these same facts, the agency finds for good cause that this correction should be effective as soon as it is published.

List of Subjects in 49 CFR Part 567

Labeling, Motor vehicle safety, Motor vehicles, National Highway Traffic Safety Administration, Reporting requirements.

In consideration of the foregoing, 49 CFR Part 567 is amended as follows:

PART 567—[AMENDED]

1. The authority citation for Part 567 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, and 1407; 15 U.S.C. 1912 and 1915; 15 U.S.C. 2021, 2022, and 2026; delegation of authority at 49 CFR 1.50.

2. Section 567.4 is amended by revising paragraph (g)(5)(ii) to read as follows:

§ 567.4 Requirements for manufacturers of motor vehicles.

* * * * *

(g) * * *

(5) * * *

(ii) In the case of 1987 and subsequent model year passenger cars manufactured on or after April 24, 1986, the expression "safety, bumper, and theft prevention" shall be substituted in the statement for the word "safety".

* * * * *

Issued on July 28, 1987.

Diane K. Steed,

Administrator.

[FR Doc. 87-17308 Filed 7-30-87; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 70645-7085]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure and request for comments.

SUMMARY: NOAA announces a three-day closure of the commercial salmon fishery in the exclusive economic zone (EEZ) from Cape Falcon to Cape Blanco, Oregon, beginning 2400 hours local time, July 28, 1987, to ensure that the coho salmon quota is not exceeded. The Director, Northwest Region, NMFS (Regional Director), has determined in consultation with the Pacific Fishery Management Council, and representatives of the Oregon Department of Fish and Wildlife (ODFW) and the California Department of Fish and Game (CDFG), that 80 percent of the commercial fishery quota of 401,700 coho salmon for the area south of Cape Falcon will be reached by that time. The closure is required by the preseason announcement of 1987 management measures. This action is intended to ensure conservation of coho salmon.

EFFECTIVE DATE: Closure of the EEZ from Cape Falcon to Cape Blanco, Oregon to commercial salmon fishing is effective at 2400 hours local time, July 28, 1987. The fishery will reopen at 0001 hours local time, August 1, 1987. Comments on this closure will be received until August 17, 1987.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, NMFS, BIN C15700, 7600 Sand Point Way NE., Seattle, WA 98115-0070; or E. Charles Fullerton, Director, Southwest Region, NMFS, 300 S. Ferry Street, Terminal Island, CA 90731-7415. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the same address.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten at 206-526-6150, or E. Charles Fullerton at 213-514-6196.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries are published at 50 CFR Part 661. In its preseason notice of 1987

management measures (52 FR 17284, May 6, 1987), NOAA announced that—

When 80 percent of the coho quota for the area south of Cape Falcon is reached, the entire Cape Falcon to Point Delgada area will close to all ocean troll fishing for three days to assess landings and project the remaining all-species fishing period. (Table 1, footnote h)

The 1987 troll catch quota for the area south of Cape Falcon is 401,700 coho salmon. Based on the best available information, the commercial catch in the area is projected to reach 80 percent of the coho quota by midnight, July 28, 1987. The area from Cape Blanco, Oregon, to Point Delgada, California, was closed to commercial fishing on June 25, 1987, the projected date of attainment of the subarea chinook quota (52 FR 24297, June 30, 1987).

Therefore, NOAA issues this notice to close the commercial fishery in the EEZ from Cape Falcon to Cape Blanco, Oregon, from 2400 hours local time, July 28, to 0001 hours local time, August 1, 1987. This notice does not apply to other fisheries which may be operating in this or other areas.

The Regional Director consulted with the Chairman of the Pacific Fishery Management Council and representatives of ODFW and CDFG regarding a closure of the commercial fishery between Cape Falcon and Cape Blanco. The ODFW representative confirmed that Oregon will close the commercial fishery in state waters adjacent to this area of the EEZ for three days beginning midnight, July 28, 1987.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

(16 U.S.C. 1801 *et seq.*)

Dated: July 28,1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 87-17444 Filed 7-28-87; 4:16 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 52, No. 147
Friday, July 31, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-85-AD]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to amend an existing airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which currently requires structural inspections and repair, as necessary, of the aft lower cargo doorway frames. This proposal would permit repairs to be made in accordance with Boeing Service Bulletin 737-53-1096, Revision 1, dated April 2, 1987, and provides an optional terminating action for the inspections required by the AD.

DATE: Comments must be received no later than September 15, 1987.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-85-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Owen E. Schrader, Airframe Branch, ANM-120S; telephone (206) 431-1923. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 37-NM-85-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

On March 5, 1987, FAA issued AD 87-06-08, Amendment 39-5584 (52 FR 7566; March 12, 1987), to require visual inspections for cracks of the aft lower cargo doorway frames on certain Model 737 series airplanes. Continued operation with cracks could result in rapid decompression, possible blowout of the aft cargo door, or the inability to carry fail-safe loads. The AD requires parts found cracked to be repaired in accordance with FAA-approved methods. Specific repairs were not cited. Also, the AD did not provide terminating action for the inspections required by the AD.

The FAA has reviewed and approved Boeing Service Bulletin 737-53-1096, Revision 1, dated April 2, 1987, which now includes procedures for specific repairs for cracked frames, and also includes procedures for repairs and modifications which, if accomplished, would allow the repetitive inspections to be terminated.

The FAA proposes to amend AD 87-06-08 to specify that repairs be made in accordance with Boeing Service Bulletin 737-53-1096, Revision 1, dated April 2, 1987, and to provide an optional terminating action for the repetitive inspections required by that AD.

It is estimated that 475 airplanes of U.S. registry would be affected by this AD. Since this action specifies repair procedures which are FAA-approved and provides an optional terminating action, there is no additional cost impact to U.S. operators.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 737 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By amending AD 87-06-08,

Amendment 39–5584 (52 FR 7566; March 12, 1987), to revise paragraph B. and add a new paragraph E., as follows:

Boeing: Applies to all Model 737 series airplanes listed in Boeing Service Bulletin 737–53–1096, dated July 24, 1986, certificated in any category.

To prevent rapid loss of cabin pressure resulting from undetected frame cracking, accomplish the following prior to the accumulation of 20,000 landings or within the next 1,000 landings after the effective date of this AD, whichever occurs later, unless previously accomplished within the last 3,000 landings:

A. Conduct a close visual inspection of the forward and aft body frames adjacent to the aft lower cargo door for cracks, in the areas identified in Boeing Service Bulletin 737–53–1096, dated July 24, 1986, or later FAA-approved revisions. Thereafter, repeat the close visual inspections at intervals not to exceed 4,000 landings.

B. If cracks are found, repair prior to further flight in accordance with Boeing Service Bulletin 737–53–1096, Revision 1, dated April 2, 1987, or later FAA-approved revisions.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

D. Alternate means of compliance or adjustment of compliance times, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, Seattle, Washington.

E. Repair or modification of the forward and aft frames in accordance with Boeing Service Bulletin 737–53–1096, Revision 1, dated April 2, 1987, or later FAA-approved revision, constitutes terminating action for the repetitive inspections required by paragraph A. of this AD.

All persons affected by this directive who have not already received the appropriate service bulletin from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124–2207. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on July 18, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87–17358 Filed 7–30–87; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 87–CE–25–AD]

Airworthiness Directives; Gulfstream Aerospace Corporation Model 690, 690A, 690B, 690C, 690D, 695, 695A, and 695B Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to Gulfstream Aerospace Corporation Model 690, 690A, 690B, 690C, 690D, 695, 695A, and 695B airplanes, herein referred to as "690 and 695" airplanes, which would supersede AD 86–24–12; Amendment 39–5483, by further prohibiting some airplanes from flight into known icing conditions. AD 86–24–12 required the use of continuous ignition during flight in meteorological conditions shown to result in engine flameouts. The FAA has further examined the ignition systems in these airplanes and has determined that the limitations of those airplanes with ignition systems having a continuous duty cycle of less than one hour do not allow the pilot to provide engine ignition for the expected duration of these meteorological conditions. The requirements of this AD will further provide additional protection against inadvertent engine flameout by prohibiting these airplanes from flight into know icing conditions.

DATE: Comments must be received on or before September 3, 1987.

ADDRESSES: Information pertinent to AD 86–24–12 and this notice may be examined at the Rules Docket at the address below. Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 87–CE–25–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., FAA, Central Region, Project Support Section Foreign, ACE–109, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 374–6932 or Ms. Alma Ramirez-Hodge, Airplane Certification Branch, DOT, FAA, Fort Worth, Texas 76193–0150, Telephone (817) 624–5147.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the' Regional Counsel, Attention: Rules Docket No. 87–CE–25–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

AD 86–24–12, Amendment 39–5483, (51 FR 44046–44048), was issued November 28, 1986, to revise the Airplane Pilot's Operating Handbook and Airplane Flight Manual (POH/AFM) by requiring that when flying in any actual or potential icing conditions, continuous ignition be assured by selecting manual "IGN" or IGN Override" or "IGN OVRD" on the ignition switch as appropriate.

The airplanes affected by AD 86–24–12 were originally certificated for flight into known icing conditions. However, AD 86–24–12 placed additional requirements on these airplanes for such flight. The FAA has determined that some airplanes to which the AD 86–24–12 applied have ignition systems with duty cycle limitations that prevent use of continuous ignition for the probable duration of exposure to actual or potential icing conditions. These ignition systems have a maximum duty cycle of 5 minutes on, followed by 55 minutes off whereas other Gulfstream 600 and 695 series airplanes have ignition systems with continuous duty cycles of at least one hour. The FAA has further determined that these airplanes

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equipped with ignition systems having a continuous duty cycle of less than one hour, even though previously approved for flight into known icing, have insufficient ignition duration to allow the pilot to comply with the additional requirements of AD 86-24-12 for the time duration required to permit flight into known icing conditions. Therefore, FAA is proposing that these airplanes having ignition systems with a duty cycle of less than one hour be prohibited from flight into known icing conditions.

Since the condition described is likely to exist or develop in other Gulfstream Aerospace Model 690 and 695 series airplanes of the same design, the proposed AD would require the use of continuous ignition when operating in actual or potential icing conditions and additionally would prohibit those airplanes equipped with ignition systems having a duty cycle of less than one hour from flight into known icing conditions. The applicability statement in this AD has been clarified with respect to AD 86-24-12 to ensure that the aircraft operators understand that this AD, as well as AD 86-24-12, applies to all Model 690, 690A, 690B, 690C, 690D, 695, 695A, and 695B airplanes and not just the Models 690 and 695.

The FAA has determined that there are approximately 898 airplanes affected by AD 86-24-12, and it is estimated that only a small percent of these airplanes will be affected by the proposed AD. The cost of the proposed AD, fabrication and installation of the placard, is estimated to be negligible.

Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the FAA proposes to amend § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD:

Gulfstream Aerospace Corporation: Applies to Models 690, 690A, 690B, 690C, 690D, 695, 695A, and 695B (all serial numbers) airplanes certificated in any category. Compliance: Required within the next 50 hours' time-in-service after the effective date of this AD, unless already accomplished.

(a) To prevent engine flameout when in or departing an icing environment, accomplish the following:

(1) Revise the airplane POH/AFM by inserting Appendix 1 of this AD in the "LIMITATIONS" Section of the POH/AFM. Appendix 1 procedures supersede any other POH/AFM procedures which may be contradictory.

(2) For those airplanes with ignition systems having a continuous duty cycle of less than one hour: Fabricate and install a placard on the instrument panel, in clear view of the pilot, stating, "This airplane is prohibited from flight into known icing," and operate the airplane in accordance with this limitation. This placard must consist of a minimum of 0.1 inch high letters with white and red contrasting letter and background colors and may be of a plastic adhesive type.

(b) The requirements of paragraph (a) of this AD are no longer applicable when the airplane is modified by the addition of an FAA approved automatic-relite ignition system for both engines. Note: Automatic-relite ignition is a system which automatically energizes engine ignition without pilot action when engine RPM or torque decays below a specified level, and de-energizes engine ignition when RPM or torque exceeds the specified level. It is not synonymous with CONTINUOUS IGNITION.

(c) The requirements of paragraph (a) of this AD may be accomplished by the holder of a pilot certificate issued under Part 61 of the FAR on any airplane owned or operated by the pilot. The person accomplishing these actions must make the appropriate airplane maintenance record entry as prescribed by FAR 91.173.

(d) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(e) An equivalent means of compliance with this AD may be used if approved by the Manager, Airplane Certification Branch, DOT, FAA, Fort Worth, Texas 76193-0150; Telephone (817) 877-5150.

This AD supersedes AD 86-24-12, Amendment 39-5483.

Issued in Kansas City, Missouri, on July 20, 1987.

James O. Robinson,

Acting Director, Central Region.

Appendix I—Supplement to the POH/AFM Gulfstream Aerospace Corporation Models 690, 690A, 690B, 690C, 690D, 695, 695A, and 695B Airplanes

Continuous ignition switch shall be assured by selecting Manual IGN or IGN Override or IGN OVRD on the ignition switch as appropriate during all operations in actual or potential icing conditions described herein:

(1) During takeoff and climb out in actual or potential icing conditions.

(2) When ice is visible on, or shedding from propeller(s), spinner(s), or leading edge(s).

*(3) Before selecting ENG INLET, when ice has accumulated.

(4) Immediately, any time engine flameout occurs as a possible result of ice ingestion.

(5) During approach and landing while in or shortly following flight in actual or potential icing conditions.

*Note: If icing conditions are entered in flight without the engine anti-icing system having been selected, switch one ENGINE system to ENG INLET ON position. If the engine runs satisfactorily, switch the second ENGINE system to the ENG INLET ON position and check that the second engine continues to run satisfactorily.

Caution

Flight in actual or potential icing conditions will be limited by duty cycle of the ignition system. Ignition system time limits must be observed to prevent exceeding duty cycle times. Operator should verify these limits for his particular installation.

For the purpose of this supplement, the following definition applies:

"Potential icing conditions in precipitation or visible moisture meteorological conditions:

(1) Begin when the OAT is +5 °C (+41 °F) or colder, and

(2) End when the OAT is +10 °C (+50 °F) or warmer."

The procedures and conditions described in this appendix supersede any other POH/AFM procedures and conditions which may be contradictory.

[FR Doc. 87-17359 Filed 7-30-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 87-NM-49-AD]

Airworthiness Directives; McDonnell Douglas Model DC-9-10 Through -50, and C-9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to all McDonnell Douglas DC-9-10 through

–50, and C–9 (Military) series airplanes, which currently requires inspection and repair, as necessary, of wing rear spar lower tee cap at wing station X_{ss}=164.00. This proposal would require expanding the inspections to include the wing rear spar upper caps, and incorporate an additional provision for optional eddy current inspections. This action is prompted by recent reports of cracks found in the wing rear spar upper caps. If this condition is not corrected, spar cracks may develop and progress to a point where the structural integrity of the wing is affected.

DATES: Comments must be received no later than September 15, 1987.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 87–NM–49–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1–750 (54–60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Michael N. Asahara, Sr., Aerospace Engineer, Airframe Branch, ANM–122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514–6319.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 87–NM–49–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

On June 5, 1981, FAA issued Airworthiness Directive (AD) 81–13–02, Amendment 39–4136 (46 FR 31678; June 18, 1981), to require inspection for cracks and repair, as necessary, of the wing rear spar lower caps, at wing station X_{ss}=164.00 on certain DC–9 series airplanes. That AD was prompted by reports of cracks in the wing lower spar caps. A cracked spar cap, if not repaired, could result in extensive damage to the rear spar, spar web, and adjacent skin structure, and could affect the structural integrity of the wing.

Since the issuance of that AD, cracks in the wing rear spar upper caps at wing station X_{ss}=164.00 have recently been reported.

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin A57–146, Revision 2, dated January 2, 1987, which provides instructions to inspect the wing rear spar upper cap, and incorporates additional provisions for intermediate visual and eddy current inspections, for those aircraft incorporating a rear spar temporary repair. The FAA has also reviewed and approved McDonnell Douglas Service Bulletin 57–146, dated May 18, 1987, which describes a preventative modification for aircraft that have been modified with a temporary or permanent repair of the wing rear spar lower and upper caps.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would expand the requirements of AD 81–13–02 to include wing rear spar upper cap inspections, and incorporate additional inspections for the temporary repairs, to be accomplished in accordance with McDonnell Douglas DC–9 Alert Service Bulletin A57–146–R2, dated January 2, 1987. Accomplishment of the repetitive inspections or replacement of wing rear lower and upper spar caps will ensure the structural integrity of the wing rear spar and minimize the potential of extensive structural damage.

It is estimated that 530 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $42,400.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model DC–9 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By superseding AD 81–13–02, Amendment 39–4136 (46 FR 31678; June 18, 1981), with the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC–9–10 through –50 and C–9 (Military) series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent fatigue cracking and possible structural failure of the wing rear spar upper and lower tee caps, accomplish the following:

A. Inspect the right and left-hand wing rear spar caps in the area of the No. 2 flap hinge attachment bracket at wing station X_{ss}=164.00 in accordance with McDonnell Douglas DC–9 Alert Service Bulletin A57–146, Revision 2, dated January 2, 1987 (hereinafter referred to as ASB 57–146), or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, as follows:

1. For airplanes with 60,000 or more landings on the effective date of this AD, accomplish the inspection in accordance with

ASB 57–146, within the next 300 landings, unless already accomplished within the last 2,000 landings.

2. For airplanes with less than 60,000 landings and more than 34,999 landings on the effective date of this AD, unless already accomplished within the last 2,000 landings, inspect in accordance with ASB 57–146, in accordance with the following initial inspection schedule:

Accumulated landings	Initial inspection
35,000–44,999	2,000 landings.
45,000–54,999	1,000 landings.
55,000–59,999	500 landings.

3. For airplanes with less than 35,000 landings on the effective date of this AD, inspect in accordance with ASB 57–146, prior to the accumulation of 37,000 landings.

B. If no cracks are found, repeat the inspections required by paragraph A., above, as applicable, at intervals not to exceed 4,000 landings until such time as the preventative modification is accomplished in accordance with paragraph D., below.

C. If cracks in either the upper or lower spar caps have progressed beyond the limits indicated in paragraph 5 of "Accomplishment Instructions," ASB 57–146, prior to further flight, accomplish the permanent repair of the spar caps, identified in ASB 57–146 as J060165 "G" Change or later service rework drawing.

D. If cracks in either the upper or lower spar caps have not progressed beyond the limits indicated in paragraph 5 of "Accomplishment Instructions," ASB 57–146, prior to further flight, accomplish one of the following:

1. The permanent repair of the spar caps, identified in ASB 57–146 as J060165 "G" Change or later FAA-approved service rework drawing; or

2. The temporary repair of the spar caps, identified in ASB 57–146 as J060271 "A" Change or later FAA-approved service rework drawing.

a. Subsequent to the accomplishment of the temporary repair of the spar caps, perform visual inspections of the spar caps at intervals not to exceed 1,500 landings, and perform eddy current inspections of the spar caps at intervals not to exceed 3,000 landings, in accordance with ASB 57–146, until such time the crack preventative modification described in paragraph E., below, is accomplished.

b. If crack progression in either the upper or lower spar caps are identified during repetitive inspections, repair within 3,000 additional landings in accordance with ASB 57–146.

c. If new crack(s) are found in the rear spar, wing panel (skin), and/or temporary repair angles or doublers on airplanes with a temporary repair incorporated, prior to further flight, repair in accordance with an FAA-approved method.

E. Accomplishment of crack preventative modification in accordance with McDonnell Douglas DC–9 Service Bulletin 57–146, dated May 18, 1987, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, constitutes terminating action for this AD.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

G. Upon request of the operator, an FAA maintenance inspector, subject to prior approval by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the repetitive inspection intervals specified in this AD to permit compliance at an established inspection period of that operator if the request contains substantiating data to justify the change for that operator.

H. Alternate means of compliance which provides an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1–L65 (54–60). These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

Issued in Seattle, Washington, on July 18, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87–17360 Filed 7–30–87; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8–R]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Mental Health Counselors

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed Amendment of Rule.

SUMMARY: This proposed rule would amend DoD 6010.8–R (32 CFR Part 199) regarding authorized mental health providers. This amendment is necessary to add mental health counselors as authorized mental health providers and to state the specific requirements that must be met. The amendment is intended to help assure that CHAMPUS beneficiaries have greater access to quality mental health services.

DATES: Written public comments must be received on or before August 31, 1987.

ADDRESS: Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Policy Branch, Aurora, CO 80045.

FOR FURTHER INFORMATION CONTACT: Reta M. Michak, Policy Branch, OCHAMPUS, telephone (303) 361–4078.

SUPPLEMENTARY INFORMATION: In FR Doc. 77–7634, appearing in the **Federal Register** on April 4, 1977 (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8–R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as Part 199 of this title. 32 CFR Part 199 (DoD 6010.8–R) was reissued in the **Federal Register** on July 1, 1986 (51 FR 24008).

A mental disorder is an increasingly pervasive and devastating illness affecting not only the patient but the whole family. The treatment of mental disorders is a significant benefit under the CHAMPUS, for reasons which include the fact that the Uniformed Services medical treatment facilities have limited capacity to provide such services. Military dependents and retirees who might have access to the Uniformed Services medical treatment facilities for most of their medical care must more often rely on civilian providers when in need of treatment for mental disorders.

Section 199.4 paragraph (c)(3)(ix) states that qualified mental health providers are: Psychiatrists or other physicians; clinical psychologists; certified psychiatric nurse specialists or clinical social workers; and marriage and family and pastoral counselors under a physician's supervision. All of these mental health providers must meet the CHAMPUS criteria for his or her respective profession. Additionally, for the purposes of the payment of CHAMPUS benefits, a mental disorder is a nervous or mental condition that involves a clinically significant behavioral or psychological syndrome or pattern that is associated with a painful symptom, such as distress, *and* that impairs a patient's ability to function in one or more major life activities. The mental disorder must be one of those conditions listed in the DSM–III.

The following professional benefits are payable when rendered in the diagnosis or treatment of a covered mental disorder by a CHAMPUS-authorized, qualified mental health provider practicing within the scope of his or her license:

a. Individual psychotherapy;

b. Group psychotherapy;

c. Family or conjoint psychotherapy;
d. Psychoanalysis;
e. Psychological testing and assessment;
f. Administration of psychotropic drugs;
g. Electroconvulsive treatment; and
h. Collateral visits.

Counseling services that are not medically necessary in the treatment of a diagnosed medical condition; for example, educational counseling, vocational counseling, and counseling for socio-economic purposes are not covered.

Although CHAMPUS has not recognized mental health counselors as a separate category of authorized providers, a mental health counselor who meets the CHAMPUS-requirements for education, experience and licensure as one of the currently recognized mental health providers can be reimbursed for otherwise covered mental health services. Because CHAMPUS is already reimbursing services provided by some mental health counselors and because the education and experience requirements for mental health counselors are equivalent to those required for marriage and family and pastoral counselors, we have decided to recognize mental health counselors as authorized mental health providers. Mental health counselors meeting specific education and experience requirements will be included as qualified mental health providers under the referral and supervision of a physician. In the absence of state licensure, the mental health counselor must be certified by, or be eligible for, membership in a CHAMPUS-approved national association that sets standards for mental health counselors equivalent to or greater than those required by CHAMPUS.

CHAMPUS will cost-share otherwise covered mental health services provided by mental health counselors. Vocational, rehabilitation, or socio-economic counseling will not be authorized.

CHAMPUS has established utilization review guidelines for all mental health services. In addition to special review requirements for specific diagnoses and treatment modalities, all outpatient mental health services are reviewed at the 48th session, and all inpatient cases at the 30th day. Like marriage and family counselors and pastoral counselors, all mental health counselor claims will be reviewed at the established review points by the CHAMPUS Fiscal Intermediaries.

This amendment will also clarify the existing CHAMPUS requirement for physician referral and supervision for services provided by paramedical providers and certain extramedical providers.

We have determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It is not, therefore, a "major rule" under Executive Order 12291.

Although there are approximately 1,000 Certified Clinical Mental Health Counselors who would potentially meet the proposed requirements, only a small number of these counselors will likely apply for CHAMPUS approval. There are approximately 100,000 CHAMPUS beneficiaries who utilize mental health services. Attending physicians and psychiatrists now provide more than 50 percent of these services while extramedical counselors provide approximately 0.2 percent. The average amount paid by the government for an outpatient visit provided by an extramedical counselor is approximately $44. We would anticipate that less than 1 percent of the CHAMPUS user beneficiaries will use mental health counselors. Because of the small number of CHAMPUS beneficiaries who will potentially use mental health counselors, and the limited amount paid for an outpatient visit, the net impact on the average mental health counselor will not be significant. Accordingly, the Secretary certifies that this proposed rule, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

This amendment is being published in the **Federal Register** for proposed rulemaking at the same time it is being coordinated within the Department of Defense, the Department of Health and Human Services, and other interested agencies so that consideration of both internal and external comments and publication of the final rule can be expedited.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, Military personnel.

Accordingly, 32 CFR Part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for Part 199 continues to read as follows:

Authority: 10 U.S.C 1079, 1086, 5 U.S.C. 301.

2. Section 199.2 is amended by adding a definition for mental health counselors in the proper alphabetical order to paragraph (b) to read as follows:

§ 199.2 Definitions.

* * * * *

(b) * * *

Mental Health Counselor. An individual who meets the requirements established by § 199.6 (c)(3)(iv)(A) of this part.

* * * * *

2. Section 199.4 is amended by revising paragraphs (c)(3)(ix)(A) and paragraph (g)(39) to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(c) * * *

(3) * * *

(ix) * * *

(A) *Covered diagnostic and therapeutic services.* Subject to the requirements and limitations stated, CHAMPUS benefits are payable for the following services when rendered in the diagnosis or treatment of a covered mental disorder by a CHAMPUS-authorized, qualified mental health provider practicing within the scope of his or her license. Qualified mental health providers are: Psychiatrists or other physicians; clinical psychologists, certified psychiatric nurse specialists or clinical social workers; and marriage and family, pastoral, and mental health counselors, under a physician's supervision. No payment will be made for any service listed in this paragraph (c)(3)(ix)(A) rendered by an individual who does not meet the criteria of § 199.6 of this part for his or her respective profession, regardless of whether the provider is an independent professional provider or an employee of an authorized professional or institutional provider.

* * * * *

(g) *Exclusions and limitations.*

* * * * *

(39) *Counseling.* Counseling services that are not medically necessary in the treatment of a diagnosed medical condition; for example, educational counseling, vocational counseling, and counseling for socio-economic purposes. Services provided by a marriage and family, pastoral or mental health counselor in the treatment of a mental disorder are covered only as specifically provided in § 199.6. Services provided by alcoholism rehabilitation counselors are covered only when rendered in a CHAMPUS-authorized alcohol rehabilitation facility and only when the cost of those services is included in the facility's CHAMPUS-determined allowable cost-rate.

3. Section 199.6 is amended by adding paragraph (c)(1)(iv), by revising paragraphs (c)(3)(iv)(A) introductory text, (c)(3)(iv)(A) (*1*), (*2*), (*3*), (*4*) introductory text; by redesignating and revising paragraph (c)(3)(iv)(A)(*4*)(*iii*) as (c)(3)(iv)(A)(*6*); and by adding a new paragraph (c)(3)(iv)(A)(*5*) to read as follows:

§ 199.6 Authorized providers.

* * * * *

(c) * * *

(1) * * *

(iv) *Physician referral and supervision.* Physician referral and supervision is required for the services of paramedical providers as listed in paragraph (c)(3)(iii)(H) of this section and for marriage and family counselors, pastoral counselors, and mental health counselors. Physician referral means that the physician must actually see the patient, perform an evaluation, and arrive at an initial diagnostic impression prior to referring the patient. Documentation is required of the physician's examination, diagnostic impression, and referral. Physician supervision means that the physician provides overall medical management of the case. The physician does not have to be physically located on the premises of the provider to whom the referral is made. Communication back to the referring physician is an indication of medical management.

* * * * *

(3) * * *

(iv) * * *

(A) *Marriage and family counselors, pastoral counselors, and mental health counselors.* The services of certain extramedical marriage and family counselors, pastoral counselors, and mental health counselors are coverable on a fee-for-service basis, under the following specified conditions:

(*1*) The CHAMPUS beneficiary must be referred for therapy by a physician.

(*2*) A physician is providing ongoing oversight and supervision of the therapy being provided.

(*3*) The marriage and family counselor, pastoral counselor, and mental health counselor must certify on each claim for reimbursement that a written communication has been made or will be made to the referring physician of the results of the treatment. Such communication will be made at the end of the treatment, or more frequently, as required by the referring physician (refer to § 199.7).

(*4*) Marriage and family counselors and pastoral counselors shall have the following:

* * * * *

(*5*) Mental health counselors shall have the following:

(*i*) Minimum of a master's degree in mental health counseling or allied mental health field from a regionally accredited institution, and

(*ii*) Two years of post-master's experience which includes 3,000 hours of clinical work and 100 hours of face-to-face supervision.

(*6*) These providers must also possess a valid state license or certificate as a marriage and family counselor, pastoral counselor or mental health counselor, or a license or certificate that allows the counselor to provide therapy in states that require such licensing or certification.

* * * * *

3. Section 199.7 (e)(3) is revised to read as follows:

§ 199.7 Claims submission, review, and payment.

* * * * *

(e) * * *

(3) *Claims involving the services of marriage and family counselors, pastoral counselors, and mental health counselors.* CHAMPUS requires that marriage and family counselors, pastoral counselors, and mental health counselors make a written report to the referring physician concerning the CHAMPUS beneficiary's progress. Therefore, each claim for reimbursement for services of marriage and family counselors, pastoral counselors, and mental health counselors must include certification to the effect that a written communication has been made or will be made to the referring physician at the end of treatment, or more frequently, as required by the referring physician.

* * * * *

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 24, 1987.

[FR Doc. 87-17277 Filed 7-30-87; 8:45 am]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-3249-7]

Approval and Promulgation of Implementation Plans; Illinois; Correction

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking; correction notice.

SUMMARY: In the June 26, 1987, Federal Register (52 FR 24037), USEPA proposed, inter alia, the promulgation into the Illinois State Implementation Plan (SIP) of rules for issuance of construction permits to new and modified air pollution sources located in or affecting nonattainment areas in Illinois (New Source Review rules). USEPA's proposed promulgation is based upon a request from the state of Illinois and will provide Illinois with New Source Review rules. Today's notice provides the proposed codification for a Federal promulgation of New Source Review rules for Illinois. This proposed codification was inadvertently left out of USEPA's June 26, 1987 proposed rulemaking. All other elements in the June 26, 1987, proposal remain unchanged.

DATES: An informal public hearing will be held on USEPA's proposed promulgation, as printed full text today, at the address listed below. It will be held on August 6, 1987, starting at 11:00 a.m. (This hearing will not cover USEPA's June 26, 1987, proposed action on the State of Illinois New Source Review rules.)

Written comments on USEPA's promulgation of rules for the State as proposed on June 26, 1987, and as printed full text today; the State of Illinois New Source Review rules as proposed on June 26, 1987; and on USEPA's proposed actions as also proposed on June 26, 1987, and today must be received by September 7, 1987.

ADDRESSES: The public hearing on USEPA's proposed promulgation will be held in the: Lakeview Conference Room, 16th Floor, Room No. 1660, John C. Kluczynski Federal Building, 230 South Dearborn Street, Chicago, Illinois 60604.

Copies of the SIP revision proposed for approval and additional copies of the rules proposed for promulgation are available at the following addresses for review: (It is recommended that you telephone Randolph O. Cano, at (312) 886-6036, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706

Comments on these proposed rules should be addressed to: (Please submit an original and three copies, if possible.) Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental

Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Air and Radiation Branch (5AR–26), Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6036.

SUPPLEMENTARY INFORMATION: Title 40 of the Code of Federal Regulations, Chapter I, Part 52, is proposed to be amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.736 is revised by amending paragraph (a) and adding new paragraph (b) as follows:

§ 52.736 Review of new sources and modifications.

(a) Part D Disapproval—USEPA disapproves the Illinois pollution Control Board's Rule 203, as adopted on July 14, 1983, and submitted to USEPA on August 23, 1983.

(b) *Major Stationary Source Construction and Modification.* The requirements of this section shall apply to any person constructing or modifying a new major stationary source or modification that is major for the pollutant for which the area is nonattainment defined at section 171 (of the Clean Air Act (42 U.S.C. 7501(2))

(1) *General Provisions*—(i) *Definitions*—(A) *Actual construction.* In general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and erection of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

(B) *Actual emissions.* The actual rate of annual emissions of a pollutant from an emissions unit as of a particular date. That rate is equal to the average annual rate (in tons per year) at which the emissions unit actually emitted the pollutant either during the 2-year period which immediately precedes the particular date, or during such other period which is determined by the United States Environmental Protection Agency (Agency) to be representative of normal source operation. Actual emissions shall be calculated using the emissions unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(1) The Agency shall allow the use of a different time period upon a determination by the Agency that it is more representative or normal source operation. The burden shall be on the applicant to demonstrate that another time period is more representative.

(2) The Agency may presume in the absence of reliable data on actual emissions, that the source-specific allowable emissions for the emissions unit are equivalent to the actual emissions of the emissions unit.

(3) For any emissions unit which has not begun normal operation on the particular date, the Agency shall presume that the actual emissions of the emissions unit on that date is equivalent to the source's potential to emit.

(C) *Allowable emissions. (1)* The allowable emissions rate of a stationary source is calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable permit conditions or other such federally enforceable limits which restrict the operating rate, or hours of operation or both) and the most stringent of the following:

(i) The applicable standard set forth in 40 CFR Part 60 or 40 CFR Part 61;

(ii) The applicable emission standard or limitation contained in the Illinois State Implementation Plan (SIP), including those with a future compliance date; or

(iii) The emission rate specified as a federally enforceable permit condition, including those with a future compliance date.

(2) The allowable emission may be expressed as a permit condition limiting material or fuel throughput.

(3) If a source is not subject to an emission standard under provision *(1)* and is not conditioned pursuant to provision *(2)* above, the allowable emissions shall be the source's potential to emit.

(D) *Available growth margin.* The portion which remains of any emission allowance for new or modified major stationary sources expressly identified in the attainment demonstration approved by the Agency under section 172(b)(5) of the Clean Air Act for a particular pollutant and area.

(E) *Commence.* As applied to construction of a major stationary source or major modification, "commence" means that the owner or operator has obtained all necessary preconstruction approvals or permits and either has:

(1) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(2) Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(F) *Construction.* Any physical change or change in the method of operation, (including but not limited to fabrication, erection, installation, demolition, or modification of an emissions unit), which would result in a change in actual emissions.

(G) *Emission baseline.* The starting point or reference level from which increases and decreases in emissions are measured. The rules herein governing determination of emission offsets and calculations of net emission increases specify the particular emission baseline that applies for that purpose.

(H) *Emission offset.* A creditable emission reduction used to compensate for the increase in emissions resulting from a new major source or a major modification.

(I) *Emissions unit.* Any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the Clean Air Act.

(J) *Fugitive emissions.* Those emissions which could not reasonably pass through a stack, chimney, vent or other functionally equivalent opening.

(K) *Lowest Achievable Emission Rate (LAER).* That rate of emissions for any source which reflects the more stringent of either the most stringent emission limitation which is contained in any State Implementation Plan for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable; or the most stringent emission limitation which is achieved in practice by such class or category of source. In no event shall the application of this term permit a proposed new or modified source to emit any pollutant in excess of the amount allowable under applicable new source standards of performance. The applicable LAER requirements are presented in § 52.736(b)(3)(i).

(L) *Potential to emit.* The maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed; shall

be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

(M) *Reasonable Further Progress.* The annual incremental reductions in emissions of the applicable air pollutant (including substantial reductions in the early years following approval or promulgation of plan provisions under Part D and section 110(a)(2)(I) of the Clean Air Act and regular reductions thereafter) which are sufficient in the judgement of the Administrator, to provide for attainment of the applicable national ambient air quality standard by the date required in section 172(a) of the Clean Air Act (42 U.S.C. 7502(a)).

(N) *Secondary emissions.* Emissions which would occur as a result of the construction of operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this rule, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train or from a vessel.

(O) *Stationary source.* Any building, structure, facility or installation which emits or may emit any air pollutant subject to regulation under the Clean Air Act (42 U.S.C. 7401 *et seq.*).

(1) The terms "building", "structure", "facility" and "installation" mean all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control), including dockside vessel emissions as determined on a case-by-case basis by the Agency.

(2) Pollutant emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101–0066 and 003–005–00176–0, respectively).

(P) *Volatile organic compound.* Any chemical compound of carbon, released to or present in the atmosphere in a gaseous state, including compounds which are liquids at standard conditions, but excluding the following compounds and other compounds exempted by the Agency by appropriate final action in the Federal Register. methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbide, metallic carbonates, ammonium carbonate, 1,1,1 trichloroethane (methyl cloroform), methylene chloride, trichlorotrifluoroethane (Freon 113), trichlorofluoromethane (CFC–11), dichlorodifluoromethane (CFC–12), chlorodifluoromethane (CFC–22), trifluorumethane (FC–23), trichlorotrifluoroethane (CFC–113), dichlorotetrafluoroethane (CFC–114), chloropentafluoroethane (CFC–115).

(ii) *Public participation.* Prior to the initial issuance of a permit for a major new source or modification subject to paragraph (2) (Major Stationary Sources in Nonattainment Areas), the Agency shall provide public participation pursuant to its procedures at 40 CFR 51.161.

(A) Such procedures shall provide that prior to approving or disapproving the construction or modification of a facility, building, structure, or installation pursuant to this section, the State or local agency will provide opportunity for public comment on the information submitted by the owner or operator and on the Agency's analysis of the effect of such construction or modification on ambient air quality, including the Agency's proposed approval or disapproval.

(B) For purposes of paragraph (A) of this section, opportunity for public comment shall include, as a minimim:

(1) Availability of the information submitted by the owner or operator and the State and local agency's analysis of the effect on air quality for public inspection in at least one location in the affected region;

(2) 30-day period for submittal of public comment; and

(3) Notice by prominent advertisement in the region affected of the location of the source information and analysis specified in paragraph (B)*(1)* of this section.

(C) Where the 30-day comment period required in paragraph (B) of this section would conflict with existing requirements for acting on requests for permission to construct or modify, the State may submit for approval a comment period which is consistent with such existing requirements.

(D) A copy of the notice required by paragraph (B) of this section shall also be sent to the Administrator through the appropriate regional office, and to all other State and local air pollution control agencies having jurisdiction in the region in which such new or modified installation will be located. The notice also shall be sent to any other agency in the region having responsibility for implementing the procedures required under this section.

(iii) *Delegation.* The Agency may delegate all or part of its authority under this rule to the Illinois Environmental Protection Agency. Where the Illinois Environmental Protection Agency has been delegated authority, it shall act for the Agency and make those determinations which would otherwise be made by the Agency. Where the Agency has so delegated its authority, the Illinois Environmental Protection Agency shall sent a copy of the public comment notice on every permit application to the USEPA.

(2) *Major Stationary Sources In Nonattainment Areas*—(i) *Prohibition.* In any nonattainment area as defined at section 171(2) of the Clean Air Act (42 U.S.C. 7501(2)), no person shall cause or allow the construction of a new major stationary source of major modification that is major for the pollutant for which the area is nonattainment except as in compliance with this rule for that pollutant.

(ii) *Construction permit requirement and application.* (A) A construction permit is required prior to having begun or having caused to begin actual construction of a major new source or major modification.

(B) Applications for construction permits required under this subparagraph shall contain sufficient information to demonstrate compliance with the requirements of this rule including, but not limited to, paragraph (b)(3), *Requirements For Major Stationary Sources In Nonattainment Areas.*

(C) The permit shall include conditions specifying the manner in which the requirements of paragraphs (b)(2) *Major Stationary Sources* and (b)(3) are satisfied.

(D) No permittee shall violate any condition contained in construction permit issued for a new major stationary source or major modification which is subject to this subparagraph (ii).

(iii) *Effect of permits.* The issuance of a permit to a source subject to the requirements of this rule shall not relieve any person of the responsibility to comply fully with applicable provisions of the Illinois Environmental Protection Act (Ill. Rev. Stat. 1981, ch. 111 ½, pars. 1001 *et seq.*); the regulations

contained in 35 Ill. Adm. Code: Subtitle B, Chapter I; the Clean Air Act (42 U.S.C. 7401 et seq.); the Federal regulations adopted thereunder including the Illinois State Implementation Plan; or other applicable requirements under local, State or Federal laws.

(iv) *Major stationary source.* For purposes of this regulation dealing with new source review in Illinois nonattainment area, the following constitutes a major stationary source:

(A)*(1)* Any stationary source of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the Act for which the area is nonattainment under section 171(2) of the Act; or

(2) Any physical change that would occur at a stationary source not qualifying under paragraph (A)*(1)* as a major stationary source, if the change would constitute a major stationary source by itself.

(B) A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

(C) The fugitive emissions of a stationary source shall not be included in determining (for any of the purposes of this subsection) whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(1) Coal cleaning plants (with thermal dryers),

(2) Kraft pulp mills,

(3) Portland cement plants,

(4) Primary zinc smelters,

(5) Iron and steel mills,

(6) Primary aluminum ore reduction plants,

(7) Primary copper smelters,

(8) Municipal incinerators capable of charging more than 250 tons of refuse per day,

(9) Hydrofluoric, sulfuric, or nitric acid plants,

(10) Petroleum refineries,

(11) Lime plants,

(*12*) Phosphate rock processing plants,

(*13*) Coke oven batteries,

(*14*) Sulfur recovery plants,

(*15*) Carbon black plants (furnance process),

(*16*) Primary lead smelters,

(*17*) Fuel conversion plants,

(*18*) Sintering plants,

(*19*) Secondary metal production plants,

(*20*) Chemical process plants,

(*21*) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input,

(*22*) petroleum storage transfer units with a total storage capacity exceeding 300,000 barrels,

(*23*) Taconite ore processing plants,

(*24*) Glass fiber processing plants,

(*25*) Charcoal production plants,

(*26*) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input,

(*27*) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act.

(v) *Major modification.* Any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulations under the Clean Air Act, except that a physical change or change in the method of operating shall not include an activity listed below. Any net emissions increase that is considered significant for volatile organic material shall be considered significant for ozone.

(A) Routine maintenance, repair, and replacement.

(B) Use of an alternative fuel or raw material by reason of any order under section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 791), the Power Plant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301) (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act (16 U.S.C. 791, *et seq.*).

(C) Use of an alternative fuel by reason of an order or rule under section 125 of the Clean Air Act (42 U.S.C. 7425).

(D) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste.

(E) Use of an alternative fuel or raw material by a stationary source which:

(*1*) The source was capable of accommodating before december 21, 1976, and has continuously remained capable, unless such change would be prohibited under any federally enforceable permit condition which was established December 21, 1976, pursuant to 40 CFR 52.21, as amended at 45 FR 25735, August 7, 1980, 40 CFR Part 51, Subpart I, 35 I11. Adm. Code 201.142 or 201.413, ot this rule; or

(*2*) Is approved for use under any permit issued pursuant to 35 I11. Adm. Code 201.142, 201.143, or this rule.

(F) An increase in the hours of operation or in the production rate, unless such change in prohibited under any federally enforceable permit condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 as amended at 45 FR 52735, August 7, 1980, or under regulations approved pursuant to 40 CFR Part 51, Subpart I, 35 I11. Adm. Code 201.142 or 201.143, or this rule.

(G) Any change in ownership at a stationary source.

(vi) *Net emission determination.* A net emissions increase is the amount by which the sum of any increase in actual emissions from a particular physical change or change in method or operation at a source, and any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable, exceeds zero. The following steps determine whether the increase or decrease in emissions is available.

(A) Net emissions increase means the amount by which the sum of the following exceeds zero:

(*1*) Any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and

(*2*) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

(B) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change, only if it occurs before the date that the increase from the particular change occurs.

(C) An increase or decrease in actual emissions in creditable only if:

(*1*) It occurs within five years of the commencement of construction of the particular change; and

(*2*) The reviewing authority has not relied on it in issuing a permit for the source under regulations approved pursuant to this section which permit is in effect when the increase in actual emissions from the particular change occurs.

(D) An increase in actual emissions is creditable only to the exent that the new level of actual emissions exceeds the old level.

(E) A decrease in actual emissions is creditable only to the extent that:

(*1*) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(*2*) It is federally enforceable at and after the time that actual construction on the particular change begins; and

(*3*) The reviewing authority has not relied on it in issuing any permit under regulations approved pursuant to 40 CFR Part 51, Subpart I or the State has not relied on it in demonstrating attainment or reasonable further progress.

(*4*) It is approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(F) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(vii) *Significant* means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emission Rate
Carbon monoxide: 100 tons per year (tpy)
Nitrogen oxides: 40 tpy
Sulfur dioxide: 40 tpy
Particulate matter: 25 tpy
Ozone: 40 tpy of volatile organic compounds
Lead: 0.6 tpy

(viii) *Relaxation of a source-specific limitation.* (A) No person shall cause or allow the operation of a source so as to exceed any enforceable limitation which affects or defines the applicability of the requirements of this rule to a stationary source or modification, by specifying the permissible emission rate, operating hours, type or amount of material processed, stored or combusted, or other aspects of source operation.

(B) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a realization in, or expiration of, any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of this rule shall apply as though construction had not yet commenced on the source or modification.

(ix) *Permit exemption based on fugitive emissions.* The provisions of this rule do not apply to a source or modification that would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the categories of sources listed in subparagraph (iv)(C).

(3) *Requirements for major stationary sources in nonattainment areas.*—(i) *Lowest achievable emission rate.* (A) For any source, lowest achievable emission rate (LAER) will be the most stringent rate of emissions based on the following:

(*1*) The most stringent emissions limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are now achievable; or

(*2*) The most stringent emissions limitation which is achieved in practice by such class or category of stationary source. This limitation, when applied to a modification, means the lowest achiveable emissions rate for the new or modified emissions units within the stationary source. In no event shall the application of this term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under any applicable new source standard of performance.

(B) The owner or operator of a new major stationary source shall demonstrate that the control equipment and process measures applied to the source will produce LAER.

(C) The owner or operator of a major modification shall demonstrate that the control equipment and process measures applied to the major modification will produce LAER. This requirement applies to each emissions unit at which a net increase in emissions of the pollutant has occurred or would occur as a result of a physical change or change in the method of operation in the unit.

(D) The owner or operator shall provide a detailed showing that the proposed emission limitations constitute LAER. Such demonstration shall include:

(1) A description of the manner in which the proposed emission limitation was selected, including a detailed listing of information resources.

(2) Alternative emission limitations, and

(3) Such other reasonable information as the Agency may request as necessary to determine whether the proposed emission limitation is LAER.

(ii) *Maintenance of reasonable further progress and emission offsets.* (A) Credit for an emissions reductions can be claimed to the extent that the reviewing authority has not relied on it in issuing any permit under regulations approved pursuant to 40 CFR Part 51, Subpart I or the State has not relied on it in demonstrating attainment or reasonable further progress. Only intrapollutant emission offsets will be acceptable (e.g., volatile organic compound increases may not be offset against SO_2 reductions).

(B) The Agency shall allow the use of all or some portion of the available growth margin to satisfy subparagraph (A) if the owner or operator can show that possible sources of emission offsets were investigated and none were reasonably available at that time.

(iii) *Baseline and emission offsets determination.* (A) An emission offset must be obtained from a source in operation prior to the permit application for the new or modified source. Emissions offsets must be effective prior to start-up of the new or modified source.

(B) The emission offsets provided must:

(1) Be intrapollutant offsets of a type with approximately the same qualitative significance for public health and welfare as that attributed to the increase in a particular change;

(2) In the case of a fuel combustion source, be based on the type of fuel being burned at the time the permit application is filed, and, if offset is to be produced by a future switch to a cleaner fuel, be accompanied by a demonstration that long-term supplies of the clean fuel are available and a commitment to a specified alternative control measure which would achieve the same degree of emission reduction if return of the dirtier fuel is proposed;

(3) In the case of a shutdown of a source or permanent curtailment of production or operating hours occurring on or after the date a permit application is filed for a new or modified source, have been made known to the affected work force;

(4) In the case of a past shutdown of a source or permanent curtailment of production or operating hours, have occurred since April 24, 1979, or the date the area is designated by the Agency as a nonattainment area for the pollutant, whichever is more recent, and the proposed new or modified source must be a replacement for the shutdown or curtailment; and

(5) Be federally enforceable. Federally enforceable offsets are those limitations and conditions which are enforceable by the Administrator.

(C)*(1)* The baseline for determining the extent to which emission reductions are creditable as offsets shall be the actual emissions of the source from which the offset is to be obtained, to the extent they are within any applicable emissions limitations of 35 Ill. Adm. Code: Subtitle B, Chapter I, or 40 CFR Part 60 and 40 CFR Part 61 except as provided in subparagraph (2).

(2) If the demonstration of reasonable further progress and attainment of ambient air quality standards approved by the Agency as part of the Illinois SIP is based on the applicable emission limitations of 35 Ill. Adm. Code: Subtitle

B, Chapter I, or 40 CFR 60 and 40 CFR 61, for sources within an area, and the source from which the offset is to be obtained is subject to such limitations, the baseline for offsets is to be either such limitations or the potential to emit of the source, whichever is less.

(D) The location of sources providing the emission offests must be consistent with the guidelines in 40 CFR Part 51, Appendix S, Section IV D.

(E) Replacement of one volatile organic compound with another lesser reactivity does not constitute an emission reduction credit.

(iv) *Compliance by existing sources.* The applicant must certify that all existing major sources owned or operated by the applicant (or any entity controlling, controlled by, or under common control with the applicant) in Illinois are in compliance with all applicable emission limitations and standards under the Clean Air Act (or are in compliance with an expeditious schedule which is Federally enforceable or contained in a court decree).

(v) *Analysis of alternatives.* For emissions of volatile organic compounds or carbon monoxide, the owner or operator shall demonstrate that benefits of the new major source or major modification significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification, based upon analysis of alternative sites, sizes, production processes, and environmental control techniques for such proposed source.

(4) *Operation of a major stationary source or major modification*—(i) Lowest achievable emission rate compliance requirement. No person shall cause or allow the operation of a new major stationary source or major modification subject to the construction requirements of subparagraph (3), except as in compliance with applicable LAER provisions established pursuant to subparagraph (3)(i) for such source or modification.

(ii) *Emission offset maintenance requirement.*—No person shall cause or allow the operation of a new major stationary source or major modification which is required to demonstrate that it would not interfere with reasonable further progress, or which must include emissions offsets in a demonstration pursuant to subparagraphs (3) (ii) and (iii) without maintaining those emission offsets or other equivalent offsets.

(5) *General maiantenance of emission offsets.* No person shall cease to maintain emission offsets which were provided for a source or modificaiton subject to the requirements of paragraph (3).

Opportunity for Public Hearing

USEPA will hold an informal public hearing on the promulgation of New Source Review rules in Illinois. The hearing will be held at 11:00 a.m. on August 6, 1987, in Room 1680, 230 S. Dearborn Street, Chicago, Illinois.

Public Comment

USEPA is soliciting public comment on both its June 26, 1987, proposed promulgation of New Source Review rules into the Illinois SIP (as printed full text today) and on its June 26, 1987, proposed approval of the New Source Review rules currently under development by the IPCB. Public comments should be sent to the Region V office listed in the beginning of the **Federal Register** notice. Comments received by September 7, 1987, will be considered in USEPA's final rulemaking.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposal or final rule on small entities. Under 5 U.S.C. 605(b), this requirement may be waived if USEPA certifies that the rule will not have a significant economic effect on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and governmental entities with jurisdiction over a population of less than 50,000.

USEPA believes that these rules, if finally promulgated, will not have a significant negative economic effect on a substantial number of small entities. Although some new requirements will be placed on Illinois sources requesting permits under the New Source Review rules, the requirements to be imposed have not been approved in Illinois primary nonattainment areas. Although the costs and benefits of imposing these requirements are difficult to accurately quantify, USEPA believes that the benefit of ending the construction moratorium greatly outweighs the costs.

USEPA expressly solicits any information available to the contrary. Such information should be submitted to the above listed address for public comments. If instead, USEPA grants final approval to the State's New Source Review rule, then the plan approval would be addressed by the Administrator's certification that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

Under Executive Order 12291, today's correction action is not "Major". The proposed codification language in today's notice was submitted to the Office of Management and Budget (OMB) for review at the same time as the notice of proposed Federal promulgation of a Illinois New Source Review plan and the proposed rulemaking on the Illinois New Source Review plan, both of which were published in the same notice on June 26, 1987 (52 FR 24037).

Authority: 42 U.S.C. 7401–7642.

Dated: July 24, 1987.

Frank M. Covington,

Acting Regional Administrator.

[FR Doc. 87–17399 Filed 7–30–87; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 65

[A-6-FRL-3240-4]

Administrative Orders Permitting a Delay in Compliance With Texas State Implementation Plan Requirements; Proposed Disapproval

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed disapproval.

SUMMARY: The Environmental Protection Agency proposes to disapprove a Delayed Compliance Order (DCO) issued by the Texas Air Control Board (TACB) to General Motors Corporation (GM) Arlington, Tarrant County, Texas, on January 16, 1987. The DCO purports to require GM to bring air emissions of volatile organic compounds from their automobile topcoat painting and final paint repair application process into compliance with the Texas State Implementation Plan (SIP) by August 28, 1987. The SIP required compliance by December 31, 1986. Tarrant County is presently not attaining the National Ambient Air Quality Standard for ozone. The DCO, as submitted to the EPA by the TACB, does not meet the requirements of EPA policy, section 113 of the Clean Air Act and cannot be approved by EPA. Because the order has been issued to a "major" stationary source and permits a delay in compliance with the Texas SIP, section 113 of the Clean Air Act requires it to be approved by EPA before it can become effective. If approved by EPA, the DCO will become an addition to the Texas SIP. In addition, a source in compliance with an approved DCO may not be sued under the federal enforcement or citizen suit provisions of the Clean Air Act for violations of SIP provisions covered by the DCO. This notice invites public comment on EPA's proposed disapproval of the DCO.

DATE: Interested persons are invited to submit comments on the proposed action on or before August 31, 1987.

ADDRESSES: Written comments should be submitted to the following address: Air Enforcement Branch (6T–E), Air, Pesticides, & Toxics Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202.

The State order, supporting material, evaluation report and any public comments received in response to this notice are available for inspection during normal business hours at the address above (as Docket number R6–87–DCO–1) and at the following locations: Environmental Protection Agency, Public Information Reference Unit, Library Systems Branch, 401 M Street SW., Washington, DC 20460, and the Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723.

FOR FURTHER INFORMATION CONTACT: Rich Raybourne, ALO Enforcement Section (6T–EA), Air, Pesticides, and Toxics Division, Environmental Protection Agency, Region 6 Office, (214) 655–7223.

SUPPLEMENTARY INFORMATION: On March 25, 1980, (45 FR 19231), EPA approved TACB Regulation V, Rule 115.191, "Surface Coating Processes in Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant and Victoria Counties," as a revision to the Texas SIP. Rule 115.191(8) (A) and (B) prohibits operation of certain automobile and light-duty truck coating (painting) facilities unless they limit emissions of volatile organic compounds (VOC) on the basis of solvent content per gallon of coating (minus water), or by the use of "add-on" control equipment such as carbon absorption systems or incineration systems. Sources subject to the Rule were to have submitted a final control plan for compliance to the TACB by December 31, 1979, and were to be in compliance by December 31, 1986.

GM's Arlington plant is a "major" stationary source, which emits more than 100 tons of VOC per year from automobile coating processes, and as such is subject to Rule 115.191. Based on GM's contention that they were unable to comply with the VOC limits in Rule 115.191(8)(B) by December 31, 1986, except by shutting down the affected automobile coating processes, on January 16, 1987, the TACB issued an order to GM extending their SIP compliance date until August 28, 1987. This order was subsequently submitted to the EPA as a DCO pursuant to section 113(d) of the Clean Air Act. On May 12, 1987, EPA notified GM under section 113(a)(1) of the Clean Air Act that they were operating in violation of the Texas SIP. In anticipation of this notification the TACB developed the January 16, 1987, DCO that is now proposed for disapproval under this notice. The TACB transmitted the DCO to EPA on January 20, 1987. EPA has reviewed the DCO,[1] and found that it does not satisfy the requirements of section 113(d) of the Clean Air Act and EPA policy.

Briefly stated, the DCO deficiencies are as follows:

- The DCO does not have a schedule to control emissions from all of the affected paint application areas.
- The DCO does not demonstrate final compliance with the applicable regulations.
- The DCO allows monthly averaging of VOC content in coatings, which does not establish compliance with the short term standard.
- The TACB has not documented communication with local governments and the Federal Land Manager regarding the DCO.

If the DCO is approved by EPA, compliance with its terms would preclude federal enforcement action under section 113 of the Clean Air Act against GM of violations covered by the DCO during the period that the DCO is in effect. Further, enforcement under the citizen suit provision of section 304 of the Clean Air Act would be similarly precluded. If approved, the DCO would constitute an addition to the Texas SIP. However, compliance with an approved DCO will not preclude assessment of any noncompliance penalty under section 120 of the Clean Air Act, unless the source is entitled to an exemption under section 120(a)(2) (B) or (C).

All interested persons are invited to submit written comments on the proposed disapproval action. Written comments received by the date specified above will be considered in determining EPA's final action on the DCO. After the public comment period, the Administrator of EPA will publish in the Federal Register the Agency's final action on the DCO and the corresponding addition to 40 CFR Part 65.

This DCO affects only one entity and involves an "Order", rather than a "Rule", and therefore this action is not subject to the requirements of the Regulatory Flexibility Act or to Executive Order 12291.

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[1] "EPA Review of Texas State Delayed Compliance Order for General Motors Corporation, Tarrant County, Texas, February 1987". This detailed evaluation is available at the addresses given previously in this Notice.

This notice of proposed disapproval is issued under the authority of sections 113 and 301 of the Clean Air Act, 42 U.S.C. 7413 and 7601.

List of Subjects in 40 CFR Part 65

Air pollution control.

Date: July 17, 1987.

Robert E. Layton, Jr.,

Regional Administrator, Region 6.

The text of the Delayed Compliance Order is set forth below. Final agency action on the order will be published in Subpart SS of Part 65 of Title 40 of the Code of Federal Regulations.

Texas Air Control Board

6330 Highway 290 East, Austin, Texas 78723

Board Order—General Motors Corporation

[No. 87–01]

Whereas, General Motors Corporation (hereinafter referred to as GM) owns and operates an automobile assembly plant (hereinafter referred to as the plant) in Arlington, Tarrant County, Texas. The assembly of automobiles at the plant results in the emission of volatile organic compounds (VOCs) into the air from the plant's topcoat facility; and

Whereas, the GM plant in Tarrant County is a major stationary source of VOCs within the meaning of 40 CFR 65.01(d); and

Whereas, the VOCs emitted from the automobile and light duty truck coating processes at GM are subject to the requirements of Rule 115.191(8)(B) of Regulation V; and

Whereas, Rule 115.191(8)(B) requires coating emissions not to exceed a VOC content of 5.2 pounds per gallon (lbs/gal), excluding water, by December 31, 1982 and 2.8 lbs/gal, excluding water, by December 31, 1986 and requires the plant's final repair facility to achieve 4.8 lbs/gal, excluding water, by December 31, 1986. Both the topcoat and final repair facilities at the plant use lacquer based paint.

Whereas, Rule 115.191(8)(B) has been approved by the administrator of the Environmental Protection Agency (hereinafter referred to as EPA) pursuant to section 110 of the Federal Clean Air Act (42 U.S.C. 7410) as a requirement of the applicable implementation plan for Texas; and

Whereas, Texas Air Control Board (hereinafter referred to as TACB) Rule 115.194(c) requires that persons affected by Rule 115.191(8)(B) submit compliance schedules and that such persons be in compliance with the requirements of

Rule 115.191(8)(B) as soon as practicable but not later than December 31, 1986; and

Whereas, on October 28, 1985, GM received a construction permit for a new plant shop which have met the December 31, 1986 deadline through use of the best available control technology. However, due to prevailing market conditions, construction on the new paint shop ceased on January 13, 1986 after a substantial expenditure of funds.

Whereas, GM thereafter worked with the TACB on a site-specific reasonably available control technology (RACT) determination; however, EPA has indicated that the proposed site-specific RACT determination is unapprovable.

Whereas, GM is unable to comply with the limits in Rule 115.191(8)(B) by December 31, 1986, except by shutting down the source listed above; and

Whereas, startup of the topcoat and final repair facilities may result in a violation of Rule 115.191(8)(B) continuing for more than 30 days until the completion of rulemaking reflecting the extension of compliance date under this order; and

Whereas, on September 26, 1986, GM submitted a schedule which demonstrates that compliance can be achieved by August 28, 1987; and

Whereas, GM has not operated the plant since December 8, 1986; and

Whereas, the Texas Air Control Board gave notice to the public and to the EPA on December 12, 1986, that it proposed to issue the following Order to GM; and

Whereas, the public notice contained the contents of the following Order, invited comment, and scheduled a public hearing; and

Whereas, a public hearing was held on January 12, 1986 at 7:00 p.m. in Arlington, Tarrant County, Texas; and

Whereas, an investigation of all relevant facts, including public comment, has demonstrated that this Order requires compliance as expeditiously as practicable and that this Order requires the best practicable system of interim emission reduction; and

Whereas, the TACB has consulted with the Arlington Health Department, Tarrant County Health Department and North Central Texas Council of Governments pursuant to section 121 of the Federal Clean Air Act (42 U.S.C. 7421); and

Whereas, the public interest in continued operation of the source listed above outweighs the environmental cost of the additional period of noncompliance provided in this Order because there are no discernible effects associated with the emissions from GM's automobile and light duty truck coating processes which exceed the level of emissions allowed under Rule 115.191(8)(B), and strict compliance with such rule would require cessation of certain operations with attendant adverse economic effects for which there is insufficient corresponding environmental benefit.

Now, therefore, it is the decision and order of the Board that:

1. GM is hereby directed to comply with TACB Rule 115.191(8)(B) by not later than August 28, 1987, in accordance with the following schedule for compliance:

A. First Color Oven Incinerator

Complete construction, February 2, 1987
Begin operation, Before plant recommences operation

B. First Color Booth Regenerative Incinerator

Begin on-site construction, February 16, 1987
Complete construction and begin operation, August 28, 1987

2. Performance verification testing on the First Color Oven Incinerator shall be completed by May 1, 1987 and the testing documentation shall be submitted to the staff by July 1, 1987. That performance verification testing on the First Color Booth Regenerative Incinerator shall be completed by December 4, 1987 and the testing documentation shall be submitted to the staff by December 21, 1987.

3. GM shall install and maintain a collection and incineration system such that a 95% destruction efficiency of VOCs is achieved from the First Color Oven Incinerator and a 93% destruction efficiency of VOCs is achieved from the First Color Booth Regenerative Incinerator.

4. Prior to final compliance with Rule 115.191(8)(B) of Regulation V, GM shall continue topcoat and final repair application operations in such a manner as to maximize paint transfer efficiencies and minimize VOC emissions. In no event, shall VOC emissions from the topcoat application operation exceed the 5.2 lbs/gal (material 1207 shall not exceed 6.8 lbs/gal) or VOC emissions from the final repair application operation exceed the 6.5 lbs/gal limitations contained in Rule 115.191(8)(A) of Regulation V, except as provided in any alternate means of control approved pursuant to TACB Rule 115.401.

5. From and after entry of this Board Order until August 28, 1987, GM shall maintain the recordkeeping system contained in Attachment "A" demonstrating that the air emissions from the topcoat application and final repair application systems do not exceed the emission limitations contained in Rule 115.191(8)(A), except as provided in any alternate means of control approved pursuant to TACB Rule 115.401. From and after August 28, 1987, GM shall maintain any recordkeeping system required by any TACB permit for the above facilities or contained in any alternate means of control approved pursuant to TACB Rule 115.401.

6. GM shall submit a written report on April 1, July 1, October 1, 1987 and January 1, 1988 documenting compliance with the increments of progress set forth in paragraphs 1 and 2 above.

7. If any delay is anticipated in meeting the milestones set forth in paragraph 1 above, GM shall immediately notify the TACB in writing. Notification of the delay shall not excuse the delay, unless it is caused by the action of a national or local government, body or court, an act of God, war, strike, riot or catastrophe as to any of which the negligence or willful misconduct on the part of GM was not the proximate cause.

8. This Order is issued pursuant to the Texas Clean Air Act, Article 4477-5 V.A.C.S. This Order fulfills the requirements for a Delayed Compliance Order provided for by section 113 of the Federal Clean Air Act (42 U.S.C. 7413). GM is protected by Sections 113(d)(10) and 304 of the Federal Clean Air Act, 42 U.S.C. 7413(d)(10) and 7604, for noncompliance with the Texas State Implementation Plan until the date for final compliance in the Order is passed, where GM is in compliance with the terms of this Order. The Order has full force and effect upon execution by the Board.

9. All notices, reports, and documents which GM is required to file pursuant to this Order shall be submitted to Eli Bell, Executive Director, Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723. If the deadline for filing falls upon a Saturday, Sunday or holiday, the document must be filed on the next business day.

10. No statement or assertion underlying this Order or any commitments herein or actions taken by GM hereunder, shall, under any circumstances, constitute evidence of or be construed as an admission by GM of any wrongdoing or violation of law or breach of duty in any case, cause, controversy, or court of law or equity.

11. Nothing in this Order shall in any way limit or preclude GM from seeking and obtaining approval of a transaction pursuant to TACB Rule 101.23 (Alternate Emission Reduction Policy), and EPA's

Controlled Trading Policy as in effect at the time any such transaction is submitted to EPA as a revision to the State Implementation Plan in lieu of demonstrating compliance with Rule 115.191(8)(B) pursuant to this Order.

12. Nothing in the Order shall in any way limit or preclude GM from seeking and obtaining approval of an alternate method of control pursuant to TACB Rule 115.401 in lieu of demonstrating compliance with Rule 115.191(8)(B) pursuant to this Order.

Notice

Pursuant to the provisions of section 113(d)(1)(E) of the Federal Clean Air Act (42 U.S.C. 7413(d)(1)(E)), GM is hereby notified that, unless excepted under section 120(a)(2) (B) or (C) of the Federal Clean Air Act, if it fails to achieve full compliance by December 31, 1988, it may be required to pay a noncompliance penalty. This Notice does not constitute a "notice of noncompliance" as that term is used in section 120(b)(3) of the Federal Clean Air Act (42 U.S.C. (b)(3)) and 40 CFR 66.11.

Passed and approved at the regular meeting of the Texas Air Control Board in Austin, Texas on this the 16th day of January, 1987.

Texas Air Control Board.

John L. Blair,
Chairman.
Charles R. Jaynes,
Vice Chairman, (Absent).
Vittorio K. Argento, P.E.,
Member.
Bob G. Bailey,
Member.
Fred Hartman,
Member.
D. Jack Kilian, M.D.,
Member (Absent).
Otto R. Kunze, Ph.D., P.E.,
Member.
R. Hal Moorman,
Member (Absent).
Hubert Oxford, III,
Member.

Attest:

Allen Eli Bell,
Executive Director.

GM shall maintain monthly summaries documenting the number of cars and the surface area coated with color topcoats and ground coat and usage (in gallons) of color topcoats and ground coat, waste paint generated from topcoats and ground coat, usage of material 1207, and usage of coatings in the final repair application system. These records shall be retained until January 1, 1988 and must be made available upon request to representatives of the TACB and local air pollution control agencies having jurisdiction.

[FR Doc. 87-17400 Filed 7-30-87; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

46 CFR Part 586

[Docket No. 87-6]

Actions To Adjust or Meet Conditions Unfavorable to Shipping in the United States/Peru Trade

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule; extension of time to comment.

SUMMARY: The Federal Maritime Commission is extending the period for filing comments in this proceeding.

DATE: Comments due on or before August 10, 1987.

ADDRESS: Send comments (original and 15 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523-5740.

SUPPLEMENTARY INFORMATION: The Commission instituted this proceeding by Notice of Proposed Rulemaking ("Proposed Rule") published in the Federal Register on April 13, 1987 (52 FR 11832), to address apparent conditions unfavorable to shipping in the United States/Peru trade ("the Trade") pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, 46, U.S.C. app. 876(1)(b) ("Section 19"). Comments on the Proposed Rule were originally due on May 13, 1987. However, by Notice of May 11, 1987 ("May Notice") (52 FR 18408), this period was extended until July 3, 1987.

It its May Notice, the Commission noted that a Memorandum of Understanding ("MOU"), signed on May 1, 1987 between the Governments of Peru and the United States, appeared to be a significant development which may be expected to affect access of non-Peruvian-flag carriers to the Trade. Accordingly, the Commission extended the comment period in order to obtain the views of interested persons on this development.

On June 26, 1987, a Petition was filed by Compania Peruana de Vapores, Empresa Naviera Santa, and Naviera Neptuno, S.A. ("Petitioners") for a further extension of time to comment. The Petitioners contended that while the Government of Peru's proposed regulations to implement the MOU were under active consideration, it was not anticipated that the regulations would be promulgated sufficiently in advance of July 3, 1987, the due date for comments, to allow interested persons to comment. The U.S. Department of Transportation advised the Commission that it had no objection to a brief extension. The Commission granted a further extension of time until July 31, 1987, or a date fourteen (14) days after receipt by the Commission of the MOU regulations promulgated by the Government of Peru, whichever date was earlier (52 FR 26027).

These same Petitioners have now filed a request for a further extension of time for commenting "from July 31, 1987, to a date fourteen (14) days after the receipt by the Commission of the regulations promulgated by the Government of Peru to implement the MOU or August 21, 1987, whichever is the earlier." Petitioners advise that the Governments of Peru and the United States are discussing the implementation of the MOU regulations in a "cordial and constructive manner." They further state that the promulgation of the regulations has been delayed because of efforts to fashion regulations that are mutually satisfactory to the Governments of the United States and Peru.

Petitioners contend that "[i]t will probably be at least seven (7) to ten (10) days[1] before the MOU regulations can be promulgated, transmitted to the Government of the United States and by the relevant United States executive agency to the Commission." They suggest that interested persons should be given at least fourteen (14) days to comment on the regulations and that comments received by the Commission prior to their promulgation "would be incomplete and possibly irrelevant."

Discussion

The Commission recognizes that the regulations to be promulgated by the Government of Peru to implement the MOU may affect access of non-Peruvian-flag carriers to the Trade. The Commission further recognizes the utility of receiving comments on these regulations in connection with its Proposed Rule. Moreover, given the ongoing diplomatic negotiations and the interests to be served by achieving a non-confrontational resolution of the matter which gave rise to this proceeding, the Commission has been

[1] The Commission calculates this 7 to 10-day period to begin from the date the instant Petition was filed, *i.e.*, July 20, 1987.

patient and cooperative throughout, particularly with regard to the pace of the Governments' efforts to eliminate the apparent conditions unfavorable to shipping in the Trade. In that spirit, the Commission has twice extended the comment period at Petitioners' urging, the last time for essentially the same reasons as advanced in the instant request. Nevertheless, based on Petitioners' assertion that "meaningful discussions continue with evidence of progress and anticipation of successful agreement, " and that the MOU regulations could be received sometime between July 27 and July 30, 1987, the Commission will again extend the comment period, but only until August 10, 1987, rather than August 21, 1987, as requested by Petitioners.

Notwithstanding the general desirability of diplomatic solutions, there comes a point when the Commission must proceed to a final resolution of a matter pending before it under section 19. This is particularly true, where as here, there exists an initial finding, reflected in a proposed rule, that U.S. trades are being disadvantaged by foreign cargo reservation laws.

The Commission further advises that no requests for further extensions will be entertained unless extreme and unforeseeable circumstances exist and that, barring such circumstances, it will proceed to determine whether final action under Section 19 is necessary in this matter on the basis of the existing record.

Therefore, the time within which interested parties may file comments in this proceeding is extended to August 10, 1987.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 87-17411 Filed 7-30-87; 8:45 am]

BILLING CODE 6730-01-M

Notices

Federal Register
Vol. 52, No. 147
Friday, July 31, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

[Docket No. 87-014N]

National Advisory Committee on Meat and Poultry Inspection; Meeting

Notice is hereby given that a meeting of the National Advisory Committee on Meat and Poultry Inspection will be held from 9:00 a.m. to 5:00 p.m. on Wednesday, August 26, 1987, and Thursday, August 27, 1987, in Conference Room MO9 of the Old Post Office Pavilion Building, 12th and Pennsylvania Avenue, NW., Washington, DC. The purpose of the Committee is to provide the Secretary with advice and recommendations on matters pertaining to the meat and poultry inspection program, pursuant to sections 7(c), 24, 205, and 301(a) of the Federal Meat Inspection Act (21 U.S.C. 607(c) 624, 645, and 661(a)) and sections 5(a), 8(b), and 11(e) of the Poultry Products Inspection Act (21 U.S.C. 454(a), 457(b), and 460(e)).

The August 1987 meeting will include a discussion of the following topics:

1. Standards for Frankfurters and Similar Cooked Sausages
2. Sulfite Labeling
3. Mechanically Separated (Species) Petition
4. Implementation of Discretionary Inspection
5. National Academy of Sciences' Study on Poultry Inspection
6. Listeria Testing Program
7. Species Testing Program
8. European Economic Community Third Country Directive
9. European Economic Community Hormone Directive

The current members of the National Advisory Committee on Meat and Poultry Inspection are:

Dr. Robert W. Bray, Former Associate Dean of Agriculture, University of Wisconsin, 4623 County Trunk M, Middleton, WI 53562

Dr. William L. Brown, President, ABC Research Corportion, P.O. Box 1557, Gainesville, FL 32602

Mr. George J. Cocoma, Vice President, Research and Development, Wilson Foods, 4545 North Lincoln Blvd., Oklahoma City, OK 73105

Dr. Charles F. Cook, Manager, Regulatory Affairs, Oscar Mayer, P.O. Box 7188, Madison, WI 53707

Ms. Nancy E. Cronmiller, Director, Nutrition Service, Emory University School of Medicine, 1365 Clifton Road, NE, Atlanta, GA 30322

Mr. Travis P. Ermon, Route 1, Box 1695, Center, TX 75935

Dr. Alan L. Forbes, Director, Office of Nutrition and Food Science, Center for Food Science and Applied Nutrition, Food and Drug Administration, 200 C Street, SW, Washington, DC 20204

Mr. John B. Glass, Glaus Angus Ranch, Inc., RR 1, Box 8, Chamberlain, SD 57325

Mr. Alex Grant, Associate Commissioner for Consumer Affairs, HFE-1, Room 1685, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857

Mr. Mark Gustafson, Vice President of Technical Affairs, U.S. Meat Exporters Federation, 7200 Stapleton Plaza, 3333 Quebec Street, Denver, CO 80207

Dr. Norman D. Heidelbaugh, Department of Veterinary Public Health, Texas A&M University, Room 81 VMS Building, College Station, TX 77843

Dr. Phil Hudspeth, Vice President, Research and Quality Assurance, Holly Farms Poultry, P.O. Box 88, Wilkesboro, NC 28697

Ms. Carmen Jorgensen, Jorgensen Farms, Route 1, Box 451, Dover, AR 72837

Mr. Wilfred E. Kaney, Inland Empire Meat Company, 1433 Miller Drive, P.O. Box 590, Colton, CA 92324

Honorable Charles E. Kruse, Director, Department of Agriculture, P.O. Box 630, Jefferson City, MO 65102-3359

Mr. Stephen F. Krut, Executive Director, American Association of Meat Processors, 224 East High Street, Elizabethtown, PA 17022

Dr. James Marion, Department Head, Department of Poultry Science, North Carolina State University, Raleigh, NC 27695-7608

Mr. Derrill McAteer, Vice President, Lykes Development, 6100 Commercial Way, WeekiWachee, FL 34606

Dr. Janet McNaughton, Associate Professor of Nutrition, Home Economics Department, Mississippi State University, Drawer HE, Mississippi State, MS 39762

Dr. David Miller, Director, Animal Health Services and State Veterinarian, P.O. Box 1163, Richmond, VA 23209

Mr. Richard B. Nichols, Nichols Brothers, Inc., 1750 Highway 42, Winston, OR 97496

Dr. Thelma Njaka, Assistant Division Director, Animal Health Division, West Virginia Department of Agriculture, State Capitol Building, Charleston, WV 25305

Dr. R. B. Sleeth, Director, Research and Technical Services, Armour Foods, 15101 North Scottsdale, Scottsdale, AZ 85254

Dr. Terry D. Strueh, Assistant to the Dean of Agriculture, Purdue University, Agricultural Administration Building, West Lafayette, IN 47907

Mr. Douglas P. Yauger, Esquire, Deputy Attorney General, Commonwealth of Pennsylvania, 564 Forbes Avenue, Pittsburge, PA 15219

The meeting is open to the public on a space available basis. Comments of interested persons may be filed with the Committee before or after the meeting, and should be sent to Catherine DeRoever, Director, Executive Secretariat, Room 335-E, Administration Building, U.S. Department of Agriculture, 14th Street and Independence Avenue, SW., Washington, DC 20250, (202) 447-3002.

Done at Washington, DC, on July 28, 1987.

Donald L. Houston,

Vice Chairman.

[FR Doc. 87-17373 Filed 7-30-87; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF COMMERCE

Bureau of the Census

Members of the Bureau of the Census Performance Review Board

The following individuals will serve as members of the Bureau of the Census Performance Review Board:

(1) Barbara A. Bailar

(2) Bryant Benton
(3) William P. Butz
(4) Charles D. Jones
(5) C.L. Kincannon
(6) Roland H. Moore
(7) Charles A. Waite
(8) Katherine K. Wallman.

Dated: July 27, 1987.

John G. Keane,

Director, Bureau of the Census.

[FR Doc. 87-17407 Filed 7-30-87; 8:45 am]

BILLING CODE 3510-07-M

Foreign-Trade Zones Board

[Docket No. 8-87]

Foreign-Trade Zone 106, Oklahoma City, OK; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port Authority of Oklahoma City (Port Authority), grantee of Foreign-Trade Zone 106, requesting authority to expand the zone to include 4 sites in Oklahoma City, within the Oklahoma City Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on July 15, 1987

On September 14, 1984, the Board authorized the Port Authority to establish a foreign-trade zone in Oklahoma City (Board Order 271, 49 FR 37133, 9/21/84). The project currently covers 640 acres at the Will Rogers World Airport.

The expansion would involve a privately-owned site and 3 tracts of airport property totalling 236 acres. The three airport tracts are designated as Tracts 1, 3, and 5. The private site is owned by Aero-Meridan Corp. and consists of a 100,000 sq. ft. warehouse and 6 acres of land located at 3501 Melcat Drive in the Lakeside Business Park. Tract 1 of the 3-tract airport property is 143 acres at SW. 59th St. and Portland Ave., adjacent to the northwest corner of the existing zone. Tract 3 is 31 acres at Highway 152 and MacArthur Blvd. and Tract 5 is 62 acres at Portland Ave. and Highway 62.

A manufacturing operation for Organon Teknika, a manufacturer of medical devices, is also included in the application. The company produces dialysis machines, absorbent cartridges and spare parts for all manufactured devices, employing 200 workers. Materials sourced abroad include chemicals, medical equipment, dialyzers and disposable blood sets. Manufacturing under zone procedures would be for export only.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Joseph Lowry (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Donald Gough, Deputy Assistant Regional Commissioner, U.S. Customs Service, Southwest Region, 5850 San Felipe St., Houston, TX 77057; and Colonel Franklin T. Tilton, District Engineer, U.S. Army Engineer District Tulsa, P.O. Box 61, Tulsa, OK 74121.

Comments concerning the proposed expansion are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before September 11, 1987.

A copy of the application is available for public inspection at each of the following locations:

Port Director's Office, U.S. Customs Service, Will Rogers World Airport, P.O. Box 599406, Oklahoma City, OK 73159

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., Room 1529, Washington, DC 20230.

Dated: July 24, 1987.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 87-17430 Filed 7-30-87; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-427-098]

Preliminary Results of Antidumping Duty Administrative Review; Anhydrous Sodium Metasilicate From France

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by the petitioner, the Department of Commerce has conducted an administrative review of the antidumping duty order on anhydrous sodium metasilicate from France. The review covers one exporter of this merchandise and the periods January 1, 1983 through December 31, 1983 and January 1, 1984 through December 31, 1984. The review indicates the existence of dumping margins for the firm during the 1984 period.

As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between United States price and foreign market value.

Since information received in response to our questionnaire for the 1984 period was inadequate, we used the best information available for assessment purposes.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATES: July 31, 1987.

FOR FURTHER INFORMATION CONTACT: Kathleen Kelleher or John R. Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2923/3601.

SUPPLEMENTARY INFORMATION:

Background

On October 31, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 43733) the final results of its last administrative review of the antidumping duty order on anhydrous sodium metasilicate from France. We began the current review of the order under our old regulations. After the promulgation of our new regulations, PQ Corporation, the petitioner, requested in accordance with § 353.53a(a) of the Commerce Regulations that we complete the administrative review. We published a notice of initiation of the antidumping duty administrative review on July 8, 1986 (51 FR 24883). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS") by January 1, 1988. In view of this, we will be providing both the appropriate *Tariff Schedule of the United States Annotated* ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item

number(s) as well as that TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are shipments of anhydrous sodium metasilicate, a crystalline silicate (Na2Si03) which is alkaline and readily soluble in water. Applications include waste paper de-inking, ore-flotation, bleach stabilization, clay processing, medium or heavy duty cleaning, and compounding into other detergent formulations. Anhydrous sodium metasilicate is currently classifiable under TSUSA number 421.3400 and HS item number HS 2839.11.00 and 2839.19.00.

The review covers one exporter of French anhydrous sodium metasilicate, Rhone Poulenc, and the periods January 1, 1983 through December 31, 1983 and January 1, 1984 through December 31, 1984.

Rhone Poulenc provided an inadequate response to the Department's questionnaire for the 1984 period. Rhone Poulenc did not submit its response in accordance with the format outlined in the Department's questionnaire. Despite several requests the firm failed to submit computer tapes of its home market sales. Furthermore, home market sale dates were missing and explanations of claimed home market expenses were inadequate. Rhone Poulenc did not adequately identify or quantify U.S. expenses. Therefore, for the 1984 period the Department used the best information available, which is the margin from the fair value investigation.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act. Since the one U.S. sale during the 1983 review period was made through a related sales agent in the U.S. to an unrelated purchaser prior to the date of importation, we used purchase price as the basis for determining United States price. For this sale the Department determined that purchase price, rather than exporter's sales price, was the more appropriate indicator of United States price based on the following elements:

1. The merchandise in questions was shipped directly from the manufacturer to the unrelated buyer, without being introduced into the inventory of the related selling agent;
2. This was the customary commercial channel for sales of this merchandise between the parties involved; and
3. The related selling agent located in the U.S. acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyer.

Where all the above elements are met, we regard the routine selling functions of the exporter as having been merely relocated geographically from the country of exportation to the U.S., where the sales agent performs them. Whether these functions are done in the U.S. or abroad does not change the substance of the transactions or the functions themselves.

Purchase price was based on the packed delivered price with deductions for foreign inland freight, ocean freight, marine insurance, customs duties, customs brokerage charges, and wharfage. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Home market price was based on the packed delivered price with adjustments, where applicable, for foreign inland freight, differences in credit, and packing costs. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist:

Manufacturer/exporter	Time period	Margin (percent)
Rhone Poulenc	1-12/83	0
	1-12/84	60

Interested parties may submit written comments on these preliminary results within 21 days of the date of publication of this notice, and may request disclosure and/or an administrative protective order within 5 days of the date of publication. Any request for a hearing must be made no later than 8 days after the date of publication. Any hearing, if requested, will be held 21 days after the date of publication or the first workday thereafter. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

The above margin shall not change the current rate for cash deposit of estimated antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Date: July 27, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 87-17431 Filed 7-30-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-038]

Preliminary Results of Antidumping Duty Administrative Review, Bicycle Speedometers From Japan

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by the petitioner and seven respondents, the Department of Commerce has conducted an administrative review of the antidumping finding on bicycle speedometers from Japan. The review covers eleven manufacturers and/or exporters of this merchandise to the United States and generally the period April 1, 1978 through October 31, 1984. The review indicates the existence of dumping margins for certain firms during the period.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: July 31, 1987.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo or Maureen Flannery, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On April 10, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 11720) the final results of its last

administrative review of the antidumping finding on bicycle speedometers from Japan (37 FR 24620, November 22, 1972). We began the current review of the finding under our old regulations. After the promulgation of our new regulations, the petitioner and seven respondents requested in accordance with § 353.53a(a) of the Commerce Regulations that we complete the administrative review. We published a notice of initiation of the antidumping duty administrative review on May 30, 1986 (51 FR 19580). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS") by January 1, 1988. In view of this, we will be providing both the appropriate *Tariff Schedule of the United States Annonated* ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are shipments of bicycle speedometers, currently classifiable under TSUSA items 711.9300, 711.9620 and 732.4200. These products are currently classifiable under HS item numbers 9029.20.20, 9029.90.40 and 9029.10.80.

The review covers eleven manufacturers and/or exporters of Japanese bicycle speedometers to the United States and generally the period April 1, 1978 through October 31, 1984.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act. Purchase price was based on the f.o.b., c.i.f., or delivered, packed price to either the first unrelated purchaser in the United States or an unrelated Japanese trading company for export to the United States. We made adjustments, where applicable, for foreign and U.S. inland freight, ocean freight, marine insurance, U.S. Customs duties, brokerage and handling charges. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis of comparison. Home market price was based on the packed, delivered price to unrelated purchasers. We made adjustments, where applicable, for inland freight, differences in packing costs, and differences in the physical characteristics of the merchandise. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist:

Manufacturer/exporter/importer	Time period	Margin (percent)
Asahi Keiki Mfg. Co./Noma Enterprises Co., Ltd.	04/01/78–10/31/81	6.62
	11/01/81–10/31/82	0
Asahi Keiki Mfg. Co./Royal Industries Ltd.	04/01/78–10/31/81	5.83
	11/01/81–10/31/82	0
Asahi Keiki Mfg. Co./Yagami Corporation.	04/01/80–10/31/81	8.10
	11/01/81–10/31/82	3.14
	11/01/82–10/31/83	.15
	11/01/83–10/31/84	0
Asahi Keiki Mfg. Co./N.S. International/Perfection Company.	04/01/78–10/31/80	0.05
	11/01/80–10/31/81	0
	11/01/81–10/31/82	0
	11/01/82–10/31/83	0
Asahi Keiki Mfg. Co./N.S. International/Diversified Products Corp.	11/01/81–10/31/82	0
	11/01/82–10/31/83	0
	11/01/83–10/31/84	0.26
Asahi Keiki Mfg. Co./N.S. International/Allegheny International.	11/01/82–10/31/83	0
	11/01/83–10/31/84	0
Asahi Keiki Mfg. Co./N.S. International/Rockwester Corporation.	11/01/82–10/31/83	0
	11/01/83–10/31/84	0
Asahi Keiki Mfg. Co./N.S. International/Chaparal Co.	04/01/78–10/31/81	0
Asahi Keiki Mfg. Co./N.S. International/Ajay Co.	04/01/78–10/31/81	0
	11/01/81–10/31/84	0
Asahi Keiki Mfg. Co./N.S. International/Frabil Corporation.	04/01/78–10/31/81	1.51
	11/01/81–10/31/82	0
Asahi Keiki Mfg. Co./N.S. International/AMF/Wheel Co.	04/01/78–10/31/81	0
Tsuyama Mfg. Co., Ltd.	11/01/82–10/31/83	0
	11/01/83–10/31/84	0
Tsuyama Mfg. Co., Ltd./Kozaki Trading Co., Ltd.	11/01/82–10/31/83	0
	11/01/83–10/31/84	0
Tsuyama Mfg. Co., Ltd./Yagami Corporation.	11/01/82–10/31/83	0
	11/01/83–10/31/84	0
Tsuyama Mfg. Co., Ltd./Kuwahara Co., Ltd.	11/01/82–10/31/83	0
	11/01/83–10/31/84	0
Tsuyama Mfg. Co., Ltd./H. Tano & Co., Ltd.	11/01/82–10/31/83	0
	11/01/83–10/31/84	5.14
Tsuyama Mfg. Co., Ltd./Mitsui & Co.	11/01/82–10/31/83	0
	11/01/83–10/31/84	0
Tsuyama Mfg. Co., Ltd./Shinwa Trading Co., Ltd.	11/01/82–10/31/83	0
	11/01/83–10/31/84	0

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice, may request disclosure within 5 days of the date of publication, and may request a hearing within 8 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided by CFR 353.48(b), since there were no margins for the following manufacturers/exporters/importers for the most recent period covered by this review, the Department shall not require a cash deposit of estimated antidumping duties for these manufacturers/exporters/importers:

Asahi Keiki Mfg. Co./Royal Industries., Ltd.
Asahi Keiki Mfg. Co./Noma Enterprises Co., Ltd.
Asahi Keiki Mfg. Co./N.S. International/ Perfection Company
Asahi Keiki Mfg. Co./N.S. International/ Chaparal Co.
Asahi Keiki Mfg. Co./N.S. International/ Ajay Co.
Asahi Keiki Mfg. Co./N.S. International/ Frabil Corporation
Asahi Keiki Mfg. Co./N.S. International AMF/Wheel Co.

For the remaining manufacturers/exporters/importers covered by this review or by earlier reviews, the cash deposit will continue to be at the rate published in the final results of the last administrative review (52 FR 11720, April 10, 1987). Those final results covered a period more recent than that covered by this review, but did not cover all manufacturers/exporters/importers covered by this review.

For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after October 31, 1985, a cash deposit of 17.74 percent, as established in the final results of the most recent review, shall be required.

These deposit requirements are effective for all shipments of Japanese bicycle speedometers entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.53a.

Date: July 27, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 87-17432 Filed 7-30-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-036]

Final Results of Antidumping Duty Administrative Review and Revocation; Instant Potato Granules from Canada

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of final results of Antidumping Duty administrative review and revocation.

SUMMARY: On June 19, 1987, the Department of Commerce published the preliminary results of its administrative review and intent to revoke the antidumping finding on instant potato granules from Canada. The review covers two producers and/or exporters of this merchandise to the United States and the period September 1, 1983 through November 30, 1984.

We gave interested parties an opportunity to comment on the preliminary results and intent to revoke. We received no comments. The final results of review are unchanged from those presented in the preliminary results and we revoke the antidumping finding on instant potato granules from Canada.

EFFECTIVE DATE: July 31, 1987.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo or Maureen Flannery, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202)377-5255.

SUPPLEMENTARY INFORMATION:

Background

On June 19, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 23329) the preliminary results of its administrative review and intent to revoke the antidumping finding on instant potato granules from Canada (37 FR 20175, September 27, 1972). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of instant potato granules, currently classifiable under items 140.5000, 140.7000 and 141.8610 of the Tariff Schedules of the United States Annotated.

The review covers two producers and/or exporters of instant potato granules to the United States and the period September 1, 1983 through November 30, 1984.

Final Results of the Review and Revocation

We invited interested parties to comment on the preliminary results and intent to revoke. We received no comments. The final results of review are unchanged from those presented in the preliminary results of review, and we determine that no margins exist for the period September 1, 1983 through November 30, 1984.

For the reasons set forth in the preliminary results of review and intent to revoke, we are satisfied that there is no likelihood of resumption of sales at less than fair value by McCain Foods Limited and Vauxhall Foods Limited. Accordingly, we revoke the antidumping finding on instant potato granules from Canada. This revocation applies to all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after November 30, 1984, the date of our tentative determination to revoke the finding.

The Department will instruct the Customs Service not to assess antidumping duties on all appropriate entries.

This administrative review, revocation, and notice are in accordance with section 751 (a)(1) and (c) of the Tariff Act [19 U.S.C. 1675 (a)(1) and (c)) and 19 CFR 353.53a and 353.54.

Date: July 27, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 87-17433 Filed 7-30-87; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. A-580-810]

Final Results of Antidumping Duty Administrative Review; Certain Rectangular Welded Carbon Steel Pipes and Tubes from Korea

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On June 8, 1987, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order that was in effect prior to October 1, 1984 on certain rectangular welded carbon steel pipes and tubes from Korea. The review covers one exporter of this merchandise and the period October 24, 1983 through September 30, 1984.

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of review are unchanged from those presented in the preliminary results.

EFFECTIVE DATE: July 31, 1987.

FOR FURTHER INFORMATION CONTACT: G. Leon McNeill or Maureen Flannery, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3601/5255.

SUPPLEMENTARY INFORMATION:

Background

On October 21, 1985, the Department of Commerce ("the Department") revoked the antidumping duty order on certain rectangular welded carbon steel pipes and tubes from Korea, effective October 1, 1984 (50 FR 42583). On June 8, 1987, the Department published in the **Federal Register** (52 FR 21609) the preliminary results of its administrative review of the antidumping duty order that was in effect prior to October 1, 1984. We have now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of certain rectangular welded carbon steel pipes and tubes, currently classifiable under items 610.3955 and 610.4976 of the Tariff Schedules of the United States Annotated.

The review covers one manufacturer/exporter of Korean rectangular welded carbon steel pipes and tubes to the

United States, Union Steel Mfg. Co., Ltd., and the period October 24, 1983 through September 30, 1984.

Final Results of the Review

We invited interested parties to comment on the preliminary results. We received no comments or requests for a hearing. Based on our analysis, the final results of review are unchanged from those we presented in the preliminary results. We determine that a margin of 1.47 percent exists for Union Steel Mfg. Co., Ltd. for the period October 24, 1983 through September 30, 1984.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

This administrative review, covering the period October 24, 1983 through September 30, 1984, does not affect the revocation of the antidumping duty order. Therefore, we will instruct the Customs Service to continue to liquidate entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after October 1, 1984 without regard to antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.53a.

Date: July 27, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 87-17434 Filed 7-30-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-045]

Final Results of Antidumping Duty Administrative Review; Steel Wire Rope From Japan

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On March 5, 1986, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on steel wire rope from Japan. The review covers 19 manufacturers and/or exporters of this merchandise to the United States and generally the period from January 1, 1977 through March 31, 1978. We deferred review of Mitsui & Co. Ltd. We will cover that firm in a separate review.

We gave interested parties an opportunity to comment on the preliminary results. We received comments from Shinko Wire Company, Ltd. Based on our analysis of the comments received, the final results of review are changed from those presented in the preliminary results with respect to Shinko Wire Corp./Shinsho Corp.

EFFECTIVE DATE: July 31, 1987.

FOR FURTHER INFORMATION CONTACT: J. David Dirstine or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3601/5255.

SUPPLEMENTARY INFORMATION:

Background

On March 5, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 7601) the preliminary results of its administrative review of the antidumping finding on steel wire rope from Japan (38 FR 28571, October 15, 1973). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of steel wire rope, except brass electroplated steel truck tire cord of cable construction specially packaged for protection against moisture and atmosphere. Such steel wire rope is currently classifiable under items 642.1200, 642.1400, 642.1500, 642.1600, and 642.1700 of the Tariff Schedules of the United States Annotated.

The review covers 19 manufacturers and/or exporters of Japanese steel wire rope to the United States and generally the period January 1, 1977 through March 31, 1978.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received comments from a respondent, Shinko Wire Corporation, which we address below.

Comment 1: The Department erred in using an exporter's sales price ("ESP") analysis for Shinko's U.S. sales through Shinsho as the degree of ownership between Shinko and Shinsho is too small to establish a related party relationship.

Department's Position: Even though Shinko owns less than 5% of Shinsho and Shinsho owns less than 5% of Shinko, we considered them to be related parties pursuant to 19 U.S.C. 1677(13)(D) since Kobe Steel owns 60% of Shinko and 50% of Shinsho. Furthermore, we considered Shinsho Corporation (Japan) sales to Shinsho American as sales to a related party. Therefore, we analyzed Shinsho American sales to the first unrelated party in the United States.

Comment 2: If the Department continues to use an ESP analysis for sales through Shinsho, Shinko is entitled to deduct its selling expenses from home market prices.

Department's Position: We agree. We have adjusted our analysis to allow for selling expenses for Shinko's home market sales.

Comment 3: The Department should use ocean freight and marine insurance charges of another responding company as best information available for Shinko sales through Shinsho.

Department's Position: We agree. Since shipping rates tend to be uniform throughout the industry, we used actual ocean freight and marine insurance charges of another respondent during the review as best information available for Shinko.

Final Results of Review

Based on our analysis of the comments received, we have revised our preliminary results for Shinko Wire Corp./Shinsho Corp. and we determine that the following margins exist during the periods indicated:

Manufacturer/exporter	Time period	Margin (percent)
Kokoku Steel Wire/Itoh-taka.	1/1/77-3/31/78	17.43
Kokoku Steel Wire/Kanematsu-Gosho.	1/1/77-3/31/78	0.35
Kokoku Steel Wire/Maruka Machinery.	1/1/77-3/31/78	3.88
Kokoku Steel Wire/Nichimen Co.	1/1/77-3/31/78	2.32
Kokoku Steel Wire/Nissho-Iwai, Ltd.	1/1/77-3/31/78	0.19
Kokoku Steel Wire/Shinsho Corp.	1/1/77-3/31/78	8.84
Kokoku Steel Wire/UNA	1/1/77-3/31/78	31.76
Shinko Wire Corp./Ataka & Co.	1/1/75-7/31/76	0.10
	8/1/76-3/31/78	0
Shinko Wire Corp./Kanematsu-Gosho.	1/1/75-3/31/78	0
Shinko Wire Corp./Nissho-Iwai, Ltd.	1/1/71-7/31/76	*
	8/1/76-3/31/78	0
Shinko Wire Corp./Shinsho Corp.	1/1/75-10/31/76	0.10
	11/1/76-9/30/77	36.18
	10/1/77-3/31/78	3.25
Shinko Wire Corp./T. Chen.	8/1/76-3/31/78	0
Shinko Wire Corp./Yuasa Trading.	8/1/76-3/31/78	0
Teikoku-Sangyo/C. Itoh	1/1/77-3/31/78	5.01
Teikoku-Sangyo/Nissho-Iwai, Ltd.	1/1/77-3/31/78	5.84
Teikoku-Sangyo/Shinsho	1/1/77-3/31/78	26.86
Teikoku-Sangyo/Showa [illegible]	1/1/77-3/31/78	0
Teikoku-Sangyo/Sumitomo Corp.	1/1/77-3/31/78	8.56
Teikoku-Sangyo/Toeho Co.	1/1/77-3/31/78	61.05
Tokyo Rope/Ataka & Co.	1/1/77-3/31/78	0.23
Tokyo Rope/C. Itoh	1/1/77-3/31/78	1.25
Tokyo Rope/Mitsubishi & Co.	1/1/77-3/31/78	0

*No shipments during the period.

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The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

The above margins shall not change the current rates for cash deposits of estimated antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Dated: July 27, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 87-17435 Filed 7-30-87; 8:45 am]

BILLING CODE 3510-DS-M

Consolidated Decision on Applications for Duty-Free Entry of Accessories for Foreign Instruments; Hawaii Institute of Geophysics et al.

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultrual Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 87-059. Applicant: Hawaii Institute of Geophysics, Honolulu, HI 96822. Instrument: X-ray Mode Unit, Model H-7011. Manufacturer: Nissei Sangyo, Japan. Intended use: See notice at 51 FR 45793, December 22, 1986. Advice submitted by: National Institutes of Health, March 25, 1987.

Docket Number: 87-060. Applicant: Hawaii Institute of Geophysics, Honolulu, HI 96822. Instrument: EDX Interface Parts Kit, Model H-6015. Manufacturer: Nissei Sangyo, Japan. Intended use: See notice at 51 FR 45793. Advice submitted by: National Institutes of Health, March 26, 1987.

Docket Number: 87-061. Applicant: Hawaii Institute of Geophysics, Honolulu, HI 96822. Instrument: Digital Scan Interface, Model EMO-0500. Manufacturer: Nissei Sangyo, Japan. Intended use: See notice at 51 FR 45793. Advice submitted by: National Institutes of Health, March 26, 1987.

Docket Number: 87-074. Applicant: Veterans Administration Lakeside Medical Center, 333 East Huron Street, Chicago, IL 60611. Instrument: Electron Microscope Accessories consisting of H-5001B Specimen Holder and H-6017 SEM Alignment Power Supply Unit. Manufacturer: Nissei Sangyo, Japan. Intended use: See 52 FR 2128, January 20, 1987. Advice submitted by: National Institutes of Health, March 26, 1987.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instruments, for the purposes for which the instruments are intended to be used, is being manufactured in the United States.

Reasons: These are compatible accessories for instruments previously imported for the use of the applicants. In each case, the instrument and accessory were made by the same manufacturer. NIH advises us that the accessories are pertinent to the intended uses and that it knows of no comparable domestic accessories.

We know of no domestic accessories which can be readily adapted to the previously imported instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87-17437 Filed 7-30-87; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; NASA Lewis Research Center

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 86-080. Applicant: NASA Lewis Research Center, Cleveland, OH 44135. Instrument: ARC Lamp System. Manufacturer: Vortek Industries Limited, Canada. Intended Use: See notice at 51 FR 4647.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides an arc heat source with a power flux of 100 kilowatts. The National Bureau of Standards advises in its memorandum dated October 10, 1986 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87-17436 Filed 7-30-87; 8:45 am]

BILLING CODE 3510-DS-M

Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes; University of Nevada School of Medicine, et al.

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No.: 87-109. Applicant: University of Nevada School of Medicine, Reno, NV 89557. Instrument: Electron Microscope, Model CM 10 with Accessories. Manufacturer: N.V. Philips, The Netherlands. Intended Use: See 52 FR 8495, March 18, 1987.

Docket No.: 87-112. Applicant: University of Texas Health Science Center at Houston, Houston, TX 77030. Instrument: Electron Microscope, Model CM 12/STEM with Accessories. Manufacturer: N.V. Philips, The Netherlands. Intended Use: See 52 FR 8495, March 18, 1987.

Docket No.: 87-113. Applicant: Thomas Jefferson University, Philadelphia, PA 19107. Instrument: Electron Microscope, Model JEM-100CS. Manufacturer: JEOL Co., Ltd., Japan. Intended Use: See notice at 52 FR 8634, March 19, 1987.

Docket No.: 87-115. Applicant: New Mexico State University, Las Cruces, NM 88003. Instrument: Electron Microscope, Model H-7000 with Accessories. Manufacturer: Hitachi Scientific Instruments, Japan. Intended Use: See notice at 52 FR 8634, March 19, 1987.

Docket No.: 87-116. Applicant: Purdue University, West Lafayette, IN 47907. Instrument: Electron Microscope, Model JEM-2000EX with Accessories. Manufacturer: JEOL Co., Ltd., Japan. Intended Use: See notice at 52 FR 8634, March 19, 1987.

Docket No.: 87-123. Applicant: Case Western Reserve University, Cleveland, OH 44106. Instrument: Electron

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Microscope, Model JEM–1200EX/SEG/DP/DP. Manufacturer: JEOL Co., Ltd., Japan. Intended Use: See notice at 52 FR 10395, April 1, 1987.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered.

Reasons: Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87–17439 Filed 7–30–87; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Review on Certain Flat-Rolled Products; Request for Comments

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products, with respect to certain steel plate used in the manufacture of tension-leg well platforms.

EFFECTIVE DATE: Comments must be submitted no later than August 10, 1987.

ADDRESS: Send all comments to Nicholas C. Tolerico, Acting Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington DC 20230, (202) 377–0159.

SUPPLEMENTAL INFORMATION: Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in certain Steel Products provides that if the United States ". . .determines that because of abnormal supply or demand factors, the United States steel industry will be unable to meet demand in the USA for a particular category of sub-category (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such category or sub-category. . . ."

We have received a short-supply request for certain steel plate, ¾ inch to 3 inches in thickness, and made by the thermomechanical control process. It will be used for the fabrication of tension-leg well platforms.

Any party interested in commenting on this request should send written comments as soon as possible, but no later than August 10, 1987. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly identify the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B–099 at the above address.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

July 27, 1987.

[FR Doc. 87–17436 Filed 7–30–87; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Marine Mammals; Denial of Permit; Mr. S. Jonathan Stern (P261B)

On November 18, 1986, notice was published in the **Federal Register** (51 FR 41651) that an application has been filed by Mr. S. Jonathan Stern, Department of Biological Sciences, San Francisco State University, 1600 Halloway, San Francisco, California 94132 for a scientific research/scientific purposes permit to take an unspecified number of gray whales (*Eschrichtius robustus*) by harassment.

Notice is hereby given that pursuant to the provisions of the Marine Mammal Protection Act of 1972 (MMPA) and the Endangered Species Act of 1973 after having considered all pertinent information and facts, the National Marine Fisheries Service has determined that the permit request submitted by Mr. S. Jonathan Stern should not be issued since the activities to be studied are likely to be unlawful under the MMPA. The request is denied without prejudice. The Applicant was notified on July 27, 1987.

Documents submitted in connection with the above application are available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Room 805, Washington, DC; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415.

Date: July 27, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

[FR Doc. 87–17443 Filed 7–30–87; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Intent To Grant Exclusive Patent License; Charter Instruments

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Charter Instruments, having a place of business in Lafayette, IN 46250, an exclusive right in the United States to practice the invention embodied in U.S. Patent 3,938,02l," Battery Charging Circuit with Full-Charge Cutoff." The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Robert P. Auber, Director, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 87–17385 Filed 7–30–87; 8:45 am]

BILLING CODE 3510-04-M

Intent To Grant Exclusive Patent License; Meridian Diagnostics, Inc.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Meridian Diagnostics, Inc., having a place of business in Cincinnati, OH 45244 and Genetic Systems, having a place of business in Seattle, WA 98121, a shared exclusive right in the United States and Canada to practice the invention embodied in U.S. Patent Application S.N. 6-938,716, "Monoclonal Antibody Against Human Pneumocystis Carinii." The patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Robert P. Auber, Director, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Associte Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 87-17388 Filed 7-30-87; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in the Hungarian People's Republic

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on August 3, 1987. For further information contact Chris Lazzaro, Assistant International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377-3715.

Background

On December 22, 1986 a notice was published in the Federal Register (51 FR 45795), which announced import restraint limits for wool textile products, produced or manufactured in Hungary and exported during the current agreement year which began on January 1, 1987 and extends through December 31, 1987. The Bilateral Wool Textile Agreement of February 15 and 25, 1983, as amended, between the Governments of the United States and the Hungarian People's Republic, under the terms of which these limits were established, also includes provisions for the carryover of shortfalls from the previous year in certain categories (carryover).

Under the foregoing provisions of the bilateral agreement and at the request of the Government of the Hungarian People's Republic, the limits established for Categories 433, 435, 443, 444, 445/446 and 448 are being increased for carryover for goods exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983, (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

July 28, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive issued to you on December 10, 1986 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain wool textile products, produced or manufactured in the Hungarian People's Republic and exported during the period which began on January 1, 1987 and extends through December 31, 1987.

Effective on Aug. 3, 1987, the directive of December 10, 1986 is hereby amended to adjust the previously established limits for wool textile products in the following categories, as provided under the terms of the bilateral agreement of February 15 and 25, 1983, as amended.[1]

Category	Adjusted 1987 limit [1]
433	8,407 dozen.
435	10,234 dozen.
443	8,076 dozen.
444	5,411 dozen.
445/446	45,292 dozen of which not more than 33,969 dozen shall be in Category 445 and not more than 33,969 dozen shall be in Category 446.
448	21,729 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1986.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-17404 Filed 7-30-87; 8:45 am]

BILLING CODE 3510-DR-M

Establishment of Guaranteed Access Levels and a Visa and Certification Requirement for Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products from Trinidad and Tobago

July 28, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, and the President's Februray 20, 1986 announcement of a Special Access Program for textile products assembled in participating Caribbean Basin beneficiary countries from fabric formed and cut in the United States, and pursuant to the requirements set forth in 51 FR 21208 (June 11, 1986), has issued the directive published below to the Commissioner of Customs to be effective on August 3, 1987. For further information contact Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

[1] The agreement provides, in part, that: (1) Specific limits may be exceeded during the agreement year by designated percentages; (2) specific limits may be adjusted for carryover and carryforward; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

Background

As announced in the Federal Register on January 13, 1987 (52 FR 1372), the Governments of the United States and Trinidad and Tobago have exchanged diplomatic notes on a new bilateral agreement concerning trade in cotton, wool, man-made fiber, silk blends and other vegetable fiber textiles and textile products, produced or manufactured in Trinidad and Tobago and exported during the period which began on October 1, 1986 and extends through December 31, 1989.

The Governments of the United States and Trinidad and Tobago also have exchanged letters establishing a visa and certification system, as an administrative arrangement under the terms of the bilateral agreement. Pursuant to the terms of the arrangement, the visa and certification requirement applies to textile and apparel products exported from Trinidad and Tobago on or after August 3, 1987. Textile products that have been exported from Trinidad and Tobago before August 3, 1987 shall not be denied entry for lack of a visa or certification. Exports from Trinidad and Tobago of products qualifying for the Special Access Program for entry under TSUSA 807.0010, exported on or after October 1, 1986 must be accompanied by a properly completed CBI Export Declaration (Form ITA–370P).

In addition to the designated consultation levels previously announced, the bilateral agreement establishes guaranteed access levels for properly certified textile products assembled in Trinidad and Tobago from fabric formed and cut in the United States within categories 336/636 (cotton and man-made fiber dresses), 336/339 (cotton knit shirts), 340/640 (cotton and man-made fiber non-knit shirts), 347/348/647/648 (cotton and man-made fiber trousers), and 352/652 (cotton and man-made fiber underwear), exported from Trinidad and Tobago during the first agreement year which began on October 1, 1986 and extends through December 31, 1987.

Pursuant to 51 FR 21208 (June 11, 1986), which established the requirements for participation in the Special Access Program and guaranteed access levels, products qualifying for the Special Access Program and covered by guaranteed access levels may be entered under TSUSA number 807.0010. To be entered under TSUSA 807.0010, shipments must be accompanied by a certification issued by the appropriate Trinidad and Tobago authorities and a completed CBI Export Declaration (Department of Commerce form ITA–370P, stock number 003–009–00505–1, available from the Government Printing Office, Washington, DC 20402). Each shipment of textile products of Trinidad and Tobago not accompanied by a properly issued certification and CBI Export Declaration must be accompanied by a properly issued visa.

The certification is a square stamp in blue ink placed on the front of the original commercial invoice. The certification must contain the 9-digit certification number, the date of issuance, the correct whole, merged, or part categories and correct quantities in each shipment in the applicable category units, and the signature of the issuing official. However, if the quantity indicated on the certification is more than that of the shipment, entry shall be permitted.

Orders for the Special Access Program CBI Export Declaration (Form ITA–370P) may be placed with the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (202/783–3238). Request stock number 003–009–00505–1. The form is being sold for $29 per package of 100.

Any shipment for entry under TSUSA 807.0010 which is not accompanied by a valid and correct certification and CBI Export Declaration in accordance with the foregoing provisions shall be denied entry unless the Government of Trinidad and Tobago authorizes the entry and any charges to the appropriate designated consultation levels. Any shipment which is declared as TSUSA 807.0010 but found not to qualify for the Special Access Program shall be denied entry into the United States.

Each shipment of textile products of Trinidad and Tobago not subject to the Special Access Program must be accompanied by a properly issued visa. The visa is a circular stamp in blue ink placed on the front of the original commercial invoice. The visa must contain the 9-digit visa number, the date of issuance, the correct whole, merged, or part categories and correct quantities in each shipment in the applicable category units, and the signature of the issuing official. However, if the quantity indicated on the visa is more than that of the shipment, entry shall be permitted.

Textile products of Trinidad and Tobago for the personal use of the importer and not for resale do not require a visa or certification for entry into the United States.

Interested persons are advised to take all necessary steps to ensure that textile products, produced or manufactured in Trinidad and Tobago, which are to be entered into the United States for consumption, or withdrawn from warehouse for consumption, that are exported on or after August 3, 1987 will meet the stated certification and visa requirements.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

July 28, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 23, 1986, between the Governments of the United States and Trinidad and Tobago; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, and the Special Access Program, as set forth in 51 FR 21208 (June 11, 1986), you are directed, effective on August 3, 1987, and until further notice, to prohibit entry into the United States for consumption or withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Trinidad and Tobago and exported on or after August 3, 1987 which are not visaed or certified in accordance with the procedures outlined below. Textile products that were assembled in Trinidad and Tobago from fabric formed and cut in the United States and exported from Trinidad and Tobago before August 3, 1987 shall not be denied entry for lack of a visa or certification.

Products qualifying for the Special Access Program and covered by guaranteed access levels may be entered under TSUSA number 807.0010. To be entered under TSUSA number 807.0010, shipments must be accompanied by a certification issued by the appropriate Trinidad and Tobago authorities and a completed CBI Export Declaration. Each shipment of textile products of Trinidad and Tobago not accompanied by a properly issued certification and a CBI Export Declaration shall be accompanied by a properly issued visa.

The certification is a square stamp in blue ink placed on the front of the original commercial invoice. The certification must contain the 9-digit certification number, the date of issuance, the correct whole, merged, or part categories and correct quantities in each shipment in the applicable category units, and the signature of the issuing official. However, if the quantity indicated on the certification is more than that of the shipment, entry shall be permitted.

Any shipment for entry under TSUSA 807.0010 which is not accompanied by a valid and correct certification and CBI Export Declaration in accordance with the foregoing

provisions shall be denied entry unless the Government of Trinidad and Tobago authorizes the entry into the United States.

The following guaranteed access levels have been established for properly certified textile products assembled in Trinidad and Tobago from fabric formed and cut in the United States and exported during the period October 1, 1986 through December 31, 1987:

Category	Guaranteed access level (doz.)
336/636	375,000
338/339	261,250
340/640	125,000
347/348/647/648	375,000
352/652	375,000

Each shipment of textile products of Trinidad and Tobago not subject to the Special Access Program must be accompanied by a properly issued visa. The visa is a circular stamp in blue ink placed on the front of the original commercial invoice. The visa must contain the 9-digit visa number, the date of issuance, the correct whole, merged, or part categories and correct quantities in each shipment in the applicable category units, and the signature of the issuing official. However, if the quantity indicated on the visa is more than that of the shipment, entry shall be permitted.

Textile products of Trinidad and Tobago for the personal use of the importer and not for resale do not require a visa or certification for entry into the United States, regardless of value.

You are directed to permit entry into the United States for consumption and withdrawal from warehouse for consumption of designated shipments of textile and apparel products, produced and manufactured in Trinidad and Tobago and exported to the United States, nothwithstanding the designated merchandise does not fulfill the aforementioned visa and certification requirements, whenever requested to do so in writing by the Chairman of the Committee for the Implementation of Textile Agreements.

In carrying out of the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-17405 Filed 7-30-87; 8:45 am]

BILLING CODE 3510-DR-M

Request for Public Comment on Bilateral Textile Consultations With the Government of Mauritius on Categories 337/637 and 342/642

July 28, 1987.

FOR FURTHER INFORMATION CONTACT: Kim Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, DC, (202) 377-4212. For information on categories on which consultations have been requested call (202) 377-3740.

On June 18 and 22, 1987, the United States Government, under Article 3 of the Arrangement Regarding International Trade in Textiles and in accordance with section 204 of the Agricultural Act of 1956, requested the Government of Mauritius to enter into consultations concerning exports to the United States of certain cotton and man-made fiber textile products in Categories 337/637 and 342/642, respectively, produced or manufactured in Mauritius.

The purpose of this notice is to advise that, if no solution is agreed upon in consultations with Mauritius, the Committee for the Implementation of Textile Agreements may later establish limits for the entry and withdrawal from warehouse for consumption of cotton and man-made fiber playsuits and sunsuits in Category 337/637 and cotton and man-made fiber skirts in Category 342/642, produced or manufactured in Mauritius and exported to the United States during the twelve-month periods, which began, in the case of Category 337/637, on June 18, 1987 and extends through June 17, 1988; and, in the case of Category 342/642, on June 22, 1987 and extends through June 21, 1988, at levels of 75,900 dozen (Category 337/637) and 67,783 dozen (Category 342/642).

Summary market statements for these categories follow this notice.

Anyone wishing to comment or provide data or information regarding the treatment of these categories is invited to submit such comments or information in ten copies to Mr. Ronald I. Levin, Acting Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC, and may be obtained upon request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the Federal Register.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Mauritius—Market Statement

Category 337/637—Playsuits, Sunsuits and Washsuits

June 1987.

Summary and Conclusions

U.S. imports of Category 337/637 from Mauritius were 75,900 dozen during the year ending March 1987, more than 60 times the 1,228 dozen imported a year earlier. During the first three months of 1987, imports of Category 336/637 from Mauritius reached 27,671 dozen, 36 times the 758 dozen imported during the same period of 1986. In 1986, Category 337/637 playsuit, sunsuit, and washsuit imports from Mauritius were 46,987 dozen; in 1985, imports totaled 555 dozen.

The market for Category 337/637 has been disrupted by imports. The sharp and substantial increase in imports from Mauritius has contributed to this disruption.

U.S. Production and Market Share

U.S. production of playsuits, sunsuits, and washsuits declined 13 percent from 7,959 thousand dozen in 1983 to 6,934 thousand dozen in 1985. The domestic manufacturers' share of this market fell from 75 percent in 1983 to 61 percent in 1985.

U.S. Imports and Import Penetration

U.S. imports of Category 337/637 grew from 2,647 thousand dozen in 1983 to 4,370 thousand dozen in 1985, a 65 percent increase. Imports continued to grow reaching 5,778 thousand dozen in 1986, a 32 percent increase over 1985. Imports are up five percent in the first three months of 1987. The ratio of imports to domestic production increased from 33 percent in 1983 to 63 percent in 1985.

Duty-Paid Value and U.S. Producers' Price

Approximately 88 percent of Category 337/637 imports from Mauritius during the first three months of 1987 entered under TSUSA numbers 384.5234—women's and girls' cotton woven playsuits, sunsuits and washsuits, other than those of corduroy or yarn dyed fabric, not ornamented; and 384.9416 (formerly a part of 384.9415)—women's and girls' man-made fiber woven playsuits, sunsuits and washsuits, not ornamented. TSUSA number 384.9416 alone represents 52 percent of Category 337/637 imports from Mauritius.

These garments entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable garments.

Mauritius—Market Statement

Category 342/642—Cotton and Man-Made Fiber Skirts

June 1987.

Summary and Conclusions

U.S. imports of Category 342/642 from Mauritius were 67,783 dozen during the year ending March 1987, over nine and one half times the 6,951 dozen imported a year earlier. During the first three months of 1987, imports of Category 342/642 from Mauritius reached 43,483 dozen, over eight and one half times the 4,957 dozen imported during the same period of 1986 and 49 percent above the amount imported during calendar year 1986.

The market for Category 342/642 has been disrupted by imports. The sharp and substantial increase in imports from Mauritius has contributed to this disruption.

U.S. Production and Market Share

U.S. production of cotton and man-made fiber skirts declined five percent from 8,233 thousand dozen in 1983 to 7,805 thousand dozen in 1985. Comparison of government cuttings [1] data for 1986 and 1985 indicate that 1986 production will be down four percent. The domestic manufacturers' share of this market fell from 75 percent in 1983 to 67 percent in 1985. The U.S. market share is expected to decrease further in 1986, to around 57 percent.

U.S. Imports and Import Penetration

U.S. imports of Category 342/642 doubled between 1983 and 1986, growing from 2,798 thousand dozen in 1983 to 5,995 thousand dozen in 1986. During the first three months of 1987, imports of Category 342/642 reached 2,335 thousand dozen, 17 percent above the level imported during the same period in 1986. The ratio of imports to domestic production increased from 34 percent in 1983 to 49 percent in 1985. The ratio is expected to reach 77 percent in 1986.

Duty Paid Value and U.S. Producers' Price

Approximately 79 percent of Category 342/642 imports from Mauritius during the first three months of 1987 entered under TSUSA numbers 384.5251—women's cotton woven skirts, not of corduroy, denim or velveteen, not ornamented; 384.5239 (formerly a part of 384.5237)—women's and girls' cotton woven divided skirts and culottes, not ornamented; and 384.8660—women's man-made fiber knit skirts and culottes, not ornamented. TSUSA number 384.5251 alone represents 52 percent of Category 342/642 imports from Mauritius.

These skirts entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable skirts.

[FR Doc. 87-17406 Filed 7-30-87; 8:45am]

BILLING CODE 3510-DR-M

[1] U.S. cuttings data are for women's cotton, wool and man-made fiber skirts and include both woven and knit skirts.

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1987; Addition and Deletion

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to and deletion from Procurement List.

SUMMARY: This action adds to and deletes from Procurement List 1987 services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: August 31, 1987.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On June 5, 1987 the Committee for Purchase from the Blind and Other Severely Handicapped published notice (52 FR 21344) of addition to and deletion from Procurement List 1987, November 3, 1986 (51 FR 39945).

Additions

After consideration of the relevant matter presented, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the service listed.

c. The action will result in authorizing small entities to provide the service procured by the Government.

Accordingly, the following service is hereby added to Procurement List 1987:

Service

Janitorial/Custodial, Federal Building, Post Office and Courthouse, 200 East Broadway, Missoula, Montana.

Deletions

After consideration of the relevant matter presented, the Committee has determined that the service listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.6.

Service

Janitorial Service, Smith Building (New Wing Only), 900 W. Grand Avenue, Porterville, California.

C.W. Fletcher,

Executive Director.

[FR Doc. 87-17413 Filed 7-30-87; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1987; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to Procurement List 1987 a commodity to be produced and services to be provided by workshops for the blind or other severely handicapped.

Comments must be received on or before: August 31, 1987.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the

Federal Government will be required to procure the commodity and the services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodity and services to Procurement List 1987, November 3, 1986 (51 FR 39945).

Commodity

Towel, Paper
7920-00-823-9772
(Requirements for New Cumberland, Pennsylanvia Army Depot)

Services

Food Service Attendant
914th Tactical Airlift Group (AFRES)
Niagara Falls International Airport
Niagara Falls, New York

Janitorial/Custodial
Marine Corps Development and Education Command
MCCDPA Building 3041A, SABRS Annex
Quantico, Virginia

C.W. Fletcher,
Executive Director.
[FR Doc. 87-17414 Filed 7-30-87; 8:45 am]
BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Air Force Activities for Conversion to Contract

ACTION: Notice.

The Air Force recently determined that the Shelf Stocking and Custodial function at Patrick AFB, FL will be examined for possible conversion to contract.

For further information contact Mr. Jack Flenner, HQ AFCOMS/XPMO, Kelly AFB, TX 78241-6290, telephone (512) 925-6692.

Patsy J. Conner,
Air Force Federal Register Liaison Officer.
[FR Doc. 87-17386 Filed 7-30-87; 8:45 am]
BILLING CODE 3910-01-M

Department of the Army

Performance Review Boards; Membership

ACTION: Notice.

SUMMARY: Notice is given of the names of members of the Performance Review Boards for the Department of the Army.

EFFECTIVE DATE: July 20, 1987.

FOR FURTHER INFORMATION CONTACT: Carol D. Smith, Senior Executive Service Office, Directorate of Civilian Personnel, Headquarters, Department of the Army, the Pentagon, Washington, DC 20310.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

The members of the Performance Review Board for the Office, Secretary of the Army are:

1. Ms. Susan J. Crawford, General Counsel
2. Mr. Walter W. Hollis, Deputy Under Secretary of the Army (Operations Research)
3. Mr. J. Douglas Sizelove, Operations Research Analyst for Command, Control, Communications and Intelligence, Office of the Deputy Under Secretary of the Army
4. Brigadier General George A. Bombel, Director, Joint Tactical Command, Control, and Communications Agency
5. Mr. Stephen R. Burdt, Deputy for Program Evaluation, Office of the Assistant Secretary of the Army (Research, Development and Acquisition)
6. Mr. Neil R. Ginnetti, Deputy for Planning, Programming, Budgeting and Budget Execution, Office of the Assistant Secretary of the Army (Financial Management)
7. Ms. Judy Ann F. Miller, Deputy Assistant Secretary of the Army (Civilian Personnel, NAF, and Personnel Security Policy), Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs)
8. Mr. Lewis D. Walker, Deputy for Environment, Safety and Occupational Health, Office of the Assistant Secretary of the Army (Installations and Logistics)
9. Mr. Steven Dola, Deputy for Management and Budget, Office of the Assistant Secretary of the Army (Civil Works)
10. Mr. Charles C. O'Donnell, Director, Defense Supply Service, Office of the Administrative Assistant to the Secretary of the Army

The members of the Performance Review Board for the Office, Chief of Staff of the Army are:

1. Dr. Julius Bellaschi, Deputy Director, Program Analysis and Evaluation, Office, Chief of Staff
2. Mr. Edgar B. Vandiver, III, Director, U.S. Army Concepts Analysis Agency
3. Birgadier General Donald W. Hansen, Assistant Judge Advocate General for Military Law
4. Brigadier General John Fugh, Assistant Judge Advocate General for Civil Law
5. Major General Donald E. Eckelbarger, Assistant Deputy Chief of Staff for Personnel
6. Mr. Joseph E. Galbraith, Chief, U.S. Army Civilian Personnel Center
7. Dr. Charles N. Davidson, Technical Director, U.S. Nuclear and Chemical Agency
8. Brigadier General Jerome H. Granrud, Director of Force Requirements, Office, Deputy Chief of Staff for Operations
9. Mr. Joseph P. Cribbins, Special Assistant to the Deputy Chief of Staff for Logistics
10. Brigadier General Joseph S. Laposata, Director for Plans and Operations, Office, Deputy Chief of Staff for Ligistics
11. Dr. Louis M. Cameron, Director of Army Research and Technology, Office, Assistant Secretary of the Army (Research, Development and Acquisition)
12. Brigadier General William S. Chen, Director for Program Management Oversight, Office, Assistant Secretary of the Army (Research, Development and Acquisition)
13. Dr. Harry M. West, III, Deputy Comptroller of the Army, Office, Assistant Secretary of the Army (Financial Management)
14. Mr. Arthur Walker, Deputy Director of the Army Budget, Office, Assistant Secretary of the Army (Financial Management)
15. Major General James McCall, Director of the Army Budget, Office, Assistant Secretary of the Army (Financial Management)
16. Mr. Edward J. Dandar, Deputy Directory, U.S. Army Intelligence Agency
17. Mr. Henry J. Fischer, Director, Audit Policy, Plans and Resources, U.S. Army Audit Agency
18. Mr. Thomas A. Grant, Director, Personnel and Force Management Audits, U.S. Army Audit Agency
19. Dr. Lewis H. Blakey, Special Assistant for Theater Defense, Operations, U.S. Army Strategic Defense Command
20. Dr. William O. Davies, Director, System Analysis/Battle Management Directorate, U.S. Army Strategic Defense Command

The members of the Performance Review Board for the U.S. Army Corps of Engineers are:

1. Major General George K. Withers, Jr., Deputy Chief of Engineers, Headquarters, U.S. Army Corps of Engineers
2. Brigadier General Peter J. Offringa, Deputy Director, Civil Works, Headquarters, U.S. Army Corps of Engineers
3. Brigadier General C.E. Edgar, III, Division Commander, South Atlantic Division
4. Mr. William P. Todsen, Chief, Engineering Division, Missouri River Division
5. Mr. William R. Murden, Chief, Dredging Division, U.S. Army Corps of Engineers Water Resources Support Center
6. Mr. William L. Robertson, Deputy Chief Counsel, Headquarters, U.S. Army Corps of Engineers
7. Mr. Jack E. Kiper, Chief, Construction-Operations Division, Ohio River Division
8. Mr. Dan M. Mauldin, Chief, Planning Division, Directorate of Civil Works, Headquarters, U.S. Army Corps of Engineers
9. Brigadier General James W. Ray, Division Commander, Europe Division
10. Major General Thomas A. Sands, Division Commander, Lower Mississippi Valley Division
11. Mr. Bob O. Benn, Assistant Director for Research and Development (Military Programs), Headquarters, U.S. Army Corps of Engineers
12. Dr. Robert W. Whalin, Technical Director, U.S. Army Engineer Waterways Experiment Station
13. Mr. Edward T. Watling, Chief, Facilities Engineering Division, Headquarters, U.S. Army Corps of Engineers
14. Mr. Herbert H. Kennon, Chief, Engineering Division, North Pacific Division
15. Mr. Kenneth Murdock, Chief, Planning Division, North Central Division

The members of the Performance Review Board for the U.S. Army Surgeon General are:

1. Major General Robert H. Buker, M.D., Deputy Surgeon General
2. Major General Billy B. Lefler, D.D.S., Assistant Surgeon General for Dental Services/Director of Personnel
3. Major General Philip K. Russell, M.D., Commander, U.S. Army Medical Research and Development Command
4. Brigadier General Connie L. Slewitzke, R.N., Chief, Army Nurse Corps
5. Brigadier General Walter F. Johnson, III, Director of Health Care Operations
6. Brigadier General Robert R. Jorgensen, Assistant Surgeon General for Veterinary Services
7. Dr. Gunter F. Bahr, Chairman, Department of Cellular Pathology, Armed Forces Institute of Pathology
8. Dr. Louis S. Baron, Chief, Department of Bacterial Immunology, Walter Reed Army Institute of Research
9. Dr. Michael A. Chirigos, Deputy for Science, U.S. Army Institute of Infectious Diseases
10. Dr. Daniel H. Connor, Chairman, Department of Infectious and Parasitic Disease Pathology, Armed Forces Institute of Pathology
11. Dr. Bhupendra P. Doctor, Director, Division of Biochemistry, Walter Reed Army Institute of Research
12. Dr. Robert R. Engle, Deputy Director, Division of Experimental Therapeutics, Walter Reed Army Institute of Research
13. Dr. Franz Enzinger, Chairman, Department of Soft Tissue Pathology, Armed Forces Institute of Pathology
14. Dr. Samuel B. Formal, Chief, Department of Bacterial Diseases, Walter Reed Army Institute of Research
15. Dr. Elson D. Helwig, Chairman, Department of Skin and Gastrointestinal Pathology, Armed Forces Institute of Pathology
16. Dr. Nelson S. Irey, Chairman, Department of Environmental and Drug Induced Pathology, Armed Forces Institute of Pathology
17. Dr. Frank B. Johnson, Chairman, Department of Chemical Pathology, Armed Forces Institute of Pathology
18. Dr. Arthur D. Mason, Jr., Chief, Laboratory Division, U.S. Army Institute of Surgical Research
19. Dr. Fathollah K. Mostofi, Chairman, Center for Advanced Pathology, Armed Forces Institute of Pathology
20. Dr. Henry J. Norris, Chairman, Department of Gynecologic and Breast Pathology, Armed Forces Institute of Pathology
21. Dr. Howard E. Noyes, Associate Director for Research Management, Walter Reed Army Institute of Research
22. Dr. Joseph V. Osterman, Special Assistant for Biotechnology, U.S. Army Medical Research and Development Command
23. Dr. Donald E. Sweet, Chairman, Department of Orthopedic Pathology, Armed Forces Institute of Pathology
24. Dr. James A. Vogel, Director, Exercise Physiology Division, U.S. Army Research Institute of Environmental Medicine
25. Dr. Kamal G. Ishak, Chairman, Department of Hepatic Pathology, Armed Forces Institute of Pathology

The members of the Performance Review for the U.S. Army Materiel Command are:

1. Mr. John B. Jury, Assistant Deputy Chief of Staff for Procurement, Headquarters, U.S. Army Materiel Command
2. Mr. Edward J. Korte, Deputy Command Counsel, Headquarters, U.S. Army Materiel Command
3. Mr. Barry W. McDaniel, Assistant Deputy Chief of Staff for Readiness, Headquarters, U.S. Army Materiel Command
4. Mr. A. David Mills, Assistant Deputy Chief of Staff for Supply, Maintenance and Transportation, Headquarters, U.S. Army Materiel Command
5. Mr. Michael C. Sandusky, Assistant Deputy Chief of Staff for Resource Management, Headquarters, U.S. Army Materiel Command
6. Mr. Benjamin Halperin, Chief Counsel, U.S. Army Armament Research, Development, and Engineering Center
7. Mr. Donald L. Lathrop, Comptroller, U.S. Army Armament, Munitions and Chemical Command
8. Mr. Charles C. Crawford, Jr., Technical Director, U.S. Army Aviation Systems Command
9. Mr. Joseph R. Varady, Director of Procurement, U.S. Army Communications-Electronics Command
10. Dr. John T. Frasier, Director, Ballistics Research Laboratory, U.S. Army Laboratory Command
11. Dr. Clarence G. Thornton, Director, Electronic Technology & Devices, U.S. Army Laboratory Command
12. Dr. Richard G. Rhoades, Associate Director for Technology, U.S. Army Missile Command
13. Dr. Robert E. Yates, Director for Guidance and Control, U.S. Army Missile Command
14. Mr. Lowell H. Barnett, Director for Product Assurance, U.S. Army Tank Automotive Command
15. Mr. Douglas R. Newberry, Comptroller, U.S. Army Tank Automotive Command
16. Dr. Lothar L. Salomon, Scientific Director, Dugway Proving Ground
17. Mr. Harold L. Mabrey, Director for Procurement and Production, U.S. Army Troop Support Command
18. Mr. Paul Donovon, Principal Deputy, U.S. Army Security Affairs Command
19. Mr. Seymour J. Lorber, Deputy Chief of Staff for Product Assurance and Testing, Headquarters, U.S. Army Materiel Command
20. Mr. Victor Lindner, Associate Technical Director, System Development and Engineering, U.S. Army Armament Research, Development and Engineering Center
21. Dr. Edward J. Poziomek, Director, Research Directorate, U.S. Army

Chemical Research, Development and Engineering Center
22. Mr. Daniel W. McEneany, Director of Engineering, Research, Development and Engineering Center, U.S. Army Aviation Systems Command
23. Mr. Victor J. Ferlise, Chief Counsel, U.S. Army Communications-Electronics Command
24. Mr. Billy R. Gilliland, Comptroller, U.S. Army Communications-Electronics Command
25. Mr. Bruce M. Fonoroff, Associate Technical Director for Research and Technology, U.S. Army Laboratory Command
26. Dr. John D. Weiz, Director, Human Engineering Laboratory, U.S. Army Laboatory Command
27. Mr. Walter B. Jennings, Jr., Deputy Director for Directed Energy, U.S. Army Missile Command
28. Mr. Billie D. Storey, Director for Test and Evaluation, U.S. Army Missile Command
29. Mr. Ernest A. Young, Deputy for Procurement and Readiness, U.S. Army Missile Command
30. Mr. Henry B. Jones, Director for Procurement and Production, U.S. Army Tank Automotive Command
31. Brigadier General George H. Akin, Deputy Commanding General, Procurement and Readiness, U.S. Army Communications-Electronics Command
32. Brigadier General Ronald K. Anderson, Project Manager, Light Helicopter Experiment, U.S. Army Aviation Systems Command
33. Brigadier General Terrence Arndt, Deputy Chief of Staff for Resource Management, Headquarters, U.S. Army Materiel Command
34. Brigadier General David A. Nydam, Project Manager for Chemical Demilitarization, U.S. Army Armament, Munitions and Chemical Command
35. Brigadier General Donald R. Williamson, Deputy Chief of Staff, Readiness, Headquarters, U.S. Army Materiel Command
36. Brigadier General Paul L. Greenberg, Deputy Commanding General, Procurement and Readiness, U.S. Army Armament, Munitions, and Chemical Command
37. Brigadier General Walter W. Kastenmayer, Deputy Chief of Staff for Chemical and Nuclear Matters, Headquarters, U.S. Army Materiel Command
38. Major General William S. Flynn, Chief of Staff, U.S. Army Materiel Command

The members of the Performance Review Board for the Consolidated Commands are:
1. Mr. Larry C. Hanson, Assistant Chief of Staff for Resource Management, Headquarters, U.S. Army Training and Doctrine Command
2. Brigadier General James W. Wurman, Deputy Chief of Staff for Personnel Administration and Logistics, U.S. Army Training and Doctrine Command
3. Mr. Raymond V. Michael, Assistant Deputy Chief of Staff for Personnel Administration and Logistics (Civiliam Personnel), U.S. Army Training and Doctrine Command
4. Mr. William S. Fraim, Civilian Personnel Director, U.S. Army Forces Command
5. Mr. William Wilkinson, Deputy Director of Resource Management, U.S. Army Forces Command
6. Mr. Thomas D. Collinsworth, Special Assistant for Transportation Engineering, Military Traffic Management Command
7. Brigadier General Charles A. Vickery, Vice Commander, Military Traffic Managment Command
8. Mr. Leonard Mabius, Technical Director to Commanding General, U.S. Army Information Systems Command
9. Brigadier General Alonzo Short, Jr., Deputy Commanding General, Information Systems Engineering Command
10. Mr. Andrew F. Foreman, Assistant Deputy Chief of Staff, Personnel (Civilian Personnel), U.S. Army Europe
11. Mr. C. Cary Jones, Assistant Deputy Chief of Staff, Engineer, U.S. Army Europe.

Carol D. Smith,
Chief, Senior Executive Service Office.
[FR Doc. 87-17390 Filed 7-30-87; 8:45 am]
BILLING CODE 3710-08-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chaper 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection concerning the Make or Buy Program.

ADDRESS: Send comments to Mr. Ed Springer, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein, Office of Federal Acquisition and Regulatory Policy (202) 523-3775.

SUPPLEMENTARY INFORMATION: a. *Purpose:* Price, performance, and/or implementation of socioeconomic policies may be affected by make-or-buy decisions under certain Government prime contracts. Accordingly, Subpart 15.7, Make-or-Buy Programs, of the Federal Acquisition Regulation (FAR)—

(a) Sets forth circumstances under which a Government contractor must submit for approval by the contracting officer a make-or-buy program, i.e., a written plan identifying major items to be produced or work efforts to be performed in the prime contractor's facilities and those to be subcontracted;

(b) Provides guidance to contracting officers concerning the review and approval of the make-or-buy programs; and

(c) Prescribes the contract clause at FAR 52.215-21, Changes or Additions to Make-or-Buy Program, which specifies the circumstances under which the contractor is required to submit for the contracting officer's advance approval a notification and justification of any proposed change in the approved make-or-buy program.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, *300;* responses per respondent, *3;* total annual responses, *900;* hours per response, *8;* and total burden hours, *7,200.*

Obtaining Copies of Proposals: Requesters may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523-4755. Please cite OMB Control No. 9000-0078, Make or Buy Program.

Dated: July 17, 1987.
Margaret A. Willis,
FAR Secretariat.
[FR Doc. 87-17392 Filed 7-30-87; 8:45 am]
BILLING CODE 6820-61-M

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection concerning Debarment and Suspension.

ADDRESS: Send comments to Mr. Ed Springer, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Edward C. Loeb, Office of GSA Acquisition Policy and Regulations on (202) 523–4764.

SUPPLEMENTARY INFORMATION:

a. *Purpose:* The FAR requires contracts to be awarded to only those contractors determined to be responsible. Instances where a firm, or its principals, have been indicted, convicted, suspended or debarred, or had a contract terminated for default are critical factors to be considered by the contracting officer in making a responsibility determination. This certification would require the disclosure of this information.

This provision requires any offeror for a contract requirement over $25,000 to certify as to whether the firm, or its principals, have been indicated, convicted, suspended, debarred or had a contract terminated for default. The certifications are used by the contracting officer in evaluating a firm's responsibility for contract award.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, *2,073,835;* responses per respondent, *1;* total annual responses *2,073,835;* subcontracts *2* minutes per response, prime contracts *5* minutes per response; and total burden hours, *131,343.*

Obtaining Copies of Proposals: Requesters may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–00XX, Debarment and Suspension.

Dated: July 27, 1987.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 87–17352 Filed 7–30–87; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF EDUCATION

Office for Civil Rights

Annual Operating Plan for Fiscal Year 1988

AGENCY: Department of Education.

ACTION: Request for comments on Annual Operating Plan for Fiscal Year 1988.

SUMMARY: The Secretary of Education invites comments on the proposed FY 1988 Annual Operating Plan for the Office for Civil Rights.

DATES: Interested persons are invited to submit comments, suggestions, and objections regarding the proposed plan on or before September 14, 1987.

ADDRESS: Written comments should be addressed to Alicia Coro, Acting Assistant Secretary for Civil Rights, Department of Education, 400 Maryland Avenue, SW., Mail Stop 2516, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Fred Tate, (202) 732–1526.

I. Introduction

The Office for Civil Rights (OCR) is responsible for ensuring that no person is unlawfully discriminated against on the basis of race, color, national origin, sex, handicap, or age in the delivery of services or the provision of benefits in programs or activities receiving financial assistance from the Department of Education (ED). The authorities under which OCR operates are Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

These authorities cover ED-funded programs and activities carried out by 50 State educational and rehabilitation agencies, the District of Columbia, the U.S. territories and possessions, approximately 16,000 local educational agencies, approximately 3,300 institutions of higher education, as well as certain subrecipients of the foregoing entities. In addition, OCR's civil rights authorities cover programs and activities in other institutions, such as libraries and museums, that receive ED funds.

OCR ensures compliance with Federal civil rights statutes by the recipients of ED financial assistance through two basic types of activities: Compliance activities and technical assistance activities. OCR's compliance activities (including complaint investigations, compliance reviews, and monitoring the implementation of some voluntary compliance plans) are generally subject to time frames imposed by a court order, *Adams* v. *Bennett* (*Adams*), Civil Action No. 3095–70 (D.D.C. December 29, 1977, as modified January 17, 1985). However, OCR has discretion over the location and scope of its compliance reviews and other monitoring activities. For the most part, OCR concentrates its compliance review activities on those recipients that have been identified as having possible compliance problems. OCR also provides tednical assistance, including the transfer of information, materials, and skills, to facilitate ED recipients' voluntary compliance with civil rights laws and to inform beneficiaries of their rights.

Technical assistance may be provided in the course of OCR's compliance activities to assist in achieving voluntary corrective action. OCR may provide technical assistance to recipients at any time after the initiation of a compliance review or complaint investigation, or following its conclusion, either in response to a request from a recipient or through an offer of such assistance from investigative staff. As a result, compliance issues may be resolved in a nonconfrontational manner that facilitates closer cooperation at the recipient level, while ensuring that the rights of beneficiaries are protected.

During FY 1988, OCR will continue to use two operational techniques designed to improve the efficiency of the case-handling process. The first, Early Complaint Resolution (ECR), is a process in which OCR acts as a mediator between an individual complainant and a recipient to negotiate a settlement between them. If mediation is successful, OCR closes the complaint without an investigation. If the parties cannot reach an agreement, OCR investigates the complaint. During the first half of FY 1987, ECR was offered in 89 complaints (3 of the 89 offers were still pending as of March 31, 1987), attempted and completed in 54 complaints (one of which had been initiated before the beginning of the fiscal year). Of the 54 cases in which ECR was completed, 40 (74 percent) were resolved successfully through mediation.

The second technique is pre-letter of findings (LOF) settlement. Under this process, OCR reviews its findings with the recipient on each of the issues raised in the complaint or covered by the compliance review, in an attempt to reach a settlement prior to the issuance of the LOF. If settlement is reached, OCR sets forth the terms of the settlement, along with the applicable statutory requirements, in the violation corrected LOF sent to the recipient. Where the settlement results from a complaint, the complainant is also sent a copy of the LOF. When an area of noncompliance has been resolved, the LOF cites the basis for the violation findings and, for each identified violation, either the remedy adopted by the recipient or the plan by which the recipient proposes to correct the violation. OCR then monitors the implementation of corrective action plans.

The activities planned by OCR in FY 1988, outlined below, are projected to be consistent with the appropriations authorized by Congress and approved by the President.

II. Compliance and Enforcement Activities

OCR's compliance and enforcement responsibilities are divided into three general categories: Complaint investigations, compliance reviews, and monitoring activities.

A. Complaint Investigations

OCR's primary compliance activity is the investigation and resolution of complaints alleging discrimination. Each timely, complete complaint must be resolved in accordance with established procedures and time frames established pursuant to the requirements of the *Adams* order.

OCR received 886 complaints and closed 1,128 (some of which had been filed before the beginning of the fiscal year) during the first half of FY 1987. OCR had 647 pending complaints as of March 31, 1987. Alleged discrimination against handicapped persons was the basis of approximately 51 percent of the complaints received; race, multiple bases, other,[1] sex, national origin, and age complaints followed in descending order of frequency. During the first half of FY 1987, 67 percent of the complaints received involved elementary and secondary institutions, 25 percent involved postsecondary institutions, 2 percent involved vocational rehabilitation institutions, and 6 percent involved other institutions. During this same time period, 77 percent of the complaints received involved issues of service delivery to students, 18 percent involved various employment issues, 2 percent involved both, and 3 percent involved other issues.

[1] "Other" consists of complaints over which OCR does not have jurisdiction.

B. Compliance Reviews

OCR's compliance review program complements its complaint investigation activities. Compliance reviews differ from complaint investigations in that, while some review activities are required by the *Adams* order, OCR has flexibility in selecting the location and scope of a review. Selection of review sites is based on various sources of information, including survey data indicating potential compliance problems and information provided by complainants, interest groups, the media, and the general public. Compliance reviews permit OCR to target resources on problems that appear to be serious or national in scope and that may not have been raised by complaints.

During the first half of FY 1987, OCR initiated 40 compliance reviews and closed 96 reviews, some of which had been initiated before the end of FY 1986. OCR had 60 open compliance reviews as of March 31, 1987. OCR plans to conduct an appropriate number of compliance reviews during FY 1988 to ensure proper enforcement of the civil rights laws.

C. Monitoring Activities

OCR closes many of the complaints and compliance reviews in which it has identified violations of civil rights statutes on the basis of a commitment by the recipient institution to complete corrective action at a future date. To ensure that agreements to complete such corrective actions are carried out, OCR may require a recipient to submit one or more progress reports detailing efforts to come into compliance with applicable laws and, in some cases, OCR may go on-site to monitor a recipient's compliance with a negotiated corrective action plan. OCR monitors higher education desegregation plans and vocational education Methods of Administration. In FY 1988, OCR will monitor various activities including the following:

- Implementation by recipient institutions of corrective action plans resulting from OCR complaint investigations and compliance reviews;
- Implementation of *Adams* higher education desegregation plans;
- Review and implementation of corrective action plans to provide educational opportunities to national origin minority students who are limited-English-proficient (*i.e.*, Title VI *Lau* plans); and
- Activities of recipients conducting vocational education programs to ensure that they fulfill their Methods of Administration responsibilities under the Vocational Education Guidelines and the July 1979 Memorandum of Procedures regarding the civil rights compliance of their vocational education subrecipients.

III. Technical Assistance Activities

Technical assistance complements OCR's compliance activities because it encourages voluntary compliance. Through technical assistance, OCR is able to reach a far greater number of recipients than it could solely through complaint investigations or compliance reviews. OCR provides technical assistance to recipients to inform them of their responsibilities under the civil rights statutes and the ED implementing regulations and of the means to meet these responsibilities. OCR provides technical assistance to beneficiaries to inform them of their rights under the civil rights statutes and to explore voluntary methods of securing those rights. During FY 1987, in addition to responding to requests for technical assistance, OCR regional offices were encouraged to provide technical assistance outreach efforts based on existing staff resources and ongoing assessments of recipient and beneficiary needs.

In FY 1988, OCR will conduct various technical assistance activities including the following:

- Actions to implement Memoranda of Understanding with State and local educational and human rights agencies to facilitate meeting mutual civil rights compliance objectives and to promote the sharing of information;
- Coordination with other ED program offices on the provision of civil rights-related technical assistance;
- Exchange of information, materials, technical assistance strategies, techniques, and successful compliance practices and procedures among OCR staff providing technical assistance;
- Provision of materials and courses to OCR regional investigators and legal staff to facilitate the provision of technical assistance training to educational institutions and State and local governments;
- Provision of training to State and local educational agencies to enhance their capabilities to carry out civil rights activities; and
- Preparation of materials for dissemination to recipients and beneficiaries, summarizing and

explaining the civil rights statutes enforced by OCR and OCR policies and regulations.

IV. Program Management Activities

In conducting its compliance, enforcement, and technical assistance activities, OCR continues to implement a comprehensive program that includes:

- Formulating or updating regulations, policies, and investigative manuals;
- Providing technical guidance on complaints and compliance reviews referred from regional offices;
- Conducting hearings before Administrative Law Judges on the compliance of Federal financial recipients with civil rights requirements;
- Meeting with Congressional staffs, U.S. Department of Justice attorneys, school district representatives, college and university officials, complainants, and civil rights groups to discuss OCR activities;
- Conducting and analyzing OCR surveys and data collection projects to obtain information on recipients and beneficiary populations for enforcement purposes;
- Providing in-house programmatic training to investigators and legal staff engaged in civil rights compliance and technical assistance activities;
- Conducting a quality assurance program to ensure that a high level of quality is maintained in OCR compliance activities; and
- Operating a Management-by-Objectives program designed to enhance management planning and to track performance in meeting organizational goals.

V. Summary

While regional programs will vary due to considerations such as the number and type of complaints received, compliance reviews conducted, and requests for technical assistance, all OCR activities will be guided by national policies, priorities, and direction. As in previous years, each Regional Director will be responsible for timely fulfillment of OCR's obligations in handling complaint investigations and compliance reviews, monitoring corrective action plans, and providing technical assistance to recipients and beneficiaries of ED financial assistance. A large part of each region's compliance program will involve the investigation of complaints of discrimination. During FY 1988 each regional office will conduct compliance reviews, in the geographic areas it serves, under each of the civil rights statutes enforced by OCR. Monitoring activities will focus on ensuring that recipients comply with corrective action plans and fulfill their vocational education Methods of Administration responsibilities. OCR will design technical assistance activities to respond to recipient and beneficiary needs.

Paperwork Reduction Act of 1980

The information collection activity to be undertaken pursuant to this plan includes the Fall 1988 Elementary and Secondary School Civil Rights Survey. A notice will be published in the Federal Register in the Fall of 1987, prior to submission of the survey to OMB, notifying the public of OCR's intention to gather the data. This survey is scheduled to be approved by OMB in April 1988. Distribution to selected local educational agencies will follow. In addition to the above survey, OCR jointly sponsors two surveys with the Center for Statistics, the Fall Enrollment Survey (OMB control number 1850-0582) and the Completions of the Integrated Postsecondary Education Data System (OMB control number 3088-0238).

VI. Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding the proposed plan. Written comments and recommendations may be sent to the address given at the beginning of this document. All comments received on or before the end of the comment period will be considered in the development of the final plan.

All comments submitted in response to the proposed plan will be available for public inspection, during and after the comment period, at the Department of Education, Room 5074, Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday of each week except Federal holidays.

Dated: July 28, 1987.

William J. Bennett,

Secretary of Education.

[FR Doc. 87-17380 Filed 7-30-87; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. ERA C&E 87-57; Certification Notice—2]

Filing of Certification of Compliance; Coal Capability of New Electric Powerplants Pursuant to Provisions of the Powerplant and Industrial Fuel Use Act, as amended (42 U.S.C. 8311 Section 201(d))

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (section 201(a)). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d) to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the Federal Register a notice reciting that the certification has been filed. Three owners or operators of proposed new electric base load powerplants have filed self certifications in accordance with section (d). Further information is provided in the SUPPLEMENTARY INFORMATION section below.

SUPPLEMENTARY INFORMATION: The following companies filed self certifications:

Name	Date received	Type facility	Megawatt capacity	Location
Caterpillar Capitol, Ltd., York, PA	7-6-87	Combined Cycle	67	York, PA.
Peter J. Pilchess, Honer Rancho, Saugus, CA	7-6-87	do	25	Saugus, CA.
SJE Investments, Inc., Chicago, Ill.	7-1-87	do	178	Woodstock, VA.

Amendments to FUA on May 22, 1987 (Pub. L. 100-42) altered the general prohibitions to include only new electric baseload powerplants and to provide for the self certification procedure. Pertinent provisions are restated in the appendix to this notice.

Issued in Washington, DC on July 23, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

Appendix

SEC. 201. Coal Capability of New Electric Powerplants: Certification of Compliance.

(a) General Prohibitions—Except to such extent as may be authorized under subtitle B, no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source.

(b) Capability To Use Coal or Alternate Fuel—An electric powerplant has the capability to use coal or another alternate fuel for purposes of this section if such electric powerplant—

(1) has sufficient inherent design characteristics to permit the addition of equipment (including all necessary pollution devices) necessary to render such electric powerplant capable of using coal or another alternate fuel as its primary energy source; and

(2) is not physically, structurally, or technologically precluded from using coal or another alternate fuel as its primary energy source.

Capability to use coal or another alternate fuel shall not be interpreted to require any such powerplant to be immediately able to use coal or another alternate fuel as its primary energy source on its initial day of operation.

(c) Applicability To Base Load Powerplants—(1) This section shall apply only to base load powerplants, and shall not apply to peakload powerplants or intermediate load powerplants.

(2) For the purposes of this section, hours of electrical generation pursuant to emergency situations, as defined by the Secretary and reported to the Secretary, shall not be included in a determination of whether a powerplant is being operated as a base load powerplant.

(d) Self-Certification—(1) In order to meet the requirement of subsection (a), the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source shall certify to the Secretary prior to construction or prior to operation as a base load powerplant in the case of a new electric powerplant operated as a peakload powerplant or intermediate load powerplant, that such powerplant has capability to use coal or another alternate fuel, within the meaning of subsection (b).

Such certification shall be affective to establish compliance with the requirement of subsection (a) as the date it is filed with the Secretary. Within 15 days after receipt of a certification submitted pursuant to this paragraph, the Secretary shall publish in the **Federal Register** a notice reciting that the certification has been filed.

(2) The Secretary within 60 days after the filing of a certification under paragraph (1), may require the owner or operator of such powerplant to provide such supporting documents as may be necessary to verify the certification.

[FR Doc. 87-17447 Filed 7-30-87; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Cases Filed During the week of June 26 Through July 3, 1987

During the Week of June 26 through July 3, 1987, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

July 24, 1987.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of June 26 through July 3, 1987]

Date	Name and location of applicant	Case No.	Type of submission
June 29, 1987	New Jersey, Newark, New Jersey	RM8-69, RM5-70	Motion for modification/rescission. If granted: The December 21, 1983 and May 23, 1984 Decisions and Orders (Case Nos. RO6-85 & RO5-27) issued to New Jersey would be modified regarding the state's application for refund submitted in the Palo Pinto and Belridge second stage refund proceedings.
Do	Sellers Oil Company, Bainbridge, Georgia	KEE-0144	Exception to the reporting requirements. If granted: Sellers Oil Company would not be required to file Form EIA-782B, "Reseller/Retailers' Monthly Petroleum Products Sales Report."
June 25, 1987	Missouri Pacific Railroad Company, Washington, DC	RR271-3	Request for modification/rescission in stripper well proceeding. If granted: The June 19, 1987 Decision and Order (Case No. RF271-58) issued to Missouri Pacific Railroad Company would be modified regarding the firm's application for refund submitted as a Rail & Water Transporter in the Stripper Well Proceeding.
Do	Site Oil Company, St. Louis, Missouri	KEE-0145	Exception to the reporting requirements. If granted: Site Oil Company would not be required to file EIA-782B, "Reseller/Retailer Monthly Petroleum Products Sales Report."
June 30, 1987	Economic Regulatory Administration, Washington, DC	KEG-0014	Petition for special redress. If granted: The Office of Hearings and Appeals would review the July 31, 1979 Consent Order entered into between the Economic Regulatory Administration and GHR Energy Corporation regarding the amount to be remitted.
Do	Economic Regulatory Administration, Washington, DC	KRD-0471	Motion for discovery. If granted: Discovery would be granted to the Economic Regulatory Administration in connection with the Statement of Objections submitted in response to the Proposed Remedial Order (Case No. KRO-0471) issued to LaJet, Inc.
Do	David Rodriquez Soler, Cranbury, New Jersey	KFA-0106	Appeal of an information request denial. If granted: The June 18, 1987 Freedom of Information Request Denial issued by Mr. Johnson, DOE/Princeton Area Office, would be rescinded and David Rodriquez Soler would receive access to information on individuals who performed the FY'83 Contractor System Procurement Review.
July 1, 1987	W.F. Lawless, Augusta, Georgia	KFA-0107	Appeal of an information request denial. If granted: W.F. Lawless would receive access to certain unspecified DOE documents.
July 2, 1987	Joseph L. Redding, Jr., Hazleton, Pennsylvania	KFA-0108	Appeal of an information request denial. If granted: The June 26, 1987, Freedom of Information Request Denial issued by the Office of Classification would be rescinded and Joseph L. Redding, Jr., would receive access to "The 1983 Topical Conference on the Physics of Radiatively-Driven ICF Targets."

REFUND APPLICATIONS RECEIVED

[Week of June 29 to July 3, 1987]

Date received	Name of refund applicant	Case No.
06/26/87	Bethlehem Steel Corp	RF277-36
06/26/87	Crude Oil	RF272-852
thru 07/03/87		thru RF272-1181
06/29/87	Dave's Getty	RF265-3
06/24/87	Dick and Hank Automotive	RF225-10854
06/26/87	Eastern Stainless Steel	RF277-55
06/26/87	Getty	RF265-2052
thru 07/03/87		thru RF265-2308
06/26/87	Mangum Oil and Gas	RF353-24
06/29/87	George Peppas	RF276-292
06/29/87	New Jersey Zinc Co	RF277-57
06/30/87	Reynolds Electrical & Eng. Co	RF225-10853
06/29/87	Southland Oil Co	RF265-16
07/02/87	Westport Energy Corp	RF116-10

[FR Doc. 87-17448 Filed 7-30-87; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders During the Week of June 8 Through June 12, 1987

During the week of June 8 through June 12, 1987, the decisions and orders summarized below were issued with respect to applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Requests for Exception

Francis Ryan, Inc., 6/10/87; KEE-0128

Francis Ryan, Inc. filed an Application for Exception from the requirement to file Form EIA-821, the "Annual Fuel and Kerosene Sales Report." In evaluating the request, the DOE found that the firm had not shown that it was more adversely affected by the reporting requirement than other reporting firms or that any burden placed upon it by filing the report outweighed the benefit to the nation provided by the EIA-821 survey results. Accordingly, the Office of Hearings and Appeals issued a final Decision and Order denying exception relief to the firm.

Graziano Oil Company, Inc., Appel Oil Corporation, 6/8/87; KEE-0126, KEE-0127

Graziano Oil Company, Inc. and Appel Oil Corporation filed Applications for Exception from the reporting requirements of Form EIA-782B, the "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In evaluating the requests, the DOE found that the firms had not shown that they were more adversely affected by the reporting requirements than other reporting firms. Accordingly, exception relief was denied.

Hahn Oil Company, Inc., Petroleum Sales, Inc., 6/8/87; KEE-0124, KEE-0125

Hahn Oil Company, Inc. and Petroleum Sales, Inc. filed Applications for Exception from the reporting requirements of Form EA-782B, the "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In evaluating the request, the DOE found that the firms had not shown that they were more adversely affected by the reporting requirements than other reporting firms. Accordingly, exception relief was denied.

Request for Modification and/or Rescission

Economic Regulatory Administration, 6/11/87; KRR-0026

The Economic Regulatory Administration (ERA) filed a Motion for Modification with the Office of Hearings and Appeals (OHA) concerning a Remedial Order (RO) issued to Brio Petroleum, Inc. (Brio) and L.B. White on April 16, 1987. *Brio Petroleum, Inc.*, 15 DOE ¶ 83,033 (1985). In its Motion, the ERA sought to modify Subparagraph 5 of Ordering Paragraph (5) to reflect DOE's present policy of assessing interest. The RO ordered that simple interest should be used for the period October 1, 1979 through January 31, 1980. The OHA determined that this manner of calculating interest for that period was incorrect. The OHA therefore granted ERA's Motion and modified Ordering Paragraph (5), Paragraph 5 so that the stated interest earned on the illegal overcharges by Brio between October 1, 1979 through January 31, 1980 would be compounded quarterly.

Supplemental Order

South Central Terminal Co., Inc., 6/11/87; KRX-0035

The Office of Hearings and Appeals issued a Supplemental Order to South Central Terminal Company, Inc. OHA issued the Order in response to South Central's requests that the Office clarify the firm's exact refund obligation under a Supplemental Order issued to the firm on April 30, 1987. *South Central Terminal Co.*, 15 DOE ¶ 83,034 (1987).

Refund Applications

All State Auto Rent, Inc., 6/11/87; RF270-1151

The DOE issued a Decision and Order denying a vehicle rental company's application for a Surface Transporters Refund. The DOE determined that the Surface Transporters Escrow's exclusion of car rental companies applies to truck and van rental companies as well. The Surface Transporters Escrow was intended for transporters who are end-users of petroleum products. Since most rental companies, regardless of the vehicle rented, act as retailers of petroleum products they are ineligible for Surface Transporter Refunds.

Beacon Oil Company/San Francisco Four Wheel Brake Service, et al., 6/8/87; RF 238-3 et al.

The DOE issued a Decision and Order concerning six Applications for Refund filed by purchasers of Beacon Oil Company petroleum products. Each firm applied for a refund based on the procedures outlined in *Beacon Oil Company*, 14 DOE ¶ 85,011 (1986), as modified by *Beacon Oil Company*, 14 DOE ¶ 85,509 (1986), governing the disbursement of settlement funds received from Beacon pursuant to a December 17, 1979 Consent Order. Since all of the applicants claimed refunds of $5,000 or less, they were presumed to have been injured by Beacon's alleged overcharges. After examining the applications and supporting documentation submitted by the claimants, the DOE concluded that they should receive refunds totaling $42,901, representing $22,131 in principal and $20,770 in accrued interest.

Dunning Sand & Gravel Co., Inc., 6/11/87; RF270-1089

The DOE issued a Decision and Order denying a sand and gravel company's application for a Surface Transporters Refund. The DOE determined that the company's use of construction equipment for digging, loading, and screening gravel were not transportation functions. Although the company also operated a private fleet of trucks, this fleet used far less than the 250,000 gallon minimum threshold.

Gulf Oil Corporation/James T. Franklin et al., 6/9/87; RF40-3275 et al.

The DOE issued a Decision and Order concerning fifteen Applications for Refund filed by retailers and resellers of Gulf refined petroleum products. The claimants applied for a refund based on the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984). After examining the evidence and supporting documentation submitted by the applicants, the DOE concluded that the claimants should receive refunds totalling $34,371 ($27,772 principal plus $6,599 interest).

Gulf Oil Corp./Palmer Gulf, 6/10/87; RF40-3212

The DOE issued a Decision and Order concerning the Application for Refund filed by Palmer Gulf (Palmer) in connection with the Gulf Oil Corp. special refund proceeding. Palmer, a Gulf consignee, demonstrated that it had lost potential sales of motor gasoline and therefore had been injured as a result of Gulf's pricing practices. Palmer did not demonstrate injury with respect to consigned middle distillates. Accordingly, a refund of $211 ($170 in principal plus $41 in interest) was approved only for consigned motor gasoline.

Louisiana and North West Railroad Co. et al 6/8/87; RF271-99 et al

The Department of Energy (DOE) issued a Decision and Order approving applications submitted by six railroad companies for refunds from the Rail and Water Transporters Escrow established as a result of the Stripper Well Settlement Agreement. Five of the firms calculated their gallonage claims from actual purchase records. The Louisiana and North West Railroad Co. calculated its gallonage claim based on actual purchase records from 1977 through January 1981, and estimates for the previous years claimed based on the average gallons per month purchased between 1977 and January 1981. The DOE will determine a per gallon refund amount and establish the amount of each applicant's refund after it completes its analysis of all Rail and Water claims.

Marathon Petroleum Company/Angola Marathon el al., 6/10/87; RF250-1830, et al.

The DOE issued a Decision and Order concerning 19 Applications for Refund filed

by purchasers of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Each applicant submitted information indicating the volume of its Marathon purchases, and none requested a refund greater than the $5,000 small claims refund amount. The sum of the refunds approved in this Decision is $11,273.19, requesting $10,437.26 in principal and $835.93 in interest.

Marathon Petroleum Company/Apollo Oil Company, 6/11/87; RF250–2208, RF250–2209

The DOE issued a Decision and Order concerning two Applications for Refund filed by Apollo Oil Company (Apollo), a reseller of Marathon motor gasoline and diesel fuel. Apollo elected to limit its claim to $5,000, the small claims injury presumption set forth in the decision implementing procedures for disbursing the Marathon consent order fund. After examining the evidence and supporting data submitted by the firm, the DOE concluded that Apollo should receive a refund of $5,000 in principal and $407.27 in accrued interest for a total refund of $5,407.27.

Marathon Petroleum Company, Bennett Distributing, Inc., 6/11/87; RF250–2233, RF250–2224

Bennett Distributing, Inc. (Bennett) filed two Applications for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order entered into with Marathon Petroleum Company, (Marathon). Bennett demonstrated that purchased 6,978,286 gallons of refinded petroleum covered products from Marathon during the consent order period. Using a volumetric methodology, the DOE determined that Bennett's claim was below the presumption of injury threshold refund level of $5,000. The DOE therefore granted Bennett a refund of $2,930.87 in principal and $234.74 in accrued interest for a total refund of $3,165.61.

Marathon Petroleum Company/Michigan Crystal Flash Petroleum Corp., Crystal Flash Petroleum Corp., 6/11/87; RF250–2122 et al.

The DOE issued a Decision and Order concerning Applications for Refund filed on behalf of Michigan Crystal Flash Petroleum Corporation and Crystal Flash Petroleum Corporation, purchasers of products covered by a consent order that the agency entered into with Marathon Petroleum Company. The two firms requested refunds on the basis of presumptions of injury established in the Marathon refund proceeding. However, because the two firms are related by common ownership, the DOE determined that they should be considered together for the purposes of those presumptions. The firms were granted a combined refund of $12,323, representing $11,203 in principal and $1,120 in interest, on the basis of the thirty-five percent presumption of injury.

Marathon Petroleum Company Okerson's Marathon Service, 6/10/87; RF250–2661

Okerson's Marathon Service (OMS) filed an Application for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order entered into with Marathon Petroleum Company (Marathon). OMS demonstrated that it purchased 722,400 gallons of refined petroleum covered products from Marathon during the consent order period. Using a volumetric methodology, the DOE determined that OMS's claim was below the presumption of injury threshold refund level of $5,000. The DOE therefore granted OMS a refund of $303.41 in principal and $23.64 in accrued interest for a total refund of $327.05.

Mobil Oil Corporation/Carter Bros., Inc. et al, 6/9/87; RF225–8374 et al

The DOE issued a Decision granting 28 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers and resellers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in the *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totaling $92,692 ($75,737 principal plus $16,955 interest).

Mobil Oil Corporation/Nicholas Carouba Halls's Auto Service Community Service Station, 6/10/87; RF225–2637, RF225–5003, RF225–5004, RF225–6734

The DOE issued a Decision and Order granting four Applications for Refund from the Mobil Oil Corporation escrow account filed by Nicholas Carouba, Hall's Auto Service and Community Service Stations. The applicants were retailers of Mobil petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $22,877.

Mobil Oil Corporation/West Side Mobil, 6/9/87; RF225–10825

On April 16, 1987, the Office of Hearings and Appeals issued a Decision authorizing the payment of $2,850 to West Side Mobil from the Mobil Oil Corporation escrow account. As a result of an inadvertent error, the payment was authorized on the basis of 29,198,981 gallons of gasoline. It should have been granted on the basis of 2,919,881 gallons of gasoline. The original refund was therefore rescinded and a refund for the correct amount, $288 ($235 in principal and $53 in interest), was granted.

Nobel/Sysco Food Services, Inc., 6/10/87; RF270–1530

The Department of Energy (DOE) issued a Decision and Order in connection with its administration of the $10.75 million escrow fund established for surface transporters pursuant to the settlement agreement in the DOE Stripper Well Exemption Litigation. The firm based its refund application on diesel fuel used in its private fleet of tractor/trailers, including fuel for the trucks' refrigeration units. In applying the two-pronged test for Surface Transporter refund eligibility, DOE first found that the firm utilized a product refined from crude oil. Second, the DOE found that, since refrigeration units were necessary to the transportation of perishable food products, fuel utilized for that purpose was used for surface transportation. Accordingly, DOE approved Nobel/Sysco's entire claim. The DOE stated that because the size of a surface transporter applicant's refund will depend upon the total number of gallons that are ultimately approved, the actual amounts of the firms' refunds will be determined at a later date. The total number of gallons approved in this Decision is 6,575,209.

Santa Maria Railroad, Co., 6/9/87; RF271–4

The Office of Hearings and Appeals issued an Order granting Santa Maria Railroad's Application for a refund from the Rail and Water Transporters Escrow established by Order of the U.S. District Court for the District of Kansas in *In Re: Department of Energy Stripper Well Exemption Litigation*, M.D.L. 378. In considering that application, OHA found that the firm had established both its status as a rail transporter for purposes of the proceeding, as well as the basis for its claim to have purchased 558,458 gallons of petroleum products during the settlement period. Accordingly, OHA ordered that Santa Maria's eventual refund will be based on that figure.

Service Cab, et al, 6/9/87; RF270–2290 et al

The DOE issued a Decision and Order concerning six Applications for Refund from the $10.75 million Surface Transporters Escrow fund established pursuant to the Settlement Agreement in the DOE Stripper Well Exemption Litigation. Each applicant demonstrated that it operated motor vehicles during the Settlement Period and that it was either a "for hire" carrier or a private fleet operator for the purposes of this proceeding. In addition, each applicant demonstrated that it purchased a certain volume above the 250,000 gallon minimum prescribed in the Order establishing the Surface Transporters Escrow. Accordingly, all six applications were approved, and the respective volumes will be used to calculate each company's final refund. The total number of gallons approved in this Decision is 8,003,039.

Suburbia Bus Stop et al, 6/10/87; RF270–339 et al

The DOE issued a Decision and Order in connection with its administration of the $10.75 million escrow account established for surface transporters pursuant to the settlement agreement in the DOE Stripper Well Exemption litigation. The DOE approved the purchase volumes of refined petroleum products claimed by six private bus companies and will use those volumes as the bases for the refunds that will ultimately be issued to the six firms. The Decision states that because the size of a surface transporter applicant's refund will depend upon the total number of gallons that are ultimately approved, the actual amounts of the six firms' refunds will be determined at a later date.

Tresler Oil Company/Hudson & Hudson Fuel Oil Inc., 6/10/87; RF265–2

The DOE issued a Decision granting a refund from the Tresler Oil Company escrow account to a retailer of Tresler motor gasoline. The Applicant elected to apply for a refund based upon the presemptions set forth in the *Tresler* decision. *Tresler Oil Company*, 15 DOE ¶ 85,522 (1987). The DOE granted a refund of $517 ($463 principal and $54 interest).

Turner Trucking Company, Inc., et al., 6/9/87; RF270–1081, et al.

The DOE issued a Decision and Order approving 22 transportation companies for refunds from the Surface Transporters Escrow. The DOE determined that each company is a Surface Transporter that used refined petroleum products in eligible vehicles during the Settlement Period. After making a few adjustments to correct errors in some of the companies' volume claims, the DOE's Decision approved each company's purchase volumes.

Warren Oil Transportation Co. et al., 6/8/87; RF270–330 et al.

The DOE issued a Decision and Order in connection with its administration of the $10.75 million escrow account established for surface transporters pursuant to the settlement agreement in the DOE Stripper Well Exemption litigation. The DOE approved the purchase volumes of refined petroleum products claimed by 13 trucking companies which operated as common carriers and will use those volumes as the bases for the refunds that will ultimately be issued to the 13 firms. The DOE states that because the size of a surface transporter applicant's refund will depend upon the total number of gallons that are ultimately approved, the actual amounts of the 13 firms' refunds will be determined at a later date.

Dismissals

The following submission were dismissed:
Name and Case No.
A.B.F. Freight Systems, Inc.; RF270–53
Camas Prairie Railroad Company; RF270–33
Cross Petroleum; RF270–828
East China Township School District; RF270–334
G.N. Renn, Inc.; RF238–45
Johnny Dilorenzo; RF270–1291
Liberty Cab Company; RF270–1291
Mary's Taxi Service; RF270–351
Metropolitan Transit Commission; RF270–30
Oil Marketing Co., Inc.; KEE–0138
Peoples Service, Inc.; RF225–10647 thru RF225–10650
T&G Auto; RF225–10613
The East Ohio Gas Co.; RF225–784

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines,* a commercially published loose leaf reporter system.

George B. Breznay,
Director, Office of Hearings and Appeals.
July 24, 1987.
[FR Doc. 87–17449 Filed 7–30–87; 8:45 am]
BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–3240–5]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075.

Availability of Environmental Impact Statements Filed July 20, 1987 Through July 24, 1987 Pursuant to 40 CFR 1506.9.

EIS No. 870250, Draft, FHW, MS, MS–301 Reconstruction, MS–304 to Tennessee State Line, DeSoto County, Due: September 20, 1987, Contact: James Iverson, (601) 965–4222

EIS No. 870251, Final, FHW, MN, TH–77/I–494 Improvements, TH–77/Cedar Avenue from 70th Street to 86th Street and I–494 from West 12th Avenue to East 34th Avenue, Hennepin County, Due: August 31, 1987, Contact: Stephen Bahler, (612) 349–5230

EIS No. 870252, Final, FRC, ID, Salmon River Basin, Fifteen Hydroelectric Projects, Construction, Operation and Maintenance, Licenses, Due: August 31, 1987, Contact: Frank Karwoski, (202) 376–1761

EIS No. 870253, Draft, NOA, NH, New Hampshire Coastal Program, Ocean, Harbor and Great Bay Areas, Approval, Due: September 14, 1987, Contact: Kathryn Cousins (202) 637–5152

EIS No. 870254, Draft, BLM, CO, Uncompahgre Basin Planning Area, Resource Management Plan, Wilderness Recommendations, Camel Back, Adobe Badlands and Gunnison Gorge Wilderness Study Areas, Due: November 4, 1987, Contact: Robert Vecchia, (303) 349–2244

EIS No. 870255, Report, COE, LA, Louisiana Flow-Regulating Structures Project, Mississippi River, Baton Rouge to the Gulf of Mexico, Engineering and Environmental Information, Contact: David Carney, (504) 862–2528

EIS No. 870256, Draft, COE, IA, Des Moines Recreational River and Greenbelt Area, Development, Operation and Maintenance, Due: September 14, 1987, Contact: Richard Makinen, (202) 272–0166

EIS No. 870257, Draft, USN, NJ, Naval Weapons Station Earle, Family Housing Development, Construction, Colts Neck, Monmouth County, Due: September 14, 1987, Contact: Thomas Peeling, (202) 325–7344

EIS No. 870258, Report, COE, OK, Mingo Creek Watershed and Flood Protection Plan, Updated Information, Tulsa County, Contact: Richard Makinen, (202) 272–0166.

Dated: July 28, 1987.
Richard E. Sanderson,
Director, Office of Federal Activities.
[FR Doc. 87–17409 Filed 7–30–87; 8:45 am]
BILLING CODE 6560–50–M

[ER–FRL–3240–6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared July 13, 1987 through July 17, 1987 pursuant to the environmental Review Process (ERP), under section 309 of the Clean Air Act (CAA) and section 102(2)(c) of the National Environmental Policy Act (NEPA) as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5076/73. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 24, 1987 (52 FR 13749).

Draft EISs

ERP No. D–COE–K36091–CA, Rating EO2, Coyote and Berryessa Creeks Flood Control Improvement, CA. EPA expressed environmental objections because the Clean Water Act section 404(b)(i) evaluation in the draft EIS is inadequate. Specifically, EPA objected to the Army Corps' designation of the "prefered" alternatives because EPA believes that other "practicable" alternatives which are less damaging to the aquatic ecosystem are available. EPA requested that the final EIS more fully discuss whether other "practicable" alternatives could be implemented. EPA also requested more discussion on the flood control project's impacts to air and water quality.

ERP No. D–DOE–J22003–CO, Rating EC2, Old and New Rifle Uranium Mill Sites Remedial Actions, Contaminated Material Cleanup, CO. Summary: EPA concurs with proposed off-site disposal of tailings and other contaminated materials. EPA requested additional information on disposal site radon barrier design.

ERP No. D–FHW/g40118–TX, Rating EC2, TX–71/US 290 Improvements, R.M. 1826 to R.M. 973, Right-of-Way Acquisition, TX. Summary: EPA expressed environmental concerns regarding potential impacts to the Edwards Aquifer and requested that measures to minimize these impacts be incorporated into the final EIS. This information is needed to more fully satisfy NEPA requirements.

Final EISs

ERP No. F–AFS–J65139–00, Custer Nat'l Forest, Land and Resource Mgmt. Plan, ND, SD, and MT. Summary: EPA requested that specific operating procedures or references to existing procedures be placed in the Management Plan in order to clarify and support the monitoring and evaluation section of the EIS.

ERP No. F–COE–E300332–FL, Palm Beach County Beach Erosio Control Project, FL. Summary: During the timeframe between the draft and final EIS, the extent of the beach erosion control project more than doubled which makes this project take on environmental significance beyond Palm Beach County. Both the draft and the final EIS failed to adequately quantify and address the significance of the unique biological and recreational resources, viz., shoreline limestone outcrops, which would be destroyed by this project. EPA is not opposed to beach nourishment projects when shoreline erosion is a significant factor, and where construction can be accomplished while avoiding significant environmental impacts. Since the environmental objections vary from segment to segment, EPA has elected to consider each segment separately under the section 404 permitting process.

ERP No. F–COE–L36100–OR, Malheur Lake Flood Damage Reduction Plan, OR. Summary: EPA made no formal comments. EPA's objections at the draft EIS stage were due to the water quality effects of structural alternatives. EPA finds the project satisfactory now that "no action" is now proposed as the preferred alternative.

ERP No. F–DOE–J06022–MT, Conrad—Shelby 230 kV Transmission Line Project, Construction, Operation and Maintenance, MT. Summary: EPA made no formal comments. EPA notes that the final EIS states "no wetlands will be lost due to the proposed projects". Since this addresses EPA's primary comment on the draft EIS, EPA has no further comment or objections to this project.

ERP No. F–SFW–L64014–AK, Kodiak Nat'l Wildlife Refuge, Comprehensive Mgmt. Plan and Wilderness Review, AK. Summary: EPA made no formal comments. EPA reviewed the final EIS and believes that the project as proposed will not result in significant adverse environmental impacts.

Regulations

ERP No. R–ASC–A31047–00, 7 CFR Part 702, Colorado River Basin Salinity Control Program, Interim Rule (52 FR 16738). Summary: While EPA is in full support of the objectives of the Colorado River Salinity Control Act, EPA believes that the implementing regulations need to be specific in describing: (1) Water quality and wetlands as specific values to be protected; (2) consistency of the interim regulation with other Acts, regulations etc., and; (3) requirements and procedures for monitoring and evaluating project implementation and results. EPA offers to work with ASCS in addressing these issues.

Amended Notice

The following review should have appeared in the FR Notice published on July 24, 1987.

ERP No. D–COE–F36152–IN, Rating EC2, Fort Wayne and Vicinity Flood Control Plan, IN. Summary: EPA's review resulted in concerns regarding water quality impacts. EPA requested that water quality impacts be determined for each alternative.

Dated: July 28, 1987.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 87–17410 Filed 7–30–87; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59246; FRL–3239–5]

Polyalkylsiloxane Resin With Alkoxy and Hydroxy Groups; Test Market Exemption Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of an application for exemption, provides a summary, and requests comments on the appropriateness of granting this exemption.

DATE: Written comments by August 17, 1987.

ADDRESS: Written comments, identified by the document control number "[OPTS–59246]" and the specific TME number should be sent to: Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, Room L–100, 401 M Street SW., Washington, DC 20460, (202) 554–1305.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Room E–611, 401 M Street SW., Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the TME application received by EPA. The complete non-confidential application is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

T 87–20

Close of Review Period. August 23, 1987.

Importer. Confidential.

Chemical. (G) Polyalkylsiloxane resin with alkoxy and hydroxy groups.

Use/Import. (G) Open, non dispersive use. Import range: Confidential.

Dated: July 21, 1987.

Denise Devoe,

Acting Division Director, Information Management Division.

[FR Doc. 87–17188 Filed 7–30–87; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–51685; FRL–3238–4]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of forty-three such PMNs and provides a summary of each.

DATES: Close of Review Period:

P 87–1392, 87–1393, 87–1394, 87–1395, 87–1396, 87–1397, 87–1398, 87–1399, and 87–1400; October 7, 1987

P 87–1401, and 87–1402; October 10, 1987

P 87–1403, 87–1404, 87–1405, 87–1406, 87–1407, 87–1408, 87–1409, 87–1410, 87–1411, 87–1412, 87–1413, 87–1414, 87–

1415, 87–1416, 87–1417, 87–1418, 87–1419, 87–1420 and 87–1421; October 11, 1987

P 87–1422, 87–1423, 87–1424, 87–1425, 87–1426, 87–1427, 87–1428 and 87–1429; October 12, 1987

P 87–1430, 87–1431, 87–1432, 87–1433 and 87–1434; October 13, 1987

Written comments by:

P 87–1392, 87–1393, 87–1394, 87–1395, 87–1396, 87–1397, 87–1398, 87–1399 and 87–1400; September 7, 1987

P 87–1401 and 87–1402; September 10, 1987

P 87–1403, 87–1404, 87–1405, 87–1406, 87–1407, 87–1408, 87–1409, 87–1410, 87–1411, 87–1412, 87–1413, 87–1414, 87–1415, 87–1416, 87–1417, 87–1418, 87–1419, 87–1420 and 87–1421; September 11, 1987

P 87–1422, 87–1423, 87–1424, 87–1425, 87–1426, 87–1427, 87–1428 and 87–1429; September 12, 1987

P 87–1430, 87–1431, 87–1432, 87–1433 and 87–1434; September 13, 1987.

ADDRESS: Written comments, identified by the document control number "[OPTS–51685]" and the specific PMN number should be sent to: Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, Rm. L–100, 401 M Street, SW., Washington, DC 20460, (202) 554–1305.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street, SW., Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the PMNs received by EPA. The complete non-confidential PMNs are available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 87–1392

Manufacturer. Confidential.

Chemical. (G) Alkanolamine salt of an aqueous carboxylated styrene butadiene copolymer.

Use/Production. (G) Site-limited, commercial and consumer flow modifier. Prod. range: Confidential.

P 87–1393

Manufacturer. Confidential.

Chemical. (G) Alkanolamine salt of an aqueous carboxylated styrene butadiene copolymer.

Use/Production. (G) Site-limited, commercial and consumer flow modifier. Prod. range: Confidential.

P 87–1394

Manufacturer. Confidential.

Chemical. (G) Alkanolamine salt of an aqueous carboxylated styrene butadiene copolymer.

Use/Production. (G) Site-limited, commercial and consumer flow modifier. Prod. range: Confidential.

P 87–1395

Manufacturer. Confidential.

Chemical. (G) Ammonium salt of an aqueous carboxylated styrene butadiene copolymer.

Use/Production. (G) Site-limited, commercial and consumer flow modifier. Prod. range: Confidential.

P 87–1396

Manufacturer. Confidential.

Chemical. (G) Ammonia salt of an aqueous acrylic emulsion.

Use/Production. (G) Site-limited, commercial and consumer flow modifier. Prod. range: Confidential.

P 87–1397

Manufacturer. Confidential.

Chemical. (G) Alkanolamine salt of an aqueous acrylic emulsion.

Use/Production. (G) Site-limited, commercial and consumer flow modifier. Prod. range: Confidential.

P 87–1398

Manufacturer. Confidential.

Chemical. (G) Alkanolamine salt of an aqueous acrylic emulsion.

Use/Production. (G) Site-limited, commercial and consumer flow modifier. Prod. range: Confidential.

P 87–1399

Manufacturer. Confidential.

Chemical. (G) Alkanolamine salt of an aqueous acrylic emulsion.

Use/Production. (G) Site-limited, commercial and consumer flow modifier. Prod. range: Confidential.

P 87–1400

Importer. Confidential.

Chemical. (G) Vinylresin or vinylchloride-acrylic acid ester copolymer with OH-functional sites.

Use/Import. (S) Binders for laquers, primer for silicone elastomers and binder resp. cobinder in magnetic storage media. Import range: Confidential.

P 87–1401

Importer. CIBA-GEIGY Corporation.

Chemical. (G) Triazine substituted metal complex formazane.

Use/Import. (G) Textile dye. Import range: Confidential.

Toxicity Data. Acute oral: >5,000 mg/kg; Acute dermal: >2,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Ames test: Non-mutagenic; Skin sensitization: Non-sensitizer; LC_{50} 96 hr (Zebrafish): 620 mg/l; EC_{50} 24 hr (Daphnia magna): 123.4 mg/l; COD: 855.0 mg/g°2; BOD_5: 0 mg/g°2; Micronucleus test: Negative; NOEL: >1,000 mg/kg; NTEL: 1,000 mg/kg.

P 87–1402

Importer. Takeda USA, Incorporated.

Chemical. (G) Polyester polyurethane.

Use/Import. (S) Industrial and commercial coating. Import range: Confidential.

P 87–1403

Importer. Nuodex Incorporated.

Chemical. (G) Copolyester of 1,4-butanediol, terephthalic acid and an aliphatic comonomer.

Use/Import. (S) Industrial injection molding and extrusion. Import range: Confidential.

P 87–1404

Manufacturer. Confidential.

Chemical. (G) Amine salt.

Use/Production. (G) Oil additive. Prod. range: Confidential.

P 87–1405

Importer. Confidential.

Chemical. (G) Blocked aliphatic urethane.

Use/Import. (S) Textile finish. Import range: Confidential.

P 87–1406

Manufacturer. Confidential.

Chemical. (G) Fatty acid polyamine condensate.

Use/Production. (G) Oil additive. Prod. range: Confidential.

P 87–1407

Manufacturer. Confidential.

Chemical. (G) Olefin-ester-anhydride polymer.

Use/Production. (G) Oil additive. Prod. range: Confidential.

P 87–1408

Manufacturer. E.I. du Pont de Nemours & Company, Inc.

Chemical. (G) Urethane-modified silicone polyester-acrylic copolymer.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 87–1409

Importer. Shin-Etsu Silicones of America, Incorporated.

Chemical. (G) Organopolysiloxane.

Use/Import. (S) Industrial coating and textile finishing agent. Import range: 1,200 to 2,000 kg/yr.

P 87-1410

Importer. Shin-Etsu Silicones of America, Incorporated.
Chemical. (G) Organopolysiloxane containing hydroxy-group.
Use/Import. (S) Industrial reactive ingredient for plastic compound. Import range: 800 to 1,000 kg/yr.

P 87-1411

Importer. Shin-Etsu Silicones of America, Incorporated.
Chemical. (S) Cyclotetrasiloxane, 2,4,6,8-tetramethyl-2-[3-(oxiranylmethoxy)-propyl]-
Use/Import. (S) Industrial cross-linking agent and adhesion promoter for silicone rubber. Import range: 300 to 600 kg/yr.

P 87-1412

Importer. Shin-Etsu Silicones of America, Incorporated.
Chemical. (S) Dimethyl polysiloxane, hydrogen terminated allyl glycidyl ether.
Use/Import. (S) Industrial reactive ingredient for plastic compounds and textile finishing agent. Import range: 100 to 500 kg/yr.
Toxicity Data. Acute oral: >5 g/kg; Irritation: Skin—Slight-irritant.

P 87-1413

Manufacturer. Confidential.
Chemical. (G) Poly(vinyl ester co-unsaturated dicarboxylic acid ester co-olefin).
Use/Production. (G) Laminating adhesive. Prod. range: Confidential.

P 87-1414

Manufacturer. Henkel Corporation.
Chemical. (G) Alkyl polymercaptan.
Use/Production. (G) Curing agent. Prod. range: Confidential.

P 87-1415

Importer. Confidential.
Chemical. (G) Propoxylated sucrose esters.
Use/Import. (S) Defoaming agent. Import range: Confidential.

P 87-1416

Importer. Confidential.
Chemical. (G) Substituted-terminated siloxanes and silicones.
Use/Import. (S) Industrial auxiliary for leather. Import range: Confidential.

P 87-1417

Manufacturer. Confidential.
Chemical. (G) Substituted diethylsuccinate.
Use/Production. (S) Agricultural chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral: 275 mg/kg; Acute dermal: 100 mg/kg; Irritation: Skin—Moderate, Eye—Corrosive; Ames test: Non-mutagenic.

P 87-1418

Manufacturer. Confidential.
Chemical. (G) Acetate of modified fatty acid polyamine condensate.
Use/Production. (G) An additive used in the energy production industry. Prod. range: Confidential.

P 87-1419

Manufacturer. Confidential.
Chemical. (G) Propoxylated formaldehyde resin.
Use/Production. (G) An additive used in the energy production industry. Prod. range: Confidential.

P 87-1420

Manufacturer. Confidential.
Chemical. (G) Cyanoacrylate ester polymer.
Use/Production. (G) Intermediate for adhesive. Prod. range: Confidential.

P 87-1421

Manufacturer. Hach Company.
Chemical. (S) 1,2-Cyclohexanediaminetetraacetic acid trisodium salt.
Use/Production. (S) Commercial and consumer used as a chelating reagent in various powder blends. Prod. range: 200 kg/yr.

P 87-1422

Importer. Cray Valley Products, Incorporated.
Chemical. (G) Epoxyacrylic resin solution.
Use/Import. (S) Industrial paint. Import range: 10,000 to 40,000 kg/yr.

P 87-1423

Importer. Cray Valley Products, Incorporated.
Chemical. (G) Carboxylic acrylic resin solution.
Use/Import. (S) Industrial paint. Import range: Confidential.

P 87-1424

Manufacturer. E.I. du Pont de Nemours Company, Inc.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 87-1425

Importer. Confidential.
Chemical. (G) Water based acrylic copolymer solution.
Use/Import. (G) Temporary coating. Import range: Confidential.

P 87-1426

Importer. Confidential.
Chemical. (G) Quaternary ammonium salt.
Use/Import. (S) Antistatic agent. Import range: Confidential.

P 87-1427

Importer. Confidential.
Chemical. (G) Quaternary ammonium salt.
Use/Import. (S) Industrial antistatic agent. Import range: Confidential.
Toxicity Data. Acute oral: >2,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Severe; Skin sensitization: No sensitization.

P 87-1428

Manufacturer. Sanncor Industries, Incorporated.
Chemical. (G) Water dispersible polyester urethane.
Use/Production. (G) Coating. Prod. range: Confidential.

P 87-1429

Manufacturer. Confidential.
Chemical. (G) Blocked urethane.
Use/Production. (G) Open use industrial coating. Prod. range: 35,500 to 116,800 kg/yr.

P 87-1430

Manufacturer. Confidential.
Chemical. (G) Acrylic solution copolymer.
Use/Production. (G) Coating additive in open, non-dispersive use. Prod. range: Confidential.

P 87-1431

Importer. Confidential.
Chemical. (G) Acrylate methacrylic acid copolymer.
Use/Import. (S) Industrial, commercial and consumer dispersing agent. Import range: Confidential.

P 87-1432

Manufacturer. Confidential.
Chemical. (G) Alkylbenzene sulfonic acid, calcium salt.
Use/Production. (S) Lube oil additive. Prod. range: Confidential.

P 87-1433

Importer. Hodogaya Chemical (USA), Incorporated.
Chemical. (S) Xanthylium, 9-[2-(methoxycarbonyl)phenyl]-3,6-bis(ethylamino) 2,7-dimethyl-, salt with 2(or 5)-dodecyl-5(or 2)-(sulfophenoxy)benzensulfonic acid (2:1).
Use/Import. (S) Industrial, commercial and consumer ingredient of ballpoint pen ink and colorant for toner. Import range: 1,000 to 1,500 kg/yr.

Toxicity Data. Acute oral: 4.7 g/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Ames test: Mutagenic.

P 87-1434

Importer. Mortell Company.
Chemical. (S) 7,12 dimethyl, 7,11-octadecadiene-1,18 dicarboxylic acid-bis (2,3 epoxypropyl).
Use/Import. (S) Industrial internal plastizer in sealer adhesive formulations for metal joining. Import range: 5,000 to 10,000 kg/yr.

Date: July 21, 1987.

Denise Devoe,

Acting Division Director, Information Management Division.

[FR Doc. 87-17189 Filed 7-30-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59825; FRL-3239-6]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). In the Federal Register of November 11, 1984, (49 FR 46066)(40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of nine such PMNs and provides the summary of each.

DATES: Close of Review Period:

Y 87-192, 87-193 and 87-194—July 30, 1987
Y 87-195, 87-196 and 87-197—July 20, 1987
Y 87-198 and 87-199—August 4, 1987
Y 87-200—August 5, 1987

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemption received by EPA. The complete non-confidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 87-192

Importer. King Industries.
Chemical. (G) Polyacrylate.
Use/Import. (G) Additive for paints, ink and alhesives.
Import range: Confidential.

Y 87-193

Manufacturer. Confidential.
Chemical. (G) Ethylene acrylic copolymer.
Use/Production. (G) Molding and extrusion compounds, packaging, textiles, adhesives. Prod. range: Confidential.

Y 87-194

Manufacturer. C.J. Osborn.
Chemical. (G) Alkyd.
Use/Production. (S) Pigmented finishes. Prod. range: 5,000 to 10,000 kg/yr.

Y 87-195

Manufacturer. Emery Chemicals.
Chemical. (S) Polymer of adipic acid, phthalic anhydride, propylene glycol pelargonic acid.
Use/Production. (S) Industrial plasticizer for polyvinyl chloride resin. Prod. range: 1,000,000 to 2,000,000 kg/yr.

Y 87-196

Manufacturer. Emery Chemicals.
Chemical. (S) Polymer of caprylic-capric acids, adipic acids, phthalic anhydride, propylene glycol.
Use/Production. (S) Industrial plasticizer for polyvinyl chloride resin. Prod. range: 500,000 to 1,000,000 kg/yr.

Y 87-197

Manufacturer. Emery Chemicals.
Chemical. (S) Polymer of adipic acid, phthalic anhydride, ethylene glycol iso octanol.
Use/Production. (S) Industrial plasticizer for polyvinyl chloride resin. Prod. range: 500,000 to 1,000,000 kg/yr.

Y 87-198

Manufacturer. Confidential.
Chemical. (G) Linseed fatty acid modified alkyd resin.
Use/Production. (S) Industrial protective coating. Prod. range: 36,000 to 73,000 kg/yr.

Y 87-199

Manufacturer. Confidential.
Chemical. (G) Water reducible alkyd resin.
Use/Production. (S) Industrial component for finishes. Prod. range: 41,000 to 83,000 kg/yr.

Y 87-200

Importer. Confidential.
Chemical. (G) Modified polyvinyl alcohol.
Use/Import. (S) Industrial textile sizing agent, paper coating agent and emulsifier in emulsion polymerization. Import range: Confidential.

Date: July 21, 1987.

Denise Devoe,

Acting Division Director, Information Management Division.

[FR Doc. 87-17190 Filed 7-30-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

Application To Engage de Novo in Permissible Nonbanking Activities; Comerica Inc.

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that the Board has determined to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governments. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a

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hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 20, 1987.

A. Federal Reserve Bank of Chicago (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Comerica Incorporated*, Detroit, Michigan; to expand the current fiduciary activities of its subsidiary, Comerica Trust Company of Florida N.A., Boca Raton, Florida, to include deposit-taking and the origination of consumer loans.

Board of Governors of the Federal Reserve System, July 27, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-17361 Filed 7-30-87; 8:45 am]

BILLING CODE 6210-01-M

Formation of, Acquisition by, or Merger of Bank Holding Companies; Fairfax Bancshares, Inc.

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than August 21, 1987.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Fairfax Bancshares, Inc.*, Fairfax, Missouri; to acquire 25–30 percent of the voting shares of The Farmers & Valley Bank, Tarkio, Missouri.

Board of Governors of the Federal Reserve System, July 27, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-17362 Filed 7-30-87; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Acquisitions of Shares of Banks or Bank Holding Companies; William C. Hess; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 87-10093) published at page 16450 of the issue for Tuesday, May 5, 1987.

Under the Federal Reserve Bank of Chicago, the entry for William C. Hess is revised to read as follows:

A. Federal Reserve Bank of Chicago (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *William C. Hess*, Coon Rapids, Iowa; to acquire 92.76 percent of the voting shares of Sac City Limited, Sac City, Iowa, and thereby indirectly acquire Sac City State Bank, Sac City, Iowa.

Comments on this application must be received by August 10, 1987.

Board of Governors of the Federal Reserve System, July 27, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-17365 Filed 7-30-87; 8:45 am]

BILLING CODE 6210-01-M

Acquisition of Company Engaged in Permissible Nonbanking Activities; Security Pacific Corp.

The organization listed in this notice has applied under § 225.23(a) of the Boards Regulation of (12 CFR § 225.23(a)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 21, 1987.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105.

1. *Security Pacific Corporation*, Los Angeles, California and SPC/RAB Acquisition Corp., Los Angeles, California; to conduct, pursuant to section 4(c)(8) (D) and (A) of the Bank Holding Company Act, the insurance agency activities of Rainier Mortgage Company, Seattle, Washington, a wholly-owned subsidiary of Rainier Bancorporation, Seattle, Washington.

The Insurance Activities include acting as insurance agent for property and casualty insurance on personal and real property (including homeowners' insurance), and performance bonds in the States of Alaska, Washington, Oregon, Idaho and (with the exception of property and casualty insurance) Colorado. The Insurance Activities also include acting as agent in the States of Idaho, Wyoming, Montana and California for the sale of credit-related insurance. In Washington, Rainier Mortgage will sell consumer credit related property and casualty insurance with respect to personal property collateral for extensions of credit by Rainier affiliates. Rainier Mortgage will also sell consumer credit property and casualty insurance on personal property collateral with respect to its extensions of credit in the States of Alaska, Washington, Oregon, California, Idaho, Nevada, Arizona, Montanan, Colorado, Wyoming, New Mexico, Texas, Oklahoma, Nebraska, Kansas and Hawaii. Rainier Mortgage will also conduct the Insurance Activities in

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Washington and all States adjacent to Washington.

Board of Governors of the Federal Reserve System, July 27, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-17363 Filed 7-30-87; 8:45 am]

BILLING CODE [illegible]

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on July 17, 1987.

Social Security Administration

(Call Reports Clearance Officer on 301-594-5706 for copies of package)

1. Application for Parent's Insurance Benefits—0960-0012—This form is used by the Social Security Administration to determine whether an applicant is entitled to monthly parent's insurance benefits. Respondents: Individuals or households. Number of Respondents: 1,400; Frequency of Response: Occasionally; Estimated Annual Burden: 350 hours.

2. Worker's Compensation/Public Disability Benefit Questionnaire—0960-0274—This form will be used by the Social Security Administration to help determine if the receipt by a worker of a workmen's compensation or public disability benefit will reduce his or her social security benefit. Respondents: Individuals or households. Number of Respondents: 100,000; Frequency of Response: Occasionally; Estimated Annual Burden: 25,000 hours.

OMB Desk Officer: Elaina Norden.

Health Care Financing Administration

(Call Reports Clearance Officer on 301-594-8650 for copies of package)

1. Request for Medical Review Information for Part F Intermediary Outpatient Therapy Bills—0938-0227—Medicare contractors will request certain medical information outpatient therapy bills that are selected for medical review activities. This will be used to verify the medical necessity of services rendered to establish payment under the Medicare program. Respondents: Individuals or households, Businesses or other for-profit, Non-profit institutions. Number of Respondents: 5,020,000; Frequency of Response: Occasionally; Estimated Annual Burden: 2,510,000 hours.

2. ICRs Contained in 42 CFR, Sections 441,56,58,60,61—EPSDT—0938-0354—Regulation requires States to inform eligible EPSDT recipients of the availability of screening services, disgnosis and corrective treatment of health problems detected. Respondents: Individuals or households, State or local governments. Number of Respondents: 54; Frequency of Response: Occasionally; Estimated Annual Burden: 3002 hours.

3. Hospice Survey Report Form—0938-0378—This survey form is an instrument used by the State agency to record data collected in order to determine provider compliance with individual conditions of participation and to report it to the Federal government. Respondents: State or local governments. Number of Respondents: 50; Frequency of Response: Occasionally; Estimated Annual Burden: 1500 hours.

OMB Desk Officer: Allison Herron.

Family Support Administration

(Call Reports Clearance Officer on 202-245-0652 for copies of package)

1. April 1988 Supplement on Child Support and Alimony—NEW—This supplement will collect data on Women who are eligible for child support and/or alimony payments, whether such payments were agreed or awarded amounts supposed to be and actually received, and whether child support enforcement efforts were instrumental in helping. Respondents: Individuals or households. Number of Respondents: 27,000; Frequency of Response: One-time; Estimated Annual Burden: 1,125 hours.

OMB Desk Officer: Elana Norden.

Office of Human Development Services

(Call Reports Clearance Officer on 202-472-4415 for copies of package)

1. Small Business Innovation Research Program Phase I Proposal Cover Sheet—NEW—The Small Business Innovation Development Act requires that participating agencies utilize a uniform process for Small Business Innovation Research Solicitations. This form implements requirements contained in the Small Business Administration Policy. Directive issued in September. Respondents: Small businesses or organizations. Number of Respondents: 500; Frequency of Response: One-time; Estimated Annual Burden: 500 hours.

OMB Desk Officer: Elana Norden.

Public Health Service

(Call Reports Clearance Officer on 202-245-2100 for copies of package)

National Institutes of Health

1. The Baseline Survey and Instrument, and Approach to Assessing the Intervention Trial for Smoking Cessation (COMMIT)—NEW—The National Cancer Institute (NCI) has initiated design of the Community Intervention Trial for Smoking Cessation (COMMIT). This large-scale trial will test community-based strategies designed to produce long-term cessation among smokers. Clearance is requested for the pretesting and fielding of a survey to develop baseline data related to smoking and the communities prior to the intervention trial and concept clearance is requested for the approach for monitoring the trial. Respondents: Individuals or households. Number of Respondents: 250,488; Frequency of Response: Single-time; Estimated Annual Burden: 12,174 hours.

Food and Drug Administration

1. Investigational Use of New Animal Drugs—0910-0117—An investigated new animal drug application is required to permit the use of unapproved new animal drugs. A drug is not approved until these investigations are completed and safety/effectiveness data obtained. Applications are filed by drug manufacturers, veterinarians, and state universities. Respondents: Businesses or other for-profit. Number of Respondents: 230; Frequency of Response: Occasionally; Estimated Annual Burden: 176,272 hours.

2. Nutritions Labeling—0910-0177—Nutrition labeling of processed loads helps consumers make appropriate choices of foods that provide nutrients necessary for good health. Respondents: Businesses or other for-profit. Number of Respondents: 3495; Frequency of Response: Occasionally; Estimated Annual Burden: 4,880,585 hours.

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

PHS: 202-245-2100
FDA: 202-245-2100
HCFA: 301-594-8650
SSA: 301-594-5706
HDS: 202-472-4415
FSA: 202-245-0652

Written comments and recommendations for the proposed

information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503. Attn: (name of OMB Desk Officer)

Date: July 27, 1987.

James F. Trickett,

Deputy Assistant Secretary, Administrative and Management Services.

[FR Doc. 87-17429 Filed 7-30-87; 8:45 am]

BILLING CODE 4160-04-M

Food and Drug Administration

[Docket No. 87N-0169]

Studies of Reported Adverse Effects of Marketed Drugs; Availability of Grants; Request for Applications; Correction

AGENCY: Food and Drug Administration.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the Request for Applications (RFA) number that was inadvertently introduced in a request for applications notice in the Federal Register of July 10, 1987. By correcting the number from "RFA-FDA-CDB-XX-X" to "RFA-FDA-CDB-88-1", FDA will indicate the appropriate RFA number to be used by prospective applicants submitting an application for a Public Health Service Grant.

FOR FURTHER INFORMATION CONTACT: Dianne Washington, Grants and Assistance Agreements Section (HFA-522), Food and Drug Administration, Park Bldg., Rm. 3-20, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6170.

SUPPLEMENTARY INFORMATION: In FR Doc. 87-15694, appearing on page 26086 in the issue of Friday, July 10, 1987, in the third column on page 26087 under "VII. Method of Application", line 5, and in the first column on page 26088 under "C. Application Submission", second paragraph, line 4, the RFA number "RFA-FDA-CDB-XX-X" should be corrected to read "RFA-FDA-CDB-88-1."

Dated: July 24, 1987.

William L. Schwamer,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-17371 Filed 7-30-87; 8:45 am]

BILLING CODE 4160-01

Public Health Service

Health Resources and Services Administration; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of July 13, 1987, by the Assistant Secretary for Health to the Administrator, Health Resources and Services Administration (HRSA), (52 FR 27264, July 20, 1987), the Administrator, HRSA, has delegated to the Director, Bureau of Health Professions, with authority to redelegate, the authorities under the Health Care Quality Improvement Act of 1986, Title IV, Public Law 99-660, excluding the authorities pertaining to the imposition and collection of civil money penalties, and the authorities to issue guidelines or regulations and submit reports to Congress.

This delegation was effective on July 24, 1987.

Date: July 24, 1987.

David N. Sundwall,

Administrator, Health Resources and Services Administration.

[FR Doc. 87-17369 Filed 7-30-87; 8:45 am]

BILLING CODE 4160-15-M

Public Health Emergencies; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of authority of January 14, 1981 (46 FR 10016) by the Secretary of Health and Human Services to the Assistant Secretary for Health, the Assistant Secretary for Health has delegated to the Director, Centers for Disease Control, with authority to redelegate, all the authorities delegated to the Assistant Secretary for Health under section 319, Title III, of the Public Health Service Act, as amended, concerning Public Health Emergencies, as it pertains to the functions assigned to the Centers for Disease Control. This delegation excludes the authorities to issue regulations and to submit reports to the Congress.

The delegation to the Director, Centers for Disease Control, became effective on July 23, 1987.

Date: July 23, 1987.

Robert E. Windom,

Assistant Secretary for Health.

[FR Doc. 87-17403 Filed 7-30-87; 8:45 am]

BILLING CODE 4160-16-M

National Committee on Vital and Health Statistics; Meeting

Pursuant to the Federal Advisory Act (Pub. L. 92-463), notice is hereby given that the National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Ambulatory Care Statistics (formerly the Subcommittee on Statistical Aspects of Physician Payment System) established pursuant to 42 U.S.C. 242k, section 306(k)(2) of the Public Health Service Act, as amended, will convene on Wednesday, August 19, 1987 from 8:30 a.m. to 3:00 p.m. in Room 339-A of the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

The Subcommittee will discuss review of the Uniform Ambulatory Medical Care Minimum Data Set and receive updates from the Health Care Financing Administration.

Further information regarding this meeting of the Subcommittee may be obtained by contacting Marjorie Greenberg, National Center for Health Statistics, Room 2-12, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, telephone (301) 436-7122.

Date: July 21, 1987.

Manning Feinleib,

Director, National Center for Health Statistics.

[FR Doc. 87-17279 Filed 7-30-87; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-010-07-4133-17]

Availability of Final Environmental Impact Statement (FEIS); Wolf Ridge Corporation Mine Plan; Colorado

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of availability of FEIS.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, BLM has prepared a FEIS on Wolf Ridge Corporation's (WRC) mine plan for a nahcolite solution mine in the Piceance Basin, Rio Blanco County, Colorado.

ADDRESS: Comments and/or questions should be sent to William Frank, Project Coordinator, White River Resource Area, PO Box 928, Meeker, Colorado 81641. Telephone: (303) 878-3601.

SUPPLEMENTARY INFORMATION: BLM has prepared an abbreviated FEIS on WRC's proposal for a commercial nahcolite

solution mine on existing sodium leases they hold in northwest Colorado. The bulk of the Draft EIS has been incorporated by reference into the abbreviated FEIS, since public comments on the draft did not, for the most part, require extensive changes in the data, analyses, or conclusions. Therefore, both documents constitute the complete FEIS and must be used in conjuction.

WRC's proposed action involves phased-approach development with initial production of nahcolite at a rate of 50,000 tons/year increasing in the second or third year to a maximum production of 125,000 tons/year. The proposed 30-year project includes a well field for in-situ solution mining of nahcolite; a handling and processing plant, including evaporation ponds; and associated transportation, access, and support facilities.

The FEIS analyzes the environmental and socioeconomic impacts of the proposed action and three project alternatives. It also identifies mitigative measures and stipulations that will be incorporated into the approved plan to (1) alleviate or minimize potential environmental impacts from their proposal, and (2) ensure compliance of their proposal with existing sodium lease terms. The FEIS identifies WRC's proposed action as BLM's preferred alternative.

The FEIS is not the BLM's decision on WRC's mine plan. The decision on the plan will be based on the analysis in the FEIS, public concerns and comments, and other multiple-use objectives or programs applicable to WRC's proposed project. No action will be taken for at least 30 days following filing of the FEIS with the Environmental Protection Agency and distribution to the public. A Record of Decision that outlines the decision and rationale for the decision will be prepared and made available to the public.

Availability

Single copies of the FEIS may be obtained from the above BLM address, or from:

Bureau of Land Management, Craig District Office, 455 Emerson Street, Craig, Colorado 81625.

Bureau of Land Management, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

Ralph Smith,

Acting State Director.

Dated: July 9, 1987.

[FR Doc. 87-17038 Filed 7-30-87; 8:45 am]

BILLING CODE 4310-JB-M

[NV-040-07-4322-12]

Ely District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of District Grazing Advisory Board meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 94-579 and 43 CFR Part 1780 that a meeting of the Ely District Grazing Advisory Board will be held on Thursday, September 10, 1987.

The meeting will convene at 9:30 a.m. in the Conference Room of the Ely District Office located on the Pioche Highway one mile south of Ely, Nevada.

The agenda will be the election of officers and the discussion of district programs to include: Status of land use plans, activity planning efforts, the wild horse program, and the range improvement program.

Public comment time is scheduled for 11 a.m. The public is invited to attend this meeting and may, at the designated time, submit written or oral statements for the advisory board's consideration.

Minutes of the meeting will be available for public inspection and reproduction during regular office hours within 30 days following the meeting.

DATE: July 22, 1987.

ADDRESS: Comments and suggestions should be sent to: Bureau of Land Management, Star Route 5, Box 1, Ely, Nevada 89301.

FOR FURTHER INFORMATION CONTACT: Kathy Lindsey, (702) 289-4865.

Date: July 22, 1987.

Kenneth G. Walker,

District Manager.

[FR Doc. 87-17387 Filed 7-30-87; 8:45 am]

BILLING CODE 4310-HC-M

[WY920 07 4121-10]

Public Meeting Announcement, Call for Expressions of Leasing Interest, and Request for Public Comments on Long-Range Market Analysis; Powder River Coal Team Activities

ACTION: Public notice.

SUMMARY: The Powder River Regional Coal Team (RCT) calls for expressions of coal leasing interest within the Powder River Coal Region by September 30, 1987. The RCT also requests public comments on a Powder River long-range market analysis by September 30, 1987. The RCT will review the leasing interest, long-range market analysis, and public comments during a public meeting on October 29, 1987. The primary purpose of this RCT meeting will be to assess the need to resume Federal coal leasing in the Powder River Coal Region. The full agenda for this RCT meeting is set out below.

DATE: The RCT will meet at 8:30 a.m. on October 29, 1987. Expressions of interest and long-range market analysis comments must be submitted by September 30, 1987, in order to assure full consideration.

ADDRESS: The RCT meeting will be held at the Holiday Inn of Sheridan, 1809 Sugarland Drive, Sheridan, WY, 82801, telephone (307) 672-8931. The expressions of coal leasing interests and comments on the Powder River long-range market analysis should be sent to Don Brabson, Bureau of Land Management, P.O. Box 1828, Cheyenne, WY 82003.

FOR FURTHER INFORMATION CONTACT: Don Brabson, telephone (307) 772-2571 or (FTS) 328-2571.

SUPPLEMENTARY INFORMATION: Concerning the call for expressions of coal leasing interest, the public is invited to submit written expressions by September 30, 1987. Expressions are to be submitted to Don Brabson at the above specified address. This call is being issued in accordance with the RCT recommendation of December 4, 1986. In order for any public body tracts to be considered, an expression of interest from a public body must be submitted. Proprietary data should not be submitted as part of the expression of leasing interest; however, if any party wishes to supplement its expression with proprietary data then such data may be submitted to the Bureau of Land Management, Deputy State Director for Mineral Resources, Cheyenne, WY 82001. Such data should be clearly labeled proprietary and confidential.

Expressions of interest must be confined to those areas available for competitive leasing consideration as set out in BLM's resource management plans. The Bureau's Casper District Office and Miles City District office can supply these plans for Wyoming and Montana portions of the region, respectively. The addresses and telephone numbers for these offices are Casper District Office, 1701 East E Street, Casper, Wyoming 82601, (307) 261-5101 and Miles City District Office, P.O. Box 950, Miles City, Montana 59301, (406) 232-4331.

An expression of interest is not an application. The size and/or location of a proposed tract as indicated by an expression of interest may be modified or changed if there is sufficient reason to do so.

Examples of the types of concerns that may make such action necessary include: the competitive nature of the tract, access needs, mining efficiency, future coal development potential, resources conservation, and State preference and priorities.

These expressions of leasing interest should include the following data where applicable:

1. Quantity needs (total tonnage, average tons per year, and year during which production should commence) for both coal producers and users.

2. Quality needs (types and grade of coal) for both producers and users.

3. Location:

a. Tracts desired by mining companies (narrative description with delineation on surface minerals management quad map, available from the Montana State Office).

b. Public and private industry user facilities in region.

c. If no location is indicated, but other specified data are provided, the expression will be considered. In such cases the delineation team will locate the tract.

4. Type of mine:

a. Surface or underground.

b. Technique of mining (i.e., longwall, room and pillar, stripo mining, etc.).

5. Proposed uses of coal:

a. By mining companies.

b. By public and private industries.

6. Where coal is consumed (include extra-regional markets).

7. Transportation needs (i.e., railroads, pipelines, etc.):

a. Existing facilities.

b. Proposed facilities and development timing.

8. Available sources of coal

a. Presently operative.

b. Contingency of other sources.

9. Information relating to mineral ownership:

a. Information on surface owner consents previously granted, e.g., a description of the location of the property, whether consents are transferable, etc.

b. Commitments from fee coal owner or for associated non-Federal coal.

10. Special qualifications for public bodies requesting special leasing opportunities. These specific requirements are listed in 43 CFR [illegible].

A summary of all expressions and the results of the Bureau's screening of these expressions will be made available during the RCT meeting on October 29, 1987. The full text of each expression will be made available for public inspection or copying, upon request.

Concerning the Powder River long-range market analysis, please be advised that copies may be obtained from Don Brabson at the above specified address or telephone numbers. Public comments received by September 30, 1987, will be reviewed by the RCT during the meeting on October 29, 1987. This document and public comments thereon will be major factors weighed by the RCT in recommending whether or not to resume coal leasing activity planning.

Concerning the RCT meeting on October 29, 1987, public input opportunities will be provided on all agenda items. The agenda for this meeting is as follows:

1. Introductions.

2. Approval of Minutes of December 4, 1987, RCT meeting.

3. Regional Coal Activity Status:

a. Current production.

b. Preference Right Lease Applications:

c. Exchanges.

d. Emergency leasing.

e. Other activity.

4. Round I Leases:

a. Status.

b. Supplemental EIS.

5. Expressions of Leasing Interest:

a. Expressions summary.

b. Screening results.

6. Long-Range Market Analysis:

a. Summarize document.

b. Review comments.

7. RCT Activity Planning Recommendation:

a. Resumption or deferral of activity planning.

b. Establish leasing schedule, if necessary.

8. Data Adequacy:

a. Adopt data adequacy standards.

b. Science advisor appointments, if necessary.

c. Geographic Information System.

F. William Eikenberry,

Associate State Director.

[FR Doc. 87-17368 Filed 7-30-87; 8:45 am]

BILLING CODE 4310-22-M

National Park Service

Jefferson National Expansion Memorial Commission; Open Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, 86 Stat. 770, 5 U.S.C. App. 1, as amended by the Act of September 13, 1976, 90 Stat. 1247, that a meeting of the Jefferson National Expansion Memorial Commission will be held August 11, 1987, at 9:30 a.m. The meeting will be held at the Old Courthouse, Jefferson National Expansion Memorial National Historic Site, 11 North Fourth Street, St. Louis, Missouri 63102.

The commission was originally established on August 24, 1964, pursuant to provisions of the Jefferson National Expansion Memorial Amendments Act of 1964, 98 Stat. 1469, 16 U.S.C. 450jj–6, to implement and support the conceptual plan.

Matters to be discussed at the August 11 meeting will include the report on fundraising/design competition, reviewing of final National Park Service draft report, the states of binding commitments, and the future role of the commission.

The meeting will be open to the public. Interested persons may submit written statements to the official listed below prior to the meeting. Further information concerning the meeting may be obtained from Alan M. Hutchings, Chief, Division of External Affairs, Midwest Region, National Park Service, 1709 Jackson Street, Omaha, Nebraska 68102, telephone 402-221-3481 (FTS 864-3431). Minutes of the meeting will be available for public inspection at the Midwest Regional Office 3 weeks after the meeting.

Date: July 23, 1987.

John Kawamoto,

Acting Regional Director, Midwest Region.

[FR Doc. 87-17386 Filed 7-30-87; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 86-80]

Revocation of Registration; Lynn L. Pearson, M.D.

On October 20, 1986, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Lynn L. Pearson, M.D. (Respondent), c/o Warden, Federal Corrections Institution, Fort Worth, Texas 76119. A copy of the Order to Show Cause was also sent to Respondent's counsel. The Order to Show Cause sought to revoke Respondent's DEA Certificate of Registration AP0900252 and to deny any pending applications for registration as a practitioner under 21 U.S.C. 823(f). The proposed action was predicated upon Respondent's felony conviction on May 22, 1986, in the United States District Court for the Southern District of Texas of two counts of illegal dispensing of a Schedule II controlled substance in violation of 21 U.S.C. 841(a)(1).

Respondent, proceeding through counsel, requested a hearing on the issues raised by the Order to Show Cause. The matter was docketed before Administrative Law Judge Francis L. Young. In lieu of further administrative proceedings for the revocation of Respondent's DEA Certificate of Registration, Dr. Pearson and counsel for the Drug Enforcement Administration entered into an agreement whereby Respondent agreed to the suspension of his DEA Certificate of Registration pending the outcome of the appeal of his criminal conviction. The Memorandum of Agreement stipulated that should Dr. Pearson's conviction be upheld, he would consent to the revocation of his registration without the benefit of a hearing. The Memorandum further stated that should Dr. Person's conviction be overturned, Respondent's registration would be reinstated and the Government would at that time determine whether or not it would proceed administratively against his DEA Certificate of Registration. In a letter dated June 10, 1987, counsel for Respondent notified DEA that the United States Court of Appeals for the Fifth Circuit affirmed Dr. Pearson's conviction and denied his motion for rehearing. Respondent will not file a Petition for Certiorari, therefore his appeal from his conviction is completed. Accordingly, pursuant to the terms of the memorandum of agreement entered into by Respondent and Government counsel, Dr. Pearson is deemed to have waived his opportunity for a hearing under 21 CFR 1301.54(e) and consented to the revocation of his DEA Certificate of Registration. Based upon his felony conviction relating to controlled substances in violation of 21 U.S.C. 841(a)(1), there is a lawful basis for such revocation.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AP0906252, previously issued to Lynn L. Pearson, M.D. be, and it hereby is, revoked. The Administrator further orders that any pending applications for registration be, and they hereby are, denied. This order is effective immediately.

John C. Lawn,
Administrator.

Date: July 27, 1987.

[FR Doc. 87-17367 Filed 7-30-87; 8:45 am]
BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of recordkeeping/reporting requirements under review: As necessary the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS-DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Revision

Employment and Training Administration.
New Jersey Reemployment Demonstration Project.
1205-0248; ETA RC 87.
One-time survey.
Individuals or households.
5,800 respondents; 2,900 burden hours; no forms.

This demonstration project is designed to evaluate whether displaced workers can be identified early in the unemployment spell, test the ability of alternative employment services to reemploy the displaced and how such a program could be implemented.

President's Committee on Employment of the Handicapped.
Job Accommodation Network Project.
JAN-PCEH.
On occasion.
State or local governments; businesses or other for profit; Federal agencies or employees, small businesses or organizations.
5200 responses; 2600 hours; 1 form.

The collection of data with the proposed direct-mail questionnaire will permit the development of a computer-based information resource which may be accessed by representatives of business for the purpose of identifying accommodations which will assist handicapped persons in obtaining employment.

Extension

Employment and Training Administration.
Domestic Agricultural IN-Season Wage Report.
1205-0017; ETA 232 & ETA 232A.
Annually.
Individuals or households; State or local governments; Farms 6,200 respondents; 3,825 burden hours; 2 forms.

State employment agencies need prevailing wage rates in order to process employers' applications for intrastate and interstate workers. The rates cover agricultural and logging jobs. Migrant and local seasonal farmworkers are hired for these jobs.

Employment Standards Administration.
Application for a Certificate to Employ Learners at Subminimum Wages.
1215-0012; WH209.
Annually.

State or local governments; businesses or other for profit; small businesses or organizations.
15 responses; 7.5 hours; 1 form.

Employers are required by DOL to submit an application for authorization to pay learners subminimum wages under the provisions of Section 14(a) of the Fair Labor Standards Act. DOL reviews this information to determine whether the statutory and regulatory provisions for each authorization have been met.

Employment Standards Administration.
Mail Haul Contract Wage Rate Survey.
1215–0050; WD–21.
Annually.
Businesses or other for-profit; Small businesses or organization 2,875 responses; 1,438 hours; 1 form.

Form WD–21 is used by the Department of Labor to elicit wage and fringe benefit data from mail haul contractors. This data is used to determine locally prevailing wages and fringe benefits under the Service Contract Act.

Departmental Management, Office of the Assistant Secretary for Administration and Management.
Qualifications Inquiry for Positions in the Local 12 Bargaining Unit—DL 1–1104.
1225–0016; PERS–5.
On occasion.
Individuals or households.
1,000 responses; 250 hours; one form.

This form is required under the Department of Labor's negotiated Merit Staffing Plan for positions in the Local 12 bargaining unit to collect information by the Personnel Office from the applicants supervisor. The information will be used by raters to evaluate outside applicants against the requirements of the vacancy to be filled.

Signed at Washington, DC, this 28th day of July, 1987.

Marisatta L. Scott,

Acting Departmental Clearance Officer.

[FR Doc. 87–17428 Filed 7–30–87; 8:45 am]

BILLING CODE 4510–30–M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3504, Washington, DC 20210.

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I:

Alabama:
AL87–8 (Jan. 2, 1987) ..... p. 10.
Connecticut:
CT87–1 (Jan. 2, 1987) ..... pp. 70, 74.
New York:
NY87–11 (Jan. 2, 1987) ..... p. 782.
Pennsylvania:
PA87–1 (Jan. 2, 1987) ..... p. 844, pp. 846–847, p. 853.
PA87–4 (Jan. 2, 1987) ..... p. 874.
Rhode Island:
RI87–1 (Jan. 2, 1987) ..... pp. 1024–1027.
Tennessee:
TN87–1 (Jan. 2, 1987) ..... p. 1078.
Virginia:
VA87–14 (Jan. 2, 1987) ..... p. 1156.

Volume II:

Illinois:
IL87–9 (Jan. 2, 1987) ..... p. 140.
New Mexico:
NM87–1 (Jan. 2, 1987) ..... pp. 690–692, pp. 695–696, pp. 698,703.

Volume III:

Idaho:
ID87–4 (Jan. 2, 1987) ..... pp. 162–163.
Montana:
MT87–1 (Jan. 2, 1987) ..... p. 180.
Oregon:
OR87–1 (Jan. 2, 1987) ..... pp. 278–292.
Utah:
UT87–3 (Jan. 2, 1987) ..... pp. 318–320.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The

Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the Country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 14th day of July 1987.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 87-17212 Filed 7-30-87; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

[TA-W-19, 613]

Termination of Investigation; MacKintosh-Hemphill International, Inc.

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on June 17, 1987 in response to a worker petition which was filed on behalf of workers at Mackintosh-Hemphill International, Incorporated, Pittsburgh, Pennsylvania.

An active certification covering the petitioning group of workers remains in effect (TA-W-19,631). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC this 23rd day of July 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 87-17426 Filed 7-30-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-19, 611]

Dismissal of Application for Reconsideration; Walled Lake Door Co.

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Walled Lake Door Company, Gilabend, Arizona. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-19, 611: Walled Lake Door Company, Gilabend, Arizona (July 23, 1987).

Signed at Washington, DC this 24th day of July 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 87-17427 Filed 7-30-87; 8:45 am]

BILLING CODE 4510-30-M

Office of Federal Contract Compliance Programs

Deberment; Bruce Church, Inc.

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Notice of Debarment, Bruce Church, Inc.

SUMMARY: This notice advises of the debarment of Bruce Church, Inc., as an eligible bidder on Government contracts and subcontracts. The debarment is effective immediately.

FOR FURTHER INFORMATION CONTACT: Leonard J. Biermann, Acting Director, Office of Federal Contract Compliance Programs, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C-3325, Washington, DC 20210 (202-523-9475).

SUPPLEMENTARY INFORMATION: On June 30, 1987, pursuant to 41 CFR 60-30.37, the Secretary of Labor issued a final administrative Decision and Order: (1) Finding Bruce Church, Inc., in violation of Executive Order 11246, as amended (30 FR 12319, September 28, 1965; 32 FR 14303, October 13, 1967; 43 FR 46501, October 5, 1978), section 503 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 793), and the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 2012), and their respective implementing regualtions; (2) cancelling all federal contracts and subcontracts and all federally-assisted construction contracts and subcontracts of Bruce Church, Inc., and of its officers, agents, servants, employees, direct or beneficial owners, divisions or subsidiaries, and those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise; and declaring Bruce Church, Inc., and its successors, officers, agents, servants, employees, direct or beneficial owners, divisions or subsidiaries, and those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise ineligible for the award of any Government contracts or subcontracts and ineligible for extensions or other modifications of any existing Government contracts or subcontracts. A copy of the Decision and Order is attached.

The debarment from future Government contracts and subcontracts is effective immediately. The contract cancellation part of the Order will not become effective until the relevant contracting agencies have been consulted in accordance with section 209(a)(5) fo Executive Order 11246, as amended by Executive Order 12086.

Signed July 22nd, 1987, Washington, DC.

William E. Brock,

Secretary of Labor.

Date: June 30, 1987.

Case No. 87-OFC-7.

In The Matter of United States Department of Labor, Office of Federal Contract Compliance Programs, *Plaintiff*, v. *Bruce Church, Inc.*, Defendant.

Before: The Secretary of Labor.

Final Decision and Order

This action was filed by Plaintiff Office of Federal Contract Compliance Programs (OFCCP) under Executive Order No. 11,246, as amended, section 503 of the Rehabilitation Act of 1973, as amended (section 503), 29 U.S.C. 793 (1982), section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended (section 402), 38 U.S.C. 2012 (1982), and the expedited hearing procedures at 41 CFR 60-30.31-60-30.37 (1986). Plaintiff alleged that Defendant Bruce Church, Inc., a grower of lettuce and other produce, was a government contractor covered by Department of Labor regulations implementing Executive Order 11,246, section 503, and section 402 and that Defendant failed to submit its written affirmative action program (AAP) upon request. *See* 41 CFR Chapter 60; 41 CFR 60-1.40, 60-2.2 60-250.5, 60-741.5, 60-60.3. Defendant asserted that it is not covered by the requirement to develop, maintain, implement and submit upon request, affirmative action programs under the Executive Order, these statutes and the Department of Labor Regulations because it does not have and has not had, during the relevant time period, a government contract for $50,000 or more.

After a hearing, Administrative Law Judge (ALJ) Alexander Karst submitted a Recommended Decision and Order (R.D. and O.) to me rejecting Defendant's arguments and recommending that Defendant's contracts be cancelled and that Defendant be declared ineligible for future contracts. R.D. and O. at 4. The

ALJ found that Defendant was covered by the written affirmative action program requirement of the regulations by virtue of Blanket Purchase Agreements (BPA) between Defendant and the Defense Department since 1981, under which the annual value of orders varied from about $180,000 to over $1 million. R.D. and O. at 2–3. The ALJ held that, under the authority of the Secretary's decision in *OFCCP* v. *Star Machinery Co.*, 83–OFCCP–4 (September 21, 1983), the Blanket Purchase Agreements, rather than individual orders placed under them, are contracts, the value of which is measured by the total amount of orders the parties reasonably anticipated to be placed during the life of the contract.

Defendant filed exceptions to the ALJ's recommended decision, asserting that *Star Machinery* is inapplicable to the facts of this case (Exception No. 2), that *Star Machinery* was incorrectly decided (Exceptions 1 and 3) and that the sanction recommended by the ALJ (referred to by Defendant as a "remedy") was improper (Exception No. 4). Plaintiff filed exceptions to the ALJ's recommended sanction and to one finding of fact.

The only distinction between the Blanket Purchase Agreements here and those in *Star Machinery* urged by Defendant is that the price of goods is not specified in the BPA. I would note that it is not entirely clear that the price to be paid by the government for the goods involved in *Star Machinery* was specified in the BPA's. Defendant there was obligated to charge the government the price charged to its most favored customers for each item. *Star Machinery* at 3. Presumably, that price could vary depending on such factors as the manufacturer's cost of production or volume discounts.

In any event, however, failure to specify price in a contract does not necessarily make it unenforceable. Uncertainty as to price is not fatal if the parties agree on a practical, objective method of setting the price. 1 A. Corbin, Contracts, § 97 at 424 (1963). "If there is a 'market price' for the goods or services that are the subject of agreement, it is sufficient that the agreement is for payment at the market price." *Id.* § 98 at 435 (citing numerous cases). That was precisely the manner in which prices were set here, that is, they were set by the prices published in the produce industry's Market News. R. D. & O. at 2.

Defendant argues that *Star Machinery* was incorrect in holding that the BPAs constitute a contract for purposes of coverage under the written affirmative action program requirement, but that each individual call placed under a BPA is a separate contract. Defendant also asserts that, by specifying in the regulations that individual contracts aggregating over $10,000 in any 12 month period triggers applicability of the Equal Opportunity Clause, 41 CFR 60–1.5, the necessary implication is that such contracts may not be aggregated for purposes of the written affirmative action program requirement.

Defendant's first argument was fully considered and squarely rejected in *Star Machinery*, at 4–5, and Defendant has not presented any new arguments on that point to persuade me to reach a different conclusion. An argument similar to the textual analysis Defendant urges here was made in *Star Machinery*, i.e., that by specifying in 41 CFR 1.40(a)(2) and 60–2.1(a)(2) which kinds of contracts may be aggregated to reach $50,000, the implication is that aggregation of other kinds of contracts is not permitted. But, as the Secretary said in *Star Machinery*, at 4, "the Blanket Purchase Agreement *itself* constitutes *one* contract which could reasonably be expected, based on past experience, to exceed $50,000." (Emphasis added.) Thus, there is no aggregation of contracts other than that provided for in the regulations.

Defendant suggests that the intent of the regulations was to limit applicability of the written affirmative action program requirement because it is an expensive, time consuming obligation. I agree that considerations of time and expense of compliance were factors considered in establishing the $50,000 threshold. But those factors suggest that contractors such as Defendant, doing hundreds of thousands of dollars of business with the government each year, were intended to be covered by the AAP requirement because they are more capable of carrying the burden that obligation imposes. It would be incongruous, indeed, if a small business with one contract for just $50,000 had to develop an AAP, but Defendant, with over three and a half million dollars of business with the government under its BPAs since 1981 did not. *See United Biscuit Company of America* v. *Wirtz*, 359 F.2d 206, 210, n.7 (D.C. Cir. 1965); *reh'g denied* (1966), *cert. denied*, 86 S.Ct. 1861 (1966). For these reasons, I reject Defendant's argument that the AAP requirement puts an undue burden on it.

Finally, Defendant offers no support for its assertion that the sanction recommended by the ALJ is too harsh. Here, unlike *Star Machinery*, the question of coverage was well settled when OFCCP requested Defendant's AAP. As the court held in *Uniroyal, Inc.* v. *Marshall*, 482 F.Supp. 364 (D.D.C. 1979) upholding immediate debarment of a contractor for refusal to comply with discovery orders in an administrative hearing under Executive Order 11,246 "[e]ffective enforcement, in turn, depends, first, on access to the employment, personnel, and similar records of the contractors; and second, on the availability of meaningful sanctions when such access is denied." Id. at 375.

Accordingly, Plaintiff's exception to the recommended sanction of the ALJ is granted.[1] Defendant's exceptions to the Recommended Decision and Order of the ALJ are denied, and it is ordered that all of Bruce Church, Inc.'s Federal and federally assisted contracts and subcontracts shall be cancelled and Bruce Church, Inc., its officers, subsidiaries, and successors, shall be ineligible for the award of any government contracts or subcontracts and shall be ineligible for extensions or other modifications of any existing Government contracts or subcontracts until Defendant has satisfied the Secretary of Labor that it is in compliance with the provisions of Executive Order 11,246, section 503, and section 402, and the rules, regulations, and orders issued thereunder which have been found to have been violated in this case.

So ordered.

William E. Brock,

Secretary of Labor.

Washington, DC.

Certificate of Service

Case Name: *United States Department of Labor, Office of Federal Contract Compliance Programs*, v. *Bruce Church, Inc.*

Case No.: 87–OFC–7

Document: Final Decision and Order

A copy of the above-referenced document was sent to the following persons on *June 30, 1987.*

Pam Horton.

Certified Mail

Office of Federal Contract Compliance Programs, U.S. Department of Labor,

[1] The record supports OFCCP's exception to the ALJ's finding of fact that all the BPAs since 1981 contained the notation "N.A." next to the AAP requirement on the printed standard form BPA. Only the BPA for 1981 contains that notation. Plaintiff's exception on this point is granted. On the other hand, Defendant is correct in pointing out that the other contracts in the record had a box checked which said "the contractor has not previously had contracts subject to the written affirmative action programs requirement. . . ." In any event, the ALJ was correct in holding that the contracting agency had no authority to waive these requirements of the regulations.

FPB, Room C-3325, 200 Constitution Avenue NW., Washington, DC 20210
Daniel Teehan, Esq., Regional Solicitor, Office of the Solicitor, U.S. Department of Labor, P.O. Box 36017, Federal Bldg., 450 Golden Gate Avenue, San Francisco, CA 94102
Judith A. Kaufman, Esq., Office of the Solicitor, U.S. Department of Labor, Room N-2464, FPB, 200 Constitution Avenue NW., Washington, DC 20210
M.T. Payne, Vice President, Bruce Church, Inc., P.O. Box 80599, Salinas, CA 93912-0599
Marion I. Quesenbery, Esq., Pressler & Quesenbery, P.O. Box 2130, Newport Beach, CA 92658
Joseph M. Hogan, Asst. Regional Administrator for OFCCP/ESA/USDOL, Room 9418, 450 Golden Gate Avenue, San Francisco, CA 94102
Arnold B. Myers, Esq., Abramson, Church & Stave, 17 East Gabilan Street, Salinas, CA 93901
Honorable Alexander Karst, Office of Administrative Law Judges, 211 Main Street, San Francisco, CA 94105
Honorable Nahum Litt, Office of Administrative Law Judges, Suite 700, 1111 20th Street NW., Washington, DC 20036.

[FR Doc. 87-17424 Filed 7-30-87; 8:45 am]
BILLING CODE 4510-27-M

Mine Safety and Health Administration

[Docket No. M-87-171-C]

Petition for Modification of Application of Mandatory Safety Standard; BethEnergy Mines Inc.

BethEnergy Mines Inc., P.O. Box 143, Eighty-Four, Pennsylvania 15330 has filed a petition to modify the application of 30 CFR 75-305 (weekly examinations for hazardous conditions) to its Mine No. 33 (I.D. No. 36-00840) located in Cambria County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that return aircourses be examined in their entirety on a weekly basis.

2. Petitioner states that certain areas of the mine have experienced bad roof conditions, roof falls, bottom heaves and water accumulations and cannot be safely traveled. Rehabilitation of these areas would expose miners to hazardous conditions.

3. As an alternate method, petitioner proposes to establish monitoring stations where certified persons would make methane and air readings on a weekly basis. Methane will not be allowed to accumulate in the return air course beyond legal limits. Access to and from the measuring stations will be kept in a travelable and safe condition. A date board will be located at each measuring station. Date, time, area, velocity, and quantity of air, as well as methane percentages will be recorded in an official book on the surface.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 31, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,
Acting Associate Assistance Secretary for Mine Safety and Health.

Date: July 22, 1987.

[FR Doc. 87-17417 Filed 7-30-87; 8:45 am]
BILLING CODE 4510-43-M

[Docket No. M-87-146-C]

Petition for Modification of Application of Mandatory Safety Standard; Bowling Mountain Coal Co.

Bowling Mountain Coal Company, P.O. Box 1006, Williamsburg, Kentucky 40769 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Mine No. 2 (I.C. No. 15-14701) and its Mine No. 3 (I.D. No. 15-15792), both located in Whitley County, Kentucky. The petition if filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous monitor, longwall face equipment and loading machine and shall be kept operative and properly maintained and frequentiy tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuing monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous monitor will be available to assure that all coal hauling tractors will be equipped with a continuous monitor;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 31, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,
Acting Associate Assistant Secretary for Mine Safety and Health.

Date: July 21, 1987.

[FR Doc. 87-17418 Filed 7-30-87; 8:45 am]
BILLING CODE 4510-43-M

[Docket No. M-87-152-C]

Petition for Modification of Application of Mandatory Safety Standard; Buck Mountain Coal Company No. 2

Buck Mountain Coal Company No. 2, R.D. #4, Box 357 B, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1714 (self-contained self-rescuers) to its Buck Mountain Slope (I.D. No. 36-02053) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that each operator make available to each person who goes undergound a self-contained self-rescue device approved by the Secretary which is adequate to protect such persons for one hour or longer.

2. The mine is always damp to wet. There are only two pieces of electrical equipment, one of which is a small pump located at the foot of the slope.

3. Petitioners states that the distance from the mine portal to the actual working face is less than 2,000 feet. The mine can be evacuated in less than 15 minutes.

4. Petitioner states that the devices are too heavy, bulky, and cumbersome to be worn while working or in the narrow confines of the slope gun boat which serves as a mantrip at the mine.

5. Sections of the mine are subjected to freezing temperatures making constant availability of the devices questionable. In addition, the wet mine conditions make it difficult to locate a suitable dry storage location for the self-rescuers.

6. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 31, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

Dated: July 21, 1987.

[FR Doc. 87-17419 Filed 7-30-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-161-C]

Petition for Modification of Application of Mandatory Safety Standard; Colket Coal Co.

Colket Coal Company, P.O. Box 32, Saint Clair, Pennsylvania 17970 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its Sharp Mount No. 2 Mine (I.D. No. 36-01761) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. Petitioner states that no such safety catch or device is available for the steeply pitching and undulating slopes with numerous curves and knuckles present in the main haulage slopes of this anthracite mine.

3. Petitioner further believes that if "makeshift" safety devices were installed, they would be activated on knuckles and curves when no emergency existed and cause a tumbling effect on the conveyance.

4. As an alternate method, petitioner proposes to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope, above the main connecting device. The hoisting ropes would have a factor of safety in excess of the design factor as determined by the formula specified in the American National Standard for Wire Rope for Mines.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 31, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

Date: July 22, 1987.

[FR Doc. 87-17420; Filed 7-30-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-173-C]

Petition for Modification of Application of Mandatory Safety Standard; Consolidation Coal Co.

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Shoemaker Mine (I.D. No. 46-01436) located in Marshall Country, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that air currents used to ventilate structures or areas enclosing electrical installations be coursed directly into the return.

2. Petitioner states that the area of the mine in which the pump is located is part of the main haulage line through which coal, supplies, and equipment are transported and part of the work force travels. This area of the mine is wet. The pump operates daily, and when it is broken down or off, water can rise over the track rails within a few hours.

3. As an alternate method, petitioner proposes that:

(a) The pump will be totally enclosed in a fireproof housing. The doors on the enclosure will be fireproof;

(b) An automatic fire suppression device will be installed in the pump house which will be activated by heat sensors;

(c) Electrical circuits will be installed and maintained; and

(d) No oil or combustible materials will be stored in the pump station.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health

Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 31, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

Dated: July 22, 1987.

[FR Doc. 87-17421 Filed 7-30-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-157-C]

Petition for Modification of Application of Mandatory Safety Standard; Wilton Contracting

Wilton Contracting, HC 61, Box 2114, Barbourville, Kentucky 40906 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Wilton Contracting Mine (I.D. No. 15-15786) located in Whitley County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous monitor, longwall face equipment and loading machine and shall be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three-wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three-wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous monitor will be available to assure that all coal hauling tractors will be equipped with a continuous monitor;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualifed person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 31, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

Date: July 21, 1987.

[FR Doc. 87-17422 Filed 7-30-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-147-C]

Petition for Modification of Application of Mandatory Safety Standard; Wolf-Creek Collieries Co.

Wolf-Creek Collieries Company, P.O. Box 179, Lovely, Kentucky 41231 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its No. 4 Mine (I.D. No. 15-04020) located in Martin County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that trolley wires and trolley feeder wires, high-voltage cables and transformers not be located inby the last open crosscut and be kept at least 150 feet from pillar-workings.

2. Petitioner states that the longwall mining systems will increase in width, which will require additional horsepower to power the longwall system, nominally 1950 to 2500 horsepower. In order to supply power to such a mining system from a power system limited to 1,000 volts, the following problems arise.

(a) The ampacity requirements at 1,000 volts are such that very large and heavy cables must be used. These large, heavy cables can cuase congested work space and handling problems. Accident information indicates that a large number of electrical-related injuries are strains and sprains incurred during cable handling;

(b) Poor voltage regulation resulting in motor overheating and lack of torque to be applied to the face conveyor; and

(c) A diminished safety factor as the interrupting limits of the available circuit breakers at 1,000 volts is approached.

3. As an alternate method, petitioner proposes to use high-voltage (not to exceed 2,400 volt) cables to supply power to permissible longwall face equipment in or inby the last open crosscut, with specific equipment and conditions as outlined in the petition.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 31, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

Date: July 22, 1987.

[FR Doc. 87-17423 Filed 7-30-87; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

Advisory Committee on Construction Safety and Health; Full Committee Meeting; Correction

Notice was given on July 20, 1987 in the **Federal Register** (Vol. 52, No. 138 page 27267) that the Advisory Committee on Construction Safety and Health, established under section

107(e)(1) of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and section 7(b) of the Occupational Safety and Health Act of 1970 (26 U.S.C. 656) will meet on August 4 and 5 (and August 6 if necessary), 1987 in Room C2318 Francis Perkins Building, Department of Labor, Washington, DC. The meeting is open to the public and will start at 9:00 a.m. each day.

The agenda for this meeting is corrected to read as follows: A briefing/update by The National Institute for Occupational Safety and Health (NIOSH) on confined spaces; an update on the building collapse in Bridgeport, Connecticut; proposed rules on respiratory protection; review of draft revision to existing rule on steel erection; and a review of proposed rule on excavations. Written data, views or comments may be submitted, preferably with 20 copies, to the Division of Consumer Affairs. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting.

Anyone wishing to make an oral presentation should notify the Division of Consumer Affairs before the meeting. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation.

For additional information contact: Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, Room N–3647, Third Street and Constitution Avenue NW. Washington, DC. 20210. Telephone: 202–523–8615.

The official record of the meeting will be available for public inspection at the OSHA Docket Office, Room N–3670, U.S. Department of Labor, Third Street and Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC, this 28th day of July 1987.

John A. Pendergrass,

Assistant Secretary.

[FR Doc. 87–17534 Filed 7–30–87; 8:45 am]

BILLING CODE 4510–26–M

Pension and Welfare Benefits Administration

[Application No. D–7052] et al.

Proposed Exemptions; Sechrist-Hall Company Profit Sharing Plan et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this Federal Register Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N–5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of pendency of the exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Sechrist-Hall Company Profit Sharing Plan (the Plan) Located in Corpus Christi, Texas

[Application No. D–7052]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale by the Plan of certain unimproved real property (the Real Property) to Sechrist-Hall Company (the Employer), provided the price paid for the Real Property is not less than the greater of its fair market value on the date of sale or the total acquisition and holding costs incurred by the Plan.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with 65 participants and total assets having a fair market value of $1,100,537 as of September 30, 1986. The trustee of the Plan and decision-maker with respect to the Plan's investments is Citizens State Bank of Corpus Christi, Texas. The Employer, which is principally located in Corpus Christi, Texas, is engaged in the roofing and sheet metal work business.

2. Since 1967, the assets of the Plan have been heavily invested in real estate. In 1983, the Plan's real estate-related holdings were placed in three parcels of real property, three real estate-related notes and interests in a bank collective investment fund which had approximately one-half of its assets invested in mortgage notes. Pursuant to an investigation of the Plan conducted in 1983 by the Dallas Area Office (the Dallas Area Office) of the Department, the Plan fiduciaries were advised to refrain from engaging the Plan in additional local real estate-related investments until such time as the real estate investments, in conjunction with

the Plan's other investments, did not represent more than 25 percent of the Plan's assets. In furtherance of this recommendation, the Plan fiduciaries agreed to reduce the Plan's real estate holdings and to diversify the Plan's investments.

3. The Plan is in the process of divesting and diversifying its real estate holdings. At present, the Plan holds an unimproved parcel of land containing seven vacant lots. The Real Property, which is referred to as the "Southview Lots", is located in the 4500 Block of Southview Drive, Corpus Christi, Texas in the Russell Industrial Park. The Real Property is adjacent to the Employer's business premises and to other property owned by the Employer. The Plan acquired the Real Property for investment purposes on March 29, 1977 from Southview Corporation, an unrelated entity. The Plan made a lump sum cash payment of $34,060.

Since the time it has owned the Real Property, the Plan has paid total real estate taxes of $4,399 and total appraisal fees of $321. In addition, since the time it has held the Real Property, the Plan has not permitted such property to be used or leased by anyone including parties in interest. At present, the Real Property is unencumbered.

4. Because the Plan's original investment objectives of either reselling the Real Property at a profit to an unrelated party or of developing and leasing the Real Property to an unrelated lessee have not materialized, an administrative exemption is requested to permit the Plan to sell the Real Property to the Employer. The Plan will sell the Real Property to the Employer for a cash price equal to the higher of the: (a) the fair market value of the Real Property, the appraisal of which takes into account any value attributable to proximity of the Real Property to the Employer's premises; or (b) $38,780, consisting of the Plan's cost of such land ($34,060), the total real estate taxes the Plan has paid on the Real Property since 1977 ($4,399) and the total appraisal fees with respect to the Real Property ($321). The Plan will not be required to pay any real estate fees or commissions in connection with the proposed sale. In addition, the Employer represents that the proposed sale of the Real Property for the sum of the acquisition price plus the holding costs incurred by the Plan will not result in a contribution to the Plan exceeding the limitations set forth in section 415(c) of the Code.

5. The Real Property was initially appraised by Mr. Terrence F. Wood (Mr. Wood), M.A.I., S.R.A. and Ms. Claire Collins (Ms. Collins), R.M. Candidate, independent appraisers affiliated with Terrence F. Wood and Company of Corpus Christi, Texas. In an appraisal report dated December 3, 1985, Mr. Wood and Ms. Collins determined that the Real Property had a fair market value of $37,400 as of November 11, 1985.

In addition to the Wood-Collins appraisal, the Real Property was valued by Messrs. Paul J. Koepke, M.A.I., S.R.E.A. and David Cheek, Staff Appraiser (Messrs. Koepke and Cheek), both of whom are independent appraisers associated with Corpus Christi Appraisal Service (formerly, Koepke and Associates) of Corpus Christi, Texas. On December 6, 1985, Messrs. Koepke and Cheek placed the fair market value of the Real Property at $35,000.

In an updated appraisal report dated May 7, 1987, Mr. Koepke appraised the Real Property at $29,750 and he stated that the recession in the oil and gas industry had had an adverse effect on business in the Corpus Christi area as well as on industrial use property such as the subject Real Property. Mr. Koepke was also of the opinion that the Real Property has a unique value to the Employer by reason of its proximity to the Empoloyer's business premises. he said it is probable to concede that a premium should be required of the Employer since the Real Property adjoins other property owned by the Employer and will permit additional street access to the Employer. In addition, Mr. Koepke indicated that he believes the Real Property will enhance the overall value of the Employer's business premises. However, he cautioned that in no event should the premium increase the sales price to such an extent that the total cost for the Real Property exceeds $35,000.

6. In summary, it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) The sale will be a one-time Transaction for cash, (b) the Plan will not incur any real estate fees or commissions in connection therewith; (c) the Real Property will be sold for the greater of its fair market value as determined by an independent appraiser or the total acquisition and holding costs incurred by the Plan; and (d) the sale will enable the Plan to comply with a diversification recommendation of the Dallas Area Office and allow the Plan to achieve greater liquidity.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan's either paying less than or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provisions of the Internal Revenue Code, including sections 401(a)(4), 404 and 415.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523– 8883. (This is not a toll-free number.)

G. Snidow, Inc., Restated Employee Pension Benefit Plan (the Plan) Located in Ruidoso, New Mexico

(Application No. D–7087)

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to a purchase of unimproved real property by the Plan from g. Snidow, Inc. (the Employer), a disqualified person with respect to the Plan, provided the Plan pays no more than fair market value for the property and the transaction represents no more than 25 percent of the assets of the Plan at the time of purchase.[1]

Summary of Facts and Representations

1. The Employer was incorported in July 1976 for the purpose of producing, owning and selling art work. Gordon Snidow (Snidow) is the sole owner of the Employer. The Plan is a defined benefit pension plan which was established in July 1981. Snidow and his wife, Sue Snidow, are the only participants in the Plan. Investments in the Plan are commingled on behalf of the two Plan participants. The total assets of the Plan were $421,445 as of June 30, 1986.

2. The Employer owns two tracks of unimproved land (the Property) located four miles north of Ruidoso, New Mexico, consisting of approximately five acres each. The tracts are contiguous and were purchased in December 1982 from a party unrelated to Employer. The

[1] Because Gordon Snidow is the sole owner of the Employer and he and his wife are the only participants in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act under section 4975 of the Code.

Property has been idle since the time of purchase. An appraisal was made on the Property on September 10, 1986, by Armand L. Smith (Smith), a real estate appraiser located in Clovis, New Mexico. Smith states that his firm is independent of the Employer and the Plan. According to Smith, the Property is located in a highly desirable upper income recreational home area, and its highest and best use would be for development of recreational or residential homes. The Property is in the general vicinity of Alto Village which has a golf course, club house and a number of luxury summer homes. Placing emphasis on the comparable sales approach to value, Smith estimates that the current fair market value of the Property is $120,000.

The Plan proposes to purchase one tract, approximately five acres, of the Property from the Employer for $60,000, i.e., one-half the appraisal price. The applicant believes that the proposed purchase will be advantgeous to the Plan because of the potential for appreciation in value. According to the applicant, the land will not be used by the Employer or any party in interest but represents a good investment because the land is located in a very desirable vacation and resort area which is expected to experience further development as the economies of Texas and Eastern New Mexico improve.

4. The purchase will be entirely for cash and the Plan will pay no fees or commissions in regard to the transaction. The Plan will pay one-half the appraisal price stated in the application or fair market value at the time of purchase, whichever is lower. A statement will be obtained from Smith at the time of the transaction as to whether the land has changed in value since the date of appraisal. Based on the most recent available data, the transaction will represent about 14.2 percent of the assets of the Plan.

5. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 4975(c)(2) of the Code because: (1) The Plan will pay no more than fair market value for the Property at the time of purchase, based on an independent appraisal; (2) the purchase will be for cash and the Plan will pay no fees or commissions in regard to the purchase; (3) the transaction will account for less then 25 percent of the assets of the Plan; and (4) the applicant believes that the purchase represents a good investmant for the Plan because of the potential for appreciation in value.

Notice to Interested Persons

Because Snidow is the applicant and he and his wife are the only participants in the Plan, it has been determined that there is no need to distribute the notice of pendency to interested persons. Comments and requests for a hearing must be received by the Department within 30 days of the date of publication of this notice of proposed exemption.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Department, telephone (202) 523-8196. (This is not a toll-free number.)

Wabash-Lagrange Steel Company Plan and Trust (the Contribution Plan) Located in Toledo, Ohio

(Application No. D-7059)

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 25, 1975). If the exemption is granted the restrictions of section 406 (a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale by the Contribution Plan of real estate trust shares (the Shares) in Landsing Institutional Properties Trust V (LIPT-V) to Wabash-Lagrange Steel Company (the Employer), the sponsor of the Contribution Plan, for a sale price of $25,000; provided that such sales price is no less than the fair market value of the asked price for the Shares on the over-the-counter NASDAQ market, as published in the *Wall Street Journal (WSJ)* on the date of sale.

Summary of Facts and Representations

1. The Plan was originally established by the Employer as a defined benefit plan (the Benefit Plan). Subsequently, effective January 1, 1984, the Benefit Plan was amended and restated as a profit sharing defined contribution plan. The Contribution Plan covers all non-collective-bargaining-unit employees. As of December 31, 1986, there were 61 participants in the Contribution Plan, which had total assets of approximately $586,750. The trustees of the Contribution Play (the Trustees) are Gordon Levine and Joel Levine who are both participants in the Contribution Plan, are each 50% shareholders of the employer, and function as president and executive vice president, respectively, of the Employer.

2. In August 1983, the Trustees on behalf of the Benefit Plan purchased through an unrelated registered broker-dealer 2,500 Shares in LIPT-V, an unrelated party, for a total purchase price of $25,000. The LIPT-V portfolio consists of investments in business and shopping facilities in Oklahoma, Colorado, Texas, Washington, Oregon, and Idaho. Four (4) of the investments of LIPT-V are in directly owned parcels of real property and seven (7) are convertible loan investments in real property. Following the restatement of the Benefit Plan in 1984, the Contribution Plan became holders of the Shares in LIPT-V. On seventeen different occasions between October 14, 1983 and January 15, 1987, the 2,500 LIPT-V Shares held either by the Benefit Plan or the Contribution Plan were increased by a total of 690.799 Shares through dividend reinvestments. It is represented that the additional Shares were allotted by LIPT-V as dividend reinvestments and were not additional purchases made by the Trustees.[3] The Contribution Plan currently holds a total of 3,190.799 Shares which constitute approximately less than 3% of its assets.

3. It is represented that from August 1983, when the Benefit Plan initially acquired the Shares at a price of $10.00 per Share until December 1986, the value of the Shares rose to a high of $11.00 per share in January 1985. However, in January 1986, the price per Share dropped from $9.50 to a low in December 1986 of $5.00 per Share. Currently, the Employer represents that the fair market value of the Units is the asked price of $4.00 per Share on the NASDAQ over-the-counter market, as published in the *WSJ*. The Employer wishes to protect the participants in the Contribution Plan from the poor performance of LIPT-V since January 1986 and proposes to purchase all of the Shares held by the Contribution Plan on the date of sale for the higher of $25,000 or the fair market value of the Shares as published in the *WSJ* on the date of sale. At a price of $25,000 for 3,190.799 Shares, the approximate price per Share is $7.84 per Share. It is represented that the Trustees intend to invest the sale proceeds from the Shares in a mutual conversion fund with a fixed rate of return, which is currently 8.6%. It is represented that the Contribution Plan

[3] The Department is expressing no opinion herein as to whether or not the initial acquisition of Shares, the subsequent receipt of additional Shares as dividend reinvestments, or continued holding by the Benefit Plan or the Contribution Plan of the Shares constituted a violation of any of the fiduciary responsibility provisions of Part 4, Subtitle B, of Title I of the Act.

will not pay any commissions or other expenses in connection with the sale.

4. In summary, the Employer represents that the proposed transaction will satisfy the terms and conditions of section 408(a) of the Act because:

(a) The sale of the Shares represents a one-time transaction for cash;

(b) The purchase price will be higher of the $25,000 original purchase price of the Shares or the fair market value of the Shares on the date of sale as published in *WSJ*;

(c) The Contribution Plan will not pay any commissions or other expenses in connection with the sale; and

(d) The sale proceeds from the Shares will be invested in a mutual conversion fund with a fixed rate of return.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan's either paying less than or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provision of the Internal Revenue Code, including Sections 401(a)(4), 404, and 415.[3]

For Further Information Contact: Angelena C. Le Blanc of the Department, telephone (202) 523–8196. (This is not a toll-free number.)

Gary J. Guttmann, D.D.S., Inc., Profit Sharing Plan and Trust (the Profit Sharing Plan) and the Gary J. Guttmann, D.D.S., Inc. Pension Plan and Trust (the Pension Plan; Collectively, the Plans) Located in Cleveland, Ohio

[Application Nos. D–7164 & D–7165]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale of certain parcels of undeveloped real estate (the Property) by the individually directed accounts (the Accounts) of Gary J. Guttmann, D.D.S. (Dr. Guttmann) in the Plans to Dr. Guttmann, a party in interest with respect to the Plans, provided that the sales price for the Property is no less than the fair market value of the Property on the date of sale.

Summary of Facts and Representations

1. The Plans are a profit sharing plan and a money purchase pension plan which, as of June 30, 1986, had total assets of $149,667.63 and $180,297.68, respectively. Both of the Plans had four participants as of June 30, 1986. The trustee of the Plans is Bank One, Cleveland, N.A. (the Trustee).

2. The Plans are sponsored by Gary J. Guttmann, D.D.S., Inc. (the Employer). The Employer is an Ohio professional corporation, located at University Hospital Health Center, Willoughby, Ohio, engaged in the practice of clinical dentistry. Dr. Guttmann is an officer and director of the Employer. Dr. Guttmann also owns 100% of the outstanding shares of the voting common stock of the Employer.

3. Under the terms of the Plans, the participants have the right to direct the Trustee as to the investment of their plan account balances.

In October 1977 and September 1978, the Trustee acquired the Property for the Accounts, pursuant to Dr. Guttmann's direction, for a total purchase price of $142,400. An undivided 60% interest in the Property is held by the Trustee for the Account in the Profit Sharing Plan and the remaining 40% interest is held by the Trustee for the Account in the Pension Plan. All expenses associated with the holding of the Property are charged solely to the Accounts, in proportion to their respective ownership interests.

4. The Property consists of three parcels of undeveloped land, totalling approximately 54.17 acres, located at the intersection of Vrooman Road and Interstate Route 90, Leroy Township, Ohio. The applicant states that the Property is vacant and has not been leased to, or otherwise used by, Dr. Guttmann or any other party in interest. The applicant states further that all three parcels of the Property were acquired from unrelated parties.

The Property borders another parcel of unimproved land owned by Dr. Guttmann individually (the Adjacent Property). The applicant states that in recent months, several offers have been received from unrelated parties to develop the Property and the Adjacent Property. All of the offers received would require equity participation by the landowner for the development project to proceed. The Trustee and Dr. Guttmann have concluded that the Accounts should not enter into such a project as a co-venturer with a party in interest.

5. The Property was appraised on March 12, 1987, by Thomas R. Bowen (Mr. Bowen) of Ostendorf-Morris Company, an independent real estate appraiser in Cleveland, Ohio, as having a fair market value of $158,000. By letter dated June 11, 1987, Mr. Bowen state that consideration was given in the appraisal to the possible special value of the Property to Dr. Guttmann as a result of his ownership of the Adjacent Property. Mr. Bowen represents that the appraised value of $158,000 incorporates the value to Dr. Guttmann considering his ownership of the Adjacent Property.

6. Dr. Guttmann proposes to purchase the Property from the Accounts for $158,000 in cash, in accordance with Mr. Bowen's appraisal. No brokerage commissions or other selling expenses will be incurred by the Accounts with respect to the sale. In addition, the transaction will allow the Accounts to reinvest the sale proceeds in investments which yield greater returns.

7. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because: (a) The sale will be a one-time transaction for cash; (b) the Accounts will receive the fair market value for the Property as determined by an independent, qualified appraiser; (c) the Accounts will not pay any commissions or other expenses in connection with the transaction; and (d) Dr. Guttmann, the only participant in the Plans to be affected by the proposed transaction, has determined that the transaction is in the best interests of the Accounts.

Notice to Interested Persons

Because Dr. Guttmann is the only participant in the Plans to be affected by the proposed transaction, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a public hearing are due 30 days from the date of publication of this proposed exemption in the Federal Register.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

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[3] It is represented that the difference between the purchase price and the fair market value of the LIPT-V Shares will be treated as trust earnings to be allocated like other trust earnings on the basis of participant account balances. The Employer maintains that even if the earnings on the sale are treated as an annual contribution to the Contribution Plan, a violation of the limits set by the Internal Revenue Code section 415 or the discrimination provisions of section 401(a)(4) will not result.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 28th day of July 1987.

Elliot E. Daniel,

Associate Director for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 87-17451 Filed 7-30-87; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 87-68; Exemption Application No. D-6757 et al.]

Grant of Individual Exemptions; David L. Smith Trust Fund-Profit Sharing Plan et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

David L. Smith Trust Fund-Profit Sharing Plan (the Plan) Located in Ramona, California

[Prohibited Transaction Exemption 87-68; Exemption Application No. D-6757]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the lease by the Plan of certain real property to David L. Smith (Mr. Smith) dba SMV Insurance Agency, a disqualified person with respect to the Plan,[1] provided that the terms and provisions of the lease are no less favorable to the Plan than those obtainable by the Plan in an arm's-length transaction with an unrelated third party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 12, 1987 at 52 FR 22560.

FOR FURTHER INFORMATION CONTACT: Joseph L. Roberts III of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Ralph Korte Enterprises Profit Sharing Plan (the Plan)

(Prohibited Transaction Exemption 87-69; Exemption Application No. D-6938)

Exemption

The restrictions of section 406(a), 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale by the Plan of real property located at 822 Broadway, Highland, Illinois, to Mr. Ralph Korte, a party in interest with respect to the Plan, provided that all the terms of the transaction were as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party on the date the transaction was consummated.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of

[1] Since Mr. Smith, a self-employed individual, is the Plan sponsor and the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510-3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

proposed exemption published on May 19, 1987 at 52 FR 18761.

EFFECTIVE DATE: April 30, 1987.

FOR FURTHER INFORMATION CONTACT: Linda Hamilton of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Dayton Area Building and Construction Industry Investment Plan (the Program) Located in Dayton, Ohio

[Prohibited Transaction Exemption 87–70; Exemption Application Nos. D–7003 and D–7004]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the proposed participation by employee benefit plans in construction loans through the Program where such loans are already committed to by certain lending institutions to parties in interest with respect to such plans, provided that the terms of the loans are not less favorable to the plans than those terms available in transactions with unrelated parties; and provided that the terms and conditions, as described in the notice of proposed exemption, are complied with during the operation of the Program.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 10, 1987 at 52 FR 11783.

FOR FURTHER INFORMATION CONTACT: Mrs. Betsy Scott of the Department, telephone (202) 523–8196. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 5975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 28th day of July, 1987.

Elliot I. Daniel,

Associate Director for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 87–17452 Filed 7–30–87; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Museum Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Utilization of Museum Resources Section) to the National Council on the Arts will be held on August 18–20, 1987, from 9:00 a.m. to 5:30 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

July 28, 1987.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 87–17454 Filed 7–30–87; 8:45 am]

BILLING CODE 7537-01-M

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Multi-Music/Solo Recitalists Presenters Section) to the National Council on the Arts will be held on August 26–28, 1987, from 9:00 a.m.–6:00 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on August 28, 1987 from 10:00 a.m.–12:30 p.m. The topics for discussion will include guidelines, the Five-Year Planning Document and other policy issues.

The remaining sessions of this meeting on August 26–27, 1987, from 9:00 a.m.–6:00 p.m. and August 28, 1987 from 9:00 a.m.–10:00 a.m. and from 1:30 p.m.–6:00 p.m. are for the purpose of application review. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

July 28, 1987.

[FR Doc. 87–17453 Filed 7–30–87; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-369 and 50-370]

Consideration of Issuance of Amendments to Facility Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing; Duke Power Co.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. NPF–9 and NPF–17, issued to Duke Power Company (the Licensee), for operating of the McGuire Nuclear Station, Units 1 and 2 located in Mecklenburg County, North Carolina.

The amendments would revise the Technical Specifications (TSs) to incorporate the ventilation system of the Equipment Staging Building (ESB) as a new gaseous effluent release point, to specify limiting conditions for operation and surveillance requirements for this ventilation system and its monitoring instrumentation, and to add associated requirements to the gaseous waste sampling and analysis program.

Specifically, TS Figure 5.1–3 "Site Boundary for Gaseous Effluents," which shows locations within the Exclusion Area Boundary for radioactive gaseous effluents released to unrestricted areas, would be revised to reflect the addition of the ESB. Changes to TS Table 3.3.–13 "Radioactive Gaseous Effluent Monitoring Instrumentation" would add minimum channel operability requirements applicable during gaseous effluent releases, and associated actions required with the number of operable channels less than specified, for the noble gas activity monitor (EMF–59), flow rate monitor, and sampler minimum flow device of the ESB ventilation system. Similarly, changes to TS Table 4.3–9 "Effluent Monitoring Instrumentation Surveillance Requirements" would add surveillance requirements (channel check, source check, channel calibration frequency, and analog channel operational test frequency) for these same three monitors, applicable at all times except when the ventilation system isolation valve is closed and locked. TS Table 4.11–2 "Radioactive Gaseous Waste Sampling and Analysis Program" would be revised to reflect the addition of the ESB as new item 4c, and to reflect sampling and analysis requirements corresponding to those presently specified for the Radwaste Facility Vent (item 4a) and Contaminated Materials Warehouse (item 4b).

An additional change would correct inconsistent names for the same structure; the reference to "Contaminated Materials Warehouse" in TS Table 4.11–2 (item 4b) and to "Contaminated Parts Storage Warehouse" in Figure 5.1–3 would both be changed to "Contaminated Parts Warehouse."

These requests are in accordance with the licensee's applications for amendment dated May 4 and July 2, 1987.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previosuly evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has recently completed construction of an ESB located outside the Unit 2 Containment equipment hatch and adjacent to the Fuel Building. The purpose of the ESB is to provide increased laydown area for the Containment during outages; storage of outage equipment; equipment decontamination; disassembly, servicing and assembly of reactor coolant system components; and environmental protection for equipment and personnel during an outage. The need for the ESB results from limited space for such activities required during an outage and which are presently performed in the Containment, Spent Fuel Building and Hot Machine Shop. Typical activities which would be conducted inside the ESB include vessel head stud cleaning, valve maintenance, cutting of discontinued piping (such as the upper head injection piping) into smaller sections for storage or shipment, and parts and component repair such as reactor coolant pump internals replacement or motor repair. The licensee finds that performing such activities in the ESB would result in a reduction in radiation exposure to workers, reduced outage time and a safer working environment.

Because the planned ESB activities involve dry brushing, cutting, grinding and welding of contaminated components and such activities create airborne contamination, the ESB includes a heating, ventilation and air conditioning (HVAC) system with a pre-filter and a high efficiency particulate absolute (HEPA) filter to collect and remove particulates prior to release of exhaust gases to the atmosphere through the new ESB HVAC discharge vent. The ESB also includes a contaminated parts wash down area with provisions to route potentially contaminated liquids to existing station liquid radwaste treatment systems. The planned ESB activities, if not conducted in the new ESB, would be performed elsewhere in the plant (as is presently the case). Thus, the proposed change would not result in a significant change in the amounts or types of radioactive material in effluents released from the station or associated doses. The only solid waste generated due to ESB usage, that would not otherwise be generated, would result from periodic changeout of the pre-filter and HEPA filter units; this would add less than 100 cubic feet of waste per year, which is an insignificant addition to McGuire's annual solid waste generation total which, in 1986, was 28,194 cubic feet.

The changes to Tables 3.3–13 and 4.3–9 would add the system noble gas activity monitor, flow rate monitor, and sampler minimum flow device to the TSs. The changes add TS requirements on the system identical to Items 8 and 9 of the tables (the Contaminated Parts Warehouse ventilation system and the Radwaste Facility ventilation system, respectively). The monitor on the ESB is of similar design and would function under similar conditions as the monitors on the Contaminated Parts Warehouse and the Radwaste Facility. The specification requires the operability of the monitor during gaseous effluent releases with sampling and flow estimates required if the monitor is inoperable. The surveillance required is the same as for the Contaminated Parts Warehouse and the Radwaste Facility ventilation systems and again, the system and operational conditions would be similar. This similarity is also the basis for the proposed change to Table 4.11–2 which would require additional sampling and analysis of the released effluents. This will require that total dose rate as calculated using methodology and parameters of the Offsite Dose Calculation Manual be maintained within the existing limits specified in TS 3.11.2.1. The proposed change to Figure 5.1–3 to designate the new gaseous effluent release point, coupled with the requirements of existing TS 3.3.3.9 (Tables 3.3–13 and

4.3–9) and 3.11.2.1 (Table 4.11–2) would ensure control of effluent releases from the facility to as low as is reasonably achievable levels.

The Commission has provided guidance concerning the application of its standards set forth in 10 CFR 50.92 for no significant hazards consideration by providing certain examples (51 FR 7744). One of the examples (i) of actions involving no significant hazards consideration regards amendments for a purely administrative change to TSs, a change in nomenclature, or a change to achieve consistency throughout the TS. The change to TS Table 4.11–2 (item 4b) and to TS Figure 5.1–3 to correct the name of the Contaminated Parts Warehouse fits this example. The remaining changes do not match the examples. However, the staff has reviewed the licensee's submittal and finds that the ESB is an independent, free standing structure with no rigid connection to adjacent structures. It houses no safety related equipment and serves no function for accident prevention or mitigation. During fuel movement, the Containment equipment hatch will be closed in accordance with existing and unchanged TS 3.9.4 to prevent any release from Containment to the ESB in the event of a fuel handling accident. Therefore, the changes would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. As discussed above, the change also would not result in a significant increase in the amounts, or a significant change in the types, of any effluents that may be released offsite, and there would be no significant increase in individual or cumulative occupational exposure. Accordingly, the Commission proposes to determine that the requested license amendments involve no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of the **Federal Register** notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 31, 1987, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission,

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Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petititons are filed during the last ten days (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to B.J. Youngblood, Director, Project Directorate II–3: Petitioner's name and telephone; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petititons and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspections at the Commissions Public Document Room, 1717 H Street NW., Washington, DC, and the Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Dated at Bethesda, Maryland, this 28th day of July 1987.

For the Nuclear Regulatory Commission.

Daniel Hood,

Project Manager, Project Directorate II–3, Division of Reactor Projects, I/II.

[FR Doc. 87–17416 Filed 7–30–87; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–320]

Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing; General Public Utilities Nuclear Corp.

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to facility operating license No. DPR–73 issued to General Public Utilities Nuclear Corporation (the licensee) for operation of Three Mile Island Nuclear Station Unit 2 located in Dauphin County, Pennsylvania.

The licensee requested the amendment, including associated changes in the Appendix A Technical Specifications for Unit 2, in a letter dated February 25, 1987 and revised by a letter dated April 13, 1987. The amendment would delete the current prohibition on disposal of accident-generated water imposed by Technical Specifications 1.17, 3.9.13 and 3/4.9.13.

As a result of the 1979 accident at Three Mile Island Unit 2, about 2.1 million gallons of radioactively contaminated water are projected to be accumulated at the TMI–2 site by the endpoint of the current cleanup program. The water, referred to as accident-generated water contains tritium, relatively small amounts of strontium–90 and cesium–137, trace amounts of other radionuclides, and nonradioactive boric acid and sodium hydroxide. The accident-generated water consists of water contaminated directly by the March 28, 1979 accident and additional water from system in-leakage and other additions which have become commingled with the original accident-contaminated water. Since the accident, this water has been processed through specially designed demineralizer systems to reduce its radioactivity content, and has been stored in the plant and utilized in carrying out various cleanup activities (e.g., decontamination flushes, and shielding). The licensee has now proposed a method for disposal of the entire volume of accident-generated water.

In March 1981, the NRC staff issued the Final Programmatic Environmental Impact Statement (PEIS) on the TMI–2 cleanup. In the PEIS the staff addressed, based on the available information, the impacts of future disposal of the accident-generated water. The Commission, in an April 27, 1981 Policy Statement (46 FR 24764) accompanying the issuance of the PEIS, stated that any future proposal for disposition of the accident-generated water shall be referred to the Commission for approval.

On July 31, 1986 the licensee proposed a plan to evaporate the accident-generated water by forced heating at the TMI site over a period of about 2½ years. On December 29, 1986 the NRC staff issued for comment an updated Draft Supplement No. 2 to the PEIS on this issue. The draft supplement assessed the environmental consequences of the licensee's proposed disposal method as well as a number of alternatives. Following a 90-day public comment period, the staff prepared the Final Supplement No. 2 which includes discussion and appropriate disposition of the public comments. In Final Supplement No. 2, dated June 1987, the NRC staff concluded that the licensee's proposed method of water disposal and eight alternative methods evaluated could each be implemented without significant environmental impact.

Prior to issuance of the proposed license amendment, which would remove the prohibition for disposal of the accident-generated water, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By September 3, 1987, the licensee may file a request for hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's Rules of Practice for Domestic Licensing Proceedings in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the peititioner's right under the Act be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to

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fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner is required to file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity, pursuant to 10 CFR 2.714(b). Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addresed to Dennis M. Crutchfield, Director, Division of Reactor Projects III/IV/V & Special Projects, Office of Nuclear Reactor Regulation, Washington, DC 20555: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of the **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 and to Ernest L. Blake, Jr., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the licensee's proposal dated July 31, 1986, the licensee's application for amendment dated February 25, 1987 and revised April 13, 1987 and the NRC staff's Final Supplement No. 2 to NUREG-0663 dated June 1987. These documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC.

Dated at Bethesda, Maryland, this 27th day of July 1987.

For the Nuclear Regulatory Commission.

Michael T. Masnik,

Acting Director, Three Mile Island Cleanup Project Directorate, Division of Reactor Projects III/IV/V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 87–17415 Filed 7–30–87; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Auxiliary Systems; Meeting;

The ACRS Subcommittee on Auxiliary Systems will hold a meeting on August 18, 1987, Room 1167, 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, August 18, 1987–8:30 A.M. until 5:00 P.M.

The Subcommittee will discuss the heating, ventilating, and air conditioning (HVAC) system malfunctions and their impact on safety systems. In addition, it will discuss problems associated with instrument air systems, AEOD findings concerning the instrument air system malfunctions and its recommendations to alleviate this problem.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS Staff member, Mr. Sam Duraiswamy (telephone 202/634–3267) between 8:15 A.M. and 5:00 P.M. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: July 28, 1987.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 87–17442 Filed 7–30–87; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Information Collection Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, Chapter 35), this notice announces a request to extend a public information collection. Mail Reinterview, OPI Form 10, is completed by individuals who have been interviewed by an OPM investigator during the course of a personnel investigation. It asks questions regarding the performance of the investigator. It is estimated that 3,500 individuals will respond annually for a total burden of 350 hours. For copies of this proposal call William C. Duffy, Agency Clearance Officer, on (202) 632–7714.

DATE: Comments on this proposal should be received on or before August 14, 1987.

ADDRESSES: Send or deliver comments to—

William C. Duffy, Agency Clearance Officer, Office of Personnel Management, 1900 E Street NW., Room 6410, Washington, DC 20415

and

Richard Eisinger, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3002, New Executive Office Building NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Peter Garcia, (202) 632-6181.

U.S. Office of Personnel Management.

James E. Colvard,

Deputy Director.

[FR Doc. 87-17402 Filed 7-30-87; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

July 27, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

AT&T Credit Corporation
Currency Exchange Warrants (expiring July 1, 1992 (Yen) (File No. 7-0293))

E—II Holdings, Inc.
Common Stock, $.01 Par Value (File No. 7-0294)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 17, 1987, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-17440 Filed 7-30-87; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

July 27, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Lorimar-Telepictures Corporation
Common Stock, $1.00 Par Value (File No. 7-0295)

Navistar International Corporation (Holding Company)
Common Stock, No Par Value (File No. 7-0296)

UtiliCorp United Inc. (Delaware)
Common Stock, $1.00 Par Value (File No. 7-0297)

Baker Hughes Incorporated (Holding Company)
Common Stock, $1.00 Par Value (File No. 7-0298)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 17, 1987, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-17441 Filed 7-30-87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-15900; File No. 812-6796]

Community Program Loan Trust No. 1987 A; Application

July 29, 1987

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: Community Program Loan Trust No. 1987 A ("Trust" or "Applicant").

Relevant 1940 Act Sections: Exemption requested under sections 6(c) and 6(e), from all provisions of the 1940 Act other than sections 26 (with certain exceptions), 36, 37 and (to the extent necessary to implement the above sections of the 1940 Act) 38 through 53 thereof.

Summary of Application: Webster & Sheffield, as attorneys on behalf of the Trust (to be formed) seek a conditional order of exemption to permit the issuance and sale by the Trust of senior and subordinated debt securities and senior and junior certificates of beneficial interest in the Trust, collateralized by certain loans originated by the Department of Agriculture, Farmers Home Administration ("FmHA"), in connection with the Federal government's pilot loan asset sale program.

Filing Date: The application was filed on July 17, 1987 and amended on July 24, and July 28, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be received by the SEC no later than 5:30 p.m., on August 14, 1987. Request a hearing in writing giving the nature of your interest, the reason for the request, and the issues contested. Serve Applicants with the request, either personally, or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC: 450 Fifth Street, NW., Washington, DC 20549; Applicant: c/o Webster & Sheffield, 237 Park Avenue, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: Fran Pollack, Staff Attorney (202) 272–3024 or Karen L. Skidmore, Special Counsel (202) 272–3023 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Statements and Representations

1. The Applicant is a Trust to be created by a Declaration of Trust to be dated on and as of the date of the closing of the sale of the Bonds (as defined below) by Shawmut Bank N.A., as Trustee, (the "Trust Agreement") and the "Issuer Trustee," respectively). The Applicant will be formed to effect the sale to the private sector by the United States of America, acting through FmHA, of certain loans originated by FmHA and administratively designated as Community Facility loans and Water and Waste loans (the "Community Program Loans" or "Loans") and held in the Rural Development Insurance Fund administered by FmHA.

2. As part of the Federal government's pilot loan asset sale program described below, FmHA has been directed by Congress to sell a portion of the Community Program Loans prior to the closing of the Federal government's fiscal year ending September 30, 1987. Specifically, section 1001(a) of the Omnibus Budget Reconciliation Act of 1986, Pub. L. 99–509, 100 Stat. 1874 ("Budget Act"), taken together with The Joint Resolution Making Continuing Appropriations for the Fiscal Year 1987, Pub. L. 99–591, 100 Stat. 3341 (1986), require FmHA to sell the loans in such amounts as to realize not less than $1,025,500,000 in net proceeds. In addition, because the Budget Act anticipates that servicing of the Loans will be transferred from FmHA to the private sector, it requires prospective purchasers of the Loans to demonstrate an ability or resources to provide servicing of the Loans necessary to ensure the continued performance of borrowers thereunder. The Applicant will contract with General Electric Credit Corporation ("GECC") as the master servicer of the Loans.

3. The proposed transaction has been designed to implement the objectives of the Budget Act and the Guidelines developed by a Federal inter-agency task force by: (i) Providing for the sale of the Loans without recourse to the Federal government, other than for breach of certain representations and warranties with respect to the Loans, (ii) providing for the transfer of servicing responsibilities for the Loans from FmHA to a private sector loan servicer, as described below, and (iii) ensuring that interest on the securities issued to finance the acquisition of the Loans by the Applicant (and thus, in effect, the future interest payments on the Loans themselves) will be subject to full Federal income tax.

4. The proposed transaction that is the subject of this application involves the issuance of securities by the Applicant to finance the Applicant's purchase of the Loans from FmHA. First, the Loans will be selected at random from a pool consisting of each Community Program Loan that meets certain eligibility criteria. Among such criteria are: (1) That the Loan in question is not delinquent, (ii) that the proceeds of such Loan have been fully disbursed by FmHA, and (iii) that such loan is not subject to a request by the borrower that FmHA approve the assumption of the Loan by another party or the subordination of an FmHA lien. Pursuant to a loan sale agreement (the "Loan Sale Agreement") between FmHA and the Applicant to be executed on behalf of the Applicant by the Issuer Trustee, FmHA will sell the Loans to the Applicant in exchange for: (1) The cash proceeds from the issuance of certain senior debt securities (the "Class A Bonds") and subordinated debt securities (the "Class B Bonds") (the Class A Bonds and the Class B Bonds, collectively, the "Bonds"), and (ii) senior and junior certificates evidencing 100% of the beneficial interest in the Applicant (the "Certificates"). FmHA may itself receive the Class B Bonds rather than the cash proceeds depending upon market conditions at the time of the sale. If FmHA does initially receive the Class B Bonds, it would expect to sell them in the future. Although FmHA will be the initial owner of 100% of the Certificates, it intends to sell the entire beneficial interest as soon as in its judgment it is prudent to do so.

5. In the Loan Sale Agreement, FmHA will make certain representations and warranties as to the Loans and their transfer, and the Applicant will have the right to return non-conforming Loans ("Defective Loans") to FmHA and demand that FmHA transfer to the Applicant substitute Loans of at least equivalent bond value and, as nearly as practicable, with equivalent cash flow characteristics and maturities. The Federal government may require that certain representations and warranties capable of being specifically verified expire prior to maturity of the Bonds, and any Loan determined to be a Defective Loan as a result of the breach of an expired representation or warranty will not be eligible for substitution and will remain as asset of the applicant.

6. The Class A Bonds will be secured by a first priority perfected security interest in the Loans pursuant to an indenture (the "Class A Indenture") between the Issuer Trustee and the trustee for the holders of the Class A Bonds (the "Class A Indenture Trustee"). The Class A Indenture Trustee will be a bank meeting the requirements of section 26(a)(1) of the 1940 Act. The Class A Bonds will be rated in one of the two highest bond rating categories by at least one nationally recognized statistical rating organization not affiliated with the Applicant (the "Rating Agencies") and will be offered and sold to the public by a group of underwriters managed by Shearson Lehman Brothers Inc., Salomon Brothers Inc. and Morgan Stanley & Co. Incorporated. The Class A Bonds will be issued in series having different maturities.

7. The Class A Bonds will bear interest at fixed rates and have maturity dates (subject to permitted prepayments). Payments will be made on semi-annual payment dates (each, a "Payment Date"). In addition to possessing rights to payment senior to the holders of the Class B Bonds and the holders of the Certificates, the Class A Bonds will benefit from the existence of a liquidity reserve fund (the "Liquidity Reserve Fund"). The Liquidity Reserve Fund will be funded in whole or in part with a portion of the proceeds of the Applicant's sale of the Bonds, and will be maintained over the life of the Class A Bonds at a specified percentage of the outstanding principal amount of the Class A Bonds (so that the amount of the Liquidity Reserve Fund will decline as the principal amount of the Class A Bonds decreases), which percentage may be reduced based on the payment performance of the Loans over time, all as specifically determined at the time of issuance of the Class A Bonds and disclosed in the related prospectus.

8. The Class B Bonds will be subordinated in right to payment to the claims of the Class A Bonds. The Class B Bonds will be secured by a subordinated lien on the Loans held by the Applicant pursuant to an indenture (the "Class B Indenture") between the

Issuer Trustee on behalf of the Applicant and the trustee for the holders of the Class B Bonds (the "Class B Indenture Trustee"). The Class B Indenture Trustee will be a bank meeting the requirements of section 26(a)(1) of the Act. Like the Class A Bonds, the Class B Bonds will bear interest at a fixed rate, and will have a definite maturity date (subject to certain prepayments). Principal and interest will be payable semi-annually, on the Payment Dates for the Class A Bonds. Until payment in full of the Class A Bonds, the holders of the Class B Bonds will not have the right to cause a default under the Class B Indenture if cash flows from the Loans are insufficient to make any payment of interest and principal in full when due. No decision has been made respecting a rating application for the Class B Bonds; they may be offered and sold without any rating from the Rating Agencies.

9. The Certificates will represent the beneficial interest in the Applicant and accordingly will entitle holders to shares of the cash flow of the Applicant after the funding of certain funds and all principal and interest payments on the Bonds then due. The Certificates will have no interest rate and will not have a definite maturity date.

10. Distributions with respect to the Certificates will be made annually on dates that coincide with Payment Dates for the Bonds. On and after each Payment Date that is not an annual distribution date for the Certificates, all amounts allocable to the Certificates will be held by the Class B Indenture Trustee as a reserve for the benefit of the Class B Bondholders until the next Payment Date, and will be applied to the payment of principal and interest on the Class B Bonds on such Payment Date to the extent that amounts for such payments are not otherwise available. Such amounts may be held by the Class B Indenture Trustee in a separate reserve fund, and to the extent such amounts are not needed on any such Payment Date to make payments to Class B Bondholders, they will be distributed to Certificateholders.

11. There will be two classes of Certificates, Senior and Junior. On each annual payment date, holders of Senior Certificates will be entitled to receive their pro-rata shares of the available funds up to an amount specified in the Trust Agreement with respect to such annual payment date. Holders of Junior Certificates will be entitled to their pro-rata shares of the remainder of the available funds. The Certificateholders are not expected to bear liability for expenses or other obligations of the Applicant. Deposits in the funds and accounts are expected to be sufficient to cover any and all expenses and other liabilities of the Applicant.

12. Collection of principal and interest payments on the Loans and other servicing functions will be performed by GECC or a successor servicer as master servicer (the "Master Servicer") under a master servicing agreement (the "Master Servicing Agreement") to be entered into among GECC, the Issuer Trustee, the Class A Indenture Trustee and Class B Indenture Trustee. The Master Servicer and the Issuer Trustee will contract with subservicers that will continue certain servicing activities currently carried out by FmHA, including inspections of security property, provision of technical assistance to borrowers, etc. designed to ensure the continued performance of the Loans.

13. Under the Master Servicing Agreement, amounts collected under the Loans by the Master Servicer will be promptly remitted to the Class A Indenture Trustee. These amounts will initially be deposited in an account designated the P&I Account under the Class A Indenture (the "P&I Account"). On each Payment Date, funds in the P&I Account will be applied in the following order or priority:

(a) Funding the Expense Fund form which certain expenses of the Applicant are to be paid, including trustees' fees, master servicer and any sub-servicers' fees, and legal accounting and auditors' fees.

(b) Payment of accrued interest and any overdue interest to the Class A Bondholders;

(c) Payment of principal and any overdue principal to Class A Bondholders then entitled to such payment;

(d) Maintenance of the Liquidity Reserve Fund to protect Class A Bondholders against cash flow shortfalls;

(e) Maintenance of a "Protective Advance and Extraordinary Expenses Fund" in order to continue FmHA's practice of providing protective advances to protect the value of Community Program Loan security property and in order to fund expenses incurred in enforcing remedies against defaulting Loan obligors;

(f) Payment of any indeminities owed by the Applicant to the Master Servicer, any of the Trustees or the underwriters except for indemnities against liability for a party's own willful misfeasance, bad faith, gross negligence or reckless disregard of duty;

On each Payment Date, after the above required payments, the amount remaining in the P & I Account will be transferred to an account maintained by the Class B Indenture Trustee, pursuant to the Class B Indenture, and will be applied in the following priority:

(a) Payment of accrued interest and any overdue interest to the Class B Bondholders;

(b) Payment of principal and any overdue principal to the Class B Bondholders; and

(c) Payment of residual cash flow to the holders of Certificates (subject to being retained in a reserve for the Class B Bondholders for six months).

14. In addition to the funds and accounts listed above and described in the application, the Class A Indenture Trustee will maintain a temporary account (the "Adjustment Account") in which a portion of the proceeds from the sale of the Bonds will be retained for a period expected not to exceed 90 days following the closing of the proposed transaction, in order to provide for a final accounting of amounts due to FmHA as of the closing date in consideration of the sale of the Loans. Pursuant to the Loan Sale Agreement, this accounting could result in a post-closing adjustment payment to either FmHA or the Applicant, depending upon the incidence of Loan prepayments and defaults between the date as of which a schedule of Loans to be sold will be prepared (currently expected to be June 30, 1987) and the closing date of the Loan sale. All amounts remaining in the Adjustment Account after the post-closing adjustment payment is made will be deposited in the P&I Account.

15. It is currently expected, on the basis of a written offer submitted by Morgan Guaranty Trust Company of New York ("Morgan"), that Morgan will enter into an investment agreement (the "Investment Agreement") at the closing of the sale of the Class A Bonds with the Applicant, the Class A Indenture Trustee and the Class B Indenture Trustee under which Morgan will agree to hold all amounts in the Expense Fund, the P&I Account, the Liquidity Reserve Fund and the Protective Advance and Extraordinary Expenses Fund. The rates under the Investment Agreement will be fixed and remain in effect for the term of the agreement. Morgan will not be able to assign its obligations under the Investment Agreement except to its parent corporation, and then only if its parent's long-term debt rating by the Rating Agencies is at least as high as Morgan's. The Investment Agreement will terminate if the Class A Indenture Trustee or the Issuer Trustee should

inform Morgan that any Rating Agency rating the Class A Bonds has indicated that such Rating Agency has determined that the continuation of the Investment Agreement with Morgan will adversely affect such Rating Agency's rating of the Class A Bonds. In the event of termination of the Investment Agreement, the Applicant, the Class A Indenture Trustee and the Class B Indenture Trustee will enter into a substitute investment agreement that would not result in a reduction in the rating of the Class A Bonds, if such an agreement can be procured. Any such substitute investment agreement would be permitted only with (i) a national bank or banking institution organized under the laws of any state or the District of Columbia, the business of which is substantially confined to banking and is supervised by the State banking commission or similar official, or a foreign bank subject to substantially the same supervision under the International Banking Act of 1978 or (ii) an insurance company subject to the supervision of the insurance commissioner, bank commissioner or any agency or officer performing like functions of any State or the District of Columbia or (iii) the Federal National Mortgage Association or the Government National Mortgage Association or such other similar entity as will be identified in the prospectus relating to the Class A Bonds or amendment to the application.

16. If no such substitute investment agreement can be procured, amounts in the Expense Fund, the P&I Account, the Adjustment Account, and the Liquidity Reserve Fund will be held by the Class A Indenture Trustee and will be invested only in Eligible Investments. Such Eligible Investments will be limited to (a) obligations issued by, and supported by the full faith and credit of, the United States and (b) repurchase agreements with respect to such obligations and overcollateralized on a basis that will not result in a reduction in the ratings of the Class A Bonds. Amounts in the Protective Advance and Extraordinary Expenses Fund and any other other debt service or reserve fund or account for the benefit of the Class B Bondholders will be held by the Class B Indenture Trustee and may be invested only in Eligible Investments. Such Eligible Investments will be limited to (i) the investments described above that are held by the Class A Indenture Trustee and (ii) any demand or time deposit or certificate of deposit which is fully insured by the Federal Deposit Insurance Corporation.

17. The amount of principal and interest paid on each Payment Date with respect to Bonds may vary to some degree depending on the incidence of prepayments on the Loans. If Loans are prepaid, the amount of the prepayment will be allocated to the Class A Bonds and, assuming that the Liquidity Reserve Fund is fully funded, to the Class B Bonds in proportion to their respective initial principal balances. The amount allocated to each Class will then be used to pay Bonds, in the case of Class A Bonds in the order of maturity of each series. Because the Bonds will be initially sold at a discount, prepayments of principal at par resulting from Loan prepayments are expected to cover reinvestment risk under foreseeable market conditions, and thus should be to the Bondholders' advantage.

18. The Bonds will not be redeemable at the option of the Bondholders. Certificateholders will have the right to direct the Applicant to cause the redemption of all outstanding Bonds of either class at par (plus accrued interest) at any time after the aggregate outstanding principal balance of that class is not more than 10 percent of its original aggregate outstanding balance, and provided that no Class B Bonds will be redeemable while any Class A Bonds remain outstanding. In the view of the underwriters, this will not significantly affect Bondholders (to whom this right will be fully disclosed) because of the relatively small amounts and late redemptions involved.

19. The value of the Loan Collateral will be at least 107% of the aggregate principal amount of the Class A Bonds. Annual cash flow from the Loans is currently projected to range from 115% to 130% of annual debt service requirements on the Class A Bonds.

20. There will be no conflict of interest between (i) the Class A Bondholders and (ii) the Class B Bondholders or Certificateholders because (a) the Class A Bonds will be issued only if at least one of the Rating Agencies has rated such Bonds in one of the two highest rating categories; and (b) the Class A Indenture subjects the Loan collateral, all income distributions thereon and all proceeds from a conversion, voluntary or involuntary, of any Loan to a first priority perfected security interest in the name of the Class A Indenture Trustee on behalf of the Class A Bondholders. Class B Bondholders and Certificateholders may not, without the consent of any Class A Bondholder affected, (a) change the stated maturity on any Class A Bond (subject to redemption rights described in #18 above); (b) reduce the principal amount, or the rate of interest on any Class A Bond; (c) change the priority of payment of any Class A Bond; (d) permit the creation of a lien ranking prior to or on parity with the lien of the Class A Indenture with respect to the Loans; (e) impair or adversely affect the Loans; or (f) otherwise deprive the Class A Bondholders of the security afforded by the lien of the Class A Indenture. Class B Bondholders and Certificateholders may not alter the Loan collateral. Except to the extent permitted by the limited right to substitute Loans, no substitution is permitted, and in no event will substitution result in a diminution in the value or quality of the Loan collateral. The sale of the Class B Bonds and Certificates will not alter the payment of cash flows under the Class A Indenture, including the amount to be deposited in any reserve fund or other funds or accounts created pursuant to the Class A Indenture to support payments of principal of, and interest on, the Class A Bonds. No Certificateholders will be affiliated with any of the Rating Agencies.

21. The Applicant expects to make certain payments to cover various costs to be paid or reimbursed at the closing of the sale of the Bonds and Certificates, as well as various ongoing costs and expenses, all such costs and expenses being fully described in the application. Should the Applicant expect to make any other payments not described in the application, Applicant will submit an amendment to this application to the Commission requesting that those fees be exempted from the provisions of section 26(a)(2) of the 1940 Act.

22. By its terms, the Trust Agreement will terminate and the Applicant will cease to exist not later than the annual payment date for Certificates following the date on which the last loan is liquidated or paid in full, except in the unlikely event that either of the indentures has not been discharged by such date. It is expected that the final Loan maturity and the final Bond maturity will occur in 2027.

Applicant's Legal Conclusions

1. Although the Applicant will not issue redeemable securities as defined under section 2(a)(32) of the 1940 Act, Applicant has agreed that it will be subject to section 26 as if it were a unit investment trust. However, the Applicant seeks to be exempt from sections 26(a)(2) (B) and (C) to the extent those provisions are inconsistent with the compensation arrangements and payment of costs and expenses described in the application. The Applicant believes that the payment of

those costs and expenses will be fair and reasonable in light of the requirements of the offering and sale of the Bonds and the ongoing servicing requirements for the Loans. Applicant also believes that granting of the requested order will satisfy the provisions of section 26(b) relating to substitution of collateral to the extent Loan substitution is made as described in the application.

2. The requested exemption is necessary or appropriate in the public interest because the Applicant's primary purpose will be to facilitate the sale by FmHA of the Loans as required by the Budget Act. The Budget Act requires the Loan sales both to meet congressional deficit reduction goals and to assist the overall program to reform Federal Credit programs.

3. The requested exemption is consistent with the purposes of the 1940 Act. The limited business purpose of the Applicant and its issuance of securities secured by the Loans obviate the need for the regulatory safeguards provided by the 1940 Act, because the operations of the Applicant do not lend themselves to the abuses against which the 1940 Act is directed.

4. The requested exemption would be consistent with the protection of investors. The Applicant is a limited purpose trust whose only significant assets will be the Loans pledged to secure the Bonds and the funds and accounts described above. The Bondholders' interest will be adequately protected by the disclosure and regulatory provisions of Securities Act of 1933, as amended (the "1933 Act") the Securities Exchange Act of 1934, and the Trust Indenture Act of 1939 (the "1939 Act"). The Certificateholders will be protected because the Certificates will be sold only to sophisticated institutional investors described below.

Conditions of the Order

Applicant agrees that the requested order may be expressly conditioned upon the following:

A. Conditions Relating to the Bonds

1. The Class A Bonds will be registered under the 1933 Act and will be rated in one of the two highest bond rating categories by at least one of the Rating Agencies. The Class A Indenture securing the Class A Bonds will be qualified pursuant to the 1939 Act.

2. The Class B Bonds will be either registered pursuant to the 1933 Act or offered and sold in a transaction not involving any public offering within the meaning of section 4(2) of the 1933 Act. In either case, the Class B Bonds will be offered and sold in the initial offering only to institutional investors qualifying as "accredited investors" as that term is defined in Rule 501(a) under the 1933 Act and having such knowledge and experience in financial and business matters as to be capable of evaluating the risks of the purchase of the Class B Bonds and with direct and significant experience in making investments in similar asset-backed securities. Such institutional investors may include: Mortgage lenders, thrift institutions, commercial and investment banks, savings and loan associations, pension funds, employee benefit plans, insurance companies, mutual funds, real estate investment trusts or other knowledgeable institutional investors as described above which customarily engage in the purchase of asset-backed securities. (Mutual funds will continue to be required to satisfy themselves that purchases of such obligations comply with the provisions of section 12(d)(1) of the 1940 Act.) If the Class B Bonds are registered under the 1933 Act, the Class B Indenture securing the Class B Bonds will be qualified pursuant to the 1933 Act. The Class B Bonds will be initially offered and sold in units of not less than $5,000,000 original principal amount, and subsequent resales or sales in any secondary market will be restricted to sales in units of not less than that original principal amount.

3. The Loans will be assigned to and held by the Class A Indenture Trustee or on behalf of such Indenture Trustee by an independent custodian. Neither the Class A Indenture Trustee nor the custodian will be an affiliate (as the term "affiliate" is defined in Rule 405 under the 1933 Act) of the Applicant. The Class A Indenture Trustee will be granted a first priority perfected security interest in and to the Loans. The Class B Indenture Trustee will be granted a subordinated security interest in and to the Loans. No Master Servicer or sub-servicer for the Loans will be affiliated with either the Class A Indenture Trustee, the Class B Indenture Trustee or the Issuer Trustee.

4. The collateral securing the Class A Bonds and Class B Bonds will be limited to Community Program Loans, the funds and accounts as described above and reinvestment income thereon.

5. Other Loans may be substituted for Defective Loans initially pledged as security for the Bonds only in the event that a Loan fails to comply with the FmHA representatives and warranties in the Loan Sale Agreement and described fully and completely in the prospectus included in the registration statement filed in connection with the public offering of the Class A Bonds. If Loans are substituted as security for the Bonds, any substitute Loans must: (i) Be Community Program Loans of at least equivalent bond value and, as nearly as practicable, with equivalent cash flow characteristcs and maturities as the Loans replaced; and (ii) meet the conditions set forth in paragraph A.3. In no event will any such substitution adversely affect the level of collateralization for the Bonds or the quality of the Loan portfolio in terms of the expected payments thereon or other Loan characteristcs that provided a basis for the credit rating for the Class A Bonds.

6. The Bonds will not be considered redeemable securities within the meaning of section 2(a)(32) of the 1940 Act.

7. No less often than annually, an independent public accountant will audit the books and records of the Applicant and will report on whether the scheduled payments of principal and interest on the Loans together with reinvestment income thereon at the assumed reinvestment rates will be adequate to pay the scheduled principal and interest on the Class A Bonds. Copies of the accountants' reports will be provided to the Class A Indenture Trustee.

8. If the Class B Bonds are sold in a transaction not involving any public offering within the meaning of section 4(2) of the 1933 Act, then each purchaser (other than FmHA if it should initially hold Class B Bonds) of Class B Bonds will represent that it is purchasing such Bonds for investment purposes and not with a view to distribution thereof, in whole or in part, and that it will hold such Bonds in its own name and not as nominee for undisclosed investors. Any purchasers in any resale or secondary market will be limited to institutional investors described above in A.2.

B. Conditions Relating to the Certificates

1. The Certificates will be offered and sold in the initial offering only to, and any subsequent resales and sales in the secondary market will be restricted to, institutional investors qualifying as "accredited investors" as defined in Rule 501(a) of the 1933 Act and having such knowledge and experience in financial and business matters as to be capable of evaluating the risks of the purchase of the Certificates and with direct and signifcant experience in making investments in similar asset-backed securities. Such institutional investors may include: mortage lenders, thrift institutions, commerical and investment banks, savings and loan associations, pension funds, employee

benefit plans, insurance companies, mutual funds, real estate investment trusts or other knowledgeable institutional investors as described above which customarily engage in the purchase of asset-backed securities. (Mutual funds will continue to be required to satisfy themselves that purchases of such obligations comply with the provisions of section 12(d)(1) of the 1940 Act.) The Certificates will be initially offered and sold in units selling for not less than $5,000,000 and subsequent resales and sales in the secondary market will be restricted to sales in units of the same size.

2. The sale of the Certificates will qualify as a transaction not involving any public offering within meaning of section 4(2) of the 1933 Act.

3. Sales of the Certificates in the initial offering will be limited to a maximum of 100 investors and the terms of each sale of a Certificates in the Applicant will prohibit the future transfer of such interest if as a result there would be more than 100 beneficial owners of the Certificates. (Restrictions on the transfer of Certificates to a maximum of 100 investors will be implemented through stop-transfer provisions in the Trust Agreement.)

4. Each purchaser (other than FmHA if it should initially hold Certificates) of Certificates will represent that it is purchasing such interest for investment purposes and not with a view to distribution thereof, in whole or in part, and that it will hold such Certificates in its own name and not as nominee for undisclosed investors.

5. No owner of a Certificate will be affiliated with either the Class A or Class B Indenture Trustee. No holders of a controlling (as that term is defined in Rule 405 under the 1933 Act) interest in the Applicant may be affiliated with the Class A or Class B Indenture Trustee, the custodian of the Loans or the Rating Agency rating the Bonds.

C. Other Conditions

1. The Trust Agreement and/or the Indenture will provide that the Issuer Trustee or an Indenture Trustee shall keep such records and provide such notices as are required by section 26(a)(4) of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-17569 Filed 7-29-87; 4:29 pm]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. MC 87-13]

Driver's Record of Duty Status

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of request for exemption.

SUMMARY: In accordance with section 206(f) of the Motor Carrier Safety Act of 1984, 49 U.S.C. App. 2505(f), the FHWA hereby provides notice that it has received three requests for an exemption from the requirements of 49 CFR 395.8 that drivers of commercial motor vehicles in interstate or foreign commerce record their hours of service in their own handwriting on a "record of duty status." In all cases the motor carrier has requested that it be permitted to use an on-board computer which, among other things, will automatically record the driver's duty status.

The requests were made by Central Distribution System, Inc., St. Paul, Minnesota, Calzona Tankways, Inc., Phoenix/Tucson, Arizona, and Wetterau Transportation Inc., Greenville Division, Greenville, Kentucky.

Copies of the petitions for exemption have been placed in the notice number file identified above. Interested parties may comment on these requests.

DATE: Comments must be received on or before August 17, 1987.

ADDRESS: All comments should refer to the notice number at the top of this document and must be submitted (preferably in triplicate) to Room 4205, Office of the Chief Counsel, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m. ET, Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas P. Kozlowski, Office of Motor Carrier Standards, (202) 366-2999, or Mr. Thomas P. Holian, Office of the Chief Counsel, (202) 366-1355, Federal Highway Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

(49 U.S.C. App. 2505 and 3102; 49 CFR 1.48)

Issued on: July 23, 1987.

R.A. Barnhart,

Federal Highway Administrator.

[FR Doc. 87-17382 Filed 7-30-87; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Privacy Act of 1974; System of Records

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: A new routine use for portions of existing records, updated safeguards and authority for the system, an additional system manager for a portion of the records.

SUMMARY: The Department of the Treasury proposes to add a routine use to the Privacy Act system of records, Treasury/OS.002—Treasury Payroll Information System (TPIS) last published at 51 FR 19807 (June 2, 1986). TPIS and PERMITS data, which already includes information on procurement personnel, will be used in implementing the Treasury Acquisition Career System (TRAC). The proposed routine use for this portion of the records will permit the Departmental Offices to disclose procurement-related personnel information to contractors assisting Treasury in the performance of a TRAC function. This notice also includes the authority, safeguards, retention schedule, and system manager for the records included in the TRAC.

DATES: The proposed routine use will become effective as proposed without further notice, 30 days from the date of this publication unless we receive comments on or before that date which would result in a contrary determination.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS, CONTACT: Shirl G. Kinney, Department of the Treasury, Room 1458, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, Telephone: (202) 566-9864.

SUPPLEMENTARY INFORMATION: The Treasury Acquisition Career System will allow the Treasury Procurement Executive to:

(1) Profile Treasury's procurement workforce;

(2) Identify procurement training needs;

(3) Determine qualifications for issuance of contracting officers' warrants;

(4) Identify intern positions and track individual progress;

(5) Monitor individual career development plans; and

(6) Assess program effectiveness.

This element of the career system will be implemented by the Department of the Treasury in response to the Office of Federal Procurement Policy (OFPP) Act, as amended (41 U.S.C. 401, et seq.) and Executive Order 12352. The Act (OFPP)

requires the head of each executive agency to "develop and maintain a procurement management program * * * to assure an adequate professional workforce." Executive Order 12352 further provides that such programs shall cover the full range of personnel management functions and result in a highly qualified, well-managed, professional procurement workforce. The Treasury Acquisition Career System is one element of the Procurement Career Development Program implemented by the Department of the Treasury in response to the OFPP Act and the Executive Order.

Additional information has not been added to TPIS or PERMITS as a result of TRAC. The existing data on Department-wide procurement personnel may at times be disclosed to Treasury contractors who may be engaged to assist Treasury in the performance of a function associated with TRAC and who need to have access to TRAC records in the performance of contract work. Although the contract provision of the Privacy Act (5 U.S.C. 522a(m)) requires appropriate wording in the contract for the maintenance of a system of records on behalf of the agency to accomplish an agency function, there may be instances when a disclosure to a contractor is required that may not be covered by the contract provisions of the Act. This routine use has been proposed for such an eventuality.

Disclosures under this proposed routine use are compatible with the Department's personnel management responsibility.

The TRAC data will be accessible only to the Treasury Procurement Executive and other Treasury procurement personnel who have the responsibility for managing Treasury's Career Development Program. Hard-copy files will be maintained in a locked cabinet. In addition, the TRAC records will be purged from TRAC upon an employee's separation from the procurement organization.

The system manager for TRAC is the Career Development Program Manager, Office of Procurement (MMK). The authority for maintenance of the system now also includes the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 401 et seq.) and Executive Order 12352 (March 17, 1982). The TRAC records will also be developed from Treasury procurement or personnel officials and training institutions, in addition to being furnished by the employees. All these minor changes have been reflected in the appropriate categories of the notice.

John F.W. Rogers,

Assistant Secretary of the Treasury (Management).

Treasury/OS.002

SYSTEM NAME:

Treasury Payroll Information System.

SYSTEM LOCATION:

The Treasury Payroll Information System and PERMITS systems are located at the ICC Building, 1201 Constitution Avenue, NW., Room 7329, Washington, DC 20220 and a contractor data processing facility, Johnstown Computing Resources, Inc., located at 90 Lulay Street, Johnstown, PA 15094. The Treasury Acquisition Career System is located at Main Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Current and former personnel data on all employees of the Treasury. (2) Payroll data on all Treasury employees except IRS. (3) Payroll data on Executive Offices of the President; Federal Emergency Management Agency; Federal Trade Commission; National Gallery of Art; National Labor Relations Board; Farm Credit Administration; Commodities Futures Trading Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

There are two basic components to the system, a personnel component (PERMITS Application) and a payroll component (TPIS), which provide current, year-to-date and historical data on the individuals covered by the system. The separate files in the system consist of payroll records, personnel records, and time and attendance records. Information contained in these records, include such data as:

(1) Employee identification and status data such as name, social security number, date of birth, sex, race and national origin designator, awards received, suggestions, work schedule, type of appointment, education, training courses attended, veterans preference, and military service.

(2) Employee date data such as service computation date for leave, date probationary period began, date of performance rating, and date of within grade increases.

(3) Position and pay data such as position identification number, pay plan, grade, step, salary and pay basis, occupational series, position skill codes, organization location and accounting classification codes.

(4) Payroll data such as earnings, e.g., overtime and night differential; deductions, e.g., Federal, State, and local taxes; bonds and allotments; and time and attendance data.

(5) Tables of data for editing, reporting, and processing any or all personnel pay actions. These include nature of action codes, civil service authority codes, standard remarks, signature table, position title table, financial organization table and salary table.

AUTHORITY FOR MAINTENANCE OF SYSTEM:

The Office of Personnel Management Manual, 50 U.S.C. App. 1705–1707; 31 U.S.C. and Departmental Circulars 115 and 830. The Department of the Treasury Fiscal Requirements Manual; 5 U.S.C. 301; FPM Letter 206–10, Office of Personnel Management; Federal Personnel Manual (Chapter 713 Subchapter 3A); the Office of Federal Procurement Policy Act, as amended (11 U.S.C. 101 et seq.) and Executive Order 12352 (March 17, 1982).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USE:

These records and information in these records may be used:

(1) To furnish the Internal Revenue Service and other jurisdictions which are authorized to tax the employee's compensation with wage and tax information in accordance with a withholding agreement with the Department of the Treasury pursuant to U.S.C. 5516, 5217, and 5520.

(2) To provide records to the Office of Personnel Management, Merit Systems Protection Board, Equal Employment Opportunity Commission, and General Accounting Office for the purpose of properly administering Federal Personnel systems or other agencies' systems in accordance with applicable laws, Executive Orders, and applicable regulations.

(3) To furnish another federal agency information to effect interagency salary offset; to furnish another federal agency information to effect interagency administrative offset, except that addresses obtained from the Internal Revenue Service shall not be disclosed to other agencies; to furnish a consumer reporting agency information to obtain commercial credit reports; and to furnish a debt collection agency information for debt collection services. Current mailing addresses acquired from the Internal Revenue Service are routinely released to consumer reporting agencies to obtain credit reports and to debt collection agencies for collection services.

(4) To disclose information to a Federal, State, local, or foreign agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit.

(5) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing Counsel or witnesses in the course of civil discovery, litigation or settlement negotiations in response to a subpoena, or in connection with criminal law proceedings.

(6) To disclose information to foreign governments in accordance with formal or informal international agreements.

(7) To provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

(8) To provide information to the news media in accordance with guidelines contained in 28 CFH 50.2 which relate to civil and criminal proceedings.

(9) To provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

(10) To provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1078, 5 U.S.C. 7111 and 7114.

(11) To provide wage and separation information to another agency such as the Department of Labor or Social Security Administration as required by law for payroll purposes.

(12) To provide information to a Federal, State, or local agency so that the agency may adjudicate an individual's eligibility for a benefit, such as a state unemployment compensation board, housing administration agency and Social Security Administration.

(13) To disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violation of, or for implementing a statute, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

(14) Disclosure of information about particular Treasury employees may be made to requesting Federal agencies or non-Federal entities under approved computer matching efforts, limited to only those data elements considered relevant to making a determination of eligibility under particular benefit programs administered by those agencies or entities or by the Department of Treasury or any constituent unit of the Department, to improve program integrity, and to collect debts and other monies owed under those programs (i.e., matching for delinquent loans or other indebtedness to the government).

(15) To provide information to Treasury contractors who may be engaged to assist Treasury in the performance of a function associated with TRAC and who need to have access to TRAC records in the performance of contract work. Contractors would be required to maintain the records in accordance with the requirements of the Privacy Act.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12) and section 3 of the Debt Collection Act of 1982; Debt information concerning a Government claim against an individual is also furnished, in accordance with 5 U.S.C. 552a(b)(12) and section 3 of the Debt Collection Act of 1982 (Pub. L. 97–385), to consumer reporting agencies to encourage repayment of an overdue debt.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic media, microfiche, and hard copy. Disbursement records are stored at the Federal Records Center. RETRIEVABILITY: Records are retrieved generally by social security number, position identification number within a bureau and region, or by name. Secondary identifiers are used to assure accuracy of data accessed.

SAFEGUARDS:

Entrance to data center is restricted to only those employees whose work requires them to be there for the system to operate. ID cards are verified to insure that only authorized personnel are present. Disclosure of information through remote terminals is restricted through the use of passwords and sign on protocols which are periodically changed. Reports produced from the remote printers are in the custody of personnel officers and are subject to the same privacy controls as other personnel documents of like sensitivity. Only the Treasury Procurement Executive and other Treasury procurement personnel with responsibility for managing Treasury's Career Development Program will have access to TRAC data. Hard-copy files will be maintained in a locked cabinet.

RETENTION AND DISPOSAL:

The Treasury Payroll Information System master file is kept on magnetic tape. Hard copies of reports are kept for a period of up to 3 years. Additional payroll data is maintained on microfiche. Employee records are retained in automated form as long as the employee is active on the system (separated employee records are maintained in an "inactive" status within PERMITS for 5 years). The master file is purged of inactive payroll records on a yearly basis. Files are purged in accordance with Treasury Directives Manual TD 80-05.5 "Records Disposition Schedule." Treasury Acquisition Career System automated and hardcopy records will be purged from TRAC upon the employee's separation from the procurement organization.

SYSTEM MANAGER AND ADDRESS:

The Treasury Payroll Information System (TPIS) and PERMITS System Manager is the Director, Office of Personnel/Payroll Systems, Department of the Treasury, Room 2426 Main Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. The TRAC System Manager is the Career Development Program Manager, Office of Procurement (MMK), Department of the Treasury, Room 1458 Main Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

NOTIFICATION PROCEDURES:

Individuals wishing to be notified if they are identified in this system or gain access to records maintained in the system must submit a request containing the following elements: (1) Identification of the records system; (2) identification of the category and types of records sought; (3) at least two items of identification (e.g., name and date of birth, employee identification number, date of employment or similar information). Address inquiries to Chief, Disclosure Branch, Department of the Treasury, Room 1015 Main Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

RECORD ACCESS PROCEDURES:

(See notification procedures above).

CONTESTING RECORD PROCEDURES:

(See notification procedures above).

RECORD SOURCE CATEGORIES:

The information contained in these records is provided by or verified by the subject of the record, supervisors, and

non-Federal sources such as private employers. TRAC records will also be developed from Treasury procurement or personnel officials and training institutions.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 87-17445 Filed 7-30-87; 8:45 am]

BILLING CODE 4810-25-M

Internal Revenue Service

Exempt Organizations Advisory Group; Open Meeting

The initial meeting of the Exempt Organizations Advisory Group will be held on Wednesday, September 16, 1987, from 1:00 p.m. to 5:30 p.m. and will continue on Thursday, September 17, from 9:00 a.m. to 3:00 p.m. The meeting will be held in Room M-09 of the Old Post Office Building (The Pavilion), 12th Street and Pennsylvania Avenue, NW., Washington, DC.

Agenda items for the meeting include discussions of the issues contained in proposed regulations under section 501(h) relating to lobbying by public charities and alternative approaches, administrative problems relating to unrelated business income tax compliance and reporting and ways to help solve them, Internal Revenue Code, provisions relating to churches and a determination of the proper role of the Service in interpreting and administering them, the status of proposed legislation affecting lobbying and political activities of charitable organizations, and future meetings and agenda topics.

The meeting on both days will be open to the public. Opportunity for public statements will be provided at the end of the meeting, or at other appropriate intervals, to the extent that time permits.

Brief written comments from members of the public of no more than two double-spaced pages relating to each announced agenda topic will be accepted by the Service for consideration as a discussion item by the Advisory Group. However, comments submitted previously regarding the proposed regulations under section 501(h) should not be resubmitted. Comments should be sent by August 14 to the Assistant Commissioner (Employee Plans and Exempt Organizations), Internal Revenue Service, Room 3408, 1111 Constitution Avenue, NW., Washington, DC 20224.

For additional information contact Robert I Brauer, Assistant Commissioner (Employee Plans and Exempt Organizations), telephone 202-566-3171 (not toll-free).

Lawrence B. Gibbs,

Commissioner.

[FR Doc. 87-17357 Filed 7-30-87; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 147
Friday, July 31, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., August 7, 1987.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Market Surveillance Briefing.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87-17519 Filed 7-29-87; 1:37 pm]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., August 11, 1987.

PLACE: 2033 K St., NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Applications of the Chicago Board of Trade for designation as a contract market in 100-ounce Gold futures and 5,000 ounce Silver futures contracts.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretay of the Commission.
[FR Doc. 87-17520 Filed 7-29-87; 1:37 pm]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., August 11, 1987.

PLACE: 2033 K St., NW., Washington, DC., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87-17521 Filed 7-29-87; 1:37 pm]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., August 14, 1987.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Market Surveillance Briefing.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87-17522 Filed 7-29-87; 1:37 pm]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., August 18, 1987.

PLACE: 2033 K St., NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Application of the New York Mercantile Exchange for designation as a contract market in Liquefied Propane Gas futures contracts.
New York Futures Exchange's Preannounced Trading Rules Submission.
Quarterly Objectives—First Quarter, FY 1988.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87-17523 Filed 7-29-87; 1:37 pm]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., August 18, 1987.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Quarterly Objectives
Enforcement Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87-17524 Filed 7-29-87; 1:37 pm]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., August 21, 1987.

PLACE: 2033 K St., NW., Washington, DC., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Market Surveillance Briefing.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87-17525 Filed 7-29-87; 1:37 pm]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., August 28, 1987.

PLACE: 2033 K St., NW., Washington, DC., 8th Floor Conference Room.

STATUS: Closed.

MATERS TO BE CONSIDERED:

Market Surveillance Briefing.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87-17526 Filed 7-29-87; 1:37 pm]
BILLING CODE 6351-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday, August 4, 1987 to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Applications for Federal deposit insurance:

Royal Thrift & Loan Company, an operating noninsured industrial bank located at 11107 West Olympic Boulevard, Los Angeles, California.

Shelton Savings Bank, an operating noninsured savings association located at 427 Howe Avenue, Shelton, Connecticut.

Great Western Savings Bank, a proposed new bank to be located at 191 Mamaroneck Avenue, White Plains, New York.

Applications for Federal deposit insurance and for consent to exercise trust powers:

Thomas McKinnon Bank and Trust Company, an operating noninsured limited purpose trust company located at 188 Route 10, East Hanover, New Jersey, for Federal deposit insurance and for consent to exercise limited trust powers.

Mitsui Trust Bank (U.S.A.), a proposed new bank to be located at One World Financial Center (200 Liberty Street), New York City (Manhattan), New York, for Federal deposit insurance and for consent to exercise limited trust powers.

Taiyo Kobe Bank and Trust Company, a proposed new bank to be located at 350 Park Avenue, New York City (Manhattan), New York, for Federal deposit insurance and for consent to exercise full trust powers.

Request for modification of a condition imposed in granting Federal deposit insurance:

The Merchant Bank of Atlanta, Atlanta, Georgia.

Application for consent to purchase assets and assume liabilities:

The First National Bank of Carmichaels, Carmichaels, Pennsylvania, for consent to purchase certain assets of and assume the liability to pay deposits made in the Washington Branch of Community Savings Association, Monroeville, Pennsylvania, a non-FDIC-insured institution.

Application for consent to merge and to establish one branch:

Merchants and Planters Bank, Raymond, Mississippi, an insured State nonmember bank, for consent to merge, under its charter and title, with The Merchants Bank, Bolton, Mississippi, Bolton, Mississippi, and for consent to establish the sole office of The Merchants Bank, Bolton, Mississippi, as a branch of the resultant bank.

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Report of the Director, Division of Liquidation:

Memorandum re:
Monthly Report of Actions Under Delegated Authority by the Committee on Liquidations, Loans and Purchases of Assets, June 1, 1987–June 30, 1987.

Memorandum re:
Report of Action Taken Under Delegated Authority

Reports of the Director, Office of Corporate Audits and Internal Investigations:

Audit Report re:
Mendon State Bank, Mendon, Illinois (2591) (Memo dated July 8, 1987)

Audit Report re:
United Bank of Minneapolis, Minneapolis, Kansas (2592) (Memo dated July 15, 1987)

Audit Report re:
Bossier Bank and Trust Company, Bossier City, Louisiana (2586) (Memo dated July 15, 1987)

Audit Report re:
New Mexico National Bank, Albuquerque, New Mexico (2578) (Memo dated July 8, 1987)

Audit Report re:
St. Joseph Consolidated Office, St. Joseph, Missouri, Cost Center (306) (Memo dated June 15, 1987)

Audit Report re:
Portland Consolidated Office, Portland, Oregon, Cost Center (602) (Memo dated July 8, 1987)

Discussion Agenda:

Status Report on the FDIC's Total Asset Purchase and Assumption Transactions as they regard failed banks.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Ms. Margaret M. Olsen, Deputy Executive Secretary of the Corporation, at (202) 898–3812.

Dated: July 28, 1987.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 87–17496 Filed 7–29–87; 12:13 pm]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Tuesday, August 4, 1987, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticpated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension of removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note: Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Recommendation regarding the Corporation's assistance agreement with an insured bank.

Discussion Agenda:

Applications for Federal deposit insurance:

Atico Bank, an operating noninsured institution located at 101 S.E. Second Avenue, Miami, Florida.

College Savings Bank, a proposed new bank to be located at 5 Vaughn Drive, West Windsor, New Jersey.

Applications for Federal deposit insurance and for consent to merge and to establish three branches:

First Security Bank of Maryland, Baltimore, Maryland, a proposed State nonmember savings bank, for Federal deposit insurance, for consent to merge, under its charter and title, with State Savings and Loan Association, Baltimore, Maryland, a noninsured State savings and loan association in organization which is to be a successor institution to Federal Savings Bank of Maryland, Baltimore, Maryland, a noninsured Federal savings bank, and for consent to establish the three existing branches of Federal Savings Bank of Maryland as branches of First Security Bank of Maryland.

Appeal from an initial denial of a request for records pursuant to the Freedom of Information Act and the Privacy Act of 1974.

Personnel actions regarding appointments, promotions, administatvie pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

Matters relating to the possible closing of certain insured banks:

Names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the

Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Ms. Margaret M. Olsen, Deputy Executive Secretary of the Corportation, at (202) 898–3812.

Dated: July 28, 1987.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 87–17499 Filed 7–29–87; 12:13 pm]

BILLING CODE 6714-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Friday, July 31, 1987.

The business of the Board requires that this meeting be held with less than one week's advance notice to the public, and no earlier announcement of the meeting was practicable.

PLACE: 20th Street and Constitution Avenue, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Date: July 29, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–17500 Filed 7–29–87; 12:13 pm]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, August 5, 1987.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of their routine nature, no substantive discussion of the following items is anticipated. These matters will be voted on without discussion unless a member of the Board requests that an item be moved to the discussion agenda.

1. Publication for comment of proposed revisions to the Board's Regulation F (Securities of State Member Banks).
2. Publication for comment of a proposed amendment to Regulation U (Credit by Banks for the Purpose of Purchasing or Carrying Margin Stocks) to exempt banks, when making loans of $100,000 or less, from executing Form U–1.
3. Proposed extension and revision of the bank merger form (FR 2070).
4. Proposed extension and revision of Notice of Change in Bank Control form (FR 2081).

Discussion Agenda

5. Proposed extension and revision of Forms FR 2083–2083E, Application for Membership in the Federal Reserve System.
6. Proposed amendments to Regulation E (Electronic Fund Transfers) regarding services initiated by non-account-holding financial institutions and processed through the automated clearing house system. (Proposed earlier for public comment; Docket No. R–0578)
7. Proposals regarding the Board's 1987 budget.
8. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Date: July 29, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–17488 Filed 7–29–87; 11:27 am]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 12:30 p.m., Wednesday, August 5, 1987, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board: (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: July 29, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–17489 Filed 7–29–87; 11:27 am]

BILLING CODE 6210-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [52 FR 27901 July 24, 1987].

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Tuesday, July 21, 1987.

CHANGE IN THE MEETING: Additional items.

The following additional items were considered at a closed meeting on Tuesday, July 28, 1987, at 2:30 p.m.

Formal order of investigation.
Status report of judical proceeding.
Post oral argument discussion.

Commissioner Peters, as duty officer, determined that Commission business required the above changes.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Patrick Daugherty at (202) 272–3077.

Jonathan G. Katz,

Secretary.

July 29, 1987.

[FR Doc. 87–17568 Filed 7–29–87; 3:56 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 52, No. 147
Friday, July 31, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 379 and 399

[Docket No. 70625-7125]

Revisions to the Export Administration Regulations Based on COCOM Review

Correction

In rule document 87-16372 beginning on page 27498 in the issue of Tuesday, July 21, 1987, make the following corrections:

1. On page 27501, in the second column, in the entry for item 1203A, in paragraph (c)(3), in the second line, "1,373k" should read "1,373K". In the same entry, in paragraph (d)(2), in the third line, "2,273k" should read "2,273K". In the same column, in the entry for item 1205A, in paragraph (a)(2)(i), in the last line, "297k" should read "297K".

2. On the same page, in the third column, in the fourth line from the bottom, "(a)(2)(i)" should read "(a)(2)(ii)".

3. On page 27504, in the first column, in the 15th line of text from the bottom, "bulldozers of" should read "bulldozers or".

4. On page 27504, in the second column, in the fourth line of text from the bottom, "4.2k" should read "4.2K".

5. On page 27505, in the second column, in the entry for item 1757A, in paragraph (e), in the fourth line, "99.00%" should read "99.99%".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 379 and 399

[Docket No. 70625-7126]

Revisions to the Export Administration Regulations Based on COCOM Review; Electronics and Precision Instruments

Correction

In rule document 87-16376 beginning on page 27505 in the issue of Tuesday, July 21, 1987, make the following corrections:

1. On page 27505, in the first column, in the first complete paragraph, in the seventh and eighth lines, "(two weeks after date of publication)" should read "August 4, 1987".

2. On the same page, in the third column, paragraph (a)(v) should read as follows:

* * * * *

"CO_2, CO or CO/CO_2 "lasers" having either of the following characteristics:."

* * * * *

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 399

[Docket No. 70624-7124]

Revisions to the Export Administration Regulations Based on COCOM Review; Electronic Component Assemblies

Correction

In rule document 87-16377 beginning on page 27512 in the issue of Tuesday, July 21, 1987, make the following corrections:

1. On page 27512, in the third column, in the seventh and eighth lines, "(two weeks after date of publication)" should read "August 4, 1987". In the 12th and 13th lines, "(four weeks after date of publication)" should read "August 18, 1987".

2. On page 27516, in the second column, in paragraph (r)(2)(A), "+0.1%" should read "±0.1%".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Benefits Review Board

20 CFR Parts 801 and 802

Organization of the Benefits Review Board and Rules of Practice and Procedure

Correction

In rule document 87-16139 beginning on page 27288 in the issue of Monday, July 20, 1987, make the following corrections:

1. On page 27289, in the second column, in paragraph "l8", in the sixth line, "8-120" should read "B-120".

2. On page 27290, in the first column, in the first paragraph, in the fifth line, "15 U.S.C. 553" should read "5 U.S.C. 553".

§ 801.2 [Corrected]

3. On the same page, in the second column, in § 801.2(a)(2), in the sixth line, "33 FR 90" should read "38 FR 90".

BILLING CODE 1505-01-D

federal register

Friday
July 31, 1987

Part II

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 9, 44, and 52

Federal Acquisition Regulation (FAR); Debarment and Suspension Procedures; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 9, 44, and 52

Federal Acquisition Regulation (FAR); Debarment and Suspension Procedures

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council (CAAC) and the Defense Acquisition Regulatory Council (DARC) are considering changes to the FAR concerning debarment and suspension procedures. Among other things, the revisions would extend debarment and suspension ineligibility to subcontracting, require a certification of eligibility prior to contract or subcontract award, and render contractors ineligible for award Governmentwide upon issuance of a Notice of Proposed Debarment.

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before September 28, 1987 to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th and F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 87–24 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Telephone (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Background

On June 24, 1982, Office of Federal Procurement Policy (OFPP) Letter 82–1 was issued to promote uniform, Governmentwide debarment and suspension procedures. The provisions of the policy letter were implemented within the Defense Acquisition Regulation and the Federal Procurement Regulations and, in 1984, within their successor, the Federal Acquisition Regulation (FAR).

Based upon several years of experience in operating under FAR implementing regulations and pursuant to a study conducted by the General Accounting Office (GAO/NS AD–87–37BR; February 1987), it has been determined that certain revisions are warranted to strengthen debarment and suspension procedures in the public interest while further promoting the Governmentwide uniformity envisioned by OFPP Policy Letter 82–1. The proposed rule would accomplish these objectives by the following revisions:

1. Current provisions in the FAR provide that a contractor proposed for debarment is ineligible for award, pending a final debarment determination, only within the Federal agency proposing debarment. This enables a seriously nonresponsible contractor to continue to receive contract awards from other Federal agencies until a debarment decision is rendered. Consistent with recommendations made by the GAO in its report to Congress, above, the proposed rule provides for Governmentwide ineligibility upon issuance of a Notice of Proposed Debarment by any Federal agency, until such time as a final determination is made concerning a contractor's status. In addition, contractors proposed for debarment would be listed on the Consolidated List of Debarred, Suspended, and Ineligible Contractors, maintained by GSA pursuant to FAR 9.403.

2. By statute, Government contracting officers may award contracts only to responsible contractors. In order to obtain information necessary for these determinations, several agencies require that prospective contractors render a certification concerning their eligibility for award and provide other information pertinent to responsibility. For example, since 1980 GSA has utilized a certification similar to that under consideration (see 48 CFR 552.209–71). The certification used by GSA was approved by OMB under the Paperwork Reduction Act. Recently, DoD published in the Federal Register on Thursday, March 6, 1986 (51 FR 7837), a proposed rule prescribing a certificate for use in DoD procurements, and comments received have been considered in drafting the proposed FAR rule which will provide a uniform certificate for use by all Federal agencies. The certificate requirement is consistent with guidelines recently promulgated by OMB for agency use in nonprocurement actions and published in the Federal Register on Friday, May 29, 1987 (52 FR 20360).

3. In those cases where subcontracts are made subject to Government consent, current regulations preclude Federal agencies from consenting to subcontracts with firms which are debarred or suspended, or which have been otherwise declared ineligible for award of subcontracts. The proposed rule would extend this policy of debarment/suspension ineligibility to all subcontracts exceeding $25,000 under Federal prime contracts in addition to those contracts made specifically subject to Government consent. The proposed rule includes a flowdown provision and contract clause for verbatim insertion in subcontracts, requiring a certification of eligibility status by prospective subcontractors, upon which higher-tier contractors may rely, unless they have knowledge to the contrary.

4. The proposed rule would enable a debarring or suspending official to simultaneously debar or suspend a contractor from the award of acquisition contracts and from the purchase of Federal personal property under Federal Property Management Regulation 101–45.6. Such coverage is proposed to eliminate dual exclusionary actions.

5. The proposed rule would revise and clarify the definition of affiliation to reflect indicia currently used by the Small Business Administration. Additionally, the definition of contractor has been revised to encompass contracts for carriage under Government and commercial bills of lading. Several other conforming and editorial changes have been made for consistency and clarity.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 et seq. An Initial Regulatory Flexibility Analysis has been prepared and submitted to the Chief Counsel for Advocacy of the U.S. Small Business Administration. The analysis concludes that the certification requirement will not have a significant economic impact because it does not require professional skills for completion, entail recordkeeping requirements, or concern information not normally available to small entities in the ordinary course of business. However, to simplify contract procedures for small purchases and subcontracts not exceeding $25,000, many of which involve small firms, no certification requirement has been imposed for those contract actions.

With respect to exclusion of debarred or suspended firms from subcontracting, and provisions extending ineligibility upon issuance of a Notice of Proposed Debarment, it has not been deemed appropriate nor feasible to establish differing criteria in the case of small entities. However, the number of small

entities who will be affected by these provisions is not deemed substantial, as: (1) Prime contractor purchasing practices generally tend to exclude debarred or suspended firms from acting as subcontractors; (2) Current regulations exclude such firms when prime contracts contain consent to subcontract provisions; and (3) Fewer than 1200 firms of all sizes are currently listed on the Consolidated List as debarred or suspended; available information suggests that the majority of those firms derived their primary Government revenues from direct, prime contractor relationships with the Government.

A copy of the Initial Regulatory Flexibility Analysis may be obtained from the FAR Secretariat, Attn: Margaret A. Willis, Room 4041, GS Bldg., 18th & F Sts., NW., Washington, DC 20405. Comments are invited. Comments from small entities concerning the affected FAR subparts will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite FAR Case 87–610 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) is deemed to apply because the proposed rule contains recordkeeping or information collection requirements with respect to certain aspects of the proposed certification. Accordingly, an approval for paperwork clearance has been requested and submitted to the Office of Management and Budget under 44 U.S.C. 3501, et seq. Public comments concerning this request will be invited through a subsequent **Federal Register** notice.

List of Subjects in 48 CFR Parts 9, 44, and 52

Government procurement.

Dated: July 27, 1987.

Lawrence J. Rizzi,

Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Parts 9, 44, and 52 be amended as set forth below:

1. The authority citation for Parts 9, 44, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 9—CONTRACTOR QUALIFICATION

2. Section 9.400 is amended by revising paragraph (a)(2) to read as follows:

9.400 Scope of subpart.

(a) * * *

(2) Provides for the listing of contractors debarred, suspended, proposed for debarment, and declared ineligible (see the definition of "ineligible" in 9.403); and

* * * * *

3. Section 9.402 is amended by revising paragraph (c) and by adding paragraph (d) to read as follows:

9.402 Policy.

* * * * *

(c) When more than one agency has an interest in the debarment or suspension of a contractor, consideration shall be given to designating one agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their debarment or suspension actions.

(d) Agencies shall establish appropriate procedures to implement the policies and procedures of this subpart.

4. Section 9.403 is amended by adding alphabetically the definition "Civil Judgment" and by revising the definitions "Affiliates", "Consolidated List of Debarred, Suspended, and Ineligible Contractors", and "Contractor" to read as follows:

9.403 Definitions.

"Affiliates." Business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly, (a) either one controls or has the power to control the other, or (b) a third party controls or has the power to control both. Indicia of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the suspension or debarment of a contractor which has the same or similar management, ownership, or principal employees as the suspended or debarred contractor.

* * * * *

"Civil judgment" means a judgment or finding of a civil offense by any court of competent jurisdiction.

"Consolidated List of Debarred, Suspended, and Ineligible Contractors" means a list compiled, maintained, and distributed by the General Services Administration, in accordance with 9.404, containing the names of contractors debarred, suspended, or proposed for debarment by agencies under the procedures of this subpart, as well as contractors declared ineligible under other statutory or regulatory authority.

"Contractor," as used in this subpart, means any individual or other legal entity that (a) submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, a Government contract, including a contract for carriage under Government or commercial bills of lading, or a subcontract under a Government contract or (b) conducts business with the Government as an agent or representative of another contractor.

* * * * *

5. Section 9.404 is amended by revising paragraphs (a)(1), (b)(1), (b)(4), and (c)(4); by redesignating the existing paragraph (b)(6) as (b)(7); and by adding a new paragraph (b)(6) to read as follows:

9.404 Consolidated List of Debarred, Suspended, and Ineligible Contractors.

(a) * * *

(1) Compile and maintain a current, consolidated list of all contractors debarred, suspended, proposed for debarment, or declared ineligible by agencies or by the General Accounting Office;

* * * * *

(b) * * *

(1) The names and addresses of all contractors debarred, suspended, proposed for debarment, or declared ineligible, in alphabetical order, with cross-references when more than one name is involved in a single action;

* * * * *

(4) The effect of the action;

* * * * *

(6) The DUNS No.; and

* * * * *

(c) * * *

(4) In accordance with internal retention procedures, maintain records relating to each suspension, debarment, or proposed debarment taken by the agency;

6. Section 9.405 is amended by revising paragraph (a); by revising the second sentence in paragraph (b); and by adding paragraph (c) to read as follows:

9.405 Effect of listing.

(a) Contractors debarred, suspended, or proposed for debarment are excluded from receiving contracts, and agencies shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors, unless the acquiring agency's head or designee determines that there is a compelling reason for such action (see 9.405–2,

9.406–1(c), and 9.407–1(d)). Contractors debarred, suspended or proposed for debarment are also excluded from conducting business with the Government as agents or representatives of other contractors.

(b) * * * Agencies shall not solicit offers from, award contracts to, consent to, or authorize subcontracts with these contractors under those conditions and for that period.

(c) Contractors debarred, suspended, or proposed for debarment are excluded from receiving subcontracts exceeding $25,000 unless the acquiring agency's head or designee states in writing that there is a compelling reason for such action (see 9.405–2, 9.406–1(c), and 9.407–1(d)).

7. Section 9.405–1 is revised to read as follows:

9.405–1 Continuation of current contracts.

(a) Notwithstanding the debarment, suspension, or proposed debarment of a contractor, agencies may continue contracts or subcontracts in existence at the time the contractor was debarred, suspended, or proposed for debarment unless the acquiring agency's head or a designee directs otherwise. A decision as to the type of termination action, if any, to be taken should be made only after review by agency contracting and technical personnel and by counsel to ensure the propriety of the proposed action.

(b) Agencies shall not renew current contracts, consent to subcontracts or waive the prohibition against entering into subcontracts with contractors debarred, suspended, or proposed for debarment or otherwise extend their duration, unless the acquiring agency's head or a designee states in writing the compelling reasons for renewal or extension.

8. Section 9.405–2 is revised to read as follows:

9.405–2 Restrictions on subcontracting.

When a contractor debarred, suspended, or proposed for debarment is proposed as a subcontractor for any subcontract in excess of $25,000, contracting officers shall not consent to or waive the prohibition against entering into subcontracts with such contractors unless the acquiring agency's head or a designee states in writing the compelling reasons for this approval action. (See 9.405(b) concerning declarations of ineligibility affecting subcontracting.)

9. Section 9.406–1 is amended by revising paragraph (c) and by adding paragraph (d) to read as follows:

9.406–1 General.

* * * * *

(c) A contractor's debarment, or proposed debarment shall be effective throughout the executive branch of the Government, unless an acquiring agency's head or a designee states in writing the compelling reasons justifying continued business dealings between that agency and the contractor.

(d)(1) When the debarring official has authority to debar contractors from both acquisition contracts pursuant to this regulation and contracts for the purchase of Federal personal property pursuant to the Federal Property Management Regulations (FPMR) 101–45.6, that official shall consider simultaneously debarring the contractor from the award of acquisition contracts and from the purchase of Federal personal property.

(2) When debarring a contractor from the award of acquisition contracts and from the purchase of Federal personal property, the debarment notice shall so indicate and the appropriate FAR and FPMR citations shall be included.

10. Section 9.406–2 is amended by revising the introductory text of paragraph (a); by revising paragraph (b); and by redesignating paragraph (c) as (b)(2) to read as follows:

9.406–2 Causes for debarment.

(a) The debarring official may debar a contractor for a conviction of or civil judgment for—

* * * * *

(b) The debarring official may debar a contractor, based upon a preponderance of the evidence, for—

(1) Violation of the terms of a Government contract or subcontract so serious as to justify debarment, such as—

(i) Willful failure to perform in accordance with the terms of one or more contracts; or

(ii) A history of failure to perform, or of unsatisfactory performance of, one or more contracts.

* * * * *

11. Section 9.406–3 is amended by revising paragraph (b)(2); by revising the introductory text of paragraph (c); and by revising paragraphs (c)(6) and (c)(7) to read as follows:

9.406–3 Procedures.

* * * * *

(b) * * *

(2) In actions not based upon a conviction or civil judgment, if it is found that the contractor's submission in opposition raises a genuine dispute over facts material to the proposed debarment, agencies shall also—

* * * * *

(c) *Notice of proposal to debar.* A notice of proposed debarment shall be issued by the debarring official advising the contractor and any specifically named affiliates, by certified mail, return receipt requested—

* * * * *

(6) Of the effect of the issuance of the notice of proposed debarment; and,

(7) Of the potential effect of an actual debarment.

12. Section 9.406–4 is amended by revising the third sentence in paragraph (a) and by revising paragraph (c)(2) to read as follows:

9.406–4 Period of debarment.

(a) * * * The period of the proposed debarment, or of any prior suspension, shall be considered in determining the debarment period.

* * * * *

(c) * * *

(2) Reversal of the conviction or civil judgment upon which the debarment was based;

* * * * *

13. Section 9.407–1 is amended by adding paragraph (e) to read as follows:

9.407–1 General.

* * * * *

(e)(1) When the suspending official has authority to suspend contractors from both acquisition contracts pursuant to this regulation and contracts for the purchase of Federal personal property pursuant to FPMR 101–45.6, that official shall consider simultaneously suspending the contractor from the award of acquisition contracts and from the purchase of Federal personal property.

(2) When suspending a contractor from the award of acquisition contracts and from the purchase of Federal personal property, the suspension notice shall so indicate and the appropriate FAR and FPMR citations shall be included.

14. Section 9.408 is added to read as follows:

9.408 Certification regarding debarment, suspension, proposed debarment and other responsibility matters.

(a) When an offeror, in compliance with the clause at 52.209–5, Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters, indicates an indictment, charge, civil judgment, conviction, suspension, debarment, proposed debarment, ineligibility, or default of a contract, the contracting officer shall—

(1) Request such additional information from the offeror as the

contracting officer deems necessary in order to make a determination of the offeror's responsibility (but see 9.405); and

(2) Notify, prior to proceeding with award, in accordance with agency procedures (see 9.406–3(a) and 9.407–3(a)), the agency official responsible for initiating debarment or suspension action, where an offeror indicates the existence of an indictment, charge, conviction, or civil judgment.

(b) Offerors who do not furnish the certification or such information as may be requested by the contracting officer shall be given an opportunity to remedy the deficiency. Failure to furnish the certification or such information may render the offeror nonresponsible.

15. Section 9.409 is added to read as follows:

9.409 Contract clause.

The contracting officer shall insert the clause at 52.209–5, Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters, in solicitations and contracts other than those conducted using small purchase procedures of Part 13.

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

16. Section 44.102 is amended by adding paragraph (c) to read as follows:

44.102 Policy.

* * * * *

(c) Contractors debarred, suspended, or proposed for debarment are precluded from award of a subcontract in excess of $25,000 (see 9.405–2) by operation of the clause at 52.209–5, Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters, unless the acquiring agency's head or a designee states in writing the compelling reasons for such a subcontract.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

17. Section 52.209–5 is added to read as follows:

52.209–5 Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters.

As prescribed in 9.409, insert the following clause:

Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters (Jul 1987)

(a)(1) The Offeror certifies, to the best of its knowledge and belief, that—

(i) The Offeror and/or any of its Principals—

(A) Are ( ) are not ( ) presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have ( ) have not ( ), within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or, commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; and

(C) Are ( ) are not ( ) presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this clause.

(ii) The Offeror has ( ) has not ( ), within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(2) "Principals", for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER TITLE 18, UNITED STATES CODE, SECTION 1001.

(b) The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A certification that any of the items in paragraph (a) of this clause exist will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror nonresponsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this clause. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The Contractor shall not knowingly enter into any subcontract under this contract expected to exceed $25,000 with a subcontractor debarred, suspended, or proposed for debarment, or declared ineligible for the award of subcontracts, by any Federal agency, unless authorized by the Contracting Officer.

(f) The Contractor may rely upon the certification of a prospective subcontractor, that it is not debarred, suspended, or proposed for debarment, or declared ineligible for award of subcontracts, by any Federal agency, unless it has knowledge that the certification is erroneous.

(g) Except for awards authorized under paragraph (e) of this clause, if the Contractor knowingly enters into a subcontract expected to exceed $25,000 with a subcontractor debarred, suspended, or proposed for debarment, or declared ineligible for the award of subcontracts, the Contracting Officer may terminate this contract for default.

(h) The certification in paragraph (a) of this clause is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate this contract for default.

(i) The Contractor agrees that it shall include the following clause, without modification, in all solicitations and subcontracts expected to exceed $25,000:

Certification Regarding Debarment, Suspension, Proposed Debarment and Ineligibility—Subcontractors (Date)

(1) The Offeror/Contractor, by submission of an offer and/or execution of a contract, certifies to the best of its knowledge and belief, that the Offeror/Contractor is not presently debarred, suspended, or proposed for debarment, or declared ineligible for the award of subcontracts, by any Federal agency,

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER TITLE 18, UNITED STATES CODE, SECTION 1001.

(2) The Offeror shall provide immediate written notice if, at any time prior to subcontract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(3) The Contractor shall not knowingly enter into any subcontract under this contract expected to exceed $25,000 with a subcontractor debarred, suspended, or proposed for debarment, or declared ineligible for the award of subcontracts, by any Federal agency, unless authorized by the Government Contracting Officer. The Contractor may rely upon the certification in paragraph (i)(1) above provided by a subcontractor, unless it has knowledge that the certification is erroneous.

(4) Except for awards authorized under paragraph (i)(3) of this clause if the

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Contractor knowingly enters into a subcontract expected to exceed $25,000 with a subcontractor debarred, suspended, or proposed for debarment, or declared ineligible for the award of subcontracts, by any Federal agency, the Government Contracting Officer may direct, through higher-tier contractors, cancellation of this contract at no cost to the Government.

(5) The certification in paragraph (i)(1) of this clause is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Government Contracting Officer may direct, through higher-tier contractors, cancellation of this subcontract at no cost to the Government.

(6) The Contractor agrees to insert this clause, without modification, including this paragraph (i)(6), in all solicitations and subcontracts expected to exceed $25,000.

(End of clause)

[FR Doc. 87-17353 Filed 7-30-87; 8:45 am]

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Friday
July 31, 1987

Part III

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 413, 430, and 447
45 CFR Parts 1 and 19
Medicare and Medicaid Programs; Limits on Payments for Drugs; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 413, 430 and 447

45 CFR Parts 1 and 19

[BERC-356-F]

Medicare and Medicaid Programs; Limits on Payments for Drugs

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This rule eliminates current Departmental procedures for setting limits on payments for drugs supplied under certain Federal health programs; and revises Medicaid rules concerning the methodology for determining upper limits for drug reimbursement. This rule enables the Federal and State governments to take advantage of savings that are currently available in the marketplace for multiple source drugs. It also maintains State flexibility in the administration of the Medicaid program.

EFFECTIVE DATE: The regulations are effective October 29, 1987. State agencies have 90 days from the publication date of this regulation until the effective date in which to submit a State plan amendment and the required attachment.

FOR FURTHER INFORMATION CONTACT: Anthony Lovecchio, (301) 594-4010.

SUPPLEMENTARY INFORMATION:

I. Background

A. Existing System

In 1976, the Department implemented drug reimbursement rules at 45 CFR Part 19 under the authority of statutes pertaining to upper payment limits for Medicaid and other programs. The authority to set an upper payment limit for services available under the Medicaid program is provided under section 1902(a)(30)(A) of the Social Security Act.

The Department rules are intended to ensure that the Federal government acts as a prudent buyer of drugs under certain Federal health programs. The rules set limits on payments for drugs supplied under Medicaid and other programs. Of the Federal programs involved, these rules have the greatest impact on the Medicaid program. Specifically, these regulations provide that the amount the Department recognizes for drug reimbursement or payment purposes will not exceed the lowest of—

- The maximum allowable cost (MAC) of the drug, as established by HCFA's Pharmaceutical Reimbursement Board for certain multiple source drugs (generic drugs), plus a reasonable dispensing fee;
- The estimated acquisition cost (EAC) of the drug (the price generally and currently paid by providers for a particular drug in the package size most frequently purchased by providers), as determined by the program agency, plus a reasonable dispensing fee; or
- The provider's usual and customary charge to the public for the drug.

The regulations provide that the MAC will not apply if the prescriber has certified in his own handwriting that a specific brand of that drug is medically necessary for the patient.

The regulations at 45 CFR Part 19 also establish within HCFA a Pharmaceutical Reimbursement Board (PRB). The PRB identifies multiple source drugs for which significant amounts of Federal funds are or may be expended and is responsible for establishing the MAC for those drugs. The process by which a MAC is established includes PRB consultation with the Food and Drug Administration (FDA), opportunity for public comment on a proposed notice of the MAC limit published in the **Federal Register**, a public hearing, and publication of the final MAC determination in the **Federal Register**. The PRB sets the MAC at the lowest unit price at which the drug is widely and consistently available. In addition to limiting the level of payment for multiple source drugs, the MAC program tends to promote substitution of lower cost (generic) drug products for brand-name drugs, since the latter are frequently available only at prices higher than the MAC limits.

Similar to the Department regulations (45 CFR Part 19) that set limits to Federal payments for drugs are the Medicaid regulations at 42 CFR 447.331 through 447.334. The regulations at §§ 447.331 through 447.334 limit the amounts that State Medicaid agencies may claim for Federal matching purposes under the Medicaid program. These limits are the same as those specified in 45 CFR Part 19. Thus, the Medicaid agency must claim no more for each drug than the lowest of —

- The MAC of the drug, as established by the HCFA PRB for certain multiple source drugs, plus a reasonable dispensing fee;
- The EAC of the drug (that is, the Medicaid State agency's best estimate of the price generally paid by providers) plus a reasonable dispensing fee; or
- The provider's usual and customary charge to the public for the drug.

The Medicaid regulations also provide that the MAC will not apply if the prescriber has certified in his own handwriting that a certain brand of that drug is medically necessary for the patient.

B. Problems and Concerns

In 1983, a Departmental Task Force was established to review the Department's drug reimbursement regulations at 45 CFR Part 19. Specific concerns presented to the Task Force included—

- The quality of multiple source drugs;
- The interpretation of "widely and consistently available" as related to the process used by the PRB in setting MAC limits;
- The adequacy of drug reimbursement; and
- Problems in administering the MAC and EAC programs (for example, the short time that the Medicaid agencies have to implement MAC limits once they become effective, and the lack of a mechanism for raising the MAC limits quickly when necessary due to changes in the market).

We agree that the process of approving a MAC for a specific drug is lengthy. This has been of concern particularly since the passage of the Drug Price Competition and Patent Term Extension Act of 1984 (Pub. L. 98-417). This law streamlines the FDA approval process for certain drugs. The result of this law is that therapeutically equivalent (generic) drugs will be coming into the marketplace more quickly than in the past. As evidenced by the current MAC program, we are interested in encouraging the use of therapeutically equivalent drugs. We would like to adopt a Medicaid drug policy that would allow us promptly to adjust payment upper limits to reflect the availability of new drug equivalents as they enter the marketplace.

Based on the concerns addressed above and the Department's desire to take advantage of savings that are currently available in the marketplace for multiple source drugs, we published a Notice of Proposed Rulemaking (NPRM) on August 19, 1986 (51 FR 29560). The NPRM announced proposed revisions to our procedures for establishing upper limits for drug payments and provided a 30-day public comment period. On September 18, 1986, we published a second notice in the **Federal Register** (51 FR 33086) announcing an extension of the comment period, the availability of new data to anyone wishing to perform an

independent review and analysis, and clarifications to the proposal.

II. Provisions of the Proposed Regulations

We proposed to remove the Departmental rules at 45 CFR Part 19 that limit drug reimbursement under certain Federal health programs including Medicaid, Medicare, Public Health Service (for example, Indian Health Services), and other Departmental grantees. We proposed the removal of these rules because they have little impact upon programs other than Medicaid and because similar rules exist in the Medicaid regulations. In the NPRM, we noted that to the extent that specific limits are useful for those other programs, other authorities exist for applying the limits.

We also proposed three alternative approaches to the current Medicaid rules (42 CFR 447.331 through 447.334) regarding upper limits for drug reimbursement and invited public comment on all three as well as suggestions for alternatives which would improve any of the three, including possible combinations of options. The three approaches were intended to enable the Medicaid program to take advantage of the savings available in the marketplace for therapeutically equivalent multiple source drugs. We proposed that all three approaches would be subject to "physician override". This means that the upper limits established for multiple source drugs would not apply if the prescribing physician certifies that a brand name drug is medically necessary.

We stated that under the final rule, which would adopt one of these approaches, State agencies would be required for purposes of Federal financial participation (FFP) to adhere to the upper limits set by the adopted approach. However, in accordance with State flexibility in the administration of the Medicaid program, a State agency would be permitted to utilize an alternative drug reimbursement system if aggregate payments under that system would not exceed the upper limits set by the adopted approach. Specifically, the maximum amount of State drug expenditures that would qualify for FFP could not exceed, in the aggregate, the upper limit of payment for certain drugs described in listings established by HCFA under the approach adopted under the final rule.

The three approaches are discussed below and include the Pharmacists' Incentive Program, a proposed revision of the existing MAC program, and the Competitive Incentive Program.

A. Pharmacists' Incentive Program (PhIP)

As proposed, PhIP would have replaced the current Federal MAC program for multiple source drugs. Other drugs would continue to be paid the EAC or the provider's usual and customary charge to the general public, whichever is lower.

We proposed to base PhIP on a specific formula that would establish payment levels above which Federal financial participation (FFP) would not be recognized. A PhIP limit would be established only for those multiple source drugs for which: (1) All of the formulations of the drug approved by FDA have been evaluated as therapeutically equivalent; and (2) at least three suppliers advertise the drug (which has been classified by the FDA as category "A" in the FDA's therapeutic equivalence evaluations publication) in either the *Red Book* or *Blue Book*, whichever we would choose to use. We proposed that the PhIP limit be set at 150 percent of the lowest priced multiple source drug advertised in the *Red Book* or *Blue Book*, whichever is lower. Thus, the pharmacist could be reimbursed the ingredient costs of a drug at 150 percent of the lowest priced multiple source drug plus the State-established dispensing fee. In order to ensure that the PhIP upper limits for multiple source drugs would be reasonable for extremely low cost and high cost drugs, we proposed to set minimum and maximum markups. We proposed a minimum markup of $1.50 over the cost of the least costly advertised drug product and a maximum markup of $4.00 over the cost of the least costly advertised drug product. While PhIP would reimburse drug ingredients at a rate that is slightly above the lowest cost at which they may be obtained, it would have the advantages of being easily administrable (once drug prices are obtained), easily updated for new drug prices, and likely to produce substantial savings for the Medicaid program.

B. Revisions to the MAC Program

We alternatively proposed to apply MAC limits to drugs purchased under the Medicaid program using a revised process. Under that process, we proposed to eliminate the PRB and to streamline the procedures for establishing MAC limits for selected multiple source drugs. Other drugs would continue to be paid for at the EAC plus a dispensing fee, or the provider's usual and customary charge to the general public, whichever is lower.

We proposed that the MAC program be operated directly by HCFA rather than under a special board. We also proposed to continue to use much of the current process for establishing MAC limits. We would continue to publish the proposed MAC limits in the **Federal Register**; utilize a comment period; and after considering all of the comments, publish the final notice in the **Federal Register**. However, the process would be shortened by not conducting a public hearing before the PRB and eliminating the requirement for specific PRB consultation with FDA for each drug.

We proposed three new requirements that we would consider before establishing a MAC limit. The first requirement would be that all of the formulations of the drug approved by the FDA have been evaluated as therapeutically equivalent. The second requirement would be that at least three suppliers advertise the drug (which has been classified by the FDA as category "A" in the FDA's therapeutic equivalence evaluations publication) in the *Red Book* or *Blue Book*. Finally, we specified that we would expect to reduce total State and Federal Medicaid expenditures by at least $50,000 annually for any drug for which a MAC limit is to be established.

We specified in the proposed regulations that we would survey drug wholesalers for assurances that they: (1) Are carrying the multiple source products at or below the proposed MAC limits; or (2) would carry the products in the event that limits are established. We also stated that, initially, we would conduct surveys to determine the prices at which the multiple source drugs that meet the MAC criteria are widely and consistently available.

In order to provide some flexibility in the MAC limits, we proposed to waive specific MAC limits in a State upon the State Medicaid agency's request and demonstration that the volume of the drug in that State is too low to justify administering the limit or that there are availability problems in that State for that particular product under the MAC limit. We also proposed to suspend or raise temporarily a MAC limit if the product becomes unavailable at or below the limit.

C. Competitive Incentive Program (CIP)

As proposed, CIP would have replaced the current MAC and EAC programs. Under CIP, the starting point for establishing an upper limit for reimbursement for all drugs would be the price that the pharmacy charges private retail customers for that drug, at that time, and in that quantity. Because

CIP payment would be based on the pharmacist's retail charge, Medicaid would participate in the retail pharmaceutical market in a way similar to that of a pharmacy's non-Medicaid customer or third party payor. CIP would depend upon the competitive market place to regulate prices.

Under CIP, we proposed to apply a mandatory discount to the pharmacist's retail charge and a screen of charges to protect the Medicaid program from excessive charges. The mandatory discount on leading brand name drugs would be greater than the discount applied to other drugs. Thus, an incentive would be created for the pharmacist to use non-brand multiple source drugs (generics). We proposed that the mandatory discount on leading brand name and multiple source drugs would apply only to certain drugs. These would be drugs for which: (1) All of the formulations of the drug approved by the FDA have been evaluated as therapeutically equivalent; and (2) at least three suppliers advertise the drug (which has been classified by the FDA as category "A" in the FDA's therapeutic equivalence evaluations publication) in the *Red Book* or *Blue Book*.

In the notice published on September 18, 1986, we clarified the proposal and proposed further alternatives relating to the screen of charges under CIP.

III. Discussion of Comments

We received approximately 123 timely items of correspondence in response to the proposed notice. The commenters represented trade associations, manufacturers, State pharmacy associations, State agencies and drug stores. In general, comments were negative to portions of all three proposals. For example, regarding the CIP proposal, 35 of the 39 State agencies responding indicated that CIP would be costly from an administrative viewpoint. Regarding PhIP, some State agencies questioned the use of the *Red Book* and *Blue Book*, stating that average wholesale prices listed in these publications are often overstated. With respect to the MAC proposal, commenters indicated that the MAC rate setting process would remain a time consuming and burdensome process.

After review of all comments and further deliberation within the Department, we decided that prescribing a preferred payment method would be unnecessary and counterproductive. Instead, we decided that encouragement of State flexibility is the most important aspect of reform in terms of avoiding disruption and bringing drug payments into conformance with the flexibility we allow States for other Medicaid services. In addition to this general conclusion, each option had significant weaknesses.

We have decided to eliminate the PhIP, CIP and MAC revisions as proposed. We decided to eliminate the MAC requirements because of the commenters and our concerns that the MAC rate setting process is too lengthy and time consuming. We determined that MAC would not achieve timely budget savings, simplified program administration, or increased State flexibility in the design and operation of drug payment systems.

We did not implement CIP as discussed in the NPRM due to the consensus expressed by many State agencies regarding administrative costs and implementation problems. However, in the context of State flexibility, we are allowing State agencies to use the CIP concept of competitive pricing should the State select this option.

For the purpose of determining an aggregate limit to State spending (but not as a payment method for individual prescriptions), we are adopting that part of PhIP that relates to the formula concept for setting upper limits for multiple source drugs because it is the least burdensome administratively for HCFA and the State agencies, responds to changes in drug pricing so that Medicaid program payments will reflect savings achievable from lower price multiple source drugs, and is readily updated. Furthermore, by setting an aggregate limit for multiple source drugs, we believe that we can provide more than adequate flexibility to States to use payment standards that reflect the prices and availability of particular drugs. Additionally, as we stated in the NPRM, based on a study of the 60 entities that would be listed initially, we can be assured of an adequate supply of the product at or below the limit. We note that this list of 60 entities includes those drugs for which a current MAC limit has been established.

A summary of the comments and our responses to them follows.

A. State Flexibility

Comment: The predominant themes expressed by the commenters were: The proposed rules were unnecessarily intrusive; the Medicaid State agencies should be allowed to design and develop their own payment systems, in order to respond to State-specific marketplace economics; and, Federal regulations should be kept to a minimum. Commenters were concerned that unnecessary Federal regulation would restrict price competition and stifle State innovation in the area of payment policies and practices. Further, commenters were concerned that the proposals would limit the ability of State agencies to monitor timely changes in drug availability, costs and usage patterns, as well as the ability to react to these changes. The commenters indicated that these issues are problems experienced by State agencies under the current regulations and expressed the desire to avoid continued Federal intrusion into existing programs that have proven to be cost-effective and innovative.

Response: Although it was not readily apparent judged by the tenor of the comments, we had intended to provide State Medicaid agencies with increased flexibility through the proposed rule. We proposed to establish an upper limit standard that would permit a State agency to design and operate, or maintain the current operation of, its own payment system. The responsibility of the State agency would be to make a finding that the maximum amount of State drug expenditures that would qualify for FFP could not exceed, in the aggregate, the upper limit payment level established by HCFA under the final rule. This approach would allow State agencies to maintain control over their pharmaceutical reimbursement programs while providing the Federal government needed oversight and control of expenditures. In order to clarify our intent, we are revising the language we had proposed.

Comment: Several commenters argued that HCFA could save $324 million in combined State and Federal expenditures for prescription drugs between 1986 and 1990 as the result of patents expiring on several drugs, and that no regulatory action was, therefore, necessary to achieve our savings objectives.

Response: As discussed in section V.E.3. of this preamble, implementing the 150 percent aggregate limit on listed drugs is estimated to save approximately $270 million over the next five years, taking into account drugs coming off patent and allowing for physician certification of brand named products as being medically necessary. We doubt whether States and HCFA would be assured of realizing those savings, or the savings that commenters estimate, without the kind of limits we are implementing in this rule. We believe that these limits will not operate to constrain dispensing or pricing behavior and it is both appropriate and necessary to establish upper payment limits in order to ensure that program payments reflect the savings available

from lower cost therapeutically equivalent drugs.

B. State Plans

Comment: Many commenters thought that if a State agency wished to use an alternative payment system to the one that would be established as the upper limit standard, the agency would have to secure a program waiver under the provisions of section 1915 of the Act. The perception was that this process was very rigorous and entailed considerable State efforts for justifying the waiver.

Response: It was our intent that, regardless of whether a State agency follows the approach established by HCFA or uses an alternative drug payment system, a State agency would not be required to obtain a program waiver. The NPRM proposed a process under which a State agency would be free to establish any payment system it would choose (except when freedom of choice or provider contracting is involved which would then require a waiver). The State agency must describe the methodology in its State plan which is subject to the usual State plan approval process.

Because the proposed language regarding the State plan approval process caused some confusion, we are revising it to make clear that drug payment methodologies must conform to all State plan requirements as must any other service. Under this final rule, we are clarifying that all State agencies are required to: (1) Describe comprehensively the agency's payment methodology for prescription drugs in its State plan; (2) make two findings, one for therapeutically equivalent multiple source drugs and one for all other drugs, through mathematical computation, analysis and comparison to determine that the payment levels under its payment methodology will not exceed the payment levels that would result from the application of the system promulgated by HCFA as the upper limit; (3) make an assurance to us that it has made such findings; and (4) maintain and make available to HCFA, upon request, documentation to support the finding.

The agency's assurance will serve as the basis for the approval of the State plan. The agency findings will be monitored through State assessments and other evaluations or auditing procedures to review the State documentation underlying the assurance without the need for specialized annual reporting by the States. Consistent with other aspects of the Medicaid program, if HCFA finds a problem with a State's assurance, HCFA can request the State to provide data to support its assurance and, if appropriate, HCFA will disallow FFP or consider whether the State ought to be subject to the statute's compliance procedures.

C. Implementation of PhIP or CIP

Comment: Many commenters expressed confusion or raised questions about the absence of operational details for PhIP and CIP. States were particularly concerned about the significant changes that would occur in current operations (for example, data collection, programming modifications, payment screens, monitoring price changes) and accompanying costs, to implement PhIP or CIP.

Response: We deliberately did not include specific technical details in the NPRM because the objective of the proposals was to establish a methodology for setting a standard for Medicaid upper payment limits for purposes of FFP. We did not intend to set forth or describe the intricate details of a particular payment system. Nonetheless, we did set forth a sufficient amount of technical detail to allow commenters to identify potential problems and solutions, and we took these into account in reaching the final decision. We do not intend to impose unnecessary or expensive operational requirements on States. Rather, it was our intent to permit State agencies to exercise maximum flexibility in designing a payment system subject only to the maximum payment levels established by this regulation.

D. Availability and Quality of Drugs

Comment: Several commenters wrote requesting that we demonstrate that the availability and quality of drugs would not be adversely affected under the proposed Medicaid drug reform alternatives.

Response: It is our belief that the application of the 150 percent upper limit standard that we are adopting for certain multiple source drugs will yield a payment level that will be great enough to assure widespread availability of drug products. Furthermore, because we are implementing aggregate upper limit standards on the State's Medicaid payments (expenditures) for drugs, a State will have the ability to make payment at levels above the specific standard for certain drugs, provided that the agency makes the payment at levels below the specific standard for other drug products. This added State flexibility will virtually guarantee widespread availability of all affected drugs provided that the State agency can determine that in the aggregate for those drugs, the State achieved savings equal to or greater than the HCFA upper limit standard.

In reference to the quality of those multiple source drugs to which we will apply the 150 percent markup, we believe that the FDA assurance that all of the formulations it has approved have been evaluated as therapeutically equivalent in the most current edition of their publication "Approved Drug Products with Therapeutic Equivalence Evaluations" is adequate.

E. Additional Compendia

Comment: One commenter requested inclusion of its publication, which is a national compendium of drug cost information, among the publications that will be used in determining the upper limit payment for multiple source drugs.

Response: We agree with the commenter that publications other than the *Red Book* and *Blue Book*, which were the only sources we proposed to use, can be used. Thus, we are revising the regulations. The final rules will state that in determining the upper limit payment levels for multiple source drugs, we will select from all available national compendia of drug cost information that reflect drug prices and availability on a national level. As we publish these upper limits in State Medicaid program issuances, we will identify the source of our drug price information. We periodically will publish these upper limits in our *Medicaid Manual* to assure comprehensive knowledge of upper limits for multiple source drugs and to reduce the need for State agencies to do independent research and computation

F. Dispensing Fees

Comment: Several commenters suggested that either we delete the requirement in current regulations for State surveys of dispensing fee costs or require State agencies to update these fees in a periodic manner.

Response: In the interest of State flexibility and to avoid imposing unnecessary Federal procedural requirements as to how State agencies establish such fees, we are deleting the current requirement at § 447.333 regarding dispensing fees. State agencies will still be required to determine reasonable dispensing fees or, if dispensing fees are not paid separarely, to impute an amount equivalent to a reasonable dispensing fee, in order to include those amounts in the calculations and comparisons they make to meet the upper limit standard for FFP. We expect that most States will continue their present activities to establish a reasonable dispensing fee

level and will document these and any new activities in their State plan. Such activities could include: (1) Audits and surveys of pharmacy operational costs; (2) compilation of data regarding professional salaries and fees; and, (3) analysis of compiled data regarding pharmacy overhead costs, profits, etc.

G. Use of "Smart Cards" and "Vouchers"

Comment: Several commenters suggested that HCFA adopt the use of a "smart card" or "voucher" payment system for payment of prescription drug claims. These commenters indicated that these systems would save significant amounts of expenditures.

Response: As we noted in the preamble to the NPRM, the use of a voucher or bank draft payment (smart card) system by State agencies was not one of the issues addressed in the proposal to establish upper payment limits. The methodology of determining an upper limit for prescription drug payments was the subject of the NPRM, not the claims payment process. The use of a voucher or "smart card" claims payment system is something which State agencies may do at present. If State agencies determine that such a system to process claims is workable, efficient and more cost-effective than their current system, and that system meets Medicaid program requirements, then, indeed, we encourage the individual agencies to adopt such a claims payment system.

H. Physician's Override

Comment: Several commenters recommended that we delete the physician override requirement while one State agency recommended that we strengthen the requirement.

Response: We are retaining the physician override requirement as proposed in the NPRM. This requirement is a safeguard that assures that the physician can select the drug that is medically necessary and best suited for his or her patient. This means that the upper limits established for specific (listed) multiple source drugs will not apply if the prescribing physician certifies that a brand name drug is medically necessary. These payments will not be included in the calculation for compliance with the upper limit for multiple source drugs. Instead, in these instances, the upper limit for all other (non-listed) drugs will apply. As under current regulations, a State agency may choose to elaborate and be more stringent regarding this standard if it chooses.

I. Acceptable Upper Limit Assurance

Comment: Several State agencies asked for guidance in making annual findings regarding the upper limit determinations and in deciding what constitutes an adequate assurance regarding the upper limit determinations when proposing State plan amendments.

Response: We are requiring in the final rule two findings. We are requiring an annual finding relating specifically to the multiple source drugs which HCFA will identify through Medicaid program issuances.

We also are requiring a separate triennial finding relating to the category of "other drugs".

The finding for the listed multiple source drugs will confirm that the agency's payment rates for these drugs do not exceed the aggregate payment levels determined by applying the upper limit formula plus a dispensing fee. The finding for the category of "other drugs" will confirm that a State agency's aggregate expenditures for these drugs under their chosen payment methodology, will not exceed aggregate payment under the EAC criteria that are retained for this rule. (Under this rule, the EAC criteria are applied as an upper limit on an aggregate basis rather than on a prescription by prescription basis.) The findings for both the listed multiple source drugs of "other drugs" can be supported by any documented acceptable method of sampling, imputation and statistical analysis that the State agency uses in making its determination. The State agency will then make an assurance to HCFA that it has made the required findings. That assurance to HCFA will constitute a presumption of validity of the findings and will serve as the basis for approval of the State plan.

J. Phase-In Upper Limit Standard for Multiple Source Drugs

Comment: One State agency recommended that the upper limit standard for multiple source drugs consist of between 15–20 specific limits established at 30 day intervals. The agency is concerned about having sufficient lead time for wholesalers and pharmacies to adjust inventories to comply with the upper limit standard.

Response: We believe that we are providing an adequate period of time for these adjustments to occur. These regulations are effective October 29, 1987. This allows State agencies 90 days from the date of publication to the effective date of these final regulations in which to submit their plan amendment and required attachment.

K. Impact Analysis

Comment: Several commenters criticized us for not providing sufficient detail in our impact analysis to permit a comparison of the relative effects of the three alternatives presented in the NPRM. In particular, one commenter stated that we failed to support our contentions that all three proposals would reduce "disruptions" of drugs to retail outlets and achieve substantial savings through encouraging the use of low cost generic substitutions.

Response: As we explain in section V. of this preamble, the combination of having to analyze an extremely complex industry with very little data makes it difficult to formulate a comprehensive empirically grounded impact analysis. Based on the information available to us at the time of the NPRM, we did not expect any of the three proposals offered in the NPRM to have an annual effect on the economy of $100 million or more. Thus, we were not required under Executive Order 12291 to propose an impact analysis. Yet, because we were concerned, at the time the NPRM was published, that one or more of the proposals might have an annual effect of $100 million or more, and because we expected our proposals to generate considerable public debate, we voluntarily prepared an analysis that met the criteria of the Executive Order.

Comment: One commenter claimed that in our impact analysis, we failed to evaluate the effects of our proposals on the research and development of new drugs.

Response: It is far from clear to us what impact our proposals would have on the research and development of new drugs. These proposals are attempts on our part to take advantage of the competitive forces at work in the marketplace.

Companies that develop new drugs are provided protection under patent from competition for a certain period of time during which they may charge prices high enough, presumably, to recover their development costs associated with the drug in question or to subsidize the research and development costs of other drugs. Once the patent expires, however, other pharmaceutical firms may copy the drug, and once approved by the FDA, they may market the same drug and set their own price. Our proposals were designed to take advantage of this competition among drugs that are no longer under patent and not intended to prevent the development of new drugs. We were merely seeking to participate in the market as prudent buyers.

L. Application to Medicare

Comment: One commenter specifically requested clarification that the alternative selected by the Department for the final rule would not apply to the Medicare program and that hospitals and hospital-based skilled nursing facilities would be exempt under Medicare.

Response: As we stated in the NPRM, we are deleting the references to the MAC program contained in the Medicare regulations concerning allowable costs for drugs. (In the NPRM, we noted that we would delete § 405.433. However, that regulation has since been redesignated and is now located at § 413.110. Thus, in this final rule, we are deleting § 413.110.) The upper limits for drugs contained in this final rule pertain only to the Medicaid program. They do not apply to hospitals and hospital-based skilled nursing facilities under Medicare.

IV. Provisions of the Final Regulations

In this final rule, we have attempted to: (1) Respond to the public comments on the NPRM; (2) provide maximum flexibility to the States in their administration of the Medicaid program; (3) provide responsible, but not burdensome Federal oversight of the Medicaid program; and, (4) take advantage of savings resulting from the availability of less costly, but safe and effective, generic drug substitutes.

To accomplish this, we are drawing from various aspects of the proposals. The Federal upper limit standard we are adopting for certain multiple source drugs is based on the application of a specific formula similar to that described in the NPRM. The upper limit for other drugs is similar to that in the NPRM in that it retains the EAC limits as the upper limit standard that State agencies must meet. However, this standard is applied on an aggregate rather than on a prescription specific basis.

We want to emphasize that as a result of our adopting aggregate limits as the upper limit standards, State agencies are encouraged to exercise maximum State flexibility in establishing their own payment methodologies. We do not intend that our adoption of the formula approach to set limits for multiple source drugs be construed as an indicator of the Federally preferred payment system. The use of the formula approach is primarily due to the straight-forward application and administrative ease in setting upper limits. We encourage State agencies to establish any program that will substitute lower-priced alternatives for drugs. We hope that the State agencies will be innovative in these programs and find ways to assure the availability at reasonable prices of multiple-source drugs. One way they could do this would be to encourage retail pharmacy participation in the Medicaid program by permitting them to retain profits from the sale of listed drugs to Medicaid recipients. Other alternative payment systems could include, for example, contracting on a competitive basis for pharmaceutical services with selected pharmacies to which recipients may go for drugs without incurring a copayment or a system which entails charge screens and/or mandatory discounts. Additionally, State agencies may initiate or retain already existing so-called "mini-MAC" programs, which they have established on specific drugs either at levels lower than those established under the current Federal MAC limits or on drugs not now covered by MAC limits. This system of aggregate upper limits will allow State agencies to alter payment rates for specific listed drugs without first having to obtain permission from HCFA. The agencies then will be able to respond rapidly to sudden price fluctuations, which may threaten the supply of specific drugs on the HCFA list, without having to pursue a cumbersome approval process. A final advantage of the aggregate limit methodology is the ease of administration at the Federal level and the lack of administrative burden on State programs.

A. Multiple Source Drugs

The Federal upper limit standard that we have adopted for certain multiple source drugs is based on an aggregate payment amount equal to an amount that includes the ingredient cost of the drug calculated according to the formula described below and a reasonable dispensing fee. HCFA will determine to which drugs the formula will be applied. The listing of these drugs and any revisions to the list will be provided to State agencies through Medicaid program issuances on a timely, periodic basis (possibly semi-annually). The effective date of the new prices will be subsequent to the issuance of the listing. As did the NPRM, the final rule will specify that the drugs to which this formula will be applied must have been evaluated as therapeutically equivalent by the FDA. Similar to the NPRM, the final rule will specify that at least three suppliers list the drug in a national compendium. The NPRM stated that three suppliers would advertise the drug in the *Red Book* or *Blue Book*.

The formula to be used in calculating the upper limit of payment for certain multiple source drugs will be 150 percent of the least costly therapeutic equivalent that can be purchased by pharmacists in quantities of 100 tablets or capsules (or if the drug is not commonly available in quantities of 100, the package size commonly listed), or in the case of liquids, the commonly listed size. As we stated in the NPRM, we chose the markup of 150 percent in order to meet the following two objectives: (1) That the markup be high enough to assure that pharmacists can normally obtain and stock an equivalent product without losing money on acquisition costs of incurring the expense of departure from normal purchasing channels, and (2) that the markup not be so high as to cost the Medicaid program unnecessary money. In other words, the 150 percent is intended to balance the interests of both pharmacists and the government in achieving efficiency, economy and quality of care as specified in section 1902(a)(30) of the Act.

In the NPRM, we stated that we would use the *Red Book* or *Blue Book* to determine the least costly therapeutic equivalent that can be purchased by pharmacists. In this final rule, however, we are deleting the reference to these specific sources and are specifying that we will publish and use the list of all current editions (or updates) of acceptable published drug compendia available for sale nationally. Although State agencies will need to calculate or impute a dispensing fee (if they do not pay for the dispensing fee separately) in order to determine if they meet the upper limit standard for certain multiple source drugs, we are deleting the current § 447.333 that recommends how agencies are to establish the dispensing fee.

As originally proposed under all options, this final rule will provide that if a physician certifies that a brand name drug is medically necessary, the upper limit for payment based on the formula will not apply. The upper limit for payment of "other drugs" (discussed in section IV.B) will apply.

In the future, the formula approach to setting an upper limit will be evaluated. We are aware of several State agencies now in the process of negotiating competitive bids for discounts or rebates from drug manufacturers and suppliers. Other agencies are considering selective contracting with providers or pharmacies (preferred provider organizations). Additionally, the interaction of competitive pricing and creative marketing may cause dynamics in the market that would necessitate a revision of our policy. Thus, we will monitor the implementation of this

policy, as well as the various payment systems used by State agencies and the dynamics of the marketplace, in order to make timely revisions to the policy for Medicaid upper limits for drug payments.

B. Other Drugs

In this final rule, we specify that the agency payment for certified brand name drugs and drugs other than multiple source drugs for which a specific limit has been established must not exceed, in the aggregate, the level of payment calculated by applying the lower of (1) the EAC plus a dispensing fee; or (2) the provider's usual and customary charges to the general public.

Under these rules, the Federal requirement for States to use the EAC method of payment will be eliminated. However, because the rule merely establishes an upper limit concept and does not describe the specific methodology for payment, State agencies may continue their practice of establishing EACs for the ingredient costs and adding to it a dispensing fee. Such practices will be acceptable, as will a system of establishing charge/payment screens based on Statewide or regional customary and usual prices.

The State's findings in regard to whether the Statewide aggregate upper limit test is met must demonstrate that aggregate payments do not exceed payment as calculated under the EAC principles.

C. State Plan Requirements, Findings and Assurances

We are revising the proposed language concerning State agency assurances regarding drug payment systems. We are clarifying that all agencies, regardless of the payment system used, will be required, in accordance with § 447.333(b)(1) of this final rule, to make two separate and distinct findings that expenditures for listed multiple source drugs on the one hand, and for all other drugs on the other, under their payment methodology will not exceed the upper limits established by HCFA. All State agencies will be required to maintain the supporting documentation and to provide HCFA with an assurance that they have made the required findings.

We note that we also have changed the requirements for findings and assurances to differ with regard to each drug category. We will require an annual finding for multiple source drugs and a triennial finding for all other drugs. The findings for multiple source drugs will be required at least annually because the State agencies efforts will be directed primarily at comparing State payments, in the aggregate, to the maximum ingredient costs published by HCFA. However, for all other drugs, State agencies will first have to determine the estimated acquisition costs before making comparisons on the aggregate basis. It is because of the various activities States will need to pursue in order to make the findings for all other drugs that we are requiring that this be done at least every three years. We anticipate that the triennial findings and assurances for all other drugs will lessen the administrative/reporting burdens on State agencies and maintain a level of accountability for purposes of FFP.

Apart from the initial plan submission, and subsequent assurances, an agency, which has determined that it is adopting a new methodology or making significant changes in its payment rates or to its existing system, will be required to provide HCFA with the requisite State plan amendments and the assurance that it has made the necessary findings.

D. Other Changes

As proposed, this final rule will remove the Departmental rules at 45 CFR Part 19 that limit drug reimbursement under certain Federal health programs. These rules have little impact upon programs other than Medicaid, and the Medicaid regulations concerning upper limits for drug payments are being revised under this final rule. We also are deleting cross references to 45 CFR Part 19 contained in 42 CFR 430.0(b)(2)(ii) and 45 CFR 1.2, and the reference to MAC limits in 42 CFR 413.110.

V. Regulatory Impact Statement

A. Introduction

Executive Order (E.O.) 12291 requires us to prepare and publish a final regulatory impact analysis for any final regulation that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in: An annual effect on the the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The local character of retail pharmaceutical markets, the large number of parties that participate in those markets, the variety of products sold, the numerous distribution channels through which these products flow, and a general lack of data adequately describing these various aspects of the market all make it extremely difficult for us to determine how and to what degree this final rule will affect market participants. For these reasons, we cannot say with any degree of certainty whether this rule will meet or exceed the Executive Order's criteria for a major rule. However, because of its controversial nature, we are providing a regulatory impact analysis.

In addition, we generally prepare a final regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a final regulation will not have a significant economic impact on a substantial number of small entities. Although the most direct effect of this rule will be on States, States are not small entities under the RFA. The economic size of Medicaid participating retail pharmacies range from large national corporate chains to small independent single-owner outlets. Yet because retail pharmaceutical markets appear to be largely local in nature, retail pharmacies operate in these markets as small entities. For purposes of the RFA, therefore, we consider pharmacies to be small entities. Other entities that may be affected by this final rule, for example, wholesale distributors and manufacturers, also may qualify as small entities under the RFA, but are more likely to participate in regional or national markets, and thus, are more likely to take on the characteristics of large firms. For this reason, plus the fact that this rule is not explicitly directed at these other entities or expected to affect them directly, we are not considering them as small entities for purposes of this rule.

B. Objectives

Through promulgation of this final rule, we hope to achieve several objectives we view as essential for providing acceptable care to Medicaid recipients and for increasing the efficiency with which pharmaceutical products and services are delivered to recipients. These objectives are to:

- Establish simple, administrable methods of applying two separate and distinct upper limits on State Medicaid expenditures: one for certain therapeutically equivalent multiple source drugs, and one for all other drugs.
- Promote wider and more efficient distribution of pharmaceutical products and services, and avoid potential disruptions in the supply of drug

products that appear to be a major drawback of the present method of reimbursing retail pharmacists under the MAC program.

• Conserve scarce Federal and State resources through encouraging the more judicious purchasing of pharmaceuticals on behalf of Medicaid recipients, thus achieving some budget savings, while preserving or enhancing current levels of service.

In pursuing these objectives, we also wish to give State agencies the incentive to encourage prudent purchasing practices on the part of retail pharmacists and foster price competition among wholesale suppliers and manufacturers of multiple source drugs.

C. Impact on State Agencies

The aggregate payment limit on HCFA listed drugs as well as the general limit on sole-source and non-listed multiple source drugs, afford State agencies wide latitude in developing their own payment schemes to suit local conditions and unusual circumstances that may arise from time to time. For example, State agencies may retain already existing so called "mini-MAC" programs, which they have established on specific drugs either at levels lower than those established under the Federal MAC limits or on drugs not now covered by MAC limits. Also, under the aggregate limits, State agencies are free to experiment with alternative payment systems, for example, letting contracts on a competitive basis for pharmaceutical services with selected pharmacies to which recipients may go for drugs without incurring a copayment, or systems identical or similar to PhIP or CIP. This system will also allow States to alter payment rates for specific listed drugs without first having to obtain permission from HCFA. States then will be able to respond rapidly to sudden price fluctuations which may threaten the supply of specific drugs on the HCFA list without having to pursue a cumbersome approval process. A final advantage of the aggregate limit methodology is ease of administration at the Federal level and the lack of administrative burden on State programs.

D. Small Entities Affected

The drug industry is highly complex and multi-layered, with a variety of manufacturing, distribution, and retail sales arrangements that not only differ according to geographic location, but also vary by product. Further, under the Medicaid program, the immediate payor (that is, the State) is distinct from the purchaser (usually the recipient) or the orderer (the physician), both of whom are key decision makers for each specific purchase of drugs. These rules will directly affect only the State, and even then, these rules do not control the option available to the State, but establish limits on the extent that we will share in the State's overall expenditures for covered drugs. It is each State's actions, taken in some measure in response to these upper limits, that will in turn affect other parties.

As a result, it is difficult for us to clearly identify the entities affected by these regulations, and nearly impossible to fix the magnitude of any impact. At best, we can only identify broad categories of small entities that may be affected in some fashion by this rule, such as retail drug outlets and pharmacists, wholesale drug distributors, and manufacturers.

Through requiring States to establish programs to make payments which reflect the availability of lower cost alternatives when three or more therapeutically equivalent generic alternatives are available, this rule will affect the behavior of retail pharmacists who receive Medicaid payments. As a result of the response of pharmacists to State programs, we expect there to be effects on drug manufacturers and wholesale distributors. Also, it is conceivable that this rule might make physicians more aware of the availability of low cost generic drugs that could be substituted for higher cost leading brand drugs, and thus produce changes in physician prescribing practices. Furthermore, by making payments more prudent, we hope to affect Medicaid recipients positively by improving the States' and Federal government's financial ability to provide for needed services.

E. Expected Impact of Limits Placed on Listed Drugs

1. Increased State Flexibility

As described in section IV of this preamble and in §§ 447.332(a) and 447.331 of the rule, HCFA will prescribe aggregate upper limits on certain therapeutically equivalent multiple-source drugs we determine to be readily available, and on sole source and other multiple-source drugs. The limit for readily available drugs is to be based on 150 percent of the lowest known price for each drug on the list. The limit for sole source and other multiple-source drugs will be based on the amounts paid by other payors. Since we are setting separate aggregate limits on what we are calling "listed drugs" and on "other drugs", States will be free to make payments for individual drugs on any reasonable basis as long as total payments for each group of drugs do not exceed the aggregate limit on that group. This approach should help avoid disruptions in the supply of listed drugs in circumstances in which acquisition costs may exceed the listed price used in establishing the HCFA limits.

State agencies should determine, independent of the 150 percent formula, appropriate payment levels for the listed multiple-source drugs. We would not expect a State agency to adopt directly the upper limit methodology as a payment method because it does not gear payments to markups appropriate to the actual costs of acquiring and dispensing these drugs. Under these final regulations, State agencies will be able to make higher payments for some listed drugs as long as they pay at rates lower than those listed for other drugs on the list. By providing this measure of flexibility, we expect that State agencies will be able to ensure that listed drugs will be generally available to recipients.

As a counterpart to allowing State agencies the freedom to set their own minimum price floor on drugs in order to cover pharmacists' ingredient costs, they also have the authority to set an upper limit on the mark-up of specific drugs on the HCFA list. Since we are not placing maximum payment limits on individual drugs, drugs with high compendia prices could generate extremely high payment levels. Unless an agency's payment methodology ensured otherwise, a Medicaid agency could end up paying inappropriately high rates for some drugs while still being in compliance with the aggregate upper limit. Nevertheless, we believe States may establish maximum payment limits in order to offset the minimum payment levels necessary to ensure reasonable compensation for very low priced drugs.

Similarly, State agencies may employ essentially the same approach in meeting the limits for all other drugs. That is, the same principal of balancing payment increases for some drugs with decreases for other drugs also applies in determining whether aggregate payments exceed the limit. For reasons of economy, availability, or therapeutic efficacy, a State agency may want to raise or lower the amount it pays for certain drugs in efforts to influence the supply of specific drugs. Under the aggregate limit methodology any change in payments above or below the lower of the EAC or customary charges for specific drugs must be balanced with a corresponding reduction or increase in payments for other drugs within the all "other" drug payment category.

2. Possible Effects on Wholesale Distributors and Manufacturers

In the previous section, we discussed the possible effects of building into our rates for ingredients a profit margin for pharmacists. We expressed the hope that States would recognize the advantage of providing pharmacists with an incentive to participate in the Medicaid program and to stimulate pharmacists to engage in prudent purchasing practices and the substitution of lower cost therapeutically equivalent products.

In addition to these effects, we believe that our method of calculating the aggregate upper limit on payment to States may have consequences for other sectors of the industry: In particular on wholesalers and manufacturers. Although these entities may not fit the definition of small entities as discussed section V.A. of this preamble, nevertheless the manner in which this initiative affects these entities may have an impact on pharmacies and on our ability to manage the program.

By using the lowest compendia price for a drug as the benchmark for our listed drug rates, the low price supplier may be encouraged to raise its published price to a point just below the next higher price. Other drug wholesalers and manufacturers may tend to lower their published prices so the range of published prices would begin to narrow and cluster around the low end of the price scale We would expect to see such pricing patterns develop only for those drugs which had sizable portions of their total sales among Medicaid recipients. However, we suspect that price competition would be carried on in the form of discounts, promotional campaigns and other incentives aimed at the retail pharmacists.

Such tactics would work to the advantage of both retail druggists and wholesalers. Retail pharmacists would gain by being able to purchase drugs at prices below the HCFA list price, while wholesalers could gradually push the benchmark price upwards without loosing sales. Although, historically, it has been the large retail outlets that have benefited the most from wholesale discount practices, if adopted by a substantial number of State agencies, our policy of using published prices as a basis for determining payment levels may cause wholesalers to invent new ways of offering discounts to the smaller independent retail outlets, thereby expanding the practice of discounting to those outlets and enabling them to have access to less expensive sources of pharmaceuticals. The drawback is that neither State programs nor the Federal Medicaid program will benefit from such reductions in wholesale prices.

3. Savings

Based on current State spending for prescription drugs, and the potential for savings to be gained from drugs currently under patent losing their protection, we estimated savings to the Federal government over the next five fiscal years from implementing an aggregate upper limit on readily available multiple source drugs to be $270 million. (This assumes that the aggregate limits on listed multiple source drugs would be applied to payments for at least 60 drugs which we identified for purposes of applying the proposed PhIP limits in the NPRM.) Our savings estimates also incorporate a factor to account for physicians exercising their privilege of specifying a particular brand in accordance with § 447.331(c). The following table shows the Federal savings by fiscal year (FY), and assumes that actual implementation of the provisions at the State level will begin April, 1988.

FEDERAL SHARE OF MEDICAID—DRUG SAVINGS

[Rounded to the nearest $5 million]

FY 1988	FY 1989	FY 1990	FY 1991	FY 1992
$30	$60	$60	$60	$60

These savings estimates are at the limits presented in this rule and represent only the Federal portion, and while we generally calculate the States share of any savings to be about 62 percent of the Federal share (assuming the average FFP rate to be 55 percent), State savings or additional Federal savings will largely depend on the plans State Medicaid agencies adopt in response to the Federal upper limit.

F. Alternatives Considered

In the NPRM, we proposed three alternative payment schemes for reimbursing pharmacy costs of providing drugs and pharmacy services to Medicaid recipients. Two of the proposals, the PhIP and reformed MAC program, were efforts to strengthen our policies on payments for readily available generic drugs, while the third proposal, CIP, was designed as an all inclusive payment scheme that would cover both multiple and single source drugs.

In evaluating the three alternatives, we considered comments and the availability of resources to implement the proposed alternatives. It became clear almost immediately, that of the three alternative presented, implementation of CIP would be the most problematic. Several obstacles proved insurmountable. These were:

- The added cost of implementing CIP for multiple source drugs appeared to be considerable. Based on comments received and our own research, the administrative costs were estimated to be about $7 million to implement CIP nationally.
- We could not determine the impact of CIP because of the lack of reliable data on retail drug charges.
- CIP could not be implemented quickly.

Our reasons for rejecting the reformed version of the MAC program had to do largely with our conclusion that even with the reforms we were proposing, the program would still prove to be too cumbersome to enable us to respond to the rapidly changing drug market.

Thus, by a process of elimination, the Federal upper limit for selected therapeutically equivalent multiple source drugs is based on an aggregate payment amount equal to the ingredient cost of the drug calculated according to the 150 percent markup formula plus the dispensing fee established by the State agency. The upper limit for all other drugs is an aggregate upper limit that does not exceed the limit as calculated under the EAC principles.

G. Conclusions

We recognize that we have presented a somewhat limited discussion of the potential effects this rule may have on States and other entities. As we have pointed out, there are many reasons for our inability to present a more thorough analysis. The complex market structures that operate at national, regional and local levels, the proprietary and highly competitive nature of these markets, and the combined effects of different participants (States, pharmacies, physicians, recipients, distributors, manufacturers) interacting with one another create analytical problems that are beyond our capacity to analyze. The flexibility provided the States means that a variety of payment systems or methods will be used subject to the established payment standards noted in this final rule. We cannot predict with

any certainty what decisions the States will make over time, particularly as they experiment with new and improved payment methods.

We do, however, recognize that the establishment of the two upper limits described in section IV of this preamble represents only a partial solution to the problems of drug availability, increased efficiency in the allocation of resources, retail pharmacists satisfaction with payment levels, and the provision of adequate pharmacy services to Medicaid recipients. Each State agency will evolve its own payment methodology and solutions to local problems. Each State agency will have to identify and decide on the trade-offs it wishes to make with the understanding that some of the side effects of a particular payment method may be counter productive with respect to achieving stated objectives.

VI. Paperwork Requirements

Section 447.333 of this rule contains information collection requirements. The public is not required to comply with the information collection requirements until the Executive Office of Management and Budget approves these requirements under section 3507 of the Paperwork Reduction Act (44 U.S.C. 3507). A notice will be published in the **Federal Register** when approval is obtained. Comments on the information collection requirements should be sent directly to Allison Herron, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

List of Subjects

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 430

Grant programs-health, Medicaid.

42 CFR Part 447

Accounting, Administrative practice and procedure, Grant programs-health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, Rural areas.

45 CFR Part 1

Organization and functions.

45 CFR Part 19

Administrative practice and procedure, Drugs, Health care, Health maintenance oganizations, Medicare.

42 CFR Chapter IV is amended as set forth below:

I. 42 CFR Part 413 is amended as set forth below:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES

A. The authority citation continues to read as follows:

Authority: Secs. 1102, 1122, 1814(b), 1815, 1833(a), 1861(v), 1871, 1881, and 1886 of the Social Security Act as amended (42 U.S.C. 1302, 1320a–1, 1395f(b), 1395g, 1395l(a), 1395x(v), 1395hh, 1395rr, and 1395ww).

B. The table of contents for Subpart F is amended by removing § 413.110.

§ 413.110 [Removed]

C. Section 413.110 is removed.

II. 42 CFR 430.0 is amended as set forth below:

PART 430—GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS

1. The authority for Part 430 continues to read as follows:

(Sec. 1102 of the Social Security Act (42 U.S.C. 1302))

§ 430.0 [AMENDED]

2. In § 430.0(b)(2)(ii), the reference to "Part 19—Limitations on Payment or Reimbursement for Drugs" is removed.

III. 42 CFR Part 447 is amended as set forth below:

A. The authority for Part 447 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302) unless otherwise noted.

B. The table of contents is amended by adding a new § 447.301 and by revising the entries for §§ 447.331 through 447.333 as follows:

PART 447—PAYMENTS FOR SERVICES

* * * * *

Subpart D—Payment Methods for Other Institutional and Noninstitutional Services

* * * * *

Sec.
447.301 Definitions.
* * * * *
447.331 Drugs: Aggregate upper limits of payment.
447.332 Upper limits for multiple source drugs.
447.333 State plan requirements, findings and assurances.
* * * * *

C. Section 447.301 is added to Subpart D to read as follows:

§ 447.301 Definitions.

For the purposes of this subpart—

"Brand name" means any registered trade name commonly used to identify a drug.

"Estimated acquisition cost" means the agency's best estimate of the price generally and currently paid by providers for a drug marketed or sold by a particular manufacturer or labeler in the package size of drug most frequently purchased by providers.

"Multiple source drug" means a drug marketed or sold by two or more manufacturers or labelers or a drug marketed or sold by the same manufacturer or labeler under two or more different proprietary names or both under a proprietary name and without such a name.

D. Section 447.331 is revised to read as follows:

§ 447.331 Drugs: Aggregate upper limits of payment.

(a) *Multiple source drugs.* Except for brand name drugs that are certified in accordance with paragraph (c) of this section, the agency payment for multiple source drugs must not exceed the amount that would result from the application of the specific limits established in accordance with § 447.332. If a specific limit has not been established under § 447.332, then the rule for "other drugs" set forth in paragraph (b) applies.

(b) *Other drugs.* The agency payments for brand name drugs certified in accordance with paragraph (c) of this section and drugs other than multiple source drugs for which a specific limit has been established under § 447.332 must not exceed, in the aggregate. payment levels that the agency has determined by applying the lower of the—

(1) Estimated acquisition costs plus reasonable dispensing fees established by the agency; or

(2) Providers' usual and customary charges to the general public.

(c) *Certification of brand name drugs.* (1) The upper limit for payments multiple source drugs for which a specific limit has been established under § 447.332 does not apply if a physician certifies in his or her own handwriting that a specific brand is medically necessary for a particular recipient.

(2) The agency must decide what certification form and procedure are used.

(3) A checkoff box on a form is not acceptable but a notation like "brand necessary" is allowable.

(4) The agency may allow providers to keep the certification forms if the forms

will be available for inspection by the agency or HHS.

E. Section 447.332 is revised as follows:

§ 447.332 Upper limits for multiple source drugs.

(a) *Establishment and issuance of a listing.*

(1) HCFA will establish listings that identify and set upper limits for multiple source drugs that meet the following requirements:

(i) All of the formulations of the drug approved by the Food and Drug Administration (FDA) have been evaluated as therapeutically equivalent in the most current edition of their publication, *Approved Drug Products with Therapeutic Equivalence Evaluations* (including supplements or in successor publications).

(ii) At least three suppliers list the drug (which has been classified by the FDA as category "A" in its publication, *Approved Drug Products with Therapeutic Equivalence Evaluations*, including supplements or in successor publications) based on all listings contained in current editions (or updates) of published compendia of cost information for drugs available for sale nationally.

(2) HCFA publishes the list of multiple source drugs for which upper limits have been established and any revisions to the list in Medicaid program instructions.

(3) HCFA will identify the sources used in compiling these lists.

(b) *Specific upper limits.* The agency's payments for multiple source drugs identified and listed in accordance with paragraph (a) of this section must not exceed, in the aggregate, payment levels determined by applying for each drug entity a reasonable dispensing fee established by the agency plus an amount established by HCFA that is equal to 150 percent of the published price for the least costly therapeutic equivalent (using all available national compendia) that can be purchased by pharmacists in quantities of 100 tablets or capsules (or, if the drug is not commonly available in quantities of 100, the package size commonly listed) or, in the case of liquids, the commonly listed size.

F. Section 447.333 is revised as follows:

§ 447.333 State plan requirements, findings and assurances.

(a) *State plan.* The State plan must describe comprehensively the agency's payment methodology for prescription drugs.

(b) *Findings and assurances.* Upon proposing significant State plan changes in payments for prescription drugs, and at least annually for multiple source drugs and triennially for all other drugs, the agency must make the following findings and assurances:

(1) *Findings.* The agency must make the following separate and distinct findings:

(i) In the aggregate, its Medicaid expenditures for multiple source drugs, identified and listed in accordance with § 447.332(a) of this subpart, are in accordance with the upper limits specified in § 447.332(b) of this subpart; and

(ii) In the aggregate, its Medicaid expenditures for all other drugs are in accordance with § 447.331 of this subpart.

(2) *Assurances.* The agency must make assurances satisfactory to HCFA that the requirements set forth in §§ 447.331 and 447.332 concerning upper limits and in paragraph (b)(1) of this section concerning agency findings are met.

(c) *Recordkeeping.* The agency must maintain and make available to HCFA, upon request, data, mathematical or statistical computations, comparisons, and any other pertinent records to support its findings and assurances.

SUBTITLE A—DEPARTMENT OF HEALTH AND HUMAN SERVICES; GENERAL ADMINISTRATION

IV. 45 CFR Subtitle A is amended as set forth below:

A. The table of contents for Subtitle A is amended by removing "Part 19, "Limitations on Payment or Reimbursement for Drugs".

PART 1—HHS's REGULATIONS

B. The authority citation for Part 1 continues to read as follows:

(5 U.S.C. 301)

§ 1.2 [Amended]

C. In § 1.2 of Subpart A, the last bullet point entitled "Miscellaneous" is amended by removing the reference to Part 19.

PART 19—LIMITATIONS ON PAYMENT OR REIMBURSEMENT FOR DRUGS [REMOVED]

D. Subtitle A is amended by removing Part 19, "Limitations on Payment or Reimbursement for Drugs".

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program; 13.773, Medicare—Hospital Insurance; 13.774, Medicare—Supplementary Medical Insurance)

Dated: June 15, 1987

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: June 16, 1987.

Otis R. Bowen,

Secretary.

[FR Doc. 87-17384 Filed 7-30-87; 8:45 am]

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Friday
July 31, 1987

Part IV

Department of Justice

Immigration and Naturalization Service

8 CFR Part 210
Special Agricultural Workers; Final Rule

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 210

[INS No. 1042-87]

Special Agricultural Workers

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule incorporates various amendments to the regulations governing the Special Agricultural Worker Program established by the Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99-603. The rule provides corrected information concerning the location of overseas processing offices in Mexico, it establishes a temporary transitional admission standard and other temporary transitional program adjustments designed to expedite the overseas processing of special agricultural workers. The temporary transitional admission program will provide for the entry of SAW eligible aliens who were not present in the United States prior to June 26, 1987, in order to avoid projected agricultural labor shortages in the United States during the 1987 harvest season. This rule also advances from May 1, 1987, to June 26, 1987, the date before which applicants must have entered the United States in order to be eligible to apply in the United States for special agricultural worker status. Finally, the rule also adjusts the provisions for administration of the numerical limitations on the number of applicants who may be accorded Group 1 special agricultural worker classification in order to eliminate inequities caused by adoption of the transitional admission standard.

EFFECTIVE DATE: July 31, 1987.

FOR FURTHER INFORMATION CONTACT: Aaron Bodin, Deputy Assistant Commissioner, Special Agricultural Workers (SAW), Office of Legalization, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, (202) 786-3658.

SUPPLEMENTARY INFORMATION: The Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99-603 was enacted on November 6, 1986. To protect the nation's food supply and assure that adequate numbers of farmworkers were available to cultivate and harvest perishable crops, Congress established the Special Agricultural Worker (SAW) program as one of several steps to offset the effects of the employer sanctions provisions. This program provides temporary and eventual lawful permanent resident status to alien workers who have been employed in the cultivation and harvesting of perishable crops.

The SAW application period began on June 1, 1987, and continues until November 30, 1988. On June 1, 1987, facilities and procedures to accept and process SAW applications, were established in the United States by the Immigration and Naturalization Service and overseas by the Department of State. These facilities include 107 legalization offices in the United States and overseas processing offices in Mexico City and in immigrant visa issuing posts in other countries.

Agricultural Labor Shortages

Despite the government's timely preparations for administration of the SAW program, agricultural labor shortages were perceived in several regions of the United States, most notably in the Northwest, during the spring and early summer harvests of 1987. Such shortages were largely attributed by growers to a lack of SAW workers. Primary attribution of this problem to the SAW program appears misdirected in light of other readily identifiable factors. For example, an unusual overlapping of the asparagus and strawberry harvests and early bumper crops of asparagus, strawberries and cherries created a demand for an unusually large agricultural labor force in the Northwest during this period.

There has historically been an unavoidable lack of reliable statistics on the numbers of undocumented aliens who enter the migrant stream annually. This renders any precise quantification of the presence or absence of specific numbers of undocumented migrant agricultural workers at any given time impossible. However, United States consular and immigration officials in Mexico report that many aliens have been deterred from attempting illegal entry into the United States for fear of the new enforcement provisions of IRCA. Agricultural extension agents in California estimate that the number of farmworkers, who are normally staging into production areas at this time of year, is off approximately forty percent from previous years. It is predicted that favorable weather conditions this year will generate bumper crops in California and parts of the Midwest and that the apple and pear harvests in the Northwest will be among the largest ever recorded.

The early response to the opportunity to apply for special agricultural worker status at overseas processing offices has been much lower than anticipated. This low respose can in part be attributed to overseas applicant's lack of ready access to documentary evidence of eligibility. This circumstance, in turn, limits the number of overseas applicants who can perfect applications in time to work in the United States during the 1987 harvest season.

Government Response

Grower concerns about labor shortages were communicated directly to the Service, as well as through the growers' elected representatives, who requested that the appropriate government agencies investigate, analyze, and resolve to the extent possible any identified agricultural labor supply problems. Representatives of the Immigration and Naturalization Service and the Departments of State, Labor, and Agriculture, in immediate response to this request, engaged in meetings and discussions with the governors of several states and with representatives of grower and agricultural labor organizations. Investigation of agricultural labor supply problems involved gathering of information from field personnel of all these agencies and on-site observation of labor camps and agricultural operations.

Based on these investigations, the Service has concluded that serious crop and economic losses could result from a failure of SAW eligible workers to enter the United States in time for critical harvest activities this year. This conclusion is supported by the U.S. Departments of Labor and Agriculture. The Service is therefore establishing, by this rule, temporary procedures it believes necessary to avoid the adverse impact such crop losses would have, not only on farmers, but on food prices and on employment throughout the food industry. A section by section analysis of this rule follows:

Overseas Processing Office

Section 210.1(k) has been amended to delete any reference to an overseas processing office in Monterrey, Mexico. Although an overseas processing office will operate in Monterrey while the temporary transitional SAW procedures are in effect, this office is not intended to be a permanent facility.

Numerical Limitations

The amendment to § 210.2(a)(3), which sets procedures for administration of the numerical limitation on the allocation of Group 1 status, is discussed below in the analysis of new § 210.6(c)(2).

Filing of Applications—General

Section 210.2(c)(1) is amended to change the date before which aliens must have entered and remained in the United States to be eligible to apply in the United States for SAW status. That date has been changed from May 1, 1987, to June 26, 1987. An alien who did not enter and remain in the United States prior to June 26, 1987, must file an application at an overseas processing office unless that alien is legally admitted as a SAW applicant under the transitional admission standard in effect from July 1, 1987 to November 1, 1987.

The establishment of an entry cutoff date for filing SAW applications in the United States is derived from the SAW provisions of IRCA and is based on the primary objective of the statute—control of illegal immigration. IRCA provides for the acceptance and processing of SAW applications outside the United States and this regulation provides for temporary procedure which facilitates the admission of SAW applicants who were outside of the United States on June 26, 1987. Thus, no alien who can demonstrate eligibility for SAW status is disadvantaged by the mere fact that he or she is outside the United States. On the contrary, orderly procedures have been established for the adjudication of overseas SAW applications and the admission of aliens who can demonstrate their eligibility for SAW status.

The statute at section 210(d)(1) provides that an alien who is apprehended prior to the application period (June 1, 1987) and can establish a nonfrivolous case of eligibility for SAW status may not be deported or excluded and must be granted authorization to work. The Conference Managers' Report expressed Congress' intent that a nonfrivolous case of eligibility be established through an attestation under penalty of perjury regarding the performance of qualifying employment. Based on § 210(d)(1), a procedure was established which permitted aliens apprehended in the U.S. who could establish a nonfrivolous case of eligibility to remain and work in the United States. This procedure was not available, however, to aliens who had entered the United States subsequent to enactment of IRCA. To reward an illegal entrant with work authorization on the basis of an unsubstantiated claim to SAW eligibility would have been an inducement to illegal entry and contrary to the essential purpose of the statute. Consistent with the need to eliminate the prospect of employment as a magnet for illegal immigration, the Service provided in its preliminary working draft (52 FR 2115, January 20, 1987) and proposed rule (52 FR 8745, March 19, 1987) that such aliens could not file applications for SAW status in the United States.

Upon publication of the SAW final rule on May 1, 1987 (52 FR 16195), the cutoff date of entry was amended from November 6, 1986, to May 1, 1987. This change was made in acknowledgment of the fact that some alien migrant farmworkers had, as they traditionally have done, entered the United States illegally to engage in early spring cultivation and harvesting operations. If these SAW eligible workers had been required to depart the United States in order to file applications overseas after the beginning of the SAW application period of June 1, 1987, their departure from agricultural employment in the United States would have had a significant adverse impact on on-going agricultural operations.

The further change to the cutoff date of entry in this rule is made in light of the fact that the United States port of entry in Calexico, California, began processing applications for SAW status on June 26, 1987, as part of the temporary procedures established by this rule. Thus, overseas applicants now have the opportunity to apply for SAW status at Calexico or at one of the additional overseas processing offices also being established as part of the temporary procedures.

The establishment of a cutoff date to avert a potential flow of illegal immigrants was a responsible and reasonable policy in support of the primary purpose of IRCA. There is no contradiction if the date is adjusted in furtherance of another IRCA objective, the maintenance of agricultural production through legalization of the workforce. By making the cutoff date coincident with the date of announcement both objectives are met since there is no inducement to unlawful entry and needed agricultural workers are not required to leave the country.

Temporary Transitional Procedures

The temporary transitional procedures designed to expedite overseas SAW processing in order to avoid crop losses during the 1987 harvest season are established in § 210.6. These procedures will be in effect from July 1, 1987, to November 1, 1987, with the exception of border processing, which is effective from June 26, 1987, to November 1, 1987.

Expanded Overseas Processing Offices

Section 210.6(a) provides that overseas processing offices will be added in Mexico to process SAW applications. Additional offices were opened in Hermosillo and Monterrey on July 1, 1987, and other offices may be added dependent upon applicant response and resource availability.

Border Processing on the US/Mexico Border

Section 210.6(b) provides that United States ports of entry on the U.S./Mexico border will be designated to accept and process SAW applications under both standard and temporary procedures. The designated ports of entry on the US/Mexican border will accept applications from SAW applicants who are residents of Mexican border states. This border state jurisdictional alignment is established in order to ensure full utilization of the current overseas processing system and to discourage ineligible applicants from the interior of Mexico from proceeding to the border area. Application fees for border processing applications are required to be submitted in United States currency due to the general lack of availability outside the United States of instruments drawn on United States financial institutions, fluctuations in exchange rates, and the problem of negotiability in the United States of instruments drawn on foreign financial institutions. The port of entry at Calexico, California, has been designated to conduct border processing as of June 26, 1987. Additional ports of entry may be so designated dependent upon applicant response.

Transitional Admission Standard

Section 210.6(c)(1) sets the transitional admission standard for acceptance of SAW applications under the temporary transitional procedures. This standard requires the submission of a SAW application with the required fee and photographs. The applicant's credibility must be established to the satisfaction of the examining officer. Qualifying employment must be described with specificity. Under this standard, the presentation of documentary evidence of eligibility, including a report of medical examination, may be deferred until after the applicant's entry into the United States.

Procedures under the Transitional Admission Standard

Section 210.6(c)(2) sets procedures for administration of the transitional admission standard. Applicants who do not establish to the satisfaction of examining officers their credibility and the plausibility of their claim to eligibility are subject to rejection rather than formal denial of their applications. An application fee will not be accepted

until a determination is made as to whether the applicant meets the transitional admission standard. This rule provides that such applications shall be rejected rather than denied because applications under the transitional admission standard are not complete applications as defined at § 210.1(c) and cannot be properly approved or denied. Applicants whose applications are rejected under the transitional admission standard shall be advised that they may gather evidence sufficient to support a complete application or to overcome the grounds for rejection of their applications, and that they may resubmit applications upon obtaining such evidence.

This rule provides that applicants under the transitional admission standard must present proof of identity in connection with their applications. Applicants at overseas processing offices must present passports to be stamped with a nonimmigrant visa-like entry document. Applicants at designated ports of entry must present one of the forms of proof of identity stipulated in this rule.

This rule provides that all applications accepted under the transitional admission standard shall be regarded as applications for Group 2 classification as defined at § 210.1(g) until they are perfected as complete applications and submitted to a legalization office. Applicants who file under the transitional admission standard who claim eligibility for Group 1 classification as defined at § 210.1(g) will not be allocated one of the authorized 350,000 Group 1 numbers until they have submitted a complete application to a legalization office. Section 210.2(a)(3) is amended accordingly by this rule. This modification is necessary to ensure that aliens in the United States who are eligible for Group 1 classification but who cannot file an application until they have gathered evidence sufficient to support a complete application are not prejudiced by establishment of the transitional admission standard. These applicants would be disadvantaged if applicants under the transitional admission standard were allocated a Group 1 number without having been required to gather evidence to perfect a complete application.

Conditions of Admission

Section 210.6(c)(3) provides that aliens determined to meet the transitional admission standard shall, at a designated port of entry, be admitted or, at an overseas processing office, be documented to apply for admission to the United States. Such aliens, upon application for admission and a determination by an immigration officer that they are admissible to the United States, shall be admitted for a period of ninety days with employment authorization. Thus, under this rule, any alien outside the United States who is eligible for SAW status can enter the United States without delay to both accept employment and perfect a complete application. As noted above, this rule is intended primarily to ensure that an adequate number of farmworkers is present in the United States to perform critical harvest work during the 1987 harvest. The temporary transitional procedures established by this rule will terminate on November 1, 1987.

SAW applicants admitted to the United States under these temporary transitional procedures are required to gather evidence of eligibility, complete a medical examination, and submit a complete application to a legalization office within the ninety-day admission period or such extension of that period as may be authorized by a district director upon a showing of good cause by the applicant. The original Form I-700 SAW application presented to a designated port of entry or overseas processing office will be returned to the applicant to be presented to a legalization office. A duplicate will be retained by the designated port of entry or overseas processing office. An application submitted under the transitional admission standard is subject to denial for lack of prosecution if the applicant fails to submit a complete application to a legalization office within the ninety-day admission period or any authorized extension of that period. A denial for lack of prosecution under the temporary standard will not prejudice any future application.

Justification for Final Rule

The Immigration and Naturalization Service is invoking the "good cause" exceptions to the notice and comment rulemaking procedures established by the Administrative Procedures Act. (See 5 U.S.C. 553 (b) and (d)). The justification for invoking the "good cause" exceptions is as follows: The time that would be required for a meaningful public comment period and prior notice of this rule would delay implementation for several months. Immediate implementation of this rule is necessary to avert an agricultural labor shortage which would result in crop losses. The adverse economic effects of crop losses would be increased food prices, an inadequate supply of some foods, and economic dislocation such as business closings and job losses throughout the food processing, packaging, distribution, and service industries. The SAW eligible workforce is needed in the United States now. There is an immediate short-term need to stage workers into various parts of the United States to engage in pre-harvest and harvest activities. Compliance with the notice and comment procedures is therefore impractical and would harm the public interest. The projected agricultural labor shortage will exist throughout the 1987 harvest unless immediate action is taken to increase the agricultural workforce. Therefore, it is necessary to invoke the "good cause" exceptions to the notice and comment period requirements of 5 U.S.C. 553 (b) and (d) to make this rule effective upon publication. These temporary standards and procedures will be in effect only during the four-month period from July 1, 1987, to November 1, 1987.

In accordance with 5 U.S.C. 605(b), the Commissioner certifies that this rule will not have a significant economic impact on a substantial number of small entities.

This is not a major rule within the meaning of section 1(b) of EO 12291.

The information collection requirements contained in this regulation have been cleared by OMB under the Paperwork Reduction Act.

List of Subjects in 8 CFR Part 210

Aliens, Permanent resident status, Reporting and recordkeeping requirements, Temporary resident status.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 210—SPECIAL AGRICULTURAL WORKERS

1. The authority citation for Part 210 continues to read as follows:

Authority: Pub. L. 99-603, 100 Stat. 3359; 8 U.S.C. 1101 note.

§ 210.1 [Amended]

2. In § 210.1, paragraph (k) is amended by removing the term "and Consulate General at Monterrey".

§ 210.2 [Amended]

3. In § 210.2, paragraph (a)(3) is amended by addition of the following sentence after the third sentence of that paragraph, which ends with the phrase "shall be accorded that classification": "Aliens admitted to the United States under the transitional admission standard placed in effect between July 1, 1987, and November 1, 1987, who claim

eligibility for Group 1 classification shall be registered as applicants for that classification on the date of submission to a legalization office of a complete application as defined in § 210.1(c) of this part."

4. In § 210.2, paragraph (c)(1) is amended by adding in the first sentence after the term "legalization office", the term "at a port of entry designated under § 210.6(b) of this part to accept such applications"; by deleting the date "May 1, 1987", from the second and third sentences of that paragraph and by adding in its place the date "June 26, 1987"; and by adding in the third sentence after the term "overseas processing office" in both places where it appears, the term "or port of entry designated under § 210.6(b) of this part".

5. Part 210 is amended by addition of the following new § 210.6, as follows:

§ 210.6 Temporary transitional procedures.

Notwithstanding any other provision of this part, the following temporary transitional procedures are placed in effect as of July 1, 1987, unless otherwise noted, and shall terminate as of November 1, 1987.

(a) *Expanded overseas processing.* Overseas processing offices will accept and process applications under the transitional admission standard set forth in paragraph (c)(1) of this section. Further, the Secretary of State will establish additional overseas processing offices in Mexico to accept and process applications for adjustment of status under this part. Additional offices have been opened in Monterrey and Hermosillo. Offices may be closed or added at the discretion of the Secretary of State.

(b) *Border processing on the U.S./Mexico border.* The Commissioner will designate specific ports of entry located on the U.S./Mexico border to accept and process applications under this part. As of June 26, 1987, ports of entry so designated will accept and process applications under the authority of the district directors in whose districts they are located. Only residents of the six states of Mexico which border the United States, i.e., Baja California Norte, Sonora, Chihuahua, Coahuila, Nuevo Leon, and Tamaulipas, shall be eligible to submit applications to a designated port of entry. The port of entry at Calexico, California, has been designated to conduct border processing. Designated ports of entry may be closed or added at the discretion of the Commissioner.

(1) *Complete applications.* Designated ports of entry will accept complete applications as defined at § 210.1(c) of this part. Except as otherwise provided in this paragraph, such applications will be processed in accordance with the provisions of § 210.2 of this part as those provisions relate to applications filed in the United States. All applications must be submitted in person by the applicant. Upon a determination by the district director that a complete application submitted to a port of entry is a nonfrivolous application as defined at § 210.1(j) of this part, the required application fee shall be accepted and the applicant shall be admitted to the United States as an applicant for adjustment of status under this part and shall be issued Form I–688A, Employment Authorization. The application shall be forwarded for adjudication by a regional processing facility in accordance with the standards set forth at § 210.3 of this part. All fees for applications submitted to a port of entry must be submitted in United States currency. If the district director determines that the application is not sufficient to meet the requirements of a "nonfrivolous application" as defined at § 210.1(j) of this part, the application will then be considered under the transitional admission standard set forth at paragraph (c)(1) of this section.

(2) *Applications under the transitional admission standard.* Ports of entry designated to accept and process applications for adjustment of status under this part shall accept and process applications submitted under the transitional admission standard set forth at paragraph (c)(1) of this section.

(c) *Processing of applicants seeking admission to the United States under the transitional admission standard.*—(1) *Transitional admission standard.* An alien agricultural worker who believes that he or she is eligible for adjustment of status under the provisions of § 210.3 of this part may be admitted to the United States to work and to perfect an application for adjustment of status and to submit a complete application as defined at § 210.1(c) of this part to a legalization office if he or she:

(i) Fills out completely and signs a Form I–700, Application for Temporary Resident Status as a Special Agricultural Worker, and presents that application to an overseas processing office or designated port of entry accompanied by the required fee and photographs which meet the specifications stated on Form I–700 (the performance of qualifying agricultural employment and the documentary evidence of such employment which the alien intends to adduce to substantiate his or her claim must be described with the specificity indicated on the form);

(ii) Establishes to the satisfaction of the examining consular or immigration officer during an interview that his or her claim to eligibility for special agricultural worker classification is credible; and

(iii) Is otherwise admissible to the United States under the provisions of § 210.3(e) of this part including, if required, approval of an application for waiver of grounds of excludability.

(2) *Procedures.* The fee for any application under this paragraph, including applications for waiver of grounds of excludability, must be submitted to a port of entry in United States currency, or to an overseas processing office in United States currency or in the currency of the country in which the overseas processing office is located. Application fees shall not be collected until the examining consular or immigration officer has determined that the applicant is admissible to the United States under the transitional admission standard set forth in paragraph (c)(1) of this section, including, if required, approval of an application for waiver of grounds of excludability as provided in this paragraph. Applicants at overseas processing offices must present a valid passport. Applicants at designated ports of entry must present proof of identity in the form of a valid passport, a "cartilla" (Mexican military service registration booklet), a Form 13 ("Forma trece"—Mexican lieu passport identity document), or a certified copy of a birth certificate accompanied by additional evidence of identity bearing a photograph and/or fingerprint of the applicant. Upon a determination by a consular officer at an overseas processing office that an applicant meets the transitional admission standard, the applicant shall be issued an entry document valid for a period of thirty days which will enable him or her to apply for admission to the United States at any port of entry as an applicant for special agricultural worker status. Upon a determination by an immigration officer at a port of entry designated to accept and process applications under this part that an applicant meets the transitional admission standard, the applicant shall be admitted to the United States as an applicant for special agricultural worker status. All applications under this part which are accepted for processing under the transitional admission standard shall be classified as applications for Group 2 classification as defined at § 210.1(g) of this part. However, such applications may be endorsed by applicants as applicants for Group 1

classification as defined at § 210.1(f) of this part and may be converted to applications for Group 1 classification upon submission to a legalization office of a complete application as defined at § 210.1(c) of this part. The date of filing the Group 1 application for the purposes of § 210.2(a)(3) of this part shall be the date on which a complete application was submitted to a legalization office. Upon a determination by a consular or immigration officer that an alien applying under the transitional admission standard does not meet that standard, the alien's application shall be rejected. The alien shall be advised of the reasons for rejection and that he or she may submit a complete application to an overseas processing office or a designated port of entry or may resubmit an application under the transitional admission standard if he or she obtains evidence which overcomes the ground of rejection.

(3) *Conditions of admission.* Aliens who meet the transitional admission standard set forth in paragraph (c)(1) of this section or who present entry documents issued by overseas processing offices in accordance with paragraph (c)(2) of this section shall be admitted to the United States for a period of ninety (90) days with authorization to accept employment, if determined by an immigration officer to be admissible to the United States. Such aliens are required, within that ninety-day period, to gather evidence of eligibility which meets the provisions of § 210.3 of this part; to obtain a report of medical examination in accordance with § 210.2(d) of this part; and to submit to a legalization office a complete application as defined at § 210.1(c) of this part. A district director may, for good cause, extend the ninety-day period and grant further authorization to accept employment in the United States if an alien demonstrates he or she was unable to perfect an application within the initial period. If an alien described in this paragraph fails to submit a complete application to a legalization office within ninety days or within such additional period as may have been authorized, his or her application shall be denied for lack of prosecution, without prejudice.

Alan C. Nelson,
Commissioner.
July 28, 1987.
[FR Doc. 87-17450 Filed 7-30-87; 8:45 am]
BILLING CODE 4410-10-M

federal register

Friday
July 31, 1987

Part V

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 405, 413, 441, 482, and 485
Medicare and Medicaid Programs; Organ Procurement Organizations and Organ Procurement Protocols; Proposed Rule

BEST COPY AVAILABLE

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 413, 441, 482, and 485

[BERC-451-P]

Medicare and Medicaid Programs; Organ Procurement Organizations and Organ Procurement Protocols

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule adds: (a) Conditions of coverage for the approval of organ procurement organizations for participation in the Medicare and Medicaid Programs and performance standards they must meet for continued reimbursement for services they furnish; and (b) a condition of participation for hospitals to have written organ procurement protocols. It would implement section 1138 of the Social Security Act, as added by section 9318(a) of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509).

DATE: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on September 29, 1987.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-451-P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Please address a copy of comments on information collection requirements to: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503, Attention: Allison Herron.

In commenting, please refer to file code BERC-451-P. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone 202-245-7890).

FOR FURTHER INFORMATION CONTACT:

Rita McGrath, (301) 594-6719, Organ Procurement Organizations,
or
Stanley Rosenfeld, (301) 594-5675, Organ Procurement Protocols.

SUPPLEMENTARY INFORMATION:

I. Background

A. Program Description (General)

The Medicare law provides coverage for broad categories of benefits, including inpatient and outpatient hospital care, and it specifically excludes some categories of services such as cosmetic surgery, routine physical examinations, and procedures that are not considered reasonable and necessary. The statute does not, however, furnish an all-inclusive list of specific items, services, treatment procedures or technologies covered by Medicare. Under our long-standing policy, when a service is determined not reasonable and necessary, individual activities that are a component of the service are considered not reasonable and necessary. Thus, we would not make payment for organs procured for transplantation if the transplant itself did not meet the "reasonable and necessary" requirement.

Section 1881(b) of the Act authorizes the Secretary to make Medicare payment for kidney transplantation if performed in facilities meeting such requirements as are prescribed in regulations. The requirements are set forth at 42 CFR Part 405, Subpart U—Conditions for Coverage of Suppliers of End-Stage Renal Disease (ESRD) Services. The costs of procuring kidneys for transplantation may be reimbursed only when the kidneys are transplanted by facilities that meet the above requirements.

Currently, most of the organs obtained for transplants performed are kidneys. Also currently, Medicare is the primary payer for almost all kidney transplant procedures. This is because section 226A of the Act entitles an ESRD patient to Medicare when he or she receives a kidney transplant and section 1881 of the Act extends coverage to kidney transplantation. In some cases, Medicare payment may also be made for heart transplantation. Heart transplants and procurement costs for obtaining the organ are paid for by Medicare only when the transplant is performed by a facility that meets criteria we specify. The criteria were published in the **Federal Register** on April 6, 1987 as a HCFA Ruling (see 52 FR 10935). Transplantation of many other major organs (e.g., pancreas, adult liver, lung, or heart/lung transplants) is currently excluded from coverage under Medicare because we consider the procedure experimental for these organs; experimental procedures are not considered reasonable and necessary.

Under the Medicaid program, payment is made for "medical assistance" (section 1905 of the Act) as defined broadly by the statute and in our regulations at 42 CFR Part 440, Subpart A. Each State has a considerable degree of flexibility to supplement required services with others it chooses to specify in its State plan. Many States pay the coinsurance and deductible associated with Medicare-covered kidney transplants. Some that choose to pay for items not covered by Medicare have paid for heart-lung, pancreas, heart and liver transplants.

Under Medicare, kidney transplantation, as an inpatient hospital service, must be furnished by an approved facility (section 1861(e) of the Act; 42 CFR 405.2171). Approval is granted after we determine, based on an on-site survey, that the facility is in compliance with the applicable conditions of participation (42 CFR Part 482) and conditions for coverage (42 CFR Part 405, Subpart U). Currently, our regulations contain specific conditions of coverage for facilities that perform kidney transplantation under both Medicare and Medicaid. There also are criteria that heart transplant facilities must meet under Medicare. These criteria are set forth in 52 FR 10935.

We have not established conditions or standards that must be met by agencies or organizations that procure kidneys for transplantation in order for the cost of procurement to be covered under Medicare or Medicaid. However, all such agencies must meet the existing definition of "organ procurement agency" (§ 405.2102), and independent organizations must comply with the organizational and administrative requirements listed in § 413.178 of our regulations in order for costs associated with kidney procurement from those organizations to be reimbursed by the programs. Organ procurement agencies (OPAs) currently are not subject to an on-site survey by the State survey agencies that verify whether facilities meet our conditions and standards, but instead are approved by HCFA. We have not restricted the number of OPAs that can be established in any given area and currently some operate locally and others cover broad regional territories.

B. Organ Procurement

When renal transplantation became an effective form of therapy in the 1960s, it was necessary to develop systems for procuring kidneys from cadaveric donors. Early programs were established to provide centralized services that might include provision for surgical retrieval, tissue typing, maintaining lists and tissue characteristics of potential recipients, and organ distribution (transportation) to cooperating transplant centers.

The United States now operates the largest organ procurement effort in the world. Nationwide there are currently approximately 120 Medicare approved OPAs. Approximately 7,000 cadaveric kidneys were obtained in the United States in 1986. This effort has come about largely through the OPAs funded by the Medicare ESRD program. The number of patients on waiting lists for a kidney transplant totaled 10,000 in 1986.

Eact OPA routinely transports organs; for example, more than 40 percent of all transplanted kidneys are obtained in a locale different from the site in which transplantation occurs.

OPAs also procure organs other than kidneys used in transplantion. In 1986, 1368 heart, 924 liver, 45 heart-lung, and 140 pancreas or islet cell transplants were performed in the United States. Virtually all of these organs came from donors identified by the organ procurement system, nearly all of whom also donated kidneys. Waiting lists are much smaller for organs other than kidneys. Approximately 300 people were waiting for donor hearts and 400 waiting for donor livers in 1986. Pediatric patients make up about one-third of the waiting list for liver transplants, but organs are most scarce for this group.

Although OPAs play a central role in locating and placing transplantable human organs, OPAs vary in size, strategies, personnel, and organization.

OPAs currently approved for supplying kidneys for Medicare patients can be divided into two organizationally distinct groups. Nearly half of the OPAs are independently incorporated non-profit entities whose sole function is the procurement of human organs. These independent organ procurement agencies (IOPAs) are approved by HCFA if they comply with our definition of an OPA (42 CFR 405.2102). We prescribe four services that an OPA must perform or coordinate the performance of in order to be approved: Recovery of kidneys, preservation of kidneys, transportation of donated kidneys, and the maintenance of a system to locate prospective recipients for the recovered kidneys. Our instructions to approved IOPAs require them to develop a standard kidney acquisition charge, which is billed to the transplant center at the time an organ is furnished. The transplant center pays the IOPA and bills Medicare for that cost. We have established cost reporting requirements in our regulations and instuctions at 42 CFR 413.178 to make adjustments at the end of the cost reporting year.

The remaining OPAs are hospital-based organ procurement agencies (HOPAs). These HOPAs are located within the administrative stucture of a hospital approved to perform kidney transplants, usually within the department of surgery or the division of transplantation, or both. The costs of organ procurement activities, of HOPAs are recorded in a kidney acquisition cost center and billed by the hospital separately from the actual transplantation procedure costs that are billed when transplantation occurs (42 CFR 412.90(e)). Medicare cost adjustments, if needed, are made for the HOPA when the hospital's cost report is settled. HOPAs are generally directly responsible to a transplant surgeon and work, for the most part, primarily for that transplant center.

II. Legislation

The National Organ Transplant Act of 1984 (Pub. L. 98–507), created a Task Force on Organ Transplantation, which conducted a comprehensive examination of all aspects of organ procurement and transplantation. In addition to many other findings and specific recommendations, the Task Force concluded that an overriding problem, common to all organ transplant procedures, is the serious gap between the need for organs and the supply of organs available for transplantation. The Task Force found that many opportunities for obtaining organs were lost because of oversights or shortcomings in the present procurement process. One recommendation adopted by the Task Force was that OPAs be strengthened by establishing criteria that they must meet in order to be certified, and that all hospitals, as a condition of participation in Medicare, be required to adopt policies and procedures for routinely identifying potential organ and tissue donors and providing next-of-kin with appropriate opportunities for donation. The Task Force also recommended periodic recertification of the OPAs, requiring the OPAs to meet performance standards and that there be only one agency per service area. (See Organ Transplantation, Report of the Task Force on *Organ Transplantation*, April 1986, pp. 5, 31–34, 59–61, 117–122.)

Congress adopted these recommendations when enacting section 9318 of the Omnibus Budget Reconciliation Act of 1986 (OBRA 86), Pub. L. 99–509, which added a new section 1138 to the Act. Section 1138(a) of the Act allows a hospital that otherwise meets the conditions of participation for the Medicare or Medicaid programs to participate in either program only if:

(1) The hospital establishes written protocols to identify potential organ or tissue donors that:

(a) Assure that families of potential donors are made aware that they have an option to donate organs or tissue and an option to decline to donate;

(b) Encourage discretion and sensitivity with respect to the circumstances, views and beliefs of the families of potential donors; and

(c) Require that an organ procurement agency designated by the Secretary of HHS under 1138(b)(1)(F) be notified of potential donors; and

(2) In the case of a hospital in which organ transplants are performed, the hospital is a member of, and abides by the rules of, the Organ Procurement and Transplantation Network (the Network) established in accordance with section 372 of the Public Health Service Act.

This section applies to hospitals participating in the Medicare or Medicaid program as of October 1, 1987.

Section 1138(b) of the Act requires that, on or after October 1, 1987, Medicare and Medicaid pay for organ procurement costs attributable to payments made to an OPA only if the OPA satisfies the conditions below. The OPA:

(a)(i) Is a qualified organ procurement organization (as described in section 371(b) of the Pubic Health Service Act) that is operating under a grant made under section 371(a) of that Act, or

(ii) Has been certified or recertified by the Secretary within the previous two years as meeting the standards to be a qualified organ procurement organization;

(b) Meets the applicable Medicare or Medicaid requirements for organ procurement agencies;

(c) meets performance-related standards prescribed by the Secretary;

(d) Is a member of, and abides by the rules and requirements of, the Organ Procurement and Transportation Network established under section 372 of the Public Health Service Act;

(e) Allocates organs, within its service area and nationally, in accordance with

medical criteria and the policies of the Network; and

(f) Is designated by the Secretary as an organ procurement organization, payment to which may be treated as organ procurement costs for purposes of reimbursement under Medicare or Medicaid.

In addition, section 1138(b) provides that the Secretary may not designate more than one organ procurement organization (OPO) for each service area (as described by section 371(b)(1)(E) of the Public Health Service Act) to which payment may be made for organ procurement costs.

Organs, for purposes of section 1138, mean human kidneys, hearts, lungs, livers, and pancreases, and any other organs or tissues specified by the Secretary.

The statute applies to costs of organs procured on or after October 1, 1987 (section 1138(b)) and to hospitals participating in either Medicare or Medicaid on or after October 1, 1987 (section 1138(a)).

III. Proposed Regulations Revisions

In order to incorporate the legislative requirements in our regulations, we would add a new Subpart D to 42 CFR Part 485 to be entitled "Conditions of Coverage: Organ Procurement Organizations". We would add the legislative requirements discussed above.

Many of our proposed requirements that are not contained in section 1138 of the Act are contained in section 371 of the Public Health Service Act. Our requirements are very similar, but not necessarily identical to those required by the PHS Act. This reflects our belief that some of the requirements of the PHS Act that appropriately apply to grantees are not relevant to Medicare payment for OPO services. The public is invited to comment on whether our regulations should more completely reflect the PHS Act. Some of our requirements are based on the recommendations of the Task Force on Organ Procurement and Transplantation; others, including performance standards, are based on expert advice from the Office of Organ Transportation of the Public Health Service (PHS) and on our experience with organ procurement agencies that furnish kidneys to Medicare beneficiaries. Both the PHS recommendations and our proposed standard draw heavily upon the Association of Independent Organ Procurement Agencies' standards. (There are no national HOPA standards; individual HOPA standards apply only to the hospital served by the HOPA.)

The PHS Office of Organ Transportation in administering the National Organ Transplantation Act of 1984 has worked very closely with the Association of Independent Organ Procurement Agencies in the establishment of qualification criteria and guidelines to assist in the development of OPOs. PHS has been providing grants for the planning, establishment, initial operation, and expansion of OPOs. Because of their experience and expertise, we rely heavily on their recommendations.

Under section 1138(b) of the Act, effective October 1, 1987, Medicare payment for organ procurement costs may be made only if the OPA has been designated by the Secretary as the OPO for its service area (section 1138(b)(1)(F)). Consequently, *all* organizations, including currently Medicare-approved OPAs and PHS grantees, seeking payment as organ procurement organizations must apply to be designated, and be designated, by the Secretary under 42 CFR Part 485, Subpart D as the designated OPO for its service area in order for costs attributable to payments to the OPO to be reimbursable after September 30, 1987. IOPAs not designated as of October 1, 1987 must submit a final Medicare cost report in accordance with § 413.24(f)(2)(ii). A HOPA not designated will receive payment for organs procured within the hospital and used in in-house transplants; like all other hosptials that furnish organs to an OPO, it will receive payment for organs furnished to a designated OPO when the hospital cannot use it in-house. Costs for those activities will be reported as part of the hospital cost report.

Criteria for Designation as an OPO

Applications from all agencies desiring designation as an OPO will receive consideration; i.e., organizations that are currently approved for Medical payment or that have PHS grants would not receive preferential treatment.

For Medicaid, we propose to revise our rules at 42 CFR 441.13, Prohibitions on FFP: Institutionalized Individuals, to prohibit Federal cost sharing for services furnished by OPOs after September 30, 1987 that do not meet the requirements of Part 485, Subpart D.

The proposed new subpart would identify section 1138(b) of the Act as its basis, would define "organs", "organ procurement organization", and other relevant terms and list the specific conditions that OPOs must meet to obtain HCFA approval.

The proposed rules would not preclude any provider approved by HCFA to perform transplants from being reimbursed the acquisition costs incurred if it retrieves and transplants an organ into one of its patients; Section 1138 of the Act only covers procurement costs. In such a case, the transplant center would be required to notify the designated OPO for its service area of the potential organ donor. We would continue to pay a provider back for the costs it incurs in procuring an organ within its own facility that it cannot use in-house but furnishes to a designated OPO.

Beginning October 1, 1987, we will not pay transplant center procurement costs for organs retrieved by an OPO that has not been designated by the Secretary for its service area.

OPO Qualifications—General

In a new § 485.303, Condition: Organ procurement organization qualifications—General, we would establish that an OPO must apply to HCFA in writing to be the designated OPO for its service area. This would apply to all OPOs, whether hospital-based or independent, whether a PHS grant recipient or not. We would require that the OPOs meet other requirements related to membership in the Organ Procurement and Transplantation Network, adherence to performance standards and maintenance of records and data related to performance.

OPO Qualifications—Specific

In a new § 485.304, Condition: Qualifications required of an organization for it to be an approved organ procurement organization, we list specific requirements as follows:

The organ procurement organization must:

- For identifying potential donors (as defined in § 485.302; see below), have a working relationship with at least 75 percent of hospitals within its service area that have facilities for harvesting organs. The working relationship must be documented by evidence that supports the organization's ability to meet these proposed conditions. The documentation should explain the OPO's plans or systematic efforts to provide a range of organ procurement services, including, for example, actual organ retrieval, organ sharing and professional education activities (such as staff visits to local hospitals and in-service education sessions) that are intended to acquire or coordinate furnishing all usable organs in the organization's proposed service area. The preferable documentation is a copy of the written agreements with the various hospitals and transplant centers in its service area that list

responsibilities and functions. (A transplant center is a hospital designated by Medicare to furnish directly, for specific organ(s), transplantation and other medical and surgical speciality services required for the care of transplant patients). If an organization seeking approval as an OPO does not have a written agreement with a given facility, we will accept a letter of intent from a hospital or transplant center that it will enter into such agreement within not more than 12 months after the OPO's designation. If an organization does not have either a written agreement or letter of intent, it must submit other documentation of its working relationship.

Congress, in its report accompanying the National Organ Transplant Act, indicated that a substantial majority of hospitals with which the OPO would have to have an effective agreement would generally consist of more than 75 percent of the hospitals in the area that have facilities for organ donations. We agree that a working relationship with 75 percent of the facilities in a service area would demonstrate the necessary capabilities and resources to coordinate procurement activities in one area. (H.R. Rep. No. 575, 98th Cong., 1st Sess. 9 (1983)) However, we recognize that there may be instances where fewer hospitals will agree to cooperate with any one OPO. Therefore, we invite the public's comment on this criterion.

• Have a written agreement with the Secretary to be reimbursed under Medicare for the procurement of kidneys. The requirement for a written agreement would apply to OPOs, similar to the requirement now found at 42 CFR 413.178(c) that requires OPAs that procure kidneys to have a written agreement with Medicare to file costs reports and to permit HCFA to designate an intermediary.

• Submit documentation of its service area. A "service area" is an area that is a geographical area of sufficient size (unless the service area comprises an entire State) to include at lease 2.5 million in population or at least fifty potential donors each year and that includes an entire standard metropolitan statistical area or does not include any part of such an area. An OPO in an area with less than 2.5 million in population would have to submit quantifiable data showing that the area yields 50 or more donors per year. The service area requirement, except for the 2.5 million population, is found in section 371(b)(1)(E) of the PHS Act. The 2.5 million population minimum is related to the Congressionally-mandated number (50) of donors per year in order to assure effective administration. PHS has indicated that evidence from studies of OPOs suggests that OPOs working as effectively as methods and resources currently permit may approach 20 donors per million, which extrapolates to 50 per 2.5 million. (This was the conclusion of a report done by Maximus for PHS entitled, "Development of OPO Descriptors, Performance Measures and Criteria," May 15, 1986, Contract No. 240–85–0512.)

We would define "potential donors" as people who die in circumstances (including age, and causes and conditions of death) that would generally make at least one of their solid organs acceptable for transplantation if the donors could be identified in time and permission for donation could be obtained. The term is not intended to represent either referrals or actual donors.

Since the enactment of the PHS Act provision referring to "standard metropolitan statistical area" in the definition of "service area," the Office of Management and Budget has changed from using "standard metropolitan statistical area" to using other statistical area groupings. Thus, we would define "entire standard metropolitan statistical area" as a metropolitan statistical area, a consolidated metropolitan statistical area, or a primary metropolitan statistical area, as defined by the Office of Management and Budget (the areas are listed in the State and Metropolitan Area Data Book published by the U.S. Bureau of the Census).

"Documentation that precisely defines the proposed service area" would include information demonstrating the following—

a. Counties (parishes in Louisiana) served;

b. Geographic boundaries of the service area for which U.S. population statistics are available;

c. Total population in service area; and

d. The number of and the names of acute care hospitals capable of providing organ donors in the service area.

• Be a nonprofit entity. According to the House Report on the National Organ Transplant Act (which enacted section 371 of the PHS Act), the organ procurement system could best be accomplished by relying upon voluntary organ donations and prohibiting the sale of human organs (H.R. Rep. No. 575, 98th Cong., 1st Sess. 22 (1983)); Section 371(b)(1)(A) of the PHS Act (42 U.S.C. 273(b)(1)(A)) requires OPOs with grants to be nonprofit.

• Have accounting and other fiscal procedures necessary to assure the fiscal stability of the organization. This requirement also would require the OPO to have procedures to obtain payment for non-renal organs provided for transplantation.

• Have a director and such other staff, including the organ donation coordinator and organ procurement specialist, necessary to obtain organs effectively from donors in its service area.

• Have a board of directors or an advisory board that has the authority to recommend policies relating to the donation, procurement, and distribution of organs. The board of directors or advisory board must consist of:

1. Members who represent hospital administrators, intensive care or emergency room personnel, tissue banks, and voluntary health associations in the service area;

2. Members who represent the public residing in such area;

3. A physician with knowledge, experience, or skills in the field of histocompatibility;

4. A physician with knowledge or skills in the field of neurology; and

5. A transplant surgeon from each transplant center in the service area with which the OPO has arrangements to coordinate its activities.

The OPO would also have to:

1. Arrange for the appropriate tissue typing of donated organs;

2. Have a system to allocate donated organs among transplant centers and patients according to established medical criteria and policies of the Network;

3. Provide or arrange for the transportation of organs to transplant centers;

4. Have arrangements to coordinate its activities with transplant centers in the area; and

5. Have arrangements to cooperate with tissue banks for the retrieval, processing, preservation, storage and distribution of tissues as may be appropriate to assure that all usable tissues from potential donors are obtained.

• The OPO would have to maintain and make available to the Secretary, the Comptroller General, or their designees data that show that it procured and transplanted the number of organs as required (as measured by the performance standards in § 485.306).

• The OPO would also have to maintain data in a format that can be readily assumed by a successor OPO and to agree to turn over to the Secretary copies of all records and data

necessary to assure uninterrupted service by a successor OPO that is newly designated by HCFA.

These requirements apply to both independent organ procurement agencies and hospital-based organ procurement agencies that wish to be approved for Medicare and/or Medicaid payment purposes.

Participation in the Network

Section 485.305 would require an OPO to be a member of, have a written arrangement with, and abide by the rules and requirements of the Organ Procurement and Transplantation Network. The United Network for Organ Sharing (UNOS) is under contract with the Secretary under section 372 of the PHS Act, effective September 30, 1986, to function as the Organ Procurement and Transplantation Network within the meaning of section 1138 of the Act. The address for UNOS is: 3001 Hungary Spring Rd., P.O. Box 28010, Richmond, VA 23228.

Our requirement is based on section 1138(b) of OBRA, which requires as a condition of payment for organs procured from an OPO that the OPO be a member of, and abide by the rules and requirements of, the Organ Procurement and Transplantation Network established pursuant to section 372 of the Public Health Service Act (i.e., UNOS). We have not defined, described or otherwise circumscribed the statutory phrase "rules and requirements" in this proposed rule. Nor have we delineated what would constitute membership in the Network.

Some concern has been expressed about the requirement that OPOs be members of and abide by the rules of the Network in order to be designated. While we do not believe that UNOS or any other Network contractor we may designate in the future will seek to impose onerous rules or conditions for membership, we recognize that some OPOs may be troubled by this possibility. To allay any fears that the Network's contractor might use particular membership criteria or rules in an exclusionary or discriminatory manner, by the time these regulations are issued in final, we will amend the current contract (or issue appropriate regulations) to specify that the contractor is not permitted to impose any nongermane, exclusionary or discriminatory rules or conditions for membership. We believe this will satisfy any reasonable concerns relating to the ability of OPOs to become and remain members of the Network and to abide by its rules as required by statute. In addition, we wish to solicit comments as to how those terms need to be defined, if at all, and problems commenters might anticipate in the absence of a definition.

Performance Standards

In a new § 485.306, Condition: Performance standards for organ procurement organizations, we would state the requirements an OPO would have to meet to be recertified in order to continue to participate in the Medicare and Medicaid programs and continue to receive reimbursement. On the basis of advice from the Public Health Service, we are proposing the following as performance standards:

a. Each OPO would have to procure within its service area a minimum ratio of 23 cadaveric kidneys per million population of its service area for each 12-month period surveyed.

b. Each OPO would have to provide a minimum ratio of cadaveric kidneys procured in its service area *and transplanted* (either locally or exported and transplanted) of 19 cadaveric kidneys per million population of its service area for each 12 month period surveyed.

c. Each OPO would have to provide multiple organs for transplantation from a minimum of 20 percent of the total number of donors procured in its service area for each 12 month period surveyed. (Multiple organs refers to the donation and recovery of more than one vascular organ from a single organ donor. A pair of kidneys is considered a single organ in this definition.)

These numeric standards are the same as those adopted by the Association of Independent Organ Procurement Agencies (we are using their standards as HOPAs do not have any comparable standards). Kidneys are the basis of the performance standard because of their frequency of transplantation.

Recertification

Each designated OPO would be exempt from meeting the performance standards for the first two years after it is approved (See § 485.306). During that period and subsequently, it must continue to meet the requirements of §§ 485.304 through 485.306 in order to be recertified. Following is our proposal for recertification that outlines the process we intend to use. Since the first recertification would not occur until 1989, we are not proposing specific timeframes for procedural steps at this time.

For recertification, we intend to use State survey agencies to survey each approved OPO at least once every two years to determine if it continues to meet all applicable requirements of §§ 485.304 and 485.305 and meets the performance standards for recertification. HOPAs as well as IOPAs would be subject to the State agency survey. The deemed status of hospitals that are accredited by the Joint Commission on Accreditation of Hospitals (JCAH) or the American Osteopathic Association (AOA) would not exempt them from this requirement.

Failure To Meet Requirements

In a new § 485.307, we would state that if the OPO fails to meet the conditions in §§ 485.304 through 485.306, we would notify the Network and transplant centers in the OPO's service area that we are not paying for services furnished by the OPO on or after a specific date. Any future costs associated with the utilization of this OPO on or after that date would not be reimbursable. We would then suspend payment for OPO services until the OPO is in compliance. If the OPO does not come into compliance, we would then proceed to terminate the agreement to reimburse the OPO's services under Medicare and Medicaid and the agreement that the OPO is the designated one for its service area. The right to appeal a proposed suspension of payment or termination of agreement would be provided. This appeal right is the same as that of other providers and suppliers and is found in 42 CFR Part 498, §§ 498.3 and 498.5. (52 FR 22444)

Multiple Applicants in a Service Area

The law permits the Secretary to pay for organ procurement costs under Medicare and Medicaid only if those costs are derived from payments to a single OPO designated for a given service area. We expect that only one OPO per service area will meet our qualifications. However, it may be that more than one applicant would be qualified. In such cases, we would consider other factors. At this time we propose to consider: (1) Bed capacity associated with the hospitals; and (2) prior performance, including the previous year's experience in the number of organs wasted and harvested and the average cost per organ. Although these additional factors are important, they stress numerical value and for that reason are secondary in consideration. We invite public comment suggesting additional factors to consider.

Also, there may be applicants whose proposed service area surrounds and includes another applicant's proposed service area. In such a case, we would give additional consideration to the applicant with the larger service area.

In new § 485.308, we would state that there will be only one OPO per service

area and the factors we will consider when deciding when more than one applicant meets the requirements.

Regardless of whether an OPO has been approved for a grant under section 371(b) of the Public Health Service Act or as being in compliance with Part 405, Subpart U, it would have to be evaluated for compliance with the newly established criteria for approval in §§ 485.304 and 485.305 and would not be eligible for payment after October 1, 1987 unless specifically designated under section 1138 of the Act.

Application Process

Because the statute is effective October 1, 1987, applicants should begin preparing material to meet these criteria based on the criteria set forth in these proposed regulations.

We encourage all interested organizations to write as soon as possible requesting a formal application. Written inquiries should be addressed to: HCFA, Office of Survey and Certification, Room 2–D–2 Meadows East Building, 6325 Security Blvd., Baltimore, MD. 21207, Attn: Wayne Smith.

As soon as the application form is completed, we will send it and complete instructions to each applicant for completion. Under express provisions in section 1138(b)(1)(F), payment may be made only to approved OPOs that have been designated for their service area. Submission of the application should be based on the conditions for approval established in final regulations. We will publish those as soon as possible after the close of the comment period. We strongly urge interested organizations to develop documentation that would satisfy the conditions as they are proposed. As noted earlier we recognize that there may be service areas where fewer than 75 percent of hospitals will agree to cooperate with any one OPO and we invited comments on that criterion. Potential applicants with agreements with a significant majority of hospitals, but less than the 75 percent proposed minimum, are encouraged to apply to prevent being disadvantaged should public comments be persuasive that the final rule contain exceptions or a lower minimum.

The applicant must forward the completed application to the HCFA regional office that services its area. The regional office will review the application against the final criteria to determine whether the OPO meets our criteria for approval (as required by §§ 485.304 and 485.305) and will make a specific designation before October 1, 1987; the State survey agency will survey the OPO later for adherence to our requirements.

An OPO that is not chosen as the OPO for its service area would have the same administrative appeal rights as other suppliers granted under Part 498. After designation, an OPO will have appeal rights to contest suspension or involuntary termination.

Organ Procurement Protocols

To implement section 1138(a) of the Act, we would revise the condition of participation for hospitals at 42 CFR 482.12, Condition of participation: Governing body. We would add to the standard concerning care of patients, paragraph (c), a new paragraph (5). We would include the language from OBRA requiring protocols pertaining to organ procurement.

The deemed status of the hospitals that are accredited by the JCAH or AOA would not exempt them from these requirements. We would employ the definition of organs used in the statute; we are not proposing any additions to the definition of "organ" at this time.

We note that these protocols would apply to all participating Medicare hospitals. Thus, many hospitals that do not now routinely inquire as to organ availability from potential donors would have to do so. Such protocols, of course, should take into account not only patient conditions but also hospital capability to maintain and harvest organs, whether or not an OPO is available to assist the hospital, and any other factors that would affect the ability of the hospital to harvest organs effectively.

As specifically required by the statute, we would require each hospital to be a member in the Organ Procurement and Transplantation Network for hospitals in which organ transplants are performed and to abide by the Network's rules and requirements. We have not defined, described or otherwise circumscribed the statutory phrase "rules and requirements" of the Network in this proposed rule, nor have we delineated what being a "member" in the Network would require. However, we are soliciting comments as to whether those terms need to be defined, if at all, and problems commenters might anticipate in the absence of a definition. We are aware that some concern has been expressed about the requirement that transplant hospitals must be members of and abide by the rules of the Network. As we stated earlier, we do not believe that UNOS or any other Network contractor we may designate in the future will seek to impose onerous rules or conditions for membership. To allay any fears that the Network contractor might use particular membership criteria or rules in an exclusionary or discriminatory manner, by the time these regulations are issued in final, we will amend the current contract with the Network contractor (or issue appropriate regulations) to specify that it is not permitted to impose any nongermane, exclusionary or discriminatory rules or conditions for membership.

Other Revisions

Our current regulations discuss OPOs primarily in the context of the Medicare ESRD program. That is, their focus has been on kidney procurement. Current § 413.178 discusses reimbursement of costs to independent OPAs. These rules would not change except for technical conforming changes; i.e., we would add a paragraph (f) (redesignating current (f) as (g)) to reflect the need for the OPO to be certified or recertified in accordance with § 485.307 in order to be reimbursed. We would also change all references to "OPA" to "OPO" for consistency; we also would not be reimbursing any costs incurred by any OPA that has not been designated as the OPO for its area.

We would revise Medicaid regulations at 42 CFR 441.13, Prohibitions on FFP: Institutionalized individuals, to exclude from FFP services furnished by an OPO that is not designated by the Secretary for its service area; we would revise the title so that it would no longer be limited only to institutionalized individuals. Under the revisions, each State would be able to continue to provide transplants as it does now; we simply would not contribute any FFP for organ procurement costs incurred by or on behalf of an OPA the Secretary has not designated as the OPO for its service area.

We would delete the definition of OPA from § 405.2102. In Subpart U of Part 405, we would change all references to "OPA" to "OPO" for consistency. It is confusing to use two different terms when we believe Congress intended payment only for OPO costs by requiring an OPA to be designated as an OPO before we could make payment for its costs.

We would add an OPO's appeal rights to 42 CFR Part 498, to assure that a decision not to designate an OPO, to suspend or cease payment (i.e., determine that the OPO does not meet the conditions for coverage), or to terminate the agreement with Secretary is subject to administrative review.

We would make minor technical revisions to §§ 405.2163(f) and 405.2171(a) (standards for participation

in patient registries for renal dialysis facilities or renal dialysis centers and for renal transplant centers), to show that the registry must be with an OPO certified and recertified in accordance with § 485.305. We would also revise § 405.2171(e) to change "OPA" to "OPO", and require that the OPO be certified and recertified in accordance with § 485.305.

IV. Regulatory Impact Statement and Regulatory Flexibility Analysis

A. Executive Order 12291

Executive Order (E.O.) 12291 requires us to prepare and publish an initial regulatory impact analysis for any proposed regulation that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in: An annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

By far the greatest majority of organs procured by affected agencies are kidneys paid for by the Medicare program. The agencies do receive payment from other programs. However, the revenues from other sources are slight compared to payments from Medicare for kidneys. The total Medicare reimbursable costs for 1985 for the entire OPA program are estimated to be only slightly over $100 million: Approximately $42 million for IOPAs and approximately $60 million for HOPAs. We believe that the net costs of implementing the criteria of this regulation would be minimal—that the costs to the program and to the affected entities would be offset by improved efficiencies, resulting in reduction of administrative costs. The requirements in this proposed rule, which for the most part implement statutory provisions, would neither result in an annual economic impact of $100 million or more nor meet any other criteria of the Executive Order. Therefore, we have determined that this rule is not a major rule under Executive Order 12291 and that a regulatory impact analysis is not required.

B. Regulatory Flexibility Act

We generally prepare an initial regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a proposed regulation would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat all existing OPAs as small entities.

Because we expect a substantial economic effect on all existing HOPAs and IOPAs as a result of these regulations, we are providing a regulatory flexibility analysis. We expect these regulations, in combination with other regulations on the subject of organ procurement, to bring about substantial change in terms of economics, behavior, and improvements in health care delivery in the industry.

Currently, there are 60 IOPAs and approximately 80 HOPAs. (We have exact data on the numbers of IOPAs because they are separately certified. Since the HOPAs are not separately certified, we have approximated the numbers.) OPAs have wide variations in size and management that affect their ability to respond effectively to meet the proposed criteria for OPOs. Presently, we expect that some OPAs now approved would meet the requirements of the criteria of this proposed regulation and some would not. Because existing OPAs report to us information about kidneys, and are not now required to meet the proposed population base and procurement minimums, available data is not useful in determining how many existing OPAs may meet all of the proposed criteria for OPAs. However, we believe that with proper notice and preparation most IOPAs could meet nearly all requirements.

The statutory requirement of designation of one OPA per defined area would have a substantial impact upon existing OPAs by necessitating a substantial reduction in the numbers of recognized organ procurement entities. Our best information indicates that as of May, 1987, 12 States and the District of Columbia have more than one OPA in one area as defined by these regulations. (There may be more or fewer as OPAs enter and leave the system.) In response to this requirement, existing OPAs may merge or consolidate.

We expect that many of the existing HOPAs may be at a relative disadvantage in competing for OPO designation because we believe many have procured organs solely or primarily for the transplant operations of the parent hospital. We realize that HOPAs have shared organs with other facilities. However, the proposed OPO criteria presume a wider range of associations and arrangements than we believe is common for HOPAs.

The operations of newly designated OPOs would differ from existing OPAs in several ways:

- They would have to meet performance standards of this rule within two years;
- They would have to work with the OPTN; which is developing its own standards; and
- With improved technology and the trend for insurers to expand coverage of transplants, we expect that procurement of nonrenal organs will comprise a growing portion of their activity. Further, we are separately pursuing a different regulation that would ensure that, in the future, the Medicare program will pay OPOs only for the costs of Medicare covered organs, and only for the share of the costs for those organs that is attributable to services furnished to Medicare beneficiaries. Thus, designated OPOs may need greater capabilities to identify separately the costs attributable to different types of organs and the costs of furnishing organs to recipients covered under different programs.

All IOPAs are currently nonprofit organizations. This may not be true of HOPAs, since one or more may be part of a for-profit hospital. In such a case, the entity could potentially meet the proposed OPO criteria if it were reorganized as a not-for-profit subsidiary.

We believe the proposed requirements regarding organ procurement protocols will have slight impact on hospitals. Effectively all transplant centers are accredited by the JCAH, which already requires hospitals to participate in the Organ Procurement Transplant Network. The proposed written organ procurement protocols may result in some administrative changes for hospitals, but we expect a slight effect on costs. We also expect that this requirement will result in increased efforts to secure organ donors. Those that do not have protocols will begin to establish them; others will step up their efforts. We do not expect it to be a major burden to small or rural hospitals. We expect their protocols to take into consideration their resources or support from an OPO and the OPTN. In addition, the requirement that hospitals participate in the OPTN is required by statute, so this is a conforming change.

State Medicaid agencies would be affected by this proposed rule because FFP would not be available for the costs of Medicaid-covered organ procurement unless the procurement were through an OPO or an "in-house" procurement by a transplant center. Thus, States would have to establish mechanisms to ensure

that Medicaid transplants used the services only of designated OPOs or were in-house. As of April, 1986, 22 States do not have any HOPAs; as of June, 1987, 21 States do not have any HOPAs. Although we cannot match data for a single period, there are 12 States that appear to have no OPAs.

Medicare beneficiaries and Medicaid recipients are affected by this regulation because most of the kidneys to be procured through the Organ Procurement and Transplantation Network by the OPOs will be transplanted in these individuals. Because of the expected improved efficiencies and publicity, we expect more organ donors to be identified, more organs procured and shared, and consequently more transplants, with a resulting beneficial effect on the beneficiaries and recipients.

The net costs of implementing these criteria are estimated to be minimal. Although these proposed criteria may increase costs in the beginning for some entities, at the same time we expect a greater effort to control costs to meet the criteria. Our objective is to improve access to and the quality of health care, and we expect these gains to more than offset any costs or potential adverse consequences for affected entities.

V. Paperwork Reduction Act

Sections 482.12, 485.303, and 485.304 of this proposed rule contain information collection requirements that are subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980. Other organizations and individuals desiring to submit comments on the information collection requirements should follow the instructions in the ADDRESS section.

VI. Response to Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "DATES" section of this preamble, and, if we decide to proceed with a final rule, we will respond to the comments in the preamble of that rule.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 441

Family planning, Grant programs-health, Infants and children, Medicaid, Penalties, Prescription drugs, Reporting and recordkeeping requirements.

42 CFR Part 482

Administrative practice and procedure, Certification of compliance, Contracts (Agreements), Health Care, Health facilities, Health professions, Hospitals, Laboratories, Medicare, Onsite surveys, Outpatient providers, Reporting requirements, Rural areas, X-rays.

42 CFR Part 485

Health facilities, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 498

Administrative practice and procedure, Appeals, Medicare Practitioners, providers and suppliers.

For the reasons set out in the preamble, 42 CFR Chapter IV would be amended as set forth below:

PART 405—[AMENDED]

1. 42 CFR Part 405, Subpart U is amended as set forth below:

a. The authority citation for Subpart U continues to read as follows:

Authority: Secs. 1102, 1861, 1862(a), 1871, 1874, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395y(a), 1395hh, 1395kk, and 1395rr), unless otherwise noted.

b. Section 405.2102 is amended by revising the definition of "Organ procurement" and by removing the definiton of "Organ procurement agency" to read as follows:

§ 405.2102 Definitions.

* * * * *

Organ procurement. The process of acquiring donor kidneys. (See definition of *Organ Procurement organization* in § 485.302 of this chapter.)

* * * * *

c. Section 405.2163(f) is revised to read as follows:

§ 405.2163 Condition: Minimal service requirements for a renal dialysis facility or renal dialysis center.

* * * * *

(f) *Standard: Participation in recipient registry.* The dialysis facility or center participates in a patient registry program with an OPO certified or recertified under Part 485, Subpart D of this chapter for patients who are awaiting cadaveric donor transplantation.

d. In § 405.2171, paragraphs (a) and (e) are revised to read as follows:

§ 405.2171 Condition: Minimal service requirements for a renal transplant center.

* * * * *

(a) *Standard: participation in recipient registry.* The Renal Transplantation Center participates in a patient registry program with an OPO certified or recertified under Part 485, Subpart D of this chapter for patients who are awaiting cadaveric donor transplantation.

* * * * *

(e) *Standard: Organ procurement.* A renal transplant center utilizing the services of an organ procurement organization certified or recertified under Part 485, Subpart D of this chapter to obtain donor organs has a written agreement covering these services. The renal transplant center agrees to notify the Secretary in writing within 30 days of the termination of such arrangements.

PART 413—[AMENDED]

2. 42 CFR Part 413, Subpart F is amended as set forth below:

a. The authority citation for Part 413 continues to read as follows:

Authority: Secs. 1102, 1122, 1814(b), 1815, 1833(a), 1861(v), 1871, 1881, and 1886 of the Social Security Act as amended (42 U.S.C. 1302, 1320a–1, 1395f(b), 1395g, 1395l(a), 1395x(v), 1395hh, 1395rr, and 1395ww).

b. Section 413.178 is revised to read as follows:

§ 413.178 Reimbursement of independent organ procurement agencies and histocompatibility laboratories.

(a) *Principle.* Covered services furnished after September 30, 1978 by organ procurement organizations (OPOs) and histocompatibility laboratories in connection with kidney acquisition and transplantation will be reimbursed under the principles for determining reasonable cost contained in this part. Services furnished by independent OPOs and histocompatibility laboratories, that have an agreement with the Secretary in accordance with paragraph (c) of this section, will be reimbursed by making an interim payment to the transplant hospitals using these services and by making a retroactive adjustment, directly with the OPO or laboratory, based upon a cost report filed by the OPO or laboratory. (The reasonable costs of services furnished by hospital based OPOs or laboratories will be reimbursed in accordance with the

principles contained in §§ 413.60 and 413.64.)

(b) *Definitions.* For purposes of this section:

(1) "OPO" means an organization that meets the definition in § 485.302 of this chapter.

(2) "Histocompatibility laboratory" means a laboratory meeting the standards and providing the services set forth in § 405.2171(d) of this chapter.

(3) "Independent"—An OPO or a histocompatibility laboratory is independent unless it—

(i) Performs services exclusively for one hospital;

(ii) Is subject to the control of the hospital in regard to the hiring, firing, training and paying of employees; and

(iii) Is considered as a department of the hospital for insurance purposes (including malpractice insurance, general liability insurance, worker's compensation insurance, and employee retirement insurance).

(c) *Agreements with independent OPOs and laboratories.* (1) Any independent OPO or histocompatibility laboratory that wishes to have the cost of its pretransplant services reimbursed under the Medicare program must file an agreement with HCFA under which the OPO or laboratory agrees—

(i) To file a cost report in accordance with § 413.24(f) within three months after the end of each fiscal year;

(ii) To permit HCFA to designate an intermediary to determine the interim reimbursement rate payable to the transplant hospitals for services provided by the OPO or laboratory and to make a determination of reasonable cost based upon the cost report filed by the OPO or laboratory;

(iii) To provide such budget or cost projection information as may be required to establish an initial interim reimbursement rate;

(iv) To pay to HCFA amounts that have been paid by HCFA to transplant hospitals and that are determined to be in excess of the reasonable cost of the services provided by the OPO or laboratory; and

(v) Not to charge any individual for items or services for which that individual is entitled to have payment made under section 1861 of the Act.

(2) An independent OPO or histocompatibility laboratory whose services were being reimbursed under Medicare on October 1, 1978, and that wishes to continue being reimbursed under Medicare must file an agreement by January 23, 1979.

(3) The initial cost report due from an OPO or laboratory is for its first fiscal year ending after September 30, 1978, during any portion of which it had an agreement with the Secretary under paragraphs (c)(1) and (2) of this section. The initial cost report covers only the period covered by the agreement.

(d) *Interim reimbursement.* (1) Hospitals eligible to receive Medicare reimbursement for renal transplantation will be paid for the pretransplantation services of an independent OPO or histocompatibility laboratory that has an agreement with the Secretary under paragraph (c) of this section, on the basis of an interim rate established by an intermediary for that OPO a laborortory.

(2) The interim rate will be based on the average cost per service incurred by an OPO laboratory, during its previous fiscal year, associated with procuring a kidney for transplantation. This interim rate may be adjusted if necessary for anticipated cost changes. If there is not adequate cost data to determine the initial interim rate, it will be determined according to the OPO's or laboratory's estimate of its projected costs for the fiscal year.

(3) Payments made on the basis of the interim rate will be reconciled directly with the OPO or laboratory after the close of its fiscal year, in accordance with paragraph (e) of this section.

(4) Information on the interim rate for all independent OPOs and histocompatibility laboratories shall be disseminated to all transplant hospitals and intermediaries.

(e) *Retroactive adjustment.* (1) *Cost reports.* Information provided in cost reports by independent OPOs and histocompatibility laboratories must meet the requirements for cost data and cost finding specified in paragraphs (a) through (e) of § 413.24. These cost reports must provide a complete accounting of the cost incurred by the agency or laboratory in providing covered services, the total number of Medicare beneficiaries who received those services, and any other data necessary to enable the intermediary to make a determination of the reasonable cost of covered services provided to Medicare beneficiaries.

(2) *Audit and adjustment.* A cost report submitted by an independent OPO or histocompatibility laboratory will be reviewed by the intermediary and a new interim reimbursement rate for the succeeding fiscal year will be established based upon this review. A retroactive adjustment in the amount paid under the interim rate will be made in accordance with § 413.64(f). If the determination of reasonable cost reveals an overpayment or underpayment resulting from the interim reimbursement rate paid to transplant hospitals, a lump sum adjustment will be made directly between the intermediary and the OPO or laboratory.

(f) For services furnished on or after October 1, 1987, no payment may be made for services furnished by an OPO that does not met the requirements of Part 485, Subpart D of this chapter.

(g) *Appeals.* Any OPO or histocompatibility laboratory that disagrees with an intermediary's cost determination under this section is entitled to an intermediary hearing, in accordance with the procedures contained in §§ 405.1811 through 405.1833, if the amount in controversy is $1,000 or more.

PART 441—[AMENDED]

3. 42 CFR Part 441, Subpart A is amended as set forth below:

a. The authority citation for Part 441 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

b. The title of § 441.13 in the table of contents is revised to read as follows:

441.13 Prohibitions on FFP.

c. In § 441.10, the introductory paragraph is republished and a new paragraph (i) is added to read as follows:

§441.10 Basis.

This subpart is based on the following sections of the Act which state requirements and limits on the services specified or provide Secretarial authority to prescribe regulations relating to services:

* * * * *

(i) Section 1138(b) for organ procurement organization services (§ 441.13(c)).

d. In § 441.13, the title is revised and a new paragraph (c) is added to read as follows:

§ 441.13 Prohibitions on FFP.

* * * * *

(c) FFP is not available in expenditures for services furnished by an organ procurement organization on or after October 1, 1987, that does not meet the requirements of Part 485, Subpart D of this chapter.

PART 482—[AMENDED]

4. 42 CFR Part 482 is amended as set forth below:

a. The authority citation is revised to read as follows:

Authority: Secs. 1102, 1138, 1814(a)(6), 1861 (e), (f), (k), (r), (v)(1)(G), (z), and (ee), 1864, 1871, 1883, 1886, 1902(a)(30), and 1905(a) of the Social Security Act (42 U.S.C. 1302, 1338, 1395f(a)(6), 1395x (e), (f), (k), (r), (v)(1)(G), (z),

and (ee), 1395aa, 1395hh, 1395tt, 1395ww, 1396a(a)(30), and 1396(a)).

b. For § 482.12(c), the introductory paragraph is republished and new paragraph (c)(5) is added to read as follows:

§ 482.12 Condition of participation: Governing body.

* * * * *

(c) *Standard: Care of patients.* In accordance with hospital policy, the governing body must ensure that the following requirements are met:

* * * * *

(5)(i) To identify potential organ donors as defined in § 485.302 of this chapter, the hospital has written protocols that—

(A) Assure that each family of a potential organ donor knows of its options to either donate an organ or organs or to decline to donate;

(B) Encourage discretion and sensitivity with respect to the circumstances, views and beliefs of the families of potential donors;

(C) Require that an organ procurement organization designated by the Secretary be notified of potential organ donors.

(i) In the case of a hospital in which organ transplants are performed, the hospital must be a member of the Organ Procurement and Transplantation Network established under section 372 of the Public Health Service Act and abide by its rules and requirements.

(ii) For purposes of this subparagraph, the term "organ" means a human kidney, liver, heart, lung, pancreas, and any other human organ or tissue specified by HCFA for purposes of this subparagraph.

5. 42 CFR Part 485 is amended as set forth below:

a. The authority citation for Part 485 is revised to read as follows:

Authority: Secs. 1102, 1138, 1861(aa), and (cc) and 1871 of the Social Security Act; (42 U.S.C. 1302, 1395x and 1395hh).

b. The part heading is revised and the table of contents is amended by adding a new Subpart D as follows:

PART 485—CONDITIONS OF PARTICIPATION AND CONDITIONS FOR COVERAGE: SPECIALIZED PROVIDERS

* * * * *

Subpart D—Conditions for Coverage: Organ Procurement Organizations

Sec.
485.301 Basis and scope.
485.302 Definitions.
485.303 Condition: Organ procurement organization qualifications—General.
485.304 Condition: Qualifications required of an organization for it to be an approved organ procurement organization.
485.305 Condition: Network participation.
485.306 Condition: Performance standards for organ procurement organizations.
485.307 Failure to meet requirements.
485.308 Designation of one OPO for each service area.

c. A new subpart D is added to read as follows:

Subpart D—Conditions of Coverage: Organ Procurement Organizations

§ 485.301 Basis and scope.

The subpart sets forth the qualifications and requirements an organ procurement organization (OPO) must meet in order for the costs of its services in procuring organs for hospitals and transplant centers to be reimbursable under Medicare and Medicaid. Its statutory basis is section 1138(b) of the Act, as added by section 9318 of Pub. L. 99–509.

§ 485.302 Definitions.

As used in this subpart, the following definitions apply:

"Entire standard metropolitan statistical" area means a metropolitan statistical area, a consolidated metropolitan statistical area, or a primary statistical area listed in the State and Metropolitan Area Data Book published by the U.S. Bureau of the Census.

"Organ" means a human kidney, heart, lung, pancreas, liver or other human tissue or organ specified by HCFA for purposes of this subpart.

"Organ procurement organization" means an organization that performs or coordinates the performance of harvesting, preserving and transporting organs and maintains a system of locating prospective recipients for harvested organs.

"Potential donor" means a person who dies in circumstances (causes and conditions of death, and age at death) that are generally acceptable for donation of at least one solid organ if the donor can be identified timely and permission for donation can be obtained.

"Service area" means a geographical area of sufficient size that (unless the service area comprises an entire State) include at least 2.5 million in population or at least fifty potential organ donors each year and that either includes an entire standard metropolitan statistical area or does not include any part of such an area.

"Transplant center" means a hospital certified by Medicare to furnish directly, for specific organ(s), transplant and other medical and surgical speciality services required for the care of transplant patients.

§ 485.303 Condition: Organ procurement organization qualifications—General.

(a) Payment may be made under the Medicare and Medicaid programs for organ procurement costs attributable to payments made to an OPO only if the OPO has been designated by the Secretary as an OPO, payment to which may be treated as organ procurement costs for reimbursement of hospitals under Medicare and Medicaid.

(b) To be initially designated as an OPO, an OPO must:

(1) Apply to HCFA in writing using the application form prescribed by HCFA; and

(2) Meet the requirements in §§ 485.304 and 485.305.

(c) To continue to be designated as the designated OPO as specified in paragraph (b) of this section, the OPO must have been certified or recertified by the Secretary within the previous two years as meeting the performance standards in § 485.306 of this subpart and must continue to meet the requirements in §§ 485.304 and 485.305 of the Subpart.

§ 485.304 Condition: Qualifications required of an organization for it to be a designated organ procurement organization.

To be designated by the Secretary as the OPO for its service area in accordance with § 485.303 of this subpart, the OPO must at the time of application and throughout the period of its designation—

(a) Be a nonprofit entity;

(b) Have accounting and other fiscal procedures necessary to assure the fiscal stability of the organization, including procedures to obtain payment for non-renal organs provided to transplant centers;

(c) Have an agreement with the Secretary to be reimbursed under Medicare for the procurement of kidneys;

(d) Make available to HCFA documentation of its service area. An OPO in a service area of less than 2.5 million in population must provide to HCFA quantifiable data showing that the area yields 50 or more potential donors per year. Documentation that precisely defines the proposed service area includes the following:

(1) The names of the counties (or parishes in Louisiana) served;

(2) Geographic boundaries of the service area for which U.S. population statistics are available;

(3) Total population in service area; and

(4) The number of and the names of acute care hospitals capable of providing organ donors in the service area;

(e) Have a director and such other staff, including an organ donation coordinator and an organ procurement specialist, necessary to obtain organs effectively from donors in its service area;

(f) Have a board of directors or an advisory board that has the authority to recommend policies relating to the donation, procurement, and distribution of organs. The board of directors or advisory board must include—

(1) Members who represent hospital administrators, intensive care or emergency room personnel, tissue banks, and voluntary health associations in its service area;

(2) Members who represent the public residing in that area;

(3) A physician with knowledge, experience, or skills in the field of histocompatability;

(4) A physician with knowledge or skills in the field of neurology; and

(5) A transplant surgeon from each transplant center in its service area with which the OPO has arrangements to coordinate its activities;

(g) To identify potential organ donors, have documented evidence that it has a working relationship with at least 75 percent of the hospitals that participate in the Medicare and Medicaid programs in its service area that have the equipment and personnel for harvesting organs and document systematic efforts intended to acquire all usable organs from potential donors;

(h) Arrange for the appropriate tissue typing of donated organs;

(i) Have a system to allocate donated organs among transplant centers and patients according to established medical criteria;

(j) Provide or arrange for the transportation of donated organs to transplant centers;

(k) Have arrangements to coordinate its activities with transplant centers in the area;

(l) Have arrangements to cooperate with tissue banks for the retrieval, processing, preservation, storage and distribution of tissues as may be appropriate to assure that all usable tissues are obtained from potential donors;

(m) Maintain and make available upon request of the Secretary, the Comptroller General, or their designees data that relate to the performance standards; and

(n) Maintain data in a format that can be readily used by a successor OPO and agree to turn over to the Secretary copies of all records and data necessary to assure interrupted service by a successor OPO newly designated by HCFA.

§ 485.305 Condition: Network participation.

In order to be designated as the OPO for its service area, and to continue to be the designated OPO once designated, an OPO must be a member of, have a written agreement with, and abide by the rules and requirements of the Organ Procurement and Transplantation Network established in accordance with section 372 of the Public Health Service Act.

§ 485.306 Condition: Performance Standards for Organ Procurement Organizations.

(a) HCFA will not recertify any OPO that fails to meet the following performance standards:

(1) Each OPO must procure within its service area a minimum ratio of 23 cadaveric kidneys per million population of its service area for each 12 month period surveyed.

(2) Each OPO must provide a minimum ratio of cadaveric kidneys procured in its service area *and transplanted* (either locally or exported and transplanted) of 19 cadaveric kidneys per million population of its service area for each 12 month period surveyed.

(3) Each OPO must provide multiple organs for transplantation from a minimum of 20 percent of the total number of donors procured in its service area for each 12 month period surveyed. (Multiple organs refers to the donation and recovery of more than one vascular organ from a single organ donor. A pair of kidneys is considered to be a single organ by this definition.)

(b) An OPO designated by HCFA for its service area will be exempt from meeting these performance standards for two years after initially being designated as an OPO under § 485.303 of this subpart.

§ 485.307 Failure to meet requirements.

(a) Failure to continue to meet any of the requirements in §§ 485.304 and 485.305 of the subpart or to meet the performance standards in § 485.306(a) of this subpart (after two years after designation (see § 485.306(b) of this subpart)) may result in suspension of payment for costs for OPO services. HCFA will notify the OPO of its determination that the OPO has not met one or more of the requirements and provide a reasonable opportunity for correction. Continued failure to meet a requirement may result in termination of the OPO's agreement with the Secretary.

(b) An OPO whose payment is suspended or whose agreement with the Secretary is terminated may appeal the action in accordance with Part 498 of this chapter.

§ 485.308 Designation of one OPO for each service area.

(a) The Secretary may designate only one OPO per service area. If more than one OPO applies and substantially meets the requirements of § 485.304 of this subpart in a given service area, the Secretary will consider other factors in reaching a decision concerning which OPO to designate. These factors are as follows:

(1) Bed capacity associated with the hospitals with which the OPOs have a working relationship; and

(2) Prior performance, including the previous year's experience in terms of the number of organs harvested and wasted and the average cost per kidney.

(b) An OPO that applies to HCFA to be the designated OPO for its service area and that is not designated may appeal its nondesignation under Part 498 of this chapter.

PART 498—[AMENDED]

6. 42 CFR Part 498 is amended as follows:

a. The authority citation for Part 498 continues to read as follows:

Authority: Secs. 205(a), 1102, (1869(c), 1871, and 1872 of the Social Security Act (42 U.S.C. 405(a), 1302, 1395 ff(c), 1395hh and (1395ii), unless otherwise noted.)

b. In § 498.2, the definition of "Supplier" is revised to read as follows:

§ 498.2 Definitions.

As used in this part—

* * * * *

"Supplier" means an independent laboratory, supplier of portable X-ray services, rural health clinic (RHC), ambulatory surgical center (ASC), organ procurement organization (OPO), or end-stage renal disease (ESRD) treatment facility that is approved by HCFA as meeting the conditions for coverage of its services, and

* * * * *

c. In § 498.3(b), the introductory paragraph is republished and paragraph (b)(4) is revised to read as follows:

§ 498.3 Scope and applicability.

* * * * *

(b) *Initial determinations by HCFA.* HCFA makes initial determinations with respect to the following matters:

* * * * *

(4) Whether a prospective supplier meets the appropriate conditions for coverage of its services, as set forth in Part 405 (§ 405.152, Subpart M, N, Q, or U), Part 416, Part 485, Subpart D, or Part 491 of this chapter).

* * * * *

(Catalog of Federal Domestic Assistance Programs No. 13.773, Medicare—Hospital Insurance; No. 13.714, Medicare Assistance)

Dated: July 8, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: July 28, 1987.

Otis R. Bowen,

Secretary.

[FR Doc. 87-17505 Filed 7-29-87; 3:31 pm]

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July 31, 1987

Part VI

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Extension of Comment Period on the Proposed Endangered Status for the California Freshwater Shrimp; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Extension of Comment Period on the Proposed Endangered Status for the California Freshwater Shrimp

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of extension of comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice that the comment period will be extended for the proposed determination of endangered status for the California freshwater shrimp (*Syncaris pacifica*). The shrimp is known from only 11 streams in Napa, Marin and Sonoma Counties, California. The extension of the comment period will allow comments on this proposal to be submitted from all interested parties.

DATES: The comment period, which originally closed on June 22, and then was extended to August 1, 1987, now closes October 1, 1987.

ADDRESSES: Written comments and materials should be sent to the Regional Director, U.S. Fish and Wildlife Service, 500 NE. Multnomah Street, Suite 1692, Portland, Oregon 97232. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Regional Endangered Species Office at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, at the above address (503–231–6131 or FTS 429–6131).

SUPPLEMENTARY INFORMATION:

Background

The California freshwater shrimp is a decapod crustacean of the family Atyidae. The species, a true freshwater shrimp, inhabits quiet portions of tree-lined streams with underwater vegetation and exposed tree roots. The species is threatened by introduced predatory fish and deterioration or loss of habitat. A proposal of endangered status was published in the **Federal Register** (52 FR 13254) on April 22, 1987. A Notice of public hearing and extension of the comment period was published in the **Federal Register** (52 FR 23317) on June 19, 1987.

A public comment hearing was held July 15, 1987, at the County Administration Building, Santa Rosa, California. Public comments at the hearing and written comments requested extension of the comment period in order to further evaluate the status of the species.

The comment period on the proposal originally closed on June 22, 1987. The Service extended the comment period to August 1, 1987. The comment period is now extended an additional 60 days, to October 1, 1987. Written comments may now be submitted until October 1, 1987, to the Service office in the **ADDRESSES** section.

Author

The primary author of this notice is Ms. Robyn Thorson, U.S. Fish and Wildlife Service, 500 NE. Multnomah Street, Suite 1692, Portland, Oregon 97232 (503–231–6131 or FTS 429–6131).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *Et seq.*; Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: July 28, 1987.

Rolf L. Wallenstrom,

Regional Director.

[FR Doc. 87–17606 Filed 7–30–87; 10:57 am]

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Briefings on How To Use the Federal Register—
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WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: September 29, at 9 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: Janice Booker, 202-523-5239

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 21

[Docket No. 87-9]

Minimum Security Devices and Procedures, Reports of Crimes and Suspected Crimes and Bank Secrecy Act Compliance

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (Office) is issuing this final rule to remove the annual certification requirement in 12 CFR 21.5(a) to every odd numbered year. In addition, the current requirement regarding records of consultation contained in § 21.5(b) is eliminated. These changes do not reduce security standards. This action is necessary to reduce burdensome requirements and should have no impact on the safety and soundness of national banks.

EFFECTIVE DATE: October 2, 1987.

ADDRESS: Office of the Comptroller of the Currency, 490 L'Enfant Plaza, Washington, DC 20219.

FOR FURTHER INFORMATION CONTACT: Thomas C. Lehmkuhl, National Bank Examiner, Commercial Activities Division, (202) 447-1164.

SUPPLEMENTARY INFORMATION:

Purpose and Content

The purpose of this final rule is to reduce costs and burdens on national banks and the Office. This final rule replaces the annual certification letter required in § 21.5(a) with a requirement that a certification letter be provided to the Office every odd numbered year. Also, the final rule eliminates the § 21.5(b) requirement that a bank retain records of consultation including the name and title of the law enforcement officer with whom the bank's security officer discussed security devices prior to installation. These changes do not reduce security standards. The security requirements of other sections of Part 21 remain in effect.

Background

The Bank Protection Act of 1968, 12 U.S.C. 1881–1884, (Act), conveys authority to supervisory agencies to promulgate rules establishing minimum standard with respect to the installation, maintenance, and operation of security devices and procedures. Section 1882(b) requires the submission of periodic reports regarding these devices and procedures.

During the mid-1960's financial institutions experienced a significant increase in external crimes. One factor believed to have contributed to the increase was the increased number of suburban shopping center branch banks. Branch banks located in these areas were considered more susceptible to "casing" and more conducive to getaways. In addition, it was believed that suburban branch banks placed greater emphasis on convenience than on security.

Federal Bureau of Investigation statistics regarding bank robberies revealed that in 1967, of the 2,551 institutions victimized, only 374 were equipped with cameras, 18 had microphones and speakers, and 142 employed guards. Approximately 50 percent of the total number of institutions had no type of alarm system at all.

For more than 30 years the FBI had professed the need for protective equipment. Trade associations and local law enforcement groups routinely alerted bankers to the dangers of external crimes. While it was clear that security devices help deter and solve crimes against banks, it was believed that bank management viewed security measures with an attitude of indifference.

For all of these reasons, Congress enacted Federal legislation requiring the use of protective devices by financial institutions. (See Bank Protection Act of 1968, Pub. L. 90-389, (H.R. 15345), Volume 1.)

Discussion

Since the Act and its regulations became effective, security devices have been utilized and have proven useful. Office examination procedures include a review of security devices and programs. In addition, prior to a new national bank opening for business, the Office conducts a pre-opening examination. During that examination that bank's security devices and program are reviewed. This final rule will not effect any security requirement. It simply eases burdensome reporting and recordkeeping requirements.

Administrative Procedure Act

The Office has determined that notice and public comment regarding this final rule are unnecessary under 5 U.S.C. 553(b)(B). These changes will reduce unnecessary reporting and recordkeeping burdens on national banks and will not affect bank security.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required by the Administrative Procedure Act or any other statute, the requirements of the Regulatory Flexibility Act (Pub. L. No. 96-354, 5 U.S.C. 601 *et seq.*) are not applicable.

Executive Order 12291

Pursuant to Executive Order 12291, it has been determined that this final rule will not have an annual effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, individual , industries, government agencies or geographic regions, and will not have an adverse effect on competition, employment, investment, productivity, or the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The collection of information requirements contained in Part 21 have been approved by the Office of Management under OMB control number 1557-0072.

List of Subjects in 12 CFR Part 21

National banks, Bank protection, Security devices, Reports.

Authority and Issuance

For the reasons set forth in the preamble, Part 21 of Chapter I of Title 12 of the Code of Federal Regulations is amended as follows:

1. The authority citation for 12 CFR Part 21 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 93a, 1818, as amended, 1881–1884 and 31 U.S.C. 5311 *et seq.*

2. The title of Part 21 is revised to read as follows:

PART 21—MINIMUM SECURITY DEVICES AND PROCEDURES, REPORTS OF CRIMES AND SUSPECTED CRIMES AND BANK SECRECY COMPLIANCE

3. Section 21.5 is amended by revising its title and paragraph (a), removing paragraph (b) and redesignating paragraphs (c) and (d) as (b) and (c). As revised, § 21.5 reads as follows:

§ 21.5 Filing of reports.

(a) *Compliance reports.* As of the last business day in June of each odd numbered year, each bank shall file with the Deputy Comptroller for the district in which it is located, a statement certifying its compliance with the requirements of this part. The statement shall be transmitted by July 31st, dated and signed by the president, or cashier, or other managing officer of the bank and may be in a form substantially as follows:

I hereby certify to the best of my knowledge and belief that this bank was developed and administers a security program that equals or exceeds the standards prescribed by 12 CFR 21.4; that such security program has been reduced to writing, approved by the bank's board of directors, and retained by the bank in such form as will readily permit determination of its adequacy and effectiveness; and that the bank security officer, after seeking the advice of law enforcement officers, has provided for the installation, maintenance, and operation of appropriate security devices, as prescribed by 12 CFR 21.3, in each of the bank's banking offices.

(b) *Records of External Crime.* After a robbery, burglary or nonemployee larceny is committed or attempted at a banking office of a bank, the bank shall keep a record of the incident at its main office. The record may be a copy of a police, insurance or similar report of the incident. Alternatively, the bank may wish to develop its own record indicating the office at which the incident occurred, the type of crime, when the crime occured and the amount of any loss; whether operational or mechanical deficiencies might have contributed to the crime; and what has been or will be done to correct any deficiencies.

(c) *Special reports.* Each bank shall file such other reports as the Comptroller of the Currency or the Comptroller's designee may require.

(Approved by the Office of Management and Budget under control number 1557–0072.)

Dated: May 5, 1987.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 87–17582 Filed 7–31–87; 8:45 am]

BILLING CODE 4810-33-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87–NM–59–AD; Amdt. 39–5696]

Airworthiness Directives: Honeywell, Inc., Sperry Commercial Flight Systems Division (Sperry Corp., Aerospace and Marine Group) Electronic Flight Instrument Systems, Models EDZ 601, 603, 801, 803, 611, and 811

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Models of Honeywell, Inc., analog and digital Electronic Flight Instruments Systems (EFIS) installations, which requires installation of modified multifunction display symbol generators. This amendment is prompted by reports of a faulty fast/slow (F/S) indication in the Electronic Attitude Director Indicator. This condition, if not corrected, can result in a hazardous condition, since the airplane's actual speed can be slower than indicated by the F/S presentation.

DATE: Effective August 20, 1987.

ADDRESSES: The applicable service information may be obtained from Honeywell, Inc., Sperry Commercial Flight Systems Division (formerly Sperry Corporation, Aerospace and Marine Group), P.O. Box 29000, Phoenix, Arizona 85038–9000. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Western Aircraft Certification Office, 15000 Aviation Boulevard, Hawthorne, California.

FOR FURTHER INFORMATION CONTACT: Mr. Ward Mulby, Aerospace Engineer, Western Aircraft Certification Office, ANM–173W, FAA, Northwest Mountain Region, 15000 Aviation Boulevard, Hawthorne, California; telephone (213) 297–1131.

SUPPLEMENTARY INFORMATION: There have been several reports of erroneous fast/slow (F/S) presentations on the electronic attitude director indicator of Honeywell EFIS equipment. It was found that Honeywell EFIS installations which employ a single angle of attack (AOA) electrical sensor source to provide inputs into more than a single 1,000 ohm load can cause erroneous indications on the F/S indicator. This problem occurs on installations that have a multifunction display symbol generator (MG). Such a F/S presentation can be hazardous, since the airplane can actually be flying more slowly than indicated on the F/S presentation. The improper electrical loading of the AOA sensor will not allow the F/S indicator to ever reach full scale deflection. This could be hazardous on the slow side because the pilot could be flying much closer to stall speed than he/she realizes, if reliance is placed on the F/S displayed information. This problem has been found to occur in both analog and digital types of Honeywell EFIS equipment. The corrective action for this problem is the same for both analog and digital EFIS, and consists of changing the AOA sensor input loading resistance of the MG from 1,000 ohms to 20,000 ohms.

The FAA has reviewed and approved Sperry Corporation Service Bulletin 21–1986–200, dated January 20, 1987, and Service Bulletin 21–1987–06, dated May 15, 1987, both of which describe a modification which incorporates the 20,000 ohms loading resistance into the MG. Service Bulletin 21–1986–200 describes the change which applies to the analog type EFIS equipment and modifies Sperry part numbers 7007061–603, –803, –601, –801, and –901 to Modification K; Service Bulletin 21–1987–06 applies to the digital type EFIS equipment and modifies part numbers 7007321–811 and –611 to Modification L.

Since this condition is likely to exist on any Honeywell EFIS equipped with Sperry Corporation Part Number (P/N) 7007061–603, –803, –601, –801, and –901, and P/N 7007321–811 and –611, this AD requires replacement of the MG with a modified unit in accordance with the service bulletins previously mentioned.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Honeywell, Inc., Sperry Commercial Flight Systems Division (formerly Sperry Corporation, Aerospace and Marine Group): Applies to all digital and analog Electronic Flight Instrument Systems (EFIS) Models EDZ 601, 603, 801, 803, 611, and 811 installations, which include a multifunction display symbol generator. Compliance required within 30 days after the effective date of this AD, unless previously accomplished.

To eliminate erroneous display of the angle of attack fast/slow presentation, accomplish the following:

A. For the analog type EFIS equipment: Exchange Multifunction Display Symbol Generator (MG) P/N's 7007061-603, -803, -601, -801, and 901 with the same part numbers which have Modification (Mod) K or subsequent incorporated; accomplish this in accordance with Paragraph 2, "Accomplishment Instructions" of Honeywell Service Bulletin 21-1986-200, dated January 20, 1987.

B. For the digital type EFIS equipment: Exchange MG P/N's 7007321-811 and -611 with the same part numbers which have Modification (Mod) L or subsequent incorporated; accomplish this in accordance with Paragraph 2, "Accomplishment Instructions" of Honeywell Service Bulletin 21-1987-06, dated May 15, 1987.

C. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Western Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to ferry aircraft to a maintenance base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Honeywell Inc., Sperry Commercial Flight System Division, P.O. Box 29000, Phoenix, Arizona 85038-9000. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at Western Aircraft Certification Office, 15000 Aviation Boulevard, Hawthorne, California.

This Amendment becomes effective August 20, 1987.

Issued in Seattle, Washington, on July 27, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-17467 Filed 7-31-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-NM-88-AD; Amdt. 39-5697]

Airworthiness Directives; McDonnell Douglas Model DC-9-81, -82, and -83 Airplanes, Fuselage Numbers 909 Through 1338 and 1340 Through 1363, Equipped With Taxi Speed Indication System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain DC-9-81, -82, and -83 series airplanes, which requires deactivation of the Taxi Speed Indication System. This amendment is prompted by a report of an undetected failure mode that exists within the Nose Wheel Speed Computer. This condition, if not corrected, could result in loss of braking on one of the inboard wheels and cause the airplane to depart from the runway during a rejected takeoff or after landing.

DATES: Effective August 20, 1987.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Alan T. Shinseki, Aerospace Engineer, Systems & Equipment Branch, ANM-132L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6323.

SUPPLEMENTARY INFORMATION: The FAA has received a report from the manufacturer that a single, undetected failure mode exists within both the analog type, Kratos Part Number 50912, and the digital type, Kratos Part Number 50913, Nose Wheel Speed Computers on McDonnell Douglas Model DC-9-80 series airplanes. This failure mode can cause the Anti-Skid System inadvertently to sense a "wheels locked" condition and result in loss of braking capability on one inboard wheel. The loss of braking capability is not annunciated to the flight crew. This condition, if not corrected, could cause the airplane to depart from the runway during a rejected takeoff or after landing.

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin A32-221, Revision 1, dated May 15, 1987, which provides instructions for deactivation of the Taxi Speed Indication System.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD requires the deactivation of the Taxi Speed Indication System in accordance with the Service Bulletin previously mentioned.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impractical for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to

involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, and evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-9-81, -82, and -83 series airplanes, fuselage numbers 909 through 1338 and 1340 through 1363, equipped with Taxi Speed Indication System, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent an inadvertent unannunciated loss of braking capability on one of the inboard wheels, accomplish the following:

A. Within 30 days after the effective date of this airworthiness directive (AD), deactivate the Taxi Speed Indication System in accordance with the Accomplishment Instructions of McDonnell Douglas DC-9 Alert Service Bulletin A32-221, Revision 1, dated May 15, 1987.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operative airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-L65 (54-60). These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

This amendment becomes effective August 20, 1987.

Issued in Seattle, Washington, on July 27, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-17498 Filed 7-31-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-AGL-15]

Alteration to the Manitowoc, WI, Control Zone and Manitowoc, WI, and Mattoon, IL, Transition Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to alter the published descriptions for the Manitowoc, WI control zone and Manitowoc, WI and Mattoon, IL transition areas.

Due to the addition of a DME capability to an existing VOR facility; and, because the existing VOR facilities are identified in the existing descriptions, the published descriptions need modification.

EFFECTIVE DATE: 0901 U.t.c., September 24, 1987.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue., Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION: Docket 87-AGL-10 addressed modifying the published descriptions for Manitowoc, WI; Marion, IL; Marion, IN; and Mattoon, IL by changing the acronyms VOR to VOR/DME, but no specific effective date for charting was mentioned. Distribution of the docket was made to aviation interest groups and Airport Managers who are located in the above mentioned areas.

The purpose of this docket is to supplement information to docket number 87-AGL-10 for Manitowoc, WI and Mattoon, IL. The supplemental information includes an effective date and expands on the fact that the only modifications being made will be to the legal descriptions and to charting changes showing VOR/DME instead of VOR for the facilities. Once effective dates have been determined for commissioning VOR/DME facilities for Marion, IL and Marion, IN docket action will be taken to include supplemental information for the two locations.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations modifies the published descriptions for Manitowoc, WI and Mattoon, IL by changing the acronyms VOR to VOR/DME.

There will be no changes to the existing designated airspace area or designated altitudes for the associated control zone and/or transition areas.

The only effects will be a charting change to depict VOR/DME facilities in lieu of VOR facilities.

I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor amendment in which the public would not be particularly interested. Sections 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

In all instances where the acronym VOR appears; remove and replace with VOR/DME for the control zone listed below.

Manitowoc, WI [Amended]

and

3. Section 71.181 is amended as follows:

In all instances where the acronym VOR appears; remove and replace with VOR/DME for the transition areas listed below.

Manitowoc, WI [Amended]

Mattoon, IL [Amended]

Issued in Des Plaines, Illinois, on July 21, 1987.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 87-17465 Filed 7-31-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86-ASO-11]

Alteration of Federal Airways; Kentucky

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends six Federal Airways so that they are aligned with the recently established Hazard, KY, very high frequency omnidirectional radio range and tactical air navigational aid (VORTAC). Formerly these airways were aligned with a navigational aid located approximately 22 miles to the southwest which has been decommissioned.

EFFECTIVE DATE: 0901 U.T.C., September 24, 1987.

FOR FURTHER INFORMATION CONTACT: Lewis Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On October 8, 1986, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to align VOR Federal Airways V-53, V-115, V-140, V-331, V-339, and V-517 with the planned relocated and renamed Whitesburg, KY, VORTAC (51 FR 36020). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400. 6C dated January 2, 1987

The Rule

This amendment to Part 71 of the Federal Aviation Regulations is the culmination of the project to relocate the Whitesburg, KY, VORTAC to a site on the Eastern Kentucky Regional Airport located approximately 22 miles to the northwest. Formerly, this VORTAC was remotely located and subjected to continuous vandalism. With the relocation of this navigational aid, VOR Federal Airways V-53, V-115, V-140, V-331, V-339, and V-517 were affected and required alignment. This action aligns those airways with the relocated and renamed navigational aid Hazard, KY, VORTAC

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-53, V-115, V-140, V-331 and V-339 [Amended]

By removing the words "Whitesburg, KY" and by substituting the words "Hazard, KY"

V-517 [Amended]

By removing "013°" and by substituting "019°"

Issued in Washington, DC, on July 24, 1987.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87-17463 Filed 7-31-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 71 and 73

[Airspace Docket No 86-ANM-30]

Establishment of Restricted Area R-6404D Hill AFB, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Restricted Area R-6404D located near Hill AFB, UT. This action provides additional restricted area airspace to permit the United States Air Force to satisfy their operational and training requirements.

EFFECTIVE DATE: 0901 U.t.c., September 24, 1987.

FOR FURTHER INFORMATION CONTACT: Andrew B. Oltmanns, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9254.

SUPPLEMENTARY INFORMATION:

History

On April 28, 1987, the FAA proposed to amend Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) to establish a new Restricted Area R-6404D located near Hill AFB, UT, and also to add R-6404D to the Continental Control Area (52 FR 15326). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Two comments objecting to the proposal were received. The Aircraft Owners and Pilots Association (AOPA) requested in lieu of indicated hours of operation "By NOTAM" that specific hours of operation should be stipulated, and that

those hours be determined only after coordination with the Salt Lake City Air Route Traffic Control Center (ARTCC). AOPA also requested that the implementation of R-6404D correspond with the date of publication for the next Salt Lake City Sectional Chart. The Air Transport Association of America (ATA) voiced their concern with the reduction in the lateral airspace dimension of the corridor west of the Salt Lake City International Airport and that the proposal did not indicate joint-use.

Use of R-6404D will be scheduled in advance to avoid peak traffic periods of the Salt Lake City ARTCC. Therefore, sufficient lateral airspace will be retained by the Salt Lake City ARTCC to accommodate peak traffic flows west of Salt Lake City International Airport. In addition, activation will be permitted only for those mutually agreed upon time periods necessary to accomplish required activities for which the area is designated. Therefore, publishing specific times of use as proposed by AOPA would not indicate real-time use of the airspace. The restricted area will be designated joint-use and pilots requiring actual status of the airspace can contact the nearest Flight Service Station or Salt Lake City ARTCC. This airspace will become effective on September 24, and will be charted on the sectional chart on November 21 since the United States Air Force (USAF) requires this parcel of airspace as soon as possible to meet their flying requirements. Between September 24 and November 21, the new area will be charted on the low altitude en route charts and published in a NOTAM accordingly whenever the area is activated for use by the USAF. Except for editorial changes, these amendments are the same as those proposed in the notice. Sections 71.151 and 73.64 of Parts 71 and 73 of the Federal Aviation Regulations were republished in Handbook 7400.6C dated January 2, 1987.

The Rule

These amendments to Parts 71 and 73 of the Federal Aviation Regulations establish Restricted Area R-6404D located near Hill AFB, UT, and add the restricted area to the Continental Control Area. This action establishes the necessary restricted airspace required by the USAF to conduct their operational and training requirements.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 73

Aviation safety, Continental control area, Restricted area.

Adoption of the Amendments

Accordingly, pursuant to the authority delegated to me, Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) are amended, as follows:

PART 71— DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.151 [Amended]

2. § 71.151 is amended as follows:

R-6404D Hill AFB, UT [New]

PART 73—SPECIAL USE AIRSPACE

3. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

4. § 73.64 is amended as follows:

R-6404D Hill AFB, UT [New]

Boundaries. Beginning at lat. 40°55'00" N., long. 112°50'30" W., to lat. 40°55'00" N., long. 114°00'00" W.; to lat. 40°49'00" N., long. 113°40'00" W.; to lat. 40°52'00" N., long. 112°57'00" W.; to the point of beginning.

Designated altitudes. 13,000 feet MSL to FL 250.

Time of designation. By NOTAM.

Controlling agency. FAA, Salt Lake City ARTCC

Using agency. USAF, Commander, 6501st Range Squadron (AFSC), Hill AFB, UT

Issued in Washington, DC, on July 23, 1987.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87-17460 Filed 7-31-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 71 and 75

[Airspace Docket No. 86-AGL-3]

Alteration, Establishment and Revocation of Airways and Jet Routes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: These amendments alter the descriptions of ten Federal Airways, add one new airway and revoke Jet Route J-113. These changes are necessary because the planned commissioning of the Timmerman, WI, very high frequency omni-directional radio range and tactical air navigational aid (VORTAC) has been canceled and the decommissioning of Badger, WI, VORTAC has been withdrawn. These actions eliminate alternate airway descriptions in accordance with our International Civil Aviation Organization (ICAO) agreement and realign other airways to improve traffic flows.

EFFECTIVE DATE: 0901 U.t.c., September 24, 1987.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On October 22, 1986, the FAA proposed to amend Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) to alter the descriptions of ten VOR Federal Airways, add one new airway and revoke Jet Route J-113 (51 FR 37416). The FAA plan to decommission Badger, WI, VORTAC and to upgrade the Timmerman, WI, TVOR was abandoned in October 1985 because of engineering and technical problems. These actions would make necessary airway changes to complement the use of the Badger VORTAC. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal

were received. Except for changes to V–228 that added the Chicago O'Hare, IL, and Northbrook, IL, intersection; V–420 that removed the portion of the airway from Chicago O'Hare to Badger, WI; V–170 which added a segment from Badger to Pullman, MI; and V–217 that added the portion of the airway from Chicago O'Hare to Badger, these amendments are the same as those proposed in the notice. Sections 71.123 and 75.100 of Parts 71 and 75 of the Federal Aviation Regulations were republished in Handbook 7400.6C dated January 2, 1987.

The Rule

These amendments to Parts 71 and 75 of the Federal Aviation Regulations alter the descriptions of ten Federal Airways, add one new airway and revoke Jet Route J–113. These changes are necessary because the planned commissioning of the Timmerman, WI, VORTAC has been canceled and the decommissioning of Badger, WI, VORTAC has been withdrawn. This action eliminates alternate airway descriptions in accordance with our ICAO agreement and realign other airways to improve traffic flows.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 75

Aviation safety, VOR Federal Airways and Jet Routes.

Adoption of the Amendments

Accordingly, pursuant to the authority delegated to me, Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) are amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V–24 [Revised]

From Aberdeen, SD, via Watertown, SD; Redwood Falls, MN; Rochester, MN; Lone Rock, WI; INT Lone Rock 147° and Janesville, WI, 281° radials; Janesville; INT Janesville 112° and Northbrook, IL, 290° radials; to Northbrook.

V–398 [New]

From Aberdeen, SD, via INT Aberdeen 101° and Watertown, SD, 312° radials; Watertown; Redwood Falls, MN; Rochester, MN; Waukon, IA; to Lone Rock, WI.

V–30 [Amended]

By removing the words "Pullman, including a S alternate via INT Badger 121° and Pullman 282° radials;" and substituting the word "Pullman;"

V–82 [Amended]

By removing the words "Dells, WI; INT Dells 097° and Timmerman, WI, 322° radials; 6 miles wide; Timmerman" and substituting the words "to Dells, WI"

V–191 [Amended]

By removing the words "Northbrook, IL; INT Northbrook 332° and Badger, WI, 182° radials; Badger;" and substituting the words "Northbrook, IL; Badger, WI;"

V–217 [Amended]

By removing the words "From Chicago O'Hare, IL; INT Chicago O'Hare 019° and Badger, WI, 137° radials; INT Chicago Heights, IL, 358° and Milwaukee 121° radials; Badger;" and substituting the words "From INT Chicago O'Hare, IL, 316°/Joliet, IL, 360° and Northbrook, IL, 290° radials; INT Chicago O'Hare 316° and Badger, WI, 193° radials; Badger;"

V–228 [Amended]

By removing the words "Madison, WI, Janesville, WI; INT Janesville 112° and Northbrook, IL, 290° radials; Northbrook;" and substituting the words "Madison, WI; INT Madison 138° and Chicago O'Hare, IL, 316° radials; INT Chicago O'Hare 316° and Northbrook, IL, 290° radials; Northbrook;"

V–411 [Amended]

By removing the words "From Rochester, MN," and by substituting the words "From Lone Rock, WI, via Waukon, IA; Rochester, MN; INT"

V–127 [Revised]

From Bradford, IL; Polo, IL; to Rockford, IL.

V–170 [Amended]

By removing the words "Dells, WI; INT Dells 097° and Badger, WI, 307° radials; Badger; INT Badger 102° and Pullman, MI, 303° radials; Pullman;" and substituting the words "Dells, WI; INT Dells 097° and Badger, WI, 304° radials; Badger; INT Badger 121° and Pullman, MI, 282° radials; Pullman;"

V–420 [Revised]

From Bradford, IL, via INT Bradford 033° and Polo, IL, 068° radials; INT Polo 068° and DuPage, IL, 320° radials. From Green Bay, WI; Traverse City, MI; Gaylord, MI; to Alpena, MI.

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

3. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

4. Section 75.100 is amended as follows:

J–113 [Removed]

Issued in Washington, DC, on July 23, 1987.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87–17461 Filed 7–31–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 75

[Airspace Docket No. 87–ASO–10]

Alteration of Jet Routes; Florida

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment realigns Jet Routes J–53, J–75 and J–210. The current alignment of these jet routes does not clear the airspace of Restricted Area R–3005A at Fort Stewart, GA, which is active with military training operations from 6 a.m. to midnight, local time, daily. As a result, all aircraft proceeding along these routes must be vectored to the west of Restricted Area R–3005A. This action realigns J–53, J–75 and J–210 to enable flight operations to proceed via flight plan filed, improve safety in that area, and reduce controller workload.

DATES: *Effective date* 0901 U.T.C., September 24, 1987. Comments must be received on or before September 14, 1987.

ADDRESSES: Send comments on the rule in triplicate to: Director, FAA, Southern Region, Attention: Manager, Air Traffic

Division, Docket No. 87–ASO–10, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is in the form of a final rule, which involves realigning Jet Routes J–53, J–75 and J–210 located in the vicinity of Jacksonville, FL, and was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of this amendment to Part 75 of the Federal Aviation Regulations (14 CFR Part 75) is to realign Jet Routes J–53, J–75 and J–210 located in the vicinity of Jacksonville, FL. The current alignment of these jet routes does not clear the boundary of Restricted Area R–3005A at Fort Stewart, GA. R–3005A is utilized for high speed combat maneuvers as well as a wide assortment of military special operations conducted by the 24th Infantry. Activities conducted in that area include battalion size live-fire exercise, Joint Air Attack Team (JAAT) activities in conjunction with A–10 aircraft, parachute attack jumps, numerous and continuous helicopter operations, extensive operations by fighter/attack aircraft and training used in support of the Patriot missile system. This action improves air safety for nonparticipating aircraft and reduces controller workload. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

Under the circumstances presented, the FAA concludes that there is an immediate need for a regulation to amend the descriptions of Jet Routes J–53, J–75 and J–210 to avoid Restricted Area R–3005A to improve aviation safety. Therefore, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable due to safety requirements for high altitude aircraft operations in the vicinity of Restricted Area R–3005A and are unnecessary because this action is a minor technical amendment in which the public would not be particularly interested.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 75 of the Federal Aviation Regulations (14 CFR Part 75) is amended, as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J–53 [Amended]

By removing the words "Colliers, SC;" and substituting the words "INT Jacksonville 347° and Colliers, SC, 174° radials; Colliers;"

J–75 [Amended]

By removing the words "Columbia, SC;" and substituting the words "INT Taylor 019° and Columbia, SC, 203° radials; Columbia;"

J–210 [Revised]

From INT Savannah, GA, 256° and Vance, SC, 221° radials; Vance; to Wilmington, NC.

Issued in Washington, DC, on July 24, 1987.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87–17459 Filed 7–31–87; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 74

[Docket No. 83C–0310]

Listing of Color Additives for Coloring Contact Lenses; D&C Yellow No. 10

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the color additive regulations to provide for the safe use of D&C Yellow No. 10 as a color additive in contact lenses. This action is in response to a petition filed by Paragon Optical, Inc. The agency is also announcing that the petitioner has withdrawn its request that FDA also approve the use of D&C Red No. 17 for coloring of contact lenses.

DATES: Effective September 3, 1987, except as to any provisions that may be stayed by the filing of proper objections; objections by September 2, 1987.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mary W. Lipien, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION:

I. Introduction

In a notice published in the Federal Register of October 21, 1983 (48 FR 48870), FDA announced that Paragon Optical, Inc., 947 East Impala Ave., Mesa, AZ 85204, had petitioned (CAP

3C0162; Docket No. 83C–0310) the agency to approve the use of D&C Red No. 17 in coloring contact lenses. An amended notice of filing for Paragon's color additive petition was published in the **Federal Register** of January 6, 1984 (49 FR 937) to announce that the firm was also seeking approval for the use of D&C Yellow No. 10 in coloring contact lenses. The petition was filed under section 706 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 376).

Currently, D&C Yellow No. 10 is permanently listed under Part 74 for use in coloring drugs (21 CFR 74.1710) and cosmetics generally (21 CFR 74.2710). This final rule provides for the safe use of D&C Yellow No. 10 in coloring contact lenses as requested by Paragon Optical, Inc., and announces that the petitioner has withdrawn its request for approval of the use of D&C Red No. 17 for coloring contact lenses.

II. Applicability of the Act

With the passage of the Medical Device Amendments of 1976 to the act (Pub. L. 94–295), Congress mandated the listing of color additives for use in medical devices when the color additive comes in direct contact with the body for a significant period of time (21 U.S.C. 376(a)). The use of D&C Yellow No. 10 as a color additive in contact lenses is subject to this listing requirement. The color additive is added to contact lenses in such a way that at least some of the color additive will come in contact with the eye when the lenses are worn. In addition, the lenses are intended to be placed on the eye for several hours a day, each day, for 1 year or more. Thus, the color additive will be in direct contact with the body for a significant period of time. Consequently, the use of the color additive currently before the agency is subject to the statutory listing requirement.

III. The Color Additive

The color additive D&C Yellow No. 10 is a mixture of the sodium salts of the mono- and disulfonic acids of 2-(2-quinolinyl)-1*H*-indene-1,3 (2*H*)-dione consisting principally of the sodium salts of 2-(2,3-dihydro-1,3-dioxo-1*H*-indene-2-yl)-6-quinolinesulfonic acid and 2-(2,3-dihydro-1,3-dioxo-1*H*-indene-2-yl)-8-quinolinesulfonic acid, with lesser amounts of the disodium salts of the disulfonic acids of 2-(2-quinolinyl)-1*H*-indene-1,3(2*H*)-dione (CAS Reg. No. 8004–92–0). D&C Yellow No. 10 is manufactured by condensing quinaldine with phthalic anhydride to give the unsulfonated dye, which is then sulfonated with oleum.

IV. Safety Evaluation

FDA concludes from the data submitted in the petition and from other relevant information that the upper limit of exposure to D&C Yellow No. 10 from its use in contact lenses is 280 nanograms per day. The agency-calculated upper limit was based on two factors. First, from information submitted by the petitioner, FDA estimated that the maximum use level of the color additive is 50 micrograms per lens (Ref. 1). Second, the agency made two worst case assumptions: (1) That a user will replace lenses tinted with D&C Yellow No. 10 once each year with a new pair of lenses tinted with the color additive at the maximum use level; and (2) that 100 percent of the color additive will migrate from the lenses into the eyes over the 1-year period. Because these assumptions are worst case estimates, exposure to D&C Yellow No. 10 from its use for coloring contact lenses is likely to be far less than 280 nanograms per day.

To establish that the color additive D&C Yellow No. 10 is safe for use in coloring contact lenses, the petitioner conducted an in vitro cytotoxicity study on the color additive using L929 mouse fibroblast cells. The cell cultures were exposed to nine different levels of the color additive ranging from 5 milligrams per milliliter down to 50 picograms per milliliter. Cell growth inhibition over 72 hours of exposure was determined by direct cell count, in addition to total protein analysis. The study demonstrates that the no-effect level for D&C Yellow No. 10 is greater than 50 micrograms per milliliter.

To relate this no-effect concentration for D&C Yellow No. 10 to the maximum concentration level in the eye that would result from the use of this color additive in contact lenses, the agency estimated that the daily exposure of the color additive in each eye (140 nanograms) will be diluted by the average daily volume of tears produced in each eye (1.68 milliliters). This concentration is equal to a maximum daily concentration of 0.083 micrograms of color additive per milliliter in the tear flow and eye area. This concentration is over 600 times less than the no-effect dose for D&C Yellow No. 10 found in the cytotoxicity study.

Based upon the available toxicity data, the small amount of the color additive added to the contact lens, and the agency's exposure calculation, FDA finds that the color additive D&C Yellow No. 10 is safe for use in contact lenses. FDA further concludes that the safety margin is sufficiently large that a limitation on the amount of the color additive that may be present in the lens is not required, beyond the limitation that only the amount necessary to accomplish the intended technical effect may be used.

IV. Certification and Specification Considerations

D&C Yellow No. 10 is currently produced as a certified color additive in accordance with 21 CFR Part 80. The agency concludes that the specifications currently set for D&C Yellow No. 10 under § 74.1710 (21 CFR 74.1710) are adequate to ensure the safe use of this color additive.

V. Conclusion

Based on the data in the petition, safety data in FDA's files on currently regulated uses of this color additive, and other relevant material, FDA concludes that there is a reasonable certainty that no harm will result from the petitioned use of D&C Yellow No. 10 for coloring contact lenses, and that this color additive is safe for its intended use. In addition, based upon the data it considered, the agency finds that D&C Yellow No. 10 is suitable for use in coloring contact lenses.

VI. Inspection of Documents

In accordance with § 71.15 (21 CFR 71.15), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the use of this color additive in coloring contact lenses is available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 71.15, the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

VII. Environmental Assessment

The agency has previously considered the environmental effects of this rule as announced in the amended Notice of Filing for CAP 3C0162, January 6, 1984 (49 FR 937). No new information or comments have been received that would affect the agency's previous determination that there is no sigpificant impact on the human environment and that an environmental impact statement is not required.

VIII. Reference

The following information has been placed on file at the Dockets Management Branch (address above) and is available for review in that office

between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum of February 10, 1986, from Food Additive Chemistry Evaluation Branch to Petitions Control Branch, Re: "Color Additives in Contact Lenses."

IX. Objections

Any person who will be adversely affected by this regulation may at any time on or before September 2, 1987, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. FDA will publish notice of the objections that the agency has received or lack thereof in the Federal Register.

List of Subjects in 21 CFR Part 74

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 74 is amended as follows:

PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 74 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); 21 CFR 5.10.

2. In Subpart D by adding new § 74.3710 to read as follows:

§ 74.3710 D&C Yellow No. 10.

(a) *Identity.* The color additive D&C Yellow No. 10 shall conform to the identity requirements of § 74.1710(a).

(b) *Specifications.* The color additive D&C Yellow No. 10 for use in contact lenses shall conform to the specifications of § 74.1710(b).

(c) *Uses and restrictions.* (1) The color additive D&C Yellow No. 10 may be used for coloring contact lenses in amounts not to exceed the minimum reasonably required to accomplish the intended coloring effect.

(2) Authorization for this use shall not be construed as waiving any of the requirements of sections 510(k), 515, and 520(g) of the Federal Food, Drug, and Cosmetic Act with respect to the contact lens in which the color additive is used.

(d) *Labeling.* The label of the color additive shall conform to the requirements of § 70.25 of this chapter.

(e) *Certification.* All batches of D&C Yellow No. 10 shall be certified in accordance with regulations in Part 80 of this chapter.

Dated: July 27, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-17485 Filed 8-2-87; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 101

[Docket No. 83N-0280]

Nutrition Labeling of Food; Calorie Content

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its food labeling regulations to provide for the exclusion of nondigestible dietary fiber when determining the calorie content of a food for nutrition labeling purposes. This action will allow for a more accurate declaration of the available calories in food.

DATES: Effective August 3, 1987. The Director of the Office of the Federal Register approves the incorporation by reference of certain publications in 21 CFR 101.9 effective on August 3, 1987.

ADDRESS: Requests for single copies of the analytical method may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, or the Division of Nutrition, Center for Food Safety and Applied Nutrition (HFF–260), Food and Drug Administration, 200 C St. SW., Washington, DC 20204.

FOR FURTHER INFORMATION CONTACT: Elizabeth J. Campbell, Center for Food Safety and Applied Nutrition (HFF–312), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0175.

SUPPLEMENTARY INFORMATION: In the Federal Register of August 13, 1984 (49 FR 32216), as corrected in the Federal Register of September 17, 1984 (49 FR 36405), FDA proposed to amend 21 CFR 101.9(c)(3) to provide for the exclusion of nondigestible dietary fiber when determining the calorie content of a food for nutrition labeling purposes. Interested persons were given until October 12, 1984, to comment on the proposal.

Eight comments from trade associations and food manufacturers were received in response to the proposal. All of the comments supported the proposal, but several comments requested minor modifications. These comments and the agency's responses are as follows:

1. One comment from a manufacturer disagreed with the proposed use of the Association of Official Analytical Chemists' (AOAC) method for determining nondigestible dietary fiber and adjusting the calorie declaration. The comment claimed that the AOAC method is not well recognized and is costlier than the method that the manufacturer was using to determine the adjusted calorie declaration for its products. The comment recommended that FDA use the "assimilable carbohydrate" method, in which the adjusted calorie declaration is determined by adding the amount of total starch, total reducing sugars, and sucrose rather than by subtracting the nondigestible dietary fiber from total calories. The comment said that the "assimilable carbohydrate" method would be less costly because the AOAC method cited in the proposal requires an additional analysis to achieve the same results.

The agency has reviewed the method of determining "assimilable carbohydrate" suggested by the comment, and does not agree that this method should be adopted by FDA for regulatory purposes. Although use of the "assimilable carbohydrate" method suggested by the comment may yield results comparable to those achieved with the AOAC method cited in the proposal, the suitability of the method for the analysis of a large variety of foods has not been established. In fact, FDA has very little information on what types of foods have been tested with this method.

Since publication of the August 13, 1984, proposal, the AOAC has adopted (with minor modifications) the method cited in the proposal as an "official final action" method. This method now appears in the *Journal of the Association of Official Analytical Chemists* (JAOAC) under the title "Total Dietary Fiber in Foods, Enzymatic-Gravimetric Method, First Action" 68:399, 1985, as amended in the JAOAC, 69:370, 1986. The final regulation has been revised to cite both JAOAC references.

2. Three comments agreed that the proposed AOAC method for determining nondigestible dietary fiber should be adopted, but the comments suggested that the final rule be worded so as to ensure that other more appropriate methods are not excluded from use as they become available and are validated.

The agency is not rewording the final rule as requested because it believes that the food industry should be given notice as to what method FDA will use to determine whether a product is appropriately labeled. The agency agrees, however, that other appropriate methods for determining nondigestible dietary fiber should also be adopted provided they have been validated by scientific procedures acceptable to FDA for corroborating the reliability of chemical methodologies. Therefore, when a new method has been validated, FDA will follow notice and comment rulemaking procedures (see 21 CFR Part 10) to amend the regulation to reflect the new method.

3. Several comments indicated that food manufacturers were confused about the extent to which the amendment would permit excluding nondigestible fiber from the various declarations in nutrition labeling.

The amendment allows a manufacturer, when calculating the appropriate declaration of calorie content of a food, to subtract the carbohydrates attributable to nondigestible fiber from the total carbohydrate content of a food. The amendment does not apply to the declaration of the amount (grams) of carbohydrate in the food. Thus, in making such a declaration, a manufacturer may not subtract nondigestible fiber from the total amount of carbohydrate in food. Nor does the amendment apply to other issues concerning the declaration of carbohydrates, e.g., declaration of simple versus complex carbohydrates and the appropriateness of dietary fiber declarations. FDA will deal with these other issues separately.

In accordance with Executive Order 12291, FDA has previously analyzed the potential economic effects of this final rule. As announced in the proposal, the agency has determined that the rule is not a major rule as determined by the Order. The agency has not received any new information or comments that would alter its previous determination.

In accordance with the Regulatory Flexibility Act, the agency previously considered the potential effects that this rule would have on small entities, including small businesses. In accordance with section 605(b) of the Regulatory Flexibility Act, the agency has determined that no significant impact on a substantial number of small entities would derive from this action. FDA has not received any new information or comments that would alter its previous determination.

In accordance with the collection of information requirements of the Paperwork Reduction Act of 1980, the agency has previously considered the increases in cost and information burden due to the analysis of nondigestible fiber, and they have been addressed in an amendment to Office of Management and Budget approval No. 0910-0177, the nutrition labeling collection of information clearance for § 101.9 *Nutrition labeling of food.*

The agency has determined under 21 CFR 25.24(a)(9) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

The effective date for this amendment is August 3, 1987. This amendment does not require that manufacturers change any of their current analyses or nutrition labeling. Therefore, FDA finds that there is good cause to make this final rule effective immediately for use by those who wish to exclude nondigestible dietary fibers from the calorie declaration included in nutrition labeling.

List of Subjects in 21 CFR Part 101

Food labeling, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act, Part 101 is amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR Part 101 continues to read as follows:

Authority: Secs. 4, 6, Pub. L. 89-755, 80 Stat. 1297, 1299, 1300 (15 U.S.C. 1453, 1455); secs. 201, 403, 701(a), Pub. L. 717, 52 Stat. 1040-1042 as amended, 1047-1048 as amended, 1055 (21 U.S.C. 321, 343, 371(a)); 21 CFR 5.10, 5.11; § 101.4 is issued only under secs. 201, 403, 701(a), 52 Stat. 1040-1042 as amended, 1047-1048 as amended, 1055 (21 U.S.C. 321, 343, 371(a)); 21 CFR 5.10.

2. In § 101.9(c)(3) by revising the second sentence and adding two new sentences after it and by revising the third sentence to read as follows:

§ 101.9 Nutrition labeling of food.

* * * * *

(c) * * *

(3) * * * Caloric content will be determined by the Atwater method as described in A.L. Merrill and B. K. Watt, "Energy Value of Foods—Basis and Derivation," USDA Handbook 74 (1955), except that the nondigestible dietary fiber may be subtracted from the total carbohydrate content before calculation of the calories contributed by the carbohydrate portion of the food. The nondigestible dietary fiber will be determined by the method "Total Dietary Fiber in Foods, Enzymatic Gravimetric Method, First Action," in the *Journal of the Association of Official Analytical Chemists* (JAOAC), 68:399, 1985, as amended in JAOAC, 69:370, 1986. Both methods are incorporated by reference. Copies of both methods are available from the Division of Nutrition, Center for Food Safety and Applied Nutrition (HFF-260), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. * * *

* * * * *

Dated: July 7, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-17486 Filed 7-29-87; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

National Highway Traffic Safety Administration

23 CFR Part 659

Certification of Speed Limit Enforcement

AGENCIES: Federal Highway Administration (FHWA), National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: The Federal Highway Administration (FHWA) and the

National Highway Traffic Safety Administration (NHTSA) are amending the regulations on certification of speed limit requirements to take into account provisions mandated by section 174 of the Federal-Aid Highway Act of 1987 (Act). Section 174 of the Act amended 23 U.S.C. 154 by giving the States the authority to increase, without loss of Federal-aid funds, the maximum speed limit to no more than 65 miles per hour (mph) on certain Interstate System highways. The regulations implementing 23 U.S.C. 154 are being revised to reflect the statutory amendment by providing the States the authority to adjust the speed sampling and analysis plan required for determining the level of 55 mph noncompliance.

EFFECTIVE DATE: August 3, 1987.

FOR FURTHER INFORMATION CONTACT: Sheldon G. Strickland, FHWA, Office of Traffic Operations, (202) 366–1993, David C. Oliver, FHWA, Office of Chief Counsel, (202) 366–1354, or Kathleen DeMeter, NHTSA, Office of Chief Counsel, (202) 366–1834, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: On April 2, 1987, the Federal-Aid Highway Act of 1987 (Pub. L. 100–17, 101 Stat. 132) (Act) was enacted. Section 174 of the Act amended 23 U.S.C. 154 by giving the States the authority to increase, without loss of Federal-aid funds, the maximum speed limit to no more than 65 mph on any highway within its jurisdiction on the Interstate System located outside of an urbanized area of 50,000 or more. However, 23 U.S.C. 154 still requires the States to report the level of 55 mph noncompliance on those highways still posted at 55 mph as part of the annual certification of speed limit enforcement mandated by 23 U.S.C. 141(a). The mandates of 23 U.S.C. 141(a) and 154 are implemented by regulations contained in 23 CFR Part 659.

The regulations contained in 23 CFR Part 659 establish a valid statistical method of measuring a sample of vehicle speeds on a sample of highways to estimate the percentage of vehicles exceeding 55 mph with sufficient accuracy to support a determination of compliance with 23 U.S.C. 154. Since the 55 mph speed limit may be raised to 65 mph for most Interstate highways, the regulations must be amended so the States can continue to accurately report the level of 55 mph noncompliance on the remaining highways.

Virtually all of the Interstate System mileage that is now eligible for a maximum speed limit of 65 mph, was posted at 55 mph prior to enactment of the Act. As such, this mileage has been subject to the 55 mph noncompliance speed monitoring that is annually conducted by each State. Any State choosing to increase the speed limit from 55 mph on any of its eligible mileage pursuant to the Act will have to adjust the speed sampling and analysis plan in effect for the fiscal year in which the limit is raised. This adjustment is required to account for the exclusion of the proportion of travel represented by the mileage with the higher speed limit. Failure to make this adjustment will result in biased 55 mph compliance data due to the inclusion of highway mileage where drivers may legally exceed the 55 mph speed limit.

Under the current regulations, changes to a State's speed sampling and analysis plan are included as part of the annual evaluation of the plan that must be submitted to the FHWA Division Administrator for approval by December 1 following the close of each fiscal year. Once approved by the FHWA Division Administrator, any changes to the speed sampling plan provided for in the evaluation can go into effect with the next calendar quarter beginning January 1.

Pursuant to the provisions and effective date of the Act, the States may raise speed limits on eligible highway sections immediately without waiting for the end of the fiscal year. In addition, such increases are likely to involve significant amounts of highway mileage and, insofar as a statewide speed figure is concerned, vehicle miles of travel. Therefore, any State electing to increase the speed limit on eligible Interstate highways may amend the speed sampling and analysis plan during the fiscal year in which the speed limit is raised to account for the reduction in mileage posted at 55 mph, without waiting for the end of the fiscal year and the next due evaluation. The provisions contained in 23 CFR 659.11 are being amended to reflect this procedural change.

Any amendments to a State's speed sampling and analysis plan shall continue to be submitted to the FHWA Division Administrator for approval; however, due to the State's authorization to raise their speed limits as of the effective date of the Federal-Aid Highway Act of 1987, approval may be given retroactively to the effective date of the State's new speed limit. States shall use their existing plan until the date the speed limit takes effect; after such date the plan submitted in accordance with this rule shall be utilized. Amendments due to increased speed limits shall not in any way relieve the State of the requirements set forth in 23 CFR 659.11 for an annual evaluation of the speed monitoring and analysis plan's effectiveness for the entire fiscal year.

This final rule is being promulgated with the knowledge that Part 659 will require additional revisions so that the regulatory language will conform to the statutory language of section 174 of the Act. The subject of this final rule is being handled separately due to its urgency. The other revisions to Part 659 will be addressed in a separate rulemaking action.

Regulatory Impact

The FHWA has determined that this action does not constitute a major rule under Executive Order 12291. However, because of the public interest in the issue of the 55 mph speed limit, this final rule is considered significant under the regulatory policies and procedures of the Department of Transportation.

The FHWA believes that circumstances warrant the issuance of this rulemaking action immediately without notice and an opportunity for comment. Section 174 of the Federal-Aid Highway Act of 1987 gave the States the authority to immediately increase the maximum speed limit on certain Interstate highways, without loss of Federal-aid funds.

Notwithstanding section 174 of the Act, the States remain obligated to monitor compliance with the 55 mph speed limit, where it remains, pursuant to 23 U.S.C 154. As has been explained in the preamble, the speed sampling and analysis plan required by 23 CFR 659.9 must be adjusted by the States as the speed limits are raised in order to have a valid statistical method for developing an annual statewide percentage of vehicles exceeding 55 mph. Section 659.11, as currently written, does not allow for such adjustments to become effective before January 1 of each year. This final rule allows for such adjustments. To delay the issuance of this final rule would severely limit the States' ability to validly monitor compliance with the 55 mph speed limit. Therefore, notice and opportunity for comment would be impracticable.

For the foregoing reasons, the FHWA finds good cause to make this regulation effective without prior notice and opportunity for comment pursuant to 5 U.S.C 553(b)(3)(B). Accordingly, the regulation will become effective upon publication in the **Federal Register**. Notice and opportunity for comment are not required under the regulatory policies and procedures of the Department of Transportation because it

is not anticipated that such action could result in the receipt of useful information since the revisions incorporated in the regulation merely reflect a procedural revision to accommodate a statutory mandate.

The economic impacts of this rulemaking, if any, that will occur are mandated by the statutory provisions themselves. A regulatory evaluation has not been prepared because of the ministerial nature of this action. Based on information available to FHWA and NHTSA at this time and under the criteria of the Regulatory Flexibility Act, it is hereby certified that this action will not have a significant economic impact on a substantial number of small entities.

In consideration of the foregoing, the FHWA is amending Part 659 of Chapter 1 of Title 23, Code of Federal Regulations, as set forth below.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

List of Subjects in 23 CFR Part 659

Grant program—transportation, Highways and roads, Motor vehicles, Reporting and recordkeeping requirements, Speed limit, Traffic regulations.

Issued on: July 27, 1987.

Diane K. Steed,

National Highway Traffic Safety Administrator.

R.A. Barnhart,

Federal Highway Administrator.

The Federal Highway Administration is amending Part 659 of Chapter 1 of Title 23, Code of Federal Regulations, as follows:

PART 659—CERTIFICATION OF SPEED LIMIT ENFORCEMENT

1. The authority citation for Part 659 is revised to read as follows:

Authority: 23 U.S.C. 141, 154, and 315; Section 174 of Pub. L. 100–17, 101 Stat. 132; 49 CFR 1.48 and 1.50.

2. Section 659.11 is revised to read as follows:

§ 659.11 Guidelines and evaluations of operations.

(a) The State shall submit its initial plan to the FHWA Division Administrator for approval by November 14, 1980. The plan shall be evaluated annually and revised as conditions and new data indicate. The plan may also be revised at any time during the 12 month data collection period ending September 30 if the State elects to change its speed limit on eligible roads.

(b) Annual evaluations shall be submitted to the FHWA Division Administrator for approval by December 1 following the close of the data collection period of each year beginning with December 1, 1981, so that changes to the plan called for by the evaluation can go into effect with the subsequent quarter beginning January 1. Plan revisions called for during the data collection period due to a State changing its speed limit shall also be submitted to the FHWA Division Administrator for approval, and may take effect retroactively to the date on which the speed limit was changed if such approval is granted.

[FR Doc. 87–17381 Filed 7–31–87; 8:45 am]

BILLING CODE 4910-22-M

Coast Guard

33 CFR Part 117

[CGD7 87–06]

Drawbridge Operation Regulations; Okeechobee Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Lee County Department of Transportation, the Coast Guard is changing the regulations governing the Sanibel Causeway bridge at Punta Rassa, Florida. This change is being made because of complaints about highway traffic delays. This action will accommodate the current needs of vehicular traffic and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on September 2, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne Lee, Chief, Bridge Section, Seventh Coast Guard District, telephone (305) 536–4103.

SUPPLEMENTARY INFORMATION: On April 27, 1987, the Coast Guard published a proposed rule change concerning this amendment. The Commander, Seventh Coast Guard District, also published the proposal as a Public Notice dated May 11, 1987. In each notice, interested persons were given until June 11, 1987, to submit their comments.

Drafting Information

The drafters of these regulations are Mrs. Zonia C. Reyes, Bridge Administration Specialist, project officer, and Lieutenant Commander S.T. Fuger, Jr., project attorney.

Discussion of Comments

Four comments were received about the proposed change. Three commenters supported the regulations as proposed; one commenter asked that bridge openings be limited to every 30 minutes from 7 a.m. to 7 p.m., daily.

The Coast Guard has carefully considered the comments. Available highway traffic data and bridge opening statistics do not support the need for daily 12-hour periods of limited operation. The final rule is unchanged from the proposed rule published on April 27, 1987, except for minor editorial revisions needed to ensure a consistent format for drawbridge regulations.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the regulation allows for tugs with tows to pass at any time. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.317(k) is revised to read as follows:

§ 117.317 Okeechobee Waterway.

* * * * *

(k) *Sanibel Causeway bridge, mile 151 at Punta Rassa.* The draw shall open on signal; except that from 3:45 p.m. to 5:15 p.m., Monday through Friday, except federal holidays, the draw need open only at 4:15 p.m. and 4:45 p.m. On Saturdays, Sundays, and federal holidays from 3:45 p.m. to 5:15 p.m., the draw need open only at 4 p.m., 4:15 p.m.,

4:30 p.m., 4:45 p.m. and 5 p.m. Exempt vessels shall be passed at any time.

Dated: July 23, 1987.

M.J. O'Brien,

Captain, U.S. Coast Guard, Acting Commander, Seventh Coast Guard District.

[FR Doc. 87-17536 Filed 7-31-87; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD7-87-11]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Florida Department of Transportation (FDOT) and St. Johns County, the Coast Guard is adding regulations governing the Vilano Beach drawbridge on State Road A1A at Vilano Beach, Florida, by permitting the number of openings to be limited during certain periods. This change is being made because of complaints about highway traffic delays. This action will accommodate the current needs of vehicular traffic and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on September 2, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne Lee, Chief, Bridge Section, Seventh Coast Guard District, telephone (305) 536-4103.

SUPPLEMENTARY INFORMATION: On April 30, 1987, the Coast Guard published proposed rules (52 FR 15735) concerning this amendment. The Commander, Seventh Coast Guard District, also published the proposal as a Public Notice dated May 15, 1987. In each notice, interested persons were given until June 15, 1987, to submit comments.

Drafting Information

The drafters of these regulations are Mr. Walt Paskowsky, Bridge Administration Specialist, project officer, and Lieutenant Commander S.T. Fuger, Jr., project attorney.

Discussion of Comments

Ten comments were received. Nine of the commenters supported timed operation of the Vilano Beach bridge. Several of these responses favored additional restrictions, such as opening only at 30-minute intervals, or scheduled operation at all times. One commenter, a local commercial vessel operator, asked to be allowed to pass at any time, for economic and safety reasons.

The Coast Guard has carefully considered the comments and believes scheduled operation of the bridge as proposed would be the most reasonable compromise between navigation and vehicular traffic. The final regulation is unchanged from the proposed rule published on April 30, 1987.

Vessel holding area is limited south of the Vilano Beach bridge and waterway safety would be reduced if vessels were required to wait for more than 20 minutes. Suggestions to allow the bridge to remain closed for 30 minutes, therefore, have not been adopted. Bridge openings are most frequent during the period from mid-March through mid-December, indicating a need for seasonal, rather than year-around regulations.

Operation of the bridge on a 20-minute schedule should not have a significant impact on local commercial vessel operations. Openings would be at sufficiently frequent intervals to minimize disruption of existing departure and return schedules. The bridge would be required to open at any time for vessels in a situation where a delay would endanger life or property, as currently is the case. This provision adequately addresses concerns expressed about vessel passage during inclement weather or when passengers are ill or injured.

Because of the limited holding area on the south side of the bridge, FDOT will be required to post signs on the Bridge of Lions to inform mariners about Vilano Beach bridge opening times. This will allow mariners to time their passages to coincide with scheduled openings and should reduce the number of accumulated vessels at any given time.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the regulations exempt tugs with tows. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 or Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05-1(g).

2. Section 117.261(c) is added to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.

* * * * *

(c) *Vilano Beach (SR A1A), Mile 778 at Vilano Beach.* The draw shall open on signal, except that from March 15 through December 15, from 7 a.m. to 6 p.m. Monday through Friday, except federal holidays, and from 9 a.m. to sunset on Saturdays, Sundays and federal holidays, the draw need open only on the hour, twenty minutes after the hour, and forty minutes after the hour.

* * * * *

Dated: July 17, 1987.

M.J. O'Brien,

Captain, U.S. Coast Guard, Acting Commander, Seventh Coast Guard District.

[FR Doc. 87-17537 Filed 7-31-87; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-7-FRL-3238-2]

Approval and Promulgation of Air Quality Implementation Plans; Lead Plan for Omaha, NE

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve all portions of the Nebraska State Implementation Plan (SIP) for lead. All portions of the plan, except the control measures as they pertained to the Omaha area, had been approved previously. EPA proposed to approve the Omaha control measures on February 25, 1987, based upon a draft of the measures submitted by the Nebraska Department of Environmental Control (NDEC). The Governor of Nebraska officially submitted the SIP revision on February 2, 1987.

EFFECTIVE DATE: This rule will become effective on September 2, 1987.

ADDRESSES: Written comments on this action should be addressed to Dewayne E. Durst at the Environmental Protection Agency Regional Office, address listed

below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Environmental Protection Agency, Region VII, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; Nebraska Department of Environmental Control, 301 Centennial Mall, Lincoln, Nebraska 68509; Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Dewayne E. Durst at (913) 236–2893, FTS 757–2893.

SUPPLEMENTARY INFORMATION:

The pertinent background information concerning this final rule was presented in the proposed rulemaking which was published in the **Federal Register** on February 25, 1987 (52 FR 5554). No comments were received on the proposal. The proposal was based upon a draft of the SIP revision prepared and submitted by NDEC. This draft was the subject of a public hearing conducted in Lincoln, Nebraska, before the Nebraska Environmental Control Council on December 19, 1986. The Council adopted the SIP revision on the day of the hearing. No changes were made in the draft SIP as a result of testimony presented at the public hearing. The Governor of Nebraska officially submitted the lead SIP for Omaha on February 2, 1987.

What the Omaha Lead SIP Requires

The control strategy for the Omaha lead SIP consists of a number of control measures which will be implemented at the Asarco lead refinery. The refinery is the principal source of lead in the Omaha area. The control measures are contained in administrative orders issued to Asarco by NDEC. The orders require that:

1. Dust collected in certain baghouse cellars at the plant will be removed by vacuum truck. Formerly, the dust was removed by using front-end loaders, which allowed a great deal of material to become airborne during transfer of the dust to the vehicles which transported the material to the residue storage area. The operational practices for use of the vacuum truck are described in detail in work practice manuals which Nebraska has incorporated as enforceable requirements of the Omaha lead SIP.

2. Fugitive lead emissions will be reduced in the refinery building through the use of improved hooding with increased airflow, and by process changes to maintain materials in liquid rather than solid state, or by reducing the temperature and thus reducing the vaporization of molten lead.

3. Dampers will be improved on the retort furnace exhaust systems to reduce leakage by approximately 40 percent and thus supply additional ventilation air to the hoods over the retort when they are being "pulled" or emptied, which is the period when lead emissions are highest.

4. The reverberatory furnace in the smelter building will be controlled by installing additional local exhaust hooding over the charging operation. The furnace will also be equipped with an automatic damper to prevent overpressures inside the furnace which cause excess lead emissions from the furnace.

5. Fugitive emissions from elevators, storage hoppers, product sacking machine, and other sources in the antimony oxide building will be controlled with new baghouses which increase building ventilation by 158 percent.

6. The emissions from stockpiles, unpaved areas, and plant traffic will be reduced by paving additional plant area and vacuum sweeping of those areas. The plant has purchased a spray truck to apply chemical dust suppressants to piles of slag, dross, and refractory brick, and to other unpaved plant areas. Application of dust suppressants and vacuum sweeping is governed by a detailed work practice manual.

7. The plant production limit will be reduced by 10 percent.

In addition to the new lead control measures which are required at the plant, the orders insure continued operation and monitoring of all existing control equipment and the continuation of all emission control practices which were included as part of the approved demonstration of attainment. If there are changes in control equipment at the plant or changes in control practices which would have the potential to increase lead emissions, such changes must be approved as SIP revisions. The orders also contain a compliance schedule which provides for increments of progress and final compliance for all control measures by February 1, 1988. The orders require certain recordkeeping which is considered necessary to insure continued compliance with the requirements of the orders.

Final Action

Based upon a review of the Omaha lead SIP revision submitted by the state of Nebraska on February 2, 1987, EPA approves the SIP as meeting the requirements of 40 CFR 51.111, Description of Control Measures (formerly 40 CFR 51.87, Control Measures, Pb) and 40 CFR 51.112, Demonstration of Adequacy (formerly 40 CFR 51.80, Demonstration of Attainment, Pb). This action also approves the Administrative Complaint and Order No. 753 dated August 22, 1985, as amended by Amended Administrative Order No. 752 dated May 9, 1986, and by Second Amended Administrative Order No. 753 dated November 12, 1986, issued by the Nebraska Department of Environmental Control. All other portions of the Omaha lead SIP have already been approved. This action results in the Nebraska lead SIP being completely approved.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 2, 1987. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Lead, Particulate matter, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of Nebraska was approved by the Director of the Federal Register on July 1, 1982.

Date: July 21, 1987.

Lee M. Thomas,

Administrator.

Title 40 of the Code of Federal Regulations Chapter I, Part 52, Subpart CC, is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart CC—Nebraska

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1420 is amended by adding new paragraph (c)(35) to read as follows:

§ 52.1420 Identification of plan.

* * * * *

(c) * * *

(35) On February 2, 1987, Nebraska submitted revisions to the lead SIP for Omaha. The revisions contained a revised demonstration of attainment of the lead standard in Omaha, a revised control strategy to provide the lead

emission reductions claimed in the demonstration of attainment, and Administrative Order No. 753 dated August 22, 1985, as amended by Amended Administrative Order No. 753 dated May 9, 1986, and by Second Amended Administrative Order No. 753 dated November 12, 1986. All items in the revisions were approved.

(i) Incorporation by Reference

(A) Administrative Order No. 753 dated August 22, 1985, issued by the Nebraska Department of Environmental Control to ASARCO Incorporated.

(B) Amended Administrative Order No. 753 dated May 9, 1986, issued by the Nebraska Department of Environmental Control to ASARCO Incorporated.

(C) Second Amended Administrative Order No. 753 dated November 12, 1986, issued by the Nebraska Department of Environmental Control to ASARCO Incorporated.

(ii) Additional Material

(A) 1986 Revised Demonstration of Attainment and Control Measures for the Nebraska State Implementation Plan for Lead—Omaha, submitted by ASARCO Incorporated, October 3, 1986.

3. Section 52.1425(a) is amended by revising the last entry in the table to read as follows: § 52.1425 Compliance schedules.

(a) * * *

NEBRASKA—COMPLIANCE SCHEDULES

Source	Location	Regulation involved	Date adopted	Variance expiration date	Final compliance date
ASARCO, Inc	Omaha, NE	Nebraska DEC Second Amended Administrative Order NO. 753.	11/12/86	Not applicable	02/27/88

4. Section 52.1431 is amended by adding one column at the right side of the table under "Pollutant" with a column heading of "Lead" and adding "e. February 1, 1988," under Note 1.

§ 52.1431 Attainment dates for national standards.

* * * * *

Note 1:

* * * * *

e. February 1, 1988.

* * * * *

[FR Doc. 87-16952 Filed 7-31-87; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 261

[SW-FRL-3240-8]

Hazardous Waste Management System: Identification and Listing of Hazardous Waste; Final Denials

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is announcing its decision to deny the petitions submitted by Arvin Automotive, IN; Bayliner Marine Corp., WA; and Digital Equipment Corp., PR to exclude their wastes from the hazardous waste lists. This action responds to delisting petitions submitted under 40 CFR 260.20 and 260.22. These petitions are being denied because they are incomplete (*i.e.*, the Agency does not have sufficient information to determine the hazardous or non-hazardous nature of the waste) despite several requests by the Agency for this information. The effect of this action is that all of this waste must continue to be handled as hazardous waste in accordance with 40 CFR Parts 262 through 266, 270, 271, and 124.

EFFECTIVE DATE: August 3, 1987.

ADDRESSES: The public docket for these final petition denials is located in the Sub-basement, U.S. Enivornmental Protection Agency, 401 M Street SW., Washington, DC 20460, and is available for public viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays. Call (202) 475-9327 for appointments. The reference number for this docket is "F-87-03DF-FFFFF". The public may copy a maximum of 50 pages from any one regulatory docket at no cost. Additional copies cost $.20/page.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For more information on this notice, contact Mr. Myles Morse, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-4788.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under 40 CFR 260.20 and 260.22 facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous waste contained at 40 CFR 261.31 and 261.32. Petitioners must provide sufficient information to EPA to allow the Agency to determine that (1) the waste to be excluded is non-hazardous based upon the criteria for which it was listed, and (2) that no other hazardous constituents are present in the wastes at levels of regulatory concern. Failure to provide sufficient information will result in denial of the petition.

The Agency requires certain information in order to fully evaluate whether the petitioned waste is hazardous. If a petitioner's initial submission is not complete, the Agency will formally or informally request the petitioner to submit the needed data. Acquisition and analysis of this additional information is necessary before a tentative determination (*i.e.*, a proposal to exclude or deny a petition) can be made for the petitioned wastes. Most of this information is requested because of the changed requirements in the Hazardous and Solid Waste Amendments (HSWA) of 1984 (*i.e.*, the Agency now must consider all factors, including additional constituents, if there is a reasonable basis to believe that these factors could cause the waste to be hazardous). If adequate data are not timely received, the Agency has no choice but to act to remove these petitions from the system.

B. Agency Decision

EPA proposed to deny a number of petitions to exclude certain wastes from the hazardous waste lists on November 20, 1985 (see 50 *FR* 47763-47765) and January 30, 1987 (see 52 *FR* 3028-3031). The proposed denials in November included Digital Equipment Corp. de Puerto Rico, located in San German, Puerto Rico.[1] The denials proposed in

[1] In that same Federal Register notice, the Agency also proposed to deny exclusion of specific wastes generated by 66 other petitioning facilities. Of these 66 other petitioners, 16 were denied final exclusion (see 51 *FR* 12148-12152, April 9, 1986); 12 petitions have either been withdrawn or considered moot; and eight petitions, for which additional information was submitted will be addressed in future Federal Register notices.

January included Arvin Automotive, located in North Vernon, Indiana; and Bayliner Marine Corporation, located in Arlington, Washington.[2]

In the case of the petitions discussed in today's notice, the Agency provided a number of opportunities for these petitioners to submit the requested information, including a written request for specific information necessary for the Agency to consider the petition complete. In addition, the Agency published a notice in the **Federal Register** of its intent to collect this information (see 49 *FR* 4802–4803, February 8, 1984). The proposed denial notices, published on November 20, 1985 and January 30, 1987, provided yet another notification of the information required and a 30 day opportunity to submit the additional information. A summary of the information requested for each petition being denied in today's notice is included in the public docket for this final notice.

The Agency has not heard from one of these petitioners in over a year; in the other two cases, it has been over two years. In the case of Digital Equipment Corp., some of the additionally requested information was received, however, not all of the information required to make their petition complete was provided. The Agency, therefore, still does not have sufficient information to fully characterize the petition waste and make a tentative decision. Waiting for this additional information has resulted in delays that have disrupted the continuity of the petition review process, and has helped to create a backlog of petitions awaiting review. The Agency believes that these petitioners have had adequate time to provide this information. The Agency, therefore, is making final its decision to deny exclusion to Digital Equipment Corp., proposed on November 20, 1985, and Arvin Automotive and Bayliner Marine Corp., proposed on January 30, 1987.

C. Agency Response to Public Comments

During the public comment period for the November 20, 1985 proposed rule, Digital Equipment Corp. submitted additional information in support of their delisting petition. The Agency has completed its review of this information, and has determined that the petition is still incomplete. Some of the requested information which has not been received pertains to techniques used for waste sampling; total constituent analyses for organic compounds; descriptions of materials used in the production process; analytical test data for reactive sulfides and cyanides; and EP leachate analyses (on representative samples) for EP toxic metals and nickel. A detailed description of the additional information not yet submitted to the Agency is included in the public docket for this final rule. The Agency, therefore, is denying Digital's petition as incomplete.

During the public comment period for the January 30, 1987 proposed denial, Arvin Automotive and Bayliner Marine Corporation did not provide comments, nor did they provide the necessary information to make their petitions complete. The Agency, therefore, is denying their petitions as incomplete.

II. Effective Date

This rule is effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here since this rule does not change the existing requirements for these petitions. The petitioners have been obligated to treat their waste as hazardous. The denial of these petitioners does not change this. Since the petitioners do not need any time to come into compliance, the Agency believes that this rule should be effective immediately. These reasons also provide a basis for making this rule effective immediately under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

III. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, requires a Regulatory Impact Analysis. This final denial of exclusions is not major since it has no effect on how the facilities must manage their wastes. Prior to submitting, and during the review of their petitions to exclude certain of the wastes generated from their facility, petitioners should have handled their wastes as hazardous. The denial of their exclusion petitioners means that they are to continue managing their wastes as hazardous. There is no additional economic impact on the facilities due to today's rule. This final denial is not a major regulation; therefore, no Regulatory Impact Analysis is required.

IV. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effect will not change the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this final regulation will not have a significant impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling.

Authority: Sec. 3001 RCRA, 42 U.S.C. 6921.

Date: July 23, 1987.

J.W. McGraw,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 87-17513 Filed 7-31-87; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 261

[FRL-3226-2]

Identification and Listing of Hazardous Waste; Spent Pickle Liquor From Steel Finishing Operations

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On May 28, 1986 (51 FR 19320), EPA promulgated a rule to amend the regulations for hazardous waste management under the Resource Conservation and Recovery Act by stating that the listing for spent pickle liquor from steel finishing operations (EPA Hazardous Waste No. K062) applies only to wastes generated by iron and steel facilities. EPA issued a technical correction to this amendment on September 22, 1986 (51 FR 33612). One person questioned whether this action was a rule requiring prior notice and opportunity to comment. In response, on May 6, 1987, (52 FR 16982), EPA proposed an amendment to the rule and is today finalizing that action.

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[2] In that same **Federal Register** notice, the Agency also proposed to deny exclusion of specific wastes generated by five other petitioning favilities (see 52 *FR* 3029–3031, January 30, 1987). Three of these five petitions have been withdrawn; the other two petitions will be addressed in future **Federal Register** notices.

DATE: This rule becomes effective September 2, 1987.

FOR FURTHER INFORMATION CONTACT: For general information contact: the RCRA Hotline at (800) 424–9346 toll-free or (202) 382–3000. For information on specific aspects of this rule contact: Michael Petruska, Office of Solid Waste (WH–562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 475–6676.

SUPPLEMENTARY INFORMATION:

A. Final Rule

In the May 6, 1987 proposed rules on boilers and industrial furnaces, EPA proposed to amend existing regulations to state with absolute clarity that the scope of the listing of Hazardous Waste K062 applies to pickle liquor from steel finishing operations at facilities within the iron and steel industry (SIC Codes 331 and 332). When EPA first promulgated this amendment on May 28, 1986, the Agency erroneously described the scope of the listing as applying to plants that actually produce iron and steel. *See* 51 FR 19320. This error was inadvertent and obviously unintended given that EPA had never proposed such a change, and in the relevant preambles, the Agency repeatedly described its action as applying to all plants in the iron and steel industry (*See* 50 FR 36966 (column 1), 36967 (column 1), 36967 (column 2) (Sept. 10, 1985) and 51 FR 19320 (column 2), 19321 (column 1) (May 28, 1986)). In addition, if the listing was to apply only to facilities actually producing iron and steel, then the listing would be narrower than the accompanying exclusion from the subject listing *i.e.*, "waste pickle liquor sludge generated by lime stabilization of spent pickle liquor from the iron and steel industry (SIC Codes 331 and 332)" (§ 261.3(c)(2)(ii))—a facial contradiction since one cannot exclude more than one has listed.

For these reasons, on September 22, 1986, EPA corrected the error by means of a technical correction (see 51 FR 33612). One person questioned this change arguing that it was in fact substantive rulemaking requiring prior notice and comment. EPA does not agree, but proposed to amend the rule to remove any possible doubt. No commenters seriously contended that the listing should not apply to all pickle liquor generated by plants in the iron and steel industry. Accordingly, for all of the reasons stated in the preamble to the proposed rule, and in the earlier **Federal Register** notices there cited, EPA has determined to adopt a final rule stating that the listing applies to spent pickle liquor produced by any plant in the iron and steel industry.

B. Effective Date

RCRA section 3010(b) indicates that final regulations implementing the requirements of Subtitle C take effect 6 months from date of publication. The Agency may waive this requirement when it finds that the regulated community does not need that time to come into compliance. That is the case here, since existing regulations already contain the same language as today's rule, and, at the very least, EPA's consistent and longstanding interpretation is that the scope of the K062 listing applies to spent pickle liquor produced by any iron and steel industry plant. For these reasons, the six month effective date is unnecessary here.

Regulatory Impacts

A. Results of Regulatory Impact Studies

1. Executive Order 12291

As defined by Executive Order 12291, today's regulation is not a "major rule." Therefore, no Regulatory Impact Analysis (RIA) is required. This rule will not have an annual impact on the national economy greater than $100 million. In fact, EPA anticipates no impact at all because existing requirements are identical. In addition, this regulation will not significantly affect competition, employment, productivity or innovation.

This rule was submitted to the Office of Management and Budget (OMB) for review under Executive Order 12291.

2. Regulatory Flexibility Act

We have determined that today's rule will not have significant impact on a substantial number of small businesses and, therefore, that no Regulatory Flexibility Analysis (RFA) is required under the Regulatory Flexibility Act.

3. Paperwork Reduction Act

The requirements of the Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. 3501 et seq., were considered in developing this regulation. We believe that the rule imposes no new reporting and recordkeeping requirements.

List of Subjects in 40 CFR Part 261

Hazardous material, Waste treatment and disposal, Recycling.

Dated: July 22, 1987.

Lee M. Thomas,

Administrator.

For the reasons set out in the Preamble, Title 40 of the Code of Federal Regulations is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 is revised to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6922.

2. Section 261.32 is amended by revising the entry under the iron and steel industry for the hazardous waste listing K062 to read as follows:

§ 261.32 Hazardous wastes from specific sources.

* * * * *

Industry and EPA hazardous waste No.	Hazardous waste	Hazardous code
* * * * * *		
Iron and steel:		
K062	Spent pickle liquor generated by steel finishing operations of facilities within the iron and steel industry (SIC Codes 331 and 332).	(C,T)

[FR Doc. 87–17344 Filed 7–31–87; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 799

[OPTS–42087B; FRL–3241–4]

2-Ethylhexanol; Final Test Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing a final test rule, under section 4 of the Toxic Substances Control Act (TSCA), requiring manufacturers and processors of 2-ethylhexanol (EH; CAS No. 104–76–7) to conduct a 2-year oncogenicity bioassay. This action follows EPA's proposed rule of December 19, 1986 (51 FR 45487).

DATES: In accordance with 40 CFR Part 23.5, this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern daylight time on August 17, 1987. This rule shall become effective on September 16, 1987.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Rm. E–543, 401 M St. SW., Washington, DC 20460, (202) 554–1404.

SUPPLEMENTARY INFORMATION: EPA is issuing a final test rule under section 4(a) of TSCA to require health effects testing of EH.

I. Test Rule Development Under TSCA

This notice is part of the overall implementation of section 4 of TSCA

(Pub. L. 94–469, 90 Stat. 2003 *et seq.*, 15 U.S.C. 2601 *et seq.*), which contains authority for EPA to require development of data relevant to assessing the risks to health and the environment posed by exposure to particular chemical substances or mixtures (chemicals).

Under section 4 of TSCA, EPA must require testing of a chemical to develop health or environmental data if the Administrator makes certain findings as described in TSCA under section 4(a)(1)(A) or (B). (15 U.S.C. 2603(a)(1)(A) and (B)). A discussion of the statutory section 4 findings is provided in the Agency's first and second proposed test rules published in the Federal Register of July 18, 1980 (45 FR 48510) and June 5, 1981 (46 FR 30300).

II. Regulatory History

In the Federal Register of December 19, 1986 (51 FR 45487), the Agency proposed to use the authority under section 4 of TSCA to require testing to obtain data needed to better assess the oncogenic potential of EH. As stated in the proposed rule, the Agency believes that the 2-ethylhexyl moiety, which occurs in EH and in other chemicals, may be an active carcinogenic agent to which people may be exposed. Refer to the EH proposed rule for additional discussion of EH's chemical profile, potential health hazard, exposure, and environmental release (51 FR 45487; December 19, 1986).

To obtain oncogenicity test data on EH as soon as possible, the Agency has limited its analysis of testing needs to oncogenicity testing. Once oncogenicity testing is underway, the Agency will evaluate available data including a recent section 8(e) submission (Ref. 24) to determine the need for additional testing and, if necessary, initiate a separate rulemaking to require such testing of EH.

Interested parties were solicited by the Agency for development of a testing consent order for EH (51 FR 28688; August 12, 1986). Plans for adopting a consent order were terminated because mutually agreeable terms could not be reached.

III. Response to Public Comments

The EH Panel of the Chemical Manufacturers Association (the Panel) submitted comments on the proposed test rule (Ref. 11). The public comment period for submitting written comments on the proposed rule closed on February 17, 1987. The Panel presented oral comments on the proposed test rule in a public meeting held in Washington, DC, on March 18, 1987 (Ref. 14). The following is a discussion of the Agency's response to the Panel's comments. No other public comments were received by EPA.

A. Health Effects

The Panel commented that the available scientific evidence does not support the section 4(a)(1)(A) finding for carcinogenicity. The Panel contends that EH is non-genotoxic and is a very weak peroxisome proliferator. In addition, the Panel contends there is growing evidence that a threshold level of exposure is necessary for peroxisome-related rodent liver tumors and that primates are markedly less susceptible than rodents to peroxisome proliferation.

EPA believes additional research is needed to establish the specific mechanism of action of EH carcinogenicity. Moreover, even if one assumes that EH is a very weak peroxisome proliferator, further research is needed to establish the nature of the relationship between peroxisome proliferation and carcinogenicity. Because of the limitations of the scientific data, EPA believes that it cannot justify assuming a specific mechanism of action for EH carcinogenicity at this time, including the presumption of a threshold.

EPA has reviewed readily available information on the genotoxicity of EH; but, because the case for EH oncogenicity testing is compelling, the Agency has decided to focus this rule on oncogenicity testing only. A full evaluation of the genotoxicity of EH and the need for additional genotoxicity testing may be completed after oncogenicity testing is underway. In any case, evidence of no genotoxicity does not negate a substance's carcinogenic potential, as there are non-genotoxic mechanisms of carcinogicity.

As stated in the EH proposed test rule, chemicals containing the ethylhexyl moiety have been shown to have carcinogenic potential. These chemicals are all expected to hydrolyze to EH; therefore, the Agency believes EH may also be a carcinogenic agent. Peroxisome proliferation is an additional piece of evidence to support this structure-activity based finding. Therefore, because there is strong evidence that chemicals containing the EH moiety are carcinogenic in rodents and because there is an absence of data on the potential carcinogenicity of EH, the Agency believes that oncogenicity testing of EH is warranted and indeed necessary to obtain data for determining if EH presents an unreasonable risk of cancer.

B. Testing Program for Peroxisome Proliferation

The Panel urges EPA to address testing needs for EH as part of a comprehensive testing program for structurally-related compounds with peroxisome-inducing potential. As an alternative to requiring that an oncogenicity bioassay be conducted on EH, the Panel proposed that testing should focus on obtaining a better understanding of the relationship between peroxisome proliferation of rodent liver tumors and the implications of these phenomena for human risk assessment. The Panel provided EPA with information on peroxisome proliferation in an attempt to support the Panel's belief that peroxisome proliferation is the mechanism of action for potential EH carcinogenicity, and that data on peroxisome proliferation should be the basis for prioritizing oncogenicity testing.

EPA believes the alternative testing program suggested by CMA is inappropriate (Refs. 21 and 22) and would unnecessarily delay oncogenicity testing for EH. As stated in Unit III.A. above, the Agency believes additional research is needed to establish the nature of the relationship between peroxisome proliferation and carcinogenicity. The Agency further believes the ethylhexyl moiety may be the proximate carcinogenic agent and that there is inadequate scientific justification to base the potential for EH oncogenicity solely on peroxisome proliferation. The Panel, however, is free to conduct research on peroxisome proliferation in conjunction with completing the bioassay on EH.

C. Exposure

The Panel believes the information used to evaluate exposure to EH is limited and largely out-of-date. The Panel plans to conduct a survey of EH producers and users to obtain current use and exposure information. The Panel requested that the rule be deferred until the results of the survey are available.

The Panel was informed of the information the Agency would use to evaluate exposure of EH in meetings held with the Panel since July 18, 1986. Only at the close of the comment period in February 1987 did the Panel decide to initiate a survey to collect more detailed use and exposure information. The best and most current information available to EPA indicates that production volume (635 million pounds per year) and potential exposure (11,550 to 45,000 workers) (Refs. 2, 3, 17, and 18) are

substantial. The Panel did not submit any exposure information which disputed these production or exposure figures. Moreover, even if this estimate is overstated, given its potential to be a carcinogen, the Agency's concern for the potential hazard of EH is high. When the hazard potential is believed to be serious, even a relatively low exposure to EH would warrant concern for testing under section 4(a)(1)(A) of TSCA (see 45 FR 48528 (July 18, 1980)). Therefore, EPA believes that a survey developed by the Panel would not alter the Agency's decision to finalize this rule. Thus, to delay testing to obtain such information is not in the public interest.

D. Test Species

The Panel believes a bioassay on EH should not be conducted in the B6C3F1 mouse. The Panel maintained that, because the mouse has a high incidence of spontaneous liver tumors, the Panel considers it a poor model for oncogenicity testing for EH. The Panel adds that there is a considerable body of data relating to peroxisome proliferation and tumor development in the rat, but very little data for the mouse.

EPA believes, based on National Toxicology Program (NTP) bioassay data for chemicals related to EH and on a recently published position paper by the NTP, there is a concern for liver tumor variability primarily in B6C3F1 males (Refs. 4 through 8, 19, and 20). However, in bioassays conducted on di(2-ethylhexyl) phthalate (DEHP), di(2-ethylhexyl) adipate (DEHA), and tris (2-ethylhexyl) phosphate (TEHP), upon which EPA based its (4)(a)(1)(A) findings for EH, a statistically significant increase in liver tumors occurred not only in male mice but also in female mice where the background incidence of liver tumors is low (Refs. 4 through 7). The Agency is aware that the male mice may have a variable rate of background liver tumors, and this will be considered with other evidence in estimating potential human risk from EH. NTP continually evaluates species used in NTP oncogenicity studies and, in a recent publication, NTP concluded that at the present time, even with the variable rate of background liver tumors in males, the B6C3F1 mouse is an acceptable species for oncogenicity studies (Ref. 19). Ethylhexyl-containing chemicals (DEHP, DEHA, TEHP, and sodium 2-ethylhexyl sulfate (EHS)) used in structure-activity analysis for EH were tested in the B6C3F1 mouse. More important, however, since the mouse appears more sensitive than the rat to these ethylhexyl-containing chemicals (Refs. 4 through 8), EPA considers the mouse appropriate for testing the potential cancer risk of EH.

As stated before, although the proliferation of peroxisomes may add to the weight of the evidence that a chemical may present risks of cancer, studies on peroxisome proliferation cannot provide data sufficient to evaluate the oncogenicity of a substance. Thus, although there may be more available data concerning peroxisome proliferation in the rat, these data as stated in Unit III.A. above do not negate the need for testing EH in two mammalian species, i.e., the mouse and the rat, in accordance with the EPA test guideline at 40 CFR 798.3300(b).

E. Route of Administration

The Panel believes that administering EH via microencapsulation, as EPA proposed, is unlikely to yield reliable and adequate data and that the Agency should require preliminary studies to determine the advantages of dermal, oral, and inhalation methods of administering EH before selecting the route for the chronic study.

This final test rule does not preclude administration by gavage provided that test sponsors validate the test methodology according to the TSCA Good Laboratory Practice Standards (40 CFR Part 792).

This final rule requires an oral route of administration so that the data can be compared with other data for EH and with data on related chemicals like EHA, DEHP, DEHA, TEH, and EHS.

NTP is completing studies evaluating the use of the microencapsulation methodology for administering EH.

To evaluate reports that EH may not be stable in dry feed (Ref. 16), the Panel initiated a detailed study using radiolabeled EH and several extraction techniques (Refs. 11, 12, and 13). The Panel has confirmed that EH is not stable in dry feed (Ref. 23). Thus, EH must be administered either by microencapsulation or by gavage.

F. Need for the EH Bioassay

The Panel believes that test data on DEHA are adequate to characterize the oncogenicity of EH since EH is a principal metabolite of DEHA.

EPA has several reasons for believing that using DEHA oncogenicity data (Ref. 5) as a surrogate for data on EH is inadequate. The DEHA oncogenicity data are insufficient to determine if the response is due to the intact DEHA molecule, DEHA partially metabolized to the monoester and EH, or EH itself. DEHA was only positive in the mouse, but EH could be positive in the mouse and the rat as was DEHP. Therefore, the Agency believes the dose-response data from the DEHA bioassay are not appropriate for assessing risk from exposure to EH. Furthermore, EPA believes the use of structure-activity relationship data is appropriate when no other bioassay data is available or attainable on a chemical. However, in the case of EH, the relevant bioassay data can be obtained because the evidence supports section 4(a)(1) (A) and (B) findings and thus a requirement to conduct testing.

G. Reporting Deadline

The Panel commented that the 53-month reporting requirement is unrealistic. They believe that, given the nature of the studies proposed, to validate the bioavailability of EH administered by microencapsulation and subsequent dietary incorporation would require extensive preliminary studies. Based on the time required for the additional testing, as well as the bioassay, the Panel has estimated that final test results cannot be reported in less than 105 to 109 months.

EPA believes that because the NTP is completing validation studies on microencapsulation of EH, and because the Panel has completed studies of the stability of EH in dry feed, validation will have been initiated before the rule becomes effective. Therefore, at this time, the additional time requested by the Panel to perform the validation studies will not be necessary. From experience with other bioassays and NTP's experience with microencapsulation, the Agency believes that 53 months provides adequate time to conduct the study by gavage and 56 months provides adequate time to conduct the study by microencapsulation.

H. Economic Impact

The Panel believes the Agency neglected to account for the cost of preliminary pharmacokinetic studies and additional dose groups needed to validate microencapsulation and interpret the bioassay results when developing cost estimates for the bioassay.

The Agency believes that for industry to repeat the preliminary studies being completed by NTP to validate administration of EH by microencapsulation is unnecessary. In addition, $140,000 to $250,000 have been included in the Agency's cost estimate to account for additional costs from microencapsulation procedures (Ref. 2). The additional dose groups proposed by the Panel may not be necessary because the capsule material will represent a small part of the animal's diet.

Furthermore, if industry chooses to conduct this testing by garage, costs should be less.

Refer to Unit VI. in the proposed EH rule (51 FR 45400; December 19, 1986) and to the economic impact analysis (Ref. 2) for a more detailed discussion of the economic impact of this rule.

I. Manufacturers

Alcolac was listed in the proposed EH rule as a manufacturer of EH. Alcolac informed the Agency that it does not manufacture or import EH and has no plans to do either in the future (Ref. 15). Thus, it would not be subject to this test rule unless it begins any such activities.

IV. Final Test Rule for EH

A. Findings

EPA is basing its oncogenicity testing requirements for EH on the authority of sections 4(a)(1) (A) and (B) of TSCA.

1. Under section 4(a)(1)(A)(i), EPA finds that the manufacture, processing, distribution in commerce, use, and disposal of EH may present an unreasonable risk of injury to human health because of its potential to cause carcinogenic effects. The finding for potential carcinogenicity is based on studies conducted on other chemicals containing the ethylhexyl moiety which suggest that EH may possess a carcinogenic hazard. See Unit II.B. of the proposed rule for a more complete discussion of carcinogenicity hazard potential.

In addition, data available to EPA indicate that more than 635 million pounds of EH is produced annually for intermediate uses and for merchant sale, and that an estimated 11,550 to 45,000 workers are potentially exposed to EH during its manufacture, processing, distribution, and use. Potential for consumer and general population exposure also exists through use and disposal (Refs. 1, 2, 3, 17, and 18).

2. Under section 4(a)(1)(B)(i), EPA finds that EH is produced in substantial quantities and that there is or may be substantial human exposure from its manufacture, processing, use, and disposal. As stated above, approximately 635 million pounds of EH are produced annually, and 11,550 to 45,000 workers in 62 occupations are estimated to have actual exposure to EH or products containing EH (Refs. 1, 2, 3, 17, and 18). EH is used as an intermediate for the manufacture of acrylates, phthalates, and the octyl ester of 2,4-dichlorophenoxyacetic acid (Ref. 2). It may also be used in several other industrial processes and uses, and there is potential for consumer and general population exposure (Ref. 1, 25, 26, and 27).

3. Under sections 4(a)(1) (A)(ii) and (B)(ii), EPA finds that there are insufficient data and experience from which the potential carcinogenic effects of the manufacture, processing, distribution, use, and disposal of EH can reasonably be determined or predicted.

4. Under sections 4(a)(1) (A)(iii) and (B)(iii), EPA finds that testing EH for oncogenicity is necessary to develop such data. EPA believes that the data resulting from this test rule will be relevant to a determination as to whether the manufacture, distribution in commerce, processing, use, and disposal of EH presents an unreasonable risk of injury to human health.

B. Required Testing

On the basis of these findings, the Agency is requiring oncogenicity testing of EH. Data from these bioassays in rats and mice will assist the Agency in conducting risk assessments for EH and thus will be of critical importance in determining whether EH presents an unreasonable risk of cancer.

The Agency is requiring the oncogenicity testing to be conducted on EH in accordance with the TSCA test guidelines for oncogenicity specified in 40 CFR 798.3300, published in the Federal Register of September 27, 1985 (50 FP 39252) and modified in the Federal Register of May 20, 1987 (52 FR 19056). EPA proposed these revisions to the guidelines in the Federal Register of January 14, 1986 (51 FR 1522), and responded to comments on the proposed revisions in the record for that rulemaking (Ref. 10).

The testing required in this final rule shall be performed with the Fisher 344 rat and B6C3F1 mouse. These species and strains have demonstrated sensitivity to other ethylhexyl compounds. The route of exposure shall be oral. Based upon experience at NTP (Ref. 9), the EH can be microencapsulated in the diet or administered by gavage. A subchronic study should be conducted using the same exposure method as selected for the lifetime bioassay to determine dose levels and characterize target organ effects for the bioassay.

C. Test Substance

The test substance shall be 2-ethylhexanol (EH; CAS No. 104–76–7) of at least 99-percent purity, which is a commercially available grade.

D. Persons Required To Test

Section 4(b)(3)(B) specifies that the activities for which the Administrator makes section 4(a) findings (manufacture, processing, distribution, use and/or disposal) determine who bears the responsibility for testing. Manufacturers are required to test if the findings are based on manufacturing ("manufacture" is defined in section 3(7) of TSCA to include "import"). Processors are required to test if the findings are based on processing. Both manufacturers and processors are required to test if the exposures giving rise to the potential risk occur during use, distribution, or disposal.

Because EPA has found that existing data are inadequate to assess the health risks from the manufacture, processing, distribution, use, and disposal of EH, EPA is requiring that persons who manufacture or process, or intend to manufacture or process, EH at any time from the effective date of this final test rule to the end of the reimbursement period are subject to the oncogenicity testing requirements contained in this final rule. While EPA has not identified any byproduct manufacturers of EH, such persons are covered by the requirements of this rule. The end of the reimbursement period will be 5 years after the last final report is submitted for EH, or an amount of time equal to that which was required to develop data, if more than 5 years, after the submission of the last final report required under this test rule.

Because TSCA contains provisions to avoid duplicative testing, not every person subject to this rule must individually conduct testing. Section 4(b)(3)(A) of TSCA provides that EPA may permit two or more manufacturers or processors who are subject to the rule to designate one such person or a qualified third person to conduct the tests and submit data on their behalf. Section 4(c) provides that any person required to test may apply to EPA for an exemption from the requirement. EPA promulgated procedures for applying for TSCA section 4(c) exemptions in 40 CFR Part 790.

Manufacturers (including importers) subject to this rule are required to submit either a letter of intent to perform testing or an exemption application within 30 days after the effective date of this final test rule. The required procedures for submitting such letters and applications are described in 40 CFR Part 790.

Processors subject to this rule, unless they are also manufacturers, will not be required to submit letters of intent or exemption applications, or to conduct testing, unless manufacturers fail to submit notices of intent to test or later fail to sponsor the required tests. The Agency expects that the manufacturers

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will pass an appropriate portion of the costs of testing on to processors through the pricing of their products or reimbursement mechanisms. If manufacturers perform all the required tests, processors will be granted exemptions automatically. If manufacturers fail to submit notices of intent to test or fail to sponsor all the required tests, the Agency will publish a separate notice in the **Federal Register** to notify processors to respond; this procedure is described in 40 CFR Part 790.

EPA is not requiring the submission of equivalence data as a condition for exemption from the required testing for EH. EPA is interested in evaluating the effects attributable to EH and, as noted in Unit IV.C. above, has specified a relatively pure substance for testing.

Manufacturers and processors who are subject to this test rule must comply with the test rule development and exemption procedures in 40 CFR Part 790 for single-phase rulemaking.

E. Reporting Requirements

EPA is requiring that all data developed under this rule be reported in accordance with its TSCA Good Laboratory Practice (GLP) standards, which appear in 40 CFR Part 792.

In accordance with 40 CFR Part 790 under single-phase rulemaking procedures, test sponsors are required to submit individual study plans within 45 days before the start of each test.

EPA is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. The Agency is requiring that the oncogenicity testing shall be completed and the final report submitted to EPA within 53 months of the effective date of this test rule if EH is administered by gavage. However, if EH is administered by microencapsulation, the final report is to be submitted within 56 months of the effective date of this rule. Progress reports are required at 6-month intervals beginning 6 months from the effective date of the rule.

TSCA section 14(b) governs Agency disclosure of all test data submitted to section 4 of TSCA. Upon receipt of data required by this rule, the Agency will publish a notice of receipt in the **Federal Register** as required by section 4(d).

Persons who export a chemical substance or mixture which is subject to a section 4 test rule are subject to the export reporting requirements of section 12(b) of TSCA. Final regulations interpreting the requirements of section 12(b) are in 40 CFR Part 707 (45 FR 82844; December 16, 1980). In brief, as of the effective date of this test rule, an exporter of EH must report to EPA the first annual export or intended export of EH to each country. EPA will notify the foreign country concerning the test rule for the chemical. Export of EH in any amount or at any concentration, including as an impurity, if known to the exporter, is subject to the section 12(b) reporting requirement.

F. Enforcement Provisions

The Agency considers failure to comply with any aspect of a section 4 rule to be a violation of section 15 of TSCA. Section 15(1) of TSCA makes it unlawful for any person to fail or refuse to comply with any rule or order issued under section 4. Section 15(3) of TSCA makes it unlawful for any person to fail or refuse to: (1) establish or maintain records; (2) submit reports, notices, or other information; or (3) permit access to or copying of records required by the Act or any regulation or rule issued under TSCA.

Additionally, TSCA section 15(4) makes it unlawful for any person to fail or refuse to permit entry or inspection as required by section 11. Section 11 applies to any establishment, facility, or other premises in which chemical substances or mixtures are manufactured, processed, stored, or held before or after their distribution in commerce. The Agency considers a testing facility to be a place where the chemical is held or stored and, therefore, subject to inspection. Laboratory inspections and data audits will be conducted periodically in accordance with the authority and procedures outlined in TSCA section 11 by duly designated representatives of the EPA for the purpose of determining compliance with this final rule for EH. These inspections may be conducted for purposes which include verification that testing has begun, schedules are being met, and reports accurately reflect the underlying raw data, interpretations, and evaluations to determine compliance with TSCA GLP standards and the test standards established in this rule.

EPA's authority to inspect a testing facility also derives from section 4(b)(1) of TSCA, which directs EPA to promulgate standards for the development of test data. These standards are defined in section 3(12)(B) of TSCA to include those requirements necessary to ensure that data developed under testing rules are reliable and adequate, and such other requirements as are necessary to provide such assurance. The Agency maintains that laboratory inspections are necessary to provide this assurance.

Violators of TSCA are subject to criminal and civil liability. Persons who submit materially misleading or false information in connection with the requirement of any provision of this rule may be subject to penalties which may be calculated as if they never submitted their data. Under the penalty provisions of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to $25,000 for each violation with each day of operation in violation constituting a separate violation. This provision would be applicable primarily to manufacturers that fail to submit a letter of intent or an exemption request and that continue manufacturing after the deadlines for such submissions. This provision would also apply to processors that fail to submit a letter of intent or an exemption application and continue processing after the Agency has notified them of their obligation to submit such documents (see 40 CFR 790.48(b)). Knowing and willful violations could lead to the imposition of criminal penalties of up to $25,000 for each day of violation and imprisonment for up to 1 year. In determining the amount of penalty, EPA will take into account the seriousness of the violation and the degree of culpability of the violator, as well as all the other factors listed in section 16. Other remedies are available to EPA under section 17 of TSCA, such as seeking an injunction to restrain violations of TSCA section 4.

Individuals, as well as corporations, could be subject to enforcement actions. Sections 15 and 16 of TSCA apply to "any person" who violates various provisions of TSCA. EPA may, at its discretion, proceed against individuals, as well as companies themselves. In particular, this includes individuals who report false information, or who cause it to be reported. In addition, the submission of false, fictitious, or fraudulent statements is a violation under 18 U.S.C. 1001.

V. Economic Analysis

To assess the potential economic impact of this rule, EPA has prepared an economic analysis (Ref. 2) that evaluates the potential for significant economic impact on the industry as a result of the required testing. The economic analysis estimates the costs of conducting the required testing and evaluates the potential for significant adverse economic impact as a result of these test costs by examining four market characteristics of EH: price sensitivity of demand, industry cost characteristics, industry structure, and market expectations. Because there was

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no indication of adverse effect, no further economic analysis was performed; however, had the first level of analysis indicated a potential for significant economic impact, a more comprehensive and detailed analysis would have been conducted to more precisely predict the magnitude and distribution of the expected impact.

Total testing costs for the final rule are estimated to range from $881,000 to $1,198,200. To better evaluate the impact on financial decisionmaking of manufacturing firms, these costs have been annualized. Annualized costs are compared with annual revenue as an indication of potential impact. The annualized costs represent equivalent constant costs which would have to be recouped each year of the payback period in order to finance the testing expenditure in the first year.

The annualized costs range from $96,700 to $131,600. In calculating these annualized costs, EPA has utilized a 7 percent real (i.e., net of inflation) cost of capital and a 15-year cost recovery period. An analysis of publicly available financial data on the chemical industry has led EPA to the determination that 7 percent represents an appropriate measure of the real, after-tax cost of capital for this industry.

Based on the 1984 production volume for EH of 635 million pounds, the unit test costs will be about 0.02 cent per pound. In relation to the selling price of 32 cents per pound of EH, these costs are equivalent to 0.06 percent of price. Based on these costs, the economic analysis indicates that the potential for significant adverse economic impact as a result of this test rule is extremely low.

Refer to the economic analysis for a complete discussion of test cost estimation and the potential for economic impact resulting from these costs (Ref. 2).

VI. Availability of Test Facilities and Personnel

Section 4(b)(1) of TSCA requires EPA to consider "the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule." Therefore, EPA conducted a study to assess the availability of test facilities and personnel to handle the additional demand for testing services created by section 4 test rules (Ref. A.(3)). On the basis of this study, the Agency believes that there will be available test facilities and personnel to perform the testing in this rule.

VII. Rulemaking Record

EPA has established a record for this rulemaking (docket number OPTS-42067B). This record includes basic information considered by the Agency in developing this rule and appropriate **Federal Register** notices.

This record includes the following information:

A. Supporting Documentation

(1) **Federal Register** notices pertaining to this rule consisting of:

(a) Notice of final rule on EPA's TSCA Good Laboratory Practice Standards (48 FR 53922; November 29, 1983).

(b) Notice of interim final rule on procedures governing Testing Consent Agreements and Test Rules and Exemption Procedures (51 FR 23706; June 30, 1986).

(c) Notice of final rule on data reimbursement policy and procedures (48 FR 31786; July 11, 1983).

(d) Toxic Substances Control Act Test Guidelines; Final Rule, 40 CFR Parts 796, 797, and 798, (50 FR 39252; September 27, 1985).

(e) Revisions to the Toxic Substances Control Act Test Guidelines; Final Rule (52 FR 19056; May 20, 1987).

(f) Notice of Proposed Test Rule for 2-Ethylhexanoic Acid (50 FR 20678; May 17, 1985).

(g) Notice of Proposed Test Rule for 2-Ethylhexanol (51 FR 45487; December 19, 1986).

(h) Notice of Final Rule for 2-Ethylhexanoic Acid (51 FR 40318; November 6, 1986).

(i) Notice of interim final rule on single-phase test rule development and exemption procedures (50 FR 20652; May 17, 1985).

(2) Communications concerning the rule including contact reports of telephone conversations, and public comments.

(3) U.S. Environmental Protection Agency (USEPA). Chemical Testing Industry Profile of Toxicological Testing. Development Planning and Research Associates, Inc. and ICF Incorporated. Contract number 68-01-6064 and Task 7, Contract No. 68-01-6287. (October, 1981).

B. References

(1) National Toxicology Program (NTP). "Summary of Data for Chemical Selection" prepared for The National Cancer Institute by SRI International. Contract No. NOl-CP-05607 9/80 (Rev. April 1981).

(2) U.S. Environmental Protection Agency (USEPA). Economic Impact Analysis of Final Test Rule for 2-Ethylhexanol. Mathtech, Inc. Contract number 68-02-4235. Office of Pesticides and Toxic Substances, Washington, DC (March 20, 1987).

(3) USEPA. 2-Ethylhexanol Worker Exposure Analysis. Office of Pesticides and Toxic Substances, Washington, DC (August 13, 1986).

(4) U.S. Department of Health and Human Services. Public Health Service. National Institutes of Health (USDHHS; PHS; NIH). Carcinogenesis Bioassay of Di (2-ethylhexyl) phthalate (CAS No. 117-81-7) in F344 Rats and B6C3F1 Mice (Feeding Study). NTP Technical Report Series No. 217.

(5) USDHHS; PHS; NIH. Carcinogenesis Bioassay of Di (2-ethylhexyl) Adipate (CAS No. 103-23-1) in F344 Rats and B6C3Fl Mice (Feed Study). NTP Technical Report Series No. 212.

(6) USDHHS; PHS; NIH. Carcinogenesis Bioassay of Sodium 2-Ethylhexyl Sulfate (CAS No. 126-92-1) in F344/N Rats and B6C3F1 Mice (Feed Study). Draft NTP Technical Report. Prepared for the Board of Scientific Counselors. (September 2, 1982).

(7) USDHHS; PHS; NIH. NTP Technical Report on the Toxicity and Carcinogenicity of Tris (2-ethylhexyl) Phosphate (CAS No. 78-42-2) in F344/N Rats and B6C3F1 Mice (Gavage Study). Draft NTP Technical Report. (September 8, 1983).

(8) USDHHS; PHS; NIH. Memorandum with Attachment from W. Kluwe to 12 Addressees. Attachment: Comparative Chronic Toxicities and Carcinogenic Potentials of Four 2-Ethyhexyl-containing Compounds in Rats and Mice (December 19, 1983).

(9) NTP, National Institute of Environmental and Health Sciences. Microencapsulation Report 2-Ethyl-1-hexanol—Conformance of Microencapsulated Chemical to Specifications. Midwest Research Institute. NIEHS Contract No. Nol-ES-45060. (July 3, 1986).

(10) USEPA. Response to Public Comments, Proposed Revision of TSCA Test Guidelines (51 FR 1522; January 14, 1986), see the **Federal Register** of May 20, 1987 (52 FR 19056).

(11) Chemical Manufacturers Association (CMA). Comments of the 2-Ethylhexanol Panel of the Chemical Manufacturers Association on EPA's Proposed Test Rule for 2-Ethylhexanol, Washington, DC (February 17, 1987).

(12) CMA. Letter from Geraldine V. Cox, Vice President-Technical Director, CMA, to Charles L. Elkins, Director, Office of Toxic Substances, USEPA. Extension of Comment Period on 2-EH Test Rule Proposal. Washington, DC (February 10, 1987).

(13) CMA. Letter from Geraldine V. Cox, Vice President-Technical Director, CMA, to Gary E. Timm, Chief, Test

Rules Development Branch, USEPA, re: Issues for Discussion at 2-Ethylhexanol Public Meeting. Washington, DC (March 13, 1987).

(14) USEPA. Transcript of Proceedings From the Public Meeting to Present Oral Comments on 2-Ethylhexanol; Proposed Test Rule. Washington, DC (March 19, 1987).

(15) Alcolac. Letter from Daniel Greenfield, Director: TSCA Compliance, Alcolac, to the TSCA Public Information Office, USEPA, Washington, DC (April 15, 1987).

(16) NTP. National Institute of Environmental and Health Sciences. Standard analysis new Report, Chemical Characterization and Dosage Formulation Studies for 2-Ethylhexanol. Midwest Research Institute. NIEHS contract No. Nol–ES–45060. (October 4, 1985).

(17) National Institute for Occupational Safety and Health (NIOSH). National Occupational Hazard Survey Data Base (NOHS), USDHHS, Washington, DC. Computer printout. (May 31, 1985).

(18) NIOSH. National Occupational Exposure Survey Data Base (NOES). USDHHS, Washington, DC. Computer printout. (June 4, 1985).

(19) NTP. Maronpot, R.R. "Liver lesions in B6C3F1 Mice: The National Toxicity Program, Experience and Position." Research Triangle Park, NC (1987).

(20) NTP. Haseman, J. K. "Comparative Results of 327 Chemical Carcinogenicity Studies." Research Triangle Park, NC (May 30, 1987, in press).

(21) NTP. Letter from Ronald L. Melnick, to Frank Benenati, Office of Toxic Substances, USEPA, Washington DC (October 3, 1986).

(22) USEPA. Memorandum re: Ethylhexanol test program, from Carl Baetcke, Health and Environmental Review Division, to Frank Benenati, Office of Toxic Substances, USEPA, Washington, DC (October 3, 1986).

(23) CMA. Letter from Geraldine V. Cox, Vice President-Technical Director, CMA, to John A. Moore, Assistant Administrator for Pesticides and Toxic Substances, USEPA, re: route of administration for 2-EH Bioassay. Washington, DC (June 2, 1987).

(24) Shell Oil Company. Hansen, R.E., letter to the USEPA Re: 2-Ethylhexanol-Teratogenic Effects. (May 14, 1987).

(25) Samolloff, M.R., Bell, J., Birkholz, D.A., Webster, G.R.B., Arnott, E.G., Pulak, R., Madrid, A. "Combined bioassay-chemical fractionation scheme for the determination and ranking of toxic chemicals in sediments." *Environmental Science and Technology*. 17:329–34. (1983).

(26) Sheldon, L.S. and Hites, P.A. "Organic Compounds in the Delaware River." *Environmental Science and Technology* 12:1188–94. (1978).

(27) Yasuhara, A., Shiraishi, H., Tsuji, M., and Okuno, T. "Analysis of organic substance in highly polluted water by mass spectrometry." *Environmental Science and Technology*. 15:570–3. (1981).

Confidential business information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection in the OPTS Reading Rm., NE–G004, 401 M St., SW., Washington, DC, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

VIII. Other Regulatory Requirements

A. Classification of Rule

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. EPA has determined that this test rule is not major because it does not meet any of the criteria set forth in section 1(b) of the Order, i.e., it will not have an annual effect on the economy of at least $100 million, will not cause a major increase in prices, and will not have a significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA, and any EPA response to those comments, are included in the rulemaking record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (15 U.S.C. 601 *et seq.*, Pub. L. 96–354, September 19, 1980), EPA is certifying that this test rule will not have a significant impact on a substantial number of small businesses because: (1) They will not perform testing themselves or will not participate in the organization of the testing effort; (2) they will experience only very minor costs in securing exemption from testing requirements; and (3) they are unlikely to be affected by reimbursement requirements.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this final rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and has assigned them OMB control number 2070–0033.

List of Subjects in 40 CFR Part 799

Testing, Environmental protection, Hazardous substances, Chemicals, Recordkeeping and reporting requirements.

Dated: July 27, 1987.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, Chapter I of Title 40, Part 799, of the Code of Federal Regulations is amended as follows:

PART 799—[AMENDED]

1. The authority citation for Part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. By adding new § 799.1645 to read as follows:

§ 799.1645 2-Ethylhexanol.

(a) *Identification of test substance.* (1) 2-Ethylhexanol (CAS No. 104–76–7) shall be tested in accordance with this section.

(2) 2-Ethylhexanol of at least 99.0-percent purity shall be used as the test substance.

(b) *Persons required to submit study plans, conduct tests, and submit data.* All persons who manufacture or process, or intend to manufacture or process 2-ethylhexanol, other than as an impurity, from the effective date of this final rule to the end of the reimbursement period shall submit letters of intent to conduct testing, submit study plans, conduct tests, and submit data or exemption applications as specified in this section, Subpart A of this Part, and Parts 790 and 792 of this chapter for single-phase rulemaking.

(c) *Health effects*—(1) *Oncogenic effects*— (i) *Required testing.* (A) Oncogenicity tests shall be conducted in Fisher 344 rats and B6C3F1 mice by the oral route with 2-ethylhexanol in accordance with § 798.3300 of this chapter, except for the provisions in § 798.3300(b)(6).

(B) For the purpose of this section, the following provisions also apply to the oncogenicity tests: (*1*) *Administration of the test substance.* 2-Ethylhexanol shall be administered either by microencapsulation before adding it to the diet or by gavage.

(*2*) [Reserved]

(ii) *Reporting requirements.* (A) The study plan for the oncogenicity test shall be submitted at least 45 days before the initiation of testing.

(B) The oncogenicity testing shall be completed and final report submitted to the Agency within 53 months of the effective date of this final rule if 2-ethylhexanol is administered by gavage or within 56 months of the effective date of this final rule if administered by microencapsulation.

(C) Interim progress reports shall be submitted to EPA at 6-month intervals beginning 6 months after the effective date of the final rule, until the final report is submitted to EPA.

(2) [Reserved]

(d) *Effective date.* The effective date of this final rule requiring oncogenicity testing of 2-ethylhexanol is September 16, 1987.

(Information collection requirements are approved by the Office of Management and Budget under control number 2070-0033.)

[FR Doc. 87-17514 Filed 7-31-87; 8:45 am]

BILLING CODE 6560-50-M

COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

45 CFR Part 2002

Regulations on Donations; Technical Amendments

AGENCY: Commission on the Bicentennial of the United States Constitution.

ACTION: Final rule.

SUMMARY: This notice announces amendments made by the Commission on the Bicentennial of the United States Constitution to the Regulations on Donations which were published as an Interim Rule on January 24, 1986 [51 FR 3173] and adopted as a Final Rule on August 7, 1986 [51 FR 28384]. The enactment of Pub. L. 99-549, 100 Stat. 3063, signed by the President on October 27, 1986, requires these amendments in order to implement the actions of Congress and conform the Commission's existing regulations with the new authority granted by Congress. The effect of these amendments is to raise the contribution ceilings for individuals and corporations.

EFFECTIVE DATE: August 3, 1987.

FOR FURTHER INFORMATION CONTACT: Joseph B. McGrath, General Counsel, Commission on the Bicentennial of the United States Constitution, 736 Jackson Place, NW., Washington, DC 20503; telephone: (202) 275-9178.

SUPPLEMENTARY INFORMATION: These amendments are required and approved in order to implement changes made by Pub. L. 99-549, 100 Stat. 3063, to the statute which created the Commission, Pub. L. 98-101, 97 Stat. 719. The new law, among other things, raised the annual limits on individual and corporate contributions to the Commission. The limit on annual contributions was raised from $25,000 to $250,000 for individual donors and from $100,000 to $1,000,000 for corporate and other business organization donors.

Paperwork Reduction Act: There are no information collection requirements subject to the Paperwork Reduction Act of 1980.

List of Subjects in 45 CFR Part 2002

Donations, U.S. Constitution Bicentennial.

Issued in Washington, DC, on July 28, 1987.

Mark W. Cannon,

Staff Director.

PART 2002—[AMENDED]

1. The authority citation for Part 2002 is revised to read as follows:

Authority: Section 5(h)(3) of Pub. L. 98-101; 97 Stat. 719; as amended by Pub. L. 99-540, 100 Stat. 3063; 5 U.S.C. 552.

§ 2002.21 [Amended]

2. Section 2002.21 is amended as follows:

a. Paragraph (a) is amended by inserting "as amended", after "97 Stat. 721,".

b. Paragraph (a)(1) is amended by striking "$25,000" and inserting in lieu thereof "$250,000".

c. Paragraph (a)(2) is amended by striking "$100,000" and inserting in lieu thereof "$1,000,000".

§ 2002.22 [Amended]

3. Section 2002.22 is amended as follows:

a. Paragraph (b) is amended by striking "$100,000" and inserting in lieu thereof "$1,000,000".

[FR Doc. 87-17483 Filed 7-31-87; 8:45 am]

BILLING CODE 6340-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-29; RM-4941]

Radio Broadcasting Services; Greenup, KY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 289B1 for Channel 288A at Greenup, Kentucky and modifies the license of Station WLGC-FM, Greenup to specify the new channel at the request of Greenup County Broadcasting, Inc. A counterproposal to allot the channel to Athens, Ohio is denied. With this action the proceeding is terminated.

EFFECTIVE DATE: September 4, 1987.

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-30, , adopted July 9, 1987, and released July 20, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended by substituting Channel 289B1 for Channel 288A at the entry for Greenup Kentucky.

Federal Communications Commission.

Bradley P. Holmes,

Chief, Policy and Rules Division Mass Media Bureau.

[FR Doc. 87-17550 Filed 7-31-87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 204, 215, 230, and 253

Department of Defense Federal Acquisition Regulation Supplement; DoD Profit Policy

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Defense Acquisition Regulatory Council has approved revisions to Subparts 204.6, 215.9, 230.70 and 253.3 of the DoD FAR Supplement with respect to profit policy.

EFFECTIVE DATE: August 1, 1987.

FOR FURTHER INFORMATION CONTACT:
Lieutenant Colonel Richard J. Wall, USAF, (202) 695-9764.

SUPPLEMENTARY INFORMATION:

A. Background

In May 1986, the Deputy Secretary of Defense approved an action plan to reform the way DoD contracting officers establish prenegotiation profit objectives on negotiated defense contracts. A new profit policy was proposed in the Federal Register on September 18, 1986 (51 FR 33087, September 18, 1986), for public comment. Subsequently, however, a provision in the DoD Appropriations Act of 1987 made it necessary to implement the proposed profit policy as an interim rule, effective on all contract solicitations issued on or after October 18, 1986. The Act specifically required DoD to accomplish the following: (a) increase emphasis placed on facilities capital employed and contractor risk, (b) consider working capital requirements, and (c) eliminate profit objectives being based on individual cost elements. The Act also included an expectation that unintended increases in profit objectives, which had occurred as a result of the profit policy issued under Defense Acquisition Circular 76-23, would be corrected. The interim rule was offered for public comment in the Federal Register on December 1, 1986 (51 FR 43200, December 1, 1986).

In developing a final rule, a DoD Joint-Service Implementation Committee evaluated the public comments received in response to both the September 18, 1986, and December 1, 1986, notices in the Federal Register. In addition, the Committee examined problems that had been experienced by DoD field contracting activities in implementing the interim rule. The financial impact of profit policy changes was evaluated against a data base of 14,000 contract actions valued at $160 billion, covering fiscal years 1981 through 1986.

A summary of the major changes made to the interim rule in adopting a final rule is presented below.

Use of Weighted Guidelines Method on Competitive Contracts.

The Weighted Guidelines Method is a structured approach which assists the contracting officer in performing a profit analysis on negotiated contracts. Although DoD's intent is to apply this method only to negotiated contracts, there were cases noted where it was applied to competitive procurements as well. Therefore, the applicability guidance was modified to stress that the Weighted Guidelines Method be used on contract actions where price is negotiated.

Distribution of Emphasis and Normal Values.

The total profit objective is the sum of values assigned by the contracting officer for three factors: performance risk, contract type risk, and facilities capital. The overall distribution of emphasis desired by DoD for these three factors determines the normal values for each in the Weighted Guidelines Method. It is DoD's intent to increase the emphasis placed on facilities capital to 40 percent (includes facilities capital cost of money). In order to achieve this overall distribution of emphasis, it was necessary to make changes to the normal values included in the interim rule.

Companies with Relatively Low Amount of Facilities Capital.

The interim rule recognized that there were research and development and service industries that did not require extensive investment in facilities capital to fulfill contract requirements. There was an adjustment factor that allowed the contracting officer to give additional profit for performance risk (up to 7 percent) under circumstances that met certain quantitative and qualitative criteria. Many commentors did not believe this mechanism was credible enough to provide a reasonable profit opportunity to these industries. As a result, this method was replaced with an alternate performance risk factor that as a separate normal value and designated range (allows profit up to 8 percent). The quantitative and qualitative criteria were removed, giving the contracting officer complete flexibility in this area. If the alternate performance risk factor is used, the contractor may still receive profit for contract type risk and facilities capital cost of money. The contractor, however, may not receive profit for facilities capital employed.

Cost as a Profit Base.

Several actions were taken to reduce the influence of cost in establishing prenegotiation profit objectives. First, the combined distribution of emphasis for the cost based portion of the Weighted Guidelines Method (performance risk and contract type risk) was reduced to 60 percent. Second, the analysis of performance risk was redirected from individual cost elements to three qualitative criteria: technical risk, management effort, and cost control. Third, contractor general and administrative (G&A) expenses and independent research and development/bid and proposal (IR&D/B&P) expenses were removed from the cost base. A number of commentors were critical of the third step, claiming that G&A and IR&D/B&P expenses were ordinary and necessary to the conduct of business and allowable under DoD's contract cost principles. No change was made to the interim rule on this issue because, while these expenses are necessary and allowable, they are not product costs in the same sense as material, direct labor, and overhead. This step was not a profit reduction measure, and if G&A and IR&D/B&P were reinstated to the cost base, compensating adjustments would have been made by reducing the normal values for performance risk and contract type risk.

Working Capital.

The new profit policy integrates the contractor's cost of working capital into the profit analysis. The intent is to provide the contracting officer with a means of varying prenegotiation profit objectives with the economic environment, DoD contract financing policies, and contract characteristics. Commentors generally agreed with the concept, but there were a number of practical application problems with the working capital adjustment factor included in the interim rule. A number of changes were made. First, two sets of contract type values were created: one for contracts that do not have contract financing provisions (e.g., progress payments) and one for contracts that do. The working capital considerations are only applied to contracts that have contract financing provisions. Second, small businesses were to be treated as if they received progress payments at the customary rate for large businesses. This removed differences in profit that would occur because small businesses receive a higher customary progress payment rate than large businesses. Third, a contract length factor table was created to simplify the calculation of the working capital adjustment. Fourth, instead of using a DoD published interest factor for computing working capital costs, contracting officers are to use the interest rate published by the Secretary of the Treasury (same rate used for facilities capital cost of money). A number of commentors challenged the assumptions and decisions that formed the baseline values of the working capital adjustment as being too conservative and not reflective of contractor costs. In addressing these comments, it was concluded that there was not enough empirical information presented to revise the analysis presented in DoD's profit study, entitled "Defense Financial and Investment

Review". DoD's management information systems on contracting officer profit objectives will collect this information in the future, allowing for a more meaningful follow-up assessment in this area in the future.

Undefinitized Contract Actions.

The interim rule had stated that no profit for contract type risk should be paid on costs incurred by a contractor while performing on an undefinitized contract arrangement. This policy was modified to give the contracting officer more flexibility in this area. DoD's intent is to preclude giving fixed-price type profit rewards to contracts that were not prospectively priced and involve risk to the contractor. The contracting officer is expected to cosider the extent that costs have been incurred when setting the prenegotiation profit objective. The contracting officer should generally regard the contract type risk to be below normal within the designated range of the contract type selected. In cases where a substantial portion of the costs have been incurred prior to definitization, the contracting officer may assign a value as low as 0 percent for contract type risk.

Facilities Capital Employed.

One of the major thrusts of the new profit policy is to increase the emphasis on capital investment that will yield higher productivity. This was accomplished by increasing the overall distribution of emphasis for facilities capital and skewing normal profit values to investment in equipment. It was observed that the limitations inherent in the mechanism for deriving facilities capital cost of money under Cost Accounting Standard 414, "Cost of Money as an Element of the Cost of Facilities Capital", were producing distortions in profit objectives on contracts for research and development and service efforts performed by highly facilitized manufacturing firms. Therefore, an alternate set of values for facilities capital employed was created to give the contracting officer more flexibility in this situation. Some commentors complained that no profit consideration was given to land. They argued that land is an integral part of contractor capital investment decisions, and DoD's policy would affect such considerations. DoD's policy remained unchanged in this area because land is not a depreciable asset that is consumed in the production of goods and services. Further, removing land from the capital base was not a profit reduction measure, and if it were reinstated, compensating adjustment would have to be made by reducing normal values for buildings and equipment.

The DoD FAR Supplement is codified in Chapter 2, Title 48 of the Code of Federal Regulations.

Interested parties may submit proposed revisions to this Supplement directly to the DAR Council.

B. Regulatory Flexibility Act Information

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because the Weighted Guidelines Method is only mandatory on negotiated contract actions exceeding $500,000 (optional between $100,000 and $500,000). As such, small business involvement is not expected to be significant as the majority of negotiated contracts awarded at this level are to large businesses. Therefore, Regulatory Flexibility Act requirements do not apply. This view had been expressed when the new profit policy was issued as an interim rule, due to the DoD Appropriations Act of 1987, in the Federal Register on December 1, 1986. Although some commentors offered criticisms on the structure of the revised Weighted Guidelines method, the view of Regulatory Flexibility Act application was not challenged.

C. Paperwork Reduction Act Information

The Office of Management and Budget approved on October 24, 1986, paperwork burden of 750 hours under OMB Control No. 0704–0267.

List of Subjects in 48 CFR Parts 204, 215, 230, and 253

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Adoption of Amendments

Therefore, the DoD FAR Supplement contained in 48 CFR Chapter 2 is amended as set forth below.

PARTS 204, 215, 230, AND 253—[AMENDED]

1. The authority for 48 CFR Parts 204, 215, 230, and 253 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 204—ADMINISTRATIVE MATTERS

2. Sections 204.673 and 204.673–1 through 204.673–4 are revised to read as follows:

204.673 Record of Weighted Guidelines Method Application (DD Form 1547).

204.673–1 Purpose.

The DD Form 1547 is the principal source document for maintaining a DoD-wide management information system on profit and fee statistics, as required under DoD Instruction 7730.27, "Reporting of Planned and Negotiated Contract Profit Rates" (see 215.970). The management information system is extensively used within the Office of the Secretary of Defense to serve a wide variety of purposes ranging from evaluating profit and fee policies to responding to information requests received from all Branches of the Government, Congress, and the public.

204.673–2 Responsibilities.

The Heads of the Military Departments shall develop the necessary policies, procedures, and internal controls for implementing this reporting system. The contracting officer is responsible for properly preparing the DD Form 1547 and forwarding a copy of it to the designated office within 30 calendar days after the date of contract award. The contracting officer is also responsible for the correction of any errors detected by the system's auditing processes.

204.673–3 Applicability.

For the field contracting offices specified below, a copy of the completed DD Form 1547 shall be forwarded to the office designated for all contract actions valued $500,000 or more where the contracting officer employed either the Weighted Guidelines Method (215.970), an alternate structured approach (215.971), or the Modified Weighted Guidelines Method (215.972). Offices located outside the United States, its possessions, and Puerto Rico are exempt from this reporting requirement.

(a) *Army.* Contracting officers from all field contracting offices shall forward completed DD Forms 1547 directly to the Office of the Assistant Secretary for, Research, Development and Acquisition (SARD–KS), Washington, DC, 20310–0600 or through intermediate office shown below:

(1) For Army Materiel Command field contracting offices, send through Army Materiel Command, ATTN: AMCPP–SC, 5001 Eisenhower Avenue, Alexandria, VA 22333–0001; and

(2) For U.S. Army Corps of Engineers contracting offices, send through Office of the Chief of Engineers, HQDA (DAEN–PRP), Washington DC 20314–1000.

(b) *Navy.* (1) Contracting officers from the contracting offices specified below

and all subordinate field offices shall forward completed DD Forms 1547 to the office designated in (b)(2):

(i) Naval Air Systems Command;

(ii) Naval Sea Systems Command;

(iii) Space and Naval Warfare Systems Command;

(iv) Naval Facilities Engineering Command;

(v) Naval Supply Systems Command;

(vi) Office of Naval Research;

(vii) Headquarters, United States Marine Corps; and

(viii) Strategic Systems Project Office.

(2) Designated Office: Commander, Naval Supply Systems Command (SUP 024B), Washington, DC 20376.

(c) Air Force: (1) Contracting officers from all field contracting offices in the Air Force Systems Command and Air Force Logistics Command shall forward completed DD Forms 1547 to HQ AFLC/LMSC/SORS, Wright-Patterson Air Force Base, Ohio 45433.

204.573-4 Procedures.

(a) All elements of the DD Form 1547 shall be completed by the contracting officer as instructed in 215.970-2, 215.971-3, and 215.972-2.

(b) Completed forms shall be sent to the designated office, as an unclassified document, within 30 days after contract award. Classified information shall not be entered into the management information system on profit. The designated office will perform the necessary audit tests to ensure that the information on the DD Form 1547 is accurate. Use of mechanized or automated systems is desirable.

(c) The designated offices shall transmit the DD Form 1547 information in the manner and format specified in DoD Instruction 7730.27.

(d) The reporting requirements of this part have been assigned RCS: A&L(Q) 1751.

204.673-5 [Removed]

3. Section 204.673—5 is removed.

PART 215—CONTRACTING BY NEGOTIATION

4. Subpart 215.9, consisting of sections 215.900 through 215.973, is revised to read as follows:

Sec.
215.900 Scope of subpart.
215.902 Policy
215.903 Contracting officer responsibilities.
215.905 Profit-analysis factors.
215.905-1 Common factors.
215.970 Weighted Guidelines Method.
215.970-1 Procedures for establishing a profit objective.
215.970-2 Instructions for completing DD Form 1547.
215.971 Alternate approaches to Weighted Guidelines Method.
215.971-1 Recognized Profit Factors.
215.971-2 Offset policy for facilities capital cost of money.
215.971-3 Instructions for completing DD Form 1547.
215.972 Modified Weighted Guidelines Method for nonprofit organizations.
215.972-1 Procedures for establishing fee objectives.
215.972-2 Instructions for completing DD Form 1547.
215.973 Cost-plus-award-fee contracts.

Subpart 215.9—Profit

215.900 Scope of subpart.

This subpart prescribes additional policies and procedures which DoD contracting officers shall use in developing a prenegotiation profit or fee objective (hereafter collectively called "profit objective") on negotiated defense contracts.

215.902 Policy.

(a)(1)(i) The Weighted Guidelines Method described in 215.970 is DoD's structured approach for performing a profit analysis on contract actions where price is to be negotiated. Its purpose is to provide a uniform and consistent manner for rewarding risk, motivating efficient and quality performance, and stimulating capital investment in the defense industrial base. The contracting officer shall use the Weighted Guidelines Method, or an alternate structured approach as authorized in 215.902(a)(1)(ii), for any negotiated contract action that requires cost analysis (215.805-3). A profit analysis shall not be performed on contract actions to be awarded on the basis of adequate price competition (215.804-3(b)). Furthermore, practices which produce an arbitrary profit objective or accomplish a profit analysis on an after-the-fact basis are unacceptable.

(ii) The contracting officer may use an alternate structured approach, described in 215.971, in lieu of the Weighted Guidelines Method for the types of contract actions listed immediately below. The alternate structured approach must specifically address performance risk, contract type risk (including contractor working capital), and contractor facilities capital.

(A) Contract actions under $500,000;

(B) Architect-engineer contracts;

(C) Construction contracts;

(D) Contracts primarily requiring delivery of material supplied by subcontractors;

(E) Termination settlements; and

(F) Cost-plus-award-fee cotracts.

(iii) Although it is intended that the Weighted Guidelines Method be applied to most negotiated contract actions, there may be unusual situations where this method may not produce a reasonable overall profit objective. An alternate structured approach may be used by the contracting officer, provided that approval has been obtained in writing from the head of the contracting activity. This approval authority may be redelegated in accordance with Departmental procedures.

(iv) The contracting officer shall use the modified Weighted Guidelines Method for contract actions with nonprofit organizations (see 215.972).

(S-70) If the contract action involves a modification to an existing contract, the contracting officer may apply the profit rate in the existing contract to the modification if all of the following conditions are met:

(1) Modification is a relatively small dollar amount;

(2) Work to be performed under the modification is similar to that required in the existing contract; and

(3) Other relevant variables have not materially changed (e.g., performance risk, interest rates, progress payment rates, distribution of facilities capital).

(S-71) The Weighted Guidelines Method shall be used to establish a basic profit rate under a formula type pricing agreement, and this basic rate may be used on all contract actions issued under that agreement, provided that conditions affecting profit do not change materially.

(S-72) The prime contractor should be encouraged to use the Weighted Guidelines Method or similar structured approach in developing profit objectives for negotiated subcontracts.

215.903 Contracting officer responsibilities.

(b) The Weighted Guidelines Method of profit analysis shall not be used in instances where cost analysis is being performed to assess cost realism on competitive acquisitions.

(e) The contractor should be encouraged to present the details of proposed profit amounts in the format described in 215.970, if application of the Weighted Guidelines Method is anticipated. This will facilitate a more complete discussion of the individual factors which will determine the overall profit objective. Specific agreement on the applied weights or values for individual profit factors shall not be attempted.

(S-70) The contracting officer's price negotiation memorandum shall fully document the profit analysis performed.

whether it be accomplished through the Weighted Guidelines Method or an alternate structured approach.

(S-71) The contracting officer is responsible for the accuracy and timeliness of profit reporting under DoD's management information system (see 204.673). Such reporting should be accomplished within 30 calendar days after the date of contract award. The contracting officer is responsible for the correction of any errors detected by the system's auditing processes.

215.905 Profit-analysis factors.

215.905-1 Common factors.

It is not necessary for the contracting officer to give consideration to the common factors beyond the means included in the Weighted Guidelines Method and alternate structured approaches.

215.970 Weighted Guidelines Method.

The Weighted Guidelines Method requires application of a DD Form 1547, "Record of Weighted Guidelines Method Application" (see 253.303-70-DD-1547). This method is DoD's structured approach for (a) performing the profit analysis necessary to develop a prenegotiation objective, (b) summarizing profit amounts subsequently negotiated as part of the contract price, and (c) serving as the principal source document for reporting profit statistics through DoD's management information system. The Weighted Guidelines Method expressly takes into account the contractor's degree of performance risk in producing the goods or services being acquired, the contract type risk assumed by the contractor under varied contract and incentive arrangements, and the nature and extent of facilities capital to be employed by the contractor. A normal value and designated range have been established for each profit factor. The normal value is the expected profit assignment where average conditions exist when compared to all goods and services acquired by DoD. The contracting officer may assign any value within the designated range if conditions warrant.

215.970-1 Procedures for establishing a profit objective.

(a) *Performance Risk.* This profit factor addresses the contractor's risk in fulfilling the contractual requirements to provide the supplies or to perform the services being acquired.

(1) *Profit base.* The profit amount for performance risk is computed by multiplying a composite profit value assigned by the contracting officer times total contract costs, *excluding* general and administrative (G&A) expenses, contractor independent research and development/bid and proposal (IR&D/B&P) expenses, and facilities capital cost of money.

(2) *Normal values and designated ranges.—(i) Standard.* Except for limited cases as provided in 215.970-1(a)(2)(ii), the normal value and designated range for the performance risk profit factor are as shown below. It is expected that the standard will be used on most contracts.

	Normal value	Designated range
Performance Risk (Standard)	4%	2% to 6%

(ii) *Alternate.* It is DoD's intent to base a substantive portion of total profit on contractor investment in facilities capital. However, some research and development and service contractors require relatively low capital investment in buildings and equipment when compared to the defense industry overall. For such contractors, the contracting officer may use the alternate normal value and designated range shown below. If the alternate is used, the contractor may not be given any profit for facilities capital employed (215.970-1(c)).

	Normal value (percent)	Designated range (percent)
Performance Risk (Alternate)	6	4 to 8

(3) *Evaluation criteria.* Performance risk shall be evaluated using three criteria: technical, management and cost control. Each is an integral part of developing the composite profit value for performance risk. The contracting officer shall weight each criterion as judged appropriate for the supplies or services being acquired. The profit value assigned will vary according to the contractor's performance risk in providing the supplies or services required by the contract. While any value may be assigned within the designated range, it is expected that the maximum and minimum values will be restricted to cases where performance risk is substantially above or below normal. The following example demonstrates how a composite profit value for performance risk is calculated.

	Weight assigned (percent)	Value assigned (percent)	Weighted value (percent)
Technical	30	5.0	1.5
Management	30	4.0	1.2
Cost Control	40	4.5	1.8
Composite Value			4.5

(i) *Technical.* This criterion focuses on the technical risk associated with providing the goods and services being acquired. The contracting officer's evaluation should address such factors as the technology being applied or developed by the contractor, technical complexity, program maturity, performance specifications and tolerances, and delivery schedule. The contracting officer is expected to carefully review the contract requirements and focus on the critical performance elements in the statement of work or specifications. The extent of a warranty or guarantee coverage should also be considered. Conditions which might justify higher or lower values are discussed below.

(A) *Above normal conditions.* The contracting officer may assign a higher than normal value in those cases where there is substantial technical risk. The following are indicators that such a condition may exist: the contractor is either developing or applying advanced technologies; items are being manufactured using specifications with stringent tolerance limits; the efforts require highly skilled personnel or require the use of state of the art machinery; the services and analytical efforts are of utmost importance to the Government and must be peformed to exacting standards; the contractor's independent development and investment has reduced the Government's risk or cost; the contractor has accepted an accelerated delivery schedule to meet DoD requirements; the contractor has assumed additional risk through warranty provisions. A maximum value may be justified in the development or initial production of a new item, particularly if performance or quality specifications are tight, or if there is a high degree of development or production concurrency. Extremely complex, vital efforts to overcome difficult technical obstacles which require personnel with exceptional abilities, experience and professional credentials may also justify a value significantly above normal.

(B) *Below normal conditions.* The contracting officer may assign a lower than normal value in those cases where the technical risk is low. The following are indicators that such a condition may exist: off the shelf items are being acquired; relatively simple requirements are specified; there is little application of complex technology; efforts that do not require highly-skilled personnel or which are relatively routine; mature programs; follow-on efforts and repetitive type procurements. A profit

value significantly below normal may be justified for circumstances such as the following: routine services; production of simple items; rote entry or routine integration of government furnished information; simple operations within government owned facilities.

(ii) *Management.* This criterion considers the management effort involved on the part of the contractor to integrate the resources necessary to meet contract requirements. Resources include raw materials, labor, technology, information, and capital. The contracting officer should assess the contractor's management and internal control systems as well as the management involvement expected on the individual contract action. The contracting officer should consider the degree of cost mix as an indication of the types of resources applied and value-added by the contractor. The cost elements should not, themselves, be a basis for profit assignment. In evaluating management efforts, the contracting officer should use reviews made by the field contract administration office or other pertinent DoD field offices. The contracting officer should also give consideration to the contractor's support of federal socioeconomic programs, such as small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, handicapped sheltered workshops, labor surplus areas, and energy conservation. Conditions which might justify higher and lower values are discussed below.

(A) *Above normal conditions.* The contracting officer may assign a higher than normal value in those cases where the management effort is intense. The following are indicators that such a condition may exist: the value-added by the contractor is both considerable and reasonably difficult; the effort involves a high degree of integration or coordination; the contractor has a substantial record of active participation in federal socioeconomic programs. A maximum value for management may be justified under conditions such as the following: efforts requiring large scale integration of the most complex nature; major international activities requiring significant management coordination; or efforts with management milestones of critical importance.

(B) *Below normal conditions.* The contracting officer may assign a lower than normal value in those cases where the management effort is minimal. The following are indicators that such a condition may exist: a mature program where many end item deliveries have been made; the contractor adds minimum value to an item; routine efforts which require minimal supervision; the contractor provides poor quality, untimely proposals; the contractor fails to provide an adequate analysis of subcontractor costs; the contractor does not cooperate in the evaluation and negotiation of the proposal. A significantly below normal profit value may be justified if reviews performed by the field contract administration offices disclose unsatisfactory management and internal control systems (e.g., quality assurance, property control, safety, security) or if the effort requires an unusually low degree of management involvement.

(iii) *Cost control.* This criterion focuses on the contractor's efforts to reduce and control costs. The principal areas for evaluation are the expected reliability of cost estimates, cost reduction initiatives, and cost control management. Other factors which bear on the contractor's ability to meet the cost targets, such as foreign currency exchange rates and inflation rates, may also be considered. The contracting officer should assess the reliability of the contractor's estimating system and the extent of the contractor's cost reduction initiatives (e.g., competition advocacy programs, dual sourcing, spare parts pricing reforms, value engineering). In evaluating cost control management, the contracting officer should consider the adequacy of the contractor's management approach to the control of cost and schedule. Conditions which might justify higher or lower values are discussed below.

(A) *Above normal conditions.* The contracting officer may assign a higher than normal value if the contractor can demonstrate a highly effective cost control program. The following are indicators that such a condition may exist: the contractor provides fully documented and reliable cost estimates; the contractor has an aggressive cost reduction program that has demonstrable benefits; the contractor uses a high degree of subcontract competition (e.g., aggressive dual sourcing); the contractor has a proven record of cost tracking and control.

(B) *Below normal conditions.* The contracting officer may assign a lower than normal value if the contractor demonstrates minimal concern for cost control. The following are indicators that such a condition may exist: the contractor has a marginal cost estimating system; the contractor has made minimal effort to initiate cost reduction programs; the contractor's cost proposal is inadequate; or the contractor has a record of cost overruns or other indications of unreliable cost estimates and lack of cost control.

(b) *Contract type risk.* This factor focuses on the degree of cost risk accepted by the contractor under varying contract types.

(1) *Profit base.* The amount of profit for contract type risk is computed by multiplying the value assigned by the contracting officer times total allowable costs *excluding* G&A expenses, IR&D/B&P expenses, and facilities capital cost of money.

(2) *Normal values and designated ranges.* (i) The following normal values and designated ranges are applicable to contracts that contain no provisions or limited (first article financing) provisions for progress payments:

Contract type	Normal value (percent)	Designated range (percent)
Firm fixed-price	5	4 to 6
Fixed-price-incentive-fee	3	2 to 4
Cost-plus-incentive fee	1	0 to 2
Cost-plus-fixed-fee	.5	0 to 1

(ii) For fixed-price type contracts that contain provisions for progress payments, the normal value and designated ranges shown below shall be used. The value assigned by the contracting officer shall be further adjusted by adding an amount to recognize the contractor's investment in working capital, as described in 215.970–1(b)(4).

Contract type	Normal value	Designated range [1] (percent)
Firm fixed-price	3	2 to 4
Fixed-price-incentive-fee	1	0 to 2

[1] Add working capital adjustment to value assigned.

(iii) Time and material contracts; labor-hour contracts; overhaul contracts priced on a time and material basis; and firm fixed-price-level-of-effort-term contracts shall be considered to be cost-plus-fixed-fee contracts for the purpose of establishing a profit value for contract

type risk and shall not receive the working capital adjustment described in 215.970–(b)(4). However, higher profit values within the designated range may be justified to the extent that portions of cost are fixed.

(iv) Fixed-price contracts with redeterminable provisions should be considered as a fixed-price-incentive-fee contract with below normal conditions.

(3) *Evaluation criteria.* (i) When assigning a profit value, the contracting officer should consider elements that affect contract type risk such as: length of contract; adequacy of cost data for projections; economic environment; nature and extent of subcontracted activity; protection provided to the contractor under contract provisions (e.g., Economic Price Adjustment clauses); the ceilings and share lines contained in incentive provisions. Conditions which might justify higher or lower values are discussed immediately below.

(A) *Above normal conditions.* The contracting officer may assign a higher than normal value in those cases where there is substantial contract type risk. The following are indicators that such a condition may exist: efforts where there is minimal cost history; long-term contracts without provisions protecting the contractor, particularly when there is considerable economic uncertainty; if the contract includes incentive provisions (e.g., cost and performance incentives) which place a high degree of risk on the contractor.

(B) *Below normal conditions.* The contracting officer may assign a lower than normal value in cases where contract type risk is low. The following are indicators that such conditions may exist: contracts involving a very mature product line with extensive cost history; relatively short-term contracts; contracts that contain provisions that substantially reduce the contractor's risk; the contract includes incentive provisions which place a low degree of risk on the contractor. Considerations regarding contract type risk on incurred costs are separately discussed below.

(ii) The contracting officer's assessment of contract type risk shall address the extent that costs have been incurred prior to definitization of the contract action (see also 217.7503(b)(8)). This assessment shall include any reduced contractor risk on both (A) the contract before definitization and (B) the remaining portion of the contract. The contracting officer should generally regard the contract type risk to be below normal within the designated range of the contract type. However, in cases where a substantial portion of the costs have been incurred prior to definitization, the contracting officer may assign a value as low as 0% for contract type risk, regardless of contract type. The contracting officer's risk assessment may consider the limitations placed on the contractor for the period prior to definitization.

(4) *Working capital adjustment (Maximum Value 4%).* For fixed-price type contracts that contain provisions for progress payments, the contracting officer shall calculate a working capital adjustment. This adjustment is added to the contract type risk and it shall not exceed 4% of contract costs. Although the working capital adjustment employs a formula approach, the intent is only to give general recognition to the contractor's cost of working capital under varying contract circumstances, financing policies and the economic environment. It is not intended to be an exact calculation of such costs.

The formula is discussed below:

Contract Costs

Multiply by Portion Financed by Contractor

Contract Costs Financed by Contractor

Multiply by Contract Length Factor

Working Capital Investment

Multiply by Interest Rate

Working Capital Adjustment

(i) *Contract costs.* This represents all allowable costs, *including* contractor G&A expenses and IR&D/B&P expenses (but not facilities capital cost of money). The contracting officer may adjust this amount where the contractor has a minimum cash investment (e.g., subcontractor progress payments liquidated late in period of performance). The contracting officer should also consider the degree which some costs are covered by special financing provisions, such as advance payments, and special funding arrangements on multi-year contracts.

(ii) *Portion financed by contractor.* The contractor's share of financing is generally the portion not covered by progress payments. Typically, this will be 100% minus the customary progress payment rate (232.501–1). For example, if the contract provides for progress payments at 75%, then the contractor's share of financing would be 25% (100% minus 75%). On contracts that provide progress payments to small businesses or flexible progress payments (252.232–7004), the contractor's share shall be computed using the customary progress payment rate for large businesses.

(iii) *Contract costs financed by contractor.* Multiply contract costs by portion financed by contractor.

(iv) *Contract length factor.* This factor represents the period of time that the contractor has a working capital investment in the contract. It is to be based on the time necessary for the contractor to complete the substantive portion of the work. The contract length factor is not necessarily the period of time between contract award and final delivery (or final payment), as periods of minimal effort should be excluded. It also should not include periods of performance contained in option provisions. The contracting officer should use the table below to establish the contract length factor. On contracts with multiple deliveries, the contracting officer should develop a weighted average contract length. Sampling techniques are permissible, so long as they provide a representative result.

Period to perform substantive portion	Factor
21 months or less	.80
22 to 27 months	.85
28 to 33 months	.90
34 to 39 months	1.15
40 to 45 months	1.40
46 to 51 months	1.85
52 to 57 months	1.90
58 to 63 months	2.15
64 to 69 months	2.40
70 to 75 months	2.65
76 months or more	2.90

(v) *Working capital investment.* Multiplying the contract costs financed by contractor by the contract length factor.

(vi) *Interest rate.* The contracting officer shall use the interest rate promulgated by the Secretary of the Treasury (230.7003(c)). No other interest rate is authorized.

(vii) *Working capital adjustment.* Multiply the working capital investment by the interest rate. The result is the working capital adjustment. It may not exceed 4% of contract costs.

Example

JIC Manufacturing is to be awarded a negotiated contract for four assemblies. The contracting officer's prenegotiation cost objective for each is $500,000. The period of performance is 40 months with assemblies being delivered in the 34th, 36th, 38th, and 40th month of the contract (average period is 37 months). JIC Manufacturing will receive progress payments at 75% (contractor portion is 25%), and the current interest rate is 8%.

Contract Costs	$2,000,000
Portion Financed by Contractor	25%
Costs Financed by Contractor	$500,000
Contract Length Factor	1.15
Working Capital Investment	$575,000
Interest Rate	8%

Working Capital Adjustment	$46,000*

* Equates to 2.3% profit on total costs.

(c) *Facilities capital employed.* The intent of this profit factor is to encourge and reward aggressive capital investment in facilities that benefit DoD. This factor recognizes both the facilities capital to be employed by the contractor in the performance of the contract and the contractor's commitment to improving productivity. The amount of recognition is differentiated among asset categories in proportion to the potential for productivity increases. In addition to the net book value of facilities capital employed, the contracting officer may consider facilities capital that is part of a formal investment plan if the contractor submits reasonable evidence that (i) achievable benefits to DoD will result from the investment, and (ii) the benefits of the investment are included in the forward pricing structure.

(1) *Profit base.* The profit amount for facilities capital employed is computed by multiplying the values assigned times the allocated facilities capital attributable to buildings and equipment, as derived in DD Form 1861, "Contract Facilities Capital Cost of Money" (see 230.7004).

(2) *Normal values and designated ranges.*

(i) Except as provided in 215.970–1(c)(2)(ii), the normal values and designated ranges for land, buildings, and equipment are as shown below.

Asset type	Normal value	Designated range
Land	0%	N/A
Buildings	15%	10% to 20%
Equipment	35%	20% to 50%

(ii) It is recognized that the method used to allocate facilities capital cost of money may produce disproportionate allocation of assets to research and development and services efforts which are being provided to the government by highly facilitized manufacturing firms. In such cases the contracting officer should use the alternate normal values and designated ranges shown below.

Asset type	Normal value	Designated range
Land	0%	N/A
Buildings	5%	0% to 10%
Equipment	20%	15% to 25%

(iii) If the contracting officer selected the alternate for performance risk (215.970–1(a)(2)(ii)), no profit for facilities capital employed may be assigned.

(3) *Evaluation criteria.* The contracting officer's assessment should relate the usefulness of the facilities capital to the goods or services being acquired under the individual contract action, as well as to the broader perspective of defense programs. The contracting officer may assign any appropriate profit value within the designated range. It is expected that the maximum values will be restricted to those cases where the benefits of the facilities capital investment are substantially above normal. The contracting officer should analyze the productivity improvements and other anticipated industrial base enhancing benefits resulting from the facilities capital investment. The assessment should consider the economic value of the facilities capital, such as physical age, undepreciated value, idleness, and expected contribution to future defense needs. The contractor's level of investment in defense related facilities as compared with the portion of the contractor's business which is derived from DoD may be a useful indicator for the contracting officer in evaluating the contractor's commitment to improving the productivity of defense program efforts. The contracting officer should consider any special protection provisions that may be included in the contract which reduce the contractor's risk of investment recovery (termination protection clauses, capital investment indemnification, productivity savings rewards (215.872). Conditions which might justify higher or lower values are discussed below.

(i) *Above normal conditions.* The contracting officer may assign a higher than normal value if the facilities capital investment has direct and identifiable benefits which are considered exceptional. The following are indicators that such a condition may exist: new investments in state-of-the-art technology which reduce acquisition costs or yield other tangible benefits such as improved produce quality or accelerated deliveries; investments in new equipment for research and development applications; or the contractor can demonstrate that the investments are over and above the normal capital investments necessary to support anticipated requirements of DoD programs. A value significantly above normal may be justified when there are direct and measurable benefits in efficiency and significantly reduced acquisition costs on the effort being priced.

(ii) *Below normal conditions.* The contracting officer may assign a lower than normal value if the facilities capital investment has little benefit to DoD. The following are indicators that such a condition may exist: allocations of capital which are predominantly applied to commercial product lines; furniture and fixtures, home or group level administrative offices, corporate aircraft and hangars, gymnasiums; old facilities or extensive idle facilities. A value significantly below normal may be justified when a significant portion of defense manufacturing is done in an environment characterized by outdated, inefficient, and labor-intensive capital equipment.

(iii) The contracting officer shall ensure that increases in facilities capital investments are not merely asset revaluations attributable to mergers, stock transfers, takeovers, sales of corporate entities, or similar actions.

215.970–2 Instructions for completing DD Form 1547.

The DD Form 1547 not only assists the contracting officer in establishing a profit objective under the Weighted Guidelines Method, but it also serves as the principal source document for reporting profit statistics to DoD's management information system. It is essential that this form be prepared accurately.

(a) *General guidance.* The items contained on the DD Form 1547 shall be completed as shown below. All amounts are those related to the price of the contract action without regard to funding status (e.g., amounts obligated). Option amounts for additional quantities shall be handled as a separate contract action when exercised. Items marked with an asterisk (*) do not have to be completed by the contracting officer if exempted from the profit reporting requirement (204.673–3). In some cases, the information required will be identical to information provided on the related DD Form 350, "Individual Contracting Action Report."

(1) *Item 1—Report Number **. Each field contracting office designated for profit reporting shall establish a control system for consecutively numbering completed DD Forms 1547. A number does not have to be assigned until contract negotiations have been completed. This number is intended to identify the specific DD Form 1547 in DoD's management information system and will be used for follow-up actions. The control number shall be four-digits starting with 0001 at the beginning of each fiscal year. The four-digit number shall be followed by a dash and the last two digits of the fiscal year (e.g., 0004–87 for 4th action in fiscal year 1987). Numbers less than 1000 shall still be assigned four digits (e.g., 0004, 0055, 0123).

(2) *Item 2—Basic Procurement Instrument Identification No. (PIIN).* This is a four-part designation in the manner prescribed in 204.671–5(b)(1) for completing DD Form 350. The parts are as follows:

Subitem A—Purchasing Office;

Subitem B—Fiscal Year (FY);

Subitem C—Type Procurement Instrument Code (TPIC); and

Subitem D—Procurement Instrument Serial Number (PRISN).

(3) *Item 3—Supplemental Procurement Instrument Identification No. (SPIIN).* Enter supplemental agreement or other modification number in the manner prescribed for the DD Form 350 in 204.671–5(b)(2).

(4) *Item 4—Date of Action* *. Enter the date when the price of the contract action was negotiated in the following manner:

Subitem A—Year: Use last two digits (e.g., 87 for 1987).

Subitem B—Month: Use two digit number (e.g., 03 for March).

(5) *Item 5—Contracting Office Code* *. Enter the code assigned to the contracting office in accordance with DoD Procurement Coding Manual, Volume 3.

(6) *Item 6—Name of Contractor* *. Enter the name of the contractor (including division name) in manner prescribed for the DD form 350 in 204.671–5(b)(5).

(7) *Item 7—Data Universal Numbering System (DUNS) Number* *. Enter number in the manner prescribed for the DD Form 350 in 204.671–5(b)(4)(i).

(8) *Item 8—Federal Supply Code* *. Enter the appropriate Federal Supply Class or Service Code in accordance with instructions shown in 204.671–5(b)(8)(i).

(9) *Item 9—DoD Claimant Program* *. Enter the code in the manner prescribed for the DD Form 350 in 204.671–5(b)(8)(ii).

(10) *Item 10—Type of Contract Code* *. Enter the appropriate code as follows:

Description	Code
FPR (all types)	A
FPI (all types)	L
FFP	J
FP(E)	K
CPAF	R
CPFF	U
CPIF (all types)	V

(11) *Item 11—Type Effort* *. Enter the appropriate code as follows:

Description	Code
Manufacturing	1
Research and Development	2
Services	3

(12) *Item 12—Use Code* *. Enter the appropriate code for use of the Weighted Guidelines Method as follows:

Description	Code
Alternate Performance Risk	1
Standard Facilities Capital Employed	2
Alternate Facilities Capital Employed	3
Alternate Structured Approach	4
Modified Weighted Guidelines Method	5

(13) *Items 13 thru 20—Cost Category.* Enter the dollar values of the prenegotiation objectives for each cost category. All dollar values shall be expressed to nearest whole value (e.g., $200,008.55=$200,009). The amount for G&A expenses in Item 19 shall also include contractor IR&D/B&P expenses.

(14) *Items 21 thru 29—Weighted Guidelines Profit Factors.* Enter dollar values, factors, and percentages in spaces provided. All dollar values shall be expressed to nearest whole value (e.g., $200,008.55=$200,009). The contract length factor and all percentages shall be expressed to nearest hundredth (e.g., contract length factor=1.65 or interest rate=8.25%).

(15) *Total Profit Objective.* Enter the total of items 24, 25, 26, 28, 29.

(16) *Items 31 thru 35—Negotiation Summary.* Enter dollar values and percentages as indicated. All dollar values shall be expressed to nearest whole value (e.g., $200,008.55=$200,009). Percentages shall be expressed to nearest hundredth (e.g., profit-rate=10.25%).

(17) *Items 36 thru 39—Contracting Officer Approval.* All forms shall be signed by the contracting officer. Include complete commercial telephone number (e.g., area code) so that follow-up actions can be accomplished quickly.

(18) *Items 96 thru 99—Optional Use.* These blocks have been reserved for optional use by Military Services and Agencies.

(b) *Special guidance.* (1) While it is recognized that fixed-price type contract actions are negotiated on the basis of total price, the negotiation summary portion of the DD Form 1547 shall be prepared showing the contracting officer's best estimates of cost and profit.

(2) Where multiple profit rates apply to a single negotiation, a consolidated DD Form 1547 shall be prepared.

(3) The profit analysis for indefinite delivery-type contracts is generally based on the annual requirements. If the annual requirement is expected to exceed $500,000, a DD Form 1547 summarizing cost and profit estimates for the annual requirement shall be submitted.

215.971 Alternate approaches to Weighted Guidelines Method.

As provided in 215.902(a)(1)(ii) and (iii), alternate structured approaches may be used in lieu of the Weighted Guidelines Method. The contracting officer shall adhere to the provisions on profit factors and offset policy described below. See also guidance on cost-plus-award-fee contracts in 215.973.

215.971–1 Recognized profit factors.

The basic structure of the Weighted Guidelines Method establishes a uniform approach for examining the three components of profit: performance risk, contract type risk (including working capital), and facilities capital employed. Alternate approaches should also consider these factors using the general principles described in 215.970.

215.971–2 Offset policy for facilities capital cost of money.

The values of the profit factors used in the Weighted Guidelines Method have been adjusted to recognize the shift in facilities capital cost of money from an element of profit to an element of contract cost (231.205–10). Reductions have been made directly to the profit factors for performance risk. In order to assure that this policy is applied to all DoD contracts which allow facilities capital cost of money, similar adjustments shall be made to contracts which use alternate structured approaches. Therefore, the contracting officer shall reduce the overall prenegotiation profit objective derived from alternate structured approaches by 1% of total cost or the amount of facilities capital cost of money, whichever is less.

215.971–3 Instructions for Completing DD Form 1547.

For all selected field contracting offices identified in 204.673–3, the contracting officer shall report Items 1 through 12 and 31 through 39 on all contract actions of $500,000 or more. A DD Form 1547 is necessary, even where an alternate structured approach is used because it is the principal source document for DoD's management information system on profit. Profit amounts in the negotiation summary shall be net of offset for facilities capital cost of money (215.971–2). Only the base fee shall be reported on cost-plus-award-fee contracts.

215.972 Modified Weighted Guidelines Method for nonprofit organizations.

215.972-1 Procedures for establishing fee objectives.

It is DoD's policy to establish the fee objective on defense contracts with nonprofit organizations in a manner that will stimulate efficient contract performance. To achieve this, the contracting officer shall use the Modified Weighted Guidelines Method described below. For purposes of applying this method, a nonprofit organization is a business entity which operates exclusively for charitable, scientific, or educational purposes; whose earnings do not benefit any private shareholder or individual; whose activities do not involve influencing legislation or political campaigning for any candidate for public office; and is exempted from Federal income taxation under section 501 of the Internal Revenue Code.

(a) The contracting officer shall use the guidelines described in 15.970 but make the following adjustments to the fee objectives:

(1) If the standard performance risk factor is used (215.970-1(a)(2)(i)), the fee objective shall be reduced by an amount equal to 1% of total costs, *excluding* G&A expenses, IR&D/B&P expenses, and facilities capital cost of money. If the alternate performance risk factor is used (15.970-1(a)(2)(ii)), then the reduction shall be 2%.

(2) The designated range for the contract type risk shall be −1% to 0% of total costs, *excluding* G&A expenses, IR&D/B&P expenses, facilities capital cost of money, for a cost-plus-fixed-fee contract with nonprofit organizations or elements that have been identified by the Secretary of Defense or Secretary of a Department, or their designees, as receiving sustaining support on a cost-plus-fixed-fee basis from a particular Department or Agency of the Department of Defense.

(b) In addition to the fee amounts computed in 215.972-1(a) above, the contracting officer shall consider the need for fee on contracts to be awarded to a nonprofit organization designated as a Federally Funded Research and Development Center (FFRDC). Such consideration shall include the FFRDC's proportion of retained earnings, as established under generally accepted accounting methods, that is relatable to DoD contracted effort. The need for fee may be based on the FFRDC's facilities capital acquisition plans, working capital funding as assessed on operating cycle cash needs, contingency funding, and provision for funding unreimbursed costs deemed ordinary and necessary to the FFRDC.

215.972-2 Instructions for completing DD Form 1547.

A DD Form 1547 shall be prepared on all contract actions using the Modified Weighted Guidelines Method if the applicability criteria specified for structured approaches in 15.902 are met. The instructions contained in 215.970-2 should be applied. Fee amounts included in the negotiation summary shall be net of offsets and need for fee considerations.

215.973 Cost-plus-award-fee contracts.

The policies and procedures for establishing fee provisions on cost-plus-award-fee contracts are contained in 216.404-2. Although these procedures prohibit application of the Weighted Guidelines Method to cost-plus-award-fee contracts, and similarly the general guidance on alternate structured approaches contained in 215.971-1, the offset policy for facilities capital cost of money shall apply. Therefore, the contracting officer shall reduce the base fee on cost-plus-award-fee contracts by the lesser of (a) 1% of total costs; or (b) the amount of facilities capital cost of money.

PART 230—COST ACCOUNTING STANDARDS

5. Subpart 230.70, consisting of sections 230.7001 through 230.7007, is revised to read as follows:

Subpart 230.70—Facilities Capital Employed for Facilities In Use

Sec.
230.7001 Policy.
230.7002 Definitions, measurement, and allocation.
230.7003 Estimating business unit facilities capital and cost of money.
230.7004 Contract facilities capital estimates.
230.7005 Preaward facilities capital applications.
230.7006 Postaward facilities capital applications.
230.7007 Administrative procedures.

Subpart 230.70—Facilities Capital Employed for Facilities In Use

230.7001 Policy.

(a) It is the policy of the Department of Defense to recognize facilities capital employed as an element in establishing the price of certain negotiated defense contracts when such contracts are priced on the basis of cost analysis. The inclusion of this recognition is intended to reward contractor investments, motivate increased productivity and reduced costs through the use of modern manufacturing technology, and to generate other efficiencies in the preformance of defense contracts.

(b) Separate recognition shall be given to the cost of capital and the special risk associated with the facilities capital employed for defense contract purposes.

(1) Guidance for establishing a prenegotiation profit objective on contractor facilities capital employed is contained in 215.970-1(c).

(2) Cost of money for facilities capital will be recognized as an allowable cost in those negotiated defense contracts priced on the basis of cost analysis. (See FAR 31.205-10(a).)

230.7002 Definitions, Measurement, and Allocation.

Cost Accounting Standard (CAS) No. 414, "Cost of Money as an Element of the Cost of Facilities Capital" (See Appendix 0), establishes criteria for the measurement and allocation of the cost of capital committed to facilities, as an element of contract cost for historical cost determination purposes. Important features of the CAS are its definitions, techniques for application, and a prescribed Form CASB-CMF with instructions. This Subpart adopts techniques of CAS 414 as the approved methods of measurement and allocation of facilities cost of money to overhead pools at the business unit level, and adds only such supplementary procedures as are necessary to extend those techniques to contract forward pricing and administration purposes. Therefore, these procedures are intended to be completely compatible with, and an extension of, the definitions, criteria and techniques of CAS 414. Contractors who computerize their financial data are encouraged to meet the requirements of both CAS 414 and this Subpart from the same data bank and programs.

230.7003 Estimating Business Unit Facilities Capital and Cost of Money.

The method of estimating the business unit facilities capital and cost of money utilizes the techniques of CAS 414. Cost of money factors (CMF) by overhead pools at the business unit are developed using Form CASB-CMF. Three elements are required to develop cost of money factors: business unit facilities capital data, overhead allocation base data, and the interest rate promulgated by the Secretary of the Treasury pursuant to Pub. L. 92-41. These elements are discussed below.

(a) *Business unit facilities capital data.* The net book value (acquisition cost less accumulated depreciation) is used for each cost accounting period. The net book value used is the total of

(1) the net book value of facilities recorded on the accounting records of the business unit, (2) the capitalized value of leases (see FAR 31.205–2 and FAR 31.205–36), and (3) the net book value of facilities at the corporate or group level that support depreciation charges allocated to the business unit in accordance with the provisions of CAS 403. Projections of facilities capital will be supported by budget plans and/or similar type documentation and the estimated depreciation will be the same as used in projected overhead rates. Projections will accommodate changes in the level of facilities net book value, e.g., facilities additions, deletions of facilities by sale, abandonment or other disposal, idle facilities (see FAR 31.205–17).

(b) *Overhead allocation bases.* The base data used to compute the CMF must be the same as that used to compute the proposed overhead rates. CMF's should be submitted and evaluated as part of the proposal.

(c) *Interest rate.* For purpose of projection, the most recent interest rate promulgated by the Secretary of the Treasury will be used as the cost of money rate in Column 1 of Form CASB–CMF and the same rate must be used on the DD Form 1861, "Contract Facilities Capital Cost of Money" (see 230.7004 below). Where actual costs are used in definitization actions, the actual treasury rate(s) applicable to the period(s) of the incurred cost will be recognized by development of a composite rate.

(d) *Determination of final cost of money.* CMF's estimated in accordance with the above procedures are used to develop the facilities investment base used in the prenegotiation profit objectives. Actual CMF's are required when it is necessary to determine final allowable costs for cost settlement and/or repricing in accordance with CAS 414 and FAR 31.205–10.

230.7004 Contract facilities capital estimates.

(a) After the appropriate Forms CASB–CMF have been analyzed and CMF's have been developed, the contracting officer is in a position to estimate the facilities capital cost of money and capital employed for a contract proposal. A form has been provided for linking the Form CASB–CMF and DD Form 1547, "Record of Weighted Guidelines Method Application": DD Form 1861, Contract Facilities Capital Cost of Money. This is necessary to provide the degree of differentiation sought in the profit to be established for varying asset types (land, buildings, equipment). An evaluated contract cost breakdown, reduced to the contracting officer's prenegotiation cost objective, must be available. The procedure is similar to applying overhead rates to appropriate overhead allocation bases to determine contract overhead costs.

(b) DD Form 1861 provides for listing overhead pools and direct-charging service centers (if used) in the same structure they appear on the contractor's cost proposal and Form CASB–CMF. The structure and allocation base units-of-measure must be compatible on all three displays. The base for each overhead pool must be broken down by year to match each separate Form CASB–CMF. Appropriate contract overhead allocation base data are extracted by year from the evaluated cost breakdown or prenegotiation cost objective, and are listed against each separate Form CASB–CMF. Each allocation base is multiplied by its corresponding cost of money factor to get the Facilities Capital Cost of Money estimated to be incurred each year. The sum of these products represents the estimated Contract Facilities Capital Cost of Money for the year's effort. Total contract facilities cost of money is the sum of the yearly amounts.

(c) Since the Facilities Capital Cost of Money Factors reflect the applicable cost of money rate in Column 1 of Form CASB–CMF, the Contract Facilities Capital Employed can be determined by dividing the contract Cost of Money by that same rate. DD Form 1861 has been designed to record and compute all the above in the most direct way possible, and the end result is the Contract Facilities Capital Cost of Money and Capital Employed which is carried forward to DD Form 1547.

230.7005 Pre-award facilities capital applications.

Facilities Capital Cost of Money and Capital Employed as determined above, are applied in establishing cost and price objectives as follows:

(a) *Cost of money.*—

(1) *Cost objective.* This special, imputed cost of money shall be used, together with normal, booked costs, in establishing a cost objective or the target cost when structuring an incentive type contract. Target costs thus established at the outset, shall not be adjusted as actual cost of money rates become available for the periods during which contract performance takes place.

(2) *Profit objective.* Cost of money shall not be included as part of the cost base when measuring the contractor's effort in connection with establishing a prenegotiation profit objective. The cost base for this purpose shall be restricted to normal, booked costs.

(b) *Facilities capital employed.* The profit objective as it relates to the risk associated with facilities capital employed shall be assessed and weighted in accordance with the profit guidelines set forth in 215.970–1(c).

230.7006 Post-award facilities capital applications.

(a) *Interim billings based on costs incurred.* Contract Facilities Capital Cost of Money may be included in cost reimbursement and progress payment invoices. The amount that qualifies as cost incurred for purposes of the "Cost Reimbursement, Fee and Payment" or "Progress Payment" clause of the contract is the result of multiplying the incurred portions of the overhead pool allocation bases by the latest available Cost of Money Factors. Like applied overhead at forecasted overhead rates, such computations are interim estimates subject to adjustment. As each year's data are finalized by computation of the actual Cost of Money Factors under CAS 414 and FAR 31.205–10, the new factors should be used to calculate contract facilities cost of money for the next accounting period.

(b) *Final settlement.* Contract facilities capital cost of money for final cost determination or repricing is based on each year's final Cost of Money Factors determined under CAS 414 and supported by separate Forms CASB–CMF. Contract cost must be separately computed in a manner similar to yearly final overhead rates. Also like overhead costs, the final settlement will include an adjustment from interim to final contract cost of money. However, estimated or target cost will not be adjusted.

230.7007 Administrative procedures.

(a) Contractor submission of Forms CASB–CMF will normally be initiated under the same circumstances as Forward Pricing Rate Agreements (see FAR 15.809), and evaluated as complementary documents and procedures. Separate forms are required for each prospective cost accounting period during which Government contract performance is anticipated. If the contractor does not annually negotiate FPRA's, submissions may nevertheless be made annually *or* with individual contract pricing proposals, as agreed to by the contractor and the cognizant ACO. The cognizant ACO shall, with the assistance of the cognizant auditor, evaluate the cost of money factors, and retain approved

factors with other negotiated forward pricing data and rates.

(b) The contracting officer using the Weighted Guidelines Method under 215.970 will complete a DD Form 1861 only after evaluating the contractor's cost proposal and establishing a prenegotiation objective on cost. Computer generated forms for completing a DD Form 1861 are acceptable, provided all essential data elements are adequately identified. The contracting officer may also request completion of these forms in connection with normal field pricing support under 215.805 by the cognizant contract administration office.

(c) If the Weighted Guidelines Method is to be used, it will be necessary for the contracting officer to obtain information from the contractor that is not included on the Form CASB–CMF. The DD Form 1861 requires the distribution percentages of land, buildings, and equipment for the business unit performing the contract (distribution by indirect expense pool is not necessary). This information is needed to compute capital employed profit rewards, which are differentiated among the asset types. The contracting officer may choose the most practical method for obtaining this information from the contractor. The following are some possible approaches:

(1) Contract administration offices located at contractor business segments which expect to have a reasonably large number of negotiated contract awards could obtain the information through the process used to establish factors for facilities capital cost of money. Contract administration offices could establish advance agreements on distribution percentages for inclusion in field pricing reports presented to the contracting officer.

(2) The distribution percentages could be obtained by the corporate administrative contracting officer and sent to interested contract administration offices or purchasing offices.

(3) In cases where such information cannot be reasonably provided through the contract administration office or corporate administrative contracting officer, the contracting officer could request the information through a solicitation provision.

(d) A final Form CASB–CMF must be submitted by the contractor under CAS 414 as soon after the end of each cost accounting period as possible for the purpose of final cost determinations and/or repricing. The submission should accompany the contractor's proposal for actual overhead costs and rates and be evaluated as complementary documents and procedures.

PART 253—FORMS

253.270 [Amended]

6. The list of forms following section 253.270 is amended by removing 253.303–70–DD–1499 DD Form 1499: Report of Individual Contract Profit Plan; by revising 253.303–70–DD 1547, the title for DD Form 1547 to read "Record of Weighted Guidelines Application" in lieu of "Weighted Guidelines Profit/Fee Objective;" and by revising 253.303–70–DD–1861, the title for DD Form 1861 to read "Contract Facilities Capital Cost of Money" in lieu of "Contract Facilities Capital and Cost of Money."

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DEPARTMENT OF ENERGY

48 CFR Parts 904, 952 and 970

Acquisition Regulations on Uniform Reporting System

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: This final rule amends the Department of Energy Acquisition Regulation (DEAR). The revisions update the DEAR to include guidance on the application of the Uniform Reporting System to Department of Energy (DOE) contracts. Including this guidance in the DEAR is necessary to ensure that this reporting system is applied, as appropriate, to DOE contracts.

EFFECTIVE DATE: This rule will be effective September 2, 1987.

FOR FURTHER INFORMATION CONTACT:
Karl Stoeckle, Office of Project and Facilities Management (MA–224.2), Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 202/586–9711
Christopher Smith, Office of Assistant General Counsel for Procurement and Finance (GC–34), Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 202/586–1526.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of this rulemaking is to adopt, as a final rule, guidance on the application of the Uniform Reporting System to DOE contracts. The Uniform Reporting System is a collection of standard plan and report forms used by contractors to report contract status. The proposed rule on this subject was published April 3, 1986 (51 FR 11457) and allowed a 60-day public comment period, which ended June 2, 1986. Only one public comment was received and it is discussed at III below.

This rule amends Subpart 904.6—Contract Reporting, Subpart 952.2—Text of Provisions and Clauses, and Subpart 970.04—Administrative Matters, to describe the contents of DOE 1332.1A, Uniform Reporting System, of October 15, 1985, (Order) and the situations in which this Order applies to DOE contractors and to require the inclusion of a new clause implementing this Order in appropriate Department of Energy contracts.

II. Procedural Requirements

A. Review Under Executive Order 12291

The Executive Order entitled "Federal Regulation" requires that certain regulations be reviewed by the Office of Management and Budget (OMB) prior to their promulgation. Procurement regulations are exempt from this review except for regulations involving specific procurement topics listed in OMB Bulletin No. 85–7, dated December 14, 1984. This rule does not include any of the specific procurement topics listed as exceptions to the exemption.

B. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act (Pub. L. 96–354), which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. DOE certificates that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

C. Paperwork Reduction Act

The information collection requirements contained in the Uniform Reporting System have been approved by the Office of Management and Budget (OMB No. 1910–0200).

D. National Environmental Policy Act

DOE has concluded that promulgation of this rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.* (1976)), the Council on Environmental Quality regulations (40 CFR Parts 1500–1508) or the DOE Guidelines (10 CFR Part 1021), and therefore does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

III. Public Comments

One comment was received from the Office of Management and Budget, Office of Federal Procurement Policy. This comment was editorial in nature and was incorporated. Other editorial modifications were made as a result of further internal review.

List of Subjects in 48 CFR Parts 904, 952 and 970

Government Procurement.

For the reasons set out in the preamble, Subparts 904.6 and 952.2 and Subsection 970.0406 of Chapter 9 of Title 48 of the Code of Federal Regulations are amended as set forth below.

Issued in Washington, DC on July 21, 1987.

Berton J. Roth,

Director, Procurement and Assistance Management Directorate.

1. The authority citations for 48 CFR Parts 904, 952, and 970 continue to read as follows:

Authority: Sec. 644 of the Department of Energy Organization Act, Public Law 95-91 (42 U.S.C. 7254); and section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

PART 904—[AMENDED]

2. Subsection 904.601-71 is added to read as follows:

904.601-71 Uniform Reporting System.

(a) The Uniform Reporting System (URS) is the Department of Energy's system for collection of uniform, timely, and valid information on cost, schedule, and technical performance of contracts and financial incentives (e.g., loan guarantee) arrangements. This subsection applies only to DOE contracts.

(b) The current version of DOE 1332.1A, Uniform Reporting System, of October 15, 1985 (Order) establishes the Uniform Reporting System. With the exception of special research contracts and management and operating contracts, this subsection requires that this Order, or any later version of the Order in effect on the effective date of the contract, be applied, as appropriate, to all DOE contracts, including inter-agency agreements for work for DOE. This subsection and the Order do not apply to special research contracts for which reporting requirements are prescribed in DEAR 917.7109 and 917.7113. In the case of management and operating contracts, see DEAR 970.0406 regarding application of the URS. Application of the URS to subcontractors is a matter for agreement between the prime contractor and the subcontractor based on the degree to which URS plans and reports are needed by the prime to fulfill the requirements of the prime contract.

(c) DOE 1332.1A provides a compendium of standard reports, procedures, and terminology from which a program or project manager selects those applicable to a specific contractual effort. Reporting requested from contractors or subcontractors shall in all cases be limited to only that information which is essential for effective management control. To apply this Order to a contract the contracting officer shall include the clause at DEAR 952.212-72 in the contract. DOE specifies which management planning and status reporting requirements pertain to a contract by use of DOE Form 1332.1, Reporting Requirements Checklist, which is included in each solicitation and contractual agreement.

PART 952—[AMENDED]

3. Subsection 952.212-72 is added to read as follows:

952.212-72 Uniform Reporting System.

Reporting on cost, schedule, and technical performance related to DOE contracts (excluding special research contracts and management and operating contracts) is controlled by DOE Order 1332.1A, Uniform Reporting System, of October 15, 1985, or any later version of the Order in effect on the effective date of the contract, and by 5 CFR 1320.6. As discussed in DEAR 904.601-71, the following clause is to be included in a contract when plans and reports are required under the Uniform Reporting System:

Uniform Reporting System (May 1987)

Contractor shall prepare and submit (postage prepaid) the plans and reports indicated on the DOE Form 1332.1, Reporting Requirements Checklist or amendments to this checklist included in this contract, to the addressees and in the specified number of copies as designated in the attachment to the checklist. The contractor shall prepare the specified plans and reports in accordance with the formats and structure set forth in DOE Order 1332.1A, or any later version in effect on the effective date of the contract. The contractor shall be responsible for levying appropriate reporting requirements on any subcontractors in such a manner to ensure that data submitted by the subcontractor to the contractor is timely and compatible with the data elements that the contractor is responsible for submitting to DOE. Plans and reports submitted in compliance with this clause are in addition to any other reporting requirements of this contract.

PART 970—[AMENDED]

4. Subsection 970.0406 is added to read as follows:

970.0406 Uniform reporting system.

DOE 5700.7B, Work Authorization System, of September 24, 1986, provides specific guidance with respect to the applicability of the Uniform Reporting System to management and operating contracts. It provides that the Uniform Reporting System plans and reports be used whenever management reports on work packages or tasks are necessitated by the nature of the work package. The specific plans and reports to be used and their frequency are negotiated between the program manager, through the responsible operations office, and the contractor, and will be negotiated based on the versions of the DOE Orders cited in 904.601-71 and this subsection 970.0406 in effect at the time of negotiation, and 5 CFR 1320.4 and 1320.6.

[FR Doc. 87-17572 Filed 7-31-87; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Final Frameworks for Selecting Open Season Dates for Hunting Migratory Game Birds in Alaska, Puerto Rico and the Virgin Islands for the 1987-88 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes final frameworks (i.e., the outside limits for dates and times when shooting may begin and end, and the number of birds that may be taken and possessed) from which wildlife conservation agency officials in Alaska, Puerto Rico and the Virgin Islands may select season dates for hunting certain migratory birds during the 1987-88 season. Selected season dates will then be transmitted to the U.S. Fish and Wildlife Service (hereinafter the Service) for publication in the **Federal Register** as amendments to §§ 20.101 and 20.102 of 50 CFR Part 20.

DATES: Effective on August 3, 1987. Season selections due from Alaska, Puerto Rico and the Virgin Islands by August 7, 1987.

ADDRESS: Season selections from Alaska, Puerto Rico and the Virgin Islands are to be mailed to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building—Room 536,

Washington, DC 20240. Public documents may be inspected in the Service's Office of Migratory Bird Management, Room 536, Matomic Building, 1717 H Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC (202 254–3207)

SUPPLEMENTARY INFORMATION: On March 13, 1987, the Service published for public comment in the **Federal Register** (52 FR 7900) a proposal to amend 50 CFR Part 20. That document dealt with the establishment of seasons, limits and shooting hours for migratory game birds under §§ 20.101 through 20.107, 20.109 and 20.110 of Subpart K of 50 CFR Part 20, including frameworks for Alaska, Puerto Rico and the Virgin Islands. A supplemental proposed rulemaking appeared in the **Federal Register** on June 3, 1987 (52 FR 20757) and another on July 2, 1987, (52 FR 25170). The July 2, 1987, document contained no information relevant to Alaska, Puerto Rico and the Virgin Islands. This final rulemaking is the fourth in a series of proposed and final rulemaking documents for migratory bird hunting regulations and deals specifically with final frameworks for the 1987–88 season from which wildlife conservation agency officials in Alaska, Puerto Rico and the Virgin Islands may select season dates for hunting certain migratory game birds.

Public Hearing

A public hearing was held in Washington, DC, on June 18, 1987, as announced in the **Federal Register** dated March 13, 1987, (52 FR 7900). The public was invited to participate in the hearing and/or submit written statements.

Presentations at Public Hearing

Dr. James C. Bartonek, Pacific Flyway Representative, discussed the status of certain Alaska-nesting geese that have undergone recent declines warranting special management considerations.

Cackling Canada geese, for which there have been no open seasons since 1983, had a fall index of 51,400 geese—an encouraging 60 percent increase above that of 1985.

The fall index for Pacific Flyway Population white-fronted geese was 107,100—a 14 percent increase over the 1985 index. The management strategy continues to aim for 50 percent or fewer birds being harvested than in 1983.

The normal January survey for brant in Mexico was unavoidably delayed by 4 weeks, thereby casting doubt on the significance of the resulting estimates because a portion of the population may have already departed on their northward migration and were missed by the survey. At face value the survey in Mexico suggested a 7 percent decrease in brant numbers over last year. The population in Washington indicated a 14 percent increase; while those in Oregon and California were unchanged. The "Yukon-Kuskokwim Delta Cooperative Goose Management Plan" calls for a continuation of a greatly reduced harvest throughout the flyway. Changes in frameworks are being proposed to allow brant hunting in Alaska, Washington, Oregon, and California by redistributing the existing harvest.

The spring index of emperor geese in southwestern Alaska was 51,700 birds—a 23 percent increase from last year's record-low index.

No estimate was made of the dusky Canada goose population this past winter. Strategies to redirect harvests away from the less numerous dusky towards more numerous populations of Canada geese have been successful. State-Federal-private cooperative ventures are underway to reduce predation on the nesting grounds, which is a major factor in the decline of dusky Canada geese.

Comments Received at Public Hearing

Ms. Jennifer Lewis, representing The Humane Society of the United States and the World Society for the Protection of Animals, indicated she would be submitting written comments relative to proposed frameworks for Puerto Rico on behalf of both organizations. Those comments have been received and are addressed below under the heading *Written Comments Received.*

Mr. John M. Anderson, speaking for the National Audubon Society, expressed support for the management strategies for goose populations in Alaska.

Response: The Service notes and appreciates Mr. Anderson's support.

Written Comments Received

Interested persons were given until June 18, 1987, to comment on the March 13 proposed rulemaking. They were also invited to participate in the June 18 public hearing. Since responding to comments in the June 3, 1987, **Federal Register** (52 FR 20757), one additional comment was received on the proposed regulations frameworks for Alaska, Puerto Rico, and the Virgin Islands.

Migratory bird hunting seasons in Alaska

In the June 3, 1987, **Federal Register** (52 FR 20761), the Service noted the Pacific Flyway Council's recommendations that frameworks for brant seasons in Washington, Oregon and California be modified to restrict season length and period, and that the frameworks for brant seasons in Alaska remain unchanged from those of 1986–87. At that time the Service deferred recommending frameworks. In order to retain the reduced harvests of brant prescribed by the "Yukon-Kuskokwim Delta Cooperative Goose Management Plan" a redistribution of the harvest is required. The Service believes the Council's proposal would increase harvests over recent years and, therefore, recommends uniform bag limits of 2 brant daily and 4 in possession in all Pacific Flyway States having brant seasons, including Alaska, and uniform frameworks of 16 consecutive days for Washington, Oregon and California. The frameworks for brant seasons in Alaska presented in this document reflect the uniform bag limits and a reduction in season length to 50 days. The uniform bag limits, uniform season length of 16 consecutive days in Washington, Oregon and California, and the reduction in season length in Alaska will have potential for not increasing the flyway-wide harvest of brant. The Service is concerned regarding any increased brant harvest because the brant population is near the level below which hunting will be closed throughout the flyway.

Migratory game birds in Puerto Rico and the Virgin Islands

Comments on behalf of The Humane Society of the United States and the World Society for the Protection of Animals, submitted by Ms. Jennifer Lewis, noted continued progress by the Puerto Rico Department of Natural Resources and the Service in gathering data on nesting chronology and population trends of waterfowl. However, Ms. Lewis asserted more needs to be done and the Service should close all migratory bird hunting seasons in Puerto Rico to protect them while the vital management information is being collected. Ms. Lewis also stated that in addition to the population trend and nesting chronology data, more work needs to be done on basic life history characteristics, movement patterns and habitat needs. She indicated the additional information is essential because four of Puerto Rico's resident waterfowl species are designated

Category 2 under the Endangered Species Act and more data is needed to determine if listing of any of these is warranted. Ms. Lewis stated that questions remain about the impacts of hunting on nesting species and that all data gathering needs to be done for doves and pigeons as well as waterfowl. With regard to the proposed frameworks, she urged that the split season for duck, snipe and moorhen hunting be dropped if the Service does not close the season because the split doubles the hunting impact on hunted and non-hunted birds.

Response: The Service and the Puerto Rico Department of Natural Resources continue to work cooperatively to develop improved guidelines to manage the harvest of migrant game species while protecting certain resident species. As outlined in a Memorandum of Understanding (MOU) signed by the Service and Puerto Rico, data will continue to be collected on breeding chronology and population indices of waterfowl in the Commonwealth. It is planned that additional data will be collected in 1987–88 via aerial flights in the summer to discern nesting activity and preferred habitats. The MOU addresses the course being taken on basic life history, habitat needs and movement patterns of resident waterfowl. Currently there are four major ongoing Pittman-Robertson Act projects in Puerto Rico involving doves and pigeons, and Puerto Rico recently met with Service personnel to discuss ways to improve census techniques that gauge the population status of doves and pigeons in the Commonwealth. Also, additional emphasis will be placed on improving studies of nesting doves and pigeons in 1987–88. The impacts of hunting on nesting species and of the split season will both be identified in the results of existing studies. The Service notes that no data were provided that indicate that opening any migratory game bird hunting seasons in Puerto Rico would be inappropriate while various migratory bird management studies are underway.

NEPA Consideration

The "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES 75–54)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975, (40 FR 25241). In addition, numerous environmental assessments have been prepared on specific matters which serve to supplement the material in the FES. Copies of these environmental assessments are available from the Service at the address indicated under the caption ADDRESS.

As noted in the March 13, 1987, **Federal Register** (52 FR 7905), the Service is preparing a supplemental environmental impact statement (SEIS) on the FES. The Service anticipates a mid-July 1987 publication date for a draft SEIS to be followed by public meetings prior to preparation of the final SEIS.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" [and shall] "insure that any action authorized, funded, or carried out . . . is not likely to jeopardize the continued existence of such endangered and threatened species or result in the destruction or modification of [critical] habitat . . . "

The Service therefore initiated section 7 consultation under the Endangered Species Act for the proposed hunting season frameworks.

On June 15, 1987, the Office of Endangered Species gave a biological opinion that the proposed action is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats.

As in the past, hunting regulations this year are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species. Examples of such consideration include closures of designated areas in Puerto Rico for the Plain pigeon (*Columba inornata wetmorei*) and the Puerto Rican parrot (*Amazona vittata*), and in Alaska for the Aleutian Canada goose (*Branta canadensis leucopareia*).

The Service's biological opinion resulting from its consultation under Section 7 is considered a public document and is available for inspection in or available from the Office of Endangered Species and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240.

Regulatory Flexibility Act, Executive Order 12291, and the Paperwork Reduction Act

In the **Federal Register** dated March 13, 1987, (52 FR 7900) the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publication of a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. This determination is detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240. These regulations contain no information collections subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980.

Memorandum of Law

In the **Federal Register** dated March 13, 1987, (52 FR 7900) the Service stated that it planned to publish its Memorandum of Law for the 1987–88 migratory bird hunting regulations with its first final rulemaking.

Memorandum of Law. Section 4 of Executive Order 12291 requires that certain determinations be made before any final major rule may be approved. Section 4(a) specifies that the regulation must be clearly within the authority of law and consistent with congressional intent, and that a memorandum of law be provided to support that determination. Also, the agency must state that the factual conclusions upon which the law is based have substantial support in the agency record and that full attention has been given to public comments in general, and to comments of persons directly affected by the rule in particular.

The development of the annual migratory bird hunting regulations is provided for under Section 3 of the Migratory Bird Treaty Act of July 3, 1918, as amended (40 Stat. 755; 16 U.S.C. 701–708h). Such regulations have been promulgated annually since 1918. They appear in 50 CFR Part 20, Subpart K. Congressional support for the development of these rules and ancillary activities involved in their development is reflected in the U.S. Fish and Wildlife Service's budget. Among these activities are biological surveys, hunter activity and harvest surveys, research investigations, law enforcement, and administrative costs associated with the development and publication of the proposed and final rules. Many other Service activities, such as the acquisition and management of habitats for migratory birds, indirectly assist in maintaining the migratory bird resource

at levels which allow reasonable sport hunting harvest.

In developing its annual hunting rules for 1987–88, the Service has published three proposed rules for public comment and conducted one public hearing to facilitate public input into the rulemaking process. Five additional proposed and final rulemakings, and another public hearing, are included in the remaining schedule for establishing the annual hunting regulations for 1987–88. Numerous public comments summarized and responded to in **Federal Registers** listed in the preamble of this document describe the Service's consideration of the impacts of its proposed rules on the public. Many of these comments originated from affected State conservation agencies, while others were submitted by the affected public. In general, the comments supported the Service's initial or supplementary regulatory proposals. Comments which do not support proposed Service action have been adequately addressed. Additional public comments are invited and will be addressed in subsequent **Federal Register** documents. The complete administrative record, including copies of public comments, is available for inspection at the Office of Migratory Bird Management.

Consequently, the Department has determined that it has fulfilled requirements of section 4 of Executive Order 12291 and the Migratory Bird Treaty Act in developing the 1987–88 migratory bird hunting regulations which are adequately supported by the Service's records.

Regulations Promulgation

The rulemaking process for migratory bird hunting must, by its nature, operate under severe time constraints. However, the Service is of the view that every attempt should be made to give the public the greatest possible opportunity to comment on the regulations. Thus, when the proposed rulemaking was published March 13, 1987, the Service established what it believed was the longest period possible for public comment. In doing this, the Service recognized that at the period's close, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the Service is of the opinion that the governments of Alaska, Puerto Rico, and the Virgin Islands would have insufficient time to select their season dates, shooting hours, and limits; to communicate those selections to the Service; and establish and publicize the necessary regulations and procedures to implement their decisions.

Therefore, the Service, under authority of the Migratory Bird Treaty Act of July 3, 1918, as amended (40 Stat. 755; 16 U.S.C. 701–708h), prescribes final frameworks setting forth the species to be hunted, the daily bag and possession limits, the shooting hours, the season lengths, the earliest opening and latest closing season dates, and special closures, from which officials of the Alaska Department of Fish and Game, Puerto Rico Department of Natural Resources, and the Virgin Islands Department of Conservation and Cultural Affairs may select open season dates. Upon receipt of season selections from Alaska, Puerto Rico and the Virgin Islands, the Service will publish in the **Federal Register** a final rulemaking amending 50 CFR 20.101 and 20.102 to reflect seasons, limits, and shooting hours for these areas for the 1987–88 season.

The Service therefore finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act and these frameworks will, therefore, take effect immediately upon publication.

Authorship

The primary author of this final rule is Morton M. Smith, Office of Migratory Bird Management, working under the direction of Robin D. Sparrowe, Chief.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1987–88 hunting season are authorized under the Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 701–708h); the Fish and Wildlife Improvement Act of 1978 (92 Stat. 3112; 16 U.S.C. 712); and the Alaska Game Act of 1925 (43 Stat. 739, as amended, 54 Stat. 1103–04).

Final Frameworks for Selecting Open Season Dates for Hunting Migratory Birds in Alaska, 1987–1988

Outside Dates: Between September 1, 1987, and January 26, 1988, Alaska may select seasons on waterfowl, snipe and cranes, subject to the following limitations:

Shooting hours: One-half hour before sunrise to sunset daily.

Hunting seasons:

Ducks, geese and brant—107 consecutive days for ducks and geese but only 50 consecutive days for brant in each of the following: North Zone (State Game Management Units 11–13 and 17–26); Gulf Coast Zone (State Game Management Units 5–7, 9, 14–16, and 10—Unimak Island only); Southeast Zone (State Game Management Units 1–4); Pribilof and Aleutian Islands Zone (State Game Management Unit 10—except Unimak Island); Kodiak Zone (State Game Management Unit 8). The season may be split without penalty in the Kodiak Zone. *Exceptions:* The season is closed on Canada geese from Unimak Pass westward in the Aleutian Island chain. Throughout the State there is no open hunting season for Aleutian Canada geese, cackling Canada geese and emperor geese.

Snipe and sandhill cranes—An open season concurrent with the duck season.

Daily Bag and Possession Limits:

Ducks—Except as noted, a basic daily bag limit of 7 and a possession limit of 21 ducks. Daily bag and possesssion limits in the North Zone are 10 and 30, and in the Gulf Coast Zone they are 8 and 24, respectively. In addition to the basic limit, there is a daily bag limit of 15 and a possession limit of 30 scoter, eider, oldsquaw, harlequin, and Common and red-breasted mergansers, singly or in the aggregate of these species.

Geese—A basic daily bag limit of 6 and a possession limit of 12, of which not more than 4 daily and 8 in possession may be greater white-fronted or Canada geese, singly or in the aggregate of these species.

Brant—A daily bag limit of 2 and a possession limit of 4.

Common snipe—A daily bag limit of 8 and a possession limit of 16.

Sandhill cranes—A daily bag limit of 3 and a possession limit of 6.

Final Frameworks for Selecting Open Season Dates for Hunting Migratory Birds in Puerto Rico, 1987–88

Shooting hours: Between one-half hour before sunrise and sunset daily.

Doves and Pigeons:

Outside Dates: Puerto Rico may select hunting seasons between September 1, 1987, and January 15, 1988, as follows:

Hunting Seasons: Not more than 60 days for Zenaida, mourning, and white-winged doves, and scaly-naped pigeons.

Daily Bag and Possession Limits: Not to exceed 10 doves of the species named herein, singly or in the aggregate, and not to exceed 5 scaly-naped pigeons.

Closed Areas:

Municipality of Culebra and Desecheo Island—closed under Commonwealth regulations.

Mona Island—closed in order to protect the reduced population of white-crowned pigeon (*Columba leucocephala*), known locally as "Paloma cabeciblanca."

El Verde Closure Area—consisting of those areas of the municipalities of Rio Grande and Loiza delineated as follows:

(1) all lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of Routes 956 and 186 (Km 13.2) in the south; (2) all lands between Routes 186 and 966 from the juncture on 186 and 966 on the north, to the Caribbean National Forest Boundary on the south; (3) all lands lying west of Route 186 for one kilometer from the juncture of Routes 186 and 956 south to Km 6 on Route 186; (4) all lands within Km 14 and Km 6 on the west and the Caribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National Forest Boundary whether private or public. The purpose of this closure is to afford protection to the Puerto Rican parrot (*Amazona vittata*) presently listed as an endangered species under the Endangered Species Act of 1973.

Cidra Municipality and Adjacent Areas—consisting of all of Cidra Municipality and portions of Aguas Buenas, Caguas, Cayey, and Comerio Municipalities as encompassed within the following boundary: beginning on Highway 172 as it leaves the Municipality of Cidra on the west edge, north to Highway 156, east on Highway 156 to Highway 1, south on Highway 1 to Highway 765, south on Highway 765 to Highway 763, south on Highway 763 to the Rio Guavate, west along Rio Guavate to Highway 1, southwest on Highway 1 to Highway 14, east on Highway 14 to Highway 729, north on Highway 729 to Cidra Municipality, and westerly, northerly, and easterly along the Cidra Municipality boundary to the point of beginning. The purpose of this closure is to protect the Plain pigeon (*Columba inornata wetmorei*), locally known as "Paloma Sabanera," which is present in the above locale in small numbers and is presently listed as an endangered species under the Endangered Species Act of 1973.

Ducks, Coots, Moorhens, Gallinules and Snipe

Outside Dates: Between November 5, 1987, and February 28, 1988, Puerto Rico may select hunting seasons as follows:

Hunting Seasons: Not more than 55 days may be selected for hunting ducks, common moorhens, and common snipe. The seasons may be split into two segments.

Daily Bag and Possession Limits:

Ducks—Not to exceed 4 daily and 8 in possession, except that the season is closed on the ruddy duck (*Oxyura jamaicensis*); the White-cheeked pintail (*Anas bahamensis*); West Indian whistling (tree) duck (*Dendrocygna arborea*); fulvous whistling (tree) duck (*Dendrocygna bicolor*), and the masked duck (*Oxyura dominica*), which are protected by the Commonwealth of Puerto Rico.

Common moorhens—Not to exceed 6 daily and 12 in possession; the season is closed on purple gallinules (*Porphyrula martinica*).

Common snipe—Not to exceed 6 daily and 12 in possession.

Coots—There is no open season on coots, i.e. common coots (*Fulica americana*) and Caribbean coots (*Fulica caribaea*).

Closed Areas: No open season for ducks, common moorhens, and common snipe is prescribed in the Municipality of Culebra and on Desecheo Island.

Final Frameworks for Selecting Open Season Dates for Hunting Migratory Birds in the Virgin Islands, 1987–88

Shooting Hours: Between one-half hour before sunrise and sunset daily.

Doves and Pigeons

Outside Dates: The Virgin Islands may select hunting seasons between September 1, 1987, and January 15, 1988, as follows.

Hunting Seasons: Not more than 60 days for Zenaida doves and scaly-naped pigeons throughout the Virgin Islands.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida doves and 5 scaly-naped pigeons.

Closed Seasons: No open season is prescribed for ground or quail doves, or other pigeons in the Virgin Islands.

Local Names for Certain Birds.

Zenaida dove (*Zenaida aurita*)—mountain dove.

Bridled quail dove (*Geotrygon mystacea*)—Barbary dove, partridge (protected).

Common Ground dove (*Columba passerina*)—stone dove, tobacco dove, rola, tortolita (protected).

Scaly-naped pigeon (*Columba squamosa*)—red-necked pigeon, scaled pigeon.

Ducks

Outside Dates: Between December 1, 1987, and January 31, 1988, the Virgin Islands may select a duck hunting season as follows.

Hunting Seasons: Not more than 55 consecutive days may be selected for hunting ducks.

Daily Bag and Possession Limits: Not to exceed 4 daily and 8 in possession, except that the season is closed on the ruddy duck (*Oxyura jamaicensis*); the White-cheeked pintail (*Anas bahamensis*); West Indian whistling (tree) duck (*Dendrocygna arborea*); fulvous whistling (tree) duck (*Dendrocygna bicolor*), and the masked duck (*Oxyura dominica*).

Date: July 21, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87-17530 Filed 7-31-87; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 70845-7085]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure and request for comments.

SUMMARY: NOAA announces the closure of the commercial salmon fishery in the exclusive economic zone (EEZ) from the Queets River, Washington, to Cape Falcon, Oregon, at 2400 hours local time, July 29, 1987, to ensure that the chinook salmon quota is not exceeded. The Director, Northwest Region, NMFS (Regional Director), has determined in consultation with representatives of the Pacific Fishery Management Council (Council), Oregon Department of Fish and Wildlife (ODFW), and Washington Department of Fisheries (WDF), that the commercial fishery quota of 17,600 chinook salmon for the subarea will be reached by that time. The closure is necessary to conform to the preseason announcement of 1987 management measures. This action is intended to ensure conservation of chinook salmon.

EFFECTIVE DATE: Closure of the EEZ from the Queets River to Cape Falcon to commercial salmon fishing is effective at 2400 hours local time, July 29, 1987. Comments on this closure will be received until August 12, 1987.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, NMFS, BIN C15700, 7600 Sand Point Way N.E., Seattle, WA 98115-0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the same address.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten at 206-526-6150.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR Part 661 specify at § 661.21(a)(1) that "When a quota for the

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commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by publishing a notice in the **Federal Register** under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

Management measures for 1987 were effective on May 1, 1987 (52 FR 17264, May 6, 1987). The 1987 commercial fishery for all salmon species from the Queets River to Cape Falcon was established as July 25 through July 27, and from July 31 through the earlier of the attainment of either 121,200 coho salmon or 15,000 chinook salmon. The subarea chinook quota subsequently was increased to 17,600 fish (52 FR 24296, June 30, 1987). In addition, the initial three-day opening was shortened to two days, July 25 and July 26; the closed period was changed from July 28–30 to July 27–29; the conservation zone at the mouth of the Columbia River was extended to 10 nautical miles for this fishery; and the area 3–10 miles offshore from North Head to the Queets River was closed (52 FR 28321, July 29, 1987).

Based on the best available information, the commercial fishery catch in the subarea is projected to reach the 17,600 chinook quota by midnight, July 29, 1987.

Therefore, NOAA issues this notice to close the commercial salmon fishery in the EEZ from the Queets River, Washington, to Cape Falcon, Oregon, effective 2400 hours local time, July 29, 1987. This notice does not apply to treaty Indian fisheries or to other fisheries which may be operating in this or other areas.

The Regional Director consulted with the Chairman of the Council and the representatives of WDF and ODFW regarding a closure of the commercial fishery between the Queets River and Cape Falcon. The WDF and ODFW representatives confirmed that Washington and Oregon will close the commercial fishery in state waters adjacent to this subarea of the EEZ effective midnight, July 29, 1987.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

(16 U.S.C. 1801 *et seq.*)

Dated: July 29, 1987.

William E. Evans,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 87-17575 Filed 7-29-87; 8:45 am]

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50 CFR Part 675

[Docket No. 70103-7003]

Groundfish of the Bering Sea and Aleutian Islands Area; Closure Modification

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure modification.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that U.S. fishing vessels working in joint ventures with foreign processing vessels (JVP) may conduct a directed fishery for "other flatfishes" in the Bering Sea north of 61 degrees N. latitude. JVP directed fishing for "other flatfishes" (1) east of 165 degrees W. longitude and south of 56 degrees 30 minutes N. latitude and (2) east of 170 degrees W. longitude and north of 56 degrees 30 minutes N. latitude previously was prohibited on June 29, 1987, to prevent overfishing of yellowfin sole in this area. Subsequent reassessment of data on the distribution of yellowfin sole in the Bering Sea indicates that incidental catches of yellowfin sole in a directed fishery for "other flatfishes" north of 61 degrees N. latitude would be minimal and would not cause a significant risk of overfishing yellowfin sole. Therefore, the previous closure notice is modified to rescind the restriction on fishing for "other flatfishes" east of 170 degrees W. longitude and north of 61 degrees N. latitude. This action is necessary to allow domestic fishermen to make the fullest possible use of the Bering Sea groundfish resource without significantly risking overfishing of any one species. The intended effect is to allow some relaxation of a restriction on domestic fishermen while maintaining conservation of the yellowfin sole resource.

EFFECTIVE DATE: From noon, Alaska Daylight Time, July 29, 1987, until midnight, Alaska Standard Time, December 31, 1987.

FOR FURTHER INFORMATION CONTACT: Jay J.C. Ginter, Fishery Management Biologist, NMFS, 907-586-7229.

SUPPLEMENTARY INFORMATION: The domestic and foreign groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands (BSAI) area are managed under the Fishery Management Plan for the Groundfish Fishery in the Bering Sea and Aleutian Islands Area (FMP). Federal regulations implementing the FMP and governing domestic fisheries in the BSAI are at 50 CFR Part 675.

A principal purpose of these regulations is to prevent overfishing of the BSAI area groundfish resources. Authority to control the risk of overfishing is provided under § 675.20(a)(7), (8), and (9). This authority requires the Secretary of Commerce (Secretary) to limit the catch of any groundfish species for which the TAC is nearly or has been fully harvested in fisheries for other groundfish species. Such limits may include (1) prohibition of directed fishing for the species for which the TAC is nearly harvested or (2) treatment of the species for which the TAC is fully harvested in the same manner as a prohibited species (§ 675.20(c)). Under § 675.20(a)(9), the Secretary may limit fishing for groundfish other than the species for which the TAC is achieved by any method, including area closures, gear restrictions or prohibition of directed fishing, that will prevent overfishing of the species for which the TAC is achieved.

This authority was exercised recently to protect yellowfin sole in the BSAI area from overfishing by the JVP fishery. In response to a determination by the Regional Director that the amount of yellowfin sole apportioned to the JVP fishery would be fully harvested on June 29, 1987, the Secretary issued a notice (52 FR 25232, July 6, 1987) closing the JVP fishery for yellowfin sole in the BSAI area and requiring incidental catches of that species in JVP fisheries for other groundfish to be treated in the same manner as prohibited species for the remainder of the fishing year. In addition, the Secretary prohibited directed fishing by the JVP fishery for "other flatfishes" in that part of the Bering Sea subarea east of 165 degrees W. longitude and south of 56 degrees 30 minutes N. latitude and east of 170 degrees W. longitude and north of 56 degrees 30 minutes N. latitude. This additional prohibition responded to a determination by the Regional Director that directed fishing for "other flatfishes" in this area would involve high incidental catch rates of yellowfin sole which may lead to overfishing of that species.

Data on the distribution of yellowfin sole subsequently has been reassessed by NMFS scientists at the Northwest and Alaska Fisheries Center. The yellowfin sole population in the extreme northeastern part of the Bering Sea

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appears to be sparse relative to the populations of species in the "other flatfishes" category such as Alaska plaice, flathead sole, and rock sole. The yellowfin sole population also is distributed primarily south of 61 degrees N. latitude. Based on this reassessment, the Regional Director has determined that incidental catches of yellowfin sole would not be significant in a JVP directed fishery for "other flatfishes" north of 61 degrees N. latitude and would not lead to overfishing of yellowfin sole. Hence, the prohibition against JVP directed fishing for "other flatfishes" east of 170 degrees W. longitude and north of 61 degrees N. latitude is not necessary.

Therefore, the Secretary modifies the notice of closure published in the Federal Register on July 6, 1987 (52 FR 25232), to prohibit JVP directed fishing for "other flatfishes" in the Bering Sea subarea (1) east of 165 degrees W. longitude and south of 56 degrees 30 minutes N. latitude, and (2) in that portion of the subarea east of 170 degrees W. longitude between 56 degrees 30 minutes N. latitude and 61 degrees N. latitude.

The closure of the JVP fishery for yellowfin sole in the BSAI area is not changed by this action. Incidental catches of yellowfin sole in JVP fisheries for other groundfish must continue to be treated in the same manner as prohibited species.

This action relieves, to some extent, a restriction on U.S. fishermen operating in the JVP groundfish fishery off Alaska. This action also will allow more efficient exploration and development of the JVP directed fishery for "other flatfishes" than was possible under the previous closure notice. However, the Regional Director will continue to monitor closely the incidental catches of yellowfin sole in the JVP directed fishery for "other flatfishes." If the Regional Director determines that such incidental catches of yellowfin sole may lead to its being overfished, the Secretary may impose further restrictions on JVP fishing for other groundfish species.

Classification

This action is required under 50 CFR 675.20 and complies with Executive Order 12291. In view of the need to avoid disruption of U.S. fisheries and afford U.S. vessels the opportunity to take available species, NOAA has determined that notice and prior public comment on this action would be impracticable and contrary to the public interest. For the same reasons, and because the action relieves a restriction, the effective date of this action is not delayed.

List of Subjects in 50 CFR Part 675

Fisheries.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 28, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 87-17487 Filed 7-29-87; 11:08 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 52, No. 148
Monday, August 3, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE
Agricultural Marketing Service
7 CFR Part 920

Kiwifruit Grown in California; Proposed Change in Quality and Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed regulation would tighten minimum quality requirements for California kiwifruit in order to provide better quality fruit for both domestic and export markets. Export markets are particularly sensitive to lower quality fruit. In order to facilitate compliance with order requirements, this action would also require handlers to inform the California Kiwifruit Administrative Committee whenever cull fruit is returned to growers. The committee needs to be able to identify sources of cull fruit to prevent its being sold in established markets. These actions are not expected to short the market, as ample supplies of good quality kiwifruit are expected to be available to meet market needs.

DATES: Comments must be received by August 18, 1987.

ADDRESSES: Comments should be sent to: Docket Clerk, F&V, AMS, Room 2085–S, U.S. Department of Agriculture, Washington, DC 20250–0200. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. Comments should reference the date and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: James M. Scanlon, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250–0200 (202) 475–3914.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the information collection provision that is included in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB). It will not become effective until OMB approval is obtained.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (the Act, 7 U.S.C. 601–674), and rules issued thereunder, are unique in that they are brought about through the group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Approximately 65 handlers of kiwifruit will be subject to regulation under the California Kiwifruit Marketing Order during the current season. In addition, there are about 1,100 producers of kiwifruit in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average annual gross revenues for the last three years of less than $100,000 and agricultural service firms which would include handlers are defined as those whose gross annual receipts are less than $3,500,000. The majority of California kiwifruit producers and handlers may be classified as small entities.

California kiwifruit are grown throughout the entire State of California. Kiwifruit shipments in 1986–87 totaled 6,525,000 trays and tray equivalents. Shipments in 1987–88 are expected to be 10 to 20 percent greater. Most of the crop is marketed fresh.

This proposal is being issued under the Marketing Agreement and Order No. 920 regulating the handling of kiwifruit grown in California. The agreement and order are effective under the Act. These actions were recommended unanimously by the Kiwifruit Administrative Committee. The committee works with the USDA in administering the marketing agreement and order program.

The regulatory action in this instance is a proposal to up-grade the quality requirements for kiwifruit and develop a way for the committee to gather information on the movement of cull fruit within the production area. Current quality requirements specify that California kiwifruit must grade at least 85 percent U.S. No. 2 provided that no more than 8 percent be allowed for defects other than badly misshapen fruit. Under the standards for U.S. No. 2 fruit, such defects may constitute "serious damage." U.S. No. 2 fruit must contain at least 6.5 percent soluble solids, unless otherwise specified. Since, under current regulations, kiwifruit must grade at least 85 percent U.S. No. 2, badly misshapen fruit is limited to 15 percent. Included in the 8 percent allowed for serious damage defects under the standards for U.S. No. 2 fruit is not more than 4 percent for sunscald, insects, internal breakdown or decay, and in this latter amount not more than 1 percent for fruit affected by internal breakdown or decay.

Export markets demand high quality fruit, although lower grade shape requirements are acceptable. However, the existing tolerances for defects have led to problems involving the breakdown of fruit both in storage and during shipment to export markets. This has caused some domestic marketing problems and aggravated the existing image problem for California kiwifruit in certain countries, notably Japan. This proposal would require that a lot of kiwifruit contain not more than 8 percent defects causing "damage" other than shape, and would result in requiring U.S. No. 1 grade fruit except for the shape requirement which would continue to be that specified for U.S. No. 2 grade. This is because, under the grading standards, No. 2 grade allows for "serious damage." Since the U.S. No. 2 shape requirements have not been a problem in domestic and export markets, tightening the grade requirements for shape to U.S. No. 1 is not necessary at this time. Tightening the requirements to permit only those defects causing damage would serve to help provide better quality fruit and thus enhance the image of California kiwifruit. This would tend to increase

domestic and export sales, thus helping growers to move their crop at a profit.

The committee also recommended requiring a mandatory 6.5 percent soluble solids content. The current grading standards require 6.5 percent "unless otherwise specified." Fruit harvested when the sugar (soluble solids) content is below 6.5 percent indicates a less mature product and the fruit may not ripen properly. Because some packers are harvesting and packing fruit below the 6.5 percent level, the committee believes this action is necessary to maintain a high quality product. Requiring a 6.5 percent soluble solids content in kiwifruit would assure a sweet, mature product that should prompt repeat sales by consumers.

The committee also recommended that a form be sent to the committee office by handlers returning fruit to their growers. This would enable the committee to gather information on the movement of cull fruit in the production area.

The committee believes that peddlers of cull fruit are buying the culls and selling them in established markets. This is a very disruptive practice that adversely affects the market for all kiwifruit. When cull fruit is sold in established markets, it puts downward pressure on grower prices for all fruit, including that of good quality, and tends to bring about disorderly marketing conditions. Requiring handlers to report returned fruit should help compliance by pinpointing potential sources of cull fruit entering established markets. The necessary information would be minimal and would be recorded on a new committee form. The total time required to fill out the form should not exceed five minutes per form.

Although this proposal would upgrade the quality and increase the reporting requirements for kiwifruit shipped from the production area, regulatory exemptions would continue in effect. For example, any handler may handle, other than for resale, up to, but not to exceed 200 pounds net weight of kiwifruit per day without regard to the requirements of the handling regulation. In addition, shipments for charity, relief, and commercial processing are exempt from the grade, size, container, and inspection requirements of the order and the handling regulation. Reporting provisions of the handling regulation apply to such shipments.

The actual cost to handlers for complying with these proposed changes cannot be precisely determined, but it is expected to be minimal. On the other hand, the increased returns expected from both domestic and export sales of better quality kiwifruit and better compliance controls on cull fruit movement should more than offset the anticipated slight increase in handler costs in meeting the proposed requirements. On the basis of the foregoing, the impact of these proposed changes on growers and handlers is expected to be beneficial.

A comment period of 15 days is appropriate on this proposal because the harvest and packing of 1987 crop California kiwifruit is expected to begin in September. It is important that any changes resulting from this rulemaking be in effect prior to that time so producers and handlers have adequate time to plan accordingly.

List of subjects in 7 CFR Part 920

Marketing agreements and orders, Kiwifruit, California.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 920 be amended as follows:

PART 920—[AMENDED]

1. The authority citation for 7 CFR Part 920 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 920.302 is amended by revising paragraph (a)(1); redesignating (a)(4) as (a)(5), redesignating (a)(3) as (a)(4), and adding a new (a)(3), to read as follows:

§ 920.302 Grade, size, pack, and container regulations.

(a)* * *

(1) *Grade requirements.* Fresh shipments of kiwifruit shall grade at least 85 percent U.S. No. 2: *Provided,* That not more than 8 percent shall be allowed for defects other than shape causing damage, not more than 4 percent of that amount shall be allowed for defects other than shape causing serious damage, and not more than 1 percent of that amount shall be allowed for fruit affected by internal breakdown or decay.

* * * * *

(3) *Maturity requirements.* Such kiwifruit shall have a minimum of 6.5 percent soluble solids at the time of inspection.

* * * * *

3. Section 920.160 is amended by adding a new § 920.160(c) as follows:

§ 920.160 Reports.

* * * * *

(c) *Handler report of returned fruit.* After fruit is returned to a grower, each handler shall file with the committee, no later than five days from the date the fruit is returned, or such other time as the committee may establish, a Return Receipt of Kiwifruit to Grower Form.

Dated: July 28, 1987.

Ronald L. Cioffi,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 87–17497 Filed 7–31–87; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION
Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87–ANM–10]

Proposed Revision of Transition Area, Evanston, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the transition area at Evanston, Wyoming, to accommodate a new VOR/DME–A approach procedures to the Evanston-Unita County Airport. This action is necessary to ensure segregation of aircraft using the approach procedure in instrument weather conditions and other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before September 15, 1987.

ADDRESSES: Send comments on the proposal to: Manager, Airspace & System Management Branch, ANM–530, Federal Aviation Administration, , Docket No. 87–ANM–10, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

The official docket may be examined in the Office of Regional Counsel at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM–535, Federal Aviation Administration, Docket No. 87–ANM–10, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168, Telephone: (206) 431–2535.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal.

Communications should identify the airspace docket and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-ANM-10". The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking any action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM'S

Any person may obtain in a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation administration, Airspace & System Management Branch, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the transition area at Evanston, Wyoming. This action will provide controlled airspace for aircraft executing new VOR/DME-A instrument approach procedure to the Evanston-Uinta County Airport.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.181 is amended as follows:

Evanston, Wyoming, Transition Area (Revised)

That airspace extending upward from 700 feet above the surface between lat. 41°18'30"N., long. 111°33'00"W to lat. 41°32'00"N., long. 110°47'00"W, to lat. 41°27'00"N., long. 110°20'00"W to lat. 41°18'30"N., long. 110°24'00"W, to lat. 41°15'00"N., long. 110°37'00"W to lat. 40°51'00"N., long. 111°05'30"W, to lat. 41°05'00"N., long. 111°27'00"W, to point of beginning excluding that airspace within the Fort Bridger, Wyoming, 700 foot transition area; and that airspace extending upward from 1,200 feet above the surface between lat. 41°18'30"N., 111°33'00"W, to lat. 41°24'00"N., long. 111°36'00"W., to lat. 41°35'30"N., long. 110°56'00"W, to lat. 41°32'00"N., long. 110°47'00"W, to lat. 41°27'00"N., long. 110°27'00"W, to lat. 41°18'30"N., long. 110°24'00"W, to lat.41°15'00"N., long 110°37'00"W, to lat. 40°51'00"N., long. 111°05'30"W, to lat. 41°05'00"N., long. 111°27'00"W to point of beginning excluding the airspace within the Fort Bridger, Wyoming, 1,200 foot transition area.

Issued in Seattle, Washington, on July 24, 1987.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 87-17402 Filed 7-31-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 87-AGL-14]

Proposed Alteration of Transition Area; Austin, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the Austin, MN, transition area to accommodate a new VOR/DME-A Standard Instrument Approach Procedure (SIAP) to Austin Municipal Airport.

The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

DATES: Comments must be received on or before September 3, 1987.

ADDRESS: Send comments on the proposal in triplicate to: Federal Aviation Administration, Regional Counsel, AGL-7, Attn: Rules Docket No. 87-AGL-14, 2300 East Devon Avenue, Des Plaines, Illinois 60016

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION: The present transition area is being altered to accommodate a new VOR/DME-A SIAP. The alteration will consist of a 2 mile extension to the northeast with a 3 mile width each side of the Rochester VOR/DME 240 radial extending from the Austin Municipal Airport 5 mile radius to 7 miles northeast of the airport.

The development of the procedure requires that the FAA alter the designated airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may

be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written date, views, or argument as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should indentify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87–AGL–14." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rule Docket, FAA, Great Lakes Region, Office of Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2, which describes the application procedures.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the designated transition area airspace near Austin, MN.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administation proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1248(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. Section 71.181 is amended as follows:

Austin, MN [Amended]

That airspace extending upward from 700 feet above the surface within a 5 mile radius of the Austin Municipal Airport (lat. 43°40'00"N, long. 92°56'00"W); within 3 miles each side of the Austin VOR 350 radial extending from the 5 mile radius to 8 miles north of the VOR; and within 3 miles each side of the Austin VOR 175 radial extending from the 5 miles radius to 8 miles south of the VOR; and within 3 miles each side of the Rochester VOR/DME 240 radial extending from the Austin Municipal Airport 5 mile radius to 7 northeast of the airport.

Issued in Des Plaines, Illinois, on July 20, 1987.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 87–17464 Filed 7–31–87; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, 1917, 1918

[Docket No. H–004I]

Occupational Exposure to Lead

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Notice of limited reopening of the lead rulemaking records; notice of comment period and informal public hearing.

SUMMARY: This notice reopens the rulemaking record for the OSHA lead standard to receive specific information relating to the feasibility of meeting the permissible exposure limit (PEL) specified in the lead standard (29 CFR 1910.1025(e)(1)) through engineering and work-practice controls in nine industry sectors: lead chromate pigments (SIC 2816), lead chemicals (SIC 2816/2819), nonferrous foundries (SIC 3362/3369), brass and bronze ingot production (SIC 3341/3362), secondary copper smelting (SIC 3341), battery breaking (when not part of secondary lead smelting) (SIC 5093), leaded steel (SIC 3312/3313), shipbuilding and ship repair (SIC 3731), and stevedoring (SIC 4463).

This notice is published pursuant to the March 31, 1987, order of the U.S. Court of Appeals for the District of Columbia Circuit, which remanded the record to OSHA for reconsideration of the feasibility of meeting the 50 $\mu g/m^3$ PEL through the use of engineering and work-practice controls in the nine specified industry sectors.

This notice also schedules a period for receipt of written comments and an informal public hearing on the question of feasibility of complying with the standard.

DATE: Written comments will be received until September 2, 1987. An informal public hearing will begin September 15, 1987. All notices of intention to appear at the public hearing and all written testimony and documentary evidence to be introduced into the hearing record must be received by September 2, 1987.

ADDRESSES: The hearing will start at 9:30 A.M. in Room C2318, Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210. Comments, in quadruplicate, should be mailed or delivered to the Docket Office, Occupational Safety and Health Administration, Docket No. H–004I, Room N–3670, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210; telephone (202) 523–7894. Notices of intention to Appear, in quadruplicate, should be mailed to Mr. Tom Hall, OSHA Division of Consumer Affairs, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 523–8615.

All materials submitted will be available for public inspection and copying at this address.

FOR FURTHER INFORMATION CONTACT: James F. Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, Room N–3641, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone (202) 523–8151.

SUPPLEMENTARY INFORMATION:

I

(a) Background and Judicial History

On November 14, 1978, OSHA promulgated the lead standard (29 CFR 1910.1025), which, in part, limited occupational exposure to airborne concentrations of lead to 50 micrograms per cubic meter of air ($\mu g/m^3$), based on an 8-hour time-weighted average (TWA) (43 FR 52952; and 43 FR 54354, November 21, 1978). Immediately after promulgation, the lead standard was challenged by both industry and labor in several U.S. Courts of Appeals. All cases were transferred to, and consolidated in the U.S. Court of Appeals for the District of Columbia Circuit.

In a lengthy opinion issued on August 15, 1980, the United States Court of Appeals for the District of Columbia Circuit upheld the validity of OSHA's lead standard in most respects. The court found OSHA's analysis of the feasibility of the standard to be adequate and upheld the validity of the entire standard for the following industry sectors: primary lead smelting, secondary lead smelting, printing, can manufacturing, battery manufacturing, paint and coating manufacturing, ink manufacturing, wallpaper manufacturing electronics manufacturing, and gray-iron foundries. However, the Court found that OSHA had failed to present substantial evidence or adequate reasons to support the feasibility of paragraph (e)(1) of the standard for 38 industry sectors. (*United Steelworkers of America v. Marshall* 647 F. 2d 1189 (D.C. Cir. 1980), Cert. denied, 453 U.S. 913 (1981).)

The Court did not vacate any portion of the lead standard. Rather, for the 38 industry sectors, it stayed the enforcement of 29 CFR 1910.1025(e)(1), which requires compliance with the PEL through engineering and work-practice controls. The Court remanded the record to OSHA for reconsideration of the question of technological and economic feasibility for these industry sectors and gave OSHA six months in which to complete its reassessment of the feasibility issue.

In accordance with the court order, the Agency conducted an expedited rulemaking (45 FR 63478; September 24, 1980). On January 19, 1981, OSHA filed its response to the remand order, in which it concluded that attainment of the 50 ug/m^3 PEL through the use of engineering and work-practice controls was generally feasible in an expanded list of remand industries. A Supplemental Statement of Reasons and Amendment of the Standard containing this conclusion was published on January 21, 1981 (46 FR 6134).

In response to industry petitions for reconsideration, OSHA subsequently requested and was granted a deferral of further court action pending reconsideration of its January 21, 1981 feasibility findings. Upon reconsideration, OSHA reaffirmed its conclusion that compliance with the PEL was generally feasible for most of the remand industries, either because exposure levels did not generally exceed the PEL, thus requiring minimal or no compliance actions, or because exposure levels above the PEL could be controlled by available engineering controls or work practices. A Revised Statement of Reasons containing this conclusion was published on December 11, 1981 (46 FR 60758). In this notice, OSHA stated that it could not reach a conclusion regarding feasibility on the existing record for eight specified industry sectors, and that it wished to reexamine the applicability of the lead standard for the stevedoring industry. OSHA, therefore, requested the court on December 10, 1981 to remand the record concerning these industry sectors for supplementary administrative proceedings (46 FR 60761).

In its December 11, 1981 Revised Statement of Reasons, OSHA also amended the Lead Standard (29 CFR 1910.1025 in several important respects, one of which was to exempt employers from the requirement to implement engineering controls for employees who are exposed above the PEL for 30 days or less annually.

Consistent with the December 11, 1981 notice (46 FR 60758), OSHA, on February 26, 1982, published a Proposed Administrative Stay on applying the lead standard to the stevedoring industry (47 FR 8381). However, OSHA did not thereafter issue a stay.

On March 31, 1987, the Court of Appeals for the District of Columbia granted OSHA's request of December 10, 1981 and remanded the record to OSHA for further administrative proceedings to determine the feasibility of paragraph (e)(1) of the lead standard for the nine industry sectors listed above. The Court further ordered OSHA to return the record on or before October 1, 1987.

On June 17, 1987, OSHA filed with the Court a motion requesting a 90-day extension of time, from October 1, 1987 to January 1, 1988, in which to return to the court the record of the nine remand industry sectors.

(b) Supplementing and Updating the Record Concerning Feasibility

As indicated in its December 11, 1981 Revised Supplemental Statement of Reasons (46 FR 60758), OSHA in 1981 had insufficient information upon which to base a determination of the feasibility of complying with paragraph (e)(1) of the lead standard in the nine remand industries. In that year, OSHA commissioned JACA, a private consulting firm, to conduct an assessment of the technological and economic feasibility of meeting the 50 ug/m^3 PEL through engineering and work practice controls in eight of the nine remand industries. The resulting study, which was completed in 1982, is now part of the record (JACA Report, Ex. 553). However, five years have passed since the study was completed and certain of the relevant industries appear to have changed considerably during that period. Consequently, OSHA needs to supplement and update the information in the record. In particular, OSHA needs to assure itself that information upon which it will base its feasibility determinations represents a current cross section of each industry sector.

Because OSHA does not know whether the information in the record accurately represents current conditions in each of the remand industries, it is refraining at this time from assessing feasibility for these industries. To supplement and update the record, OSHA has contracted with Meridian Research, Inc., a private consulting firm, to collect and develop new data to

support a new feasibility study for the nine remand industry sectors. The Meridian report is expected to be submitted to the docket by August 3, 1987, for public review and comment.

Through this notice, OSHA also is requesting the submission of new information pertaining to exposure data, engineering and work practice controls currently in use, potential feasible modifications in both process and control technologies and cost and time needed for meeting the PEL by means of engineering work practice controls, as well as any other relevant information that will facilitate OSHA's final determination of the feasibility issue.

II. Request for Information and Comments

Interested parties are requested to submit, in quadruplicate, written comments and additional data related to the rulemaking described in this notice. To supplement previous submissions, new information or written comments and suggestions on the technological and economic feasibility of compliance with the 50 ug/m ^{3} PEL by means of engineering and work-practice controls, including exposure data, are hereby solicited. It would facilitate the Agency's action if interested parties address their comments to the issues listed below as they pertain to each plant and/or industry sector.

1. Please submit the following information from your plant and/or industry sector:

a. Job categories for each operation or process in which workers are potentially exposed to lead;

b. Number of workers in each job category;

c. A brief description of each operation, production techniques, and associated engineering controls; and

d. Exposure data, if available, before and after installing existing engineering controls.

2. In each job category, for all employees exposed to lead, provide the last two years of air lead monitoring results, as an 8-hour time-weighted average (TWA). To the extent that representative sampling is used, clearly indicate which employees within each job category were monitored, the corresponding results, and which employees were represented by the results. Please also provide the dates of all monitoring.

3. Identify any job category and employees whose exposure to lead is so varied, intermittent, short etc. that the monitoring data provided in response to question 2 do not adequately portray the nature of the exposures. Please explain, indicating peak levels, duration, and frequency of exposure.

4. Please list the operations or processes in which current air lead levels exceed the 50 ug/m ^{3} permissible exposure limit (PEL) and describe or provide:

a. Existing engineering and work-practice controls, if any;

b. Additional engineering and work-practice controls that could be implemented to further reduce exposure levels;

c. The level to which exposures can be expected to be reduced from implementing the additional controls; and

d. Estimates of the costs and time needed to develop, install, and/or implement such controls.

5. What are the benefits, other than reducing workers' exposure to lead, that can be derived from implementing engineering controls? (e.g. reduced exposure to other contaminants, increased productivity, product improvement, reduced absenteeism, reduction in medical expenses or in workers' compensation payments, etc.). Please annualize.

6. Are control technologies that have been proven effective in industry sectors not included in this notice applicable to the remand industry sectors? Please explain or describe the nature and extent of compatibility and provide supporting documents.

7. Are there any processes or operations in your plant and/or industry sector in which it is not reasonably possible to implement engineering and work-practice controls within six months to one year to achieve the PEL? If so, would allowing employers additional time to come into compliance with requirements of paragraph (e)(1) make compliance reasonably possible? Please identify the processes or operations, explain, and provide supporting data, including needed compliance time.

8. Within your industry sector, are there variations among plants in process or production technology? If so, describe the variations and explain how those variations impact on:

a. Workers' exposure;

b. Implementation of engineering and work-practice controls to achieve the PEL; and

c. Product quality and productivity (volume and cost).

9. In operations where the air lead level is greater than 50 ug/m ^{3}, what processes can be automated or remotely controlled? For example: (a) In the production of leaded steel, can lead shot be injected by remote control blast guns instead of by dropping canvas bags of lead shot into the molds? (b) In battery breaking, can scrap batteries be fed into an automated shredder or crusher through the use of an enclosed conveyor belt?

10. Are there any restrictions on the use of automated or remote control techniques? Please explain and provide supporting data.

11. For material handling and transport, what are:

a. The current techniques;

b. Engineering controls in place to reduce workers' exposure;

c. Exposure data before and after the implementation of existing engineering controls (e.g. enclosure of equipment, cabs for operators); and

d. Techniques for further automation; e.g. the use of screw or pneumatic conveyors instead of cranes and front-end loaders?

12. In operations with existing engineering controls, are current exposure levels below the 50 ug/m ^{3} PEL? If not, please state the reasons (e.g. filters are not maintained properly, inappropriate work practices, etc.).

13. What are the operations or products for which substitutes (total or partial) for lead are available? Please cite any examples, indicating the extent of success.

14. What is the expected reduction in workers' exposures that would occur from total or partial substitution for lead? How efficient are substitutes in terms of product quality and cost?

15. Are there known hazards associated with these substitutes?

16. What was the labor turnover rate in your plant and/or industry sector for each of the last 5 years for jobs involving exposure to lead?

17. What were the rates of return on assets, equity, and net worth of your company and/or industry sector for each of the last 5 years, and how much of those are lead-related?

18. What were the total annual volume and dollar value of production, shipments, and inventories for your company and/or industry sector for each of the last 5 years? What percentages are lead-related?

19. What is the age, production capacity, and estimated remaining useful life of your plant and equipment?

20. Will major renovation or reconstruction of your plant be required to bring air lead exposures into compliance? If so, please provide costs and time necessary for renovation/construction, as well as expected exposure reductions and associated benefits.

21. What portion, if any, of the costs that would be incurred for coming into

compliance with the PEL by engineering and work practice controls (or for achieving the lowest air lead level feasible, whichever is higher) cannot be passed backward or forward? Please explain.

22. Are there reasons why the stevedoring industry should be exempt from the requirements of paragraph (e)(1) of the lead standard? If so, please explain and provide suporting evidence.

III. Public Participation and Notice of Public Hearing

Interested persons are invited to submit comments and data on the above-listed and other pertinent issues related to the technological and economic feasibility of meeting the 50 ug/m^3 PEL by means of engineering and work-practice controls in the remand industry sectors.

Comments must be received by September 2, 1987 and should be sent in quadruplicate to the Docket Office at the address noted above, where they will be available for inspection and copying. All timely written submissions will be made a part of the record of the proceeding. Any submissions made prior to September 24, 1980 should be resubmitted if they are to be considered as part of the record in this rulemaking.

Pursuant to section 6(b)(3) of the Act, an opportunity to submit oral testimony concerning the issues raised in this document will be provided at an informal public hearing scheduled to begin at 9:30 a.m. on September 15, 1987 in Room C2318, Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210.

(a) Notice of Intention to Appear

All persons desiring to participate at the hearing must file in quadruplicate a notice of intention to appear by September 2, 1987 addressed to Mr. Tom Hall, OSHA Division of Consumer Affairs, Docket No. H–0041, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210; telephone (202) 523–8615.

This notice of intention to appear, which will be available for inspection and copying at the OSHA Docket Office (Room N–3670), telephone (202) 523–7894, must contain the following information:

(1) The name, address, and telephone number of each person to appear;

(2) The capacity in which the person will appear;

(3) The approximate amount of time requested for the presentation;

(4) The specific issues that will be addressed;

(5) A detailed statement of the position that will be taken with respect to each issue addressed, and;

(6) Whether the party intends to submit documentary evidence, and if so, a brief summary of the evidence.

(b) Filing of Testimony and Evidence Before Hearing

Any party requesting more than 10 minutes for a presentation at the hearing, or who will submit documentary evidence, must provide in quadruplicate the complete text of the testimony, including any documentary evidence to the OSHA Division of Consumer Affairs. This material must be received by September 2, 1987 and will be available for inspection and copying at the Technical Data Center-Docket Office. Each such submission will be reviewed in light of the amount of time requested in the notice of intention to appear. In those instances where the information contained in the submission does not justify the amount of time requested, less time will be allocated and the participant will be notified of that fact.

Any party who has not substantially complied with this requirement may be limited to a 10-minute presentation and may be requested to return for questioning at a later time.

(c) Conduct of Hearing

In view of the nature of this rulemaking proceeding, the hearing will be conducted in as expedited a manner as possible consistent with full development of the record and the rights of the parties. The hearing will commence at 9:30 A.M., September 15, 1987 with the resolution of any procedural matters relating to the proceeding. The hearing will be presided over by an Administrative Law Judge, who will have all the powers necessary and appropriate to conduct a full and fair informal hearing, as provided in 29 CFR Part 1911, including the powers—

1. To regulate the course of the proceeding;

2. To dispose of procedural requests, objections, and comparable matters;

3. To confine the presentation to the matters pertinent to the issues raised;

4. To regulate the conduct of those present at the hearing by appropriate means; and

5. In the Judge's discretion, to keep the record open for a reasonable stated time to receive written information and additional data, views, and arguments from any person who has participated in the oral proceeding.

Following the close of the hearing, the presiding Administrative Law Judge will certify the record of the hearing to the Assistant Secretary of Labor for Occupational Safety and Health. The proposed standard will be reviewed in light of all oral and written submissions received as part of the record.

The determination on the feasibility issue will be made based upon the entire record as a whole, which is limited to dockets H–004E, F, G, H, and I.

List of Subjects

29 CFR Part 1910

Hazardous materials, Health, Lead, Lead poisoning, Occupational Safety and Health Administration, Occupational safety and health, Protective equipment, Respiratory protection.

29 CFR Part 1915

Hazardous materials, Health, Lead, Lead poisoning, Occupational Safety and Health Administration, Occupational safety and health, Protective equipment, Respiratory protection, Shipyard employment, Vessels.

29 CFR Part 1917

Hazardous materials, Health, Lead, Lead poisoning, Marine terminals, Occupational Safety and Health Administration, Occupational safety and health, Protective equipment, Respiratory protection, Vessels.

29 CFR Part 1918

Hazardous materials, Health, Lead, Lead poisoning, Longshoremen, Occupational Safety and Health Administration, Occupational safety and health, Protective equipment, Respiratory protection, Vessels.

V. Authority

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health Administration, 200 Constitution Avenue NW., Washington, DC 20210. It is issued pursuant to section 6(b) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593; 29 U.S.C. 655), and section 41 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941).

Signed at Washington, D.C., this 30th day of July 1987.

John A. Pendergrass,

Assistant Secretary of Labor.

[FR Doc. 87–17623 Filed 7–31–87; 8:45 am]

BILLING CODE 4510–26–M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 85-7]

Extension of Comment Period; Notice of Inquiry on Definition of Cable Systems

AGENCY: Copyright Office, Library of Congress.

ACTION: Extension of comment period.

SUMMARY: On October 15, 1986, the Copyright Office in a Notice of Inquiry (51 FR 36705) invited public comment on the definition of the term "cable system" as it concerns the operation of the compulsory licensing mechanism in 17 U.S.C. 111 (1976). Comments were invited through December 15, 1986, and reply comments through January 12, 1987.

Since the closing of the comment and reply period, the Copyright Office has received four comments including a supplemental comment from The Microband Companies Incorporated, ("Microband") a letter responding to Microband's comments from Major League Baseball, ("MLB") and a reply letter responding to MLB's letter from Microband. In the interest of allowing full public comment, the Copyright Office hereby extends the comment period until thirty days from the date of publication of this notice in the Federal Register. Reply comments may be submitted during this extended comment period. The late comments already received will be made part of the record.

DATE: Comments should be received on or before September 2, 1987.

ADDRESSES: Ten copies of written comments should be addressed, if sent by mail, to: Library of Congress, Department 100, Washington, DC 20540.

If delivered by hand, copies should be brought to: Office of the General Counsel, Copyright Office, James Madison Memorial Building, Room 407, First and Independence Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Washington, DC 20559. Telephone (202)287-8380.

List of Subjects in 37 CFR Part 201

General provision on copyrights, Cable television, Cable compulsory license.

Dated: July 13, 1987.

Ralph Oman,

Register of Copyrights.

Approved by:

Daniel J. Boorstin,

Librarian of Congress.

[FR Doc. 87-17484 Filed 7-31-87; 8:45 am]

BILLING CODE 1410-07-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 83-525]

Policies To Be Followed in the Authorization of Common Carrier Facilities to Meet Caribbean Region Telecommunications Needs During the 1985-1995 Period

AGENCY: Federal Communications Commission.

ACTION: Order establishing comment period.

SUMMARY: This document accepts for filing and consideration, a pleading submitted by the American Telephone and Telegraph Company on July 1, 1987 in reference to the Commission's Proposed Rule, published on March 19, 1986 at 51 FR 9470. As a result of this filing, the Commission is establishing a filing period for comments and reply comments and requesting additional information from the US International Service Carriers. The AT&T pleading sets forth, among other things, a revised configuration for the proposed Transcaribbean Cable System (TCS-1).

DATES: Information requested of the US International Service Carriers shall be filed on July 27, 1987. Comments and reply comments must be filed on or before August 17 and August 27, 1987, respectively.

FOR FURTHER INFORMATION CONTACT: Robert E. Gosse, (202) 632-7834.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order adopted on July 14, 1987 by delegated authority and released July 16, 1987. The full text of this action may be obtained from the International Transcription Service, 1919 M Street NW., Washington, DC 20036, Tel. (202) 857-3800.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-17539 Filed 7-31-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-260, RM-5728]

Radio Broadcasting Services; Olive Branch, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by J.J. Kirk, proposing the allocation of FM Channel 239A to Olive Branch, Mississippi, as that community's first FM broadcast service. There is a site restriction 2.5 kilometers (1.5 miles) northeast of the community.

DATES: Comments must be filed on or before September 14, 1987, and reply comments on or before September 29, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Earl N. Hodges, Mid-South Frequency, Monitoring Service, 4004 Clay Drive, Jonesboro, Arkansas 72401, (Consultant to the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-260, adopted July 9, 1987, and released July 21, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-17546 Filed 7-31-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-256, RM-5723]

Radio Broadcasting Services; Kill Devil Hills, NC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Joseph A. Booth to allocate Channel 281C1 to Kill Devil Hills, North Carolina, as the community's first local FM service. Channel 281C1 can be allocated to Kill Devil Hills in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.6 kilometers (7.2 miles) southeast in order to avoid a short-spacing to the licensed site of Station WKTC, Channel 282C1, Tarboro, North Carolina. No site restriction would be necessary if Station WKTC is licensed at the site specified in its construction permit (BMPH-860421ID).

DATES: Comments must be filed on or before September 14, 1987, and reply comments on or before September 29, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lawrence J. Bernard, Jr., Ward & Mendelkson, P.C., 1100 17th Street, NW., Suite 900, Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-256 adopted July 9, 1987, and released July 21, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-17547 Filed 7-31-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-258, RM-5795]

Radio Broadcasting Services; New London and Merrill, WI

AGENCY: Federal Communications Commissions.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Goetz Communications Corporation, licensee of Station WNBK(FM), Channel 228A New London, Wisconsin, proposing the substitution of Channel 228C2 for Channel 228A at New London and the modification of its license to specify operation on the higher class of channel. In addition the proposal requires the substitution of Channel 281A for Channel 228A at Merrill, Wisconsin in order to accomplish the New London substitution. A first wide coverage area FM station could be provided to the community. Also a site restriction of 17 kilometers (10.6 miles) northest of the community is required. Concurrence by the Canadian government must be obtained for the substitution at Merrill.

DATES: Comments must be filed on or before September 14, 1987, and reply comments on or before September 29, 1987.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows:

Samuel Miller, Miller & Fields, P.C., P.O. Box 33003, Washington, D.C. 20033 (Counsel to petitioner)

Goetz Communications Corporation, Station WNBK, P.O. Box 935, New London, WI 54961 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-258, adopted July 9, 1987, and released July 23, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-17551 Filed 7-31-87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 649

[Docket No. 70756-7156]

American Lobster Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues this proposed rule to implement Amendment 2 to the Fishery Management Plan for the American Lobster Fishery (FMP), which would (1) increase the minimum legal carapace length for American lobsters; (2) prohibit the possession of V-notched female American lobster throughout the range of the stock; and (3) prohibit throughout the Nation the possession of egg-bearing or V-notched female American lobsters, or lobsters under the legal minimum size taken in violation of the Magnuson Fishery Conservation and Management Act. The intended effect is to conserve and manage the American lobster resource to promote full utilization by the U.S. fishing industry.

DATE: Comments on the proposed rule are invited until September 10, 1987.

ADDRESSES: Send comments to Richard Roe, Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Gloucester, MA 01930–3799. Mark the outside of the envelope "Comments on the lobster regulations."

Copies of the amendment incorporating the environmental assessment and supplemental regulatory impact review/regulatory flexibility analysis are available from Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway, Saugus, MA 01906.

FOR FURTHER INFORMATION CONTACT: Kathi L. Rodrigues, Resource Management Specialist, 617–281–3600, ext. 324.

SUPPLEMENTARY INFORMATION: The FMP, which was prepared by the New England Fishery Management Council (Council), is implemented by regulations appearing at 50 CFR Part 649. The objective of the FMP is a unified regional management program for American lobsters (*Homarus americanus*), to promote conservation, to reduce the possibility of recruitment failure, and to allow full utilization of the resource by the U.S. fishing industry. Amendment 2 proposes to (1) increase the 3$^{3}/_{16}$-inch minimum legal carapace length for American lobsters to 3$^{5}/_{16}$ inches in $^{1}/_{32}$-inch increments, effective January 1, 1988, 1989, 1991, and 1992; (2) prohibit the possession of V-notched female American lobsters throughout the range of the stock; and (3) prohibit throughout the Nation the possession of egg-bearing lobsters, V-notched female lobsters, and lobsters that are smaller then the minimum size set forth in the FMP taken in violation of the Magnuson Act. Two of the largest American lobster producing States (Maine and Massachusetts) have initiated complementary laws that would be triggered by implementation of this rule.

The first proposal, to increase the minimum carapace length, is based on the scientific finding that fewer than one percent of the inshore northern Gulf of Maine female lobsters attain sexual maturity and extrude their first clutch of eggs before reaching the current minimum carapace length of 3-$^{3}/_{16}$ inches. A similar situation exists in the offshore fishery on Georges Bank and off Southern New England. Together these areas account for approximately 80 percent of the total American lobster landings. Thus, the continuing viability of the overall resource may be in jeopoardy through recruitment failure. To guard against such an eventuality, it is proposed to increase the minimum carapace length from 3-$^{3}/_{16}$ inches to 3-$^{5}/_{16}$ inches in four increments of $^{1}/_{32}$ of an inch between January 1, 1988, and January 1, 1992. Rectangular or circular escape vents compatible with a minimum carapace length of 3-$^{5}/_{16}$ inches would be required by January 1, 1990. The exact specifications of the escape vents will be published by January 1, 1989.

The increase in the minimum carapace length to 3-$^{5}/_{16}$ inches is expected to result in an overall gain of more than 45 percent in total egg production relative to current management standards. After five years, the management program is expected to result in an overall increase in landings of 25.2 percent based upon prospects for enhanced recruitment. The specific intent of this proposal is to increase spawning potential while miminizing the short-term effects on landings. This rule would allow a 180-day grace period following the effective date of each carapace length increase for any dealer/wholesaler to dispose of any American lobsters purchased or received in the prior year which do not meet the minimum carapace length increase. The grace period recognizes the traditional industry practice of holding lobsters in pounds in order to take advantage of seasonal market opportunities.

The second proposal would prohibit the possession of V-notched female American lobsters throughout the range of the stock. For the past 40 years, Maine has required the V-notching of berried female lobsters for conservation and administrative purposes. Under Maine law it is unlawful to possess a V-notched lobster. This proposal recognizes that V-notched lobsters may migrate out of the Gulf of Maine and be encountered in the gear of fishermen who operate in the southern portion of the range of the stock.

The Council intends that V-notched female lobsters be left in the population to reproduce and add to the spawning potential. The Council recognizes that their infrequent occurence outside the Gulf of Maine may result in unintentional retention by fishermen unaccustomed to inspecting lobsters for V-notching. Accordingly, the Council has recommended that any person found in violation of this provision not be subject to a civil penalty, provided that the V-notched lobsters are viably returned to the natural environment. NOAA will consider the Council's recommendation in establishing its enforcement practices and penalty schedules, but has an obligation to enforce all regulations implementing fishery management plans.

The third proposal would prohibit throughout the Nation the possession of egg-bearing or V-notched female American lobsters, and American lobsters smaller than the minimum size set forth in the regulations taken in violation of the Magnuson Act. The Council finds that it is necessary to extend these management measures throughout the Nation to promote compliance, assure effective enforcement, and achieve the objectives of the FMP. Because management measures of the States where the American lobster resource predominantly occurs (i.e., Maine, Massachusetts, Rhode Island) will become fully consistent with the management measures of the FMP upon final promulgation of this rule, and because of the number of fishermen in these States holding permits to fish for lobsters in the exclusive economic zone (EEZ), it is presumed that any non-conforming lobsters in interstate commerce were taken in violation of the Magnuson Act. Evidence that such lobsters were harvested by a vessel not holding a permit to fish for lobsters in the EEZ and fishing exclusively within State or foreign waters would be sufficient to rebut the presumption.

This proposed rule also changes all references to the fishery conservation zone (FCZ) to exclusive economic zone (EEZ) in accordance with the 1986 amendments to the Magnuson Act (Pub. L. 99–659) and removes obsolete material in the regulations.

Classification

Section 304(a)(1)(ii) of the Magnuson Act, as amended by Pub. L. 99–659, requires the Secretary of Commerce (Secretary) to publish regulations proposed by the Council 15 days after receipt of the amendment and regulations. At this time the Secretary

has not determined that the amendment these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views and comments received during the comment period.

The Council prepared an environmental assessment for this amendment and concluded that there will be no significant impact on the environment as a result of this rule (see ADDRESSES).

The Council prepared a supplementary regulatory impact review/initial regulatory flexibility analysis. The Administrator of NOAA determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. A determination as to whether or not the proposed rule would have a significant economic impact on a substantial number of small entities will be made in conjunction with publication of the final rule. If found to be significant, a final regulatory flexibility analysis will be prepared and made available; otherwise, the General Counsel of the Department of Commerce will certify to the Small Business Administration that the rule will not have a significant economic impact.

This rule would have the following economic effects. The proposed rule is expected to reduce ex-vessel revenues by $4.2 million in the first year, assuming that all other factors, such as recruitment, remain constant, and increase revenues after the fifth year. There are an estimated 8,400 commercial lobstermen, both full- and part-time, not including those employed on trawlers which occasionally land lobsters. The average loss per lobsterman is expected to be about $500 in the first year of implementation. From the tenth year onward, the increase in exvessel revenues would be from $2.0 million (if there are no positive stock size-recruitment effects) to $38.6 million (if positive stock size-recruitment effects are considered). The average expected gain would be about $4,800 per lobsterman, using the average of the estimates derived from biological models.

The proposal to extend the prohibition against the landing of V-notched lobsters will initially decrease the exvessel revenues of about 2,100 commercial lobstermen in Massachusetts and New Hampshire by about $259,000, or an average of about $123 per lobsterman. However, it should be noted that V-notched lobsters might have already been voluntarily released by other lobstermen who could have landed them and that this measure is expected to increase the spawning potential of Gulf of Maine lobsters by 47 percent. In public hearings held in Portsmouth, New Hampshire, and Peabody, Plymouth, and Provincetown, Massachusetts, there was nearly unanimous support by lobstermen for extending the protection of V-notched lobsters throughout their range. This measure is not expected to have any impacts on lobstermen in the Georges Bank fishery or south of Cape Cod.

Administrative, enforcement, and paperwork and recordkeeping requirements are expected to remain unchanged, thus there are no impacts on Federal, State, or local government agencies. Lobstermen's operating expences are not expected to be affected in any way. Rather than a decrease in employment, it is expected that inshore lobstermen will initially experience a general decrease in revenues without any substantial change in employment, and then an increase after five years. Offshore lobstermen are not expected to experience any decrease in revenues; however, there is insufficient data on employment per vessel and a lack of models to determine the employment response to revenue changes in this sector.

The purpose of Amendment 2 is to enhance productivity. It is expected to increase annual lobster landings from 2.3 to 35.2 percent after five years, increase the size of the average chicken lobster by 12 percent, and increase egg production by 92 percent due to the larger carapace size and the V-notch program.

This proposed rule is exempt from the procedures of Executive Order 12291 under section 8(a)(2) of that order. Deadlines imposed under the Magnuson Act require the Secretary to publish this proposed rule 15 days after its receipt. The proposed rule is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of the order.

This rule does not contain a collection of information requirement for the purposes of the Paperwork Reduction Act.

The Council determined that this rule will be implemented in a manner that is consistent, to the maximum extent practicable, with the approved coastal zone management programs of Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Delaware, Maryland, and New Jersey. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

List of Subjects in 50 CFR Part 649

Fisheries, Reporting and recordkeeping requirements.

Dated: July 29, 1987.

William E. Evans,

Assistant Administrator For Fisheries National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Part 649 is proposed to be amended as follows:

PART 649—[AMENDED]

1. The authority citation for 50 CFR Part 649 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 649.2, the definition of *Fishery conservation zone (FCZ)* and *V-notch conservation area* are removed and a new definition for *Exclusive economic zone (EEZ)* is added in alphabetical order to read as follows:

§ 649.2 Definitions.

* * * * *

Exclusive economic zone (EEZ) means the zone established by Presidential Proclamation 5030, dated March 10, 1983, and is that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

3. In § 649.7, paragraph (a)(5) is revised and a new paragraph (c) is added to read as follows:

§ 649.7 Prohibitions.

* * * * *

(a) * * *

(5) To possess any V-notched female American lobsters throughout the range of the stock;

* * * * *

(c) The possession for sale of egg-bearing female American lobsters, V-notched female American lobsters, or American lobsters that are smaller than the minimum size set forth in § 649.20(b) of this part, will be *prima facie* evidence that such lobsters were taken or imported in violation of these regulations. Evidence that such lobsters were harvested by a vessel not holding a permit under this part and fishing exclusively within State or foreign waters will be sufficient to rebut the presumption.

4. In § 649.20, paragraphs (b) and (c) are revised and paragraph (f) is removed, to read as follows:

§ 649.20 Harvesting and landing requirements.

* * * * *

(b) *Carapace length.* All American lobsters landed on the dates set forth must have a minimum carapace length as follows:

Effective dates:	Minimum carapace length:
January 1, 1985, through December 31, 1987.	3 9/16 inches.
January 1, 1988, through December 31, 1988.	3 5/8 inches.
January 1, 1989, through December 31, 1990 [1].	3¼ inches.
January 1, 1991, through December 31, 1991.	3 5/8 inches.
January 1, 1992, and beyond.....	3 9/16 inches.

[1] By January 1, 1990, escape vents in traps must be compatible with a minimum carapace length of 3 9/16 inches.

(c) *Mutilation.* It is unlawful for any person to remove meat or any body appendages from any lobster before landing, or to have in possession on board any lobster part other than whole lobsters.

* * * * *

5. In § 649.21, paragraphs (c)(1), (2), and (3) are redesignated (c)(1)(i), (ii), and (iii); paragraph (c) introductory text is designated (c)(1), an initial phrase is added, and the word "All" is set in lower case; a new paragraph (c)(2) is added; the text of paragraph (d) is designated (d)(1); and a new paragraph (d)(2) is added, to read as follows:

§ 649.21 Gear identification, marking, and escape vent requirements.

* * * * *

(c) *Escape vents.* (1) Until January 1, 1990, all * * *

* * * * *

(2) On January 1, 1990, rectangular or circular escape vents compatible with a minimum carapace length of 3 9/16 inches will be required.

(d) * * *

* * * * *

(2) Following the effective date of each carapace length increase set forth in § 649.20(b) of this part, any dealer/wholesaler will have 180 days in which to dispose of any lobsters purchased or received in the prior year which do not meet the new minimum carapace length increase.

§§ 649.4, 649.7, 649.20, 649.21, and 649.22 [Amended]

6. In addition to the amendments set forth above, the initials "FCZ" are removed and the initials "EEZ" are added in their place in the following places:

§ 649.4(a)(1), (2), and (3);
§ 649.7(a) introductory text and (b)(2);
§ 649.20(a)
§ 649.21(a) introductory text, (b) introductory text and (b)(4)(i), (ii), (iii), and (iv), and (c) introductory text; and
§ 649.22(b)(1).

[FR Doc. 87-17576 Filed 7-31-87; 8:45 am]
BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 52, No. 148
Monday, August 3, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

Lemons Grown in California and Arizona; Marketing Policy

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of Marketing Policy.

SUMMARY: This notice sets forth a summary of the 1987–88 marketing policy for lemons grown in California and Arizona. The marketing policy was discussed and approved on June 30, 1987, by the Lemon Administrative Committee, which locally administers the marketing order covering California-Arizona lemons. The marketing policy contains information on crop and market prospects for the 1987–88 season.

DATE: Written suggestions, views, or pertinent information will be considered if received by August 18, 1987.

ADDRESS: Interested persons are invited to submit written statements in triplicate to: Docket Clerk, Room 2085–S, F&V, AMS, U.S. Department of Agriculture, Washington, DC 20250. Such submissions should reference the date and page number of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: James M. Scanlon, Acting Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Washington, DC 20250, telephone (202) 447–5697.

SUPPLEMENTARY INFORMATION: Pursuant to § 910.50 of the marketing order covering lemons grown in California and Arizona, the Lemon Administrative Committee, hereinafter referred to as the "committee", is required to hold a marketing policy meeting not later than August 15 of each fiscal year and thereafter submit such marketing policy to the Secretary. The order authorizes volume and size regulations applicable to fresh shipments of lemons to domestic markets including Canada. Regulation of export shipments of lemons and lemons utilized in the production of processed lemon products are not authorized under the order.

Section 910.50 of the marketing order reads as follows:

> Each year not later than August 15 of the fiscal year (or such later date as the committee may establish with the approval of the Secretary) the committee shall hold a marketing policy meeting and shall thereafter submit to the Secretary its marketing policy for such fiscal year, to continue in force until revised, or superseded by the adoption of a new marketing policy. The marketing policy shall contain the following information: (a) The available supplies of lemons in each prorate district, including estimated quality and composition of size; (b) the estimated utilization of the crop, showing the quantity and percentages of the crop that will be marketed in domestic, export, and byproduct channels, together with quantities otherwise to be disposed of; (c) a schedule of estimated weekly shipments to be recommended to the Secretary during the fiscal year; (d) level and trend of consumer income; (e) estimated supplies of competitive citrus commodities; and (f) any other pertinent factors bearing on the marketing of lemons. In the event that it becomes advisable to substantially modify the marketing policy the committee shall submit to the Secretary a revised marketing policy or a new marketing policy setting forth the information as required in this section.

Marketing policies for California-Arizona lemons are intended to apply to a 12-month period beginning on August 1 and ending on July 31 of the following year. This 12-month period contains a full production cycle in all of the regulated districts and serves to define an annual marketing season.

The committee has prepared a marketing policy for the 1987–88 marketing season. The marketing policy is intended to inform the Secretary and persons in the industry of the committee's evaluation of supply and demand factors expected during the marketing season. This information is essential to the review and evaluation of committee recommendations for the issuance of regulations. The committee evaluates market conditions and makes such recommendations to the Secretary as to the quantity of lemons that can be shipped each week to domestic outlets during the season, without disrupting markets. The committee may also recommend size regulations applicable to fresh domestic shipments.

The committee identified an array of general considerations in forming its 1987–88 marketing policy. It indicated that a satisfactory supply-demand relationship is necessary for a satisfactory price structure for any product but that the California-Arizona lemon industry, which produces more than 90 percent of the U.S. supply, is faced with unique problems and challenges that distinguish it from other perishable food industries. The committee pointed out that unlike other fruits, lemons are generally not consumed independently but are used as ingredients for flavoring or decorative purposes. These characteristics contribute to a highly inelastic demand for fresh lemons.

The committee also called attention to the seasonality of demand for fresh lemons which peaks when supplies are traditionally lowest. According to the committee, the California-Arizona lemon industry expanded into different geographic areas with different climatic production patterns in order to deal with this paradox but has experienced a surplus production capacity in part as a result of this expansion. The committee pointed out that the California-Arizona lemon industry has dealt with the overproduction problem by reducing acreage from a high of over 91,000 acres ten years ago to approximately 63,000 acres currently, and that such adjustments are an ongoing process.

It is the committee's contention, however, that further acreage reduction is not a complete solution to the industry's supply problem, citing sharp weather-related variations in output in the past several years, and that use of the marketing order to stabilize supplies is vital to the survival of the current California-Arizona lemon industry.

In its 1987–88 marketing policy, the committee specifically projected the California-Arizona lemon crop at 46,913 cars (1,000 cartons at 37-1/2 pounds net weight each equal one car). This compares with last year's estimated total production of 57,312 cars and an estimated output of 37,483 carloads in 1985–86, when no regulations were in effect.

The production area is divided into three districts. The current production estimates by district (with last year's

production in parentheses) are as follows: District 1—6,400 cars (6,917); District 2—25,640 cars (27,584); and District 3—14,873 cars (22,811).

The committee projects that the fruit sizes in the 1987–88 fiscal year will fall within normal ranges and that approximately 80–85 percent of the 1987–88 crop will average size 165's (2.13 inches in diameter) or larger. Current regulation limits domestic fresh market shipments of lemons to size 235's (1.82 inches in diameter) and larger. The committee estimates that less than 3 percent of production is smaller than this size and that the most efficient utilization of such fruit is in product outlets.

The committee estimates that 1987–88 shipments to domestic fresh market outlets, including Canada, may total 15,250 cars. This would be 6 percent above the preceding 4-year average but below the relatively large movement being marketed in the marketing season now drawing to a close (1986–87 shipments of fresh lemons to domestic markets are estimated to reach 15,500 cars). The committee anticipates an "opportunity" for fresh export shipments to total 10,600 cars in 1987–88 compared to 9,000 cars in 1986–87. Processing and other disposition is forecast at 21,663 cars compared to 32,400 cars in 1986–87.

In terms of total crop utilization, 33 percent of the 1987–88 crop is expected to be accounted for in domestic fresh markets compared with 27 percent in 1986–87; fresh exports are projected to require 21 percent of total 1987–88 utilization compared with 16 percent in 1986–87; processed and other uses would account for a residual 46 percent compared with 57 percent in the season now ending. In terms of changes in volume, domestic fresh market shipments would be down about 2 percent from 1986–87's estimates; export shipments would be up about 11 percent and processed and other utilization would fall approximately 33 percent.

The committee noted that in 1985–86, when production was relatively low and regulations were suspended for the entire season, utilization shares in both fresh market outlets were considerably higher. In real terms, however, shipments to both fresh domestic and export outlets in 1987–88 would exceed those to the same outlets during the unregulated 1985–86 season.

The market for California-Arizona fresh lemons is influenced by the availability of substitutes. Fresh lemons face competition from other varieties of citrus fruit, lemon juice, lemonade, and a number of soft drink products. Moreover, the California-Arizona lemon crop is also in direct competition with Florida and foreign lemons. Florida shipments of lemons are estimated at 600–700 cars for 1987–88. These shipments are expected to be confined to the mid and late summer. The potential for import competition is much larger both in quantity and seasonally. However, imports in the last five years have accounted for less than 2 percent of total domestic consumption. The committee portrays this as evidence that the weekly volumes that it recommends for supplying U.S. markets with fresh domestic fruit precludes the need for reliance on import sources.

With respect to the use of periods of open movement (i.e. no volume regulation), the committee, in its 1987–88 marketing policy stated that, if, during the fiscal year, supply and demand conditions are such that a relaxation in weekly volume regulation or open movement is the appropriate recommendation, the committee would present such a recommendation to the Secretary.

Based on the most recent data available, it appears that the 1986–87 season average fresh equivalent on-tree parity price for California-Arizona lemons will average $5.95 per carton. The projected season average parity price for the 1987–88 season is $6.15 per carton. The Agricultural Marketing Service (AMS) is currently evaluating the 1987–88 price outlook and when this process is completed will use the results of this evaluation in reviewing the committee's marketing policy for the 1987–88 season.

In order to provide an opportunity for public input, the Department will accept written views and information pertinent to the marketing policy and the need for, or level of, regulation for the 1987–88 season. Interested persons are also invited to comment on the possible regulatory and informational impact of this marketing policy and seasonal volume regulations on small businesses.

Publication of this summary of the marketing policy is to provide information as to potential regulations. This action does not create any legal obligations or rights, either substantive or procedural.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: July 28, 1987.

Ronald L. Cioffi,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 87–17496 Filed 7–31–87; 8:45 am]

BILLING CODE 3410-02-M

Establishment of a New Official Mailing Address for the Agricultural Marketing Service, Headquarters

AGENCY: Agricultural Marketing Service, USDA.

SUMMARY: This notice serves to advise all interested persons of a change in the official mailing address for the Washington, DC, offices of the Agricultural Marketing Service (AMS).

EFFECTIVE DATE: August 17, 1987.

FOR FURTHER INFORMATION CONTACT: Gerald Mainer, Mail Manager, Mail and Records Management Section, Information Management Branch, Administrative Services Division, Animal and Plant Health Inspection Service, 1400 Independence Avenue, Washington, DC 20250. Telephone (202) 447–5366.

SUPPLEMENTARY INFORMATION: The Agricultural Marketing Service has established a new official mailing address for the Washington, DC, offices. A Washington DC post office box was established to provide mail services more economically and efficiently. The Washington DC post office box conversion will preserve and protect the security of all mail from unauthorized operating, inspection, or reading of contents or covers, tampering, delay, or other unauthorized acts. Any interested person intending to mail to AMS offices located in Washington, DC, should use the new post office box address.

New official mailing address: USDA/AMS (Name of Division & Office), (Room Number), P.O. Box 96456, Washington, DC 20090–6456.

Old mailing address: USDA/AMS/(Name of Division & Office), (Room Number), 1400 Independence Ave., SW., Washington, DC 20250.

Done in Washington, DC, this 29th day of July 1987.

William T. Manley,

Acting Administrator.

[FR Doc. 87–17571 Filed 7–31–87; 8:45 am]

BILLING CODE 3410-02-M

Federal Grain Inspection Service

Designation Renewal of the Central Iowa Agency (IA), State of Maine, and State of Montana

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of Central Iowa Grain Inspection Service, Inc. (Central Iowa), Maine Department of Agriculture (Maine), and Montana Department of

Agriculture (Montana), as official agencies responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act).

EFFECTIVE DATE: September 1, 1987.

ADDRESS: James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service announced that Central Iowa's, Maine's, and Montana's designations terminate on August 31, 1987, and requested applications for official agency designation to provide official services within specified geographic areas in the March 2, 1987, **Federal Register** (52 FR 6204). Applications were to be postmarked by April 1, 1987. Central Iowa, Maine, and Montana were the only applicants for designation in their geographic area and each applied for designation renewal in the area currently assigned to that agency.

The Service announced the applicant names in the May 1, 1987, **Federal Register** (52 FR 15987) and requested comments on the designation renewal of Central Iowa, Maine, and Montana. Comments were to be postmarked by June 15, 1987; none were received.

The Service evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act, and in accordance with section 7(f)(1)(B), determined that Central Iowa, Maine, and Montana are able to provide official services in the geographic area for which the Service is renewing their designation. Effective September 1, 1987, and terminating August 31, 1990, Central Iowa, Maine, and Montana will provide official inspection services in their entire specified geographic area, previously described in the March 2 **Federal Register**.

A specified service point, for the purpose of this notice, is a city, town, or other location specified by an agency for the performance of official inspection or Class X or Class Y weighing services and where the agency and one or more of its inspectors or weighers is located. In addition to the specified service points within the assigned geographic area, an agency will provide official services not requiring an inspector or weigher to all locations within its geographic area.

Interested persons may receive a listing of an agency's specified service points by contacting either the Review Branch, Compliance Division, at the address listed above or the agencies at the following addresses:

Central Iowa Grain Inspection Service, Inc., 125 S.E. 18th Street, P.O. Box 1562, Des Moines, IA 50306.

Maine Department of Agriculture, State House, Station No. 28, Augusta, ME 04333

Montana Department of Agriculture, Agriculture/Livestock Bldg., Capitol Station, Helena, MT 59620

Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Date: July 17, 1987.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 87–17376 Filed 7–31–87; 8:45 am]

BILLING CODE 3410-EE-M

Request for Comments on Designation Applicants in the Geographic Area Currently Assigned to the Aberdeen Agency (SD), McGregor Agency (IA), and State of Missouri

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the geographic area currently assigned to Aberdeen Grain Inspection, Inc. (Aberdeen), McGregor Grain Inspection and Weighing Corporation, Inc. (McGregor), and Missouri Department of Agriculture (Missouri).

DATE: Comments to be postmarked on or before September 17, 1987.

ADDRESS: Comments must be submitted in writing to Lewis Lebakken, Jr., Information Resources Staff, FGIS, USDA, Room 1661 South Building, 1400 Independence Avenue, SW., Washington, DC 20250.

Telemail users may respond to [IRSTAFF/FGIS/USDA] telemail.

Telex users may respond as follows: To: Lewis Lebakken, TLX:7607351, ANS:FGIS UC.

All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service requested applications for official agency designation to provide official services within specified geographic areas in the June 1, 1987, **Federal Register** (52 FR 20434). Applications were to be postmarked by July 1, 1987. Aberdeen, McGregor, and Missouri were the only applicants for designation in their geographic area and each applied for designation renewal in the area currently assigned to that agency.

This notice provides interested persons the opportunity to present their comments concerning the designation of the applicants. Commenters are encouraged to submit reasons for support or objection to these designation actions, and include pertinent data to support their views and comments. All comments must be submitted to the Information Resources Staff, Resources Management Division, at the above address.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicants will be informed of the decision in writing.

Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: July 17, 1987.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 87–17375 Filed 7–31–87; 8:45 am]

BILLING CODE 3410-EN-M

Request for Designation Applicants To Provide Official Services in the Geographic Area Currently Assigned to the State of California and State of Washington

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as Amended (Act), official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of two agencies will terminate, in accordance with the Act, and requests applications from parties, including the agencies

currently designated, interested in being designated as the official agency to provide official services in the geographic area currently assigned to the specified agencies. The official agencies are the California Department of Food and Agriculture and Washington Department of Agriculture.

DATE: Applications to be postmarked on or before September 2, 1987.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250. All applications received will be made available for public inspection at this address during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of the Service is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

California Department of Food and Agriculture (California), 1220 N. Street, Sacramento, CA 95814, and Washington Department of Agriculture (Washington), 406 General Administration Building, AX–41, Olympia, WA 98504, were each designated under the Act as an official agency to provide inspection and weighing functions on February 1, 1965.

Each official agency's designation terminates on January 31, 1988. Section 7(g)(1) of the Act states that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to California, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is as follows: The entire State of California, except those export port locations within the State, and the area assigned to Los Angeles Grain Inspection Service, Inc., which is as follows:

Bounded on the North by the Angeles National Forest southern boundary from State Route 2 east; the San Bernadino National Forest southern boundary east to State Route 79;

Bounded on the East by State Route 79 south to State Route 74;

Bounded on the South by State Route 74 west-southwest to Interstate 5; Interstate 5 northwest to Interstate 405; Interstate 405 northwest to State Route 55; State Route 55 northeast to Interstate 5; Interstate 5 northwest to State Route 91; State Route 91 west to State Route 11; and

Bounded on the West by State Route 11 north to U.S. Route 66; U.S. Route 66 west to Interstate 210; Interstate 210 northwest to State Route 2; State Route 2 north to the Angeles National Forest boundary.

The geographic area presently assigned to Washington, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is as follows: The entire State of Washington, except those export port locations within the State.

Interested parties, including California and Washington are hereby given opportunity to apply for official agency designation to provide the official services in each geographic area, as specified above, under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in each specified geographic area is for the period beginning February 1, 1988, and ending January 31, 1991. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above, for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Date: July 17, 1987

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 87–17377 Filed 7–31–87; 8:45 am]

BILLING CODE 3410-EN-M

Cancellation of Designation Issued to Kankakee Grain Inspection Bureau, Inc., and Request for Designation Applicants (IL).

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: This notice announces that the Kankakee Grain Inspection Bureau, Inc., has requested the cancellation of its designation, effective January 31, 1988. A request for designation applicants is also included in this notice.

DATE: Applications to be postmarked on or before September 2, 1987.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250. All applications received will be made available for public inspection at this address during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Department Regulation 1512–1; therefore, the Executive Order and Department Regulation do not apply to this action.

This notice announces that the Kankakee Grain Inspection Bureau, Inc. (Kankakee), has requested the cancellation of its designation, effective January 31, 1988. A request for designation applicants is also included in this notice.

Section 7(f)(1) of the U.S. Grain Standards Act, as amended (Act) specifies that the Administrator of the Service is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Section 7(g)(1) of the Act states that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area in the State of Illinois, which is available for assignment to the applicant selected for designation, is as follows:

Bounded on the North by the northern Bureau County line; the northern LaSalle and Grundy County lines; the northern Will County line east-southern to Interstate 57;

Bounded on the East by Interstate 57 south to U.S. Route 52; U.S. Route 52 south to the Kankakee County line;

Bounded on the South by the southern Kankakee and Grundy County lines; the southern LaSalle County line west to State Route 17; State Route 17 west to U.S. Route 51; U.S. Route 51 north to

State Route 18; State Route 18 west to State Route 26; State Route 26 north to Interstate 180; Interstate 180 west to State Route 29; State Route 29 south to the Bureau County line; the southern Bureau County line west to State Route 88; and

Bounded on the West by State Route 88 north to the Bureau County line.

An exception to the described geographic area is the following location situated inside Kankakee's area which has been and will continue to be serviced by Eastern Iowa Grain Inspection and Weighing Service, Inc.: Leland Farmers Company, Leland, LaSalle County.

Interested parties are hereby given opportunity to apply for official agency designation to provide the official services in the geographic area, as specified above, under the provisions of section7(f) of the Act and §800.196(d) of the regulations issued thereunder. Designation in the specified geographic area is for the period beginning February 1, 1988, and ending January 31, 1991. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above, for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

Pub. L. 94-582, 90 Stat. 2867, as amended. (7 U.S.C. 71 *et seq.*)

Date: July 29, 1987.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 87-17570 Filed 7-31-87; 8:45 am]

BILLING CODE 3410-EN-M

COMMISSION ON CIVIL RIGHTS

South Carolina Advisory Committee; Meeting Postponement and Revision of Agenda

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the South Carolina Advisory Committee to the Commission originally scheduled for July 28, 1987, in Columbia, SC, has been postponed and the agenda revised. The meeting will convene at 10:30 a.m. and adjourn at 3:30 p.m. on September 23, 1987, at the Radisson Hotel, 937 Assembly Street, Columbia, South Carolina, 29202. The purpose of the meeting will be to hear reports from the Chairman and the regional director on the outcome of a recent conference of SAC chairpersons and the status of the Commission and its State Advisory Committees. The committee will also conduct a community forum on civil rights enforcement in the juvenile justice system in the state. These revisions amend the notice previously published in 52 FR 25288 (July 6, 1987).

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Vice Chairperson Dr. Oscar Butler (803) 777-4155 or John I. Binkley, Director of the Eastern Regional Division, at (202) 523-5264; TDD (202) 376-8117. Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 27, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87-17469 Filed 7-31-87; 8:45 am]

BILLING CODE 6335-01-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amending the Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Mauritius; Correction

July 29, 1987.

In the notice and the letter to the Commissioner of Customs published in the **Federal Register** on February 13, 1987 (52 FR 4644), correct the import restraint limit for Category 347/348 to read 421,730 dozen instead of 422,730 dozen.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-17565 Filed 7-31-87; 8:45 am]

BILLING CODE 3510-DR-M

Adjustments of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Mexico

July 29, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on August 4, 1987. For further information contact Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377-3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase the limits for cotton and man-made fiber textile products in Categories 347/348, 633 and 647/648, produced or manufactured in Mexico and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Background

On December 5, 1986 a notice was published in the **Federal Register** (51 FR 43960), as amended on April 7, 1987 (52 FR 12230), which announced import restraint limits for certain cotton, wool and man-made fiber textile products, including Categories 347/348, 633 and 647/648, produced or manufactured in Mexico and exported during the current agreement year which began on January 1, 1987 and extends through December 31, 1987. The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 26, 1979, as amended and extended, between the Governments of the United States and the United Mexican States, under the terms of which these limits were established, also includes provisions for the carryover of shortfalls from the previous agreement year in certain categories (carryover). Under the foregoing provisions of the bilateral agreement and at the request of the Government of the United Mexican States, the limits established for Categories 347/348, 633 and 647/648 are being increased by application of carryover for goods exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386),

July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register.**

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

July 29, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive issued to you on November 28, 1986, as amended on April 7, 1987, by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Mexico and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Effective on Aug. 4, 1987, the directive of November 28, 1986, as amended, is hereby further amended to adjust the previously established limits for cotton and man-made fiber textile products in Categories 347/348, 633 and 647/648, as provided under the terms of the bilateral agreement of February 28, 1979, as amended and extended [1]:

Category	Adjusted 1987 Limit [1]
347/348	1,441,335 dozen of which not more than 1,045,160 dozen shall be in Category 347 and not more than 1,045,160 dozen shall be in Category 348.
633	90,598 dozen.
647/648	1,764,900 dozen of which not more than 1,153,280 dozen shall be in Category 647 and not more than 1,153,280 dozen shall be Category 648.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1986.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-17566 Filed 7-31-87; 8:45 am]

BILLING CODE 3510-DR-M

Announcing Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Polish People's Republic Effective on January 1, 1987; Correction

In the letter to the Commissioner of Customs published in the **Federal Register** on January 9, 1987 (52 FR 854), third column, correct the restraint limit for Category 459 to read 109,369 pounds instead of 12,152 dozen.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-17567 Filed 7-31-87; 8:45 am]

BILLING CODE 3510-DR-W

Amendment to the Export Licensing System to Include Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

July 29, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on August 3, 1987. For further information contact Diana Solkoff, International Trade Specialist (202) 377-4212.

Background

A CITA directive dated February 23, 1984 (49 FR 7269), as amended, established an export licensing system for certain cotton, wool and man-made fiber textiles and textile products, produced or manufactured in the People's Republic of China.

Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854) and exchange of letters dated July 17, 1987 and July 21, 1987 between the Governments of the United States and the People's Republic of China, agreement was reached to further amend the existing export licensing system to include the use of visas for shipments of silk blend and other vegetable fiber textiles and textile products in Categories 800-899, excluding merchandise in Categories 845(2) and 846(2) which are assembled in Hong Kong from parts made in the People's Republic of China provided these products have an appropriate export visa from Hong Kong (see 51 FR 27235 and 52 FR 3328, published on July 30, 1986 and February 3, 1987, respectively), produced or manufactured in China and exported on or after August 3, 1987. Shipments classified in these categories and exported from China on or after August 3, 1987 not visaed in accordance with the existing export licensing system will be denied entry.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

July 29, 1987

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on February 23, 1984, as amended, by the Chairman of the Committee for the Implementation of Textile Agreements which established an export licensing system for certain cotton, wool and man-made fiber textile products, produced or manufactured in China.

Effective on August 3, 1987 and until further notice, you are directed to prohibit entry into the United States (i.e., the 50 States, the District of Columbia and the Commonwealth of Puerto Rico) for consumption and withdrawal from warehouse for consumption of silk blend and other vegetable fiber textiles and textile products in Categories 800-899, excluding merchandise in Categories 845pt.[1] and 846pt.[2] if these products have an appropriate export visa from Hong Kong, produced or manufactured in China and exported on or after August 3, 1987 for which the Government of the People's Republic of

[1] The agreement provides, in part, that: (1) specific limits and sublimits may be exceeded by not more than seven percent for swing in any agreement period; (2) these same limits may be adjusted for carryforward and carryover up to 11 percent of the applicable category limit or sublimit; and (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement.

[1] In Category 845, only TSUSA numbers 381.3570, 381.8585, 381.9585, 384.2795, 384.5310, and 384.9664.

[2] In Category 846, only TSUSA numbers 381.3574, 381.8554, 384.2793 and 384.7781.

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China has not issued an appropriate visa. Shipments of merchandise in the foregoing categories exported before August 3, 1987 will not be denied entry for lack of an appropriate visa.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-17581 Filed 7-31-87; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1987; Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to procurement list.

SUMMARY: This action adds to Procurement List 1987 commodities to be produced by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: September 2, 1987.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On January 20, 1987 the Committee for Purchase for the Blind and Other Severely Handicapped published notice (52 FR 2145) of addition to Procurement List 1987, November 3, 1986 (51 FR 39945).

Comments were received from the current contractor for the disposable coveralls, the subcontractor which is actually manufacturing the coveralls for the current contractor, a former contractor, an industry association representing the manufacturers of nowoven products, three firms which manufacture nonwoven apparel, two members of Congress, the National Industries for the Severely Handicapped, and the workshop proposing to produce the disposable coveralls. The major issues raised in the comments concerned the impact on the current contractor for the coveralls, the impact on the subcontractor who is manufacturing the coveralls, the impact on the nonwoven apparel manufacturing industry, the capability of the workshop to produce the coveralls, the proposed fair market prices, and the opportunity to submit comments to the Committee.

Impact on Contractor

The current contractor for the coveralls reports that the proposed addition would be a severe loss and hardship on that firm since its current contract represents over one-third of that firm's sales to the Government of almost $2.8 million. The value of the current contract for the coveralls of $946,406 represents less than 3% of that firm's total sales of $34,000,000. It was also noted that this firm is not manufacturing the coveralls but is only serving as a distributor or dealer. The procurement history for these coveralls shows that, of the awards of Government contracts for these coveralls since 1983, the current contractor had not received a contract for these items during the three years prior to 1986, the date of the current contract.

The current contractor claims that past additions to the Procurement List have reduced that firm's sales by 40%, that its product line closely resembles the items on the Procurement List, and that additions to the Procurement List over the past five years have included several of the items on its product line. A review of the Committee's records of additions to its Procurement List shows that, during the past 14 years, that firm was a current contractor for only one item added to the Procurement List, a cotton bed sheet with a value of $432,665. That sheet was added to the Procurement List in March 1980 at which time the firm's sales were $18,000,000. An analysis of the firm's product listing shows that less than 25% of the items on the list have the same name as an item on the Committee's Procurement List. However, the fact that items on the two lists have the same generic name does not necessarily mean that they are comparable.

In view of the above, the impact of the addition on the current contractor is not considered to be serious.

Impact on Subcontractor

The firm which is actually manufacturing the coveralls (the subcontractor) reports that these coveralls represent 6.25% of its total revenues and that the loss of this business would result in the layoff of about 10% of its workforce with little likelihood of their finding employment in the local area. Considering that the subcontracting firm would not receive the full contract value of $946,406 and the subcontractor's projected annual sales are $19,000,000, the possible loss of the business would represent less than 5% of that firm's projected sales. Impact in the range from 5% to 6.25% of annual sales is not considered to be serious. On the other hand, the workshop has indicated that the addition of these coveralls to the Procurement List would provide employment for about 31 severely handicapped persons.

Impact on Apparel Manufacturing Industry

An industry association representing the manufacturers of nonwoven apparel and several other firms submitting comments stated that the proposed addition of the coveralls would harm a large number of small apparel manufacturers who have already been hurt by foreign imports. The association was requested to provide data on the annual value of the total sales of nonwoven apparel in the United States which would show how the proposed action would harm a large number of apparel manufacturers. The association did not provide the data requested. However, an article in the January 1987 publication of "Nonwovens Industry" (Table 5 on page 58) shows that the value of industiral/institutional disposable apparel was $110 million and that projected growth was "above average." In this connection, the article states "We expect nonwoven disposable industrial/institutional apparel to continue to expand at a very attractive rate." From the above, it appears that the procurement of these disposable coveralls represents less than 1% of a growing market for these and similar apparel items.

It is notworthy that three of the firms which commented on the impact of the proposed addition on the apparel manufacturers' industry did not submit bids on the most recent procurement of these coveralls.

A former contractor for the coveralls commented that the proposed addition would be detrimental to that firm since it would lose the opportunity to compete for this business. The former contractor has not received a Government contract for these coveralls since 1983 and that award was for only 55% of the Government's procurement of these coveralls in that year. The loss of the opportunity to bid on future procurements as the result of the addition of an item to the Procurement List is not considered to be serious adverse impact and, therefore, would not justify the Committee's refusing to add the coveralls to the Procurement List.

The former contractor also commented that that firm has two contracts with the Defense Personnel

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Support Center for disposable items and that the proposed action threatens that business. Those contracts are for different items from those being considered for addition to the Procurement List and, therefore, are not included in the current action. If those items were proposed for addition to the Procurement List at some future date, any cumulative impact of that action would be considered at that time.

Another member of the association reported that it supplies disposable coveralls to the General Services Adminsitration (GSA) under a three-year contract worth approximately $1 million and that the proposed action would jeopardize that contract. That firm's contract is to provide commercial type coveralls on a GSA Supply Schedule. The contract would be unaffected by the action being considered by the Committee which concerns only a particular type of coveralls being procured by the Defense Personnel Support Center and which are manufactured in accordance with a military specification.

The association also raised the point that there is only a limited supply of the Tyvek raw material which is used to manufacture these coveralls and that diverting the quantity of the raw material required for these coveralls to the workshop would reduce the amount available to other small apparel manufacturers. The specification for the disposable coveralls permits three types of nonwoven material, one of which is Tyvek. The workshop plans to use one of the other types of nonwoven material. Thus, the addition of these coveralls to the Procurement List would have no impact on the supply of Tyvek to the other apparel manufacturers who are using that material.

The association also pointed out that the addition of the coveralls would eliminate the technical expertise the Government receives through experienced contractors in the marketplace. There are already several disposable apparel items on the Procurement List. The workshops producing those items, as well as their central nonprofit agencies, are expanding their technical expertise in producing these types of items and they are able to share that expertise with the Government.

The proposed addition of the coveralls to the Procurement List would not cause significant harm to the apparel manufacturers of disposable garments.

Capability of Workshop to Produce Coveralls

The current subcontractor and the industry association questioned the capability of the workshop to produce a quality product and whether it would have the necessary production equipment on hand. The industry association also indicated that it would be difficult to measure the quality of disposable coveralls which might be manufactured by a workshop. The procuring activity, based on a recent on-site inspection of the workshop regarding its capability to produce disposable coveralls which are very similar to those being considered for addition to the Procurement List, has determined that the workshop is capable of producing the coveralls in accordance with Government specifications and either has or will have the necessary equipment to begin production by the time it would assume responsibility for supplying the coveralls.

The workshop reports that in the fall of 1986, it began the production of disposable coveralls, which are similar to the Government coveralls, for sale to commercial accounts and has produced 20,000 disposable coveralls to date. It reports that it has also produced 35,000 other sewing goods such as canvas bags for commercial customers.

In view of the above, the workshop has been determined to be capable of producing the Government's requirements for the coveralls.

Competitive Prices

The Committee's fair market prices for these coveralls are based on the median of the bids submitted in 1986 on the procurement which resulted in the current contract. A review of the bids submitted on the 1986 procurement by the four firms which had received awards by the Government to produce these coveralls from 1983 through 1985 shows that the proposed fair market prices of $1.98, plus $.044 for freight, fall within the range of the bids submitted by the four firms which had recently produced the coveralls for the Government. The bids submitted by those contractors ranged from $1.90 to $2.11, with the two firms which had been awarded contracts in the prior year, 1985, submitting bids of $2.05 and $2.11. Thus, the proposed prices are representative of the bids submitted by recent prior contractors and are fair market prices under the Committee's pricing procedures.

Opportunity to Submit Additional Comments

The notice of proposed addition to the Procurement List of these coveralls was published in the **Federal Register** on January 20, 1987, with comments due by February 19, 1987. The current contractor and a former contractor were notified directly by letter of the proposed action and were given until March 18, 1987, to submit comments. The time for submitting comments for the current contractor was extended until April 3, 1987. In late March 1987 an industry association requested additional time to submit comments. On April 2, 1987, the Committee staff reopened the comment period until April 24, 1987, and notified the current contractor that the period for receipt of that firm's comments was also extended until April 24, 1987. A request by the current contractor on April 23, 1987, for a further extension of the comment period was denied.

The Committee staff met with the Chairman and President of the Industrial Safety Equipment Association on April 17, 1987, to explain the Committee's program to them and to give them an opportunity to discuss the impact of the proposed addition action on the members of their association.

Several commentors requested that the Committee hold public hearings on this matter. The Committee provided an opportunity for the principal parties concerned to present views orally on this subject at its meeting on June 11, 1987.

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77 and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have serious economic impact on any contractors for the commodities listed.

c. The actions will result in authorizing small entities to produce the commodities procured by the Government.

Accordingly, the following commodities are hereby added to Procurement List 1987:

Coveralls, Disposable
8415–00–601–0792
8415–00–601–0793
8415–00–601–0794
8415–00–601–0797
8415–00–601–0801
8415–00–601–0802

C.W. Fletcher,
Executive Director.

[FR Doc. 87–17535 Filed 7–31–87; 8:45 am]
BILLING CODE 6820-33-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange; Proposed Amendments Relating to the Standard & Poor's 500 Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of Proposed Contract Market Rule Change.

SUMMARY: The Chicago Mercantile Exchange ("CME" or "Exchange") has submitted a proposal to amend its Standard & Poor's (S&P) 500 futures contract. The proposed amendments would add an exemption from speculative position limits applicable to the S&P 500 futures contract for certain "cash-substitute" positions. The proposed amendments define such positions, the conditions under which cash-substitute exemptions would be granted by the Exchange and the procedures to be followed by traders seeking such exemptions.

In accordance with section 5a(12) of the Commodity Exchange Act ("Act") and acting pursuant to the authority delegated by Commission Regulation 140.96, the Director of the Division of Economic Analysis of the Commodity Futures Trading Commission ("Commission") has determined, on behalf of the Commission, that the proposal is of major economic significance and that, accordingly, publication of the proposal is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Act.

DATE: Comments must be received on or before September 2, 1987.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the CME S&P 500 futures contract.

FOR FURTHER INFORMATION CONTACT: Ronald Hobson, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, (202) 254–7303.

SUPPLEMENTARY INFORMATION: The CME's S&P 500 futures contract is subject to a speculative position limit of 5,000 contracts net long or net short in all contracts months combined. This limit was adopted by the Exchange and approved by the Commission pursuant to the requirements of Commission Regulation 1.61. Consistent with this Regulation, Exchange rules provide for exemptions from the 5,000-contract limit for bona fide hedging, intercommodity spread and arbitrage positions along with specified procedures that traders must follow in order to obtain such exemptions.

The proposed amendments would add an additional category of exemptions from the 5,000-contract S&P 500 futures position limit for so-called "cash-substitute" positions. The amendments being proposed by the CME are printed below, using bracketing to indicate deletions and italics to indicate additions.

STANDARD & POOR's 500

4002. FUTURES CALL

F. Exemptions

The foregoing limits shall not apply to (*1*) bona fide hedge positions meeting the requirements of Regulation 1.3(z)(1) of the CFTC and the rules of the Exchange, [and shall not apply to] (*2*) arbitrage positions and inter-commodity spread positions subject to Rule 543.B *and (3) cash-substitute positions described in Rule 4006.*

4006. CASH-SUBSTITUTE POSITIONS.—For purposes of this rule, the term "cash-substitute positions" means positions which are economically appropriate to the management of risks in the conduct and management of a commercial enterprise, including the following—

Long positions in futures whose underlying commodity value does not exceed the sum of:

1. cash set aside in an identifiable manner, or short-term U.S. Treasury obligations or other U.S. dollar denominated, high-quality, short-term debt instruments so set aside, plus any funds deposited as margin on such positions; and

2. accrued profits on such positions held at the futures commission merchant.

A clearing member shall not carry a cash-substitute account which by itself or in accumulative total with other accounts of the owner exceeds the speculative position limits of Chapter 40, unless the President approves and unless—

The applicant has applied to the Market Surveillance Department on forms provided by the Exchange, wherein he requests a maximum number of positions and states under oath that:

1. The intended positions will be cash-substitute positions.

2. The positions are kept in a special account on the books of a clearing member.

3. The prospective applicant will comply with whatever limitations are applied by the Exchange with regard to said positions.

4. The applicant agrees to submit immediately a supplemental statement explaining any change in circumstances affecting his position.

5. The applicant complies with all other Exchange rules and requirements.

6. The positions are moved in an orderly manner in accordance with sound commercial practices, and are not initiated or liquidated in a manner calculated to cause unreasonable price fluctuations or unwarranted price changes. The applicant does not use said positions in an attempt to violate or avoid Exchange rules, or otherwise impair the good name or dignity of the Exchange.

The President shall, on the basis of the application and supplemental information which the Exchange may request, determine whether the positions shall be approved as cash-substitute positions. The President may impose such limitations as are commensurate with the applicant's business needs, financial ability and personal integrity. The President and the Business Conduct Committee may, from time to time, review approvals and, for cause, revoke said approvals or place limitations thereon.

The applicant may appeal any decision of the President or the Business Conduct Committee to the Board.

The applicant shall be exempt from emergency orders reducing speculative limits or restricting trading but only to the extent provided in such order and only if the approvals required by this rule are secured by the applicant.

* * * * *

In support of these proposed amendments, the Exchange noted that cash-substitute positions, as defined by the amendments, are used by money managers to create so-called synthetic index funds and "that such strategies are used to take advantage of daily liquidity and desirable transaction cost features" of the S&P 500 futures market. The Exchange stated further that the proposed amendments are consistent with the legislative history of the Futures Trading Act of 1986.[1] The Exchange also noted that the Commission's Financial Products Advisory Committee (FPAC) recently has recommended that the Commission allow the type of speculative limit

[1] H.R. Rep. No. 624, 99th Cong. 2d Sess. 1, 46 (1986).

exemption for which the CME is seeking approval.[2]

Finally, the Exchange argued that the proposed amendments are not inconsistent with the stated purpose of speculative limits, *viz.*, the prevention of excessive speculation arising from extraordinarily large futures contract positions in a commodity which may cause sudden or unreasonable fluctuations or unwarranted changes in the price of such commodity. Commodity Exchange Act, section 4a(1); 17 CFR 1.61(a). In this regard, the CME stated its belief that

> • • • unlevereged cash substitute positions in S&P 500 futures do not have significantly greater potential to cause sudden fluctuations or unwarranted changes in futures prices than do bona-fide hedging positions (under the current Commission definition), spreads, straddles, and arbitrage positions, all of which are allowed to be exempted under Rule 1.61.

Interested persons are requested to comment on the general question of whether the proposed amendments are consistent with the objectives, noted above, of section 4a(1) of the Act and Commission Regulation 1.61. In this regard, it is noted that the Exchange believes that the set aside of cash or cash equivalents against a long S&P 500 futures position renders such futures position unleveraged. Is the CME requirement that the value not exceed cash or funds "set aside in an identifiable manner" sufficient to assure that such positions are "unleveraged" or, *e.g.*, should such funds be segregated from a firm's other capital or required to be deposited in an escrow account? Finally, since both the Congressional discussion and the FPAC recommendation noted above were made in the context of financial institutions' use of stock index and interest rate futures and options, comment is invited on providing such cash substitute exemptions only to financial institutions which normally engage in risk management activities in the underlying equity and debt markets.

The materials submitted by the Exchange in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1984)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, by September 4, 1987.

Issued in Washington, DC, on July 28, 1987.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 87-17805 Filed 7-31-87; 8:45 am]

BILLING CODE 6351-01-M

[2] *The Hedging Definition and the Use of Financial Futures and Options: Problems and Recommendations for Reform*, Report of the Financial Products Advisory Committee of the Commodity Futures Trading Commission, June 1987

DEPARTMENT OF EDUCATION

[CFDA No. 84.051G]

Inviting Applications for New Awards Under the Endowment Challenge Grant Program for Fiscal Year 1987

Purpose: Provide grants to eligible institutions of higher education so that they can establish or increase their endowment funds.

Eligiblity: Potential applicants, including current grantees under any of the Institutional Aid Programs authorized by Title III of the Higher Education Act, are advised that a notice was published in the Federal Register on June 22, 1987, 52 FR 23492–23493, telling interested parties how to become eligible to receive Endowment Challenge Grant funds.

Deadline for Transmittal of Applicotions: Friday, September 25, 1987

Applications Available: August 17, 1987

Available Funds: $19.8 million

Estimated Range of Awards: Regular grants: $50,000–$250,000; large grants: Over $1,000,000.

Estimated Average Size of Awards: $200,000.

Estimated Number of Awards: 80 to 99

Project Period: 240 months

Applicable Regulations: The Endowment Challenge Grant Program Regulations, 34 CFR Part 628.

For Applications or Information Contact: Ms. Anne Price Collins, Chief, Challenge Grant and Endowment Branch, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3042, ROB–3, Washington, DC 20202, Telephone: (202) 732–3308.

Program Authority: 20 U.S.C. 1065a.

Dated: July 29, 1987.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 87-17560 Filed 7-31-87; 8:45 am]

BILLING CODE 4000-01-M

National Board of the Fund for the Improvement of Postsecondary Education; Closed meeting

AGENCY: Department of Education.

ACTION: Notice of Closed Meeting.

SUMMARY: This notice sets forth the proposed agenda of a forthcoming meeting of the National Board of the Fund for the Improvement of Postsecondary Education. This notice also describes the functions of the Board. Notice of this meeting is required under section10(a)(2) of the Federal Advisory Committee Act.

DATE: August 17, 1987 at 5:30 p.m. to August 19, 1987 at 12:00 p.m.

ADDRESS: Embassy Row Hotel, 2015 Massachusetts Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Charles H. Karelis, Director, Fund for the Improvement of Postsecondary Education, 400 Maryland Avenue, SW., Room 3100, ROB #3, Washington, DC 20202 (202–245–8091).

SUPPLEMENTARY INFORMATION: The National Board of the Fund for the Improvement of Postsecondary Education is established under section 1007 of the Higher Education Amendments of 1980, Title X (20 U.S.C. 1135a–1). The National Board of the Fund is established to "advise the Secretary and the Director of the Fund for the Improvement of Postsecondary Education . . . on the selection of projects under consideration for support by the Fund in its competitions."

The meeting of the National Board is closed to the public. The meeting is for the purpose of reviewing and evaluating grant applications submitted to the Fund under the Innovative Projects for Community Services and Student Financial Independence Program.

The meeting of the National Board will be closed to the public from 5:30 p.m., August 17 until the conclusion of the agenda, approximately 12:00 p.m., August 19. The meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. Appendix 2) and under exemptions (4) and (6) of 5 U.S.C. 552b(c) (Pub. L. 94–409). The review and discussions of the applications and the qualifications of proposed staff may disclose commercial or financial information obtained from a

person and privileged or confidential or which would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session.

A summary of the activities at the closed session and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b will be available to the public within fourteen days of the meeting.

Records are kept of all Board proceedings, and are available for public inspection at the office of the Fund for the Improvement of Postsecondary Education, Room 3100, Regional Office Building #3, 7th & D Streets, S.W., Washington, DC 20202 from the hours of 8:00 a.m. to 4:30 p.m.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 87-17473 Filed 7-31-87; 8:45 am]

BILLING CODE 4000-01-M

Office of Postsecondary Education

PLUS and Supplemental Loans for Students Programs

AGENCY: Department of Education.

ACTION: Notice of SLS and PLUS Interest Rate for the Period July 1, 1987, Through June 30, 1988.

The Assistant Secretary for Postsecondary Education announces the interest rate for variable rate Supplemental Loans for Students (SLS) and PLUS loans to be 10.27% for the period July 1, 1987, through June 30, 1988. The interest rate for these loans is provided under section 427A(c) of the Higher Education Act of 1965 (the Act), as amended (Pub. L. 89-329).

The Higher Education Amendments of 1986 (Pub. L. 99-498) established a new SLS and PLUS variable interest rate applicable on a calendar year basis, pursuant to section 427A(c) of the Act. This variable interest rate applied to SLS and PLUS loans for periods of enrollment beginning on or after July 1, 1987. The Assistant Secretary announced a variable rate for calender year 1987 of 10.03 percent (52 FR 6861).

The Higher Education Technical Amendments Act of 1987 (Pub. L. 100-50) amended both the variable interest rate formula and the applicability of that rate. Section 427A(c) of the Act now provides that the variable interest rate applies for each 12-month period beginning July 1 and ending June 30, and equals the bond equivalent rate of the 52-week Treasury bills auctioned at the final auction prior to June 1, plus 3.25 percent. The revised variable rate applies to SLS and PLUS loans disbursed on or after July 1, 1987, and SLS and PLUS loans made prior to that date which are refinanced at the variable rate.

The interest rate for SLS and PLUS loans disbursed on or after July 1, 1987, or refinanced SLS and PLUS loans, will be set each year after the final auction (prior to June 1) of the 52-week Treasury bills.

Pursuant to section 427A(c) of the Act, as amended by Pub. L. 100-50, the Assistant Secretary has determined the interest rate for variable-rate PLUS and SLS loans for the period July 1, 1987 through June 30, 1988 in the following manner:

Step 1. By determining the bond equivalent rate of the 52-week Treasury bills auctioned at the final auction prior to June 1, 1987 (7.02 percent); and

Step 2. By adding 3.25 percent to that average.

FOR FURTHER INFORMATION CONTACT: Ralph B. Madden, Program Analyst, Division of Policy and Program Development, Department of Education on (202) 245-2475.

(20 U.S.C. 1077a(c))

(Catalog of Federal Domestic Assistance No. 94.032, Guaranteed Student Loan Program and PLUS Program)

Dated: July 29, 1987.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 87-17562 Filed 7-31-87; 8:45 am]

BILLING CODE 4000-01-M

Guaranteed Student Loan Program, SLS Program, PLUS Program, and Consolidation Loan Program

AGENCY: Department of Education.

ACTION: Notice of Special Allowance for Quarter Ending June 30, 1987.

The Assistant Secretary for Postsecondary Education announces a special allowance to holders of eligible loans made under the Guaranteed Student Loan Program (GSLP), the Supplemental Loans for Students (SLS) Program, the PLUS Program or the Consolidation Loan Program. This special allowance is provided for under section 438 of the Higher Education Act of 1965 (the Act), as amended (20 U.S.C. 1087-1).

Pursuant to the requirements of section 252 of Pub. L. 99-177, the Balanced Budget and Emergency Deficit Control Act of 1985 (popularly known as the Gramm-Rudman-Hollings Act), the President issued a sequestration order on February 4, 1986 directing implementation of the reductions contained in the law. Congress ratified and affirmed the order as law (Pub. L. 99-366; July 31, 1986). Section 256 of Pub. L. 99-177 provides that if a sequestration order is issued, the special allowance formula for loans made after the order takes effect and before the end of the fiscal year is adjusted by reducing the rate provided in section 438(b)(2)(A)(iii) of the Higher Education Act by 0.4 percent. The reduction will apply to the first four special allowance payments on loans made on or after March 1, 1986, and before October 1, 1986.

Except for loans subject to section 438(b)(2)(B) of the Act, 20 U.S.C. 1087-1(b)(2)(B), for the quarter ending June 30, 1987, the special allowance will be paid at the following rates:

	Applicable interest rate percent	Annual special allowance rate percent	Special allowance rate percent for quarter ending June 30, 1987
I. GSLP, PLUS or Consolidation loans made prior to October 1, 1981:			
	7	2.5	0.625
	9	0.5	0.125
II. GSLP, SLS or PLUS loans made on or after October 1, 1981, but prior to November 15, 1986; for periods of enrollment beginning prior to November 16, 1986; Consolidation loans made on or after October 1, 1981, but prior to November 16, 1986:			
A. Loans *not* subject to sequester order (Pub. L. 99-177)	7	2.42	0.605
	8	1.42	0.355
	9	0.42	0.105
	12	0.00	0.00
	14	0.00	0.00
B. Loans subject to sequester order (Pub. L. 99-177)	7	2.02	0.505
	8	1.02	0.255
	9	0.02	0.005
	12	0.00	0.00
III. GSLP loans made on or after November 16, 1986, or made for periods of enrollment beginning on or after November 16, 1986; SLS or PLUS loans made at a fixed rate of interest on or after November 16, 1986, or for periods of enrollment beginning on or after November 16, 1986; Consolidation loans made on or after November 16, 1986:			
	7	2.17	0.5425
	8	1.17	0.2925
	9	0.17	0.0425
	10	0.00	0.00
	11	0.00	0.00
	12	0.00	0.00
	13	0.00	0.00
	14	0.00	0.00

The Assistant Secretary determines the special allowance rate in the manner

specified in the Act, for loans at each applicable interest rate, by making the following four calculations:

(a) *Step 1.*

Determine the average bond equivalent rate of the 91-day Treasury bills auctioned during the quarter for which this notice applies (5.92 percent for the quarter ending June 30, 1987);

(b) *Step 2.*

Subtract from that average the applicable interest rate of loans for which a holder is requesting payment;

(c) *Step 3.*

(1) Add 3.5 percent to the remainder, and, in the case of loans made before October 1, 1981, round the sum upward to the nearest one-eighth of one percent; or

(2) Add 3.1 percent to the remainder, in the case of loans subject to the sequester order issued pursuant to Pub. L. 99–177; or

(3) Add 3.25 percent in the case of (i) GSLP loans made on or after November 16, 1986, or made for periods of enrollment beginning on or after November 16, 1986, (ii) SLS or PLUS loans made at a fixed rate of interest on or after November 16, 1986, or made for periods of enrollment beginning on or after November 16, 1986, or (iii) Consolidation loans made on or after November 16, 1986: and

(d) *Step 4.*

Divide the resulting percent in Step 3 (either (c)(1), (c)(2), or (c)(3), as applicable) by four.

FOR FURTHER INFORMATION CONTRACT: Ralph B. Madden, Program Analyst, Guaranteed Student Loan Branch, Division of Policy and Program Development, Department of Education on (202) 245–2475.

(Catalog of Federal Domestic Assistance No. 84.032, Guaranteed Student Loan Program and PLUS Program)

Dated: July 29, 1987.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 87–17561 Filed 7–31–87; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Alaska Power Administration

Divestiture Status Report

AGENCY: Alaska Power Administration, DOE.

ACTION: Notice of Availability of "Divestiture Status Report: The Purchase Proposal Process," July 10, 1987.

SUMMARY: The Alaska Power Administration (APAd) has prepared a new status report describing recent activities towards divestiture of the two APAd hydroelectric projects. Notice is hereby given that copies of the new report are available to interested parties. The new report summarizes divestiture activities since distribution of the January 14, 1987, "Revised Work Plan and Proposed Sale Structure," and describes the start of the process to obtain specific purchase proposals. The new report includes the public comments received on the January 14 report, the invitations for purchase proposals, and an updated schedule of divestiture activities. The proposal process follows the work plan and structure contained in the January 14 report, with some changes in the schedule of activities. The proposal process was started on April 1, 1987, with invitations for Snettisham Project purchase proposals. Responses were requested by August 3, 1987. APAd extended invitations for Eklutna Project purchase proposals on May 20, 1987, with responses requested by September 21, 1987. APAd will consider extending the response dates if additional time is needed to prepare the proposals. The updated schedule retains the target date of February 1, 1988, for submitting proposed legislation to authorize the APAd divestiture for Congressional consideration.

DATES: The July 10, 1987 "Divestiture Status Report: The Purchase Proposal Process" is available immediately and at no charge upon request at the address below.

ADDRESS: The July 10 report may be obtained at the Alaska Power Administration office, Room 835, Juneau Federal Building, 709 West Ninth Street, Juneau, Alaska, between 8:00 a.m. and 4:30 p.m., Monday through Friday. Requests for the report may be mailed to Administrator, Alaska Power Administration, P.O. Box 020050, Juneau, Alaska 99802–0050.

FOR FURTHER INFORMATION CONTACT: Robert J. Cross, Administrator, or Mary I. Rivera, Assistant to the Administrator, at the address above or 907–586–7405 (commercial and FTS).

SUPPLEMENTARY INFORMATION: The Alaska Power Administration (APAd) is a unit of the U.S. Department of Energy and is responsible for operation, maintenance, transmission and power marketing for the two Federal hydroelectric projects in Alaska. These are the 30,000 kilowatt Eklutna Project which has served the Anchorage and Palmer areas since 1955, and the 47,160 kilowatt Snettisham Project which has been Juneau's main power source since 1975.

An expansion of the Snettisham Project—the 31,000 kilowatt Crater Lake Unit—is under construction by the Corps of Engineers, with power production expected in October 1988.

APAd sells power at wholesale to five electric utilities and to the State of Alaska for a State-owned hatchery facility at Snettisham.

Sale of the projects to the State of Alaska or other non-Federal owner was proposed along with the President's budget for FY 1986, 1987, and 1988.

As described in the July 10 Status Report, the divestiture work has now reached the stage of inviting specific purchase proposals.

The solicitation is limited to electric utilities who now purchase power from APAd, municipalities in the areas served by Eklutna and Snettisham, the State of Alaska, or combination of these entities.

Proposals will not be considered unless they meet minimum payment criteria (payment within five (5) years of enactment of Federal legislation authorizing the sale, and payment of not less than present value of future interest and principal payments the Treasury would receive under continued Federal ownership).

APAd will evaluate proposals received using the evaluation criteria published in the Janauary 14, 1987, APAd report, "Revised Work Plan and Proposed sale Structure" to determine which proposal or proposals best satisfy the objectives, guidelines, and priorities also published in the January 14 report.

Conditional purchase agreements will be subsequently negotiated and presented to the Congress along with proposed legislation for authorization of the sale.

Dated: July 10, 1987.

Robert J. Cross,

Administrator.

[FR Doc. 87–17573 Filed 7–31–87; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Agency Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of requests submitted for clearance to the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at

the end of this notice to the Office of Management and Budget (OMB) for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not contain information collection requirements contained in new or revised regulations which are to be submitted under 350(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by DOE.

Each entry contains the following information: (1) The sponsor of the collection (the Department of Energy component of Federal Energy Regulatory Commision (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, or extension; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses annually; (11) Annual respondent burden, i.e., an estimate of the total number of hours needed to respond to the collection; and (12) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed within 30 days of publication of this notice. Last notice issued Wednesday, July 22, 1987.

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards, at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Carole Patton, Office of Statistical Standards (EI–70), Energy Information Administration, M.S. 1H–023, Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586–2222.

SUPPLEMENTARY INFORMATION: If you anticipate that you will be submitting comments, but find it difficult to do so within the periopd of time allowed by this Notice, you should advise the OMB DOE Desk Officer of your intention to do so as soon as possible.

The energy information collection to OMB for review was:

1. Energy Information Administration
2. EIA–878A/C (Formerly EIA–141 and EIA–429)
3. NA
4. Residential Transportation Energy Consumption Survey
5. Reinstatement
6. Triennially
7. Voluntary
8. Individuals or households
9. 1,000 respondents
10. 1,000 responses
11. 417 hours
12. Forms EIA/C–876A/C will provide information on the number and types of vehicles per household, annual mileage, gallons of fuel consumed, fuel type used, price paid for fuel, annual fuel expenditures and fuel efficiency as measured by miles-per-gallon. Data will be published.

1. International Affairs and Energy Emergencies
2. IE–411
3. 1901–0260
4. Coodinated Regional Bulk Power Supply Program
5. Reinstatement of a previously approved collection for which approval has expired
6. Annually
7. Voluntary
8. Businesses or other for profit, State and local governments, Federal agencies or employees
9. 693 respondents
10. 693 responses
11. 17,502 hours
12. The IE–411 provides a single, comprehenisve source of information on current and planned electric power supply for the U.S. The data are used to evaluate the current and projected reliability of bulk electric power supply, and the effects of unforeseen changes in powerplant construction schedules. Each of the nine Regional Electric Reliability Councils submit an IE–411 report compiled from data furnished by the electric utilities within the Councils' areas.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. 93–275, Federal Energy Administration Act of 1974, (15 U.S.C. 764(a), 764(b), 772(b), and 790a).

Issued in Washington, DC, July 28, 1987.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 87–17574 Filed 7–31–87; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. EL87–40, et al.]

Applications Filed with the Commission; Hydroelectric Applications (Kenneth Powers et al.)

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. Type of Application: Declaration of Intention.

b. Project No: EL87–40.

c. Date Filed: January 13, 1987.

d. Applicant: Kenneth Powers.

e. Name of Project: Powers.

f. Location: On an unnamed stream, Twin Falls County, Idaho., SW¼NW¼ of Section 10, Township 9 South, Range 15 East of the Boise Meridian, on the south side of the Snake River.

g. Filed Pursuant to: Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b). Contact Person: Fred D. Decker, Decker and Hollified, P.A. 249 Third Avenue East, P.O. Box 66, Twin Falls, Idaho 83303–0066.

i. Comment Date: August 27, 1987.

j. Description of Project: The proposed project would consist of: (1) a 3-foot-high, 12-foot-wide diversion/inlet structure; (2) a 30-inch-diameter, 1,765-foot-long penstock; (3) a powerhouse containing a turbine-generating unit with a total capacity of 20 kW; and (4) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power form a government dam; or (4) if applicable, has involved or have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

k. Purpose of Project: The proposed project woud furnish electric power for the Applicant's fruit farm operation.

l. This notice also consists of the following standard paragraphs: *B, C, and D2.*

2 a. Type of Application: Minor License Under 5 MW.

b. Project No: P–9230–001.

c. Date Filed: January 15, 1987.

d. Applicant: Jewett City Electric Light Plant.

e. Name of Project: Pachaug River.

f. Location: On the Pachaug River in New London County, Connecticut.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Joseph M. Dudek, Jewett City Electric Light Plant, 29 Park Square, Jewett City, Connecticut 06351, (203) 376–2955.

i. FERC Contact: Cheryl Phillips (202) 376–9821.

j. Comment Date: September 18, 1987

k. Description of Project: The proposed project would consist of the Ashland Pond Dam Development and the Slater Dams Development. The proposed Ashland Pond Dam Development would consist of: (1) an existing 25-foot-high, 450-foot-long earth embankment dam; (2) an existing reservoir with a surface area of 100 acres and a gross storage capacity of 650 acre-feet at 126.9 feet msl; (3) a proposed 11-foot-wide by 33-foot-long reinforced concrete powerhouse housing a double regulated propeller-type turbine and generator with a rated capacity of 190 kW and; (4) a proposed 205-foot-diameter steel penstock; (5) a proposed 200-foot-long transmission line. The estimated average annual energy produced by the project would be 828,000 kWh under a net hydraulic head of 17 feet.

The proposed Slater Dams Development would consist of: (1) the existing Upper Slater Dam, a 15.4-foot-high, 109-foot-long concrete and stone masonary broad crest structure; (2) the existing Lower Slater Dam, a 9.8-foot-high, 78-foot-long concrete ogee spillway; (3) an existing reservoir with a surface area of 3 acres for the Upper Slater Dam and .3 acres for the Lower Slater Dam, and a gross storage capacity of 6 acre-feet for the Upper Slater Dam at 105.9 feet msl and .5 acre-feet for the Lower Slater Dam at 86.9 feet msl; (4) a proposed 17-foot-wide by 32-foot-long reinforced powerhouse housing a double regulated propeller-type turbine and generator with a rated capacity of 300 kW; (5) a proposed 370-foot-long, 5-foot-diameter steel penstock; and (6) a proposed 200-foot-long transmission line. The estimated average annual energy produced by the project would be 1,127,000 kWh under a net hydraulic head of 26 feet.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

3 a. Type of Application: Major License.

b. Project No: 9705–001.

c. Date Filed: December 27, 1985.

d. Applicant: Baker Falls Corporation.

e. Name of Project: Hudson Falls Project.

f. Location: On the Hudson River near the Town of Moreau and the Village of Hudson Falls, in Saratoga, Washington, and Warren Counties, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Paul J. Elston, Baker Falls Corporation, 420 Lexington Ave., Suite 440, New York, NY 10170, (212) 986–0440.

i. FERC Contact: Robert Bell—(202) 376–5706.

j. Comment Date: August 28, 1987.

k. Competing Application: Project No. 5276–000, Date Filed: 8/21/81.

l. Description of Project: The proposed project would consist of: (1) a proposed 1,370-foot-long, 25-foot-high concrete gravity dam (approximately 1,050 feet upstream of the existing Niagara Mohawk Power Corporation's Hudson Falls Dam); (2) an impoundment having a surface area of 220 acres, a storage capacity of 2,200 acre-feet and a normal water surface elevation of 219.7 feet m.s.l.; (3) a proposed 313-foot-long, 15-foot-wide reinforced concrete headwork structure which would have 16 gated openings; (4) a proposed 1,640-foot-long, 90-foot-wide, and 30-foot-deep canal with reinforced concrete side slopes and a reinforced plastic membrane bottom; (5) a proposed reinforced concrete power intake; (6) two proposed 120-foot-long, 21-foot-diameter steel penstocks; (7) a proposed powerhouse containing two generating units having a total installed capacity of 45,600 kW; (8) a proposed tailrace; (9) a proposed 3,500-foot-long, 115-kV transmission line; and (10) appurtenant facilities. The applicant estimates the average annual generation would be 20.5 GWh. The applicant estimates the cost of this project would be $94,921,000.

m. Purpose of Project: All project energy produced would be sold to the Niagara Mohawk Power Corporation.

n. This notice also consists of the following standard paragraphs: A4, B, and C.

4 a. Type of Application: Preliminary Permit.

b. Project No: 10382–000.

c. Date Filed: April 13, 1987.

d. Applicant: Snoqualmie River Hydro.

e. Name of Project: North Fork Snoqualmie River.

f. Location: On the North Fork Snoqualmie River and its tributaries within the Snoqualmie-Mt. Baker National Forest in T24N, R8 and 9E and T25N, R9 and 10E near North Bend and Snoqualmie in King County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Lawrence J. McMurtrey, 12122—196th Avenue, NE, Redmond, WA 98053, (206) 885–3986.

i. FERC Contact: Julie Bernt, (202) 376–9812.

j. Comment Date: September 17, 1987.

k. Description of Project: The proposed project would consist of the following:

(A) The North Fork Snoqualmie Development would consist of: (1) two concrete intake structures buried in the streambed on tributaries of the North Fork Snoqualmie River at elevation 2,000 feet; (2) a 6,000-foot-long, 48-inch-diameter penstock; (3) a powerhouse containing one generating unit with a rated capacity of 1,580 kW; and (4) a 13-mile-long transmission line.

(B) The Lennox Creek Development would consist of: (1) four concrete intake strucutures buried in the streambed on tributaries of Lennox Creek at elevation 2,000 feet; (2) a 1,200-foot-long, 60-inch-diameter penstock; (3) a powerhouse containing one generating unit with a rated capacity of 1,879 kW; and (4) a 13-mile-long transmission line.

(C) The Hancock Creek Development would consist of: (1) one concrete intake structure buried in the streambed of Hancock Creek at elevation 2,400 feet; (2) a 5,000-foot-long, 36-inch-diameter penstock; (3) a powerhouse containing one generating unit with a rated capacity of 4,328 kW; and (4) a 5-mile-long transmission line.

(D) The Big Creek Development would consist of: (1) one concrete intake structure buried in the streambed of Big Creek at elevation 2,400 feet; (2) a 4,000-foot-long, 12-inch-diameter penstock; (3) a powerhouse containing one generating unit with a rated capacity of 1,183 kW; and (4) an 8-mile-long transmission line.

The total installed capacity would be 8,970 kW. Applicant estimates that the average annual energy production would be 39.27 GWh and the cost of the work to be performed under the preliminary permit would be $44,000.

l. Purpose of Project: The power produced is to be sold to a local power company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

5 a. Type of Application: Preliminary Permit.

b. Project No: 10393–000.

c. Date Filed: April 20, 1987.

d. Applicant: Heron Hydro Associates.

e. Name of Project: Heron Dam Hydro Project.

e. Location: On Willow Creek in Rio Arriba County, NM: On lands of the Tierra Amarilla Land Grant.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Christine W. Townsend, Synergics, Inc., 410 Severn Avenue, Suite 313, Annapolis MD 21403.

i. FERC Contact: Jesse W. Short (202) 273–9818.

j. Comment Date: September 21, 1987.

k. Description of Project: The proposed project would utilize the existing U.S. Bureau of Reclamation's Heron Dam (crest elevation at 7,199 feet m.s.l.) and Reservoir and would consist of: (1) a new penstock, 10.5 feet in diameter and 100 feet long, connecting to the existing outlet works near the left dam abutment; (2) a new powerhouse to contain two turbine generator units rated at 4,000 kW each for a total installed capacity of 8,000 kW; (3) a tailrace with a capacity of 5,300 cubic feet per second, returning flow to the creek immediately downstream of the dam; (4) a new 24.9–kV transmission line about 3 miles long; and (4) appurtenant facilities. The Applicant estimates that the average annual energy output would be 15,700,000 kWh. The Applicant estimates that the cost of studies under the permit would be $50,000.

l. Purpose of Project: Project energy would possibly be sold to the Public Service Company of New Mexico, Plains Electric Generation and Transmission, Northern Rio Arriba Electric Coop and the Western Area Power Administration.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

6 a. Type of Application: Preliminary Permit.

b. Project No: P–10430–000.

c. Date Filed: June 12, 1987.

d. Applicant: Franklin Hydro, Inc.

e. Name of Project: Lake Abanakee Dam.

f. Location: On the Indian River in Hamilton County, New York.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Frank O. Christie, Ballard Mill, S. William St., Malone, New York 12953, (518) 483–1943.

i. FERC Contact: Cheryl Phillips (202) 376–9821.

j. Comment Date: September 18, 1987.

K. Description of Project: The proposed project would consist of: (1) an existing 12-foot-high and 120-foot-long concrete dam at elevation 1594 feet USGS; (2) an existing 345-acre surface area reservoir with a storage capacity of 2000 acre-feet at elevation 1594 USGS; (3) a proposed powerhouse to contain one turbine/generator unit with an installed capacity of 400 kW; (4) a proposed tailrace; (5) a proposed 480-v transmission line 85 feet-long; and (6) appurtentant facilities. The estimated average annual energy produced by the project would be 1,600,000 kWh operating under a net hydraulic head of 8 feet. The dam is owned by the Town of Indian Lake. The applicant estimated that the cost of the work to be performed under the preliminary permit would be $13,000. Project power will be sold to the Niagara Mohawk Power Company.

This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C & D2.

7 a. Type of Application: Preliminary Permit.

b. Project No: 10422–000.

c. Date Filed: May 28, 1987.

d. Applicant: Diobsud Hydro Power.

e. Name of Project: Diobsud Creek.

f. Location: On Diobsud Creek in Skagit County, Washington, partially within Mt. Baker-Snoqualmie National Forest Townships 35 and 36 North, Ranges 10 and 11 East, Willamette Meridian.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Lawrence J. McMurtrey, 12121 196th Avenue NE., Redmond, WA 98052, (206) 885–3986.

i. FERC Contact: James Hunter, (202) 376–9814.

j. Comment Date: September 17, 1987.

k. Description of Project: The proposed project would consist of: (1) a 3-foot-wide diversion structure in the streambed at elevation 960 feet; (2) a 120-inch-diameter, 6,000-foot-long penstock; (3) a powerhouse at elevation 400 feet containing a generating unit rated at 7,289 kW, producing an average annual output of 31.9 Gwh; and (4) a 4-mile-long transmission line connecting to a utility company distribution line at Marblemount. The estimated cost of permit activities is $40,000.

l. Purpose of Project: The project power would be sold.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

8 a. Type of Application: Preliminary Permit.

b. Project No: P–10423–000.

c. Date Filed: June 1, 1987.

d. Applicant: The City of Charleston, Illinois.

e. Name of Project: Lake Charleston.

f. Location: Embarrass River, Coles County, Illinois.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Terrence L. Turner, W.M. Lewis & Associates, Inc., P.O. Bos 1383, Portsmouth, Ohio 45662, (614) 345–5650.

i. FERC Contact: Dean Wight (202) 376–9820.

j. Comment Date: September 24, 1987.

k. Description of Project: The proposed project would consist of: (1) an existing earthfill and concrete dam and spillway 820 feet long and 33 feet high; (2) an existing impoundment of 350 acres surface area and 2,000 acre-feet capacity at a normal maximum surface elevation of 581 feet NGVD; (3) a proposed 120-foot-long outlet works; (4) a proposed steel and concrete powerhouse 40 feet wide, 30 feet long, and 45 feet high, to enclose two proposed turbine-generators of 350 kW capacity each; (5) a proposed 12.5-kV transmission line 2.1 miles long; and (6) appurtenant facilities.

The net hydraulic head would be 19 feet. The estimated annual energy production is 2.8 GWh. The existing facilities are owned by the applicant, who estimates that the cost of the work to be performed under the preliminary permit would by $20,000.

This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C and D2.

9 a. Type of Application: Preliminary Permit.

b. Project No: P–10419–000.

c. Date Filed: May 26, 1987.

d. Applicant: Richard S. De Angelis.

e. Name of Project: Deer River.

f. Location: On the Deer River, in Dickinson Center, Franklin County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Richard S. De Angelis, P.O. Box 74, Main St., Dickinson Center, New York 12930 (518) 856–9881.

i. FERC Contact: Thomas O. Murphy (202) 376–9829.

j. Comment Date: September 21, 1987.

k. Description of Project: The proposed project would consist of: (1) a proposed 6-foot-high, 30-foot long, reinforced concrete dam; (2) a proposed ¼-acre reservoir; (3) a proposed 1,500-foot-long, 6-foot-diameter, steel penstock; (4) a proposed powerhouse containing an estimated installed generating capacity of 495–kW; (5) a proposed 1,000-foot-long, 4.16–kV transmission line; (6) a short tailrace; and (7) appurtentant facilities. The average annual energy generation is estimated to be 2 GWh. The applicant estimated that the cost of the studies under permit would be $20,000.

l. Purpose of Project: All project power generated would be sold to Niagara Mohawk.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, & D2.

10 a. Type of Application: Preliminary Permit.

b. Project No.: 10394–000.

c. Date Filed: April 20, 1987.

d. Applicant: Trenton Falls Hydroelectric Company.

e. Name of Project: Morgan Dam Project.

f. Location: On the West Canada Creek in the Village of Barnerald, Oneida and Herkimer Counties, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Fred T. Samel, Trenton Falls Hydroelectric Company, P.O. Box 169, Prospect, NY 13435, (315) 733–8478.

(i). Contact Person: Robert Bell, (202) 376–5706.

j. Comment Date: September 23, 1987.

k. Description of Project: The proposed project would consist of: (1) an existing 175-foot-long, 8-foot-long overflow dam; (2) an impoundment having a surface area of 1-acre with negligible storage and a normal water surface elevation of 752 feet m.s.l.; (3) a new 120-foot-long, 10-foot-diameter steel penstock; (4) a new powerhouse containing a generating unit with an installed capacity of 250–kW; (5) a new tailrace; (6) a new 1000-foot-long, 46–kV transmission line; and (7) appurtenant facilities. The applicant estimates the average annual generation would be 1,824,000 kWh. The dam is owned by the New York State Department of Transportation. All project generated would be sold to Niagara Mohawk Power Corporation. The applicant estimates the cost of the work to be performed under the preliminary permit would be $49,500.

1. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development applications, must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application, or notice of intent to file a competing preliminary permit or development application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may filed in response to this notice.

A competing license application must conform with 18 CFR 4.30(b) (10) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation,

cultural and other relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in section 313(b) of the Federal Power Act, 16 U.S.C. 825*l*(b), that Commission findings as to facts must be supported by substantial evidence.

All other federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be set to the Applicant's representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: July 28, 1987.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–17474 Filed 7–31–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP87–419–00 et al.]

Natural Gas Certificate Filings; Blue Dolphin Pipe Line Company et al.

Take notice that the following filings have been made with the Commission:

1. Blue Dolphin Pipe Line Company

[Docket No. CP87–419–000]

July 22, 1987.

Take notice that on July 1, 1987, Blue Dolphin Pipe Line Company (Blue Dolphin), 2900 Citicorp Center, Houston, Texas 77002, filed in Docket No. CP87–419–000 a prior notice request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations. Blue Dolphin Seeks authorization to transport natural gas on behalf of Walter Oil & Gas Corporation (Walter) under Blue Dolphin's blanket transportation certificate issued in Docket No. CP87–31–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Blue Dolphin states that, pursuant to a transportation agreement dated May 13, 1987, Blue Dolphin proposes to transport natural gas on behalf of Walter on Blue Dolphin's system in offshore Texas in the Gulf of Mexico. Blue Dolphin states that peak day volumes under this agreement would not exceed 20,000 Mcf, annual volumes would not exceed 5,110,000 Mcf and the average daily volume would be 14,000 Mcf.

Blue Dolphin states that it is not aware of any relationship under which a local distribution company or affiliate of Walter would receive natural gas on behalf of Walter. Blue Dolphin also indicates that no facilities are required to be constructed to provide the proposed service for Walter. It is stated that service commenced May 15, 1987, pursuant to the automatic 120–day authorization permitted by § 284.223 of the Commission's Regulations.

Comment date: September 8, 1987, in accordance with Standard Paragraph G at the end of this notice.

2. Blue Dolphin Pipe Line Company

[Docket No. CP87–420–000]

July 24, 1987.

Take notice that on July 1, 1987, Blue Dolphin Pipe Line Company (Blue Dolphin), 2900 Citicorp Center, Houston, Texas 77002, filed in Docket No. CP87–420–000 a prior notice request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations. Blue Dolphin seeks authorization to transport natural gas on behalf of Polo Energy Corporation (Polo) under Blue Dolphin's blanket transportation certificate issued in Docket No. CP87–31–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Blue Dolphin states that, pursuant to a transportation agreement dated May 13, 1987, Blue Dolphin proposes to transport

natural gas on behalf of Polo on Blue Dolphin's system in offshore Texas in the Gulf of Mexico. Blue Dolphin states that peak day volumes under this agreement would not exceed 35,000 Mcf, annual volumes would not exceed 9,125,000 Mcf and the average daily volume would be 25,000 Mcf.

Blue Dolphin states that it is not aware of any relationship under which a local distribution company of affiliate of Polo would receive natural gas on behalf of Polo. Bule Dolphin also indicates that no facilities are required to be constructed to provide the proposed service for Walter. It is stated that service commenced May 4, 1987, pursuant to the automatic 120-day authorization permitted by § 284.223 of the Commission's Regulations.

Comment date: September 8, 1987, in accordance with Standard Paragraph G at the end of this notice.

3. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. ZCP87-448-000]

July 27, 1987.

Take notice that on July 16, 1987, Northern Natural Gas Company, Division of Enron Corp. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP87-4448-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to abandon and remove ten small volume measuring station meters under the authorization issued in Docket No. CP82-401-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Northern requests authority to abandon and remove the sales facilities serving the following customers:

Customer and Location

Alphose Blaschko, Le Sueur Co., Minnesota
City of Belle Plaine, Iowa, Benton Co., Iowa
Kirby Clawson, Meade Co., Kansas
Bill Fayen, Dubuque Co., Iowa
Richard T. Johnson, Northfield Minnesota
Land O'Lakes Research Farm, Hamilton Co., Iowa
Leigh Equipment, Inc, Dubuque Co., Iowa
Red Rock Land Corp., Blaine Co., Montana
Stare Light Trailer Court, Dubuque Co., Iowa
Leo L. Stortenbecker, Pottawattamie Co., Iowa .

Northern indicates that it has included letters from each customer indicating that service is no longer required and agreeing to the proposed abandonment. Northern indicates that it estimates the cost of removal at $915.

Comment date: September 10, 1987, in accordance with Standard Paragraph G at the end of this notice.

4. Tennessee Gas Pipeline Company A Division of Tenneco Inc.

[Docket No. CP87-440-000]

July 27, 1987

Take notice that on July 13, 1987, Tennessee Gas Pipeline Company, A Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP87-440-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act for authorization to establish a new delivery point to its existing firm sales customer, The Connecticut Light and Power Company (CL & P), under the certificate issued in Docket No. CP82-413-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request with the Commission and open to public inspection.

Tennessee proposes to establish the new delivery point by constructing and operating gas measurement and appurtenant facilities, and gas pipeline connecting facilities on property owned by CL & P near East Granby, Hartford County, Connecticut. Tennessee estimates that the total for all costs associated with the construction and installation of the proposed facilities would be $295,000. Tennessee indicates that CL & P has agreed to reimburse it for all costs associated with the construction and operation of the propose facilities.

Tennessee states that it does not proposed to increase or decrease the total daily and/or annual quantities it is authorized to deliver to CL & P. Tennessee further states that the establishment of the proposed new delivery point is not prohibited by its currently effective tariff and that it has sufficient capacity to accomplish the deliveries at the proposed new delivery point without detriment or disadvantage to any of its other customers.

Comment date: September 10, 1987, in accordance with Standard Paragraph G at the end of this notice.

5. United Gas Pipe Line Company

[Docket No. CP87-437-000]

July 27, 1987.

Take notice that on July 10, 1987, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP87-437-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a sales tap to serve an existing customer, Entex, Inc. (Entex) under its certificate issued in Docket No. CP82-430-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to construct and operate a 2-inch sales tap to be located on United's existing 30-inch Kosciusko main line near Jackson, Rankin County, Mississippi. It is stated that the sales tap would enable United to supply an estimated 350 Mcf per day of natural gas to Entex for resale to residential customers under United's Rate Schedule DG-N.

United asserts that it has sufficient capacity to render the proposed service without detriment or disadvantage to its other existing customers. It is further asserted that no change is proposed in the total volumes United is obligated to deliver. It is indicated that Entex would reimburse United for all costs associated with the installation of the tap.

Comment date: September 10, 1986, in accordance with Standard Paragraph G at the end of this notice.

6. United Gas Piple Line Company

[Docket No. CP87-436-000]

July 27, 1987.

Take notice that on July 10, 1987, United Gas Piple Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP87-436-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorizatioin to construct and operate a one-inch sales tap on United's existing 14-inch Jackson-Mobile main line near Mobile, Mobile County, Alabama, under United's blanket certificate issued in Docket No. CP82-430-000 on September 1, 1982, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United states that it proposes to deliver up to 0.5 Mcf of natural gas on an average day at the proposed sales tap to supply Mobile Gas Service Corporation (MGSC), a distributor, for resale to a residential customer under its Rate Schedule DG-N. It is stated that MGSC would reimburse United for the estimated $2,100 construction cost of the proposed sales tap.

United states that it does not propose to increase or decrease that total daily and/or annual quantities it is authorized

to deliver to MGSC. United states that it would deliver no more than 2 Mcf of natural gas on a peak day and no more than 150 Mcf of natural gas per annum at the proposed sales tap. United states that the proposed sales tap is not prohibited by its currently effective tariff and that it would have sufficient capacity to accomplish the deliveries at the proposed sales tap without deteriment or disadvantage to any of its other customers.

Comment date: September 10, 1987, in accordance with Standard Paragraph G at the end of this notice.

7. United Gas Pipe Line Company

[Docket No. CP87–438–000]

July 27, 1987.

Take notice that on July 10, 1987, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP87–438–000 a request pursuant to §157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a two-inch sales tap on United's existing 30-inch Clarence-Olla main line near Winnfield, Winn Parish, Louisiana, under United's blanket certificate issued in Docket No. CP82–430–000 on September 1, 1982, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United states that it proposes to deliver up to 360 Mcf of natural gas on an average day at the proposed sales tap to supply Trans Louisiana Gas Company (Transla), a distributor, for resale to a correctional institution presently under construction, pursuant to its Rate Schedule DG–N. It is stated that Transla would reimburse United for the estimated $3,500 construction cost of the proposed sales tap.

United states that it does not propose to increase or decrease the total daily and/or annual quantities it is authorized to deliver to Transla. United states that it would deliver no more than 584 Mcf of natural gas on a peak day and no more than 108,000 Mcf of natural gas per annum at the proposed sales tap. United asserts that the proposed new sales tap is not prohibited by its currently effective tariff and that it would have sufficient capacity to accomplish the deliveries at the proposed sales tap without detriment or disadvantage to any of its other customers.

Comment date: September 10, 1987, in accordance with Standard Paragraph G at the end of this notice.

8. United Gas Pipe Line Company

[Docket No. CP87–435–000]

July 27, 1987.

Take notice that on July 10, 1987, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP87–435–000 a request pursuant to §157.205 of the Commission Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a two-inch sales tap on United's existing 30-inch Agua Dulce Perryville main line near Houston, Harris County, Texas, under United's blanket certificate issued in Docket No. CP82–430–000 on September 1, 1982, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United states that it proposes to construct and operate a 2-inch sales tap to supply Entex, a distributor, with an estimated 360 Mcf/d of natural gas for resale to residential customers in the Village of Cypress Laker Subdivision under United's Rate Schedule DG–5. It is stated that Entex would reimburse United for the estimated $3,500 construction cost of the proposed sales tap.

United states that it does not propose to increase or decrease the total daily and/or annual quantities it is authorized to deliver to Entex. United further states that it would deliver no more than 360 mcf/d of natural gas on a peak day and no more than 21,000 mcf of natural gas per annum at the proposed sales tap. United asserts that the proposed sales tap is not prohibited by its currently effective tariff and that it would have sufficient capacity to accomplish the deliveries at the proposed sales tap without detriment or disadvantage to any of its customers.

Comment date: September 10, 1987, in accordance with Standard Paragraph G at the end of this notice.

9. United Gas Pipe Line Company

[Docket No. CP87–434–000]

July 27, 1987.

Take notice that on July 10, 1987, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP87–434–000 a request pursuant to §157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a two-inch sales tap on United's existing 18-inch Baton Rouge-New Orleans main line near Prairieville, Ascension Parish, Louisiana, under United's blanket certificate issued in Docket No. CP82–430–000 on September 1, 1982, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United states that it proposes to deliver up to 300 Mcf of natural gas on an average day at the proposed sales tap to supply Louisiana Gas Service Company (LGSC), a distributor, for resale to residential and commercial customers under its Rate Schedule DG–N. It is stated that LGSC would reimburse United for the estimated $3,500 construction cost of the proposed sales tap.

United states that it does not propose to increase or decrease the total daily and/or annual quantities it is authorized to deliver to LGSC. United states that it would deliver no more than 330 Mcf of natural gas on a peak day and no more than 20,640 Mcf of natural gas per annum at the proposed sales tap. United states that the proposed sales tap is not prohibited by its currently effective tariff and that it would have sufficient capacity to accomplish the deliveries at the proposed sales tap without detriment or disadvantage to any of its other customers.

Comment date: September 10, 1987, in accordance with Standard Paragraph G at the end of this notice.

10. United Gas Pipe Line Company

[Docket No. CP87–439–000]

July 27, 1987.

Take notice that on July 13, 1987, United Gas Pipe Line Company (United), P. O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP87–439–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for permission to abandon direct industrial sales to Chevron U.S.A., Inc. (Chevron) at Heidelberg, Mississippi and Mobile, Alabama, under the authorization issued in Docket No. CP32–430–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United states the sales contracts with Chevron expired on January 1, 1987, and that Chevron has agreed to the proposed abandonment. United further states that its facilities will remain in place in anticipation of future service.

Comment date: September 10, 1987, in accordance with Standard Paragraph G at the end of this notice.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the

Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-17480 Filed 7-31-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-578-000]

Application for Permanent Abandonment with Limited-Term Pregranted Abandonment for Sales Under Small Producer Certificate;

July 24, 1987.

Take notice that on June 5, 1987, as supplemented on July 17, 1987, Robert B. Lambert and Lexey C. Lambert (the Lamberts), 100 N. Stone Ave., Suite 1002, Tucson, Arizona 85701-1517, filed an application pursuant to section 7(b) of the Natural Gas Act for a permanent abandonment of their sales to ANR Pipeline Company (ANR) from Northwest Field, Woodward County, and Laverne Field, Harper County, Oklahoma, and their sale to Northern Natural Gas Company, Division of Enron (Northern) from Mocaine-Laverne Gas Area, Ellis County, Oklahoma. The Lamberts also request a three-year pregranted abandonment for sales of such gas under their small producer certificate in Docket No. CS86-39-000. The gas is NGPA section 104 flowing gas (92%) and 108 gas (8%). Deliverability is approximately 1,402 Mcf/d. The Lamberts state that their December 30, 1960, contract with ANR and their June 2, 1966, contract with Northern have expired. A release has been requested for the gas under the Lambert's May 18, 1979, contract with ANR but has not been granted by ANR at this time.

The Lamberts' application filed June 5, 1987, was noticed on July 7, 1987, (52 FR 26171) as an abandonment request. The application is being renoticed herein to reflect the Lamberts' supplemental request received July 17, 1987, for three-year pregranted abandonment for sales for resale of the subject gas in interstate commerce and to delete from their original abandonment application the sale of gas under the July 25, 1977, contract with Northern for sales from the Shepherd #1 well in Beaver County, Oklahoma, for which the Lamberts state they have reached an agreement on price with Northern.

Any person desiring to be heard or to make any protest with reference to said application, as supplemented, should on or before August 10, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in a proceeding must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the Lamberts to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-17477 Filed 7-31-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF87-521-000 et al.]

Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.; Suffolk Cogeneration Limited Partnership et al.

Comment Date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. Suffolk Cogeneration Limited Partnership

[Docket No. QF87-521-000]

July 21, 1987.

On July 10, 1987, Suffolk Cogeneration Limited Partnership (Applicant) of 1010 Franklin Avenue, Garden City, New York 11530, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Suffolk County, New York. The facility will consist of combustion turbine generator(s), a heat recovery steam generator, a steam turbine generator and auxiliary equipment. Steam recovered from the facility will be utilized by Applicant for heating, drying and sanitizing in an industrial process, and for space heating and cooling. The primary energy source will be natural gas. The maximum net electric power production capacity of the facility will be 79MW. Construction of the facility will begin in 1988.

2. Union Texas Petroleum Corporation

[Docket No. QF87-446-000]

July 24, 1987.

On July 6, 1987, Union Texas Petroleum Corporation (Applicant), of Route 1, Rayne, Louisiana 70578 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility is located in Rayne, Louisiana 70578. The facility consists of four steam generators and two steam turbine generators. Thermal energy recovered from the facility is used on-site at Applicant's Rayne Fractionation Plant. The primary energy source is natural gas. The electric power production capacity of the facility is 1957 KW. The facility was originally constructed in 1959 and modified in 1966 and 1978. Additional modifications are to be completed in 1987.

3. PW Ventures, Inc.

[Docket No.QF87-518-000]

July 24, 1987.

On July 9, 1987, PW Ventures, Inc. (Applicant), of 100 Australian Avenue, Suite 304, West Palm Beach, Florida 33406, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in West Palm Beach, Florida. The facility will consist of three engine generating units and three heat recovery steam generators. Steam recovered from the facility will be used by Pratt & Whitney for process usuage and in absorption chillers to produce chilled water for space cooling. The primary energy source will be natural gas and diesel fuel. The net electric power production capacity will be 15.46 MW. Installation of the facility is expected to begin in July, 1988.

4. North Jersey Energy Associates, a New Jersey Limited Partnership

[Docket No. QF86-789-001]

July 24, 1987.

On July 1, 1987, North Jersey Energy Associates, a New Jersey Limited Partnership (Applicant), of 87 Elm Street, Cohasset, MAssachusetts 02025, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Sayerville, New Jersey. The facility originally proposed to consist of one (1) combustion turbine generator, one heat recovery steam generator and one extraction/condensing steam turbine generator. Thermal energy recovered from the facility will be utilized in the cooling process for a cold storage facility and for heating and cooling of industrial buildings located nearby the facility. The net electric power production capacity as originally proposed was to be 140 megawatts. The primary energy source as originally proposed was to be coal and natural gas, with oil used when natural gas is not avaliable.

By order issued September 10, 1986, the Director of Office of Electric Power Regulation granted certification of the facility as a cogeneration facility under Docket No. QF86-789-000.

The recertification is requested due to change in the primary energy source from coal and natural gas to natural gas. The number of combustion turbines has increased to two, and the net electric power production capacity has increased to 295 MW. Installation of the facility will begin on April, 1988. All other facility's characteristics remain unchanged.

5. Copolymer Rubber & Chemical Corporation

[Docket No. QF87-530-000]

July 27, 1987.

On July 16, 1987, Copolymer Rubber & Chemical Corporation (Applicant), of P.O. Box 2591, Baton Rouge, Louisiana 70821, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located on Highway 1 in Addis, Louisiana 70710. The facility will consist of a combustion turbine generator and a heat recovery steam generator. Thermal energy recovered from the facility will be used for process applications in the manufacture of synthetic rubber. The primary energy source will be natural gas. The net electric power production capacity of the facility will be 8.712 KW. Installation of the facility is scheduled to begin on or about April 1, 1988.

6. County Sanitation Districts of Orange County, California

[Docket No. QF87-519-000]

July 27, 1987.

On July 9, 1987, County Sanitation Districts of Orange County, California (Applicant), of P.O. Box 8127, 10844 Ellis Avenue, Fountain Valley, California 92728-8127 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the County Sanitation District of Orange County Wastewater Treatment Plant No. 1 in Fountain Valley, California. The facility will consist of three engine generators, three exhaust heat recovery steam generators (HRSG's), three engine jacket water heat exchangers, and three lube oil heat exchangers. Steam recovered from the HRSG's will be used for space heating and cooling and plant process applications, while hot water from the engine jacket heat exchangers will be used for the plant's digester heating needs. The primary energy source will be natural gas, to be supplemented with sludge digester gas as available. The net electric power production capacity of the facility will be 4.87 MW. Facility installation is scheduled to begin in March 1988.

7. County Sanitation Districts of Orange County, California—Treatment Plant No. 2

[Docket No. QF87-520-000]

July 27, 1987.

On July 9, 1987, County Sanitation Districts of Orange County, California (Applicant), of 10844 Ellis Avenue, Post Office Box 8127, Fountain Valley, California 92728-8127 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located at the County Sanitation Districts of Orange County Wastewater Treatment Plant No. 2, 22212 Brookhurst Street, Huntington Beach, California. The facility will consist of several internal combustion engine generator units. The primary energy source of the facility will be biomass in the form of digester gas (biomethane gas) supplemented by natural gas. The net electric power production capacity of the facility will be 11.65 megawatts.

8. Ogden Martin Systems of San Bernadino, Inc.

[Docket No. QF87-517-000]

July 27, 1987.

On July 8, 1987, Ogden Martin Systems of San Bernardino, Inc. submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Ontario, California. The facility will consist of three (3) mass-burn steam generators and one turbine generator. The net electric power production capacity will be 42.5 megawatts. The primary energy source will be biomass in the form of municipal solid waste. Natural gas will be used for flame stabilization, start-up and shut-down purposes. Such fossil fuel uses, however, will not exceed 25% of the total energy input to the facility during any calendar year period. Construction of the facility is expected to begin in November 1987.

9. South Jersey Energy Associates, A New Jersey Limited Partnership

[Docket No. QF86-1060-001]

July 27, 1987.

On September 19, 1986 South Jersey Energy Associates, a New Jersey Limited Partnership (Applicant), of 87 Elm Street, Cohasset, Massachusetts 02025, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Williamstown Junction, New Jersey. The facility, as originally proposed, was to consist of a combustion turbine generator, a heat recovery steam generator and an extraction/condensing turbine generator. The thermal energy in the form of steam was to be used for space heating and cooling, and for the curing of concrete castings. The net electric

power production capacity was to be 140 MW. The primary sources of energy were to be coal and natural gas. Construction of the facility was to begin March 1988.

By order issued December 12, 1986, the Director of the Office of Electric Power Regulation granted certification of the facility as a qualifying cogeneration facility under Docket No. QF86–1050–000.

The recertification is requested due to a change in the primary energy source from coal and natural gas to natural gas. In addition, the number of combustion turbines, heat recovery steam generators, and extraction/condensing steam turbine generators have increased to two each, and the net electric power production capacity has increased to 295 MW. In addition to the thermal uses stated in the original application, steam recovered from the facility will be used for a cold/freezer storage facility. Construction of the facility will begin September 1988. All other facility characteristics remain unchanged.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–17479 Filed 7–31–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA87–3–26–000]

Changes in Rates; Natural Gas Pipeline Company of America

July 28, 1987.

Take notice that on July 23, 1987, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1 (Tariff), the below listed tariff sheets to be effective September 1, 1987:

Sixty-sixth Revised Sheet No. 5
Thirty-third Revised Sheet No. 5A

Natural states the purpose of the instant filing is to implement Natural's semi-annual PGA unit rate adjustment (including revised surcharge) computed pursuant to sections 18 and 29 of the General Terms and Conditions of Natural's tariff (PGA and Incremental Pricing). Natural is also requesting a waiver in the terms of its Purchased Gas Cost Adjustment tariff provision to provide for a three year recovery of its present deferred account balance.

Natural states that the overall effect of the filed for adjustments is to decrease Natural's DMQ–1 commodity rate by 40.44¢ and to increase the DMQ–1 entitlement rate by .05¢. No change is required to the DMQ–1 demand rate. Appropriate adjustments have been made with respect to Natural's other sales rate schedules. The effect of these rates changes on an annual basis is a net revenue decrease of $80.4 million. This net revenue decrease is comprised of a $77.5 million decrease in gas cost recovery and a $2.9 million decrease due to a decrease in the deferred account surcharge recovery rate.

In addition, Natural also tendered for filing the below listed tariff sheets to be part of its FERC Gas Tariff:

Third Revised Volume No. 1

Title Page
Original Sheet No. 1A
Seventh Revised Sheet No. 1
First Revised Sheet No. 2C

Original Volume No. 1A

Title Page

Second Revised Volume No., 2

Title Page
First Revised Sheet No. 1C

The purpose of these sheets is to amend Natural's Tariff to reflect: (1) the appropriate name and title of the person to whom communications covering rates should be addressed, and (2) an up-date of the Table of Contents.

A copy of this filing is being mailed to Natural's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §385.214 and 385.211. All such motions or protests must be filed on or before August 4, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 17478 Filed 7–31–87, 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA87–4–17–001]

Proposed Changes in FERC Gas Tariff; Texas Eastern Transmission.

July 28, 1987.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on July 23, 1987 tendered for filing as a part of its FERC Gas Tariff, Fourth Revised Volume No. 1, six copies of the following tariff sheets:

Substitute Eighty-fifth Revised Sheet No. 14
Substitute Eighty-fifth Revised Sheet No. 14A
Substitute Eighty-fifth Revised Sheet No. 14B
Substitute Eighty-fifth Revised Sheet No. 14C
Substitute Eighty-fifth Revised Sheet No. 14D

The above tariff sheets are being issued in substitution for tariff sheets filed on July 1, 1987 in the referenced docket consisting of Texas Eastern's Semiannual PGA tracking filing to be effective on August 1, 1987. The sole change included in the substitute tariff sheets is an increase in the cost of gas purchased from ProGas Limited.

In the July 1, 1987 filing Texas Eastern calculated and included total annual demand payments to ProGas Limited of $6,525,00 as being in conformance with Opinion Nos. 256 and 256A. Such calculation was based upon data available to Texas Eastern at the time of the filing. However, since then Texas Eastern has received additional data, supported by work papers, which shows that the correct calculation of the total annual demand payments to ProGas Limited in conformance with Opinion Nos. 256 and 256–A is $8,612,100. This corrected amount has been included in the substitute tariff sheets filed herein, impacting a decrease in the Demand-1 component of Texas Eastern's sales rates of $.093/dth rather than the decreased reflected in the original tariff filing of July 1, 1987.

Also in the July 1, 1987 filing Texas Eastern used the commodity rate actually being paid to ProGas Limited at the time of the filing, which is $1.63/dth. In this substitute filing Texas Eastern has used the commodity rate of ProGas which will become effective beginning August 1, 1987 as a result of the increase in the commodity rate of Texas Eastern's DCQ rate schedule for Rate Zone C under the semiannual PGA filing to be effective August 1, 1987. The impact on Texas Eastern's commodity

sales rates included in these substitute tariff sheets is an increase of $.0047/dth.

The proposed effective date of the above tariff sheets is August 1, 1987.

Texas Eastern has respectfully requested waiver of any of the Commission's Regulations deemed necessary to accept the above substitute tariff sheets to be effective on August 1, 1987, in substitution for those corresponding tariff sheets filed on July 1, 1987.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20406, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 4, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-17475 Filed 7-31-87; 845 am]

BILLING CODE 6717-01-M

[Docket No. RP87-15-016]

Proposed Changes in FERC Gas Tariff; Truckline Gas Co.

July 28, 1987.

Take notice that Truckline Gas Company (Trunkline) on July 20, 1987 tendered for filing the following sheets to its FERC Gas Tariff, Original Volume No. 2:

To Be Effective September 20, 1986

First Revised Sheet Nos. 3882 and 3885

To Be Effective May 1, 1987

First Revised Sheet Nos. 3888, 3890 and 3893

Truckline states that such change is made to amend Rate Schedule T-80 for the transportation of natural gas on behalf of Southern Natural Gas Company (Southern) to reflect an extension of the term of the agreement and the currently effective rates as approved by the Commission in Docket Nos. RP87-15, *et al.*

A copy of this filing has been served on Southern.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before August 4, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-17476 Filed 7-31-87; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[A-4-FRL-3241-2]

PSD Permit for the South Broward County Resource Recovery Facility; Broward County, FL

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Prevention of Significant Deterioration (PSD) permit (PSD-FL-105) issued to Broward County, Florida, on May 15, 1987, became effective on June 20, 1987. The permit was issued for the construction of the South Broward County 2589 tons per day municipal solid waste incineration facility with electrical generation capability.

DATE: This action is effective as of June 20, 1987, the effective date of the PSD permit. Construction must begin within eighteen (18) months of this date or the permit will become invalid.

ADDRESSES: Copies of the PSD permit, permit application, and preliminary and final determinations are available for public inspection upon request at the following locations:

U.S. Environmental Protection Agency, Air Programs Branch, 345 Courtland Street, N.E., Atlanta, Georgia 30365

Bureau of Air Quality Management, Florida Department of Environmental Regulation, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32301

FOR FURTHER INFORMATION CONTACT: Michael Brandon of the EPA Region IV, Air Programs Branch at the Atlanta address given above, telephone (404) 347-2864; (FTS) 257-2864.

SUPPLEMENTARY INFORMATION: On May 30, 1986, the Broward County Resource Recovery Office submitted an application to EPA for the construction of the South Broward County Resource Recovery Facility. The facility will consist of three 750 tons per day municipal solid waste incinerators located in Broward County, Florida. The preliminary determination was made by the Florida Department of Environmental Regulation and the public comment period commenced on February 12, 1987. Comments on the preliminary determination were made by both EPA and Broward County in reference to various permit conditions. On May 1, 1987, EPA prepared the Final Determination and Permit Conditions. These conditions require, in part, the installation of an acid gas control device to control 90% of the acid gases, and 65% control or 0.14 lbs per million Btu of the sulfur dioxide emissions. In addition, the permit limits the emission of particulate matter to 0.015 gr/dscf corrected to 12% CO_2. The facility was also allowed to burn municipal solid waste at 115% of its rated capacity (i.e., 2589 tons per day). No other comments were received during the public comment period.

The federal PSD permit (PSD-FL-105) was issued on May 15, 1987, and became effective on June 20, 1987. The effective date of this permit constitutes final agency action under 40 CFR 124.19(f)(1) and section 307 of the Clean Air Act, for purposes of judicial review. Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 2, 1987. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

If construction does not commence within eighteen (18) months after the effective date, that is, by December 20, 1988, or if construction is not completed within a reasonable time, the permit shall expire and the authorization to construct shall become invalid.

(Sections 160-169 of the Clean Air Act (42 U.S.C. 7470-7479).)

Date: July 22, 1987.

Joe R. Franzmathes,

Acting Regional Administrator.

[FR Doc. 87-17515 Filed 7-31-87; 8:45 am]

BILLING CODE 6560-50-M

[FRL 3241-1]

Privacy Act of 1974; Proposed New System of Records

AGENCY: Environmental Protection Agency (EPA).

ACTION: Privacy Act of 1974; Proposed New System of Records.

SUMMARY: As required by the Privacy Act, 5 U.S.C. 552a, the U.S. Environmental Protection Agency is publishing for comment a system of records. This system is the "Congressional and Executive Communications Files." The purpose of these records is to respond to correspondence sent to the Administrator and Deputy Administrator by the public, Members of Congress and White House staff, and to control correspondence requiring a timely response.

EFFECTIVE DATE: This system shall become effective without further notice on October 2, 1987, unless comments are received which would result in a contrary determination.

FOR FURTHER INFORMATION CONTACT: Alice M. Greene, Congressional and Executive Communications Officer, Office of Executive Support (A–101), U.S. Environmental Protection Agency, 401 M St., SW, Washington, DC 20460, telephone (202) 382–7638.

C. Morgan Kinghorn,
Acting Assistant Administrator for Administration and Resources Management.

Dated: July 24, 1987.

EPA–22

SYSTEM NAME:

Congressional and Executive Communications Files—EPA/OES.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Executive Support (A–101), U.S. Environmental Protection Agency, 401 M St., SW, Washington, DC 20460, and offices listed in appendix.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons from the private sector, Members of Congress, the White House staff, and other persons from the public sector (Federal, state and local) who send correspondence to the Administrator and Deputy Administrator.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name and address of correspondent, copies of incoming letter, EPA's response, and correspondence control number when assigned.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE:

EPA will use this system to respond to correspondence from the public and private sector, Members of Congress and White House staff. The records also will be used to control correspondence requiring a timely response.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of information may be made: 1. To a Federal, State or local agency when a response by that agency is more appropriate.

2. To a Member of Congress or a congressional office in response to an inquiry from that Member or office made at the request of the individual to whom the record pertains.

3. To an appropriate Federal, State, local or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation or order, where there is an indication of a violation or potential violation of the statute, rule, regulation or order and the information disclosed is relevant to the matter.

4. To the Department of Justice to the extent that each disclosure is compatible with the purpose for which the record was collected and is relevant and necessary to litigation or anticipated litigation in which one of the following is a party or has an interest: (a) EPA or any of its components, (b) an EPA employee in his or her official capacity, (c) an EPA employee in his or her individual capacity where the Department of Justice is representing or considering representation of the employee, or (d) the United States where EPA determines that the litigation is likely to affect the Agency.

5. In a proceeding before a court, other adjudicative body or grand jury, or in an administrative or regulatory proceeding, to the extent that each disclosure is compatible with the purpose for which the record was collected and is relevant and necessary to the proceeding in which one of the following is a party or has an interest; (a) EPA or any of its components, (b) an EPA employee in his or her official capacity, (c) an EPA employee in his or her individual capacity where the Department of Justice is representing or considering representation of the employee, or (d) the United States where EPA determines that the litgation is likely to affect the Agency. Such disclosures include those made in the course of presenting evidence, conducting settlement negotiations, and responding to subpoenas and requests for discovery.

6. To representatives of the General Services Administration and the National Archives and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders and compute tapes.

RETRIEVABILITY:

Records are retrieved by the name of the individual correspondent and the correspondence control number when assigned.

SAFEGUARDS:

Only authorized EPA personnel have access to the system on a need-to-know basis. File folders are stored in cabinets secured by locks. Computer tapes are protected from access by unique passwords. The records are located in secured rooms in buildings with controlled access.

RETENTION AND DISPOSAL:

Controlled correspondence: Records are permanent. See EPA Records Control Schedules, Appendix C, Item 1.

All other correspondence: Records are destroyed when five years old. See EPA Records Control Schedules, Appendix C, Item 2.

SYSTEM MANAGER(S) AND ADDRESS:

Congressional and Executive Communications Officer, Office of Executive Support (A–101), 401 M St. SW., Washington, D.C. 20460.

NOTIFICATION PROCEDURES:

Inquiries should be directed to the System Manager.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Individual should provide his or her complete name, name of person incoming letter was addressed to and date of incoming letter.

CONTESTING RECORD PROCEDURES:

Same as notification procedures. Also, the corrective action sought and supporting justification for the correction should be provided.

RECORD SOURCE CATEGORIES:

Subject individual and drafter of EPA response.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

APPENDIX:

In addition to Office of Executive Support, the Congressional and Executive Communications Coordinator in the following EPA offices has Congressional and Executive Communications Files:

At Headquarters:

Office of Administrtion and Resources Management
Office of Enforcement and Compliance Monitoring
Office of Policy, Planning, and Evaluation
Office of External Affairs
Office of Water
Office of Solid Waste and Emergency Response
Office of Air and Radiation
Office of Pesticides and Toxic Substances
Office of Research and Development
Office of International Activities
Office of Regional Operations
Office of General Counsel
Office of Civil Rights
Science Advisory Board
Small and Disadvantaged Business Utilization

At Regional Offices:

EPA Region I, Federal Center, Boston, MA 02203
EPA Region II, 26 Federal Plaza, New York, NY 10278
EPA Region III, 841 Chestnut St., Philadelphia, PA 19107
EPA Region IV, 345 Courtland St. N.E., Atlanta, GA 30365
EPA Region V, 230 S. Dearborn St., Chicago, IL 60604
EPA Region VI, 1445 Ross Ave., Dallas, TX 75202
EPA Region VII, 726 Minn. Ave., Kansas City, KS 66101
EPA Region VIII, 999 18th St., Suite 1300, Denver, CO 80202
EPA Region IX, 215 Fremont St., San Francisco, CA 94105
EPA Region X, 1200 6th Ave., Seattle, WA 98101

[FR Doc. 87-17517 Filed 7-31-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

July 27, 1987.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW, Suite 140, Washington, DC 20037. For further information on these submissions contact Jerry Cowden, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on these information collections should contact J. Timothy Sprebe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0213
Title: Section 73.3525, Agreements for removing application conflicts
Action: Extension
Respondents: Businesses (including small businesses)
Frequency of Response: On occasion
Estimated Annual Burden: 1,084 Responses; 2,168 Hours
Needs and Uses: Section 73.3525 requires that applicants for a broadcast station who enter into an agreement to procure the removal of a conflict between applications pending before the FCC file a joint request for approval of agreement and an affidavit. The data is used by FCC staff to assure agreement is in compliance with Section 311 of the Communications Act of 1934, as amended.

OMB Number: 3060-0326
Title: Section 73.69, Antenna monitors
Action: Extension
Respondents: Businesses (including small businesses)
Frequency of Response: On occasion
Estimated Annual Burden: 20 Responses; 30 Hours
Needs and Uses: Each directional antenna operation employs an antenna monitor. Section 73.69 outlines procedures should repair or replacement be necessary. If unit is replaced, data is submitted for modification of license and in the interim the station operates at variance provided certain conditions are met. Station licensees must operate in accordance with station licenses. The data collected by Section 73.69(d)(1) is used by FCC staff to grant interim authority to licensees to operate in variance of the station license. The data collected by Section 73.69(d) (5) is used by FCC staff to issue a modified license.

Federal Communications Commission.
William J. Tricarico,
Secretary.

[FR Doc. 87-17554 Filed 7-31-87; 8:45 am]

BILLING CODE 6712-01-M

[Report No. W-19]

Window Notice for the Filing of FM Broadcast Applications

Release: July 20, 1987.

Notice is hereby given that applications for vacant FM broadcast allotment(s) listed below may be submitted for filing during the period beginning July 20, 1987 and ending August 27, 1987 inclusive. Selection of a permittee from a group of acceptable applicants will be by the Comparative Hearing process.

Channel—253 A	
Coeburn	VA
Channel—297 A	
Clarendon	AR
Chinle	AZ
Madera	CA
Las Animas	CO
Lake Arthur	LA
Sleepy Eye	MN
Warrenton	NC
Highland	NY
Crooksville	OH
Swanton	OH
Northumberland	PA
Nolanville	TX
Kemmerer	WY
Channel—297 B1	
Atlantic City	NJ
Channel—297 C2	
Lawton	OK
Post	TX

Federal Communications Commission.
William J. Tricarico,
Secretary.

[FR Doc. 87-17555 Filed 7-31-87; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1670]

Petitions for Reconsideration and Clarification and Applications for Review of Actions in Rulemaking Proceedings

July 28, 1987.

Petitions for reconsideration and clarification and applications for review have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC., or may be purchased from the Commission's copy contractor, International Transcription

Service (202–857–3800). Oppositions to these petitions and applications must be filed.

See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of § 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry); and Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Thereof Communications Protocols Under § 64.702 of the Commission's Rules and Regulations. (CC Docket No. 85–229, Phase I)
Number of petitions received: 3

Subject: Amendment of Parts 15 and 76 Relating to Terminal Devices Connected to Cable Television Systems. (Gen Docket No. 85–301)
Number of petitions received: 4

Subject: Amendment of The Commission's Rules for Cellular Radio Service. (CC Docket No. 85–388, RM–5167)
Number of petitions received: 10

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Cape Vincent, New York) (MM Docket No. 86–262, RM's 5295 & 5344)
Number of petitions received: 1

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Blackshear, Richmond Hill, and Folkston, Georgia) (MM Docket No. 86–294, RM's 5029, 5155 & 5560)
Number of petitions received: 1

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Santa Isabel, Puerto Rico and Christiansted, Virgin Islands) (MM Docket No. 85–211, RM–4740)
Number of applications received: 2

Federal Communications Commission.
William J. Tricarico,
Secretary.

[FR Doc. 87–17553 Filed 7–31–87; 8:45 am]
BILLING CODE 6712–01–M

Comsat Files Application to Transfer Control of, Comsat International Communications, Inc., to Contel ASC

July 24, 1987.

Pleading Cycle Established

Communications Satellite Corporation (COMSAT), COMSAT International Communications, Inc. (CICI), COMSAT Technology Products, Inc. (CTP), and American Satellite Company, d/b/a Contel ASC (Contel ASC) have filed an application under sections 214(a) and 310(d) of the Communications Act, 47 U.S.C. 214(a), 310(d), for authority to transfer control of CICI and to reissue CTP's domestic very small aperture terminal (VSAT) earth station authorizations to Contel ASC. The proposed transaction does not contemplate transfer of CICI s multipurpose earth stations, including the Earth Station Ownership Committee earth stations and associated point-to-point microwave stations and authorizations. COMSAT has filed a separate application to assign such authorizations to COMSAT Earth Stations, Inc., a newly-formed COMSAT subsidiary.

At the request of COMSAT and Contel Corporation, their earlier application for consent to merger filed November 3, 1986 (File No. ENF–87–05) has been dismissed (Order, DA–87–983, adopted July 22, 1987).

General Information

The application listed herein has been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return the application if, upon further examination, it is determined that it is defective and not in conformance with the Commission's Rules or policies.

Parties wishing to comment on this matter may do so no later than August 24, 1987. Reply comments should be filed no later than September 7, 1987. All filings concerning this matter should refer to File No. ENF–87–18.

Copies of the application and any subsequently filed documents in this matter may be obtained from International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20036. (202) 857–3800. The application and documents will also be available for inspection and copying in Room 6206, 2025 M Street, NW., Washington, DC 20054. For further information contact Margaret Wood at (202) 632–4887.

Federal Communications Commission.
William J. Tricarico,
Secretary.

[FR Doc. 87–17548 Filed 7–31–87; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200011.
Title: Philadelphia Port Corporation Lease Agreement.
Parties:
Philadelphia Port Corporation
Seagate Corporation

Synopsis: The proposed agreement covers the lease of Piers 82 and 84 South, Port of Philadelphia to be used for the loading, discharge, transfer, consolidation and storage of waterborne cargo.

Agreement No.: 224–200012.
Title: Port of Oakland Terminal Agreement.
Parties:
Port of Oakland
Mitsui O.S.K. Lines, Limited
Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The proposed license agreement provides that Mitsui O.S.K. Lines, Limited and Yamashita-Shinnihon Steamship Co. Ltd. jointly rent a parcel of land and building to be used for establishing and maintaining a truck and rail terminal for distributing goods to and from trucks, rail cars and containers.

Agreement No.: 224–011030–001.
Title: Port of Anchorage Crane Agreement.
Parties:
Municipality of Anchorage, Alaska
Sea-Land Service, Inc.

Synopsis: The proposed agreement modifies the basic Agreement to allow the substitution by Sea-Land of a letter of credit as a guarantee of payment in lieu of a surety bond as provided in subsection V B. 6 of said agreement.

Agreement No.: 224–010716–002.
Title: Port of San Francisco Terminal Revenue Sharing Agreement.
Parties:
City and County of San Francisco
Evergreen Marine Corporation (Taiwan), Ltd.

BEST COPY AVAILABLE

Synopsis: The proposed agreement modifies the basic Agreement to provide that (1) Evergreen shall pay wharfage on liquid cargo in bulk at the rate of $.27 per revenue ton; and, (2) Evergreen may deduct from wharfage due the Port railroad equalization payments made on frozen export cargo to the extent such payments do not exceed 5 percent of the annual wharfage paid to the Port.

By Order of the Fedral Maritime Commission.

Dated: July 29, 1987.

Joseph C. Polking,

Secretary.

[FR Doc. 87-17490 Filed 7-31-87; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Applications To Engage de Novo in Permissible Nonbanking Activities; Norstar Bancorp, Inc., et al.; Correction

This notice corrects a previous Federal Register notice (FR Doc. 87-16916) published at page 28045 of the issue for Monday, July 27, 1987.

Under the Federal Reserve Bank of New York, the entry for Norstar Bancorp, Inc. is revised to read as follows:

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Norstar Bancorp Inc.*, Albany, New York; to engage *de novo* through its subsidiary, Norstar Trust Company of Florida, N.A., Naples, Florida, in performing functions or activities that may be performed by a trust company pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Comments on this application must be received by August 12, 1987.

Board of Governors of the Federal Reserve System, July 28, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-17455 Filed 7-31-87; 8:45 am]

BILLING CODE 6210-01-M

Acquisition of Company Engaged in Permissible Nonbanking Activities; Charter Bank Group, Inc.

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y [12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 27, 1987.

A. Federal Reserve Bank of Chicago (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Charter Bank Group, Inc.*, Northfield, Illinois; to acquire Charter Group, Inc., Northfield, Illinois, and thereby engage in auditing and consulting pursuant to § 225.22(a)(2)(i); and the sale of insurance for the bank and is employees pursuant to § 225.22(a)(2)(ix) of the Board's Regulation Y. Applicant has also applied to sell credit-related insurance pursuant to § 225.25(b)(8) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 28, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-17456 Filed 7-31-87; 8:45 am]

BILLING CODE 6210-01-M

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Local Investors, Inc.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 24, 1987.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Local Investors, Inc.*, Unadilla, Georgia; to acquire 51.45 percent of the voting shares of Citizens Bank, Vienna, Georgia.

Board of Governors of the Federal Reserve System, July 28, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-17457 Filed 7-31-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

Federal Council on the Aging; Meeting

Agency Holding the Meeting: Federal Council on the Aging.

Time and Date: Meeting begins at 9:30 AM and ends at 5:00 PM on Wednesday, August 12, 1987 and begins at 9:00 AM and ends at 3:00 PM on Thursday, August 13, 1987.

Place: On Wednesday, August 12 from 9:30 to 12:00 Noon, Department of Health and Human Services, Federal Council on the Aging, Executive Session (members & staff only), Longworth Room, J. W. Marriott Hotel, 1331 Pennsylvania Avenue, NW., Washington, DC 20004, and from 2:00 to 5:00 p.m., in conjunction with the N4A Conference, J. W. Marriott Hotel, 1331 Pennsylvania Avenue, NW., Washington, DC 20004. On Thursday, August 13, Longworth Room, J.W. Marriott Hotel, 1331 Pennsylvania Avenue, NW., Washington, DC 20004.

Status: Meeting is open to the public. Exception: August 12 *Executive Session* is closed to public.

Contact Persons: Pete Conroy, Room 4545, HHS North Building, 245–2451.

The Federal Council on the Aging was established by the 1973 Amendments to the Older Americans Act of 1965 (Pub. L. 93029, 42 U.S.C. 3015) for the purpose of advising the President, the Secretary of Health and Human Services, the Commissioner on Aging and the Congress on matters relating to the special needs of older Americans.

Notice is hereby given pursuant to the Federal Advisory Committee Act (Pub. L. 92–453, 5 U.S.C. App. 1, sec. 10, 1976) that the Council will hold a meeting on August 12 and 13, 1987 from 9:30 AM–5:00 PM and from 9:00 AM–3:00 PM respectively. On August 12, the morning executive session will be closed. The afternoon session from 2 PM–5 PM will be held in conjunction with the N4A Conference, J.W. Marriott Hotel. On August 13 the meeting from 9:00–3:00 PM will be held in the Longworth Room, J.W. Marriott Hotel, 1331 Pennsylvania Avenue, NW., Washington, DC 20004.

The agenda will include: a forum on Community Service Cooperation—A Mandate of the Older Americans Act; an update on the Administration on Aging programs by Commissioner, Carol Fraser Fisk; a briefing of Aging Network as Community Resource Centers for Help by Robert Binstock, Ph.D.; a briefing on Community Service Cooperation An Urban View by Roberta Spohn, Deputy Commissioner, New York City Department of Aging; a briefing on Community Service Cooperation A Rural View by Irene Hart, Director, Central Plains Area Agency on Aging, Wichita, Kansas; a briefing on Community Service Cooperation A Local Government View by Jack Jallings, Dane County Supervisor, Oregon, Wisconsin; and a briefing on Congressional Intent of Community Service Language in Titles I & III of the Older Americans Act by Robert Blancato, Staff Director, Congressman Mario Biaggi Office. Suggested issues to be covered are: turf problems, duplication, priorities, limitations and recruiting. In addition, a substantial amount of time will be devoted to FCoA committee meetings and reports.

Dated: July 20, 1987.

Ingrid Azvedo,

Chairperson, Federal Council on the Aging.

[FR Doc. 87–17047 Filed 7–31–87; 8:45 am]

BILLING CODE 4130–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Alaska Land Use Council; Meeting

As required by the Alaska National Interest Lands Conservation Act (ANILCA), Pub. L. 96–487, dated December 2, 1980, section 1201, paragraph (h), the Alaska Land Use Council will meet at 9:00 a.m., Tuesday, August 25, 1987, in the Municipality of Anchorage Assembly Chamber, 3600 Denali Street, Anchorage, Alaska.

The tentative agenda will include Council consideration of:

—Draft ROD's for Kodiak and Kanuti NWR Comprehensive Conservation Plans,
—Council Work Program Recommendations for 1987–88,
—National Park Service Proposed Mining Rule, 36 CFR Part 9,
—Outfitter/Guide Report from Staff Committee,
—Other items as may be appropriately considered by the Council.

Any individual desiring to appear before the Council to address any of the above matters or matters of general concern to the Council should contact either Cochairman's office before the close of business Monday, August 10, 1987.

FOR FURTHER INFORMATION CONTACT:

Alaska Land Use Council, Office of the Federal Cochairman, 1689 C Street, Suite 100, Anchorage, Alaska 99501, (907) 272–3422, (FTS) 271–5485

Alaska Land Use Council, Office of the State Cochairman Designee, P.O. Box AW, Juneau, AK 99811, (907) 465–3562

OR

2600 Denali Street, Suite 700, Anchorage, Alaska 99503, (907) 274–3528

The public is invited to attend.

July 27, 1987.

William P. Horn,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–17536 Filed 7–31–87; 8:45 am]

BILLING CODE 4310–10–M

Bureau of Indian Affairs

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act.

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer and the Officer of Management and Budget Interior Desk Officer, Washington, DC 20503, telephone (202) 395–7340.

Title: Housing Improvement Program (HIP), 25 CFR Part 256.

Abstract: The Bureau's HIP provides housing assistance to needy Indians who are not eligible for this type of assistance through other Federally-assisted programs. In order to determine eligibility and priority in terms of degree of need, certain information must be provided by each applicant. On the basis of this information and in accordance with 25 CFR 256.5, tribes determine eligibility, priority, as well as the amount of HIP funds to be granted to each applicant.

Bureau Form Number: BIA 6407.

Frequency: On occasion.

Description of Respondents: Indians who need new or better housing.

Annual Responses: 3,500.

Annual Burden Hours: 1,750.

Bureau Clearance Office: Cathie Martin (202) 343–3577.

Hazel E. Elbert,

Deputy to the Assistant Secretary, Indian Affairs (Tribal Services).

[FR Doc. 87–17510 Filed 7–31–87; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[UT–020–007–4410–08]

Planning Amendment, Tooele MFP Decision 10–2–2, Salt Lake District, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Planning Amendment, Tooele MFP Decision 10–2–2.

SUMMARY: The Tooele MFP decision 10–2–2 is amended to exclude 2.5 acres from 14,207 acres seasonally closed to

motorized vehicles between January 1 and April 30. The 2.5 acres excluded from the designation are located in T. 3 S., R. 8 W., Section 22: W ½ W ½ NW ¼ NW ¼, SE ¼. The area is adjacent to the east side of the Iosepa Cemetery Historic Site.

The amended decision shall read as follows: "Motorized vehicle use on 14,204.5 acres of public land in the Stansbury Mountains shall be limited to existing roads and jeep trails from May 1 through December 31 of each year and closed to motorized vehicle use between January 1 and April 30. The area seasonally closed lies on the western foothills of the Stansbury Mountains between Muskrat Canyon and the Skull Valley Indian Reservation. This closure applies only to public lands. It does not restrict access on designated county roads. Exceptions from the closure include BLM, Utah Division of Wildlife Resources, Forest Service and official search and rescue personnel." The public will have 30 days to protest this decision effective from the date this notice is published in the Federal Register. Any protests should be addressed to Howard Hedrick, Pony Express Area Manager, Salt Lake District, Bureau of Land Management, 2370 South 2300 West, Salt Lake City, Utah 84119.

Dean Zeller,

Salt Lake District Manager.

[FR Doc. 87-17472 Filed 7-31-87; 8:45 am]

BILLING CODE 4310-DQ-M

[UT-020-87-4212-11]

Realty Action on Lease/Conveyance of Public Lands for Recreation and Public Purposes U-54874; Salt Lake District, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following public land in Tooele County, Utah has been found suitable for lease or conveyance to the Iosepa Historical Association for use as a campground and monument/memorial site. The land is to be classified for lease or conveyance under the Recreation and Public Purposes, as amended (43 U.S.C. 869 et seq.).

Salt Lake Base & Meridian

T. 3 S., R. 8 W.,
Sec. 22: W½ W½ NW¼ NW¼ SE¼
Containing 2.5 acres more or less.

The land is not needed for Federal Purposes. Lease or conveyance is consistent with current BLM land use planning and would be in the public interest.

The lease/patent, when issued, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

3. A right-of-way is reserved for ditches and canals constructed by the authority of the United States by Act of August 30, 1890. (26 Stat. 391; 43 U.S.C. 945).

4. All above—ground structures (except monuments) not subject to safety requirements shall be painted by the holder to blend with the natural color of the landscape. The paint used shall be a color which simulates "Standard Environmental Colors" designated by the Rocky Mountain Five—State Interagency Committee. The color selected for this site will be done in consultation with the authorized officer.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Salt Lake District, 2370 S. 2300 W., Salt Lake City, Utah.

Upon publication of this notice in the Federal Register, the land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for recreation and public purposes and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice, interested persons may submit comments regarding the proposed lease/conveyance or classification of the land to the District Manager, Salt Lake District Office, 2370 S. 2300 W., Salt Lake City, Utah 84119. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

John H. Stephenson,

Acting Salt Lake District Manager.

[FR Doc. 87-17471 Filed 7-31-87; 8:45 am]

BILLING CODE 4310-DQ-M

[NV-940-07-4220-11; N-2385]

Proposed Continuation of Withdrawal of Land by the Department of Energy; Nevada

July 17, 1987.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of Energy proposes that a 2.5 acre withdrawal for a seismic station continue for an additional 20 years. The land will remain closed to location and entry under the mining laws, and has been and will remain open to leasing under the mineral leasing laws.

DATE: Comments should be received by November 2, 1987.

ADDRESS: Comments should be sent to: State Director, Nevada State Office, Bureau of Land Management, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520, (702) 784-5484.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, BLM Nevada State Office, P.O. Box 12000, Reno, NV 89520, 702-784-5481.

SUPPLEMENTARY INFORMATION: The Department of Energy proposes that the existing land withdrawal made by Public Land Order No. 4662 dated May 12, 1969, be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

Mount Diablo Meridian

T. 26 S., R. 64 E.,
Sec. 4, SE¼NE¼NW¼SW¼

The area described contains 2.5 acres in Clark County.

The purpose of the withdrawal is for protection of substantial permanent improvements and equipment. The withdrawal closed the described lands to surface entry and mining, but not to mineral leasing. No change in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Nevada State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the

Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued, and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 87-1740 Filed 7-31-87; 8:45 am]

BILLING CODE 4310-HC-M

[OR-943-07-4220-10; GP-07-253; OR-42920 (WASH)]

Proposed Withdrawl of Lands and Opportunity for Public Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to withdraw approximately 9,000 acres of National Forest System lands for protection of the North Cascades Scenic Highway Zone. This notice closes the lands for up to 2 years from mining. The lands will remain open to surface entry and mineral leasing.

DATE: Comments and requests for a public meeting must be received on or before November 2, 1987.

ADDRESS: Comments and meeting requests should be sent to the Oregon State Director, BLM, P.O. Box 2965, Portland, Oregon 97208.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, 503-231-6905.

SUPPLEMENTAL INFORMATION: On July 15, 1987, the U.S. Department of Agriculture, Forest Service, filed an application to withdraw the following described National Forest System lands from location and entry under the United States mining laws, subject to valid existing rights:

Willamette Meridian

Mt. Baker, Okanogan, and Wenatchee National Forests

A strip of land of varying widths of from 200 to 2,000 feet on each side of and runing parallel and concentric with the monumented centerline of State Highway 20 through the following described townships and sections as more particularly identified and described in the offical records of the Bureau of Land Management, Oregon State Office;

T. 37 N., R. 14 E., unsurveyed,
Secs. 10, 11, 12, and 13.
T. 36 N., R. 16 E., unsurveyed,
Secs. 3, 4, 10, 11, 14, 15, 23, 24, 25, and 36.
T. 37 N., R. 16 E., unsurveyed,
Secs. 17, 20, 21, 28, 29, 33, and 34.
T. 35 N., R. 17 E., unsurveyed,
Secs. 5, 6, 7, 8, 13, 16, 17, 21 to 28, inclusive, and 35.
T. 36 N., R. 17 E., unsurveyed,
Sec. 31.
T. 35 N., R. 18 E., unsurveyed,
Secs. 5, 8, 17, 18, 19, and 20.
T. 36 N., R. 18 E., unsurveyed,
Secs. 21 to 29, inclusive, 32, and 33.
T. 36 N., R. 19 E., unsurveyed,
Secs. 19, 20, 27, 28, 29, 30, 32, and 33.

The areas described aggregate approximately 9,000 acres in Chelan, Okanogan, Skagit and Whatcom Counties.

The purpose of the proposed withdrawal is to protect the North Cascades Scenic Highway Zone for a distance of approximately 38 miles between the easterly boundary of the Ross Lake National Recreation Area and a point located approximately one mile west of the Early Winters Ranger Station. The withdrawal, if approved, would replace an existing withdrawal that does not cover the entire scenic zone.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for public meetings is afforded in connection with the proposed withdrawal. All interested person who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. All temporary uses are permitted during this segregative period with the exception of the disposal of the mineral resources under the mining laws.

Dated: July 23, 1987.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87-17511 Filed 7-31-87; 8:45 am]

BILLING CODE 4310-33-M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 395-7313.

Title: Permanent Program Performance Standards—Surface Mining Activities 30 CFR Part 816.

Abstract: Section 515 of Pub. L. 95-87 provides that permittees conducting surface coal mining operations shall meet all applicable performance standards of the Act. This information is used by the regulatory authority in monitoring and inspecting surface mining activities to ensure that they are conducted in a manner which preserves and enhances environmental and other values of the Act.

Bureau form number: None.

Frequency: On occasion, quarterly, and annually.

Description of respondents: Surface coal mining operators.

Annual responses: 60,965.

Annual burden hours: 108,730.

Bureau clearance officer: Darlene Grose Boyd 202-343-5447.

Dated: June 26, 1987.

Carson W. Culp,

Assistant Director for Budget and Administration.

[FR Doc. 87-17468 Filed 7-31-87; 8:45 am]

BILLING CODE 4310-05-M

INTERNATIONAL TRADE COMMISSION

Agency Form Subcommittee for OMB Review

AGENCY: In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Commission has submitted a proposal for the collection of information to the Office of Management and Budget (OMB) for review.

Purpose of Information Collection

The proposed information collection is a "generic clearance" under which the Commission can issue questionnaires for the following types of investigations: countervailing duty, antidumping, escape clause, escape clause review, market disruption and "interference with programs of the USDA."

Summary of Proposal:

(1) Number of forms submitted: three.

(2) Title of forms: *Sample Producer's, Sample Importer's and Sample Purchaser's questionaires* (i.e., the "samples" are an aggregate of the information that is likely to be collected in a series of questionnaires issued under the generic clearance).

(3) Type of request: extension.

(4) Frequency of use: on occasion.

(5) Description of respondents: Businesses or farms that produce, import and/or purchase products under investigation.

(6) Estimated annual number of respondents: 4,000.

(7) Estimated total annual number of hours to complete the forms: 100,000.

(8) Information obtained from the forms that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

Additional Information or Comment

Copies of the proposed forms and supporting documents may be obtained from Lynn Featherstone, (tel. no. 202-523-0301). Comments about the proposal should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: Ms. Francine Picoult). Any comments should be specific, indicating which part of the questionnaires or study plan are objectionable, describing the problem in detail, and including specific revisions or language changes.

Submission of Comments

Comments should be submitted to OMB within two weeks of the date this notice appears in the **Federal Register**. If you are unable to submit them promptly you should advise OMB within the two week period of your intent to comment on the proposal. Ms. Picoult's telephone number is 202-395-7340. Copies of any comments should be provided to Charles Ervin (United States International Trade Commission, 701 E Street, NW., Washington, DC 20436).

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 724-0002.

By order of the Commission.
Issued: July 29, 1987.

Kenneth R. Mason,
Secretary.

[FR Doc. 87-17481 Filed 7-31-87; 8:45 am]
BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Information Collection(s) Under Review

July 29, 1987.

The Office of Management and Budget (OMB) has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories. Each entry contains the following information: (1) The name and telephone number of the Department's Clearance Officer from whom a copy of the form and/or supporting documentation is available; (2) the office, board or division of the Department of Justice issuing the form or administering the collection; (3) the title of the form/collection; (4) the agency form number, if any; (5) how often the report must be filled out or the information is to be collected; (6) who will be asked or required to respond, as well as a brief abstract; (7) an estimate of the total number of respondents; (8) an estimate of the total public burden hours associated with the collection; (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies; and, (10) the name and telephone number of the person or office responsible for the OMB review. Comments and/or questions regarding the item(s) contained in this notice should be directed to the OMB reviewer listed at the end of each entry *AND* to the Department's Clearance Officer. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submissions, you should so advise the OMB reviewer *AND* the Department's Clearance Officer of your intent as early as possible.

The Department of Justice Clearance Officer is: Larry E. Miesse, (202) 633-4312.

New Collection

(1) Larry E. Miesse, (202) 633-4312
(2) Office of Juvenile Justice Delinquency and Prevention, Department of Justice
(3) FY 1987 Program Announcements and Request for Applications
(4) No form number
(5) One time
(6) State or local governments, non-profit institutions, small businesses or organizations. To communicate to interested applicants the specific requirements for submitting proposals in response to solicitations for approved programs.
(7) 132 annual responses
(8) 5,280 estimated total public burden hours (40 hours per response)
(9) Not applicable under 3504(h).
(10) Robert Fishman, (202) 395-7340

Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

(1) Larry E. Miesse, (202) 633-4312
(2) Drug Enforcement Administration, Department of Justice
(3) Application for Registration, Application for Registration Renewal
(4) DEA 363 (Application); DEA 363a (Renewal)
(5) DEA 363 on occasion; DEA 363a annually
(6) State or local governments, businesses or other for-profit, non-profit institutions. Practitioners who dispense narcotic drugs to individuals for maintenance or detoxification treatment must register with the Drug Enforcement Administration under the Narcotic Addict Treatment Act of 1974. Registration is needed for control measures and is used to prevent diversion.
(7) 900 annual responses
(8) 450 estimated total public burden hours (.5 hours per response)
(9) Not applicable under 3504(h).
(10) Robert Fishman, (202) 395-7340

Larry E. Miesse,
Clearance Officer, Department of Justice.

[FR Doc. 87-17518 Filed 7-31-87; 8:45 am]
BILLING CODE 4410-09-M

Lodging of Consent Decree; Dover, NH

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that on June 25,

1987 a proposed Consent Decree in *United States and the State of New Hampshire, v. City of Dover, New Hampshire*, was lodged with the United States District Court for the District of New Hampshire. That action was brought pursuant to the Clean Water Act for the City's failure to meet that Act's deadline for construction of secondary wastewater treatment facilities and for violating discharge limitations included in its federal and state permits.

The settlement agreement requires Dover to complete construction of a new secondary treatment facility, and to come into compliance with provisions of the Clean Water Act by November 1, 1992. Until that time, the City's existing treatment plant must meet strict standards regulating its discharge or pay civil penalties ranging from $250 to $1,000 per violation. In addition, Dover will pay a $27,500 penalty to the United States, and as further injunctive relief, the City will spend $67,500 to fund an environmentally beneficial program. That program will consist of the purchase and installation of testing equipment to analyze wastewater discharges from industries in Dover and surrounding communities. The equipment will allow Dover to detect and reduce or eliminate significant concentrations of hazardous metals from the City's wastewater, the Cocheco River, and the primary sludge produced at the existing plant. The testing equipment will be installed and operating within six months, and construction of the new treatment plant will commence early in 1989 following completion and approval of necessary design work.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Acting Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to *United States and the State of New Hampshire, v. City of Dover, New Hampshire*, D.J. Ref. 90–5–1–1–2728.

The proposed consent decree may be examined at the office of the United States Attorney, 439 Federal Building, 55 Pleasant Street, Concord, New Hampshire 03301 and at the Regional I Office of the Environmental Protection Agency, John F. Kennedy Federal Building, Boston, Massachusetts 02203. Copies of the proposed consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. Any request for a copy of the consent decree should be accompanied by a check in the amount of $2.50 for copying costs ($0.10 per page) payable to "United States Treasurer."

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87–17512 Filed 7–31–87; 8:45 am]

BILLING CODE 4410-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–285]

Issuance of Environmental Assessment and Findings of No Significant Impact; Omaha Public Power District, Fort Calhoun Station, Unit 1

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of a proposed amendment to Facility Operating License No. DPR–40, issued to the Omaha Public Power District (licensee), for operation of the Fort Calhoun Station, Unit 1, located in Washington County, Nebraska. *Identification of Proposed Action:* The amendment would consist of changing the operating license to extend the expiration date of the operating license for Fort Calhoun Station, Unit 1 from June 7, 2008 to August 9, 2013. The proposed license amendment is responsive to the licensee's application dated July 17, 1986, as supplemented on April 30 and May 15, 1987. The Commission's staff has prepared an Environmental Assessment of the proposed action, "Environmental Assessment by the Office of Nuclear Reactor Regulation Relating to the Change in Expiration Date of Facility Operating License No. DPR–40, Omaha Public Power District, Fort Calhoun Station, Unit 1, Docket No. 50–285," dated July 29, 1987.

Summary of Environmental Assessment: The Commission's staff has reviewed the potential environmental impact of the proposed change in the expiration date of the Operating License for Fort Calhoun, Unit 1. This evaluation considered the previous environmental studies, including the "Final Environmental Statement Related to Fort Calhoun, Unit 1," (FES) August 1972, and more recent NRC policy.

Radiological Impacts: Based on the 1980 U.S. Census data, the actual population was approximately three times less than was projected in the FES based on the 1972 census. The U.S. Census data shows the low population zone is 6,418 and within 50–mile radius 883,525 (of which 569,614 reside in the metropolitan area of Omaha). The census shows an increase in population in the Omaha metropolitan area and in most of the nearby cities, but a decrease in the rural population. The estimated growth rate is 1.2% or 22,449 for the year 2013. The staff concludes, based upon these population estimates that the nearest Exclusion Area Boundary, Low Population Zone, and nearest population center distances will likely be unchanged in the future. Therefore, the conclusion reached in the staff's Safety Evaluation in 1973, that Fort Calhoun Station meets the requirements of 10 CFR Part 100, remains unchanged.

Station radiological effluents to unrestricted areas during normal operation have been well within Commission regulations regarding as low as reasonably achievable (ALARA) limits, and are indicative of future releases. In addition, the proposed additional years of reactor operation do not increase the annual public risk from reactor operation. Thus, the slightly incease in projected population growth rate does not change the environmental impact findings in the FES because its effect are offset by favorable radiological exposure from plant releases during normal operation and by low public risk from accidents.

With reagard to normal plant operation, the licensee complies with Commission guidance and requirements for keeping radiation exposures to ALARA for occupational exposures and for radioactivity in effluents. The licensee would continue to comply with these requirements during any additional years of facility operation and also apply advanced technology when available and appropriate. Accordingly, radiological impacts on man, both onsite and offsite, are not significantly more severe than previously estimated in the FES and our

previous cost-benefit conclusions remain valid.

The environmental impacts attributable to transportation of fuel and waste to and from the Fort Calhoun Station, with respect to normal conditions of transport and possible accidents in transport, would be bounded as set forth in Summary Table S-4 of 10 CFR 51.52, and the values in Table S-4 would continue to represent the contribution of transportation to the environmental costs associated with the reactor.

Non-Radiological Impacts: The Commission has concluded that the proposed extension will not cause a significant increase in the impacts to the environment and will not change any conclusions reached by the Commission in the FES.

Findings of No Significant Impacts:

The Commission's staff has reviewed the proposed change to the expiration date of the Fort Calhoun Station, Unit 1, Facility Operating License relative to the requirements set forth in 10 CFR Part 51. Based upon the environmental assessment, the staff concluded that there are no significant radiological or non-radiological impacts associated with the proposed action and that the proposed license amendment will not have a significant effect on the quality of the human environment. Therefore, the Commission has determined, pursuant to 10 CFR 51.31, not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this action, see: (1) The application for amendment dated July 17, 1986, as supplemented on April 30 and May 15, 1987, (2) the Final Environmental Statement Related to Operation of Fort Calhoun Station, Unit 1, issued August 1972 and (3) the Environmental Assessment dated July 29, 1987. These documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, Washington, DC 20555 and at the W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Dated at Bethesda, Maryland, this 29th day of July 1987.

For the Nuclear Regulatory Commission.

Anthony Bournia,

Project Manager, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 87-17558 Filed 7-31-87; 8:45 am]

BILLING CODE 7590-01-M

PENSION BENEFIT GUARANTY CORPORATION

[Case No. 08035400]

Request for Exemption From Bond/Escrow Requirement Relating to Sale of Assets by an Employer that Contributes to a Multiemployer Plan: Puerto Rico Maritime Shipping Authority and Maher Terminals, Inc.

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of pendency of request.

SUMMARY: This notice advises interested persons that the Pension Benefit Guaranty Corporation has received a request from Puerto Rico Maritime Shipping Authority and Maher Terminals, Inc. for an exemption from the bond/escrow and contract language requirements of section 4204(a)(1)(B) and (C) of the Employee Retirement Income Security Act of 1974. Section 4204(a)(1) provides that the sale of assets by an employer that contributes to a multiemployer pension plan will not result in a complete or partial withdrawal from the plan if certain conditions are met. Two of these conditions are that the purchaser post a bond or deposit money in escrow for five plan years beginning after the sale and that the sale contract provide for secondary liability on the part of the seller if the buyer withdraws during the five-year period. ERISA authorizes the PBGC to grant an exemption from these requirements after giving interested persons an opportunity to comment on the exemption request. The effect of this notice is to advise interested persons of this exemption request and to solicit their views on it.

DATE: Commenters must submit comments on or before September 17, 1987.

ADDRESS: Commenters should address all written comments to: Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006. The exemption request and the comments received will be available for public inspection at the PBGC Communications and Public Affairs Department, Suite 7100, at the above address, between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Corporate Policy and Regulations Department (35400), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; 202-778-8850 (202-778-8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

Section 4204(a)(1) of the Employee Retirement Income Security Act of 1974 ("ERISA") provides that a bona fide arm's-length sale of assets to an unrelated party by an employer that contributes to a multiemployer pension plan will not result in a withdrawal if three conditions are met. These conditions, listed in section 4204(a)(1)(A)-(C), are that—

(A) the purchaser has an obligation to contribute to the plan for substantially the same number of contribution base units for which the seller was obligated to contribute;

(B) the purchaser obtains a bond or places an amount in escrow, for a period of five plan years after the sale, in an amount equal to the greater of the seller's average required annual contribution to the plan for the three plan years before the year of sale or the seller's required annual contribution for the plan year before the year of sale; and

(C) the contract of sale provides that if the purchaser withdraws from the plan within the first five plan years beginning after the sale and fails to pay its liability to the plan, the seller will be secondarily liable for the liability it (the seller) would have had but for section 4204.

The bond or escrow described above will be paid to the plan if the purchaser withdraws from the plan or fails to make any required contributions to the plan within the first five plan years beginning after the sale.

Section 4204(c) of ERISA authorizes the Pension Benefit Guaranty Corporation ("PBGC") to grant exemptions from the purchaser's bond/escrow requirement of section 4204(a)(1)(B) and the contract/provision requirement of section 4204(a)(1)(C). The legislative history of section 4204 indicates a Congressional intent that the sales rules be administered in a manner that assures protection of plans with the least practicable intrusion into normal business transactions. The granting of an exemption from the requirements of section 4204(a)(1)(B) or (C) is not a finding by the PBGC that the transaction satisfies the other requirements of section 4204(a)(1).

Under the PBGC's regulation on variances for sales of assets (29 CFR Part 2643), requests for waivers of the bond/escrow and contract-provision requirements are normally made to the multiemployer plan in question. However, under § 2643.2 of the regulation, a waiver of these requirements may be sought from the PBGC, if the parties decline to provide

to the plan privileged or confidential financial information (within the meaning of section 552(b)(4) of the Freedom of Information Act) necessary to support the waiver request. Under § 2643.3(a) of the regulation, the PBGC will approve an exemption request if it determines that approval of the exemption—

(1) Will more effectively or equitably carry out the purposes of Title IV of ERISA; and

(2) Will not significantly increase the risk of financial loss to the plan.

Section 4204(c) of ERISA and § 2643.3(b) of the regulation require the PBGC to publish a notice of the pendency of a request for an exemption in the **Federal Register**, and to provide interested parties with an opportunity to comment on the proposed exemption.

The Request

The PBGC has received a request from Puerto Rico Maritime Shipping Authority ("PRMSA") and Maher Terminals, Inc. ("Maher"), to waive the bond/escrow and contract language requirements of section 4204(a)(1) (B) and (C) of ERISA. The applicants represent, among other things, the following:

(1) Effective November 29, 1986, Maher purchased the assets of the guard service operated by PRMSA in Port Elizabeth, New Jersey.

(2) In connection with the sale, Maher assumed PRMSA's obligation to contribute to the NYSA-PPGU Pension Fund and Plan ("the Plan").

(3) The Plan has informed Maher that the amount of the bond or escrow required of Maher under section 4202(a)(1)(B) is $166,794. The Plan has also informed Maher that it will not request Maher to post the bond while Maher's waiver request to the PBGC is pending. The estimated amount of the withdrawal liability that PRMSA would otherwise incur as a result of the sale if section 4204 did not apply to the sale is $272,385.

(4) Maher had net tangible assets of more than $2,000,000 as of the end of its fiscal year ending in September 1986.

(5) The information necessary to support the waiver request is confidential financial information (within the meaning of section 552(b)(4) of the Freedom of Information Act) that Maher declines to submit to the Plan.

(6) The applicants have sent a copy of this request (excluding copies of financial statements included with the request) to the Plan and the collective bargaining representatives of the former employees of PRMSA by certified mail, return receipt requested.

Comments

The PBGC invites all interested persons to submit written comments on the pending exemption request to the above address by September 17, 1987. The PBGC will make all comments a part of the record. Comments received, as well as the application for exemption, will be available for public inspection at the address set forth above.

Issued at Washington, DC, on this 28th day of July 1987.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 87-17506 Filed 7-31-87; 8:45 am]

BILLING CODE 7708-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-24735; File No. SR-CBOE-87-23]

Self-Regulatory Organizations; Proposed Rule Change by Chicago Board Options Exchange, Inc., Relating to Updating Exchange Rules Concerning Membership

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 1, 1987 the Chicago Board Options Exchange, Inc. ("Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

This proposed rule change revises the Exchange's membership rules, which are contained in chapter three. It primarily updates those rules, for example, replacing outdated references to the "Office of the Secretary" with "Membership Department." It eliminates repetitive and otherwise unnecessary language. The proposed rule change also adds important existing policies to the rules: (1) Defining the term "good standing" (Rule 1.1 (jj)), (2) making clear that a nominee must have his employer's permission and must be registered as a broker-dealer before trading for his own account (Rule 3.3), (3) making clear that application fees are not refundable (Rule 3.8) and (4) describing the member death benefit (Rule 3.24).

Several material changes are proposed. An individual would be able to own more than one membership. (Rule 3.2) The language concerning denying or conditioning membership has been clarified. Rule 3.4 would allow the Exchange to deny or condition membership for the same reasons that the Commission may deny or revoke a broker-dealer registration under the Act. In addition, Rule 3.4 would stipulate that denial of membership could be based on "such other cause(s) as the Membership Committee reasonably may decide." Rule 3.4 thus is intended to incorporate specifically the broad "just and equitable principles of trade" language of Section 6(c) of the Act, which would allow the Exchange to consider factors other than those arising in the context of the securities business. Rule 3.4 also would allow the Membership Committee to delay action on the application of an applicant who is the subject of a pending investigation by a self-regulatory organization or government agency until the matter is resolved. Finally, the Exchange's normal appellate process would serve as a protection against arbitrary action by the Membership Committee. In addition, Rule 3.4 makes clear that the Exchange's Business Conduct Committee may take action when any reason for denying or for conditioning membership comes into existence after a membership has been approved and/or has become effective.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to bring chapter three, which contains the Exchange's membership rules, up to date by revising or eliminating out of date language, by adding important existing policies to the rules and by making mostly nonmaterial, procedural changes.

The statutory basis for this proposed rule change is Section 6, particularly Paragraphs (b)(2) (admission to membership) and (b)(7) (denial of membership) of the Act.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

(C) Self Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copy in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to file number SR-CBOE-87-23 and should be submitted by August 24, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 27, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-17491 Filed 7-31-87; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

July 27, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Americus Trust for AT&T Shares, Series 2, Scores (File No. 7-0299)

Americus Trust for GM Shares, Scores (File No. 7-0300)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 17, 1987 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-17492 Filed 7-31-87; 8:45 am]

BILLING CODE 8010-01-M

[File No. 81-737]

Application and Opportunity for Hearing; IMCO Realty Services

July 27, 1987.

Notice is hereby given that IMCO Realty Services ("Applicant") has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act") for an order exempting Applicant from the registration requirements of section 12(g) of the 1934 Act.

For a detailed statement of the information presented, all persons are referred to the application which is on file at the offices of the Commission in the Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

Notice is further given that any interested person not later than August 21, 1987, may submit to the Commission in writing his views or any substantial facts bearing on the application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert.

Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponement thereof. At any time after that date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-17493 Filed 7-31-87; 8:45 am]

BILLING CODE 8010-01-M

[File No. 87-735]

Application and Opportunity for Hearing; Mid-Atlantic Residential Investors Limited Partnership

July 27, 1987

Notice is hereby given that Mid-Atlantic Residential Investors Limited Partnership ("Applicant") has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended, (the "1934 Act") for an order exempting Applicant from the registration requirements of section 12(g) of the 1934 Act.

For a detailed statement of the information presented, all persons are referred to the application which is on file at the offices of the Commission in the Public Reference Room, 450 Fifth Street, NW. Washington, DC 20549.

Notice is further given that any interested person not later than August 21, 1987, may submit to the Commission in writing his views or any substantial facts bearing on the application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and should state briefly the nature of the interest of the person submitting such information

or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert.

Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponement thereof. At any time after that date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-17494 Filed 7-31-87; 8:45 am]

BILLING CODE 8010-01-M

[File No. 81-736]

Application and Opportunity for Hearing; 600 Grant Street Associates Limited Partnership

July 27, 1987.

Notice is hereby given that 600 Grant Street Associates Limited Partnership ("Applicant") has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended, (the "1934 Act") for an order exempting Applicant from the registration requirements of section 12(g) of the 1934 Act.

For a detailed statement of the information presented, all persons are referred to the application which is on file at the offices of the Commission in the Public Conference Room, 450 fifth Street NW., Washington, DC 20549.

Notice is further given that any interested person not later than August 21, 1987, may submit to the Commission in writing his views or any substantial facts bearing on the application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert.

Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponement thereof. At any time after that date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-17495 Filed 7-31-87; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

[Docket 44843]

U.S.-Venezuela Route Proceeding; Reassignment of Proceeding

This proceeding is reassigned to Administrative Law Judge Burton S. Kolko. Future communications regarding the proceeding should be addressed to him at the U.S. Department of Transportation, Office of Hearings, M-50, Room 9228, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-2142.

William A. Kane, Jr.,

Chief Administrative Law Judge.

[FR Doc. 87-17504 Filed 7-31-87; 8:45 am]

BILLING CODE 4910-62-M

Office of the Secretary

[Order 87-7-70; Dockets 39855, 40208, 41156, and 41586]

Proposed Suspension of the Section 401 Certificates of South Pacific Island Airways, Inc.

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Notice of Order to Show Cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue orders suspending the certificates of South Pacific Island Airways, Inc. issued under section 401 of the Federal Aviation Act for failure to comply with the continuing fitness requirements of section 401(r).

DATES: Persons wishing to file objections should do so no later than August 13, 1987.

ADDRESSES: Responses should be filed in Dockets 39855, 40208, 41156 and 41586 and be addressed to the Documentary Services Division, Department of Transportation, 400 7th Street, SW., Room 4107, Washington, DC 20590 and should be served on the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Stephen H. Davis, Air Carrier Fitness Division, P-56, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590, (202) 366-1049.

Dated: July 29, 1987

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 87-17503 Filed 7-31-87; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA), Special Committee 160-406 MHz Emergency, Locator Transmitters (ELT); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 160 on 406 MHz Emergency Locator Transmitters (ELT) to be held on August 26-28, 1987, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC., commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Remarks; (2) Approval of the Minutes of the Fourth Meeting; (3) Review and Discuss EUROCAE WG-29 Activities; (4) Report on Potential Problems of Frequency Interference in the 406 MHz Band; (5) Review of Task Assignments From Last Meeting; (6) Review the Second Draft of the MOPS; (7) Task Assignments; (8) Other Business; and (9) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 27, 1987.

Wendie F. Chapman,

Designated Officer.

[FR Doc. 87-17466 Filed 7-31-87; 8:45 am]

BILLING CODE 4910-13

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: July 27, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to

OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: IRS Form 8582
Type of Review: New collection
Title: Passive Activity Loss Limitations
Description: Under section 469, losses from passive activities, to the extent that they exceed income from passive activities, cannot be deducted against nonpassive income. Form 8582 is used to figure the passive activity loss allowed and the loss to be reported on the tax return. The worksheets 1 and 2 in the instructions are used to figure the amount to be entered on lines 1 and 2 of Form 8582 and worksheets 3 through 6 are used to allocate the loss allowed back to individual activities.
Respondents: Individuals or households, Farms, Businesses or other for-profit
Estimated Burden: 18,285,326 hours

OMB Number: New
Form Number: IRS Form 5305A–SEP
Type of Review: New collection
Title: Salary Reduction and Other Simplified Employee Pension Elective-Individual Retirement Contribution Agreement
Description: This form is used by an employer to make an agreement to provide benefits to all employees under a salary reduction Simplified Employee Pension (SEP) described in section 408(k). This form is not to be filed with IRS but to be retained in the employer's records as proof of establishing such a plan, thereby justifying a deduction for contributions made to this SEP. The data is used to verify the deduction.
Respondents: Businesses
Estimated Burden: 25,000 hours

OMB Number: New
Form Number: IRS Form 1120–RIC
Type of Review: New collection
Title: U.S. Income Tax Return for Regulated Investment Companies
Description: Form 1120–RIC is filed by a domestic corporation electing to be taxed as a RIC in order to report its income and deductions and to compute its tax liability. IRS uses Form 1120–RIC to determine whether the RIC has correctly reported its income, deductions, and tax.
Respondents: Businesses
Estimated Burden: 12,884 hours

OMB Number: 1545–0024
Form Number: IRS Form 843
Type of Review: Revision
Title: Claim
Description: Internal Revenue Code (IRC) sections 6402, 6404, and 301.6402–2, 301.6403–1, and 301.6511 of the regulations allow for refunds of taxes (other than income taxes) which were illegally, erroneously, or excessively collected; or to claim amount paid for stamps unused or used in error or excess and, (except in the case of income, estate, or gift tax), to file a claim for abatement of an overassessment or the unpaid portion of an overassessment, if more than the correct amount of tax, interest, additional amount, addition to tax, or assessable penalty has been assessed.
Respondents: Individuals or households, State and local governments, Farms, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations
Estimated Burden: 676,443 hours

OMB Number: 1545–0052
Form Number: IRS Forms 990–PF and 4720
Type of Review: Revision
Title: Form 990–PF, Return of Private Foundation or section 4947(a)(1) Trust Treated as a Private Foundation. Form 4720, Return of Certain Excise Taxes on Charities and Other Persons Under Chapters 41 and 42 of the Internal Revenue Code.
Description: IRC section 6033 requires all private foundations including section 4947(a)(1) trusts treated as private foundations to file an annual information return. Section 53.4940–1(a) of the Income Tax Regulations requires that the tax on net investment income be reported on the return filed under section 6033. Section 6011 requires a report of taxes under Chapter 42 of certain related parties. Section 4948(a)(1) trusts may file Form 990–PF in lieu of Form 1041 under the provisions of sections 6033 and 6012.
Respondents: Individuals or households, Businesses or other for-profit, Non-profit institutions
Estimated Burden: 856,595 hours

OMB Number: 1545–0123
Form Number: IRS Form 1120, Schedules D and PH
Type of Review: Revision
Title: U.S. Corporations Income Tax Return, Capital Gains and Losses; Computation of U.S. Personal Holding Company Tax
Description: Form 1120 is used by corporations to compute their taxable income and their liability. Schedule D (Form 1120) is used by corporations to report gains and losses from the sale of capital assets. Schedule PH is used by personal holding companies to compute their tax liability. The IRS uses these forms to determine whether corporations have correctly computed their tax liability.
Respondents: Farms, Businesses or other for-profit, Small businesses or organizations
Estimated Burden: 22,394,053 hours

OMB Number: 1545–0145
Form Number: IRS Form 2439
Type of Review: Revision
Title: Notice to Shareholder of Undistributed Long-Term Capital Gains
Description: Form 2439 is sent by regulated investment companies to their shareholders to report undistributed capital gains and the amount of tax paid on these gains designated under IRC section 852(b)(3)(D). Both the company and shareholder file copies of Form 2439 with IRS. IRS uses the information to check shareholder compliance.
Respondents: Businesses or other for-profit
Estimated Burden: 2,040 hours

OMB Number: 1545–0170
Form Number: IRS Form 4466
Type of Review: Revision
Title: Corporation Application for Quick Refund of Overpayment of Estimated Tax
Description: Form 4466 is used by a corporation to file for an adjustment (quick refund) of overpayment of estimated income tax for the tax year. This information is used to process the claim, so the refund can be issued.
Respondents: Farms, Businesses or other for-profit, Small businesses or organizations
Estimated Burden: 7,096 hours

OMB Number: 1545–0187
Form Number: IRS Form 4835
Type of Review: Revision
Title: Farm Rental Income and Expenses
Description: This form is used by landowners (or sub-lessors) to report farm rental income based on crops or livestock produced by the tenant when the landowner (or sub-lessor) does not materially participate in the operation or management of the farm. This form is attached to Form 1040 and the data is used to determine whether the proper amount of rental income has been reported.
Respondents: Individuals or households, Farms
Estimated Burden: 164,475 hours

OMB Number: 1545–0196
Form Number: IRS Form 5227
Type of Review: Revision
Title: Split-Interest Trust Information Return
Description: The data reported is used to verify that the beneficiaries of a split-interest trust include the correct amounts in their tax returns, and that the trust owes no income tax or private foundation taxes.
Respondents: Businesses or other for-profit
Estimated Burden: 187,093 hours

OMB Number: 1545–0233
Form Number: IRS Form 7004
Type of Review: Revision
Title: Application for Automatic Extension of Time to File Corporation Income Tax Return
Description: Form 7004 is used by corporations and certain non-profit institutions to request an automatic 6-month extension of time to file their income tax returns. The information is needed by IRS to determine whether Form 7004 was timely filed so as not to impose a late filing penalty in error and also to insure that the proper amount of tax was computed and deposited.
Respondents: Farms, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations
Estimated Burden: 750,885 hours

OMB Number: 1545–0520
Form Number: IRS Form SWR E–665
Type of Review: Extension
Title: Deduction for Depletion on Ground Water Used for Irrigation
Description: This form is required by Rev. Proc. 66–11 as an attachment to the tax return. The form provides a standard method of computing and reporting water depletion deductions by taxpayers who extract ground water from the Ogallala geological formation. The Internal Revenue Service uses the information to determine if the depletion has been computed correctly.
Respondents: Individuals or households, Farms, Businesses or other for-profit
Estimated Burden: 4,000 hours

OMB Number: 1545–0687
Form Number: IRS Form 990–T
Type of Review: Extension
Title: Exempt Organization Business Income Tax Return
Description: Form 990–T is needed to compute the section 511 tax on unrelated business income of a charitable organization. IRS uses the information to enforce the tax.
Respondents: Non-profit institutions
Estimated Burden: 294,085 hours

OMB Number: 1545–0862
Form Number: IRS Form 8257
Type of Review: Extension
Title: Documentation of State Data
Description: IRC 6103(d) provides for the exchange of Federal/State information for tax administration. The Form provides an effective, efficient, and uniform method for the Service to determine what state records are available that may be used by the Service in its Compliance Programs. Use of the form conserves resources and avoids duplication of effort.
Respondents: State or local governments
Estimated Burden: 40,000 hours

OMB Number: 1545–0890
Form Number: IRS Form 1120–A
Type of Review: Revision
Title: U.S. Corporation Short-Form Income Tax Return
Description: Form 1120–A is used by small corporations, those with less than $25,000 of income and assets to compute their taxable income and their tax liability. The IRS uses Form 1120–A to determine whether corporations have correctly computed their tax liability.
Respondents: Farms, Businesses or other for-profit, Small businesses or organizations
Estimated Burden: 5,239,571 hours

OMB Number: 1545–0975
Form Number: IRS Form 1120–W
Type of Review: Revision
Title: Corporation Estimated Tax
Description: Form 1120–W is used by corporations to figure estimated income tax liability and the amount of each installment payment. Form 1120–W is a worksheet only. It is not required to be filed.
Respondents: Businesses or other for-profit
Estimated Burden: 476,046 hours
Clearance Officer: Garrick Shear (202) 566–6150, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Dale A. Morgan,
Departmental Reports, Management Officer.
[FR Doc. 87–17577 Filed 7–31–87; 8:45 am]
BILLING CODE 4810-25-M

Customs Service

Application for Recordation of Trade Name: "BROWNING"

ACTION: Notice of application for recordation of trade name.

SUMMARY: Application has been filed pursuant to § 133.12, Customs Regulations (19 CFR 133.12) for the recordation under § 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "BROWNING" used by Browning, a corporation organized under the laws of the State of Utah, located at Route 1, Morgan, Utah 84050.

The application states that the trade name is used in connection with hunting, camping and sporting goods equipment and accessories and sportswear including shotguns, rifles, black powder rifles, pistols, pistol cases, pistol holsters, flexible gun cases, fitted luggage cases, recoil pads, sight beads, chokes for shotguns, scope mount rings and bases, rifle slings and swivels, magazine plugs, gun oil, gun cleaners, gun safes, pocket knives, knife sharpeners, fishing and hunting knives, knife sheaths, knife honing oil, sleeping bags, coats, jackets, parkas, vests, insulated hunting suits, hoods, rain jackets, rain coats, rain pants, rain suits, rain parkas, underwear, hunting trousers, hunting vests, gloves, mittens, shooting gloves, hats, shirts, belts, belt buckles, insulated boots, waterproof boots, boot laces, boot dressings, socks, wool fleece bedding, archery bows, cross bows, archery gloves, shooting tabs, arm guards, quivers, nontelescopic bow sights and slings, bow cases, target faces, bow strings, fishing rods, rod blanks and cases, hand-pulled golf carts, golf clubs, golf bags and golf club head covers, manufactured in Belgium, France, England, Italy, West Germany, Portugal and Canada.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken in the application for recordation of this trade name will be published in the **Federal Register**.

DATE: Comments must be received on or before October 2, 1987.

ADDRESS: Written comments should be addressed to the Commissioner of Customs, Attention: Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Beatrice E. Moore, Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue, NW., Washington, DC 20229 (202–566–5765).

Dated: July 23, 1987.

John F. Atwood,

Acting Chief, Entry, Licensing and Restricted Merchandise Branch.

[FR Doc. 87-17531 Filed 7-31-87; 8:45 am]

BILLING CODE 4820-02-M

Application for Recordation of Trade Name: "Two's Company"

ACTION: Notice of application for recordation of trade name.

SUMMARY: Application has been filed pursuant to § 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "TWO'S COMPANY" used by Two's Company, a corporation organized under the laws of the State of New York, located at 33 Bertel Avenue, Mount Vernon, New York 10550.

The application states that the trade name is used in connection with acrylic and glass vases; stirrers; glass picture frames; glass products; floral accessories; commercial flower containers; Christmas ornaments; silver and silver plated products; napkin rings and vinyl products, manufactured in Taiwan, Hong Kong and Japan.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the Federal Register.

DATE: Comments must be received on or before October 3, 1987.

ADDRESS: Written comments should be addressed to the Commissioner of Customs, Attention: Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue, NW., Washington, DC 20229 (Room 2345).

FOR FURTHER INFORMATION CONTACT: Harriet Lane, Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue, NW., Washington, DC 20229 (202-566-5765).

Dated: July 23, 1987.

John F. Atwood,

Acting Chief, Entry, Licensing and Restricted Merchandise Branch.

[FR Doc. 87-17532 Filed 7-31-87; 8:45 am]

BILLING CODE 4820-02-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 148
Monday, August 3, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, August 6, 1987.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Md.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

PPPA Protocol Revisions

The Commission will consider options for revisions to the child and adult testing protocols for poison prevention packaging.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301-492-6800.

Sheldon D. Butts,
Deputy Secretary.
June 30, 1987.

[FR Doc. 87-17621 Filed 7-30-87; 12:34 pm]
BILLING CODE 6355-01-M

FEDERAL COMMUNICATIONS COMMISSION

FCC To Hold Open Commission Meeting Tuesday, August 4, 1987

July 28, 1987.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Tuesday, August 4, 1987, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, DC.

Agenda, Item No., and Subject

Private Radio—1—Title: Amendment of Part 90 of the Rules concerning eligibility of commercial enterprises to be licensed in the Special Emergency Radio Service. Summary: The Commission will consider whether to allow commercial enterprises to be licensed directly in the Special Emergency Radio Service to offer communications services to other Special Emergency Radio Service eligibles.

Common Carrier—1—Title: In the Matter of Policy and Rules concerning Rates for Dominant Carriers. Summary: The FCC will consider initiating a rulemaking proceeding to examine alternative approaches to rate-of-return regulation for dominant carriers.

Mass Media—1—Title: Inquiry into § 73.1910 of the Commission's Rules and Regulations concerning Alternatives to the General Fairness Doctrine Obligations of Broadcast Licensees. Summary: The Commission will consider a Report Examining Various Alternatives to the Fairness Doctrine.

Mass Media—2—Title: Notice of Proposed Rule Making Concerning Abuses of the Commission's Processes. Summary: The Commission considers proposed modifications to its policy on citizens' agreements and proposed rules intended to deter abuses of the Commission's petition to deny any allocation counterproposal process.

Mass Media—3—Title: In re Complaint of Syracuse Peace Council against Television Station WTVH, Syracuse, New York. Summary: The Commission will consider the appropriate action to take in the enforcement of the fairness doctrine against Meredith Corporation, licensee of Station WTVH, Syracuse, New York, in light of the remand order of the U.S. Court of Appeals for the District of Columbia Circuit.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Sarah Lawrence, Office of Congressional and Public Affairs, telephone number (202) 632-5050.

Issued: July 28, 1987.
Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 87-17637 Filed 7-30-87; 2:05 pm]
BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:08 a.m. on Tuesday, July 28, 1987, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider matters relating to the possible failure of certain insured banks: Names and locations of banks authorized to be exempt from disclosure pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Ms. Judith A. Walter, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: July 20, 1987.
Federal Deposit Insurance Corporation
Margaret M. Olsen,
Deputy Executive Session.
[FR Doc. 87-17617 Filed 7-30-87; 12:34 pm]
BILLING CODE 6714-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Tuesday, August 4, 1987.

PLACE: Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Pipeline Accident Report—Lone Star Gas Company's Natural Gas Explosion and Fire, Fort Worth, Texas, March 12, 1986
2. Recommendation for the Establishment of Statewide Coordinated Highway Safety Education Program

FOR MORE INFORMATION, CONTACT: Bea Hardesty, *Staff Assistant.*

Bea Hardesty,
Staff Assistant.
July 24, 1987.

[FR Doc. 87-17600 Filed 7-30-87; 10:23 am]
BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of August 3, 10, 17, and 24, 1987.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of August 3

Tuesday, August 4

10:00 a.m.
Briefing on the Management of "Greater Than Class C Low Level Wastes" and the LLW Program (Public Meeting)
2:00 p.m.
Briefing on Performance of New Plants (Public Meeting)

Wednesday, August 5

10:00 a.m.
Briefing on Staff Response to Recommendations of the Materials Safety Review Group (Public Meeting)
2:00 p.m.
Briefing on the Status of B&W Reassessment (Public Meeting)

Thursday, August 6

2:00 p.m.
Periodic Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if Needed)

Friday, August 7

10:30 a.m.
Discussion of Management–Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

Week of August 10—Tentative

Thursday, August 13

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of August 17—Tentative

No Commission Meetings

Week of August 24—Tentative

No Commission Meetings

NOTE.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)—(202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Robert McOsker (202) 634–1410.

Robert B. McOsker,
Office of the Secretary.
July 30, 1987.

[FR Doc. 87–17653 Filed 7–30–87; 3:49 pm]
BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

TIME AND DATE: 9:00 a.m. on Friday, August 14, 1987.

PLACE: Conference Room, 1333 H Street, NW., Suite 300, Washington, DC

STATUS: Open.

MATTERS TO BE CONSIDERED: The consideration of the Commission's Fiscal Year 1988 Budget.

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Room 300, 1333 H Street, NW., Washington, DC 20268–0001, Telephone (202) 789–6840.

Cyril J. Pittack,
Acting Secretary.

[FR Doc. 87–17586 Filed 7–30–87; 9:40 am]
BILLING CODE 7715-01-M

Corrections

Federal Register
Vol. 52, No. 148
Monday, August 3, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-41027; FRL 3203-9]

Twentieth Report of the Interagency Testing Committee to the Administrator; Receipt of Report and Request for Comments Regarding Priority List of Chemicals

Correction

In notice document 87-11478, beginning on page 19020, in the issue of Wednesday, May 20, 1987, make the following corrections:

1. On page 19020, in the first column, in the "**SUMMARY**", in the 14th line, "[2" should read "[(2", in the 17th line "amino" should read "amino]", and in the 19th line, "bis" should read "[bis".

2. On the same page, in the second column, in the second paragraph, after "Rm.", insert "NE".

3. On the same page, in the second column, under **I. Background**, in the second paragraph, in the first line, "49(e)" should read "4(e)".

BILLING CODE 1505-01-D

LEGAL SERVICES CORPORATION

45 CFR Part 1612

Restrictions on Lobbying and Certain Other Activities

Correction

In rule document 87-17347 beginning on page 28434 in the issue of Wednesday, July 29, 1987, make the following corrections:

§ 1612.5 [Corrected]

1. In § 1612.5, on page 28438, in the second column, in paragraph (h)(1), in the first line, "Communicating" was misspelled, and in the fifth line, insert a comma after "regulations".

2. On the same page, in the same column, in paragraph (h), there were two paragraphs designated "(h)(2)". Remove the first one.

§ 1612.6 [Corrected]

3. On the same page, in § 1612.6, in the third column, in paragraph (b), in the third line, "an" should read "any".

BILLING CODE 1505-01-D

LEGAL SERVICES CORPORATION

45 CFR Part 1612

Restrictions on Lobbying and Certain Other Activities

Correction

In proposed rule document 87-17348 appearing on page 28441 in the issue of Wednesday, July 29, 1987, make the following corrections:

1. In the first column, in the **SUMMARY**, in the fifth line, insert "of" after "use".

2. In the third column, in the fifth line, "exception" should read "exceptions".

BILLING CODE 1505-01-D

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federal register

Monday
August 3, 1987

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination and Proposed Determination of Additional Critical Habitat for the Inyo Brown Towhee; Final Rule and Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status and Critical Habitat Designation for the Inyo Brown Towhee

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the Inyo brown towhee (*Pipilo fuscus eremophilus*) to be a threatened species. This action is being taken because the entire population of this bird is confined to a very limited habitat that has already been altered to some extent and could be further adversely impacted by future changes in land use. The Inyo brown towhee occurs in the Argus Mountains, Inyo County, California. Critical habitat is included in this rule. This action implements the protection of the Endangered Species Act, as amended, for this species. The Service also announces in this same separate part of today's Federal Register the opening of a 60-day comment period on a proposed rule as to whether additional areas should be added to the designated critical habitat of this species.

DATE: The effective date of this rule is September 2, 1987.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, at the above address (503/231-6131 or FTS 429-6131).

SUPPLEMENTARY INFORMATION:

Background

The Inyo brown Towhee (*Pipilo fuscus eremophilus*) is a medium-sized (7–7.5 inches, 17–19 centimeters) sparrow-like songbird, one of several recognized subspecies of the brown towhee (*Pipilo fuscus*). This subspecies was described in 1935 from specimens taken in the Argus Mountains, Inyo County, California. It is particularly significant because it is completely isolated from the other subspecies and has become adapted to a rigorous desert riparian environment not fully duplicated elsewhere within the range of the species. It is a yearlong resident of its limited habitat, all of which is included within the confines of a circle approximately 12 miles in diameter. Nesting occurs in dense vegetation at springs and along water courses, and the birds forage for seeds and insects in open areas adjacent to the riparian scrub. Limited, if any, competition with several other species does not appear to limit the numbers or distribution of this towhee.

The population is estimated to include less than 200 individuals. It is not known if the population level is changing, but the species is vulnerable to changes in its habitat that could occur from overgrazing, export of water, mining, or recreational activities. Recent studies of the Inyo brown towhee were done by Bart Cord and Joseph R. Jehl, Jr. (1979) under contract to the Bureau of Land Management. Mills *et al.* (1982) and WESTEC (1983) provide more recent data on the towhee. LaBerteaux (1984) estimates the present number at 117 to 200 adult towhees.

The Inyo brown towhee was included on the December 30, 1982, Vertebrate Notice of Review (47 FR 58452) in category 1. Category 1 includes those taxa for which the Service has substantial information on hand to support the appropriateness of proposing to list the species as endangered or threatened. After evaluating the information available on the status of this species, the Service published a proposed rule on November 23, 1984 (49 FR 46174), to designate the Inyo brown towhee as a threatened species with critical habitat. Additional areas may be added to the critical habitat of the Inyo brown towhee, pending an additional comment period.

Summary of Comments and Recommendations

In the November 23, 1984, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. The Commander of China Lakes Naval Weapons Center requested an extension of the first comment period that closed January 22, 1985. The comment period was reopened, as announced in the Federal Register on February 11, 1985 (50 FR 5647), to close March 11, 1985. Subsequently the Service extended the comment period on March 7, 1985 (50 FR 9300), and accepted comments until April 11, 1985. Newspaper notices regarding the proposal and reopening of the comment periods were published in *The Daily Independent*, the Bakersfield *Californian*, Trona *Argonaut*, the *Valley Inquirer*, and the *Enterprise*, all of which invited general public comment. Seven comments were received and are discussed below. No request was received for a public hearing, and none was held.

Of the seven comments, three supported the proposal, one recommended against listing, two did not state their position, and one was non-substantive.

The California Department of Fish and Game (CDFG), responding for the Governor of California, supported the proposal. Having recognized the Inyo brown towhee as endangered by action of the California Fish and Game Commission in 1980, the State is concerned that towhee numbers are low. CDFG presented data from a recently prepared report (LaBerteaux 1984) that towhee numbers are probably between 117 and 200. Should numbers drop to less than 100, CDFG suggested the towhee be reclassified as endangered. Substantial additions to critical habitat were recommended by CDFG. These included adding a newly discovered site, expanding virtually all proposed critical habitat, and using a ¼ mile strip on both sides of the respective washes and a ¼ mile radius around each spring to serve as the critical habitat boundaries. CDFG asked to have LaMotte Canyon and Crow Canyon added as critical habitat because they contain apparently suitable habitat, although no towhees have been located there.

Service response: The status of the Inyo brown towhee will be monitored. Should threats to the towhee increase or should new threats develop, the Service will reevaluate the condition of the taxon and may propose reclassifying it to endangered status. After evaluating the LaBerteaux (1984) findings, a study that CDFG had funded, the Service believes that recommendations to expand critical habitat where towhees presently are, and to include the new site, may be warranted. Such a sizable increase in the critical habitat necessitates publication of another proposed rulemaking to augment the critical habitat that is the subject of this final rule. The Service has responded to the comment regarding augmenting critical habitat by proposing additional areas in this same part of today's Federal Register. A determination of whether these additional areas will be added to the critical habitat designated herein will be made following the closing of that comment period.

The Service has adopted a consistent ⅛-mile figure rather than the ¼-mile

"upslope" distance that CDFG requested as the boundary on either side of the washes and around springs for critical habitat. "Upslope" measurements over such a large number of narrow to wide canyons pose great difficulties to local land managers and owners. The use of "airline" distances from the streambeds and springs greatly assists these land managers and owners in determining the critical habitat zones over such a topographically variable landscape. The Service believes that the ⅛-mile distance provides sufficient buffer for the habitats, is more easily determined on standard maps of the area, and meets all the essential conservation needs of the birds. The ⅛-mile distance on either side of the streambeds (or as a radius) should contain those physical and biological features that are essential to the conservation of the towhee and that may require special management consideration or protection.

The Service did not accept CDFG's suggestion to add LaMotte and Crow Canyons, because towhees are not known to occupy either of these canyons (see Critical Habitat and Regulations Promulgation sections for details) and these areas do not appear to be essential to the conservation of the towhee. The Service has accepted the State's suggestions for some additional areas, as indicated in the "Critical Habitat" section of this rule, which towhees are known to occupy.

Defenders of Wildlife strongly supported the proposal, but provided no additional information. The International Council for Bird Preservation supported the proposal.

The Department of the Navy, China Lake Naval Weapons Center (CLNWC), commented that the threats to the towhee on the Center's land have been essentially eliminated by suspension of cattle grazing in 1981 and removal of approximately 8,000 wild burros and horses, which were reducing the quality of the towhee's habitat through grazing and trampling of the vegetation. CLNWC stated that the Center has been withdrawn from all commercial and private mining since 1943, and that the majority of current range facilities and activities, which alter or disturb native habitat, occur on lower elevations where there are no towhees. The Navy believes that existing legal environmental safeguards and base policies, and the fact that it is cooperating with the California Department of Fish and Game to fund a study on the towhee and to manage the bird, protect the bird sufficiently. In addition, it indicated that towhee numbers have increased. Lastly, CLNWC stated that it is its understanding that non-biological factors are considered in determining whether a species is to be listed. Because of its tight time schedules for testing weapons systems and the sometimes classified nature of the tests that it conducts, CLNWC stated it would rarely be able to meet its legal obligations under the Endangered Species Act, as amended, to consult with the Fish and Wildlife Service should the towhee be listed. Because of the potential difficulties entailed in consulting with the Fish and Wildlife Service, and because it believes the threats to the bird on the base have been eliminated, the Navy stated it does not believe the towhee warrants listing.

Service response: CLNWC has done a commendable job of improving desert ecosystem conditions (including riparian habitat of the towhee) by suspending livestock grazing and removing the majority of wild burros and horses. The cooperative efforts of the California Department of Fish and Game and CLNWC are also duly noted. However, the Service is evaluating the total range of this bird and all actions that may affect it regarding the degree of threats. The Service agrees that most of the base's activities and facilities associated with development, testing, and evaluation of air weapons and air warfare systems are not within the range of the towhee. However, some activities associated with the operation of the base, such as the maintenance and use of Mountain Springs Canyon Road, do have the potential to adversely affect the Inyo brown towhee and its habitat.

In addition, no biological evidence was submitted to substantiate the claim that towhee population numbers have significantly increased. In fact, it appears that numbers are approximately the same as in 1978. Sampling of towhee populations to obtain census information is not an easy undertaking. Yearly variations in bird numbers are a common phenomenon, and it is not unexpected that towhee numbers in such censuses change from year to year. A minimum of several years' worth of data are necessary before any preliminary statements regarding a change in population numbers and status can be made.

The Service believes that, although certain threats to the towhee have been reduced, the threats to the bird on the base as well as within its entire range have not been eliminated. Further, the existing regulatory mechanisms (e.g., State listing of the Inyo brown towhee as endangered, National Environmental Policy Act) are inadequate to fully obviate the threats to the Inyo brown towhee and thereby preclude listing. In addition, in reference to the Navy's statement that non-biological factors can be considered, the Service notes that section 4(b)(1)(A) of the Act requires that listing decisions be made "*solely* on the basis of the best scientific and commercial data available . . ." (emphasis added).

The argument that the Inyo brown towhee should not be listed because the consultation process with the Service under section 7(a)(2) of the Act would be difficult and inconvenient for the Center is not relevant to the listing criteria in section 4(a)(1), which are the only criteria the Service may consider in making its final decision on the appropriate classification for the towhee. The Service does not anticipate consultations for individual weapons system's tests, but rather a more generic one may be needed to cover a host of activities that are likely to affect the towhee. The consultation process under section 7(a)(2) is not inflexible, and the Service has a good track record in working with Federal action agencies through consultations.

The Bureau of Land Management (BLM) recommended that the boundary of critical habitat areas be standardized by using a 400-yard radius from single reference points and 400 yards on either side of streambeds. BLM further suggested that certain other areas near known towhee habitat be evaluated for possible inclusion as critical habitat, but provided no data to support towhee use of these areas. Further, BLM indicated that because the majority of wild burros in the vicinity have been removed, thus reducing the threats to the towhee, the need to list the towhee should be reassessed.

Service response: As previously indicated in the response to CDFG's letter, the Service has adopted a standard distance measurement for critical habitat zones. As to adding new sites for critical habitat, once data are available to indicate that such areas are essential to the conservation of the towhee, the Service will evaluate the necessity to propose additional areas as critical habitat. Such an addition would be the subject of another Federal Register proposal. Regarding the burros removal, the Service supports efforts to remove or at least exclude wild burros from these areas; however, degradation of habitat by the burros is only one of a number of actual or potential threats facing the Inyo brown towhee. Even if wild burros were totally eliminated, the Service believes that other threats to the

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towhee are sufficient to warrant listing as a threatened species.

The Inyo County Planning Department indicated that listing may impose a hardship on individuals using spring water for domestic and industrial purposes at Bainter, Benko, and Indian Joe Springs, and an unnamed spring, and that some of these springs are privately owned. The Planning Department expressed concern that use of these springs would be denied and suggested that mitigation measures be developed. According to the County, the main management concern for towhees should be that they have access to water.

Service response: Available information indicates that of the springs included as designated critical habitat, only Indian Joe is in private ownership. The other springs are in public ownership. Before the Federal agency having jurisdiction over these springs could approve increased water removal, an assessment of the impacts of such an action on the Inyo brown towhee and its critical habitat would be required by that agency. If an effect on the towhee or its critical habitat is anticipated, then the Federal agency would be required to consult with the Service. During the consultation process, possible avenues to alleviate adverse effects of such actions would be evaluated. In addition, water is essential to maintain the riparian habitat required by the towhee. It is not merely a case of supplying the towhee with surface drinking water.

Summary of Factors Affecting the Species

After a thorough review and consideration of all scientific and commercial information available, the Service has determined that the Inyo brown towhee (*Pipilo fuscus eremophilus*) should be classified as a threatened species. Procedures found at section 4(a)(1) of the Endangered Species Act and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Pipilo fuscus eremophilus* are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Up to 200 adult Inyo towhees are scattered over a very small area in the Argus Mountains. The towhee is restricted within its range to the proximity of dense riparian vegetation (particularly arroyo willow, *Salix lasiolepis*). Such vegetation is limited in extent naturally in the arid Mohave Desert, but can be further restricted by decreases in water supply needed to support the vegetation, or by events that destroy or degrade the existing vegetation.

Animal grazing (particularly by wild burros), mining, water exporting, and recreational activities could be the cause of these changes in habitat conditions. Destruction of some portions of the habitat has been documented in the past and is continuing at the present time. Wild burros have already had some impact at some springs by grazing and trampling of the vegetation. Over 2,000 wild burros and wild horses have been removed from the range of the Inyo brown towhee by BLM and CLNWC. The goal is total exclusion of the burros and maintenance of a horse herd with less than 30 animals. Livestock grazing has been suspended on the Center since 1981 and is not occurring on BLM habitat within the range of the towhee. It is anticipated that the quality of the riparian habitat used by the towhee will improve if the burros are eventually eliminated and cattle grazing does not resume.

A major portion (approximately 75%) of Inyo brown towhee habitat occurs within the CLNWC. The mission of the Center is to serve as a major development, testing, and evaluation laboratory for air weapons and air warfare systems. Although most of these functions and associated activities are conducted outside the range of the towhee, it is certainly conceivable that actions conducted near or within the range of the bird could adversely affect it or its habitat.

A portion (approximately 640 acres, 260 hectares) of the critical habitat lies within the BLM's Great Fall Basin-Argus Mountains Area of Critical Environmental Concern (ACEC) and was established primarily to benefit the towhee; the draft management plan for this ACEC has just been developed. Hiking, camping, hunting, and off-road vehicle use occur in this area. Water rights have been appropriated on most of the springs situated on BLM administered lands for such activities as livestock grazing and mining. Numerous mining claims occur in the area and are often associated with the springs. Working the mines often involves exportation of water. At the present time no mineral production is underway within the range of the towhee, but there is some exploratory activity. Use of spring water may occur also on CLNWC such as for dust abatement during road construction or maintenance. Water withdrawal can reduce the amount of water available to maintain riparian habitat.

The total available habitat is on the order of 5,600 acres (2,250 hectares). The effective population size for this bird has not been determined, but for most avian species it is thought to be about 100. Any lower population level of this isolated bird would invite genetic and other problems, including possible extinction. The limited range of the towhee and the fragility of its ecosystem make it susceptible to extinction rather quickly if current land uses were to change.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* No threat from overutilization of this species is known to exist at this time.

C. *Disease or predation.* Not applicable.

D. *The inadequacy of existing regulatory mechanisms.* Most of the habitat is administered by the Bureau of Land Management (BLM) and U.S. Navy, and these agencies can control the use of lands under their jurisdiction. Designating the species as threatened will invoke the authorities and prohibitions of the Endangered Species Act, a necessary supportive measure that will open up additional options for protection and management. The towhee is protected under the Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*) and is listed as endangered by the California Fish and Game Commission. However, no Federal or State laws or regulations can protect the habitat of this bird from Federal activities, except for the Endangered Species Act. A small portion of the critical habitat (190 acres, 77 hectares) is in private ownership and not subject to public management.

E. *Other natural or manmade factors affecting its continued existence.* None known.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the Inyo brown towhee as threatened. Localized destruction of habitat by wild burros and, to a lesser extent, by wild horses and cattle grazing, have occurred. There is also the long-term potential loss of the very limited habitats that the towhee requires by actions such as water withdrawal, mining, recreational activities, and actions and activities associated with the testing and evaluation of air warfare systems.

Therefore, the Service finds that the Inyo brown towhee "is likely to become

an endangered species within the foreseeable future throughout all or a significant portion of its range." Section 3(20) of the Act. The available data do not support a finding that the towhee is presently in danger of extinction throughout all or a significant portion of its range. Critical habitat is also designated for this bird (see following section).

Critical Habitat

Critical habitat, as defined by section 3(5) of the Act, means: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4(a)(3) of the Act requires that critical habitat be designated, to the maximum extent prudent and determinable, concurrently with the determination that a species is endangered or threatened. Critical habitat is being designated or proposed for the Inyo brown towhee to include approximately 5,600 acres (2,250 hectares) of desert riparian scrub habitat near springs and streambeds in, and adjacent to, the northeast corner of China Lake Naval Weapons Center, Argus Mountains, Inyo County, California.

Critical habitat lies in the vicinity of the following: Margaret Ann Springs, Snooky Spring, Ruby Spring, Quail Spring, Benko Spring, Bainter Spring, Indian Joe Spring, Great Falls Basin, Mountain Springs Canyon, and a number of unnamed springs and canyons in this area. The areas proposed as critical habitat in today's **Federal Register** and those determined as critical habitat in this rule are known to be occupied by towhees and satisfy all known criteria for the ecological, behavioral, and physiological requirements of the conservation of this species. The desert riparian scrub habitat, which is encompassed by this rule and the proposal following, provides sufficient cover for nesting, roosting, and escaping from predators, and also provides a source of food and water.

Subsection 4(b)(8) requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public or private) that may adversely modify such habitat or may be affected by such designation. Actions that could adversely affect critical habitat for this species are removal, thinning, or destruction of riparian vegetation; a lowering of the present water tables would also directly affect the vegetation, which would then affect the towhee. Specific activities that could cause the above are: (1) Water diversion or substantially increased water use for mining or other purposes; (2) grazing by domestic livestock, wild horses, or wild burros; (3) mechanical brush clearing for any purpose; or (4) damage to vegetation from recreational vehicles.

Any of these actions occurring on land under Federal jurisdiction will require section 7 consultation if there is a potential impact on the Inyo brown towhee or its critical habitat. In addition, any actions on non-federal lands that are subject to Federal approval, funding, or other action will also require Section 7 consultations between the Federal agency and the Service, if the proposed activities may affect a listed species or its critical habitat.

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. The Service has considered the critical habitat designation in light of the most current information available. H.D. Carper, Director, California Department of Fish and Game (CDFG), requested that additional areas in which towhees are now known to occur and two canyons that may support towhees be added as critical habitat. His request was based on a report of the 1984 field season (LaBerteaux 1984). These recommendations by the CDFG are the subject of a separate rulemaking proposal found following in this part of today's **Federal Register**. Because of the request of the State to delete or add areas, the Service has reviewed all the zones contained in the original 1984 proposal. As a result of that review, several small springs or other patches of proposed critical habitat were found to lack any observations of towhees. These few areas have been removed in this rule as critical habitat. Activities that may be affected by the designation of critical habitat are discussed in the Available Conservation Measures section of this rule.

Below is a list of the additional tracts that would supplement the zones determined in this rule. In the document that follows in this part of today's **Federal Register** are the proposed revised descriptions of all critical habitats. In the first eight areas below, the areas are adjoining the eleven areas determined in this rule as critical habitat. If finalized as proposed, the critical habitats will be described with all tracts combined where they form single contiguous units of area. The last area listed below (item 9) is separate and apart from all other areas in this rule. All of these newly proposed areas are described here to provide a complete administrative record.

Proposed Critical Habitat To Be Added

1. Approximately 1.5 miles of streambed and ⅛ mile on either side of the wash commencing at a point along the streambed ⅛ mile south of the spring in T23S R42E, W½ NE¼ Section 8 and continuing along the streambed to Margaret Ann Spring, and approximately 0.3 miles of streambed and ⅛ mile on either side from the western boundary of Section 2 downstream in Water Canyon to longitude 117°25' W. The above adds portions of Sections 2, 4, 5, 8, and 11, T23S R42E.

2. Approximately 1.3 miles of streambed and ⅛ mile on either side of the wash commencing at the western boundary of NE¼ of Section 21 (at the point nearest to the NW corner of SW¼ NE¼ Section 21), T23S R42E, and proceeding downstream to Ruby Spring, Section 22. The above adds portions of Sections 21 and 22, T23S R42E.

3. Approximately 2.3 additional miles of streambed and ⅛ mile on either side of the larger wash within Homewood Canyon, commencing at the western boundary (at the point nearest to its midpoint) of Section 28, T23S R42E, and extending past Quail Spring (already included in this rule as critical habitat) downstream to a point along the streambed ⅛ mile southeast of Benko Spring, T23S R42E, Sections 34 and 35 (also already included); approximately 1.2 miles of streambed and ⅛ mile on either side of the wash commencing at the western boundary of E½ NE¼ of Section 33 (at the point nearest to the SW corner of NE¼ NE¼ Section 33) and extending easterly past Parson's Spring to Homewood Canyon; approximately 0.8 mile of streambed and ⅛ mile on either side of the wash commencing at the northern boundary of Section 28 (at the point nearest to its midpoint) and extending southeasterly and downstream to Homewood Canyon; and approximately 0.5 mile of streambed and ⅛ mile on either side of the wash commencing at the western boundary of Section 27 (at the point nearest to the SW corner of NW¼ SW¼ Section 27), and proceeding easterly to Homewood Canyon. The

above adds portions of Sections 21, 27, 28, 33, 34, and 35, T23S R42E.

4. In T23S R42E, E½ SE¼ Section 31 and W½ SW¼ Section 32, and in T24S R42E, NE¼, W½ SE¼, and E½ SW¼ Section 6; and W½ NW¼ Section 5. (This includes the area around Bench Mark 5485 that is being designated as critical habitat in this rule.)

5. Approximately 0.7 mile of streambed and ⅛ mile on either side of Great Falls Basin Wash commencing at the western boundary of Section 11 (at the point nearest to and south of the NW corner of Section 11), T24S R42E, and proceeding southwesterly and downstream to the western boundary of E½ Section 11, T24S R42E; and approximately 0.8 mile of streambed and ⅛ mile on either side of the unnamed wash commencing at a point ⅛ mile upstream of Deep Canyon Spring (near the SE corner of Section 10) and proceeding eastward along the streambed to Great Falls Basin Wash. The above adds portions of Sections 10, 11, and 15, T24S R42E.

6. In Section 18, T24S R43E, approximately 0.4 mile of streambed from a point ⅛ mile downstream of Bainter Spring and continuing downstream to longitude 117°22'20" W, including ⅛ mile on either side of this wash.

7. Approximately 1.0 mile of streambed and ⅛ mile on either side of Indian Joe Canyon commencing ⅛ mile downstream of Indian Joe Spring in Section 24, T24S R42E, and proceeding southeasterly to the southern boundary of Section 24. The above adds portions of Sections 24 and 25, T24S R42E.

8. Approximately 0.7 mile of Mountain Springs Canyon main streambed and ⅛ mile on either side commencing at the southern boundary of Section 8, T23S R41E, and proceeding westerly along the streambed to the western boundary of NE¼ Section 18; approximately 0.8 mile of streambed and ⅛ mile on either side of the wash commencing at the southern boundary of the SW¼ Section 4 and continuing southerly through Sections 9 and 8 to the intersection with the main wash in Mountain Springs Canyon; approximately 0.5 mile of streambed and ⅛ mile on either side of the wash commencing at the southern boundary of NE¼ NE¼ Section 10 (at the point nearest the upper Mammoth Mine) and continuing downstream to the main wash; approximately 0.8 mile of streambed and ⅛ mile on either side of the wash commencing at the eastern boundary of Section 15 at a point just south of the midpoint of that boundary, and proceeding north along the streambed to Mountain Springs Canyon; and approximately 0.5 mile of streambed and ⅛ mile on either side of the wash commencing at the southern boundary of N½ Section 14 (at the point nearest to the midpoint of Section 14) and proceeding north along the streambed to the main wash. The above adds portions of Sections 4, 5, 8, 9, 10, 11, 14, 15, 17, and 18, T23S R41E.

9. Approximately 4.2 miles of streambed and ⅛ mile on either side of the wash commencing at the southern boundary of N½ Section 23 (at the point nearest to the midpoint of Section 23), T23S R41E, and proceeding southerly along the streambed to a point ⅛ mile downstream from the spring in SW¼ SW¼ Section 3, T24S R41E. The above adds portions of Sections 3 and 4, T24S R41E; and Sections 23, 26, 27, 34, and 35, T23S R41E.

The Service has prepared an economic analysis of all areas proposed to be designated as critical habitat. No significant economic or other impacts are expected to result from the critical habitat designation, including the proposed additional areas. This conclusion is based on the following: (1) CLNWC's current management of its testing operations and other activities on its land within or in the vicinity of the critical habitat is not likely to be significantly effected by the designations; (2) it is estimated that the annual economic impacts on the national economy that may result from CLNWC's plans to develop a management plan for a comprehensive consultation and other potential restrictions associated with possible road projects and water withdrawals due to critical habitat considerations on CLNWC administered land will be substantially less than $100 million; (3) potential economic impacts will be less than .06 percent of CLNWC FY 1986 budget; (4) current management of mineral leasing, hunting, ORV and other activities on BLM administered land within or in the vicinity of the critical habitat is not likely to be significantly affected by the designations; (5) the ongoing CLNWC–BLM wild burro and horse removal and control efforts will help preserve the critical habitats; (6) the absence of any known livestock grazing, vegetation removal, mining, or other activities that may affect or be affected by the critical habitat designation; and (7) no known involvement of Federal funds or permits for the private land or the State of California's acquisition of the private land that contains critical habitat. In addition, no significant impact on the economy or present economic status of Inyo County, California, is expected as a result of the critical habitat designation.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required by Federal agencies and the prohibitions against taking and harm are discussed in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Almost all of the land within the critical habitat of the Inyo brown towhee is in Federal ownership and is under the jurisdiction of either BLM or the U.S. Navy.

These two agencies are planning a cooperative program to preserve and manage Inyo brown towhee habitat within their areas of jurisdiction. Programs that may be authorized in the future that might impact critical habitat would be livestock grazing, water exporting, additional human recreation, and mining. In addition, activities associated with the development, testing, and evaluation of air weapons and air warfare systems by CLNWC have potential to adversely affect the towhee and its critical habitat. Consultation with the Fish and Wildlife Service on such issues as they arise would assist in identifying means for reducing the potential for adverse effects from such activities.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened

wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that had been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing such permits are at 50 CFR 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, for incidental take in connection with otherwise lawful activities, and for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

Public Comments Solicited

In an accompanying announcement in this same part of today's **Federal Register**, the Service solicits comments and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or other interested parties concerning the possible addition of areas to the critical habitat designated in the present rule for the Inyo brown towhee. The comment period, which opens on the date of publication of this rule and the accompanying proposal, will remain open for 60 days. A final decision on the inclusion of these additional areas will be made and published in the **Federal Register** following the conclusion of the comment period.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Regulatory Flexibility Act and Executive Order 12291

The Department of the Interior has determined that designation of critical habitat for this species will not constitute a major action under Executive Order 12291 and certifies that this designation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The critical habitat designation, as defined in the proposed rule of November 23, 1984, did not bring forth economic or other impacts to warrant consideration of revising the critical habitat because of such impacts. The critical habitat consists of selected riparian habitat near springs and within washes in Argus Mountains, Inyo County, California. The lands are primarily owned by the U.S. Navy (China Lake Naval Weapons Center) and, to a lesser extent, by the Bureau of Land Management, U.S. Department of the Interior. Of the 5,570 acres (2,255 hectars) of critical habitat (designated and proposed), approximately 190 (77 hectares) are in private ownership.

There is no known involvement of Federal funds or permits for the private lands within the critical habitat designation. BLM has indicated that it does not anticipate conflicts between its management of the area and the critical habitat. No specific information on military activities was disclosed that would indicate that the designation of critical habitat will adversely affect the national security mission of the Center or its routine operations.

Consequently, no significant economic impacts are expected to result from the designation of critical habitat for the Inyo brown towhee. Also, no direct costs, enforcement costs, or information collection or recordkeeping requirements are imposed on small entities by this designation. These determinations are based on a Determination of Effects that is available at the Regional Office, U.S. Fish and Wildlife Service, 500 NE., Multnomah Street, Suite 1692, Portland, Oregon 97232. This Determination of Effects also addresses the economic impacts of the proposed revision, published in today's **Federal Register**, to the critical habitat designation for the Inyo brown towhee promulgated in this rule.

Literature Cited

Cord, B., and J.R. Jehl, Jr. 1979. Distribution, biology and status of a relict population of brown towhee (*Pipilo fuscus eremophilus*). Western Birds 10:131–156.

LaBerteaux, D. 1984. Untitled. Unpubl. Rept. on the Inyo brown towhee prepared by California Dept. of Fish and Game, Sacramento, California.

Mills, S.G., S. Sutherland, and F.W. Reichenbacker. 1982. Vertebrate survey of selected riparian habitats on the China Lake Naval Weapons Center. Preliminary report prepared for S.W. Carothers and Associates.

WESTEC Services Inc. 1983. Biological resource survey of Mountain Springs Canyon on the Naval Weapons Center. NWC TP 6424.

Author

The primary author of this final rule is Dr. Kathleen E. Franzreb, Endangered Species Field Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room E–1823, Sacramento, California 95825 (916/978–4866).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulations Promulgation

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq*).

2. Amend § 17.11(h) by adding the following, in alphabetical order under BIRDS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Birds							
Towhee, Inyo brown	*Pipilo fuscus eremophilus*	U.S.A. (CA)	Entire	T	282	17.95(b)	NA

3. Amend § 17.95(b) by adding critical habitat of the Inyo brown towhee in same sequence as the species appears in § 17.11 as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(b) *Birds.*

* * * * *

Inyo Brown Towhee (*Pipilo fuscus eremophilus*)

California, Inyo County: lands within and adjacent to the China Lake Naval Weapons Center identified as follows:

(1) Approximately 2.0 miles of streambed and ⅛ mile on either side of the wash from Margaret Ann Spring and proceeding downstream to the eastern boundary of Section 3 near Snooky Spring. The above includes portions of Sections 3, 4, 9, and 10, T23S R42E. (Map location A)

(2) A circle ⅛ mile in radius with the spring in T23S R42E W½ NE¼ Section 8 as the center. (Map location B)

(3) Approximately 2 miles of streambed and ⅛ mile on either side of the wash from Ruby Spring (T23S R42E, Section 22) and proceeding downstream to the boundary between Sections 25 and 26. The above includes portions of Sections 22, 23, 25, and 26, T23S R42E. (Map location C)

(4) A circle ⅛ mile in radius with Quail Spring as the center in T23S R42E, NE¼ Section 28. (Map location D)

(5) A circle ⅛ mile in radius with Benko Spring as the center in T23S R42E, Sections 34 and 35. (Map location E)

(6) A circle ⅛ mile in radius with Bench Mark 5485 (some USGS maps report this as 5484) near the common boundary of Sections 31 and 32, T23S R42E, as the center and lying within Sections 31 and 32. (Map location F)

(7) T24S R42E, NW¼ NW¼ Section 2 and NE1/4 NE1/4 Section 3. (Map location G)

(8) T24S R42E, E½ SE¼ Section 6. (Map located H)

(9) Approximately 1.8 miles of streambed and ⅛ mile on either side of Great Falls Basin Wash commencing from the western boundary of E½ Section 11, T24S R42E, and proceeding downstream along the streambed to the eastern boundary of Section 13. The above includes portions of Sections 11, 12, 13, and 14, T24S R42E. (Map location I)

(10) Circles with ⅛ mile radii around Mumford and Austin Springs in T24S R43E, Section 7 and Bainter Spring in Section 18 and around Indian Joe Spring in T24S R42E Section 24. (Map locations J)

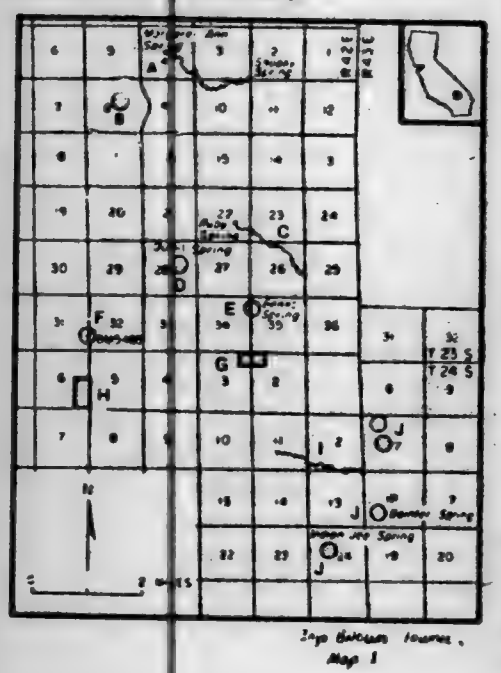

(11) Approximately 5 miles of streambed and ⅛ mile on either side of Mountain Springs Canyon commencing from the southern border of Section 8 and continuing along the streambed to the point at which Mountain Springs Canyon Wash intersects the eastern boundary of SW¼ Section 12. The above includes portions of Sections 8, 9, 10, 11, 12, 13, 14, and 17, T23S R41E. (Map location K)

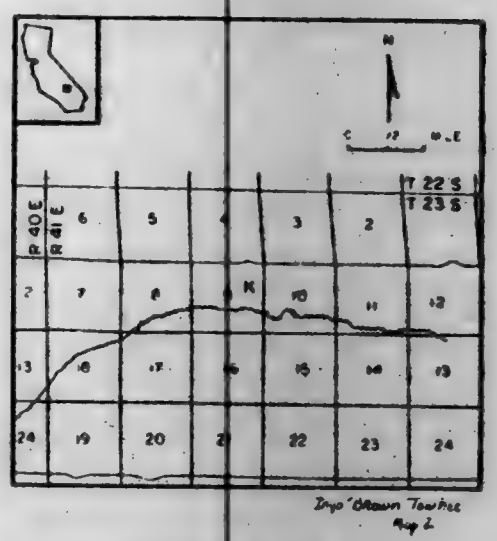

Major constituent element: desert riparian scrub vegetation.

* * * * *

Dated: June 22, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87-17383 Filed 7-31-87; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Determination of Additional Critical Habitat for the Inyo Brown Towhee

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: In the previous document in this part of today's **Federal Register**, the Service determined the Inyo brown towhee (*Pipilo fuscus eremophilus*) to be a threatened species with critical habitat. As described in that rule, the Service received comments from the State of California that additional areas in the range of the bird (Argus Mountains, Inyo County, California) should be determined as critical habitat. The Service seeks additional comments on these supplementary areas.

DATES: Comments from all interested parties must be received by October 2, 1987. Public hearing requests must be received by September 17, 1987.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Endangered Species Field Station, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room E–1823, Sacramento, CA 95825.

FOR FURTHER INFORMATION CONTACT: Dr. Kathleen E. Franzreb at the above ADDRESSES (916–978–4866 or FTS 460–4866).

SUPPLEMENTARY INFORMATION:

Background

In the rule published today the Service determined the Inyo brown towhee to be a threatened species with critical habitat. For further information on the comments and discussion over the purpose and effects of that rule and this proposal, see that document. This proposed rule would add one new area and supplement several of those determined today to be critical habitat. A list of the areas proposed to be added is provided under the Critical Habitat Section of that document. This proposal would revise 50 CFR 17.95(b) by combining the list of proposed new areas with those areas determined in today's **Federal Register** to be critical habitat. Maps showing these combined areas would be published if a decision is made to adopt the proposed additional critical habitat areas.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposal for additional critical habitat for the Inyo brown towhee are hereby solicited. Comments particularly are sought concerning:

(1) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(2) Additional information concerning the range and distribution of this species;

(3) Current or planned activities in the subject area and their possible impacts on this species; and

(4) Any foreseeable economic and other impacts resulting from the proposed designation of the additional critical habitat.

Final promulgations of these regulations for the Inyo brown towhee critical habitat will take into consideration the comments and additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Sacramento Endangered Species Field Station (see **ADDRESSES** section).

National Environmental Policy Act

See statement in the aforementioned rule published in today's **Federal Register**.

Regulatory Flexibility Act and Executive Order 12291

See statement in the aforementioned rule published in today's **Federal Register**.

Author

The primary author of this proposed rule is Dr. Kathleen E. Franzreb (see **ADDRESSES** above).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[REVISED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to revise the critical habitat for the Inyo Brown Towhee at § 17.95(b) to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(b) *Birds.*

* * * * *

Inyo Brown Towhee (*Pipilo fuscus eremophilus*)

California, Inyo County: lands within and adjacent to the China Lake Naval Weapons Center, identified (names of features from 1982 and 1983 Provisional Editions 7.5' USGS quadrangles for this area) as follows:

(1) Approximately 3.7 miles of stream and ⅛ mile on either side of the wash commencing along the streambed ⅛ mile south of a spring in W½ NE¼ sec. 8, T. 23. S., R. 42. E., and continuing along the streambed northeasterly to Margaret Ann Spring, thence easterly and downstream in Water Canyon to longitude 117° 25' W. The above includes portions of secs. 2, 3, 4, 5, 8, 9, 10, and 11, T. 23. S., R. 42. E.

(2) Approximately 3.3 miles of streambed and ⅛ mile on either side of the wash commencing at the western boundary of NE¼ of Section 21 (at the point nearest to the NW corner of SW¼NE¼, Section 21), T23S R42E, thence proceeding downstream past Ruby Spring, Section 22, to the boundary between Sections 25 and 26. The above includes portions of Sections 21, 22, 23, 25, and 26, T23S R42E.

(3) Approximately 2.8 miles of streambed and ⅛ mile on either side of the larger wash within Homewood Canyon commencing at the western boundary (at the point nearest to its midpoint) of Section 28, T23S R42E, and extending past Quail Spring downstream to a point along the streambed ⅛ mile southeast of Benko Spring (T23S R42E, Sections 34 and 35); approximately 1.2 miles of streambed and ⅛ mile on either side of the wash commencing at the western boundary of E½NE¼ of Section 33 (at the point nearest to the SW corner of NE¼NE¼ Section 33) and extending easterly past Parson's Spring to Homewood Canyon; approximately 0.8 mile of streambed and ⅛ mile on either side of the wash commencing at the northern boundary of Section 28 (at the point nearest to its midpoint) and extending southeasterly and downstream to Homewood Canyon; and approximately 0.5 mile of streambed and ⅛ mile on either side of the wash commencing at the western boundary of Section 27 (at the

point nearest to the SW corner of NW¼SW¼ Section 27), and proceeding easterly to Homewood Canyon. The above includes portions of Sections 21, 27, 28, 33, 34, and 35, T23S R42E.

(4) T23S R42E, E½SE¼ Section 31 and W½SW¼ Section 32. T24S R42E, E½ and E½1SW¼ Section 6 and W½NW¼ Section 5.

(5) T24S R42E, NW¼NW¼ Section 2 and NE¼NE¼ Section 3.

(6) Approximately 2.5 miles of streambed and ⅛ mile on either side of Great Falls Basin Wash commencing at the western boundary of Section 11 (at the point nearest to and south of the NW corner of section 11), T24S R42E, and proceeding southwestly and downstream to the eastern boundary of R42E; and approximately 0.8 mile of streambed and ⅛ mile on either side of the unnamed wash commencing at a point ⅛ mile upstream of Deep Canyon Spring (near the SE corner of Section 10) and proceeding eastward along the streambed to Great Falls Basin Wash. The above includes portions of Sections 10, 11, 12, 13, 14, and 15, T24S R42E.

(7) Circles with ⅛ mile radii around Austin and Mumford Springs in Section 7, T24S R43E.

(8) In Section 18, T24S R42E, a ⅛ mile radius around Bainter Spring and thence continuing downstream along the wash approximately 0.5 mile from the spring to longitude 117° 32'20" W, including ⅛ mile on either side of this wash.

(9) Approximately 1.2 miles of streambed and ⅛ mile on either side of Indian Joe Canyon commencing ⅛ mile upstream of Indian Joe Spring in Section 24, T24S R42E, and proceeding southeasterly along the streambed to the southern boundary of Section 24. The above includes portions of Sections 24 and 25, T24S R42E.

(10) Approximately 5.7 miles of Mountain Springs Canyon main streambed and ⅛ mile on either side commencing at eastern boundary of SW¼ Section 12, T23S R41E, and proceeding westerly along the streambed to the western boundary of NE¼ Section 18; approximately 0.8 mile of streambed and ⅛ mile on either side of the wash commencing at the southern boundary of the SW¼ of Section 4 and continuing southerly through Sections 9 and 8 to the intersection with the main wash in Mountain Springs Canyon; approximately 0.5 mile of streambed and ⅛ mile on either side of the wash commencing at the southern boundary of NE¼NE¼ Section 10 (at the point nearest the upper Mammoth Mine) and continuing downstream to the main wash; approximately 0.8 mile of streambed and ⅛ mile on either side of the wash commencing at the eastern boundary of Section 15 at a point just south of the midpoint of that boundary, and proceeding north along the streambed to Mountain Springs Canyon; and approximately 0.5 mile of streambed and ⅛ mile on either side of the wash commencing at the southern boundary of N½ Section 14 (at the point nearest to the midpoint of Section 14) and proceeding north along the streambed to the main wash. The above includes portions of Sections 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 17, and 18, T23S R41E.

(11) Approximately 4.2 miles of streambed and ⅛ mile on either side of the wash commencing at the southern boundary of N½ Section 23 (at the point nearest to the midpoint of Section 23), T23S R41E, and proceeding southerly along the streambed to a point ⅛ mile downstream from the spring in SW¼SW¼ Section 3, T24S R41E. The above includes portions of Section 3 and 4, T24S R41E; and Sections 23, 26, 27, 34, and 35, T23S R41E.

Major constituent element: desert riparian scrub vegetation.

* * * * *

Dated: June 22, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks

[FR Doc. 87-17245 Filed 7-31-87; 8:45 am]

BILLING CODE 4310-55-M

Federal Register

Monday
August 3, 1987

Part III

Department of the Interior

National Park Service

Significant Thermal Features Within Units of the National Park System; Notice

DEPARTMENT OF THE INTERIOR

National Park Service

Significant Thermal Features Within Units of the National Park System

AGENCY: National Park Service, U.S. Department of the Interior.

ACTION: Notice of final list of significant thermal features within units of the National Park System.

SUMMARY: In accordance with section 115 of the Department of the Interior and Related Agencies Appropriations Act for 1987, Pub. L. 99–591, the National Park Service (NPS) published for review and comment a Proposed Notice in the **Federal Register** on February 13, 1987 (Volume 52, No. 30, pp. 4700–4710, Part II), that identified proposed significant thermal features within twenty-two (22) units of the National Park System. The Department received comments from twenty-three (23) respondents as a result of the public comment period for the Proposed Notice which closed on March 16, 1987. The purpose of this notice is to summarize the comments received and to provide the public the list of significant thermal features submitted to Congress.

The Final Report listing significant thermal features within units of the National Park System was transmitted to the Congress June 30, 1987. With the transmittal to Congress of the list of significant thermal features, the moratorium on geothermal leasing imposed by Pub. L. 99–591 is lifted. There is insufficient information at the present time on a possible thermal feature (i.e., hydrothermal vents) at the bottom of Crater Lake; therefore, Crater Lake National Park was not included on the final list. A determination for Crater Lake National Park will be deferred until studies and additional reviews have been conducted. The Department plans to conduct research on this question at Crater Lake National Park this summer and to make a decision in the Fall 1987 on whether Crater Lake National Park should be added to the list. The Department plans to subsequently monitor Crater Lake as needed. No geothermal leases will be issued for lands surrounding Crater Lake National Park until such time as a determination has been made and forwarded to the Congress.

For those units in which significant thermal features are listed, future geothermal leasing is dependent on determinations of whether proposals to explore for, develop, produce, or use geothermal resources surrounding the listed features are "likely to result in significant adverse effects, adverse effects, or no effects" to the thermal features listed as significant within the identified units of the National Park System. The determinations will be subject to appropriate public notice.

DATES: Copies of the public comments are available until August 14, 1987.

ADDRESS: Copies of public comments received may be requested by writing the Director, NPS, ATTN: Land Resources Division (WASO 660), National Park Service, P.O. Box 37127, Washington, DC 20013–7127.

FOR FURTHER INFORMATION CONTACT: Ms. Pam Mathes, Land Resources Division (WASO 660), National Park Service, P.O. Box 37127, Washington, DC 20013–7127, (202) 523–5120.

SUPPLEMENTARY INFORMATION: The Department of the Interior and Related Agencies Appropriations Act, Pub. L. 99–591, (hereinafter referred to as the Act) was passed by Congress and signed into law October 30, 1986.

Paragraph 2(a) of section 115 of the General Provisions for the Act directed the Secretary to publish for public comment in the **Federal Register** a proposed list of significant thermal features in the following twenty-two (22) units of the National Park System:

Mount Rainier National Park, Washington;
Lassen Volcanic National Park, California;
Yellowstone National Park, Wyoming, Montana, and Idaho;
Bering Land Bridge National Preserve, Alaska;
Gates of the Arctic National Park and Preserve, Alaska;
Yukon-Charley Rivers National Preserve, Alaska;
Katmai National Park, Alaska;
Aniakchak National Monument and Preserve, Alaska;
Wrangell-St. Elias National Park and Preserve, Alaska;
Glacier Bay National Park and Preserve, Alaska;
Denali National Park and Preserve, Alaska;
Lake Clark National Park and Preserve, Alaska;
Hot Springs National Park, Arkansas;
Sequoia National Park, California;
Hawaii Volcanoes National Park, Hawaii;
Lake Mead National Recreation Area, Arizona and Nevada;
Big Bend National Park, Texas;
Olympic National Park, Washington;
Grand Teton National Park, Wyoming;
John D. Rockefeller, Jr. Memorial Parkway, Wyoming;
Haleakala National Park, Hawaii; and,
Crater Lake National Park, Oregon.

The proposed list was published in the **Federal Register** on February 13, 1987 (Vol. 52, No. 30, pp. 4700–4710, Part II). The Department requested data or information that would assist in preparing a final list of significant thermal features, including recommendations for adding or deleting features. All recommendations were to be accompanied by background information on the thermal feature discussed and a supporting rationale for the recommended action.

The Department received comments from twenty-three (23) respondents representing four Federal agencies, one State agency, two conservation groups, one university, eight corporations from private industry, and seven individual citizens. Paragraph 2(a) of the Act further authorized the Secretary of the Interior to make additions to or deletions from the list based on any comments received and from new information made available to the Department. The following section titled "Summary Analysis of Public Comments Received on the Proposed List of Significant Thermal Features" discusses the public comments received and their effect on the list of significant thermal features in units of the National Park System.

Paragraph 2(b) of the Act directs the Secretary of the Interior to maintain a monitoring program for each of the significant thermal features included on the list transmitted to Congress. The existing data characterizing each listed thermal feature and any data collected as a result of the monitoring program will serve as baseline data on which to assess the potential effects of future geothermal leasing and development on the listed features.

Paragraphs 2(c) through 2(e) of the Act require that, "Upon receipt of an application for a geothermal lease, the Secretary shall determine, on the basis of scientific evidence, if exploration, development, or utilization of the lands subject to the geothermal lease application is reasonably likely to result in a significant adverse effect on a significant thermal feature listed." Also, the Secretary of Agriculture must consider the effects on the listed thermal features when determining whether to consent to geothermal leases on national forest lands or any other lands under the jurisdiction of the Department of Agriculture. No geothermal lease can be issued if the Secretary determines that the exploration, development, or utilization of the land included in the lease application is "reasonably likely to result in a *significant adverse effect* on a listed thermal feature (emphasis

added)". If the Secretary finds a significant adverse effect, he must withdraw from leasing under the Geothermal Steam Act, the lands within the lease application.

The "Secretary shall include stipulations in leases necessary to protect significant thermal features" if it is determined that exploration, development, production, or use of geothermal resources is reasonably likely to *adversely affect* (but not significantly) a significant thermal feature. One of the required stipulations states that if the Secretary later "determines that ongoing exploration, development, or utilization activities are having a significant adverse effect on significant thermal features listed", all activity on the lease must be suspended "temporarily or permanently" until the significant adverse effect is eliminated.

The concluding paragraphs of the Act, 2(f) through 2(h), discuss the relationship of the Act with existing laws governing the development of geothermal resources. Paragraph 2(f) states that nothing in the Act "shall affect the ban on leasing under the Geothermal Steam Act of 1970, as amended, with respect to the Island Park Known Geothermal Resources Area." Paragraph 2(g) states that the Act, except as explicitly mentioned, "shall not affect or modify the authorities or responsibilities of the Secretary under the Geothermal Steam Act of 1970, as amended." Paragraph 2(h) states that the provisions of Section 115 of the Act "shall remain in effect until Congress determines otherwise."

Summary Analysis of Public Comments Received on the Proposed List of Significant Thermal Features

Comments received from the twenty-three respondents varied in scope and in specificity. Eleven respondents provided general comments pertaining to the interpretation of the Act by the National Park Service in the proposed notice. Five respondents generally commented on the definition of "thermal feature" and its inclusion of volcanic systems, six respondents commented generally on the definition of specific criterion and on the general application of the criteria, and other respondents either supported or opposed the listing for reasons related to either the definition used for a thermal feature or for specific criteria. These comments and the Department's response are addressed in two subsections titled "Definition of Thermal Feature" and "Application of the Criteria."

Two respondents wanted entire park units to be listed rather than discrete thermal features within the boundaries of park units. With the exception of listing Yellowstone National Park in its entirety, the Department did not adopt this recommendation because it interprets the Act to mean that discrete thermal features were to be evaluated and listed. Listing of discrete features within Yellowstone National Park was not considered reasonable or necessary.

Numerous topics were raised by individual commentors that were beyond the scope of the requirements of the Act as explained in the Proposed Notice. One individual wanted the final list to be refined based on the expected impacts to geothermal leasing. The Department did not adopt such a recommendation as consideration of impacts to the geothermal leasing program was not within the specified criteria of the Act upon which to determine the significance of a feature. Several commentors wanted the Department to delineate a surface boundary associated with each listed feature. The Department believes that delineating surface boundaries of significant features might not adequately reflect the possibly broader extent of the underlying thermal systems, considering the fact that subsurface interconnections within these systems are not adequately understood to date. Also, there was insufficient information available during the time allocated for listing to confidently delineate surface boundaries of the listed features.

One commentor requested the Department to consider a spring within a unit not specified in the Act. The Department did not adopt this recommendation since the Act specified only certain units for which evaluations of thermal features were to be made. Even though the Act provided for possible additions to or deletions from the proposed list of thermal features, the Act did not provide for an expansion of the list of specified units. For this reason, the Department did not include candidate thermal features within units not specified by the Act.

The remaining respondents addressed their comments to either specific thermal features or to the listing of specific units of the National Park System. The Department received fourteen comments on Crater Lake National Park, twelve of which opposed listing the proposed feature as significant and two of which supported a determination of significance by the Department; four comments supported the listing of Lassen Volcanic National Park; two supported the listing of all lands within Yellowstone National Park; five commented on the listing of proposed features in Mt. Rainier National Park; three commentors opposed the listing of Sol Duc Hot Springs in Olympic National Park; one supported listing identified features within Grand Teton National Park; two commented on the proposed features within Hawaii Volcanoes National Park; and, one opposed listing any features within Lake Mead National Recreation Area. Except for Crater Lake National Park, comments on features within specific units of the National Park System are addressed in the sections titled "Summary Analysis of Significant Thermal Features Within Units of the National Park System" and "Units Within the National Park System With No Significant Thermal Features." Comments received on Crater Lake National Park are discussed in the next section.

Determination of Significance for the Proposed Thermal Feature Within Crater Lake National Park is Deferred

The analysis in the proposed notice for Crater Lake National Park stated that studies indicate that thermal springs feed the lake from hydrothermal vents located on the floor of the basin. Based on such studies, the National Park Service proposed that the hydrothermal vents postulated to exist on the floor of the basin of Crater Lake be listed as a significant thermal feature. In the proposed notice, the Department acknowledged that additional research is needed to characterize the contribution of these vents to the lake's water quality. Recent studies show that elevated concentrations of chlorides and dissolved minerals are found throughout the lake and are believed to be associated with hydrothermal fluids. Helium, an indicator of hydrothermal input, and radon, an indicator of ground water input, have been recorded in the lake at higher levels than would normally be expected from atmospheric sources. The data suggest that hydrothermal vents exist at the bottom of Crater Lake and that these vents may contribute in some manner to the character of the lake. The Department plans to conduct research on this question at Crater Lake National Park this summer and to make a decision in the Fall of 1987 on whether Crater Lake National Park should be added to the list. However, at this time, Crater Lake National Park has not been included on the list of significant thermal features.

Of the fourteen commentors, twelve opposed listing the proposed feature as a significant thermal feature because they believe that the existence of the thermal springs, or hydrothermal vents, is questionable. Some of the commentors noted that the springs or

vents, if they exist, may have too low a temperature to be defined as "thermal." Several of these commentors do not believe that the thermal springs contribute significantly to the water quality of Crater Lake and could be, in fact, adversely affecting the water clarity and quality of Crater Lake. Two commentors supported the listing of the thermal feature as proposed, believing that the thermal feature and Crater Lake National Park should be afforded the protection of the Act, including the monitoring program required by the Act. However, none of the public comments submitted conclusive evidence supporting or refuting the existence of the hydrothermal vents at the bottom of Crater Lake.

After reviewing all the data available on the proposed hydrothermal feature, including all information received from public comments submitted, it was decided that at this time there is insufficient information upon which to list Crater Lake as a significant thermal feature under the criteria of the Act. Therefore, the Department will defer making a determination of significance until after further research and review have been conducted. Based on studies that were conducted this summer, the Department will reevaluate the listing and leasing issues of Crater Lake in the Fall of this year. Until such time that a final decision is made about this proposed thermal feature, no geothermal leases for lands surrounding Crater Lake National Park will be issued.

Definition of "Thermal Feature"

In the proposed notice, the NPS broadly defined a "thermal feature" as a surface manifestation of a subsurface heat source. Such a definition encompasses not only surface manifestations of underlying hydrothermal systems, but also surface manifestations of volcanic processes.

Five respondents objected to the adoption of the broad definition because it encompassed a variety of geomorphic landforms, such as volcanoes, craters, and calderas, that are surface manifestations of cooled molten rock in the earth's crust, and as such are not "thermal" features. Also, commentors suggested that these geomorphic expressions of volcanic processes are not subject to adverse effects from current technology for geothermal development or exploration; therefore, these features should not be included in the list of significant thermal features.

Although the Department has made a finding, based on information available at this time, that there are no known impacts to geomorphic expressions of volcanic processes from development of hydrothermal systems under current technology, the Act requires review of "thermal features" and does not explicitly restrict evaluation only to features of "hydrothermal" significance. Therefore, the Department continues to advocate its original proposal of adopting a broad definition for the term "thermal feature." In light of the differences between hydrothermal systems and volcanic processes and their significance to the current geothermal leasing program, the Department notes in the listing whether each identified feature is listed as a hydrothermal feature, a volcanic feature, or both.

Application of the Criteria

In making an overall determination of significance, the Act specifically requires four criteria be applied to each thermal feature identified within the twenty-two (22) units of the National Park System. This section evaluates the public comments received on the application of the specified criteria in the proposed notice.

One respondent believed that the proposed notice inconsistently evaluated features within park units because of a general lack of data applicable to each of the four criteria. This respondent recommended that the Department develop a comprehensive data base upon which the four criteria could be evaluated and applied. The Department did not adopt this suggestion because the Act provided only 180 days in which to identify candidate features, publish the proposal for public comment and analysis, and in turn evaluate each of the public comments received to determine whether the proposal should be modified before transmitting the list to Congress. Because Congress did not call for new data collection, the Department evaluated existing data (except for Crater Lake National Park) in order to determine whether identified thermal features qualified as significant under the criteria of the Act.

Several respondents commented that the application of the criteria in the proposed notice was inconsistently applied because of an overly broad interpretation of the criteria. However, a broad definition and a broad application of the criteria were intentionally used to prevent arbitrary omission of a feature from consideration for significance and to stimulate public comments. We agree that the criteria needed to become more focused in order to prepare the final list.

The application of the criteria within the proposed notice was broad in that an identified feature could meet the test for significance even if it marginally met only one of the first three criteria, but met the fourth criteria because the feature was identified within the enabling legislation for the specified unit. The Department now applies the criteria so that a feature must be exceptionally significant for more than one of the criteria or, when considered "collectively", found to have a high rating.

The four criteria are listed below, along with a brief discussion of the factors contributing to the determination of whether or not the identified feature(s) qualify as "significant" under each criterion:

(1) *Size, extent, and uniqueness*—Neither lower nor upper limits on the size or extent of a feature were established. Each feature is still identified according to its existing surface dimensions. In the proposed notice, a feature could be considered significant under this criterion as long as it was identified as unique to the park unit, as well as to the Region, the Nation, or, in some cases, the World. Public comments received on the application of this criterion stated that it was applied too broadly. As a result of reevaluating the application of this criterion, the Department decided that, unless a feature was identified as unique to at least the Region, it should not automatically qualify as a significant thermal feature.

(2) *Scientific and geologic significance*—Under the proposed notice, a feature qualified as "significant" if the feature contributed important information to scientific or geologic knowledge, to the understanding of thermal regimes, or to the history or origin of the feature within the park unit, the Region, or the Nation. Also, the proposal considered biological factors as important to the scientific significance of a feature. The Department decided to define "scientific significance" so as to exclude consideration of biological factors because they are considered and protected under the provisions of other laws, such as the National Environmental Policy Act and the Endangered Species Act. Also, the Department decided to narrow the qualifiers of this criterion so that only those features that satisfy the following conditions would meet this criterion: a feature must contribute to geologic knowledge compared with similar features in other areas or must make a unique contribution to the understanding of similar systems.

(3) *The extent to which such features remain in a natural, undisturbed condition*—Under the proposed notice,

the existing condition of identified features described a full range of conditions, from completely undisturbed to commercially developed. As with size and extent, there were no limits established for amount or degree of development, but rather a judgment was made as to whether the amount of development was compatible with the purposes for which the park unit was established. The Department decided to limit qualification for significance under this criterion to those features which remain in a natural, relatively undisturbed condition, unless modifications were necessary to preserve a developed feature, consistent with the intent of the enabling legislation.

(4) *Significance of thermal features to the authorized purposes for which the National Park System unit was created*—The proposed notice considered this criterion being met if either: (a) A feature was specifically identified within the enabling legislation for the unit, or (b) a feature is being used in a manner consistent with the stated purposes for which the unit was created. The Department decided that features that are the basis for establishing the unit in the first instance (e.g., Yellowstone National Park or Hot Springs National Park) automatically meet this criterion, and that features that now significantly contribute to the statutory purposes for which the area was set aside by Congress could meet this criterion, but not automatically.

Listing of Affected States in the Proposed Notice

In the proposed notice, the Department requested public comments on the concept of identifying "affected States" as those States containing units where significant thermal features were listed. Applications for geothermal leases in affected States were proposed to be evaluated under the provisions of the Geothermal Steam Act as well as under the explicit public review requirements of the Act. For those States with no units listed as containing significant thermal features, all lease applications would be evaluated strictly under the requirements of the Geothermal Steam Act and other applicable laws and regulations, without implementing the case-by-case public review requirements of the Act.

Even though the Department received no public comments on this issue, the Department has decided that the proposed procedure of reviewing lease applications under the concept of affected States may not be in compliance with the Act. Therefore, when the Bureau of Land Management (BLM) receives an application for leasing geothermal resources, the likely impacts on listed thermal features of conducting operations under the lease application will be evaluated. The NPS will determine whether the likely impacts are *significantly adverse*, or *adverse*, or as having *no effect* to listed thermal features. Determinations will be applied and public notice will be given. The Department, including the U.S. Forest Service where applicable, will jointly review all public comments received to decide if the proposed action should be modified. BLM will process lease applications according to the provisions of the Act, as well as the Geothermal Steam Act, as amended, dependent on the determination of likely impacts to listed thermal features.

Summary Analysis of Significant Thermal Features Within Units of the National Park System

The Department has listed thermal features as significant within the following thirteen (13) park units of the twenty-two park units specified by the Act:

Mount Rainier National Park (Washington);
Yellowstone National Park (Wyoming, Montana, Idaho);
John D. Rockefeller, Jr. Memorial Parkway (Wyoming);
Bering Land Bridge National Preserve (Alaska);
Gates of the Arctic National Park and Preserve (Alaska);
Katmai National Park (Alaska);
Aniakchak National Monument and Preserve (Alaska);
Wrangell St. Elias National Park and Preserve (Alaska);
Lake Clark National Park and Preserve (Alaska);
Hot Springs National Park (Arkansas);
Lassen Volcanic National Park (California);
Hawaii Volcanoes National Park (Hawaii); and,
Haleakala National Park (Hawaii).

The section titled "List of Significant Thermal Features in Units of the National Park System" describes the listed significant thermal features within each of these thirteen units and addresses each of the significance criteria identified by the Act and applied by the Department as a consequence of public comments received on the proposed notice.

In addition, the Department has decided not to list thermal features as "significant" within nine (9) of the twenty-two (22) specified units. Features are not listed as significant for one or both of the following reasons: (1) No thermal features were identified by the National Park Service or by the public; or (2) features identified did not meet the significance criteria of the Act. As previously discussed, the Department has decided that at this time there is insufficient information upon which to list the postulated hydrothermal vents at Crater Lake as a significant thermal feature under the criteria of the Act; therefore, Crater Lake National Park is not included on the list.

Not listing features as "significant" does not mean that the features are not important. Since these features are in units of the National Park System, they are accorded the same high level of consideration as any park resource. Federal actions that may impact these features must still be reviewed under several laws, including the National Environmental Policy Act. The section titled "Specified Units Within the National Park System With No Significant Thermal Features" explains the rationale for each of the features on the proposed list that were not listed as significant on the list transmitted in this report.

The twenty-two (22) units of the National Park System specified by Congress in the Act are located within five (5) NPS Regions. The following table summarizes the list of significant thermal features:

SUMMARY TABLE

NPS Region: Park units evaluated	Number and type of proposed features identified	Identified features qualify as significant
Pacific Northwest Region:		
Mount Rainier National Park (Washington).	2 Hydrothermal	Yes.
	1 Volcanic	Yes.
Crater Lake National Park (Oregon).	1 Hydrothermal	No. Further study.
Olympic National Park (Washington).	2 Hydrothermal	No.
Rocky Mountain Region:		
Yellowstone National Park (Wyoming, Idaho, and Montana).	1 Hydrothermal	Yes (entire park).
Grand Teton National Park (Wyoming).	5 Hydrothermal	Nil.
John D. Rockefeller, Jr. Memorial Parkway (Wyoming).	1 Hydrothermal	Yes.
Alaska Region:		
Bering Land Bridge National Preserve.	1 Hydrothermal	Yes.

SUMMARY TABLE—Continued

NPS Region: Park units evaluated	Number and type of proposed features identified	Identified features quality as significant
Gates of the Arctic National Park and Preserve	1 Hydrothermal	Yes
Yukon-Charley Rivers National Preserve	None	Not Applicable
Katmai National Park	1 Volcanic	Yes.
Aniakchak National Monument and Preserve	1 Volcanic	Yes.
Wrangell-St. Elias National Park and Preserve	1 Volcanic	Yes.
	1 Hydrothermal	No.
Glacier Bay National Park and Preserve	None	Not Applicable.
Denali National Park and Preserve	None	Not Applicable.
Lake Clark National Park and Preserve	2 Volcanic	Yes.
Southwest Region:		
Hot Springs National Park (Arkansas)	1 Hydrothermal	Yes.
Big Bend National Park (Texas)	3 Hydrothermal	No.
Western Region:		
Lassen Volcanic National Park (California)	1 Hydrothermal	Yes
Sequoia National Park (California)	2 Hydrothermal	No.
Hawaii Volcanoes National Park (Hawaii)	9 Volcanic	6 Yes/1 No
	1 Hydrothermal	Yes.
Haleakala National Park (Hawaii)	1 Volcanic	Yes.
Lake Mead National Recreation Area (Arizona and Nevada)	3 Hydrothermal	No

List of Significant Thermal Features in Units of the National Park System

The following features are listed as "significant" thermal features within units of the National Park System:

Mount Rainier National Park

The National Park Service originally proposed Mount Rainier, the volcano, and two associated springs and the thermal features at the summit (fumaroles) as one significant thermal feature. As the Department wishes to distinguish those features of a hydrothermal character from those of volcanic origin, the Department lists three features within Mount Rainier, one volcanic and two hydrothermal. Mount Rainier is listed as a significant volcanic feature. The fumaroles at the summit and Ohanapecosh springs near the bottom of Mount Rainier in the southeast part of the park are listed as two significant hydrothermal features. Longmire springs were reconsidered and a review of this feature determined that it did not meet the significance criteria of the Act as applied by the Department.

Feature: Mount Rainier (volcanic feature)

Significance Criteria:

1. *Size*—Approximately 176,000 acres. *Extent*—Entire volcanic cone, including lava flows, pyroclastic ejecta, glaciers, and glacial debris.

Uniqueness—Mount Rainier is the largest and highest volcano in the Cascade Range and the largest stratovolcano south of Alaska.

2. *Scientific and geologic significance*—This feature is an ideal example of a large Cascade composite cone or stratovolcano. It differs from other Cascade volcanoes in that about 90% of its eruptions have been in the form of lava flows, and only 10% pyroclastics, low for a composite cone. Mount Rainier, as well as other Cascade volcanoes, is located approximately above the zone of melting created by the convergence of two crustal plates. Since the last significant eruption, Mount Rainier has been heavily incised by glacial action.

3. *The extent to which the feature remains in a natural, undisturbed condition*—The volcano itself is primarily undisturbed. There are some disturbances to the flanks of the volcano from the construction of roads and visitor facilities; however, these developments are not believed to alter or interact with the underlying volcanic heat source.

4. *Significance of the feature to the authorized purposes for which the unit was created*—Mount Rainier, the volcano, is the central feature of the park and Mount Rainier National Park was established in 1899 to preserve Mt. Rainier and its associated geologic wonders (16 U.S.C. 91).

Feature: Fumaroles at the Summit of Mount Rainier and Associated Ice Caves (hydrothermal feature)

The following discussion was not included in the proposed notice, but was described in more detail during the public comment period. As the Department wishes to distinguish features of a hydrothermal character from those of volcanic origin, the following information is provided as a rationale for listing this feature as a separate hydrothermal feature.

Significance Criteria:

1. *Size and extent*—The fumaroles at the summit of Mount Rainier are small vents which release steam and are situated in an area where the ground temperature is reported to be 85–71 °C (174–185 °F).

Uniqueness—Vented steam has melted ice to form ice caves. One notable cave passage extends about 3,000 feet along the arc of the east crater rim. The presence of the fumaroles contributes to the continued formation of the ice caves.

2. *Scientific and geologic significance*—The summit fumaroles are considered scientifically and geologically significant because the creation of the ice caves by the steam vents in an active glacier area represents an unusual geologic feature. The ice passages offer opportunities to study the formation of the ice pack and the interaction of volcanic gases and steam with ice.

3. *The extent to which the feature remains in a natural, undisturbed condition*—Both the fumaroles and the ice caves remain in a natural, undisturbed condition mainly due to the difficult access and consequent lack of visitation to the summit.

4. *Significance of the feature to the authorized purposes for which the unit was created*—The summit fumaroles and associated ice caves are unique educational attractions of the unit. The summit steam vents have formed the ice caves which are rare geologic occurrences, unique to the Region, and an important feature to visitors of the unit.

Feature: Ohanapecosh Springs (hydrothermal feature)

Significance Criteria:

1. *Size and extent*—These 25 springs, ranging from small seeps to small springs, exist near the bottom of Mount Rainier in the southeast part of the park.

Uniqueness—These springs are indicators of subsurface thermal processes and are unique to the region in that they are easily accessible for study.

2. *Scientific and geologic significance*—Temperatures have been reported as high as 50 °C (122 °F) and flows have been measured between 110–250 liters per minute. These springs have been documented in U.S. Geological Survey Circular 790 as evidence of an active hydrothermal system.

3. *The extent to which the feature remains in a natural, undisturbed condition*—Ohanapecosh springs were

significantly altered by development that occurred prior to the establishment of the park; however, such alterations have not changed the thermal regime of the hydrothermal feature.

4. *Significance of the feature to the authorized purposes for which the unit was created*—Chanapecosh springs are an important geologic feature associated with Mount Rainier and contribute to understanding the geology of the area. Mount Rainier National Park was established to preserve Mount Rainier and its associated geologic wonders (16 U.S.C. 91).

Yellowstone National Park

Feature: Yellowstone National Park (hydrothermal feature) Old Faithful and approximately 10,000 geysers and hot springs make Yellowstone National Park the world's greatest thermal area. Because each of the components listed are part of and in total comprise the Yellowstone hydrothermal system, the entire park unit is listed as a significant thermal feature. In addition, since Huckleberry Hot Springs within the John D. Rockefeller, Jr. Memorial Parkway are suspected of being directly linked to the Yellowstone hydrothermal system, these springs are identified as a significant thermal feature also and are listed as part of that unit. The following significance criteria have been analyzed for all of the components of the Yellowstone hydrothermal system as a single feature and are applicable to each component of the Yellowstone thermal system.

Significance Criteria:

1. *Size and extent*—Approximately 2,220,000 acres

(a) 10 travertine hot springs in Mt. Holmes, Mammoth, Tower Junction, Abiathar, Madison Junction, Firehole Lake, and Huckleberry Mountain Quadrangles. This includes the location of Mammoth Hot Springs.

(b) 41 acid-sulfate hot springs in Obsidian Lake, Mt. Washburn, Amethyst Mountain, Madison Junction, Norris Junction, Solfatara Plateau, Canyon Village, Ponuntpa Springs, Pelican Cone, Juniper Creek, Beach Lake, Lake Junction, Steamboat Point, Buffalo Lake, Summit Lake, Shoshone Geyser Basin and Huckleberry Mountain Quadrangles. This includes Norris Geyser Basin.

(c) 18 neutral-chloride hot springs in Norris Junction, Ponuntpa Springs, Firehole Lake, Buffalo Lake, Warm River Butte, Old Faithful, Ragged Falls, and Lewis Lake West Quadrangles. This includes the Upper (the location of Old Faithful) and Lower Geyser Basins.

(d) 1 neutral-dilute spring in Warm River Butte Quadrangle.

(e) 6 neutral-alkaline dilute springs in Lewis Lake West, Grassy Lake Reservoir, Huckleberry Mountain, and Mt. Hancock Quadrangles.

(f) 21 springs having a mixture of the above types in: Obsidian Lake, Amethyst Mountain, Madison Junction, Norris Junction, Canyon Village, Pelican Cone, Firehole Lake, Juniper Creek, Steamboat Point, Old Faithful, West Thumb, Shoshone Geyser Basin, and Lewis Lake East Quadrangles.

(g) 1 bicarbonate spring located in the Obsidian Lake Quadrangle.

(h) 16 springs of undetermined dominate chemistry located in Amethyst Mountain, Madison Junction, Norris Junction, Solfatara Plateau, Canyon Village, Ponuntpa Springs, Pelican Cone, Juniper Creek, Steamboat Point, and Lewis Lake West Quadrangles.

(i) 7 gas vents located in Amethyst Mountain, Abiathar Peak, Solfatara, Pelican Cone, and Eagle Peak (Brimstone Basin) Quadrangles.

Uniqueness—The Yellowstone thermal system is the world's greatest hydrothermal system and geyser area and is recognized as an outstanding natural feature of the world.

2. *Scientific and geologic significance*—Yellowstone contains thousands of thermal features and the park is widely known as the preeminent hydrothermal area of the world. The entire Yellowstone hydrothermal system provides numerous opportunities to study and characterize a large, undisturbed geyser system.

3. *The extent to which the features remain in a natural, undisturbed condition*—The feature is in a natural, undisturbed condition.

4. *Significance of the features to the authorized purposes for which the unit was created*—Yellowstone National Park was created in 1872 to preserve and protect all natural curiosities or wonders within the park and to retain them in their natural condition. The thermal features of the park are one of the natural wonders of the park and comprise the preeminent hydrothermal area of the world (16 U.S.C. 21).

John D. Rockefeller, Jr. Memorial Parkway

Feature: Huckleberry Hotsprings (hydrothermal feature)

Although the feature Huckleberry Hotsprings was identified in the proposed listing, it was not proposed as a significant thermal feature. However, because of comments relating these springs to the Yellowstone hydrothermal system, the Department now lists this feature.

Significance Criteria:

1. *Size and extent*—This feature consists of several springs located one mile west of Flagg Ranch.

Uniqueness—This feature is unique in that it is suspected of being an extension of the Yellowstone hydrothermal system.

2. *Scientific and geologic significance*—The combined flow of this feature is estimated at 350,000 gallons per day with temperatures over 100° Fahrenheit. The waters from these springs are slightly radioactive. Their scientific or geologic significance lies in their possible connection to the Yellowstone hydrothermal system.

3. *The extent to which the feature remains in a natural, undisturbed condition*—These springs have been highly altered and were developed into a public swimming pool facility in the early 1960's. The facility was abandoned in 1984. Extensive rehabilitation is planned for the area to restore it toward natural conditions.

4. *Significance of the feature to the authorized purposes for which the unit was created*—As a result of comments received, this feature is suspected to be part of the Yellowstone hydrothermal system. As such, this feature is significant to the purposes for which Yellowstone National Park was established, even though it was not used as a rationale for establishing John D. Rockefeller, Jr. Memorial Parkway.

Bering Land Bridge National Preserve

Feature: Serpentine Hot Springs (hydrothermal feature)

Significance Criteria:

1. *Size*—Approximately 0.5 square miles

Extent—Serpentine Hot Springs is a group of hot springs in the northern interior of the Seward Peninsula.

Uniqueness—These springs are the only springs in the region and are a unique indicator of underlying thermal activity in the Preserve. Also, these springs are a site where ceremonies of cultural significance are conducted by Native Alaskans, and as such are unique to the Native culture of the Region.

2. *Scientific and geologic significance*—As the only springs in the region, Serpentine Hot Springs are a unique indicator of thermal activity in the Preserve and knowledge about these springs will contribute to scientific data of the Region.

3. *The extent to which the feature remains in a natural, undisturbed condition*—The main pool has undergone some disturbance. Bath and bunk houses have been moved to the site to facilitate public visits and water has been piped to the bathing pool

These surface disturbances have not altered the underlying thermal regime of the feature.

4. *Significance of the feature to the authorized purposes for which the unit was created*—The Bering Land Bridge National Preserve was established to protect and interpret volcanic lava flows, ash explosions, coastal formations and other geologic processes. Also, the recreational significance of the Serpentine Hot Springs was recognized in the enabling legislation (16 U.S.C. 410hh).

Gates of the Arctic National Park and Preserve

Feature: Reed River Hot Springs (hydrothermal feature)

Significance Criteria:

1. *Size*—A complex of springs approximately 0.25 miles in length.

Extent—0.25 mile section along the east side of Reed River.

Uniqueness—Reed River Hot Springs is the largest known thermal feature in the park and is one of the few large hot springs in the region.

2. *Scientific and geologic significance*—As one of the few large warm springs in the Brooks Range of Alaska, Reed River Hot Springs has been proposed for listing in the National Register of Natural Landmarks and for designation as a State Ecological Preserve.

3. *The extent to which the feature remains in a natural, undisturbed condition*—The feature is in a natural, undisturbed condition.

4. *Significance of the feature to the authorized purposes for which the unit was created*—The Alaska National Interest Lands Conservation Act of 1980 (ANILCA) established Gates of the Arctic National Park and Preserve as a new park unit within the National Park System. ANILCA states that the purpose of the unit is to "preserve unrivaled scenic and geologic values" with the mandate to manage the unit "to maintain the wild and undeveloped character of the area" and its "ecological integrity" (16 U.S.C. 410hh). The natural, undisturbed character of one of the few warm springs in the Brooks Range, as found in the Reed River Hot Springs, is a significant thermal feature for this unit.

Katmai National Park and Preserve

Feature: Novarupta and vicinity (volcanic feature)

Significance Criteria:

1. *Size*—800 square miles.

Extent—Novarupta and several volcanoes to the northeast and southwest of Novarupta that parallel the Shelikof Strait, including Mount Martin, Mount Mageik, Trident Volcano, Mount Griggs, Kukak Volcano and Mount Katmai. These volcanoes, all in the vicinity of Novarupta, are east of the Bruin Bay fault and between Mount Martin and Mount Katmai, in the south central part of the park.

Uniqueness—The 1912 eruption of Novarupta altered the Katmai area dramatically and another volcanic eruption could occur at any time to again radically alter the landscape. The active volcanoes that line the Shelikof Strait make this area one of the world's most active volcanic centers today. Novarupta, itself, has a relatively simple structure conducive to study. There is no other site in the world where an historical ash eruption of comparable size has occurred at a site where the ejecta are easily accessible for study.

2. *Scientific and geologic significance*—It is thought that the magma body is close to the surface from a most recent eruption and the structure beneath Novarupta, including the magma body, is of major scientific interest and significance because of its relatively easy accessability.

3. *The extent to which the feature remains in a natural, undisturbed condition*—The feature is in a natural, undisturbed condition.

4. *Significance of the feature to the authorized purposes for which the unit was created*—Katmai National Monument was originally established to protect the volcanic features. ANILCA further expanded the unit to protect, among other features, all the existing geological features, including the volcanoes within the unit (16 U.S.C. 410hh–1).

Aniakchak National Monument and Preserve

Feature: Aniakchak Caldera (volcanic feature)

Significance Criteria:

1. *Size*—Approximately 28 square miles.

Extent—The caldera is a volcanically active, flat-floored, ash-filled bowl that is 2,500 feet deep.

Uniqueness—The Aniakchak caldera is one of the largest calderas in Alaska, exhibits recent volcanic activity, and is essentially dry-bottomed.

2. *Scientific and geologic significance*—The area is acclaimed as one of the largest and most accessible ice-free calderas on the Alaska peninsula.

3. *The extent to which the feature remains in a natural, undisturbed condition*—The feature is in a natural, undisturbed condition.

4. *Significance of the feature to the authorized purposes for which the unit was created*—Aniakchak's enabling legislation states the unit must be managed to "maintain the caldera and its associated volcanic features and landscapes in their natural state." Therefore, the identified feature is a significant feature serving as the basis for the unit's creation (16 U.S.C. 410).

Wrangell-St. Elias National Park and Preserve

Feature: Wrangell Volcanoes (volcanic feature)

Significance Criteria:

1. *Size*—Mt. Wrangell 14,153 feet; Mt. Drum 12,010 feet; Mt. Sanford 16,237 feet; and Mt. Blackburn 16,390 feet.

Extent—The four volcanoes are central features of the park.

Uniqueness—The four active volcanoes are prominent within the park which includes the greatest assemblages of mountain peaks in any park in the Nation.

2. *Scientific and geologic significance*—The Wrangells are collectively referred to as a group of large shield and composite volcanoes. Geologically, they are relatively young and have had major eruptions as recently as 1,500 years ago. Their size and recent eruptive activity provide significant opportunities for scientific investigations, including glaciological and volcanic studies. A long-term monitoring program of Mt. Wrangell has been ongoing for over 15 years. The Wrangells are one of the greatest assemblages of mountain peaks in the Nation, some of which are volcanoes, both active and inactive. The Wrangells are the origin for some of the longest glaciers on the North American continent.

3. *The extent to which the feature remains in a natural, undisturbed condition*—The foothills and lowlands that form the outer fringe of this mountain range have been sites for a few small mining operations. The mining operations, with developed access routes, have created some disturbance to these areas; however, disturbances to the surrounding mountains is minimal.

4. *Significance of the feature to the authorized purposes for which the unit was created*—ANILCA identifies the general purpose for which various Alaska units were established as one of preserving unrivaled scenic and geological values associated with natural landscapes. The primary purposes of Wrangell-St. Elias National Park and Preserve are to maintain unimpaired the scenic beauty and quality of high mountain peaks, foothills, glacial systems, lakes, and streams in their natural state and to provide

reasonable access for mountain climbing, mountaineering, and other wilderness recreational activities. These high peaks are the significant features serving as the basis for the creation of the unit (16 U.S.C. 410hh).

Lake Clark National Park and Preserve

Feature: Redoubt Volcano (volcanic feature)

Significance Criteria:

1. *Size*—38,000 acres.

Extent—The volcano, including the small vents in the cone of Redoubt Volcano.

Uniqueness—Redoubt volcano is the second highest of the 76 volcanoes of the Alaska Peninsula and Aleutian Islands and is an active, heavily glaciated stratovolcano.

2. *Scientific and geologic significance*—Redoubt Volcano is an excellent example of a classic stratovolcano which exhibits areas of steam and sulfur venting. The feature is marked by erosion from glaciers and other processes exposing cross-sections of the volcano. Exposures illustrate the relationships of various lava flows and pyroclastic rocks of which the stratovolcano is composed.

3. *The extent to which the feature remains in a natural, undisturbed condition*—The feature is in a natural, undisturbed condition.

4. *Significance of the feature to the authorized purposes for which the unit was created*—The enabling legislation for Lake Clark National Park and Preserve states that the purpose of the unit is, among others, to "maintain unimpaired the scenic beauty and quality of portions of the Alaska Range, including active volcanoes" (16 U.S.C. 410hh).

Feature: Iliamna Volcano (volcanic feature)

Significance Criteria:

1. *Size*—33,900 acres.

Extent—The volcano, including the small vents in the cone of Iliamna Volcano.

Uniqueness—Iliamna Volcano is a broad cone-shaped active volcano deeply dissected by erosional processes. Thermal activity consists of two small sulfur vents located at about 9,000 feet near the summit on the eastern face of the volcano.

2. *Scientific and geologic significance*—The composition and appearance of the Iliamna Volcano offers opportunites to study the results and the history of volcanic processes.

3. *The extent to which such features remain in a natural, undisturbed condition*—The feature is in a natural, undisturbed condition.

4. *Significance of the feature to the authorized purposes for which the unit was created*—The enabling legislation for Lake Clark National Park and Preserve states that the purpose of the unit is, among others, to "maintain unimpaired the scenic beauty and quality of portions of the Alaska Range, including active volcanoes" (16 U.S.C. 410hh).

Hot Springs National Park

Feature: Hot Springs (hydrothermal feature)

Significance Criteria:

1. *Size*—0.3 mile long section of the southwest base of Hot Springs Mountain.

Extent—These springs are comprised of 47 individual springs along the southwest toe of Hot Springs Mountain.

Uniqueness—The average temperature of 143 °F of the spring waters are unique, as is the combined flow of 23 of the monitored springs which is 600,000 gallons per day. These springs are credited with advancing the bathhouse and health-spa ethic in this region of the United States.

2. *Scientific and geologic significance*—The springs have been studied to differing levels of sophistication over the past 150 years. Studies are being conducted to affirm the subsurface geology and the groundwater flow network. Monitoring equipment to be installed will provide base information to monitor temperatures and flow as a measure of adverse effects and hydrologic changes.

3. *The extent to which the feature remains in a natural, undisturbed condition*—The natural environment of the springs has been extensively altered with the construction of bathhouses and the city's Central Avenue business district. The springs themselves have been walled in and capped to prevent surface-borne contamination. Twenty-three (23) of the springs have had plumbing installed to collect and distribute the waters to a central reservoir.

4. *Significance of the feature to the authorized purposes for which the unit was created*—The Act of April 20, 1832, initially set aside this area, including the Hot Springs, as a Federal reserve in the Territory of Arkansas. Since the initial Act, there have been over 50 additional Federal statutues specifically addressing the management of the Hot Springs. The Department recognizes the cultural significance of the evolution of the bathing regime into the elegant bathhouses, and the thermal flows remain of primary significance to Hot Springs National Park (16 U.S.C. 361).

Lassen Volcanic National Park

Feature: Lassen hydrothermal system (hydrothermal feature)

There are six areas within Lassen Volcanic National Park that contain surface manifestations of a single hydrothermal system. As all of these areas are related to a single system, the Lassen hydrothermal system is listed as a single significant feature. The following significance criteria have been analyzed for all 6 components of the feature and have been found to be applicable to each component within the Lassen hydrothermal system.

Significance Criteria.

1. *Size*—70 square kilometers

Extent—Bumpass Hell, Little Hot Springs Valley, Sulphur Works, Devils Kitchen, Boiling Springs Lake—Drakesbad Hot Springs, and Terminal Geyser in the southern part of the park are the six features related to the Lassen hydrothermal system. The system is a two-phase, vapor-dominated system approximately 500–600 meters thick. Surficial expression varies from superheated fumaroles at Bumpass Hall to acid-sulfate springs and mudpots at Sulfur Works and Devils Kitchen.

2. *Scientific and geologic significance*—The Lassen hydrothermal system constitutes the only known vapor-dominated thermal system in the Cascade Range. Only two other vapor-dominated systems are known in the Western United States (The Geysers in California and Mud Volcano is Yellowstone National Park).

3. *The extent to which the feature remains in a natural, undisturbed condition*—Except for one abandoned geothermal well near Terminal Geyser, the system has not been tapped by drilling and there has been no depletion of thermal energy from drilling activity. Surface features at Bumpass Hell, Sulphur Works, and Devils Kitchen have been only slightly altered by the installation of trails andl boardwalks for the safety of visitors.

4. *Significance of the feature to the authorized purposes for which the unit was created*—Lassen Volcanic National Park was established in 1916 as a "public park and pleasuring ground for the benefit of the people of the United States", and to be managed "for the preservation from injury or spoilation of all timber, mineral deposits, and natural curiosities or wonders within said park and their retention in natural condition." The surface thermal features in the park represent an outstanding example of large steam heated thermal features, and the thermal system and its surface manifestations are a significant

expression of the continuing thermal activity in the area (16 U.S.C. 201).

Hawaii Volcanoes National Park

Feature: Steaming Bluff and Sulphur Banks (hydrothermal feature)

Significance Criteria:

1. *Size and extent*—Approximately 2 square miles (two miles long by one mile wide).

Uniqueness—Contains continuously active steaming fumaroles indicative of considerable subsurface hydrothermal phenomena.

2. *Scientific and geologic significance*—This feature is the site of active steaming fumaroles that may easily be viewed and studied.

3. *The extent to which the feature remains in a natural, undisturbed condition*—The area is the site of developed visitor trails; however, these trails have not altered the integrity of the thermal feature.

4. *Significance of the feature to the authorized purposes for which the unit was created*—Hawaii Volcanoes National Park was established as part of Hawaii National Park in 1916 and later redesignated as Hawaii Volcanoes National Park in 1961. The enabling legislation for this unit states that the purpose of the unit is to "provide for the preservation from injury of all . . . natural curiosities and wonders within said park, and their retention in their natural condition as nearly as possible." As the Steaming Bluff and Sulphur Banks area within Hawaii Volcanoes National Park contains major surface manifestations of a subsurface hydrothermal system which are of scientific and geologic significance to the Region, the Department has determined that this feature is a significant thermal feature (16 U.S.C. 391).

The following eight features are all listed as significant thermal features within Hawaii Volcanoes National Park because of their volcanic origin and significance. Significance criterion #3, the extent to which the feature remains in a natural, undisturbed condition, will not be repeated for each of the eight features under the discussion of the significance criteria, as each feature is in a natural, undisturbed condition. Significance criterion #4, significance of the feature to the authorized purposes for which the unit was created, will not be repeated for each feature since the following analysis is applicable to all the listed features. Hawaii Volcanoes National Park was established as part of Hawaii National Park in 1916 and later redesignated as Hawaii Volcanoes National Park in 1961. The enabling legislation for this unit states that the purpose of the unit is to "provide for the preservation from injury of all . . . natural curiosities and wonders within said park, and their retention in their natural condition as nearly as possible." As the following identified volcanic features within Hawaii Volcanoes National Park are unique natural thermal features of known scientific and geologic significance to the region, each of these eight features have been determined to be a natural wonder of the unit and, as such, are significant thermal features for this unit (16 U.S.C. 391). All of these identified features are features for which the park was created and criterion #4 is fully met.

Feature: Kilauea Caldera and Halemaumau Crater (volcanic feature)

Significance Criteria:

1. *Size and extent*—The entire caldera, including Halemaumau Crater, is approximately 3 square miles (3 miles long by 1 mile wide).

Uniqueness—Kilauea Volcano is one of the world's most active volcanic areas and has been in eruption since January 1983.

2. *Scientific and geologic significance*—This feature offers extensive opportunities for scientific and geologic investigations of an active mid-ocean volcanic system and is being constantly monitored. Kilauea (and Halemaumau) reflect the upwelling of mantle-derived lava as the Pacific Plate passes over the Hawaiian Hot Spot.

Feature: Kilauea Iki Crater (volcanic feature)

Significance Criteria:

1. *Size and extent*—That area 1 mile long by ½ mile wide beside Kilauea Crater.

Uniqueness—This feature is the only lava pond with an extended history of cooling.

2. *Scientific and geologic significance*—This feature is the site of current lava pond cooling rate studies.

Feature: Great Crack and Southwest Rift (volcanic feature)

Significance Criteria:

1. *Size and extent*—Approximately 10 square miles (20 miles long by ½ mile wide).

Uniqueness—Active rift zone, even though not as recently active as the East Rift Zone. Eruption occurred in this rift zone in the 1970's. It is a major fissure and volcanic feature.

2. *Scientific and geologic significance*—This feature is a major fault structural feature of Kilauea and offers numerous opportunities for scientific and geologic investigation.

Feature: East Rift Zone (volcanic feature)

Significance Criteria:

1. *Size and extent*—Approximately 20 square miles (13 miles long by 1.5 miles wide).

Uniqueness—The East Rift Zone is currently the world's most active volcanic rift zone and exhibits steaming ground.

2. *Scientific and geologic significance*—As the world's most active volcanic rift zone, it offers important opportunities for scientific and geologic investigations, and numerous such studies are being carried out. This feature is a major fault structural feature of Kilauea.

Feature: Chain of Craters (volcanic feature).

Significance Criteria:

1. *Size and extent*—Approximately 12 square miles (12 miles long by 1 mile wide) along the upper part of the East Rift Zone.

Uniqueness—This long line of volcanic features and phenomena is a very active thermal site, even though volcanic activity is shifting toward the lower part of the East Rift Zone.

2. *Scientific and geologic significance*—This feature is an active intrusive zone with many collapsed caldera features, pit craters, and steaming ground.

Feature: Mauna Ulu (volcanic feature).

Significance Criteria:

1. *Size and extent*—4 square miles (two miles long by two miles wide).

Uniqueness—It is a major volcanic vent along the East Rift Zone.

2. *Scientific and geologic significance*—Major active volcanic feature formed in the 1970's.

Feature: Puu Oo (volcanic feature).

Significance Criteria:

1. *Size and extent*—Two square miles (2 miles long by 1 mile wide).

Uniqueness—Recently active major volcanic vent of the East Rift Zone. The latest eruption was in June 1986. This is currently the largest such feature within the unit; however, eruptive activity seems to be shifting farther down the East Rift Zone.

2. *Scientific and geologic significance*—This feature is the site of significant studies of active volcanic vents and the resultant magmatic activity.

Feature: Mokuaweoweo Caldera and Northeast Rift Zone of Mauna Loa (volcanic feature)

Significance Criteria:

1. *Size and extent*—40 square miles (Mokuaweoweo Caldera is 4 miles long by 2½ miles wide and the Northeast Rift Zone of Mauna Loa is 15 miles long by 2 miles wide).

Uniqueness—The feature is the major caldera and rift zone of Mauna Loa.

2. *Scientific and geologic significance*—This feature is the site of significant caldera studies.

Haleakala National Park

Feature: Haleakala Crater (volcanic feature).

Significance Criteria:

1. *Size*—17,130 acres from crater rim.

Extent—Volcanic feature extends from the crater rim into the interior of the crater.

Uniqueness—Haleakala Crater, on the island of Maui, marks the prior location of the Hawaiian Hot Spot, or plume of rising magma. As the Pacific Plate has moved westward relative to the plume, the Hawaiian Islands have formed like a "string of pearls", with the Island of Hawaii presently the most active. Haleakala last erupted in 1790 with two lava flows at lower elevations. Hence, the volcano is still potentially active even though the major activity has shifted eastward. The same crustal thermal and volcanic processes are responsible for both Haleakala on Maui and the volcanic features and current activity on the Island of Hawaii.

2. *Scientific and geologic significance*—Haleakala Crater offer opportunities for studies of waning Hawaiian volcanism. It is the focus of geologic studies to determine the composition of the earth's mantle and if it has changed over time. Changes are measured by comparing the composition of Haleakala rock with magma presently issuing from the Island of Hawaii.

3. *The extent to which the feature remains in a natural, undisturbed condition*—In its upper reaches, the crater is a pristine native rain forest with unique, fragile, and endemic plant and animal species. The Crater Historic District which encompasses the entire crater is listed on the National Register of Historic Places. The feature is in a natural condition except for very few roads, trails, and buildings provided to serve the public. The summit of the crater and a great many sites within are considered to be sacred by Native Hawaiians and contains many sites of archeological value, including royal burial sites.

4. *Significance of the feature to the authorized purposes for which the unit was created*—The legislative history supporting the Act of August 10, 1916, which created the Haleakala National park as an isolated extension of Hawaii Volcanoes National Park, emphasizes that the craters within the proposed boundaries are among the most remarkable of natural wonders and among the largest and most spectacular in the world. These volcanoes are a national as well as a regional and local asset. The purposes of Haleakala National Park are, among others, to preserve the area's volcanoes and the outstanding scenic, geologic, and biological resources, as well as to preserve the natural environment for public enjoyment and scientific study (16 U.S.C. 396b).

Units Within the National Park System With No Significant Thermal Features

The Department identified no thermal features within the following three specified units of the National Park System located in Alaska:

Yukon-Charley Rivers National Preserve;

Glacier Bay National Park and Preserve; and,

Denali National Park and Preserve.

Thus, determinations of "significance" are not applicable, and the three units listed above were so noted in the "Summary Table" of the earlier section titled "Summary Analysis of Significant Thermal Features Within Units of the National Park System."

One commentor nominated an area known as "Moose Creek" within Denali National Park and Preserve in Alaska as a possible candidate for evaluating as a significant thermal feature. "Moose Creek" was known to the NPS at the time of the proposed notice and was not listed as a candidate feature because it is an area of intermittent or reemergent streams with temperatures in the winter that are only slightly higher than ambient temperature. Since this area does not meet the criteria, it was not added to the list of significant thermal features.

The following features within the boundaries of several of the specified units of the National Park System, were identified in the proposed list, but after review of new and existing information and public comments, they were not included on the list of significant thermal features transmitted to Congress. The Department determined these features not to be "significant" because the features do not qualify as significant under the criteria of the Act, either as originally proposed or as subsequently modified as a result of public comments received. In the case of Crater Lake National Park, the Department determined that there is insufficient information at this time to make a determination of significance; therefore, Crater Lake is not included on the list of significant thermal features. These park units and their originally identified features are described below. The text will reference whether the feature was either not originally proposed as a significant thermal feature in the proposed notice or not listed on this list as a consequence of evaluating public comments received on the proposed notice.

Crater Lake National Park

Feature: Postulated Hydrothermal Vents at the Bottom of Crater Lake.

The Department is not listing this features as a significant thermal feature because there is insufficient information at the present time on the possible thermal feature. The Department is conducting a six month study on the question of Crater Lake and plans to make a decision on whether Crater Lake should be added to the list in the Fall 1987. Concurrent with the studies conducted to determine the significance of the postulated hydrothermal vents, no leases will be issued surrounding Crater Lake under the discretion vested in the Secretary by the Congress under section 3 of the Geothermal Steam Act of 1970 [30 U.S.C. 1002 (1982)].

Olympic National Park

Feature: Sol Duc Hot Springs.

NPS originally proposed Sol Duc Hot Springs as marginally significant, mainly because of the lack of scientific interest or significance to the unit or to the Region. As a result of evaluating public comments on this feature, the Department decided not to list this feature as a significant thermal feature under the Act because in relation to other springs known to exist in Washington, Oregon, or California, neither the size nor the character of the proposed feature is unique to the Region. The springs are actually seeps rather than springs with measurable flow. These springs have not been identified as an area of scientific interest and possess no unusual geologic significance. The springs have undergone extensive commercial development as a spa. This concession in the park is used extensively by the public for recreational and therapeutic purposes. Because of the current use the springs are not in an undisturbed condition. Finally, the feature is only incidental to the purposes for which the park unit was created.

Feature: Olympic Hot Springs.

Olympic Hot Springs in Olympic National Park was not proposed as a significant thermal feature and no public comments were received on this feature to warrant its reconsideration for listing.

Grand Teton National Park

Feature: Steamboat Mountain Fumarole.

Feature: Jackson Lake Warmsprings.

Feature: Kelly Warmsprings.

Feature: Teton Valley Ranch Warmsprings.

Feature: Abercrombie Warmsprings.

None of the five identified hydrothermal features within Grand Teton National Park were proposed as significant thermal features. Although

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the Department received one public comment in support of listing these features, there were no data submitted or new information available that warranted reconsideration of the original determination that none of these five springs met the criteria of significance. Therefore, no significant thermal features are listed for Grand Teton National Park.

Wrangell-St. Elias National Park and Preserve

Feature: Mineral Springs (mud volcanoes).

The mineral springs were originally proposed as a significant thermal feature. New information on the boundaries of the unit reveals that this feature is included within lands designated for interim conveyance to Native Alaskans. Because they are destined to be conveyed outside of the unit's boundaries, the Department removed this thermal feature from the list.

Big Bend National Park

Feature: Spring No. 1.
Feature: Spring No. 4.
Feature: Hot Springs.

These three springs were originally proposed as significant thermal features in the proposed notice. They are low flow, low temperature springs that are not unique to the region and, in fact, have been extensively altered from their natural state by the construction of enclosures, bathhouses and pumphouses. Springs No. 1 and 4 are used primarily for maintaining endangered wildlife species. The third spring supplies a bathhouse that is used by park visitors. While the presence of endangered species indicates biological significance, this is not the geologically oriented scientific significance specified in the Act. A reconsideration of these springs concludes that the criteria were too broadly applied and that the presence of endangered species should not, by itself, qualify a thermal feature as significant under the criteria of the Act; however, the endangered species will be categorically protected under the Endangered Species Act.

Sequoia National Park

Feature: Kern Hot Springs.
Feature: Whitney Warm Springs.

Both of the identified thermal features within Sequoia National Park were proposed as marginally significant, mainly because the scientific and geologic significance of these features are unknown at this time. Upon reevaluation of existing and new information submitted as a result of the public comment period, the Department does not consider these springs as significant. Neither springs are unique to the Region, nor do they exhibit unique temperatures for the Region. They are but two of over 100 springs in California with similar temperatures ranging between 80–100 °F. Both springs are very small and of limited extent. They are not of particular geologic interest. Their significance to the purposes for which the unit was established is incidental, and neither spring is mentioned in the enabling legislation for the unit.

Hawaii Volcanoes National Park

Feature: Thurston Lava Tube.

This feature is a cooled geomorphic landform formed by flowing lava during historically old eruptions from nearby vents that existed at that time. The area is so cool that visitors enjoy the coolness within the lava tube as a refreshing pause on a tour of the unit. Sometimes the ambient air in the Thurston Lava Tube is cool enough to require a jacket to walk through it. This feature, although formed at one time by lava, is not of itself a "thermal feature." It is rather a surface manifestation of past volcanic processes that is no longer being changed by eruptive activity. Since it is a feature that, most likely, will not be subject to another lava flow through the tube to change its structure and form, the Department excluded this feature from the list of significant thermal features.

Lake Mead National Recreation Area

Feature: Black Canyon Hotsprings.
Feature: Blue Point Spring.
Feature: Rogers Spring.

The three features identified in this unit were originally proposed as significant thermal features. Based on its review of these features, the Department determined that none of the warm springs should be listed as significant thermal features.

Black Canyon Hot Springs are five springs in a four mile stretch of the river, where the individual size of each of these springs is not large. These springs are neither unique to the Region nor of considerable interest to the scientific community. With one exception, temperatures of the springs are generally low for thermal springs. They are close to ambient temperature and range between 26 °C to 31 °C. Only one spring has a higher temperature recorded, at 51 °C (124 °F); however, at least 55 springs have been identified in Nevada as having temperatures greater than 124 °F. These hotsprings do not necessarily serve as indicators of extraordinary subsurface thermal gradients. If water circulates deep enough under normal geothermal gradient conditions, the water will have temperatures as high as presented here. This process does not require the existence of an unusual subsurface thermal gradient.

One spring has biological significance to the extent that it provides habitat for the Devil's Hole Pupfish, an endangered species; however, they are protected under the Endangered Species Act.

These springs are not in a natural state as they are used as spas by the public. Also, the use of these springs is incidental to the purposes for which the park was established. It was not until Hoover Dam had created Lake Mead that Congress considered the recreational value of the area to be worthy of park status. Furthermore, the number of visitors using these springs is small compared to the number of visitors using the park each year.

Blue Point Spring and Rogers Spring, the remaining two of the three identified features within Lake Mead National Recreation Area, are connected to the same regional flow system, but otherwise their geologic significance is not known at this time. These springs are similar to other springs within the Region, and information about these springs will not contribute significantly to the data base about similar springs.

Blue Point Spring has a temperature of 85 °F which is approximately ambient temperature. As a result, water from this spring will exhibit a higher temperature above ambient for only about 100 feet from the spring; it, therefore, is not significant in size. At least 152 thermal springs with this temperature have been identified in Nevada. This spring does not have uncommon characteristics compared with other thermal springs. Although it was once considered as a refugium for the endangered Moapa coriacez, the ionic constituents of the waters of the spring make it unsuitable as a refugium. The spring has been altered for commercial and recreational uses. This spring is not scientifically significant when compared to springs within the remainder of the Region.

The flow rates and temperatures of Rogers Spring are similar to other springs in the area and the physical parameters are considered common. The spring site has been altered by developments which include man-made ponds and picnic facilities which significantly detract from a natural condition of the spring. The recreational significance of this spring is less than that of Black Canyon.

Dated: July 28, 1987.

William P. Horn,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–17396 Filed 7–31–87; 8:45 am]
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Monday
August 3, 1987

Part IV

Information Security Oversight Office

32 CFR Part 2003

National Security Information; Standard Forms; Final Rule

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INFORMATION SECURITY OVERSIGHT OFFICE

32 CFR Part 2003

National Security Information; Standard Forms

AGENCY: Information Security Oversight Office (ISOO).

ACTION: Final rule

SUMMARY: This amendment to 32 CFR 2003.20 provides (1) authority for the witnessing and acceptance of the Standard Form 189, "Classified Information Nondisclosure Agreement" or the Standard Form 189–A, "Classified Information Nondisclosure Agreement (Industrial/Commercial/Non-Government)," by an authorized representative of a contractor, licensee, grantee, or other non-Government organization, acting as a designated agent of the United States; and (2) points of clarification concerning the meaning and intent of specific provisions of SF 189 and SF 189–A. The points of clarification do not alter the substance of the agreements reflected in SF 189 and SF 189–A. They are fully consistent with previous interpretations provided in response to individual inquiries and apply to the interpretation of those provisions in existing versions and future reprints of SF 189 and SF 189–A.

EFFECTIVE DATE: August 3, 1987.

FOR FURTHER INFORMATION CONTACT: Steven Garfinkel, Director, ISOO. Telephone: (202) 535–7251.

SUPPLEMENTARY INFORMATION: This amendment to 32 CFR Part 2003 is issued pursuant to section 5.2(b)(7) of Executive Order 12356.

List of Subjects in 32 CFR Part 2003

Classified information, Exeuctive orders, Information, National security information, Security information.

32 CFR Part 2003 is amended as follows:

PART 2003—NATIONAL SECURITY INFORMATION—STANDARD FORMS

1. The authority citation for 32 CFR Part 2003 continues to read:

Authority: Sec. 5.2(b)(7) of E.O. 12356.

Subpart B—Prescribed Forms

2. Section 2003.20 is revised to read as follows:

§ 2003.20 Classified Information Nondisclosure Agreement: SF 189; Classified Information Nondisclosure Agreement (Industrial/Commercial/Non-Government): SF 189–A.

(a) SF 189 and SF 189–A are nondisclosure agreements between the United States and an individual. An individual is to execute either the SF 189 or the SF 189–A, as appropriate, before the United States Government may authorize that individual access to classified information.

(b) All employees of executive branch departments, and independent agencies or offices must sign SF 189 before being authorized access to classified information.

(c) All Government contractor, licensee, and grantee employees, or other non-Government personnel requiring access to classified information in the performance of their duties, must sign either SF 189 or SF 189–A before being authorized access to classified information.

(d) Agencies may require other persons, who are not included under paragraphs (b) or (c) of this section, to execute SF 189 or SF 189–A before receiving access to classified information.

(e) Only the National Security Council may grant an agency's request for a waiver from the use of SF 189 or SF 189–A. To apply for a waiver, an agency must submit its proposed alternative nondisclosure agreement to the Director of ISOO, along with a justification for its use. The Director of ISOO will request a determination about the alternative agreement's enforceability from the Department of Justice prior to making a recommendation to the National Security Council. An agency that has received a waiver from the use of SF 189 need not seek a waiver from the use of SF 189–A, if the employees of its contractors, licensees and grantees, and other non-Government personnel are required to sign a nondisclosure agreement identical or comparable to the agreement for which a waiver has been granted.

(f) Each agency must retain its executed copies of SF 189 and SF 189–A in file systems from which the agreements can be expeditiously retrieved in the event that the United States must seek their enforcement. The copies or legally enforceable facsimiles of them must be retained for 50 years following their date of execution. An agency may permit its contractors, licensees and grantees to retain the executed agreements of their employees during the time of employment. Upon the termination of employment, the contractor, licensee or grantee shall deliver the SF 189 or SF 189–A of that employee to the Government agency primarily responsible for his or her classified work.

(g) An authorized representative of a contractor, licensee, grantee, or other non-Government organization, acting as a designated agent of the United States, may witness the execution of SF 189 or SF 189–A by another non-Government employee, and may accept it on behalf of the United States. Also, an employee of a United States agency may witness the execution of SF 189 or SF 189–A by an employee, contractor, licensee or grantee of another United States agency, provided that an authorized United States Government official or, for non-Government employees only, a designated agent of the United States subsequently accepts by signature the SF 189 or SF 189–A on behalf of the United States.

(h) *Points of clarification.* As a result of inquiries concerning the meaning and intent of specific provisions of SF 189 and SF 189–A, the following points of clarification are provided. These points of clarification do not alter the substance of the agreements reflected in SF 189 and SF 189–A. They are fully consistent with previous interpretations provided in response to individual inquiries and apply to the interpretation of these provisions in existing versions and future reprints of SF 189 and SF 189–A.

(1) As used in paragraph 1 of SF 189, the term "classifiable information" refers to information that meets all the requirements for classification under Executive Order 12356, or under any other Executive order or statute that prohibits the unauthorized disclosure of information in the interest of national security, but which, as a result of negligence, time constraints, error, lack of opportunity or oversight, has not been marked as classified information. A party to SF 189 would violate its nondisclosure provisions only if he or she disclosed without authorization classified information or information that he or she knew, or reasonably should have known, was classified, although it did not yet include required classification markings.

(2) As used in paragraph 3 of SF 189 and SF 189–A, the word "indirect" refers to any situation in which the knowing, willful or negligent action of a party to the agreement results in the unauthorized disclosure of classified information even though the party to the agreement does not directly communicate, deliver or transmit classified information to a person who is not authorized to receive it. A party to

SF 189 would violate its nondisclosure provisions only if he or she knew, or reasonably should have known, that his or her action would result, or reasonably could result in the unauthorized disclosure of classified information.

(3) As used in paragraph 7 of SF 189, "information" refers to "classified information," exclusively. Future reprints of SF 189 will reflect this clarification explicitly.

(4) As used in the third sentence of paragraph 7 of SF 189 and SF 189–A, the words "all materials which have, or may have, come into my possession," refer to "all classified materials which have or may come into my possession," exclusively. Future reprints of SF 189 and SF 189–A will reflect these clarifications explicitly.

(5) The format for the " Witness and Acceptance" statement on future reprints of SF 189 will be the same as the "Witness and Acceptance" statement of SF 189–A, which is consistent with the provisions of paragraph (g), above.

(i) The national stock number for the SF 189 is 7540–01–161–1869. The national stock number for the SF 189–A is 7540–01–237–2597.

Dated: July 29, 1987.

Steven Garfinkel,

Director, Information, Security Oversight Office.

[FR Doc. 87–17557 Filed 7–31–87; 8:45 am]

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federal register

Monday
August 3, 1987

Part V

Department of Health and Human Services

Office of Human Development Services

Head Start Program; Availability of Grants

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

[Program Announcement No. 13600-872]

Head Start Program; Availability of Grants

AGENCY: Administration for Children, Youth and Families (ACYF), Office of Human Development Services (OHDS), Department of Health and Human Services (DHHS).

ACTION: Announcement of availability of Federal financial assistance for innovative Head Start projects and request for applications.

SUMMARY: The Head Start Bureau of the Administration for Children, Youth and Families (ACYF) is soliciting applications from current Head Start grantees that wish to compete for $2,000,000 in grant funds available in fiscal year (FY) 1988 to develop and implement innovative program options or innovative adjuncts to existing programs. These funds will be awarded, through a national competition, to applicants who propose innovative methods for the delivery of Head Start services or outstanding solutions for pressing local problems focused on preschool children and their families.

Applications are being solicited now so that the competitive process for selecting grantees can be completed in FY 1987 and funding can take place in the first quarter of FY 1988.

DATE: The closing date for receipt of applications is September 17, 1987.

Address Applications To: Department of Health and Human Services, Office of Human Development Services, Grants and Contracts Management Division, 200 Independence Avenue SW., Room 341-F, HHH Building, Washington, DC 20201. Attention: William J. McCarron, Head Start/Innovation.

FOR FURTHER INFORMATION CONTACT: Mary S. Lewis, Education Specialist, (202) 755-7710.

SUPPLEMENTARY INFORMATION:

Part I. General Information

A. Program Purpose

The Head Start program is designed to provide comprehensive developmental services primarily to low-income preschool children, age three to the age of compulsory school attendance, and their families. To aid enrolled children to achieve their full potential, Head Start programs provide comprehensive health, nutritional, educational, social and other services. In addition, Head Start programs are required to provide for the direct participation of parents of enrolled children in the development, conduct, and direction of local programs. In FY 1986, Head Start served 451,732 children through a network of 1,302 grantees.

While Head Start is targeted primarily on children whose families have incomes at or below the poverty line or are eligible for public assistance, ACYF policy permits up to 10 percent of the Head Start children in local programs to be from families who do not meet these low-income criteria. Head Start also requires that a minimum of 10 percent of the enrollment opportunities in each State be made available to handicapped children. Such children are expected to be enrolled in the full range of Head Start services and activities in a setting with their non-handicapped peers, and to receive needed special education and related services.

The Head Start Act, originally enacted as part of the Economic Opportunity Act of 1964, as amended, was reauthorized most recently by the Human Services Reauthorization Act of 1986, Pub. L. 99-425. The Act is codified at 42 U.S.C. 9831 et seq. The Head Start regulations are published in 45 CFR Parts 1301-1305.

B. Background

Since 1972, Head Start grantees have had five (5) program options from which to choose, i.e., the Standard Head Start Model, Variations in Center Attendance, Double Sessions, Home Based Models, and Locally Designed Options. The locally designed option is available to programs who elect to design a delivery system better suited to the needs of individual children and families in their communities than either the center-based or home-based options.

ACYF has now placed greater emphasis on local designs and, in 1985, approximately two million dollars were used to fund the first Innovative Cycle of 34 grants to 31 grantees nationwide. A synopsis of these locally designed demonstration programs is provided as Appendix I. The purpose of providing this information is so that applicants will not submit similar designs in response to this announcement (Cycle II), unless local circumstances might make one of these designs particularly appropriate.

C. Program Goals and Objectives of this Announcement

It is expected that applicants under this announcement will develop proposals which address specific needs as identified by their annual program self assessment and community needs assessment. Thus, the proposed work would be aimed at demonstrating innovative ways to meet the needs of children, parents and staff across all Head Start components, including administration.

Within the context of the Head Start goals, applicants may wish also to address the Department's new national initiative entitled "Youth 2000."

Youth 2000, a joint effort of the Departments of Labor and Health and Human Services, is a national campaign to heighten awareness about the issues that threaten to prevent millions of young people from having a productive and rewarding future. It is a "Call to Action" between now and the Year 2000 to motivate America's young people to believe in themselves; to make the most of their potential; to believe in the value of a healthy mind and body; and to strive toward becoming self-sufficient, productive members of society. Youth 2000 is an all out effort to enlist the coordination of businesses, communities, and government at the Federal, State and local levels in support of this endeavor. Please see Appendix II for Youth 2000 themes and possible approaches to Head Start innovative programming.

Specific Head Start program goals include those listed below:

- Serve eligible children and families with demonstrated high needs in such a specific manner that all Head Start programs could eventually benefit from the results of these innovative efforts.
- Improve the quality of service to eligible children and families.
- Meet documented needs of staff, families and children in a more efficient way through networking with specific agencies or joining forces with nearby or adjoining Head Start grantees or other early childhood programs.
- Document and disseminate information on the innovative approaches to service delivery.
- Contribute to the Departmental "Youth 2000" initiative by focusing on those objectives which have causal roots in the early years of childhood. Projects which underline the importance of prevention and early intervention, family involvement and individual perception of worth can serve to support young children and family functioning among young parents.

D. Eligible Applicants

Any existing Head Start grantee is eligible to apply for financial assistance under this announcement.

E. Available Funds

The Administration for Children, Youth and Families expects to award

approximately $2,000,000 in FY 1988 one or two year grants to develop innovative approaches to service delivery or products of benefit to Head Start programs. For two year grants, the second year of support will be available only if: (1) There has been satisfactory performance; (2) the grantee provides information on how it plans to disseminate, evaluate and refine the innovative activity; and (3) if funds are available.

Part II. Specific Responsibilities of the Grantee

A. Grantee Responsibilities

These projects are intended to demonstrate efficiency and high quality of service resulting in lasting effects on children and families or improved performance by staff within a limited time frame. The assumption is that more freedom is needed to meet needs of some individual children and their families than is available in the center-based or home-based options. To test this assumption at the local level, a one or two year time period in which to try out the local option is available. A second year of funding is available only for replication activities which are described in the applications.

For instance, during the first year, a grantee could develop a product or process for use with some of its constituents and try the activity with a small subset of people. In the second year, the activity could be enlarged to include all constituents or part or all of another grantee's or other child development program's constituents. This system, in turn, would test replicability and cost effectiveness within the two-year time frame. ACYF's goal is to disseminate findings which may be applicable to other grantees.

The emphasis is on testing and demonstrating new approaches. For FY 1988, the Innovative Grants program is aimed at improving the quality of services. Requests for funding services to additional children will be considered only if adding children is the only way the proposed option will work. Therefore, grantee activities should be designed to focus on children and families within their current funded enrollment level in specific ways that exceed current Head Start Program Performance Standards requirements.

All innovative projects must:

- Be consistent with good developmental practices for children as well as good adult learning practices in working with parents and staff;
- Work with parents toward greater understanding of child development practices;
- Meet all Head Start Program Performance Standards. An exception to this rule is a model which is designed as an adjunct to a grantee's comprehensive services. Adjunct is defined as a special programmatic focus or circumscribed effort designed to meet a specific local need arising from a review of Head Start component capabilities and aimed at a specified subset of people. For example, some people would get something extra while the regular enrollment of children and families would continue to receive comprehensive Head Start services. This subset of people might be those who are counted in the regular enrollment but who get additional services or they might be an adjunct group of family members, waiting list families, or other low-income families in the community. An example of an adjunct project would be one that provides comprehensive health services to low-income families who are not eligible for Medicaid/Early and Periodic Screening, Diagnosis and Treatment (EPSDT) or other third party comprehensive health services;
- Mainstream children with special needs;
- Address the bilingual/bicultural needs of persons to be served;
- Assure that qualifications of staff to be assigned to the proposed project are appropriate.
- Provide for involvement of parents and other community members and organizations in developing and planning the project;
- Reflect the racial or ethnic background of the population being served with respect to employment of residents from the service area and career development and training opportunities for paraprofessional and other staff;
- Identify precise location or area to be served by the proposed project;
- Address collaborative efforts with other organizations.
- Provide for replication of the project within a one or two year time frame.

B. Grantee Share of the Project

The non-Federal share must be at least 20 percent of the total costs of the proposed program (e.g. if the total program cost is $125,000, the non-Federal share will be $25,000). Start up costs may be available depending on the appropriateness of the request. Suitability and availability of existing facilities and equipment is pertinent since they must be provided at minimum cost. To this end, networking with other programs and sharing of staff facilities and equipment is encouraged.

Part III. Criteria for Review and Evaluation of Applications.

Applications proposing to be funded as innovative projects that will carry out the responsibilities addressed under Part II of this announcement will be reviewed and evaluated against the following criteria:

A. Objectives and Need for this Assistance (15 points)

Identify any revelant physical, economic, social or other community problems related to design and implementation of a Head Start program. Indicate the type and results of planning studies, needs assessments, or community surveys that have been conducted to determine the scope of the need for comprehensive or adjunct services for children of low-income families. Supporting documentation or testimonies from other concerned commnity organizations may be used. Demonstrate the need for assistance, stating the primary and secondary objectives of the program proposed. The proposed program must be consistent with ACYF policies and with needs of the participants and the community that you plan to serve.

B. Beneficial Impact (25 points)

In response to the community needs identified above, indicate the number of children and type of participants to be served and how the participants and the community will benefit from the services provided. For example, if the community needs assessment has shown there are inadequate programs for preschool handicapped children, then in what ways will the proposed program fulfill these needs? All proposed programs must be consistent with Head Start goals and the required performance standards for local Head Start programs. The anticipated contribution to Head Start practice should be indicated.

C. Approach (40 points)

1. In accordance with applicable performance standards and ACYF policies, outline a plan of action pertaining to the scope and detail of how the proposed work will be accomplished for the locally designed option provided for in the budget. Cite factors which might accelerate or decelerate the work and your reason for proposing this option as opposed to others. Describe any unusual features of the project such as social or educational innovations, reductions in costs, and parent and community participation.

2. Provide the following information about the proposed design:

a. Number of children and/or families to be enrolled.

b. Number of handicapped children to be enrolled.

c. Number of families above and below the poverty income level who will be enrolled.

d. Number of hours per week of operation.

e. Number of weeks per year that the program will operate.

3. When accomplishments cannot be quantified by option and component, list them chronologically to show the schedule of accomplishments and their target dates. These projected accomplishments will be reported in quarterly program progress and statistical reports.

4. List resources (e.g., Medicaid, Nutrition programs, volunteers, organizations concerned with handicapped children) that will be mobilized to assist the project. Include a short description and cost estimate of the nature of these efforts or contributions.

D. Budget Appropriateness and Reasonableness (20 points)

The application demonstrates that the project's costs are reasonable in view of the anticipated results, i.e., the cost of service is reasonable.

Part IV. The Application Process

A. Availability of Forms

Agencies and organizations interested in applying for funds may request application kits from Robert Foster, Head Start Bureau, Administration for Children, Youth and Families, P.O. Box 1182, Washington, DC 20013; (202 755-8200).

In order to be considered for a Head Start innovation grant, an application must be submitted on the standard 424 form which has been approved by the Office of Management and Budget (OMB) under Control Number 0348-0000.

Each application must be executed by an individual authorized to act for the applicant agency and to assume responsibility for the obligations imposed by the terms and conditions of the grant award. Applications must be prepared in accordance with the guidance provided in the announcement and the instructions in the application kit.

B. Application Submission

One signed original and two copies of the grant application, including all attachments, are required. Completed applications must be sent to: Department of Health and Human Services, Office of Human Development Services, Grants and Contracts Management Division, 200 Independence Avenue SW., Room 341-F, HHH Building, Washington, DC 20201. Attention: William J. McCarron, Head Start/Innovation. The program announcement number (13600-872) must be clearly identified on the application.

C. Application Consideration

Applicants will be scored against the criteria outlined above. The review will be conducted in Washington, DC. Reviewers will be persons knowledgeable about Head Start and early childhood education and development.

The results of the competitive review will be taken into consideration by the Associate Commissioner, Head Start Bureau, who, in consultation with ACYF regional officials, will recommend projects to be funded. The Commissioner of ACYF will make the final selection of applicants to be funded. Applications may be funded in whole or in part depending on the innovative approach and applicability to Head Start programs nationwide. The Commissioner may elect not to fund any applicants that have management, fiscal, or other problems and situations which make it unlikely that they would be able to conduct an effective demonstration project.

Successful applicants will be notified through the issuance of a Notice of Financial Assistance Awarded which sets forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which support is given, the total length of the project period, and the non-Federal share to be provided.

D. Closing Date for Receipt of Applications

The closing date for receipt of applications under this program announcement is September 17, 1987.

1. *Mailed Applications.* Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date at the HDS Grants and Contracts Management Office, or

b. Sent on or before the deadline date, and received by the granting agency in time for them to be considered during the competitive review and evaluation process. (Applicants must be cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Applications submitted by other means.* Applications which are not submitted in accordance with the above criteria shall be considered as meeting the deadline only if they are physically received before close of business on or before the deadline date. Hand delivered applications will be accepted at the HDS Grants and Contracts Management Office during the normal working hours of 8:30 a.m. to 5:00 p.m., Monday through Friday.

3. *Late Applications.* Applications which do not meet criteria one and two above are considered late applications and will not be considered in the current competition.

4. *Extension of deadline.* The Head Start Bureau may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is widespread disruption of the mail. However, if the granting agency does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

E. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Pub. L. 96-511, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and record keeping requirements in regulations including program announcements. This program announcement does not contain information collection requirements beyond those approved for HDS grant applications under the Part IV narrative under OMB Control Number 0980-0016.

F. Executive Order 12372—Notification Process

This program is covered under Executive Order (E.O.) 12372 "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs. All States and territories except Alaska, Idaho, Nebraska, American Samoa, and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these five areas need take no action regarding E.O. 12372.

Applications for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOC as

soon as possible to alert them of the prospective application and receive any necessary instructions. Applicants must submit any required material to the SPOC as early as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or date of contact if no submittal is required) on the SF 424, item 22a.

SPOCs have 60 days from the application deadline date to comment on applications for financial assistance under this program. Therefore, comments are due no later than November 16, 1987. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which they intend to trigger the "accommodate or explain" rule.

When comments are submitted directly to OHDS, they should be addressed to: Department of Health and Human Services, Office of Human Development Services, Grants and Contracts Management Division, 200 Independence Ave., SW., Room 341F, Hubert H. Humphrey Building, Washington, DC 20201, Attention: William J. McCarron. OHDS will notify the State of any application received which has no indication that the State process has had an opportunity for review. A list of single points of contact for each State and territory is included at Appendix III of this announcement.

G. Protection of Human Subjects

Department of Health and Human Services policy requires that if any phase of this project will involve subjecting individuals to the risk of physical, psychological, sociological, or other harm, certain safeguards must be instituted and an assurance must be filed. If there is any question about the application of requirements for the protection of human subjects to this project, further information should be requested from Mr. Denis Doyle of the Office for Protection from Research Risks, Building 31–4B09, National Institute of Health, DHHS, 9000 Rockville Pike, Bethesda, Maryland 20014: (202–496–7041)

(Catalog of Federal Domestic Assistance Program Number 13.600, Project Head Start)

Dated: June 23, 1987.

Dodie Livingston,

Commissioner, Administration for Children, Youth and Families.

Approved: July 13, 1987.

Joan K. Elder,

Assistant Secretary for Human Development Services-Designate.

Appendix I

Innovative Projects—1985

The FY 1985 grants, which included one and two year projects, were used to try out practices seen as having merit for all Head Start grantees. All of the innovative projects that were funded in 1985 will conclude on or before September 30, 1987. Since it is ACYF's belief that those persons working in communities know what is needed and are eager to prove their expertise in meeting local needs, the innovative grant process served as a useful proving ground for grantees who were successful applicants. The following list illustrates the types of projects currently funded. It also serves to indicate the types of projects that may not be duplicated in this new cycle of Innovative grants, unless local circumstances might make one of these projects particularly appropriate. Please note that the number of projects may represent work of more than one grantee.

The types are:

1. Mental Health

Four projects focused on:

- Methods for working with high-risk families.
- Development and field testing of a mental health curriculum for 3–5 year olds.
- Integration of recommended mental health training among a consortium of twelve rural grantees.

2. Handicap Services

Four projects focused on:

- Home intervention and parent education for American Indian families with special needs children.
- Hearing screening for Head Start siblings and children on waiting lists; treatment for otitis media and parent/community education on ways to conserve hearing.

3. Health Services

Five programs provided extra services in:

- Dental screening for Head Start siblings and special dental health education for rural home-based families.
- Health and speech screening for Head Start siblings and health/speech education for parents.
- Comprehensive health services to isolated rural children, health education for their parents during the school year, and an eight week summer educational enrichment program for children.
- Family oriented preventive health program for at-risk families with infant and toddlers who have many health problems.

4. Head Start Family Day Homes

Three grantees provided:

- Respite care to high-risk Head Start families by providing the children with family day care services.
- Community college training for current and new family day care providers.
- Family day care for the children of parents enrolled in General Education Training leading to the acquisition of a GED, which is the equivalency of high school graduation.
- Full day child care services to Head Start children through contracts with family day care providers.

5. Parent Involvement

Two programs initiated projects focused on:

- Research on the difference in costs of services to high-risk families vs. low-risk families.
- Individualized parent involvement.

6. Training/Employment/Joint Training Partnership Act [J.T.P.A.] Projects

Five grantees provided:

- Child care for women in job training with decreasing Head Start support and increasing employer support.
- Child care and residential facilities on site for women in job training at a community college.
- Head Start/Community Coordinated child care services for low-income teenage students in GED classes, work-study programs, and job training courses.
- Day care services for families in JTPA training.
- Head Start in an inner city "Enterprise" zone which is a geographic area targeted for economic development.

7. Special Populations

Six projects addressed the needs of specific groups through:

- The provision of comprehensive Head Start services to homeless urban families living in a hotel.
- Child care and follow-up services to urban families receiving emergency housing.
- Comprehensive day care for infants of refugee parents in English-as-a-second-Language training.

- Day care services for high school students who are parents of infants.
- Training and development of a Peer Support Network for home-based programs.
- Documentation of the impact of State/Federal interaction in preschool education in Maine.

8. Five Demonstration Playgrounds

Demonstrations funded were:
- A new Day Care/Head Start Center playground in Colorado under Private Industry Council/County sponsorship.
- A county fairground in California with day care, Head Start and Special Education programs on the premises.
- A rural New England playground featuring indoor and outdoor equipment.
- An urban housing project playground used by Head Start and day care programs in Washington, DC.
- A school district-operated Head Start site in North Carolina with special emphasis on outdoor learning centers.

Funding for the above 34 innovative projects ranged from $3,300 to $261,202 per year which included travel costs for two people to attend three special Innovation Conferences in Washington, DC. Grantees were expected to disseminate their findings in appropriate local, State and National settings.

Appendix II

Youth 3000 Themes

"Window of Opportunity." Changing demographics predict that the number of new jobs created in the next 10–15 years will exceed the number of new entrants into the labor force. Therefore, every youth is important to America's future.

Grantees wishing to tie their innovative projects to the Youth 2000 theme can address Head Start as a system which involves the whole family including grandparents and older siblings. The Head Start Program can be seen as a resource for young parents with infants, toddlers and preschoolers as well as a catalyst for all eligible children in a given neighborhood, whether they are in Head Start programs or other early childhood settings. For instance, development of Head Start families as resources for other families in the neighborhood can build an educational support network which will multiply the effects of Head Start.

Short-Term Goals

The Youth 2000 campaign's short-term goals are:
- To heighten public awareness concerning the problems of youth; and
- To bring about action on their behalf by government agencies, private organizations, business, the media, and concerned individuals at the National, State, and local levels.

Long-Term Goals

The Youth 2000 campaign's long-term goals are:
- To increase opportunities for youth social and economic self-sufficiency, and motivate youth to take advantage of these opportunities; and
- To significantly reduce the incidence and prevalence of specific youth-related problems, such as

—School dropout and illiteracy;
—Teen pregnancy;
—Alcohol, smoking, and drug abuse; and
—Homicides, suicides, and accidents.

Meeting these goals is more likely if sufficient attention is given to prevention and early intervention strategies for children and their families.

Appendix III

Executive Order 12372—State Single Points of Contact

Alabama

Mrs. Donna J. Snowden, SPOC, Alabama State Clearinghouse, Alabama Department of Economic and Community Affairs, 3465 Norman Bridge Road, Post Office Box 2939, Montgomery, Alabama 36105–0939, Tel. (205) 284–8905

Alaska

None

Arizona

Department of Commerce, State of Arizona

Note: Correspondence and questions concerning this State's E.O. 12372 process should be directed to:

Janice Dunn, ATTN: Arizona State Clearinghouse, 1700 West Washington, Fourth Floor, Phoenix, Arizona 85007, Tel. (602) 255–5004.

Arkansas

Joe Gillesbie, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Tel. (501) 371–1074

California

Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Tel. (916) 323–7480

Colorado

State Clearinghouse, Division of Local Government, 1313 Sherman Street, Rm. 520, Denver, Colorado 80203, Tel. (303) 866–2156

Connecticut

Gary E. King, Under Secretary, Comprehensive Planning Division, Office of Policy and Management, Hartford, Connecticut 06106–4459

Note: Correspondence and questions concerning this State's E.O. 12372 process should be directed to:

Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106–4459, Tel. (203) 566–3410

Delaware

Executive Department, Thomas Collins Building, Dover, Delaware 19903, Attn: Francine Booth, Tel. (302) 736–4204

Florida

Ron Faha, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32301, Tel. (904) 488–8114

Georgia

Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street, SW—Room 608, Atlanta, Georgia 30334, Tel. (404) 656–3855

Hawaii

Rober A. Ulveling, Director, Department of Planning and Economic Development, P.O. Box 2359, Honolulu, Hawaii 96804

For Information Contact: Hawaii State Clearinghouse, Tel. (808) 548–3016 or 548–3085

Idaho

None

Illinois

Tom Berkshire, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Tel. (217) 782–9939

Indiana

Ms. Peggy Boehm, Deputy Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Tel. (317) 232–5804

Iowa

A. Thomas Wallace, Iowa Dept. of Economic Development, Division of Community Progress, 200 East Grand Avenue, Des Moines, Iowa 50309, Tel. (515) 281–3864

Kansas

Martin Kennedy, Intergovernmental Liaison, Department of Administration, Division of Budget, Room 152–E, State Capitol Building, Topeka, Kansas 66612, Tel. (913) 296–2436

Kentucky

Bob Leonard, Kentucky State Clearinghouse, 2nd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Tel. (502) 564–2382

Louisiana

Colby S. La Place, Assistant Secretary, Dept. of Urban Community Affairs, Office of State Clearinghouse, P.O. Box 94455, Capitol Station, Baton Rouge, Louisiana 70804, Tel. (504) 342–9700

Maine

State Planning Office, Attn: Intergovernmental Review Process/ Hal Kimbal, State House Station No. 38, Augusta, Maine 04333, Tel. (207) 289–3154

Maryland

Guy W. Hager, Director Maryland State Clearinghouse for Intergovernmental Assistance, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Tel. (301) 225–4490

Massachusetts

Executive Office of Communities and Development, Attn: Beverly Boyle, 100 Cambridge Street, Rm. 904, Boston, Massachusetts 02202, Tel. (617) 727–3253

Michigan

Michelyn Pasteur, Director, Local Development Services, Department of Commerce, P.O. Box 30225, Lansing, Michigan 48909, Tel. (517) 373–3530, Staff Contact: Don Bailey, Tel. (517) 334–6190

Minnesota

Maurice D. Chandler, Intergovernmental Review, Minnesota State Planning Agency, Room 101, Capitol Square Building, St. Paul, Minnesota 55101, Tel. (612) 296–2571

Mississippi

Office of Federal State Programs, Department of Planning and Policy, 2000 Walter Sillers Bldg., 500 High Street, Jackson, Mississippi 39202. For Information Contact: Mr. Marlan Baucum, Department of Planning and Policy, Tel. (601) 359–3150

Missouri

Lois Pohl, Coordinator, Missouri Federal Assistance Clearinghouse, Office of Administration, Division of General Services, P.O. Box 809—Room 760, Truman Building, Jefferson City, Missouri 65102, Tel. (314) 751–4834

Montana

Sue Heath, Intergovernmental Review Clearinghouse, c/o Office of the Lieutenant Governor, Capitol Station, Helena, Montana 59620, Tel. (406) 444–5522

Nebraska

None.

Nevada

Ms. Jean Ford, Director, Nevada Office of Community Services, Capitol Complex, Carson City, Nevada 89710, Tel. (702) 885–4420

Note.—Correspondence & questions concerning this State's E.O. 12372 process should be directed to: John Walker, Clearinghouse Coordinator, Tel. (702) 885–4420.

New Hampshire

David G. Scott, Acting Director, New Hampshire Office of State Planning, 2½ Beacon Street, Concord, New Hampshire 03301, Tel. (603) 271–2155

New Jersey

Mr. Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, 363 West State Street, Trenton, New Jersey 08625–0803, Tel. (609) 292–6613

Note.—Correspondence & questions concerning this State's E.O. 12372 process should be directed to: Nelson S. Silver, State Review Process, Division of Local Government, Services—CN 803, Trenton, New Jersey 08625–0803, Tel. (609) 292–9025.

New Mexico

Dean Olson, Director, Management and Program Analysis Division, Department of Finance and Administration, Management and Contracts Review Div., Clearinghouse Bureau, Room 424, State Capitol, Santa Fe, New Mexico 87503, Tel. (505) 827–3885

New York

Director of the Budget, New York State.

Note.—Correspondence & questions concerning the State's E.O. 12372 process should be directed to: Harold W. Juhre Jr., New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Tel. (518) 474–1605.

North Carolina

Mrs. Chrys Baggett, Director, State Clearinghouse, Department of Administration, 116 West Jones Street, Raleigh, North Carolina 27611, Tel. (919) 733–4131

North Dakota

Bill Robinson, Office of Intergovernmental Assistance, Office of Management and Budget, 14th Floor, State Capitol, Bismarck, North Dakota 58505, Tel. (701) 224–2094

Ohio

State Clearinghouse, Office of Budget and Management, 30 East Broad Street, Columbus, Ohio 43215. For Information Contact: Mr. Leonard E. Roberts, Deputy Director, Tel. (614) 466-0698

Oklahoma

Don Strain, Oklahoma Department of Commerce, Office of Federal Assistance Management, 6601 Broadway Extension, Oklahoma City, Oklahoma 73116, Tel. (405) 843–9770

Oregon

Intergovernmental Relations Division, State Clearinghouse, Attn: Delores Streeter, Executive Building, 155 Cottage Street NE., Salem, Oregon 97310, Tel. (503) 373–1998

Pennsylvania

Laine A. Heltebridle, Special Assistant, Pennsylvania Intergovernmental Council, P.O. Box 11880, Harrisburg, Pennsylvania 17108, Tel. (717) 783–3700

Rhode Island

Daniel W. Varin, Chief, Rhode Island Statewide Planning Program, 265 Melrose Street, Providence, Rhode Island 02907, Tel. (401) 277–2656

Note.—Questions & correspondence concerning this State's review process should be directed to: Mr. Michael T. Marfeo, Review Coordinator.

South Carolina

Danny L. Cromer, Grant Services, Office of the Governor, 1205 Pendleton Street, Rm. 477, Columbia, South Carolina 29201, Tel. (803) 734–0435

South Dakota

Sue Korte, State Clearinghouse Coordinator, State Government Operations, Second Floor, Capitol Building, Pierre, South Dakota 57501, Tel. (605) 773–3661.

Tennessee

Charles Brown, Tennessee State Planning Office, 1800 James K. Polk Building, 505 Deaderick Street, Nashville, Tennessee 37219, Tel. (615) 741–1676.

Texas

Leon Willhite, State Planning Director, Office of the Governor, P.O. Box 13561, Capitol Station, Austin, Texas 78711.

Note.—Questions concerning this State's review process should be directed to: Intergovernmental Relations Division, Tel. (512) 463–1814.

Utah

Dale Hatch, Director, Office of Planning and Budget, State of Utah, 116 State Capitol Building, Salt Lake City, Utah 84114, Tel. (801) 533–5245.

Vermont

State Planning Office, Attn: Bernie Johnson, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Tel. (802) 828–3326.

Virginia

Nancy Miller, Intergovernmental Affairs Review Officer, Department of Housing and Community Development, 205 North 4th Street, Richmond, Virginia 23219, Tel. (804) 786–4474.

Washington

Washington Department of Community Development, Attn: Washington Intergovernmental Review process Dori Goodrich, Coordinator, Ninth and Columbia Building, Olympia, Washington 98504–4151. Tel (206) 586–1240.

West Virginia

Mr. Fred Cutlip, Director, Community Development Division, Governor's Office of Community and Industrial Development, Building #6, Rm. 553, Charleston, West Virginia 25305, Tel. (304) 348–4010.

Wisconsin

Secretary James R. Krauser, Wisconsin Department of Administration, 101 South Webster—GEF 2, P.O. Box 7864, Madison, Wisconsin 53707–7864, Tel. (608) 266–1741.

Note.—Correspondence and questions concerning this State's E.O. 12372 process should be directed to: Thomas Krauskopf, Federal-State Relations Coordinator, Wisconsin Department of Administration, P.O. Box 7864, Madison, Wisconsin 53707–7864, Tel. (608) 266–8349.

Wyoming

Ann Redman, Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002, Tel. (307) 777–7574.

Virgin Islands

Toya Andrew, Federal Programs Coordinator, Office of the Governor, The Virgin Islands of the United States, Charlotte Amalie, St. Thomas 00801, Tel. (809) 774–6517.

District of Columbia

Lovetta Davis, D.C. State Single Point of Contact for E.O. 12372, Executive Office of the Mayor, Office of Intergovernmental Relations, Rm. 416, District Building, 1350 Pennsylvania Avenue NW., Washington, DC 20004, Tel. (202) 727–6111.

Puerto Rico

Patricia G. Custodio, P.E., Chairman and Isael Soto Marrero, Director, Federal Proposal Review Office, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–9985, Tel. (809) 727–4444.

Northern Mariana Islands

Planning and Budget Office, Office of the Governor, Saipan, CM 96950.

American Samoa

None.

Guam

Guam State Clearinghouse, Office of the Lieutenant Governor, P.O. Box 2950, Agana, Guam 96910.

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federal register

Monday
August 3, 1987

Part VI

Department of Education

Office of Elementary and Secondary Education

34 CFR Part 221

Assistance for School Construction in Areas Affected by Federal Activities; Final Regulations

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

34 CFR Part 221

Assistance for School Construction in Areas Affected by Federal Activities

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the school construction program. This amendment is needed to implement changes made by section 301(b) of Pub. L. 98–511. These regulations establish criteria for waiver or reduction of certain statutory eligibility requirements for four categories of federally connected children.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Dr. David G. Phillips, Division of Impact Aid, U.S. Department of Education, Room 2117, 400 Maryland Avenue SW., Washington, DC 20202–6272. Telephone (202) 732–4052.

SUPPLEMENTARY INFORMATION: On May 5, 1987, the Secretary published in the **Federal Register** a notice of proposed rulemaking (NPRM). See 52 FR 16764. The NPRM proposed to amend the regulations governing the school construction program by establishing criteria for the waiver or reduction of certain statutory eligibility requirements for four categories of federally connected children. Section 301(b) of Pub. L. 98–511 reestablished the eligibility of these four categories of children. No comments were received by the Department of Education with respect to the NPRM, and no changes have been made in the final regulations.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Paperwork Reduction Act of 1980

These regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

List of Subjects in 34 CFR Part 221

Education, Education of the handicapped, Elementary and secondary education, Federally affected areas, Grant programs—education, Reporting and recordkeeping requirements, School construction.

(Catalog of Federal Domestic Assistance Number 84.040, School Assistance in Federally Affected Areas—Construction)

Dated: July 21, 1987.

William J. Bennett,

Secretary of Education.

The Secretary amends Part 221 of Title 34 of the Code of Federal Regulations as follows:

PART 221—[AMENDED]

1. The authority statement continues to read as follows:

Authority: 20 U.S.C. 631–647, unless otherwise noted.

2. Section 221.15 is amended by revising the introductory text of paragraph (b) and paragraph (b)(3) to read as follows:

§ 221.15 Under what circumstances may an LEA request a waiver or reduction of the minimum increase in the number or percentage of federally connected children?

* * * * *

(b) The Secretary considers the request for a waiver or reduction if the LEA meets the following conditions:

* * * * *

(3)(i) In the case of a request for a waiver or reduction of the minimum percentage requirement of 6 percent in § 221.13(a)(1), or of 10 percent in § 221.13(b)(1), the estimated increase in federally connected membership in the isolated attendance area at the end of the increase period is at least 10 percent of the total average daily membership in the isolated attendance area during the base year.

(ii) In the case of a request for a waiver or reduction of the minimum number requirement of 20 children in § § 221.13(a)(1) or 221.13(b)(1), the estimated increase in the number of the LEA's federally connected children at the end of the increase period is at least 25 percent of the LEA's total average daily membership in the base year.

[FR Doc. 87–17559 Filed 7–31–87; 8:45 am]

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CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

Last List July 30, 1987

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 3022/Pub. L. 100-90

To provide for a temporary extension of the public debt limit. (July 30, 1987; 101 Stat. 542; 1 page) Price: $1.00

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily Federal Register as they become available.

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1987. The CFR volume issued as of Apr. 1, 1980, should be retained.

[3] No amendments to this volume were promulgated during the period July 1, 1984 to June 30, 1986. The CFR volume issued as of July 1, 1984, should be retained.

[4] No amendments to this volume were promulgated during the period July 1, 1985 to June 30, 1986. The CFR volume issued as of July 1, 1985 should be retained.

[5] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[7] No amendments to this volume were promulgated during the period Oct. 1, 1985 to Sept. 30, 1986. The CFR volume issued as of Oct. 1, 1985 should be retained.

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federal register

Tuesday
August 4, 1987

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THE FEDERAL REGISTER

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WHO: The Office of the Federal Register.

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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: September 29, at 9 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: Janice Booker, 202-523-5239

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Rules and Regulations

Federal Register
Vol. 52, No. 149
Tuesday, August 4, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 572

Travel and Transportation Expenses; New Appointees

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing regulations setting forth the basic criteria and procedures used to determine whether a shortage of qualified candidates exists for particular positions. The shortage determination is required before Federal agencies may pay the travel and moving costs which new appointees incur when reporting to their first official duty stations. These regulations delegate to agencies the authority to make new shortage determinations in accordance with these criteria, and terminate existing shortage determinations that do not meet the criteria.

EFFECTIVE DATE: September 3, 1987.

FOR FURTHER INFORMATION CONTACT: Tracy Spencer, (202) 632–6817.

SUPPLEMENTARY INFORMATION: Section 5723 of title 5, United States Code, provides that OPM may find that a shortage of eligibles exists for particular positions and, based on that finding, may authorize agencies to pay travel and transportation expenses to the first post of duty for appointees to those positions. OPM has used its authority under 5 U.S.C. 5723 both to authorize payment of travel and transportation expenses for appointees to individual vacancies, and to authorize agencies to pay such expenses without obtaining approval in individual cases when the agencies had experienced difficulty in recruiting qualified candidates for many vacancies in a particular occupation(s), grade(s), and location(s) and those conditions were likely to continue for the foreseeable future. OPM also entered into delegation agreements with various agencies authorizing those agencies to make shortage determinations for high grade positions and positions in occupations where the agencies were the sole or predominant employers.

Proposed regulations delegating to agencies authority to make shortage determinations for any vacancies were published for comment on March 11, 1987 (52 FR 7427). Under those regulations, agencies were permitted to pay travel and transportation expenses for all new appointees to (1) positions for which special salary rates were established pursuant to 5 U.S.C. 5303; (2) positions filled by members of the National Defense Executive Reserve Program called to active duty in the event of a national emergency; and (3) positions for which direct-hire authorities were in effect. Individual shortage determinations were not to be required for those positions because the criteria used in approving special pay rates and direct-hire authorities were as strict or stricter than those prescribed for approving payment of travel and transportation expenses. For positions not covered by the three general authorizations, agencies were to determine whether a shortage of qualified candidates existed using the criteria set out in the regulations. Both the authority to determine whether a shortage exists for particular positions and the authority to pay travel and transportation expenses for particular appointees were discretionary.

Analysis of Comments

Written comments on the proposed regulations were received from 10 Federal agencies, which generally supported the proposal, from one individual employee, and from two employee organizations. Several agencies suggested editorial changes, which have been incorporated in the final regulations.

Two agencies suggested expanding the list of general authorizations to include all scientific and engineering positions and positions filled by outstanding scholars. Adoption of either proposal would exceed OPM's authority under 5 U.S.C. 5723. The law permits payment of new appointees' travel and transportation expenses only when there is a shortage of well qualified candidates for the positions being filled. Such a shortage may not exist for all positions in the two suggested categories.

Many scientific and engineering occupations are characterized by severe and chronic shortages and are covered by special pay rates and/or direct-hire authorities. We expect that condition to continue. The regulations permit payment of moving expenses for appointees in those occupations. Availability of candidates in the remaining scientific occupations varies considerably among agencies and positions. For example, the biological sciences—which would be covered by any definition of scientific positions—include occupational series in which shortages have been found only for specific job titles and agencies.

The law requires that payment of moving expenses for new appointees be justified by a shortage of candidates for particular *positions*. The law does not authorize OPM to provide such payment for certain *candidates*. While the availability of marginally qualified candidates need not preclude a finding that a shortage exists, the law would not permit payment based on a shortage of outstanding scholars when other well qualified candidates were available.

Two agencies suggested that the shortage determinations currently published in the Federal Personnel Manual remain in effect for a specified period after the new regulations become effective. This would allow agencies that are still experiencing shortages of candidates for any of those positions to continue paying appointees' travel expenses while processing new determinations under their delegated authority. One of the agencies suggested 120 days as an appropriate transition period; the other suggested 18 months. We have adopted the proposed 120-day transition period. Agencies may, at their discretion, continue to use the shortage listings in the Federal Personnel Manual for 120 days following the effective date of these regulations. All written commitments to pay travel and transportation expenses for appointees to such positions may be honored as long as the commitments are dated before the expiration of this 120-day grace period, even though the

appointees do not report for duty until a later date.

One agency suggested that shortage determinations made by agencies should remain in effect indefinitely. We did not adopt this suggestion because the requirement for review and redetermination is necessary to ensure that payments continue to be limited to shortage occupations, as required by law. We did, however, increase the maximum duration of agencies' shortage determinations to 3 years. Labor market conditions for any positions are not likely to change substantially in a 3-year period.

Two agencies and one employee suggested that agencies need authority to pay additional expenses associated with relocation, particularly those associated with real estate costs, house hunting trips, and temporary housing. They note that such expenses are often paid by private employers. This suggestion is outside OPM's jurisdiction. Under the law, OPM is responsible only for determining whether a shortage of candidates exists for particular positions. The General Services Administration (GSA) has legal responsibility for determining what expenses agencies may pay. Copies of these comments were forwarded to GSA for information and appropriate consideration.

The employee organizations expressed concerns about potential misuse of management discretion. One organization, concerned about possible disparate or discriminatory treatment of individual appointees, recommended that payment of travel and transportation expenses be mandatory whenever an agency determines that a shortage of qualified candidates exists for a particular type of position. The other organization, concerned that agencies would waste money paying expenses to bring new appointees into an organization which already had employees who could do the work, recommended that payment be prohibited when an agency has three or more internal employees or applicants on a best qualified list for a particular position.

The disparity between these comments suggests the difficulty of establishing mandatory criteria that would be equally appropriate in all situations. Even in occupations where shortages are widespread (e.g., those for which special pay rates or direct-hire authorities have been approved on a nationwide basis), some agencies experience greater recruiting difficulty than others. The differences may reflect many factors: Public awareness of the agency's programs; established relationships between the agency and academic and professional organizations; and, as one commenter suggested, availability of qualified candidates within the agency's workforce. Positions that require frequent travel or unusual working hours or that are in remote locations may be more difficult to fill than are positions with comparable duties and responsibilities that offer more attractive working conditions. For this reason, we are not adopting the suggestion that payment of travel and transportation expenses be mandatory for positions for which current shortage determinations exist. We believe, however, that sufficient protections already exist against application of this authority in an arbitrary or discriminatory manner.

Payment of travel and transportation expenses for new appointees is subject to 5 U.S.C. 2301 and 2302, which require that all employees and applicants receive fair and equitable treatment, and forbid discrimination for or against any employee or applicant on the basis of race, color, religion, sex, national origin, age, handicapping condition, marital status, or political affiliation. These principles are restated in the civil service rules (5 CFR 4.2). Because the merit principles and prohibited practices provisions apply to all actions regarding employment, pay, and benefits taken under OPM's regulations, it is unnecessary to restate them in individual regulations.

Agencies may establish whatever internal policies and guidance they find necessary to ensure compliance with merit principles and with the criteria set forth in these regulations. In addition, we have added to the final regulations a provision that each agency will make the reasons for its shortage determination(s) regarding particular positions a matter of record and will furnish information about those reasons to an employee or applicant on request. The record may be in any form (e.g., internal policy manual, memos to agency offices, approved staff recommendations for specific determinations) so this requirement should not create additional paperwork for agencies. We believe that this provision, along with the basic statutory protections, will satisfy the fair treatment concerns expressed by employee organization commenters.

In response to an employee organization's concern that money might be wasted recruiting new appointees who are not better qualified to perform particular jobs than employees already at the agency, we have strengthened the language requiring agencies to consider internal staffing efforts when deciding whether a shortage exists. We have also added availability of well-qualified internal candidates as an example of a situation that may justify an agency's decision not to pay moving costs for a particular position. We are not, however, adopting the suggestion that payments for new appointees be prohibited when at least three candidates are available internally. Quality as well as quantity of candidates may be a factor in determining whether a shortage exists. Many agencies' merit promotion plans provide for referral of the best qualified employees available for a particular position, even when all of the available employees are rated minimally or marginally qualified. Restricting agencies' ability to recruit outside candidates in that situation would not ensure the best return for salary expenses.

We believe that budget and cost controls offer the most effective deterrent to excessive travel payments. No funds are appropriated specifically for the purpose of paying new appointees' travel and transportation expenses; money used for that purpose reduces the funds available to meet other travel or salary needs. Although OPM has authorized payment of moving expenses for appointees to many positions (listed in chapter 571 of the Federal Personnel Manual), agencies have made prudent use of those authorizations. We expect that condition to continue.

Except for the changes discussed above, the final regulations are the same as the proposed regulations published on March 11, 1987. When these regulations become effective, the general delegation of authority to agencies will supersede all delegation agreements covering shortage determinations under 5 U.S.C. 5723.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation applies only to Federal agencies and employees.

List of Subects in 5 CFR Part 572

Administrative practice and procedure, Government employees.

U.S. Office of Personnel Management.
Constance Horner,
Director.

Accordingly, OPM is amending 5 CFR Part 572 as follows:

PART 572—TRAVEL AND TRANSPORTATION EXPENSES; NEW APPOINTEES

1. The authority citation for Part 572 is added as set forth below, and the authority citation following any sections in Part 572 is removed:

Authority: 5 U.S.C. 5723.

2. Subpart A is redesignated as Subpart B with the heading revised to read as follows:

Subpart B—Shortage Determinations for Positions Above Grade GS–15 (or Equivalent)

§§ 572.101 and 572.201 [Redesignated as §§ 572.201 and 572.202]

3. Sections 572.101 and 572.201 are redesignated as §§ 572.201 and 572.202, respectively.

4. A new Subpart A is added to Part 572 to read as follows:

Subpart A—General Provisions

Sec.
572.101 Agency authority.
572.102 Agencies' discretion in paying travel and transportation expenses.

Subpart A—General Provisions

§ 572.101 Agency authority.

Subject to the provisions of Subparts B and C of this part, an agency may determine that a shortage of qualified candidates exists for particular positions and that payment of appointees' travel and transportation expenses to the first post of duty is appropriate as a recruiting incentive. An agency may exercise this authority only in accordance with the requirements set out in this part and with standards of performance established by the Office of Personnel Management.

§ 572.102 Agencies' discretion in paying travel and transportation expenses.

Payment of travel and transportation expenses for any individual appointee will be at the discretion of the employing agency. A determination by one agency that a shortage of eligibles exists for a particular title, series, grade and geographical location does not require a like determination by any other agency. A determination made in connection with one specific vacancy does not require a like determination in connection with future vacancies. In deciding whether to pay travel and transportation expenses for an individual appointee, an agency may consider such factors as availability of funds and availability of well-qualified internal candidates, as well as the shortage criteria set out in this part.

5. A new Subpart C is added to Part 572 to read as follows:

Subpart C—Shortage Determinations for Positions at Grades GS–15 and Below (or Equivalents)

§ 572.301 Determination of shortage for positions at grades GS–15 and below (or equivalents).

(a) *Continuing determinations.* The Office of Personnel Management has determined that a shortage of qualified candidates exists for the positions listed below. Agencies may pay travel and transportation expenses to first post of duty for appointees to these positions without making a specific shortage determination, assuming other legal requirements are met.

(1) Positions for which special pay rates established pursuant to 5 U.S.C. 5303 are in effect;

(2) Positions filled by members of the National Defense Executive Reserve program who are called to duty in the event of a national emergency; and

(3) Positions filled under direct-hire authority, when that authority covers all positions in a specific series, grade, and geographic location. Payment of travel and transportation expenses is not authorized under this paragraph when direct-hire authority is granted only for certain candidates for the positions (e.g., candidates attaining a predetermined cutoff score; outstanding scholars).

(b) *Other determinations.* An agency may pay appointees' travel and transportation expenses for positions other than those listed above only when the agency determines that there is a shortage of well qualified candidates for the positions. The criteria in paragraphs (b)(1) and (2) of this section will be used in determining whether a shortage exists for a particular position and whether the shortage will also exist for future vacancies in the same series, grade, and location. Each agency will make the reasons for its shortage determination(s) regarding particular positions a matter of record and will furnish information about those reasons to an employee or applicant on request.

(1) *Reasonable recruitment effort.* Appropriate recruiting efforts for positions in the competitive service will include requests for referral of eligibles from the appropriate competitive examination, contact with the State Employment Service office or offices serving the locality concerned, and, where appropriate, contact with academic institutions, technical and professional organizations, or other organizations likely to produce qualified candidates for the positions. Recruiting for positions in the excepted service will be in accordance with the agency's objectives and staffing procedures, but must include contacts with academic institutions, or State Employment Service offices, or other organizations appropriate for the particular positions. The possibility of relieving a shortage for a certain type of position through broader publicity and recruitment will be considered in determining whether a shortage of qualified candidates exists.

(2) *Internal efforts.* When determining whether a shortage of qualified candidates exists for any position, an agency will consider the number and quality of candidates available within its current workforce. Consideration will also be given to efforts to relieve the shortage situation through such techniques as job engineering, training programs for under utilized employees, or automation.

(3) *Duration of the shortage.* Shortage determinations will be effective for a period not to exceed 3 years and may be renewed by the agency only upon a showing that the criteria of this paragraph are still met. Unless there is evidence that the shortage of qualified candidates for particular positions is continuing, the shortage determination will terminate when the current vacancy or vacancies in the positions are filled. The length of time active recruiting has been conducted for the position(s), the current and projected vacancy rate, and the number of declinations will be considered in determining whether the shortage of qualified candidates for particular positions is continuing.

[FR Doc. 87–17615 Filed 8–3–87; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87–NM–36–AD; Amdt. 39–5696]

Airworthiness Directives; Short Brothers PLC Model SD3–60 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Short Brothers Model SD3–60 series airplanes, which requires installation of an aluminum cover to protect the flight data recorder

(FDR). This amendment is prompted by reports of corrosion of circuit cards in the electronic section of the recorder, which has resulted in the inability to obtain data from the FDR. This AD is needed to prevent the loss of information that, in the event of an accident, may be used to determine the cause and, thereby, prevent future accidents.

EFFECTIVE DATE: September 10, 1987.

ADDRESSES: The applicable service information may be obtained from Shorts Aircraft, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202–3702. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM–113; telephone (206) 431–1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, which requires the installation of an aluminum cover to protect the flight data recorder (FDR) on Short Brothers PLC Model SD3–60 series airplanes was published in the **Federal Register** on April 22, 1987 (52 FR 13251).

Interested parties have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 43 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $3,440.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because of the minimal cost of compliance per airplane ($80). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Section 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Short Brothers PLC: Applies to Model SD3–60, serial numbers SH3601 through SH3675, certificated in any category. Compliance required within 90 days after the effective date of this AD, unless previously accomplished.

To prevent the potential for the loss of recorded information from the flight data recorder, due to corrosion, accomplish the following:

A. Install a flight data recorder cover in accordance with the Shorts Service Bulletin No. SD360–31–04, Revision No. 2, dated October 1986.

B. Inspect the installed flight data recorder for corrosion of the circuit cards and correct as required in accordance with the appropriate recorder maintenance manual.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to Shorts Aircraft, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202–3702. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective September 10, 1987.

Issued in Seattle, Washington, on July 28, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87–17588 Filed 8–3–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 87–AWP–23]

Amendment to Various Transition Areas; California

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: In 1985, airspace action eliminated alternate airway designations in California. Various transition area descriptions in California still refer to alternate airways. This action removes any reference to alternate airways and substitutes correct airway designations.

EFFECTIVE DATE: 0901 UTC, September 24, 1987.

FOR FURTHER INFORMATION CONTACT: Frank T. Torikai, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP–530, Air Traffic Division, Western Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90260; telephone (213) 297–1648.

The Rule

These amendments to Part 71 of the Federal Aviation Regulations amend the description of various transition areas in California. This action will remove any reference to alternate airways and substitute correct airway designations. I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because these actions are minor amendments in which the public would not be particularly interested. Section 71.171 of Part 71 of the Federal Aviation Regulations was published in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it

is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Fort Jones, CA [Amended]

By removing "V-23W" and substituting "V-267."

Klamath, CA [Amended]

By removing "V-23W" and substituting "V-495."

Priest, CA [Amended]

By removing "V-25E" and substituting "V-248."

San Francisco, CA [Amended]

By removing "V-27W" and substituting "V-494."

Sunol, CA [Amended]

By removing "V-244S" and substituting "V-195."

Ukiah, CA [Amended]

By removing the words "and that airspace extending upward from 5,300 feet MSL bounded on the east by the southwest edge of V-27 and on the west by the east/southeast edge of V-27W" and substituting "and that airspace extending upward from 5,300 feet MSL bounded on the east by the southwest edge of V-27 and on the west by the west/southwest edge of V-494."

Issued in Los Angeles, California, on July 24, 1987.

James A. Holweger,

Assistant Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 87-17590 Filed 8-3-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 87-AWP-34]

Amendment to Tustin MCAS H, California, and Santa Ana Orange County Airport, CA; Control Zones

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: On June 1, 1966, the United States Marine Corps eliminated the helicopter (H) designation from all Marine Corps air stations. This action amends the description of the Tustin MCAS H, California, and Santa Ana Orange County Airport, California, control zones to reflect this change.

EFFECTIVE DATE: 0901 UTC, September 24, 1987.

FOR FURTHER INFORMATION CONTACT: Frank T. Torikai, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90260; telephone (213) 297-1648.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations amends the Tustin MCAS H, California, and the Santa Ana Orange County Airport, California, control zones. This action eliminates the helicopter (H) designation after Tustin MCAS. I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor amendment in which the public would not be particularly interested. Section 71.161 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71), as amended (52 FR 6130), is amended as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Santa Ana Orange County Airport, CA [Amended]

Remove the words "Tustin MCAS H, California, Control Zone" and substitute "Tustin MCAS, California, Control Zone."

Tustin MCAS H, CA [Amended]

Remove the letter "H" after the words "Tustin MCAS" in the title and text.

Issued in Los Angeles, California, on July 24, 1987.

James A. Holweger,

Assistant Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 87-17591 Filed 8-3-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 87-AWP-19]

Revision to Winnemucca Transition Area; Nevada

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises the Winnemucca, Nevada, transition area and changes the airport reference point (ARP) and the coordinates of the Winnemucca non-directional radio beacon (NDB).

EFFECTIVE DATE: 0901 UTC, September 24, 1987.

FOR FURTHER INFORMATION CONTACT: Frank T. Torikai, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261; telephone (213) 297-1648.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations revises the Winnemucca, Nevada, transition area to include the correct coordinates for the ARP and the NDB. I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor amendment in which the public would not be particularly interested. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71), as amended (52 FR 6136), is amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Winnemucca, NV [Revised]

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Winnemucca Municipal Airport (lat. 40°53'46" N., long. 117°48'16" W.) and within 9 miles west and 5 miles east of the Winnemucca NDB (lat. 40°57'48" N., long. 117°50'28" W.) 342° and 162° bearings, extending from 5 miles south to 10 miles north of the NDB; that airspace extending upward from 1,200 feet above the surface within 5 miles northeast and 11 miles southwest of the 342° and 162° bearings extending from the southeast edge of V-113 to 11 miles southeast of the NDB; within 5 miles each side of the 162° bearing extending from 11 miles southeast of the NDB to the north edge of V-32; within 5 miles each side of the Battle Mountain VORTAC 296° radial extending from 12 miles to 50 miles northwest of the Battle Mountain VORTAC.

Issued in Los Angeles, California, on July 24, 1987.

James A. Holweger,

Assistant Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 87-17589 Filed 8-3-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 25331; Amdt. No. 1353]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS-230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously

issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the IERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC on July 24, 1987.

Robert L. Goodrich,

Director of Flight Standards.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

PART 97—[AMENDED]

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

2. By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective September 24, 1987*

Arcata-Eureka, CA—Arcata, ILS RWY 32, Amdt. 27
Chico, CA—Chico Muni, VOR/DME RWY 13L, Amdt. 4
Chico, CA—Chico Muni, VOR RWY 31R, Amdt. 6
Chico, CA—Chico Muni, NDB RWY 13L, Amdt. 3
Chico, CA—Chico Muni, ILS RWY 13L, Amdt. 5
Concord, CA—Buchanan Field, LDA RWY 19R, Amdt. 6
Concord, CA—Buchanan Field, NDB RWY 19R, Orig.
Orland, CA—Haigh Field, VOR-A, Amdt. 2
New Smyrna Beach, FL—New Smyrna Beach Muni, RADAR-1, Amdt. 3
Dodge City, KS—Dodge City Muni, VOR RWY 14, Amdt. 15
Dodge City, KS—Dodge City Muni, VOR/DME RWY 32, Amdt. 3
Fort Scott, KS—Fort Scott Muni, NDB RWY 17, Amdt. 8
Wellington, KS—Wellington Muni, NDB RWY 17, Amdt. 3
Flemingsburg, KY—Fleming-Mason, NDB RWY 25, Amdt. 4
Escanaba, MI—Delta County, ILS/DME RWY 9, Amdt. 3
Austin, MN—Austin Muni, VOR/DME-A, Orig.
Dodge Center, MN—Dodge Center, VOR-A, Amdt. 1
Latrobe, PA—Westmoreland County, RNAV RWY 5, Orig.
Pelion, SC—Corporate, VOR-A, Amdt. 1
Rock Hill, SC—Rock Hill Municipal-Bryant Field, VOR-A, Amdt. 7
Rock Hill, SC—Rock Hill Municipal-Bryant Field, VOR/DME-B, Amdt. 2
Rock Hill, SC—Rock Hill Municipal-Bryant Field, RNAV RWY 1, Amdt. 3
Rice Lake, WI—Rice Lake Muni, NDB RWY 36, Amdt. 5

** * * Effective August 27, 1987*

Milledgeville, GA—Baldwin County, NDB RWY 27, Amdt. 6
Chicago, IL—Chicago-O'Hare Intl, RADAR-1, Amdt. 38, CANCELLED
Williamsport, PA—Williamsport-Lycoming Co., NDB-A, Amdt. 4, CANCELLED

** * * Effective July 16, 1987*

Rome, GA—Richard B Russell, VOR/DME RWY 1, Amdt. 6
Rome, GA—Richard B Russell, VOR/DME RWY 19, Amdt. 5
Rome, GA—Richard B Russell, VOR/DME RWY 1, Amdt. 1
Rome, GA—Richard B Russell, NDB-A, Amdt. 4

The FAA published an Amendment in Docket No. 25327, Amdt. No. 1352 to Part 97 of the Federal Aviation Regulations (VOL 52 FR No. 137 Page 26950; dated Friday July 17, 1987) under § 97.27 effective August 27, 1987, which is hereby amended as follows:

Plymouth, MA—Plymouth Muni, NDB RWY 6, Amdt. 8 CANCELLED

Should Read:

Plymouth, MA—Plymouth Muni, NDB RWY 6, Amdt. 8, PROPOSED CANCELLED EFF 24 SEP 87

[FR Doc. 87-17587 Filed 8-3-87; 8:45 am]

BILLING CODE 4910-13-M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 202

[Docket RM 83-5A]

Registration of Claims to Copyright Full Term Retention of Copyright Deposits

AGENCY: Copyright Office, Library of Congress.

ACTION: Final regulation.

SUMMARY: This notice is published to inform the public that the Copyright Office of the Library of Congress is adopting interim regulation 37 CFR 202.23 as a final regulation with minor housekeeping changes. The purpose of the regulation is to implement section 704(e) of the Copyright Act. Section 704(e) directs the Register of Copyrights to issue regulations prescribing the conditions under which requests for full term retention of copyright deposits are to be made and granted including the fees for this service.

The effect of this regulation is to provide a mechanism for requesting retention of copyright deposits, to establish the conditions under which such requests are granted or denied, and to fix the fee to be charged pursuant to section 708(a)(ii), if the request is granted.

EFFECTIVE DATE: August 4, 1987.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, DC 20559; (202) 287-8380.

SUPPLEMENTARY INFORMATION: Section 704(e) of the Copyright Act of 1976, title 17 of the United States Code, directs the Register of Copyrights to issue regulations prescribing the conditions under which requests for full term

retention of copyright deposits may be made and granted. Effective July 19, 1983 the Copyright Office adopted interim regulations (48 FR 32775) governing the making and granting of requests for full term retention of deposits. The regulations were put into effect on an interim basis because they conferred a benefit on the public and were primarily procedural in nature. The Copyright Office invited comment, however, before issuing the regulations in final form.

None of the nine comment letters received in response to the interim full term retention regulation suggested any changes in the substance of the regulation. Only one letter questioned the amount of the fee. The remaining letters were primarily concerned with the effect of the announced policy decision of the Register of Copyrights and the Librarian of Congress that it is no longer practicable to retain deposit copies of published works for more than five years from the date of deposit, except works of the visual arts which will be retained for ten or more years, if practicable. (48 FR 12862).

The comment letters indicate that there may be some misunderstanding of the effect of the announcement regarding the shortened retention period for copies and the full term retention regulation. First, neither of these has any effect on copyright protection or the length of protection for published works; secondly, the question of the retention of deposit copies applies only to those copies in the custody of the Copyright Office. The Library of Congress is permitted by the Copyright Act to select copies from the copyright deposits to add to its collections. The policy decision to retain copyright deposits for a limited period of time does not apply to copies selected by the Library for its collections. Those copies will continue to be available in the Library. However, such copies are not considered to be in the custody of the Copyright Office and the Copyright Office cannot certify them as the copies used to make the copyright registration. In those cases, certification must be requested from the Library of Congress through the Library's Office of the General Counsel.

The sole purpose of the full term retention of deposit copies regulation is to offer copyright owners the opportunity to assure that the deposit copies of their published works will be retained in the custody of the Copyright Office for the full term of copyright. The Copyright Act itself obligates the Office to retain the deposit copies of unpublished works or their facsimile for the entire term of copyright.

Section 704(e) specifies that deposit material retained for full term storage in response to a request will be kept "under the control of the Copyright Office." Accordingly, deposit material retained under the final regulation pursuant to section 704(e) will be kept within the confines of Copyright Office buildings or under the control of Copyright Office employees, and will not be transferred to the Library of Congress collections. The Copyright Office will exercise normal due care in processing and maintaining copyright deposits in full term retention status, but the Office will not apply special preservation techniques. Moreover, full term deposits are open to public inspection pursuant to 17 U.S.C. 705(b).

The only change in the final regulation appears in paragraph (b)(2) which specifies that requests for full term retention be addressed to the Chief, Information and Reference Division of the Copyright Office. The interim regulation directed that the requests be sent to the Chief, Records Management Division. The Records Management Division has been abolished since the interim regulation was published and its functions were reassigned to the Information and Reference Division.

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress and is part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (title 5, Chapter 5 of the U.S. Code, Subchapter 11 and Chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since that Act affects only those entities of the Federal Government that are agencies and defined in the Administrative Procedure Act.[1] Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to the Regulatory Flexibility Act, the Register of Copyrights has determined that this final regulation will have no significant impact on small businesses.

[1] The Copyright Office was not subject to the Administrative Procedure Act before 1978, and it is now subject to it only in areas specified by section 701(d) of the Copyright Act (i.e., "all actions taken by the Register of Copyrights under this title [17], "except with respect to the making of copies of copyright deposits). [17 U.S.C. 708(b)]. The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA-FOIA requirements.

List of Subjects in 37 CFR Part 202

Claims to copyright, Copyright registration requirements.

Final Regulation

In consideration of the foregoing, Part 202 of 37 CFR, Chapter II is amended as follows:

PART 202—[AMENDED]

1. The authority citation for Part 202 continues to read as follows:

Authority: Section 702, 90 Stat. 2541; 17 U.S.C. 702.

2. Section 202.23 is adopted as final and revised to read as follows:

§ 202.23 Full term retention of copyright deposits.

(a) General. (1) This section prescribes conditions under which a request for full term retention, under the control of the Copyright Office, of copyright deposits (copies, phonorecords, or identifying material) of published works may be made and granted or denied pursuant to section 704(e) of Title 17 of the United States Code. Only copies, phonorecords, or identifying material deposited in connection with registration of a claim to copyright under Title 17 of the United States Code are within the provisions of this section. Only the depositor or the copyright owner of record of the work identified by the copyright deposit, or a duly authorized agent of the depositor or copyright owner, may request full term retention. A fee for this service is fixed by this section pursuant to section 708(a)(11) of Title 17 of the United States Code.

(2) For purposes of this section, "under the control of the Copyright Office" shall mean within the confines of Copyright Office buildings and under the control of Copyright Office employees, including retention in a Federal records center, but does not include transfer to the Library of Congress collections.

(3) For purposes of this section, "full term retention" means retention for a period of 75 years from the date of publication of the work identified by the particular copyright deposit which is retained.

(4) For purposes of this section, "copyright deposit" or its plural means the copy, phonorecord, or identifying material submitted to the Copyright Office in connection with a published work that is subsequently registered and made part of the records of the Office.

(b) Form and content of request for full term retention—(1) *Forms.* The Copyright Office does not provide printed forms for the use of persons requesting full term retention of copyright deposits.

(2) Requests for full term retention must be made in writing addressed to the Chief, Information and Reference Division of the Copyright Office, and shall (i) be signed by or on behalf of the depositor or copyright owner of record, and (ii) clearly indicate that full term retention is desired.

(3) The request for full term retention must adequately identify the particular copyright deposit to be retained, preferably by including the title used in the registration application, the name of the depositor or copyright owner of record, the publication date, and, if registration was completed earlier, the registration number.

(c) *Conditions under which requests will be granted or denied.*—(1) *General.* A request that meets the requirements of subsection (b) will generally be granted if the copyright deposit for which full term retention is requested has been continuously in the custody of the Copyright Office and the Library of Congress has not, by the date of the request, selected the copyright deposit for its collections.

(2) *Time of request.* The request for full term retention of a particular copyright deposit may be made at the time of deposit or at any time thereafter; however, the request will be granted only if at least one copy, phonorecord, or set of identifying material is in the custody of the Copyright Office at the time of the request. Where the request is made concurrent with the initial deposit of the work for registration, the requestor must submit one copy or phonorecord more than the number specified in § 202.20 of 37 CFR for the particular work.

(3) *One deposit retained.* The Copyright Office will retain no more than one copy, phonorecord, or set of identifying material for a given registered work.

(4) *Denial of request for full term retention.* The Copyright Office reserves the right to deny the request for full term retention where:

(i) The excessive size, fragility, or weight of the deposit would, in the sole discretion of the Register of Copyrights, constitute an unreasonable storage burden. The request may nevertheless be granted if, within 60 calendar days of the original denial of the request, the requestor pays the reasonable administrative costs, as fixed in the particular case by the Register of Copyrights, of preparing acceptable identifying materials for retention in lieu of the actual copyright deposit;

(ii) The Library of Congress has selected for its collections the single copyright deposit, or both, if two copies or phonorecords were deposited; or

(iii) Retention would result in a health or safety hazard, in the sole judgment of the Register of Copyrights. The request may nevertheless be granted if, within 60 calendar days of the original denial of the request, the requestor pays the reasonable administrative costs, as fixed in the particular case by the Register of Copyrights of preparing acceptable identifying materials for retention in lieu of the actual copyright deposit.

(d) *Form of copyright deposit.* If full term retention is granted, the Copyright Office will retain under its control the particular copyright deposit used to make registration for the work. Any deposit made on after September 19, 1978 shall satisfy the requirements of 37 CFR 202.20 and 202.21.

(e) *Fee for full term retention.* (1) Pursuant to section 708(a)(11) of title 17 of the United States Code, the Register of Copyrights has fixed the fee for full term retention at $135.00 for each copyright deposit granted full term retention.

(2) A check or money order in the amount of $135.00 payable to the Register of Copyrights, must be received in the Copyright Office within 60 calendar days from the date of mailing of the Copyright Office's notification to the requestor that full term retention has been granted for a particular copyright deposit.

(3) The Copyright Office will issue a receipt acknowledging payment of the fee and identifying the copyright deposit for which full term retention has been granted.

(f) *Selection by Library of Congress.*—(1) *General.* All published copyright deposits are available for selection by the Library of Congress until the Copyright Office has formally granted a request for full term retention. Unless the requestor has deposited the additional copy or phonorecord specified by paragraph (c)(2) of this section, the Copyright Office will not process a request for full term retention submitted concurrent with a copyright registration application and deposit, until the Library of Congress has had a reasonable amount of time to make its selection determination.

(2) A request for full term retention made at the time of deposit of a published work does not affect the right of the Library to select one or both of the copyright deposits.

(3) If one copyright deposit is selected, the second deposit, if any, will be used for full term retention.

(4) If both copyright deposits are selected, or, in the case where the single deposit made is selected, full term retention will be granted only if the additional copy or phonorecord specified by paragraph (c)(2) was deposited.

(g) *Termination of full term storage.* Full term storage will cease 75 years after the date of publication of the work identified by the copyright deposit retained, and the copyright deposit will be disposed of in accordance with section 704, paragraphs (b) through (d), of title 17 of the United States Code.

Date: July 15, 1987.

Ralph Oman,

Register of Copyrights.

Approved by:

Daniel J. Boorstin,

The Librarian of Congress.

[FR Doc. 87-17482 Filed 8-3-87; 8:45 am]

BILLING CODE 1410-07-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 409 and 442

[BERC-258-CN]

Medicare and Medicaid Programs; Benefit Period Determinations, Drug Regimen Reviews and Other Technical Changes

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction notice.

SUMMARY: Federal Register document 87-13449, beginning on page 22638 of the issue of Monday, June 15, 1987 specified conditions for the Medicare and Medicaid programs; Benefit Period Determinations, Drug Regimen Reviews and Other Technical Changes. This document corrects errors in the June 15 publication.

FOR FURTHER INFORMATION CONTACT: Betty Burrier (301) 594-9773.

Corrections

1. On Page 22845, in column 1, the bold faced heading halfway down the column, "PART 409–MEDICARE BENEFITS, LIMITATIONS, AND EXCLUSIONS" is changed to "PART 409–HOSPITAL INSURANCE BENEFITS".

2. On the same page, in column 2, line 7, subparagraph identifier "(F)" is changed to "(i)".

3. On the same page, in column 3, each reference to "42 CFR Part 405, Subpart G" is changed to "Part 405, Subpart G of this chapter", and the reference on line 4 to "42 CFR Part 431, Subpart E." is changed to "Part 431, Subpart E of this Chapter".

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare—Supplementary Medical Assistance Program; No. 13.714, Medical Assistance Program).

Dated: July 29, 1987.

James F. Trickett,

Deputy Assistant Secretary for Administrative and Management Services.

[FR Doc. 87-17650 Filed 8-3-87; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3450

[Circular No. 2600; AA—660-87-4121-02]

Management of Existing Leases; Amendment of Inaccurate Cross-Reference

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking amends 43 CFR Part 3450 regarding existing solid mineral leases to correct an inaccurate cross-reference.

ADDRESS: Any inquiries or suggestions should be sent to: Director (660), Bureau of Land Management, Room 3411 Main Interior Building, 1800 C Street, NW., Washington, DC 20240.

EFFECTIVE DATE: August 4, 1987.

FOR FURTHER INFORMATION CONTACT: Allen B. Agnew (202) 343–7722.

SUPPLEMENTARY INFORMATION: On March 4, 1985 (50 FR 8627), in a Bureau of Land Management (BLM) final rulemaking, the Department of the Interior amended 43 CFR Parts 3400, 3410, 3420, 3430, 3450, 3460, and 3470, including 43 CFR 3451.2(e), by removing all references in those parts to 30 CFR Part 211 and replacing them with references to 43 CFR Part 3480, to conform with an earlier redesignation of Minerals Management Service regulations as regulations of BLM. This rulemaking, however, contained an erroneous cross-reference in § 3451.2(e). The rulemaking of March 4, 1985, should have specifically amended 43 CFR 3451.2(e) by replacing "30 CFR Part 211" with "30 CFR 218.200" instead of "Part 3480 of this title."

The Department of the Interior has determined that because this rulemaking is a nonsubstantive, administrative action, merely correcting a cross-reference, it is not a major rule for purposes of E.O. 12291, and neither an environmental impact analysis nor a regulatory flexibility analysis is required. Furthermore, for the same reason, notice and public comment are unnecessary, and there is no requirement that the regulation be made effective 30 days after publication.

The principal author of this proposed rulemaking is Allen B. Agnew of the Division of Solid Mineral Operations, Bureau of Land Management, assisted by the staff of the Division of Legislation and Regulatory Management.

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

List of Subjects in 43 CFR Part 3450

Coal, Government contracts, Intergovernmental relations, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements.

Under the authority of section 2478 of the Revised Statutes (43 U.S.C. 1201), Subpart 3451, Part 3450, Group 3400, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

J. Steven Griles,

Assistant Secretary of the Interior.

July 27, 1987.

PART 3450—[AMENDED]

1. The authority citation for Part 3450 continues to read as follows:

Authority: 30 U.S.C. 181 *et seq.;* 30 U.S.C. 351–359; 30 U.S.C. 521–531; 30 U.S.C. 1201 *et seq.;* 42 U.S.C. 7101 *et seq.;* and 43 U.S.C. 1701 *et seq.*

§ 3451.2 [Amended]

2. Section 3451.2(e) is amended by removing from the last sentence thereof the phrase "in Part 3480 of this title" and replacing it with the phrase "in 30 CFR 218.200."

[FR Doc. 87-17660 Filed 8-3-87; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

45 CFR Part 233

Coverage and Condition of Eligibility in Financial Assistance Programs

AGENCY: Family Support Administration (FSA), HHS.

ACTION: Final rule; correction.

SUMMARY: This document corrects a technical error in final regulations published in the Federal Register on March 18, 1986 (51 FR 9191–9207) to promote fiscal savings, reduce the paperwork burden and increase State flexibility in the administration of the Aid to Families with Dependent Children (AFDC) program under title IV–A, and the adult categories under titles I, X, XIV or XVI (AABD) of the Social Security Act.

EFFECTIVE DATE: March 18, 1986.

FOR FURTHER INFORMATION CONTACT: Mark Ragan, (202) 245–3290.

SUPPLEMENTARY INFORMATION: The regulation at 45 CFR 233.90(a)(1) and published March 18, 1986 (51 FR 9206, first column), contained a technical error. In revising paragraph (a)(1) in 45 CFR 233.90, the incorrect placement of the asterisks resulted in the omission of a portion of the regulatory language. By publication of this correction document, the omitted language is hereby reinstated in the regulation.

(Catalog of Federal Domestic Assistance Programs No. 13.808, Public Assistance Maintenance [State Aid]).

Dated: July 29, 1987.

James F. Trickett,

Deputy Assistant Secretary for Administrative and Management Services.

Accordingly, § 233.90 is amended to correct paragraph (a)(1) to read as follows:

§ 233.90 Factors specific to AFDC.

(a) *State plan requirements.* A State plan under title IV–A of the Social Security Act shall provide that:

(1) The determination whether a child has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, or (if the State plan includes such cases) the unemployment of his or her parent who is the principal earner will be made only in relation to the child's natural or adoptive parent, or in relation to the child's stepparent who is married, under State law, to the child's natural or adoptive parent and is legally obligated

to support the child under State law of general applicability which requires stepparents to support stepchildren to the same extent that natural or adoptive parents are required to support their children. Under this requirement, the inclusion in the family, or the presence in the home, of a "substitute parent" or "man-in-the-house" or any individual other than one described in this paragraph is not an acceptable basis for a finding of ineligibility or for assuming the availability of income by the State; and

* * * * *

[FR Doc. 87-17051 Filed 8-3-87; 8:45 am]

BILLING CODE 4150-04-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 80

[PR Docket No. 84-477; FCC 87-234]

Maritime Service; Amendment of the Rules to Permit the use of Maritime Radar Transponders and Radio Beacons; Action on Petition for Limited Reconsideration

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for limited reconsideration granted.

SUMMARY: The attached Memorandum Opinion and Order changes the maximum range error and antenna polarization directivity for marine radar transponders. This action is taken in response to a Petition for Limited Reconsideration filed by Tideland Signal Corporation (Tideland).

EFFECTIVE DATE: September 3, 1987.

FOR FURTHER INFORMATION CONTACT: William P. Berges, Private Radio Bureau, Washington, DC 20554, (202) 632-7175.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, adopted July 6, 1987 and released July 20, 1987. The full text of this Commission decision and the rule amendment is available for inspection and copying during normal business hours in the FCC Docket Branch (Room 230), 1919 M Street, NW., Washington, DC. The full text of this decision and the rule amendment may also be purchased from the Commission's contractor, International Transcription Services, Inc., (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Memorandum Opinion and Order

1. On January 5, 1987, the FCC adopted a Report and Order in PR Docket No. 84-477 (52 FR 7417) amending Parts 2 and 80 of the rules to permit the operation of radar transponders and radio beacons in the marine services. In response to a Petition for Limited Reconsideration from Tideland the FCC changed the maximum range error of certain marine radar transponders from 75 to 100 meters and the polarization directivity of their antenna from both horizontal and vertical to either horizontal or both horizontal and vertical.

2. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that the adopted rule will not have a significant economic impact on a substantial number of small entities. The changes herein will have a minor beneficial effect on the marine community by permitting the use of radar transponders with more relaxed operating requirements. No new equipment will be required by any station. These changes allow greater flexibility and will not cause significant economic impact on any entity.

3. The rules contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information, collection and/or record keeping, labeling, dislosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

A copy of this Memorandum Opinion and Order will be served on the Chief Counsel for Advocacy of the Small Business Administration.

5. Accordingly, *it is ordered,* That under the authority contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C.154(i) and 303(r), Part 80 of the FCC rules is amended as shown below.

It is further ordered, that this proceeding *is terminated.*

List of Subjects in 47 CFR Part 80

Radiodetermination.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Part 80 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for Part 80 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377, unless otherwise noted.

2. In §80.213 paragraphs (h), (i)(1)(i) and (i)(1)(vii) are changed to read as follows:

§ 80.213 Modulation requirements.

* * * * *

(h) Radar transponder coast stations using the 2920–3100 MHz or 9320–9500 MHz band must operate in a variable frequency mode and respond on their operating frequencies with a maximum error equivalent to 100 meters. Additionally, their response must be encoded with a Morse character starting with a dash. The duration of a Morse dot is defined as equal to the width of a space and ⅓ of the width of a Morse dash. The duration of the response code must not exceed 50 microseconds. The sensitivity of the stations must be adjustable so that received signals below −10 dBm at the antenna will not activate the transponder. Antenna polarization must be horizontal when operating in the 9320–9500 MHz band and either horizontal or both horizontal and vertical when operating in the 2920–3100 MHz band. Racons using frequency agile transmitting techniques must include circuitry designed to reduce interference caused by triggering from radar antenna sidelobes.

(i) * * *

(1) Non-selectable transponders must have the following characteristics:

(i) They must respond on all their frequencies with a maximum range error equivalent to 100 meters;

* * * * *

(vii) Antenna polarization must be horizontal when operating in the 9320–9500 MHz band and either horizontal or both horizontal and vertical when operating in the 2920–3100 MHz band.

* * * * *

[FR Doc. 87-17036 Filed 8-3-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-406; FCC 87-243]

Broadcast Services; Partial Stay of the Public File Retention Rules

AGENCY: Federal Communications Commission.

ACTION: Partial stay.

SUMMARY: This action grants a partial stay of the amendments enacted in the *Report and Order* (*R&O*) in this proceeding (52 FR 21684, June 9, 1987). This decision responds to petitions filed by the National Association of Broadcasters (NAB), Greater Media, Inc. (Greater Media), and a petition filed jointly by Knight Communications Corp., Knight Radio, Inc., and Quality Radio Corp. (Knight Quality Stations). The partial stay of the revised local public inspection file rules was granted to preserve the status quo for existing operations pending a decision on reconsideration.

EFFECTIVE DATE: July 16, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Eileen E. Huggard, Mass Media Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order* in MM Docket 86–406, adopted July 16, 1987, and released July 17, 1987.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, Northwest, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, (202) 857–3800, 1919 M Street, NW., Room 230, Washington, DC 20037.

Summary of Memorandum Opinion and Order

1. This decision places a partial stay on the rule amendments enacted in the *R&O* in this proceeding. The *R&O* amended § 73.1125 of the Commission's Rules to permit television and radio broadcast stations to locate their main studios outside their communities of license at any point within their principal community contours. It also revised §§ 73.3526(d) and 73.3527(d) of the Rules to provide that the station's local public inspection file must be maintained in the community of license.

2. Requests for a stay of the revised public inspection file rules were filed by the National Association of Broadcasters and Greater Media, Inc. A joint motion was filed by Knight Communications Corp., Knight Radio, Inc., and Quality Radio Corp., requesting a limited stay of the same rules.

3. Although the Commission found that the petitioners had not made the requisite showing to warrant grant of the stay request under the applicable standard, the Commission in its own discretion granted a limited stay of the revised public inspection rules. The stay permits licensees who currently maintain their public files at the AM transmitter main studio site, pursuant to § 73.1125(a)(2), or who maintain their files at a main studio location authorized pursuant to § 73.1125(a)(3), to continue to maintain their public files at their present location pending resolution of several Petitions for Reconsideration of the *R&O* in this proceeding. This action was taken to preserve the status quo for existing operations until a decision on reconsideration is made.

Ordering Clause

4. Accordingly, *It Is Ordered, That* NAB's Motion for Partial Stay of Enforcement and For Expedited Action, Greater Media's Petition for Partial Stay and Knight Quality Stations' Motion for Partial Stay *Are Granted* to the extent indicated above and *Are Otherwise Denied.*

Accordingly, the amendments to 47 CFR §§ 73.1125, 73.3526(d), and 73.3527(d) published on June 9, 1987 at 52 FR 21684 are stayed.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–17548 Filed 8–3–87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 97

Amateur Radio Service; Waiver of the Amateur Service Rules To Allow Designated Club Stations To Identify Using a Special "200" Call Sign

AGENCY: Federal Communications Commission.

ACTION: Order granting rule waiver.

SUMMARY: The American Radio Relay League, Inc., requested a temporary waiver of the amateur radio station identification requirement so that designated amateur club stations could use a "200" call sign in lieu of their assigned call signs as a means of celebrating the 200th anniversary of the United States Constitution. The use of a special commemorative call sign will encourage radio contacts with the designated club stations during the bicentennial celebration. The effect of granting the waiver is to permit a "200" call sign to be used by designated amateur club stations from September 17, 1987 through December 31, 1988.

EFFECTIVE DATE: August 4, 1987.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Private Radio Bureau, Federal Communications Commission, Washington, DC 20554, (202) 632–4964.

SUPPLEMENTARY INFORMATION:

Order

Adopted: July 9, 1987.

Released: July 20, 1987.

By the Chief, Private Radio Bureau.

1. By letter of May 27, 1987, the American Radio Relay League, Inc. (ARRL), by its Secretary, Perry F. Williams, has requested a waiver of the station identification requirement provided for in Section 97.84(a) of the amateur service rules. Section 97.84(a) requires that the transmissions of each amateur station be identified by the station's own call sign at the end of each communication. ARRL requests that designated amateur club stations be authorized to use a special commemorative amateur call sign in lieu of their assigned call signs as a means of celebrating the bicentennial of the United States Constitution.

2. In support of its request, the ARRL notes the profound relationship between amateur operators and the Constitution, especially in regard to the First Amendment's guarantee of unhindered communications. The ARRL states that its "People to People" project has been officially recognized by the Bicentennial Commission and that the use of a special bicentennial call sign will enhance and highlight the operating aspects of the project. It includes a "We the People" Worked-All-States award and the participation of non-amateurs as "shortwave listeners" in order to interest them in becoming amateur radio operators.

3. A special "200" call sign would be authorized to amateur club stations that preregister with the ARRL. The designated club stations would receive high visibility since they would be located as state capitals (and capitols) around the country. ARRL states that dignitaries at the state and national level would be invited to participate at the display amateur radio stations which would also be open to the public. The ARRL believes that the use of a special commemorative call sign would enable amateur operators to recognize the significance of the bicentennial and encourage radio contact with the designated club stations during the celebration.

4. We believe that the ARRL's request has merit and is in keeping with our statutory mandate to encourage the larger and more effective use of radio in the public interest. Accordingly, the ARRL's request for a waiver of

§ 97.84(a) is granted under the following terms and conditions:

a. All amateur club stations that pre-register with the ARRL are authorized to replace the numeral in the call sign with the number "200" for a one week period, in accordance with a schedule to be published by the ARRL. The state where the club station is located will be noted and the schedule will correspond closely with the date of entry of that state into the Union. The operation for a designated week begins as 0001Z Saturday through 2359Z the following Friday.

b. The ARRL must provide each FCC field office with a data base printout of all preregistered club stations using the numeral "200" to facilitate ready identification of the trustee.

c. The waiver of § 97.84(a) is for the period beginning 0001Z September 17, 1987 through 2359Z December 31, 1988.

Federal Communications Commission.

Michael T.N. Fitch,

Chief, Private Radio Bureau.

[FR Doc. 87-17552 Filed 8-3-87; 8:45 am]

BILLING CODE 6712-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 507, 508, 552 and 553

[APD 2800.12 CHGE 47]

General Services Administration Acquisition Regulation; Implementing FAC 84-25

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR), Chapter 5, is amended to revise Part 507 to clarify the requirement for use of the Report of Employment Under Commercial Activities clause at 552.207-70 and to modify the reference to a GSA order on the implementation of OMB Circular A-76 Productivity Improvement Program; to revise Part 508 to identify the central printing authority for the General Services Administration (GSA) and to delete section 508.870; to revise section 552.203-70 to modify Alternate II; to revise section 552.207-70 to delete material in the introductory paragraph that repeats the prescriptive language in Part 507; to revise section 553.270-1 to permit modification of the GSA Form 3503, Representations and Certifications, pending a revision of the form, and to revise section 553.270-2 to permit modification of the GSA Forms 3501, Solicitation Provisions (Sealed Bid), and 3502, Solicitation Provisions (Negotiated), pending a revision to the forms. The intended effect is to improve the regulatory coverage and to provide uniform procedures for contracting under the regulatory system.

EFFECTIVE DATE: July 1, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. John Joyner, Office of GSA Acquisition Policy and Regulations on (202) 523-4916.

SUPPLEMENTARY INFORMATION:

Background

This rule was not published in the Federal Register for public comment because it is merely implementing a higher level issuance, the Federal Acquisition Regulation (FAR), and making minor changes which do not impact offerors or contractors. Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain procurement regulations from Executive Order 12291. The exemption applies to this rule. The GSA certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The rule simply revised the GSAR regulation to make it conform to the FAR as amended by FAC 84-25. Therefore, no regulatory flexibility analysis has been prepared. The rule does not contain information collection requirements which are subject to OMB approval under the Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 507, 508, 552 and 553.

Government procurement.

1. The authority citations for 48 CFR Parts 507, 508, 552, and 553 continue to read as follows:

Authority: 40 U.S.C. 486(c).

PART 507—ACQUISITION PLANNING

2. Section 507.305 and 507.307 are revised to read as follows:

§ 507.305 Solicitation provisions and contract clauses.

The contracting officer shall insert the clause at Section 552.207-70, Report of Employment Under Commercial Activities, in solicitations which may result in a conversion from in-house performance to contract performance of work currently being performed by the Government and in contracts that result from the solicitations, whether or not a cost comparison is conducted.

§ 507.307 Appeals.

Appeal procedures for informal administrative review of the initial cost comparison results are contained in GSA Order, Implementation of the OMB Circular A-76 Productivity Improvement Program (ADM P. 5400.40).

PART 508—REQUIRED SOURCES OF SUPPLIES AND SERVICES

3. Section 508.802 is revised to read as follows:

508.802 Policy.

The Director of the Reproduction Services Division (CAR) has been designated as the central printing authority for GSA and serves as the liaison with the Joint Committee on Printing and the Public Printer on all matters related to printing.

508.870 [Removed]

4. Section 508.870 is removed in its entirety.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 552.203-70 is amended by revising alternate II to read as follows:

552.203-70 Advertising of Award.

* * * * *

Alternate II

The following clause shall be included in solicitations and contracts when the Experimental Technology Incentive Program (ETIP) provisions are included:

Advertising of Award (Jun 1987)

The Contractor agrees not to refer to awards in commercial advertising in an inaccurate or misleading manner or in such a manner as to state or imply that the product or service is endorsed by the Federal Government. The Contractor may state that a contract was awarded pursuant to the Experimental Technology Incentive Program (ETIP) criteria provided that the information given is complete and accurate.

(End of Clause)

6. Section 552.207-70 is amended to revise the introductory paragraph to read as follows:

552.207-70 Report of Employment Under Commercial Activities.

As prescribed in § 507.305, insert the following clause:

* * * * *

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PART 553—FORMS

7. Section 553.270–1 is revised to read as follows:

553.270–1 Representations and certifications.

(a) GSA Form 3503, Representations and Certifications, may be used as a part of all solicitations and contracts, except contracts for utilities and leases of real property. Until the form is revised, contracting officers must modify paragraph 9 of the form to include the July 1987 version of the FAR clauses at 52.214–2 and 52.215–6. The form may also be used for small purchases when Standard Form 33, Solicitation, Offer, and Award, or Standard Form 1442, Solicitation, Offer, and Award, is used.

8. Section 553.270–2 is amended by revising paragraphs (a) and (b) to read as follows:

553.270–2 Solicitation provisions.

(a) GSA Form 3501, Solicitation Provisions (Sealed bid), is for use in connection with all sealed bid solicitations. Until the form is revised, contracting officers must modify paragraph 1 of the form to include the July 1987 version of the FAR clause at 52.214–1.

(b) GSA Form 3502, Solicitation Provisions (Negotiated), is for use in connection with all negotiated procurements, including small purchases when offers are solicited by the use of SF 33 or SF 1442. Until the form is revised, contracting officers must modify paragraph 1 of the form to include the July 1987 version of the FAR clause at 52.215–5.

* * * * *

Dated: July 20, 1987.

Patricia A. Szarvo,

Associate Administrator for Acquisition Policy.

[FR Doc. 87–17598 Filed 8–3–87; 8:45 am]

BILLING CODE 6820–61–M

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48 CFR Part 525

[Acquisition Circular AC–86–8, Supplement 1]

General Services Administration Acquisition Regulation, Threshold for Application of Trade Agreements Act

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Temporary regulation.

SUMMARY: This supplement to the General Services Administration Acquisition Regulation, Acquisition Circular AC–86–8 extends the expiration date to January 1, 1988. The intended effect is to extend the policies and procedures as established in AC–86–8, which revised section 525.402 to provide the newdollar threshold required for the applicability of the Trade Agreements Act of 1979 as authorized by the U.S. Trade Representative under E.O. 12260.

DATES: *Effective date:* July 2, 1987. *Expiration date:* January 1, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Marjorie Ashby, Office of GSA Acquisition Policy and Regulations (VP), (202) 523–3822.

SUPPLEMENTARY INFORMATION: The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted agency procurement regulations from Executive Order 12291. The exemption applies to this rule. When AC–86–8 was originally issued, the GSA certified under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that the document would not have a significant economic effect on a substantial number of small entities. Therefore, no regulatory analysis was prepared. This circular does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Part 525

Government procurement.

PART 525—[AMENDED]

1. The authority citation for 48 CFR Part 525 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. 48 CFR Part 525 is amended by the following supplement toAcquisition Circular AC–86–8:

General Services Administration Acquisition Regulation Acquisition Circular AC–86–8; Supplement 1

July 23, 1987.

To: All GSA contracting activities.

Subject: Threshold for Application of Trade Agreements Act.

1. *Purpose.* This supplement extends the expiration date of the General Services Administration Acquisition Regulation (GSAR) Acquisition Circular AC–86–8.

2. *Effective date.* July 2, 1987.

3. *Expiration date.* Acquisition Circular AC–86–8 and this supplement will expire on January 1, 1988 unless cancelled earlier.

Richard H. Hopf, III,

Acting Associate Administrator for Acquisition Policy.

[FR Doc. 87–17597 Filed 8–3–87; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for the Puerto Rican Crested Toad

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the Puerto Rican crested toad (*Peltophryne lemur*) to be a threatened species pursuant to the Endangered Species Act (Act) of 1973, as amended. The species is endemic to two islands on the Puerto Rican Shelf, but is presently thought to exist only on the main island of Puerto Rico, where a single large population is known from the southwest coast and a few small populations are believed to survive on the north coast. Threats to this species include filling and drainage of its breeding sites, and direct loss of adults and their habitat during land development. This final rule will implement the Federal protection and recovery provisions afforded by the Act for this toad.

DATE: The effective date of this rule is September 3, 1987.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622, and at the Service's Southeast Regional Office, Suite 1282, 75 Spring Street, SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Pace at the Caribbean Field Office address (809/851–7297) or Mr. Richard P. Ingram at the Atlanta Regional Office address (404/331–3583 or FTS 242–3583).

SUPPLEMENTARY INFORMATION:

Background

The Puerto Rican crested toad (*Peltophryne lemur*) was first described in 1868 by E.D. Cope, and was later placed in the genus *Bufo* (Stejneger 1904). Recently, the native bufonids of the Greater Antilles have been regrouped under the genus *Peltophryne*, in recognition of their presumed monophyletic origin (Pregill 1981). *Peltophryne lemur* is a medium-sized toad, 64 to 120 millimeters (2.5 to 4.5 inches) in snout-vent length, yellowish-olive to blackish-brown in color, with prominent supraorbital crests and a

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distinctive long, upturned snout. Males are considerably smaller than females, and exhibit less prominent crests.

The Puerto Rican crested toad is endemic to two islands on the Puerto Rican Shelf (the main island of Puerto Rico and the island of Virgin Gorda in the British Virgin Islands). The known historic distribution on Virgin Gorda is very limited, and the species has not been observed there for at least two decades; it is assumed to have been extirpated from that island. It has historically been considered rare on Puerto Rico, and prior to 1966 (Garcia Diaz 1967) was thought to be extinct there. Recent surveys suggest that the toad is confined to certain areas on the coastal plain of Puerto Rico. It has been found as single individuals or very small populations at several locations on the northern coastal plain, and is known from two areas on the southern coastal plain. Since 1975 it has been known to occur in Guánica Commonwealth Forest on the southern coast (Richard Thomas, University of Puerto Rico, pers. comm. 1976), and a large breeding aggregation estimated to contain more than a thousand individuals was found there in 1984 (Moreno 1985). The species has also been in captive propagation (Paine 1985), and approximately 850 toadlets were released in Cambalache Commonwealth Forest on the north coast in 1984 and 1985.

The Puerto Rican crested toad occurs at low elevations (below 200 meters or 660 feet) where there is exposed limestone or porous, well-drained soil offering an abundance of fissures and cavities. Adults toads are semifossorial and widely dispersed when not breeding. Although not completely understood, breeding appears to be sporadic and highly dependent upon occasional heavy rains (Rivero *et al.* 1980, Moreno 1985). When rainfall and surface water are adequate, more than one breeding event may occur in a single season. Breeding is concentrated in a very short period, and within a few weeks the toadlets metamorphose and quickly disperse. There is a high fidelity to breeding sites that offer the right combination of elevation, topography, and ponded fresh water.

The Puerto Rican crested toad appears to be susceptible to a variety of threats at various stages of its life cycle. Because of their cryptic behavior, the location or even presence of adult toads in an area being developed is difficult to detect in advance. More importantly, destruction of its breeding sites by filling or alteration of drainage may indirectly destroy even a large population. Many breeding sites are known to have been eliminated on both the north and south coasts of Puerto Rico, and with so few breeding sites known to remain, further losses could place the species in danger of extinction.

The Puerto Rican crested toad was included as a category 2 species in a notice of vertebrate wildlife review on December 30, 1982 (47 FR 58454). Category 2 includes taxa for which information in the possession of the Service indicates that proposing to list the species is possibly appropriate, but for which available data are not judged sufficient to support such a proposal. The Puerto Rico Department of Natural Resources petitioned the Service to list the Puerto Rican crested toad as endangered on December 27, 1984. On August 20, 1986 (51 FR 29671), the Service announced a 12-month finding that the action requested by the petitioner was warranted but precluded by other listing actions in accordance with section 4(b)(3)(B)(iii) of the Act, and that available evidence indicated the species should be listed as threatened. The Service proposed listing the Puerto Rican crested toad on December 23, 1986 (51 FR 45923).

Summary of Comments and Recommendations

In the December 23, 1986, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate agencies of the Commonwealth of Puerto Rico, municipal governments, Federal agencies, scientific organizations, private landowners, and other interested parties were contacted and requested to comment. Newspaper notices inviting general public comment were published in the *San Juan Star* (in English) and in *El Nuevo Dia* (in Spanish) on January 18, 1987. Seven letters of comment were received and are discussed below. No public hearing was requested or held.

Comments were received from the Secretary of the Puerto Rico Department of Natural Resources, administrators of the Federal Highway Administration and the Environmental Protection Agency, two scientists, and two private landowners. The Department of Natural Resources supported the proposal, while the Federal Highway Administration and Environmental Protection Agency acknowledged the proposal, and stated that they could not identify any specific projects that might affect the species. Of the two scientists who responded, one stated unqualified support for the proposal, while the other thought more status information should be gathered before proceeding with listing, although he acknowledged that the threats posed by development in or near breeding areas would be sufficient justification for listing the species as threatened. Neither scientist provided any additional data. The two private landowners, who own the property proposed for resort development adjacent to the Guánica breeding area, did not object to the proposal.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Puerto Rican crested toad should be classified as a threatened species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Puerto Rican crested toad (*Peltophryne lemur*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Although the Puerto Rican crested toad has historically been rare, the species has undoubtedly declined further as its coastal lowland habitats have been destroyed by agricultural and urban development. In particular, known breeding sites have been filled or drained for construction, cultivation, and mosquito control. The Puerto Rico Department of Natural Resources has been considering construction of visitor facilities within the species' only known major breeding area in Guánica Commonwealth Forest. In addition, a major resort development has recently been proposed for a tract of private land adjacent to this site, and road construction through this site to improve access to the proposed resort area has been proposed by the Municipality of Yauco. This sudden acceleration of development pressure where the only known healthy toad population survives has increased concern over the species' continued existence. However, discussions between Federal and Commonwealth agencies are continuing in an effort to find alternatives to the proposed developments that will avoid destruction of toad breeding habitat.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The taking of toads has occurred for the purpose of captive breeding (Paine 1985), although only *e*

few adults have been taken. However, overcollecting of other species of Puerto Rican herpetofauna is known to have occurred, and may become a factor affecting the continued existence of this species. This would be more likely if collectors were aware of the location of breeding sites and were present during breeding when large numbers of toads may be concentrated in a small area.

C. *Disease or predation.* Disease and predation have not been documented as factors in the decline of this species. However, predation on dispersing toadlets may be heavy, particularly from wading birds (M. Canals, Guánica Commonwealth Forest, pers. comm. 1986), and could become a significant factor if populations are greatly reduced by other problems.

D. *The inadequacy of existing regulatory mechanisms.* The Commonwealth of Puerto Rico has recently adopted a regulation that recognizes and provides protection for certain Commonwealth listed species. The Puerto Rican crested toad is classed as threatened on the Commonwealth list. Federal listing enhances this protection and applies the recovery and enforcement provisions of the Act to this species.

E. *Other natural or manmade factors affecting its continued existence.* Reproduction in this species appears to rely on climatic events, sometimes one or more years apart, that occur at irregular intervals. Such reliance may create natural fluctuations in population sizes that could, when compounded by a reduced availability of breeding sites, increase the likelihood of whole subpopulations being eliminated. Extremes in sex ratios have also been reported; a low incidence of males in one area (Rivero *et al.* 1980), and a low incidence of females at another locality (Moreno 1985). However, the significance of these observations is difficult to assess without more information about the reproductive biology of this species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the Puerto Rican crested toad as threatened. Due to the species' low numbers, restricted distribution, and apparent susceptibility to extirpation, threatened status seems an accurate assessment of the species' condition. Endangered status is not appropriate, since the species does not appear to be faced with imminent extinction. It is not prudent to designate critical habitat because doing so would increase the risk to this species, as detailed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the Puerto Rican crested toad at this time. As discussed under threat factor "B" above, collecting could threaten the toad's continued existence. The publication of critical habitat maps and other publicity accompanying critical habitat designation could increase collecting pressure and enforcement problems. The Service believes that Federal involvement in the areas where this species occurs can be identified without the designation of critical habitat. All involved parties and landowners have been notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will also be addressed through the recovery process and through the section 7 jeopardy standard. Therefore, it would not be prudent to determine critical habitat for the Puerto Rican crested toad at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, Commonwealth, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the Commonwealth and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. These may include support for additional study to determine more concisely the distribution and reproductive biology of this secretive animal, Service advice and cooperation in the ongoing program of captive propagation for this species in zoos, and other cooperation with the Commonwealth government on specific management measures. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No critical habitat is being proposed for the Puerto Rican crested toad, as discussed above, and no Federal involvement is known or expected to occur.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and Commonwealth conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination

was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Garcia Diaz, J. 1967. Rediscovery of *Bufo lemur* Cope and additional records of reptiles from Puerto Rico. Stahlia 10:1–8.

Moreno, J.A. 1985. Notes on *Peltophryne lemur*. Unpublished report. 6 pp.

Paine, F.L. 1985. International studbook of the Puerto Rican crested toad (*Peltophryne lemur*). Buffalo Zoological Gardens, New York. 33 pp.

Pregill, G. 1981. Cranial morphology and the evolution of West Indian toads (Salientia: Bufonidae): Resurrection of the genus *Peltophryne* Fitzinger. Copeia 1981:273–285.

Rivero, J.A., H. Mayorga, E. Estremera, and I. Izquierdo. 1980. Sobre el *Bufo lemur* Cope (Amphibia, Bufonidae). Carib. J. Sci. 15:33–40.

Stejneger, L. 1904. The herpetology of Porto Rico. Rept. U.S. Natl. Mus., 1902:549–724.

Author

The primary author of this final rule is Mr. David Densmore, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boqueron, Puerto Rico 00622 (809/851–7297).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.11(h) by adding the following, in alphabetical order under "AMPHIBIANS," to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species							
Common name	Scientific name	Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Amphibians							
Toad, Puerto Rican crested	*Peltophryne lemur*	U.S.A. (PR), British Virgin Islands	Entire	T	283	NA	NA

Dated: July 9, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–17509 Filed 8–3–87; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 50239–5115]

Atlantic Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustment.

SUMMARY: NOAA issues this notice to increase the Harpoon Boat category quota of giant Atlantic bluefin tuna from 60 short tons (st) to 75 st and to decrease the inseason adjustment amount from 104 st to 89 st accordingly. The increase is necessary to prevent an early closure of this segment of the fishery.

EFFECTIVE DATE: July 31, 1987.

FOR FURTHER INFORMATION CONTACT: William C. Jerome, Jr., 617–281–3600, extension 262; or David S. Crestin, 617–281–3600, extension 253.

SUPPLEMENTARY INFORMATION: Final regulations governing the Atlantic bluefin tuna fishery were published on October 25, 1985 (50 FR 43396). Section 285.22(g) provides that the Director, Northeast Region, NMFS, may allocate during the fishing season any portion (from zero to 100 percent) of the inseason adjustment amount (104 st) to any segment of the fishery. The Regional Director is required to publish a notice of allocation in the **Federal Register** before such allocation becomes effective. Consistent with § 285.22(g), the Regional Director has considered the following factors:

(1) The usefulness of information obtained from catches of the particular gear segment of the fishery for biological sampling and monitoring the status of the stock;

(2) The catches of the particular gear segment to date and the likelihood of closure of that segment of the fishery if no allocation is made;

(3) The projected ability of the particular gear segment to harvest the additional amount of Atlantic bluefin tuna before the anticipated end of the fishing season; and

(4) The estimated amounts by which quotas established for other gear segments of the fishery might be exceeded.

The Regional Director has determined that a 15 st allocation to the Harpoon Boat category is appropriate based on these factors.

Current landing reports indicate that the Harpoon Boat quota of 60 st of giant Atlantic bluefin tuna will be taken by the effective date. Without an allocation from the inseason adjustment amount, fishing for giant Atlantic bluefin tuna by vessels permitted in the Harpoon Boat category will cease for the remainder of 1987. A significant increase in the number of vessels permitted in the Harpoon Boat category has occurred from 1980 to the present (30 to 261). This increase in the number of vessels actively engaged in this fishery has occurred at the same time as a substantial reduction in the quota (150 st to 60 st). There is little doubt that, with the many vessels and landings to date, a 15 st increase in the quota could be taken prior to the end of the 1987 fishing season.

An allocation of 15 st from the Inseason Adjustment Amount would leave 89 st available for potential allocation to other gear categories later in the fishing season. Based on current landings data for all gear categories in the Atlantic bluefin tuna fishery, the 89 st remaining in the Inseason Adjustment Amount should be more than sufficient to provide for potential shortages in other gear segments.

The Regional Director, therefore, increases the Harpoon Boat quota in § 285.22(b) from 60 st to 75 st and decreases the Inseason Adjustment Amount in § 285.22(g) from 104 st to 89 st. When the adjusted Harpoon Boat quota is reached, the further taking and retention of Atlantic bluefin tuna by

vessels permitted in this category will be prohibited for the remainder of 1987.

Notice of this action has mailed to all Atlantic bluefin tuna dealers and vessel owners holding a valid vessel permit for this fishery.

Other Matters

This action is taken under the authority of 50 CFR 285.22, and is taken in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 285

Fisheries, Penalties, Reporting and recordkeeping requirements, Treaties.

(16 U.S.C. 971 *et seq.*)

Dated: July 30, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 87-17612 Filed 8-3-87; 8:45 am]

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OFFICE O
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5 CFR Par

Privacy Pr
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AGENCY: O
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ACTION: Pr

SUMMARY:
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Proposed Rules

Federal Register
Vol. 52, No. 149
Tuesday, August 4, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 297

Privacy Procedures for Personnel Records

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: Under the authority of the Privacy Act of 1974, the Office of Personnel Management (the Office) proposes revised regulations regarding privacy procedures for personnel records. These revised regulations would provide for more effective management of records maintained by the Office and by other Federal agencies that are under the Office's control and ownership. These regulations would also promulgate exemptions for a new system of records.

DATE: Comments must be submitted on or before October 5, 1987.

ADDRESS: Send or deliver written comments to the Assistant Director for Workforce Information, Personnel Systems and Oversight Group, Office of Personnel Management, Room 5415, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: John Sanet, (202) 632–4455.

SUPPLEMENTARY INFORMATION: These proposed regulations would clarify and simplify the existing regulations to provide uniform policies and procedures for maintaining, accessing, disclosing, and amending personnel records on Federal civilian employees that are within the scope of the Office's authority. Management of personnel records will be better accomplished through these procedures that, in accordance with the Privacy Act of 1974, provide requirements on protecting, accessing, amending, and disclosing Office records.

The regulations reflect a statutory change in the Privacy Act (5 U.S.C. 552a(b)(12)) implemented since the regulations were last rewritten. This change is in 5 CFR 297.401(l). The regulations also add exemptions 5 U.S.C. 552a(k)(4) and (k)(7) to the list of exemptions claimed for three of the Office's systems of records, and adds the Office's OPM/CENTRAL–4, Inspector General Case File system of records to the list of systems for which the Office claims exemptions.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I have determined that this regulation will not have a significant impact on a substantial number of small entities because it is concerned only with the administration of personnel records for certain civilian employees.

List of Subjects in 5 CFR Part 297

Privacy, Records, Government employees.

Office of Personnel Management.
James E. Colvard,
Deputy Director.

Accordingly, OPM proposes to revise Part 297 of Title 5 of the Code of Federal Regulations to read as follows:

PART 297—PRIVACY PROCEDURES FOR PERSONNEL RECORDS

Subpart A—General Provisions

Sec.

297.101 Purpose and scope.
297.102 Definitions.
297.103 Designations of authority by system manager.
297.104 Types of records.
297.105 Agency and Office responsibilities for systems of records and applicability of the regulations.
297.106 Contact point for Privacy Act matters.

Subpart B—Request for Access

297.201 General provisions.
297.202 Methods of access.
297.203 Access by the parent of a minor or by the legal guardian of an individual declared to be incompetent.
297.204 Access by the representative of the data subject.
297.205 Access to medical records.
297.206 Fees charged by the Office.
297.207 Denials of access and appeals with respect to such denials.
297.208 Judicial review.

Subpart C—Amendment of Records

297.301 General provisions.
297.302 Time limits.
297.303 Applicability of amendment provisions.
297.304 Approval of requests to amend records.
297.305 Denial of requests to amend records.
297.306 Appeal of a denial of a request to amend a record.
297.307 Statement of disagreement.
297.308 Judicial review.

Subpart D—Disclosure of Records

297.401 Conditions of disclosure.
297.402 Disclosure pursuant to compulsory legal process served on the Office.
297.403 Disclosure pursuant to a subpoena served on the Office.
297.404 Accounting of disclosure.

Subpart E—Exempt Records

297.501 Exemptions.

Authority: Sec. 3, Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

Subpart A—General Provisions

§ 297.101 Purpose and scope.

This part sets forth the regulations of the U.S. Office of Personnel Management (the Office) to govern the maintenance, protection, disclosure, and amendment of records within the systems of records as defined by the Privacy Act of 1974 (5 U.S.C. 552a), Pub. L. 93–579.

§ 297.102 Definitions.

In this part, the terms "agency," "individual," "maintain," "record," "statistical records," and "systems of records" have the same meanings as defined in the Privacy Act, 5 U.S.C. 552a. In addition:

"Access" means providing a copy of a record to, or allowing review of the original record by, the data subject or the data subject's authorized representative, parent, or legal guardian;

"Act" means the Privacy Act of 1974, Pub. L. 93–579, 5 U.S.C. 552a, as amended;

"Agency" means any department or independent establishment in the Executive Branch of the Federal Government, including a Government corporation, or Government-controlled corporation, except those specifically excluded from the Office recordkeeping requirements by statute, this title, or formal agreement between the Office and the agency.

"Amendment" means the correction, addition, deletion, or destruction of a record or specific portions of a record;

"Data subject" means the individual to whom the information pertains and by whose name or other individual identifier the information is retrieved;

"Disclosure" means providing personal review of a record, or a copy thereof, to someone other than the data subject or the data subject's authorized representative, parent, or legal guardian;

"Office" means the Office of Personnel Management;

"Personnel record" means any record concerning an individual which is maintained and used in the personnel management or personnel policy-making process; and

"System manager" means the Office or agency official, designated by the head of the agency, who has the authority to decide Privacy Act matters relative to each system of records maintained by the Office.

§ 297.103 Designations of authority by system manager.

The responsible office system manager having jurisdiction over a system of records may designate in writing an Office employee to evaluate and issue the Office's decision on Privacy Act matters relating to either internal, central, or Governmentwide systems of records.

§ 297.104 Types of records.

The Office manages three generic types of personnel records systems:

(a) Internal systems of records are under the Office's physical control and are established and maintained by the Office solely on its own employees and, when appropriate, on others in contact with the Office regarding matters within its authority.

(b) Centralized systems of personnel records are physically established and maintained by the Office with regard to most current and former Federal employees and some applicants for Federal employment.

(c) Governmentwide systems of personnel records are maintained by the Office, and through Office delegations of authority, by Federal agencies with regard to their own employees or applicants for employment. Although they are Office records, they are in the physical custody of those agencies. Though in the physical custody of agencies, the Office retains authority under its record management authority and under the Privacy Act to decide appeals of initial agency determinations regarding access to and amendment of material in these systems.

§ 297.105 Agency and Office responsibilities for systems of records and applicability of the regulations.

(a) These regulations apply to processing requests from both current and former Office employees for records contained in internal, central, and Governmentwide systems of records managed by the Office.

(b) Agencies are solely and totally responsible for processing requests regarding records maintained in their internal systems of records. Agency regulations, and not these Office regulations, govern the implementation of the Privacy Act for agency internal systems; there is no right of appeal to the Office from an agency's determination regarding its internal agency records.

(c) For records maintained in the Office's central systems of records, the data subject should contact the appropriate Office system manager concerning Privacy Act matters. These regulations will apply to inquiries regarding records located in the central systems of records.

(d) For records maintained within the Office's Governmentwide systems of records, each agency is responsible, unless specifically excepted by the Office, for responding to initial Privacy Act access and amendment requests from its own current employees. For records in Office Governmentwide systems, including those in Official Personnel Folders, Employee Performance Folders, and Employee Medical Folders, the Office is responsible for responding to initial Privacy Act access and amendment requests from former Federal employees.

(e) The procedures in this part apply to all such requests. The procedures in this part also apply to appeals from an agency initial determination regarding access to or amendment of records contained in the Office's Governmentwide systems of records.

(f) The Office follows the procedures in this part when—

(1) Processing initial requests regarding access to or amendment of records by its own employees and others that the Office is maintaining information on in its systems of records, including requests from former employees of an agency whose records properly reside in an Office Governmentwide system of records.

(2) Processing Privacy Act appeals regarding access to and amendment of records generated by another Federal agency, but which are contained in the Office's Governmentwide systems of records, after an agency has issued the initial decision.

(3) Processing initial requests and appeals concerning access to and amendment of records contained in the central systems of records.

(g) For requests concerning records and material of another agency that are in the custody of the Office, but not under its control or ownership, the Office reserves the right to either refer the request to the agency primarily responsible for the material or to notify the individual of the proper agency that should be contacted.

§ 297.106 Contact point for Privacy Act matters.

To determine what records the Office maintains in its system of records, requesters must write to the Assistant Director for Workforce Information, Personnel Systems and Oversight Group, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415. Using the Office's response, requesters can contact the particular system manager indicated in the Office's notices of its systems published in the Federal Register for further assistance in determining if the Office maintains information pertaining to them.

Subpart B—Request for Access

§ 297.201 General provisions.

(a) Individuals requesting access to records pertaining to them that are maintained in a system of records should submit a written request to the appropriate system manager and state that the request is being made pursuant to the Privacy Act of 1974.

(b) The Office or agency will require proof of identity from a requester. The Office or agency reserves the right to determine the adequacy of any such proof. The general identifying items the Office will require a requester to provide when a request is made to the Office are—

(1) Full name, signature, and home address;

(2) Social security number (for systems of records that include this identifier);

(3) Current or last place and dates of Federal employment, when appropriate and,

(4) Date and place of birth.

(c) An individual may be represented by another when requesting access to records.

§ 297.202 Methods of access.

(a) The methods for allowing access to records, when such access has been granted by the Office or agency, are:

(1) Inspection in person in the designated office during the hours specified by the Office or agency; or

(2) Transfer of records at the option of the Office or agency to another more convenient Federal facility.

(b) Generally, Office of Personnel Management offices will not furnish certified copies of records. When copies are to be furnished, they may be provided as determined by the Office and may require payment of any fee levied in accordance with the Office's established fee schedule.

(c) When the requester seeks to obtain original documentation, the Office reserves the right to limit the request to copies of the original records. Original records should be made available for review only in the presence of the system manager or designee. An agency should consult with the Office when it receives a request for original documentation. Section 2701(a) of title 18 of the United States Code makes it a crime to conceal, mutilate, obliterate, or destroy any record filed in a public office, or to attempt to do so.

§ 297.203 Access by the parent of a minor or by the legal guardian of an individual declared to be incompetent.

(a) A parent, legal guardian, or custodian of a minor, upon presentation of suitable personal identification, may access on behalf of a minor any record pertaining to the minor in a system of records maintained by the Office.

(b) A legal guardian, upon presentation of documentation establishing guardianship, may access on behalf of an individual declared to be incompetent by a court of competent jurisdiction, any record pertaining to that individual in a system of records maintained by the Office.

(c) Minors are not precluded from exercising personally those rights provided them by the Privacy Act.

§ 297.204 Access by the representative of the data subject.

A record may be disclosed to a representative of the individual to whom the record pertains after the system manager receives written authorization from the individual who is the subject of the record.

§ 297.205 Access to medical records.

When a request for access involves medical or psychological records that the system manager believes requires special handling, the requester should be advised that the material will be provided only to a physician designated by the data subject. Upon receipt of the designation and upon verification of the physician's identity, the records will be made available to the physician, who will have full authority to disclose those records to the data subject when appropriate.

§ 297.206 Fees charged by the Office.

(a) No fees will be charged for search and review time expended by the Office to produce a record for a data subject when a record is retrieved from a system of records pertaining to that data subject. Additional copies provided may be charged under the Office's established fee schedule.

(b) When the fees chargeable under this section will amount to more than $25, the requester will be notified and payment of fees may be required before the records are provided.

(c) Remittance should be made by either a personal check, bank draft, or a money order that is made payable to the U.S. Office of Personnel Management and addressed to the appropriate system manager.

§ 297.207 Denials of access and appeals with respect to such denials.

(a) If an access request is denied, the Office or agency response will be in writing and will include a statement of the reasons for the denial and the procedures available to appeal the denial, including the name, position title, and address of the Office official responsible for the review.

(b) Nothing in this part should be construed to entitle a data subject the right to access any information compiled in reasonable anticipation of a civil action or proceeding.

(c) For denials of access made under this subpart, the following procedures apply:

(1) For initial denials made by an agency, when the record is maintained in an Office Governmentwide system of records, a request for administrative review should be made only to the Assistant Director for Workforce Information, Personnel Systems and Oversight Group, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

(2) For denials initially made by an Office official, when a record is maintained in an internal or central system of records, a request for administrative review should be made to the General Counsel, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

(3) Any administrative review decision that either partially or fully supports the initial decision and denies access to the material the individual originally sought should state the requester's right to seek judicial review of the final administrative decision.

§ 297.208 Judicial review.

Upon receipt of notification that the denial of access has been upheld on administrative review, the requester has the right to judicial review of the decision for up to 2 years from the date on which cause of action arose. Judicial review may be sought in the district court of the United States in the district in which: (a) The requester resides; (b) the requester has his or her principal place of business; or (c) the agency records are situated; or it may be sought in the district court of the District of Columbia.

Subpart C—Amendment of Records

§ 297.301 General provisions.

(a) Individuals may request, in writing, the amendment of their records maintained in an Office system of records by contacting the appropriate system manager. The Office or agency will require proof of identity from a requester. The Office or agency reserves the right to determine the adequacy of any such proof. The general identifying items the Office will require a requester to provide when a request is made to the Office are—

(1) Full name, signature, and home address;

(2) Social security number (for systems of records that include this identifier);

(3) Current or last place and dates of Federal employment, when appropriate; and

(4) Date and place of birth.

(b) An individual may be represented by another party when requesting amendment of records.

(c) A request for amendment should include the following:

(1) The precise identification of the records to be amended;

(2) The identification of the specific material to be deleted, added, or changed; and

(3) A statement of the reasons for the request, including all available material substantiating the request.

(d) Requests for amendment of records should include the words "PRIVACY ACT AMENDMENT REQUEST" in capital letters on both the envelope and at the top of the request letter.

(e) A request for administrative review of an agency denial to amend a record in the Office's systems of records should be addressed to the Assistant Director for Workforce Information, Personnel Systems and Oversight Group, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

(f) A request for administrative review of a denial to amend a record by an Office official should be addressed to the General Counsel, Office of Personnel

Management, 1900 E Street, NW., Washington, DC 20415.

(g) The burden of proof demonstrating the appropriateness of the requested amendment rests with the requester; and, the requester must provide relevant and convincing evidence in support of the request.

§ 297.302 Time limits.

The system manager should acknowledge receipt of an amendment request within 10 working days and issue a determination as soon as practicable. This timeframe begins when the request is received by the proper Office or agency official.

§ 297.303 Applicability of amendment provisions.

(a) The amendment procedures are not intended to allow a challenge to material that records an event that actually occurred nor are they designed to permit a collateral attack upon that which has been or could have been the subject of a judicial, quasi-judicial, or administrative proceeding. The amendment procedures are also not designed to change opinions in records pertaining to the individual.

(b) The amendment procedures apply to situations when an occurrence that is documented was challenged through an established judicial, quasi-judicial, or administrative procedure and found to be inaccurately described; when the document is not identical to the individual's copy; or when the document is not created in accordance with the applicable recordkeeping requirements. (For example, the amendment provisions are not designed to allow a challenge to the merits of an agency adverse action that is documented in an individual's Official Personnel Folder.)

§ 297.304 Approval of requests to amend records.

(a) If the system manager determines that amendment of a record is appropriate, the system manager will take the necessary steps to have the necessary changes made and will see that the individual receives a copy of the amended record.

(b) When practicable and appropriate, the system manager will advise all prior recipients of the fact that an amendment of a record has been made.

§ 297.305 Denial of requests to amend records.

(a) If the Office or agency system manager decides not to amend the record in the manner sought, the requester should be notified in writing of the reasons for the denial.

(b) The decision letter should also include the requester's right to appeal the denial and the procedures for appealing the denial to the appropriate official.

§ 297.306 Appeal of a denial of a request to amend a record.

(a) An individual who disagrees with an initial denial to amend a record may file a written appeal of that denial to the appropriate official. In submitting an appeal, the individual should provide a copy of the original request for amendment, a copy of the initial denial decision, and a statement of the specific reasons why the initial denial is believed to be in error. Any appeal should be submitted to the official designated in the initial decision letter. The appeal should include the words "PRIVACY ACT APPEAL" in capital letters on the envelope and at the top of the letter of appeal.

(b) The reviewing official should complete the review and make a final determination in writing no later than 30 working days from the date on which the appeal is received. When circumstances warrant, this timeframe may be extended.

(c) If the Office grants the appeal, it will take the necessary steps either to amend the record itself or to require the originating agency to amend the record. When appropriate and possible, prior recipients of the record should be notified of the Office's action.

(d) The Office reserves the right to hold in abeyance any Privacy Act appeal concerning a record when an individual is involved in challenging an action involving that record in another administrative, judicial, or quasi-judicial forum. At the conclusion of such a challenge, the individual can resubmit the appeal.

(e) If the Office denies the appeal, it will include in the decision letter notification of the appellant's right to judicial review.

§ 297.307 Statement of disagreement.

(a) Upon receipt of a final administrative determination denying a request to amend a record, the requester may file a concise statement of disagreement. Such a statement should be filed with the appropriate system manager and should include the reasons why the requester believes the decision to be incorrect.

(b) The statement of disagreement should be maintained with the record to be amended and any disclosure of the record must include a copy of the statement of disagreement.

(c) When practicable and appropriate, the system manager should provide a copy of the statement of disagreement to any individual or agency to whom the record was previously disclosed as noted by the disclosure accounting.

§ 297.308 Judicial review.

Upon receipt of notification that the denial to amend a record has been upheld on administrative review, the requester has the right to judicial review of the decision for up to 2 years from the date the cause of action arose. Judicial review may be sought in the district court of the United States in the district in which: (a) the requester resides; (b) the requester has his or her principal place of business; or (c) the agency records are situated; or it may be sought in the district court of the District of Columbia.

Subpart D—Disclosure of Records

§ 297.401 Conditions of disclosure.

An official or employee of the Office or agency should not disclose a record retrieved from a Governmentwide system of records to any person, another agency, or other entity without the express written consent of the subject individual unless disclosure is—

(a) To officers or employees of the Office who have a need for the information in the performance of their duties.

(b) Required by the provisions of the Freedom of Information Act.

(c) For a routine use as published in the Federal Register.

(d) To the Bureau of the Census for uses pursuant to title 13 of the United States Code.

(e)(1) To a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record. The record will be transferred in a form that is not individually identifiable. The written statement should include as a minimum:

(i) A statement of the purpose for requesting the records; and

(ii) Certification that the records will be used only for statistical purposes.

(2) These written statements should be maintained as records. In addition to deleting personal identifying information from records released for statistical purposes, the system manager will reasonably ensure that the identity of the individual cannot be deduced by combining various statistical records.

(f) To the National Archives of the United States as a record that has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or his or her designee to

determine whether the record has such value.

(g) To another agency or instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality or his designated representative has made a written request to the Office or agency that maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought.

(h) To a person showing compelling circumstances affecting the health and safety of an individual, not necessarily the individual to whom the record pertains. Upon such disclosure, a notification should be sent to the last known address of the subject individual.

(i) To the Congress or to a Congressional committee, subcommittee, or joint committee to the extent that the subject matter falls within its established jurisdiction.

(j) To the Comptroller General or any authorized representatives of the Comptroller General in the course of the performance of the duties of the General Accounting Office.

(k) Pursuant to the order of a court of competent jurisdiction.

(l) To a consumer reporting agency in accordance with section 3711(f) of title 31 of the United States Code.

§ 297.402 Disclosure pursuant to a compulsory legal process served on the Office.

(a) The Office may disclose, without prior consent of the data subject, specified information from a system of records whenever such disclosure is pursuant to an order signed by the appropriate official of a court of competent jurisdiction or quasi-judicial agency. In this subpart, a court of competent jurisdiction includes the judicial system of a state, territory, or possession of the United States.

(b) Notice of the order will be provided to the data subject by the Office as soon as practicable after service of the order. The notice should be mailed to the last known address of the individual and state the name and number of the case or proceeding, and the nature of the information sought.

(c) Before complying or refusing to comply with the order, an official with authority to disclose records under this subpart should consult legal counsel to ensure that the response is appropriate.

§ 297.403 Disclosure pursuant to a subpoena served on the Office.

(a) The Office may disclose, without prior consent of the individual, specified information from a system of records whenever such disclosure is pursuant to a subpoena signed by the appropriate official and issued in connection with a judicial or administrative proceeding.

(b) Before responding to a subpoena, an official with authority to disclose records under this part, should consult, as appropriate, with legal counsel to ensure that—

(1) The requested materials are relevant to the subject matter of the related judicial or administrative proceeding;

(2) Motion is made to quash or modify a subpoena that is unreasonable or oppressive;

(3) Motion is made for a protective order when necessary to restrict the use or disclosure of any information furnished for purposes other than those of the involved proceeding; or

(4) Request is made for an extension of the time allowed for response, if necessary.

(c) If a subpoena for production of documents also requests appearance of an Office employee, the response should be to furnish certified copies of the appropriate records.

(d) If oral testimony is requested by the subpoena, an explanation, which sets forth the testimony desired, must be furnished to the Office system manager. The individual who has been subpoenaed to testify should consult with legal counsel to determine the matters about which the individual may properly testify.

(e) In all situations concerning a subpoena or other demand for an employee of the Office to produce any material or testimony concerning the records that are subject to the subpoena, that are contained in the Office's systems of records, and that are acquired as part of the employee's official duties, the employee should not provide the information without prior approval of the appropriate Office official.

(f) If it is determined that the information should not be provided, the individual subpoenaed should respectfully decline to comply with the demand based on the instructions from the appropriate Office official.

(g) When the records for an individual residing in an Office system of records are subpoenaed, the disclosing Office official should notify the individual whose records are sought of the subpoena's issuance. Notice should be mailed to the last known address of the individual and contain the following information: The date the subpoena is returnable; the court, quasi-judicial, or administrative authority to which it is returnable; the name and number of the case or proceeding; and the nature of the record sought. Such notice should be accomplished within 10 working days after receipt of the subpoena or as soon as practicable. In the case of a grand jury subpoena, such notice should be accomplished within 10 working days of its becoming a matter of public record.

§ 297.404 Accounting of disclosure.

(a) The Office or agency will maintain a record of disclosures in cases where records about the individual are disclosed from an Office system of records except—

(1) When the disclosure is made pursuant to the Freedom of Information Act, as amended (5 U.S.C. 552); or

(2) When the disclosure is made to those officers and employees of the Office or agency who have a need for the record in the performance of their duties.

(b) This accounting of the disclosures will be retained for at least 5 years or for the life of the record, whichever is longer, and will contain the following information:

(1) A brief description of the record disclosed;

(2) The date, nature, and purpose for the disclosure; and

(3) The name and address of the person, agency, or other entity to whom the disclosure is made.

(c) Except for the accounting of disclosure made to agencies, individuals, or entities in law enforcement activities or disclosures made from the Office's exempt systems of records, the accounting of disclosures will be made available to the data subject upon request in accordance with the access procedures of this part.

Subpart E—Exempt Records

§ 297.501 Exemptions.

(a) Several of the Office's internal, central, and Governmentwide systems of records contain information for which exemptions appearing at 5 U.S.C. 552a(k) (1), (2), (3), (5), and (6) may be claimed. The systems of records for which the exemptions are claimed, the specific exemptions determined to be necessary and proper with respect to these systems of records, the records exempted, the provisions of the act from which they are exempted, and the justifications for the exemptions are set forth below.

(b) Specific exemptions:

(1) *Inspector General Investigations Case File Records (OPM/CENTRAL–4).* All information in these records that meets the criteria stated in 5 U.S.C. 552a(k) (1), (2), (3), (4), (5), (6), and (7) is exempt from the requirements of 5 U.S.C. 552a (c)(3) and (d). These provisions of the Privacy Act relate to making accountings of disclosures available to the data subject and access to and amendment of records. The specific applicability of the exemptions to this system and the reasons for the exemptions are as follows:

(i) Inspector General investigations may contain properly classified information that pertains to national defense and foreign policy obtained from other systems or another Federal agency. Application of exemption (k)(1) may be necessary to preclude the data subject's access to and amendment of such classified information under 5 U.S.C. 552a(d).

(ii) Inspector General investigations may contain investigatory material compiled for law enforcement purposes other than material within the scope of 5 U.S.C. 552a(j)(2); e.g., investigations into the administration of the merit system. Application of exemption (k)(2) may be necessary to preclude the data subject's access to or amendment of such records under 5 U.S.C. 552a (c)(3) and (d).

(iii) Inspector General investigations may contain information obtained from another system or Federal agency that relates to providing protective services to the President of the United States or other individuals pursuant to 18 U.S.C. 3056. Application of exemption (k)(3) may be necessary to preclude the data subject's access to and amendment of such records under 5 U.S.C. 552a(d).

(iv) Inspector General case files may contain information that, by statute, is required to be maintained and used solely as a statistical record. Application of exemption (k)(4) may be necessary to ensure compliance with such a statutory mandate.

(v) All information about individuals in these records that meets the criteria stated in 5 U.S.C. 552a(k)(5) is exempt from the requirements of 5 U.S.C. 552a (c)(3) and (d). This exemption is claimed because this system contains investigatory material that if disclosed may reveal the identity of a source who furnished information to the Government under an express promise that the source's identity would be held in confidence or, prior to September 27, 1975, under an implied promise. The application of exemption (k)(5) will be required to honor promises of confidentiality should the data subject request access to or amendment of the records, or access to the accounting of disclosures of the record.

(vi) All information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(6) is exempt from the requirements of 5 U.S.C. 552a(d) relating to access to and amendment of records by the data subject. This exemption is claimed because portions of a case file record may relate to testing and examining material used solely to determine individual qualifications for appointment or promotion in the Federal service. Access to or amendment of this information by the data subject would compromise the objectivity and fairness of the testing or examining process.

(vii) Inspector General case files may contain evaluation material used to determine potential for promotion in the armed services. Application of exemption (k)(7) may be necessary, but only to the extent that the disclosure of the data would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence.

(2) *Administrative Law Judge Applicant Records OPM/CENTRAL–6).* (i) All information about individuals in these records that meets the criteria stated in 5 U.S.C. 552a(k)(5) is exempt from the requirement of 5 U.S.C. 552a (c)(3) and (d). The exemptions are claimed because this system contains investigatory material compiled solely for determining suitability, eligibility, and qualifications for Federal civilian employment. To the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence, the application of exemption (k)(5) will be required to honor promises of confidentiality should the data subject request access to the accounting of disclosures of the record, or access to or amendment of the record.

(ii) All information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(6) is exempt from the requirements of 5 U.S.C. 552a(d), relating to access to and amendment of the records by the data subject. This exemption is claimed because portions of this system relate to testing and examining materials used solely to determine individual qualifications for appointment or promotion in the Federal service. Access to or amendment of this information by the data subject would compromise the objectivity and fairness of the testing or examining process.

(3) *Litigation and Claims Records (OPM/CENTRAL–7).* (i) When litigation or claim cases occur, information from other existing systems of records may be incorporated into the case file. This information may be material for which exemptions have been claimed by the Office in this section. To the extent that such exempt material is incorporated into a litigation or claim case file, the appropriate exemption (5 U.S.C. 552a(k) (1), (2), (3), (4), (5), (6), or (7)) shall also apply to the material as it appears in this system. The exemptions will be only from those provisions of the Act that were claimed for the systems from which the records originated.

(ii) During the course of litigation or claims cases, it may be necessary to conduct investigations to develop information and evidence relevant to the case. These investigative records may include material meeting the criteria stated in 5 U.S.C. 552a(k) (1), (2), (3), (4), (5), (6), and (7). Such material is exempt from the requirement of 5 U.S.C. 552a (c)(3) and (d). These provisions of the Act relate to making accounting of disclosures available to the data subject and access to and amendment of records. The specific applicability of the exemptions to this system and the reasons for the exemptions are:

(A) Such investigations may contain properly classified information that pertains to national defense and foreign policy obtained from another Federal agency. Application of exemption (k)(1) may be necessary to preclude the data subject's access to and amendment of such classified information under 5 U.S.C 552a(d).

(B) Such investigations may contain investigatory material compiled for law enforcement purposes other than material within the scope of 5 U.S.C. 552a(j)(2), e.g., administration of the merit system, obtained from another Federal agency. All information about individuals in these records that meets the criteria of 5 U.S.C 552a(k)(2) is exempt from the requirements of 5 U.S.C. 552a (c)(3) and (d). Application of exemption (k)(2) may be necessary to preclude the data subject's access to or amendment of those records.

(C) Such investigations may contain information obtained from another agency that relates to providing protective services to the President of the United States or other individuals pursuant to 18 U.S.C. 3056. All information about individuals in these records that meets the criteria of 5 U.S.C. 552a(k)(3) is exempt from the

requirements of 5 U.S.C. 552a(d), relating to access to or amendment of records by the data subject. Application of exemption (k)(3) may be necessary to preclude the data subject's access to and amendment of such records.

(D) Such investigations may contain information that, by statute, is required to be maintained and used solely as a statistical record. Application of exemption (k)(4) may be necessary to ensure compliance with such a statutory mandate.

(E) All information about individuals in these records that meets the criteria stated in 5 U.S.C. 552a(k)(5) is exempt from the requirements of 5 U.S.C. 552a (c)(3) and (d). These exemptions are claimed because this system contains investigatory material compiled solely for determining suitability, eligibility, and qualifications for Federal civilian employment. To the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence, the application of exemption (k)(5) will be required to honor such a promise should the data subject request access to the accounting of disclosure, or access to or amendment of the record, that would reveal the identity of a confidential source.

(F) All information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(6) is exempt from the requirements of 5 U.S.C. 552a(d), relating to access to and amendment of the records by the data subject. This exemption is claimed because portions of this system relate to testing or examining materials used solely to determine individual qualifications for appointment or promotion in the Federal service. Access to or amendment by the data subject of this information would compromise the objectivity and fairness of the testing or examining process.

(G) Such investigations may contain evaluation material used to determine potential for promotion in the armed services. Application of exemption (k)(7) may be necessary, but only to the extent that the disclosure of the data would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence.

(4) *Privacy Act/Freedom of Information Case Records (OPM/CENTRAL–8).* In this subpart, the Office has claimed exemptions for its other systems of records where it felt such exemptions are appropriate and necessary. These exemptions are claimed under 5 U.S.C. 552a(k) (1), (2), (3), (4), (5), (6) and (7). During the processing of a Privacy Act/Freedom of Information Act request (which may include access requests, amendment requests, and requests for review for initial denials of such requests) exempt materials from those other systems may in turn become part of the case record in this system. To the extent that copies of exempt records from those other systems are entered into this system, the Office hereby claims the same exemptions for the records from those other systems that are entered into this system, as claimed for the original primary system of which they are a part.

(5) *Personnel Investigations Records (OPM/CENTRAL–9).* All information in these records that meets the criteria stated in 5 U.S.C. 552a(k) (1), (2), (3), (4), (5), (6), and (7) is exempt from the requirements of 5 U.S.C. 552a (c)(3) and (d). These provisions of the Privacy Act relate to making accountings of disclosures available to the data subject and access to and amendment of records. The specific applicability of the exemptions to this system and the reasons for the exemptions are as follows:

(i) Personnel investigations may contain properly classified information which pertains to national defense and foreign policy obtained from another Federal agency. Application of exemption (k)(1) may be necessary to preclude the data subject's access to and amendment of such classified information under 5 U.S.C. 552a(d).

(ii) Personnel investigations may contain investigatory material compiled for law enforcement purposes other than material within the scope of 5 U.S.C. 552a(j)(2); e.g., investigations into the administration of the merit system. Application of exemption (k)(2) may be necessary to preclude the data subject's access to or amendment of such records under 5 U.S.C. 552a(c)(3) and (d).

(iii) Personnel investigations may contain information obtained from another Federal agency that relates to providing protective services to the President of the United States or other individuals pursuant to 18 U.S.C. 3056. Application of exemption (k)(3) may be necessary to preclude the data subject's access to and amendment of such records under 5 U.S.C. 552a(d).

(iv) Personnel investigations may contain information that, by statute, is required to be maintained and used solely as a statistical record. Application of exemption (k)(4) may be necessary to ensure compliance with such a statutory mandate.

(V) All information about individuals in these records that meets the criteria stated in 5 U.S.C. 552a(k)(5) is exempt from the requirements of 5 U.S.C. 552a (c)(3) and (d). These exemptions are claimed because this system contains investigatory material compiled solely for determining suitability, eligibility, and qualifications for Federal civilian employment. To the extent that the disclosure of material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence, the applicability of exemption (k)(5) will be required to honor promises of confidentiality should the data subject request access to or amendment of the record, or access to the accounting of disclosures of the record.

(vi) All information in these records that meets the criteria stated in 5 U.S.C. 552a (k)(6) is exempt from the requirements of 5 U.S.C. 552a(d), relating to access to and amendment of records by the data subject. This exemption is claimed because portions of this system relate to testing or examining materials used solely to determine individual qualifications for appointment or promotion in the Federal service. Access to or amendment of this information by the data subject would compromise the objectivity and fairness of the testing or examining process.

(vii) Personnel Investigations may contain evaluation material used to determine potential for promotion in the armed services. Application of exemption (k)(7) may be necessary, but only to the extent that the disclosure of the data would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence.

(6) *Presidential Management Intern Program Records (OPM/CENTRAL–11).* All information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(6) is exempt from the requirements of 5 U.S.C. 552a(d), relating to access to and amendment of records by the data subject. This exemption is claimed because portions of this system relate to testing or examining materials used solely to determine individual qualifications for appointment or

promotion in the Federal service and access to or amendment of this information by the data subject would compromise the objectivity and fairness of the testing or examining process.

(7) *Recruiting, Examining, and Placement Records (OPM/GOVT–5).* (i) All information about individuals in these records that meets the criteria stated in 5 U.S.C. 552a(k)(5) is exempt from the requirements of 5 U.S.C. 552a (c)(3) and (d). These provisions of the Privacy Act relate to making accountings of disclosures available to the data subject and access to and amendment of records. These exemptions are claimed because this system contains investigative material compiled solely for determining the appropriateness of a request for approval of an objection to an eligible's qualification for employment in the Federal service. To the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence, the application of exemption (k)(5) will be required to honor promises of confidentiality should the data subject request access to the accounting of disclosures of the record, or access to or amendment of the record.

(ii) All information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(6) is exempt from the requirements of 5 U.S.C. 552a(d), relating to access to an amendment of records by the subject. This exemption is claimed because portions of this system relate to testing or examining materials used solely to determine individual qualifications for appointment or promotion in the Federal service and access to or amendment of this information by the data subject would compromise the objectivity and fairness of the testing or examining process.

(8) *Personnel Research Test Validation Records (OPM/GOVT–6).* All information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(6) is exempt from the requirements of 5 U.S.C. 552a(d), relating to access to and amendment of the records by the data subject. This exemption is claimed because portions of this system relate to testing or examining materials used solely to determine individual qualifications for appointment or promotion in the Federal service. Access to or amendment of this information by the data subject would compromise the objectivity and fairness of the testing or examining process.

(c) The Office also reserves the right to assert exemptions for records received from another agency that could be properly claimed by that agency in responding to a request. The Office may refuse access to information compiled in reasonable anticipation of a civil action or proceeding.

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BILLING CODE 6325–01–M

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5 CFR Part 540

Performance Management and Recognition System; Minimum Performance Award Funding

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is proposing the minimum percentage for calculating funds to pay performance awards to Performance Management and Recognition System (PMRS) employees for Fiscal Years 1988 and 1989. Establishing a new minimum percentage for each year is required by title II of the Civil Service Retirement Spouse Equity Act of 1984, which established the PMRS.

DATE: Comments will be considered if received no later than September 3, 1987.

ADDRESS: Send or deliver written comments to: Barbara L. Fiss, Assistant Director for Pay and Performance, Personnel Systems and Oversight Group, Room 7H28, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Jack Pokoyk, (202) 632–7620.

SUPPLEMENTARY INFORMATION: The funding for performance awards to be paid to PMRS employees is determined as a percentage of the estimated aggregate amount of PMRS employees' pay for each Fiscal Year. Section 5406(c)(2)(A)(i)(II) of title 5, U.S. Code, provides that the minimum percentage used by an agency to determine the aggregate amount of performance awards paid during any Fiscal Year shall, for each of the four Fiscal Years after FY 85 " * * * be adjusted incrementally (by equal increments or otherwise) over the percentage for the preceding Fiscal Year by the appropriate agency head in accordance with regulations which the Office of Personnel Management shall prescribe;".

The regulations implementing the PMRS, issued on August 30, 1985 (50 FR 169), provide that the minimum percentage will be adjusted each year in accordance with OPM instructions. This proposed rule provides instructions on calculating the aggregate amount of performance awards to be paid for Fiscal Years 1988 and 1989.

OPM is proposing that the minimum percentage for calculating the aggregate amount of PMRS performance awards to be paid by each agency during Fiscal Year 1988 will be 1.05 percent of the estimated aggregate amount of PMRS employees' pay for Fiscal Year 1988. Additionally, Fiscal Year 1989 is the final year to make adjustments to the minimum percentage for PMRS awards amounts. Therefore, as required by 5 U.S.C. 5406(c)(2)(A)(i)(III), the minimum percentage under this proposed rule to be spent on performance awards for Fiscal Year 1989 will be 1.15 percent.

Procedures agencies must follow to calculate the aggregate amount of performance awards to be paid for each Fiscal Year are described at 5 CFR 540.109(b).

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulations will only affect Government employees and agencies.

Reduction of Comment Period for Proposed Rulemaking

I find that, because agencies are required to compute FY 88 awards funds at the beginning of the Fiscal Year, good cause exists for setting the comment period on this proposed rulemaking at 30 days.

List of Subjects in 5 CFR Part 540

Government employees, Wages.

U.S. Office of Personnel Management.

James E. Colvard,

Deputy Director.

Accordingly, OPM proposes to amend 5 CFR Part 540 as follows:

PART 540—PERFORMANCE MANAGEMENT AND RECOGNITION SYSTEM

1. The authority citation for Part 540 continues to read as follows

Authority: 5 U.S.C. Chapters 43 and 54

2. In § 540.109, paragraphs (b)(1)(i) and (b)(1)(ii) are revised to read as follows:

§ 540.109 Performance awards.

* * * * *

(b) * * *

(1) * * *

(i) Each agency is required to pay a minimum of 1.05 percent of the estimated aggregate amount of PMRS employees' basic pay for Fiscal Year 1988 for performance awards;

(ii) In accordance with chapter 54 of title 5 United States Code, the minimum percentage to be spent for performance awards will be 1.15 percent for Fiscal Year 1989.

* * * * *

[FR Doc. 87-17624 Filed 8-3-87; 8:45 am]

BILLING CODE 6325-01-M

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5 CFR Parts 870 and 874

Standardization of Terms Used Under the Federal Employees Group Life Insurance Program

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is proposing to issue regulations that would define terms commonly used under the statutory order of precedence for making payments under the Federal Employees' Group Life Insurance (FEGLI) Program. Conflicts have arisen concerning entitlements to these payments because of different interpretations given these terms by the various States. These proposed regulations would provide uniform definitions for such terms as "child" and "parent" and thereby initiate a standardized approach to inheritance rights under the order of precedence in the FEGLI Program no matter where the potential heirs might reside. In addition, OPM is proposing to clarify the existing regulations concerning designations of beneficiary to specify that designations must be witnessed by two people, and is proposing to set a maximum age of majority at age 18 for FEGLI purposes.

DATE: Comments must be received on or before October 5, 1987.

ADDRESSES: Written comments may be sent to Reginald M. Jones, Jr., Assistant Director for Retirement and Insurance Policy, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044, or delivered to OPM, Room 4351, 1900 E Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Ray, (202) 632-4634.

SUPPLEMENTARY INFORMATION: Section 8705(a) of title 5, U.S. Code, specifies the order of precedence under which the amounts of FEGLI coverage are to be paid upon the death of an insured employee or annuitant. According to the order of precedence: (1) A designated beneficiary is first; (2) if there is no designated beneficiary, payment is made to the widow or widower of the insured; (3) if no widow or widower survives, payment is made to the children of the insured; (4) if no children survive the insured, payment is made to the parents of the insured, the executor or administrator of the insured's estate, or the next of kin, in that order.

Metropolitan Life Insurance Company's Office of Federal Employees' Group Life Insurance (OFEGLI) is responsible for determining the proper payee(s) under the above order of precedence following the death of the insured FEGLI participant and for disbursing the proceeds to the appropriate claimants in a timely manner. OFEGLI has brought to our attention the administrative complexities and inherent delays associated with recognizing the various states' definitions of heirs and inheritance rights in the absence of published definitions in the FEGLI regulations for this purpose. Therefore, OPM proposes to add a new section for definitions in the FEGLI regulations to eliminate this administrative burden and to provide uniform definitions for such terms used in the FEGLI law's order of precedence as "child" and "parent."

Many of the states define the term "child" differently and distinguish between the inheritance rights of different categories of children. For example, some states differentiate between "legitimate," "recognized natural children," "half blood," "whole blood," and "adopted children," and specify the conditions under which they inherit. Depending upon the definitions in place in the state of domicile of the insured at the time of his or her death, or depending upon the inheritance laws of the state where the parent-child relationship was established, the potential heirs may be subject to various interpretations on inheritance rights and may experience subsequent delays in the settlement from OFEGLI. To a lesser degree, the same set of problems exist with the working definitions of "parent." OPM proposes to fill the existing void of standardized definitions under the FEGLI Program by defining several of the tenns used in the FEGLI order of precedence.

In addition to providing standardized definitions, OPM's proposed regulations would also set a maximum age of majority at age 18. Most states have legislated the "age of majority" (i.e., the age at which an individual is accorded full civil rights and considered to be an adult) at age 18. OPM's proposed regulations would make the attainment of age 18 universally accepted as having attained adulthood under the FEGLI Program. In those few states which recognize the age of majority at less than age 18, an individual will be considered to be an adult upon attaining the lesser age.

OPM is also proposing to clarify the existing regulations concerning designations of beneficiary to specify that designations must be witnessed by two people. The form itself has always had two lines provided for the signatures and addresses of "witnesses." The instructions to agencies and employees on the completion of the form have always envisioned two witnesses to the execution of the document. However, the regulations have never specifically stated this requirement. We propose to correct this deficiency in the regulations at this time.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations will primarily serve to clarify the status of family members under the FEGLI Program.

List of Subjects in 5 CFR Parts 870 and 874

Administrative practice and procedure, Government employees, Life insurance, Retirement, Worker's compensation.

U.S. Office of Personnel Management.

James E. Colvard,

Deputy Director.

Accordingly, OPM proposes to amend Parts 870 and 874 of Title 5 of the Code of Federal Regulations as follows:

1. The authority citation for Parts 870 and 874 continues to read as follows:

Authority: 5 U.S.C. 8716.

PART 870—BASIC LIFE INSURANCE

2. In Subpart I of Part 870, § 870.901 is redesignated as § 870.902 and a new § 870.901 is added to read as follows:

§ 870.901 Order of precedence.

(a) *Definitions.* For the purposes of this part, the following terms are defined as follows:

(1) "Child" means a legitimate child, an adopted child, or a recognized natural child but does not include a stillborn child, a stepchild, or a foster child. An individual who has attained age 18 is considered to be an adult. However, if the age of majority in the jurisdiction in which that individual is domiciled is set at a lower age, he or she is considered to be an adult upon attaining the age designated in that jurisdiction. An adopted child does not inherit under the order of precedence specified in 5 U.S.C. 8705, other than as a designated beneficiary, from his/her natural parents but inherits from and through his or her adoptive parents. However, a child who is adopted by the spouse of his or her natural parent does inherit from that natural parent.

(2)(i) A "recognized natural child," with respect to paternity, is one for whom the father meets one of the following:

(A) Has acknowledged paternity in writing;

(B) Has been judicially ordered to provide support;

(C) Has, before his death, been judicially decreed to be the father;

(D) Has been established as the father by a certified copy of the public record of birth or church record of baptism if the insured was the informant and so named himself as the father of the child; or

(E) Has established paternity on public records, such as school or social welfare agencies, which show that with his knowledge the insured was named as the father of the child.

(ii) Secondary evidence to support the alleged paternity, such as evidence of eligibility as a recognized natural child under other State or Federal programs or proof of inclusion of the child as a recognized natural child on the insured's income tax returns, may also be considered in the determination process.

(3) "Parent" means the mother or father of a legitimate child or an adopted child. The term "parent" includes the mother of a recognized natural child and the father of a recognized natural child but only if the recognized natural child meets the definition provided in paragraph (a)(2) of this section. An individual can not inherit from a child who has been adopted by someone else. However, an individual whose spouse adopted his or her child can inherit from that child.

3. In the redesignated § 870.902, paragraph (a) is amended, by adding the words "by two people," to read as follows:

§ 870.902 Designation of beneficiary.

(a) A designation of beneficiary shall be in writing, signed, and witnessed by two people, and received in the employing office (or in OPM, in the case of (1) an annuitant or (2) a compensationer whose basic life insurance is continued) before the death of the insured.

* * * * *

PART 874—ASSIGNMENT OF LIFE INSURANCE

4. In Part 874, § 874.701(d) is revised to read as follows:

§ 874.701 Designations of beneficiary.

* * * * *

(d) The provisions of § 870.902 of this chapter apply to designations of beneficiary filed by assignees.

[FR Doc. 87-17616 Filed 8-3-87; 8:45 am]

BILLING CODE 8325-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 91

[Docket No. 87-026]

Cleaning and Disinfecting of Export Aircraft

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Reopening of comment period for proposed rule.

SUMMARY: We published a document in the **Federal Register** on December 24, 1986, proposing to amend the regulations governing the exportation of animals and animal products from the United States by requiring the cleaning and disinfecting of aircraft prior to their being used to export animals from the United States. We are reopening the comment period for the proposal. This action will provide interested persons with additional time to prepare comments on the proposed rule. It will also allow us to consider comments that we received after the comment period for the proposed rule closed on February 23, 1987.

DATE: Consideration will be given only to comments postmarked on or before August 19, 1987.

ADDRESS: Send written comments to Steven B. Farbman, Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 84-042. Comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Najam Q. Faizi, Import-Export Operations Staff, VS, APHIS, USDA, Room 726, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8383.

SUPPLEMENTARY INFORMATION:

Background

On December 24, 1986, we published in the **Federal Register** (51 FR 46684-46685, Docket No. 84-042), a proposal to amend the regulations in 9 CFR Part 91 by requiring the cleaning and disinfecting of aircraft prior to their being used to export animals from the United States.

The proposed rule provided that written comments would be accepted for 60 days until February 23, 1987. We are reopening the comment period to the public for an additional 15 days. This action will provide interested persons with additional time to prepare comments on the proposed rule. It will also allow us to consider comments that we received after the comment period for the proposed rule closed on February 23, 1987.

Done in Washington, DC, this 29th day of July 1987.

J.K. Atwell,

Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 87-17657 Filed 8-3-87; 8:45 am]

BILLING CODE 3410-34-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

Small Business Investment Companies

AGENCY: Small Business Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The purpose of this proposed rule is to increase the examination fees imposed upon small business investment companies. The objective of this proposed rule is to reduce the difference between costs and billings.

DATE: Written comments should be submitted in duplicate not later than September 3, 1987.

ADDRESSES: Comments should be

addressed to: Robert G. Lineberry, Deputy Associate Administrator, for Investment, Small Business Administration, 1441 L Street, NW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: John L. Werner, Director, Office of Investment (202)653–6584.

SUPPLEMENTARY INFORMATION: Section 310(b) of the Small Business Investment Act, as amended, mandates that each small business investment company be examined by the Agency at least once each year. The section further provides that "the cost of such examinations, including the compensation of the examiners, may in the discretion of the Administration, be assessed against the company examined. . . ." The proposed rule would revise the fee schedule set forth in 13 CFR 107.1002(c) to increase the fees set forth therein by approximately 60 percent. For example, under the present rule, a small business investment company with assets of $2,000,000 must pay an examination fee of $1,700. If the proposed rule is adopted, such company would pay an examination fee of $2,720.

An analysis of expenses incurred in Fiscal 1986 in SBA Regions II (New York), III (Philadelphia), VI (Dallas) and IX (San Francisco) disclosed that SBA's direct costs, including the expense of review in the Central Office, were $1,524,619, while billings were only $976,502. The objective of this proposed rule is to reduce the difference between costs and billings.

For the purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) SBA hereby certifies that the proposed rule will not, if promulgated in final form, have a significant impact on a substantial number of small entities. For the average small business investment company, the increase in the examination fee would represent about .05 percent of its assets.

For the purposes of Executive Order 12291 (February 17, 1981), SBA certifies that this Proposed regulation would not, if adopted as a final rule, be likely to result in an annual economic effect of as much as $100,000,000, or a major increase in costs for consumers, individual industries, Federal, State or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based businesses to compete with foreign-based businesses in domestic or export markets. The intended economic effect of the rule is the recovery, from the entire small business investment company industry, of approximately $600,000.

List of Subjects in 13 CFR Part 107

Small business investment companies, operational requirements.

Accordingly, pursuant to the authority set forth in sections 308(c) [15 U.S.C. 687(c)] and 310(b)[15 U.S.C. 687b(b)] of the Small Business Investment Act, as amended, it is proposed to amend 12 CFR Part 107 as follows:

PART 107—[AMENDED]

1. The authority citation for 13 CFR Part 107 continues to read as follows:

Authority: Sec. 308(c), 72 Stat. 694, as amended (15 U.S.C. 687(c)); sec. 310, 78 Stat. 147 (15 U.S.C. 687d).

2. In § 107.1001, the rate table in paragraph (c) is revised to read as follows:

§ 107.1001 Examination and fees.

* * * * *

(c) *Rates.* * * *

Total assets of licensee	Base rate	Percent of assets
$500,000 or less	$1,280	+0
$500,001 to $1,000,000	$1,280	+0.1920 over $500,000
$1,000,001 to $3,000,000	$2,240	+0.0480 over $1,000,000
$3,000,001 to $5,000,000	$3,200	+0.0256 over $3,000,000
Over $5,000,001	$3,712	+0.0096 over $5,000,000

For example, a Licensee with total assets of $2,000,000 would pay an examination fee of $2,720 ($2,240 +0.0480% of $1,000,000).

* * * * *

(Catalog of Federal Domestic Assistance Programs No. 59.011)

Dated: July 13, 1987.

James Abdnor,

Administrator

[FR Doc. 87–17579 Filed 8–3–87; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 85N–0061]

Food Labeling; Public Health Messages on Food Labels and Labeling

AGENCY: Food and Drug Administration.

ACTION: Notice of propose rulemaking.

SUMMARY: In this notice, the Food and Drug Administration (FDA) discusses a new and innovative initiative concerning the placing of health-related claims or information on food labeling and the criteria it will apply in evaluating the propriety of such labeling. Consistent with this new initiative, FDA proposes to amend certain regulations on food labeling to codify and clarify its policy on the appropriate use of health-related messages. The agency also announces its intention to form a Public Health Service (PHS) committee that will attempt to develop "health messages" appropriate for use on food labeling. FDA recognizes that this new initiative represents a substantive change in past agency policy, and because of the complexity of the matter and the broad public interest, wishes to proceed cautiously and deliberately in its regulatory approach.

Pending this rulemaking proceeding, the agency will employ the criteria discussed in the preamble to this notice in evaluating the propriety of bringing enforcement action against products bearing health messages on food labeling.

DATE: Written comments by November 2, 1987.

ADDRESS: Written comments on this notice and on four related citizen petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. The four citizen petitions may be reviewed in the Dockets Management Branch.

FOR FURTHER INFORMATION CONTACT: David Hattan, Center for Food Safety and Applied Nutrition (HFF–204), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–245–3117.

SUPPLEMENTARY INFORMATION:

Statement

Consumers are becoming increasingly conscious of the relationship between diet and health. As a result, food manufacturers have begun to show an interest in developing a mechanism to inform consumers about this relationship and how specific foods may be used to improve one's diet, thereby

promoting good health. FDA believes that it is important to consider ways to improve the public's understanding about the health benefits that can result from adhering to a sound and nutritious diet. Accordingly, in this notice, FDA discusses its views concerning the current state of knowledge about the relationship between diet and health; sets forth general criteria it intends to apply in evaluating health and disease-related information and claims on food labeling; announces the formation of a PHS committee to devise suggested health messages for use on food labeling; proposes amendments to 21 CFR 101.9 on nutrition labeling; and calls for comment on the initiatives discussed in this notice as well as on related initiatives suggested in pending citizen petitions.

The Relationship Between Good Nutrition and Good Health

Good nutrition is essential to good health, and in fact the increased longevity of Americans can in part be attributed to the availability of a plentiful, wholesome, and nutritious food supply that enables consumers to select generally well-balanced diets based on a variety of foods. Increasingly, consumers are taking a greater interest in healthful dietary practices, as "evidence keeps mounting that certain food factors and current dietary habits may be linked with health problems as diverse as heart disease, tooth decay, obesity, and some types of cancer * * *." (Ref. 1; see also Ref. 2.)

The field of nutrition, health, and disease is a dynamic one. Many intriguing and promising findings have been reported in recent years. Some have been studied and confirmed to the point of emerging consensus, while others have not. Recommendations for major dietary changes should not be advanced until sufficient evidence has been developed. The rapid growth of scientific and public interest in nutrition argues for recognition and dissemination of such new knowledge, and food labels offer one appropriate vehicle for this dissemination.

Good nutrition is a function not of individual foods, but of a total diet over time. The conscious construction of useful recommendations for a healthful diet is complicated by the fact that the composition of a healthful diet will vary among individuals according to such factors as age, sex, size, level of physical activity, and state of health. Thus, recommendations for subpopulations with certain risk factors or characteristics may be unnecessarily restrictive or otherwise inappropriate for the population as a whole. PHS agencies (including FDA), the United States Department of Agriculture (USDA), and a number of health-related organizations have implemented various initiatives to provide the public with dietary guidance that acknowledges the differences in the nutritional needs of different people, and have targeted more specific advice to special subpopulations.

PHS has formally recognized good nutrition and diet as an essential component of good health (Ref. 2) and has also included nutrition and diet as part of its health promotion, health education, and health protection initiatives (Ref. 3). Industry, consumer advocacy groups, professional societies, and PHS components such as the National Cancer Institute (NCI) have suggested that food labels, by virtue of their proximity during the purchase, preparation, and consumption of food, are suitable vehicles for conveying information to the general public or target subpopulations regarding the relationship between diet and health, including specific health problems.

Historic Regulation of Health-Related Information on Food Labeling

Truthful, nonmisleading general information regarding nutrition has appeared for years on food labeling. For example, the list of ingredients has been used by health professionals and consumers to identify valued ingredients having specific nutrients. More recently, nutrition labeling (21 CFR 101.9) has provided more complete and explicit information. As noted above, however, there is now information that shows that following certain dietary patterns, including increasing or decreasing relative intake of certain types of food, may help maintain health by decreasing the risk of developing specific health problems, including chronic diseases that account for a large proportion of morbidity and mortality in the United States. Including health- or disease-related information on food labeling, however, may affect the regulatory status of the product, if it results in the food's being deemed a drug within the meaning of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321 et seq.).

The act defines a drug, in part, as "articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man * * *" (21 U.S.C. 321(g)(1)(B)), and sets forth rigorous requirements to ensure that drugs are proven in controlled studies to be both safe and effective. FDA has promulgated regulations that further provide that a food shall be deemed to be misbranded "if its labeling represents, suggests, or implies: (1) That the food because of the presence or absence of certain dietary properties, is adequate or effective in the prevention, cure, mitigation, or treatment of any disease or symptom" (21 CFR 101.9(i)). These provisions have served a public health protection function by safeguarding consumers from fraudulently promoted and sometimes dangerous products. A brief review of relevant legal precedents illustrates this point.

The intended use of a product may be determined from its "label, accompanying labeling, promotional material, advertising and any other relevant source." *United States* v. *An Article Consisting of 216 bottles * * * Sudden Change*, 409 F.2d 734, 739 (2d Cir. 1969). Accordingly, courts have found food products to be drugs on the basis of promotional material as diverse as oral representations on a radio broadcast, *United States* v. *An Article of Drug Consisting of Undetermined Quantities of Vitamin, Mineral, and Other Dietary Preparations * * * Food Plus, Inc.*, 239 F. Supp. 465 (D. N.J. 1965), *aff'd*, 362 F.2d 923 (3d Cir. 1966); brochures and magazine reprints, *United States* v. *Articles of Drug * * * Neptone*, No. C–83–0864 (N.D. Cal., October 25, 1983) (ground and whole New Zealand green-lipped mussels); and product labeling, *United States* v. *Hohensee*, 243 F.2d 367 (3d Cir. 257) (tea leaves); and *United States* v. *250 Jars of * * * Honey*, 218 F. Supp. 208 (E.D. Mich. 1963), *aff'd*, 344 F.2d 288 (6th Cir. 1965).

Having found that a food can also be a drug, depending on the marketing claims made, courts have concluded that the product is misbranded if it does not contain adequate directions for use (21 U.S.C. 351(f)(1)). See, for example, *United States* v. *Article of Drug Consisting of Undetermined Quantities of Vitamin, Mineral, and Other Dietary Preparation * * * Foods Plus, Inc., supra; United States* v. *Articles of Drug * * * Neptone, supra.*

In a number of other instances, courts have also found that health or disease prevention claims on food labeling or on material which serves the function of labeling (books, pamphlets, written advertisements), may cause the food to fall under the new drug provisions of the act (21 U.S.C. 321(p), 335). See, for example, *United States* v. *Article of Drug * * * Vit-Ra-Tox*, 263 F. Supp. 212, 215 (D. Neb. 1967), where vitamins accompanied by advertising and labeling representing the vitamins to be an effective cure for conditions ranging from backaches to cancer were found to be drugs and new drugs within the

meaning of the act. See also, *United States* v. *Article of Drug * * * Neptone, supra.*[1]

As a practical matter, food products are not likely to be able to meet the adequate directions for use requirement or to have disease prevention claims substantiated in a manner necessary for approval of a new drug application. While effectively protecting the public from fraudulent, unsubstantiated, and potentially dangerous claims, the law, regulations, and past legal precedent in this area have also had the effect of generally discouraging the use of any health-related messages on food labeling.

In summary, using food labeling to communicate health-related messages may raise complex legal and procedural concerns. In some instances, as illustrated above, health-related claims may directly call into play the misbranding and new drup provisions of the act. In light of advances in current knowledge, however, the agency now believes that health-related messages, when appropriately formulated for use on food labels and consistent with existing law and regulations, may provide valuable information to health-conscious consumers.

FDA's Criteria for Evaluating the Propriety of Health-Related Claims and Information on Food Labeling

FDA believes that it is worthwhile to consider new ways to inform and educate the general public or target subpopulations concerning the relationship between diet and health. The agency believes that, if proper criteria are followed, it is possible to use the food label to communicate more explicit health-related information. The agency acknowledges that in the past, foods labeled with information of this type could have been viewed as subject to action under 21 CFR 101.9(i) and the new drug provisions of the act. The agency's current view is that appropriate health messages would not be inconsistent with either of these provisions. Consistent with its current view, FDA is proposing in this notice to amend § 101.9(i) (21 CFR 101.9(i)) and to add new § 101.9(j) to clarify its enforcement policy. The proposed amendments reflect the criteria which are discussed in this notice and which the agency intends to apply to help determine the propriety of health-related claims and information. The criteria, as well as the proposed clarifications to the regulations, reflect a cautious and deliberate approach and do not change FDA's basic interpretation of the act or legal precedent in cases of false or misleading claims. FDA's use of the criteria may prove helpful in ordering the agency's priorities in combating health fraud and nutrition quackery. (This use of agency discretion is consistent with FDA's authority over food labeling. *National Milk Producers Federation* v. *Harris*, 653 F.2d 339, 343 (8th Cir. 1981). *Cf. Heckler* v. *Chaney*, 105 S.Ct. 1649 (1985).)

These criteria will apply to health claims made on food labels but not to health claims made in food advertising, except in those limited circumstances which fall under the labeling provisions of the act. FTC has primary jurisdiction over advertising of foods and over-the-counter drugs. Similarly, meat and poultry products are subject to the jurisdiction of the Food Safety and Inspection Service (FSIS), USDA, which administers the Federal Meat Inspection Act and the Poultry Products Inspection Act. As a matter of policy, the agency will work closely with both FTC and FSIS on issues involving public health messages. The ultimate propriety of the labeling of meat and poultry products that fall under the Federal Meat Inspection Act or the Poultry Products Inspection Act will remain a matter governed by FSIS and USDA (21 U.S.C. 601 et seq.; 21 U.S.C. 451 et seq.). Food advertising which is not labeling will continue to be regulated by FTC.

FTC has set forth relevant policies and criteria in the FTC Policy Statement Regarding Advertising Substantiation, included as an appendix to the Commission's Opinion in *Thompson Medical Co.*, 104 F.T.C. —— (D. 9149, November 23, 1984); the Deception Policy Statement, included as an appendix to the Commission's Opinion in *Cliffdale Associates*, 103 F.T.C. 110, 174 (D. 9156, 1984); and the Commission Statement of Polciy on the Scope of the Consumer Unfairness Jurisdiction, included as an appendix to the Commission's Opinion in *International Harvester Co.*, 104 F.T.C. —— (D. 9147, December 21, 1984).

The agency's criteria for evaluating health-related claims and information on food labeling are as follows:

1. Information on the labeling must be truthful and not misleading to the consumer. The information should not imply that a particular food be used as part of a drug-like treatment or therapy oriented approach to health care. Information on food labeling must not over emphasize or distort the role of a food in enhancing good health. The term "health" includes specific health problems, including disease.

2. The information should be based on and be consistent with valid, reliable, scientific evidence that is publically available (prior to any health related claim being made), including data derived from clinical and other studies performed and evaluated by persons qualified by experience and training to evaluate such studies, and should conform to generally recognized medical and nutritional principles. Preliminary findings should be confirmed. Conclusions supported by a less-than-clear data base may prove in time to be correct, but are not appropriate for use on food labeling if they do not reflect the weight of scientific evidence. This approach will ensure that the substance of the message has achieved sufficient recognition to be appropriate and nonmisleading. This, in turn, will provide a measure of assurance that the information, if followed, will help an individual to develop a sound, total dietary pattern that may enhance health.

3. Available information regarding the relationship between nutrition and health shows that good nutrition is a function, not of specific foods, but of total diet over time. Appropriate information on food labeling should describe the role of a specific food or a specific ingredient in tems that are consistent with generally recognized medical and nutritional principles for a sound total dietary pattern. The dietary characteristics of the food must be consistent with the message being used.

4. The use of health-related information constitutes a nutritional claim that triggers the requirements of FDA's regulations regarding nutrition labeling. Therefore, any product bearing health-related information must comply with the nutrition labeling requirements found in 21 CFR 101.9. However, the use of health-related information in conformity with the agency's criteria will not be deemed misbranding within the meaning of 21 CFR 101.9(i) and will not be deemed to invoke the new drug provisions of the act.

Manufacturers may make health-related claims on food labels that conform to these guidelines without prior approval, with the understanding that, if a manufacturer fails to adhere to

[1] As discussed further below, the Federal Trade Commission (FTC) has primary jurisdiction over advertising. "FDA's authority to control labeling extends only to 'literature' which 'supplements' a drug's package label and which is 'distributed to consumers as part of an integrated distribution program' and 'constitutes an essential supplement to the label' * * *. See *Kordel* v. *United States*, 335 U.S. 345, 349–50, 69 S.Ct. 106, 109–10 (1948)." *McNeilab, Inc.* v. *Heckler*, No. 84–1617, slip op. at 4 (D.D.C. June 5, 1985). In *Kordel, supra*, the Supreme Court noted that FDA's authority relates to the function served by labeling. The Court stated specifically that "No physical attachment * * * is necessary. It is the textual relationship that is significant" for the purposes of enforcing the act.

the criteria, the product and the manufacturer's activity may be subject to regulatory action. FDA welcomes discussions with any manufacturer who wishes to consult with the agency on health-related claims before making changes in existing labeling.

Labeling of Dietary Supplements

The agency will apply the same criteria to dietary supplements (products of isolated vitamins, minerals, or other nutrients intended to supplement the diet by increasing total intake of one or more nutrients). However, the extent to which the criteria can be met may be limited. Although supplements are useful for individuals suffering from particular nutrient deficiencies, the available scientific information and data regarding good nutrition and health referred to in this notice focus primarily on the role of traditional foods, not dietary supplements. For example, the National Academy of Sciences (NAS) expressly stated that the findings of its comprehensive study on diet, nutrition, and cancer do not aply to the consumption of dietary supplements (Ref. 4). NAS so limited the findings of its study because scientists have not generally identified the specific compounds that are responsible for the apparently beneficial effects of certain foods and because whole foods and isolated components of food may not be similar in their nutritional attributes.

For a further discussion of the nutritional effects of traditional foods, compared to dietary supplements, see *Federal Trade Commission* v. *Pharmtech Research, Inc.*, No. 83–2247 (D.D.C., November 30, 1983), where in determining that the health claims made on behalf of certain dietary supplement products constituted false advertising, the court analyzed the NAS report and found that the conclusions in the report applied only to conventional foods and not to dietary supplements. This finding is consistent with the joint DHHS/USDA Dietary Guidelines for Americans containing the statement that: "There are no known advantages and some potential harm in consuming excessive amounts of any nutrient. Large dose supplements of any nutrient should be avoided." (Ref. 5, p. 7.)

Moreover, the identification of an association between a dietary component and a disease condition is complicated not only by the composite nature of foods but also by the interrelated variations in the intakes of a number of foods in any given diet. A reduced intake of animal products, for example, might be accompanied by an increased intake of substances such as starches, fibers, and certain vitamins and minerals that are present in the substituted vegetable and cereal grain foods. Because these dietary constituents increase and decrease simultaneously, it is difficult to determine which ones, if any, are causal factors when a change in the prevalence of a disease condition is also observed. Individual diets are not composed of isolated substances or even isolated foods; rather, they contain thousands of combinations of nutrients and other compounds. From the standpoint of general public health education, it has generally been found more practical and effective to emphasize overall dietary patterns that enhance good health than to attempt to identify individual compounds.

For these reasons, although the agency will apply the same criteria to the labeling of dietary supplements, it may be more difficult for dietary supplements to meet the criteria. Accordingly, the agency specifically asks for comments and available information concerning the value of and need for dietary supplements in enhancing good nutrition and health.

Proposed Amendment to 21 CFR 101.9

As stated above, FDA is proposing clarifying changes in its current rules on nutrition labeling. Specifically, the proposed amendments to 21 CFR 101.9(i) clarify that information on a food label representing, suggesting, or implying a food is adequate or effective in the prevention, cure, mitigation, or treatment of any disease or symptom will be deemed misbranded pursuant to sections 201(g) and 403(a) of the act (21 U.S.C. 321(n) and 343(a)) unless it complies with the criteria for health messages set forth in proposed section 101.9(i)(1) (i), (ii), (iii) and (iv), and is consistent with the criteria described above.

Section 101.9(i)(1)(i) requires that claims be truthful and nonmisleading. This provision incorporates the key elements of the criteria elaborated in this document and is the fundamental principle underlying FDA's evaluation of health messages on food labels. If a health-related claim is false or misleading (e.g., by implying that the food be used as part of a drug-like treatment or therapy-oriented approach to health care), the agency may take action under the misbranding and/or new drug provisions of the act.

Section 101.9(i)(1)(ii) requires that the claim be supported by valid, reliable, publicly available scientific evidence derived from well-designed and well-conducted studies consistent with generally accepted scientific procedures and principles, performed and evaluated by persons qualified by expertise and training in the appropriate disciplines. This criterion further clarifies what a "truthful" claim means by describing the type of evidence necessary to support a claim. It also would not be appropriate to use the results of a single study to support a label claim if it conflicts with the majority of available pertinent evidence.

Section 101.9(i)(1)(iii) requires that the claim be consistent with generally recognized medical and nutritional principles. This criterion also further elaborates the concept of "truthful and nonmisleading" by ensuring that a claim would not conflict with accepted medical and nutritional principles.

Section 101.9(i)(1)(iv) requires that a food label containing a health-related claim also contain the nutrition labeling information required by all of 21 CFR 101.9. This provision is proposed as a further safeguard against misleading statements and will ensure that consumers have relevant information about the characteristics of the food to assess the claim in the context of the overall nutritional properties of the food.

PHS Committee for Devising Public Health Messages on Food Labeling

The Assistant Secretary for Health will establish a standing committee, to be chaired by the Commissioner of Food and Drugs, with representatives of other PHS agencies and the Food Safety and Inspection Service of the U.S. Department of Agriculture. The committee will develop suggested health messages for use on food labeling that are truthful and not misleading to consumers and that are in compliance with FDA policy, the act, and FDA regulations. The Federal Trade Commission will also participate in committee meetings in a liaison function. Based on available information, the committee will develop examples of appropriate health messages that will convey, in a nonmisleading manner, the advantages of following certain preferred dietary patterns that it believes would help to improve the public health. These messages could be used on the labeling of food products. The messages developed by the committee will avoid referring to specific brands of products and will emphasize the important effects that a total dietary plan has on good health. Health messages developed by the committee will be subjected to consumer research where relevant such as field testing to help ensure that the message is understood by the consumer. The committee will also consider whether messages are appropriate for

use on the labeling of a dietary supplement. The committee will determine its own priorities and pace concerning the evaluation of data and information and the preparation of a given health message; however, manufacturers may proceed to develop their own health messages in advance of the committee's deliberations.

FDA will announce in the **Federal Register** the public health messages suggested by the committee and in compliance with the criteria on the labeling of food. A principal purpose in establishing the PHS committee is to provide examples of health message labeling that are clear, accurate, and meaningful to the consumer. Manufacturers may use the public health messages recommended by the committee with assurance that they are consistent with FDA criteria. As noted above, however, manufacturers are not required to use these messages and may develop and use their own messages consistent with the policy criteria outlined in this notice and in compliance with nutrition labeling regulations. Manufacturers who choose to develop their own messages or to modify or create their own versions of a message developed by the committee are free to do so, but in so doing they assume both the responsibility of devising an acceptable message consistent with the criteria discussed in this notice and the risk of violating applicable provisions of the act if the labeling exceeds legal bounds. This approach is consistent with that followed by the agency in regulating the labeling of over-the-counter drugs (see the **Federal Register** of May 1, 1986 (51 FR 16258)).

Citizen Petitions

To date FDA has received four citizen petitions from interested persons concerning the use of health-related claims on food labeling. Three include guidelines for using health claims on food labeling. FDA announces the availability of these petitions and encourages comments on them. Comments are to be submitted to the Dockets Management Branch (address above) and should be identified with Docket No. 85N–0061. Below, FDA summarizes the content of the petitions.

1. Center for Science in the Public Interest

In its petition, the Center for Science in the Public Interest (CSPI) suggested that FDA:

1. Prohibit health claims for nutrients that are not linked to major health problems facing Americans today.

2. Prohibit health claims for foods which contain nutrients that both prevent and promote the same disease.

3. Allow health claims for problem nutrients such as fats, fatty acids and cholesterol, sodium, and fiber.

4. Require that food manufacturers who make health claims disclose any nutritional flaws in the food that may have a negative impact on health.

5. Require that health claims refer to specific nutrients, not the brand name of the food containing the nutrients.

6. Require that health claims be accompanied by an explanation stating that one's total diet, not an individual food, can reduce the risk of disease.

7. Establish a moratorium on health claims until firm guidelines are in place. Once such guidelines are in effect, FDA should proceed on a case-by-case basis.

2. The Council for Responsible Nutrition

The Council for Responsible Nutrition (CRN) also submitted in its petition proposed enforcement guidelines for FDA to follow in evaluating the propriety of food and, specifically, dietary supplement advertising and labeling regarding the relationship between diet and health. The guidelines discuss suggested FDA policy considerations, enforcement policy philosophy, and legal precedents. The guidelines also include detailed enforcement standards and criteria designed to differentiate "therapeutic" statements from "nutritional" statements.

CRN suggests that those statements that discuss the relationship between diet and disease in nutritional terms—that is, in terms of the effect of the food on the structure or function of the body—be distinguished from those that discuss the prevention of disease in a therapeutic or pharmacological context. To this end, CRN submits that statements that speak in terms of modifying the diet so as to enhance the body's ability to fight off disease, or to reduce the long-term risks of developing disease, should not be regarded as therapeutic. On the other hand, CRN believes that statements that suggest that consumption of a particular product can, by itself and without regard to other factors, stop a disease from developing should be viewed by FDA as therapeutic and subject to the drug and new drug provisions of the act.

Regarding substantiation, CRN proposes that nutritional statements would be required to be substantiated by "peer-reviewed published studies or other well-controlled studies of the type that scientists qualified in the relevant field would consider reliable for such purposes." The studies relied on would have to be "reasonably representative of the state of research in the area," but a statement would not be inadequately substantiated solely because it did not reflect a consensus of scientific or medical opinion. Manufacturers would be prohibited, however, from exaggerating or distorting the degree of supporting evidence, and could be required to disclose the existence of conflicting studies when such disclosure is necessary to avoid misleading consumers.

3. National Food Processors Association

The National Food Processors Association (NFPA) submitted a petition that does not propose guidelines. The petition calls for a change in agency policy that would allow a manufacturer to substantiate a health or disease-related statement for use on food labeling. NFPA suggests that a statement could be substantiated in three different ways:

1. The statement is consistent in material respects with nutrition information disseminated by governmental bodies with public health responsibilities, or a private body, generally recognized as an authoritative source of health and nutrition information; or

2. The statement is determined to be adequately substantiated by a governmental body with public health responsibilities, or a private body, generally recognized as an authoritative source of health and nutrition information; or

3. The statement is substantiated by peer-reviewed published studies, or other well-controlled studies, of the type that scientists qualified in the relevant field would consider reliable for such purposes.

NFPA also suggests that label statements concerning the relationship between the amount of a particular dietary property or nutrient in a well-balanced diet and the incidence of a specific disease or disorder should only be made on the label or in labeling of foods for which such a statement would be appropriate. Thus, if a U.S. Recommended Daily Allowance (U.S. RDA) has been established for a nutrient, then a statement concerning the health effects of the nutrient could be made only with respect to a food that is a significant source of the nutrient within the meaning of the nutrition labeling regulations. If there were no U.S. RDA for the nutrient, then the label statement would have to be accompanied by an accurate statement of the quantity of a nutrient supplied in a serving of the food, and the

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appropriateness of the claim for a particular food would have to be supported by substantiating data.

4. Kellogg Co.

In its citizen petition, the Kellogg Co. has proposed guidelines that would confirm the ability of manufacturers to make health-related claims for their products if certain conditions are met. Specifically, the guidelines provide that a food should be allowed to bear labeling which refers to the relationship between diet and health, inlcuding, but not limited to, the relationship between diet and specific diseases, disorders, or conditions, and identify food(s) that may serve as component(s) of that diet, provided that such statements comply with all of the following:

1. The statements are substantiated by studies, both published and unpublished, generally recognized as valid by some experts qualified by scientific training and experience to evaluate such studies, and agreement exists concerning the conclusions which can be drawn from the studies, at the time at which the statement is made, among some experts who have examined the studies;

2. The statements are made only in the context of a diet and refer only to a food that is an appropriate component of that diet.

3. The statements specify the dietary properties or ingredients of the food which make that food an appropriate component of the diet, and the amount of the property(ies) or ingredient(s) in a serving of the food is disclosed on the label; and

4. The statements are not false or misleading to consumers.

Conclusion

FDA and other components of PHS believe that it is important to consider ways to improve the public's understanding about the health benefits that can result from adhering to a sound and nutritious diet. Accordingly, FDA has considered new ways to inform and educate the public concerning the relationship between diet and health. This effort, however, is complicated by the fact that making the public aware of the current knowledge about what constitutes good nutrition raises complex issues of public health education, science, and legal policy. The new policy FDA has discussed in this notice, as well as the formation of the PHS health messages committee, are steps toward establishing a mechanism for providing educational information on food labeling that presents a nonmisleading message about good nutrition and health. In addition to soliciting comments on the citizen petitions, on the agency's criteria discussed in this notice, and on the establishment of the PHS health message committee, FDA specifically requests comments on the following issues:

1. Whether it is in the interest of the public health that health information, including information regarding specific diseases, appear on food labeling;

2. Whether the basic principles upon which FDA has based its criteria are reasonable;

3. What types of valid, reliable, recognized scientific evidence should be considered adequate to support healthy information which might appear on food labeling;

4. Whether there are sufficient scientific data and information to allow the use of health information on dietary supplements; and

5. What priority FDA should assign to enforcement actions against the use of therapeutic or misleading health-related information on food labeling.

FDA will evaluate all the comments it receives. FDA will consider the comments in determining its response to the citizen petitions as well as in assessing the propriety of the criteria and policy discussed in this notice. Based upon FDA's evaluation of comments received, the agency will determine the necessary subsequent steps in establishing final agency policy on public health messages on food labels and labeling.

In accordance with Executive Order 12291, FDA has analyzed the economic effects of this proposal and has determined that the final rule, if promulgated, will not be a major rule as defined by the Order.

FDA, in accordance with the Regulatory Flexibility Act, has considered the effect that this proposal would have on small entities including small businesses and has determined that the effect of this proposal does not impose involuntary requirements on either large or small business. Therefore, FDA certifies in accordance with section 605(b) of the Regulatory Flexibility Act that no significant economic impact on a substantial number of small entities will derive from this action.

The agency has determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

References

The following information has been placed on file in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

(1) "Nutrition Activities of the Department of Health and Human Services," DHHS (PHS) Publication No. 83–5023, 42 pages.

(2) "Healthy People," The Surgeon General's Report on Health Promotion and Disease Prevention, DHEW (PHS) Publication No. 79–55071, 177 pages.

(3) "Promotion Health/Preventing Disease: Objectives for the Nation," Department of Health and Human Services, Public Health Service, 197 pages, November 1980.

(4) *Diet, Nutrition, and Cancer*, National Research Council, Committee on Diet, Nutrition, and Cancer, National Academy Press, Washington, DC 20418, 1982.

(5) "Nutrition and Your Health: Dietary Guidelines for Americans," 1985, USDA/DHHS Publication, *USDA Home and Garden Bulletin* No. 232, 23 pages.

Interested persons may, on or before November 2, 1987, submit to the Dockets Management Branch (address above) written comments regarding this interim policy. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 101

Food labeling.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that Part 101 be amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR Part 101 continues to read as follows:

Authority: Secs. 4, 6, Pub. L. 89–755, 80 Stat. 1297, 1299, 1300 (15 U.S.C. 1453, 1455); secs. 403, 701, Pub. L. 717, 52 Stat. 1047–1048 as amended, 1055–1056 as amended (21 U.S.C. 343, 371); 21 CFR 5.10 and 5.11; § 101.11 is issued only under secs. 201(s), 403(p), 409, 701(a), Pub. L. 717, 52 Stat. 1055, 72 Stat. 1784–1788 as amended, 91 Stat. 1453 (21 U.S.C. 321(s), 343(p), 348, 371(a)) and Pub. L. 95–203, 91-Stat. 1451–1454 (21 U.S.C. 301 note); § 101.100(a)(4) is issued only under secs. 201 (n) and (s), 403, 409, 701, 52 Stat. 1041 as amended, 1047–1048 as amended, 1055–1056 as amended, 72 Stat. 1784–1788 as amended (21 U.S.C. 321 (n) and (s), 343, 348, 371).

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2. In § 101.9 by revising paragraph (i)(1) and adding new paragraph (j) to read as follows:

§ 101.9 Nutrition labeling of food.

* * * * *

(i) * * * (1) That the food, because of the presence or absence of certain dietary properties, is adequate or effective in the prevention, cure, mitigation, or treatment of any disease or symptom unless the food bears a health-related nutritional claim and:

(i) The claim is truthful and not misleading;

(ii) The claim is supported by valid, reliable, publicly available scientific evidence derived from well-designed and conducted studies consistent with generally accepted scientific procedures and principles performed and evaluated by persons qualified by expertise and training in the appropriate disciplines;

(iii) The claim is consistent with generally recognized medical and nutritional principles for a sound total dietary pattern; and

(iv) The food is labeled in accordance with the requirements of this section.

* * * * *

(j) If the Food and Drug Administration determines that a food meets the requirements of the exception to paragraph (i)(1) of this section, the agency will not consider the food to be a drug within the meaning of 21 U.S.C. 321(p) solely because the labeling contains a health-related message.

Dated: July 30, 1987.

Frank E. Young,

Commissioner of Food and Drugs.

Otis R. Bowen,

Secretary of Health and Human Services.

[FR Doc. 87-17736 Filed 7-31-87; 2:11 pm]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

Proposed Regulatory Amendment on Payment of Fees and Taxes Under Alternative Bonding System; Virginia

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing the receipt of a proposed amendment to the Virginia permanent regulatory program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendment is intended to correct a technical error in section 480-03-19.801.12 of Virginia's program.

This notice sets forth the times and locations that the Virginia program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m., on September 3, 1987; if requested, a public hearing on the proposed amendment will be held on August 31, 1987; and requests to present testimony at the hearing must be received on or before 4:00 p.m., August 19, 1987.

ADDRESSES: Written comments and requests to testify at the hearing should be directed to Mr. William R. Thomas, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, P.O. Box 626, Room 220, Powell Valley Square Shopping Center, Route 23, Big Stone Gap, Virginia 24219; Telephone (703) 523-4303. If a hearing is requested, it will be held at the same address.

Copies of the proposed amendment, the Virginia program, the Administrative Record on the Virginia program, a listing of any scheduled public meetings and all written comments received in response to this notice will be available for review at the following locations during normal business hours Monday through Friday, excluding holidays.

Each requestor may receive, free of charge, one single copy of the proposed amendment by contacting the OSMRE Big Stone Gap Field Office.

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5315, 1100 "L" Street, NW., Washington, DC 20240; Telephone (202) 343-5492.

Office of Surface Mining Reclamation and Enforcement, Eastern Field Operations, Building 10, Parkway Center, Pittsburgh, PA 15220; Telephone (412) 937-2910.

Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, P.O. Box 626, Room 220, Powell Valley Square Shopping Center, Route 23, Big Stone Gap, Virginia 24219; Telephone (703) 523-4303.

Virginia Division of Mined Land Reclamation, P.O. Drawer U, 622 Powell Avenue, Big Stone Gap, Virginia 24219; Telephone (703) 523-2925.

FOR FURTHER INFORMATION CONTACT: Mr. William R. Thomas, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, P.O. Box 626, Room 220, Powell Valley Square Shopping Center, Route 23, Big Stone Gap, Virginia 24219; Telephone: (703) 523-4303.

SUPPLEMENTARY INFORMATION:

I. Background on the Virginia Program

The Secretary of the Interior approved the Virginia program on December 15, 1981. Information pertinent to the general background and revisions to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the December 15, 1981 Federal Register (46 FR 61085-61115). Subsequent actions concerning the conditions of approval and proposed amendments are identified at 30 CFR 946.12, 946.13 and 946.15.

II. Discussion of the Proposed Amendments

By letter dated July 2, 1987, (Administrative Record No. VA 633) Virginia submitted a proposed amendment to Section 480-03-19.801.12(a) of its Coal Surface Mining Control Reclamation Regulations. The proposed changes are briefly summarized below:

Under Virginia's Surface Coal Mining Reclamation Fund (alternate bonding program) each permit bonded through the fund must pay an entry fee of $1,000 and a tax based upon production. Virginia had elected to allow personal checks as one form of suitable payment of the fee and taxes. In its amendment submittal of November 8, 1985, (Virginia Administrative Record Number 571) the allowance for accepting personal checks was included in section 480-03-19.777.17 and 480-03-19.801.15(b) but inadvertently omitted from section 480-03-19.801.12(a). The November 8, 1985, submittal was approved by the Secretary on November 25, 1986 (51 FR 42548-42555) before this omission was discovered. This proposed amendment is intended to correct this oversight.

The full text of the proposed program amendment submitted by Virginia is available for public inspection at the addresses listed above. The Director now seeks public comment on whether the proposed amendments are no less effective than the Federal regulation. If approved, the amendment will become part of the Virginia program.

III. Public Comments Procedures

In accordance with the provisions of 30 CFR 732.17, OSMRE is now seeking comment on whether the amendment proposed by Virginia satisfies the requirements of 30 CFR 732.15 for the approval of State program amendments. If the amendment is deemed adequate, it will become part of the Virginia program.

Written Comments

Written Comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Big Stone Gap Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by close of business on August 19, 1987. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

If only one person requests a hearing, a public meeting, rather than a public hearing, may be held. A summary of the meeting will be included in the Administrative Record.

Public Meeting

Persons wishing to meet with OSMRE representatives to discuss the proposed amendment may request a meeting at the Big Stone Gap Field Office by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT**". All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made part of the Administrative Record.

IV. Procedural Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this section is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 946

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: July 22, 1987.

A.E. Whitehouse,

Acting Assistant Director, Eastern Field Operations.

[FR Doc. 87-17644 Filed 8-3-87; 8:45 am]

BILLING CODE 4310-05-M

National Park Service

36 CFR Part 9

Mineral Management; Mining and Mining Claims

AGENCY: National Park Service, Interior.

ACTION: Proposed Rule; extension of comment period.

SUMMARY: On Friday, April 3, 1987, the National Park Service (NPS) published a proposed rulemaking to clarify the scope of its regulations governing mineral development on mining claims within units of the National Park System and the relationship of these regulations to those governing access in Alaska at 43 CFR Part 36 (52 FR 10866). On May 28, 1987, the NPS extended the 45-day public comment period on the proposed rule an additional 30 days, ending June 29, 1987. On June 12, 1987, the Department of the Interior received a letter dated June 9, 1987, from the Alaska Land Use Council requesting that NPS not implement a final rule until the Council "had an opportunity to review the public comments and make its recommendation(s) to the Secretary of the Interior." The Council noted in its letter that it was "tentatively scheduled to meet at the end of August and at that time [would] consider the public comments and submit its recommendation(s) to the Secretary." After much deliberation, the Department of the Interior has decided to reopen the public comment period in order to provide the Council and all other interested parties a third and final opportunity to submit comments on the proposed rule.

DATES: Written comments will be accepted through September 4, 1987. Comments postmarked after September 4, 1987, will not be considered in finalizing the proposed rule.

ADDRESS: Comments should be addressed to: Land Resources Division (660), National Park Service, P.O. Box 37127, Washington, DC 20013-7127.

FOR FURTHER INFORMATION CONTACT: Ms. Carol McCoy, Land Resources Division (660), National Park Service, P.O. Box 37127, Washington, DC 20013-7127, 202-523-5120.

Dated: July 29, 1987.

William P. Horn,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87-17620 Filed 8-3-87; 8:45 am]

BILLING CODE 4310-70-M

Bureau of Land Management

43 CFR Parts 5400 and 5440

Sales of Forest Products; General; Conduct of Sales; and Procedures for Debarment of Contractors

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking is a reproposal of a rulemaking proposed on July 18, 1985 (50 FR 29324), and would amend provisions of the existing regulations in 43 CFR Part 5400, *Sales of Forest Products; General,* and Part 5440, *Conduct of Sales.* The Department of the Interior has determined that it is necessary to amend the existing regulations concerning debarment of timber sale purchasers in order to define

more precisely when debarment will occur and to provide notice and opportunity for a hearing to purchasers who are subject to debarment. The provisions of the proposed rulemaking are similar to provisions in the revised Federal Procurement Regulations on debarment, and have been determined to be suitable for timber sale contracts and to meet the requirements of the law. The Department of the Interior has determined that it is necessary to provide an opportunity for additional public review because of changes in the proposed rulemaking and the time that has passed since the rulemaking was initially proposed.

DATE: Comments should be submitted by October 5, 1987. Any comments received or postmarked after this date may not be considered in the decisionmaking process on a final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Department of the Interior, Bureau of Land Management, Room 5555 MIB, 1800 C Street, NW., Washington, DC 20240.

Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Gary Ryan, (202) 653-8864.

SUPPLEMENTARY INFORMATION: A proposed rulemaking to amend provisions of the existing regulations in 43 CFR Part 5400, *Sales of Forest Products; General*, and Part 5440, *Conduct of Sales*, was published in the Federal Register on July 18, 1985 (50 FR 29324). The proposed rulemaking was designed to correct certain deficiencies in the existing regulations on debarment.

This proposed rulemaking includes the proposal announced in 1985. Changes have been made to coordinate this rulemaking more closely with those on debarment proposed by the United States Forest Service and to respond to suggestions received during the public comment period on the 1985 rulemaking. These changes are discussed in this preamble.

Debarment excludes a person from contracting with the United States Government for a specified period of time. The Government ordinarily uses debarment to protect itself from contractors lacking present responsibility, those whose actions as a contractor indicate that for the Government to do business with them would be too risky.

The Department of the Interior, through the Bureau of Land Management (BLM), currently provides in 43 CFR 5441.1(c) that a person who defaults under a contract to purchase timber from the agency may not bid on any subsequent timber purchase contract until satisfactory arrangements have been made for payment of damages due the United States. However, the existing regulations do not focus on whether a purchaser's default was coupled with a lack of present responsibility to do business with the Government. The significant criterion in considering debarment is not a contractor's default itself, but rather whether it indicates a lack of present responsibility, so that the contractor would be a bad risk for future contracting with the Government. Also, the existing regulations provide timber purchasers no notice or opportunity to be heard when they are being considered for debarment, raising questions of due process.

To correct these problems, this proposed rulemaking would state more precisely when and under what circumstances purchasers of timber from BLM might be debarred by further defining specific actions by contractors that could indicate a present lack of responsibility, and would provide purchasers with notice and hearing procedures. This proposed rulemaking also includes provisions on the effect of debarment by another Federal agency, the appeals process to the Interior Board of Contract Appeals, and the status of potential debarees during the debarment process. These provisions are similar to those governing debarment under the Federal Procurement Regulations, but they apply only to purchasers of Federal timber. They also reflect in many instances the public comments received in response to the 1985 proposed rulemaking.

The July 18, 1985, proposed rulemaking provided the public a comment period of 60 days. A 30 day extension was granted on September 26, 1985 (50 FR 39024). The Department of Interior received 2 comments from the public. The letters were from a timber association and a law firm. The 2 letters together made 13 recommendations. Many of the recommendations are incorporated in this proposed rulemaking.

One comment contained 5 suggestions.

First, it suggested that default for failure to make timely payment on timber sales bid prior to January 1, 1982, should not be grounds for consideration for debarment. This suggestion has not been incorporated in this proposed rulemaking. The debarment regulations are not limited to timber sales made after January 1, 1982. Timber contract relief legislation enacted in 1984, commonly known as the Federal Timber Contract Payment Modification Act, afforded the forest products industry an opportunity for substantial relief. The legislative history of the statute shows that Congress deemed this relief sufficient to justify an expectation that the remaining pre 1982 timber contracts held by purchasers would be performed. There is, therefore, no reason to excuse default on these contracts. Companies currently obligated under high priced timber sales may arrange with the Bureau of Land Management to insure payment. Only in the event that such arrangements are not made, and the company lacks present responsibility to do business, would debarment be initiated.

Second, the comment suggested that only timber sales made after January 1, 1982, should be considered under the new rulemaking. For the same reason stated for the response to the first recommendation, it is not necessary to include such a provision. The rulemaking will apply prospectively to all purchasers who default on timber sale contracts after the date of final publication of this rulemaking, and to all purchasers who defaulted prior to final publication of this rulemaking and whose cases are still pending before the Department. This applicability to pending cases is justified by due process considerations.

Third, the comment offered a definition of "contract expiration date" to be incorporated in the regulations. The definition has been included in this proposed rulemaking.

Fourth, the comment recommended that a purchaser under review for possible debarment be allowed to continue to bid on timber sales. The comment suggested, however, that award of a contract should not occur until debarment review has been completed. This recommendation is equitable. Provisions clarifying a purchaser's right to continue to bid on timber sales pending debarment have been added to this proposed rulemaking through the introduction of the term "suspension" to describe the status of purchasers under review for debarment.

Fifth, the comment suggested that default on a timber sale should trigger automatic debarment. This suggestion has not been included in this proposed rulemaking. Automatic debarment for timber sale contract default cannot be considered. First, default is not the sole criterion for debarment. There also must be a showing that the purchaser lacks present responsibility to do business with the Government. Second, due process requires that notice and an

opportunity to be heard be provided for defaulting purchasers who are subject to potential debarment.

The second comment made 6 suggestions. First, the comment pointed out that the 1985 proposed rulemaking did not provide for a specific duration for debarment, if it is imposed, and suggested that paragraph (p) of proposed § 5400.0–5 be amended to establish a reasonable term for a debarment to last, not to exceed 3 years. During this time, the debarred purchaser would be excluded from award of timber sale contracts by the Bureau of Land Management. This suggestion has been included in this proposed rulemaking.

Second, the comment suggested that paragraph (q) of § 5400.0–5, the definition of Debarring Official, be changed to distinguish his or her authority from that of the Authorized Officer. The comment requested that the definition make clear that the debarring official will act solely in an adjudicatory capacity, and that all prosecutorial functions will be handled by someone else, such as the authorized officer. This suggestion has been included in this proposed rulemaking because of the importance of assuring impartiality in debarment proceedings.

Third, the comment suggested that paragraphs (c) (1) and (2) of § 5441.1 be amended to clarify that debarment cannot occur solely for failure to pay. This suggestion has been included in this proposed rulemaking. Debarment can only occur when it is shown that the purchaser has demonstrated a lack of present responsibility to do business with the Government.

Fourth, the comment suggested that paragraph (c)(3) of § 5441.1, which states the role of the Authorized Officer, should be clarified to show a separation of function between the Debarring Official and the State Director. This suggestion has been included in this proposed rulemaking, which would provide, in effect, that the authorized officer, in a quasi-prosecutorial role, will report, investigate, and refer all matters appropriate to the debarring official.

Fifth, the comment suggested that paragraph (c)(4) of § 5441.1 be expanded to provide additional information in the notice informing the purchaser that debarment is being considered. This suggestion has been included in this proposed rulemaking. The notice now would fully inform the purchaser that debarment is being considered, and state the reasons for the proposed action in terms sufficient to put the purchaser on notice of the transaction(s) upon which it is based, the potential effect of the proposed debarment, the opportunity to submit in writing information and argument opposing the proposed debarment, and the opportunity for a hearing if a genuine dispute over material facts exists.

The comment also questioned the debarring official's "preliminary approval" required before commencing debarment proceedings. The Department agrees that the term is ambiguous and has removed it from this proposed rulemaking. Under this rulemaking, debarments would be initiated by notice from the debarring official, as described above, after he or she has determined, upon reviewing the authorized officer's recommendation, that there is sufficient cause to consider debarment.

The comment also questioned why notice should be sent to the purchaser's affiliates, stating that no provision exists for debarring affiliates. The provision is not an indication that a purchaser's affiliates would automatically be subjected to debarment because of the purchaser's lack of present responsibility. Rather, this notice would advise affiliates of the difficulty in which their affiliated company is involved. However, depending upon the circumstances warranting debarment, and the nature of the affiliation, the authorized officer might initiate debarment proceedings against the affiliate of a purchaser lacking present responsibility. The key question would be whether there is sufficient cause to believe the purchaser's lack of present responsibility also affects the affiliate's present responsibility to contract with the Government. The definition of purchaser has been expanded to include affiliates of the purchaser so that this possibility can be considered. In addition, the term "affiliate" has been added to the definitions in reproposed § 5400.0–5.

Sixth, the comment suggested that § 5441.1(c)(6), the provision governing debarment proceedings, be revised to provide more fully for due process of law. This section has been amended in this proposed rulemaking to provide for a hearing in cases of disputed facts, and to state in greater detail the procedural requirements to guarantee due process.

Seventh, the comment suggested that § 5441.1(c)(7) should include a requirement that the debarring official prepare written findings of fact based upon the preponderance of the evidence. This section has been amended in this proposed rulemaking to require that the debarring official prepare written findings of fact based upon the evidence in deciding the case.

Eighth, the comment suggested that § 5441.1(d)(4) should be amended to state when and to whom applications for reinstatement should be submitted by debarred purchasers, and what standards would be applied in considering such applications. This suggestion has been included in this proposed rulemaking. The revisions reflect the view that debarment is not a punishment and will last only so long as the purchaser is a risk as a contractor with the Government. The suggestion in the comment that reinstatement should be mandatory upon a showing by the purchaser of present responsibility is rejected. Under this proposed rulemaking, reinstatement of a debarred purchaser would remain discretionary.

The principal author of this proposed rulemaking is Gary Ryan, Division of Forestry, assisted by the staff of the Office of Legislation and Regulatory Management.

It is hereby determined that this proposed rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) Its effect would be the same regardless of the size of the regulated entity, and would not be greater than $100,000,000 annually on the national economy.

Under this proposed rulemaking, individuals or firms who receive notice from the Bureau of Land Management of proposed debarment would be permitted to present facts and information pertaining to an allegation of failure to perform under a timber sale contract and/or to mitigation of damages. The rulemaking would not require any specific information or any format for the information to be provided. Therefore, the rulemaking would not impose an information collection requirement as that term is defined in Office of Management and Budget regulations at 5 CFR 1320.7.

List of Subjects

43 CFR Part 5400

Administrative practice and procedure, Forests and forest products, Public lands, Reporting and recordkeeping requirements.

43 CFR Part 5440

Forest and forest products, Government contracts, Public lands.

Under the authority of section 5 of the Act of August 28, 1937 (43 U.S.C. 1181e), and the Act of July 31, 1947, as amended (30 U.S.C. 601 *et seq.*), Subchapter E, Chapter II of Title 43 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 5400—[AMENDED]

1. The authority citation for Part 5400 is revised to read as follows:

Authority: 61 Stat. 681, as amended, 69 Stat. 367, 48 Stat. 1269, section 11, 30 U.S.C. 601 *et seq.*, 43 U.S.C. 315, 423, 1181a *et seq.* unless otherwise noted.

2. Section 5400.0–5 is amended by adding new paragraphs (p) through (x) at the end thereof to read:

§ 5400.0–5 Definitions.

* * * * *

(p) "Debarment" means action taken by a debarring official under § 5441.1–4 of this title to exclude a purchaser from bidding on or entering into contracts with the Bureau of Land Management for sale of timber for a specified period not to exceed 3 years.

(q) "Debarring official" is a Bureau of Land Management official who has been delegated adjudicatory authority to make debarment decisions under this part.

(r) "Purchaser" means any person that: (1) Submits bids or proposals for or is awarded, or reasonably may be expected to submit bids or proposals for or be awarded, a Bureau of Land Management timber sale contract, or (2) conducts business with the Government as an agent or representative of another purchaser. Affiliates of the purchaser may be considered as the purchaser.

(s) "Expiration date" means the date shown on the timber sale contract or the date of cancellation of the contract, whichever occurs first.

(t) "Affiliates" means business concerns or individuals who (1) control or are controlled by another party; or (2) are related to another party by virtue of a third party that controls or can control both. In determining whether or not affiliation exists, the Bureau of Land Management shall consider all appropriate factors, including but not limited to common ownership, common management, and contractual relationships.

(u) "Control" means the power to exercise, directly or indirectly, a controlling influence over the management, policies, or activities of an individual or business concern, whether through the ownership of voting securities, through one or more intermediary individuals or business concerns, or otherwise. For purposes of actions under these guidelines, ownership in excess of 50 percent constitutes control, ownership of 20 through 50 percent creates a presumption of control, and ownership of less than 20 percent creates a presumption of noncontrol. Such presumptions may be rebutted by evidence.

(v) "Conviction" means a judgment or conviction for a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

(w) "Notice" means a written communication served in person or by certified mail, return receipt requested, or its equivalent, to the last known address of a party, its identified counsel, or agent for service of process. In the case of an organization, such notice may be sent to any partner, principal officer, director, owner or co-owner, or joint venturer.

(x) "Suspension" means the status of a purchaser not being eligible to be awarded a BLM timber purchase contract due to being considered for debarment, but without an official determination having been made by the debarring official. During suspension, a purchaser may continue to bid on timber contracts, which shall not be awarded to any purchaser until the suspension period ends. Suspension shall not exceed 120 days.

PART 5440—[AMENDED]

3. The authority citation for Part 5440 continues to read as follows:

Authority: Sec. 5, 50 Stat. 875, 61 Stat. 631, as amended, 69 Stat. 367; 43 U.S.C. 1181e, 30 U.S.C. 601 *et seq.*

4. Section 5441.1 is amended by revising paragraph (c) to read:

§ 5441.1 Qualification of bidders.

* * * * *

(c)(1) A suspended purchaser may continue to bid on timber purchase contracts until a final debarment determination has been made by the debarring official. Contract award will not be made during the suspension.

(2) Debarred purchasers are prohibited from bidding on timber purchase contracts.

5. A new § 5441.1–4 is added to read as follows:

§ 5441.1–4 Debarment.

(a) Debarment shall be considered where a purchaser demonstrates a lack of present responsibility to do business as a government contractor. The debarring official may consider debarring a purchaser for any of the following causes:

(1) Conviction of the purchaser or an affiliate for:

(i) Theft, forgery, bribery, embezzlement, falsification or destruction of records, making false statements, or receiving stolen property;

(ii) Fraud, a criminal offense, or violation of Federal or State antitrust laws, any of which occurred in connection with (A) obtaining, (B) attempting to obtain, or (C) performing a public contract or subcontract.

(iii) Any other offense indicating a lack of business integrity or honesty that seriously and directly affects the present responsibility of the purchaser.

(2) A civil judgment against the purchaser or an affiliate for claims arising out of any of the offenses listed in paragraph (a)(1) of this section.

(3) Cutting and/or removal of more than incidental volumes of undesignated timber from public land.

(4) Substantial violation of the terms of one or more government timber sale contracts so serious that debarment is necessary to protect the government's interest, including but not limited to:

(i) Willful failure to perform in accordance with contract terms; or

(ii) A history of failure to perform contract terms or of unsatisfactory performance of contract terms. Among actions regarded as serious enough to justify debarment are the willful violation of or repeated failure to perform or satisfactorily perform timber sale contract provisions relating to the following:

(A) Fire suppression, fire prevention, and the disposal of slash;

(B) Protection of soil, water, wildlife, range, cultural and timber resources, and protection of improvements when such failure causes significant environmental, resource, or improvements damage;

(C) Removal of designated timber when such failure causes substantial product deterioration or conditions favorable to insect epidemics;

(D) Observance of restrictions on export of timber;

(E) Observance of restrictions on the disposal of timber from small business set-aside sales;

(F) Payment for timber designated for cutting and removal;

(G) Providing access, upon request by the authorized officer, to purchaser's books and accounts;

(H) Payment of damages relating to failure to cut and/or remove designated timber by the termination dates.

(5) Debarment of the purchaser or an affiliate by another Federal agency that sells timber.

(6) Any other cause so serious or compelling that it affects the present responsibility of a purchaser of Government timber.

(7) The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a purchaser may be imputed to a purchaser when the conduct occurred in connection with the individual's performance of duties for or on the behalf of the purchaser or with the purchaser's knowledge, approval, or acquiescence. The purchaser's acceptance of the benefits derived from the contract shall be prima facie evidence of such knowledge, approval, or acquiescence.

(8) The fraudulent or criminal of a purchaser may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the purchaser who participated in, knew of, or had reason to know of the purchaser's conduct.

(9) The fraudulent, criminal, or other seriously improper conduct of one purchaser participating in a joint venture or similar arrangement may be imputed to other participating purchasers if the conduct occurred for or on behalf of the joint venture or similar arrangement or with the knowledge, approval, or acquiescence of those purchasers. Acceptance of the benefits derived from the conduct shall be prima facie evidence of such knowledge, approval, or acquiescence.

(b) The authorized officer shall report to the debarring official any information relating to the basis for debarment of a timber purchaser, including a complete statement of the facts, appropriate exhibits, and a recommendation for action, and shall advise the State Director of all debarment activity.

(c) When the debarring official determines that sufficient cause exists to consider debarment, he or she shall initiate formal debarment proceedings by giving notice to purchasers being considered for debarment and any specially named affiliates by certified mail, return receipt requested, as follows:

(1) That debarment is being considered.

(2) The reasons for the proposed debarment in terms sufficient to put the purchaser on notice of the transaction(s) upon which it is based;

(3) The potential effect of the proposed debarment; and

(4) That the purchaser is entitled to a hearing if a dispute over material facts exists.

(d) The purchaser, within 30 days after receipt of the notice, may submit in writing, either in person or through a representative, information in opposition to the proposed debarment, including any additional specific information that raises a genuine dispute over the material facts.

(e) If a dispute over material facts exists, the debarring official at the purchaser's request shall hold an informal hearing within 20 calendar days of such request. Any statements, records, or exhibits submitted by the purchaser and by the Bureau of Land Management at this hearing shall become part of the debarment decision record.

(f) The debarring official shall make a decision on the basis of all the information in the record, including any submission made by the purchaser. The decision shall be made within 30 days after receipt of any information and arguments submitted by the purchaser, unless the debarring official determines that there is good cause to extend this period. If a hearing was convened at the purchaser's request, the debarring official shall prepare written findings of fact based upon the evidence in the record.

(g)(1) If the debarring official decides to impose debarment, the purchaser and any affiliates involved shall be given prompt notice by certified mail, return receipt requested, as follows:

(i) The notice of proposed debarment shall be referred to:

(ii) The reasons for debarment shall be specified; and

(iii) The period of debarment including effective date shall be stated.

(iv) Instructions as to how an appeal of the debarring official's decision is to be filed with the Interior Board of Contract Appeals.

(2) If a debarment is not imposed the debarring official shall promptly notify the purchaser and any affiliates involved of the decision by certified mail return receipt requested.

(h)(1) The debarring official shall compile and maintain a current list of debarred timber purchasers. This list shall be distributed to all State Directors, the General Services Administration, the General Accounting Office, and other Federal agencies requesting it.

(2) The list of debarred purchasers shall contain the following information:

(i) The names and addresses of all debarred purchasers.

(ii) The cause of the action.

(iii) Any limitations to or deviations from the normal effect of debarment.

(iv) The effective date of the action.

(v) The name and telephone number of the person in the Bureau of Land Management with information about the debarment.

(3) Purchasers debarred in accordance with this section shall be excluded from receiving Bureau of Land Management timber sale contracts and the Bureau shall not solicit offers from, award contracts to, or consent to subcontracts with these purchasers unless the Director or authorized representative determines that there is a compelling reason for such action. This determination shall be documented in writing.

(4) During the period of debarment, a debarred purchaser may apply to the debarring official to contract with the Bureau of Land Management and may be reinstated if the debarring official determines that he or she demonstrates a present responsibility to do business as a government contractor.

James E. Cason,

Acting Assistant Secretary of the Interior.

July 6, 1987

[FR Doc. 87-17070 Filed 8-3-87; 8:45 am]

BILLING CODE 4310-84-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1206 and 1249

[Docket No. 39953 Sub-No. 1]

Revision to the Accounting and Reporting Requirements for Motor Carriers of Passengers

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Interstate Commerce Commission proposes to change the levels of gross annual carrier operating revenues which define the classes of motor carriers of passengers for accounting and reporting purposes. The Commission also proposes to make operating revenues of motor carriers of passengers subject to Commission indexing procedures for classification purposes. The Commission recommends that the current $3 million Class I classification level be increased to $5 million after applying the revenue deflation formula. These changes would further reduce the number of carriers subject to the Commission's accounting requirements and further reduce the reporting burden.

DATES: This proposed revision would be effective for the year beginning January 1, 1988, based on reports of operations for the year 1987 and prior years, after applying the revenue deflator formula. Comments are due 45 days from the date of publication in the **Federal Register**.

ADDRESS: An original and 10 copies, if possible, of any comments should be sent to: Docket No. 39953 Sub-No. 1, Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: William F. Moss, III, Chief, Section of Audit and Accounting, (202) 275–7510.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area).

This action will not significantly affect either the quality of the human environment or energy conservation. This rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects

49 CFR Part 1206

Buses, Motor carriers, Uniform system of accounts.

49 CFR Part 1249

Motor carriers, Reporting and recordkeeping requirements.

Parts 1206 and 1249 of Title 49 of the Code of Federal Regulations are proposed to be amended as set forth below.

Decided: July 27, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Vice Chairman Lamboley and Commissioner Simmons would have rejected the decision and notice.

Noreta R. McGee,

Secretary.

Parts 1206 and 1249 of Title 49 of the Code of Federal Regulations would be amended as follows:

PART 1206—PASSENGERS

1. In 49 CFR Part 1206, the authority citation would continue to read as follows:

Authority: 49 U.S.C. 10321, 11142 and 11145; 5 U.S.C. 553.

§ 1206.2 [Amended]

2. In § 1206.2, under INSTRUCTIONS, Instruction 2–1, *Classification of Carriers*, is revised to read as follows:

2–1 Classification of carriers.

(a) For the purpose of accounting and reporting regulations, common and contract carriers of passengers subject to the Interstate Commerce Act are grouped into the following two classes:

Class I—Carriers having average annual gross transportation operating revenues (including interstate and intrastate) of $5 million or more passenger motor carrier operations after applying the revenue deflator formula as shown in the Note.

Class II—Carriers having average annual gross transportation operating revenues (including interstate or intrastate) of less than $5 million from passenger motor carrier operations after applying the revenue deflator formula as shown in the Note.

(b)(1) The class to which any carrier belongs shall be determined by annual carrier operating revenues after applying the revenue deflator formula as shown in the Note. Upward and downward reclassification will be effected as of January 1 of the year immediately following the third consecutive year of revenue qualification.

(2) Any carrier which begins new operations (obtains operating authority not previously held) or extends its existing authority (obtains additional operating rights) shall be classified in accordance with a reasonable estimate of its annual carrier operating revenues after applying the revenue deflator formula shown in the Note.

(3) When a business combination occurs, such as a merger, reorganization, or consolidation, the surviving carrier shall be reclassified effective as of January 1 of the next calendar year on the basis of the combined revenues for the year when the combination occurred after applying the revenue deflator formula shown in the Note.

(4) Carriers shall notify the Commission of any change in classification or when their annual operating revenues exceed the Class I limit by writing to the Bureau of Accounts, Interstate Commerce Commission, Washington, DC 20423. In unusual circumstances where the classification regulations and reporting requirements will unduly burden the carrier, the carrier may request from the Commission a waiver from these regulations. This request shall be in writing specifying the conditions justifying the waiver. The Commission then shall notify carriers of any change in classification or reporting requirements.

(c) For classification purposes, the Commission shall publish in the **Federal Register** annually an index number which shall be used for adjusting gross annual operating revenues. The index number (deflator) is based on the Producer Price Index of Finished Goods and is used to eliminate the effects of inflation from the classification process.

Note: Each carrier's operating revenues will be deflated annually using the Producers Price Index (PPI) of Finished Goods before comparing them with the dollar revenue limits prescribed in paragraph (a). The PPI is published monthly by the Bureau of Labor Statistics. The formula to be applied is as follows:

$$\text{Current year's annual operating revenues} \times \frac{\text{1986 average PPI}}{\text{Current year's average PPI}} = \text{Adjusted annual operating revenues}$$

PART 1249—REPORTS ON MOTOR CARRIERS

1. In 49 CFR Part 1249, the authority citation for Part 1249 would continue to read as follows:

Authority: 49 U.S.C. 11142 and 11145; 5 U.S.C. 553.

2. Section 1249.3, Classification of Carriers—Motor Carriers of Passengers would be revised to read as follows:

§ 1249.3 Classification of carriers—motor carriers of passengers.

(a) Common and contract carriers of passengers subject to the Interstate Commerce Act are grouped into the following two classes:

Class I—Carriers having average annual gross transportation operating revenues (including interstate and intrastate) of $5 million or more from passenger motor carrier operations after applying the revenue deflator formula as shown in the Note.

Class II—Carriers having average annual gross transportation operating revenues (including interstate and intrastate) of less than $5 million from passenger motor carrier operations after applying the revenue deflator formula as shown in the Note.

(b)(1) The class to which any carrier belongs shall be determined by annual carrier operating revenues after

applying the revenue deflator formula as shown in the Note. Upward and downward reclassification will be effected as of January 1 of the year immediately following the third consecutive year of revenue qualification.

(2) Any carrier which begins new operations (obtains operating authority not previously held) or extends its existing authority (obtains additional operating rights) shall be classified in accordance with a reasonable estimate of its annual carrier operating revenues after applying the revenue deflator formula shown in the Note.

(3) When a business combination occurs, such as a merger, reorganization, or consolidation, the surviving carrier shall be reclassified effective as of January 1 of the next calendar year on the basis of the combined revenues for the year when the combination occurred after applying the revenue deflator formula shown in the Note.

(4) Carriers shall notify the Commission of any change in classification or when their annual operating revenues exceed the Class I limit by writing to the Bureau of Accounts, Interstate Commerce Commission, Washington, DC 20423. In unusual circumstances where the classification regulations and reporting requirements will unduly burden the carrier, the carrier may request from the Commission a waiver from these regulations. This request shall be in writing specifying the conditions justifying the waiver. The Commission then shall notify carriers of any change in classification or reporting requirements.

(c) For classification purposes, the Commission shall publish in the **Federal Register** annually an index number which shall be used for adjusting gross annual operating revenues. The index number (deflator) is based on the Producer Price Index of Finished Goods and is used to eliminate the effects of inflation from the classification process.

Note: Each carrier's operating revenues will be deflated annually using the Producers Price Index (PPI) of Finished Goods before comparing them with the dollar revenue limits prescribed in paragraph (a). The PPI is published monthly by the Bureau of Labor Statistics. The formula to be applied is as follows:

$$\text{Current year's annual operating revenues} \times \frac{\text{1986 average PPI}}{\text{Current year's average PPI}} = \text{Adjusted annual operating revenues}$$

[FR Doc. 87-17641 Filed 8-3-87; 8:45 am]

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Notices

Federal Register
Vol. 52, No. 149
Tuesday, August 4, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of National Security Investigation of Imports of Anti-Friction Bearings

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of an investigation under section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862), and request for comments.

SUMMARY: This notice is to advise the public that an investigation is being conducted under section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862), to determine the effects on the national security of imports of anti-friction bearings. Interested parties are invited to submit written comments, opinions, data, information or advice relative to the investigation to the Strategic Analysis Division, Office of Industrial Resource Administration, U.S. Department of Commerce.

DATE: Comments must be received not later than October 5, 1987. Written comments should be addressed to: Steven C. Goldman, Director, Strategic Analysis Division, Office of Industrial Resource Administration, International Trade Administration, U.S. Department of Commerce, Room 3878, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Steven C. Goldman, Director, or Edward Levy, Section 232 Investigations Program Manager, Strategic Analysis Division, Office of Industrial Resource Administration, International Trade Administration, U.S. Department of Commerce, Room 3878, Washington, DC 20230, (202) 377–4060.

SUPPLEMENTARY INFORMATION: In an application submitted by the Anti-Friction Bearing Manufacturers Association on July 17, 1987, the Secretary of Commerce was requested to initiate an investigation under section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862), to determine the effect on the national security of imports of anti-friction bearings. On July 28, 1987 the Department of Commerce confirmed receipt of and accepted the application requesting an investigation. The findings and recommendations of the investigation will be reported by the Secretary of Commerce to the President no later than July 17, 1988.

The articles to be investigated include all ball and roller bearings, including bearing parts and mounted bearings. These items are currently described by Standard Industrial Classification Code 3562, and are currently classifiable in the Tariff Schedules of the United States Annotated (1981) at items 680.3025 through 680.4170.

This investigation is being undertaken in accordance with Part 359 of Title 15 of the Code of Federal Regulations (15 CFR Part 359) ("the regulations"). Interested parties are invited to submit written comments, opinions, data, information or advice relevant to this investigation to the Office of Industrial Resource Administration, U.S. Department of Commerce, no later than (60 days from publication).

The Department is particularly interested in comments and information directed to the criteria listed in § 359.4 of the regulations (15 CFR 359.4) as they affect national security, including the following:

(a) Quantity of and circumstances related to the importation of the articles subject to the investigation;

(b) Domestic production and productive capacity needed for these articles to meet anticipated national security requirements;

(c) Existing and potential availability of skilled labor, raw materials, production equipment, and facilities to produce these items.

(d) Growth requirements of domestic industries to meet national security requirements and/or requirements to assure such growth;

(e) The impact of foreign competition on the economic welfare and on the capacity of the domestic industry to meet national security needs;

(f) The impact of imports on domestic competition, productivity, and the strength of the domestic industry to meet national security requirements.

All materials should be submitted with 10 copies. Public information will be made available at the Department of Commerce for public inspection and copying. Material that is national security classified information or business confidential information is subject to the provisions of § 359.6 of the regulations (15 CFR 359.6).

The public record concerning this investigation will be maintained in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 1104, U.S. Department of Commerce, 14th and Pennsylvania Avenue NW., Washington, DC 20230. The records in this facility may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations.

Information about the inspection and copying of records at the facility may be obtained from Patricia L. Mann, International Trade Administration's Freedom of Information Officer (202–377–3031).

If deemed appropriate by the Department, public hearings may be held to elicit further information as provided in § 359.6 (15 CFR 359.6) of the regulations. Notice will be published in the **Federal Register**, giving the time, place, and matters to be considered at such hearing(s) so that interested parties will have an opportunity to participate.

John A. Richards,
Director, Office of Industrial Resource Administration.
July 29, 1987.

[FR Doc. 87–17610 Filed 8–3–87; 8:45 am]
BILLING CODE 3510–DT–M

National Oceanic and Atmospheric Administration

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The New England Fishery Management Council will convene a public meeting at the King's Grant Inn, Danvers, MA, to discuss reports of the lobster, groundfish, foreign fishing, sea scallop, Atlantic salmon, large pelagics, environmental affairs, surf clams/ocean quahogs and enforcement oversight

committees; discuss the status of bluefish, reports on habitat and the uniform standards; and to discuss Mid-Atlantic Committee policy, as well as other fishery management and administrative matters. The Council also may convene a closed session (not open to the public) to discuss personnel and/or national security matters. The public meeting will convene August 10, 1987, at approximately 10 a.m. and will adjourn on August 11 at approximately 4 p.m.

FOR FURTHER INFORMATION CONTACT: Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway, (Route One), Saugus, MA 01906; telephone: (617) 231-0422.

Date: July 30, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 87-17679 Filed 8-3-87; 8:45 am]

BILLING CODE 3510-22-M

Patent and Trademark Office

Public Advisory Committee for Trademark Affairs; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee meeting:

The Public Advisory Committee for Trademark Affairs will meet from 10:00 a.m. until 5:00 p.m. on September 16, 1987, at the U.S. Patent and Trademark Office in Room 11C24 of Building 3, Crystal Plaza, located at 2021 Jefferson Davis Highway, Arlington, Virginia.

The agenda for the meeting is as follows:

(1) Automation Activities.

(2) Financial Reporting.

(3) Quality of the Registration Process.

(4) Intent to Use Legislation.

The meeting will be open to public observation; approximately twelve (12) seats will be available for the public on a first-come first-served basis.

If time permits, oral comments by the public of three (3) minutes on each topic within the above agenda will be allowed. Written comments and suggestions will be accepted before or after the meeting on any of the matters discussed.

Copies of the minutes will be available upon request.

FOR FURTHER INFORMATION CONTACT: Carlisle E. Walters, Office of the Assistant Commissioner for Trademarks, Room CP3-11C17, Patent and Trademark Office, Washington, DC 20231. Telephone: 703-557-7464.

Approved:

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

Date: July 27, 1987.

[FR Doc. 87-17652 Filed 8-3-87; 8:45 am]

BILLING CODE 3510-16-M

COMMISSION ON CIVIL RIGHTS

Kentucky Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Kentucky Advisory Committee to the Commission will convene at 8:30 a.m. and adjourn at 4:00 p.m., on August 21, 1987, at the Seelbach Hotel, 500 Fourth Avenue, Louisville, Kentucky. The purpose of the meeting is to conduct a community forum on the status of civil rights in Louisville and to develop program ideas and activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Porter G. Peeples, Sr., or Melvin Jenkins, Director of the Central Regional Division (816) 374-5253, (TDD 816/374-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 27, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87-17594 Filed 8-3-87-87; 8:45 am]

BILLING CODE 6335-01-M

Michigan Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Michigan Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 5:00 p.m., on August 25, 1987, at the Days Inn, 500 South Capital, Lansing, Michigan. The purpose of the meeting is to conduct program planning and to hold a community forum on the status of civil rights in Michigan.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Charles Tobias, or Melvin Jenkins, Director of the Central Regional Division (816) 374-5253, (TDD 816/374-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 27, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87-17595 Filed 8-3-87; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information:

(1) Type of submission;

(2) Title of Information Collection and applicable OMB Control Number and Form Number;

(3) Abstract statement of the need for and the uses to be made of the information collected;

(4) Type of Respondent;

(5) An estimate of the number of responses;

(6) An estimate of the total number of hours needed to provide the information;

(7) To whom comments regarding the information collection are to be forwarded; and

(8) The point of contact from whom a copy of the proposed information collection may be obtained.

This information collection is as follows:

(1) New;

(2) "The Impact of AIDS on the U.S. Army: Interviews with Seropositive Applicants for Military Service," Survey Questionnaire;

(3) A modified Centers for Disease Control, no known risk, form will be used by trained personnel to interview military recruit applicants. The applicants have been identified as positive for human immunodeficiency virus (HIV). Information gained will be uniquely important for designing intervention programs, for targeting high risk groups, for screening and health

education, and for assessing the efficacy of prevention efforts. Data currently available may not reflect the current state of the epidemic. This research effort will provide as broad-based, national surveillance system for determining the geographical spread of the epidemic and the risk factors most associated with its spread;

(4) Individuals or Households;

(5) Current responses of 1200;

(6) Current burden hours of 2,400;

ADDRESSES: (7) Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone 202/746–0933.

FOR FURTHER INFORMATION CONTACT: (8) A copy of the information collection proposal may be obtained from Mr. Vitiello, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone 202/746–0933.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 29, 1987.

[FR Doc. 87–17613 Filed 8–3–87; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection system concerning Quality Assurance Requirements.

ADDRESS: Send comments to Mr. Ed Springer, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein, Office of Federal Acquisition and Regulatory Policy (202) 523–3775.

SUPPLEMENTARY INFORMATION:

a. *Purpose:* Supplies and services acquired under Government contracts must conform to the contracts' quality and quantity requirements. FAR Part 46 prescribes inspection, acceptance, warranty, and other measures associated with quality requirements. Standard clauses related to inspection (a) require the contractor to provide and maintain an inspection system that is acceptable to the Government, (b) give the Government the right to make inspections and test while work is in process; and (c) require the contractor to keep complete, and make available to the Government records of its inspection work.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, 950; responses per respondent, 1; total annual responses, 950; hours per response, .25; and total burden hours, 237.5; number or recordkeepers, 58,100; hours per recordkeeper per year, .75; total recordkeeping hours 43,575; and total burden hours (responses and recordkeeping hours/year), 43,812.5.

Obtaining Copies of Proposals: Requesters may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0077, Quality Assurance Requirements.

Dated: July 23, 1987.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 87–17625 Filed 8–3–87; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF DEFENSE

Environmental Impact Statement; Strategic Defense Initiative Technologies Transition

AGENCY: Strategic Defense Initiative Organization, DOD.

ACTION: Availability of findings of no significant impact.

SUMMARY: The Department of Defense has prepared findings of no significant impact on the basis of seven environmental assessments related to a decision to transition six Strategic Defense Initiative (SDI) technologies from the "Concept Exploration" phase to the "Demonstration/Validation" phase of the Department of Defense (DoD) major systems acquisition management process. The assessments indicate a potential impact at the U.S. Army Kwajelein Atoll (USAKA). The U.S. Army Strategic Defense Command will file a Notice of Intent to prepare an environmental impact statement for USAKA activities. Pursuant to regulations of the Council on Environmental Quality and DoD, a final determination on whether to prepare environmental impact statements for all other Demonstration/Validation activities will be made upon expiration of a 30 day period commencing August 4, 1987.

Background

The Department of Defense major system acquisition procedures, set forth in DoD Directive 5000.1, provide for milestone reviews of major programs by the Defense Acquisition Board (DAB) chaired by the Under Secretary of Defense, Acquisition. DAB recommendations are forwarded to the Secretary of Defense for final approval. Major milestones are Zero, "Concept Exploration"; One, "Demonstration/Validation" (Dem/Val); Two, "Full Scale Development" (FSD), and Three, "Production/Deployment."

DoD implements the National Environmental Policy Act (NEPA) of 1969, Pub. L. No. 91–90 (1970), 42 U.S.C. 4321, 4331–4335, 4341–4347 (1976) and NEPA Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA, 40 CFR Parts 1500 through 1508, in DoD Directive 6050.1. With respect to acquisition of major weapons systems, actions that may have a significant impact on the environment do not normally occur before full scale development because the level of building and testing that occurs daring concept exploration and demonstration/validation is well within the capabilities and routine activities of existing facilities and test ranges.

The SDI is a vigorous research program that will provide the basis for an informed decision regarding the feasibility of eliminating the threat posed by nuclear ballastic missiles of all ranges. It is organized around technologies which have, as objectives, the detection, tracking and destruction of nuclear missiles during each of their four successive stages of flight: boost, post-boost, mid course and reentry. The six technologies proposed for advancement to Dem/Val, and described briefly below, are for a space-based, boost phase sensor; a space-based, boost phase interceptor; two mid course sensors; and one ground-based, mid course interceptor. The sixth

technology is comprised of battle management or the command, control and communications that would coordinate the other elements in a defense against a ballistic missile attack. While Dem/Val activity for each individual technology is not likely to have a significant environmental impact, the Strategic Defense Initiative Organization recognizes that a decision to advance six technologies could have a potentially significant impact on the environment of the U.S. Army Kwajelein Atoll (USAKA) facilities in the Marshall Islands, to which NEPA is applicable pursuant to a Compact of Free Association between the U.S. Government and the Government of the Republic of the Marshall Islands (RMI), 48. U.S.C. 1681.

SDIO has completed six assessments analyzing the environmental impacts of transitioning six technologies to demonstration and validations. A seventh assessment addresses potential cumulative impacts at locations where demonstration and validation testing of more than one technology will be conducted. The environemntal assessments concluded that, with the exceptionof activities at USAKA in the Marshall Islands, there would be no significant impacts and, accordingly, Findings of No Significant Impact have been signed for each of the six technologies and the seventh summary assessment. With respect to USAKA, the assessment showed that planned SDI demonstration and validation testing considered along with other SDI and DoD activities planned at that location, could potentially have an impact. The Strategic Defense Command, U.S. Army, will prepare an Environmental Impact Statement (EIS) addressing the foreseeable construction and operations at USAKA. No SDI Flight testing associated with these 6 technologies will be conducted at USAKA before completion of that EIS.

The decision to approve transition of six technologies to demonstration and validation will be made in the context of approving the concept that deployment, if any, or a ballistic missile defense system would be made in phases, beginning with those technologies that have reached a stage of maturity sufficient to provide an effective response to known and reasonably foreseeable evolving threats. While an advance from concept exploration, the demonstration/validation phase occurs several years before decisions would be made on whether to advance to engineering development.

In the case of SDI, the six technology Dem/Val activities that will occur over the next several years will be constrained not only by technological objectives of the Dem/Val phase, but also by limitations of the 1972 Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Limitation of Anti-Ballistic Missile systems (ABM Treaty). Any decision to advance those six-technologies beyond Dem/Val (Milestone 1) to Full Scale Development (Milestone 2) will consider not only their technological maturity, but also the maturity of technologies currently planned for later phases (e.g., Ground or Space Based laser interceptors) and broad national security interests. Any such decision would also be based on appropriate environmental analysis.

Candidate Technologies

Assessments were prepared on six candidate technologies being considered by the Defense Acquisition Board for entry into the Demonstration and Validation phase of weapons system acquisition pursuant to DOD Directive 5000.1. Certain test and demonstration activities will result from the Defense Acquisition Board's decision. The six candidate technologies are briefly described below.

Ground-based Surveillance and Tracking System: This technology would provide the capability to search, acquire, track, discriminate and transfer sensor data concerning potentially hostile ballistic missile targets. Test and demonstration activities include data analysis, simulation, hardware assembly and flight testing at several government and contractor facilities.

Space-based Surveillance and Tracking System: This technology would provide ballistic missile surveillance and tracking capability, as well as timely attack warning and verification. Test and demonstration activities include data analysis, simulations, hardware assembly and flight testing at several government and contractor facilities.

Exoatmospheric Reentry Vehicle Interception System: This technology would provide the capability to intercept and destroy hostile intercontinental or submarine-launched ballistic missiles in the midcourse phase of their flight. Test and demonstration activities include data analysis, simulation hardware assembly and flight testing at several existing government and contractor facilities.

Space-Based Interception System: This technology would provide the capability to use kinetic energy as the mechanism for intercepting intercontinental and submarine-launched ballistic missiles in the powered and unpowered portions of their flight. Test and demonstration activities include data analysis, simulation, hardware assembly and flight testing at several government and contractor facilities.

Battle Management/Command and Control, and Communications: This technology would provide the capability to coordinate a multitiered defense against ballistic missile attacks. Test and demonstration activities include data analysis, simulations and hardware assembly at several government and contractor facilities.

Boost Surveillance and Tracking System: This technology would provide the capability to detect and track intercontinental and submarine-launched ballistic missiles during their boost phase. Test and evaluation activities include data analysis, simulations, hardware assembly and flight testing at several government and contractor facilities.

Environmental Consequences

The staff of the Department of Defense, Strategic Defense Initiative Organization, has evaluated the environmental impacts of the proposed action to move to Demonstration and Validation of the six candidate technologies and has found that there are no significant impacts on the quality of the human environment except those potential impacts associated with flights test activities at USAKA. A brief summary of the conclusions reached for each of the six technologies is provided below.

Ground-based Surveillance and Tracking System: No potentially significant impacts are identified for any of the test activities at the Nevada Test Site, The National Test Facility, Vandenberg AFB or the Western Test Range. Potential impacts could occur at USAKA. These potential impacts include the possible degradation of water quality around the islands, the possible degradation of the marine habitat of two species and possible socioeconomic impacts as a result of population increases. An EIS for the entire range of operations at this facility, to include those associated with SDI Dem/Val activities, will be prepared and necessary mitigations identified. No SDS Dem/Val testing activities at USAKA will begin until that document is completed.

Space-based Surveillance and Tracking System: No potentially significant impacts are identified for any of the test activities to be conducted at the Nevada Test Site, The Western Test Range, Vandenberg AFB, Cape

Canaveral AFS, the Kennedy Space Center, or The Eastern Test Range. Planned activities for those locations are within the capacity of ongoing programs and will require no significant facility construction. Analysis and simulation exercises will be conducted at the National Test Facility. A separate Environmental Assessment has addressed the effects of construction and operation of the National Test Facility. The assessment predicted only minor erosion impacts during construction and minor air quality, groundwater supply and vehicle traffic impacts during operations, due only to personnel volume. At Arnold Engineering Development Center a new space simulation chamber might be constructed. If it is, it will be completed with accepted practice to mitigate impacts and no significant impacts to the environment are identified.

Exoatmospheric Reentry Vehicle Interception System: No potentially significant impacts are identified from activities at Arnold Engineering Development Center, The Nevada Test Site, Harry Diamond Laboratories, Vandenberg AFB, The Western Test Range or the Pacific Missile Range. No significant impacts are expected at the National Test Facility as explained above. Potential impacts were identified at USAKA as explained above.

Battle Management/Command and Control, and Communications: No potentially significant impacts were identified for any of the test activities at Rome Air Development Center, The Electronic Systems Division at Hanscom AFB, the Nevada Test Site, Harry Diamond Laboratories, or the Army Advanced Research Center. In all cases the test activities are well within the existing capacity of the facility and no significant construction will occur. No significant impacts are expected at the National Test Facility as explained above.

Space-Based Interception System: SDIO staff identified no potentially significant impacts from any of the test activities at Eglin AFB or Edwards AFB. These activities are well within the existing capacity of the facilities and no facility construction will occur. Engineers will conduct analysis and simulations at the National Test Facility where minor impacts have been predicted as explained above. No significant impacts are expected at the National Test Facility as explained above. Potential impacts were identified at USAKA as explained above.

Boost Surveillance and Tracking System: No potentially significant impacts were identified for any of the test activities at any location except Cape Canaveral AFS. Launches of the Titan IV could cause impacts from rocket motor burnoff and noise. A separate assessment for the development of the Titan IV launch facility assessed these impacts and found that, with proper mitigation, they were insignificant.

Findings of No Significant Impact

Based upon the foregoing, the DoD has concluded that the proposed action will not significantly impact the quality of the human environment with possible exception of flight test activities at USAKA. An Environmental Impact Statement for the entire range of operations at USAKA will be prepared, and no SDI Dem/Val test activities will be conducted at that facility until it is complete.

Copies may be obtained from: SDIO/EA, P.O. Box 3509, Reston, VA 22090-1509, (202) 693-1081.

Linda M. Lawson,

Alternative OSD Federal Register Liaison Officer, Department of Defense.

July 31, 1987.

[FR Doc. 87-17763 Filed 8-3-87; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER87-507-000 et al.]

Electric Rate and Corporate Regulation Filings; Florida Power & Light Co. et al.

July 29, 1987.

Take notice that the following filings have been made with the Commission:

1. Florida Power & Light Company

[Docket No. ER87-507-000]

Take notice that Florida Power & Light Company (FPL) on July 20, 1987, tendered for filing a letter which amends FPL's filing submitted to the Commission on June 22, 1987, in this docket.

FPL states in the letter that an amended page 1 of 4 of two revised Exhibits A provides for revised Contract Demands for the City of Jacksonville Beach and the City of Green Cove Springs respectively, under Rate Schedule PR-3 of FPL's FERC Electric Tariff Second Revised Volume No. 1. The proposed effective date for the contract demands is as originally requested, June 1, 1987.

Comment date: August 13, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. Montana Power Company

[Docket No. ER87-538-000]

Take notice that on July 17, 1987, the Montana Power Company tendered for filing pursuant to section 205 of the Federal Power Act an agreement dated May 6, 1987 for the sale of firm energy to the Sierra Pacific Power Company during the period from June 15, 1987 through November 30, 1987.

MPC has requested waiver of the notice provisions of Section 35.3 of the Commission's regulations in order to permit the agreement to become effective as of June 15, 1987 in accordance with its terms.

Comment date: August 13, 1987, in accordance with Standard Paragraph E at the end of this notice.

3. Florida Power & Light Company

[Docket No. ER87-539-000]

Take notice that on July 20, 1987, Florida Power & Light Company (FPL) tendered for filing a document entitled Amendment Number Thirteen to Revised Agreement to Provide Specified Transmission Service Between Florida Power & Light Company and Tampa Electric Company (Rate Schedule FERC No. 57).

FPL states that under Amendment Number Thirteen, FPL will transmit power and energy for Tampa Electric Company as is required in the implementation of its interchange agreement with the Utility Board of the City of Key West, Florida.

FPL requests that waiver of § 35.3 of the Commission's regulations be granted and that the proposed Amendment be made effective immediately. FPL states that copies of the filing were served on Tampa Electric Company.

Comment date: August 13, 1987, in accordance with Standard Paragraph E at the end of this document.

4. Portland General Electric Company

[Docket No. ER87-543-000]

Take notice that Portland General Electric Company (PGE) on July 23, 1987 tendered for filing (i) a Sale and Exchange Agreement with Southern California Edison Company for the sale during a 25-year period beginning on January 1, 1988 of firm energy and capacity and economy energy and during a 20-year period beginning on November 1, 1990 for the seasonal exchange of capacity and associated energy, (ii) the Certificate of Concurrence for Southern California Edison Company.

The Sales Agreement provides for the payment of an annual fee and for the energy to be sold based upon PGE's

incremental cost of production plus an additional amount for fixed charges plus the costs of transmission.

PGE states that the reason for the proposed Sales Agreement, which is the result of a mutually beneficial negotiation, is to allow it to recover a portion of its fixed charges applicable to certain of its thermal generating resources when they are not being utilized to serve its system loads. These thermal resources may be displaced, depending upon prevailing water conditions by PGE's hydroelectric or other resources.

PGE requests an effective date of January 1, 1986 and therefore requests a waiver of the Commission's notice requirements.

Comment date: August 13, 1987, in accordance with Standard Paragraph E at the end of this notice.

5. Portland General Electric Company

[Docket No. ER87-545-000]

Take notice that on July 24, 1987, Portland General Electric Company (PGE) tendered for filing a Sales Agreement with the Sacramento Municipal Utility District, which provides for sale from January 21, 1987 through March 15, 1987 of 64,800 MWh of firm energy deliverable at rates not in excess of 50 MW per hour, and a Notice of Cancellation of the Sales Agreement. PGE states that this Sales Agreement has expired by its own terms.

The contract rate, 17 mills/kWh, is based upon its incremental cost of production plus an additional amount for fixed charges (not exceeding fully distributed fixed charges) plus the cost of transmission.

PGE states that the reason for the proposed Sales Agreement is to allow it to recover a portion of its fixed charges applicable to certain of its thermal generating resources during a short period of time when they are not required for its system loads.

PGE requests an effective date of January 21, 1987 and, therefore, requests a waiver of the Commission's notice requirements.

Copies of the filing have been served upon the Sacramento Municipal Utility District and the Oregon Public Utility Commissioner.

Comment date: August 13, 1987, in accordance with Standard Paragraph E at the end of this notice.

6. Portland General Electric Company

[Docket No. ER87-546-000]

Take notice that on July 24, 1987, Portland General Electric Company (PGE) tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 53. PGE states that this rate schedule has expired by its own terms.

PGE requests an effective date of February 28, 1987, and therefore requests a waiver of the Commission's notice requirements.

Notice of the proposed cancellation has been served upon the following parties: State of California Department of Water Resources, Oregon Public Utility Commissioner.

Comment date: August 13, 1987, in accordance with Standard Paragraph E at the end of this notice.

7. Southern California Edison Company

[Docket No. ER87-540-000]

Take notice that on July 21, 1987, Southern California Edison Company (SCE) tendered for filing proposed cancellation of Rate Schedule FERC No. 175, Edison-Burbank Firm Transmission Service Agreement between SCE and the City of Burbank; FERC No. 176, Edison-Glendale Firm Transmission Service Agreement between SCE and City of Glendale; and FERC No. 177, Edison-Pasadena Firm Transmission Service Agreement between SCE and City of Pasadena.

SCE states that the service under each of these Agreements expired under its own terms and SCE terminated the Agreements on June 8, 1987. SCE respectfully requests waiver of prior notice requirements and request an effective date of May 1, 1986, to the cancellation of Rate Schedule FERC Nos. 176 and 177 and June 1, 1986 for Rate Schedule FERC No. 175.

Comment date: August 13, 1987, in accordance with Standard Paragraph E at the end of this document.

8. South Carolina Electric & Gas Company

[Docket No. ER87-541-000]

Take notice that South Carolina Electric & Gas Company on July 22, 1987, tendered for filing proposed cancellation of Rate Schedule 34 (FERC) between Savannah Electric and Power Company and South Carolina Electric & Gas Company.

Under the proposed Rate Schedule 34 (FERC) Limited Term Contract for the purchase of 20 megawatts of capacity and associated energy by Savannah Electric and Power Company from South Carolina Electric & Gas Company dated April 26, 1983, is to be cancelled and replaced with the Interconnection Agreement between South Carolina Electric & Gas Company and Savannah Electric and Power Company which, includes Emergency Assistance, Limited Term Power, Short Term Power and Economy Interchange Service Schedules dated April 14, 1987.

Copies of this filing were served upon Savannah Electric and Power Company.

Comment date: August 13, 1987, in accordance with Standard Paragraph E at the end of this notice.

9. Southeastern Power Administration

[Docket No. EF87-3031-000]

Take notice that on July 23, 1987, the Under Secretary of the Department of Energy confirmed and approved, on an interim basis effective midnight August 20, 1987, Rate Schedule JW-1-B and JW-2-B for power from Southeastern Power Administration's (SEPA) Jim Woodruff Project. The approval extends through August 19, 1992. The Under Secretary states that the Commission, by Order issued January 10, 1983, in Docket No. EF82-3031, confirmed and approved Rate Schedules JW-1-A and JW-2-B through August 19, 1987.

SEPA proposes in the instant filing to extend Rate Schedule JW-2-B, and to replace JW-1-A with JW-1-B. The rate adjustment will increase rates by 34 percent to the preference customers. The Rate Schedule applicable to Florida Power Corporation contains an automatic escalation factor based on the Company's cost of fuel. This escalation factor has raised the effective rate paid by Florida Power Corporation, over the long-term, in excess of the 34 percent rate increase to the preference customers. Therefore, the Florida Power Corporation rate has been extended. The Rate Schedules are submitted for confirmation and approval on a final basis pursuant to authority vested in the Commission by Delegation Order No. 0204-108. Approval is requested for a period ending August 19, 1992.

Comment date: August 13, 1987, in accordance with Standard Paragraph E at the end of this notice.

10. Southwestern Electric Power Company

[Docket No. ER87-542-000]

Take notice that on July 22, 1987, Southwestern Electric Power Company (SWEPCO) tendered for filing proposed tariff changes in its Rate Schedule FERC No. 72, applicable to transmission service rendered to Arkansas Electric Cooperative Corporation (AECC) under the Flint Creek Power Plant Coordination, Interchange and Transmission Service Agreement. SWEPCO has proposed rates which would decrease transmission revenues from AECC by $22,500 for the twelve months ending June 30, 1988. SWEPCO has calculated the proposed rates in

accordance with the formula contained in the Flint Creek Agreement.

SWEPCO requests an effective date of July 1, 1987, and therefore requests waiver of the Commission's notice requirements. Copies of the filing have been served on AECC and the Arkansas Public Service Commission.

Comment date: August 13, 1987, in accordance with Standard Paragraph E at the end of this notice.

11. Wisconsin Public Service Corporation

[Docket No. ER87-544-000]

Take notice that on July 24, 1987, Wisconsin Public Service Corporation (the Company) tendered for filing a new service agreement for partial requirements service to the City of Marshfield, and its Marshfield Electric and Water Department, Wood County, Wisconsin (the City). The new agreement revises the initial term of service, and provides for a change from a single 115 Kv delivery point to two 115 Kv delivery points. The delivery point change results from the company's leasing certain electric facilities from the city under a lease agreement included with the filing. The Company, with the support of the City, has requested an effective date of July 1, 1987, for the new service agreement.

The Company states that copies of the executed service agreement were sent to the City, the two other purchasers of service under the same tariff as the City and to the Public Service Commission of Wisconsin.

Comment date: August 13, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-17649 Filed 8-3-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP87-451-000 *]

Notice Inviting Applications To Provide New Gas Service to the Northeast U.S.; Northeast U.S. Pipeline Projects

July 24, 1987.

During the past five years, the Commission has received over 100 applications to provide new gas service to the Northeast United States. Many of these filings were in the nature of amendments to applications, or new applications that superseded previously filed ones. A number of these applications proposed construction and operation of major new pipeline facilities and the transportation or sale for resale of large quantities of natural gas. In many instances, applicants or interveners alleged that two or more of these proposals were mutually exclusive, and were therefore entitled to consideration in a comparative evidentiary hearing, pursuant to the decision in *Ashbacker Radio Corporation* v. *F.C.C.*, 326 U.S. 327 (1945).

The *Ashbacker* decision arose in a proceeding under the Communications Act of 1934 and involved mutually exclusive applications to provide broadcast services on the same radio frequency. One applicant received approval and the remaining applicant found its proposal set for an evidentiary hearing. On appeal, the court held that when mutually exclusive *bona fide* license applications were filed at the F.C.C., the grant of one without a hearing to both deprives the loser of the opportunity for a hearing that Congress chose to grant under section 309 of the Communications Act (*Ashbacker* at 333). It is clear, however, that *Ashbacker* did not create a right to a comparative hearing in those instances where no statutory hearing right was conferred; it merely requires an administrative agency to use the same set of procedures to process the applications of all similarly situated persons who come before it seeking the same license. *Multi-State Communications, Inc.* v. *F.C.C.* 728 F2d 1519, 1525-1526 (D.C. Cir. 1984).

A number of the Northeast U.S. applications were consolidated for comparative hearing in *Boundary Gas, Inc.*, et al., Docket No. CP81-107-000, et al. Extensive superseding filings in that proceeding eventually rendered it an unwieldly vehicle for further consideration of currnt and future proposals involving the Northeast U.S. In two companion orders issued today, we have decided all of the applications that are currently ripe for decision in that proceeding, have dismissed those that are unripe or have been suspended, and have dismissed another application (Canadian Gateway Pipeline System, Docket No. CP86-513-000) for failure to satisfy the standards of our Regulations.

The history of these filings, as well as the applications filed by Tennessee Gas Pipeline Company, a Division of Tenneco Inc. in Docket Nos. CP87-131-000 and CP87-358-000 suggests that there may exist in the Northeast U.S. a need for new service, including construction of significant new gas pipeline facilities; that proposals to provide such new service and to construct such new facilities may be competitive or mutually exclusive; and that such proposals may require an evidentiary hearing. The Commission stands ready and willing to establish a comparative evidentiary hiring in the event that it has before it at one time two or more mutually exclusive applications in which issues of material fact are in dispute.

The Commission intends to act efficiently and expeditiously in deciding whether the need for new gas services and facilities in the Northeast U.S. exists and, if so, what new services and/or facilities ought to be certificated to meet such needs. Our experience in Boundary, however, was that over a protracted period of time many competing applications and amendments to applications were filed for consideration on a comparative basis. Consequently, the decisional process was considerably delayed. We would like to avoid similar delays when considering future proposals to provide new gas service to the Northeast U.S.

The courts have observed that there must be some time when an administrative agency can close the door to new parties to an *"Ashbacker"* comparative hearing or, at least hypothetically, no license could ever be granted. *Radio Athens, Inc.* v. *F.C.C.*, 401 F2d 398, 400-401 (D.C. Cir. 1968). The

* This docket number designation is applicable to this notice and any requests for rehearing of this notice. Applications for authority to provide new gas service to the Northeast U.S. filed in response to this notice will be identified by future docket numbers assigned at the time of filing.

Federal Communications Commission has elected to respond to the comparative hearing requirement by promulgating a series of rules that, essentially, provide for public notice of license applications and the establishment, in these notices, of a date certain, beyond which no mutually exclusive applications would be accepted for filing. (*See, e.g.*, 47 CFR 22.31 and 73.3516(e); *see also Maxcell Telecom Plus, Inc.* v *F.C.C.*, Nos. 85–1322, et al. slip op. (D.C. Cir. April 7, 1987) affirming (F.C.C. action designating 30 market areas for cellular phone operations and fixing cut-off dates in each market area for the filing of mutually exclusive license applications).) We believe that a similar procedure may be appropriate in this instance.

Accordingly, we announce today an open season for filing new applications to provide natural gas service to the Northeast U.S.[1] All applications presently on file will be considered, as well as all new applications and amendments thereto filed between now and December 1, 1987. All applications and amendments thereto on file at the Commission as of that date, which are complete and in compliance with the Commission's Regulations, which are ripe for decision, and which seek to provide new gas service to the Northeast U.S., will be reviewed at that time to determine what procedures are appropriate for their resolution.

By this Notice, potential applicants are advised that applications for such service that are filed, substantially amended, or (if incomplete when filed) completed after December 1, 1987 will not be deemed to be competitive or mutually exclusive with such applications that are on file and complete as of the that date.[2] Potential applicants are further advised that applications filed, substantially amended, or (if incomplete when filed) completed after December 1, 1987 may be subject to competing claims as between such applications.

Applications filed, completed or amended subsequent to December 1, 1987 will, of course, be processed as appropriate, on their own merits, but can not claim a right to competitive status with applications that are completed and ripe for decision (without subsequent amendment) as of December 1, 1987. Also, nothing in this Notice commits the Commission to consolidate any applications, or to set any applications for hearing. Less time consuming procedures may be used if legally permissible and otherwise appropriate. The purposes of this Notice is to give the Commission the ability, if it so chooses, to use December 1, 1987 as a cut-off date, so that subsequent applicants cannot delay whatever proceeding may have been established (if any) to process mutually exclusive applications that were on file, complete, and ripe for action as of December 1, 1987.

Discussion

This notice is spawned, in a large part, from the *Boundary* proceeding and the comments, interventions and protests filed by a number of parties in *Boundary* and in other pending northeastern-area pipeline projects. Under the rubric of *Ashbacker*, many participants at the Commission exercised their administrative prerogatives in a manner which turned the *Boundary* proceeding into an administrative procedural moving target, constantly evoking further applications, amendments to applications, counterproposals, and proposals to counter the counterproposals, to the point that scarcely any matter became ripe for adjudication for an extended period of time.

This notice would allow the Commission subsequently to refuse requests to consolidate northeastern-area pipeline projects filed after December 1, 1987, with other northeastern-area projects filed before that date. The Commission would then be confronted with a closed class of projects and could decide, based on the targeted markets and any allegations of contested issues of material fact, whether any of the timely applications are mutually exclusive or otherwise require conduct of an evidentiary hearing.

If an application filed after the cut-off date proposes to serve a market that would be fully satisfied by a timely-filed application, and the Commission chooses to approve the timely-filed application, it could do so without violation of the *Ashbacker* comparative hearing equipment. In such case, the untimely application, if a traditional section 7(c) application, could be denied on the merits as failing to show a market for its proposed service. Consequently, the Commission is convinced that the procedures outlined in this notice will provide a more expeditious, efficient, rational and fully legal procedure to ensure that any needed additional supply for the northeastern United States can be considered in a timely way.

Administrative Procedures

Pursuant to Rule 713(a)(2)(v) of our Rules of Practice and Procedure (18 CFR 385.713(a)(2)(v)), this notice is designated as a final decision of the Commission for the purpose of receiving requests for rehearing filed pursuant to section 19(a) of the Natural Gas Act.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–17648 Filed 8–3–87; 8:45 am]

BILLING CODE 6717-01-M

[1] For purposes of this Notice, the Northeast U.S. is defined as including the states of Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, and Pennsylvania. Proposals to provide new gas service to this area could, of course, include proposals to construct and operate pipeline facilities outside of this area for the purpose of transporting gas to the Northeast.

[2] Applications filed under our optional certificate procedures (Subpart E of Part 157 of our Regulations) are deemed not to be mutually exclusive for the purpose of establishing a comparative evidentiary hearing, no matter whether filed before or after the December 1, 1987 cut-off date.

Western Area Power Administration

Central Valley Project—Proposed Power and Transmission Rates Adjustments

AGENCY: Department of Energy, Western Area Power Administration.

ACTION: Notice of proposed power and transmission rates adjustments—Central Valley Project.

SUMMARY: The Western Area Power Administration (Western) is proposing a power rate decrease and a transmission rate increase for the Central Valley Project (CVP), a multipurpose Federal water project located in northern California. In addition, Western is proposing that certain third party transmission expenses be directly passed through to the CVP customers and not included as part of the CVP power rates. Power rates are set as low as possible consistent with sound business principles and must, by law, also be sufficient to recover the annual power expenses plus repay the power and certain nonpower investments of the CVP within prescribed time periods. For the period of May 1983 through May 1988, the CVP power rates produced a level of revenues significantly above the CVP annual expenses and repaid the $234 million deficit previously incurred in the operation of the CVP. Repayment of this deficit is on target for FY 1988, and the continuation of the current CVP

rate would provide more than the required revenue to pay the annual CVP power expenses and required investment costs within the prescribed periods. The CVP transmission rates are being modified to reflect updated transmission system investment costs, and operation, maintenance, and replacement expenses.

The power rates presently in effect, designated CV–F5 (Schedule of Rates for Wholesale Firm Power Service), provide a composite rate of approximately 39.50 mills/kWh by applying an assumed system average load factor of 64 percent to the current $3.75/kW-month capacity charge and the energy charge of 31.44 mills/kWh. The transmission rates currently in effect, designated CV–T1 and CV–T2 (respectively, the Schedules for Firm and Nonfirm Transmission Service) are $0.35/kW-month for firm transmission service and 1.00 mill/kWh for nonfirm service.

In addition to the CVP transmission rates, Western currently has a rate schedule for third party transmission (designated CV–TPT1). This schedule is for CVP customers that require transmission of their CVP power allocation over the transmission system of a third party. Under the current CV–TPT1 schedule, such customers must pay for the portion of third party transmission services, including losses, that are in excess of the at-or-above 44-kV transmission charges and losses specified by Western's Integration Agreement (Western Contract No. 14–D6–200–2948A) with the Pacific Gas and Electric Company (PGandE).

The current CVP rates (other than CV–TPTI) were placed into effect on an interim basis by the Assistant Secretary of the Department of Energy (DOE) on May 25, 1983, and were confirmed and approved on a final basis for a 5-year period from May 25, 1983, through May 24, 1988, by the Federal Energy Regulatory Commission (FERC) order issued November 30, 1983.

Proposed Rates

Two CVP power rate design options are proposed for consideration, as well as rates for the transmission of non-CVP power over the CVP transmission system. Although two power rate designs are outlined in this proposal, it is Western's intent to adopt only one design for final implementation. A determination on the final design will be made substantially on the basis of customer comments. The proposed rates offered by Western for consideration are:

OPTION A.— CVP POWER RATES BASED ON A 50-PERCENT REVENUE RECOVERY BY THE CAPACITY RATE AND 50-PERCENT REVENUE RECOVERY BY THE ENERGY RATE

	($/kW-month)
Capacity charge:	
06/01/88 to 09/30/89	6.80
10/01/89 to 09/30/91	7.42
10/01/91 to 05/31/93	7.67
	(mills/kWh)
Energy charge:	
06/01/88 to 09/30/89	14.43
10/01/89 to 09/30/91	15.75
10/01/91 to 05/31/93	16.29
Composite rate:	
06/01/88 to 09/30/89	29.86
10/01/89 to 09/30/91	31.50
10/01/91 to 05/31/93	32.58

OPTION B.— CVP POWER RATES BASED ON "FIXED" COSTS BEING RECOVERED BY THE CAPACITY RATE AND "VARIABLE" COSTS BEING RECOVERED BY THE ENERGY RATE

	($/kW-month)
Capacity Charge:	
06/01/88 to 09/30/89	5.33
10/01/89 to 09/30/91	5.82
10/01/91 to 05/31/93	6.02
	(mills/kWh)
Energy Charge:	
06/01/88 to 09/30/89	17.54
10/01/89 to 09/30/91	19.18
10/01/91 to 05/31/93	19.80
Composite Rate:	
06/01/88 to 09/30/89	29.86
10/01/89 to 09/30/91	31.50
10/01/91 to 05/31/93	32.58

Special Adjustment Clauses Associated with the Proposed CVP Power Rates

Power factor adjustment clause: Western's Integration Agreement with PGandE requires Western's customers to maintain a 95 percent power factor at their points-of-delivery. Western's present power rate schedule (CV–F5) states that all CVP customers should normally meet this requirement. Western proposes to implement a surcharge for noncompliance with this power factor requirement. The surcharge is proposed to be 0.25 percent of the customer's unadjusted capacity and energy bill for each 1 percent deviation of such customer's monthly power factor from the 95 percent requirement.

Revenue adjustment clause: Unlike other Western projects, the CVP power marketing program is significantly supported by power purchases made from the Pacific Northwest and PGandE. Due to the dynamic nature of these purchased power expenses, Western is proposing a Revenue Adjustment Clause (RAC). The proposed RAC design would periodically adjust certain major estimated purchased power expenses to actual, and at the same time, adjust estimated revenue from capacity and energy sales to actual. The net result of these adjustments would be surcharged or credited to the CVP customers' subsequent bills. Adjustments would occur on a 6-month cycle. The limit to any 6-month adjustment would be $15 million overall.

Low voltage loss adjustment: The billed amounts for low voltage customers (below 44 kV) on the PGandE system will be the metered amounts of energy and capacity at the point-of-delivery, multiplied by a loss adjustment factor of 1.035. This is identical practice to that presently required by CVP Rate Schedule CV–TPT1, and is designed to account for the fact that low voltage customers incur 8 percent losses in delivery of power, while high voltage customers incur 4.5 percent losses.

CVP Transmission Rate for Firm Transmission Service

Capacity Charge: $0.597/kW-month per kilowatt contracted for or received (whichever is greater) into the CVP transmission system
Energy Charge: None
Losses: As determined by contract

CVP Transmission Rate for NonFirm Transmission Service

Capacity Charge: None
Energy Charge: 1.27 mills/kWh for each kilowatthour delivered from the CVP transmission system
Losses: As determined by contract

Rate Schedule for Third Party Transmission

Transmission service charges incurred by Western in the delivery of CVP power over a third party's transmission system to a CVP customer will be directly passed through to that customer. Rates urder this schedule are proposed to be automatically adjusted as third party transmission charges are adjusted.

General Information

The proposed new CVP power and transmission rate schedules will become effective on or before May 25, 1988. Implementation of the new CVP rates on an interim basis is planned as soon as is reasonable after the conclusion of the formal public consultation and comment period, and approval on an interim basis by the Under Secretary of DOE.

A brochure explaining the proposed capacity, energy, and transmission charges, and outlining the methods used in developing the proposed rates, will be distributed to the CVP customers and other interested parties. Since the proposed rates constitute a major rate

adjustment as defined by the current procedures for public participation in general rate adjustments, a public information forum and a public comment forum will be held. After public discussions and review of public comments, Western will decide on the proposed rates, which it believes should be implemented, and will make its recommendation to the Under Secretary of DOE.

DATES: The consultation and comment period will begin with the publication of this notice in the **Federal Register** and will end November 2, 1987. Formal public information and comment forums, as well as any other mandatory hearings or meetings, will be held and documented during this consultation and comment period.

A public information forum, at which Western's staff will review the need for the proposed rate adjustments, review alternatives, and answer questions, will be held on August 25, 1987, at the Sacramento Hilton Inn, 2200 Harvard, Sacramento, California, beginning at 10 a.m. The public comment forum, at which interested parties may comment on the proposed rate adjustments, will be held on September 22, 1987, at the Holiday Inn Holidome, 5321 Date Avenue, Sacramento, California, beginning at 10 a.m. Persons planning to speak at the September 22, 1987, comment forum should send their name and affiliation to the address noted below by September 18, 1987, so that a speaker list may be developed. Time permitting, other persons will be allowed to comment at the forum. Transcripts will be made of both the information and comment forums.

Written comments may be submitted at the comment forum or may be submitted to the address below throughout the consultation and comment period, but should be received at that address on or before November 2, 1987.

In addition to the public information and comment forums, Western is scheduling an evidentiary hearing regarding the merits of the proposed RAC for October 7, 1987. This hearing is required by the Public Utility Regulatory Policies Act. Further information as to the time, location, and procedure for participation in this hearing will be published in the **Federal Register** and will be distributed to all CVP customers and interested parties.

ADDRESS: For further information contact: Mr. David G. Coleman, Area Manager, Sacramento Area Office, Western Area Power Administration, 1825 Bell Street, Suite 105, Sacramento, CA 95825, (916) 978–4413.

SUPPLEMENTARY INFORMATION: Power rates for the CVP are established pursuant to the DOE Organization Act of August 4, 1977 (42 U.S.C. 7101, *et seq.*); the Reclamation Act of 1902 (43 U.S.C. 372, *et seq.*) as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)); and the acts specifically applicable to the project and divisions thereof.

The Secretary of the DOE, by Delegation Order No. 0204–108 (48 FR 55664, December 14, 1983), as amended at 51 FR 19744 on May 30, 1986, delegated to the Administrator of Western the authority to develop power and transmission rates; to the Under Secretary of the DOE the authority to confirm, approve, and place such rates in effect on an interim basis; and to the FERC the authority to either confirm and approve and place in effect on a final basis, to remand, or to disapprove such rates.

The procedures for public participation in rate adjustments for power marketed by Western are formally cited as "Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions" (10 CFR Part 903) published in the **Federal Register** at 50 FR 37837 on September 18, 1985.

Availability of Information

All brochures, studies, written comments, letters, memorandums, and other documents made or received by Western for the purpose of developing the proposed rate are and will be available for inspection and copying at the Sacramento Area Office, located at the address noted above.

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*), each agency, when required by 5 U.S.C. 553 to publish a proposed rule, can be required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In this instance, the initiation of the CVP rate is related to nonregulatory services provided by Western at a particular rate. Under 5 U.S.C. 601(2), rules of particular applicability relating to rates of services are not considered rules subject to the act. Since the CVP rates are of particular applicability relating to rates and services, no flexibility analysis is required.

Determination Under Executive Order 12291

The DOE has determined that this is not a major rule subject to Executive Order 12291 (46 FR 13193, February 9, 1981) because is does not meet the criteria of section 1(b) of that order. In addition, Western has an exemption from sections 3, 4, and 7 of Executive Order 12291, and therefore, will not prepare a regulatory impact statement.

Paperwork Reduction Act of 1980

The Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) requires that certain information collection requirements be approved by the Office of Management and Budget (OMB) before information is demanded of the public. OMB has issued a final rule on the Paperwork Burdens on the Public (48 FR 13666) dated March 21, 1983. There is no requirement that members of the public participating in the development of the CVP rates supply information about themselves to the Government. It follows that the CVP rates are exempt from the Paperwork Reduction Act.

Environmental Evaluation

In compliance with the National Environmental Policy Act of 1969 and DOE regulations published in the **Federal Register** on March 28, 1980 (45 FR 20694–20701), Western is conducting an environmental evaluation of the proposed rate adjustments. CVP customers and interested parties will be notified of the results of the environmental evaluation.

Issued at Golden, Colorado, July 28, 1987.

William H. Clagett,

Administrator.

[FR Doc. 87–17685 Filed 8–3–87; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3241–5]

Superfund Program; Nonbinding Preliminary Allocations of Responsibility (NBARs)

AGENCY: Environmental Protection Agency.

ACTION: Extension of comment period.

SUMMARY: The Agency is today extending the deadline for public comment on its Interim Guidelines for Preparing Nonbinding Preliminary Allocations of Responsibility for an additional 30 days. The guidelines were published on May 28, 1987 at (52 FR 19919). The guidelines describe how

EPA may prepare an allocation among potentially responsible parties of percentages of total response costs at a facility. The comment period is being extended by 30 days to allow additional time for public comment on the policy.

DATE: Comments must be provided on or before September 3, 1987.

ADDRESS: Comments may be submitted to Debbie Wood, U.S. Environmental Protection Agency, Office of Waste Programs Enforcement, WH–527, 401 M. St., SW., Washington, DC 20460.

Dated: July 28, 1987.

Gene A. Lucero,

Director, Office of Waste Programs Enforcement.

[FR Doc. 87–17632 Filed 8–3–87; 8:45 am]

BILLING CODE 6560-01-M

[FRL–3241–6]

Science Advisory Board, Hazard Ranking System Review Subcommittee; Open Meeting

Under Pub. L. 92–463, notice is hereby given that the Large Volume Waste Work Group of the Science Advisory Board's Hazard Ranking System Review Subcommittee will hold a two-day meeting on August 20–21, 1987 at the U.S. Environmental Protection Agency's Region 8 Headquarters in Denver, Colorado. The meeting, which will be held in the Rocky Mountain Room, South Tower, 5th Floor, 999 18th Street, Denver, CO, will begin at 8:30 a.m. on Thursday and adjourn no later than 4:00 p.m. on Friday.

The purpose of this meeting is to continue deliberations on the large volume waste issues that have been presented to the Science Advisory Board as part of the review of the Hazard Ranking System. The issues were introduced at the July 16–17, 1987 Subcommittee meeting. They are described in *Superfund Hazard Ranking System (HRS): Selected Issues Related to Mining Waste Sites.* Copies of this and other documents provided to the Subcommittee are available in the Superfund Docket. The Superfund Docket is located at EPA Headquarters, Waterside Mall Sub-basement, 401 M Street, SW., Washington, DC 20460. The Docket is open by appointment only from 9:00 a.m. to 4:00 p.m. Monday through Friday excluding holidays. To obtain copies of the document or to make an appointment, contact Tina Maragousis at 202/382–3046. Further technical information on the large volume waste issues is available from Ms. Agnes Ortiz, Office of Emergency and Remedial Response (WH–548E), U.S. EPA, 401 M Street, SW., Washington, DC 20460 (202/382–4777).

The meeting is open to the public. Any member of the public wishing to attend, make brief oral comments, or submit written comments to the Large Volume Waste Work Group should notify Mrs. Kathleen Conway, Executive Secretary, or Mrs. Dorothy Clark, Staff Secretary, of the Science Advisory Board at 202/382–2552 by August 17, 1987.

Terry F. Yosie,

Director, Science Advisory Board.

Date: July 23, 1987.

[FR Doc. 87–17633 Filed 8–3–87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Solicitation of Comments on Western Union's Petition for Partial Reconsideration or Clarification of Order Completing Commission's Investigation of Interstate Access Tariff Non-Recurring Charges

July 24, 1987.

Pleading Cycle Established

On July 13, 1987, the Western Union Telegraph Company (Western Union) filed a petition for reconsideration of a Memorandum Opinion and Order, 2 FCC Rcd 3498 (1987), in which the Commission completed its investigation of non-recurring charges (NRCs) for both switched and special access services. The Commission concluded that the NRC rates set for investigation were not unreasonably high and that no further investigation was required. It also concluded that NRCs should recover the full costs of the associated non-recurring activities.

Western Union seeks reconsideration insofar as the Commission decided not to require local exchange carriers (LECs) to disaggregate their rate structures to reflect the cost characteristics of different types of special access installations. The Commission indicated that LECs should file rates which reflect legitimate cost savings resulting from certain types of installations. Western Union argues in favor of an alternative set of rate structure requirements and also asserts that some LECs' NRCs do not reflect the different installation costs for different special access services, *i.e.*, metallic facilities as opposed to voice grade circuits.

Western Union further argues that the Commission's proposal in CC Docket No. 87–113, 2 FCC Rcd 2673 (1987), to preclude rate structure changes in annual access filings, is inconsistent with its directive that future NRCs reflect cost savings associated with particular installations. It asks the Commission not to restrict the LECs from restructuring their NRCs to account for these cost differences in conjunction with rate changes in their annual access tariff filings.

Parties wishing to comment on Western Union's petition must do so not later than August 24, 1987. Replies are due not later than September 8, 1987. An original and seven copies of all submissions must be field with the Secretary of Commission. In addition, one copy must be delivered directly to the Commission's commercial copy firm, International Transcription Service, Inc. (ITS), in Room 246, 1919 M Street, NW., Washington, DC. Copies of documents filed by parties in this matter may be obtained from ITS. Copies are also available for public inspection from the Tariff Division, Common Carrier Bureau, Room 518, 1919 M Street, NW., Washington, DC.

For further information, contact Lawrence Krevor, Tariff Division, at (202) 632-6917.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–17549 Filed 8–3–87 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; St. Croix Wireless Co. et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/State	File No.	MM docket No.
A. St. Croix Wireless Co., A Limited Partnership	Christiansted, VI	BPH-870711GD	87-[illegible]
B. Sugarbird Communications	do	BPH-870712DD	
C. Sunshine-Eagle Broadcasting Co.	do	BPH-870712WH	
D. Kareem Abdulghani	do	BPH-870712WI	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its

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entirety under the corresponding headings at 51 FR 19347 (May 29, 1986). The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading	Applicants
1. Main Studio	C
2. Comparative	A,B,C,D
3. Ultimate	A,B,C,D

3. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87–17639 Filed 8–3–87; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Charles J. Seltzman et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/State	File No.	MM Docket No.
A. Charles J. Seltzman	Bloomfield, IN	BPH-851122MD	87-271
B. Melissa Miles	Bloomfield, IN	BPH-851211MD	
C. Wm. Gerald Willis and Catherine H. Willis d/b/a Willtronics Broadcasting Company	Bloomfield, IN	BPH-851216MQ	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name above is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading	Applicant
1. Comparative	A,B,C
2. Ultimate	A,B,C

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau

[FR Doc. 87–17640 Filed 8–3–87; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

[Agreement No. 203–011137]

Erratum; Pacific Coast/Australia-New Zealand Discussion Agreement

The Federal Register Notice of July 17, 1987 (Vol. 52, No. 137, page 27055) incorrectly identified the Pacific Coast/Australia-New Zealand Discussion Agreement as Agreement No. 206–011137, whereas, it should have read Agreement No. 203–011137.

By Order of the Federal Maritime Commission

Joseph C. Polking,

Secretary.

Dated: July 30, 1987.

[FR Doc. 87–17638 Filed 8–3–87; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BERC–454–N]

Medicare Program; Hospice Cap

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces an updated payment cap for hospice care under the Medicare program. The revised cap amount applies to payments made to a hospice during the period November 1, 1986 through October 31, 1987.

EFFECTIVE DATE: The payment cap is effective for the period November 1, 1986 through October 31, 1987.

FOR FURTHER INFORMATION CONTACT: Randal Ricktor, (301) 597–1806.

SUPPLEMENTARY INFORMATION: Section 122 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97–248), which was enacted on September 3, 1982, expanded the scope of Medicare benefits by authorizing coverage for hospice care for terminally ill beneficiaries. The principal changes made by section 122 are contained in sections 1812 (a)(4) and (d), 1813(a)(4), 1814 (a)(7) and (i), 1816(e)(5) and 1861(dd) of the Social Security Act (the Act). Section 1814(i) of the Act was further amended on August 29, 1983 by section 1 of Pub. L. 98–90 and on November 8, 1984 by section 1(a) of Pub. L. 98–617. Our regulations implementing the hospice program under Medicare were published in the **Federal Register** on December 16, 1983 (48 FR 56008) and are set forth at 42 CFR Part 418.

Under the authority of section 1814(i) of the Act, hospices are paid on the basis of one of four prospectively determined rates for each day in which a qualified Medicare beneficiary is under the care of the hospice. The four categories of payment rates are routine home care, continuous home care, inpatient respite care, and general inpatient care, as described in § 418.302.

Section 1814(i)(2) of the Act specifies that Medicare payment to a hospice for care furnished over the period of a year is limited by a payment cap. The payment cap is described in regulations at § 418.309. Section 1812(i)(2)(B) of the Act and § 418.309 of the regulations set the initial hospice cap amount for the period November 1, 1983 to October 31, 1984 at $6,500. Subsequent hospice caps were $6,884 for hospice care furnished from November 1, 1984 through October 31, 1985 and $7,391 for hospice care furnished from November 1, 1985 through October 31, 1986. Each hospice's cap amount is calculated by multiplying the yearly cap by the number of Medicare beneficiaries who elected to receive and did receive hospice care from the hospice during the cap period (November 1 through October 31).

Section 1814(i)(2)(B) of the Act and § 418.309(a) specify the manner in which the cap amount is adjusted for accounting years that end after October 1, 1984. The initial cap amount of $6,500 is adjusted for inflation or deflation for cap years that end after October 1, 1984 by using the percentage change in the

BEST COPY AVAILABLE

medical care expenditure category of the Consumer Price Index (CPI) for urban consumers, which is published by the Bureau of Labor Statistics (BLS). This adjustment is made using the change in the CPI from March 1984 to the fifth month of the cap year. For purposes of the cap year that runs from November 1, 1986 through October 31, 1987, an index is needed to measure inflation (or deflation) from March 1984 to March 1987 (the fifth month of the accounting year). Since this calculation is not made until after the month of March in each cap year, we cannot, as a practical matter, publish the hospice cap amount before the beginning of the period to which the cap applies.

BLS has recently released figures that indicate a March 1987 price level in the medical care expenditure category of the CPI of 455.0 (1967 = 100.0). This figure is divided by the March 1984 price level of 374.5 to yield an index of 1.2150 (rounded). Therefore, the new hospice cap is the product of $6,500 and 1.2150; that is, $7,898. This cap applies to hospices for care furnished from November 1, 1986 to October 31, 1987.

This notice merely announces amounts required by legislation and by § 418.309. It is not a proposed rule or a final rule issued after a proposal, and does not alter any regulation or policy. Therefore, no analyses are required under Executive Order 12291 or the Regulatory Flexibility Act (5 U.S.C. 601 through 612).

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare-Hospital Insurance)

(Section 1814(i) of the Social Security Act (42 U.S.C. 1395f(i)) and 42 CFR 418.309)

Dated: July 10, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 87-17682 Filed 8-3-87; 8:45 am]

BILLING CODE 4120-01-M

National Institutes of Health

Meeting of the President's Cancer Panel

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the President's Cancer Panel, National Cancer Institute, October 23, 1987, at the University of Pittsburgh, School of Medicine-Scaife Hall, Lecture Room 6, 3550 Terrace Street, Pittsburgh, PA 15261.

This meeting will be open to the public on October 23 from 8:30 a.m. to adjournment. Agenda items include reports by the Chairman, President's Cancer Panel and the Director, National Cancer Institute; and reports and discussions from experts to obtain information regarding research programs supported by the National Cancer Institute. Attendance by the public will be limited to space available. Dr. Elliott Stonehill, Executive Secretary, President's Cancer Panel, National Cancer Institute, Building 31, Room 11A23, National Institutes of Health, Bethesda, Maryland 20892 (301/496-1148) will provide an agenda for the meeting, a roster of the Panel members, and substantive program information upon request.

Dated: July 29, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87-17671 Filed 8-3-87; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-87-1717]

Notice of Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission; (8) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Proposal: Contractor's Requisition - Project Mortgages.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: HUD Field Office Managers need data each month on projects that HUD has approved for the insurance of advances of mortgage proceeds. Applicable certificates must be signed by the General Contractor, Project Architect, and the HUD Inspector, then reviewed and approved by the Field Office prior to insurance of the advances.

Form Number: HUD-92448.

Respondents: Businesses or Other For-Profit and Non-Profit Institutions.

Frequency of Response: Monthly.

Estimated Burden Hours: 60,000.

Status: Extension.

Contact:

Felix Coward, HUD, (202) 755-5743
John F. Morrall, OMB, (202) 395-6880

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act 42 U.S.C. 3535(d).

Proposal: Operating Budget and Supporting Schedules.

Office: Public and Indian Housing.

Description of the Need for the Information and Its Proposed Use: Section 6(c)(4) of the U.S. Housing Act of 1937 requires this information so that HUD can ensure the public housing agencies are using sound management practices in project operations. The information is needed to determine if Federal funds are being used for eligible expenditures.

Form Number: HUD–52584, 52586, 52587, 52571, and 52573.
Respondents: State or Local Governments and Non-Profit Institutions.
Frequency of Response: Annually.
Estimated Burden Hours: 441,600.
Status: Reinstatement.
Contact:
John T. Comerford, HUD, (202) 426–1872
John Allison, OMB (202) 395–6880

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Proposal: Schedule of Land Development Lots—Title X.
Office: Housing.
Description of the Need for the Information and Its Proposed Use: This program provides for the mortgage insurance of large land developments, with subsequent resale by the insured of developed lots and/or parcels to other developers and to the public. Form HUD–93554 is used by HUD to calculate the amount of funds required to release a lot/parcel from the insured mortgage, and to record the date of release.
Form Number: HUD–93554 and 93554–A.
Respondents: Individuals or Households and Businesses or Other For-Profit.
Frequency of Response: On Occasion.
Estimated Burden Hours: 100.
Status: Reinstatement.
Contact:
Edwin W. Baker, HUD, (202) 755–6720
John Allison, OMB (202) 395–6880

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Proposal: State and Local Government Information.
Office: Fair Housing and Equal Opportunity.
Description of the Need for the Information and Its Proposed Use: This form is needed by the Office of Fair Housing and Equal Opportunity to collect employment data by department or agency for Community Development Block Grant (CDBG) monitoring. The affected public are those participants in the CDBG program who are required to maintain data which demonstrates their affirmative action in equal opportunity employment.
Form Number: HUD/EEO–4.
Respondents: State or Local Governments and Federal Agencies or Employees.
Frequency of Response: Annually.
Estimated Burden Hours: 1,165.
Status: Extension.
Contact:
Joan W. Brackett, HUD, (202) 755–6540
John Allison, OMB (202) 395–6880

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July 22, 1987.

John T. Murphy,
Director, Information Policy and Management Division.

[FR Doc. 87–17681 Filed 8–3–87; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–940–87–4121–11; C–45378]

Invitation for Coal Exploration License Application; Twentymile Coal Co., Colorado

Pursuant to the Mineral Leasing Act of February 25, 1920, as amended, and to Title 43, Code of Federal Regulations, Subpart 3410, members of the public are hereby invited to participate with Twentymile Coal Company in a program for the exploration of unleased coal deposits owned by the United States of America in the following described lands located in Routt County, Colorado:

Township 5 North, Range 88 West, 6th P.M.
Sec. 19, SW¼NW¼SE¼.
The area described contains approximately 10.00 acres, more or less.

The application for coal exploration license is available for public inspection during normal business hours under serial number C–45378 at the BLM Colorado State Office, Public Room, 2850 Youngfield Street, Lakewood, Colorado and at the BLM Craig District Office, 455 Emerson Street, Craig, Colorado.

Any party electing to participate in this program must share all costs on a pro rata basis with the applicant and with any other party or parties who elect to participate. Written Notice of Intent to Participate should be addressed to the following and shall be made within 30 days after the publication of this Notice of Invitation in the Federal Register:

Chief, Mineral Leasing Section,
Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215, and
Richard Mills, Yampa Valley Coal Corporation, 29566 Routt County Road No. 27, Oak Creek, Colorado 80467.

Evelyn W. Axelson,
Chief, Mineral Leasing Section.

[FR Doc. 87–17626 Filed 8–3–87; 8:45 am]
BILLING CODE 4310–JB–M

[MT–020–07–4333–02]

Montana Off-Road Vehicle Designation

AGENCY: Interior, Bureau of Land Management, Miles City District.

ACTION: Notice of designations for off-road vehicle use on public land.

SUMMARY: Notice is hereby given relating to the use of off-road vehicles (ORV) on public lands in accordance with the authority and requirements of Executive Orders 11644 and 11989, and regulations contained in 43 CFR Part 8340. The lands described below are under the administration of the Bureau of Land Management and are designated as open, limited, or closed to off-road motorized vehicle use.

EFFECTIVE DATE: September 1, 1987.

SUPPLEMENTARY INFORMATION: The approximately 3,969,498-acre area affected by the designation is part of the Miles City District and includes public lands in all of South Dakota and the following counties in Montana: Carbon, Big Horn, Golden Valley, Musselshell, Stillwater, Sweet Grass, Wheatland, Yellowstone, Treasure, Powder River, Rosebud, Carter, Custer, Daniels, Sheridan, Prairie, Roosevelt, Garfield, McCone, Richland, Dawson, Wibaux, and Fallon.

The designations are a result of resource management decisions made in the following Resource Management Plans (RMP) and Management Framework Plans (MFP): South Dakota RMP (1985); Billings RMP (1984); Powder River RMP (1984); Haxby MFP (1977); McCone MFP (1977); Musselshell MFP (1977); Redwater MFP (1979); New Prairie MFP (1982); and Jordan-North Rosebud MFP (1982). Comments received from the public during these planning efforts were considered in the designation decision. These designations are published as final today. Under 43 CFR 4.21 an appeal may be filed within 30 days with the Interior Board of Land Appeals by anyone who believes he/she is adversely affected by the designation.

A. Open Designation

Areas which are designated as open total approximately 3,260,151 acres. Open designation is determined to be

appropriate for these public lands since off-road vehicle use is an important recreational activity and no resource or user conflicts have been identified.

B. Limited Designation

1. Use is limited to existing roads and trails for the following areas, which total approximately 95,846 acres: Zook Creek Wilderness Study Area (WSA), 28 miles southwest of Ashland; Buffalo Creek WSA, 35 miles southwest of Broadus; Tusler, 6 miles northeast of Miles City; Billy Creek WSA, 30 miles northwest of Jordan; Seven Blackfoot WSA, 35 miles northwest of Jordan; Musselshell Breaks WSA, 6 miles north of Mosby; Bridge Coulee WSA, 15 miles north of Mosby; Terry Badlands WSA, 10 miles west of Terry; and all public lands in T. 10 S., R. 27 E., M.P.M., including a portion of the Pryor Mountain WSA. Maps are available at the Miles City District Office and appropriate Resource Area offices.

2. Howrey Island is a 631 acre area 5 miles west of Hysham. The limited designation described below is to prevent soil and vegetative damage and to protect bird nesting and other wildlife habitat in the spring. Furthermore, it is a safety measure to keep motorized vehicles off ice jams and out of river channels during the spring rise of the Yellowstone River. No vehicle use will be allowed from February 15 through June 1 each year. For the remainder of the year, use will be limited to existing roads and trails. Maps are available at the power River Resource Area office in Miles City.

C. Closed Designation

The Twin Coulee WSA of approximately 6,870 acres is designated as closed. This designation will reduce erosion and protect vegetative and natural values. The existing vehicle way in the W/2W/2 of Section 10, T. 11 N., R. 20 E., M.P.M., which traverses from the Red Hill Road to the Forest Service boundary, is open.

D. Changes in Previous Designations

The following are changes in designation for the Pryor Mountain area described in the **Federal Register** on October 4, 1979, [44 FR 57227].

(1) Turkey Flat Spur Road starting at T. 58 N., R. 95 W., Section 22 W., 6th P.M., meandering NW for approximately 1½ miles to T. 9 S., R. 28 E., Section 32 M.T.M., is designated closed.

(2) The Bear Springs, Timber Canyon, Water Canyon, and Inferno Canyon roads are designated open. These roads in T. 8 S., R. 25 E., are on the west side of Big Pryor Mountain and abut Custer National Forest roads on their east ends at the Forest boundary.

(3) The Demi John Flat road is designated as open. The road is east of Crooked Creek road and west of Crooked Creek. It is approximately 2 miles in length within Sections 3, 10, and 15 of T. 9 S., R. 27 E., M.P.M.

E. Previous Designations

Previous designations were published in the **Federal Register** for: the Pryor Mountain area (including approximately 6,340 acres in Wyoming) on October 4, 1979, [44 FR 57227]; the Acton area on March 21, 1986 [51 FR 9896]; the South Hills area on March 8, 1984 [49 FR 8685]; the Shepherd Ah-Nei area on June 21, 1985 [50 FR 25791]; and the Pole Creek/Gage Dome Special Management areas on August 7, 1986 [51 FR 28445] in the Billings Resource Area and Fort Meade on February 18, 1983 [48 FR 7321] in the South Dakota Resource Area. These designations total 125,346 acres and in combination with the designations in this notice cover the entire Miles City District.

F. Other Information

Expressly authorized vehicle use, emergency use by emergency vehicles, and official use for administrative purposes is allowed.

FOR FURTHER INFORMATION CONTACT: District Manager, Miles City District, BLM, P.O. Box 940, Miles City, Montana 59301, (406) 232-4331.

Mat Millenbach,

District Manager.

[FR Doc. 87-17628 Filed 8-3-87; 8:45 am]

BILLING CODE 4310-DN-M

Proposed Reinstatement of a Terminated Oil and Gas Lease; Alaska

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease AA-49024 J has been received covering the following lands:

Fairbanks Meridian, Alaska

T. 19 S., R. 6 E.,
Sec. 16 SW¼NE¼
(40 acres).

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $10 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from March 1, 1987, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA-49024-J as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective March 1, 1987, subject to the terms and conditions cited above.

Dated: July 24, 1987.

Kay F. Kletka,

Chief, Branch of Mineral Adjudication.

[FR Doc. 87-17629 Filed 8-3-87; 8:45 am]

BILLING CODE 4310-JA-M

[ES-037523, Groupo 19; ES-940-07-4520-13]

Filing of Plats of Dependent Resurvey, Subdivisions of Sections and Survey of Rend Lake Acquisition Boundary; Illinois

July 23, 1987.

1. The plat, in eleven sheets, of the dependent resurvey of a portion of the south boundary and the east boundary, Township 4 South, Range 2 East, a portion of the east boundary, Township 4 South, Range 1 East, a portion of the subdivision lines, and the survey of the subdivision of sections 1, 4, 5, 8, 9, 10, 12, 14, 15, 16, 17, 18, 20, 22, 23, 26, 27, 29 and 32, and the Rend Lake Acquisition Boundary, Township 4 South, Range 2 East, Third Principal Meridian, Illinois, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on September 8, 1987.

2. The dependent resurvey and survey were made at the request of the Corps of Engineers.

3. All inquiries or protests concerning the technical aspects of the dependent resurvey and survey must be sent to the Deputy State Director for Cadastral Survey and Support Services, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., September 8, 1987.

4. Copies of the plats will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Lane J. Bouman,

Deputy State Director for Cadastral, Survey and Support Services.

[FR Doc. 87-17598 Filed 8-3-87; 8:45 am]

BILLING CODE 4310-GJ-M

Meeting of the Southern Alaska Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Southern Alaska Advisory Council will meet to advise Glennallen and Anchorage District managers on pending natural resource management issues.

DATE: The meeting is September 10, 1987.

ADDRESSES: The location of the meeting is the BLM Campbell Tract Facility, 6881 Abbot Loop Road, Anchorage, Alaska 99507. Individuals planning to make public testimony should contact the BLM State Office, Public Affairs, 701 C Street, Anchorage, Alaska 99513 prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Danielle Allen at (907) 271–5555.

SUPPLEMENTARY INFORMATION:

Agenda

Thursday, September 10, 1987

8:30 a.m. Introductory Remarks.
8:40 a.m. Administrative Requirements
8:45 a.m. BLM Alaska Reorganization Update
9:30 a.m. Resource Management Programs
Wildlife
Recreation
Trespass
10:30 a.m. RS 2477 Update
10:45 a.m. Arctic National Wildlife Refuge mineral assessment
11:30 a.m. Lunch
1:00 p.m. Public Testimony
2:00 p.m. Summary of Issues
2:15 p.m. Open Discussion and Resolutions
4:00 p.m. Summary and Adjournment

Gene R. Terland,
Glennallen District Manager.

[FR Doc. 87–17627 Filed 8–3–87; 8:45 am]
BILLING CODE 4310-JA-M

[NM 940–07–4520–12]

Filing of Plat of Survey; New Mexico

July 24, 1987.

The plats of surveys described below were officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, effective at 10:00 a.m. on July 24, 1987.

A survey representing the dependent resurvey of a portion of the south and west boundaries, a portion of the subdivisional lines, the subdivision of section 31, the metes and bounds survey of certain lot boundaries and the survey of the right-of-way of Interstate 10, through section 31, Township 23 South, Range 1 West, New Mexico Principal Meridian, New Mexico, Group 864.

A survey representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of section 14, Township 24 South, Range 5 West, New Mexico Principal Meridian, New Mexico, Group 834.

A survey representing the dependent resurvey of a portion of the east boundary and a portion of the subdivisional lines, Township 22 South, Range 1 East, New Mexico Principal Meridian, New Mexico, Group 855.

A survey representing the dependent resurvey of a portion of the south and west boundaries, a portion of the subdivisional lines, the subdivision of sections 31 and 33, and the survey of the right-of-way of U.S. Highway No. 60 through sections 31 and 33, Township 3 South, Range 1 West, New Mexico Principal Meridian, New Mexico, Group 845.

A supplemental plat of the NW quarters of sections 24 and 25, Township 2 South, Range 1 West, New Mexico Principal Meridian, New Mexico, Group 768.

These surveys were requested by the District Manager, Las Cruces District Office, New Mexico.

A survey representing the dependent resurvey of a portion of the east boundary, a portion of the subdivisional lines, the subdivision of section 12, and the survey of a portion of the meanders of the San Juan River through section 12, Township 29 North, Range 14 West, New Mexico Principal Meridian, New Mexico, Group 831.

The survey was requested by the District Manager, Albuquerque District Office, New Mexico.

The plats will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87504. Copies of the plats may be obtained from that office upon payment of $2.50 per sheet.

Kelley R. Williamson, Jr.,
Acting Chief, Branch of Cadastral Survey.

[FR Doc. 87–17604 Filed 8–3–87 8:45 am]
BILLING CODE 4310-FB-M

Bureau of Mines

Advisory Committee on Mining and Mineral Resources Research; Meeting

This notice is issued in accordance with provisions of the Federal Advisory Committee Act.

The Advisory Committee on Mining and Mineral Resources Research will meet from 8 a.m. to 5 p.m. (or completion of business) on Wednesday, September 30, 1987, in Gallery A, Holiday Inn Airport, 1406 Beers School Road, Coraopolis, Pennsylvania 15108. Committee members and MMRRI personnel may participate in an optional escorted tour of the Bureau of Mines Pittsburgh Research Center on Thursday morning, October 1.

The proposed agenda is:

1. Swearing in of new Committee members.
2. Charge to the Committee by co-chairman Ziglar.
3. Approval of the minutes of the meeting of October 15, 1986.
4. Approval of the 1987 grant awards program.
5. Status of congressional action on Mineral Institutes 1988 budget.
6. Review of the research program of the Respirable Dust Generic Mineral Technology Center (GMTC).
   a. Brief overview of the respirable dust problem.
   b. Medical projects at Hershey, Pennsylvania, and Morgantown, West Virginia.
   c. Engineering projects at Pennsylvania State University, West Virginia University, and affiliated institutions.
   d. Related applied engineering research at the Bureau of Mines.
7. Review of draft second annual update of National Plan for research in mining and mineral resources.
8. Review of eligibility of the 32 presently designated Mineral Institutes.
9. Other business.

This meeting is open to the public. Approximately 30 visitors can be accommodated on a first-come, first-served basis. Written statements concerning the subjects are welcome. Visitors who expect to attend should inform Dr. Ronald A. Munson, Chief, Office of Mineral Institutes, Bureau of Mines, Mail Stop 1020, 2401 NW., Washington, DC 20241, telephone (202) 634–1328, no later than noon, Tuesday, September 29.

Dated: July 30, 1987.

John D. Morgan,
Acting Director.

[FR Doc. 87–17643 Filed 8–3–87; 8:45 am]
BILLING CODE 4310-53-M

Fish and Wildlife Service

Receipt of Application for Permits; Dallas Zoo and Steven Marcus

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-719822

Applicant: Dallas Zoo, Dallas, TX.

The applicant requested a permit to import one pair of sexually mature tuataras (*Sphenodon punctatus*) from the New Zealand government for the purpose of captive propagation. The tuataras will be removed from the wild in New Zealand by the government for export to the zoo.

PRT-720008

Applicant: Steven Marcus, Smithtown, NY.

The applicant requests a permit to purchase in interstate commerce from Dr. William Zovickian of Connecticut, one pair of radiated tortoises (*Geochelone* (=*Testudo*) *radiata*) for the purpose of captive propagation.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) in Room 601, 1000 North Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service, Federal Wildlife Permit Office, 1000 N. Glebe Rd., Rm. 611, Arlington, VA 22201.

Interested persons may comment on either of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT No. when submitting comments.

Dated: July 30, 1987.

Larry LaRochelle,

Acting Chief, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 87-17880 Filed 8-3-87; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Development Operations Coordination Document; Amoco Production Company

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Amoco Production Company has submitted a DOCD describing the activities it proposes to conduct on Leases OCS-G 5504 and 8693, Blocks 224 and 225, respectively, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Fourchon, Louisiana.

DATE: The subject DOCD was deemed submitted on July 24, 1987. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: July 27, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-17901 Filed 8-3-87; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Amoco Production Company

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is here by given that Amoco Production Company has submitted a DOCD describing the activities it proposes to conduct on Leases OCS-G 5625 and 5626, Blocks 245 and 246, respectively South Timbalier Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Fourchon, Louisiana.

DATE: The subject DOCD was deemed submitted on July 23, 1987. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office, located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management

Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Dated: July 27, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-17602 Filed 8-3-87; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Chevron U.S.A. Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Chevron U.S.A. Inc., Unit Operator of the South Timbalier Block 135 Federal Unit Agreement No. 14-08-001-8669, has submitted a DOCD describing the activities it proposes to conduct on the South Timbalier Block 135 Federal unit. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Leeville, Louisiana.

DATE: The subject DOCD was deemed submitted on July 21, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8: a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Al Durr; Minerals Management Service; Gulf of Mexico OCS Region; Production and Development; Development Unitization Section; Unitization Unit; Telephone (504) 736-2858.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 205.34 of Title 30 of the CFR.

Dated: July 27, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-17603 Filed 8-3-87; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 25, 1987. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by August 19, 1987.

Carol D. Shull,

Chief of Registration, National Register.

ARKANSAS

Hot Spring County

Jones Mill Site (3HS28)

CONNECTICUT

Fairfield County

Bridgeport *Bridgeport Downtown North Historic District (Downtown Bridgeport MRA)*, Roughly bounded by Congress, Water, Fairfield Ave., Elm, Golden Hill, & Chapel Sts.

Bridgeport *Bridgeport Downtown South Historic District (Downtown Bridgeport MRA)*, Roughly bounded by Elm, Cannon, Main, Gilbert, & Broad Sts.

Bridgeport *Connecticut Railway and Lighting Company Car Barn (Downtown Bridgeport MRA)*, 55 Congress St.

Bridgeport *Golden Hill Historic District (Downtown Bridgeport MRA)*, Roughly bounded by Congress St., Lyon Terr., Elm, & Harrison Sts.

Danbury, *Terrywile*, Southern Blvd. & Mountain Rd.

Darien, *Meadowlands*, 274 Middlesex Rd.

Trumbull, *Nichols Farms Historic District*, Center Rd., 1681—1944 Huntington Turnpike, 5—34 Priscilla Pl., & 30—172 Shelton Rd.

New Haven County

Meridan, *Colony Street—West Main Street Historic District*, 1-62 Colony, 55 Grove, 1—119 & 82—110 W. Main Sts.

Waterbury, *Hillside Historic District*, Roughly bounded by Woodlawn Terr., W. Main, & Willow

GEORGIA

Clarke County

Athens, *Woodlawn Historic District*, Woodlawn Ave.

KANSAS

Saline County

Salina, *Flanders—Lee House and Carriage House*, 200 S. Seventh St.

MARYLAND

Carroll County

New Windsor vicinity, *Avalon*, MD 31

Cecil County

Rising Sun vicinity, *Brown, Jeremiah, House and Mill Site*, 1416 Telegraph Rd.

Harford County

Jerusalem, *Jerusalem Mill Village*, Jerusalem and Jericho Rds.

MASSACHUSETTS

Middlesex County

Concord, *Shaw, Thomas Mott, Estate*, 317 Garfield Rd.

Waltham, *Lawrence, Phineas, House*, 257 Trapelo Rd.

Norfolk County

Needham, *Grover Emery, Building*, 1330 Highland Ave.

Suffolk County

Boston, *Congress Street Fire Station*, 344 Congress St.

Boston, *House at 17 Cranston Street*, 17 Cranston St.

Boston, *Hoxie, Timothy, House*, 135 Hillside St.

Boston, *New Riding Club*, 52 Hemenway St.

West Roxbury, *Westerly Burial Ground*, Centre St.

Worcester County

Southbridge, *Southbridge Town Hall*, 41 Elm St.

MICHIGAN

Eaton County

Grand Ledge, *Grand Ledge Chair Company Plant*, 101 Perry St.

OHIO

Carroll County

Carrollton, *Van Horn Building*, Public Sq., jct. of W. Main & N. Lisbon Sts.

Lorain County

Elyria, *Washington Avenue Historic District*, Roughly Ohio, Columbus, Harrison, & St. Clair Sts. between Washington Ave. & Glenwood St.

Lorain, *Lorain Fire Station No. 1*, 605 W. Fourth St.

[FR Doc. 87-17618 Filed 8-3-87; 8:45 am]
BILLING CODE 4310-70-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-19,421]

Dismissal of Application for Reconsideration; Bay Shipbuilding Corp., Sturgeon Bay, WI

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Bay Shipbuilding Corporation, Sturgeon Bay, Wisconsin. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-19,421; Bay Shipbuilding Corporation, Sturgeon Bay, Wisconsin (July 24, 1987).

Signed at Washington, DC, this 27th day of July 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 87-17672 Filed 8-3-87; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-19,432]

Dismissal of Application for Reconsideration; Esso Exploration, Inc., Houston, TX

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Esso Exploration, Incorporated, Houston, Texas. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TW-W-19,432; Esso Exploration, Incorporated, Houston, Texas (July 24, 1987).

Signed at Washington, DC, this 27th day of July 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 87-17673 Filed 8-3-87; 8:45 am]
BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; General Motors Co, et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 14, 1987.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 14, 1987.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC, this 27th day of July 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Gen. Motors Co., BOC Buick (U.A.W.)	Flint, MI	7/27/87	7/16/87	19,922	Engines Assembly.
Gen. Motors Co., BOC Detroit (U.A.W.)	Detroit MI	7/27/87	7/16/87	19,923	Vehicles Assembly.
Gen. Motors Co., BOC Lansing (U.A.W.)	Lansing, MI	7/27/87	7/16/87	19,924	Engines Assembly.
Gen. Motors Co., BOC Orion (U.A.W.)	Lake Orion, MI	7/27/87	7/16/87	19,925	Auto Assembly.
Gen. Motors Co., BOC Wentzville (U.A.W.)	Wentzville, MO	7/27/87	7/16/87	19,926	Auto Assembly.
Gen. Motors Co., CPC Bowling Green (U.A.W.)	Bowling Green KY	7/27/87	7/16/87	19,927	Engines, Assembly.
Gen. Motors Co., CPC Pontiac Fiero (U.A.W.)	Pontiac, MI	7/27/87	7/16/87	19,928	Fieros Assembly.
Gen. Motors Co., CPC Pontiac (U.A.W.)	Pontiac, MI	7/27/87	7/16/87	19,929	Engines, Assembly.
Gen. Motors Co., Truck & Bus—Pontiac (U.A.W.)	Pontiac, MI	7/27/87	7/16/87	19,930	Truck & Bus Assembly.
Gen. Motors Co., Central Foundry Defiance (U.A.W.)	Defiance, OH	7/27/87	7/16/87	19,931	Engine Castings.
Gen. Motors Co., Central Foundry (U.A.W.)	Saginaw, MI	7/27/87	7/16/87	19,932	Engine Castings.
Gen. Motors Co., Central Foundry Pontiac (U.A.W.)	Pontiac, MI	7/27/87	7/16/87	19,933	Engine Castings.
Gen. Motors Co., CPC Flint Engine (U.A.W.)	Flint, MI	7/27/87	7/16/87	19,934	V-6 & T-4 Engines.
Gen. Motors Co., CPC Grand Rapids (U.A.W.)	Grand Rapids, MI	7/27/87	7/16/87	19,935	Auto Stampings.
Gen. Motors Co., CPC Marion (U.A.W.)	Marion, IN	7/27/87	7/16/87	19,936	Auto Stampings.
Gen. Motors Co., Detroit Diesel, Allison Div. (U.A.W.)	Indianapolis, IN	7/27/87	7/16/87	19,937	Engine Parts.
Gen. Motors Co., Electro Motive Div. (U.A.W.)	La Grange, IL	7/27/87	7/16/87	19,938	Locomotives Parts.
Gen. Motors Co., Fisher Guide Div. (U.A.W.)	Anderson, IN	7/27/87	7/16/87	19,939	Lighting Products.
Gen. Motors Co., Fisher Guide Div. (U.A.W.)	Flint, MI	7/27/87	7/16/87	19,940	Auto Parts.
Gen. Motors Co., Hydramatic Div. (U.A.W.)	Muncie, IN	7/27/87	7/16/87	19,941	Transmissions.
Gen. Motors Co., Inland Div. Euclid (U.A.W.)	Euclid, OH	7/27/87	7/16/87	19,942	Auto Seat Cushions
Gen. Motors Co., Inland Div. Livonia (U.A.W.)	Livonia, MI	7/27/87	7/16/87	19,943	Auto Seat Cushions.
Gen. Motors Co., Rochester Products (U.A.W.)	Grand Rapids MI	7/27/87	7/16/87	19,944	Diesel Injectors.
Gen. Motors Co., Saginaw Div. (U.A.W.)	Athens, AL	7/27/87	7/16/87	19,945	Steering Gears.
Gen. Motors Co., Saginaw Div. (U.A.W.)	Buffalo, NY	7/27/87	7/16/87	19,946	Auto Axles.
Gen. Motors Co., Saginaw Div. (U.A.W.)	Detroit, MI	7/27/87	7/16/87	19,947	Axles, Brakes etc.
Gen. Motors Co., Saginaw Div. (U.A.W.)	Saginaw, MI	7/27/87	7/16/87	19,948	Steering Columns, Shafts Etc.
Ajax Frocks, Inc. (Workers)	New York, NY	7/27/87	7/16/87	19,949	Dresses.
Aurora Industries (Workers)	Culver, MN	7/27/87	7/17/87	19,950	Bentonite.
Berluron Mfg. Co., Inc. (Workers)	Bethlehem, PA	7/27/87	7/10/87	19,951	Brassiers.
Diamond Bosit (Workers)	Conroe, TX	7/27/87	7/10/87	19,952	Drill Bits.
Everything is Jake, Inc., (Workers)	Allentown, NJ	7/27/87	7/13/87	19,953	Slacks, Tops & Skirts.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Ft. Phillips Drill (Workers)	Milwaukie, OR	7/27/87	7/14/87	19,954	Tools.
Finkel Outdoor Prod. (UTWA)	Garfield, NJ	7/27/87	7/17/87	19,955	Furniture.
General Electric Co. (IUE)	Austintown, OH	7/27/87	6/29/87	19,956	Lamps.
General Motors (U.A.W.)	Kansas City, MO	7/27/87	7/10/87	19,957	Passenger Automobiles.
Kimberly Clark Corp. (Paper Workers)	Spotswood, NJ	7/27/87	7/17/87	19,958	Cigarette Papers.
Motion Control Indus. (IUE)	Ridgway, PA	7/27/87	7/20/87	19,959	Brake Linings.
Mobil Exploration & Producing (Workers)	Denver, CO	7/27/87	7/15/87	19,960	Oil & Gas.
Onnasport, Inc. (ACTWU)	Woonsocket, RI	7/27/87	7/17/87	19,961	Jackets.
Port Clyde Foods (Workers)	Rockland, ME	7/27/87	7/15/87	19,962	Seafood.
Rohm and HAAS (Workers)	Redwood City, CA	7/27/87	7/8/87	19,963	Ion Exchange Resins.
Safeway 453 (Workers)	Synder, TX	7/6/87	7/6/87	19,964	Food Outlet.
TEMEX (Formerly Amerey, Inc.) (Workers)	Oklahoma City, OK	7/27/87	7/7/87	19,965	Oil & Gas.
Tonka Sportswear (ILGWU)	West New York, NJ	7/27/87	7/15/87	19,966	Sportswear.
Western Atlas (Workers)	Pearland, TX	7/27/87	7/7/87	19,967	Wireline Services.

[FR Doc. 87-17686 Filed 8-3-87; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-19,777]

Termination of Investigation; Itmann Coal Co., Itmann, WV

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated in response to a worker petition received on June 8, 1987 which was filed on behalf of workers at Itmann Coal Company, Itmann, West Virginia.

A negative determination applicable to the petitioning group of workers was issued on February 27, 1987 (TA-W-18,891). Production at Itmann was discontinued in December 1986. No new information is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 24th of July 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 87-17674 Filed 8-3-87; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-19,631]

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance; Mackintosh-Hemphill International, Inc., Pittsburgh, PA

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 22, 1987 applicable to all workers of Mackintosh-Hemphill International, Incorporated, Pittsburgh, Pennsylvania.

Based on information availble to the Department, the Certification Notice is amended to properly reflect the correct impact date as January 29, 1986, one year prior to the date the original petition was signed.

Accordingly, the Department is amending the subject Certification by issuing a new impact date of January 29, 1986.

The Amended Certification for TA-W-19,631 is hereby issued as follows:

All workers of Mackintosh-Hemphill International, Incorporated, Pittsburgh, Pennsylvania who became totally or partially separated from employment on or after January 29, 1986 are eligible to apply for adjustment assistance.

Signed at Washington, DC, this 24th day of July 1987.

Harold A. Bratt,

Deputy Director, Office of Program Management, UIS.

[FR Doc. 87-17675 Filed 8-3-87; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-19,559]

Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance; Santa Fe Minerals, Inc.

In the matter of Santa Fe Minerals, Inc., Southwest Exploration District; Midland, TX and all other locations of the Southwest Exploration District in the following states, Texas TA-W-19,559A, Louisiana TA-W-19,559B, Oklahoma TA-W-19,559C.

In accordance with section 223 of the Trade Act of 1974, the Department of labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 20, 1987 applicable to all workers of the Midland, Texas facility of Santa Fe Minerals, Inc. The Certification was published in the Federal Register on July 9, 1987 (52 FR 25930).

The certification notice is amended to identify the states in which the Southwest Exploration District maintains operations. The District has oil fields in Louisiana, Oklahoma and Texas as well as offices which support crude oil production. Worker separations and production declines occurred throughout the District in 1986 compared to 1985.

The intent of the certification is to cover all workers of the Southwest Exploration District in all locations. The amended notice applicable to TA-W-19,559 is hereby issued as follows:

All workers of Santa Fe Minerals, Incorporated, Southwest Exploration District, Midland, Texas and all other workers of the Southwest Exploration District operating in the states of Texas, Louisiana and Oklahoma who became totally or partially separated from employment on or after April 13, 1986 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 27th day of July 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 87-17676 Filed 8-3-87; 8:45 am]
BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Toyad Corp. et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period July 20, 1987–July 24, 1987.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–19,746; Toyad Corporation, Latrobe, PA

TA–W–19,742; Stainless Ice-Tainer Co. (SITCO), San Antonio, TX

TA–W–19,753; Earmark, Inc., Hamden, CT

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA–W–19,852; H.O. Mohr & Associates, Houston, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–19,761; Leaseway of Detroit, Westland, MI

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–19,774; BJ Titan Service Co., San Angelo, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–19,792; RCA Business System, Cherry Hill, NJ

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–19,847; Delmed, Inc., Freehold, NJ

Increased imports did not contribute importantly to workers' separations at the firm.

TA–W–19,809; ITT Snyder, New Orleans, LA

Increased imports did not contribute importantly to workers' separations at the firm.

TA–W–19,763; HNG Oil Co., Midlnad, TX

Increased imports did not contribute importantly to workers' separations at the firm.

TA–W–19,828; Hay Brothers, Inc., Lake Charles, LA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–19,727; GTE Government Systems Corp., Tempe, AZ

Increased imports did not contribute importantly to workers' separations at the firm.

TA–W–19,728; GTE Laboratories, Inc., Waltham, MA

Increased imports did not contribute importantly to workers' separations at the firm.

Affirmative Determinations

TA–W–19,731; Major Watch Case Co., Brooklyn, NY

A certification was issued covering all workers of the firm separated on or after April 28, 1986.

TA–W–19,731A; Bellacose, Inc., Brooklyn, NY

A certification was issued covering all workers of the firm separated on or after April 28, 1986.

TA–W–19,795; Terry Corp., Niantic, CT

A certification was issued covering all workers of the firm separated on or after May 26, 1986.

TA–W–19,740; Racine Steel Castings, Racine, WI

A certification was issued covering all workers of the firm separated on or after May 15, 1986.

TA–W–19,749; Westinghouse Electric Corp., East Pittsburgh, PA

A certification was issued covering all workers of the firm separated on or after May 12, 1986.

TA–W–19,736; Momentum Technologies, Inc., Herkimer, NY

A certification was issued covering all workers of the firm separated on or after May 18, 1986.

TA–W–19,739; Polymer Corp., Reading, PA

A certification was issued covering all workers of the firm separated on or after May 5, 1986.

TA–W–19,758; BHP Petroleum (Americas), Inc., Headquarters Staff, Houston, TX

A certification was issued covering all workers of the firm separated on or after May 10, 1986.

TA–W–19,751; Clark Brothers Colt Co., Milldale, CT

A certification was issued covering all workers of the firm separated on or after May 14, 1986.

TA–W–19,797; Unit Drop Forge Co., Inc., West Allis, WI

A certification was issued covering all workers of the firm separated on or after May 26, 1986.

TA–W–19,745; Sprague Electric Co., Wichita Falls, TX

A certification was issued covering all workers of the firm separated on or after April 13, 1986.

TA–W–19,729; GTE Microcircuits, Tempe, AZ

A certification was issued covering all workers of the firm separated on or after April 29, 1986.

I hereby certify that the aforementioned determinations were issued during the period July 20, 1987–July 24, 1987. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213 during normal

business hours or will be mailed to persons who write to the above address.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Dated: July 28, 1987.

[FR Doc 87-17877 Filed 8-3-87; 8:45 am]

BILLING CODE 4510-30-M

Occupational Safety and Health Administration

Supplement to Wyoming State Plan; Request for Public Comment

AGENCY: Department of Labor, Occupational Safety and Health Administration (OSHA).

ACTION: Request for Comment: Wyoming State Standards Supplements.

SUMMARY: This notice invites comment on Wyoming's Standards for Oil and Gas Well Drilling, Oil and Gas Well Servicing, and Oil and Gas Well Special Services. These Wyoming Standards are independent State standards for which there are no Federal OSHA equivalents. Where a State standard adopted pursuant to an OSHA-approved State plan differs significantly from a comparable Federal standard or is a State-initiated standard, the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) requires that the State standard must be "at least as effective" in providing safe and healthful employment and places of employment. In addition, if the standard is applicable to a product distributed or used in interstate commerce, it must be required by compelling local conditions and not pose any undue burden on interstate commerce. OSHA, therefore, seeks public comment as to whether the Wyoming standards meet the above requirements.

DATES: Written comments should be submitted by September 3, 1987.

ADDRESSES: Written comments should be submitted in quadruplicate to the Director, Federal-State Operations, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3700, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, Room N-3647, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 523-8148.

SUPPLEMENTARY INFORMATION

A. Background

The requirements for adoption and enforcement of safety and health standards by a State with a State plan approved under section 18(b) of the Act are set forth in section 18(c)(2) of the Act and in 29 CFR Part 1902, 29 CFR 1952.7, and 29 CFR 1953.21, 1953.22, and 1953.23. OSHA regulations require that States respond to the adoption of new or revised permanent Federal standards by State promulgation of comparable standards within six months of OSHA publication in the **Federal Register** (29 CFR 1953.23(a)); a 30-day response time is required for State adoption of a standard comparable to a Federal emergency temporary standard (29 CFR 1953.22(a)(1)). Independent State standards must be submitted for OSHA's review and approval. Newly adopted State standards or revisions to standards must be submitted for OSHA review and approval under procedures set forth in 29 CFR Part 1953, but are enforceable by the State prior to Federal review and approval. Section 18(c)(2) of the Act provides that if State standards which are not identical to Federal standards are applicable to products which are distributed or used in interstate commerce, such standards must be required by compelling local conditions and must not unduly burden interstate commerce. (This latter requirement is commonly referred to as the "product clause.")

On May 3, 1974, notice was published in the **Federal Register** (39 FR 15394) of the approval of the Wyoming State plan and the adoption of Subpart BB to Part 1952 containing the decision. The Wyoming State plan provides for the adoption of State standards in the following manner.

The Wyoming Division of Occupational Safety and Health either proposes to adopt Federal standards or drafts such standards as it considers necessary after agency review and research and consultation with other persons knowledgeable in the specific field for which the standards are being formulated. The standards are submitted to the Wyoming Occupational Safety and Health Commission for its approval. The Wyoming plan provides for adoption of a standard as a State standard after public notice and hearing are published in accord with the Wyoming Administrative Procedure Act, and the Secretary's rules on rule-making.

Wyoming submitted State-initiated plan changes by letters, with attachments, which incorporated these standards as part of its occupational health and safety plan. By letter of October 27, 1981, the standard for Oil and Gas Well Servicing was submitted by Donald D. Owsley, Administrator, to Curtis A. Foster, former Regional Administrator. By letter of December 17, 1981, the standard for Oil and Gas Well Drilling was submitted by Donald D. Owsley, Administrator, to Curtis A. Foster, former Regional Administrator. By letter of November 16, 1984, the standard for Oil and Gas Well Special Services was submitted by Donald D. Owsley, Administrator, to Byron R. Chadwick, Regional Administrator. The subject standards establish rules and regulations applicable to the Oil and Gas Well Drilling, Servicing, and Special Services industries in the State of Wyoming. After the normal open period for public review and comments, the Commission adopted these standards and they became effective on dates as follows: the Oil and Gas Well Drilling standard was adopted finally on July 24, 1981, and became effective on November 2, 1981; the Oil and Gas Well Servicing standard was adopted on July 23, 1981, and became effective October 5, 1981; and, the Oil and Gas Well Special Services standard was adopted on August 3, 1984, and became effective on September 6, 1984.

OSHA does not have specific standards for oil and gas well drilling. It currently uses 29 CFR Part 1910 General Industry Standards and Instruction STD 1-12-28. Wyoming standards were compared to OSHA's general standards requirements and enforcement policy set out in OSHA Instruction STD 1-12-28, which prescribes alternative abatement methods.

B. Issues for Determination

The Wyoming standards in question are now under review by the Assistant Secretary to determine whether they meet the requirements of section 18(c)(2) of the Act and 29 CFR 1902 and 1953. Public comment is being sought by OSHA on the following issues.

1. "At least as effective" requirement. There are no equivalent Federal standards applicable to the oil and gas well industries. Therefore, OSHA has evaluated the State's requirements in comparison to OSHA's general standards requirements and to enforcement policy and has preliminarily determined that the State standards in question meet the "at least as effective" criterion on section 18(c)(2) of the Occupational Safety and Health Act. However, public comment on this issue is solicited for OSHA's

consideration in its final decision on whether or not to approve the State's standard.

2. Product clause requirement. OSHA is also seeking through this notice public comment as to whether the Wyoming Standards:

(a) Are applicable to products which are distributed or used in interstate commence;

(b) If so, whether they are required by compelling local conditions; and

(c) Unduly burden interstate commerce.

C. Public Participation

Interested persons are invited to submit written data, views and arguments with respect to the issues described above. These comments must be postmarked on or before September 3, 1987 and submitted in quadruplicate to the Director, Federal-State Operations, Room N–3700, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Written submissions must clearly identify the issues which are addressed and the position taken with respect to each issue. The Occupational Safety and Health Administration will consider all relevant comments, arguments and requests submitted concerning these standards and will thereafter publish notice of the decision approving or disapproving them.

D. Location of Supplement for Inspection and Copying

A copy of Wyoming standards applicable to the Oil and Gas Well industries, along with approved State provisions for adoption of standards, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, U.S. Department of Labor, Federal Office Building, Room 1576, 1961 Stout Street, Denver, Colorado 80294; Occupational Health and Safety Department, 604 East 25th Street, Cheyenne, Wyoming 82002; Office of the Director, Federal-State Operations, U.S. Department of Labor, Room N–3700, 200 Constitution Avenue, NW., Washington, DC 20210.

Authority: Secs. 18, 84 Stat. 1608 [29 U.S.C. 667]; 29 CFR Part 1902, Secretary of Labor's Order No. 9–83 (43 FR 35736).

Signed the 30th day of July, 1987, in Washington, DC.

John A. Pendergrass,

Assistant Secretary.

[FR Doc. 87–17622 Filed 8–3–87; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

National Endowment for the Humanities

Agency Information Collection Under OMB Review

AGENCY: National Endowment for the Humanities NFAH.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisons of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATE: Comments on this information collection must be submitted on or before September 3, 1987.

ADDRESSES: Send comments to Ms. Ingrid Foreman, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202–786–0233) and Mr. Joseph Lackey, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, DC 20503 (202–395–7316).

FOR FURTHER INFORMATION CONTACT: Ms. Ingrid Foreman, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202) 786–0233 from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filed out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h).

Category: Revision

Title: Centers for Advanced Study
Category: Application Instructions, interim reports, and annual performance reports for centers; fellows' final reports; guidelines for site visitors
Form Number: Not applicable
Frequency of Collection: Annual
Respondents: Independent centers for advanced study, American research centers overseas, independent research libraries, research museums, and humanities scholars
Use: Application for funding, program evaluation, and compliance
Estimated Number of Respondents: 88
Estimated Hours for Respondents to Provide Information: 29 per respondent

Susan Metts,

Assistant Chairman for Administration.

[FR Doc. 87–17611 Filed 8–3–87; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

Tennessee Valley Authority Revised Corporate Nuclear Performance Plan; Availability of Volume 1 of Safety Evaluation Report

The U.S. Nuclear Regulatory Commission (NRC) announces the publication of NUREG–1232, Volume 1, Safety Evaluation Report (SER) on the Tennessee Valley Authority Corporate Nuclear Performance Plan—Revised.

On September 17, 1985, NRC issued a letter to the Tennessee Valley Authority (TVA), pursuant to 10 CFR 50.54(f), requesting TVA to submit information on its plans for correcting problems in the overall management of its nuclear program as well as plant-specific problems. In response to this letter, TVA prepared a plan that identifies and proposes corrections to problems with TVA's management of its nuclear program. For corporate management, the plan is documented in revisions of the TVA Corporate Nuclear Performance Plan (CNPP) dated November 1, 1985; March 10, and December 4, 1986; and March 26, 1987 and in its letter dated May 27, 1987.

The TVA Board of Directors' response to the 10 CFR 50.54(f) letter was to hire the current Manager of the Office of Nuclear Power and provide him with the resources, authority and responsibility for the total management, control and supervision of the TVA nuclear power program. The Office of Nuclear Power generated the CNPP representing an overall plan to re-establish effective TVA management of its nuclear power program.

NUREG–1232, Volume 1, presents the NRC staff evaluation of the information submitted in the revised TVA CNPP through Revision 4 and in TVA's letter dated May 27, 1987. In this report the staff concludes (1) that TVA has acceptably addressed the corporate-level concerns raised by NRC in its 10 CFR 50.54(f) letter dated September 17,

1985; (2) that because many of the corrective actions that TVA has taken or is taking to strengthen its nuclear program are programmatic, the effectiveness of these actions depends on their implementation, and NRC plans to closely monitor this implementation effort; and (3) that, at this time, the organization and staffing as presented in the CNPP, coupled with the programmatic improvements in place or underway, are sufficient to resolve the problems at the corporate level that led to issuance of the 10 CFR 50.54(f) letter in September 1985, and to support continuing TVA nuclear activities, including plan operations.

The NRC staff's acceptance of the CNPP is based on the information TVA provided about the new organization and the current senior managers. TVA was requested to notify the NRC at least 30 days prior to any permanent change in this organization, or permanent replacement of senior managers, including the Site Directors.

The NRC will address site-specific concerns in subsequent SERs on each plant-specific volume of the Nuclear Performance Plan.

Copies of NUREG–1232, Volume 1, may be purchased by calling (202) 275–2060 or (202) 275–2171 or by writing to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington DC 20013–7082. Copies may also be purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

A copy of NUREG–1232, Volume 1, is also available for inspection and/or copying for a fee in the NRC Public Document Room 1717 H Street, NW, Washington, DC 20555.

Dated at Bethesda, Maryland, this 28th day of July 1987.

For The Nuclear Regulatory Commission.

John A. Zwolinski,

Assistant Director for Projects, TVA Projects Division, Office of Special Projects.

[FR Doc. 87–17656 Filed 8–3–87; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50-334]

Exemption; Duquesne Light Co. et al.; Beaver Valley Power Station, Unit No. 1

I.

Duquesne Light Company, et al. are the holders of Facility Operating License No. DPR–66 which authorizes operation of the Beaver Valley Power Station, Unit No. 1. The license provides, among other things, that Beaver Valley Power Station, Unit No. 1 be subject to all rules, regulations, and Orders of the Commission now or hereafter in effect. Duquesne Light Company (the licensee) is the authorized operator of the facility.

The station is a pressurized water reactor at the licensee's site located in Shippingport, Pennsylvania.

II.

On November 19, 1980, the Commission published a revised § 50.48 and a new Appendix R to 10 CFR Part 50 regarding fire protection features of nuclear power plants. The revised § 50.48 and Appendix R became effective on February 17, 1981. Section III of Appendix R contains 15 subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant. One of these subsections, III.J, is the subject of the licensee's exemption request.

Subsection III.J of Appendix R requires that emergencylighting units with at least 8-hour battery power be provided in all areas needed for operation of safe shutdown equipment and in access and egress routes thereto.

III.

The NRC has previously granted several fire-protection exemptions to the licensee. These are dated March 14, 1983, August 30, 1984 and December 4, 1986.

By letters dated January 21, 1986 and October 21, 1986, the licensee requested an exemption from the technical requirements of section III.J of Appendix R to 10 CFR Part 50, concerning the need for 8-hour battery-powered lighting units in areas having safe shutdown equipment and along access/egress routes. The reason for requiring 8-hour battery powered emergency lighting is to ensure that at least minimum lighting is available for the performance of manual actions necessary for safe shutdown after a fire. The licensee requested the exemption to allow the use of:

1. Security perimeter lighting for outside yard area access/egress routes.

For a control room area fire, the operators are required to follow outdoor pathways to achieve and maintain safe shutdown from outside the control room. To provide lighting, the licensee proposed to use security perimeter lighting instead of the required 8-hour battery-powered lighting for the following access/egress routes—control room to emergency diesel generator building via the east yard area, control room to the intake structure via the north yard area and the roof-top area between the safeguard building stairway and service building (feedwater regulating valve room).

The security perimeter lighting is powered from motor control center MCC–137 (located in the security guard house), which on loss of offsite power, would be supplied from the security diesel generator. This emergency diesel generator has a fuel supply for at least 24 hours. The security perimeter lighting circuits are not routed through fire areas where safe shutdown equipment or cables are located. The transfer circuits that switch power between the normal source and the security diesel generator are routed through the fire areas TB–1 (turbine building) and NS–1 (normal switchgear). However, for fire in these two areas, a control room evacuation would not be required. The security diesel generator and transfer circuitry are independent for all other fire areas of Appendix R concern. The staff concludes that the security perimeter lighting system, including its emergency power supply, are independent of fire areas where control room evacuation may be required, and provides lighting capability equivalent to the technical requirements of section III.J.

2. Portable, hand-held lighting units for specific plant-areas. .

The licensee has requested approval of the use of portable lights to enhance the permanently installed 8-hour emergency lighting for alternate shutdown, in specified areas, based on field walkdown: intake structure, turbine deck, primary auxiliary building, service building roof top to feedwater regulation valve room, normal 4-kv switchgear room, AE and DF emergency switchgear rooms and process rack room .

The Illuminating Engineering Society (IES) Handbook (referenced in Generic Letter 85–01) for industry standard lighting guidance accepts the use of portable lighting to supplement fixed d-c units. The staff concludes that the use of portable hand-held lights to supplement the permanently installed 8-hour battery-powered units is acceptable..

The operator actions are hands-free activities (access/egress, observe a gauge, etc.), or require on hand (operate switch, etc.), which would facilitate the use of flash lights.

3. Two-hour battery-powered emergency lighting in the fire brigade room.

The licensee requested approval of the use of 2-hour battery-powered lighting units in the fire brigade room, which were installed instead of 8-hour

battery-powered lighting. The brigade room is located on the turbine deck adjacent to the control room main entrance/exist area. It is used as a staging area for alternate shutdown procedures. In this room the operators are briefed on job assignments, and provided key rings, procedure packets and extra flash lights. The expected time duration at this staging area would be less than 30 minutes. The turbine deck has 8-hour battery-powered lighting units installed for access/egress around the brigade room.

IV.

Accordingly, the Commission has determined that pursuant to 10 CFR 50.12(a), the exemption as described in section III is authorized by law and will not present an undue risk to the public health and safety and are consistent with common defense and security, and special circumstances are present for the exemptions in that application of the regulation in these particular circumstances is not necessary to achieve the underlying purposes of Appendix R to 10 CFR Part 50. Therefore, the Commission hereby grants the following exemption for the items mentioned in section III above from the requirements of section III.J of Appendix R to 10 CFR Part 50 concerning the need for 8-hour battery-powered lighting units in areas having safe shutdown equipment and along access/egress routes as follows:

1. Security perimeter lighting for outside yard area access/egress routes may be used, .

2. Portable, hand-held lighting units may be used for plant areas as specified in the licensee's submittal provided the licensee provide the hand-held lights as part of the dedicated supplies required for alternate safe shutdown, and .

3. Two-hour battery-powered emergency lighting in the fire brigade room may be used.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of the exemption will have no significant impact on the environment (52 Fr 27892).

This Exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director Division of Reactor Project I/II, Office of Nuclear Reactor Regulations.

Dated at Bethesda, Maryland, this 27th day of July 1987.

[FR Doc. 87-17654 Filed 8-3-87; 9:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-423]

Withdrawal of Application for Amendment to Facility Operating License; Northeast Nuclear Energy Company et al.

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Northeast Nuclear Energy Company (the licensee) to withdraw its August 26, 1986 application for proposed amendment to the Millstone Nuclear Power Station, Unit No. 3, located in New London County, Connecticut. The proposed amendment would have revised Technical Specification Section 6.5.3.2 to change the size of the quorum required to conduct a meeting of the Millstone Unit No. 3 Nuclear Review Board. The Commission issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on October 22, 1986 (51 FR 37516). By letter dated May 28, 1986, the licensee withdrew its application for the proposed amendment.

For further details with respect to this action, see the application for amendment dated August 28, 1986, and the licensee's letter dated May 28, 1987, withdrawing the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut.

Dated at Bethesda, Maryland, this 23rd day of June 1987.

Robert L. Ferguson,

Project Manager, Project Directorate I-4, Division of Reactor Projects I/II.

[FR. Doc. 87-17655 Filed 8-3-87; 8:45 am]

BILLING CODE 1590-01-M

PENSION BENEFIT GUARANTY CORPORATION

Request for Determination of Substantial Damage With Respect to Cessation of Contributions by Pioneer Paper Stock to Freight Drivers and Helpers Local 557 Pension Fund

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of no determination.

SUMMARY: This notice advises interested persons that the Pension Benefit Guaranty Corporation ("PBGC") has declined to make a determination of substantial damage under section 4203(d)(4) of the Employee Retirement Income Security Act with respect to the cessation of contributions under the Freight Drivers and Helpers Local 557 Pension Fund by Pioneer Paper Stock. Section 4203(d) provides a special withdrawal rule for the trucking industry, under which a trucking employer that ceases contributions to a plan is considered not to have withdrawn from the plan if certain conditions are met, including the furnishing of a bond or escrow. After the bond/escrow requirement has been satisfied, the PBGC may make a finding under section 4203(d)(4) that the cessation (considered together with other cessations) has substantially damaged the plan's contribution base. In this event the employer will be treated as having withdrawn from the plan and the bond or escrow will be paid to the plan. Alternatively, the PBGC may find under section 4203(d)(5) that no substantial damage has been caused, in which case the bond will be cancelled or the escrowed amount returned to the employer, and the employer will have no further liability under the plan. The effect of this notice is to advise interested persons that the PBGC has declined to find substantial damage in this case.

FOR FURTHER INFORMATION CONTACT: J. Ronald Goldstein, Manager, Regulations Division, Corporate Policy and Regulations Department (35400), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; 202-778-8850 (202-778-8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

Section 4203(d) of the Employee Retirement Income Security Act, as amended ("ERISA"), provides a special withdrawal rule for the trucking industry. That industry, for purposes of this rule, is considered to include the long and short haul trucking industry, the household goods moving industry, and the public warehousing industry. The rule is limited to trucking plans, *i.e.*, plans under which substantially all of the contributions required are made by employers primarily engaged in the trucking industry. The rule is also limited to trucking employers, *i.e.*, those employers that have an obligation to contribute under a trucking plan primarily for work in the trucking industry.

Under section 4203(d), a trucking employer will not be considered to have withdrawn from a trucking plan merely because the employer permanently ceases to have an obligation to

contribute under the plan or permanently ceases all covered operations under the plan, if certain conditions are met. One condition is that the employer must not continue to perform work within the jurisdiction of the plan. Another condition is that the employer must furnish a bond or establish an escrow account in an amount equal to 50 percent of its withdrawal liability.

After the bond is posted or the escrow established, the Pension Benefit Guaranty Corporation ("PBGC") may, within 60 months after the cessation of the employer's covered operations or obligation to contribute, make a determination about the effect of the cessation (considered together with any cessation by other employers) on the plan's contribution base. If the PBGC makes a finding under section 4203(d)(4) that the contribution base has suffered substantial damage, the employer will be treated as having withdrawn from the plan on the date when the obligation to contribute or covered operations ceased. In that event, the bond or escrow will be paid to the plan, and the employer will be liable for the remainder of the withdrawal liability. If the PBGC makes a finding under section 4203(d)(5) that no substantial damage has occurred, or if it does not make a finding of substantial damage under section 4203(d)(4) within the 60-month period referred to above, then the bond will be cancelled or the escrow refunded and the employer will have no further liability under the plan.

The Request

The Freight Drivers and Helpers Local 557 Pension Fund (the "Plan") has requested that the PBGC find that the cessation of contributions under the Plan by Pioneer Paper Stock has substantially damaged the Plan's contribution base. The Plan represents that 96% of the employers that contribute to the Pension Plan are trucking employers. It also asserts that Pioneer is a trucking employer and ceased all covered operations under the Plan in May 1984.

On February 5, 1987, the PBGC published (at 52 FR 3723) a notice of the pendency of the Plan's request. The notice solicited comments by interested persons; Pioneer submitted the only comment received by the PBGC. The PBGC also corresponded with the Plan to obtain information about the cessation of contributions by Pioneer and other employers and the effect of those cessations on the Plan. The factual data in this notice are derived from information submitted by the parties.

Decision

As noted above, each cessation must be considered within the context of other cessations under the same plan in determining its effect on the plan's contribution base. The statute does not limit this context to any specified time period, although, as a practical matter, the 60-month limitation on PBGC determinations restricts the context to five years after a cessation occurs. In this case, the PBGC has reviewed data from the period beginning five years before Pioneer's cessation and ending in 1984. However, because the issue in this determination is the impact of the section 4203(c) trucking rule on the Plan, the PBGC has concentrated particularly on the period beginning on September 26, 1980, the effective date of MPPAA. (In other cases, the PBGC may find that other time periods are appropriate.)

For the plan year ended December 31, 1980 ("PY 1980"), the plan year ending closest to September 26, 1980, the Plan's contribution base was 5,541,200 base units. The contribution base declined to 4,086,900 in PY 1982, rebounded slightly in PY 1983 and fell to 4,081,500 in PY 1984. Thus, during the five-year period beginning with PY 1980 (when section 4203 became applicable) and ending with PY 1984, the Plan experienced a decline of about 26.3% in its contribution base.

During the same five-year period, 32 employers completely ceased contributions to the Plan. All of the employers that completely ceased contributing to the Plan between September 26, 1980 and the end of PY 1984 are characterized by the Plan as trucking employers. The aggregate contribution base units for these employers in their last year of participation was 1.1 million, or about 20 percent of the Plan's PY 1980 contribution base units. Only one of these employers paid withdrawal liability; the Plan states that the remaining employers' withdrawal liability is uncollectible.

As the Plan's contribution base declined during the period, its average contribution rate increased 53.7%. Total contributions to the Plan dropped from $6,195,800 in PY 1980 to $5,502,200 in PY 1982 and rebounded to $7,087,900 in PY 1984. The Plan states that it had to borrow against the next year's contributions in plan years 1980 through 1984 in order to meet the previous year's minimum funding requirement. The Plan's actuarial valuation as of January 1, 1985 notes that there was a significant drop in the contributions borrowed from 1985 to meet the 1984 minimum funding requirements. It projects that the borrowing of contributions should be unnecessary as of the end of 1985.

The January 1, 1985 valuation also states that the Plan's scheduled costs ($6,556,300) compare favorably with expected employer contributions ($7,406,300). It notes that there would be an excess of contributions over costs even if the number of active employers decreased by 10% and the contribution rate remained the same.

Pioneer has filed a response urging the PBGC to reject the Plan's request. Pioneer argues that the decline in contribution base units suffered by the Plan is only half that which led the PBGC to conclude that the Trucking Employees of North Jersey Welfare Fund, Local 641 ("Local 641") had suffered substantial damage to its contribution base, 50 FR 36171 (September 5, 1985). Pioneer also observes that the Plan's total contributions actually increased during the period that it was losing contribution base units, further distinguishing it from Local 641. Finally, Pionner argues that while the Plan had to borrow against the next year's contributions in previous years, the amount of money borrowed has been declining and the Fund expected such borrowing to become unnecessary by the end of PY 1985.

After reviewing the information submitted by the Plan and by Pioneer, the PBGC concludes that it is unable to find that the Plan suffered substantial damage to its contribution base as a result of Pioneer's cessation considered together with other cessations. This does not, however, constitute a finding of no substantial damage pursuant to section 4203(d)(5).

The PBGC disagrees with Pioneer's assertion that the decline in contribution base units suffered by the Plan is only half that which led the PBGC to make a finding of substantial damage in the Local 641 matter. The Local 641 plan had experienced an approximately 20 percent decline in contribution base units as a result of employer cessations during the pertinent period; its overall decline during that period was about 46 percent. However, neither of these figures alone was the basis for the PBGC's determination.

In the instant case, the Plan has experienced a 26.3 percent decline in contribution base units from PY 1980 through PY 1984, including a 20 percent decline attributable to trucking employer cessations after September 26, 1980 (a figure virtually identical to the comparable figure for the Local 641 plan). While this degree of decline is significant, it must be considered in the context of the Plan's overall total

increase in contributions during that same period. In that context, it is difficult to conclude that the Plan's contribution base was substantially damaged.

In addition, unlike the experience of Local 641, the loss of contribution base units did not come at a time when the Plan's general financial condition was deteriorating. The Plan's unfunded vested benefits declined by 35% during this period, with vested benefits approximately 52 percent funded as of the end of PY 1984. Further, the Plan projects that it will no longer be necessary to borrow from the next year's contributions in order to meet the minimum funding standards. These indications of an improving financial condition also militate against a finding that the Plan's contribution base was substantially damaged.

Nevertheless, while the PBGC is unable to find substantial damage on the basis of these facts, they do not clearly demonstrate that the Plan has suffered no substantial damage to its contribution base as a result of employer cessations. Accordingly, the PBGC declines to find either substantial damage or no substantial damage, pursuant to ERISA sections 4203 (d)(4) or (d)(5), respectively. The effect of this decision is that the bond or escrow furnished by Pioneer shall remain in place until the expiration of the 60-month period described in section 4203(d)(4), unless and until the PBGC should hereafter be requested to and make a finding of either substantial damage or no substantial damage as a result of Pioneer's cessation considered together with other employer cessations.

Issued at Washington, DC, this 28th day of July 1987.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 87-17087 Filed 8-3-87; 8:45 am]

BILLING CODE 7708-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-24752; File No. SR-AMEX-87-21]

Self-Regulatory Organizations; Proposed Rule Change by the American Stock Exchange, Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) ("Act"), notice is hereby given that on July 16, 1987, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex is proposing that its AUTO-EX System be expanded to increase the size of eligible market and marketable limit orders from 10 to 20 contracts.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Recently, the Exchange received approval, in part, to expand its Amex Options Switching (AMOS) System, including its AUTO AMOS sub-system, to increase the size of eligible market and marketable limit orders from 10 to 20 contracts. *See* Securities Exchange Act Release No. 24668, 52 FR 25677 (July 8, 1987). The Exchange herein proposes to similarly increase the size of eligible orders in its AUTO-EX System from 10 to 20 contracts.

AUTO-EX is the Exchange's automatic execution system that results in both instantaneous executions of selected active series against the current quote and reports such executions back to the entering firm as well as to the last sale tape. AUTO-EX is presently used in selected series of Major Market Index options (SR-AMEX-85-29), in "breakout" situations for stock options (SR-AMEX-87-4) and will soon be used for certain orders in competitively traded options (SR-AMEX-87-19).

Overall, the AUTO-EX System has received the strong support of Exchange member firms. The system results in "locked in" trades (since the Exchange submits both sides to comparison) thereby eliminating operational burdens for users.

AUTO-EX is a system that interlocks with the AMOS system. In order for these interlocking systems to operate efficiently, the Exchange must have the authority to set the same limits for both systems.

The proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objective of section 6(b)(5), in particular, in that it will foster cooperation and coordination with persons engaged in facilitating transactions in securities, and will also result in more efficient and effective market operations, consistent with section 11A(a)(1)(B).

B. Self-Regulatory Organization's Statement on Burden on Competition

The AMEX believes that the proposed rule change will not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Options Committee, a committee of the AMEX Board of Governors comprised of members and representatives of member firms, has endorsed the proposed rule change.

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchagne Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed

with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 25, 1987.

Dated: July 28, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-17658 Filed 8-3-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24751; File No. SR-CBOE-87-23]

Self-Regulatory Organizations; Proposed Rule Change by the Chicago Board Options Exchange, Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) ("Exchange Act"), notice is hereby given that on July 14, 1987, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Text of the Proposed Rule Change

The Exchange intends to implement its authority in the Retail Automatic Execution System ("RAES") for options on the Standard and Poor's 100 Index ("OEX"), as described in SR-CBOE-85-32, to set the size of eligible orders up to 20 contracts.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

RAES in OEX, described in SR-CBOE-85-32, was approved by the Commission as a permanent program in Exchange Act Release No. 23490 (August 1, 1986), 51 FR 28788. The Commission found that the rule was consistent with the Exchange Act and the rules and regulations thereunder, and in particular, the requirements of Sections 6 and 11A. The approved rules allow the Exchange to increase or decrease the size of eligible RAES orders:

> Eligible orders must be no greater than the number of contracts allowed by the Exchange. The current contract limit is 10 contracts. The Exchange may increase or decrease the contract limit. . . .
>
> (SR-CBOE-85-32, at p. 3)

Since permanent approval, RAES in OEX has continued to function well, allowing customers to enjoy firm quotes to 10 contracts in eligible series; increasing the efficiencies of order entry and handling, trade matching and reporting; enhancing the Exchange's audit trail; and adding to the confidence of public customers. *See* 51 FR at 28791 n.25. As an illustration of RAES' effectiveness, in June 1987, on an average day, RAES in OEX handled 3,067 orders amounting to an average of 17,233 contracts. This was 26.1 percent of OEX customer orders routed over the Order Routing System ("OR") and 8.2 percent of OEX ORS customer contracts. On a peak day in June 1987, RAES handled 6,431 orders amounting to 38,377 contracts (30.8 percent of ORS customer contracts).

The Exchange believes that it is appropriate to increase the size of eligible orders in designated series. Assuming that the size of RAES customer orders remains relatively constant,[1] increasing the size of RAES orders to 20 contracts would increase the average percentage of OEX customer orders on RAES to by approximately 2.5 percent, while increasing the average percentage of OEX customer contracts on RAES by approximately 2.4 percent.[2]

The Exchange believes that expanding the contract limit for RAES up to 20 contracts will provide the benefits of more timely and cost-effective executions of customer option orders to a greater number of OEX orders; enhanced audit trail; enhanced fill reporting and price reporting; enhanced trade match; increased customer confidence; and reduction of transactions that have to be executed manually on the trading floor, thereby increasing the efficiency in the handling of non-RAES orders. *See* 50 FR at 19833-34.

The Exchange, of course, reserves the right to increase the contract limit as it deems appropriate.[3]

The proposed rule change is consistent with the provisions of the Exchange Act and, in particular, section 6(b)(5) thereof, in that the proposed rule change will improve the quality and efficiency of the market in OEX options, the clearance and settlement of transactions, and Exchange rule compliance.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and

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[1] The Exchange believes that the assumption underlying this projection is valid because the experience with RAES to date has been that the average size of customer orders has not been affected by the size of RAES eligible orders. In connection with the expansion of eligible order size in RAES in OEX from 5 contracts to 10 contracts, the Exchange projected that as many as 30 percent of OEX customer orders would go through RAES. *See* letter to Richard G. Ketchum, Director, Division of Market Regulation, SEC, from Charles J. Henry, President and Chief Operating Officer, CBOE, dated April 9, 1985, at 2. *See also* Exchange Act Release No. 22015 (May 6, 1985), 50 FR 19632 n.12 and accompanying text. In June 1987, 26.1 percent of OEX ORS customer orders on an average day were handled by RAES.

[2] This projection is based on the further assumption that the eligible size order would be increased to 20 contracts in all RAES series. The Exchange may elect to increase the eligible size order to less than 20 contracts or limit the series subject to increased size. Such modifications would, of course, affect the projections. The bulk of the projected increase would be expected to occur in option series with market prices of less than $5.00.

[3] Commission approval would, of course, be required for any further contract limit expansion.

publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making writing submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 25, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 28, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-17659 Filed 8-3-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24755; File No. SR-CBOE 87-19]

Self-Regulatory Organizations; Order Granting Partial Approval to Proposed Rule Change; Chicago Board Options Exchange, Inc.

On May 7, 1987, the Chicago Board Options Exchange, Inc. ("CBOE"), submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act")[1] and Rule 10b-4 thereunder,[2] a proposed rule change to make permanent the Exchange's new Standard & Poor's 500 stock index option contract ("NSX"), the exercise settlement value of which is based on an index value derived from opening, rather than closing prices on the last business day prior to its expiration.

The proposed rule change was noticed in Securities Exchange Act Release No. 24571 (June 10, 1987). No comments were received on the proposed rule change.

The Exchange seeks permanent approval of the new NSX option contract, which is the same as the current Standard and Poor's 500 option contract ("SPX") except that NSX's exercise settlement value will be based on opening prices of each stock comprising the index on the last business day prior to expiration Saturday. This value will be different than the current index value at any point in time, since the opening prices of the constituent stocks will be established at different times. NSX has expiration months of March, June, September and December, the same expiration months as the Standard and Poor's 500 futures contract.

The Exchange takes this action because the Chicago Mercantile Exchange ("CME") has moved the Standard and Poor's future contract's settlement value to opening prices on the delivery date. CBOE continues to believe that heightened volatility at expiration of index options and futures can better be addressed by improving procedures for information dissemination at the close of trading than by changing the terms of contracts to provide for exercise settlement based on opening prices. However, in light of the action of the CME, CBOE believes it should promptly provide investors in SPX an alternative contract valued on the same basis as the Standard and Poor's 500 future. Introduction of NSX will provide investors with offsetting Standard and Poor's 500 futures and SPX positions with a means of alleviating risk resulting from disparate valuation methods.

While a change to outstanding contracts would appear more straightforward than introduction of new contracts with changed terms, that alternative is not available. The Options Clearing Corporation ("OCC"), out of justifiable concern for potential liability, had declined to alter the terms of outstanding contracts.[3]

CBOE recognizes that the existence of two Standard and Poor's 500 option contracts in the same expiration month with different methods of valuation may give rise to confusion. However, CBOE believes that the potential for confusion should not be an obstacle to introduction of NSX. SPX is used primarily by institutional investors, who have indicated a need to have the option settle as the future does.

The Commission has determined to grant partial approval to the proposed rule change and approve the NSX contract through the September 18, 1987, expiration. Commission is currently evaluating the results of the disparate expiration that occurred on June 19, 1987, and has determined to complete its review of the June settlement before approving the CBOE proposal on a permanent basis. Based on the results of that review, the Commission will examine whether to continue disparate expiration settlements, or whether index settlement based on opening prices may be appropriate for all options products.

Accordingly, the Commission believes it is appropriate to approve the CBOE proposals on a temporary basis through the September expiration.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[4] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

Dated: July 28, 1987.

[FR Doc. 87-17660 Filed 8-3-87; 8:45 am]

BILLING CODE 8010-01-M

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[1] U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1985).

[3] The Commission notes that the OCC recently amended its disclosure document to disclose that the settlement of index option contracts may be altered, and also adopted a By-law amendment that will permit options exchanges to provide by rule that the settlement value of any index on which options are traded on a particular exchange will be determined by reference to the prices of the constituent stocks at times other than the close of trading. *See*, Securities Exchange Act Release Nos. 24259 (March 25, 1987, and 24277 (March 27, 1987).

[4] 15 U.S.C. 78s(b)(2) (1982).

[5] 17 CFR 200.30-3(a)(12) (1985).

[Release No. 34-24748; File No. SR-DTC-87-11]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by The Depository Trust Co.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 13, 1987 The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change being filed by DTC consists of the Participant Operating Procedures relating to DTC's proposed Tax Exempt Dividend Service ("TEDS"). DTC plans to initiate TEDS on a pilot basis to benefit certain classes of U.S. investors who are exempt from Canadian withholding tax on dividends and other distributions attributable to Canadian securities. Before now, Canadian law has required Canadian paying agents to withhold tax when they pay DTC's nominee Cede & Co. dividends and other distributions attributable to Canadian securities. Beneficial owners of securities on deposit at DTC which are exempt from the Canadian withholding tax nevertheless receive only the decreased amount through DTC and must claim on the Canadian government for refund. The time period between withholding and eventual refund can be substantial. This delay between withholding and refund and the inconvenience and expense of the refund claim procedure have prompted some DTC Participants to consider withdrawing Canadian securities from DTC for re-registration in physical certificate from in their own or special nominee names approved by Revenue Canada. TEDS will enable DTC Participants to receive, on behalf of certain tax-exempt beneficial owners whose securities are held at DTC, 100% of their Canadian dividend and similar payments on payable date through DTC's dividends payment system (subject to foreign exchange conversion rate limitations). Revenue Canada has authorized the TEDS pilot program.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The main purpose of TEDS is to eliminate a disincentive to the immobilization of Canadian securities at DTC. The statutory bases for encouraging immobilization are section 17A(e) of the Securities Exchange Act of 1934, as amended, and Article XXI of the Canada-United States of America Income Tax Convention (1980).

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

TEDS has been developed in response to requests by DTC Partoicipants. Written comments from DTC Participants or others have not been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the self-regulatory organization. All submissions should refer to the file number SR-DTC-87-11 and should be submitted by August 25, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

Dated: July 27, 1987.

[FR Doc. 87-17661 Filed 8-3-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24741; File No. PSE-87-09]

Self-Regulatory Organizations; Proposed Rule Change by the Pacific Stock Exchange Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 1, 1987, the Pacific Stock Exchange Incorporated ("PSE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

This filing will amend Article V, section 3 of the PSE Constitution which defines a member of the PSE, to incorporate an individual who has purchased a membership and leased it to another. This individual will be referred to as an "inactive member."

The filing also proposes an additional amendment to Article VII of the PSE Constitution which allows a member or proposed inactive member to leave the membership to a designated heir, as long as the designated heir is a natural person or Broker Dealer. This change will be added to the provisions of the Exchange Constitution relating to Treasury Memberships. The change will limit the application of Treasury Memberships upon the death of a member or proposed inactive member who has designed the appropriate heir.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of the proposed rule change is to amend those provisions of the PSE Constitution that relate to the definition of a "Member," and those provisions that define an "eligible transferee" in the context of the creation of Treasury Memberships.

Inactive Member

Currently, Article V of the Exchange Constitution defines "Member" as an individual in whose name the Exchange membership is held and who is in good standing. This definition includes those individuals who own their own Exchange membership as well as those individuals who lease their memberships from others. However, the definition does not include individuals who own memberships and are leasing them to others. In that case, an individual who owns and leases out a membership has no membership rights as defined in the PSE Constitution.

The first part of this Constitution change will amend the Constitution by adding language to define an "inactive member" as an individual natural person who has purchased a membership on the Exchange and who has leased the membership to another. This addition is necessary to include the inactive member in the provisions of Article VII, sections 8(c) and 9, which will allow the transfer of a membership, when necessary, to an individual heir, or will become a treasury membership where no eligible transferee exists. (These provisions are further defined below.)

In the case where a natural person owns the membership and leases it to another, the lessee is then considered the member pursuant to section 3(a)(3) of the Securities Exchange Act of 1934.

In connection with the addition of the "inactive member" status, the Exchange will utilize a new form for membership application. This form will be used by those individuals who intend to enter a bid for the purchase of a PSE membership and, if successful, intend to become a lessor pursuant to an authorized PSE lease agreement.

Eligible Transfer/Treasury Membership

Sections 8(c) and 9 of Article VII of the PSE Constitution define the creation and consequences of a Treasury Membership upon the death of a member leaving no eligible transferee. The definition of eligible transferee is set forth in Article VII, sections 8(a) (a member firm that provided the funds for the purchase of the membership) and section 8(b) (the membership was purchased otherwise than by funds advanced by the member firm but leaving an agreement for transfer back to the firm). However, no provision of the Constitution allows for the passing of a membership into a deceased member's estate. Therefore, if a deceased member has no eligible transferee under Article VII of the Constitution, the membership becomes a Treasury Membership, even if the member had provided for the transfer of membership in his estate.

Accordingly, the Exchange membership has voted to amend those provisions of the Constitution to allow the transfer of a membership to a natural person or Broker Dealer in the estate of a deceased member. This would also apply to the inactive member as defined above.

The basis for the proposed Contitutional change is found in section 6(b)(5) of the Act which provides, in pertinent part, that the rules of the Exchange remove impediments to and perfect the mechanism of a free and open market by allowing the members more alternatives in how they will structure their membership affiliations.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The proposed rule change was sent to each member and approved by over a ⅔ majority vote of the general membership at the annual meeting on January 22, 1987.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of the publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR-PSE-87-9 and should be submitted by August 25, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: July 27, 1987.

[FR Doc. 87-17662 Filed 8-3-87; 8:45 am]

BILLING CODE 8010-01-M

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[Release No. 34-24754; File No. SR-Phlx-87-18]

Self-Regulatory Organizations; Order Approving Proposed Rule Change; Philadelphia Stock Exchange, Inc.

On April 23, 1987, the Philadelphia Stock Exchange, Inc. ("Phlx"), submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to put its members and the public on notice that it may in the future alter the time at which the prices of constituent stocks will be reviewed for the purpose of calculating the final index settlement value for expiring index options.

The proposed rule change was noticed in Securities Exchange Act Release No. 24582 (June 12, 1987). No comments were received on the proposed rule change.

This rule change is designed to coincide with an Options Clearing Corporation ("OCC") rule change and Options Disclosure Document revision that accommodate morning settlement of options on indexes for those securities exchanges that have determined to alter the time at which the final index settlement value is calculated for expiring options.[3]

The rule change gives the Exchange the flexibility to move the calculation of the final index value for any series of options opened after March 30, 1987 from the close on the last trading day before expiration to the opening on such day. The Exchange understands that the OCC is concerned about the potential liability exposure of changing the terms of outstanding index options contracts, and the Phlx has therefore determined that it will only allow index options series not yet issued to provide for a morning rather than a closing settlement valuation time. However, the OCC rule is not automatic, and it would only be effective for index options contracts for which the relevant exchange has changed the settlement valuation time.

In this context, the Exchange seeks the option of moving its settlement valuation time from the close to the opening on the pertinent expiration day for any index option series first opened after March 30, 1987. This rule change does would not require the Exchange to change the index option settlement terms for any index options contract at this time, but permits the Exchange to observe overall industry developments in this area and make a change to a morning settlement at some point in the future if the Exchange chooses to do so. In filing SR-Phlx 87-13, which the Commission approved on April 7, 1987, the Exchange received approval on an accelerated basis of a filing identical to the instant filing covering the first two options series added after March 30, 1987. In the instant filing, the Exchange asks approval for subsequent series.

In approving SR-Phlx 87-13, the Commission noted, and here reiterates, that the Options Clearing Corporation already had amended their rules to provide for the possibility of such changed contract terms, and modified the options disclosure document that broker-dealers provide to their customers to explain that options exchanges could make changes in the settlement times of index options, even to outstanding contracts. Accordingly, the Commission continues to believe that options markets are not required to make such conforming rule changes such as the current Phlx proposal, apart from those rule changes necessary to amend the settlement times specified for options traded on their markets.[4]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6,[5] and the rules and regulations thereunder. By permitting the Exchange to continue to study the potential benefits of altering the time for calculating the final index settlement value of expiring options, while nevertheless providing the Exchange with what it believes to be the necessary authority to make such a change on short notice, the proposed rule change should promote fair and orderly markets and otherwise foster the protection of investors and the public interest.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change is approved.

Dated: July 28, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jonathan G. Katz,

Secretary.

[FR Doc. 87-17663 Filed 8-3-87; 8:45 am]

BILLING CODE 8010-01-M

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1985).

[3] *See* Securities Exchange Act Release Nos. 24250 (March 25, 1987) and 24277 (March 27, 1987).

[4] *See* Securities Exchange Act. Release No. 23470 (April 17, 1987).

[5] 15 U.S.C. 78f (1982).

[6] 15 U.S.C. 78s(b)(2) (1982).

[7] 17 CFR 200.30-3(a)(12) (1985).

[File No. 500-1]

Order of Trading Suspension; Broker's Choice Capital, Inc.

July 27, 1987.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information relating to the securities of Broker's Choice Capital, Inc. ("Broker's Choice") and that questions have been raised about the adequacy and accuracy of publicly disseminated information concerning, among other things: the management of Broker's Choice; control of Broker's Choice; the beneficial ownership of its securities; its business plans; and other matters. The Commission is of the opinion that the public interest and the protection of investors require a summary suspension of trading in the securities of Broker's Choice.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that over-the-counter trading in the securities of Broker's Choice is suspended for the period commencing at 9:30 a.m. (EST) on July 27, 1987, and terminating at 9:30 a.m. (EST) on August 6, 1987.

By the Commission,

Jonathan G. Katz,

Secretary.

[FR Doc. 87-17664 Filed 8-3-87; 8:45 am]

BILLING CODE 8010-01-M

[File No. 500-1]

Order of Trading Suspension; Chatsworth Enterprises, Inc.

July 27, 1987.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information relating to the securities of Chatsworth Enterprises, Inc. ("Chatsworth") and that questions have been raised about the adequacy and accuracy of publicly disseminated information concerning, among other things: the management of Chatsworth; control of Chatsworth; the beneficial ownership of its securities; its business plans; and other matters. The Commission is of the opinion that the public interest and the protection of investors require a summary suspension of trading in the securities of Chatsworth.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that over-the-counter trading in the securities of Chatsworth is suspended for the period commencing at 9:30 a.m. (EST) on July 27, 1987, and

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terminating at 9:30 a.m. (EST) on August 6, 1987.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-17665 Filed 8-3-87; 8:45 am]

BILLING CODE 8010-01-M

[File No. 500-1]

Order of Trading Suspension; Pilgrim Venture Corp.

July 10, 1987.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information relating to the securities of Pilgrim Venture Corporation ("Pilgrim Venture") and that questions have been raised about the adequacy and accuracy of publicly disseminated information concerning, among other things: the management of Pilgrim Venture; control of Pilgrim Venture; the beneficial ownership of its securities; its financial condition; its assets; and, other matters. The Commission is of the opinion that the public interest and the protection of investors require a summary suspension of trading in the securities of Pilgrim Venture.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that over-the-counter trading in the securities of Pilgrim Venture is suspended, for the period commencing at 1:00 p.m. (EST) on July 10, 1987, and terminating at 1:00 p.m. (EST) on July 20, 1987.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-17666 Filed 8-3-87; 8:45 am]

BILLING CODE 8010-01-M

[File No. 500-1]

Order of Trading Suspension; Sheppard Resources, Inc.

July 10, 1987.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information relating to the securities of Sheppard Resources, Inc. ("Sheppard Resources") and that questions have been raised about the adequacy and accuracy of publicly disseminated information concerning, among other things: the management of Sheppard Resources; control of Sheppard Resources; the beneficial ownership of its securities; its financial condition; its assets; and, other matters. The Commission is of the opinion that the public interest and the protection of investors require a summary suspension of trading in the securities of Sheppard Resources.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that over-the-counter trading in the securities of Sheppard Resources is suspended, for the period commencing at 1:00 p.m. (EST) on July 10, 1987, and terminating at 1:00 p.m. (EST) on July 20, 1987.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-17667 Filed 8-3-87; 8:45 am]

BILLING CODE 8010-01-M

Order of Trading Suspension; Vanguard Financial, Inc.

July 27, 1987.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information relating to the securities of Vanguard Financial, Inc. ("Vanguard") and that questions have been raised about the adequacy and accuracy of publicly disseminated information concerning, among other things: The management of Vanguard; control of Vanguard; the beneficial ownership of its securities; its business plans; and, other matters. The Commission is of the opinion that the public interest and the protection of investors require a summary suspension of trading in the securities of Vanguard.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that over-the-counter trading in the securities of Vanguard is suspended, for the period commencing at 9:30 a.m. (EST) on July 27, 1987, and terminating at 9:30 a.m. (EST) on August 6, 1987.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-17668 Filed 8-3-87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-15698; 812-6740]

Baron Asset Fund and Baron Capital Inc.; Notice of Application

July 28, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: Baron Asset Fund (the "Fund") and Baron Capital, Inc. ("BARON") on behalf of all existing and subsequently created series of the Fund and any other future investment company or series which will be distributed by BARON on substantially the same basis as the Fund's shares ("Other BARON Funds").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and Rule 22c-1 thereunder.

Summary of Application: Applicants seek an order to permit the Fund and Other BARON Funds to assess a contingent deferred sales charge (the "Charge") on certain redemptions of their shares.

Filing Date: The application was filed on May 29, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on August 21, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, 450 Park Avenue, New York, New York 10022, Attention: Linda S. Martinson, Esq.

FOR FURTHER INFORMATION CONTACT: Sherry A. Hutchins, Staff Attorney (202) 272-2799, or Brion R. Thompson, Special Counsel (202) 272-3016, Office of Investment Management, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier which can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. The Fund was organized as a Massachusetts business trust and is registered as an open-end, diversified, management investment company. On February 19, 1987, the Fund file l a registration statement for the registration of its shares under the Securities Act of 1933 and proposes to

commence a public offering of those shares upon the effectiveness of such registration statement.

2. The Fund's principal underwriter and distributor is BARON, a broker-dealer registered under the Securities Exchange Act of 1934. BAMCO, Inc. (the "Adviser") is the Fund's investment adviser. Both BARON and the Adviser are wholly-owned subsidiaries of Baron Capital Group, Inc.

3. Applicants propose to offer the shares of the Fund without an initial sales charge. However, a contingent deferred sales charge (the "Charge") will be deducted from the proceeds of certain redemptions and repurchases of the shares of the Fund if the shares have been held for less than three years. The length of time a shareholder will be deemed to have owned his shares for the purpose of determining the applicability of the Charge will be calculated from the date of the earliest purchase of the shares of the Fund, which have not already been redeemed.

4. The Charge will be imposed at the time a redemption occurs in an amount of 2% of the net asset value at the time of the redemption or repurchase. No Charge will be imposed when a shareholder redeems amounts derived from (1) shares acquired through reinvestment of dividends and distributions, or (2) shares which have been held for more than three years. The proceeds of the Charge will be paid to BARON.

5. The Fund proposes to finance its distribution expenses under a distribution plan adopted under Rule 12b–1 under the 1940 Act (the "Plan"). Under the Plan, the Fund will pay a distribution fee to BARON in connection with its activities or expenses primarily intended to result in the sale of the Fund's shares. The Fund will pay BARON such distribution fee monthly at the annual rate of 0.5% of its average daily net assets, reduced by the amount, if any, BARON receives as a Charge. In their review of the Plan pursuant to Rule 12b–1 under the 1940 Act, the Board of Trustees of the Fund will consider the use by BARON of revenues raised by the Charge and the continuing appropriateness of the reduction of the fee paid by the Fund pursuant to the Plan by the amount of the Charge.

Applicants' Legal Conclusion

1. The exemptions requested are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act because the Charge will enable the shareholders of the Fund and Other BARON Funds to have the advantages of greater investment dollars working for them from the time of their purchase than is a sales charge was imposed at the time of purchase. Moreover, the Charge does not apply to amounts representing reinvestment of dividends and distributions.

2. Furthermore, the imposition of the Charge is appropriate in light of the relationship between the Charge and the Plan adopted under Rule 12b–1 under the 1940 Act. It is fair to impose on withdrawing shareholders who purchased their shares less than three years ago, and on whose assets the distribution fee was based and who will no longer contribute to the distribution fee, a lump sum payment reflecting expenses that have not been recovered through payments by the Fund under the Plan. The amount, computation and timing of the Charge are designed to promote fair treatment of all shareholders, while permitting the Fund and Other BARON Funds to offer investors the advantage of having purchase payments fully invested on their behalf immediately.

Applicants' Conditions

If the requested order is granted, Applicants agree to the following condition:

1. Appliants will comply with the provisions of Rule 12b–1 under the 1940 Act in its present form and as it may be revised in the future.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–17608 Filed 8–3–87; 8:45 am]

BILLING CODE 8010–01–M

[File No. 81–750]

Application and Opportunity for Hearing; Liberty Petroleum Corp.

July 28, 1987.

Notice is hereby given that Liberty Petroleum Corporation ("Applicant") has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended, (the "1934 Act") for an order exempting Applicant from the registration requirements of section 12(g) of that Act.

For a detailed statement of the information presented, all persons are referred to the application which is on file at the offices of the Commission in the Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

Notice is further given that any interested person not later than August 22, 1987, may submit to the Commission in writing his views or any substantial facts bearing on the application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert.

Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponement thereof. At any time after that date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–17609 Filed 8–3–87; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–15903; 812–6807]

College and University Facility Loan Trust; Application

July 31, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicant: The First National Bank of Boston, not in its individual capacity, but solely as trustee (the "Applicant" or "Owner Trustee"), on behalf of the College and University Facility Loan Trust (the "Trust"), to be formed.

Relevant Sections of the 1940 Act: Exemption requested under section 6(c) from the provisions of sections 10(h), 14(a), 16(a), 17(a), 18(a), (c) and (i) and 32(a) of the 1940 Act.

Summary of the Application: The Applicant which will serve as the Owner Trustee, on behalf of the Trust (to be formed), seeks an order to permit the issuance and sale by the Trust of debt securities and senior and junior certificates of beneficial interest in the Trust, collateralized by certain loans originated by the United States Department of Education ("ED"), in connection with the Federal government's pilot loan asset sale program.

Filing Date: The Application was filed on July 29, 1987 and amended on July 31, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 P.M. on August 17, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC: 450 5th Street, Washington, DC 20549. Applicant: c/o Christopher J. Kell, Esq., Skadden, Arps, Slate, Meagher & Flom, 919 Third Avenue, New York, New York 10022 .

FOR FURTHER INFORMATION CONTACT: Karen L. Skidmore, Special Counsel (202) 272–3023 or Fran Pollack, Staff Attorney (202) 272–3024 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier which may be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Statements and Representations

1. The Trust will be organized as a Massachusetts business trust pursuant to a Declaration of Trust (the "Declaration of Trust") to be filed by The First National Bank of Boston with the Commonwealth of Massachusetts and will register with the Commission as a closed-end, management investment company. The Trust will be organized for the purpose of acquiring certain loans (the "Loans") from ED, pursuant to a loan sale agreement, in exchange for equity interests and proceeds of debt securities to be issued by the Trust. The Loans were made by ED, under the College Housing Loan Program ("CHLP") and the Academic Facilities Loan Program ("AFLP") (or made, and assigned to ED, by the United States Department of Housing and Urban Development, by the former United States Department of Health, Education and Welfare under AFLP or by the former United States Housing and Home Finance Agency under CHLP) to public and private universities and colleges throughout the United States.

2. The Loans will be sold by ED pursuant to congressional directives found in section 7005 of the Omnibus Budget Reconciliation Act of 1986 (the "Budget Act"), Pub. L. No. 99–509, § 7005, 100 Stat. 1874, 1949 (1986), and section 783 of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1986 (the "Education Act"), 20 U.S.C. 1132i–2 (1987), and in accordance with the Guidelines for Loan Asset Sales, dated July 8, 1986, prepared by the Federal Credit Policy Working Group and issued by the United States Office of Management and Budget (the "Guidelines"). The Budget Act and the Education Act require ED to net approximately $579 million from certain dispositions of its loan assets during fiscal year 1987.

3. The proposed transaction has been designed to implement the objectives of the Budget Act and the Guidelines by (i) providing for the sale of Loans without recourse to the Federal government, (ii) providing for the transfer of servicing responsibilities for the Loans to a private sector loan servicer, and (iii) ensuring that interest on the securities issued to finance the acquisition of the Loans by the Trust (and thus, in effect, the future interest payments on the Loans themselves) will be subject to full Federal income tax.

4. The proposed transaction that is the subject of this application involves the issuance of securities by the Trust to finance the Trust's purchase of the Loans from ED. The Loans have been selected on a random selection basis from ED's portfolio of non-delinquent loans (the "Portfolio"). In order to be eligible for selection from ED's Portfolio, the Loans must not have been delinquent (*i.e.*, more the 30 days late in the payment of any installment of principal and interest) during the one year period preceding their purchase by the Trust. Pursuant to the Loan Sale Agreement between the Owner Trustee and ED, ED will sell the Loans to the Trust in exchange for: (i) The proceeds from the issuance of certain debt securities (the "Bonds"), and (ii) senior and junior certificates evidencing ownership of beneficial interests in the net assets of the Trust (the "Certificates").

5. Under the Loan Sale Agreement, ED may be required during a limited period of time following issuance of the Bonds ("Warranty Period"), to deliver to the Trust substitute Loans conforming to ED's warranties under the Loan Sale Agreement. Under the Loan Sale Agreement, the substitute Loans will be required to have equal or greater principal amounts and equal or greater cumulative payments of principal and interest as of any "Payment Date" (each date on which principal of and/or interest on the Bonds is due) as the Loans not meeting ED's warranties ("Non-Conforming Loans") that are being replaced. The obligation of ED to substitute Loans may be subject to the feasibility of ED's delivering from the Loans remaining in its Portfolio, Loans conforming to its warranties and having the required principal amounts and cash flow. Notice will be given by the Bond Trustee and the Owner Trustee to the Bondholders and the Certificate holders of such substitution within five days after such substitution as contemplated by section 26(a)(4)(B) of the 1940 Act. With the exception of such limited right of substitution, the Loans will be transferred to the Trust without recourse of any kind to ED.

The Trust will issue multiple series of Bonds in an aggregate principal amount presently estimated at $130,000,000. The Bonds will be secured by a first priority perfected security interest in the Loans pursuant to an indenture (the "Indenture") between the Owner Trustee and a corporate trustee acting as bond trustee (the "Bond Trustee"). The Bond Trustee and Owner Trustee and any successors thereto will be banks and will be required to have at all times an aggregate capital, surplus and undivided profits of not less than $50,000,000.

7. The Bonds will be registered under the Securities Act of 1933 (the "1933 Act") pursuant to a registration statement (the "Registration Statement") on Form N–2. The Indenture will be qualified under the Trust Indenture Act of 1939 ("1939 Act"). The Bonds will be rated in the highest rating category ("AAA" or "Aaa") by at least one nationally recognized statistical rating organization ("Rating Agency") not affiliated with the Trust. The Trust will offer the Bonds through the underwriters (the "Underwriters") named in the prospectus included in the Registration Statement (the "Prospectus").

8. The Bonds are expected to be issued as serial Bonds and/or term Bonds. Each series of serial Bonds will have a fixed interest rate and maturity date and will be non-amortizing prior to maturity. Each series of term Bonds will have a fixed interest rate and maturity date and will amortize through scheduled sinking fund redemptions. In addition, the Trust may issue a series of compound interest Bonds and/or a series of zero coupon Bonds, described more fully in the application. Interest on the Bonds will be payable (or in the case

of compound interest Bonds will compound) semi-annually. The mix of serial Bonds, term Bonds, compound interest Bonds and/or zero coupon Bonds, and the aggregate principal or face amounts, initial public offering prices, maturity dates, interest rates and sinking fund installments of each series will be determined in light of market conditions at the time of the pricing of the Bonds so as to achieve the highest return to ED both in terms of net proceeds of the Bonds and the value of the Certificates.

9. The Certificates will evidence ownership of beneficial interests in the net assets of the Trust and accordingly will entitle holders to shares of the cash flow of the Trust after the funding of certain funds and all principal and interest payments on the Bonds then due. Such distributions to the Certificateholders shall be made semi-annually on or immediately following each Payment Date in respect of the Bonds. It is expected that ED will retain the Certificates until a performance history for the Trust has been established.

10. For certain tax reasons, described in the application, the Certificates will be issued by the Owner Trustee in two classes with different rights as to distributions. On each date on which the Owner Trustee makes a distribution to the Certificateholders, one class of Certificateholders will receive a specified return on the Certificates' value assigned to that Class prior to distributions to the other Class. The certificates will be transferable, subject to the limitations described below and in the application. The Certificates will not be redeemable at the option of the holders. The holders of the Certificates will not be liable for payment of principal of, or interest on, the Bonds or for any other liabilities of the Trust.

11. The Owner Trustee will contract with General Electric Credit Corporation ("GECC" or "Servicer") as servicer of the Loans under a servicing agreement ("Servicing Agreement"). Under the Servicing Agreement, GECC will administer, service, collect and enforce the Loans on behalf of the Trust. The Servicing Agreement will not permit the Servicer to resign so long as any Loans are outstanding. The fees of GECC will be disclosed in the Prospectus. The Owner Trustee will assign the Loans and its rights under the Loan Sale Agreement and the Servicing Agreement to the Bond Trustee pursuant to the Indenture as security for the Bonds.

12. The Indenture will provide for the creation of a reserve fund ("Reserve Fund") to be held by the Bond Trustee under the Indenture to provide additional liquidity for the payment when due of the principal of and interest on the Bonds. The Reserve Fund will be funded on the date of issuance of the Bonds and, if this is not sufficient, thereafter from the revenues received from the Loans. The amount, if any, by which the Reserve Fund is funded at closing will be determined prior to the pricing and sale of the Bonds in connection with obtaining the required rating of the Bonds. Any amounts in the Reserve Fund in excess of the then required amount will be transferred to the revenue fund ("Revenue Fund").

13. The Revenue Fund will be credited with the scheduled payments of principal and interest on the Loans, recoveries on defaulted Loans, prepayment premiums and late payment penalties, if any, on Loans and reinvestment income. Amounts credited to the Revenue Fund will be applied on each Payment Date in the following order of priority:

(a) To pay principal and interest due on the Bonds (except to the extent Servicer's fees have been retained by the Servicer prior to deposits to the Revenue Fund);

(b) To make required deposits in the expense reserve fund in order to pay the administrative fees and expenses of the Bond Trustee which include fees and expenses of the Bond Trustee and the Trust's accountants, and expenses of GECC relating to defaulted Loans (except to the extent GECC's fees have been retained by GECC prior to deposits to the credit of the Revenue Fund);

(c) To make required deposits to the Reserve Fund;

(d) To pay fees and expenses of the Owner Trustee;

(e) To pay any indemnity obligations owed to GECC, the Bond Trustee, and the Owner Trustee except for indemnities against liability for a party's own willful misfeasance, bad faith, gross neglience or reckless disregard of duty; and

(f) To the Owner Trustee for distribution to the Certificateholders.

14. In addition to the funds listed above, the Indenture will provide for the creation of a Prepayment Fund, to which will be credited any prepayments of principal on the Loans. The Prepayment Fund will be held by the Bond Trustee under the Indenture as security for the Bonds.

15. In order to provide for earnings on the Funds referred to above together with the expense reserve fund referred to in condition 1(a) under "other Conditions" herein (the "Funds"), without creating investment discretion in the Bond Trustee, the Indenture will require the Bond Trustee, prior to the issuance of the Bonds, to enter into an investment agreement (the "Investment Agreement") with a financial institution. Such institution will be (i) a national bank, or a banking institution organized under the laws of any State or the District of Columbia the business of which is substantially confined to banking and is supervised by the State banking commission or similar official, or a foreign bank subject to substantially the same supervision under the International Banking Act of 1978, (ii) an insurance company, subject to the supervision of the insurance commissioner, bank commissioner or any agency or officer performing like functions, of any State or the District of Columbia or (iii) a United States government agency or government sponsored corporation, in each case, whose obligations are rated in, or eligible to be pledged as collateral for securities rated in, the highest rating category ("AAA" or "Aaa") by the same Rating Agency or Agencies which rate the Bonds. In order to assure that the Trust receives a fair return on the Investment Agreement, the Trust will ask qualified institutions to submit bids shortly before the Bonds are priced. The identity of the Investment Agreement provider ("Provider") selected will be disclosed in the Prospectus.

The Indenture will require the Bond Trustee to invest under the Investment Agreement all amounts held under the Indenture and credited from time to time to the Reserve Fund, the Revenue Fund and the Prepayment Fund. The Investment Agreement will bear a fixed interest rate or rates specified in the Investment Agreement and disclosed in the Prospectus. The Investment Agreement will not be terminable or assignable by the Provider, except that if the Provider is a bank which is a principal subsidiary of a bank holding company, the Provider may be permitted to assign its obligations under the Investment Agreement to its parent corporation if the long-term debt rating of the parent by each Rating Agency rating the Bonds is at least as high as that of the Bonds (i.e., AAA or Aaa, the same as the Original Provider). The Investment Agreement will terminate if the Bond Trustee or the Owner Trustee should inform the Provider that any Rating Agency rating the Bonds has indicated that such Rating Agency has determined that the continuation of the Investment Agreement with the Provider will adversely affect such Rating Agency's rating of the Bonds. In the event of such termination, the Bond Trustee will enter into a substitute investment agreement that would not

result in a reduction in the rating of the Bonds, if such an agreement can be procured. Any such substitute agreement would be permitted only with the financial institutions described above. If the Investment Agreement is with an entity other than a United States government agency or government sponsored corporation, in the highly unlikely event that in excess of twenty-five percent of the assets of the Trust are invested in the Investment Agreement, the Bond Trustee will be required, in order to maintain the Trust's status as a regulated investment company under the Internal Revenue Code, to invest any such excess amounts in an additional investment agreement meeting all of the requirements of a substitute agreement specified above or, if no such additional investment agreement can be procured, in the kinds of investments described below for instances when no substitute agreement can be procured.

16. If no such substitute investment agreement can be procured, amounts in the Funds will be invested by the Bond Trustee only in (i) obligations issued by the United States (and supported by its full faith and credit) or (ii) repurchase agreements with respect to such obligations and overcollateralized on a basis that will not result in a reduction in the ratings of the Bonds. All such investments must mature before the next scheduled distribution date. In addition, after final payment of the Bonds, any amounts paid over by the Bond Trustee to the Owner Trustee, for distribution to Certificateholders may be invested, pending distribution, in the same investments described above and any demand or time deposit or certificate of deposit which is fully insured by the Federal Deposit Insurance Corporation.

17. The Bonds will not be subject to redemption (other than scheduled sinking funds redemptions in the case of term Bonds and compound interest Bonds, if any) prior to maturity. The Bonds will not be redeemable at the option of the holders and, except in the event of a default on the Bonds followed by an acceleration, holders of the Bonds will not be entitled to compel the liquidation of the Loans in order to redeem the Bonds prior to maturity. In the event of a default and acceleration, there may be restrictions on the entities to whom tax-exempt Loans may be sold.

18. The scheduled payments on the Loans net of anticipated expenses of the Trust plus amounts initially deposited to the Reserve Fund and reinvestment income will exceed scheduled payments on the Bonds by an amount currently estimated at approximately 112 percent. This level of overcollateralization is required in order to obtain the highest investment grade rating on the Bonds.

19. Neither the holders of the Certificates, the Owner Trustee nor the Bond Trustee will be able to impair the security afforded by the Loans to the holders of the Bonds. Without the consent of each Bondholder to be affected, the Indenture may not be amended so as to: (1) Change the stated maturity of, or the date or amount of any scheduled sinking fund installment for, any Bond; (2) reduce the principal amount of or the rate of interest on any Bond; (3) change the priority of payment on any series of Bonds; (4) impair or adversely affect the Loans securing any series of Bonds; (5) permit the creation of a lien ranking prior to or on a parity with the lien of the Indenture with respect to the assets pledged under the Indenture; or (6) otherwise deprive the Bondholders of the security afforded by the lien of the Indenture. The sale of the Certificates by ED or any other holder will not alter the payment of cash flows under the Indenture, including the amounts to be deposited in any fund created pursuant to the Indenture to support payments of principal of and interest on the Bonds.

20. The interests of the Bondholders will not be compromised or impaired by the ability of the Trust to issue the Certificates, and there will not be a conflict of interest between the Bondholders and the holders of the Certificates in the Trust for several reasons, including the following:

(a) The Indenture will subject the Loans, the various Funds held under the Indenture, and the Investment Agreement to a first priority perfected security interest in favor of the Bond Trustee for the benefit of the Bondholders. The Indenture will further provide that no amounts may be released from the lien of the Indenture to be remitted to the Owner Trustee (or the holders of Certificates) on any Payment Date until: (i) The Bond Trustee has made the scheduled payment of principal of and interest on the Bonds on such Payment Date, (ii) all fees and expenses of the Bond Trustee, the Servicer or the Trust's accountants then due have been paid and (iii) any required deposit has been made to the Reserve Fund.

(b) The holders of the Certificates will be entitled to receive current distributions representing the residual payments on the Loans in accordance with the terms of the Indenture and the Declaration of Trust. Except for such rights to receive residual payments, the holders of the Certificates will have no rights in, or discretionary control over, the Trust while the Bonds are outstanding other than the right to replace the Owner Trustee for breach of fiduciary duty, willful misfeasance, bad faith, gross negligence or reckless disregard of its duties under the Declaration of Trust (which right may be limited in the case of ED's rights as a Certificateholder) and to replace the Trust's accountants with respect to the responsibilities of the accountants other than those arising under the Indenture. The holders of the Certificates will have the right to replace the Servicer for breach of the Servicing Agreement only after all Bonds have been paid.

(c) The Bonds will only be issued if they have been rated in the highest rating category by at least one Rating Agency not affiliated with the Trust.

21. The Trust expects to make certain payments to cover various costs to be paid or reimbursed at the closing of the sale of the Bonds and Certificates, as well as various ongoing costs and expenses, all such costs and expenses being fully described in the application and Prospectus. Should the Trust expect to make any other payments not described in the application, Applicant will submit an amendment to this application to the Commission requesting that those fees be exempted from the provisions of section 26(a)(2) of the 1940 Act.

22. Upon payment of the Bonds in full and the discharge of the Indenture, any remaining assets of the Trust held by the Bond Trustee will be transferred to the Owner Trustee. Any cash assets will then be distributed to the holders of the Certificates. Any remaining Loans will be retained by the Owner Trustee and cash flows from the Loans will be distributed by the Owner Trustee to the holders of the Certificates at least monthly on a pass-through basis after payment of the fees and expenses of the Owner Trustee, the Servicer and the Trust's accountants. Upon final payment of the Loans, any remaining assets of the Trust will be distibuted to the Certificateholders and the Trust will be terminated.

23. In order to allow the Trust to register with the Commission as a closed-end management investment company, exemptive relief is required from the provisions of the 1940 Act specified below.

Applicant's Legal Conclusions

1. *Section 10(h).* Section 10(h) of the 1940 Act applies certain of the restrictions of Sections 10(a), (b) and (c) of the Act to the board of directors of

the depositor of a registered management company which is an unincorporated company not itself having a board of directors, as will be the case with the Trust. ED, by conveying the Loans to the Trust, might be deemed to be the depositor of the Trust. However, ED, as a Federal department in the Executive Branch, has no board of directors nor can it elect or appoint a board of directors. Except for its limited rights as a Certificateholder, ED would not have any discretion over the administration of the Trust under the Declaration of Trust and the Indenture. Moreover, the Trust will operate as a passive entity without the traditional methods of management and investment.

2. *Section 14(a).* Section 14(a)(1) of the 1940 Act provides that no investment company shall make a public offering of securities of which such company is the issuer unless such company has a net worth of at least $100,000. On the date of issuance of the Bonds and the Certificates, the aggregate scheduled payments of principal of and interest on the Loans plus the amount on deposit in the Reserve Fund will exceed the aggregate scheduled payments of principal of and interest on the Bonds by substantially more than $100,000. Thus, the net worth of the Trust will exceed $100,000 on the date of issuance of the Bonds and the Certificates. Prior to the issuance and delivery of the Bonds to the Underwriters, the Underwriters will agree to purchase the Bonds subject to customary conditions of the closing. The Underwriters will not be entitled to purchase less than all of the Bonds. Accordingly, either the offering will not be completed at all or the Trust will have a net worth in excess of $100,000 on the date of issuance of the Bonds and the Certificates. Based on the determination of the independent evaluator, it is not anticipated that the net worth of the Trust will fall below that minimum level until the Bonds and the Certificates have been retired.

3. *Section 16(a).* Section 16(a) of the 1940 Act requires that no person shall serve as director of a registered investment company unless elected to that office by the holders of the outstanding voting securities of such company. The powers of the Bond Trustee and the Owner Trustees are so circumscribed that neither the Bond Trustee nor the Owner Trustee should be deemed a director within the meaning of section 2(a)(12) of the 1940 Act. Election or subsequent ratifications of the Owner Trustee or the Bond Trustee are not necessary in the public interest or to protect investors, and the additional expense for the Trust is not justified. The Trust will be a passive entity that will not require investment management. Similar to a unit investment trust, neither the Owner Trustee nor the Bond Trustee will be authorized to manage the Trust's portfolio of Loans. The activities of the Owner Trustee will be carefully limited to receipt of payments from the Bond Trustee while the Bonds are outstanding and of payments on the Loans thereafter and to making current distributions to Certificateholders of the amounts received. Moreover, the Trust has agreed to comply with section 26 of the 1940 Act as if it were a unit investment trust, including the requirements in that section regarding entities acting on behalf of the Trust and the limitations on expenses set forth therein. Finally, exemption from section 16(a) of the 1940 Act is necessary in light of the exemption requested from section 18(i) of the 1940 Act discussed below to permit the issuance of only non-voting securities.

4. *Section 17(a).* An exemption from section 17(a) of the 1940 Act is sought to permit the Trust to acquire Loans from ED in exchange for the Certificates and the proceeds of the Bonds issued by the Trust and to effect substitutions for Non-Conforming Loans thereafter. Section 17(a) of the 1940 Act prohibits specified transactions between certain persons related to a registered investment company and such investment company. ED would otherwise be prohibited from entering into the above transactions under section 17(a) of the 1940 Act because ED may either be considered an "affiliated person" under section 2(a)(3) of the 1940 Act or a "promoter" under section 2(a)(30) of the 1940 Act.

Section 17(a)(1) of the 1940 Act specifically excepts sales which involve securities deposited with the trustee of a unit investment trust. Although the Trust is not a unit investment trust, its structure is very similar to one in that both entities involve the deposit into a trust by a related person of a predetermined fixed portfolio of securities. Moreover, the transactions would meet the requirements of section 17(b) of the 1940 Act, the provision granting the Commission authority to exempt transactions under section 17(a) of the 1940 Act, in that the terms of the exchange will be reasonable and fair and do not involve overreaching on the part of any person concerned.

In order to establish the reasonableness and fairness of the price for the Loans received by ED, ED's financial advisory will advise ED that the proceeds of the Bonds, less transaction costs, plus the Certificates representing the residual interest in the Trust, represent a fair price for the Loans. In order to establish that the price paid by the Trust for the Loans is reasonable and fair to the Trust, the Trust will retain an independent, qualified evaluator (not including any Underwriter for the Bonds or the Certificates) which will determine that the consideration to be paid by the trust for the Loans is reasonable and fair.

5. *Section 18(a).* Section 18(a) of the 1940 Act prohibits a registered closed-end investment company from issuing any class of senior securities unless certain asset coverage requirements are met. The Trust will have an asset coverage ratio immediately after the sale of the Bonds and Certificates currently estimated at approximately 112 percent. The proposed transaction, in view of the overcollateralization of the Trust and the nature of the investors in the certificates, adequately protects against the dangers of excessive leveraging, the concern underlying section 18(a) of the 1940 Act. As a condition to the issuance of the Bonds, the Trust will obtain a determination from an independent, qualified evaluator that the aggregate scheduled payments on the Loans plus the initial deposit in the Reserve Fund and reinvestment earnings will exceed aggregate scheduled payments of principal and interest on the Bonds by an amount adequate to provide for payment of the Bonds in light of the payment terms and past experience on the Loans. Moreover, the certificates may only be sold to sophisticated institutional investors having sufficient expertise to evaluate the risks involved in acquiring either Class of Certificates.

6. *Section (18)(c).* The Applicant is seeking an exemption from section 18(c) of the 1940 Act to permit the Trust to issue the Bonds in multiple series. Section 18(c) of the Act makes it unlawful for any registered investment company to have more than one class of senior security of debt or equity. Here, each series of Bonds will be secured by collateral equally and ratably with every other series and all series will have the benefit of the same covenants and rights on default. Moreover, no action by the Owner Trustee or the Certificateholders can affect the timely payment of Bonds, and no action by the Bondholders of one series can affect the timely payments of Bonds of any other series. All of the assets of the Trust will be pledged to the Bond Trustee and the Owner Trustee will not be permitted to borrow against the assets of the Trust. Further, Loans will not be permitted to

be removed from the Trust or substituted for other assets, except under limited circumstances.

7. *Section (18)(i)* Under section 18(i) of the 1940 Act, a registered investment company may not issue stock which does not have equal voting rights with every other class of stock. The trust will operate essentially as a unit investment trust, to which section 18(i) of the 1940 Act does not apply. Given the lack of discretion vested in the Certificateholders and the Owner Trustee, voting rights would have very little actual effect on the operation of the Trust and would not enhance investor protection.

8. *Section 26.* Applicant has agreed that it will be subject to section 26 of the 1940 Act (with certain exceptions) as though it were a unit investment trust within the meaning of section 4(2) of the 1940 Act. With respect to sections 26(a)(2)(B) and (C) the Applicant has requested to be able to pay certain costs and expenses described in the application. The Applicant believes that the payment of those costs and expenses will be fair and reasonable in light of the requirements of the offering and sale of the Bonds and the ongoing servicing requirements for the Loans. The Applicant further believes that the granting of the Order sought by this application will satisfy the provisions of section 26(b) of the 1940 Act relating to substitution of collateral to the extent Loan substitution is made as described in the application.

9. *Section 32(a).* Sections 32(a)(1) and 32(a)(3) of the 1940 Act require the independent public accountant filing the investment company's financial statements to be selected annually by a vote of a majority of the board of directors and ratified annually by a majority of the voting securities of the investment company. The Trust, however, will not have voting securities. The initial accountants will be selected and disclosed in the Prospectus prior to the issuance of the Bonds and Certificates. Both the Bond Trustee and the Owner Trustee will have the right to remove the accountants for the trust. Moreover, the Trust will not engage in any investing or reinvesting of securities, except to a limited extent. As a result, the Trust's financial statements will be primarily records of receipts and distributions, and audits of the Trust's financial statements will be straightforward and will not involve complex auditing and accounting principles. Therefore, the additional expense of ratification of the accountants would not be justified given the nature of the Trust.

10. *Section 6(c).* For the reasons stated above, the requested exemptions are consistent with the section 6(c) standards. The relief requested is appropriate in the public interest, because: (1) The trust's activities will promote the public interest by permitting ED to sell its Loan assets pursuant to the directives under the Budget Act and the Education Act and will provide investors with a highly rated security; (2) the Trust may be unable to proceed fully and in a timely manner with its proposed Activities if the uncertainties concerning the applicablility of the above sections are not removed; and (3) the activities of the Trust are not the types of activities intended to be prevented by the 1940 Act.

Applicant's Conditions

Applicant agrees that if the requested order is granted it will be expressly conditioned on the following conditions:

A. Conditions Relating to the Bonds

(1) The Bonds will be registered under the 1933 Act. The Indenture will be qualified under the 1939 Act.

(2) The Loans, the Funds and the limited investments securing the Bonds ("Collateral") will be held by the Bond Trustee. The Bond Trustee may not be an affiliate (as the term "affiliate" is defined in Rule 405 under the 1933 Act, 17 CFR 230.405) of the Trust. The Bond Trustee will be provided with a first priority perfected security interest in the Collateral. The Servicer will not be affiliated with either the Bond Trustee or the Owner Trustee.

(3) The initial collateral for the Bonds will consist only for the Loans and any moneys initially deposited to the credit of the Funds which are invested in the Investment Agreement. No loans may be released from the lien of the Indenture prior to the payment of the Bonds (except upon the acceleration of defaulted Loans) or substituted except pursuant to the limited substitution obligations of ED under the warranties of ED contained in the Loan Sale Agreement described in the application. Any such substitute collateral may consist only of Loans and will: (i) Be of equal quality as the Non-Conforming Loans being replaced in that they will be covered by the warranties of ED contained in the Loan Sale Agreement (subject to the limitation on ED's obligation to replace Non-Conforming Loans during the Warranty Period) and will be selected from ED's Portfolio in a similar manner as the Non-Conforming Loans being replaced: (ii) have equal or greater principal amounts and cash flows as the Non-Conforming Loans being replaced; and (iii) meet the conditions set forth in paragraph (2) above. The replacement of such substitute Loans for any Non-Conforming Loans will not affect the level of collateralization on which the original rating or ratings of the Bonds were based or affect the rating or ratings on the Bonds.

(4) The Bonds will be rated in the highest bond rating category by at least one Rating Agency that is not affiliated with the Trust. The Bonds will not be considered "redeemable securities" within the meaning of section 2(a)(32) of the 1940 Act.

(5) No less often than annually, an independent public accountant will audit the books and records of the Trust and, in addition, will report on whether the anticipated payments of principal of and interest on the Collateral continue to be adequate to pay the principal of and interest on the Bonds in accordance with their terms. Upon completion, copies of the auditor's reports will be provided to the Bond Trustee and the Owner Trustee and will be made available to the Bondholders and the Certificateholders.

(6) At the time of the deposit of the Collateral with the Trust, the scheduled payments to be received by the Bond Trustee on the Collateral will be more than sufficient to make all payments of principal of and interest on the Bonds. The Collateral will pay down as the Loans are repaid, but will not be released from the lien of the Indenture prior to the payment of the Bonds (except upon the acceleration of defaulted Loans).

Conditions Relating to the Certificates

1. The Certificates will be offered and sold to sophisticated institutional investors. Such institutional investors may include one or more banks, savings and loan associations, insurance companies, pension funds and other large institutional investors (*i.e.*, having assets of not less than $100,000,000), that have such knowledge and experience in financial and business matters so as to be capable of evaluating the risks of the purchase of the Certificates because of direct and significant experience in making investments in similar asset-backed securities ("Eligible Investors"). (Any Mutual Funds which may purchase Certificates will continue to be required to satisfy themselves that purchase of such Certificates complies with the provisions of section 12(d) (1) of the 1940 Act.)

2. The sale of the Certificates will occur pursuant to private placements exempt from the registration

requirements of the 1933 Act under section 4(2) thereof.

3. Sales of the Certificates will be to a limited number, not exceeding 100, of sophisticated institutional investors. Each purchaser of Certificates will be required to represent that it is acquiring its Certificates for investment for its own account and not as nominee for undisclosed investors and to agree that it will not resell its Certificates except to other Eligible Investors pursuant to private placements subject to the same representation and agreement and subject to the above limitation on the number of Certificateholders. (The Declaration of Trust will provide that the Owner Trustee may not register any transfer of Certificates if, following such transfer, the number of Certificateholders would exceed one hundred.)

4. Neither the Trust nor any Certificateholder will be affiliated with the Bond Trustee. No holder of a controlling interest in the Trust (as such term is defined in Rule 405 of the 1933 Act) nor the Trust, will be affiliated with either (a) any custodian which may hold the Collateral on behalf of the bond Trustee or (b) any statistical Rating Agency rating the Bonds.

5. The Certificates will not be redeemable at the option of the holders.

Other Conditions

1. All administrative fees and expenses in connection with the administration of the Trust will be paid or provided for in a manner satisfactory to each Rating Agency rating the Bonds. The Trust will provide for the payment of administrative fees and expenses incurred in connection with the issuance of the Bonds and the administration of the Trust by the following methods:

(a) An expense reserve funds will be established with the Bond Trustee under the Indenture to provide for the payment of such fees and expenses, which maximum fees will be projected, assuming current inflation factors required by the Rating Agency or Agencies rating the Bonds, at the time of the issuance of the Bonds and the establishing of such expense reserve fund. Thereafter, the Bond trustee will look solely to such reserve fund for the payment of certain fees and expenses. The procedure used to calculate the anticipated level of fees and expenses will provide for funds sufficient to pay such fees and expenses.

(b) The Bonds will be secured by Collateral, the value of which is in excess of the amount necessary to make payments of principal and interest on the Bonds, and such excess or a portion thereof will be applied to the payment of such fees and expenses, and may be used in combination with the other method described above. The anticipated level of fees and expenses will be more than adequately provided for by the above methods.

2. Applicant agrees that the Trust will comply with the provisions of section 26 of the 1940 Act as though it were a unit investment trust within the meaning of section 4(2) of the 1940 Act, provided that for purposes of section 26(a)(4) (A) and (B) of the 1940 Act, the Bond Trustee and the Owner Trustee shall preform the recordkeeping and notice responsibilities of the depositor or its agent as provided therein, and the requirements of sections 26(a)(2) (B) and (C) shall not prevent the Trust from paying certain expenses described in the application.

3. The Owner Trustee will be required under the Declaration of Trust, and, to the extent stated in the application, the Bond Trustee will be required under the Indenture to monitor compliance by the Trust with the requirements of the 1940 Act and to fulfil the Trust's ongoing obligations under the 1940 Act including without limitation the filing of periodic reports with the Commission as and when required by the 1940 Act.

4. To alleviate any potential conflict of interest between the Bondholders and the Certificateholders, the Applicant further agrees that the above representations regarding the Certificates may be made express conditions to the requested Order.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-17752 Filed 7-31-87; 2:27 pm]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATE: Comments should be submitted within 30 days of this publication in the **Federal Register**. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline. COPIES: Request for clearance (S.F. 83s), supporting statements, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: William Cline, Small Business Administration, 1441 L Street NW., Room 200, Washington, DC 20416, Telephone: (202) 653-8538.

OMB Reviewer: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395-7340.

Title: Grants Management Reporting and Recordkeeping Requirements
Frequency: On occasion
Description of respondents: SBA requires the recepients of Federal dollars to report both programmatic and financial status for prudent monitoring by Federal officials.
Annual responses: 2,000
Annual burden hours: 10,600
Type of request: Reinstatement

Title: Secondary Participation Guaranty and Certification Agreement and Request for Certification of SBA Form 1084
Forms nos: SBA 1085, 1086
Frequency: On occasion
Description of respondents: Participating lenders used these forms to apply for initial issuance of an SBA Guarantee Interest Certification.
Annual responses: 6200
Annual burden hours: 23,250
Type of request: Extension.

William Cline,

Chief, Administrative Information Branch, Small Business Administration.

July 28, 1987.

[FR Doc. 87-17684 Filed 8-3-87; 8:45 am]

BILLING CODE 8025-01-M

Office of the United States Trade Representative

Generalized System of Preferences; Review of Petitions, Public Hearings, and List of Articles To Be Sent to the U.S. International Trade Commission (USITC) for Review

SUMMARY: The purpose of this notice on the Generalized System of Preferences (GSP) annual review is (1) to announce the acceptance for review of petitions to

modify the list of articles eligible to receive duty-free treatment under the GSP and requests to review country practices of beneficiary countries; (2) to announce the timetable for public hearings to consider petitions accepted for review; and (3) to announce that the list of articles herein to be sent by the United States Trade Representative to the United States International Trade Commission with respect to designating articles as eligible for GSP.

I. Acceptance of Petitions for Review

Notice is hereby given of acceptance for review of petitions requesting modification of the list of articles eligible to receive duty-free treatment under the GSP, as provided for in Title V of the Trade Act of 1974 (the Act) (19 U.S C. 2461–2465), and requests to review country practices of beneficiary countries. These petitions and requests were submitted, and will be reviewed, pursuant to regulations codified at 15 CFR Part 2007

1. Requests to Modify Product and Country Eligibility

Petitions have been submitted by interested parties or foreign governments (1) to designate additional articles as eligible for the GSP; or (2) to withdraw, suspend or limit GSP duty-free treatment accorded either to eligible articles under the GSP or to individual beneficiary developing countries with respect to specific GSP eligible articles; or (3) to otherwise modify GSP coverage. In addition, requests have been received requesting that the GSP status of certain beneficiary developing countries be reviewed with respect to the criteria listed in subsection 502(b) or 502(c) of the Act.

As in previous reviews, requests to add products to or remove them from the list of articles eligible for GSP duty-free treatment will be evaluated in accordance with the "graduation" policy. In considering GSP eligibility for products, limitations on GSP benefits will be considered for the more economically advanced beneficiary developing countries in specific products where it is determined that they have demonstrated sufficient competitiveness. Four criteria will be taken into account when any such graduation action is considered: The development level of individual beneficiary countries; their competitive position in the product concerned; the countries' practices relating to trade, investment and worker rights; and the overall economic interests of the United States. The GSP Subcommittee will review information for the relevant U.S. industry as enumerated in 15 CFR 2007.1 (5) when considering the removal of any beneficiary developing country from GSP eligibility.

Product designations announced at the conclusion of the review process, therefore, may be made on a differential basis. This means that certain beneficiary developing countries may not be designated for GSP benefits on certain products even though those countries are not excluded under the competitive need provisions set forth in section 504(C)(1) of the Trade Act of 1974, as amended. It also is possible to withdraw GSP treatment from certain beneficiary developing countries, or reduce the competitive need limit applicable to the countries and product in question, rather than remove the product entirely from GSP coverage.

2. Information Subject to Public Inspection

Information submitted in connection with the hearings will be subject to public inspection by appointment with the staff of the GSP Information Center, except for information granted "business confidential" status pursuant to 15 CFR 2003.6 and 2006.10. Briefs or statements must be submitted in twenty copies in English. If the document contains business confidential information, twenty copies of a nonconfidential version of the submission along with twelve copies of the confidential version must be submitted. In addition, the document containing confidential information should be clearly marked "confidential" at the top and bottom of each and every page of the document. The version that does not contain business confidential information (the public version) should also be clearly marked at the top and bottom of each and every page (either "public version" or "non confidential").

3. Communications

All communications with regard to these hearings should be addressed to: GSP Subcommittee, Office of the United States Trade Representative, 600 17th St., NW., Room 517, Washington, DC 20506. The telephone number of the Secretary of the GSP Subcommittee is (202) 395–6971. Questions may be directed to any member of the staff of the GSP Information Center.

Acceptance for review of the petitions listed herein does not indicate any opinion with respect to a disposition on the merits of the petitions. Acceptance indicates only that the listed petitions have been found to be eligible for review by the GSP Subcommittee and the TPSC, and that such review will take place.

II. Deadline for Receipt of Requests To Participate in the Public Hearings

The GSP Subcommittee of the Trade Policy Staff Committee invites submissions in support of or in opposition to any petition or request contained in this notice. All such submissions should conform to 15 CFR Part 2007, particularly §§ 2007.0, 2007.1(a)(1), 2007.1(a)(2), and 2007.1(a)(3). All product-related submissions should identify the product of interest in terms of both the current TSUS nomenclature and the proposed Harmonized System tariff nomenclature.

A hearing will be held on October 5–7 beginning at 10:00 a.m. in the GSA Auditorium, 18th and F St. NW., Washington, DC.

The hearing will be open to the public and the transcript will be made available for public inspection or purchase from the reporting company.

Requests to present oral testimony in connection with public hearings should be accompanied by twenty copies, in English, of all written briefs or statements and should be received by the Chairman of the GSP Subcommittee no later than the close of business Monday, September 14. Oral testimony before the GSP Subcommittee will be limited to five minute presentations that summarize or supplement information contained in briefs or statements submitted for the record. Post-hearing briefs or statements will be accepted if submitted in twenty copies, in English, no later than close of business Monday, October 26. Rebuttal briefs should be submitted in twenty copies, in English, by close of business Monday, November 23.

Parties not wishing to appear may submit written briefs or statements in twenty copies, in English, in connection with articles or countries under consideration in the public hearings, provided that such submissions are filed by Wednesday, October 28 and conform with the regulations cited above.

During December 1987 and/or January 1988, an opportunity will be provided for the public to comment on nonconfidential USITC analysis. Notice of the availability of this analysis and the timetable for comment will be published in the **Federal Register** as soon as USITC analysis is available.

III. List of Articles Which May Be Considered for Designation as Eligible Articles for Purposes of the GSP or for Waiver of the Competitive Need Limit and On Which the United States International Trade Commission Will Be Asked to Provide Advice

1. In conformity with sections 502(a) and 131(a) of the Trade Act of 1974 as amended (19 U.S.C. 2463(A) and 2151(A)), notice is hereby given that the articles listed herein may be considered for designation as eligible articles for purposes of the GSP.

An article which is determined to be import sensitive in the context of the GSP cannot be designated as an eligible article. Recommendations with respect to the eligibility of any listed article will be made after public hearings have been held and advice has been received from the U.S. International Trade Commission on the probable effects of the requested modification in the GSP on industries producing like or directly competitive articles and on consumers.

2. As explained in 52 FR 10960, the Harmonized System tariff nomenclature is a new international product nomenclature developed under the auspices of the Customs Cooperation Council (CCC) for the purpose of classifying goods in international trade. The Harmonized System is expected to be implemented by the United States and internationally on January 1, 1988, and will replace the current Tariff System of the United States (TSUS) nomenclature. Product eligibility under the coverage of the GSP program is currently defined in terms of the five-digit TSUS classifications. However, upon implementation of the Harmonized System, the coverage of the GSP program will be defined in terms of the Harmonized System. Therefore, all product-related petitions identified the product(s) of interest in terms of both the current TSUS nomenclature and the proposed Harmonized System tariff nomenclature The lists that follow describe the articles that have been accepted for review in this year's review in terms of both the TSUS nomenclature and the Harmonized System tariff nomenclature. However, notwithstanding the latter listing, the TPSC reserves the right to convert its decisions on items identified in terms of the TSUS nomenclature to the Harmonized System nomenclature.

3. Advice of the United States International Trade Commission. On behalf of the President and in accordance with sections 503(A) and 131(A) of the Trade Act of 1974 as amended, the United States International Trade Commission is being furnished with a list of articles published herein for the purpose of securing from the Commission its advice on the probable economic effect on United States industries producing like or directly competitive articles, and on consumers, of the designation of such articles as eligible articles for purposes of the GSP. Also, on behalf of the President and in accordance with section 504(c)(3)(A)(i) of the Act, the USITC is being asked to furnish economic advice on the probable economic effect on United States industries producing like or directly competitive articles, and on consumers, of the granting of a waiver of competitive need limits for the products identified in section D of the lists which follow.

IV. Cases Accepted for Review Regarding Country Practices, Pursuant to 15 CFR 2007.0(b)

Pursuant to 15 CFR 2007.0(b), the TPSC has accepted for review 6 requests filed by various petitioners to review the status of Thailand, Indonesia, Turkey, Korea, Taiwan and the Central Africa Republic as GSP beneficiary countries in relation to their practices relating to worker rights. Further, in view of the fact that a review of Chile's GSP eligibility in relation to its practices with respect to worker rights is already in progress, and that Paraguay's GSP eligibility has been indefinitely suspended, comments on the worker rights practices of these two countries will be welcome during the public hearing and comment process described in Section II.

Pursuant to 15 CFR 2007.0(b), the TPSC has accepted for review requests filed by the International Intellectual Property Alliance and the Pharmaceutical Manufacturer's Association to review Thailand's status as a GSP beneficiary country in relation to its practice regarding the protection of intellectual property rights, with particular reference to copyright and patent protection.

David P. Shark,

Acting Chairman, Trade Policy Staff Committee.

BILLING CODE 3190-01-M

Annex I

Petitions Accepted for Review

Case No.	TSUS or TSUSA 1/ item No.	Article	Petitioner
		[The bracketed language in this list has been included only to clarify the scope of the numbered items which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
		A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences.	
		Fish, prepared or preserved in any manner, not in oil, in airtight containers:	
		Anchovies:	
87-1	112.01	In containers weighing with their contents not over 15 pounds each	Government of Morocco
		Milled grain products:	
		Fit for human consumption:	
		Oats:	
87-2	131.27	Valued over $8 per 100 pounds	Government of Colombia
		Vegetables (whether or not reduced in size), packed in salt, in brine, pickled, or otherwise prepared or preserved (except vegetables in subpart B, part 8, schedule 1 of the Tariff Schedules of the United States):	
		Beans:	
		[Soybeans]	
		Other:	
87-3	141.15	Pickled	Government of Morocco
		[Articles provided for in items 141.25 thru 141.70]	
		Other:	
		[Packed in salt, in brine, or pickled]	
		Other:	
87-4	141.83	Corn in airtight containers	Government of Thailand
		Capers:	
		[In immediate containers holding more than 7.5 pounds]	
87-5	161.08	Other	Government of Morocco
		Rum (including cana paraguaya):	
87-6	169.13	In containers each holding not over 1 gallon	Government of the Philippines
		In containers each holding over 1 gallon:	
87-7	169.1415	Valued over $3.50 per gallon	do.

1/ Tariff Schedules of the United States (19 U.S.C. 1202).

Annex I

Petitions Accepted for Review

Case No.	TSUS or TSUSA 1/ item No.	Article	Petitioner
A.	Petitions to add products to the list of eligible articles for the Generalized System of Preferences. (con.)		
		Wood blinds, shutters, screens, and shades, all the foregoing, with or without their hardware: [Consisting of wooden frames in the center of which are fixed louver boards or slats, with or without their hardware]	
87-8	206.67	Other	Eastman Bell, Costa Mesa, CA; Ohline Corporation, Gardenia, CA
		Strips (in continuous form), whether known as artificial straw, yarns, or by any other name: Not laminated:	
87-9	309.20	Valued not over $1 per pound	Government of Mexico; Cordelrias Filamentos y Costales, S.A. de C.V. (COFISCA), Mexico
87-10	309.21	Valued over $1 per pound	do.
		Other handkerchiefs, not ornamented: Of silk: Hemmed:	
87-11	370.8405	Containing 70 percent or more by weight of silk	Government of Thailand
		Not hemmed:	
87-12	370.8450	Containing 70 percent or more by weight of silk	do.
		Mufflers, scarves, shawls, and veils, all the foregoing of textile materials: [Lace or net articles, whether or not ornamented, and other articles, ornamented:]	
		Other articles, not ornamented: Of silk: Knit:	
87-13	372.5005	Containing 70 percent or more by weight of silk	do.
		Not knit: Weighing over 1 ounce per square yard and rectangular in shape:	
87-14	372.5505	Valued not over $5 per dozen Containing 70 percent or more by weight of silk	do.

1/ Tariff Schedules of the United States (19 U.S.C. 1202).

Annex I

Petitions Accepted for Review

Case No.	TSUS or TSUSA 1/ item No.	Article	Petitioner
A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences. (con.)			
		Articles not specially provided for, of textile materials:	
		[Lace or net articles, whether or not ornamented, and other articles ornamented:]	
		Other articles, not ornamented:	
		Of man-made fibers:	
		Knit (except pile or tufted construction):	
87-15	389.40(pt.)	Plastic pot scourers used chiefly to clean pots and other household articles used in preparing, serving, and storing food	Government of Mexico; Filtros Y Mallas Industriales, S.A., Mexico
		Products suitable for medicinal use, and drugs:	
		Obtained, derived, or manufactured in whole or in part from any product provided for in subpart A or B of part 1, schedule 4, of the Tariff Schedules of the United States:	
		Drugs:	
		Imidazoline derivatives:	
		[Articles provided for in items 411.00 and 411.04]	
		Other:	
87-16	411.08(pt.)2/	Anthelmintic compound containing a thiazoline ring fused to a imidazoline ring	Cyanamid Latin American Group, Wayne, NJ
87-17	455.04	Pectin	Grinsted de Mexico, S.A., Mexico
		Articles chiefly used for preparing, serving, or storing food or beverages, or food or beverage ingredients:	
		Of chinaware or of subporcelain:	
		Household ware:	
		Of nonbone chinaware or of subporcelain:	
		Not available in specified sets:	
		[Articles provided for in items 533.72 thru 533.78]	
87-18	533.79	Other articles 3/	Corning Glassware, Corning, NY

1/ Tariff Schedules of the United States (19 U.S.C. 1202).
2/ Currently eligible for GSP under the TSUS; request is for GSP eligibility under the HS.
3/ 504(d) waiver also requested for TSUS item 533.79.

Annex I

Petitions Accepted for Review

Case No.	TSUS or TSUSA 1/ item No.	Article	Petitioner
A.	Petitions to add products to the list of eligible articles for the Generalized System of Preferences. (con.)		
		Smokers' articles, household articles, and art and ornamental objects such as, but not limited to, statues, figurines, flowers, vases, lamp bases, bric-a-brac, and wall plaques, all the foregoing not specially provided for, of ceramic ware: [Articles provided for in items 534.21 thru 534.94]	
87-19	534.97	Other 2/	Corning Glassware, Corning, NY
		Ferroalloys:	
		Ferrochromium:	
87-20	606.22	Not containing over 3 percent by weight of carbon	Government of Zimbabwe
87-21	606.42	Ferrosilicon chromium	Government of Zimbabwe
		Dolls, and parts of dolls including doll clothing: [Doll clothing imported separately]	
		Other:	
		Dolls (with or without clothing):	
		[Stuffed]	
		Other	
87-22	737.2415	Over 18 inches in height	Playmates Toys, Inc., La Mirada, CA
87-23	755.15	Fireworks	Government of Colombia
		Fountain pens, including stylographic pens and ball-point pens and ball-point pencils, and combination pens and pencils:	
87-24	760.0520	Ball-point pens and ball-point pencils	Government of Thailand

1/ Tariff Schedules of the United States (19 U.S.C. 1202).
2/ Currently eligible for GSP under the TSUS; request is for GSP eligibility under the HS; 504(d) waiver also requested for TSUS 534.97.

Annex I

Petitions Accepted for Review

Case No.	TSUS or TSUSA 1/ item No.	Article	Petitioner
B.		Petitions to remove products from the list of eligible articles for the Generalized System of Preferences.	
		Flavoring extracts, and fruit flavors, essences, esters, and oils, all the foregoing whether or not containing ethyl alcohol:	
		Not containing alcohol:	
		[In ampoules, capsules, tablets, or similar forms]	
		Other:	
		Spice oleoresins:	
87-25	450.2015	Black pepper	Kalsec, Inc., Kalamazoo, MI
		Metal-bearing ores and the dross or residuum from burnt pyrites:	
87-26	601.33	Molybdenum ore	Cyprus Minerals, Englewood, CO
		Other metal-bearing materials of a type commonly used for the extraction of metal or as a basis for the manufacture of chemical compounds:	
		[Articles provided for in items 603.05 thru 603.30]	
		Other:	
87-27	603.40	Materials in chief value of molybdenum	do.
		Pipe and tube fittings of iron or steel:	
		Cast-iron fittings, malleable:	
87-28	610.74	Advanced in condition by operations or processes subsequent to the casting process	American Pipe Fittings Association, Washington, D.C.
		Jewelry and other objects of personal adornment not provided for in the foregoing provisions of part 6, schedule 7, of the Tariff Schedules of the United States (except articles excluded by headnote 3 of subpart A, part 6, schedule 7, of the Tariff Schedules of the United States), and parts thereof:	
		Valued over 20 cents per dozen pieces or parts:	
		[Articles provided for in items 740.34 thru 740.39]	
87-29	740.41	Other	Manufacturing Jewelers and Silversmiths of America, Inc., Providence, RI

1/ Tariff Schedules of the United States (19 U.S.C. 1202).

Annex I

Petitions Accepted for Review

Case No.	TSUS or TSUSA 1/ item No.	Article	Petitioner
		B. Petitions to remove products from the list of eligible articles for the Generalized System of Preferences. (con.)	
		Religious articles of a purely devotional character designed to be worn on apparel or carried on or about or attached to the person:	
87-30	740.50	Rosaries and chaplets	Manufacturing Jewelers and Silversmiths of America, Inc., Providence, RI
		Crucifixes and medals:	
		[Of precious metals (including rolled precious metals)]	
87-31	740.60	Other	do.
		Rope, curb, cable, chain, and similar articles produced in continuous lengths, all the foregoing, whether or not cut to specific lengths and whether or not set with imitation pearls or imitation gemstones, of metal or of metal and such pearls or gemstones, suitable for use in the manufacture of articles provided for in subpart A, part 6, schedule 7, of the Tariff Schedules of the United States:	
		[Of precious metals (including rolled precious metals)]	
		Other:	
87-32	740.75	Valued not over 30¢ per yard	do.
87-33	740.80	Valued over 30¢ per yard	do.
		Clasps, handbag and similar frames incorporating clasps, and snap fasteners; all the foregoing and parts thereof:	
		Valued over 20 cents per dozen pieces or parts:	
		For jewelry and other objects of personal adornment:	
		[Of precious metal except silver (including rolled precious metal except silver)]	
		Other:	
		[Silver]	
87-34	745.6740	Other	do.

1/ Tariff Schedules of the United States (19 U.S.C. 1202).

Annex I

Petitions Accepted for Review

Case No.	TSUS or TSUSA 1/ item No.	Article	Petitioner
C.	Petitions to remove duty-free status from a beneficiary developing country for a product on the list of eligible articles for the Generalized System of Preferences 2/		
		Products obtained, derived, or manufactured in whole or in part from any product provided for in subpart A or B of part 1, schedule 4 of the Tariff Schedules of the United States: Plastics materials: [Articles provided for in items 408.44 and 408.48]	
		Other: Thermoplastic resins:	
87-35	408.72 (Korea)	Acrylonitrile-butadiene-styrene (ABS) resins	Borg-Warner Chemicals, Inc., Parkersburg, WV; Dow Chemicals, USA, Midland, MI
		Other inorganic compounds: [Articles provided for in items 422.90 thru 422.94]	
		Other: [Rare-earth oxides except cerium oxide; hydrogen peroxide]	
87-36	423.0050 (Brazil)	Other oxides, hydroxides and peroxides	Teledyne Industries, Albany, OR
87-37	618.15 (Argentina, Brazil, Mexico, Taiwan, Venezuela, Yugoslavia)	Wrought rods of aluminum	Southwire Company, Carrollton, GA
		Aluminum wire:	
87-38	618.20 (Argentina, Brazil, Venezuela)	Not coated or plated with metal	do.

1/ Tariff Schedules of the United States (19 U.S.C. 1202).
2/ The country or countries named are those beneficiary developing countries specified by the petitioner. While the Trade Policy Staff Committee (TPSC) review will focus on those countries, the TPSC reserves the right to address removal of GSP status for countries other than those specified by the petitioner.

Annex I

Petitions Accepted for Review

Case No.	TSUS or TSUSA 1/ item No.	Article	Petitioner
C.	Petitions to remove duty-free status from a beneficiary developing country for a product on the list of eligible articles for the Generalized System of Preferences.2/ (con.)		
		Strands, ropes, cables, and cordage, all the foregoing, of wire, whether or not cut to length, and whether or not fitted with hooks, swivels, clamps, clips, thimbles, sockets or other fittings or made up into slings, cargo nets, or similar articles:	
		Fitted with fittings, or made up into articles:	
87-39	642.2010 (Korea)	Ropes, cables or cordage fitted with fittings	Committee of Domestic Steel Wire Rope and Specialty Steel Mfgs., Washington, D.C.
87-40	652.80 (Korea, Mexico)	Expanded metal, of base metal	Expanded Metal Fair Trade Coalition, Washington, D.C.
		Generators, motors, motor-generators, converters (rotary or static), transformers, rectifiers and rectifying apparatus, and inductors; all the foregoing which are electrical goods, and parts thereof:	
		Motors:	
		Of 1 horsepower or more, but not over 20 horsepower:	
		AC:	
87-41	682.4130 (Korea, Taiwan)	Polyphase	National Electrical Manufacturers Association, Washington, D.C.
		Of 200 or more horsepower:	
		Of 200 horsepower:	
87-42	682.5010 (Korea, Taiwan)	AC	do.
		Of over 200 horsepower but not over 500 horsepower:	
87-43	682.5030 (Korea, Taiwan)	AC	do.

1/ Tariff Schedules of the United States (19 U.S.C. 1202).
2/ The country or countries named are those beneficiary developing countries specified by the petitioner. While the Trade Policy Staff Committee (TPSC) review will focus on those countries, the TPSC reserves the right to address removal of GSP status for countries other than those specified by the petitioner.

Annex I

Petitions Accepted for Review

Case No.	TSUS or TSUSA 1/ item No.	Article	Petitioner
C.	Petitions to remove duty-free status from a beneficiary developing country for a product on the list of eligible articles for the Generalized System of Preferences.2/ (con.)		
		Radiotelegraphic and radiotelephonic transmission and reception apparatus; radiobroadcasting and television transmission and reception apparatus, and television cameras; record players, phonographs, tape recorders, dictation recording and transcribing machines, record changers, and tone arms; all the foregoing, and any combination thereof, whether or not incorporating clocks or other timing apparatus, and parts thereof:	
		Radiotelegraphic and radiotelephonic transmission and reception apparatus; radiobroadcasting and television transmission and reception apparatus, and parts thereof:	
		[Articles provided for in 684.90 thru 685.08]	
		Other:	
		[Articles provided for in 685.10 thru 685.24]	
		Other transmission apparatus incorporating reception apparatus:	
87-44	685.28 (Hong Kong, Korea, Taiwan)	[Cordless handset telephones] Other	Motorola, Inc., Schaumburg, IL
		Uninsulated electrical conductors:	
87-45	688.20 (Brazil, Korea, Taiwan, Venezuela)	Comprised of aluminum wire or strand spirally wound or twisted around a steel or aluminum core	Southwire Company, Carrollton, GA

1/ Tariff Schedules of the United States (19 U.S.C. 1202).
2/ The country or countries named are those beneficiary developing countries specified by the petitioner. While the Trade Policy Staff Committee (TPSC) review will focus on those countries, the TPSC reserves the right to address removal of GSP status for countries other than those specified by the petitioner.

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Annex I

Petitions Accepted for Review

Case No.	TSUS or TSUSA 1/ item No.	Article	Petitioner
		C. Petitions to remove duty-free status from a beneficiary developing country for a product on the list of eligible articles for the Generalized System of Preferences.2/ (con.)	
		Beach balls, play balls, toy balls, and other balls for games or sports not provided for in the foregoing provisions of subpart D, part 5, schedule 7, of the Tariff Schedules of the United States:	
87-46	735.09 (Korea, Taiwan)	Inflatable balls	Hedstrom Corporation, Ashland, OH
87-47	735.10 (Korea, Taiwan)	Noninflatable hollow balls not over 7.5 inches in diameter	do.
87-48	735.11 (Korea, Taiwan)	Sponge rubber balls	do.
87-49	735.12 (Korea, Taiwan)	Other	do.
		Buttons:	
87-50	745.32 (Taiwan)	Of acrylic resin, of polyester resin, or of both such resins	Cresthill Industries Inc., New York, NY
		Articles chiefly used for preparing, serving or storing food or beverages, or food or beverage ingredients; and household articles not specially provided for; all the foregoing of rubber or plastics:	
87-51	772.06 (Hong Kong, Korea, Mexico)	Plates, cups, saucers, soup bowls, cereal bowls, sugar bowls, creamers, gravy boats, serving dishes, and platters	Ullman Co., Hauppauge, NY
87-52	772.09 (Hong Kong, Korea, Mexico)	Trays	do.

1/ Tariff Schedules of the United States (19 U.S.C. 1202).
2/ The country or countries named are those beneficiary developing countries specified by the petitioner. While the Trade Policy Staff Committee (TPSC) review will focus on those countries, the TPSC reserves the right to address removal of GSP status for countries other than those specified by the petitioner.

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Annex I

Petitions Accepted for Review

Case No.	TSUS or TSUSA 1/ item No.	Article	Petitioner
D. Petitions for waiver of competitive-need limit for a product on the list of eligible products			
87-53	547.3720 (Taiwan)	Glass envelopes (including bulbs and tubes), without fittings, designed for electric lamps, vacuum tubes or other electrical devices: [Bulbs for incandescent lamps] Other Glass envelopes for cathode-ray tubes	Clinton Electronics Corporation, Rockford, IL
87-54	657.40(pt.) (Taiwan)	Articles of aluminum, not coated or plated with precious metal: Luggage frames	Skyway Luggage Co., Seattle, WA
87-55	685.25 (Korea)	Radiotelegraphic and radiotelephonic transmission and reception apparatus; radiobroadcasting and television transmission and reception apparatus, and television cameras; record players, phonographs, tape recorders, dictation recording and transcribing machines, record changers, and tone arms; all the foregoing, and any combination thereof, whether or not incorporating clocks or other timing apparatus, and parts thereof: Radiotelegraphic and radiotelephonic transmission and reception apparatus; radiobroadcasting and television transmission and reception apparatus, and parts thereof: [Television apparatus, and parts thereof] Other: [Articles provided for in 685.10 thru 685.24] Other transmission apparatus incorporating reception apparatus: Cordless handset telephones	Maxon Electronics, Inc., Kansas City, MO

1/ Tariff Schedules of the United States (19 U.S.C. 1202).

Annex I

Petitions Accepted for Review

Case No.	TSUS or TSUSA 1/ item No.	Article	Petitioner
D. Petitions for waiver of competitive-need limit for a product on the list of eligible products (con.)			
		Chassis, bodies (including cabs), and parts of the foregoing motor vehicles: [Bodies (including cabs) and chassis:] Other: [Articles provided for in item 692.24] Other: [Articles provided for in items 692.29 and 692.31] Other: Brakes and parts thereof:	
87-56	692.3262 (Mexico)	Brake drums and rotors (discs)	Cifunsa, S.A., Mexico
87-57	692.3264 (Mexico)	Other	do.
		Beach balls, play balls, toy balls, and other balls for games or sports, not provided for in the foregoing provisions of subpart D, part 5, schedule 7, of the Tariff Schedules of the United States:	
87-58	735.09 (Mexico)	Inflatable balls	Kenner Parker Toys, Inc., Beverly, MA; Mattel, Inc., Hawthorne, CA
87-59	735.10 (Mexico)	Noninflatable hollow balls not over 7.5 inches in diameter	do.
87-60	735.11 (Mexico)	Sponge rubber balls	do.
87-61	735.12 (Mexico)	Other	do.

1/ Tariff Schedules of the United States (19 U.S.C. 1202).

Annex I

Petitions Accepted for Review

Case No.	TSUS or TSUSA 1/ item No.	Article	Petitioner
D.		**Petitions for waiver of competitive-need limit for a product on the list of eligible products** (con.)	
		Model trains, model airplanes, model boats and other model articles, all the foregoing whether or not toys; and construction kits or sets for assembling such model articles:	
		[Articles provided for in item 737.05]	
87-62	737.07 (Mexico)	Other models and construction kits or sets: Rail locomotives and rail vehicles; railroad and railway rolling stock; track, including switching track; rail depots, round houses, signal towers, water towers, and other trackside structures; trolley buses and trolley-bus systems; cable-car systems; highway vehicles; ships and harbor structures; and airplanes and spacecraft; all the foregoing made to scale of the actual article at the ratio of 1 to 85 or smaller	Kenner Parker Toys, Inc., Beverly, MA; Mattel, Inc., Hawthorne, CA
		[Articles provided for in items 737.09 and 737.14]	
		[Construction kits or sets with construction units prefabricated to precise scale of the actual article]	
87-63	737.14 (Mexico)	Articles described in item 737.07 made to a scale of the actual article at a ratio larger than 1 to 85	do.
87-64	737.16 (Mexico)	Other	do.
		Toys, and parts of toys, not specially provided for:	
87-65	737.80 (Mexico)	Toys having a spring mechanism	do.
		Other:	
		[Kites]	
87-66	737.93 (Mexico)	Toys having an electric motor	do.
87-67	737.96 (Mexico)	Toys wholly or almost wholly of rubber or plastics, not inflatable	do.
87-68	737.98 (Mexico)	Other	do.

1/ Tariff Schedules of the United States (19 U.S.C. 1202).

Annex I

Petitions Accepted for Review

Case No.	TSUS or TSUSA 1/ item No.	Article	Petitioner
D.	Petitions for waiver of competitive-need limit for a product on the list of eligible products (con.)		
		Jewelry and other objects of personal adornment, and small articles ordinarily carried in the pocket, in the handbag, or on the person for mere personal convenience, all the foregoing, and parts thereof, of precious metal (including rolled precious metal), of precious stones, of natural pearls, of precious metal (including rolled precious metal) set with semiprecious stones, cameos, intaglios, amber, or coral, or of any combination of the foregoing:	
		[Of silver (including rolled silver) and valued not over $18 per dozen pieces or parts]	
		Other:	
		Of precious metals:	
		[Necklaces and neck chains, almost wholly of gold]	
87-69	740.14 (Thailand)	Other	Government of Thailand

1/ Tariff Schedules of the United States (19 U.S.C. 1202).

Annex II

Petitions Accepted for Review

Case No.	HS Subheading 1/	Article	Petitioner
		[The bracketed language in this list has been included only to clarify the scope of the numbered items which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
		A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences.	
	1104	Cereal grains otherwise worked (for example, hulled, rolled, flaked, pearled, sliced or kibbled), except rice of heading 1006; germ of cereals, whole, rolled, flaked or ground:	
		Rolled or flaked grains:	
87-HS-1	1104.12.00	Of oats	Government of Colombia
	1302	Vegetable saps and extracts; pectic substances, pectinates and pectates; agar-agar and other mucilages and thickeners, whether or not modified, derived from vegetable products:	
87-HS-2	1302.20.00	Pectic substances, pectinates and pectates	Grinsted de Mexico, S.A., Mexico
	1604	Prepared or preserved fish; caviar and caviar substitutes prepared from fish eggs:	
		Fish, whole or in pieces, but not minced:	
	1604.16	Anchovies:	
		[In oil, in airtight containers]	
		Other:	
87-HS-3	1604.16.40	In immediate containers weighing with their contents 6.8 kg or less each	Government of Morocco
	2001	Vegetables, fruit, nuts and other edible parts of plants, prepared or preserved by vinegar or acetic acid:	
		[Cucumbers including gherkins; onions]	
		Other:	
		Capers:	
		[In immediate containers holding more than 3.4 kg]	
87-HS-4	2001.90.20	Other	do.
		Other:	
		Vegetables:	
87-HS-5	2001.90.30	Beans	do.

1/ Proposed United States Tariff Schedules Annotated in the Harmonized System Nomenclature (GPO Stock Number: 040-000-00516-1).

Annex II

Petitions Accepted for Review

Case No.	HS Subheading 1/	Article	Petitioner
A.	Petitions to add products to the list of eligible articles for the Generalized System of Preferences.(con.)		
	2005	Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen:	
87-HS-6	2005.80.00	Sweet corn (Zea mays var. saccharata)	Government of Thailand
	2208	Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 percent vol.; spirits, liqueurs and other spirituous beverages; compound alcoholic preparations of a kind used for the manufacture of beverages:	
		Rum and tafia:	
87-HS-7	2208.40.00.30	In containers each holding not over 4 liters	Government of the Philippines
		In containers each holding over 4 liters:	
87-HS-8	2208.40.00.80	Valued over 92c per liter	do.
	2934	Other heterocyclic compounds: [Articles provided for in subheadings 2934.10 thru 2934.30]	
	2934.90	Other:	
		Aromatic or modified aromatic: [Articles provided for in subheadings 2934.90.05 and 2934.90.06]	
		Other:	
87-HS-9	2934.90.25	Drugs	Cynamid Latin America Group, Wayne, NJ
	3604	Fireworks, signalling flares, rain rockets, fog signals and other pyrotechnic articles:	
87-HS-10	3604.10.00	Fireworks	Government of Colombia
	3920	Other plates, sheets, film, foil and strip, of plastics, noncellular and not reinforced, laminated, supported or similarly combined with other materials:	
87-HS-11	3920.20.00	Of polymers of propylene	Government of Mexico Cordelerias Filamentos y Costales, S.A. de C.V. (COFICSA), Mexico

1/ Proposed United States Tariff Schedules Annotated in the Harmonized System Nomenclature (GPO Stock Number: 040-000-00516-1).

Annex II

Petitions Accepted for Review

Case No.	HS Subheading 1/	Article	Petitioner
A.		Petitions to add products to the list of eligible articles for the Generalized System of Preferences.(con.)	
	4421	Other articles of wood: [Clothes hangers] Other: Wood blinds, shutters, screens and shades, all the foregoing with or without their hardware: [Consisting of wooden frames in the center of which are fixed louver boards or slats, with or without their hardware]	
87-HS-12	4421.90.40	Other	Eastman Bell, Inc., Costa Mesa, CA; Online Corporation, Gardenia, CA
	6117	Other made up clothing accessories, knitted or crocheted; knitted or crocheted parts of garments or of clothing accessories:	
	6117.10	Shawls, scarves, mufflers, mantillas, veils and the like: [Of wool or fine animal hair; of man-made fibers]	
87-HS-13	6117.10.30(pt.)	Other: Containing 70 percent or more by weight of silk	Government of Thailand
	6213	Handkerchiefs:	
87-HS-14	6213.10.00	Of silk or silk waste	do.
	6214	Shawls, scarves, mufflers, mantillas, veils and the like:	
87-HS-15	6214.10.00	Of silk or silk waste	do.
	6307	Other made up articles, including dress patterns: [Articles provided for in subheadings 6307.10 and 6307.20]	
	6307.90	Other: [Articles provided for in subheadings 6307.90.30 thru 6307.90.75]	
87-HS-16	6307.90.80(pt.)	Other: Plastic pot scourers used chiefly to clean pots and other household articles used in preparing, serving and storing food	Government of Mexico; Filtros Y Mallas Industriales, S.A., Mexico

1/ Proposed United States Tariff Schedules Annotated in the Harmonized System Nomenclature (GPO Stock Number: 040-000-00516-1).

Annex II

Petitions Accepted for Review

Case No.	HS Subheading 1/	Article	Petitioner
		A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences.(con.)	
	7013	Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018):	
87-HS-17	7013.10.00	Of glass-ceramics 2/	Corning Glassware, Corning, NY
	7202	Ferroalloys: Ferrochromium: [Containing by weight more than 4 percent of carbon]	
	7202.49	Other: [Containing by weight more than 3 percent of carbon]	
87-HS-18	7202.49.50	Other	Government of Zimbabwe
87-HS-19	7202.50.00	Ferrosilicon chromium	do.
	9502	Dolls representing only human beings and parts and accessories thereof:	
	9502.10	Dolls, whether or not dressed: [Stuffed] Other:	
87-HS-20	9502.10.3060	[Not over 38 cm in height] Other	Playmate Toys, Inc., La Mirada, CA
	9608	Ball point pens; felt tipped and other porous-tipped pens and markers; fountain pens, stylograph pens and other pens; duplicating stylos; propelling or sliding pencils (for example, mechanical pencils); pen-holders, pencil-holders and similar holders; parts (including caps and clips) of the foregoing articles, other than those of heading 9609:	
87-HS-21	9608.10.00	Ball point pens	Government of Thailand

1/ Proposed United States Tariff Schedules Annotated in the Harmonized System Nomenclature (GPO Stock Number: 040-000-00516-1).
2/ 504(d) waiver also requested for 7013.10.00.

Annex II

Petitions Accepted for Review

Case No.	HS Subheading 1/	Article	Petitioner
		A. Petitions to remove products from the list of eligible articles for the Generalized System of Preferences.	
	2613	Molybdenum ores and concentrates:	
87-HS-22	2613.10.00	Roasted	Cyprus Minerals, Englewood, CO
	2620	Ash and residues (other than from the manufacture of iron or steel) containing metals or metallic compounds: [Articles provided for in subheadings 2620.11 thru 2620.50]	
	2620.90	Other:	
87-HS-23	2620.90.10	Containing mainly molybdenum	do.
	3301	Essential oils (terpeneless or not), including concretes and absolutes; resinoids; concentrates of essential oils in fats, in fixed oils, in waxes or the like, obtained by enfleurage or maceration; terpenic by-products of the deterpenation of essential oils; aqueous distillates and aqueous solutions of essential oils:	
	3301.30	Resinoids:	
		Prepared oleoresins consisting essentially of nonvolatile components of the natural raw plant:	
87-HS-24	3301.30.1020	Black pepper	Kalsec, Inc., Kalamazoo, MI
	7117	Imitation jewelry:	
		Of base metal, whether or not plated with precious metal:	
87-HS-25	7117.11.00	Cuff links and studs	Manufacturing Jewelers and Silversmiths of America, Inc., Providence, RI
	7117.19	Other:	
		Rope, curb, cable, chain and similar articles produced in continuous lengths, all the foregoing, whether or not cut to specific lengths and whether or not set with imitation pearls or imitation gemstones, suitable for use in the manufacture of articles provided for in this heading:	
87-HS-26	7117.19.10	Valued not over 33 cents per meter	do.
87-HS-27	7117.19.20	Valued over 33 cents per meter	do.
87-HS-28	7117.19.30	Religious articles of a purely devotional character designed to be worn on apparel or carried on or about or attached to the person	do.
87-HS-29	7117.19.50	Other	do.

1/ Proposed United States Tariff Schedules Annotated in the Harmonized System Nomenclature (GPO Stock Number: 040-000-00516-1).

Annex II

Petitions Accepted for Review

Case No.	HS Subheading 1/	Article	Petitioner
B.		Petitions to remove products from the list of eligible articles for the Generalized System of Preferences.(con.)	
	7307	Tube or pipe fittings (for example, couplings, elbows, sleeves), of iron or steel: Cast fittings:	
	7307.19	[Of nonmalleable cast iron] Other:	
87-HS-30	7307.19.90	[Ductile fittings] Other	American Pipe Fittings Association, Washington, DC
C.		Petitions to remove duty-free status from a beneficiary developing country on the list of eligible articles for the Generalized System of Preferences. 2/	
	2825	Hydrazine and hydroxylamine and their inorganic salts; other inorganic bases; other metal oxides, hydroxides and peroxides: [Articles provided for in subheadings 2825.10 thru 2825.80]	
	2825.90	Other: [Beryllium oxide and hydroxide; tin oxides; tungsten oxides]	
87-HS-31	2825.90.50 (Brazil)	Other	Teledyne Industries, Albany, OR
	3903	Polymers of styrene, in primary forms:	
87-HS-32	3903.30.00 (Korea)	Acrylonitrile-butadiene-styrene (ABS) copolymers	Borg-Warner Chemicals, Inc., Parkersburg, WV; Dow Chemical, USA, Midland, MI
	3924	Tableware, kitchenware, other household articles and toilet articles, of plastics:	
	3924.10	Tableware and kitchenware:	
87-HS-33	3924.10.20 (Hong Kong, Korea, Mexico)	Plates, cups, saucers, soup bowls, cereal bowls, sugar bowls, creamers, gravy boats, serving dishes and platters	Ullman Company, Inc., Hauppauge, NY
87-HS-34	3924.10.30 (Hong Kong, Korea, Mexico)	Trays	do.

1/ Proposed United States Tariff Schedules Annotated in the Harmonized System Nomenclature (GPO Stock Number: 040-000-00516-1).

2/ The country or countries named are those beneficiary developing countries specified by the petitioner. While the Trade Policy Staff Committee (TPSC) review will focus on those countries, the TPSC reserves the right to address removal of GSP status for countries other than those specified by the petitioner.

Annex II

Petitions Accepted for Review

Case No.	HS Subheading 1/	Article	Petitioner
C.	Petitions to remove duty-free status from a beneficiary developing country on the list of eligible articles for the Generalized System of Preferences. 2/ (con.)		
	7312	Stranded wire, ropes, cables, plaited bands, slings and the like, of iron or steel, not electrically insulated:	
	7312.10	Stranded wire, ropes and cables:	
		Ropes, cables and cordage other than stranded wire:	
		Of stainless steel:	
87-HS-35	7312.10.50 (Korea)	Fitted with fittings or made up into articles	Committee of Domestic Steel Wire Rope and Specialty Steel Mfg., Washington, DC
		Other:	
87-HS-36	7312.10.70 (Korea)	Fitted with fittings or made up into articles	do.
	7314	Cloth (including endless bands), grill, netting and fencing, of iron or steel wire; expanded metal of iron or steel:	
87-HS-37	7314.50.00 (Korea, Mexico)	Expanded metal	Expanded Metal Fair Trade Coalition, Washington, DC
	7414	Cloth (including endless bands), grill and netting, of copper wire; expanded metal of copper:	
		[Endless bands, for machinery]	
87-HS-38	7414.90.00 (Korea, Mexico)	Other	do.
	7604	Aluminum bars, rods and profiles:	
	7604.10	Of aluminum, not alloyed:	
		Bars and rods:	
87-HS-39	7604.10.30 (Argentina, Brazil, Mexico, Taiwan, Venezuela, Yugoslavia)	Having a round cross section	Southwire Company, Carrollton, GA
		Of aluminum alloys:	
		[Hollow profiles]	
	7604.29	Other:	
		Bars and rods:	
87-HS-40	7604.29.30 (Argentina, Brazil, Mexico, Taiwan, Venezuela, Yugoslavia)	Having a round cross section	do.

1/ Proposed United States Tariff Schedules Annotated in the Harmonized System Nomenclature (GPO Stock Number: 040-000-00516-1).

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Annex II

Petitions Accepted for Review

Case No.	HS Subheading 1/	Article	Petitioner
	C. Petitions to remove duty-free status from a beneficiary developing country on the list of eligible articles for the Generalized System of Preferences. 2/ (con.)		
	7605	Aluminum wire:	
		Of aluminum, not alloyed:	
87-HS-41	7605.11.00 (Argentina, Brazil, Venezuela)	Of which the maximum cross-sectional dimension exceeds 7 mm	Southwire Company, Carrollton, GA
87-HS-42	7605.19.00 (Argentina, Brazil, Venezuela)	Other	do.
		Of aluminum alloys:	
87-HS-43	7605.21.00 (Argentina, Brazil, Venezuela)	Of which the maximum cross-sectional dimension exceeds 7 mm	do.
87-HS-44	7605.29.00 (Brazil, Korea, Taiwan, Venezuela)	Other	do.
	7614	Stranded wire, cables, plaited bands and the like, including slings and similar articles, of aluminum, not electrically insulated:	
	7614.10	With steel core:	
87-HS-45	7614.10.50 (Argentina, Brazil, Venezuela)	Fitted with fittings or made up into articles	do.
	7614.90	Other:	
87-HS-46	7614.90.50 (Argentina, Brazil, Venezuela)	Fitted with fittings or made up into articles	do.

1/ Proposed United States Tariff Schedules Annotated in the Harmonized System Nomenclature (GPO Stock Number: 040-000-00516-1).
2/ The country or countries named are those beneficiary developing countries specified by the petitioner. While the Trade Policy Staff Committee (TPSC) review will focus on those countries, the TPSC reserves the right to address removal of GSP status for countries other than those specified by the petitioner.

Annex II

Petitions Accepted for Review

Case No.	HS Subheading 1/	Article	Petitioner
	C. Petitions to remove duty-free status from a beneficiary developing country or the list of eligible articles for the Generalized System of Preferences. 2/ (con.)		
	8501	Electric motors and generators (excluding generating sets): [Articles provided for in subheadings 8501.10 to 8501.40]	
	8501.52	Other AC motors, multi-phase: Of an output exceeding 750 W but not exceeding 75 kW:	
87-HS-47	8501.52.40 (Korea, Taiwan)	Exceeding 750 W but not exceeding 14.92 kW	National Electrical Manufacturers Association, Washington, DC
		Of an output exceeding 75 kW:	
87-HS-48	8501.53.60 (Korea, Taiwan)	[Exceeding 75 kW but under 149.2 kW] 149.2 kW or more but not exceeding 150 kW	do.
		Other:	
87-HS-49	8501.53.80 (Korea, Taiwan)	Exceeding 150 kW but not exceeding 373 kW	do.
	8525	Transmission apparatus for radiotelephony, radiotelegraphy, radiobroadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras:	
	8525.20	Transmission apparatus incorporating reception apparatus:	
		[Transceivers] Other:	
87-HS-50	8525.20.60 (Hong Kong, Korea, Taiwan)	[Cordless handset telephones] Other	Motorola, Inc., Schaumburg, IL
	9503	Other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof: [Articles provided for in subheadings 9503.10 thru 9503.80]	
	9503.90	Other:	
87-HS-51	9503.90.40 (Korea, Taiwan)	[Kites] Other	Hedstrom Corporation, Ashland, OH

1/ Proposed United States Tariff Schedules Annotated in the Harmonized System Nomenclature (GPO Stock Number: 040-000-00516-1).

2/ The country or countries named are those beneficiary developing countries specified by the petitioner. While the Trade Policy Staff Committee (TPSC) review will focus on those countries, the TPSC reserves the right to address removal of GSP status for countries other than those specified by the petitioner.

Annex II

Petitions Accepted for Review

Case No.	HS Subheading 1/	Article	Petitioner
C.		Petitions to remove duty-free status from a beneficiary developing country or the list of eligible articles for the Generalized System of Preferences. 2/ (con.)	
	9506	Articles and equipment for gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof:	
		Balls, other than golf balls and table-tennis balls:	
		[Lawn-tennis balls]	
	9506.62	Inflatable balls:	
		[Footballs and soccer balls]	
87-HS-52	9506.62.80 (Korea, Taiwan)	Other	Hedstrom Corporation, Ashland, OH
	9506.69	Other:	
		[Baseballs and softballs]	
87-HS-53	9506.69.40 (Korea, Taiwan)	Noninflatable hollow balls not over 19 cm in diameter	do.
87-HS-54	9506.69.60 (Korea, Taiwan)	Other	do.
	9606	Buttons, press-fasteners, snap-fasteners and press-studs, button molds and other parts of these articles; button blanks:	
		Buttons:	
	9606.21	Of plastics, not covered with textile material:	
		[Of casein]	
87-HS-55	9606.21.40 (Taiwan)	Of acrylic resin, of polyester resin or of both such resins	Cresthill Industries Inc., New York, NY

1/ Proposed United States Tariff Schedules Annotated in the Harmonized System Nomenclature (GPO Stock Number: 040-000-00516-1).

2/ The country or countries named are those beneficiary developing countries specified by the petitioner. While the Trade Policy Staff Committee (TPSC) review will focus on those countries, the TPSC reserves the right to address removal of GSP status for countries other than those specified by the petitioner.

Annex II

Petitions Accepted for Review

Case No.	HS Subheading 1/	Article	Petitioner
	D.	Petitions for waiver of competitive-need limit for a product on the list of eligible products.	
	7011	Glass envelopes (including bulbs and tubes), open, and glass parts thereof, without fittings, for electric lamps, cathode-ray tubes or the like:	
87-HS-56	7011.20.00 (Taiwan)	For cathode-ray tubes	Clinton Electronics Corporation, Rockford, IL
	7113	Articles of jewelry and parts thereof, of precious metal or of metal clad with precious metal:	
	7113.11	Of precious metal whether or not plated or clad with precious metal: Of silver, whether or not plated or clad with other precious metal: [Articles provided for in subheading 7113.11.10]	
		Other: [Valued not over $18 per dozen pieces or parts]	
87-HS-57	7113.11.50 (Thailand)	Other	Government of Thailand
	7113.19	Of other precious metal, whether or not plated or clad with precious metal: [Articles provided for in subheading 7113.19.10]	
		Other: [Necklaces and neck chains, of gold; clasps and parts thereof]	
87-HS-58	7113.19.50 (Thailand)	Other	do.
	7113.20	Of base metal clad with precious metal: [Articles provided for in subheading 7113.20.10]	
		Other: [Necklaces and neck chains, of gold; clasps and parts thereof]	
87-HS-59	7113.20.50 (Thailand)	Other	do.

1/ Proposed United States Tariff Schedules Annotated in the Harmonized System Nomenclature (GPO Stock Number: 040-000-00516-1).

Annex II

Petitions Accepted for Review

Case No.	HS Subheading 1/	Article	Petitioner
D.	Petitions for waiver of competitive-need limit for a product on the list of eligible products.(con.)		
	7616	Other articles of aluminum: [Nails, tacks, staples (other than those of heading 8305), screws, bolts, nuts, screw hooks, rivets, cotters, cotter-pins, washers and similar articles]	
		Other:	
87-HS-60	7616.90.00(pt.) (Taiwan)	Luggage frames	Skyway Luggage Co., Seattle, WA
	8525	Transmission apparatus for radiotelephony, radiotelegraphy, radiobroadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras:	
	8525.20	Transmission apparatus incorporating reception apparatus: [Transceivers]	
		Other:	
87-HS-61	8525.20.50 (Korea)	Cordless handset telephones	Maxon Electronics, Inc., Kansas City, MO
	8708	Parts and accessories of the motor vehicles of headings 8701 to 8705: Brakes and servo-brakes and parts thereof: [Mounted brake linings]	
	8708.39	Other: [For tractors suitable for agricultural use]	
87-HS-62	8708.39.50 (Mexico)	For other vehicles	Cifunsa, S.A., Mexico
87-HS-63	8708.39.5010 (Mexico)	Brake drums and rotors (disc)	do.
87-HS-64	8708.39.5050 (Mexico)	Other	do.
	9503	Other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof: [Articles provided for in subheadings 9503.10 thru 9503.80]	
	9503.90	Other: [Kites]	
87-HS-65	9503.90.40 (Mexico)	Other	Kenner Parker Toys, Inc., Beverly, MA; Mattel, Inc., Hawthorne, CA

1/ Proposed United States Tariff Schedules Annotated in the Harmonized System Nomenclature (GPO Stock Number: 040-000-00516-1).

Annex II

Petitions Accepted for Review

Case No.	HS Subheading 1/	Article	Petitioner
B.		Petitions for waiver of competitive-need limit for a product on the list of eligible products.(con.)	
	9506	Articles and equipment for gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof:	
		Balls, other than golf balls and table-tennis balls:	
	9506.62	[Lawn-tennis balls] Inflatable balls:	
87-HS-66	9506.62.80 (Mexico)	[Footballs and soccer balls] Other	Kenner Parker Toys, Inc., Beverly, MA; Mattel, Inc., Hawthorne, CA
	9506.69	Other:	
87-HS-67	9506.69.40 (Mexico)	[Baseballs and softballs] Noninflatable hollow balls not over 19 cm in diameter	do.
87-HS-68	9506.69.60 (Mexico)	Other	do.

1/ Proposed United States Tariff Schedules Annotated in the Harmonized System Nomenclature (GPO Stock Number: 040-000-00516-1).

[FR Doc. 87-17804 Filed 8-3-87; 8:45 am]
BILLING CODE 3190-04-C

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending July 24, 1987

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 408, 409, 412, and 414. Answers may be filed within 21 days of date of filing.

Docket No. 45037

Parties: Members of International Air Transport Association.
Date filed: July 23, 1987.
Subject: Morocco fares increase.
Proposed effective date: August 1, 1987.

Docket No. 45038 R-1—R-6

Parties: Members of International Air Transport Association.
Date filed: July 23, 1987.
Subject: Specified cargo rates tables.
Proposed effective date: October 1, 1987.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 87-17634 Filed 8-3-87; 8:45 am]
BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended July 24, 1987

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 45026

Date filed: July 20, 1987.
Due date for answers, conforming applications, or motion to modify scope: August 17, 1987.
Description: Application of Air Ruidoso, Ltd., pursuant to section 401 of the Act and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity for an indefinite term to perform scheduled interstate air transportation of persons, property and mail between the terminal point Ruidoso, New Mexico, Albuquerque, New Mexico and the terminal point El Paso, Texas.

Docket No. 45027

Date filed: July 20, 1987.
Due date for answers, conforming applications, or motions to modify scope: August 17, 1987.
Description: Application of Air Nova, pursuant to section 402 of the Act and Subpart Q of the Regulations, requests a foreign air carrier permit authorizing scheduled foreign air passenger transportation on small aircraft between Yarmouth, Nova Scotia, Canada and Boston (Logan International Airport), Massachusetts. Further requests back-up authority for Air Nova to perform scheduled foreign air passenger transportation on small aircraft between Saint John, New Brunswick, Canada and Boston; and to perform foreign air charter cargo and mail transportation to the extent permitted under existing bilateral provisions.

Docket No. 45029

Date filed: July 21, 1987.
Due date for answers, conforming applications, or motions to modify scope: August 18, 1987.
Description: Application of Aztec Aviation Consulting Ltd. d/b/a Skylink Airlines pursuant to section 402 of the Act and Subpart Q of the Regulations applies for a foreign air carrier permit authorizing it to engage in passengers, property and mail between Vancouver, British Columbia, Canada and Portland, Salem, Eugene, Medford, Oregon, with all flights to the U.S.A. originating or terminating in Vancouver.

Docket No. 45033

Date filed: July 22, 1987.
Due date for answers, conforming applications, or motions to modify scope: August 19, 1987.
Description: Application of Continental Airlines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations requests a certificate of public convenience and necessity which will authorize Continental to provide foreign air transportation of persons, property and mail between Denver, Colorado and Vancouver, British Columbia, Canada.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 87-17635 Filed 8-3-87; 8:45 am]
BILLING CODE 4910-62-M

Federal Aviation Administration

[Summary Notice No. PE-87-17]

Petition for Exemption; Summary of Petitions Received and Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: August 24, 1987.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. ———, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 915G, FAA Headquarters Building (FOB 10A) 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11)

Issued in Washington, DC, on July 29, 1987.

Leonard R. Smith,
Manager, Program Management Staff.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
23139	Wylie Aircraft Corporation	14 CFR 91.31(a)	To allow petitioner to operate its McDonnell Douglas DC-6 series aircraft at a 5 percent increased zero fuel and landing weight for the purpose of competing with foreign operators operating under Part 129 of the FAR who are authorized to use the 5 percent increase in zero fuel and landing weight.
015NM	Avions Marcell Dassault-Breguet Aviation (J. Schmitt).	25.813.(E)	To permit installation or fixed partitions with doors in the cabin of FALCON 900 Aircraft.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought, disposition
24541	Boeing Commercial Airplane Company.	14 CFR 91.45	To allow petitioner to conduct ferry flights with one engine inoperative on its Boeing manufactured 707, 720, 727, or 747 turbine-engine-powered transport category airplanes without obtaining a special flight permit. *Granted, July 17,1987.*
25297	NPA, Inc	14 CFR 135.337 and 135.339	To allow petitioner to use another British Aerospace instructor pilot to train petitioner's initial cadre of BA-3100A pilots. *Granted, July 17, 1987.*
25091	Garrett Turbine Engine Company	14 CFR 21.325 (b)(1) and (3)	To allow the issuance of export airworthiness approvals for engines, and parts thereof, assembled and tested under petitioner's Production Certificate No. 413, at the Rolls Royce facility located in East Kilbride, Scotland. *Granted, July 17, 1987.*
25158	Anchorage Air Center	14 CFR 141.91(a)	To allow petitioner to conduct flight and ground training in several villages in Alaska which are more than 25 miles from the petitioner's home base. *Denied, July 14, 1987.*
25205	Robert A. Hoover	14 CFR 91.213(a)(2)	To allow certain single-pilot operations during acrobatic flight demonstrations of North American Sabreliner, NA265-40, Serial No. 282-027, N61RH. *Denied, July 14, 1987*

DISPOSITIONS OF PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought, Disposition
24836	Department of the Air Force	91.24(b)	Petitioner is asking exemption from Federal Aviation Regulations (FAR) to allow aircraft to conduct flight operations above 12,500 feet means sea level (MSL) without having to operate the transponders of those aircraft. *Granted: June 29, 1987.*

[FR Doc. 87-17592 Filed 8-3-87; 8:45 am]
BILLING CODE 4910-13-M

Federal Highway Administration

Supplemental Environmental Impact Statement; Larimer County, CO

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a Supplemental Environmental Impact Statement will be prepared for a proposed highway project in Larimer County, Colorado.

FOR FURTHER INFORMATION CONTACT: Mr. Leon Witman, Division Aministrator, Federal Highway Administration, 555 Zang Street, Lakewood, Colorado 80228, Attention: Mr. Mike Herron, Telephone: (303) 236-3366.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Colorado Deparment of Highways, will prepare a Supplemental Environmental Impact Statement (SEIS) on a proposal to construct a new, limited-access highway known as the Fort Collins Expressway in Larimer County, Colorado. The original environmental impact statement for the expressway (FHWA-COLO-EIS-72-06-F) was approved in 1977.

The Fort Collins Expressway project will provide a divided, four-lane, limited-access highway to alleviate traffic congestion presently encountered by motorists who are using State Highway 14 and U.S. 287 routes through northern Fort Collins. It is intended to accommodate existing and projected traffic demand and to improve safety conditions.

This notice updates an earlier Notice of Intent that was published in the Monday, August 16, 1982, Federal Register (Vol. 47, No. 158).

The location and preliminary design of a portion of the proposed facility beginning at College Avenue (U.S. 287) and extending eight miles northwesterly past the town of Laporte have been approved. A five-mile-long portion bypassing Laporte is currently under construction. This first usable segment is initially being built with a two-lane roadway, expandable to four lanes in the future. However, substantial changes in the local street system and other developments have reduced the suitability of the approved route location east of College Avenue.

The portion of the expressway east of College Avenue is now being restudied to determine if a new route location would be appropriate. The lengths of project alternatives range from approximately 2½ miles to over 4 miles. These alternatives will include routes to take the expressway from College Avenue to the connection with either State Highway 14 or Interstate 25 east of the city of Fort Collins. Various corridors to provide these connections, as well as the no-build alternative will be evaluated in environmental studies leading to an SEIS.

This notification is being sent directly to agencies of Federal, State, and local governments which may have an interest in this project.

An initial scoping meeting was held December 8, 1982, in Fort Collins.

To ensure that the full range of issues related to this proposed action are addressed and that all significant issues are identified, comments and suggestions are invited from all interested parties.

Agencies, organizations, and individuals interested in submitting comments and/or questions should direct them to the FHWA at the address provided above.

Issued on: July 22, 1987.

Leon Witman,

Division Administrator, Lakewood, Colorado.

[FR Doc. 87-17599 Filed 8-3-87; 8:45 am]
BILLING CODE 4910-22-M

BEST COPY AVAILABLE

Environmental Impact Statement; Wasco County, OR

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed bridge replacement in the City of The Dalles in Wasco County, Oregon.

FOR FURTHER INFORMATION CONTACT: Elton Chang, Environmental Coordinator and Safety Programs Engineer, Federal Highway Administration, Equitable Center, Suite 100, 530 Center NE., Salem, Oregon 97301, Telephone: (503) 399–5749.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Oregon Department of Transportation and the City of The Dalles, will prepare an environmental impact statement on a proposed project to replace the Mill Creek (West Sixth Street) Bridge in The Dalles with a new concrete structure. The existing bridge is eligible for the National Register of Historic Places but is obsolete in width and safety features. The proposed replacement bridge would provide wider travel lanes, sidewalks, and roadway shoulders. The proposed project is located on a main traffic arterial which connects the two main commercial areas within the City of The Dalles.

The proposed bridge replaces an obsolete, narrow structure with a new structure capable of handling existing and future traffic levels, and would subsequently improve the safety and efficiency of the arterial.

Alternatives being considered include replacing the bridge on the existing alignment, constructing an arterial on new alignment which would avoid impacting the existing bridge, and taking no action.

Information describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies. No formal scoping meeting is planned at this time. A public hearing for review and comment will be held after release of the document.

Comments or questions concerning this proposed action and the EIS should be directed to the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs" apply to this program.)

Issued on: July 27,1987.

Elton H. Chang,

Environment Coordinator/Safety Program Engineer.

[FR Doc. 87–17690 Filed 8–3–87; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: July 30, 1987.Q04

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Office listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB number: New
Form number: IRS Form 8596
Type of review: New collection
Title: Computation of Deductible Home Mortgage Interest
Description: IRC section 163(h) disallows personal interest as a deduction. Qualified residence interest paid on mortgage loans or residences is not treated as personal interest. The form is needed to determine the amount of qualified residence interest. The data is used to help verify the deduction claimed is proper.
Respondents: Individuals or households
Estimated burden: 14,343,430 hours

OMB number: 1545–0092
Form number: IRS Form 1041 and Schedules D, J, and K–1
Type of review: Revision
Title: U.S. Fiduciary Income Tax Return; Capital Gains and Losses; Trust Allocation of an Accumulation Distribution; Beneficiary's Share of Income, Deductions, Credits, etc.
Description: IRC section 6012 requires that an annual income tax return be filed for estates and trusts. Data used to determine that the estates, trusts, and beneficiaries filed the proper returns and paid the correct tax.
Respondents: Individuals or households, Businesses or other for-profit
Estimated burden: 7,005,180 hours

OMB number: 1545–0177
Form number: IRS Form 4684
Type of review: Extension
Title: Casualties and Thefts
Description: Form 4684 is used by all taxpayers to compute their gain or loss from casualty and thefts, and to summarize such gains and losses. The data is used to verify that the correct gain or loss has been reported.
Respondents: Individuals or households, Businesses or other for-profit, Small business or organizations
Estimated burden: 91,256 hours

OMB number: 1545–0836
Form number: IRS Form 8453
Type of review: Revision
Title: U.S. Individual Income Tax Return Declaration for Electronic Filing
Description: This form will be used to secure taxpayer signatures and declarations in conjunction with the Electronic Filing Pilot. This form, together with the electronic transmission, will comprise the taxpayer's income tax return.
Respondents: Individuals or households
Estimated burden: 29,565 hours
Clearance officer: Garrick Shear, (202) 566–6150, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Department Reports Management Officer.

[FR Doc. 87–17678 Filed 8–3–87; 8:45 am]

BILLING CODE 4810-25-M

Customs Service

Availability of Harmonized System Advisory Classifications

AGENCY: Customs Service, Treasury.

ACTION: Notice of Availability of Harmonized System Advisory Classifications.

SUMMARY: This notice announces the availability of Harmonized System advisory classifications to interested members of the importing community.

DATES: A printed package of Harmonized Commodity Description and Coding System advisory rulings will be available July 31, 1987, and the last day of each month thereafter until the effective date of the Harmonized System.

ADDRESS AND FOR FURTHER INFORMATION: Legal Retrieval and Dissemination Branch, Office of Regulations and Rulings, 1301

BEST COPY AVAILABLE

Constitution Avenue, NW., Room 2321, Washington, DC 20229 (202–566–5095)

SUPPLEMENTARY INFORMATION:

Background

If approved by Congress, the Harmonized Commodity Description and Coding System (popularly known as the "Harmonized System") will replace the Tariff Schedules of the United States (TSUS) as the tariff code applicable to articles imported into the United States. The Harmonized System may become effective as early as Janaury 1, 1988.

In order to provide public notice of the possible change to the Harmonized System and to provide examples of the nomenclature and numerical coding employed under the Harmonized System, the United States Customs Service (Customs) has for several months been providing advisory classifications under the Harmonized System in certain of the ruling letters it has issued setting forth binding tariff classifications under the TSUS. The Harmonized System classifications provided in these letters have been accompanied by a caveat stressing that they constitute information of an advisory, nonbinding character and are not challengeable at the present time.

Customs has determined that there is significant public interest in these advisory Harmonized System classifications, notwithstanding their nonauthoritative status. Accordingly, Customs will make available to interested parties printed packages of recently issued ruling letters under the TSUS which also contain advisory Harmonized System classifications. These printed packages of ruling letters will be made available every month.

Persons wishing to receive these printed packages should make written requests to the office identified in the "Address and For Further Information Contact" portion of this document. Unless the requester states otherwise the advisory rulings will be automatically sent to the requester each month. The cost of each package will vary depending on the printing cost. An invoice will be enclosed with each package and subsequent packages will not be mailed to a requester until the invoice for the previous package is paid.

The initial package containing ruling letters, as described above, is now available.

Dated: July 27, 1987.

Richard R. Rossettie,

Acting Assistant Commissioner, Commercial Operations.

[FR Doc. 87–17533 Filed 8–3–87; 8:45 am]

BILLING CODE 4820-02-M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains an extension and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) and indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Elaina Norden, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: July 29, 1987.

By direction of the Administrator.

David A. Cox,

Associate Deputy Administrator for Management.

Extension

1. Department of Veterans Benefits
2. Offer to Rent Month-to-Month Basis and Credit Statement
3. VA Form 26–6725
4. This information is used as the credit statement and rental offer executed by prospective tenants of VA-owned properties. The information is needed to determine eligibility of applicants
5. On occasion
6. Individuals or households; Businesses or other for-profit
7. 100 responses
8. 33 hours
9. Not applicable.

[FR Doc. 87–17645 Filed 8–3–87; 8:45 am]

BILLING CODE 8320-01-M

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains an extension and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Elaina Norden, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: July 29, 1987.

By direction of the Administrator.

Raymond S. Blunt,

Director, Office of Program Analysis and Evaluation.

Extension

1. Office of Facilities
2. Supplement to SF–129, Solicitation Mailing List Application
3. VA Form 08–6299
4. This information is needed to determine specific interests of prospective bidders
5. Annually
6. Businesses or other for-profit and Small businesses or organizations
7. 3,000 responses
8. 500 hours
9. Not applicable.

[FR Doc. 87–17646 Filed 8–3–87; 8:45 am]

BILLING CODE 8320-01-M

CIVIL RIGHTS COMMISSION

Amended Notice of Hearing on Indian Civil Rights Issues; Change of Venue

Notice is hereby given pursuant to the provisions of the Civil Rights Act of 1983, Pub. L. 98–183, 97 Stat. 1304, that a public hearing on Indian civil rights issues before a Subcommittee of the U.S. Commission on Civil Rights has been relocated. The hearing will be held in Room 107 of the Social and Behavioral Sciences Building, Dubois Conference Center, Northern Arizona University, McConnell Circle South, Flagstaff, Arizona.

The purpose, dates, and time of the hearing remain the same as previously published in 52 FR 26365 (July 14, 1987).

Dated at Washington, D.C., August 3, 1987.

Clarence M. Pendleton, Jr.,

Chairman.

[FR Doc. 87–17858 Filed 4–3–87; 12:02 pm]

BILLING CODE 6335-01-M

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Sunshine Act Meetings

Federal Register
Vol. 52, No. 149
Tuesday, August 4, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, August 10, 1987.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: July 31, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-17766 Filed 7-31-87; 3:49 pm]

BILLING CODE 6210-01-M

MERIT SYSTEMS PROTECTION BOARD

TIME AND DATE: 10:00 a.m., Wednesday, August 12, 1987.

PLACE: Eighth Floor, 1120 Vermont Avenue, NW., Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Adjudication of cases dealing with subject matter jurisdiction and untimely petitions for review.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Robert E. Taylor, Clerk of the Board, (202) 653-7200.

Date: July 30, 1987.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 87-17683 Filed 7-30-87; 4:44 pm]

BILLING CODE 7400-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Open Consultation Notice

ACTION: Notice of consultation.

STATUS: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming open consultation to be held pursuant to the Government in the Sunshine Act, 5 U.S.C. 552b. Activities will include:

- Discussion of system planning oversight
- Presentation on status of contract negotiations
- Public comment.

DATE: August 6, 1987. 1:00 p.m.

ADDRESS: The meeting will be held in the Council's central office, 850 S.W. Broadway, Suite 1100, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: John Marsh, 503-222-5161.

Edward Sheets,

Executive Director.

[FR Doc. 87-17725 Filed 7-31-87; 3:36 pm]

BILLING CODE 0000-00-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

STATUS: Open.

TIME AND DATE: August 12, 1987, 1:30 p.m. and August 13, 1987, 9:00 a.m.

PLACE: Outlaw Inn, 1701 Highway 93 South, Kalispell, Montana.

MATTERS TO BE CONSIDERED:

1. Public Hearing on Proposed Model Conservation Standards for Regional Conservation Programs other than those for New Residential and Commercial Buildings.
2. Public Comment on Draft Analysis of Conservation Measures as required by Section 4(k) of the Northwest Power Act.
3. Staff Presentation on Heating Cost Comparison Study.
4. Council Decision to Enter Rulemaking on Umatilla Hatchery Amendment.
5. Staff Presentation on Yakima-Klickitat Outplanting Facility Master Plan Issue Paper.
6. Council Decision on Rock Island Settlement Amendment.
7. Public Comment on Proposed Guidelines on Notice of Meetings.
8. Council Business.
9. Public Comment.

FOR FURTHER INFORMATION CONTACT: Ms. Bess Atkins at (503) 222-5161.

Edward Sheets,

Executive Director.

[FR Doc. 87-17723 Filed 7-31-87; 1:22 pm]

BILLING CODE 0000-00-M

POSTAL SERVICE BOARD OF GOVERNORS

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 52 FR 27600, July 22, 1987.

PREVIOUSLY ANNOUNCED DATE: August 4, 1987.

CHANGES IN THE MEETING: Addition of the following agenda item:

1. Officer Compensation.

CONTACT PERSON FOR MORE INFORMATION: Mr. David F. Harris, Secretary of the Board, (202) 268-4800.

David F. Harris,

Secretary.

[FR Doc. 87-17784 Filed 7-31-87; 2:28 pm]

BILLING CODE 7710-12-M

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [52 FR 28509 July 30, 1987].

STATUS: Open meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Friday, July 24, 1987.

CHANGE IN THE MEETING: Additional item.

The following additional item will be considered at an open meeting on Thursday, August 6, 1987, at 10:00 a.m.

Consideration of whether to issue a release announcing the adoption of amendments to Securities Exchange Act Rule 15c3-3 involving the treatment of repurchase agreements by registered brokers and dealers. For further information, please contact Michael P. Jamroz at (202) 272-2398 or Michael A. Macchiaroli at (202) 272-2904.

Commissioner Peters, as duty officer, determined that Commission business required the above change.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Douglas Michael at (202) 272-2467.

Jonathan G. Katz,

Secretary.

July 30, 1987.

[FR Doc. 87-17721 Filed 7-31-87; 1:18 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 52, No. 149
Tuesday, August 4, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WASH-0844, WASH-04835, WASH-05804, OR-3347(WASH), OR-7308(WASH), OR-943-07-4220-11; GPD7-106]

Proposed Continuation of Withdrawals; Washington

Correction

In notice document 87-5342 appearing on page 7670 in the issue of Thursday, March 12, 1987, make the following correction:

In the second column, in the first line, "7309" should read "7308".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ORE-03393, ORE-06502, WASH-01316, OR-22-22444(WASH); OR-943-07-4220-11; GP-07-213]

Oregon/Washington; Proposed Continuation of Withdrawals

Correction

In notice document 87-13414 appearing on page 22542 in the issue of Friday, June 12, 1987, make the following correction:

In the first column, in the eighth line of text from the bottom, "89" should read "8" and in the fifth line of text from the bottom, insert "T." before "10".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

Refuge-Specific Hunting Regulations

Correction

In proposed rule document 87-16781 beginning on page 27828 in the issue of Friday, July 24, 1987, make the following correction:

§ 32.32 [Corrected]

On page 27838, in § 32.32(oo)(1), paragraph designation "(i)" should read "(vi)".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Employment and Training Administration

Addition to List of Labor Surplus Areas; Labor Surplus Area Classifications Under Executive Orders 12073 and 10582

Correction

In notice document 87-16988 appearing on page 27873 in the issue of Friday, July 24, 1987, make the following correction:

In the second column, in the table, in the left column, "Dameron"should read "Cameron".

BILLING CODE 1505-01-D

federal register

Tuesday
August 4, 1987

Part II

Department of Commerce

International Trade Administration

Overseas Trade Fair Certification Program; Support of Privately-Organized International Trade Events; Notice

DEPARTMENT OF COMMERCE

International Trade Administration

Overseas Trade Fair Certification Program; Support of Privately-Organized International Trade Events

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Revisions to the Overseas Trade Fair Certification Program.

SUMMARY: This notice sets forth the revised objectives and application review criteria associated with the Department's Overseas Trade Fair Certification Program, its Program to recognize and support selected, privately organized, U.S. group participation in overseas trade fairs. This notice also describes revised application procedures for organizers of U.S. exhibitors wishing Certification or desiring further information or assistance with regard to the Program.

DATE: These revised administrative procedures are effective September 1, 1987.

ADDRESS: Export Promotion Services, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. David Earle, Room 2114, Marketing Programs, Export Promotion Services, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC. 20230 (202–377–2525).

SUPPLEMENTARY INFORMATION: While the Department continues to manage its own U.S. Pavilions and solo exhibitions, it established the Overseas Trade Fair Certification Program in 1983 (**Federal Register**, vol. 48, no. 93, pg. 21520) to encourage qualified private sector fair organizers to recruit U.S. exhibitors for fairs overseas.

The revised Program set forth in this announcement provides the private sector with greater opportunities to work with the Commerce Department in support of overseas commercial fairs. The principal changes include:

- The minimum number of exhibitors is reduced from 20 to 10;
- The fair no longer must be "leading", but can be a "good" opportunity for U.S. exporters;
- The Business Information Office and U.S. Pavilion will be provided only if the post deems them essential for the successful marketing of U.S. products in that particular event;
- A $1,000 contribution is required upon Certification.

Certification confers Commerce Department endorsement and support to the private trade show organizer, trade association or any organization that is in the business to conduct trade shows overseas or to organize U.S. participation in international fairs overseas. By Certifying the organizer who assembles group participation for an event, the Program also indirectly serves the U.S. manufacturer seeking export opportunities.

Certification provides a means for the exporter to verify that selected fairs will be a good promotional medium. Prospective U.S. exhibitors at Certified events know Commerce will be on hand to assist them and to counsel them on exporting questions that may arise before or during the show.

In lieu of Commerce operating these fairs, private organizers assume this responsibility. The private sector party in every instance takes the initiative to request Certification. These requests could be for fair promotions overseas that the Department had not previously developed or for events that Commerce handled solo in the past, but now welcomes the private sector as the organizer. An organizer seeking certification for any fair must submit an application, even for a fair that has been previously Certified, in order for Commerce to evaluate current market conditions.

The Department limits Certification to those events, which in its judgment, most clearly meet the Department's program objectives and general selection criteria. A decision not to certify a particular event does not mean that the event should not be considered as a promotional tool by individual U.S. companies or group participation by U.S. industry.

The Commerce Department does not provide a subsidy to organizers or exhibitors of Certified events. The organizer contributes $1,000 to cover Commerce expenses supporting the organizer. The organizer may ask Commerce to perform additional services for which the post Senior Commercial Officer (SCO) will determine the appropriate and additional contribution to cover direct project expenses.

Certification and logo. Commerce provides each successful applicant with a certificate designating the particular event as Certified by the U.S. Department of Commerce. Commerce also provides the applicant with copies of the official Trade Fair Certification Program logo to use in advertising and promotional materials. Certification indicates that the Department has found the event to be a good market opportunity, warranting the participation of U.S. exporting firms. Certification is not intended—nor may it be characterized—as a U.S. Government guarantee of the success of the event or the proper performance of the undertakings of the organizer as to participants or other persons or organizations. Endorsement under this Certification Program indicates that specific organizers for specific fairs have met basic criteria and are prepared to carry out their projects in a way supporting export development objectives of the International Trade Administration (ITA).

Department of Commerce Support of Certified Events. The support provided for Certified events will differ depending on the specific needs identified by the organizer and the Department. Services may include special overseas marketing efforts by staff of the U.S. and Foreign Commercial Service, such as promotion to sales prospects on behalf of exhibitors, presence of commercial officers at the certified fair; publicity in appropriate Departmental periodicals; and trade specialists' advice to organizer and providing potential exhibitor lists when available.

General Criteria for Awarding Certification. Subject to Departmental budget and resource constraints, Certification will be granted to those events which, in the judgment of the Department most clearly and best meet the following criteria:

a. The event must be a good market opportunity for the industry(ies) it is featuring.

In applying this criterion, the Department may consider such factors as:

(i) The degree to which the event provides promise of foreign market exposure for the latest technology or techniques in an industry or a commercially recognized category of goods or services;

(ii) Whether the event provides a unique opportunity for export promotion within a particular market;

(iii) Whether the event is appropriate for and is likely to have a minimum of 10 U.S. industry participants; and

(iv) Whether such participants are likely to exhibit products or services representing U.S. industry in the particular field involved—the theme should represent the U.S. industry.

b. The event must have good potential for export promotion. In applying this criterion, the Department will consider:

(i) Whether the industry or target market of the event promises to attract foreign customers for U.S. products or services that represent a large

proportion of the universe of potential customers in country; and

(ii) The "marketability" of the overall industry products or services likely to be exhibited, i.e., the sales potential in the market area and suitability of the products or services to promotion by the specific exhibition technique identified in the application for certification.

c. The event must be one whose promotion and support would be consistent with the Department's overall export promotion program and its priorities for allocation of human resources and name association. In applying this criterion, the Department will consider such factors as the theme, timing and location and mode of exhibition, and whether under the relevant circumstances, Department of Commerce support would contribute to the enhancement of exports by the industry(ies). The Commerce Department reserves the right to "decertify" an event at any time after Certification is granted if it thinks that the organizer has not or is not likely to meet the stated Certification criteria.

d. The applicant for Certification must demonstrate:

(i) Financial capability and personnel resources sufficient to guarantee planning and implementation of a successful event, including, but not limited to having a U.S. office or appropriate representative for recruitment of participants and capability to provide exhibition and sundry trade services to exhibitors.

(ii) Experience in trade fair management or qualifications in related marketing disciplines;

(iii) A high-level management commitment to develop and execute the trade event. In particular, the applicant must provide documentation showing a firm agreement committing both the applicant and the lessor of exhibit space at the event to lease the necessary exhibition space. Leasing arrangements for such space cannot be made contingent on Certification of the event;

(iv) Commitment that at least 10 individual U.S. companies will participate in the event;

(v) The ability and commitment to provide a comprehensive show management and marketing effort, including ability to identify and seek participation by small and medium-sized, or new-to-market companies; and

(iv) The ability and commitment to satisfy U.S. companies exhibitor needs by arranging or providing exhibition services which normally include booth design and construction, transportation of display, cleaning services and market promotion.

Specific Department of Commerce Actions and Responsibilities. For certified events, the Department of Commerce will:

a. Authorize the use of a Department of Commerce "Trade fair Certification" logo and other Department of Commerce approved references that indicate that an agency of the United States Government recognizes and supports the show.

b. Make general announcement to appropriate Commerce units (district offices, US&FCS overseas) and other private organizations, such as trade associations, Chambers of Commerce, etc., that the Department of Commerce has recognized the exhibition under the Certification Program.

c. Provide a letter accepting the show under the Certification Program and a suggested news release for the organizer to use in public relations campaigns/activities.

d. Assist in marketing the event through the following actions if requested by the organizer:

(i) The SCO will furnish the organizer with a list of key local government entities, associations, distributors, agents, etc., prepared by his staff;

(ii) Resources permitting, US&FCS officers may cooperate with organizer and local representatives of U.S. companies participating in the event, in a variety of pre-show market promotions to foreign customers, key buying organizations or key decision-makers on behalf of U.S. companies participating in the event; and

(iii) The International Trade Administration units such as International Economic Policy country desk officers and Trade Development industry offices can provide on request, and to the extent available, pertinent market information, U.S. industry export potential and advice on how to contract with and service overseas buyers.

e. Encourage potential exhibitors, either in the normal course of their counseling of U.S. firms or through contacts with business or trade associations, to take advantage of the certified fair, and respond to inquiries regarding opportunities afforded by the event.

f. Upon the request of the organizer, provide a Department of Commerce representative for duty at the show (generally stationed overseas). The period of time and nature of support required are to be specifically identified in the organizer's application and agreed to by the Senior Commercial Officer.

Specific Responsibilities of the Organizer. Subject to any specific agreement between the Department of Commerce and the organizer, the responsibilities of the organizer of a certified event are as follows:

a. Designate an individual on the organizer's staff to work on all aspects of the show with Department of Commerce personnel assigned to coordinate activities for the exhibition.

b. Make a $1,000 contribution to the Department of Commerce upon acceptance of the event as Certified.

c. Provide the following exhibition services:

(i) Display space comparable with industry standards for trade events;

(ii) Forwarding and exhibit set-up services including, but not limited to: Unloading participant's equipment at the exhibition site; delivery to the participants' booth, unpacking, placement in display area, storing packing crates, repacking and loading for onward shipment, customs clearance; and any other services required to assure the prompt and orderly receipt and dispatch of materials in and out of an exhibition site; all at the control of the exhibitor;

(iii) Installation of a display system, chairs, tables, standard company identification and standard agent identification signs;

(iv) Normal utilities and hook-up services; and

(v) Assistance in hiring interpreters, clerical personnel or booth attendants required by participants. All fees to be charged to participants for standard and supplementary services must be stated in the organizer's application and be within a reasonable range of such charges in the market as can be verified by the Department of Commerce's Certification staff.

d. Undertake, as appropriate, a comprehensive promotional campaign, such as in-country pre-show press meetings, conferences and meetings to reach importers, distributors, agents, buyers and end-users.

e. Provide at no cost to the U.S. Government, space for use by the post in the form of a Business Information Office (BIO) if required by the SCO because of market conditions. This space (BIO) will be where contacts between U.S. exhibitors and foreign customers can be facilitated by a U.S. Government representative. Also, if host post determines it essential, group U.S. exhibitors in U.S. Pavilion co-located with the BIO.

f. Organizer must focus recruitment mailings and direct solicitations on small- and medium-sized, new-to-market U.S. firms in keeping with the identical Commerce Department mandate.

g. Subject to Departmental guidelines, pay per diem and travel-related

expenses for U.S. Department of Commerce employee(s) whom the organizer has requested.

h. Provide an end of show review to the Senior Commercial Officer within 14 days of show close. This review should be incorporated in an overall report from post for use in evaluating the success of the event, the effectiveness of support provided by the Department, and the organizer's performance of Certification criteria. The end of show report shall include, but not be limited to: number of business visitors, off-the-floor sales, future sales estimates, evaluation of exhibitors' objectives met or unmet. Other statistical data may at times be requested of the organizer by the Department.

When, Where, and how to Apply for Trade Fair Certification. Applications for Certification should be received by the Department one (1) year before the scheduled date of the event. To ensure the availability of Department resources and to fully anticipate workload associated with support provided to organizers, the Department may reject any application received later than that date. An application is not considered to have been received for purposes of this rule until it is complete in all material respects.

H. Michael Stevens,

Manager, Export Promotion Services.

[FR Doc. 87-17583 Filed 8-3-87; 8:45 am]

BILLING CODE 3510-FP-M

federal register

Tuesday
August 4, 1987

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 121, 125, 127, 129, and 135
Special Federal Aviation Regulation No. 38; Certification and Operating Requirements; Final Rule; Request for Comments

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, 125, 127, 129, and 135

[Docket No. 18510; SFAR No. 38-4]

Special Federal Aviation Regulation No. 38; Certification and Operating Requirements

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment reinstates Special Federal Aviation Regulation [SFAR] No. 38-2 (50 FR 23941; June 7, 1985) and establishes a new termination date. The SFAR 38-2 was previously amended by SFAR 38-3 (51 FR 17274; May 9, 1986) to extend its termination date to allow time for the FAA, in a separate rulemaking action, to prepare a Notice of Proposed Rulemaking (NPRM) that would consolidate the certification rules now in Parts 121 and 135 into a new part of the Federal Aviation Regulations (FAR). This NPRM would also propose incorporating the necessary portions of SFAR 38-2 into the FAR. Having generally reviewed the FAA regulations to determine the most appropriate response to the Airline Deregulation Act of 1978 [ADA] and the termination of CAB functions following the CAB sunset, the FAA now concludes that it is necessary to renew the effectiveness of SFAR 38-2 and to establish a new termination date to allow time for the FAA to complete the rulemaking process that will consolidate the certification rules and incorporate SFAR 38-2 into the FAR. The termination date for reinstated SFAR 38-2 is June 1, 1989. The FAA intends to publish a notice rescinding SFAR 38-2 and a final rule incorporating SFAR 38-2 into the FAR concurrently in the Federal Register.

DATES: Effective date August 4, 1987. Comments must be received on or before October 5, 1987.

ADDRESSES: Send comments on the rule in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 18518, 800 Independence Avenue, SW., Washington DC 20591, or deliver comments in duplicate to: Federal Aviation Administration, Rules Docket, Room 916, 800 Independence Avenue SW., Washington, DC. Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Coffey, Project Development Branch, AFS-240, Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Telephone (202) 267-3750.

SUPPLEMENTARY INFORMATION:

Background

On December 12, 1978, the FAA promulgated SFAR 38 (43 FR 58366; December 14, 1978) in consequence of the ADA (Pub. L. 95-504, 92 Stat. 1705). That Act expresses the Congressional intent that the Federal Government diminish its involvement in regulating the economic aspects of the airline industry. To accomplish this, Congress directed that the CAB be abolished on December 31, 1984, and that various of its functions cease before that date. Anticipating its sunset, the CAB itself curtailed or suspended much of its regulatory activity during the period 1979-1984. On October 4, 1984, additional legislation was enacted further defining the process of CAB sunset. On January 1, 1985, the remaining CAB functions were transferred to the Department of Transportation (DOT).

Because some aspects of FAA safety regulation relied upon CAB definitions and authority, the FAA found it necessary in 1978 to adopt an interim measure to provide for an orderly transition from CAB and FAA interlocking authority to a regulatory regime with no CAB in existence. This action was consistent with the Congressional directive contained in section 107(a) of the Act that the deregulation of airline economics result in no diminution of the high standard of safety in air transportation that existed when the ADA was enacted. The SFAR 38 set forth FAA certification and operating requirements applicable to all "air commerce" and "air transportation" operations for "compensation or hire." (SFAR 38 did not address Part 133 External Load Operations, Part 137 Agriculture Aircraft Operations, or Part 91 training and other special purpose operations.)

On December 27, 1984, the FAA adopted SFAR 38-1 (50 FR 450; January 4, 1985), which merely extended the termination date of the regulation and allowed the FAA time to propose and receive comments on revising SFAR 38.

On May 28, 1985, the FAA adopted SFAR 38-2, which updated SFAR 38 in light of changes since 1978 and clarified provisions stating which FAA regulations apply to each air carrier and each type of operation. This action was necessary because of the changes in the air transportation industry brought about by economic deregulation. Before deregulation, economic certificates were fairly rigidly compartmentalized and each air carrier typically was authorized to conduct only one type of operation (domestic, flag, or charter (supplemental)). The safety certificate issued to the air carrier by the FAA paralleled the authorization granted in the air carrier's economic certificate. Economic deregulation broke down the barriers between the various types of operations. The economic authority granted an air carrier by the DOT is no longer indicative of the safety regulations applicable to the type of operation authorized by the FAA. Thus, it was necessary for the FAA to establish guidelines to determine what safety standards were applicable to an air carrier's particular operation.

On May 8, 1986, the FAA adopted SFAR 38-3, which merely extended the termination date of SFAR 38-2 to allow the FAA time to incorporate its contents into an NPRM that will propose consolidation of the certification rules in Parts 121 and 135, and will incorporate various provisions of SFAR 38-2 into a new part of the FAR.

Good Cause Justification for Immediate Adoption

Because of unavoidable, administrative delays, SFAR 38-2 terminated on June 1, 1987. The reasons which justified the adoption, and the subsequent revision, of SFAR 38 still exist. Therefore, it is in the public interest to reinstate SFAR 38-2 and to establish a new termination date of June 1, 1989, although the FAA anticipates that a final rule incorporating SFAR 38-2 into the FAR will be published before then. If it is, a notice rescinding SFAR 38-2 will be published concurrently. This action is necessary to permit continued operations under SFAR 38, as amended, and to avoid confusion in the administration of FAA regulations regarding operating certificates and operating requirements.

For this reason, and because this amendment continues in effect the provisions of a currently effective SFAR and imposes no additional burden on any person, I find that notice and public procedures are unnecessary, impracticable, and contrary to the public interest, and that the amendment should be made effective in less than 30 days after publication. However, interested persons are invited to submit such comments as they may desire regarding this amendment. Communications

should identify the docket number and be submitted in duplicate to the address above. All communications received on or before the close of the comment period will be considered by the Administrator, and this amendment may be changed in light of the comments received. All comments will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested parties.

Trade Impact Statement

The FAA finds that this amendment will have no impact on international trade.

Conclusion

The FAA has determined that this document involves an amendment that imposes no additional burden on any person. Accordingly, it has been determined that: The action does not involve a major rule under Executive Order 12291; it is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and its anticipated impact is so minimal that a full regulatory evaluation is not required.

List of Subjects

14 CFR Part 121

Air carrier, Aircraft, Airmen, Air transportation, Aviation safety.

14 CFR Part 125

Aircraft, Airmen, Airports, Airspace, Air traffic control, Air transportation, Chemicals, Children, Drugs, Flammable materials, Handicapped, Hazardous materials, Infants, Smoking.

14 CFR Part 127

Air carriers, Aircraft, Airmen, Airworthiness.

14 CFR Part 129

Air carriers, Aircraft, Air transportation, Aviation safety, Safety.

14 CFR Part 135

Air carriers, Aircraft, Airmen, Air taxis, Air transportation, Airworthiness, Aviation safety, Safety.

Adoption of the Amendment

In consideration of the foregoing SFAR 38–2 (14 CFR Parts 121, 125, 127, 129, and 135) of the Federal Aviation Regulations is amended as follows:

PART 121—[AMENDED]

1. The authority citation for Part 121 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, 1423, 1424, and 1502; 49 U.S.C. 106(g) (revised Pub. L. 97–449, January 12, 1983).

PART 125—[AMENDED]

2. The authority citation for Part 125 continues to read as follows:

Authority: 49 U.S.C. 1354, 1421 through 1430, and 1502; 49 U.S.C. 106(g) (revised Pub. L. 97–449, January 12, 1983).

PART 127—[AMENDED]

3. The authority citation for Part 127 is revised to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, 1422, 1423, 1424, 1425, 1430; 49 U.S.C. 106(g) (revised Pub. L. 97–449, January 12, 1983).

PART 129—[AMENDED]

4. The authority citation for Part 129 is revised to read as follows:

Authority: 49 U.S.C. 1346, 1354(a), 1356, 1357, 1421, 1502, and 1511; 49 U.S.C. 106(g) (revised Pub. L. 97–449, January 12, 1983).

PART 135—[AMENDED]

5. The authority citation for Part 135 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g) (revised Pub. L. 97–449, January 12, 1983).

6. Special Federal Aviation Regulation No. 38–2 is reinstated and the last paragraph is amended by removing the words "June 1, 1987", and adding in place thereof the words, "June 1, 1989."

Issued in Washington, DC, on July 15 1987.

Robert E. Whittington,

Acting Administrator.

[FR Doc. 87–17593 Filed 8–3–87; 8:45 am]

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Part IV

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Solicitation of Applications for a Grant Program To Provide Support for Private Nonprofit Missing Children's Agencies Service Activities; Notice

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Solicitation of Applications for a Grant Program To Provide Support for Private Nonprofit Missing Childrens' Agencies Service Activities

AGENCY: Office of Juvenile Justice and Delinquency Prevention; Justice.

ACTION: Notice of a solicitation of applications for a grant program to provide support for private nonprofit children's agencies service activities.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP), pursuant to section 406(a)(1)(2)(3)(4) of the Missing Children's Assistance Act, Title IV of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, invites applications by private nonprofit voluntary organizations (PVOs) currently serving missing and exploited children for the establishment or expansion of service components designed to educate parents, children, and community agencies and organizations in ways to prevent the abduction and sexual exploitation of children; and/or to provide information to assist in the locating or return of such missing children; and/or to aid communities in the collection of materials which would be useful to parents in assisting others in the identification of such missing children; and/or to provide treatment pertaining to the psychological consequences on both parents and children of the abduction of a child or the sexual exploitation of a missing child.

OJJDP's National Institute for Juvenile Justice and Delinquency Prevention (NIJJDP) invites eligible private nonprofit voluntary organizations to request the application kit which contains detailed forms and instructions. However, organizations that received grants under a similar solicitation of December 11, 1986 (**Federal Register** Vol. 51, No. 238) are not eligible for funding and will not be considered.

Up to $250,000 is available for award to qualified projects. Up to 20 awards, ranging in amount from $3,000 to $25,000, are anticipated.

DATE: All applications will be reviewed and acceptable applications processed in the order that they are received, to the extent that funds remain available, or until September 7, 1987.

FOR FURTHER INFORMATION CONTACT: Sylvia Sutton, Program Specialist, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, DC 20531, (202) 724–7573.

SUPPLEMENTARY INFORMATION:

I. *Introduction and Background.* Funds to provide support to private nonprofit missing children's services agencies in the amount of $250,000 have been reserved for award to qualified PVOs in grants ranging from $3,000 to $25,000. Grants will be awarded for service programs designed to educate parents, children, and community agencies and organizations in ways to prevent the abduction and sexual exploitation of children, to provide information to assist in the locating and return of missing children, to aid communities in the collection of materials which would be useful to parents in assisting others in the identification of missing children, and/or to provide treatment pertaining to the psychological consequences on both parents and children of the abduction of a child or the sexual exploitation of a missing child.

II. *Program Goals and Objectives.* The goal of the program is to enhance the capacity of private missing children's agencies that utilize volunteers to provide direct support and services to individuals, families and communities impacted by the missing children problem and thus to assist them to become more effective direct service provider organizations.

The objective of the program is to assist PVO's to establish or expand critical missing and exploited children services by providing supplemental funding to support putting into place the administrative, operational and program costs associated with the provision of such services.

III. *Eligibility Criteria.* Eligible applicants are private nonprofit voluntary service organizations whose primary organizational mission is directly related to the problem of missing and exploited children. In order to receive assistance, applicants will be required to give assurance that they will expend, to the greatest extent practicable for the year of award, an amount of funds (without regard to any funds received under any other Federal law) that is not less than the amount of funds for missing and exploited children's activities that they received in the preceding year from State, local, and private sources. This means that the organization must have been in operation and that the Federal grant funds must supplement or be in addition to the applicant's operating budget level of the previous year. Organizations that have received grants from this Office in 1987 are not eligible for awards and should not apply

IV. *Dollar Amount and Duration.* Up to $250,000 is available in Fiscal Year 1987 for awards to qualified projects. Up to 20 awards, ranging in amount from $3,000 to $25,000, are anticipated.

Applications will be reviewed in the order received. Once an applicant is determined to be: (1) Eligible; and (2) qualified for funding through the submission of a complete (see Sec III and Sec V, 1–13) acceptable proposal, OJJDP will enter into negotiations with the applicant to address issues that may be present in program or budget and, if these can be satisfactorily resolved, will process the application for final review approval and award or disapproval by the OJJDP Administrator. Applications will be funded for a single budget period, not to exceed one year, as determined by project need. No additional supplemental or continuation funding is anticipated.

V. *Application Requirements.* Eligible PVOs are required to submit:

1. A fully complete application (Short Form SF 424), from the Program Application Kit, please submit an original and three (3) copies.

2. The PVO must be incorporated as a nonprofit organization, be in good standing in the state of incorporation, and be recognized by the Internal Revenue Service as a 501(c)(3) tax-exempt organization. A copy of the IRS letter of tax-exemption status must be provided.

3. A brief description of sample tasks or activities to be supported which address an identified problem or need and provide services in the area of missing and exploited children, *specifically* those which are designed:

(a) To educate parents, children, and community agencies and organizations in ways to prevent the abduction and sexual exploitation of children;

(b) To provide information to assist in the locating and return of such missing children;

(c) To aid communities in the collection of materials which would be useful to parents in assisting others in the identification of missing children; and/or

(d) To provide treatment pertaining to the psychological consequences on both parents and children of the abduction of a child or the sexual exploitation of a missing child.

4. A brief history of the organization, including the date of incorporation, the organizational goals and objectives, and examples of accomplishments that demonstrate competence in carrying out missing children activities, with emphasis on those described under 3. above, and a brief description of how

the activities proposed to be funded will contribute to the achievement of the goals and objectives.

5. A letter of endorsement from the District Attorney or an active judge of the jurisdiction.

6. A statement supporting the need for and feasibility of carrying out the proposed activity in the community served.

7. The extent to which the applicant has obtained a commitment for the contribution of money or services from other specified sources to assist in carrying out the proposed activities will be viewed as additional evidence supporting the need for the project activity.

8. A roster of the Board of Directors, listing their occupations and affiliations, as appropriate.

9. A statement of the principal objectives of the project and a plan of action to accomplish those objectives, including the following:

(a) A brief description of the qualifications of the individuals who will be primarily responsible for carrying out project activities; and

(b) A schedule of proposed activities and an estimated timetable to complete each activity of the project;

(c) A budget by specific elements and a brief narrative justifying the proposed expenditures.

10. A brief proposed plan for obtaining financial support to continue the funded activity following the period of Federal support.

11. A description of the extent to which volunteer assistance will be utilized in carrying out the project activity funded under the grant.

12. The most recent financial statement or audit, if available.

13. A description of how the success of the funded activities will be determined and reported.

VI. *Funding Criteria.* The application will be screened and rated by a panel of reviewers. Individuals who screen the applications will give consideration to the factors listed below.

1. Appropriateness of project tasks or activities in furthering the eligible services specified under V. 3. above, which are taken from Section 406(a)(1)(2)(3)(4) of the Missing Children's Assistance Act. Clarity of the proposal and establishment of need are important considerations.

2. Feasibility of the proposal and clear objectives.

3. Qualifications of the individuals involved to carry out project activity.

4. Extent to which the applicant organization has demonstrated a track record of success, or has designed a project which demonstrates a clear likelihood of success, in locating missing children or locating and reuniting missing children with their legal guardian *or* providing other eligible program services to missing children or their families.

5. The extent to which the applicant has and will substantially utilize volunteer services.

6. Cost effectiveness of the budget and adequacy of plan for obtaining financial support to continue the funded activity following the period of federal support.

7. Procedures to determine and report project success.

VII. *Submission of Applications.* Applicants who are interested in responding to this solicitation are requested to apply to:

Sylvia Sutton, Program Specialist,
OJJDP/NIJJDP, U.S. Dept. of Justice,
633 Indiana Ave., NW., Room 700,
Washington, DC 20531, 202–724–7573

for an application kit. The kit will contain all required forms and instructions to complete an application.

VIII. *Definitions. Tax Exempt Organization*—A PVO which has incorporated as a nonprofit in a state will not in itself suffice as a tax exempt organization. Eligible PVOs must be recognized by the Internal Revenue Service as a 501(c)(3) organization at the time of application for a grant. PVOs which have not received this formal exemption may apply for a grant jointly through co-applicancy with a qualified 501(c)(3) organization.

Approved:

Verne L. Speirs,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 87–17642 Filed 8–3–87; 8:45 am]

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Part V

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for New Stationary Sources; Fossil-Fuel-Fired Steam Generators; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-3127-8]

Standards of Performance for New Stationary Sources; Fossil-Fuel-Fired Steam Generators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Central Illinois Public Service Company (CIPS) petitioned the Environmental Protection Agency (EPA) to amend 40 CFR Part 60, Subpart D, as it applies to sulfur dioxide (SO_2) emissions from the two steam generating units (boilers) at its Newton Power Station in Jasper County, Illinois. The EPA is today amending Subpart D as it applies to these two boilers to provide an alternative method of compliance. The amendment would lower the cost of compliance while yielding SO_2 emissions less than current or projected emission levels under Subpart D.

EFFECTIVE DATE: August 4, 1987.

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the amendments providing CIPS an alternative compliance method is available *only* by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under section 307(b)(2) of the Clean Air Act, these amendments may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESS: *Response to Public Comments.* Major comments made on the proposed amendment are summarized, along with EPA's responses, in today's **Federal Register.** Minor comments have been responded to in a memorandum which may be obtained from docket number A–84–01 at the address indicated below, or from the Standards Development Branch (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5578. Please refer to docket item number V–C–1.

Docket. A docket, number A–84–01, containing all of the comments as well as other information considered by EPA in developing this rule, is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section (LE–131), West Tower Lobby, Gallery 1, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Doug Bell, Emission Standards and Engineering Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5568.

SUPPLEMENTARY INFORMATION:

I. Approval of Alternative Compliance Method for CIPS

Legal Basis

Section 111 of the CAA requires the Administrator to establish and enforce certain "standards of performance for new stationary sources." These new source performance standards (NSPS) are intended to reduce emissions, consistent with consideration of costs and other impacts. *Portland Cement Ass'n.* v. *Ruckelshaus*, 486 F.2d 375 (D.C. Cir. 1973), *cert. denied* 417 U.S. 921 (1974); *Essex Chemical Corp.* v. *Ruckelshaus*, 486 F.2d 417 (D.C. Cir. 1973), *cert. denied* 416 U.S. 969 (1974); *Portland Cement Ass'n* v. *Train*, 513 F.2d 506 (D.C. Cir. 1975), *cert. denied* 423 U.S. 1025 (1975).

The NSPS for sulfur dioxide emissions applicable to the Newton units is an emission limit for SO_2 of 1.2 pounds per million Btu (lb/MM Btu) (40 CFR 60.43). The final rulemaking being promulgated in today's notice is not a separate NSPS from Subpart D; rather, it is an alternative method of determining compliance with Subpart D for CIPS' Newton Units 1 and 2. This alternative method of compliance is termed a compliance "bubble" because SO_2 emissions from Units 1 and 2 are averaged together as though the units are under an imaginary "bubble," subject to conditions designed to assure overall emission rates less than those which would be produced by facility-by-facility compliance with Subpart D without the bubble. Two important elements of the compliance bubble, the combined emission limit of 1.1 lb SO_2/MM Btu and use of a 30-day rolling average for computing the SO_2 emission rate, differ from Subpart D as it applies to other boilers. In addition, the bubble contains more protective requirements regarding treatment of emissions during periods of control equipment malfunction and requires that compliance be determined by continuous emission monitoring systems (CEMS) which otherwise would not be required under Subpart D. For these and other reasons, as described in the following sections of this notice, EPA has determined that emissions under the bubble will be less than estimated emissions under the present form of the Subpart D standard of performance applied to Units 1 and 2 separately. For this reason and other reasons discussed in detail in the section entitled DISCUSSION OF COMMENTS, the CIPS compliance bubble is consistent with the emissions-reducing purposes of Section 111 and Subpart D.

Summary of Action and Impacts

CIPS operates two 600 megawatt (electrical output) coal-fired steam generating units at its Newton power station in Jasper County, Illinois. Unit 1 has been operated since 1979, and is equipped with a dual alkali flue gas desulfurization system (DAFGDS) to reduce SO_2 emissions. Unit 2, which came on-line in December 1982, has been fired with a low sulfur compliance coal. Both units are subject to the NSPS requirements of Subpart D for fossil-fuel-fired boilers. The amendment to Subpart D promulgated today creates an alternative way in which the Newton units may comply with Subpart D.

On October 1, 1982, CIPS petitioned EPA to allow the Newton units to demonstrate compliance with the SO_2 standard by averaging emissions from the two units, that is, by treating them as one unit under an imaginary "bubble." CIPS files a supplemental petition on November 30, 1983. On January 25, 1985, EPA proposed to grant CIPS' request provided that SO_2 emissions from the two units, calculated as a 30-day rolling average, did not exceed 1.1 lb/MM Btu, and that CIPS install continuous emission monitoring systems (CEMS) on each unit for the purpose of determining compliance on a continuous basis.

As EPA proposed, the bubble approved today establishes an alternative combined SO_2 emission limit of 1.1 lb/MM Btu for Newton Units 1 and 2. Compliance will be determined by daily calculations of the average emission rate for the most recent 30 days of boiler operation. Approval of this compliance bubble is based on the Administrator's determination that the bubble will result in SO_2 emission rates that are lower than the rates that would be achieved from the Newton units without the bubble,[1] that it will result in

[1] As discussed in detail later in this notice, it is EPA's judgment that emissions under the bubble will be lower than they would be without the bubble. This more than satisfies the criterion for future NSPS bubble approvals, also discussed later in this notice, that bubble emissions be no greater than emissions without the bubble. Thus, even if the projected emissions under this CIPS bubble were somewhat greater, the Administrator still would approve the bubble, provided that the bubble emissions would not exceed the non-bubble emissions.

reduced costs of compliance, that the DAFGDS on Unit 1 is essentially different from the technologies selected as representative of best demonstrated technology (BDT), and that the inclusion of continuous monitoring provisions will ensure continuous compliance with the bubble emission limit. These findings are consistent with the criteria for future NSPS bubble approvals as described below in the section entitled BUBBLE POLICY.

As described in more detail in the CIPS bubble proposal (50 FR 3691), the Administrator has found that the DAFGDS on Unit 1 represents a technology essentially different from the technologies selected as representative of BDT during the development of Subpart D. The DAFGDS on Unit 1 is a technology with a higher scrubbing efficiency than the efficiencies of the lime/limestone flue gas desulfurization (FGD) systems that were recognized as BDT. The EPA believes that the DAFGDS, along with additional improvements to the system planned by CIPS, represents technology that will have SO_2 removal capabilities superior to those of conventional limestone slurry FGD systems. The DAFGDS not only represents essentially different technology than the technology representative of BDT, but the SO_2 removal capacity of the DAFGDS will be used to a much greater extent under the bubble than under the baseline. Therefore, it is appropriate to allow CIPS credit for the additional emission-reducing capability of the DAFGDS.

Today's amendment requires continuous SO_2 monitoring systems on each stack and systems for monitoring heat input (or other indirect indicators of heat input) for the purpose of computing the combined emission rate from the two units. The combined emission rate will be a weighted average based on the heat input to each unit.

An additional provision of the rule, as proposed, is a 250-hour limit on the amount of time CIPS can claim as control equipment malfunctions under § 60.8(c). Also, after 16 continuous hours of a control equipment malfunction, the owner or operator is to begin loading low sulfur coal from the Unit 2 coal supply into the Unit 1 bunker, and continue to load Unit 2 coal for the duration of the malfunction. Once 250 hours of emissions data have been excluded from the compliance calculations, all emissions data for the remainder of the calendar year are to be included in the calculations of the 30-day rolling averages used to determine compliance with the 1.1 1b MM/Btu combined emission limit. These provisions are substantially more protective than existing Subpart D, which contains no ceiling on the amount of malfunction time that can be excluded from emissions calculations.

To reduce scrubber operation costs, CIPS currently operates a variable bypass which can be used to discharge a portion of the Unit 1 flue gas directly to the atmosphere before it is scrubbed by the DAFGDS. In order to assure that the bubble would yield actual emission reductions at least as great as those produced by facility-by-facility compliance with the NSPS under all potential operating conditions, CIPS is prohibited from using the bypass at all times except during periods of malfunctions, start-up, or shut-down. The practical effect of this provision will be to secure significantly greater than equivalent emission reductions under the operating conditions expected for the bubble.

Based on EPA's analysis, implementation of this compliance bubble would result in lower SO_2 emission rates from the two Newton units than what would be achieved by facility-by-facility compliance with Subpart D. CIPS has estimated that cost savings under the bubble it requested could total an estimated $22 million per year. The actual savings will depend on relative fuel prices and other factors, and will probably be lower than CIPS originally estimated, although still significant (on the order of several million dollars per year, as presented in IV-B-12).[2] No other environmental or economic impacts are anticipated as the result of today's amendment.

Determination of Bubble Emissions

An important consideration in the Administrator's decision to propose the bubble was the projection that the bubble and its provisions would achieve an emission reduction greater than the emission reduction obtained by compliance with the NSPS without the bubble.[3] At proposal, EPA assumed that, without the bubble, average emissions from Unit 1 were 1.0 to 1.1 1b/MM Btu, and from Unit 2 were 1.01 1b/MM Btu (50 FR 3690). The EPA concluded that emissions from the two units together would have to average 0.95 1b/MM Btu in order to comply with the bubble. *Id.* The EPA also concluded that emissions would be lower with the bubble than without it.

The EPA has refined its estimates of emissions from the Newton units with and without the bubble.[4] In addition, EPA has revised its assumptions about the types of Midwestern coals that would be fired in Newton Unit 2 under the bubble. As discussed below, the refined estimates confirm that emissions would be lower with the bubble than without it.

To estimate SO_2 emissions from the Newton power station as it complies with Subpart D without the bubble, EPA obtained daily average SO_2 emissions data from CIPS for Newton Unit 1 and fuel sampling and analysis data on the sulfur content of the Unit 2 coal supply (IV–B–2; IV–D–204; IV–D–205; IV–J–1. Previously, in 1983, CIPS had stated its intention to operate Unit 1 in compliance with the 1.2 lb SO_2 emission limit of Subpart D such that emissions from the DAFGDS would range from 1.0 to 1.1 lb SO_2 MM/Btu, and demonstrated the ability to operate the scrubber at the upper end of this range with very low variability in a test run (II–D–10). Based on data supplied by CIPS, EPA has determined that the average Unit 1 SO_2 emission rate for the first three quarters of 1986 was approximately 0.99 lb/MM Btu. Although the apparent average Unit 1 emission rate for that period was 0.97 lb/MM Btu (IV–D–204, IV–D–205), the second and third quarter data include data for periods of reduced emissions during which CIPS experimented with the performance of a different scrubbing solution in the DAFGDS, resulting in lower than typical quarterly average SO_2 emission rates (IV–E–8). Deleting the emissions data for the periods of DAFGDS experimentation from the Unit 1 emissions data base results in an average Unit 1 emission rate of 0.99 lb/MM Btu for the first three quarters of 1986. CIPS also indicated that it fired coal from the Unit 2 low-sulfur coal supply in Unit 1 for brief periods during the 3 quarters to practice procedures

[2] Throughout this notice, documents in docket no. A-84-01 are referred to by the document number assigned to them (e.g., IV-B-12).

[3] At proposal, EPA assumed that Subpart D would be revised independently to include a 30-day averaging time for determining compliance by all sources with the SO_2 emission limit, as previously proposed by EPA (48 FR 48960, October 21, 1983). However, a final decision on the proposed general revision to Subpart D has not been made. Following proposal of the bubble, some commenters objected to the 30-day averaging time assumption in the bubble proposal, as well as to the proposed general revision to Subpart D. The former objection is addressed by the refined emissions analysis for this rule which analyzes CIPS' emissions under existing Subpart D.

[4] Similarly, CIPS also submitted an analysis in March 1985 (IV–D–113) of actual emissions from Unit 1 and Unit 2 under existing Subpart D (i.e., assuming no amendment to require 30 day averaging). CIPS' analysis concluded that emissions under the bubble would be less than emissions from the two units operating independently under existing Subpart D.

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required under the bubble during periods of DAFGDS malfunction. The emission rates associated with the firing of low-sulfur coal in Unit 1 generally are lower than typical daily average emission rates, but EPA did not delete these emissions data from the 3-quarter average. Thus, were the periods when CIPS fired low sulfur coal in Unit 1 excluded, the average long-term baseline emission rate for Unit 1 could be slightly higher than 0.99 lb/MM Btu. Nonetheless, EPA believes that the adjusted 3-quarter average SO_2 emission rate of 0.99 lb/MM Btu is a reasonable estimate of current long-term SO_2 emissions from Unit 1. Based on the data obtained from CIPS, and because these emission data reflect a mode of DAFGDS operation that is generally consistent with CIPS' stated plan for operation of the DAFGDS, EPA believes, for the purpose of this analysis, that 0.99 lb/MM Btu would be representative of future long-term emissions from Unit 1 under existing Subpart D without a bubble. Consequently, EPA used this SO_2 emission rate in its revised estimate of the combined average emissions from the Newton power station.[5]

To estimate current emissions from Newton Unit 2, EPA obtained Department of Energy (DOE) fuels data, then computed the annual average SO_2 emission rate of the compliance coal fired in Unit 2 in 1985. The DOE data used included an annual summary of monthly reports of the quality (percent sulfur and specific heat) and cost of fuels for electric plants, including the Newton power station (see IV–J–1). Based on the 1985 DOE summary of monthly reports, EPA has calculated the average SO_2 emission rate from Newton Unit 2 during 1985 as 1.01 lb/MM Btu (IV–B–5). Because this rate is the average of data for an entire year, EPA believes the 1.01 lb/MM Btu emission rate is representative of baseline long term SO_2 emissions from Newton Unit 2 without the bubble.[6]

The EPA estimated the combined average emission rate from Units 1 and 2 by assuming equal unit load, and computed the arithmetic average of Unit 1 emissions (0.99 lb SO_2 /MM Btu) and Unit 2 emissions (1.01 lb SO_2 /MM Btu.) From this calculation, EPA estimated the combined long-term average baseline emission rate from the Newton station under Subpart D without the bubble to be 1.0 lb SO_2 /MM Btu.[7] This is a potentially conservative estimate based on current emissions.[8]

The EPA also considered the possibility that, at some point in the future, the Agency may revise Subpart D to include a 30-day averaging time for all affected facilities. The EPA's analysis shows that the bubble and its provisions would result in a lower SO_2 emission rate from the Newton units than would result from these units without the bubble under a revised Subpart D incorporating a 30-day averaging time for all units (IV–B–7).

In order to comply with the alternative 1.1 lb bubble limit, CIPS plans to allocate emissions from each unit so that the combined costs of operating the DAFGDS on Unit 1 and of supplying a lower sulfur coal for Unit 2 will be minimized. In other words, the SO_2 removal efficiency of the DAFGDS will be increased as necessary to offset the SO_2 emissions of whatever coal CIPS purchases to fire in Unit 2 such that overall plant compliance costs are as low as possible. Thus, the SO_2 emission potential of the Unit 2 coal supply governs the level of DAFGDS performance necessary to ensure compliance with the alternative bubble emission limit. Because CIPS has not yet signed a contract to purchase a specific coal under the bubble for Unit 2, EPA has used its best judgment to estimate potential emissions under the provisions of the compliance bubble by making reasonable assumptions about the sulfur content of the future Unit 2 coal supply. CIPS has repeatedly indicated that Midwestern coal would continue to be fired in both Newton units under the bubble, and has submitted data to EPA that shows several regional coals (Illinois, Indiana, and western Kentucky) with SO_2 emission potentials ranging from 1.0 to 2.0 lb/MM Btu available for Unit 2 if the bubble is adopted. Thus, the EPA developed a range of emission projections assuming a range of coals for Unit 2.

Initially, EPA considered the range of coals CIPS had indicated it would potentially purchase under the bubble (i.e., with emissions ranging from 1.0 to 2.0 lb SO_2/MM Btu), but was able to dismiss the coals at the extremes of the range. First, CIPS would not need the bubble if it continued to purchase a compliance coal for Unit 2. Therefore, EPA has assumed that CIPS would choose under the bubble to purchase a coal above the 1.0 lb/MM Btu coal presently fired in Unit 2. Moreover, locally available washed bituminous coal with an SO_2 emission potential of 1.2 lb/MM Btu or less is not abundant in Illinois, Indiana, and western Kentucky, and appears to be significantly more costly than higher sulfur regional coals (*see* IV–B–4). Hence, to minimize compliance costs under the bubble, CIPS is not likely to purchase coal with a sulfur content less than 1.2 lb SO_2/MM Btu.

Second, considering the high end of the range, current DAFGDS performance data indicate that a Unit 1 emission rate as low as 0.35 lb/MM Btu is achievable. Even with this extremely low emission rate, CIPS would need to limit Unit 2 coals to emissions of 1.6 lb SO_2/MM Btu or less to account for emissions variability. Thus, EPA estimated emissions under the bubble assuming that Unit 2 coal would range from 1.2 to 1.6 lb/MM Btu. The EPA estimated emissions under the bubble assuming that use of the Unit 1 bypass would be prohibited except during periods of malfunction (*see* IV–B–11). Under this assumption, the combined SO_2 emission rate for Unit 1 and Unit 2 would have to average 0.93 lb/MM Btu or less if CIPS fired a 1.2 lb/MM Btu coal in Unit 2, and would have to average 0.95 lb/MM Btu or less if CIPS fired a 1.6 lb/MM Btu coal in Unit 2 to ensure compliance with the 1.1 lb/MM Btu bubble emission limit (*see* IV–B–5, IV–B–11).

As presented in the above discussion, the entire range of the estimated maximum emission rate under the compliance bubble (0.93 to 0.95 lb/MM Btu with the 30-day averaging time) is lower than the average long-term emission rate anticipated without the

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[5] This analysis of CIPS' baseline emission rate is somewhat lower, and more representative, than earlier analyses in the docket (IV–B–5) because it is based on more recent data reflecting Unit 1 operation over a longer period of time.

[6] The data reviewed by EPA for Units 1 and 2 indicate that over the period of time in question there were no actionable violations of the Subpart D standard at either unit.

[7] Even if EPA had used the average emission rate for Unit 1 without excluding the unrepresentative emissions (0.97 lb/MM Btu), the combined baseline emission rate would have been 0.99 lb/MM Btu. As discussed later in this notice, the estimated bubble emissions would still be significantly lower than that baseline emission rate.

[8] The 1.0 lb/MM Btu estimated combined emission rate is potentially a conservative estimate, since the estimated long-term emission rates for each unit indicate that neither unit would emit more than 1.2 lb/MM Btu during any 3-hour period more than 0.5 percent (or less) of the time. However, should the two units emit more than 1.2 lb/MM Btu even 1 percent of the time (based on 3 hour averaging), the combined emission rate of the two units could range up to 1.08 lb SO_2 /MM But (*see* IV–B–5). However, this estimate is based on an assumption of very low variability for Unit 1. CIPS, however, has suggested that such a low variability may not be feasible over long periods and has suggested that a higher variability level would be expected (IV–D–13). In any event, even assuming a higher variability level, the combined average emission rate would still be approximately 1.03 lb/MM Btu (*see* IV–B–5). This estimate corresponds closely to the actual average emission rate (1.0 lb/MM Btu) discussed above and confirms the reasonableness of that estimate.

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bubble (1.0 lb/MM Btu).[9] In terms of actual SO_2 emission reductions expected under the bubble, EPA estimated the difference in annual SO_2 emissions between the current and projected combined emission rate (1.0 lb/MM Btu) and the endpoints of the range of average emission rates estimated under the bubble (0.93 and 0.95 lb/MM Btu). From this comparison, EPA estimates that compliance with the bubble would achieve additional SO_2 emission reductions ranging from 1,800 to 2,600 tons/yr compared to expected emissions without the bubble (IV–B–10).

In short, the bubble approved today, with the bypass limitation and other conditions, will result in long-term SO_2 emission rates lower than those that would be produced through source-by-source compliance with either the current Subpart D (1.2 lb/MM Btu limit enforceable by a stack test) or a revised Subpart D incorporating a 30-day average, at a lower cost to CIPS. For these reasons, approval of the bubble is consistent with the purposes of Subpart D and section 111 of the Act.

Based on analysis of the currently available data and the statistical projections discussed above, EPA believes that given the conditions imposed on this bubble, including the bypass restriction, emissions under the bubble will be significantly lower than total emissions would be without the bubble. Of course, if CIPS wishes to petition for modification of the bubble rule to allow greater use of the bypass, it may do so. If CIPS submitted new data (such as data obtained by actual operation under the bubble) in support of such a request, EPA would consider such an amendment of the rule, consistent with the bubble policy discussed later in this notice.

II. Discussion of Comments

Comments on the proposed CIPS compliance bubble were received from numerous interested parties. The major comments and the Agency's responses are summarized in several following sections. Minor comments and EPA responses have been summarized separately in a memorandum which has been placed in the docket (V–C–1). All comments were considered by EPA and, as a result, a change was made to the recordkeeping and reporting requirements of the amendment. This change is described in detail in the appropriate section below. Comments and responses have been divided into the following topics: General; Legality Under Section 111; Averaging Time; Emission Reduction Credit; Technology Better Than BDT; Malfunction Provision; Monitoring, Recordkeeping and Reporting Requirements; and Adequacy of Notice.

General

Two commenters stated that EPA imposed several restrictions on CIPS that are either unnecessary or not required by section 111 of the CAA. Specific bubble requirements cited as excessive were: The bubble emission limit of 1.1 lb/MM Btu which is more restrictive than the 1.2 lb/MM Btu limit of Subpart D; denial of the use of the difference between expected actual performance under the NSPS and the allowable NSPS limit as a source of emission reduction credit; and the special restrictions on emissions during malfunctions.

The Administrator disagrees. The compliance bubble is an optional means of compliance that EPA is making available at CIPS' request for use if it so chooses. The bubble, thus, does not impose an unreasonable restrictions. Second, since approval of the bubble is completely discretionary, the Administrator has the inherent right to impose whatever conditions he deems necessary to ensure that the bubble complies with the purposes of section 111. The restrictions included in the CIPS bubble, specifically the 1.1 lb/MM Btu emission limit and the malfunction provisions, are intended to accomplish the emissions-reducing purposes of section 111, and for that reason are appropriate. An increase in emissions could result if emission reduction credit was given for the difference between expected actual performance under the NSPS and the allowable NSPS limit. Apart from consideration of emissions, CIPS has estimated that the NSPS bubble will provide savings of approximately $22 million per year in operating costs (although actual savings may be somewhat less). Thus, the CIPS bubble should yield substantial benefits to source owners or operators while simultaneously reducing overall emissions. In view of this outcome, the restrictions for the CIPS bubble are wholly justified.

Several commenters opposed application of the bubble concept to CIPS and any other NSPS sources because they claimed that bubbles will sacrifice future air quality, remove national uniformity from the NSPS program, and allow some sources to operate at emission rates exceeding those expected under traditional NSPS compliance.

The EPA's decision to approve a bubble for CIPS that is both enforceable and that results in quantifiable emission reductions greater than those achieved by facility-by-facility compliance assures that the long term air quality benefits of the NSPS will not be sacrificed and that emissions will not exceed those under traditional compliance. Thus, any deviation from national uniformity due to this decision will serve only to further the emission-reducing purposes of the NSPS program.[10]

Legality Under Section 111

One commenter argued that since EPA's proposal would establish—according to the commenter—a new NSPS for CIPS' Newton Station, section 111 of the Act would require EPA to make new decisions as to what is the "best demonstrated technology" (BDT) for each specific source at that station.) The commenter claimed that the BDT previously established by EPA for all coal-fired power plants (36 FR 24876, December 23, 1971) is not BDT for the two Newton units. The commenter asserted that BDT for Unit 1 would be the DAFGDS, without allowing for use of that unit's bypass; that BDT for Unit 2 presumptively would be installation of a DAFGDS; and that if the bubble were approved EPA would have to require that technology at those units.

This commenter has misunderstood the nature of the bubble. As discussed previously, the CIPS bubble is not establishing a new NSPS for the Newton Station. Rather, the bubble merely amends Subpart D to allow CIPS to demonstrate compliance with the existing NSPS in a different manner. Thus, section 111 does not require EPA to make a new BDT determination for the Newton units before approving the bubble. Moreover, the commenter's

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[9] The estimated SO_2 emission rates under the bubble would also be well below the 1.08 lb/MM/Btu non-bubble combined emission rate, discussed in n.5 *supra*.

[10] Comments addressing the possible broader implications of future compliance bubble applications are premature and speculative and raise matters which go beyond the merits of today's decision to approve CIPS' bubble. Thus, those comments do not require a response. However, EPA notes that some non-uniformity in compliance with NSPS is inherent, given that affected new facilities have a choice of compliance techniques and operating practices, provided only that the facilities comply with the emission standard. Any future compliance bubbles are unlikely to alter such national uniformity as does exist, since facilities under a bubble remain subject to the applicable NSPS and must produce reductions as great as or greater than those which stack-by-stack performance under such an NSPS would yield. In addition, the States must be consulted in their development. However, since these matters can best be addressed on a case-by-case basis in the context of individual bubble applications which have not yet been submitted, let alone acted upon, they are not further discussed here.

claim that a DAFGDS, without a bypass, would clearly be BDT for Unit 1 and, presumably, Unit 2, is based on the commenter's assumption that use of the bypass at Unit 1 is illegal and, in general, should not be considered in determining what level of emissions is reasonably achievable at that unit. However, as discussed elsewhere in this notice, the commenter erroneously assumed that CIPS was legally required to minimize its emissions by forgoing use of the bypass.

Commenters objected that the Administrator may not set standards for a specific small group of sources, such as the two CIPS boilers. The commenters apparently misunderstood the nature of the proposal. As discussed earlier, the bubble is not establishing a new NSPS for the CIPS Newton units. Rather, it is establishing a new method, including a combined emission limit, by which CIPS can demonstrate compliance with the existing SO_2 NSPS. Moreover, the bubble does not encourage States to weaken their pollution control requirements, as the commenters claim. The bubble has the overall effect of tightening the Federal standards for these two sources. No State standard is relaxed, altered or influenced.

Commenters objected that the bubble would conflict with section 111(j) of the Act regarding waivers for sources using innovative technology. The Administrator disagrees. Section 111(j) simply authorizes the Administrator to waive performance standards in certain cases for innovative technologies; it does not govern the factors the Administrator may consider in establishing methods of compliance. There is no merit to the commenters' argument that because the Administrator must consider technological innovation in granting waivers, he must ignore it in establishing methods of compliance. The legislative history of section 111 makes clear that encouraging technological innovation is one of the principal purposes of section 111, *see* H.R. Rep. No. 95–294, 95th Cong., 1st Sess. 186 (1977), and the action taken today is consistent with that purpose.

One commenter also argued that section 111(e) of the Act effectively precludes approval of the CIPS bubble. That section makes it unlawful for any source to be operated "in violation of any [applicable] standard of performance. . . ." Since, in the case of existing Subpart D, the sources subject to the SO_2 NSPS are individual boilers [40 CFR 60.40(a)], the commenter inferred that it is unlawful for either unit at the Newton Station to exceed the 1.2 lb/MM Btu standard. Thus, since Unit 2 generally would emit in excess of 1.2 lb/MM Btu under the bubble, the commenter concluded that the bubble itself would be unlawful. The Administrator disagrees. The commenter has overlooked the fact that section 111(e) simply creates the legal obligation to operate sources in compliance with any applicable NSPS. Since section 111(e) does not specify how compliance with an NSPS is to be determined for any source, EPA has discretion to establish the appropriate method of compliance. In this case, EPA is expressly amending Subpart D to specify an alternative means of compliance with the standard. Thus, approval of the bubble is not inconsistent with section 111(e).

One commenter asserted that Newton Unit 2 must obtain a permit under the current (post-August 1977) "prevention of significant deterioration" (PSD) regulations because the unit had not "commenced construction" under the PSD program before August 7, 1977. The basis for this assertion was that Unit 2 purportedly had not been issued "all necessary preconstruction approvals or permits" by that date. The commenter noted that a PSD permit would require the "best available control technology (BACT)." The commenter also maintained that the Administrator may not promulgate the bubble, because the burning of local low sulfur coal that CIPS purportedly contemplates at Newton Unit 2 could not meet the BACT requirement.

The Administrator disagrees. First, this rulemaking is limited to amending the NSPS. Even if Newton Unit 2 were subject to BACT, that would have no bearing on how the NSPS should be amended. Any applicable BACT requirements would be defined in a PSD permit, which would be issued at the conclusion of a separate proceeding.

Second, in any case, Newton Unit 2 is not subject to BACT requirements. Briefly, by August 7, 1977, CIPS had "all necessary preconstruction approvals or permits" to begin the construction of Unit 2 within the meaning of the statute and the current PSD regulations. In particular, CIPS had a 1976 construction permit that authorized CIPS to "begin a continuous program of physical on-site construction * * *." Clean Air Act, Section 169(2), 42 U.S.C. 7479(2). Thus, under the transition regime prescribed by Congress in the 1977 Clean Air Act amendments to avoid retroactive application of PSD requirements to a source that already had made a "substantial commitment" to a particular site, CIPS did not need a PSD permit under the post-August 1977 PSD requirements to begin or complete the unit. This issue is analyzed in more depth in the docket [IV–B–3].

The commenter also asserted that, even if Newton Unit 2 is not subject to the post-1977 PSD requirements, it "would still be subject to the pre-1977 EPA regulatory program." However, over ten years ago, CIPS requested from EPA a PSD determination on whether the pre-1977 requirements applied. The EPA Region V formally determined in a June 13, 1977 letter to CIPS that Newton Unit 2 was not subject to those pre-1977 requirements [IV–C–7].[11] The commenter completely failed to explain why that determination may have been wrong or to give any other reason why it thinks Newton Unit 2 was subject to those requirements. The EPA therefore would have to guess at the reasoning of the commenter in order to respond to the comment, and it is not appropriate to do so. Moreover, EPA is not independently aware of any defect in the June 1977 determination.

Finally, EPA notes that CIPS has substantially and specifically relied on the 1977 determination by completing the construction of a utility steam generation unit and associated coal-storage and coal-handling facilities, and by negotiating coal contracts, together representing an investment of several hundred million dollars. Whatever might be the case in other circumstances, any abstract argument that this determination should now be reversed would have to be weighed against that long-standing reliance in considering the equities of the situation.

Accordingly, on the facts of this case, the Administrator concludes that neither the Act's current PSD requirements nor the current or prior PSD regulations apply to Newton Unit 2.

A commenter objected that the Administrator may not amend an NSPS as it applies to sources that have already commenced construction. The Administrator disagrees. First, agencies have inherent authority to amend their regulations. *NAACP* v. *FCC*, 682 F.2d 993, 998 (D.C. Cir. 1982); *United States* v. *O'Brien*, 391 U.S. 367, 380 (1968). Second, EPA has contemporaneously and consistently interpreted Section 111 to permit such amendments. Many NSPS have been amended. The amendments apply to sources that had already

[11] Eight years later, on September 25, 1985, the Regional Counsel for Region V reviewed the facts relating to this issue and concluded that Newton Unit 2 was not subject to PSD review under the pre-1977 regulations or the 1977 PSD requirements [IV–B–1].

commenced construction. *See* 39 FR 39872 (November 12, 1974) (amending opacity standard in NSPS for portland cement plants, originally proposed and promulgated in 1971); 38 FR 28564 (October 15, 1973) (amending all five NSPS proposed and promulgated in 1971 to provide for startup, shutdown, and malfunction conditions); 38 FR 13562 (May 23, 1973) (amending opacity standards in NSPS for sulfuric acid plants and nitric acid plants, originally proposed and promulgated in 1971); 37 FR 14877 (July 26, 1972) (amending the SO_2 standard in the 1971 boiler NSPS to accommodate mixed fuels); 39 FR 20790 (June 14, 1974) and 40 FR 46250 (October 6, 1975) (making various amendments to NSPS, including those originally proposed and promulgated in 1971); 44 FR 61542 (October 25, 1979) (exempting one type of source from the NSPS for petroleum refineries); 49 FR 41030 (October 19, 1984) (amending the NSPS for glass manufacturing plants); 47 FR 32743 (July 29, 1982) (proposing amendment of the NSPS for automobile painting plants). This consistent Agency practice, and Congress' tacit approval of it in reenacting the Act in 1977, show that it is the correct interpretation of the Act, in the absence of compelling evidence to the contrary. *See Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. 367 (1969); *NLRB* v. *Bell Aerospace Division*, 416 U.S. 267 (1974). Third, this interpretation of Section 111 was tacitly upheld in *Portland Cement Ass'n* v. *Train*, 513 F.2d 506 (D.C. Cir. 1975), *cert. denied* 423 U.S. 1025 (1975). In that case, the Court upheld EPA's 1973 and 1974 amendments of the NSPS for portland cement plants, which applied to sources that had already commenced construction.

Finally, the commenter cites no authority for its argument that the Administrator may not so amend an NSPS.

Averaging Time

The CIPS proposal notice stated that the bubble would use a 30-day averaging time as previously proposed for Subpart D as a whole. Several commenters stated that they supported use of a 30-day averaging time for the CIPS bubble. A number of other commenters believed that the 30-day averaging time should not be approved for the CIPS bubble or for Subpart D. One of these commenters stated that a 30-day average would amount to a relaxation of the standard and result in emission increases. Another commenter recommended that the 1.1 lb limit be an annual average.

As described in the section entitled, "Determination of Bubble Emissions," EPA has refined its analysis of the emission impact of the bubble compared to the current SO_2 emission rate, without 30-day averaging, from the Newton station under Subpart D. The EPA also has determined that the requirements of the bubble would result in actual emission decreases compared to individual unit compliance with Subpart D. Thus, there is no basis for arguing that approval of a 30-day averaging time for the CIPS bubble amounts to a relaxation of the standard. The EPA has concluded that an averaging time longer than 30 days is not necessary because averaging times longer than 30 days have been found to have relatively little additional effect on mitigating the effect of coal sulfur variability compared to a 30-day rolling average. Thus, EPA maintains that a 30-day averaging time is appropriate for the CIPS bubble.

Technology Better than BDT

The CIPS bubble was proposed on the basis of three findings. One of the findings was that the DAFGDS technology applied to Unit 1 constitutes technology that is essentially different from the limestone FGD technologies selected as representative of BDT during development of Subpart D. Several commenters questioned this finding, stating that the DAFGDS technology is not innovative technology and does not achieve better emission reduction than some conventional limestone scrubbers.

The Administrator did not propose to approve the CIPS bubble on the basis that the DAFGDS represents innovative technology as the term is used in section 111(j), but on the basis that this technology is essentially different from and better than the technologies that would otherwise generally be applied. While there are instances where limestone FGD systems have produced emission rates at or below that of the DAFGDS used at Unit 1, the DAFGDS removes SO_2 at a higher efficiency than typical limestone FGD systems.

Emission Reduction Credit

Several commenters questioned EPA's use of the Subpart D emission limit of 1.2 lb SO_2/MM Btu as the basis for determining a baseline against which emission reductions under the bubble are calculated. Two commenters suggested that emissions credit should be given only for emission reductions below the average level of performance achievable by Unit 1 if the *entire* flue gas stream is scrubbed by the DAFGDS (one commenter cited a range of 0.6–0.7 lb/MM Btu). The major concern of the commenters was that excessive emission credits would result in an increase rather than a decrease in emissions under the bubble.

As stated elsewhere, EPA does not agree that CIPS is required to treat the entire Unit 1 flue gas volume by DAFGDS. Moreover, EPA has compared anticipated emissions under the CIPS bubble against emissions that would actually result from compliance with the otherwise applicable NSPS. Consistent with this analysis, emission reduction credits are appropriately calculated against the emission levels of the individual CIPS units when they are operating in compliance with the Subpart D emission limit of 1.2 lb SO_2/MM Btu. In the absence of the bubble, as discussed earlier, the CIPS units are complying with Subpart D with long term average emissions of 0.99 lb/MM Btu from Unit 1 and approximately 1.01 lb/MM Btu from Unit 2. The EPA, therefore, believes that these average emission rates should be the numerical baseline for calculating emission reduction credit for the CIPS compliance bubble. In addition, as adequately demonstrated in the section entitled "Determination of Bubble Emissions," the bubble will in fact result in a decrease rather than an increase in SO_2 emissions.

A commenter objected to the Administrator's estimate of the amount of SO_2 that would be emitted from the Unit 1 boiler if the bubble were not promulgated. The Administrator assumed that CIPS would operate the DAFGDS so as to comply with the 1.2 lb/MM Btu emission limit in the NSPS. The commenter claimed that because Newton Unit 1 is capable of reducing its emissions below 1.2 lb/MM Btu, it is legally obligated to do so under 40 CFR 60.11(d). Specifically, the commenter claimed that CIPS is legally obligated to treat a larger proportion (though not all) of the boiler exhaust gases by FGD than is necessary to meet the 1.2 lb/MM Btu emission limit.

The Administrator disagrees. The NSPS is by definition a standard of performance. The performance that is required is to achieve an SO_2 emission limit of 1.2 lb/MM Btu. The NSPS does not dictate what technique(s) a source must use to meet the emission limit. This is consistent with the literal language of section 111(a)(1) itself, which only requires that an NSPS "reflect the degree of emission reduction achievable through the application of the" best demonstrated technology, and not that such control technology be installed at every affected facility. Thus, CIPS is legally free to choose any technique that meets the emission limit, including its preferred technique of burning coal of a

certain sulfur content and treating a portion of the exhaust gases by FGD. *See Sierra Club* v. *Costle*, 657 F. 2d 298, 321 n. 56 (D.C. Cir. 1981).

Section 60.11(d) is not to the contrary. It provides that "owners and operators shall, to the extent practicable, maintain and operate any affected facility including associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions." This requires CIPS to properly operate and maintain the boiler, including the FGD. It does not require CIPS to develop a more effective system of emission control (such as treating a larger amount of the flue gas) merely because that is possible. When the Administrator promulgated § 60.11(d), he made it clear that it simply requires proper operation and maintenance of whatever system meets the standard of performance. This requirement is needed because most NSPS, including Subpart D, require emission tests only occasionally. Section 60.11(d) simply makes clear that the owner is not free to neglect the source during the intervals between emission tests. (38 FR 10820 (May 2, 1973); 38 FR 28564, 28565 (October 15, 1973)). There is no support for the commenter's theory that § 60.11(d) supersedes the performance standard with a vague requirement to achieve the lowest emission level possible.[12]

Malfunction Provision

One commenter on the bubble malfunction provision stated that the malfunction provision did not sufficiently clarify what kinds of upsets would be included in the 250-hour allowance. He stated that malfunctions in support systems such as clarifiers, mixers, sludge disposal, limestone and soda ash delivery systems, reheaters, etc., should not be excluded from counting toward the allowance of 250 hours. Several commenters stated their concern that the increase in emissions because of the malfunction allowance would decrease EPA's estimate of overall emission reductions resulting from the bubble. A commenter added that the proposal also did not clearly state the sulfur content of coal to be used in Unit 1 after 16 consecutive hours of malfunction. One commenter said that allowing 250 hours of malfunctions is excessive, particularly with a 30-day averaging time, because periods of high emissions can be offset by periods of lower emissions over 30 days.

The 250-hour malfunction allowance is based on EPA's analysis of 3 years of Unit 1 malfunction data provided by CIPS (IV–B–6). The data showed that the DAFGDS experienced 755 hours of malfunctions over the 3-year period, or an average of 250 hours per year. Several types of equipment failures compose the basis for the 755 hours considered by EPA to be malfunctions, including reduced scrubbing capacity due to lack of control over bypass dampers or loss of power to booster fans, lime bucket elevator failure, plugged chemical tanks, fly ash deficiency, thickener underflow pump failure, and FGD tray pluggage. The EPA specifically denied CIPS' claims that periods of reduced scrubbing capacity due to load swings represent malfunctions. The types of system failures that might be considered malfunctions certainly are not exhausted by the above list, and enforceability of the standard is not improved by specifying such a list.

As stated in the proposal, the 250 hours represents 97 percent DAFGDS availability. Data on FGD systems on other Subpart D units firing medium-sulfur coal shows that national FGD availability averages approximately 95 percent. Other scrubber units covered by Subpart D are not limited by § 60.8(c) in the number of hours that could be claimed as malfunction periods. In the absence of a limit on the number of hours that could be claimed under the malfunction provision, CIPS could legitimately claim malfunctions in excess of 250 hours per year. The 250 hour limit on malfunctions, therefore, encourages CIPS to continue operating the DAFGDS in the high availability mode that has characterized its performance to date. Therefore, EPA does not consider the 250-hour malfunction allowance excessive.

Moreover, the scrubber malfunctions and the resulting additional emissions would occur whether the CIPS units were operating under the bubble or under unit-by-unit compliance with the 1.2 lb/MM Btu Subpart D limit. Therefore, the 250-hour malfunction provision is, in fact, a limit on the amount of time that can be claimed as malfunction rather than the granting of additional time over what would be allowed under the otherwise applicable requirements of Subpart D. The EPA sees no merit to the claim that the malfunction provision in any way allows, encourages, or promotes additional SO_2 emissions.

In response to the question of the sulfur content of the coal to be used in Newton Unit 1 after 16 hours of malfunction, CIPS is required to fire the coal used in Newton Unit 2. As discussed earlier in this notice, CIPS has not yet made a commitment to purchase the type of coal it will fire in Unit 2 under the bubble. However, EPA anticipates that it will purchase coals ranging in SO_2 emission potential from 1.2 lb/MM Btu to 1.8 lb/MM Btu.

Monitoring, Recordkeeping and Reporting Requirements

One commenter stated that the proposed monitoring requirements are inadequate to accurately track compliance with the bubble. He stated that monitoring 75 percent of the hours per day for 26 out of 30 operating days amounts to only 65 percent of total operating time. Without emissions data for the remaining one third of the time, the commenter believed that it would be impossible to calculate emissions under the bubble. In addition, the commenter stated that the span value of the CEM for the Unit 1 DAFGDS stack needs to be enlarged from 50 percent of the maximum estimated emissions to 200 percent. With the proposed 50 percent span value, concentrations greater than 2.2 lbs/MM Btu will be recorded incorrectly. Thus, high emissions during scrubber malfunctions will not be measured accurately.

Compliance with the final rule is based upon a rolling 30-day average and studies for Subpart Da and proposed revisions to Subpart D have shown that 75 percent of the hours per day for 26 out of 30 days is more than adequate to account for systematic or random emission variations over a 30-day period (IV–B–9). Also, CIPS has demonstrated the ability to exceed these minimum data requirements and will be required under the bubble to use all available data. Therefore, compliance will likely be based upon more than the minimum data. In addition, downtime for monitoring systems must be provided to allow for regular periodic calibration and maintenance of the monitors.

The EPA agrees that the 50 percent span value required for the monitor on the DAFGDS stack will decrease the accuracy of measurement of emission rates greater than 2.2 lbs/MM Btu from the DAFGDS stack. However, under normal operating loans, the Unit 1 DAFGDS facility would need to maintain between 0.35 to 0.7 lbs/MM Btu. If the span value were raised, the

[12] In fact, the history of § 60.11(d) clearly indicates that its main thrust was to require emissions to be minimized during periods when the standards might be exceeded (primarily during periods of start-up and shut-down, malfunction, or maintenance). (38 FR 28565 (October 15, 1973) (purpose of section to require "that the plant operator use maintenance and operating procedures designed to minimize emissions in excess of the standard"))

accuracy of the monitor may not be sufficiently accurate for determining compliance during normal operation. Moreover, the 50 percent span value is consistent with similar scrubber controlled units under Subpart Da for utility boilers and no change is being made in the proposed span value for the CEMS. However, EPA agrees that measurement of emission rates above 2.2 lb/MM Btu is necessary to accurately determine the 30-day average combined emission rate under the bubble. Therefore, EPA has changed the alternative compliance method to require CIPS to develop a plan, to be approved by EPA, to measure the emission rate from Unit 1 whenever the required span value (50 percent of the maximum expected emission rate of the coal fired in Unit 1) of the CEMS is exceeded.

A commenter said that the proposed monitoring requirements require a check for DAFGDS bypass leakage only at the time of an infrequent performance test. However, in his opinion, bypass leakage is probable every time the bypass dampers or other mechanical components are moved. Accordingly, unless the bypass is permanently and securely sealed, continuous monitoring should be required.

The proposed rule does require continuous monitoring of bypass leakage by three different measurements—SO_2 concentration, temperature of the bypass stack, and static pressure of the inlet ducts to the DAFGDS. Any one of these measurements is adequate to indicate leakage into the bypass duct, and when leakage or use of the bypass is indicated, the final rule requires CIPS to monitor emissions from the bypass stack and add these to the scrubber outlet emissions.

Another commenter pointed out that the recordkeeping and reporting requirements do not require collection and reporting of information to monitor possible leakage from the bypass damper, and that recording and reporting such information are essential for verifying monitoring information on emission rates and for ensuring compliance.

The proposed rule required recordkeeping and reporting of emissions from the bypass stack only during any periods that the bypass damper is opened. The EPA agrees that records should be kept of possible leakage from the damper. Therefore, the final rulemaking requires that CIPS keep records of the bypass stack temperature, SO_2 concentrations, and the static pressure at the DAFGDS inlet ducts. In addition, the final rule requires CIPS to report each quarter any periods of bypass usage and periods during which there is any indication of leakage through the bypass damper as indicated by any of the above measurements.

One commenter stated that he did not believe that continuous emission monitors in general have demonstrated the 90 percent reliability attributed to the CIPS monitors. He stated that EPA should not consider the CIPS experience as typical of CEMS reliability.

The EPA does not agree. CIPS and other facilities have demonstrated monitor systems with greater than 90 percent availability and reliability (IV–B–9).

A commenter questioned the method used to calculate the percentage of availability being required of CEMS. He said that, as proposed, each monitor must be available for 26 out of 30 successive boiler operating days, or 86.7 percent of the time. He said the probability of two independent events, such as both CEMS being operable simultaneously, is the product of their individual probabilities and thus he implied that the proposed availability requirements for the CEMS were overly restrictive.

The EPA agrees that multiple monitor availability is the product of the probability of availability for individual monitors. However, the commenter apparently overlooked the fact that the proposal specified minimum data requirements of 75 percent of the hours per day for 26 out of 30 boiler operating days, not 100 percent of the hours per day as inferred by the commenter. Thus, EPA believes that CIPS has demonstrated its ability to operate two independent monitoring systems that, when combined, meet the minimum data requirements. Therefore, EPA believes that the requirements are not overly restrictive, and that CIPS can meet the proposed minimum data requirements.

Adequacy of Notice

One commenter suggested that EPA repropose the CIPS bubble and allow additional public comment on EPA's rationale if EPA planned to approve the bubble without amending Subpart D to require 30 day averaging by all sources. The EPA does not agree that reproposal or additional public comment are necessary or appropriate. The EPA believes that approval of the bubble without further amendment of Subpart D at this time is consistent with the original bubble proposal and is a logical outgrowth of that notice and comments received.

As discussed earlier, EPA's basic rationale for proposing the CIPS bubble was that the bubble would be consistent with section 111 of the Act in that it would reduce overall emissions from the sources, as a whole, below what would otherwise occur under Subpart D, at a lower cost to CIPS. Although the proposal did assume that Subpart D would be amended to require 30-day averaging (*see* 50 FR 3690), that assumption did not change the basic rationale of the proposal or of today's final rule, i.e., that emissions under the bubble would be lower, and that CIPS compliance costs would be less, than they otherwise would be under Subpart D without the bubble. As demonstrated earlier in this notice, this premise is true whether or not Subpart D is amended generically to require 30-day averaging. Thus, EPA's basic rationale for approving the bubble is not materially different from that discussed in the proposal and no additional notice and comment are required.

Moreover, EPA's decision to approve the bubble without first amending Subpart D to require 30-day averaging was responsive to another comment by the same commenter who requested additional notice and comment. That commenter argued that EPA should not amend Subpart D to require 30-day averaging and that emissions under the bubble would be greater than they would be without the bubble under existing Supbart D. The EPA has addressed this concern by refining its estimates of CIPS' future emissions with the bubble and without the bubble under existing Subpart D, and confirming that overall emissions under the bubble would be less than without the bubble.[13] Thus, today's decision is a logical outgrowth of the bubble proposal and comments on it.

In any event, as the comment requesting additional notice itself shows (IV–D–201), approval of the bubble without amending Subpart D was a reasonably foreseeable logical outgrowth of the proposal. Indeed, the basic rationale for this bubble—that even with a bubble emission limit expressed as a 30-day average, emissions will be reduced from current emissions in compliance with Subpart D—has remained unchanged. All commenters have had ample

[13] CIPS, in its comments of June 18, 1985 (IV–D–196), also responded to arguments against amending Subpart D and basing the bubble on the assumption that Subpart D would require 30-day averaging. CIPS pointed out, at that time, that emissions under the bubble would be reduced whether or not Subpart D was amended to require 30-day averaging in general, and urged EPA to approve the bubble whether or not the generic Subpart D rulemaking was finalized (*see* IV–D–196 at page 11).

opportunity to comment on that rationale.

III. Bubble Policy

Today's action represents one example of EPA's willingness to consider, on a case-by-case basis, applications for individual NSPS compliance bubbles. Interested parties should, however, be aware that EPA will also consider applications for NSPS compliance bubbles under other factual circumstances, provided such bubbles, like CIPS, yield actual emission reductions at least as great as those which would be produced by facility-by-facility compliance with otherwise applicable NSPS and assure equal or better enforceability. In order to better effectuate the emission-reducing purposes of Section 111, EPA will give preference to bubbles that result in a net actual emissions decrease from otherwise applicable NSPS (i.e., produce emission reductions greater than those that have occurred or would actually be expected to occur in the absence of the bubble).

Emission reductions eligible for bubble credit must be quantifiable and enforceable and must exceed those which would actually result from facility-by-facility compliance with otherwise applicable NSPS. In accord with this test, applicants must document both tht NSPS compliance bubble applications are not based on windfall [14] emission credits and that their bubbles fully satisfy in all other respects the purposes of the NSPS program.[15] In general, an applicant could do this by showing that claimed bubble credits would result from the use of control technology, production processes, or operating practices that are essentially different than those which would be used without the bubble.[16]

The EPA encourages such NSPS bubble applications and will review them on a case-by-case basis, subject to full public notice and comment as amendments to the relevant NSPS if formal action on the application appears warranted. However, because implementation and enforcement of NSPS set by EPA have long been delegated to many States, EPA also intends to consult, and urges sources considering NSPS compliance bubbles to consult, the relevant State as well as EPA when formulating specific applications. Interested parties will have full opportunity to evaluate and comment on individual bubble applications during any rulemaking proposing approval, and to seek judicial review when final Agency action on bubble applications is taken.

As it gains experience with individual NSPS bubbles, EPA may consider whether this policy's emphasis on case-by-case review could be reduced by adding more detailed review criteria. Those additions to the policy would be set forth in the rulemaking documents for individual bubbles and could eventually be codified in an expanded policy statement.

IV. Administrative

The docket is an organized and complete file of all the information considered by EPA in the development of this action. The docket is a dynamic file, since material is added throughout the development of this amendment. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the development process. Along with the statements of basis and purpose of the proposed and promulgated amendment and EPA responses to significant comments, the contents of the docket will serve as the record in case of judicial review. [Section 307(d)(7)(A) of the Clean Air Act]

Section 317 of the Clean Air Act requires the Administrator to prepare an economic impact assessment for any revision of a new source standard of performance which he determines to be substantial. Because the Administrator has determined that this revision is not "substantial," preparation of an economic impact assessment is not required.

The Paperwork Reduction Act of 1980 requires that the Office of Management and Budget (OMB) approve reporting and recordkeeping requirements that qualify as an "information collection request" (ICR). The reporting and recordkeeping requirements associated with this alternative compliance method for CIPS do not qualify as an ICR since they will affect fewer than 10 firms. Therefore, they do not require approval by OMB.

Under Executive Order 12291, EPA is required to judge whether a regulation is a "major rule" and therefore subject to the requirements of a regulatory impact analysis (RIA). The Agency has determined that the CIPS bubble regulation would result in none of the adverse economic effects set forth in section 1 of the Order as grounds for finding a regulation to be a "major rule." The Agency has, therefore, concluded that this regulation is not a "major rule" under Executive Order 12291.

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small entities. The Act specifically requires the completion of a Regulatory Flexibility Analysis for those regulations that would result in a significant impact on a substantial number of small entities. Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this amendment will not have a significant impact on a substantial number of small entities. Because the CIPS amendment imposes no adverse economic impacts, a Regulatory Flexibility Analysis has not been conducted.

List of Subjects in 40 CFR Part 60

Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Incorporation by reference, Fossil-fuel-fired steam generating units.

Date: July 24, 1987.

Lee M. Thomas,

Administrator.

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

1. The authority citation for Part 60 continues to read as follows:

Authority: 42 U.S.C. 7411, 7414, and 7601(a).

2. Section 60.43 is amended by revising paragraph (a)(2) and adding paragraph (e) to read as follows. (Paragraph (d) is reserved.)

§ 60.43 Standard for sulfur dioxide.

(a) * * *

(2) 520 nanograms per joule heat input (1.2 lb per million Btu) derived from solid fossil fuel or solid fossil fuel and

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[14] Allowing NSPS bubble limits to be calculated against the nominal NSPS requirements, rather than actual or expected BDT performance, could result in "windfall" emission credits and increases in emissions above what would have otherwise resulted.

[15] For this reason, EPA will not consider applications for NSPS compliance bubbles between sources which emit different pollutants or that include sources not subject to NSPS promulgated under section 111. Nor will EPA consider applications for compliance bubbles involving proposed fuel switches between new facilities which are not yet operating. In light of the technical difficulty and potential administrative burden of attempts to determine what mix of fuel an unbuilt facility would use in the future absent the bubble, such future switches must be treated as ineligible for bubble credit.

[16] Some indicators of such essentially different control strategies might be, as in the case of CIPS, use or optimization of advanced control systems that are designed to achieve emission reductions beyond the levels reasonably expected with BDT, significantly increased control expenditures, or more effective operating practices than those expected to be associated with BDT controls.

wood residue, except as provided in paragraph (e) of this section.

* * * * *

(e) Units 1 and 2 (as defined in Appendix G) at the Newton Power Station owned or operated by the Central Illinois Public Service Company will be in compliance with paragraph (a)(2) of this section if Unit 1 and Unit 2 individually comply with paragraph (a)(2) of this section or if the combined emission rate from Units 1 and 2 does not exceed 470 nanograms per joule (1.1 lb per million Btu) combined heat input to Units 1 and 2.

2a. Section 60.46 is amended by adding paragraph (h) to read as follows:

§ 60.46 Test methods and procedures.

* * * * *

(h) If the Central Illinois Public Service Company elects, under § 60.43(e), to comply with the combined SO_2 emission rate of 470 nanograms per joule (1.1 lb per million Btu) of combined heat input to Units 1 and 2, the test methods and procedures described in Appendix G, "Provisions for an Alternative Method of Demonstrating Compliance with 40 CFR 60.43 for the Newton Power Station of Central Illinois Public Service Company" must be used.

3. Part 60 is amended by adding Appendix G as follows. (Appendix E is reserved.)

Appendix G—Provisions for an Alternative Method of Demonstrating Compliance With 40 CFR 60.43 for the Newton Power Station of Central Illinois Public Service Company

1. *Designation of Affected Facilities*

1.1 The affected facilities to which this alternative compliance method applies are the Unit 1 and 2 coal-fired steam generating units located at the Central Illinois Public Service Company's (CIPS) Newton Power Station in Jasper County, Illinois. Each of these units is subject to the Standards of Performance for Fossil-Fuel-Fired Steam Generators for Which Construction Commenced After August 17, 1971 (Subpart D).

2. *Definitions*

2.1 All definitions in Subparts D and Da of Part 60 apply to this provision except that:

"24-hour period" means the period of time between 12:00 midnight and the following midnight.

"CEMS" means continuous emission monitoring system.

"DAFGDS" means the dual alkali flue gas desulfurizaiton system for the Newton Unit 1 steam generating unit.

"Boiler operating day" means a 24-hour period during which any fossil fuel is combusted in either the Unit 1 or Unit 2 steam generating unit and during which the provisions of § 60.43(e) are applicable.

"Coal bunker" means a single or group of coal trailers, hoppers, silos or other containers that: (1) are physically attached to the affected facility; and (2) provide coal to the coal pulverizers.

3. *Compliance Provisions*

3.1 If the owner or operator of the affected facility elects to comply with the 470 nanograms per joule (ng/J) (1.1 lb/million Btu) of combined heat input emission limit under § 60.43(e), he shall notify the Administrator at least 30 days in advance of the date such election is to take effect, stating the date such operation is to commence. When the owner or operator elects to comply with this limit after one or more periods of reverting to the 520 ng/J heat input (1.2 lb/million Btu) limit of § 60.43(a)(2), as provided under 3.4, he shall notify the Administrator in writing at least ten (10) days in advance of the date such election is to take effect.

3.2 Compliance with the sulfur dioxide emission limit under § 60.43(e) is determined on a continuous basis by performance testing using CEMS. Within 60 days after the initial operation subject to the combined emission limit in § 60.43(e), the owner or operator shall conduct an initial performance test, as required by § 60.8, to determine compliance with the combined emission limit. This initial performance test is to be scheduled so that the first boiler operating day of the 30 successive boiler operating days is completed within 60 days after initial operation subject to the 470 ng/J (1.1 lb/million Btu) combined emission limit. Following the initial performance test, a separate performance test is completed at the end of each boiler operating day Unit 1 and Unit 2 are subject to § 60.43(e), and new 30 day average emission rate calculated.

3.2.1 Following the initial performance test, a new 30 day average emission rate is calculated each boiler operating day the affected facility is subject to 60.43(e). If the owner or operator of the affected facility elects to comply with § 60.43(e) after one or more periods of reverting to the 520 ng/J heat input (1.2 lb/million Btu) limit under § 60.43(a)(2), as provided under 3.4, the 30 day average emission rate under § 60.43(e) is calculated using emissions data of the current boiler operating day and data for the previous 29 boiler operating days when the affected facility was subject to § 60.43(e). Operation of the affected facility under § 60.43(a)(2) is not considered a boiler operating day. Emissions data collected during such periods are considered relative to 4.6 and emissions data are not included in calculations of emissions under § 60.43(e).

3.2.2 When the affected facility is operated under the provisions of § 60.43(e), the Unit 1 DAFGDS bypass damper must be fully closed with no flue gas bypassing the DAFGDS and the full flue gas volume treated by the DAFGDS. The DAFGDS bypass may be opened only during periods of DAFGDS startup, shutdown, or malfunction as described under Sections 3.5.1, 3.5.2, 3.5.3, 3.5.4, and 3.5.5.

3.3 Compliance with the sulfur dioxide emission limit set forth in § 60.43(e) is based on the average combined hourly emission rate from Units 1 and 2 for 30 successive boiler operating days determined as follows:

$$E30 = \frac{1}{n} \sum_{i=1}^{n} EC_i$$

where

n = the number of available hourly combined emission rate values in the 30 successive boiler operating day period where Unit 1 and Unit 2 are subject to § 60.43(e).

E30 = average emission rate for 30 successive boiler operating days where Unit 1 and Unit 2 are subject to § 60.43(e).

EC = the hourly combined emission rate from Units 1 and 2.

3.3.1 The average hourly combined emission rate for Units 1 and 2 for each hour of operation of either Unit 1 or 2, or both, is determined as follows:

$EC = [(E1)(H1) + (E2)(H2)]/[H1 + H2]$

where:

EC = the hourly combined emission rate from Units 1 and 2 where Units 1 and 2 are subject to § 60.43(e).

E1 = the hourly emission rate from Unit 1 as determined from CEMS data using the calculation procedures in EPA Method 19 Section 5 and Section 4 of this Appendix.

E2 = the hourly emission rate from Unit 2 as determined from CEMS data using the calculation procedures in EPA Method 19 Section 5 and in Section 4 of this Appendix.

H1 = the hourly heat input to Unit 1 as determined in Section 4 of this Appendix.

H2 = the hourly heat input to Unit 2 as determined by Section 4 of this Appendix.

If data for any of the four hourly parameters (E1, E2, H1, and H2) under 3.2 are unavailable during an hourly period, the combined emission rate (EC) is not calculated and the period is counted as missing data under 4.6.1., except as provided under 3.5.6.

3.4 After the date of initial operation subject to the combined emission limit, the owner or operator shall remain subject to the requirements of this Appendix unless the owner or operator of the affected facility elects to revert to the 520 ng/J heat input (1.2 lb/MM Btu) limit of § 60.43(a)(2) separately at each unit. The Administrator shall be given written notification from CIPS as soon as practical of their decision to revert to the 520 ng/J heat input (1.2 lb/MM Btu) limit of § 60.43(a)(2) separately at each unit, but no later than 10 days in advance of the date such election is to take effect.

3.5 Emission monitoring data for Unit 1 may be excluded from calculations of the 30 day rolling average only during the following times:

3.5.1 Periods of DAFGDS startup.

3.5.2 Periods of DAFGDS shutdown.

3.5.3 Periods of DAFGDS malfunction during system emergencies as defined in § 60.41a.

3.5.4 The first 250 hours per calendar year of DAFGDS malfunctions of Unit 1 DAFGDS provided that efforts are made to minimize emissions from Unit 1 in accordance with § 60.11(d), and if, after 16 hours of DAFGDS

malfunction, the owner or operator of the affected facility begins loading coal (following the customary loading procedures, but not more than 24 hours later) with a potential SO_2 emission rate equal to or less than the current emission rate of Unit 2 (E2) into the Unit 1 coal bunker. Malfunction periods under 3.5.3 are not counted toward the 250 hour/yr limit under this section.

3.5.5 The malfunction exemption in 3.5.4 is limited to the first 250 hours per calendar year of DAFGDS malfunction. During the first 250 hours, except for the initial 16 hours of each Unit 1 DAFGDS malfunction, the owner or operator shall load coal with a potential SO_2 emission rate equal to or less than the current emission rate of Unit 2 (E2) into the Unit 1 coal bunkers. For malfunctions of the DAFGDS after the 250 hours per calendar year limit (cumulative), other than those defined in 3.5.3, the owner or operator of the affected facility shall combust lower sulfur coal or use any other method to comply with the 470 ng/J (1.1 lb/million Btu) combined emission limit.

3.5.6 During the first 250 hours of DAFGDS malfunction per year or during periods of DAFGDS startup, or DAFGDS shutdown, CEMS emissions data from Unit 2 shall continue to be included in the daily calculation of the combined 30 day rolling average emission rate; that is, the load on Unit 1 is assumed to be zero (H1=0; EC=E2).

3.5.7 The provision for excluding CEMS data from Unit 1 during the first 250 hours of DAFGDS malfunctions from combined hourly emissions calculations supercedes the provisions of § 60.11(d). However, the general purpose contained in § 60.11(d) (i.e., following good control practices to minimize air pollution emissions even during malfunctions) has not been superseded.

4. Continuous Emission Monitoring

4.1 The CEMS required under Section 3.2 are operated and data are recorded for all periods of operation of the affected facility including periods of the DAFGDS startup, shutdown and malfunction except for CEMS breakdowns, repairs, calibration checks, and zero and span adjustment. All provisions of § 60.45 apply except as follows:

4.2 The owner or operator shall install, calibrate, maintain, and operate CEMS and monitoring devices for measuring the following:

4.2.1 For Unit 1:

4.2.1.1 Sulfur dioxide and oxygen or carbon dioxide for the Unit 1 DAFGDS stack.

4.2.1.2 Sulfur dioxide, oxygen or carbon dioxide, volumetric flow rate, and static pressure and temperature for the Unit 1 DAFGDS by-pass stack.

4.2.1.3 Volumetric flow rate, static pressure, and temperature at the inlet ducts to the Unit 1 DAFGDS.

4.2.2 For Unit 2, sulfur dioxide and oxygen or carbon dioxide.

4.2.3 For Units 1 and 2, the hourly heat input, the hourly steam production rate, or the hourly gross electrical power output from each unit.

4.3 For the Unit 1 by-pass stack and the Unit 2 stack, the span value of the sulfur dioxide monitoring system is 200 percent of the maximum estimated hourly potential sulfur dioxide emissions of the fuel fired. For the Unit 1 DAFGDS stack, the span value is 50 percent of the maximum estimated hourly potential emissions of the fuel fired.

4.3.1 For the Unit 1 DAFGDS stack, an additional SO_2 monitor with a span value of 200 percent of the maximum hourly potential emissions of the fuel fired is required. During initial application of § 60.43(e), this requirement is considered to be satisfied if:

(1) Within 90 days of initial election to operate under § 60.43(e), the owner or operator of the affected facility submits a monitoring plan to the Administrator to install, maintain, and operate a CEMS with a span value of 200 percent or operate an alternative monitoring system capable of measuring such values;

(2) The plan is approved by the Administrator within 60 days of receipt of the plan; and

(3) During the period before the plan is approved, the owner or operator of the affected facility operates Methods 6 and 3, 6 and 3, or 6A on an hourly basis during all periods emissions exceed 50 percent of the maximum hourly potential emission rate of the fuel fired.

4.3.2 If an alternative monitoring plan under 4.3.1 is not approved by the Administrator within 150 days of initial election to operate under § 60.43(e), or if a separate CEMS with a span value of 200 percent has not been installed and made operational, Unit 1 and Unit 2 will become subject to the requirements of § 60.43(a)(2).

4.4 The monitoring devices required in 4.2 shall be installed, calibrated, and maintained as follows:

4.4.1 The volumetric flow rate monitoring device specified in 4.2.1.2 (DAFGDS bypass stack) shall be installed at the same location as the sulfur dioxide emission monitor.

4.4.2 The volumetric flow rate monitoring devices shall be calibrated using Reference Methods 1 and 2 (Appendix A). The traverse location for Method 2 shall be as near as practicable to the monitoring device location, and such that no gas flow is added or diverted between the measurement sites. The average gas velocity or volumetric flow rate by Method 2 shall be used to calculate a calibration coefficient for the monitoring device. Average gas molecular weight and moisture content may be used to calculate the gas density for use in the velocity or flow rate equations of Method 2.

4.4.3 The volumetric flow rate calibrations shall be conducted prior to the start of the initial performance test required in 3.2, and annually thereafter.

4.4.4 Temperature and pressure monitoring devices shall be calibrated and maintained according to manufacturer's specifications.

4.4.5 Hourly steam production rate or hourly electrical power output monitoring devices for Unit 1 and Unit 2 shall be calibrated and maintained according to manufacturer's specifications. The data from either of these devices may be used for the hourly heat input rates used in the calculation of the combined emission rate in Section 3.3 unless the hourly heat input to steam production or hourly heat input to electrical power output efficiency over a given segment of each boiler or generator operating range, respectively, varies by more than 5 percent within the specified operating range, or the efficiencies of the boiler/generator units differ by more than 5 percent. The hourly heat input may also be calculated based on the fuel firing rates and fuel analysis.

4.5 The Calculation procedures of Method 19, Appendix A are combined with the volumetric flow rate monitoring device results to calculate an emission rate for Unit 1 when leakage or diversion of any DAFGDS inlet gas to the bypass stack occurs (such as during conditions under 3.5.3, 3.5.4, and 3.5.6):

For Unit 1, hourly SO_2 emission rate (E1) is calculated as follows:

$$E1 = \frac{(QF)(EF)+(QB)(EB)}{QF+QB}$$

Where

QB=Dry volumetric bypass stack gas flow rate corrected to standard conditions, dscm/hr (dscf/hr).

QF=Dry volumetric DAFGDS inlet gas flow rate corrected to standard conditions, dscm/hr (dscf/hr).

EF=Hourly SO_2 emission rate measured in DAFGDS stack, ng/J (lb/million Btu).

EB=Hourly SO_2 emission rate measured in bypass stack ng/J (lb/million Btu).

Other than during conditions under 3.5.1, 3.5.2, 3.5.3, 3.5.4, or 3.5.5, the DAFGDS bypass system is not used and no leakage through the bypass damper should be indicated by either the bypass stack static pressure, temperature, or SO_2 measurements, and:

E1=EF

4.6 For the CEMS required for Unit 1 and Unit 2, the owner or operator of the affected facility shall maintain and operate the CEMS and obtain combined emission data values (EC) for at least 75 percent of the boiler operating hours per day for at least 26 out of each 30 successive boiler operating days.

4.6.1 When hourly SO_2 emission data are not obtained by the CEMS because of CEMS breakdowns, repairs, calibration checks and zero and span adjustments, hourly emission data required by 4.6 are obtained by using Methods 6 and 3, 6A, or 6 and 3, or by other monitoring procedures approved by the Administrator. Failure to obtain the minimum data requirements of 4.6 by CEMS, or by CEMS supplemented with alternative methods of this section, is a violation of performance testing requirements.

4.6.2 Independent of complying with the minimum data requirements of 4.6, all valid emissions data collected are used to calculate combined hourly emission rates (EC) and 30-day rolling average emission rates (E30) are calculated and used to judge compliance with 60.43(e).

4.7 For each continuous emission monitoring system, a quality assurance plan shall be prepared by CIPS and approved by the Administrator. The plan is to be submitted to the Administrator 45 days before initiation of the intial performance

test. At a minimum, the plan shall contain the following quality control elements:

4.7.1 Calibration of continuous emission monitoring systems (CEMS).

4.7.2 Calibration drift determination and adjustment of CEMS.

4.7.3 Periodic CEMS relative accuracy determinations.

4.7.4 Preventive manitenance of CEMS (including spare parts inventory).

4.7.5 Data recording and reporting.

4.7.6 Program of corrective action for malfunctioning CEMS.

4.7.7 Criteria for determining when the CEMS are not producing valid data.

4.8 For the purpose of conducting the continuous emission monitoring system performance specification tests as required by § 60.13 and Appendix B, the following conditions apply:

4.8.1 The calibration drift specification of Specification 2, Appendix B shall be determined separately for the Unit 1 SO_2/diluent systems and the Unit 2 SO_2/diluent system.

4.8.2 The relative accuracy of Specification 2, Appendix B shall apply to the calculated combined emission rate for Unit 1 and Unit 2. The required relative accuracy is ± 20 percent using the procedures in Specification 2 simultaneously at Unit 1 and Unit 2.

4.8.3 If, during the instrument performance test period, the DAFGDS bypass stack gas volumetric flow rate monitoring device indicates a detectable flow or if the temperature or SO_2 concentration in the bypass stack indicates that leakage to the bypass is occurring or if the static pressures in the DAFGDS inlet ducts are positive, then the relative accuracy determination for the Unit 1 CEMS must include the DAFGDS bypass combination. To determine the relative accuracy of the Unit 1 flow combination:

4.8.3.1 Determine the volumetric flow rate using Method 2 at the bypass stack and the DAFGDS inlet ducts concurrently with the Method 6 tests required at the DAFGDS and bypass stacks.

4.8.3.2 Compute "E (Unit 1)" (Section 4.5) using the reference methods results.

4.8.3.3 Compute "E (Unit 1)" using the concurrent CEMS and flow rate monitoring device results.

4.8.3.4 Compute the relative accuracy as outlined in Specification 2 using the results in 4.8.3.2 and 4.8.3.3. The resulting relative accuracy for this separate system must be within ± 20 percent.

5. Recordkeeping Requirements

5.1 The plant owner or operator shall keep a record of each hourly emission rate and each hourly Btu heat input rate, hourly steam rate, or hourly electrical power output for Unit 1 and for Unit 2, and a record of each hourly weighted average emission rate. These records shall be kept for all periods of operation of Unit 1 or 2, including emissions of Unit 1 (E1) during periods of DAFGDS startup, shutdown, and malfunction when H1 is assumed to be zero (0) (see 4.5).

5.2 The plant owner or operator shall keep a record of each hourly gas flow rate to the DAFGDS, each hourly stack gas flow rate to the bypass stack during any periods that the DAFGDS bypass damper is opened, and reason for bypass operation.

6. Reporting Requirements

6.1 The owner or operator of any affected facility shall submit the written reports required under 6.2 of this section and Subpart A to the Administrator for every calendar quarter. All quarterly reports shall be submitted by the 30th day following the end of each calendar quarter.

6.2 For sulfur dioxide, the following data are submitted to the Administrator for each 24-hour period:

6.2.1 Calendar date

6.2.2 The combined average sulfur dioxide emission rate (ng/J or lb/million Btu) for the past 30 successive boiler operating days (ending with the last 30-day period in the quarter); and, for any noncompliance periods, reasons for noncompliance with the emission standards and description of corrective action taken.

6.2.3 Identification of the boiler operating days for which valid sulfur dioxide emissions data required by 4.6 have not been obtained for 75 percent of the boiler operating hours; reasons for not obtaining sufficient data; and description of corrective actions taken to prevent recurrence.

6.2.4 Identification of the time periods (hours) when Unit 1 or Unit 2 were operated but combined hourly emission rates (EC) were not calculated because of the unavailability of parameters E1, E2, H1, or H2 as described in 3.2.

6.2.5 Identification of the time periods, (hours) when Unit 1 and Unit 2 were operated and where the combined hourly emission rate (EC) equalled Unit 2 (E2) emissions because of the Unit 1 malfunction provisions under 3.5.3, 3.5.4, and 3.5.5.

6.2.6 Identification of the time periods (hours) when emissions from the Unit 1 DAFGDS have been excluded from the calculation of average sulfur dioxide emisison rates because of Unit 1 DAFGDS startup, shutdown, malfunction, or other reasons; and justification for excluding data for reasons other than startup or shutdown. Reporting of hourly emission rate of Unit 1 (E1) during each hour of the DAFGDS startup, shutdown, or malfunction under 3.5.1, 3.5.2, 3.5.3, 3.5.4, and 3.5.5 (see 4.5).

6.2.7 Identification of the number of days in the calendar quarter that the affected facility was operated (any fuel fired).

6.2.8 Identify any periods where Unit 1 DAFGDS malfunctions occurred and the cumulative hours of Unit 1 DAFGDS malfunction for the quarter.

6.2.9 Identify any periods of time that any exhaust gases were discharged to the DAFGDS bypass stack and the hourly gas flow rate to the DAFGDS and to the DAFGDS bypass during such periods and reason for bypass operation.

6.2.10 Identification of each hourly emission rate (E1) and average heat input rate (H1) for Unit 1, each hourly average emission rate (E2) and average heat input rate (H2) for Unit 2, and each hourly weighted average emission rate (EC).

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S.J. Res. 76/Pub. L. 100–81

To designate the week of October 4, 1987, through October 10, 1987, as "Mental Illness Awareness Week." (July 31, 1987; 101 Stat. 543; 2 pages) Price: $1.00

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Briefings on How To Use the Federal Register—
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Title 3—

The President

Proclamation 5686 of July 31, 1987

Helsinki Human Rights Day, 1987

By the President of the United States of America

A Proclamation

Twelve years ago, the United States, Canada, and 33 European countries signed the Helsinki Final Act of the Conference on Security and Cooperation in Europe. These nations thereby committed themselves to observe important standards of international conduct and to respect basic human rights and fundamental freedoms at home. They also pledged themselves to pursue practical steps to reduce the barriers by which the Soviet Union has divided Europe into East and West, denying the nations of Eastern Europe the right of self-determination and limiting contact between peoples.

The Helsinki Final Act embodies its signatories' agreement that freedom and human rights are the best guarantors of peace. It mandated that these freedoms, routinely enjoyed by the peoples of the West, be recognized and respected as well in the Soviet Union and Eastern Europe. After more than a decade, though there have been some limited gains, that mandate has not been fulfilled.

The Soviet Union and the Soviet-dominated governments of Eastern Europe have systematically violated many of their most fundamental Helsinki pledges. Freedoms of thought, conscience, religion, and belief are constrained. Loved ones, families, and friends are kept apart. The flow of ideas and information is restricted. The right of the individual to depart from and return to his own country is denied. Helsinki monitors and other prisoners of conscience continue to languish in prisons, labor camps, psychiatric hospitals, and internal exile, merely for expressing their political and religious beliefs. In Perm Camp 36–1, the most brutal of the labor camps in the Gulag, ten political prisoners—three of whom were Helsinki monitors—have died in the last 3 years. Harsh treatment and lack of medical care threaten the lives of those remaining in the camp.

These and other violations have exacted a fearsome and tragic human cost, and they reflect a disregard for the fundamental principle that in order for any of a nation's international agreements to be respected, all must be observed. The continuing violations of Helsinki obligations by the Soviet Union and the Soviet-dominated countries of Eastern Europe place in doubt those nations' faithful observance of their international obligations in every sphere.

The third Follow-up Meeting of the Conference on Security and Cooperation in Europe has been underway in Vienna since November 1986. The primary aim of the United States and its NATO Allies in Vienna is to secure compliance by the East with the commitments made at Helsinki, so that citizens in all the signatory states can enjoy the fundamental freedoms agreed to in the Final Act.

The Congress, by Senate Joint Resolution 151, has designated August 1, 1987, as "Helsinki Human Rights Day" and has authorized and requested the President to issue a proclamation in its observance.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim August 1, 1987, as Helsinki Human Rights Day and reaffirm the American commitment to universal observance of the values enshrined in the Final Act. These values are fundamental to our way of life and a source of inspiration to peoples around the world. In renewing our dedication with appropriate programs, ceremonies, and activities, let us call upon all signatories of the Final Act to match deeds with words and to respect in full its solemn principles and provisions.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of July, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 87-17900
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Proclamation 5687 of July 28, 1987

Thanksgiving Day, 1987

By the President of the United States of America

A Proclamation

Thanksgiving Day is one of our most beloved holidays, an occasion set aside by Americans from earliest times to thank our Maker prayerfully and humbly for the blessings and the care He bestows on us and on our beautiful, bountiful land. Through the decades, through the centuries, in log cabins, country churches, cathedrals, homes, and halls, the American people have paused to give thanks to God, in times of peace and plenty or of danger and distress.

Acknowledgement of dependence on God's favor was, in fact, our fledgling Nation's very first order of business. When the delegates to the First Continental Congress met in Philadelphia in 1774, they overcame discord by uniting in prayer for our country. Despite the differences among them as they began their work, they found common voice in the 35th Psalm, which concludes with a verse of joyous gratitude, "And my tongue shall speak of thy righteousness and of thy praise all the day long."

This year, of course, our Thanksgiving Day celebration coincides with the Bicentennial of the Constitution. In 1789 the government established by that great charter of freedom, and "the civil and religious liberty with which we are blessed," were cited by George Washington in the first Presidential Thanksgiving Proclamation as among "the great and various favors" conferred upon us by the Lord and Ruler of Nations. As we thank the God our first President called "that great and glorious Being, who is the beneficent Author of all the good that was, that is, or that will be," we have even greater cause for gratitude than the fresh triumphs that inspired Washington's prose. We have seen the splendor of our natural resources spread across the tables of the world, and we have seen the splendor of freedom coursing with new vigor through the channels of history. The cause for which we give thanks, for which so many of our citizens through the years have given their lives, has endured 200 years—a blessing to us and a light to all mankind,

On Thanksgiving Day, 1987, let us, in this unbroken chain of observance, dedicate ourselves to honor anew the Author of Liberty and to publicly acknowledge our debt to all those who have sacrificed so much in our behalf. May our gratitude always be coupled with petitions for divine guidance and protection for our Nation and with ready help for our neighbors in time of need.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim Thursday, November 26, 1987, as a National Day of Thanksgiving, and I call upon the citizens of this great Nation to gather together in homes and places of worship on that day of thanks to affirm by their prayers and their gratitude the many blessings God has bestowed upon us.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of July, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Changes in Property Insurance Requirements for NRC Licensed Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations requiring licensees to maintain substantial amounts of onsite property insurance to provide financial security for stabilizing and decontaminating their licensed reactors in the event of an accident. These changes will increase the amount of insurance required to $1.06 billion, impose a modified decontamination priority on any proceeds from such insurance, and require that proceeds subject to the decontamination priority shall be paid to an independent trustee. All commercial reactor licensees are subject to this rule.

EFFECTIVE DATE: October 5, 1987.

FOR FURTHER INFORMATION CONTACT: Robert S. Wood, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301/492–8413.

SUPPLEMENTARY INFORMATION:

I. Background

On November 8, 1984, a proposed rule was published in the **Federal Register** (49 FR 44645) which would increase the amount of onsite property damage insurance that commercial reactor licensees are required to carry pursuant to 10 CFR 50.54(w). Operating reactor licensees are currently required to carry both (1) the maximum amount of property insurance offered as primary coverage by either American Nuclear Insurers/Mutual Atomic Energy Reinsurance Pool (ANI/MAERP) or Nuclear Mutual Limited (NML)—currently $500 million—and (2) any excess coverage in amount no less than that offered by either ANI/MAERP—$120 million—or Nuclear Electric Insurance Limited (NEIL–II)—$810 million. Thus, the minimum currently required under the rule is $500 million primary coverage and $120 million excess coverage. By buying both excess layers, utilities are able to purchase a total of $1.23 billion in property insurance.

The proposed rule also provided for a modified decontamination priority on any proceeds from such insurance and sought comment on several related issues.

II. Summary and Analysis of Comments

The NRC received 35 comments on the proposed rule to amend its property insurance regulations. The comments may be grouped as follows:

21 Utilities
5 Counsel to Utilities
3 Insurers/Insurance Trade Groups
2 Utility/Nuclear Trade Groups
2 Individuals
1 Bar Association Committee
1 Environmental Interest Group

Because the issues considered in the rulemaking are complex and affect different utilities in different ways, the focus of the comments varied considerably. Nevertheless, the majority of utility commenters tended to endorse the positions taken by two trade groups, the Atomic Industrial Forum and the Edison Electric Institute, but chose to emphasize areas of their particular concern. The two individuals who commented tended to support the positions of those utilities with smaller plants worried about being required to carry more insurance than they believe is necessary. The set of comments from the environmental interest group supported most aspects of the NRC's proposal. The insurers provided a slightly different perspective from the utilities but made many of the same points. The Bar Association Committee comments provided the most distinct perspective on one aspect of the proposed rule, the decontamination priority.

The following is a detailed discussion and analysis of the comments received arranged according to topic. The topics are: (1) Amount of insurance; (2) method of future adjustment of insurance; (3) site-wide vs. unit coverage; (4) State prohibitions against buying certain types of insurance; (5) the decontamination priority; and (6) other issues. Of greatest concern to the commenters was item five, NRC's proposal to require insurance proceeds to be used first to decontaminate the facility when so required to protect public health and safety and so ordered by the Director of the Office of Nuclear Reactor Regulation.

1. Amount of Insurance

Summary of Comments: Most of the commenters, including most utilities and their representatives, either supported the proposed coverage limit of $1.02 billion or at least found it acceptable or non-burdensome. However, most of those who accepted the proposed limit in principle suggested that the rule be modified to reflect the potential for reductions in capacity because of changes in the insurance markets. To avoid such a situation, several commenters suggested that the rule be modified to require either $1.02 billion or, if that amount were not available, the total of the primary coverage offered by either ANI/MAERP or NML plus the total excess coverage offered by both ANI/MAERP and NEIL–II. Others suggested a modification to allow utilities which may incur property losses during a particular policy year to take reasonable steps to have their insurance reinstated so as not to be in technical violation of NRC's regulations. To avoid this, commenters suggested that the NRC clarify its position that claims made by a utility which resulted in a reduction in policy limits for that policy year would not be considered a violation of NRC regulations. Alternatively, some proposed that § 50.54(w) be amended to require a licensee to take reasonable steps to obtain reinstatement of insurance, an action keeping that licensee in compliance with § 50.54(w). Another commenter suggested that reductions in capacity could be handled by allowing a "cushion" of $50 million to $100 million between what is available and what the NRC requires. Special action should be required on reinstatement only if it affected public health and safety.

A few commenters took issue with the amount established. One suggested that

the rule is not sufficiently flexible because it would require insurance to be purchased from all insurers offering this coverage, which tends to limit a utility's options. It was alleged that this requirement might also lead to anti-competitive behavior. Another stated that the NRC should not be concerned with the full cost of restoring a reactor to service after an accident but rather with the costs associated with protecting public health and safety. This commenter suggested using decommissioning funds for cleaning up after an accident, and stated that, because of lessons learned from TMI, cleanup costs have been substantially reduced. Another commenter suggested rounding off required coverage of $1 billion because of the lack of precision in establishing a required amount. A non-utility commenter suggested that the "enormous" premiums generated for property insurance are directly removed from expenditures that would otherwise be made for nuclear safety. One commenter suggested that requiring a specific dollar amount, rather than all that is offered, would lead to the established figure being considered by utilities a maximum as well as a minimum.

Several commented on the related issue of whether special provisions should be made for licensees of smaller reactors. Most who commented on this issue supported the NRC proposal of not specifically providing for smaller reactors in the rule but rather treating them on an ad hoc basis through the exemption process. A few commenters indicated their support for special provisions for smaller reactors based on physical size, core inventory, etc. Even those against special treatment of smaller reactors suggested that existing exemptions should remain unaffected by the new rule and that the final rule should clarify that this interpretation is correct.

NRC Response: 1.a. Issue: Amend the rules to reflect reductions in available insurance through changes in insurance capacity.

Response: The NRC believes there is some merit in commenters' proposals to address in the rule the problem of reductions in capacity. To require more than what is available would be meaningless because licensees' only realistic alternative to buying insurance would be to self-insure which the NRC determined would provide no additional assurance. This is discussed under issues "4". Futher, the Commission has traditionally never required more insurance than that generally available. Surety bonds, letters of credit, and other methods of assurance may be available to certain licensees in relatively small amounts, but would probably not be generally available especially if capacity shrank substantially.

Consequently, the NRC has modified the rule to allow the lesser of the specific amount or the maximum available from insurance sources. The Commission will continue to monitor the adequacy of the amount of property insurance that is available to reactor licensees.

The NRC also believes that there is justification for amending the rule to provide reasonable time for reinstatement of insurance when a claim filed by an insured causes coverage at a facility to be reduced during the remainder of the policy year by the amount of the claim. Because a reduction would be for only the remainder of the policy year, after which the insurance would be automatically reinstated, the NRC does not believe a serious threat to public health and safety would exist. It is highly unlikely that any single utility would face two large accidents within one year at the same site. Therefore, the NRC has modified the rule to require that licensees take reasonable steps to obtain reinstatement of insurance within 60 days.

1.b. Issue: Change the amount of insurance required.

Response: Because most commenters supported the amount of coverage proposed in the rule, there was little discussion of whether that figure should be changed. A few commenters stated that coverage was higher than necessary to protect public health and safety or too imprecise to be specified to the degree done in the rule. However, in the proposed rule, the rationale for requiring $1.02 billion was not only that this was the most available at that time, but that it approximated the maximum estimated in a PNL study [1] to be necessary to clean up a reactor in its entirety after an accident. The actual maximum required was estimated to be $1.06 billion. The amount currently available is $1.23 billion. The Commission believes that $1.6 billion should be required, because at least that amount is now available and no other amount is as technically supportable.

The NRC does not believe that most utilities would have difficulty obtaining the slightly higher amount since most choose to buy the maximum available. The NRC agrees that the process of determining the actual amount needed to protect public health and safety is imprecise and that the threat to public health and safety usually decreases as cleanup progresses. Clearly, there is a sliding scale of effect on public health and safety so that after some undetermined point is passed, the contributions to public health and safety that additional amounts of insurance would make are less significant, although this problem is addressed more fully in the discussion on the decontamination priority. Thus, there currently appears to be no adequate basis for selecting any figure that would be better than the amount suggested in the PNL report. The NRC is not persuaded that there is any compelling reason to keep the $1.02 billion originally proposed, or to round off to $1 billion, or to choose some figure other than the $1.06 figure derived from the PNL report.

The NRC is also not persuaded by the argument that requiring the purchase of insurance is unduly restrictive or may lead to anti-competitive behavior by forcing the purchase of insurance from all carriers. Other carriers could conceivably enter the insurance market. In fact, by requiring a specific dollar amount rather than insurance from specific carriers, NRC has avoided a restriction which would have prohibited others from offering the insurance. Similarly, NRC does not accept the argument that the $2–3 million spent per reactor on insurance premiums each year represent a drain on a licensee's expenditures on safety. These premiums represent only small percent of a licensee's annual expenditures on operating the reactor safely. NRC also notes that the utilities did not state that they had been prevented from receiving ratepayer revenues to cover the insurance premium expenses.

The argument that a specified dollar amount will be considered a maximum as well as a minimum is beside the point. The Commission has based its amount on what the PNL study determined would be needed for decontamination and cleanup following an accident. Any amount above that has

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[1] *Technology, Safety and Costs of Decommissioning Reference Light Water Reactors Following Postulated Accidents*, (NUREG/CR–2601), Pacific Northwest Laboratory, November 1982. (See especially pages 2–20 to 2–28. The PNL study estimated that accident cleanup costs at a reference PWR following a scenario 3 accident would be approximately $404 million. However, additional costs that can appropriately be ascribed to such an accident include:

Base operations and maintenance	$124M
Design differences (when comparing to TMI-2)	$84M
Cost escalation during cleanup	$209M
Additional decontamination of the containment building	$100M
Net Stabilization cost	$139M

When these costs are added to the $404 million basic cleanup cost estimate, a total of $1.06 billion is derived.) This report is available for purchase from the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082.

not been shown to be significant in protecting health and safety, but represents the economic replacement of the facility itself. If a utility decides not to insure for the replacement value of its plant, that is its decision to make.

1.c. Issue: Clarify that exemptions already granted will not be affected by new rulemaking.

Response: The NRC agrees that the reasons for exemptions from the current rule have not been changed by the final rule. Exemptions have been granted to four licensees of small reactors from carrying the full amount of insurance currently required by 10 CFR 50.54(w). These exemptions were based on case-by-case analysis of accident costs at the specific plants. Increasing the required amount of insurance based on general technical studies in no way negates the continued validity of the specific studies upon which the existing exemptions were based. Thus, the exemptions for amounts of property insurance required should remain in effect. Licensees currently exempt from full requirements of 10 CFR 50.54(w) will not be required to reapply for an exemption.

2. Method of Future Adjustment of Insurance

Summary of Comments: Almost all who commented on this issue suggested that future changes should be effected by rulemaking based on a periodic assessment of need. Some suggested updating the PNL report. Commenters generally argued that relying on some formula tied to measures of inflation or increasing insurance based on availability would not be appropriate. They believe that an inflation-based formula probably would not reflect the actual needs for insurance necessary to protect public health and safety because decontamination cost changes could not be measured accurately by any existing cost index. Additionally, changes in an index might lead to property insurance requirements that would outstrip the availability of insurance. Similarly, requirements based simply on the capacity available would not necessarily equal the amount necessary for decontamination. Insurance capacity tends to increase based on the demand for it. This demand is not only comprised of funds necessary for decontamination and debris removal, but also reflects the needs of insureds and their owners for compensation to replace the facility, a concern beyond the province of the NRC.

One commenter suggested that insurers determine the future amount to be required, which presumably is akin to requiring whatever capacity is available.

NRC Response: The NRC basically accepts the reasoning propounded by most commenters on this issue. Property insurance capacity available now has apparently reached, if not exceeded, the maximum amount necessary to decontaminate and clean up a large commercial reactor as determined by the PNL study. Although there may be cost increases in the future, no satisfactory formula for measuring them exists. Unlike such measures as the Consumer Price Index or the Handy-Whitman construction index, measures of decontamination costs depend on a very limited universe of experience. Furthermore, present trends suggest that growth in insurance capacity will outstrip decontamination cost escalation. It can be expected that most licensees will purchase the maximum available notwithstanding changes in NRC requirements.

Of course, NRC resources might be required to perform periodic analyses to determine changes in accident recovery costs and possibly to conduct rulemaking based on these analyses. Nevertheless, as one commenter has pointed out, any future rulemakings should be substantially less onerous and involved than the present one. Even PNL technical studies should be substantially less expensive if the same cost estimation methodology were to be used. Thus, the costs to the NRC of any future rulemaking should be lower. These costs would most likely be less than the excess premium costs incurred by those few licensees who would be required to buy more insurance than they otherwise would because of any automatic upward escalation of insurance requirements as discussed above.

3. Site-Wide vs. Unit Coverage

Summary of Comments: Very few commenters addressed this issue directly, although some discussed it in relation to the reinstatement considerations covered under issue "1". Consequently, most recommendations were concerned with allowing a reasonable period for licensees to obtain reinstatement of coverage for their facilities. One commenter suggested that some latitude be allowed so that different licensees sharing the same site would not be required to maintain a single insurance limit for the site. Most others strongly endorsed the NRC's acceptance of site-wide as opposed to per-unit coverage.

NRC Response: The NRC continues to believe that site-wide coverage is appropriate given that general per-unit coverage has not been and probably will not be available and that the chance of a second accident occurring at one site during a policy year prior to reinstatement of the full policy limits is extremely remote. As indicated under issue "1", the NRC also believes three is some merit in revising the rule to allow reasonable steps to be taken for reinstatement. With respect to the comments that provision be made for units of different licensees at the same site, the NRC agrees. Although per-site coverage is acceptable where a single licensee owns more than one reactor, separate coverage is needed for different licensees operating different units at the same site. This is because differences in factors such as reactor design and utility management can result in different risks for different licensees. In addition, separate coverage conforms to the manner in which reactor property damage insurance is offered and held. For these reasons, the final rule requires each licensee to obtain property damage insurance for its nuclear facilities. Thus, different licensees operating different units at the same site would each have to provide coverage for their reactor units.

4. State Laws Prohibiting the Purchase of Certain Insurance

Summary of Comments: Relatively few comments were received on the issue of what should be done about those utilities subject to State laws or constitutional provisions prohibiting the purchase of mutual or retroactive insurance.[2] All those commenting on this issue insisted that the NRC must show greater flexibility to those utilities prohibited from buying full insurance coverage. Commenters suggested that § 50.54(w)(3)[3] of the existing rule should be retained. This section provides some leeway for affected utilities either to obtain alternate coverage or to be exempted from unachievable NRC requirements.

Several commenters indicated that they have taken a variety of steps to

[2] Prohibitions generally take two forms. One prohibits public entities in some States from owning stock in private corporations. Such prohibitions have been construed to include the purchase of insurance from mutual insurance companies whereby the insured becomes an owner of the company. A second prohibits public entities from extending credit to private corporations, an action interpreted to include the payment of retrospective premiums. The insurance offered by NML and NEIL–II is mutual insurance and may require the payment of retrospective premiums.

[3] This paragraph reads, "When a licensee is prohibited from purchasing on-site property damage insurance because of state or local law, the licensee shall purchase the specific amount of such insurance found by the NRC to be reasonably available to that licensee, or to obtain an equivalent amount of protection . . ."

attempt to purchase additional insurance. One commenter described recent efforts to amend the sections of the Texas Constitution pertaining to the prohibitions against purchasing insurance. The only way the Texas Constitution can be amended is by referendum and the proposal submitted to Texas voters in November 1984 was defeated. Another commenter indicated that the Nebraska Constitution prohibits public entities in the State from becoming "a subscriber to the capital stock, or owner of such stock, or any portion of interest therein of any railroad, or private corporation, or association" (Article XI, Section I). The New York Power Authority stated that NEIL–II excess insurance is unavailable to it at the present time but did not explain why.

Some commenters indicated that they have made efforts to secure equivalent protection, including surety bonds or letters or lines of credit. However, instruments in the amount necessary to comply with the rule are not available. Even if available, however, these commenters concluded that "the existence of such protection on a liability (however contingent), backed by no assets and not covered by any current revenues, would effectively preclude them from future financing needed to maintain, improve, and expand their physical plant." Commenters concluded, therefore, that they would be unable to furnish evidence of equivalent protection in accordance with the proposed rule.

Commenters suggested that three alternatives exist. First, affected utilities could continue to explore with NEIL–II the possibility that through amendment to its by-laws and charter and to its current policies, NEIL–II could offer insurance structured to comply with State law. Nebraska publicly-owned utilities have done this and are awaiting a decision by the Nebraska Supreme Court. Second, the relevant portions of State laws or constitutions could be amended. However, as indicated above, this could be a protracted process with no assurance of success. Third, licensees could seek exemption under 10 CFR 50.12 from the proposed amendments. Several commenters mentioned that if these alternatives were unavailable, they would probably be forced to shut down their reactors at enormous cost.

Finally, one commenter suggested that one result of the NRC's proposal in this area was to inject itself into the regulation of terms and conditions of property insurance, a result the NRC previously indicated it wished to avoid.

NRC Response: The proposed rule was designed to allow utilities either to purchase the requisite insurance or to demonstrate an equivalent amount of protection by alternate means. When the Commission published the proposed rule for public comment, it believed that such alternate means of financial assurance would be available. This assumption formed the basis for the Commission's conclusion that it probably could not promulgate a rule that would preempt the State prohibitions at issue. Based on the comments received, however, it now appears that alternate means of protection might not be available to some utilities. As noted above, these utilities indicated that surety bonds or letters or lines of credit are not available in the amount necessary to comply with the proposed rule. Self insurance, although discussed as a possibility in the legal analysis of the preemption question, would not be acceptable because the potential liability would greatly exceed the net assets of the affected utilities. Thus, a guarantee based on the financial strength of the licensee would be insufficient. A trust fund based on collections from customers would be prohibitively expensive if funded immediately, because it would require collecting the entire amount in advance. If funded over a period of time, it would not meet the Commission's objective of providing financial assurance for decontamination and cleanup because an accident could occur before the full amount had been collected.

In these circumstances, the Commission believes that a clear conflict exists between the requirements of Federal and State law. The Commission has determined that $1.06 billion of nuclear property damage insurance is needed to stabilize, decontaminate and clean up a reactor after an accident so as to mitigate potential threats to the health and safety of workers and the public and to the environment. Accordingly, the Commission is requiring reactor licensees to purchase this insurance. Some State laws or constitutions prohibit certain licensees from purchasing mutual or assessment insurance. No other insurance is available in an amount sufficient to comply with the Commission's requirement. There are no reasonable alternative means of financial assurance available to these licensees. Based on these changed circumstances, the Commission believes that its property insurance rule would preempt conflicting State laws.

There can be no doubt that this rule is concerned with reactor safety. Indeed, in discussing the issue of whether to impose a decontamination priority in the proposed rule the Commission stated:

> In fact, the Commission has no reason to impose a property insurance requirement other than to protect the public health and safety. Proceeds from insurance would be used both to assure that contamination from a reactor immediately after the accident did not threaten public health and safety and the environment and to eliminate delays and degradations to the cleanup process that could cause threats to health, safety and the environment over time.

Thus, the rule operates in an area of exclusive Federal control. Although the State prohibitions at issue do not attempt to regulate within this area, they prohibit what the Commission's rule requires. They would, therefore, be preempted because they are in direct conflict with Federal law. It should be noted that "[f]ederal regulations have no less preemptive effect than federal statutes." Capital Cities Cable, Inc. v. Crisp, 81 L.Ed.2d 580, 589 (1984), quoting Fidelity Federal Savings and Loan Assn. v. De La Cuesta, 458 U.S. 141 (1982). In addition, the State prohibitions concern insurance, a matter that the States have traditionally regulated. Accordingly, Congressional intent to preempt must be "clear and manifest." Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947). Such intent is present, however, when the requirement of Federal and State law are in conflict. See Florida Avocado and Lime Growers v. Paul, 373 U.S. 132, 142–43 (1963); Ferebee v. Chevron Chemical Co., 736 F.2d 1529 (D.C. Cir. 1984), cert. denied, 469 U.S. 1062 (1984).

A conflict with Federal law arises when compliance with both Federal and State law is impossible or the State law frustrates the accomplishment of a Federal objective. Pacific Gas and Electric Co. v. State Energy Resources Conservation and Development Commission, 461 U.S. 190, 204 (1983). In Capital Cities, supra, the Supreme Court held that an FCC regulation requiring cable television operators to carry certain broadcast signals without alteration preempted an Oklahoma constitutional provision prohibiting the advertising of alcoholic beverages within the State. State law compelled deletion of wine commercials, an action that Federal law prohibited. Cable operators who complied with Federal law were subject to criminal prosecution under State law.

The Court found a conflict based on the impossibility of complying with both Federal and State law, as well as obstruction of the Federal objective of

increased program diversity. 81 L.Ed.2d at 593–94. Similarly, it is impossible for a reactor licensee to comply with both the Commission's rule requiring the purchase of nuclear property damage insurance and the State constitutional provisions prohibiting the purchase of that insurance. In addition, the State prohibitions interfere with the Federal objective of exclusive Federal regulation of reactor safety. Thus, the provisions of Federal and State law are clearly in conflict.

This conclusion is consistent with recent Supreme Court decisions on Federal preemption under the Atomic Energy Act, notwithstanding the absence of a conflict in those cases. In Pacific Gas, supra, the Court upheld California's moratorium on the certification of new nuclear power plants pending Federal approval of a demonstrated technology or means for the permanent disposal of high level radioactive wastes. The Court reasoned that, under the Atomic Energy Act, Congress provided for a system of dual regulation of nuclear-generated electricity in which the Federal Government maintains complete control over reactor safety and the States exercise their traditional authority over economic questions, such as the need for power, type of facilities to be licensed, land use, and ratemaking. Because the moratorium was based on economic rather than safety concerns and did not conflict with Federal safety regulations, the Court held that the California statute was not preempted. The Court relied on the fact that the moratorium would only affect reactors at the planning stage, cautioning that "[s]tate regulations which affected the construction and operation of federally approved nuclear power plants would pose a different case." 461 U.S. at 223 n.34. The State prohibitions at issue here affect a reactor licensee's ability to comply with the Commission's safety requirements. Thus, they would affect the operation of a Federally licensed reactor and would not escape Federal preemption under the rationale of Pacific Gas.

In Silkwood v. Kerr-McGee Corp., 464 U.S. 238, (1984), the Supreme Court held that the Atomic Energy Act does not preempt an award of punitive damages under State tort law for personal injuries or property damage from radioactive materials. The Court examined the legislative history of the Price-Anderson Act and found ample evidence that Congress had assumed that remedies under State tort law would continue to be available to persons injured by nuclear incidents. There was no conflict with Federal law because licensees could pay both Federal fines and State-imposed punitive damages. Citing a failure of proof, the Court declined to decide whether an award of damages could be so large as to conflict with the NRC's policy of avoiding penalties which would put a licensee out of business or have an adverse effect on safety. Thus, the Court did not preclude the possibility of Federal preemption in an appropriate case based on a conflict with Federal law.

Finally, the Commission rejects the notion that a conflict with Federal law could be avoided by the licensee's option of ceasing to operate the reactor. Rather, the Commission believes that in analyzing this issue, a court would conclude that a conflict exists where the licensee's only option is to withdraw from its Federally licensed activities. This is suggested not only by Pacific Gas, supra, but by other Federal preemption cases. See, e.g., Ferebee, supra, 736 F.2d at 1541; Douglas v. Seacoast Products, Inc., 431 U.S. 265 (1977); Sperry v. Florida, 373 U.S. 379 (1963).

The Commission believes that, where a reactor licensee has no reasonable alternatives to purchasing nuclear property damage insurance, the State prohibitions at issue would conflict with Federal law. For all the foregoing reasons, the Commission concludes that its property insurance rule would preempt these State prohibitions.

5. Decontamination Priority

Summary of Comments: The great majority of comments received on the proposed rule focused on the NRC's proposal to require some form of decontamination priority, that is, proceeds from insurance should be used to decontaminate and clean up after an accident before any other purpose such as facility restoration or payment of investors.

Although the comments in response to the Advance Notice of Proposed Rulemaking (ANPRM) published on June 24, 1982 (47 FR 27371) evoked a similar degree of interest in the issue of decontamination priority, comments on the proposed rule provide more detail and elaboration of the reasons for the extensive opposition to the NRC proposal.

The NRC proposal was drafted as a modified decontamination priority [4] with hope that earlier objections by utilities could be ameliorated. In the ANPRM, utilities had objected to an absolute decontamination priority because such a priority: (1) Would conflict with trust indenture language and fuel leasing agreements that require licensees in general to maintain sufficient insurance to protect bondholders and fuel lessors in case of damage to property; (2) would be unnecessarily restrictive in allowing utilities to respond to an accident and thus would inhibit an expedited recovery and adversely affect public health and safety; (3) could, because of reduced investor protection, lead to reduce access to funds from investors or increased cost of funds; and (4) would be unnecessary because of the existing priority offered in the excess layer through NEIL–II. (This priority covers ". . . all expenses necessarily incurred in discharging the obligation or liability of the Insured(s) to remove debris of and to decontaminate the property covered by this Policy following direct physical damage to such property caused by any peril covered under the Underlying Property Policy . . ." (see NEIL's Decontamination Liability and Excess Property Insurance Policy, p. 12)).

Many of these same arguments were raised again by commenters in response to the modified decontamination proposal. Some commenters indicated that a modified priority, while not as seriously affecting finances as an absolute priority, would still have substantial adverse impact. This point was made most comprehensively by the Edison Electric Institute (comment 13) and endorsed by several other commenters. It stated in part:

> While the EEI recognizes that the Commission sought to afford utilities some financial flexibility to respond to any future accident by giving the Director of Nuclear Reactor Regulation the authority to require payments under the decontamination priority, the sole substantive standard guiding the use of this authority is that he may direct insurance proceeds be used 'to the extent that such decontamination is required to protect public health and safety.' . . . While this approach provides more flexibility than an absolute decontamination priority, we continue to have serious concerns about this proposal. In particular, there seems to be virtually no limit upon the discretion of the Director, other than the 'public health and safety' standard. If an accident were to occur, we fear that the Director would immediately impose the decontamination priority for all insurance proceeds, whether or not all funds are necessary to protect public health and safety since this step maximizes his future options. Once this happens, there would be no administrative mechanism to cause a reconsideration of this decision. Moreover,

[4] As proposed, paragraph 50.54(w)(3) reads, "The proceeds of this insurance shall be used first to decontaminate the licensed reactors before any other purpose when and to the extent that such decontamination is required to protect public health and safety and is so ordered to be used by the Director of Nuclear Reactor Regulation."

the Director is likely to be under pressure from multiple sources to (1) require decontamination prior to other actions that may be appropriate to restore the property to operating condition and (2) manage the course of repair and clean-up through his control of the insurance proceeds. These factors cause EEI to fear that the broad discretion vested in the Director over the use of proceeds from the decontamination priority may effectively deprive utilities of any of the benefits of property insurance. In effect, the Director would become the ultimate manager of the decontamination and repair operation.

EEI believes one way to balance the need for flexibility to respond to an accident with the need to limit the Director's authority over property insurance proceeds is to restrict the time period in which any order regarding the use of proceeds from property insurance for decontamination remains in effect. Limiting the duration of any such order will ensure that post-accident response decisions are periodically reevaluated as conditions change and new information becomes available. EEI proposes that the Director's initial determination respecting use of the property insurance proceeds for decontamination shall issue a new order regarding the use of such proceeds. This second order would remain in effect for no more than six months. It could be followed by new orders which terminate every six months. All such orders should be final orders which are subject to judicial review. Each should reveal the rationale, basis and record which are relied upon support the Director's determination. In addition, the Director should sequest [sic] only those portions of the insurance funds reasonably needed for decontamination so that funds also would be available to carry out other activities necessary to restore the utility's property.

Finally, EEI interprets the Commission's proposal to allow the Director to act expeditiously without holding hearings since that could seriously delay the decisionmaking process. In order to avoid any confusion, we suggest the Commission confirm our understanding of this process.

Other commenters suggested similar problems. For example, by not establishing standards or criteria by which the Director of NRR is to order a decontamination priority, the resulting uncertainty would be as unsettling to investors as a more rigid priority. Further, such an order would probably be subject to a protracted review process, open to intervention, and might so tie up funds that the cleanup process could be hampered and public health and safety adversely affected. One commenter stated that, although the NRC has authority to impose decontamination requirements on a licensee, it does not have authority "to dictate either to insurers or to indenture trustees how they are to deal with the insurance proceeds" (comment 15). Similarly, another commenter suggested that requiring a decontamination priority would preempt the coverages filed by ANI/MAERP with State insurance departments and would thus be in effect a preemption of State law, a result the NRC sought to avoid (comment 7, p. 2).

Another commenter analyzed several scenarios in which an accident caused varying amounts of damages and the resulting actions that probably would be taken by the trustee (Comment 15, p. 2):

> If the damaged plant can be reused, decontamination would be a necessary element of the repair, and the trustee would release insurance proceeds. After initial decontamination, repairs would proceed simultaneously with decontamination. The only effect of an order establishing a priority for decontamination would be to forbid use of the funds acquired from the trustee for anything but decontamination. This would presumably require the licensee to segregate and invest the portion of the insurance proceeds trhat would be spent on repairs rather than decontamination and to use other sources of funds for the repairs. When the priority order was lifted, the segregated funds could then be used to replace the funds spent on repairs. In short, the priority order would cause some added bookkeeping without serving any useful purpose.
>
> If the damaged plant could not be restored to use, the trustee might refuse to release funds for decontamination on the ground that they would not be used for repairs or replacement. However, the utility could still obtain the funds if it could provide additional unbonded property. While the utility would probably use the funds for decontamination without compulsion, NRC could require it to do so even in the absence of the proposal in § 50.54(w)(3).
>
> If the licensee did not have additional unbonded property to offer the trustee, it could obtain the proceeds only on the basis that it would use them to build or acquire new public utility property. Thus, an NRC priority order would require the use of the proceeds for decontamination while the indenture would forbid their use for that purpose, and the licensee might be unable to reach the proceeds.
>
> This could push the licensee into insolvency and possibly bankruptcy. We doubt that reorganization would be appealing to NRC since it might find itself with the responsibility for the cleanup and the possibility that in the post-bankruptcy period it could not recover the cleanup costs from the licensee.
>
> Absent a priority, the trustee, in its discretion, could still refuse to relinquish the proceeds if the licensee was unable to substitute additional property. But this is not a position it would take lightly. Such a step could also push the licensee into bankruptcy, and the trustee would run the risks that (i) its efforts to use the proceeds to benefit bondholders would be automatically stayed and (ii) it would be forced to turn the proceeds over to the licensee or reorganization trustee for use in post-bankruptcy operations.
>
> In the case of a possible bankruptcy, we believe that, as a practical matter, the licensee, its creditors and NRC would have a common interest in working out a plan that allowed the licensee to continue as an entity while decontaminating to the extent necessary to protect public health and safety. Our analysis is that the proposed priority could not facilitate that result and in some circumnstances would impede it. We therefore urge that NRC reject 50.54(w)(3).

A somewhat different conclusion was reached by another commenter. This commenter suggested two approaches. First, perhaps a licensee could "identify those decontamination costs which are not treatable as capital repairs and cause them to be insured separately or at least paid separately under existing insurance. It may then be possible to conclude that such insurance is not property insurance which must be payable to mortgage trustees." (Comment 20, p. 2–3). This approach would allow release of a significant amount of funds not subject to the control of the trustee. Second, funds would be released by the trustee if they were to be used for repairs that would be treated as additions "chargeable to plant accounts in accordance with sound accounting practice." (Ibid, p. 3) However, this commenter concludes,

> To the extent that decontamination expenses do not constitute repairs so chargeable, the trustee may refuse to release the funds unless the Company happens to have available property additions which have not previously been tendered to the trustee. There can certainly be no assurance that the Company will have independently available property additions to tender to the trustee to obtain such release. The Company simply may be unable to obtain release of funds to expend on decontamination, at least to the extent that such expenditures do not constitute repairs under the provisions of the mortgage. (Ibid, p. 3)

Other commenters emphasized the impact on investor perceptions. One commenter indicated that because of the lack of clear standards for imposing a decontamination priority, bondholders probably would not have a "significantly greater sense of security for their investment than they could have had under the 1982 proposal of an absolute priority." (Comment 18, p. 4). Further, "existing bondholders purchased their bonds with an understanding that Federal regulatory policy would allow utilities to protect their investment with insurance." (Ibid, p. 5). A letter from Morgan Stanley & Co. was enclosed with EEI's comments to support this view. This letter states that particularly since TMI, investors expect that, "in the event of an accident, a portion of these insurance proceeds will

be available to repair or replace their investment."

Finally, the comment from the insurance pools suggested

> that they were able to pay the owner of TMI Unit 2 $68 million for loss to their nuclear fuel, even though decontamination was barely commenced. This contributed to regaining financial stability and made it more likely that the owners could address the long-range plans to decontaminate the reactor. (Comment 31, p. 2).

Despite their strong reservations about a decontamination priority, several commenters proposed ways of making such a priority less burdensome. Suggested revisions to the proposed rule would: (1) Provide specific criteria for determining when public health and safety is endangered, such as by following limits used in 10 CFR Part 20; (2) establish "sunset" provisions so that the Director's order would last only for a specified time, e.g., three to six months subject to renewal; and (3) have the Director of NRR issue a show cause order requiring the licensee to explain its prepared work plan and schedule and related expenditures are in the public interest. Following a hearing on the show cause order, the Commission could issue a modification of the licensee's work plan or schedule. Until an order was issued, the licensee would be able to proceed with its work plan.

Others suggested that the term "decontamination" be defined. These commenters argued that preparatory expenditures, such as stabilization costs and purchase of equipment and other materials necessary for cleanup might not be included in the definition of decontamination priority. Similarly, the degrees of decontamination should be tied to avoiding "exposure of the off-site public to radiation levels exceeding those allowed by NRC regulations" (comment 18, p. 6) or should otherwise indicate the level above which health and safety is endangered (comment 16, p. 3).

One comment addressed the specific issue of timing the implementation of a decontamination priority to coincide with the renewal dates of the policies. Because policies issued by NML and NEIL-II are, in effect, bilateral contracts, changes would be difficult to make without mutual consent or without awaiting policy expiration.

In preparing the proposed rule, the NRC relied on comments and proposals submitted by the Association of the Bar of the City of New York (the Association) in response to the 1982 ANPRM. As indicated in the proposed rule (49 FR 44647, Co. 3), the Association determined that utility trust indentures do not in general give bondholders any vested rights to a given amount or type of coverage. It also recognized that to respond properly to a nuclear accident, a licensee may be required to take a range of actions apart from decontamination and debris removal. Consequently, this commenter favored priority for payment of decontamination and debris removal expenses only insofar as it is "necessary to remove any significant health or safety hazard." The Association suggested this goal could be accomplished if a regulation were properly drawn, although it proposed no wording for such a regulation in its comments.

In responding to the proposed rule, however, the Association changed the focus of its comments. Although the Association indicated that it supported "in principle the form of decontamination priority which the Commission has proposed," it believes that, "as now proposed, the amendments to the Commission's property insurance regulations may not effectively provide for the decontamination priority which the Commission desires to achieve . . . that in the event of a serious nuclear accident, the utility's indenture trustee may refuse to release property insurance proceeds for decontamination or debris removal purposes." (Comment 12, p. 5).

The Association believes that "only by restricting payment of insurance proceeds to the trustee can there be any reasonable assurance that the proposed decontamination priority will prove effective." (p. 6). Such a restriction of payment would not be effective merely by payment directly to the utility because funds would still be vulnerable to creditor delays due to bankruptcy or insolvency. The Association perceives a fundamental conflict between the Atomic Energy Act, NRC regulations, and the terms of the license on the one hand and the provisions of the Bankruptcy Code on the other. The Association presents a legal analysis and synopsis of the arguments that the parties might use in obtaining property insurance proceeds and concludes from its analysis that

> a decontamination priority can only be effectively implemented if the decontamination proceeds are paid neither to the indenture trustee nor the utility itself but rather into a separate trust fund previously established for that purpose. The proceeds under the insurance policy would be paid to the trustee of the trust fund and disbursed to pay for costs incurred in decontaminating the reactor and removing radioactive debris. The remaining amounts, up to the limits of the policies, would then be available to pay for property damage and these funds would be paid to the indenture trustee." (p. 13).

Finally, the Association believes that such an approach should not conflict with utility indenture provisions because such indentures generally require a utility to maintain property insurance to the same extent as companies similarly situated and operating like properties, and not a particular level of coverage. Primary policies offered by ANI/MAERP and NML would have to be modified analogously to the NEIL-II excess policy, yielding a hybrid decontamination liability and property insurance policy.

NRC Response: The NRC disagrees that a decontamination priority would conflict with bond indenture language. As the Association indicated, such language typically would require a utility "to insure its property against loss or damage to the same extent that property of a similar character is usually so insured by companies similarly situated and operating like properties." [5] The NRC agrees with the Association's conclusion that such language would allow the NRC to impose a decontamination priority because all utility licensees would face similar conditions, would be insured "to the same extent" and would thus comply with indenture language. More recently, the Association concluded that, after a large accident, conflict between the interests of bondholders as represented by their trustees on the one hand, and the NRC on the other, could seriously impede, in some circumstances, recovery from an accident. The Association's recommended solution, i.e., to require all insurance proceeds to be deposited in a trust apart from the utility or bondholder's trustee, would provide additional assurance that funds would be available for accident decontamination and cleanup but could exacerbate this conflict, if imposed.

The extent to which this conflict would adversely affect investor perceptions and thus increase utility cost of capital and reduce access to capital is speculative. It is possible that utilities would incur some, perhaps significant, increased capital costs if a full decontamination priority were imposed. However, there are a number of factors which should temper the

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[5] One commenter indicated that its mortgage provisions require it to maintain insurance in "a reasonable amount against loss or damage by fire and from other causes customarily insured against by similar companies." (Comment 20). This is not appreciably different from the language cited by the Association. The staff has attempted without success to obtain assistance from the Federal Energy Regulatory Commission (FERC) and others to determine the extent to which indenture language varies.

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rational investor's possible disquiet. First, as some commenters pointed out, the NRC has the authority under sections 161, 182(a), and other sections of the Atomic Energy Act to impose a decontamination priority after an accident whether or not such a priority is actually spelled out in 10 CFR 50.54(w). Given this, it can be argued that a conflict existed all along, although perhaps not known to certain investors.

Second, investors now are covered for a relatively small portion of their investment, although it has increased from the maximum $300 million coverage at the time of the TMI–2 accident. Because NEIL–II coverage has its own decontamination priority,[6] the most coverage investors could currently expect is $620 million. When compared to the $5 billion or more to construct the latest nuclear power facilities, an investor would be covered for little over 10% of the value of the investment. The NRC doubts that an investor would derive security from this limited coverage but would tend not to invest if an NRC decontamination priority were imposed.

Third, commenters essentially ignored in their comments the rapid growth in insurance capacity. The NRC cannot speculate on whether and to what extent capacity will grow further. Nevertheless, because of the shortfall in coverage as compared to facility value, it would be expected that demand for, if not supply of, insurance will remain high. If capacity continues to grow at a pace that substantially exceeds possible increases in estimated facility decontamination costs, it would be expected that investors would find a decontamination priority progressively less onerous as more funds would be made available exceeding those subject to a priority.

Fourth, as some commenters have suggested, a decontamination priority is only necessary for a scenario in which a plant is completely written off and the interests of the NRC and indenture trustee would conflict to the extent that bankruptcy might occur. Without a priority, some commenters argue that both the NRC and the trustee would have incentive to work out a plan "that allowed the licensee to continue as an entity while decontaminating." (Comment 15) Again, the NRC disagrees that a decontamination priority would destroy that incentive. If the priority itself ever became an impediment to accident recovery and resulted indirectly in a threat to public health and safety, it could be rescinded or made part of a broader recovery framework as the previous commenter discussed. The NRC, no less than the investors, would not wish to precipitate bankruptcy and so impede accident recovery.

The NRC rejects the argument that a decontamination priority would reduce flexibility in responding to an accident. Obviously, the NRC would not interpret a priority in so rigid a manner as to preclude prudent practices necessary to an orderly decontamination, such as equipment purchases, stabilization activities, etc. The decontamination priority was not meant to be applied sequentially in that all expenditures on cleanup would have to be made before any others. The priority has been worded to allow licensee flexibility, particularly after a reactor has been stabilized after an accident. Despite possible utility reluctance, the priority should be compatible with the broadest range of actions necessary to protect public health and safety. Further, the decontamination priority is meant to be invoked only when there would be serious concern over the availability of funds for decontamination.

Although most commenters opposed imposition of a decontamination priority, many did recommend changes to the wording of the priority that would make it less onerous. One change, suggested with slight variation by several commenters, would require that a definite time limit be established for an order by the Director of NRR. Some suggested that a time limit, of three or six months duration, could be extended as necessary. The NRC agrees that periodic reevaluation of the need to continue the Director's order is desirable and is thus incorporating a variety of provisions in the final rule relating to duration of the priority. However, the NRC believes that, as a practical matter, orders for decontamination priority would be extended as necessary to protect public health and safety. Thus, the principal effect of sunset provisions would be to allow for additional consideration as each order was replaced or extended.

Concerning the matter of hearings, the mechanism for imposing the decontamination priority would be an order to show cause by the Director of NRC. The Commission's rules in 10 CFR Part 2, Subpart B, afford the licensee the right to demand a hearing when the NRC staff seeks to impose requirements by order. In addition, any person whose interest may be affected by the proceeding could request a hearing or file a petition to intervene. If the Commission followed its usual practice of confining the scope of the proceeding to whether the order should be sustained, only persons opposing the order could request a hearing or petition to intervene. Petitioners who did not object to the order but might seek further corrective measures would lack the requisite interest in the proceeding. See Bellotti v. NRC, 725 F.2d 1380 (1983). Thus as a practical matter, the Director's ability to impose the priority without a hearing would most likely depend on the licensee's response to the order.

With regard to the commenter's concern about delay in the decisionmaking process, the Commission notes that, even if a hearing were held, insurance proceeds would not necessarily be tied up. This is because the Commission's authority to impose the priority before holding a hearing would depend on the circumstances.

Other suggested changes to the actual wording of the priority concern the definition of the degree to which public health and safety should be protected. Some commenters recommend defining what is meant by protection of public health and safety; others suggest referencing the radiation protection guidelines used in 10 CFR Part 20.

The NRC favors tying decontamination limits to 10 CFR Part 20 standards for radiation protection and the ALARA principle (as low as reasonably achievable). Notwithstanding reliance on these radiation protection standards, the NRC believes it is also necessary to work with a decontamination plan tailored both to the specific problems and characteristics of the particular site suffering the accident and to the general characteristics that differentiate decontamination after an accident from decommissioning. This approach would allow both the NRC and the licensee greater discretion in initiating and completing a safe recovery and would be particularly desirable because accidents are expected to be rare and, to a large degree, unique. The NRC also believes that some commenters have confused the purpose of this rule—to provide adequate funds for recovery after an accident—with the process of accident recovery itself which is more thoroughly covered in other parts of the NRC's regulations.

This rule applies to decontamination after an accident; it does not encompass decommissioning. The NRC realizes that there may be an overlapping area of

[6] The fact that NEIL–II itself has a decontamination priority raises the question of whether NEIL–II's priority would not also conflict with bond indenture language. The comments directed to this area did not differentiate between the adverse effects that the NEIL–II priority and the NRC priority might have.

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tasks which cannot be defined as uniquely decontamination or decommissioning. For example, certain components would be removed and disposed of whether as a result of cleanup following an accident or as part of decommissioning operations at the end of a plant's useful life. The NRC has attempted to minimize this overlap, but acknowledges that it cannot be eliminated.

The NRC understands, as confirmed by ANI officials, that insurers would likely pay for activities required or components damaged as a result of the accident. Insurers would not distinguish between accident decontamination and decommissioning when paying out insurance proceeds, as long as a licensees could offer proof of causation of damage.

If a reactor suffered an accident so severe that restart would not be possible, the reactor would have to be decommissioned. In this situation, the distinction between decontamination and decommissioning would be difficult to maintain. For example, a licensee could use property insurance proceeds for decontamination activities, such as removal and disposal of certain components, that under normal circumstances would clearly be considered part of the decommissioning process. As a result, the licensee might be able to preserve some decommissioning funds for other purposes following completion of decommissioning. Conversely, a licensee might try to draw upon funds reserved for decommissioning to perform decontamination tasks if property insurance proceeds were expended prior to completion of decontamination.

If an accident were severe enough to prevent restart of the reactor, however, essentially all of the property insurance proceeds would likely be needed for decontamination. Because property insurance also covers replacement of components, equipment, and structures, the insurance proceeds would be insufficient under current (and likely future) limits to cover all replacement as opposed to decontamination expenses. Thus, it is likely that all property insurance proceeds would be paid out regardless of whether used for accident decontamination or decommissioning activities.

In sum, the Commission is implementing a decontamination priority further modified to reflect many commenters' concerns. The section of the rule containing the priority, 19 CFR 50.54(w)(3), begins by establishing a priority for stabilizing the reactor after an accident so as to prevent any significant risk to the public health and safety. After the reactor is safe and stable, the licensee is required under section 10 CFR 50.54(w)(3)(ii) to submit a cleanup plan that identifies all cleanup operations necessary to bring the reactor to the point of decommissioning or restart. Various cleanup operations are indentified and reference to 10 CFR Part 20 occupational exposure standards is made so as to differentiate between decontamination after an accident and decommissioning. Section 10 CFR 50.54(w)(3)(iii) addresses the scope of the decontamination priority.

With respect to the Association's recommendation that all insurance proceeds be placed in trust so as not to be available to the bondholder's trustee, the NRC believes this requirement provides additional protection of public health and safety. As explained in the Association comments, utility bond indentures typically require available property insurance proceeds to be paid directly to the indenture trustee, not to the utility. This means that in the event of a serious accident, the insurance policy proceeds would not be under the control of the utility. If the NRC were to order the utility to spend all or part of the proceeds for protection of the public health and safety, the utility would be powerless to do so without asking for and receiving the proceeds from the trustee.

However, the bondholder trustee might not be willing or even legally able to release the proceeds. The trustee's obligation is not to the public health and safety, but to bondholders, and the bondholders are interested in preserving their investment. Thus, utility indentures generally limit the trustee's ability to pay insurance policy proceeds to the utility to circumstances where the funds will be used for repairs to or replacement of the damaged property and the bondholder's interests will thereby be protected. Most importantly, if a utility were forced into default because of the financial consequences of a serious accident, the trustee might be legally prohibited from paying policy proceeds to the utility. As the Association points out and NRC's own experience confirms, the NRC's ability under the Bankruptcy Code to get priority for expenditures of funds for safety is very uncertain. For these reasons, the Commission is adopting the Association's proposed approach to the decontamination priority. Thus, 10 CFR 50.54(w)(4) requires that the policy proceeds be paid to a separate trust fund established for the sole purpose of protecting the public health and safety.

The NRC also believes that an approach worth further evaluation is to seek legislation in Congress that would give preference in any bankruptcy proceeding to expenditures that mitigate threats to public health and safety. The NRC is currently studying the feasiblity of this approach.

6. Other Issues

Summary of Comments: Very few comments were received that were not related to the previously discussed issues. One commenter endorsed NRC's position stated in the proposed rule of not becoming involved in regulating insurance terms and conditions (comment 1). Another endorsed the NRC's position of not requiring licensees to carry coverage from both primary insurers (i.e., NML and ANI/MAERP) (comment 19). Finally, one commenter suggested that the term "financial protection" not be used in 10 CFR 50.54(w)(2). "Financial protection," as defined in the Atomic Energy Act and 10 CFR Part 104, is used in a specific sense not meant in Part 50.

NRC Response: The NRC essentially agrees with these comments and is incorporating them in the rulemaking. The NRC agrees that the term "financial protection" might be misleading to some in the context used in Part 50. Thus, the rule will be revised to use the less ambiguous term, "financial security."

Environmental Assessment and Finding of No Significant Environmental Impact

These amendments to 10 CFR 50.54(w) will increase the amount of insurance that each commercial reactor licensee is required to maintain to clean up a licensed reactor site after an accident. The amount of required insurance will increase from a minimum of $620 million currently required to $1.06 billion. The rule also adds a requirement that proceeds from insurance must be used first to stabilize and then decontaminate the licensed reactors before any other purpose when and to the extent that decontamination is required to protect public health and safety and is consistent with the Commission's 10 CFR Part 20 radiation protection standards. These actions are required to provide greater assurance that commercial reactor licensees will have sufficient funds to clean up their reactors following an accident. Assurance of these funds is required so that public health and safety is not adversely affected during the cleanup process. Alternatives to this action consist of maintaining the existing rule or establishing some other limit of insurance. Neither this action nor the alternatives to it have any significant impact on the environment. No other

agencies or persons were contacted for this action.

Consequently the Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and therefore an environmental impact statement is not required. Although changes in insurance requirements affect the financial arrangements of licensees and have economic and social consequences, they do not alter the environmental impact of the licensed activities. As determined in the above environmental assessment, the alternatives to the proposed action likewise do not have any significant impact on the environment. No other documents related to this proposed action exist. The foregoing constitutes the environmental assessment and finding of no significant impact for this final rule.

Paper Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.SC. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget approval number 3150–0011.

Regulatory Analysis

The Commission has prepared a regulatory analysis for this regulation. This analysis examines the costs and benefits of the alternatives considered by the Commission. Interested persons may examine and copy for a fee the regulatory analysis at the NRC Public Document Room, 1717 H St. NW., Washington, DC. Single copies of the analysis may be obtained from Robert S. Wood, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492–8413.

Backfit Analysis

This final rule requiring an increase in property damage insurance does not require "the modification of or addition to systems, structures, components, or design of a facility; or the design, approval or manufacturing license for a facility; or the procedures or organization required to design, construct, or operate a facility." Accordingly, this action is not a backfit as defined in § 50.109. However, the staff has prepared an analysis of the rule's impact in light of the factors listed in § 50.109(c). This analysis may be examined or obtained in the same manner as the regulatory analysis mentioned previously.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities.

This rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Fire prevention, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, and the NRC is adopting the following amendment to 10 CFR Part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 is revised to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.23, 50.35, 50.55, 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 50.10 (a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.10 (b) and (c), and 50.54 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.55(e), 50.59(b), 50.70, 50.71, 50.72, 50.73, and 50.78 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. Section 50.54 is amended by revising paragraph (w) to read as follows:

§ 50.54 Conditions of licenses.

* * * * *

(w) Each electric utility licensee under this part for a production or utilization facility of the type described in § 50.21(b) or § 50.22 shall, by June 29, 1982, take reasonable steps to obtain onsite property damage insurance available at reasonable costs and on reasonable terms from private sources or to demonstrate to the satisfaction of the Commission that it possesses an equivalent amount of protection covering the facility. Provided that:

(1) This insurance must have a minimum coverage limit for the reactor station site of either $1.06 billion or whatever amount of insurance is generally available from private sources, whichever is less. If a licensee's coverage falls below the required minimum, the licensee shall within 60 days take all reasonable steps to restore its coverage to the required minimum.

(2) The licensee shall report to the NRC on April 1 of each year the current levels of this insurance or financial security it maintains and the sources of this insurance or financial security.

(3)(i) The proceeds of this insurance shall be used first to ensure that the licensed reactor is in a safe and stable condition and can be maintained in that condition so as to prevent any significant risk to the public health and safety. The licensee shall inform the Director of the Office of Nuclear Reactor Regulation in writing when that condition is attained.

(ii) Within thirty (30) days after the licensee informs the Director of the Office of Nuclear Reactor Regulation that the reactor is and can be maintained in a safe and stable condition, the licensee shall prepare and submit a cleanup plan for the Director's approval. The plan shall identify all cleanup operations that will be required to decontaminate the reactor sufficiently to permit the licensee either to resume operation or to commence decomissioning of the reactor in a manner that is consistent with the Commission's occupational exposure

limits in 10 CFR Part 20. If applicable, these operations may include:

(A) Processing any contaminated water generated by the accident and by decontamination operations to remove radioactive materials;

(B) Decontamination of surfaces inside the auxiliary and fuel handling buildings and the reactor building to levels consistent with the Commission's occupational exposure limits in 10 CFR Part 20, and decontamination or disposal of equipment;

(C) Decontamination or removal and disposal of internal parts and damaged fuel from the reactor vessel; and

(D) Cleanup of the reactor coolant system.

(iii) Following review of the licensee's plan, the Director will order that the licensee complete all operations that the Director finds are necessary to decontaminate the reactor sufficiently to permit the licensee either to resume operation or to commence decommissioning of the reactor, in a manner that is consistent with the Commission's occupational exposure limits in 10 CFR Part 20. Any property insurance proceeds not already expended to place the reactor in a safe and stable condition pursuant to paragraph (w)(3)(i) of this section shall be used first to complete those decontamination operations that are the subject of the Director's order. Such order may not be effective for more than one year, at which time it may be renewed. Each subsequent renewal order, if imposed, may be effective for not more than six months.

(4) Property insurance proceeds subject to the decontamination priority in paragraph (w)(3) of this section must be payable to a separate trust established for the sole purpose of paying for costs incurred in decontaminating the reactor and removing radioactive debris. The trust and trustee must be acceptable to the Commission. An acceptable trustee includes an appropriate State or Federal government agency or an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(5) The decontamination priority and trust requirements set forth in paragraphs (w)(3) and (w)(4) of this section must:

(i) Be incorporated in onsite property damage insurance policies for nuclear power plants not later than October 4, 1988 and

(ii) Apply uniformly to all onsite property damage insurance policies for nuclear power plants required under paragraph (w)(1) of this section.

Dated at Washington, DC, this 31st day of July 1987.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 87-17796 Filed 8-4-87; 8:45 a.m.]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-13-AD; Amdt. 39-5702]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which requires inspection for disbonding of tear straps in fuselage body section 46, and repair, if necessary. This AD is prompted by reports of disbonding of upper body hot bonded skin tear straps on eight airplanes. This condition, if not corrected, could lead to rapid depressurization if a longitudinal body skin crack should occur adjacent to the area of ineffective tear strap attachment.

EFFECTIVE DATE: September 13, 1987.

ADDRESSES: The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Owen E. Schrader, Airframe Branch, ANM-120S; telephone (206) 431-1923. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive to require inspection for disbonding of upper body hot bonded skin tear straps in body section 46 of Boeing Model 747 series airplanes, and subsequent repair, if necessary, was published in the **Federal Register** on March 17, 1987 (52 FR 8264). The comment period for the proposal closed on May 4, 1987.

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the three comments received. Comments were received from the Air Transport Association (ATA) of America, on behalf of its members; a non-U.S. operator; and the manufacturer.

The ATA, as well as the non-U.S. operator, were concerned that the proposed compliance time was too short and would require the operators of large fleets to commence inspections prior to the issuance of the final rule or suffer possible grounding of some airplanes. The ATA further stated that its members have requested that the compliance time be extended to as much as 1,000 landings after the effective date of the final rule. The basis for this request is to provide sufficient time for the operator to accomplish the required inspections. The manufacturer also commented on the proposed compliance time and recommended that airplanes from line number 231 through 349 be inspected within 750 landings after the effective date of the final rule, based upon recent negative findings on 16 airplanes between line number 231 and 349, and the fact that there was a process control tightening at line number 231. The manufacturer also recommended that airplanes from line number 1 through 230 be inspected within 250 landings after the effective date of the final rule. The FAA has considered these comments and has determined that the extension of compliance time, as recommended by the manufacturer, will provide an acceptable level of safety, and also provide adequate relief for the operators to schedule the inspections. Paragraph A. of the final rule has been revised to reflect this change.

Two commenters requested that the initial compliance times refer to the effective date of the AD and not some other date. The FAA concurs, and has revised the initial compliance time of the final rule to reflect the effectivity of this amendment. Paragraph A. of the final rule has been revised to reflect this change.

The commenters were concerned that the final rule may be different from the Notice of Proposed Rulemaking and might require additional effort. The FAA does not concur. If additional requirements are imposed, the FAA would be required to propose them in a separate rulemaking action.

The ATA requested that this AD allow the utilization of an external skin inspection for cracking as an optional inspection until the tear strap inspection is accomplished. This request is based on the assumption that the purpose of

the tear straps is to prevent unknown cracks from becoming critical. The FAA does not concur. The tear straps are important to stop crack growth, but the area of inspection is partially within the path of debris from an engine turbine burst. The proper functioning of the tear straps could be essential to continued safe flight in the event the fuselage is struck by debris. Therefore, the FAA does not consider that an external skin inspection would provide an equivalent level of safety.

The manufacturer recommended that paragraph C. of the proposed AD be changed to correspond to the service bulletin that allows for deferral of the repair if the unbonded area exceeds 60% but does not exceed 75% of the total tear strap area between stringers. The FAA does not concur because the rate of growth of the disbond area cannot be predicted with adequate certainty. Paragraph C. remains unchanged.

The manufacturer recommended that the AD reference Revision 1 of the service bulletin. The FAA concurs. This change does not increase the scope of the inspection, but only provides clarification of instructions for certain models of the airplane. This change has been incorporated into the final rule.

The manufacturer also stated that only pressurized flights should be counted in determining compliance. The FAA concurs and has added a paragraph in this regard to the final rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes noted above.

It is estimated that 125 airplanes of U.S. registry will be affected by this AD, that it will take approximately 72 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $360,000 for the initial inspection.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities, because few, if any, Model 747 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes, as listed in Boeing Alert Service Bulletin 747-53A2279, dated January 15, 1987, certificated in any category. Compliance required as indicated, unless previously accomplished.

To detect disbonding of the upper body tear straps in body section 46, accomplish the following, unless already accomplished:

A. Within 250 landings after the effective date of this AD for airplanes line number 1 through 230, and within 750 landings after the effective date of this AD, for airplanes line number 231 through 349, perform an ultrasonic inspection of tear straps for disbonding in accordance with Boeing Alert Service Bulletin 747-53A2279, Revision 1, dated May 7, 1987, or later FAA-approved revisions.

B. If no evidence of unbonded areas are found, reinspect those areas at intervals not to exceed 6 years.

C. If evidence of unbonded areas is found, and the unbonded area between any two adjacent stringers does not exceed 60 percent of the total tear strap area between these stringers, reinspect those areas at intervals not to exceed the limits allowed by the chart in Figure 2 or 4, as appropriate, of Boeing Alert Service Bulletin 747-53A2279, Revision 1, dated May 7, 1987, or later FAA-approved revisions.

D. If evidence of unbonded areas is found, and the unbonded area between any two adjacent stringers exceeds 60 percent of the total tear strap area between these stringers, repair those areas prior to further flight in accordance with Boeing Alert Service Bulletin 747-53A2279, Revision 1, dated May 7, 1987, or later FAA-approved revisions. If blind fasteners are used, visually reinspect installation at intervals not to exceed 1,000 landings for loose or missing fasteners, cracks, or corrosion.

E. Terminating action for the inspections required by this AD is the installation of solid fasteners at all affected tear strap locations in accordance with Boeing Alert Service Bulletin 747-53A2279, Revision 1, dated May 7, 1987, or later FAA-approved revisions.

F. For the purpose of complying with this AD, the number of landings may be determined to equal the number of pressurization cycles where the cabin pressure differential was greater than 2.0 PSI.

G. An alternate means of compliance or adjustment of the compliance time, which provide an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

H. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective September 13, 1987.

Issued in Seattle, Washington, on July 29, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87-17689 Filed 8-4-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-NM-109-AD; Amdt. 39-5701]

Airworthiness Directives; Lockheed-California Model L-1011-385 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of Lockheed-California Model L-1011-385 series airplanes by individual telegrams. This AD requires repetitive ultrasonic inspections for cracks of the inboard retract lugs of both the left and right main landing gear (MLG) shock strut cylinder. Failure to detect and correct cracks can result in structural failure of the MLG shock strut cylinder and ultimate collapse of the MLG.

DATES: Effective August 24, 1987. This AD was effective earlier to all recipients of telegraphic AD T87–15–51, dated July 22, 1987.

ADDRESSES: The applicable service information may be obtained from Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Order Administration, Dept. 65–33, U–33, B–1. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Augusto Coo, Aerospace Engineer, Airframe Branch, ANM–121L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514–6319.

SUPPLEMENTARY INFORMATION: On July 22, 1987, the FAA issued telegraphic AD T87–15–51, applicable to Lockheed-California Model L–1011–385 series airplanes, which requires repetitive ultrasonic inspections for cracking of the inboard retract lugs of both the left and right main landing gear (MLG) shock strut cylinder, and repair or replacement, if necessary. This action was prompted by the report of an accident where, during roll-out after landing, the right-hand MLG on a Model L–1011–385 airplane collapsed and separated from the aircraft. The failure was attributed to a stress corrosion crack emanating from the bore of the inboard retract actuator lug on the right-hand MLG strut cylinder. This condition, if not corrected, could result in structural failure of the MLG shock strut cylinder and ultimate failure of the MLG.

Preliminary investigation of the aforementioned accident revealed that the strut cylinder lug bushing installed was was made of stainless steel and is the type of bushing the installation of which constitutes terminating action for the repetitive inspection requirements of AD 82–10–52–R1, Amendment 39–4671 (48 FR 29470; June 27, 1983). That AD was issued to require repetitive visual and/or ultrasonic inspections for cracks of the inboard retract actuator lug on both MLG strut cylinders of all Model L–1011–385 series airplanes; installation of a stainless steel strut cylinder lug bushing was provided as an optional terminating action for the required repetitive inspections. In light of the recent accident that has prompted this amendment, the FAA may consider further rulemaking action to amend the requirements of AD 82–10–52–R1.

Since this condition may exist or develop on other airplanes of this same type design, this AD requires, within 10 days after the effective date of this amendment, an initial ultrasonic inspection of the inboard retract lugs of both the left and right MLG shock strut cylinder on Model L–1011–385 series airplanes equipped with stainless steel bushings in the retract lugs, and repetitive inspections thereafter at intervals not to exceed 400 landings. Any MLG shock strut cylinder found to be cracked must be repaired or replaced in a manner approved by the FAA prior to further flight.

Since a situation existed, and still exists, that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The Federal Aviation Administration has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Lockheed-California Company: Applies to Lockheed-California Model L–1011–385 series airplanes, certificated in any category, which have stainless steel bushings installed in the retract lugs of the left and/or the right main landing gear (MLG) shock strut cylinder. Compliance required as indicated, unless previously accomplished.

To detect cracks and prevent structural failure of the MLG shock strut cylinder, accomplish the following:

A. Within 10 days after the effective date of this AD, unless previously accomplished within the last 400 landings, and thereafter at intervals not to exceed 400 landings, perform an ultrasonic inspection of the inboard retract lugs of both the left and right MLG shock strut cylinder, following the procedure specified in Section 2, Accomplishment Instructions, of Lockheed-California L–1011 Service Bulletin 093–32–A211, Revision 1, dated October 28, 1982, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

B. Any MLG shock strut cylinders that are found cracked must be repaired or replaced prior to further flight, in a manner approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the inspection requirements of this AD.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer, may obtain copies upon request to Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Order Administration, Dept. 65–33, U–33, B–1. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 4344 Donald Douglas Drive, Long Beach, California.

This amendment becomes effective August 24, 1987.

It was effective earlier to all recipients of Telegraphic AD T87–15–51, issued July 22, 1987.

Issued in Seattle, Washington, on July 29, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87–17690 Filed 8–4–87; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 87-NM-37-AD; Amdt. 39-5699]

Airworthiness Directives; Short Brothers Model SD3-60 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Short Brothers Model SD3-60 series airplanes, which requires repetitive inspection of the spar webs of the horizontal stabilizer, and repair if cracks are found. This amendment is prompted by results of extended fatigue testing by the manufacturer, which revealed cracks in the spar web of the horizontal stabilizers. This condition, if not corrected, could result in loss of the structural integrity of the horizontal stabilizer.

EFFECTIVE DATE: September 10, 1987.

ADDRESSES: The applicable service information may be obtained from Short Brothers Aircraft, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3702. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, which requires repetitive inspections of the spar webs of the horizontal stabilizer on Short Brothers Model SD3-60 series airplanes, and repair if cracks are found, was published in the **Federal Register** on April 14, 1987 (52 FR 11998).

Interested parties have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After issuance of the proposal, Short Brothers issued Revision 3 to Service Bulletin SD360-55-11, dated April 28, 1987. This revision of the service bulletin differs from the original issue in that the initial compliance time for inspection has been extended from 8,000 flights to 12,000 flights for certain serial-numbered airplanes and other airplanes which have used 15° take-off flaps, and the number of flights between inspections has been extended from 1,000 flights to 1,500 flights. The final rule has been revised to reflect the compliance time and repetitive inspection intervals as indicated in Revision 3 to the Short Brothers service bulletin. The FAA has determined that this change will not have a significant adverse effect on the safety of flight, and will not impose any additional economic burden on operators.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes noted above.

It is estimated that 33 airplanes of U.S. registry will be affected by this AD, that it will take approximately 5 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $6,600.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because of the minimal cost of compliance per airplane ($200). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Short Brothers PLC: Applies to Model SD3-60 airplanes, serial numbers SH3601 through SH3691 and SH3694, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent loss of the structural integrity of the horizontal stabilizer accomplish the following:

A. Visually inspect, in accordance with the schedule listed below, the forward face of the rear spar web and the aft face of the front spar web for cracks between fuselage attach fitting at 12.5" left and right of the airplane center line, in accordance with Short Brothers Model SD3-60 Service Bulletin SD360-55-11, Revision 3, dated April 28, 1987.

1. For airplanes serial numbers SH3680 through SH3691 and SH3694, and airplanes which have used only 15° flap take-off since before or upon reaching 5,000 flights, inspection is required within the next 100 flights or prior to the accumulation of 12,000 flights, whichever occurs later. Repeat the inspection at intervals not to exceed 1,500 flights.

2. For all other airplanes, inspection is required within the next 100 flights or prior to the accumulation of 8,000 flights, whichever occurs later. Repeat the inspection at intervals not to exceed 1,000 flights.

B. If cracks are found, prior to further flight, modify by strengthening the horizontal stabilizer in accordance with Short Brothers Model SD3-60 Service Bulletin SD360-55-12, dated April 1986.

C. The repetitive inspections required by paragraph A., above, may be terminated following completion of the modification described in Short Brothers Model SD3-60 Service Bulletin SD360-55-12, dated April 1986.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Short Brothers Aircraft, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3702. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective September 10, 1987.

Issued in Seattle, Washington, on July 28, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87-17991 Filed 8-4-87; 8:45 am]

BILLING CODE 4910-13-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1015

Freedom of Information Act Regulations; Final Amendments on Fees

AGENCY: Consumer Product Safety Commission.

ACTION: Final amendments.

SUMMARY: When members of the public are provided documents under the Freedom of Information Act, the Commission may impose fees for such services as duplication and searching. The Commission is amending its regulations so that (1) the fees will reflect more accurately the Commission's direct (actual) costs of providing the services and (2) the fees will conform to the Freedom of Information Reform Act of 1986.

DATES: The amendments will become effective on September 4, 1987.

FOR FURTHER INFORMATION CONTACT: Alan Shakin, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492-6980.

SUPPLEMENTARY INFORMATION:

A. Background

The Commission's existing regulations on Freedom of Information Act (FOIA) fees appear at 16 CFR 1015.9. They provide, in essence, that fees will be charged for FOIA services, but "certain information provided routinely in the normal course of doing business will be provided at no charge" (§ 1015.9(a)); that the Commission's Secretary determines and levies fees and may waive or reduce them "when the furnishing of the information can be considered as primarily benefiting the general public or when special circumstances warrant" (§ 1015.9(b)); that the Secretary's determination of fees may be appealed to the commission (§ 1015.9(b)); that the first $25 of fees will be waived (§ 1015.9(c)); and that fees are not levied where the requested documents are not provided or made available (§ 1015.9(d)).

The existing regulations also direct that payment should be by check or money order payable to the Consumer Product Safety Commission (§ 1015.9(e)). Finally, they set forth the schedule of charges for FOIA services: searches, computer time, reproduction, postage, microfiche, and microfilm (§ 1015.9(f)).

In October 1986 the Commission voted to propose certain changes to these FOIA fee regulations. Before it did so, however, the Freedom of Information Reform Act of 1986 ("Reform Act," at sections 1802-04 of Pub. L. 99-570, the Anti-Drug Abuse Act of 1986) was enacted.

The Commission's reasons for wanting to amend its FOIA fee provisions were to make the fees better reflect the direct (actual) costs of responding to FOIA requests and to clarify some provisions. The Reform Act addresses the direct-costs issue and other issues that require changes to the Commission's fee provisions.

On March 27, 1987 the Office of Management and Budget issued its final Fee Schedule and Guidelines ("OMB Guidelines") which the Reform Act required OMB to issue. 52 FR 10011. On April 2, 1987 the Department of Justice's Office of Legal Policy issued a memorandum on New FOIA Fee Waiver Policy Guidance ("DOJ Memorandum"). After considering the guidance provided in these OMB and DOJ documents, the Commission proposed amendments to its FOIA fee regulations on May 12, 1987. 52 FR 17767.

B. Public Comments

The Commission received one public comment on its proposed FOIA fee amendments. This comment, from attorneys for Public Citizen and the Freedom of Information Clearinghouse ("Public Citizen"), did not specifically address the Commission's proposal—rather, it discussed issues raised by the Reform Act, its legislative history, the OMB Guidelines, and the DOJ Memorandum. The Commission has considered Public Citizen's applicable points and addresses them in section C, below.

C. Final Amendments

This section summarizes the final amendments issued below, discusses their rationales, and explains the changes made to the proposed amendments (the citations are to the final amendments):

1. The Commission will provide certain routine information at no charge; otherwise, the Secretary will determine and levy FOIA fees in accordance with the regulations (§ 1015.9(a)). This provision shortens, but does not change, existing provisions.

2. Checks and money orders will be payable to the Treasury of the United States, instead of to the CPSC, but will continue to be sent to the CPSC (§ 1015.9(b)). This will make fee collection administratively easier because the U.S. Treasury eventually receives funds collected for FOIA responses.

3. Under the Reform Act, different categories of requests incur different types of costs. The four types of requests are: (a) Commercial use requests; (b) requests from educational and non-commercial scientific institutions; (c) requests from representatives of the news media; and (d) all other requests. The three types of costs are duplication, search, and review.

The Commission specifically sought comment on the issue of whether lawyers would be "commercial use requesters" or "other" requesters when seeking information under FOIA for use in product liability lawsuits. Although no public comments addressed this issue, the Commission has evaluated arguments on both sides, considered the positions taken by other federal agencies, and decided to apply the following criteria to requests from lawyers:

(a) If a FOIA request from a lawyer is being submitted on behalf of a client, the Commission will consider the client's use of the information to determine the proper category for that request. If the client is a victim seeking reimbursement for injuries suffered in an incident involving a consumer product, the request will be an "other" request and not a "commercial use" request. For clients in different categories, the intended use of the information will determine the type of request for fee purposes.

(b) If a FOIA request from a lawyer doesn't identify a client, the Commission will attempt to find out—for example, by telephoning the lawyer—if the request was submitted on behalf of a client.

(c) If the lawyer is not representing a client or refuses to reveal the client's identity, the lawyer's intended use of the information will determine whether the request is a "commercial use" request or some other type.

(d) For FOIA fee purposes, lawyers may identify their clients by category rather than by name. To assess appropriate fees, however, the Commission may insist on a specific description of the intended use.

4. To reflect and clarify the approach of categorizing requests from lawyers according to their clients' intended use of the information (whenever possible), the Commission has modified its definition of "commercial use request." As proposed, the definition referred to "a request from or on behalf of one who

seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made." The final definition refers, more simply, to a request that seeks information for a use or purpose that furthers commercial, trade, or profit interests (§ 1015.9(c)(v)).

Public Citizen sought a definition for "commercial use request" that would "[draw] a bright line between private, profit-making and non-profit entities." This seemed to be a request for a blanket guarantee that no request from public interest or non-profit organizations would ever be categorized as a commercial use request. The Commission believes that a fairer and more workable approach is to consider—for each FOIA request on an individual basis—how the information is intended to be used.

The statutory language of the Reform Act supports this approach by directing agency regulations to "provide that . . . fees shall be limited to reasonable standard charges for document search, duplication, and review, when records are requested *for commercial use.*" 5 U.S.C. 552(a)(4)(A)(ii), as amended (emphasis added). The Act does not refer to commercial or other types of *users.* While FOIA requests from non-profit groups are unlikely to be commercial requests, the Commission will categorize them on a case-by-case basis.

5. Public Citizen suggested definitions for "educational institution" and "representative of the news media." The Commission's proposed definition of "educational institution," taken from the OMB Guidelines, listed the types of schools it included. Public Citizen's suggestion was that the Tax Code contains a better definition: entities "organized and operated exclusively for . . . educational purposes." The Commission is adopting a final definition that is based on this language (§ 1015.9(c)(vi)), but will not be bound by any tax law authorities in interpreting it.

Similarly, the Commission is changing its definition of "representative of the news media," in response to Public Citizen's comment, to "any person or organization which regularly publishes or disseminates news to the public, in print or electronically (§ 1015.9(c)(viii)). The proposed definition unfairly excluded free-lance journalists who are not associated with any specific news organization, and the final definition remedies that problem. Public Citizen also suggested broadening the definition to those who publish or disseminate information, rather than news, to the public. However, the Commission retained the word "news" in the definition because it is based on the statutory phrase "news media." "Information" is so broad that it might apply to people and organizations outside of the generally understood category of the news media.

All but one of the remaining definitions are being issued in final form as they were proposed (§ 1015.9(c) (i), (ii), (iii), and (iv)). The definition of "non-commercial scientific institution" has been reworded for clarity, but the Commission intends its meaning to remain unchanged.

6. Commercial use requesters may be charged for duplication, search, and review costs; educational institution and non-commercial scientific institution requesters and representatives of the news media may be charged for duplication costs; and all other requesters may be charged for duplication and search costs (§ 1015.9(d)). The following discussion illustrates how the Commission intends to impose review costs under the amendments.

Section 6(b) of the Consumer Product Safety Act (15 U.S.C. 2055(b)) requires the Commission to give manufacturing and private labeling firms the opportunity to comment on documents in which they are identified. The Commission then reviews those comments and decides whether to withhold the documents. If so, the documents are often withheld because of a specific statutory provision, section 6(b), which makes them exempt from disclosure under Exemption 3 of the FOIA (5 U.S.C. 552(b)(3)).

The time spent processing documents under section 6(b) of the CPSA would be a "review" cost under the amendments, since "review" is defined to include the examination of documents to determine whether they are permitted to be withheld. Depending on the nature and length of the firms' comments, such review time is sometimes considerable.

7. Some changes are being made to the fee structure (§ 1015.9(e)), to make fees reflect direct (actual) costs more closely than the existing fees do:

(a) The cost of a search does not now depend on what type of employee conducted it. Under the amendments, clerical personnel will be "billed out" at one rate ($3.00 for each 15-minute period), while non-clerical and professional and managerial personnel will be billed out at a higher rate ($4.90 for each 15-minute period). In addition, any special costs of sending records from field locations to headquarters for review will be included in search fees, at the clerical rate.

(b) Computer time rates are being revised. Postage will be charged, on a direct-cost basis, only for special handling. The rates for materials and services not specified in the regulations will be on direct-cost bases, as determined by the Secretary.

(c) The costs of review, which are not currently charged, will be billed at $4.90 for each 15-minute period, since lawyers and other professionals perform this work.

8. The Reform Act addresses the circumstances under which agencies must waive FOIA fees. First, 100 pages of duplication and two hours of search time must be waived, except for commercial users. Second, fees must be waived (or, in rare cases, reduced) if disclosure of the requested information is in the public interest, because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

The Commission currently waives the first $25 of fees for all requests. It also directs the Secretary to waive or reduce fees when the disclosure would primarily benefit the general public or when special circumstances warrant. These provisions are being amended as follows:

For commercial use requests, there will be no automatic waiver (§ 1015.9(f)(i)). For educational institutions, noncommercial scientific institutions, and representatives of the media (for which the Commission only imposes duplication costs), there will be a $10 waiver for duplication costs (at $.10/page, 100 pages of duplication would cost $10) (§ 1015.9(f)(ii)). For any other requester (for which the Commission imposes duplication and search costs), the waiver will be $10 for duplication costs and $40 for search costs (§ 1015.9(f)(iii)). The cost of a two-hour search would vary, depending on the status of the employee searcher, from $24.00 to $39.20 (computer searches are excluded). For administrative convenience, the Commission will waive the highest possible figure for a two-hour search, $39.20, rounded off to $40.

Under the amendments, the Secretary will consider all "public interest" waiver requests under the six factors outlined in the DOJ Memorandum (§ 1015.9(f) (iv) and (v)). Public Citizen commented that the advice in the DOJ Memorandum is inconsistent with the Reform Act, disingenuous, and biased. However, the Commission does not plan to rely on the Justice Department's advice any more or less than it would rely on the legislative history of the Reform Act and its own

interpretation of the Act, should a question arise about applicability of the "public interest" waiver. The six factors merely isolate and restate the statutory language, and the Commission finds them to be a useful framework for its regulation. Therefore, they are retained in the final amendments.

The Secretary's decisions on waivers will be appealable to the General Counsel (§ 1015.9(f)(vi)).

9. Other amendments concerning the assessment and collection of fees follow the OMB Guidelines:

(a) The Commission will assess interest charges on an unpaid bill, starting on the 31st day after the billing was sent (§ 1015.9(g)(i)).

(b) The Commission will assess charges for time spent searching, even if responsive documents are not located or located documents are exempt from disclosure (§ 1015.9(g)(ii)). Such charges shall not exceed $25, unless the requester has authorized a higher amount.

(c) The Commission will require advancce payment if (1) charges are estimated to exceed $250 and the requester has no history of payment and cannot provide satisfactory assurance of payment, or if (2) a requester has previously failed to pay within 30 days of the billing date (§ 1015.9(g)(iii)).

(d) The Commission will aggregate requests for billing purposes when it reasonably believes that one request has been "broken down" into a series of requests for the purpose of evading fees (§ 1015.9(g)(iv)).

(e) Under the Reform Act, agencies are prohibitied from charging a fee if the cost of collecting the fee would be equal to or greater than the fee itself. Therefore, the Commission will not charge for any request in which the total bill is less than $9.00 (§ 1015.9(g)(v)), an amount that the Commission estimates is the average cost of proceeding one fee collection.

The amendments will become effective on September 4, 1987. In proposing them, the Commission found that neither an environmental assessment nor an environmental impact statement was required. In addition, because any changes in the numbers of firms affected or the amounts of fees collected under the FOIA are not expected to be substantial, the Commission certified that the proposed amendments were not expected to have a significant economic impact on a substantial number of small entities, under the Regulatory Flexibility Act. 5U.S.C. 603(3).

List of Subjects in 16 CFR Part 1015

Freedom of information.

Pursuant to 5 U.S.C. 552(a)(4)(A), as amended, the Commission hereby amends 16 CFR Part 1015 as follows:

PART 1015—[AMENDED]

1. The authority citation for Part 1015 continues to read as follows:

Authority: 80 Stat. 1207; (15 U.S.C. 2051), 74 Stat. 372 as amended; (15 U.S.C. 1261), 84 Stat. 1670; (15 U.S.C. 1471), 70 Stat. 953; (15 U.S.C. 1211), 68 Stat. 11 as amended; (15 U.S.C. 1191), 81 Stat. 54 as amended (5 U.S.C. 552).

2. Section 1015.9 is revised to read as follows:

§ 1015.9 Fees for production of records.

(a) The Commission will provide, at no charge, certain routine information. For other Commission responses to information requests, the Secretary shall determine and levy fees for duplication, search, review, and other services, in accordance with this section.

(b) Fees shall be paid by check or money order, payable to the Treasury of the United States and sent to the Commission.

(c) The following definitions shall apply under this section:

(1) "Direct costs" means those expenditures which an agency actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request.

(2) "Search" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents.

(3) "Duplication" refers to the process of making a copy of a document necessary to respond to a FOIA request.

(4) "Review" refers to the process of examining documents located in response to a commercial use request to determine whether any portion of any document located is permitted to be withheld.

(5) "Commercial use request" refers to a request that seeks information for a use or purpose that furthers commercial, trade, or profit interests.

(6) "Educational institution" refers to an entity organized and operated exclusively for educational purposes, whose purpose is scholarly.

(7) "Non-commercial scientific institution" refers to an entity organized and operated exclusively for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(8) "Representative of the news media" refers to any person or organization which regularly publishes or disseminates news to the public, in print or electronically.

(d) A commercial use request may incur charges for duplication, search, and review. The following requests may incur charges only for duplication: A request from an educational institution for records not sought for commercial use; a request from a non-commercial scientific institution for records not sought for commercial use; a request from a representative of the news media. Any other request may incur charges for duplication and search.

(e) The following fee schedule will apply:

(1) Copies of documents reproduced on a standard photocopying machine: $0.10 per page.

(2) File searches conducted by clerical personnel: $3.00 for each one-quarter hour (a fraction thereof to be counted as one-quarter hour). Any special costs of sending records from field locations to headquarters for review will be included in search fees, billed at the clerical personnel rate.

(3) File searches conducted by non-clerical or professional or managerial personnel: $4.90 for each one-quarter hour (a fraction thereof to be counted as one-quarter hour).

(4) Review of records: $4.90 for each one-quarter hour (a fraction thereof to be counted as one-quarter hour).

(5) Computerized records: for central processing, $0.32 per second of central processing unit (CPU) time; for printer, $10.00 per 1,000 lines; and for computer magnetic tapes or discs, direct costs.

(6) Postage: Direct-cost basis for mailing requested materials, if the requester wants special handling or if the volume or dimensions of the materials requires special handling.

(7) Microfiche: $0.35 for each frame.

(8) Other charges for materials requiring special reproducing or handling, such as photographs, slides, blueprints, video and audio tape recordings, or other unusual materials: direct-cost basis.

(9) Any other service: An appropriate fee established by the Secretary, based on direct costs.

(f) Fees shall be waived as follows:

(1) No automatic fee waiver shall apply to commercial use requests.

(2) The first $10.00 of duplication costs shall be waived for requests from educational institutions, non-commercial scientific institutions, and representatives of the news media.

(3) For all other requests, the first $10.00 of duplication costs and the first $40 of search costs shall be waived.

(4) The Secretary shall waive or reduce fees whenever disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and disclosure of the requested information is not primarily in the commercial interest of the requester.

(5) In making a determination under paragraph (f)(4) of this section, the Secretary shall consider the following factors:

(i) The subject of the request: Whether the subject of the requested records concerns the operations or activities of the government.

(ii) The informative value of the information to be disclosed: Whether the disclosure is likely to contribute to an understanding of government operations or activities.

(iii) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to public understanding.

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities.

(v) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(vi) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(6) Any determination made by the Secretary concerning fee waivers may be appealed by the requester to the Commission's General Counsel in the manner described at § 1015.7.

(g) Collection of fees shall be in accordance with the following:

(1) Interest will be charged on amounts billed, starting on the 31st day following the day on which the billing was sent. Interest will be at the rate prescribed in 31 U.S.C. 3717.

(2) Search fees will be imposed (on requesters charged for search time) even if no responsive documents are located or if the search leads to responsive documents that are withheld under an exemption to the Freedom of Information Act. Such fees shall not exceed $25.00, unless the requester has authorized a higher amount.

(3) Before the Commission begins processing a request or discloses any information, it will require advance payment if:

(i) Charges are estimated to exceed $250.00 and the requester has no history of payment and cannot provide satisfactory assurance that payment will be made; or

(ii) A requester failed to pay the Commission for a previous Freedom of Information Act request within 30 days of the billing date.

(4) The Commission will aggregate requests, for the purposes of billing, whenever it reasonably believes that a requester or group of requesters is attempting to separate a request into more than one request for the purpose of evading fees.

(5) If a requester's total bill is less than $9.00, the Commission will not request payment.

Dated: July 23, 1987.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 87-17059 Filed 8-4-87; 8:45 am]

BILLING CODE 6355-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 30, 32, and 166

Foreign Futures and Foreign Options Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is adopting final regulations governing the domestic offer and sale of options and futures contracts traded on or subject to the rules of a foreign board of trade. These rules are intended to implement the provisions of sections 2(a)(1)(A), 4(b) and 4c of the Commodity Exchange Act ("Act"), which vest the Commission with exclusive jurisdiction over the offer and sale of such instruments in the United States.

EFFECTIVE DATE: January 4, 1988.

FOR FURTHER INFORMATION CONTACT: Jane C. Kang, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION:

I. Background

On April 8, 1986, the Commission published for public comment a new part 30 to its regulations to govern the domestic offer and sale of futures and options entered into on or subject to the rules of a foreign board of trade. 51 FR 12104.[1] Following an initial comment period of 90 days, the comment period was twice extended and closed on November 14, 1986. Upon careful consideration of all comments received and its own reconsideration of the regulations as proposed in light of its regulatory objectives, the Commission is today publishing final rules.

With the development of international futures markets, and increasing public awareness of such markets, these regulations will add to the Commission's existing customer protection regulatory scheme coverage of foreign futures and options transactions undertaken by U.S. domiciliaries. Throughout the formulation of these rules, the Commission has been guided by Congress' intent that foreign futures and options products sold in the U.S. be subject to regulatory safeguards comparable to those applicable to domestic transactions.[2] In particular, requirements with respect to registration, disclosure, capital adequacy, protection of customer funds and recordkeeping will be applied to the offer and sale of foreign products as they are to the offer and sale of domestic products. In addition, the regulations will extend the open season provisions of section 12(e) of the Act to permit the application of state law to those persons and foreign transactions that operate in violation of the regulatory scheme. Currently, the Commission has exclusive enforcement jurisdiction with respect to all foreign futures and options transactions. *See* section 12(e). Further, the rules potentially are a vehicle for harmonizing regulatory programs among international markets, thus facilitating the growth of these markets.

Finally, the regulations are a prerequisite to permitting the offer and sale of foreign options, now banned, to members of the public.[3] As described in greater detail in section IV, *infra*, pursuant to rule 30.3(a) adopted herein, the Commission intends to authorize by separate order the offer and sale of foreign options on a market-by-market basis.

In order to give affected persons sufficient time to comply with the rules (and to coincide with the effective date of certain offshore regulatory programs), the Commission is delaying their effective date to January 4, 1988. In the interim, the prohibition on foreign options will remain in place, while foreign futures may be offered subject only to the antifraud provisions of section 4b of the Act and current Commission rule 30.02. The Commission is mindful that the implementation of a regulatory scheme such as this is an evolving process, particularly as the issues are numerous and complex. Accordingly, the Commission invites affected persons to seek interpretations of the rules, no-action positions and

[1] This proposal was preceded by an advance notice of proposed rulemaking that was published in the Federal Register on July 25, 1984 in response to amendments to the Act in the Futures Trading Act of 1982, Pub. L. No. 97-444, 96 Stat. 2294, 2299 (1983). 49 FR 29963.

[2] *See* S. Rep. No. 384, 97th Cong., 2d Sess. 45-46 (1982) and 51 FR at 12107.

[3] Although Congress removed the statutory prohibition on the offer and sale of foreign options formerly contained in section 4c(c) of the Act, *see* Futures Trading Act of 1982, Pub. L. No. 99-641, section 102, 100 Stat. 3556 (1987), the regulatory prohibition set forth in Commission rule 32.11, 17 CFR 32.11 (1987), adopted pursuant to section 4c(b) of the Act, remains in effect. This regulatory prohibition, of course, is subject to the trade option exception set forth in Commission rule 32.4, 17 CFR 32.4 (1987).

exemaptions, as appropriate. In this regard, the Commission has determined to retain the general exemptive provision set forth in rule 30.10, as proposed.

As the Commission noted in proposing this rule, among other things, it allows persons located outside the United States that are subject to a comparable regulatory scheme to seek an exemption from the application of certain of the rules adopted herein. In this connection, the Commission is issuing concurrently as Appendix A to Part 30 of these rules, an interpretative statement generally indicating how this exemption would be applied which sets forth the elements the Commission will examine in determining whether to grant an exemption to such persons. As described more completely in the interpretative statement, a party seeking an exemption must set forth with particularity the comparable rule or rules applicable in the jurisdiction in which the party is located. Moreover, any exemption that may be granted will be subject to the condition that the foreign person consensually submit to U.S. jurisdiction by designating an agent for service of process in the United States with respect to the foreign transactions that are the subject of these rules. In addition, the foreign person must agree to make its relevant books and records available in the United States to a Commission or Department of Justice representative.

The Commission would like to make clear that the more general exemption described herein and in the interpretative statement would be available to persons located outside the United States that are subject to a comparable regulatory structure. It is not the Commission's intention to grant such exemptions to persons located in the United States that solicit or accept orders for execution on a foreign board of trade although, as noted above, the Commission will entertain from domestic persons petitions for exemption or no-action to address technical problems of particularity in the application of the Commission's foreign futures and options rules to given persons, as it would with respect to any Commission rules. Otherwise, U.S. persons required to register with the Commission under part 30 generally will be expected to comply in all respects with its provisions and related provisions of the Commission's rules.

II. Summary of Comments on Proposed Rules

During the seven-month comment period, the Commission received thirty letters on the notice of proposed rulemaking, representing five United States contract markets, four futures commission merchants, the Futures Industry Association ("FIA"), National Futures Association ("NFA"), two United States Government agencies (Departments of Commerce and Justice), the North American Securities Administrators Association, Inc. ("NASAA"), a company which provides bookkeeping systems to futures commission merchants and to other commodity clients in London and Hong Kong, and thirteen foreign commenters. The foreign commenters included five foreign exchanges, one of which submitted its views through a comment letter prepared jointly by a United States law firm and a Canadian law firm, and one letter from the Joint Exchanges Committee in London, representing the views of the London Commodity Exchange Ltd., the Metal Market and Exchange Company Ltd., the London International Financial Futures Exchange Ltd., the Grain and Feed Trade Association, the International Petroleum Exchange of London Ltd., and International Commodities Clearing House Ltd. (hereinafter "London Exchanges"), two foreign commodities firms, one of which is also a registered futures commission merchant, and five foreign governmental entities. Two commenters submitted more than one comment letter.[4] A synopsis of the views of the three major groups of commenters, *i.e.*, U.S. exchanges, U.S. futures commission merchants and foreign exchanges, in addition to that of NFA, follows. A more detailed survey of the comments received is outlined in the analysis of the final rules.

The U.S. futures commission merchants generally questioned the need for any regulation whatsoever. However, their specific concerns centered on the separate segregation requirement, which they believed would be expensive to implement and which they contended their current computer systems would not be able to accommodate. The futures commission merchants also expressed reservations about serving as an agent for service of process of all communications under the proposed alternative procedure, fearing that as a result they could be held responsible for the conduct of the foreign entity over which they had no control. The majority of the futures commission merchants also strongly recommended that the definition of "commercial" persons set forth in proposed rule 30.1 be broadened to include institutional users of the commodities markets and financial institutions.

The U.S. contract markets supported the adoption of a regulatory structure but contended that the proposed rules, if not exactly equivalent to the regulation of domestic products, would give a competitive advantage to foreign exchanges. The contract markets expressed particular concern that commercials would be excluded from the definition of a foreign futures and option customer setting a precedent for a trade futures exception and that foreign futures and option customer funds would not be included in a firm's required capital computation. They specifically addressed the issue of parity with respect to foreign and domestic products stating that these exclusions would make the cost of doing business on a foreign exchange less expensive than the cost of doing business in the U.S. and, hence, would have an anticompetitive effect on the U.S. market. They also expressed concern about the increased threat to U.S. customer funds for lack of capital reflecting the risk of foreign positions in the event of the bankruptcy of the futures commission merchant.

The foreign exchanges also asserted the rules were anticompetitive but, conversely, that they discriminated in favor of the U.S. markets. They particularly expressed concern about the registration requirement for firms not located in the U.S. In their view, the alternative procedure in proposed rule 30.5 provided little relief, since it would require the foreign firm to effect transactions through a registered domestic futures commission merchant.[5] However, they strongly supported the exemptive procedure. The foreign exchanges also objected to the disclosure requirement, contending it suggests that trading on a foreign exchange is riskier than trading on a U.S. exchange. Finally, since foreign exchanges permit "upstairs" or over-the-counter trading, the exchanges asked that the rules make clear that such transactions are not prohibited. Conversely, on this matter, the U.S. contract markets requested clarification that section 4(a), which prohibits the offer and sale of all off-exchange futures contracts, would be applicable to off-exchange foreign futures contracts.

NFA commented that U.S. participants in foreign futures and options transactions should be afforded protections substantially similar to those afforded customers whose transactions are executed on domestic

[4] These commenters were the Department of Justice and the Coffee, Sugar & Cocoa Exchange, Inc. In addition, on July 3, 1987, the Joint Exchanges Committee in the United Kingdom submitted a letter on behalf of the London Exchanges, the Bank of England, the Securities and Investments Board, the Association of Futures Brokers and Dealers and the Department of Trade and Industry urging the Commission to adopt final rules governing foreign futures and options transactions as expeditiously as possible.

[5] Notably, the U.S. exchanges criticized the alternative procedure in proposed rule 30.5 as it would provide an intermediate basis for qualifying to do business from offshore without the corresponding agreement of offshore self-regulators to cooperate in enforcing the regulations.

exchanges. In that connection, NFA urged the Commission to promulgate rules governing registration and minimum financial requirements for firms engaged in foreign futures and options transactions, but commented that maximum flexibility would be achieved if the Commission permitted additional requirements in areas such as segregation, recordkeeping, disclosure and sales practices to be imposed through NFA rulemaking. According to NFA, this approach to regulation would be especially appropriate in view of the apparent general trend among foreign governments to provide for regulation in their jurisdictions through self-regulatory bodies.

III. Final Rules

A. In General

The rules which the Commission is now adopting reflect the Commission's careful evaluation of the comments received and refinement of its regulatory objectives in this rulemaking proceeding. As a result, the regulatory system outlined in the final rules as adopted herein is consistent with that proposed by the Commission in April of last year while refining the proposed rules in three principal respects. These principal revisions to the proposed rules are discussed at length below, followed by a discussion of the other aspects of the final rules. Generally, these revisions reflect the resolution of issues raised for comment in favor of according substantially comparable treatment, insofar as practicable, to foreign and domestic products sold in the U.S., a resolution that effectuates the overall purpose of the rulemaking. As previously noted, however, the Commission is mindful of the particularly complex nature of the issues presented by these rules as well as the regulatory goals embodied herein. In consideration of the foregoing, and to give affected persons sufficient time to comply or to apply for an exemption through the exemptive procedure in rule 30.10, the Commission is delaying the effective date of the rules to January 4, 1988, and reiterates its invitation to affected persons to seek interpretations, clarifications and exemptions, as appropriate.[6]

[6] The Commission wishes to note that the staff will continue to consider requests for issuance of no-action letters with respect to the offer and sale of foreign futures contracts which are based on stock indices in light of the criteria set forth in section 2(a)(1)(B) of the Act. The rules herein will regulate the offer and sale of foreign futures contracts based on such indices, but does not eliminate the necessity of complying with other provisions of the Act applicable to such contracts.

B. Principal Revisions to Proposed Rules

Commercial exclusion. Unlike the broad definition of a "customer" for purposes of domestic exchange transactions, the Commission proposed to exclude from the definition of a "foreign futures or foreign options customer" a "producer, processor, or commercial user of, or a merchant handling, the commodity which is the subject of the foreign futures contract or foreign options transaction, or the products or byproducts thereof, when such foreign futures contracts or foreign options transactions are entered into solely for purposes related to its business as such." Proposed § 30.1(c). The Commission, which modeled this exception on the trade option exception, proposed this exclusion based upon the current nonregulation of foreign futures generally and its belief that, historically, persons who had determined to use transactions on foreign exchanges in connection with their business had taken the time to investigate those markets and the brokers with which they would be dealing. As a result, except for the prohibitions on fraud that in any event are applicable to the offer and sale of all transactions on foreign exchanges, the Commission preliminarily determined that such persons may not require the special protections afforded by the Commission's proposed regulatory scheme for the domestic offer and sale of such foreign products. However, the Commission specifically requested comment on whether this exclusion was appropriate.[7]

The commercial exclusion generated strong opinions on both sides of the issue. The exchanges expressed great concern with the Commission's plan to exclude from the definition of "customer" all "commercial" entities, commenting that the proposal is inconsistent with the objectives of customer protection and fair competition. Noting the Commission's statement in the proposal that commercial traders are more sophisticated than non-commercial traders and, therefore, do not need the "special protections" provided by Commission regulations, they commented that the need for such protections is even less compelling when transactions occur on domestic exchanges, where safeguards that may not be found on foreign markets are enforced directly by the contract markets and their clearing organizations, subject to Commission oversight. However, the primary reason the exchanges opposed this exclusion was their concern that it provided a competitive advantage to foreign markets at the expense of domestic markets. Another U.S. commenter noted the Commission's assessment in the proposed rules that virtually all foreign futures and foreign options transactions originating from the U.S. are for commercial accounts and was troubled that the exclusion of commercials from the definition of a foreign futures or foreign options customer would have eliminated the desirable aspects of the Commission's customer protection rules.

The futures commission merchants and foreign commenters who remarked on this provision endorsed the Commission's effort to exempt from the scope of the proposed regulations certain commercial entities. Nevertheless, they believed that the language of the commercial customer exclusion, set forth in proposed rule 30.1(c), should be broadened in two respects. First, the exclusion should be expanded to include a sophisticated professional and business user of the markets who would not strictly be "a producer, processor or commercial user of, or a merchant handling the commodity which is the subject of the foreign futures contract or foreign options transactions. . . ." Second, they suggested that the restriction that an excluded customer enter into the foreign futures or options transaction "solely for purposes related to its business as such" is too narrow and could undermine completely the benefits of the proposed exemption. In this connection, certain futures commission merchants noted that the narrow scope of the exclusion would require them to carry commercials in two separate accounts, since commercials frequently engage in transactions that would not qualify for an exclusion. Hence, the benefits intended by the proposed rule would be lost and administrative problems and costs of doing a global business would be materially magnified. In essence, these commenters endorsed a "sophisticated investor" exclusion from the definition of a foreign futures and foreign options customer.

The Commission finds merit in the position of the U.S. exchanges that "commercials" be included in the definition of a foreign futures and foreign options customer. This assessment is generally consistent with Congressional intent that the Commission adopt rules to protect *all* U.S. residents and that any regulations adopted not result in either domestic or foreign products having a comparative

[7] 51 FR at 12107.

advantage over the other.[8] Moreover, the Commission has determined that it would not be appropriate to expand the scope of the language in the trade option exception to all commercials trading in foreign futures and foreign options. As noted by one U.S. exchange, the mere fact that a firm deals in the underlying commodity does not mean that it is a "sophisticated" trader of all foreign futures or foreign options and that it could not benefit from the safeguards applicable to other non-commercial customers. Further in this regard, as noted above, the futures commission merchant community appeared generally dissatisfied with the scope of the exclusion, arguing that it did not provide meaningful relief as proposed. The Commission, however, was concerned that such an exclusion, particularly in that it may provide lesser protections to funds of institutions which invest and carry funds for the general public, may not be in the public interest. Therefore, the Commission has determined not to exclude commercials from the definition of foreign futures and foreign options customers.[9]

Capital requirements. The Commission proposed no changes to Commission rule 1.17 which currently does not require that foreign futures customer funds be taken into account in computing the firm's minimum net capital requirements, although a futures commission merchant is required to take a charge against its capital for undermargined house proprietary accounts or customer futures accounts (including foreign futures accounts) carried by the futures commission merchant. Commission rule 1.17(c)(5)(viii)–(x), 17 CFR 1.17(c)(5)(viii)–(x) (1987). Thus, as proposed, the rules would not have applied the present four percent of segregated fund captial requirement to foreign futures and options with respect to entities currently registered as futures commission merchants. For entities which registered as futures commission merchants and engaged exclusively in foreign futures or option transactions, an adjusted minimum net capital of no less than $50,000 would have been required under Commission rule 1.17(a). An entity which registered as an introducing broker would have been required to maintain an adjusted net capital of at least $20,000 or be guaranteed by a futures commission merchant. Commission rule 1.17 (a), (j), 17 CFR 1.17 (a), (j) (1987). The Commission specifically requested comment, however, on whether this approach to the minimum net capital requirement of futures commission merchants that carry foreign futures or options was appropriate and, in particular, whether it was sufficient in the case of certain foreign markets that do not have explicit margin requirements. 51 FR at 12107–08.

The U.S. exchanges strongly opposed the proposal not to impose the same capital requirements applicable to domestic transactions on foreign futures and foreign options. Specifically, they commented that domestic and foreign contracts carried by a firm must be treated alike in order to provide a meaningful net capital standard to provide the protections generally envisioned by capital against risk to the financial integrity of a firm, particularly in that margin may not always be assessed, and to insure that foreign products do not enjoy a built-in competitive advantage over domestic products. Otherwise, they argued, U.S. firms will favor the sale of foreign futures and options and firm capital will inadequately protect customers who are sold such instruments. Additionally, they urged the Commission to impose a minimum capital requirement on firms engaged exclusively in the domestic offer and sale of foreign futures and options that accurately reflects the risk inherent in the total positions carried by such firms.[10] Finally, the exchanges noted that the growing availability of such instruments in the U.S. creates a real danger that foreign trading losses could cause an otherwise safe and sound domestic firm to fail.

One foreign exchange also questioned the adequacy of the Commission's proposal in this regard and commented that in the jurisdiction in which it is situated, its member firms are required to include all contracts, including foreign futures and options, in calculating their minimum net capital requirement (except for exempt contracts consisting of spreads in the same commodity entered into on the same commodity future exchange, short covered hedge positions and commodity futures contracts held for financial institutions). One futures commission merchant which commented on this issue noted that the Commission's approach to minimum net capital was appropriate.

On this issue as well, the Commission has considered the comments in light of the proposal's intent to ensure, to the degree reasonably possible, the comparable treatment of domestic and foreign products, and the Congressional directive in this regard. The Commission's capital requirement essentially serves three related purposes. First, it ensures that a firm has made a sufficient financial commitment to doing business and that it has an adequate inclination to operate a responsible business. Second, the capital requirement promotes a firm's stability and enhances its ability to perform as an agent to its customers. Finally, and most importantly, the minimum adjusted net capital requirement promotes a firm's financial integrity and coupled with margin, protects against firm insolvencies. As previously discussed, the U.S. exchanges expressed the view that domestic and foreign products must be treated alike in order to ensure a meaningful net capital standard, and further expressed great concern that the failure to account for foreign futures and options in computing the firm's minimum net capital requirement could affect an otherwise safe and sound domestic firm. For these reasons, the Commission believes that, in light of the differences in margin treatment on foreign exchanges and Congressional concern with respect to the comparable treatment of domestic and foreign products, rule 1.17 should be applied to money, securities and property which a futures commission merchant holds for or on behalf of foreign futures and foreign options customers to secure open foreign futures and foreign options positions as well as domestic positions.[11] Specifically, pursuant to

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[8] S. Rep. No. 384, 97th Cong., 2d Sess. 46 (1982).

[9] The Commission notes, however, that, as under current Commission rules and regulations with respect to transactions on U.S. contract markets, a person trading foreign futures and options solely for proprietary accounts will not be required to register as a futures commission merchant, although such a person will remain subject to all other applicable provisions of the Act of the rules, regulations and orders thereunder. See Commission rule 3.10(c), 17 CFR 3.10(c) (1987).

[10] The Commission has recently sent letters to all of the industry self-regulatory organizations, welcoming their efforts to develop and test a risk-based minimum capital requirement as an alternative to certain proposals advanced by the Commission after the default of Volume Investors Corporation in 1985. The Commission stated that it looks forward to receipt of this proposal, which it understands may be submitted to the Commission within the next few months. The Commission further stated that any such proposal would deserve a prompt, yet thorough, examination and comment process, which will permit all interested parties sufficient time to review and assess its potential impact. However, the Commission believes that the continuing work on a general modification of the Commission's capital rules, however timely, should not further defer the adoption of the rules herein.

[11] The definition of such funds, the secured amount, describes the minimum amount required to be maintained in the separate account or accounts mandated by new rule 30.7 on behalf of foreign futures and options customers. The secured amount can be deposited in an account together with nonregulated customer funds provided there is no competing security interest in such account and the provisions of § 30.7(b) are met.

amendments to rule 1.17, the capital requirement applicable to firms carrying foreign futures and foreign options positions will include four percent of the foreign futures and foreign options secured amount, which is defined in new rule 1.3(rr) and discussed more fully below. The Commission believes this determination is more consistent with Congressional intent and the Commission's goal of ensuring to the extent possible, the parallel treatment of domestic and foreign futures and options products and the financial integrity of firms doing an integrated business.

To effectuate this new determination, conforming amendments have been added to part 1 of the Commission's rules. As referenced above, the definition of foreign futures and foreign options customer funds in proposed § 30.1(d) has been deleted and the definition of foreign futures and foreign options secured amount has been added at rule 1.3(rr) because of the reference to such term in conforming amendments to rules 1.10, 1.16 and, most significantly, in rules 1.12 and 1.17, CFR 1.10, 1.12, 1.16 and 1.17 (1978). This secured amount was adopted in lieu of a separate segregation requirement for excess margin in order to reduce the accounting and transmission problems affiliated with the requirement that all such excess funds be accounted for and maintained onshore. In essence, the foreign futures and foreign options secured amount is an amount equal to the money, securities and property held by, or held for or on behalf of, a futures commission merchant from, for, or on behalf of foreign futures or foreign options customers required to margin, guarantee or secure *open* foreign futures contracts or representing premiums paid or received, plus other funds required to guarantee or secure open option transactions, plus any unrealized gain or minus any unrealized loss on such transactions. In the case of certain foreign options, the Commission understands that premiums paid by customers are held not by the firm but transferred directly to the opposite party to the foreign option contract. Since such premium would not be held by or held on behalf of the futures commission merchant, such premium would not constitute foreign futures and foreign options secured amount.

This will also be the amount to which the existing four percent capital requirement is applied and in calculating the early warning level for firm capital pursuant to 1.12(b)(2) and the firm's adjusted net capital in sections 1 17(a)(1)(i)(B), (b)(2), (c)(5)(iii), (e)(1)(ii), (h)(3)(iv)(C)(2), (h)(2)(vii)(A)(2), (h)(2)(vii)(B)(2), (h)(2)(viii)(A)(2), (h)(3)(ii)(B) and (h)(3)(v)(B) of the Commission's rules. Further, pursuant to amendments to rule 1.10, futures commission merchants must account for money, securities and property received from foreign futures and foreign options customers on the Form 1–FR. Similarly, in rule 1.16, which deals with the qualifications and reports of accountants, paragraph (a)(4) which defines "customer" has been revised to include a foreign futures and foreign options customer as that term is defined in rule 30.1(c).

Foreign Futures and Foreign Options Secured Amounts. In specifying which of the Commission's existing rules and regulations would not be applicable, the Commission noted that rule 1.20, requiring the segregation of customer funds, would not be applicable in recognition of the fact that the Commission could not impose upon members of foreign exchanges, or the foreign exchanges, or the foreign exchanges themselves, the same obligations imposed upon U.S. clearing member firms and clearing organizations consistent with Congressional directive discussed more fully below.[12] Therefore, the Commission originally proposed a separate segregation rule to govern the treatment of foreign futures or foreign options customer funds, imposing upon futures commission merchants carrying foreign futures or options customer funds virtually the same obligations with respect to funds in their possession as they have with respect to U.S. futures or option customer funds as long as such funds are held in the United States. Proposed § 30.7. This rule, in effect, required excess margin funds for foreign transactions to be retained onshore.

Under the modified segregation proposal, futures commission merchants were required to deposit foreign futures or options customer funds in a bank located in the United States [13] or with another futures commission merchant and separately account for and segregate such funds as belonging to foreign futures or option customers. However, such funds subsequently could be deposited with a member of a foreign exchange, with the clearing organization of such foreign exchange or with their respective designated depositories to purchase, margin, guarantee, secure, transfer, adjust or settle foreign futures contracts or options of behalf of the foreign futures or options customer. The requirement of a U.S. deposit before the transmission of funds offshore was intended to insure the availability of bank and futures commission merchant records with respect to such funds which would help establish that they had indeed been transferred on behalf of customers and assist in the tracing of funds.

Proposed rule 30.7 also provided that such funds could, for convenience, be commingled with the funds of other foreign futures or options customers and deposited in the same account or accounts with a bank or trust company located in the United States or with another futures commission merchant, but under no circumstances could such funds be commingled with customer funds required to be segregated under section 4d of the Act and Commission rule 1.20. The Commission expressed concern that to permit such commingling would possibly dilute the pool of funds available to U.S. futures customers in the event of a bankruptcy of the futures commission merchant to the extent funds located overseas could not be repatriated. The Commission's bankruptcy rules provide that for purposes of determining the pro rata distribution of property to customers who hold claims against a debtor, all property segregated on behalf of, or otherwise traceable to, a particular account class is to be allocated to that particular class. Commission rule 190.08(c)(1), 17 CFR 190.08(c)(1) (1987). Thus, to the extent funds located overseas could not be repatriated, if foreign futures and foreign options customer funds were commingled with customer funds required to be segregated pursuant to section 4d, the shortfall in foreign futures and foreign options customer funds would have diminished the pro rata distribution to all customers, including customers trading on domestic exchanges.

However, by requiring foreign futures and foreign options customer funds to be segregated in a separate account, proposed rule 30.7, in conjunction with the Commission's recordkeeping requirements, would have permitted these separately segregated funds to be traceable to a foreign futures or options account class. Provided foreign futures and options customer funds were on deposit in the United States or were otherwise recoverable, foreign futures or options customers would have received the same priority with respect to their

[12] 51 FR at 1208 and proposed § 30.2.

[13] In this connection, the Commission wishes to emphasize that this is a current requirement for domestic futures commission merchants and that a United States branch of a foreign bank may be an acceptable depository.

See Commodity Exchange Authority Administrative Determination No. 238 (September 4, 1974).

funds as U.S. futures and options customers. The Commission also requested comment on whether, in the alternative, this segregation requirement should be eliminated and foreign futures and foreign options customer funds continue to receive a lower priority as was then accorded to them as unregulated funds under the Commission's backruptcy rules.

One U.S. exchange argued very strongly that the Commission should impose identical segregation requirements for funds securing foreign and domestic positions, commenting that the practical effect of the Commission's present proposal is to mislead such customers as to the fate of their funds in a bankruptcy.[14]

On different grounds, U.S. futures commission merchants also objected to the Commission's proposed separate segregation requirement. Essentially, the futures commission merchants noted that the proposed requirement would be extremely complex and costly to implement, requiring major systems changes over an extended period of time. The futures commission merchants noted that in order to comply with the existing segregation requirements of section 4d of the Act, they currently separate customer and non-customer funds. They contended that the Commission's segregation proposal would require the creation of two additional categories within the customer level (commercial and speculative) and could also result in one client being classified in both categories depending upon the commodity being traded. In addition, they commented that separate segregated accounts would be necessary for each possible foreign currency. They contended current systems are not equipped and could not be equipped without excessive cost to handle an additional set of segregated accounts for yen, HK Dollars, Swiss francs, deutschmarks, pounds sterling and Australian Dollars, among other foreign currencies.[15]

They further noted that even if separate segregation could be accomplished without costly systems changes, reporting to clients with respect to such accounts would be confusing and perhaps misleading. Firms also would need to account for segregated (in U.S.) and no longer segregated customer funds (funds transferred to the foreign country) and this would be extremely complex. They were also concerned how to identify accurately where excess funds could be deposited in light of likely substantial nonregulated spot transactions in foreign currencies of their foreign futures and options customers.

One futures commission merchant took a contrary position and commented that it would prefer that no distinction be made between the customer funds of U.S. residents trading in domestic futures and options and the funds of those U.S. residents trading on foreign boards of trade and that these funds be allowed to be retained by futures commission merchants in a consolidated account as long as the funds are located in the United States.[16] If the purpose of the contemplated segregation regulation was to protect the funds of U.S. residents trading in foreign futures and options, this futures commission merchant believed that there was no conceptual basis for treating foreign futures and options customers any differently from U.S. residents who trade on U.S. exchanges or for treating the funds of commercial or institutional customers any differently from those of speculative customers generally. Accordingly, the futures commission merchant requested that consideration be given to the proposition that all U.S. resident customers funds be generally commingled, regardless of the location of the exchange. Finally, this futures commission merchant urged the Commission to clearly authorize futures commission merchants to invest foreign futures and options customer funds in the same manner as they may invest domestic futures and options customer funds.

The majority of the foreign commenters supported the Commission's proposal not to require the segregation in the U.S. of funds necessary to margin foreign futures and foreign options positions overseas, commenting that once foreign futures and option customer funds are transmitted to their respective jurisdictions, such funds are protected by the segregation and other customer protection rules in place in such jurisdictions.

Upon further reflection on this matter, the Commission has determined to modify rule 30.7 to reflect the concerns of the commenters. In so doing, the Commission reaffirms its view that domestic customers of all commodity futures and options products, wherever they originate, should receive substantially the same protections. The Commission further recognizes the inherent limitations on its ability to provide U.S. residents trading on foreign exchanges the identical protections available to U.S. residents trading on U.S. contract markets. Weighed against these considerations, however, is the decision not to promulgate rules which in any way would diminish the pool of funds available to domestic customers trading on U.S. exchanges in the event of a firm failure and not to create biases in favor of the trading of foreign products. Accordingly, pursuant to paragraph (a) of rule 30.7 as adopted, the Commission will require futures commission merchants to maintain in a *separate* account or accounts at least that amount of money, securities and property defined in new rule 1.3(rr) adopted herein, discussed above, which is equal to original client margins set by the futures commission merchant plus accruals and less losses. This amount, "the secured amount," must be deposited in an account accessible on behalf of customers. This rule specifies only the minimum amount required to be maintained in such an account(s). Nothing in these rules prohibits a firm from maintaining additional money, securities and property received from the appropriate customers in such separate account or accounts provided that these amounts are not subject to a competing security interest or claim for noncustomers.

For example, pursuant to new paragraph (b) of this section, the secured amount may, if permitted under foreign laws, be deposited in the same account as are the funds of foreign customers of the futures commission merchant trading on foreign boards of trade

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[14] Another U.S. exchange expressed concern that proposed section 30.7 did not address whether, in linked transactions, it would be permissible for funds received from customers to margin *either* the domestic or foreign positions to be commingled in the same segregated account at the registrant, at a depository, or at the clearinghouse. In that connection, on November 17, 1986, the Division of Trading and Markets issued an interpretative letter at the request of COMEX on the permissible treatment of funds received to margin transactions executed pursuant to COMEX's linkage agreement with the Sydney Futures Exchange. Specifically, the Division stated therein that trades executed on the Sydney Futures Exchange and cleared under the linkage agreement with the COMEX would not be treated as foreign futures but rather as contracts for future delivery on or subject to the rules of a contract market to which the provisions with respect to the segregation of customer funds under section 4d(2) of the Act apply. However, any trades executed on the Sydney Futures Exchange outside of the agreement would be treated as foreign futures. Interpretative Letter No. 86-28, 2 Comm. Fut. L. Rep. (CCH) ¶23,369 (Nov. 17, 1986). *See also* Mutual Offset System's Customer Funds Treatment, Interpretative Letter No. 84-19 [1984-1986 Transfer Binder], Comm. Fut. L. Rep. (CCH) ¶22,398 (Aug. 9, 1984).

[15] In this connection, the Commission notes that a separate account for each foreign currency would not be necessary if such foreign currencies are converted into U.S. dollars.

[16] Under such a system, all foreign futures and foreign options, including funds required to be segregated pursuant to 4d of the Act, would be automatically included in computing the firm's net capital requirement.

provided that the claims of such customers do not diminish the amount required to be on deposit by rule 30.7.[17] Consequently, new paragraph (b) to rule 30.7 requires that, in such instances, the amount on deposit in such account or accounts may be no less than the greater of: (i) The foreign futures and foreign options secured amount plus the amount required to be on deposit if all such customers were foreign futures or foreign options customers under part 30; or (ii) the foreign futures or foreign options secured amount plus the amount required to be held in such separate account(s) for or on behalf of customers pursuant to any law or rule, regulation or order thereunder, or any rule of any self-regulatory organization authorized thereunder, in the jurisdiction in which the depository or the customer is located. This is because, if these funds are subject to an offshore segregation requirement, it is not clear that the priority on behalf of domestic foreign futures and options customers would prevail, as the funds would constitute a trust for two purposes. In the case of other excess funds permitted to be maintained in the separate account, of course, foreign futures and options customers should have a priority claim in the event of insolvency. The foreign futures and foreign options secured amount may not be deposited with money, securities or property of the futures commission merchant or of noncustomers, nor used to secure or guarantee the obligations of such futures commission merchant or of noncustomers. Further, pursuant to paragraph (d), under no circumstances may such secured amount be commingled with funds required to be segregated pursuant to section 4d of the Act and the regulations thereunder.

Pursuant to paragraph (c), the secured amount must be deposited in a separate account or accounts maintained under an account name clearly identifying them as such with a bank or trust company located in the U.S. or as designated, another futures commission merchant, the clearing organization of any foreign board of trade, any member of such foreign board of trade or their designated depositories as permitted under applicable local law. Also pursuant to paragraph (c), as with funds required to be segregated pursuant to section 4d, futures commission merchants must retain in their files for the period designated in rule 1.31, an acknowledgment from the depository that it has been advised that the money, securities or property are held for or on behalf of foreign futures and foreign options customers and are being held in accordance with the provisions of these regulations.

This permits futures commission merchants to continue to document other money, securities and property belonging to foreign futures and foreign options customers deposited in respect of nonregulated transactions such as spot currency transactions subject only to certain recordkeeping and reporting requirements. These requirements include, but are not limited to, the provisions of rule 1.10(d), which, in essence, requires futures commission merchants to include such unregulated funds in addition to the foreign futures and options "secured amount" in completing the Form 1–FR; the requirements of new paragraph (e) to § 30.7, which parallels Commission rule 1.27(a), 17 CFR 1.27(a) (1987), and requires futures commission merchants to account strictly for the investment of money, securities or property on behalf of foreign futures or foreign options customers; new paragraph (f), which parallels Commission rule 1.32, 17 CFR 1.32 (1987), which requires a daily calculation of all funds on deposit, the total amount of money securities and property required to be on deposit in such separate account(s) and, finally, the amount of the futures commission merchant's residual interest in such funds.

In this connection, the Commission's bankruptcy rules as noted above and in the preamble to the proposed rules provide that for purposes of determining the pro rata distribution of property to customers who hold claims against a debtor, all property segregated on behalf of, or otherwise traceable to, a particular account class is to be allocated to that particular class. Commission rule 190.08(c)(2), 17 CFR 190.8(c)(2) [1987]. Under such a formulation, therefore, the Commission does not need to amend its bankruptcy rules. Foreign futures and options secured amounts would be automatically allocated to foreign futures and options customers, to the extent such funds are on deposit in the U.S. or are repatriated. In addition, by imposing strict recordkeeping requirements set forth in rule 30.7(d) and other applicable Commission rules, all money, securities and property held for or on behalf of foreign futures and foreign options customers, should also be traceable to such foreign futures and foreign options account class. Provided these funds are on deposit in the U.S. or may be recovered, such customers should receive such funds on a pro-rated basis.

C. Other Final Rules

Definitions. The proposed rules set forth definitions of, among other terms, "foreign futures" and "foreign options". Proposed § 30.1. These definitions were drawn from similar definitions relating to domestic exchange-traded futures and options. Thus, the definition of "foreign options" paralleled the definition of "commodity option" at Commission rule 1.3(hh), 17 CFR 1.3(hh) (1987). Similarly, the term "foreign futures" was drawn from the definition of the same term at section 761(11) of the Bankruptcy Code, which previously had been incorporated by reference in the Commission's own bankruptcy rules. *See* Commission rule 190.01(t), 17 CFR 190.01(t) (1987). The term "foreign futures", therefore, was defined to include a "contract for the purchase or sale of any commodity for future delivery made, or to be made, on or subject to the rules of any board of trade located outside the United States, its territories or possessions." [18] The Commission specifically requested comment on whether the terms "foreign futures" and "foreign options" may be defined more precisely.

One exchange commented that the Commission's proposed definition of foreign futures was unnecessarily restricted to contracts traded on a "board of trade." It suggested that the Commission adopt the statutory formulation—"board of trade, exchange, or market"—in the definition to ensure that the regulatory scheme will be applicable to all forms of futures and options contracts executed in a foreign location.

One futures commission merchant noted, however, that read in conjunction with proposed rule 30.3, the definition of foreign futures in rule 30.1 would prohibit all off-exchange foreign futures transactions, regardless of the fact that a particular transaction may be entirely consistent with the laws or organized trading practices of the foreign nation. Noting that there are significant "curb" markets that should not be embraced in such a definition, it urged the Commission to amend the definition by adding at the end of that subsection

[17] Specifically, if a firm has foreign futures and foreign options customers as well as clients overseas who trade on foreign boards of trade, the funds of all such customers may be consolidated in the same account or accounts.

[18] A "board of trade" is defined at section 2(a)(1)(A) of the Act and §1.3(a), 17 CFR 1.3(a) (1987), of the Commission's rules to include "any exchange or association, whether incorporated or unincorporated, of persons who shall be engaged in the business of buying or selling any commodity or receiving the same for sale on consignment."

". . . or otherwise consistent with the laws of any other nation."

First, the Commission notes that it did not intend in any way to limit the definition of foreign futures subject to coverage under these regulations, and subject to the other limitations of the Act, by abbreviating the statutory term, "board of trade, exchange, or market" to simply "board of trade." In that connection, this problem has been ameliorated by the addition of the definition of "foreign board of trade" at rule 1.3(ss) in part 1 of the Commission's rules to mean "any board of trade, exchange or market located outside the United States, its territories or possessions, whether incorporated or unincorporated, where foreign futures or foreign options transactions are entered into."

With respect to the concern expressed by the futures commission merchant that the definition of "foreign futures" would prohibit all off-exchange foreign futures transactions, including transactions deemed lawful in the jurisdiction in which they occur, the Commission has already taken note of the fact that not all foreign commodity exchanges may operate in the same manner as domestic exchanges and that questions may arise as to whether a particular transaction either is, or should be, a foreign futures or foreign option. The Commission also takes note of legislative history in this regard in which Congress stated that in adopting rules in this regard, the Commission should "take into account the customs and practices of foreign boards of trades or markets and recognize that differences may exist between the practices of foreign boards of trade and their U.S. counterparts." [19]

The Commission reiterates its belief that these terms should be interpreted as broadly as possible in order to effectuate the intent of Congress. As the Commission previously commented in the proposed rules, the London Metals Exchange ("LME") is often referred to as a principals' spot and forward market rather than a futures market; however, to the extent the members of the LME execute transactions for futures delivery for or on behalf of U.S customers, such transactions by the Commission would be deemed to be foreign futures transactions for purposes of part 30. At the same time, the Commission also emphasized that these rules do not permit the offer and sale in the U.S. of futures and options which are not executed *on or subject to* the rules of a foreign board of trade and that, pursuant to the terms of section 4(a) of the Act, the domestic offer and sale of off-exchange futures contracts, whether foreign or domestic, is prohibited.[20] Thus, off-exchange products have already been explicitly prohibited, regardless of whether such transactions may be deemed lawful by the jurisdiction in which they occur.

However, in amending section 4b of the Act in the Futures Trading Act of 1986 to make explicit that the prohibition against fraud applies to the offer and sale of all commodity futures contracts, regardless of where traded, Congress clarified that "antifraud enforcement action brought under 4b involving foreign futures contracts will not be directed at the rules of, or trading practices occurring on, foreign boards of trade, exchanges, or markets, or at the terms or conditions of the futures contracts traded on such boards of trade, exchanges or markets." In that connection, Congress stated that it does not intend that certain activities which occur subject to the rules of foreign markets such as curb trading or after-hours trading be the subject of Commission enforcement action for fraud.[21] To the extent questions arise as to whether a particular transaction occurs subject to the rules of a foreign board of trade, the Commission encourages affected persons to request staff interpretations.

Applicability of the Act and regulations. To effectuate the dual purposes of insuring that domestic customers of all commodity futures and options products wherever they originate receive substantially the same protections against improper sales practices and to limit any additional burden on current Commission registrants as the result of the adoption of a regulatory scheme to affect the marketing by them of these products, the Commission determined not to propose an entirely new regulatory structure. Rather, the Commission proposed that, except as specified or unless the context otherwise requires, the Act and the existing regulations thereunder should be deemed applicable to the persons and transactions subject to the requirements of part 30 as though they were set forth therein. Proposed § 30.2. Consistent with the above, the regulations governing the conduct of Commission registrants, including the Commission's recordkeeping and reporting requirements, would have been applicable to the persons required to be registered in the same capacities under part 30 in connection with the transactions subject to regulation under such part. In paragraph (b), the Commission identified certain specific provisions of the Commission's rules which would not be applicable.

Several foreign commenters expressed the concern that such a blanket provision regarding the applicability of the Act and regulations could lead to misunderstandings about the applicable law, particularly on the part of the foreign entities to whom, among others, the regulations would apply. Accordingly, they urged the Commission to amend the proposed regulations to identify explicitly those statutory provisions and regulations which are intended to apply to foreign futures and foreign options transactions. The Commission finds merit in this comment and, accordingly, has revised rule 30.2 to identify the provisions of the Act and regulations which will generally be applicable to such transactions. Specifically, rule 30.2(a) provides that sections 2(a)(1), 4, 4c, 4f, 4g, 4k, 4l, 4m, 4n, 4o, 4p, 6, 6c, 6d, 8, 8a, 9, 12, 13 and 14 of the Act and parts 1, 3, 4, 10, 11, 12, 13, 14, 21, 155, 166 and 190 of the Commission's regulations will apply, as appropriate. Further, in that regard, in rule 30.2(b), the Commission has expanded upon which of the Commission's rules and regulations, particularly those in part 1 of the Commission's regulations, will not be applicable to the transactions herein. Specifically, the provisions of §§ 1.20 through 1.30, 1.32, 1.35(a) (2-4) and (c)-(i), 1.36(b), 1.38, 1.39, 1.40 through 1.51, 1.53, 1.54, 1.55, 1.58, 1.59, 33.2 through 33.6 and parts 15 through 20 of the Commission's rules shall not be applicable to foreign futures and foreign options transactions.

The Commission also wishes to highlight here several other provisions in part 1 which will be specifically applicable to foreign futures and options transactions as if the terms "foreign futures", "foreign option" and "foreign futures and option customer" appeared therein or because by their terms, they are sufficiently broad to encompass such persons and transactions.[22] These rules include the requirements of rule 1.31, dealing with the books and records required to be maintained under the Act and regulations; rule 1.34, pertaining to the preparation of a monthly "point balance"; rule 1.35 (a), (a-1), (b) (1)-(3), concerning records of cash commodity, future and options transactions; rule 1.36(a), concerning records of securities and property received from futures and

[19] S. Rep. No. 384, 97th Cong., 2d Sess. 46 (1982).

[20] *See* 51 FR at 12106.

[21] S. Rep. No. 291, 99th Cong., 2d Sess. 23-24 (1986).

[22] Other sections of part 1 which will apply have been explicitly incorporated into part 30 as paragraphs (d) and (e) of section 30.7.

option customers; rule 1.37 which requires firms to maintain a record of the customer's name, address and occupation and of the guarantor or controller of the account, if any; rule 1.52, which deals with the adoption by U.S. self-regulatory organizations of surveillance and minimum financial requirements; rule 1.56 which is the prohibition on guarantees against loss; rule 1.57 which deals with the operations and activities of introducing brokers; and rule 1.70, which requires the appropriate state official to notify the Commission of state enforcement actions brought under the Act. Finally, with respect to speculative position limits for foreign futures and foreign options generally, the Commission notes that contract markets, pursuant to the provisions of Commission rule 1.61, or NFA at the direction of the contract markets, may impose such limits with respect to their members if they so wish.

Prohibited transactions. Proposed rule 30.3 generally prohibited the offer and sale in the United States of any foreign futures contract or foreign options transaction except in accordance with the provisions of part 30. Specifically, except for persons not located in the United States that elected the alternative to registration contained in proposed rule 30.5, any person engaged in the domestic offer and sale of foreign futures or options would have been required to register in an appropriate capacity as required under proposed rule 30.4 and to be a member of a registered futures association that had provided for the regulation of the foreign futures and options-related activities of its members in a manner equivalent to that governing the domestic futures and options-related activities of its members. Proposed § 30.3(b). Moreover, except for persons not located in the United States that elected the alternative to registration contained in proposed rule 30.5 and that, in addition, deposited $50,000 with a futures commission merchant, foreign futures or options solicited from a foreign futures or options customer in the United States were required to be carried on a fully-disclosed basis by or through a futures commission merchant. Proposed § 30.3(c). The purpose of proposed rule 30.3(c) was to create a domestic record of foreign futures and options transactions entered into by U.S. customers and to ensure that any funds deposited by a foreign futures or options customer prior to transmission abroad would be deposited with a futures commission merchant subject to the segregation requirements of proposed rule 30.7.

The only foreign futures or options transactions entered into by foreign options or foreign futures customers that would not have been subject to regulation, other than antifraud regulation, under part 30 were those transactions "executed on a board of trade located outside the United States, its territories or possessions, subject to an agreement with a contract market that permits positions in a commodity interest which have been established on one of two markets to be liquidated on the other market",[23] *i.e.*, a link agreement such as that which presently exists between the Chicago Mercantile Exchange and the Singapore International Monetary Exchange ("SIMEX") and the Commodity Exchange, Inc. and the Sydney Futures Exchange.[24] Proposed § 30.3. Since transactions under such link agreements generally are effected pursuant to rules of a contract market located in the U.S. that have been approved by the Commission under section 5a(12) of the Act and rule 1.41, the Commission noted that such transactions are already subject to the panoply of the Commission's regulations, including the requirement that such transactions may be solicited or accepted only by Commission registrants.[25]

Although one U.S. exchange commented that a linkage agreement should not be a means of eluding the regulations proposed to be adopted, the remaining commenters on this issue supported the exclusion for linked transactions on the ground that transactions subject to such agreements are adequately regulated by the Commission and additional regulation would be essentially unnecessary and duplicative.

COMEX noted, however, that the text of the proviso in proposed section 30.3(a) is too narrow in scope. Specifically, the proviso describes only a two-exchange linkage whereas it is foreseeable that linkages will be formed among more than two markets. For example, a linkage might consist of three exchanges, located in the U.S., Asia and Europe, to maximize the benefits of 24-hour trading. Accordingly, COMEX recommended that the text of the proposed section 30.3 be modified to read as follows:

> . . . subject to agreement with and rules of a contract market which permit positions in a commodity interest which has been established on one market to be liquidated on *another* market.

The Commission has taken note of this suggestion and has incorporated appropriate amendments to rule 30.3(a).

The Commission has further added a new proviso to rule 30.3(a), as adopted. Specifically, language has been added to paragraph (a) that notwithstanding any other provisions of part 30, it shall be unlawful for a person to engage in the offer and sale of any foreign options until the Commission, *by order*, authorizes such foreign option to be offered in the U.S. As the Commission noted in its proposal, although the regulations contemplated that the prohibition on foreign options would be lifted, the Commission had not made a final decision to do so. In this connection, the Commission further stated that its decision would rest, in part, on the ability of the Commission to obtain information from the foreign exchange with respect to transactions entered into on that exchange on behalf of U.S. customers.[26] Accordingly, in order to ensure that foreign exchanges are both willing and able to share appropriate information with the Commission, particularly since blocking statutes in many foreign jurisdictions may inhibit such foreign exchange from providing such information, the Commission has determined to make the issuance of a Commission order authorizing the offer of a particular foreign option a prerequisite to the lawful offer and sale of such products. The Commission has determined that, in issuing such an order, the existence of an appropriate information sharing arrangement will be a consideration.[27]

Further, in this regard, the Commission notes that the current options ban applies to transactions executed pursuant to a link agreement and that the rules adopted herein will have no effect on the ability of options to be offered and sold pursuant to such links. The Commission wishes to clarify that it intends to approve the offer and

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[23] *See* rule 1.59(a)(5), 17 CFR 1.59(a)(5) (1987).

[24] In an earlier interpretative letter concerning the treatment of customer funds under the Chicago Mercantile Exchange's agreement with SIMEX, the Commission's staff clarified that any trades executed on the SIMEX *outsie* of the agreement would be treated as foreign futures. Interpretative Letter No. 84–19, [1984–1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,389 (Aug. 9, 1984). *See also* n. 14, *supra*.

[25] *See* 51 FR at 12108.

[26] 51 FR at 12105.

[27] Access to necessary information is essential if the Commission is to fulfill its obligations under the Act with respect to customer protection. For example, the Commission should be able to confirm by a simple telephone call or telex to the appropriate regulatory authority, such as the Securities and Investments Board or, alternatively, the Association of Futures Brokers and Dealers or other relevant self-regulatory organization whether a firm is, in fact, registered.

sale of a particular option traded pursuant to a link agreement by approval of a rule submission in this regard by the appropriate contract market. In considering the submission, the Commission intends to apply the same standards discussed above in connection with the issuance of a Commission order pursuant to rule 30.3(a).

Paragraph (b) of proposed § 30.3 which required each registrant to be a member of a registered futures association that regulates foreign futures and foreign options activities has been deleted. Under the Act and current regulations, NFA is effectively required to regulate the activities of *all* registrants and, therefore, the Commission has concluded that rule 30.3(b) is unnecessary.[28] Accordingly, paragraph (c) of proposed rule 30.3 has been redesignated as paragraph (b). In addition, this paragraph has been amended to clarify that persons located overseas are eligible to request an exemption from the application of this paragraph which makes it unlawful for any person, unless otherwise provided in § 30.4 (which sets forth the registration requirement), to engage in the offer and sale of any foreign futures contract or foreign option other than by or through a futures commission merchant on a fully-disclosed basis. Thus, although, as discussed in more detail below, persons located outside the United States are no longer eligible to act, through the alternative procedure, in the capacity of a futures commission merchant without first registering as such and maintaining an office in this country, they may request an exemption from the application of this rule through rule 30.10. As a result of this change, offshore firms have three choices, as more fully discussed below.

Registration. Except as described in rule 30.5 with respect to persons located outside of the U.S., the Commission proposed to require that persons who act in the capacity of futures commission merchant, an introducing broker, a commodity pool operator or a commodity trading advisor in the United States with respect to foreign futures or options customers register in the appropriate capacity with the Commission.[29] Proposed § 30.4. As Commission registrants, such entities would be subject generally to all of the regulatory requirements which currently apply to each category of registrant.[30] In addition, paragraph (e) as proposed required all persons required to be registered under this section and who did not elect the alternative procedure to maintain an office in the U.S. managed by a person domiciled in the U.S. and registered with the Commission as an associated person.

One U.S. exchange and NFA supported the Commission's regulatory objective of requiring the registration of appropriate persons. Specifically, NFA noted that it supports a registration requirement for persons doing a domestic business in foreign futures and options subject to appropriate exemptions and exclusions. In general, NFA believes that the proposed rules set forth appropriate requirements especially in view of the Commission's expressed willingness to grant exemptions pursuant to proposed rule 30.10 based on foreign regulatory protections and understandings with foreign governments and self-regulatory organizations.

However, one U.S. futures commission merchant and the London Exchanges commented that it was inappropriate to subject foreign entities and their business activities outside the United States to the Commission's rules and regulations. Further, the London Exchanges again expressed the view that the Commission has no authority to regulate the offer and sale of foreign futures contracts by persons not located in the United States.[31] They further commented that the requirements that a person registered as a futures commission merchant with the Commission pursuant to the proposed rules must maintain records and an office in the United States are burdensome, unnecessary, and discriminatory as against foreign brokers. Still another foreign exchange noted the serious consequences of proposed rule 30.4(e) which required all registrants to have a branch office in the U.S.[32] Specifically, it noted that under the U.S. Internal Revenue Code, the location of a branch office in the U.S. which engages in a U.S. trade or business with effectively connected income will subject that office to U.S. taxation.

With one major exception discussed below, the Commission has decided to adopt this section essentially as proposed. In addition to certain technical amendments to rule 30.4, the Commission has exempted from the commodity pool operator registration requirement, any investment trust, syndicate, or similar form of enterprise located outside the United States, its territories or possessions which is registered as an investment company under the Investment Company Act of 1940 and whose securities are registered in accordance with the Securities Act of 1933, or which is exempt from such registration requirements. However, this exemption is only available if no more than 10 percent of the participants in, and the value of the assets of, such investment trust, syndicate or similar form of enterprise located outside the United States, its territories or possessions are held by or on behalf of foreign futures and foreign options customers. §30.4(c). In essence, the Commission has incorporated an "otherwise regulated" exemption standard in this regard subject to a 10 percent limitation on the number of U.S. participants and the aggregate value of ownership by U.S. residents.

The Commission has also amended paragraph (d) to exclude from the definition of the term "commodity trading advisor" an insurance company subject to regulation by any state, or any wholly-owned subsidiary or employee thereof, provided that the furnishing of such trading advisory services is solely incidental to the conduct of its business or profession.[33]

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[28] *See* Commission rule 170.15, 17 CFR 170.15 (1987) and NFA Bylaw 1101. NFA commented that at present, it had not provided for the regulation of the foreign futures and foreign option-related activities of its members and in order to do so, NFA would have to amend its Bylaws to include foreign options and futures within NFA's definition of such products. NFA expects that it would take this step if the Commission adopted registration requirements applicable to foreign futures and foreign options transactions.

[29] In this connection, under rule 30.4 as proposed and adopted, the only persons required to register as a commodity trading advisor are those persons who solicit or manage discretionary accounts in foreign options or foreign futures.

[30] At the time the rules were proposed, the Commission stated that this registration requirement will serve to identify those who are lawfully engaged in the offer and sale of foreign futures and options and, thus, will assist those states that may wish to apply their laws to those who are unlawfully engaged in such activity. 51 FR at 12108.

[31] As the Commission has previously noted, however, nothing in section 4(b) or its legislative history limits the Commission's authority over foreign options and futures in section 2(a)(1)(A) of the Act. *See* 51 FR 12104.

[32] *See* 51 FR at 12109.

[33] This amendment is consistent with recent developments in this area. Specifically, in adopting the Futures Trading Act of 1986, the House Committee on Agriculture declined to adopt a proposed statutory amendment to exclude, among others, a life insurance company subject to regulation by any State from the definition of a commodity trading advisor provided that its commodity advisory activities are solely incidental to its bussiness. However, the Committee urged the Commission to issue regulations in this regard. H.R. Rep. No. 624, 99th Cong., 2d Sess. 46–48 (1986). In that regard, on May 26, 1987, the Commission published in the Federal Register proposed rules which would exclude, among others, the above-described insurance companies from the definition of a commodity trading advisor. 52 FR 19522.

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This paragraph has also been amended to specify that registration as a commodity trading advisor will not be required if a person is already registered as, among other things, a commodity pool operator or is otherwise exempt from registration pursuant to rule 30.5.

As noted above, the most significant amendment to this section appears in paragraph (e), which, as proposed, had provided that *any* person required to be registered under this section and who did not elect the alternative procedure for non-domestic persons under proposed rule 30.5 must maintain an office in the U.S. managed by a registered associated person. As adopted, the paragraph now provides that any person required to be registered as a *futures commission merchant* under this part must maintain an office in the United States which is managed by an individual domiciled in the United States and registered with the Commission as an associated person. Specifically, this amendment reflects the Commission's reconsideration of its preliminary determination to include among those able to elect the alternative procedure to registration entities which act in the capacity of a futures commission merchant.

The Commission was particularly concerned that unscrupulous firms would merely establish their base of operations offshore, particularly in a locale which has no history or an inadequate history of cooperation with U.S. regulators and law enforcement officials, and by making the $50,000 deposit, solicit and accept money, securities and property from foreign futures and foreign options customers. The Commission was also concerned that the requirement in rule 30.3(b) that all accounts be carried through a futures commission merchant would be insufficient to adequately protect the funds of U.S. customers if carried on an omnibus basis. Accordingly, because the Commission has a paramount interest in the fitness and financial integrity of those entities which receive customer funds, the Commission has determined to require all entities which act in the capacity of a futures commission merchant to register as such.

Thus, for a firm located outside the U.S. which acts in the capacity of a futures commission merchant, the alternative procedure is no longer available and one of three options remain available to it. First, it can register as a futures commission merchant and open an office in the U.S. managed by an associated person who is also domiciled in the U.S. If it elects not to register, it is restricted to acting in the capacity of an introducing broker with respect to accounts which it solicits and all trades must be carried by a U.S. futures commission merchant on a fully-disclosed basis. As a third alternative, firms located in jurisdictions which, among other things, impose customer protection rules similar to those imposed by the Commission are eligible to seek an exemption from the futures commission merchant registration requirement in rule 30.4(a) through the exemptive procedure in rule 30.10.

Alternative procedures for non-domestic persons. As previously noted, the Commission proposed to exempt from registration any non-domestic person that solicited United States residents to trade foreign futures or options, if the person otherwise qualified to do business by entering into an agreement with a futures commission merchant through which the foreign futures or options that person solicited in the United States are carried,[34] designating that futures commission merchant as the agent for the service of process for communications both from the Commission and from the customers of the non-domestic person. Proposed § 30.5. A non-domestic person that would otherwise be required to be registered as a futures commission merchant and would be exempt from registration under the proposed rule generally would not have been able to accept customer funds except through a registered futures commission merchant on a fully-disclosed basis. However, that person would have been able to carry its foreign futures and foreign options customer accounts with a futures commission merchant on an omnibus basis if it deposited with that futures commission merchant money, securities or property in the amount of $50,000. The Commission specifically requested comment on the adequacy of the proposed alternative registration to protect the public.[35]

One U.S. exchange commented that this alternative to registration should be withdrawn and that all entities engaged in the offer and sale of foreign futures and options to customers in the U.S. should be required to register in the appropriate category or to create a U.S. subsidiary or affiliate. If a foreign entity finds this requirement too burdensome, the exchange commented that the foreign firm should be prohibited from having direct contact with U.S. customers. In the alternative, should the Commission determine to permit this alternative procedure, the exchange urged that the amount of money to be deposited with the futures commission merchant through which the foreign firm conducts business should be strictly related to the scale of foreign futures and foreign options activity with U.S. residents.

The foreign commenters, on the other hand, generally expressed the view that the alternative procedure put foreign market professionals at a clear competitive disadvantage by creating what is, in essence, a "tying arrangement," since the foreign entity's access to U.S. customers would be conditioned on the willingness of a domestic competitor to act as its agent. They argued that this requirement would discourage domestic customers from doing business with foreign brokers since by dealing directly with the U.S. futures commission merchant, the customer could avoid the additional costs of the domestic futures commission merchant's processing costs. The futures commission merchants and NFA supported the alternative procedure but the futures commission merchants expressed concerns about first, the scope of the term "communications" and, second, serving as an agent for service of process of all communications. Specifically, they were concerned that they would be held liable for the entirety of the foreign entity's conduct.

On the first issue of permitting persons located outside the U.S. to utilize the alternative procedure, the Commission, as noted above, has reassessed its initial position in this regard and has determined to exclude futures commission merchants from the class of registrants eligible for this alternative procedure. Accordingly, paragraph (c) of rule 30.5, as proposed, concerning the authority to act as an futures commission merchant has been deleted. Persons located overseas are reminded, however, that they may seek an exemption from this requirement pursuant to § 30.10.

Persons who act in the capacities of the remaining categories of registrant, that is, introducing brokers, commodity pool operators and commodity trading advisors and who are located outside the U.S. continue to be eligible to utilize the alternative procedure.[36] However, the Commission takes special note of the fact that pool operators located outside the U.S. will also be able to

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[34] *See* proposed rule 30.3(c).

[35] *See* 51 FR at 12109.

[36] Pursuant to amendments to rule 30.4(c), however, certain foreign commodity pool operators may be exempted from the commodity pool operator registration requirement and, thus, would not be subject to the requirements of rule 30.5.

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accept funds, securities or property from foreign futures and foreign options customers and that, as is the case of pools offering domestic products, the Commission is not similarly requiring such persons to have a base of operations in the U.S. In that connection, the Commission notes that pursuant to rule 30.6(b)(1), such persons remain subject to the disclosure requirement in rule 30.6(a)(1) the purpose of which is to alert foreign futures and foreign options customers to certain of the risks associated with such transactions. However, because of the Commission's paramount interest in protecting, to the degree reasonably possible, money, securities and property of all customers, the Commission intends to monitor this area closely. Specifically, if the Commission finds a pattern of abuse by foreign pool operators, the Commission will take appropriate measures to remedy any such problems.

With respect to the two concerns expressed by the futures commission merchants in regard to the alternative procedure, the first, regarding the scope of the term "communications," has been remedied by appropriate amendments to rule 30.5(a) which now reads, in part: "For the purposes of this section, the term communication includes any summons, complaint, order, subpoena, request for information, or notice, as well as any other written document or correspondence relating to any activities of such person *subject to regulation under this part*."

With respect to the second concern, the futures commission merchants stated that they should not be required to serve as an agent of an exempt person for purposes of receiving all customer communications since customers will have been solicited by and will have been doing business with the exempt entity, not the U.S. futures commission merchant. In this regard, the Commission is concerned that a significant degree of customer protection as well as the Commission's ability to regulate effectively foreign futures and options transactions would be lost if the Commission and the foreign entities' customers do not have a means of communicating with the foreign entity in a timely manner. In addition, as noted by the Commission in adopting rule 15.05, 17 CFR 15.05 (1987), which currently requires the designation of a futures commission merchant or introducing broker to be the agent of a foreign broker, customers of a foreign broker and foreign traders, in the past, the Commission's attempts to communicate *directly* with certain foreign persons have not always been well received, either by the recipient, or the recipient's foreign government.[37] Accordingly, the Commission is of the opinion that the designation of an agent for service of process is a significant element of the Commission's customer protection scheme.[38]

However, the Commission has taken note of the futures commission merchants' concerns and has determined that the same objectives may be achieved by broadening the scope of persons to be among those who are eligible to act as an agent for service of process. Specifically, rule 30.5 has been amended to include a registered futures association, *i.e.*, NFA, or any other person located in the United States in the business of providing such services. It is expected, however, that ordinarily the agent will be a futures commission merchant or the NFA.

Another amendment to rule 30.5 incorporates the comment of one futures commission merchant which suggested that all such agency agreements be filed only with NFA. Accordingly, paragraph (a) has been amended to require that rather than being filed both with the Commission and NFA, such agency agreement must now be filed only with the Vice President-Registration, NFA, with a copy to the Vice President-Compliance, NFA. In addition, NFA has been added, along with other self-regulatory organizations and the Department of Justice as appropriate issuers of communications as is the case with respect to domestic regulations. Conforming amendments in this regard have been added to paragraph (b) dealing with termination of such agreements. In paragraph (c), which identifies the rules applicable to persons exempt from registration under this section, rule 30.7 has been deleted as being applicable since the only entity subject to the requirements of that section, a futures commission merchant, can no longer use the alternative procedure. Finally, in paragraph (d), the Department of Justice has been added as an entity that can require persons exempt from registration pursuant to the alternative procedure to produce the books and records such persons are required to maintain under the Commission's rules and regulations.

Risk disclosure. Under proposed rule 30.6, a futures commission merchant or introducing broker could not open or introduce a foreign futures or options account for a customer without first obtaining written authorization from the customer, which authorization must have included a written risk disclosure statement containing only the language set forth in the proposed rule. The authorization could be contained either in the customer account agreement or on a separate form. However, if the futures commission merchant, introducing broker or an associated person of either had discretionary authority over the customer's account, the futures commission merchant or introducing broker was required to receive from the customer a signed and dated acknowledgment to the effect that he had received and understood the risk disclosure statement. This disclosure was required whether the customer had already been provided with the risk disclosure statement required in rules 1.55 and 33.7 of the Commission's regulations.[39]

Commodity pool operators and commodity trading advisors who direct or guide a customer's commodity interest trading in foreign futures or option contracts were also required to provide customers and prospective customers with the disclosure statement referred to above and receive the required acknowledgment prior to engaging in foreign futures or options transactions on behalf of foreign futures or option customers. The commodity pool operator or commodity trading advisor could make the disclosure language part of the Disclosure Document required by part 4 of the Commission's regulations by inserting it as the only language on the page(s) immediately following the disclosure required to be made by Commission rules 4.21(a)(17) and 4.31(a)(8). Otherwise, a separate disclosure statement was required to be provided. In either case, an acknowledgment was required to be received from such person and maintained in accordance with Commission rule 1.31.

In order to limit any additional regulatory burden that would be placed on Commission registrants, the Commission in proposing the rules determined to adopt, to the extent possible, the language and procedures set forth in NFA's Compliance Rule 2–28, governing disclosure to customers in connection with transactions entered into pursuant to link agreements. The Commission stated that upon receipt of

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[37] 45 FR 30428, 30427 (May 8, 1980).

[38] In this connection, as noted earlier, the Commission also intends to make this a requirement for foreign persons granted exemptions from these rules pursuant to rule 30.10.

[39] Under the rule as adopted, the options disclosure statement required under Commission rule 33.7 must also be furnished to a foreign options customer, unless the customer has previously received that disclosure statement in connection with opening a domestic exchange-traded options account under part 33. *See* § 30.6(d).

comments, it expected to coordinate with NFA regarding a uniform disclosure statement with respect to both linked and non-linked foreign futures and options transactions.[40]

One U.S. exchange supported the Commission's risk disclosure proposal, but urged that such disclosure should be required regardless of whether the positions are established in connection with a link. Moreover, the exchange commented that if the Commission adopts a regulatory scheme which provides for different segregation standards offering potentially different consequences in bankruptcy or minimum capital computations which fail to calculate the risk related to foreign futures positions, such matters must receive primary and detailed emphasis in all disclosure documents in standardized language by the Commission.

Conversely, foreign commenters expressed concern that the form of the risk disclosure statement could lead investors to conclude that U.S. contract markets are safer and subject to a greater degree of regulatory oversight and protection and contended that the Commission is inaccurately comparing the relative protections with respect to foreign futures and options contracts versus U.S. products and failing to distinguish between those foreign exchanges which have a history of a customer protection oriented regulatory scheme and those which do not. Instead, they urged the Commission to revise the current risk disclosure statements for U.S. traded futures and options contracts to include an appropriate reference to the market risks of foreign futures and options contracts. Such an incorporation would not only simplify procedures for the futures commission merchant and introducing broker community, but would also render the risks more understandable to the investor, who is already confronted with a myriad of forms and material upon opening a futures or options account.

The futures commission merchants commented that the Commission's decision to coordinate with NFA to achieve a uniform disclosure statement with respect to both linked and non-linked foreign futures and options is appropriate. In that connection, they commented that a separate authorization for foreign transactions should not be required. Rather, they urged the Commission to incorporate the foreign futures and foreign options disclosure statement into the general disclosure documents through amendments to rules 1.55 and 33.7, 17 CFR 1.55, 33.7 (1987). Thus, a maximum of two disclosure documents could be maintained—one for foreign and domestic futures and one for foreign and domestic options. The futures commission merchants further noted that rule 30.6(a)(2) requires a futures commission merchant which has received discretionary authority from a customer to trade foreign futures or foreign options to receive "specific consent" of the customer and a "separate acknowledgment signed and dated by the customer that the customer has received and understood the risk disclosure statement". The futures commission merchants commented that the general power of attorney contained in Commission regulation 166.2 is sufficient authorization for trading of futures and options contracts on all exchanges, domestic and foreign.

Finally, NFA commented that given the increasing integration of international futures and options markets, NFA believes the appropriate goal for NFA and the Commission should be a single risk disclosure statement adequate to apply to instruments traded on domestic, foreign and linked markets. The Commission has taken all of these comments into consideration and has incorporated amendments as it deems appropriate.

First, in response to concerns that the separate consent for such foreign transactions and separate acknowledgment for the risk disclosure statement were unnecessarily burdensome, the Commission has streamlined these requirements. Rule 30.6(a) as adopted, still provides that futures commission merchants and introducing brokers must first deliver the risk disclosure statement to all customers; however, in the final rule, the requirement of a separate customer consent for engaging in foreign futures and options transactions has been deleted. Instead, only those customers who have granted general discretionary authority must expressly authorize such transactions with respect to their account in accordance with the provisions of 166.2. In that regard, rather than requiring a separate authorization, the Commission has amended Commission rule 166.2 to clarify that customers must *expressly* grant in the document the authority to the futures commission merchant and introducing broker to engage in foreign futures and foreign options transactions. The Commission also wishes to clarify that although the futures commission merchant or introducing broker may still receive the separate acknowledgment that the customer has received and understood the risk disclosure statement, this requirement may also be satisfied by incorporating into the text of the customer's grant of general discretionary authority, another acknowledgment, also express, that the customer has received and understood the applicable risk disclosure document.

In addition, the language of the risk disclosure has been revised to incorporate the risks associated with linked transactions. Specifically, the Commission agrees with NFA that a single statement should be used to disclose the risks of trading in foreign futures and options, whether pursuant to a link agreement or not. Accordingly, appropriate language changes have been made in rule 30.6(b). In this connection, the Commission notes that at the option of the futures commission merchant or introducing broker, the disclosure statement in 30.6(b) may be given to linked transaction customers in lieu of that required under NFA Compliance Rule 2–28 or the NFA disclosure may be used. If a firm solicits a customer who engages in both foreign futures and options and linked transactions, the firm's disclosure obligation in this regard will be fulfilled by giving the customer the risk disclosure statement in 30.6(b). If a customer is exclusively a foreign futures and options customer, he must be given the statement in 30.6(b).

Finally, in this regard, the Commission takes note of concerns raised by almost all commenters as to the myriad of disclosure documents required to be provided to customers generally. The Commission has directed its staff, in consultation with NFA, in recognition of its general sales practice responsibility, to review the Commission's disclosure requirements in an effort to explore less burdensome alternatives.

Reporting requirements. In proposed rule 30.8, the Commission proposed to require that futures commission merchants file with the Commission on a monthly basis, separately by foreign exchange and commodity, long and short, customer and proprietary, a report containing data for the total volume of foreign futures contracts effected on such foreign exchange and the open interest at month end. With respect to foreign options, the Commission proposed to require that futures commission merchants report, on a monthly basis, separately by underlying futures contracts for options on futures contracts or by underlying physical for options on physicals, by put, by call, and by customer or proprietary, the total volume and the open interest at month end. The Commission further proposed

[40] 51 FR 12110.

that futures commission merchants report, on a monthly basis, the total amount of foreign futures and foreign options customer funds forwarded to each member of a foreign exchange, a clearing organization of such exchange or their respective designated depositories to purchase, margin or otherwise secure foreign futures or foreign options positions. Further, the Commission requested comment on whether these reports should be filed with NFA rather than with the Commission.

Although one U.S. exchange supported this requirement, many of the other commenters questioned the regulatory purpose of this monthly requirement which many futures commission merchants viewed as being burdensome. As NFA pointed out in its comment letter, however, such information is essential, along with the other reporting and recordkeeping requirements imposed by the Commission, for monitoring compliance with the Commission's financial and other regulatory requirements and targeting certain firms for sales practice audits with respect to their foreign futures and options business. However, the Commission agrees that a monthly requirement may not be necessary and, therefore, has changed the requirement to a quarterly one.[41] The Commission has also deleted subparagraph 5 of paragraph (d) concerning the total amount of foreign futures and foreign options customer funds forwarded overseas as a result of the revisions to the Commission's proposed rules regarding the treatment of such funds. Finally, the Commission is requiring that these reports be filed with NFA rather than the Commission based upon the comment of NFA and a U.S. futures commission merchant that NFA would be the appropriate entity to receive these reports.

Fraudulent transactions prohibited. The Commission proposed to redesignate rule 30.02 as rule 30.9 as modified to reflect the definitions set forth in the part 30 rules. The Commission received only one comment on this proposal, that from a futures commission merchant which had earlier commented on the scope of certain definitions. Specifically, this futures commission merchant noted that the language in 30.9(d) making it unlawful "to bucket any order, or to fill any order by offset . . ." could make certain overseas transactions illegal although such transactions may be ordinary and customary under the rules of a foreign jurisdiction. The Commission reiterates its earlier statement regarding amendments to section 4b of the Act and its comments in this regard.

Exemptive procedure. The Commission notes initially that although persons located in the U.S. may request exemptions in instances of particular hardship from specific requirements set forth in these regulations, the only persons eligible for a broader exemption from the general applicability of the rules are those persons located outside the U.S. who are subject to comparable regulation in the jurisdiction in which they are situated, provided such exemption would not otherwise be contrary to the public interest.

The Commission received many comments on this provision. The U.S. exchanges noted that immediate issues arise as to what constitutes "comparable regulation" and to what extent the enforcement authority in the various foreign nations is equal to the task set forth in statute. Moreover, they commented that the Commission should not accord this sort of recognition to the laws of nations which in many cases do not reciprocate in their treatment of U.S. firms and have obstructed the development of joint surveillance and other reciprocal trading agreements which would facilitate the offer of foreign futures and options by exchanges in this country.[42]

The foreign commenters were generally of the opinion that the exemptive procedure was entirely appropriate. They noted, however, that the Commission should establish an appropriate timetable to permit a substantial grace period between the promulgation of the final rules and their effective date. The grace period should provide sufficient time for an applicant to obtain an exemption or, if the exemption is denied, to obtain registration, should the applicant elect to do so. They further commented that, as a practical matter, the Commission should permit self-regulatory organizations, or government regulators, to apply for exemptions on behalf of all of their members or regulated persons, respectively. This would eliminate unnecessarily repetitious and administratively burdensome applications.

In this regard, the Commission, as previously noted, has delayed the effective date of these rules to January 4, 1988, and, accordingly, more than sufficient time has been provided for interested persons to seek the appropriate exemptions. All of the remaining comments are addressed in Appendix A to the rules herein, which is the Commission's interpretative statement with respect to its exemptive authority under section 30.10.

Applicability of state law. Finally, pursuant to its authority under the "open season" provisions of section 12(e) of the Act, the Commission proposed to authorize the application of any state law to transactions on a foreign exchange entered into by U.S. customers through any person not registered with the Commission or exempt from registration in accordance with this part. In this regard, the North American Securities Administrators Association, Inc. ("NASAA") requested clarification that pursuant to section 12(e)(3) of the Act, the states are not pre-empted from applying their laws against any person required to be registered but who is not so registered. The Commission notes that section 12(e)(3) is already clear in this regard.

In closing, the Commission wishes to make clear that it intends to monitor closely the application of this regulatory scheme for the offer and sale of foreign futures and foreign options in the U.S. and to make adjustments in these rules, as necessary, based, in part, on its experience in administering the exemptive procedure as well as other requests for interpretations of the provisions herein.

IV. Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act ("PRA") of 1980, 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information as defined by the PRA. Office of Management and Budget ("OMB") control number 3038–3035 previously has been assigned to these part 30 rules. Other control numbers have been assigned to other rules referred to herein. The Commission previously submitted the propsed rules to OMB. However, the Commission is resubmitting to OMB an explanation and details of the information collection and recordkeeping requirements contained in the final rules. Any person wishing to comment on the information collection requirements should contact Robert Neal, Office of Information and Regulatory Affairs, Office of

[41] Thus, the first such reports would be required on the 10th business day in April 1988.

[42] One exchange further commented because granting such an exemption could have a far-reaching impact, the notice of the filing of a petition for exemption should be published in the Federal Register and interested parties should be given an opportunity to comment. The Commission declines to adopt such an unprecedented procedure.

Management and Budget, Washington, DC 20503. Copies of the information collection submission to OMB are available from Joseph G. Salazar, Clearance Officer, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254–9735.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. As the Commission noted in the preamble to the proposed rules, it has previously determined that neither futures commission merchants nor commodity pool operators should be considered small entities for purposes of the RFA. Specifically, the Commission found that with respect to futures commission merchants, based upon the fiduciary nature of futures commission merchant/customer relationships, as well as the requirement that futures commission merchants meet minimum financial requirements, futures commission merchants should be excluded from the definition of a small entity. With respect to commodity pool operators, Commission rule 4.13(a), 17 CFR 4.13(a) (1987), already exempts small entities from the regulatory requirements imposed on commodity pool operators.[43] Accordingly, the requirements of the RFA do not apply to those entities. For the same reasons, those entities required to register as futures commission merchants or commodity pool operators under this part should not be considered small entities.

With respect to introducing brokers and commodity trading advisors, and those required to register as such under these rules, the Commission stated that it is appropriate to evaluate within the context of a particular rule proposal whether some or all commodity trading advisors and introducing brokers should be considered to be small entities and, if so, to analyze the economic impact on such entities at that time. In this regard, the Commission noted that the regulations with respect to commodity trading advisors and introducing brokers are essentially the same as those governing these categories of registrant in connection with their activities relating to futures contracts and options traded or executed on or subject to the rules of a contract market designated by the Commission. Further, the Commission has previously found that its regulations governing these categories of registrant will not have a significant economic impact on a substantial number of small entities.[44] Therefore, pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), the Chairman certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

[43] *See* 47 FR 18618 (April 30, 1982).

[44] 48 FR 35248 (August 3, 1983).

List of Subjects

17 CFR Part 1

Commodity futures, Financial requirements, Reporting and recordkeeping requirements, Customer protection, Definitions, Foreign futures, Foreign options, Registration requirements, Risk disclosure statements, Segregated funds, Introducing brokers.

17 CFR Part 30

Reporting and recordkeeping requirements, Customer protection, Definitions, Foreign futures, Foreign options, Registration requirements, Risk disclosure statements, Treatment of foreign futures and options secured amount.

17 CFR Part 32

Commodity options, Foreign options, Fraud.

17 CFR Part 166

Authorization to trade, Customer protection.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 2(a)(1), 4, 4a, 4b, 4c, 4d, 4e, 4f, 4g, 4h, 4i, 4j, 4k, 4l, 4m, 4n, 4o, 5, 5a, 6(a), 6(b), 6b, 6c, 8, 8a, 8c, 12, 15, 17, 19 and 20 thereof, 7 U.S.C. 2, 2a, 4, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 19, 21, 23 and 24 (1982), and pursuant to the authority contained in 5 U.S.C. 552 and 552b (1982), the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for Part 1 continues to read as follows:

Authority: Sections 2(a)(1), 4, 4a, 4b, 4c, 4d, 4e, 4f, 4g, 4h, 4i, 4j, 4k, 4l, 4m, 4n, 4o, 5, 5a, 6(a), 6(b), 6b, 6c, 8, 8a, 8c, 12, 15, 17 and 20 of the Commodity Exchange Act, 7 U.S.C. 2, 2a, 4, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 19, 21, and 24.

2. Section 1.3 is amended by adding paragraphs (rr) and (ss) to read as follows:

§ 1.3 Definitions.

* * * * *

(rr) *Foreign futures or foreign options secured amount.* This term means all money, securities and property held by or held for or on behalf of a futures commission merchant from, for, or on behalf of foreign futures or foreign options customers as defined in § 30.1 of this chapter:

(1) In the case of foreign futures customers, money, securities and property required by a futures commission merchant to margin, guarantee, or secure open foreign futures contracts plus or minus any unrealized gain or loss on such contracts; and

(2) In the case of foreign options customers in connection with open foreign options transactions money, securities and property representing premiums paid or received, plus any other funds required to guarantee or secure open transactions plus or minus any unrealized gain or loss on such transactions.

(ss) *Foreign board of trade.* This term means any board of trade, exchange or market located outside the United States, its territories or possessions, whether incorporated or unincorporated, where foreign futures or foreign options transactions are entered into.

3. Section 1.10 is amended by revising paragraphs (d)(1), (d)(2) and (g)(2) to read as follows:

§ 1.10 Financial Reports of Futures Commission Merchants and Introducing Brokers.

* * * * *

(d) *Contents of financial reports.* (1) Each form 1–FR filed pursuant to this § 1.10 which is not required to be certified by an independent public accountant must be completed in accordance with the instructions to the form and contain:

(i) A statement of financial condition as of the date for which the report is made;

(ii) A statement of changes in ownership equity for the period between the date of the most recent statement of financial condition filed with the Commission and the date for which the report is made;

(iii) A statement of the computation of the minimum capital requirements pursuant to § 1.17 as of the date for which the report is made;

(iv) For a futures commission merchant only, a schedule of segregation requirements and funds on deposit in

segregation as of the date for which the report is made; and

(v) For a futures commission merchant only, a schedule of funds required to be on deposit and funds actually on deposit in separate accounts in accordance with § 30.7 of this chapter as of the date for which the report is made; and

(vi) In addition to the information expressly required, such further material information as may be necessary to make the required statements and schedules not misleading.

(2) Each form 1–FR filed pursuant to this § 1.10 which is required to be certified by an independent public accountant must be completed in accordance with the instructions to the form and contain:

(i) A statement of financial condition as of the date for which the report is made;

(ii) Statements of income (loss), changes in financial position, changes in ownership equity, and changes in liabilities subordinated to claims of general creditors, for the period between the date of the most recent certified statement of financial condition filed with the Commission and the date for which the report is made: *Provided,* That, for an applicant filing pursuant to paragraph (a)(2) of this section the period must be the year ending as of the date of the statement of financial condition;

(iii) A statement of the computation of the minimum capital requirements pursuant to § 1.17 as of the date for which the report is made;

(iv) For a futures commission merchant only, a schedule of segregation requirements and funds on deposit in segregation as of the date for which the report is made;

(v) For a futures commission merchant only, a schedule of funds required to be on deposit and funds actually on deposit in separate accounts in accordance with § 30.7 of this chapter as of the date for which the report is made;

(vi) Appropriate footnote disclosures; and

(vii) In addition to the information expressly required, such further material information as may be necessary to make the required statements not misleading.

* * * * *

(g) * * *

(2) All of the copies of the Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II or Part IIA, filed pursuant to paragraph (h) of this section will be public: *Provided, however,* That if the statement of financial condition, the computation of net capital, and the schedule (to be filed by a futures commission merchant only) of segregation requirements and funds on deposit in segregation and the schedule (to be filed by a futures commission merchant only) of funds required to be on deposit and funds actually on deposit in separate accounts in accordance with § 30.7 of this chapter are bound separately from the other financial statements (including the statement of income (loss)), footnote disclosures and schedules of the Financial and Operational Combined Uniform Single Report under the Securities and Exchange Act of 1934, Part II or Part IIA, trade secrets and certain other commercial or financial information on such other statements and schedules will be treated as nonpublic for purposes of the Freedom of Information Act and the Government in the Sunshine Act and Parts 145 and 147 of this chapter.

* * * * *

4. Section 1.12 is amended by revising paragraph (b)(2) to read as follows:

§ 1.12 Maintenance of Minimum Financial Requirements by Futures Commission Merchants and Introducing Brokers.

* * * * *

(b) * * *

(2) 6 percent of the following amount: The customer funds required to be segregated pursuant to the Act and these regulations and foreign futures or foreign options secured amount, less the market value of commodity options purchased by such customers on or subject to the rules of a contract market or a foreign board of trade: *Provided, however,* That the deduction for each such customer shall be limited to the amount of customer funds in such customer's account(s) and foreign futures and foreign options secured amounts; or

* * * * *

4. Section 1.16 is amended by revising paragraph (a)(4) to read as follows:

§ 1.16 Qualifications and Reports of Accountants

(a) * * *

(4) *Customer.* The term "customer" means customer (as defined in § 1.3(k)) and option customer (as defined in § 1.3(jj) and in § 32.1(c) of this chapter) and includes a foreign futures and foreign options customer (as defined in § 30.1(c) of this chapter).

* * * * *

5. Section 1.17 is amended by revising paragraphs (a)(1)(i)(B), (b)(2), (c)(5) (iii), (e)(1), (h)(2)(vi)(C), (h)(2)(vii)(A), (h)(2)(vii)(B), (h)(2)(viii)(A), (h)(3)(ii) and (h)(3)(v) to read as follows:

§ 1.17 Minimum financial requirements for futures commission merchants and introducing brokers.

(a) * * *

(1) * * *

(i) * * *

(B) Four percent of the following amount: the customer funds required to be segregated pursuant to the Act and these regulations and the foreign futures or foreign options secured amount, less the market value of commodity options purchased by customers on or subject to the rules of a contract market or a foreign board of trade: *Provided, however,* That the deduction for each customer shall be limited to the amount of customer funds in such customer's account(s) and foreign futures and foreign options secured amounts; or

* * * * *

(b) * * *

(2) "Customer" means customer (as defined in § 1.3(k)), option customer (as defined in § 1.3(jj) and in § 32.1(c) of this chapter) and includes a foreign futures and foreign options customer (as defined in § 30.1(c) of this chapter).

* * * * *

(c) * * *

(5) * * *

(iii) In the case of a futures commission merchant, four percent of the market value of commodity options granted (sold) by option customers on or subject to the rules of a contract market or a foreign board of trade.

* * * * *

(e) * * *

(1) Either adjusted net capital of any of the consolidated entities would be less than the greatest of:

(i) 120 percent of the appropriate minimum dollar amount required by paragraphs (a)(1)(i)(A) or (a)(1)(ii)(A) of this section;

(ii) For a futures commission merchant or applicant therefor, 7 percent of the following amount: the customer funds required to be segregated pursuant to the Act and these regulations and the foreign futures or foreign options secured amount, less the market value of commodity options purchased by customers on or subject to the rules of a contract market or a foreign board of trade: *Provided, however,* That the deduction for each customer shall be limited to the amount of customer funds in such customer's account(s) and foreign futures and foreign options secured amounts; or

(iii) For an applicant or registrant which is also a securities broker or dealer, the amount of net capital specified in Rule 15c3–1(e) of the

Securities and Exchange Commission (17 CFR 240.15c3–1(e)); or

* * * * *

(h) * * *

(2) * * *

(vi) * * *

(C) The secured demand note agreement may also provide that, in lieu of the procedures specified in the provisions required by paragraph (h)(2)(vi)(B) of this section, the lender, with the prior written consent of the applicant and the National Futures Association, or with the prior written consent of the registrant and the designated self-regulatory organization or, if the registrant is not a member of a designated self-regulatory organization, the Commission, may reduce the unpaid principal amount of the secured demand note: *Provided,* That after giving effect to such reduction the adjusted net capital of the applicant or registrant would not be less than the greatest of:

(*1*) 120 percent of the appropriate minimum dollar amount required by paragraphs (a)(1)(i)(A) or (a)(1)(ii)(A) of this section;

(*2*) For a futures commission merchant or applicant therefor, 7 percent of the following amount: the customer funds required to be segregated pursuant to the Act and these regulations and the foreign futures or foreign options secured amount, less the market value of commodity options purchased by customers on or subject to the rules of a contract market or a foreign board of trade: *Provided, however,* That the deduction for each customer shall be limited to the amount of customer funds in such customer's account(s) and foreign futures and foreign options secured amounts; or

(*3*) For an applicant or registrant which is also a securities broker or dealer, the amount of net capital specified in Rule 15c3–1d(b)(6)(iii) of the Securities and Exchange Commission (17 CFR 240.15c3–1d(b)(6)(iii)): *Provided, further,* That no single secured demand note shall be permitted to be reduced by more than 15 percent of its original principal amount and after such reduction no excess collateral may be withdrawn.

(vii) *Permissive prepayments and special prepayments.* (A) An applicant or registrant at its option, but not at the option of the lender, may, if the subordination agreement so provides, make a payment of all or any portion of the payment obligation thereunder prior to the scheduled maturity date of such payment obligation (hereinafter referred to as a "prepayment"), but in no event may any prepayment be made before the expiration of one year from the date such subordination agreement became effective: *Provided, however,* That the foregoing restriction shall not apply to temporary subordination agreements which comply with the provisions of paragraph (h)(3)(v) of this section nor shall it apply to "special prepayments" made in accordance with the provisions of paragraph (h)(2)(vii)(B) of this section. No prepayment shall be made if, after giving effect thereto (and to all payments of payment obligations under any other subordination agreements then outstanding, the maturity or accelerated maturities of which are scheduled to fall due within six months after the date such prepayment is to occur pursuant to this provision, or on or prior to the date on which the payment obligation in respect to such prepayment is scheduled to mature disregarding this provision, whichever date is earlier) without reference to any projected profit or loss of the applicant or registrant, the adjusted net capital of the applicant or registrant is less than the greatest of:

(*1*) 120 percent of the appropriate minimum dollar amount required by paragraphs (a)(1)(i)(A) or (a)(1)(ii)(A) of this section;

(*2*) For a futures commission merchant or applicant therefor, 7 percent of the following amount: the customer funds required to be segregated pursuant to the Act and these regulations and the foreign futures or foreign options secured amount, less the market value of commodity options purchased by customers on or subject to the rules of a contract market or a foreign board of trade: *Provided, however,* That the deduction for each customer shall be limited to the amount of customer funds in such customer's account(s) and foreign futures and foreign options secured amounts; or

(*3*) For an applicant or registrant which is also a securities broker or dealer, the amount of net capital specified in Rule 15c3–1d(b) (7) of the Securities and Exchange Commission (17 CFR 240.15c3–1d(b) (7)). Notwithstanding the above, no prepayment shall occur without the prior written approval of the National Futures Association, in the case of an applicant, or without the prior written approval of the designated self-regulatory organization, if any, and the Commission, in the case of a registrant.

(B) An applicant or registrant at its option, but not at the option of the lender, may, if the subordination agreement so provides, make a payment at any time of all or any portion of the payment obligation thereunder prior to the scheduled maturity date of such payment obligation (hereinafter referred to as a "special prepayment"). No special prepayment shall be made if, after giving effect thereto (and to all payments of payment obligations under any other subordination agreements then outstanding, the maturity or accelerated maturities of which are scheduled to fall due within six months after the date such special prepayment is to occur pursuant to this provision, or on or prior to the date on which the payment obligation in respect to such special prepayment is scheduled to mature disregarding this provision, whichever date is earlier) without reference to any projected profit or loss of the applicant or registrant, the adjusted net capital of the applicant or registrant is less than the greatest of:

(*1*) 200 percent of the appropriate minimum dollar amount required by paragraphs (a)(1)(i)(A) or (a)(1)(ii)(A) of this section;

(*2*) For a futures commission merchant or applicant therefor, 10 percent of the following amount: the customer funds required to be segregated pursuant to the Act and these regulations and the foreign futures or foreign options secured amount, less the market value of commodity options purchased by customers on or subject to the rules of a contract market or a foreign board of trade: *Provided, however,* That the deduction for each customer shall be limited to the amount of customer funds in such customer's account(s) and foreign futures and foreign options secured amounts; or

(*3*) For an applicant or registrant which is also a securities broker or dealer, the amount of net capital specified in Rule 15c3–1d(c)(5)(ii) of the Securities and Exchange Commission (17 CFR 240.15c3–1d(c)(5)(ii)): *Provided, further,* That no special prepayment shall be made if pre-tax losses during the latest three-month period were greater than 15 percent of current excess adjusted net capital. Notwithstanding the above, no special prepayment shall occur without the prior written approval of the National Futures Association, in the case of an applicant, or without the prior written approval of the designated self-regulatory organization, if any, and the Commission, in the case of a registrant.

(viii) *Suspended repayment.* (A) The payment obligation of the applicant or registrant in respect of any subordination agreement shall be suspended and shall not mature if, after giving effect to payment of such payment obligation (and to all payments of payment obligations of the applicant or registrant under any other subordination agreement(s) then outstanding which are scheduled to

mature on or before such payment obligation), the adjusted net capital of the applicant or registrant would be less than the greatest of:

(*1*) 120 percent of the appropriate minimum dollar amount required by paragraphs (a)(1)(i)(A) or (a)(1)(ii)(A) of this section;

(*2*) For a futures commission merchant or applicant therefor, 6 percent of the following amount: the customer funds required to be segregated pursuant to the Act and these regulations and the foreign futures or foreign options secured amount, less the market value of commodity options purchased by customers on or subject to the rules of a contract market or a foreign board of trade: *Provided, however,* That the deduction for each customer shall be limited to the amount of customer funds in such customer's account(s) and foreign futures and foreign options secured amounts; or

(*3*) for an applicant or registrant which is also a securities broker or dealer, the amount of net capital specified in Rule 15c3–1d(b)(8)(i) of the Securities and Exchange Commission (17 CFR 240.15c3–1d(b)(8)(i)): *Provided,* That the subordination agreement may provide that if the payment obligation of the applicant or registrant thereunder does not mature and is suspended as a result of the requirement of this paragraph (h)(2)(viii) for a period of not less than six months, the applicant or registrant shall then commence the rapid and orderly liquidation of its business, but the right of the lender to receive payment, together with accrued interest or compensation, shall remain subordinate as required by the provisions of this section.

* * * * *

(3) * * *

(ii) *Notice of maturity or accelerated maturity.* Every applicant or registrant shall immediately notify the National Futures Association, and the registrant shall immediately notify the designated self-regulatory organization, if any, and the Commission if, after giving effect to all payments of payment obligations under subordination agreements then outstanding which are then due or mature within the following six months without reference to any projected profit or loss of the applicant or registrant, its adjusted net capital would be less than:

(A) 120 percent of the minimum dollar amount required by paragraphs (a)(1)(i)(A) or (a)(1)(ii)(A) of this section;

(B) For a futures commission merchant or applicant therefor, 6 percent of the following amount: The customer funds required to be segregated pursuant to the Act and these regulations and the foreign futures or foreign options secured amount, less the market value of commodity options purchased by customers on or subject to the rules of a contract market or a foreign board of trade: *Provided, however,* That the deduction for each customer shall be limited to the amount of customer funds in such customer's account(s) and foreign futures and foreign options secured amount; or

(C) For an applicant or registrant which is also a securities broker or dealer, the amount of net capital specified in Rule 15c3–1d(c)(2) of the Securities and Exchange Commission (17 CFR 240.15c3–1d(c)(2)).

* * * * *

(v) *Temporary subordinations.* To enable an applicant or registrant to participate as an underwriter of securities or undertake other extraordinary activities and remain in compliance with the adjusted net capital requirements of this section, an applicant or registrant shall be permitted, on no more than three occasions in any 12-month period, to enter into a subordination agreement on a temporary basis which has a stated term of no more than 45 days from the date the subordination agreement became effective: *Provided,* That this temporary relief shall not apply to any applicant or registrant if the adjusted net capital of the applicant or registrant is less than the greatest of:

(A) 120 percent of the appropriate minimum dollar amount required by paragraphs (a)(1)(i)(A) or (a)(1)(ii)(A) of this section;

(B) For a futures commission merchant or applicant therefor, 7 percent of the following amount: the customer funds required to be segregated pursuant to the Act and these regulations and the foreign futures or foreign options secured amount, less the market value of commodity options purchased by customers on or subject to the rules of a contract market or a foreign board of trade: *Provided, however,* That the deduction for each customer shall be limited to the amount of customer funds in such customer's account(s) and foreign futures and foreign options secured amounts;

(C) For an applicant or registrant which is also a securities broker or dealer, the amount of net capital specified in Rule 15c3–1d(c)(5)(i) of the Securities and Exchange Commission (17 CFR 240.15c3–1d(c)(5)(i)); or (D) the amount of equity capital as defined in paragraph (d) of this section is less than the limits specified in paragraph (d) of this section. Such temporary subordination agreement shall be subject to all the other provisions of this section.

* * * * *

6. Section 1.19 is revised to read as follows:

§ 1.19 Prohibited Trading in Certain "Puts" and "Calls".

No futures commission merchant or introducing broker may make, underwrite, issue, or otherwise assume any financial responsibility for the fulfillment of, any commodity option except:

(a) Commodity options traded on or subject to the rules of a contract market in accordance with the requirements of Part 33 of this chapter; or

(b) Commodity options traded on or subject to the rules of a foreign board of trade in accordance with the requirements of Part 30 of this chapter.

7. Section 1.33 is amended by revising paragraphs (a) and the introductory paragraph of paragraph (b) to read as follows:

§ 1.33 Monthly and Confirmation Statements.

(a) Monthly Statements. Each futures commission merchant must promptly furnish in writing to each commodity customer and to each option customer and to each foreign futures and foreign options customer, as of the close of the last business day of each month or as of any regular monthly date selected, except for accounts in which there are neither open positions at the end of the statement period nor any changes to the account balance since the prior statement period, but in any event not less frequently than once every three months, a statement which clearly shows:

(1) For each commodity customer and foreign futures customer—

(i) The open contracts with prices at which acquired;

(ii) The net unrealized profits or losses in all open contracts marked to the market; and

(iii) Any customer funds carried with the futures commission merchant; and

(iv) A detailed accounting of all financial charges and credits to such customer accounts during the monthly reporting period, including all customer funds and funds on deposit with respect to foreign futures transactions in accordance with § 30.7 of this chapter received from or disbursed to such customer and realized profits and losses; and

(2) For each option customer and foreign options customer—

(i) All commodity options and foreign options purchased, sold, exercised, or

expired during the monthly reporting period, identified by underlying futures contract or underlying physical, strike price, transaction date, and expiration date;

(ii) The open commodity option and foreign option positions carried for such customer as of the end of the monthly reporting period, identified by underlying futures contract or underlying physical, strike price, transaction date, and expiration date;

(iii) All open commodity option and foreign option positions marked to the market and the amount each position is in the money, if any;

(iv) Any customer funds carried in such customer's account(s); and

(v) A detailed accounting of all financial charges and credits to such customer's account(s) during the monthly reporting period, including all customer funds and funds on deposit with respect to foreign options transactions received from or disbursed to such customer, premiums charged and received, and realized profits and losses.

(b) Confirmation statement. Each futures commission merchant must, not later than the next business day after any commodity futures or commodity option transaction, including any foreign futures or foreign options transactions, furnish:

* * * * *

8. 17 CFR Part 30 is amended by revising the Part heading, by revising and redesignating § 30.02 as § 30.9 and by adding §§ 30.1–30.8 and 30.10–30.11 to read as follows:

PART 30—FOREIGN FUTURES AND FOREIGN OPTIONS TRANSACTIONS

Sec.

30.1 Definitions.
30.2 Applicability of the Act and rules.
30.3 Prohibited transactions.
30.4 Registration required.
30.5 Alternative procedures for non-domestic persons.
30.6 Disclosure.
30.7 Treatment of foreign futures and foreign options secured amount.
30.8 Quarterly reporting requirements.
30.9 Fraudulent transactions prohibited.
30.10 Petitions for exemption.
30.11 Applicability of state law.

Appendix A to Part 30—Interpretative Statement With Respect to the Commission's Exemptive Authority Under § 30.10 of Its Rules

Authority: Secs. 2(a)(1)(A), 4, 4c and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 4, 6, 6c and 12a (1982).

§ 30.1 Definitions.

For the purposes of this part:

(a) "Foreign futures" means any contract for the purchase or sale of any commodity for future delivery made, or to be made, on or subject to the rules of any foreign board of trade.

(b) "Foreign option" means any transaction or agreement which is or is held out to be of the character of, or is commonly known to the trade as, an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty" or "decline guaranty", made or to be made on or subject to the rules of any foreign board of trade.

(c) "Foreign futures or foreign options customer" means any person located in the United States, its territories or possessions who trades in foreign futures or foreign options: *Provided,* That an owner or holder of a proprietary account as defined in paragraph (y) of § 1.3 of this chapter shall not be deemed to be a foreign futures or foreign options customer within the meaning of §§ 30.6 and 30.7 of this part.

§ 30.2 Applicability of the Act and rules.

(a) Except as specified in this part or unless the context otherwise requires, the provisions of sections 2(a)(1), 4, 4c, 4f, 4g, 4k, 4l, 4m, 4n, 4o, 4p, 6, 6c, 6d, 8, 8a, 9, 12, 13, and 14 of the Act and parts 1, 3, 4, 10, 11, 12, 13, 14, 21, 155, 166 and 190 of this chapter shall apply to the persons and transactions that are subject to the requirements of this part as though they were set forth herein and included specific references to foreign board of trade, foreign futures, foreign options, foreign futures and foreign options customers, and foreign futures and foreign options secured amount, as appropriate.

(b) The provisions of §§ 1.20 through 1.30, 1.32, 1.35(a) (2)–(4) and (c)–(i), 1.36(b), 1.38, 1.39, 1.40 through 1.51, 1.53, 1.54, 1.55, 1.58, 1.59, 33.2 through 33.6 and Parts 15 through 20 of this chapter shall not be applicable to the persons and transactions that are subject to the requirements of this part.

§ 30.3 Prohibited transactions.

(a) It shall be unlawful for any person to engage in the offer and sale of any foreign futures contract or foreign options transaction for or on behalf of a foreign futures or foreign options customer, except in accordance with the provisions of this part: *Provided,* That, notwithstanding any other provisions of this part, it shall be unlawful for any person to engage in the offer and sale of any foreign option until the Commission, by order, authorizes such foreign option to be offered in the United States: *And, provided further,* That, with the exception of the disclosure and antifraud provisions set forth in §§ 30.6 and 30.9 of this part, the provisions of this part shall not apply to transactions executed on a foreign board of trade, and carried for or on behalf of a customer at a designated contract market, subject to an agreement with and rules of a contract market which permit positions in a commodity interest which have been established on one market to be liquidated on another market.

(b) Except as otherwise provided in § 30.4 of this part or pursuant to an exemption granted under § 30.10 of this part, it shall be unlawful for any person to engage in the offer and sale of any foreign futures contract or foreign option transaction for or on behalf of any foreign futures or foreign options customer other than by or through a futures commission merchant on a fully-disclosed basis.

§ 30.4 Registration required.

Except as provided in § 30.5 of this part, it shall be unlawful for any person, with respect to a foreign futures or foreign options customer:

(a) To solicit or accept orders for or involving any foreign futures contract or foreign options transaction and, in connection therewith, to accept any money, securities or property (or extend credit in lieu thereof) to margin, guarantee or secure any trades or contracts that result or may result therefrom unless such person shall have registered, under the Act, with the Commission as a futures commission merchant and such registration shall not have expired nor been suspended nor revoked;

(b) Except an individual who elects to be and is registered as an associated person of a futures commission merchant, to solicit or accept orders for or involving any foreign futures contract or foreign options transaction, and who in connection therewith, does not accept any money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trade or contracts that result or may result therefrom, unless such person shall have registered, under the Act, with the Commission as an introducing broker and such registration shall not have expired nor been suspended nor revoked;

(c) To engage in a business which is of the nature of an investment trust, syndicate, or similar form of enterprise, and, in connection therewith, to solicit, accept, or receive funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading, directly or indirectly, in any foreign futures contract or foreign options transaction

unless such person shall have registered, under the Act, with the Commission as a commodity pool operator and such registration shall not have expired nor been suspended nor revoked: *Provided, however,* That the registration requirement set forth in this paragraph shall not apply to any investment trust, syndicate, or similar form of enterprise located outside the United States, its territories or possessions which is registered as an investment company under the Investment Company Act of 1940 and whose securities are registered in accordance with the Securities Act of 1933, or which is otherwise exempt from such registration requirements: *And, provided further,* That no more than 10% of the participants in, and the value of the assets of, such investment trust, syndicate or similar form of enterprise located outside the United States, its territories or possessions, are held by or on behalf of foreign futures and foreign options customers.

(d) To solicit or enter into an agreement to direct, or to guide such customer's account by means of a systematic program that recommends specific transactions in any foreign option or foreign futures contract unless such person shall have registered, under the Act, with the Commission as a commodity trading advisor and such registration shall not have expired nor been suspended nor revoked: *Provided,* That the term "commodity trading advisor" does not include (i) any bank or trust company or any person acting as an employee thereof, (ii) any news reporter, news columnist, or news editor of the print or electronic media, or any lawyer, accountant, or teacher, (iii) the publisher or producer of any print or electronic data of general and regular dissemination, including its employees, (iv) the named fiduciary, or trustee, of any defined benefit plan which is subject to the provisions of the Employee Retirement Income Security Act of 1974, or any fiduciary whose sole business is to advise that plan, (v) any foreign board of trade or clearing organization of such board of trade, (vi) an insurance company subject to regulation by any State, or any wholly-owned subsidiary or employee thereof, and (vii) such other persons not within the intent of the term "commodity trading advisor" as the Commission may specify by rule, regulation, or order: *And, provided further,* That the furnishing of such services by the foregoing persons is solely incidental to the conduct of their business or profession. Registration as a commodity trading advisor shall not be required if such person is registered with the Commission as a futures commission merchant, introducing broker, commodity pool operator or associated person, or is otherwise exempt from registration pursuant to § 30.5.

(e) Any person required to be registered as a futures commission merchant under this section must maintain an office in the United States which is managed by an individual domiciled in the United States and registered with the Commission as an associated person.

§ 30.5 Alternative procedures for non-domestic persons.

(a) *Agent for service of process.* Any person not located in the United States, its territories or possessions, who is required in accordance with the provisions of this part to be registered with the Commission, other than a person required to be registered as a futures commission merchant, will be exempt from such registration requirement if such person enters into a written agency agreement with the futures commission merchant through which business is done in accordance with the provisions of § 30.3(b) of this part, with any registered futures association or any other person located in the United States in the business of providing such services, pursuant to which agreement such futures commission merchant or other person is authorized to serve as the agent of such person for purposes of accepting delivery and service of communications issued by or on behalf of the Commission, U.S. Department of Justice, any self-regulatory organization or any foreign futures or foreign options customer. If the written agency is entered into with any person other than the futures commission merchant through which business is done, such futures commission merchant must be expressly identified in such agency agreement. Service or delivery of any communication issued by or on behalf of the Commission, U.S. Department of Justice, any self-regulatory organization or any foreign futures or foreign options customer, pursuant to such agreement shall constitute valid and effective service or delivery upon such person. Unless otherwise specified by the Commission, the agreement required by this section shall be filed with the Vice President-Registration, National Futures Association, 200 West Madison Street, Chicago, Illinois 60606, with a copy to the Vice President-Compliance, National Futures Association. For the purposes of this section, the term "communication" includes any summons, complaint, order, subpoena, request for information, or notice, as well as any other written document or correspondence relating to any activities of such person subject to regulation under this part.

(b) *Termination of agreement.* Whenever the agreement referred to in paragraph (a) of this section is terminated or is otherwise no longer in effect, the futures commission merchant or any other person which is party to the agreement shall immediately notify the Vice President-Compliance of the National Futures Association and the futures commission merchant through which business is done, as appropriate. Upon notice, a futures commission merchant shall not accept from the person that has entered into such agreement any order, other than liquidating order(s), for, or on behalf of a foreign futures or foreign options customer. Notwithstanding the termination of the agreement referred to in paragraph (a) of this section, service or delivery of any communication issued by or on behalf of the Commission, U.S. Department of Justice, any self-regulatory organization or any foreign futures or foreign options customer pursuant to the agreement shall nonetheless constitute valid and effective service or delivery upon such person with respect to any transaction entered into on or before the date of the termination of the agreement.

(c) *Applicability of other rules.* Any person who is located outside of the United States, its territories or possessions, and who, in accordance with the provisions of paragraph (a) of this section, is exempt from registration as an introducing broker, commodity pool operator or commodity trading advisor under this part, shall nonetheless comply with the provisions of §§ 30.6 of this part and 1.37 and 1.57 of this chapter as if registered in such capacity.

(d) *Access to records.* Any person exempt from registration with the Commission in accordance with the provisions of paragraph (a) of this section must, upon the request of any representative of the Commission or U.S. Department of Justice, provide such records as such person is required to maintain under this part as requested at the place in the United States designated by the representative within 72 hours after the person receives the request.

§ 30.6 Disclosure.

(a) *Futures commission merchants and introducting brokers.* (1) No futures commission merchant or, in the case of an introduced account, no introducing broker may open a foreign futures or

foreign options account for a foreign futures or foreign options customer unless the futures commission merchant or introducing broker first delivers to the customer either in the customer account agreement or on a separate form the following risk disclosure statement set in bold-face type or print:

Risk Disclosure Statement

Foreign Futures and Foreign Options

The risk of loss in trading foreign futures and foreign options can be substantial. Therefore, you should carefully consider whether such trading is suitable for you in light of your financial condition. In considering whether to trade foreign futures or foreign options, you should be aware of the following:

(1) Participation in foreign futures and foreign options transactions involves the execution and clearing of trades on or subject to the rules of a foreign board of trade.

(2) Neither the Commodity Futures Trading Commission, the National Futures Association nor any domestic exchange regulates activities of any foreign boards of trade, including the execution, delivery and clearing of transactions, or has the power to compel enforcement of the rules of a foreign board of trade or any applicable foreign laws. Generally, the foreign transaction will be governed by applicable foreign law. This is true even if the exchange is formally linked to a domestic market so that a position taken on the market may be liquidated by a transaction on another market. Moreover, such laws or regulations will vary depending on the foreign country in which the foreign futures or foreign options transaction occurs.

(3) For these reasons, customers who trade foreign futures or foreign options contracts may not be afforded certain of the protective measures provided by the Commodity Exchange Act, the Commission's regulations and the rules of the National Futures Association and any domestic exchange, including the right to use reparations proceedings before the Commission and arbitration proceedings provided by the National Futures Association or any domestic futures exchange. In particular, funds received from customers for foreign futures or foreign options transactions may not be provided the same protections as funds received in respect of transactions on United States futures exchanges. Therefore, you should obtain as much information as possible from your account executive concerning the foreign rules which will apply to your particular transaction.

(4) You should also be aware that the price of any foreign futures or foreign options contract and, therefore, the potential profit and loss thereon, may be affected by any variance in the foreign exchange rate between the time your order is placed and the time it is liquidated, offset or exercised.

(2) If a futures commission merchant or introducing broker, or any associated person of such futures commission merchant or introducing broker, has received general discretionary authority to engage in foreign futures or foreign options transactions on behalf of a foreign futures or foreign options customer, the futures commission merchant or introducing broker must receive a separate acknowledgment signed and dated by the customer that the customer has received and understood the foreign futures and options risk disclosure statement.

(b) *Commodity pool operators and commodity trading advisors.* (1) No commodity pool operator registered or required to be registered under this part, or exempt from registration pursuant to § 30.5 of this part, may, directly or indirectly, solicit, accept or receive funds, securities or other property from a prospective participant in a foreign pool that it operates or that it intends to operate or, in the case of a commodity trading advisor, no commodity trading advisor registered or required to be registered under this part, or exempt from registration pursuant to § 30.5 of this part, may solicit or enter into an agreement with a prospective client to direct or to guide the client's foreign commodity interest trading by means of a systematic program that recommends specific transactions, unless the commodity pool operator or commodity trading advisor, at or before the time it engages in such activities, first complies with the provisions of paragraph (a)(1) of this section.

(2) The disclosure statement required to be made in paragraph (b)(1) above may be given as a separate document or, if a part of the Disclosure Document required to be furnished customers or potential customers pursuant to §§ 4.21(a) or 4.31(a) of this chapter, must be the only language on the page(s) immediately following the disclosure required to be made by §§ 4.21(a)(17) and 4.31(a)(8) of this chapter.

(c) The acknowledgment required by paragraphs (a) and (b) of this section must be retained by the futures commission merchant, introducing broker, commodity pool operator or commodity trading advisor in accordance with § 1.31 of this chapter.

(d) This section does not relieve a futures commission merchant or introducing broker from its obligations under § 33.7 of this chapter: *Provided, however,* That a new disclosure statement is not required to be furnished if the futures commission merchant or introducing broker has previously delivered such statement to the foreign options customer in connection with the opening of a commodity option account under part 33 of this chapter.

(e) This section does not relieve a futures commission merchant, introducing broker, commodity pool operator or commodity trading advisor from any other disclosure obligation it may have under applicable law or regulation.

§ 30.7 Treatment of foreign futures or foreign options secured amount.

(a) Except as provided in this section, a futures commission merchant must maintain in a separate account or accounts money, securities and property in an amount at least sufficient to cover or satisfy all of its current obligations to foreign futures or foreign options customers denominated as the foreign futures or foreign options secured amount. Such money, securities and property may not be commingled with the money, securities or property of such futures commission merchant, with any proprietary account of such futures commission merchant, or used to secure or guarantee the obligations of, or extend credit to, such futures commission merchant or any proprietary account of such futures commission merchant.

(b) A futures commission merchant may deposit together with the secured amount required to be on deposit in the separate account or accounts referred to in paragraph (a) of this section money, securities or property held for or on behalf of other customers of the futures commission merchant for the purpose of entering into foreign futures or foreign options transactions. In such a case, the amount that must be deposited in such separate account or accounts must be no less than the greater of (i) the foreign futures and foreign options secured amount plus the amount that would be required to be on deposit if all such customers were foreign futures or foreign options customers under this part 30, or (ii) the foreign futures or foreign options secured amount plus the amount required to be held in a separate account or accounts for or on behalf of customers pursuant to any law, or rule, regulation or order thereunder, or any rule of any self-regulatory organization authorized thereunder, in the jurisdiction in which the depository or the customer, as appropriate, is located.

(c) The separate account or accounts referred to in paragraph (a) of this section must be maintained under an account name that clearly identifies them as such, with any of the following depositories:

(i) A bank or trust company located in the United States or as designated;

(ii) Another person registered as a futures commission merchant;

(iii) The clearing organization of any foreign board of trade;

(iv) Any member of such board of trade; or

(v) Such member or clearing organization's designated depositories. Each futures commission merchant must obtain and retain in its files for the period provided in § 1.31 of this chapter an acknowledgment from such depository that it was informed that such money, securities or property are held for or on behalf of foreign futures and foreign options customers and are being held in accordance with the provisions of these regulations.

(d) In no event may money, securities or property representing the foreign futures or foreign options secured amount be held or commingled and deposited with customer funds in the same account or accounts required to be separately accounted for and segregated pursuant to section 4d of the Act and the regulations thereunder.

(e) Each futures commission merchant which invests money, securities or property on behalf of foreign futures or foreign options customers shall keep a record showing the following:

(i) The date on which such investments were made;

(ii) The name of the person through whom such investments were made;

(iii) The amount of money so invested;

(iv) A description of the obligations in which such investments were made;

(v) The identity of the depositories or other places where such obligations are maintained;

(vi) The date on which such investments were liquidated or otherwise disposed of and the amount of money received of such disposition, if any; and

(vii) The name of the person to or through whom such investments were disposed of.

(f) Each futures commission merchant must compute as of the close of each business day:

(1) The total amount of money, securities and property on deposit in separate account(s) in accordance with this section;

(2) The total amount of money, securities and property required to be on deposit in separate account(s) in accordance with this section; and

(3) The amount of the futures commission merchant's residual interest in money, securities and property on deposit in separate account(s) in accordance with this section. Such computations must be completed prior to noon on the next business day and must be kept together with all supporting data, in accordance with the requirements of § 1.31.

§ 30.8 Quarterly reporting requirements.

(a) Each futures commission merchant required to be registered under this part shall file written quarterly reports on a form specified by the National Futures Association at the National Futures Association's headquarters office in Chicago, Illinois, by the tenth business day of the month following the quarter covered by the reports.

(b) Each report shall contain the following information separately for each foreign board of trade on which foreign futures contracts or foreign options transactions were effected:

(1) The total number of foreign futures contracts, separately by contract, long and short, customer or proprietary, executed during the quarter on such board of trade on behalf of the futures commission merchant or its foreign futures customers;

(2) The total number of foreign futures contracts, separately by contract, long and short, customer or proprietary, open on such board of trade on behalf of the futures commission merchant or its foreign futures customers as of the close of business on the last business day of the quarter;

(3) The total number of foreign options, separately by underlying futures contracts for options on futures contracts or by underlying physical for options on physicals, by put, by call, and by customer or proprietary, executed during the quarter on such board of trade on behalf of the futures commission merchant or its foreign options customers;

(4) The total number of foreign options, separately by underlying futures contracts for options on futures contracts or by underlying physical for options on physicals, by put, by call, and by customer or proprietary, open on such board of trade on behalf of the futures commission merchant or its foreign options customers as of the close of business on the last business day of the quarter.

§ 30.9 Fraudulent transactions prohibited.

It shall be unlawful for any person, by use of the mails or by any means or instrumentality of interstate commerce, directly or indirectly, in or in connection with any account, agreement or transaction involving any foreign futures contract or foreign options transaction:

(a) To cheat or defraud or attempt to cheat or defraud any other person;

(b) To make or cause to be made to any other person any false report or statement thereof or to enter or cause to be entered for any person any false record thereof;

(c) To deceive or attempt to deceive any other person by any means whatsoever in regard to any such account, agreement or transaction or the disposition or execution of any such account, agreement or transaction or in regard to any act of agency performed with respect to such account, agreement or transaction; or

(d) To bucket any order, or to fill any order by offset against the order or orders of any other person or without the prior consent of any person to become the buyer in respect to any selling order of such person, or become the seller in respect to any buying order of such person.

§ 30.10 Petitions for exemption.

Any person adversely affected by any requirement of this part may file a petition with the Secretary of the Commission, which petition must set forth with particularity the reasons why that person believes that he should be exempt from such requirement. The Commission may, in its discretion, grant such an exemption if that person demonstrates to the Commission's satisfaction that the exemption is not otherwise contrary to the public interest or to the purposes of the provision from which exemption is sought. The petition will be granted or denied on the basis of the papers filed. The petition may be granted subject to such terms and conditions as the Commission may find appropriate.

§ 30.11 Applicability of state law.

Pursuant to section 12(e)(2) of the Act, the provisions of any state law, including any rule or regulation thereunder, may be applicable to any person required to be registered under this part who solicits foreign futures and foreign options customers and who shall fail or refuse to obtain such registration, unless such person is exempt from such registration in accordance with the provisions of §§ 30.4, 30.5 or 30.10 of this part.

Appendix A–Part 30—Interpretative Statement With Respect to the Commission's Exemptive Authority Under Section 30.10 of Its Rules

Part 30 of the Commission's regulations establishes the regulatory structure governing the offer and sale in the United States of futures and options contracts made or to be made on or subject to the rules of a foreign board of trade. Section 30.10 of these regulations provides that, upon petition, the Commission may exempt any person from any requirement of this part. Specifically, section 30.10 states:

Any person adversely affected by any requirement of this part may file a petition with the Secretary of the Commission, which petition must set forth with particularity the reasons why that person believes that he should be exempt from such requirement. The Commission may, in its discretion, grant such an exemption if that person demonstrates to the Commission's satisfaction that the

exemption is not otherwise contrary to the public interest or to the purposes of the provision from which exemption is sought. The petition will be granted or denied on the basis of the papers filed. The petition may be granted subject to such terms and conditions as the Commission may find appropriate.

As the provisions of this section make clear, any person subject to regulation under part 30 may petition the Commission for an exemption. In adopting these regulations, however, the Commission noted in particular that persons located outside the United States that solicit or accept orders directly from United States customers for foreign futures or options transactions and that are subject to a comparable regulatory scheme in the country in which they are located may apply under section 30.10 for exemption from some or all of the requirements that would otherwise be applicable to such persons. This interpretative statement sets forth the elements that the Commission intends to evaluate in determining whether a particular regulatory program may be found to be comparable to the Commission's program.

The Commission wishes to emphasize, however, that this interpretative statement is not all inclusive, and that information with respect to other aspects of a particular regulatory program may be submitted by a petitioner or requested by the Commission. In this connection, the Commission would have broad discretion to determine that the policies of any program element generally are met, notwithstanding the fact that the offshore program does not contain an element identical to that of the Commission's regulatory program and conversely may assess how particular elements are in fact applied by offshore authorities. Thus, for example, in order to find that a particular program is comparable, the regulations thereunder would have to be applicable to all United States customers, notwithstanding any exemptions that might otherwise be available to particular classes of customer located offshore. A petitioner, therefore, must set forth with particularity the factual basis for a finding of comparability and the reasons why such policies and purposes are met, notwithstanding differences of degree and kind in its regulatory program.

No exemptions of a general nature will be granted unless the persons to which the exemption is to be applied consent to submit to jurisdiction in the United States by designating an agent for service of process pursuant to the provisions of rule 30.5 with respect to any activities of such persons otherwise subject to regulation under this part and to notify the National Futures Association of the commencement or termination of business in the United States. In this connection, to be exempted, such person must further agree to respond to a request to confirm that it continues to do business in the United States.

Persons located outside the United States may seek an exemption on their own behalf or an exemption may be sought on a general basis through the governmental agency responsible for the implementation and enforcement of the regulatory program in question, or the self-regulatory organizations of which such persons are members. The appropriate petitioner is a matter of judgment and may be determined by the parties seeking the exemption. The Commission, however, notes that it will be able to address petitions more efficiently if they are filed by the governmental agency or self-regulatory organization responsible for the regulatory program.

In this connection, as will be discussed in more detail below, any exemption of a general nature based on comparability will be conditioned upon appropriate information sharing arrangements between the Commission and the relevant governmental agency and/or self-regulatory organization. Representations from the appropriate governmental agency with respect to the applicability of any blocking statutes that may prevent the sharing of information requested under private arrangements would also be considered. Finally, in considering an exemption request, the Commission will take into account the extent to which United States persons or contracts regulated by the Commission are permitted to engage in futures-related activities or be offered in the country from which an exemption is sought.

In the Commission's review, the minimum elements of a comparable regulatory program would include: (1) Registration, authorization or other form of licensing, fitness review or qualification of persons through which customer orders are solicited and accepted; (2) minimum financial requirements for those persons that accept customer funds; (3) protection of customer funds from misapplication; (4) recordkeeping and reporting requirements; (5) minimum sales practice standards, including disclosure of the risks of futures and opotions transactions and, in particular, the risk of transactions undertaken outside the jurisdiction of domestic law; and (6) compliance.

Qualification. Under domestic law, registration identifies to the Commission, the public and other governmental agencies the individuals and entities that are properly authorized to solicit and accept customer orders and are in good standing. Equally important, the procedure provides the Commission, through the National Futures Association, the opportunity to determine whether applicants are unfit to deal with the public. In this connection, the standards for determining whether a person through its principals is fit for registration with the Commission are set forth in section 8a(2)–8a(4) of the Act. Timely access to information as to a firm's good standing and the application by relevant authorities of membership and licensing criteria, as well as the criteria themselves, will be considered by the Commission in assessing comparability.

Minimum Financial Requirements. Minimum financial requirements for persons that handle customer funds serve at least three critical functions. First, they provide a cushion together with margin such that in the event of a default of a customer, the losses of that customer need not adversely affect the funds held on behalf of other customers. Second, they help ensure that the person has sufficient funds to operate its business and, therefore, is less likely to be tempted to misapply customer funds for its own purposes. Third, they ensure that the person holding customer funds has some financial stake in its business and, therefore, is serious in its intent. In assessing comparability, capital rules or their equivalent will be considered together with any provisions made for insuring customer losses, the scope of clearing guarantees and segregation or customer trust calculation and accounting requirements which, to the extent they cover undermargined accounts, can provide significant protection of one customer from another customer's losses.

Customer Funds. The Act requires the strict segregation of customer funds from those of the person holding such funds. One of the primary purposes of this requirement is to prevent the misapplication of those funds for purposes other than those intended by the customer, which may affect not only the customer but the market as a whole. The purpose of segregation is also to identify customer deposits as assets of the customer, rather than the firm, in order that in bankruptcy such funds are payable only to satisfy the carrying firm's obligations to such customers and not other obligations of the firm. In assessing comparability of protection of customer funds, the Commission will consider protections accorded customer funds in a bankruptcy under applicable law, as well as protection from fraud.

Recordkeeping and Reporting. Recordkeeping requirements have long been recognized as the linchpin of the Commission's regulatory scheme. Reporting and recordkeeping requirements assist in determining that a registrant is acting in accordance with the provisions of the Act and the rules, regulations and orders of the Commission thereunder. Similarly, reporting requirements ensure that customers are timely advised of the transactions that have been executed on their behalf, thus ensuring that they are aware of their positions in the markets and may object to any transactions that they believe are in error. The Commission will consider the types of records maintained, the ability through those records to trace funds and transactions, and the period of retention and accessibility of records under the information sharing arrangements discussed below in considering comparability.

Sales Practice Standards. In 1982, Congress reaffirmed the importance of minimum sales practice standards to protect customers from fraud or misrepresentation by requiring any futures association registered by the Commission to adopt and enforce rules governing the sales practices of its members. The Commission has consistently provided that written disclosure of the risks of futures and options trading is essential to ensure that potential customers are aware of these risks and are not otherwise misled and that other appropriate disclosure is made. The Commission will review the type and manner of disclosure given and the mechanisms for assuring the disclosure requirements are met and, in particular, the treatment of discretionary accounts for which, for example, Commission rule 166.2 requires particularized documentation of intent to confer discretion in the case of foreign futures and options transactions.

Compliance. Finally, in assessing comparability of a program, the Commission will examine the procedures employed by the governmental authority or the appropriate self-regulatory organization to audit for compliance with, and to take action as appropriate against those persons that violate, the requirements of that program.

Information Sharing. As noted above, any exemption of a general nature would also require an information sharing arrangement between the Commission and the appropriate governmental or self-regulatory organization to ensure Commission access to information on an as needed basis as may be necessary to fulfill its regulatory responsibilities. The information subject to these arrangements generally would be of a type necessary in the first instance to monitor domestic markets and to protect domestic customers trading on foreign markets.

Firm-specific information that is potentially relevant to protection of domestic customers engaged in foreign transactions could include the following: (1) Registration qualification status; (2) names of principals; (3) current capital; (4) location of customer funds; (5) address of main office and branches; (6) exchange and self-regulatory organization memberships; (7) the existence of any derogatory information such as that required to be disclosed on the Commission's Form 7–R; (8) notice of limitations imposed on activities; (9) notice of undersegregation or undercapitalization; (10) notice of misuse of customer funds; and (11) notice of sanctions or of expulsion from exchange or self-regulatory organization membership. The Commission believes that much of the above information would be public in the ordinary course in most jurisdictions. From time to time, the Commission also may need immediate access to financial information concerning risks posed to domestic firms by the carrying of foreign positions.

In addition to information that relates to the financial stability and creditworthiness of the firm, the Commission should have access to transaction-specific information that confirms the execution of orders and prices and facilitates tracing of customer funds. Such data could include records reflecting: (1) That an order has been received by a firm on behalf of one or more United States customers; (2) that an order has been executed on an exchange on behalf of one or more United States customers; (3) that funds to margin, guarantee or secure United States customer transactions have been received by a firm and deposited in an appropriate depository; and (4) the price at which a transaction was executed and general access to pricing information.

Again, such information is likely to be maintained in the ordinary course of business. Tracing of customer funds would be most essential in cases of insolvency where repatriation of funds is at issue.

The Commission may also seek relevant position data information, including the identity of the position holder and related positions, in connection with surveillance of a potential "market disruption." This is particularly true in the case of integrated markets.

The Commission wishes to emphasize that the information sharing arrangements discussed herein are not necessarily a substitute for, nor would they preclude, a more formal agreement or arrangement with respect to the sharing of information.

PART 32—REGULATION OF COMMODITY OPTION TRANSACTIONS

9. The authority citation for Part 32 continues to read as follows:

Authority: Sections 2(a)(1)(A), 4c and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 6c and 12a (1982).

10. Section 32.1 is amended by revising paragraph (a) to read as follows:

§ 32.1 Definitions.

(a) *Scope.* The provisions of this Part, except for the provisions of §§ 32.8 and 32.9 which shall in any event apply to all commodity option transactions, shall apply to all commodity option transactions except for commodity option transactions conducted or executed on or subject to the rules of a contract market, or a foreign board of trade, pursuant to section 4c of the Act and the regulations promulgated thereunder.

* * * * *

11. Section 32.11 is amended by revising paragraph (b) to read as follows:

§ 32.11 Suspension of Commodity Option Transactions.

* * * * *

(b) The provisions of paragraph (a) of this section shall not apply to any commodity option transaction conducted in accordance with the provisions of § 32.4(a) of this part, or any commodity option transaction conducted on or subject to the rules of a contract market or a foreign board of trade in accordance with the provisions of section 4c of the Act and any rule, regulation or order promulgated thereunder.

* * * * *

PART 166—CUSTOMER PROTECTION RULES

12. The authority citation for Part 166 is revised to read as follows:

Authority: Sections 2(a)(1)(A), 4b, 4c, 4g, 4h, 4*l*, 4*o*, 8a, and 19 of the Commodity Exchange Act, 7 U.S.C. 4, 6b, 6c, 6g, 6h, 6*l*, 6*o*, 12a, and 23.

13. Section 166.1 is amended by revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 166.1 Definitions.

* * * * *

(b) The term "commodity interest" as used in this part means—

(1) Any contract for the purchase or sale of any commodity for future delivery, traded on or subject to the rules of a contract market or a foreign board of trade.

(2) Any agreement or transaction subject to Commission regulation under section 4c of the Act, including any such contract or transaction made or to be made on or subject to the rules of a foreign board of trade; or

* * * * *

14. Section 166.2 is amended by revising paragraph (b) to read as follows:

§ 166.2 Authorization to trade.

* * * * *

(b) Authorized in writing the futures commission merchant, introducing broker or any of their associated persons to effect transactions in commodity interests for the account without the customer's specific authorization; *Provided, however,* That if such futures commission merchant, introducing broker or any of their associated persons is also authorized to effect transactions in foreign futures or foreign options without the customer's specific authorization, such authorization must be expressly documented.

Issued in Washington, DC, on July 23, 1987, by the Commission.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 87-17007 Filed 8-4-87 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 270, 271, 273, and 274

[Docket No. RM 87-31-000, et al.; Order No. 479]

Procedures for Determining High-Cost Natural Gas Produced From Tight Formations

Issued July 29, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing a final rule describing procedures for determining high-cost natural gas produced from tight formations eligible for incentive prices pursuant to section 107(c)(5) of the Natural Gas Policy Act of 1978. Specifically, the Commission is revising its regulations to provide that a

jurisdictional agency recommendation that a natural gas formation qualifies as a tight formation will be reviewed by the Commission under Parts 274 and 275 of the Commission's regulations.

EFFECTIVE DATE: This rule is effective July 29, 1987, except for the information collection provisions in §§ 271.703(c)(3) and 271.703(c)(4) which have been submitted for OMB approval. When these provisions are approved, the Commission will issue a notice of their effective date.

FOR FURTHER INFORMATION CONTACT: Julia Lake White, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, DC 20426, (202) 357-8530.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

In the matter of Procedures for Determining High-Cost Natural Gas Produced From Tight Formations, Docket No. RM87-31-000, High-Cost Gas Produced From Tight Formations (Colorado-23), Docket No. RM79-76-101, High-Cost Gas Produced From Tight Formations (Kentucky-3), Docket No. RM79-76-225, High-Cost Gas Produced From Tight Formations (Colorado-39 Addition), Docket No. RM79-76-230, High-Cost Gas Produced From Tight Formations (Oklahoma-8), Docket No. RM79-76-248, High-Cost Gas Produced From Tight Formations (Virginia-4), Docket No. RM79-76-249, High-Cost Gas Produced From Tight Formations (Travis Peak), Docket No. RM79-76-250 and High-Cost Gas Produced From Tight Formations (Colorado-38 Addition), Docket No. RM79-76-255.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is changing its procedures for qualifying gas as high cost natural gas produced from tight formations [1] that is eligible for incentive prices pursuant to section 107(c)(5) of the Natural Gas Policy Act of 1978 (NGPA).[2] Specifically, the Commission is revising its regulations [3] to provide that such determinations must be made under the procedures prescribed by section 503 of the NGPA.[4]

[1] A "tight formation" is a sedimentary layer of rock cemented together in a manner that greatly hinders the flow of any gas through the rock. Because such a formation is characterized by low permeability, wells drilled into gas bearing formations of this kind usually produce at very low rates.

[2] 15 U.S.C. 3317(c)(5) (1982).

[3] 18 CFR 271.703 (1987).

[4] 15 U.S.C. 3413 (1982).

II. Background

Section 107(c) of the NGPA[5] provides that the Commission may by rule or order prescribe a maximum lawful price for natural gas determined to be high cost natural gas eligible for incentive prices under the procedures statutorily prescribed in section 503 of the NGPA.

In Order Nos. 99 and 99-A,[6] the Commission established rulemaking procedures for designating a natural gas formation as a tight formation and therefore eligible for incentive prices under section 107 of the NGPA. The Commission established these procedures for designating tight formations pursuant to its broad rulemaking powers under section 501 of the NGPA[7] because the Commission did not believe that its authority to engage in the tight formation identification process was limited to an NGPA section 503 review of jurisdictional agencies' determinations.[8] Also, the Commission believed that NGPA section 503 described the Commission's review authority only with respect to well category determinations.

The Commission noted that section 501 of the NGPA provides authority to engage in any activity and to issue any rules it finds necessary to carry out its functions under the NGPA. The Commission also noted that one of its functions under section 107 of the NGPA is to identify natural gas produced under extraordinary risk or cost. Given its function under NGPA section 107 and its rulemaking authority under NGPA section 501, the Commission concluded that it was not constrained by NGPA section 503 procedures for jurisdictional agency determinations. Under the procedures established in Order Nos. 99 and 99-A,[9] a jurisdictional agency made a recommendation that certain areas be designated as tight formations. Upon receipt of the recommendation, the Commission published a notice of proposed rulemaking in the Federal Register and, after reviewing comments, issued a final rule approving or disapproving the jurisdictional agency's recommendation.[10] Since these procedures were established, the Commission processed over 200 local jurisdictional agency recommendations. Most of these recommendations were processed between 1980 and 1984.[11]

Recently, the U.S. Court of Appeals for the District of Columbia Circuit in *Williston Basin Interstate Pipeline Co. v. FERC*,[12] (*Williston Basin*) indicated that particular tight formation determinations may be made only through the procedural scheme of section 503 of the NGPA and not through procedures adopted under the Commission's broad rulemaking power under section 501 of the NGPA. Under NGPA section 503, the responsibility for applying the definition of high cost natural gas under section 107(c) is divided between the jurisdictional agency that governs the drilling of wells on the particular site for Docket No. RM87-31-000, *et al.*[5] which the high cost designation is requested, and the Commission. Unless the jurisdictional agency waives its role, it makes the initial determination of whether specific gas satisfies the Commission-set criteria for a particular category of incentive priced gas. Then the Commission reviews the jurisdictional agency's factual determinations to ensure that they are supported by substantial evidence.[13]

III. Discussion

The Commission is revising its regulations in response to the court's decision in *Williston Basin*. Under the revised procedures promulgated by this rule, the appropriate jurisdictional agency will make a determination that a natural gas formation is eligible as a tight formation pursuant to procedures currently used to make well category determinations in Part 274 of the Commission's regulations.[14] The

[5] 15 U.S.C. 3317(c) (1982).

[6] Regulations Covering High-Cost Natural Gas Produced From Tight Formations, 45 FR 56034 (Aug. 22, 1980), FERC Stats. & Regs. [Regulations Preambles 1977-1981] ¶ 30,183 (Aug. 15, 1980) (Order No. 99); High-Cost Natural Gas Produced From Tight Formations; Order Denying Rehearing and Clarifying Order No. 99, 45 FR 71563 (Oct. 29, 1980), FERC Stats. & Regs. [Regulations Preambles 1977-1981] ¶ 30,196 (Oct. 21, 1980) (Order No. 99-A).

[7] 15 U.S.C. 3411 (1982).

[8] *See* Interim Rule Covering High-Cost Natural Gas Produced From Tight Formations, 45 FR 12414 (Feb. 26, 1980), FERC Stats. & Regs. [Regulations Preambles 1977-1981] ¶ 30,130 (Feb. 26, 1980); High-Cost Natural Gas Produced From Tight Formations; Order Denying Rehearing and Clarifying Order No. 99, 45 FR 71563 (Oct. 29, 1980), FERC Stats. & Regs. [Regulations Preambles 1977-1981] ¶ 30,196 (Oct. 21, 1980) (Order No. 99-A).

[9] 18 CFR 271.703(c) (1987).

[10] 18 CFR 271.703(c) (4) (1987).

[11] There has been a marked decrease in tight formation recommendations by jurisdictional agencies. In 1985, the Commission received seven jurisdictional agency recommendations, in 1986, only two recommendations, and, to date for 1987, only one.

[12] 816 F.2d 777 (D.C. Cir. 1987).

[13] *Id.* at 780.

[14] Part 274 of the Commission's regulations provides the procedures for determinations by jurisdictional agencies, including requirements for

Continued

Commission will then review the jurisdictional agency's determination in accordance with the procedures provided in Part 275 of the Commission's regulations.[15] Therefore, once the jurisdictional agency tight formation determination becomes final, a producer may file for a well determination under § 274.205 of the Commission's regulations,[16] i.e., a determination that a specific well is producing from a tight formation. This well category determination is likewise made by the jurisdictional agency and then reviewed by the Commission pursuant to the procedures in NGPA section 503.

IV. Technical and Conforming Changes

This final rule makes technical conforming changes to Parts 270, 271, 273 and 274 to remove inconsistencies between the Commission's regulations and the NGPA, and updates the tight formation designation list in § 271.703 to reflect the two tight formation determinations recently approved under separate Commission orders.

This final rule also amends the Commission's regulations to update the addresses for jurisdictional agencies provided in § 274.507(a)(2).

V. Administrative Procedure Act

The Adminsitrative Procedure Act (APA)[17] requires that a notice of proposed rulemaking be published in the **Federal Register** and that an opportunity for comment be provided when an agency promulgates regulations. The APA provides exemptions to the notice and comment requirements if the rule is an interpretative rule, a general statement of policy, or a rule of Commisison organization, procedure or practice, or if the Commission for good cause finds that notice and comment procedures thereon are impracticable, unnecessary or contrary to the public interest.

An interpretative rule is one that explains the requirements of a statute. This rule modifies the Commission's regulations so that they conform with the requirements of section 503 of the NGPA, as interpreted by the court in *Williston Basin*. Consequently, it is an interpretative rule that simply sets forth and explains that which the NGPA requires.[18]

This is also a procedural rule that establishes procedures for seeking a tight formation determination. The Commission, therefore, finds good cause to dispense with notice and comment as unnecessary.

VI. Paperwork Reduction Act Statement

The Paperwork Reduction Act [19] and the Office of Management and Budget (OMB) regulations [20] require that OMB approve certain information collection requirements imposed by an agency. Because the Commission's revised tight formation determination procedures pursuant to Parts 274 and 275 of its regulations will bring these jurisdictional agency determinations into the information collection provisions provided by OMB in those parts, the Commission is submitting this final rule to OMB for its approval. Interested persons can obtain information on the information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 (Attention: Ellen Brown, Information Collection Analysis Branch, (202) 357–5311). Comments on the information collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

VII. Effective Date

Generally, a rule becomes effective not less than 30 days after publication in the **Federal Register**. A rule may become effective sooner if it is an interpretative rule, a statement of policy, or if the agency finds good cause to make it effective sooner.[21] Since this rule is an interpretative rule, the 30-day restriction does not apply. In addition, the Commission finds good cause to make the technical and conforming changes needed to remove inconsistencies between the Commission's regulations and the NGPA, and to reflect recent orders to the Commission. For these reasons, except for the information collection provisions in §§ 271.703(c)(3) and 271.703(c)(4) of the Commission's regulations submitted for OMB approval, this rule becomes effective immediately upon the issuance date of this final rule. When these information collection provisions are approved by OMB, the Commission will issue a notice in the **Federal Register** with the effective date for these information collection provisions.[22]

List of Subjects

18 CFR Part 270

Natural gas, Price controls, Reporting and recordkeeping requirements.

18 CFR Part 271

Continental shelf, Natural gas, Price controls, Reporting and recordkeeping requirements.

18 CFR Part 273

Natural gas, Price controls, Reporting and recordkeeping requirements.

18 CFR Part 274

Natural gas, Price controls, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Parts 270, 271, 273 and 274, Chapter I, Title 18 of the Code of Federal Regulations, as set forth below. By direction of the Commission.

Kenneth F. Plumb,

Secretary.

PART 270—RULES GENERALLY APPLICABLE TO REGULATED SALES OF NATURAL GAS

1. The authority citation for Part 270 is revised to read as follows:

Authority: National Gas Act, 15 U.S.C. 717–717w (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Natural Gas Policy Act of 1987, 15 U.S.C. 3301–3432 (1982).

2. In § 270.101 paragraph (c)(1) is revised to read as follows:

§ 270.101 Application of ceiling prices to first sales of natural gas.

* * * * *

(c) *Maximum lawful prices requiring jurisdictional agency determinations.*

* * *

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filings with jurisdictional agencies, procedures for waivers by jurisdictional agencies, delegations to state agencies, and identification of state and Federal jurisdictional agencies.

[15] Part 275 of the Commission's regulations provides the procedures for Commission determinations and review of jurisdictional agency determinations.

[16] 18 CFR 274.205 (1987).

[17] 5 U.S.C. 553(b) (1982).

[18] *See* Legislative History of the APA, S. Doc. No. 248, 79th Cong., 2d. Sess. 200.

[19] 44 U.S.C. 3501–3520 (1982).

[20] 5 CFR 1320.12 (1987).

[21] 5 U.S.C. 553(d) (1982).

[22] The Commission is terminating the following dockets in this order: Docket No. RM79–76–250, *Travis Peak*; Docket No. RM79–76–101, *Colorado-23*; Docket No. RM79–76–248, *Oklahoma-8*; Docket No. RM79–76–239, *Colorado-39 Addition*; Docket No. RM79–76–225, *Kentucky-3*; Docket No. RM79–76–249, *Virginia-4*; and Docket No. RM79–76–255, *Colorado-38 Addition*. The Commission is remanding one pending jurisdictional agency recommendation and reversing five pending jurisdictional agency recommendation and reversing five pending jurisdictional agency recommendations. The Commission is also issuing an order approving one pending jurisdictional agency recommendation. This rule, therefore, also revises § 271.703(d) of the Commission's regulations to include these approved tight formations in the regulations.

(1) Any maximum lawful price under any of the following subparts of Part 271 applies to a first sale of natural gas only if a determination of a particular well or new OCS lease by a jurisdictional agency that such gas qualifies under such subpart has become final in accordance with Parts 274 and 275:

* * * * *

PART 271—CEILING PRICES

3. The authority citation for Part 271 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.* (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Administrative Procedure Act, 5 U.S.C. 553 (1982), unless otherwise noted.

4. In § 271.703, paragraph (b)(5) is revised to read as follows:

§ 271.703 Tight formations.

* * * * *

(b) * * *

(5) A "designated tight formation" is a natural gas formation as determined by the appropriate jurisdictional agency, pursuant to paragraph (c)(3) of this section. Appropriate jurisdictional agencies are identified in § 274.501 of this chapter.

* * * * *

5. In § 271.703, paragraph (c) is revised to read as follows:

§ 271.703 Tight formations.

* * * * *

(c) *Determination of tight formations.*

(1) *General.* Determinations by a jurisdictional agency must be made in the form and manner prescribed in Part 274 of this chapter.

(2) *Guidelines.* (i) The guidelines for tight formations are as follows:

(A) The estimated average *in situ* gas permeability, throughout the pay section, is expected to be 0.1 millidarcy or less.

(B) The stabilized production rate, against atmospheric pressure, of wells completed for production in the formation, without stimulation, is not expected to exceed the production rate determined in accordance with the following table:

If the average depth to the top of the formation (in feet)		The maximum allowable production rate (in thousand cubic feet per day) may not exceed—
Exceeds	But does not exceed	
0	1,000	44
1,000	1,500	51
1,500	2,000	58
2,000	2,500	66
2,500	3,000	76
3,000	3,500	91
3,500	4,000	105
4,000	4,500	122
4,500	5,000	141
5,000	5,500	163
5,500	6,000	186
6,000	6,500	217
6,500	7,000	251
7,000	7,500	289
7,500	8,000	336
8,000	8,500	388
8,500	9,000	449
9,000	9,500	519
9,500	10,000	600
10,000	10,500	693
10,500	11,000	802
11,000	11,500	927
11,500	12,000	1,071
12,000	12,500	1,238
12,500	13,000	1,432
13,000	13,500	1,656
13,500	14,000	1,913
14,000	14,500	2,212
14,500	15,000	2,557

(c) No well drilled into the recommended tight formation is expected to produce, without stimulation, more than five barrels of crude oil per day.

(D) If the formation or any portion thereof was authorized to be developed by infill drilling prior to the date of determination and the jurisdictional agency has information which in its judgment indicates that such formation or portion subject to infill drilling can be developed absent the incentive price established in paragraph (a) of this section then the jurisdictional agency shall not include such formation or portion thereof in its determination.

(ii) The jurisdictional agency may designate as a tight formation any formation which meets the guidelines contained in paragraph (c)(2)(i) (B) and (C) of this section, but does not meet the guideline contained in paragraph (c)(2)(i)(A) of this section, if the jurisdictional agency makes an adequate showing that the formation exhibits low permeability characteristics and the price established in paragraph (a) of this section is necessary to provide reasonable incentives for production of the natural gas from the determined formation due to the extraordinary costs associated with such production.

(3) *Notice to the Commission.* Any jurisdictional agency making a determination that a natural gas formation qualifies as a tight formation will provide timely notice in writing of the determination to the Commission. Such notice shall include substantiation provided in paragraph (4) of this section and be in the manner prescribed in § 274.104 of this chapter.

(4) *Content of determinations.* A determination that a formation qualifies as a designated tight formation shall contain the following information:

(i) Geological and geographical descriptions of the formation which is determined to qualify as a tight formation;

(ii) Geological and engineering data to support the determination and the source of that data;

(iii) A map which clearly locates wells which are currently producing from the determined tight formation or a list locating all wells which are currently producing natural gas from the determined tight formation;

(iv) A report of the extent to which existing State and Federal regulations will assure development of the determined tight formation will not adversely affect any fresh water aquifers (during both hydraulic fracturing and waste disposal operations) that are or are expected to be used as a domestic or agricultural water supply;

(v) If the formation is determined under paragraph (c)(2)(ii) of this section, the types and extent of enhanced production techniques which are expected to be necessary and the estimated expenditures necessary for employing those techniques; and the degree of increase in production to be expected from use of such techniques and engineering and geological data to support that estimate; and

(vi) Any other information which the jurisdictional agency deems relevant.

(5) *Commission review of determinations.* Upon receipt of a determination submitted in accordance with this section, the Commission will review the jurisdictional agency's determination in accordance with the procedures established in Part 275 of this chapter

* * * * *

6. Section 271.703 is amended by adding paragraphs (d) (199) and (200) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.* * * *

(199) *Dakota Formation in Colorado,* RM79–76 (Colorado-23).

(i) *Delineation of formation.* The Dakota Formation is located in Garfield and Mesa Counties, Colorado and underlies portions of Townships 7 through 13 South, Ranges 97 through 98 and 100 through 104 West, 6th P.M.; Township 1 North, Ranges 1 and 2 West,

Ute P.M.; Township 2 North Range 2 West, Ute P.M.; Township 1 North, Range 1 East, Ute P.M.; Township 1 South Range 1 West Ute P.M.; and Townships 1 through 3 South, Ranges 1 and 2 East, Ute P.M.

(ii) *Depth.* The average depth to the top of the Dakota formation is 2,815 feet.

(200) *Morrison Formation in Colorado,* RM79–76 (Colorado-23).

(i) *Delineation of formation.* The Morrison Formation is located in Garfield and Mesa Counties, Colorado and underlies portions of Township 7 through 13 South, Ranges 97 through 98 and 100 through 104 West, 6th P.M.; Townships 1 and 2 North, Ranges 1 and 2 West, Ute P.M.; Township 1 North, Range 1 East, Ute P.M.; Township 1 South, Range 1 West, Ute P.M.; and Townships 1 through 3 South, Ranges 1 and 2 East, Ute P.M.

(ii) *Depth.* The average depth to the top of the Morrison Formation is 3,005 feet.

PART 273—COLLECTION AUTHORITY; REFUNDS

7. The authority citation for Part 273 is revised to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982), unless otherwise noted.

8. In § 273.102, paragraph (a)(1) is revised to read as follows:

§ 273.102 Definition of final eligibility determination.

(a) * * *

(1) An affirmative or negative determination by a jurisdictional agency respecting eligibility for a particular well or new OCS lease to collect a deregulated price under Part 272 or a maximum lawful price under Subpart B, C, G or H of Part 271, and

* * * * *

PART 274—DETERMINATIONS BY JURISDICTIONAL AGENCIES

9. The authority citation for Part 274 is revised to read as follows:

Authority: Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982) unless otherwise noted.

10. In § 274.104, paragraph (a)(5) is revised to read as follows:

§ 274.104 Notice to the Commission.

(a) *Affirmative determinations.* * * *

(5) The information required to be filed under subpart B of Part 274 under § 274.207, or under § 271.703(c)(4), and in any case in which other materials in the record constitute portions of such information, a copy of those portions of the record; and

* * * * *

11. In § 274.501, paragraphs (a)(1)(i), (ii), (iii) and (iv) are revised to read as follows:

§ 274.501 Jurisdictional agency.

(a) *Definition.* * * *

(1) * * *

(i) For OCS wells located in the Gulf Coast Region: Area Oil & Gas Supervisor, 1201 Wholesalers Parkway, New Orleans, LA 70123.

(ii) For OCS wells located in the Atlantic Region: Area Oil & Gas Supervisor, Atlantic OCS Operations, 1951 Kidwell Drive, Vienna, VA 22180.

(iii) For OSC wells located offshore Alaska: Area Oil & Gas Supervisor, P.O. Box 101159, 800 A Street, Anchorage, AK 99510.

(iv) For OCS wells located offshore California: Area Oil & Gas Supervisor, 160 Federal Building, 1340 W. 6th Street, Room 200, Los Angeles, CA 90017.

* * * * *

12. In § 274.501(a)(2) in the table, the following entries are revised to read as follows:

State in which well is located	Jurisdictional agency for wells on	
	Federal lands	Other lands
Alaska:		
Only Alaska OCS region.	Regional Supervisor for Field Operations, 800 A Street, Anchorage, AK 99510.	
Arizona (Only the Navajo and Hopi Indian Reservations).	District Manager, Bureau of Land Management, Albuquerque District Office (NGPA), 435 Montano Road, NE., Albuquerque, NM, 87107.	
Colorado	Deputy State Director for Mineral Resources, Bureau of Land Management, Colorado State Office (CO–920), 2850 Youngfield Street, Lakewood, CO 80215.	Oil and Gas Conservation Commission, 1580 Logan Street, Room 280, Denver, CO 80203.
Kansas	Deputy State Director for Mineral Resources, Bureau of Land Management, Colorado State Office (CO–920), 2850 Youngfield Street, Lakewood, CO 80215.	
Kentucky		Kentucky Public Service Commission, P.O. Box 615, Frankfort, KY 40602.
Louisiana		Office of Conservation, P.O. Box 94275, Baton Rouge, LA 70804.
Only Gulf of Mexico OCS Region.	Regional Supervisor for Field Operations, 1201 Wholesalers Parkway, New Orleans, LA 70123.	
Montana		Board of Oil and Gas Conservation, 2535 St. John's Ave., Billings, MT 59102, or 1520 East Sixth Ave., Helena, MT 59620.
New Mexico:		
Northern New Mexico.	District Manager, Bureau of Land Management, Albuquerque District Office (NGPA), 435 Montano Road, NE, Albuquerque, NM 87107.	
Oregon		Department of Geology & Mineral Industries, 910 State Office Bldg., Portland, OR 97201.
Pennsylvania:		
Northern Region.		Bureau of Oil & Gas Management, 1012 Water Street, Meadville, PA 16335.
Southern Region.		Bureau of Oil & Gas Management, Highland Bldg., 121 South Highland Ave., Pittsburgh, PA.
15205:		
South Dakota		Department of Water and Natural Resources, 35 East Chicago, Rapid City, SD 57701.
Utah	Chief, Branch of Fluid Minerals, Bureau of Land Management, Utah State Office (U-922), 324 South State Street, Suite 301, Salt Lake City, UT 84111.	Div. of Oil & Gas, 355 West North Temple, 3 Triad Center, Suite 350, Salt Lake City, UT 84180.
or		
Utah (Navajo and Hopi Indian Reservation).	District Manager, Bureau of Land Management, Albuquerque District Office (NGPA), 435 Montano Road, N.E., Albuquerque, NM 87107.	
Virginia		Department of Mines, Minerals & Energy, Division of Mined and Quarries, Oil & Gas Section, P.O. Box 1416, Abingdon, VA 24210.

State in which well is located	Jurisdictional agency for wells on	
	Federal lands	Other lands
West Virginia		Department of Mines, Oil & Gas Division, 1615 Washington Street, East Charleston, WV 25305.
Wyoming:		
Casper District	District Manager, Bureau of Land Management, 1701 East E Street, Casper, WY 82601..	
Rawlins District	District Manager, Bureau of Land Management, P.O. Box 670, Rawlins, WY 82301..	
Worland District	District Manager, Bureau of Land Management, P.O. Box 119, Worland, WY 82401..	

[FR Doc. 87-17538 Filed 8-4-87; 8:45 am]
BILLING CODE 6717-01-M

18 CFR Part 271

[Docket Nos. RM86-7-001 and 002]

Compression Allowances and Protest Procedures Under NGPA Section 110

Issued: July 30, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order granting rehearing solely for the purpose of further consideration.

SUMMARY: On June 3, 1987, the Federal Energy Regulatory Commission issued Order No. 473 revising regulations governing production related cost allowances. On June 30, 1987, and July 2, 1987, two applicants applied for rehearing of Order No. 473. In this order, the Commission grants rehearing solely for the purpose of further consideration.

EFFECTIVE DATE: July 30, 1987.

FOR FURTHER INFORMATION CONTACT: Arthur W. Iler, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington, DC 20426, (202) 357-5275.

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

Order Granting Rehearing Solely for the Purpose of Further Consideration

On June 3, 1987, the Commission issued Order No. 473 [1] in Docket No. RM86-7-000 revising regulations governing production-related cost allowances in response to the court's mandate in *Texas Eastern Transmission Corp. v FERC.*[2] On June 30, 1987, Louisiana Intrastate Gas Corporation (LIG) requested in Docket No. RM86-7-001, clarification, or, in the alternative, rehearing of Order No. 473. On July 2, 1987, in Docket No. RM86-7-002, Indicated Producers requested rehearing and clarification of Order No. 473.

In order to afford sufficient time to consider the issues raised in these applications, the Commission grants rehearing of Order No. 473 solely for the purpose of further consideration. This order does not constitute a grant or denial of the applications on their merits, either in whole or in part. As provided in Rule 713 of the Commission's rules of practice and procedure,[3] no answer to these applications will be entertained by the Commission.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-17788 Filed 8-4-87; 8:45 am]
BILLING CODE 6717-01-M

[1] 52 FR 21660 (June 8, 1987); 39 FERC ¶ 61,280.

[2] 769 F.2d 1063 (5th Cir. 1985), *cert. denied*, 106 S. Ct. 1987 (1986).

[3] 18 CFR 385.713 (1987).

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Parts 193 and 561

[FAP 5H5470/R893; FRL-3242-4]

Pesticide Tolerances for Cyano(4-Fluoro-3-Phenoxyphenyl)Methyl-3-(2,2-Dichloroethenyl)-2,2-Dimethyl-Cyclopropanecarboxylate

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: These rules establish a temporary food additive and a temporary feed additive regulation to permit residues of the insecticide cyano(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethyl-cyclopropanecarboxylate in or on certain tomato products in accordance with an experimental program. These regulations to establish maximum permissible levels of the insecticide in or on the tomato products were requested in a petition by Mobay Chemical Corp.

EFFECTIVE DATE: Effective on August 5, 1987.

ADDRESS: Written objections, identified by the document control number [FAP 5H5470/R893], may be submitted to the Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St. SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail:

George LaRocca, Product Manager (PM) 15, Registration Division (TS-767C), Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 200, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-2400).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of June 9, 1986 (51 FR 20893), which announced that Mobay Chemical Corp., Agricultural Chemicals Division, P.O. Box 4913, Hawthorn Rd., Kansas City, MO 64120, had filed a food/feed additive petition (FAP 5H5470), proposing that 21 CFR Parts 193 and 561 be amended by establishing regulations permitting tolerances for residues of the insecticide cyano(4-fluoro-3-phenoxyphenyl) methyl-3-(2,2-dichloroethenyl)-2,2-dimethyl-cyclopropanecarboxylate in or on the food commodity concentrated tomato products at 0.5 part per million (ppm) and in or on the animal feed commodities tomato pomace (dry) at 5.0 ppm and tomato pomace (wet) at 2.0 ppm resulting from application of the insecticide to tomatoes.

No comments were received by the Agency in response to the notice.

EPA has granted Mobay Chemical Corp. temporary tolerances for the pesticide in or on the food additive commodity concentrated tomato products and the feed additive commodities tomato pomace (dry) and tomato pomace (wet) in conjunction with FAP 5H5470 and Experimental Use Permit 3125-EUP-194.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the tolerances include a 90-day rat feeding study with a no-observed-effect level (NOEL) of 300 ppm; a 26-week feeding study in dogs with a NOEL of 8.00 mg/kg/day (200 ppm); a rat teratology study with a teratogenic and fetotoxic NOEL of 30 mg/kg/day (highest dose tested); and a rabbit teratogenicity study with a NOEL of 45 mg/kg/day for fetotoxicity and maternal toxicity. Studies on mutagenicity demonstrated negative potential.

Based on the 2-year chronic oncogenicity feeding study in rats with a 2.50 mg/kg/day NOEL and using a safety factor of 100, the acceptable daily intake (ADI) for man is 0.025 mg/kg/day. The theoretical maximum residue contribution (TMRC) resulting from the established temporary tolerance of 0.2

ppm for residues in or on tomatoes, 0.2 ppm in red meat, and in milk at 0.01 ppm is 0.008738 mg/day for a 60-kg person. The resulting percent Acceptable Daily Intake (ADI) occupied is 34.953800.

The pesticide may be safely used in the prescribed manners when such uses are in accordance with the label and labeling registered pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 751, 7 U.S.C. 135(a) et seq.). It has further been determined that since residues of the pesticide may result in concentrated tomato products and tomato pomace from the agricultural use provided for in the experimental use permit, the food and feed additive regulations should be established and should include tolerance limitations.

The metabolism of the insecticide is adequately understood for these uses, and the analytical method for enforcing these tolerances has been published in the Pesticide Analytical Manual, Volume II. No actions are currently pending against registration of the insecticide.

The scientific data reported and other relevant material have been evaluated, and the Agency concludes that the pesticide may be safely used in the prescribed manner when such use is in accordance with the label and labeling registered pursuant to FIFRA, as amended (86 Stat. 973, 89 Stat. 751, 7 U.S.C. 135(a) et seq.) and is established as set forth below.

Any person adversely affected by these regulations may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulations deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new food or feed additive levels, or conditions for safe use of additives, or raising such food or feed additive levels do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24945).

(Sec. 409(c)(1), 72 Stat. 1786 (21 U.S.C. 346(c)(1)))

List of Subjects in 21 CFR Parts 193 and 561

Food additives, Feed additives, Pesticides and pests.

Dated: July 16, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 21 CFR Chapter I is amended as follows:

1. In Part 193:

PART 193—[AMENDED]

a. The authority citation continues to read as follows:

Authority: 21 U.S.C. 348.

b. New § 193.98 is added to read as follows:

§ 193.98 Cyano(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethyl-cyclopropanecarboxylate.

(a) [Reserved]

(b) A temporary tolerance of 0.5 part per million is established for residues of the insecticide cyano(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethyl-cyclopropanecarboxylate in concentrated tomato products resulting from application of the insecticide to tomatoes. Such residues may be present therein only as a result of the application of the insecticide in accordance with the provisions of the experimental use permit number 3125–EUP–194.

2. In Part 561:

PART 561—[AMENDED]

a. The authority citation continues to read as follows:

Authority: 21 U.S.C. 348.

b. New § 561.96 is added to read as follows:

§ 561.96 Cyano(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethyl-cyclopropanecarboxylate.

(a) [Reserved]

(b) A temporary tolerance of 2.0 parts per million is established for residues of the insecticide cyano(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethyl-cyclopropanecarboxylate in tomato pomace (wet) and 5.0 parts per million in tomato pomace (dry) resulting from application of the insecticide to tomatoes. Such residues may be present therein only as a result of the application of the insecticide in accordance with the provisions of the experimental use permit number 3125–EUP–194.

[FR Doc. 87–17737 Filed 8–4–87; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Hygromycin B

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the new animal drug regulations to reflect approval of a new animal drug application (NADA) filed for Mac Page, Inc., providing for use of a 2.4-gram-per-pound hygromycin B Type A medicated article for making a hygromycin B Type C medicated feed for swine for control of infestations of large roundworms, nodular worms, and whipworms, and for chickens for control of large roundworms, cecal worms, and capillary worms.

EFFECTIVE DATE: August 5, 1987.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1414.

SUPPLEMENTARY INFORMATION: Mac Page, Inc., 1600 South Wilson Ave., Dunn, NC 28334, is the sponsor of NADA 140–842 submitted on its behalf by Elanco Products Co. The NADA provides for the use of a 2.4-gram-per-pound hygromycin B Type A medicated article to make a 12-gram-per-ton hygromycin B Type C medicated swine feed for control of infestations of large roundworms (*Ascaris suis*), nodular worms (*Oesophagostomum dentatum*), and whipworms (*Trichuris suis*), and an 8- or 12-gram-per-ton chicken feed for the control of infestations of large

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roundworms (*Ascaris galli*), cecal worms (*Heterakis gallinae*), and capillary worms (*Capillaria obsignata*). The NADA is approved and 21 CFR 558.274(a) is amended to reflect the approval.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a signifiant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PARTY 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Part 558 is amended in § 558.274 by adding, in numerical sequence, drug labeler code "047427" to the "Sponsor" column in paragraphs (c)(1) (i) and (ii), and by revising paragraph (a)(7), to read as follows:

§ 558.274 Hygromycin B.

(a) * * *

(7) 2.4 grams per pound to 011790 and 047427 in § 510.600(c) of this chapter for use in chickens as in paragraph (c)(1)(i) and in swine as in paragraph (c)(1)(ii) of this section.

* * * * *

Dated: July 30, 1987.

Richard H. Teske,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 87–17757 Filed 8–4–87; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 885

[Docket No. R–87–1254; FR–1899]

Loans for Housing for the Elderly or Handicapped

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends HUD's regulations governing the direct loan program for elderly or handicapped housing (24 CFR Part 885) to incorporate statutory amendments made in the Housing and Urban-Rural Recovery Act of 1983 and the Housing and Community Development Technical Amendments of 1984, to subject Section 202 applications to the requirements of Executive Order 12372, "Intergovernmental Review of Federal Programs," and to clarify certain provisions applicable to Sponsors and Borrowers.

EFFECTIVE DATE: October 12, 1987.

FOR FURTHER INFORMATION CONTACT: Robert Wilden, Assisted Elderly and Handicapped Housing Division, Room 6118, Office of Elderly and Assisted Housing, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW. Washington, DC 20410–8000, telephone (202) 426–8730. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On April 10, 1986, the Department published in the **Federal Register**, an interim rule amending HUD's regulations governing the direct loan program under section 202 of the Housing Act of 1959 (51 FR 12308). This interim rule, effective May 12, 1986: (1) Imposed limitations on prepayment or transfer of Section 202 loans; (2) amended the definitions of "Borrower" and "Sponsor" to include conflict of interest provisions; (3) permitted the Borrower or Sponsor to award a negotiated construction contract under certain conditions; (4) deleted from § 885.416(c) of the regulation, the provision that for negotiated noncompetitive construction contracts, no change orders will be approved and no HUD loan proceeds may be used for costs arising from inadequacies in the plans and specifications; and (5) imposed requirements with respect to site acquisition and other matters. The interim rule also added requirements relating to intergovernmental review procedures. Most of the revisions contained in the interim rule implemented statutory changes to the section 202 Program enacted in the Housing and Urban-Rural Recovery Act of 1983 (HURRA) and in the Housing and Community Development Technical Amendments Act of 1984.

The interim rule sought public comment on the revisions. HUD received one comment in response to the interim rule. The commenter generally supported the interim rule but argued that the rule should be expanded to include certain additional provisions added by HURRA. These included: (1) Section 202(i)(1), which provides that, unless otherwise requested by the Sponsor, a maximum of 25 percent of the units in a project may be efficiency units, subject to a HUD determination that such units are appropriate for the elderly and handicapped population residing in the vicinity of the project; (2) Section 202(i)(2), which provides that the Secretary may require a Sponsor of a housing project to deposit an amount not to exceed $10,000 in a special escrow account to assure the commitment and long-term management capabilities of the Sponsor; (3) Section 202(i)(3), which requires the Secretary to take into account special design features necessary for housing for the elderly or handicapped in establishing unit cost limits and to adjust cost limits at least once annually to reflect changes in construction costs; and (4) Section 202(m), which permits the Sponsor to provide amenities or other design features, if the cost of the amenities and design features is not financed by the loan and is not taken into account when determining the amount of Federal subsidy or the rent contribution of tenants. In the interim rule (51 FR 12308), HUD indicated that it was not necessary to amend Part 885 to reflect these statutory changes because the provisions "apply only to the Secretary and in most instances reflect policies and procedures already in effect."

Except for the minimum capital investment requirements of Section 202(i)(2) which are fully implemented in the regulations at § 885.410(j), the cited statutory changes have not, as yet, been incorporated in Part 885. Rather, HUD's interpretation of these provisions has generally been explained in HUD's annual notice governing each fiscal year's program. [See FR–2326—Section 202 Loans for Housing for the Elderly or Handicapped—Announcement of Fund Availability—Fiscal Year 1987, published March 13, 1987 (52 FR 7936).

HUD agrees that all of the cited statutory changes have an impact on the

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ability of an organization to develop housing and on the design and quality of housing provided under section 202 and should be incorporated in the regulations. While the FY 1987 NOFA stated that these changes would be included in the final rule in this rulemaking, HUD is currently preparing a proposed rule incorporating certain requirements that have been included in the text of the annual section 202 NOFA, and other amendments. To ensure that the implementation of the HURRA requirements will receive the benefit of public comment, the Department has decided to implement section 202 (i)(1), (i)(3) and (m) in the proposed rule.

As noted above, HUD believes that the existing regulations at § 885.410(j) fully implement the requirements of section 202(i)(2). This section provides: "The Secretary may require a sponsor of a housing project financed with a loan under this section to deposit an amount not to exceed $10,000 in a special escrow account to assure the commitment and long-term management capabilities of such sponsor." The commenter claimed that it is HUD's current procedure to require *all* sponsors to provide the full $10,000 escrow deposit and that this policy discourages small and minority nonprofit organizations from participating in the section 202 program.

Contrary to the commenter's allegation, § 885.410(j) does not require the full $10,000 escrow payment for all housing projects financed under section 202. Rather the escrow payment is set at one-half of one percent of the mortgage amount committed to be disbursed, *not to exceed $10,000.* This result is consistent with congressional intent regarding this provision. The House committee report concluded that the full $10,000 was "not so great as to limit the ability of small nonprofit organizations representing minority, handicapped and rural elderly from participating in the program." H.R. Rep. No. 123, 98th Cong. 1st Sess. 41 (1983). Indeed, this House report indicates that section 202(i)(2) was merely intended to codify HUD's existing escrow practices.

In addition to supplemental rules implementing HURRA, the commentor urged the Department to exercise discretion and flexibility in its implementation of § 885.210(b)(9). This provision prohibits Borrower corporations from including references to religion or religious purposes in their Articles of Incorporation. The commenter was concerned that this requirement, if carried to an extreme, could be interpreted to require the deletion of all references to religious denominations or specific churches, from documents describing the Borrower corporation.

HUD has applied and will continue to apply this requirement flexibly within Permissible First Amendment limits, as set forth in Supreme Court decisions. For example, HUD has determined that the mere recital in the Borrower's Articles of Incorporation or By-laws that the Borrower is organized exclusively for religious, charitible, scientific, literary or educational purposes within the meaning of section 501(c)(3) of the Internal Revenue Code is not a sufficient indication of a religious purpose to make a Borrower ineligible, in the absence of an additional indication of a specifically religious purpose or character, provided that the Articles of Incorporation also include a clause prohibiting the distribution of any corporate assets to a religious organization upon the dissolution of the Borrower. (52 FR 7938.)

This rule adopts the interim rule published on April 10, 1986 as final without change.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, Room 10278, 451 Seventh Street, SW., Washington, DC 20410-0500.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 11291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does (1) have an annual effect on the economy of $100 million or more; (2) cause major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic region; or (3) have a signficant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned certifies that this rule does not have a significant economic impact on substantial number of small entities. Rather than imposing new requirements on Sponsors or Borrowers or causing the expenditure or more funds by Sponsors or Borrowers, this rule clarifies existing and statutorily mandated policies and procedures to facilitate the development of applications and ensure the proper processing of applications.

This rule was listed in the Department's Semiannual Agenda of Regulations publish April 27, 1987 (52 FR 14362 at 14389) as item number 971 under Executive Order 12291 and the Regulatory Flexibility Act.

The information collection requirements contained in this rule were submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520. All requirements have been approved and assigned an OMB control number. The OMB control number is 2502–0267.

The Catalog of Federal Domestic Assistance Program title and number is 14.157, Housing for the Elderly or Handicapped.

List of Subjects in 24 CFR Part 885

Aged, Grant programs: Housing and community development, Handicapped, Loan programs: Housing and community development, Low- and moderate-income housing.

Accordingly, the Department amends 24 CFR Part 885 as follows:

PART 885—LOANS FOR HOUSING FOR THE ELDERLY OR HANDICAPPED

1. The authority citation for 24 CFR Part 885 continues to read as follows:

Authority: Sec. 202, Housing Act of 1959 (12 U.S.C. 1701q); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. The interim rule published April 10, 1986 (51 FR 12308) is adopted without change as final.

Dated: July 28, 1987.

James. E. Schoenberger,

Acting General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 87–17716 Filed 8–4–87; 8:45 am]

BILLING CODE 4210-27-M

POSTAL SERVICE

39 CFR Part 111

Mail Disputes

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule deals with the situation in which two or more parties claim delivery of the same mail. Present regulations (which are changed by this final rule) provide that when the parties cannot agree about who should receive

the mail or who should act as a receiver, the postmaster may resolve the dispute based on evidence supplied by the parties. When doubtful, the postmaster may submit the case to the regional counsel for a ruling. The postmaster or the regional counsel resolve most such cases on an informal basis.

The Postal Service now changes these regulations to refer disputed cases to the Judicial Officer Department if no informal resolution of a dispute is achieved by the regional counsel within 5 working days, or within such additional agreed upon time, and the regional counsel has not ordered the mail returned to the sender. The rules of procedure of the Judicial Officer Department will also reflect these changes.

EFFECTIVE DATE: September 4, 1987.

FOR FURTHER INFORMATION CONTACT: William P. Bennett, (202) 268–2966.

SUPPLEMENTARY INFORMATION: On June 22, 1987, the Postal Service published for comment in the **Federal Register** (52 FR 23477) proposed changes of the Domestic Mail Manual that would amend postal regulations on the handling of disputes between two or more parties claiming delivery of the same mail. Interested persons were invited to submit comments on the proposed changes by July 22, 1987. Two comments were received. It was suggested it be made clear that regional counsel retained authority under Domestic Mail Manual Exhibit 159.14(22) to order the return of mail to sender. It was decided to emphasize that regional counsel retained the authority to order mail returned to sender inasmuch as such authority is a useful means to encourage settlement. Accordingly, the regulation is changed to indicate that disputes which are not resolved by returning mail to sender or by other means will be submitted to the Judicial Officer Department.

Secondly, it was suggested that postmasters may circumvent regional counsel by sending matters directly to the Judicial Officer Department. That is not a realistic observation inasmuch as the Department may assume jurisdiction of a mail dispute only after regional counsel has determined that no informal resolution can be made. Further, any transmission so as to confer jurisdiction to the Judicial Officer Department must come from regional counsel, not the postmaster. Nonetheless, in order to make it clear that regional counsel retains the flexibility to settle these matters prior to such transmission, the regulations are altered to state that transmission is to take place after 5 working days or such additional time as may be agreed upon by all parties. In that way, regional counsel need not transmit the dispute if it is on the verge of settlement or resolution of some type as the 5 days draw to a close, but instead may keep the matter for a reasonable further time as may be agreed by all concerned. Accordingly, the Postal Service adopts the proposal as altered, and makes the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal service

PART 111—[AMENDED]

1. The authority citation for Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3821, 5001.

PART 153—CONDITIONS OF DELIVERY

2. In 153.7, revise .72 to read as follows:

153.7 Conflicting orders by two or more parties for delivery of same mail.

* * * * *

.72 Reference to Regional Counsel or Judicial Officer Department. Where the disputing parties are unable to select a receiver, they shall furnish the postmaster all available evidence on which they rely to exercise control over the disputed mail. In after receipt of such evidence the postmaster is still in doubt as to who should receive the mail, the postmaster will submit the case to the regional counsel for informal resolution. If after 5 working days, or such additional time as may be agreed to by all parties, no informal resolution is achieved and no order has been made by regional counsel to return the mail to sender, then regional counsel shall forward the case file to the Judicial Officer Department for decision in accordance with the rules of procedure of that department.

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided by 39 CFR 111.3.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 87–17708 Filed 8–4–87; 8:45 am]

BILLING CODE 7710-12-M

39 CFR Part 965

Rules of Practice in Proceedings Relative to Mail Disputes

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Judicial Officer of the Postal Service hereby issues the rules of practice in proceedings relative to mail disputes. Acting in accordance with authority delegated to him by 39 CFR 224.1(c)(4)(ii)(A), the Judicial Officer of the Postal Service adopts 39 CFR Part 965, the Rules of Practice in Proceedings Relative to Mail Disputes. The rules in this part apply to any hearing conducted pursuant to Domestic Mail Manual Sec. 153.7 regarding conflicting orders by two or more parties for the delivery of the same mail.

EFFECTIVE DATE: September 4, 1987.

FOR FURTHER INFORMATION CONTACT: Judge James D. Finn, Jr., 202–268–2133.

List of Subjects in 39 CFR Part 965

Administrative practice and procedure, Mail disputes, Postal Service.

Accordingly, 39 CFR is amended by adding the following new Part 965:

PART 965—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO MAIL DISPUTES

Sec.

965.1 Authority for rules.
965.2 Scope of rules.
965.3 Notice to parties.
965.4 Presiding officers.
965.5 Submittals by parties.
965.6 Comments by parties.
965.7 Default.
965.8 Hearings.
965.9 Evidence.
965.10 Transcript.
965.11 Initial decision.
965.12 Appeal.
965.13 Compromise and informal disposition.
965.14 Public information.

Authority: 39 U.S.C. 204, 401.

§ 965.1 Authority for rules.

These rules of practice are issued by the Judicial Officer of the U.S. Postal Service pursuant to authority delegated by the Postmaster General. (39 CFR 224.1(c)(4)).

§ 965.2 Scope of rules.

The rules in this part shall be applicable to mail dispute cases forwarded to the Judicial Officer Department by Regional Counsel pursuant to Domestic Mail Manual 153.72.

§ 965.3 Notice to parties.

Upon receipt of a mail dispute case from Regional Counsel, the Recorder, Judicial Officer Department, United States Postal Service, 475 L'Enfant Plaza West, SW., Washington, DC 20260–6100, will send a notice of docketing and submittal due date to the parties together with a copy of these rules.

§ 965.4 Presiding officers.

(a) The presiding officer shall be an Administrative Law Judge or an Administrative Judge qualified in accordance with law. The Judicial Officer assigns cases under this part. Judicial Officer includes Associate Judicial Officer upon delegation thereto. The Judicial Officer may, on his own initiative or for good cause found, preside at the reception of evidence.

(b) The presiding officer has authority to:

(1) Take such action as may be necessary to preside properly over the proceeding and render decision therein;

(2) Render an initial decision, if the presiding officer is not the Judicial Officer, which becomes the final agency decision unless a timely appeal is taken; the Judicial Officer may issue a tentative or a final decision.

§ 965.5 Submittals by parties.

Within 15 days after receipt of the Recorder's notice, each party shall file with the Recorder a sworn statement of the facts supporting its claim to receipt of the mail together with a copy of each document on which it relies in making such claim. All such submittals shall be in duplicate. Upon receipt of such evidence, the Recorder shall send a copy of each submittal to the opposing party.

§ 965.6 Comments by parties.

Within 10 days of receipt of the other party's evidence, each party may file with the Recorder a statement setting forth in detail its disagreements, if any, with its opponent's statement and documents. The Recorder will send to each party a copy of the other party's comments.

§ 965.7 Default.

A party who fails to file the submittal required by § 965.5 may be held in default and the presiding officer may issue an initial decision that mail be delivered to the other party.

§ 965.8 Hearings.

(a) In the discretion of the presiding officer an oral hearing may be granted at the request of either, or both, parties or on the presiding officer's own initiative if there is a dispute as to a material issue of fact which can only be resolved by examination of witnesses.

(b) Hearings are held at the headquarters of the U.S. Postal Service, 475 L'Enfant Plaza West, SW., Washington, DC, 20260–6100, or at such other place as may be designated by the presiding officer.

§ 965.9 Evidence.

(a) In general, admissibility will hinge on relevancy and materiality. However, relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

(b) Testimony shall be given under oath or affirmation and witnesses are subject to cross-examination.

(c) Agreed statements to fact are encouraged and may be received in evidence.

§ 965.10 Transcript.

Testimony and argument at hearings shall be reported verbatim, unless the presiding officer otherwise orders. Transcripts or copies of the proceedings are supplied to the parties at such rate as may be fixed by contract between the reporter and Postal Service.

§ 965.11 Initial decision.

The presiding officer shall render an initial decision in writing, based on the record, as expeditiously as possible, but to the extent practicable within 10 working days of closing of the record. The decision will be brief, containing summary findings of fact, conclusions of law, and reasons therefor. If there has been a hearing the presiding officer may in his discretion render an oral decision. A typed copy of such oral decision will subsequently be furnished to the parties to establish the date for commencement of time for requesting review of the initial decision.

§ 965.12 Appeal.

The initial or tentative decision will become final 10 days after its issuance and receipt by the parties unless the Judicial Officer, or by delegation the Associate Judicial Officer, in his sole discretion, grants review upon appeal of either party filed within that period, or on his own motion within that period. If an appeal is denied, the initial or tentative decision becomes the final agency decision on the issuance of such denial. The judicial Officer's decision on appeal is the final agency decision with no further agency review or appeal rights.

§ 965.13 Compromise and informal disposition.

Nothing in these rules precludes the compromise, settlement, and informal disposition of proceedings initiated under these rules at any time prior to the issuance of the final agency decision.

§ 965.14 Public information.

The Law Librarian of the Postal Service maintains for public inspection in the Law Library copies of all initial, tenatative, and final agency decisions and orders. The Recorder maintains the complete official record of every proceeding.

James A. Cohen,

Judicial Officer.

[FR Doc. 87–17709 Filed 8–4–87; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 6F3434/R880A; FRL–3242–2]

Exemption From the Requirement of a Tolerance for the Insect Pheromone Containing the Active Ingredients 3,7,11-Trimethyl-1-6,10-Dodecatriene 1–OL and 3,7,11-Trimethyl-2,6,10-Dodecatriene-3-OL; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This document corrects FR Doc. 87–8286, published in the **Federal Register** of April 15, 1987, which established an exemption from the requirement of a tolerance for residues of the insect pheromone containing the active ingredients 3,7,11-trimethyl-1,6,10-dodecatriene-1-o1 and 3,7,11-trimethyl-2,6,10-dodecatriene-3-o1, in or on all raw agricultural commodities. This action is necessary to correct the section number assigned to the rule.

EFFECTIVE DATE: Effective on April 15, 1987.

FOR FURTHER INFORMATION CONTACT: By mail: John A. Richards, Chief, Federal Register Staff (TS–788B), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. NE–G009, (202–382–3415).

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** on April 15, 1987 (52 FR 12165) which established an exemption from the requirement of a tolerance for residues of the insect pheromone

containing the active ingredients 3,7,11-trimethyl-1-6,10-dodecatriene 1-o1 and 3,7,11-trimethyl-2,6,10-dodecatriene-3-o1 in or on all raw agricultural commodities. In the amendatory paragraph, the heading for the added section for the insect pheromone "3,7,11-trimethyl-1-6-10-dodecatriene 1-o1 and 3,7,11-trimethyl-2,6,10-dodecatriene-3-o1" was inadvertently given as "§ 180.378."

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Accordingly, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. The heading for § 180.1066 is revised to read as follows:

§ 180.1066 3,7,11-Trimethyl-1,6,10-dodecatriene-1-ol and 3,7,11-trimethyl-2,6,10-dodecatriene-3-ol; exemption from the requirement of a tolerance.

* * * * *

Dated: July 28, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 87-17736 Filed 8-4-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA-6816]

Changes in Flood Elevation Determinations; Arkansas et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Interim rule.

SUMMARY: This rule lists those communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) elevations for new buildings and their contents and for second layer insurance on existing buildings and their contents.

DATES: These modified elevations are currently in effect and amend the Flood Insurance Rate Map (FIRM) in effect prior to this determination.

From the date of the second publication of notice of these changes in a prominent local newspaper, any person has ninety (90) days in which he can request through the community that the Administrator, reconsider the changes. These modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base (100-year) flood elevation determinations are available for inspection at the office of the Chief Executive Officer of the community, listed in the fifth column of the table. Send comments to that address also.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2768.

SUPPLEMENTARY INFORMATION: The numerous changes made in the base (100-year) flood elevations on the FIRM(s) make it administratively infeasible to publish in this notice all of the modified base (100-year) flood elevations contained on the map. However, this rule includes the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection.

Any request for reconsideration must be based on knowledge of changed conditions, or new scientific or technical data.

These modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended, Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 65.4.

For rating purposes, the revised community number is listed and must be used for all new policies and renewals.

These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time, enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities.

The changes in the base (100-year) flood elevations listed below are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a signficant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains.

PART 65—[AMENDED]

The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

§ 65.4 [Amended]

Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arkansas: Pulaski	City of Little Rock	July 13, 1987 and July 20, 1987, *Arkansas Democrat*	The Honorable Marty Shackelford, Mayor of the City of Little Rock, City Hall, 500 West Markham, Little Rock, Arkansas 72201.	June 30, 1987	050181D
Florida: Pasco	Unincorporated Areas	July 23, 1987 and July 30, 1987, *St. Petersburg Times (Pasco Times).*	The Honorable John J. Gallagher, County Administrator, Pasco County, Pasco County Government Center, 7530 Little Road, New Port Richey, Florida 33553.	July 8, 1987	120230
Louisiana: East Baton Rouge	City of Baton Rouge	Feb. 19, 1987 and Feb. 26, 1987, *State Times*	The Honorable Patrick Screen, Mayor of the City of Baton Rouge and East Baton Rouge Parish, P.O. Box 1471, Baton Rouge, Louisiana 70821.	Feb. 10, 1987	225058C

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Louisiana: Orleans Parish	City of New Orleans	July 9, 1987 and July 16, 1987 *The Times-Picayune*	The Honorable Sidney J. Bartholemy, Mayor of the City of New Orleans, 1300 Perdido Street, New Orleans, Louisiana 70112.	July 2, 1987	225209E
Minnesota: Wright	City of DeLano	June 27, 1987 and July 3, 1987 *DeLano Eagle*	The Honorable Gordon Wetter, Mayor, City of DeLano, City Hall, 205 Bridge Avenue, Delano, Minnesota 55328.	June 16, 1987	270539
New Jersey: Monmouth	Aberdeen, Township	July 22, 1987 and July 29, 1987 *Asbury Park Press*	Mr. Mark Coren, Aberdeen Township Manager, One Aberdeen Square, Aberdeen, New Jersey 07747.	June 11, 1987	340312
Texas: Harris	Unincorporated areas	June 22, 1987 and June 29, 1987 *Houston Post*	The Honorable Jon Lindsay, Harris County Judge, Harris County Administration Building, 1001 Preston, Houston, Texas 77002.	June 10, 1987	480287

Issued: July 29, 1987.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 87-17713 Filed 8-4-87; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 65

Changes in Flood Elevation Determinations; California et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations will be used in calculating flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

DATES: The effective dates for these modified base flood elevations are indicated on the following table and amend the Flood Insurance Rate Map(s) (FIRM) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed on the following table.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2768.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of modified flood elevations for each community listed. These modified elevations have been published in newspaper(s) of local circulation and ninety (90) days have elapsed since that publication. The Administrator, has resolved any appeals resulting from this notification.

Numerous changes made in the base (100-year) flood elevations on the FIRMs for each community make it administratively infeasible to publish in this notice all of the changes contained on the maps. However, this rule includes the address of the Chief Executive Officer of the community, where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968, (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR Part 65.

For rating purposes, the revised community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management measures required by §60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities.

These modified base flood elevations shall be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

The changes in the base flood elevations are in accordance with 44 CFR 65.4

Pursuant to the provisions of 5 U.S.C 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains.

PART 65—[AMENDED]

The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

§65.4 [Amended]

Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
California: Orange	Unincorporated areas	June 19, 1987 and June 26, 1987 *Orange County Register*	Mr. Larry Parnish, Orange County Administrative Officer, 10 Civic Center Plaza, Santa Ana, California 92701.	June 12, 1987	060312A
Florida: Santa Rosa (Docket No FEMA-6908).	City of Gulf Breeze	Feb. 26, 1987 and Mar. 5, 1987 *The Sentinel*	The Honorable Ed Gray III, Mayor, City of Gulf Breeze, City Hall, P.O. Box 640, Gulf Breeze, Florida 32561.	Dec. 22, 1986	120275

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Minnesota: Washington (Docket No. FEMA-6908).	City of Bayport	Mar. 6, 1987 and Mar. 13, 1987 *Stillwater Gazette*	The Honorable Nathan R. Bliss, Mayor, City of Bayport, City Hall, 294 North Third Street, Bayport, Minnesota 55003.	Feb. 23, 1987	275229
Minnesota: Anoka (Docket No. FEMA-6910).	City of Coon Rapids	Mar. 20, 1987 and Mar. 27, 1987	The Honorable Robert Lewis, Mayor, City of Coon Rapids, 1313 Coon Rapids Boulevard, Coon Rapids, Minnesota 55433.	Mar. 13, 1987	270011
Minnesota: Washington (Docket No. FEMA-6908).	City of Lake St. Croix Beach	Mar. 6, 1987 and Mar. 13, 1987 *Stillwater Gazette*	The Honorable John E. Jansen, Mayor, City of Lake St. Croix Beach, City Hall, 1919 Quebec Avenue South, Lakeland, Minnesota 55043.	Feb. 23, 1987	275240
Minnesota: Washington (Docket No. FEMA-6908).	City of Lakeland	Mar. 6, 1987 and Mar. 13, 1987 *Stillwater Gazette*	The Honorable E. Craig Morris, Mayor, City of Lakeland, City Hall, 690 Quinnell Avenue North, Lakeland, Minnesota 55043.	Feb. 23, 1987	275238
Minnesota: Washington (Docket No. FEMA-6908).	City of Lakeland Shores	Mar. 6, 1987 and Mar. 13, 1987 *Stillwater Gazette*	The Honorable Leonard Boesel, Mayor, City of Lakeland Shores, 16755 Third Street North, Lakeland Shores, Minnesota 55043.	Feb. 23, 1987	275239
New Jersey: Atlantic	City of Brigantine (FEMA Docket No. 6908).	Feb. 13, 1987 and Feb. 20, 1987 *The Press*	The Honorable J. Edward Kline, Mayor of the City of Brigantine, 1417 West Brigantine Avenue, Brigantine, New Jersey 08203.	Feb. 4, 1987	345286C
Pennsylvania: Berks	Township of Cumru (FEMA Docket No. 6908).	Mar. 17, 1987 and Mar. 24, 1987 *Reading Times*	The Honorable Richard Venne, President of the Township of Cumru Board of Commissioners, Berks County, R.D. 3005, Mohnton, Pennsylvania 19540.	Mar. 6, 1987	4201308
Tennessee: Knox (Docket No. FEMA-6910).	Unincorporated areas	Apr. 6, 1987 and Apr. 13, 1987 *Knoxville News Sentinel*	The Honorable Dwight Kessel, Knox County Executive, City-County Building, Suite 651, 400 Main Street, Knoxville, Tennessee 37902.	Mar. 27, 1987	475433
Tennessee: Shelby	Unincorporated areas (Docket No. FEMA-6910).	Feb. 6, 1987 and Feb. 13, 1987 *Commercial Appeal*	The Honorable William N. Morris, Jr., Mayor, Shelby County, Shelby County Administration Building, 160 North Mid America Mall, Suite 850, Memphis, Tennessee 38103.	Feb. 2, 1987	470214
Texas: Bexar	Unincorporated areas (FEMA Docket No. 6908).	Feb. 27, 1987 and Mar. 6, 1987 *San Antonio Light*	The Honorable Tom Vickers, Bexar County Judge, Bexar County Courthouse, Commissioners Court, Suite 101, San Antonio, Texas 78205.	Feb. 19, 1987	480035
Texas: Dallas, Denton & Collin (FEMA Docket No. 6904).	City of Carrollton	Jan. 2, 1987 and Jan. 9, 1987 *Times-Chronicle*	The Honorable Milburn Gravley, Mayor of the City of Carrollton, P.O. Box 110535, Carrollton, Texas 75011-0535.	Dec. 23, 1986	480167
Texas: Tarrant (FEMA Docket No. 6910).	City of Keller	Mar. 27, 1987 and Apr. 3, 1987 *Fort Worth Star-Telegram*	The Honorable Bruce Lee, Mayor of the City of Keller, 158 South Main, P.O. Box 770, Keller, Texas 76248.	Mar. 16, 1987	480602B
Texas: Tarrant and Johnson	City of Mansfield (FEMA Docket No. 6908).	Jan. 22, 1987 and Jan. 29, 1987 *Mansfield News-Mirror*	The Honorable Wayne Wilshire, Mayor of the City of Mansfield, 1305 East Broad Street, Mansfield, Texas 76063-1896.	Jan. 13, 1987	480606B
Texas: Harris	City of Pasadena (FEMA Docket No. 6908).	Feb. 27, 1987 and Mar. 6, 1987 *Pasadena Citizen*	The Honorable John Ray Harrison, Mayor of the City of Pasadena, P.O. Box 672, Pasadena, Texas 77501.	Feb. 11, 1987	480307D
Texas: Bexar	City of San Antonio (FEMA Docket No. 6908).	Feb. 27, 1987 and Mar. 6, 1987 *San Antonio Light*	The Honorable Henry Cisneros, Mayor of the City of San Antonio, P.O. Box 9066, San Antonio, Texas 78285.	Feb. 19, 1987	480045B
Wisconsin: St. Croix (Docket No. FEMA-6910).	City of Hudson	Apr. 16, 1987 and Apr. 23, 1987 *Hudson Star Observer*	The Honorable Thomas Redner, Mayor, City of Hudson, City Hall, 505 Third Street, Hudson, Wisconsin 54016.	Apr. 6, 1987	555558
Wisconsin: St. Croix (Docket No. FEMA-6910).	Village of North Hudson	Apr. 16, 1987 and Apr. 23, 1987 *Hudson Star Observer*	The Honorable Wallace Gregerson, Village President, Village of North Hudson, 400 Seventh Street North, North Hudson, Wisconsin 54016.	Apr. 6, 1987	555568
Wisconsin: Pierce (Docket No. FEMA-6910).	City of Prescott	Apr. 16, 1987 and Apr. 23, 1987 *Prescott Journal*	The Honorable Dean Hauschildt, Mayor, City of Prescott, City Hall, 233 North Broad Street, Prescott, Wisconsin 54071.	Apr. 6, 1987	555574
Wisconsin: St. Croix (Docket No. FEMA-6910).	Unincorporated areas	Apr. 16, 1987 and Apr. 23, 1987 *Hudson Star Observer*	The Honorable Norman Anderson, Chairman, St. Croix County Board, 911 Fourth Street, Hudson, Wisconsin 54016.	Apr. 6, 1987	555578

Issued: July 29, 1987.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 87-17712 Filed 8-4-87; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

Final Flood Elevation Determinations; California et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing modified base flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below:

ADDRESSES: See table below:

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2768.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal the proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for floodplain management in flood-prone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the

Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been proposed. It does not involve any collection of information for purposes of The Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

PART 67—[AMENDED]

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The modified base flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

Source of flooding and location	±Depth in feet above ground. *Elevation in feet (NGVD), modified
CALIFORNIA	
Carlsbad (city), San Diego County (FEMA Docket No. 6907)	
Pacific Ocean:	
At a point 1,000 feet north along the shore from Pacific Avenue Extended	*11
At a point 500 feet north along the shore from Pacific Avenue Extended	*11
At Grand Avenue Extended	*10
At Cannon Road Extended	*9
At Cerezo Drive Extended	*10
At a point 400 feet north along the shore from Manzano Drive Extended	*11
At a point 200 feet north along the shore from Manzano Drive Extended	*12
Adjacent to the intersection of Carlsbad Boulevard and Palomar Airport Road	*13
Adjacent to a point on Carlsbad Boulevard 0.7 mile south of its intersection with Palomar Airport Road	*9
At Poinsettia Lane Extended	*13
Maps are available for review at the Engineering Department, 1200 Elm Street, Carlsbad, California.	
CONNECTICUT	
Plainville (town), Hartford County (FEMA Docket No. 6907)	
Pequabuck River:	
Just downstream of upstream CONRAIL crossing	*182
Approximately 250 feet upstream of upstream State Route 72 crossing	*194
Approximately 500 feet downstream of upstream corporate limits	*196
Maps available for inspection at the Town Hall, Plainville, Connecticut.	
FLORIDA	
Palm Beach Gardens (city), Palm Beach County (FEMA Docket No. 6911)	
C18 Canal: Within community	*10
Maps available for inspection at the City Manager's Office, 10500 North Military Trail, Palm Beach Gardens, Florida.	
IDAHO	
Bonner County, unincorporated areas (FEMA Docket No. 6907)	
Pend Oreille River:	
River Mile 90.2 at Albini Falls Dam	*2,063
River Mile 93	*2,064
River Mile 94	*2,065
River Mile 95	*2,066
River Mile 96	*2,067
River Mile 103	*2,068
River Mile 110	*2,069
Lake Pend Oreille: River Mile 120	*2,070
Priest River:	
Confluence of the Pend Oreille River	*2,066
6,000 feet above the confluence of Pend Oreille River	*2,067
6,500 feet above the confluence of Pend Oreille River	*2,068
7,000 feet above the confluence of Pend Oreille River	*2,069
7,500 feet above the confluence of Pend Oreille River	*2,070
Maps are available for inspection at the Bonner County Department of Public Works, 215 South First Street, Sandpoint, Idaho 83864.	
Priest River (city), Bonner County (FEMA Docket No. 6907)	
Pend Oreille River:	
River Mile 93.6 at City of Priest River corporate limits	*2,065
River Mile 95.2 at confluence of the Priest River	*2,066
Priest River:	
At confluence of Pend Oreille River	*2,066
At corporate limits	*2,066
Maps are available for inspection at the Office of the City Clerk, 209 High Street, Priest River, Idaho 83856.	
Sandpoint (city), Bonner County (FEMA Docket No. 6907)	
Pend Oreille River: River Mile 116.6 at Sandpoint corporate limits	*2,070
Lake Pend Oreille: River Mile 120	*2,070
Maps are available for inspection at the Sandpoint Planning Office, 110 Main Street, Sandpoint, Idaho 83864.	
MARYLAND	
Baltimore County (FEMA Docket No. 6911)	
Roland Run:	
Approximately 100 feet upstream of Business Entrance	*259
Approximately 90 feet downstream of Essex Farm Road	*266
Approximately 850 feet upstream of Essex Farm Road	*275
Maps available for inspection at the Baltimore County Department of Public Works, Towson, Maryland.	
Ocean City (town), Worcester County (FEMA Docket No. 6911)	
Atlantic Ocean:	
Intersection of North 15th Street and Baltimore Avenue	±1
Approximately 200 feet east of boardwalk at Talbot Street	*11
Maps available for inspection at the Town Hall, Ocean City, Maryland.	
NEW JERSEY	
Dunellen (borough), Middlesex County (FEMA Docket No. 6911)	
Green Brook:	
Upstream side of Madison Avenue	*52
Downstream side of North Washington Avenue	*53
Maps available for inspection at the Office of the Borough Clerk, 355 North Avenue, Dunellen, New Jersey.	
East Orange (city), Essex County (FEMA Docket No. 6911)	
Second River Tributary:	
Downstream corporate limits	*126
Upstream side of Dodd Street Culvert	*132
Downstream side of Brighton Avenue	*145
Upstream corporate limits	*149
Nishuane Brook:	
At confluence of Second River Tributary	*149
Upstream side of Hayward Street	*151
At centerline of Orange Road	*169
Maps available for inspection at 44 City Hall Plaza, East Orange, New Jersey.	
Ewing (township), Mercer County (FEMA Docket No. 6907)	
Delaware River:	
Approximately 450 feet downstream of I-95	*45
Approximately 0.6 mile downstream of confluence of Jacobs Creek	*48
Shabbakunk Creek:	
Approximately 1,100 feet upstream of confluence of West Branch Shabbakunk Creek	*65
Approximately 250 feet downstream of CONRAIL	*71
Approximately 200 feet downstream of Green Lane	*83
Upstream side of Lake Sylvia Dam	*95
Approximately 1,400 feet upstream of Ewingville Road	*100
Approximately 200 feet downstream of Bull Run Road	*112
West Branch Shabbakunk Creek:	
Approximately 400 feet downstream of Spruce Street	*67
Approximately 175 feet upstream of Olden Avenue (downstream crossing)	*78
Approximately 200 feet downstream of Prospect Street	*78
At Parkside Avenue	*82
Approximately 150 feet upstream of Thurston Avenue	*89
Approximately 325 feet upstream of Carlton Avenue	*117
Jacobs Creek:	
Approximately 0.4 mile upstream of confluence with Delaware River	*48
Approximately 1,000 feet downstream of confluence of Ewing Creek	*83
Ewing Creek:	
Approximately 1,250 feet upstream of Jacobs Creek Road	*84
Approximately 250 feet upstream of Nursery Road	*121
Approximately 600 feet downstream of Scotch Road	*149
Approximately 125 feet upstream of Scotch Road	*154
Maps available for inspection at 1872 Pennington Road, Trenton, New Jersey.	
Waldwick (borough), Bergen County (FEMA Docket No. 6907)	
Ho Ho Kus Brook:	
Downstream corporate limits	*187
Approximately 500' upstream of Dam No. 2	*207
Approximately 900' upstream of Dam No. 2	*208

Source of flooding and location	±Depth in feet above ground. *Elevation in feet (NGVD), modified
Approximately 420' downstream of Wyckoff Avenue	*213
Maps available for inspection at the Borough Clerk's Office, 15 East Prospect Street, Waldwick, New Jersey.	
NEW YORK	
Greece (town), Monroe County (FEMA Docket No. 6907)	
Salmon Creek:	
At the confluence with Braddock Bay	*249
At Hogan Point Road (extended)	*249
At upstream corporate limits	*250
Maps available for inspection at 2505 West Ridge Road, Rochester, New York.	
Parma (town), Monroe County (FEMA Docket No. 6907)	
Salmon Creek:	
At the downstream corporate limits	*250
Approximately 1,900 feet downstream of Wilder Road	*258
At the most downstream Hilton corporate limits	*261
At the upstream Hilton corporate limits	*270
At Hill Road	*274
Mud Creek:	
At the downstream corporate limits	*250
Approximately 150 feet downstream of Bennett Road	*252
Approximately 2,350 feet upstream of Bennett Road	*262
Approximately 400 feet downstream of North Avenue	*269
Approximately 500 feet downstream of Collamer Road	*274
Downstream side of Parma- Hamlin Town Line Road	*277
Dix Creek:	
Approximately 158 feet upstream of confluence with Salmon Creek	*274
Approximately 53 feet downstream of Hill Road	*275
Approximately 53 feet upstream of Hill Road	*277
Approximately 53 feet downstream of Private Drive	*277
Approximately 160 feet upstream of Private Drive	*279
Approximately 1,640 feet downstream of the corporate limits	*284
Maps available for inspection at 1300 Hilton-Parma Corner Road, Hilton, New York.	
OHIO	
Hilliard (city), Franklin County (FEMA Docket No. 6911)	
Dover Golf Ditch:	
About 1.35 miles downstream of Scioto Darby Creek Road	*938
About 500 feet upstream of Scioto Darby Creek Road	*941
Hayden Run:	
Just upstream of Avery Road	*911
About 1,350 feet upstream of Avery Road	*916
Scioto River: Within community	*772
Maps available for inspection at the City Hall, 3800 Municipal Square, Hilliard, Ohio.	
OKLAHOMA	
Shawnee (city), Pottawatomie County (FEMA Docket No. 6911)	
Tributary # 1:	
Approximately 60 feet downstream of Wallace Street	*1,026
Approximately 740 feet upstream of Wallace Street	*1,037
Approximately 0.5 mile upstream of Bennock Avenue	*1,047
Rosedale Park Tributary:	
At confluence with Tributary # 1	*1,030
Approximately 1,050 feet upstream of the confluence with Tributary # 1	*1,038
Maps available for inspection at the City Engineer's Office, Shawnee, Oklahoma.	
OREGON	
Clatsop County, unincorporated areas (FEMA Docket No. 6907)	
Backwater from Columbia River: Confluence of Walluski and Young's Rivers to the confluence of Walluski and Little Walluski Rivers	*9
Maps are available for inspection at the Clatsop County Planning Department, P.O. Box 179, Astoria, Oregon.	
TEXAS	
Haltom City (city), Tarrant County (FEMA Docket No. 6911)	
Big Fossil Creek:	
Downstream corporate limits	*505
Upstream side of State Route 183	*511
Upstream side of Glenview Drive	*534
Upstream side of I-820	*545
Approximately 200 feet downstream of upstream corporate limits	*575
Stream BFC-1:	
Downstream corporate limits	*580
Approximately 1,650 feet upstream of corporate limits	*590
Approximately 150 feet upstream of Watauga Road	*599
Little Fossil Creek:	
Approximately 1,400 feet downstream of Chicago Rock Island and Pacific Railroad	*505
Upstream side of Midway Road	*522
Upstream side of Fincher Road	*543
Upstream corporate limits	*559
Maps available for inspection at the Haltom City Building and Zoning Department, 5024 Broadway Avenue, Haltom City, Texas.	
Harris County (FEMA Docket Nos. 6729 and 6911)	
Cypress Creek Unincorporated Areas:	
Approximately 900 feet downstream of confluence of Dry Gully	*113
At confluence of Pillot Gully	*118
Approximately 1.8 miles downstream of confluence of Snake Creek and Mound Creek	*180
Approximately 0.6 mile downstream of confluence of Snake Creek and Mound Creek	*182
Approximately 1,000 feet downstream of confluence of Snake Creek and Mound Creek	*184
Horsepen Creek:	
Approximately 0.6 mile downstream of West Little York Road	*110
Upstream side of FM 529	*117
Downstream side of State Route 6	*121
Tributary 32.23 to Greens Bayou:	
Upstream side of Spears Road	*103
Approximately 1,750 feet upstream of T.C. Jester Boulevard	*105
Williams Gully:	
Approximately 1.2 miles downstream of confluence of Tributary 2.01 to Williams Gully	*57
At confluence of Tributary 2.01 to Williams Gully	*57
Approximately 2.3 miles upstream of confluence of Tributary 2.01 to Williams Gully	*62
Spring Gully (K131-00-00):	
Approximately 2,200 feet upstream of Spring Creek Oak Drive	*119
Approximately 400 feet downstream of Spring-Cypress Road	*132
Tributary 2.1 to Spring Gully (K131-03-00):	
Upstream side of drop structure located approximately 0.5 mile upstream of confluence with Spring Gully	*120
Approximately 0.9 mile upstream of Spring-Cypress Road	*134
*Elevation in feet (NGVD 1973 Relevaling	
Maps available for inspection at the Harris County Engineering Department, Sweeny Building, 301 Main Street, Houston, Texas.	
Missouri City (city), Fort Bend and Harris Counties (FEMA Docket No. 6909)	
Mustang Bayou: Approximately .30 mile upstream of Turtle Creek Drive	*75
Fondren Division Channel:	
At downstream corporate limits	*61
Approximately 1,700 feet upstream of McLain Boulevard	*65
Brazos River: West side of Missouri Pacific Railroad at southernmost corporate limits	*64
Oyster Creek: At upstream corporate limits	*66
Maps available for inspection at the City Hall, 1522 Texas Parkway, Missouri City, Texas (hours 9-5 Monday-Friday).	
Montgomery County (FEMA Docket No. 6907)	
Panther Branch:	
Approximately 110 feet upstream of Woodlands Parkway	*128
Approximately 1,900 feet downstream of Unimproved Road	*133
Maps available for inspection at 328½ North Main, Conroe, Texas.	
Issued: July 29, 1987.	

Harold T. Duryee,
Administrator, Federal Insurance Administration

[FR Doc. 87-17715 Filed 8-4-87; 8:45 am]
BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 31 and 32

[CC Docket 86-322; FCC 87-238]

Common Carrier Services; Expensing of Installation and Removal Costs for Payphones

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has waived the provisions of §§ 31.235 and 31.607 to permit carriers to expense installation and removal costs relating to payphone equipment, and the Commission has amended Section 32.2351 to require carriers to expense installation and removal costs relating to payphone equipment.

EFFECTIVE DATES: The waiver to §§ 31.325 and 31.607 shall be effective July 1, 1987. The amendment to Part 32 shall be effective on January 1, 1988.

ADDRESS: Federal Communications Commission Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: John T. Curry, Accounting Systems Branch, Accounting and Audits Division, Common Carrier Bureau, (202) 634-1861.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* adopted July 15, 1987, and

released July 27, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC.

Summary of Report and Order

On August 8, 1986, the Commission released a *Notice of Proposed Rulemaking* (NPRM) CC Docket 86–322 summary at 51 FR 45915 (December 23, 1986), wherein the Commission proposed to amend §§ 31.235 and 31.607 of the Rules and Regulations to allow the expensing of costs related to the installation and removal of coin operated telephone equipment in semipublic locations. The proposal would have established new subclasses within accounts 235 and 607 for "semi-public telephone equipment—coin-operated" and "Semi-public telephone equipment—coinless." Conforming amendments would also have been made in the new Uniform System of Accounts (USOA) in Part 32 of our Rules and Regulations, which will become effective January 1, 1988.

Interested parties were requested to file comments on the issues set forth in the NPRM on or before February 6, 1987 and reply comments on or before February 23, 1987. Eight carriers and two state commissions filed comments and three carriers filed comments and reply comments.

Most of the commenting parties believed that the Commission should amend its Rules to permit the expensing of costs related to the installation and removal of all payphones regardless of type or location. The carriers provided persuasive statistics showing a rapid displacement of coin and coinless payphones in both public and semi-public locations. The Michigan Public Service Commission (Michigan) agreed that no distinction should be made between public and semi-public or coin operated and coinless telephone equipment.

The current rules prescribe a practice of capitalizing and depreciating these costs to spread them over the expected useful life of the payphone instrument and match them with revenues to be recorded in the future. The rapid displacement and churn of payphone equipment in public and semi-public locations cast doubt on the wisdom of continuing to capitalize all costs associated with payphone installations. Over time, this could produce unwarranted growth in Account 235 investment and burden ratepayers in future periods. Accordingly, the Commission decided to amend its rules to require that installation and removal costs including labor costs and minor materials for the telephone equipment, and premises wiring for all payphones be expensed on a prospective basis. The Commission decided to amend Part 32, which will become effective January 1, 1988, and waive the provisions of §§ 31.235 and 31.607 to permit all carriers to begin expensing these costs under Part 31 effective July 1, 1987. As stated in the NPRM, carriers will be required to continue to capitalize the costs of installing lines to a demarcation point and the costs of the telephone company provided pay stations and related enclosures.

A review of the carriers' comments show that their investment in payphone premises wiring vary. Accordingly, the Commission concluded that it would be difficult to prescribe a single amortization period for these embedded costs that would be appropriate for all carriers. Instead the Commission decided to rely on depreciation life adjustments as an appropriate mechanism to recognize individual circumstances and that the carriers should seek relief in their depreciation filings.

Accordingly, it is ordered, That the provisions of §§ 31.235 and 31.607 are waived to permit carriers to expense installation and removal costs relating to payphone equipment effective July 1, 1987.

It is further ordered, That under the authority contained in sections 4(i), 4(j) and 220 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j) and 220, Part 32, Uniform System of Accounts for Telecommunications Companies, of the Commission's Rules is amended as shown below effective January 1, 1988.

List of Subjects in 47 CFR Part 32

Communications common carriers, reporting and recordkeeping requirements, Telephone, Uniform system of accounts.

William J. Tricarico,

Secretary.

Part 32 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 32—UNIFORM SYSTEM OF ACCOUNTS FOR TELECOMMUNICATIONS COMPANIES

1. The authority citation for Part 32 continues to read as follows:

Authority: 47 U.S.C. 154, 219 and 220.

2. Section 32.2351, Public telephone terminal equipment is amended by revising paragraph (c) to read as follows:

§ 32.2351 Public telephone terminal equipment.

* * * * *

(c) The original cost of installing public telephone equipment shall not include the labor and minor materials costs of installing the public telephone equipment or premises wiring. These costs as well as the cost of replacing a public telephone shall be charged to Account 6351 Public Telephone Terminal Equipment Expense. The labor and minor materials costs of removal of public telephones will also be charged to Account 6351.

[FR Doc. 87–17543 Filed 8–4–87; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 70845–7085]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustments and request for comments.

SUMMARY: NOAA announces inseason adjustments to recreational ocean salmon management measures from Cape Falcon, Oregon, to the U.S.-Canada border. The Director, Northwest Region, NMFS (Regional Director), has determined in consultation with representatives of the Pacific Fishery Management Council (Council), the Oregon Department of Fish and Wildlife (ODFW) and the Washington Department of Fisheries (WDF), that the adjustments are necessary to conform to the recreational chinook quota established in the preseason announcement of 1987 management measures. These actions are intended to slow the harvest of chinook salmon and extend the recreational seasons.

EFFECTIVE DATE: This notice is effective at 0001 hours (Pacific Daylight Time) time, July 31, 1987. Comments on this notice will be received until August 14, 1987.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, NMFS, BIN C15200, 7600 Sand Point Way NE., Seattle, WA 98115–0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the same address.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten (Regional Director) at 206–528–6150.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries are codified at 50 CFR Part 661. Management measures for 1987 were effective on May 1, 1987 (52 FR 17284, May 8, 1987). The 1987 recreational fishery for all salmon species north of Cape Falcon, Oregon, is divided into three subareas. The recreational season in all three subareas began on June 28 and will continue through whichever occurs first (1) September 24, (2) attainment of subarea chinook or coho quotas, or (3) attainment of overall troll and recreational chinook or coho quotas for the area between Cape Falcon, Oregon, and the U.S.-Canada border.

Recreational subarea quotas for chinook and coho salmon were established at preseason and have been adjusted once (52 FR 27560, July 22, 1987). The following recreational quotas for chinook and coho salmon currently are in effect for subareas north of Cape Falcon:

Subarea	Current chinook quota	Current coho quota
U.S.-Canada Border to Queets River (northern area)	3,200	25,650
Queets River to Leadbetter Point (central area)	27,700	74,300
Leadbetter Point to Klipsan Beach; Red Buoy Line to Cape Falcon (southern area)	13,650	100,950

Based on the best available information, the recreational fishery in all three subareas is estimated to have caught a higher proportion of chinook than anticipated at preseason. Most chinook off the Washington coast migrate from north to south, thus the problem of too high a proportion of chinook in the catch is most severe in the northern area at this time.

In the northern area, an estimated 84 percent of the current chinook quota, but only 44 percent of the coho quota have been harvested through July 26. Fishery representatives from all three subareas have agreed to transfer chinook from the southern and central subareas to the northern subarea to extend the recreational season in the northern subarea.

Therefore, NOAA issues this notice to adjust the recreational salmon fisheries north of Cape Falcon, Oregon, by modifying the subarea quotas as follows:

Subarea	Revised chinook quota	Revised coho quota
U.S.-Canada Border to Queets River (northern area)	3,400	25,650
Queets River to Leadbetter Point (central area)	27,875	74,300
Leadbetter Point to Klipsan Beach; Red Buoy Line to Cape Falcon (southern area)	13,525	100,950

This notice does not apply to treaty Indian fisheries or to other fisheries which may be operating in this or other areas.

The Regional Director consulted with representatives of the Council, ODFW, and WDF regarding these inseason adjustments for the recreational fisheries north of Cape Falcon, Oregon. The ODFW and WDF representatives confirmed that Oregon and Washington will manage the recreational fisheries in State waters adjacent to these areas of the EEZ in accordance with this Federal action.

Other Matters

This action is authorized by 50 CFR 661.21(b) and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

(16 U.S.C. 1801 *et seq.*)

Dated: July 31, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 87–17772 Filed 7–31–87; 4:28 pm]

BILLING CODE 3510-22-M

50 CFR Part 661

[Docket No. 70845–7085]

Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California; Correction

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustment and request for comments; correction.

SUMMARY: This document corrects a geographic coordinate and an erroneous citation in the preamble of a notice of inseason adjustment for the Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California, which appeared in the Federal Register on July 10, 1987 (52 FR 26013).

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten, Regional Director, 206–528–6150.

In rule document 87–75726 beginning on page 26013, the following corrections are made: On page 26014, under "**SUPPLEMENTARY INFORMATION,**" column 1, paragraph 3, line 8, the coordinate for Point Brown is corrected to read "(40°55'42"N. latitude),". On the same line "(July 2, 1987)," is corrected to read "(52 FR 25605, July 8, 1987)."

Dated: July 31, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.

[FR Doc. 87–17775 Filed 8–4–87; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 674

[Docket No. 70619–7119]

High Seas Salmon Fishery off Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: NOAA issues this notice closing for 10 days the U.S. exclusive economic zone (EEZ) off Southeastern Alaska to commercial fishing for all salmon species. This action is necessary to allow coho salmon to escape the ocean fishery so they can move into the bays and inlets where the harvests can be managed more closely on a stock-by-stock basis. It complements similar actions taken by the State of Alaska for the commercial salmon fisheries in its waters. The intent of this action is to achieve better control over the numbers of each stock that are harvested and that reach the spawning grounds.

DATE: This notice is effective at 0001 hours (12:01 am) Alaska Daylight Time (ADT), Monday, August 3, 1987, and will expire at 2400 hours (midnight), Wednesday, August 12, 1987. Public comments are invited until September 3, 1987.

ADDRESS: Send comments to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802–1668. During the 30-day public comment period, the data upon which this notice is based will be available for public inspection during the hours of 0800 to 1630 ADT Monday through Friday at the NMFS Regional Office, Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Aven M. Andersen (Fishery

Management Biologist, NMFS) 907–586–7228.

SUPPLEMENTARY INFORMATION: Salmon fishing in the EEZ off Alaska is managed under the Fishery Management Plan for the High Seas Salmon Fishery Off the Coast of Alaska East of 175 Degrees East Longitude (FMP). This FMP was developed and amended by the North Pacific Fishery Management Council (Council) and is implemented by NOAA through regulations appearing at 50 CFR Part 674.

The Alaska Board of Fisheries (Board) requires that the commercial salmon troll fisheries in Alaskan waters be closed "for approximately 10 days" unless "the coho salmon runs are larger than the last 10-year average and . . . acceptable numbers of coho salmon are moving into the in-shore salmon fishing areas" (5 AAC 33.365(b)(3)).

In 1980, the Council amended section 8.3.1.4 of the FMP to provide for an area-wide closure of the entire troll fishery for 10 days to stabilize or reduce coastal and offshore fishing effort on coho salmon unless an evaluation of the coho runs and harvests indicated a "well above average magnitude and good movement inshore." The Council took this action in cooperation with the Board so that the troll fishery in the EEZ and in State waters would be under consistent management. The Council intended that if the State issued a closure for coho, a similar closure should be instituted for the EEZ, under the procedures outlined in section 8.3.1.5. of the FMP and specified in § 674.23 of the regulations.

Regulations implementing the FMP (at § 674.23(a)) provide that the Secretary of Commerce (Secretary) may modify the fishing times and areas whenever he determines that the condition of any salmon species in any part of the management area is substantially different from the condition anticipated in the FMP. In making such a determination, he may consider the following factors:

(1) The effect of overall fishing effort within any part of the management area; (2) The catch per unit of effort and the rate of harvest; (3) The relative abundance of salmon stocks within the management area; (4) The condition of salmon stocks throughout their ranges; and (5) Any other factors relevant to the conservation of salmon.

As of July 31, 1987, analyses of coho harvests by the commercial troll, gill net, purse seine, and sport fisheries in Southeastern Alaska indicate that the 1987 coho run is probably below average (or quite late). Harvests by commercial trollers in offshore waters have been light and spotty. Trollers in inside waters have been harvesting approximately at the long-term average. Gill net, purse seine, and sport harvests are average or below average. Overall, the coho run appears to be a bit below average.

Having reviewed the evidence of the coho harvest in the EEZ off Alaska and in Alaskan waters, the Secretary has determined that the effect of overall fishing effort, the catch per unit of effort, and the below average rate of harvest throughout the management area indicate that the condition of coho stocks is substantially different from the condition anticipated in the FMP. He has also found that this difference reasonably requires a modification of fishing times or areas if coho stocks are to be conserved and managed adequately. Thus, according to the Board's guidelines and the Council's FMP, the troll fishery should be closed for 10 days. Accordingly, on July 31, 1987, the Alaska Department of Fish and Game and the National Marine Fisheries Service issued a joint announcement that the commercial troll fishery would close for 10 days, beginning at 0001 hours on Monday, August 3, 1987.

The Secretary, therefore, is implementing the 10-day closure prescribed by this action. The closure will become effective after this notice has been filed for public inspection with the Office of the Federal Register and the closure has been publicized for 48 hours through procedures of the Alaska Department of Fish and Game.

Other Matters

The Assistant Administrator for Fisheries, NOAA, has determined that the coho salmon stocks harvested in Southeastern Alaska will be subject to harm unless this notice takes effect promptly. He finds, therefore, that it would be impracticable and contrary to the public interest to provide advance notice and a prior opportunity for public comment or to delay for 30 days the effective date of this notice under the provisions of 5 U.S.C. 553 (b) and (c).

This action is authorized by 50 CFR Part 674 and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 674

Fisheries, Fishing, Reporting and recordkeeping requirements.

(16 U.S.C. 1801 et seq.)

Dated: July 31, 1987.

[FR Doc. 87–17773 Filed 7–31–87; 4:28 pm]

BILLING CODE 3510-22-M

50 CFR Part 675

[Docket No. 61225–7052]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustment.

SUMMARY: NOAA announces the apportionment of amounts of Alaska groundfish to the joint venture processing (JVP) portion of the domestic annual harvest (DAH) and to the total allowable level of foreign fishing (TALFF) under provisions of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). Groundfish are apportioned according to the regulations implementing the FMP. The intent of this action is to assure optimum use of these groundfish by allowing the domestic and foreign fisheries to proceed without interruption.

DATES: Effective July 31, 1987. Comments will be accepted through August 17, 1987.

ADDRESS: Comments should be mailed to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802, or be delivered to Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Janet E. Smoker (Resource Management Specialist, NMFS), 907–586–7230.

SUPPLEMENTARY INFORMATION: The FMP governs the groundfish fishery in the exclusive economic zone under the Magnuson Fishery Conservation and Management Act. The FMP was developed by the North Pacific Fishery Management Council (Council) and implemented by rules appearing at 50 CFR 611.93 and Part 675. The total allowable catches (TACs) for various groundfish species are apportioned initially among DAH, reserves, and TALFF. The reserve amount, in turn, is to be apportioned to DAH and/or TALFF during the fishing year, under 50 CFR 611.93(b) and 675.20(b). As soon as practicable after April 1, June 1, August 1 and on such other dates as are necessary, the Secretary of Commerce apportions to DAH all or part of the reserve that he finds will be harvested by U.S. vessels during the remainder of the year, except that part or all of the reserve may be withheld if an apportionment would adversely affect the conservation of groundfish resources or prohibited species. No action was scheduled for the April 1 date because

no need for adjustment to the initial specifications was apparent at that time. On May 15, JVP was supplemented by 100,000 mt from the 271,590 mt non-specific reserve (52 FR 18367). On June 10, JVP was supplemented by 75,000 mt from the non-specific reserve (52 FR 21958). On June 30, JVP was supplemented by 23,050 mt and TALFF by 22,000 mt from the non-specific reserve, reducing the non-specific reserve to 51,540 mt (52 FR 24297).

Reapportionment (See Table 1)

The following actions are taken by this notice to reapportion specifications in the BSA fisheries.

To the BSA JVP

In the Aleutian Islands subarea, about 30 U.S. catcher boats delivering fish to 20 foreign processors are conducting directed fisheries on pollock and Atka mackerel. In the Bering Sea subarea, about 20 U.S. catcher boats delivering to ten foreign processors are conducting directed fisheries on "other flatfish" and Pacific cod. The current JVPs for Greenland turbot, Pacific ocean perch (POP), and "other rockfish" in the Aleutian Islands area are insufficient to provide the necessary bycatch for continued JVP fishing in the Bering Sea and Aleutian Islands subareas. To allow continued JVP fishing, the following amounts are apportioned to JVP from the non-specific reserve: 30 mt to Greenland turbot; 250 mt to Aleutian Islands subarea POP; and 90 mt to Aleutian Islands subarea "other rockfish".

These apportionments do not result in overfishing of any of the three stocks, as the resulting TACs for each species are below the original TACs established prior to subtraction of the 15 percent reserve amounts.

To the BSA TALFF

At its May 1987 meeting, the Council agreed that the TALFF for Pacific cod should be increased to provide the Japanese longliners with a directed fishery on cod of 44,000 mt. This was accomplished in the June 30 apportionment. However, that action did not provide any amounts needed for bycatch. To provide bycatch, the following amounts of the non-specific reserve are apportioned to TALFF: 100 mt to arrowtooth flounder, 40 mt to "other flatfish," 3 mt to Bering Sea POP, and 1,500 mt to "other species."

These apportionments do not result in overfishing of any of the four stocks, as the resulting TACs for each species are below the original TACs established prior to subtraction of the 15 percent reserve amounts.

Comments and Responses

In accordance with 50 CFR 611.93(b) and 675.20(b), aggregated reports on U.S. catches of Alaska groundfish and the processing of those groundfish were available for public inspection to facilitate informed public comment. In addition, those provisions afforded the public an opportunity to submit comments on the extent to which U.S. fishermen will harvest and the extent to which U.S. processors will process Alaska groundfish. One comment was received.

Comment: Additional amounts of bycatch species must be made available to TALFF to allow the Japanese longline fleet to take the 22,000 mt of Pacific cod made available in June.

Response: The bycatch amounts apportioned to TALFF by this notice should be sufficient to allow the Japanese longline fleet to take its Pacific cod quota.

Classification

This action is taken under the authority of 50 CFR 675.20(b) and complies with Executive Order 12291.

The Assistant Administrator for Fisheries finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment. Immediate effectiveness of this notice is necessary to benefit fishermen who otherwise would have to forego substantial amounts of other groundfish species if fishing were closed as a result of achieving previously specified JVPs or TACs. However, interested persons are invited to submit comments in writing to the address above for 15 days after the effective date of this notice.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 31, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

TABLE 1—BERING SEA/ALEUTIANS REAPPORTIONMENTS OF TAC, ALL IN METRIC TONS

		Current	This action [1]	Revised totals
Greenland turbot TAC 20,000; EY 20,000.	DAP	15,213		15,213
	JVP	37	+30	67
	TALFF	1,750		1,750
Arrowtooth flounder TAC 9,795; EY 30,900.	DAP	830		830
	JVP	3,363		3,363
	TALFF	4,133	+100	4,233
Other flatfish TAC 148,300; EY 193,300.	DAP	23,103		23,103
	JVP	88,472		88,472
	TALFF	14,480	+40	14,520
Pacific ocean perch (Bering Sea subarea) TAC 2,850; EY 3,800.	DAP	2,423		2,423
	JVP	120		120
	TALFF	12	+3	15
Pacific ocean perch (Aleutian Is. subarea) TAC 8,175; EY 10,900.	DAP	6,786		6,786
	JVP	120	+250	370
	TALFF	0		0

TABLE 1—BERING SEA/ALEUTIANS REAPPORTIONMENTS OF TAC, ALL IN METRIC TONS

		Current	This action [1]	Revised totals
Rockfish (Aleutian Is. subarea) TAC 1,430; EY 1,430.	DAP	1,001		1,001
	JVP	214	+90	304
	TALFF	0		0
Other species TAC 148,300; EY 193,300.	DAP	500		500
	JVP	10,000		10,000
	TALFF	2,250	+1,500	3,750
Total (TAC 2,000,000)	DAP	416,016		416,016
	JVP	1,446,090	+370	1,446,460
	TALFF	86,352	+1,643	87,995
	RESERVES	51,540	−2,013	49,527

[1] Reapportionments from non-specific reserve.

[FR Doc. 87-17771 Filed 7-31-87; 4:28 pm]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 52, No. 150
Wednesday, August 5, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

Rule on the Submission and Management of Records and Documents Related to the Licensing of a Geologic Repository for the Disposal of High-Level Radioactive Waste; Establishment of an Advisory Committee for Negotiated Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of establishment of an advisory committee to negotiate a proposed rule, and notice of first meeting.

SUMMARY: The Nuclear Regulatory Commission is establishing an advisory committee, under the authority of Federal Advisory Committee Act (FACA), to develop recommendations for revision of the Commission's Rules of Practice in 10 CFR Part 2 related to the adjudicatory proceeding for the issuance of a license for a geologic repository for the disposal of high-level waste (HLW). Specifically, the committee will attempt to negotiate a consensus on proposed revisions related to the submission and management of records and documents for the HLW licensing proceeding. The committee will be composed of organizations representing the major interests likely to be affected by the rulemaking. This notice announces the establishment of the committee and the time and place of the first committee meeting. The title of the committee will be the HLW Licensing Support System Advisory Committee ("negotiating committee").

DATE: The first meeting of the HLW Licensing Support System Advisory Committee will be held on September 16 and 17, 1987, beginning at 10:00 a.m. The meeting will be open to the public.

ADDRESSES: The September 16–17, 1987 meeting of the HLW Licensing Support System Advisory Committee will be held at the Conservation Foundation, 1250 24th Street, Washington, DC 20037. Obtain single copies of the feasibility report prepared by the Conservation Foundation and the LSS Background Paper from Francis X. Cameron, Office of the General Counsel, Washington, DC 20555, telephone (301) 492–8689.

FOR FURTHER INFORMATION CONTACT:

NRC Staff—Francis X. Cameron, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington DC 20555, telephone: 301–492–5889

Kenneth L. Kalman, Office of Nuclear Material Safety and Safeguards, Washington DC 20555, Telephone: 301–427–4071.

Facilitators—Howard S. Bellman, Timothy J. Mealey, and Matthew A. Low, Conservation Foundation, 1250 24th Street, Washington, DC 20037, 202–293–4800

SUPPLEMENTARY INFORMATION:

Background

Section 114(d) of the Nuclear Waste Policy Act (NWPA), 42 U.S.C. 10134, requires the Commission to issue a final decision on the issuance of a construction authorization for the HLW repository within three years after DOE submits the license application (with a one year extension for cause). The HLW licensing proceeding will not only involve novel and complex technical issues, but will also involve millions of documents, a substantially larger number than the volume of documents involved in the average nuclear power reactor licensing proceeding. In view of this, the Commission does not believe that the use of traditional licensing procedures will enable the Commission to meet the statutory timetable, or will provide all parties with an opportunity for the most effective review of the license application. In order to meet the statutory schedule, and to provide for the most effective review of the license application by the Commission and other parties, the Commission is initiating measures to streamline the licensing process.

One of these measures is the development of an information management system that would contain all of the data supporting the DOE license application, as well as all of the potentially relevant documents generated by the NRC and other parties to the licensing proceeding, in a standardized electronic format. All parties would then have access to this system. Because all relevant information would be readily available through access to the system, the initial time-consuming interrogatory discovery process involving the physical production and on-site review of documents by parties to a NRC licensing proceeding would not be necessary.

Implementation of this system is intended to accomplish the following objectives—

- To facilitate discovery by providing comprehensive and easy access to potentially relevant licensing information;
- To establish the information base for the licensing proceeding, to the extent practicable, before the DOE license application is submitted and the three year statutory time period begins;
- To facilitate review of the relevant licensing information by all parties and eventually the boards through the provision, to the extent practicable, of full text search capability;
- To reduce the time associated with the physical submission of motions and other documents associated with the licensing proceeding by providing for the electronic transmission of these documents;

The Commission intends to develop this rulemaking through the process of negotiated rulemaking. In negotiated rulemaking, the representatives of parties who may be affected by a proposed rule, including the Commission, convene as a group over a period of time to try to reach consensus on the proposed rule. The agency then uses this consensus as the basis for a proposed rule which the agency issues for notice and comment. The consensus is not the basis per se for the final rule which the agency will develop after traditional notice and comment procedures. The Commission, however may ultimately find it useful to rely on, or to refer to, the consensus in connection with its adoption of the final rule.

The negotiated rulemaking process facilitates the comprehensive treatment of the rulemaking issues because those groups that may be affected by the rulemaking are present at the discussions and can react directly to each other's concerns and positions. The Commission believes that negotiated rulemaking is an appropriate process for this rulemaking because it will help to

establish the credibility of the LSS, i.e., the belief that all relevant documents will be entered into the system and that the system is free from tampering. In addition, because the LSS will constitute a new process for managing a Commission licensing proceeding, it is important that affected and knowledgeable organizations directly participate in establishing the rules for system operation, particularly because individual parties to this proceeding will possess substantial research data that should be placed into the LSS.

On December 18, 1986, the Commission's intent to conduct a negotiated rulemaking was published in the **Federal Register** (51 FR 45338). Comments were due by February 17, 1987. The **Federal Register** Notice invited expressions of interest from those who might want to participate in the negotiations. The Notice also solicited comment on the feasibility of negotiation, and on a preliminary list of rulemaking issues associated with the LSS.

Twenty-four comments were received. The comments came from State governments (six from first round repository States, two from second round repository States); Tribal governments (three from first round repository Tribes, one from a nonprofit organization representing second round repository Tribes and those Tribes affected by the transportation of HLW to a first or second round repository); three national environmental groups; three industry organizations; two Federal agencies (the Department of Energy, and the Bureau of Land Management, Department of Interior); the National Association of Regulatory Utility Commissioners; and three individuals.

The Commission has retained the Conservation Foundation, a nonprofit organization with expertise in the area of mediation and negotiated rulemaking, to assist the Commission in conducting the negotiation. The Foundation will provide the Commission with support in the areas of convening (assessing the feasibility of the negotiated rulemaking), facilitating (chairing the negotiating sessions and assisting the participants in arriving at consensus), training for participants on the negotiating committee (on the principles of negotiated rulemaking), and technical and administrative support to the negotiating committee on the rulemaking issues. The Conservation Foundation's initial responsibility was to evaluate the feasibility of conducting the negotiated rulemaking based on discussions with potential participants. The Foundation submitted its feasibility report on May 27, 1987.

Based on the public comments, and the Conservation Foundation's feasibility report, the Commission has decided to establish the negotiating committee for this rulemaking.

Feasibility

The Conservation foundation recommended that the Commission proceed with the negotiated rulemaking. The Foundation concluded that—

> with certain cautious reservations, . . . it is feasible for the NRC to form an advisory committee to negotiate revisions to its . . . rules to support the development of a Licensing Support System (LSS). Our recommendations regarding both procedural and substantive issues are grounded upon the judgments of the potential committee participants. There is already a broadly held view among them that genuine efforts by all concerned made within such a committee structure should yield a superior proposal. They also genuinely believe that the proposed regulatory negotiation process can contribute very positively not only to improvements in the licensing procedure, but also to their many other working relationships. We concur in these judgments and look forward to the committee's initiation.

Although in the judgment of the Foundation it would be unrealistic to expect an ultimate consensus on all matters in issue, it believes that—

> even where consensus is not reached a valuable report can be developed identifying areas of agreement and disagreement, narrowing the issues in dispute, identifying the information necessary to resolve remaining issues, and setting priorities for potentially acceptable solutions.

The comments submitted in response to the Commission's **Federal Register** Notice were generally supportive of the negotiated rulemaking concept. These favorable comments came from both the supporters of repository siting and also from those groups who have been critical of the siting process. The comments on the advisability of developing the LSS were primarily directed towards specific aspects of the LSS, rather than on the general feasibility of establishing such a system. However, several commenters, again from both sides of the repository siting issue, expressed support for the LSS.

Participants

In the **Federal Register** Notice announcing the Commission's intent to conduct a negotiated rulemaking, the Commission identified several interests that might be affected by this particular rulemaking. These interests included Indian Tribes, State governments, local governments, and public interest groups affected by repository siting, utilities, ratepayers, and Federal agencies such as the NRC and DOE.

The Commission stated that it would consider parties for membership on the negotiating committee on the basis of (1) whether they have a direct, immediate, and substantial stake in the rulemaking, (2) whether they may be adequately represented by another party on the committee, and (3) whether their participation is essential to a successful negotiation. However, the Commission welcomed expressions of interest from all groups potentially affected by the rulemaking and stated that it would use the selection criteria to exclude interested parties only as a last resort. The Commission also noted its concern that the negotiating committee be kept to a manageable size in order to maximize the potential for arriving at a consensus, and that the Commission would encourage the consolidation of groups with similar interests in order to achieve this goal.

The Conservation Foundation has recommended that the Commission establish three tiers of participation in the negotiated rulemaking proceeding. The first tier would be composed of committee "members," i.e., those participants whose views will constitute any consensus or disagreement. The first tier would include not only individuals acting as a representative of a single party but also individuals acting as representatives of a coalition of parties. A coalition would collectively only hold a single seat, in the first tier of committee membership.

The second tier would consist of individuals representing entities that, for specific reasons, were not invited to the first tier but whose views are important to the negotiations. These second tier participants would have a seat at the negotiating table, but their views would not consititute any consensus or disagreement.

The third tier would be comprised of any members of the general public who have an interest in the proceeding but who are not included in tiers one and two. The third tier will not have a seat at the negotiating table. As with the meetings of any advisory committee chartered under FACA, 5 U.S.C. App., the meeting will be open to the public and members of the public will be able to offer written comments to the committee, and if practicable, to offer oral comments at appropriate times during the meetings. Further, any individual or group and the public generally, will be provided with an opportunity to comment on any

proposed rule developed as a result of the negotiating process.

The Commission has invited the following groups, each to have one seat, to participate in the first tier of the negotiating committee—

(1) State of Nevada;
(2) State of Washington;
(3) State of Texas, representing itself and affected Texas local governments;
(4) Yakima Indian Nation;
(5) Nez Perce Indian Tribe;
(6) Confederated Tribes of the Umatilla Indian Reservation;
(7) Department of Energy;
(8) National Congress of American Indians, representing all tribes affected by the siting of the second repository and by the transportation of HLW;
(9) Utah, Oregon, and Mississippi (jointly), representing a coalition of all other states affected by the siting of the first repository;
(10) Minnesota and Wisconsin (jointly), representing a coalition of all states affected by the siting of the second repository, and by the transportation of HLW;
(11) The Sierra Club, Environmental Defense Fund, and Friends of the Earth (jointly), representing a coalition of nonprofit environmental groups;
(12) Nuclear Waste Task Force, representing a coalition of local Texas nongovernmental groups;
(13) Edison Electric Institute and the Utility Nuclear Waste Management Group (jointly), representing the nuclear industry;
(14) Nuclear Regulatory Commission.

There are a total of fourteen first tier participants including the NRC.

Those invited to participate in the second tier of the negotiating committee are—

(1) U.S. Council for Energy Awareness;
(2) National Conference of State Legislatures;
(3) National Association of Regulatory Utility Commissioners.

The Conversation Foundation also recommended that the Commission invite any other tribes or states affected by the siting of a repository or the transportation of HLW to the repository, and not specifically included as a member of the coalitions in the first tier of committee membership, to participate as second tier members of the committee. The Commission agrees, and is extending an invitation for second tier participation to affected tribes and states that are not specifically named in the first tier coalitions (Groups 8, 9, or 10). Membership in these first tier coalitions was based on a timely request for participation in response to the Commission's December 18, 1986 **Federal Register** Notice. To the extent that any affected tribe or state may wish to participate as a named member of a first tier coalition, a reqeust should be made to the appropriate coalition. It is within the discretion of the coalition as to whether it wants to accept any additional members.

The Commission emphasizes that the groups invited to participate as a member of the negotiating committee are those who might be broadly affected by the LSS rulemaking. These groups do not necessarily correspond to the groups or persons who might have standing to participate as a party to the Commission's HLW licensing proceeding. Participation in the HLW proceeding is governed by the Commission's regulations set forth in 10 CFR 2.714 and 2.7115.

Convenor/Facilitators

As noted above, the Commission has retained the Conservation Foundation to oversee the negotiated rulemaking process. The Conservation Foundation has had extensive experience in multi-party dispute resolution, including experience in negotiated rulemaking, but has not had any prior involvement with the substantive content of this particular rulemaking.

Howard S. Bellman of the Conservation Foundation will serve as the senior facilitator for the negotiated rulemaking, assisted by Timothy J. Mealey, also of the Conservation Foundation, and Matthew A. Low of TLI Systems. The facilitator will chair the negotiating sessions, assist individual parties in forming and presenting their positions, and offer suggestions and alternatives to help the negotiating committee reach consensus. Support to the facilitators and the negotiating committee on the technical and legal aspects of the rulemaking will be provided by TechLaw, a subcontractor to the Conservation Foundation.

Funding

Two interests—local non-governmental groups and national environmental public interest groups requested funding by the Commission in order to participate in the negotiations. The Commission reiterates the position set forth in the **Federal Register** Notice announcing its intent to negotiate that it is unable to provide any direct funding to individual participants on the negotiating committee. The Commission's inability to do so derives from a specific provision in the NRC appropriations legislation. For example, section 502 of the Energy and Water Development Appropriations Act for Fiscal Year 1986 provides that—

None of the funds in this Act shall be used to pay the expenses of, or otherwise compensate, parties intervening in regulatory or adjudicatory proceedings funded in this Act. Pub. L. No. 99–141, 98 Stat. 578.

In addition, the Continuing Appropriations Act, Fiscal Year 1987, Pub. L. No. 99–591, contains the same provision, as do the NRC Appropriations Acts for previous fiscal years. The legislative history of this provision indicates that the prohibition would apply to rulemaking proceedings. *See* Energy and Water Development Appropriations for 1982, Part 4, Nuclear Regulatory Commission, Hearings before the Subcommittee on Energy and Water Development of the House Subcommittee on Appropriations, 97th Cong., 1st Sess. 210 (1981); S. REP. NO. 767, 96th Cong., 2d Sess. 13 (1980); 126 CONG. REC. 20865 (1980); Public Participation in Agency Proceedings, Hearings on H.R. 3361 before the Subcommittee on Administrative Law and Government Relations of the House Judiciary Committee, 95th Cong., 1st Sess. 114 (1977). Although each negotiated rulemaking must be evaluated to determine whether the negotiating phase of the rulemaking would constitute a "proceeding" within the intent of section 502, the better view is that this provision applies to this particular negotiated rulemaking. In this case, the stated objective of the negotiating committee is not merely to exchange information, but to also reach consensus on the text of a proposed rule. Furthermore, the Commission, within certain stated limitations, has agreed to use the consensus as the basis for a proposed rule. The Commission believes that, in this context, the negotiating phase would constitute the beginning of a rulemaking "proceeding" for purposes of section 502.

However, the Conservation Foundation advised the Commission that the negotiating committee will not provide a representative sample of LSS users if the groups who requested funding do not participate. Therefore, the Foundation recommended that the NRC, the convenors, and the affected organizations explore ways to develop funding for the participation of these interests. The Commission agrees that it is important to facilitate the participation of environmental groups and local nongovernment groups in this negotiated rulemaking. Accordingly, the Commission has requested the Conservation Foundation, its convenor, to seek funding assistance from such organizations as the National Institute for Dispute Resolution (NIDR).

The Commission anticipates that the other participants will either be able to cover their own expenses through funds provided by DOE under the NWPA or through their own financial resources. The Commission is providing complete support for the operation of the negotiating committee, including funding for the professional facilitator to assist the negotiating committee in reaching consensus, funding for the training of participants on the principles of negotiation, provision of background information to the negotiating committee on the technical and legal aspects of the rulemaking, provision of administrative support for committee operations, and provision of Commission legal and technical staff to assist the committee.

Federal Advisory Committee Act (FACA)

In accordance with the requirements of FACA, and the Commission's regulations in 10 CFR Part 7, the Commission is, by the notice, indicating its intent to charter the negotiating committee as an advisory committee. The draft charter will be reviewed by the General Services Administration (GSA) under 41 CFR Part 101–6.

In accordance with the Commission's regulations in 10 CFR Part 7, advance notice of negotiating committee meetings will be provided in the **Federal Register**, the meetings of the full negotiating committee will be open to the public, members of the public will be allowed to submit written statements to the committee, and detailed minutes of each meeting will be made available for public review and copying.

Committee Procedures and Meetings

Under the general guidance of the facilitator, the negotiating committee will establish detailed procedures for conducting committee meetings. To assist the committee, the facilitator is preparing draft procedures for committee review and approval. These draft procedures will address such issues as the definition of consensus and the use of working groups and caucuses.

The Commission anticipates that approximately nine two-day meetings will be required to complete the negotiating process. This series of meetings will take place over a period of nine months beginning in September 1987. Approximately one-half of the meetings will be held in Washington, DC, and the remaining meetings will be held at regional locations. The first meeting of the negotiating committee will be organizational in nature, focusing on dates, times, locations, and procedures for future meetings. The Commission also intends to sponsor a one-day training session on the principles of negotiation for the committee as part of this first meeting. The second meeting will be devoted to familiarizing the participants with the legal and technical aspects of the rulemaking. The actual negotiating sessions would begin approximately one month after the second organizational meeting and will continue monthly thereafter through May 1988.

Notice of Proposed Rulemaking

The negotiating committee's specific objective will be to reach consensus on the terms of a notice of proposed rulemaking. To the extent that the negotiations are successful, the facilitator will prepare a report describing the basis on which the committee developed its proposals. If consensus is not reached on some issues, the report should identify the areas of consensus, the areas in which consensus could not be reached, and the reasons for non-agreement.

The Commission agrees to issue for comment any proposed rule resulting from a consensus of the negotiating committee unless the Commission finds that the proposed rule is inconsistent with its statutory authority or is not appropriately justified. In that event, the Commission would explain the reasons for its decision. Adoption of any final rule will be based on consideration of any comments received on the proposed rule and other materials constituting the rulemaking record.

Failure To Reach Consensus

The Commission anticipates that the potential for reaching consensus will be demonstrated by the conclusion of the eighth meeting of the negotiating committee (April 1988) and will dissolve the negotiating committee if it does not appear that consensus is possible. The Commission retains the discretion to dissolve the committee at an earlier time if the Commission determines that the committee's activities are not being carried out in the public interest. In the absence of consensus, the Commission has directed the NRC Staff to develop a proposed rule on an expedited basis.

Comments on the Negotiated Rulemaking

The public comments on the Commission's **Federal Register** Notice announcing its intent to conduct a negotiated rulemaking are summarized below. The comments have been organized into the categories of "feasibility," "participants," "funding," "consensus," "timing," and "procedural issues."

Feasibility

As noted earlier, most commenters were generally supportive of using negotiated rulemaking. However, several commenters were concerned that the Commission is focusing too much attention on meeting the NWPA three year deadline, and thereby may be sacrificing a thorough review of the license application. The Commission does not intend to sacrifice a thorough review of the DOE license application to meet the statutory deadline. The legislative intent, and the Commission's efforts to satisfy that intent, are to accomplish a thorough and effective review of the license application within the statutory time period. The Commission is pursuing various initiatives, such as the development of the LSS, to achieve this objective. The Commission emphasizes that the LSS is intended not only to facilitate the discovery process, but to provide for a comprehensive and effective review of the license application by all parties, and ultimately by the boards.

Other commenters supported the development of the LSS, and also recommended that the LSS be established as soon as possible. The Commission is working expeditiously, with DOE and all affected parties, towards the establishment of the LSS. The intent of the negotiated rulemaking is to provide for the most efficient method of establishing a credible and effective LSS. In this regard, the DOE, in its comments on the negotiated rulemaking, emphasized its commitment to coordinate the LSS design with the negotiated rulemaking and to make any changes that may be required as a result of the negotiated rulemaking.

Another commenter was concerned over the need to ensure the validity of any rule resulting from the negotiated rulemaking even though potential parties to the licensing proceeding had not participated in the negotiated rulemaking. As with any other rulemaking, the Commission will ensure that any rule resulting from the negotiated rulemaking process meets all applicable legal requirements, including the Administrative Procedure Act, 5 U.S.C. 553, requirements for notice and comment rulemaking. The Commission intends to publish any rule based on a consensus of the negotiating committee for notice and comment unless the Commission finds that the proposed rule is inconsistent with its statutory authority or is not appropriately justified. The Commission will also ensure that there is an adequate rationale for any provisions contained in

such a rule. The final rule will be generally applicable to all parties to the HLW licensing proceeding witin the limits of the Commission's jurisidiction, and will apply to any party to the licensing proceeding regardless of whether it participated in the negotiated rulemaking.

The Bureau of Land Management in the Department of Interior questioned the basic authority of an advisory committee to "develop rulemaking under FACA." The negotiated rulemaking mechanism has been used several times by various agencies to develop recommendations on a proprosed rule. The consensus recommendations form the basis for a notice and comment rulemaking proceeding. Any such negotiating committee would constitute a committee established by an agency for the purpose of obtaining advice or recommendations on issues or policies that are within the scope of agency responsibilities, and therefore would be subject to FACA. Thus, the Commission believes it is within the authority of the negotiating committee to provide this type of advice to the Commission.

Participants

One commenter urged the Commission to define "affected states" broadly. As is apparent from the groups invited to participate on the negotiating committee, the Commission has defined "affected states" broadly to include all first round and second round states that may be potentially affected by the siting of a repository. Another commenter requested that second round repository Indian Tribes and those Indian Tribes affected by the transportation of HLW, be represented on the committee. The Commission has invited the National Congress of American Indians to represent these Tribes. Another commenter recommended that the Commission consider participation by local groups. In addition to the Commission's original Federal Register Notice, which invited expressions of interest from local groups and other organizations, the convenor made several inquiries regarding the interest of local governments and local non-governmental groups in participating in the negotiated rulemaking. Based on the response to these inquiries, local government and local non-governmental groups have been invited to participate in the negotiated rulemaking.

An environmental public interest group stated that the negotiating committee must have more than one participant from the public interest sector. Three environmental public interest groups requested participation. In response, the Commission has invited these three groups to participate as a coalition on the negotiating committee.

An industry group suggested that the committee have broader industry participation, e.g., the U.S. Council for Energy Awareness, a trade association, reactor vendors and other suppliers. In response to requests for participation, the Commission has invited the Edison Electric Institute and the Utility Nuclear Waste Management Group to participate in the first tier of the negotiating committee. The U.S. Council for Energy Awareness has also been invited to participate as part of the second tier of participants.

One commenter suggested that the Commission needs to select participants carefully to keep the committee balanced and manageable. The Commission agrees and, based on the convenor's report, has structured participation on the committee to ensure not only broad participation, but also a manageable number of participants.

Several commenters addressed the FACA requirement of balanced membership. One commenter was concerned that it may be impossible to achieve the FACA requirement of balanced membership because of many opposing interests. Another commenter suggested that the balanced membership requirements of FACA would best be achieved by having numerically equal representatives from energy and environmental interests, utilities and ratepayers, federal government and state/local/tribal government. On a related point, one commenter asked how the membership on the committee would be weighted to reflect degrees of interest.

Section 5(b)(2) of FACA requires "the membership of the advisory committee to be fairly balanced in terms of the points of view to be represented and the functions to be performed by the advisory committee." 5 U.S.C. App., The courts have held that the "balanced membership" provision must be interpreted in terms of the function to be performed by the advisory committee. *National Anti-Hunger Coalition* v. *Executive Committee of the Private Sector Survey on Cost Control*, 557 F. Supp 524 (D.D.C. 1983), *aff'd.*, 711 F.2d 1071 (D.C. Cir. 1983). In regard to the LSS, the function of the advisory committee is to reach consensus on the rules governing the use of an information management system in the Commission's HLW proceeding. This directly affects the potential parties to that proceeding, and also those individuals and groups that are not parties to the HLW proceeding but who would traditionally seek access to the document data base as concerned citizens, as well as those groups who may be contributing to the cost of developing such a system. In order to ensure that the design and operation of the LSS, to the extent practicable, accommodates the needs of all those who will have to use it, the Commission extended a broad invitation to those groups. The Commission believes that this is consistent with the FACA requirements for "balanced membership," and that the composition of the committee does reflect equal representation of affected interests.

Furthermore, the groups invited to participate represent a wide spectrum of interests with different viewpoints, not only on the procedural issues of concern in this rulemaking, but also on the substantive repository siting issues. This will inevitably involve some opposing interests. However, the Commission disagrees with the commenter who suggested that the presence of opposing interests would make it "impossible" to achieve balanced membership. In fact, it may be one indication that the committee does have balanced membership. Although no formal appeal of the Commission's choice of participants is being provided, the Commission will accept comments from any group that believes its interests are not already represented on the negotiating committee. The Commission anticipates that additional requests for participation will be evaluated by the negotiating committee itself.

The Nez Perce Indian Tribe emphasized that although the Tribal representative has the full confidence of the Nez Perce, only the Tribal Executive Committee can bind the tribe. The Commission recognizes that the individual representatives of participants on the negotiating committee will need to confirm proposed consensus positions with their organization. The Commission would also take this opportunity to reiterate that it is important to the success of the negotiation for each participant to be represented by a senior individual within the organization. Although the representative will not be required to "bind" the party he or she represents in terms of making an "on the spot" commitment on any issue that may arise at a particular negotiating session, the representative must have sufficient seniority and delegated responsibility to represent authoritatively the views of the organization. In this regard, the Commission has designated William J. Olmstead, Assistant General Counsel for Hearings, as its representative.

Funding

Two commenters suggested that the NRC provide broad funding to interested participants. Another commenter stated that the Nuclear Waste Fund established under section 302 of the NWPA can be used for State participation. The Commission would refer these commenters to the discussion on "Funding", *supra*.

Consensus

One commenter suggested that the Commission consider the difficulty of reaching consensus before embarking on negotiations. Another commenter suggested that the NRC should address the nature of the consensus, including the ability of a participant to seek judicial review. Another commenter suggestged that the NRC commitment to issue the consensus rule should be clear.

The Commission has considered the difficulty of reaching consensus. The Commission's intent in issuing the December 18, 1986 **Federal Register** Notice on negotiated rulemaking and initiating the Conservation Foundation's feasibility report was to evaluate the feasibility of reaching consensus. As noted above, based on the public comments on the **Federal Register** Notice, and the Conservation Foundation's feasibility report, the Commission believes that consensus is possible on at least some matters, and is proceeding with the negotiated rulemaking. As stated in the **Federal Register** Notice announcing the Commission's intent to negotiate, the Commission agrees to issue for public comment any proposed rule resulting from a consensus of the negotiating committee unless the Commission funds that the proposed rule is inconsistent with its statutory authority or is not appropriately justified. Any judicial review would follow a final rulemaking on the LSS in accordance with the traditional procedures for challenging final agency rules.

Timing

A few commenters believed that eight months is too short a time for the committee to reach consensus. Other commenters believed that there should be fewer negotiating committee meetings over a shorter timeframe. Several commenters recommended that the negotiating committee be terminated if no consensus is reached by a certain date, and that the Commission be prepared to terminate the negotiating committee if the participants are using it to delay the licensing process.

The Commission believes that the time allotted for the negotiations is appropriate for the complexity of the rulemaking and the need to establish the LSS as expeditiously as possible. Although the Commission anticipates that all participants will negotiate in good faith, the Commission has stated that it retains the discretion to dissolve the committee at an earlier time if the Commission determines that the committee's activities are not being carried out in the public interest. Furthermore, considering that a time limit has been specified for achieving consensus, and that the Commission intends to proceed with a rulemaking on the LSS if consensus is not achieved, the Commission does not believe that the activities of the negotiating committee could be used to "delay the licensing process."

Procedural Issues

Several comments addressed the process of negotiated rulemaking. For example, one commenter stated that the NRC should follow notice and comment rulemaking procedures. Another comment requested that the Interagency Coordinating Committee (ICC), whose purpose was to provide a primlimary evaluation of LSS issues, be disbanded. Another commenter suggested that subcommittee meetings of the full negotiating committee be open to the public. Another commenter suggested that negotiating committee deliberations should be part of the rulemaking record. Finally, one commenter requested that parties should be able to comment on the choice of facilitator.

The Commission will follow notice and comment procedures on any proposed rule issued as a result of a consensus reached by the negotiating committee. The ICC will be disbanded. The negotiating committee will determine to what extent subcommittees will be used, and whether these meeting will be open or closed. The Commission anticipates however that all formal committee and subcommittee meetings will be open. Consistent with the need to provide an adequate rationale for any rule that is issued, the Commission intends to make the negotiating committee deliberations part of the rulemaking record. As for the choice of facilitator, it was necessary for the Commission to make its selection of the facilitator early in the negotiating rulemaking process, and, therefore, it could not invite comment on this matter.

Comments on LSS Issues

In the **Federal Register** Notice announcing its intent to conduct a negotiated rulemaking, the Commission identified a number of issues appropriate for consideration by the committee. The Commission staff has prepared a background paper that summarizes the existing framework for the disclosure of documents relevant to a Commission licensing proceeding, and provides more detail on the preliminary rulemaking issues. Copies of the background paper will be provided to the groups invited to participate on the negotiating committee and will be available on request from the NRC contact listed at the beginning of this Notice. The Commission anticipates that the negotiating committee will supplement the list of preliminary issues, as appropriate. The public comments on the LSS are summarized below.

Several commenters address the coverage of the LSS. One commenter recommended that the LSS be limited to HLW licensing at this time. Another commenter suggested that the Commission should evaluate the implications for other Commission activities of changing the rules on privileged information, particularly insofar as they relate to drafts and handwritten annotations. Another recommended that the Commission consider whether it is appropriate to have discovery rules for the HLW proceeding different from those for other NRC licensing proceedings.

The Commission has considered the implications of the proposed revisions for other Commission licensing proceedings, and is limiting them to the HLW proceeding at this time because of the novel and complex issues involved, the volume of documents, and the statutory deadline for the Commission's decision. However, if implementation of the LSS for the HLW proceeding is successful, the Commission may explore its feasibility for use in other types of licensing proceedings.

On a related point, one recommended that the negotiating committee follow a rigid set of issues, i.e., it would be undesirable to have a wholesale rewriting of NRC adjudicatory principles. The Commission does not intend to have a "wholesale rewriting" of Commission adjudicatory principles. The preliminary issues indentified by the Commission are confined to the implementation of the LSS in the HLW licensing proceeding, and any related changes that may be necessary to allow for effective operation of the LSS.

One commenter recommended that the Commission should establish an interim system as soon as feasible and that this should be an issue for discussion by the negotiating committee. The Commission recognizes the importance of establishing an interim

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system to ensure the capture of all relevant documents. Both the NRC and DOE are developing procedures for us in the interim period until the LSS is established. The negotiating committee will be kept informed of these efforts and the interim system will also be an appropriate issue for discussion by the negotiating committee. Any interim procedures will be revised to conform to the rule emerging from the negotiated rulemaking process.

One commenter recommended that the LSS should be evaluated to determine whether it is cost-beneficial compared to traditional procedures. Another commenter emphasized the need to consider technology and funding constraints in developing the rules for the LSS. This same commenter recommended that the committee avoid setting specific technical characteristics in order to allow DOE to obtain the best system available for the purpose to be served. Finally, another commenter recommended that the committee limit the consensus to broad guidance on requirements involving the nature and use of the LSS rather than detailed design specifications.

Althought the Commission has not prepared a detailed cost/benefit analysis of the LSS, the Commission believes that the technology exits to implement the LSS at a reasonable cost. Furthermore, the Commission believes that the LSS will be more cost-effective than conducting the HLW licensing proceeding under the traditional hard copy approach. The Commission recognizes that the resolution of certain issues will be dependent on the cost and availability of the technology. These constraints will need to be considered by the negotiating committee. The Commission staff and other participants, as well as the technical and legal advisor to the facilitator, will assist the committee in determining the costs and benefits of various options. Although it may not be necessary or advisable to set detailed design specifications, the Commission believes that the resolution of some LSS issues will neeed to be explicit and detailed. The negotiating committee will have the responsibility for determining the extent of detail necessary. To assist the negotiating committee in its deliberations on the level of detail needed, the Commission staff will prepare a sample regulatory text to illustrate the options available.

Several comments were submitted on the relationship of traditional discovery techniques to the LSS. A few commenters recommended that traditional discovery techniques be used in addition to the LSS and suggested that the LSS should enhance, not detract from a party's traditional rights of discovery. Another commenter believed that DOE will not provide all of the necessary information and therefore, asserted that discovery should not be eliminated. Still another commenter was concerned about whether the LSS would be the sole information base for discovery purposes. Another commenter recommended that the LSS at least provide for discovery by interrogatories and depositions. In contrast, one commenter recommended that the Commission eliminate all aspects of the traditional discovery process.

The extent of discovery under the LSS is an issue for the negotiating committee. However, the Commission would emphasize that the goal of this rulemaking is to develop an information management system that would contain all of the data supporting the DCE license application, as well as all of the potentially relevant documents generated by the NRC and other parties to the licensing proceeding, in a standardized electronic format. All parties would then have access to this system. Because all relevant information would be readily available through access to the system, the initial time-consuming interrogatory discovery process involving physical production and on-site review of documents by parties to a NRC licensing proceeding would not be necessary.

One commenter suggested that all parties use uniform procedures for assuring the accuracy of the information submitted and that all relevant documents have been entered. On a related point, another commenter recommended that there be strong sanctions to ensure that all data is entered. Another commenter was concerned over the accuracy of information submitted and how to keep spurious documents out. One of the issues for negotiating committee consideration is what sanctions and procedures should be used to ensure the capture of all relevant documents. Another issue for committee consideration will be potential techniques for eliminating duplicative material and for minimizing the problem of "document dumping."

One commenter did not believe that privileged documents should be placed in the LSS. Another commenter recommended that there should be very little privileged information. Both the NRC Rules of Practice and the Federal Rules of Civil Procedure allow parties to claim certain privileges from discovery. The application of these privileges to the LSS, and the administration of privileged material, will be issues for discussion by the negotiating committee.

Other commenters were concerned over what type of administrative framework would be appropriate to control LSS input and output. Several commenters did not believe that DOE should develop or administer the LSS. One commenter suggested that NRC should administer the system. The Commission recognizes the importance of this issue and has identified it as an issue for consideration by the negotiating committee.

Finally, several comments addressed the issue of access to the LSS. One commenter recommended that the Commission establish procedures to allow latecomers sufficient access to the data base. Another commenter was concerned about cost of access to the LSS for local governments, environmental groups, and concerned citizens. Another commenter recommended that access should be provided at no charge. The Commission's intent is that all parties to the HLW licensing proceeding will have access to the data base, as well as an obligation to place documents in the system. The Commission supports the principle of providing low cost and easy access to the LSS. These issues will be subject for discussion by the negotiating committee.

Dated at Washington, DC, this 31st day of July, 1987.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 87-17797 Filed 8-4-87; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 522

[No. 87-821]

Issuance and Form of Stock in Federal Home Loan Banks

Date: July 29, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") is proposing to amend its Federal Home Loan Bank System Regulations ("Regulations") to authorize the capital stock of a Federal Home Loan Bank ("Bank") to be put in uncertificated or book entry form. Currently, the Regulations provide for Bank stock to be issued in certificated form only, but on the basis of an earlier

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legal opinion by the Board's Office of General Counsel some Banks are now using uncertificated stock. The amendment would clarify a Bank's authority both to issue uncertificated stock and to convert certificated stock to book entry form. Any member, however, would be entitled to stock in certificated form upon written request.

DATE: Comments must be received on or before October 5, 1987.

ADDRESS: Send comments to Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

FOR FURTHER INFORMATION CONTACT: William J. Carey, Director, Bank Liaison Division, Office of the District Banks, at (202) 377–6656; or Richard L. Little, Associate General Counsel, Corporate and Securities Division, Office of General Counsel, at (202) 377–6447, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: Under section 6(c) of the Federal Home Loan Bank Act ("Act"), every institution that becomes a Bank member must make an "original stock subscription . . . [in] an amount equal to 1 per centum of the subscriber's aggregate unpaid loan principal, but not less than $500." 12 U.S.C. 1426 (c) (1982 and Supp. I 1983). Thereafter, the amount of Bank stock that the member is required to hold is adjusted annually by the Bank in accordance with the original subscription formula. *Id.*

While the Act establishes the minimum amount of a member's Bank stockholdings, it does not explicitly prescribe the manner in which existence of such interests may be evidenced. Under modern corporate practice, securities can be either certificated—*i.e.*, represented by a physical instrument—or uncertificated—*i.e.*, evidenced by an entry on the books of the issuer. *See* U.C.C. 8–102 (a) and (b) (1979). Despite the widespread acceptance of uncertificated securities by corporations generally, the Banks for a number of years have been directed by § 522.10 of the Regulations to issue a "certificate" to each new member in the amount of its initial stock subscription. 12 CFR 522.10 (1986). The regulatory language had generally been construed to mean that Banks could fill initial stock subscriptions and make subsequent annual stockholding adjustments solely through the use of certificated shares.

In 1979, a legal opinion of the Board's Office of General Counsel reviewed the statutory authority underlying § 522.10 and concluded that nothing in the Act prohibited issuance of uncertificated Bank stock. On the basis of this ruling at least two Banks began using uncertificated stock. Due to an oversight, however, the text of § 522.10 was never changed to incorporate the revised legal position.

Recently, in reviewing a request by a Bank to formalize its use of uncertificated stock through adoption of a bylaw amendment, the Board's staff became aware of the absence of an express regulatory authorization. After being informed about the shortcomings of the regulatory langauge and the prior uneventful experiences of the Banks with uncertificated stock, the Board is proposing to amend § 522.10 of the Regulations explicitly to provide for issuance of uncertificated stock and conversion of outstanding stock to book entry form, both at the discretion of the issuing Bank. In the Board's view, the proposal would not present any material administrative drawbacks and could significantly enhance a Bank's ability to deal with a routine aspect of its operations in a cost-effective manner. Since the proposal would ensure that any member could retain certificated stock upon written request, the Board expects that any disruption of the internal affairs of individual institutions upon final adoption would be minimal.

Initial Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Board is providing the following initial regulatory flexibility analysis:

1. *Reasons, objectives, and legal bases underlying the proposed rules.* These elements have been discussed elsewhere in the **SUPPLEMENTARY INFORMATION** regarding the proposal.

2. *Small entities to which the proposed rule would apply.* The Small Business Administration defines a small financial institution as "a commercial bank or savings and loan association, the assets of which, for the preceding fiscal year, do not exceed $100 million." 13 CFR 121.13(a). Therefore, small entities to which the proposed rule would apply would be the 1,651 insured members of the Bank System with assets totaling $100 million or less as of December 31, 1986.

3. *Impact of the proposed rule on small entities.* The rule would impose no new recordkeeping or reporting requirements on any insured institution. The Board believes that the proposed rule would not have a significant economic impact on small institutions.

4. *Overlapping or conflicting federal rules.* Other than the current rule relating to issuance of certificated stock, which would be amended by the proposal, the Board has no rules prescribing the manner in which the existence of Bank stock may be evidenced.

5. *Alternatives to the proposed rule.* There are no feasible alternatives that would achieve the Board's principal goal of correcting a flaw in existing regulatory procedures.

The Board is providing a 60-day comment period for this rule. Comment is invited on all aspects of the proposal, including the appropriateness and effect of the proposed changes, and any additional or alternative measures that would serve the goals of the Board as outlined in the proposal.

List of Subjects in 12 CFR Part 522

Federal home loan banks, Conflict of interests.

Accordingly, the Federal Home Loan Bank Board hereby proposes to amend Part 522, Subchapter B, Chapter v, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

PART 522—ORGANIZATION OF THE BANKS

1. The authority citation for Part 522 continues to read as follows:

Authority: Sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); secs. 6–7, 47 Stat. 727, 730, as amended (12 U.S.C. 1426–1427); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1464); secs. 402–403, 407, 48 Stat. 1256–1257, 1260, as amended (12 U.S.C. 1725–1726, 1730); sec. 207, 62 Stat. 692, as added by sec. 1a, 76 Stat. 1123, as amended (18 U.S.C. 207); sec. 602, 92 Stat. 2115, as amended (42 U.S.C. 8101 *et seq.*); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071; Reorg. Plan No. 6 of 1961, *reprinted in* 12 U.S.C.A. 1437 App. (West Supp. 1986).

2. Section 522.10 is amended by revising the heading and the text of the section to read as follows:

§ 522.10 Issuance and form of stock.

A Bank shall issue to each new member, as of the effective date of membership, stock in the member's name for the amount of its stock subscription but the Bank shall not transfer stock so issued until it has received full payment therefor. Stock may be issued in certificated or uncertificated form at the discretion of the Bank, but a member shall be issued certificated stock upon written request. A Bank may convert all outstanding certificated stock to uncertificated form, but a member may retain certificated stock upon written request. If a member with stock in certificated form changes

its name, a new certificate shall be issued.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87-17701 Filed 8-4-87; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-53-AD]

Airworthiness Directives; Short Brothers PLC Model SD3-30 and SD3-60 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive (AD), applicable to certain Short Brothers PLC Model SD3-30 and SD3-60 series airplanes, that would require further insulation of certain electrical contactor bodies. This proposal is prompted by reports of in-service failure of the insulation of the bodies of the contactors, which, if not corrected, could lead to grounding of the contactors and possible electrical fires.

DATES: Comments must be received no later than September 28, 1987.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-53-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Short Brothers PLC, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3702. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-53-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition that may exist on Short Brothers PLC Models SD3-30 and SD3-60 airplanes. There have been reports of in-service failures of the insulation of the bodies of certain ECE electrical contactors. Such failures of the insulation, if not corrected, could lead to grounding of the contactors, and possible electrical fires.

Short Brothers has issued Service Bulletins SD330-24-21, Revision 1, dated October 1986, and SD360-24-06, dated August 1986, which describe procedures to further insulate the ECE contactors by installing shrink-on sleeving on bodies of the contactors. The CAA has classified the service bulletins as mandatory.

These airplane models are manufactured in the United Kingdom and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on airplanes of these models registered in the United States, an AD is proposed that would require modification of the electrical contactors in accordance with the previously mentioned service bulletins.

It is estimated that 124 airplanes of U.S. registry would be affected by this AD, that it would take approximately 14 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $69,440.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($560). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Short Brothers PLC: Applies to Short Brothers PLC Model SD3-30 series airplanes, serial numbers SH3002 through SH3107, SH3109 through SH3121, and SH3123 through SH3125 inclusive; and Model SD3-60 series airplanes, serial numbers SH3601 through SH3695 inclusive; certificated in any category. Compliance required within the next 180 days after the effective date of this AD, unless previously accomplished.

To prevent fire caused by grounding of certain electrical contactors, accomplish the following:

A. For Model SD3-30 series airplanes modify the ECE electrical contactors on panels 1C and 2C in accordance with the

Accomplishment Instructions of Shorts Service Bulletin SD330-24-21, Revision 1, dated October 1986.

B. For Model SD3-60 series airplanes, modify the ECE electrical contactors on panels 1C and 2C in accordance with the Accomplishment Instructions of Short Service Bulletin SD360-24-08, dated August 1986.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Short Brothers PLC, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3702. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on July 28, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-17902 Filed 8-4-87; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 239

[Release No. 33-6758; File No. S7-28-87]

Employee Benefit Plans and Compensation Contracts

AGENCY: Securities and Exchange Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is reproposing for comment a new Rule 701, new temporary Rules 702 and 703, and the new Form 701 which would, if adopted, provide an exemption from the registration requirements of the Securities Act of 1933 (the "Securities Act") for offers and sales of securities pursuant to certain employee benefit plans or written contracts with employees relating to compensation.

DATE: Comments must be received on or before September 15, 1987.

ADDRESSES: All communications on this matter should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments should refer to File No. S7-28-87 and will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Richard K. Wulff or John D. Reynolds, (202) 272-2644, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: On January 16, 1987, the Commission published for comment [1] a proposed new rule, designated Rule 701, to be promulgated pursuant to the exemptive authority provided by section 3(b) of the Securities Act, [2] which would exempt from the registration requirements of such Act offers and sales of securities made in accordance with the terms of compensatory employee benefit plans or compensation agreements by issuers that are not subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934 (the "Securities Exchange Act") [3] ("non-reporting companies of issuers"). The notice of proposed rulemaking also published for comment a proposed temporary Rule 702 which conditioned the availability of the exemptive rule upon the filing of a brief notification Form 701 with the Commission.

Certain revisions to the initial proposals have been made. Because of the substantive nature of these revisions, the Commission has decided to republish revised proposals for public comment. [4] This release focuses principally on the revisions to the initial proposal.

I. The Revised Proposals

The essential concern addressed by this series of proposals remains the same—many privately-held companies have found the costs of complying with the registration requirements of the Securities Act and the subsequent reporting obligations under section 15(d) of the Exchange Act so burdensome that employee incentive arrangements are not being provided by them. As a consequence, employees must forego potentially valuable means of compensation. The Commission historically has recognized that when transactions of this nature are primarily compensatory and incentive oriented, some accommodation should be made under the Securities Act.

A. Preliminary Notes

Four preliminary notes continue to preface proposed Rule 701. These notes are the same as those initially proposed. The first note indicates that the antifraud provisions of the federal securities laws may require that certain disclosure be provided to employees purchasing securities even though Rule 701 does not, and that exemption in the rule only pertains to the registration requirements of the Securities Act. The second note acknowledges the applicability of state law to securities transactions including the ones governed by Rule 701 and reminds issuers to consider the provisions of such laws. The third note states that reliance on the rule does not constitute an election; any other available exemption may also be relied upon. The fourth note indicates that the Rule 701 exemption is only available to the issuer of the securities offered and sold and not to affiliates or other persons for resale.

Commenters on the initial proposal recommended that additional preliminary notes be added to indicate the limited scope of the rule which only encompasses compensatory transactions, and to explain the application of Rule 701 with regard to foreign offerings. In view of changes made to the proposals, it does not appear that ny additional explanatory notes are needed.

B. Proposed Rule 701

The exemption to be provided by proposed Rule 701(a) would permit offers of securities by a non-reporting company pursuant to the terms of compensatory employee arrangements (either by virtue of an employee benefit plan or a written contract relating to compensation) between that issuer and its employees, directors, general partners, trustees (if the issuer is a business trust) and officers, or the employees, directors, general partners, trustees and officers of the issuer's parents or majority-owned subsidiaries. As originally proposed the rule would have provided an aggregate lifetime

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[1] Release No. 33-6663 (January 16, 1987) [52 FR 3015]. That release also proposed certain revisions to the Commission's Regulation D [17 CFR 230.501-508]. Those revisions will be the subject of a separate release in the future.

[2] 15 U.S.C. 77a *et seq.*

[3] 15 U.S.C. 78a *et seq.* Issuers submitting home country reports pursuant to Rule 12g3-2 [17 CFR 240:12g3-2] would be eligible.

[4] The Commission received 28 comment letters regarding the initial proposed Rules 701, 702 and Form 701. The comment letters and a summary of comments (File No. S7-28-87) are available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

exemption of $5 million for offers and sales, with sales being limited to $1 million in any 12-month period. The new proposal eliminates these provisions.

The Commission believes that the lifetime limitation unduly restricted the utility of the rule, particularly for larger non-public companies that may have a large number of employees. To accommodate the needs of these larger issuers, while assuring that the exemption does not provide a threshold that small issuers could use to raise substantial capital from employees, the revised rule defines the annual sales exemption as the lesser of $5 million or 15% of the issuer's total assets measured at the end of its last fiscal year. The revised rule would continue to permit offers of $5 million to be outstanding whatever the size of the issuer.

The Commission solicits comment on the appropriateness of the asset test and request comments on whether the 15% ceiling sould be higher or lower, as well as whether the test should be defined in terms of stockholders' equity or some other capital account.

The Commission is proposing no change in the provisions that make the exemption available to transactions within the description of the rule commenced prior to its adoption, as long as ultimate sales occur after the effective date of Rule 701. Similarly, offers made by a company before it becomes subject to the reporting requirements of the Exchange Act may be consummated afterwards in reliance upon the rule. Companies registered or required to be registered under the Investment Company Act of 1940 [5] would not be eligible to use Rule 701.

The revised rule would permit sales up to $5 million (regardless of total assets) in any fiscal year in which the issuer had an effective registration statement or the public announcement of an agreement in principle to effect a business combination. Thus, if a business combination was announced in the first month of the fiscal year, the issuer would have 11 months to sell up to the $5 million limit. On the other hand, if the announcement was made in the elevent month, there would be only one month in which to sell up to the newly-created $5 million ceiling. The revised rule specifically provides that if the agreement in principle is terminated in the same fiscal year as it is announced, the Rule 701 ceiling for sales reverts to 15% of total assets, although sales already made in reliance upon the increased ceiling would be deemed to be in compliance with the rule. In the previous proposal, the issuer would have had 90 days after certain specified events to sell up to the $5 million ceiling. Since under the revised proposal the measuring period is a fiscal year rather than a 12-month period, the 90-day provision could result in the ceiling limit being $5 million for each of two fiscal years and, therefore has been deleted. Comments are specifically requested, however, on whether the 90-day provision should be included. Comments on other ways to handle year-end announcements are also requested.

A number of commenters on the initial proposal noted that frequently, especially with stock option plans, exercises are accelerated because of the death or disability of an employee. The proposed rule provides that sales to a disabled participant, or to the beneficiaries or estate of a participant, as a result of termination of employment because of disability or death of such participant, will not reduce the available ceiling for sales by an issuer whose ceiling would be less than $5 million. In no event, however, may sales in any fiscal year exceed $5 million.

The aggregation principles applicable to Rule 701 have been revised. The revised rule no longer requires a reduction in offers or sales as a result of offers or sales made in violation of Section 5. Given the compensatory nature of the transactions under Rule 701, it does not appear necessary to reduce the potential benefits available to employees because of an issuer's prior unrelated violations of the statute.

The revised rule defines the manner of calculating the aggregate offering price and specifically indicates that services rendered or to be rendered by an employee or other eligible participant are not a part of the calculation.

The definitions of the appropriate compensatory arrangements within the ambit of Rule 701 have been modified from those originally proposed. The rule incorporates the simpler definition provided in Rule 405,[6] instead of the one contained in Rule 16b–3.[7] As a result, Rule 701 does not dictate any formal requirements for the employee benefit plan, except that it be in writing. The revision also makes clear that interests which constitute separate securities in such plans [8] are also to be exempted. Securities issued pursuant to employment compensation agreements would come within the Rule 701 exemption, as originally proposed.

With regard to eligible participants, the rule provides that the compensatory arrangements specified must be between the issuer and its (or its parents' or its majority-owned subsidiaries') employees, directors, general partners, trustees (if a business trust) or officers. Unlike the initial proposal, eligible participants would include employees of any majority-owned subsidiary of the issuer, rather than wholly-owned subsidiaries.

No special accommodation is made under the proposed rule for consultants and independent agents. While a number of comments were offered in support of the proposal to include these persons within the scope of the rule, the Commission believes such a change could lead to an exemption broader than the compensatory employee benefit purpose intended. In defining employee benefit plans both for registration purposes and for exemption from section 16(b) of the Exchange Act [9] the Commission traditionally has limited the transactions to those involving employees. There does not appear to be a compelling reason to distinguish proposed Rule 701.[10] It is likely that other exemptions will be available for sales to consultants, i.e., one of the exemptions under Regulation D or the private offering exemption provided by section 4(2) of the Securities Act.[11] Nonetheless, comments are requested as to whether consultants should be included perhaps on a selective basis, such as limiting their participation to some percentage of the dollar amount of securities being offered each year pursuant to employment compensation arrangements, or limiting the number of consultants that might participate each year.

C. Proposed Temporary Rules 702 and 703

Proposed temporary Rule 702 requires the filing of Form 701, a brief notification form, with the Commission no later than 30 days following the first sale of the issuer's securities that brings aggregate

[5] 15 U.S.C. 80a–1 *et seq.*

[6] 17 CFR 230.405.

[7] 17 CFR 240.16b–3.

[8] *See* Release Nos. 33–6281 (January 15, 1981) [46 FR 8446], 33–6758 (February 1, 1980) [45 FR 8960].

[9] 17 CFR 240.16b–3.

[10] Registration exemptions for benefit plans at the state level generally are limited to employees and do not extend to consultants. *See* Uniform Securities Act, section 401(b)(11). It is understood that on a case-by-case basis, some state regulators may permit the exemption to be available where a few consultants are participating in a particular benefit plan.

[11] The Division of Corporation Finance has taken the position in interpretive letters that offerings under employee plans need not be integrated with other offers by an issuer for which a valid exemption is available. *E.g., Tallgrass Technologies Corporation* (March 20, 1986), *Pacific Physicion Services, Inc.* (July 22, 1985).

sales in reliance upon Rule 701 over $50,000. Thereafter, the form should be annually amended within 30 days following the close of the issuer's fiscal year. These features are the same as originally proposed. Failure to file within the periods stated would constitute a violation of Rule 702. Unlike the earlier proposal, however, revised Rule 702 does not establish the filings of Form 701 as a condition to the Rule 701 exemption.

The public comments were strongly opposed to conditioning the exemption on the filing of Form 701. A number of alternatives were suggested in lieu thereof in order to satisfy the Commission's need to monitor the usefulness of the exemption as well as to oversee possible misuse of the provision. Certain of these alternatives, such as a fine for late filing, were not within the Commission's authority. Other suggestions, such as to eliminate the filing of the form as a condition to the exemption and obtain the information when the company becomes public, were not responsive to the Commission's concern with monitoring the utility of the exemption and with oversight of the transactions to determine whether the exemption is being used for capital-raising rather than incentive purposes.

To provide a disincentive for noncompliance with the filing requirements of Form 702, the Commission is proposing new temporary Rule 703, which would disqualify an issuer from use of Rule 701 if it has been found to have violated Rule 702. The proposed Rule 703 is patterned on Rule 252.[12] As with Rule 252, the Commission will have the authority to waive such disqualification upon a showing of good cause by the issuer that the Rule 701 exemption should not be denied.

Given the substantial increase in the dollar amount available for exempted transactions, by virtue of the use of a 12-month definition of the scope of the issue, and the elimination of the filing condition to the exemption, the temporary period for Rule 702, and Rule 703 as well, has been extended from three to five years. At the end of five years, Form 701 would cease to be a required filing and the disqualification provision would lapse, unless the Commission takes further action to establish such provisions on a permanent basis or extends their lives as temporary requirements.

Several commenters suggested that Rule 702 provide that Form 701 would be deemed filed with the Commission on the date received by the Commission or on the mailing date, if mailed by registered or certified mail. Recognizing a filing date other than the date the form is actually received places a substantial burden on the Commission's mail processing and filing units. This burden does not appear to be justified if the filing of the Form is no longer a condition to the exemption.

[12] 17 CFR 230. 252.

D. Proposed Form 701

Form 701 as proposed, continues as a brief notification provision which identifies the issuer, the types of the plans and/or contracts pursuant to which securities are being offered and sold in reliance upon the Rule 701 exemption, and the amount of securities offered and the amount sold. The form also requests information about the issuer's total assets at the end of its last fiscal year and the various events which allow additional sales to be consummated in any particular fiscal year.

II. Summary of Initial Regulatory Flexibility Analysis

An initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding Rules 701, 702, 703 and Form 701 has been prepared. The analysis notes that the proposals are a result of public inquiry as well as the Commission's own experience. Except for Rule 702, the proposals impose no new reporting, recordkeeping or other compliance requirements and in fact may eliminate the need to provide certain information. Members of the public who wish to obtain a copy of the Initial Regulatory Flexibility Analysis should contact Eloise A. Green in the Office of Small Business Policy, Division of Corporation Finance, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

III. Cost-Benefit Analysis

No specific data was provided on the Commission's original request for costs and benefits of the proposals. While many of the commenters suggested that significant cost savings could result from the proposals with concomitant benefits to employees who are not presently being offered plans for their employer's securities because of the registration requirements of the Securities Act, more specific data would be helpful. The Commission believes the exemption will not have a negative impact upon the protection of these investors.

IV. Statutory Basis and Text of the Proposed Rules

The new rules and Form are being proposed pursuant to sections 3(b) and 19(a) of the Securities Act.

List of Subjects in 17 CFR Parts 230 and 239

Reporting and recordkeeping requirements, Securities.

Text of Proposals

Accordingly, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 continues to read, in part, as follows:

Authority: Sections 230.100 to 230.174 issued under Sec. 19, 48 Stat. 85 as amended; 15 U.S.C. 77s, * * *

2. By adding a new § 230.701 to read as follows:

§ 230.701 Exemption for offers and sales of securities pursuant to certain compensatory employee benefit plans and contracts relating to compensation.

Preliminary Notes

(1) Nothing in this rule is intended to be or should be construed as in any way relieving issuers or persons acting on behalf of issuers from providing disclosure to employees or other persons within the scope of the rule adequate to satisfy the antifraud provisions of the federal securities laws. The rule only provides an exemption from the registration requirements of the Securities Act of 1933 (the "Act") [15 U.S.C. 77a et seq.].

(2) Nothing in the rule obviates the need to comply with any applicable state law relating to the offer and sale of securities.

(3) Attempted compliance with the rule does not act as an exclusive election; the issuer can also claim the availability of any other applicable exemption.

(4) The rule is only available to the issuer of the securities and not to any affiliate of the issuer or to any other person for reselling the securities. The rule provides an exemption only for the transactions in which the securities are offered or sold by the issuer, not for the securities themselves.

(a) *Exemption.* Offers and sales of securities that satisfy the conditions of paragraph (b) of this § 230.701 by an issuer that is not subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. 78a et seq.] and is not an investment company registered or required to be registered under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.] shall be exempt from the provisions of section 5 of the Act by virtue of section 3(b) of the

Act. Offers made prior to the adoption of this § 230.701 if in accordance with this section had it been in effect, or offers made pursuant to this § 230.701 prior to the issuer becoming subject to the reporting requirements of section 13 or 15(d) of the Exchange Act are within the purview of this rule and sales in relation to such offers may be consummated thereafter in reliance upon this provision.

(b) *Conditions to be met.* (1) An exemption under this § 230.701 applies only to offers and sales of (i) an issuer's securities pursuant to a written employee benefit plan established by that issuer for the participation of its employees, directors, general partners, trustees (where the issuer is a business trust) or officers, or the employees, directors, general partners, trustees or officers of its parents or majority-owned subsidiaries, and interests in such employee benefit plans, or (ii) an issuer's securities pursuant to a written contract relating to compensation involving such persons.

(2) For purposes of §§ 230.701 and 230.702, an employee benefit plan means any purchase, savings, option, bonus, stock appreciation, profit sharing, thrift, incentive, pension or similar plan.

(3) The aggregate offering price for the securities being offered hereunder shall not exceed $5,000,000 in any one of the issuer's fiscal years, reduced by sales made pursuant to this § 230.701 during that fiscal year. No adjustment to the aggregate offering price in this section shall be made for other offerings made in reliance upon other rules or regulations adopted pursuant to section 3(b) of the Act. The aggregate offering price under other rules and regulations adopted pursuant to section 3(b) shall not be reduced by offerings made under this § 230.701. Aggregate offering price means the sum of all cash, property, notes, cancellation of debt or other consideration to be received by the issuer for the issuance of the securities. Generally, the services rendered or to be rendered by the employee would not be a part of the consideration for purposes of this provision. Non-cash consideration should be valued in reference to bona fide sales of that consideration made within a reasonable time, or, in the absence of sales, on the fair value as determined by an accepted standard.

(4) Sales of securities under this § 230.701 in each of an issuer's fiscal years shall not exceed the lesser of 15 per centum of the issuer's total assets measured at the end of its last fiscal year, or $5,000,000; *Provided, however:*

(i) The limitation on sales shall be $5,000,000 for any issuer in any fiscal year in which either of the following events occur:

(A) The effectiveness of a registration statement under the Act; or

(B) The public announcement of an agreement in principle to effect a business combination involving the issuer, provided that, if the agreement is terminated at any time during the fiscal year in which it is announced, the limitation on sales would thereafter be as provided in § 230.701(b)(4) except that sales made in excess of that limit before the termination of the agreement would be considered to have been made in compliance with this § 230.701.

(ii) Sales made to a participant or to the beneficiaries or estate of a participant upon termination of employment as a result of disability or death of such participant shall not reduce the level of permitted sales pursuant to this subsection in a fiscal year, provided that, in no event shall sales exceed $5,000,000 in any fiscal year.

(c) *Resale limitations.* (1) Securities acquired in a transaction pursuant to this § 230.701 shall have the status of securities acquired in a transaction under section 4(2) of the Act.

(2) Resales of such securities must be in compliance with the registration requirements of the Act or an exemption therefrom.

(3) In the event that the issuer becomes subject to the reporting requirements of section 13 or 15(d) of the Exchange Act, the status as securities acquired in a transaction under section 4(2) of the Act shall lapse 90 days after the issuer becomes subject to such reporting requirements.

3. By adding a new temporary § 230.702(T) to read as follows:

§ 230.702(T) Notice of sales pursuant to an exemption under § 230.701.

(a) The issuer shall file with the Commission five copies of a notice on Form 701 [17 CFR 239.701] not later than 30 days after the first sale of securities which brings the aggregated sales pursuant to employee benefit plans and/or contracts relating to compensation exempt from the registration requirements of the Act by § 230.701 above $50,000 and thereafter annually within 30 days following the end of the issuer's fiscal year.

(b) One copy of every notice on Form 701 shall be manually signed by a person duly authorized by the issuer.

(c) New filings and annual amendments must contain all the information requested on Form 701. Corrected filings need only report the name of the issuer and plan and the information being corrected. A separate filing is not required for each plan or contract relating to compensation.

(d) A notice on Form 701 is considered filed with the Commission under paragraph (a) of this § 230.702 on the date of its receipt at the Commission's principal offices in Washington, DC.

(e) This section shall be effective until [5 years from the effective date of the final rule].

4. By adding a new temporary § 230.703(T) to read as follows:

§ 230.703(T) Disqualifying provision relating to an exemption under § 230.701.

(a) No exemption under § 230.701 shall be available for an issuer if such issuer, any of its predecessors or affiliates have been subject to any order, judgment, or decree of any court of competent jurisdiction temporarily, preliminarily or permanently enjoining such person for failure to comply with § 230.702.

(b) Paragraph (a) of this section shall not apply if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption be denied.

(c) This section shall be effective until [5 years from the effective date of the final rule].

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

5. The authority citation for Part 239 continues to read, in part, as follows:

Authority: The Securities Act of 1933, 15 U.S.C. 77a *et seq.*

6. By adding § 239.701 (Form 701) to read as follows:

§ 239.701 Form 701, report of sales of securities pursuant to a compensatory employee benefit plan or contract relating to compensation.

This form shall be used for the report of sales of securities pursuant to a compensatory employee benefit plan or contract relating to compensation under Rule 701 (§ 230.701 of this chapter).

By the Commission.

Jonathan G. Katz,

Secretary.

July 30, 1987.

[Editorial Note: Form 701 does not appear in the Code of Federal Regulations.]

BILLING CODE 8010-01-M

FORM 701

OMB APPROVAL
OMB NUMBER: 3235-0347
Expires: March 31, 1990

U.S. Securities and Exchange Commission
Washington, D.C. 20549

REPORT OF SALES OF SECURITIES PURSUANT TO A
COMPENSATORY EMPLOYEE BENEFIT PLAN OR CONTRACT RELATING TO COMPENSATION

(INSTRUCTIONS ON REVERSE)

1. Name of Issuer:

2. Address of Principal Executive Offices: (Number, Street, City, State, Zip Code) | 3. Telephone No. (Incl. Area Code):

4. Type of Business Organization:

a.[ ] Corporation b.[ ] Limited Partnership c.[ ] Business Trust d.[ ] Other (Please specify): _____

5. Type of Filing:

a.[ ] New Filing b.[ ] Annual Amendment c.[ ] Corrected Filing

6. Full Title of the Plan: 7. Description of Contract(s):

8. Type of Plan: (Check all applicable plans)

a.[ ] Profit Sharing b.[ ] Stock Appreciation c.[ ] Retirement d.[ ] Option e.[ ] Thrift

f.[ ] Incentive Or g.[ ] Savings h.[ ] Bonus i.[ ] Other (Please Specify): _____

9.[ ] Employment Contract

10. Issuer's Total Assets last fiscal year:

11. Dollar Amount and Number of Securities Sold to Date:	Dollar Amount	Number of Securities
a. Plans - $	_____	_____
b. Contracts - $	_____	_____

12. Dollar Amount and Number of Securities Sold this fiscal year:	Dollar Amount	Number of Securities
a. Plans - $	_____	_____
b. Contracts - $	_____	_____

13. What is the aggregate offering price for all securities offered pursuant to Rule 701 during this fiscal year?

	Dollar Amount
a. Plans - $	_____
b. Contracts - $	_____

14. Have any of the following events occurred during this fiscal year?

a.[ ] Business Combination Announcement: Date: _____

b.[ ] Registration of Securities Under the Securities Act of 1933: Date: _____

c.[ ] Sales by virtue of Participant Deaths and/or Disability: $: _____

The Issuer has duly caused this Notice to be signed by the undersigned duly authorized person.

Issuer (Print or Type):	Signature:	Date:
Name of Signer (Print or Type):	Title of Signer (Print or Type):	

ATTENTION

Intentional misstatements or omissions of fact constitute federal criminal violations. (See 18 U.S.C. 1001.)

BILLING CODE 8010-01-C

Instructions

All responses should be typed or printed

Who Must File: All issuers making an offering of securities pursuant to an employee benefit plan or contract relating to compensation in reliance upon the exemption provided by Rule 701, 17 CFR 230.701.

When To File: A notice must be filed no later than 30 days after the first sale of securities pursuant to employee benefit plans or contracts relating to compensation which cause aggregate sales to exceed $50,000, and thereafter annually within 30 days after the issuer's fiscal year end. A notice is deemed filed with the U.S. Securities and Exchange Commission on the date it is received by the Commission at the address below.

Where To File: U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549

Copies Required: Five (5) copies of this notice must be filed with the Commission, one of which must be manually signed. Any copies not manually signed must be photocopies of the manually signed copy or bear printed signatures.

Information Required: New filings and annual amendments must contain all information requested. Corrected filings need only report the name of the issuer and plan and the informaton being corrected. A separate filing is not required for each plan or contact relating to compensation.

WHOLE DOLLAR AMOUNTS ARE REQUESTED; CENTS SHOULD BE ROUNDED TO THE NEAREST DOLLAR AMOUNT.

Filing Fee: There is no filing fee.

[FR Doc. 87-17776 Filed 8-4-87; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Part 115

[Docket No. N-87-1711; FR-2378]

Recognition of Substantially Equivalent Laws

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Request for comments on recognition of substantially equivalent laws.

SUMMARY: Title 24, Part 115 of the Code of Federal Regulations describes the procedure for recognition of State and local fair housing laws that provide rights and remedies, for alleged discriminatory housing practices, that are substantially equivalent to those provided by the Federal Fair Housing Act (Title VIII of the Civil Rights Act of 1968) ("the Act"). This notice advises that determinations have been made that the fair housing laws of the named localities, on their face, are substantially equivalent to the Act. The notice seeks public comment on these determinations and on present or past performance of the agency administering and enforcing each of these local laws. The Department will consider all comments submitted in making its determination as to whether each local law provides rights and remedies which are substantially equivalent to the Act.

DATE: Comments due: September 4, 1987.

ADDRESS: Interested persons are invited to submit comments to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Kenneth Holbert, Acting Director, Office of Fair Housing Enforcement and Section 3 Compliance, Room 5208, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 755-6836 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: On August 9, 1984 (49 FR 32042), the Department published a final rule that revised 24 CFR Part 115 to enable the Department to add or withdraw recognition of substantially equivalent laws through publication of a rule-related notice in the **Federal Register.** The purpose of this Notice is to advise the public, in accordance with 24 CFR 115.6(b), that the laws of the following jurisdictions have, on their face, been determined to be substantially equivalent. The jurisdictions are: (1) Gainesville, Florida; (2) Fort Dodge, Iowa; (3) Webster County, Iowa; and (4) Albany, New York.

The evaluation of the laws of these jurisdictions has been conducted in accordance with 24 CFR 115.3. Under section 115.3(c), analysis of the adequacy of a State or local fair housing law "on its face" is intended to focus on the meaning and intent of the text of the law as distinguished from the effectiveness of its administration. Accordingly, the analysis is not limited to the literal text of the law, but must take into account necessary relevant matters of State or local law, or interpretations of the fair housing law by competent authorities.

Section 115.2 provides for two separate inquiries: (a) Whether the State or local law, on its face, provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in the Act, and (b) whether the current practices and past performance of the appropriate State or local agency charged with administration and enforcement of such law demonstrates that in operation, the State or local law in fact provides rights and remedies which are substantially equivalent to those provided in the Act.

Today's notice invites interested persons and organizations, during the next 30 days, to file written comments relevant to the determination whether the current practices and past performance of the local agency charged with administration and enforcement of the fair housing law of each of these jurisdictions demonstrate that, in operation, the law in fact provides rights and remedies substantially equivalent to those provided in the Act. This notice also invites comments on the Department's determination as to the adequacy of the law on its face.

In accordance with 24 CFR 50.20(k), this notice is not subject to the environmental assessment requirements of the National Environmental Policy Act of 1969, 42 U.S.C. 4332.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this notice would not have a significant economic impact on a substantial number of small entities. The rule only carries out the Department's statutory responsibility as set out in section 810(c) of the Fair Housing Act, 42 U.S.C. 3610(c).

Accordingly, public comment is solicited in accordance with 24 CFR 115.6(b) with respect to the following jurisdictions: Localities: Gainesville, Florida, Fort Dodge, Iowa, Webster County, Iowa, Albany, New York.

Dated: July 28, 1987.

Judith Y. Brachman,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 87-17755 Filed 8-4-87; 8:45 am]

BILLING CODE 4210-28-M

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 103

Collective-Bargaining Units in the Health Care Industry

AGENCY: National Labor Relations Board.

ACTION: Proposed rule; notice of change of hearing location and additional hearing date.

SUMMARY: The National Labor Relations Board gives notice that it is changing a previously announced hearing location, and adding an additional hearing in Washington, DC, to commence on October 7, 1987, for the purpose of receiving further oral testimony from interested witnesses about its proposed rule for collective-bargaining units in the health care industry.

DATES: The hearing scheduled for August 17, 1987, at 9 a.m. has been relocated.

The October 7, 1987, hearing will be in Washington, DC, commencing at 9 a.m. All persons who wish to testify at this October 7th hearing should notify the Office of the Executive Secretary (see address section of this notice) no later than August 28, 1987. Thereafter, all witnesses for this hearing should submit to the Executive Secretary at the above address eight copies of either the written text or a summary of their presentations no later than September 30, 1987.

The comment period still ends at the close of business on October 30, 1987.

ADDRESSES: The hearing scheduled for August 17, 1987, at 9 a.m. has been moved from the Board's Hearing Room, Sixth Floor, 1717 Pennsylvania Avenue, NW., to The General Services Administration Auditorium, First Floor, 18 and F Streets, NW., Washington, DC.

The October 7, 1987 hearing will be held in the Board's Hearing Room, Sixth Floor, 1717 Pennsylvania Avenue, NW., Washington, DC 20570. Persons wishing to present oral testimony at this location on this date should notify the office of the Executive Secretary, 1717 Pennsylvania Avenue, NW., Washington, DC 20570, telephone number (202) 254–9430, no later than August 28, 1987.

FOR FURTHER INFORMATION CONTACT: Curtis A. Wells, Associate Executive Secretary, Telephone (202) 254–9430.

SUPPLEMENTARY INFORMATION:

Background:

The Board's notice of proposed rulemaking and original notice of hearing was published in the **Federal Register** (52 FR 25142) on July 2, 1987. That notice provided for three hearings: on August 17, 1987, in Washington, DC; on August 31, 1987, in Chicago, Illinois; and on September 14, 1987, in San Francisco, California.

Thereafter, upon being contacted by large numbers of individuals and organizations who wished to testify, and at the specific request of the AFL–CIO, the Board has decided to add a fourth hearing date, Wednesday, October 7, 1987, in Washington, DC. All persons who wish to testify at this fourth hearing should notify the Office of the Executive Secretary (see address section of this notice) no later than August 28, 1987. Thereafter, all witnesses for this hearing should submit to the Executive Secretary at the above address eight copies of either the written text or a summary of their presentations no later than September 30, 1987.

Furthermore, the hearing scheduled for August 17, 1987, has been moved to a larger facility, The General Services Administration Auditorium at the address noted above.

Dated, Washington, DC, July 31, 1987.

By direction of the Board.

National Labor Relations Board.

Joseph E. Moore,

Deputy Executive Secretary.

[FR Doc. 87–17753 Filed 8–4–87; 8:45 am]

BILLING CODE 7545–01–M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 223

Regulations Governing Surety Companies Doing Business With the United States

AGENCY: Financial Management Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of the Treasury intends to amend its regulations governing surety companies doing business with the United States, at 31 CFR Part 223 (also appearing as Department Circular 297, Revised). This notice invites comments on the proposed revision. In evaluating comments, Treasury will give more weight to those comments which include a practical means of accomplishing the desired end, and less weight to those responses which merely object to the revision, without offering a workable alternative. In addition, more weight will be given to alternatives which include supporting data.

DATES: The proposed revision would become effective December 31, 1987.

Comment Deadline: All comments or inquiries received on or before October 4, 1987 will be given due consideration.

ADDRESS: Comments or inquiries may be mailed to Surety Bond Branch, US Treasury Dept.—FMS, 1725 I St., NW., Rm. 1000A, Washington, DC 20226.

FOR FURTHER INFORMATION CONTACT: Terry L. Boyer, Telephone—(202) 634–2214.

SUPPLEMENTARY INFORMATION:

Executive Order 12291—5 U.S.C. 601 nt . . .

The Department of the Treasury has determined that this proposal is not major for purposes of E.O. 12291. Therefore, no regulatory impact analysis is required.

Background

The Secretary of the Treasury is authorized by 31 U.S.C. 9305 to decide whether each surety company that wishes to do business with the United States is able to carry out its contracts. There is a need to strengthen the regulations which must be adhered to by insurance companies authorized under 31 U.S.C. 9305, to provide assurance to the Treasury that an authorized company is financially capable of carrying out its contracts.

The proposed rule includes several substantive changes as well as editorial changes and a realignment of sections. All sections referenced throughout this narrative are the section numbers as stated in the proposed Revision, unless indicated otherwise. Substantive changes are as follows:

1. It is proposed to revise § 223.5 to require companies applying for Treasury certification to have been actively engaged in writing surety bonds for a minimum period of three years prior to the date of application. Certain exceptions may be allowed.

This revision is proposed because Treasury's statutory authority provides that the Secretary of the Treasury may authorize a corporation to provide federal surety bonds if the Secretary decides that the corporation is able to carry out its contracts. Operationally, this decision is based upon a company's overall financial position, with special emphasis placed upon a company's experience in the business for which it requires certification. Surety is a specialty line of insurance. Success in other property/casualty lines is not necessarily a basis for determining that success is likely in the surety business.

Treasury has found little basis on which to certify newly formed surety companies unless management is affiliated with another surety company currently certified by Treasury. Under such circumstances, Treasury could make a determination concerning the financial soundness of the applicant company, based on the results of the affiliated Certified Company, combined with certain indemnifications.

2. Proposed revision to § 223.8 indicates that the Treasury quarterly financial statement form has been abolished and that the NAIC form should be used for quarterly reporting purposes.

3. Proposed revision of § 223.9 deletes the last sentence of the section. The information in this sentence is generally referred to in the first sentence of the section. Specific information is referenced in Treasury's Annual Letter to Executive Officers of Surety Companies.

4. It is proposed that § 223.11(c) of the current CFR (1978 Revision) be deleted. This section allows any Treasury admissible asset to be pledged as security for excess risks in lieu of reinsurance. (This section does not apply to risks on bonds written under the Miller Act.) When risks are secured under the provisions of this section, the administrative burden of determining that pledged assets have been valued properly and pledged free of any other encumbrances, is unreasonable as related to the benefits derived.

5. Proposed revision to § 223.11(d) provides a more specific definition of what Treasury considers to be the liability on a contract bond.

6. Proposed revision to § 223.12 reflects a change in reinsurance form numbers.

7. Proposed revision to § 223.13 limits the reporting of excess risks and allows companies to report such risks on a form other than TFS Form 285–A. This revision does not change Treasury's requirement that a company write or assume no risk in excess of its Treasury limit without obtaining acceptable reinsurance as defined by § 223.12. The revised section limits the reporting of these risks to surety and fidelity excess risks only. Failure to obtain acceptable reinsurance on excess risks that are written but not required to be reported, is a violation of Treasury regulations and could result in termination of a company's Treasury Certificate of Authority.

8. It is proposed to add § 223.14 to the current regulations. The purpose of this section is to eliminate "fronting" on federal bonds. Fronting is an arrangement whereby one insurer issues a policy on a risk for and at the request of one or more other insurers with the intent of passing the majority of the risk, by way of reinsurance to the other insurer(s). Exceptions made to this regulation will be based on whether the purpose of such an arrangement is to circumvent Treasury minimum financial requirements, and the potential financial impact on the direct writing company.

9. Proposed revision to § 223.15 requires a company recognized as an Admitted Reinsurer to have net assets of $2,000,000 over and above all liabilities. This increase in Treasury's surplus requirement is designed to encourage financial and managerial responsibility on the part of recognized reinsurers and to bring Treasury requirements in line with State Insurance Department regulations.

10. Proposed revisions to § 223.17(a) are being made to clearly indicate Treasury's expectation that each company writing federal surety bonds should promptly honor its obligations under such bonds.

Extensive editorial changes have been made throughout the text of Part 223. Treasury feels that these changes are not substantive. These changes were made to reflect the recodification of 6 U.S.C. 6–8 to 31 U.S.C. 9304–9308, to place sections in better alignment, and to include other minor cosmetic editorial changes. Anyone requiring a copy of the current 31 CFR Part 223, for comparison purposes, should contact the address or telephone number mentioned above. The text of the proposed revision to 31 CFR Part 223 is as follows:

PART 223—SURETY COMPANIES DOING BUSINESS WITH THE UNITED STATES

Sec.

223.1 Certificate of authority.
223.2 Application for certificate of authority.
223.3 Issuance of certificate of authority.
223.4 Deposits.
223.5 Business.
223.6 Investment of capital and assets.
223.7 Paid up capital and surplus for Treasury rating purposes; how determined.
223.8 Financial reports.
223.9 Valuation of assets and liabilities.
223.10 Limitation of risk.
223.11 Full penalty of the obligations regarded as the liability; exceptions.
223.12 Limitation of risk; protective methods.
223.13 Schedule of single risks.
223.14 Federal risks not exceeding underwriting limitation.
223.15 Recognition as reinsurer.
223.16 Revocation.
223.17 Performance of obligations.
223.18 Informal hearing on agency complaints.
223.19 Final decisions.
223.20 Reinstatement.
223.21 Fees for services of the Treasury Department.
223.22 List of certificate—holding companies.

Authority: 31 USC 9301–9309.

§ 223.1 Certificate of authority.

The regulations in this Part will govern the issuance by the Secretary or the Treasury of Certificates of Authority to bonding companies to do business with the United States as sureties on, or reinsurers of surety bonds, under the provisions of the Act of July 30, 1947 (61 Stat. 646, as amended: 31 U.S.C. 9304–9308), and the acceptance of such surety bonds from such companies so long as they continue to hold said Certificates of Authority. Every company now or hereafter authorized to do business under the above mentioned Act shall be subject to the regulations contained in this Part.

§ 223.2 Application for certificate of authority.

Every company wishing to apply for a Certificate of Authority shall notify the Surety Bond Branch, Finance Division, Financial Management Service, U.S. Department of the Treasury, Washington DC 20226, who will advise the company of the data which the Secretary of the Treasury determines from time to time to be necessary to make application. In accord with 31 U.S.C. 9304, data will include a copy of the applicant's charter or articles of incorporation and a statement, signed and sworn to by its president and secretary, showing its assets and liabilities. A fee shall be transmitted with the application in accordance with the provisions of § 223.21(a)(1).

§ 223.3 Issuance of certificate of authority.

(a) If, from the evidence submitted in the manner and form herein required, subject to the guidelines referred to in § 223.9, the Secretary of the Treasury is satisfied that such company has authority under its charter or articles of incorporation to do the business provided for by the Act referred to in § 223.1, and if the Secretary of the Treasury is satisfied from such company's financial statement and from any further evidence or information that may be required, and from such examination of the company, at its own expense, as the Secretary may cause to be made, that such company has a capital fully paid up in cash (or its equivalent) of not less than $250,000, is solvent and financially and otherwise qualified to do the business provided for in said Act, and is able to carry out its contracts, the Secretary may, subject to the further conditions herein contained, authorize the company to provide surety bonds under the provisions of said Act. The company will receive notice of such authorization through the issuance of a Certificate of Authority, under the seal of the Treasury Department, for a term expiring on the last day of June next

following. The Certificate of Authority shall be renewed annually on the first day of July, so long as the company remains qualified under the law and the regulations in this Part, and transmits to the Surety Bond Branch by March 1 each year the fee in accordance with the provisions of § 223.21(a)(3).

(b) If a company meets the requirements for a Certificate of Authority as an acceptable surety on federal bonds in all respects except that it is a United States branch of an alien company (a company not incorporated under the laws of the United States or of any State), or it is limited by its articles of incorporation or corporate charter to reinsurance business only, it may be issued a Certificate of Authority as a reinsuring company on federal bonds. For purposes of this Part, the state of incorporation of a U.S. Branch of an alien company, is considered to be the State in which the company was first licensed. The fee for initial application and renewal of a Certificate as a reinsuring company shall be the same as the fees for a Certificate of Authority as an acceptable surety on Federal bonds.

§ 223.4 Deposits.

No such company will be granted authority to do business under the provisions of the Act referred to in § 223.1 unless it shall have and maintain on deposit with the Insurance Commissioner, or other proper financial officer, of the State in which it is incorporated, or of any other State of the United States, for the protection of claimants, including all its policyholders in the United States, legal investments having a current market value of not less than $[illegible].

§ 223.5 Business.

(a) The company must be currently engaged in the business of suretyship, whether or not also making contracts in other classes of insurance, but shall not be engaged in any type or class of business not authorized by its charter or the laws of the State in which the company is incorporated. It must be the intention of the company to engage actively in the business of providing surety bonds required by a law of the United States.

(b) (1) A company seeking Treasury authority to issue surety bonds required by Federal Statute, shall have been actively engaged in writing such class of bonds for a minimum period of three years next preceding the date of its application for such certificate.

(2) This subsection shall not apply to a company affiliated with a company authorized under § 223.3 of this Part, provided an indemnity, acceptable to the Secretary of the Treasury, is submitted with the application.

(c) No bond is acceptable unless it has been provided by a company or its agent in a State where it has obtained that State's license to do surety business. Although a company must be licensed in the State or other area in which it provides a bond, it need not be licensed in the State or other area in which the principal resides or where the contract is to be performed. The term "other area" includes American Samoa, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

§ 223.6 Investment of capital and assets.

The capital and other funds of every such company must be safely invested in accordance with the laws of the State in which it is incorporated and will be valued on the basis set forth in § 223.9. The Secretary of the Treasury will periodically issue instructions for the guidance of companies with respect to investments and other matters. These guidelines may be updated from time to time to meet changing conditions in the industry.

§ 223.7 Paid up capital and surplus for Treasury rating purposes; how determined.

The amount of paid up capital and surplus of any such company shall be determined on an insurance accounting basis under the regulations in this Part, from the company's financial statements and other information, or by such examination of the company at its own expense as the Secretary of the Treasury may deem necessary or proper.

§ 223.8 Financial reports.

(a) Every such company will be required to file with the Surety Bond Branch, on or before the last day of January of each year, a statement of its financial condition made up as of the close of the preceding calendar year upon the annual statement blank adopted by the National Association of Insurance Commissioners, signed and sworn to by its president and secretary. On or before the last days of April, July, and October of each year, every such company shall file a financial statement with the Surety Bond Branch, as of the last day of the preceding month. The quarterly statement form of the National Association of Insurance Commissioners should be used for this purpose. The quarterly statement should be signed and sworn to by the company's president and secretary or their authorized designees.

(b) Every such company shall furnish such other exhibits or information, and in such manner, as the Secretary of the Treasury may at any time require.

§ 223.9 Valuation of assets and liabilities.

In determining the financial condition of every such company, its assets and liabilities will be computed in accordance with the guidelines contained in the Treasury's current Annual Letter to Executive Officers of Surety Companies. However, the Secretary of the Treasury may value the assets and liabilities of such companies at the Secretary's discretion.

§ 223.10 Limitation of risk.

Except as provided in § 223.12, no company holding a Certificate of Authority shall underwrite any risk on any bond or policy on behalf of any individual, firm, association, or corporation whether or not the United States is interested as a party thereto, the amount of which is greater than ten percent of the paid up capital and surplus of such company, as determined by the Secretary of the Treasury. That figure is hereinafter referred to as the underwriting limitation.

§ 223.11 Full penalty of the obligations regarded as the liability; exceptions.

In determining the limitation prescribed in § 223.10, the full penalty of the obligation will be regarded as the liability, and no offset will be allowed on account of any estimate of risk which is less than such full penalty, except in the following cases:

(a) Appeal bonds; in which case the liability will be regarded as the amount of the judgment appealed from, plus ten percent of said amount to cover interest and costs.

(b) Bonds of executors, administrators, trustees, guardians, and other fiduciaries, where the penalty of the bonds or other obligation is fixed in excess of the estimated value of the estate; in which case the estimated value of the estate, upon which the penalty of the bond was fixed, will be regarded as the liability. Credit will also be allowed for indemnifying agreements executed by sole heirs or beneficiaries of an estate releasing the surety from liability.

(c) Contract bonds; where a performance and a payment bond are issued in connection with a contract, the penal sum of the larger shall be regarded as the liability. For purposes of this Section, bonds are not aggregated in determining the liability.

(d) Bonds for banks or trust companies as principals, conditioned to repay moneys on deposit, where by law or decree of a court the amount to be

deposited shall be less than the penalty of the bond; in which case the maximum amount on deposit at any one time will be regarded as the liability.

§ 223.12 Limitation of risk: Protective methods.

The limitation of risk prescribed in § 223.10 may be complied with by the following methods:

(a) *Coinsurance.* Two or more companies may underwrite a risk on any bond or policy, the amount of which does not exceed their aggregate underwriting limitations. Each company shall limit its liability upon the face of the bond or policy, to a definite specified amount which shall be within its underwriting limitation.

(b) *Reinsurance.* (1) In respect to bonds running to the United States, liability in excess of the underwriting limitation shall be reinsured within 45 days from the date in which the bond was provided with one or more companies holding a Certificate of Authority from the Secretary of the Treasury. Such reinsurance shall not be in excess of the underwriting limitation of the reinsuring company. Where reinsurance is contemplated, federal agencies may accept a bond from the direct writing company in satisfaction of the total bond requirement even though it may exceed the direct writing company's underwriting limitation. Within the 45 day period, the direct writing company shall furnish to the federal agency the required reinsurance agreements. However, a federal agency may, at its discretion, require that reinsurance be obtained within a lesser period than 45 days, and may require completed reinsurance agreements in hand before making a final determination that any bond is acceptable. Use of reinsurance or coinsurance to protect federal bonds is at the discretion of the direct writing company. Reinsurance shall be provided using reinsurance agreement forms; Standard Form 273 for Miller Act Performance bonds, Standard Form 274 for Miller Act Payment bonds, and Standard Form 275 for other types of federal bonds.

(2) In respect to risks covered by bonds or policies not running to the United States, liability in excess of the underwriting limitation shall be reinsured within 45 days from the date the bond or policy is provided, with:

(i) One or more companies holding a Certificate of Authority from the Secretary of the Treasury as an acceptable surety on federal bonds or one or more companies holding a Certificate of Authority as an acceptable reinsuring company on such bonds, or

(ii) One or more companies recognized as an admitted reinsurer in accord with § 223.15, or

(iii) A pool or association, to the extent that it is composed of such companies, or

(iv) An instrumentality or agency of the United States which is permitted by federal law or regulation to enter into reinsurance contracts.

(3) No certificate-holding company may cede to a reinsuring company recognized under § 223.15 any risk in excess of ten percent of the latter company's paid up capital and surplus.

§ 223.13 Schedules of single risks.

By the fifteenth day of February, May, August, and November of each year, every company will be required to report to the Secretary of the Treasury every surety and fidelity obligation which it has written or assumed during the quarter immediately preceding, the penal sum of which is greater than its underwriting limitation, together with required supporting data, on TFS Form 285–A, Schedule of Excess Risks. Companies may use other forms for such purpose so long as all information required on the TFS Form 285–A is included on such form.

§ 223.14 Federal risks not exceeding underwriting limitation.

Reinsurance obtained by direct writing companies for federal risks not exceeding such companies' underwriting limitation, must in all cases be placed with companies recognized in accord with § 223.3 or § 223.15. Exceptions may be made to this regulation at the Secretary of the Treasury's discretion. Exceptions will be based on (a) whether the purpose of the reinsurance is to allow the reinsurer(s) to circumvent Treasury's minimum financial regulations and (b) the potential financial impact on the direct writing company.

§ 223.15 Recognition as reinsurer.

(a) *Application by a United States Company.* Any company organized under the laws of the United States or of any State thereof, wishing to apply for recognition as an admitted reinsurer (except on excess risks running to the United States) of surety companies doing business with the United States, shall file the following data with the Surety Bond Branch and shall transmit therewith the fee in accordance with the provisions of § 223.21(a)(2).

(1) A certified copy of its charter or articles of incorporation,

(2) A certified copy of a license from any State in which it has been authorized to do business,

(3) A copy of a current (within the last three years) report of its examination by a State Insurance Department,

(4) A statement of its financial condition, as of the close of the preceding calendar year, on the annual statement form of the National Association of Insurance Commissioners, signed and sworn to by two qualified officers of the company, showing that it has net assets of not less than $2,000,000 over and above all liabilities.

(5) Such other evidence as the Secretary of the Treasury may determine necessary to establish that it is solvent and able to carry out its contracts.

(b) *Application by a United States Branch.* A United States branch of an alien company applying for such recognition shall file the following data with the Surety Bond Branch, and shall transmit therewith the fee in accordance with the provisions of § 223.21(a)(2):

(1) The submission listed in paragraphs (a) (1) through (5) of this section, except that the financial statement of such branch shall show that it has net assets of not less than $2,000,000 over and above all liabilities, and

(2) Evidence satisfactory to the Secretary of the Treasury to establish that it has on deposit in the United States not less than $250,000 available to its policyholders and creditors in the United States.

(c) *Financial Reports.* Each company recognized as an admitted reinsurer shall file with the Surety Bond Branch on or before the first day of March each year its financial statement and such additional evidence as the Secretary of the Treasury determines necessary to establish that the requirements of this Section are being met. A fee shall be transmitted with the foregoing data, in accordance with the provisions of § 223.21(a)(4).

§ 223.16 Revocation.

Whenever it appears that a company is not complying with the requirements of 31 U.S.C. 9304–9308 and of the regulations in this Part, the Secretary of the Treasury will (a) in all cases notify the company of the facts or conduct which indicate such failure, and provide opportunity to the company to respond, and (b) in those cases where the public interest in the constant financial stability of such company allows, also provide opportunity to the company to demonstrate or achieve compliance with those requirements. The Secretary shall revoke a company's Certificate of Authority with advice to it if (c) the

company does not respond satisfactorily to the notification of noncompliance, or (d) the company, provided an opportunity to demonstrate or achieve compliance, fails to do so.

§ 223.17 Performance of obligations.

(a) Every company shall promptly honor its bonds naming the United States or one of its agencies or instrumentalities as obligee. If an agency's demand upon a company on behalf of the agency or laborers, materialmen or suppliers (on payment bonds), for payment of a claim against it is not settled to the agency's satisfaction, and the agency's review of the situation thereafter establishes that the default is clear or the company's refusal to respond adequately is not based on reasonable grounds, the agency may make a report to the Secretary of the Treasury, including a copy of the subject bond, the basis for the complaint against the company, a chronological resume of efforts to obtain performance under the bond, a statement of all reasons offered for nonperformance, and a statement of the agency's views on the matter.

(b) On receipt of such report from the federal agency, the Secretary will, if the circumstances warrant, notify the company concerned that the agency report may demonstrate that the company is not carrying out its contracts and that, in the absence of a satisfactory explanation, the company's actions may preclude the renewal of the company's Certificate of Authority, or warrant prompt revocation of the existing Certificate. This notice will provide opportunity to the company to demonstrate its qualification for continuance of its Certificate of Authority.

§ 223.18 Informal hearing on agency complaints.

(a) *Request for informal hearing.* If a company determines that the opportunity to make known its views, as provided for under § 223.17(b), is inadequate, it may, within 20 business days of the date of the notice required by § 223.17(b), request, in writing, that the Secretary of the Treasury convene an informal hearing.

(b) *Purpose.* As soon as possible after a written request for an informal hearing is received, the Secretary of the Treasury shall convene an informal hearing, at such time and place as the Secretary deems appropriate, for the purpose of determining whether revocation of the company's Certificate of Authority is justified.

(c) *Notice.* The company shall be advised, in writing, of the time and place of the informal hearing and shall be directed to bring all documents, records and other information it may find necessary and relevant to substantiate its refusal to settle the claims made against it by the federal agency making the report under § 223.17(a).

(d) *Conduct of Hearings.* The hearing shall be conducted by a hearing officer appointed by the Secretary. The company may be represented by counsel and shall have a fair opportunity to present any relevant material and to examine the agency's evidence. Formal rules of evidence will not apply at the informal hearing.

(e) *Report.* Within 30 days after the informal hearing, the hearing officer shall make a written report to the Secretary setting forth the officer's findings, the basis for such findings, and the officer's recommendations. A copy of the report shall be sent to the company.

§ 223.19 Final decisions.

If, after review of the case file, it is the judgment of the Secretary that the complaint was unfounded, the Secretary shall dismiss the complaint by the federal agency concerned and shall so notify the company. If, however, it is the judgment of the Secretary that the company has not fulfilled its obligations to the complainant agency, the company shall be notified of the facts or conduct which indicate such failure and allow the company 20 business days from the date of such notification to demonstrate or achieve compliance. If no showing of compliance is made within the period allowed, the Secretary shall either preclude renewal of the company's Certificate of Authority or revoke it without further notice.

§ 223.20 Reinstatement.

If, after one year from the date of the expiration or the revocation of the Certificate of Authority under § 223.19, a company can show that the basis for the non-renewal or revocation has been eliminated and that it can comply with the requirements of 31 U.S.C. 9304–9308 and the regulations in this Part, a new Certificate of Authority shall be issued without prejudice.

§ 223.21 Fees for services of the Treasury Department.

(a) Fees shall be imposed and collected, for the services listed in paragraphs (a)(1)–(a)(4) of this section which are performed by the Treasury Department, regardless of whether the action requested is granted or denied. The payee of the check or other instrument shall be the Financial Management Service, Treasury Department. The amount of the fee will be based on the following categories of service:

(1) Examination of a company's application for a Certificate of Authority as an acceptable surety or reinsurer on federal bonds (see § 223.2);

(2) Examination of a company's application for recognition as an admitted reinsurer (except on excess risks running to the United States) of surety companies doing business with the United States (see § 223.15);

(3) Determination of a company's continuing qualification for annual renewal of its Certificate of Authority (see § 223.3); or

(4) Determination of a company's continuing qualification for annual renewal of its recognition as an admitted reinsurer (see § 223.15).

(b) In a given year a uniform fee will be collected from every company requesting a particular category of service. However, the Treasury Department reserves the right to re determine the amounts of fees annually. Fees are determined in accordance with Office of Management and Budget Circular A–25, as amended.

(c) Specific fee information may be obtained from the Surety Bond Branch at the address shown in § 223.2. In addition a notice of the amount of a fee referred to in this Section will be published in the **Federal Register** as each change in such fee is made.

§ 223.22 List of certificate-holding companies.

A list of qualified companies is published annually as of July 1 in Department Circular 570, Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies, with information as to underwriting limitations, areas in which licensed to transact surety business, and other details. If the Secretary of the Treasury shall take any exceptions to the annual financial statement submitted by a company, the Secretary shall, before issuing Department Circular 570, give a company due notice of such exceptions. Copies of the Circular are available from the Surety Bond Branch upon request. Selection of a particular qualified company from among all companies holding Certificates of Authority is discretionary with the principal required to furnish a bond.

Superseded Regulations. The foregoing regulations supersede all

previous regulations relating to the same subject.

Mitchell A. Levine,

Assistant Commissioner, Comptroller Financial Management Serivce.

Dated: July 28, 1987.

[FR Doc. 87-17508 Filed 8-4-87; 8:45 am]

BILLING CODE 4810-35-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8-R]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Demonstration Projects

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends the comprehensive CHAMPUS regulation to specifically provide that the Director of the Office of CHAMPUS may waive or alter the normally applicable provisions of the CHAMPUS regulations when necessary to conduct a demonstration project required or authorized by law. The proposed rule, however, would not allow the waiver or alteration of any requirement that may not be waived or altered under applicable law. The proposed rule is necessary to establish a specific regulatory counterpart to existing statutory authorities for demonstration projects to develop improved methods to finance and deliver health care services under CHAMPUS. It is intended to expedite the administrative processing associated with initiating healthcare demonstration projects.

DATE: Written public comments must be received on or before September 4, 1987.

ADDRESS: Office of the Assistant Secretary of Defense for Health Affairs, OCHAMPUS Office of Demonstrations, Room 1D511, The Pentagon, Washington, DC 20301-1200.

FOR FURTHER INFORMATION CONTACT: LTC David J. Fant, United States Air Force (202) 695-3331.

SUPPLEMENTARY INFORMATION: The purpose of this proposed rule is to establish an appropriate regulatory counterpart to the current statutory authority for the conduct of demonstration projects relating to CHAMPUS.

One such statutory is 10 U.S.C. 1092, which authorizes studies and demonstration projects relating to delivery of health and medical care. This section authorizes demonstrations of alternative methods for financing and delivery health and medical care services, including those under CHAMPUS. The purpose and effect of this statute is to provide for the waiver or alteration of normally applicable requirements as part of a project to test alternative methods.

In addition to this general statutory authority to conduct demonstration projects, Congress from time to time enacts requirements for DoD to conduct specific demonstration projects. For example, in section 702(a) of the National Defense Authorization Act for Fiscal Year 1987, Congress directed DoD to conduct a demonstration of the CHAMPUS Reform Initiative. This initiative involves alternative methods of financing and delivering CHAMPUS health care services under regional umbrella contracts with competitively-selected contractors. DoD issued a request for proposals for the CHAMPUS Reform Initiative in February 1987.

These two rather recent legislative actions are only part of the urging DoD has received from Congress to actively pursue innovative strategies for improving DoD health care programs. Related Congressional actions include authority for resource sharing agreements (10 U.S.C. 1096), special contracts for delivery of medical care services (10 U.S.C. 1097) and incentives for participation in cost-effective health care plans (10 U.S.C. 1098). The common theme of all of these provisions is the desire to try new approaches to bring about needed improvements in the Military Health Services System, especially CHAMPUS.

Against this backdrop of clear Congressional encouragement for developing innovative methods to finance and deliver health care services, this proposed rule would establish for CHAMPUS a regulatory counterpart to the applicable statutory demonstration provisions. The proposed rule simply provides that the normally applicable provisions of the CHAMPUS regulation may be waived or altered by the Director of OCHAMPUS in connection with the conduct of a demonstration project required or authorized by law. "Demonstration project" is defined to include projects based on the full applicable range of legislatively required or authorized activities designed to test potential program innovations. However, the proposed rule would not allow waiver or alteration of requirements that may not under the applicable statutory authorities be waived or altered.

This proposed rule is somewhat analogous to paragraph 199.1(n). That section authorizes the waiver of any provision of the part, except for requirements that may not be waived under the law, under very special circumstances when it would be in the best interest of the program. Like the current paragraph 199.1(n), the proposed new paragraph (o) is limited to special circumstances, namely demonstration projects, and does not allow waiver of requirements of law that may not be waived.

Thus, the effect of this proposed rule is to assure that normally applicable provisions of the CHAMPUS regulation that are within the administrative discretion of the agency not inhibit the ability of OCHAMPUS to conduct demonstrations consistent with the far-reaching intent of Congress to develop meaningful improvements in health care programs.

The impact of this proposed rule is limited. It does not reach beyond specifically designed demonstration projects. Nor does it allow for the waiver or alteration of rules regarding the Military Health Services System other than CHAMPUS rules. Also, it does not allow for the waiver of requirements that may not be waived under applicable law.

The proposed rule also establishes certain procedural requirements whenever OCHAMPUS waives or alters a normally applicable provision of the part in connection with a demonstration. To assure that providers, beneficiaries and other interested parties are aware of the demonstration project and the matters affected by the regulatory waiver, the proposed rule provides for notice to be published at least 30 days before the waiver would be effective.

Included in this Federal Register notice of the demonstration project would be its duration and an explanation of what it is designed to test. The definition included in the proposed rule makes clear that these are the key features, limited duration and its nature as a test, that distinguish a demonstration project from a change in program policy or procedure. Because of these features, these notices of demonstration projects are not covered by public comment practices under DoD Directive 5400.9 (32 CFR Part 296) or DoD Instruction 6010.8. Similarly, individual notices of demonstration projects are not "rules" within the meaning of section 553 of the Administrative Procedure Act because they are not statements of general applicability and future effect that

establish or interpret policy or procedure; rather, as is made clear in the definition contained in the proposed rule, they are time-limited tests. Any generally applicable change in policy or procedure that might arise from a demonstration project will be handled in accordance with established practices for soliciting public comment, to the extent those practices apply.

This proposed rule is not a major rule under the Regulatory Flexibility Act or Executive Order 12291.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, Military personnel.

Accordingly, 32 CFR Part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for Part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, 5 U.S.C. 301.

2. In § 199.1 paragraph (o) is redesignated as paragraph (p).

3. Add a new paragraph (o) to § 199.1 to read as follows:

§ 199.1 General Provisions.

* * * * *

(o) *Demonstration projects*—(1) *Authority.* The Director, OCHAMPUS may waive or alter any requirements of this Regulation in connection with the conduct of a demonstration project required or authorized by law, except for any requirement that may not be waived or altered pursuant to 10 U.S.C. Chapter 55, or other applicable law.

(2) *Procedures.* At least 30 days prior to taking effect, OCHAMPUS shall publish a notice describing the demonstration project, the requirements of this Regulation being waived or altered under paragraph 1 and the duration of the waiver or alteration. Consistent with the purpose and nature of demonstration projects, these notices are not covered by public comment practices under DoD Directive 5400.9 or DoD Instruction 6010.8.

(3) *Definition.* For purposes of this section, a "demonstration project" is a project of limited duration designed to test a different method for the finance, delivery or administration of health care activities for the uniformed services. Demonstration projects may be required or authorized by 10 U.S.C. 1092, any other statutory provision requiring or authorizing a demonstration project or any other provision of law that authorizes the activity involved in the demonstration project.

* * * * *

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 31, 1987.

[FR Doc. 87-17801 Filed 8-4-87; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 2

[FRL No. 3172-8]

Freedom of Information Regulations

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This proposed rule would modify the Environmental Protection Agency procedures for handling requests for information under the Freedom of Information Act. It would modify the rules and guidelines that implement the charging of fees and granting of fee waivers, amend the exemptions, and add the exclusions to reflect amendments enacted by the Freedom of Information Reform Act of 1986.

DATE: Comments must be submitted on or before September 4, 1987.

ADDRESS: Comments should be addressed to the Office of General Counsel, Contracts and Information Law Branch (LE-132G), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Comments will be available for public inspection in Room M3600 at this address from 8:30 a.m. to 4:00 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Marlyne Lipfert or Mary Adler, Office of General Counsel, Contracts and Information Law Branch (LE-132G), 401 M Street, SW., Washington, DC 20460, Telephone: 202/382-5460.

SUPPLEMENTARY INFORMATION: The Freedom of Information Reform Act of 1986 (Pub. L. 99-570) amended the Freedom of Information Act (5 U.S.C. 552) by modifying the terms of Exemption (b)(7), by adding a new subsection (c), and by supplying new provisions relating to the charging and waiving of fees.

This **Federal Register** notice proposes changes in the following sections:

Sec.

2.100 Definitions.
2.101 Policy on disclosure of EPA records.
2.113 Initial denials of requests.
2.116 Contents of determination denying appeal.
2.118 Exemption categories.
2.120 Fees; payment; waiver.
2.121 Exclusions.

The following is a brief summary by section of each of the above changes:

Section 2.100(b) would be modified to conform the definition of "agency record" to that used in Freedom of Information Act case law.

Section 2.100 (e) through (k) would be added to include definitions of key terms used in this rulemaking. These definitions are adopted from those set forth in Office of Management and Budget, Uniform Freedom of Information Act Fee Schedule and Guidelines, 52 FR 10012 (March 27, 1987), implementing certain provisions of the Freedom of Information Reform Act of 1986.

Section 2.101(d) would be added to indicate that requestors will be referred to agencies operating statutory-based fee programs, such as the Government Printing Office and the National Technical Information Service, when records responsive to a request are maintained by them for distribution.

Section 2.113(d) would be modified to contain two subsections and to indicate generally that the existence or nonexistence of records will not be revealed in response to a request where an exemption is designed to protect that very information. This section is further modified to indicate that concurrence in such a determination must be by the General Counsel or his designee, which is the Contracts and Information Law Branch of the Office of General Counsel.

Section 2.113(e) would be modified to clarify those instances when an additional person's identity and position must be stated in a determination letter.

Section 2.113(f) would be modified to indicate that an appeal notice must be given when the existence of records is neither confirmed or denied and that no appeal notice will be given when a determination denies the existence of records.

Section 2.116 would be modified to contain two subsections and to indicate that appeal determinations upholding the initial determination shall not reveal the existence or nonexistence of records when the initial determination has not done so.

Section 2.118(a)(7) would be amended to reflect the changes in the statutory language for Exemption (b)(7) (5 U.S.C. 552(b)(7)) as enacted by the Freedom of Information Reform Act of 1986.

Section 2.120(a)(1) would be amended to include the four new categories of requestors and the three new levels of fees.

Section 2.120(a)(2) would be amended to describe how a requestor's fee category will be determined.

Section 2.120(a)(3) would be amended to reflect the Agency's new fee schedule.

Section 2.120(a)(4) would be amended to give notice that appropriate fees will be charged, even if there is no disclosure of records.

Section 2.120(a)(5) would be modified to eliminate the examination or review of records as exempt from charge, to indicate no charges will be made for resolution of legal or policy issues, or for the first two hours of search time or the first 100 pages of duplication (except for commercial use requestors), to clarify when the Agency may aggregate requests, and to clarify when Privacy Act requests will not be billed. The remaining items for which no charge will be made contain no changes except that they have been renumbered within the subsection.

Section 2.120(b) would be amended to indicate that the authority of the Debt Collection Act will be utilized concerning delinquent FOIA bills. This section has also been rearranged to place the lockbox addresses immediately following reference to them.

Section 2.120(c) would be modified to indicate that assurance of payment will be sought if the fees for processing a request will exceed $25.00, and that prepayment will be required when prior FOIA fees have not been paid timely, or may be required when estimated fees exceed $250.00. This section is also modified to give notice that when prepayment is required and such payment is not received within 30 days of EPA's billing, the request will not be processed further.

Section 2.120(d) would be amended to reflect the changes in the statutory language on reduction or waiver of fees as enacted by the Freedom of Information Reform Act of 1986. Also included is guidance interpreting the new language. This guidance is based on the guidelines developed by the Department of Justice, Office of Information and Privacy.

Section 2.120(e) would be modified to include review charges in the record maintained by the FOI Officer.

Section 2.121 would be added to implement the new statutory language that excludes certain enforcement-related records from the provisions of the Freedom of Information Act, as enacted by the Freedom of Information Reform Act of 1986.

Executive Order 12291

Under Executive Order 12291, EPA must submit a Regulatory Impact Analysis for all "major" rules. EPA has determined that this regulation is not a major rule for purposes of Executive Order 12291 because it will not have a $100 million annual effect on the economy, will not result in a major increase in cost or prices for consumers, individual industries, Federal, state, or local government agencies or geographic regions, and will not have significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in the domestic or export markets. Therefore, a Regulatory Impact Analysis is not required. EPA has based all administrative decisions on this rule on adequate information concerning the need for and consequences of the rule.

Paperwork Reduction Act

This rule does not come under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., because it makes no independent request or requirement to collect information.

Regulatory Flexibility Act

This regulation will not have significant economic impact on a substantial number of small entities. These changes to EPA's regulations will not impose significant additional costs on small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., is not required.

List of Subjects in 40 CFR Part 2

Administrative practice and procedure, Freedom of information, Public information.

Dated: July 24, 1987.

Lee M. Thomas,

Administrator.

Therefore, EPA proposes to amend 40 CFR Part 2 as follows:

PART 2—[AMENDED]

1. The authority citation for Part 2 is revised to read as follows:

Authority: 5 U.S.C. 301, 552 (as amended), 553, secs 113, 208, 209, 301, and 307 of the Clean Air Act, as amended (42 U.S.C. 7414, 7525, 7542, 7601, 7607), secs. 308, 501 and 509(a) of the Clean Water Act, as amended (33 U.S.C. 1318, 1361, 1369(a)); sec. 13 of the Noise Control Act of 1972 (42 U.S.C. 4912); secs 1445 and 1450 of the Safe Drinking Water Act (42 U.S.C. 300j–4, 300j–9); secs 2002, 3007, and 9005 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6912, 6927, 6995); secs. 8(c), 11, and 14 of Toxic Substances Control Act (15 U.S.C. 2607(c), 2610, 2613); secs. 10, 12, and 25 of Federal Insecticide, Fungicide and Rodenticide Act, as amended (7 U.S.C. 136h, 136j, 136w); sec. 408(f) of the Federal Food, Drug and Cosmetic Act, as amended (21 U.S.C. 346(f)); secs 104(f) and 108 of the Marine Protection Research and Sanctuaries Act of 1972 (33 U.S.C. 1414(f), 1418); sec. 104 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604); sec 505 of the Motor Vehicle Information and Cost Savings Act, as amended (15 U.S.C. 2005).

2. Section 2.100 is amended by revising paragraph (b) and adding paragraphs (e) through (k) to read as follows:

§ 2.100 Definitions.

* * * * *

(b) "EPA Record" or, simply "record" means any document, writing, photograph, sound or magnetic recording, drawing, or other similar thing by which information has been preserved, from which the information can be retrieved and copied, and over which EPA has possession or control. It may include copies of the records of other Federal agencies (see § 2.111(d)). The term includes informal writings (such as drafts and the like), and also includes information preserved in a form which must be translated or deciphered by machine in order to be intelligible to humans. The term includes documents and the like which were created or acquired by EPA, its predecessors, its officers, and its employees by use of Government funds or in the course of transacting official business. However, the term does not include materials which are legally owned by an EPA officer or employee in his or her purely personal capacity. Nor does the term include materials published by non-Federal organizations which are readily available to the public, such as books, journals, and periodicals available through reference libraries, even if such materials are in EPA's possession.

* * * * *

(e) The term " 'commercial use' request" refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade or profit interests of the requestor or the person on whose behalf the request is made. In determining whether a requestor properly belongs in this category, EPA must determine the use to which a requestor will put the documents requested. Moreover, where EPA has reasonable cause to doubt the use to which a requestor will put the records sought, or where that use is not clear from the request itself, EPA may seek additional clarification before assigning the request to a specific category.

(f) The term "non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis as that term is referenced in paragraph (e) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(g) The term "educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(h) The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but EPA may also look to the past publication record of a requestor in making this determination.

(i) The term "search" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Searching for material must be done in the most efficient and least expensive manner so as to minimize costs for both the EPA and the requester. For example, EPA will not engage in line-by-line search when merely duplicating an entire document would prove the less expensive and quicker method of complying with a request. "Search" will be distinguished, moreover, from "review" of material in order to determine whether the material is exempt from disclosure (see paragraph (j) of this section. Searches may be done manually or by computer using existing programming.

(j) The term "review" refers to the process of examining documents located in response to a request that is for a commercial use (see paragraph (e) of this section) to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving legal or policy issues regarding the application of exemptions.

(k) The term "duplication" refers to the process of making a copy of a document necessary to respond to an FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others. The copy provided must be in a form that is reasonably usable by requestors.

4. Section 2.101 is amended by adding paragraph (d) to read as follows:

§ 2.101 Policy on disclosure of EPA records.

* * * * *

(d) When documents responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs, such as, but not limited to, the Government Printing Office or the National Technical Information Service, EPA will inform the requestor of the steps necessary to obtain records from the sources.

4. Section 2.113 is amended by revising paragraphs (d), (e) and (f) to read as follows:

§ 2.113 Initial denials of requests.

* * * * *

(d)(1) Each initial determination to deny a request shall be written, signed, and dated, and, except as Provided in paragraph (d)(2), shall contain a reference to the Request Identification Number, shall identify the records that are being withheld (individually, or, if the denial covers a large number of similar records, by described category), and shall state the basis for denial for each record or category of records being withheld.

(2) No initial determination shall reveal the existence or nonexistence of records if identifying the mere fact of the existence or non-existence of those records would reveal the information that an exemption is designed to protect. Instead of identifying the existence or nonexistence of the records, the initial determination shall state that the request is denied because either the records do not exist or they are exempt from mandatory disclosure under the applicable provision of 5 U.S.C. 552(b). No such determination shall be made without the concurrence of the General Counsel or his designee. The General Counsel has designated the Contracts and Information Law Branch to act on these requests for concurrence. See § 2.121 for guidance on initial determinations denying, in limited circumstances, the existence of certain law enforcement records or information.

(e) If the decision to deny a request is made by an authorized EPA employee other than the person signing the determination letter, that other person's identity and position shall be stated in the determination letter.

(f) Each initial determination which denies, in whole or in part, a request for one or more existing, located EPA records (including determinations described in § 2.113(d)(2) above) shall state that the requestor may appeal the initial denial by sending a written appeal to the address shown in § 2.106(a) within 30 days after receipt of the determination. An initial determination which only denies the existence of records, however, will not include a notice of appeal rights.

* * * * *

5. Section 2.116 is revised to read as follows:

§ 2.116 Contents of determination denying appeal.

(a) Except as provided in paragraph (b) of this section, each determination denying an appeal from an initial denial shall be in writing, shall state which of the exemptions in 5 U.S.C. 552(b) apply to each requested existing record, and shall state the reasons(s) for denial of the appeal. A denial determination shall also state the name and position of each EPA officer or employee who directed that the appeal be denied. Such a determination shall further state that the person whose request was denied may obtain *de novo* judicial review of the denial by complaint filed with the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the Agency records are situated, or in the District of Columbia, pursuant to 5 U.S.C. 552(a)(4).

(b) No determination denying an appeal shall reveal the existence or nonexistence of records if identifying the mere fact of the existence or nonexistence of those records would

reveal the information that an exemption is designed to protect. Instead of identifying the existence or nonexistence of the records, the determination shall state that the appeal is denied because either the records do not exist or they are exempt from mandatory disclosure under the applicable provision of 5 U.S.C. 552(b).

6. Section 2.118 is amended by revising paragraph (a)(7) to read as follows:

§ 2.118 Exemption categories.

(a) * * *

(7) Records or information compiled for law enforcement purposes, (i) but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;

* * * * *

7. Section 2.120 is revised to read as follows:

§ 2.120 Fees, payment, waiver.

(a) *Fee schedule.* Requestors shall be charged the full allowable direct costs incurred by the Agency in responding to a FOIA request. However, if EPA uses a contractor to search for, reproduce or disseminate records responsive to a request, the cost to the requestor shall not exceed the cost of the Agency itself performing the service.

(1) There are four categories of requests. Fees for each of the categories will be charged as follows:

(i) Commercial use requests. If the request seeks disclosure of records for a commercial use, the requestor shall be charged for the time spent searching for the requested record, reviewing the record to determine whether it should be disclosed and for the cost of each page of duplication.

(ii) Requests from an educational or non-commercial scientific institution whose purpose is scholarly or scientific research, involving a request which is not for a commercial use and seeks disclosure of records. In the case of such a request, the requestor shall be charged only for the duplication cost of the records, except that the first 100 pages of duplication shall be furnished without charge.

(iii) Requests from a representative of the news media, involving a request which is not for a commercial use and seeks disclosure of records. In the case of such a request, the requestor shall be charged only for the duplication cost of the records, except that the first 100 pages of duplication shall be furnished without charge.

(iv) All other requests. If the request seeks disclosure of records other than as described in paragraphs (a)(1) (i), (ii), and (iii) of this section, the requestor shall be charged the full cost of search and duplication. However, the first two hours of search time and the first 100 pages of duplication shall be furnished without charge.

(2) The determination of a requestor's fee category will be based on the following:

(i) Commercial use requestors—the use to which the requestor will put the documents requested;

(ii) Educational and non-commercial scientific institution requestors—identity of the requestor and the use to which the requestor will put the documents requested;

(iii) Representatives of the news media requestors—the identity of the requestor and the use to which the requestor will put the documents requested.

(3) Fees will be charged to requestors, as appropriate, for search, duplication and review of requested records in accordance with the following schedule:

(i) Manual search for records. For each ½ hour or portion thereof (EPA employees):

(A) GS–8 and below: $4.00

(B) GS–9 and above: $10.00

(ii) Computer search for records charges will consist of:

(A) EPA employee operators: For each ½ hour or portion thereof:

(*1*) GS–8 and below: $4.00

(*2*) GS–9 and above: $10.00, *plus*

(B) Contractor operators (where separately charged to the EPA), actual charges up to but not exceeding the *rate* which would have been charged had EPA employees conducted the search (see (A) above), *plus*

(C) Actual computer resource usage charges for this search, as indicated on the computer run printout.

(iii) Review of records. For each ½ hour or portion thereof (EPA employees):

(A) GS–8 and below: $4.00.

(B) GS–9 and above: $10.00.

(iv) Duplication or reproduction of records.

(A) Duplication or reproduction of documents by EPA employees (paper copy of paper original): $.15 per page

(B) Computer printouts (other than those calculated in a direct-cost billing—see paragraph (a)(3)(ii) of this section "Computer Search for records") $.15 per page

(C) Other methods of duplication or reproduction, including, but not limited to, duplication of photographs, microfilm and magnetic tape, will be charged at the actual direct cost to EPA.

(v) Certification or authentication of records: $25.00 per certification or authentication.

(vi) Other charges. Other charges incurred in responding to a request including but not limited to, special handling or transportation of records will be charged at the actual direct cost to EPA.

(4) EPA may assess charges for time spent searching and reviewing, even if EPA fails to locate the records or if the records located are determined to be exempt from disclosure.

(5) No charge shall be made—

(i) For the cost of preparing or reviewing letters of response to a request or appeal;

(ii) For time spent resolving legal or policy issues concerning the application of exemptions;

(iii) For search time and the first 100 pages of duplication for requests described in § 2.120(a)(1) (ii) and (iii) above;

(iv) For the first two hours of search time and for the first 100 pages of duplication for requests described in § 2.120(a)(1)(iv);

(v) If the total fee in connection with a request is less than $25.00, or if the costs of collecting the fee would otherwise exceed the amount of the fee. However, when EPA reasonably believes that a requestor or group of requestors is attempting to break a request down into a series of requests for the purpose of avoiding the assessment of fees, EPA will aggregate such requests to determine the total fee, and will charge accordingly.

(vi) For responding to a request by an individual for one copy of a record

retrievable by the requesting individual's name or personal identifier from a Privacy Act system of records;

(vii) For furnishing records requested by either House of Congress, or by a duly authorized committee or subcommittee of Congress, unless the records are requested for the benefit of an individual Member of Congress or for a constituent;

(viii) For furnishing records requested by and for the official use of other Federal agencies; or

(ix) For furnishing records needed by an EPA contractor, subcontractor, or grantee to perform the work required by the EPA contract or grant.

(b) *Method of payment.* All fee payments shall be in the form of a check or money order payable to the "U.S. Environmental Protection Agency" and shall be sent (accompanied by a reference to the pertinent Request Identification Numbers(s)) to the appropriate Headquarters or Regional Office lock box address:

(1) EPA—Washington Headquarters, P.O. Box 360277M, Pittsburgh, PA 15251;

(2) EPA—Region 1, P.O. Box 360197M, Pittsburgh, PA 15251;

(3) EPA—Region 2, P.O. Box 360188M, Pittsburgh, PA 15251;

(4) EPA—Region 3, P.O. Box 360515M, Pittsburgh, PA 15251;

(5) EPA—Region 4, P.O. Box 100142, Atlanta, GA 30384;

(6) EPA—Region 5, P.O. Box 70753, Chicago, IL 60673;

(7) EPA—Region 6, P.O. Box 360582M, Pittsburgh, PA 15251;

(8) EPA—Region 7, P.O. Box 360748M, Pittsburgh, PA 15251;

(9) EPA—Region 8, P.O. Box 360859M, Pittsburgh, PA 15251;

(10) EPA—Region 9, P.O. Box 360863M, Pittsburgh, PA 15251;

(11) EPA—Region 10, P.O. Box 360903M, Pittsburgh, PA 15251;

Under the Debt Collection Act of 1982 (Pub. L. 97–365), payment (except for prepayment) shall be due within thirty (30) calendar days after the date of billing. If payment is not received at the end of thirty calendar days, interest and a late payment handling charge will be assessed. In addition, under this Act, a penalty charge will be applied on any principal amount not paid within ninety (90) calendar days after the due date for payment. By the authority of the Debt Collection Act of 1982, delinquent amounts due may be collected through administrative offset or referred to private collection agencies. Information related to delinquent accounts may also be reported to the appropriate credit agencies.

(c) *Prepayment or assurance of payment.* (1) If an EPA office estimates that the fees for processing a request (or aggregated requests as described in § 2.120(a)(5)(v)) will exceed $25.00, that office need not search for, duplicate or disclose records in response to the request(s) until the requestor assures payment of the total amount of fees estimated to become due under this section. In such cases, the EPA office will promptly inform the requestor (by telephone if practicable) of the need to make assurance of payment.

(2) An EPA office may not require a requestor to make an advance payment, i.e. payment before work is commenced or continued on a request, unless:

(i) A requestor has previously failed to pay a fee charged in a timely fashion (i.e., within 30 days after the date of the billing), or

(ii) The EPA office estimates or determines that the allowable charges that a requestor may be required to pay are likely to exceed $250.00. Then the EPA office will notify the requestor of the likely cost and obtain satisfactory assurance of full payment where the requestor has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of requestors with no history of payment. If such advance payment is not received within 30 days after EPA's billing, the request will not be processed and the request will be closed. See also § 2.112(d).

(d) *Reduction or waiver of fee.* (1) The fee chargeable under this section shall be reduced or waived by EPA if the Agency determines that disclosure of the information

(i) Is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and

(ii) Is not primarily in the commercial interest of the requestor.

(2) Both of these requirements must be satisfied before fees properly assessable can be waived or reduced.

(3) The Agency will employ the following four factors in determining whether the first requirement has been met:

(i) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government";

(ii) The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute to an understanding of government operations or activities";

(iii) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to "public understanding"; and

(iv) The significance of the contribution to public understanding: Whether disclosure is likely to contribute "significantly" to public understanding of government operations or activities.

(4) The Agency will employ the following factors in determining whether the second requirement has been met:

(i) The existence and magnitude of a commercial interest: Whether the requestor has a commercial interest that would be furthered by the requested disclosure; and if, so

(ii) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requestor is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requestor."

(5) In all cases, the burden shall be on the requestor to present information in support of a request for a waiver of fees. A request for reduction or waiver of fees should include:

(i) A clear statement of the requestor's interest in the requested documents;

(ii) The use proposed for the documents and whether the requestor will derive income or other benefit from such use;

(iii) A statement of how the public will benefit from such use and from the release of the requested documents; and

(iv) If specialized use of the documents or information is contemplated, a statement of the requestor's qualifications that are relevant to the specialized use.

(6) A request for reduction or waiver of fees shall be addressed to the appropriate Freedom of Information Officer. The requestor shall be informed in writing of the Agency's decision whether to grant or deny the fee waiver or fee reduction request. This decision may be appealed by letter addressed to the EPA Freedom of Information Officer. The Assistant Administrator for External Affairs or, if delegated the authority, the Deputy Assistant Administrator for External Affairs, shall decide such appeals.

(e) The EPA Freedom of Information Officer shall maintain a record of all fees charged requesters for searching for, reviewing and reproducing requested records under this section. If after the end of 60 calendar days from the date on which request for payment was made the requestor has not submitted payment to the appropriate EPA billing address (as listed in § 2.120(b)), the Financial Management Division shall place the requestor's

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name on a delinquent list which is sent to the EPA Freedom of Information Officer. If a requestor whose name appears on the delinquent list makes a request under this part, the EPA Freedom of Information Officer shall inform the requestor that EPA will not process the request until the requestor submits payment of the overdue fee from the earlier request. Any request made by an individual who specifies an affiliation with or representation of a corporation, association, law firm, or other organization shall be deemed to be a request by the corporation, association, law firm, or other organization. If an organization placed on the delinquent list can show that the person who made the request for which payment was overdue did not make the request on behalf of the organization, the organization will be removed from the delinquent list but the name of the individual shall remain on the list. A requestor shall not be placed on the delinquent list if a request for a reduction or for a waiver is pending under paragraph (d) of this section.

8. Section 2.121 is added to read as follows:

§ 2.121 Exclusions.

(a) Whenever a request is made which involves access to records described in § 2.118(a)(7)(A), and

(1) The investigation or proceeding involves a possible violation of criminal law; and

(2) There is reason to believe that the subject of the investigation is not aware of its pendency, and disclosure of the existence of such records could reasonably be expected to interfere with enforcement proceedings, EPA shall, during only such time as the circumstances continue, treat the records as not subject to the requirements of 5 U.S.C. 552 and this subpart.

(b) Whenever informant records maintained by the Agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier and the informant's status as an informant has not been officially confirmed, EPA shall treat the records as not subject to the requirements of 5 U.S.C. 552 and this subpart.

(c) No determination relying on this section shall be issued without the concurrence of the General Counsel or his designee. The General Counsel has designated the Contracts and Information Law Branch to act on these requests for concurrence.

(d) An initial determination which only relies on this section will not include notice of appeal rights.

[FR Doc. 87-17762 Filed 8-4-87; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 180

[PP 7E3466/P424; FRL-3240-3]

Pesticide Tolerance for Chlorpyrifos

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for the combined residues of the pesticide chlorpyrifos and its metabolite 3,5,6-trichloro-2-pyridinol in or on the raw agricultural commodity blueberries. The proposed regulation to establish a maximum permissible level for residues of the pesticide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

DATE: Comments, identified by the document control number [PP 7E3466/P424], should be received on or before September 4, 1987.

ADDRESSES:

By mail, submit written comments to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Donald R. Stubbs, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1806.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 7E3466 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project and the Agricultural Experiment Station of New Jersey.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the combined residues of the pesticide chlorpyrifos [*O,O*-diethyl *O*-(3,5,6-trichloro-2-pyridyl)phosphorothioate] and its metabolite 3,5,6-trichloro-2-pyridinol (TCP) in or on the raw agricultural commodity blueberries at 2 parts per million (of which no more than 1 part per million is chlorpyrifos).

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance include:

1. A 2-year dog feeding study with a plasma cholinesterase (ChE) no-observed-effect level (NOEL) of 0.01 milligram (mg)/kilogram (kg)/day and a NOEL at 1.0 mg/kg/day (highest dose tested) for systemic effects.

2. A voluntary human study with a ChE NOEL of 0.03 mg/kg/day (based on 20 days of exposure at this level).

3. A 2-year mouse oncogenicity study which was negative for oncogenic effects under the conditions of the study at all levels tested (0.5, 5, and 15 ppm).

4. A three-generation rat reproduction study with a NOEL for reproductive effects at 1.0 mg/kg/day (highest dose tested).

5. A rat teratology study that was negative for teratogenic effects at 15 mg/kg/day.

6. An acute delayed neurotoxicity study in the hen that was negative at 100 mg/kg.

7. A 2-year rat feeding/oncogenicity study with a red blood cell ChE NOEL of 0.1 mg/kg/day and negative for oncogenic effects at all levels tested (0.03, 0.1, 1.0 and 3.0 mg/kg/day). The existing rat feeding/oncogenicity study is not adequate for regulatory purposes (core supplementary data) and represents a data gap for the chemical.

The provisional acceptable daily intake (PADI), based on the human voluntary ChE study (ChE NOEL of 0.03 mg/kg/day) and using a 10-fold safety factor, is calculated to be 0.003 mg/kg of body weight/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 0.18 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg daily diet of a 60-kg human is calculated to be 0.63093 mg/day; the current action will increase the TMRC by 0.0009 mg/day (a 0.14 percent increase). The increase in dietary exposure to residues of chlorpyrifos and its metabolite resulting from the proposed use on blueberries is considered to pose a negligible incremental risk in dietary exposure (0.14 percent increase in the TMRC).

Although the TMRC based on all established tolerances for chlorpyrifos exceeds the MPI, the Agency believes that the actual residues to which the public is likely to be exposed are considerably less than indicated by the TMRC for the following reasons:

1. Not all of the planted crop for which a tolerance is established is normally treated with the pesticide.

2. Not all crops contributing to the TMRC are likely to be consumed by an individual.

3. Most treated crops have residue levels which are below the established tolerance level.

4. Residues are frequently reduced when foods are processed or prepared for human consumption.

The basic manufacturer has been requested to submit additional studies to allow the Agency to reassess the existing tolerances for chlorpyrifos. Additional plant and animal metabolism studies are required to fully characterize and quantify the parent compound and its metabolites (including TCP) in plants and animals. Since there is insufficient information to adequately characterize TCP, the tolerance expression for chlorpyrifos currently includes this major metabolite. The requested data will allow the Agency to determine the necessity of establishing tolerances at levels sufficient to cover residues for both the parent compound and metabolite TCP. If the requested data indicate that it is not necessary to include the metabolite in the tolerance expression, the TMRC for chlorpyrifos will be lower than the current calculation based on tolerances for combined residues of chlorpyrifos and TCP. The U.S. tolerances for chlorpyrifos would also be compatible with the Codex Alimentarius and the tolerances of Canada and Mexico, which include only chlorpyrifos per se.

Although additional plant and animal metabolism data are needed to fully characterize the residues, the available metabolism data are adequate to support the proposed use of chlorpyrifos on blueberries. Chlorpyrifos and its major metabolite TCP are considered to be the residues of concern for this use.

Adequate analytical methods, gas chromatography, are available in the Pesticide Analytical Manual, Volume II (PAM–II), for enforcement purposes. There is no expectation of secondary residues in meat and milk since blueberries are not an animal feed commodity. There are presently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency, the tolerance established by amending 40 CFR 180.342 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments should bear a notation indicating the document control number, [PP 7E3466/P424]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities. Pesticides and pests, Recording and recordkeeping requirements.

Dated: July 22, 1987.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR 180.342 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.342 is amended by adding and alphabetically inserting the raw agricultural commodity blueberries to paragraph (a), to read as follows:

§ 180.342 Chlorpyrifos; tolerances for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Blueberries	2 ppm (of which no more than 1 ppm is chlorpyrifos)
* * * * *	

[FR Doc. 87–17345 Filed 8–4–87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[General Docket 87–112]

Development and Implementation of a Public Safety National Plan and Amendment of Part 90 to Establish Service Rules and Technical Standards for Use of the 821–824/866–869 MHz Bands by the Public Safety Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of time.

SUMMARY: This action extends the time for filing reply comments to the Notice of Proposed Rulemaking in this proceeding. This action is in response to a Motion for Extension of Time filed by the Land Mobile Radio Section of the Electronics Industries Association's Information and Telecommunications Technologies Group. It requested more time so that technical data could be developed relative to the Commission's proposed channeling plan.

DATES: Reply comments are now due August 5, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Fred Thomas, telephone (202) 632-6112.

SUPPLEMENTARY INFORMATION: The Proposed Rule was published on May 26, 1987, 52 FR 19544.

Federal Communications Commission.

Thomas P. Stanley,

Chief Engineer.

[FR Doc. 87-17541 Filed 8-4-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 97

[PR Docket No. 86-397; FCC 87-233]

Amateur Radio Service; Amendment of Part 97 To Authorize Additional Privileges in the 40 Meter Band to Novice and Technician Control Operators at Amateur Stations in Alaska, Hawaii, Region 2 Pacific Insular Areas and the Caribbean Insular Areas

AGENCY: Federal Communications Commission.

ACTION: Withdrawal of proposed rule.

SUMMARY: The proposed rule amendments (published on October 29, 1986, 51 FR 39554) would have authorized additional privileges in the 40 meter band at 7050-7075 kHz for Novice and Technician control operators at amateur stations in Alaska, Hawaii, Region 2 Pacific Insular areas and the Caribbean Insular areas, based on a petition for rule making that claimed excessive interference in those areas from International broadcasting. The proposal was withdrawn because the situation of Novice and Technician control operators in those areas is not unique.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Federal Communications Commission, Washington, DC 20554, (202) 632-4964.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-17540 Filed 8-4-87; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 52, No. 150
Wednesday, August 5, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration
Title: Statement by Foreign Importer of Aircraft or Vessel Repair Parts
Form Number: Agency—ITA–686P, EAR 373.8; OMB—0625–0137
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 55 respondents; 15 reporting/recordkeeping hours
Needs and Uses: The Aircraft and Vessel Repair Station Procedure was established as an alternative procedure to the filing of supporting documents with applications to export aircraft or vessel repair parts to certain destinations. To apply for qualification to operate under the Aircraft and Vessel Repair Station procedure, the foreign importer needs to submit ITA Form–686P.
Affected Public: Businesses and other for-profit institutions; small businesses or organizations
Frequency: On occasion/recordkeeping
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: John Griffen, 395–7340

Agency: International Trade Administration
Title: Statement by Foreign Consignee in Support of a Special License
Form Number: Agency—ITA–6052P; OMB 0625–0135
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 1,000 respondents; 533 reporting/recordkeeping hours
Needs and Uses: Special license procedures have been established allowing exporters under special circumstances to ship certain commodities abroad without restrictions to foreign consignees that have been approved for unlimited shipments. ITA Form–6052P is used by foreign consignees of U.S. exporters as a means of providing pertinent information to support the special license procedures (Distribution, Project License and Service Supply). Foreign consignees approved for such shipments need not submit supporting documentation every time they place an order with a U.S. exporter.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: On Occasion/recordkeeping
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: John Griffen, 395–7340

Agency: International Trade Administration
Title: Exception to Order Requirement
Form Number: Agency—EAR 372.6(c); OMB—0625–0024
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 10 respondents; 3 reporting/recordkeeping hours
Needs and Uses: Generally an export license application is not considered unless an actual order has been received. However, Export Administration will consider granting a waiver of the order requirement when an applicant is able to substantiate that an exception is warranted. The information provided is used in determining whether or not to grant the waiver.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: On occasion/recordkeeping
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: John Griffen, 395–7340

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3228, New Executive Office Building, Washington, DC 20503.

Dated: July 29, 1987.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87–17765 Filed 8–4–87; 8:45 am]

BILLING CODE 3510-CW-M

National Oceanic and Atmospheric Administration

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council has appointed a Limited Entry Committee to develop specific limited access alternatives for the west coast groundfish fishery, for analysis and discussion by the Pacific Council and the public. The Committee is comprised of trawl, pot, longline, hook-and-line, and gillnet groundfish fishermen; a Pacific Coast Federation of Fishermen's Association representative; a fish processor; National Oceanic and Atmospheric Administration legal counsel, and an enforcement representative. In addition, technical and gear-specific industry advisory groups have been set up to assist the Committee with development and analysis of limited entry options. The Committee, in conjunction with the Technical Advisory Group, is scheduled to convene August 18–19, 1987, beginning at 10 a.m., at the Pacific Council's offices, Metro Center, Room 330, 2000 SW. First Avenue, Portland, OR.

For further information about the public meeting, contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW First Avenue, Portland, OR 97201; telephone: (503) 221–6352.

Dated: July 31, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 87–17749 Filed 8–4–87; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blends and Other Vegetable Fiber Textile Products From Taiwan Effective on January 1, 1987; Correction

July 31, 1987.

A notice was published in the **Federal Register** on June 12, 1987 (52 FR 22515) which added TSUSA number 352.4000 to the TSUSA numbers for man-made fiber textile products in Category 669–F, produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987. TSUSA number 352.4000 should not be included in the TSUSAs for Category 669–F and, therefore, is to be deleted. The corrrect TSUSA numbers for Category 669–F are 355.4520 and 355.4530.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–17758 Filed 8–4–87; 8:45 am]

BILLING CODE 3510-DR-M

CONSUMER PRODUCT SAFETY COMMISSION

Interagency Committee on Cigarette and Little Cigar Fire Safety; Technical Study Group Meeting

AGENCY: Interagency Committee on Cigarette and Little Cigar Fire Safety.

ACTION: Notice of meeting.

SUMMARY: The Technical Study Group on Cigarette and Little Cigar Fire Safety will meet on August 17 and 18, 1987, in Washington, DC to review the technical reports implementing the Cigarette Safety Act of 1984.

DATE: The meeting will be on August 17 and 18, 1987, from 9:30 a.m. to 5:00 p.m. each day.

ADDRESS: The meeting will be in room 703–A of the Hubert Humphrey Building, 200 Independence Avenue, SW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Terri Buggs, Office of Program Management and Budget, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492–6554.

SUPPLEMENTARY INFORMATION: The Cigarette Safety Act of 1984 (Pub. L. 98–567, 98 Stat. 2925, October 30, 1984) created the Technical Study Group on Cigarette and Little Cigar Fire Safety to prepare a final technical report to Congress concerning the technical and commercial feasibility of developing cigarettes and little cigars with minimum propensity to ignite upholstered furniture and mattresses.

The Technical Study Group will meet on August 17 and 18, 1987, to approve revised technical reports on (1) cigarette ignition propensity measurement; (2) economic impact (benefit-cost) analysis; (3) ignition probability analysis; (4) pilot field data study; and (5) cigarette performance data study. In addition, the second draft of the Final Technical Report will be reviewed.

The meeting will be open to observation by members of the public, but only members of the Technical Study Group may participate in the discussion.

Dated: July 28, 1987.

Colin B. Church,

Federal Employee Designated by the Interagency Committee on Cigarette and Little Cigar Fire Safety.

[FR Doc. 87–17759 Filed 8–4–87; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92–463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, September 1, 1987; Tuesday, September 8, 1987; Tuesday, September 15, 1987; Tuesday, September 22, 1987; and Tuesday, September 29, 1987 at 10:00 a.m. in Room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Pub. L. 92–392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92–463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b.(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a gurantee that the data will be held in confidence (5 U.S.C. 552b.(c)(4)).

However, members of the public who may wish to do so are inivted to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, The Pentagon, Washington, DC. 20301.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 31, 1987.

[FR Doc. 87–17803 Filed 8–4–87; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP87–444–000 et al.]

Natural Gas Certificate Filings; Williams Natural Gas Co. et al.

July 30, 1987.

Take notice that the following filings have been made with the Commission:

1. Williams Natural Gas Company

[Docket No. CP87–444–000]

Take notice that on July 14, 1987, Williams Natural Gas Company (WNG), formerly Northwest Central Pipeline Corporation, P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP87–444–000 a request pursuant to §§ 157.205, and 157.216 of the Regulations under the Natural Gas Act (18 CFR 157.205, and 157.216) for authorization to abandon by reclaim and in place approximately 5.0 miles of 4-inch pipeline and appurtenant facilities and the transportation of gas

through said facilities, and to relocate two taps serving right-of-way customers all in Brown County, Kansas, under its authorization issued in Docket No. CP82–479–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in its request on file with the Commission and open to public inspection.

WNG states that the 4-inch pipeline and appurtenant facilities are no longer required as a part of its transmission system. It is stated that an existing 6-inch pipeline looping the 4-inch line has sufficient capacity to handle existing volumes as well as any expected growth on WNG's system. It is further stated that the pipeline was installed in 1930 and is now obsolete, shallow, and has a number of corrosion leaks each year. WNG indicates that two right-of-way customers are currently located on the 4-inch pipeline and that they would be relocated to the existing 6-inch pipeline with no interruption of service. WNG states that the cost of constructing the two taps is estimated to be $8,380, and furthermore the cost of removing the 4-inch line is estimated to be $7,180 and it is expected to have a salvage value of $600.

Comment date: September 14, 1987, in accordance with Standard Paragraph G at the end of this notice.

2. Columbia Gas Transmission Corporation

[Docket No. CP87–450–000]

Take notice that on July 16, 1987, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP87–450–000, a request pursuant to § 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate sales taps and related facilities for twelve additional points of delivery to existing wholesale customers, under the certificate issued in Docket No. CP83–76–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Specifically, Columbia requests authorization to construct and operate certain facilities necessary to provide twelve additional delivery points to the following:

Wholesale customers	Commercial	Residential	Industrial	Annual (Mcf) volumes
The Dayton Power and Light Company		1		150
Columbia Gas of Kentucky		2 (150 Mcf ea)		300
Mountaineer Gas Company		2 (150 Mcf ea)		300
Columbia Gas of Ohio		5 (150 Mcf ea)		750
Do	1			2,100
Do			1	18,000

These customers would serve new requests for residential, commercial and/or industrial service, it is stated. Columbia also explains that the additional volumes to be provided through the new delivery points are within Columbia's currently authorized level of sales and such volumes would not affect the peak day and annual deliveries to which these existing wholesale customers are entitled. Columbia indicates further that the sales to be made through the proposed taps would be under its currently effective Contract Demand Service Rate Schedule.

Comment date: September 14, 1986, in accordance with Standard Paragraph G at the end of this notice.

3. Arkla Energy Resources, a Division of Arkla, Inc.

[Docket No. CP87–445–000]

Take notice that on July 14, 1987, Arkla Energy Resources (AER), a division of Arkla, Inc., P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP87–445–000 a request pursuant to §§157.205 and 157.208 of the Regulations under the Natural Gas Act (18 CFR 157.205 and 157.208) for authorization to acquire, construct and operate pipeline facilities and related appurtenances located in northern Arkansas, under the certificate issued in Docket Nos. CP82–384–000 and CP82–384–001, pursuant to the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission, and open to public inspection.

Specifically, by this application AER proposes to: (1) Acquire from AER-Arkansas Gas Transit Company, a subsidiary of Arkla, Inc., approximately 120 miles of 12-inch pipeline facilities formerly used in petroleum transportation, which will be designated Line BT–14; (2) construct a 3.2-mile, 8-inch line, to be disignated Line BT–16, extending from the Mantooth Compressor Station in the Aetna Field, Franklin Country, Arkansas, to a point of interconnection with the acquired facilities; and (3) construct connections between Line BT–14 and Line BT–16 and between Line BT–14 and Line JM–30. It is stated that all of the above facilities would be operated in interstate commerce. AER estimates that acquisition, and construction of the proposed facilities, which would enable AER to supply its central Arkansas markets with approximately 50,000 Mcf on a peak day, would cost approximately $14.43 million.

AER states that the proposed acquisition, construction and operation, would permit the production and introduction into AER's system supply reserves that cannot currently be made available to AER becasue of capacity limitations in the facilities carrying gas from the fields in the eastern Arkoma Basin. It if further stated that additional incidental benefits include the possibility of future connections between Line BT–14 and other lines in the Arkoma Basin and a commensurate unloading of AER's existing transmission lines.

Comment date: September 14, 1987, in accordance with Standard Pragraph G at the end of this notice.

4. KN Energy, Inc., Northern Utilities, Inc.

[Docket No. CP87–432–000]

Take notice that on July 8, 1987, KN Energy, Inc. (KN), P.O. Box 15625, Lakewood, Colorado 80215 and Northern Utilities, Inc. (NUI), 441 South Center Street, Casper, Wyoming 82602, filed in Docket No. CP87–432–000 a joint application pursuant to section 7(c) of the Natural Gas Act (NGA) for a certificate of public convenience and necessity authorizing the exchange of natural gas between KN and UNI, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

KN and NUI state that they have entered into a gas exchange agreement dated June 25, 1987, pursuant to which they would exchange equivalent volumes of natural gas for a primary term of 15 years, continuing year to year thereafter, at primary exchange points located at the West Poison Spider Field in Natrona County, Wyoming and the Beaver Creek producing area in Freemont County, Wyoming. KN also rquests authority to designate a secondary exchange and balancing point for deliveries to NUI at KN's Sand Draw plant located in the Big Sand Draw field, Freemont County, Wyoming, where KN presently receives gas for system supply from third parties. KN states that this secondary exchange

point would only be utilized if exchange and balancing at the primary Beaver Creek exchange point is not feasiable, for whatever reason.

It is stated that under the proposed exhange UNI would deliver to KN at West Poison Spider, volumes of gas supply in which NUI has an interest, and KN would deliver to NUI at Beaver Creek equivalent volumes of gas supply in which KN haws an interest. Thus, it is further stated, under the proposed exchanges each party would be able to arrange for delivery of gas from fields in which each has supply interests to distant points of receipt on the respective systems of each, to be accomplished without the construction of any new facilities.

KN and NUI state that the maximum exchange volumes would be 15,000 Mcf per day. It is further started that the volumetric exchange would be undertaken on a no fee basis.

NUI states that it is an intrastate pipeline exempt from Commission jurisdiction pursuant to section 1(c) of the NGA and seeks a limited jurisdiction certificate authorization to participate in this exchange only to the extent necessary to authorize its participation in such gas supply exchange. NUI requests that the certificate of public convenience and necessity issued to it be so limited and conditioned so as not to make NUI subject to FERC jurisdiction as "a natural gas company" under the NGA with respect to any of its other operations, nor to require NUI to file reports or maintain its books and records in accordance with the Uniform System of Accounts, nor to change its status as as intrastate pipeline and public utility subject to the jurisdiction of the Public Service Commission of Wyoming, nor to alter NUI's Hinshaw exemption under section 1(c) of the NGA.

Comment date: August 20, 1987, in accordance with Standard Paragraph F at the end of this notice.

5. Natural Gas Pipeline Company of America

[Docket Nos. CP86-106-003 and CP86-107-005]

Take notice that on July 1, 1987, Natural Gas Pipeline Company of America (Petitioner), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket Nos. CP86-106-003 and CP86-107-005 a petition to amend the order issued May 1, 1986, in Docket Nos. CP86-106-000 and CP86-107-000, respectively, pursuant to section 7(c) of the Natural Gas Act. Petitioner requests authorization so as to extend the terms of its transportation services for two end-users, Firestone Tire and Rubber Company (Firestone) and Wabash Alloys, Inc. (Wabash), and to increase the maximum daily volume of gas transported for Wabash, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Petitioner states that in the order issued May 1, 1986, in Docket No. CP86-106-000, it is authorized to transport up to 4,000 MMBtu of natural gas per day on an interruptible basis for Firestone for a term ending August 30, 1987.

Petitioner states that in an amendement to the transportation agreement dated April 13, 1987, it has received a request from Firestone to continue service beyond the currently authorized termination date. Petitioner requests that the certificate, in Docket No. CP86-106-000, be extended for a limited term ending April 30, 1989.

Petitioner states that in the order issued May 1, 1986, in Docket No. CP86-107-000, it is currently authorized to transport on an interruptible basis for Wabash up to 1,300 MMBtu of gas per day for a limited term ending April 30, 1987.

Petitioner states that, in an amendment to the transportation agreement dated February 5, 1987, it has received a request from Wabash to continue service beyond the currently authorized termination date, and increase the maximum daily volume of gas transported by Petitioner for Wabash at its Wabash, Indiana plant. Petitioner requests that the certificate in Docket No. CP86-107-000 be extended for a limited term ending April 30, 1988. Petitioner also requests an increase in the maximum daily volume of gas transported for Wabash to 5,000 MMBtu of gas per day.

Petitioner does not propose any other changes in the authorized service, and states further that no new facilities are proposed here.

Comment date: August 20, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

6. Natural Gas Pipeline Company of America

[Docket No. CP87-412-000]

Take notice that on June 29, 1987, Natural Gas Pipeline Company of America (Applicant), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP87-412-000 an application pursuant to section 7(c) of the Natural Gas Act for authorization to transport up to 100,000 MMBtu of natural gas per day on an interruptible basis for Delhi Gas Pipeline Corporation (Delhi) and TXO Gas Marketing Corp. (TXO Marketing), all as more fully set forth in its application which is on file with the Commission and open for public inspection.

Pursuant to the terms and conditions contained in a gas transportation agreement (Agreement) between Applicant and Delhi dated November 17, 1986, Applicant states that it would receive up to 100,000 MMBtu of gas per day at twenty-two existing points of receipt located in the states of Oklahoma, Texas, Kansas, Iowa and Arkansas for the accounts of Delhi and TXO Marketing. It is further stated that such gas volumes would be transported and redelivered to Northern Indiana Public Service Company (NIPSCO) at three existing points of interconnection located on the Illinois-Indiana border. NIPSCO is expected to use a portion of the gas to meet the supply requirements of its system and to deliver the balance to USX Corporation, an industrial end-suer, for use in its Gary, Indiana plant. It is explained that the proposed transportation service would be provided for an initial term of two years and month to month thereafter, unless cancelled as provided in the Agreement.

Applicant states that it would charge Delhi a transportation rate that is consistent with its Rate Schedule TRT-1 for each MMBtu of gas received. Applicant notes that pursuant to the Commission's Order issued May 8, 1987 at Docket Nos. RP85-150-000 and RP86-97-002, the currently effective transportation rate that would be charged under Rate Schedule TRT-1 for the proposed service is 31.23 cents per MMBtu. Applicant also states that it would either reduce redelivery volumes or impose a monetary charge for fuel consumed and unaccounted for gas. Finally, Applicant advises that it would also charge Delhi the currently effective GRI surcharge, if required, as set forth in its Tariff on file with the Commisison.

Comment date: August 20, 1987, in accordance with Standard Paragraph F at the end of this notice.

7. Mississippi River Transmission Corporation

[Docket No. CP87-429-000]

Take notice that on July 6, 1987, Mississippi River Transmission Corporation (Applicant) 9900 Clayton Road, St. Louis Missouri 63124, filed in Docket No. CP87-429-000 an application pursuant to section 7(c) of the Natural Gas Act for authorization to implement increases in firm gas service for nine (9) of its existing jurisdictional sales customers served under Rate Schedule SGS-1 (SGS Customers) and in conjunction therewith, install new

metering facilities and make minor facility modifications, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

In response to the request of SGS Customers, Applicant states that it is seeking authorization to increase contract demand quantities totaling 6,690 Mcf per day which represent current peak day requirements as well as further growth.

Applicant further states that two of the SGS Customers, City of Hazen and City of Potosi, require a portion of their increased contract demand to provide new natural gas service.

In order to implement the proposed increases in contract demand, Applicant indicates that it would install new meters at the City of Hazen Metering Station and make minor facility modifications to the delivery stations off lateral line A–66 downstream of its Desloge Pressure Regulating Station. Applicant states that there would be minor modifications to the Desloge Pressure Regulating Station, rendering a total estimated cost of the new meters and facility modification at approximately $110,300.

Comment date: August 20, 1987, in accordance with Standard Paragraph F at the end of this notice.

8. Southern Natural Gas Company

[Docket No. CP87–424–000]

Southern Natural Gas Company, South Georgia Natural Gas Company

[Docket No. CP87–425–000]

Take notice that on July 1, 1987, Southern Natural Gas Company (Southern) P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP87–424–000 and Southern and South Georgia Natural Gas Company (South Georgia), P.O. Box 1279, Thomasville, Georgia 31792, filed in Docket No. CP87–425–000 applications pursuant to section 7(c) of the Natural Gas Act for limited-term certificates of public convenience and necessity authorizing the transportation on an interruptible basis of up to 34,500 MMBtu of natural gas per day for a limited term ending October 31, 1988, for distribution customers in Georgia and Alabama, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

In Docket No. CP87–424–000 Southern proposes to transport up to 32,000 MMBtu equivalent of gas per day on behalf of Alabama Gas Corporation (Alagasco), an existing distribution customer, acting as agent for commercial and industrial customers in Alabama. Southern states that it would receive gas purchased by Alagasco from SNG Trading Inc. (SNG) at existing points on Southern's system in Texas, Louisiana, offshore Louisiana and Mississippi. It is further stated that Southern would redeliver equivalent volumes of gas less 3.25 percent for compressor fuel and company-use gas at 20 points on Southern's system in Alabama for use by Alagasco's commercial and industrial customers.

In Docket No. CP87–425–000 Southern and South Georgia propose to transport up to 2,500 MMBtu of gas per day on behalf of the City of Bainbridge, Georgia (Bainbridge). Southern and South Georgia state that Southern would receive gas purchased by Bainbridge from four producer-suppliers [1] at existing points on Southern's system in Louisiana, offshore Louisiana and Alabama. Southern and South Georgia explain that Southern would deliver equivalent volumes of gas less 3.25 percent for compressor fuel and company-use gas to South Georgia at an existing point of interconnection between Southern and South Georgia in Lee County, Alabama. It is further explained that South Georgia would redeliver equivalent volumes less 0.5 percent for compressor fuel and company-use gas to Bainbridge at the City of Bainbridge Meter Stations Nos. 1 and 2 in Decatur County, Georgia.

It is asserted that no new facilities would be required to effect the proposed transportation services.

Southern proposes in Docket No. CP87–424–000 to charge Alagasco the following rates:

(a) Where the aggregate of the volumes transported and redelivered by Southern on any day to Alagasco under any and all transportation agreements with Southern, excluding that certain Long-Term Transportation Agreement Among Southern, Alagasco, and Alabama Interstate Supply dated October 1, 1984, when added to the volumes of gas delivered under Southern OCD Rate Schedule on such day to Alagasco do not exceed the daily Contract Demand of Alagasco, the transportation rate shall be 39.9 cents MMBtu; and

(b) Where the aggregate of the volumes transported and redelivered by Southern on any day to Alagasco under any and all transportation agreements with Southern, excluding that certain Long-Term Transportation Agreement Among Southern, Alagasco, and Alabama Intrastate Supply dated October 1, 1984, when added to the volumes of gas delivered under Southern's OCD Rate Schedule on such day to Alagasco exceed the daily Contract Demand of Alagasco, the transportation rate for the excess volumes shall be 64.9 cents per MMBtu.

Southern proposes in Docket No. CP87–425–000 to charge South Georgia the following rates:

(a) Where the aggregate of the volumes transported and redelivered by Southern on any day to South Georgia under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern OCD Rate Schedule on such day to South Georgia do not exceed the daily Contract Demand of South Georgia, the transportation rate shall be 39.9 cents MMBtu; and

(b) Where the aggregate of the volumes transported and redelivered by Southern on any day to South Georgia under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's OCD Rate Schedule on such day to South Georgia exceed the daily Contract Demand of South Georgia, the transportation rate for the excess volumes shall be 64.9 cents per MMBtu.

South Georgia proposes in Docket No. CP87–425–000 to charge Bainbridge a rate of 28.33 cents per MMBtu redelivered. It is explained that Bainbridge would reimburse South Georgia for all transportation and fuel charges paid to Southern by South Georgia.

It is asserted that in both dockets the transportation agreements provide for collection of the currently authorized GRI surcharge. It is further asserted that Southern would receive take-or-pay credit for all volumes of gas redelivered by Southern.

Comment date: August 20, 1987, in accordance with Standard Paragraph F at the end of this notice.

9. Texas Gas Transmission Corporation

[Docket No. CP87–422–000]

Take notice that on July 1, 1987, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP87–422–000, an application pursuant to section 7(b) of the Natural Gas Act for an order permitting and approving the partial abandonment of service to Associated Natural Gas (Associated) by Texas Gas, all as more fully described in the application on file with the Commission, which is open for public inspection.

Pursuant to the terms of its current service agreement with Texas Gas, which expires October 31, 1987,

[1] SNG, Consolidated Fuel Supply, Inc., Panhandle Trading Company, and Texican Natural Gas Company.

Associated gave timely notice effective October 31, 1987, it w reduce its contract demand from 10,267 MMBtu per day to 7,490 MMBtu per day. It is stated that this reduction is necessary because Associated has experienced changed market conditions, and does not now need the full requirements available to it under its present service agreement.

It is stated that, as a result of this reduction in contract demand, Associated, which is currently purchasing under Texas Gas Rate Schedule G–1, now qualifies for service under Rate Schedule SG–1. This change in rate schedules will be effectuated through Texas Gas's blanket certificate in Docket No. CP82–407 and pursuant to §157.217 of the Commission's Regulations. The change will provide significant savings to associated and its customers.

Comment date: August 20, 1987, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a normal hearing is required, further notice of such hearing will be fully given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and no withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–17789 Filed 8–4–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP87–457–000]

Application; Trunkline Gas Co.

July 24, 1987.

Take notice that on July 23, 1987, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP87–457–000, an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act and the regulations thereunder for a limited-term certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of Transcontinental Gas Pipe Line Corporation (Transco) on an interruptible basis, for a term ending July 20, 1992, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Pursuant to a transportation agreement between Trunkline and Transco dated July 20, 1987, Trunkline has agreed to receive for transportation a volume of natural gas of up to 30,000 Mcf per day on an interruptible basis on behalf of Transco. Trunkline will receive volumes for Transco's account from McMoran Oil and Gas Company (McMoran) at Eugene Island Block 380, offshore Louisiana. Trunkline will utilize its capacity in Tarpon Transmission Company (Tarpon) and will redeliver to Transco at an existing point of pipeline interconnection located near Ragley in Beauregard Parish, Louisiana. The ultimate destination of such gas is the system supply of Transco. For this transportation service, Transco will pay Trunkline 31.24 cents for Dt of natural gas received, which includes a charge of 16.88 cents/Dt for transportation on the Tarpon system.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 7, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Trunkline to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–17790 Filed 8–4–87; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3242-7]

Financial Assistance Program for Review Under 40 CFR 29 and Subject to Section 204 of the Demonstration Cities and Metropolitan Development Act

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability and review.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of a new financial assistance program (66.703, "Asbestos Inspection and Management Plan Assistance Program") to provide financial support to States (including the District of Columbia and U.S. Trust Territories), and in turn, local education agencies (LEAs) to assist with the costs of inspection for asbestos-containing material (ACM) and preparation of management plans for school buildings. The program is authorized by section 4(b)(1) of the Asbestos Hazard Emergency Response Act of 1986 (AHERA).

DATE: All complete applications must be received in EPA no later than September 1, 1987, to be considered for FY 88 funding awards.

ADDRESS: All the necessary addresses are included in the supplementary information.

FOR FURTHER INFORMATION CONTACT: Michael Stahl, Chief, Hazard Abatement Assistance Branch (TS-788A), U.S. EPA, 401 M Street SW., Washington, DC 20460, (202) 382-3949.

SUPPLEMENTARY INFORMATION:

Under the authority of AHERA, section 4(b)(1), EPA will award grant and cooperative agreements to State agencies. This program is eligible for intergovernmental review under Executive Order 12372 and is subject to the review requirements of Section 204 of the Demonstration Cities and Metropolitan Development Act. States must notify the following office in writing within 30 days of this publication whether their State's official E.O. 12372 process will review applications in this program: Grants Policy and Procedures Branch, Grants Administration Division (PM-216F), U.S. EPA, 401 M Street SW., Washington, DC 20460, Attention: Corinne Allison.

Applicants must contact their State's Single Point of Contact (SPOC) for intergovernmental review as early as possible to find out if the program is subject to the State's official E.O. 12372 review process and what material must be submitted to the SPOC for review. In addition, applications for projects within a metropolitan area must be sent to the areawide/Regional/local planning agency designated to perform metropolitan or regional planning for the area for their review.

Under AHERA, Congress has imposed a deadline of October 12, 1988 for schools to complete their inspections and prepare management plans for submission to State Governors. EPA intends to make awards on or before the date AHERA specifies that final rules are to be promulgated (October 17, 1987). SPOCs and other reviewers should send their official intergovernmental review comments on an application to the Grants Administration Division, Grants Operations Branch (PM-216F), U.S. EPA, 401 M Street SW., Washington, DC 20460, no later than 30 days after the receipt of the application/other required material for review.

The Asbestos Inspection and Management Plan Assistance Program is implemented through the Office of Pesticides and Toxic Substances with support from the EPA Regional Offices. The objective of the program is to provide financial assistance to States which may in turn pass through funds to LEAs to assist with the costs of carrying out inspections and preparing management plans for school buildings. There is a 5% cost sharing requirement for State recipient agencies. Costs incurred before the award date are not allowable. The new assistance program is open to all States. It is expected that 10 to 20 awards will be made during the FY 1988 in amounts ranging from $100,000 to $500,000 and may be used by recipients to:

(1) Pay LEA directly to offset the costs they incur for hiring accredited inspectors;

(2) Pay LEAs directly to offset the costs they incur for hiring accredited management plan developers;

(3) Purchase the services of accredited persons who will perform inspections or develop management plans for schools; or

(4) Pay State employees (who are accredited inspectors) to perform inspections in schools.

Each State is required to establish its own organizational and management structure to formulate and implement its assistance program. EPA's Regional Asbestos Coordinators (RACs) will be the EPA projects officers. Applicants must submit their completed application to the Grants Administration Division, Grants Operations Branch (PM-216F), U.S. EPA, 401 M Street SW., Washington, DC 20460. A duplicate copy of the application must be sent to the appropriate RAC. Addresses for the RACs may be obtained by contacting EPA headquarters (telephone: (202) 382-3949). Applications will be evaluated by the Hazard Abatement Assistance Branch (HAAB) staff and the RACs who will generate an award list.

Each application submitted to EPA must include specific details on how the individual State intends to manage any federally awarded funds. The following outlines the standard program elements required of applicants.

1. Applicants must complete EPA Standard for 5700-33.

2. Applicants must provide an explanation of their plans for administration of the grant program. This must include identification of official(s) responsible for making award determinations and distributing funds to LEAs.

3. Applicants must include a proposal for budgeting administrative costs. Not more than 2% of the total award may be used for administrative purposes. Administrative costs include costs incurred by the recipient in the management or supervision of the execution of the program but do *not* include salaries of employees who inspect for ACM or assist in the preparation of management plans.

4. Applicants must provide an estimate of the demand for assistance (*i.e.*, the number of LEAs and the dollar amount needed) from financially needy LEAs in their State.

5. Applicants must provide a description of the selection criteria and process they will use to determine LEAs who will receive funds. LEA selections must be based on financial need of the LEA. EPA strongly encourages the recipient agencies to give *both private and public schools equitable consideration* when making award decisions.

6. Applicants must identify who will be responsible for managing and overseeing their program. Program oversight include these elements:

A. Assurance that federal funds are used specifically for inspection of and preparation of management plans for school buildings.

B. Assurance that accredited persons are used to conduct inspections or develop management plans.

C. Assurance that school inspection costs will be necessary and reasonable.

D. Assurance that those LEAs receiving financial assistance, will perform inspections and submit management plans to State Governors

by October 12, 1988 as required by AHERA, section 205.

A schedule of events, containing among other elements, the announcement of awards and milestones for program oversight, must be included.

E. Assurance that all federally funded inspections will be done in accordance with AHERA.

Dated: July 24, 1987.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 87-17742 Filed 8-4-87; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3242-8]

Science Advisory Board; Hazard Ranking System Review Subcommittee; Open Meeting, September 14-15, 1987

Under Pub. L. 92-463, notice is hereby given that the Science Advisory Board's Hazard Ranking System Review Subcommittee will hold a two day meeting September 14-15, 1987 at the U.S. Environmental Protection Agency, the Administrator's Conference Room, 1103 West Tower, Waterside Mall, 401 M Street, SW., Washington, DC. The meeting will begin a 8:30 a.m. Monday and adjourn no later than 5:00 p.m. Tuesday.

The major purpose of the meeting is to continue review of the issues presented to the Science Advisory Board concerning the Hazard Ranking System. The three major documents under review are: *Discussion of Options for Revisions of Hazard Ranking System (HRS) Toxicity Factor, Air Target Distance for Hazard Ranking System*, and *Superfund Hazard Ranking System (HRS): Selected Issues Related to Mining Waste Sites*. Copies of these and other documents provided to the Subcommittee are available in the Superfund Docket. The Superfund Docket is located at EPA Headquarters, Waterside Mall Sub-basement, 401 M Street, SW., Washington, DC 20460. The Docket is open by appointment only from 9:00 a.m. to 4:00 p.m. Monday through Friday excluding holidays. To obtain copies of the documents or to make an appointment, contact Tina Maragousis at (202) 382-3046.

The meeting is open to the public. Any member of the public wishing to attend, make brief oral comments, or submit written comments to the Subcommittee should notify Mrs. Kathleen Conway, Executive Secretary, or Mrs. Dorothy Clark, Staff Secretary, (A101-F) Science Advisory Board, by the close of business on Monday, August 10, 1987. The telephone number is (202) 382-2552.

Terry F. Yosie,

Director, Science Advisory Board.

Date: July 30, 1987

[FR Doc. 87-17743 Filed 8-4-87; 8:45 am]

BILLING CODE 6560-50-M

[PF-485; FRL-3242-6]

Chevron Chemical Co.; Withdrawals of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the withdrawal without prejudice of certain pesticide petitions filed by the Chevron Chemical Co. for the fungicide captafol that were previously filed and published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: By mail: Richard F. Mountfort, Product Manager (PM) 23, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 237, CM #2, 1921 Jefferson Davis Hwy. Arlington, VA 22202, (703) 557-1830.

SUPPLEMENTARY INFORMATION: EPA has received requests under 40 CFR 180.8 from the Chevron Chemical Co., 15049 San Pablo Ave., Richmond, CA 94804-0010, to withdraw without prejudice to future filings the following petitions that were previously filed and published in the **Federal Register**

1. *PP 6F1795*. Proposed in the **Federal Register** of July 6, 1976 (41 FR 27776), that 40 CFR 180.267 be amended by establishing a tolerance for residues of the fungicide captafol (*cis-N*-[(1,1,2,2-tetrachloroethyl)thio]-4-cyclohexene-1,2-dicarboximide) in or on the raw agricultural commodity pecan nutmeats (shells removed) at 0.1 part per million.

2. *PP 7F1962*. Proposed in the **Federal Register** of July 19, 1977 (42 FR 37029), that 40 CFR 180.267 be amended by establishing a tolerance for residues of the fungicide captafol on growing soybeans with a tolerance limitation of 3 ppm in soybean hulls.

3. *FAP 7H5166*. Proposed in the **Federal Register** of July 19, 1977 (42 FR 37029), that 21 CFR Part 561 be amended by establishing a regulation permitting the use of the fungicide captafol on growing soybeans with a tolerance limitation of 3 ppm in soybean hulls.

4. *PP 8E2047*. Proposed in the **Federal Register** of March 16, 1978 (43 FR 10971), establishment of a tolerance for captafol in or on green coffee beans at 0.20 ppm, amended in the **Federal Register** of June 30, 1982 (47 FR 28458), by increasing the proposed tolerance from 0.20 ppm to 5.0 ppm, and further amended in the **Federal Register** of September 7, 1983 (48 FR 40433), by decreasing the proposed tolerance to 1.0 ppm and changing the expression of residues.

5. *PP 4E3080*. Proposed in the **Federal Register** of June 6, 1984 (49 FR 23444), that 40 CFR 180.267 be amended by establishing a tolerance for residues of the fungicide captafol in or on the commodity kiwifruit at 5.0 ppm.

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2))

Dated: July 27, 1987.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 87-17745 Filed 8-4-87; 8:45 am]

BILLING CODE 6560-50-M

[PF-484; FRL-32425]

Pesticide Tolerance Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the filing of pesticide petitions proposing the establishment of tolerances and/or regulations for residues of certain pesticide chemicals in or on certain agricultural commodities.

ADDRESS: By mail, submit written comments to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (TS–767C), Attn: Product Manager (PM) (named in the petition), Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

In person, contact the PM named in each petition at the following office location/telephone number:

Production manager	Office location/ telephone number	Address
Dennis Edwards (PM 12).	Rm. 202, CM #2, (703)–557–2386.	EPA, 1921 Jefferson Davis Hwy., Arlington, VA 22202.
George LaRocca (PM 15).	Rm. 204, CM #2, (703)–557–2400.	Do.
Lois Rossi (PM 21).	Rm. 227, CM #2, (703)–557–1900.	Do.
Mr. Robert Taylor (PM 25).	Rm. 245, CM #2 (703)–557–1800.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide (PP) and/or food and feed additive (FAP) petitions as follows, proposing the establishment and or amendment of tolerances or regulations for residues of certain pesticide chemicals in or on certain agricultural commodities.

Initial Filing

1. *PP 6F3331.* Ciba-Geigy Corp., Agricultural Division, P.O. Box 18300, Greensboro, NC 27419, proposes amending 40 CFR 180.298 by establishing a tolerance for the insecticide methidathion (O,O-dimethyl phosphorodithioate, S-ester with 4-(mercaptomethyl-2-methoxy-delta^2-1,3,4,-thiadiazolin-5-one) and its oxygen analog (S-[(5-methoxy-2-oxo-1,3,4,-thiadiazol-3(2H)-yl)methyl]O,O-dimethyl phosphorothiate in or on corn, grain at 0.1 ppm and corn, fodder and corn, forage at 2.0 ppm. The proposed analytical method for determining residues as liquid gas chromatography (PM 12).

2. *PP 7F3516.* Union Carbide Agricultural Products Co., Inc., P.O. Box 12014, T.W. Alexander Drive, Research Triangle Park, NC 27709, proposes amending 40 CFR 180.407 by establishing a regulation to permit the residues of the insecticide thiodicarb (dimethyl N,N'[thiobis[(methylamino) carbonyloxy]]bis[ethanimidothioate]) and its metabolite, methomyl (S-methyl N-[(methylcarbamoyl)oxy]-thioacetimidate) in or on leafy vegetables at 30 ppm. The proposed analytical method for determining residues is liquid gas chromatography. (PM 12)

3. *PP 7F3521.* ICI Americas, Inc., Agricultural Products Group, Registration and Regulatory Affairs, Wilmington, DE 19897, proposes amending 40 CFR Part 180 by establishing a regulation to permit the residues of the insecticide tefluthrin (2,3,5,6-tetrafluoro-4-methylbenzyl cis-3-[(Z)-2-chloro-3,3,3-trifluoroprop-1-enyl]-2,2-dimethylcyclopropanecarboxylate) in or on corn, grain, field and corn, grain, pop at 0.01 ppm. The proposed analytical method for determining residues is liquid gas chromatography. (PM 15)

4. *FAP 7H5536.* Agrimont, S.P.A. c/o Kennedy Consultants, Inc., 9101 Cherry Lane, Suite 113, Laurel, MD 20708, proposes amending 21 CFR Part 561 by establishing a regulation to permit the residues of the fungicide benalaxyl (N-(2,6-dimethylphenyl)- N-(2-phenylacetyl)-DL-alanine methyl ester in or on hops (dry) at 0.2 ppm. The proposed analytical method for determining residues is gas chromatography. (PM 21)

5. *PP 7F3522.* Mobay Corp., Agricultural Chemicals Division, Kansas City, MO 64120, proposes amending 40 CFR 180.158 by establishing a regulation to permit the residues of the fungicide anilazine (2,4-dichloro-6-(o-chloroanilino)-s-triazine) in or on onions (dry bulbs) at 10.0 ppm. The proposed analytical method for determining residues is gas chromatographic. (PM–21

6. *PP 7F3523.* Mobay Crop., Agricultural Chemicals Division, Kansas City, MO 64120, proposes amending 40 CFR 180.349 by establishing a regulation to permit the residues of the fungicide fenamiphos (ethyl-3-methy-4-(methylthio)phenyl (1-methylethyl)phosphoramidate) and its sulfone and sulfoxide metabolites in or on peanut shells at 0.5 ppm. The proposed analytical method for determining residues is gas chromatographic. (PM–21)

7. *PP 7F3529.* BASF Corp. Chemicals Division, Agricultural Chemicals Group, 100 Cherry Hill Rd., Parsippany, NJ 07054, proposes amending 40 CFR 180.412 by establishing a regulation to permit the residues of the herbicide 2-[1-(ethoxyimino) butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide) in or on potatoes at 4.00 ppm. The proposed analytical method for determining residues is gas chromatographic. (PM–25)

8. *FAP 7H5537.* BASF Corp., Chemicals Division, Agricultural Chemicals Group, 100 Cherry Hill Rd., Parsippany, NJ 07054, proposes amending 21 CFR Part 193 by establishing a regulation to permit the residues of the herbicide (2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one) and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide) in or on potato flakes at 8.00 ppm and potato granules at 8.00 ppm. The proposed analytical method for determining residues is gas chromatographic. (PM–25)

Authority: 21 U.S.C. 346a.

Dated: July 24, 1987.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 87–17744 Filed 8–4–87; 8:45 am]

BILLING CODE 6560–50–M

[OPP–180739; FRL–3240–3]

Emergency Exemptions; Paraquat, etc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to the 23 States listed below and one quarantine exemption granted to the United States Department of Agriculture. Also listed are two denials of requests for specific exemptions from the California Department of Food and Agriculture and the Wisconsin Department of Agriculture, Trade, and Consumer Protection. These exemptions, issued during the months of April and June, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific or quarantine exemption for its effective date.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption for the name of the contact person. The following information applies to all contact persons:

By mail: Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–1606).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. Alabama Department of Agriculture and Industries for the use of paraquat on peanuts to control Florida beggarweed and sicklepod; April 13, 1987 to June 1, 1987. (Jack E. Housenger)

2. Arizona Commission of Agriculture and Horticulture for the use of sulfur dioxide as a postharvest fumigant on table grapes to control gray mold and bunch rot; April 1, 1987 to July 31, 1987. (Jack E. Housenger)

3. Arizona Department of Agriculture for the use of fenoxycarb on citrus groves, dairy feed lots, pasture and rangeland near Mesa, AZ to control imported fire ants; April 15, 1987 to June 15, 1987. Solicitation of public comment was published in the **Federal Register** of March 4, 1987 (52 FR 6607), no comments were received. The exemption was granted based on the finding that the main western front of the fire ant infestation is still several hundred miles to the east. The establishment of the fire ant in the State can be significantly delayed provided isolated infestations that slip through the quarantine inspection at the border can be eliminated as they occur. The toxicology data available to the Agency for fenoxycarb will support the proposed one-time use. The most exposed subgroup would be nonnursing infants whose estimated TMRC would utilize 15.6 percent of the PADI. It is highly unlikely that any endangered species will be affected by the proposed use of fenoxycarb and that fenoxycarb will degrade in the soil, and it is not expected to contaminate ground water. (Jim Tompkins)

4. California Department of Food and Agriculture for the use of methiocarb on artichokes to control snails and slugs; April 15, 1987 to March 1, 1988. (Jim Tompkins)

5. Delaware Department of Agriculture for the use of (±)-2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-ethyl-3-pyridinecarboxylic acid (imazethapyr) on lima beans and snap beans to control broadleaf weeds; April 27, 1987 to September 30, 1987. Solicitation of public comment was published in the **Federal Register** of March 10, 1987 (52 FR 7307), no comments were received. The exemption was granted based on the finding that there are no registered alternative pesticides which will provide adequate control of these pests in lima and snap beans. A significant economic loss may result if an effective pesticide is not made available. Residues of imazethapyr will not exceed 0.1 ppm in snap beans and lima beans and 0.3 ppm in cannery waste (snap and lima beans). These residue levels can be toxicologically supported and will not pose a threat to the public health. The percent PADI occupied by these uses and established uses is 0.023 percent. The proposed use should not pose an unreasonable hazard to the environment. (Libby Pemberton)

6. Florida Department of Agriculture and Consumer Services for the use of paraquat on peanuts to control Florida beggarweed and sicklepod; April 13, 1987 to August 1, 1987. (Jack E. Housenger)

7. Georgia Department of Agriculture for the use of paraquat on peanuts to control Florida beggarweed and sicklepod; April 13, 1987 to August 1, 1987. (Jack E. Housenger)

8. Idaho Department of Agriculture for the use of fluazifop-butyl on onions to control grasses; April 28, 1987 to September 1, 1987. (Donald Stubbs)

9. Iowa Department of Agriculture for the use of fluazifop-butyl on onions to control grasses; April 28, 1987 to September 1, 1987. (Donald Stubbs)

10. Maryland Department of Agriculture for the use of (±)-2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-ethyl-3-pyridinecarboxylic acid (imazethapyr) on lima beans and snap beans to control morningglory; April 27, 1987 to September 30, 1987. Solicitation of public comment was published in the **Federal Register** of March 25, 1987 (52 FR 9536), no comments were received. The exemption was granted based on the finding that there are no registered alternative pesticides which will provide adequate control of this pest in lima and snap beans. A significant economic loss may result if an effective pesticide is not made available. Residues of imazethapyr will not exceed 0.1 ppm in snap beans and lima beans and 0.3 ppm in cannery waste (snap and lima beans). These residue levels can be toxicologically supported and will not pose a threat to the public health. The percent PADI occupied by these uses and established uses is 0.023 percent. The proposed use should not pose an unreasonable hazard to the environment. (Libby Pemberton)

11. Minnesota Department of Agriculture for the use of 6-(4-isopropyl-4-methyl-5-oxo-2-imidazolin-2-yl)methyl ester and 2-(4-isopropyl-4-methyl-5-oxo-2-imidazoline-2-yl)methyl ester on sunflowers to control wild mustard; April 26, 1987 to July 31, 1987. Solicitation of public comment was published in the **Federal Register** of January 22, 1987 (52 FR 2440), no comments were received. The exemption was granted based on the finding that there are no postemergent herbicides registered for control of wild mustard in sunflowers. Other products tested for this use are economically unacceptable. The potential losses of $2.81 million in Minnesota and $6.48 million in North Dakota threaten long-term financial viability of the sunflower industry in these States. (Libby Pemberton)

12. Nebraska Department of Agriculture for the use of sethoxydim on dry edible beans to control wild proso millet; April 28, 1987 to August 15, 1987. (Jim Tompkins)

13. New Jersey Department of Environmental Conservation for the use (±)-2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-ethyl-3-pyridinecarboxylic acid (imazethapyr) on lima beans and snap beans to control broadleaf weeds; April 27, 1987 to September 30, 1987. Solicitation of public comment was published in the **Federal Register** of February 18, 1987 (52 FR 4961), no comments were received. The exemption was granted based on the finding that there are no registered alternative pesticides which will provide adequate control of these pests in lima and snap beans. A significant economic loss may result if an effective pesticide is not made available. Residues of imazethapyr will not exceed 0.1 ppm in snap beans and lima beans and 0.3 ppm in cannery waste (snap and lima beans). These residue levels can be toxicologically supported and will not pose a threat to the public health. The percent PADI occupied by these uses and established uses is 0.023 percent. The proposed use should not pose an unreasonable hazard to the environment. (Libby Pemberton)

14. New Jersey Department of Environmental Protection for the use of sodium fluoaluminate on potatoes to control Colorado potato beetles; April 20, 1987 to October 31, 1987. (Gene Asbury)

15. New Jersey Department of Environmental Protection for the use of sulfur dioxide as a postharvest fumigant on imported table grapes to control gray mold and bunch rot; April 1, 1987 to April 30, 1987. (Jack E. Housenger)

16. New York Department of Environmental Conservation for the use of fluazifop-butyl on onions to control grasses; April 28, 1987 to July 1, 1987. (Donald Stubbs)

17. North Carolina Department of Agriculture for the use of paraquat on peanuts to control annual broadleaf weeds and grasses; April 13, 1987 to August 1, 1987. (Jack E. Housenger)

18. North Dakota Department of Agriculture for the use of 6-(4-isopropyl-4-methyl-5-oxo-2-imidazolin-2-yl)methyl ester and 2-(4-isopropyl-4-methyl-5-oxo-2-imidazoline-2-yl)methyl ester on sunflowers to control wild mustard; April 26, 1987 to July 31, 1987.

Solicitation of public comment was published in the **Federal Register** of January 22, 1987 (52 FR 2441), no comments were received. The exemption was granted based on the finding that there are no postemergent herbicides registered for control of wild mustard in sunflowers. Other products tested for this use are economically unacceptable. The potential losses of $2.81 million in Minnesota and $6.48 million in North Dakota threaten long-term financial viability of the sunflower industry in these States. (Libby Pemberton)

19. Oregon Department of Agriculture for the use of vinclozolin on snap beans to control gray mold; June 1, 1987 to September 15, 1987. (Gene Asbury)

20. Pennsylvania Department of Agriculture for the use of sodium fluoaluminate on potatoes to control Colorado potato beetles; April 20, 1987 to October 31, 1987. (Gene Asbury)

21. Rhode Island Department of Environmental Management for the use of sodium fluoaluminate on potatoes to control Colorado potato beetles; April 20, 1987 to September 30, 1987. (Gene Asbury)

22. South Carolina, Clemson University for the use of paraquat on peanuts to control Florida beggarweed and sicklepod; April 13, 1987 to August 1, 1987. (Jack E. Housenger)

23. South Dakota Department of Agriculture for the use of fenvalerate on winter wheat to control pale western and army cutworms; April 1, 1987 to June 30, 1987. (Gene Asbury)

24. Virginia Department of Agriculture and Consumer Services for the use of (±)-2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-ethyl-3-pyridinecarboxylic acid (imazethapyr) on lima beans and snap beans to control broadleaf weeds; April 27, 1987 to September 30, 1987. Solicitation of public comment was published in the **Federal Register** of February 26, 1987 (52 FR 5831), no comments were received. The exemption was granted based on the finding that there are no registered alternative pesticides which will provide adequate control of these pests in lima and snap beans. A significant economic loss may result if an effective pesticide is not made available. Residues of imazethapyr will not exceed 0.1 ppm in snap beans and lima beans and 0.3 ppm in cannery waste (snap and lima beans). These residue levels can be toxicologically supported and will not pose a threat to the public health. The percent PADI occupied by these uses and established uses is 0.023 percent. The proposed use should not pose an unreasonable hazard to the environment. (Libby Pemberton)

25. Virginia Department of Agriculture and Consumer Services for the use of paraquat on peanuts to control annual broadleaf weeds and grasses; April 13, 1987 to August 1, 1987. (Jack E. Housenger)

26. Washington Department of Agriculture for the use of fluazifop-butyl on dry bulb onions to control grassy weeds; April 17, 1987 to November 30, 1987. (Libby Pemberton)

27. Washington Department of Agriculture for the use of sethoxydim on green peas to control rye grass and barnyard grass; April 21, 1987 to July 1, 1987. (Jim Tompkins)

28. Wisconsin Department of Agriculture, Trade, and Consumer Protection for the use of metolachlor on dry bulb onions to control grassy weeds; April 6, 1987 to September 15, 1987. (Libby Pemberton)

A quarantine exemption was granted to the:

United States Department of Agriculture for the use of dichlorvos in traps to monitor the Mediterranean fruit fly; April 9, 1987 to April 9, 1990. (Gene Asbury)

EPA has denied requests from the:

1. California Department of Agriculture for the use of benomyl on parsley (fresh and processed) to control *Septoria petroselini*. A notice of receipt was published in the **Federal Register** of April 17, 1987 (52 FR 12593). The Agency has denied this request on the following basis: The applicant failed to demonstrate that an urgent, nonroutine situation or a significant economic loss will occur as a result of late blight. (Jim Tompkins)

2. Wisconsin Department of Agriculture, Trade, and Consumer Protection for the use of pyridate on cabbage to control broadleaf weeds. A notice of receipt was published in the **Federal Register** of March 4, 1987 (52 FR 6608). The Agency has denied this request on the following basis: The applicant provided no evidence that an urgent, nonroutine situation exists. Much of the data necessary to support registration of this chemical are lacking, thus complete risk evaluation of the proposed use was not possible. (Jim Tompkins)

Authority: 7 U.S.C. 136.

Dated: July 22, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 87-17346 Filed 8-4-87; 8:45 am]

BILLING CODE [illegible]

[OPP-30282; FRL-3241-3]

Certain Companies; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: NOTICE.

SUMMARY: This notice announces receipt of applications to register a pesticide product containing an active ingredient not included in any previously registered product and a product involving a changed use pattern pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATE: Comment by September 4, 1987.

ADDRESSES: By mail submit comments identified by the document control number [OPP-30282] and the registration/file number, attention Product Manager (PM) named in each application at the following address:

Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to:

Environmental Protection Agency, Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Registration Division (TS-767C), Attn: (Product Manager (PM) named in each registration), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

In person: Contact the PM named in each registration at the following office location/telephone number:

Product Manager	Office location telephone number	Address
PM 15 George LaRocca	Rm. 204, CM#2 (703-557-2400)	Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202.
PM 17 Arturo Castillo	Rm. 207, CM#2 (703-557-2690)	Do.

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register a pesticide product containing an active ingredient not included in any previously registered product and a product involving a changed use pattern pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

I. Product Containing an Active Ingredient Not Included in Any Previously Registered Product

File Symbol: 10182-RGN. Applicant: ICI Americas, Inc., Agricultural Chemical Div., Concord Pike and New Murphy Road, Wilmington, DE 19897. Product name: Force® 1.5G. Insecticide. Active ingredient: 2,3,5,6-tetrafluoro-4-methylbenzyl-cis-3-[(*Z*)-2-chloro-3,3,3-trifluoroprop-1-enyl]-2,2-dimethylcyclopropane-carboxylate 1.5%. Proposed classification/Use: General. For use to control insects on field corn and popcorn. Type registration: Conditional. (PM 15)

II. Product Involving a Changed Use Pattern

File Symbol: 35977-ET. Applicant: Maag Agrochemicals, HLR Science, PO Box X, Vero Beach, FL 32961. Product name: Maag Logic® Fire Ant Killer. Insect Growth Regulator. Active ingredient: Fenoxycarb ethyl (2-(4-phenoxyphenoxy)ethyl) carbamate 1%. Proposed classification/Use' General. To include in its presently registered use, a new domestic outdoor use. Type registration: Conditional. (PM 17).

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Program Management and Support Division (PMSD) office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the PMSD office (703-557-3262), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

Dated: July 23, 1987.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 87-17516 Filed 8-4-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL HOME LOAN BANK BOARD

[No. AC-645]

Final Action Approval of Conversion Application; Lyman Savings and Loan Association, Pittsburgh, PA

Date: July 29, 1987.

Notice is hereby given that on July 23, 1987, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Lyman Savings and Loan Association, Pittsburgh, Pennsylvania for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552 and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Pittsburgh, One Riverfront Center, 20 Stanwix Street, Pittsburgh, Pennsylvania 15222-4893.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87-17702 Filed 8-4-87; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in §572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-003945-008.

Title: Port of Oakland Terminal Agreement.

Parties:

Port of Oakland

Maersk Line Pacific, Ltd.

Synopsis: The proposed agreement extends the original term for Agreement No. 224-003945 an additional three months to and including October 31, 1987.

Agreement No.: 224-200013.

Title: City of Long Beach Terminal Agreement.

Parties:

City of Long Beach (The City)

Baker Commodities, Inc. (Baker).

SYNOPSIS: The proposed agreement would lease to Baker certain premises on Pier D in the Harbor District of the City for use as a tank farm and transmission lines to berths 30 and 32.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: July 31, 1987.

[FR Doc. 87-17750 Filed 8-4-87; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in §572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-010637-021.

Title: North Europe-U.S. Atlantic Conference.
Parties:
Atlantic Container Line, B.V.
Dart-ML Limited
Hapag-Lloyd AG
Sea-Land Service, Inc.
Gulf Container Line (GCL), B.V.
Trans Freight Lines
Compagnie Generale Maritime (CGM)
Nedlloyd Lijnen, B.V.
Synopsis: The proposed amendment would delete Southampton and Greenock from the list of United Kingdom base ports.

Agreement No.: 203-010717-019.
Title: United States Atlantic and Gulf/Central America Freight Association.
Parties:
Crowley Caribbean Transport, Inc.
Ecuadorian Line, Inc.
Seaboard Marine Line, Ltd.
American Transport Lines, Inc.
Synopsis: The proposed amendment would restate the agreement to incorporate previously effective amendments and would remove the restriction on collective ratemaking with respect to household goods, personal effects and privately owned vehicles moving under U.S. government through bills of lading. It would also permit independent action with respect to the level of compensation paid to an ocean freight forwarder who is also a customs broker.

Agreement No.: 202-010950-001.
Title: Aruba Bonaire Curacao Liner Association.
Parties:
Genesis Container Line, Ltd.
Sea-Land Service, Inc.
King Ocean Service de Venezuela S.A.
Synopsis: The proposed amendment would authorize independent action on the level of compensation paid to an ocean freight forwarder who is also a customs broker. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.
Dated: July 31, 1987.
Joseph C. Polking,
Secretary.

[FR Doc. 87-17760 Filed 8-4-87; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Application to Engage de Novo in Permissible Nonbanking Activities; Banc One Corp.

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 27, 1987.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Banc One Corporation*, Columbus, Ohio; to engage *de novo* through its subsidiary, Banc One Community Development Corp., Columbus, Ohio, in community development pursuant to § 225.25(b)(6) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 30, 1987.
James McAfee,
Associate Secretary of the Board.

[FR Doc. 87-17695 Filed 8-4-87; 8:45 am]
BILLING CODE 6210-01-M

Formations of; Acquisitions by; and Mergers of Bank Holding Companies; Community Bank System, Inc., et al.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 27, 1987.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Community Bank System, Inc.*, DeWitt, New York; to become a bank holding company and acquiring 100 percent of the voting shares of The Nichols National Bank, Nichols, New York.

B. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Mercer County State Bancorp, Inc.*, Sandy Lake, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Mercer County State Bank, Sandy Lake, Pennsylvania, and The First National Bank of Stoneboro, Stoneboro, Pennsylvania.

C. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago Illinois 60690:

1. *First of America Bank Corporation*, Kalamazoo, Michigan; to acquire 100 percent of the voting shares of Manistee Bank & Trust Co., Manistee, Michigan.

2. *Ixonia Bancshares, Inc.*, Ixonia, Wisconsin; to become a bank holding company by acquiring 100 percent of the

voting shares of Ixonia State Bank, Ixonia, Wisconsin.

3. *Northern Financial, Inc.*, Sault Ste. Marie, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Presque Isle Bank, Rogers City, Michigan. Comments on this application must be received by August 24, 1987.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Lincolnland Bancorp, Inc.*, Dale, Indiana; to acquire 100 percent of the voting shares of Chrisney State Bank, Chrisney, Indiana.

E. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Dean Financial Services, Inc.*, Minneapolis, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Princeton State Bank, Princeton, Minnesota. *Comments on this application must be received by August 28, 1987.*

2. *Langdon Bank Holding Company*, Walhalla, North Dakota, to become a bank holding company by acquiring 88.3 percent of the voting shares of First Bank of Langdon, Langdon, North Dakota.

3. *215 Holding Co.*, Minneapolis, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of First Bank Luverne, N.A., Luverne, Minnesota.

4. *Walhalla Bank Holding Company*, Walhalla, North Dakota; to acquire 100 percent of the voting shares of Langdon Bank Holding Company, Walhalla, North Dakota.

Board of Governors of the Federal Reserve System, July 30, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-17696 Filed 8-4-87; 8:45 am]

BILLING CODE 6210-01-M

Acquisition of Company Engaged in Permissible Nonbanking Activities; Norwest Corp.

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 C.F.R. 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 28, 1987.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation*, Minneapolis, Minnesota; to acquire Norwest Mortgage, Inc., Des Moines, Iowa, and thereby engage in a general residential mortgage loan business pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 30, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-17697 Filed 8-4-87; 8:45 am]

BILLING CODE 6210-01-M

Applications; Hearings; Determinations; Application To Engage de Novo in Permissible Nonbanking Activities; Ohio County Bancshares, Inc.; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 87-14495) published at page 24058 of the issue for Friday, June 26, 1987.

Under the Federal Reserve Bank of St. Louis, the entry for Ohio County Bancshares, Inc. is revised to read as follows:

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Ohio County Bancshares, Inc.*, Beaver Dam, Kentucky; to engage *de novo* through its subsidiary, Catalyst Financial Services, Inc., Beaver Dam, Kentucky; in the business of leasing personal and real property pursuant to § 225.25(b)(5) of the Board's Regulation Y.

Comments on this application must be received by August 8, 1987.

Board of Governors of the Federal Reserve System, July 30, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-17698 Filed 8-4-87; 8:45 am]

BILLING CODE 6210-01-M

Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company; One National Bancshares, Inc.

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound

banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 27, 1987.

A. *One National Bancshares, Inc.*, North Little Rock, Arkansas; to become a bank holding company by acquiring 100 percent of the voting shares of Hunt and Howell Bancshares, Inc., Fayetteville, Arkansas, and thereby indirectly acquire First National Bank of Fayetteville, Fayetteville, Arkansas, and First American Bancshares, Inc., North Little Rock Arkansas, and thereby indirectly acquire First American Bank of North Little Rock, N.A., North Little Rock, Arkansas; First American Bank/Little Rock, N.A., Little Rock, Arkansas; and First American Bank of Hot Springs, N.A., Hot Springs, Arkansas.

In connection with this application, Applicant also proposes to acquire First American Life Insurance Company, Little Rock, Arkansas, and thereby engage in the underwriting of insurance sold in connection with extensions of credit made by affiliated banks, limited to ensuring the repayment of the outstanding balance due on the credit in the event of death, disability, or involuntary unemployment of the debtor pursuant to § 225.25(b)(8) of the Board's Regulation Y. This activity will be conducted in the State of Arkansas.

Board of Governors of the Federal Reserve System, July 30, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-17699 Filed 8-4-87; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 071587 AND 072887

Name of acquiring person name of acquired persons, name of acquired entity	PMN number	Date terminated
(1) Johnson Controls, Inc., General Motors Corporation, Fisher Guide Division, Elyria Plant	87-1557	07/15/87
(2) Avcorp Industries, Inc., Federal Industries, Ltd., Standard Aero Inc	87-1649	07/15/87
(3) Wetterau Incorporated, James D. Tucker, USCP—Wesco Inc	87-1664	07/15/87
(4) Linneaus Associates, L.P., Pier Properties, Ltd., Pier Properties, Ltd	87-1677	07/15/87
(5) Nelson Peltz, Triangle Industries, Inc., Triangle Industries, Inc	87-1687	07/15/87
(6) CJI Industries, Inc., Triangle Industries, Inc., Triangle Industries, Inc	87-1688	07/15/87
(7) Kevin F. Donohoe, Robert Campeau, Miller & Rhodes, Inc., Miller & Rhodes Real Estate Corp	87-1812	07/16/87
(8) Leucadia National Corporation, Ronald O. Perelman, Devon Capital Corp	87-1910	07/16/87
(9) VSR Acquisition Corp., Rusty Pelican Restaurants, Inc., Rusty Pelican Restaurants, Inc	87-1914	07/16/87
(10) The Philp Co. Trust, J. T. Acquisition Corporation, J. T. Acquisition Corporation	87-1922	07/16/87
(11) Mr. John P. Thompson, J. T. Acquisition Corporation, J. T. Acquisition Corporation	87-1923	07/16/87
(12) Thompson Capital Partners, L.P., The Philp Co. Trust, The Philp Co. Trust	87-1924	07/16/87
(13) Roxboro Investments (1976) Ltd., James B. Lindsey, Sr., Puritan Leasing Company	87-1930	07/16/87
(14) Champion Enterprises, Inc., L.C. Merta, Moduline International, Inc	87-1933	07/16/87
(15) Mrs. Lee Knurr Sternberg, c/o Goudchaux/Maison Blanche, The May Department Stores Company, Associated Dry Goods Corporation and Adcor Realty	87-1935	07/16/87
(16) Cable Systems Corporation (Charles F. Dolan, UPE), SportsChannel Associates, SportsChannel Associates	87-1950	07/16/87
(17) Cablevision Systems Corporation (Charles F. Dolan, UPE), SportsChannel Prism Associates, SportsChannel Prism Associates	87-1951	07/16/87
(18) Nortek, Inc., Stanley Interiors Corporation, Stanley Interiors Corporation	87-1953	07/16/87

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 071587 AND 072887—Continued

Name of acquiring person name of acquired persons, name of acquired entity	PMN number	Date terminated
(19) Southern Inc., Wallace F. Holleday, Sr., Holleday-Tyler Printing Corporation	87-1957	07/16/87
(20) Dainippon Ink and Chemicals, Incorporated, J.H. Wally III, Opti-Copy, Inc	87-1843	07/20/87
(21) Dainippon Ink and Chemicals, Incorporated, J.C. Wally, Opti-Copy, Inc	87-1850	07/20/87
(22) Stanley H. Durwood, TPI Enterprises, Inc., TPI Enterprises, Inc	87-1869	07/20/87
(23) Frequency Electronics, Inc., TRW, Inc., TRW Microwave Inc	87-1870	07/20/87
(24) BBC Brown Boveri & Company, Limited, Household International, Inc., Schwitzer Division of Household Manufacturing, Inc	87-1831	07/21/87
(25) Anchor Glass Container Corporation, Diamond-Bathurst Inc., Diamond-Bathurst Inc	87-1860	07/21/87
(26) Anchor Glass Container Corporation, Consolidated-Bathurst Inc., Consolidated-Bathurst Inc	87-1861	07/21/87
(27) National Computer Systems, Inc., Data Card Corporation, Data Card Corporation	87-1875	07/21/87
(28) Ratners Group plc, Sterling Inc., Sterling Inc	87-1942	07/21/87
(29) Bunge Foundation, Carlin Foods Corporation, Carlin Foods Corporation	87-1958	07/21/87
(30) Ratners Group plc, Sterling, Inc., Sterling Inc	87-1966	07/21/87
(31) Ronald J. Likas, Harry Weinstein, Weinstein International Corporation	87-1918	07/22/87
(32) Carl W. Kushner, Harry Weinstein, Weinstein International Corporation	87-1919	07/22/87
(33) Petroleum Heat and Power Co., Inc., Peter J. Carini, Whale Oil Corp	87-1825	07/22/87
(34) Gad Zeevi, Chevron Corporation, Caribbean Gulf Refining Corporation	87-1820	07/23/87
(35) Vulcan Materials Company, R.L. White Company, Statewide Transportation, Inc. and assets of RL White	87-1830	07/23/87
(36) Vulcan Materials Company, White's Mines, Inc., White's Mines, Inc	87-1834	07/23/87
(37) William J. Stoecker, Fruehauf Corporation, Fruehauf Corporation Aerospace Group	87-1868	07/23/87
(38) Conquest Exploration Company, Cenergy Corporation, Cenergy Corporation	87-1906	07/23/87
(39) Burrous Enterprises, Ltd, The Coca-Cola Company, New South Carolina Holding Company	87-1917	07/23/87
(40) Melville Corporation, Merrill Lynch & Co., Inc., Supermarkets General Corporation-25 drug stores	87-1931	07/23/87
(41) Borden, Inc., Culbro Corporation, Culbro Sneck Foods, Inc	87-1938	07/23/87
(42) Rock Capital Partners, L.P., Ralston Purina Company, Drake Bakeries, Inc	87-1960	07/23/87
(43) Greenwood Mills, Inc., Paul E. Ramsey, Pre Wash Assoc., Pre Wash Ltd. and RAH, Inc	87-1952	07/23/87
(44) Gabriel Banon, Arthur N. Seessel, III, Seessel's Inc	87-1956	07/23/87
(45) Multibanc Savings Association (David G. Shuldiner, UPE), George A. Steiner Testamentary Trust, Steiner Financial Corporation	87-1975	07/23/87
(46) United Savings of America, AMEV Holdings, Inc., Security Mutual Finance Corporation	87-1976	07/23/87
(47) Regal-Beloit Corporation, Household International, Inc., The Gear Products Division of Household Manufacturing	87-1985	07/23/87

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 071587 AND 072887—Continued

Name of acquiring person name of acquired persons, name of acquired entity	PMN number	Date terminated
(48) Central Life Assurance Company, Lumbermens Mutual Casualty Company, Lumbermens Mutual Casualty Company	87-1987	07/22/87
(49) Central Life Assurance Company, Kemper Corporation, Kemper Corporation	87-1988	07/22/87
(50) MEDIQ Incorporated, Health Care Services, Inc., Health Care Services, Inc	87-2000	07/23/87
(51) Diageo Group plc, Sylvan Kaplan and Doris Kaplan, Tipton Centers, Inc	87-2001	07/23/87
(52) Carelco Investments B.V., Orbis Communications, Inc., Orbis Communications, Inc	87-2005	07/23/87
(53) Diageo Group plc, Sylvan Kaplan and Doris Kaplan, Tipton Centers, Inc	87-2013	07/23/87
(54) Imasco Limited, Pan Partners, L.P., Casa Lupita Restaurants, Inc	87-1925	07/24/87
(55) Mesa Limited Partnership, The Boeing Company, The Boeing Company	87-1979	07/27/87
(56) Tele-Communications, Inc., Tele-Communications, Inc., TCI of Ramapo, TCI of Warwick, TCI of Wildwood	87-1906	07/27/87
(57) Knight-Ridder, Inc., Tele-Communications, Inc., TCI of Ramapo, TCI of Warwick and TCI of Wildwood	87-1913	07/27/87
(58) Tyco Laboratories, Inc., Alcor, Inc., Alcor, Inc	87-1981	07/27/87
(59) Agip S.p.A., Mr. Edwin L. Cox, Sr., Cox Oil and Gas	87-1995	07/27/87
(60) Agip S.p.A., Cox Family Trust No. 6, Trust No. 6, Oil and Gas	87-1996	07/27/87
(61) Agip S.p.A., Berry R. Cox Trust No. 14, Trust No. 14, Oil and Gas	87-1997	07/27/87
(62) N. V. Gemeenschappelijk Bezit van Kunstzeem Philips, John Fluke Mfg. Co., Inc., John Fluke Mfg. Co., Inc	87-1879	07/28/87
(63) Laporte Industries (Holdings) PLC, J. Lee Krumme and Elizabeth B. Krumme, husband & wife, Vinings Industries, Inc	87-1991	07/28/87
(64) George Fischer Limited, Signet Scientific Company, Signet Scientific Company	87-1980	07/28/87
(65) Willis Faber plc, Stewart Wrightson Holdings plc, Stewart Wrightson Holdings plc	87-1971	07/28/87
(66) Imo Delaval Inc., Baird Corporation, Baird Corporation	87-1990	07/28/87
(67) Imo Delaval Inc., Baird Corporation, Baird Corporation	87-1992	07/28/87
(68) ASK Computer Systems, Inc., NCA Corporation, NCA Corporation	87-2009	07/28/87
(69) ASK Computer Systems, Inc., NCA Corporation, NCA Corporation	87-2011	07/28/87
(70) ASK Computer Systems, Inc., NCA Corporation, NCA Corporation	87-2012	07/28/87

FOR FURTHER INFORMATION CONTACT:
Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580, (202) 326-3100.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 87-17688 Filed 8-4-87; 8:45 am]
BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Project Grants for Preventive Health Services; Sexually Transmitted Diseases Professional Education Program Announcement and Notice of Availability of Funds for Fiscal Year 1988

Introduction

The Centers for Disease Control (CDC) announces a program to support Project Grants for Sexually Transmitted Diseases (STD) Prevention and Training (P/T) Centers under the Professional Education component of the STD Research, Demonstrations, and Public and Professional Education Grant Program.

Authority

This program is authorized by section 318(b) of the Public Health Service Act (42 U.S.C. 247c(b)), as amended. Regulations governing Grants for STD Research, Demonstrations, and Public and Professional Education are codified in Part 51b, Subparts A and F of Title 42, Code of Federal Regulations. The Catalog of Federal Domestic Assistance Number is 13.978.

Eligible Applicants

Eligible applicants for this program are the official public health agencies of State and local governments, including the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and the Virgin Islands.

Purpose

The objective of this program of grants under section 318(b) of the Public Health Service Act is to support STD professional education programs. It is designed to meet the 1990 Objective for the Nation which states that 95 percent of public health care providers and key clinical specialists should receive accurate and timely information on diagnosis and treatment of all currently recognized STD.

This will be accomplished primarily by training health department STD clinicians, but also by updating private sector practitioners on the latest developments in the diagnosis and treatment of STD, by educating physicians-in-training, and by demonstrating quality standards for the care of patients with STD. The achievement of the 1990 objective to improve clinical capability and the other objectives to reduce STD cases and complications are mutually dependent and are national in scope. Therefore, it is necessary to assure that this training initiative is coordinated effectively with the basic control components of local STD programs. It must also be coordinated with CDC to assure that the total training environment represents a national model, that training is consistent with guidelines and is uniform nationwide, and that all course offerings can be broadly publicized by CDC.

Priority for Locating P/T Centers

Priority will be given to funding at least one applicant in each of the following areas:

1. *Carribean Area,* which includes the Commonwealth of Puerto Rico and the Virgin Islands;
2. *Central Area,* which includes Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin;
3. *Mid-Atlantic Area,* which includes Delaware, the District of Columbia, Maryland, North Carolina, Pennsylvania, Virgina, and West Virginia;
4. *North Central Area,* which includes Colorado, Montana, Nebraska, North Dakota, South Dakota, and Wyoming;
5. *Northeastern/New England Area,* which includes Connecticut, Maine, Massachusetts, New Hamphire, New Jersey, New York, Rhode Island, and Vermont;
6. *Northwestern Area,* which includes Alaska, Idaho, Oregon, and Washington;
7. *South Central Area,* which includes Arkansas, Kansas, Louisiana, New Mexico, Oklahoma, and Texas;
8. *Southeastern Area,* which includes Alabama, Florida, Georgia, Kentucky, Mississippi, South Carolina, and Tennessee; and
9. *Western Area,* which includes American Samoa, Arizona, California, the Federated States of Micronesia, Guam, Hawaii, Nevada, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and Utah.

Availability of Funds

Based on the President's budget approximately $1.8 to $2 million will be available for Fiscal Year 1988 to fund up to seven continuation applications and up to three competing applications as indicated below. Grants are usually funded in 12-month budget periods within a 2 to 5-year project period. Funding estimates outlined may vary and are subject to change.

Competing Applications—Approximately $350,000 will be available in Fiscal Year 1988 to fund one grant in each of the following areas:

1. *Carribean Area,* one fulltime P/T center, $70,000 to $100,000;

2. *Northeastern/New England Area,* one fulltime P/T center, $150,000 to $210,000; and

3. *North Central Area,* one parttime P/T center; $30,000 to $40,000.

Although all applications will be considered, priority for FY 1988 funding will be given to existing programs which are making satisfactory progress. It is expected that one competing grant will be awarded on or about December 1, 1987, and two competing grants will be awarded on or about January 2, 1988, for 12 months in a 2 to 5 year project period.

Non-Competing Applications—Approximately $1.4 million will be available for Fiscal Year 1988 to fund up to seven continuation grants ranging from $141,000 to $280,000 with an average awrd of $200,000.

Use of Funds

1. Grant funds may be used for the costs associated with organizing and conducting professional education programs.

2. Requests for direct assistance (i.e., "in lieu of cash") for personnel and other forms of direct assistance will be considered.

3. Funds will not be awarded for the purchase or lease of land or buildings or for the construction of a facility. Except where another agency normally houses the public STD clinic, the P/T center should be located in the health department facility. Funds will not be awarded to renovate existing space, without adequate justification, including appropriate detailed diagrams, reliable estimates of cost, and a realistic projection of the time required for completion.

4. Grant funds may not be used to supplant funds supporting existing STD control services.

Reporting Requirements

1. Quarterly narrative reports may be required 30 days after the end of each quarter subject to approval by the Office of Management and Budget. Narratives should address progress being made in achieving project objectives, problems which have been encountered (and methods used or changes being made to resolve problems) and other information which, in the grantee's opinion, may be useful.

2. Financial status reports are required no later than 90 days after the end of each budget period. Final financial status and progress reports are required 90 days after the end of a project period.

Recipient Financial Participation

There are no matching or cost participation requirements for this program.

Application Content

Competing applications, including new applications and initial applications for new project periods, must include a narrative detailing the following:

1. Plans to locate the P/T center in a health department clinic that; a. Is dedicated to the diagnosis and treatment of STD patients;

b. Serves an average of at least 300 patients per 40 weekly service hours;

c. Serves patients of sufficient demographic variety and morbidity to support and stimulate the learning process;

d. Is sufficiently near to major highways that accessibility by car is a reasonable option; and

e. Is convenient to restaurants and reasonable hotel/motel accommodations and accessible through a local ground transportation system from an airport;

2. The role, support, experience, and firm commitment in principle of at least one university school or medicine in the vicinity which should include a description of the existing medical school-health department liaison activities needed to develop and implement clinical training and evidence of that local institution's participation;

3. Assurance that a satisfactory schedule of training activities will continue without interruption if the award is made to an established P/T center or that the training will begin within 180 days of the date of grant award if a new P/T center is established;

4. Evidence of the capability of complying with the CDC document entitled "Quality Assurance Guidelines for STD Clinics, 1986" (Clinic QAG) in providing clinic structure, clinic management, STD diagnosis and treatment, patient education and compliance counseling, and disease intervention outreach activities;

5. Evidence of the capability of complying with applicable portions of the CDC document entitled "STD Prevention/Training Center Curriculum Guidelines and Performance Standards for STD Clinical Training" (P/T Center Guidelines) revised August, 1986;

6. Evidence of a stisfactory commitment from the State/local health department administration toward meeting STD 1990 Objectives for the Nation, and specifically, the objective related to the preparation of STD clinicians to adequately diagnose and treat STD, and to conduct such noninvasive STD research that may be feasible and which will not conflict with other program priorities;

7. Evidence which describes how the P/T center corresponds to the needs, plans, and objectives of the State/local STD Program; how the P/T center activities will be effectively coordinated with the basic control components of the local STD program; and how both will be coordinated with CDC to assure that the total training environment represents a national model;

8. Long- and short-term objectives of the propsed training which address the applicant's expected role over the project period in meeting the STD 1990 Objectives for the Nation and which establish the applicant's anticipated training accomplishments for the initial budget period;

9. An evaluation plan which will help determine if the methods are effective and the long- and short-term objectives are being achieved;

10. An itemized budget with accompanying justification;

11. A description of the organizational structure, including an organizational chart, resumes and duties, responsibilities, and role relationships of persons involved with the training center; and

12. Any other information which will support the request for assistance.

Noncompeting applications must include a narrative detailing the following:

1. A progress report on activities performed during the prior budget period, including the following:

a. A discussion of progress or lack of progress in accomplishing the project objectives of the prior budget period;

b. The number of courses offered and persons trained;

c. Special achievements;

d. Problems encountered;

e. Short term objectives for the next budget period;

f. Activities and methods which will be used to accomplish the new objectives;

g. An evaluation plan which will help determine if the methods are effective and the objectives are being achieved; and

h. Any changes concerning the personnel, operations and policies of the P/T center.

2. A continued commitment from the State/local health department administration toward meeting the STD 1990 Objective on the preparation of STD clinicians to adequately diagnose

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and treat STD, and to conduct such noninvasive STD research as may be feasible and which will not conflict with other program priorities; an updated description of how the P/T center corresponds to the needs, plans, and objectives of the State/local STD Program; how the P/T center activities are effectively coordinated with the basic control components of the local STD program; positive and negative impact upon the established STD control program; and how both are coordinated with CDC to assure that the total training environment represents a national model.

3. A continued commitment to comply with the provisions of both the "Quality Assurance Guidelines for STD Clinics, 1986" and the "STD Prevention/Training Center Curriculum Guildelines and Performance Standards for STD Clinical Training" and a satisfactory explanation in those instances where local procedures or practices depart from them;

4. A continued commitment from a local university medical school to participate with the applicant in the continuation of P/T center activities;

5. An itemized budget with accompanying justification consistent with the objectives and purpose of the grant funds.

Review and Evaluation Criteria

Competing applications, including new applications and initial applications for new project periods, will be reviewed and evaluated based on the extent to which the evidence submitted specifically describes (with documentation and attachments) the applicant's ability to meet the following criteria:

1. Locate the P/T center in a health department clinic that:

a. Is dedicated to the diagnosis and treatment of STD patients;

b. Serve an average of at least 300 patients per 40 weekly service hours; and

c. Serve patients of sufficient demographic variety and morbidity to support and stimulate the learning process;

d. Is sufficiently near to major highways that accessibility by car is a reasonable option; and

e. Is convenient to restaurants and reasonable hotel/motel accommodations and accessible through a local ground transportation system from an airport.

2. Provide evidence of a commitment in principle from a local university medical school to participate with the applicant in the establishment of a P/T center which addresses the following:

a. The commitment of a part-time liaison/coordinating physician (usually a second or third year fellow) to help coordinate activities between the State/local health department and medical school faculty (the expense of medical school faculty instructional services should be covered by the most cost-effective mechanism possible);

b. The medical school's participation in the development of curriculum that is governed by the STD P/T Center Guidelines;

c. The instruction that will be provided annually as described in 5h;

d. Faculty assistance from the medical school in clinical practicum through the use of residents or fellows;

e. The medical school's reinforcement of the provisions of the Clinic QAG during curriculum development, instruction, and precepting clinic practicum; and

f. The medical school's arrangement for medical students, accompanied by faculty preceptors, to rotate through the center for training and clinic practicum.

3. Assure that a satisfactory schedule of training activities will continue without interruption if an award is made to an established P/T center or that the training will begin within 180 days of the date of grant award if a new P/T center is established;

4. Comply with the CDC document entitled "Quality Assurance Guidelines for STD Clinics, 1986" (Clinic QAG) in providing clinic structure, clinic management, STD diagnosis and treatment, patient education and compliance counseling, and disease intervention outreach activities, in particular:

a. There will be adequate space (examination rooms, waiting area, laboratory, office space) and clinical, clerical and Disease Intervention Specialist (D.I.S.) staff to accommodate patient volume;

b. There will be at least 5 days of full clinical services provided (a minimum of 35 registration hours during a minimum of 40 patient service hours, including at least one late evening or Saturday session each week) with no interim daily shutdowns;

c. Clinic management responsibility will be assigned to one person with clinical and/or administrative skills and experience;

d. Diagnosis and treatment will be provided for most STD and their syndromes (e.g., HTLV–III/LAV infection, syphilis, gonorrhea, nongonococcal urethritis, chlamydia, pelvic inflammatory disease, herpes, trichomoniasis, human papilloma virus, scabies, etc.);

e. A nurse clinician or nurse clinician and physician assistant model of care will be used with a physician available on-site for consultation;

f. An integrated flow will be used which minimizes the number of patient stops and the amount of patient waiting time. There should be no more than four patients stops (registration, clinical care, interviewing/counseling, and waiting room);

g. An appointment, modified appointment, or walk-in patient care system will be utilized;

h. Confidentiality will be observed during both patient registration and patient care service delivery;

i. Patients are given oral and written information concerning their visit, the clinic and STDs;

j. Special rapid registration procedures for patients attending for followup exam, test-of-cure, repeat STD, or D.I.S. emergencies are incorporated into the daily clinic operations;

k. A standardized medical record with a checkoff design contains a sufficiently complete set of symptoms, history, physical exam findings, diagnosis, treatment, and appropriate lab tests to cover all common STD. The medical record should be fully auditable;

l. The medical records should be stored in locked files or a room where they are not accessible to unauthorized persons;

m. There will be an on-site laboratory facility which offers a range of immediately available (stat) tests for commonly seen STD;

n. There will be a formalized quality assurance program through which clinical care is audited systematically and the proficiency of state laboratory activities are assessed through smear/culture and serologic test correlations;

o. CDC diagnostic guidelines will be used (complete history, basic physical exam for women and men including lab work, therapy, followup, emergency procedures, counseling, and education);

p. The policies and procedures of the STD clinic will harmoniously complement the activities of the disease intervention outreach component of the program; and

q. Current CDC guidelines for STD treatment will be used;

5. Assure that the development and operation of the clinical training component of the proposed P/T center will be according to the STD P/T Center Guidelines, in particular:

a. There will be adequate training space for clinical courses and assurances that it will be available for all scheduled courses. This space should

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comfortably seat a minimum of 10 students;

b. Classroom space will be adequately furnished and equipped with appropriate audiovisual equipment;

c. A P/T Center Coordinator will be identified or provided for through a proposal to create and fill such a position;

d. A clerical resource will be identified and available on-site to assist the P/T Center Training coordinator or will be provided for through a proposal to create and fill such a position;

e. The curricula will be developed according to STD P/T Center Curriculum Guidelines;

f. The clinic and stat laboratory practicum will be structured such that participants are provided an opportunity to demonstrate their clinical skills under the supervision of P/T center personnel by performing STD examinations on patients and practicing STD laboratory procedures;

g. There will be a written evaluation of student and medical school teaching faculty performance;

h. In P/T centers designated by CDC as "Full-time," a minimum of 400 hours of instruction and four "core" courses will be provided annually. Unless approved by CDC, at least one Comprehensive course, one Laboratory Methods course, one Intensive or Advanced course, and at least two Clinician Update courses (one of which is entirely dedicated to AIDS/HTLV–III/LAV infection), will be offered as described by the P/T Center Guidelines. P/T centers designated by CDC as "Part-time" will offer fewer hours of instruction, the precise type, number, and budget for which should be specified;

i. The medical school personnel will play a dominant role in classroom training;

6. Convey a satisfactory commitment from the State/local health department administration toward meeting STD 1990 Objectives for the Nation, and specifically, that objective related to the preparation of STD clinicians to adequately diagnose and treat STD, and to conduct such noninvasive STD research that may be feasible and which will not conflict with other program priorities;

7. Satisfactorily describe how the P/T center corresponds to the needs, plans, and objectives of the State/local STD Program; how the P/T center activities will be effectively coordinated with the basic control components of the local STD program; and how both will be coordinated with CDC to assure that the total training environment represents a national model;

8. Satisfactorily describe the expected role over the project period in meeting STD 1990 Objectives for the Nation and ensure that anticipated training accomplishments for the initial budget period are satisfactorily addressed in the long- and short-term objectives;

9. Provide a satisfactory evaluation plan which will help determine if the methods are effective and the long- and short-term objectives are being achieved;

10. Submit a budget request which is clearly and thoroughly explained (with item by item justification), reasonable, and consistent with the intended use of grant funds; and

11. Evidence that the organizational structure which discusses persons involved with the training center, duties and responsibilities, and role relationships is capable of supporting a clinic environment that represents a national model.

Site visits may also be made in connection with the review of applicants.

Noncompeting applications will be reviewed and evaluated based on the extent to which evidence is submitted which specifically describes (with documentation and attachments) the following criteria:

1. The accomplishments of the current budget period show that the P/T Center is meeting its objectives and is contributing to the achievement of the 1990 objective for the Nation on clinical training; the objectives for the coming budget period are realistic, specific, and measurable; the methods are clearly described and lead to achievement of these objectives; the evaluation plan will allow management to monitor whether the methods are effective and the objectives are being achieved;

2. A continued commitment from the State/local health department administration toward meeting the STD 1990 Objective on the preparation of STD clinicians to adequately diagnose and treat STD, and to conduct such noninvasive STD research as may be feasible and which will not conflict with other program priorities; an updated description of how the P/T Center corresponds to the needs, plans, and objectives of the State/local STD Program; how the P/T Center activities are effectively coordinated with the basic control components of the local STD Program; positive and negative impact upon the established STD control program; and how both are coordinated with CDC to assure that the total training environment represents a national model;

3. There is substantial compliance with the provisions of both the "Quality Assurance Guidelines for STD Clinics, 1988" and the "STD Prevention/Training Center Curriculum Guidelines and Performance Standards for STD Clinical Training" and a satisfactory explanation in those instances where local procedures or practices depart from them;

4. A continued commitment from a local university medical school to participate with the applicant in the continuation of P/T Center activities;

5. The budget request is thoroughly explained, adequately justified (with item by item justification), reasonable, and consistent with the intended use of grant funds.

Application Information

The original and two unbound copies of the application must be submitted to Leo A. Sanders, Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305. Competing applications are due on or before 4:30 p.m. (E.D.T.) on October 5, 1987. Noncompeting continuation applications are due 120 days prior to the expiration of the current budget period.

Deadline: Applicants shall be considered as meeting the deadline if they are either:

1. Received at the above address on or before the deadline date; or

2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applicants: Applications which do not meet the criteria in A. 1. or 2. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Other Requirements: Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Where to Obtain Additional Information

Information on application procedures, copies of application forms, and other material may be obtained from Nealean Austin, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305, or by

calling (404) 262–6575 or FTS 236–6575. Technical assistance may be obtained from Yvonne Green, Division of Sexually Transmitted Diseases, Center for Prevention Services, Centers for Disease Control, Atlanta, Georgia 30333, telephone (404) 329–2775 or FTS 236–2775.

Dated: July 30, 1987.

Glenda S. Cowart,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 87–17693 Filed 8–4–87; 8:45 am]

BILLING CODE 4160–18–M

Health Resources and Services Administration

Availability of Funds for Maternal and Child Health Projects

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that funds are available for grants for carrying out the following activities:

(1) Projects for the screening of newborns for sickle-cell anemia and other genetic diseases,

(2) Research projects to promote access to primary health services for children and community-based service network and case management services for children with special health care needs,

(3) Training projects to promote access to primary health services for children and community based service networks and case management services for children with special health care needs,

(4) Special projects of regional or national significance to promote access to primary health services for children and community-based service networks and case management services for children with special health care needs.

DATE: To receive consideration as being on time, mailed applications must be postmarked on or before August 28, 1987. Hand delivered applications must be received by 5:00 PM on August 28, 1987.

ADDRESS: Application materials may be obtained by calling or writing the Grants Management Officer, Office of Program Support, Bureau of Health Care Delivery and Assistance, HRSA, Room 6–29, 5600 Fishers Lane, Rockville, Maryland 20857, (301–443–1440). Requests should specify the grant category for which an application is requested. Applications for research projects will use Form PHS 398 approved by the Office of Management and Budget (OMB) under control number 0915–0098. Training project applications will be made using Form PHS 6025–1 approved by the OMB under control number 0915–0060 and other special projects of regional and national significance will use application Form PHS 5161–1 with revised facesheet DHHS Form 424 approved by the OMB under control number 0915–0006.

FOR FURTHER INFORMATION CONTACT: Office of the Director, Division of Maternal and Child Health, Bureau of Health Care Delivery and Assistance, HRSA, Room 6–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301–443–2170).

SUPPLEMENTARY INFORMATION: The Final Year 1987 Supplemental Appropriations Act (Pub. L. 100–71) provides additional 1987 funding for newborn sickle-cell and genetic screening under section 502(c)(1) of the Social Security Act and, under section 502(c)(2)(B), for research, training and other special projects designed to promote access to primary health services for children, community based service networks, and case management services with special health care needs.

These are new authorities added to Title V of the Social Security Act by the Omnibus Budget, Reconciliation Act of 1986, Pub. L. 99–509. HRSA, through this notice, invites potential applicants to request application packages for the particular grant category in which they are interested and then make their application for funding. A total of $1,312,500 is available for genetic projects under section 502(c)(1) and a total of $871,003 is available under section 502(c)(2)(B) for the research, training, and special projects described in the summary part of the notice. These funds will be utilized for new projects in these program areas.

Notice is herein also provided that additional funds totaling $1,744,622 have been made available for funding of projects under the ongoing priorities of section 502(a); that is, projects of regional and national significance that contribute to the improvement of services for mothers, children, and children with special health care needs; for research and training in maternal and child health; genetic diseases screening, testing, counseling and information services; and hemophilia diagnosis and treatment projects. Because of the extremely limited time available for processing and reviewing grant applications in this fiscal year, these funds will be used to provide funding for high quality projects approved but not funded during the recently completed review cycle. No new project applications will be accepted for these funds.

The department will review applications for funds under sections 502(c)(1) and 502(c)(2)(B) as competing applications and will fund those which are consistent with the statutory purpose of improving child health and, in the Department's view, will best promote improvements in child health care.

In accordance with the statute, training grants may be made only to public or nonprofit private institutions of higher learning and research grants may be only to public or nonprofit private institutions of higher learning or to nonprofit agencies and organizations engaged in research or in maternal and child health or crippled children's programs. Any public or private entity including an Indian tribe or tribal organization (as defined at 25 U.S.C. 450b) is eligible to apply for grants for genetic disease testing and special maternal and child health improvement grants.

The regulations implementing this program are codified at 42 CFR Part 51a. Applicants should note that § 51a.4 of the regulation requires the submission of a budget and narrative plan including the applicant's past attempts and future plans to secure other sources of funding. (This requirement is approved by the Office of Management and Budget under control number 0915–0050).

Other Award Information

The MCH Federal Set-Aside Program has been determined to be a program which is not subject to the provision of Executive Order 12372 concerning intergovernmental review of Federal programs.

The MCH program is listed as No. 13.110 in the OMB Catalog of Federal Domestic Assistance.

Dated: July 14, 1987.

David N. Sundwall,

Administrator.

[FR Doc. 87–17700 Filed 8–4–87; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974—Establishment of New Notice of System of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior proposes to establish a new notice describing a system of records maintained by the

Bureau of Indian Affairs (BIA). The notice is titled "Indian Electric Power Utilities—Interior, BIA–26", and documents an existing system of records containing information on power service provided to the public from electricity generated at Indian electric power utilities. The new notice is published in its entirety below.

As required by section 3 of the Privacy Act of 1974, as amended (5 U.S.C. 552a(o)), the Office of Management and Budget, the President of the Senate, and the Speaker of the House of Representatives have been notified of this action.

5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment. The Office of Management and Budget, in its Circular A–130, requires a 60-day period to review such proposals. Therefore, written comments on this proposal can be addressed to the Department Privacy Act Officer, Office of the Secretary (PMA), Room 7357, Main Interior Building, U.S. Department of the Interior, Washington, DC 20240. Comments received on or before October 5, 1987, will be considered. The notice shall be effective as proposed without further notice at the end of the comment period, unless comments are received which would require a contrary determination.

Dated: July 27, 1987.

Oscar W. Mueller, Jr.,

Director, Office of Management Analysis.

INTERIOR/BIA–26

SYSTEM NAME:

Indian Electric Power Utilities—Interior, BIA–26.

SYSTEM LOCATIONS:

(1) Colorado River Irrigation Project—Power Division; Route 1, Box 9–C; Parker, AZ 85344; (2) Flathead Indian Irrigation Project—Power Division; Box 890; Polson, Montana 59860; (3) San Carlos Indian Irrigation Project—Power Division; Box 250; Coolidge, Arizona 85228.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individual Indians and non-Indians desiring electric power service for households, farms, small businesses and organizations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Electric power service requests and agreements; applications and contracts; applications and contracts for seasonal motors; special provisions to application agreement and billing records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Act of August 30, 1935 (49 Stat. 1039), the Act of May 25, 1948 (62 Stat. 269) and the Act of June 7, 1924 (43 Stat. 476).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the records is to identify the recipient(s) of the electric power services rendered and the person(s) responsible for monetary charges (service bill) associated with providing the desired benefits. Disclosure outside the Department of the Interior may be made (1) to the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (2) to disclose pertinent information to an appropriate Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, regulation, rule, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (3) to a Member of Congress from the record of an individual in response to an inquiry made at the request of that individual; (4) to the Department of the Treasury to effect payment to Federal, State, and local government agencies, nongovernmental organizations, and individuals; (5) to a Federal agency for the purpose of collecting a debt owed the Federal government through administrative or salary offset; and (6) to other Federal agencies conducting computer matching programs to help eliminate fraud and abuse and to detect unauthorized overpayments made to individuals.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual, application, agreement and contract files.

RETRIEVABILITY:

Indexed by individual name and account number.

SAFEGUARDS:

In accordance with 43 CFR 2.5.

RETENTION AND DISPOSAL:

Records retention and disposal in accordance with 15 BIAM Supplement 3, Schedule No. 1103–13, BIA Files Operation and Records Disposition Handbook.

SYSTEM MANAGER(S) AND ADDRESS:

(1) Power Manager, Colorado River Irrigation Project—Power Division; Route 1, Box 9–C; Parker, AZ 85344; (2) Power Manager, Flathead Indian Irrigation Project—Power Division; Box 890; Polson, Montana 59860; (3) Power Manager, San Carlos Indian Irrigation Project—Power Division; Box 250; Coolidge, Arizona 85228.

NOTIFICATION PROCEDURE:

To determine whether the records are maintained on you in this system, write to the pertinent System Manager. The request must meet the requirements of 43 CFR 2.60.

RECORD ACCESS PROCEDURE:

To see your records, write to the pertinent System Manager. The request must meet the requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURE:

To request corrections or the removal of material from your files, write to the pertinent System Manager. The request must meet the requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained, electric power service customers.

[FR Doc. 87–17703 Filed 8–4–87; 8:45 am]
BILLING CODE 4310–02–M

Bureau of Land Management

[CO–070–07–4212–13; C–43109]

Exchange of Lands in Pitkin, Grand, Eagle, and Garfield Counties, Colorado; Correction

AGENCY: Bureau of Lands Management, Interior.

ACTION: Notice of exchange of lands.

In notice document 87–10727 appearing on pages 17835 and 17836 in the issue of May 12, 1987, make the following corrections:

1. Disposal Parcel 113—The acreage is changed to "184.76 acres."
2. Disposal Parcel 310—The description should read "Section 30, lots 3, 4, 5, 6, and SE¼NW¼, and Section 25, SE¼NE¼, NE¼SE¼."
3. Disposal Parcel 92—The acreage is changed to "7.89 acres."
4. Tyler Mountain Parcel—The description should read "T. 3 N., R. 81 W., 6th P.M., Section 29, NE¼SE¼, and Section 17, SW¼NW¼."
5. Parcel B—The description should read "Section 30, lots 5, 6, 7, 8, 9, 10, 11, 12, S½NE¼, N½SE¼ and SW¼SE¼."

Bruce Conrad,

District Manager, Grand Junction District.

[FR Doc. 87–17704 Filed 8–4–87; 8:45 am]

BILLING CODE 4310–JB–M

[CO–920–07–4121–02]

Meeting of the Green River–Hams Fork Regional Coal Team and Request for Public Comment on the Long-Range Market Analysis for the Region; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Green River-Hams Fork Regional Coal Team (RCT) will meet to consider the need for new federal coal leasing in the region.

DATES: The Green River-Hams Fork Regional Coal Team will meet on Friday, October 9, 1987, at 9:00 a.m. To ensure that they receive full consideration, comments on the long-range market analysis for the region should be submitted to Betsy Daniel at the address below by C.O.B., Monday, September 22, 1987. Comments received after the September 22 deadline but before the RCT meeting will be made available after to members of the RCT for consideration as time permits.

ADDRESSES: The meeting will be held at the Clarion Hotel, 3203 Quebec Street, Denver, Colorado 80207 telephone (303) 321–3333. Copies of the long-range market analysis for the Green River-Hams Fork Region may be obtained from the Public Room of the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, CO 80215. Telephone (303) 236–2100 or (FTS) 776–2100.

FOR FURTHER INFORMATION CONTACT: Betsy Daniel, Green River-Hams Fork Project Manager, Bureau of Land Management, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215. Telephone (303) 236–1778 or (FTS) 776–1778.

SUPPLEMENTARY INFORMATION:

The charter for the Green River-Hams Fork Regional Coal Team was approved by the Secretary of the Interior on March 26, 1986. This is the first meeting of the regional coal team since approval of the charter.

At this initial meeting, the regional coal team will consider various options regarding new federal coal leasing in the region. The options identified include: (1) Initiating a new round of activity planning or resuming the round II regional coal activity planning process which was suspended in July of 1983; (2) decertifying some portion or all of the region and leasing in response to applications filed under the regulations contained in 43 CFR 3425.1–5; and, finally, (3) maintaining the regional activity planning option without either initiating or resuming activity planning, leasing only in response to emergency lease applications meeting the criteria of 43 CFR 3425.1–4. The public will be provided with opportunities to comment on the appropriateness of the available options at the regional coal team meeting.

Following is a preliminary meeting agenda:

I. Introductions
II. Approval of Minutes
III. Approval of Agenda
IV. Updates
  A. Geographic Information Systems
  B. Technical Investigations
  C. Other Studies
  D. Current Levels of Production
  E. Pending Lease Actions
    1. Emergency Lease Applications
    2. Preference Right Lease Applications
  F. Lease Relinquishments
  G. Round 2 Tracts
V. Regional Coal Team Charter
VI. Long-Range Market Analysis
  A. Summary of Public Comment
  B. Additional RCT/Public Comment
VII. Activity Planning in the Green River–Hams Fork Region
  A. Options
    1. Initiate Regional Activity Planning
    2. Defer Regional Activity Planning and Continue Leasing Under the Emergency Leasing Criteria
    3. Decertify the Region and Lease Only in Response to Applications
  B. Public and RCT Discussion
  C. RCT Recommendation of Preferred Alternative
  D. Actions and Schedules Necessary to Implement the Preferred Alternative
VIII. Data Adequacy

On and after September 23, 1987, copies of the written comments received on the long-range market analysis will be available for review from 10 a.m. to 4 p.m., in the Public Room of the Colorado State Office at the address above. In addition, a summary of all public comment received on the long-range market analysis will be provided to the RCT members on Monday, October 5, 1987, and will be available to the public on that date, again, on request to the Public Room of the Colorado State Office. Copies of the public comment summary will also be available at the RCT meeting.

Date: July 30, 1987.

Neil F. Morck,

State Director.

[FR Doc. 87–17711 Filed 8–4–87; 8:45 am]

BILLING CODE 4310–JB–M

National Park Service

Yellowstone National Park; Commercial Traffic Regulations

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the National. Park Service, Yellowstone National Park, has scheduled three meetings for the purpose of obtaining public response concerning the regulation of commerical traffic on that portion of U.S. Highway 191 which passes through Yellowstone National Park.

DATES: The first public meeting is scheduled for September 4, 1987, at Big Sky, Montana. Two additional meetings are planned, one on September 19, 1987, in West Yellowstone, Montana, and one on September 30, 1987, in Bozeman, Montana.

FOR FURTHER INFORMATION CONTACT: Superintendent, Yellowstone National Park, Yellowstone National Park, Wyoming, 82190; telephone 307–344–7381, (FTS) 585–0011.

Jack W. Neckels,

Acting Regional Director, Rocky Mountain Region.

[FR Doc. 87–17619 Filed 8–4–87; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-271]

Import Investigation; Certain Buoyant Metallized Balloons

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on June 26, 1987, under section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, on behalf of Continental American Corporation, 555 North Woodlawn, Wichita, Kansas 67208 and Gerald L. Hurst, 1401 Spring Garden Road, Austin, Texas 78746. A supplement to the complaint was filed on July 13, 1987. The complaint, as supplemented, alleges unfair methods of competition and unfair acts in the importation of certain buoyant metallized balloons, and in their sale, by reason of alleged direct and induced infringement of at least claim 1 of U.S. Letters Patent 4,077,588. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainants requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and a permanent cease and desist order.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Gertler, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-523-0115.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on July 27, 1987, Ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation into the United States of certain buoyant metallized balloons, or in their sale, by reason of alleged direct and induced infringement of claim 1 of U.S. Letters Patent 4,077,588, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

Continental American Corporation, 555 North Woodlawn, Wichita, Kansas 67208

Gerald L. Hurst, 1401 Spring Garden Road, Austin, Texas 78746

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Pacific Balloon Manufacturing Company, 2454 Mariondale Avenue, Los Angeles, California 90032

Bernhardt-Case, Inc., 1187 Coast Village Road, No. 1, Suite 201, Santa Barbara, California 93108

You Chang Balloon Manufacturing Company, Suite 1102, Manhattan Hotel, 13-3 Yeoeuido-Dong, Yeongdeungpo-ku, P.O. Box 406, Yeoeuido, Seoul 150, South Korea.

(c) Jeffrey L. Gertler, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 701 E Street NW., Room 125, Washington, DC 20436, shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210-21). Pursuant to § 201-16(d) and 210.21(a) of the rules (19 CFR 201-16(d) and 210.21(a)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, DC 20436, telephone 202-523-0471. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: July 28, 1987.

[FR Doc. 87-17780 Filed 8-4-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-272]

Import Investigation; Certain Electronic Chime Modules

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on June 30, 1987, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Lectron Products, Inc., 1400 South Livernois, Rochester Hills, Michigan 48306. The complaint was supplemented on July 14, 15, and 17, 1987. The complaint, as supplemented, alleges unfair methods of competition and unfair acts in the importation into the United States of certain electronic chime modules, and in their sale, by reason of alleged direct infringment of (1) at least claims 1-2, 6-10, 12, 14-16, and 18-25 of U.S. Letters Patent 4,286,257; and (2) at least claims 10, 11, and 15 of U.S. Letters Patent 4,183,278. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to substantially injure an industry, efficiently and economically operated, in the United States

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

FOR FURTHER INFORMATION CONTACT: Juan Cockburn, Esq., Office of unfair Import Investigations, U.S. International Trade Commission, telephone 202-523-1272.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of Investigation: Having considered the complaint, the U.S.

International Trade Commission, on July 30, 1987, Ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation into the United States of certain electronic chime modules, or in their sale, by reason of alleged direct infringement of (1) claims 1–2, 6–10, 12, 14–16, or 18–25 of U.S. Letters Patent 4,286,257; or (2) claims 10, 11 or 15 of U.S. Letters Patent 4,183,278, the effect or tendency of which is to substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is Lectron Products, Inc., 1400 South Livernois, Rochester Hills, Michigan 48306.

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Modu-Tronics, Inc., 710 Progress Avenue, Scarborough, Ontario N1H 2Y3, Canada

Invotec Instruments, Inc., 390 Tapscott Road, Scarborough, Ontario M1B 2Y6, Canada

Invotec Instruments, Inc., Invotronics Division, 19700 Haggerty Road, Livonia, Michigan 48154.

(c) Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 701 E Street NW., Room 128, Washington, DC 20436, shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to § 201.16(d) and 210.21(a) of the rules (19 CFR 201.16(d) and 210.21(a)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, DC 20436, telephone 202–523–0471. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: July 30, 1987.

[FR Doc. 87-17781 Filed 8-4-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 332-248]

Implications of Foreign-Trade Zones (FTZ's) for U.S. Industries and for Competitive Conditions Between U.S. and Foreign Firms (Supplement and Expansion)

AGENCY: International Trade Commission.

ACTION: Institution of investigation.

SUMMARY: Following receipt on July 6, 1987, of a request from the Committee on Ways and Means of the U.S. House of Representative. The Commission instituted investigation No. 332–248 under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g), for the purpose of gathering and presenting information on the implication of foreign-trade zones (including subzones) (FTZ's) for U.S. industries and for competitive conditions between U.S. and foreign firms. The Commission's investigation will examine all developments concerning issues covered in the Commission's previous investigation, No. 332–165 (The Implications of Foreign-Trade Zones for U.S. Industries and for Competitive Conditions between U.S. and Foreign Firms, USITC Pub. 1498, February 1984), that have occurred since it was completed and will expand it to cover certain additional information requested by the Committee, primarily concerning subzones.

EFFECTIVE DATE: July 28, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Carl F. Seastrum, General Manufactures Division, U.S. International Trade Commission, Washington, DC 20436 (telephone 202–724–1733).

SUPPLEMENTARY INFORMATION: In addition to providing a supplement to the previous report, the Commission was specifically asked to expand the study to place focus on subzones so that the Committee can analyze them and assess their implications for the U.S. economy and U.S. International trade. In this connection, the report will have an account of trends since the previous study in the usage of subzones; an account of the Foreign-Trade Zones Board activities, focusing on subzones; an account of safeguards in the system, including the effectiveness of customs procedures in detecting such abuses as evasion of quotas, an circumvention of countervailing and antidumping orders and country of origin provisions; an analysis, to the extent possible, of the economic effects of subzone status on employment, tariff revenue, state economic development, U.S. investment levels, and on international trade; and a description of U.S. industry concerns (including both user industries and affected industries, such as suppliers) about subzones (the previous study invited comments on FTZ's in general and thus such comments are solicited within the scope of the request for a supplement), and an assessemnt of these recommendations for change.

The Committee requested that the Commission forward its support no later than January 29, 1988.

Written Submissions: To accelerate delivery of this report to the Committee for use in its hearings, the Committee asked the Commission to rely on written submissions from the public rather than to hold separate hearings. Thus interested persons are invited to submit written statements concerning the investigation. Such submissions should be received by the close of business on November 16, 1987. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practices and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submission should be addressed to the Secretary,

United States International Trade Commission, 701 E Street NW., Washington, DC 20436.

Hearing impaires individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 724-0002.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: July 30, 1987.

[FR Doc. 87-17787 Filed 8-4-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-242]

Commission Decision on Whether To Review Initial Determination, Specification of Issues for Review, and Schedule for Filing of Written Submissions on Review and on Remedy, the Public Interest, and Bonding; Certain Dynamic Random Access Memories, Components Thereof and Products Containing Same

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has determined to review the administrative law judge's initial determination (ID) that there is a violation of section 337 of the Tariff Act of 1930 in the above-captioned investigation with respect to certain issues, has requested written submissions with respect to specific questions, has determined to review and vacate certain findings and conclusions in the ID, and has determined not to review the ID with respect to certain other issues.

Authority: The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in §§ 210.53-.56 of the Commission's rules of practice and procedure (19 CFR 210.53-210.56).

FOR FURTHER INFORMATION CONTACT: Judith M. Czako, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0359.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on March 19, 1986, in response to a complaint filed by Texas Instruments, Inc. (TI) of Dallas, Texas on February 7, 1986, to determine whether there is a violation of section 337 (19 U.S.C. 1337) and 19 U.S.C. 1337a in the importation and sale of certain dynamic random access memories (DRAMs). The complaint alleged that such importation and sale by the nineteen named respondents constitutes unfair methods of competition and unfair acts by reason of infringement of certain claims of ten U.S. patents owned by TI. The complaint further alleged that the effect or tendency of these unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States. During the course of the proceedings, thirteen of the original nineteen respondents were terminated from the investigation on the basis of license and settlement agreements.

On May 21, 1987, the presiding administrative law judge (ALJ) issued her initial determination (ID), finding that there is a violation of section 337 and 19 U.S.C. 1337a in the importation and sale of certain DRAMs by two of the remaining respondents, and that there is no violation of section 337 and 19 U.S.C. 1337a in the importation and sale of certain DRAMs by the other four remaining respondents. Complainant, the remaining respondents, and the Commission investigative attorneys filed petitions for review of various portions of the ID, and responses thereto. Subsequently, the Commission determined to terminate respondents Hitachi, Ltd. and Hitachi America, Ltd. from the investigation on the basis of a settlement and license agreement.

Having examined the record in this investigation, including the ID, the petitions for review, and the responses thereto, the Commission has concluded that there are issues that warrant review. Specifically, the Commission will review the following issues. As noted below, the Commission is limiting written submissions to specific questions raised by the issues to be reviewed.

1. Whether U.S. Letters Patent 3,716,764 (the '764 patent) is valid, and infringed by the accused imports. Review is limited to the validity and infringement issues arising out of the interpretation of the term "central region" in the patent claims, and the question of infringement under the doctrine of equivalents.

2. Whether U.S. Letters Patent 3,940,747 is infringed by the accused imports. Review is limited to the question of infringement under the doctrine of equivalents.

3. Whether U.S. Letters Patent 4,081,701 is infringed by the accused imports.

4. Whether U.S. Letters Patent 4,543,500 (the '500 patent) and U.S. Letters Patent 4,533,843 (the '843 patent) are valid, and infringed by the accused imports.

5. Whether respondent NEC Corporation is licensed under the '500 and '843 patents.

6. Whether complainant's activities, and those of its licensees, with respect to the patents in issue constitute an industry or industries, efficiently and economically operated, in the United States.

7. Whether the infringing imports have the effect or tendency to substantially injure a domestic industry or industries.

The Commission has further determined to review and vacate the ID with respect to the ALJ's determinations concerning the issue of double-patenting respecting U.S. Letters Patent 4,043,027, and infringement of claims 5, 8, and 15 of U.S. Letters Patent 4,240,092. In addition, the Commission has determined to review the ID with respect to the ALJ's findings and conclusions concerning respondents Hitachi, Ltd. and Hitachi America, Ltd., and vacate such findings and conclusions in light of the settlement and license agreement between Hitachi, Ltd. and complainant Texas Instruments, Inc.

The Commission has determined not to review the remainder of the ID, which thereby becomes the determination of the Commission.

If the Commission finds that a violation of section 337 has occurred, it may issue (1) an order which could result in the exclusion of the subject articles from entry into the United States and/or (2) cease and desist orders which could result in one or more respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions which address the form of remedy, if any, which should be ordered.

If the Commission concludes that a violation of section 337 has occurred and contemplates some form of remedy, it must consider the effect of that remedy upon the public interest. The factors which the Commission will consider include the effect that an exclusion order and/or cease and desist order(s) would have upon (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the U.S. production of articles which are like or directly competitive with those which are the subject of the investigation, and (4) U.S. consumers. The Commission is therefore interested in written submissions which address the aforementioned public interest factors in the context of this investigation.

If the Commission finds that a violation of section 337 has occurred

and orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is thereby interested in receiving written submissions concerning the amount of the bond which should be imposed.

Written Submissions: While the Commission has determined that no hearing will be held in this investigation, the parties to the investigation and interested Government agencies are encouraged to file written submissions on the issues under review and on the issues of remedy, the public interest, and bonding. Complainant and the Commission investigative attorneys are also requested to submit a proposed exclusion order and/or proposed cease and desist order(s) for the Commission's consideration. Persons other than the parties and Government agencies may file written submissions addressing the issues of remedy, the public interest, and bonding. Submissions on the issues of remedy, the public interest, and bonding, are limited to fifty (50) pages, excluding exhibits in support thereof, and twenty-five (25) pages in response, excluding exhibits in support thereof. Exhibits should be limited to the extent possible, and where appropriate, may simply reference exhibits and testimony adduced during the trial before the ALJ.

In connection with its review of the issues specified above, the Commission wishes to receive written submissions which are responsive to the following questions *only*. The submissions should be concise, and thoroughly referenced to the record in this investigation, including references to specific exhibits and testimony. To the extent possible, the parties should reference arguments made in the pre- and/or post-hearing briefs filed with the ALJ concerning these questions. Arguments referenced in this manner need not be repeated in full, but may be made in summary form. The submissions are limited to thirty (30) pages with respect to the patent issues (questions 1–5 below), and an additional seventy (70) pages with respect to the economic issues (questions 6–15 below). Submissions in response are limited to fifteen (15) pages with respect to the patent issues, and an additional thirty-five (35) pages with respect to the economic issues. The Commission does not wish to receive submissions on the infringement issues.

1. With respect to the interpretation of the claims of the '764 patent, the parties should address the proper definition of the phrases "central region" and "central region of the assembly." The parties should specifically address whether the ALJ's definition of those phrases is supported by the record.

2. With respect to the ALJ's decision that the '500 patent is unenforceable the parties should address the following issues:

(a) Was the due process/unenforceability issue raised by the parties prior to the ALJ's issuance of the ID?

(b) Did the parties put on evidence at the evidentiary hearing regarding TI's contention that the scope of claims 6 and 7 of the '500 patent does not extend to DRAMs which at no time during the active cycle raise the word line voltage to a level which is greater than the supply voltage level?

(c) If the respondents had been apprised of TI's corrected answer to NEC Interrogatory No. 55 (Eighth Set) prior to the hearing, would the presentation of their case have differed? If yes, explain how respondents' case would have differed from that presented?

(d) Were respondents prejudiced by TI amending its answer to Interrogatory No. 55? In answering this question specifically address whether respondents were prejudiced in view of the prosecution history of the '500 patent.

(e) In the event that the Commission determines that any party was denied due process, or denied any statutory rights or any rights under the Commission's rules, what is the appropriate remedy?

3. The parties should discuss the effect of the terminal disclaimers filed by TI with respect to the '500 and '843 patents on the existence of any license.

4. The parties should address whether the filing of the terminal disclaimers by TI amounts to an admission that the inventions claimed in the '500 and '843 patents are obvious variants of the invention claimed in U.S. Letters Patent 4,239,993 (the '993 patent).

5. The parties should address whether the effect of the filing of the terminal disclaimers by TI respect to the '500 and '843 patents results in the '993, '500, and '843 patents being merged into one patent, regardless of whether there is actually double patenting among those patents. *In re Braithwaite*, 154 U.S.P.Q. 29 (CCPA 1967).

6. With respect to the domestic industry issue, the parties should address the legal and factual arguments concerning whether the definition of a single domestic industry producing DRAMs under multiple patents is appropriate in the circumstances of this case; the effect of such a determination on the existence of a domestic industry as of the date of filing of the complaint; and the effect of such a determination on the analysis of the efficient and economic operation of the domestic industry.

7. The parties should address whether the nature and significance of the domestic activities involved in the exploitation of the '764 patents are sufficient to constitute an industry in the United States.

8. The parties should address whether the existence of shut-down production capacity, sales from inventory, research and development, and service-related activities by Motorola are sufficient, under either a single-industry definition or a patent-based industries definition, to be included in the scope of the domestic industry(ies).

9. With respect to the value-added analysis in considering the nature and significance of domestic activities, the parties should address whether the inclusion of costs related to material, labor, marketing, capital, overhead, general and administrative expense, profit, research and development, and royalties from licensing is appropriate in the circumstances of this investigation, particularly in light of judicial and Commission precedent concerning the appropriate elements of value-added analysis.

10. The parties should address whether the nature and significance of domestic activities pertaining to the production of DRAMs whose front-end production takes place in complainant's foreign facilities is nonetheless sufficient to support the conclusion that such DRAMs are produced by a domestic industry.

11. With respect to the issue of substantial injury to the domestic industry, the parties should address whether infringing imports substantially injure a patent-based domestic industry practicing the '764 patent.

12. With respect to the issue of substantial injury to the domestic industry or industries, the parties should address whether infringing imports substantially injure separate patent-based domestic industries, as defined in the ID, including analysis of the condition of the respective industries and the casual nexus between infringing imports and the substantial injury to each such industry.

13. With respect to the issue of substantial injury to the domestic industry, the parties should address whether infringing imports substantially

injure a single domestic industry, including analysis of the casual nexus between infringing imports and the substantial injury, and a discussion of whether a sectoral or sub-industry analysis is legally valid and factually appropriate.

14. With respect to the issue of tendency to substantially injure the domestic industry and/or industries, the parties should discuss relevant conditions or circumstances, including foreign costs and production capacity, which might indicate capacity and intent to penetrate the U.S. market, and the potential volumes and effect of infringing imports.

15. With respect to the issue of effect or tendency to substantially injure the domestic industry or industries, the parties should discuss the volume and effect of infringing imports entered into the United States incorporated into downstream products and through the "gray market."

Written submissions on the issues enumerated above and on remedy, the public interest, and bonding, must be filed by August 3, 1987. Reply submissions on the enumerated issues and on remedy, the public interest, and bonding, must be filed by August 10, 1987.

Additional Information: Persons submitting written submissions must file the original document and 14 true copies thereof with the Office of the Secretary on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary to the Commission and must include a full statement on the reasons why the Commission should grant such treatment. Documents containing confidential information approved by the Commission for confidential treatment will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

Notice of this investigation was published in the **Federal Register** of March 19, 1986 (51 FR 9537).

Copies of all nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing-imparied individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

By order of the Commission.

Issued: July 24, 1987.

Stephen A. McLaughlin,

Acting Secretary.

[FR Doc. 87–17795 Filed 8–4–87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337–TA–260]

Initial Determination Terminating Respondent on the Basis of Settlement Agreement; Certain Feathered Fur Coats and Pelts, and Process for the Manufacture Thereof

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a settlement agreement: Hong Kong Tientsin Fur Co. Ltd. (Tientsin).

SUPPLEMENTARY INFORMATION: This investiation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the intitial determination. The initial determination in this matter was served upon the parties on July 30, 1987.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Written Comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–523–0176.

By order of the Commission.

Issued: July 30, 1987.

Kenneth R. Mason,

Secretary.

[FR Doc. 87–17782 Filed 8–4–87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337–TA–260]

Commission Decision Not To Review Initial Determination Terminating One Respondent; Certain Feathered Fur Coats and Pelts, and Process for the Manufacture Thereof

AGENCY: International Trade Commission.

ACTION: Nonreview of initial determination terminating the above-captioned investigation as to one respondent.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) granting a joint motion to terminate the investigation as to respondent Jindo Industries, Ltd. (Jindo) on the basis of a settlement and license agreement.

FOR FURTHER INFORMATION CONTACT: Randi S. Field, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–563–0261.

SUPPLEMENTARY INFORMATION: On November 10, 1986, David Leinoff and David Leinoff, Inc. (Leinoff), filed a section 337 complaint with the Commission alleging unfair methods of competition and unfair acts in the importation and sale of certain feathered fur coats and pelts. On the basis of that complaint, the Commission instituted the above-captioned investigation. The notice of investigation referred to the following unfair acts: (1) alleged infringement of claim 1 of U.S. Letters Patent 3,760,424. (the '424 patent), owned by Leinoff and (2) , alleged manufacture abroad by a process which, if practiced in the United States, would infringe claim 5 of the '424

patent), the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States. 51 FR 46944 (December 29, 1986). The Commission's notice of investigation listed eleven respondents that were alleged to be in violation of section 337.

On June 15, 1987, complainants and respondent Jindo filed a joint motion (Motion No. 260–17) to terminate the investigation as to Jindo on the basis of a settlement and license agreement.

On July 1, 1987, the presiding administrative law judge (ALJ) issued an ID (Order No. 21) granting joint Motion No. 260–17 and terminating the investigation as to Jindo on the basis of the settlement and license agreement.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rules 210.53–.55 (19 CFR 210.53–210.55).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–1626. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

By order of the Commission.

Issued: July 28, 1987.

Kenneth R. Mason,

Secretary.

[FR Doc. 87–17783 Filed 8–4–87; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701–TA–288 and 289 (Preliminary) and 731–TA–381 and 382 (Preliminary)]

Import Investigation; Certain Granite From Italy and Spain

AGENCY: International Trade Commission.

ACTION: Institution of preliminary countervailing duty and antidumping investigations and scheduling of a conference to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of countervailing duty investigations Nos. 701–TA–288 and 289 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) and of preliminary antidumping investigations Nos. 731–TA–381 and 382 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Italy and Spain of certain granite,[1] suitable for use as monumental, paving, or building stone, the foregoing pitched, lined, pointed, hewn, sawed, dressed, polished, or otherwise manufactured, provided for in item 513.74 of the Tariff Schedules of the United States, that is alleged to be subsidized by the Governments of Italy and Spain and sold in the United States at less than fair value. As provided in sections 703(a) and 733(a), the Commission must complete preliminary countervailing duty and antidumping investigations in 45 days, or in this case by September 11, 1987.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and B (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: July 28, 1987.

FOR FURTHER INFORMATION CONTACT: Rebecca Woodings (202–523–0282), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–523–0161.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on July 28, 1987, by the Ad Hoc Granite Trade Group.

Participation in the Investigations

Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the Federal Register. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 9:30 a.m. on August 18, 1987, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Rebecca Woodings (202–523–0282) not later than August 14, 1987, to arrange for their appearance. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written Submissions

Any person may submit to the Commission on or before August 20, 1987, a written statement of information pertinent to the subject of the investigations, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope

[1] For the purposes of these investigations, the term "certain granite" refers to products ⅝ inch to 2-½ inches in thickness and includes rough sawed granite slabs; face finished granite slabs; and finished dimensional granite including, but not limited to, building facing, flooring, tiles, and crypt fronts; excluding monument stone, crushed granite, and curbing.

and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: July 31, 1987.

[FR Doc. 87-17784 Filed 8-4-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-248]

Commission Decision To Extend the Deadline for Determining Whether To Review Final Initial Determination; Certain Plastic Fasteners and Processes for the Manufacture Thereof

AGENCY: International Trade Commission.

ACTION: Extension of deadline for deciding whether to review final initial determination.

SUMMARY: Notice is hereby given that the Commission has determined to extend until August 14, 1987, the deadline by which it must decide whether to review the final initial determination (ID) issued by the presiding administrative law judge (ALJ) in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Stephen A. McLaughlin, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0421.

SUPPLEMENTARY INFORMATION: On June 19, 1987, the presiding ALJ issued his final ID finding that there is no violation of section 337 in the importation and sale of certain plastic fasteners. The original deadline for deciding whether to review the ALJ's final ID was August 6, 1987.

This action is taken under authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and § 210.53(h) of the Commission's Rules of Practice and Procedure (19 CFR 210.53(h)).

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: July 30, 1987.

[FR Doc. 87-17785 Filed 8-4-87; 8:45 am]

BILLING CODE 7020-02-M

Dismissal of Request for Institution of a Section 751(b) Review Investigation; Certain Welded Carbon Steel Pipes and Tubes From Turkey

AGENCY: International Trade Commission.

ACTION: Dismissal of a request to institute a section 751(b) review investigation concerning the Commission's affirmative determinations in investigation No. 701-TA-253 (Final), Certain Welded Carbon Steel Pipes and Tubes from Turkey.

SUMMARY: The Commission determines, pursuant to section 751(b) of the Tariff Act of 1930 (19 U.S.C. 1675(b)) and rule 207.45 of the Commission's rules (19 CFR 207.45), that the request does not show good cause or changed circumstances sufficient to warrant institution of an investigation to review the Commission's affirmative determinations in investigation No. 701-TA-253 (Final), regardidng certain circular welded carbon steel standard and line pipes and tubes from Turkey.[1]

FOR FURTHER INFORMATION CONTACT: Daniel Leahy (202-523-1376), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the office of the Secretary at 202-523-0161.

SUPPLEMENTARY INFORMATION:

Background

On February 21, 1986, the Commission issued its determinations in investigation No. 701-TA-253 (Final), Certain Welded Carbon Steel Pipes and Tubes from Turkey, notice of which was published in the **Federal Register** of March 3, 1986 (51 FR 7342). The Commission determined that an industry in the United States was materially injured, or threatened with material injury, by reason of imports from Turkey of welded carbon steel standard pipes and tubes which had been found by the Department of Commerce to be subsidized by the Government of Turkey. The Commission also determined that an industry in the United States was threatened with material injury by reason of imports from Turkey of welded carbon steel line pipes and tubes which had been found by the Department of Commerce to be subsidized by the Government of Turkey. On March 7, 1986, the Department of Commerce issued a countervailing duty order, notice of which was published in the **Federal Register** (51 FR 7984).

On April 24, 1987, the Commission received a request filed by the Government of Turkey, pursuant to section 751(b) of the Act, to review its affirmative determinations in investigation No. 701-TA-253 (Final). On May 28, 1987, the Commission requested written comments in the **Federal Register** (52 FR 19933) as to whether the changed circumstances alleged by the petitioner were sufficient to warrant a review investigation. Comments were supplied by counsel on behalf of the standard and line pipe subcommittees of the Committee on Pipe and Tube Imports (CPTI), and the individual producer members of these subcommittees, opposing the institution of a review investigation. These parties were the petitioners in the original investigation (No. 701-TA-253 (Final)). Comments were also received from counsel on behalf of the Government of Turkey supporting the institution of a review investigation.

After consideration of the request for review and the responses to the notice inviting comments, the Commission has determined, pursuant to 19 U.S.C. 1675(b) and rule 19 CFR 207.45, that the request does not show good cause or changed circumstances sufficient to warrant institution of a review investigation regarding circular welded

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[1] The term "welded carbon steel standard pipes and tubes" covers welded carbon steel pipes and tubes of circular cross section, 0.375 inch or more but not over 16 inches in outside diameter, provided for in items 610.3231, 610.3234, 610.3241, 610.3242, 610.3141, 610.3252, 610.3254, 610.3258, 610.3256, and 610.4925 of the Tariff Schedules of the United States Annotated (TSUSA). The term "welded carbon steel line pipes and tubes" covers welded carbon steel pipes and tubes of circular cross section, with walls not thinner than 0.065 inch, 0.375 inch or more but not over 16 inches in outside diameter, conforming to American Petroleum Institute specifications for line pipe, provided for in TSUSA items 610.3208 and 610.3100.

carbon steel pipes and tubes from Turkey. A Memorandum Opinion, setting forth reasons for dismissing this request, will be made available in the Secretary's office.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: July 29, 1987.

[FR Doc. 87-17786 Filed 8-4-87; 8:45 am]

BILLING CODE 7035-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31085]

Rocky Mountain Railcar and Railroad, Inc.; Operation Exemption; Corps of Engineers Railroad

Rocky Mountain Railcar and Railroad, Inc. has filed a notice of exemption to operate rail lines of the U.S. Department of the Army located primarily within the Rocky Mountain Arsenal, Adams County, CO. The lines consist of 8 main-line miles and 26 branch-line miles that connect at milepost 632.0 with Union Pacific Railroad Company's main line between Denver, and Limon, CO, and at milepost 553.2 with Burlington Northern Railroad Company's main line between South Denver, CO, and McCook, NE. Any comments must be filed with the Commission and served on Ron Maynard, President; Rocky Mountain Railcar and Railroad, Inc.; P.O. Box 39164; Denver, CO 80239; (303) 286-8636.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.[1]

Decided: July 24, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-17529 Filed 8-4-87; 8:45 am]

BILLING CODE 7035-01-M

[1] The Railway Labor Executives' Association (RLEA) filed an unsupported request for labor protection, claiming that this transaction is subject to the mandatory labor protection provisions of 49 U.S.C. 11347. Since this transaction involves an exemption from 49 U.S.C. 10901, only a showing of exceptional circumstances will justify the imposition of labor protective conditions. RLEA's request is denied because the requisite showing has not been made. *See Class Exemption—Acq. & Oper. of R. Lines under 49 U.S.C. 10901*, 1 I.C.C. 2nd 810 (1985).

[Docket No. AB-167 (Sub-1085X)]

Consolidated Rail Corp.; Exemption; Abandonment in Middlesex County, NJ

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by the Consolidated Rail Corporaiton of a 0.52-mile portion of the Sayreville Running Track between milepost 11.73± on the south side of Georges Road to milepost 12.25G6# , including all wye trackage at the terminus of the subject line, in New Brunswick, Middlesex County, NJ, subject to labor and historic preservation conditions.

DATES: This exemption will be effective on September 4, 1987. Petitions to stay must be filed by August 20, 1987, petitions for reconsideration must be filed by August 31, 1987.

ADDRESSES: Send pleadings referring to Docket No. AB-167 (Sub-No. 1985X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representatives: Charles E. Mechem, 1138 Six Penn Center Plaza, Philadelphia, PA 19103-2959.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 202-289-4357.

Decided: July 28, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87-17761 Filed 8-4-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

Competitive Impact Statements and Proposed Consent Judgments; United States v. Hughes Tool Co., et al.

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (a) and (b), the United States publishes below the comment it received on the Competitive Impact Statement and proposed Final Judgment in *United States* v. *Hughes Tool Company, et al.*, Civil No. 87-0932 JHP, United States District Court for the District of Columbia, together with the response of the United States to this comment.

Copies of the response and the public comment are available on request for inspection and copying in Room 3233, Antitrust Division, Department of Justice, Washington, DC, and for inspection at the Office of the Clerk of the United States District Court for the District of Columbia.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

United States of America, plaintiff, v. Hughes Tool Company and Baker International Corporation, defendants.

[Civil No. 87-0932]

Filed: April 3, 1987

Plaintiff's Response to Comment on the Proposed Final Judgment

Plaintiff, the United States, pursuant to section 2(d) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)-(h), files this Response to Comments on the Proposed Final Judgment submitted for entry in this civil antitrust proceeding.

On April 3, 1987, the Plaintiff filed a civil antitrust Complaint under section 15 of the Clayton Act, 15 U.S.C. 25, alleging that the proposed merger of Hughes Tool Company ("Hughes") and Baker International Corporation ("Baker") would constitute a violation of section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleged, in part, that the effect of the merger may be substantially to lessen competition in the manufacture for sale in the United States of tricone rock bits (U.S. tricone rock bit market), which Hughes manufactured and sold through its Hughes Tool Division and which Baker manufactured and sold through its wholly-owned subsidiary, Reed Tool Company. The Complaint sought, among other relief, an injunction preventing defendants from combining their tricone rock bit businesses in any manner. On April 3, 1987 the plaintiff and defendants filed a stipulation by which they consented to the entry of a proposed Final Judgment designed to eliminate the anticompetitive effects of the merger.[1] Under the proposed Final Judgment, defendant Baker was required to sell its tricone rock bit business within six (6) months.[2]

[1] The proposed Final Judgment was published in the **Federal Register** on April 23, 1987. 52 FR 13533.

[2] On April 30, 1987, Baker sold its tricone rock bit business to Camco, Incorporated.

Plaintiff received one comment on the proposed Final Judgment, submitted on behalf of Smith International, Inc. (Smith), one of the defendants' principal competitors in the U.S. tricone rock bit market.[3] As discussed in the Competitive Impact Statement,[4] prior to the filing of the proposed Final Judgment, plaintiff considered a proposal by Smith that the defendants be required to delay their merger pending resolution of defendant Hughes' claim as a judgment creditor in the Chapter 11 reorganization proceeding in which Smith was then involved.[5] Alternatively, Smith asked that the merger be delayed until the relief required in the proposed Final Judgment was approved by the Court. Smith contended that Hughes had engaged in a series of anticompetitive actions during the reorganization proceeding and that the relief proposed was necessary to preserve Smith as a significant competitor in the tricone rock bit industry. Plaintiff rejected Smith's proposals because we concluded that there was not a sufficient nexus between the relief sought by Smith and the anticompetitive effects that formed the basis of our challenge to the merger. 52 FR 13542.

On June 9, 1987, Smith, a letter from its counsel, informal plaintiff that it had reached a stettlement with Baker Hughes, incorporated [6] regarding the Hughes judgment against Smith. Smith stated that as a result of the settlement, it was withdrawing its objection to the merger of Baker and Hughes. It is not clear that this letter is intended by Smith to be a comment on the proposed Final Judgment requiring a response by plaintiff. Nontheless, because the letter was received during the comment period and relates to the subject matter of the action in which the proposed Final Judgment was entered, plaintiff is treating Smith's letter as a commnt on the proposed Final Judgment.

Given that Smith's letter simply withdraws its earlier objections, Plaintiff sees no need to respond to Smith's comment beyond filing it with the Court.

Plaintiff received no other comments on the proposed Final Judgment.

Respectfully submitted,

Donald A. Kaplan,

Patricia G. Chick,

Donna N. Kooperstein,

Philip J. Thompson,

Attorneys, U.S. Department of Justice, Antitrust Division, Judiciary Center Building, Room 9822, 555 Fourth Street, NW., Washington, DC 20001, (202) 724-6464.

Dated: July 23, 1987.

June 9, 1987.

James R. Weiss, Esq.,
Chief, Transportation, Energy and Agriculture Section, Antitrust Division, U.S. Department of Justice, Judiciary Center Bldg., Rm. 9403, 555 Fourth Street, NW., Washington, D.C. 20001

Re: *United States* v. *Hughes Tool Co., et al.* (D.D.C. Civil Action No. 87-0932)

Dear Mr. Weiss: In previous communications with the Department, Smith International, Inc. has expressed concerns about the antitrust implications of the merger of Hughes Tool Co. and Baker International, Inc., as conditioned in the proposed Final Judgment. Smith's concerns about its own survival as a viable competitor and the resulting effect on a competitive market for tricone drill bits were driven by Smith's being in bankruptcy as a result of a patent judgment obtained by its principal creditor, Hughes.

Smith is pleased to report that the judgment that Baker Hughes holds against Smith has been settled, subject to the entry of an appropriate order by the Bankruptcy Court. (Attached is a copy of the press release announcing the settlement.) This settlement should clear the way for Smith promptly to file a plan of reorganization and emerge from bankruptcy as a viable competitor.

Because of this development, Smith withdraws its objections to the merger of Baker and Hughes.

Sincerely yours,

Howard J. Trienens.

HJT:ez
cc: Michael N. Sohn, Esq.
Counsel for Baker Hughes.

Smith International Announces Settlement with Baker Hughes

Newport Beach, California (June 5, 1987) . . . Smith International, Inc. (NYSE, PSE: SII) announced today that it has agreed with Baker Hughes, Incorporated to settle litigation which had resulted in the entry of a $205 million judgment against Smith for patent infringement. Appeals taken by each party to this judgment are pending before a Federal appeals court. Under the settlement, which is contingent on a stay of the pending appeals and consummation of a plan of reorganization in Smith's Chapter 11 proceeding, Smith would pay Baker Hughes a total of $95 million in cash and notes.

The judgment was entered in March 1986 in patent litigation between Smith and Hughes Tool Company, which is now a subsidiary of Baker Hughes. As a result of this judgment, Smith filed a petition for reorganization under Chapter 11 of the Bankruptcy Code, which is pending in the U.S. Bankruptcy Court for the Central District of California.

Smith International is a worldwide supplier of products and services to the oil and gas drilling, completion and production industries.

For further information, contact Loren Carroll, Vice President and Chief Financial Officer at 714/752-8000.

Certificate of Service

I hereby certify that I caused a copy of the foregoing to be mailed, first class mail, postage prepaid, this twenty-third day of July, 1987, to:

Michael N. Sohn, Esquire, Arnold & Porter, 1200 New Hampshire Avenue NW., Washington, DC 20036

John W. Ebert, Esquire, Andrews & Kurth, 4200 Texas Commerce Tower, Houston, Texas 77002

Howard J. Trienens, Esquire, Sidley & Austin, One First National Plaza, Chicago, Illinois 60603.

Donna N. Kooperstein.

[FR Doc. 87-17710 Filed 8-4-87; 8:45 am]
BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[Docket No. M-87-162-C]

Petition for Modification of Application of Mandatory Safety Standard; Colket Coal Co.

Colket Coal Company, P.O. Box 32, Saint Clair, Pennsylvania 17970 has filed a petition to modify the application of 30 CFR 75.1714 (self-contained self rescuers) to its Sharp Mount No. 2 Mine (I.D. No. 36-07761) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that each operator make available to each person who goes underground a self-contained self-rescue device approved by the Secretary which

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[3] The comment is attached to this response.

[4] Competitive Impact Statement, at 20-21, 52 FR 13542 (April 23, 1987).

[5] Prior to the proposed merger, defendant Hughes obtained a judgment against Smith for $205 million for Smith's alleged infringement of Hughes' patent covering an O-Ring seal used in tricone rock bits. As a result of Hughes' judgment again it, Smith entered Chapter 11 reorganization proceedings in which Hughes participated as an unsecured judgment creditor.

[6] Subsequent to the filing of the Complaint and proposed Final Judgment, and subject to conditions set forth in the proposed Final Judgment and a Hold Separate Order entered by the Court on April 3, 1987 (52 FR 13542-46), Baker and Hughes completed their merger to form Baker Hughes, Incorporated, which, as successor to Hughes, held the patent infringement judgment against Smith.

is adequate to protect such persons for one hour or longer.

2. The mine is always damp to wet. There is only one piece of electrical equipment, which is a small pump located at the foot of the slope.

3. Petitioner states that the distance from the mine portal to the actual working face is less than 2,000 feet. The mine can be evacuated in less than 15 minutes.

4. Petitioner states that the devices are too heavy, bulky, and cumbersome to be worn while working or in the narrow confines of the slope gun boat which serves as a mantrip at the mine.

5. Sections of the mine are subjected to freezing temperatures making constant availability of the devices questionable. In addition, the wet mine conditions make it difficult to locate a suitable, dry storage location for the self-rescuers.

6. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 4, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

Date: July 24, 1987.

[FR Doc. 87-17726 Filed 8-4-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-150-C]

Petition for Modification of Application of Mandatory Safety Standard; Cresent Development Co., Inc.

Cresent Development Company, Inc., 208 Seemont Drive, Kingwood, West Virginia 26537 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Baker No. 1 Mine (I.D. No. 46-07277) located in Preston County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the use of a locked padlock to secure battery plugs to machine-mounted battery receptacles on permissible, mobile battery-powered machines.

2. As an alternate method, petitioner proposes to use a spring-loaded metal locking device in lieu of padlocks. The spring-loaded device will be designed, installed and used to prevent the threaded signs that secure the battery plugs to the battery receptacles from unintentionally loosening and will be attached to prevent accidental loss. In addition, the fabricated metal brackets will be securely attached to the battery receptacles to prevent accidental loss of the brackets.

3. Petitioner states that the spring-loaded metal locking devices will be easier to maintain than padlocks because there are no keys to be lost and dirt cannot get into the workings as with a padlock.

4. Operators of permissible, mobile, battery-powered machines affected by this modification will be trained in the proper use of the locking device, the hazards of breaking battery-plug connections under load, and the hazards of breaking battery-plug connections in areas of the mine where electric equipment is required to be permissible.

5. For these reasons, petitioner requests a modification of the standards.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 4, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

Date: July 24, 1987.

[FR Doc. 87-17727 Filed 8-14-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-158-C]

Petition for Modification of Application of Mandatory Safety Standard; CY Smith, Inc.

CY Smith, Inc., HC 81, Box 2114, Barbourville, Kentucky 40906 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its No. 2 Mine (I.D. No. 15-15484), its No. 4 Mine (I.D. No. 15-15720) and No. 7 Mine (I.D. No. 15-15099) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous monitor, longwall face equipment and loading machine and shall be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous monitor will be available to assure that all coal hauling tractors will be equipped with a continuous monitor;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These

comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 4, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

Date: July 30, 1987.

[FR Doc. 87-17728 Filed 8-4-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-167-C]

Petition for Modification of Application of Mandatory Safety Standard; Girdner Mining Co.

Girdner Mining Company, HC 73, Box 2086, Bryant Store, Kentucky 40921 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Mine No. 1 (I.D. No. 15-14708) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous monitor, longwall face equipment and loading machine and shall be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximaterly 30-40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous monitor will be available to assure that all coal hauling tractors will be equipped with a continuous monitor;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 4, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

Date: July 30, 1987.

[FR Doc. 87-17729 Filed 8-4-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-178-C]

Petition for Modification of Application of Mandatory Safety Standard; Granny Rose Coal Co., Inc.

Granny Rose Coal Company, Inc., P.O. Box 1098, Barbourville, Kentucky 40906 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Mine No. 1 (I.D. No. 15-15732) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioners's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous monitor, longwall face equipment and loading machine and shall be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractors will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapsed time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous monitor will be available to assure that all coal hauling tractors will be equipped with a continuous monitor;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 4, 1987. Copies of the petition

are available for inspection at that address.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

Dated: July 29, 1987.

[FR Doc. 87-17730 Filed 8-4-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-166-C]

Petition for Modification of Application of Mandatory Safety Standard; Hubbs Creek Coal

Hubbs Creek Coal, P.O. Box 188, Rockhold, Kentucky 40759 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Hubbs Creek No. 4 Mine (I.D. No. 15-15448) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continous monitor, longwall face equipment and loading machine and shall be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 35% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous monitor will be available to assure that all coal hauling tractors will be equipped with a continuous monitor;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alternations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 4, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

Date: July 24, 1987.

[FR Doc. 87-17731 Filed 8-4-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-151-C]

Petition for Modification of Application of Mandatory Safety Standard; Kerr-McGee Coal Corp.

Kerr-McGee Coal Corporation, P.O. Box 727, Harrisburg, Illinois 62946 has filed a petition to modify the application of 30 CFR 75.902 (low- and medium-voltage ground check monitor circuits) to its Galatia Mine 56-1 (I.D. No. 11-02752) located in Saline County, Illinois. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirements that low- and medium-voltage resistance grounded systems include a fail-safe ground check circuit to monitor continuously the grounding circuit to assure continuity. The ground check circuit shall cause the circuit breaker to open when either the ground or pilot check wire is broken.

2. As an alternate method, petitioner proposes to use 480 volt, three phase power distribution, without the need of the ground check circuit in the No. 6 Shop. In further support of this request petitioner states that:

(a) The maintenance shop is constructed with concrete floors with the roof and rib wire meshed and sealed with a nonhazardous pressure applied fibrous sealant;

(b) Galvanized rigid conduit will be used throughout the shop area. The conduit will be supported by strut fastened to conventional expansion shells mounted in the roof;

(c) All electrical panels, starters, boxes, etc., will be of type NEMA 12;

(d) All 480 volt, three phase equipment will be stationary and connected by galvanized rigid conduit;

(e) All equipment will be bonded to the grounding system through the conduit system and through a ground wire pulled in the conduit system;

(f) Power will be fed to NEMA 12 electrical panels from a mine duty power center by MSHA approved cables and protected at the power center by MSHA approved ground monitor, ground fault, under voltage release, thermal and magnetic overload protection;

(g) All exposed metal parts of the overhead crane and its accessories will be metallically joined together into a continous electrical conductor and will be connected to the grounded conduit enclosing the crane supply conductors and to the copper grounding conductor associated with the crane supply conductors. Grounding circuit continuity for the trolley frame and bridge frame will be assured through the use of grounding collectors and grounding conductors; and

(h) The design and installation of the system will conform to the 1987 National Electrical Code.

3. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 4, 1987. Copies of the petition

are available for inspection at that address.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

Date: July 29, 1987.

[FR Doc. 87-17732 Filed 8-4-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-168-C]

Petition for Modification of Application of Mandatory Safety Standard; the NACCO Mining Co.

The NACCO Mining Company, 56854 Pleasant Ridge Road, Alledonia, Ohio 43902 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Powhatan No. 6 Mine (I.D. No. 33-01159) located in Belmont County, Ohio. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that trolley wires and trolley feeder wires, high-voltage cables and transformers not be located inby the last open crosscut and be kept at least 150 feet from pillar workings.

2. Petitioner states that the longwall mining systems will increase in width and have over 1200 connected horsepower. In order to supply power to such a mining system from a power system limited to 1,000 volts, the following problems arise:

(a) The ampacity requirements at 1,000 volts are such that very large and heavy cables must be used. Accident information indicates that a large number of electrical-related injuries are strains and sprains incurred during cable handling;

(b) Poor voltage regulation resulting in motor overheating and lack of torque to be applied to the face conveyor, and

(c) A diminished safety factor when approaching the interrupting limits of the available circuit breakers at 1000 volts.

3. As an alternate method, petitioner proposes to use high voltage (not to exceed 4,160 volt) cables to supply power to permissible longwall face equipment in or inby the last open crosscut, with specific equipment and conditions as outlined in the petition.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 4, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

Dated: July 28, 1987.

[FR Doc. 87-17739 Filed 8-4-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-172-C]

Petition for Modification of Application of Mandatory Safety Standard; Old Ben Coal Co.

Old Ben Coal Company, 200 Public Square, Cleveland, Ohio 44114-2375 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Mine No. 24 (I.D. No. 11-00589) located in Franklin County, Illinois. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that trolley wires and trolley feeder wires, high-voltage cables and transformers not be located inby the last open crosscut and that they be kept at least 150 feet from pillar workings.

2. Petitioner states that the longwall mining equipment presently in use is powered by 950 volt, a.c. electricity to face electrics controller, the stage loader, paneline, and shearer. Such equipment is subject to unacceptable voltage drops across the system which causes a decrease in the working torques of the drive motors. This leads to excessive strain on equipment and high current loads in the electric circuitry. In order to maintain compliance with overcurrent protection with the 950 volt system, it is necessary to split the loads and increase the number of cables. This doubles the amount of cable handling and electrical connections that has to be done.

3. As an alternate method, petitioner proposes to use high-voltage (not to exceed 2,400 volt) cables to supply power to permissible longwall face equipment in or inby the last open crosscut, with specific equipment and conditions as outlined in the petition.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 4, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

Date: July 30, 1987.

[FR Doc. 87-17734 Filed 8-4-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-176-C]

Petition for Modification of Application of Mandatory Safety Standard; S & S Anthracite, Inc.

S & S Anthracite, Inc., RD 1, Box 67A2, Williamstown, Pennsylvania 17098 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its Buck Mountain Slope (I.D. No. 36-05619) located in Schuylkill County, Pennsylvania. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. Petitioner states that no such safety catch or device is available for the steeply pitching and undulating slopes with numerous curves and knuckles present in the main haulage slopes of this anthracite mine.

3. Petitioner further believes that if "makeshift" safety devices were installed they would be activated on knuckles and curves when no emergency existed and cause a tumbling effect on the conveyance.

4. As an alternate method, petitioner proposes to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope, above the main connecting device. The hoisting ropes would have a factor of safety in excess of the design factor as determined by the formula specified in the American National Standard for Wire Rope for Mines.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 4, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

Date: July 28, 1987.

[FR Doc. 87-17735 Filed 8-4-87; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Council on the Humanities, Advisory Committee Meeting; Change

This is to announce a change in the location of a portion of the National Council on the Humanities meeting to be held in Philadelphia, PA on August 6-7, 1987. The August 7, 1987 meeting will be held in the Sheraton Society Hill Hotel at 1 Dock Street in lieu of the Second National Bank at 420 Chestnut Street as was previously announced. The Endowment's prior notice was published in the **Federal Register** on July 13, 1987 on page 26191. Any questions concerning this change should be directed to Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786-0322.

Stephen J. McCleary,

Advisory Committee, Management Officer.

[FR Doc. 87-17767 Filed 8-4-87; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrences for Fourth Quarter CY 1986; Dissemination of Information

Section 208 of the Energy Reorganization Act of 1974, as amended, requires the NRC to disseminate information on abnormal occurrences (i.e., unscheduled incidents or events which the Commission determines are significant from the standpoint of public health and safety). The following incidents at NRC licensees were determined to be abnormal occurrences (AOs) using the criteria published in the **Federal Register** on February 24, 1977 (42 FR 10950). These abnormal occurrences are described below, together with the remedial actions taken. These events are also being included in NUREG-0090, Vol. 9, No. 4 ("Report to Congress on Abnormal Occurrences: October-December, 1986"). This report will be available in the NRC's Public Document Room, 1717 H Street, NW., Washington, DC about three weeks after the publication date of this **Federal Register** Notice.

Nuclear Power Plants

AO 86-20 Loss of Low Pressure Service Water Systems at Oconee

One of the general AO criteria notes that major deficiencies in design, construction, use of, or management controls for licensed facilities or material can be considered an abnormal occurrence. In addition, one of the AO examples notes that a major deficiency in design, construction, or operation having safety implications requiring immediate remedial action can be considered an abnormal occurrence.

Date and place—On October 1, 1986, Duke Power Company (the licensee) twice attempted an electrical load shed surveillance test of circuits on Oconee Unit 2, which was shut down for refueling at the time. During both tests, the low pressure service water (LPSW) system was lost. Investigation revealed a questionable design feature which was also applicable to Units 1 and 3. Therefore, the LPSW systems for all three units were considered inoperable and on October 2, 1986, orderly shutdowns of Units 1 and 3 (both operating at 100% power at the time) were commenced.

Oconee Units 1, 2, and 3 each utilize a Babcock & Wilcox-designed pressurized water reactor; the facility is located in Oconee County, South Carolina.

Background—At Oconee, the condenser circulating water (CCW) system takes suction from Lake Keowee and supplies water to the main condensers. Unlike most nuclear power plants, the CCW pumps at Oconee also perform safety-related functions which include: supplying a source of water to the LPSW system, the cooling water pump for the standby shutdown facility (SSF) emergency diesel generator (EDG), a supply to the SSF auxiliary service water (ASW) pump, and the primary source for cooling the turbine-driven auxiliary feedwater pump for long-term cooling. The LPSW system supplies cooling water for the decay heat removal function of the low pressure injection system and other safety-related equipment. The LPSW system pumps take suction on the upstream side of the condenser from the CCW system crossover lines between Oconee Units 1, 2, and 3.

Each of the four CCW pump motors for each Oconee unit is capable of being powered from either of two emergency hydro-generators. However, the Oconee plant is designed to accommodate a loss (shedding) of the CCW pumps and still provide LPSW pump suction through a siphon arrangement. The siphon is necessary because of a high point in the CCW piping just downstream of the CCW pumps and upstream of the LPSW pump suction. This high point may be as much as 25 feet above the level of Lake Keowee (depending upon lake level).

Nature and probable consequences—On October 1, 1986, while Unit 2 was in a refueling outage, the Unit 2 load shed test was performed. At Oconee, a load shed of non-essential loads is initiated when emergency power is required via the underground feeder from Keowee Hydro Station. The load shed protects this power path from overload.

When the load test was initiated, the condenser circulating water pumps were deenergized. Normally, this causes the gravity flow system to automatically align and to allow the flow of water from the Lake Keowee intake structure through the condenser and discharging to the Keowee tailrace into Lake Hartwell. The elevation difference and a siphon effect are used to cause the condenser circulating water to continue to flow. This mode of operation of the CCW system is referred to as the emergency condenser circulating water (ECCW) system. For this test, the condenser gravity drain to the Keowee tailrace was blocked because this was not part of the test.

After about an hour, the LPSW pumps began to cavitate and stop pumping. One LPSW pump was stopped by the control room operator, and a second LPSW pump was observed to have low discharge pressure and cycling amps.

Various high temperature alarms for the components cooled by LPSW were received in the control room. CCW flow was restored by restarting a CCW pump and the plant was restored to its normal power condition without any plant damage or system upsets. Prior to the occurrence, two LPSW pumps were operating with approximately 13,000 gpm/pump. The CCW crossover header, which provided suction for the LPSW pumps, was being supplied by the Unit 2 CCW pumps at the time.

In the evening of October 1, 1986, the test was repeated, but this time the gravity drain feature was also tested. The results were the same as in the first test, i.e., loss of LPSW system function due to loss of LPSW pump suction. NRC Region II was advised of these results late in the evening, and concurred with the licensee that Units 1 and 3 (operating at 100% power) could continue to operate until the test data could be fully evaluated. At 9:00 a.m. on October 2, 1986, evaluation of the tests revealed that the operation of this design feature (the ECCW system) was questionable for Units 1 and 3, and that this resulted in inoperability of all LPSW systems for Oconee. As a result, an orderly shutdown of the two operating units was begun as required by Technical Specification 3.3.7. Both units reached cold shutdown conditions by October 3, 1986.

The licensee's analysis of the event showed that the loss of suction to the LPSW pumps was caused by a loss of the previously described siphon. The CCW pump discharge flange is normally nine feet below the surface of Lake Keowee when the lake is at full level. However, because of drought conditions, the lake level was about six feet below the flange at the time of the load shed test. During operation at these reduced lake levels, minor water leakage of the flange had been observed. This leakage was insignificant during plant operation. However, with the CCW pumps off (shedded), air inleakage at this flange caused the high point in the CCW system piping to drain and resulted in a loss of siphon flow.

Siphon flow, if initiated, could not be sustained in the system, as originally designed and built, during low lake level conditions because of air inleakage at the CCW pump discharge flange. It appears that previous surveillance tests were not of sufficient duration to determine that siphon flow was sustained. Since the large volume of water contained in the CCW lines provided LPSW flow for about an hour before the loss of LPSW suction, it appears that load shed testing personnel, in the past, may have been misled into thinking siphon flow had been sustained.

As mentioned briefly in the "Background" information above, the Oconee CCW system is designed to also provide suction and discharge (heat sink) for the cooling water pump for the SSF EDG and a supply for the SSF ASW pump. The SSF was designed to be a backup means to achieve and maintain the plant in a hot shutdown condition. Analysis performed subsequent to the above load shed test showed that if siphon flow were lost in the CCW system pipe, the CCW system could not provide an adequate heat sink for SSF operation to meet its design basis of 72 hours of operation. In addition, when the CCW pumps are not operating, the CCW system should provide emergency gravity-siphon CCW system flow to the main condensers to recover condensate for DHR following certain postulated events until the DHR system is in operation. The gravity flow is possible because the CCW system discharge from the main condenser is shifted to an alternate pipe that discharges downstream of Lake Keowee dam at an elevation well below the CCW system intake. This feature of the CCW system also was disabled by the loss of siphon.

The safety significance of the October 2, 1986 event at Oconee is that the event revealed an unanticipated failure mode which resulted in the loss of the ECCW system and the safety-related functions of the LPSW system. This situation has existed ever since the first Oconee unit went into operation in 1973.

Cause or causes—The root cause of this incident is the inadequate design and testing of the ECCW system. This led to a failure of the ECCW system to perform its intended function as described in the FSAR under all assumed conditions. Inadequate original design evaluation of the ECCW system and the lower than normal lake level due to extreme drought conditions of Lake Keowee are contributing factors to the cause of this incident.

Actions Taken to Prevent Recurrence

Licensee—The licensee modified the discharge flange on all CCW pumps to prevent air inleakage when the lake level is below the discharge flange. The LPSW pumps were successfully tested for several hours with the CCW pumps off and the lake level below the discharge flange. The emergency CCW gravity-siphon flow to the main condensers and the SSF EDG cooling water pump also were successfully tested under the above conditions. In addition, the SSF cooling water pump was modified to take a separate and independent suction from Lake Keowee.

The licensee inspected each continuous vacuum priming (CVP) line at the CCW system intake for blockage. Unit 3 lines were clear and vacuum was established on Unit 3 intake high point vents. Unit 1 and Unit 2 lines were found blanked off with blind flanges which prevented the CVP pumps from developing adequate vacuum on the CCW system intake high point vents to overcome air inleakage at the pumps. These flanges had apparently not been removed at the completion of the original system hydrostatic testing. The flanges were removed and a vacuum was established on Units 1 and 2 intake high point vents.

Successful testing was performed on the condensate steam air ejector, the turbine bypass valves (TBV), and the siphon effect. By October 23, 1986, all three units were returned to service.

Further corrective actions planned by the licensee include: (a) Review and analyze the seismicity of the CCW system, (b) develop a program to include CCW system piping in a routine inspection, (c) review the validity of the testing program to ensure that systems and components are tested adequately, and (d) review Technical Specifications to determine if any revisions are necessary.

NRC—The NRC Resident Inspectors for the Oconee site were observing the Unit 2 load shed test in progress on October 1, 1986, and observed the failures. They observed licensee actions to assure that the Units remained in a stable condition and notified Region II. Initial investigation of the circumstances associated with this event began while surveillance test data was being analyzed.

On October 4, 1986, the Deputy Director of the Division of Reactor Projects, Region II, went to the site to observe the licensee's repairs for a fix of the problem, to review the potential of the proposed fix to solve the problem, and to assess the overall significance of the event.

On October 8, 1986, a meeting between NRC and licensee personnel was held in the NRC Region II Office to discuss actions being taken and planned by the licensee to repair and demonstrate operability of the Oconee units. Actions to be taken and required conditions prior to restart of the units were also discussed.

The NRC Resident Inspectors witnessed the repairs and the subsequent testing to confirm the overall adequacy of the licensee's corrective action prior to restart of the units.

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On October 14, 1986, an NRC Management Meeting with the licensee was held in Bethesda, Maryland, to review the completed modifications and test results. The licensee presented the results of the surveillances which were conducted following the described modifications to the pumps.

NRC Inspection Reports No. 86–26 and No. 86–33 concerning the incident were forwarded to the licensee on October 23, 1986, and December 1, 1986, respectively. On December 22, 1986, an NRC Enforcement Conference was held at the NRC Region II Office to discuss the event with the licensee. On February 5, 1987, the NRC issued a Notice of Violation to the licensee regarding the operability of the ECCW system. The violation was classified as Severity Level IV (on a scale where Levels I and V are the most and least severe, respectively).

On January 30, 1987, the NRC issued Inspection and Enforcement Information Notice No. 87–06 to all nuclear power reactor facilities holding an operating license or a construction permit to inform them of the Oconee event.

AO 86–21 Degraded Safety Systems Due to Incorrect Torque Switch Settings on Rotork Motor Operators at Catawba and McGuire Nuclear Stations

One of the AO examples notes that a major deficiency in design, construction, or operation having safety implications requiring immediate remedial action can be considered an abnormal occurrence.

Date and place—On October 23, 1986, Duke Power Company (the licensee) discovered that numerous safety-related valves at Catawba Nuclear Station were degraded due to incorrect torque switch settings. On October 28, 1986, a similar situation was also found at the licensee's McGuire Nuclear Station. Catawba Units 1 and 2, and McGuire Units 1 and 2 are Westinghouse-designed pressurized water reactors. The Catawba Station is located in York County, South Carolina and the McGuire Station is located in Mecklenburg County, North Carolina.

Background—At Catawba and McGuire, and many other plants, Rotork Actuators are used for remote control of plant valves. Many of these valves are in safety-related systems. The actuators are driven by electric motors. The size of the motor and the actuator depends on the size of the valve and the force or torque necessary to open and close the valve. Rotork Actuators have five torque switch settings which the licensee had assumed represented 40, 55, 70, 85 and 100 percent of the maximum rated torque output. The required torque switch setting for each actuator is determined based on the maximum differential pressure expected on its accociated valve during anticipated events.

If incorrect torque switch settings are used, the valves may not perform as designed (e.g., the actuator motor may switch off before the valves complete their travel) thereby possibly degrading their function to avoid, or mitigate, the consequences of a transient or a design basis accident. Improper torque switch settings, on motor operators manufactured by various vendors, have been a contributing cause in a number of significant events, one of the most serious of which was the complete loss of main and auxiliary feedwater event at Davis-Besse on June 9, 1985. The Davis-Besse event was reported as abnormal occurrence No. 85–7 in NUREG–0090, Vol. 8, No. 2 ("Report to Congress on Abnormal Occurrences: April–June 1985").

On November 15, 1985, the NRC issued IE Bulletin No. 85–03 to all holders of nuclear power reactor operating licenses or construction permits for action. The Bulletin described various events (including the June 9, 1985 event at Davis-Besse) during which motor-operated valves failed on demand, in a common mode, due to improper switch settings. The Bulletin also described numerous previously issued NRC reports, Information Notices, Bulletins, and Circulars (as far back as 1972) involving problems with torque switches.

Bulletin No. 85–03 requested licensees to develop and implement a program to ensure that switch settings on certain safety-related motor-operated valves are selected, set, and maintained correctly to accommodate the maximum differential pressures expected on these valves during both normal and abnormal events within the design basis. It was during the licensee's followup to the Bulletin that the problem at Catawba and McGuire was discovered.

Nature and Probable Consequences

Catawba Nuclear Station (CNS). On October 23, 1986, with both CNS units in cold shutdown, a valve was being repaired. The motor and worm gear had been replaced and the valve's actuator was being calibrated per CNS plant procedure. After setting the torque switch to the specified setting, per procedure, while the valve was on the test bench, the torque output was checked. The result indicated the torque output was lower than required. Subsequently, a performance curve (percent torque output versus torque switch setting) was obtained. As stated above, the licensee had assumed that setting 1 represents 40 percent of rated torque and setting 5 represents 100 percent of rated torque.

A linear or straight curve had been assumed by the licensee for the range from 40 percent to 100 percent. However, results of the performance curve indicated a non-linear relationship between percent torque output versus torque switch setting. Also, the curve obtained was generally lower than the linear relationship previously thought to be correct.

Based on these results, the valve being tested at CNS was determined to be incapable of performing its intended function. Subsequent review indicated that at CNS this situation was not unique to the single valve discussed. Fifty-three valves were determined to potentially be affected. Systems which contained safety-related valves (many of which were containment isolation valves) which could potentially be affected were:

(a) Chemical and volume control systems
(b) Component cooling system
(c) Residual heat removal system
(d) Ice condenser refrigeration system
(e) Safety injection system
(f) Nuclear service water system
(g) Containment hydrogen purge system
(h) Breathing air system
(i) Instrument air system
(j) Containment air release and addition system

McGuire Nuclear Station (MNS). Based on the above event at CNS, it was determined at MNS on October 28, 1986 that the charging line outside containment isolation valves for both MNS units were technically inoperable. In fact, analysis of the two valves, which would be required to close during safety injection, indicated that they may not be able to do so under differential pressure conditions which could be encountered following a loss-of-coolant accident.

Unit 1 was operating at 100 percent and Unit 2 was operating at 47 percent of full power. With both trains of the emergency core cooling system thus inoperable, the licensee commenced shutdown of both Units. A plan was established to inspect all safety-related Rotork motor operators and perform a detailed engineering evaluation on each affected valve to determine the appropriate corrective action to ensure its operability.

Cause or causes—The cause of the problem appears to be poor communication between the motor operator vendor and the licensee. The vendor subsequently stated that

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whenever the factory torque setting is changed in the field, an individual calibration curve or bench test is required to accurately determine torque output. In fact, based on verbal communication with the vendor, the licensee utilized a linear or straight line curve for the relationship between percent torque versus torque switch setting.

Actions Taken to Prevent Recurrence

Licensee—The licensee took the following corrective steps:

(a) Operability requirements for all safety-related Rotork motor operators were evaluated individually.

(b) Corrective action for each motor operator evaluated was performed if required.

(c) Corrective maintenance procedures for Rotork motor operators were revised to require a bench test of the operator when setting torque switches.

(d) A detailed inspection of each safety-related Rotork motor operator installed was performed.

(e) All significant discrepancies found during inspection were corrected.

(f) A new document which specifies the required torque output (in terms of torque output, and not torque switch setting) for each valve with a Rotork motor operator was completed and approved.

(g) The licensee committed to implement a program by November 15, 1987, to ensure that torque switch settings on *all* safety-related motor operated valves are selected, set, and maintained correctly. This commitment was made in accordance with the previously discussed NRC IE Bulletin No. 85–03.

NRC—The NRC monitored the licensee's corrective actions to assure that they were responsive. Subsequently, NRC met with the licensee and Rotork to follow progress on the issue.

On November 3, 1986, the NRC issued IE Information Notice No. 86–93 which described the McGuire event, to all nuclear power reactor facilities holding an operating license or a construction permit.

AO 86–22 Secondary System Pipe Break Resulting in Death of Four Persons at Surry Unit 2

One of the AO examples notes that a major deficiency in design, construction, or operation having safety implications requiring immediate remedial action can be considered an abnormal occurrence.

Date and place—On December 9, 1986, with both Surry Units 1 and 2 operating at 100% reactor power, a Unit 2 reactor trip (scram) followed by a main feedwater (MFW) line rupture occurred. Eight individuals were injured by the escaping steam and water. Four of those injured subsequently died.

The Surry Power Station consists of two Westinghouse-designed pressurized water reactors. The station is operated by Virginia Electric and Power Company (the licensee) and is located in Surry County, Virginia.

Nature and probable consequences—On December 8, 1986, Unit 2 had completed a refueling outage and had returned to full power operation. Unit 1 was also operating at 100% power.

On December 9, 1986, at about 2:20 p.m. (EST), a low-low level in the "C" steam generator (S/G) of Unit 2 caused an automatic reactor trip and an automatic start of the two motor-driven auxiliary feedwater pumps. The reactor trip also resulted in a trip of the Unit 2 main turbine-generator.

The control room operators noted the S/G code safety valves lifting and regulated S/G pressure through the atmospheric dump valves. Approximately 30 seconds after the trip, the unit's electrical busses auto-transferred to offsite power. A small steam release noise was heard followed by a very loud noise approximately five seconds later.

A shift supervisor, who was in the turbine building observing construction activity around the MFW pumps, realized that a large break had occurred and ran to the control room to alert the control room operators. He also told them that people had been injured. All secondary pumps were secured and the break isolated. Water to the S/Gs was supplied by the auxiliary feedwater system.

The primary system responded normally to the loss of load transient. Reactor coolant temperature, pressure, and pressurizer level were stabilized in the desired band.

A notification of unusual event was declared at 2:27 p.m. At 2:30 p.m., ground and air ambulances were called to take the injured people to the hospital. At 2:40 p.m., the unusual event was upgraded to an Alert in order to ensure accountability of all station personnel.

Unit 2 was stabilized by 2:34 p.m. with two reactor coolant pumps running and primary system pressure and temperature being maintained by relieving steam to the atmosphere. No radioactive releases resulted from the event and a cooldown was initiated.

At 3:48 p.m., accountability of personnel was completed and at 4:25 p.m., the Alert was terminated. At 3:55 a.m. on December 10, 1986, Unit 2 was placed on the residual heat removal system; at 7:04 a.m., the Unit achieved cold shutdown conditions.

Later investigation showed that an 18-inch suction line to the A train main feedwater pump had ruptured at the elbow where the line connects to the 24-inch condensate header. At the time of the rupture, contractor personnel employed by Daniel Construction Company of Greenville, South Carolina, and by Insulation Specialities, Inc., of Hopewell, Virginia, were doing instrument line relocation and pipe insulation work in the general area of the ruptured pipe. As a result of the escaping steam and water, six of these individuals were hospitalized for treatment of severe burns. Three were evacuated directly from the site by helicopter, and three others were taken off site by ambulance. The other two, who were less severely injured, were treated at a clinic and released.

One of those hospitalized died the afternoon of December 10, 1986, and another victim died on December 11, 1986. Two others died several days later. The other two remained in serious to critical condition. One of the two improved and was later released but the other was still in serious condition more than a month after the accident.

The escaping steam and water also caused various system interactions which complicated the licensee's handling of the event. For example, one important complication was that water and steam saturated a security card reader which shorted out the entire plant card reader system. As a result, key-cards would not open plant doors. Security personnel responded to the control room and provided access control while doors into the control room were opened for easy access and to improve control room ventilation. Guards admitted personnel on the basis of personal recognition and excluded non-essential personnel. The card reader system returned to service approximately 20 minutes after the pipe break and functioned normally thereafter.

An operator reported being delayed in the stairway outside the control room as a result of the card reader failure. Due to the hot water conditions on the turbine building basement floor and the discharge of the Halon fire suppression system in the emergency switchgear rooms below the control room and the carbon dioxide fire suppression system in the cable tray rooms above the control room (see discussion below), the operator had no safe way to exit the stairway other than the control room itself. The operator was admitted to the

control room by someone opening the door from inside the control room. The licensee is considering installing electronic override switches which would permit the opening of electronically locked doors in emergency situations.

Another important complication was that within minutes of the feedwater pipe rupture event in the Unit 2 turbine building, portions of the Unit 2 turbine building sprinkler system actuated. Sixty-two sprinkler heads opened in the immediate area of the feedwater pipe rupture due to the high heat levels associated with the event. As they opened, these sprinkler heads immediately began discharging water to cool turbine building atmosphere.

Water short-circuited control systems in the area of the Halon and carbon dioxide fire suppression systems; as a result, the systems activated. Control room habitability became a concern because doors were blocked open to allow better control room access without recognizing that carbon dioxide had been discharged in the areas above. The carbon dioxide was apparently coming into the control room from the turbine building hallway. Control room personnel in the main control room annex and near the main control room door experienced shortness of breath, dizziness and nausea. However, once they recognized that carbon dioxide was present, the control room operators took appropriate corrective actions and initiated control room emergency air supply fans which placed the main control room at a higher pressure than the turbine building. This action assisted in diluting and exhausting the existing carbon dioxide levels and kept any additional carbon dioxide from infiltrating into the main control room.

About 3:30 p.m. on December 9, 1986, a decision was made by NRC Region II management to send an inspection team to the site. This team consisted of Regional-based personnel and the senior resident inspectors from North Anna and Surry. The Region II inspection team arrived on site about 9:30 p.m. on December 9, 1986, to assess the operational status of the unit and to inspect the damaged area of the Unit 2 turbine building. During the morning of December 10, 1986, the team's status was upgraded to an Augmented Inspection Team (AIT), and an engineer from the NRC Office of Nuclear Reactor Regulation, knowledgeable in water hammer phenomena, was assigned to the team. The AIT was tasked with the job of examining the licensee's response to the incident and performing a separate investigation.

Following the termination of the Alert classification on December 9, 1986, licensee management initiated recovery activities. An organization was established and resources identified for evaluating the incident and recommending recovery actions. The licensee's preliminary findings resulting from the Unit 2 main feed pump suction pipe rupture indicated that there may have been significant thinning of the pipe wall due to a corrosion/erosion mechanism not fully understood at the time. Since the same mechanism could similarly affect Unit 1, at 12:30 p.m. on December 10, 1986, the licensee decided to shut down Unit 1. The shutdown was initiated at 5:30 p.m. on December 10, 1986, and the unit was off the line at 10:47 p.m. Subsequently, the unit was placed in a cold shutdown condition.

Based on the licensee's investigation and the NRC Region II AIT inspection/investigation, it has been concluded that the following factors attributed to the main feedwater pipe rupture events.

1. *Pipe wall thinning on "A" main feed pump suction line.* The 18-inch suction line which supplies the "A" Train Main Feed Pump was fabricated using ASTM A–106, Grade B, Extra Strong, carbon steel seamless pipe and ASTM A–234, Grade B, Extra Strong, WPB carbon steel wrought fittings which had a nominal wall thickness of .50 inches ±10% at installation.

Since installation, the bulk single-phase corrosion/erosion mechanism had subsequently reduced the original wall thickness. Ultrasonic wall thickness measurements and micrometer measurements taken on the elbow following the failure showed a gradually sloping wall thickness loss over much of the suction line. At several locations, usually near welds, localized cavities had been formed in the elbow inner surface by the corrosion/erosion process. The remaining wall thickness of these localized areas has been measured as low as .048 inches while adjacent locations were .090 to .140 inches in thickness. Using the code minimum wall equation and assuming an internal pipe pressure of 600 psig, a temperature of 370°F, and an ultimate strength of 60,000 psi results in a calculated burst thickness of .099 inches and a yield thickness of .173 inches. This difference in the pipe thickness directly contributed to the pipe failure.

2. *Main steam trip valve and instrument air pressure.* Surry Unit 2 tripped as designed when a low-low S/G water level protection signal occurred on the "C" Steam Generator Reactor Protection System instrumentation. This occurrence was a result of the unplanned closure of the "C" main steam trip valve (MSTV). The MSTV closure was initiated by a slight reduction in instrument air pressure combined with valve misassembly. The "C" MSTV would not be expected to close with the slight reduction in instrument air pressure; however, the investigation revealed that the valve disc had not been in a fully open position because of misalignment of the valve bonnet that occurred when the valve was overhauled during the past refueling outage. This slight reduction in instrument air pressure allowed enough air pressure decrease for the steam flow to force the disc shut. This directly contributed to the trip, but not to the pipe rupture.

3. *Main feed pump discharge check valve.* The licensee's inspection of the 2A main feed pump check valve revealed two hardware deficiences, i.e., a missing disc hinge pin and a displaced seat-disc assembly. Further investigation showed that these deficiencies did not contribute to the cause of the break, but may have permitted an additional amount of water to be discharged through the break.

Cause or causes—The investigations have indicated that the rupture of the suction line elbow resulted from the combination of wall thinning due to bulk single-phase corrosion/erosion and a normal feed pump suction pressure transient. The root causes appear to be a design deficiency (associated with piping configuration and flow velocity) and operational circumstances associated with water chemistry.

Actions Taken to Prevent Recurrence

Licensee—The licensee developed a comprehensive plan for inspection, evaluation, and modification/replacement, as necessary for components (e.g., piping, main steam trip valves, main feed pump discharge check valves), systems (e.g., fire protection system) and procedures (e.g., security plan, emergency plan and communications). The licensee also developed a station startup plan. On January 14, 1987, the licensee forwarded to the NRC a report entitled "Surry Unit 2, Reactor Trip and Feedwater Pipe Failure Report", which provided detailed information on the event, together with the station recovery plan and corrective actions for NRC review and concurrence prior to station restart. As discussed below under "NRC Actions," the licensee's plans and actions were acceptable to the NRC. Subsequently, Surry Units 1 and 2 were returned to service on February 23, 1987 and March 20, 1987, respectively.

The licensee also operates the North Anna nuclear power station which consists of two units similar to those of Surry. The facility is located in Louisa County, Virginia. Subsequently, when pipe wall thinning was found at Surry Units 1 and 2, the licensee decided to inspect similar piping at North Anna Unit 1. Therefore, on December 25, 1986, power was reduced from 100%, reaching 20% on December 26, 1986. Approximately 4900 ultrasonic inspections were made on North Anna Unit 1 piping. No measurements indicated pipe wall thickness below the required minimum. The feedwater pump suction piping and header wall thicknesses were within original pipe manufacturing specifications, and the high pressure drain pump dischange piping was in more than 15 percent below the original specifications. Since no abnormal conditions were found, Unit 1 was returned to full power on December 27, 1986. North Anna Unit 2 and additional Unit 1 piping inspections will be performed during future outages.

NRC—As previously mentined, an NRC AIT was sent to the Surry facility on December 9, 1986. The AIT conducted inspections during the remainder of the week ending December 12, 1986, to ascertain the circumstances involved in the accident. An executive summary was transmitted to the Region II office on December 17, 1986. This summary provided the significant facts concering the event. The AIT did not conclude its insection at that time due to the ongoing activities by the licensee to develop a root cause analysis, which required subsequent inspection activities.

AIT activities continued during the weeks of December 22 and 29, 1986, and January 12, 1987. An AIT exit meeting with plant management was held on January 14, 1987, after review of the licensee's investigative report and proposed corrective actions which were presented to the NRC on January 12, 1987. In addition to the AIT inspection activities, inspectors knowledgeable in security, fire protection systems, water chemistry and check valve design were assigned to review specific concerns in these areas. Where applicable, their inspection findings were incorporated into the AIT report.

The AIT Inspection Report was forwarded to the licensee on February 10, 1987. The forwarding letter stated that the AIT concurred in the licensee's planned actions in order to restart the plant. The forwarding letter also included a Notice of Violation regarding maintenance procedures for overhauling a main steam trip valve. The violations was classified as Severity Level IV (on a scale in which Levels I and V are the most and least significant, respectively).

On December 16, 1986, the NRC issued Inspection and Enforcement Information Notice No. 86–106 ("Feedwater Line Break") to all nuclear power reactor facilities holding an operating license or a construction permit. The Notice alerted addressees of a potentially generic problem with feedwater pipe thinning and other problems related to the Surry Unit 2 event. Supplement 1 to that Notice, issued February 13, 1987, provided additional information about thinning of piping walls which led to the pipe break. Supplement 2 to the Notice, issued March 18, 1987, provided information about potentially generic systems interaction problems that were caused by the release of large quantities of feedwater.

Other NRC Licensees (Industrial Radiographers, Medical Institutions, Industrial Users, etc.)

AO 86–23 Release of Americium 241 Inside a Waste Storage Building at Wright=Patterson Air Force Base

One of the AO examples notes that serious deficiency in management/procedural controls in major areas can be considered an abnormal occurrence.

Date and place—On September 18 and October 6, 1986, a drum containing radioactive waste was opened to inspect its contents at Wright-Patterson Air Force Base, located near Dayton, Ohio. Opening the dum caused a significant release of americium-241 inside the waste storage building, resulting in extensive contamination of the facility; significant efforts and costs have been incurred in decontaminating the facility, as well as in the investigations being performed by the NRC and other agencies.

Background—The United States Air Force (USAF) holds a license, issued by the NRC on June 26, 1985, which grants the USAF the authority to issue Permits to Air Force locations where the NRC has regulatory jurisdiction. The management and control of this license are the responsibilities of the USAF Radioisotope Committee. The Executive Secretary of this Committee is located at Brooks Air Force Base near San Antonio, Texas. Wright-Patterson Air Force Base is the holder of a USAF Radioactive Material Permit issued by the Committee on December 16, 1985, as a conversion of a previously issued NRC specific license.

Nature and probable consequences—In response to a request by the USAF Radioisotope Committee, the Wright-Patterson Radiation Safety Officer and another individual began an inventory on September 18, 1986 of radioactive waste drums which were in storage at the Air Base. Five drums were not labeled as to their contents. When one of the unlabeled drums was opened, the two individuals performing the inspection noticed that their alpha radiation detector had gone "off scale" (caused by a radiation level in excess of the measuring scale). The individuals immediately left the storage building and were assisted by two additional individuals in removing their protective garments. The two individuals who had opened the drum and one of the additional technicians has some minor radioactive contamination remaining on their hands, necks, and shoes. They subsequently decontaminated themselves using soap and water.

Subsequent radiation surveys revealed the presence of radioactive contamination inside the building. There were also detectable releases outside the structure, but these were below NRC release criteria for unrestricted areas. The waste storage building is located in a remote controlled-access munitions storage area.

On October 1, 1986, the Air Force Radiological Assistance Team and a private contractor (Chem-Nuclear Services) arrived at the Air Base to assist in decontamination work and repackaging of the waste. Because of an unexplained high radiation level emanating from one of the drums, the drum was opened on October 6, 1986, and the contents transferred to a larger drum. The drum which was opened on October 6 was the same drum that was opened on September 18, and the reopening resulted in further release of radioactive materials inside the building. Although they were wearing anti-contamination clothing, the workers received contamination on their personal clothing, and one individual received an uptake (inhalation) of airborne americium-241, which may have exceeded the NRC limit of 3.8 nanocuries. The actual uptake is in the process of being determined, pending further testing and analysis. The preliminary evidence, however, is that the uptake is below the level at which detectable medical effects would be expected.

A technician reentered the building three days later and determined that the removable surface contamination levels has increased to as high as 2,875,000 disintegrations per minute. This level of contamination requires cleanup to prevent personnel contamination or release to the environment. Workers in the facility would have to wear

respiratory protection. For an area that is open to the public, the NRC guidelines call for removal of contamination above 20 disintegrations per minute. In addition to the surface contamination, the measurement of airborne radioactivity in the building was approximately one million times the NRC limit for a restricted area.

Actual decontamination work began October 30, 1986, and continued until November 18, 1986. At that time all radioactive waste drums had been examined and repackaged (with the exception of the durm which was the source of the americium-241 contamination). Most radioactive contamination was successfully decontaminated by the Air Force's contractor. Approximately 100 microcuries of contamination remained in the building, awaiting a decision on further decontamination work or dismantling and disposal of the building. Access to the building remains restricted.

The drum containing the americium-241 (estimated by external measurements to be 1.6 to 2.2 curies) will be transferred to a Department of Energy facility for storage.

The costs to date (as of mid to late February 1986) for decontamination, repackaging, and disposal are approximately $500,000. Additional costs will be incurred during final disposition of the storage building.

Subsequent investigation by the Air Force and by the NRC determined that the barrel containing the americium-241 had originated at a former NRC licensee's facility and had been accepted by an individual at the Air Base for disposal in the 1970s. (The circumstances of the transfer of the waste remain under investigation.) The waste barrel had apparently remained in storage since that time.

Cause or causes—The root cause appears to be attributed to deficient management/procedural controls. However, the event remains under investigation by the NRC Office of Investigations, and a complete understanding of all contributing causes awaits their report.

Actions Taken To Prevent Recurrence

Licensee—The licensee's investigation of the incident is continuing. The Radiation Safety Officer and two other individuals associated with the handling of the incident have been removed from any work involving NRC-licensed radioactive materials; this was documented by a Confirmatory Action Letter issued by NRC Region III on February 5, 1987.

The licensee has provided information to other Air Force bases on handling practices for opening waste drums and the NRC's reported requirements.

In addition, the USAF will have to decide whether further decontamination attempts should be undertaken, or whether the waste storage building should be dismantled and disposed of as radioactive waste.

NRC—After the NRC learned of the scope of the contamination incident, NRC inspection personnel were dispatched from Region III to review the circumstances of the incident and to monitor the licensee's decontamination activities. Personnel from Oak Ridge Associated Universities were also retained by the NRC to perform radiation surveys at the Air Base and to assist the NRC in reviewing the decontamination plans and activities.

Region III issued a Confirmatory Action Letter on October 27, 1986, documenting the Air Force's agreement (a) not to enter the building without NRC authorization; (b) to provide training for fire protection personnel; (c) to maintain a fire and security watch at the site; (d) to notify the NRC promptly of any problems concerning the contaminated building such as fire, damage due to storms, or detection of contamination outside the building; and (e) to provide an Incident Report to the NRC within seven days.

The NRC is continuing its investigation of the circumstances surrounding the contamination incident and its handling by the Air Force, including the reporting of this incident to NRC. On February 19, 1987, the NRC issued a letter to the Air Force requiring it to submit written information on how it will assure (a) that the NRC receives complete, timely, and accurate information; (b) that appropriate individuals will be fully aware of NRC reporting requirements; and (c) that NRC-licensed activities will be conducted in compliance with NRC regulations. This information is necessary for the NRC to determine whether the license should be modified or other enforcement action taken.

AO 86-24 Therapeutic Medical Misadministration

The general AO criterion notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurence.

Date and place—On October 6–8, 1986, a patient at the Cleveland Clinic Foundation, Cleveland, Ohio, received a series of cobalt-60 therapeutic radiation exposures which resulted in a radiation exposure that was about 67 percent greater than the prescribed dosage.

Nature and probable consequences—A 58-year-old female patient received two radiation treatments a day for three consecutive days, October 6–8, 1986, for treatment of bone marrow disease. Because of an error in calculating treatment time, these treatments resulted in the patient receiving a radiation doze of approximately 2,000 rads head-to-waist, as opposed to the intended 1,200 rads.

The patient was discharged form the hospital on October 10, 1986, but was readmitted on October 20, 1986, for symptoms believed to result from the radiation exposure (unable to swallow, fever, and chills). she was discharged after treatment, but later admitted to Cleveland Metropolitan Hospital Burn Clinic on November 10, 1986, with skin burns. The patient died on November 18, 1986.

The licensee did not discover the therapeutic treatment error until November 11, 1986, when a dosimetrist reviewed the patient's treatment records and checked the calculations. NRC regulations stipulate that such misadministrations be reported to the NRC within 24 hours after they are discovered; however, the licensee did not report it to the NRC until November 17, 1986. The delay was apparently due to the licensee's failure to realize that a misadministration of this type requires immediate notification.

A panel of NRC medical consultants reviewed the case and concluded that the radiation treatment had "minimal effect, if any, upon the fatal outcome of her disease." The skin burns were not attributable to the radiation treatment, but rather to a variety of drugs (i.e., chemotherapy) given to the patient prior to and in addition to her radiation tratments.

Cause or causes—The misadministration was caused by an error in the calculations performed to determine the exposure time to deliver the desired radiation dosage. The physicist who performed the calculations used the distance from the cobalt-60 radition source to the patient, instead of the distance from the exterior of the radiation therapy device to the patient. The physicist entered the measurement into a programmable calculator that already accounted for the internal distance from the radiation source to the exterior of the device. Therefore, the internal distance was added twice with the result that a longer treatment time was scheduled. (The further the source is from the patient, the longer the treatment time required.)

In 1982 Cleveland Clinic adopted new procedures as a result of a therapeutic misadministration at that time. These new procedures included a system of dual verification of all dose calculations prior to the first day of treatment. In this case, however, the procedure was not followed and there was no recheck of the physicist's calculations prior to treatment.

Actions Taken to Prevent Recurrence

Licensee—The licensee has adopted revisions to its procedures providing that all dose calculations will be independently performed by two qualified individuals and that, prior to the first treatment, the technologist will verify that the duplicate calculations have been performed. In addition, the treatment data will be reviewed weekly by the chief technologist. A quality assurance audit by the licensee's Radioisotope Committee is to be performed quarterly for a year and then annually thereafter.

NRC—On November 20, 1986, NRC Region III issued a Confirmatory Action Letter documenting the licensee's agreement to institute the improvements in its procedures listed above.

A special NRC inspection was conducted beginning November 20, 1986. The inspection identified two violations of NRC requirements, i.e., failure to report the therapeutic misadministration within 24 hours and failure to obtain approval of the licensee's Radioisotope Committee for physicians to use NRC-licensed materials. (This second violation is not directly related to the misadministration.) On April 15, 1987, the NRC issued a proposed civil penalty of $2,500, which the licensee subsequently paid.

The NRC retained a special medical panel to review the case, consisting of two physicians and a physicist. As previously mentioned, the panel concluded that the patient's deteriorating condition, ending in her death, was not the result of the misadministration.

AO 86-25 Suspension of License for Servicing Teletherapy and Radiography Units

The general AO criterion notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence. In addition, Example 11 of "For All Licensees" in Appendix A notes that serious deficiency in management or procedural controls in major areas can be considered an abnormal occurrence.

Date and place—On October 10, 1986, the NRC Office of Inspection and Enforcement issued an Order suspending certain NRC-licensed service activities of Advanced Medical Systems, Inc., of Geneva, Ohio. This action was taken after the NRC determined that the firm had been using untrained and unqualified employees to service cobalt-60 teletherapy units.

Nature and probable consequences—Advanced Medical Systems (AMS) is licensed by the NRC to install, service, maintain, and dismantle radiography and teletherapy units. (A teletherapy machine contains cobalt-60 and is used in medical facilities for the radiation treatment of cancer. A radiography unit contains cesium-137 or cobalt-60 and is used to make X-ray like pictures of metal products and welds.) AMS is also licensed to possess cobalt-60 and cesium-137 for manufacturing the sealed sources used in the teletherapy and radiography units. This source manufacturing, which is performed at a separate AMS facility in Cleveland, Ohio, was not affected by the NRC Order.

By a special safety inspection conducted on September 17 through November 12, 1986 at AMS, the NRC confirmed allegations that since the Spring of 1985, and as recently as September 1986, licensee employees were directed to perform certain service and maintenance activities on teletherapy equipment at medical facilities even though these individuals lacked (1) NRC authorization, (2) the required training to perform the directed maintenance, and (3) the appropriate radiation detection and monitoring equipment or the required service manuals.

Only those AMS technicians who are specifically named on the NRC license, or who were approved by the AMS Safety Committee, may service safety-related components on a teletherapy unit. Proir to either NRC or AMS Safety Committee approval, the technician must have had 40 hours of classroom and 40 hours of laboratory training; approximately six months of on-the-job training or prior related employment; and satisfactorily completed a written examination.

The potential safety consequences of work performed by an unqualified or unauthorized technician is that a faulty repaired or serviced teletherapy unit could expose the AMS repairman, a medical patient, or a hospital technician to excessive radiation.

Through the course of its inspection efforts, NRC Region III determined that unqualified AMS repairmen had serviced teletherapy units at seven medical institutions in the midwestern and eastern United States. An Order was sent to each institutions by the NRC's Office of Inspection and Enforcement requiring the institution to perform full calibration measurements on its teletherapy units prior to the treatment of patients, unless "those calibration requirements have been satisfactorily completed *subsequent* to maintenance or service by AMS representatives." In addition, each institution was required to have its teletherapy unit(s) fully inspected and serviced within 90 days of the Order by technicians other than AMS; until the full inspection and servicing were completed, each licensee was to perform periodic spot-checks of its teletherapy unit(s) every seven days.

The NRC's inspection of AMS also disclosed that the firm has been installing a defective teletherapy unit timer. Operational malfunction of the timer could result in radiation misadministrations to patients and possible excessive radiation exposures to teletherapy unit operators.

Cause or causes—The cause of this event was the apparent disregard of NRC's regulations and requirements by the licensee.

Actions Taken to Prevent Recurrence

Licensee—The NRC's October 10, 1986, Suspension Order required AMS to make available to the NRC all employee training records on the servicing of teletherapy units, all leak test records of sealed cobalt-60 sources, and all invoice and service reports of teletherapy unit maintenance and service work.

AMS was given 20 days from the date of the Order to show-cause why the Order should not have been issued.

On December 23, 1986, the licensee met with NRC Region III officials in Glen Ellyn, Illinois, seeking a rescission of the October 10, 1986 Order. On January 7, 1987, the NRC denied the licensee's request, in part because the licensee failed to "provide reasonable assurance of the protection of the public health and safety . . ."

In a letter dated January 23, 1987, the licensee agreed to perform all work on teletherapy units with only licensed, qualified technicians. AMS also agreed to conduct more frequent field inspections of their employees' work, including conducting a field audit of an individual's first job, followed by quarterly audits for the next six months, and semiannual audits thereafter. AMS also committed to bringing in an outside consultant semiannually to independently audit their service and repair program.

NRC—On October 29, 1986, the NRC issued Inspection and Enforcement

Bulletin No. 86–04 to all NRC licensees authorized to use cobalt-60 teletherapy units. The Bulletin directed licensees to instruct their technicians on how to recognize defective timers and the mitigating actions to be taken if a malfunction occurs. It also required the licensees to notify the NRC of the presence of any defective timer and the corrective actions taken.

On February 2, 1987, the Regional Administrator of NRC Region III relaxed the October 10, 1986 Order, following a review of the licensee's stated corrective actions. In addition to the licensee's commitments described above, Region III required AMS to (1) notify a Regional Branch Chief within 24 hours of a teletherapy unit service request, (2) provide a description of the work to be done, (3) name the individual assigned to perform the work, and (4) notify the NRC of the date the work is to be performed.

The licensee has asked for a hearing on the Suspension Order. A hearing date before an NRC Administrative Law Judge has not yet been scheduled.

On April 8, 1987, the NRC issued Inspection and Enforcement Information Notice No. 87–18, to caution applicable licensees against using nonlicensed maintenance personnel to service their teletherapy equipment.

AO 86–26 Diagnostic Medical Misadministration

The general AO criterion notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurence.

Date and place—On October 21, 1986, a patient at St. Luke's Hospital, Racine, Wisconsin, received a whole body iodine-131 diagnostic scan while the intended procedure was to be a thyroid scan.

Nature and probable consequences—On October 6, 1986, a patient received a diagnostic thyroid scan using iodine–123, an accelerator-produced radioisotope (accelerator-produced radioisotopes are not subject to NRC regulation, but are under State jurisdiction). The attending physician then gave oral instructions for an iodine-131 scan because the previous scan was not definitive. The nuclear medicine technologist erroneously arranged for a whole body scan instead of a thyroid scan as intended by the physician. The whole body scan involved 1.53 millicuries of iodine-131, which is approximately 30 times the normal 50 microcurie dosage for a thyroid scan.

After the scan was performed on October 21, 1986, the attending physician discovered the error. The whole body scan, however, did provide the physician with the diagnostic information desired.

The radiation exposure, while in excess of that intended, did not result in any immediate medical effects, according to the licensee. Had a typical dosage of iodine-131 for a therapeutic procedure been administered (i.e., 4 to 6 millicuries), rather than the 1.53 millicuries actually administered, a significant reduction in thyroid activity could have resulted. Thyroid damage, however, can be compensated for through the use of medication.

Cause or causes—The misadministration was caused by the nuclear medicine technologist's misinterpreting the attending physician's oral instruction. The physician requested an "iodine-131 scan," which the technologist incorrectly assumed to be whole body scan. Typically, the licensee uses iodine-123 for thyroid scans and iodine-131 for either thyroid scans or whole body scans.

Actions Taken To Prevent Recurrence

Licensee—The licensee has revised its procedures for prescribing radioiodine for medical procedures and provided training on the revised procedures. All prescriptions are now to be in written form and will be reviewed. by a nuclear medicine physician and verified by the technologist prior to administration of the radiopharmaceutical to the patient.

NRC—The NRC conducted a special inspection on December 15, 1986, to review the circumstances of the misadministration. The inspection did not identify any violations of NRC requirements, but determined that improvements were needed in the patient prescription process to preclude similar misadministrations in the future.

NRC Region III issued a Confirmatory Action Letter on January 9, 1987, documenting the licensee's agreement to change its procedures. The changes will be incorporated into the facility's NRC license.

The NRC also retained a medical consultant to evaluate the misadministration and its possible medical effects. The consultant's report is pending.

On April 15, 1987, the NRC issued Information Notice No. 85–61, Supplement 1 ("Misadministrations to Patients Undergoing Thyroid Scans") to licensees which described various misadministrations and corrective actions taken by some licensees which have been found effective to prevent such misadministrations. Information Notice No. 85–61, previously issued on July 22, 1985, discussed several other similar misadministrations.

AO 86–27 Diagnostic Medical Misadministration

The general AO criterion notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

Date and place—On November 18, 1986, a patient at Toledo Hospital, Toledo, Ohio, received a misadministration of a radiopharmaceutical when the wrong radioactive material was administered. It is estimated that the patient's thyroid received a dose of about 6,760 rads.

Nature and probable consequences—The physicians of a 62-year old female patient planned a bone scan for the patient as an outpatient at the Diagnostic Center at Toledo Hospital. The bone scan normally involves a 20 millicurie dose of technetium-99m MDP. The hospital's procedures provide that the referring physician's office notify the Diagnostic Center by telephone of the scheduled procedure. The procedure is then scheduled, and the hospital's nuclear medicine department is notified to order the radiopharmaceutical.

In this instance, the physician's office notified the Diagnostic Center, but kept no record of the telephone conversation. The intended procedure was a bone scan, but the Center's receptionist recorded a "total body scan, rule out metastases, carinoma." This was interpreted by the nuclear medicine department as an order for a thyroid metastatio disease scan, which is also known as a "total body scan." Toledo Hospital normally uses a 20 millicurie dose of iodine-131 for such a procedure, which is usually performed on patients who have had their thyroid removed. (The organ principally affected by an iodine dose is the thyroid.) The nuclear medicine department confirmed with the Center's receptionist that the thyroid metastatic disease scan was the prescribed procedure. The receptionist, however, did not verify the procedure with the referring physician's office.

On November 18, 1986, the patient was administered the iodine-131. She returned to the Diagnostic Center the following day and said she was scheduled for a bone scan. Since the Center had no bone scan scheduled, the error was consequently discovered.

The patient had previously been diagnosed as having mild hypothyroidism (underactive thyroid) and was taking medication to make up for the decreased thyroid function. The iodine-131 dossage was estimated to cause a 6,760 rad dose to the thyroid, while other organs received a relatively

small dose. (A rad is a standard measure of absorbed dose.) This dose to the thyroid is less than would normally be expected for 20 millicuries of iodine-131, because of the patient's reduced thyroid function. If the patient had had a normally functioning thyroid, the expected dose would have been three to seven times what this patient is estimated to have actually received.

Nevertheless, the 6,760 rad thyroid dose is expected to significantly decrease the patient's thyroid function, necessitating an increase in the medication (thyroxin) the patient was already receiving. The prescribed thyroxin dosage was increased to three times the original prescribed dose. Both the hospital and the patient's physician plan to continue to monitor the patient.

Cause or causes—The apparent cause of the misadministration was a failure to accurately communicate the prescribed procedure to the hospital's Diagnostic Center. The precise method of failure could not be determined since the patient's physician did not have a record of the telephone conversation in which the procedure was scheduled.

Actions Taken to Prevent Recurrence

Licensee—The hospital has instituted a change in its procedures for scheduling outpatient diagnostic doses. All prescriptions for nuclear medicine procedures are to be in written form and reviewed by a nuclear medicine physician and verified by a technologist prior to the administration of the radiopharmaceutical to the patient.

NRC—NRC Region III conducted a special inspection at Toledo Hospital on November 25, 1986, to review the circumstances of the misadministration. No violations of NRC requirements were found during the inspection. NRC Region III issued a Confirmatory Action Letter to the hospital on November 21, 1986, documenting the hospital's agreement to change its procedures for scheduling procedures involving radiopharmaceuticals. The NRC also retained a medical consultant to review the possible health effects of the misadministration.

AO 86-28 Immediately Effective Order Modifying License and Order to Show Cause Issued to an Industrial Radiography Company

One of the general criteria notes that major deficiencies in management controls for licensed facilities or material can be considered an abnormal occurrence.

Date and place—On December 30, 1986, the NRC issued an Order to Met-Chem Testing Laboratories of Utah, Inc. of Salt Lake City that in effect prohibits the company from involving a senior management employee in the performance or supervision of any NRC licensed activities.

Background—The licensee is the holder of both a general license pursuant to 10 CFR 150.20 and a specific license (License No. 43-28021-01) pursuant to 10 CFR Part 30, issued by the NRC. The general license authorizes the licensee to conduct the same activity in non-Agreement states pursuant to the provisions of 10 CFR 150.20 as the licensee is authorized to conduct by its specific license from the State of Utah, an Agreement State. The NRC specific license authorizes the licensee to use the licensed materials in performing industrial radiography and replacing sources, and to use an EON Model 04-764 calibrater (which contains a readioactive source) for calibration of survey instruments at locations where NRC maintains jurisdiction. The NRC license for industrial radiography was issued in July 1986.

Nature and probable consequences—The NRC Order was issued to remove the senior vice president from any assignment or position influencing or involving the performance or supervision of any licensed activities. This action was taken following an NRC investigation initiated in 1985 as a result of inspector observations made during a routine inspection. The NRC decided to issue the Order after an NRC investigator obtained a sworn statement on August 21, 1986, from the senior vice president in which he admitted that while employed as the office manager for the predecessor radiography company (Met-Chem Engineering Laboratories, Inc.), he had typed a letter and forged on it the signature of a radiographer for the purpose of explaining away an overexposure indicated on the radiographer's film badge.

The overexposure, while not clinically significant, was reportable according to NRC regulations. The letter falsely stated that the radiographer's dosimeter and film badge were left in a shirt pocket and the shirt was placed in an area near a radiation source resulting in an overexposure reading, but not an overexposure to the radiographer himself.

Had the NRC been provided with correct information, inspection actions regarding the overexposure would have been taken against Met-Chem Engineering Laboratory, Inc., the now defunct former company. Further, had the NRC known that a senior management employee of the licensee had withheld reportable information concerning radiation exposures, the specific license for the present company would not have been issued. The false statements made by the senior vice president call into question his candor in dealing with the NRC, and demonstrate that there was no longer reasonable assurance that the licensee would comply with NRC requirements while the individual was involved in licensed activities.

Cause or causes—The employee willfully made false statements to, and withheld information from, the NRC. On August 13, 1986, the employee denied to an NRC inspector and an NRC investigator any knowledge of how the forged letter was generated. However, on August 21, 1986, he admitted that he had indeed generated, and signed, the letter.

The employee has stated that the reasons he wrote the forged letter were (1) he did not want anything to stop the sale of certain Met-Chem Engineering Laboratories, Inc. properties to a third party, and (2) he did not want the NRC to know about the overexposure because he believed it would not have been desirable to have the NRC looking into the matter during the sale negotiation period.

Actions Taken to Prevent Recurrence

Licensee—The licensee responded to the NRC Order on January 15, 1987. The licensee stated that the employee terminated employment at Met-Chem Testing Laboratories during November 1986, to accept employment with a company which neither has a radioactive materials license nor handles any radioactive materials.

The licensee held meetings with all authorized users of radioactive materials to restate the instructions they are given during training, which includes total compliance to NRC requirements and to be honest and cooperate totally with NRC personnel. On January 5, 1986, the authorized users of radioactive materials signed a statement that they have read and understand the December 31, 1986 NRC Order.

NRC—The NRC Order contained the following provisions, effective immediately:

(1) License No. 43-28021-01 is amended by adding the following conditions:

The employee shall be removed from any assignment or position influencing or involving the performance or supervision of any licensed activities (e.g., as an authorized user), including the supervision of any Radiation Safety Officer (RSO).

(2) The licensee shall show cause in the manner hereinafter provided why

the license amendment set out in paragraph (1) above should not become permanent.

(3) The employee shall be removed from any assignment or position influencing or involving the performance or supervision of any licensed activities permitted under the general license issued pursuant to 10 CFR § 150.20.

(4) The licensee shall show cause in the manner hereinafter provided why the provisions in paragraph (3) above should not become permanent.

(5) Prior to conducting any licensed activities after receipt of this Order, the licensee shall (a) notify in writing all personnel involved in the performance and supervision of licensed activities at Met-Chem Testing Laboratories of Utah, Inc. of this Order and the importance of strict adherence to NRC requirements and complete candor with NRC personnel, and (b) certify to the NRC that each Authorized User and RSO has read the notification and Order and understands its contents.

(6) The NRC Region IV Regional Administrator may relax or rescind any of the above provisions for good cause shown by the licensee.

The NRC is evaluating the licensee's response to the Order, to determine whether it is satisfactory, and/or whether further enforcement action is required.

Dated in Washington, DC, this 31st day of July 1987.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 87-17798 Filed 87-4-87; 8:45 a.m.]

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[Docket No. 50-287; Facility Operating License No. DPR-55]

Environmental Assessment and Finding of No Significant Impact; Duke Power Co., Oconee Nuclear Station, Unit 3

The United States Nuclear Regulatory Commission (the Commission) is considering the issuance of a proposed amendment which would allow the use of multielement spent fuel casks in the Oconee Unit 3 spent fuel pool. Oconee Nuclear Station, Unit 3 is operated by Duke Power Company (the licensee) and is located in Oconee County, South Carolina.

Environmental Assessment

Identification of the proposed action: The proposed amendment would revise the Technical Specification 3.8.13.b to allow use of the multielement spent fuel casks in the Oconee Unit 3 spent fuel pool.

On July 26, 1985, the Commission issued Amendment Nos. 44 and 25 to the licenses of the McGuire Nuclear Station, Units 1 and 2, to allow the receipt, possession and storage at McGuire of the irradiated spent fuel assemblies from the Oconee Nuclear Station. The McGuire licenses had limited such receipt of Oconee spent fuel at McGuire only in NFS-4 (NAC-1) and NLI-1/2 casks, which are single-element casks.

On August 29, 1986, the Commission issued Amendment Nos. 61 and 42 to the licenses of McGuire Units 1 and 2 to authorize the use of Transnuclear, Inc. multielement spent fuel shipping casks, Model Numbers TN-8 and TN-8L, for receipt of irradiated Oconee fuel.

The proposed amendments to the Oconee Unit 3 license would authorize the use of the TN-8 and TN-8L multielement spent fuel casks in the Oconee Unit 3 spent fuel pool. The proposed amendments would increase the region of Oconee Unit 3 spent fuel racks within the spent fuel pool; with limits on the spent fuel cask movement from 31 to 33 rows. No change is needed for the Oconee Units 1 and 2 Technical Specifications for their combined spent fuel pool. This change was requested in the licensee's application for amendments dated November 19, 1985. Additional information in support of the requested change was provided in the licensee's letters dated June 16, 1986, February 18, 1987 and June 5, 1987.

The need for the proposed action: In its March 20, 1986 amendment application to the McGuire licenses on this issue, the licensee stated that to maintain acceptable reserve spent fuel storage capacity (needed for potential full core off-loading, reload batch and upender access) in the Oconee spent fuel pools, the licensee needs to use a multielement spent fuel shipping cask. The licensee states that in addition to maintaining the necessary shipment rate, multielement casks have the advantage of fewer shipments (and hence lower probability of adverse offsite impact), lower station manpower requirements and reduced total radiation exposure to personnel.

A. Transportation

TN-8 and TN-8L are multielement truck casks which are physically capable of accommodating up to three PWR fuel assemblies. The two models have the same dimensions, but TN-8L is about one ton lighter than TN-8's forty tons because it has fewer external cooling fins and, hence, a lower maximum authorized heat load. These casks have received a Certificate of Compliance for Radioactive Materials Packages, which was recently reviewed by the Commission (Certificate No. 9015, Revision 12, expiration date January 31, 1991). Such certificates are issued by the Commission to certify that the packaging (i.e., cask) and contents meet applicable safety standards of 10 CFR Part 71, "Packaging and Transportation of Radioactive Material." By letter dated June 17, 1986, the Commission acknowledged Duke Power Company as a registered user of TN-8 and TN-8L shipping casks pursuant to § 71.12 of 10 CFR Part 71.

In meeting the requirements for obtaining a Certificate of Compliance, it was demonstrated that adequate containment exists under both normal and accident conditions. To satisfy normal condition requirements, the cask was required to withstand continuous exposure, i.e., equilibrium conditions, to direct sunlight at an ambient temperature of at least 130°F in still air and continuous exposure to an ambient temperature of at least −40°F in the shade in still air. It was also required to withstand rough handling which is typified by a one-foot free-fall on an unyielding surface in a manner that produces maximum damage or other conditions representative of rough handling, and vibrations normally incident to the mode of transport. Under these normal conditions (which are really fairly severe abnormal conditions), no release of radioactive material or coolant was allowed and shielding effectiveness was not allowed to be reduced. In addition, contamination of liquid or gaseous primary coolants could not exceed certain specified low levels.

The attendant accident condition requirements for cask qualification were much more severe. The cask was required to withstand very severe impact puncture, fire and immersion in water test criteria (Impact is defined as a thirty foot free-fall onto an unyielding surface, in a manner that produces maximum damage. Puncture is represented by a forty inch free-fall onto a six inch diameter pin, mounted on an unyielding surface, at an altitude to produce maximum damage. Fire resistance requirements are that the cask withstand an exposure to an all-enveloping thermal radiating environment of at least 1475°F for thirty minutes and no external cooling for three hours thereafter. The cask was also required to withstand immersion in water. The 10 CFR Part 71 regulations required sequential application of the above conditions.) The cask was able to withstand immersion in water after it had been subjected successively to

these impact, puncture and fire conditions.

No changes in the offsite or onsite transportation routes are involved with the proposed amendments. The transportation routes were previously approved by the Commission (see McGuire Nuclear Station, Units 1 and 2 Amendment Nos. 61 and 42 dated August 29, 1986 and the related Environmental Assessment (51 FR 30593). Upon arrival at the McGuire site, the multielement casks would be transported to the same unloading points designated for the single-element casks.) A given multielement cask would be transported either to the unloading point for Unit 1 or to the unloading point for Unit 2, but not to both. The licensee states that the contents of a given multielement cask will not be divided between the two McGuire spent fuel pools.

By letter dated January 15, 1987, the licensee addressed paragraphs (a) and (c) of 10 CFR 51.52, "Environmental effects of transportation of fuel and waste–Table S–4." Although the letter is associated with another amendment application on extending the expiration dates of the operating licenses, the information is pertinent here also. In a February 18, 1987 letter, the licensee submitted additional information on the transportation of Oconee spent fuel to the McGuire Nuclear Station. In an August 5, 1986 letter, the licensee gave information with respect to McGuire on the cask transportation issue. Paragraph (c) consists of a Table S–4 which represents the contribution to environmental costs of transportation of fuel (and waste) to and from a "typical" reactor. The types of reactors, fuel and modes of transportation for which Table S–4 applies are set forth in various subparagraphs of paragraph (a). A summary of the licensee's evaluation follows.

Oconee and McGuire are both light-water cooled nuclear power reactors with thermal power ratings of 2568 and 3411 megawatts, respectively, which is in accordance with the maximum power level of 3800 megawatts specified by subparagraph (a)(1). All shipments of Oconee irradiated fuel to McGuire will be by truck, which is consistent with subparagraph (a)(5) which recognizes use of truck, rail or barge. Table S–4 is based on an annual refueling and an assumption of sixty spent fuel shipments per reactor year. Presently, Oconee Nuclear Station is on an eighteen-month refueling cycle which would require less than 30 spent fuel shipments per reactor year. Reducing the number of fuel shipments will reduce the overall impacts associated with population exposure and accidents discussed in Table S–4. Table S–4 represents the contribution of such transportation to annual radiation dose per reactor year to exposed transportation workers and to the general public. Presently, Oconee Nuclear Station is authorized to slightly exceed the fuel enrichment and average fuel irradiation levels that are specified in 10 CFR 51.52(a) (2) and (3) as the bases for Table S–4. The radiation levels of the transport fuel casks are limited by the Department of Transportation and are not dependent on fuel enrichment and/or irradiation levels. Therefore, the estimated doeses to exposed individuals per reactor year will not increase over that specified in Table S–4.

The expected heat content of the fully loaded cask in transit will be less than 10,200 BTU/hr, which represents less environmental impact from heat discharge than the impact of the 250,000 BTU/hr/cask in Table S–4. Shipments with the multielement cask would occur once per week and, therefore, the impact from traffic density would not exceed the density of less than one truck per day in Table S–4. With respect to weights specified in Table S–4, the licensee will observe truck weight limitations specified by Federal and State regulations and will obtain overweight permits from the State of North Carolina and the State of South Carolina; these permits ensure that repetitive overweight shipments will not have any significant adverse effect on the roadways.

Radiological exposure to transportation workers would be less than the four man-rem per reactor year of Table S–4 (i.e., Department of Transportation (DOT) regulations limit exposure in occupied areas of the truck to a maximum of two millirem per hour; at this limit, the three and a half hour trip 52 times a year with two people in the vehicle would not exceed an annual dose of 0.73 man-rem; actual exposures would be much less than the DOT limit.) There are no planned stops between Oconee and McGuire Stations, and therefore, no radiological exposure to onlookers is expected. The total population within a one mile wide corridor along the 172 mile route is about 124,000 people (which is small compared to the total population of 600,000 used in Table S–4) and the dose rates from the proposed casks are lower than those in Table S–4, therefore, annual doses to the general public from exposure to the casks in transit would be less than the 3 man-rem of Table S–4.

The environmental risk associated with accidents in transit (both radiological and non-radiological) would be small and less than the risks in Table S–4 because the 8,944 miles per year for the proposed actions is less than the 155,000 vehicle miles per year upon which Table S–4 is based.

The Commission has reviewed the licensee's evaluation pursuant to 10 CFR 51.52 and finds that the reactor fuel and proposed transport mode meet the conditions of paragraph (a) to 10 CFR 51.52 and, therefore, are the type upon which Table S–4 is based. Accordingly, Table S–4 appropriately represents the environmental costs of transportation for the proposed amendments. The Commission finds that these environmental impacts are small and do not represent any significant adverse impact on the quality of the human environment.

The environmental impacts associated with the transhipment of Oconee spent fuel to the McGuire and Catawba Nuclear Stations were previously evaluated by the staff (Final Environmental Statement related to the operation of Catawba Nuclear Station, January 1983) and the Atomic Safety and Licensing Appeal Board (ASAB–651, 14 NRC 307 (1981)) and found to be insignificant. These impacts would not be changed by the proposed license amendments. The current authorization to ship such spent fuel is limited to 300 fuel assemblies.

B. Handling

In support of its request for authorization to use TN–8 and TN–8L multielement spent fuel casks for shipping Oconee irradiated fuel to McGuire, the licensee provided cask drop analyses (which evaluated the consequences of dropping or tipping, or a combination of both, of TN–8 and TN–8L casks in the Oconee spent fuel handling building), discussed the effects of the change upon the guidelines of NUREG–0612, "Control of Heavy Loads at Nuclear Power Plants," and identified plant operating procedures and training associated with the use of the new casks.

Control procedures and plant cask handling procedures restrict the travel path of the cask and thus provide additional assurance that the cask will not fall and tip into the spent fuel pool. The procedures require the cask to follow a prescribed path which restricts the cask approach to the cask pit to either side (i.e., the cask is precluded from approaching the cask pit in the direction of the spent fuel pool.) The prescribed path will further cause the cask's center of gravity to be located over the spent fuel cask pit such that

any tipping of a dropped cask would be within the confines of the cask pit. The prescribed path also precludes the cask from passing over or near safety-related equipment and restricts the cask to areas designed to accommodate a dropped cask with only negligible damage to the structural concrete.

The staff has reviewed the licensee's analyses of the fuel cask drop accident and concludes that with the administrative control procedures, there is little likelihood that the cask will enter the spent fuel pool should it break free as postulated during cask handling. The staff also concludes that such an accident would not cause significant structural damage or damage to any safety-related equipment.

In April 1983, the staff completed a review of the Oconee Units 1, 2 and 3 overhead handling systems and programs used to handle heavy loads in the vicinity of the reactor vessel, near the spent fuel in the spent fuel pool, or in other areas where load drop may damage safe shutdown systems or spent fuel. The staff review was based upon the guidelines of NUREG–0612. Plants conforming to these guidelines (1) have developed and implemented, through procedures and operator training, safe load travel paths such that, to the maximum extent practical, heavy loads are not carried over or near irradiated fuel or safe shutdown equipment, and (2) have provided sufficient operator training, handling system design, load-handling instructions and equipment inspection to ensure reliable operation of the handling systems. The staff concluded that these systems and programs for Oconee met the guidelines of NUREG–0612. The information provided by the licensee for that NUREG–0612 review was reevaluated along with the above cask drop accident analyses, including the plant operating procedures associated with the use of the TN–8 and TN–8L spent fuel casks, the physical characteristics of the TN–8 and TN–8L spent fuel casks, use of the associated handling equipment, and plant staff training. The staff finds that in addition to the acceptability of the cask drop analyses and the procedures discussed above, the licensee is providing sufficient operator training, the handling system design has sufficient capability to handle the casks, and the load-handling instructions and equipment inspection will ensure reliable operation of the handling systems. The staff concludes that the cask handling system and association procedures at Oconee meet the guidelines of NUREG–0612 for the TN–8 and TN–8L spent fuel casks, and therefore, that the probability of a cask drop event during handling of the multielement casks remains very unlikely and is not increased by the proposed license amendment.

The cask qualification requirements, which were met in obtaining a Certificate of Compliance (discussed above) imposed more severe conditions on the structural integrity of the cask and containment of its contents than would be experienced during handling at the Oconee site. These results provide assurance that the fuel and cask would remain intact in the event of a dropped cask handling at the Oconee site. In addition, as discussed above, a dropped cask would not enter the spent fuel pool nor cause significant damage to any safety-related equipment. Therefore, the radiological consequences would be no more severe than those associated with the use of the single-element casks.

Accordingly, we conclude that the handling aspects of the proposed amendments continue to represent only very small risks to the environment, do not result in any adverse change in our previous Final Environmental Statement (FES) conclusions, and will not result in any significant adverse impact on the quality of the human environment.

C. Occupational Radiological Exposure

The licensee states that one advantage of the multielement cask is that it results in less handling, only one third as many shipments, and therefore, less occupational exposure for the same number of fuel assemblies. The licensee has determined that the average radiation dose to workers at Oconee and McGuire stations using the single-element casks is 215 person-millirems for each individual shipment (i.e., 645 millirems for 3 individual shipments.) If, instead, the 8 spent fuel assemblies had been shipped using the TN–8 and TN–8L multielement cask, the licensee estimates that the dose to all workers would have been no more than 615 person-millirems. Therefore, use of the multi-element cask is estimated to result in a reduction in occupational exposure of at least 10 person-millirems for each spent fuel assembly slippage.

D. Cumulative Effects

The proposed amendments would not increase the maximum number (i.e., 300) of Oconee spent fuel assemblies authorized for receipt for storage at McGuire Nuclear Station. The licensee states that it intends to deliver all spent fuel, including that shipped to McGuire Nuclear Station, to the Department of Energy for disposal pursuant to contract, and that it has no plans for other transfer of Oconee spent fuel at McGuire. Accordingly, we conclude that the proposed amendments do not involve any cumulative adverse impacts.

E. Additional Non-Radiological Effects

In addition to the radiological and non-radiological effects associated with transportation as discussed above, the licensee states that certain minor modifications to the Oconee Nuclear Station are necessary to accommodate the additional handling tools and larger envelope of the multielement cask. These modifications include: (1) Enlarging a grating opening in the decontamination pit, (2) adding grating at the bottom of the decontamination pit, (3) adding permanent lighting in the decontamination pit, (4) purchasing a new crane hook adapter, (5) fabricating and mounting a new spent fuel handling tool/crane hook adapter storage bracket in the transfer canal area, and (6) fabricating and mounting a storage stand for the cask primary lift beam on one wall of the decontamination pit. The Commission agrees that these are relatively simple modifications which do not (1) adversely affect any major structural components or use of the facility, or (2) create any adverse impact upon the environment.

F. Conclusion

The environmental impacts from use of the multielement cask are accounted for by the values contained in Table S–4 of 10 CFR 51.52, and, in accordance therewith, are small. Additionally, no new transportation routes are involved with the proposed amendments and the multielement casks have been certified to applicable requirements of 10 CFR Part 71. As a result of these considerations, transportation using the multielement cask as would be authorized by the proposed amendments will not result in adverse environmental impacts significantly affecting the human environment. Handling control procedures and analyses demonstrate that there is little likelihood that the cask could enter the spent fuel pool if dropped from the handling crane, or that it would cause significant structural damage or damage to any safety-related equipment. The cask and its fuel contents would remain intact if dropped during handling and the radiological consequences, therefore, would be no more severe than those previously evaluated by the Commission and found acceptable in the FES. Use of the multielement cask is estimated to result in a reduction in occupational exposure to workers because it involves less handling and fewer shipments than the single element casks. The proposed

amendments involve no adverse cumulative impacts. Minor modifications at Oconee Nuclear Station to accommodate the larger cask will not create any adverse impact to the environment. The proposed amendments do not otherwise involve significant non-radiological effects.

Therefore, we conclude that the proposed amendments will not result in significant adverse environmental impacts.

Alternative to the proposed actions: Since we have concluded that adverse environmental effects of the proposed action are not significant, any alternatives to the actions proposed would not result in substantial improvement in the quality of the environment and, therefore, need not be evaluated. The principal alternative would be to deny the requested amendments. That alternative, in effect, is the same as the "no action" alternative. Neither alternative would reduce environmental impacts of plant operation but would result in increased occupational exposure and reduced operational flexibility associated with reserve storage capacity in the Oconee spent fuel pool.

Alternative use of resources: This action does not involve the use of resources not previously considered in connection with the U.S. Nuclear Regulatory Commission's Final Environmental Statement dated March 1972 relative to this facility.

Agencies and persons consulted: The Commission staff reviewed the licensee's request of November 19, 1985 supplemented on June 16, 1986, February 18, 1987 and June 5, 1987, and did not consult other agencies or persons.

Finding of no significant impact: The Commission has determined not to prepare an environmental impact statement for the proposed license amendments.

Based upon this environmental assessment, the Commission, staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for amendments dated November 19, 1985, and its supplements dated June 16, 1986, February 18, 1987 and June 5, 1987. Also, see the Commission's approval for the McGuire Nuclear Station, amendments dated August 29, 1986 and environmental assessment (51 FR 30593). These documents are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC and at the Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina 29691.

Dated at Bethesda, Maryland, this 30th day of July 1987.

For the Nuclear Regulatory Commission.

B.J. Youngblood,

Director, Project Directorate II-3, Division of Reactor Projects—I/II.

[FR Doc. 87-17792 Filed 8-4-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-272 and 50-311]

Environmental Assessment and Finding of No Significant Impact; Public Service Electric and Gas Co., et al., Salem Nuclear Generating Station, Units 1 and 2

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a partial exemption from the requirements of Appendix J to 10 CFR Part 50 to Public Service Electric and Gas Company, et al. (the licensee) for the Salem Nuclear Generating Station, Units 1 and 2, located at the licensee's site in Salem County, New Jersey.

Environmental Assessment

Identification of proposed actions: Licensee's request for exemption and the bases therefor are contained in a letter dated April 11, 1986. By letters dated August 29, 1986 and March 13, 1987, the licensee requested a slightly revised exemption that would additionally allow the door seal leakage rate test of III.D.2(b)(iii) to be used when the maintenance affecting the airlocks sealing capability was performed only on the door gaskets. The proposed exemption would partially relieve the licensee from the requirement of conducting a full pressure airlock leakage test, pursuant to Paragraph III.D.2(b)(ii) of Appendix J to 10 CFR Part 50, whenever airlocks are opened during periods when containment integrity is not required. Licensee would rely, instead, on the door seal leakage test described in Paragraph III.D.2(b)(iii) when the airlocks are opened when the reactor is in cold shutdown (Mode 5) or refueling (Mode 6) and when no maintenance has been performed on the airlock that could affect its sealing ability, unless the maintenance is performed only on the door seals (gaskets) themselves. If maintenance that could affect sealing ability has been performed on an airlock, other than the door gaskets, a full pressure airlock test must still be performed. Door seal testing will be done after each opening, after maintenance which could affect the airlock door gaskets, and prior to establishing containment integrity.

The need for the proposed actions: The proposed exemption is from performance of the leakage rate test required by Paragraph III.D.2(b)(ii) of 10 CFR Part 50, Appendix J, which takes at least 8 hours per airlock. Exemption from full pressure leakage tests on airlocks opened during a period when containment integrity is not required, would provide the licensee with greater plant availability over the lifetime of the plant.

Environmental impact of proposed actions: The proposed exemption would permit the substitution of an airlock seal leakage test (Paragraph III.D.2(b)(iii) of Appendix J, 10 CFR Part 50) for the full pressure airlock test otherwise required by Paragraph III.D.2(ii) when the airlock is opened while the reactor is in a cold shutdown or refueling mode. If the tests required by III.D.2(b) (i) and (iii) are current, if no maintenance (other than on door gaskets) has been performed on the airlock, and if the airlock has been properly sealed, this exemption will not affect containment integrity and does not affect the risk of facility accidents. Thus, post-accident radiological releases will not be greater than previously determined nor does the proposed exemption otherwise affect radiological plant effluents, nor result in any significant occupational exposure. Likewide, the exemption does not affect non-radiological plant effluents and has no other environmental impact.

Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with the proposed exemption.

Alternative to the proposed actions: Because we have concluded that there is no measurable environmental impact associated with the proposed exemption, any alternatives to the exemption will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested exemption. Such action would not reduce environmental impacts of Salem Units 1 and 2 operations and would result in reduced operational flexibility or uwarranted delays in power ascension.

Alternative use of resources: These actions do not involve the use of resources not previously considered in connection with the "Final Environmental Statement Related to Operation of Salem Nuclear Generating Station, Units 1 and 2," dated April 1973.

Agencies and persons consulted: The NRC reviewed the licensee's request

that supports the proposed exemption. The NRC staff did not consult other agencies or persons.

Findings of No Significant Impact

Based upon the foregoing environmental assessment, we conclude that the proposed exemption will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to the proposed actions, see the licensee's requests for the exemption dated April 11, 1986, August 29, 1986, and March 13, 1987, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Salem Free County Public Library, 112 W. Broadway, Salem, New Jersey 08079.

Dated at Bethesda, Maryland, this 28th day of July 1987.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate I-2, Division of Reactor Projects I/II.

[FR Doc. 87-17783 Filed 8-4-87; 8:45 am]

BILLING CODE 7590-01-M

Meeting Agenda of the Advisory Committee on Reactor Safeguards

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on August 6–8, 1987, in Room 1046, 1717 H Street, NW., Washington, DC. Notice of this meeting was published in the **Federal Register** on July 20, 1987.

Thursday, August 6, 1987

8:30 a.m.–8:45 a.m.: Report of ACRS Chairman (Open)—The ACRS Chairman will report briefly regarding items of current interest to the Committee.

8:45 a.m.–10:15 a.m.: Tennessee Valley Authority (TVA) Nuclear Activities (Open)—Review proposed TVA Nuclear Performance Plan-Corporate and proposed restart of TVA nuclear power plants.

10:30 a.m.–12:30 p.m.: Fire Protection (Open)—Discuss proposed scoping plan for a research program regarding fire protection provisions in nuclear power plants.

1:30 p.m.–1:50 p.m.: Preparation for Meeting with NRC Commissioners (Open)—Discuss comments regarding ACRS reports to the NRC on:

- Plan for Implementation of NRC Safety Goals, report dated May 13, 1987.
- Draft NUREG–1150, Reactor Risk Reference Document, report dated July 15, 1987.
- Integrated Safety Assessment Program, report dated July 15, 1987.

2:00 p.m.–3:30 p.m.: Meeting with NRC Commissioners (Open)—Discuss items noted above.

3:45 p.m.–6:15 p.m.: Requirements for Reactor Operators (Open)—Consider proposed degree requirements for nuclear power plant operators.

Friday, August 7, 1987

8:30 a.m.–10:20 a.m.: Management Allocation of Resources for Advisory Functions (Closed)—Discuss ACRS role in review of regulatory matters.

This session will be closed to discuss information that involves the internal personnel rules and practices of NRC and information the release of which would represent a clearly unwarranted invasion of personal privacy.

10:30 a.m.–12:00 Noon: Meeting with NRC Commissioners (Closed)—Discuss management allocation of resources for advisory functions.

This session will be closed to discuss information that involves the personnel rules and practices of NRC and information the release of which would represent a clearly unwarranted invasion of personal privacy.

1:00 p.m.–1:30 p.m.: Standardized Westinghouse PWR Plant (Open)—Briefing and discussion of proposed NRC plan for review of the proposed Westinghouse improved standardized nuclear power plant design (RESAR SP/90).

1:30 p.m.–3:00 p.m.: General Design Criterion–4 (Open)—Review proposed revision of GDC–4 to include consideration of leak-before-break criteria in the design of nuclear power plants.

3:15 p.m.–5:15 p.m.: Nuclear Power Plant Operating Experience (Open)—Briefing and discussion regarding recent operating events and incidents at nuclear facilities.

5:15 p.m.–5:45 p.m.: Future ACRS Activities (Open)—Discuss anticipated ACRS activities and items proposed for consideration by the full Committee.

5:45 p.m.–6:30 p.m.: Appointment of New ACRS Members (Open/Closed)—Discuss qualification of candidates proposed for appointment to the ACRS.

Portions of this session will be closed as required to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy and information that involves the internal personnel rules and practices of NRC.

Saturday, August 8, 1987

8:30 a.m.–12:00 Noon: Preparation of ACRS Reports to the NRC (Open)—Discuss proposed reports to NRC regarding items considered during this meeting.

1:00 p.m.–2:00 p.m.: Nuclear Safety Board (Open)—Discuss ACRS role in support of a nuclear safety board to provide oversight of DOE activities.

2:00 p.m.–3:00 p.m.: Miscellaneous (Open)—Complete discussion of items considered during this meeting.

Procedures for the conduct of participation in ACRS meetings were published in the **Federal Register** on October 20, 1986 (51 FR 37241). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, R.F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)) and information related to the internal personnel rules and practices of the agency (5 U.S.C. 552b(c)(2)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F.

Fraley (telephone 202/634–3265), between 8:15 a.m. and 5:00 p.m.

Dated: July 30, 1987.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 87–17799 Filed 8–4–87; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–261]

Carolina Power & Light Co., H.B. Robinson Steam Electric Plant, Unit No. 2; Exemption

I

The Carolina Power & Light Company (CP&L or the licensee) is the holder of Operating License No. DPR–23 that authorizes operation of the H.B. Robinson Steam Electric Plant, Unit No. 2. The license provides, among other things, that the H.B. Robinson Steam Electric Plant, Unit No. 2, is subject to all rules, regulations, and Orders of the Commission now or hereafter in effect.

The station is a single-unit pressurized water reactor at the licensee's site located in Darlington County, South Carolina.

II

On November 19, 1980, the Commission published a revised Section 50.48 and a new Appendix R to 10 CFR Part 50 regarding fire protection features of nuclear power plants. The revised § 50.48 and Appendix R became effective on February 17, 1981. Section III of Appendix R contains 15 subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant. One of these subsection, III.J, is the subject of the licensee's exemption request.

Section III.J. of Appendix R to 10 CFR Part 50, Emergency Lighting, requires 8-hour battery powered lighting units in areas needed for operation of safe shutdown equipment and along access and egress routes thereto.

III

By letter dated June 29, 1984, as supplemented January 16, 1985, CP&L requested approval of exemption from the technical requirements of section III.J of Appendix R to 10 CFR Part 50 concerning the need for 8-hour battery powered lighting units in areas needed for operation of safe shutdown equipment and along access routes. The exemption request relates to the access routes to the charging pump room, component cooling water heat exchanger room, battery room, safety injection pump room and the service water intake structure. The licensee also requested an exemption for the containment and residual heat removal (RHR) pit areas where manual, cold shutdown operations are required and/or where possible repairs may be needed. The staff's evaluation of the licensee's request is provided below.

The reason for requiring 8-hour battery powered emergency lighting is to ensure that at least minimal lighting is available for the performance of manual actions necessary for safe shutdown after a fire. Usually manual actions are required for valve alignment, repairs and pump control operations. The licensee has stated that a fire on the ground level at the south end of the auxiliary building hallway would pervent access to dedicated shutdown equipment in the charging pump room and the component cooling water heat exchanger room. Similarly, a fire in the emergency switchgear room would prevent access to the DC distribution panels in the battery room. A fire at the north end of the auxiliary building hallway on the ground level would prevent access to the SI–864 A and B valves in the safety injection pump room. Also, manual operation of service water valve V6–12D, located at the intake structure, would require emergency lighting. The licensee has stated that due to the numerous alternate access pathways, a large number of fixed emergency lighting units would have to be installed, and the routing of associated cabling to provide the necessary electrical power for redundant lighting is not practicable.

The licensee justified the proposed exemptions for the limited circumstances where a fire may prevent access through the south end of the auxiliary building to the above stated areas. The licensee's justification is based on the availability of an assured alternate path where 8-hour battery powered lighting units are provided. In the areas where lighting units would not be installed, dedicated portable, hand-held lighting would be provided for the operator to perform the necessary functions. The licensee justifies this approach on the basis that the availability of dedicated portable hand-held lighting provides a level of emergency lighting equivalent to that required by Section III.J for the above areas.

The technical requirements of section III.J of Appendix R are not expressly met at the intake structure and along the access route to the safety injection pump room because fixed, individual 8-hour battery powered lighting units are not provided for safe shutdown.

At the north end of the auxiliary building, the staff was concerned about the availability of a reliable means of illumination and whether the path of travel would be unobstructed and easily traversed. The licensee has identified alternate access paths to the required equipment or alternate equipment that would provide the same functions. For example, the alternate access route to the charging pump room is from the second level of the auxiliary building adjacent to the non-regenerative and seal water heat exchangers, to the component cooling water heat exchanger from the turbine building via the exterior door in the south wall of the room, and to the battery room via the chemical batch addition room. These alternate routes are provided with fixed, 8-hour battery powered units. Furthermore, the alternate access route to the safety injection pump room follows the exterior of the auxiliary building along the east and north sides of the safety injection pump room exterior door. Portable hand-held lighting will be provided for operator access to the safety injection pump room. Permanent emergency lighting is provided inside the safety injection pump room to operate the required equipment. Portable lights will be provided in the control room for performing the required functions at the service water intake structure. These portable lights will provide adequate illumination for the operators to access the intake structure and operate valve V6–12D.

Since the only manual actions required inside the containment and RHR pit are for the operation of valves for cold shutdown, sufficient time is available for the licensee to take appropriate action to re-energize the normal containment lighting units prior to containment entry.

Based on the above evaluation of alternate access routes and provison for portable, hand-held lighting, the staff concludes that adequate lighting will prevail to access areas and perform necessary safe shutdown functions. Therefore, the licensee's request for exemptions from the requirements of section III.J of Appendix R for certain paths to the charging pump room, component cooling water heat exchanger room, DC distribution panels in the battery room and safety injection pump room is acceptable and should be granted. Furthermore, the staff concludes that the installation of 8-hour battery powered emergency lighting units inside the containment would not significantly improve the level of fire protection for this fire area. Therefore, their omission is an acceptable exemption from section III.J of Appendix

R, and application of the regulation in this particular circumstance is not necessary to achieve the underlying purpose of the rule.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), that (1) these exemptions as described in Section III are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security and (2) special circumstances are present for the exemptions in that application of the regulation in these particular circumstances is not necessary to achieve the underlying purposes of Appendix R to 10 CFR Part 50. Therefore, the Commission hereby grants the following exemptions from the requirements of section III.J of Appendix R to 10 CFR Part 50:

1. Access and egress routes to the:
a. Charging pump room;
b. Component cooling water heat exchanger room;
c. Battery room;
d. Safety injection pump room; and
e. Service water intake structure.
2. Containment and RHR pit areas where manual, cold shutdown operations and required and/or where possible repairs may be needed.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the environment.

For further details with respect to this action, see the request for exemption dated June 29, 1984, as supplemented January 16, 1985, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Hartsville Memorial Library Home and Fifth Avenues, Hartsville, South Carolina 29535.

This exemption is effective upon issuance.

Dated at Bethesda, Maryland, this 30th day of July, 1987.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 87-17794 Filed 8-4-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-353-OLA (TS Iodine); ASLBP No. 87-550-03-LA]

Hearing on Issuance of Amendment to Facility Operating License; Philadelphia Electric Co. (Limerick Generating Station, Unit 1)

July 28, 1987.

Before Administrative Judges Sheldon J. Wolfe, Chairman, Dr. Richard F. Cole, and Dr. Peter A. Morris.

On March 12, 1987, at 52 FR 7675, 7691-93, the Nuclear Regulatory Commission published a notice captioned "Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity For Hearing." Among other things, the notice stated that:

> Generic Letter No. 85-19, "Reporting Requirements on Primary Coolant Iodine Spikes" was issued on September 27, 1985 to all licensees and holders of construction permits. The Generic Letter stated that the NRC staff had determined that the reporting requirements for iodine spiking could be changed from a short term report (Special Report or Licensee Event Report) to an item which is to be included in the Annual Report. The information to be included in the Annual Report would be similar to that previously required in the Licensee Event Report but would be changed to more clearly designate certain desired information. Accordingly, by application dated August 19, 1986, the licensee requested that the Limerick Technical Specification (TS) Section 3.4.5. BASES Section 3/4.4.5 and Section 6.9.1.5 be amended to incorporate the revised reporting requirements as described in the Model TS accompanying Generic Letter No. 85-19.

The notice also provided that, by April 13, 1987, any person whose interest might be affected by this proceeding and who wishes to participate as a party must file a written petition for leave to intervene in accordance with the Commission's "Rules of Practice" in 10 CFR Part 2. On May 7, 1987, an Atomic Safety and Licensing Board was established to rule on petitions for leave to intervene and/or requests for hearing and to preside over the proceeding in the event that a hearing is ordered. The Board's Administrative Judges are Richard F. Cole, Peter A. Morris, and Sheldon J. Wolfe, who will serve as Chairman of the Board.

Mr. Robert L. Anthony and Air and Water Pollution Patrol (AWPP) filed petitions for a hearing and leave to intervene. As indicated in its Memorandum and Order issued today, July 28, 1987 (unpublished), the Atomic Safety and Licensing Board provisionally grants the two petitions for leave to intervene and provisionally orders a hearing.

Pursuant to 10 CFR 2.751a, the Board will conduct a special prehearing conference at the following location at 9:00 a.m. on September 29, 1987: Old Customs Courtroom, U.S. Customs House, Courtroom 300, Second & Chestnut Streets, Philadelphia, Pennsylvania 19106. Counsel for the Licensee and for the Staff, Mr. Anthony and the Chairman of AWPP are directed to appear. This special prehearing conference is held in order to:

(1) Permit identification of the key issues in the proceeding;

(2) Take any steps necessary for further identification of the issues;

(3) Consider all intervention petitions to allow the presiding officer to make such preliminary or final determination as to the parties to the proceeding, as may be appropriate; and

(4) Establish a schedule for further actions in the proceeding.

In order that the Board will have sufficient time within which to review contentions proposed by Mr. Anthony and by AWPP and to review the responses of the Licensee and the NRC Staff, pursuant to §§ 2.711 and 2.712, the two Petitioners shall serve, by personal delivery or by express mail so that the Licensee, the Staff and the Board will receive on August 28, 1987, a supplement to each petition for leave to intervene which must include a list of the contentions which they seek to have litigated in the matter, and set forth the bases for each contention with reasonable specificity as required by § 2.714(b). Contentions shall be limited to matters within the scope of the amendment under consideration. The Licensee and the NRC Staff shall serve, by personal delivery or by express mail in order that Petitioners and the Board will receive on September 16, 1987 their responses to the proposed contentions.

The public is invited to attend the prehearing conference but members of the public may not participate in this conference. An opportunity will be provided for any person who wishes to make an oral or written statement in this proceeding but who has not filed a petition for leave to intervene. Any person may request permission to make a limited appearance in order to set forth his position on the issues pursuant to provisions of 10 CFR 2.715 of the Commission's "Rules of Practice." Subject to the conditions set forth in subsequent Orders, limited appearances will be permitted at the time a § 2.752 prehearing conference is held and also at the beginning of the hearing, if any. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Whether a hearing is ultimately held will depend upon whether one or more contentions suitable for hearing develop in the prehearing procedures to follow this Notice of Hearing.

Dated at Bethesda, Maryland, this 28th day of July, 1987.

It is so ordered.

For the Atomic Safety and Licensing Board.

Sheldon J. Wolfe,

Chairman, Administrative Judge.

[FR Doc. 87-17800 Filed 8-4-87; 8:45 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Northwest Conservation and Electric Power Plan; Proposed Model Conservation Standards; Hearing Schedule

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of public hearing regarding model conservation standards for new and existing structures, utility, customer, and governmental conservation programs, and other consumer actions for achieving conservation except in areas for which model conservation standards already exist.

SUMMARY: On April 23, 1983, the Pacific Northwest Electric Power and Conservation Planning Council (Council) adopted, pursuant to the Pacific Northwest Electric Power and Conservation Act. Pub. L. 96-501, 94 Stat. 2697, 16 U.S.C. 839 *et seq.* (the Act), a Northwest Conservation and Electric Power Plan (Power Plan), including model conservation standards (MCS) for new residential and commercial structures, and for buildings converting to electric space conditioning (48 FR 24493, June 1, 1983). The most recent amendments of the MCS were adopted by the Council at its January 14, 1987, meeting (52 FR 9736, March 26, 1987). At its March 11, 1987 meeting, the Council voted to enter rulemaking to add to the existing MCS, model standards for all sectors and end-uses of electricity not already covered. On April 2, 1987, the Council published a notice of proposed amendments and opportunity to comment (52 FR 10646).

DATES AND ADDRESSES: The public comment period regarding the proposed amendments closes at 5 p.m. Pacific time on September 11, 1987. All written comments must be received by that date in the Council's central office. The Council's address is 850 SW Broadway, Suite 1100, Portland, Oregon 97205. Public hearings on the proposed amendments will be held in each of the four Northwest states, as required by the Act, at the times and places listed below.

- August 12, 1987, 1:30 p.m.—Kalispell, Montana. Outlaw Inn, 1701 Highway 93 South.
- August 21, 1987, 1:00 p.m.—Spokane, Washington. Sheraton Hotel, Trentwood Mead Room, N. 322 Spokane Falls Court.
- August 24, 1987, 3:00 p.m.—Salem, Oregon. Oregon Department of Energy. Conference Room D, 625 Marion NE. (corner of Marion and Church).
- September 10, 1987, 1:30 p.m.—Idaho Falls, Idaho. City Council Chambers. The Electric Building, 140 S. Capital.

Guidelines for Presenting Oral Comments at Hearings

1. To reserve a time period for presenting oral comments at a hearing, contact Ruth Curtis, Information Coordinator, at the Council's central office (850 SW. Broadway, Suite 1100, Portland, Oregon 97205 or (503) 222-5161 (toll free 1-800-222-3355 in Idaho, Montana, and Washington or 1-800-452-2324 in Oregon)) not later than the day before the hearing.

2. Those who do not reserve time periods will be permitted to present oral comments as time permits.

3. Each speaker will be allowed 15 minutes during the hearing.

SUPPLEMENTARY INFORMATION: The Act states that "Model conservation to be included in the [Council's] plan shall include, but not be limited to, standards applicable to (A) new and existing structures, (B) utility, customer, and governmental conservation programs, and (C) other consumer actions for achieving conservation." Section 4(f)(1). Upon consideration of a petition requesting that the Council adopt model standards for the particular conservation activities related to residential weatherization in the region, the Council now proposes to amend the Power Plan by adopting model standards applicable to all areas not covered by the existing MCS, including residential weatherization.

Edward Sheets,

Executive Director

[FR Doc. 87-17722 Filed 8-4-87; 8:45 am]

BILLING CODE 0000-00-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

July 30, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

British Petroleum (The) P.L.C., Warrants (File No. 7-0282)

USX Corporation, $3.50 Convertible, Exchangeable, Cumulative Preferred Stock (File No. 7-0283)

Oppenheimer Capital, L.P., Shares of Beneficial Interest (File No. 7-0284)

Putnam High Income Convertible & Bond Fund, Shares of Beneficial Interest (File No. 7-0285)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 20, 1987 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-17718 Filed 8-4-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24749; File No. SR-NASD-87-29]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

On July 1, 1987, the National Association of Securities Dealers, Inc.

("NASD"), submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder, a proposed rule change to introduce a new NASDAQ Workstation service on a pilot basis.

The Workstation service will allow NASDAQ Level 3 subscribing firms to substitute certain personal computer terminals for existing equipment that is owned by the NASD. In addition to all of the functions currently available with the NASDAQ Harris standard terminal, the Workstation service will offer new market monitoring features including a market minding/limit alert and dynamic updating of bid/ask quotations. Also, the software associated with the Workstation service will permit subscribers to create their own customized screen displays. Approximately 90 firms are expected to participate in the pilot, which is scheduled to operate from July 31 to October 1, 1987.

The proposed rule change was noticed in Securities Exchange Act Release No. 24675 (July 2, 1987), 52 FR 26109 (July 10, 1987). No comments were received.

The new NASDAQ Workstation service is designed to enhance the provision of data to, and the data management capabilities of, market makers in the NASDAQ system. The Commission believes this service is designed to foster greater efficiency in the securities markets. The service in effect represents a new technology for delivering current Level 3 services, with enhancements such as the market monitoring features. The Commission believes it is appropritate to introduce the service on a pilot basis to allow subscribers to familiarize themselves with the service and allow the NASD to evaluate the service's effectiveness and prepare enhancements where necessary. In this connection the Commission notes that there will not be any charge for the service during the pilot phase. The question of fees and charges, if the service is approved on a permanent basis, will be addressed in a separate rule filing.

For these reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association, and, in particular, the requirements of Sections 11A, 15A and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the proposal in the Federal Register in that: (1) The proposed rule change has been published for comment for fourteen days, and no comments have been received; and (2) the NASD and the firms intending to participate in the pilot phase have made preparations to commence the pilot on July 31, 1987.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: July 27, 1987.

[FR Doc. 17719 Filed 8–4–87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–24753; File No. SR–NYSE–87–22]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange, Inc. Relating to Reduced Initial Fee for Changes in State of Incorporation or Holding Company Formations

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 15, 1987, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

(a) The text of the proposed amendments to Paragraph 902.02 of the NYSE Listed Company Manual appears below. Additions are *underscored*; deletions are [bracketed].

Reduced Initial Fee

A reduced fee [equaling one-fourth of the basic initial fee] *of $5,000* will apply to a company which either changes its state of incorporation or forms a holding company which replaces a listed company.

II. Self-Regulatory Organization's Statement of, the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) *Purpose*—The purpose of this proposed rule change is to amend the fee for changes in the state of incorporation or holding company formations. NYSE-listed companies are presently charged a listing fee for technical changes to their corporate form. These fees, as set forth in paragraph 902.02 of the NYSE Listed Company Manual, currently equal one-fourth of the basic initial fee that applies to original listings and to listings of additional shares, new issues of stock, warrants or other similar securities.

The proposed rule change would result in a fee of $5,000 for changes in the state of incorporation or holding company formations.

The application of the fee is effective July 6, 1987.[1]

Statutory Basis—The basis under the Act for this proposed rule change is the requirement under section 6(b)(4) that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that this proposed rule change will not impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments regarding this proposed rule change. The Exchange has not received any unsolicited written comments from

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[1] The NYSE has indicated that, compared with the current requirement that a company pay a fee for changes in its state of incorporation or for holding company formations of 25% of the company's basic initial listing fee, the new flat fee of $5,000 will not constitute an increase in the fees charged to any currently listed domestic company and, indeed, would result in a reduction in the fee for the vast majority of such companies.

members or other interested parties regarding this rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 under the Act in that it changes a due, fee or other charge imposed by the NYSE. In this regard, we note that the fee change will result in a decrease for almost all the domestic companies listed on the NYSE that change their state of incorporation or establish a holding company formation. At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with repsect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–87–22 and should be submitted by August 26, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Date: July 28, 1987.

[FR Doc. 87–17720 Filed 8–4–87; 8:45 am]

BILLING CODE 8010–01–M

[File No. 81–751]

Application and Opportunity for Hearing; Cablevision of Baton Rouge, Ltd.

July 30, 1987.

Notice is hereby given that Cablevision of Baton Rouge, Ltd. ("Applicant") has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended, (the "1934 Act") for an order exempting Applicant from the registration requirements of section 12(g) of the 1934 Act.

For a detailed statement of the information presented, all persons are referred to the application which is on file at the offices of the Commission in the Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

Notice is further given that any interested person not later than August 24, 1987, may submit to the Commission in writing his views or any substantial facts bearing on the application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert.

Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponement thereof. At any time after that date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–17777 Filed 8–4–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–24433]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

July 30, 1987.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 24, 1987 (except as to SEC File No. 70–7417) to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicants(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Mississippi Power Company (70–7382)

Mississippi Power Company ("Mississippi)", 2992 West Beach, Gulfport, Mississippi 39501, a wholly owned subsidiary of The Southern Company, a registered holding company, has filed an application-declaration pursuant to sections 6(a), 7, 9(a), 10, 12(b) and 12(d) of the Act and Rules 43, 44, 45 and 50(a)(5) thereunder.

Since 1925, Mississippi has sold electric appliances through its retail sales division ("Division"). Mississippi now proposes to acquire all the capital stock of Electric City Merchandise Company ("Electric City"), a corporation to be formed at the direction of Mississippi. Following the acquisition, Mississippi proposes to conduct through Electric City, appliance sales activities in the states in which Mississippi and its associate companies provide retail electric service.

Mississippi will transfer its Division employees and assets to Electric City, along with approximately $300,000 in cash, in exchange for all of the initially issued capital stock of the subsidiary.

Mississippi further proposes, to issue and sell secured or unsecured notes, from time to time on or before December 31, 1992, so that not more than $10,000,000 aggregate principal amount of notes will be outstanding at any onetime. The maturities of such notes will be five years or less, which maturities may extend beyond the

December 31, 1992 date on or before which such notes may be issued and sold. Such notes will be issued solely for the purpose of financing the business of Electric City and will bear interest at a rate not in excess of 150 basis points over the prime rate in effect at Morgan Guaranty Trust Company of New York. Mississippi may secure its obligations under such notes by granting a subordinated security interest in property of Mississippi. Assuming a prime rate of 8.25%, borrowings under this arrangement would be at a rate of 9.75%.

To the extent the issuance and sale of the notes are not excepted pursuant to Rule 50(a)(20 from the competitive bidding requirements of Rule 50, Mississippi requests that the issuance and sale be excepted pursuant to Rule 50(a)(5) for reasons that such requirements are impracticable with respect to such notes and are necessary for the protection of investors or consumers to assure the maintenance of competitive conditions. During the same period, Mississippi proposes to subscribe for and purchase additional capital stock and/or make additional capital contributions or cash advances to Electric City to an aggregate of $17 million.

Mississippi (or its affiliated assignee) presently has an option to purchase a sales outlet which it now leases at Gulfport, Mississippi. The option price, including cost of acquisition, is not expected to exceed $4 million. If the option is exercised, Electric City proposes to finance the purchase through the issuance and sale of a promissory note maturing no more than 30 years from the date of issuance and secured by a first deed of trust upon the acquired premises. It is requested that the proposed issuance and sale of the note be excepted from the competitive bidding requirements of Rule 50, pursuant to Rule 50(a)(5). Mississippi proposes to guarantee the obligations of Electric City under the note. Lastly, Mississippi proposes to guarantee the credit of Electric City up to an aggregate of $10 million at any one time outstanding.

New England Hydro-Transmission Electric Company, Inc., et al. (70–7401)

New England Hydro-Transmission Electric Company, Inc. ("NEH–M"), 25 Research Drive, Westborough, Massachusetts 01582 and New England Hydro-Transmission Corporation ("NEH–NH"), Four Park Street, Concord, New Hampshire 03301, wholly owned subsidiaries of New England Electric System ("NEES"), a registered holding company, have filed an application pursuant to Rule 50(a)(5) promulgated under the Act.

By order dated February 9, 1987 (HCAR No. 24315), the Commission authorized NEES to acquire all of the common stock of two new special purpose subsidiaries, NEH–M and NEH–NH. Subject to further Commission authorization, later this year, NEH–M and NEH–NH will issue common stock such that NEES will own 51% and certain qualified Phase II participants will own 49%. It is stated that NEH–M and NEH–NH will have responsibility for the high voltage direct current portion of the Phase II facilities to be constructed, owned, and operated in Massachusetts and New Hampshire, respectively. The Phase II participants, including New England Power Company, a wholly owned generating subsidiary of NEES, which, subject to further Commission authorization, will have about an 18% participation in the project, have agreed to support the full costs of NEH–M and NEH–NH in connection with the Phase II project. The current estimated total cost of Phase II is approximately $547 million of which $256 million is expected to be incurred by NEH–M, $178 million by NEH–NH, $109 million by NEP and $4 million by Boston Edison.

NEH–M and NEH–NH believe that retention of an investment banking firm or firms is necessary to determine the appropriate structure for the nonequity financing. Applicants believe an exception from the competitive bidding requirements of Rule 50 should be granted pursuant to Rule 50(a)(5) because:

—NEH–M and NEH–NH are new, special purpose corporations with no publicly held securities and no operating history.
—NEH–M and NEM–NH were formed to provide for the project financing, ownership, and operating of a single asset.
—The primary credit behind the nonequity financing involves complex contractual arrangements with a large number of supporting direct and indirect participants, including a consortium of 20 investor-owned utilities and 35 municipals and cooperatives.
—Approximately 12% of the supporting participants either have credit ratings below investment grade or do not have credit ratings.
—At least seven regulatory commissions at the state and federal level are involved in reviewing and approving the project in one way or another.
—NEH–M and NEM–MN require the expertise of an investment banking firm to determine which markets and types of debt securities are the most feasible or desirable for the nonequity financing.

NEH–M and NEH–NH have had preliminary discussions with representatives of five investment banking firms (Goldman, Sachs, & Co., Morgan Stanley & Co. Incorporated, Salomon Brothers Inc., PaineWebber Incorporated and Merrill Lynch) concerning the structure of the nonequity financing of the Phase II facilities. Assuming that the request for an exception from competitive bidding is granted, it is expected that the service of one or more of them will be utilized. In determining which firm or firms to retain, the applicants will compare relative costs and the ability of each firm to provide the requested services.

Any specific financing by NEH–M and NEH–NH will require approval of the Commission and will be the topic of future filings with the Commission after NEH–M and NEH–NH have retained an investment banking firm and agreed on a structure for such financing.

Southwest Electric Cooperative (70–7412)

Southwest Electric Cooperative ("Cooperative"), P.O. Box 150, Bolivar, Missouri 65613, has filed an application for exemption from the provisions of the Act pursuant to section 3(a)(1) thereof.

Cooperative, which is incorporated under the Missouri Rural Electric Cooperative Act, is a nonprofit rural electric cooperative which serves approximately 22,000 retail customers. Its operations are confined to Polk, Hickory, Greene, Camden, Dallas, Benton, Dade, Webster, and Cedar counties, all in Missouri. It is financed by the Rural Electrification Administration of the United States Department of Agriculture ("REA") and is designated MISSOURI 53, POLK. It sells electric energy to its consumer members. Cooperative generates no power of its own, purchasing power from Sho-Me Power Corporation, Marshfield, Missouri, and KAMO Electric Cooperative, Vanita, Oklahoma. It owns 100% of the stock of Southwest Electric Service Co. ("Service"), a Missouri corporation which is an electric utility company under section 2(a)(3) of the Act.

Missouri law limits the service area of rural electric cooperatives to communities with populations no greater than 1,500 persons. Service was created as a wholly owned subsidiary of Cooperative to qualify under Missouri law to serve Cooperative members and new customers in areas which may

cease to be rural due to annexation by municipalities that have populations in excess of 1,500. Cooperative intends, subject to the approval of the Missouri Public Service Commission and the REA, to transfer to Service facilities and members of Cooperative which are in the annexed areas. Service will not generate power, and Cooperative will be its sole power supplier. All of its sales will be made to consumers within the State of Missouri.

Cooperative asserts that the public interest does not demand its registration as a holding company. Cooperative is owned by the several thousand consumer members of the rural electric cooperative. These consumer members elect from their own members those persons who serve on the board of directors of the Cooperative. This board elects, in turn, the persons who serve on the board of directors of Service. It is stated that the election of directors and the management of the affairs of both Cooperative and Service are effectively audited and regulated by the REA.

Howard Electric Cooperative (70–7415)

Howard Electric Cooperative ("Cooperative"), P.O. Box 391, Highway 5 North, Fayette, Missouri 65248, has filed an application for exemption from the provisions of the Act pursuant to section 3(a)(1) thereof.

Cooperative, which is incorporated under the Missouri Rural Electric Cooperative Act, is a nonprofit rural electric cooperative which serves approximately 2,200 retail customers. Its operations are confined to Howard, Randolph, Boone, and Chariton counties, all in Missouri. It is financed by the Rural Electrification Administration of the United States Department of Agriculture ("REA") and is designated MISSOURI 22, HOWARD. It sells electric energy to its consumer members. Cooperative generates no power of its own, purchasing power from Central Electric Power Cooperative, Jefferson City, Missouri. It owns 100% of the stock of Howard Electric Service Co. ("Service"), a Missouri corporation which is an electric utility company under section 2(a)(3) of the Act.

Missouri law limits the service area of rural electric cooperatives to communities with populations no greater than 1,500 persons. Service was created as a wholly owned subsidiary of Cooperative to qualify under Missouri law to serve Cooperative members and new customers in areas which may cease to be rural due to annexation by municipalities that have populations in excess of 1,500. Cooperative intends, subject to the approval of the Missouri Public Service Commission and the REA, to transfer to Service facilities and members of Cooperative which are in the annexed areas. Service will not generate power, and Cooperative will be its sole power supplier. All of its sales will be made to consumers within the State of Missouri.

Cooperative asserts that the public interest does not demand its registration as a holding company. Cooperative is owned by the several thousand consumer members of the rural electric cooperative. These consumer members elect from their own members those persons who serve on the board of directors of the Cooperative. This board elects, in turn, the persons who serve on the board of directors of Service. It is stated that the election of directors and the management of the affairs of both Cooperative and Service are effectively audited and regulated by the REA.

Western Massachusetts Electric Company (70–7417)

Western Massachusetts Electric Company ("WMECO"), 174 Brush Hill Avenue, Springfield, Massachusetts 01090, a subsidiary of Northeast Utilities, a registered holding company, has filed an amendment to its application-declaration pursuant to 6(b), 9(a), 10 and 12(c) of the Act and Rules 42, 46 and 50(a)(5) thereunder.

A notice was issued (HCAR No. 24425, July 16, 1987) giving interested persons until August 10, 1987 to request a hearing on WMECO's proposal to issue and sell up to 2,400,000 shares of Class A money market preferred stock, at $25 par value per share on or before December 31, 1987 under an exception from competitive bidding.

By amendment WMECO requests preliminary authorization to begin negotiations so that selection of a lead underwriter for the money market preferred stock may be made. WMECO submits that the proposed transaction is unique and complex, in so far as money market preferred stock typically has a dividend rate established for short term successive periods, normally 49 days, through a bidding process among holders and prospective purchasers. WMECO may proceed with preliminary negotiations.

North Central Missouri Electric Cooperative, Inc. (70–7418)

North Central Missouri Electric Cooperative ("Cooperative"), Highway E-West, P.O. Box 220, Milan, Missouri 63556, has filed an application for exemption from the provisions of the Act pursuant to section 3(a)(1) thereof.

Cooperative, which is incorporated under the Missouri Rural Electric Cooperative Act, is a nonprofit rural electric cooperative which serves approximately 3,900 retail customers. Its operations are confined to Linn, Sullivan, and Putnam counties, all in Missouri. It is financed by the Rural Electrification Administration of the United States Department of Agriculture ("REA") and is designated MISSOURI 56, SULLIVAN. It sells electric energy to its consumer members. Cooperative generates no power of its own, purchasing power from N.W. Electric Power Cooperative, Inc., Cameron, Missouri. It owns 100% of the stock of North Electric Service Co. ("Service"), a Missouri corporation which is an electric utility company under section 2(a)(3) of the Act.

Missouri law limits the service area of rural electric cooperatives to communities with populations no greater than 1,500 persons. Service was created as a wholly owned subsidiary of Cooperative to qualify under Missouri law to serve Cooperative members and new customers in areas which may cease to be rural due to annexation by municipalities that have populations in excess of 1,500. Cooperative intends, subject to the approval of the Missouri Public Service Commission and the REA, to transfer to Service facilities and members of Cooperative which are in the annexed areas. Service will not generate power, and Cooperative will be its sole power supplier. All of its sales will be made to consumers within the State of Missouri.

Cooperative asserts that the public interest does not demand its registration as a holding company. Cooperative is owned by the several thousand consumer members of the rural electric cooperative. These consumer members elect from their own members those persons who serve on the board of directors of the Cooperative. This board elects, in turn, the persons who serve on the board of directors of Service. It is stated that the election of directors and the management of the affairs of both Cooperative and Service are effectively audited and regulated by the REA.

Farmers' Electric Cooperative, Inc. (70–7419)

Farmers' Electric Cooperative, Inc. ("Cooperative"), Highway 36 East, P.O. Box 310, Chillicothe, Missouri 64601, has filed an application for exemption from the provisions of the Act pursuant to Section 3(a)(1) thereof.

Cooperative, which is incorporated under the Missouri Rural Electric

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Cooperative Act, is a nonprofit rural electric cooperative which serves approximately 10,000 retail customes. Its operations are confined to Caldwell, Carroll, Chariton, Clinton, Daviess, Dekalb, Linn, Livingston, and Ray counties, all in Missouri. It is financed by the Rural Electrification Administration of the United States Department of Agriculture ("REA") and is designated MISSOURI 42, CALDWELL. It sells electric energy to its consumer members. Cooperative generates no power of its own, purchasing power from N.W. Electric Power Cooperative, Inc., Cameron, Missouri. It owns 100% of the stock of Farmers' Electric Service Co. ("Service"), a Missouri corporation which is an electric utility company under section 2(a)(3) of the Act.

Missouri law limits the service area of rural electric cooperatives to communities with populations no greater than 1,500 persons. Service was created as a wholly owned subsidiary of Cooperative to qualify under Missouri law to serve Cooperative members and new customers in areas which may cease to be rural due to annexation by municipalities that have populations in excess of 1,500. Cooperative intends, subject to the approval of the Missouri Public Service Commission and the REA, to transfer to Service facilities and members of Cooperative which are in the annexed areas. Service will not generate power, and Cooperative will be its sole power supplier. All of its sales will be made to consumers within the State of Missouri.

Cooperative asserts that the public interest does not demand its registration as a holding company. Cooperative is owned by the several thousand consumer members of the rural electric cooperative. These consumer members elect from their own members those persons who serve on the board of directors of the Cooperative. This board elects, in turn, the persons who serve on the board of directors of Service. It is stated that the election of directors and the management of the affairs of both Cooperative and Service are effectively audited and regulated by the REA.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-17778 Filed 8-4-87; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3242-1]

Environmental Impact Statement on Protocol to the Vienna Convention for the Protection of the Ozone Layer

ACTION: Notice.

SUMMARY: On August 1, 1984, the Environmental Protection Agency (EPA) and the State Department announced our intent to prepare an environmental impact statement (EIS) on a possible protocol to the Vienna Convention for the Protection of the Ozone Layer (Convention) being negotiated under the auspices of the United Nations Environment Program (UNEP) (49 FR 30823). At that time, negotiations on both the Convention and protocol were scheduled to be completed by April 1985. While the Convention was successfully completed within that timeframe, the parties failed to reach agreement on a protocol. Instead, a resolution was passed at the March 1985 Diplomatic Conference setting in motion a year of workshops and studies leading to the resumption of negotiations in December 1986.

During this hiatus in the negotiations, EPA and the State Department jointly or independently held numerous domestic workshops and public briefings on key issues related to possible controls to protect the ozone layer, while also actively participating in related activities organized by UNEP. These public meetings and reviews have continued since the resumption of negotiations.

Substantial progress toward a protocol has been made since the negotiations resumed in December 1986. Discussions among nations have advanced from a wide range of possible approaches to limiting ozone-depleting chemicals during the initial negotiating sessions to the point where an agreement now appears possible. According to UNEP's current timetable, a Diplomatic Conference is scheduled for Montreal in mid-September of this year.

This update to the previous notice of intent provides a summary of recent activities concerning the protocol negotiations, sets forth proposed changes in the scope of the EIS to reflect these new developments, and invites comments from interested parties.

Upon completion of the draft EIS now scheduled for mid-January, its availability will be announced in the Federal Register and comments will be solicited. A final EIS will be prepared reflecting comments received during public review and is scheduled for completion by May 1988.

DATE: Comments may be submitted in writing by September 4, 1987.

ADDRESS: Written comments or suggestions on the scope of the EIS may be submitted in writing notice to: Stephen Seidel, PM-221, U.S. Environmental Protection Agency, Washington, DC 20460. A public docket has been established and copies of comments received will be available for review at the Public Information Reference Unit, (202) 382-5926, EPA headquarters Library, 401 M Street, SW., Washington, DC 20460 between the hours of 8:30 and 4:30 p.m. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Stephen Seidel at (202) 382-2787 US EPA or Suzanne Butcher at (202) 647-9312 U.S. Dept. of State.

SUPPLEMENTARY INFORMATION: The August 1, 1984 Federal Register notice indicated that the State Department and EPA were the lead agencies in regard to U.S. participation in international negotiations related to a protocol to the Vienna Convention for the Protection of the Ozone Layer which would establish specific obligations to limit and reduce use of chlorofluorocarbons (CFCs) and possibly other ozone-depleting chemicals. In support of this process they are jointly preparing an EIS addressing the environmental impact of such a protocol. The EIS is being prepared pursuant to section 102 (2)(c) of the National Environmental Policy Act (NEPA) and in furtherance of Executive Order 12114 (E.O. 12114), "Environmental Effects Abroad of Major Federal Actions" (see sections 2-3(a) and 2-4 (b)(i)). Because any protocol is likely to include measures that could significantly affect the ozone layer, it has been determined that Agency action with respect to the protocol should be treated as a major federal action necessitating preparation of an EIS under E.O. 12114 and NEPA.

In the period since the August 1984 notice was published, significant progress has taken place in several important areas: scientific understanding of potential changes to the ozone layer and their possible human health and environmental effects has substantially improved; extensive analysis of economic issues and control options for limiting use of ozone-depleting chemicals have been completed; and substantial progress in the negotiations following their resumption in December 1986 has

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occurred. Activities in each of these areas have included extensive public participation. Most of these activities were announced and described as part of EPA's Stratospheric Ozone Protection Plan (51 FR 1257; January 10, 1986).

Developments Related to Scientific Understanding

While scientific uncertainties remain, substantial evidence supports the theory linking CFCs with some depletion. The state of knowledge concerning atmospheric research related to ozone was examined and synthesized in an extensive international risk assessment published in 1986. This three-volume document, *Atmospheric Ozone: 1985* was prepared under the auspices of the World Meteorological Organization, United Nations Environment Program, National Aeronautics and Space Administration, National Oceanographic and Atmospheric Administration and other national and international organizations. Copies of this document may be obtained by writing to the address provided above.

Drawing extensively from these volumes, in fall 1986 EPA issued its own draft risk assessment, "An Assessment of the Risks from Trace Gases that Can Modify the Stratosphere." This five-volume document presents the current state of knowledge in the the areas of atmospheric change and its potential effects on human health and the environment. The report was made available for public review and comment (51 FR 40510; November 7, 1986), and was also reviewed by EPA's Science Advisory Board (SAB) at public meetings held on November 24–5, 1986 and January 26–7, 1987. A revised executive summary of that document, which responds to comments by the public and the SAB, is available by contacting the address provided above. Revisions to the body of the document should be completed by the end of the summer and will be available to the public at that time.

Two meetings of UNEP's Coordinating Committee on the Ozone Layer (CCOL) were held during 1986 involving scientists from throughout the world. Reports summarizing the current state of science were issued for background use by nations preparing for the next round of protocol negotiations. UNEP also brought together in April 1987 an international panel of atmospheric modellers to evaluate the effects on potential depletion of control options being considered as part of a protocol. Their report (the report of the Wurzburg meeting) has also been used by negotiators as part of their deliberations. In addition, UNEP and EPA co-sponsored a conference on the "Health and Environmental Effects of Climate Change and Ozone Modification" in June 1986. Papers from this conference have been published in a four-volume set available by contacting the address listed above.

Finally, one area of scientific inquiry that has received widespread attention involves the recent discovery of large seasonal losses of ozone over Antarctica. Data describing this phenomenon were first published in 1985 by the British Antarctic Survey team (Nature, 315; May 16, 1985, p. 207). Since the discovery of the so-called "ozone hole," the first National Ozone Expedition has travelled to Antarctica to conduct experiments aimed at improving our understanding of its possible causes and implications, if any, for global ozone levels. While substantial uncertainties remain, initial evidence from the expedition shows the existence of anomalous chlorine chemistry. An expedition planned for this October will seek to further improve scientific understanding of this seasonal loss in ozone.

Economic Issues and Control Options

Along with adoption of the Vienna Convention at the Diplomatic Conference in March 1985, the Conference of Plenipotentiaries on the Protection of the Ozone Layer passed a resolution calling for studies and a workshop "leading to a more common understanding of possible scenarios for global production, emissions, and use of CFCs and other substances affecting the ozone layer and the costs and effects of various control measures." The U.S. actively participated in UNEP-sponsored workshops in March and September of 1986 related to these issues. To encourage widespread public input from interested parties in the U.S., EPA organized public meetings prior to each of these UNEP sessions (51 FR 5091, February 11, 1986; 51 FR 21576, June 13, 1986). These conferences were held in February and July of 1986 and each was attended by more than 100 members of the public.

EPA has also initiated a series of detailed engineering and cost studies to evaluate specific options for reducing the use of CFCs and other ozone-depleting chemicals. Information is currently being collected for more than 600 control options and will be incorporated into the analysis used for the EIS.

Progress of Protocol Negotiations

Negotiations on a protocol to limit CFC emissions can be traced back to 1982 when the Ad Hoc Working Group of Legal and Technical Experts first discussed options for limiting CFCs. Early discussions focussed on the extension of policies previously implemented by individual nations or groups of countries. These options had been used in developing the control alternatives described in the August 1984 notice.

The year of workshops and analysis provided nations with an opportunity to reevaluate prior positions based on additional information. By the resumption of negotiations in December 1986, the substance of proposals differed markedly from the prior round of talks. Despite this change in thinking, substantial disagreements existed concerning most key aspects of the negotiations including the basic approach to controls and their stringency, timing, and coverage.

At the follow-on negotiating sessions held in February and April, substantial differences continued to exist concerning treatment of important issues essential to any agreement, but a growing consensus was emerging that a protocol to limit ozone-depleting substances was warranted and differences among approaches were beginning to narrow. While no final agreement has yet been reached, enough progress has now been achieved that it appears likely that a protocol will be adopted at the Diplomatic Conference scheduled for September in Montreal.

On-going negotiations are focussed on the provisions of a draft protocol text developed by the UNEP Executive Director. This text calls for: a freeze on the fully halogenated CFCs at 1986 levels to take effect one year after entry into force of the protocol; a 20 percent reduction from those levels 4 years after entry into force of the protocol; and an additional 30 percent reduction from those levels 8 to 10 years after entry into force. (The earliest expected date for entry into force of the protocol is late 1988.) It also calls for periodic review of the protocol provisions based on scientific, econmic, environmental and technical considerations to determine if more or less stringent restrictions are warranted. Furthermore, it proposes that Halon 1211 and 1301 be frozen at 1986 levels three years after entry into force.

Throughout the course of these negotiations, EPA and the State Department have held a number of public meetings and briefings to solicit the advice of interested parties. For example, the Agencies held a meeting on October 14, 1985 at the State Department to discuss the issues of stringent, timing and coverage prior to the resumption of negotiations.

Additional briefings have been held periodically, typically prior to and following official negotiating sessions.

In addition, EPA prepared a preliminary assessment of the economic and environmental impacts of protocol options. This analysis was presented and discussed at a series of briefings for representatives from the interested public, including industry, the environmental community and congressional staff. This preliminary assessment will be further refined and expanded as part of the EIS.

Scope of the EIS

The alternatives to be examined in the draft EIS will reflect the altered focus of the negotiations. These alternatives also reflect comments received from the public at the scoping session (held on August 13, 1984) following the August 1984 notice.

—No international action (i.e., also assumes no unilateral U.S. action);
—No international action, but the U.S. acts unilaterally;
—An international protocol providing for:
Ban on CFCs in aersols or other uses;
Ban on growth in production capacity;
Freeze on production; or
Scheduled phase-down on production or use (e.g., 20%, 50% or more)

The draft EIS will also examine the timing, participation and coverage of controls (e.g., CFC–11, –12, –113, –114 and –115 and Halon 1211 and 1301 in various combinations). Some nations have proposed that fewer chemicals be included under the protocol, while others have sought broader coverage (e.g., adding CFC–22 and methyl chloroform). Other issues that will be examined in the EIS include:

—Allocation of Limits: various approaches for allocating limits have been proposed (e.g., Canada proposed a formula based on each nation's population and wealth);
—Trade Provisions: different provisions have been proposed to restrict trade of bulk ozone-depleting chemicals, or products made with or containing CFCs, between parties to the protocol and non-parties;
—Developing Countries: different approaches have been discussed concerning the treatment of developing countries which are not yet large consumers or producers of CFCs;
—Definition of Compliance: different approaches have been proposed for measuring compliance with restrictions. Options discussed included directly using a nation's production of the subject chemicals, its consumption (defined as production + imports − exports + credit for destruction and permanent encapsulation), or some variation of the two.

The August 1984 notice also included a preliminary list of issues to be addressed in the draft EIS. These issues included: effects of CFCs and other gases on ozone; impact of protocol options on possible changes in ozone and UV–B radiation; the effects of such changes on a range of human health and environmental conditions; and the socio-economic impacts of limiting ozone-depleting chemicals. In addition, based on comments received during the scoping process, the draft EIS will explicitly take into consideration the potential health, safety, and energy impacts from actions to reduce the use of CFCs and Halons.

Interested parties are invited to comment on the appropriateness of the revised list of alternatives and issues in light of developments since the August 1984 notice. Comments should be submitted within 30 days of publication of this notice and should be sent to Stephen Seidel, Environmental Protection Agency, at the address given above.

Richard Elliot Benedick,

Deputy Assistant Secretary of Environment, Health and Natural Resources, U.S. Department of State.

Date: July 30, 1987.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation, U.S. Environmental Protection Agency.

Date: July 24, 1987.

[FR Doc. 87–17741 Filed 8–4–87; 8:45 am]
BILLING CODE 6560–60–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Roster of Approved Trustees

The following is a list of Banks currently on the Maritime Administration's Roster of Approved Trustees:

Roster of Approved Trustees

Allied Bank of Texas, P.O. Box 4441, Houston, Texas 77210
Ameritrust Company, N.A., 900 Euclid Avenue, Cleveland, Ohio 44101
BT Trust Company of California, N.A., 343 Sansome Street, San Francisco, California 94163
Bank of New Orleans and Trust, Company (the), P.O. Box 52499, New Orleans, Louisiana 70152
Bankers Trust Company, 16 Wall Street, New York, New York 10015
Centerre Trust Company of St. Louis, 510 Locust Street, St. Louis, Missouri 63101
Chase Manhattan Bank, N.A., One Chase Manhattan Plaza, New York, New York 10015
American Security Bank, N.A., 1501 Pennsylvania Avenue, NW., Washington, DC 20013
Amsouth Bank N.A., 31 North Royal Street, Mobile, Alabama 36821
Bank of America National Trust & Savings Assoc., P.O. Box 37105, San Francisco, California 94137
Bank of New York (the), 21 West Street, New York, New York 10015
Boatmen's National Bank of St. Louis (the), P.O. Box 236, St. Louis, Missouri 63118
Chase Lincoln First Bank, N.A., 20 Clinton Avenue South, Rochester, New York 14604
Chemical Bank, 55 Water Street, New York, New York 10021
Citibank, N.A., 111 Wall Street, New York, New York 10015
Connecticut National Bank (the), 777 Main Street, Hartford, Connecticut 06115
Farmers and Merchants National Bank of Bridgeton, New Jersey (the), 53 South Laurel Street, Bridgeton, New Jersey 08302
Fifth Third Bank (the), 38 Fountain Square Plaza, Cincinnati, Ohio 45202
First City National Bank of Houston, P.O. Box 2557, Houston, Texas 77001
First Interstate Bank of Oregon, N.A., P.O. Box 2971, Portland, Oregon 97208
First National Bank of Commerce, 210 Barrone Street, New Orleans, Louisiana 70112
First National Bank of Boston (the), P.O. Box 2016, Boston, Massachusetts 02106
First National Bank and Trust Company of Evanston, 800 Davis Street, Evanston, Illinois 60204
Connecticut Bank and Trust Company (the), One Constitution Plaza, Hartford, Connecticut 06115
Continential Illinois National Bank and Trust Company of Chicago, 231 South LaSalle Street, Chicago, Illinois 60693
Fidelity Bank, N.A., Great Valley Corporate Centre, 14 Great Valley Parkway, Malvern, Pennsylvania
First City National Bank of Beaumont, P.O. Box 3391, Beaumont, Texas 77704
First Interstate Bank of California, 707 Wilshire Boulevard, P.O. Box 3666, Los Angeles, California 90051
First Interstate Bank of Washington, N.A., P.O. Box 21927, Seattle, Washington 98111

First National Bank of Minneapolis, 120 South Sixth Street, Minneapolis, Minnesota 55402
First National Bank of Chicago (the), One First National Plaza, Chicago, Illinois 60670
First Pennsylvania Bank, N.A., 15th & Chestnut Street, Philadelphia, Pennsylvania 19101
First Security Bank of Utah, N.A., 79 South Main Street, Salt Lake City, Utah 84110
First Trust Company, Inc., First National Bank Building, Saint Paul, Minnesota 55101
Interfirst Bank Dallas, N.A., P.O. Box 6031, Dallas, Texas 75222
Irving Trust Company, One Wall Street, New York, New York 10015
Mbank Dallas, N.A., 108 S. Akard Street, Dallas, Texas 75201
Maine National Bank, 400 Congress Street, Portland, Maine 04104
Manufacturers Hanover Trust Company of California, 50 California Street, San Francisco, California 94111
Mellon Bank (East) N.A., Bala Cynwyd, Philadelphia, Pennsylvania 19004
Mercantile Bank National Association, 721 Locust Street, St. Louis, Missouri 63101
First Tennessee Bank, N.A., 165 Madison Avenue, Memphis, Tennessee 38103
Hibernia National Bank in New Orleans, 313 Carondelet Street, New Orleans, Louisiana 70112
Interfirst Bank Houston, N.A., 1100 Louisiana, Houston, Texas 77002
Key Bank, N.A., 60 State Street, Albany, New York 12207
Mbank Houston, N.A., P.O. Box 3285, Houston, Texas 77253
Manufacturers Hanover Trust Company, 40 Wall Street, New York, New York 10015
Mellon Bank, N.A., Mellon Square, Pittsburgh, Pennsylvania 15230
Mercantile-Safe Deposit and Trust Company, Two Hopkins Plaza-P.O. Box 2258, Baltimore, Maryland 21203
Meridian Bank, 35 North Sixth Street, Reading, Pennsylvania 19601
Morgan Guaranty Trust Company of New York, 30 West Broadway, New York, New York 10015
Northern Trust Company, (The) 50 South LaSalle Street, Chicago, Illinois 60690
Peoples National Bank of Washington, 1414 Fourth Avenue, Seattle, Washington 98111
Rainier National Bank, P.O. Box 3966, Seattle, Washington 98124
Rhode Island Hospital Trust National Bank, One Hospital Trust Plaza, Providence, Rhode Island 02903
Seattle Trust and Savings Bank, P.O. Box 90, Seattle, Washington 98111
Shawmut Bank of Boston, N.A., One Federal Street, Boston, Massachusetts 02105
Texas Commerce Bank National Association, 712 Main Street, Houston, Texas 77002
Trust Services of America, Inc., 700 Wilshire Boulevard, Los Angeles, California 90017
NCNB National Bank of Florida, 600 N. Florida Avenue, Tampa, Florida 33602
Norwest Bank Minneapolis, N.A., 8th and Marquette, Minneapolis, Minnesota 55479
Philadelphia National Bank (The), Broad & Chestnut Streets Philadelphia, Pennsylvania 19101
Republicbank Houston, N.A., 1010 Milam, Houston, Texas 77002
Seattle-First National Bank, P.O. Box 35886, Seattle, Washington 98124
Security Pacific National Bank, P.O. Box 30376, Los Angeles, California 90030
State Street Bank and Trust Company, 225 Franklin Street, Boston, Massachusetts 02110
Terrebone Bank and Trust Company, 720 East Main Street, Houma, Louisiana 70360
United States Trust Company of New York 45 Wall Street, New York, New York 10005
United Virginia Bank, 919 East Main Street, Richmond, Virginia 23219
Whitney National Bank of New Orleans, P.O. Box 61260, New Orleans, Louisiana 70161
Wells Fargo Bank, N.A., 475 Sansome Street, San Francisco, California 94111
Wilmington Trust Co., 10th & Market Streets, Wilmington, Delaware 19899

Dated: July 30, 1987.

By Order of the Maritime Administrator.

Joel C. Richard,

Assistant Secretary.

[FR Doc. 87-17707 Filed 8-4-87; 8:45 am]

BILLING CODE 4910-81-M

National Highway Traffic Safety Administration

[Docket No. T87-01; Notice 1]

Insurer Reporting Requirements; Report to Congress Motor Vehicle Theft Law Enforcement Act of 1984

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for comments.

SUMMARY: This notice announces publication by NHTSA of a report to Congress pursuant to Title VI of the Motor Vehicle Information and Cost Savings Act (Pub. L. 93-513), which requires that the Secretary shall transmit to the Congress two reports (October 1987 and October 1990, respectively) on motor vehicle theft. The first of these reports is to provide information on the theft and recoveries of stolen motor vehicles; information on the extent to which motor vehicles stolen annually are dismantled to recover parts or exported, and a description of the market for such stolen parts; the rating rules and plans motor vehicle insurers use to establish the premiums for vehicles considered more likely to be stolen; the actions taken by such insurers to reduce premiums they charge for comprehensive insurance coverage because of a reduction in motor vehicle thefts; and actions taken by insurers to assist in deterring or reducing thefts of motor vehicle thefts. The agency seeks public review and comment on this first report before forwarding a final version to Congress as required by Title VI.

DATE: Comments must be received no later than September 21, 1987.

ADDRESS: Interested persons may obtain a copy of the report free of charge by contacting Barbara Kurtz, Office of Market Incentives, National Highway Traffic Safety Administration, Room 5313, 400 Seventh Street SW., Washington, DC 20590 (202-366-4808). The report can be requested in two forms: A 50-page text, or the 50-page text with 400 pages of tables which form the appendices. The requestor should specify whether the text, or the text with appendices are desired. Comments should refer to Docket No. T87-01; Notice 1, and can be submitted (preferably in 10 copies) to: Docket Section, NHTSA, Room 5109, 400 Seventh Street SW., Washington, DC. 20590. (Docket hours are 8:00 am to 4:00 pm, Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Barbara Kurtz, Office of Market Incentives, NHTSA, 400 Seventh Street SW., Washington, DC 20590 (202-366-4808).

SUPPLEMENTARY INFORMATION: The Motor Vehicle Theft Law Enforcement Act of 1984 (the Theft Act) was implemented to enhance detection and prosecution of motor vehicle theft (Pub. L. 98-547). The Theft Act added a new Title VI to the Motor Vehicle Information and Cost Savings Act, which requires the Secretary of Transportation to issue a theft prevention standard for identifying major parts of certain high-theft lines of passenger cars. The Theft Act also addressed several other actions to reduce motor vehicle theft, such as: Increased criminal penalties for those who traffic in stolen vehicles and parts; curtailment of the exportation of stolen motor vehicles and off-highway mobile equipment; establishment of penalties

for dismantling vehicles for the purpose of trafficking in stolen parts; and development of ways to encourage decreases in premiums charged consumers for motor vehicle theft insurance.

Section 614 of the Theft Act directs the Secretary to submit two reports to the Congress on motor vehicle theft. The first report is required in October 1987—three years after enactment of Title VI in October 1984, and the second report is required in October 1990—five years after enactment of the theft prevention standard in October 1985. The first report is to contain the following information as specified in Sections 614(a)(2)(A)–(E) of the Theft Act:

(A) Data on the number of trucks, multipurpose passenger vehicles (MPV's), and motorcycles stolen and recovered annually;

(B) Information on the extent to which trucks, MPV's, and motorcycles, stolen annually, are dismantled to recover parts or are exported;

(C) A description of the market for such parts;

(D) Information concerning the premiums charged by insurers of comprehensive insurance coverage for trucks, MPV's, and motorcycles including any increase in such premiums charged because any such motor vehicle is a likely candidate for theft; and

(E) An assessment of whether the identification of parts of trucks, MPV's, and motorcycles is likely to (i) have a beneficial impact in decreasing the rate of theft of such vehicles; (ii) improve the recovery rate of such vehicles; (iii) decrease the trafficking in stolen parts of such vehicles; (iv) stem the export and import of such stolen vehicles or parts; or (v) have benefits which exceed the costs of such identification.

The first report to the Congress also should include a recommendation on whether, and to what extent, the identification of trucks, MPV's, and motorcycles should be required by statute (Section 614(a)(3)).

In addition to the requirements set forth for the first report to Congress, the second report, due in October 1990, is required to include an evaluation of the effectiveness of the Federal Motor Vehicle Theft Prevention Standard (49 CFR Part 541) and an assessment of whether the theft standard should be extended to other classes of motor vehicles.

Title VI was designed to impede the theft of motor vehicles by creating a theft prevention standard which requires manufacturers of designated high-theft car lines to mark or inscribe them with a vehicle identification number. The theft standard became effective in Model Year 1987 for designated high-theft car lines.

Section 612 of the Theft Act requires subject insurers or designated agents to report annually to the Department on theft and recovery of vehicles; ratings rules, and plans used by insurers to reduce premiums due to a reduction in motor vehicle thefts; and actions taken by insurers to assist in deterring thefts. The subject insurance companies received more than 57 percent of the total premiums paid for *all* forms of motor vehicle insurance issued within the United States for 1984. Rental and leasing companies also are required to provide annual theft reports to the Department.

Annual insurer reports are intended to aid in implementing the Theft Act and in fulfilling the Department's requirements to report to Congress on the effects of the Act. The first insurer reports were due to the Department on January 31, 1987, and disclosed the following:

(1) The 31 insurance companies subject to the Department's regulation reported that 65,310 vehicles were stolen in 1985, with 44,665 recovered, yielding a 68-percent recovery rate.

(2) On hundred and forty rental/leasing companies reported the theft of 13,385 vehicles in 1985. Based on data from several of these companies, 92 percent of such stolen vehicles were recovered.

(3) Based on data from 23 of the 31 insurance companies, an estimated $856,693,346, or 38 percent, of their comprehensive claims were paid due to theft.

A detailed and explanatory report to Congress on motor vehicle theft has been prepared and is available upon request. This report addresses the data in the first annual insurer reports submitted by the designated insurance companies and rental or leasing companies, describes their theft and recovery data, and provides required comprehensive insurance coverage information on motor vehicle theft. The report is available in two forms: a 50-page text, or the 50-page text with 400 pages of tables which form the appendices. Either the text, or the text with appendices can be requested.

Interested persons are invited to submit comments on NHTSA's report to Congress as discussed above. It is requested but not required that 10 copies of comments be submitted. A 45-day comment period is provided. All comments must be limited not to exceed 15 pages in length (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies, from which purportedly confidential information has been deleted, should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR 512).

All comments received before the close of business on the comment closing date indicated above will be accepted, and will be available for examination in the docket at the above address both before and after that date. The agency will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material. Those persons desiring to be notified upon receipt of their comments in the public docket should enclose, in the envelope with their comments, a self-addressed stamped post card. Upon receiving the comments, the docket supervisor will return the post card by mail.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 87-17791 Filed 8-4-87; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 87-96]

Current Fee Charged Proprietors of Warehouse Facilities

AGENCY: Customs Service, Treasury.

ACTION: Notice of annual fee.

SUMMARY: This document advises the public of the 1987 annual fee charged proprietors of Customs bonded warehouses. The fee is charged to reimburse the Customs budget for services rendered including audit, inspection, and related costs. The fee is projected on the basis of actual resources that have been allocated to the various Customs regions to support the positions authorized for the program.

EFFECTIVE DATE: September 4, 1987.

FOR FURTHER INFORMATION CONTACT: John Holl, Office of Inspection and Control (202–566–8151), or Marcus Sircus, Regulatory Audit Division (202–566–2812).

SUPPLEMENTARY INFORMATION:

Background

Section 19.5, Customs Regulations (19 CFR 19.5), provides that each warehouse proprietor granted the right to operate a warehouse facility is charged an annual fee which is determined under section 555, Tariff Act of 1930, as amended (19 U.S.C. 1555).

The annual fee for warehouse proprietors was implemented as a 3-tiered fee structure by T.D. 85–196, published in the **Federal Register** on December 6, 1985 (50 FR 50032). The 3-tiered fee structure assigns a warehouse to a tier based upon the individual warehouse size or volume. The tier assignment for 1987 for existing warehouses was determined by the total number of entries or lots listed in Column A of the most recent Customs Form 300 properly filed with Customs before November 15, 1986. The tier assignment for new warehouses which have not yet had to file Customs Form 300, or class 7 warehouses, will be based upon the number of entries or lots in the warehouse at any time during Fiscal Year 1986.

The bonded warehouse fee for 1987 is $950 for Tier 1, $2,375 for Tier 2, and $4,750 for Tier 3. The fee is based on the actual resources for 34 Customs and 10 Bureau of Alcohol, Tobacco, and Firearms (BATF) positions authorized for the audit-inspection program. The BATF officers are responsible underf T.D. 86–193, published in the **Federal Register** on October 21, 1986 (51 FR 37362), for conducting spot checks and audits of bonded warehouses containing only alcoholic beverages. The total calculation came to $1,929,792, and was rounded to $1,930,000. The calculation included salary, 37 percent fringe benefits (§ 24.17(d), Customs Regulations (19 CFR 24.17(d)), 15 percent overhead (§ 24.21(a)), Customs Regulations (19 CFR 24.21(a)), and 1.3 percent Medicare compensation costs (§ 24.17(f)), Customs Regulations (19 CFR 24.17(f)).

Currently, there are 1,027 Tier 1 locations, 273 Tier 2 locations, and 64 Tier 3 locations for a total of 1,364 locations. If Customs collects the above-stated fee from each of them, the total collected will be $1,928,025.

The 1987 fee is 5 percent lower in each tier than the annual fees of $1,000, $2,500 and $5,000 because of a reduction in Customs staffing for conducting audits. This reduction was partially counterbalanced by a 3 percent employee salary increase, a reduced number of bonded warehouses to share Customs costs, and the highest average grade of BATF officers (GS–11) who conduct spot checks, compared with that of Customs Inspectors (GS–9).

New Facilities

New bonded warehouses approved after October 1, 1986, will automatically pay the Tier 1 fee. However, if a new warehouse (never previously approved) is approved after January 31, 1987, the Tier 1 fee will be prorated over the full and fractional number of months remaining in Calendar Year 1987.

Determination

It has been determined that the annual fee for warehouse proprietors for Calendar Year 1987 is as follows:

Bonded Warehouses

Tier 1 (0–100 entries or lots)=$950.
Tier 2 (101–500 entries or lots)=$2,375.
Tier 3 (501 or more entries or lots)=$4,750.

Dated: July 28, 1987.

Michael H. Lane,

Acting Commissioner of Customs.

[FR Doc. 87–17706 Filed 8–4–87; 8:45 am]

BILLING CODE 4820–02–M

Fiscal Service

Financial Guidelines for Qualification of Surety Companies

AGENCY: Financial Management Service, Treasury.

ACTION: Proposed guideline and request for comments.

SUMMARY: The proposed guideline will supplement and strengthen the current financial standards which require that a company must be able to carry out its contracts in order to be authorized to provide surety bonds under 31 U.S.C. 9304.

DATES: The proposed additional financial guideline for companies seeking or holding Treasury Authority is proposed to become effective December 31, 1987. Under the proposed guideline, companies holding a Treasury Cretificate of Authority at December 31, 1987, will have until December 31, 1990 to meet the additional financial standard.

Comment Deadline: All comments or inquiries received on or before October 4, 1987 will be given due consideration.

ADDRESS: Comments or inquiries may be mailed to Surety Bond Branch, US Treasury Dept.—FMS, 1725 I St., NW., Rm. 1006A, Washington, DC 20226.

FOR FURTHER INFORMATION CONTACT: Terry L Boyer, Telephone—(202) 634–2214.

SUPPLEMENTARY INFORMATION:

Executive Order 12291—5 U.S.C. 601 nt . . .

The Department of the Treasury has determined that this proposal is not major for purposes of E.O. 12291. Therefore, no regulatory impact analysis is required.

Background

The Secretary of the Treasury is authorized by 31 U.S.C. 9305 to decide whether each surety company that wishes to do business with the United States is able to carry out its contracts. The regulations issued to administer this responsibility are set forth in 31 CFR Part 223 entitled "Regulations Governing Surety Companies Doing Business with the United States." The guidelines applied in assessing a company's financial condition are in the "Instructions Relating to the Submission of Annual and Quarterly Financial Statement of Surety Companies to the Treasury Department" see 31 CFR 223.6 and 223.9. These Instructions are transmitted to surety companies annually with the Treasury's Annual Letter to Surety Companies Reporting to the Treasury.

Treasury believes that its minimum combined capital and surplus requirement ($500,000) is too low. A strong financial commitment to a company's net worth is necessary to encourage proper management and financial responsibility. In addition, every company should maintain sufficient surplus to protect it against financial impairment. Treasury has determined that a minimum total combined surplus of $2,000,000 is necessary to promote the financial responsibility and surplus protection expected of companies holding a Treasury Certificate of Authority. This proposed guideline will bring Treasury minimum financial guidelines in line with State Insurance Department requirements. Of the companies presently certified by the Treasury Department, 97 percent would meet this additional guideline. We expect this would increase to 99 percent by December 31, 1990.

The Department of the Treasury will therefore adopt the following financial guideline:

Combined Capital and Surplus

In no instance shall a company's combined capital and surplus (Policyholders' Surplus), after adjustment for Treasury rating purposes, fall below $2,000,000. Companies holding a Treasury Certificate of Authority at December 31, 1987, and not meeting this minimum requirement, may continue to qualify for a Treasury Certificate of Authority, provided the minimum requirement is obtained by December 31, 1990.

Dated: July 28, 1987.

Mitchell A. Levine,

Assistant Commissioner, Comptroller Financial Management Service.

[FR Doc. 87-17507 Filed 8-4-87; 8:45 am]

BILLING CODE 4810-35-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 150
Wednesday, August 5, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., August 7, 1987.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 87–17820 Filed 8–3–87; 10:10 am]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., August 14, 1987.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 87–17821 Filed 8–3–87; 10:10 am]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., August 21, 1987.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 87–17822 Filed 8–3–87; 10:10 am]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., August 28, 1987.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 87–17823 Filed 8–3–87; 10:10 am]
BILLING CODE 6351-01-M

CONSUMER PRODUCT SAFETY COMMISSION

"FEDERAL REGISTER" ANNOUNCEMENT OF PREVIOUS CITATION: Vol. 52, No. 145 (July 29, 1987), P. 28415.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: July 30, 1987, 10:00 a.m.

CHANGES: Time and date changed to July 31, 1987, 3:00 p.m.

Listed Below is the Revised Agenda

Commission Meeting, Friday, July 31, 1987, 3:00 p.m.
Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, MD

Open to the Public

Methylene Chloride: Final Rule

The Commission will consider a final rule that, if issued, would declare products which contain methylene chloride to be hazardous substances under section 3(a) of the Federal Hazardous Substances Act.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301–492–6800.

Sheldon D. Butts,
Deputy Secretary.
July 31, 1987.

[FR Doc. 87–17875 Filed 8–3–87; 3:12 pm]
BILLING CODE 6355-01-M

FARM CREDIT ADMINISTRATION

SUMMARY: Notice is hereby given pursuant to the Government in the Sunshine Act (5 U.S.C. 552(e)(3)), that the regular meeting of the Farm Credit Administration Board (Board) scheduled for August 4, 1987, has been cancelled. The next meeting of the Board is scheduled for August 18, 1987.

FOR FURTHER INFORMATION CONTACT: William A. Sanders, Jr., Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive McLean, Virginia 22102–5090 (703–883–4010).

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

Dated: July 27, 1987.

William A. Sanders, Jr.,
Secretary, Farm Credit Administration Board.

[FR Doc. 87–17862 Filed 8–3–87; 11:37 am]
BILLING CODE 6705-01-M

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Monday, August 3, 1987 at 3:00 p.m.

PLACE: Room 117, 701 E Street, NW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints: Certain Cellular Mobile Telephones and subassemblies and Component Parts Thereof (Docket Number 1404).
5. Inv. 701–TA–283 (F) and 731–TA–346 (F) (Certain Acetylsalicylic Acid (Aspirin) from Turkey)—briefing and vote.
6. Inv. 701–TA–285 & 286 (F) and 731–TA–365 & 366 (F) (Industrial Phosphoric Acid from Belgium and Isreal)—briefing and vote.
7. Inv. 731–TA–348 (F) (Certain Malleable Cast-Iron Pipe Fittings from Thailand—briefing and vote.
8. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523–0161.

Stephen McLaughlin,
Acting Secretary.
July 30, 1987.

[FR Doc. 87–17779 Filed 7–31–87; 4:43 pm]
BILLING CODE 7020-02-M

SECURITIES AND EXCHANGE COMMISSION

PLACE: 450 Fifth Street, NW., Washington, DC.

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission held a closed meeting on Friday, July 31, 1987 at 10:00 a.m., to consider the following item.

Legislative matter relating to enforcement program.

Commissioner Peters, as duty officer, determined that Commission business required the above change.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Douglas Michael at (202) 272-2014.

Jonathan Katz,

Secretary.

July 31, 1987.

[FR Doc. 87-17774 Filed 7-31-87; 4:42 pm]

BILLING CODE 6715-01-M

VOL 52 ISS 150 AG 5 1987 UMI

federal register

Wednesday
August 5, 1987

Part II

Department of Education

34 CFR Part 673

Income Contingent Loan Program Demonstration Project; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 673

Income Contingent Loan Program Demonstration Project

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Higher Education Amendments of 1986 authorize the Secretary to implement an Income Contingent Direct Loan Program Demonstration Project (ICL Demonstration Project) beginning with the 1987–88 award year. The Secretary is issuing regulations to implement the ICL Demonstration Project. The ICL Demonstration Project will examine the feasibility of a direct loan program which uses the income contingent repayment method in order to increase the economic and full use of direct student loan funds.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Ms. Carney McCullough or Mr. William L. Moran, Division of Policy and Program Development, Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue, SW., [Regional Office Building 3, Room 4100], Washington, DC 20202. Telephone number: (202) 732–4888.

SUPPLEMENTARY INFORMATION: During the past decade, higher education costs have escalated and, as a result, students are borrowing more. By the time of graduation, many students have incurred a substantial debt. Repayment of such debt on a short-period, fixed-payment basis commencing shortly after graduation often forces students to pay substantial sums at a time when earnings are at their lowest. Income-sensitive loan repayment, on the other hand, is an equitable and reasonable approach to student debt manageability. The flexibility afforded by this type of repayment plan accommodates changes in the borrowers' financial circumstances.

The Income Contingent Direct Loan Program Demonstration Project explores the feasibility of a direct loan program which uses an income contingent repayment plan. The ICL Demonstration Project will be conducted for five years beginning with the 1987–88 academic year, and ten institutions have recently been selected to participate in the ICL Demonstration Project. In the fiscal year 1988 budget, the Secretary has requested a major expansion of the Income Contingent Loan (ICL) Program. However, the Secretary emphasizes that these regulations implement the ICL Demonstration Project only.

Revisions to the Notice of Proposed Rulemaking

On March 5, 1987, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the **Federal Register**, 52 FR 6924—6939. Final regulations for Subpart B were published in the May 12, 1987 **Federal Register**, 52 FR 17900–17904. The Secretary is publishing final regulations for Subparts A, C, and D in this document. Several changes have been made to the NPRM and the following is a listing of those changes. A full discussion of the changes is contained in the Appendix of Comments and Responses. Sections 673.24, 673.25, and 673.26 are applicable to the 1987–88 award year only because the Secretary intends to use his discretion to implement the need analysis provisions found in the Higher Education Act of 1965, as amended, beginning with the 1988–89 award year. The Secretary continues to review the repayment matrix in § 673.43(b)(5) and may propose revisions in the future. The Secretary will publish an NPRM for Subpart E—Due Diligence after publishing the final due diligence requirements for the Perkins Loan Program; the due diligence requirements of the ICL Program will follow closely those used for the Perkins Loan Program.

Section 673.2 Definitions.

The Secretary has revised the Initial Repayment Period to include the remainder of the calendar year in which the end of the grace period falls plus the following calendar year, rather than the following two years, as proposed in the NPRM. The Secretary believes that the revised definition allows sufficient time for borrowers to establish a financial foundation before beginning income contingent repayment.

Section 673.22 Student eligibility and selection requirements.

The Secretary has revised the student eligibility standards in order to permit an institution to use some ICL funds for otherwise eligible borrowers who have not demonstrated financial need for the loan under customary Title IV methodology. The institution must first make ICL assistance reasonably available to students who have demonstrated financial need for the loan. Only after ICL assistance has been made available to students with financial need, may the institution use those ICL funds not needed to meet these commitments for the award year to make loans to students who have not demonstrated financial need at all, or who wish to borrow to meet their expected family contribution under ICL or other Title IV programs.

In accordance with the terms of the Compact of Free Association for the Federated States of Micronesia and for the Marshall Islands and in anticipation of the implementation of the Compact of Free Association for Palau, the Secretary has deleted § 673.22(a)(4)(v) of the NPRM which allowed citizens of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau to be eligible for an ICL. Implementation of the Compact of Free Association for Palau, which would have established the Republic of Palau, was delayed by a plebiscite on December 2, 1986. Therefore, the Trust Territory of the Pacific Islands, of which Palau is the only remaining entity, continues to exist, and until the Compact is enacted, its permanent residents meet the citizenship and residency requirements of § 673.22(a)(4)(iv).

Section 673.29 Making and disbursing loans.

Because there are no loan application or loan origination fees in the ICL Program, the Secretary has deleted § 673.29(a)(1)(xi) of the NPRM which required institutions to provide borrowers with information concerning the amount of any charges collected by the institution at or prior to the disbursement of the loan and any deduction of those changes from the proceeds of the loan.

Section 673.31 Use of Funds.

The Secretary has revised § 673.31(b) to mirror the practice in the Perkins Loan Program by allowing an administrative cost allowance of 5% of the funds expended each award year under the ICL Program.

Section 673.41 Permissible charges to students.

The Secretary has modified § 673.41(a)(1) to reflect the legislative changes resulting from the Higher Education Technical Amendments of 1987. The rate of interest to be charged on an ICL shall be, at the institution's discretion, either a variable rate set annually at the average bond equivalent rate of 91-day Treasury bills for the calendar quarter ending September 30 of the preceding calendar year plus three

percent, or a fixed rate set in this manner in the year in which the loan was made and remaining unchanged thereafter over the life of the loan.

Section 673.42 Promissory note.

The Secretary has added § 673.42(a)(4) and (5) to clarify that an institution may not record on a single promissory note advances under both fixed-rate and variable-rate loan agreements, and that an institution which uses a single promissory note for advances under a fixed-rate loan agreement made during more than one award year must note the applicable interest rate for each advance on the promissory note.

The Secretary has revised § 673.42(b)(4)(ii) to clarify that amounts which a borrower repays during an academic year are used to pay any accrued interest first and then to reduce the original loan amount.

The Secretary has also revised the terms of the model promissory note to delete the optional language which limited the amount of contingent fees charged to the institution by a collection firm that could be collected from the borrower. This provision originated in regulations for the National Direct Student Loan (now Perkins Loan) Program published July 30, 1982, 47 FR 33228, and was based on a comment by the Federal Trade Commission interpreting section 808(1) of the Fair Debt Collection Practices Act to limit the amount of contingent fee charges that could be imposed in collecting NDSL debts. The Secretary has been advised that the FTC now regards such charges as permitted under section 808(1) to the extent that the charge is legal under applicable State law. 51 FR 8019, 8027, March 7, 1986. On April 7, 1986, a new section 484A was added to the Higher Education Act by section 16033 of Pub. L. 99-272, the Consolidated Omnibus Budget Reconciliation Act of 1985. Under section 484A(b)(1), borrowers on loans made under Title IV of the HEA are, notwithstanding any State law to the contrary, liable for reasonable collection costs. 20 U.S.C. 1091a(b)(1). Consistent with this provision, the Secretary has removed from the promissory note the limitation on the amount of contingent fees that the institution may impose on the borrower. The institution may now, therefore, impose through the debt collection firm the full amount of "reasonable collection costs," including contingent fees charged to the institution by the collection firm.

Section 673.43 Repayment plan.

The Secretary has revised the manner in which the annual payment obligation is calculated to include taxable income received by the borrower and his or her spouse if the borrower does not file a Federal income tax return and to allow the institutional loan administrator to use more recent income information in situations when the borrower's base year income does not accurately reflect the ability to repay an ICL. The Secretary believes that this flexibility is important in order for the borrower's annual payment obligation to be realistic and sensitive to individual circumstances.

The Secretary has further revised the manner in which the payment obligation is to be calculated (§ 673.43(b) of the NPRM) to replace the fixed payment obligation during the initial repayment period proposed in the NPRM. The final rule provides that, during the initial repayment period, payment is to be based on a percentage of income, if the borrower provides income information, or a percentage of opening ICL balance, if no income information is provided. The Secretary has revised the repayment matrix by reducing the percentage of income which the borrower is required to use for repayment and by basing the percentage of income used on the opening ICL balance and the year of repayment. The Secretary believes that the revised repayment matrix will reduce the incidence of negative amortization and is more sensitive to other obligations which the borrower will incur during the repayment period.

The Secretary continues, in this final regulation, to include in the base on which the borrower's annual repayment obligation is calculated both the income actually earned by the borrower and the income of his or her spouse, if the borrower is married at any time during the repayment period. This does not require the spouse to contribute to the repayment of the loan, or attempt to make the spouse legally liable for the debt; rather, the Secretary regards income earned by each spouse as effectively available to the borrower and therefore a reasonable measure of the borrower's ability to generate payments on the loan.

This policy for ICL repayment is consistent with Title IV HEA need analysis as traditionally implemented by governmental and private parties. In computing the need for student aid, need analysis customarily deems the income of the spouse of the student applicant to be available to meet the educational expenses of the student. This need analysis policy rests on a recognition that the need of the student includes living expenses for the couple, and that the education of the student is an investment likely to yield economic benefits to the couple over many years. For similar reasons, the Secretary includes the income of the couple in the economic base on which the borrower's repayment obligation is determined. The education of the borrower can reasonably be expected to increase the earning capacity and wealth of the couple throughout the repayment period, regardless of the earnings of the borrower in any particular year of that period. The standard of living of the borrower is based on the income of the couple, and thus that income is in a realistic sense effectively available to the borrower regardless of the amount earned by the borrower in a particular year of repayment.

In these final regulations, a borrower who does not provide in a timely manner the income information required to determine his or her annual payment obligation after the initial repayment period will be charged a late charge of up to 20% of the amount of the borrower's most recently required installment. Continued failure to submit the required income information is a substantial breach of the borrower's duty under the loan agreement and constitutes a default on the loan.

Section 673.44 Deferment of repayment.

The Secretary has added a student deferment provision to specify that a borrower need not repay principal or interest while enrolled on at least a half-time basis at an institution of higher education.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 673

Education, Loan programs—education, Reporting and recordkeeping requirements, Student aid.

(Catalog of Federal Domestic Assistance Number has not been assigned)

Dated: June 17, 1987.

William J. Bennett,

Secretary of Education.

The Secretary amends Part 673 of Title 34 of the Code of Federal Regulations by adding new Subparts A, C, and D to read as follows:

PART 673—INCOME CONTINGENT LOAN PROGRAM

Note.—An asterisk (*) indicates provisions that are identical to provisions in Parts 674, 675 and 676.

Subpart A—Scope, Purpose, and General Definitions

Sec.
673.1 Purpose.
673.2 Definitions.
* * * * *

Subpart C—General Provisions

673.21 Program participation agreement.
673.22 Student eligibility and selection requirements.
673.23 ICL loan maximums.
673.24 Allowable costs of attendance—1987–88.
673.25 Expected family contribution—1987–88.
673.26 Approved need analysis systems—1987–88.
673.27 Overaward.
673.28 Coordination with BIA grants.
673.29 Making and disbursing loans.
673.30 Federal interest in allocated funds—transfer of Fund.
673.31 Use of funds.
673.32 Fiscal procedures and records.
673.33 Compliance with equal credit opportunity requirements.

Subpart D—Loan Terms and Conditions

673.41 Permissible charges to students.
673.42 Promissory note.
673.43 Repayment plan.
673.44 Deferment of repayment—financial hardship.
673.45 Cancellation for death or disability.

Subpart E—Due Diligence [Reserved]

Appendix A—Sample Promissory Note

Authority: 20 U.S.C. 1087a–1087e, unless otherwise noted.

Subpart A—Scope, Purpose, and General Definitions

§ 673.1 Purpose.

(a) The Income Contingent Loan (ICL) Program provides loans through institutions of higher education to financially needy students attending those institutions to help them pay their educational costs.

(b) The Secretary implements the ICL Program through the ICL Demonstration Project (Demonstration Project). Under the Demonstration Project, the Secretary provides funds to selected institutions of higher education, to establish a revolving ICL fund at the institution, in order to evaluate the feasibility of a program of student loans using income-based repayment plans.

(Authority: 20 U.S.C. 1087b)

§ 673.2 Definitions.

(a) Subpart A of the Student Assistance General Provisions, 34 CFR Part 668, sets forth definitions of the following terms used in this part:

Academic year
Act
Award year
Campus-based programs
Clock-hour
College Work-Study (CWS) Program
Consolidation Loan Program
Defense loan
Dependent student
Direct loan
Enrolled
Guaranteed Student Loan (GSL) Program
Independent student
National Defense Student Loan Program
National Direct Student Loan (NDSL) Program (now called the Perkins Loan Program)
National of the United States
One-year training program
Parent
Pell Grant Program
Perkins Loan Program (formerly called the National Direct Student Loan Program)
PLUS Program
Postsecondary vocational institution
Proprietary institution of higher education
Public or private nonprofit institution of higher education
Recognized equivalent of a high school diploma
Regular student
Secretary
Six-month training program
State
State Student Incentive Grant (SSIG) Program
Supplemental Educational Opportunity Grants (SEOG) Program, and
Supplemental Loans for Students (SLS) Program

(b) The Perkins Loan Program (formerly National Direct Student Loan (NDSL) Program) regulations, 34 CFR Part 674, sets forth definitions of the following terms used in this part:

Acceleration
Default
Defaulted principal amount outstanding
Eligible program
Expected family contribution (EFC)
Financial need
Half-time graduate or professional student
Half-time undergraduate
Institution of higher education (institution)
Matured loans
Payment period

(c) The Secretary defines other terms used in this part as follows:

Adjusted gross income: The adjusted gross income (AGI) reported on the Federal income tax return.

Base income year: The most recent Federal tax year ending before November 1 of the calendar year preceding the calendar year for which a payment obligation is calculated.

Federal capital contribution (FCC): Federal funds provided to an institution in order to establish and maintain an ICL Fund.

Fund (ICL Fund): A fund established and maintained according to § 673.21.

Grace period: A period of nine consecutive months, starting from the date the borrower ceases to be at least a half-time student at an institution of higher education, during which a borrower does not have to make payments.

Handicapped student: A student who meets the definition in section 602(1) of the Education of the Handicapped Act, as amended [20 U.S.C. 1401(1)], that is, a student who is mentally retarded, hard of hearing, deaf, speech- and language-impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or is otherwise health-impaired or has specific learning disabilities which require special education and related services.

Initial repayment period: The period of time beginning at the end of the grace period of a borrower and ending December 31 of the first complete calendar year after the end of the grace period.

Institutional capital contribution (ICC): Funds contributed by the institution in order to establish and maintain an ICL Fund.

Opening loan account balance: The principal and accrued interest outstanding on the date on which the grace period of a borrower ends.

(Authority: 20 U.S.C. 1087a–1087e)

Subpart C—General Provisions

§ 673.21 Program participation agreement.

To participate in the ICL Program, an institution shall enter into a participation agreement with the Secretary. The agreement provides that the institution shall use the funds it receives solely for the purposes specified in this part and shall administer the program in accordance with the Act, this part and the Student Assistance General Provisions regulations, 34 CFR Part 668. The agreement provides that the institution shall deposit and maintain these funds

in an interest-bearing account. The agreement further provides that—

(a) The institution shall establish and maintain a Fund and shall deposit into the Fund—

(1) FCC appropriated under section 452(b) of the Act:

(2) ICC equal to at least one-ninth of the FCC described in paragraph (a)(1) of this section;

(3) Repayments of principal and interest;

(4) Penalty charges collected under § 673.41 (b) and (c).

(5) Any other earnings of the Fund including any interest earned on the funds listed in paragraphs (a)(1) through (4) of this section; and

(6) Any short term, no-interest loans the institution makes to the Fund in anticipation of collections or receipt of FCC.

(b) The institution shall use the money in the Fund only for—

(1) Making ICLs to students;

(2) Administrative expenses as provided for in § 673.31;

(3) Capital distributions in accordance with section 466 of the Act;

(4) Litigation costs;

(5) Other collection costs, agreed to by the Secretary in connection with the collection of principal, interest, and penalty charges on a loan made from the Fund; and

(6) Repayment of the short term, no-interest loans made to the Fund by the institution in anticipation of collections or recept of FCC.

(c) At least annually, the institution shall submit a report to the Secretary which contains information on loans in default—

(1) 120 days or more for loans repayable in monthly installments; or

(2) 180 days or more for loans repayable in less frequent installments;

(d) If a loan is in default despite due diligence on the part of the institution in collecting the loan, the institution may assign its rights to the loan to the United States without recompense.

(e) To assist institutions in collecting outstanding loans, the Secretary provides to an institution the names and addresses of borrowers or other information relevant to collection which is available to the Secretary.

(f) The Secretary may require that the institution restore to the Fund the outstanding principal balance, accrued interest, and any administrative cost allowance it received for an ICL if the institution—

(1) Improperly disbursed the loan; or

(2) Failed to exercise due diligence in its collection of the defaulted loan.

(Authority: 20 U.S.C. 1087c)

(Approved by the Office of Management and Budget under control number 1840-0589)

§ 673.22 Student eligibility and selection requirements.

(a) *Eligibility.* A student is eligible to receive funds under the Income Contingent Loan Program at an institution of higher education if the student—

(1) Is a regular student:

(2) Is enrolled or accepted for enrollment as at least a half-time undergraduate student in an eligible program at that institution in accordance with § 673.11(b);

(3)(i) Has a high school diploma or recognized equivalent; or

(ii) Is beyond the age of compulsory school attendance in the State in which the institution he or she is attending is located and has the ability to benefit from the education or training offered by that institution;

(4)(i) Is a U.S. citizen or national;

(ii) Is a permanent resident of the U.S.;

(iii) Provides evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(iv) Is a permanent resident of the Trust Territory of the Pacific Islands, or the Northern Mariana Islands;

(5) Except as provided in paragraph (e)(2) of this section, has financial need. A member of a religious order (an order, community, society, agency, or organization) who is pursuing a course of study at an institution of higher education is considered to have no financial need if that religious order—

(i) Has as its primary objective the promotion of ideals and beliefs regarding a Supreme Being;

(ii) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(iii) Directs the member to pursue the course of study or provides subsistence support to is members;

(6) Is maintaining satisfactory progress in the course of study he or she is pursuing according to the standards and practices of that institution:

(7) Does not owe a refund on a grant awarded under the Pell Grant, SEOG or SSIG programs to meet the cost of attending any institution:

(8) Is not in default on any loan made or guaranteed under the Title IV HEA programs to meet the cost of attending any institution; and

(9) Receives a preliminary or final determination from the institution of the student's eligibility or ineligibility for a Pell Grant.

(b) *Overpayment.* Overpayment of a grant means that a student's grant payments are greater than the amount he or she is entitled to receive. A student who owes a refund on a Pell Grant, SEOG, or SSIG due to an overpayment is eligible to receive a ICL under the following conditions:

(1)(i) *Overpayment of Pell Grant.* If an institution makes an overpayment of a Pell Grant to a student, that student is eligible to receive an ICL if—

(A) The student is otherwise eligible: and

(B) The institution can eliminate the overpayment in the award year in which it occurred by adjusting subsequent Pell Grant payments for that award year.

(ii) *Overpayment of a Pell Grant due to institutional error.* If the institution makes an overpayment of a Pell Grant as a result of its own error and cannot correct it as specified in paragraph (b)(1)(i)(B) of this section, it may continue to disburse an ICL to that student if the student—

(A) Is otherwise eligible; and

(B) Acknowledges in writing the amount of overpayment and agrees to repay it in a reasonable period of time.

(2) *Overpayment of an SEOG or SSIG.* If an institution makes an overpayment of an SEOG or SSIG to a student, that student is eligible to receive an ICL if—

(i) The student is otherwise eligible; and

(ii) The institution can eliminate the overpayment by adjusting financial aid payments (other than Pell Grants) in the same award period in which the overpayment occurred.

(c) *Default on loans.* If a student is in default on a loan made or guaranteed under any title IV HEA Program for attendance at any institution, the institution may nevertheless make an ICL payment to that student under the following conditions:

(1)(i) *Guaranteed loans.* An institution may make an ICL or continue to advance funds to a student who is in default on a loan guaranteed under any Title IV HEA program if the Secretary (for a Federal insured loan) or a guarantee agency (for a loan insured by that guarantee agency) determines that the student has made satisfactory arrangements to repay the defaulted loan.

(ii) *Reliance on student's statement.* An institution, in determining whether a student is in default on a loan guaranteed under any Title IV HEA program, may rely upon the student's written statement that he or she is not in default, unless the institution has information to the contrary.

(2) *Perkins Loan.* An institution may make an ICL to a student who is in default on a National Defense/Direct Student Loan or Perkins Loan if the institution that made the loan, or the Secretary, if the loan has been assigned to the Department of Education, certifies that the student has made satisfactory arrangements to repay that loan.

(d) *Bankruptcy.* The Secretary does not consider a loan made or guaranteed under a Title IV HEA program that is discharged in bankruptcy to be in default for purposes of paragraph (c) of this section.

(e) *Selection.* (1) An institution shall make ICLs reasonably available within each award year to the extent of available funds first to all eligible students who demonstrate financial need for the loan.

(2) An institution may then use those funds that remain available to make ICLs to eligible students who have not demonstrated financial need for the loan.

(3) The institution shall establish selection procedures and these procedures must be—

(i) Uniformly applied;

(ii) In writing; and

(iii) Maintained in the institution's files.

(4) The institution shall not make an ICL to a student who is unwilling to repay that loan. Default on a previous loan including a defaulted loan discharged in bankruptcy is evidence of that unwillingness.

(Authority: 20 U.S.C. 1087d)

§ 673.23 ICL loan maximums.

(a) *Annual amounts.* The maximum amount a student may borrow under the ICL program in an academic year is—

(1) $2,500 for a student enrolled in the first and second academic year of undergraduate study;

(2) $3,500 for a student enrolled in the third academic year of undergraduate study; and

(3) $4,500 for a student enrolled in the fourth and fifth academic years of undergraduate study.

(b) *Aggregate amounts.* The maximum aggregate amount an eligible student may borrow under the ICL program is $17,500.

(Authority: 20 U.S.C. 1087d(a))

§ 673.24 Allowable costs of attendance—1987–88.

(a) *General.* (1) Except as provided in paragraph (d) of this section a student's cost of attendance means—

(i) The tuition and fees charged to a full-time student for an academic year by the institution he or she is attending as determined under paragraph (b) of this section;

(ii) An allowance for room and board expenses for an academic year, as determined under paragraph (c) of this section;

(iii) A reasonable allowance determined by the institution for books and supplies for an academic year;

(iv) A reasonable allowance determined by the institution for transportation for an academic year. This allowance may include—

(A) The cost of travel between the student's residence and the institution; and

(B) The cost of travel required for completion of a course of study;

(v) A reasonable allowance determined by the institution for miscellaneous personal expenses for an academic year;

(vi) A reasonable allowance determined by the institution for an academic year for expenses related to study abroad for students enrolled in an academic program which normally includes a formal program of study outside the United States;

(vii) A reasonable allowance determined by the institution for expenses for an academic year related to child care for a student's dependent children; and

(viii) A reasonable allowance determined by the institution for a handicapped student's expenses for an academic year related to his or her handicap, if these expenses are not provided for by any other assisting agency or program. This allowance may include expenses related to special services, transportation, equipment and supplies.

(2) The institution shall take into account when determining a student's cost of attendance—

(i) The period for which financial assistance is awarded; and

(ii) Whether the student is enrolled on a full-time or less than full-time basis.

(b) *Tuition and fees.* (1) An institution shall determine the tuition and fees charged a full-time student by calculating—

(i) The actual amount charged the full-time student for tuition and fees for an academic year; or

(ii) The average amount it charges full-time undergraduate students for tuition and fees for an academic year.

(2) If an institution establishes its tuition and fee charges on a residency requirement basis (e.g., In-State and Out-of-State) and elects to calculate an average charge for tuition and fees, it shall establish a separate average charge for each different residency based classification.

(3) An institution may determine a separate average charge for any other distinct classification upon which it bases tuition and fee charges.

(c) *Room and board.* (1) The institution shall calculate a student's room and board allowance as follows—

(i) For a student who has no dependents and lives with his or her parent(s), an allowance of not less than $1,100;

(ii) For a student who has no dependents and lives in institutionally owned or operated housing—

(A) The actual amount charged the student for room and board for an academic year; or

(B) A standard allowance based on the average amount it charges most of its student residents for room and board for an academic year;

(iii) For a student who has no dependents and does not live with his or her parent(s) or in institutionally owned or operated housing, a standard allowance determined by the institution for room and board for an academic year; or

(iv) For a student who has dependents, an allowance determined by the institution for room and board for an academic year based upon expenses incurred by the student and his or her dependent(s).

(2) For purposes of this section, a spouse is considered a dependent.

(d) *Attendance costs for students in correspondence study programs.* The cost of attendance for a student enrolled in a correspondence study program means—

(1) Actual tuition and fees charged to the student for an academic year;

(2) A reasonable allowance determined by the institution for books and supplies for an academic year, if required for the completion of the program; and

(3) If incurred in fulfilling a required period of residential training, expenses for—

(i) Room and board; and

(ii) Travel between the student's residence and the institution.

(e) *Adjustments.* An institution may, in individual cases, adjust a student's cost of attendance if the cost of attendance calculated under paragraphs (a) through (d) of this section is not a reasonable approximation of the student's actual costs.

(f) *Required documentation.* An institution shall prepare and retain a written explanation of the cost of attendance figures established under this section.

(Authority: 20 U.S.C. 1087d)

§ 673.25 Expected family contribution—1987-88.

(a) *Annual determinations.* An institution shall determine a student's financial need at least annually.

(b)(1) To determine a student's financial need, an institution shall determine the student's EFC.

(2) To determine an EFC for the period of the student's award, an institution shall use one of the approved systems of need analysis as provided in § 673.26.

(c) *Native American students.* In determining a Native American's EFC, an institution may not consider the following as income or assets of the student and his or her spouse or parent(s):

(1) Awards made under Pub. L. (98–64, the Distribution of Judgment Funds Act (25 U.S.C. 1401 *et seq.*), the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), and the Maine Indian Claims Settlement Act (25 U.S.C. 1721 *et seq.*) However, if the awards under the first or second Acts individually exceed $2,000 only the awards under each of those Acts in excess of $2,000 shall be considered income or assets of the student or the student's spouse or parents;

(2) Property that may not be sold or encumbered without the consent of the Secretary of the Interior.

(3) Any other property held in trust by the U.S. Government for the student or the student's spouse or parent(s).

(d) *Adjustments.* An institution may, in individual cases, adjust an EFC computed according to one of the approved need analysis systems, as provided in § 673.26, if—

(1) The EFC does not accurately reflect the student's, spouse's, or parent's ability to contribute; or

(2) The relationship between a student and his or her parents makes it unreasonable to expect the parents to contribute to the student's cost of attendance, regardless of their ability to do so.

(Authority: 20 U.S.C. 1087d)

(Approved by the Office of Management and Budget under control number 1840–0589)

§ 673.26 Approved need and analysis systems—1987–88.

(a)(1) An institution shall use a need analysis system which is approved by the Secretary in determining a student's EFC.

(2) Any system of need analysis approved by the Secretary—

(i) Must consider in determining the amount a dependent student and his or her spouse and parent(s) are expected to contribute toward the student's costs of attendance—

(A) The number of the parents' dependent children;

(B) The number of the parents' dependent children attending institutions of higher education;

(C) Tuition costs of dependent children attending elementary and secondary schools; and

(D) Any unusual expenses of the student or the student's family, such as unusual medical or dental expenses;

(ii) Must consider in determining the amount an independent student and his or her spouse are expected to contribute toward the student's costs of attendance, the student's dependent children; and

(iii) Must produce expected parental contributions that—

(A) Increase incrementally and the parents' financial strength, measured in constant dollars, increases; and

(B) Are equal for parents of equal financial strength.

(3) The Secretary preapproves the need analysis systems described in paragraph (b) of this section, and approves other systems that meet the requirements of this section.

(b) *Preapproved systems for dependent and independent students.* The Secretary preapproves the following need analysis systems—

(1) The system that produces the expected family contribution number (FC) printed on the Student Aid Report provided to the student by the Secretary; and

(2) The EFC used in the Pell Grant Program (34 CFR Part 690).

(c) *Application requirements.* (1) An individual or organization wishing to have a need analysis system approved for an award year shall submit to the Secretary before the closing date published in the **Federal Register** the following:

(i) A complete description of its system of need analysis for dependent and independent students.

(ii) Its student application form(s) for undergraduate students.

(iii) The expected parental contributions its system produces for dependent undergraduate students under the sample cases published by the Secretary if the majority of students to be served by its system are undergraduates.

(iv) A complete calculation of how each expected parental contribution is derived, including enough information to allow the Secretary to duplicate these calculations and results.

(2) The Secretary does not accept the information specified in paragraph (c)(1) of this section in the form of computer programs, software, or mechanical devices.

(d) *Expected parental contributions and sample cases.* (1) For each award year, the Secretary publishes in the **Federal Register** sample cases and expected parental contributions for dependent undergraduate students.

(2) The Secretary computes the expected parental contributions for undergraduate dependent students by using sample cases which—

(i) Are based on families of varying sizes with two parents, the older of whom is 45 and is the sole wage earner, and one dependent undergraduate;

(ii) Deduct from the adjusted gross income of the student's working parent—

(A) The amount of Federal income tax (based on a joint return with standard deductions) and social security tax;

(B) An 8 percent allowance on taxable income for State and other taxes; and

(C) A Standard Maintenance Allowance for the family (excluding the applicant during the academic year) using the Department of Labor's , estimates for a low budget standard of living;

(iii) Determine the parents' Discretionary Net Worth by deducting a Home and Other Asset Protection Allowance from the net market value of the parents' assets;

(iv) After considering the parents' available income, apply an asset conversion, rate against the parents' Discretionary Net Worth;

(v) Add the amounts determined under paragraph (d)(2)(ii) and (d)(2)(iv) of this section; and (vi) Apply to the amount determined under paragraph (d)(2)(v) of this section, taxation rate schedules for undergraduate students.

(3) The expected parental contributions published by the Secretary do not take into account—

(i) More than one family member attending an institution of higher education as an undergraduate, or graduate or professional student;

(ii) Business or farm assets;

(iii) Nontaxable income;

(iv) Unusual medical or dental expenses;

(v) Other unusual expenses; and

(vi) Elementary and secondary tuition expenses.

(4) In comparing figures from systems submitted for approval with figures from sample cases, the Secretary treats an expected parental contribution of less than zero as zero.

(5) To insure measurement in constant dollars, the Secretary revises sample case figures for inflation annually by adjusting—

(i) Deductions for family maintenance;

(ii) The standard deduction from assets; and

(iii) The rate of contribution from income and assets.

(e) *Approval of systems.* (1) The Secretary approves systems of need analysis for an award year if those systems—

(i) Satisfy the criteria set forth in paragraph (a)(2) of this section; and

(ii) Produce expected parental contributions that are within $50 in 75 percent of the sample cases published by the Secretary.

(2) If the Secretary approves an individual's or organization's system for dependent undergraduate students, the Secretary also approves that individual's or organization's system for independent undergraduate students.

(3) For each award year, the Secretary publishes in the Federal Register a list of approved need analysis systems that institutions shall use in calculating awards for that year.

(Authority: 20 U.S.C. 1087d)

(Approved by the Office of Management and Budget under control number 1840-0589)

§ 673.27 Overaward.

(a) *Overaward prohibited.* *(1) An institution may only award or disburse an ICL to a student selected pursuant to § 673.22(e)(1) if the ICL, when combined with the other resources the student receives, does not exceed the student's financial need.

(2) When awarding and disbursing an ICL to a student, the institution must take into account those resources it—

(i) Can reasonably anticipate at the time it awards ICL funds to the student;

(ii) Makes available to it students; or

(iii) Knows about.

(3)(i) If a student receives additional resources before the institution advances the ICL, and the total resources including the ICL exceed the student's need, and the excess is not from employment, the overaward is the amount that exceeds need.

*(ii) If a student receives additional resources after the institution advances the ICL, and the total resources including the ICL exceeds the student's need by $200 or more and the excess is not from employment, the overaward is the amount that exceeds $199.

*(4) If a student earns more money from employment than the institution anticipated or could have reasonably anticipated when it awarded or disbursed the ICL, the institution shall treat the earnings in accordance with paragraph (d) of this section.

*(b) *Resources.* (1) The Secretary considers that "resources" include, but are not limited to, any—

(i) Funds the students is entitled to receive from a Pell Grant, regardless of whether the student applies for the Pell Grant;

(ii) Waiver of tuition and fees;

(iii) Scholarship or grant, including ROTC or an athletic scholarship;

(iv) Fellowship or assistantship;

(v) Insurance programs for the student's education;

(vi) Veterans benefits;

(vii) Net earnings from employment, other than CWS employment for the period of the award except as provided in 34 CFR 675.23; and

(viii) Except as provided in paragraph (b)(3) of this section, long-term loans, including ICLs, made by the institution pursuant to § 673.22(e)(2); and

(ix) Loans made under the GSL Program.

(2) The Secretary does not consider as a resource any portion of the resources described in paragraph (b)(1) of this section that are included in the student's EFC.

(3) The student may use an ICL made pursuant to §673.22(e)(2), Supplemental Loans for Students (SLS), State-sponsored or private loan programs, or PLUS loans to substitute for his or her expected family contribution. However, if the loan amounts received under § 673.22(e)(2) and under the PLUS or SLS program individually or collectively exceed the student's expected family contribution, the excess is a resource.

(c) *Liability for and recovery of overpayments.* (1) The student is liable for any overpayment of ICL advances made to him or her.

(2) The institution is also liable for an overpayment if the overpayment occurred because it failed to follow the procedures set forth in this Part. The institution shall restore an amount equal to the overpayment and any administrative cost allowance claimed on that amount to its ICL fund even if it cannot collect the overpayment from the student.

(3) If an institution makes an overpayment for which it is not liable, it must help the Secretary recover the overpayment by making a reasonble effort to contact the student and recover the overpayment.

(d) *Treatment of earnings in excess of need.* An institution shall take the following steps when it learns that a borrower has earned, or will earn, $200 or more over his or her financial need:

(1) The institution shall decide whether the student has increased financial need unanticipated when it awarded financial aid to the student. If the student does, no further action is necessary.

(2) If the student's earnings still exceed need by $200 or more after the institution subtracts any additional costs, it shall cancel any unpaid loan or grant (other than Pell Grants) to avoid exceeding need by more than $199.

(3) If the student's earnings still exceed his or her need by $200 or more after the institution takes the steps required in paragraphs (d) (1) and (2) of this section, and the student is enrolled for the next academic year, the institution shall consider the amount that exceeds $199 as a resource to help pay the student's cost of attendance in the following year.

(4) If the student's earnings still exceed his or her need by $200 or more after the institution takes the steps required in paragraph (d) (1) and (2) of this section, and the student is not enrolled for the next academic year, no further action is necessary.

(Authority: 20 U.S.C. 1087d)

§ 673.28 Coordination with BIA grants.

(a) To determine the amounts of an ICL for a student selected under § 673.22(e)(1) who is also eligible for a Bureau of Indian Affairs (BIA) education grant, an institution shall prepare a package of student aid—

(1) From resources other than the BIA education grant the student has received or is expected to receive; and

(2) That is consistent in type and amount with packages prepared for students in similar circumstances who are not eligible for a BIA education grant.

(b)(1) The BIA education grant, whether received by the student before or after the preparation of the student aid package, supplements that package.

(2) No adjustment may be made to the student aid package as long as the total of the package and the BIA education grant is less than the institution's determination of that student's financial need.

(c)(1) If the BIA education grant, when combined with other aid in the package, exceeds the student's need, the excess shall be deducted and may be deducted only from the other assistance, not the BIA education grant.

(2) The institution shall deduct the excess in the following sequence: loans, work-study awards, and grants other than Pell Grants. However, the institution may change the sequence if requested by a student and the institution believes the change benefits the student.

(d) To determine the financial need of a BIA/eligible student, a financial aid administrator is encouraged to consult

with area officials in charge of BIA postsecondary financial aid.

(Authority: 20 U.S.C. 1087d)

§673.29 Making and disbursing loans.

(a)(1) Before an institution makes its first disbursement to a student, the student shall sign the promissory note and the institution shall provide the student with the following information—

(i) The name of the institution and the address to which communications and payments should be sent;

(ii) The principal amount of the loan;

(iii) The applicable interest rate on the loan and, if a variable rate, the manner in which it will be determined over the life of the loan;

(iv) The yearly and cumulative maximum amounts that may be borrowed;

(v) An explanation of when repayment of the loan will begin and when the borrower will be obligated to pay interest that accrues on the loan;

(vi) The repayment terms which the institution may impose;

(vii) Special options the borrower may have for loan consolidation or other refinancing of the loan;

(viii) The borrower's right to prepay all or part of the loan, at any time, without penalty and a summary of the circumstances in which repayment of the loan or interest that accrues on the loan may be deferred or cancelled;

(ix) A definition of default and the consequences to the borrower including a statement that the default may be reported to a credit bureau or credit reporting agency;

(x) The effect of accepting the loan on the eligibility of the borrower for other forms of student assistance; and

(xi) Any cost that may be assessed on the borrower in the collection of the loan including penalties and collection and litigation costs.

(2) The institution shall provide the information in paragraph (a)(1) of this section to the borrower in writing—

(i) As part of the written application material;

(ii) As part of the promissory note; or

(iii) On a separate written form.

(b)(1) Except as provided in paragraphs (c) and (g) of this section, an institution shall advance in each payment period a portion of a loan awarded for a full academic year.

(2) The institution determines the amount advanced each payment period by the following fraction:

$$\frac{ICL}{N}$$

Where ICL = the total Income Contingent Loan awarded for an academic year and N = the number of payment periods that the institution expects the student will attend in that year.

(3) An institution may advance funds, within each payment period, at such time and in such amounts as it determines best meets the student's needs.

(c) If a student incurs uneven costs or resources during an academic year and needs additional funds in a particular payment period, the institution may advance ICL funds to the student for those uneven costs.

(d) The institution may advance the loan proceeds to the borrower directly by check or by crediting his or her account with the institution. The institution shall notify the student of the amount he or she can expect to receive, and how and when that amount will be paid. In either case, the borrower must sign for each advance of funds on the promissory note.

(e) Subject to the requirements of paragraph (f) of this section—(1) An institution may advance loan proceeds directly to a registered student no more than 10 days before the first day of classes of a payment period, and

(2) An institution may advance loan proceeds by crediting a registered student's account no more than 3 weeks before the first day of classes of a payment period.

(f)(1) The institution shall return to the ICL fund any funds advanced to a student who, before the first day of classes—

(i) Officially or unofficially withdraws; or

(ii) Is expelled.

(2) A student who does not begin class attendance is deemed to have withdrawn.

(g) Only one advance is necessary if the total amount the institution awards a student for an academic year under the ICL, Perkins Loan programs is less than $501.

(h) A correspondence student shall submit his or her first completed lesson before receiving an advance.

(i) If an institution computes a student's need using estimated data submitted before January 1 of the previous calendar year, the institution shall not pay the student unless it verifies that information.

(j) An institutional official shall not obtain a student's power of attorney to authorize any disbursement or to authorize any crediting of a student's account.

(Authority: 20 U.S.C. 1087c; 1087d)

(Approved by the Office of Management and Budget under control number 1840-0589)

§ 673.30 Federal interest in allocated funds—transfer of Fund.

(a) Funds received by an institution under the ICL program, including repayments on loans, are held in trust for the intended student beneficiaries. Funds may not be used or hypothecated (i.e., serve as collateral) for any other purpose.

(b)(1) If an institution responsible for an ICL fund closes or no longer wants to participate in the program, the Secretary directs the institution to take the following steps to protect the outstanding loans and the Federal interest in that Fund:

(i) A capital distribution of the liquid assets of the Fund according to section 466(c) of the Act;

(ii)(A) The transfer of the outstanding loans to another institution; or

(B) The transfer of the outstanding loans to the Department of Education.

(2) The Secretary considers cost of collecting the transferred outstanding loans to be equal to the institutional share of those loans.

(3) If the Secretary directs that the outstanding loans be transferred to a second institution, the second institution may deposit the collections on those loans in its own Fund. The Secretary considers the first institution's share of those collections to be the second institution's ICC.

(4) If the Secretary directs that the outstanding loans be transferred to the Department of Education, the Secretary may use the institutional share of those collections to pay collection costs.

(5) If more than one institution offers to collect the outstanding loans, the Secretary directs that the loans be transferred to one or more of the competing institutions on the basis of—

(i) The institution's demonstrated loan collection capability; and

(ii) The number of students of the first institution expected to enroll in the second institution.

(6) The Secretary does not take an audit exception against a transferee institution on account of actions or omissions of the transferor institution in the administration of its Fund. The transferee institution shall segregate the transferred Fund account until an audit satisfactory to the Secretary is performed on the operation of the transferor institution's program.

(Authority: 20 U.S.C. 1087d)

§ 673.31 Use of funds.

(a) *General.* An institution shall deposit the funds it receives under the

ICL program into its Fund. It may use these funds only for making loans and the other activities specified in § 673.21(b).

(b) *Administrative cost allowance.* (1) An institution participating in the ICL program for an award year is entitled to an administrative cost allowance if it advances funds to students in that year.

(2) For any award year, the maximum amount of the allowance equals five (5) percent of the institution's expenditures in that award year under the ICL Program.

(3) An institution shall use its administrative cost allowance to offset its costs of administering the ICL Program. Administrative costs also include the expenses incurred for carrying out the student consumer information services requirements of Subpart D of the Student Assistant General Provisions regulations, 34 CFR Part 668.

(4) An institution shall charge any administrative costs against its Fund during the same award year in which the expenditures for these costs were made.

(Authority: 20 U.S.C. 1087c)

§ 673.32 Fiscal procedures and records.

(a) *Fiscal procedures.* (1) In administering its ICL program, an institution shall establish and maintain an internal control system of checks and balances that ensures that no office can both authorize payments and disburse funds to students.

(2) A separate bank account for Federal funds is not required, except as provided in paragraph (b) of this section. However, an institution must notify any bank in which it deposits Federal funds of all accounts in that bank in which it deposits Federal funds. The institution may give this notice by either—

(i) Including in the name of the account the fact that Federal funds are deposited; or

(ii) Notifying the bank in writing of the accounts in which it deposits Federal funds. The institution must retain a copy of this notice in its files.

(b) *Account for ICL Fund.* (1) An institution must maintain all the cash of its ICL Fund in a separate, federally insured interest-bearing bank account that contains no other funds if the Secretary determines that the institution's accounting system and internal controls do not—

(i) Meet the requirements of paragraph (c) of this section, paragraph (d) of this section, or both;

(ii) Identify the cash balance of the ICL Fund as readily as if the Fund were maintained in a separate bank account; or

(iii) Adequately identify the earnings of the Fund.

(2) The Secretary makes that determination on the basis of an audit examination or as a result of a program review.

(3) That separate bank account must be identified as the institution's Federal ICL Fund account and must contain all the cash of the institution's ICL Fund. That cash includes Federal capital contributions, institutional capital contributions, repayments made by borrowers, and any earnings of the Fund including interest.

(c) *Deposit of ICC into Fund.* An institution shall deposit its ICC into its Fund prior to or at the same time it deposits any FCC.

(d) *Records and reporting.* (1) An institution shall establish and maintain on a current basis financial records that reflect all program transactions. The institution shall establish and maintain general ledger control accounts and related subsidiary accounts that identify each program transaction and separate those transactions from all other institutional financial activity.

(2) The institution shall also establish and maintain program and fiscal records that—

(i) Are reconciled at least monthly;

(ii) Identify each student's account and status;

(iii) Show the eligibility of each student aided under the program; and

(iv) Show how the need was met for each student.

(3) Each year an institution shall submit a program and fiscal report. The institution shall insure that the information reported is accurate and shall submit it on the form and at the time specified by the Secretary.

(4) The institution shall maintain on file all ICL applications for those students it reports on the program and fiscal report.

(5) The institution shall maintain all records relating to its applications for funds under this part.

(e) *Retention of records*—(1) *Records.* Each institution shall keep intact and accessible records pertaining to the application for and receipt and expenditure of Federal funds, including all accounting records and original and supporting documents necessary to document how the funds are spent.

(2) *Period of retention.* Except for loan records and audit questions, an institution shall keep records for an award year for five years after it submits its program and fiscal report.

(3) *Loan records.* (i) An institution must maintain a repayment history for each borrower. This repayment history must show the date and amount of each repayment over the life of the loan. It must also indicate that amount of each repayment credited to principal and interest respectively.

(ii) This history shall also show the date, nature, and result of each contact with the borrower or proper endorser in the collection of an overdue loan. The institution shall include in the repayment history copies of all correspondence to or from the borrower and endorser, except routine bills, routine overdue notices, and routine form letters.

(iii) An institution shall retain repayment records, including cancellation and deferment requests, for at least 5 years from the date of the loan's final repayment or cancellation.

(iv) An institution shall keep the original promissory notes and repayment schedules in a locked, fireproof container until the loan obligations are satisfied. The institution shall then return the original notes to the borrower marked paid in full. Only authorized personnel may have access to these documents.

(4) *Separate ICL records.* An institution shall keep ICL cancellation records separate from cancellation records on Perkins Loan, National Defense Student Loans, and National Direct Student Loans.

(5)(i) *Microfilm or computer records.* (i) An institution may keep the records required in this section (except those listed in paragraph (e)(3)(iv) of this section) on microfilm or in computer format.

(ii) If the institution keeps its records in computer format it shall maintain, in either hard copy or microfilm, the source documents supporting the computer input.

(6) *Audit question.* An institution shall keep records on any claim or expenditure questioned by Federal or non-Federal audit until resolution of any audit questions.

(Authority: 20 U.S.C. 1087c)

(Approved by the Office of Management and Budget under control number 1840–0589)

§ 673.33 Compliance with equal credit opportunity requirements.

(a) In making an ICL an institution shall comply with the equal credit opportunity requirements of Regulation B (12 CFR Part 202).

(b) The Secretary considers the ICL program to be a credit assistance program authorized by Federal law for the benefit of an economically disadvantaged class of persons within the meaning of 12 CFR 202.6(a)(1). There fore, the institution may request a loan applicant or recipient to disclose

his or her marital status, income from alimony, child support, and spouse's income and provide the spouse's signature.

(Authority: 20 U.S.C. 1087d)

(Approved by the Office of Management and Budget under control number 1840-0589)

Subpart D—Loan Terms and Conditions

§ 673.41 Permissible charges to students.

(a) *Interest*—(1) *Rate.* (i) The rate of interest that may be charged on an ICL must be, at the discretion of the institution,—

(A) A fixed rate set at the rate determined in accordance with paragraph (a)(1)(ii) of this section for the calendar year in which the first disbursement is made; or

(B) A variable rate determined in accordance with paragraph (a)(1)(ii) of this section for each calendar year.

(ii) The applicable interest rate is the average bond equivalent rate of the 91-day Treasury bills for the quarter ending September 30 of the preceding calendar year plus three percent.

(2) *Accrual.* Interest accrues on the outstanding principal balance of an ICL from the date of disbursement of funds to the borrower.

(3) *Capitalizing interest.* The institution must add accrued unpaid interest to the principal balance of an ICL annually.

(b) *Late charges.* (1) The institution shall require that the borrower pay a late charge if the borrower fails—

(i) To repay all or part of a scheduled repayment when due; or

(ii) To submit the income information required to determine the annual repayment obligation by November 1.

(2) The institution shall determine the amount of the late charge based on either—

(i) Actual costs incurred in attempting to secure the required payment or information from the borrower; or

(ii) The average cost incurred for similar attempts to secure required payments or information from other borrowers.

(3) The institution may not require a borrower to pay charges imposed under this paragraph in an amount exceeding 20 percent of the most recent installment payment.

(c) *Collection charges.* The institution shall require that the borrower pay the institution for certain reasonable costs incurred by the institution or its agent in collecting any installment not paid when due in accordance with provisions of Subpart E.

(d) *Non-authorized charges.* No charges other than those authorized by this section may be passed on to the borrower, either directly or indirectly. Examples of charges that are not permitted are as follows:

(1) Costs other than those described in paragraphs (b) and (c) of this section associated with preparing letters or notices or making personal contacts or local telephone calls.

(2) Fees charged by a servicing or collection agency, to the extent they exceed permissible charges.

(3) Loan orgination fees.

(Authority: 20 U.S.C. 1087d; 20 U.S.C. 1091a(b))

§ 673.42 Promissory note.

(a) *Promissory note.* (1) An institution may use only an ICL promissory note which the Secretary has approved.

(2) The Secretary has approved the promissory note set forth in Appendix A. The institution shall not change the substance of the note set forth in the Appendix without the Secretary's approval.

(3) The institution—

(i) Shall print the note on one page, front and back; or

(ii) May print the note on more than one page if

(A) The note requires the signature on each page by the borrower and any endorser; or

(B) Each page of the note states both the total number of pages in the complete note as well as the number of each page, *e.g.*, page 1 of 4, page 2 of 4.

(4) An institution shall not record on a single promissory note advances made under a fixed interest rate loan agreement with advances made under a variable interest rate loan agreement.

(5) If the institution records on a single promissory note advances made for an award year under a fixed interest rate loan agreement with advances made during any other award year, the institution shall identify on the note the applicable interest rate for each advance.

(b) *Provisions of the promissory note.*–(1) *Interest* The promissory note must state that—

(i) The applicable interest rate on the loan as determined in § 673.41(a)(1);

(ii) The manner in which that interest rate is determined and, if that rate is a variable rate, the way in which that rate will be calculated throughout the life of the loan; and

(iii) That interest shall accrue beginning on the day of disbursement and ending on the day that all principal, interest, and charges on the loan are satisfied.

(2) *Repayment.* (i) The promissory note must state that the repayment period—

(A) Begins 9 months after the month in which the borrower ceases to be at least a half-time regular student at an institution of higher education or a comparable institution outside the U.S. approved for this purpose by the Secretary;

(B) May begin earlier at the borrower's request; and

(C) Varies based on the frequency and amount of payments made under the income contingent repayment plan; and

(ii) The promissory note must state that the borrower shall repay the loan in equal quarterly, bimonthly, or monthly installments established and periodically modified by the institution.

(3) *Cancellation.* The promissory note must state that the unpaid balance of the loan shall be cancelled upon the death or total and permanent disability of the borrower.

(4) *Prepayment.* The promissory note must state that—

(i)The borrower may prepay all or part of the loan at any time without penalty;

(ii) The institution shall use amounts repaid during the academic year in which the loan was made to satisfy any accrued interest first and then to reduce the original loan amount, and shall not consider these amounts to be prepayments; and

(iii) If a borrower repays more than the amount then due under the repayment plan, the institution shall use the excess to prepay the principal unless the borrower designates it as an advance payment of the next regular installment.

(5) *Late charge.* (i) An institution may state in the promissory note that the institution will charge a late charge of up to 20 percent of the amount of the borrower's installment payment most recently required if the borrower does not—

(A) Repay all or part of a schedule repayment when due;

(B) File a timely request for cancellation or deferment with the institution. This request must include sufficient evidence to enable the institution to determine whether the borrower is entitled to a cancellation or deferment; or

(C) Submit the required income information to the institution by November 1 of each calendar year in accordance with § 673.43(b)(4).

(ii) The institution may—

(A) Add the late charge to the principal the day after the scheduled repayment was due; or

(B) Demand payment of the late charge from the borrower with the next

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scheduled repayment after the borrower receives notice of the late charge.

(6) *Security and endorsement.* The promissory note must state that the loan shall be made without security and endorsement unless—

(i) The borrower is a minor; and

(ii) Under applicable State law, a note signed by a minor would not create a binding obligation.

(7) *Acceleration.* The promissory note must state that an institution may demand immediate payment of the entire loan, including any penalty charges and accrued interest if the borrower does not—

(i) Make a scheduled repayment on time;

(ii) File cancellation or deferment form(s) with the institution on time; or

(iii) Submit the income information required under § 673.43(b)(3) for a calendar year despite repeated requests by the institution.

(8) *Cost of collection.* The promissory note must state that the borrower must pay all attorney's fees and other loan collection costs and charges.

(Authority: 20 U.S.C. 1087; 20 U.S.C. 1091a)

(Approved by the Office of Management and Budget under control number 1840–0589)

§ 673.43 Repayment plan.

(a) *General.* The institution shall use—

(1) The repayment plan set forth in this section; or

(2) An alternative income contingent repayment plan which has been approved by the Secretary.

(b) *Payment obligation.*

(1) The institution shall determine the payment obligation of the borrower for each calendar year of the repayment period as a percentage of the adjusted gross income of the borrower, and, if married at any time during the repayment period, of his or her spouse, determined according to the provisions of this paragraph.

(2) The institution may require the borrower to make monthly, bimonthly, or quarterly installment payments.

(3) In order to permit the institution to determine the annual repayment obligation of the borrower, the borrower shall submit the following to the institution by November 1 of each year of the repayment period:

(i) If the borrower or the spouse of the borrower filed a Federal income tax return for the base income year, a copy of those pages of this return which—

(A) Bear the signatures of the person or persons who filed the return; and

(B) Contain the statement of the adjusted gross income for the base income year of the person or persons who filed a return.

(ii) If the borrower or the spouse of the borrower did not file a Federal income tax return for the base income year, documentation of the amount and sources of all taxable income of the non-filer for the base income year.

(iii) If the institution determines that the income data from the base income year, as adjusted in accordance with this paragraph, may not accurately reflect the borrower's ability to repay during the year for which the institution is calculating the repayment obligation, documentation of the amount and sources of taxable income to the borrower and his or her spouse for the current year.

(4) The institution shall determine the adjusted gross income of the borrower and his or her spouse for purposes of this section by multiplying the adjusted gross income or taxable income, as appropriate, derived from information submitted in accordance with paragraph (b)(3) of this section, by an inflation factor announced annually by the Secretary.

(5) Subject to paragraph (b)(6) of this section, the institution shall calculate the borrower's annual repayment obligation as a percentage of the adjusted gross income as determined under paragraph (b)(4) of this section. The institution shall use the following matrix:

INCOME-CONTINGENT LOAN REPAYMENT RATES: PERCENT OF INCOME DUE AS LOAN REPAYMENT

Year of repayment	Opening ICL balance		
	Up to $10,000	$10,000–$19,999	$20,000 and above
Initial repayment period	5	5	5
Year 3	7	9	10
Years 4 and 5	8	10	11
Years 6, 7 and 8	9	11	12
Years 9 and beyond	10	12	12

(6)(i) The institution shall determine the repayment obligation for any year or portion of a year in the initial repayment period in accordance with the matrix set forth in paragraph (b)(5) of this section, unless information needed to determine the ability of the borrower to repay is not submitted in accordance with the requirements of paragraph (b)(3) of this section. If this information is not submitted as required, the institution shall establish the annual repayment obligation as—

(A) Seven percent of the opening ICL balance, for a borrower with an opening ICL balance of less than $10,000;

(B) Six percent of the opening ICL balance, for a borrower with an opening ICL balance between $10,000 and $19,999; or

(C) Five percent of the opening ICL balance, for a borrower with an opening ICL balance of $20,000 or more.

(ii) The institution shall determine the repayment obligation for that part of the initial repayment period preceding the first full calendar year of repayment by—

(A) Determining the repayment obligation of the borrower in accordance with paragraph (b)(6) of this section;

(B) Dividing that amount by 12; and

(C) Multiplying the amount determined in paragraph (b)(6)(ii)(B) of this section by the number of complete months in the period for which the obligation is to be established.

(iii) The institution may, with the consent of the borrower, adjust the annual repayment obligation up to a level of 15% of the borrower's adjusted gross income to cover the annual accruing interest.

(iv) If the borrower demonstrates to the institution that both the borrower and his or her spouse will be in a repayment status on ICLs—

(A) The opening ICL account balance of the borrower and his or her spouse must be summed;

(B) The annual repayment obligation of the couple is determined using the matrix in paragraph (b)(5) of this section; and

(C) The annual repayment obligation of the borrower is determined by multiplying the total annual repayment obligation of the couple by the fraction of the summed opening ICL account balances of the couple owed by the borrower.

(Authority 20 U.S.C. 1087c; 20 U.S.C. 1087d)

(Approved by the Office of Management and Budget under control number 1840–0589)

§ 673.44 Deferment of repayment—financial hardship.

(a) *In-school deferment.* A borrower need not repay principal or interest during a period when a borrower is at least a half-time student at an institution of higher education or a comparable institution outside the U.S. approved by the Secretary for this puprose.

(b) *Financial hardship deferment.* A borrower need not repay principal or interest during a period in which an institution determines that the borrower is unable to make the scheduled repayments due to extraordinary circumstances. Periods of financial hardship deferment may not exceed three years in the aggregate over the entire repayment period.

(c) *Interest accrual.* Interest continues to accrue and is capitalized during a deferment period.

(d) *Requests for deferment.* In order to receive a deferment, a borrower must request the deferment in writing and provide the institution with documentation needed to establish eligibility for the deferment.

(e) *Loss of eligibility.* A borrower whose loan has been accelerated is not eligible for deferment on that loan.

(Authority: 20 U.S.C. 1087d(a))

§ 673.45 Cancellation for death or disability.

(a) *General.* An institution shall cancel the unpaid balance of an ICL without regard to the repayment status of the loan, if the borrower dies or becomes totally and permanently disabled, in accordance with this section.

(b) *Death.* An institution shall cancel the unpaid balance of an ICL on the basis of a death certificate or other evidence of death that is conclusive under State law.

(c) *Permanent and total disability.* (1) An institution shall cancel the unpaid balance of an ICL loan if the institution determines, based on medical evidence certified by a physician which the borrower or his or her representative supplies, that the borrower became permanently and totally disabled after receiving the loan.

(2) Permanent and total disability is the inability to work and earn money because of an impairment that is expected to continue indefinitely or result in death.

(Authority: 20 U.S.C. 1087d(a))

Subpart E—Due Diligence [Reserved]

Appendix A—Sample Promissory Note

Income Contingent Loan Program

I, ——— promise to pay to ——— (hereinafter called the Lending Institution) located at ——— the sum of the amounts that are advanced to me and endorsed in the Schedule of Advances set forth below. I promise to pay all attorney's fees and other reasonable costs and charges necessary for the collection of any amount not paid when due. I promise to pay interest on the outstanding balance owing on this loan, including late charges and collection costs, at the rate set forth in paragraph II of this note.

I further understand and agree that:

I. General

All sums advanced under this note are drawn from a fund created under Part D of Title IV of the Higher Education Act of 1965, as amended, hereinafter called the Act, and are subject to the Act and the Federal Regulations issued under the Act. The terms of this note shall be interpreted in accordance with the Act and Federal Regulations, copies of which are available from the Lending Institution.

II. Interest

Interest is charged on this loan from the date of disbursement of any funds under this loan agreement. The interest rate on funds advanced under this agreement is [check applicable paragraph]—

[ ] a fixed rate that is set at the time of the first advance of funds to me for an award year (July 1 through June 30). This fixed rate applies to all funds advanced to me for that award year until I repay those funds and any unpaid interest on those funds. This fixed rate is set at three percent over the average bond equivalent rate of 91-day U.S. Treasury bills for the calendar quarter ending on September 30 of the calendar year preceding the award year in which the first disbursement is made. The rate that applies to funds advanced to me under this agreement is set forth in the schedule of advances included in this note.

[ ] a variable rate that applies to all funds advanced to me under this loan agreement. This variable rate may change for each calendar year until I repay these funds and any unpaid interest on these funds. This variable rate is set at three percent over the average bond equivalent rate of 91-day U.S. Treasury bills for the quarter ending on September 30 of the calendar year before the calendar year for which the rate applies.

III. Repayment

(1) I promise to begin to repay the principal and the interest which accrues on it to the Lending Institution not later than nine (9) months after the date I cease to be at least a half-time regular student at an eligible institution of higher education or at a comparable institution outside the United States approved for this purpose by the United States Secretary of Education (hereinafter called the Secretary).

(2) I may, if I choose, begin the repayment period earlier than the date on which I would be required to begin in paragraph III(1).

(3) I promise to repay the principal, interest, and any other charges over the course of the repayment period in monthly, bimonthly, or quarterly installments, as determined by the Lending Institution. A copy of the current payment formula which the Lending Institution will use to calculate my annual repayment obligation is attached to this note, and is part of this repayment agreement. The payment formula is subject to change by Federal regulation, and such changes, if any, will become part of this repayment agreement. I understand, however, that in no case will my annual repayment obligation be greater than 15% of my adjusted gross income and that of my spouse.

(4) I promise to submit to the Lending Institution the information on my income and, if I am married at any time during the repayment period on this loan, the information on the income of my spouse necessary to calculate my annual payment obligation. I promise to submit this information by November 1 of each year. I understand that continued failure to submit this information will constitute a default on this loan.

IV. Prepayment

(1) I may, at my option and without penalty, repay all or any part of the outstanding balance of this loan at any time.

(2) The Lending Institution will use any amounts I prepay in the same academic year in which the loan was made to reduce the amount of the loan.

(3) If I repay more than the amount due for any installment, and I do not designate it as an advance payment of the next regular installment, the Lending Institution will use the excess amount to prepay principal.

V. Default

(1) I understand that the Lending Institution may declare my loan to be in default and require immediate payment of the entire unpaid balance of my loan, including accrued interest, late charges, and collection costs, if—

(A) I fail to make a scheduled repayment of any installment when due under the repayment schedule established by the Lending Institution, or

(B) Despite demand by the institution, I fail to submit information regarding my income, and the income of my spouse, needed to calculate my repayment obligation.

(2) I understand that if I default on my loan, the Lending Institution may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(3) I understand that after the Lending Institution accelerates the loan under paragraph V(1), I will then lose my right to defer repayments due after the date the Lending Institution accelerates the loan.

(4) I understand that failure to pay this obligation under the terms agreed upon will prevent my obtaining additional Federal financial aid.

VI. Deferment

The Lending Institution may permit me to defer making my scheduled repayments if it determines that extraordinary circumstances, such as illness or unemployment, prevent me from making those scheduled repayments or when I am enrolled as at least a half-time student at an institution of higher education. I understand that I must request this deferment in writing on a timely basis. Interest will continue to accrue on the unpaid balance of my loan during periods of deferment. The Lending Institution will add the amount of interest that accrues during a period of deferment to the balance of my loan.

VII. Death and Disability Cancellation

If I should die or become permanently and totally disabled, the total principal, interest, and other charges on this loan shall be cancelled.

VIII. Change in Name, Address, and Social Security Number

I understand that I, and any party signing this note as a comaker or endorser, must inform the Lending Institution of any change in my name, address, or social security number.

IX. Late Charges

(1) The Lending Institution may impose a late charge if I fail to make all or any part of a scheduled installment payment when it is due.

(2) The Lending Institution may impose a late charge if I fail to provide by November 1 of each year, the required income information necessary to calculate my annual payment obligation.

(3) This charge may be up to 20 percent of the amount of the installment payment then due.

(4)(A) The Lending Institution may either—

(i) Add the amount of the late charge to the principal on the day after the missed scheduled repayment was due; or

(ii) Require that I repay it with a future scheduled repayment.

(B) If the Lending Institution elects to add the assessed charge to the outstanding principal of the loan, it must so inform me before the due date of the next installment.

X. Prior Loans

I have listed below all of the ICL, Perkins Loans, and National Direct Student Loans (or National Defense Student Loans) I have obtained at other institutions. (If no prior loans have been received state "None.")

SCHEDULE OF ICL, PERKINS LOANS, NATIONAL DIRECT STUDENT LOANS AND NATIONAL DEFENSE STUDENT LOANS AT OTHER INSTITUTIONS

	Amount	Date	Institution
1			
2			
3			
4			

XI. Schedule of Advances

The following amounts were advanced to me on the dates indicated:

	Amount	Date	Interest rate	Signature of borrower
1				
2				
3				
4				

NOTICE TO BORROWER: DO NOT SIGN THIS NOTE BEFORE YOU READ IT. THE LENDING INSTITUTION MUST SUPPLY TO YOU AND ANY ENDORSER A COPY OF THIS NOTE.

[This notice is signed as a sealed instrument.]

Signature ———— [(seal)].

Date ———— 19——.

Permanent Address (Street or Box Number, City, State, and Zip Code) Social Security Number (endorser must provide)————.

The borrower and Lending Institution shall execute this note without security and without endorsement unless the borrower is a minor and this note would not, under the law of the State in which the Lending Institution is located, create a binding obligation. If the borrower is a minor and this note would not, therefore, be legally binding, the Lending Institution shall require the following endorsement:

Signature ———— [(Seal)].

Date———— 19——.

Permanent Address (Street or Box Number, City, State, and Zip Code) Social Security Number (borrower must provide)————.

Appendix B—Summary of Comments and Responses

[Editorial Note.—This appendix will not appear in the Code of Federal Regulations.]

Comments and Responses

General

Comment: One commenter commended the Secretary's attempt to develop a loan program that aims to respond to the varying circumstances faced by students upon graduation. Another commenter noted that it is important to keep an open mind in the development of a new program and that the higher education community looks forward to the results. Several commenters recognized that in times of budgetary constraints, the elimination of interest subsidies is a necessary step to ensure continued funding for student aid programs.

Response: The Secretary agrees with the commenters. The ICL Program is designed to be both cost-effective to the taxpayer by reducing interest subsidy and default costs and beneficial to borrowers by extending the repayment period and providing flexibility through repayment which is tied to the borrower's income.

Comment: Many commenters opposed the proposed ICL Program because they felt that this program places the entire burden of the student loan on the student without any benefit to the student other than a longer repayment period which would be offset by large amounts of accrued interest. These commenters stated that the proposed ICL concept will be hard for students to understand fully and that when the students discover the magnitude of their ICL debt they will be forced into bypassing low-paying, service-oriented careers, such as teaching, in favor of more lucrative careers. A number of commenters felt that this program would lead to increased student loan indebtedness and, as a result, to increases in defaults. Several commenters believe that this program would be particularly intimidating to low-income and minority students for whom the extended repayment period could cause the greatest difficulties. A number of commenters felt that the elimination of any interest subsidy by the Government is inappropriate and that the Government should be willing to continue to invest in higher education for students.

Response: The Secretary emphasizes that the Federal Government is willing to continue to invest in higher education for students. However, because students are the principal beneficiaries of college education, it is appropriate that they assume more of the burden for making use of this support. Moreover, in the ICL Program, the Secretary believes that the benefits to the students far outweigh any additional burden.

The Secretary strongly believes that income-sensitive repayment as implemented in these ICL regulations is an equitable and reasonable approach to student debt manageability. The ICL Program provides a great deal of flexibility for institutions and borrowers who can therefore tailor repayment terms to fit their financial circumstances. Furthermore, under the ICL Program, there is a limit on the percentage of income a borrower is required to devote to repayment, unlike other fixed-rate, fixed-term loans which require equal payment installments and repayment within a specific time frame. Rather than pressuring borrowers to avoid careers in low-paying, service-oriented occupations, the ICL repayment method clearly facilitates such career choices.

Comment: One commenter applauded the Secretary for the flexibility provided to institutions in the proposed rule. Other commenters felt that the proposed regulations were too long and detailed.

Response: No change has been made. In the proposed rule, the Secretary repeated applicable sections of the Perkins Loan Program regulations to provide institutions in one package with all regulations governing the operational aspects of the program. Therefore, although the proposed regulations were long, many provisions were merely duplications of the Perkins Loan Program. The Secretary believes that having all the regulations in one package will make the program easier for an institution to administer.

Certain aspects of the ICL Program are set by statute, while others, such as determination of need, are traditional aspects of Title IV student aid programs. However, in other matters the rule allows the institution considerable discretion in the manner in which it can operate an ICL project. For example, the rule would allow an institution discretion to design and use its own method of determining the amount of the annual loan repayments obligations of

its borrowers each year, subject to the approval of the Secretary. For these reasons the Secretary believes that these rules, insofar as they track customary Title IV practice, are not complex. Although some aspects of the program are new, he does not regard those as calling for more complex calculations than institutions already routinely perform, or have performed for them, in administering traditional Title IV programs.

Comment: A number of commenters opposed the proposed Income Contingent Loan Program, and preferred the current Perkins Loan Program. These commenters indicated that the income contingent repayment methodology could be tested by allowing an income contingent repayment plan as an alternative under the Perkins Loan Program.

Response: No change has been made. In the Higher Education Amendments of 1986, Congress authorized the Secretary to conduct an Income Contingent Direct Loan Demonstration Project beginning with the 1987–88 award year and charged the Secretary with providing an evaluation of the Demonstration Project to Congress. In any case, the Secretary prefers to establish a separate unsubsidized loan program rather than allowing an income contingent repayment feature in the heavily subsidized Perkins Loan Program.

Comment: Several commenters felt that five years is too short a period of time for the Demonstration Project to assess the feasibility of an income contingent repayment plan since few borrowers will be in the income contingent portion of their repayment.

Response: The five year duration of the Demonstration Project is set by statute. The Secretary would like to emphasize that borrowers under the ICL Program will be in repayment after the Demonstration Project period ends, and therefore, data will be available on those borrowers for longer than five years.

Comment: A number of commenters criticized the short comment period and suggested that the implementation of the Demonstration Project be delayed until further analysis has been completed and additional input has been provided from professional organizations and institutions.

Response: The law authorizing the Demonstration Project was enacted October 17, 1986, with the program to begin in the 1987–88 academic year. The shortness of the comment period is an unfortunate but necessary consequence of the need to establish rules to implement the program early enough to permit participating institutions to include Income Contingent Loans (ICL) in the student aid provided to students for courses beginning in September 1987. Obviously, the design of an Income Contingent Loan Program entails resolution of complex issues, and that is indeed one purpose of the Demonstration Project. Use of a more extended comment period might have marginally aided in resolving these issues, but delay in establishing operational rules for the Demonstration Project would ensure that ICLs would probably not be available to many borrowers at participating institutions until late in the academic year. On balance, therefore, the Secretary considered the use of a short comment period to be preferable to delay in providing operational rules. The Secretary believes that such a delay would be neither responsible nor responsive to the needs of students and institutions for whom the program was intended.

Section 673.2 Definitions.

Initial Repayment Period

Comment: Many commenters requested clarification of the proposed Initial Repayment Period because the initial repayment period set forth in the proposed rule would vary in length depending on the month in which the borrower left school and, thereby, arbitrarily benefit certain students.

Response: The Secretary has revised the definition of initial repayment period to be that part of the repayment period from the end of the grace period to the close of the first complete calendar year of the repayment period. The purpose of the initial repayment period is to allow borrowers to make lower payments during the period in which they are establishing a financial foundation. The Secretary believes that the revised definition allows sufficient time for borrowers to establish a financial foundation before they begin the portion of the repayment period in which payments are computed as a percentage of income. Although the length of the initial repayment period will still vary among students, the Secretary has defined the period to always end on December 31 for the administrative convenience of the institution which must calculate all subsequent repayments on that basis. In any case, even if the period does vary, holding the loan balance constant, a lower repayment in the initial repayment period simply leads to a higher repayment later—however the payments flow, the entire loan must be repaid.

Section 673.22 Student eligibility.

Comment: Many commenters asked for clarification of whether a borrower who has had a Title IV loan discharged in bankruptcy is eligible for an ICL.

Response: The Secretary wishes to clarify that an institution may consider a previous default on any loan, including a defaulted loan discharged in bankruptcy, as evidence of potential future unwillingness to repay an ICL. However, a defaulted loan discharged in bankruptcy in and of itself is not an automatic bar to student eligibility for an ICL.

Section 673.23 ICL maximums.

Comment: Many commenters felt that the aggregate loan amounts are too high and that the Secretary should modify them to match the Perkins Loan Program.

Response: The annual and aggregate loan amounts are set by statute and not by the Secretary. Therefore, no change has been made. The Secretary has proposed legislation for higher maximums in the expanded income-contingent loan program for FY 1988.

Section 673.27 Overaward.

Comment: One commenter felt that an institution should not be liable for an overpayment if it has made an attempt to collect the overpayment from the student but has not been successful in this attempt.

Response: No change has been made. The student is always liable for any overpayment of ICL advances made to him or her. In addition, the institution is liable for an overpayment which was made as a result of institutional error. Whether an institution is liable for the overpayment or not, it must make a reasonable attempt to recover the overpayment from the student. Traditionally, in the Title IV student aid programs, the institution is held liable for any incorrect actions which it takes. The Secretary does not believe that this policy should be changed.

Comment: One commenter suggested that net earnings from employment other than College Work Study (CWS) employment be allowed to replace the family contribution rather than be classified as a resource.

Response: No change has been made. In analyzing financial need and student resources for the Title IV programs, the Department has traditionally considered as a resource earnings from employment other than College Work Study for the award year unless those earnings are included in calculation of the student's expected family contribution. For consistency and ease in administration,

the Secretary believes that the same method should be used in the ICL need analysis.

Section 673.29 Making and disbursing loans.

Comment: Because there are no loan application fees or loan origination fees in the ICL program, many commenters encouraged the Secretary to delete proposed § 673.29(a)(1)(xi) which would have required the institution to provide the borrower with information concerning the amount of any charges collected by the institution at or prior to the disbursement of the loan and any deduction of those charges from the proceeds of the loan.

Response: The Secretary agrees with the commenters and has deleted the subparagraph.

Section 673.30 Federal interest in allocated funds—transfer of funds.

Comment: One commenter was concerned that an institution which closes or no longer wants to participate in the ICL program would lose its institutional capital contribution when the fund was liquidated.

Response: No change has been made. The proposed procedures for liquidating an ICL fund are the same as those now governing liquidation of a Perkins Loan fund. Under those procedures, an institution may retain the institutional portion of the cash on hand in the fund, but must relinquish its interest in any outstanding loans. 34 CFR 674.17. The Secretary usually transfers these loans to a second institution which deposits in its loan fund all monies collected on the transferred outstanding loans.

Comment: One commenter felt that an institution which accepts the ICL portfolio of another institution should be entitled to an administrative cost allowance for collection of the transferred loans.

Response: No change has been made. Currently, for both the Perkins Loan and the proposed ICL Programs, the administrative cost allowance for an award year is based upon the expenditures during that year, and is not tied to collection costs. During the ICL Demonstration Project, the Secretary will explore the need for alternative methods of calculating administrative cost allowances.

Section 673.31 Use of funds.

Comment: Many commenters felt that the administrative cost allowance of 5% of Federal capital contribution expended in an award year is too low and that the administrative cost to an institution will far exceed this amount. The commenters suggested that the Secretary modify the regulation to mirror the practice in the Perkins Loan Program by allowing an administrative cost allowance of 5% of the funds advanced to students each year under the ICL Program. Some commenters suggested that during the Demonstration Project the Secretary evaluate the administrative cost allowance to determine if a calculation based on number of borrowers in repayment would be more appropriate for the ICL Program.

Response: The Secretary agrees with the commenters and has modified the regulations to increase the administrative cost allowance permitted to 5% of the total amount expended each award year under the ICL Program, rather than merely 5% of the FCC used. The Secretary plans to evaluate the method of calculating the administrative cost allowance during the Demonstration Project and is particularly interested in this regard in the cost to institutions of administering loans that are in repayment.

Section 673.32 Fiscal procedures and records.

Comment: One commenter felt that the recordkeeping requirements would prompt an institution to have a separate bank account for ICL, which would eliminate the positive financial rewards for the program fund which could result from institutional "pooling" of Title IV funds.

Response: No change has been made. The institution is expected to establish and maintain financial records that reflect all program transactions and create a clear audit trail. Unless the Secretary determines as a result of an audit or program review that an institution does not have an adequate accounting system, an institution is not required to have a separate bank account for ICL. These requirements are the same as those used for many years for the Perkins Loan Program. The Secretary does not believe any change is necessary or appropriate.

Section 673.41 Permissible charges to students.

Comment: The Secretary requested public comment on alternative methods of calculating interest rates for the ICL Program as well as the variable rate set forth in the NPRM.

Variable rate: Several commenters supported the variable rate set forth in the NPRM. One commenter noted that since there are other fixed interest rate loans in existence, one purpose of the ICL Demonstration Project would be to evaluate the use of a variable interest rate.

Several commenters opposed the use of a variable interest rate citing the administrative difficulties to institutions in recalculating the rate annually as well as the unpredictability of the consequences of borrowing under the ICL Program for the students. One commenter noted that the variable rate as set forth has no cap and therefore, significant increases in market rates in the future could, as a result, present borrowers with unmanageable student loan debts. One commenter noted that the use of a variable interest rate combined with no interest subsidy will increase money available to institutions for making ICLs but will also greatly increase student indebtedness. Other commenters noted that the use of a variable interest rate will create difficulties for borrowers in understanding fully the extent of their ICL obligations and for institutions in counseling students regarding their total student loan indebtedness.

Fixed rate: Many commenters felt that a flat rate would be easier for institutions to administer and for borrowers to understand fully.

Weighted average rate: One commenter felt that the calculation of a weighted average interest rate was too complex and burdensome for institutions.

Variable fixed rate: Several commenters stated that a combination of the variable and fixed rate would be most equitable and easier to understand and to administer. They supported a variable rate while the borrower is in school and fixing the rate when the loan enters repayment. Two commenters suggested a fixed rate be used with a provision that the rate could be reduced based upon the variable annual rate but could never be increased.

Many commenters opposed the idea of providing students with the option of various methods of calculating the interest rate on their ICLs because this would force institutions to calculate and to administer the repayment on all the options, which would result in increased administrative burden. Several commenters suggested allowing institutions the option of choosing the method of interest rate calculation to be used.

Response: A change has been made. The final regulations reflect the recent legislative changes resulting from the Higher Education Technical Amendments Act of 1987, Pub. L. 100-50, June 3, 1987. Section 454 of the Higher Education Act of 1965, as amended, provides that the interest rate to be charged on an ICL is, at the discretion of the institution, a fixed or a variable rate.

The applicable interest rate is equal to the average bond equivalent rate of the 91-day Treasury bills for the quarter ending September 30 preceding that calendar year plus three percent. For fixed-rate loans, this rate is determined for the year in which the first disbursement of loan proceeds is made and remains in effect until the loan is repaid. For variable-rate loans, this rate will be reset annually. The Secretary will announce annually the variable interest rate applicable for the coming year. The Secretary intends to work with institutions selected for the demonstration project to attempt to ensure that enough borrowers utilize each type of rate to provide better information about the feasibility and desirability of both types.

In the preamble to the NPRM, the Secretary requested public comment on other alternative interest rate calculations. The Secretary is appreciative of the thorough and well-developed comments which were received.

Comment: Several commenters were opposed to basing the interest rate for ICLs on the 91-day Treasury bills and suggested that the 10 or 20 year Treasury notes more accurately reflect the Government's long-term cost of borrowing and would enable the rate to be a fixed rather than a variable rate.

Response: No change has been made since the statute directs the use of 91-day Treasury bill rates. However, the Secretary will carefully consider the commenters' suggestion in determining whether to seek an amendment to the statute concerning the interest rate calculation.

Comment: Many commenters objected to the provisions which require that interest accrue from the date of disbursement and that unpaid accrued interest be capitalized annually since these provisions greatly increase the borrower's debt while in-school and, after graduation, could cause borrowers in a low-income/high-debt situation to pay interest on interest, and, in some cases, never to reduce their debt. One commenter suggested that the institution bill the borrower for interest on ICLs while the borrower is in-school and capitalize interest only for those borrowers who are unable to pay the interest accruing during in-school periods. Another commenter suggested that unpaid interest be cancelled rather than capitalized to prevent the continued growth of the borrower's ICL debt.

Response: No change has been made. The Secretary has developed and the Congress has authorized the ICL Program as an unsubsidized student loan program to assist students further in financing their education but to reduce the cost of this assistance to the Government by eliminating any interest subsidy. Therefore, in order to increase the earnings of the Fund and make more money available to future student borrowers, decrease the need for future Federal capital supplements, and broaden the effectiveness of the pilot by increasing the number of loans that can be generated from the original Federal capital contribution, the Secretary will implement in these rules the requirement that interest on ICLs accrue from the date of disbursement of funds to the borrower as with other unsubsidized loan programs. In order to allow a borrower to postpone payment of accrued interest until the repayment period, the final rules, like the NPRM, provide that interest may be capitalized while the borrower is in school, during the grace period, during a period of authorized deferment and when payments made by a borrower for a given year are insufficient to meet accrued interest costs. Institutions may advise borrowers to pay the annual accrued interest while in school in order to prevent the growth of the borrower's ICL debt and, if the borrower requests, may bill the borrower for this interest.

Comment: One commenter felt that the institution should not be required to charge borrowers late charges because borrowers who are late with payments generally have financial difficulties and the addition of a late charge will create more financial hardship for these borrowers. Two commenters objected that a late charge of up to 20% is too high, and that a stated flat rate would be easier to administer.

Response: Although the Secretary agrees that late payments may reflect financial difficulties, the Secretary believes that a late charge which is reasonable and reflects the circumstances under which it is assessed is an appropriate means of emphasizing the importance of meeting one's student loan obligations. The rule has been clarified to make clear that the late charge must bear a reasonable relation to the cost to the institution of handling the failure to make the required submission. As discussed here and as clarified in the due diligence regulations to be published shortly, the late charge may include actual or average costs incurred in securing information needed to calculate a repayment obligation or in taking those steps included within the actions customarily considered to be within the billing cycle on a loan as opposed to those more costly efforts included in the collection cycle; the latter are separately addressed in § 673.41(c). This procedure is consistent with that used in the Perkins Loan Program.

Section 673.42 Promissory note.

Comment: Two commenters suggested that the provision which requires institutions to use amounts repaid during an academic year to reduce the original loan amount be deleted since this would be extremely complicated to implement because using prepayments to reduce the original balance would require recalculation of all subsequent accrued interest charges.

Response: The Secretary agrees with the commenters and has modified the regulation to require institutions to use amounts repaid during the academic year in which the loan was made to pay any accrued interest first and then to reduce the original loan amount.

Section 673.43 Repayment plan.

Comment: Many commenters applauded the Secretary for allowing institutions to utilize either the repayment plan set forth in the proposed rule or an alternative plan approved by the Secretary as being responsive to the goals of the ICL Demonstration Project in exploring the feasibility of an income contingent repayment method.

Response: No change has been made. The Secretary agrees with the commenters that this provision allows the institution a considerable amount of discretion to design and to use its own method of determining the amount of loan repayments due from the borrowers each year subject to the approval of the Secretary.

Comment: Several commenters noted that the proposed fixed payment obligation mandated for the initial repayment period would, in many cases, be insufficient to cover the annual accrued interest, and would result in negative amortization. Other commenters suggested that the repayment obligation be modified to cover the annual accrued interest in order to prevent negative amortization.

Response: A change has been made. The Secretary has revised the annual payment obligation calculation for the initial repayment period to address this issue. Under the final rules the borrower has the option of using an annual payment calculation for the initial repayment period determined as a percentage of his or her income—that is, moving immediately into income contingent repayment—or having the annual payment calculated as a percentage of the opening ICL balance. If the borrower wishes to receive an income-based annual repayment

obligation, he or she must submit information needed to make that determination in a timely manner; if that information is not submitted, the obligation must be based on the loan balance. In the latter case, a borrower with median total debt of $6,000 would pay $35 a month instead of the $30 proposed in the NPRM. This approach reduces the amount of negative amortization, particularly when the borrower has a large opening ICL balance. It also may allow a reduction in the maximum assessment rate during the regular repayment period, as further discussed below.

Comment: Many commenters supported the use of Adjusted Gross Income (AGI) reported on the federal income tax return as the basis for determination of the annual loan repayment obligation. They felt that expanding the base to include a Modified Adjusted Gross Income (MAGI) would unduly complicate the administration of the program because other sources of income and expenses are not easily documented and because it would be burdensome for institutions to collect this information and calculate a MAGI. Several commenters believed that AGI ignores untaxed or specially-taxed income, and therefore they favored use of a MAGI in order to provide a more realistic picture of a borrower's ability to pay.

Several commenters felt that the income for the base income year, even when adjusted for inflation, does not reflect the borrower's financial situation at the time of repayment, particularly if there has been a large increase or decrease in income. Those commenters noted that there is no mechanism in the proposed rule for an individual adjustment under these circumstances.

A number of commenters pointed out that borrowers who do not file tax returns would not have an AGI to be assessed in determining an annual repayment obligation. The commenters suggested that several forms of records, including W–2 forms, IRS form 1099, payroll stubs, a notarized statement of earnings, and a notarized income worksheet provide acceptable documentation of income for non-tax filers. One commenter suggested that the institution use an AGI equal to the maximum income an individual may earn without filing a tax return. Several commenters suggested that non-tax filers pay the minimum repayment amount allowed during the initial repayment period.

Response: For borrowers who file a Federal income tax return, the Secretary has retained the definition of AGI published in the proposed rule. However, the Secretary has added a provision to allow the institutional loan administrator to utilize the current income of the borrower and his or her spouse in cases where the AGI for the base income year does not accurately reflect the borrower's ability to repay an ICL. The Secretary believes that the flexibility provided in these cases will allow an institution to determine a repayment obligation tailored to the borrower's income. For borrowers who do not file a Federal income tax return, the Secretary bases the annual repayment obligation on the sum of the amounts of taxable income from all sources received by the borrower and his or her spouse.

Comment: Many commenters opposed as extremely burdensome and costly for institutions to administer the requirements that borrowers provide by November 1 of each calendar year a copy of the Federal income tax return(s) filed by the borrower and his or her spouse for the preceding tax year and that the institution determine a borrower's payment obligation annually. One commenter questioned the institution's legal right to request the tax return. Many commenters felt that in order to obtain valid data on a timely basis, it would be necessary to secure cooperation from the Internal Revenue Service to provide, or to permit access to, this data.

Response: No change has been made. The ICL Program is defined by statute as utilizing an income contingent repayment method. In order to implement a repayment methodology which is contingent on the borrower's income, the Secretary believes that it is necessary to utilize the most readily available and easily verified indicator of a borrower's income, his or her Federal tax return. Furthermore, for the repayment obligation to be in fact contingent on the borrower's income, the Secretary believes it is necessary to evaluate the borrower's financial situation annually. The Secretary has explored the possibilities of a tape match with the Internal Revenue Service (IRS) and has determined that technical difficulties make this option unavailable at this time. The Secretary considers the signed copy of the tax return itself to be sufficiently trustworthy for the purposes of this program, and does not believe it is necessary to require borrowers to request a copy from the IRS to submit to the institution since this would increase the burden on institutions and borrowers and would create unnecessary delays in determining annual payment obligations.

The Secretary wishes to emphasize that the borrower's requirement to submit the required income information is set forth in the promissory note, and agreement to comply with that requirement is the condition on which the loan is made. Any borrower who considers this disclosure to constitute an untoward intrusion into the privacy of the borrower and his or her spouse should not borrow under this program.

Comment: One commenter suggested that the institution be allowed to accelerate the entire ICL if the borrower fails to submit his or her tax return by November 1. Another commenter suggested that an institution impose a six-year fixed repayment plan on borrowers who fail to submit the income information on time. One commenter supported the Secretary's proposal discussed in the preamble to the NPRM to develop and publish an alternative repayment plan which utilizes national statistics showing the average annual earnings for college graduates for borrowers who fail to submit income information in a timely manner. Several commenters opposed this proposed alternative repayment plan as not reflective of the individual borrower's circumstances.

Response: The Secretary is still considering optional means of implementing the income contingent repayment method without requiring the collection of income tax forms from all borrowers, as well as an appropriate incentive for borrowers to provide the necessary income information on a timely basis and welcomes additional public comment. The Secretary believes that to impose a six-year fixed repayment plan on a borrower who is tardy in supplying income data would eliminate entirely the income contingent concept and the flexibility which it provides and is therefore not a desirable sanction at this time. The Secretary also believes that acceleration of the entire ICL for a borrower who merely fails to submit in a timely manner the required income information is too severe a penalty and would lead to an unnecessary increase in defaults. However, continued failure to submit required income information is a serious breach of the borrower's duty under the loan agreement, and constitutes a default. Acceleration is the normal consequence of any default, and therefore acceleration is, in such a case, an appropriate sanction for continued failure to supply required income information. This sanction, of course, would not apply during the initial repayment period. The institution at that time may simply determine the annual obligation as in § 673.43(b)(6).

In these final regulations, borrowers who do not provide on a timely basis the income information required to determine their annual payment obligation will be charged a late charge of up to 20% of the amount of the borrower's most recently required payment; borrowers who persist in failing or refusing to supply the income information required are to be considered as being defaulted on their loans. Although the Secretary does not believe imposition of a fixed term, fixed payment schedule is an appropriate sanction for mere tardiness in submitting required income data, the Secretary does not intend to limit the customary discretion of the institution to set the terms of any repayment agreement reached with a borrower who has already defaulted on the loan, but wishes to resume payment. As with Perkins Loans, the institution may structure these curative agreements in the manner it considers necessary to recoup lost payments most effectively and prevent future lapses. The institution therefore does not need to agree to resumption of income contingent terms or other terms requiring submission of income tax forms in these curative agreements.

Comment: Many commenters felt that the income assessment rates set forth in the repayment matrix in the proposed rule are too high and that studies have shown that borrowers can only afford to use a maximum of 12% of their disposable income for all loan obligations.

Response: The Secretary concurs with the commenters that the maximum rate should be reduced to a lower level and has modified the repayment matrix accordingly. Furthermore, the repayment matrix has been modified to increase gradually the percentage of the borrower's income used to determine the annual payment obligation as the repayment period progresses to enable borrowers to have a larger percentage of their income available for other obligations which are incurred early in their careers. This also reflects the fact that, in general, the borrower's assets will increase over time, allowing a higher assessment against annual income over time without reducing the borrower's command over goods and services. Thus repayment rates are progressive over time.

Comment: Several commenters objected to the use of the borrower's spouse's income in determining the amount of the borrower's annual payment obligation and stated that the spouse has no legal responsibility to provide this information.

Response: No change has been made. In determining the amount of financial need for which a married independent student qualified to receive Federal aid under the Title IV programs, the Department has always considered the income and assets of both the student and his or her spouse. As stated in the preamble to the final rule regarding expected family contributions for the Guaranteed Student Loan Program for 1983–84, this practice rests on the economic reality that the marital unit benefits directly from the enhanced earning capacity gained from education financed with the student loan, and therefore Title IV need analysis customarily assesses the income and assets of both spouses in calculating the need for either one for a loan. 48 FR 14317, April 1, 1983. The Secretary believes that the same principle applies to the determination of the ability to repay a federally financed loan, and that the spouse's income should be considered in determining whether the borrower can repay at a faster rate, and thereby reducing the need for additional Federal support by more quickly replenishing the ICL fund at the lending institution.

The Secretary emphasizes that a prospective borrower who is currently married cannot honor the terms of the ICL loan if his or her spouse is unwilling to provide the required income information, and should not borrow under the ICL Program. A prospective borrower who is currently unmarried should be aware of the requirements that the borrower must provide spousal income information if the borrower later marries and that failure to provide income information of both the borrower and his or her spouse may result in the institution declaring the loan to be in default.

Comment: Several commenters opposed the suggestion in the preamble of the proposed rule indicating that the borrower and the institution could agree to biweekly payments because the benefit to the student in the reduction of interest costs is greatly outweighed by the administrative costs to the institution, and the student would receive a much greater benefit by merely making larger payments on a monthly basis.

Response: No change has been made. The institution has the right to require the borrower to repay the ICL in quarterly, bimonthly or monthly payments; a biweekly payment plan could nevertheless be agreed to by the institution and the borrower.

Section 673.44 Deferment of repayment.

Comment: Since many students transfer from one institution to another institution as undergraduates and also continue their education at the graduate level, many commenters were concerned that this section did not allow deferment of the loan during periods of half-time enrollment at an accredited institution of higher education. One commenter suggested an internship deferment for students who are serving an internship which is required to begin professional practice or service. One commenter questioned whether the grace period and subsequent initial repayment period could be repeated if the student borrower re-enrolls at another institution during the repayment period.

Response: The Secretary has added a provision to allow deferment of the principal and interest while the borrower is at least a half-time student at an institution of higher education. The Secretary wishes to clarify that, as under the Perkins Loan Program, students who re-enroll at an institution after the loan has entered repayment do not receive a second grace period. The Secretary believes that students who have entered repayment and then re-enroll in school are more likely to gain employment quickly and resume repayment ability, and that, as a result, have less need for a second grace period and attendant initial repayment period. However, for ease of administration for the institution, students who have an ICL in repayment but re-enroll at an institution and then borrow under the ICL Program for that period of re-enrollment are entitled to a grace period and initial repayment period for any new ICLs.

Comment: Many commenters favored the deferment on the basis of financial hardship. One commenter requested clarification of what constitutes extraordinary circumstances. Another commenter felt that having interest continue to accrue and be capitalized during this period would defeat the purpose of the deferment since the borrower's outstanding debt would continue to grow. One commenter suggested that the regulations be amended to extend the financial hardship deferment beyond three years since certain circumstances which may result in financial hardship such as long-term, non-disabling illness may last more than three years.

Response: No change has been made. The Secretary believes that the loan officer should exercise professional judgment and require appropriate

justification to determine what constitutes extraordinary circumstances and that this institutional flexibility is necessary to the ICL concept. Although the borrower's debt will increase during the deferment, the Secretary points out that this situation is inherent in any unsubsidized loan program and that the financial hardship deferment is to be used in situations in which a borrower is unable to make any substantial regular payments. The Secretary is continuing to limit the financial hardship deferment to three years because the loan officer has the flexibility to adjust the borrower's annual repayment obligation in situations when the financial hardship is long-term, but the borrower does not qualify for cancellation.

Section 673.45 Cancellation.

Comment: Many commenters felt that the repayment period for ICLs is too long and that a maximum repayment period should be set. Several commenters suggested that ICLs which have been in repayment for 25 to 30 years should be cancelled.

Response: No change has been made. The ICL concept is designed to permit borrowers, by repaying their debts based on their incomes, to spread the cost of their investment in postsecondary education over the period of enhanced earning made possible by that education.

To estimate the likely repayment terms needed to satisfy varying amounts of ICL debt at differing income levels, repayment models were devised based on the median salary for recent college graduates as determined by the Department in an annual survey ($17,567 in 1985), as well as salaries at the first ($13,395) and third ($22,677) quartiles with three levels of ICL debt. Salaries in each level were assumed to grow during the repayment period in accordance with the growth patterns as indicated by the Current Population Survey data from the Bureau of the Census and inflation rates of five and six percent. Next, three levels of ICL debt were matched to the income levels described here: First, the median student loan debt for that same population, $6,000, second, $15,000, and third, the maximum amount permitted under current ICL authority, $17,500. Each of the three levels of ICL debt were then amortized on the basis of these salaries and average interest rates of nine and ten percent. The repayment studies further assumed that the borrowers had uninterrupted employment, that they received no deferments, and that borrower income grew from the listed starting salaries in each case at a rate of five and six percent per year, respectively.

Based on these assumptions, borrowers in all of these three income levels can be expected to repay the full amounts borrowed, plus accrued interest, in periods ranging from nine to 23 years. Borrowers starting with salaries in the fifth percentile ($8,235 in 1985) were also matched with debt in the amount of $17,500; these borrowers were unable to repay their loans within a 30-year period under these assumptions. In order to have received ICL loans totalling $17,500, however, borrowers in this last hypothetical category must have successfully completed five years of undergraduate study; it is extremely doubtful that a significant number of ICL borrowers with that amount of ICL debt would actually be employed at this lowest of the earnings levels (fifth percentile) posited for purposes of this study. The Secretary expects that the great majority of ICL borrowers are thus reasonably likely to complete their repayments within 30 years and therefore that no cancellation provision is needed.

Furthermore, because the repayment remains contingent on the amount of the adjusted gross income of the borrower, the repayment burden even of those borrowers who never repay fully will never be unreasonable in any given year, particularly given the reduction in the maximum repayment rate from 15 percent to 12 percent.

The Secretary, of course, is concerned about the difficulty that certain low income borrowers may have in repaying their loans and will continue to review this issue in the future.

Subpart E—Due Diligence

Comment: Many commenters criticized the Secretary for publishing an NPRM and soliciting applications for the Demonstration Project without proposing due diligence requirements since institutions should be aware of all obligations under the program before deciding to participate.

Response: Although the NPRM and these regulations were published without due diligence requirements, the Secretary does not regard this fact as leaving applicant institutions with an unclear picture of their loan collection responsibilities. As the Secretary explained in the preamble to the NPRM, the ICL Program is modeled after the Perkins Loan Program. All applicants are required to demonstrate a thorough and effective familiarity with the loan collection rules in effect in the Perkins Loan Program. Based on that familiarity and the explanation that the ICL operational requirements would be modeled, where possible, on the Perkins Loan Program rules, and because proposed due diligence regulations for the Perkins Loan Program were published some time ago, and final regulations are nearing publication, the Secretary felt that it would be less confusing to institutions to defer promulgation of ICL due diligence requirements until the final Perkins Loan regulations are published. In any case, several months will elapse before any borrowers under the ICL program will cease to be enrolled at least half-time and institutions will have to follow due diligence procedures. The Secretary plans to issue an NPRM on the due diligence requirements for the ICL Program shortly after the final due diligence regulations for the Perkins Loan Program are published.

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Wednesday
August 5, 1987

Part III

Department of Education

34 CFR Parts 631, 632, 633, 634, 635, and 636

Cooperative Education Program; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Parts 631, 632, 633, 634, 635, and 636

Cooperative Education Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Cooperative Education Program. These amendments are needed to implement changes in Title VIII of the Higher Education Act of 1965, as amended on October 17, 1986 by the Higher Education Amendments of 1986 (Pub. L. 99-498) (Amendments). The changes affect the types of projects funded, the application contents, the duration and level of Federal support, and the selection criteria.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Elizabeth Slany, Education Program Specialist, Program Development Branch, Division of Higher Education Incentive Programs, Office of Postsecondary Education, U.S. Department of Education, (Room 3022, ROB #3), 400 Maryland Avenue SW., Washington, DC 20202. Telephone (202) 732-4061.

SUPPLEMENTARY INFORMATION: As a result of the Amendments and the need to change the application review process, the Secretary is amending the existing program regulations.

On June 16, 1987 the Secretary published a Notice of Proposed Rulemaking for this program in the **Federal Register** (52 FR 22948). Proposed major changes in the program were discussed in that issue of the **Federal Register** on page 22948. Except for minor editorial and technical revisions, there are no differences between the NPRM and these final regulations.

Summary of Public Comments

No significant comments on the Notice of Proposed Rulemaking were received by the Department.

Technical Amendments

To make the regulations for the Supplemental Funds Program for Cooperative Education in Part 636 consistent with the regulations in Parts 631-635, the Secretary makes technical amendments to Part 636. In Part 636, the references to certain provisions of Part 631 are amended. The Secretary also amends the authority citation for the Supplemental Funds Program for Cooperative Education. The Supplemental Funds Program for Cooperative Education was not reauthorized by the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1986. However, under the appropriation statutes for fiscal years 1986 and 1987 funds are available for obligation under this program until September 30, 1988 (Pub. L. 99-178; H.R. 5233 as referenced in Pub. L. 99-591).

Waiver of Proposed Rulemaking for Technical Amendments to 34 CFR Part 636

Under section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A), and the Administrative Procedure Act (5 U.S.C. 553) it is the practice of the Department of Education to publish regulations in proposed form and to offer interested parties the opportunity to comment on the proposed regulations. Because these regulations merely incorporate changes made by statute, however, public comment could have no effect. Therefore, publication of this document as a proposed rule for public comment has been determined to be unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B).

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 631

Colleges and universities, Education, Educational research, Employment, Grant programs—education, Manpower training programs, Student aid, Students.

34 CFR Part 632

Colleges and universities, Education, Employment, Grant programs—education, Manpower training programs, Student aid, Students.

34 CFR Part 633

Colleges and universities, Education, Employment, Grant programs—education, Manpower training programs, Student aid, Students.

34 CFR Part 634

Colleges and universities, Education, Educational research, Grant programs—education, Students, Teachers.

34 CFR Part 635

Colleges and universities, Education, Grant programs—education, Students, Teachers.

(Catalog of Federal Domestic Assistance Number 84.055—Cooperative Education Program)

Dated: July 27, 1987.

William J. Bennett,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations by revising Parts 631, 632, 633, 634, and 635, and by amending 636 as follows:

1. Parts 631, 632, 633, 634, and 635 are revised to read as follows:

PART 631—COOPERATIVE EDUCATION PROGRAM—GENERAL

Subpart A—General

Sec.

631.1 What is the Cooperative Education Program?
631.2 Who is eligible for an award?
631.3 What kinds of projects may the Secretary fund?
631.4 What regulations apply?
631.5 What definitions apply?

Subpart B—How Does One Apply for an Award?

631.10 What limitations apply to the number of applications that may be submitted?

Subpart C—How Does the Secretary Make an Award?

631.20 How does the Secretary evaluate applications?

Subpart D—What Conditions Must Be Met after an Award?

631.30 What costs are allowable?
631.31 What costs are unallowable?

Authority: 20 U.S.C. 1133-1133b, unless otherwise noted.

Subpart A—General

§ 631.1 What is the Cooperative Education Program?

The Cooperative Education Program provides Federal financial assistance to—

(a) Help institutions of higher education offer students paid work experiences closely related to their academic and career pursuits; and

(b) Improve the quality of cooperative education through demonstration, research, and training.

(Authority: 20 U.S.C. 1133a)

§ 631.2 Who is eligible for an award?

Eligibility for each of the four kinds of authorized projects is explained in 34 CFR 632.2, 633.2, 634.2, and 635.2.

(Authority: 20 U.S.C. 1133a, 1133b)

§ 631.3 What kinds of projects may the Secretary fund?

Under the Cooperative Education Program the Secretary awards—

(a) Grants for Administration projects, as described in 34 CFR 632.1;

(b) Grants and contracts for Demonstration projects, as described in 34 CFR 633.1;

(c) Grants and contracts for Research projects, as described in 34 CFR 634.1; and

(d) Grants and contracts for Training and Resource Center projects, as described in 34 CFR 635.1.

(Authority: 20 U.S.C. 1133–1133b)

§ 631.4 What regulations apply?

(a) *Grants.* The following regulations apply to grants under this program:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74 (Administration of Grants), 75 (Direct Grant Programs), 77 (Definitions that apply to Department Regulations), and 78 (Education Appeal Board).

(2) The regulations in this Part 631.

(3) The regulations in the following parts, as applicable:

(i) 34 CFR Part 632—Cooperative Education Program—Administration Projects.

(ii) 34 CFR Part 633—Cooperative Education Program—Demonstration Projects.

(iii) 34 CFR Part 634—Cooperative Education Program—Research Projects.

(iv) 34 CFR Part 635—Cooperative Education Program—Training and Resource Center Projects.

(b) *Contracts.* The following regulations apply to contracts under this program:

(1) The Federal Acquisition Regulation and the Education Department Acquisition Regulation in Title 48 of the Code of Federal Regulations.

(2) The regulations in this Part 631.

(3) The regulations in the following parts, as applicable:

(i) 34 CFR Part 633—Cooperative Education Program—Demonstration Projects.

(ii) 34 CFR Part 634—Cooperative Education Program—Research Projects.

(iii) 34 CFR Part 635—Cooperative Education Program—Training and Resource Center Projects.

(Authority: 20 U.S.C. 1133)

§ 631.5 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in 34 CFR Parts 631 through 635 are defined in 34 CFR 77.1:

Applicant
Application
Contract
EDGAR
Equipment
Grant
Grantee
Nonprofit
Private
Project
Project period
Public
Secretary
State

(b) *Other definitions.* The following definitions also apply to terms used in 34 CFR Parts 631 through 635:

"Act" means the Higher Education Act of 1965, as amended.

"Alternating periods of study and employment" means alternating academic terms of classroom study and periods of monitored and supervised public or private employment of a cooperative education student.

"Combination of institutions of higher education" means two or more institutions of higher education that have entered into a cooperative arrangement (consortium) for the purpose of carrying out a common objective.

"Cooperative education" means a method of education which includes—

(1) Alternating or parallel periods of study and employment;

(2) Formal work experience agreements among the institution of higher education, the student, and the employer;

(3) Work experiences which are of sufficient number and duration, as explained in § 632.30;

(4) Work experiences which are related to the students' academic programs of study or career goals;

(5) Student work experiences which are monitored, supervised and evaluated; and

(6) Student employment which is compensated in conformity with Federal, State, and local laws, unless a waiver for compensation is justified in the application and approved by the Secretary.

"Enrolled in a cooperative education project" means the status of students who have been accepted into a cooperative education project and will be or have been placed in cooperative education work experiences.

"Institution of higher education" means an educational institution as defined in section 1201(a) of the Act, but excludes an institution that does not meet the provision of section 1201(a)(3) of the Act.

"Institution-wide cooperative education" means a comprehensive cooperative education project in an institution of higher education that—

(1) Integrates cooperative education into all or nearly all of the academic disciplines or departments of the institution;

(2) Enrolls in its cooperative education project at least a majority of the institution's students who are eligible for the cooperative education project;

(3) Enables students to participate in work experiences with a variety of employers; and

(4) Acts as a liaison between high schools and the institution's admissions office to inform high school students of the availability and advantages of cooperative education.

"Parallel periods of study and employment" means periods of both classroom study and monitored and supervised public or private employment of a student in a cooperative education project, with the student carrying a half-time academic course load and working about 20 hours per week in a cooperative education work experience.

"Student" means a person—

(1) Enrolled in an institution of higher education other than by correspondence;

(2) Enrolled in—

(i) A graduate degree program;

(ii) An undergraduate degree program of not less than two academic years; or

(iii) An undergraduate certificate program of not less than one academic year if the program is provided by an institution of higher education that offers a two-year program which is acceptable for full credit toward a bachelor's degree; and

(3) Carrying at least one half the academic workload normally required of persons who are full-time degree candidates.

"Unit of an institution of higher education."

(1) This term means the organizational entity that has the final, noncentral administrative authority to recommend or administer the requirements, standards, and credits necessary to earn academic degrees.

(2)(i) In a university, the term means a college or its equivalent within the university.

(ii) In a four-year college, the term means a school or its equivalent within the college.

(iii) In a two-year college, the term means a department or division, whichever is the higher level, within the college.

(Authority: 20 U.S.C. 1133–1133b)

Subpart B—How Does One Apply for an Award?

§ 631.10 What limitations apply to the number of applications that may be submitted?

For any single fiscal year, the Secretary accepts from the same applicant no more than one application under each of the four kinds of projects listed in § 631.3.

(Authority: 20 U.S.C. 1133–1133b)

Subpart C—How Does The Secretary Make an Award?

§ 631.20 How does the Secretary evaluate applications?

(a) The Secretary evaluates each kind of application on the basis of the selection criteria set forth in 34 CFR 632.20, 632.21, 633.20, 634.20, and 635.20, as applicable.

(b)(1) The Secretary awards up to 100 points for each set of program selection criteria.

(2) The maximum possible score for each criterion is indicated in parentheses.

(c) The Secretary may assign up to 20 additional points to applications under the Administration Program which address the special consideration factors in § 632.21.

(d) The Secretary funds an application from a public or private agency or organization under Parts 633, 634, and 635 only if the application receives an average score of 75 or more points.

(Authority: 20 U.S.C. 1133–1133b)

(Approved by the Office of Management and Budget under control number 1840–0128)

Subpart D—What Conditions Must Be Met After an Award?

§ 631.30 What costs are allowable?

Subject to 34 CFR 75.530, governing allowable costs for grants, Federal and matching funds may be used for, but are not limited to, the following:

(a) Salaries for professional and clerical cooperative education staff members.

(b) Release or overload time for faculty involved in the project.

(c) Expenses associated with conducting cooperative education seminars or courses for students.

(d) Per diem and travel expenses of cooperative education project staff and faculty for project related activities.

(e) Fees or honoraria, per diem, and travel expenses for project consultants.

(f) Supplies and telephone costs.

(g) In-service project staff, faculty, and employer training related to the project.

(h) Expenses for developing, printing, and disseminating materials related to the project, including materials designed to recruit students into the project.

(i) Registration fees for training sessions related to cooperative education.

(j) Student travel, but only if the cooperative education student is a member of an advisory board for the project.

(k) Computer equipment with related software costs, and other special equipment related to project activities, if the costs are adequately justified and specifically approved by the Secretary.

(Authority: 20 U.S.C. 1133–1133b)

§ 631.31 What costs are unallowable?

(a) In addition to the costs not allowed under 34 CFR Parts 74 and 75, a grant recipient shall not use Federal and matching funds to pay for the following:

(1) Compensation of students for cooperative education work experiences.

(2) Teaching salaries for academic courses.

(3) Recruitment activities to encourage students to enroll at the grantee institution.

(4) Individual membership fees in professional organizations.

(5) Individual or institutional membership fees in organizations that devote a substantial part of their activities to influencing the passage or defeat of legislation.

(6) Planning for determining the feasibility of establishing a cooperative education project.

(b) Except under the Administration Program under 34 CFR Part 632, a recipient of funds under the Cooperative Education Program—

(1) May use Federal funds only to supplement and, to the extent possible, increase the level of funds that would otherwise have been available from non-Federal sources to carry out the approved activities; and

(2) Shall not use Federal funds to supplant funds from non-Federal sources.

(Authority: 20 U.S.C. 1133–1133b)

PART 632—COOPERATIVE EDUCATION PROGRAM—ADMINISTRATION PROJECTS

Subpart A—General

632.1 What is a Cooperative Education Administration project?
632.2 What is eligible for a grant?
632.3 What students are eligible to participate?
632.4 What types of administration projects are eligible for funding?
632.5 What regulations apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make a Grant?

632.20 What selection criteria does the Secretary use to evaluate Administration applications?
632.21 What special consideration factors does the Secretary use?
632.22 What limitations apply to the number of years an institution may be funded?
632.23 What requirements must an applicant meet to be eligible for funding beyond the basic five-year limitation?
632.24 What limitations apply to a grant amount?

Subpart D—What Conditions Must Be Met After an Award?

632.30 What are the minimum requirements for the frequency and duration of work experiences?
632.31 How are student work experiences evaluated?
632.32 What are the fiscal requirements?

Authority: 20 U.S.C. 1133–1133a, unless otherwise noted.

Subpart A—General

§ 632.1 What is a Cooperative Education Administration project?

An Administration project is designed to provide students enrolled at an institution of higher education with opportunities to participate in cooperative education, as defined in 34 CFR 631.5(b).

(Authority: 20 U.S.C. 1133a)

§ 632.2 Who is eligible for a grant?

The following are eligible for grants under this part:

(a) Institutions of higher education.

(b) Combinations of institutions of higher education.

(Authority: 20 U.S.C. 1133a)

§ 632.3 What students are eligible to participate?

An individual who meets the definition of "student" in § 631.5(b) is eligible to participate in a project under this part.

(Authority: 20 U.S.C. 1133a)

§ 632.4 What types of administration projects are eligible for funding?

The Secretary makes awards under this part for the planning, establishment, operation, and expansion of cooperative education projects.

(Authority: 20 U.S.C. 1133a)

§ 632.5 What regulations apply?

The following regulations apply to this program:

(a) The regulations cited in § 631.4(a) and (b).

(b) The regulations in this part.

(Authority: 20 U.S.C. 1133)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make a Grant?

§ 632.20 What selection criteria does the Secretary use to evaluate Administration applications?

The Secretary uses the following criteria to evaluate an application for an Administration grant:

(a) *Institutional commitment.* (10 points) The Secretary considers the extent of commitment by reviewing—

(1) The applicant's support for the concept of cooperative education, as reflected, for example, by the inclusion of cooperative education in the institution's mission statement, long-range planning documents, budget, and catalog; and

(2) The chief executive officer's, other key administrators', faculty's, and governing board's support for the project, including their involvement in the planning and development of the project.

(b) *Plan of operation.* (80 points) The Secretary considers the quality, effectiveness, and extent of the following:

(1) Organizational structure of the project and its relationship to the institution's organizational and academic structure (3 points).

(2) Measurable objectives of the project (6 points).

(3) Strategy for implementing the project (36 points), including, as applicable,—

(i) The activities to be conducted by the applicant and employers, and any training or project development activities conducted by a nonprofit organization or institution;

(ii) The schedule that will be used for conducting project activities and meeting the objectives for each year Federal funds are being requested;

(iii) Plans for modifying the institution's academic calendar and course schedules to meet the needs of the students in the proposed project; and

(iv) Involvement and extent of participation of academic departments, divisions, and colleges within the institution; and

(v) Adequacy of resources, including adequacy of space and equipment.

(4) Provision of work experiences (10 points) based on—

(i) The relevance of the work experiences to the students' academic programs of study or career objectives;

(ii) The work/study calendar for alternating and parallel periods of study and employment;

(iii) The number, frequency, and duration of the work experiences; and

(iv) The level of monitoring and supervision of cooperative education students while they are on work assignments.

(5) The proposed procedures for administering the project, including fiscal control and funds accounting procedures, and for responding to unexpected problems and evaluation results (5 points).

(c) *Quality of key personnel.* (10 points) The Secretary considers the following in determining the quality of key project personnel:

(1) The qualifications of the project director, coordinators, and other key personnel.

(2) The relationship of the qualifications of each professional person involved in the project to the project's stated purposes and objectives.

(d) *Evaluation plan.* (10 points) The Secretary considers—

(1) The quality of the proposed evaluation plan and the extent to which the plan includes evaluation methods that are objective and produce useful data that are quantifiable; and

(2) Beginning in the second year of the project, the quality of the procedures to collect and record data on the impact of the project, including the—

(i) Enrollment and placement of cooperative education students, including data on the students' academic and occupational interests, the type of cooperative education employment, and the students' jobs upon graduation;

(ii) Income earned by students placed in cooperative education jobs;

(iii) Number of employers involved in the project; and

(iv) The increase or decrease in enrollment in the project from year to year.

(e) *Adequacy and reasonableness of the budget.* (10 points) The Secretary considers the extent to which the budget—

(1) Is reasonable in relation to the objectives and scope of the project, and the number of students placed in cooperative education jobs; and

(2) Is reasonable with respect to any costs to be paid to a nonprofit organization or to another institution which assists in the development or expansion of the project.

(Authority: 20 U.S.C. 1133a)

(Approved by the Office of Management and Budget under control number 1840-0126)

§ 632.21 What special consideration factors does the Secretary use?

The Secretary may assign up to 20 additional points to applications from institutions whose projects show the greatest promise of success based on the following factors:

(a) The extent to which public and private sector employers support the project and accept students for jobs related to the students' respective academic programs (5 points), as demonstrated by—

(1) The types of positions for which employers hire cooperative education students;

(2) The match between students' interests and their actual job experiences; and

(3) The number of employers who accept cooperative education students and the number of cooperative education students they hire.

(b) The applicant's plans for continuing cooperative education after the termination of Federal financial assistance, including the sources of support and the amount of funds, personnel and other resources that will be committed to the project (5 points).

(c) The extent to which the institution is committed to expanding cooperative education into an institution-wide cooperative education program (5 points).

(d) The institution's demonstrated commitment to serving special populations such as women, the handicapped, Black, Mexican American, Puerto Rican, Cuban, other Hispanic, American Indian, Alaska Native, Aleut, Native Hawaiian, American Samoan, Micronesian, Guamian (Chamorro), and Northern Marianian students (5 points).

(Authority: 20 U.S.C. 1133a)

(Approved by the Office of Management and Budget under control number 1840-0126)

§ 632.22 What limitations apply to the number of years an institution may be funded?

(a)(1) Except as provided in § 632.23, the Secretary may fund an institution of higher education, either individually or as a member of a combination of institutions, by providing up to five

years of financial support for each unit of the institution.

(2) The five-year limitation in paragraph (a)(1) of this section applies to grants received both before and after the enactment of the Higher Education Amendments of 1986 (Pub. L. 99-498).

(b)(1) The Secretary may fund a unit of an institution which meets the requirements given in § 632.23 for a maximum of ten years.

(2) The ten-year funding limit for an individual unit under this part applies regardless of whether the unit was funded individually, or as a part of a grant to a single institution or a combination of institutions.

(Authority: 20 U.S.C. 1133a)

§ 632.23 What requirements must an applicant meet to be eligible for funding beyond the basic five-year limitation?

The Secretary considers an application from an institution of higher education, individually or as a participant in a combination of institutions, for the first year of additional support for cooperative education in a unit which had previously been funded for five years under this part if the applicant institution—

(a) Conducted cooperative education in the unit, which previously received five years of Federal assistance, without Federal financial assistance for at least two academic years subsequent to the end of the fifth year of Federal funding, including the two academic years immediately preceding the year for which the institution reapplies for program support;

(b) Expended for its cooperative education project during each of the academic years in paragraph (a) of this section an amount at least equal to the total cost of the project in the fifth fiscal year in which the institution received an Administration grant under this part; and

(c) Submits an application which contains all the information required by the Secretary, including for each academic year in paragraph (a) of this section information on—

(1) The number of staff and faculty positions involved in the project; and

(2) The number and income of students enrolled in the project.

(Authority: 20 U.S.C. 1133a)

(Approved by the Office of Management and Budget under control number 1840-0126)

§ 632.24 What limitations apply to a grant amount?

(a) No grant may exceed $500,000 for a single institution of higher education or a combination of institutions in any fiscal year.

(b) The Federal share for cooperative education for a unit of a project may not exceed—

(1) Ninety percent of the cost of the unit in the first year the applicant receives a grant;

(2) Eighty percent of the cost in the second year;

(3) Seventy percent of the cost in the third year;

(4) Sixty percent of the cost in the fourth year; and

(5) Thirty percent of the cost in the fifth year.

(c) In addition, the Federal share for funding cooperative education in a unit beyond the fifth year may not exceed the following percentages:

(1) Ninety percent in the sixth year.

(2) Eighty percent in the seventh year.

(3) Seventy percent in the eighth year.

(4) Sixty percent in the ninth year.

(5) Thirty percent in the tenth year.

(Authority: 20 U.S.C. 1133a)

Subpart D—What Conditions Must Be Met After An Award?

§ 632.30 What are the minimum requirements for the frequency and duration of work experiences?

(a) A cooperative education project in an institution of higher education must provide at least one work experience for participating graduate students and undergraduate certificate students, and at least two work experiences for other participating undergraduate students.

(b) The work experiences provided under paragraph (a) of this section must—

(1) Be of a duration consistent with the grantee's academic calendar but not less than the equivalent of a quarter term; and

(2) Provide sufficient opportunities for each student to gain in-depth experience in an area related to his or her academic program or occupational objectives.

(c) Academic credit for work experiences may be awarded at the discretion of the institution.

(Authority: 20 U.S.C. 1133a)

§ 632.31 How are student work experiences evaluated?

During a student's work experiences, the grantee shall assess the student's progress to ensure that the work experiences satisfy the objectives of the student and the cooperative education project.

(Authority: 20 U.S.C. 1133a)

§ 632.32 What are the fiscal requirements?

A grantee shall expend from its own resources for its cooperative education project during the fiscal year in which a grant is received not less than the amount the grantee expended from non-Federal funds for its project during the previous fiscal year for which Federal funds were received.

(Authority: 20 U.S.C. 1133a)

PART 633—COOPERATIVE EDUCATION PROGRAM—DEMONSTRATION PROJECTS

Subpart A—General

Sec.
633.1 What is a Cooperative Education Demonstration project?
633.2 Who is eligible for an award?
633.3 Who is eligible to participate in a demonstration project?
633.4 What types of demonstration projects does the Secretary fund?
633.5 What regulations apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary make an Award?

633.20 What selection criteria does the Secretary use to evaluate demonstration applications?

Authority: 20 U.S.C. 1133, 1133b, unless otherwise noted.

Subpart A—General

§ 633.1 What is a Cooperative Education Demonstration project?

A Demonstration project is designed to demonstrate or determine the feasibility or value of innovative methods of cooperative education.

(Authority: 20 U.S.C. 1133b)

§ 633.2 Who is eligible for an award?

The following are eligible to apply for an award under this part:

(a) Institutions of higher education.

(b) Combinations of institutions of higher education.

(c) Public or private nonprofit agencies or organizations.

(Authority: 20 U.S.C. 1133b)

§ 633.3 Who is eligible to participate in a demonstration project?

An individual who meets the definition of "student" in § 631.5(b) is eligible to participate in a project under this part.

(Authority: 20 U.S.C. 1133b)

§ 633.4 What types of demonstration projects does the Secretary fund?

The Secretary makes awards under this part for projects that—

(a) Determine the value of existing, innovative methods of cooperative education which have not been fully evaluated;

(b) Determine the feasibility of a proposed, innovative method of cooperative education; or

(c) Disseminate information on successful innovative projects.

(Authority: 20 U.S.C. 1133b)

§ 633.5 What regulations apply?

The following regulations apply to this program:

(a) The regulations cited in § 631.4(a) and (b).

(b) The regulations in this part.

(Authority: 20 U.S.C. 1133b)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 633.20 What selection criteria does the Secretary use to evaluate demonstration applications?

The Secretary uses the following selection criteria to evaluate applications under this part:

(a) *Purposes and objectives of the project.* (20 points) The Secretary reviews each application to evaluate the merits of the following:

(1) The purposes of the project.

(2) The extent to which the project is designed to—

(i) Determine the value of existing, innovative methods of cooperative education which have not yet been fully evaluated;

(ii) Determine the feasibility of proposed, innovative methods of cooperative education; or

(iii) Disseminate information on successful innovative projects.

(3) Measurable objectives which relate to the purposes of the project for each year for which Federal funds have been requested.

(4) The expected outcomes of the project, and how the outcomes will benefit cooperative education.

(b) *Project design and plan of operation.* (50 points) The Secretary considers the quality of—

(1) The project's design and the activities to be conducted, including the relationship between the activities and the project objectives; (10 points)

(2) The organizational structure of the project; (5 points)

(3) A schedule for implementing the project's activities and meeting its objectives which shows the way resources will be used in meeting each objective; (10 points)

(4) The plan for effectively and efficiently administering the project; (10 points)

(5) The staffing plan and the time each project person will devote to the project; (10 points) and

(6) Other resources, such as space and equipment, that will be available to the project. (5 points)

(c) *Quality of key personnel.* (10 points) The Secretary considers—

(1) The qualifications of the project director, other professional staff, faculty, and consultants, if used.

(2) The relationship of the qualifications of each professional person involved in the project to the project's stated purposes and objectives.

(d) *Evaluation plan.* (10 points) The Secretary considers the quality of the proposed evaluation plan for the project, including the extent to which the methods of evaluation—

(1) Are appropriate to the project; and

(2) Are objective and produce useful data that are quantifiable.

(e) *Adequacy and reasonableness of the budget.* (10 points) The Secretary considers the extent to which—

(1) Costs for the project are adequate and reasonable compared with the objectives, project design, staffing plan, and plan of operation; and

(2) Funds will be contributed by the applicant and consortium members of the project, if any.

(Authority: 20 U.S.C. 1133b)

(Approved by the Office of Management and Budget under control number 1840-0128)

PART 634—COOPERATIVE EDUCATION PROGRAM—RESEARCH PROJECTS

Subpart A—General

Sec.

634.1 What is a Cooperative Education Research project?

634.2 Who is eligible for an award?

634.3 What types of research projects does the Secretary fund?

634.4 What regulations apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

634.20 What selection criteria does the Secretary use to evaluate research applications?

634.21 What priorities may the Secretary use?

Authority: 20 U.S.C. 1133, 1133b, unless otherwise noted.

Subpart A—General

§ 634.1 What is a Cooperative Education Research project?

The purpose of a research project is to conduct studies to improve, develop, or evaluate methods of cooperative education for the benefit of the cooperative education community.

(Authority: 20 U.S.C. 1133b)

§ 634.2 Who is eligible for an award?

The following are eligible to apply for an award under this part:

(a) Institutions of higher education.

(b) Combinations of institutions of higher education.

(c) Public or private nonprofit agencies or organizations.

(Authority: 20 U.S.C. 1133b)

§ 634.3 What types of research projects does the Secretary fund?

(a) The Secretary makes awards under this part for research projects related, but not limited, to the following:

(1) Improving the effectiveness of cooperative education projects.

(2) Providing data on the usefulness of cooperative education as an alternative educational approach to assist students to prepare for careers and to finance their educational pursuits.

(3) Developing better cooperation among high schools, institutions of higher education, business, and industry to enhance the opportunity for students to participate in work experiences related to their academic or career objectives.

(b) The Secretary does not fund a project designed to benefit only a single institution.

(Authority: 20 U.S.C. 1133b)

§ 634.4 What regulations apply?

The following regulations apply to this program:

(a) The regulations cited in § 631.4 (a) and (b).

(b) The regulations in this part.

(Authority: 20 U.S.C. 1133)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 634.20 What selection criteria does the Secretary use to evaluate research applications?

The Secretary uses the following selection criteria in evaluating research applications under this part:

(a) *Relevancy of research.* (20 points) The Secretary considers the extent to which—

(1) The proposed research is responsive to a major problem or need in cooperative education; and

(2) The findings would be of value to institutions, faculty, students, or employers involved or interested in cooperative education.

(b) *Design of research.* (20 points) The Secretary considers the research design by assessing the objectivity and quality of the—

(1) Definition of the problem or objectives to which the research is directed;

(2) Research methods;

(3) Sampling method to be used, if applicable;

(4) Data collection method to be used, if applicable; and

(5) Plan for analyzing data.

(c) *Plan of operation.* (15 points) The Secretary considers the quality and the effectiveness of—

(1) The plan of management, including the extent to which the plan will ensure proper and efficient administration of the project;

(2) The schedule for implementing the project; and

(3) The way the applicant plans to use its resources and personnel to conduct the project.

(d) *Adequacy of resources.* (10 points) The Secretary considers the extent to which—

(1) The personnel resources the applicant plans to use are adequate;

(2) The facilities that the applicant plans to use are adequate; and

(3) The equipment and supplies that the applicant plans to use are adequate.

(e) *Quality of key personnel.* (20 points) The Secretary considers the quality of the key personnel the applicant plans to use on the project by reviewing—

(1) The qualifications of the project director or principal investigator;

(2) The qualifications of each of the other key personnel to be used in the project; and

(3) The relationship of the qualifications of each professional person involved in the project to the project's stated purposes and objectives.

(f) *Dissemination of results.* (5 points) The Secretary considers the extent to which the results of the research will be disseminated by reviewing—

(1) Publication plans;

(2) Methods of dissemination; and

(3) The dissemination schedule.

(g) *Budget.* (10 points) The Secretary reviews the budget to assure that it is reasonable when compared with the design of the project, the plan of operation, and plans for disseminating the results of the research.

(Authority: 20 U.S.C. 1133b)

(Approved by the Office of Management and Budget under control number 1840-0126)

§ 634.21 What priorities may the Secretary use?

The Secretary may select funding priorities from the following research categories:

(a) Identification and assessment of incentives and factors that influence an institution of higher education to continue its cooperative education project successfully after Federal financial assistance has ended.

(b) Identification and assessment of the factors that influence the participation of students, faculty and employers in cooperative education.

(c) Alternatives to, and methods of, financing cooperative education without Federal support in public and private, 2- and 4-year colleges and universities.

(d) Longitudinal studies on former cooperative education students and non-cooperative education students to determine the relationship between the students' cooperative education work experiences and one or more of the following:

(1) Initial job placement.

(2) Job advancement.

(3) Long-term earnings.

(e) Assessment of the impact of cooperative education on college retention rates and academic achievement of students participating in cooperative education, compared to non-participants.

(f) Assessment of the impact of institution-wide cooperative education projects on—

(1) The institution;

(2) Students at the institution;

(3) Faculty;

(4) Employment opportunities; and

(5) Factors influencing the successes and failures of institution-wide cooperative education projects.

(Authority: 20 U.S.C. 1133b)

PART 635—COOPERATIVE EDUCATION PROGRAM—TRAINING AND RESOURCE CENTER PROJECTS

Subpart A—General

Sec.

635.1 What is a Cooperative Education Training and Resource Center project?
635.2 Who is eligible for an award?
635.3 Who is eligible to participate?
635.4 What activities may the Secretary fund?
635.5 What priorities may the Secretary establish?
635.6 What regulations apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

635.20 What selection criteria does the Secretary use to evaluate applications?

Authority: 20 U.S.C. 1133, 1133b, unless otherwise noted.

Subpart A—General

§ 635.1 What is a Cooperative Education Training and Resource Center project?

A Training and Resource Center project is designed to train and assist individuals who participate in or are planning to participate in the planning, establishment, and administration of cooperative education projects.

(Authority: 20 U.S.C. 1133b)

§ 635.2 Who is eligible for an award?

The following are eligible to apply for awards under this part:

(a) Institutions of higher education.

(b) Combinations of institutions of higher education.

(c) Public or private nonprofit agencies or organizations.

(Authority: 20 U.S.C. 1133b)

§ 635.3 Who is eligible to participate?

Individuals with a need for training, project-related materials, and technical assistance in the planning, establishment, or administration of a cooperative education project, are eligible to participate in training projects assisted under this part, including—

(a) Presidents and administrators of institutions of higher education, whether or not their institution administers a Federally-funded cooperative education project;

(b) Faculty and staff of institutions of higher education, whether or not their institution administers a Federally-funded cooperative education project;

(c) High school personnel responsible for career and academic guidance; and

(d) Employers or prospective employers of students in a cooperative education project.

(Authority 20 U.S.C. 1133b)

§ 635.4 What activities may the Secretary fund?

(a) The Secretary makes awards under this part for training and resource center projects designed to provide information and develop skills necessary to administer cooperative education projects.

(b) A recipient of an award for a training and resource center project shall conduct one or more of the following activities:

(1) Training project directors, coordinators, faculty members, employers, and other persons mentioned in § 635.3 who are or will be involved in cooperative education.

(2) Improving materials used in cooperative education projects.

(3) Providing technical assistance to institutions of higher education to increase their potential to continue cooperative education programs without Federal funds.

(4) Encouraging model cooperative education projects which furnish education and training in occupations in which there is a national need.

(5) Supporting partnerships in which an institution with an existing institution-wide cooperative education program assists another institution to—

(i) Develop and expand its existing cooperative education program; or

(ii) Establish, improve, or expand an institution-wide cooperative education project.

(Authority: 20 U.S.C. 1133b)

§ 635.5 What priorities may the Secretary establish?

Each year the Secretary may select as a priority one or more of the activities listed in § 635.4.

(Authority: 20 U.S.C. 1133b)

§ 635.6 What regulations apply?

The following regulations apply to this program:

(a) The regulations cited in § 631.4(a) and (b).

(b) The regulations in this part.

(Authority: 20 U.S.C. 1133)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 635.20 What selection criteria does the Secretary use to evaluate applications?

The Secretary uses the following selection criteria to evaluate an application under this part:

(a) *Needs assessment.* (21 points) The Secretary considers the extent to which the applicant provides evidence, as applicable, of current need for its project, for example, need for—

(1) Training, technical assistance, and materials in its geographic area;

(2) Training, technical assistance, and materials of a specialized nature addressed to a nationwide clientele; or

(3) Development of model programs, partnerships, and institution-wide cooperative education projects.

(b) *Purpose and scope of training and functions of the resource center.* (15 points) The Secretary considers the extent to which the purpose of the project and the scope of the project activities to be provided will address the needs of the constituency selected to receive training and information, based on the use of needs analysis data.

(c) *Plan of operation.* (36 points) The Secretary considers—

(1) The extent to which the applicant provides evidence of thorough planning for the proposed project, including the procedures to be used in conducting the project, and the commitment of personnel to be involved in conducting the project;

(2) The extent to which the objectives and proposed outcomes of the project relate to the project's purpose and the results of the needs assessment;

(3) The quality of the actual design of the project, including plans for dealing with unexpected problems and evaluation results;

(4) The quality of the activities to be conducted and their relationship to the criteria in paragraph (c)(2) of this section;

(5) The quality of the methods and procedures to be used in conducting the project's training plan;

(6) The proposed schedule for conducting project activities and training sessions, including the subject matter to be covered at each session, the duration and geographic location of the sessions, and the proposed number of participants to be served at each session;

(7) The extent to which the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition;

(8) The quality of the plan for managing the project; and

(9) The extent to which the proposed project has promise of fulfilling the proposed objectives and the current need for the project.

(d) *Quality of key personnel.* (9 points) The Secretary considers—

(1) The qualifications and training skills of the project director;

(2) The qualifications of other professional personnel, including consultants, to be used in the project; and

(3) The relationship of the qualifications of each professional person involved in the project to the project's stated purposes and objectives.

(e) *Adequacy of resources.* (8 points) The Secretary considers the extent to which—

(1) Personnel resources are available and adequate for conducting the project's activities.

(2) Physical facilities are available and adequate for conducting the project's activities; and

(3) Necessary equipment and other required resources are available for conducting the project's activities.

(f) *Evaluation plan.* (6 points) The Secretary considers the quality of the proposed evaluation plan for the project, including the extent to which the methods of evaluation—

(1) Are appropriate to the project; and

(2) Are objective and produce useful data that are quantifiable.

(g) *Budget.* (5 points) The Secretary considers the extent to which the budget is reasonable compared with the scope of training and the plan of operation.

(Authority: 20 U.S.C. 1133b)

(Approved by the Office of Management and Budget under control number 1840–0126)

PART 636—THE SUPPLEMENTAL FUNDS PROGRAM FOR COOPERATIVE EDUCATION

2. The authority citation for Part 636 is revised to read as follows:

Authority: 42 U.S.C. 2752(d) (as in effect prior to enactment of the Higher Education Amendments of 1986 (Pub. L. 99–498)); Pub. L. 99–178; H.R. 5233, as referenced in Pub. L. 99–951.

3. In Part 636, the references to "34 CFR 631.3(b)" are revised to read "34 CFR 631.5(b)" in the following places:

(a) Section 636.2 (a) and (b).

(b) Section 636.4(c), in the definitions of "Expand Cooperative Education", "Improve Cooperative Education", and "Initiate Cooperative Education".

(c) Section 636.10.

§ 636.30 [Amended]

4. In § 636.30, the following words are added in the first sentence between the word "amended" and the period: "prior to enactment of the Higher Education Amendments of 1986".

§ 636.40 [Amended]

5. In § 636.40, the reference to "34 CFR 631.40" is revised to read "34 CFR 631.30".

§ 636.41 [Amended]

6. In § 636.41, the reference to "34 CFR 631.41" is revised to read "34 CFR 631.31".

[FR Doc. 87–17764 Filed 8–4–87; 8:45 am]

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Part IV

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Office of Human Development Services

National Resource Center on Child Sexual Abuse; Announcement of Availability of Funds and Request for Applications

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

[Program Announcement No. 13670-871]

National Resource Center on Child Sexual Abuse

AGENCY: Administration for Children, Youth and Families (ACYF), Office of Human Development Services (OHDS), Department of Health and Human Services (DHHS).

ACTION: Announcement of availability of funds and request for applications.

SUMMARY: The Office of Human Development Services (OHDS) announces that applications are being accepted for a grant to establish a National Resource Center on Child Sexual Abuse authorized by Pub. L. 93-247, as amended, 42 U.S.C. 5101, *et seq.* This announcement is a follow up to the OHDS FY 1985 and FY 1986 Program Announcements for Resource Centers for Child Welfare Services published in the **Federal Register** on April 1, 1985 (50 FR 12918), and November 5, 1985 (50 FR 45962). Under those announcements, nine grant awards were made to fund National Resource Centers in the areas of Foster Care, Adoption, Family-Based Preventive Services, Developmental Disabilities, Youth Services, Program Management and Administration, Legal Resources on Child Welfare, Child Abuse and Neglect, and Child Abuse Clinical Resources. The purpose of this announcement is to request applications for a National Center in the one area in which no award was made: Child Sexual Abuse.

DATE: The closing date for receipt of applications is October 5, 1987.

ADDRESSES: Application receipt point: HDS Grants and Contracts Management Division, HDS/OMS, 200 Independence Avenue, SW., Room 345-F, Hubert H. Humphrey Building, Washington, DC 20201, Attention: Mary White, 13670-871.

FOR FURTHER INFORMATION CONTACT: Cynthia Darling, HDS/ACYF/Children's Bureau, National Center on Child Abuse and Neglect, P.O. Box 1182, Washington, DC 20013, (202) 245-2856.

SUPPLEMENTARY INFORMATION:

Part I. General Information

A. Background

The Child Welfare Services National Resource Center Grant program was undertaken to develop, expand, strengthen and improve the capacity of State and local, public and private child welfare agencies throughout the country to utilize exemplary methods and resources to provide effective services to children and families. National resource centers, focusing on nine different program areas related to child welfare services: Foster Care, Adoption, Family-Based Preventive Services, Developmental Disabilities, Youth Services, Program Management and Administration, Legal Resources on Child Welfare, Child Abuse and Neglect, and Child Sexual Abuse, would be established to be the focal point nationwide for technical assistance, training, and consultation in their respective areas.

Program announcements of the availability of funds to establish these nine Resource Centers for Child Welfare Services were published in the **Federal Register** on April 1, 1985 (50 FR 12918) and November 5, 1985 (50 FR 45962). Under those announcements, nine awards were made in eight of the nine areas described.

Proposals for grants in the area of child sexual abuse were not considered to be fully responsive to the announcements for a number of reasons: (1) Proposals did not describe centers of excellence and expertise but, instead, described loose configurations of existing organizations; (2) proposals did not adequately address the activities identified for the child sexual abuse priority area; (3) proposals did not reflect an awareness of, or proposed to duplicate, activities or services already being provided under other OHDS grant program initiatives or contracts; (4) proposals did not present a credible marketing strategy which would produce non-Federal funds for continuation of activities beyond the Federal grant period; and (5) proposals outlined projects which were local or regional rather than national in scope. As a result, no grants were awarded in the area of child sexual abuse.

B. Program Purpose

Child sexual abuse has been defined in a variety of ways and encompasses a wide range of behavior from fondling and exhibitionism, forcible rape and incest, to commercial exploitation through prostitution or the production of pornographic materials. In the Child Abuse Prevention and Treatment Act, the term *sexual abuse* includes the following activities under circumstances which indicate that the child's health or welfare is harmed or threatened with harm:

(i) The employment, use, persuasion, inducement, enticement, or coercion of any child to engage in, or having a child assist any other person to engage in any sexually explicit conduct (or any simulation of such conduct) for the purpose of producing any visual depiction of such conduct, or

(ii) The rape, molestation, prostitution, or other such form of sexual exploitation of children, or incest with children.

The Child Abuse Amendments of 1984 also broadened the definition of persons responsible for the child's welfare to include an employee of a residential facility or any staff person providing out-of-home care. This change broadens the scope of preventive efforts and extends protective services to children abused in out-of-home settings, such as day care centers.

Because of these legislative changes and the increase in the reports of child sexual abuse, the demand for resources, exemplary materials, and expertise in the prevention, identification and treatment of child sexual abuse remains high. Therefore, a National Resource Center on Child Sexual Abuse, similar to the other nine Child Welfare Services National Resource Centers currently supported by ACYF, is needed.

The Resource Center would assist State, local and private sector service providers, including child protective service providers; schools; day care providers; mental health and health providers; as well as law enforcement, and the judicial and legal communities in accessing current and timely program information and implementing innovative methods and strategies to improve services for children and families affected by child sexual abuse.

This program announcement solicits applications, specifies grantee responsibilities, and describes the application process for a grant to establish a National Resource Center on Child Sexual Abuse.

OHDS/ACYF proposes to support a three-year effort to collect, develop and disseminate resource materials and facilitate the exchange of information on effective and innovative approaches and techniques in the area of child sexual abuse prevention, identification, diagnosis, and treatment. The Resource Center will function as a national center of excellence and expertise recognized by the field as an essential resource to be accessed for training, consultative services, and state-of-the-art knowledge, on a payment for services basis so that the Resource Center can become self-supporting over a three-year period.

C. Statutory Authority

The statutory authority under which a grant will be awarded through this program announcement is section 4(a) of the Child Abuse Prevention and

Treatment Act, Pub. L. 93–247, as amended (42 U.S.C. 5103(a)).

D. Eligible Applicants

Any State, local public, or non-profit organization or agency, including accredited colleges and universities, located within, or proposing to operate the Center within, the contiguous United States may submit an application under this announcement. This geographic limitation is included to assure maximum accessibility of the greatest number of users at the most economical costs. Applications developed jointly by State, local, and community-based social services agencies, foundations, colleges or universities are encouraged.

E. Availability of Funds

OHDS expects to make one grant award for approximately $250,000 per year for each of three years, subject to the availability of funds and satisfactory grantee performance. The funding level may vary based upon the scope of work projected in the grant application.

Continuation funding will be based, in part, on the extent to which the project has succeeded in marketing its skills and services and obtained commitments for the purchase of services for the second and third year of the grant period.

Part II. Specific Responsibilities of the Grantee

A. Grantee Responsibilities

The National Resource Center on Child Sexual Abuse is expected to be task-oriented, time-limited and specific in focus. The Resource Center must have personnel who are well qualified to carry out the activities of the Center, as well as adequate resources and the organizational, professional, and educational capacity to address the critical issues related to the project's goals and objectives. Therefore, we are requesting applications which propose to establish a National Resource Center staffed by knowledgeable and experienced professionals capable of providing leadership, resource information and materials, technical assistance and professional consultation in the following areas:

- The prevention, identification, diagnosis, and treatment of child sexual abuse;
- The enhancement of the effectiveness of interrelated systems such as child protective services, judicial, mental health, law enforcement and medical systems processes;
- The investigation, management and prosecution of child sexual abuse cases from the initial report through disposition;
- The development of experimental, model and demonstration programs; and
- The training of professionals in multidisciplinary fields.

Examples of tasks to be performed include:

- The identification, verification, and dissemination of best case practices and case management approaches;
- The development of networking and coordination activities to establish linkages between public, private, and voluntary agencies, organizations, and individuals serving children and families; and
- The development of an analysis of the most up-to-date, reliable information on the phenomenon of group child sexual abuse as it differs from the handling of individual child sexual abuse cases.

The Resource Center must address the ethnic and cultural needs of children and families in the context of child sexual abuse with special attention to the requirements of Pub. L. 95–608, the Indian Child Welfare Act of 1978.

This Resource Center must also address both intrafamilial and extrafamilial sexual abuse of children as well as sexual exploitation of children as defined in the Child Abuse Prevention and Treatment Act (cited above). It must also be a resource to public, private, and voluntary agencies as well as multidisciplinary professionals concerned with the care and treatment of child sexual abuse victims and their families, e.g., child protective services workers, health care providers, law enforcement, judicial and legal personnel, counselors, therapists, school personnel, and others who work with children and youth on a daily basis.

The Resource Center must establish cooperative relationships with foundations, private sector organizations, and affiliated State and local agencies for the purpose of obtaining their participation in the planning and implementation of the proposed project. This participation will include a commitment to a specified and substantive involvement in and support of the goals and objectives of the project.

The Center must have a program component specifically designed to attract private sector initiatives, and involve private sector agencies and organizations in the activities of the Center.

The Resource Center must have a strategy for acquiring additional non-Federal support to sustain the full cost of the project when Federal funding terminates, e.g., contractual arrangements with State and local agencies and other relevant entities to acquire program income on a fee-for-service basis, and the marketing of exemplary resource materials, training, and consultation services. Approval of second and third year grants will be based, in part, on the extent to which the Center has succeeded in marketing its skills and services.

B. Grantee Share of the Project

At least 25 percent of the total cost of the proposed project must come from a source other than the Federal government (one non-Federal dollar match for every three Federal dollars requested from HDS). Applications proposing less than the 25 percent required match will be considered unresponsive and will not be reviewed. The non-Federal share of total project costs for each budget period may be in the form of grantee-incurred costs or third party in-kind contributions.

Part III. Criteria for Review and Evaluation of the Grant Application

In considering how the grantee will carry out the responsibilities under Part II of this announcement, competing applications will be reviewed and evaluated against the following criteria:

A. *Objectives and Need for This Assistance*—(10 Points). State the specific objectives and needs addressed by the project in terms of its national significance, its theoretical importance and its applicability to practices and subordinate objectives of the project. Provide a discussion of the "state-of-the-art" relative to the problem or area addressed by the proposal and indicate how the proposed effort will impact on it. For demonstration, training and technical assistance, and evaluation projects, indicate goals or service objectives of the proposal. Supporting documentation or other testimonies from concerned interests other than the applicant may be used. Any relevant data based on planning or demonstration studies must be summarized, evaluated and related to the proposed project.

B. *Results or Benefits Expected (Beneficial Impact)*—(15 Points). This section must identify the results and benefits—for target groups and human service programs—to be derived from implementing the proposed project. The anticipated contribution to policy and practice should be indicated.

C. *Approach (Project Implementation Plan)*—(30 Points).

Tasks to be Performed

Provide major milestones of events, activities and products and a timetable for completion, including the time commitments of all key staff to individual project tasks.

Design and Methodology

This portion of the program narrative must identify the specific problem(s), issue(s), and objectives of the proposal addressed by the applicant agency and provide a detailed discussion of how the approach provided for will accomplish these project objectives.

Evaluation

Where appropriate, evaluation plans and procedures must be described in detail and must be capable of measuring the degree to which project objectives have been accomplished.

Dissemination and Utilization

Describe the steps to be taken to disseminate and promote the utilization of project products and findings using Federal and/or non-Federal resources. The specific audiences to whom the products will be addressed must be specified.

D. *Staffing and Management*—(25 Points). This section must address:

Staffing Pattern

Describe the staffing pattern for the proposed project, clearly linking responsibilities to project tasks and specifying the contribution to be made by senior staff.

Competence of Staff

Indicate the qualifications of the project team, the variety of skills to be used, relevant research experience, educational background and the demonstrated ability to produce final results that are readily comprehensible and usable.

Adequacy of Resources

Specify the adequacy of the facilities, resources and organizational experience with regard to the tasks of the proposed project.

E. *Budget Appropriateness and Reasonableness*—(20 Points). This section must address:

Budget

Relate the proposed budget to the level of effort required to attain project objectives. Provide a cost/benefit analysis if possible. Demonstrate that the project's costs are reasonable in view of the anticipated results.

Assurances

Discuss collaborative efforts with other agencies or organizations. Written assurances should be included with the application if available.

Authorship

The author(s) of the application must be clearly identified together with their current relationship to the applicant organizations and any future project role they may have if the application is funded.

Part IV. Application Process

A. Availability of Forms

All instructions and forms required for submittal of applications are included in an application kit. The application kit may be obtained by writing or telephoning: HDS Grants and Contracts Management Division, OHDS/OMS, 200 Independence Ave. SW., Room 345–F, Hubert H. Humphrey Building, Washington, DC 20201, Attention: Mary White 13670–871, (202) 472–6712.

B. Application Submission

At a minimum, one signed original and two copies of the application, including all attachments, are required. Applications must be submitted to the HDS Grants and Contracts Management Division, Attention: Mary White, 13670–871, at the above-referenced address.

In order to be considered for a grant under this program announcement, an application must be submitted on the forms and in the manner required by this announcement. The application must be executed by an individual authorized to act for the applicant agency and to assume responsibility for the obligations imposed by the terms and conditions of the grant award.

C. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Pub. L. 96–511, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and recordkeeping requirement inherent in a program announcement. This program announcement does not contain information collection requirements beyond those approved for HDS discretionary grant applications approved under OMB Control Number 0980–0016.

D. Notification Under Executive Order 12372

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs" and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All the States that are eligible to apply, except Idaho and Nebraska, have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these areas need take no action regarding E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them to the prospective application and to receive any necessary instructions.

Applicants must submit any required material to the SPOC as early as possible so the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or date of contact if no submittal is required) on the SF–424, item 22a.

SPOCs have sixty (60) days starting from the application deadline date to comment on applications submitted under this announcement. Therefore, the comment period for State processes will end on December 3, 1987, to allow time for OHDS to review, consider, and attempt to accommodate SPOC input. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which they intend to trigger the "accommodate or explain" rule.

When comments are submitted directly to HDS, they should be addressed to: HDS Grants and Contracts Management Division, OHDS/OMS, 200 Independence Ave. SW., Room 345–F, Hubert H. Humphrey Building, Washington, DC 20201, Attention: Mary White 13670–871.

OHDS will notify the State of any application received which has no indication that the State process has had an opportunity for review.

A list of State Single Points of Contact is included at the end of this announcement.

E. Application Consideration

Applications which are complete and conform to the requirements of this program announcement are subject to a competitive review and evaluation by qualified individuals. Applicants will be scored against the evaluation criteria outlined in Part III of this

announcement. The Commissioner, ACYF, determines the final action to be taken with respect to each grant application for this program. In addition to the results of the review, in making final decisions the Commissioner also will consider comments from Central and Regional Office staff.

After the Commissioner has made the final selection, unsuccessful applicants will be notified in writing of this final decision. The successful applicant will be notified through the issuance of a Financial Assistance Award which sets forth the amount of funds awarded, the budget period for which support is given, the non-Federal share requirements, and the total period for which project support is contemplated.

F. Closing Date for Receipt of Applications

The closing date for receipt of applications is October 5, 1987.

1. Mailed Applications

Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date at the above address; or

(b) Sent on or before the deadline date, and received in time to be considered during the competitive review and evaluation process. (Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Applications Submitted By Other Means

Applications which are not submitted in accordance with the above instructions shall be considered as meeting the deadline only if they are physically received before the close of business on or before the deadline date. Hand-delivered applications will be accepted at the HDS Grants and Contracts Management Division office during the normal working hours of 8:30 a.m. to 5:00 p.m., Monday through Friday, except Federal holidays.

3. Late Applications

Applications which do not meet these criteria are considered late applications and will not be considered in the current competition.

4. Extension of Deadlines

OHDS may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is widespread disruption of the mails. However, if OHDS does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

(Catalog of Federal Domestic Assistance Program Number 13.670, Child Abuse and Neglect Discretionary Activities.)

Dated: June 30, 1987.

Dodie Livingston,

Commissioner, Administration for Children, Youth and Families.

Approved: June 30, 1987.

Jean K. Elder,

Assistant Secretary for Human Development Services-Designate.

Executive Order 12372—State Single Points of Contact

Alabama
Mrs. Donna J. Snowden, SPOC, Alabama State Clearinghouse, Alabama Department of Economic and Community Affairs, 3465 Norman Bridge Road, Post Office Box 2939, Montgomery, Alabama 36105–0939, Tel. (205) 284–8905

Alaska
None

Arizona
Department of Commerce, State of Arizona

Note.—Correspondence & questions concerning this State's E.O. 12372 process should be directed to: Janice Dunn, ATTN: Arizona State Clearinghouse, 1700 West Washington, Fourth Floor, Phoenix, Arizona 85007, Tel. (602) 255–5004.

Arkansas
Joe Gillesbie; Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Tel. (501) 371–1074

California
Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Tel. (916) 323–7480

Colorado
State Clearinghouse, Division of Local Government, 1313 Sherman Street, Rm. 520, Denver, Colorado 80203, Tel. (303) 866–2156

Connecticut
Gary E. King, Under Secretary, Comprehensive Planning Division, Office of Policy and Management, Hartford, Connecticut 06106–4459

Note.—Correspondence & questions concerning this State's E.O. 12372 process should be directed to: Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106–4459, Tel. (203) 566–3410.

Delaware
Executive Department, Thomas Collins Building, Dover, Delaware 19903, Attn: Francine Booth, Tel. (302) 736–4204

Florida
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Georgia
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Hawaii
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For Information Contact: Hawaii State Clearinghouse, Tel. (808) 548–3016 or 548–3085.

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Indiana
Ms. Peggy Boehm, Deputy Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Tel. (317) 232–5604

Iowa
A. Thomas Wallace, Iowa Dept. of Economic Development, Division of Community Progress, 200 East Grand Avenue, Des Moines, Iowa 50309, Tel. (515) 281–3864

Kansas
Martin Kennedy, Intergovernmental Liaison, Department of Administration, Division of Budget, Room 152–E, State Capitol Building, Topeka, Kansas 66612, Tel. (913) 296–2436

Kentucky
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Louisiana
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Maine
State Planning Office. Attn: Intergovernmental Review Process/ Hal Kimbal. State House Station #38. Augusta, Maine 04333. Tel.

(207) 289–3154

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Guy W. Hager, Director, Maryland State Clearinghouse, for Intergovernmental Assistance, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Tel. (301) 225–4490

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Michigan
Michelyn Pasteur, Director, Local Development Services, Department of Commerce, P.O. Box 30225, Lansing, Michigan 48909, Tel. (517) 373–3530, Staff Contact: Don Bailey, Tel. (517) 334–6190

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Missouri
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Sue Heath, Intergovernmental Review Clearinghouse, c/o Office of the Lieutenant Governor, Capitol Station, Helena, Montana 59620, Tel. (406) 444–5522

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None

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Ms. Jean Ford, Director, Nevada Office of Community Services, Capitol Complex, Carson City, Nevada 89710, Tel. (702) 885–4420

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Ohio
State Clearinghouse, Office of Budget and Management, 30 East Broad Street, Columbus, Ohio 43215

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Oklahoma
Don Strain, Oklahoma Department of Commerce, Office of Federal Assistance Management, 6601 Broadway Extension, Oklahoma City, Oklahoma 73116, Tel. (405) 843–9770

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Intergovernmental Relations Division, State Clearinghouse, Attn: Delores Streeter, Executive Building, 155 Cottage Street, NE., Salem, Oregon 97310, Tel. (503) 373–1998

Pennsylvania
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Note.—Questions & correspondence concerning this State's review process should be directed to: Mr. Michael T. Marfeo, Review Coordinator.

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Part V

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Identification and Transfer of Effective Juvenile Justice Projects and Services; Effective Parenting Strategies for Families of High Risk Youth; Notice

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Identification and Transfer of Effective Juvenile Justice Projects and Services; Effective Parenting Strategies for Families of High Risk Youth

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of issuance of a solicitation for applications to conduct a demonstration program regarding effective parenting strategies for families of troubled youth.

SUMMARY: This guideline announces an OJJDP program initiative entitled the Identification and Transfer of Effective Juvenile Justice Projects and Services: Effective Parenting Strategies for Families of High Risk Youth.

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) pursuant to section 224(a)(4) of the Juvenile Justice and Delinquency Prevention Act, as amended, is sponsoring a comprehensive demonstration initiative to identify, assess and demonstrate effective programs designed to strengthen families.

The purpose of this program is to provide communities with the necessary information and skills to adopt and implement family strengthening approaches which support the prevention, intervention, and treatment of high risk youth.

An additional purpose of this program is to focus national attention upon selected juvenile justice projects that have demonstrated a significant degree of operational success over a period of time and that are suitable for adoption by state and local service providers.

OJJDP proposes to accomplish this task by sponsoring this demonstration effort which will include:

- Identification and assessment of selected programmatic approaches;
- Development of descriptive program operation manuals;
- Development of training and technical assistance materials to transfer the program information contained in the operation manuals to demonstration sites; and
- Provision of training and technical assistance to demonstration sites.

Eligibility

Public agencies and private not-for-profit organizations which possess capability to conduct a demonstration program of effective parenting strategies for families of high risk youth are invited to submit applications to enter into a cooperative agreement with OJJDP. OJJDP will select the applicant which presents the most cost effective approach, and which best demonstrates knowledge of and experience in the fields of family strengthening and juvenile justice and experience in the areas of operations manual development, program assessment, and training and technical assistance. The project period for this program is three (3) years. Up to $350,000 has been allocated for the first budget period of 24 months. One non-competing continuation award is anticipated. Applicants are encouraged to present cost-competitive proposals. The deadline for receipt of applications is September 7, 1987.

FOR FURTHER INFORMATION CONTACT: Lois Brown, Special Emphasis Division, 202/724-8491, or Catherine Sanders, Research and Program Development, 202/724-5929, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue NW., Washington, DC 20531.

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I. Introduction and Background

Family factors are most influential in the early socialization of children, and family management practices are significant predictors of subsequent delinquency and drug problems. Family focused interventions which seek to improve family management skills appear promising as a prevention strategy.

Highly developed social learning approaches to improving family management skills have been implemented and evaluated (Alexander and Parsons, 1973; Klein, 1977; Patterson, 1982). Parent training combines knowledge building with skill development. Typically, trainers use lectures, reading assignments, or videotapes to provide instruction in skills, followed by demonstration, modeling, and supervised practice to insure skill acquisition at the level of application (Fraser et al., 1986).

Training that teaches parents to monitor their children's behavior, to use moderate contingent discipline for undesired behavior and to consistently reward prosocial behavior (Patterson and Fleishman, 1979) has been shown to reduce children's antisocial behaviors and to produce increases in parent-child attachment and decreases in children's skill deficits (Fleishman, 1981; Patterson and Reid, 1973; Peed, Roberts and Forehand, 1977). Moreover, at least four randomized experimental tests of parent training have shown significant reductions in preadolescents' problem behaviors (Karoly and Rosenthal, 1977; Martin, 1977; Patterson, Chamberlain and Reid, 1982; Walters and Gilmore, 1973).

Kumpfer and Associates (DeMarsh & Kumpfer, 1986; Kumpfer & DeMarsh, 1986) have designed a family skills training program specifically for children of drug abusers participating in treatment programs. Research suggests that these children are at high risk of substance abuse. The Strengthening Families Program is a structured skills training program that teaches parents how to monitor and control their child's behavior. Children participate in a social skills class while parents meet in weekly training sessions. In the second hour of each session, parents and children meet with individual trainers to practice principles introduced in skills classes. Post-treatment evaluations revealed significant improvements in parent-child communication skills and reductions in children's behavior problems. Children in the program also reported significant post-test reductions in their intentions to use tobacco and alcohol.

The evidence regarding the effectiveness of parenting training in reducing childhood behavior disorders suggests the promise of this approach as a prevention strategy for delinquent behavior and drug abuse. Because childhood behavior disorders are significant risk factors for later involvement in illegal activities, training designed for the developmental stage of a child should help parents develop skills to reduce children's early behavior problems in preschool and early elementary years, to increase academic performance in middle elementary grades and to deal with social influences toward drug use in late elementary and junior high school years. To date, little experimental research on the effectiveness of parent training for drug abuse prevention has been conducted, though single case interventions (Bry, 1983) and preliminary studies of group experiments (Hawkins et al., in press) suggest the promise of these approaches in this area.

This program is aimed at identifying promising and effective approaches (e.g., training in family management practices, counseling, support groups, etc.) that can be integrated into comprehensive community strategies to strengthen families.

II. Program Goals and Objectives

A. Goals

1. To identify and assess effective parenting strategies for families of high risk youth;
2. To provide the capability to selected localities to implement effective parenting strategies for families of high risk youth through intensive training and technical assistance; and
3. To disseminate effective parenting strategy designs for families of high risk youth.

B. Objectives

1. Assess existing research and programs which focus on parenting strategies for families of high risk youth;
2. Develop operational manuals based on selected programs;
3. Develop training and technical assistance materials to document and transfer selected program models; and
4. Provide training and technical assistance to selected sites to demonstrate the program models.

III. Program Strategy

OJJDP planning and program development activities are guided by a framework which specifies four sequential phases: research, development, demonstration and dissemination.

The purpose of the demonstration phase is to identify promising or effective operational programs, and to demonstrate the program models in selected jurisdictions. Programs in the demonstration phase are developed incrementally in four discrete stages: (1) Assessment, (2) operational manual development, (3) training and technical assistance development, and (4) provision of training and technical assistance to demonstration sites. This solicitation calls for applications to implement the *demonstration* phase of the program development process in order to assist the juvenile justice system in designing and implementing more effective parenting strategies for families of troubled youth. The purpose of this demonstration is to identify operational promising or effective parenting strategies, and demonstrate the program models in selected sites.

An advisory committee established specifically for this program will provide comments and recommendations to the recipient regarding the program strategy and activities. It may be necessary to change or supplement advisory committee members for different stages of the program. The advisory committee members should have combined expertise in juvenile justice, parent training, youth development, research and program evaluation, and training and technical assistance delivery experience and knowledge of community youth services delivery systems. Each stage of the incremental demonstration process is designed to result in a complete and publishable product (e.g., final demonstration report) and a dissemination strategy to inform the field of the development of the program, and the results and products of each stage. A decision will be made at the completion of each stage, based on availability of funds, and the quality and utility of the products, whether to invest additional funds to complete the current stage or terminate the program.

Stage 1—Assessment

The first stage of the program consists of an assessment of programs and information related to the implementation and operation of programs dealing with parenting strategies for families of high risk youth. The literature review should address the extent of the problem and define the aspects and impact of the problem on the family unit, siblings, parents and the troubled youth. The literature reviews should focus on the types of youth and families where the problem is most prevalent; risk factors relating to family dissolution and the system's responses to the affected families and youth. The purpose of the literature review is to identify the most definitive theoretical and empirical research findings in order to apply them to the review of operational programs, and the selection of the most promising or effective approaches.

The recipient will develop criteria for identifying promising approaches to strengthening families of troubled youth through parent training and related support strategies, and use the criteria to select programs for review and documentation. Information to be collected and assessed should include, at a minimum, the historical development of the program; conceptual framework/theoretical assumptions; number and type of families and youth served; program costs per unit of service and per client; evaluation findings; sources of funding; staffing requirements; and program approach to management and administration.

The assessment should provide the basis for selecting the programs most appropriate for demonstration. The assessment phase may reveal that many programs have very effective components, but there are none which meet the majority of the criteria at a sufficient level to justify nationwide demonstration. If this is the case, an additional developmental phase will be initiated to design prototypical programs based on the best information available through the assessment and other sources. Evaluation issues which should be addressed through the demonstration program should be identified.

Activities

The major activities of this stage are:

1. Establishment of the advisory committee;
2. Development of the assessment plan;
3. Review of the literature;
4. Development of criteria for identifying promising programs;
5. Identification and description of operational promising programs;
6. Preparation of assessment report; and,
7. Development and implementation of a dissemination strategy.

Products

The products to be completed in this stage are:

1. Assessment plan—specifying each step of the assessment process in detail;
2. Draft report which includes:
—literature review
—criteria for identifying promising programs
—recommendations for refining the goals and objectives of the program
—descriptions of promising/effective programs
3. Final report;
4. Recommendations for developing program operation manuals; and,
5. Dissemination strategy to inform the field of the development of the program, and the products and results of this stage.

Stage 2—Development of Descriptive Program Operation Manuals

Upon successful completion of Stage 1, and with the approval of OJJDP, the recipient will develop descriptive program operation manuals for strengthening families through effective parent training and related support strategies for families of troubled youth.

The activities and products of this stage will be based on the information generated as a result of the assessment. Appropriate technical and subject matter expertise will be utilized to design the operation manuals which detail the promising programs.

The operation manuals will provide guidance regarding: identification of the appropriate target population; relationship of the program to other public and private youth and family serving agencies; funding; program organization and management; the philosophy and content of the intervention; resource development; program monitoring; and evaluation of program effectiveness. This information will become part of a training and technical assistance package for dissemination to the appropriate state and local agencies. The recipient will also develop a strategy for demonstrating the promising approaches.

Activities

The major activities of this stage are:
1. Preparation of a plan for developing the operation manuals;
2. Development of the operation manuals;
3. Participation and review by the advisory committee;
4. Development of recommendations for a program announcement to select demonstration sites;
5. Development of a demonstration stragegy; and,
6. Development and implementation of a dissemination strategy.

Products

The products to be completed in this stage are:
1. Plan for operation manuals development;
2. Draft and final operations manuals design(s);
3. Demonstration strategy; and,
4. Dissemination strategy to inform the field of the development of the program, and the products and results of this stage.

Stage 3—Training and Technical Assistance Development Activities

Upon successful completion of Stage 2, and with the approval of OJJDP, the recipient will prepare a plan for deveoping the training and technical assistance packages. Based on the plan, the recipient will transfer the information contained in the program operation manuals and related materials into a training and technical assistance package. Comprehensive training manuals that detail the program design and operation must be developed to encourage and facilitate implementation of the promising programs in the final stage of the demonstration phase.

The training manual should be the focal point of the entire training and technical assistance package. The major audience will be policymakers and practitioners involved in resource allocation and program development related to families with troubled youth. The manual should be designed for presentation in formal training sessions and for independent use in jurisdictions that do not participate in formal sessions. Therefore, each manual should include a compete description of a promising program and incorporate related policies and procedures. The manual should also contain instructions and supplementary materials for trainers to facilitate presentation, and to assure understanding and successful adaption and implementation of the promising programs.

The recipient will recruit and prepare the training and technical assistance personnel to be involved in this demonstration effort. Following this, the training curricula will be tested by the recipient on a limited basis. The recipient will develop a set of recommendations for use by OJJDP in issuing a program announcement for the selection of demonstration sites. Further, the recipient will develop and implement a dissemination strategy to ensure broad distribution of the operations manual and related materials.

The recipient will, as part of the demonstration strategy, develop a strategy to conduct a series of seminars or conferences, nationally, to inform the field about the promising programs.

Activities

The major activities of this stage are:
1. Preparation of a plan for developing the training and technical assistance package;
2. Development of the training and technical assistance materials;
3. Recruitment and preparation of the training and technical assistance personnel;
4. Testing of training curriculum package;
5. Participation and review by the advisory committee;
6. Development of a dissemination strategy to inform the field of the development of the program, and the products and results of this stage.

Products

The products to be completed during this stage are:
1. Plan for the development of the training and technical assistance package;
2. Identification of training and technical assistance personnel;
3. Draft and final training and technical assistance materials, including the training manual and information materials; and,
4. Dissemination strategy.

Stage 4—Provision of Training and Technical Assistance to Demonstration Sites

While a decision to demonstrate the model designs will be made during or following completion of the operations manual development stage, the applicant is expected to explain the methods and approaches that would be employed to implement this stage. As noted, funds for this stage will be provided through noncompetitive continuation awards. In order to ensure the applicant's understanding of the entire demonstration effort, the initial application must address and explain the implementation and coordination of all four stages of the initiative (i.e., assessment, operations manual development, training and technical assistance development, and provision of training and technical assistance to demonstration sites).

Upon successful completion of Stage 3, and with the approval of OJJDP, the recipient will prepare a plan for providing the training and technical assistance to demonstration sites. During this stage, the recipient will provide site selection assistance to OJJDP to facilitate the selection of the demonstration sites. Once these sites are selected and become operational, the recipient will provide intensive training and technical assistance support to them, to enhance the overall operational success of these sites, and to assist the demonstration sites implementing the program evaluation. The recipient will implement a dissemination strategy, to present the program and evaluation results to policymakers and practitioners at the state and local level. Finally, the recipient will be expected to work cooperatively with an independent evaluator to ensure the integrity of the data collection and feedback activities.

Activities

The major activities of this stage are:
1. Assistance to OJJDP in review and selection of demonstration sites;
2. Provision of intensive training and technical assistance to demonstration sites;
3. Assistance to sites in implementing the program evaluation; and,
4. Implementation of a dissemination strategy.

Products

The products to be completed during this stage are:

1. Plan for providing training and technical assistance to demonstration sites;

2. Dissemination strategy to inform the field of the development of the program, and the products and results of this stage.

IV. Dollar Amount and Duration

Up to $350,000 has been allocated for the initial award. One cooperative agreement will be awarded competitively, and the initial budget period will be for 24 months. It is anticipated that this demonstration program will entail three (3) years of program activities (i.e. three year project period), and consist of four phases (assessment, operational manual development, training and technical assistance development, and training and technical assistance to demonstration sites). The initial award will provide support for stages one through three. Supplemental funds will be allocated for an additional budget period.

Each non-competing continuation award, i.e. each additional budget period within the approved three year project period, may be withheld for justifiable reasons. They include: (1) The results do not justify further program activity; (2) the recipient is delinquent in submitting required reports; (3) adequate grantor agency funds are not available to support the project; (4) the recipient has failed to show satisfactory progress in achieving the objectives of the project or otherwise failed to meet the terms and conditions of the award; (5) a recipient's management practices have failed to provide adquate stewardship of grantor agency funds; (6) outstanding audit exceptions have not been cleared; and (7) any other reason which would indicate that continued funding would not be in the best interest of the Government.

V. Eligibility Criteria

Eligible applicants include public agencies and not-for-profit private research and/or juvenile and family service agencies and organizations. Applicant agencies or organizations may submit joint proposals with other eligible organizations provided one is designated in the application as the applicant, and any co-applicants are designated as such. The applicant or co-applicants must demonstrate in the application that they experience in the following areas in order to be eligible for consideration:

A. Design and implementation of research on the effectiveness of family strengthening programs; and design and implementation of family strengthening programs;

B. Demonstrated knowledge of the issues associated with the development, implementation and operation of family strengthening programs; and

C. Management and financial capability to effectively implement a project of this scope and complexity.

VI. Program Application Requirements

All applicants must submit a completed Standard Form 424, Application for Federal Assistance (SF 424), including a program narrative, a detailed budget and a budget narrative. All applications must include in the program narrative information outlined in this section of the solicitation. The program narrative should not exceed 70 double-spaced pages in length. Applications which propose non-competitive contracts for the provision of specific services must include a sole source justification for any procurement in excess of $10,000.

In submitting applications which contain more than one organization, the relationships among the parties must be set forth in the application. As a general rule, organizations which describe their working relationship in the development of products and the delivery of services as primarily cooperative or collaborative in nature will be considered as co-applicants. In the event of a co-applicant submission, one co-applicant must be designated as the payee to receive and disburse project funds and be responsible for the supervision and coordination of the activities of the other co-applicants. Under this arrangement, each organization would agree to be jointly and severally responsible for all project funds and services. Each co-applicant must sign the SF-424 and indicate their acceptance of the conditions of joint and several responsibility with the other applicants.

In addition to the requirements specified in the instructions for preparation of Standard Form 424, the following information must be included in the application:

A. Organizational Capability—Applicants must demonstrate that they are eligible to compete for this cooperative agreement on the basis of eligibility criteria established in this solicitation.

1. Organizational Experience—Applicants must concisely describe their organizational experience with respect to the eligibility criteria specified above. Applicants must demonstrate how their organizational experience and capabilities will enable them to achieve the goals and objectives of this initiative. Applicants are invited to append one example of prior work products of similar nature to their application.

2. Financial Capability—In addition to the assurances provided in Part V, Assurances (SF 424), applicants must also demonstrate that their organization has or can establish fiscal controls and accounting procedures which assure that Federal funds available under this agreement are disbursed and accounted for properly. Applicants who have not previously received federal funds will be asked to submit a copy of the Office of Justice Programs (OJP) Accounting System and Financial Capability Questionnaire (OJP Form 7120/1).

Copies of the form will be provided in the application kit and must be prepared and submitted along with the application. Other applicants may be requested to submit this form. All questions are to be answered regardless of instructions (Section C.I.B. note). The CPA certification is required only of those applicants who have not previously received Federal funding.

B. Program Goals—A succinct statement of your understanding of the goals and objectives of the program should be included. The application should also include a problem statement and a discussion of the potential contribution of this program to the field.

C. Program Strategy—Applicants should describe the proposed approach for achieving the goals and objectives of the Program. A discussion of how each of the four stages of the program would be accomplished should be included.

D. Program Implementation Plan—Applicants should prepare a plan which outlines the major activities involved in implementing the program and describes how they will allocate available resources to implement the program, and how the program will be managed.

The plan must also include an annotated organizational chart depicting the roles and describing the responsibilities of key organizational/functional components; and a list of key personnel responsible for managing and implementing the four major elements of the program. Applicants must present detailed position descriptions, qualifications, and selection criteria for each position. Applicants should also provide recommendations for program advisory committee members. This documentation and individuals' resumes may be submitted as appendices to the application.

E. Time-Task Plan—Applicants must develop a time-task plan for the 24-month budget period, clearly identifying major milestones and products. This

must include designation of organizational responsibility and a schedule for the completion of the tasks and products identified in section III and indicate the anticipated cost schedule per month for the entire budget period.

F. Products—Applicants must concisely describe the interim and final products of each stage of the program, and must address the purpose, audience, and usefulness to the field of each product.

G. Program Budget—Applicants shall provide a 24-month budget with a detailed justification for all costs, including the basis for computation of these costs. Applicants should include a budget estimate to complete the balance of the program. Applications submitted by co-applicants and/or those containing contract(s) must include detailed budgets for each organization's expenses. The budget should include funds for a four person advisory committee to meet four times during the first 24-month budget period.

VII. Procedures and Criteria for Selection

All applications will be evaluated and rated based on the extent to which they meet the following weighted criteria. In general, all applications received will be reviewed in terms of their responsiveness to the minimum program application requirements, organizational capability, and thoroughness and innovativeness in responding to the program strategy requirements. Applications will be evaluated by a peer review panel according to the OJJDP Competition and Peer Review Policy, 28 CFR Part 34, Subpart B, published August 2, 1985 at 50 FR 31366–31367. The selection criteria and their point values (weights) are as follows:

A. Organizational Capability (20 Points)

1. The extent and quality of organizational experience in the development, delivery, and coordination of juvenile and family related research, training, or technical assistance which have been national in scope. (10 points)

2. Adequate fiscal controls and accounting procedures to ensure that the applicant can effectively implement a project of this size and scope, and to ensure the proper disbursal and accounting of Federal funds. (10 points)

B. Soundness of the Proposed Strategy (30 Points)

Understanding of the nature of the program area and the soundness of the approach to each stage of the program for meeting the goals and objectives; and potential utility of proposed products.

C. Qualifications of Project Staff (20 Points)

1. The qualifications of staff identified to manage and implement the program including staff to be hired through contracts. (10 Points)

2. The clarity and appropriateness of position descriptions, required qualifications and selection criteria relative to the specific functions set out in the Implementation Plan. (10 Points)

D. Clarity and appropriateness of the program implementation plan (15 Points)

Adequacy and appropriateness of the activities, and the project management structure; and the feasibility of the time-task plan.

E. Budget (15 Points)

Completeness, reasonableness, appropriateness and cost-effectiveness of the proposed costs, in relationship to the proposed strategy and tasks to be accomplished.

Applications will be evaluated by a peer review panel. The results of peer review will be a relative aggregate ranking of applications in the form of "Summary of Ratings". These will ordinarily be based on numerical values assigned by individual peer reviewers. Peer review recommendations, in conjunction with the results of internal review and any necessary supplementary review, will assist the Administrator in considering competing applications and in selection of the application for funding. The final award decision will be made by the OJJDP Administrator.

VIII. Submission Requirements

All applicants responding to this solicitation should be aware of the following requirements for submission:

1. Organizations which plan to respond to this announcement are requested to submit written notification of their intent to apply to OJJDP by August 31, 1987. Such notification should specify: the name of the applicant organization, mailing address, telephone number, and primary contact person. In the event that organizations intend to apply as co-applicants, each of the co-applicants are to provide the above information. The submission of this notification is optional. It is requested to assist OJJDP in estimating the workload associated with the review of applications and for notifying potential applicants of any supplemental information related to the preparation of their applications.

2. Applicants must submit the original signed application and three copies to OJJDP. The necessary forms for applications (Standard Form 424) will be provided upon request. Applications must be received by mail or hand delivered to the OJJDP by 5:00 p.m. EST on September 7, 1987. Those applications sent by mail should be addressed to Lois Brown, SED/OJJDP, U.S. Department of Justice, 633 Indiana Avenue NW., Washington, DC 20531. Hand delivered applications must be taken to the OJJDP, Room 742, 633 Indiana Avenue NW., Washington, DC between the hours of 8:00 a.m. and 5:00 p.m. except Saturdays, Sundays or Federal holidays.

3. The OJJDP will notify applicants in writing of the receipt of their application. Subsequently, applicants will be notified by letter as to the decision made regarding whether or not their submission will be recommended for funding. It is anticipated that the grant may be awarded as early as September, 1987.

IX. Civil Rights Compliance

A. All recipients of OJJDP assistance must comply with the nondiscrimination requirements of the Juvenile Justice and Delinquency Prevention Act of 1974 as amended; Title VI of the Civil Rights Act of 1964; section 504 of the Rehabilitation Act of 1973 as amended; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; and the Departmnent of Justice Non-Discrimination Regulations (28 CFR Part 42, Subparts C, D, E, and G).

B. In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office of Civil Rights Compliance (OCRC) of the Office of Justice Programs.

C. Applicants shall maintain such records and submit to the OJJDP upon request timely, complete and accurate data establishing the fact that no person or persons will be or have been denied or prohibited from participation in, benefits of, or denied or prohibited from obtaining employment in connection with any program activity funded in whole or in part with funds made available under this program because of their race, national origin, sex, religion, handicap or age. In the case of any program under which a primary recipient of Federal funds extends financial assistance to any other recipient or contracts with any other person(s) or group(s), such other

recipient, person(s) or group(s) shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to assure its civil rights compliance obligations under any award.

X. References

Hawkins, J.D., Lishner, D.M., Jenson, J.M., Catalano, R.F. "Delinquents and Drugs: What the Evidence Suggests About Prevention and Treatment Programming," Paper prepared for the National Institute on Drug Abuse, July, 1986.

Verne L. Speirs,

Administrator, Office of Juvenile and Delinquency Prevention.

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Part VI

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Demonstration of Post Adjudication Non-Residential Intensive Supervision Programs; Notice

DEPARTMENT OF JUSTICE

Demonstration of Post Adjudication Non-Residential Intensive Supervision Programs

AGENCY: Office of Juvenile and Delinquency Prevention, Justice.

ACTION: Notice of issuance of a solicitation for applications to demonstrate post adjudication, non-residential, intensive supervision programs for serious juvenile offenders.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) pursuant to section 224(a)(5) of the Juvenile Justice and Delinquency Prevention Act announces a program entitled: Demonstration of Post Adjudication Non-Residential Intensive Supervision Programs for Serious Juvenile Offenders.

Two of the most widely accepted findings of juvenile delinquency research during the past decade concern the contribution of chronic offenders to the nation's crime problem and the ineffectiveness of correctional programs in reducing subsequent criminality. Program evaluations have not identified particular intervention strategies that consistently produce recidivism rates lower than would be expected in the absence of the intervention, although there is growing evidence that some strategies seem to be effective with different tyes of offenders. Since the ultimate fate of the juvenile justice system rests largely on its capability to control serious juvenile crime, the focus will be on programs for reducing recidivism among serious juvenile offenders.

The purpose of this project is to assist the field by identifying promising and effective intensive supervision programs and demonstrating the program models in selected sites.

Public agencies and not-for-profit private organizations are invited to submit applications to enter into a cooperative agreement with OJJDP. OJJDP will select the applicant which presents the most cost-effective approach and which best demonstrates the organizational capability, knowledge, and experience to conduct a multisite demonstration program. The project period is three years. OJJDP has allocated up to $350,000 for the first 24 months. Based on successful completion of the first budget period a non-competitive continuation project is anticipated. Applicants are encouraged to submit cost-competitive proposals. The deadline for the receipt of applications is September 7, 1987.

The competition will be conducted according to the OJJDP Competition and Peer Review Policy, 28 CFR Part 34, Subpart A published August 2, 1985 at 50 FR 31365–31367.

FOR FURTHER INFORMATION CONTACT: Richard Sutton, Research and Program Development Division, Telephone (202) 724–5929, or Frank Smith, Special Emphasis Division, Telephone (202) 724–5914, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Ave., NW., Washington, DC 20531.

SUPPLEMENTARY INFORMATION:

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I. Introduction and Background
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IV. Dollar Amount and Duration
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I. Introduction and Background

Juvenile delinquency research has documented the unacceptably high contribution of serious juvenile offenders to the national crime problem. Juveniles accounted for approximately 30 percent of all 1985 arrests for property and violent offenses combined. Violent juvenile crime constituted a relatively small percentage (4.2 percent) of all 1985 juvenile arrests. Based on national studies of self-reported delinquency, most American adolescents (up to 70 percent) have been involved in delinquent behavior. Serious juvenile crime is concentrated, however, among a small proportion of juvenile offenders.

Chronic juvenile offenders, who constitute approximately five percent of the male juvenile population and less than 18 percent of all male juveniles arrested, represent more than a costly failure for the juvenile justice system. They also represent a substantial proportion of the group that will eventually become the core of the adult career criminal population. Age at first arrest, frequency of juvenile contacts, and confinement to a state training school are all strong predictors of adult recidivism (Blumstein et al., 1986: Hoffman, 1983; Klein and Caggiano, 1986). High rate offending chronic juvenile offenders are at the core of the predatory street crime problem (Blumstein et al., 1986; Chaiken and Chaiken, 1982; Greenwood and Abrahamse, 1982; Visher, 1986).

In 1985, a total of 1,040 public operated state and local juvenile detention and correctional facilities held approximately 49,300 juveniles. At the same time, approximately 2,000 private facilities housed about 34,000 juveniles.

Most states now spend somewhere between $25,000 and $50,000 per year to provide security and program services for youth, often after they have passed through an extensive series of community-based programs. After their release, however, more than 70 percent are usually re-arrested within one year and more than 50 percent are returned to some form of secure confinement. (Greenwood and Abrahamse, 1982; Haapasen and Jesness, 1982).

One reason for this failure may be the inadequacies of the correctional programs to which they are committed. The principal factors that will influence post adjudicatory supervision issues in the immediate future are: (1) Current facility overcrowding, (2) a projected decline in the numbers of offenders, and (3) effectiveness of existing programs. Temporary overcrowding will be alleviated by favorable demographic trends, necessitating alternatives to capital-intensive approaches. The population is shifting toward a higher proportion of low crime rate adults and a lower proportion of high crime rate juveniles as the baby boom cohorts are aging out of the juvenile-court jurisdiction. It is essential to develop intensive supervision programs that can control serious juvenile offenders, without the costs and inflexibility of traditional secure confinement.

In response to intense public and professional criticism, juvenile agencies throughout the country have begun to experiment with a variety of different supervisory strategies and techniques. Among the more stringent approaches that have been deployed are: mandatory substance abuse treatment, electronic monitoring, reportive sanctioning, and intensive probation supervision. Two dominant factors appear to be driving current efforts to develop new programs of this type: the search for viable and meaningful sentencing options to relieve crowding, and the attempt to satisfy public demand for more accountable forms of community-based control. Typically, intensive supervision programs are designed for serious and/or chronic offenders who otherwise would have been committed to correctional facilities, but through an objective system of diagnosis and classification, have been identified as amenable to community sentencing. The definition of serious and chronic offenders varies for different communities depending on local norms regarding delinquent behavior, law enforcement policies, etc., however, it usually encompasses at least two

dimensions—the nature of the presenting offense and prior offense history. The programs are usually characterized by small caseloads, individualized community sentencing plans, intensive surveillance, and specialized roles for probation officers. (Greenwood, Peter W. and Franklin Zimring, 1985).

Program Goals and Objectives

A. Goals

1. To identify and assess operational or effective intensive supervision programs;
2. To provide the capability to selected localities to implement effective intensive supervision programs for serious offenders through intensive training and technical assistance; and,
3. To disseminate effective post adjudicatory non residential intensive supervision program designs for the supervision of serious juvenile offenders.

B. Objectives

1. Assess existing research and programs which focus on post adjudicatory non-residential intensive supervision;
2. Develop operational manuals based on selected programs;
3. Develop training and technical assistance materials to transfer selected program models; and,
4. Provide training and technical assistance to selected sites to demonstrate the program models. (Applicants are advised that this stage of the demonstration initiative will not be funded during the initial budget period, however, demonstration of the program is one of the primary objectives of this initiative.)

III. Program Strategy

OJJDP planning and program development activities are guided by a framework which specifies four sequential phases of development: research, development, demonstration and dissemination.

The purpose of the demonstration phase is to identify promising or effective operational programs, and to implement the program models in selected jurisdictions in order to demonstrate their feasibility and effectiveness to the field.

OJJDP programs located at the demonstration phase are developed incrementally in four discrete stages: (1) Assessment, (2) operational manual development, (3) training and technical assistance development, and (4) training and technical assistance to demonstration sites. This solicitation calls for applications to complete the *demonstration* phase of the development process in order to assist the juvenile justice system in designing and implementing more effective intensive supervision programs. The purpose of this demonstration is to identify operational promising or effective intensive supervision programs, and demonstrate the program models in selected sites.

An advisory committee established specifically for this program will provide comments and recommendations to the recipient regarding the program strategy and activities. It may be necessary to change or supplement advisory committee members for different stages of the program. The advisory committee members should have combined expertise in juvenile corrections research and program evaluation, training and technical assistance delivery, and experience and knowledge of community youth services delivery systems. Each stage of the incremental demonstration process is designed to result in a complete and publishable product (e.g., final demonstration report) and a dissemination strategy to inform the field of the development of the program, and the results and products of each stage. A decision will be made at the completion of each stage, based on availability of funds, and the quality and utility of the products, whether to invest additional funds to complete the current stage or terminate the program.

Stage 1—Assessment

The first stage of the program consists of an assessment of programs and information related to the implementation and operation of post adjudication non-residential intensive supervision programs. The literature review should address the definition of "serious" offender, number and characteristics of serious offenders adjudicated in juvenile courts, and the effectiveness of dispositions for these youth. The purpose of the literature review is to identify the most definitive theoretical and empirical research findings in order to apply them to the review of operational programs, and the selection of the most promising or effective approaches.

The recipient will develop criteria for identifying promising approaches to post adjudication, non-residential, intensive supervision, and use the criteria to select programs for review and documentation. Information to be collected and assessed should include, at a minimum, the historical development of the program; conceptual framework/theoretical assumptions; number and type of youth served; program costs per unit of service and per client; evaluation findings; sources of funding; staffing requirements; and program approach to management and administration.

The assessment should provide the basis for selecting the programs most appropriate for demonstration. The assessment phase may reveal that many programs have very effective components, but there are none which meet the majority of the criteria at a sufficient level to justify nationwide demonstration. An additional developmental phase will be initiated to design prototypical programs based on the best information available through the assessment and other sources. Evaluation issues which should be addressed through the demonstration program should be identified.

Activities

The major activities of this stage are:

1. Establishment of the advisory committee;
2. Development of the assessment plan;
3. Review of the literature;
4. Development of criteria for identifying promising programs;
5. Identification and description of operational promising programs;
6. Preparation of assessment report; and,
7. Development and implementation of a dissemination strategy.

Products

The products to be completed in this stage are:

1. Assessment plan—specifying each step of the assessment process in detail;
2. Draft report which includes:

—Literature review
—Criteria for identifying promising programs
—Recommendations for refining the goals and objectives of the program
—Descriptions of promising/effective programs

3. Final report;
4. Recommendations for developing program operation manuals; and,
5. Dissemination strategy to inform the field of the development of the program, and the products and results of this stage.

Stage 2—Development of Descriptive Program Operation Manuals

Upon successful completion of Stage 1, and with the approval of OJJDP, the recipient will develop descriptive program operation manuals for post adjudication, non-residential, intensive supervision programs.

The activities and products of this stage will be based on the information generated as a result of the assessment. Appropriate technical and subject matter expertise will be utilized to design the operation manuals which detail the promising programs.

The operation manuals will provide guidance regarding: identification of the appropriate target population; relationship of the program to other public and private youth and family serving agencies; funding; program organization and management; the philosophy and content of the supervision; resource development; program monitoring; and evaluation of program effectiveness. This information will become part of a training and technical assistance package for dissemination to the appropriate state and local agencies. The recipient will also develop a strategy for demonstrating the promising approaches.

Activities

The major activities of this stage are:

1. Preparation of a plan for developing the operation manuals;
2. Development of the operation manuals;
3. Participation and review by the advisory committee;
4. Development of recommendations for a program announcement to select demonstration sites;
5. Development of a demonstration strategy; and,
6. Development and implementation of a dissemination strategy.

Products

The products to be completed in this stage are:

1. Plan for operation manuals development;
2. Draft and final operations manuals design(s);
3. Demonstration strategy; and,
4. Dissemination strategy to inform the field of the development of the program, and the products and results of this stage.

Stage 3—Training and Technical Assistance Development Activities

Upon successful completion of Stage 2, and with the approval of OJJDP, the recipient will prepare a plan for developing the training and technical assistance packages. Based on the plan, the recipient will transfer the program operation manuals and related materials into a training and technical assistance package. Comprehensive training manuals that detail the program design and operation must be developed to encourage and facilitate implementation of the promising programs in the final stage of the demonstration phase.

The training manual should be the focal point of the entire training and technical assistance package. The major audience will be policymakers and practitioners involved in resource allocation and program development related to post adjudication, non-residential, intensive supervision programs. The manual should be designed for presentation in formal training sessions and for independent use in jurisdictions that do not participate in formal training sessions. Therefore, each manual should include a complete description of a promising program and incorporate related policies and procedures. The manual should also contain instructions and supplementary materials for trainers to facilitate presentation, and to assure understanding and successful adaptation and implementation of the promising programs.

The recipient will recruit and prepare the training and technical assistance personnel to be involved in this demonstration effort. Following this, the training curricula will be tested by the recipient on a limited basis. The recipient will develop a set of recommendations for use by OJJDP in issuing a program announcement for the selection of demonstration sites. Further, the recipient will develop and implement a dissemination strategy to ensure broad distribution of the operations manual and related materials.

The recipient will, as part of the demonstration strategy, develop a strategy to conduct a series of seminars or conferences, nationally, to inform the field about the promising programs.

Activities

The major activities of this stage are:

1. Preparation of a plan for developing the training and technical assistance package;
2. Development of the training and technical assistance materials;
3. Recruitment and preparation of the training and technical assistance personnel;
4. Testing of training curriculum package;
5. Participation and review by the advisory committee;
6. Development of a dissemination strategy to inform the field of the development of the program, and the products and results of this stage.

Products

The products to be completed during this stage are:

1. Plan for the development of the training and technical assistance package;
2. Identification of training and technical assistance personnel;
3. Draft and final training and technical assistance package including the training manual and information materials; and,
4. Dissemination strategy.

Stage 4—Provision of Training and Technical Assistance to Demonstration Sites

While a decision to demonstrate the model designs will be made during or following completion of the operations manual development stage, the applicant is expected to explain the methods and approaches that would be employed to implement this stage. As noted, funds for this stage will be provided through noncompetitive continuation awards. In order to ensure the applicant's understanding of the entire demonstration effort, the initial application must address and explain the implementation and coordination of all four stages of the initiative (i.e., assessment, operations manual development, training and technical assistance development, and provision of training and technical assistance to demonstration sites).

During this stage, the recipient will provide site selection assistance to OJJDP to facilitate the selection of the demonstration sites. Once these sites are selected and become operational, the recipient will provide intensive training and technical assistance support to them, to enhance the overall operational success of these sites. Further, the recipient must provide similar intensive training and technical assistance to those demonstration sites implementing the program evaluation. The recipient will implement a dissemination strategy, to present the program and evaluation results to policymakers and practitioners at the state and local level. Finally, the recipient will be expected to work cooperatively with an independent evaluator to ensure the integrity of the data collection and feedback activities.

Activities

The major activities of this stage are:

1. Assistance to OJJDP in review and selection of demonstration sites;
2. Provision of intensive training and technical assistance to demonstration sites;
3. Assistance to sites in implementing the program evaluation; and
4. Implementation of a dissemination strategy.

Products

The products to be completed during this stage are:

1. Plan for providing training and technical assistance to demonstration sites;

2. Dissemination strategy to inform the field of the development of the program, and the products and results of this stage.

IV. Dollar Amount and Duration

Up to $350,000 has been allocated for the initial award. One cooperative agreement will be awarded competitively, and the initial budget period will be for 24 months. It is anticipated that this demonstration program will entail three (3) years of program activities (i.e. three year project period), and consist of four stages (assessment, operational manual development, training and technical assistance development, and training and technical assistance to demonstration sites). The initial award will provide support for stages one through three. Supplemental funds will be allocated for an additional budget period.

Each noncompeting continuation award, i.e. each additional budget period within the approved three year project period, may be withheld for justifiable reasons. They include: (1) The results do not justify further program activity; (2) the recipient is delinquent in submitting required reports; (3) adequate grantor agency funds are not available to support the project; (4) the recipient has failed to show satisfactory progress in achieving the objectives of the project or otherwise failed to meet the terms and conditions of the award; (5) a recipient's management practices have failed to provide adequate stewardship of grantor agency funds; (6) outstanding audit exceptions have not been cleared; and (7) any other reason which would indicate that continued funding would not be in the best interest of the Government.

V. Eligibility Criteria

Eligible applicants include public agencies and not-for-profit private research, and juvenile justice development and service delivery agencies and organizations. Applicant agencies or organizations may submit joint proposals with other eligible organizations provided one is designated in the application as the applicant, and any co-applicants are designated as such. The applicant or co-applicants must demonstrate in the application that they have experience in the following areas in order to be eligible for consideration:

A. Design and implementation of research on the effectiveness of correctional programs; and design and implementation of correctional programs;

B. Demonstrated knowledge of the issues associated with the development, implementation and operation of juvenile intensive supervision programs; and

C. Management and financial capability to effectively implement a project of this scope and complexity.

VI. Program Application Requirements

All applicants must submit a completed Standard Form 424, Application for Federal Assistance (SF–424), including a program narrative, a detailed budget and a budget narrative. All applications must include in the program narrative the information outlined in this section of the solicitation. The program narrative should not exceed 70 double-spaced pages in length. Applications which propose non-competitive contracts for the provision of specific services must include a sole source justification for any procurement in excess of $10,000.

In submitting applications which contain more than one organization, the relationships among the parties must be set forth in the application. As a general rule, organizations which describe their working relationship in the development of products and the delivery of services as primarily cooperative or collaborative in nature will be considered as co-applicants. In the event of a co-applicant submission, one co-applicant must be designated as the payee to receive and disburse project funds and be responsible for the supervision and coordination of the activities of the other co-applicants. Under this arrangement, each organization would agree to be jointly and severally responsible for all project funds and services. Each co-applicant must sign the SF–424 and indicate their acceptance of the conditions of joint and several responsibility with the other applicants.

In addition to the requirements specified in the instructions for preparation of Standard Form 424, the following information must be included in the application:

A. *Organizational Capability*—Applicants must demonstrate that they are eligible to compete for this cooperative agreement on the basis of eligibility criteria established in this solicitation.

1. Organizational Experience—Applicants must concisely describe their organizational experience with respect to the eligibility criteria specified above. Applicants must demonstrate how their organizational experience and capabilities will enable them to achieve the goals and objectives of this initiative. Applicants are invited to append one example of prior work products of similar nature to their application.

2. Financial Capability—In addition to the assurances provided in Part V, Assurances (SF–424), applicants must also demonstrate that their organization has or can establish fiscal controls and accounting procedures which assure that Federal funds available under this agreement are disbursed and accounted for properly. Applicants who have not previously received federal funds will be asked to submit a copy of the Office of Justice Programs (OJP) Accounting System and Financial Capability Questionnaire (OJP Form 7120/1).

Copies of the form will be provided in the application kit and must be prepared and submitted along with the application. Other applicants may be requested to submit this form. All questions are to be answered regardless of instructions (Section C.I.B. note). The CPA certification is required only of those applicants who have not previously received Federal funding.

B. *Program Goals*—A succinct statement of your understanding of the goals and objectives of the program should be included. The application should also include a problem statement and a discussion of the potential contribution of this program to the field.

C. *Program Strategy*—Applicants should describe the proposed approach for achieving the goals and objectives of the Program. A discussion of how each of the four stages of the program would be accomplished should be included.

D. *Program Implementation Plan*—Applicants should prepare a plan which outlines the major activities involved in implementing the program and describes how they will allocate available resources to implement the program, and how the program will be managed.

The plan must also include an annotated organizational chart depicting the roles and describing the responsibilities of key organizational/functional components; and a list of key personnel responsible for managing and implementing the four major elements of the program. Applicants must present detailed position descriptions, qualifications, and selection criteria for each position. Applicants should also provide recommendations for program advisory committee members. This documentation and individuals' resumes

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may be submitted as appendices to the application.

E. *Time-Task Plan*—Applicants must develop a time-task plan for the 24-month project period, clearly identifying major milestones and products. This must include designation of organizational responsibility and a schedule for the completion of the tasks and products identified in Section III and indicate the anticipated cost schedule per month for the entire project period.

F. *Products*—Applicants must concisely describe the interim and final products of each stage of the program, and must address the purpose, audience, and usefulness to the field of each product.

G. *Program Budget*—Applicants shall provide a 24-month budget with a detailed justification for all costs, including the basis for computation of these costs. Applicants should include a budget estimate to complete the balance of the program. Applications submitted by co-applicants and/or those containing contract(s) must include detailed budgets for each organization's expenses. The budget should include funds for a four person advisory committee to meet four times during the first 24-month budget period.

VII. Procedures and Criteria for Selection

All application will be evaluated and rated based on the extent to which they meet the following weighted criteria. In general, all applications received will be reviewed in terms of their responsiveness to the minimum program application requirements, organizational capability, and thoroughness and innovativeness in responding to strategic issues in project implementation. Applications will be evaluated by a peer review panel according to the OJJDP Competition and Peer Review Policy, 28 CFR Part 34, Subpart B, published August 2, 1985 at 50 FR 31366–31367. The selection criteria and their point values (weights) are as follows:

A. Organizational Capability (20 Points):

1. The extent and quality of organizational experience in the development, delivery, and coordination of post adjudication non-residential intensive supervision related research, training, or technical assistance which have been national in scope. (10 points)

2. Adequate fiscal controls and accounting procedures to ensure that the applicant can effectively implement a project of this size and scope, and to ensure the proper disbursal and accounting of Federal funds. (10 points)

B. Soundness of the Proposed Strategy (30 Points). Understanding of the nature of the program area and the soundness of the approach to each stage of the program for meeting the goals and objectives; and potential utility of proposed products.

C. Qualifications of Project Staff (20 Points):

1. The qualifications of staff identified to manage and implement the program including staff to be hired through contracts. (10 points)

2. The clarity and appropriateness of position descriptions, required qualifications and selection criteria relative to the specific functions set out in the Implementation Plan. (10 points)

D. Clarity and appropriateness of the program implementation plan (15 Points). Adequacy an appropriateness of the activities, and the project management structure; and the feasibility of the time-task plan.

E. Budget (15 Points).

Completeness, reasonableness, appropriateness and cost-effectiveness of the proposed costs, in relationship to the proposed strategy and tasks to be accomplished.

Applications will be evaluated by a peer review panel. The results of peer review will be a relative aggregate ranking of applications in the form of "Summary of Ratings". These will ordinarily be based on numerical values assigned by individual peer reviewers. Peer review recommendations, in conjunction with the results of internal review and any necessary supplementary review, will assist the Administrator in considering competing applications and in selection of the application for funding. The final award decision will be make by the OJJDP Administrator.

VIII. Submission Requirements

All applicants responding to this solicitation should be aware of the following requirements for submission:

1. Organizations which plan to respond to this announcement are requested to submit written notification of their intent to apply to OJJDP by August 17, 1987. Such notification should specify: The name of the applicant organization, mailing address, telephone number, and primary contact person. In the event that organization intend to apply as coapplicants, each of the co-applicants are to provide the above information. The submission of this notification is optional. It is requested to assist OJJDP in estimating the workload associated with the review of applications and for notifying potential applicants of any supplemental information related to the preparation of their applications.

2. Applicants must submit the original signed application and three copies to OJJDP. The necessary forms for applications (Standard Form 424) will be provided upon request. Applications must be received by mail or hand delivered to the OJJDP by 5:00 p.m. EST on September 7, 1987. Those applications sent by mail should be addressed to Richard Sutton, NIJJDP/OJJDP, U.S. Department of Justice, 633 Indiana Avenue, NW., Washington, DC 20531. Hand delivered applications must be taken to the OJJDP, Room 780, 633 Indiana Avenue, NW., Washington, DC between the hours of 8:00 a.m. and 5:00 p.m. except Saturdays, Sundays or Federal holidays.

3. The OJJDP will notify applicants in writing of the receipt of their application. Subsequently, applicants will be notified by letter as to the decision made regarding whether or not their submission will be recommended for funding. It is anticipated that the grant may be awarded as early as September, 1987.

IX. Civil Rights Compliance

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B. In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds or race, color, religion, national origin or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office of Civil Rights Compliance (OCRC) of the Office of Justice Programs.

C. Applicants shall maintain such records and submit to the OJJDP upon request timely, completre and accurate data establishing the fact that no person or persons will be or have denied or prohibited from participation in, benefits of, or denied or prohibited from obtaining employment in connection with any program activity funded in whole or in part with funds made available under this program because of their race, national origin, sex, religion, handicap or age. In the case of any

program under which a primary recipient of Federal funds extends financial assistance to any other recipient or contracts with any other person(s) or group(s), such other recipient, person(s) or group(s) shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to assure its civil rights compliance obligations under any grant award.

X. References

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Verne L. Speirs,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

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WHO: The Office of the Federal Register.

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WASHINGTON, DC

WHEN: September 29, at 9 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: Janice Booker, 202-523-5239

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Thursday, August 6, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 87-104]

Oriental Fruit Fly; Addition to the Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Oriental fruit fly regulations by adding a portion of San Diego County in California to the list of areas designated as quarantined areas. This action is necessary as an emergency measure in order to prevent the artificial spread of the Oriental fruit fly into noninfested areas of the United States. The effect of this action is to impose certain restrictions on the interstate movement of regulated articles moving interstate from the quarantined area.

DATES: Interim rule effective July 31, 1987. Consideration will be given only to comments postmarked or received on or before October 5, 1987.

ADDRESSES: Send written comments to Steven B. Farbman, Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 87-104. Comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Milton C. Holmes, Acting Assistant Director, Survey and Emergency Response Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 611, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8365.

SUPPLEMENTARY INFORMATION: The Oriental fruit fly, *Dacus dorsalis* Hendel, is a very destructive pest of numerous fruits (especially citrus fruits), nuts, vegetables, and berries. Heavy infestations of this pest can result in complete loss of these crops. The short life cycle of the Oriental fruit fly permits the rapid development of serious outbreaks.

A document published in the Federal Register on July 22, 1987, (52 FR 27529-27536, Docket Number 87-095) established the Oriental fruit fly regulations (7 CFR 301.93 *et seq.*; referred to below as the regulations). The regulations impose restrictions on the interstate movement of regulated articles from quarantined areas in order to prevent the artificial spread of the Oriental fruit fly to noninfested areas of the United States.

The regulations, among other things, designated portions of Los Angeles and Orange Counties as quarantined areas. These areas remain infested with Oriental fruit fly.

However, the Oriental fruit fly has now been found in an area of San Diego County in California, as a result of trapping surveys conducted by inspectors of the United States Department of Agriculture and state agencies of California. The regulations in § 301.93 provide that the Deputy Administrator for Plant Protection and Quarantine shall list as a quarantined area each state, or each portion of a state, in which the Oriental fruit fly has been found by an inspector. Therefore, we are amending the regulations by adding the following area in San Diego County in California as a quarantined area:

That portion of San Diego County bounded by a line beginning at the intersection of State Highway 163 and Interstate Highway 8, then east along Interstate Highway 8 to its intersection with Spring Street, then south along Spring Street to its intersection with Broadway, then southwest along Broadway to its intersection with Sweetwater Road, then south along Sweetwater Road to its intersection with South Bay Freeway, then southwest along South Bay Freeway to its intersection with Sweetwater Road, then west along Sweetwater Road to its intersection with 30th Street, then west along 30th Street to its intersection with National City Boulevard, then north along National City Boulevard to its intersection with 24th Street, then west along 24th Street to its intersection with Interstate Highway 5, then northwest along Interstate Highway 5 to its intersection with Harbor Drive, then northwest along Harbor Drive to its intersection with State Highway 75, then northeast along State Highway 75 to its intersection with Interstate Highway 5, then northwest along Interstate Highway 5 to its intersection with 6th Avenue, then north along 6th Avenue to its intersection with State Highway 163, then north along State Highway 163 to the point of beginning.

Emergency Action

The Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine has determined that an emergency situation exists, which warrants publication of this interim rule without prior opportunity for a public comment period. Due to the possibility that the Oriental fruit fly could be spread artificially to noninfested areas of the United States, a situation exists requiring immediate action to help control the spread of this pest. Therefore, in accordance with the administrative procedure provisions of 5 U.S.C. 553, we find that it would be impracticable and contrary to the public interest to give advance notice and opportunity to comment on this rule.

Further, pursuant to the administrative procedure provisions of 5 U.S.C. 553, we find that there is good cause to make this interim rule effective upon signature. We are accepting comments on this interim rule for 60 days after it is published. As soon as possible after the comment period closes, we will publish another document in the Federal Register discussing the comments we received and any changes we are making in the rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than 100 million dollars; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will

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not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

Within the part of San Diego County that is being added to the quarantined area, there are fewer than 40 small entities that may be affected, including 25 nurseries, 5 mobile fruit and vegetable vendors, and one farmers' market. Most of the sales by these entities are local intrastate and will not be affected by this rule. Also, the treatments and conditions in the Oriental Fruit Fly regulations and the Plant Protection and Quarantine Treatment Manual allow interstate movement of most products without significant added costs.

Based on these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The regulations in this subpart contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation, Oriental fruit fly.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, 7 CFR Part 301 is amended as follows:

1. The authority citation for Part 301 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff; 161, 162, and 167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 301.93–3(c), the description of the quarantined areas are amended by adding a portion of San Diego County in California, to read as follows:

§ 301.93–3 Quarantined areas.

* * * * *

(c) * * *

California

* * * * *

That portion of San Diego County bounded by a line beginning at the intersection of State Highway 163 and Interstate Highway 8, then east along Interstate Highway 8 to its intersection with Spring Street, then south along Spring Street to its intersection with Broadway, then southwest along Broadway to its intersection with Sweetwater Road, then south along Sweetwater Road to its intersection with South Bay Freeway, then southwest along South Bay Freeway to its intersection with Sweetwater Road, then west along Sweetwater Road to its intersection with 30th Street, then west along 30th Street to its intersection with National City Boulevard, then north along National City Boulevard to its intersection with 24th Street, then west along 24th Street to its intersection with Interstate Highway 5, then northwest along Interstate Highway 5 to its intersection with Harbor Drive, then northwest along Harbor Drive to its intersection with State Highway 75, then northeast along State Highway 75 to its intersection with Interstate Highway 5, then northwest along Interstate Highway 5 to its intersection with 6th Avenue, then north along 6th Avenue to its intersection with State Highway 163, then north along State Highway 163 to the point of beginning.

Done at Washington, DC, this 31st day of July, 1987.

W.F. Helms,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 87–17904 Filed 8–5–87; 8:45 am]

BILLING CODE 3410-34-M

Farmers Home Administration

7 CFR Parts 1944 and 1951

Section 502 Rural Housing Loans

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations concerning Section 502 rural housing loans to show that direct payments will be sent to the address on the payment coupons, rather than to the FmHA Finance Office. Form FmHA 451–34 is being renumbered for consistency within our directives system. References to the direct payment system and to the processing method for payment plan changes are being updated. The circumstance requiring this action is a change in the method that FmHA will use to process these section 502 direct payments after they are mailed by the borrowers to the Agency. The intended effect is to implement a new lockbox system for receipt and processing of these payments.

EFFECTIVE DATE: August 6, 1987.

FOR FURTHER INFORMATION CONTACT: Duane L. Ischer, Director, Financial and Management Analysis Staff, Farmers Home Administration, USDA, Room 5047 South Agriculture Building, 14th and Independence Avenue, SW, Washington, DC 20250. Telephone (202) 475–4616.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Department Regulation 1512–1, which implements Executive Order 12291, and has been determined to be exempt from those requirements because it involves only Agency procedure. It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contracts notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking, since it involves only Agency procedure and publication for comment is unnecessary.

FmHA Section 502 rural housing regulations previously required that direct payments be sent to the FmHA Finance Office for processing. However, as a result of a cost/benefit study performed jointly by FmHA and by the United States Department of Treasury, FmHA has determined that the cost to the Agency for receiving and processing these direct loan payments would be lower if the work were contracted to the private sector. This new method of processing direct payments, a lockbox, will be transparent to the borrowers, and the only change will be in the address which is preprinted on the payment coupons provided to the borrowers.

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.410. For the reasons set forth in the Final Rule related Notice to 7 CFR Part 3015, Subpart V, 48 FR 29115, June 24, 1983, this program/activity is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub.

L. 91-190, an Environmental Impact Statement is not required.

List of Subjects

7 CFR Part 1944

Home improvement, Loan programs—Housing and community development, Low and moderate income housing—Rental, Mobile homes, Mortgages, Rural housing, Subsidies.

7 CFR Part 1951

Account servicing, Credit, Loan programs—Agriculture, Loan programs-Housing and Community Development, Low and moderate income housing loans—Servicing.

Therefore, Chapter XVII, Title 7 of the Code of Federal Regulations is amended as follows:

PART 1944—HOUSING

1. The authority citation for Part 1944 continues to read as follows:

Authority: 42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

2. Section 1944.33 is amended by revising paragraph (f) to read as follows:

§ 1944.33 Loan closing.

* * * * *

(f) *Direct payments.* Direct payment coupons for all new borrowers, including transferees, will be retained in the County Office until the borrower has made at least six monthly payments on time. The coupons may then be delivered to the borrower and payments made directly to the address shown on the payment coupon. The County Supervisor may retain the payment coupons for a longer period if such action is considered to be necessary to determine that the borrower is able to make timely payments as agreed. If the County Office is not on the Concentration Banking System (CBS), payments made to the County Office will be forwarded to the Finance Office with the appropriate direct payment coupon in the Finance Office mail. If the County Office is on CBS, direct payments made in the County Office will be deposited into the Treasury Limited Depositary Account and the direct payment coupon forwarded to the Finance Office in accordance with the applicable CBS procedures. Cash payments, refunds, and extra payments made by borrowers will be handled in accordance with Subpart B of Part 1951 of this chapter.

* * * * *

3. Section 1944.34 is amended by revising paragraph (b)(1) to read as follows:

§ 1944.34 Interest credit.

* * * * *

(b) * * *

(1) *Annual payment borrowers.* Borrowers who signed promissory notes providing for annual payments, including borrowers converted to monthly payments through the use of Form FmHA 1951-34, "Direct Payment Plan Change."

* * * * *

PART 1951—SERVICING AND COLLECTIONS

4. The authority citation for Part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Account Servicing Policies

5. Section 1951.8 is amended by revising paragraphs (c)(1), (c)(2), (c)(3)(ii), (c)(3)(iv), (c)(3)(v), (c)(3)(vi), (c)(3)(vii), (d), (e)(1), and (e)(4) to read as follows:

§ 1951.8 Handling payments.

* * * * *

(c) * * *

(1) Payments made through the County Office without direct payment coupons for FO and SW loans will be handled in accordance with Part 1951, Subpart B.

(2) Payments for FO and SW individual loans made through the County Office with Form FmHA 370-46A, Expanded Direct Payment Coupon, will be handled as follows:

(i) County Supervisors may put FO and SW individual borrowers on the Expanded Direct Payment Coupon system if the borrower only needs limited credit counseling or only makes one annual installment payment per year on the loan.

(ii) For new loans, the County Supervisor will indicate by checking the appropriate block on Form FmHA 1940-1, "Request For Obligation of Funds," that for selected borrowers Expanded Direct Payment Coupons are to be mailed to the County Office.

(iii) An existing loan borrower may be put on or taken off this Expanded Direct Payment Coupon system by filling out Form FmHA 1951-34, "Direct Payment Plan Change," in accordance with the Forms Manual Insert (FMI) and entering it via the field office terminal system.

(iv) Payments must be made by check or money order payable to the Farmer Home Administration. If a field office is on concentration banking, the checks and/or money orders are deposited in the concentrator bank. The coupons are forwarded directly to the Finance Office in accordance with concentration banking procedures. If a field office is not on concentration banking, the coupons and checks and/or money orders are placed in one envelope and mailed to the Finance Office with any other items being mailed that day.

(v) The Finance Office, upon receipt of the payment coupon and check or money order, will credit the borrower's account with payment as of the date the payment is received in the field office.

(vi) When the Finance Office received payment coupon number 10, a new supply of coupons will be mailed to the County Office. All 12 payment coupons should be used before using the new supply.

(3) * * *

(ii) For new loans the County Supervisor will indicate on Form FmHA 1940-1 the selected borrowers by checking the appropriate box. The payment coupon packet will be forwarded to the County Office at the time the loan is obligated. It will be delivered to the borrower at loan closing, at which time the use of the payment coupons will be explained to the borrower.

* * * * *

(iv) The payment coupons and pre-addressed envelopes, together with instructions on how to use the coupons and a record keeping card, will be assembled into an envelope in which the borrower may retain the records. The Form FmHA 370-46, "Direct Payment Coupon," will be numbered 1-12, even though the borrower may have less or more than 12 payments scheduled during the year.

(v) The Finance Office, upon receipt of Form FmHA 370-46 and a check or money order, will credit the borrower's account with payment as of the date the payment is received by the Finance Office.

(vi) When the Finance Office receives Form FmHA 370-46 for payment number 10, a new supply of Forms FmHA 370-46 will be prepared and mailed to the borrower. All 12 copies of Form FmHA 370-46 should be used before using the new supply.

(vii) If a borrower is on direct payment and receives a subsequent FO or SW loan, the Finance Office will send a set of Form FmHA 370-46 with "FO" or "SW" in the loan number block. This indicates the borrower has more than one loan of the particular type. The borrower will be instructed by the County Office to send a Form FmHA

370–46 showing the amount and a check or money order for the total payment.

(d) *County Office handling of direct payment accounts.* Form FmHA 1905–1, "Management System Card—Individual," and Form FmHA 1905–1, "Management System Card—Individual (Rural Housing only)," will be used in the County Office Management System Box. These forms and the transaction records will be maintained as prescribed in FmHA Instruction 1905–A (available in any FmHA office). In addition, an orange signal will be placed to the left of Position A on Form FmHA 1905–1 to denote that the borrower is on the direct payment system. If a borrower fails to make payments as agreed, or becomes delinquent in taxes or insurance so that it is necessary for FmHA to pay taxes or insurance by voucher, the County Supervisor may request the Finance Office to remove the borrower from the direct payment method. If this decision is made, the County Supervisor will contact the borrower and collect the remaining supply of Forms FmHA 370–46 which will be destroyed. The borrower will be informed that payments after that date should be made to the County Office. If at a later date the borrower is making payments on schedule, the County Supervisor may request the Finance Office to put the borrower back on the direct payment method and provided a new set of Forms FmHA 370–46. These changes are made by filling out Form FmHA 1951–34 in accordance with the FMI and entering it via the field office terminal system.

(e) * * *

(1) Any regular payments a borrower is to make prior to receiving the packet of payment coupons will be made through the County Office in the usual manner.

* * * * *

(4) If an uncollectible item is received, the Finance Office will reverse the amount from the borrower's account and a new Form FmHA 451–28, "Transaction Record," reflecting the uncollectible amount will be prepared. The Form FmHA 451–28 will be mailed to the County Office. The uncollectible item with a transmittal memorandum will be sent to the County Office. The County Office will return the uncollectible check to the borrower after it is fully redeemed. The borrower will make payment by sending a new check and a new payment coupon to the Finance Office.

* * * * *

Subpart G—Borrower Supervision, Servicing and Collection of Single Family Housing Loan Accounts

6. Section 1951.308 is amended by revising the introductory text of paragraph (a) and paragraph (b) to read as follows:

§ 1951.308 Payment coupons and changes in payment plan.

(a) *Issuing payment coupons.* A booklet of 12 payment coupons and envelopes is provided initially for each borrower. The Finance Office will mail the payment coupons to the County Supervisor who will forward them to the borrower or keep them in the County Office depending on the status of the borrower's account. The County Supervisor will use Form FmHA 1951–34, "Direct Payment Plan Change," to request new coupons when not automatically provided by the Finance Office. The Finance Office will automatically provide a new booklet of 12 coupons and envelopes when:

* * * * *

(b) *Changes in payment plan*—(1) *From annual payment to monthly payment.* With their concurrence, borrowers may be converted at anytime from annual payments to the monthly payment plan by using Form FmHA 1951–34, completed in accordance with the Forms Manual Insert (FMI). The County Office must be careful not to create a delinquency when making this conversion. When the form is processed in the Finance Office, the required monthly payments will be established as 1/12th of the annual installment. Cents will be rounded to the next higher dollar.

(2) *From monthly payments to annual payment.* Borrowers with annual payment notes who voluntarily converted to the monthly payment plan may be removed from the monthly payment plan upon request provided their account is current. The change will be accomplished by completing Form FmHA 1951–34.

* * * * *

7. Section 1951.309 is amended by revising paragraph (a)(1) to read as follows:

§ 1951.309 Receiving and applying payments.

(a) * * *

(1) *Direct payments.* Normally, borrowers should mail their payments directly to the address shown on the payment coupon in one of the window envelopes provided with the coupon packet. However, for all new borrowers, the payment coupons will be held in the County Office for at least the first six payments or for a longer period of time if needed to determine that borrowers understand their responsibility to make payments in a timely manner.

* * * * *

Dated: June 4, 1987.

Eric Thor,

Acting Administrator, Farmers Home Administration.

[FR Doc. 87–17905 Filed 8–5–87; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 379, 389 and 399

[Docket No. 70631–7131]

Editorial Changes to the Export Administration Regulations

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: This rule, which neither expands nor limits the provisions of the Export Administration Regulations (15 CFR Parts 368–399), makes editorial corrections and clarifications and, in some cases, inserts material inadvertently omitted from earlier regulatory amendments.

Among these corrections and clarifications, are the following:

(a) Several cross-references are revised and others are added for the sake of clarity. Another cross-reference to a regulatory section that no longer exists is removed.

(b) A paragraph that was inadvertently omitted from an earlier revision of § 399.1 is reinserted.

(c) An "Advisory Note" in the Commodity Control List is amended by removing incorrect references to certain commodities.

(d) The processing code, used to facilitate the internal routing and processing of export license applications, is revised for two entries of the Commodity Control List.

(e) Entry 1558A of the Commodity Control List, covering electronic vacuum tubes, is amended by reinserting material inadvertently omitted from an earlier revision.

(f) Entry 5998B of the Commodity Control List is amended by revising the wording of the validated license requirements for shipment of shotguns. This revision is for the sake of clarity only and does not represent any change in export licensing policy.

EFFECTIVE DATE: This rule is effective August 6, 1987.

FOR FURTHER INFORMATION CONTACT: John Black or Patricia Muldonian, Office of Technology and Policy Analysis, Export Administration, Telephone: (202) 377–2440.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule also is exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule mentions a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0625–0001.

List of Subjects in 15 CFR Parts 373, 379 and 399

Computer technology, Exports, Reporting and recordkeeping requirements, Science and technology.

Accordingly, the Export Administration Regulations (15 CFR Parts 368–399) are amended as follows:

1. The authority citation for Parts 379, 389 and 399 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223, 50 U.S.C. 1701 *et seq.*; E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 (October 2, 1986); E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

PART 379—[AMENDED]

Supplement No. 3 [Amended]

2. Supplement No. 3 to Part 379, "Technical Data," is amended by revising paragraph (d)(1) to read: "Technical data described in Supplement No. 4 to Part 379 for metal-working manufacturing processes;".

Supplement No. 4 [Amended]

3. Supplement No. 4 to Part 379, "Additional Specifications for Certain Technical Data Requiring a Validated License to All Destinations Except Canada," is amended by revising paragraph (1)(i) introductory text to read "The following are definitions of terms used in section (1) of this Supplement:".

PART 389—[AMENDED]

§ 389.2 [Amended]

4. Section 389.2(b)(1) is amended by revising the phrase "Room 6716" to read "Room 3898B".

PART 399—[AMENDED]

5. Section 399.1 is amended by redesignating paragraphs (f)(1) (iii) and (iv) as (iv) and (v) and by adding a new (iii), reading as follows:

§ 399.1 The commodity control list and how to use it.

* * * * *

(f) * * *

(1) * * *

(iii) No more than five commodities will be considered in a single request. Exceptions may be made on a case-by-case basis for several related products if the relationship between these products is substantiated and documented;

* * * * * *

Supplement No. 1 [Amended]

6. In Supplement No. 1 to § 399.1 (the Commodity Control List), ECCNs 1501A, 1502A, 1516A, 1519A, 1520A, 1572A and 1588A (in Commodity Group 5, Electronics and Precision Instruments) and ECCN 1763A (in Commodity Group 7, Chemicals, Metalloids, Petroleum Products and Related Materials) are amended by adding a Note immediately preceding the heading "Controls for ECCN * * *" reading as follows: "NOTE: For 'specially designed software', see Supp. No. 3 to Part 379."

7. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1501A is amended by adding in Advisory Note 1 the phrase "listed in paragraph (a) of this ECCN" immediately after the phrase "commercial airborne equipment".

8. In Supplement No. 1 to § 399.1 (the Commodity Control List), ECCN 1519A is amended by adding a Note immediately following Technical Note 2 reading: "Note: see § 379.4(f)(1)(i)(Q) for written assurance requirement for exports of technical data related to equipment described in paragraph (b) or (d) of the List of this ECCN, but having a data signalling rate of 2.1 megabits per second or less."

9. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1529A is amended by revising the Processing Code paragraph to read: *"Processing Code:* EE."

10. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1531A is amended by revising the Processing Code paragraph to read: *Processing Code:* EE for items in paragraphs (a), (b) and (c); MT for all other items."

11. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1558A is amended by revising paragraphs (a)(1)(ii), (a)(2)(i), and (a)(3) to read as follows:

1558A Electronic vacuum tubes (valves), and specially designed components therefor.

Controls for ECCN 1558A

* * * * *

List of Electronic Vacuum Tubes (Valves) and Specialized Parts Controlled by ECCN 1558A

(a) * * *

(1) * * *

(ii) Within the frequency range 0.3 to 4 GHz and for which, under any condition of cooling, the product of the maximum rated anode dissipation (expressed in watts) and the square of the maximum frequency (expressed in GHz) at the maximum rated anode dissipation is greater than 10^4, *except for tubes specially designed for television transmitters operating in the frequency range of 0.47 to 0.96 GHz and rated for operation without a grid current, for which the product of the rated anode dissipation (expressed in watts) and the square of the maximum frequency (expressed in GHz) may reach* 2×10^4*;*

(2) * * *

(i) Above 1 GHz at the peak pulse output power; *or*

(ii) * * *

(3) Tubes specially designed for use as pulse modulators for radar or similar applications, having a peak anode voltage rating of 100kV or more, or rated for a peak pulse power of 6 MW or more (See also ECCN 1514A.);

* * * * *

12. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1565A is amended by removing the second Note following *Nuclear Non-Proliferation Controls*, which begins "Certain digital computers and/or devices. . . ."

13. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1567A is amended by redesignating "Advisory Note 8" (which begins "The following are definitions of terms . . .") as "Note 8".

14. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1572A is amended by revising in paragraph (b) of (Advisory) Note 8 the phrase "Department of Commerce" to read "Office of Export Licensing".

15. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 9 (Miscellaneous), ECCN 5998B is amended by revising the Validated License Required paragraph to read as follows: *"Validated License Required:* Country Groups QSTVWYZ, except for Australia, Japan, New Zealand, and members of NATO.

(a) Shotguns with a barrel length 24 inches or over require a validated license for shipment to:

(1) Country Groups QSWYZ, regardless of end-user;

(2) South Africa, Namibia, Botswana, Lesotho and Swaziland, regardless of end–user; and

(3) Other destinations in Country Groups T and V, except for Australia, Japan, New Zealand, and members of NATO, *only* if for sale or resale to police or law enforcement agencies.

(b) Shotguns with a barrel length of at least 18 inches but less than 24 inches require a validated license for shipment to all destinations, except Australia, Japan, New Zealand, and members of NATO, regardless of end-user.

(c) Shotguns with a barrel length of less than 18 inches are controlled by the Office of Munitions Control, Department of State.

Date: July 30, 1987.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 87–17705 Filed 8–5–87; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 175

[Docket No. 80F–0409]

Indirect Food Additives: Adhesives and Components of Coatings

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 1,2-bis(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamoyl) hydrazine as a component of adhesives in articles intended for food-contact use. This action responds to a petition filed by Ciba-Geigy Corp.

DATES: Effective August 6, 1987; objections by September 8, 1987.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of January 16, 1981 (46 FR 3982), FDA announced that a petition (FAP 0B3487) had been filed by Ciba-Geigy Corp., Ardsley, NY 10502 (the firm is now located at Three Skyline Dr., Hawthorne, NY 10532), proposing that § 175.105 *Adhesives* (21 CFR 175.105) be amended to provide for the safe use of 1,2-bis (3,5-di-*tert*-butyl-4-hydroxyhydrocinnamoyl) hydrazine as a component of adhesives in articles intended for food-contact use.

FDA, in its evaluation of the safety of this additive, reviewed the safety of both the additive and the starting materials used to manufacture the additive. Although, 1,2-bis (3,5-di-*tert*-butyl-4-hydroxyhydrocinnamoyl) hydrazine has not been found to cause cancer, it may contain minute amounts of an impurity, hydrazine, as a byproduct of its production. Hydrazine has been shown to cause cancer in test animals. Residual amounts of reactants and manufacturing aids, such as this chemical, are commonly found as contaminants in chemical products, including food additives.

FDA proposed to prohibit the use of hydrazine as a food additive in boiler water used to produce steam for food processing (21 CFR 173.310) in the **Federal Register** of June 12, 1979 (44 FR 33683). The agency's proposal was based upon information, using new analytical methods, that hydrazine was present at low levels (parts per billion) in steam condensate from boilers using hydrazine as a boiler water additive. The agency intends to take further action on the June 12, 1979, proposal at a future date.

FDA's evaluation of any risks created by the presence of hydrazine as an impurity in 1,2-bis(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamoyl) hydrazine is based on different considerations than its evaluation of the safety of hydrazine as a food additive, however. Therefore, FDA concludes that it can proceed with this rulemaking independently of the latter evaluation.

I. Determination of Safety

Under section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), the so-called "general safety clause" of the statute, a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. The concept of safety enbodied in the Food Additives Amendment of 1958 is explained in the legislative history of the provision: "Safety requires proof of a reasonable certainty that no harm will result from the proposed use of an additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstances." H. Rept. 2284, 85th Cong., 2d Sess. 4 (1958). This definition of safety has been incorporated into FDA's food additive regulations (21 CFR 170.3(i)). The anticancer or Delaney clause of the Food Additives Amendment (section 409(c)(3)(A) of the act (21 U.S.C. 348(c)(3)(A))) provides further that no food additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal.

In the past, FDA has often refused to approve the use of an additive that contained or was suspected of containing even minor amounts of a carcinogenic chemical, even though the additive as a whole had not been shown to cause cancer. The agency now believes, however, that developments in

scientific technology and experience with risk assessment procedures make it possible for FDA to establish the safety of additives that contain carcinogenic chemicals but that have not themselves been shown to cause cancer.

In the preamble to the final rule permanently listing D&C Green No. 6, published in the **Federal Register** of April 2, 1982 (47 FR 14138), FDA explained the basis for approving the use of a color additive that had not been shown to cause cancer, even though it contains a carcinogenic impurity. Since that decision, FDA has approved the use of other color additives and food additives on the same basis.

An additive that has not been shown to cause cancer, but that contains a carcinogenic impurity, may properly be evaluated under the general safety clause of the statute using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive.

The agency's position is supported by *Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984). That case involved a challenge to FDA's decision to approve the use of D&C Green No. 5, which contains a carcinogenic chemical but has itself not been shown to cause cancer. Relying heavily on the reasoning in the agency's decision to list this color additive, the United States Court of Appeals for the Sixth Circuit rejected the challenge to FDA's action and affirmed the listing regulation.

II. Safety of Petitioned Use

FDA estimates that the petitioned use of 1,2-bis(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamoyl)hydrazine will result in extremely low levels of exposure to this additive. FDA does not ordinarily consider chronic testing to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Refs. 1 and 2), and the agency has not required such testing here. Because 1,2-bis(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamoyl)hydrazine has not been shown to cause cancer, the anticancer clause does not apply to it.

FDA has evaluated the safety of this additive under the general safety clause, considering all available data and using risk assessment procedures to estimate the upper bound limit of risk presented by the carcinogenic chemical that may be present as an impurity in the additive. Based on this evaluation, the agency has concluded that the additive is safe under the proposed conditions of use.

The risk assessment procedures that FDA used in this evaluation are similar to the methods that it has used to examine the risk associated with the presence of minor carcinogenic impurities in various other food and color additives that contain carcinogenic impurities (see, e.g., 49 FR 13018, 13019; April 2, 1984). This risk evaluation of the carcinogenic impurity hydrazine has two aspects: (1) Assessment of the worst case exposure to the impurity from the proposed use of the additive and (2) extrapolation of the risk observed in the animal bioassay to the conditions of probable exposure to humans.

A. Hydrazine

Based on the fraction of the daily diet that may be in contact with surfaces containing 1,2-bis(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamoyl)hydrazine and on the level of hydrazine that may be present in the additive (Ref. 3), FDA estimated the hypothetical worst case exposure to hydrazine from the use of this additive to be 20 nanograms per person per day. The agency used data in a carcinogenesis bioassay on hydrazine conducted by Toth et al. at the University of Nebraska College of Medicine (Ref. 4) to estimate the upper bound limit of lifetime human risk from exposure to this chemical stemming from the proposed use of 1,2-bis(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamoyl)hydrazine. The results of the Toth bioassay on hydrazine demonstrated that the material was carcinogenic for male and female mice under the conditions of the study. The test material caused significantly increased incidences of lung tumors in male and female mice.

The Center for Food Safety and Applied Nutrition's Cancer Assessment Committee reviewed this bioassay and other relevant data available in the literature and concluded that the findings of carcinogenicity were supported by this information on hydrazine. The committee further concluded that the Toth bioassay provided the appropriate basis on which to calculate an estimate of the upper bound level of lifetime human risk from potential exposure to hydrazine stemming from the proposed use of 1,2-bis(3,5-di-*tert*-butyl-4-hydroxy-hydrocinnamoyl)hydrazine.

The agency used a quantitative risk assessment procedure (linear proportional model) to extrapolate from the dose used in the animal experiment to the very low doses encountered under the proposed conditions of use. This procedure is not likely to underestimate the actual risk from very low doses and may, in fact, exaggerate it because the extrapolation models used are designed to estimate the maximum risk consistent with the data. For this reason, the estimate can be used with confidence to determine to a reasonable certainty whether any harm will result from the proposed conditions and levels of use of the food additive.

Based on a worst case exposure of 20 nanograms per person per day, FDA estimates that the upper bound limit of individual lifetime risk from potential exposure to hydrazine from the use of 1,2-bis(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamoyl)hydrazine is 7×10^{-8} or less than 1 in 10 million. Because of numerous conservatisms in the exposure estimate, lifetime averaged individual exposure to hydrazine is expected to be substantially less than the estimated daily intake, and, therefore, the calculated upper bound limit of risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from the exposure to the hydrazine that might result from the proposed use of 1,2-bis(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamoyl)hydrazine.

B. Need for Specifications

The agency has also considered whether a specification is necessary to control the amount of the hydrazine impurity in the food additive. The agency finds that a specification is not necessary for the following reasons: (1) Because excess hydrazine is removed during the additive's manufacturing process, the agency would not expect this impurity to become a component of food at other than extremely small levels; and (2) the upper bound limit of lifetime risk from exposure to this impurity, even under worst case assumptions, is very low, less than 1 in 10 million.

III. Conclusion on Safety

FDA has evaluated the available toxicity data and the exposure calculation for the additive and has determined that the additive is safe for its proposed use.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the

action will not have significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. Under FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25), an action of this type would require an abbreviated environmental assessment under 21 CFR 25.31a(b)(1).

References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Carr, G.M., "Carcinogenicity Testing Programs" *in* "Food Safety: Where Are We?," Committee on Agriculture, Nutrition, and Forestry, United States Senate, July 1979, p. 59.

2. Kokoski, C.J., "Regulatory Food Additive Toxicology" presented at the "Second International Conference on Safety Evaluation and Regulation of Chemicals," October 24, 1983, Cambridge, MA.

3. Memorandum dated October 2, 1985, from Food Additive Chemistry Evaluation Branch to Indirect Additive Branch. "FAP 0B3487—Exposure to Hydrazine."

4. Toth, et al., "Hydrazine Methylhydrazine and Methylhydrazine Sulfate Carcinogenesis in Swiss Mice," *International Journal of Cancer*, 9:109, 1972.

Any person who will be adversely affected by this regulation may at any time on or before September 8, 1987, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 175

Adhesives, Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 175 is amended as follows:

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR Part 175 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 175.105 is amended in paragraph (c)(5) by alphabetically inserting a new item in the table to read as follows:

§ 175.105 Adhesives.

* * * * *

(c) * * *

(5) * * *

Substances	Limitations
* * *	* * *
1,2-Bis(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamoyl)hydrazine (CAS Reg. No. 32687-78-8).	For use at a level not to exceed 2 percent by weight of the adhesive.
* * *	* * *

Dated: July 30, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-17869 Filed 8-5-87; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 816

Permanent Program Performance Standards-Surface Mining Activities; Use of Explosives

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; technical amendment.

SUMMARY: This rule makes a technical correction to the Office of Surface Mining Reclamation and Enforcement's (OSMRE) final rule governing the use of explosives which was published March 8, 1983 (48 FR 9788), under provisions of the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

EFFECTIVE DATE: August 6, 1987.

FOR FURTHER INFORMATION CONTACT: Gertrude Dark, Regulatory Development and Issues Management, Office of the Director, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240; (202) 343-5361.

SUPPLEMENTARY INFORMATION:

I. Background and Discussion of the Amendment

II. Procedural Matters

I. Background and Discussion of the Amendment

OSMRE published a final rule on March 8, 1983 (48 FR 9788) revising the requirements in 30 CFR Part 816 relating to the use of explosives. Section 816.68 requires operators to maintain blasting records for at least 3 years and to make them available for inspection by the regulatory authority and the public upon request. This is required in section 515(b)(15)(B) of SMCRA.

One of the items to be reported in the record of blasting operations is the condition of the weather as explained in the preamble to the March 8, 1983 rule at 48 FR 9803. However, in 30 CFR 816.68(e), the word "weather" meaning climatic condition appeared in error as the word "whether". This rule corrects that spelling error. The correction is considered a technical amendment and no change in the meaning or application of the rule as explained in the preamble at 48 FR 9803 is intended.

II. Procedural Matters

Executive Order 12291 and the Regulatory Flexibility Act

OSMRE has determined that this document is not a major rule and does not require a regulatory impact analysis under Executive Order 12291 because the rule is an administrative correction and has no economic effect on the public. The Department has also determined that this document will not have a significant economic effect on a substantial number of small entities and does not require a regulatory flexibility analysis under the Regulatory Flexibility Act.

National Environmental Policy Act

This rulemaking is not a major Federal action, but an administrative

rule covered under previous rulemakings. Therefore, an environmental assessment is not required for this rulemaking which is covered under the environmental assessment and environmental impact statements prepared for the previous rulemakings.

Federal Paperwork Reduction Act

It has been determined that the information collection requirements do not change due to the corrections of this rulemaking and therefore, it is exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and does not require clearance by the Office of Management and Budget.

List of Subjects in 30 CFR Part 816

Environmental protection, Reporting and recording keeping requirements, Surface mining.

Accordingly, the Office of Surface Mining Reclamation and Enforcement is amending 30 CFR Part 816 as set forth herein.

Date July 29, 1987.

J. Steven Griles,

Assistant Secretary for Land and Minerals Management.

PART 816—PERMANENT PROGRAM PERFORMANCE STANDARDS—SURFACE MINING ACTIVITIES

1. The authority citation for Part 816 is revised to read as follows:

Authority: Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1201 *et seq.*), as amended; and Pub. L. 100-34.

§ 816.68 [Amended]

2. Paragraph (e) of § 816.68 is amended by removing the word "Whether" and adding in its place the word "Weather".

[FR Doc. 87-17825 Filed 8-5-87; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 174

Ocean Transportation Service; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Military Sealift Command amends this part by outlining its authority and responsibilities, relationships with military services, and updating its organization and contact numbers. It reflects changes in awarding contracts for ship repair under the Federal Acquisition Regulation. Also, it gives the availability for DOD Instruction 7416.4 of April 16, 1982. This revision is intended to reflect current agency procedures for better understanding by the public.

EFFECTIVE DATE: September 8, 1987.

FOR FURTHER INFORMATION CONTACT: Nancy H. Barr, Bldg. 210, Washington Navy Yard, Washington, DC 20390-5100, telephone (202) 433-0642.

SUPPLEMENTARY INFORMATION: Part 174 of Chapter I, Title 32 of the Code of the Federal Regulations, is being amended to update and clarify Department of the Navy procedures for the Military Sealift Command. This regulation involves an established body of technical regulations. Routine amendments are necessary to keep them operationally current. Since this regulation contains only minor technical amendments to DON procedures, notice and public comment under 5 U.S.C. 553(b) are unnecessary.

The Department of the Navy determined this regulation is not a major rule as defined by Executive Order 12291, is not subject to relevant provisions of the Regulatory Flexibility Act of 1980 (Pub. L. No. 96-354), is not subject to relevant provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347), and does not contain reporting or record-keeping requirements under the Paperwork Reduction Act of 1980 (Pub. L. No. 96-511).

List of Subjects in 32 CFR Part 174

Transportation.

For the reasons set out in the preamble, Title 32, Chapter I, Subchapter F of the Code of Federal Regulations, is amended as set forth below.

PART 174—OCEAN TRANSPORTATION SERVICE

1. The authority citation for Part 174 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. 125, 133.

2. Section 174.1 is amended by revising the second sentence of paragraph (d) and the last sentence of paragraph (e) to read as follows:

§ 174.1 Authority and responsibility.

* * * * *

(d) * * * MSC is a part of the Operating Forces of the Navy, and the Commander, Military Sealift Command, is under the military command of the Chief of Naval Operations, except that the Assistant Secretary of the Navy (Shipbuilding and Logistics) exercises policy supervision in procurement, administrative, management principles affecting the Military Sealift Command including, inter alia: (1) Justification and approval documentation authorizing other than full and open competition and (2) business clearances as required by Navy Acquisition Regulations Supplement section 1.690. * * *

(e) * * * MSC operates Government-owned ships and augments this capability by shipping cargo and passengers in commercially operated ships, chartering ships, and exercising operational control over ships activated from the National Defense Reserve Fleet and Ready Reserve Force to meet emergency needs.

3. Section 174.3 is amended by revising the first sentence of paragraph (b), the second and third sentences of paragraph (c), paragraph (d), paragraph (e), and the second paragraph of paragraph (f) to read as follows:

§ 174.3 Organization.

* * * * *

(b) Under the Commander, Military Sealift Command, with the headquarters at Washington, DC, are area commands, with headquarters as follows:

Commander, Military Sealift Command, Far East, Yokohama, Japan
Commander, Military Sealift Command, Pacific, Oakland, California
Commander, Military Sealift Command, Atlantic, Bayonne, New Jersey
Commander, Military Sealift Command, Europe, London, United Kingdom * * *

(c) * * * This fleet is comprised of dry cargo ships, tankers, special mission ships, and naval fleet auxiliary force ships, all civilian-manned. Operational and administrative control of this fleet, is generally accomplished by MSC area commands and MSC headquarters.* * *

(d) Augmentation of MSC USNS fleet capability is accomplished by shipping less-than-shipload lots of cargo in commercially-operated berth line merchant ships under the terms of MSC Shipping Agreements or MSC Shipping Contracts, and by the chartering of commercial dry-cargo ships and tankers. Chartered ships are under the operational control of MSC and become part of the MSC controlled fleet during the tenure of the charters. Merchant ships activated from the National Defense Reserve Fleet and Ready Reserve Force to meet emergency needs are placed under MSC operational control by means of U.S. Maritime Administration General Agency Agreements (GAA).

(e) The negotiation, execution, and administration of ship charters are

accomplished at MSC headquarters, Washington, DC and area commands. Negotiation and execution of MSC shipping agreements and shipping contracts are accomplished at MSC headquarters. Policy concerning MSC operation and maintenance of National Defense Reserve Fleet and Ready Reserve Force ships is also determined at MSC headquarters; scheduling and other operational matters for these ships are accomplished at MSC area commands.

(f) * * * Mail address:
Commander, Military Sealift Command, Department of the Navy, Washington, DC 20398–5100
Street address:
Washington Navy Yard, Bldg. 210, Washington, DC 20398–5100
Telephone numbers:
Commander (202 area code)—433–0001
Vice Commander—433–0007
Deputy Commander—433–0005
Legislative and Public Affairs Officer—433–0333
Deputy EEO Officer—(301 area code)—427–5559
Flag Secretary Headquarters Secretariat—433–0004
Personnel, Manpower, and Management Officer—433–0445
Readiness and Program Introduction Officer—433–0497
Operations Officer—433–0075
Engineering Officer—433–0170
Force Medical Officer—(301 area code)—427–5612
Supply Officer—433–0116
Comptroller—(301 area code)—427–5815
Strategic Mobility Officer—433–0296
Counsel—433–0140
Command Information Systems Officer—433–0320
Contracts and Business Management Officer—433–0315
Commander, Military Sealift Command, Atlantic, Military Ocean Terminal, Bldg. 42, Bayonne, New Jersey 07002–5399.
Commander (201 area code)—823–7504
Chief Staff Officer—823–7506
Civilian Personnel Officer—823–6683
Fleet Operations Officer—823–7516
Transportation and Sealift Readiness Officer—823–7154
Engineering Officer—823–7431
Medical Officer—823–7220
Supply Officer—823–7424
Comptroller—823–7572
Strategic Mobility Officer—823–7528
Counsel—823–7510
Management Information Systems Officer—823–7583
Contracting Officer—823–5383
Public Affairs—823–7622
Commander, Military Sealift Command, Pacific, Naval Supply Center, Oakland, California 94625–5010.
Commander (415 area code)—466–4111
Chief Staff Officer—466–4247
Administration and Manpower Officer—466–4717
Public Affairs Officer—466–4802
Civilian Personnel Officer—466–4949
Fleet Operations Officer—466–4918
Transportation Officer—466–4848
Engineering Officer—466–4866
Supply Officer—466–4271
Comptroller—466–4796
Strategic Mobility Officer—466–4828
Counsel—466–4923
Contracting Officer—466–4840
Commander, Military Sealift Command, Europe (mailing address) Box 3, FPO New York 09510–3700 (location not to be included in mailing address) Eastcote Ruislip Middlesex, HA 48135 England.
Commander—place call with overseas operator and ask for 441–868–5588.
Public inquiries may be addressed to the Commander, Military Sealift Command, Far East, who will direct the inquiries to cognizant members of his staff.
Commander, Military Sealift Command, Far East (mailing address), FPO Seattle 98760–2600 (location not to be included in mailing address) Bldg. S–200, North Pier, Yokohama, Japan.
Commander—place call with overseas operator and ask for Yokohama, North Pier, 235–6318/6418.
Public inquiries may be addressed to the Commander, Military Sealift Command, Far East, who will direct the inquiries to cognizant members of his staff.

4. Section 174.4 is amended by revising paragraph (c) to read as follows:

§ 174.4 Relationships.

* * * * *

(c) *Joint policies.* The Assistant Secretary of Defense (Acquisition and Logistics) (ASD (A&L)) is responsible for issuing policy direction in connection with the single manager assignment except as otherwise specifically designated in Department of Defense Directive 5160.10. In developing such policies, ASD(A&L) will collaborate with the Assistant Secretary of Defense (Comptroller) to assure maximum utilization of the assignment for budgetary purposes. Similarly he will collaborate with the Assistant Secretary of Defense (System Analysis) to assure maximum application of the assignment for manpower utilization effectiveness purposes. The ASD(A&L) will also collaborate with other elements of the Office of Secretary of Defense, as appropriate.

5. Section 174.5 is amended by revising paragraph (b) and paragraph (d) to read as follows:

§ 174.5 Engineering.

* * * * *

(b) *Maintenance and repair.* MSC ships are maintained, repaired, overhauled, and where necessary, modified under Department of Defense Master Ship Repair Agreements. Awards under these contracts are made by both Commander, Military Sealift Command and the responsible area commanders. In the case of government-owned, contract-operated ships, repair contracts are awarded in accordance with the particular operating contract and the Federal Acquisition Regulation.

* * * * *

(d) *Ship classification.* MSC ships (public vessels) of a commercial type are constructed and classified according to the American Bureau of Shipping rules, then surveyed and retained in the assigned class after construction.

* * * * *

6. Section 174.6 is amended by revising paragraph (a) to read as follows:

§ 174.6 Fiscal.

(a) The operations of the Military Sealift Command are financed under the Navy Industrial Fund. For additional information, see DOD Instruction 7410.4 of April 16, 1982. Contact COMSC Directives Control on 202–433–0642, Bldg. 219, Washington Navy Yard, Washington, DC 20398–5100.

* * * * *

Dated: August 3, 1987.

Jane M. Virga,

LT, JAGC, USNR, Federal Register Liaison Officer.

[FR Doc. 87–17826 Filed 8–5–87; 8:45 am]

BILLING CODE 3810–AE–M

Defense Intelligence Agency

32 CFR Part 292a

[DIA Reg. 12–12]

Defense Intelligence Agency Privacy Program

AGENCY: Defense Intelligence Agency (DIA), DoD.

ACTION: Final rule.

SUMMARY: This final rule revises the Defense Intelligence Agency's earlier version of § 292a.13. Part 292a implements the Privacy Act (5 U.S.C.

552a) within the DIA. This revision supersedes § 292a.13 published on December 8, 1986 (51 FR 44064). This revision merely re-formats the existing § 292a.13 in a manner consistent with the format of the announcements of other components within the Department of Defense.

EFFECTIVE DATE: August 6, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. Hardzog, Chief, Freedom of Information and Privacy Act Staff, Defense Intelligence Agency, RTS-1, Washington, DC 20340-3299. Telephone: (202) 373-3910 or autovon 243-3910.

SUPPLEMENTARY INFORMATION: The DIA has determined that this final rule revision is not a major rule as defined by E.O. 12291, is not subject to the relevant provisions of the Regulatory Flexibility Act of 1980 (Pub. L. 90-354), and does not contain reporting or recordkeeping requirements under criteria of the Paperwork Reduction Act of 1980 (Pub. L. 96-511).

List of Subjects in 32 CFR Part 292a

Privacy.

PART 292a—[AMENDED]

Accordingly, 32 CFR Part 292a is amended as follows:

1. The authority citation for Part 292a continues to read as follows:

Authority: Privacy Act of 1974 (Pub. L. 93-579, section 3 (f) and (k) of 5 U.S.C. 552a).

2. Section 292a.13 is revised to read as follows:

§ 292a.13 Specific exemptions.

(a) All systems of records maintained by the Defense Intelligence Agency shall be exempt from the requirements of 5 U.S.C. 552a(d) pursuant to 5 U.S.C. 552a(k)(1) to the extent that the system contains any information properly classified under Executive Order 12356 "National Security Information" (47 FR 14874, April 2, 1982), or which is required by Executive Order to be kept secret in the interest of national defense or foreign policy. This exemption, which may be applicable to parts of all systems of records, is necessary because certain record systems not specifically designated for exemption may contain isolated information which has been properly classified.

(b) The Director, Defense Intelligence Agency, designates the systems of records listed below for exemptions under the specified provisions of the Privacy Act of 1974 (Pub. L. 93-579).

LDIA 0271

System Name:

Investigations and Complaints.

Exemption:

Parts of this record system may be exempt from the following portions of Title 5, U.S.C.; section 552a (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (e)(4)(I).

Authority.

5 U.S.C. 552a: (k)(2), (k)(5), and (k)(7).

Reason:

The reasons for asserting these exemptions are to insure the integrity of the Inspector General process within the Agency. The execution of this function requires that information be provided in a free and open manner without fear of retribution or harassment in order to facilitate a just, thorough and timely resolution of the complaint or inquiry. Disclosures from this system can enable individuals to conceal their wrongdoings or mislead the course of the investigation by concealing, destroying or fabricating evidence or documents. Also, disclosures can subject sources and witnesses to harassment or intimidation which may cause individuals not to seek redress for wrongs through Inspector General channels for fear of retribution or harassment.

LDIA 0275

System Name:

DoD Hotline Referrals.

Exemption:

Parts of this record system may be exempt from the following portions of Title 5, U.S.C.; section 552a (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (e)(4)(I).

Authority:

5 U.S.C. 552a: (k)(2), (k)(5), and (k)(7).

Reason:

The reasons for asserting these exemptions are to insure that informants can report instances of fraud and mismanagement without fear of reprisal or unauthorized disclosure of their identity. The execution of this function requires that information be provided in a free and open manner without fear of retribution of harassment in order to facilitate a just, thorough and timely resolution of the case. These records are priviledged Director, DIA, documents and information contained therein is not routinely released or disclosed to anyone.

LDIA 0800

System Name:

Security Files.

Exemption:

Parts of this record system may be exempt from the following portions of Title 5, U.S.C.; section 552a (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (e)(4)(I).

Authority:

5 U.S.C. 552a: (k)(2), (k)(5), and (k)(7).

Reason:

The reason for asserting these exemptions are to insure the integrity of the adjudication process used by the Agency to determine the suitability, eligibility or qualification for Federal service with the Agency and to make determinations concerning the questions of access to classified materials and activities. The proper execution of this function requires that the Agency have the ability to obtain candid and necessary information in order to fully develop or resolve pertinent information developed in the process. Potential sources, out of fear of retaliation, exposure or other action, may be unwilling to provide needed information or may not be sufficiently frank to be a value in personnel screening, thereby seriously interfering with the proper conduct and adjudication of such matters.

LDIA 0800

System Name:

Operation Record System.

Exemption:

Parts of this record system may be exempt from the following portions of Title 5, U.S.C.; section 552a: (c)(3), (d), (e)(1), (e)(4)(G), (e)(45)(H), and (e)(4)(I).

Authority:

5 U.S.C. 552a (k)(2), (k)(5), and (k)(7).

Reason:

The reason for asserting these exemptions are to insure the integrity of ongoing foreign intelligence collection and/or training activities conducted by the Defense Intelligence Agency and the Department of Defense. The execution of these functions requires that information in response to national level intelligence requirements be provided in a free and open manner without fear of retribution or unauthorized disclosure. Disclosures from this system can jeopardize sensitive sources and methodology.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 87-17802 Filed 8-5-87; 8:45 am]

BILLING CODE 3810-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6760]

Suspension of Community Eligibility; New Jersey et al.

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The third date ("Susp.") listed in the third column.

FOR FURTHER INFORMATION CONTACT: Frank H . Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646–2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et seq.). Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6–month, 90–day, and 30–day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Admininstrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in Section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effectivce dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

PART 54—[AMENDED]

The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127).

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State and location	Community No.	Effective dates of authorizaiton/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
		Region II		
New Jersey: Bridgewater, township of, Somerset County.	340432	Nov. 26, 1971, Emerg.; Dec. 1, 1978, Reg.; Aug. 19, 1987, Susp.	Aug. 19, 1987	Aug. 19, 1987
		Region III		
Pennsylvania: Conewango, township of, Warren County	422117	Aug. 20, 1975, Emerg.; Aug. 19, 1987, Reg.; Aug. 19, 1987, Susp.	do	Do.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Muncy, township of, Lycoming County	421847	May 9, 1980, Emerg.; Aug. 19, 1987, Reg.; Aug. 19, 1987, Susp.	do	Do.
North Beaver, township of, Lawrence County	421795	Mar. 2, 1977, Emerg.; Aug. 19, 1987, Reg.; Aug. 19, 1987, Susp.	do	Do.
Pine Grove, township of, Warren County	422124	Aug. 19, 1975, Emerg.; Aug. 19, 1987, Reg.; Aug. 19, 1987, Susp.	do	Do.
Warren, borough of, Warren County	420843	July 3, 1974, Emerg.; Aug. 19, 1987, Reg.; Aug. 19, 1987, Susp.	do	Do.
Region IV				
Kentucky:				
Oldham County, unincoporated areas	210195	Mar. 10, 1987, Emerg.; Aug. 19, 1987, Reg.; Aug. 19, 1987, Susp.	do	Do.
Warsaw, city of, Gallatin County	210050	Jan. 19, 1976, Emerg.; Aug. 19, 1987, Reg.; Aug. 19, 1987, Susp.	do	Do.
North Carolina: Mars Hill, town of, Madison County.	370385	Oct. 4, 1979, Emerg.; Aug. 19, 1987, Reg.; Aug. 19, 1987, Susp.	do	Do.
Region VI				
Arkansas: Gould, city of, Lincoln County	050127	July 26, 1974, Emerg.; Aug. 19, 1987, Reg.; Aug. 19, 1987, Susp.	do	Do.
Oklahoma: Rogers County, unincorporated areas	405379	Nov. 6, 1970, Emerg.; Nov. 5, 1971, Reg.; Aug. 19, 1987, Susp.	do	Do.
Region VIII				
Utah: St. George, city of, Washington County	490177	Aug. 28, 1974, Emerg; Aug. 19, 1987, Reg.; Aug. 19, 1987, Susp..	do	Do.
Region X				
Washington: Pierce County, unincorporated areas	530139	Feb. 15, 1974, Emerg.; Aug. 19, 1987, Reg.; Aug. 19, 1987, Susp.	do	Do.
Minimal Conversions—Region II				
New York: Tupper Lake, village of, Franklin County.	360274	May 29, 1975, Emerg.; Mar. 1, 1987, Reg.; Aug. 19, 1987, Susp.	Mar. 1, 1987	Mar. 1, 1987.
Minimal Conversions—Region III				
Pennsylvania: Franklin, township of, Lycoming County.	420973	Jan. 28, 1974, Emerg.; June 1, 1987, Reg.; Aug. 19, 1987, Susp.	June 1, 1987	June 1, 1987.
Minimal Conversions—Region IV				
Kentucky: Fleming-Neon, city of, Letcher County	210139	July 21, 1976, Emerg.; Aug. 19, 1987, Reg.; Aug. 19, 1987, Susp.	Aug. 19, 1987	Aug. 19, 1987.
North Carolina: Williamston, town of, Martin County.	370157	Oct. 2, 1974, Emerg.; Aug. 19, 1987, Reg.; Aug. 19, 1987, Susp.	do	Do.
Minimal Conversions—Region V				
Illinois:				
Carterville, city of, Williamson County	170718	Sept. 30, 1975, Emerg.; Aug. 19, 1987, Reg.; Aug. 19, 1987, Susp.	do	Do.
Christopher, city of, Franklin County	170238	May 15, 1975, Emerg.; Aug. 19, 1987, Reg.; Aug. 19, 1987, Susp.	do	Do.
Forreston, village of, Ogle County	170527	July 21, 1975, Emerg.; Aug. 19, 1987, Reg.; Aug. 19, 1987, Susp.	do	Do.
Nokomis, city of, Montgomery County	170515	Apr. 15, 1976, Emerg.; Aug. 19, 1987, Reg.; Aug. 19, 1987, Susp.	do	Do.
Michigan: Fredonia, township of, Calhoun County	260562	Dec. 22, 1975, Emerg.; Aug. 19, 1987, Reg.; Aug. 19, 1987, Susp.	do	Do.
Minnesota: Pope County, unincorporated areas	270368	June 25, 1974, Emerg.; Aug. 19, 1987, Reg.; Aug. 19, 1987, Susp.	do	Do
Traverse County, unincorporated areas	270621	Apr. 11, 1974, Emerg.; Aug. 19, 1987, Reg.; Aug. 19, 1987, Susp.	do	Do.
Ohio: Delroy, village of, Carroll County	390049	Mar. 11, 1977, Emerg.; Aug. 19, 1987, Reg.; Aug. 19, 1987, Susp.	do	Do.
Dexter City, village of, Noble County	390431	Aug. 19, 1975, Emerg.; Aug. 19, 1987, Reg.; Aug. 19, 1987, Susp.	do	Do.
Hemlock, village of, Perry County	390708	Feb. 27, 1976, Emerg.; Aug. 19, 1987, Reg.; Aug. 19, 1987, Susp.	do	Do.
Lestonia, village of, Columbiana County	390084	Sept. 8, 1975, Emerg.; Aug. 19, 1987, Reg.; Aug. 19, 1987, Susp.	do	Do.
Mount Gilead, village of, Morrow County	390424	Apr. 29, 1975, Emerg.; Aug. 19, 1987, Reg.; Aug. 19, 1987, Susp.	do	Do.
Minimal Conversions—Region VII				
Iowa: Anamosa, city of, Jones County	190174	July 25, 1975, Emerg.; Aug. 19, 1987, Reg.; Aug. 19, 1987, Susp.	do	Do.
Nebraska: Brock, village of, Nemaha County	310188	Dec. 26, 1975, Emerg.; Aug. 19, 1987, Reg.; Aug. 19, 1987, Susp.	do	Do.

Code for reading third column: Emerg.—Emergency, Reg.—Regular, Susp.—Suspension.

Harold T. Duryee,
Administrator, Federal Insurance Administration.
[FR Doc. 87-17857 Filed 8-5-87; 8:45 am]
BILLING CODE 6718-02-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket No. 85-388]

Amendment Rules Concerning Rural Cellular Service; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects inadvertent errors in the *Order on Reconsideration* (FCC-87-178) in CC Docket No. 85-388 concerning the amendment of the Commission's Rules For Rural Cellular Radio Service (published on June 12, 1987, 52 FR 22461). Appendices D and E are corrected.

FOR FURTHER INFORMATION CONTACT: Gerald Mark Goldstein, Mobile Services Division, Common Carrier Bureau; TELE: 202-632-6450.

SUPPLEMENTARY INFORMATION: This is a summary of corrected portions of the *Order on Reconsideration*, CC Docket 85-388, Adopted May 5, 1987 and Released June 8, 1987. The Complete text of Commission Decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

In Appendices D and E of the June 12, 1987, document, the following entries are corrected:

Appendix D

State:	Market No.
ALABAMA	
RSA 1	315
Wade Hampton	
Yukon-Koyukuk	
RSA 2	316
Aleutian Islands	
RSA 3	317
Ketchikan Gateway	
ARIZONA	
RSA 1	318
Mohave	
CALIFORNIA	
RSA 1	336
Del Norte	
RSA 10	345
Sierra	
COLORADO	
RSA 7	354
Conejos	
FLORIDA	
RSA 3	362
Charlotte	
GEORGIA	
RSA 4	373
Taliaferro	
ILLINOIS	
RSA 2	394
Stark	
RSA 3	395
Knox	
INDIANA	
RSA 1	402
Starke	
DELETE Benton.	
RSA 5	408
Putnam	
Benton is now in RSA 5.	
KANSAS	
RSA 13	439
Comanche	
RSA 15	441
Elk	
DELETE Caldwell, Lyon and Trigg. These counties are in Kentucky RSA 2.	
KENTUCKY	
RSA 1	442
Hickman	
RSA 2	443
ADD Caldwell, Lyon, Trigg.	
These counties were inadvertently placed in Kansas 15.	
RSA 4	445
Larue	
RSA 5	446
Metcalfe	
LOUISIANA	
RSA 5	457
Vermilion	
MAINE	
RSA 3	464
DELETE Sagadahoc (Sagadahoc)	
MARYLAND	
RSA 2	467
Worcester	
MINNESOTA	
RSA 6	486
Crow Wing	
Morrison	
RSA 8	488
Lac qui Parle	
MISSOURI	
RSA 1	503
DELETE Andrew	
RSA 7	509
ADD Lafayette	
RSA 13	515
Ste. Genevieve	
MONTANA	
RSA 5	526
Lewis and Clark	
NEBRASKA	
RSA 1	532
Scotts Bluff	
RSA 4	536
Arthur	
NEW HAMPSHIRE	
RSA 1	547
Cheshire	
NEW MEXICO	
RSA 2	558
Colfax	
NEW YORK	
ADD RSA 6	
RSA 6	726*
Columbia	
Greene	
*This will be Blanket No. 726.	
NORTH CAROLINA	
RSA 15	577
Stanly	
OKLAHOMA	
RSA 6	599
Pittsburg	
RSA 8	601
Jackson	
Tillman	
These are separate counties.	
SOUTH DAKOTA	
RSA 7	637
Sully should not have a 6 after it, it is Market No. 637	
TEXAS	
RSA 18	656
Uvalde	
La Salle	
RSA 19	667
Kenedy	
RSA 20	668
De Witt	
Aransas	
VERMONT	
RSA 1	676
Lamoille	
VIRGINIA	
RSA 6	693
Staunton City	
RSA 12	699
King and Queen	
WASHINGTON	
RSA 1	690
Jefferson	
Island	
These are separate counties.	
WEST VIRGINIA	
RSA 5	702
Pocahontas	
WISCONSIN	
RSA 9	713
Fond du Lac	

APPENDIX E—RSA BLOCKS

Block 1	No. of RSAs
Alabama	8
Florida	10
Georgia	14
Mississippi	11
North Carolina	15
South Carolina	8
Tennessee	9
Puerto Rico	7
U.S. Virgin Islands	2
Guam	1
All Other U.S. Territories & Possessions	
Total	85

Block 2	No. of RSAs
Alaska	3
Arizona	6
California	12
Colorado	9
Hawaii	3
Idaho	6
Montana	10
Nevada	5
New Mexico	6
Oregon	6
Utah	6
Washington	8
Wyoming	5
Total	85

Block 3	No. of RSAs
Arkansas	12
Kansas	15
Louisiana	8
Missouri	15
Oklahoma	10
Texas	21
Total	86

Block 4	No. of RSAs
Connecticut	2
Delaware	1
Kentucky	11
Maine	4
Maryland	3
Massachusetts	2
Michigan	10
New Hampshire	2
New Jersey	3
New York	6
Ohio	11
Pennsylvania	12
Rhode Island	1
Vermont	2
Virginia	12
West Virginia	7
Total	86

Block 5	No. of RSAs
Illinois	9
Indiana	9
Iowa	16
Minnesota	11
Nebraska	10
North Dakota	5
South Dakota	8
Wisconsin	9
Total	78
Overall Total	423

Order of Blocks Scheduled for Lottery	
1. Block 2	
2. Block 5	
3. Block 3	
4. Block 1	
5. Block 4	

Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 87-17545 Filed 8-5-87; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Final Frameworks for Selecting Early Hunting Seasons on Certain Migratory Game Birds in the United States for the 1987–88 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes final frameworks (i.e., the outer limits for dates and times when shooting may begin and end, hunting areas, and the numbers of birds which may be taken and possessed) for early-season migratory bird hunting regulations from which States may select season dates and daily bag and possession limits for the 1987–88 season. These seasons may open prior to October 1, 1987, and apply to mourning doves; white-winged and white-tipped doves; band-tailed pigeons; rails: woodcock; snipe; common moorhens and purple gallinules; teal (September only, in designated States); sea ducks (Atlantic Flyway only); experimental September duck seasons in Florida, Iowa, Kentucky and Tennessee; experimental early September Canada goose seasons in parts of Illinois, Michigan and Minnesota; sandhill cranes in the Central and Pacific Flyways; sandhill cranes and Canada geese in southwestern Wyoming; and extended falconry seasons.

DATES: Effective on August 6, 1987. Selected season dates are to be transmitted to the U.S. Fish and Wildlife Service (hereinafter the Service) for publication in the **Federal Register** as amendments to §§ 20.103 through 20.106 and 20.109 of 50 CFR Part 20.

ADDRESSES: Season selections from States are to be mailed to: Director (FWS/MBMO U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building—Room 536, Washington, DC 20240. Comments received are available for public inspection during normal business hours at the Service's Office in Room 536, Matomic Building, 1717 H Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, Department of the Interior, Washington, DC 20240, telephone (202) 254–3207.

SUPPLEMENTARY INFORMATION: On March 13, 1987, the U.S. Fish and Wildlife Service published for public comment in the **Federal Register** (52 FR 7900) initial proposals to amend 50 CFR Part 20, with comment periods ending June 18, 1987, for Alaska, Hawaii, Puerto Rico and the Virgin Islands frameworks; July 14, 1987, for other early-season frameworks; and August 25, 1987, for late-season frameworks. The March 13, 1987, document dealt with establishment of seasons, limits and shooting hours for migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of Subpart K. A supplemental proposed rulemaking for both the early and late hunting season frameworks appeared in the **Federal Register** dated June 3, 1987 (52 FR 20757).

On June 18, 1987, a public hearing was held in Washington, DC., to review the status of mourning doves, woodcock, band-tailed pigeons, white-winged and white-tipped doves, sanchill cranes and other species. The meeting was announced in the **Federal Register** on March 13, 1987, (52 FR 7900) and June 3, 1987, (52 FR 20757). Proposed hunting regulations were discussed for these species and for common snipe; rails; common moorhens and purple gallinules; September teal seasons in the Mississippi and Central Flyways; experimental early duck seasons in Florida, Iowa, Kentucky and Tennessee; experimental early September Canada goose seasons in parts of Illinois, Michigan and Minnesota; special sea duck seasons in the Atlantic Flyway; sandhill cranes in the Central and Pacific Flyways; sandhill cranes and Canada geese in southwestern Wyoming; extended falconry seasons and hunting regulations for Alaska, Puerto Rico and the Virgin Islands.

Public comments on these matters were received.

On July 2, 1987, the Service published in the **Federal Register** (52 FR 25170) a third document in the series of proposed and final rulemaking documents dealing specifically with proposed frameworks for the 1987–88 season from which, when finalized, wildlife conservation agency officials may select season dates and bag limits for hunting certain migratory birds in their respective jurisdictions during the 1987–88 season. On August 3, 1987, the Service published in the **Federal Register** (52 FR 28717) a fourth document in the series which dealt specifically with final frameworks for Alaska, Puerto Rico and the Virgin Islands.

This rulemaking is the fifth in the series and deals specifically with final frameworks for other early-season migratory game bird hunting regulations from which State wildlife conservation agency officials may select season dates and daily bag and possession limits for the 1987–88 season. These seasons may open prior to October 1, 1987, and apply to mouring doves; white-winged and white-tipped doves; band-tailed pigeons; rails; woodcock; snipe; common moorhens and purple gallinules; teal; (September only, in designated States); sea ducks (Atlantic Flyway only); experimental September duck seasons in Florida, Iowa, Kentucky and Tennessee; experimental early September Canada goose seasons in parts of Illinois, Michigan and Minnesota; sandhill cranes in the Central and Pacific Flyways; sandhill cranes and Canada geese in southwestern Wyoming; and extended falconry seasons.

Review of Public Comments

The Service has already responded to earlier comments on proposed regulations published in the **Federal Register** on March 13, 1987 (52 FR 7900) and June 3, 1987 (52 FR 20757), and discussed at the June 18, 1987, public hearing in Washington, DC. These responses appeared in the **Federal Register** of June 3, 1987 (52 FR 20757) July 2, 1987 (52 FR 25170), and August 3, 1987 (52 FR 28717). Fifty-seven additional comments relating to proposed early season frameworks have been received and are discussed here.

One individual expressed his support of the proposed early season frameworks as they appeared in the July 2, 1987, **Federal Register** (52 FR 25176). The remaining comments are discussed in the same order as the specific numbered items to which they apply are listed in previous 1987 **Federal Register** publications.

6. September Teal Season

An Indiana waterfowl biologist requested that the Service consider permitting eligible States to split their 9-day September teal season. He indicated the option to split the teal season would provide the State flexibility to solve a public relations problem and it would not negatively impact the resource.

Response. The frameworks for September teal seasons specify that such seasons be 9 consecutive days. Further, States may not zone or split the September teal seasons. The request to allow a split season is viewed as a liberalization. The blue-winged teal population has been generally depressed during the 1980s, therefore the Service believes liberalizations are not appropriate. In addition, it may be time to examine current harvest management strategies for blue-winged teal in the event that the decline in this species continues in subsequent years. For these reasons the Service believes the current frameworks for September teal seasons should be continued during the 1987 season.

8. Experimental September Duck Seasons

In the July 2, 1987, **Federal Register** (52 FR 25172), the Service reviewed and responded to the comments presented at the June 18, 1987, public hearing by Mr. Frank Montalbano, III, representing the Florida Game and Fresh Water Fish Commission, who urged the Service to support Florida's request for operational status of their experimental September duck season. By letter dated June 23, 1987, Florida submitted additional information in support of their request foroperational status of their experimental September duck season. The State asserts that existing banding data (1961-85) showing low recovery rates for Florida wood ducks are sufficient to justify the additional hunting opportunities associated with the September season. The State pointed out that while wood duck harvest has not increased with implementation of the special September season, harvest per hunter per day has, which they believe suggests that wood duck populations have expanded. Also, based on the estimate size of the resident wood duck population in Florida and the estimated annual harvest, they maintain that harvest rates do not exceed 10 percent, which is not excessive. In addition, they believe by means of a recent parasite-tag study, the evaluation of the October liberalized harvest regulations (Johnson et al. 1986) and the final report of Florida's September duck season, that sufficient information exists to satisfy the Service's expression of need for more cooperative studies that are flyway-oriented to better manage wood ducks.

Response. In the **Federal Register** of July 2, 1987 (52 FR 25172), June 3, 1987 (52 FR 20759) and August 13, 1986 (51 FR 28948), the Service responded to Florida's request that their experimental September season become operational by citing that results of wood duck banding information provided in Florida's final report were not adequate to evaluate the impact of the season. The Service recognizes the difficulty in obtaining these banding samples but again, reiterates its position. Problems associated with September duck seasons and the need for a full and complete evaluation were presented in the July 3, 1986, **Federal Register** (51 FR 24420). The Service notes the various studies conducted in the Atlantic Flyway and recognizes the contribution they provide to better management of wood ducks. However, the Service has repeatedly stated its intent to review September seasons and their suitability for widespread application before authorizing existing experimental seasons to become operational.

14. Frameworks For Geese And Brant in the Conterminous United States—Outside Dates, Season Length, and Bag Limits

Mississippi Flyway. (a) By letter dated June 29, 1987, a Michigan wildlife official transmitted the following requests relative to early September Canada goose hunting seasons: (1) The large areas outside the posted boundaries of the Shiawassee River State Game Area, the Shiawassee National Wildlife Refuge (NWR) and the Fish Point Wildlife Area that were closed during the 1986 experimental September Canada goose hunting season be opened for the 1987 experimental season because significant movements of migrant Canada geese do not occur in Michigan until after September 10; (2) the daily bag limit during the experimental September Canada goose hunting season be increased to 5 Canada geese daily, and the season length be increased to 10 days between September 1 and 10; (3) the State be permitted to incorporate portions of its Upper Peninsula in an early September Canada goose hunting season in 1987 because hunting is the only practical way to address crop damages by geese there; and (4) the opening date for the regular Canada goose hunting season in the Saginaw County Goose Management Area be liberalized to September 26 to

act as a control against crop damage by geese in the vicinity of the Shiawassee NWR and the State Game Area.

In a subsequent letter dated July 10, 1987, another Michigan wildlife official reiterated the preceding requests and emphasized the following points: (1) The closed areas adjacent to the Shiawassee State and Federal wildlife areas and the Fish Point and Allegan State Game and Wildlife Areas be opened; and (2) that the Upper Peninsula (UP) or limited portions of the same be included in the early September hunt because of reports of serious crop damage problems. It was noted that an early September hunt in the UP was denied in 1986 for reasons not fully explained and that the State supplied the Service with information from the Baraga Plains Area and Seney NWR concerning peak migration periods for Canada geese. It was reported that no apparent migration (i.e., arrival of migrating Canada geese) occurs before September 12 at Seney NWR. Additional information was offered for the UP and northern Lower Peninsula to the effect that 89 percent of the neck-collar reports received from these areas were of Michigan collars during the May-October period, but the State indicated that there were too few collar observations during the September 1–10 period to draw specific conclusions about the relative numbers of migrant versus resident Canada geese.

Response. The Service addressed the issue of removing the area closures for the 1987 experimental September Canada goose hunting season in Michigan in the June 3, 1987, **Federal Register** (52 FR 20760), by indicating that the closed-areas provision of the experimental season should not be changed until after the initial experimental period (3-years) has been completed and the results evaluated. The Service notes the closed areas were identified and described by Michigan in 1986. Based on 1-year's experience with a 6-day early season and a 2-goose daily bag limit the State now believes these closed areas should be opened to hunting. The Service has reconsidered this situation and agrees that removal of the closed areas outside the posted boundaries of the Shiawassee, Fish Point and Allegan State Game and Wildlife Areas and the Shiawassee NWR is appropriate to aid in control of depredation complaints. The Service's understanding is that all lands within the posted boundaries of those four wildlife management areas will remain closed to hunting during the experimental September hunting season. The final frameworks presented later in this document reflect a 10-day experimental Canada goose season between September 1 and 10 and a daily bag limit of 5 Canada geese for Michigan's Lower Peninsula. Should the removal of the hunting closure in the four areas above, in combination with the longer season and larger bag limit, result in an unacceptable harvest of migrant Canada geese, the Service hereby gives notice that these seasons may be more restrictive in 1988.

In regard to the request for an early season in a limited portion of the UP, the Service notes the migration information provided by Michigan for the Baraga Plains and Seney NWR and the limited neck collar sightings support the State's claim that little or no migration of Canada geese occurs during early September in the UP. The Service agrees an experimental early September season for resident Canada geese is warranted. The final frameworks that follow provide for a 10-day experimental season between September 1 and 10 and a daily bag limit of 5 Canada geese for certain designated areas in the UP. For both the Lower Peninsula and Upper Peninsula experimental September Canada goose seasons are offered provided the following conditions are met and a Memoranda of Agreement governing the experimental seasons is concluded by the Service and Michigan.

1. Outside dates for the seasons are September 1 and September 10.

2. The State must conduct neck-collar observations and population surveys during these hunt periods.

3. The State must collect sufficient data to ascertain the probable source population of the Canada geese harvested.

4. The State must report in writing on the results of these early seasons prior to the Service's June 1988 early-season regulations meeting.

Michigan's desire to open the 1987 goose hunting season in its Saginaw County Goose Management Area on September 26 was addressed by the Service in the June 3, 1987, **Federal Register** (52 FR 20760) wherein the Service noted the request required an extension of the regular framework opening date and that present frameworks are adequate and no further changes should be made at this time.

(b) Three hunting groups and 45 individuals from Michigan submitted comments supporting Michigan's request that the large areas outside the posted boundaries of the Shiawassee, Fish Point and Allegan State Game and Wildlife Areas and the Shiawassee NWR that were closed to hunting during the 1986 experimental September Canada goose season be opened for the 1987 experimental season.

Response. See the response in 14a above concerning these areas.

(c) Minnesota's request for an experimental 9-day September Canada goose hunting season between September 1 and 15 was noted in the June 3, 1987, **Federal Register** (52 FR 20760). Minnesota later amended its request by changing the dates for the season to September 12 through 20. In the July 2, 1987, **Federal Register** (52 FR 25174) the Service indicated that Minnesota's request would be considered pending receipt of supplemental data from the State supporting its request. Minnesota subsequently submitted additional information relative to the neck-collar observation data it had previously supplied.

Response. In view of the data provided by Minnesota, the Service believes an experimental September hunting season on Canada geese is warranted. However, there are still concerns that the population data and neck-collar observations of Canada geese in the proposed hunt area in mid-September are limited. Therefore, the regulatory frameworks presented later in this document provide for an experimental September Canada goose season in Minnesota not to exceed 10 days, provided a Memorandum of Agreement governing the experimental season is concluded by the Service and Minnesota and the numbered conditions outlined in 14a above for Michigan are met by Minnesota.

16. Sandhill Cranes

The National Wildlife Federation submitted comments endorsing the proposed regulatory frameworks for hunting sandhill cranes. The endorsement is made because the frameworks are such that excellent sandhill crane hunting opportunities are provided, crop depredations by sandhill cranes can be reduced and the potential conflicts between sandhill crane hunters and whooping cranes are minimized.

Response. The Service notes and appreciates the National Wildlife Federation's comments.

22. Band-tailed Pigeons.

The National Wildlife Federation expressed its endorsement of the proposed regulatory frameworks restrictions for the Pacific Coast Population of band-tailed pigeons.

Response. The Service notes and appreciates the support of the National Wildlife Federation.

23. Mourning Doves

Western Management Unit. (a) In a July 1, 1987, letter, Arizona reaffirmed the comments presented at the June 18, 1987, public hearing by its representative Mr. Dave Brown, objecting to the Service's proposed frameworks for mourning doves in the Western Management Unit. The State reiterated its request for a 70-day season, the first 20 days from September 1 through 20, the remainder of the season to occur after November 1.

Response. The Service reviewed and addressed Mr. Brown's comments in the July 2, 1987, **Federal Register** (52 FR 25172). In view of the significant long-term downward trend in mourning doves throughout the Western Management Unit, the Service continues to believe that harvest opportunity for this species should be reduced commensurate with lower population levels. The Service does not favor establishing separate regulatory frameworks which attempt to address population segments that have not yet been adequately defined and therefore has established frameworks that will regulate mourning dove harvest throughout the Western Management Unit.

(b) The Tucson Rod and Gun Club expressed its support of Arizona's request for a 70-day mourning dove hunting season.

Response. See the Service's response given to item 23a above.

(c) The National Wildlife Federation submitted comments indicating that it agreed that available data on long-term mourning dove population trends support the Service's 3-year experimental harvest reduction of the species in the Western Management Unit. The Federation indicated that while the data do not suggest the population decline is due to excessive harvest, the causes and possible remedies for the decline need to be determined.

Response. The Service notes and appreciates the National Wildlife Federation's comments.

(d) The Wildlife Legislative Fund of America questioned the Service's basis for reduction of the season length and bag limits for mourning doves in the Western Management Unit. They indicated it is highly questionable whether restrictions on hunting will have any affect on dove populations in the Unit because the decreased dove population is not the result of hunting, but rather is the result of loss of habitat due to changing agricultural and horticultural practices.

Response. In the June 2, 1987, **Federal Register** (52 FR 20762) it was noted that the factors that are suspected of causing the long-term downward trend in dove populations in the Western Management Unit are loss of nesting habitat, agricultural changes and overharvest. In light of this, the Service concurred with the Pacific Flyway Council's recommendation that regulations restrictions be imposed to decrease harvest opportunity to a level commensurate with the reduced dove populations.

24. White-winged Doves

The National Wildlife Federation expressed its endorsement of the proposed regulatory frameworks for white-winged doves.

Response. The Service notes and appreciates the National Wildlife Federation's support.

NEPA Consideration

The "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES 75–54)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975 (40 FR 25241). In addition, several environmental assessments have been prepared on specific matters which serve to supplement the material in the Final Environmental Statement. Copies of the environmental assessments are available from the Service at the address indicated under the caption **ADDRESS**. As a noted in the March 13, 1987, **Federal Register** (52 FR 7905), the Service is preparing a supplemental environmental impact statement (SEIS) on the FES. The Service indicated a mid-July 1987 publication date for a draft SEIS to be followed by public meetings prior to preparation of the final SEIS was anticipated; however, it is now unlikely that the draft SEIS will be available before early September.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" [and shall] "insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of such endangered or threatened species or result in the destruction or modification of [critical] habitat * * * ". The Service therefore initiated section 7 consultation under the Endangered Species Act for the proposed hunting season frameworks. On June 15, 1987, the Chief, Office of Endangered Species, concluded that the proposed actions were not likely to jeopardize the continued existence of listed species.

As in the past, hunting regulations this year are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species.

The Service's biological opinions resulting from its consultation under section 7 are considered public documents and are available for inspection in the Office of Endangered Species and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240.

Regulatory Flexibility Act, Executive Order 12291 and the Paperwork Reduction Act

In the **Federal Register** dated March 18, 1987 (52 FR 7900), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publication of a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. This determination is detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240. These regulations contain no information collections subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980.

Memorandum of Law

The Service published its Memorandum of Law, as required by section 4 of Executive Order 12291, in the **Federal Register** dated August 3, 1987 (52 FR 28717).

Authorship

The primary author of this final rulemaking is Morton M. Smith, Office of Migratory Bird Management, working under the direction of Rollin D. Sparrowe, Chief.

Regulations Promulgation

The rulemaking process for migratory bird hunting must, by its nature, operate under severe time constraints. However, the Service is of the view that every attempt should be made to give the public the greatest possible opportunity to comment on the regulations. Thus, when the proposed rules were published March 13, June 3, and July 2, the Service established what it believed were the longest periods possible for public comment. In doing this, the Service recognized that at the periods' close, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the Service is of the opinion that States would have insufficient time to select their season dates, shooting hours and limits; to communicate those selections to the Service; and finally establish and publicize the necessary regulations and procedures to implement their decisions.

Therefore, the Service under authority of the Migratory Bird Treaty Act of July 3, 1918, as amended, (40 Stat. 755; 16 U.S.C. 701 through 708h), prescribes final frameworks setting forth the species to be hunted, the daily bag and possession limits, the shooting hours, the season lengths, the earliest opening and latest closing season dates, and hunting areas, from which State conservation agency officials may select hunting season dates and other options. Upon receipt of season and option selections from State officials, the Service will publish in the **Federal Register** a final rulemaking amending 50 CFR Part 20 to reflect seasons, limits, and shooting hours for the contiguous United States, Alaska, Puerto Rico and the Virgin Islands for the 1987–88 season.

The Service therefore finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act and these frameworks will, therefore, take effect immediately upon publication.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1987–88 hunting season are authorized under the Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 701–708h); the Fish and Wildlife Improvement Act of 1978 (92 Stat. 3112; 16 U.S.C. 712); and the Alaska Game Act of 1925 (43 Stat. 739, as amended, 54 Stat. 1103–04).

Final Regulations Frameworks for 1987–88 Early Hunting Seasons on Certain Migratory Birds

Pursuant to the Migratory Bird Treaty Act, the Service of Interior has approved final frameworks which prescribe season lengths, bag limits, shooting hours and outside dates within which States may select seasons for mourning doves; white-winged and white-tipped doves; band-tailed pigeons; rails; woodcock; snipe; common moorhens and purple gallinules; teal in September; experimental September duck season in Iowa, Florida, Kentucky and Tennessee; experimental September Canada goose seasons in Illinois, Michigan and Minnesota; sea ducks (scoters, eiders, and oldsquaw) in certain defined areas of the Atlantic Flyway; sandhill cranes; sandhill cranes-Canada geese in southwestern Wyoming; and extended falconry seasons. For the guidance of State conservation agencies, these frameworks are summarized below.

Notice

Any State desiring its hunting seasons for mourning doves, white-winged doves, white-tipped doves; band-tailed pigeons; rails; woodcock; common snipe; common moorhens and purple gallinules, sandhill cranes or extended falconry seasons to open in September must make its selection no later than August 7, 1987. States desiring these seasons to open after Septemer 30 may make their selections at the time they select regular waterfowl seasons. Season selections for the seven States offered experimental September waterfowl seasons and Wyoming's special sandhill crane-Canada goose season must also be made by August 7, 1987.

Atlantic Flyway coastal States desiring their seasons on sea ducks in certain defined areas to open in September must make their selection no later than August 7, 1987. Those desiring this season to open after September may make their selections when they select their regular waterfowl seasons.

Outside Dates; All dates noted are inclusive.

Shooting Hours: Between ½ hour before sunrise and sunset daily for all species except as noted below. The hours noted here and elsewhere also apply to hawking (taking by falconry).

Mourning Doves

Outside Dates: Between September 1, 1987, and January 15, 1988, except as otherwise provided, States may select hunting seasons and bag limits as follows:

Eastern Management Unit

(All States east of the Mississippi River and Louisiana)

Hunting seasons, and daily bag and possession limits: Not more than 70 days with bag and possession limits of 12 and 24, respectively.

or

Not more than 60 days with bag and possession limits of 15 and 30, respectively.

Hunting seasons may be split into not more than 3 periods under either option.

Shooting Hours: Between ½ hour before sunrise and sunset daily.

Zoning: Alabama, Georgia, Illinois, Louisiana and *Mississippi*, may elect to zone their States as follows:

A. Two zones per State having the following descriptions or division lines:

Alabama—South Zone: Mobile, Baldwin, Escambia, Covington, Coffee, Geneva, Dale, Houston and Henry Counties. North Zone: Remainder of the State.

Georgia—The Northern Zone shall be that portion of the State lying north of a line running west to east along U.S. Highway 280 from Columbus to Wilcox County, thence southward along the western border of Wilcox County, thence east along the southern border of Wilcox County to the Ocmulgee River, thence north along Ocmulgee River to Highway 280, thence east along Highway 280 to the Little Ocmulgee River; thence southward along the Little Ocmulgee River to the Ocmulgee River; thence southwesterly along the Ocmulgee River to the western border of Jeff Davis County; thence south along the western border of Jeff Davis County; thence east along the southern border of Jeff Davis and Appling Counties; thence north along the eastern border of Appling County to the Altamaha River; thence east to the eastern border of Tattnall County; thence north along the eastern border of Tattnall County; thence north along the western border of Evans to Candler County; thence east along the northern border of Evans to Bulloch County; thence north along the western border of Bulloch County to Highway 301; thence northeast along Highway 301 to the South Carolina line.

Illinois—U.S. Highway 36.

Louisiana—Interstate Highway 10 from the Texas State line to Baton Rouge, Interstate Highway 12 from Baton Rouge to Slidell and Interstate Highway 10 from Slidell to the Mississippi State line.

Mississippi—U.S. Highway 84.

B. Within each zone, these States may select hunting seasons of not more than

70 days (or 60 under the alternative) which may be split into not more than 3 periods.

C. The hunting seasons in the South Zones of Alabama, Georgia, Louisiana and Mississippi may commence no earlier than September 20, 1987.

D. Regulations for bag and possession limits, season length, and shooting hours must be uniform within specific hunting zones.

Central Management Unit

(Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas and Wyoming)

Hunting seasons and daily bag and possession limits: Not more than 70 days with bag and possession limits of 12 and 24, respectively,

or

Not more than 60 days with bag and possession limits of 15 and 30, respectively.

Hunting seasons may be split into not more than 3 periods under either option.

Texas zoning:—In addition to the basic framework and the alternative, Texas may select hunting seasons for each of 3 zones described below.

North zone—That portion of the State north of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Interstate Highway 20; northeast along Interstate Highway 20 to Interstate Highway 30 at Fort Worth; northeast along Interstate Highway 30 to the Texas-Arkansas State line

South zone—That portion of the State south and west of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Van Horn, south and east on U.S. 90 to San Antonio; then east on Interstate 10 to Orange, Texas.

Special white-winged dove area in the south zone—That portion of the State south and west of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Van Horn, south and east on U.S. Highway 90 to Uvalde, south on U.S. Highway 83 to State Highway 44; east along State Highway 44 to State Highway 16 at Freer; south along State Highway 16 to State Highway 285 at Hebbronville; east along State Highway 285 to FM 1017; southeast along FM 1017 to State Highway 186 at Linn; east along State Highway 186 to the Mansfield Channel at Port Mansfield; east along the Mansfield Channel to the Gulf of Mexico.

Central zone—That portion of the State lying between the North and South Zones.

Hunting seasons in these zones are subject to the following conditions:

A. The hunting season may be split into not more than 2 periods, except that, in that portion of Texas where the special 4-day white-winged dove season is allowed, a limited mourning dove season may be held concurrently with the white-winged dove season and with shooting hours coinciding with those for white-winged doves (see white-winged dove frameworks).

B. Each zone may have a season of not more than 70 days (or 60 under the alternative). The North and Central zones may select a season between September 1, 1987 and January 25, 1988; the South zone between September 20, 1987 and January 25, 1988.

C. Except during the special 4-day white-winged dove season in the South Zone, each zone may have an aggregate daily bag limit of 12 doves, (or 15 under the alternative), no more than 2 of which may be white-winged doves and no more than 2 of which may be white-tipped doves. The possession limit is double the daily bag limit.

D. Regulations for bag and possession limits, season length, and shooting hours must be uniform within each hunting zone.

Western Management Unit

(Arizona, California, Idaho, Nevada, Oregon, Utah and Washington)

Hunting seasons, and daily bag and possession limits: Not more than 30 consecutive days between September 1, 1987 and Janaury 15, 1988.

Not more than 45 days to be split between two periods, September 1–15, 1987, and November 1, 1987–January 15, 1988.

In all States, the bag and possession limits are 10 and 20, respectively.

White-Winged Doves

Outside dates: Arizona, California, Nevada, New Mexico, and *Texas* (except as shown below) may select hunting seasons between September 1 and December 31, 1987. *Florida* may select hunting seasons between September 1, 1987 and January 15, 1988.

Arizona may select a hunting season of not more than 15 consecutive days running concurrently with the mourning dove season. The daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate, no more than 6 of which may be white-winged doves, and a possession limit twice the daily bag limit after the opening day.

In the *Nevada* counties of Clark and Nye, and in the *California* counties of Imperial, Riverside and San Bernardino, the aggregate daily bag and possession limits of mourning and white-winged doves may not exceed 10 and 20, respectively, and run concurrently with the season on mourning doves.

New Mexico may select a hunting season with daily bag and possession limits not to exceed 12 and 24 (or 15 and 30 if the 60-day option for mourning doves is selected) white-winged and mourning doves, respectively, singly or in the aggregate of the 2 species. Dates, limits, and hours are to conform with those for mourning doves.

Texas may select a hunting season of not more than 4 days for the special white-winged dove area of the South Zone. The daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate including no more than two mourning doves and two white-tipped doves per day; and the possession limit may not exceed 20 white-winged, mourning and white-tipped doves in the aggregate including no more than four mourning doves and four white-tipped doves in possession.

and

In addition, *Texas* may also select a white-winged dove season of not more than 70 days (or 60 under the alternative for mourning doves) to be held between September 1, 1987, and January 25, 1988, and coinciding with the mourning dove season. The daily bag limit may not exceed 12 white-winged, mourning and white-tipped doves (or 15 under the alternative) in the aggregate, of which not more than 2 may be white-winged doves and not more than 2 of which may be white-tipped doves. The possession limit may not excced 24 white-winged, mourning and white-tipped doves (or 30 under the alternative) in the aggregate, of which not more than 4 may be white-winged doves and not more than 4 of which may be white-tipped doves.

Florida may select a white-winged dove season of not more than 70 days (or 60 under the alternative for mourning doves) to be held between September 1, 1987, and January 15, 1988, and

coinciding with the mourning dove season. The aggregate daily bag and possession limits of mourning and white-winged doves may not exceed 12 and 24 (or 15 and 30 if the 60-day option for mourning doves is selected); however, for either option, the bag and possession limits of white-winged doves may not exceed 4 and 8, respectively.

Band-Tailed Pigeons

Pacific Coast States and Nevada: California, Oregon, Washington and the Nevada counties of Carson City, Douglas, Lyon, Washoe, Humboldt, Pershing, Churchill, Mineral and Storey.

Outside dates: Between September 7, 1987, and January 3, 1988 (Sunday closest to January 1).

Hunting seasons, and daily bag and possession limits: Not more than 16 consecutive days, with a bag and possession limit of 4.

Zoning: California may select hunting seasons of 16 consecutive days in each of the following two zones:

1. In the counties of Alpine, Butte, Del Norte, Glenn, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama and Trinity; and

2. The remainder of the State.

Four-corners states: Arizona, Colorado, New Mexico and Utah.

Outside dates: Between September 1, 1987, and November 30, 1987.

Hunting seasons, and daily bag and possession limits: Not more than 30 consecutive days, with bag and possession limits of 5 and 10, respectively.

Areas: These seasons shall be open only in the areas delineated by the respective States in their hunting regulations.

Zoning: New Mexico may be divided into North and South Zones along a line following U.S. Highway 60 from the Arizona State line east to Interstate Highway 25 at Socorro and south along Interstate Highway 25 from Socorro to the Texas State line. Hunting seasons not to exceed 20 consecutive days may be selected between September 1 and November 30, 1987, in the North Zone and October 1 and November 30, 1987, in the South Zone.

Rails (Clapper, King, Sora and Virginia)

Outside dates: States included herein may select seasons between September 1, 1987, and January 20, 1988, on clapper, king, sora and Virginia rails as follows:

Hunting seasons: The season may not exceed 70 days. Any State may split its season into two segments.

Clapper and King Rails

Daily bag and possession limits: In *Rhode Island, Connecticut, New Jersey, Delaware,* and *Maryland,* 10 and 20 respectively, singly or in the aggregate of these two species. In *Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina,* and *Virginia,* 15 and 30, respectively, singly or in the aggregate of the two species.

Sora and Virginia Rails

Daily bag and possession limits: In the Atlantic, Mississippi and Central [1] Flyways and portions of Colorado, Montana, New Mexico and Wyoming in the Pacific Flyway,[2] 25 daily and 25 in possession, singly or in the aggregate of the two species.

Woodcock

Outside dates: States in the Atlantic Flyway may select hunting seasons between October 1, 1987, and January 31, 1988. States in the Central and Mississippi Flyways may select hunting seasons between September 1, 1987, and February 28, 1988.

Hunting seasons, and daily bag and possession limits: In the Atlantic Flyway, seasons may not exceed 45 days, with bag and possession limits of 3 and 6, respectively; in the Central and Mississippi Flyways, seasons may not exceed 65 days, with bag and possession limits of 5 and 10, respectively. Seasons may be split into two segments.

Zoning: New Jersey may select seasons by north and south zones divided by State Highway 70. The season in each zone may not exceed 35 days.

Common Snipe

Outside dates: Between September 1, 1987, and February 28, 1988. In *Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland* and *Virginia* the season must end no later than January 31.

Hunting seasons, and daily bag and possession limits: Seasons may not exceed 107 days in the Atlantic, Mississippi and Central Flyways and 93 days in Pacific Flyway portions of Montana, Wyoming, Colorado and New Mexico. In the remainder of the Pacific Flyway the season shall coincide with the duck seasons. Seasons may be split into two segments. Bag and possession limits are 8 and 16, respectively.

Common Moorhens and Purple Gallinules

Outside dates: September 1, 1987, through January 20, 1988, in the Atlantic and Mississippi Flyways and September 1, 1987, through January 17, 1988, in the Central Flyway. States in the Pacific Flyway must select their hunting seasons to coincide with their duck seasons.

Hunting seasons, and daily bag and possession limits: Seasons may not exceed 70 days in the Atlantic, Mississippi and Central Flyways; in the Pacific Flyway seasons must be the same as the duck seasons. Seasons may be split. Bag and possession limits are 15 and 30 common moorhens and purple gallinules, singly or in the aggregate of the two species respectively; except the daily bag and possession limits in the Pacific Flyway may not exceed 25 coots and common moorhens, singly or in the aggregate of the two species.

Sandhill Cranes

Regulation Seasons in the Central Flyway

Seasons not to exceed 58 days between September 1, 1987, and February 28, 1988, may be selected in the following States: *Colorado* (the Central Flyway portion except the San Luis Valley); *Kansas; Montana* (the Central Flyway portion except that area south of I–90 and west of the Bighorn River); *North Dakota* (west of U.S. 281); *South Dakota;* and *Wyoming* (in the counties of Campbell, Converse, Crook, Goshen, Laramie, Niobrara, Platte and Weston).

For the remainder of the flyway, seasons not to exceed 93 days between September 1, 1987 and February 28, 1988, may be selected in the following States: *New Mexico* (the counties of Chaves, Curry, DeBaca, Eddy, Lea, Quay and Roosevelt); *Oklahoma* (that portion west of I–35); and *Texas* (that portion west of a line from Brownsville along U.S. 77 to Victoria; U.S. 87 to Placedo; Farm Road 616 to Blessing; State 35 to Alvin; State 6 to U.S. 290; U.S. 290 to Sonora; U.S. 277 to Abilene; Texas 351 to Albany; U.S. 283 to Vernon; and U.S. 183 to the Texas-Oklahoma boundary).

[1] The Central Flyway is defined as follows: Colorado (east of the Continental Divide), Kansas, Montana (east of Hill, Chouteau, Cascade, Meagher, and Park Counties), Nebraska, New Mexico (east of the Continental Divide but outside the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas and Wyoming (east of the Continental Divide).

[2] The Pacific Flyway is defined as follows: Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington; those portions of Colorado and Wyoming lying west of the Continental Divide; New Mexico west of the Continental Divide plus the entire Jicarilla Apache Indian Reservation; and in Montana, the counties of Hill, Chouteau, Cascade, Meagher and Park, and all counties west thereof.

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Bag and possession limits: 3 and 6, respectively.

Permits: Each person participating in the regular sandhill crane seasons must obtain and have in his possession while hunting, a valid Federal sandhill crane hunting permit.

Special Seasons in the Central and Pacific Flyways

Arizona, Colorado, Idaho, Montana, New Mexico, Utah and Wyoming may select seasons for hunting sandhill cranes within the range of the Rocky Mountain Population (as described in a management plan approved March 22, 1987, by the Central and Pacific Flyway Councils) subject to the following conditions:

1. Outside dates are September 1–November 30, 1987.
2. Season(s) in any State may not exceed 30 days.
3. Daily bag limits may not exceed 3 and season limits may not exceed 9.
4. Participants must have in their possession while hunting a valid permit issued by the appropriate State.
5. Numbers of permits, areas open and season dates, protection plans for other species, and other provisions of seasons are consistent with the management plan and approved by the Central and Pacific Flyway Councils.

Specific restrictions are:

Arizona

1. The hunting area is confined to Game Management Units 30A, 30B, 31 and 32.
2. No more than 500 permits may be issued.
3. Emergency closures for all crane hunting may be invoked as necessary.

Wyoming

1. Outside dates for the season(s) are September 1–22, 1987.
2. No more than 60 permits may be issued for the Bear River drainage and 60 permits issued for the Salt River area all in Lincoln County; no more than 75 permits may be issued for the Eden-Farson Agricultural Project in Sweetwater and Sublette Counties and the season may not exceed 14 days; and no more than 75 permits may be issued for the Bureau of Reclamation Riverton-Boysen Units in Fremont County.
3. Each permittee may take 2 sandhill cranes per season.
4. Emergency closures for all crane hunting may be invoked as necessary.

New Mexico

1. Two experimental seasons, not to exceed 8 days each, may be selected during the period October 10–31, 1987, in the Middle Rio Grande Valley Crane Hunt Area bounded by the south boundary of Isleta Pueblo; on the west by Interstate 25 and including all of Sevilleta and Bosque del Apache National Wildlife Refuges; on the east by a dirt road from the northeast corner of Bosque del Apache NWR to the western boundary of the White Sands Missile Range Extension Co-Use (WSMREC) area, by the western WSMREC boundary and the eastern boundary of the Sevilleta NWR to U.S. Highway 60, U.S. 60 to NM Highway 47, and NM 47 to the south boundary of Isleta Pueblo; under the following conditions:
2. Not more than 500 special permits may be issued for each season. Permittees must possess valid Bosque del Apache NWR Hunt Cards or pass a hunter qualification course to be eligible to participate.
3. Shooting hours shall be sunrise to sunset and non-toxic shot is required.
4. All special provisions of an annual operational hunt plan, cooperatively prepared by the New Mexico Department of Game and Fish and the U.S. Fish and Wildlife Service Region 2, must be in effect to assure protection of whooping cranes that might occur in the hunting area.

Special Sandhill Crane-Canada Goose Season

Wyoming may select a concurrent season(s) on sandhill cranes, subject to conditions listed under "Sandhill Cranes, Special Seasons in the Central and Pacific Flyways" above, and Canada geese subject to the following conditions:

1. Outside dates for the season(s) are September 1–22, 1987.
2. Hunting will be by State permit.
3. No more than 60 permits may be issued for the Salt River (Star Valley) area in Lincoln County. Each permittee may take 2 Canada geese per season.
4. No more than 75 permits may be issued in the Eden-Farson Agricultural Project in Sweetwater and Sublette Counties, each permittee may take no more than 1 goose per season, and the season may not exceed 14 days.

Scoter, Eider, and Oldsquaw Ducks (Atlantic Flyway)

Outside dates: Between September 15, 1987, and January 20, 1988.

Hunting seasons, and daily bag and possession limits: Not to exceed 107 days, with bag and possession limits of 7 and 14, respectively, singly or in the aggregate of these species.

Bag and possession limits during regular duck season: Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may set, in addition to the limits applying to other ducks during the regular duck season, a daily limit of 7 and a possession limit of 14 scoter, eider and oldsquaw ducks, singly or in the aggregate of these species.

Areas: In all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in *Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut* and *New York;* in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 1 mile of open water from any shore, island and emergent vegetation in *New Jersey, South Carolina,* and *Georgia;* and in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island and emegent vegetation in *Delaware, Maryland, North Carolina* and *Virginia;* and provided that any such areas have been described, delineated and designated as special sea duck hunting areas under the hunting regulations adopted by the respective States. In all other areas of these States and in all other States in the Atlantic Flyway, sea ducks may be taken only during the regular open season for ducks and they must be included in the regular duck season conventional or point-system daily bag and possession limits.

Deferred selection: Any State desiring its sea duck season to open in September must make its selection no later than August 7, 1987. Any State desiring its sea duck season to open after September may make its selection at the time it selects its waterfowl season.

September Teal Season

Outside Dates: Between September 1 and September 30, 1987, an open season on all species of teal may be selected by *Alabama, Arkansas, Colorado* (Central Flyway portion only), *Illinois, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, New Mexico,* (Central Flyway portion only), *Ohio, Oklahoma, Tennessee* and *Texas* in areas delineated by State regulations.

Hunting seasons, and bag and possession limits: Not to exceed 9 consecutive days, with bag and possession limits of 4 and 8, respectively.

Shooting hours: From sunrise to sunset daily.

Deadline: States must advise the Service of season dates and special provisions to protect non-target species by August 7, 1987.

Special September Duck Seasons

Iowa September duck season: Iowa may experimentally hold a portion of its regular duck hunting season in September. All ducks which are legal during the regular duck season may be taken during the September segment of the season. In 1987, the 5-day season segment may commence no earlier than September 19, with daily bag and possession limits being the same as those in effect during the 1987 regular duck season.

Florida September duck season: An experimental 5-consecutive-day duck season may be selected in September subject to the following conditions:

1. The season will be in lieu of the extra teal option.

2. The daily bag limit will be 4 ducks, no more than one of which may be a species other than teal or wood duck, and the possession limit will be double the daily bag limit.

Tennessee and Kentucky September duck seasons: Experimental 5-consecutive-day duck seasons may be selected in September by *Tennessee* and *Kentucky* subject to the following conditions:

1. The seasons will be in lieu of September teal seasons.

2. The daily bag limit will be 4 ducks, no more than 2 of which may be wood ducks, and no more than 1 of which may be a species other than teal or wood duck. The possession limit will be double the daily bag limit.

Special Early-September Canada Goose Seasons

Experimental Canada goose seasons of up to 10 consecutive days may be selected in September by *Michigan, Illinois,* and *Minnesota* subject to the following conditions:

1. Outside dates for the season are September 1–10, 1987.

2. The daily bag and possession limits will be no more than 5 and 10 Canada geese, respectively.

3. Areas open to the hunting of Canada geese are as follows:

Michigan—The Lower Peninsula, exclusive of the major goose migration/concentration areas that remained closed during the 1986 early-September season, except for the areas outside the posted boundaries of the Fish Point, Shiawassee and Allegan State Game and Wildlife Areas and the Shiawassee National Wildlife Refuge. On the Upper Peninsula the areas open to hunting are limited to the Garden Peninsula, that area south of US Highway 2 but east of Escanaba, Michigan, that area east of Interstate Highway 75, and that area west of Interstate Highway 75 bounded by Highways M–28 and M–221.

Illinois: McHenry, Lake, Kane, DuPage, Cook, Kendall, Grundy, Will, and Kankakee Counties.

Minnesota: All or portions of Anoka, Washington, Ramsey, Hennepin, Carver, Scott and Dakota Counties.

4. Areas open to hunting must be described, delineated and designated as such in each State's hunting regulations.

Special Falconry Regulations

Extended Seasons: Falconry is a permitted means of taking migratory game birds in any State meeting Federal faconry standards in 50 CFR 21.29(k). These States may select an extended season for taking migratory game birds in accordance with the following:

Framework dates: Seasons must fall within the regular season framework dates and, if offered and accepted, other special season framework dates for hunting.

Daily bag and possession limits: Falconry daily bag and possession limits for all permitted migratory game birds shall not exceed 3 and 6 birds, respectively, singly or in the aggregate, during both regular hunting seasons and extended falconry seasons.

Regulations publication: Each State selecting the special season must inform the Service of the season dates and publish said regulations.

Regular seasons: General hunting regulations, including seasons, hours, and limits, apply to falconry in each State listed in 50 CFR 21.29(k) which does not select an extended falconry season.

Note: In no instance shall the total number of days in any combination of duck seasons (regular duck season, sea duck season, September seasons, special scaup season, special scaup and goldeneye season or falconry season) exceed 107 days for a species in one geographical area.

Dated: July 27, 1987.

Susan Recce,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–17855 Filed 8–5–87; 8:45 am]

BILLING CODE 4310–55–M

Proposed Rules

Federal Register
Vol. 52, No. 151
Thursday, August 6, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1030

[Docket No. AO-361-A25]

Milk in the Chicago Regional Marketing Area; Extension of Time for Filing Briefs

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Extension of time for filing briefs.

SUMMARY: This notice extends the time for filing briefs on the record of the hearing held June 2–4, 1987, at Madison, Wisconsin, concerning proposals six through ten to amend the Chicago Regional marketing order. Counsel for proponent cooperatives requested more time to review the hearing record and to prepare a brief.

DATE: Briefs are now due on or before August 6, 1987.

ADDRESS: Briefs (4 copies) should be filed with the Hearing Clerk, Room 1079, South Building, U. S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U. S. Department of Agriculture, Washington, DC 20250 (202) 447–4829.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Hearing: Issued May 15, 1987; published May 19, 1987.

Notice is hereby given that the time for filing briefs, proposed findings and conclusions on the record of the public hearing held June 2–4 1987, at Madison, Wisconsin, on proposals six through ten with respect to the tentative marketing agreement and to the order regulating the handling of milk in the Chicago Regional marketing area pursuant to notice of hearing issued May 15, 1987, (52 FR 18894, May 19, 1987) is hereby further extended to August 6, 1987.

This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

List of Subjects in 7 CFR Part 1030

Milk marketing orders, Milk, Dairy products.

Signed at Washington, DC, on: July 31, 1987.

William T. Manley
Acting Administrator.

[FR Doc. 87-17861 Filed 8-5-87; 8:45 am]
BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 9

Revision of Freedom of Information Act Regulations; Conforming Amendments

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations pertaining to Public Records in order to conform its Freedom of Information Act (FOIA) regulations to the Freedom of Information Reform Act of 1986 and to reflect current NRC organizational structure and current agency practice and delegation.These amendments will also reduce the repetition of statutory requirements. These amendments are necessary to inform the public about the procedural changes to the FOIA regulations.

DATES: The comment period expires on August 26, 1987. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Send written comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Comments may also be delivered to Room 1121, 1717 H Street, NW., Washington, DC between 7:30 a.m. and 4:15 p.m. Copies of any comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Donnie H. Grimsley, Director, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–492–7211.

SUPPLEMENTARY INFORMATION: The Freedom of Information Reform Act of 1986 (Pub. L. 99–570) was signed by the President on October 27, 1986. The Act provides for broader exemption protection for law enforcement information (Exemption 7 of the FOIA) and new law enforcement record exclusions.The new exemption provisions became effective immediately. The amendments changed the threshold of records encompassed under Exemption 7 from "investigatory records" to all records or information compiled for law enforcement purposes.

The OMB guidelines containing a uniform schedule of fees for all agencies were published on March 27, 1987 (52 FR 10012) and became effective on April 25, 1987. Important features of the new fee structure involve substantial changes that relate to agency charges for search, review, and duplication of records. In addition, the new guidelines set forth procedures for conducting searches without charge, duplicating records without charge, waiving or reducing a fee, and the provisions for assessing interest on unpaid bills that are more than 30 days delinquent. Moreover, the OMB guidelines set forth the exclusions to the Act which require the agency to provide the first 100 pages of requested records free of charge. The Act requires affected agencies to use the March 27, 1987 OMB guidelines in structuring their implementing regulations. The new fee structure provisions of the Act became effective on April 25, 1987.

Currently, the NRC is undergoing a major consolidation effort, affecting the entire organizational structure of the agency. While finalization of the total reorganization has not yet been completed, Part 9 has been revised to reflect certain organizational changes that have been completed.

In revising Subpart A, the NRC has renumbered most of the sections to conform to the Office of the Federal Register guidelines which will allow

greater flexibility and ease in making future amendments.

The proposed rule also contains several changes to Part 9, Subpart A, that were proposed by the NRC's Office of the General Counsel. Among the recommended changes included in the proposed rule are four exclusions from the definition of "agency record," a provision that FOIA requests cover only agency records in existence on the date the request is received, and reflection of the delegations made in NRC Manual Chapter 0211.

Conforming amendments are also being made to Part 2 and Part 9, Subparts B, C, and D, to conform cross references to the renumbered sections of Part 9, Subpart A, and to reflect the changes to Exemption 7 of the Freedom of Information Act.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget approval numbers 3150-0136 (Part 2) and 3150-0043 (Part 9).

Regulatory Analysis

The proposed rule implements the provisions of the Freedom of Information Reform Act of 1986 and brings Part 9 into conformance with current agency practice and several of the major recommendations of the Office of the General Counsel.

The Freedom of Information Reform Act of 1986 established (1) three levels of fees, (2) new standards for waiving or reducing fees, and (3) an exclusion from providing records without charge. Basically, the NRC will not charge fees for the first two hours of search and the first 100 pages duplicated for all requesters, except commercial-use requesters. Any requester may also seek a waiver or reduction of fees for records in excess of 100 pages. The NRC will not charge fees if the cost of collecting the fee is equal to or greater than the fee itself.

There will be an economic impact on all requesters. However, the most significant economic impact will fall on commercial-use requesters. In keeping with the intent of the Federal user fee concept, the NRC will charge commercial-use requesters full direct cost fees for all search for, review, and duplication of requested records. Commercial-use requesters are not considered to be "small entities," and the NRC believes that assessment of the fees will not cause a significant economic burden on them.

Estimated Annual Costs for Commercial-Use Requesters

[Figure of 350 commercial-use requesters based on actual 1986 statistics]

Search costs (⅓ clerical + ⅔ Professional)	$14,000
Review costs (Professional)	17,000
Total estimated costs	31,000

For the remaining three categories of requesters, the Freedom of Information Reform Act requires agencies to provide 100 pages and two hours of search time free of charge. In addition, these requesters may request a waiver or reduction of fees, which would normally be charged for duplication and search time in excess of the initially waived amounts, if they can show that their request for agency records is in the public interest and is not primarily in their commercial interest.

As a result of the amendments, several principal economic impacts on the NRC are expected. Additional administrative effort will be required by the staff to record time spent in processing FOIA requests, time spent in recording staff processing reports, and time spent in determining the amount requesters will be billed. Also, additional staff duplication effort will be required to provide requesters copies that must be provided without charge.

Estimated Annual Costs for NRC to Process FOIA Requests

[Figures based on estimated 833 hours]

Staff recording of time (⅓ Clerical + ⅔ Professional)	$17,000
Division of Rules and Records Billing Costs	3,000
Duplication of first 100 free pages (23,000 sheets x $.20 per page)	5,000
Total estimated costs	25,000

Regulatory Flexibility Certification

As required by the Regulatory flexibility Act, 5 U.S.C. 605(b), the Commission certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This proposed rule implements the Freedom of Information Reform Act of 1986 (Pub. L. 99-570) which includes the establishment of three levels of fees and specific provisions regarding waiver or assessment of fees for search, review, and duplication of records. Because the Freedom of Information Reform Act of 1986 provides relief for all requesters, except for commercial-use requesters, through waiver or reductions of fees, the NRC does not believe that the majority of potential requesters would fall under the definition of "small entities" set forth in the Regulatory flexibility Act or the Small Business Size Standards issued by the Small Business Administration at 13 CFR Part 121.

Backfit analysis

This proposed rule pertains to the implementation of the Freedom of Information Reform Act of 1986; therefore, no backfit analysis has been prepared.

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 9

Freedom of information, Penalty, Privacy, Reporting and recordkeeping requirements, Sunshine Act.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Parts 2 and 9.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for Part 2 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

2. In § 2.790, paragraphs (a)(7), (b)(1)(ii), and (d) are revised to read as follows:

§ 2.790 Public inspections, exemptions, requests for withholding.

(a) * * *

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information—

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority, or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual;

* * * * *

(b)(1) * * *

(ii) Contains a full statement of the reasons on the basis of which it is claimed that the information should be withheld from public disclosure. Such statement shall address with specificity the considerations listed in paragraph (b)(4) of this section. In the case of an affidavit submitted by a company, the affidavit shall be executed by an officer or upper-level management official who has been specifically delegated the function of reviewing the information sought to be withheld and authorized to apply for its withholding on behalf of the Company. The affidavit shall be executed by the owner of the information, even though the information sought to be withheld is submitted to the Commission by another person. The application and affidavit shall be submitted at the time of filing the information sought to be withheld. The information sought to be withheld shall be incorporated, as far as possible, into a separate paper. The affiant may designate with appropriate markings information submitted in the affidavit as a trade secret or confidential or privileged commercial or financial information within the meaning of § 9.17(a)(4) of this chapter and such information shall be subject to disclosure only in accordance with the provisions of § 9.19 of this chapter.

* * * * *

(d) The following information shall be deemed to be commerical or financial information within the meaning of § 9.17(a)(4) of this chapter and shall be subject to disclosure only in accordance with the provisions of § 9.19 of this chapter.

* * * * *

PART 9—PUBLIC RECORDS

3. The authority citation for Part 9 is revised to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Subpart A also issued under 5 U.S.C. 552; 31 U.S.C. 9701; Pub. L. 99–570. Subpart B also issued under 5 U.S.C. 552a. Subpart C also issued under 5 U.S.C. 552b.

4. Section 9.1 is revised to read as follows:

§ 9.1 Scope and purpose.

(a) Subpart A implements the provisions of the Freedom of Information Act, 5 U.S.C. 552, concerning the availability to the public of Nuclear Regulatory Commission records for inspection and copying.

(b) Subpart B implements the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, concerning disclosure and availability of certain Nuclear Regulatory commission records maintained on individuals.

(c) Subpart C implements the provisions of the Government in the Sunshine Act, 5 U.S.C. 552b, concerning the opening of Commission meetings to public observation.

(d) Subpart D describes procedures governing the production of agency records, information, or testimony in response to subpoenas or demands of courts or other judicial or quasi-judicial authorities in State and Federal proceedings.

§ 9.1a, 9.3, 9.5, and 9.8 [Removed]

5. Sections 9.1a, 9.3, 9.5 and 9.8 are removed.

6. Section 9.2 is redesignated § 9.3 and revised to read as follows:

§ 9.3 Definitions.

As used in this part:

"Commission" means the Commission of five members of a quorum thereof sitting as a body, as provided by section 201 of the Energy Reorganization Act of 1974.

"Government agency" means any executive department, military department, Government corporation, Government-controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.

"NRC" means the Nuclear Regulatory Commission, established by the Energy Reorganization Act of 1974.

"NRC personnel" means employees, consultants, and members of advisory boards, committees, and panels of the NRC; members of boards designated by the Commission to preside at adjudicatory proceedings; and officers or employees of Government agencies, including military personnel, assigned to duty at the NRC.

"Working days" means Monday through Friday, except legal holidays.

7. Section 9.2a is redesignated § 9.5 and is republished to read as follows:

§ 9.5 Interpretations.

Except as specifically authorized by the Commission in writing, no interpretation of the meaning of the regulations in this part by an officer or employee of the Commission other than a written interpretation by the General Counsel will be recognized as binding upon the Commission.

8. Section 9.2b is redesignated § 9.8 and revised to read as follows:

§ 9.8 Information collection requirements; OMB approval.

(a) The NRC has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) OMB has approved the information collection requirements contained in this part under control number 3150–0043.

(b) The approved information collection requirements contained in this part appear in §§ 9.29, 9.41, 9.54, 9.55, and 9.202.

9. Subpart A currently consists of §§ 9.3–9.16. New §§ 9.3, 9.5, and 9.8 are redesignated to precede Subpart A and the remaining sections in Subpart A are renumbered and revised to read as follows (new §§ 9.11 through 9.45):

Subpart A—Freedom of Information Act Regulations

Sec.

9.11 Scope of subpart.
9.13 Definitions.
9.15 Availability of records.
9.17 Agency records exempt from public disclosure.
9.19 Segregation of exempt information and deletion of identifying details.
9.23 Requests for records.
9.21 Publicly available records.

Sec.
9.23 Requests for records.
9.25 Initial disclosure determination.
9.27 Form and content of responses.
9.29 Appeal from initial determination.
9.31 Extension of time for response.
9.33 Search, review, and special service fees.
9.34 Assessment of interest and debt collection.
9.35 Duplication fees.
9.37 Fees for search, review, and duplication of records by NRC personnel.
9.39 Search and duplication provided without charge.
9.41 Requests for waiver or reduction of fees.
9.43 Processing of requests for a waiver or reduction of fees.
9.45 Annual Report to Congress.

Subpart A—Freedom of Information Act Regulations

§ 9.11 Scope of subpart.

This subpart prescribes procedures for making NRC agency records available to the public for inspection and copying pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552) and provides notice of procedures for obtaining NRC records otherwise publicly available. This subpart does not affect the dissemination or distribution of NRC-originated, or NRC contractor-originated, information to the public under any other NRC public, technical, or other information program or policy.

§ 9.13 Definitions.

As used in this subpart:

"Agency record" is a record in the possession and control of the NRC that is associated with Government business. Agency record does not include records such as—

(1) Publicly available books, periodicals, or other publications that are owned or copyrighted by non-Federal sources;

(2) Records solely in the possession and control of NRC contractors;

(3) Personal records in possession of NRC personnel that have not been circulated, were not required to be created or retained by the NRC, and can be retained or discarded at the author's sole discretion, or records of a personal nature that are not associated with any Government business; and

(4) Non-substantive information in logs or schedule books of the Chairman or Commissioners, uncirculated except for typing or recording purposes.

"Commercial-use request" means a request made under § 9.23(b) for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

"Direct costs" mean the expenditures that an agency incurs in searching for and duplicating agency records. For a commercial-use request, direct costs include the expenditures involved in reviewing records to respond to the request. Direct costs include the salary of the employee category performing the work based on that basic rate of pay plus 16 percent of that rate to cover fringe benefits and the cost of operating duplicating machinery.

"Duplication" means the process of making a copy of a record necessary to respond to a request made under § 9.23. Copies may take the form of paper copy, microform, audio-visual materials, disk, magnetic tape, or machine readable documentation, among others.

"Educational institution" means an institution which operates a program or programs of scholarly research. Educational institution refers to a preschool, a public or private elementary or secondary school, an institution or graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education.

"News" means information that is about current events or that would be of current interest to the public.

"Noncommercial scientific institution" means an institution that is not operated on a commercial basis, as the term "commecial" is referred to in the defintion of "commercial-use request," and is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particualr product or industry.

"Office", unless otherwise indicated, means all offices, boards, panels, and advisory committees of the NRC.

"Record" means any book, paper, map photograph, brochure, punch card, magnetic tape, paper tape, sound recording, pamphlet, slide, motion picture, or other documentary material regardless of form or characteristics. Record does not include an object or article such as a structure, furniture, a tangible exhibit or model, or a vehicle or piece of equipment.

"Representative of the news media" means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public.

"Review" means the process of examining records identified as responsive to a commercial-use request to determine whether they are exempted from disclosure in whole or in part. Also, review includes examining records to determine which Freedom of Information Act exemptions are applicable, identifying records or portions thereof to be disclosed, and excising from the records those portions which are to be withheld.

"Search" means all time spent looking for records, either by manual search or search using existing computer programs, that respond to a request including a page-by-page or line-by-line identification or responsive information within the records.

"Unusual circumstances" mean—

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which will be conducted with all practicable speed, with another agency having substantial interested in the determination of the request or among two or more components of the NRC having substantial subject-matter interest therein.

§ 9.15 Availability of records.

The NRC will make available for public inspection and copying any reasonably described agency record in the possession and control of the NRC under the provisions of this subpart, and upon request by any person. Records that the NRC routinely makes publicly available are described in § 9.21. Procedures and conditions governing requests for records are set forth in § 9.23.

§ 9.17 Agency records exempt from public disclosure.

(a) The following types of agency records are exempt from pubilc disclosure under § 9.15:

(1) Records (i) which are specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy, and (ii) which are in fact properly classified pursuant to such Executive order;

(2) Records related solely to the internal personnel rules and practices of the agency;

(3) Records specifically exempted from disclosure by statute (other than 5 U.S.C. 552b), provided that such statute (i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Interagency or intraagency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information complied for law enforcement purpose, but only to the extent that the production of such law enforcement records or information—

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to fair trail or an impartial adjudication;

(iii) Could reasonably be expected to consitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential sources, including a State, local, or foreign agency or authority, or any private institution which furnished information on a confidential basis, and, in the case of a record or information complied by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual;

(8) Matters contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulations or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(b) Nothing in this subpart authorizes withholding of information of limiting the availability or records to the public, except as specifically provided in this part, nor it this subpart authority to withhold information from Congress.

(c) Whenever a request is made which involves access to agency records described in paragraph (a)(7) of this section, the NRC may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this subpart when—

(1) The investigation or proceeding involves a possible violation of criminal law; and

(2) There is reason to believe that—

(i) The subject of the investigation or proceeding is not aware of its pendency; and

(ii) Disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings.

§ 9.19 Segregation of exempt information and deletion of identifying details.

(a) For records required to be made availalble under 5 U.S.C. 552(a)(2), the NRC shall delete the name with any identifying details, if the release of the name or other identifying details of, or relating to, a private party will constitute a clearly unwarranted invasion of personal privacy. The NRC shall provide notification that names of parties and certain other identifying details have been removed in order to prevent a clearly unwarranted invasion of the personal privacy of the individuals involved.

(b) In responding to a request for information submitted under § 9.23, in which it has been determined to withhold exempt information, the NRC shall segregate—

(1) Information that is exempt from public disclosure under § 9.17(a) from nonexempt information; and

(2) Factual information from advice, opinions, and recommendations in predecisional records unless the information is inextricably intertwined, or is contained in drafts, legal work products, and records covered by the lawyer-client privilege, or is otherwise exempt from disclosure.

§ 9.21 Publicly available records.

(a) Publicly available records of NRC activities described in paragraphs (c) and (d) of this section are available through the National Technical Information Service. Subcriptions to these records are available on 48× michrofiche and may be ordered from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. Single copies of NRC publications in the NUREG series, NRC Regulatory Guides, and Standard Review Plans are also available from the National Technical Information Service.

(b) For the convenience of persons who may wish to inspect without charge or purchase copies of a records or a limited category of records for a fee, publicly available records of the NRC's activities described in paragraph (c) of this section are also made available at the NRC Public Document Room. The NRC Public Document Room is located at 1717 H Street, NW, Washington, DC, and is open between 7:45 a.m. and 4:15 p.m. on Mondays through Friday, except legal holidays.

(c) The following records of NRC activities are publicly available at the NRC Public Document Room For public inspection and copying:

(1) Final opinions including concurring and dissenting opinions as well as orders of the NRC issued as a result of adjudication of cases.

(2) Statements of policy and interpretations which have been adopted by the NRC and have not been published in the **Federal Register**.

(3) Nuclear Regulatory Commission rules and regulations.

(4) Nuclear Regulatory Commission Manual and instructions to NRC personnel that affect any member of the public.

(5) Records made available for public inspection and copying under this chapter and the NRC Manual. (NRC Bulletin 3203–15 describes the "NRC Policy for Routinely Making NRC Records Publicly Available.")

(6) Current indexes to records made available under 5 U.S.C. 552 (a)(2) and that are made publicly available are listed in NUREG–0550, "Title of List of Documents Made Publicly Available," which is published monthly.

(d) Records made publicly available under paragraphs (c)(1), (2), and (5) of this section are also available for purchase through the National Technical Information Service.

§ 9.23 Requests for records.

(a)(1) A person may request access to records routinely made available by the NRC under § 9.21 in person or in writing at the NRC Public Document Room, 1717 H. Street NW., Washington, DC 20555.

(i) Each record requested must be described in sufficient detail to enable the Public Document Room to locate the record. If the description of the records is not sufficient to allow the Public Document Room staff to identify the record, the Public Document Room shall advise the requester to select the record from the indexes published under § 9.21(c)(6).

(ii) In order to obtain copies of records expeditiously, a person may open an account at the Public Document Room with the private contracting firm that is responsible for duplicating NRC records.

(2) A person may also order records routinely made available by the NRC under § 9.21 from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia, 22168.

(b) A person may request agency records by submitting a request

authorized by 5 U.S.C. 552(a)(3) to the Director, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555. The request must be in writing and clearly state on the envelope and in the letter that it is a "Freedom of Information Act request." The NRC does not consider a request as received until it has been received and logged in by the Director, Division of Rules and Records, Office of Administration and Resources Management.

(1) A Freedom of Information request covers only agency records that are in existence on the date the Director, Division of Rules and Records, receives the request. A request does not cover agency records destroyed or discarded before receipt of a request or which are created after the date of the request.

(2) All Freedom of Information Act requests for copies of agency records must reasonably describe the agency records sought in sufficient detail to permit the NRC to identify the requested records. Where possible, the requester should provide specific information regarding dates, titles, docket numbers, file designations, and other information which may help identify the records. If a requested record is not described in sufficient detail to permit its identification, the Director, Division of Rules and Records, shall inform the requester of the deficiency within 10 working days after receipt of the request and ask the requester to submit additional information regarding the request or meet with appropriate NRC personnel in order to clarify the request.

(3) Upon receipt of a request made under paragraph (b) of this section, the NRC shall provide written notification to the requester that indicates the request has been received, the name of the individual and telephone number to contact to find out the status of the request, and other pertinent matters regarding the processing of the request.

(4)(i) The NRC shall advise a requester that fees will be assessed if—

(A) A request involves anticipated costs in excess of the minimum specified in § 9.39; and

(B) Search and duplication is not provided without charge under § 9.39; or

(C) The requester does not specifically state that the cost involved is acceptable or acceptable up to a specified limit.

(ii) The NRC has discretion to discontinue processing for records responsive to a request made under paragraph (b) until—

(A) A required advance payment has been received;

(B) The requester has agreed to bear the estimated costs;

(C) A determination has been made on a request for waiver or reduction of fees; or

(D) The requester meets the requirements of § 9.39.

(c) If a requested agency record that has been reasonably described is located at a place other than the NRC Public Document Room or NRC headquarters, the NRC may, at its discretion, make the record available for inspection and copying at the other location.

(d) Except as provided in § 9.39, if the record requested under paragraph (b) of this section is a record available through the National Technical Information Service, the NRC shall refer the requester to the National Technical Information Service. If the requested record has been placed in the NRC Public Document Room under § 9.21, the NRC shall inform the requester that the record is in the PDR, and that the record may be obtained in accordance with the procedures set forth in paragraph (a) of this section.

(e) The Director, Division of Rules and Records, shall promptly forward a Freedom of Information Act request made under § 9.23(b) for an agency record which is not publicly available in the NRC Public Document Room under § 9.21 to the head of the office primarily concerned with the records requested and to the General Counsel, as appropriate. The responsible office will conduct a search for the records responsive to the request and compile those records to be reviewed for initial disclosure determination under §§ 9.25 and 9.27.

§ 9.25 Initial disclosure determination.

(a) The head of the responsible office shall review agency records located in a search under § 9.23(b) to determine whether the agency records are exempt from disclosure under § 9.17(a). If the head of the office determines that, although exempt, the disclosure of the agency records will not be contrary to the public interest and will not affect the rights of any person, the head of the office may authorize disclosure of the agency records. If the head of the office authorizes disclosure of the agency records, the head of the office shall furnish the agency records to the Director, Division of Rules and Records, who shall notify the requester of the determination in the manner provided in § 9.27.

(b) Except as provided in paragarph (c) of this section, if, as a result of the review specified in paragraph (a) of this section, the head of the responsible office finds that agency records should be denied in whole or in part, the head of the office will submit that finding to the Director, Division of Rules and Records, who will, in consultation with the General Counsel, make an independent determination whether the agency records should be denied in whole or in part. If the Director, Division of Rules and Records, determines that the agency records sought are exempt from disclosure and disclosure of the records is contrary to the public interest and will adversely affect the rights of any person, the Director, Division of Rules and Records, shall notify the requester of the determination in the manner provided in § 9.27.

(c) For agency records located in the office of a Commissioner or in the Office of the Secretary of the Commission, the Assistant Secretary of the Commission shall make the initial determination to deny agency records in whole or in part under § 917(a) instead of the Director, Division of Rules and Records. For agency records located in the Office of the General Counsel, the General Counsel shall make the initial determination to deny agency records in whole or in part instead of the Director, Division of Rules and Records. If the Assistant Secretary of the Commission or the General Counsel determines that the agency records sought are exempt from disclosure and that their disclosure is contrary to the public interest and will adversely affect the rights of any person, the Assistant Secretary of the Commission or the General Counsel shall furnish that determination to the Director, Division of Rules and Records, who shall notify the requester of the determination in the manner provided in § 9.27.

(d) If a requested record that is located is one of another Government agency or deals with subject matter over which an agency other than the NRC has exclusive or primary responsibility, the NRC shall promptly refer the record to that Government agency for disposition or for guidance regarding disposition.

(e) The 10-working day period for response to a request for records provided in paragraphs (a), (b), and (c) of this section may be extended for unusual circumstances as provided in § 9.31.

(f) In exceptional circumstances where it does not appear possible to complete action on a request within the maximum 20 working-day limit as provided in § 9.31, the Director, Division of Rules and Records, may seek an agreement with the requester for a specified extension of time in which to

act upon the request. The NRC shall confirm the agreement for an extension of time in writing.

(g) If the NRC does not respond to a request within the 10-working-day period, or within the extended periods described in paragraph (c) of this section, the requester may treat that delay as a denial of the request and immediately appeal to the Executive Director for Operations as provided in § 9.29(a) or to a district court as provided in § 9.29(c).

§ 9.27 Form and content of responses.

(a) When the NRC has located a requested record and has determined to disclose the record, the Director, Division of Rules and Records, shall promptly furnish the record or notify the requester where and when the record will be available for inspection and copying. The NRC will normally place copies of records disclosed in response to Freedom of Information Act requests in the NRC Public Document Room and, for records relating to a specific nuclear power facility, in the Local Public Document Room established for that facility. The NRC shall also advise the requester of any applicable fees under § 9.35.

(b) When the NRC denies access to a requested agency record or denies a request for a waiver or reduction of fees, the Director, Division of Rules and Records, shall notify the requester in writing. The denial includes as appropirate—

(1) The reason for the denial;

(2) A reference to the specific exemption under the Freedom of Information Act and the Commission's regulations authorizing the withholding of the record or portions of it;

(3) The name and title or position of each person responsible for the denial of the request, including the head of the office recommending denial of a record;

(4) A statement stating why the request does not meet the requirements of § 9.41 if the request is for a waiver or reduction of fees; and

(5) A statement that the denial may be appealed within 30 days from the receipt of the denial to the Executive Director for Operations or to the Commission, as appropriate.

(c) The Director, Division of Rules and Records, shall maintain a copy of each letter granting or denying requested records or denying a request for waiver or reduction of fees in accordance with the NRC Comprehensive Records Disposition Schedule.

§ 9.29 Appeal from initial determination.

(a) A requester may appeal a notice of denial of a Freedom of Information Act request for agency records or a request for waiver or reduction of fees under this subpart within 30 days of the date of the NRC's denial. For records denied by an Office Director reporting to the Executive Director for Operations or for a denial of a request for a waiver or reduction of fees, the appeal must be in writing and addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555. For record denied by an Office Director reporting to the Commission, the Assistant Secretary of the Commission, or by the Advisory Committee Management Officer, the appeal must be in writing and addressed to the Secretary of the Commission. The appeal should clearly state on the envelope and in the letter that it is an "Appeal from Initial FOIA Decision." The NRC does not consider an appeal that is not marked as indicated in this paragraph as received until it is actually received by the Executive Director for Operations or Secretary of the Commission.

(b) The NRC shall make determination on any appeal made under this section within 20 working days after the receipt of the appeal.

(c)(1) If the appeal of the denial of the request for record is upheld in whole or in part, the Executive Director for Operations or the Secretary of the Commission shall notify the requester of the denial, specifying—

(i) The exemptions relied upon;

(ii) An explanation of how the exemption applies to the records withheld; and

(iii) The reasons for asserting the exemption.

(2) If, on appeal, the denial of a request for waiver or reduction of fees for locating and reproducing records is upheld in whole or in part, the Executive Director for Operations shall notify the person making the request of his decision to sustain the denial, including a statement explaining why the request does not meet the requirements of § 9.41.

(3) The Executive Director for Operations or the Secretary of the Commission shall inform the requester that the denial is final agency action and that judicial review is available in a district court of the United States in the district in which the requester resides, has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

(d) The Executive Director for Operations or the Secretary of the Commission shall furnish copies of all appeals and written determinations on appeals to the Director, Division of Rules and Records.

§ 9.31 Extension of time for response.

(a) In unusual circumstances defined in § 9.13, the NRC may extend the time limits prescribed in § 9.25 or § 9.29 by not more than 10 working days. The extension may be made by written notice to the person making the request to explain the reasons for the extension and indicate the date on which a determination is expected to be dispatched.

(b) An extension of the time limits prescribed in §§ 9.25 and 9.29 may not exceed a combined total of 10 working days per request.

§ 9.33 Search, review, and special service fees.

(a) The NRC charges fees for—

(1) Search, duplication, and review, when records are requested for commercial use;

(2) Duplication of records provided in excess of 100 pages when records are not sought for commercial use and the request is made by an educational, noncommercial scientific institution, or a representative of the news media;

(3) Search and duplication of records in excess of 100 pages for any request not described in paragraph (a) (1) and (2) of this section;

(4) The direct costs of searching for records. The NRC will assess fees even when no records are located as a result of the search or when records that are located as a result of the search are not disclosed; and

(5) Computer searches which include the cost of operating the Central Processing Unit for that portion of operating time that is directly attributable to searching for records plus the operator/programmer salary apportionable to the search.

(b) The NRC may charge requesters who request the following services for the direct costs of the service:

(1) Certifying that records are true copies; or

(2) Sending records by special methods, such as express mail, package delivery service, etc.

§ 9.34 Assessment of interest and debt collection.

(a) The NRC shall assess interest on the fee amount billed starting on the 31st day following the day on which the billing was sent in accordance with NRC's regulations set out in § 15.37 of this chapter. Interest is at the rate prescribed in 31 U.S.C. 3717.

(b) The NRC will use its debt collection procedures under Part 15 of this chapter for any overdue fees.

§ 9.35 Duplication fees.

(a)(1) Charges for the duplication of records made available under § 9.21 at the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555 by the duplicating service contractor are as follows:

(i) Six cents per page for paper copy to paper copy, except for engineering drawings and any other records larger than 17 x 11 inches for which the charges vary as follows depending on the reproduction process that is used:

(A) Xerographic process—$1.50 per square foot for large documents or engineering drawings (random size up to 24 inches in width and with variable length) reduced or full size;

(B) Photographic process—$7.00 per square foot for large documents or engineering drawings (random size exceeding 24 inches in width up to a maximum size of 42 inches in length) full size only.

(ii) Six cents per page for microform to paper copy, except for engineering drawings and any other records larger than 17 x 11 inches for which the charge is $1.25 per square foot or $3.00 for a reduced size print (18 x 24 inches).

(iii) One dollar per microfiche to microfiche.

(iv) One dollar per aperture card to aperture card.

(2) Self-service, coin-operated, duplicating machines are available at the PDR for the use of the public. Paper to paper is $0.10 per page. Microform to paper is $0.10 per page on the reader printers.

(3) A requester may submit mail-order requests for contractor duplication of NRC records made by writing to the NRC Public Document Room. The charges for mail-order duplication of records are the same as those set out in paragraph (a)(1) of this section, plus mailing or shipping charges.

(4) A requester may open an account with the duplicating service contractor. A requester may obtain the name and address and billing policy of the contractor from the NRC Public Document Room.

(5) Any change in the costs specified in this section will become effective immediately pending completion of the Commission's rulemaking that amends this section to reflect the new charges. The Commission shall post the charges that will be in effect for the interim period in the Public Document Room. The Commission shall complete the rulemaking necessary to reflect the new charges within 15 working days from the beginning of the interim period.

(b) The NRC shall assess the following charges for copies of records to be duplicated by the NRC at locations other than the NRC Public Document Room located in Washington, DC or at Local Public Document Rooms:

(1) Sizes up to 8½ x 14 inches made on office copying machines—$0.20 per page of copy; and

(2) The charge for duplicating records other than those specified in paragraphs (a) and (b) of this section is computed on the basis of NRC's direct costs.

(c) In compliance with the Federal Advisory Committee Act, a requester may purchase copies of transcripts of testimony in NRC Advisory Committee proceedings, which are transcribed by a reporting firm under contract with the NRC directly from the reporting firm at the cost of reproduction as provided for in the contract with the reporting firm. A requester may also purchase transcripts from the NRC at the cost of reproduction as set out in paragraphs (a) and (b) of this section.

(d) Copyrighted material may not be reproduced in violation of the copyright laws.

(e) Charges for the duplication of NRC documents located in NRC Local Public Document Rooms are those costs that the institutions maintaining the NRC Local Public Document Room collections establish.

§ 9.37 Fees for search, review, and duplication of records by NRC personnel.

The NRC shall charge the following hourly rates for search, review, and duplication of records by NRC personnel:

(a) Clerical search, review, and duplication at a salary rate that is equivalent to a GG–7, Step 5 plus 16 percent fringe benefits;

(b)Professional/managerial search, review, and duplication at a salary rate that is equivalent to a GG–13, Step 5 plus 16 percent fringe benefits; and

(c) Senior executive or Commissioner search, review, and duplication at a salary rate that is equivalent to an ES–3 plus 16 percent fringe benefits.

§ 9.39 Search and duplication provided without charge.

(a) The NRC shall search for records requested under § 9.23(b), without charges:

(1) If the requester is a representative of the news media;

(2) If the requester is an educational institution.

(3) If the requester is a noncommercial scientific institution; and

(4) For the first two hours of search if the requester is not a commercial-use requester;

(b) The NRC shall duplicate records requested under § 9.23(b) without charge for the first 100 pages of standard paper copies, or equivalent pages on microfiche, computer, disks, etc., if the requester is not a commercial-use requester.

(c) The NRC may not bill any requester for fees if the cost of collecting the fee would be equal to or greater than the fee itself.

(d) The NRC may aggregate requests in determining search and duplication to be provided without charge as provided in paragraphs (a) and (b) of this section, if the NRC finds a requester has filed multiple requests for only portions of a document or similar documents for the purpose of avoiding charges.

§ 9.41 Requests for waiver or reduction of fees.

(a)(1) The NRC shall collect fees for searching for, reviewing, and duplicating agency records, except as provided in § 9.39, unless a requester submits a request in writing for a waiver or reduction of fees. To assure that there will be no delay in the processing of Freedom of Information Act requests, the request for a waiver or reduction of fees should be included in the initial Freedom of Information Act request letter.

(2) Each request for a waiver or reduction of fees must be addressed to the Director, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

(b) A person requesting the NRC to waive or reduce search, review, or duplication fees shall:

(1) Describe the purpose for which the requester intends to use the requested information;

(2) Explain the extent to which the requester will extract and analyze the substantive content of the record;

(3) Describe the nature of the specific activity or research in which the records will be used and the specific qualifications the requester possesses to utilize information for the intended use in such a way that it will contribute to public understanding;

(4) Describe the likely impact on the public's understanding of the subject as compared to the level of understanding of the subject existing prior to disclosure;

(5) Describe the size and nature of the public to whose understanding a contribution will be made;

(6) Describe the intended means of dissemination to the general public;

(7) Indicate if public access to information will be provided free of charge or provided for an access fee or publication fee; and

(8) Describe any commercial interest the requester has in the records sought.

(c) The NRC will waive or reduce fees, without further specific information from the requester if, from information provided with the request for records made under § 9.23(b), it can determine that disclosure of the information in records is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester.

(d) In making a determination regarding a request for a waiver or reduction of fees, the NRC shall consider the following factors:

(1) How the subject of the requested records concerns the operations or activities of the Government;

(2) How the disclosure of the information is likely to contribute to an understanding of Government operations or activities;

(3) If disclosure of the requested information is likely to contribute to public understanding;

(4) If disclosure is likely to contribute significantly to public understanding of Government operations or activities;

(5) If, and the extent to which, the requester has a commercial interest that would be furthered by the disclosure of the requested records;

(6) If the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester;

(7) If the request involves search fees, to what extent the search is likely to identify records which will be disclosed;

(8) If a concurrent request for the same or similar records has been made under Subpart D of this part or under § 2.720 of this chapter; and

(9) If the requested records are already publicly available or will not add appreciably to the substance of information already available to the public in the NRC Public Document Room, a Local Public Document Room, the National Technical Information Service, or from other public sources.

(d) If the written request for a waiver or reduction of fees does not meet the requirements of this section, the NRC will inform the requester that the request for waiver or reduction of fees is being denied and set forth the appeal rights under § 9.29 to the requester.

§ 9.43 Processing of requests for a waiver or reduction of fees.

(a)(1) Within 10 working days after receipt of a request for access to records for which the NRC agrees to waive fees under § 9.39(a)–(d) or § 9.41(c), the NRC shall respond to the request as provided in § 9.25.

(2) If the request is expected to require the NRC to assess fees in excess of $25 for search and/or duplication, the NRC shall notify the requester that fees will be assessed unless the requester has indicated in advance his or her willingness to pay fees as high as estimated.

(3) In the notification, the NRC shall include the estimated cost of search fees and the nature of the search required and estimated cost of duplicating fees.

(4) The NRC will encourage requesters to discuss with the NRC the possibility of narrowing the scope of the request with the goal of reducing the cost while retaining the requester's original objective.

(5) If the fee is determined to be in excess of $250, the NRC shall require an advance payment. If the fee is determined to be $250 or less, the NRC may not begin to process the request until the requester agrees to bear the estimated costs.

(b) If the NRC receives a new request and determines that the requester has failed to pay a fee charged within 30 days of receipt of the bill on a previous request, the NRC may not accept the new request for processing until payment of the full amount owed on the prior request, plus any applicable interest assessed as provided in § 9.34, is made.

(c)(1) Within 10 working days of the receipt of NRC's notice that fees will be assessed, the requester shall provide advance payment if required, notify the NRC in writing that the requester agrees to bear the estimated costs, or submit a request for a waiver or reduction of fees pursuant to § 9.41.

(2) In making a request for a waiver or reduction of fees, a requester shall provide the information required by § 9.41(b).

(d) Within 10 working days after receipt of a request for the waiver or reduction of fees made in accordance with § 9.41, the NRC shall either waive or reduce the fees and notify the requester of the NRC's intent to promptly provide the records or deny the request and provide a statement to the requester explaining why the request does not meet the requirements of § 9.41(b).

(e) As provided in § 9.29, a requester may appeal a denial of a request to waive or reduce fees within 30 days to the Executive Director for Operations.

§ 9.45 Annual Report to Congress.

(a) On or before March 1 of each calendar year, the Chairman of the NRC will submit a report covering the preceding calendar year to the Speaker of the House of Representatives and President of the Senate for referral to the appropriate committees of the Congress. The report includes—

(1) The number of determinations made by the NRC to deny requests for records made to the NRC under this part and the reasons for each determination;

(2) The number of appeals made by persons under § 9.29, the results of the appeals, and the reason for the action taken on each appeal that results in a denial of information;

(3) The names and titles or positions of each person responsible for the denial of records requested under this section, and the number of instances of participation for each;

(4) The results of each proceeding conducted pursuant to 5 U.S.C. 552(a)(4)(F), including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records, or an explanation of why disciplinary action was not taken;

(5) A copy of every rule the NRC published affecting this part;

(6) A copy of the fee schedule and the total amount of fees collected by the NRC for making records available under this part; and

(7) Any other information that indicates efforts to administer fully the provisions of 5 U.S.C. 552.

(b) The NRC shall make a copy of each report submitted to the Congress under paragraph (a) of this section available for public inspection and copying in the NRC Public Document Room.

10. Section 9.85 is revised to read as follows:

§ 9.85 Fees.

Fees shall not be charged for search for or review of records requested pursuant to this subpart or for making copies or extracts of records in order to make them available for review. Fees established pursuant to 31 U.S.C. 483c and 5 U.S.C. 552a(f)(5) shall be charged according to the schedule contained in § 9.35 of this part for actual copies of records requested by individuals, pursuant to the Privacy Act of 1974, unless the Director, Division of Rules and Records, waives the fee because of the inability of the individual to pay or because making the records available without cost, or at a reduction in cost, is otherwise in the public interest.

11. Section 9.100 is revised to read as follows:

§ 9.100 Scope of subpart.

This subpart prescribes procedures pursuant to which NRC meetings shall be open to public observation pursuant to the provisions of 5 U.S.C. Sec. 552b. This subpart does not affect the procedures pursuant to which NRC records are made available to the public for inspection and copying which remain governed by Subpart A, except that the exemptions set forth in § 9.104(a) shall govern in the case of any request made pursuant to § 9.23 to copy or inspect the transcripts, recordings, or minutes described in § 9.108. Access to documents considered at NRC meetings shall continue to be governed by Subpart A of this part.

12. In § 9.200, paragraph (b) is revised to read as follows:

§ 9.200 Scope of subpart.

* * * * *

(b) For purposes of this subpart, the term "employee of the NRC" includes all NRC personnel as that term is defined in § 9.3 of this part, including NRC contractors.

* * * * *

Dated at Washington, DC, this 27th day of July 1987.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 87-17584 Filed 8-5-87; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 61, 71, and 91

[Docket No 25304; Notice N 87-7]

Terminal Control Area (TCA) Classification and Pilot and Equipment Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM); extension of comment period.

SUMMARY: This notice announces extension of the comment period of an NPRM which proposes to establish a single-class TCA and to revise the associated pilot and equipment requirements. Under this proposal, the separate classifications of TCA's, which are currently Group I, Group II, and Group III, would be eliminated. Existing and future TCA's would be designated simply as "terminal control areas." This notice also proposes expanded pilot and equipment requirements for operation in and near TCA's as follows: (a) The pilot-in-command of a civil aircraft operating within a TCA would be required to hold at least a private pilot certificate, with a limited exception for student pilots with certain training; (b) automatic pressure altitude reporting equipment (Mode C) would be required in all airspace from the surface to and including 12,500 feet above mean sea level (MSL) within 30 miles of the primary TCA airport; and (c) helicopters would be required to operate under the same equipment requirements as fixed-wing aircraft. Student pilots would not be allowed to operate at certain primary airports and would require specific training and an instructor's endorsement for all other TCA operations.

DATES: Comments must be received on or or before September 18, 1987.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204) Docket No. 25304, 800 Independence Avenue, SW., Washington, DC 20591.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Burns, Air Traffic Rules Branch (ATO-230), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. Communications should identify the regulatory docket and be submitted in duplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on the NPRM must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25304." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-200, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of the document. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

Background

Docket No. 25304, published on June 16, 1987 (52 FR 22918) proposed to establish a single-class TCA and to revise the associated pilot and equipment requirements. Under this proposal, the separate classifications of TCA's, which are currently Group I, Group II, and Group III, would be eliminated. Existing and future TCA's would be designated simply as "terminal control areas." This notice also proposes expanded pilot and equipment requirements for operation in and near TCA's as follows: (a) The pilot-in-command of a civil aircraft operating within a TCA would be required to hold at least a private pilot certificate, with a limited exception for student pilots with certain training; (b) automatic pressure altitude reporting equipment (Mode C) would be required in all airspace from the surface to and including 12,500 feet above mean sea level (MSL) within 30 miles of the primary TCA airport; and (c) helicopters would be required to operate under the same equipment requirements as fixed-wing aircraft. Student pilots would not be allowed to operate at certain primary airports and would require specific training and an instructor's endorsement for all other TCA operations.

On June 26, 1987, the Experimental Aircraft Association (EAA) petitioned the FAA for a 60-day extension to the comment period in order to circularize the notice to the organization's members. The FAA is aware that many general aviation pilots receive

notification of proposed rulemaking only through user organizations. However, due to the urgent need to implement safety improvements, we are reluctant to extend the original comment period beyond an additional 30 days.

Due to the vast numbers of responses received to date (700 responses to the docket in less than 40 days), the FAA believes that a 60-day extension of the comment period is unwarranted. However, the FAA believes that a shorter extension of the comment period will not jeopardize the ability of the agency to reach a timely final rule action.

For the reasons stated, the FAA will extend the comment period on Docket Number 25304 to September 16, 1987, to allow for a 92-day comment period instead of the existing 62-day comment period.

Issued in Washington, DC, on July 31, 1987.

John E. Ryan,

Director, Air Traffic Operations Service.

[FR Doc. 87-17809 Filed 8-5-87; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 230

[Release No. 33-6727; IC-15902 File No. S7-29-87]

Prospectus Delivery Requirements in Firm Commitment; Underwritten Offerings of Securities Made for Cash

AGENCY: Securities and Exchange Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Securities and Exchange Commission ("Commission") today is publishing for comment two alternative proposals for a new Rule 433 concerning the timing of delivery to investors of a prospectus meeting the requirements of section 10(a) of the Securities Act of 1933. The proposals would permit, if all conditions are satisfied, the sending of a final prospectus no later than five business days after a confirmation of sale is sent to a purchaser in a registered firm commitment offering of securities for cash.

DATE: Comments should be received on or before October 5, 1987.

ADDRESS: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. All comment letters should refer to File No. S7-29-87. Comment letters received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Mauri L. Osheroff, Deputy Chief Counsel, (202) 272-2573 or Gerard S. DiFiore, (202) 272-2589, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., 20549.

SUPPLEMENTARY INFORMATION: The Commission today is publishing for comment two alternative proposals for a new Rule 433 that would provide a safe harbor for sending a confirmation of sale prior to sending a prospectus meeting the requirements of section 10(a) [1] ("final prospectus") of the Securities Act of 1933 (the "Securities Act") [2] for a security sold for cash in a firm commitment underwritten offering.

I. Executive Summary

On January 21, 1986, as supplemented on April 18, 1986, the Commission received a rulemaking petition [3] from the Securities Industry Association ("SIA") [4] requesting amendment of certain prospectus delivery requirements under the Securities Act. Citing serious logistical problems in providing a final prospectus prior to or contemporaneously with delivery of a confirmation in syndicated offerings, the SIA sought promulgation of a rule that would permit the delivery of the final prospectus after the confirmation was sent. The Commission, appreciative of the problems cited in the SIA's petition, is proposing two alternative versions of a new Rule 433 that would allow, under specified conditions, delayed delivery [5] of the final prospectus in a firm commitment underwritten offering made for cash. Both proposal require that the final prospectus be sent no later than five business days after the confirmation is sent to the investor. Each proposal contains provisions limiting the availability of the Rule to offerings where specified information about the securities being offered is available. Each proposal also contains specific provisions for offerings registered on Form S-3 or F-3 [6] and those registered on other Forms.

Proposal I would permit delayed delivery of the final prospectus for an offering not registered on Form S-3 or F-3 if a prospectus subject to completion [7] is delivered to the investor before or with the confirmation ("prior delivery"). Delivery of any subsequent prospectus containing a material change also would be required, and the final prospectus could not differ materially from the latest prospectus so delivered, except for the inclusion of the type of information permitted to be omitted pursuant to Rule 430A.[8]

For an offering registered on Form S-3 or F-3, Proposal I would not require prior delivery of a prospectus. Rather, delayed delivery of the final prospectus would be permitted if any material change in Item 11 information [9] between effectiveness and the sending of the confirmation is filed in a Form 8-K (or Form 6-K for a foreign issuer). [10] Such filing would have to be made no later than two business days after the date that the confirmation is sent to the investor, whether or not such information also is physically included in the final prospectus. If, however, a prospectus had been delivered to an investor and the information contained

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[1] 15 U.S.C. 77j(a).

[2] 15 U.S.C. 77a *et seq.*

[3] The petition (File No. 4-287), which was submitted pursuant to Rule 4(a) of the Commission's Rules of Practice (17 CFR 201.4(a)), is available for public inspection in the Commission's Public Reference Room, 450 Fifth St., NW. Washington, DC 20549.

[4] The SIA is a trade association representing over 500 securities firms in the United States and Canada, which collectively account for approximately 90% of the securities business transacted in North America.

[5] "Delayed delivery" is used in this release to mean sending of the final prospectus no later than five business days after the confirmation is sent to the investor, rather than before or with the confirmation, as currently required.

[6] 17 CFR 239.13 and 17 CFR 239.33, respectively.

[7] The term "prospectus subject to completion" refers either to a preliminary prospectus used in reliance on Rule 430 (17 CFR 230.430), or a prospectus used after the effective date of a registration statement that omits certain information and accordingly cannot substitute for the final prospectus (*i.e.*, a prospectus omitting information in reliance on Rule 430A (17 CFR 230.430A), or a prospectus omitting information not yet known concerning a delayed offering under Rule 415 (17 CFR 230.415)). *See* Item 501(c)(8) of Regulation S-K (17 CFR 229.501(c)(8)). When the word "prospectus" is used unmodified in this release, it means a prospectus subject to completion and not a final prospectus.

[8] If specified conditions are met, Rule 430A permits a registration statement to be declared effective without including information as to the offering price, underwriting syndicate and other specified information related to the offering price and data in the registration statement must be included either in a prospectus filed pursuant to Rule 424(b) or 497 (17 CFR 230.424(b) or 497) (which will be deemed part of the registration statement) or in a post-effective amendment. This type of information is referred to in this release as "430A-type information" in connection with prospectuses that may or may not be filed in reliance on Rule 430A. *See* Release 33-6714 (June 5, 1987) (52 FR 21252).

[9] Item 11 of both Forms requires disclosure of material changes in the registrant's affairs that have occurred since the end of the latest fiscal year, as well as specified financial information necessitated by an acquisition, disposition or restatement of financial statements.

[10] 17 CFR 249.308 and 17 CFR 249.308, respectively.

in it changed materially (except for 430A-type information), the Rule 433 safe harbor would not be available unless a revised, updated prospectus was delivered to the investor prior to or with the confirmation.

Proposal I would not be available for delayed shelf offerings if the description of the securities (except for 430A-type information) were not contained in a prospectus, supplemented as necessary, which is delivered to investors prior to or with the confirmation (or, for offerings on Form S–3 or F–3, in the effective registration statement or post-effective amendment).

In contrast to Proposal I, Proposal II would not require prior delivery of a prospectus as a condition to the availability of the safe harbor, except for initial public offerings. If, however, a prospectus were delivered and there were material changes to the information contained in it (except for 430A-type information), delivery of a revised, updated prospectus would be required, as in Proposal I.

Proposal II would permit delayed delivery of the final prospectus in an offering not registered on Form S–3 or F–3 where: (i) There were no material differences (except for inclusion of the securities description and 430A-type information) between the final prospectus and the prospectus included in the effective registration statement or latest effective post-effective amendment (and the latest prospectus delivered to the investor, if any); and (ii) the final prospectus was sent on an expedited basis to any prospective purchaser who so requested.

Proposal II, like Proposal I, would permit delayed delivery in an offering registered on Form S–3 or F–3 without prior delivery of a prospectus. A Form 8–K or 6–K would be required to be filed no later than two business days after the date the confirmation of sale was sent to an investor to report any material change in Item 11 information between effectiveness of the registration statement and the sending of the confirmation. Expedited delivery would not be required for such offerings. For a delayed shelf offering on Form S–3 or F–3 that did not provide a specific description of the securities, the proposed Rule would require either (i) prior delivery of a prospectus, supplemented to contain the securities information, (ii) inclusion of such information in a post-effective amendment, or (iii) expedited delivery of the final prospectus upon request (comparable to that required in a non-Form S–3 or F–3 offering).

Proposal I is based on the premise that the delivery of a prospectus that does not differ materially from the final prospectus except for the inclusion of 430A-type information, together with the confirmation, is substantially equivalent to delivery of the final prospectus. While a prospectus subject to completion ordinarily does not contain the price and many specific terms of the security related to the price and offering date, the principal elements of such information generally will be in the confirmation.[11] The lack of a prior delivery requirement for offerings registered on Form S–3 or F–3 reflects the fact that most, if not all, substantive issuer information is incorporated by reference to Securities Exchange Act of 1934 ("Exchange Act")[12] reports disseminated into the marketplace.

Proposal II, on the other hand, relies on the assurance of access to the information contained in the final prospectus to meet the investor protection information needs served by section 5(b)(1) of the Securities Act.[13] Proposal II is intended to assure that any investor who wants to review that information prior to payment has an opportunity to do so. Expedited access to the final prospectus through expedited delivery upon investor request would be required for offerings not registered on Form S–3 or F–3. For offerings registered on Form S–3 or F–3, there would be access to information in the Commission's files that is materially equivalent to the information in the final prospectus or, for certain delayed offerings, expedited prospectus delivery. As in Proposal I, the treatment of offerings on Form S–3 or F–3 reflects the incorporation by reference of Exchange Act reports for substantive issuer information.

While the Commission specifically requests commentators to address whether Proposal I or Proposal II is preferable, it also is interested in comment on a rule that would include both proposals as alternative safe harbors, or a rule combining various features of each proposal.

II. Background

Under section 5(b)(1) of the Securities Act, it is unlawful to use a prospectus after a registration statement has been filed unless it meets the requirements of section 10 of the Securities Act.[14] The term "prospectus," as defined in section 2(10) of the Securities Act,[15] includes any written communication that "offers a security for sale or confirms the sale of any security; except that * * * a communication provided after the effective date of the registration statement (other than a prospectus permitted under subsection (b) of section 10) shall not be deemed a prospectus if it is proved that prior to or at the same time with such communication a written prospectus meeting the requirements of subsection (a) of section 10" is provided. Accordingly, a confirmation must be preceded or accompanied by a final prospectus meeting the requirements of section 10(a),[16] because the confirmation itself would not meet these requirements.[17]

The SIA stated in its petition that the current prospectus delivery requirements under the Securities Act result in a burdensome and costly confirmation process in syndicated public offerings. Existing requirements prevent syndicate members from confirming trades until the final prospectus has been received from the syndicate manager. Regional firms must await receipt of the final prospectus and only thereafter mail the confirmation with the prospectus.

Additionally, such delays may interfere with the process whereby brokerage firms mail confirmations from regional operational centers or branch offices. While, in other contexts, such as ordinary exchange or over-the-counter trading transactions, this regional confirmation mailing process ordinarily enables customers to receive confirmations promptly, for syndicate trades the delay in receiving copies of the final prospectus can result in disruptive delays in the mailing of confirmations.

The SIA stated that such mailing delays may result in delays in the payment of the purchase price to the underwriter, increasing underwriter carrying costs, and may create uncertainty on the part of investors.

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[11] Exchange Act Rule 10b–10 [17 CFR 240.10b–10] contains requirements regarding the timing and content of a confirmation sent by a broker or dealer in effecting a transaction for a customer.

[12] 15 U.S.C. 78a *et seq.*

[13] 15 U.S.C. 77e(b)(1).

[14] 15 U.S.C. 77j.

[15] 15 U.S.C. 77b(10).

[16] 15 U.S.C. 77j(a).

[17] Delivery of a prospectus to investors in advance of the final prospectus is not required by the Securities Act. The Commission has, however, imposed such a requirement for all initial public offerings. *See* Exchange Act Rule 15c2–8(b) [17 CFR 240.15c2–8(b)], which requires brokers and dealers participating in an offering of securities by an issuer not previously required to file reports pursuant to section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78o(d)) to deliver a copy of a preliminary prospectus to any person who is expected to receive a confirmation of sale at least 48 hours prior to the mailing of such confirmation.

Although a purchase of a new issue [18] can be effected only in a cash account,[19] margin regulations effectively allow purchasers to defer payment for securities until the underwriters have paid for and received the securities from the issuer.[20] For firm commitment offerings, this closing process ordinarily occurs seven to ten days after effectiveness of the registration statement.

After considering the petition submitted by the SIA, and the application of existing prospectus delivery requirements in the context of firm commitment underwritten offerings, the Commission has determined that it may be appropriate to permit alternative means of compliance that conform more closely to the needs of issuers, underwriters and dealers in light of modern distribution practices, while assuring that investors continue to have timely access to information required to be disclosed by rules and regulations under the Securities Act.

III. Features Common To Both Proposals

1. Operation of the Rule

Each proposal specifies a set of conditions under which the requirements of section 5(b)(1) of the Securities Act will be deemed to have been met if a confirmation of purchase is sent prior to sending a final prospectus. Failure to meet any condition would preclude reliance on the safe harbor of proposed Rule 433 and would require compliance with existing Securities Act requirements governing the timing of delivery of the final prospectus. Both proposals would be available to any issuer, including one engaged in an initial public offering, except an investment company.[21] Both proposals are, however, conditioned on compliance with the prospectus delivery requirement of Exchange Act Rule 15c2–8(b) [22] applicable to an offering by an issuer not previously required to file reports pursuant to section 13(a) or 15(d) of the Exchange Act.[23] Reliance on the proposed Rule would not, of course, excuse compliance with the other provisions of Rule 15c2–8 [24] or other requirements relating to the filing, delivery or content of prospectuses.[25]

As discussed more specifically below, the proposals would either require or permit delivery of a prospectus in advance of the final prospectus. Accordingly, both proposals would permit delivery after the registration statement has been declared effective of prospectus that met the requirements of Rule 430 or 430A.[26]

Both proposals would require that the final prospectus meeting the requirements of section 10(a) of the Securities Act be sent to a purchaser of securities registered by the registration statement no later than five business days after a confirmation is sent to that person.[27] In this context, sending of the prospectus means placing into the mails or otherwise beginning transmission. First class mail or an equally prompt means is required. The Commission solicits comment on whether this five business day time period should be shortened or extended. Finally, both proposals would require that the confirmation incorporate the final prospectus by reference.[28]

2. Limitation to Firm Commitment Underwritten Offerings for Cash

The Commission is proposing to make this safe harbor available only for firm commitment underwritten offerings[29] of securities offered for cash.[30]

The problems described by the SIA appear to be limited to firm commitment underwritings where the underwriter must make payment with its own funds to the issuer on a specified date, whether or not its customers have purchased and paid for the securities. In contrast, in a best efforts offering,[31] Exchange Act Rule 15c2–4 requires that the broker-dealer pay customers' funds promptly to the issuer upon receipt or, if payment is not to be made to the issuer until some future event or contingency occurs, to a separate bank account or escrow account. While the prompt payment requirement calls for diligent efforts to settle customer transactions and prompt forwarding of funds received, it does not contemplate that a broker-dealer pay out funds it has not received, or use its own funds to pay for securities that have not been sold.

Firm commitment underwriting arrangements thus appear to impose the greatest pressure on the distribution process regarding delivery of the final prospectus. Nonetheless, the Commission specifically seeks comment on whether other types of offerings cause comparable logistical and timing pressures. Comment also is solicited on whether non-syndicated firm commitment underwriting arrangements are subject to these pressures, and if not, whether the Rule should be available for such offerings.

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[18] A new issue of securities in this context is intended to cover both initial public offerings and offerings of additional debt or equity issues by reporting companies.

[19] *See* section 11(d) of the Exchange Act (15 U.S.C. 78k(d)).

[20] The cash account provisions of Regulation T (12 CFR 220.8(b)(1)(ii)) require full cash payment for customer purchases within seven business days after the date an unissued security is made available for delivery to purchasers. For purposes of this section, the securities are not available for delivery to purchasers until the underwriter or underwriters have closed with the issuer. While Regulation T establishes a maximum time during which credit can be extended, brokers may require payment from their customers sooner. The customary settlement period is five business days after the sale, but not earlier than the date of the closing.

[21] *See* Part VII. 3, "Applicability to Investment Companies," *infra*.

[22] *See* n. 17, *supra*.

[23] *See* paragraph (a)(7) of Proposal I and paragraph (a)(6) of Proposal II.

[24] 17 CFR 240.15c2–8. *See* n. 46, *infra*, for certain of these requirements.

[25] *See, e.g.*, Rule 424 (17 CFR 230.424). *See also* Rules 460 and 461(b)(2) (17 CFR 230.460 and 461(b)(2)), which provide that the Commission, in responding to requests for acceleration of the effective date of a registration statement, may consider the extent to which a preliminary prospectus has been distributed to underwriters and dealers, and whether appropriate correcting material has been sent if a distributed preliminary prospectus has been found to be materially inaccurate or inadequate.

Use of the proposed Rule would not limit any existing cause of action available to investors based on the content of the registration statement or prospectus used after effectiveness. *See* sections 11, 12(2) and 17(a) of the Securities Act (15 U.S.C. 77k, 77*l*, and 77q respectively). *See also* section 10(b) of the Exchange Act (15 U.S.C. 78j(b)) and Rule 10b-5 thereunder (17 CFR 240.10b-5).

[26] Rule 430 by its terms is limited to prospectuses used before effectiveness. Rule 430A allows the use after effectiveness of the registration statement, but before pricing, of the prospectus contained in the registration statement when declared effective. Both proposals would extend the time during which Rule 430 and 430A prospectuses may be used so that they could be delivered, for purposes of the proposed Rule, at any time before or with the confirmation. *See* paragraph (b) of both proposals.

[27] *See* paragraph (a)(5) of Proposal I and paragraph (a)(4) of Proposal II.

[28] *See* paragraph (a)(6) of Proposal I and paragraph (a)(5) of Proposal II.

[29] For purposes of the proposed Rule, all offerings that are not subject to Exchange Act Rule 10b–9 (17 CFR 240.10b–9) or 15c2–4 (17 CFR 240.15c2–4) would be deemed firm commitment underwritings. In a firm commitment underwriting, the underwriter(s) purchases the securities from the issuer for a fixed price and then re-sells the securities to the public, thereby assuming the risk of market fluctuations in the price of the securities.

[30] *See* paragraph (a)(1) of each proposal. The proposed Rule would be available only when cash is the sole form of consideration given in exchange for the securities. This requirement is intended to limit the use of the Rule to the conventional firm commitment public offerings associated with the logistical problems intended to be alleviated by the proposed Rule, rather than including transactions such as issuer exchange offers or business combinations.

[31] In a best efforts arrangement, the underwriter acts as an agent for the issuer. It agrees to use its best efforts to sell the securities on behalf of the issuer, and acts as a conduit for funds paid to it by the purchasers of the security being offered.

3. Securities Description Limitation

Both proposals contain provisions conditioning use of the Rule on the availability to investors of the description of the securities being offered in accordance with Item 202 of Regulation S-K,[32] except for 430A-type information. While these provisions operate differently in each proposal, they are intended to assure that investors have an adequate opportunity to review the basic features and terms of the securities prior to payment. These securities description conditions would restrict the availability of the Rule for certain delayed offerings. The Commission solicits comment on whether the proposed approaches, described more fully below,[33] achieve their purpose without unnecessarily restricting registrants' flexibility.

4. The Confirmation

The term "confirmation" would be defined in both versions of the proposed Rule to include electronic confirmations.[34] This will facilitate the use of a no-action position granted by the Division of Market Regulation to The Depository Trust Company ("DTC") regarding its automated interdealer settlement system (the "ID System"),[35] as well as anticipated subsequent developments in this area. This no-action position permits, for purposes of Rule 10b–10 under the Exchange Act, confirmations to institutional customers in DTC's ID System to be delivered by DTC on behalf of its broker-dealer participants through the use of automated electronic methods rather than by providing "hard copy."[36]

IV. Proposal I[37]

1. Offering Not Registered on Form S–3 or F–3

Proposal I would permit the mailing of a final prospectus to an investor no more than five business days after the confirmation is sent to him in an offering registered on a Form other than Form S–3 or F–3, if the following conditions are satisfied.

First, the investor would have to receive a prospectus omitting no more than 430A-type information,[38] as well as any subsequent prospectus that contains a material change other than inclusion of 430A-type information, before or with the confirmation. Second, there could be no material change, other than inclusion of 430A-type information, between the information contained in the latest prospectus delivered to the investor and the information contained in the final prospectus.

The Commission seeks comment on the impact of proposed Rule 433 on the procedures followed by managing underwriters, syndicate members, and selling dealers in firm commitment offerings when material unforeseen events occur after effectiveness of the registration statement and before confirmation, and also when such events occur during the confirmation process or immediately after completion of the confirmation process. Commentators should focus on the effect of the proposed Rule on the manner in which updated information is provided to investors during these time periods and the circumstances under which investors would have an opportunity to disaffirm their investment decision after receiving disclosure of the impact of such events on the company.

The proposed Rule would be available to non-syndicate non-selling group broker-dealers effecting transactions in the immediate aftermarket for initial public offerings where they have a prospectus delivery obligation.[39] Comment is solicited on whether use of the proposed Rule would be needed for such broker-dealers, whether such use would be practicable in light of potential redelivery obligations, and if not, how the Rule should be modified to accommodate their transactions.

2. Offering Registered on Form S–3 or F–3

For an offering registered on Form S–3 or F–3, Proposal I would not require any prospectus to be delivered before or with a confirmation, given the comprehensive incorporation by reference of issuer information in such a prospectus. If such a prospectus were delivered, however, material changes to the information in it would require delivery of a revised, updated prospectus.[40] Material changes to the information required by Item 11[41] of Form S–3 or F–3 between effectiveness and the sending of the confirmation would have to be filed with the Commission in a Current Report on Form 8–K or 6–K,[42] whether or not such information was physically contained in the final prospectus, unless a prospectus containing such information had been delivered to the investor before or with the confirmation. The filing would alert the market place to the new information, and quickly disseminate it to the public. The Form 8–K or 6–K would disclose information as of the date a confirmation is sent to a purchaser and be filed with the Commission no later than two business days after the date the confirmation is sent.

V. Proposal II[43]

1. Offering Not Registered on Form S–3 or F–3

Proposal II is premised primarily upon access to information rather than delivery of it. It would require, for an offering not registered on Form S–3 or F–3, that the information contained in the prospectus included in the effective registration statement or effective post-effective amendment not be materially different from the information contained in the final prospectus (except for the inclusion of the securities description and 430A-type information);[44] and that the person confirming the sale deliver the final prospectus on an expedited basis after a prospective purchaser's request.[45] Although Proposal II, unlike

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[32] 17 CFR 229.202, "Description of Registration's Securities."

[33] *See* Part VI, "Applicability of Securities Description Limitation to Delayed Offerings," *infra*.

[34] *See* paragraph (c) of both proposals.

[35] The ID System allows confirmation of trades between a broker-dealer and its institutional customers or the institution's agent bank through DTC's facilities.

[36] Under this arrangement, broker-dealers in the ID System provide DTC with all data necessary to generate a confirmation in accordance with Rule 10b-10. DTC in turn provides electronic confirmation to the broker-dealer's ID System customer. *See* Letter from Edward A. Kwalwasser, Associate Director, Division of Market Regulation, to Edward J. McGuire, Jr., Secretary, DTC, dated February 28, 1983.

[37] *See also* Part VI, "Applicability of Securities Description Limitation to Delayed Offerings," *infra*, for a discussion of the securities description limitation in Proposal I.

[38] The proposed Rule refers to "the type of information permitted to be omitted pursuant to Rule 430A" in order not to limit the prospectuses described to those filed in reliance on that Rule. For example, a delayed offering shelf filing made pursuant to Rule 415 could be included in that category, depending on the information omitted. *See* n. 8, *supra*.

[39] Under the Securities Act, there would be no such obligation for transactions exempt pursuant to section 4(3) (15 U.S.C. 77d(3)) and Rule 174 thereunder (17 CFR 230.174) or section 4(4) (15 U.S.C. 77d(4)).

[40] *See* paragraph (a)(4)(ii) of Proposal I.

[41] *See* paragraph (a)(4)(i) of Proposal I, and n. 9, *supra*.

[42] The Form 8–K or 6–K would be incorporated by reference into the prospectus. *See* Item 12(b) of Forms S–3 and F–3.

[43] *See also* Part VI, "Applicability of Securities Description Limitation to Delayed Offerings," *infra*, for a discussion of the securities description limitation in Proposal II.

[44] *See* paragraph (a)(2)(i) of Proposal II. The inclusion of a securities description would not trigger a requirement under the proposed Rule to file a post-effective amendment. *See also* section VI, "Applicability of Securities Description Limitation to Delayed Offerings," *infra*.

[45] If no such request was made, the final prospectus would have to be sent no later than five business days after the confirmation, as required by paragraph (a)(4) of Proposal II.

Proposal I, would not require prior delivery for non-Form S–3 or F–3 offerings,[46] if a prospectus were so delivered, the final prospectus could not differ materially (except for inclusion of 430A-type information) from the latest prospectus delivered to the investor.[47]

To facilitate expedited access to the information in the final prospectus, Proposal II would require that the confirmation in an offering not registered on Form S–3 or F–3 be sent no later than one business day after the date on which the investor agrees to purchase the security. Use of first class mail or equally prompt means reasonably calculated to cause delivery no more than three business days later would be required.[48] Comment is solicited on whether the ability to mail confirmations regionally would reasonably assure delivery within three business days.

Proposal II also would require [49] that the confirmation specifically and prominently set forth a telephone number that the investor may call toll-free to request the final prospectus, and state that the final prospectus will be delivered to a requesting investor within one business day.[50] Since a confirmation is a standardized pre-printed "fill in the blank" form that is completed by computer, modifications would have to be made to the confirmation to accommodate this proposed legend. It is anticipated that the above language would be added to the other information customarily contained in the confirmation.

Investors would be permitted to request expedited delivery of the final prospectus until the fifth business day after the confirmation is sent, the date the final prospectus is required to be sent pursuant to paragraph (a)(4) of Proposal II.[51] Upon receipt of such a request, the person confirming the sale would be required to deliver the final prospectus in a manner reasonably calculated to result in delivery no later than one business day after the request. This would require overnight mail or equally prompt means.

Prospective investors would be able to request expedited delivery of the final prospectus before receiving the confirmation, perhaps as early as the first contact with a broker-dealer regarding that securities offering. At the time of the request, of course, the final prospectus might not yet be available. In such case, paragraph (a)(2)(v) would require delivery of the final prospectus no later than the second business day following the determination of the offering price of the security.[52]

As proposed, the Rule would not provide a specific method, other than a statement in the confirmation, of informing prospective investors of their right to request expedited delivery of the final prospectus. In order to notify persons of this right at an earlier time, the Commission is considering requiring that prospectuses contain a legend on the cover or back page stating that the final prospectus, if not furnished with the confirmation, may be obtained on an expedited basis by calling the toll-free number. Comment is solicited on this approach and on alternative means of accomplishing this purpose.

The provisions of Proposal II are intended to provide investors with an opportunity to request and review the final prospectus before settlement date, customarily five business days after the sale. Comment is sought on the impact of the proposed Rule's requirements on the current timing and procedures for the settlement of securities purchases. The Commission is concerned that Proposal II's time frame might not provide an adequate opportunity for investor review of the final prospectus prior to payment. The Commission solicits specific suggestions on alternative means to provide a meaningful time frame for investors to review the final prospectus before settlement date, taking into account the point in the transaction at which investors are obligated, practically speaking, to purchase and pay for the securities.

As in Proposal I, Proposal II requires that the final prospectus be sent, by first-class mail or other equally prompt means, to each person who purchased securities registered by the registration statement no later than five business days after a confirmation is sent to that purchaser. Expedited delivery of a final prospectus to an investor pursuant to paragraph (a)(2)(iii) of Proposal II for an offering not registered on Form S-3 or F-3 would satisfy the delivery obligation pursuant to paragraph (a)(4) for that investor.

2. Offering Registered on Form S–3 or F–3

As in Proposal I, for an offering registered on Form S–3 or F–3, Proposal II would not require prior delivery of a prospectus. In the absence of such delivery, any material changes in Item 11 information between effectiveness and the sending of the confirmation must be included in a Current Report on Form 8–K or Form 6–K [53] filed within two business days after the date a confirmation is sent to the investor.

Although Proposal II would not impose prior delivery of a prospectus as a condition to the availability of the safe harbor, if a person delivered a prospectus before confirmation, he also would be required to deliver a revised, updated prospectus, if there were material changes in the information contained in the prospectus.[54]

As proposed, offerings on Form S–3 or F–3 would not be subject to the expedited delivery procedures required for offerings on other Forms, although such procedures would be available as an optional means of providing the securities description.[55] Comment is, however, solicited on whether expedited delivery upon request should be required as a condition to the use of the Rule regardless of the Form on which the securities are registered.

VI. Applicability of Securities Description Limitation to Delayed Offerings

1. General Effect of Limitation

As noted above,[56] both Proposals would require that the terms of the securities offered be described in accordance with Item 202 of Regulation S–K, except for omission of 430A-type information.[57] For example, terms such

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[46] Initial public offerings, however, still would require delivery of a preliminary prospectus to investors pursuant to Exchange Act Rule 15c2–8(b) and paragraph (a)(6) of Proposal II, discussed in Part III, "Features Common to Both Proposals," *supra*. Nor would proposed Rule 433 affect the current requirements to furnish the latest preliminary prospectus to any person who so requests and to distribute the preliminary prospectus to brokers and dealers participating in an offering if such brokers and dealers are expected to solicit customers' orders to buy the security. *See* Exchange Act Rule 15c2–8 (c) and (e) (17 CFR 240.15c2–8 (c) and (e)).

[47] *See* paragraph (a)(2)(ii) of Proposal II.

[48] *See* paragraph (a)(2)(iii) of Proposal II.

[49] *See* paragraph (a)(2)(iv) of Proposal II. These requirements would be in addition to those under other Commission rules governing the content of confirmations. *See, e.g.*, Rule 10b–10 under the Exchange Act.

[50] The provision for delivery of the prospectus upon request would be in addition to any applicable requirements for delivery of a prospectus upon request pursuant to Exchange Act Rule 15c2–8. *See* n. 46, *supra*.

[51] *See* paragraph (a)(2)(v) of Proposal II.

[52] The final prospectus should be available and on file with the Commission by the second business day after the determination of the offering price. *See* Rule 424(b) (1), (2), (4) and (5) (17 CFR 230.424(b) (1), (2), (4) and (5)).

[53] *See* paragraph (a)(3)(i) of Proposal II and discussionin Part IV.2, "Offering Registered on Form S–3 or F–3," *supra*.

[54] *See* paragraph (a)(3)(ii) of Proposal II.

[55] *See* Part VI, "Applicability of Securities Description Limitation to Delayed Offerings," *infra*.

[56] *See* Part III.3, "Securities Description Limitation," *supra*.

[57] A registrant need not be relying on Rule 430A to omit 430A-type information. Instead, the

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as the price, interest rate, discount or premium, maturity and redemption dates of debt securities could be omitted, but the basic characteristics of the securities, such as the presence of a put or convertibility feature, the index by which interest will be calculated, the nature of the collateral, subordination provisions, and the existence of sinking fund and redemption provisions, could not.

Under current rules, at the time a registration statement for an offering not made on a delayed basis becomes effective, it must contain an Item 202 description of securities, omitting only narrowly specified terms related to the offering price and date if Rule 430A is used. Thus, the securities description limitation in the proposed Rule is a limiting factor only with respect to delayed offerings under Rule 415, since only such registration statements may omit a broader range of information than would be permitted under Rule 430A.

While some registrants eligible to make delayed offerings [58] are able to specify the nature of the security in advance, and thus include in the prospectus at effectiveness all of the required information except for 430A-type information, many registrants prefer to preserve their flexibility to tailor securities to be offered in the future to then-prevailing market conditions. Such registrants will register a "generic" security, such as debt or preferred stock, with the principal features of the security disclosed by prospectus supplement each time a tranche is offered. In such case, the securities description limitation generally would condition the availability of proposed Rule 433 on providing the securities information, as described below.

2. Proposal I

Under Proposal I, for offerings not registered on Form S–3 or F–3, a prospectus containing a complete description of the securities (except for omission of 430A-type information) must be delivered to the investor.[59] For an offering registered on Form S–3 or F–3, the securities description either could be delivered in an appropriately supplemented prospectus or, alternatively, included in a prospectus contained in an effective registration statement or post-effective amendment.

Under the current Form requirements, the description of the securities must be included in the prospectus itself, not incorporated by reference, except for the description of capital stock in a Form S–3 or F–3 registration statement.[60] However, the Commission solicits comment on whether a Form S–3 or F–3 registrant should be permitted to file the description of certain types of securities with which investors generally are familiar, such as conventional debt or preferred stock, in a Form 8–K or 6–K, which would be incorporated by reference into the prospectus. The report would be required to be filed no later than two business days after the determination of the offering price. This could substitute for the requirement to file a post-effective amendment or deliver a prospectus before or with the confirmation.

The principal elements of the securities description also would be in the confirmation. The Commission recognizes, however, that certain provisions of standard senior securities, such as optional redemption prices and extraordinary call provisions, are not necessarily reflected in a confirmation. If incorporation by reference of the securities description is to be permitted, it would appear appropriate to require the confirmation to indicate that the securities are subject to an extraordinary call at a stated price, and to optional redemption starting in a stated year at a stated price. The Commission recognizes the physical limitations of confirmations, but believes the information could be streamlined to be so accommodated.

Other features of conventional debt securities not found in the confirmation include the ranking of the debt, along with provisions governing collateral or subordination, and restrictive covenants. Comment is solicited on whether the availability of the incorporation by reference approach for debt should be limited to rated senior securities, as the securities rating would reflect an assessment of ranking and security provisions.

The incorporation by reference approach would not extend to novel or complex securities that are not widely known and readily understood throughout the investment community, such as currency exchange warrants, stripped or synthetic securities, hybrids, and notes with yields based on a stock or commodity price index. The principal difficulty in adopting this approach is developing an appropriate definition of the securities permitted to be described by incorporation by reference. One possible approach would be to focus on securities as to which the confirmation provides basic financial terms, such as maturity, yield, calls, sinking fund provisions, and convertibility and exchange prices. Commentators supporting an incorporation by reference approach should address the parameters of such a definition.

3. Proposal II

Proposal II, unlike Proposal I, does not have an across-the-board securities description limitation. Under the access-based approach of Proposal II, no such limitation would attach to offerings not on Form S–3 or F–3, because expedited delivery of the final prospectus would be available upon investor request for all such offerings.[61] Accordingly, an investor purchasing securities in a delayed offering, e.g., on Form S–11, would have the opportunity to review the prospectus, including the complete description of securities, before payment.[62]

Proposal II does include a securities description limitation for filings on Form S–3 or F–3, because expedited delivery generally would not be required under Proposal II for such offerings.[63] As

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registrant may be relying on Rule 430 or, in the case of a delayed shelf offering under Rule 415, may be omitting information because it is not yet known at the time of effectiveness of the registration statement or use of the prospectus.

[58] Registrants using Rule 415 to make delayed offerings are generally those eligible to use Form S–3 or F–3 (*see* Rule 415(a)(1)(x) (17 CFR 230.415(a)(1)(x))), but Rule 415 also provides that several kinds of traditional delayed offerings may be made on other Forms. *See, e.g.*, Rule 415(a)(1)(vii) (17 CFR 230.415(a)(1)(vii)), which permits offerings of mortgage related securities to be made on a delayed basis; such offerings may be registered on Form S–11 (17 CFR 239.18).

[59] *See* paragraph (a)(2) of Proposal I. Such a prospectus still would be subject to completion since it could omit 430A-type information, which would be provided in the final prospectus required to be sent pursuant to paragraph (a)(5) of Proposal I and paragraph (a)(4) of Proposal II. If the prospectus contained all required information, including the 430A-type information, it presumably would be a final prospectus. If a final prospectus were furnished before or with the confirmation, the safe harbor afforded by proposed Rule 433 would not, of course, be needed.

[60] *See* Item 12(a) of such Forms, which permits incorporation by reference when the capital stock is registered under section 12 of the Exchange Act (15 U.S.C. 78*l*).

[61] *See* paragraph (a)(2) (iii)–(v) of Proposal II and discussion in Part V, "Proposal II," *Supra*.

[62] In general, a material change in the prospectus from that included in the registration statement would preclude availability of the proposed Rule under Proposal II unless a post-effective amendment were filed and declared effective, but the addition of a securities description or 430A-type information would not trigger this requirement. *See* paragraph (a)(2)(i) of Proposal II. Accordingly, Proposal II would not limit the current practice for delayed offerings on Form S–11, such as those of collateralized mortgage obligations, which typically do not require a post-effective amendment to describe each offering under the registration statement.

[63] *See* paragraph (a)(3)(iii) of Proposal II.

noted above, this limitation would affect only delayed offerings. In such case, the Rule would be available if the securities description were included in a supplemented prospectus delivered to investors in advance of the final, or in a prospectus contained in an effective post-effective amendment. Alternatively, expedited delivery of the final prospectus could be provided in the same manner as for offerings not registered on Form S–3 or F–3. Issuers making delayed offerings would therefore have the flexibility to tailor their securities to market-sensitive conditions without having to file a post-effective amendment or have a prospectus delivered to investors in advance of the final prospectus. Comment is solicited on whether expedited delivery of the final prospectus is a useful approach for providing information regarding the principal characteristics of the securities offered, and if so, whether this option should be available only for conventional securities.

VII. Additional Specific Issues of Concern to the Commission

In addition to other topics noted throughout this release, the Commission seeks comment on the following questions and concerns.

1. Alternative Safe Harbors

The Commission has proposed Rule 433 in two distinct versions, which take different approaches to providing a means of satisfying the requirements of section 5(b)(1) of the Securities Act. The Commission seeks comment on whether proposed Rule 433 should instead provide alternative safe harbors for compliance with section 5(b)(1), allowing persons wishing to rely on the Rule, particularly those persons not otherwise required to deliver a preliminary prospectus,[64] greater flexibility.

2. Registrant Eligibility Criteria

As proposed, Rule 433 would be available for all non-investment company registrants complying with the limitations of the Rule, including those engaged in initial public offerings. The Commission seeks comment on whether the proposed Rule should impose any registrant eligibility requirements, such as a limitation to registrants subject to the provisions of section 13(a) or 15(d) of the Exchange Act immediately prior to the filing of the registration statement.

3. Applicability to Investment Companies

The Rule as proposed would not apply to offerings by investment companies regulated under the Investment Company Act of 1940.[65] The SIA petition does not discuss them, and the Commission does not have independent evidence that similar relief is required for them. (In any event, the firm commitment underwriting condition would preclude use of the Rule in most offerings by open-end investment companies.)

The Commission seeks comment on whether a similar rule should be proposed for offerings of investment company securities, and, if so, whether a different approach is necessary or appropriate with respect to them. In addition, the Commission seeks comment on how, if at all, the current confirmation process for registered offerings by open-end investment companies, unit investment trusts, or closed-end investment companies (including business development companies) creates the need for a rule of this type or raises concerns discussed by the SIA in its petition.

VIII. Cost-Benefit Analysis

To evaluate fully the benefits and costs associated with each alternative rule proposal, the Commission requests commentators to provide views and data as to the costs and benefits associated with the proposals. In this regard, the Commission notes that adoption of either proposal should expedite the confirmation process associated with purchases of securities offered in a firm commitment underwriting solely for cash, substantially eliminating the payment delays previously affecting underwriters and concurrently reducing underwriter carrying costs and investor uncertainty. The Commission believes the proposals would permit alternative means of compliance with the requirements of section 5(b)(1) of the Securities Act that conform more closely to the needs of investors, issuers, underwriters, and dealers in light of modern distribution practices. The Commission believes both alternatives address the problems resulting from delays in the confirmation process, while assuring timely access by investors and others to mandated disclosure relating to the investment decision. In addition, use of the proposed Rule would be optional, so persons not wishing to rely on the Rule would be able to continue selling under current procedures.

In order to use the safe harbor that would be afforded by Proposal I, a person may have to deliver a prospectus subject to completion (as well as a final prospectus) who otherwise only would have been required to deliver a final prospectus. This also would be true for certain delayed offering filings under Proposal II. The Commission believes that any increased costs would be offset by the logistical advantages of being able to rely on the proposed Rule, but solicits comment on this aspect of the proposals.

Although the expedited delivery requirements applicable to offerings not registered on Form S–3 or F–3 under Proposal II would be more expensive than those used under current prospectus delivery requirements, the Commission believes that the proposed Rule would reduce the total delivery costs since expedited delivery need only be made to those requesting the prospectus. Potential related costs would include those associated with establishing record-keeping procedures sufficient to demonstrate compliance with the conditions set forth in the proposals, and the additional costs of distribution of the preliminary prospectus where otherwise not required by the Commission's Rules. Such potential costs also would include any costs associated with establishing and operating the toll-free telephone service which would be available to those requesting prospectuses for offerings not made on Form S–3 or F–3 pursuant to Proposal II. The Commission specifically requests comments on the respective costs and benefits of these aspects of the rule proposals.

Finally, comments also are sought concerning costs and benefits to investors resulting from the prospectus delivery procedures and timing that would be permitted by the proposals.

IX. Initial Regulatory Flexibility Analysis

This initial regulatory flexibility analysis, which relates to two alternative rule proposals concerning prospectus delivery requirements, has been prepared in accordance with the Regulatory Flexibility Act ("RFA").[66]

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[64] For example, an issuer having an obligation to file reports pursuant to Exchange Act section 13(a) or 15(d) who makes an offering pursuant to Proposal I must deliver a prospectus to the investor prior to the final prospectus. If such an issuer were not relying upon the proposed Rule, only the final prospectus would be required to be delivered since Exchange Act Rule 15c2–8(b) would be inapplicable to such an issuer. *See n. 17, supra.*

[65] 15 U.S.C. 80a-1 *et seq.* as amended. *See* paragraph (d) of both proposals.

[66] 5 U.S.C. 601 *et seq.*

1. Reasons for and Objectives of the Proposed Action

The alternative rule proposals would allow, if specified conditions are satisfied, the delivery to investors of a confirmation of a purchase of securities in a firm commitment offering prior to delivery of the final prospectus. The proposals respond to concerns raised by the SIA in its rulemaking petition filed with the Commission on January 2, 1986, as supplemented on April 18, 1986. The SIA stated in its petition that the current prospectus delivery requirements under the Securities Act result in a burdensome and costly confirmation process in syndicated public offerings. The alternative rule proposals are designed to address these concerns, reducing the administrative burdens associated with the requirement to mail the final prospectus with the confirmation of purchase, reducing payment delays, and enhancing timely access to such prospectus by investors who wish to review its contents before compliance with their settlement obligation. Under both proposals, existing requirements governing the delivery of the final prospectus would continue to be available.

2. Legal Basis

The alternative rule proposals are being proposed by the Commission pursuant to sections 2(10), 10(a)(4), 10(d), and 19(a) of the Securities Act.[67]

3. Small Entities Subject to the Rule

The Commission has adopted definitions of the term "small entity" for the various entities subject to Commission rulemaking. When used with reference to an "issuer," other than an investment company, the term is defined by Rule 157 [68] under the Securities Act as an issuer whose total assets on the last day of its most recent fiscal year were $5,000,000 or less and that is engaged or proposing to engage in an offering of securities which does not exceed $5,000,000. In the recent experience of the Commission, several hundred registration statements a year may be filed with the Commission by small issuers.

When used with reference to a broker or dealer, the term is defined by Rule 0–10 [69] of the Exchange Act as a broker or dealer that: (1) Had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Rule 17a–5(d)[70] under the Exchange Act or, if not required to file such statements, a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than $500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business, if shorter); and (2) is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined by Rule 0–10. As many as 5,000 brokers and dealers may be considered small entities under this definition. Of these, approximately 600 are involved in underwriting activity.

The Commission believes that the proposals would reduce regulatory burdens associated with satisfying the prospectus delivery requirements for those small issuers, brokers and dealers (including underwriters) covered by each of the proposals. Although the delivery requirements of Proposal I and the expedited delivery available under Proposal II would be more expensive than those used under current prospectus delivery requirements, the Commission believes that the proposals would reduce the total delivery costs since delivery under Proposal I would reduce carrying costs associated with mailing and payment delays, and under Proposal II delivery prior to expiration of a five business day period following the sending of confirmations need only be made to those requesting the prospectus.

4. Reporting, Record-Keeping and Other Compliance Requirements

Since existing requirements governing the delivery of the final prospectus would continue to be available, the Commission believes that neither proposal would impose additional reporting or record-keeping requirements on small entities, nor increase their regulatory compliance costs. Potential costs for those entities opting to use either proposal, however, would include those associated with establishing record-keeping procedures sufficient to demonstrate compliance with the conditions set forth in the proposals. Such potential costs also would include any costs associated with establishing and operating the toll-free telephone service which would be available to those requesting the prospectus for offerings not registered on Form S–3 or F–3 pursuant to Proposal II.

5. Overlapping or Conflicting Federal Rules

The Commission does not believe that the proposals duplicate, overlap, or conflict with any existing rule provisions, although they do condition availability of the safe harbor on compliance with one existing rule, Rule 15c2–8(b).

6. Significant Alternatives

Since proposed Rule 433 is a voluntary safe harbor, satisfaction of existing prospectus delivery requirements would make compliance with the proposed Rule's provisions unnecessary.

The Rule's safe harbor is intended to benefit all issuers and broker-dealers engaging in firm commitment underwritten offerings solely for cash. In this regard, the rule proposals represent alternative approaches to reducing the regulatory burdens associated with prospectus delivery.

The Commission has requested comment on whether registrant eligibility requirements should be included in proposed Rule 433. specifically, the Commission has requested whether the proposed Rule should be available to registrants not subject to the reporting provisions of section 13(a) or 15(d) of the Exchange Act immediately prior to the filing of a registration statement. If not, such an alternative would essentially exempt small issuers from the proposed rule since no more than 2,000 of the 12,000 companies reporting to the Commission pursuant to section 13(a) or 15(d) of the Exchange Act are small issuers.

The Commission has also requested comment on whether the security description limitations and the firm commitment condition in the proposals are appropriate. Specifically, comment has been requested on alternative approaches to the securities description limitation, and also whether other types of offerings impose pressure on the distribution process similar to those posed by firm commitment underwritten offerings subject to the Rule. If the firm commitment underwriting condition were removed, the Rule would be applicable to all small entities engaging in small registered financings whether made on a firm commitment basis or on a best efforts basis. As currently proposed, the Rule's impact on small entities engaged in small business financings is limited to those entities involved in firm commitment registered offerings not exceeding $5,000,000.

Another significant alternative to the proposed Rule could be different or

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[67] 15 U.S.C. 77b(10, 77j(a)(4), 77j(d), and 77s(a) respectively.

[68] 17 CFR 230.157.

[69] 17 CFR 240.0–10.

[70] 17 CFR 240.17a–5(d).

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simplified compliance or reporting requirements for small entities. such an alternative could include the elimination or modification of various prerequisites for use of the proposed Rule for small entities. Such an approach would not be consistent with the Commission's mandate under section 5 of the Securities Act as it relates to registered offerings by small issuers. Another alternative could be the adoption of performance rather than design standards with respect to prospectus delivery requirements. Use of performance standards in a safe harbor context would frustrate the ability of persons subject to the Rule to ascertain whether all the conditions for meeting the safe harbor were satisfied.

7. Solicitation of Comments

The Commission encourages the submission of written comments with respect to any aspect of this initial regulatory flexibility analysis. Such written comments will be considered in the preparation of the final regulatory flexibility analysis if either proposal is adopted. Persons wishing to submit written comments should file four copies with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. All submissions should refer to File No. S7--87 and will be available for public inspection and copying at the Commission's Public Reference Room.

X. Request for Comments

Any interested persons wishing to submit written comments on the alternative rule proposals, as well as other matters that might have an impact on the proposals, are requested to do so. In addition to the specific requests for comments appearing elsewhere in this release, the Commission generally seeks comment on the necessity for or desirability of Commission action relating to the prospectus delivery requirements under the Securities Act, the potential benefits or disadvantages of such a rule to investors, issuers, underwriters, brokers, dealers, and others, and the extent of hardship experienced by underwriters operating under the current prospectus delivery requirements. The Commission also solicits comment on whether the operation of the proposed Rule could have an adverse impact upon investor's rights and remedies, both legal and practical, in the purchase of securities offered in reliance on the Rule. The Commission also invites all interested persons to comment on any other possible alternative resolutions to the issuers raised by the SIA's petition.

Written statements must be received on or before October 5, 1987 and should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Such communications should refer to File No. S7–29–87 and will be available for public inspection and copying at the Commission's Public Reference Room.

XI. Statutory Basis of Alternative Rule Proposals

These alternative rules are being proposed pursuant to sections 2(10), 10(a)(4), 10(d) and 19(a) of the Securities Act of 1933.

List of Subjects in 17 CFR Part 230

Prospectus delivery requirements, Reporting and record keeping requirements, Securities.

XII. Text of Alternative Rule Proposals

In accordance with the foregoing Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 continues to read: (citations before * * * indicate general rulemaking authority).

Authority: Sec. 19, 48 Stat. 85, as amended; 15 U.S.C. 77s * * * Section 230.433 also issued under Section 2, 15 U.S.C. 77b, and 10, 15 U.S.C. 77j.

* * * * *

2. By adding § 230.433 to read in one of the following ways:

Proposal I

§ 230.433 Prospectus delivery requirements in firm commitment underwritten offerings of securities for cash.

(a) Where each of the following conditions has been met, the prospectus meeting the requirements of section 10(a) of the Securities Act of 1933 (15 U.S.C. 77j(a)) shall be deemed to have been sent to a person prior to or at the same time that a confirmation is sent to that person:

(1) The securities are offered for cash in a firm commitment underwriting;

(2) The terms of the securities offered are described in accordance with Item 202 of Regulation S-K (17 CFR 229.202 of this chapter), except for the omission of the type of information that may be omitted pursuant to Rule 430A (17 CFR 230.430A of this chapter), in a prospectus delivered to that person prior to or with the confirmation; *Provided, however,* that with respect to an offering registered on Form S–3 or F–3, such information need not be delivered if the information is included in the prospectus contained in the effective registration statement or effective post-effective amendment thereto;

(3) With respect to an offering not registered on Form S–3 or F–3:

(i) A prospectus omitting no more than the type of information that may be omitted pursuant to Rule 430A, and any subsequent prospectus that contains a material change (other than inclusion of information of the type that may be omitted pursuant to Rule 430A) from that previously delivered, is delivered to that person prior to or with the confirmation; and

(ii) There is no material change (other than inclusion of the type of information that may be omitted pursuant to Rule 430A) between the information contained in the latest prospectus delivered to that person pursuant to paragraph (a)(3)(i) of this section and the information contained in the prospectus required to be sent to that person pursuant to paragraph (a)(5) of this section;

(4) With respect to an offering registered on Form S–3 or F–3:

(i) Any material change in the information required by Item 11 of such Form between effectiveness of the registration statement or post-effective amendment and the sending of the confirmation shall, whether or not such information is contained in the prospectus required to be sent to that person pursuant to paragraph (a)(5) of this section, be included in a Current Report on Form 8–K or 6–K (17 CFR 249.308 and 249.306 of this chapter, respectively) filed no later than two business days after the sending of the confirmation; *Provided, however,* that no such filing shall be required if such information is contained in a prospectus delivered to that person prior to or with the confirmation; and

(ii) There is no material change (other than inclusion of the type of information that may be omitted pursuant to Rule 430A) between the information contained in the latest prospectus delivered to that person, if any, and the information contained in the prospectus required to be sent to that person pursuant to paragraph (a)(5) of this section;

(5) A prospectus meeting the requirements of section 10(a) of the Securities Act is sent by first class mail or other equally prompt means to that person no later than five business days after the date the confirmation is sent to that person;

(6) The confirmation sent to that person incorporates by reference the prospectus required to be sent pursuant to paragraph (a)(5) of this section; and

(7) That person receives a prospectus in accordance with the prospectus delivery requirements of Rule 15c2–8(b) (17 CFR 240.15c2–8(b) of this chapter) under the Securities Exchange Act of 1934, if applicable.

(b) Notwithstanding any provision of Rule 430 (17 CFR 230.430 of this chapter) or Rule 430A to the contrary, and solely for purposes of use under paragraphs (a)(3)(i) and (a)(4)(ii) of this section, a prospectus that omits no more than the information permitted to be omitted pursuant to Rule 430 or Rule 430A may be used after the effective date of the registration statement; *Provided, however,* that such prospectus otherwise complies with the requirements of Section 10 of the Act (15 U.S.C. 77j) at the time of delivery under paragraph (a)(3)(i) or (a)(4)(ii) of this section.

(c) For purposes of this rule, confirmation shall mean any written or electronic data communication confirming the sale of securities.

(d) This section shall not apply to the offering of any securities of any company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.* as amended) or any company that is exempt from the requirement to register under that Act through filing either a notification of election or a notice of intent to file a notification of election to be treated as a business development company under that Act.

Proposal II

§ 230.433 Prospectus delivery requirements in firm commitment underwritten offerings of securities for cash.

(a) Where each of the following conditions has been met, the prospectus meeting the requirements of section 10(a) of the Securities Act of 1933 (15 U.S.C. 77j(a)) shall be deemed to have been sent to a person prior to or at the same time that a confirmation is sent to that person:

(1) The securities are offered for cash in a firm commitmeat underwriting;

(2) With respect to an offering not registered on Form S–3 or F–3:

(i) There is no material change between the information contained in the prospectus included in the effective registration statement or effective post-effective amendment thereto (other than inclusion of the description of the securities and the type of information that may be omitted pursuant to Rule 430A (17 CFR 230.430A of this chapter)) and the information contained in the prospectus required to be sent to that person pursuant to paragraph (a)(4) of this section;

(ii) There is no material change (other than inclusion of the type of information that may be omitted pursuant to Rule 430A) between the information contained in the latest prospectus delivered to that person, if any, and the information contained in the prospectus required to be sent to that person pursuant to paragraph (a)(4) of this section;

(iii) The confirmation is sent, no later than one business day after the date on which that person agrees to purchase the security, by first class mail or equally prompt means reasonably calculated to result in delivery no later than three business days after the date the confirmation is sent;

(iv) The confirmation specifically and prominently sets forth a telephone number that may be called toll-free to request expedited delivery of the prospectus required to be sent pursuant to paragraph (a)(4) of this section, and states that such prospectus will be delivered no later than one business day after such a request is made; and

(v) If that person requests expedited delivery of a prospectus no later than the sending date for prospectus required to be sent pursuant to paragraph (a)(4) of this section, that prospectus is sent to that person by means reasonably calculated to result in delivery no later than (1) two business days after the date of determination of the offering price or (2) one business day after the date on which such request is made, whichever is later;

(3) With respect to an offering registered on Form S–3 or F–3:

(i) Any material change in the information required by Item 11 of such Form between effectiveness of the registration statement or post-effective amendment and the sending of the confirmation shall, whether or not such information is contained in the prospectus required to be sent to that person pursuant to paragraph (a)(4) of this section, be included in a Current Report on Form 8–K or 6–K [17 CFR 249.308 and 249.306 of this chapter, respectively] filed no later than two business days after the sending of the confirmation; *Provided, however,* that no such filing shall be required if such information is contained in a prospectus delivered to that person prior to or with the confirmation;

(ii) There is no material change (other than inclusion of the type of information that may be omitted pursuant to Rule 430A) between the information contained in the latest prospectus delivered to that person, if any, and the information contained in the prospectus required to be sent to that person pursuant to paragraph (a)(4); and

(iii)(A) Except for the omission of the type of information that may be omitted pursuant to Rule 430A, the terms of the securities offered are described in accordance with Item 202 of Regulation S–K (17 CFR 229.202 of this chapter):

(*1*) In the prospectus contained in the effective registration statement or effective post-effective amendment thereto; or

(*2*) In a prospectus delivered to that person prior to or with the confirmation; or

(B) The confirmation requirements of paragraphs (a)(2) (iii) and (iv) of this section and the expedited delivery provisions of paragraph (a)(2)(v) of this section are complied with;

(4) A prospectus meeting the requirements of section 10(a) of the Securities Act is sent to that person by first class mail or other equally prompt means no later than five business days after the date the confirmation is sent to that person;

(5) The confirmation sent to that person incorporates by reference the prospectus required to be sent pursuant to paragraph (a)(4) of this section; and

(6) That person receives a prospectus in accordance with the prospectus delivery requirements of Rule 15c2–8(b) (17 CFR 240.15c2–8(b) of this chapter) under the Securities Exchange Act of 1934, if applicable.

(b) Notwithstanding any provision of Rule 430 (17 CFR 230.430 of ths chapter) or Rule 430A to the contrary, and solely for purposes of use under paragraphs (a)(2)(ii) and (a)(3)(ii) of this action, a prospectus that omits no more than the information permitted to be omitted pursuant to Rule 430 or Rule 430A may be used after the effective date of the registration statement; *Provided, however,* that such prospectus otherwise complies with the requirements of Section 10 of the Act (15 U.S.C. 77j) at the time of delivery under paragraph (a)(2)(ii) or (a)(3)(ii) of this section.

(c) For purposes of this rule, confirmation shall mean any written or electronic data communication confirming the sale of securities.

(d) This section shall not apply to the offering of any security of any company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.* as amended) or any company that is exempt from the requirement to register under that Act through filing either a notification of election or a notice of intent to file a notification of

election to be treated as a business development company under that Act.

July 31, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-17880 Filed 8-5-87; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 385

[Docket No. RM87-24-000]

Procedures for the Assessment of Civil Penalties under Section 31 of the Federal Power Act

August 3, 1987.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing a notice of proposed rulemaking establishing procedures for the assessment of civil penalties pursuant to section 12 of the Electric Consumers Protection Act of 1986, which amended and added a new section 31 to the Federal Power Act.

DATE: Comments must be in writing and received by the Secretary of the Commission prior to 4:30 p.m. E.D.T. on October 5, 1987. An original and fourteen copies should be filed.

ADDRESS: All filings should refer to Docket No. RM87-24-000 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Richard Meyer, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, Phone: (202) 357-5228.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Federal Energy Regulatory Commission (Commission) is proposing to adopt new regulations for the assessment of civil penalties pursuant to section 12 of the Electric Consumers Protection Act of 1986 (ECPA) [1].

[1] Pub. L. No. 99-495, 100 Stat. 1243 (1986).

II. Background

ECPA was enacted on October 16, 1986. Section 12 of ECPA amended the Federal Power Act (FPA) by adding a new section 31.[2] Section 31 of the Federal Power Act, among other things, authorizes the Commission to assess civil penalties in certain circumstances. It does not lessen or repeal any authority the Commission possessed prior to the enactment of ECPA to issue compliance orders or to take other remedial action.

Section 31 of the Federal Power Act has four subsections. Subsection (a) affirms the Commission's authority to monitor and investigate compliance with licenses, permits and exemptions issued for hydroelectric projects.[3] This subsection also sets forth the Commission's authority to issue certain compliance orders which, if violated, provide a basis for enforcement action under subsection (b) or (c). Subsection (b) states the conditions under which the Commission may issue an order revoling a license or exemption.[4] Subsection (c) forth the persons subject to a civil penalty, the conduct which may subject those persons to a civil penalty, and factors which the Commission must take into account in determining the amount of a proposed penalty.[5] Subsection (c) also provides that no civil penalty shall be assessed where revocation is ordered. Subsection (d) establishes alternative civil penalty assessment procedures.[6]

[2] To be codified as 16 U.S.C. 823b.

[3] Section 31(a) of the FPA states:

MONITORING AND INVESTIGATION.—The Commission shall monitor and investigate compliance with each license and permit issued under this Part and with each exemption granted from any requirement of this Part. The Commission shall conduct such investigations as may be necessary and proper in accordance with this Act. After notice and opportunity for public hearing, the Commission may issue such orders as necessary to require compliance with the terms and conditions of licenses and permits issued under this Part and with the terms and conditions of exemptions granted from any requirement of this Part.

[4] Section 31(b) of the FPA states:

REVOCATION ORDERS.—After notice and opportunity for an evidentiary hearing, the Commission may also issue an order revoking any license issued under this Part or any exemption granted from any requirement of this Part where any licensee or exemptee is found by the Commission:

(1) to have knowingly violated a final order issued under subsection (a) after completion of judicial review (or the opportunity for judicial review); and

(2) to have been given reasonable time to comply fully with such order prior to commencing any revocation proceeding.

In any such proceeding, the order issued under subsection (a) shall be subject to de novo review by the Commission. No order shall be issued under this subsection until after the Commission has taken into consideration the nature and seriousness of the violation and the efforts of the licensee to remedy the violation.

[5] Section 31(c) of the FPA states:

CIVIL PENALTY.—Any licensee, permittee, or exemptee who violates or fails or refuses to comply with any rule or regulation under this Part, any term, or condition of a license, permit, or exemption under this Part, or any order issued under subsection (a) shall be subject to a civil penalty in an amount not to exceed $10,000 for each day that such violation or failure or refusal continues. Such penalty shall be assessed by the Commission after notice and opportunity for public hearing. In determining the amount of a proposed penalty, the Commission shall take into consideration the nature and seriousness of the violation, failure, or refusal and the efforts to the licensee to remedy the violation, failure, or refusal in a timely manner. No civil penalty shall be assessed where revocation is ordered.

[6] Section 31(d) of the FPA states:

ASSESSMENT.—(1) Before issuing an order assessing a civil penalty against any person under this section, the Commission shall provide to such person notice of the proposed penalty. Such notice shall, except in the case of a violation of a final order issued under subsection (a), inform such person of his opportunity to elect in writing within 30 days after the date of receipt of such notice to have the procedures of paragraph (3) (in lieu of those of paragraph (2)) apply with respect to such assessment.

(2)(A) In the case of the violation of a final order issued under subsection (a), or unless an election is made within 30 calendar days after receipt of notice under paragraph (1) to have paragraph (3) apply with respect to such penalty, the Commission shall assess the penalty, by order, after a determination of violation has been made on the record after an opportunity for an agency hearing pursuant to section 554 of title 5, United States Code, before an administrative law judge appointed under section 3105 of such title 5. Such assessment order shall include the administrative law judge's findings and the basis for such assessment.

(B) Any person against whom a penalty is assessed under this paragraph may, within 60 calendar days after the date of the order of the Commission assessing such penalty, institute an action in the United States court of appeals for the appropriate judicial circuit for judicial review of such order in accordance with chapter 7 of title 5, United States Code. The court shall have jurisdiction to enter a judgment affirming, modifying, or setting aside in whole or in part, the order of the Commission, or the court may remand the proceeding to the Commission for such further action as the court may direct.

(3)(A) In the case of any civil penalty with respect to which the procedures of this paragraph have been elected, the Commission shall promptly assess such penalty, by order, after the date of the receipt of the notice under paragraph (1) of the proposed penalty.

(B) If the civil penalty has not been paid within 60 calendar days after the assessment order has been made under subparagraph (A), the Commission shall institute an action in the appropriate district court of the United States for an order affirming the assessment of the civil penalty. The court shall have authority to review de novo the law and the facts involved, and shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part, such assessment.

(C) Any election to have this paragraph apply may not be revoked except with the consent of the Commission.

(4) The Commission may compromise, modify, or remit, with or without conditions, any civil penalty which may be imposed under this subsection, taking into consideration the nature and seriousness of the

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In this notice of proposed rulemaking, the Commission is proposing rules to implement subsections (c) and (d) of FPA section 31.

The civil penalty provisions enacted in those subsections may be summarized as follows.

Licensees, permittees and exemptees are subject to civil penalties of up to $10,000 per day for each violation of, or failure or refusal to comply with, any rule or regulation issued under Part I of the FPA, any term or condition of a license, permit, or exemption issued under Part I of the FPA, or a compliance order issued under subsection (a)(1). The amount of the proposed penalty must reflect the nature and seriousness of the violation and the timely remedial efforts of the person against whom the penalty is proposed. No penalty may be assessed where a license or exemption is revoked.

The Commission must provide notice of the proposed penalty and, where applicable, of the person's right to make an election between the administrative hearing procedures of FPA section 31(d)(2) and trail in United States district court under FPA section 31(d)(3) procedures. The person then has 30 days to elect in writing the procedural course to be followed. An election may be revoked only with the consent of the Commission.

If an election is not made, or if an election is not applicable, then administrative procedures apply. The Commission must then provide the opportunity for an adjudicatory hearing under section 554 of the Administrative Procedure Act, 5 U.S.C. 554 (1982). After the hearing, the Commission may issue an assessment order, and the person against whom the penalty is assessed may appeal to the appropriate United States Court of Appeals within 60 days. If the penalty is not paid within 60 days after a final and unappealable order has been issued, the Commission must institute a collection action in United States District Court.

If an election is made in favor of the alternate trial court procedures, the Commission must promptly assess the penalty and, if the penalty is not paid within 60 days, must initiate an action in United States District Court for an order affirming the penalty. If the penalty is not paid within 60 days after the District Court has entered a final judgment in favor of the Commission, the Commission must institute a collection action in United States District Court.

In certain circumstances, the Commission may modify a civil penalty.

A detailed analysis of the civil penalty provisions and the proposed regulations follows below.

III. Discussion

A. Scope of Proposed Rule and Persons Subject to Civil Penalties (§§ 385.1501 and 1502)

Section 385.1501 of the proposed rules provides that the rules apply to proceedings to assess civil penalties pursuant to section 31 of the FPA. Section 385.1502 states that any licensee or permittee under the FPA, and any exemptee from any requirement of Part I of the FPA, may be subject to civil penalties. Any person who should have a license or exemption, but does not, would also be subject to civil penalties. The Commission interprets the statutory phrase, "licensee, permittee or exemptee" to include a person who engages in conduct requiring a license or exemption but fails to obtain one. Congress was clearly concerned about unlicensed projects when it enacted this law: "The Committee . . . expects FERC to locate projects that are being operated without legal authority and to enforce the law." [7]

In the Commission's view, Congress could not have meant to insulate from civil penalties persons who have ignored licensing requirements, while penalizing only those who have taken the trouble to obtain the necessary authority. Under such a reading, an unlicensed person would be immune from a civil penalty even if he operated in exactly the same way as a penalized licensee. There is no reason to ascribe to Congress such an irrational intent. Accordingly, the Commission proposes in new § 385.1502 to apply the civil penalty provisions to those persons who should have a license or exemption for constructing, maintaining or operating a project, but do not.

Similarly, section 31(c) of the FPA does not explicitly state that the Commission may assess civil penalties for violations of exemptions that are issued pursuant to section 405 of the Public Utility Regulatory Policies Act of 1978, as amended, 16 U.S.C. 2705 (1982) (PURPA). The Commission, however, reads the civil penalty provisions to apply to violations of such exemptions for two reasons. First, EPA section 31(c) makes "any exemptee" subject to a civil penalty, not just the small percentage of exemptees who hold conduit exemptions issued under section 30 of the FPA. Second, FPA section 31(b) explicitly provides authority to the Commission to revoke any exemption, regardless of whether it is grounded on PURPA or section 30 of the FPA. The legislative history shows that Congress intended the Commission to use its revocation authority "quite sparingly." [8] It is doubtful Congress intended to permit the use of the more severe remedy—revocation—against the holder of any exemption while limiting the use of a less severe remedy—civil penalties—to holders of conduit exemptions. Therefore, proposed § 385.1502 provides that any exemptee is subject to civil penalties. The Commission also notes that FPA section 31(c) provides for civil penalties for violations of orders issued under FPA section 31(a). FPA section 31(a) covers the terms and conditions of exemptions granted from any requirement of Part I of the FPA. This would include exemptions issued pursuant to section 405 of PURPA. Thus, the Commission clearly has the authority to assess a civil penalty for violations of any order issued pursuant to FPA section 31(a) requiring compliance with the terms and conditions of an exemption under section 405 of PURPA.

B. Actions Subjecting Persons to Civil Penalties (§ 385.1503)

Section 385.1503 of the proposed rules sets forth the actions that would subject persons to civil penalties. Those actions are violations of, or failures or refusals to comply with: (1) Any rule or regulation issued under Part I of the

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violation and the efforts of the licensee to remedy the violation in a timely manner at any time prior to a final decision by the court of appeals under paragraph (2) or by the district court under paragraph (3).

(5) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order under paragraph (2), or after the appropriate district court has entered final judgment in favor of the Commission under paragraph (3), the Commission shall institute an action to recover the amount of such penalty in any appropriate district court of the United States. In such action, the validity and appropriateness of such final assessment order or judgment shall not be subject to review.

(6)(A) Notwithstanding the provisions of title 28, United States Code, or of this Act, the Commission may be represented by the general counsel of the Commission (or any attorney or attorneys within the Commission designated by the Chairman) who shall supervise, conduct, and argue any civil litigation to which paragraph (3) of this subsection applies (including any related collection action under paragraph (5)) in a court of the United States or in any other court, except the Supreme Court. However, the Commission or the general counsel shall consult with the Attorney General concerning such litigation, and the Attorney General shall provide, on request, such assistance in the conduct of such litigation as may be appropriate.

(B) The Commission shall be represented by the Attorney General, or the Solicitor General, as appropriate, in actions under this subsection, except to the extent provided in subparagraph (A) of this paragraph.

[7] H.R. Rep. No. 507, 99th Cong., 2d Sess. 40 (1986).

[8] *Id.* at 41.

Federal Power Act; (2) any term or condition of a license, permit or exemption; or (3) any order issued pursuant to section 31(a) of the FPA to require compliance with terms and conditions of licenses, permits or exemptions issued under Part I of the Federal Power Act. As noted above, the Commission also interprets the statutory civil penalty provisions to apply to those persons who construct or operate a jurisdictional project without a license or exemption.

There is no requirement in section 31 of the FPA that the actions subjecting persons to civil penalties be either knowing or willful, nor does the Commission propose such a requirement in this regulation. Where Congress has intended such a requirement as a condition for assessing a civil penalty it has said so.[9] However, the Commission will take these factors into account in considering the "nature" of any violation.

FPA section 31(c) is silent as to whether Congress intended to give the Commission authority to assess a civil penalty for improper conduct occurring prior to enactment of ECPA on October 16, 1986. Absent clear congressional intent favoring retroactive application, a statute is presumed to be applied prospectively only.[10] Accordingly, the Commission proposes in the new § 385.1503 to apply the civil penalty provisions of FPA section 31 prospectively. The proposed rules would apply to conduct occurring on or after October 16, 1986, even if that conduct began before October 16, 1986.[11]

C. Maximum Amount of Civil Penalty (§ 385.1504)

Under section 31(c) of the FPA, the Commission may not assess a civil penalty of more than $10,000 for each day that such violation or failure or refusal continues, and no civil penalty may be assessed where a license or exemption is ordered revoked. Section 385.1504 of the proposed rules reflects these limitations.

The Commission proposes to utilize a civil penalty as a supplement to other appropriate sanctions, such as criminal penalties and nonpenal remedies authorized by sections 4(g) and 309 of the FPA.[12] Although the Commission may not assess a penalty where a license is ordered revoked, an unsuccessful criminal prosecution would not foreclose an action for civil penalties.[13]

D. Determination of Proposed Penalty Amount (§ 385.1505)

In determining the amount of a proposed penalty, section 31(c) of the FPA requires the Commission to consider (1) the nature and seriousness of the violation, failure or refusal, and (2) the efforts of the licensee to remedy the violation, failure, or refusal in a timely manner. These factors are set forth in § 385.1505(a) of the proposed rules.

In considering the "nature" of the violation, the Commission proposes in the new § 385.1505(b) (1), (2) and (3) to consider the violator's compliance history, and whether the violator had actural knowledge or the constructive knowledge deemed to be possessed by a reasonable individual acting under similar circumstances. Other factors being equal, a knowing violation will subject a person to a higher civil penalty than a violation which is not knowing.

In considering the "seriousness" of the violation, the Commission proposes in § 385.1505 (b)(4) through (b)(6) to consider whether the violation resulted in loss of life, whether and to what extent persons were injured or property or the environment was damaged, and whether persons, property or the environment were endangered but not damaged. For example, a violation which results in loss of human life will subject a person to a higher civil penalty than a violation that solely endangers property, other factors being equal.

In considering the remedial efforts of the violator, the Commission proposes in § 385.1505 (b)(7) through (b)(9) to consider whether the violator remedied the violation in a timely manner, in an untimely manner, or failed to remedy the violation. A violation followed by untimely remedial efforts will subject a person to a higher civil penalty than a violation followed by timely remedial efforts, other factors being equal.

The Commission does not propose to state in the proposed regulations specific dollar amounts for every hypothetical violation that may occur. Because the Commission lacks experience assessing civil penalties pursuant to FPA section 31, it would be premature to allocate precise or even approximate numerical weights to the factors to be considered or to establish fixed formulae for penalty assessment at this time. Moreover, FPA section 31 does not require the Commission to publish criteria for calculating the dollar amount at which to propose or assess a penalty, and it has been historically rare for federal agencies in general to publish such criteria.[14] In most variable penalty statutes, Congress has imposed few constraints on the discretion of the penalty-imposing authority to determine the penalty amount. Its most common restraint has been the enumeration of standards to be considered in determining the penalty amount.[15] While the Commission is not proposing fixed formulae for assessing penalties, the proposed rule enumerates factors that will influence the determination of penalty amounts.

Read literally, section 31(c) of the FPA requires the Commission to consider timely remedial efforts only of licensees. It does not expressly require the Commission to consider timely remedial efforts of permittees or exemptees. However, since there is no logical reason to require a consideration of remedial efforts when the violator is a licensee but not when it is a permittee or exemptee, the Commission, in § 385.1505(a), proposes to consider the remedial efforts of all persons subject to civil penalties. When interpreting a statute, words may be inserted to carry out legislative intent and to avoid absurd results.[16] In any event, in the absence of contrary statutory language, the Commission has the inherent discretion to consider the remedial efforts of a violator when it assesses a civil penalty.

E. Requirement of Notice of Proposed Penalty (§ 385.1506)

FPA section 31(d)(1) requires the Commission to provide notice of the proposed penalty to the person against whom the penalty is to be assessed. The new § 385.1506(a) embodies this requirement.

Section 31(d)(1) of the FPA does not expressly state that the notice of proposed penalty must specify the exact amount of the proposed penalty. It also does not expressly state that the notice must articulate the basis for the amount of the proposed penalty. Nevertheless, because section 31(c) of the FPA states how the Commission is to determine the amount of a proposed penalty, it can be argued that the amount, and the basis

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[9] *See* section 504(b) of the Natural Gas Policy Act of 1978, 15 U.S.C. 3414(b)(6) (1982).

[10] *See 2 Sutherland Stat. Const.* section 41.04 (4th ed. 1984).

[11] *See Samuels v. McCurdy*, 267 U.S. 188, 193 (1925) (criminal penalty upheld for possession of liquor, where possession began before statutory prohibition and continued thereafter).

[12] *See e.g., Niagara Mohawk Power Corp. v. FPC*, 379 F. 2d 153 (D.C. Cir. 1967); Administrative Conference of the United States, *Recommendations and Reports* 229 (1979).

[13] *See U.S. v. Ward*, 448 U.S. 242, 248, 253 (1980).

[14] *See* Administrative Conference of the United States, *Recommendations and Reports* 221 (1979).

[15] *Id.* at 214, 289.

[16] 2A *Sutherland Stat. Const.* section 47.38 (4th ed. 1984).

for such amount, should be articulated in the notice of proposed penalty to provide a person receiving a notice with a rational basis on which to exercise his election rights.[17] This is consistent with the procedures used by other agencies.[18] The Administrative Conference of the United States recommends that agencies should give notice of the factual and legal basis for, and the amount of, the initial assessment.[19] Accordingly, the Commission proposes in the new § 385.1506(b) to include, in the notice, a statement of the amount of the proposed penalty, and the factual and legal basis of the proposed penalty. In the instance of a continuing violation, the proposed penalty could be expressed in terms of a daily amount.

Where there is a right to an election, the Commission must inform the person against whom the penalty is to be assessed of that person's opportunity to elect the procedures to be followed, *i.e.*, the administrative evidentiary hearing of FPA section 31(d)(2) or the United States District Court procedures of FPA section 31(d)(3). This notice would be provided under § 385.1506(b)(iii) of the proposed regulations.

F. Election of Procedures and Answer (§ 385.1507(a))

Under section 31(d)(1) of the FPA, a person to whom a notice of proposed penalty is issued has thirty days from receipt of such notice to elect in writing between the procedures of FPA section 31(d)(2) and section 31(d)(3). The administrative hearing procedures of FPA sction 31(d)(2) automatically apply unless the person has the right to an election and exercises that right within 30 days of receipt of the notice of proposed penalty, new § 385.1507(a). The notification may include an answer contesting the proposed assessment. If the person fails to file such as anser in a timely manner, all material facts alleged by the Commission shall be deemed admitted. General denials unsupported by specific factual allegations may provide a basis for summary disposition.

Sections 31(d)(1) and 31(d)(2)(A) of the FPA provide that there is no right to an election where the proposed penalty is based on a violation of a final order issued under FPA section 31(a) requiring compliance with the terms and conditions of licenses, permits and exemptions. The violation of a nonfinal compliance order would not, in itself, eliminate the right to an election.

Read literally, FPA section 31(d)(2)(A) refers only to a *violation* of a final compliance order. By contrast, section 31(c) of the FPA makes violations, refusals and failures all actions which may subject a person to civil penalties. However, whether a person has a right to an election cannot reasonably depend on whether he violates a compliance order or refuses or fails to comply with a compliance order. A refusal or a failure to comply with a lawful order is a violation of the order, and a violation is a refusal or failure to comply. It therefore makes no sense to argue that Congress meant to remove the right to an election of procedures in one case but not in the other. Absent a reasonable distinction between violations, on one, hand, and refusals and failures, on the other, the Commission proposes to interpret "violation" under FPA section 31(d)(2)(A) to include failures and refusals.

The Commission proposes to treat as "final," compliance orders issued by staff pursuant to delegated authority and from which no appeal has been filed.[20] For example, such actions could include letters issued by FERC regional offices ordering a licensee, exemptee, or permittee to file specific information. Such a letter order would become a final FPA section 31(a) order where the licensee, exemptee or permittee did not file a timely appeal from staff action pursuant to the procedures set forth in §§ 12.4(c), 385.207 and 385.1902 of the Commission's regulations.

The Commission does not propose to interpret the notice and opportunity for public hearing requirement of section 31(a) as requiring a formal evidentiary hearing. Where Congress has intended such a hearing in FPA section 31 it has said so. (FPA section 31(d)(2)(A)). Morever, since Congress has clearly provided an opportunity for a formal evidentiary proceeding before a civil penalty may be assessed, the Commission does not propose to require an additional formal evidentiary hearing prior to issuing an FPA section 31(a) compliance order. In the Commission's judgment, Congress did not intend cumbersome procedures at this perliminary stage of the civil penalty assessment process. Notice of noncompliance, issued by the Commission or its delegate, coupled with an opportunity to respond in writing, with written submissions placed into the public record, satisfy the notice and hearing requirement of the preliminary stage of the penalty process.[21] Moreover, the right to appeal from staff action, and the right to seek rehearing, provide further assurances that procedural due process will not be denied.[22]

G. Revocation of Election (§ 385.1507(b))

FPA section 31(d)(3)(C) provides that a person may revoke an election to require FPA section 31(d)(3) District Court procedures only with the consent of the Commission. The Commission proposes in the new § 385.1507(b) to require consent only after the 30-day election period has ended. Where a person elects the procedures of section 31(d)(3) of the FPA and subsequently files to revoke that election within the 30-day election period, the Commission's consent will not be required.

H. Description of Section 31(d)(2) Procedures (§ 385.1506)

There are four phases to the assessment process under FPA section 31(d)(2).

In the first phase the Commission would provide an opportunity for a hearing under 5 U.S.C. 554, and would utilize, as appropriate, the hearing procedures set forth in 18 CFR part 385, Subpart E (1986). The Commission does not propose to institute a hearing before an Administrative Law Judge (ALJ) If there are no disputed issues of material fact. Even where an adjudicative proceeding is provided by statute, an evidentiary hearing before an ALJ is unnecessary where it will serve no purpose, such as when material facts are not in dispute.[23]

In the second phase, the Commission would issue an assessment order which would include the ALJ's initial decision, if any, and the Commission's basis for the assessment.

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[17] This is distinguished from the civil penalty provision of the Natural Gas Policy Act of 1978, which neither specifies how the Commission is to determine the amount of the penalty nor provides for an election. *See* section 504(b) of the NGPA 15 U.S.C. 3414(b)(6) (1982).

[18] *See* 16 CFR 1.93 (1987) (Federal Trade Commission implementation of civil penalty notice requirements of the Energy Policy and Conservation Act. 42 U.S.C. 6303(d)(1982).

[19] 1 CFR 305.79–3 (1987).

[20] *See* FERC Stats. & Regs., [Regulations Preambles 1982–1985] ¶ 30,568 at 30,941 (1984) ("Staff actions are final in the absence of any appeal.").

[21] *See Goss v. Lopez*, 419 U.S. 565, 581–84 (1975).

[22] *See Boddie v. Connecticut*, 401 U.S. 371, 378 (1970) ("The formality and procedural requisites for the hearing can vary, depending upon the importance of the interests involved and the nature of the subsequent proceedings."); *DOE v. Casey*, 798 F. 2d 1508, 1524 (D.C. Cir. 1986) ("A hearing demands that a person have the right to support his allegations by argument, however brief, and if necessary, by proof, however informal.").

[23] *See Cerro Wire & Cable Co. v. FERC*, 677 F.2d 124 (D.C. Cir. 1982); *Citizens for Allegan County v. FPC*, 414 F.2d 1125 (D.C. Cir. 1969).

In the third phase, the person against whom the penalty is assessed could appeal to an appropriate United States Court of Appeals within 60 calendar days after the date of the order of the Commission assessing such penalty.

In the fourth phase, the Court of Appeals may affirm, modify, set aside in whole or in part, or remand the matter to the Commission.

I. Description of Section 31(d)(3) Procedures (§ 385.1509)

There are two phases to the assessment process under FPA section 31(d)(3) procedures.

In the first phase, FPA section 31(d)(3)(A) provides that the Commission shall *promptly* assess the penalty, by order, after the notice of election is received by the Commission.

In the second phase, if the penalty has not been paid within 60 days of the date of issuance of the assessment order, the Commission shall institute an action in United States District Court for an order affirming the civil penalty.

J. Commission Authority to Modify a Civil Penalty (§ 385.1510)

Section 31(d)(4) of the FPA gives the Commission the authority to compromise, modify, or remit, with or without conditions, any civil penalty. Section 385.1510(a) of the proposed rules implements this authority. The Commission would allow increases in the proposed penalty amount only if it issued a new notice proposing an increase.

In determining whether to compromise, modify or remit a civil penalty, FPA section 31(d)(4) provides that the Commission may consider the nature and seriousness of the *violation* and the efforts of the *licensee* to remedy the violation in a timely manner. Although licensees, permittees and exemptees are referred to elsewhere in FPA section 31, only licensees are referred to in FPA section 31(d)(4). Absent a reasonable distinction between these three classes of persons in terms of the purpose of the statute, the Commission concludes that Congress used the term "licensee" in this context as a shorthand for holders of all forms of jurisdictional authority, whether a licensee, permittee, or exemptee, or one who should possess appropriate authority but does not.

Likewise, FPA section 31(d)(4) specifically refers only to violations. It does not refer to failures or refusals. The Commission nevertheless proposes in § 385.1510(b) of the proposed rules interpret to "violations" to include "failures" or "refusals" for the purpose of exercising its authority to compromise, modify or remit any civil penalty.[24]

Section 385.1510(c) of the proposed rules provides that the Commission's authority to compromise, modify or remit a civil penalty may be exercised at any time prior to a final decision by the United States Court of Appeals under FPA section 31(d)(2) procedures or a final decision by the United States District Court under FPA's section 31(d)(3) procedures.

K. Collection of Civil Penalties (§ 385.1511)

As provided in section 31(d)(5) of the FPA, § 385.1510(c) of the proposed rules proposes that the Commission institute an action to recover an unpaid civil penalty in an appropriate United States District Court. The validity and appropriateness of the final assessment order or judgment are not subject to review in such actions.

Where the administrative hearing procedures set forth in FPA's section 31(d)(2) are used to assess the penalty, the Commission will take any necessary collection action after a final and unappealable order has been issued.

Where the procedures set forth in section 31(d)(3) of the FPA are used to assess the penalty, the Commission proposes to include a collection action in its pleading at the same time it institutes its action in the United States District Court to affirm the civil penalty.

IV. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act of 1980 (RFA) requires a description and analysis of final rules that will have a "significant economic impact on a substantial number of small entities."[25] An agency is not required to make an RFA analysis, however, if it certifies that rule will not have such an impact.

In accordance with the Regulatory FLexibility Act, the Commission certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. Although many of the licensees, permittees, and exemptees that may be assessed civil penalties under this regulation are likely to be small entities, the Commission expects that the total number of small entities assessed civil penalties will not be substantial. The Commission notes that other agencies implementing civil penalty provisions have similarly found that no regulatory flexibility analysis is required when the number of small entities that will be assessed civil penalties is not substantial. *See* 46 FR 25321 (1981) (Civil Aeronautics Board Proposed Revision of 14 CFR Part 374) and 51 FR 30501 (1986) (Department of Labor Proposed Revision of 29 CFR Part 2560).

V. Paperwork Reduction Act Statement

This notice of proposed rulemaking does not propose any new information collection provisions. Thus, this notice of proposed rulemaking is not being submitted to the Office of Management and Budget (OMB) for its approval under the Paperwork Reduction Act[26] and OMB's regulations.[27]

VI. Public Comment Procedures

The Commission invites interested persons to submit written comments, data, views, and other information concerning the matters set out in this notice.

An original and 14 copies of such comments should be filed with the Commission by October 5, 1987. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, and should refer to to Docket No. RM87–24–000. All written submissions will be placed in the Commission's public files and will be available for public inspection through the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426 during regular business hours.

List of Subjects in 18 CFR Part 385

Administrative practice and procedure, Pipelines, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission proposes to amend Part 385, Title 18, Code of Federal Regulations, as set forth below.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

PART 385—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for Part 385 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p 142; Administrative Procedure Act, 5 U.S.C. 551–557 (1982); Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Federal Power Act, 16 U.S.C. 791–825r (1982); Natural Gas Act, 15 U.S.C. 717–717w (1982); Natural Gas Policy Act, 15 U.S.C. 3301–3432

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[24] *See Election of procedures and answer, supra.*

[25] U.S.C. 601–612 (1982).

[26] 5 U.S.C. 601(6) (1982).

[27] 44 U.S.C. 3501–3520 (1982).

(1982); Public Utilities Regulatory Policies Act of 1978, 16 U.S.C. 2601–2645 (1982); Interstate Commerce Act, 49 U.S.C. 1–27 (1976), unless otherwise noted.

2. Subpart O is added to Part 385 to read as follows:

Subpart O—Procedures for the Assessment of Civil Penalties Under Section 31 of the Federal Power Act

Sec.

385.1501 Scope (Rule 1501).
385.1502 Persons subject to civil penalties (Rule 1502).
385.1503 Actions subjecting persons to civil penalties (Rule 1503)..
385.1504 Maximum civil penalty (Rule 1504).
385.1505 Determination of proposed penalty amount (Rule 1505).
385.1506 Notice of proposed penalty (Rule 1506).
385.1507 Election of procedures and answer (Rule 1507).
385.1508 Commission proceeding to assess a civil penalty (Rule 1508).
385.1509 Procedures upon election (Rule 1509).
385.1510 Modifications of civil penalty (Rule 1510).
385.1511 Collection of civil penalties (Rule 1511).

Subpart O—Procedures for the Assessment of Civil Penalties Under Section 31 of the Federal Power Act

§ 385.1501 Scope (Rule 1501).

The rules in this subpart apply to and govern proceedings for the assessment of civil penalties pursuant to section 31 of the Federal Power Act, 16 U.S.C. 823b.

§ 385.1502 Persons subject to civil penalties (Rule 1502).

(a) Any licensee or permittee under the Federal Power Act, or exemptee from any requirement of Part I of the Federal Power Act, may be subject to civil penalties; and

(b) Any person who should have a license under, or exemption from, the Federal Power Act, but does not, may be subject to civil penalties.

§ 385.1503 Actions subjecting persons to civil penalties (Rule 1503).

(a) The actions that subject persons to civil penalties are violations of, or failures or refusals to comply with: any rule of regulation issued under Part I of the Federal Power Act; any term or condition of a license, permit or exemption; any Commission order or order issued pursuant to delegated authority issued under section 31(a) of the Federal Power Act requiring compliance with terms and conditions of a license, permit or exemption; or any requirement of Part I of the Federal Power Act.

(b) Only actions occurring on or after October 16, 1986, may subject a person to civil penalties.

§ 385.1504 Maximum civil penalty (Rule 1504).

(a) Except as provided in paragraph (b) of this section, the Commission may assess a civil penalty of up to $10,000 for each day that such violation, failure, or refusal continues.

(b) No civil penalty may be assessed where a license or exemption is ordered revoked.

§ 385.1505 Determination of proposed penalty amount (Rule 1505).

(a) In determining the amount of a proposed penalty, the Commission will consider the nature and seriousness of the violation, failure or refusal, and the efforts of the licensee, exemptee or permittee to remedy the violation, failure, or refusal in a timely manner.

(b) In making its determination under paragraph (a) of this section, the Commission will consider, among other things, the following factors:

(1) Whether the person had actual knowledge;

(2) Whether the person had constructive knowledge deemed to be possessed by a reasonable individual acting under similar circumstances;

(3) Whether the person has a history of previous violations;

(4) Whether the violations caused, in whole or in part, loss of life or injury to persons;

(5) Whether the violation caused, in whole or in part, damage to property or the environment;

(6) Whether the violation endangered persons, property or the environment;

(7) Timely remedial efforts;

(8) Untimely remedial efforts; and

(9) No remedial efforts.

(c) In considering the factors in paragraph (b) of this section:

(1) An affirmative finding under paragraphs (b)(1), (2), or (3) of this section will subject a person to a higher penalty than if the findings under those paragraphs are negative, other factors being equal;

(2) A person will be subject to a higher penalty if any of the situations described in paragraphs (b)(4) through (b)(8) of this section are present. The amount of the penalty will be increased most by presence of the situation described in paragraph (b)(4) of this section. The amount of the penalty will be increased least by the presence of the situation described in paragraph (b)(6) of this section, other factors being equal; and

(3) A violation followed by untimely remedial efforts will subject a person to a higher civil penalty than a violation followed by timely remedial efforts, other factors being equal.

§ 385.1506 Notice of proposed penalty (Rule 1506).

(a) Before issuing an order assessing a civil penalty under this subpart against any person, the Commission will provide to such person notice of the proposed penalty.

(b) The notice referred to in paragraph (a) of this section will:

(1) Include the amount of the proposed penalty;

(2) Include a statement of the material facts constituting the alleged violation, failure, or refusal; and

(3) Inform such person of the opportunity to elect in writing within 30 days of receipt of the notice to have the procedures of Rule 1509 (in lieu of those of Rule 1508) apply with respect to such assessment, except that no notice of election shall be provided for a violation of, or a failure or refusal to comply with, a final order issued under section 31(a) of the Federal Power Act requiring compliance with the terms and conditions of a license, permit or exemption.

§ 385.1507 Election of procedures and answer (Rule 1507).

(a) Within 30 days of receipt of the notice of proposed penalty, the respondent receiving such notice must, if he wishes to have the procedures of Rule 1509 apply, file a notification of such election with the Commission in accordance with Subpart T of this subchapter. The notification may include an answer setting forth factual or legal reasons why the proposed assessment order should not issue, should be reduced in amount, or should otherwise be modified. If a person fails to file an answer within the 30-day time limit, all material facts stated in the Commission's notice will be deemed admitted. General denials which are unsupported by specific factual allegations will provide a basis for summary disposition.

(b) Any election to have the procedures of Rule 1509 apply may not be revoked after the 30-day election period in paragraph (a) of this section, except with the consent of the Commission.

§ 385.1508 Commission proceeding to assess a civil penalty (Rule 1508).

(a) If the respondent fails to elect to have the procedures of Rule 1509 apply, the Commission will determine whether to commence a proceeding in accordance with the provisions of Subpart E of this chapter. The

Commission will not commence such an evidentiary proceeding if it would serve no purpose, such as if no material facts are in dispute, in which event the Commission may summarily act on the assessment.

(b) The Commission's Rules of Practice and Procedure, Part 385 of Subchapter X of this chapter, will apply, as appropriated, to a proceeding to assess a civil penalty.

§ 385.1509 Procedures upon election (Rule 1509).

(a) After receipt of the notification of election to apply the provisions of this section pursuant to Rule 1507, the Commission will promptly assess such penalty as it deems appropriate, in accordance with Rule 1505(b).

(b) If the civil penalty has not been paid within 60 calendar days after the assessment order has been issued under paragraph (a) of this section, the General Counsel, unless otherwise directed by the Commission, shall institute an action in the appropriate United States District Court for an order enforcing the assessment of the civil penalty.

§ 385.1510 Modification of civil penalty (Rule 1510).

(a) The Commission may compromise, modify, or remit, with or without conditions, any civil penalty (with leave of court if necessary).

(b) In exercising its authority under paragraph (a) of this section, the Commission may consider the nature and seriousness of the violation, failure, or refusal, and the efforts of the licensee, exemptee, permittee, or one who should possess appropriate authority but does not, to remedy the violation in a timely manner.

(c) The Commission's authority to compromise, modify or remit a civil penalty may be exercised at any time prior to a final decision by the United States Court of Appeals if Rule 1508 procedures are utilized, or a final decision by the United States District Court if Rule 1509 procedures are utilized.

§ 385.1511 Collection of civil penalties (Rule 1511).

If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order under Rule 1508, or after the appropriate District Court has entered final judgment in favor of the Commission under Rule 1509, the Commission shall seek to recover the amount of such penalty in any appropriate District Court of the United States. In such action, the validity and appropriateness of such final assessment order or judgment shall not be subject to review.

[FR Doc. 87-17902 Filed 8-5-87; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 256

Outer Continental Shelf Minerals and Rights-of-Way Management; General

AGENCY: Minerals Management Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: This notice reopens the comment period for the proposed rulemaking concerning amendments to the Outer Continental Shelf (OCS) leasing regulations to authorize the Minerals Management Service (MMS) to conduct supplemental sales. The reopening extends the time for submission of comments on this proposed rule and permits MMS to consider those which were not submitted during the original comment period.

DATE: Comments must be hand-delivered or postmarked not later than August 20, 1987.

ADDRESS: Written comments must be mailed or hand-delivered to the Department of the Interior; Minerals Management Service; 12203 Sunrise Valley Drive; Mail Stop 646, Room 6A110; Reston, Virginia 22091.

FOR FURTHER INFORMATION CONTACT: Mary B. McDonald, Telephone: (703) 648-7817, (FTS) 959-7817.

SUPPLEMENTARY INFORMATION: In the Federal Register of March 28, 1987 (52 FR 9672), MMS issued a Notice of Proposed Rulemaking to authorize supplemental sales in addition to regular lease sales scheduled in the 5-year leasing plan. This action will enable the Department of the Interior to respond to new geological and geophysical data by making available for lease a limited number of additional blocks which new data may indicate to be critical for the development of an area. The proposed regulation excluded the Central and Western Gulf of Mexico OCS Planning Areas where sales are conducted annually, precluding the need for supplemental sales.

The comment period was orginally open through April 27, 1987. Several comments were received after the closing date. The elimination of late comments from consideration might require MMS to disregard important and unique observations and suggestions. Given the restricted scope of the rule and its importance to the areas affected by it, MMS wishes to have the benefit of as many comments as possible and, therefore, is reopening the comment period. All comments previously submitted and received to date will be considered and should not be resubmitted. Any additional comments should be submitted so as to ensure that they are postmarked or received by the date specified above.

Date: July 27, 1987.

Bruce G. Weetman,

Acting Associate Director for Offshore Minerals Management.

[FR Doc. 87-17818 Filed 8-5-87; 8:45 am]

BILLING CODE 4310-MR-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 22 and 24

[FRL-3198-8]

Issuance of and Administrative Hearings on RCRA Section 3008(h) Corrective Action Orders for Hazardous Waste Management Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: The rule proposed here establishes procedures governing the conduct of administrative hearings requested, pursuant to section 3008(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), by recipients of administrative enforcement orders issued under the interim status corrective action authority contained in Section 3008(h) of RCRA.

DATE: Comments on this proposed rule will be accepted if received on or before September 8, 1987.

ADDRESS: Interested members of the public must submit an original and two copies of their comments to: Steve Botts, mail code LE-134S, Office of Enforcement and Compliance Monitoring, Waste Enforcement Division, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Steve Botts at (202) 382-5787.

SUPPLEMENTARY INFORMATION:

I. Authority

The rule we propose today has been issued under authority of sections 2002 and 3008 of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. sections 6912 and 6928.

II. Background

On November 8, 1984, the President signed HSWA into law. Among the changes in RCRA effected by this legislation was the addition of new authority under section 3008(h) of RCRA for EPA to issue administrative enforcement orders to owner/operators of interim status treatment, storage, and disposal facilities, requiring corrective action or other measures necessary to respond to releases of hazardous waste from such facilities. Such orders may also revoke or suspend authority to operate under section 3005(e) of RCRA and/or assess penalties of up to $25,000 a day for noncompliance with a previous corrective action order.

Section 3008(b) of RCRA provides that an administrative enforcement order issued pursuant to section 3008 of RCRA becomes final, unless, within 30 days of service of such order, the person or persons named therein request a public hearing. The rules currently appearing at 40 CFR Part 22 establish procedures to be followed in administrative hearings requested by recipients of orders issued pursuant to section 3008(a) of RCRA, which require compliance or assess penalties for violations of Subtitle C of RCRA.

III. Purpose of Today's Proposed Rule

The rule proposed here is designed to supplement those appearing at 40 CFR Part 22. It would establish new procedures for the conduct of administrative hearings requested by recipients of section 3008(h) orders, which require corrective action or other response measures necessary to address releases of hazardous waste or constituents from interim status facilities. It would also amend 40 CFR Part 22 as necessary to insure that Part 22 procedures would be employed for hearings on section 3008(h) orders which (1) include counts under section 3008(a) of RCRA, (2) assess penalties for non-compliance with a previous section 3008(h) order, or (3) revoke or suspend authority to operate under section 3005(e) of RCRA.

Prior to the enactment of HSWA, the language in section 3008(b) of RCRA offering the recipient of an order the opportunity to request a hearing applied only to section 3008(a) orders. In enacting HSWA, Congress amended section 3008(b) so as to make it applicable to any order "issued under this section." The clear intent of Congress in adding this language, as borne out by the legislative history of this amendment, was to extend the right to request a hearing to recipients of orders issued under the new section 3008(h) corrective action authority. However, there is no indication in the language of the statute or the legislative history as to what kind of "public hearing" on corrective action orders is required or contemplated by section 3008(b).

In the absence of Congressional guidance on the question of what kind of public hearing is required, we believe that the Agency has the discretion, circumscribed only by constitutional due process considerations, to decide what kind of hearings are appropriate. The range of options considered by the Agency in developing the procedures we propose today for use in hearings on RCRA section 3008(h) corrective action orders extends from formal evidentiary hearings of the kind now required by 40 CFR Part 22 for hearings on SWDA section 3008(a) orders to informal conferences of the type employed by the Agency pursuant to guidance (see, "Guidance Memorandum on Use and Issuance of Administrative Orders under section 106(a) of CERCLA," September 8, 1983) to afford due process to recipients of orders issued pursuant to section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).

Under the Supreme Court decision in *Mathews* v. *Eldridge*, 424 U.S. 319 (1976), in order to satisfy the requirements of procedural due process, an Agency decision as to whether evidentiary hearings or less formal hearings are required for a given class of proceedings should be based on consideration of three factors: (1) The private interest that will be affected by the official action, (2) the risk of an erroneous deprivation of such interest through the procedures used, and probable value, if any, of additional procedural safeguards, and (3) the Government's interest, including the fiscal and administrative burdens that the additional or substitute procedures would entail. Accordingly, the procedures proposed today by the Agency attempt to balance EPA's interest in expediting clean-up and minimizing the resource outlay required to prepare for and participate in hearings against (1) the cost of corrective action incurred by the respondent and (2) the risk that the Agency might mistakenly require unwarranted expenditures by respondent through reliance on hearing procedures containing inadequate mechanisms for the resolution of those factual disputes which might reasonably be expected to arise.

In the preamble to the proposed rule adopting 40 CFR Part 22 procedures for public hearings on RCRA section 3008(a) orders (43 FR 34738), the Agency noted that the language of RCRA section 3008(b) did not specifically compel use of formal adjudicatory hearing procedures but nevertheless opted for full adjudicatory hearings because of the nature of the section 3008(a) proceedings. The Agency observed that in such proceedings EPA would be accusing respondents of violations of "established legal standards" and that the decisionmaker would be called upon to adjudicate specific factual issues relating to the violations in question. In other words, the Agency concluded that, without full adjudicatory hearings, there was a significant risk that EPA might be vulnerable to arguments that the Agency lacked the means to properly resolve disputed factual matters upon which respondent's property interests were dependent.

It should be noted that the Part 22 procedures were designed for use not just in hearings on RCRA section 3008(a) compliance orders but also hearings on orders which assessed penalties and revoked or suspended operating authority. The rule proposed today requires that Part 22 procedures be employed for hearings on corrective action orders which assess penalties or revoke or suspend interim status operating authority.

However, we believe that the nature of the typical hearing on a RCRA section 3008(h) order will differ significantly from the type of hearing held on a RCRA section 3008(a) compliance order. Hearings on corrective action orders are less apt to present the kind of specific factual issues, which case law identifies as being uniquely susceptible to resolution in a formal evidentiary hearing. Corrective action orders generally will not seek injunctive relief for specific regulatory violations but will rather seek to compel respondent to undertake studies of identified releases of hazardous waste or implement measures designed to remediate such releases. The only jurisdictional prerequisite to obtaining relief under RCRA section 3008(h) is that the Agency establish that a release of hazardous waste or constituents from an interim status facility has occurred. It will generally be a simple and straightforward matter to make the

threshold demonstration that a release has occurred. Where the issue is in dispute the Presiding Officer can typically resolve the dispute through analysis of the written affidavits and arguments of the parties' technical experts. The risk of an erroneous deprivation of respondent's rights in deciding this issue is accordingly very low.

The issues posed in proceedings on disputed corrective action orders will typically relate to legal, policy, or technical matters, which are most appropriately addressed in informal hearings. The primary issue in a hearing on a corrective action order is not likely to be whether a violation occurred (as is generally true in the case of a RCRA section 3008(a) order) but how a respondent should study and remediate a release. This kind of issue is apt to be wide-ranging and complex and is more susceptible to resolution through analysis of a full documentary record than through examination and cross-examination of witnesses. The goal should then be to compile a full and fair documentary record upon which EPA can base its decision. These procedures allow the respondent and the Agency every opportunity to develop just such a record.

Since (1) proceedings on corrective action orders will generally not involve adjudication of factual issues for which formal evidentiary hearings are best suited, and (2) the Agency has a strong interest in conserving the resources which would be required for formal adjudication of disputed factual matters and in expediting the owner/operator's response to releases of hazardous waste or constituents from his facility, the proposed procedures for hearings on RCRA section 3008(h) orders have been designed to eliminate formalities and time-consuming features contained in the Part 22 procedures which are unnecessary for section 3008(h) orders.

The hearing procedures here proposed employ a two-track approach. Hearings on corrective action orders requiring respondent to undertake investigative studies, either alone or in conjunction with certain limited interim corrective measures, would be subject to the relatively informal procedures set forth in Subpart B of Part 24. Hearings on corrective action orders directing respondent to implement more permanent corrective measures, either alone or in conjunction with investigative studies, would be governed by the somewhat more formal procedures contained in Subpart C of Part 24. The Agency's rationale for employing this two-track system is essentially an extension of its rationale for adopting something less formal than full adjudicatory hearings on corrective action orders. Hearings on orders requiring investigative studies (with or without interim corrective measures) are expected to present fewer issues of material fact and, accordingly, fewer opportunities for the Agency to commit a prejudicial error in reaching its decision. It is also expected that the extent of respondent's property interests placed at risk will be more limited where the order seeks to compel studies or interim measures as opposed to permanent corrective measures.

It should be noted that, although the Agency has opted in this proposed rule not to require full evidentiary hearings on corrective action orders for the reason, among others, that proceedings on such orders typically will not present issues of material fact for resolution, the proposed procedures do allow respondents (subject to the Presiding Officer's approval) the opportunity to pose either oral or written questions to EPA on those factual matters which are in dispute. EPA believes that such procedures will provide additional protection against factual error, while ensuring that hearings do not require the unnecessary expenditure of Agency or respondent's resources or interfere with the timely selection and implementation of appropriate corrective measures.

IV. Regulatory Analysis

A. Regulatory Impact Analysis

Inasmuch as this proposed rule is procedural in nature, will not have any important economic impacts, and will not significantly affect the operations of Regional or other program offices, it is not deemed to be "major" within the meaning of Executive Order No. 12291 and, accordingly, does not trigger the requirement in said executive order that a regulatory impact analysis be prepared.

B. Regulatory Flexibility Act

Since this proposed rule merely establishes hearing procedures and has no significant economic impact on a substantial number of small entities, it does not trigger the requirement in the Regulatory Flexibility Act, 5 U.S.C. section 601 *et seq.*, that a regulatory flexibility analysis be prepared.

C. Paperwork Reduction Act

This regulation contains no information collection requirements and thus will not increase the paperwork burden on the regulated community in contravention of the purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

List of Subjects

40 CFR Part 22

Administrative practice and procedure, Hazardous materials, Penalties, Waste treatment disposal.

40 CFR Part 24

Administrative practice and procedure, Corrective action, Hazardous materials, Penalties, Revocation of operating authority.

Lee M. Thomas,

Administrator.

July 24, 1987.

For the reasons set out in the Preamble, Title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AND THE REVOCATION OR SUSPENSION OF PERMITS

1. The authority citation for Part 22 is revised to read as follows:

Authority: 15 U.S.C. sec. 2615; 42 U.S.C. secs. 7545 and 7601; 7 U.S.C. secs. 136(1) and (w); 33 U.S.C. secs. 1415 and 1418; 42 U.S.C. secs. 6912, 6928.

2. Section 22.01 is amended by revising paragraph (a)(4) to read as follows:

§ 22.01 Scope of these rules.

(a) * * *

(4) The issuance of a compliance order, the issuance of a corrective action order, the suspension or revocation of authority to operate pursuant to section 3005(e) of the Solid Waste Disposal Act, or the assessment of any civil penalty under section 3008 of the Solid Waste Disposal Act, as amended, except as provided in 40 CFR Parts 24 and 124.

* * * * *

3. New Part 24 is added as follows:

PART 24—RULES GOVERNING ISSUANCE OF AND ADMINISTRATIVE HEARINGS ON INTERIM STATUS CORRECTIVE ACTION ORDERS

Subpart A—General

Sec.

24.01 Scope of these rules.
24.02 Issuance of initial orders; definition of final orders and orders on consent.
24.03 Maintenance of docket and official record.
24.04 Filing and service of orders, decisions, and documents.

Sec.
24.05 Response to the initial order; request for hearing.
24.06 Designation of Presiding Officer.
24.07 Informal settlement conference.
24.08 Selection of appropriate hearing procedures.

Subpart B—Hearings on Orders Requiring Investigations or Studies

24.09 Qualifications of Presiding Officer; ex parte discussion of the proceeding.
24.10 Scheduling the hearing; pre-hearing submissions by respondent.
24.11 Hearing; oral presentations and written submissions by the parties.
24.12 Summary of hearing; Presiding Officer's recommendation.

Subpart C—Hearings on Orders Requiring Corrective Measures

24.13 Qualifications of Presiding Officer; ex parte discussion of the proceeding.
24.14 Scheduling the hearing; pre-hearing submissions by the parties.
24.15 Hearing; oral presentations and written submissions by the parties.
24.16 Transcript or recording of hearing.
24.17 Presiding Officer's recommendation.

Subpart D—Post-Hearing Procedures

24.18 Final decision.
24.19 Final order.
24.20 Final agency action.

Authority: 42 U.S.C. sections 6912, 6928.

Subpart A—General

§ 24.01 Scope of these rules.

(a) These rules establish procedures governing issuance of administrative orders for corrective action pursuant to section 3008(h) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (the Act), and conduct of administrative hearings on such orders, except as specified in § 24.01(b) below.

(b) The hearing procedures appearing at 40 CFR Part 22 govern administrative hearings on any order issued pursuant to section 3008(h) of the Act which:

(1) Is contained within an administrative order that includes claims under section 3008(a) of the Act; or

(2) Includes a suspension or revocation of authorization to operate under section 3005(e) of the Act; or

(3) Seeks penalties under section 3008(h)(2) of the Act for non-compliance with a section 3008(h) order.

(c) Questions arising at any stage of the proceeding which are not addressed in these rules shall be resolved at the discretion of the Regional Administrator or Presiding Officer, as appropriate.

§ 24.02 Issuance of initial orders; definition of final orders and orders on consent.

(a) An administrative action under section 3008(n) of the Act shall be commenced by issuance of an administrative order. When the order is issued unilaterally, the order shall be referred to as an initial administrative order and may be referenced as a proceeding under section 3008(h). When the order has become effective, either after issuance of a final order following a final decision by the Regional Administrator, or after thirty days from issuance if no hearing is requested, the order shall be referred to as a final administrative order. Where the order is agreed to by the parties, the order shall be denominated as a final administrative order on consent.

(b) The initial administrative order shall be executed by an authorized official of EPA (petitioner), other than the Regional Administrator or the Assistant Administrator for the Office of Solid Waste and Emergency Response. For orders issued by EPA Headquarters, rather than by a Regional office, all references in these procedures to the Regional Administrator shall be understood to be to the Assistant Administrator for the Office of Solid Waste and Emergency Response or his delegatee.

§ 24.03 Maintenance of docket and official record.

A Clerk shall be designated by the Regional Administrator to receive all initial orders, final orders, responses, memoranda, and documents regarding the order and to maintain the official record and docket.

§ 24.04 Filing and service of orders, decisions, and documents.

(a) *Filing of orders, decisions, and documents.* The original and one copy of the initial administrative order, the final decision and the final administrative order, and one copy of the administrative record and an index thereto must be filed with the Clerk designated for section 3008(h) orders. In addition, all memoranda and documents submitted in the proceeding shall be filed with the Clerk.

(b) *Service of orders, decisions, and rulings.* The Clerk (or in the case of the initial administrative order, any other designated EPA employee) shall arrange for the effectuation of service of the initial administrative order, the final decision, and final administrative order. Service of a copy of the initial administrative order together with a copy of these procedures, the final decision, or a final administrative order, shall be made personally or by certified mail, return receipt requested, or, if personal service cannot be effectuated or certified mail is returned refused or unsigned, by regular mail, on the respondent or his representative. The Clerk shall serve other documents from the Presiding Officer by regular mail.

(c) *Service of documents filed by the parties.* Service of all documents, filed by the parties, shall be made by the parties or their representatives on other parties or their representatives and may be made by regular mail, with the original filed with the Clerk.

(d) *Effective date of service.* Service of the initial administrative order and final administrative order is complete upon receipt by respondent (or the respondent's agent, attorney, representative or other person employed by respondent and receiving such service), personally or by certified mail, or upon mailing by regular mail if personal service or certified mail cannot be accomplished, in accordance with § 24.04(b). Service of all other pleadings and documents is complete upon mailing, except as provided in §§ 24.10(b) and 24.14(e).

§ 24.05 Response to the initial order; request for hearing.

(a) The initial administrative order becomes a final administrative order thirty (30) days after service of the order, unless the respondent files with the Clerk within thirty (30) days after service of the order, a response to the initial order and requests a hearing.

(b) The response to the initial order and request for a hearing must be in writing and mailed to, or personally served on, the Clerk of the Region which issued the order.

(c) The response to the initial order shall specify each factual, or legal determination, or relief provision in the initial order the respondent disputes.

§ 24.06 Designation of Presiding Officer.

Upon receipt of a request for a hearing, the Regional Administrator shall designate a Presiding Officer to conduct the hearing and preside over the proceedings.

§ 24.07 Informal settlement conference.

The respondent may request an informal settlement conference at any time by contacting the appropriate EPA employee, as specified in the initial administrative order. A request for an informal conference will not affect the respondent's obligation to timely request a hearing. Whether or not the respondent requests a hearing, the parties may confer informally concerning any aspect of the order. The respondent and respondent's representatives shall generally be allowed the opportunity at an informal conference to discuss with the

appropriate Agency technical and legal personnel all aspects of the order, in particular the basis for the determination that a release has occurred and the appropriateness of the ordered corrective action.

§ 24.08 Selection of appropriate hearing procedures.

If the initial order directs the respondent (a) to undertake only a RCRA Facility Investigation and/or Corrective Measures Study, which may include monitoring, surveys, testing, information gathering, analyses, and/or studies (including studies designed to develop recommendations for appropriate corrective measures), or (b) to undertake such investigations and/or studies and interim corrective measures, and if such interim corrective measures are neither costly nor technically complex and are necessary to protect human health and the environment prior to development of a permanent remedy, the hearing procedures set forth in Subpart B of this part shall be employed for any requested hearing. If the respondent seeks a hearing on an order directing that corrective measures or such corrective measures together with investigations/studies be undertaken, the hearing procedures set forth in Subpart C of this part shall be employed. The procedures contained in Subparts A and D of this part shall be followed regardless of whether the initial order directs respondent to undertake an investigation or implement corrective measures.

Subpart B—Hearings on Orders Requiring Investigations or Studies

§ 24.09 Qualifications of Presiding Officer; ex parte discussion of the proceeding.

The Presiding Officer shall be any employee of the Agency designated by the Regional Administrator other than a person who drafted or participated in drafting the order in question. If, after issuance of the initial order and prior to issuance of the final order, the Regional Administrator, Presiding Officer, or any person who will advise these officials in the decision on the case receives from or on behalf of any party in an ex parte communication information which is relevant to the decision on the case and to which other parties have not had an opportunity to respond, a summary of such information shall be served on all other parties, who shall have an opportunity to reply to same within ten (10) days of service of the summary.

§ 24.10 Scheduling the hearing; pre-hearing submissions by respondent.

(a) *Date and time for hearing.* The Presiding Officer shall establish the date and time for the requested public hearing. Subject to § 24.10(c), the hearing shall be scheduled and held within thirty (30) days of the Agency's receipt of the request for a public hearing.

(b) *Pre-hearing submissions by respondent.* At any time up to five (5) business days before the hearing respondent may, but is not required to, submit for inclusion in the administrative record information and argument supporting respondent's positions on the facts, law, and relief, as each relates to the order in question. All factual representations made by respondent must be by affidavit. A copy of any information or argument submitted by respondent shall be served such that the Clerk and petitioner receive same at least five (5) business days before hearing.

(c) *Postponement of hearing.* The Presiding Officer may grant an extension of time for the conduct of the hearing, upon written request of either party, for good cause shown, and after consideration of any prejudice to other parties. The Presiding Officer may not extend the date by which the request for hearing is due under § 24.05(a).

(d) *Location of hearing.* The hearing shall be held in the city in which the relevant EPA Regional Office is located, unless the Presiding Officer determines that there is good cause to hold it in another location.

§ 24.11 Hearing; oral presentations and written submissions by the parties.

The Presiding Officer shall establish the agenda for the hearing and conduct the hearing in a fair and impartial way, taking action as needed to avoid unnecessary delay, exclude redundant material, and maintain order during the proceedings. Representatives of EPA shall introduce the administrative record and be prepared to summarize the basis for the order. The respondent shall have a reasonable opportunity to address relevant issues and present its views through legal counsel or technical advisors. The Presiding Officer may also allow technical and legal discussions and interchanges between the parties, including responses to questions to the extent deemed appropriate. It is not the Agency's intent to provide EPA or respondent an opportunity to engage in direct or cross-examination of witnesses. Where respondent can demonstrate that, through no fault of its own, certain documents supportive of its position could not have been submitted before hearing in accordance with the requirements of § 24.10(b), it may submit such documents at the hearing. Otherwise no new documentary support may be submitted at hearing. Unless otherwise directed by the Presiding Officer, factual representations made by respondent shall be by affidavit. The Presiding Officer may upon request grant petitioner leave to respond to submissions made by respondent pursuant to this section or § 24.10(b).

§ 24.12 Summary of hearing; Presiding Officer's recommendation.

(a) As soon as practicable after the conclusion of the hearing, a written summary of the proceeding shall be prepared. This summary shall, at a minimum, identify:

(1) The dates of and known attendees at the hearing; and,

(2) the bases upon which the respondent contested the terms of the order.

The summary must be signed by the Presiding Officer.

(b) The Presiding Officer will evaluate the entire administrative record and, on the basis of that review and the representations of EPA and respondent at the hearing, shall prepare and file a statement recommending to the Regional Administrator that the initial order be modified, withdrawn, or issued without modification. The statement must address all significant arguments raised by respondent and provide support, through citation to material contained in the record or adduced at the hearing, for any decision to modify a term of the order, withdraw the order, or issue the order without change.

(c) The statement shall be based on the administrative record, including the hearing and supplemental submissions. If the Presiding Officer finds that there is not adequate support in the record for the initial order, the Presiding Officer may recommend that the order be modified and issued on terms that are supported by the record, or withdrawn.

Subpart C—Hearings on Orders Requiring Corrective Measures

§ 24.13 Qualifications of Presiding Officer; ex parte discussion of the proceeding.

(a) *Qualifications of Presiding Officer.* The Presiding Officer shall be either the Regional Judicial Officer, or another attorney employed by the Agency who did not draft or in any way assist in drafting the section 3008(h) initial order that is the subject of the proceeding.

(b) *Ex parte discussion of the proceeding.* If, after issuance of the initial order and prior to issuance of the

final order, the Regional Administrator, Presiding Officer, or any person who will advise these officials in the decision on the case receives from or on behalf of any party in an ex parte communication information which is relevant to the decision on the case and to which other parties have not had an opportunity to respond, a summary of such information shall be served on all other parties, who shall have an opportunity to reply to same within ten (10) days of service of the summary.

§ 24.14 Scheduling the hearing; pre-hearing submissions by the parties.

(a) The Presiding Officer shall establish an expeditious schedule for—

(1) The submission by respondent of a memorandum, with appropriate affidavits and exhibits, stating and supporting respondent's position on the facts, law and relief, specifying the bases upon and manner in which such determinations or relief provisions, if erroneous, require modification or withdrawal or the order;

(2) Submission of a response by EPA; and

(3) A public hearing.

Subject to § 24.14(b), a hearing shall be scheduled within 45 days of the order setting the schedule.

(b) *Postponement of the hearing.* The Presiding Officer, as appropriate, may grant an extension of time for the filing of any document, other than a request for a hearing under § 24.05(a), or may grant an extension of time for the conduct of the hearing, upon written request of either party, for good cause shown and after consideration of any prejudice to other parties.

(c) *Respondent's pre-hearing submission.* In accordance with the schedule set by the Presiding Officer, the respondent shall file a memorandum stating and supporting respondent's position on the facts, law and relief. The memorandum must identify each factual allegation and all issues regarding appropriateness of the terms of the relief in the initial order that respondent contests and for which respondent requests a hearing. The memorandum must clearly state respondent's position with respect to each such issue. Respondent must also include any proposals for modification of the order. Respondent must submit affidavits and exhibits which support any of its factual contentions on relief and defenses. The memorandum shall also present any arguments on the legal conclusions contained in the order.

(d) *Written questions to EPA.* The respondent may file a request with the Presiding Officer for permission to submit written questions to the EPA Regional Office issuing the order concerning issues of material fact in the order.

(1) Requests shall be accompanied by the proposed questions. In most instances, no more than twenty-five (25) questions, including subquestions and subparts, may be posed. The request and questions must be submitted to the Presiding Officer at least twenty-one (21) days before the hearing.

(2) The Presiding Officer may direct EPA to respond to such questions as he designates, if he determines that such questions are required for full disclosure and adequate resolution of the facts. No questions shall be allowed regarding matters of policy or privileged internal communications. The Presiding Officer shall grant, deny, or modify such requests expeditiously. If a request is granted, the Presiding Officer may revise questions and may limit the number and scope of questions. Questions may be deleted or revised in the discretion of the Presiding Officer for reasons, which may include the fact that he finds the questions to be irrelevant, redundant, unneccessary, or an undue burden on the Agency. The Presiding Officer shall transmit the questions as submitted or as modified to EPA. EPA shall respond to the questions within fourteen (14) calendar days of service of the questions by the Presiding Officer, unless an extension is granted.

(e) *Submission of additional information.* The Presiding Officer shall have the discretion to order either party to submit additional information in whatever form he deems appropriate. The Presiding Officer may issue subpoenas for the attendance and testimony of persons and the production of relevant papers, books, and documents. Since these hearing procedures provide elsewhere that the parties are not to engage in direct or cross-examination of witnesses and must make any factual representations in writing by affidavit, the subpoena power is to serve only as an adjunct to the Presiding Officer's authority to ask questions and otherwise take steps to clarify factual matters which are in dispute. Upon request of the respondent, the Presiding Officer may, in his discretion, allow submittal by the respondent of additional information in support of its claim, if it is received by the Clerk and petitioner at least five (5) business days before the hearing.

(f) *Location of hearing.* The hearing shall be held in the city in which the relevant EPA Regional Office is located, unless the Presiding Officer determines that there is good cause to hold it in another location.

§ 24.15 Hearing; oral presentations and written submissions by the parties.

(a) The Presiding Officer shall establish the agenda for the hearing and conduct the hearing in a fair and impartial manner, take action to avoid unnecessary delay in the disposition of the proceedings, and maintain order. The Presiding Officer shall permit oral statements on behalf of the respondent and EPA. The Presiding Officer may address questions to the respondent or the EPA representative during the hearing. Although oral statements will be permitted at the hearing, unless otherwise directed by the Presiding Officer, all factual matters to be presented by respondent must be in writing by affidavit. Apart from questions by the Presiding Officer, no direct examination or cross-examination shall be allowed.

(b) Upon commencement of the hearing, a representative of EPA shall introduce the order and the record supporting issuance of the order, and summarize the basis for the order. The respondent may respond to the administrative record and offer any facts, statements, explanations or documents which bear on any issue for which the hearing has been requested. Any such presentation by respondent may include new documents only to the extent that respondent can demonstrate that, through no fault of its own, such documents could not have been submitted before hearing in accordance with the requirements of § 24.14 (c) and (e). The Agency may then present matters solely in rebuttal to matters previously presented by the respondent. The Presiding Officer may allow the respondent to respond to any such rebuttal submitted. The Presiding Officer may exclude repetitive or irrelevant matter. The Presiding Officer may upon request grant petitioner leave to respond to submissions made by respondent pursuant to this paragraph or § 24.14(e).

§ 24.16 Transcript or recording of hearing.

(a) The hearing shall be either transcribed stenographically or tape recorded. Upon written request, such transcript or tape recording shall be made available for inspection or copying.

(b) The transcript or recording of the hearing and all written submittals filed with the Clerk by the parties subsequent to initial issuance of the order including post-hearing submissions will become part of the administrative record for the proceeding, for consideration by the Presiding Officer and Regional Administrator.

§ 24.17 Presiding Officer's recommendation.

The Presiding Officer will, as soon as practicable after the conclusion of the hearing, evaluate the entire administrative record and, on the basis of the administrative record, prepare and file a recommended decision with the Regional Administrator. The recommended decision must address all material issues of fact or law properly raised by respondent, and must recommend that the order be modified, withdrawn or issued without modification. The recommended decision must provide an explanation, with citation to material contained in the record, for any decision to modify a term of the order, to issue the order without change or to withdraw the order. The recommended decision shall be based on the administrative record. If the Presiding Officer finds that there is not adequate support in the record for any contested required action, the Presiding Officer may recommend that the order be modified and issued on terms that are supported by the record, or withdrawn.

Subpart D—Post-Hearing Procedures

§ 24.18 Final decision.

As soon as practicable after receipt of either the summary and statement or the recommended decision, the Regional Administrator will either sign, or modify such statement or recommended decision, and issue it as a final decision. The Regional Administrator's decision shall be based on the administrative record.

§ 24.19 Final order.

If the Regional Administrator does not adopt portions of the initial order, or finds that modification of the order is necessary, the signatory official on the initial administrative order shall modify the order in accordance with the terms of the final decision and file and serve a copy of the final administrative order. If the Regional Administrator finds the initial order appropriate as originally issued, the final decision shall declare the initial administrative order to be a final order, effective upon service of the final decision. If the Regional Administrator declares that the initial order must be withdrawn, the signatory official on the initial administrative order will file and serve a withdrawal of the initial administrative order. This may be done without prejudice.

§ 24.20 Final agency action.

The final decision and the final administrative order are final agency actions that are effective on filing and service. These actions are not appealable to the Administrator.

[FR Doc. 87-17739 Filed 8-5-87; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 763

[OPTS-62045C; FRL-3242-3]

Asbestos-Containing Materials in Schools; Public Hearing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Public Hearing.

SUMMARY: EPA has scheduled a public hearing to hear comments on the proposed rule to require all Local Education Agencies to identify asbestos-containing materials in their school buildings, develop asbestos management plans, and take appropriate actions to control release of asbestos fibers.

DATES: The hearing will be held on Tuesday, August 25, and Wednesday, August 26, 1987, from 9 a.m. to 5 p.m.

ADDRESS: The hearing will be held at: Holiday Inn, Columbia South Room, 550 C St., SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room E-543, 401 M St., SW., Washington, DC 20460, Telephone: (202-554-1404).

SUPPLEMENTARY INFORMATION: EPA has proposed a rule to require all Local Education Agencies to identify asbestos-containing materials in their school buildings, develop asbestos management plans, and take appropriate actions to control release of asbestos fibers. The proposed rule was published in the Federal Register of April 30, 1987 (52 FR 15820). The proposal allowed 60 days for public comment, with comments due by June 29, 1987. Seven state attorneys general, two city boards of education, and other persons have requested a public hearing. Requests to testify at the hearing should be submitted by August 20, 1987, to Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, DC 20460.

Dated: July 30, 1987.

John W. Melone,

Director, Chemical Control Division.

[FR Doc. 87-17740 Filed 7-31-87; 3:54 am]
BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA-6915]

Proposed Flood Elevation Determinations; Arizona et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed modified base flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

DATES: The period for comment will be ninety (90) days following the second publication of the proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2768.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance

premimum rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. The proposed modified base flood elevations for selected locations are:

PROPOSED MODIFIED BASE FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Arizona	Town of Eagar, Apache County	Water Canyon	At the confluence with Little Colorado River	None	*7,012
			At Highway 260	None	*7,035
			At the confluence of Dry Canyon	None	*7,045
			At 4th Street	None	*7,107
			At River Road	None	*7,112
			At 6th Street	None	*7,142
			At School Bus Road	None	*7,194
			At Burk Street	None	*7,204
			At Big Ditch	None	*7,215
			At 10th Street	None	*7,219
			Approximately 3,000 feet upstream of 10th Street	None	*7,294
			Approximately 4,600 feet upstream of 10th Street (limit of detailed study).	None	*7,332
		Dry Canyon	At 4th Street	None	*7,082
			At Farm Road	None	*7,104
			At Amity Ditch	None	*7,113
			At School Bus Road	None	*7,139
			At River Road	None	*7,173
			At Spanish Trail Road	None	*7,218
			Approximately 3,100 feet upstream of Spanish Trail Road (limit of detailed study).	None	*7,280
		Robertson Hollow	At Big Ditch (limit of detailed study)	None	*7,210
			Approximately 1,000 feet upstream of Big Ditch	None	*7,231
			Approximately 2,000 feet upstream of Big Ditch	None	*7,246
			At Flat Top Road	None	*7,278
			Approximately 220 feet upstream of Flat Top Road (limit of detailed study).	None	*7,281

Maps are available for inspecion at the Town Hall, Town of Eagar, Eagar, Arizona.

Send comments to The Honorable George R. Pena, Mayor, Town of Eagar, Box 70, Eagar, Arizona 85925.

	Graham County (unincorporated areas).	Frye Creek	At the Town of Thatcher western corporate limits	*3,087	*3,086
			Approximately 1,000 feet upstream of Town of Thatcher western corporate limits.	*3,105	*3,104
			Approximately 2,000 feet upstream of Town of Thatcher western corporate limits.	*3,126	*3,128
			Approximately 3,000 feet upstream of Town of Thatcher western corporate limits.	*3,151	*3,148
			Approximately 4,000 feet upstream of Town of Thatcher western corporate limits.	None	*3,177
			Approximately 4,600 feet upstream of Town of Thatcher western corporate limits (limit of detailed study).	None	*3,191
		Frye Creek Tributary	At the Town of Thatcher southern corporate limits	*3,089	*3,090
			Approximately 1,000 feet upstream of Town of Thatcher southern corporate limits.	*3,102	*3,103
			Approximately 2,000 feet upstream of Town of Thatcher southern corporate limits.	*3,115	*3,115
			Approximately 3,000 feet upstream of Town of Thatcher southern corporate limits.	*3,131	*3,132
			Approximately 3,600 feet upstream of Town of Thatcher southern corporate limits (limit of detailed study).	None	*3,141
		School District Wash	Approximately 4,200 feet upstream of Frye Creek Dam (downstream limit of detailed study).	None	*3,002
			Approximately 6,400 feet upstream of Frye Creek Dam	None	*3,027
			At Golf Course Road	None	*3,048
			Approximately 2,000 feet upstream of Golf Course Road.	None	*3,072
			Approximately 4,000 feet upstream of Golf Course Road.	None	*3,096
			Approximately 5,900 feet upstream of Golf Course Road (limit of detailed study).	None	*3,123
		Spring Canyon	At the Town of Thatcher western corporate limits	None	*3,005
			Confluence of Frye Creek	None	*3,013
			Confluence of Spring Canyon Tributary	None	*3,028

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 2,000 feet upstream of confluence of Spring Canyon.	None	*3,049
			Approximately 4,000 feet upstream of confluence of Spring Canyon.	None	*3,074
			Approximately 6,400 feet upstream of confluence of Spring Canyon.	None	*3,110
			Approximately 8,800 feet upstream of confluence of Spring Canyon Tributary.	None	*3,146
		Spring Canyon Tributary	Confluence with Spring Canyon	None	*3,027
			Approximately 2,000 feet upstream of confluence with Spring Canyon.	None	*3,040
			Approximately 4,000 feet upstream of confluence with Spring Canyon.	None	*3,060
			Approximately 6,000 feet upstream of confluence with Spring Canyon.	None	*3,085
			Approximately 8,000 feet upstream of confluence with Spring Canyon.	None	*3,118
			Approximately 10,000 feet upstream of confluence with Spring Canyon.	None	*3,161
			Approximately 11,100 feet upstream of confluence with Spring Canyon (limit of detailed study)	None	*3,192
Maps are available for inspection at the County Courthouse, 800 Main Street, Safford, Arizona.					
Send comments to The Honorable Ben L. Smith, Chairman, Graham County Board of Supervisors, 800 Main Street, Safford, Arizona 85546.					
California	City of Chula Vista San Diego County.	San Diego Bay	At Chula Vista	*5	*6
		Telegraph Canyon Creek	Approximately 3,250 feet southwest of the intersection of Telegraph Canyon Road and Otay Lakes Road.	None	*377
			Approximately 1,150 feet northeast of the intersection of Rutgers Avenue and Telegraph Canyon Road.	None	*456
			Approximately 1,400 feet southwest of the intersection of Otay Lakes Road and Janal Drive.	None	*499
			Approximately 425 feet northeast of the intersection of Otay Lakes Road and Rancho Janal Drive.	None	*530
Maps are available for inspection at the City of Chula Vista Engineering Department, 276 Fourth Avenue, Chula Vista, California.					
Send comments to The Honorable Gregory R. Cox, Mayor, City of Chula Vista, 276 Fourth Avenue, Chula Vista, California 92010.					
	City of Foster City, San Mateo County.	San Francisco Bay	At Foster City	*6	*7
Maps are available for inspection at the City Hall, 610 Foster City Boulevard, Foster City, California.					
Send comments to The Honorable John Oliver, Mayor, City of Foster City,10 Foster City Boulevard, Foster City, California 94404.					
	City of Milpitas, Santa Clara County.	Upper Penitencia Creek Overflow	From a point approximately 5,100 feet north of Redwood Avenue to a point approximately 100 feet north of Redwood Avenue between Nimitz Freeway to the west and lower Penitencia Creek to the east.	*10	*12
			At Chestnut Avenue	#1	*14
			At Serra Way	#1	*17
			Approximately 100 feet south of Sylvia Avenue	*17	*20
			From a point approximately 200 feet south of Sylvia Avenue to a point approximately 150 feet north of Capital Avenue between Nimitz Freeway to the west and lower Penitencia Creek to the east.	#1	#2
			From a point approximately 150 feet north of Capital Avenue to Lower Penitencia Creek.	*26	#1
			From lower Penitencia Creek to the southern corporate limits between the Southern Pacific Railroad and the Union Pacific Railroad.	*33	#1
		San Francisco Bay	At shoreline	*7	*9
		Scott Creek Overflow	Along Union Pacific Railroad on eastern side, between northern corporate limits and Dixon Landing Road.	None	17
Maps are available for inspection at 455 East Calaveras Boulevard, Milpitas, California.					
Send comments to The Honorable Robert Livengood, Mayor, City of Milpitas, 455 East Calaveras Boulevard, Milpitas, California 95035.					
	City of San Jacinto, Riverside County.	Bautista Wash	At Seventh Street (downstream corporate limits)	None	*1,522
			At Palm Avenue	None	*1,525
			At Grand Avenue	None	*1,526
			At State Street	None	*1,532
			At Atchison Topeka and Santa Fe Railroad	None	*1,536
			At Santa Fe Avenue	*1,546	*1,546
Maps are available for inspection at the City Hall, 201 East Main Street, San Jacinto, California.					
Send comments to The Honorable Wayne Stuart, Mayor, City of San Jacinto, P.O. Box 488, San Jacinto, California 92383					
Colorado	City of Wheat Ridge, Jefferson County.	Lena Gulch	Downstream of Kipling Street	*5,361	*5,361
			Upstream of Kipling Street	*5,367	(**)
			Downstream of Parfet Street	*5,403	(**)
			Upstream of Parfet Street	*5,408	5,406
			Approximately 1,500 feet downstream from Simms Street.	*5,416	*5,416

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
100-Year Flood Contained in Channel					
Maps are available for inspection at the City Hall, 7600 West 29th Avenue, Wheat Ridge, California.					
Send comments to The Honorable Frank Stites, Mayor, City of Wheat Ridge, P.O. Box 638, Wheat Ridge, California 0034.					
Connecticut	South Windsor, Town, Hartford County.	Farm Brook	Downstream side of Oakland Road Bridge	*125	*127
Maps available for inspection at the Town Clerk's Office, Town Hall, South Windsor, Connecticut.					
Send comments to The Honorable Richard Sartor, Manager of the Town of South Windsor, Hartford County, 1209 Sullivan Avenue, South Windsor, Connecticut 06074.					
Georgia	City of Darien, McIntosh County	Atlantic Ocean/Altamaha River/ Darien River	About 500 feet west of the intersection of Broad Street and Screven Street	*11	*12
			About 0.56 miles south of the intersection of Wayne Street and Second Street	*11	*14
Maps available for inspection at the City Hall, Darien, Georgia.					
Send comments to The Honorable George Scotty Rogers, Mayor, City of Darien, City Hall, P.O. Box 452, Darien, Georgia 31305.					
Idaho	Benewah County, unincorporated areas.	St. Joe River	Approximately 8.8 miles downstream of U.S. Highway 95A Bridge	None	*2,136
			Approximately 4.9 miles downstream of U.S. Highway 95A Bridge	None	*2,136
			Approximately 3.4 miles downstream of U.S. Highway 95A Bridge	None	*2,137
			Approximately 2.7 miles downstream of U.S. Highway 95A Bridge	None	*2,138
			Approximately 0.4 mile downstream of U.S. Highway 95A Bridge	*2,139	*2,138
Maps are available for inspection at the Building Inspector's Office, Benewah County Courthouse, St. Maries, Idaho 83861.					
Send comments to Mr. Jack A. Buell, Chairman, Benewah County Board of Commissioners, Benewah County Courthouse, St. Maries, Idaho 83861.					
Illinois	City of Cairo, Alexander County	Upper Mississippi River	About 0.85 mile downstream of U.S. Route 60	*329	*331
			About 1,700 feet upstream of Interstate 57	*334	*335
		Ohio River	About 1 mile downstream of U.S. Route 60	*329	*331
			About 1,200 feet upstream of Illinois Central Gulf Railroad	*332	*331
		Ponding from Interior Drainage	At Goose Pond Pumping Station	*312	*307
Maps available for inspection at the City Hall, 1501 Washington Avenue, Cairo, Illinois.					
Send comments to The Honorable Allen E. Moss, Mayor, City of Cairo, City Hall, 1501 Washington Avenue, P.O. Box 393, Cairo, Illinois 62914.					
	Unincorporated Areas of Monroe County.	Carr Creek	About 0.26 mile downstream of Bluff Road	None	*428
			About 550 feet upstream of Bluff Road	None	*423
			About 0.92 mile upstream of Bluff Road	None	*431
		Palmer Creek	About 1.45 miles downstream of Bluff Road	None	*403
			Just downstream of Bluff Road	None	*421
			Just upstream of Bluff Road	None	*424
			Just downstream of Illinois Central Gulf Railroad	None	*430
			Just upstream of Illinois Central Gulf Railroad	None	*425
			About 0.26 mile upstream of Rueck Road	None	*460
		Palmer Creek Tributary	At confluence with Palmer Creek	None	*435
			About 0.2 mile downstream of Rueck Road	None	*440
			Just downstream of Abandoned Railroad	None	*461
			Just upstream of Abandoned Railroad	None	*474
Maps available for inspection at the County Courthouse, Planning Department, 100 South Main Street, Waterloo, Illinois.					
Send comments to The Honorable Carl Upchurch, Chairman, Monroe County Board, County Courthouse, 100 South Main Street, Waterloo, Illinois 62298.					
Indiana	City of Indianapolis, Marion County.	State Ditch	At mouth	None	*672
			About 400 feet upstream of Bradbury Avenue	None	*782
		Beerley Creek	At confluence with State Ditch	None	*693
			About 0.66 mile upstream of Lynhurst Drive	None	*732
		Mars Ditch-Drexel Run	At confluence with State Ditch	None	*697
			Just upstream of Lynhurst Drive	None	*724
			About 1,500 feet upstream of Lynhurst Drive	None	*732
		Howland Ditch	Just upstream of Allison Road	*760	*760
			About 0.84 mile upstream of 62nd Street	None	*806
		Neeld Ditch	At confluence with Eagle Creek	*692	*692
			Just downstream of Mickley Avenue	None	*752
		East Fork White Lick Creek	About 0.67 mile downstream of U.S.Route 40	None	*738
			Just downstream of Raceway Road	None	*805
		Pleasant Run Creek	About 0.37 mile downstream of State Route 37	None	*808
			Just downstream of County Line Road	None	*678
Maps available for inspection at 2501 City County Building, Indianapolis, Indiana.					
Send comments to The Honorable William Hudnutt III, Mayor, City of Indianapolis, 2501 City County Building, Indianapolis, Indiana 46402.					
Louisiana	West Monroe, City, Ouachita Parish	Black Bayou	Downstream side of Glenwood Drive	*74	*73
			Approximately 3,000 feet upstream of Glenwood Drive	*82	*80
		Gravel Pit Branch	Approximately 100 feet upstream of confluence with Black Bayou	*81	*80
			Approximately 150 feet upstream of Interstate Route 20	*87	*86

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) Existing	Modified
		Highland School Branch	At confluence with Black Bayou	*77	*76
			Approximately 3,050 feet upstream of McMillan Road	*87	*86
		Black Bayou Tributary	Approximately 50 feet upstream of confluence with Black Bayou	*81	*80
			Approximately 50 feet downstream of corporate limits	*93	*92

Maps available for inspection at the City Engineer's Office, P.O. Box 2105, Monroe, Louisiana.

Send comments to The Honorable Dave Norris, Mayor of the City of West Monroe, Ouachita Parish, 2305 North Seventh Street, West Monroe, Louisiana 71291.

Maryland	Frederick, City, Frederick County	Monocacy River Tributary No. 8	Approximately 340 feet downstream of Fairview Avenue	*312	*313
			Downstream side of Fairview Avenue	*317	*321
			Upstream side of Fairview Avenue	None	*322
			Approximately 650 feet upstream of Fairview Avenue	None	*333

Maps available for inspection at the City Hall, 101 N. Court Street, Frederick, Maryland.

Send comments to The Honorable Ronald N. Young, Mayor of the City of Frederick, Frederick County, 101 N. Court Street, Frederick, Maryland 21701.

Massachusetts	Ludlow, Town, Hampden County	Chicopee River	380 feet upstream of Cottage Avenue	*226	*229
			Approximately 509 feet upstream of Cottage Avenue	*226	*229

Maps available for inspection at 488 Chapin Street, Ludlow, Massachusetts.

Send comments to The Honorable John B. Randall, Chairman of the Board of Selectmen of the Town of Ludlow, Hampden County, 488 Chapin Street, Ludlow, Massachusetts 01056.

	Wilbraham, Town, Hampden County.	Chicopee River	Approximately 380 feet upstream of Cottage Avenue	*226	*229
			Approximately 500 feet upstream of Cottage Avenue	*226	*229

Maps available for inspection at the Town Office Building, 240 Springfield Street, Wilbraham, Massachusetts.

Send comments to The Honorable Melvin Kleckner, Executive Secretary of the Town of Wilbraham, Hampden County, Town Office Building, 240 Springfield Street, Wilbraham, Massachusetts 01095.

New Jersey	Bergenfield, Borough, Bergen County.	Hirschfield	Brook Downstream side of North Prospect Avenue	*44	*45
			Upstream side of Coopers Pond Dam	*49	*50
			Approximately 80 feet upstream of West Church Street	*55	*54
			Approximately 40 feet upstream of West Main Street	*58	*55
			Approximately 70 feet upstream of Roosevelt Avenue	*64	*58
			Approximately 300 feet upstream of downstream CONRAIL bridge	*68	*69
		Hirschfield Brook Tributary	Approximately 140 feet downstream of downstream side of culvert	*56	*57
			Approximately 30 feet downstream of Dick Street	*73	*70
			Upstream side of New Jersey Avenue	*86	*86

Maps available for inspection at the Borough Clerk's Office, 198 North Washington Avenue, Bergenfield, New Jersey.

Send comments to The Honorable Louis C. Goetting, IV, Administrator of the Borough of Bergenfield, Bergen County, 198 North Washington Avenue, Bergenfield, New Jersey 07621.

	Dumont, Borough, Bergen County.	Hirschfield Brook	Approximately 600 feet downstream of Lafayette Avenue	*22	*23
			Approximately 230 feet downstream of West Madison Avenue	*34	*35
		Hirschfield Brook Tributary	Downstream corporate limits	None	*88
			Upstream side of Rucereto Avenue	None	*115

Maps available for inspection at 50 Washington Avenue, Dumont, New Jersey.

Send comments to The Honorable William Dochicchio, Mayor of the Borough of Dumont, Bergen County, 50 Washington Avenue, Dumont, New Jersey 07628.

	Garwood, Borough, Union County.	Garwood Brook	Upstream side of Oak Street	*79	*78
			At upstream corporate limits	*96	*94

Maps available for inspection at the Construction Department, Municipal Building, 403 South Avenue, Garwood, New Jersey.

Send comments to The Honorable Georgiana Gurnieri, Mayor of the Borough of Garwood, Union County, Municipal Building, 403 South Avenue, Garwood, New Jersey 07027.

	Livingston, Township, Essex County.	Canoe Brook	Approximately 520 feet upstream of confluence with Bear Brook	*225	*224
			Upstream side of West Oakwood Avenue	*277	*275
			Upstream side of Mount Pleasant Avenue	*315	*317
			Approximately 0.5 mile upstream of Laurel Avenue	*440	*435

*Nation Sea Level

Maps available for inspection at the Township Engineer's Office, 357 South Livingston Avenue, Livingston, New Jersey.

Send comments to The Honorable Charles Tahaney, Manager of the Township of Livingston, Essex County, 357 South Livingston Avenue, Livingston, New Jersey 07039.

Oklahoma	Catoosa, City, Rogers County	Bird Creek	Most downstream corporate limit	None	*572
			Approximately 630 feet upstream of Burlington Northern Railroad	None	*575
		Spunky Creek	Confluence with Verdigris River	*575	*571
			Approximately 600 feet downstream of U.S. Highway 66	*575	*572

Maps available for inspection at the City Hall, P.O. Box 190, Catoosa, Oklahoma.

Send comments to The Honorable Terry Whiteley, Mayor of the City of Catoosa, Rogers County, P.O. Box 190, Catoosa, Oklahoma 74015.

	Oklahoma City, City, Oklahoma County.	Tributary 1 of Canadian River	Approximately 0.6 mile downstream of S.W. 122nd Street	*1,190	*1,189
			At upstream side of S.W. 119th	1,204	*1,202
			Approximately 550 feet downstream of S.W. 112th	*1,213	*1,212

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Tributary 4 of Tributary 1 of Canadian River.	At confluence with Tributary 1 of N. Canadian River	*1,198	*1,194
			Approximately 2,300 feet upstream of S.W. 119th Street bridge.	*1,211	*1,212
			Approximately 0.65 mile upstream of S.W. 119th Street bridge.	*1,219	*1,220

Maps available for inspection at the City Engineer's Office, 200 N. Walker, Oklahoma City, Oklahoma.

Send comments to The Honorable Andrew Coats, Mayor of the City of Oklahoma City, Oklahoma County, 200 N. Walker, Suite 102, Oklahoma City, Oklahoma 73102.

Oregon	Unincorporated Areas, Lane County.	Coast Fork, Willamette River	Approximately 5,830 feet downstream of State Highway 99.	*616	*616
			Approximately 3,175 feet downstream of State Highway 99.	*620	*621
			Approximately 825 feet downstream of State Highway 99.	*631	*629
			Downstream of Woodson Place	*635	*635
			Downstream of Main Street	*642	*641
			Approximately 170 feet downstream of Harrison Avenue.	*647	*647
			Downstream of State Highway 99	*653	*651
			Downstream of the Southern Pacific Railroad	*653	*652
			Approximately 2,550 feet upstream of the Southern Pacific Railroad.	*653	*653
			Downstream of London Road	*660	*660
		Long Tom River	Approximately 2,400 feet upstream of State Highway 126.	*385	*385
			Approximately 3,600 feet upstream of State Highway 126.	*390	*395
			Approximately 9,000 feet upstream of State Highway 126.	*387	*387

Maps are available for inspection at the Department of Public Works, 125 East 8th Street, Eugene, Oregon.

Send comments to The Honorable Chuck Ivey, Chairman, Lane County Board of Commissioners, Eugene, Oregon 97401.

Pennsylvania	Caln, Township, Chester County	Valley Run	Approximately 1,340 feet upstream of Bondsville Road	*285	*284
			Downstream side of Barley Sheaf Road	*318	*319

Maps available for inspection at the Municipal Building, 253 Municipal Drive, Thorndale, Pennsylvania.

Send comments to Mr. Charles O'Donnell, President of the Township of Caln Board of Supervisors, P.O. Box 147, Thorndale, Pennsylvania 19372.

Texas	Cedar Hill, (City), Dallas and Ellis Counties.	Bee Branch	At downstream side of Duncanville Road	None	*667
			At downstream side of dam	None	*706
			Approximately 500 feet upstream of Calvert Drive	None	*740

Maps available for inspection at the City Manager's Office, Cedar Hill, Texas.

Send comments to The Honorable Kenneth Lander, Mayor of the City of Cedar Hill, Dallas and Ellis Counties, P.O. Box 96, Cedar Hill, Texas 75104.

	Fort Bend County, unincorporated areas.	Dry Creek	At Bergen Road	None	*74
			Approximately 650 feet upstream of FM 2977	None	*82
			At County boundary	*91	*102

Maps available for inspection at the Fort Bend County Judge's Office, County Courthouse, Richmond, Texas.

Send comments to The Honorable Jodie Stavinoha, Fort Bend County Judge, P.O. Box 368, Richmond, Texas 77469.

	Friendswood, City, Galveston County.	Mary's Creek	At confluence with Clear Creek	*25	*25
			Approximately 300 feet downstream of Dunbar Estates Drive.	*30	*23
			At upstream corporate limits	*32	*25
		Cowart Creek	At confluence with Clear Creek	*22	*19
			Approximately 320 feet upstream of Sunset Drive	*24	*20
			At upstream corporate limits	*31	*30
		Chigger Creek	At confluence with Clear Creek	*16	*15
			Approximately 4,000 feet downstream of Windwood Drive.	*28	*25
			At upstream corporate limits	*36	*37
		Clear Creek (A100-00-00)	At downstream corporate limits	*15	*14
			Upstream side of Whispering Pines	*23	*20
			At confluence of Mary's Creek	*25	*23
			At upstream corporate limits	*33	*32
		Turkey Creek (A119-00-00)	At confluence with Clear Creek	None	*26
			At upstream corporate limits	None	*26
		Tributary 0.16 to Turkey Creek (A119-02-00).	At confluence with Turkey Creek	None	*26
			At upstream corporate limits	None	*29
		Halls Road Ditch (A120-00-00)	At confluence with Clear Creek	None	*27
			At upstream corporate limits	None	*30
		Cedar Gully (A116-00-00)	At confluence with Clear Creek	None	*23
			At upstream corporate limits	None	*22

Maps available for inspection at the Public Works Building, 1306 Deepwood, Friendswood, Texas.

Send comments to The Honorable Ralph L. Lowe, Mayor of the City of Friendswood, Galveston County, 109 Willowick, Friendswood, Texas 77546.

	Montgomery County, unincorporated areas.	Bens Branch	At County boundary	*74	*72

BEST COPY AVAILABLE

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

[illegible]	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Bens Branch Tributary No. 1	Approximately 3,000 feet downstream of Sorters Road	*88	*90
			At confluence with Bens Branch	*78	*77
		Bens Branch Tributary No. 2	At confluence with Bens Branch	*84	*81
			Approximately 700 feet upstream of Martin Drive	*84	*83
Maps available for inspection at J.D. Stanton's office, 326½ North Main, Conroe, Texas.					
Send comments to The Honorable Al Stahl, Montgomery County Judge, County Courthouse, Conroe, Texas 77301.					
	Ovilla (City), Dallas and Ellis Counties (FEMA Docket No. [illegible]).	Red Oak Creek	At downstream corporate limits	*589	
			*	*	
			Upstream side of State Route 664	*604	
			Upstream side of Water Street	*619	
			At upstream corporate limits	*651	
		Shiloh Branch	At confluence with Red Oak Creek	*606	
			Upstream side of Stock Tank Dam	*634	
			At upstream corporate limits	*637	
		Little Creek	Approximately 520 feet downstream of downstream corporate limits.	*590	
			At upstream corporate limits	*596	
Maps available for inspection at the City Hall, Cockar Hill and Main, Ovilla, Texas.					
Virginia	Waynesboro, City, Independent City.	Pratt's Run	At confluence with South River	None	*1,307
			Approximately 1.1 miles upstream of confluence with South River.	None	*1,340
			At upstream corporate limits	None	*1,385
		Jones Hollow	At confluence with South River	*1,250	*1,284
			Approximately 0.9 mile upstream of confluence with South River.	*1,315	*1,320
			Approximately 1,200 feet upstream of Kirby Avenue	*1,327	*1,336
			Approximately 0.5 mile upstream of Kirby Avenue	None	*1358
		South River	Approximately 1.1 miles downstream of corporate limits.	None	*1,258
			Approximately 200 feet downstream of Second Street	*1,273	*1,272
			At upstream corporate limits	*1,314	*1,332
Maps available for inspection at 250 South Wayne Avenue, Waynesboro, Virginia.					
Send comments to The Honorable Thomas L. Gorsuch, Mayor of the City of Waynesboro, P.O. Box 1028, Waynesboro, Virginia 22980.					
Wisconsin	Unincorporated Areas of Fond du Lac County.	De Navau Creek	About 420 feet downstream of County Highway V	*784	*783
			About 370 feet upstream of U.S. Highway 45	*818	*820
			About 0.7 mile upstream of U.S. Highway 45	*828	*829
Maps available for inspection at the Planning Department, 160 South Macy Street, Fond du Lac, Wisconsin.					
Send comments to The Honorable Anita Anderegg, County Executive, Fond du Lac County, 160 South Macy Street, Fond du Lac, Wisconsin 54935.					
	Unincorporated Areas of Sheboygan County.	Fishermen's Creek	At confluence with Black River	*584	*584
			About 640 feet upstream of U.S. Highway 141	None	*635
Maps available for inspection at the Planning Department, 615 North Sixth Street, Sheboygan, Wisconsin.					
Send comments to The Honorable Harold Lindemann, Chairman, Sheboygan County Board, 615 North Sixth Street, Sheboygan, Wisconsin 53081.					
Wyoming	City of Gillette, Campbell County	Stonepile Creek	Approximately 100 feet downstream of Interstate Highway 90.	*4,504	*4,504
			Approximately 50 feet upstream of Interstate Highway 90.	*4,508	(**)
			Approximately 100 feet upstream of Stanley Avenue	*4,516	(**)
			Approximately 150 feet downstream of Gurley Avenue	*4,520	(**)
			Just upstream of N. Brooks Avenue	*4,534	(**)
			Approximately 50 feet upstream of N. Gillette Avenue	*4,540	(**)
			Just upstream of Burma Avenue	*4,558	(**)
			Approximately 220 feet downstream of Highway 14/16	*4,573	(**)
			Approximately 300 feet upstream of Highway 14/16	*4,578	*4,578
** 100-year flood contained in the channel.					
Maps are available for inspection at the City Hall, 201 East 5th Street, Gillette, Wyoming 82716.					
Send comments to The Honorable Herbert A. Carter, City of Gillette, P.O. Box 3003, Gillette, Wyoming 82716.					

Issued: July 29, 1987.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 87-17714 Filed 8-5-87; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-259, RM-5693]

Radio Broadcasting Services; Steamboat Springs, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by KBCR, Inc., proposing the substitution of FM Channel 245C2 for Channel 244A at Steamboat Springs, Colorado, and modification of the license of Station KSBT(FM) accordingly, to provide that community with its first wide-coverage area FM service.

DATES: Comments must be filed on or before September 21, 1987, and reply comments on or before October 6, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: John G. Gayer, KBCR, Inc., P.O. Box 881720, Steamboat Springs, CO 80488.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-259, adopted July 9, 1987, and released July 30, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-17616 Filed 8-5-87; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 52, No. 151
Thursday, August 6, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE COMMITTEE OF THE FEDERAL REGISTER

Sale of Magnetic Tapes by the Superintendent of Documents, Government Printing Office

AGENCY: Administrative Committee of the Federal Register (ACFR).

ACTION: Notice.

SUMMARY: The sale of magnetic tapes produced by the Government Printing Office to photocompose the daily **Federal Register** and the annual Code of Federal Regulations, ACFR publications, has been transferred to the Superintendent of Documents at GPO. New prices for the tapes have been established.

FOR FURTHER INFORMATION CONTACT: Sarah S. Wilson, Government Printing Office, telephone 202–275–3328.

SUPPLEMENTARY INFORMATION: GPO has transferred to the Superintendent of Documents the sale of all publication data tapes previously available through its Customer Service Staff. The ACFR, which in 1979 had authorized sale of the **Federal Register** and Code of Federal Regulations tapes by the Customer Service Staff, has now approved sale of the tapes by the Superintendent of Documents at the new prices.

Each daily issue of the **Federal Register** on magnetic tape is available three working days after the issue is published. The price is $175 for a daily tape, $18,750 for a six month subscription and $37,500 for an annual subscription.

Each magnetic tape for the Code of Federal Regulations will be available after the paper edition is published. The price is $125 for a tape and $21,750 for an annual subscription. The number of tapes necessary to print one volume or title of the *Code* will vary with the length of the volume or title. Payment must be made in advance.

The magnetic tapes include the printing instructions or codes used to print the **Federal Register** as well as text. The tapes do not include all the material appearing in the **Federal Register** or CFR. Illustrations, graphic designs, and certain documents that were photographed in order to be published are not on the tapes and certain last-minute corrections may not be on the tapes.

John E. Byrne,
Secretary, Administrative Committee of the Federal Register.

[FR Doc. 87–17831 Filed 8–5–87; 8:45 am]
BILLING CODE 6325-02-M

COMMISSION ON CIVIL RIGHTS

Alaska Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Alaska Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 4:00 p.m., on August 26, 1987, at the Federal Building, 701 C Street (Room C–105), Anchorage, Alaska 99513. The purpose of the meeting is to develop program plans and to receive a briefing on the status of the U.S. Commission on Civil Rights and its regional operations.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Daniel Alex or Philip Montez, Director of the Western Regional Division, (213) 894–3437 (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 31, 1987.

Susan J. Prado,
Acting Staff Director.

[FR Doc. 87–17832 Filed 8–5–87; 8:45 am]
BILLING CODE 6335-01-M

New Jersey Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New Jersey Advisory Committee to the Commission will convene at 7:00 p.m. and adjourn at 9:30 p.m. on August 25, 1987, at the Quality Inn Conference Center, U.S. Route 1, South, North Brunswick, New Jersey. The purpose of the meeting is to present an administrative orientation for new members, report on the 1987 Regional Conference, discuss a synopsis of the forum on racial harassment in Essex County, and to plan activities for FY 87–88.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Stephen Balch or John I. Binkley, Director of the Eastern Regional Division at (202) 523–5264, (TDD 202/376–8117). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 28, 1987.

Susan J. Prado,
Acting Staff Director.

[FR Doc. 87–17833 Filed 8–5–87; 8:45 am]
BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Computer Systems Technical Advisory Committee will be held August 26, 1987, 9:30 a.m., in the Herbert C. Hoover Building, Room 6802, 14th Street & Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology & Policy Analysis with respect to technical questions which affect the level of export controls applicable to computer systems or technology.

Open Session

1. Opening Remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Presentation on multi data stream processing.
4. Reports from Hardware and Software Subcommittees.

Executive Session

5. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrencies of the delegate of the General Counsel, formally determined on January 10, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: 202/377–4127. For further information or copies of the minutes, call Betty Ferrell at 202/377–2583.

Date: August 3, 1987.

Betty A. Ferrell,

Acting Director, Technical Support Staff, Office of Technology & Policy Analysis.

[FR Doc. 87–17893 Filed 8–5–87; 8:45 am]

BILLING CODE 3510-DT-M

Hardware Subcommittee of the Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Hardware Subcommittee of the Computer Systems Technical Advisory Committee will be held August 25, 1987, 1:30 p.m. in the Herbert C. Hoover Building, Room 6802, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

The Hardware Subcommittee was formed to study computer hardware with the goal of making recommendations to the Department of Commerce relating to the appropriate parameters for controlling exports for reasons of national security.

Open Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Review of NEMA evaluation of proposals on programmable controllers.

Executive Session

4. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 10, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: 202/377–4127. For further information or copies of the minutes, call Betty Ferrell at 202/377–2583.

Date: August 3, 1987.

Betty A. Ferrell,

Acting Director, Technical Support Staff, Office of Technology & Policy Analysis.

[FR Doc. 87–17892 Filed 8–5–87; 8:45 am]

BILLING CODE 3510-DT-M

Software Subcommittee of the Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Software Subcommittee of the Computer Systems Technical Advisory Committee will be held August 25, 1987, 9:30 a.m. in the Herbert C. Hoover Building, Room 6802, 14th Street & Constitution Avenue, NW., Washington, DC. The Software committee was formed to study computer software with the goal of making recommendations to the Department of Commerce relating to the appropriate parameters for controlling exports for reasons of national security.

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.

Executive Session

3. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: 202/377–4127. For further information or copies of the minutes, call Betty Ferrell at 202/377–2583.

Dated: August 3, 1987.

Betty A. Ferrell,

Acting Director, Technical Support Staff Office of Technolog & Policy Analysis.

[FR Doc. 87–17891 Filed 8–5–87; 8:45 am]

BILLING CODE 3510-DT-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment and Amendment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Socialist Republic of Romania

August 4, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on August 7, 1987.

For further information contact Chris Lozano, Assistant International Trade Specialist (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 682–3072. For information on embargoes and quota re-openings, please call (202) 377–3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to establish new limits for cotton and wool textile products in the Categories 360 and 465, and to amend the previously established import restraint limits for cotton, wool and man-made fiber textile products in Categories 315, 333, 339, 361, 442, 448, 640 and 641, produced or manufactured in the Socialist Republic of Romania and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987. In addition, the Commissioner is directed to exclude tank tops from the current limit for sublevel 338pt. They will continue to be charged to the limit of Category 338. Also, goods exported in 1986 in Categories 448 and 641, but charged to the 1987 limits are to be deducted from the 1987 limits and charged back to the limits established for 1986. The Commissioner is directed to charge imports, for the period beginning January 1, 1987, to the newly established limits for Categories 333/833, 360, 465, as indicated.

As a result of the above actions, the limits for Categories 338pt., 339 and 641, which are currently filled, will re-open.

Background

CITA directives dated December 23, 1986 established import restraint limits for certain cotton textile products, including Categories 315, 333, 339, 361, 338 and 338pt. (51 FR 47050) and wool and man-made fiber textile products, including Categories 442, 448, 640 and 641 (51 FR 47280), produced or manufactured in the Socialist Republic of Romania and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

On March 18, 1987, a notice was published in the **Federal Register** (52 FR 8498) which announced that the United States Government had requested the Government of Socialist Republic of Romania to enter into consultations concerning certain silk blend and other vegetable fiber textiles and textile products in Category 833, produced or manufactured in Romania.

A CITA directive dated April 3, 1987 (52 FR 11305) established an import restraint limit for certain man-made fiber textile products in Category 641, produced or manufactured in Romania and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Under the terms of the Bilateral Cotton Textile Agreement, effected by exchange of notes dated January 28 and March 31, 1983, as amended, and the Bilateral Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated November 7 and 16, 1983, as amended, between the Governments of the United States and the Socialist Republic of Romania, the two governments have reached agreement, effected by exchange of notes dated June 16, 1987 and July 7, 1987, to further amend the bilateral agreements.

The bilateral agreements are amended to increase the existing designated consultation levels for Categories 315, 339, 360, 361, 465 and 640 for the 1987 agreement year. In addition, agreement was reached to exclude tank tops from the current sublevel for Category 338pt. They will continue to be charged to the designated consultation level for Category 338. The current level for Category 338 and the sublevel for 338pt. will remain the same.

The bilateral agreements are further amended to include new designate consultation levels for the newly merged Category 333/833, including a sublevel for Category 833, and Categories 361 and 465. The level for 333/833 is for the 1987 agreement year only. Category 333 is currently controlled under the Group II limit and shall remain subject to the group limit, as merged Category 333/833. The conversion factor for converting Category 333/833 to square yards is 36.2.

The Bilateral Wool and Man-Made Fiber Textile Agreement is further amended to convert the existing minimum consultation levels for Categories 448 and 641 to designated consultation levels for the agreement years 1986 through 1989. The existing minimum consultation level for Category 442 is being converted to a designated consultation level for the agreement years 1987 through 1989.

Imports of 1986 overshipments charged to the 1987 restraint limits for Categories 448 and 641 will be deducted and charged back to the adjusted 1986 limits for those categories.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (49 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register**.

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreements, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

August 4, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directives of December 23, 1986, as amended on April 3, 1987, issued to you by the Chairman, Committee for the Implementation of Textile Agreements, which directed you to prohibit entry for consumption or withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products, produced or manufactured in Romania and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Effective on August 7, 1987, the directives of December 23, 1986, as amended, are hereby further amended to create the merged Category 333/833 and to include amended

limits for cotton, wool, silk blend and other vegetable fiber textiles and textile products in the newly merged Category 333/833 and Categories 315, 339, 361, 442, 448, 640 and 641; and new limits for cotton and wool textile products in Categories 360 and 465, produced or manufactured in Romania and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987. Category 333/833 shall be subject to the Group II limit. Categories 442, 448, 640 and 641 are currently controlled under the Group III limit and shall remain subject to the group.

Category	Twelve-month adjusted limit [1]
315	1,750,000 square yards.
333/833 [2]	66,298 dozen of which not more than 13,260 dozen shall be in Category 833.
339	150,000 dozen.
360	1,030,000 numbers.
361	515,000 numbers.
442	5,500 dozen.
448	6,500 dozen.
465	2,100,000 square feet.
640	62,500 dozen.
641	85,000 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1986.

[2] The conversion factor for converting to square yards is 36.2.

In addition, you are directed to exclude tank tops (TSUSA numbers 381.0230 and 381.4120) from the current limit for sublevel 338pt. TSUSAs 381.0230 and 381.4120 are to be included in the current limit of 256,000 dozen for Category 338, as a whole, of which not more than 97,222 dozen shall be in TSUSA numbers 381.0240, 382.0425, 381.3516, 381.4130, 381.4337, 381.6610, 381.8506, and 381.9624.

Effective on August 7, 1987, you are directed to deduct 61,225 dozen from the charges made to the 1987 import restraint limit for Category 338pt. for tank tops only (TSUSA numbers 381.0230 and 381.4120). In addition, you are to charge 61,225 dozen to the 1987 restraint limit for Category 338, as a whole. These charges are for goods imported during the period January 1, 1987 through April 30, 1987.

Textile products in Categories 360, 465 and 833 which have been exported to the United States prior to January 1, 1987 shall not be subject to this directive.

Textile products in Categories 360, 465 and 833 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

Also effective on August 7, 1987, you are directed to deduct the following amounts from the 1987 import restraint limits established in the directive of December 23, 1986, as amended, for Categories 448 and 641. These same amounts are to be charged to the 1986 limits established for these categories.

Category	Amount to be deducted/ charged
448	944 dozen.
641	16,724 dozen.

Charges already made to Group II limit for Category 333 shall be applied to the newly merged Category 333/833. In addition, the following amounts are to be charged to the import restraint limits established by this directive for Categories 360, 465 and 333/833. These charges are for the period January 1, 1987 through May 30, 1987.

Category	Amount to be charged
360	214,290 numbers.
465	483,790 square feet.
833	533 dozen.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-17984 Filed 8-5-87; 8:45 am]

BILLING CODE 3510-DR-M

Amendment of an Import Limit for Certain Cotton and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Thailand

August 3, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on August 3, 1987. For further information contact Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 343-6580. For information on embargoes and quota reopenings, please call (202) 377-3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to cancel the previously established ninety-day import restraint limit and establish a six-month limit for cotton and man-made fiber textile products in Category 342/642, produced or manufactured in Thailand and exported during the period which began on July 1, 1987 and extends through December 31, 1987.

Background

A CITA directive dated June 5, 1987 (52 FR 22515) established an import restraint limit for cotton and man-made fiber textile products in Category 342/642, produced or manufactured in Thailand and exported during the ninety-day period which began on May 22, 1987 and extends through August 19, 1987.

The Governments of the United States and Thailand have agreed in consultations to further amend their Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of July 27 and August 8, 1983, as previously amended and extended, to establish a new specific limit for cotton and man-made fiber skirts in Category 342/642, during the six-month period which began on July 1, 1987 and extends through December 31, 1987.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the Federal Register.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

August 3, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive cancels and supersedes the directive of June 5, 1987 from the Chairman of the Committee for the Implementation of Textile Agreements, which established a restraint limit for certain cotton and man-made fiber textile products in Category 342/642, produced or manufactured in Thailand and exported during the ninety-day period which began on May 22, 1987 and extends through August 19, 1987.

Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made fiber Textile Agreement of July 27 and August 8, 1983, as amended, and extended, between the Governments of the United States and Thailand; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on August 3, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Category 342/642, produced or manufactured in Thailand and exported during the six-month period which began on July 1, 1987 and extends through December 31, 1987, in excess of 137,000 dozen.[1]

Textile products in Category 342/642 which have been exported to the United States prior to July 1, 1987 shall not be subject to this directive. Those exports remain, however, subject to the Group limit established in the directive of December 23, 1986, as are imports of Category 342/642 exported during the July 1–December 31, 1987 period.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-17890 Filed 8-5-87; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

DOD Advisory Group on Electron Devices; Meeting

SUMMARY: Working Group A (Mainly Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Thursday and Friday, 27 & 28 August 1987.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 S. Crystal Drive, Suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Harold Summer, AGED Secretariat, 201 Varick Street, New York, 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave, electronic warfare devices, millimeter wave devices, and passive devices. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. No. 92-463, as amended, (5 U.S.C. App. II § 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 31, 1987.

[FR Doc. 87-17872 Filed 8-5-87; 8:45 am]

BILLING CODE 3810-01-M

DOD Advisory Group on Electron Devices; Meeting

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Wednesday, 26 August 1987.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 S. Crystal Drive, Suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: David Slater, AGED Secretariat, 201 Varick Street, New York, NY 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Pub. L. No. 92-463, as amended (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 31, 1987.

[FR Doc. 87-17873 Filed 8-5-87; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Performance Review Boards; List of Members

Below is a list of additional individuals who are eligible to serve on the Performance Review Boards for the Department of the Air Force in accordance with the Air Force Senior Executive Appraisal and Award System.

Air Staff

BG Joseph A. Ahearn
Earl A. Aler
L. Denny Crouch
BG William P. Hallin
BG John E. Jackson, Jr.

Air Force Systems Command

LG Spence M. Armstrong

Air Force Logistics Command

W. Edward Daley
L. Keith Dumas
BG Robert F. Swarts

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 87-17874 Filed 8-5-87; 8:45 am]

BILLING CODE 3910-01-M

[1] The limit has not been adjusted to account for any imports exported after June 30, 1987.

USAF Scientific Advisory Board; Meeting

August 3rd, 1987.

The USAF Scientific Advisory Board Ad Hoc Committee on Peacekeeper IMU Testing and Production will meet on August 21st, 27th and 28th, and September 3rd and 4th and 10th through 15th, 1987, at the Pentagon, Washington, DC from 8:00 a.m. to 5:00 p.m. each day. The purpose of the meeting is to review and assess the testing and production of the Inertial Measurement Unit for the Peacekeeper weapon system.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202–697–4811.

Norita C. Koritko,

Air Force Federal Register Liaison Officer.

[FR Doc. 87–17943 Filed 8–5–87; 8:45 am]

BILLING CODE 3910-01-M

Corps of Engineers, Department of the Army

Intention To Prepare a Draft Environmental Impact Statement (Draft EIS); Norfolk Harbor and Channels, VA

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent to prepare a draft environmental impact statement, Norfolk Harbor and Channels, Virginia, Long-Term Disposal (Draft EIS).

SUMMARY: 1. The proposed action involves investigating the long-term dredged material disposal needs of Hampton Roads and developing the most suitable plan to meet those needs. These investigations will be in the depth and detail needed to adequately evaluate all possible long-range disposal alternatives and to select the optimum plan. This investigation is authorized by Congressional Resolutions adopted by the Senate Committee on Public Works on 20 June 1968 and 24 June 1974, and by the House Committee on Public Works on 3 Ocotber 1968 and 10 October 1974. The authority for continuing this investigation is contained in the Water Resources Development Act of 1986. The Draft EIS will focus on the impacts to the environment that may occur as a result of implementing the recommended plan and would also consider the impacts of alternative measures.

2. The study will be a comprehensive effort and will consider all possible alternatives for dealing with the long-range dredged material disposal needs in Hampton Roads. Alternative plans which will be considered include the expansion of Craney Island Disposal Area, confined sites at Willoughby Bay, Ocean View, Hampton Flats, Horseshoe Area off Buckroe Beach, Ragged Island, Suffolk, and Chesapeake Bay, open water disposal at the Dam Neck Ocean Disposal Site and Norfolk Disposal Site, and truck and rail haul. The study will reflect a sound planning approach in which all alternatives will be appropriately considered in order to reach conclusions that can be supported throughout the implementation process.

3a. The scoping process is a method of soliciting public or agency input which could include perception of the action, identification of major issues and environmental concerns, and development of alternatives and mitigation plans. The scoping process for this Draft EIS will take place during the 90 days following the date of this notice of intent. The written comments of interested Federal, State, and local agencies as well as organized groups and private individuals are requested before this time limit so that scheduling of studies needed for this Draft EIS can be done.

3b. Some preliminary investigations are currently underway which will identify and evaluate impacts of the alternatives. Impacts of the considered plans on the environmental, social, historical, and cultural resources of the study area will be investigated. Significant issues to be considered in the Draft EIS include impacts to commercial and non-commercial benthos and finfish, navigation, cultural resources, aesthetics, wetlands and water quality. Alternatives which have less long term adverse effects on the local environment with a lower economic cost will be considered more favorably over alternatives with higher environmental and economic costs.

3c. Requests will be made of the following Federal and State agencies for assistance within their areas of expertise during the scoping portion of the Draft EIS's preparation:

The U.S. Fish and Wildlife Service
The National Marine Fisheries Service
The U.S. Environmental Protection Agency
The Virginia State Water Control Board
The Virginia Department of Health
The Virginia Marine Resources Commission
The Virginia Institute of Marine Science
The Virginia Port Authority

Other Federal and State agencies may be requested to provide information for the draft document if necessary.

3d. Further environmental review and consultation may be required for site-specific evaluations but the preparation and evaluation of the Draft and Final EIS is expected to fulfill all immediate environmental coordination.

4. One or more public scoping meetings will be held within 90 days of the date of this notice to give all interested parties an opportunity to express concerns related to this study and the preparation of this Draft EIS. An interagency meeting involving Federal and State environmental agencies will also be held to obtain specific environmental concerns which should be addressed in this document. This meeting is expected to be held at the Norfolk District Corps of Engineers within 60 days of the date of this notice.

5. It is estimated that the Draft EIS will be available for public review approximately two years following the date of this notice.

ADDRESS: Questions about the proposed action and Draft EIS can be answered by:

Craig L. Seltzer, Oceanographer, CENAO–PL–R, Norfolk District Corps of Engineers, 803 Front Street, Norfolk, VA 23510–1096.

Dated: July 6, 1987.

J.J. Thomas,

District Engineer, Corps of Engineers, Norfolk District.

[FR Doc. 87–17835 Filed 8–5–87; 8:45 am]

BILLING CODE 3710-EH-M

Department of the Navy

Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNC) Executive Panel Advisory Committee Mine Warfare Capabilities Task Force will meet September 9–10, 1987 from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to review current and projected U.S. and Allied Mine Warfare capabilities and potential U.S. vulnerabilities in the broad context of maritime operations and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly

classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Paul G. Butler, Executive Secretary of the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302-0268. Phone (703) 756-1205.

Dated: August 3, 1987.

Jane M. Virga,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 87-17830 Filed 8-5-87; 8:45 am]

BILLING CODE 3810-AE-M

Intent to Prepare a Draft Environmental Impact Statement (DEIS) for the Establishment of an AV-8B (Harrier Jet) Forward Training Facility Within North Carolina

Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality Guidelines (40 CFR part 1500), the Department of the Navy (DON), U.S. Marine Corps is preparing a Draft Environmental Impact Statement for the establishment of an AV-8B (Harrier Jet) Forward Training Facility (FTF) in the eastern region of North Carolina.

The primary purpose of the proposed facility is to provide a site to exercise the Harrier's forward basing capability. Facility operations will expose aircrews and squadron ground-support personnel to a remote environment that is difficult to see and locate (a type environment that may be experienced in a real battle situation). The facility is intended to be austere in nature and will be logistically dependent upon the Marine Corps Air Station, Cherry Point.

Training at the facility will have a maximum of 200 aircraft operations per day and will occur primarily during daylight hours, five days a week, with infrequent weekend and nighttime operations.

To support proposed facility operations, the following infrastructure is required:

—1,800 foot runway constructed of steel/aluminum matting (interlocking sections) sufficient to support the AV-8B at gross weight of 26,000 pounds,
—Ramp sufficient to support six AV-8B aircraft,
—Areas (hides) sufficient to conceal six AV-8B aircraft,
—Taxiway sufficient to taxi to/from ramp and hides,
—Berms sufficient to install six fuel bladders, and contain any leaks therefrom,
—Refueling capability on ramp and hides from fuel bladder,
—Arming and de-arming area sufficient to accommodate two AV-8B aircraft simultaneously, and
—Utilities consisting of potable water (well with treatment system) expeditionary electrical power, expeditionary lighting, and commercial telephone lines.

Additional facilities will include a crash/fire/rescue pad, security perimeter fencing, a support facilities building (9,000 sq. ft.), a caretakers post (400 sq. ft.), toilets (150 person maximum), septic system (possible batch treatment system unless soil condition will permit septic tanks system), and road improvements.

The perferred location of the facility was selected on the basis of recommendations provided by a Navy-contracted siting study. Three basic alternatives were examined under this analysis:

a. Develop the AV-8B training facility at MCAS Cherry Point, from which such operations are currently conducted.

b. Choose an existing outlying military airfield on which to develop the facility.

c. Locate a new site on which to develop the facility.

In view of these alternatives, a methodology was developed to identify and evaluate possible training facility locations. Identified locations included five existing military facilities (MCAS Cherry Point, MCOLF Atlantic, MCALF Bogue, MCALF Camp Davis, and MCOLF Oak Grove) as well as five new undeveloped "generic" areas which were selected on the basis of compatibility with mission requirements.

Scoping for this DEIS was initiated on December 22, 1986, by a letter to potentially affected entities. The letter described the proposed action and requested formal input which would identify environmental issues warranting in-depth analysis. MCOLF Oak Grove has now been determined to be an appropriate site, and is currently being considered as the preferred FTF location. The Marine Corps wishes to ensure all interested parties have the opportunity to participate in the environmental analysis and requests comments be addressed to: Atlantic Division, Naval Facilities, Engineering Command, Norfolk, VA 23511-6287, Attn. Mr. H. Eacho (Code 2032E3).

In order that comments be considered in a timely fashion, all scoping correspondence should be received not later than three (3) weeks after the publication date of this notice. When the DEIS is completed, a public notice of its availability will be made which will request review and comments by all interested parties. A final Environmental Impact Statement (FEIS) will then be prepared to respond to the review comments.

Date: August 3, 1987.

Jane M. Virga,

LT, JAGC, USNR Federal Register Liaison Officer.

[FR Doc. 87-17827 Filed 8-5-87; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

National Advisory and Coordinating Council on Bilingual Education; Cancellation of Meeting

AGENCY: Department of Education, National Advisory and Coordinating Council on Bilingual Education.

ACTION: Notice of cancellation of meeting.

SUMMARY: The notice is hereby given of the cancellation of the National Advisory and Coordinating Council on Bilingual Education meeting scheduled at the Holiday Inn, 480 King Street, Alexandria, Virginia for August 10 and 11, 1987 that was published in the **Federal Register** of July 23, 1987, Vol. 52, No. 141, page 27704.

FOR FURTHER INFORMATION CONTACT: Anna Maria Farias, Designated Federal Official, 421 Reporters Building, 400 Maryland Avenue SW., Washington, DC 20202 (202-732-5063).

Dated: August 3, 1987

Anna Maria Farias,

Acting Director, Office of Bilingual Education.

[FR Doc. 87-17879 Filed 8-5-87; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Preliminary Findings; Oklahoma Corporation Commission et al.

July 29, 1987.

In the matter of Oklahoma Corporation Commission, Cherokee Group, Roger Mills County, JD No. 87-16490T, Docket No. GP87-65-000, (formerly RM79-76-248 (Oklahoma-8)); Colorado Oil and Gas Conservation Commission, Niobrara Formation, Weld County, JD No. 87-16489T, Docket No. GP87-66-000, (formerly RM79-76-239 (Colorado-39

Addition)); Commonwealth of Kentucky, "Big Lime" Formation, Harlan, Leslie, Letcher and Perry Counties, JD No. 87-16488T, Docket No. GP87-67-000, (formerly RM79-76-225 (Kentucky-3)); Virginia Department of Mines, Minerals and Energy, "Big Lime" Formation, Buchanan, Dickenson, Lee, Scott, Wise, Russell and Tazewell Counties, JD No. 87-16491T, Docket No. GP87-68-000, (formerly RM79-76-249 (Virginia-4)) and Colorado Oil and Gas Conservation Commission, Niobrara Formation, Larimer, Boulder and Weld Counties, JD No. 87-16492T, Docket No. GP87-69-000, (formerly RM79-76-255 (Colorado-38 Addition)).

Introduction

Under section 107(b) of the Natural Gas Policy Act of 1978, (NGPA) the Federal Energy Regulatory Commission (Commission) is authorized to prescribe incentive prices for high-cost natural gas.[1] High-cost gas is produced under conditions which present extraordinary risks or costs and once designated may receive an incentive price. The Commission determined that natural gas produced from tight formations is high-cost natural gas under section 107(c)(5).[2] Under the Commission's rule, jurisdictional agencies may submit for Commission review recommendations of areas for designation as tight formations.

The five tight formation recommendations listed above were submitted to the Commission by state jurisdictional agencies pursuant to § 271.703(c) of the Commission's regulations, and are still pending before the Commission. Under § 271.703(c) the Commission in the past has reviewed tight formation recommendations received from jurisdictional agencies under its general rulemaking authority of NGPA section 501. However, the United States Court of Appeals for the District of Columbia Circuit recently held in *Williston Basin Interstate Pipeline Co.* v. *FERC*, 816 F.2d 777 (D.C. Cir. 1987) (*Williston Basin*) that the Commission must review jurisdictional agency tight formation recommendations as determinations under NGPA section 503.

A review of section 503 reveals that if there is not substantial evidence to support a jurisdictional agency's determination, the Commission may issue a preliminary finding reversing such determination.

The Commission is issuing a notice of preliminary finding that the subject jurisdictional agency recommendations are not supported by substantial evidence in the record. In addition, the Commission will treat the issuance of the court mandate in *Williston Basin* on July 15, 1987, as triggering the 45 day review period of section 503(b)(1)(B). The Commission believes the preliminary finding issued herewith satisfies the 45 day period. Within 120 days of the notice of preliminary finding, the Commission may issue a final finding reversing the jurisdictional agencies' determination.

Background

Five state jurisdictional agencies submitted recommendations that the respective areas be designated as tight formations pursuant to § 271.703(c)(2)(i) of the Commission's regulations and section 501 of the NGPA.[3] These recommendations if approved by the Commission would entitle gas produced from these properties to receive section 107(c) incentive pricing.

In all five of the above-captioned cases the Commission staff found that additional information was needed before the formations could be designated as tight formations under § 271.703. The Commission staff sent out deficiency letters in the five cases detailing the particular information missing in the jurisdictional agencies' original recommendations. A report of the specific deficiencies is attached hereto as Appendix A. In four cases there was no response to the deficiency letters. In the fifth case (Kentucky-3) the jurisdictional agency provided the explanation and information requested. However, as discussed in Appendix A, the Commission believes there is not substantial evidence in the record even with the response. Accordingly, the Commission is issuing a notice of preliminary findings in the above-captioned cases reversing the tight formation determinations of Oklahoma, Kentucky, Virginia and Colorado (38-Addition and 39-Addition) since there is not substantial evidence to support the determinations. The Commission notes that Virginia's determination will satisfy the guidelines of § 271.703, provided Virginia resubmits its recommendation without the "Big Lime" formation in Buchanan County.

Discussion

The Commission used NGPA section 501 rulemaking procedures for evaluating jurisdictional agency recommendations up until the recent *Williston Basin* decision. In implementing its authority under section 107(c)(5) of the NGPA, the Commission issued Order Nos. 99 and 99-A establishing incentive pricing for natural gas produced from designated tight formations. Section 271.703(c) of the Commission's regulations provides that upon written recommendation by a jurisdictional agency, the Commission may approve a recommendation that a natural gas formation be designated as a tight formation if it meets the following guidelines:

(A) The estimated average in situ gas permeability, throughout the pay section, is expected to be 0.1 millidarcy or less.

(B) The stabilized production rate, against atmospheric pressure, of wells, completed for production in the formation, without stimulation, is not expected to exceed [certain specified] production rate[s]. . . .

(C) No well drilled into the recommended tight formation is expected to produce, without stimulation, more than five barrels of crude oil per day.

The court in *Williston Basin*, contrary to the Commission's past practice, held that the Commission, in passing on local jurisdictional agencies' recommendations for tight formation designations, was actually reviewing determinations under NGPA section 503. Under section 503, the Commission's orders and thus the determinations were not judicially reviewable when the Commission adopts the jurisdictional agency's recommendation. As a result of *Williston Basin* the Commission must reevaluate the appropriate treatment of the seven tight formation recommendations which are currently pending before it.[4]

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[1] 15 U.S.C. 3317(c)(5) (1986).

[2] Order No. 99, Regulations Covering High-Cost Natural Gas Produced from Tight Formations, 45 FR 56034 (Aug. 22, 1980), FERC Stats. and Regs. [Regulations Preambles 1977-1987] ¶30,183 (1980). 18 CFR 271.703 (1987).

[3] 18 CFR 271.703(c)(2)(i) (1986); *see also*, 15 U.S.C. 3317(c) (1986) (To encourage exploration for high-cost natural gas, Congress in the NGPA provided the Commission with authority to establish incentive prices for certain classifications for high-cost gas).

[4] Concurrently with this order, the Commission is issuing a final rule in Docket No. RM87-31-000 regarding procedures for determining high-cost natural gas produced from tight formations eligible for incentive prices pursuant to section 107(c)(5) of the NGPA. The rule will, among other things, incorporate tight formation designations under NGPA section 503 regulations rather than section 501 under Title 18 of the Code of Federal Regulations. The Commission is also issuing a notice of preliminary finding and order terminating hearing in Docket No. JD87-16493T (formerly Docket No. RM79-76-250) remanding the jurisdictional agency tight formation determination of the Texas Railroad Commission as not supported by substantial evidence in the record on which the determination was made. In addition, the Commission is issuing an order permitting a jurisdictional agency determination of tight formation to become final in Docket No. RM79-76-101 (Colorado 23). This order specifically approves the jurisdictional agency's recommendation that the subject areas be designated as tight formations.

The Commission staff reviewed the five of the seven pending tight formation recommendations herein and found that additional information was required for the formations to be designated as tight formations under § 271.703. The Commission staff sent out deficiency letters to each of the five jurisdictional agencies requesting more detailed information. A report of the specific deficiencies is attached hereto as Appendix A. Four of the five jurisdictional agencies did not respond to the deficiency letters. Kentucky did provide a response; however, the staff determined the data in such response was still incomplete. Based on currently available information, the Commission finds that the five jurisdictional agency determinations are not supported by substantial evidence in the record upon which such determinations were made pursuant to NGPA section 503(b)(1)(A). Therefore, the Commission will reverse the jurisdictional agency tight formation determinations under NGPA section 503(b)(1).

Accordingly, the Commission herewith issues a notice of preliminary findings under § 275.202(a)(1)(i) (1986) that the determinations submited by the five jurisdictional agencies are not supported by substantial evidence in the record on which the determinations were made.

Pursuant to section 503(b)(2)(B), the Commission must make its preliminary finding and notice thereof within 45 days after the date on which the Commission received notice of such determination under subsection (a)(2). However, since there was no notice prior to the *Williston Basin* decision that the Commission's review was under section 503 of the NGPA, and to avoid the untoward result of retroactive effectiveness of tight formation determinations, some of which have been pending at the Commission for years, the Commission concludes as the date of notification of the jurisdictional agency's tight formation determination.[5] Thus, the 45 day review period will run from the date of the *Williston Basin* mandate. The Commission is acting within the 45 days by issuing this notice of preliminary findings. Pursuant to section 553(d) of the Administrative Procedure Act, the Commission's new rule concurrently issued in Docket No. RM87–31–000 will be effective immediately except for the information collection provisions in §§ 271.703 (c)(3) and (c)(4) which have been submitted to the Office of Management and Budget for approval. When these information collection provisions are approved by the Office of Management and Budget, the Commission will issue a notice in the Federal Register with the effective date for these information collection provisions.

The Commission Orders

(A) Pursuant to section 18 CFR 275.202 (a)(1)(i) (1986) and section 503(b)(2)(A) of the NGPA, the Commission makes a preliminary finding that the determinations of the five jurisdictional agencies are not supported by substantial evidence in the record on which the determinations were made and issues this notice under 18 CFR 275.202(a)(1) (1987).

(B) Pursuant to section 18 CFR 2375.202(f) (1987), jurisdictional agencies, interested parties or any person may, within 30 days after issuance of the preliminary finding, submit written comments and request an informal conference with the Commission staff.

By the Commission.

Kenneth F. Plumb,
Secretary.

Appendix A

Oklahoma–8 (JD87–1649OT, Formerly RM79–76–248)

On December 6, 1985, the Oklahoma Corporation Commission (OCC) found that the information presented by Diamond Shamrock Exploration Company in its application to designate a tight formation complied fully with the guidelines of section 271.703(c) of the Commission's regulations. The OCC ruled that the Cherokee Group common source of supply underlying sections 19, 20, 21, 22, 23, 28, 29, 31, 32, and 33, all in Township 15 North, Range 22 West, Roger Mills County, Oklahoma should be designated as a tight formation pursuant to section 107 of the NGPA in accordance with the provisions of 18 CFR § 271.703(c)(2)(i)(1985).

By letter dated October 27, 1986, the staff of the Federal Energy Regulatory Commission (Commission) advised the OCC that additional information was required in order for the Commission to designate the Cherokee Group in a portion of Roger Mills County as a tight formation. Specifically, the staff requested the OCC to provide the formula used to calculate the predicted rates of the test wells and to furnish examples of how variation of one of the four variables in the formula affected the others. Staff also requested the OCC to explain why the permeability and stabilized flow rates of the Upper Cherokee are adequately represented when only one or two of the test wells is completed in the Upper Cherokee. To date, the Commission has received no response from the OCC.

Virginia–4 (JD87–16491T, Formerly RM79–76–249)

On May 12, 1986, Virginia's Department of Mines, Minerals and Energy (Virginia) recommended that the "Big Lime" formation in southwest Virginia (in portions of Buchanan, Dickenson, Lee, Scott, Wise, Russell, and Tazewell Counties) be designated a tight formation. By letter dated September 29, 1986, Commission staff advised Virginia that its recommendation, as it pertains to the "Big Lime" formation in Buchanan County, is not supported by substantial evidence and that the Buchanan portion should be deleted from the recommendation. The staff's letter was based on its review which revealed that 32% of the data wells in Buchanan County were excluded as anomalous and that 62% of the data wells which were completed in the "Big Lime" formation were also excluded an anomalous. The Commission staff noted that the exclusions are, in effect, a suggestion that 62% of the wells drilled and completed in the "Big Lime" are anomalous when attempting to satisfy the expected production rate in the Commission's regulations, and that the flow rates attributable to the excluded wells are not representative of the expected production rates of wells completed in the "Big Lime" formation although these wells account for 74% of the cumulative open flow for all available data wells in Buchanan County. To date, the Commission has received no response from Virginia.

Kentucky–3 (JD87–16488T, formerly RM79–76–225)

On January 16, 1984, the Commonwealth of Kentucky (Kentucky) submitted to the Commission its

[5] Although the general rule is to apply court decisions retroatively, the Supreme Court in *Chevron Oil Co. v. Huson*, 404 U.S. 97 (1971) enumerated three factors which should be weighed in determining whether a particular judicial construction prospectively. First, any decision which establishes a new principle of law may be prospectively applied. The second factor is whether retroactive operation of the rule will further or retard the purpose and effect of the rule. The third factor involves equitable considerations. Using this test, the Commission concludes that the *Williston Basin* decision should be applied prospectively only. The decision establishes a new principle of law; retroactive application of the decision would retard the purpose of the rule because unsupported jurisdictional agency determinations which have been pending before the Commission for more than 45 days would otherwise be considered final; and such a result would be inequitable.

recommendation that the "Big Lime" formation of the Newman Group (located in Harlan, Leslie, Letcher and Perry Counties) be designated as a tight formation. On May 17, 1984, the Commission staff sent a letter to Kentucky requesting that additional information or explanations be submitted to support its recommendation. Specifically, staff requested Kentucky to submit a more precise geographic delineation of the recommended area, a list of wells within the recommended area which produce from the recommended formation, additional permeability data for the recommended area, and an explanation, in light of statistical evidence, of how permeability in the area was determined to meet the guideline in § 271.703(c) of the Commission's regulations.

By letter dated October 6, 1986, Kentucky furnished the requested information and explanation. Kentucky stated that it believes the "Big Lime" formation exhibits a linear relationship between permeability and porosity and, therefore, that permeability can be calculated for wells which have a measured porosity. Using this method, Kentucky states that the average calculated permeability in the recommended area is less than the Commission's guideline of 0.1 md.

A review of Kentucky's data reveals that deficiencies still exist, and that the method Kentucky uses to determine the "average in-situ" permeability for the recommended area does not appear to be based on sound statistical methodology. Therefore, the Commission finds there is insufficient evidence on which to base a recommendation that the "Big Lime" formation of the Newman Group in Harlan, Leslie, Letcher and Perry Counties meets the Commission's guidelines as a tight formation.

Colorado–39 Addition (JD87–16489T, Formerly RM79–76–239)

On November 15, 1984, the Colorado Oil and Gas Conservation Commission (Colorado) submitted to the Commission a recommendation pursuant to § 271.703 of the Commission's its regulations, that the Niobrara formation located in Weld County, Colorado, be designated as a tight formation. The recommended acreage is an extension of an area in which the Niobrara formation had been previously approved as a tight formation by the Commission in Docket No. RM79–76–235 (Colorado–39).

The Commission staff advised Colorado by letter dated April 18, 1985, that further explanation and information was required in order for staff to complete its review of Colorado's recommendation that the Niobrara formation in Weld County be designated as a tight formation. Specifically, staff noted that the record contained no permeability data for wells in the recommended area and requested Colorado to furnish such permeability data. If no data was available, staff requested that Colorado explain why data from five wells outside the recommended area was adequate to support its recommendation. Staff also requested Colorado to provide additional information (such as well completion reports, post-stimulation production data, etc.) to substantiate Colorado's recommendation that the prestimulation flow rate is not expected to exceed the rate in the regulations. To date the Commission has received no response from Colorado to the deficiency letter.

Colorado–38 Addition (JD87–16492T, Formerly RM79–76–255)

On February 9, 1987, the Colorado Oil and Gas Conservation Commission (Colorado) submitted to the Commission a recommendation that the area in which the Niobrara Formation had previously been recommended as a "Tight Formation" by Order No. 43–1, and approved by the Commission in Order No. 386, be extended to include additional lands in Larimer, Boulder and Weld Counties under § 271.703(c) of the Commission's regulations.

On June 4, 1987, the Commission staff advised Colorado that more information was needed for its recommendation that an additional area of the Niobrara formation in Larimer, Boulder, and Weld Counties be designated as a tight formation. Since a majority of the wells in the recommended area appear to be oil wells, staff requested Colorado to clarify whether the recommended area contains designated oil fields and, if so, why Colorado believes the oil areas should be designated a natural gas tight formation. Staff also requested additional information (such as well completion reports, prestimulation production or additional post-stimulation production data) to substantiate Colorado's finding that the pre-stimulation flow rate of oil and gas was not expected to exceed the rate in the regulations. To date the Commission has received no response from Colorado.

[FR Doc. 87–17844 Filed 8–5–87; 8:45 am]
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[Docket No. GP87–27–000 (Formerly RM79–76–250)]

Preliminary Finding and Order Terminating Hearing; Texas Railroad Commission, Travis Peak Formation JD87–16493T

Issued July 29, 1987.

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

Introduction

Under section 107(c)(5) of the Natural Gas Policy Act of 1978 (NGPA), the Federal Energy Regulatory Commission (Commission) designates certain types of natural gas as high-cost gas.[1] High-cost gas is produced under conditions which present extraordinary risks or costs, and once designated may receive an incentive price. The Commission issued a rule establishing that natural gas produced from tight formations is high-cost natural gas under NGPA section 107(c)(5).[2] Under the Commission's rule, jurisdictional agencies may submit recommendations of areas for designation as tight formations for Commission approval. In the instant case, the Texas Railroad Commission (Texas) recommended designation of the Travis Peak formation (Travis Peak) as a tight formation. For the reasons stated below the Commission is issuing this notice of preliminary finding under NGPA section 503(b)(2) that the determination by Texas that Travis Peak qualifies as a tight formation is not consistent with information contained in the public records of the Commission and therefore should be remanded to Texas for such further action as it deems appropriate. The Commission's preliminary finding under section 503 is made in light of the recent decision of the United States Court of Appeals for the District of Columbia Circuit *Williston Basin Interstate Pipeline Co. v. FERC*, 816 F.2d 777 (D.C. Cir. 1987) (*Williston Basin*) which held that the Commission in reviewing jurisdictional agency tight formation recommendations must treat them as determinations under NGPA section 503, rather than recommendations for rulemakings under NGPA section 501 as the Commission has done in the past.

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[1] 15 U.S.C. 3317(c)(5) (1988).

[2] Order No. 99, Regulations Covering High-Cost Natural Gas Produced from Tight Formations, 45 FR 56034 (August 22, 1980), FERC Stats. and Regs. [Regulations Preambles 1977–1981] ¶ 30,183 (1980); 18 CFR 271.703 (1987).

Background

On November 2, 1981, the Commission received a recommendation from Texas that Travis Peak be designated a tight formation pursuant to § 271.703(c)(2)(i) of the Commission's regulations.[3] Travis Peak underlies 47 counties in northeastern Texas. After reviewing the record and supplemental material the Commission on May 23, 1986, issued Order No. 450 [4] that modified and adopted Texas' recommendation that Travis Peak be designated a tight formation under NGPA section 107(c)(5) but excluded certain "sweet spots" from the designation.[5]

On June 19, 1986, Delhi Gas Pipeline Corporation (Delhi) filed an application for rehearing which was later supplemented on October 6, 1986, complaining that Texas' recommendation contained stale information which was limited to fewer than half of the wells drilled into the formation. The data submitted by Delhi suggest that the average permeability and flow rates in Travis Peak may exceed the maximum permissible level for the formation to qualify as a tight formation under the Commission's regulations.[6] The Commission concluded that Delhi's supplemental information raised legitimate doubts as to whether Travis Peak should be designated a tight formation. On January 9, 1987, the Commission granted Delhi's request for rehearing, vacated Order No. 450, reopened the record, and initiated a formal hearing to determine whether, in light of additional evidence presented by Delhi and other interested parties, Travis Peak meets the Commission's standards for designation as a tight formation.[7]

Discussion

The Commission used section 501 rulemaking procedures for evaluating jurisdictional agency recommendations up until the recent *Williston Basin* decision. In implementing its authority under section 107(c)(5) of the NGPA, the Commission issued Order Nos. 99 and 99–A establishing incentive pricing for natural gas produced from designated tight formations. Section 271.703(c) of the Commission's regulations provides that, upon written recommendation by a jurisdictional agency, the Commission may approve a recommendation that a natural gas formation be designated as a tight formation if it meets the following guidelines:

(A) The estimated average in situ gas permeability, throughout the pay section, is expected to be 0.1 millidarcy or less.

(B) The stabilized production rate, against atmospheric pressure, of wells completed for production in the formation, without stimulation, is not expected to exceed [certain specified] production rate[s]. . . .

(C) No well drilled into the recommended tight formation is expected to produce, without stimulation, more than five barrels of crude oil per day.

Pursuant to § 271.703(c) of the regulations, the Commission has reviewed tight formation recommendations received from jurisdictional agencies under its general rulemaking authority in section 501 of the NGPA, which authorizes the Commission to perform any and all acts and to prescribe, issue, amend and rescind such rules and orders as it may find necessary. The section 501 rulemaking procedure is subject to judicial review under sections 502 and 506 of the NGPA.

The court in *Williston Basin*, contrary to the Commission's past practice, held that the Commission, in passing on local jurisdictional agencies' recommendations for tight formation designations, was actually reviewing determinations under NGPA section 503. Under section 503, the Commission's orders and thus the determinations were not judicially reviewable when the Commission adopts the jurisdictional agency's view. As a result of *Williston Basin* the Commission must reevaluate the appropriate treatment of the seven tight formation recommendations which are currently pending before it.[8]

In Travis Peak, which was in hearing when the court issued its opinion in *Williston Basin*, the Commission originally approved the jurisdictional agency's determination in Order No. 450. As noted above, however, supplemental information submitted by Delhi which contradicted this finding caused the Commission to vacate Order No. 450, grant Delhi's request for rehearing, and establish procedures for determining the character of the formation. Since the Commission's Order granting rehearing, interested parties have submitted copious information both challenging and supporting designation of Travis Peak as a tight formation. Section 503 of the NGPA [9] establishes a procedure whereby state and federal agencies with jurisdiction with respect to the production of natural gas determine whether natural gas qualifies under various NGPA price categories upon application. Once a jurisdictional agency notifies the Commission of its determination, such determination becomes final by operation of law within 45 days unless it is reversed or remanded by the Commission during that period. Section 503(b) sets the standards for Commission review of these determinations and states, in pertinent part, that if, "the Commission finds that a state or federal agency determination if not consistent with information contained in the public records of the Commission, and which is not part of the record upon which such determination was made, * * * it may remand the matter to such state or federal agency for consideration of the information. If such agency, after consideration of the information transmitted to it by the Commission, affirms its previous determination, such determination, as affirmed, shall be subject to review in accordance with this subsection (other than this paragraph)."

A review of section 503 reveals that the Commission's options in dealing with Travis Peak are either to reverse or remand the case to the state jurisdictional agency. In light of information in the Commission's files submitted by Delhi which is inconsistent with Texas' recommendation, and which is not part of the record upon which such tight formation determination was made, the Commission under section 503(b)(2)(A) hereby remands Travis Peak to the Texas Railroad Commission. Section 503 provides no basis for

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[3] 18 CFR 271.703(c)(2)(i) (1986).

[4] Docket No. RM79–76–090, 51 FR 19164 (May 28, 1986), FERC Stats. & Regs. ¶ 30,696.

[5] The sweet spots excluded in Order No. 450 were the Bethany and the Carthage fields in Panola County. Also excluded were 31 additional gas wells which had high permeability values.

[6] 18 CFR 271.703(c)(2) (1986).

[7] Docket No. RM79–76–250, 52 FR 2401 (January 22, 1987), FERC Stats. & Regs. ¶ 30724.

[8] Concurrently with this order, the Commission is issuing a final rule in Docket No. RM87–31–000 regarding procedures for determining high-cost natural gas produced from tight formations eligible for incentive prices pursuant to section 107(c)(5) of the NGPA. The rule will, among other things, incorporate tight formation designations under UGPA section 503 regulations rather than section 501 under Title 18 of the Code of Federal Regulations. The Commission is also issuing a notice of preliminary findings in Docket Nos. JD87–16490T, JD87–16489T, JD87–16486T, JD87–16491T, and JD87–16492T reversing the jurisdictional agency tight formation recommendations as not supported by substantial evidence in the records, pursuant to NGPA section 503 and § 275.202 of the Commission's regulations. In addition, the Commission is issuing an order permitting a jurisdictional agency determination of tight formation to become final in Docket No. RM79–76101 (Colorado 23). This order specifically approves the jurisdictional agency's recommendation that the subject areas be designated as tight formations.

[9] 15 U.S.C. 3413 (1984).

holding hearings on tight formations. Therefore, the hearing previously ordered will be terminated as having no further force under NGPA section 503 and *Williston Basin* and Docket No. GP87–27–000 is hereby cancelled.

Accordingly, the Commission herewith issues notice of its preliminary finding under § 275.202(a)(1)(ii)(1986) that the determination submitted by the Texas Railroad Commission is not consistent with information which is contained in the public records of the Commission and which was not part of the record on which the jurisdictional agency made the determination. The Commission issues this notice of preliminary finding under § 275.202(a)(2)(1986), remanding Travis Peak to the jurisdictional agency.

The Commission notes that numerous motions are pending in this case requesting that the hearing be remanded to the state jurisdictional agency. In light of the *Williston Basin* decision and the new procedures under section 503, the Commission hereby dismisses all pending motions in this case. Comments may be submitted prior to the Commission's final finding pursuant to section 503.

Pursuant to section 503(b)(2)(B), the Commission must make its preliminary finding and notice thereof within 45 days after the date on which the Commission received notice of such determination under subsection (a)(2). However, since there was no notice prior to the *Williston Basin* decision that the Commission review was under section 503 of the NGPA, and to avoid the untoward result of retroactive effectiveness of tight formation determinations, some of which have been pending at the Commission for years, the Commission concludes that the court's mandate on July 15, 1987, will be treated as the date of notification of the jurisdictional agency's tight formation determination.[10] Thus the 45 day period will run from the date of the *Williston Basin* mandate. The Commission is hereby acting within the 45 days by issuing this notice of preliminary finding.[11]

The Commission Orders

(A) Pursuant to section 18 CFR 275.202(a)(i)(ii) (1987) and section 503(b)(2)(A) of the NGPA the Commission issues notice of a preliminary finding that the determination is not consistent with information which is contained in the public recording of the Commission and which was not part of the record on which the jurisdictional agency made its determination.

(B) Pursuant to section 18 CFR 275.202(f) (1987), jurisdictional agencies, interested parties, or any person may, within 30 days after issuance of the preliminary finding, submit written comments and request an informal conference with the Commission staff.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–17845 Filed 8–5–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP87-443-000 et al.]

Natural Gas Certificate Filings; Southern Natural Gas Co. et al.

July 31, 1987.

Take notice that the following filings have been made with the Commission:

1. Southern Natural Gas Co.

[Docket No. CP87-443-000]

Take notice that on July 14, 1987, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP87-443-000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity for a term expiring on October 2, 1988, authorizing the transportation of natural gas for the City of Cartersville, Georgia (Cartersville), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern proposes, to transport gas on an interruptible basis, for Cartersville in accordance with the terms and conditions of a tranportation agreement between Cartersville and Southern dated June 29, 1987.

Subject to the receipt of all necessary governmental authorizations, Southern states that it has agreed to transport on an interruptible basis up to 10,800 MMBtu of gas per day purchased by Cartersville from SNG Trading Inc., and Exxon Corporation, U.S.A. Southern requests that the Commission issue a limited-term certificate for a term expiring October 31, 1988.

Southern states that the agreement provides for gas to be delivered to Southern for transportation at the various existing points on Southern's contiguous pipeline system specified in Exhibit A to the agreement. Southern states that it will redeliver to Cartersville at the City of Cartersville Meter Station located in Floyd County, Georgia, an equivalent quantity of gas less 3.25 per cent of such amount which shall be deemed to be used as compressor fuel and company-use gas (including system unaccounted-for gas losses), less and all shrinkage, fuel or loss resulting from or consumed in the processing of gas and less Cartersville's pro-rate share of any gas delivered for Cartersville's account which is lost or vented for any reason.

Southern states that Cartersville has agreed to pay Southern each month the following transportation rates:

(a) Where the aggregate of the volumes transported and redelivered by Southern on any day to Cartersville under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's Rate Schedule OCD on such day to Cartersville does not exceed the daily contract demand of Cartersville, the transportation rate would be 48.2 cents per MMBtu; and

(b) Where the aggregate of the volumes transported and redelivered by Southern on any day to Cartersville under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's Rate Schedule OCD on such day to Cartersville exceeds the daily contract demand of Cartersville, the transportation rate for the excess volumes would be 77.6 cents per MMBtu.

Southern proposes to collect from Cartersville the GRI surcharge of 1.52 cents per Mcf or any such other GRI funding unit or surcharge as hereafter prescribed.

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[10] Although the general rule is to apply court decisions retroactively, the Supreme Court in *Chevron Oil Co. v. Huson*, 404 U.S. 97 (1971) enumerated three factors which should be weighed in determining whether to apply a particular judicial construction prospectively. First, any decision which establishes a new principle of law may be prospectively applied. The second factor is whether retroactive operation of the rule will further or retard the purpose and effect of the rule. The third factor involves equitable considerations. Using this test, the Commission concludes that the *Williston Basin* decision should be applied prospectively only. The decision established a new principle of law; retroactive application of the decision would retard the purpose of the rule because unsupported jurisdictional agency determinations which have been pending before the Commission for more than 45 days would otherwise be considered final; and such a result would be inequitable.

[11] Pursuant to section 553(d) of the Administrative Procedure Act, the Commission's new rule concurrently issued in Docket No. RM87–31–000 will be effective immediately except for the information collection provisions in § 271.703(c)(3) and (c)(4) which have been submitted to the Office of Management and Budget for approval. When these information collection provisions are approved by the office of Management and Budget, the Commission will issue a notice in the **Federal Register** with the effective date for these information.

Southern states that the transportation arrangement would enable Cartersville to diversify its natural gas supply sources and to obtain gas at competitive prices. In addition, Southern states that it would obtain take-or-pay relief on gas that Cartersville may obtain from its suppliers.

Comment Date: August 21, 1987, in accordance with Standard Paragraph F at the end of this notice.

2. Consolidated Gas Transmission Corp.

[Docket No. CP87-447-000]

Take notice that on July 15, 1987, Consolidated Gas Transmission Corporation (Consolidated), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP87-447-000 an application pursuant to section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing the rendition of a long-term storage service for Tennessee Gas Pipeline Company, a Division of Tenneco, Inc. (Tennessee), as more fully set out in the application which is on file with the Commission and open to public inspection.

Consolidated states that the proposed storage service consists of a storage capacity quantity of 12,000,000 dt and a storage demand quantity of 80,000 dt. Consolidated further states that the storage service proposed is to be rendered on a firm basis under and in accordance with Consolidated's Rate Schedule GSS contained in its effective FERC Gas Tariff or any effective superseding rate schedule. Consolidated indicated that the proposed service would be rendered under a contract the term of which commences April 1, 1988, and continues for a term of twenty years.

Consolidated states that no additional facilities are proposed or required to be constructed in connection with the service proposed in this application. Consolidated states further that deliveries of Gas to Consolidated for Tennessee's account for injection, and by Consolidated for Tennessee's account upon withdrawal would be made at an existing interconnection between the pipeline facilities of Consolidated and Tennessee in Kanawha County, West Virginia, known as the Broad Run Measuring Station.

Comment Date: August 21, 1987, in accordance with Standard Paragraph F at the end of this notice.

3. Northwest Pipeline Co.

[Docket No. CP86-166-002]

Take notice that on July 21, 1987, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP86-166-002, its petition to amend the Commission's December 24, 1985, order in Docket No. CP86-166-000 to extend the term of the limited-term certificate of public convenience and necessity authorizing Northwest to transport natural gas for the account of J. R. Simplot Company (Simplot); all as more fully set forth in the petition on file with the Commission and open to public inspection.

It is stated that the Commission's order issued December 24, 1985 in Docket No. CP86-166-000 (33 FERC ¶62,464) authorized Northwest to transport, on an interruptible basis, up to 30,000 MMBtu's of natural gas per day for the account of Simplot pursuant to a gas transportation agreement (transportation agreement) dated October 30, 1985, for a term of two years commencing with initial delivery. Northwest states that since service commenced thereunder on June 8, 1986, certificate authority expires June 8, 1988. It is stated that under the transportation agreement, Northwest would transport Simplot's gas supplies and redeliver the gas for Simplot's account to either Intermountain Gas Company (Intermountain) at existing interconnections in Idaho or to Cascade Natural Gas Company (Cascade) at an existing interconnection in Oregon. Northwest indicates that Intermountain and Cascade would then redeliver the gas to various Simplot fertilizer and potato processing plants in Idaho and Oregon.

It is said that, by an amendment dated June 25, 1987, to the transportation agreement, Northwest and Simplot agreed to extend the term of the transportation agreement for an additional term, expiring June 11, 1991.

Northwest requests the Commission to amend its December 24, 1985, order to authorize Northwest to continue to transport natural gas for Simplot under the transportation agreement, as amended, for an additional term expiring June 11, 1991.

Other than the extension of term, Northwest proposes no change in the above-described existing transportation service. Northwest indicates it would continue to charge its previously-approved interruptible incremental on-system transportation rate (T-4) and its interruptible replacement on-system transportation rate (T-5) under Volume No. 2 of its tariff.

Comment date: August 21, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

4. Northwest Pipeline Corp.

[Docket No. CP87-449-000]

Take notice that on July 16, 1987, Northwest Pipeline Corporation (Northwest), P.O. Box 8900, Salt Lake City, Utah 84108, filed in Docket No. CP87-449-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for the account of Washington Natural Gas Company (Washington Natural), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Washington Natural has acquired Canadian and domestic supplies of natural gas which it desires to have transported by Northwest pursuant to a transportation agreement dated June 2, 1987, providing for transportation service under Rate Schedules T-4 and T-5 of Northwest's FERC Gas Tariff Volume 1-A. Northwest states that it would transport up to 100,000 MMBtu's per day of natural gas for a term commencing with initial delivery and terminating October 31, 1989.

Northwest states that the Canadian gas supplies would be tendered to it for transportation at its interconnection with Westcoast Transmission Company Limited at the international boundary near Sumas, Washington or at its interconnection with Pacific Gas Transmission Company near Stanfield, Oregon.

It is stated that the domestic gas supplies would be tendered to Northwest for transportation at the following points: interconnections with Mountain Fuel Resources Inc. at Crossover 16 in Sweetwater County, Wyoming and Red Wash in Uintah County, Utah; the interconnection with Utah Gas Service Company near Jensen, Utah; the interconnections with Rocky Mountain Natural Gas Company at South Canyon in Mesa County, Colorado and Piceance in Rio Blanco County, Colorado; the Papoose Canyon mainline receipt point from Santa Fe Energy in Delores County, Colorado; the interconnections between Northwest's gathering facilities and Northwest's mainline at North Douglas Creek and Foundation Creek in Rio Blanco County, Colorado and at Corcoran Point in Garfield County, Colorado; and the outlets of Northwest's Opal Gasoline Plant in Lincoln County, Colorado and Ignacio Gasoline Plant in LaPlata County, Colorado.

Northwest proposes to transport and deliver the natural gas, on an

interruptible basis, for the account of Washington Natural, to the existing meter stations in the State of Washington where Northwest states it is presently authorized to make deliveries to Washington Natural under Northwest's ODL–1 sales rate schedule. Northwest further proposes to provide the transportation service for a limited-term expiring on October 31, 1989. Also, Northwest requests authorization to allow Washington Natural the flexibility to switch to new suppliers behind any of the authorized transportation receipts points.

Northwest states that Washington Natural, as a local distribution company subject to the jurisdiction of the Washington Utilities and Transportation Commission, would deliver the subject natural gas to 86 specific end-users.

Comment date: August 21, 1987, in accordance with Standard Paragraph F at the end of this notice.

5. Southern Natural Gas Co.

[Docket No. CP86–306–002]

Take notice that on July 9, 1987, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563 filed in Docket No. CP86–306–002 a petition to amend the order issued June 13, 1986, as extended by order issued September 11, 1986, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the petition to amend which is on file with Commission and open to public inspection.

By its Order Issuing Limited-Term Certificates issued June 13, 1986, and its Order Extending Certificates issued September 11, 1986, in this proceeding, the Commission authorized Southern to provide interruptible transportation of up to 310 billion Btu equivalent of natural gas per day for Atlanta Gas Light Company (Atlanta) for a term expiring June 13, 1988.

In its petition to amend which is the subject of the present filing, Southern, in accordance with an amended agreement with Atlanta, requests that the Commission authorize the addition of 37 redelivery points or areas in Georgia. According to Southern the addition of these redelivery points would allow the gas that is transported by Southern for Atlanta to be accessible at all points on Atlanta's distribution system.

Comment date: August 21, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

6. Southern Natural Gas Co.

[Docket No. CP86–318–002]

Take notice that on July 14, 1987, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP86–318–002 a petition to amend the order issued June 13, 1986, as extended by order issued September 11, 1986, and June 5, 1987, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

By its Order Issuing Limited-Term Certificates issued June 13, 1986, and its Order Extending Certificates issued September 11, 1986, and June 5, 1987 in this proceeding, the Commission authorized Southern to provide interruptible transportation of up to 80 billion Btu equivalent of natural gas per day for South Carolina Pipeline Corporation (South Carolina) for a term expiring October 31, 1988.

In its petition to amend which is the subject of the present filing, Southern, in accordance with an amended agreement with South Carolina, requests that the transportation quantity authorized in the certificate be increased to 160 billion Btu equivalent per day. Southern states that South Carolina has arranged to obtain additional sources of supply of natural gas, and that the amended transportation is proposed to transport these additional supplies.

Comment date: August 21, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

7. Trunkline Gas Co.

[Docket No. CP87–441–000]

Take notice that on July 13, 1987, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP87–441–000, an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of natural gas to the Hardeman-Fayette Utility District (Hardeman) for distribution and resale in Fayette County, Tennessee, as well as the construction and operation of facilities necessary to provide such sale, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Trunkline proposes to sell a maximum of 3,800 Mcf of natural gas per day to Hardeman under its Rate Schedule SG–1 for Small General Service Customers in its FERC Gas Tariff, Original Volume No. 1. It is stated that Hardeman is a public utility district which serves industrial and residential end-users and is expanding its current service into a new area in Fayette County, Tennessee.

Trunkline proposes to deliver the gas to Hardeman at two points of delivery referred to as the Piperton point and the Canadaville point. Trunkline states that the authorization to establish the Piperton point is requested in Docket No. CP87–413–000 under the blanket certificate authorization; however, Trunkline requests authorization in the subject filing to construct and operate additional facilities necessary to provide the sale of gas to Hardeman at the Piperton point. In addition, Trunkline requests authorization to establish the Canadaville point as well as to construct and operate the necessary facilities in order to also deliver the sale gas to Hardeman at the new Canadaville point. Trunkline states that the cost of facilities would be $223,000 which would be financed from funds on hand.

Trunkline projects that the distribution of the maximum daily quantity of 3,800 Mcf per day between the delivery points would be approximately 2,300 Mcf per day to the Piperton point and 1,500 Mcf per day to the Canadaville point. Trunkline states that the sale of natural gas to Hardeman for resale would be for a primary term through November 1, 1993 and for successive terms of twelve months thereafter, subject to termination by either party upon 18 months prior notice.

Comment date: August 21, 1987, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal

Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-17846 Filed 8-5-87; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 9642-001 et al.]

Surrender of Preliminary Permits; Hydrodynamics, Inc., et al.

July 31, 1987.

Take notice that the following prelimiary permits have been surrendered effective as described in Standard Paragraph I at the end of this notice.

1. Hydrodynamics, Inc.

[Project No. 9642-001]

Take notice that Hydrodynamics, Inc., permittee for the proposed East Bench Project, has requested that its preliminary permit be terminated. The permit was issued on April 28, 1986, and would have expired on March 31, 1989. The project would have been located on Rock Creek Clear Ditch near the town of Red Lodge, in Carbon County, Montana.

The permitted filed the request on June 23, 1987.

2. Hydrodynamics, Inc.

[Project No. 9644.001]

Take notice that Hydrodynamics, Inc., permittee for the proposed Scotch Coulee Project, has requested that its preliminary permit to be terminated. The permit was issued on April 28, 1986, and would have expired on March 31, 1989. The project would have been located on Rock Creek Clear Creek Ditch near the town of Red Lodge, in Carbon County, Montana.

The permittee filed the request on June 25, 1987.

3. Tongue River Limited Partnership

[Project No. 9536.001]

Take notice that Tongue River Limited Partnership, Permittee for the Tongue River Project No. 9536, has requested that its preliminary permit to be terminated. The preliminary permit for Project No. 9536 was issued April 14, 1986, and would have expired on March 31, 1989. The project would have been located on Tongue River at the State of Montana owned Tongue River Dam in Big Horn County, Montana.

The permittee filed the request on July 6, 1987.

4. River Street Associates

[Project No. 9559.001]

Take notice that River Street Associates, permittee for the Gurnsey Dam Project No. 9559, has requested the preliminary permit to be terminated. The preliminary permit for Project No. 9559 was issued on April 28, 1986, and would have expired on March 31, 1989. The project would have been located on the Nubanusit River, In Hillsboro County, New Hampshre.

The permitted filed the request on May 4, 1987.

Standard Paragraphs

1. The preliminary permit shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007 in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-17847 Filed 8-5-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF87-529-000]

Application for Commission Certification of Qualifying Status of a Cogeneration Facility; Ada Cogeneration

July 30, 1987.

On July 14, 1987, Ada Cogeneration (Applicant), of 320 Lennon Lane, Walnut Creek, California 94598 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Ada, Michigan and will consist of a combustion turbine generator, a heat recovery steam generator, and an extraction/condensing steam turbine generator. Thermal energy recovered from the facility in the form of steam will be used for space heating, hot water production and various manufacturing, chemical processing and packaging by Amway Corporation. The electric power production capacity of the facility is 20.6 MW. The primary energy source will be natural gas. Construction of the facility is expected to commence in mid-1988.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-17848 Filed 8-5-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-621-001]

Application for Commission Certification of Qualifying Status of a Small Power Production Facility; Pennsylvania Renewable Resources Associates

July 30, 1987.

On July 16, 1987, Pennsylvania Renewable Resources Associates (Applicant), of c/o United American Energy Corp., 50 Tice Boulevard, Woodcliff Lake, New Jersey 07675 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 15 MW hydroelectric facility (FERC P. 3207) is located near the Conemaugh River and Lake in Westmoreland County, Pennsylvania.

Recertification is requested due to a change in ownership of the facility. Under the instant application, the

ownership of the facility will be transferred from Borough of Saltsburg, Pennsylvania and Pennsylvania Renewable Resources Associates to Pennsylvania Renewable Resources Associates.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-17849 Filed 8-15-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-3-48-006]

PGA Rate Change Filing; ANR Pipeline Co.

July 31, 1987.

Take notice that on July 28, 1987 ANR Pipeline Company ("ANR"), pursuant to Section 15 of the General Terms and Conditions of its F.E.R.C. Gas Tariff, Original Volume No. 1, tendered for filing with the Federal Energy Regulatory Commission ("Commission") the following tariff sheets:

Tenth Revised Sheet No. 18

Tenth Revised Sheet No. 18 reflects a 8.56¢ per dekatherm ("dth") increase in the gas cost component of the commodity rate of ANR's CD-1 and MC-1 Rate Schedules, a decrease of $0.408 in the monthly demand rate of CD-1 and MC-1 Rate Schedules and an increase of ANR's one-part rates applicable to Rate Schedules SGS-1 and LVS-1 of 2.09¢ and 6.80¢ respectively, per dth.

In this tariff filing, ANR is revising its demand and commodity rates to reflect cost functionalization and classification consistent with Opinion Nos. 256 and 256A with respect to ANR's Canadian gas costs. In the absence of specific guidance from the Commission, ANR has undertaken to estimate such cost functionalization and classification, with the benefit of only limited information from its Canadian suppliers.

ANR states that copies of the filing were served upon all of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 7, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-11850 Filed 8-5-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA87-2-23-005, 006 and RE87-61-001]

Tariff Filing; Eastern Shore Natural Gas Co.

July 30, 1987.

Take notice that Eastern Shore Natural Gas Company (Eastern Shore) on July 22, 1987, tendered for filing the following tariff sheets to Original Volume No. 1 of its FERC Gas Tariff:

Revised Tariff Sheets—Docket No. TA87-2-23-000, et al.

Third Substitute Second Alternate Thirty-Third Revised Sheet No. 5
Third Substitute Second Alternate Thirty-Third Revised Sheet No. 6
Third Substitute Second Alternate Thirty-Third Revised Sheet No. 10
Third Substitute Second Alternate Thirty-Third Revised Sheet No. 11
Third Substitute Second Alternate Thirty-Third Revised Sheet No. 12
Third Substitute Second Alternate Tenth Revised Sheet No. 13
Substitute Second Alternate Fourth Revised Sheet No. 14
Substitute Thirty-Fifth Revised Sheet No. 5
Substitute Thirty-Fifth Revised Sheet No. 6
Substitute Thirty-Fifth Revised Sheet No. 10
Substitute Thirty-Fifth Revised Sheet No. 11
Substitute Thirty-Sixth Revised Sheet No. 12
Substitute Twelfth Revised Sheet No. 13
Substitue Sixth Revised Sheet No. 14

Substitute Revised Tariff Sheets in Docket No. RP87-61-000

Substitute Thirty-Fourth Revised Sheet No. 5
Substitute Thirty-Fourth Revised Sheet No. 6
Substitute Thirty-Fourth Revised Sheet No. 10
Substitute Thirty-Fourth Revised Sheet No. 11
Substitute Thirty-Fifth Revised Sheet No. 12
Substitute Eleventh Revised Sheet No. 13
Substitute Fifth Revised Sheet No. 14

Eastern Shore states that the purpose of the tariff sheets is to (1) revise certain tariff sheets in compliance with the Commission's June 19, 1987 order in Docket No. TA87-2-23-000, *et al.*, and (2) re-submit its June 4, 1987 filing in compliance with the Commission's May 22, 1987 order in Docket No. RP87-61-000.

On July 27, 1987, Eastern Shore filed the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Docket No. TA87-2-23-000 et al.

Fourth Substitute Second Alternate Thirty-Third Revised Sheet No. 11

Docket No. RP87-61-000

Second Substitute Thirty-Fourth Revised Sheet No. 5
Second Substitute Thirty-Fifth Revised Sheet No. 12

Eastern Shore states that the purpose of the July 27th filing was to correct mathematical calculations on the tariff sheets previously filed on July 22, 1987.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214,

385.211). All such motions or protests should be filed on or before August 7, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-17851 Filed 8-5-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-554-000]

Application for Limited-Term Abandonment with Pregranted Abandonment for Sales Under Small Producer Certificate; Horace F. McKay, Jr.

July 30, 1987.

Take notice that on May 1, 1987, as supplemented on May 11, 1987, June 1, 1987, and June 23, 1987, Horace F. McKay, Jr. (McKay) filed an application pursuant to Section 7(b) of the Natural Gas Act (NGA) and § 2.77 of the Commission's rules for a three-year limited-term abandonment of his sale of gas to El Paso Natural Gas Company (El Paso) from the McKay #1 Well, located in the Bloomfield Field, San Juan County, New Mexico. McKay also requests a three-year pregranted abandonment for sales of such gas under his small producer certificate in Docket No. CS71-969.

In support of his application McKay states the well has been shut-in due to market conditions for the majority of 1986 and 1987, and he is subject to substantially reduced takes without payment.[1] By letter agreement dated May 1, 1987, El Paso agreed to release the subject gas upon receipt by McKay of appropriate abandonment authority from the Commission. McKay proposes to sell instead to Sunshine Energy Company under a February 1, 1987, contract, as amended by letter agreement dated April 24, 1987. The estimated deliverability is 40 Mcf/d. The gas is NGPA section 104 post-1974 gas.

Since McKay indicates his well is shut-in without payment and has requested that his application be considered on an expedited basis, all as more fully described in the application which is on file with the Commission and open to public inspection, any person desiring to be heard or to make any protest with reference to said application should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in a proceeding must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for McKay to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-17852 Filed 8-5-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CI87-555-000 and CI87-572-000]

Applications for Limited-Term Partial Abandonment, Blanket Limited-Term Certificate with Pregranted Abandonment and Limited-Term Pregranted Abandonment for Sales Under Small Producer Certificate; SPG Exploration Corp., et al., Kerr-McGee Corp.

July 30, 1987.

Take notice that on May 21, 1987, as supplemented on June 2 and July 17, 1987, SPG Exploration Corp. and Kerr-McGee Corporation (Applicants) filed an application in Docket No. CI87-555-000 requesting limited-term partial abandonment through January 1, 1989, of sales of excess gas owned by Applicants and their co-owners [1] to Northern Natural Gas Company, Division of Enron Corp. (Northern). The application also requests that for sales of the released gas to other purchasers, SPG Exploration Corp. receive pregranted abandonment authorization through January 1, 1989, under the small producer certificate in Docket No. CS75-396, and in Docket No. CI87-572-000, Kerr-McGee Corporation receive a blanket limited-term certificate through January 1, 1989, with pregranted abandonment.

Applicants state expedited relief is sought for the reason that takes of gas under the terms of the Gas Purchase Contracts have been substantially reduced below the deliverability test amounts as filed with the Texas Railroad Commission. Applicants have not received any take-or-pay payments as a result of reduced takes, and Northern disputes Applicants' claim that such payments should be made as a result of the reduced takes. Applicants request that their application be considered on an expedited basis under procedures established by Order No. 436, Docket No. RM85-1-000, at 18 CFR 2.77.[2] Deliverability is approximately 15,449 Mcf/d. The gas is NGPA section 104 flowing (66%), certain Permian Basin gas (6%), 1973-1974 biennium (7%) and post 1974 gas (8%), 107 (c)(5) (6%) and 108 (7%) gas.

Since SPG states that it is subject to substantially reduced takes without payment and has requested that its applications be considered on an expedited basis, all as more fully described in the attached tabulation and in the applications which are on file with the Commission and open to public inspection, any person desiring to be heard or to make any protest with reference to said application should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to

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[1] The United States Court of Appeals for the District of Columbia vacated the Commission's Order No. 436 on June 23, 1987. In vacating Order No. 436, the Court rejected challenges to the Commission's statement of policy in § 2.77 of its Regulations. Section 2.77 states that the Commission will consider on an expedited basis applications for certificate and abandonment authority where the producers assert they are subject to substantially reduced takes without payment.

[1] Applicants state that the gas is produced from various interests and attributable to other owners having interests in the same wells as either or both of Applicants to the extent that such other owners agree to same.

[2] The United States Court of Appeals for the District of Columbia vacated the Commission's Order No. 436 on June 23, 1987. In vacating Order No. 436, the Court rejected challenges to the Commission's statement of policy in § 2.77 of its Regulations. Section 2.77 states that the Commission will consider on an expedited basis applications for certificate and abandonment authority where the producers assert they are subject to substantially reduced takes without payment.

be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for SPG to appear or to be represented at the hearing.

Kenneth F. Plumb,
Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
CI87-555-000	SPG Exploration Corp, et al.[2] 100 NE. Loop 410, Suite 1400, One International Centre, San Antonio, Texas 72816-4797.	Northern Natural Gas Company, Division of Enron Corp.[3], Sawyer Canyon Field, Sutton County, Texas.		
(CI86-546-000)	Kerr McGee Corporation, P.O. Box 25861, Oklahoma City, Okla. 73125.	Hunt Baggett Strawn, Ozona Canyon and Thomason Strawn Fields. Ozona Canyon, Ozona SW. Strawn, Ozona E. Ellenberger and Penn 7890 Fields.		
(CI86-547-000)		Penn 7890 and Canyon 6200 Fields		
(CI86-553-000)		Penn 7890 Field		
(CI86-554-000)		Hunt Baggett Strawn and Ozona Canyon Fields, Crockett County, Texas.		
B, May 1, 1987 [1]				
CI87-572-000, A, May 21, 1987 [5].	Kerr-McGee Corporation, P.O. Box 25861, Oklahoma City, Okla. 73125.	Various Purchasers [4], Various Fields, Sutton and Crockett Counties, Texas.		

[1] Additional material received June 2 and July 17, 1987.

[2] Applicants state that the gas is produced from various interests and attributable to other owners having interests in the same wells as either or both of Applicants to the extent that such other owners agree to same.

[3] Applicants request limited-term partial abandonment through January 1, 1988, of sales of gas in excess of Northern's requirements. SPG requests limited-term pregranted abandonment through January 1, 1989, for sales under the small producer certificate in Docket No. CS75-396. The purpose of the abandonment is to maximize production of the wells involved by entering into alternate marketing arrangements to sell this excess gas. In support of their application, Applicants state that they are subject to reduced takes without payment.

[4] Kerr-McGee requests a blanket limited-term certificate with pregranted abandonment through January 1, 1989 to make sales for resale in interstate commerce of the gas attributable to its interest which is released in Docket No. CI87-555-000.

[5] The application was received May 1, 1987. The filing date is the date the filing fee was received.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 87-17853 Filed 8-5-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. RP87-26-007 and RP87-26-008]

Filing of Revised Tariff Sheets; Tennessee Gas Pipeline Co., a Division of Tenneco, Inc.

July 30, 1987.

Take notice that on July 22, 1987, Tennessee Gas Pipeline Company (Tennessee) tendered for filing the following revised tariff sheets to Second Revised Volume No. 1 of its FERC Gas Tariff, to be effective as indicated:

Tariff Sheets and Effective Date

First Revised Sheet No. 46, August 21, 1987
First Revised Sheet Nos. 106-112, 116, August 21, 1987
Original Sheet Nos. 117-199, August 21, 1987
First Revised Sheet Nos. 205-207, August 21, 1987
First Revised Sheet No. 208, December 10, 1986
Original Sheet Nos. 208A and 208B, December 10, 1986
First Revised Sheet No. 211, August 21, 1987
First Revised Sheet Nos. 247-252, August 21, 1987
Original Sheet Nos. 253-299, August 21, 1987
First Revised Sheet Nos. 333-348, August 21, 1987
Original Sheet No. 349, August 21, 1987

Tennessee states that it is filing these revised tariff sheets in response to comments and concerns raised at the informal technical conference in this proceeding on February 19, 1987, and to operational situations that have arisen during the six months Tennessee has been an open-access transporter under the terms of Order No. 436. On July 27, 1987, Tennessee filed First Revised Sheet Nos. 113, 114, 115, which had been inadvertently omitted from the July 22nd filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before August 7, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file

BEST COPY AVAILABLE

with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-17854 Filed 8-5-87; 8:45 am]

BILLING CODE 6712-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3243-4]

Ambient Air Monitoring Reference and Equivalent Methods; Receipt of Application for a Reference Method Determination

Notice is hereby given that on July 14, 1987, the Environmental Protection Agency received an application from Wedding & Associates, Inc., P.O. Box 1756, Fort Collins, Colorado 80522, to determine if its PM_{10} Critical Flow High-Volume Sampler should be designated by the Administrator of the EPA as a reference method under 40 CFR Part 53 (40 FR 7049, 41 FR 11255, 52 FR 24727). If, after appropriate technical study, the Administrator determines that this method should be so designated, notice thereof will be given in a subsequent issue of the Federal Register.

Vaun A. Newill,

Assistant Administrator for Research and Development.

[FR Doc. 87-17883 Filed 8-5-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Requirement Approval by Office of Management and Budget

July 31, 1987.

The following information collection requirements have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). For further information contact Terry Johnson, Federal Communications Commission, telephone (202) 632-7513.

OMB No.: 3060-0113.

Title: Equal Employment Opportunity Program—10 Point Model Program and Guidelines.

Form No.: FCC 396.

OMB No.: 3060-0120.

Title: Equal Employment Opportunity Program—5 Point Model Program and Guidelines.

Form No.: FCC 396-A.

OMB No.: 3060-0212.

Title: Section 73.2080—Equal Employment Opportunity Program.

The approval on the above three information collections has been extended through 1/31/88 and they will remain in effect until that time, or until superseded by revised EEO program requirements which are currently under review at OMB.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-17896 Filed 8-5-87; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

July 31, 1987.

The Federal Communications Commission has submitted the following information collection requirement to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Jerry Cowden, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: None.

Title: Monitoring Program for Impact of Federal-State Joint Board Decisions.

Action: New collection.

Respondents: Telephone companies and state utility regulatory commissions.

Frequency of Response: Quarterly and annual reporting requirements.

Estimated Annual Burden: 890 Responses; 3,850 Hours.

Needs and Uses: The Commission is proposing to collect from telephone companies and state utility regulatory commissions information on: (1) Lifeline assistance programs, (2) telephone network usage and growth, (3) rate cases brought by large telephone companies before state regulatory commissions, and (4) jurisdictional shifts in revenue requirements. This information will be used by the Commission, Joint Board, Congress, and the public to assess the impact of several Federal-State Joint Board decisions.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-17897 Filed 8-5-87; 8:45 am]

BILLING CODE 6712-01-M

Specialized Mobile Radio Service Frequencies To Be Available for Reassignment

July 22, 1987.

The following channels were recently recovered from licensees who failed to meet the Commission's loading or construction requirements and will be available for reassignment to trunked Specialized Mobile Radio (SMR) applicants. They were previously licensed at the coordinates indicated and are available at any location within the geographic area which will protect existing SMR systems pursuant to Rules 90.362 and 90.621.

864.1375, 864.5875, 865.0375, 865.4875, 865.9375 MHz, Buffalo, NY

864.1375, 864.5875, 865.0375, 865.4875, 865.9375 MHz, Rochester, NY

864.0625, 864.5125, 864.9625, 865.4125, 865.8625 MHz, Grand Island, NY

864.0625, 864.5125, 864.9625, 865.4125, 865.8625 MHz, Brighton, NY

864.0875, 864.5375, 864.9875, 865.4375, 865.8875 MHz, Buffalo, NY

863.9875, 864.4375, 864.8875, 865.3375, 865.7875 MHz, Buffalo, NY

863.9875, 864.4375, 864.8875, 865.3375, 865.7875 MHz, Rochester, NY

856/860.5625 MHz, San Antonio, TX, 29-30-28 North, 98-34-09 West

856/860.9000 MHz, Tucson, AZ, 32-08-56 North, 110-52-54 West

856/860.8250 MHz, Tucson, AZ, 32-13-20 North, 110-58-14 West

856/860.7500 MHz, Tucson, AZ, 32-11-45 North, 110-54-28 West

851/854.9375 MHz, Ontario, OH, 40-45-36 North, 82-39-02 West

856/860.1625 MHz, Denver, CO, 39-23-17 North, 105-01-56 West

856/860.1375 MHz, Denver, CO, 39-45-55 North, 105-22-07 West

863.9375, 864.3875, 864.8375, 865.2875, 865.7375 MHz, Erie, PA, 42-02-24 North, 80-04-06 West

Pursuant to the Public Notice of January 6, 1986, Mimeo No. 1805, these channels will be available for reassignment on August 21, 1987. All applications received before August 21, 1987 will be dismissed. The first application received after the channels become available for reassignment opens the filing window. The window stays open only for the day on which the first application is received. *All applications MUST reference the date and DA number of this Public Notice in*

order to be considered for these frequencies.

There is a $30.00 fee required for each application filed. All checks should be made payable to the FCC. Applications should be mailed to: Federal Communications Commission, 800 Megahertz Service, P.O. Box 360416M, Pittsburgh, PA 15251–6416. Applications may also be filed in person between 9:00 AM and 3:00 PM at the following address: Federal Communications Commission, c/o Mellon Bank, Three Mellon Bank Center, 525 William Penn Way, 27th Floor, Room 153–2713, Pittsburgh, PA 15259, Attention: (Wholesale Lockbox Shift Supervisor).

For further information, refer to Public Notice of January 6, 1986 or contact Riley Hollingsworth or Betty Woolford, (202) 632–7125 of the Private Radio Bureau's Land Mobile and Microwave Division.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–17899 Filed 8–5–87; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; B&F Broadcasting, Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and State	File No.	MM Docket No.
A. B&F Broadcasting, Inc., Clinton, Missouri.	BPH-850617MI	87-270
B. Bott Communications, Inc., Clinton, Missouri.	BPH-850702ME	
C. Progressive Media, Inc., Clinton, Missouri.	BPH-850712XL	
D. Lucile Faye Stevens, Clinton, Missouri.	BPH-850712XM	
E. Cat Broadcasting, Inc., Clinton, Missouri.	BPH-850712CI	
F. Clinton Radio Partnership, Clinton, Missouri.	BPH-850712ZS	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Air Hazard, A, C
2. Comparative, A, B, C, D, E, F
3. Ultimate, A, B, C, D, E, F

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87–17817 Filed 8–5–87; 8:45 am]

BILLING CODE 6712-01-M

Filing of Proposed Revisions to the Average Schedules; National Exchange Carrier Association, Inc. (NECA)

On June 30, 1987, the National Exchange Carrier Association, Inc. ("NECA") filed revisions with supporting documentation to the 1987 average schedules with a proposed effective date of January 1, 1988.

Persons wishing to examine NECA's June 30, 1987 filing may do so at the Commission's Public Reference Room, Room 239, 1919 M St., NW., Washington, DC in CC Docket No. 78–72, Phase I—Average Schedule Companies. Copies of the filing may also be ordered from the International Transcription Service ("ITS"), Room 246, 1919 M St., NW., Washington, DC. ITS may be reached by telephone at 202–857–3800.

Persons wishing to file comments may do so on or before September 15, 1987. Reply comments may be filed on or before October 8, 1987.

For further information contact Kent Nilsson at (202)–632–6363.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–17896 Filed 8–5–87; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Pub. L. 89–777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540): Sea Venture Cruises, Inc., 5233 NW., 79th Avenue, Miami, Florida 33166.

Date: August 3, 1987.

Joseph C. Polking,

Secretary.

[FR Doc. 87–17887 Filed 8–5–87; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

[Docket No. R-0607]

Interim Policy Statement Regarding Risks on Large-Dollar Wire Transfer Systems

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim policy statement.

SUMMARY: The Board has adopted a statement of an interim policy regarding risks on large-dollar wire transfer systems pending reevaluation of the Board's risk reduction program. This interim policy statement supersedes the policy statement adopted by the Board on May 17, 1985. 50 FR 21120 (May 22, 1985). In addition to matters covered in the earlier statement, the interim policy statement:

- Reduces in two stages the current sender net debit cap by 25 per cent.
- Exempts depository institutions from self-evaluation guidelines if their boards of directors approve a *de minimis* net debit cap of the lesser of 20 per cent of adjusted primary capital or $500,000.
- Imposes a $50 million limit on book-entry securities transfers over Fedwire.
- Provides for review by the Federal Reserve Bank of New York of the clearing procedures of primary dealers.
- Permits inter-affiliate Fedwire transfers resulting in daylight overdrafts, provided certain safeguards are observed, and permits depository institution holding companies to centralize their wire transfer operations at one or more of their subsidiaries, again, provided certain safeguards are observed.

EFFECTIVE DATE: The component parts of the interim policy will take effect as follows:

Cap Reduction: 15 per cent reduction on January 14, 1988; the remainder of the 25 per cent cap reduction on May 19, 1988.

De Minimis Cap: Implementation no later than December 3, 1987; earlier at the discretion of Reserve Banks. Board of director certification required by March 31, 1988.

$50 million Book-Entry Transfer Limit: January 14, 1988.

Inter-affiliate Transfers: No later than June 30, 1988.

FOR FURTHER INFORMATION CONTACT: Edward C. Ettin, Deputy Director (202–452–3368), Division of Research and Statistics; Elliott C. McEntee, Associate Director (202–452–2231), Division of Federal Reserve Bank Operations; Joseph R. Alexander, Senior Attorney (202–452–2489), Legal Division; for the hearing impaired only, Telecommunications Device for the Deaf (202–452–3544), Earnestine Hill or Dorothea Thompson.

SUPPLEMENTARY INFORMATION: The Board of Governors of The Federal Reserve System has issued the following interim policy statement concerning risks on large-dollar electronic funds transfer systems:

Interim Policy Statement Regarding Risks on Large-Dollar Payment Systems [1]

The Board has been concerned for some time about the risks associated with large-dollar payment systems.[2] The Federal Reserve Banks face direct risks of loss should depository institutions [3] be unable to settle their intra-day overdrafts on Fedwire before the end of the day. Moreover, the inability or unwillingness of a participant to settle its net debit position on a private large-dollar network—one that permits its participants to transmit payment messages throughout the day with settlement of net positions at the end of the day—would expose the banking system to systemic risk. The Federal Reserve would bear an indirect risk if it sought to avoid or limit this systemic risk. Systemic risk occurs when institutions unable to settle on private large-dollar payments networks cause their creditors on those networks, in turn, to be unable to settle their own commitments. Serious repercussions could, as a result, spread to other participants in the network, to other depository institutions not even participating in the private network, and to the nonfinancial economy generally. Finally, on either private wire systems or Fedwire, depository institutions create risk by permitting their customers, including other depository institutions, to transfer uncollected balances over wire systems in anticipation of their coverage before the end of the day.

The Board first began to address these risks in 1982 by permitting same-day net settlement at the Federal Reserve Bank of New York by participants in the CHIPS [4] network. In 1985, it adopted the next step in its effort to reduce risk on large-dollar networks by:

(1) Requiring participants in private networks using the Federal Reserve's net settlement service to establish maximum net credit limits they would establish for each other network participant (bilateral net credit limits).

(2) Requiring such networks to establish maximum limits on the net credit positions that all participants could have with any one participant (network net debit caps).

(3) Establishing guidelines by which institutions could evaluate their own ability to settle intra-day payments over Fedwire and private large-dollar wire systems combined; using these guidelines, institutions adopt voluntary limits on their maximum intra-day net debit funds positions across all large-dollar payments systems (cross-system sender net debit caps), approved annually by each institution's board of directors and subject to the primary supervisor's review as part of the examination process.

These and related steps were effective March 27, 1986.

In its 1985 policy statement, the Board indicated its intention to review its policy in late 1986, and to adopt modifications as required. In December, 1986, it published for public comment proposed modifications.[5] After reviewing the public comments and the progress of its risk reduction program to date, the Board has determined to adopt several modifications to its policy on an interim basis while the Board reconsiders the whole of its risk reduction program (see below). The interim policy changes the previous risk reduction policy in the following ways:

- The sender net debit cap multiples will be reduced by 25 per cent in two steps; a 15 per cent reduction will be effective on January 14, 1988, and the balance to 25 per cent below the original cap multiples will take place on May 19, 1988, unless subsequent events suggest the second step would be too disruptive to the payments mechanism or financial markets.
- A Fedwire transfer limit of $50 million on secondary market book-entry securities transfer (effective January 14, 1988) has been adopted. It will be unacceptable to send multiple transfers of $50 million or less with the express purpose of avoiding the limits or intentionally substitute book-entry for funds transfers in order to avoid quantitative limits on overdrafts.
- The Federal Reserve Bank of New York will continue to monitor clearing patterns and policies of primary dealers and will encourage these dealers to adopt practices designed to minimize book-entry overdrafts.
- With board of director approval, depository institutions may exempt themselves from self-evaluation to determine their sender net debit cap if they limit their cross-system funds overdrafts to the lesser of 20 per cent of adjusted primary capital or $500,000. Institutions that chronically exceed this *de minimis* cap, or incur overdrafts without filing a cap, will not be permitted to incur any Fedwire overdrafts. The *de minimis* cap is intended for use by depository institutions incurring only occasional overdrafts. Institutions that incur overdrafts under the *de minimis* policy on a regular basis will be counseled to reduce their frequency of overdrafts or to file a regular cap. Institutions that have not filed any cap by March 31, 1988, will be assigned a cap of zero.
- Depository institutions may transfer funds over Fedwire to affiliates, even when the sending institution incurs an overdraft, so long as the sender's total overdrafts stay within its cap, and provided that the sending institution's

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[1] This policy statement supercedes an earlier one issued by the Board on May 17, 1985. 50 FR 21120 (May 22, 1985).

[2] In a changing technological and regulatory environment, it is not possible or desirable to adopt an all inclusive and permanent definition of a "large-dollar payment system" for the purposes of Federal Reserve risk control policy. In determining whether any particular system is a "large-dollar" system, the Board will consider any of the following four factors: (1) The employment of multilateral netting arrangements, (2) the use of same-day settlement, (3) the routine processing of a significant number of individual payments larger than $50,000, and (4) the possibility that any one participant could be exposed to a net debit position at the time of settlement in excess of its capital.

[3] In this policy statement, the terms "depository institution" or "institution" will be used to refer not only to institutions defined as "depository institutions" by 12 U.S.C. 461(b)(1)(A), but also to U.S. branches and agencies of foreign banks and Edge and agreement corporations, unless the context indicates a different reading.

[4] CHIPS (Clearing House Inter-bank Payments System) is a large-dollar network owned and operated by the New York Clearing House.

[5] On December 10, 1986, the Board issued the following six proposals for public comment: book-entry securities transfers (Docket No. R–0587, 51 FR 45046); cap level reductions (Docket No. R–0588, 51 FR 45050), *"de minimis"* caps (Docket No. 0589, 51 FR 45053); limits on inter-affiliate Fedwire transfers (Docket No. R–0590, 51 FR 45054); automated clearing house transactions (Docket No. 0591, 51 FR 45043); and pricing of daylight overdrafts (Docket No. R–0592, 51 FR 45052). All these proposals were published in the December 16, 1986, edition of the Federal Register.

board of directors approves and the primary supervisor finds the arrangement acceptable. (FSLIC-insured institutions are not permitted by the Federal Home Loan Bank Board to adopt such practices.)

• Depository institutions may arrange to send and receive Fedwire transfers for affiliated depository institutions with board of director approval, provided certain safeguards are met.

The Board is well aware that large-dollar networks are an integral part of the payments and clearing mechanism and that it is of vital importance to keep the payments mechanism operating without significant disruption. Indeed, it is precisely because of the importance of avoiding such disruptions that the Board continues to seek to reduce the risks of settlement failures that could cause these disruptions. The Board is also aware, however, that some intra-day credit may be necessary to keep the payments mechanism running smoothly and efficiently. While it is essential to reduce and control intra-day credit risks, this must be done in a manner that will minimize disruptions to the payments mechanism. The Board anticipates that in relying largely on the efforts of individual institutions to identify, control, and reduce their own exposures, and by establishing guidelines for use by institutions, the goal of reducing and controlling risks will not unduly disrupt the smooth operation of the payments mechanism—even with the additional steps the Board has taken.

The Board reemphasizes that it is not condoning daylight overdrafts. While, as noted, some intra-day credit may be necessary, the Board anticipates that, as a result of its policy, there will continue to be a reduction in the number of institutions consistently relying on daylight overdrafts or other intra-day credit to conduct their business. The Board also expects to continue observing, over time, a reduction in the volume of intra-day credit at those institutions with a pattern of substantial reliance on such credit. The Board will continue to monitor the effect of its policy on the payments system and financial markets and anticipates that its Large-Dollar Payments System Advisory Group will advise it if significant disruptions occur from its daylight overdraft policy.

The Board believes that its policy to date has been successful in alerting senior management of depository institutions to the risks involved in extending daylight credit to their customers and in the exposure presented by other depository institutions on private networks. The evidence suggests that most depository institutions have improved operational and credit controls and have been successful in reducing their daylight overdrafts relative to their transactions volume. The Board has taken the additional modest steps described above in order to induce a further reduction. The Board believes that these steps will not result in any disruptions to the payments mechanism.

The additional steps taken by the Board are considerably less stringent than those published for public comment in December, 1986.[6] In view of public comments, the Board has determined that, before it considers further steps to reduce payment system risk it will first review:

• Its long-run goals for this policy;

• The applicablity to, and relationship between, caps and collateral for book-entry overdrafts;

• The role of collateral for funds and book-entry overdrafts;

• The applicability of caps to book-entry overdrafts;

• The benefits and costs of future cap reductions;

• The benefits and costs of Reserve Bank pricing of Fedwire funds and book-entry overdrafts, in lieu of, or in addition to, cap reduction;

• The benefits and costs of requiring larger clearing balances for active participants in the payment system in lieu of, or in addition to, cap reduction and/or pricing of Fedwire overdrafts; and

• Other related issues.

The Board will be requesting its Large-Dollar Payment System Advisory Group to review these issues in consultation with other interested private-sector parties and to present its views to the Federal Reserve Payment System Policy Committee [7] by the first quarter of 1988. At the same time, it has asked the Payment System Policy Committee to create a joint Reserve Bank-Board staff task force to review these issues as well and to present its analysis by early 1988. Subsequent to the reports of the private sector Advisory Group and the staff task force, the Payment System Policy Committee will review the analyses and present its views to the Board. The Board intends that the Committee report will highlight the Board's options and the implications of each of them for both risk reduction and possible market disruption.

In the interim, the Board's revised risk reduction policy is set out below:

I. Bilateral Net Credit Limits

In earlier statements of its risk-reduction policy,[8] the Board stated that any large-dollar network obtaining net settlement services from a Federal Reserve Bank would have to require each of its participants to establish bilateral net credit limits vis-a-vis each other participant on that network. In setting bilateral net credit limits, each participant on a network determines for itself the maximum dollar amount of net transfers (i.e., the value of receives in excess of the value of sends) that it is willing to accept from each other participant on that network. The Board believes that bilateral net credit limits reduce risk by enabling an institution to identify and control the exposure it could face in the event of a settlement failure. Accordingly, the Board has decided to continue this requirement.

Under the Board's policy, no private large-dollar payment network is eligible for Reserve Bank net settlement services unless it (1) requires each participant to establish bilateral net credit limits vis-a-vis each other participant on that network, and (2) establishes a system to reject or hold any payment that would exceed such a limit.[9]

The federal bank examiners will continue, during regular examinations, to review and comment on the procedures used by each institution in establishing, monitoring, reviewing, and modifying bilateral net credit limits, and ensure that institutions understand their potential exposures with each other participant over more than one network and in more than one market.

II. Sender Net Debit Caps

Bilateral net credit limits are not sufficient by themselves to reduce aggregate risk on large-dollar payment networks. The volume of daylight exposure that each institution is willing to accept from each other institution is likely to be quite large when aggregated across all receivers. Moreover, each institution is unaware of the credit made available to a given sender by other potential receivers. For this reason, the Board believes that bilateral net credit limits must be supplemented by a limit

[6] The Board anticipates that it will consider in the fall of 1987 proposals to reduce risks on automated clearing houses (ACHs), but does not expect that it will, at that time, modify the treatment of ACH payments in its ex post monitoring system.

[7] The Payment System Policy Committee is chaired by Vice Chairman Johnson. Other members are Governor Angell and Presidents Corrigan and Melzer and First Vice President Monhollon.

[8] 49 FR 13191; 50 FR 21121.

[9] Bilateral net credit limits do not apply to Fedwire because the Federal Reserve provides final credit to the receiver when advice of credit is given for the transfer. 12 CFR 210.36. Reserve Banks, however, may take action to reduce their credit exposure.

on the aggregate amount of risk that an institution can present to the payments system. Accordingly, the Board strongly urges that each institution either participating on a large-dollar network or incurring daylight overdrafts on Fedwire adopt a sender net debit cap (a ceiling or "cap" on the aggregate net debit position—the value of all sends in excess of the value of all receives—that it can incur during a given interval).

Sender net debit caps—expressed as multiples of capital—should be applied across all large-dollar systems, i.e., to the aggregate position of an institution at a moment in time on all large-dollar transfer systems combined. With this "cross-system" sender net debit cap, net debit positions on one system can be offset by credit positions on other systems.[10] In addition to the cross-system sender net debit cap, the Board requires, as a condition for access to the Federal Reserve net settlement service, that each private network develop and impose on its participants a network sender net debit cap designed to reduce individual institution risk exposure on that network to reasonable levels. Further, each network is required to implement a mechanism for rejecting or holding those transfers that would cause an institution to exceed its cap.

The Board's policy calls for a voluntary cross-system sender net debit cap based on a specific set of guidelines and some degree of examiner oversight.[11] The Board's policy has no regulatory dimension except (1) potential responses to an actual level of aggregate daylight credit exposure at an individual institution deemed by the institution's examiner to be unsafe or unsound, (2) elimination of access to daylight overdrafts on Fedwire by institutions not engaging in the self-evaluation process or filing a board of directors approved *de minimis* cap, and (3) control of Fedwire overdrafts of individual institutions determined by a Reserve Bank to expose it to excessive risk. Events since March, 1986, have demonstrated that senior management and the boards of directors of depository institutions generally have followed the proposed guidelines and procedures closely. If further events demonstrate the contrary, the Board will reconsider its options, including the adoption of regulations designed to impose explicit limits on daylight credit exposure.

A. Determining Cap Category

The first step for an institution in establishing its cross-system sender net debit cap is to determine its own cap category by evaluating its creditworthiness, credit policies, and operational controls and procedures.[12] The guidelines to be used by each institution in establishing its cap category are detailed in an Appendix to the Board's this policy statement.

Determination of cap category should be made by an institution's board of directors. A cap determination may be reviewed and approved by the board of directors of a holding company parent of a depository institution, or the parent of an Edge or agreement corporation, provided that (1) the self-evaluation is performed by each entity incurring daylight overdrafts or participating on a private large-dollar network, (2) the entity's cap is based on the entity's own capital (adjusted as noted below to avoid double counting), and (3) each entity maintains for its primary supervisor's review its own file with supporting documents for its self-evaluation and a record of the parent's board of directors' review, as noted below.[13]

In applying these guidelines, each institution is expected to maintain a confidential file for examiner review that includes (1) worksheets and supporting analysis developed in its self-evaluation of its own risk category, (2) copies of senior management reports to the board of directors of the institution or its parent (as appropriate) regarding that self-evaluation, and (3) copies of the minutes of the discussion of the appropriate board of directors concerning the institution's adoption of a cap category.[14] The process of self-evaluation, with board of director review, should be conducted at least once in each 12-month period.

As part of its normal examination, the depository institution's examiners will review the contents of the self-evaluation file.[15] The objective of this review will be to assure that the institution has seriously and diligently applied the guidelines, that the underlying analysis and methodology were reasonable, and that the resultant self-evaluation was generally consistent with the examination report. Examiner comments, if any, would be expected to be forwarded to the board of directors of the institution. Consistent with the voluntary nature of the Board's policy with regard to sender net debit caps, however, it should be emphasized that the examiner cannot require a modification of the self-evaluation cap category unless the level of daylight credit used by the institution constitutes an unsafe or unsound banking practice.

B. Establishing Sender Net Debit Cap

The cap category resulting from the self-evaluation process should be used by each institution to establish its cross-system net debit cap. The cap levels, set as multiples of adjusted primary capital.[16] would be as follows:

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[10] As noted below, however, Reserve Banks will not permit daylight overdrafts on Fedwire to exceed the cross-system cap established by an institution; i.e., net credits on private wire systems will not be able to be used to increase the Fedwire cap. A similar arrangement will exist for private network participants where net credits on Fedwire and other private networks cannot be used to increase a participant's cap on a given private network.

[11] The Board acknowledges with appreciation that its policy draws heavily on the *Final Report of the Risk Control Task Force, Payments System Committee, Association of Reserve City Bankers*, prepared with the assistance of the Bank Administration Institute and Robert Morris Associates (October, 1984).

[12] This evaluation should be done on an individual institution basis—treating as separate entities each commercial bank, each Edge (and its branches), each thrift institution, etc. While the Board realizes that depository institution holding companies may act as integrated entities and that performing the self-evaluation on an individual institution basis may result in some increased costs, permitting holding company organizations to consolidate their funds transfer activities for daylight overdraft monitoring purposes would increase Federal Reserve Bank credit risk or systemic risk to depository institutions.

An exception is made in the case of U.S. agencies and branches of foreign banks. Since these entities have no existence separate from the foreign bank, all the U.S. offices of foreign banks (excluding U.S. chartered bank subsidiaries and U.S. chartered Edge subsidiaries) should be treated as a consolidated family relying on the foreign bank's capital.

[13] The Board believes that in determining a sender net debit cap for its U.S. branches and agencies, a foreign bank should undergo the same self-evaluation process as domestic banks. Many foreign banks, however, do not have the same management structure as U.S. depository institutions, and adjustments should be made as appropriate. Where a foreign bank's board of directors has a more limited role to play in the bank's management than a U.S. board, the self-evaluation and cap level should be reviewed by senior management at the foreign bank's head office that exercises authority over the foreign bank that is equivalent to that exercised by a board of directors over a U.S. depository institution. In those cases where the board of directors does exercise authority equivalent to that of a U.S. board, cap determination should be done by the board.

[14] In most cases it may not be possible for the U.S. examiners to review the minutes of the meeting a foreign bank's board of directors or other appropriate management group at which the self-evaluation was discussed. In lieu of this, the file on the self-evaluation that is made available for examiner review by the U.S. offices of a foreign bank should contain the report on the self-evaluation made to the foreign bank's senior management by the management of U.S. operations. In addition, the file should also contain a record of the appropriate senior management's response. As in the case of U.S. institutions, this review and confirmation should be completed every year.

[15] In the interim between examinations, examiners may contact an institution about its cap if statistical or supervisory reports or ad hoc information suggest that there may have been a change in the institution's position.

[16] See Section II C on capital, *infra*.

1. MARCH 27, 1986 THROUGH JANUARY 13, 1988

Cap class	Net debit cap	
	2-week avg. plus	Single day
High	2.0	3.0
Above average	1.5	2.5
Average	1.0	1.5
Limited [17]	0.5	0.5
No cap	0.0	0.0

[17] The "Limited Cap" is described in Section II C, infra. It will remain in effect only until January 1, 1989.

2. JANUARY 14, 1988 THROUGH MAY 18, 1988

Cap class	Net debit cap	
	2-week avg. plus	Single day
High	1.70	2.55
Above average	1.275	2.125
Average	0.85	1.275
Limited	0.425	0.425
No Cap	0.0	0.0

3. MAY 19, 1988 AND AFTER

Cap class	Net debit cap	
	2-week avg. plus	Single day
High	1.50	2.25
Above average	1.125	1.875
Average	0.75	1.125
Limited	0.375	0.375
No Cap	0.0	0.0

An institution is expected to avoid incurring cross-system net debits that, on average over a two-week period, exceed the two-week average cap, *and*, on any day, exceed the single-day cap. The two-week average cap provides some flexibility for institutions and recognizes that fluctuations in payments can occur from day-to-day. The purpose of the higher single-day cap is to limit excessive daylight overdrafts on any day, and to assure that institutions develop internal controls that focus on the exposures each day, as well as over time.

The two-week average overdraft volume to be measured against the cap is the average over a two-week reserve maintenance period of an institution's daily maximum net debit position across all networks. In calculating the two-week average, individual days on which an institution is in an aggregate net credit position across all systems throughout the day are treated as if the institution was in a net position of zero. The number of days to be used in calculating the average is the number of business days the institution's Reserve Bank is open during the reserve maintenance period.

C. Capital

Sender net debit caps are multiples applied to "adjusted primary capital." Primary capital includes common stock, perpetual-preferred stock, surplus, undivided profits, contingency and other capital reserves, qualifying mandatory convertible instruments, allowances for possible loan and lease losses (exclusive of any allocated transfer risk reserves),[18] and minority interests in equity accounts of consolidated subsidiaries, but excludes limited-life preferred stock. "Adjusted primary capital" is defined as the sum of these primary capital components less all intangible assets and deferred net losses on loans and other assets sold. Adjusted primary capital for thrift institutions would include any capital assistance provided by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation in the form of net worth certificates pursuant to 12 U.S.C. 1729(f) or 1823(i).

Any institution with negative adjusted primary capital may incur daylight overdrafts on Fedwire only with the permission of its Reserve Bank; all such overdrafts are to be collateralized and be subjected to "limited" sender net debit cap levels. An institution that has improved its position from negative to positive adjusted primary capital, but whose intangible assets and deferred loan and other asset losses still equal one-half or more of its adjusted primary capital, may continue to incur daylight overdrafts on Fedwire up to the limited cap for two years after it has achieved a positive adjusted primary capital position, but only with the permission of its Reserve Bank. All such overdrafts must be collateralized. Reserve Banks decide whether to allow institutions with negative capital and improving institutions to incur daylight overdrafts on a case-by-case basis and in no case permit an institution to incur daylight overdrafts on Fedwire unless the institution has undergone the self-assessment process outlined in the self-assessment guidelines and rated itself as having satisfactory credit policies and procedures and adequate creditworthiness. This limited cap policy will remain in effect until January 1, 1989, after which time all institutions must adopt another appropriate sender net debit cap.

In some instances, further adjustments to capital will be required. For example, virtually all Edge and agreement corporations are subsidiaries of depository institutions that may themselves use intra-day credit. The same capital would be double-counted if both the parent and the Edge or agreement corporation subsidiary used such credit based on their own capital bases. Accordingly, if a parent elects to permit its Edge or agreement corporation subsidiary to use daylight credit, any adjusted primary capital attributable to its Edge or agreement corporation subsidiary that is reflected on the parent's balance sheet must be subtracted from the parent's capital. The parent could choose, however, not to permit its Edge or agreement corporation subsidiary to use intra-day credit, and use all of its (the parent's) capital for its own cap.

In determining cross-system sender net debit cap levels, U.S. branches and agencies of a foreign bank should use the world-wide consolidated capital of that foreign bank[19] not that bank's parent. Furthermore, the adjusted primary capital of any U.S. bank subsidiary of the foreign bank should be subtracted from the foreign bank's adjusted primary capital to avoid double counting.

D. "De Minimis" Caps

Many depository institutions incur insignificant amounts of overdrafts and thus impose little risk to the payments system. In order to ease for these small overdrafters the burden of engaging in the self-evaluation process, and to ease the burden on the Federal Reserve of administering caps and monitoring these institutions, the Board has adopted its proposal to allow those institutions that meet reasonable safety standards to incur *"de minimis"* amounts of daylight overdrafts. The *de minimis* cap policy will take effect on December 3, 1987, or earlier at the option of each Reserve Bank.

Under this policy, any institution, including an Edge or agreement corporation or a "family" of U.S. offices of a foreign bank, may incur daylight overdrafts up to the lesser of 20 per cent of its adjusted primary capital (or U.S. "capital equivalency" for foreign banks' overdrafts on Fedwire) or $500,000.

This *de minimis* cap will be available to any institution, even though the institution has not conducted the self-evaluation normally required under Board guidelines. Nevertheless, an institution choosing to use a *de minimis* cap must submit to its Reserve Bank at least once each year a copy of the

[18] Allocated transfer risk reserves ("ATRR") are reserves against certain assets whose value has been found by the federal bank regulatory agencies to have been significantly impaired by protracted transfer risk problems. Such reserves are not considered capital by the agencies.

[19] As reported on Form FR 2225, the daylight overdraft capital report for U.S. branches and agencies of foreign banks.

resolution of its board of directors (or its holding company's board) approving the depository institution's use of daylight credit up to the *de minimis* level. Of course, if an institution's primary supervisor or Reserve Bank believes that the institution is not creditworthy, it will not be permitted to incur daylight overdrafts on Fedwire.

Depository institutions using a *de minimis* cap will not be permitted to have daylight overdrafts on a regular basis. Each Reserve Bank will counsel institutions that have a *de minimis* cap but continue to use daylight overdrafts habitually; those institutions that continue to incur overdrafts on a regular basis within the *de minimis* cap will be asked to file a regular cap or reduce their frequency of overdrafts. Institutions that exceed their *de minimis* caps on a chronic basis will be counseled vigorously to file a regular cap or to eliminate overdrafts. Institutions that fail to respond to counseling will be prohibited from incurring overdrafts on Fedwire by being assigned a zero cap and by either having their transfers monitored on a real-time basis or handled manually.

E. Additional Considerations

The contents of the self-evaluation cap category file will be considered confidential by the institution's examiner. Similarly, the actual cap level selected by the institution will be held confidential by the Federal Reserve and the institution's examiner. Finally, the Board notes that exceptional circumstances may require an institution to incur overdrafts in excess of its cap. Such a pattern of overdrafts should be discussed with its the Reserve Bank, with specific plans developed to reduce the intra-day credit positions as soon as possible to a level within the institution's cap.

III. Other Components of the Board's Policy

A. Daylight Overdrafts on Fedwire

The Fedwire cap for depository institutions is equal to the voluntary cross-system cap adopted by the institution, reduced by the institution's actual net debits on other networks as determined in an after-the-fact measurement process. This cap is thus to be monitored on an ex post basis.[20] The Fedwire cap is not increased by the institution's net credits on other networks. Each Reserve Bank, of course, retains the right to protect its risk exposure from individual institutions by reducing unilaterally Fedwire caps, imposing collateralization or clearing balance requirements, holding or rejecting Fedwire transfers during the day until the institution has collected balances in its Federal Reserve account, or—in extreme cases—taking the problem institution off-line or prohibiting it from using Fedwire.

Institutions that incur Fedwire overdrafts for the first time will be subjected to the *de minimis* cap of the lesser of 20 per cent of adjusted primary capital or $500,000. After 90 days, this provisional cap will be reduced to zero unless the institution either submits the appropriate board of directors approval of the *de minimis* cap or files a self-assessment rating and regular cap.[21]

B. Inter—Affiliate Transfers

The Board's prior policy statement provided for sender net debit caps to be established for each individual depository institution regardless of whether an institution was part of a holding company. Recognizing that depository institution subsidiaries of holding companies often seek to operate their funds transfers as if they were a single consolidated entity, the Board requested the private sector Large-Dollar Payments System Advisory Group to study whether institutions affiliated through common holding company ownership should be allowed to consolidate their wire transfer activity and capital for the purpose of monitoring compliance with the Board's payments system risk policy. The matter was also studied by a Federal Reserve task force.

After considering the recommendation of the Advisory Group and the Federal Reserve task force, the Board determined to continue its prior policy and not permit the consolidation of affiliates' capital and funds transfer activity for daylight overdraft monitoring purposes. The Board did, however, in December, 1986, request the public's comments on whether to permit or forbid holding companies to simulate consolidation through inter-affiliate transfers. After considering the public comments and the staff's recommendations, the Board has determined to permit transfers of funds over Fedwire among affiliated depository institutions that are intended to simulate consolidation and which create a pattern of daylight overdrafts up to the sending institution's sender net debit cap, provided the following conditions are met:

1. Each of the individual sending depository institutions' boards of directors approve, at least once each year, the intra-day extension of credit to the specified affiliate(s),[22] and sends a copy of the directors' resolution to its Reserve Bank.

2. During the regular examination, the individual's primary federal supervisor reviews the timeliness of board of directors resolutions, the establishment by the institution of limits on credit extensions to each affiliate, the establishment by the institution of controls to assure that credit extensions stay within such limits, and notes whether credit extensions have in fact stayed within those limits.

The Federal Home Loan Bank Board has advised that federal law prohibits any extension of credit between affiliated institutions insured by the Federal Savings and Loan Insurance Corporation. Accordingly, FSLIC-insured institutions may not enter into such "consolidation" arrangements. The federal bank regulatory agencies have indicated that they will scrutinize inter-affiliate transfers carefully, with particular emphasis on any indications of concentrations of credit beyond the sending bank's usual limits.

The Board notes that the adoption of this policy regarding transfers among depository institution affiliates does not in any way change the treatment of depository institutions and their Edge and agreement corporation *subsidiaries*. The ability of a parent institution to fund its Edge or agreement subsidiaries on an intra-day basis remains unchanged, so long as the parent remains within its own cap.

The Board has also adopted a proposal to allow arrangements whereby a depository institution or other entity ("the service provider") could initiate Fedwire transfers from the Federal Reserve account of another depository institution. Such arrangements will be permitted provided:

1. The institution whose account is being charged (the "institution") retains

[20] Reserve Banks, however, monitor an institution's Fedwire positions on a real-time basis when they believe that the institution is exposing the Federal Reserve to excessive risk. Real-time monitors permit a Reserve Bank to take action when a transaction exposes the Reserve Bank to excessive risk.

[21] Under the self-policing policy adopted by the Board, an institution that does not adopt a cap for itself would be able to use without limit all credit available to it over any private network, unless use of such credit is found to constitute an unsafe or unsound banking practice by the institution's examiner. Such behavior, however, would not be consistent with the spirit of the Board's policy.

[22] The provision of this policy statement that allows a holding company to establish caps for its depository institution subsidiaries does not apply to this requirement.

control of the credit granting process by individually approving each transfer or establishing credit limits within which the service provider can act.

2. The service provider must be an affiliate of the institution, or, if the institution approves each individual transaction, an unaffiliated company. All service providers must be subject to examination.

3. The service provider must not permit or initiate transfers that would exceed individual customer credit limits without first obtaining the institution's permission.

4. The service provider must have the operational ability to ensure that the aggregate funds transfer activity of the institution does not result in daylight overdrafts in excess of the institution's cap.

5. All funds transfer activity must be posted to the institution's account, and the institution will remain responsible for its account.

6. The institution's board of directors must approve the specifics of the arrangement, including: (a) The operational transfer of its funds transfer activity to the service provider; (b) the net debit cap for the activity to be processed by the service provider; (c) the credit limits for any inter-affiliate funds transfers.

7. The institution and the service provider must execute an agreement with the relevant Reserve Banks delineating the terms of the agreement.

8. The institution must have adequate backup procedures and facilities to cover equipment failure or other developments affecting the adequacy of the service being provided. This back-up must provide the Reserve Bank with the ability to terminate a service provider arrangement.

9. The institution must have the ability to monitor transfers being made on its behalf.

10. The institution must provide an opinion of counsel that the arrangement is consistent with corporate separateness and does not violate branching restrictions.

11. The primary supervisor must not object to the arrangement.

12. No individual with decision-making responsibilities relating to the funds transfer area may hold such a position in more than one affiliated institution participating in an approved arrangement.

13. The institution must have in place an adequate audit program to review the arrangements at least annually to confirm that these requirements are being met.

Any existing third-party access arrangements that do not conform to these requirements should be phased out as soon as possible, but in no event later than June 30, 1990. In order to assure consistency with the Board's policy, each new arrangement should be reviewed by the Director of the Division of Federal Reserve Bank Operations prior to approval by the Reserve Bank.

C. Book-entry Securities Transfers

In formulating its daylight overdraft policies, the Board has been concerned about the effect that overdraft restrictions could have on the U.S. government securities market and on the Federal Reserve's ability to conduct monetary policy through open market operations. Accordingly, the Board, pending adoption of procedures for reducing the Reserve Banks' risk exposure, had provisionally exempted from quantitative overdraft controls those Fedwire daylight overdrafts resulting from the transfer of book-entry securities against payment.[23]

In May, 1985, and again in December, 1986, the Board requested public comment on options that would collateralize part or all of book-entry securities overdrafts and subject the uncollateralized portion to the sender net debit cap. The Board has determined that, in light of the adverse public comments and the changes and potential changes in Treasury regulations governing the government securities market and the transfer and pledge of Treasury securities,[24] the collateralization of book-entry overdrafts and the inclusion of some or all of these overdrafts under the sender net debit cap warrants further review. The Board has thus determined to continue to exempt book-entry overdrafts from explicit quantitative limitations and delay its consideration of the collateralization of such overdrafts in normal circumstances pending the outcome of this review process, which will be part of the general review of longer-run goals, collateral, caps, pricing, etc., discussed above. Of course, as is now the case, Reserve Banks will continue to take steps to protect themselves against the risks posed by weak organizations or other special cases. For these high-risk situations, a Reserve Bank will take whatever steps it deems necessary, including requiring additional or specific collateral to be posted for funds *and* book-entry overdrafts, or, in extreme cases, even denying direct access to the funds and book-entry Fedwire system.

Nevertheless, the Board has adopted the following measures:

1. The operating circulars of the Reserve Banks will be revised to impose, effective January 14, 1988, a $50 million par value transfer size limit on secondary market book-entry Fedwire transfers. This limit is intended to induce multiple deliveries to reduce position building by dealers, a major cause of book-entry overdrafts; participants may choose to limit their trade size as well. New issue allocations to dealers and transfers of Treasury STRIPS would be exempt from the transfer limit. The Federal Reserve will work with the Public Securities Association and others to establish market practices and policies consistent with the intent of this policy modification, and the Board will monitor the effects of this policy on overdraft levels.

2. It will not be acceptable for institutions to use Fedwire to avoid the Board's risk reduction policy. Among other things, institutions should not:

(a) Send multiple deliveries of $50 million or less in succession for the account of the same customer for the purpose of avoiding the $50 million transfer limit;

(b) Intentionally substitute book-entry transfers for funds transfers in order to avoid quantitative limits; or

(c) Establish multilateral netting arrangements which settle net differences at the end of the day on Fedwire in order to reduce measured daylight overdrafts without reducing the gross obligations among participants. (This policy applies both to funds and book-entry Fedwire transfers.)

3. Staff in the surveillance and open market units of the Federal Reserve Bank of New York will continue to monitor primary dealers' clearing patterns and policies and review their findings with senior officials of those dealers. The Reserve Bank will seek to persuade dealers to adopt practices designed to minimize book-entry overdrafts.

4. After review by the Federal Reserve's Payments System Policy Committee of the work of a System task force, Reserve Banks are to develop and

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[23] Such overdrafts occur when the institution receiving book-entry securities has received book-entry securities against payment at a point in time of a greater value than the securities it has sent. Because receipt of a book-entry security and Fedwire payment to the sender of the security are simultaneous, the sender of the security receives Fedwire payment regardless of the securities overdraft position of the receiver. The definition used for a book-entry securities overdraft means that such an overdraft could occur even while the receiver's funds account was in credit balance.

[24] *See*, Treasury regulations implementing the Government Securities Act of 1986, 17 CFR Ch. IV, 52 FR 19,642 (May 26, 1987), and proposed regulations governing the Treasury-Reserve Automated Debt Entry System, 31 CFR Part 357, 51 FR 43027 (Nov. 28, 1986).

implement book-entry real-time monitoring capabilities as soon as possible, but not later than the first quarter of 1989.

5. Reserve Banks will review the book-entry clearing and settlement activities of institutions incurring sizable book-entry daylight overdrafts or conducting large-scale book-entry securities operations to assure themselves that such institutions have developed acceptable procedures to control the associated risk. In the event that an institution's controls are found to be inadequate, the Reserve Bank will take whatever steps it deems necessary to cover its risk exposure.

D. Automated Clearing Houses Transactions

In the past, automated clearing houses (ACHs) have generally been regarded as small-dollar systems. Recently, however, the ACHs have been evolving in such a way that they appear to be taking on many of the characteristics of large-dollar transfer systems, and they therefore present many of the same risks.

Accordingly, the Board directed its staff to undertake a study of ACH risk and sought comment on ACH risk issues.[25] Based upon the comments received and further study of the issues, the Board proposed certain changes in the Federal Reserve's treatment of ACH transactions.[26]

The Board has now determined to postpone any changes to the treatment of ACH transactions pending the review of the Federal Reserve's payments system risk policy. Pending completion of this review, the present treatment of ACH transactions on the ex post monitoring system will remain in place. Specifically, for purposes of ex post monitoring, net debits and credits resulting from ACH transactions will continue to be posted at the Reserve Bank's opening of business on the settlement date.[27] In addition, pending completion of the payment system risk study, the Board has suspended. consideration of providing same-day ACH settlement service by Reserve Banks.

E. Edge and Agreement Corporations, U.S. Branches and Agencies of Foreign Banks, and New York Article XII Investment Companies [28]

Special risks are presented by the participation on large-dollar transfer systems of these institutions. Some of them are major participants in those networks, often making and receiving a large volume of payments on behalf of affiliates and their parent organizations. The size of their payment activities is generally quite large relative to their U.S. capital (or for branches and agencies of foreign banks, measures derived from their U.S. financial statements), and thus sender net debit caps would tend to constrain severely the ability of many of these institutions to participate directly in the U.S. dollar payments mechanism, forcing them to deal either through their U.S. parent (in the case of Edges) or through U.S. correspondents or affiliates (in the case of U.S. agencies and branches and Edge subsidiaries of foreign banks, and some New York investment companies).

In developing its policy for these institutions, the Board has sought to balance the goal of reducing and managing risk in the payments system, including risk to the Federal Reserve, with that of minimizing the adverse effects on the payments operations of these institutions. In addition, the principle of fair and equitable treatment embodied in the U.S. policy of national treatment for foreign banks was given explicit consideration.

1. *Edge and Agreement Corporations.* Under current Board policy, all Fedwire overdrafts of Edge and agreement corporations must be fully collateralized. This policy reflects the lack of access of these institutions to the discount window and the possibility that the parent of an Edge or agreement corporation may be unable or unwilling to cover its subsidiary's overdraft on a timely basis.

The Board believes that Edge and agreement corporation subsidiaries of U.S. banks can, together with their parents, arrange their affairs in a way that would allow them to continue to service their customers at the same time that risk exposures are reduced. Specifically, the Board notes that the parent of an Edge or agreement corporation could fund its subsidiary during the day over Fedwire and/or the parent could substitute itself for its subsidiary on private networks. Indeed, data suggest that, in virtually all cases, the consolidated Edge and parent overdraft positions would be within the cap limits of the parent if it were evaluated as an above average cap institution, even though the Edge's overdrafts are very large in relation to the Edge's own capital. This suggests that such an approach by the parent could both reduce systemic risk exposure and permit the Edge corporation to continue to service its customers.[29]

With respect to Edge and agreement subsidiaries of foreign banks, the Board believes that because they lack access to the discount window and ready access to a U.S. affiliate that can provide support, these institutions should be treated in the same manner as their domestically owned counterparts.

Accordingly, the Board has determined that all Edge and agreement corporations will continue to be required to collateralize Fedwire daylight overdrafts, and strongly urges that each such corporation restrain its use of intra-day credit by establishing sender net debit caps based on its own capital in the same manner as any other domestic depository institution. In addition, the Board urges parents of Edge and agreement corporations to substitute themselves for their Edge or agreement subsidiaries on private large-dollar networks.

For purposes of sender net debit caps, the Board suggests that all branches of these same Edge or agreement corporations be consolidated. The consolidated entity's overdraft position will be monitored by the Reserve Bank of the Edge or agreement corporation's head office.[30] The monitoring Reserve Bank, in consultation with those Reserve Banks in which the Edge or agreement branches operate and the management of the consolidated entity, can either (1) determine that Edge or agreement branches outside its District will not be permitted to run Fedwire overdrafts, or (2) allocate part or all of the Edge or agreement corporation's Fedwire cap (and the responsibility of administering part or all of the collateral requirement) to a Reserve Bank in which one or more of the branches operate.

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[25] 50 FR 21130 (May 22, 1985).

[26] 51 FR 45043 (Dec. 16, 1986).

[27] This posting procedure is for ex post monitoring purposes and will in no way change when actual settlement entries are made or when ACH transactions become final.

[28] This section excludes discussion of foreign-owned U.S. depository institutions, including U.S. depository institutions that are either subsidiaries of foreign banks or of foreign bank holding companies. These entities have U.S. depository institution charters and capital in the U.S., and are treated the same as any other U.S. depository institution.

[29] The Board's action to place certain restrictions on inter-affiliate transactions has not changed the existing policy with respect to the treatment of depository institutions and their Edge or agreement subsidiaries.

[30] With the consent of the parties, a Reserve Bank other than that of an Edge head office can assume the management of these responsibilities.

2. *U.S Branches and Agencies of Foreign Banks.* As noted previously, the Board believes that U.S. branches and agencies of foreign banks should undergo the same self-evaluation process as domestic depository institutions, but that it be done on the basis of all U.S. branch and agency operations, rather than on an office-by-office basis. In setting a cross-system sender net debit cap, the Board believes that it is appropriate the cap be based on the world-wide consolidated capital of the foreign bank (less any adjusted primary capital attributable to subsidiary U.S. banks and Edge or agreement corporations reflected in the foreign bank's world-wide capital). The Board has reached this conclusion because public comments and other data indicate that private market participants view the intra-day credit risk associated with U.S. offices of foreign banks in terms of the world-wide creditworthiness of the entire foreign bank.

In assessing the Federal Reserve's own risk, however, the Board is still concerned about the lack of timely information filed with Reserve Banks, and the Federal Reserve's inability to monitor developments concerning each foreign bank's non-U.S. operations. Accordingly, the Board has determined that, only for purposes of determining the volume of a foreign bank family's uncollateralized Fedwire overdrafts, the multiples developed from the self-evaluation process (Section II–B, above) will be multiplied by the consolidated "U.S. Capital equivalency" of its U.S. agencies and branches.[31] (The term "U.S. capital equivalency" has been chosen merely as the most convenient term of art. While "U.S. capital equivalency" is to continue to be used in connection with "sender net debit cap multiples," developed from the foreign bank's self-evaluation, to determine foreign banks' maximum uncollateralized daylight overdrafts on Fedwire, the Board's use of the term is not meant to suggest that the Board presently intends that this measure necessarily should be used to measure a foreign bank's capital position in the United States for prudential or other purposes.) Any Fedwire overdrafts in excess of that amount will have to be collateralized. Any use of intra-day credit on private large-dollar networks will be treated as any other use of intra-day credit, and, as noted above, the total cross-system cap of a foreign bank's U.S. agencies and branches will be based on the world-wide capital of the foreign bank (less the noted adjustments).

The cross-system sender net debit cap for families of branches and agencies of the same foreign bank will be monitored by the Reserve Bank which exercises the Federal Reserve's oversight responsibilities under the International Banking Act. The administering Reserve Bank can, in consultation with Reserve Banks in which other U.S. agencies and/or branches of the same foreign bank are located and the management of the foreign bank's U.S. operations, determine that branches and agencies outside its District either will not be permitted to incur Fedwire overdrafts or will allocate part or all of the foreign family's Fedwire cap (and the responsibility for administering part or all of the collateral requirement) to a Reserve Bank in which one or more of the foreign offices operate.[32]

The Board believes that this approach will limit the Federal Reserve's risk while giving foreign banks with U.S. branches and agencies open access to the U.S. payments mechanism in keeping with the policy of national treatment.

3. *New York Investment Companies.* Investment companies chartered under Article XII of the New York Banking Law are not subject to reserve requirements and do not have access to the discount window. Because they do not maintain accounts with the Federal Reserve, they cannot use Fedwire. Some are, however, active participants on private networks, and therefore introduce risk in the payments system much like other participants. Accordingly, the Board urges that investment companies that participate on private large-dollar networks establish for themselves a cross-system sender net debit cap using the procedures and guidelines the Board has established for depository institutions.

F. Bankers' Banks

Bankers' banks are exempt from reserve requirements and do not have regular access to the discount window. They do, however, have access to Federal Reserve payment services. To protect Reserve Banks from potential loss resulting from daylight overdrafts incurred by bankers' banks, the Board adopted, in 1982, a policy that bankers' banks should refrain from incurring overdrafts and post collateral to cover any overdrafts they do incur. Bankers' banks may voluntarily give up their exemption from reserve requirements, thus gaining access to the discount window and avoid having to post collateral.

The Board has determined to continue the present policy.

G. Monitoring

The Board believes that ex-post monitoring is consistent with the voluntary, flexible approach it has adopted. Under ex-post monitoring, an institution with a cross-system net debit position in excess of its cap will be contacted by its Reserve Bank.[33] The Reserve Bank will counsel the institution, discussing ways to reduce its excessive use of intra-day credit. No regulatory action will be taken, but the Reserve Bank may

- Advise the appropriate examiner, who may recommend supervisory action if the volume of cross-system overdrafts are deemed unsafe or unsound, and/or
- Take appropriate action to limit its own risk exposure on Fedwire.

A Federal Reserve Bank will apply real-time monitoring to an individual institution's Fedwire position when the Reserve Bank believes that it faces excessive risk exposure, e.g., for problem banks or from institutions with chronic overdrafts in excess of what the Reserve Bank thinks is prudent. In such a case, the Reserve Bank will control its risk exposures by monitoring the institution's position on a real-time basis, and taking other prudential actions.

In order that Reserve Banks may properly monitor the use of intra-day credit, no future or existing large-dollar network will be permitted to settle on the books of a Reserve Bank unless its members authorize the network to provide position data to the Reserve Bank on request.

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[31] "Capital equivalency" is defined as: the greater of (1) the sum of the amount of capital (but not surplus) which would be required of a national bank being organized at each branch or agency location, or (2) the sum of 5 per cent of the total liabilities of each branch or agency, including acceptances, but excluding (A) accrued expenses and (B) amounts due and other liabilities to offices, branches, and subsidiaries of the foreign bank.

[32] As in the case of Edge and agreement corporations and their branches, with the approval of the designated administering Reserve Bank, a second Reserve Bank may assume the responsibility of managing and monitoring the cross-system sender net debit cap of particular foreign branch and agency families. This would often be the case when the payments activity and national administrative office of the foreign branch and agency family is located in one District, while the oversight responsibility under the International Banking Act is in another District. If a second Reserve Bank assumes management responsibility, monitoring data will be forwarded to the designated administrator for use in the supervisory process.

[33] Even if the institution is not a state member bank, the Reserve Bank can make this contact because an overdraft is occurring on Fedwire or because the institution is in a net debit position on a wire system settling on the books of the Federal Reserve.

H. Avoidance of Risk Reduction Measures

In its March 29, 1984, policy statement, the Board stated that "use of Fedwire for the avoidance of Federal Reserve or private sector risk reduction measures is not appropriate." The Board adopted this policy to prevent institutions from participating in bilateral netting arrangements whereby they would exchange gross payment messages during that day and settle at the end of the day by using Fedwire to adjust net positions bilaterally. Such arrangements would be difficult for Reserve Banks to detect and would be outside of Federal Reserve and private-sector risk control measures. They still, however, present the same risks to the payments mechanism that other net settlement arrangements present because settlement failures are still possible, and such failures would have the same deleterious consequences as any other settlement failures.

The Board, therefore, reaffirms its policy that institutions may not use Fedwire or other payments networks as a method of avoiding risk reduction measures.

The Board realizes, however, that certain netting arrangements are not intended to avoid risk reduction measures. Indeed, they can themselves reduce risk. For example, institutions may by means of novation, net transactions prior to settlement, with each participant legally obligated only for the resultant net position. This arrangement reduces risk because it replaces gross transactions with the smaller net obligation, and failures to settle would almost always involve smaller exposures (and less systemic risk) than with bilateral net settlement. The Board's policy on limiting avoidance techniques is not intended to restrict this kind of netting arrangement.

I. Large-Dollar Payment Systems Advisory Group

In July, 1985, the Board appointed a Large-Dollar Payment Systems Advisory Group composed of knowledgeable representatives of institutions active in the large-dollar payments market. Although the Board has not adopted all of the recommendations that the Advisory Group has made, it has found the Group an invaluable source of information on industry practices and industry views. Indeed it has asked the Advisory Group to aid in the Board's continued evaluation of its daylight overdraft policy. The Advisory Group will report directly to the Board through the Payment System Policy Committee and will be free to study any and all matters associated with the Board's policy of reducing risks on large-dollar payment systems.

By order of the Board of Governors of the Federal Reserve System, July 30, 1987.

James McAfee,

Associate Secretary of the Board.

Appendix—Guidelines for Establishing Risk Categories

This appendix presents the Board's guidelines to be used by institutions in determining their own classifications for purposes of setting their own sender net debit caps. The Board policy recognizes that individual institutions may perceive that special or unusual circumstances not adequately captured in these guidelines may, in the view of the institution's management and board of directors, be consistent with a higher grade classification and higher sender net debit cap. Such a position should be fully supported by analysis and evidence included in the file for examiner review. Examiners will be critical if such special factors are not fully documented, and will be especially sensitive to evidence that special positive factors are being emphasized and adverse factors ignored or downplayed.

The guidelines address creditworthiness; operational controls, policies, and procedures; and credit policies and procedures. The last section suggests how the self-evaluation in each of these three areas is to be combined into an overall assessment, which is then to be the basis for determining a sender net debit cap.

I. Creditworthiness

Self-assessment of creditworthiness should begin by reference to an institution's most recent examination report and, where applicable, to peer group statistics contained in the most recent Uniform Bank Performance Report (UBPR) and to the most recent Bank Holding Company Performance Report (BHCPR). Additional data from other reports and analyses should, of course, be used.

Major emphasis should be placed on asset quality, capital, and earnings where an institution's relative standing can be determined based upon quantifiable measures. Liquidity and holding company strength should be added in as modifying factors which, if strongly positive or negative, could influence the overall assessment of creditiworthiness. For each of the characteristics that become the primary determinants of the initial benchmark assessment of creditworthiness, each institution should rank itself using a four part scale from "Excellent" to "Below Standard."[1] The institution's files maintained for examiner review of cap determination should provide supporting analysis for the self-ranking assigned for each of the characteristics.

a. *Asset quality.* Asset quality should be graded "Excellent" through "Below Standard" in relation to

(a) The level, distribution, and severity of classified assets; (b) the level and composition of non-accrual and reduced rate assets; (c) the adequacy of valuation reserves; and (d) demonstrated ability to administer and correct problem credits. The self-analysis should take peer group statistics into consideration.[2] Obviously, adequate valuation reserves and a proven capacity to police and collect problem credits mitigate to some degree the weaknesses inherent in a given level of classified assets. In evaluating asset quality, consideration should also be given to any undue degree of concentration of credits or investments, the nature and volume of credits specially mentioned or classified, lending policies, and the adequacy of credit administration procedures. Evaluations of asset quality significantly different from the last examination report should be highlighted and supported in the cap determination file.

b. *Capital.* In the self-evaluation of capital, institutions should, as a starting point, note that the federal guidelines call for a minimum primary capital-to-asset ratio of 5.5 per cent for commercial banks. In assigning a specific rating for its capital position, adjustments should be made for the volume of risk assets; the level of off-balance sheet risk; the volume of classified assets; and bank growth experience, plans, prospects, and peer group capital levels. Asset quality should receive particular weight. Any institution that ranks its capital more than one grade above its asset quality has a significant burden of proof to justify such a grade, and its cap file should contain specific documentation.

c. *Earnings.* Earnings should also be graded "Excellent" to "Below Standard" with respect to (a) the ability to cover losses and provide for adequate capital, (b) earnings trends, (c) peer group comparisons, and (d) quality and composition of earnings. Consideration must also be given to the inter-relationships that exist between the dividend payout ratio, the rate of growth

[1] The full scale is as follows: "Excellent," "Very Good," "Adequate," and "Below Standard."

[2] In the case of classified assets, reference should be made to nonperforming assets of peer group institutions.

of retained earnings, and the adequacy of bank capital. A dividend payout rate that is excessive in this context, would warrant a lower grade despite a level of earnings that might otherwise result in a more favorable appraisal. Quality is also an important factor in evaluating this dimension of an institution's performance. Consideration should be given to the adequacy of transfers to the valuation reserve and the extent to which extraordinary or nonrecurring items, securities transactions, and tax effects contribute to net income.

The self-grading for asset quality, capital, and earnings should be combined into a single preliminary grade of creditworthiness based on an average of the three components. This preliminary grade would be affected by two final considerations, which are graded positive (+), neutral (o), or negative (−).

d. *Liquidity.* In most instances, an analysis of liquidity will indicate a stable funding base with a reasonable cushion of assets or untapped funding sources available to meet contingencies. In such instances, liquidity should be regarded as a neutral (o) factor in assessing creditworthiness. Evidence of frequent, unplanned borrowing from the Federal Reserve's discount window or deterioration in the normal funding base would be regarded as negative (−), and, depending upon the severity of the situation, the preliminary grade might be downgraded. Extremely liquid findings (+) could cause an upgrading of the preliminary rating, but such findings would usually need to demonstrate asset liquidity as well as sound liability management practices.

e. *Holding company and affiliates.* The relative strength of other depository institutions within the holding company, the parent company itself, and nondepository institution subsidiaries within the company can also marginally affect the preliminary grade. In general, if the regulators have characterized the consolidated holding company as in satisfactory condition in its most recent inspection, the influence should be regarded as neutral (o). If it was regarded as less than satisfactory, the influence should be regarded as negative (−). Downgrading of the preliminary grade would be expected if significant losses were being incurred or anticipated at the parent or nondepository institution subsidiary level, if consolidated capital was materially less than that of the subsidiary institution(s), or if holding company debt service necessitated excessive dividends from the depository institution subsidiaries. If the parent had a demonstrated record of capital contributions and other support for the depository institution subsidiary, its influence would be regarded as positive (+) and could raise the preliminary grade upward.

These five factors become the initial and minimum benchmark for the self-assessment. Other considerations, such as major changes in management or pending litigation that is material, may be significant when evaluating an institution. Further, in using any ratio in the analysis of the first three factors, the limitations of using a single ratio or even a few ratios must be recognized. To the extent that other factors or mitigating circumstances are factored into the final grade on creditworthiness, the reasoning for special consideration should be clearly laid out for the examiner's review. Also, in a voluntary self-assessment program, management should recognize its own natural predisposition to identify and emphasize positive factors while downplaying adverse ones. To the extent that files do not document balanced analyses, examiners should be critical.

U.S. Branches and Agencies of Foreign Banks

U.S. branches and agencies of foreign banks pose special problems for assessing creditworthiness because they do not have a corporate identity in the United States separate from that of the world-wide institution. Conceptually, however, the same analytical approach is appropriate, although special considerations are necessary to address data limitations.

In many cases, branches and/or agencies belonging to a single family will be found in several different geographic regions and subject to different supervisory authorities. Because the strength of the foreign bank, including all of its parts, will largely determine the strength of each branch or agency in the United States, a single overall assessment is necessary. Thus, branches and agencies of foreign banks should assess creditworthiness on the basis of the entire family—excluding any subsidiary U.S. chartered banks or Edge corporations of the foreign bank—rather than on an individual branch or agency basis.

For capital and earnings, the same approach and standards used for domestic depository institutions are appropriate. In general, the analysis should be done using available data on the foreign parent. Branches and agencies may restate their data to identify undisclosed reserves that are functionally equivalent to capital and to adjust earnings to reflect additions to such reserves. To the extent that the self-assessment relies on these factors, the file available to the examiner should provide supporting documentation.

For assessment of asset quality, additional difficulties are encountered. While information on the overall organization is clearly the data that should be used, asset quality information on the foreign bank or on the consolidated organization is generally not available to either the manager of U.S. operations or U.S. supervisory authorities. Instead, only U.S. asset quality information is available. Even then, organizations with multiple branches or agencies will typically have examinations of individual entities conducted on different dates and by different supervisors. Combining these results into a single meaningful composite of U.S. operations is therefore not easily accomplished. Recognizing these imperfections, the only practical approach available in most cases is to extrapolate for the overall family from whatever information is available in the U.S. operations.

Recognition should be given to the distortions that can arise when a single international credit becomes problemtic and is booked entirely in or outside the U.S. for control purposes. In instances where it is booked in the U.S., the credit may unduly overstate the severity of asset problems in the U.S. by attributing it entirely to the U.S. when it should more properly be attributed to the overall family. Judgment is therefore clearly appropriate in assessing asset quality.

As in the case for domestic depository institutions, asset quality, capital, and earnings provide a benchmark for the assessment of creditworthiness of the branch or agency. Other factors, like liquidity or the effect of affiliates, should be factored in as appropriate. Nevertheless, because the assessment has already included the strength of the foreign bank in measuring capital and earnings, extra care should be taken to avoid double counting the foreign bank in the assessment of its U.S. branches and agencies.

II. Operational Controls, Policies and Procedures

Two distinct components require analysis in the operational area if an institution is to be able to monitor its payments system risk effectively. These components are:

- Monitoring of the position of the institution on *each* payments system on which it operates and *across* all systems as an overall net position; and

• Monitoring of individual customers and the extent to which the institution extends credit by making funds available before they are collected, both when the institution is a sender and a receiver of funds.

Both components are important to any institution in its efforts to manage its payments system risk. The significance of monitoring the debit and credit flows to determine one's overall position and the position of individual customers does not decrease for smaller institutions. For both components, the business activity is first defined, areas of significant risk identified, and the adequacy of controls reviewed.

Factors such as automation or the size of the institution are not relevant except as they affect the ability to monitor risks. References to "real-time," therefore, address the timeliness of information, and not the degree of automation. Indeed, a manual system in a small institution that records every transaction may be far more effective as a real-time monitor than a fully automated and integrated system in a major operation that has yet to bring one area with substantial risk exposure in the institution into the monitored environment.

Based upon the analysis of the business activities and the identification of existing monitoring capabilities, each component is graded "strong," "satisfactory," or unsatisfactory," using specific standards. These two separate ratings of overall activity and individual customers should then be combined into an overall rating of operational controls, policies, and procedures.

a. Monitoring Institution Positions Relative to Net Debit Caps

Before evaluating its wire transfer operation, each institution needs to define the magnitude and relative importance of each payment system in which it participates.

The table below seeks to define the institution's funds transfer environment.[3]

AVERAGE DAILY VOLUME

System	Dollars sent	Percent of total	Dollars received	Percent of total
1. CHIPS				
2. Fedwire				
3. Other				
Total		100		100

For each system in which the institution participates, an acceptable level of risk exposure needs to be identified against which its position will be monitored. The monitoring of each system should then be identified as being: (1) On a real-time basis; (2) on a periodic basis and at what periodicity; or (3) not currently monitored or monitored only at the end of the day. Completing the following table summarizes the type of monitoring activity for each system:

INDIVIDUAL SYSTEM MONITORING CAPABILITY

System	Real time	Periodic	(Frequency)	No interim monitoring
1. CHIPS			( )	
2. Fedwire			( )	
3. Other			( )	

For systems that are monitored, the extent of cross-system monitoring can then be determined. For example, a real-time, cross-system monitor on Fedwire might be combined with a periodic monitor on CHIPS (or other networks that might develop in the future) to give a periodic cross-system on all systems. By identifying which systems used by the institution are monitored on a cross-system basis to determine a net exposure, an overall risk exposure can be obtained. As with the individual system, a summary table of cross-system monitoring capability can be completed like the one below.[4]

CROSS-SYSTEM MONITORING CAPABILITY

Systems monitored together	Real time	Periodic	(Frequency)	No interim monitoring
			( )	
			( )	
			( )	

Based on the cross-system monitoring capability and the volume of business handled by each system, a rating for the institution's controls for its cross-system exposure can be obtained as follows:

Rating for Monitoring Institution Positions

Strong

a. 95% of total dollars sent and received are monitored on a real-time basis or at 15 minute intervals or less *and*

b. a cross-system calculation of the institution's net debit/credit positions is computed and compared to established limits on a real-time basis or at 15 minute intervals or less.

Satisfactory

a. 80% of the total average daily dollar volume sent is monitored on a real-time basis or at 30 minute intervals or less; *and*

b. a cross-system calculation of the institution's net debit/credit position, utilizing these data, is computed and compared to established limits on a real-time basis or at 30 minute intervals or less.

Unsatisfactory—Any other condition.

b. Montoring Customer Positions

Each institution should have the capability of monitoring the effect of all significant transactions on the funds positions of customers as the transactions occur during the business day. At a minimum, the institution should be aware of the positions of customers that have a high-dollar volume of funds transfer activity in relation to each customer's funds position or to the institution's capital. Customer position should reflect the collected status of funds sent and received over payments systems, as well as the effect of other activities, such as loan advances, loan payments, and book transfers (transfers between customers on the institution's own books) which may result from instructions developed internally or received over message systems, such as S.W.I.F.T. Some customers require frequent monitoring because the volume of their daily transactions is large. Others need to be monitored only as a result of particularly large and unusual transactions.

For customers that are significant users of the payments system, three questions are important:

	Yes	No
1. Has the institution isolated its customers which participate to a significant degree in funds transfer systems as either senders or receivers of funds?		
2. Can the institution monitor the positions of these customers taking into account the source of significant transactions?		
3. Does the monitoring system include the opening collected balance?		

In monitoring customers for compliance with intra-day overdraft position limits established by credit policy and/or in approving over-limit payments, transactions other than those being transmitted and received over payments systems need to be considered as they directly affect the intra-day position. Among the transaction sources that should be

[3] To the extent that an institution uses other payments systems with same-day settlement, the list should be expanded to include them.

[4] Systems may often be listed on more than one line. For example, a real-time cross-system monitor on Fedwire and CHIPS might be combined with a periodic monitor on other systems to give a periodic cross-system monitor on all four systems.

considered are message systems such as S.W.I.F.T. and Telex; internal book transfers; and the institution's own lending, investment, and check processing operations. While it may not be feasible or reasonable to monitor all transactions from all areas, material thresholds should be established by the institution as criteria for monitoring individual transactions or aggregate transactions for a single customer that could put the institution at risk. The files should clearly document the reasons for including or excluding other areas and justify threshold limits sets.

Once customers have been identified and individual transaction limits set, the institution's ability to monitor and control the funds positions of its customers can be determined. The following checklist identifies the adequacy of controls:

	Yes	No
1. Does the system for monitoring positions of customers cover:		
a. All significant sources generating customer account entries?		
b. Total dollar volume of transactions over an established dollar limit?		
c. Overdraft limits?		
d. Single transfer limits?		
2. Does the system halt any transaction in excess of established limits from further processing until appropriate action is taken?		
3. If documentation of action taken with regard to over-limit transactions reflects consistent exceptions extended to a customer, is analysis of those accounts intensified?		
4. Are reviews of the funds transactions environment conducted by internal or external auditors at least annually? (These reviews should conform to the standards established by the Bank Administration Institute and the Federal Financial Institutions Examination Council.)		

Institutions must be able to respond positively to all questions in this section on monitoring customer positions if they are to evaluate their control as satisfactory or strong. These ratings should be obtained as follows:

Rating for Customer Monitoring System and Controls

1. *Strong*—Responses to all of the above are positive and comprehensive customer monitoring is in force *for both debits and credits* on a real-time basis or at intervals of 15 minutes of or less.[5]

2. *Satisfactory*—Responses to all of the above are positive and comprehensive customer monitoring is in force for all debit transactions greater than or equal to the monitoring threshold on a real-time basis or at intervals of 30 minutes or less.

3. *Unsatisfactory*—Any other condition.

Overall Rating for Operational Controls, Policies, and Procedures

The two separate ratings for monitoring capability are combined into a single rating by taking the lower of the two ratings as follows:

Monitoring institution positions	Monitoring customer and controls	Overall rating
Strong	Strong	Strong.
Strong	Satisfactory	Satisfactory.
Satisfactory	Strong	Satisfactory.
Satisfactory	Satisfactory	Satisfactory.
—Either Rated Unsatisfactory—		Unsatisfactory.

III. Credit Policies and Procedures

A simple two-way classification system for credit policies and procedures should be used. All institutions should have explicit, written credit policies and the necessary internal procedures in place to implement these policies. Failure to have such policies and procedures puts all participants in the payments system at risk, and should preclude a satisfactory overall rating and its associated debit cap limit regardless of the ratings for creditworthiness or monitoring capabilities.

The following checklist identifies the adequacy of credit policies and procedures:

	Yes	No
1. Does the institution have a written credit policy detailing normal and exception approval and reporting procedures for all loans and credit commitments, including daylight overdraft and bilateral limits and other special facilities?		
2. Are all facilities and exposures approved as part of acknowledged aggregate exposure to individual bank and commercial customers?		
3. Does the institution use monitoring systems which identify usage in excess of approved facilities and provide adequate information for review and evaluation of such usage on a timely basis?		
4. Does the institution have exception identification and approval systems which are tailored to the speed, volume, and size of credit approvals required by its payment system generated exposures?		
5. Are the institution's review systems geared to single out and take action on deteriorating risk situations?		
6. Does senior management periodically review and take action on aggregate exposures over a finite limit?		
7. Are all controls and procedures reviewed and tested by the institution's internal auditors?		
8. Is adequate training available and required for operations, credit, and account officer staff responsible for monitoring the intra-day overdraft exposure system of the institution?		

In completing the checklist, negative responses should not be explained away in order to obtain a satisfactory self-assessment except under extremely unusual circumstances. Institutions that attempt to explain shortcomings will be scrutinized very closely by the examiners.

IV. Overall Assessment

The three component evaluations can be combined into a single overall assessment using the following table:

Credit policies and procedures	Operational controls policies and procedures	Credit worthiness	Overall assessment
Satisfactory	Strong	Excellent	High cap
		Very good	Above average cap
		Adequate	Average cap
		Below standard	No cap
Satisfactory	Satisfactory	Excellent or very good.	Above average cap
		Adequate	Average cap
		Below standard	No cap
Satisfactory	Unsatisfactory	Any	No cap
Unsatisfactory	Any	Any	No cap

In completing the assignment for U.S. branches and agencies of foreign banks that are part of a single family operating in more than one state, a single assessment for the family should be conducted. If more than one branch or agency has access to a large-dollar system, the adequacy of operational controls for each access point should be assessed separately and combined into a single assessment. A single cap should then be determined and divided among the entities having access. The file documenting the assessment and its division among the separate entities should be available to examiners in a designated office in the District of the Administrative Federal Reserve Bank.

[FR Doc. 87-17694 Filed 8-5-87; 8:45 am]

BILLING CODE 6210-01-M

[5] If an institution monitors on a worst case basis, that is, debits only, a strong rating may still be justified if the limits established are no higher than those appropratie for monitoring a net position.

Application To Engage de Novo in Nonbanking Activities; Midlantic Corp.

Midlantic Corporation and Midlantic

Banks Inc., both of Edison, New Jersey, have filed an application under § 225.23(a)(3) of the Board's Regulation Y, 12 CFR 225.23(a)(3), for the Board's approval under section 4(c)(8), 12 U.S.C. 1843(c)(8) and § 225.21(a) of Regulation Y, 12 CFR 225.21(a), to engage through a national bank subsidiary in making loans to individuals for personal, family, household, or charitable purposes, and in taking deposits, including savings, time, and demand deposits. The national bank subsidiary will not make commercial loans or engage in any transactions defined by applicable law or regulation to be commercial loans for purposes of the definition of "Bank" in the Bank Holding Company Act. The activities will be engaged in by Midlantic National Bank Trust Company of Florida, Fort Lauderdale, Florida. The Board has previously determined by order that such activities are closely related to banking. *U.S. Trust Company*, 70 Federal Reserve Bulletin 371 (1984).

The application is available for immediate inspection at the Federal Reserve Bank of New York. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors.

Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of facts that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Federal Reserve Bank of New York or the offices of the Board of Governors not later than August 28, 1987.

Board of Governors of the Federal Reserve System, July 31, 1987.

Barbara Lowrey,

Associate Secretary of the Board.

[FR Doc. 87-17819 Filed 8-5-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Service's claims collection regulations (45 CFR Part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of the Treasury's current value of Certified Interest Rates with Range of Maturities. This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the **Federal Register.**

The Secretary of the Treasury has certified a rate of 14% for the quarter ended June 30, 1987. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Date: August 3, 1987.

Dennis Fischer,

Deputy Assistant Secretary, Finance.

[FR Doc. 87-17901 Filed 8-5-87; 8:45 am]

BILLING CODE 4150-04-M

Centers for Disease Control

National Institute for Occupational Safety and Health; Cooperative Agreement to Enhance the Preparation of Graduates of Schools of Business in the Areas of Occupational Safety and Health; Availability of Funds for Fiscal Year 1987

The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC) announces the availability of funds in Fiscal Year 1987 for a cooperative agreement to assist the Nation's schools of business by influencing the academic curriculum of schools of business, to enhance skill/knowledge in the development and preparation of graduates in the areas of occupational safety and health, and to enhance their ability to understand that workplace safety and health must be managed as any other function. The Catalog of Federal Domestic Assistance number is 13.263.

Program Objectives

Long-term objectives of the agreement are:

A. To enhance the integration of occupational safety and health into the existing curriculum of schools of business.

B. To expand the number of schools of business which are promoting the goals of Project Minerva. The purpose of Project Minerva is to assist schools of business to improve the knowledge and skills of their graduates to understand the importance of occupational safety and health and provide them with the necessary ability to manage this area of responsibility as they will all other areas of business.

C. To assist the recipient in providing leadership and direction in this activity.

Authority

This program is authorized under section 21(a) of the Occupational Safety and Health Act (Pub. L. 91-596) as amended.

Eligibility Requirements

Eligible applicants are public or private non-profit organizations which have demonstrated that a major part of their organizational function is to promote occupational safety and health within the academic programs of schools of business.

Availability of Funds and Period of Support

It is expected that approximately $100,000 will be available during Fiscal Year 1987 to support one cooperative agreement award. It is anticipated that the cooperative agreement will be funded initially for a 12-month budget period.

Continuation award within a 5-year project period will be made on the basis of satisfactory progress in meeting project objectives and on the availability of funds. The funding estimate is subject to change.

Purpose and Cooperative Activities

A. Purpose

The purpose of this cooperative agreement is to enhance the education and practice of graduates of schools of business in the area of occupational safety and health.

B. Cooperative Activities

To achieve the purpose and objectives, the following activities should be performed.

1. Recipient Activities

a. Build a consensus among the academic community regarding essential skills and knowledge in occupational safety and health which all graduates of business schools should possess.

b. Make available information regarding those essential skills and knowledge in occupational safety and health to all faculty and students in business schools affiliated with Project Minerva.

c. Identify new educational activities and instructional methods to provide necessary skills and knowledge.

d. Develop and evaluate new educational activities and instructional methods.

e. Identify and develop new approaches and opportunities for field experiences and internships in which faculty can participate in industry programs where occupational safety and health practice is applied to assist the instructor in providing more meaningful curricular for their students.

f. Conduct workshops and conferences of interested private, academic, and public organizations to exchange current information, opinions and findings in the area of occupational safety and health. Utilize the result of such workshops and conferences to help further the Minerva concept.

g. Conduct faculty workshops to enhance their ability to provide OS&H content to their students.

h. Establish regional speakers bureaus to assist new schools of business to introduce the program into its curriculum.

2. NIOSH Activities

a. Collaborate in building consensus among the business school community regarding essential skills and knowledge on occupational safety and health which all graduates of business schools should possess.

b. Collaborate regarding methods to disseminate information concerning those essential skills and knowledge.

c. Collaborate in developing new and unique methods to integrate occupational safety and health into existing curriculum.

d. Collaborate in developing new educational activities and instructional methods to provide necessary skills and knowledge.

e. Provide technical assistance on the design, development and testing of educational activities and instructional packages.

f. Collaborate in identifying new approaches and opportunities for field experiences and internships in which faculty can participate in industry programs emphasizing the importance of occupational safety and health practice.

g. Participate in workshops and conferences to exchange current information, opinions and findings in the area of management of occupational safety and health.

h. Provide information on experts in the field to serve as members of regional speakers bureaus.

Scheduling and Reporting

Annual progress and financial status reports shall be prepared and submitted in accordance with the requirements of 45 CFR 74, subparts I and J, respectively.

Applications Submission and Deadline

The original and two copies of the application should be submitted on Form PHS 5161–1 (revised 3–86) on or before September 8, 1987, to: Leo A. Sanders, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 E. Paces Ferry Rd., Room 321, Atlanta, Georgia 30305.

A. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or

2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly-dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

B. *Late applications:* Applications which do not meet the criteria in A. 1. or 2. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Other Submission and Review Requirements

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Application Content

Applications must include a narrative which includes the following:

A. Briefly states the applicant's understanding of the need or problem to be addressed and the purpose of this cooperative agreement.

B. Documents the applicant's ability to provide staff, knowledge, and other resources required to perform the responsibilities in this project, and describe the approach to be used in carrying out those responsibilities.

C. Describes clearly the objectives of the project, the steps to be taken in planning and implementing this project, and the respective responsibilities of the applicant, CDC, and any other entities for carrying out those steps.

D. Provides a proposed schedule for accomplishing each of the activities to be carried out in this project, and a method for evaluating the accomplishments.

E. Describes the names, qualifications, and time allocations of the professional staff to be assigned to this project; the support staff available for performance of this project; and the facilities, space, and equipment available for performance of this project.

F. Specifies a proposed plan for administering this project, and the name, qualifications, and time allocations of the individual whom the applicant proposes to make responsible for its administration.

G. Provides a detailed budget which indicates (1) anticipated costs for personnel, travel, communications and postage, equipment, and supplies and (2) the sources of funds to meet those needs.

Review and Evaluation Criteria

The application will be reviewed in accordance with PHS Grants Administration Manual Chapter PHS 1–507, Objective Review of Grant Applications. An ad hoc committee will be convened to determine the merit of the application which will be based on the following:

A. The applicant's understanding of the need or problem to be addressed in this program and its approach to perform the project.

B. The plan and schedule for accomplishing each of the activities to be carried out in this project, and the method for evaluating the accomplishments.

C. The qualifications, time allocations of the professional staff, the support staff; the adequacy of facilities, space, and equipment available for performance of this project.

D. The adequacy of the plan for administering this project, including the qualifications and time allocations of the individual whom the applicant proposes to make responsible for its administration.

E. The adequacy of the budget as it relates to the proposed activities.

Information

Information on application procedures, copies of application forms, and other material may be obtained from: Nancy Bridger, Grants Management Specialist, Procurement and Grants Office, Centers for Disease

Control, 255 E. Paces Ferry Road, NE., Room 231, Atlanta, Georgia 30305, Telephone (404) 262-6575.

Technical assistance may be obtained from: Norbert J. Berberich, Jr., Ph.D., Chief, Curriculum Development Branch, Division of Training and Manpower Development, National Institute for Occupational Safety and Health, Robert A.Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephone (513) 533-8231.

Dated: July 31, 1987.

Larry W. Sparks,

Executive Officer, National Institute for Occupational Safety and Health.

[FR Doc. 87-17811 Filed 8-5-87; 8:45 am]

BILLING CODE 4160-19-M

Hearing Protector Effects on Communication; Open Meeting

The following meeting will be convened by the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) and will be open to the public for observation and participation, limited only by the space available:

Date: August 20, 1987.

Time: 9 a.m.–4 p.m.

Place: Auditorium, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Purpose: To review and discuss the scientific merit of an experimental investigation designed to evaluate the effect of hearing protectors on normal and hearing-impaired listeners as a function of background noise level. Viewpoints and suggestions from industry, organized labor, academia, other government agencies, and the public are invited.

Additional information may be obtained from: Barry L. Lempert, Division of Biomedical and Behavioral Sciences, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephones: FTS: 684-8281; Commercial: 513/533-8281.

Dated: July 30, 1987.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 87-17812 Filed 8-5-87 8:45 am]

BILLING CODE 4160-19-M

Revision of the NIOSH Work Practices Guide for Manual Lifting Workplace Protection Factor Study of Negative Pressure Respirators; Open Meetings; Correction

In the **Federal Register**, Vol. 52, No. 130, Wednesday, July 8, 1987, page 25636, the above titles were listed as one meeting. Titles should have read "Revision of the NIOSH Work Practices Guide for Manual Lifting; Workplace Protection Factor Study of Negative Pressure Respirators; Open Meetings."

The word "Respirators" was omitted in the narrative title for the open meeting, "Workplace Protection Factor Study of Negative Pressure Respirators."

All other portions of this Notice remain as printed.

Dated: July 30, 1987.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

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Cooperative Agreements for Pilot Demonstration Projects for the Prevention of Perinatal Infections With Human Immunodeficiency Virus (HIV) and Acquired Immunodeficiency Syndrome (AIDS); Program Announcement and Notice of Availability of Funds for Fiscal Year 1987

Introduction

The Centers for Disease Control (CDC) announces the availability of funds for Fiscal Year 1987 for cooperative agreements for pilot demonstration projects for the prevention of perinatal infection with human immunodeficiency virus (HIV) and Acquired Immunodeficiency Syndrome (AIDS).

Authority

These projects are authorized under section 301(a) of the Public Health Service Act (42 U.S.C. 241(a)), as amended, section 311)(b) of the Public Health Service Act (42 U.S.C. 243(b)), as amended, and section 318 of the Public Health Service Act (42 U.S.C. 247c), as amended. The Catalog of Federal Domestic Assistance Number is 13.118.

Eligible Applicants

Eligible applicants are official health departments of any State or local government, including the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States. Applicants are encouraged to have health care providers or research groups participate in the program. The proposed program must be located within, or include a Standard Metropolitan Statistical Area, with a minimum of 10 cases of AIDS among adult women meeting the CDC case definition and reported to CDC during calendar year 1986.

Program Background and Objectives

The incidence of AIDS in women is increasing markedly. To date (July 20, 1987) there have been 2,623 cases of AIDS in women, 50 percent of which were intravenous (IV) drug abusers, 24 percent had heterosexual exposure to an AIDS case or AIDS risk group member, 11 percent had been transfused or had other exposure to blood components, 5 percent were born in a country with high AIDS case rates, and 10 percent had HIV infection of other or undetermined origin. A much larger number of women have HIV infection without the manifestations of AIDS. Each of these HIV infectionss, apart from its effect on the women herself, represents a risk of perinatal transmission. Between 30 and 50 percent of children born to infected mothers are themselves infected. Most of the 423 cases of AIDS that have occurred in children were acquired perinatally from infected women. Infections in women represent only 7 percent of all AIDS cases. However, this proportion is increasing. Heterosexual propagation of the epidemic is a serious possibility. These infections in women and the resulting perinatal transmission to children are potentially preventable.

AIDS has disproportionable affected minorities, especially AIDS not involving homosexual transmission. Seventy-one percent of non-homosexual AIDS cases are Black or Hispanic whereas 18 percent of the U.S. population is Black or Hispanic. Seventy-one percent of all AIDS cases among women and 76 percent of female IV drug abuse-related cases have been Black or Hispanic. Eighty-seven percent of childen with perinatally-acquired AIDS in children have been Black or Hispanic.

Current State and local AIDS Prevention Projects are designed to prevent infections among women and children by (1) expanding health education and risk reduction efforts among IV drug abusers, (2) promoting less risky sex practices among non-monogomous women of reproductive age, (3) developing approaches to reach female sex partners of infected males, and (4) expanding efforts to involve minority communities at increased risk of HIV infection. This program's objective is to meet an urgent need to develop additional programs to prevent pregnancies among HIV-infected women, and women at high risk of HIV infection.

Purpose

The purpose of this program is to assist selected areas experiencing

substantial numbers of HIV infections in women and children (perinatal) to demonstrate an effective program to (1) identify women with HIV infection or women at high risk of infection; (2) provide them with information concerning the effects of infection on the mother and fetus during pregnancy and on the infant following birth; (3) assess the adequacy of their current and past contraception practices and their attitudes toward contraception and pregnancy; (4) activley educate such women about the need to take steps to avoid pregnancy; and (5) provide those desiring to avoid pregnancy with the medical and counseling support to practice adequate contraception. These efforts to prevent perinatal infections should be integrated with other education efforts to promote less risky sex practices and to reduce drug dependency and needle sharing. Program effort should also insure that infected pregnant women are referred to health care providers with appropriate medical and social service expertise. Since the program is a demonstration, it is intended that grantees will identify and develop a rationale for promising and different approaches, and conduct evaluation studies to demonstrate which of the approaches is most effective.

Cooperative Activities

1. Recipient Activities

a. Obtain Community Participation

Community input should be obtained during planning, implementation, and evaluation of the program. Participation by members of black, Hispanic, and immigrant communities affected by the program should, in particular, be obtained.

b. Define the Target Population

The population of women considered to be at risk for HIV infection and pregnancy should be defined. Suitable populations may be as broad as a entire community or may be narrower such as the catchment population for an obstetric service experiencing perinatal infections or a set of clinics (drug abuse treatment centers, family planning clinics, sexually transmitted diseases clinics, etc.) attended by women with an elevated prevalence of infection.

c. Develop Methods to Identify Infected Women

Methods must be devised to screen the target population for HIV infection and for HIV risk factors. Alternative approaches should be considered for their relative merits. For example, if the target population is defined as a set of clinics or is served by clinics, the clinic attendees might be serologically screened. If the target population is not restricted to clinic attendees, outreach workers might be considered to identify IV drug abusers who are not affiliated with clinics. Sex partner referral would be appropriate if the target population includes sex partners of high risk males; e.g., bisexuals or IV drug abusers.

d. Develop Education and Counseling Methods

Education and counseling activities should be developed based on existing information or on an assessment of the women in the target population who have HIV Infection or are at high risk of infection. Alternative approaches should be considered for their relative merits. Consideration should be given to the several factors that may influence behaviors including: (1) knowledge of HIV Infection and its effects on the mother and fetus during pregnancy and on the infant after birth, (2) knowledge of contraceptive methods, (3) attitudes toward infection, pregnancy, and contraception, (4) normative values in the community and among peers regarding HIV infection, pregnancy, and contraceptive practices, and (5) social skills to negotiate adequate contraception and HIV risk reduction behaviors with sex partners.

e. Develop Referral Systems

Education and counseling activities may not be most efficiently or effectively conducted at sites where women at high risk are identified. Where indicated, methods should be developed to refer women with HIV infection or at high risk of infection for education and counseling. Alternative approaches should be considered for their relative merits.

f. Evaluate the Effectiveness of the Program by Developing and Implementing

(1) *Systems to monitor program activities and the outcomes of interest.* Systems should be developed to monitor women in the target population who have HIV infection or are at high risk of infection for trends in perinatal HIV infections, pregnancies, adequate contraception, and those psychological and social factors that influence contracepting behaviors. Systems should be developed to monitor program activities and to devise methods to relate trends in outcomes of interest to the level and quality of activities.

(2) *Evaluation studies to determine the best education and counseling methods and referral systems.* At a minimum, a program should convey basic information concerning HIV infection, the serologic test, the risks of pregnancy, the risks to the infant, and methods to prevent transmission perinatally or otherwise, and to provide psychological support. Wherever feasible, more intensive efforts should be evaluated to justify the effort by comparing the intensive and minimum efforts with regard to their efforts on perinatal infection rates, pregnancy rates, knowledge, attitudes, and contraceptive practices. Inclusion of controls, randomization, and other research methods to permit unambiguous comparison of results are desirable, where ethical and feasible. To the extent that the recipient engages in information collection through questionnaires, survey forms, or any related means, there shall be no review of such forms or the information collection design by CDC or another federal agency. However, recipients may request technical consultation from CDC.

g. Participate in the Transfer of Perinatal Prevention Information and Methods Developed in This Program to Other States and Communities

2. CDC Activities

a. Provide consultation and technical assistance in planning, operating, and evaluating activities for preventing the perinatal transmission of HIV infection and AIDS.

b. Provide current scientific information relevant to program strategies for such prevention.

c. Participate in the analysis of data gathered from program activities and the reporting of results.

d. Participate in transfer of perinatal prevention information and methods developed in this program to other States and communities.

Availability of Funds

Approximately $1,484,000 will be available in Fiscal Year 1987 to fund 1 to 3 new cooperative agreements ranging from $350,000 to $1,484,000 with an average award of $495,000. It is expected that new cooperative agreements will begin on or about September 1, 1987, and will be funded for 12 months in a 1 to 5-year project period. Continuation awards within the project period will be made on the basis of satisfactory progress in meeting project objectives and on the availability of funds. Funding estimates outlined above may vary and are subject to change.

Use of Funds

Funds may be expended for the written materials, pictorials, audiovisuals, questionnaires or survey

instruments, and educational group sessions related to AIDS risk reduction if approved in accordance with guidance provided in this announcement under the heading *Content of Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions.*

Funds may be used to support personnel and purchase supplies and services directly related to planning, organizing, and conducting the program described in this announcement. Requests for direct assistance (i.e., "in lieu of cash") for personnel, supplies, and other forms of direct assistance will be considered.

Funds may not be used to pay for clinical treatment costs.

Confidentiality

In accordance with section 318(e)(5) of the Public Health Service Act (42 U.S.C. 247c(e)(5)), all information obtained in connection with the examination, care, or services provided to any individual under any program which is being carried out with a cooperative agreement made under this announcement shall not, without such individual's consent, be disclosed except as may be necessary to provide services to him/her or as may be required by a law of a State or political subdivision of a State. Information derived from any such program may be disclosed (A) in summary, statistical, or other form, or (B) for clinical or research purposes, but only if the identity of the individuals diagnosed or provided care under such program is not disclosed.

Reporting Requirements

Progress reports are required on a quarterly basis and are due 30 days after the end of each quarter. The fourth quarter report will include a summary of the year's activities. Annual financial status reports are required no later than 90 days after the end of each budget period. Final financial status and performance reports are required 90 days after the end of a project period.

Recipient Financial Participation

This program has no statutory cost sharing formula.

Guidance—Content of Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions

The current lack of therapeutic or vaccine methods to control the spread of HIV infection and AIDS requires the promotion of sexual and lifestyle behaviors for individuals which will reduce their risk of acquiring and spreading the virus. Behavioral science research suggests that expecting people to permanently alter any set of behaviors affecting their health is unrealistic unless the educational message provides acceptable alternatives to the behaviors creating the risk. Consequently, AIDS risk reduction efforts have focused on the promotion of responsible sex practices for individuals for whom sexual activity is an important factor of risk in acquiring or spreading HIV.

The adoption of less risky sex practices is a practical concept of AIDS risk reduction and is being suggested as a strategy intended to minimize the spread of HIV infection among sexually active individuals, including homosexual and bisexual men. The promotion of this risk reduction strategy may involve supporting the communication of suggestions using candid terms, some of which may be offensive to society at large or to local community standards. The Centers for Disease Control (CDC) is answerable for the use of Federal funds and broad support is vital to its public health mission. CDC also has an obligation to take actions designed to control the spread of HIV. This guidance is meant to promote such actions, and to require local review panels to consider the bounds of explicitness believed needed to communicate an effective message to those for whom it is intended.

1. Basic Principles

a. Language use in written materials (i.e., pamphlets, brochures, fliers), audiovisual materials (i.e., motion pictures and video tapes), and pictorials (i.e., posters and similar educational materials using photographs, slides, drawings, or paintings) to explain less risky sex practices and/or to contrast them with "unsafe sex" practices concerning AIDS should use terms or descriptors necessary for the target audience to understand the messages.

B. Such terms or descriptors used should be those which a reasonabale person would conclude should be understood by a boad cross-section of educated adults in society, or which, when used to communicate with a specific group, such as homosexual men, about high risk sexual practices, would be judged by a reasonable person to be unoffensive to most educated adults beyond that group.

c. The language of items in questionnaires or survey instruments which will be administered in any fashion to any persons should use terms to communicate the information needed which would be understood by a broad cross-section of educated adults in society but which a reasonable person would not judge to be offensive to such people.

d. Educational group sessions of any size should avoid activities in which attendees participate in sexually suggestive physical contact or actual sexual practices.

2. Program Review Panel

a. Prospective cooperative agreement recipients will be required to establish a program review panel whether the applicant plans to conduct the total program activities or plans to have part of them conducted through subvention to nongovernmental organization(s). This panel, guided by the CDC Basic Principles in conjunction with prevailing community standards, will review and approve all written materials, pictorials, audiovisuals, questionnaires or survey instruments, and proposed educational group session activities to be used under the project plan. This panel is intended to review materials only and should not be empowered either to evaluate the proposal as a whole or to replace any other internal review panel or procedure of the local governmental jurisdiction. Specifically, applicants for cooperative agreements will be required to include in the application the following:

(1) Identification of a panel of no less than five persons representing a reasonable cross-section for the general community, which might include members of existing AIDS service groups, but which is not drawn predominantly from the target group or groups to whom the written materials, pictorials, audiovisuals, questionnaires, survey instruments, or educational group sessions are directed; and

(2) A letter or memorandum from the proposed project director, countersigned by the business office, which includes:

(a) Concurrence with this guidance and assurance that its provisions will be observed;

(b) The identity of proposed members of the Program Review Panel, including their names, occupations, and any organizational affiliations that were considered in their selection for the Panel;

b. When a cooperative agreement is awarded, the recipient will:

(1) Convene the Program Review Panel and Present for its assessment actual copies of written materials, pictorials, and audiovisuals to be used;

(2) Provide for assessment by the Program Review Panel draft text, scripts, or detailed descriptions for written materials, pictorials, or audiovisuals to be used;

(3) Prior to expenditure of funds related to the ultimate program use of

these materials, assure that their project files are documented with a statement(s) signed by the Program Review Panel which itemizes their majority vote of approval or disapproval of all proposed written materials, audiovisual materials and pictorials submitted to them for assessment as part of the project plan.

(4) Provide to CDC in progress reports the statement(s) of all members of the program review panel itemizing their majority vote of approval or disapproval of all proposed written materials, audiovisual materials and pictorials signed during the quarter.

Application Content

1. *Compliance with program review panel requirement*—Applications which include written materials, pictorials, audiovisuals, questionnaires or survey instruments, or group educational sessions related to AIDS risk reduction must contain the documentation required in paragraph 2.a under the subpart of this announcement entitled *Content of Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments and Education Sessions;*

2. *Competing applications*—Competing applications, including the initial application for a new project period, must include a narrative which details the following:

a. The background and need for project support, including:

(1) A description of the problem;

(2) Evidence of the administrative capability and experience of the applicant to conduct the activities of the project; and

(3) The applicant's contribution to overall program costs;

b. Objectives which address the recipient activities and a time schedule for conducting the activities. These should include specific quantifiable objectives;

c. A plan of operation which describes the methods and activities which will be undertaken to accomplish the recipient activities described above. In addition, the plan should include:

(1) The proposed organization and the qualifications and training of the project staff;

(2) A description of how the project will be coordinated with other AIDS prevention and surveillance activities, the efforts of comprehensive hemophilia treatment centers to provide education and support to hemophiliacs and their families, and the "look back" programs of blood plasma donation services to identify people at risk through transfusion; and

(3) A description of how clinical care will be coordinated with counseling activities;

d. A plan of evaluation which describes how program activities and the outcomes of interest will be monitored and how studies to determine the best education and counseling methods and referral systems will be conducted. In addition, the plan should include information about how statistical and data processing support will be obtained;

e. A budget and accompanying justification consistent with the purpose and objectives of the project; and

f. Any other information that will support the request for assistance;

3. *Noncompeting continuation applications*—An application for continuation funding of these activities within an approved project period should contain the following information:

a. Progress report on activities performed and results achieved during the prior budget period;

b. Short-term, numerically measurable objectives for the new budget period;

c. A description of the method of operation that will be used to accomplish any new or signficantly revised objectives;

d. A description of any other changes in the need for support, long-term objectives, methods of operation, and the evaluation procedures compared to information provided in the previous application;

e. A budget and accompanying justification consistent with the purpose and objectives of the project.

4. *Related projects*—If the applicant has current projects in perinatal HIV surveillance, epidemiology, or prevention, these should be described and the relationship to this demonstration project should be made clear, to avoid duplication of efffort. A copy of related project applications should be submitted.

Review and Evaluation Criteria

1. *Competing applications*—Competing applications, including the initial application for a project period, will be reviewed and evaluated for technical merit according to the following criteria.

a. *Understanding the problem.* The extent to which the applicant's statement of background and need and objectives demonstrates an understanding of the risks of perinatal transmission of HIV, methods of prevention, and an understanding of the purpose of the cooperative agreement.

b. *Administrative capabilities and experience.* The degree to which the applicant provides evidence that demonstrates the capability and experience to manage the planning, implementation, and coordination of HIV perinatal infection prevention activities.

c. *Plan of operation.* The extent to which the applicant's proposal indicates that the following will be accomplished:

(1) Participation by the community;

(2) Selection of an appropriate target population;

(3) Effective methods will be developed and implemented to identify women in the target population who have HIV infection and/or are at high risk of infection;

(4) Effective methods will be developed and implemented to educate and counsel women with HIV infection or at high risk of HIV infection to prevent pregnancy and perinatal HIV infection;

(5) Referral systems will be developed and implemented to bring high risk women into the education and counseling program to prevent perinatal HIV infection.

d. *Plan of evaluation.* Evaluation systems will be designed and implemented to monitor outcomes of interest and to include (where feasible) controlled studies to determine the relative and abosolute effectiveness of proposed activities.

e. *Personnel.* The extent to which the staff to be assigned to this project are demonstrated to be adequate in number and to have the qualifications appropriate for this project.

f. *Coordination with other AIDS prevention activities.* The degree to which evidence is provided that the applicant (1) understands existing State and local health department surveillance, health education, and risk reduction activities for HIV infection and AIDS and (2) plans to coordinate activities supported by this grant with other AIDS and HIV surveillance, health education, and risk reduction activities.

g. The extent to which the budget is reasonable and consistent with the intended use of cooperative agreement funds.

2. *Noncompeting continuation applications*—Continuation awards within the project period will be made on the basis of the following criteria:

a. The degree to which the accomplishments of the prior budget period demonstrate that the applicant is meeting its objectives;

b. The extent to which the objectives for the new budget period are realistic, specific, numerically measurable, and time-phased;

c. The extent to which the methods described will clearly lead to achievement of the objectives;

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d. The extent to which the evaluation plan will allow management to monitor whether individual and organizational performance is of acceptable quality, the methods are effective, and the activities are having an impact; and

e. The extent to which the budget request is clearly explained, adequately justified, reasonable, and consistent with the intended use of cooperative agreement funds.

Application Submission

The original and two copies of the application must be submitted to Leo A. Sanders, Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, N.E., Room 321, Mailstop E14, Atlanta, Georgia 30305, on or before August 19, 1987.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late applications:* Applications which do not meet the criteria in 1. a. or b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Other Submission and Review Requirements

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Where to Obtain Additional Information

Information on application procedures, copies of application forms, and other material may be obtained from Marsha Driggans, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, N.E., Room 321, Mailstop E14, Atlanta, Georgia 30305, or by calling (404) 262-8575 or FTS 236-8575. Technical information may be obtained by calling Dr. Robert E. Johnson, Division of Sexually Transmitted Diseases, Centers for Disease Control, (404) 329-2580 or FTS 236-2580.

Dated: August 3, 1987.

Glenda S. Covert,

Acting Director, Office of Program Support, Centers for Disease Control.

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Food and Drug Administration

[Docket No. 87N-0078]

Denial of Hearing and Withdrawal of Approval of New Drug Applications and New Animal Drug Applications for Sterile Injectable Products; Final Order; J.D. Copanos and Sons, Inc. and Kanasco Ltd.

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Commissioner of Food and Drugs denies a hearing and withdraws approval of the New Drug Applications (NDA's) and New Animal Drug Applications (NADA's) for sterile injectable products manufactured by John D. Copanos and Sons, Inc. and Kanasco, Ltd. (hereinafter Kanasco or Copanos) on the grounds that the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of the sterile injectable drugs are inadequate to assure their identity, strength, quality, and purity, and were not made adequate within a reasonable time after receipt of written notice specifying the inadequacies.

EFFECTIVE DATE: September 8, 1987.

FOR FURTHER INFORMATION CONTACT:

For Human Drugs: Steven A. Masiello, Division of Manufacturing and Product Quality (HFN-320), Center for Drugs and Biologics, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8095.

For Veterinary Drugs: Philip J. Frappaolo, Division of Voluntary Compliance and Hearings Development (HFV-240), Office of Surveillance and Compliance, Center for Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4940.

For general information: Douglas I. Ellsworth, Center for Drugs and Biologics (HFN-366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8041.

SUPPLEMENTARY INFORMATION: In the Federal Register of March 10, 1987 (52 FR 7311), the Acting Director of the Center for Drugs and Biologics and the Director of the Center for Veterinary Medicine (hereinafter the Directors) published a notice of opportunity for hearing (NOOH) proposing to issue an order under sections 505(e) and 512(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e) and 360b(e)) (the FDC Act) withdrawing approval of specifically listed NDA's and NADA's for sterile injectable products manufactured by Kanasco. The basis for the proposal was that new information, evaluated together with the evidence when the applications were approved, showed that the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such drugs were inadequate to assure their identity, strength, quality, and purity, and were not made adequate within a reasonable time after receipt of written notice from the Food and Drug Administration (FDA) specifying the matters complained of.

Interested persons were advised in the Federal Register of March 10, 1987 (52 FR 7318), that hearing requests "may not rest upon mere allegations or denials, but must present *specific facts* showing that there is a genuine and substantial issue of fact that requires a hearing," and that failure to provide such a response would result in the denial of a hearing and entry of summary judgment against the person(s) who requested a hearing (emphasis in original). Interested persons were asked to file hearing requests by April 9, 1987, and to file the data, information, and analysis relied on to justify the hearing by May 11, 1987. *Id.*

In addition to the applications held by Copanos, the NOOH listed applications held by Elkins-Sinn, Inc., 2 Esterbrook Lane., P.O. Box 5483, Cherry Hill, NJ 08034 (Elkins-Sinn) and E.R. Squibb & Sons, Inc., P.O. Box 191, New Brunswick, NJ 08903 (Squibb). By letter dated March 18, 1987, Elkins-Sinn advised FDA that the inclusion of its application in the notice was in error and that it never had any business relationship with Copanos. In the Federal Register of March 31, 1987 (52 FR 17477), the Director of the Center for Drugs and Biologics rescinded the NOOH with respect to Elkins-Sinn's applications. By letters dated March 20, 1987, Squibb advised FDA that it was supplementing its NDA's to delete Kanasco as a manufacturing site for its products. In the Federal Register of May 8, 1987 (52 FR 17477), the Director of the Center for Drugs and Biologics rescinded the NOOH insofar as it related to the Squibb products.

On May 18, 1987, Kanasco submitted a Motion for Summary Judgment and a memorandum in support of its Request for Hearing and Motion for Summary Judgment (hereinafter "Kanasco Memo."). In support of its motion and

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hearing request, the firm submitted four declarations (two from its employees and two from experts in the field of current good manufacturing practice (CGMP)) and various written responses which the firm had contemporaneously made to the Lists of Observations (Form FD–483's) that FDA investigators had issued to Kanasco representatives during the 2½ years that preceded the NOOH.

The Commissioner has reviewed Kanasco's response to the NOOH and the data on file with the Dockets Management Branch filed by the Directors in support of the NOOH, and concludes that Kanasco's motion for summary judgment should be denied, that Kanasco has failed to raise a genuine and substantial issue of fact requiring a hearing under 21 CFR 314.200, and that summary judgment should be granted in favor of the agency. The reasons for this decision are described below.

I. Statutory and Regulatory Framework

The FDC Act provides that the Secretary and by delegation of authority, the Commissioner of Food and Drugs may withdraw approval of a manufacturer's NDA's or NADA's if he finds:

> * * * that on the basis of new information before him, evaluated together with the evidence before him when the application was approved, the methods used in, or the facilities and controls used for, the manufacture, processing, and packing of such drug are inadequate to assure and preserve its identity, strength, quality, and purity and were not made adequate within a reasonable time after receipt of written notice from the [Commissioner] specifying the matter complained of * * *.

21 U.S.C. secs. 355(e), 360b(e)(2)(B).

In turn, the current good manufacturing practice provision of the FDC Act, 21 U.S.C. 351(a)(2)(B), provides that a drug is deemed to be adulterated if:

> * * * the methods used in, or the facilities or controls used for, its manufacture, processing, packing, or holding do not conform to or are not operated or administered in conformity with current good manufacturing practice to assure that such drug meets the requirements of this Act as to safety and has the identity and strength, and meets the quality and purity characteristics, which it purports or is represented to possess * * *.

Congress added this provision to the FDC Act in 1962 to improve the quality and reliability of drugs and to assure their integrity from the beginning of the manufacturing process until their delivery to the ultimate consumer. Congress intended to require that all phases of drug production be rigorously controlled to achieve the desired end:

> The manufacturing of drugs is a business that requires highly qualified and trained personnel, and special laboratory and other facilities and most careful internal manufacturing, packaging, and labeling controls. These requirements are necessary to the assurance that the drugs will be safe for the user and will have, and so far as possible retain, the identity, strength, quality, purity, and effectiveness that they purport to have. * * * People with inadequate experience, equipment, and technical competence can, and do, enter the business of making drugs. * * * The phrase "operated or administered in conformity with current good manufacturing practice" [in the law] encompasses key technical and professional personnel responsible for the safety of the drug, and its identity, strength, quality, and purity characteristics.
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> H. Rept. No. 2464, 87th Cong., 2d Sess., pp. 1 and 2 (1962).

To show that a manufacturer has failed to conform to CGMP, the FDA need not establish that the drugs it has produced are actually contaminated. As one court explained:

> the purpose of section 351(a)(2)(B) was to attack commerce in unsafe and unreliable drugs in its incipiency by giving the Food and Drug Administration (FDA) '* * * additional authority to require that sound methods, facilities, and controls be used in all phases of drug manufacturing and distribution.' Thus, under the subject section a drug is *deemed* to be adulterated if the methods used in, or the facilities or controls used for, its manufacture, processing, packing, or holding do not conform to . . . current good manufacturing practice to assure that such drug is safe and reliable, *regardless of whether the drug actually is deficient in some respect.* [footnotes omitted]?

United States v. *Bel-Mar Laboratories, Inc.*, 284 F. Supp. 875, 880–81 (E.D.N.Y. 1968) (emphasis added). *Accord, United States* v. *Lit Drug Co.*, 333 F. Supp. 990, 998 (D.N.J. 1971) ("Thus a drug may be pharmaceutically perfect in content but still be regarded as adulterated under the law").

The CGMP regulations, 21 CFR Part 211, were promulgated pursuant to 21 U.S.C. 351(a)(2)(B) and FDA's general rulemaking authority, 21 U.S.C. 371(a). These regulations establish the minimum requirements in determining whether production methods, facilities, and controls are in compliance with the FDC Act. 21 CFR 211.1(a). The CGMP regulations are binding and have the force and effect of law. *National Ass'n of Pharmaceutical Manufacturers* v. *FDA*, 637 F.2d 877, 880–81 and 889 (2d Cir. 1981); *see* also *Weinberger* v. *Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609, 621–24 (1973); *National Nutritional Foods Assn.* v. *Weinberger*, 512 F.2d 688, 696–97 (2d Cir.), *cert. denied*, 423 U.S. 827 (1975). A broad-based challenge to the content of the CGMP regulations has been rejected. *National Ass'n of Pharmaceutical Manufacturers* v. *Department of Health and Human Services*, 586 F. Supp. 740 (S.D.N.Y. 1984).

II. Kanasco's Motion for Summary Judgment

A. The Vindictiveness Claim

Kanasco's first contention is that this proceeding is another example of "vindictive abuse" of FDA's regulatory power and a "misguided obsession" on the part of the agency to force its president out of the pharmaceutical business. Kanasco Memo., p. 1.

Kanasco does not point to any facts to support this contention. Instead, the firm turns only to further arguments. For example, Kanasco argues that FDA is attempting to use its resources to "wage a war of attrition against John D. Copanos," the owner of Kanasco, and cites *Southeastern Minerals, Inc.* v. *Harris*, 622 F.2d 758 (5th Cir. 1980), to buttress its claim. Kanasco does not provide any explanation as to how the facts in *Southeastern Minerals*, an unrelated case, are in any way related to this proceeding. Hence, the agency has not been provided with the information it would need to give this contention any further consideration.

In further support of its vindictiveness claim, Kanasco also argues that, because it has been closed since late 1986 as the result of previous CGMP violations which led to a consent decree of permanent injunction filed in the district court (Civil No. K–85–3356 (D. Md.)), "the only possible explanation" for FDA's institution of this proceeding is to "emasculate" any order which the firm might obtain from the district court to reopen its facility. Kanasco Memo., p. 2 and 3.[1] This argument is unpersuasive. As Kanasco itself points out, if the firm were to petition the district court to reopen, and if the court agreed to hear the matter while it was being actively considered by the FDA, and if the court granted Kanasco's petition, then the FDA would take whatever action is appropriate in this proceeding, which could include abating or terminating this proceeding.

More importantly, however, there are compelling reasons to go forward with this proceeding, notwithstanding the current status of the permanent injunction. As the history of Kanasco described in the NOOH and amplified in

[1] By letter dated March 10, 1987, with a copy to Kanasco counsel, FDA advised the district court of this proceeding.

this order shows, an enormous amount of judicial and administrative time and resources has been expended in an effort to achieve compliance by the Kanasco firm with the law during the last 10 years. These efforts have included seizures of adulterated and misbranded products, recalls, Regulatory Letters and other similar warning correspondence from FDA, inspections at the Kanasco facility and elsewhere, complaints for injunction, numerous motions filed with the district court to enforce the injunctions, telephone conferences and meetings with the district court to discuss the motions and other case-related matters, a voluntary agreement, consent decrees and other court orders, a prior FDA proceeding in which 23 lots of Kanasco-manufactured products were declared adulterated, execution of a criminal search warrant, laboratory testing by FDA, meetings with the firm's personnel and counsel, and appeals to the United States Court of Appeals for the Fourth Circuit. 52 FR 7311 to 7318; *See also,* the record in this docket number, *passim.* These efforts have required the courts and the agency to devote thousands of hours to resolve a problem which appears intractable.

As noted in the NOOH, Kanasco made the vindictiveness argument in a lawsuit which it filed in 1985. *John D. Copanos & Sons, Inc.* v. *Heckler* Civil No. K–85–2905 (D. Md.). At a May 12, 1986 hearing in that case, the district court (the same judge who presided over the FDA's suit for injunctive relief) observed, "[t]he violations in this case, that clearly, without controversy took place on the part of [Kanasco] * * * are egregious. They are established beyond controversy. They are far beyond a question in terms of fact, and * * * [Kanasco] leave[s] all that out when [it claims] that there was no call for what the [FDA] did." *See* this Docket Number, FDA Ex. 32 (hereinafter "FDA Ex._____"). Transcript of May 12, 1986 hearing in Civil No. K–85–2905, at 116–17. The district court also observed that "if there ever was a case for summary judgment, this is it." *Id.,* pp. 20 and 21. On July 8, 1986, the district court granted summary judgment for the government and dismissed all counts with prejudice. FDA Ex. 32, Order dated July 9, 1986, filed in Civil No. K–85–2905 (D. Md.).

Kanasco appealed the decision of the district court. In an unpublished opinion dated April 24, 1987, the United States Court of Appeals for the Fourth Circuit summarily affirmed the district court's decision characterizing Kanasco's appeal as "meritless". *See John D. Copanos & Sons, Inc.* v. *Bowen,* No. 86–2186, slip op. at 5 and 7 (4th Cir. April 24, 1987) (*per curiam*).

On January 13, 1986, Kanasco filed a similar suit in the United States Claims Court alleging that FDA had unfairly administered the 1984 Agreement which the firm and FDA entered in settlement of the agency's 1984 injunction action. 52 FR 7315. After the Government moved to dismiss the complaint and for summary judgment, Kanasco withdrew its complaint. That case also was dismissed with prejudice. *See* July 2, 1986 Order, No. 22–86C, U.S. Claims Court.[2]

Moreover, Kanasco's claim of vindictiveness is not supported by the 1984 Agreement pursuant to which the FDA gave the company an additional, and very rare, opportunity to voluntarily comply with the law without being subjected to an injunction.

Congress specifically empowered FDA both to seek injunctive relief from the district courts (21 U.S.C. 332) and to withdraw NDA's and NADA's when a manufacturer cannot comply with CGMP. *See* 21 U.S.C. 355(e) and 360b(e). There is nothing in the FDC Act that suggests that these remedies may only be used in the alternative.

In conclusion, Kanasco has not provided any factual basis to support its claim of unfair treatment by FDA. If anything, the record in this case shows an unusual amount of forbearance by the agency.

B. The Improper Notice Claim

Kanasco next argues that the FDA, "in its zeal to punish Kanasco," has failed to provide the proper written notice required under the FDC Act to initiate this withdrawal proceeding. Kanasco Memo., p. 3. Specifically, the company contends that sections 355(e) and 360b(e)(2)(B) of the statute provide that the Secretary may withdraw approval of an NDA or NADA if he finds that the methods used for the manufacture of drugs are inadequate, *"and were not made adequate within a reasonable time after receipt of written notice from the Secretary specifying the matter complained of* * * *" (emphasis in Kanasco Memo.). And, Kanasco's argument continues, since FDA's regulations, 21 CFR 5.10, have only delegated the authority to issue such notice to the Commissioner of Food and Drugs, not to subordinate agency officials, and it has not received any notice from the Commissioner, the statutorily required notice has not been given in this proceeding. *Id.,* pp. 5 and 6.

This argument is also without factual or legal merit. Kanasco does not claim that it lacked actual notice of the CGMP violations that precipitated this proceeding. Nor does Kanasco argue that the predicate notice, which it claims is absent, must be issued in a specific format or have a specific content. Rather, its argument is premised on the assumption that the Commissioner's authority has not been redelegated by FDA's regulations. The assumption is wrong.

Under FDA's regulations, the agency's chief compliance official, the Associate Commissioner for Regulatory Affairs, is authorized to perform "all of the functions of the Commissioner of Food and Drugs." 21 CFR 5.20. In this very proceeding, the Associate Commissioner for Regulatory Affairs gave Kanasco the requisite written notice on several occasions. The Associate Commissioner for Regulatory Affairs signed the November 1984 Agreement with Kanasco which was entered to settle the complaint for injunctive relief filed by the government in Civil No. JH–84–3957 (D. Md.). *See* FDA Ex. 19. The 1984 Agreement explicitly told Kanasco that the company was not in compliance with CGMP, and that the company could not resume the manufacture and distribution of drugs unless and until FDA advised the firm in writing that it was in compliance with CGMP. *See* FDA Ex. 19, 1984 Agreement, paras. 1 and 2. The 1984 Agreement also referenced the 1984 complaint for injunctive relief and the 1984 Consent Decree both of which listed numerous violations of specific CGMP regulations. *Compare* 1984 Agreement, FDA Ex. 19 paras. 1 and 2, *with* government's Motion for Preliminary Injunction in Civil No. JH–84–3957 (D. Md.), pp. 2 to 6 and the Form FD–483 and declarations of Thomas L. Hooker and Salvatore J. Turco attached thereto, FDA Ex. 18; *See also,* 1984 Consent Decree, exhibit C attached to Government's Request to Enter Consent Decree of Permanent Injunction, FDA Ex. 33.

The Associate Commissioner for Regulatory Affairs also signed the November 1985 Consent Decree which, like its 1984 predecessor, specified many violations of CGMP that had not been corrected by Kanasco. *See* FDA Ex. 39. In fact, the 1985 Consent Decree also stated that Kanasco would be required to correct "all deficiencies brought to [its] attention in writing subsequent to November 2, 1984," including those listed in the 1985 Consent Decree. *See*

[2] Recently, Kanasco appealed another order of the district court awarding inspectional fees to the FDA incurred under the 1985 consent decree entered in Civil No. K–85–3330 (D. Md.). That matter has been briefed by the parties and a decision is expected in the near future. No. 86–2189 (4th Cir.)

FDA Ex. 39, p. 2; *See also* FDA Ex. 35, October 22, 1985, Declaration of J. Paul Hile, Associate Commissioner for Regulatory Affairs (filed in support of Government's Reply to Defendant's Response to Order to Show Cause, Civil No. K–85–3356 (D. Md.)) in which Mr. Hile advised the district court and Kanasco that he had signed the 1984 Agreement with the expectation "that there would be no further proceedings in this case" and that "defendants would bring their drug manufacturing operations into compliance with the law." As the Associate Commissioner for Regulatory Affairs also advised the district court, "[s]ubsequent events have shown that this decision was ill advised." *Id.*

Finally, in a 15-page letter dated June 24, 1986, the Acting Associate Commissioner for Regulatory Affairs, James Swanson, advised Kanasco's counsel that numerous lots of veterinary injectable drugs produced by Kanasco between April 1984 and June 1985 were adulterated because they had not been produced in compliance with CGMP. *See* FDA Ex. 45, *passim.* Mr. Swanson's letter was based upon, and discussed in detail, the observations made by FDA investigators during inspections conducted at the Kanasco facility in 1984 and February–March, May, July, and November 1985; declarations, exhibits, and other documents filed by Kanasco and the agency in the injunction actions against Kanasco, and by Kanasco's suit against the FDA (K–85–2905 (D. Md.)); Kanasco's test data, media fill results, and batch records; and the declarations of two independent experts in CGMP retained by FDA, Drs. Salvatore Turco and Kenneth E. Avis. The Associate Commissioner's letter and FDA's exhibits attached thereto provided a comprehensive discussion of Kanasco's CGMP violations, including an explanation of the significance of those violations and citation to CGMP regulations and particular Form FD–483's.

In addition to these notifications from the Associate Commissioner for Regulatory Affairs, Kanasco also received written notice of the CGMP deficiencies at its facility from numerous other appropriate sources. For example, Kanasco received two Regulatory Letters from the Director of FDA's Baltimore District. The first such letter, dated April 28, 1977, warned Kanasco and its president that the company had used an uncertified bulk ingredient in one of its antibiotic drugs. *See* FDA Ex. 5. The second Regulatory Letter, dated January 2, 1980, advised Kanasco and its president that the steam autoclave which the firm used to sterilize various packaging components and equipment used to manufacture injectable drugs had not been adequately validated. *See* FDA Ex. 13.

Kanasco also received two Notice of Adverse Findings (NAF) letters from FDA. The first NAF letter, dated June 9, 1980, again warned Kanasco and its president that the company had used another uncertified bulk antibiotic in one of its injectable products. *See* FDA Ex. 14. The second NAF letter, dated July 31, 1981, warned Kanasco and its president about "serious inadequacies" in the firm's stability program for oral products. *See* FDA Ex. 15.

The authority to issue these NAF and Regulatory Letters was specifically delegated to the persons who sent them or approved them (*See* 21 CFR 5.37 (1978)), and there is no authority that such warnings cannot serve as a predicate to initiate this proceeding. This is particularly true where, as here, neither section 355(e) nor section 360b(e) contain any suggestion that the predicate notice must be given in any particular form. *Compare,* e.g., section 355(g) describing the manner of service of an order issued under section 355, *with* 355(e) which is silent about the form of predicate notice. The issuance of such warning letters is more than adequate to provide the requisite notice and to give reasonable assurance of a responsible executive determination of the fairness of the sanction imposed.

Kanasco received yet further written notice of its CGMP deficiencies by means of the various complaints filed in the district courts requesting statutory injunctions under the FDC Act for violations of CGMP. *See* FDA Exs. 18 and 33. These complaints, together with the Form FD–483s, declarations, and other exhibits attached thereto and the numerous ancillary motions filed with the district court (also with attached and referenced Form FD–483s, declarations, and exhibits), discussed Kanasco's CGMP violations at great length and in extensive detail. *See* e.g., FDA Ex. 35, Government's Supplemental Request to Enter Consent Decree of Permanent Injunction, filed August 7, 1985 (supported by Second Declaration of Carl I. Turner); Government's Reply to Defendants' Response to Order to Show Cause, filed October 22, 1985 (supported, *inter alia,* by Fourth Declaration of Carl I. Turner, Declaration of Kenneth E. Avis (CGMP expert), and Second Declaration of Salvatore J. Turco (CGMP expert)); FDA Ex. 42, Government's Motion to Enforce Consent Decree of Permanent Injunction, filed December 12, 1985 (supported, *inter alia,* by Declarations of FDA investigators Henry L. Avallone and Bruce W. Hartman and Form FD–483 dated November 25 and 26, 1985); FDA Ex. 48, Government's Motion for Expedited Enforcement of Consent Decree of Permanent Injunction, filed on October 16, 1985 (supported, *inter alia,* by declarations of FDA investigators David Pulham and Ronald Tetzlaff, and Declarations of Dr. Kenneth E. Avis and Salvatore Turco).

In short, there has been an overwhelming amount of appropriate predicate notice to Kanasco prior to initiating this proceeding. Where, as here, a manufacturer has received such a longstanding and continuous stream of notice and refused to make substantial corrections of CGMP, the Commissioner is fully warranted in withdrawing approval of its NDA's and NADA's.

For the foregoing reasons, Kanasco's motion for summary judgment is denied.

III. Kanasco's Hearing Request

A. Legal Arguments

Kanasco contends that it is entitled to a full evidentiary hearing because FDA has failed to issue "precise regulations that apply to withdrawal of NDA's on the grounds set forth in the notice of opportunity for hearing". Kanasco Memo., p. 11. Kanasco also argues that FDA's hearing regulations, 21 CFR 314.200, do not apply to the current case. The only cases which Kanasco cites in support of this contention are *Weinberger* v. *Hynson, Westcott & Dunning, Inc.,* 412 U.S. 609 (1973), and *American Cyanamid Co.* v. *FDA,* 606 F.2d 1307 (D.C. Cir. 1979).

For the reasons set forth below, this argument is without merit.

In *Hynson,* the Supreme Court not only sustained the propriety of FDA's umbrella hearing regulations, 21 CFR 130.14 (now 314.200), but also the agency's regulations defining adequate and well-controlled clinical investigations, 21 CFR 130.12 (now 314.126). Even with respect to the latter regulations, the Court did not rule, as Kanasco suggests, that FDA could never grant itself summary judgment based on regulations which were less than precise. To the contrary, the Court stated that regulations which use

> qualitative standards [such as] 'adequate' and 'suitable' do not lend themselves to clear-cut definition, and it *may* not be possible to tell from the face of a study whether the standards have been met. Thus it *might* not be proper to deny a hearing on the ground that the study did not comply with this regulation.

412 U.S. at 621 n. 17 (emphasis added).

As courts have subsequently pointed out, whether or not a particular regulation is sufficiently precise to provide a basis for denying a hearing request "will vary with the context in which it is invoked. * * * [A] regulatory provision which seems vague in the abstract may nonetheless be conclusively at odds with a peculiarly deficient item of evidence." *Cooper Laboratories, Inc.* v. *Commissioner, Federal Food & Drug Admin.*, 501 F.2d 772, 780 (D.C. Cir. 1974); *American Cyanamid Co.* v. *FDA*, 606 F.2d at 1312.

Nor does *American Cyanamid* support Kanasco's argument. In that case, the manufacturer sought FDA's approval of a supplemental NADA to market a new animal drug over-the-counter (OTC). The FDA denied the supplement on the grounds that the manufacturer had failed to show that the product could be used safely, and published an NOOH particularizing, for the first time, the reasons for its denial. *Id.*, at 1309. The court noted that since the FDC Act did not delineate the type of evidence needed to prove the safety of a product and since the agency had not promulgated detailed regulations defining either the kinds of safety tests FDA would consider adequate or the margin of safety that would be sufficient to market an OTC product, summary judgment should not have been granted; FDA had not given the applicant notice of the safety standards and of the manner in which its data failed to meet those standards. *Id.*, pp. 1313 and 14.

This proceeding bears no resemblance to the situation described in American Cyanamid. Here, FDA has promulgated extensive regulations particularizing the requirements of CGMP. *See* 21 CFR Parts 210 and 211. These regulations, while somewhat broadened since their initial promulgation in 1967 (*See* 21 CFR 133.1 *et seq.* (January 1, 1967)), have remained virtually unchanged in principle, scope, and detail since 1978. *Compare* 21 CFR Part 211 (1978), *with* 21 CFR Parts 210 and 211 (1987).

In fact, Kanasco overlooks critical language in the *American Cyanamid* decision. The court in that case also observed that *"summary action may likewise be taken on the basis of manifest noncompliance with general statutory or regulatory provisions,* or even on the basis of obvious noncompliance with an undisputed particularization of general statutory mandates, so long as the regulated party is afforded ample opportunity to question or meet the newly-adopted standards". *Id.*, p. 1323 (emphasis added). *See also Hess & Clark, Division of Rhodia, Inc.* v. *FDA*, 495 F.2d 975, 983 (D.C. Cir. 1974) (an NOOH which specifies the nature of the facts and evidence on which the agency proposes to take action and gives the affected party enough information to provide a general opportunity to identify material issues of fact, satisfies the notice and opportunity for hearing required by the FDC Act and may serve as a predicate for summary judgment).

Moreover, in this and earlier proceedings, FDA has provided Kanasco with numerous declarations, consent decrees, motions filed in the district court, letters from agency officials, and even scientific treatises describing in extensive detail precisely how the firm's manufacturing methods, processes, and controls ran afoul of the CGMP provision of the FDC Act, 21 U.S.C. 351(a)(2)(B), and the implementing CGMP regulations, 21 CFR Parts 210 and 211. These materials have not only been continuously furnished to the Kanasco firm, its employees and counsel since 1976, but also, and for the most part, the materials have been furnished to Kanasco in the context of adversarial proceedings in which the company had a strong incentive to focus carefully on the documents' contents.

FDA has provided Kanasco with notice of the facts, the evidence which supports the notice, an explanation of the basis for the proposed action, and a genuine and meaningful opportunity to prepare a response. Nothing more is required. *See* 21 CFR 314.200(a)(1); *See also*, 21 CFR Part 12, subpart B describing the proceedings which may or may not lead to a formal hearing.

Objections to a notice must raise issues material to the question involved. *See Pineapple Growers Ass'n* v. *Food and Drug Admin.*, 673 F.2d 1083, 1085 (9th Cir. 1982). Objections may not be frivolous or inconsequential—Congress did not intend governmental agencies created by it to perform useless or unfruitful tasks. *Id.* Moreover, it is well established that the law does not require a hearing in every case in which an adversely affected person files an objection, particularly where the issues have already been aired in a previous proceeding. *See Community Nutrition Inst.* v. *Young*, 773 F.2d 1356, 1364 (D.C. Cir. 1985). Thus, in this proceeding, it will not suffice for Kanasco to point to a few improvements in its CGMP. Rather, Kanasco must raise a material issue of fact concerning whether its manufacturing methods are adequate to assure and preserve the identity, strength, quality, and purity of its drug products and whether efforts to render such methods adequate have been successful within a reasonable time period. 21 U.S.C. 355(e), 360(e)(2)(B). In short, Kanasco must submit specific facts showing that there is a genuine and substantial issue of fact concerning whether the statutory standards for the withdrawal of the approvals of Kanasco's new drug and new animal drug applications have been met. Unless Kanasco submits such facts, the Commissioner may deny a hearing and enter summary judgment in this proceeding. 21 CFR 314.200(g). As discussed below, Kanasco has failed to come forward with such facts.

B. Kanasco's Evidence—An Overview

In response to the NOOH and underlying evidentiary documents, Kanasco submitted 14 exhibits consisting of 4 declarations, 8 letters constituting Kanasco's contemporaneous responses to the Form FD–483's which FDA investigators had left at the firm following the inspections conducted between August–October 1984 and September 1986, a 2-page letter to FDA transmitting validation studies which Kanasco conducted in October and November 1986, and a letter responding to a meeting which the firm had with FDA representatives in December 1986. Kanasco also incorporated by reference the reports of its 1986 validation studies.

The declarations, which will be discussed in greater detail below, may be briefly summarized as follows. Two of the declarations were submitted by experts in CGMP. For the most part, these experts did not directly refute any of the specific contentions in the NOOH. Nor did they attempt to rebut, the numerous declarations filed by the Directors in support of the NOOH. Instead, in a conclusory fashion, the experts stated that the methods, procedures, records, and employees of the firm were either in compliance with CGMP (*See* Kanasco Ex. 2, Declaration of Theodore E. Byers, *passim*) or that the deficiencies noted in the NOOH were "correctable." *See* Kanasco Ex. 1, Declaration of Angel Arambulo, p. 5. One of Kanasco's experts, Mr. Byers, adopted by reference each of Kanasco's letter responses to the Form FD–483's stating that he helped prepare the letters and that they "reflect [his] position concerning the investigators' observations." *See* Kanasco Ex. 2, Declaration of Theodore E. Byers, pp. 2 and 3. The other two declarations were submitted by the two Kanasco employees whose qualifications to serve in key supervisory roles at Kanasco were challenged in the NOOH. These employees recounted their background and experience, took issue with several

of the statements made about the interviews in the NOOH, and stated that the interviews had been conducted in an unfair manner. Although both of these employees were present during, and in one case supervised, the day-to-day operations of Kanasco, neither challenged any of the CGMP findings stated in the NOOH or the underlying FDA exhibits. *See* Kanasco Exs. 3 and 4, Declarations of Ian Chester and John Wanner.

IV. Kanasco's Response to the NOOH

A. Regulatory History of Kanasco

1. Prior to 1984

The NOOH stated the following with respect to Kanasco's regulatory history prior to 1984:

> In 1976, a large number of vials of antibiotic that FDA found to be nonsterile was destroyed, and one lot of veterinary oral dosage form antibiotics that FDA found to be subpotent was recalled. During the same year, FDA decertified a batch of antibiotic that the Agency found to be subpotent. The batch was subsequently recalled by the consignee. FDA refused to certify yet another batch of human oral dosage form antibiotic because of excessive variance in moisture content and inadequate batch records.
>
> In 1977, FDA issued a Regulatory letter to Kanasco regarding the firm's use of uncertified bulk antibiotic in the production of two lots of human oral dosage form drug products. The two lots were ultimately seized, condemned, and destroyed (Civil No. B–78–322 D. Md.).
>
> In 1978, FDA conducted an inspection and found that the firm had not validated its autoclave or sterilization-depyrogenation heat tunnel and that its manufacturing and control records were incomplete. A List of Inspectional Observations (FDA–483) was left [at] the firm reflecting these and other CGMP deficiencies. Later that year, tests showed that one lot of veterinary drug product was not sterile. The product was recalled and destroyed. Thereafter, as a result of a limited followup inspection, the agency provided Kanasco with [an] FDA–483, which reflected that the firm's autoclave, depyrogenation tunnel, and manufacturing (gel) tanks used to sterilize and depyrogenate products and product containers had not been adequately validated to assure that pharmaceuticals intended to be sterile would in fact be sterile. FDA also advised Kanasco that the firm's manufacturing and testing records were incomplete.
>
> In 1979, one lot of a human oral dosage form drug product was decertified and recalled because its moisture content exceeded established specifications. During the same year, Kanasco produced and distributed several batches of an injectable veterinary product which lacked an approved new animal drug application. Also during the same year, Kanasco recalled a lot of a human oral dosage form antibiotic which was misbranded.
>
> In 1980, FDA issued a Regulatory Letter to Kanasco advising the firm that one of its autoclaves used to sterilize manufacturing equipment had not been validated. During this period, the agency also issued a Notice of Adverse Findings to Kanasco regarding the firm's use of an uncertified sterile bulk antibiotic in the production of finished pharmaceuticals.
>
> In 1981, FDA issued a Notice of Adverse Findings to Kanasco regarding the firm's inadequate stability data for two oral dosage form penicillin products that it had produced.

52 FR 7312; *See also,* FDA Exs. 1 to 15.

Kanasco did not submit any factual response to these observations. Rather, in its legal memorandum, the company argued that the recitation of the history prior to 1984 was "wholly irrelevant" because the items discussed therein related "almost solely" to oral dosage form drugs which the NOOH specifically stated were not affected by this proceeding. Kanasco Memo., p. 12 n. 8.

This argument raises no factual issues which require an evidentiary hearing. Contrary to Kanasco's assertion, many of the deficiencies cited in this section of the NOOH pertain exclusively to the sterile injectable facility (i.e., the nonsterile vials produced in 1976, FDA Ex. 1; the decertified, subpotent batch of antibiotic drug which had to be recalled in 1976, FDA Ex. 3; the failure to validate the autoclave and sterilization-depyrogenation heat tunnel and incomplete manufacturing and control records in April 1978, FDA Ex. 7; [3] the nonsterile lot of veterinary drug that was recalled and destroyed in 1978, FDA Ex. B; the firm's continued failures to validate the autoclave and sterilization-depyrogenation heat tunnel and to have complete manufacturing records in June 1978, FDA Ex. 9; [4] the distribution in 1979 of an injectable drug product which lacked an approved new animal drug application, FDA Ex. 11; the still-continuing failure to validate the autoclave in 1980, FDA Ex. 13; and the use of an uncertified antibiotic ingredient in the production of an injectable product in 1980, FDA Ex. 14.

Nor can the Commissioner agree that the findings related to the manufacture of oral dosage form drugs are "irrelevant" to this proceeding. Both types of drugs were made in the same facility. The company primarily responsible for making the oral drugs and injectable drugs is owned, operated, and controlled by the same individual; the FDA's observations regarding both operations were, in many cases, brought directly to his attention. *See* e.g., FDA Exs. 1, 3, 4, 5, 11, and 13 to 15. There is no reason why a CGMP deficiency brought to management's attention relating to one type of product should not cause a company to take corrective action to prevent the same violation from occurring with respect to another product made in the same (or indeed, even a different) facility. (In fact, Kanasco management was again reminded of the applicability of the foregoing events to its injectable manufacturing operation when FDA recounted the firm's pre-1984 regulatory history in a declaration filed with the district court in October 1985. *See* FDA Ex. 35, Fourth Declaration of Carl Turner, pp. 9 to 11, filed in Civil No. K–85–3356 (D. Md.)).

The Commissioner concludes that the findings related to oral dosage form drugs are relevant to this proceeding and that the events described in this section should have caused Kanasco management to take corrective and preventive action with respect to the firm's manufacturing practices generally.

2. The August–October 1984 Inspection

The NOOH charged:

> A partial inspection of the Kanasco oral dosage form manufacturing facility conducted by FDA in August through October 1984 revealed that Kanasco's processing and quality control procedures were not adequate to provide reasonable assurance that the firm's products would have the identity, strength, quality, and purity characteristics that they were purported or represented to have. At the conclusion of the inspection, FDA left an FDA–483 with Kanasco and discussed the observations with the firm's management. Some of the observations were as follows:

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[3] Among other things, FDA Ex. 7 also pointed out that (a) the autoclave validation data were inadequate because "heat distribution, heat penetration and microbial destruction tests have not been performed for each load and configuration * * *"; (b) the firm used a lower temperature and shorter time cyle than called for by its own SOP for sterilizing various materials; (c) actual weights of active ingredients were not recorded in writing at the time of weighing; (d) the company had not followed its own manufacturing instructions with respect to the temperature of water that was used in a batch of product; (e) products had been distributed prior to determination of actual yield, review, and approval of batch records and release of the lot; (f) Kanasco failed to properly store laboratory reference standards; (g) employees had not properly calculated the potency of a product; (h) the company lacked a written quality assurance program to assure that laboratory equipment was and had been working properly; (i) Kanasco's laboratory procedures failed to specify which tests were required for active ingredients and raw materials; and (j) the company did not have the manufacturing instructions contained in master records signed and dated to reflect management approval.

[4] Among other things, FDA Ex. 9 pointed out that Kanasco's (a) master production records had not been updated to reference current laboratory test procedures, (b) batch records contained inadequate manufacturing directions, and (c) laboratory reports did not adequately describe the sample being tested or the particular analytical method used.

• A consultant then employed by Kanasco stated that he had prepared batch production records for six lots of a prescription antibiotic intended for human use to reflect that certain manufacturing steps had been completed when in fact the steps had not been performed. The consultant also stated that he had persuaded other employees to countersign these records.

• Batch records for several lots of drugs showed that the lots had been prepared in final form and shipped in interstate commerce whereas FDA investigators observed the same lots of drugs in the process of being manufactured at the Kanasco facility.

• Batch records for a specified raw material showed that the material had been used in making a product whereas the same material was actually located, unused, in Kanasco's storage area.

• Production records showed that a particular lot of raw material had been used in a product whereas the firm's inventory and receipt records showed that the same lot of material had not yet been received by Kanasco at the time the product was supposed to have been made.

• Various pieces of basic analytical equipment used in Kanasco's quality control laboratory to test the quality of its products and ingredients had not been regularly and routinely calibrated or standardized.

• On the ceiling support in a room used to compound drugs for human use, FDA investigators observed dust, used cigarettes, and other unidentified materials.

• Laboratory records for samples of a drug did not include the location from which the sample was taken, the quantity of sample taken, or the date the sample was taken.

In addition to the above observations, FDA analyses revealed that one lot of a veterinary injectable dosage form antibiotic produced by Kanasco contained only 45.7 to 53.1 percent of the amount of active ingredient declared by the product's label. The analyses also showed that the product contained gross amounts of particulate matter.

52 FR 7312 and 7313; *See also* FDA Ex. 18, Form FD–483 attached to Government's Motion for Temporary Restraining Order, filed on October 26, 1984 (Civil No. JH–84–3957 (D. Md.)). The Director of FDA's Baltimore District described these deficiencies in greater detail in a declaration filed with the district court and in this docket number. He stated:

8. The FDA inspection of Copanos conducted between August 23 through October 3, 1984, by the Baltimore District Office revealed serious deviations from the Current Good Manufacturing Practice (CGMP) Regulations 21 CFR 210.3 and 211.1 through 211.198. At the conclusion of this inspection, FDA investigators provided Dr. Ellerton [the firm's director of quality control and quality assurance] with a list of observed deficiencies (FD–483). This list and an addendum thereto (which was hand-carried to Dr. Ellerton on October 10, 1984) are attached to this declaration as exhibits 1 and 2, respectively [attached to FDA Ex. 18]. The CGMP deviations observed at Copanos include the following:

(a) The batch production and control records for six lots of Amoxicillin for Oral Suspension (Amoxicillin), a prescription antibiotic drug intended for human use, were falsified in that they were created before the drugs were manufactured. Mr. Greenspun, who was identified by Mr. Copanos as a consultant to Copanos, admitted to two FDA investigators that he had falsified these documents and that he had persuaded two other Copanos employees to counter-sign these records. As a result, although Copanos' batch records indicated that each of the six lots had been blended, reconciled, and each placed into 18 drums, in fact, the lots had not been blended, and had been placed in only three to four drums each. *See* [FD–483] Exhibit 1, item 8 [attached to FDA Ex. 18].

(b) Twelve drums of in-process Amoxicillin (eleven drums with lot number 122H214 written over the original lot number 122H234, and one drum identified as lot 122H234) were observed in the Copanos plant. The batch records for both of these lots showed that the lots had already been packaged and shipped to Pennsylvania. When asked to investigate this discrepancy, Dr. Ellerton replied that the drums must actually represent a third lot number, 123H284.

However, the batch record for lot 123H284 indicate that there should have been 18 drums, not 12. Dr. Ellerton was unable to explain these discrepancies. [*Id.*], item 1.

(c) A similar situation existed with respect to three drums of what appeared to be unblended Amoxicillin (with lot number 122H274 written over the original lot number 123J084). When the FDA investigators looked at the batch records for these lots, the records showed that the batches had been blended and placed into 18 and 19 drums, respectively. Although the FDA investigators later found 11 blended drums of lot 122H274, Dr. Ellerton was unable to account for the missing drums of both lots. [*Id.*], Exhibits 1 and 2, item 5.

(d) There are several instances in which Copanos' raw materials inventory and batch records indicated that a certain quantity of a specified raw material had been used in batches of drug, when, in fact, the same raw material was found in a Copanos storage area. [*Id.*], Exhibit 1, items 6 and 7; Exhibit 2, item 7.

(e) On several occasions, Copanos' records showed that raw materials had been used in a product, whereas other records showed that the raw materials had not yet arrived at the plant. [*Id.*], Exhibit 1, items 8, 9, 24 and 26; Exhibit 2, item 9.

(f) In one instance, the firm cannot account for 71.1 kg (approximately 243 pounds) of Pen V Potassium raw material. [*Id.*], Exhibit 1, item 10.

(g) Copanos' raw material records and batch records do not always agree with respect to what lot numbers of raw material were actually used in particular batches of drugs. [*Id.*], Exhibit 1, item 11.

(h) Raw material inventory/use records are written in pencil with numerous missing dates, crossouts, erasures, and write-overs, with no identification as to who made the changes. [*Id.*], Exhibit 1, items 13 and 15.

(i) The gross, tare, and net weights of in-process materials (tablets, capsules) recorded (to the hundredth of a kilogram) on many weight sheets are suspicious in that the entries on each weight sheet appear to have been made at one sitting and the net weights of bulk drums of raw material (each weighing approximately 50 pounds) are identical. [*Id.*], Exhibit 1, item 17.

(j) Records do not show whether drums of raw material are weighed before being used in production. [*Id.*], Exhibit 1, item 17.

(k) Copanos does not keep logs to show whether laboratory equipment and instruments have been calibrated or standardized. This equipment includes dissolution measuring devices, automatic titrators, an autoanalyzer, pH meter, polarimeter, and thermometers. Laboratory employees could not state with certainty when various pieces of equipment had been calibrated. [*Id.*], Exhibit 1, items 17 to 21.

(l) Copanos does not control intermediate carton labeling and cannot account for thousands of labels. [*Id.*], Exhibit 1, items 29 to 32.

(m) Cleaning and maintenance logs do not exist for some manufacturing equipment such as blenders, compactor, fitzmill, and tableting equipment. [*Id.*], Exhibit 1, items 36 and 39.

(n) Various batches of in-process products were observed in the plant which were not identified as to their stage of processing, and in one instance, an active ingredient was not identified as to its status (e.g., released for use, quarantined, or rejected). [*Id.*], Exhibit 1, items 43 and 44.

(o) Items of manufacturing equipment were observed without identification as to their stage of operation (e.g., in use, cleaned, not cleaned). [*Id.*], Exhibit 1, item 37.

(p) Records required by the GMP regulations under 21 CFR Part 211, Subpart J, are not readily available at Copanos for authorized inspection by the FDA. *See* FDA Ex. 18, October 18, 1984, Declaration of Thomas L. Hooker, Director, FDA Baltimore District Office, exhibit A attached to Motion for Temporary Restraining Order.

9. Mr. Copanos used a variety of tactics during the FDA inspection to interfere with the investigators' ability to conduct a complete and timely investigation of the Copanos and Kanasco plants. These tactics included closing the plants on three occasions when the investigators appeared, delaying ready access to manufacturing records, requiring the investigators to inspect the plant as a team instead of allowing them to contemporaneously and individually inspect several departments, and subjecting the investigators to lengthy and sometimes unseemly tirades. As a result of the actions, I decided that a complete FDA inspection of defendants' plants could not be conducted within a reasonable time, and I terminated the inspection before it was completed. *Id.*

10. FDA analyses of one lot of a veterinary drug, Oxytetracycline Hydrochloride Injection, produced by Copanos show that this drug was subpotent in that it contained between 84.0 and 93.6% of the amount of active ingredient declared on label (*See* exhibit 4) [*in* FDA Ex. 18], and had large amounts of particulate matter. This product is

not recognized in the official drug compendia (e.g., United States Pharmacopeia and National Formulary). This product had been shipped by Copanos to a customer in Sioux Falls, South Dakota, in October 1983. The customer complained, and Dr. Ellerton, by letter dated August 13, 1984, advised the firm to return the product to Copanos. On September 25, 1984, FDA investigators found a portion of the returned product stored at Kanasco. When Dr. Ellerton was asked about the material, he denied any knowledge about it. [FD-483] Exhibit 3, item 2. *Id.*

An expert who testified on behalf of FDA, both in the district court and in this proceeding, Dr. Salvatore J. Turco, explained the significance of the foregoing CGMP deficiencies. Dr. Turco stated:

2. In the pharmaceutical industry, it has been understood for many years that product deficiencies such as incorrect formulation, subpotency, and improper dissolution characteristics cannot always be accurately detected by laboratory analysis of the product itself. The purpose of the good manufacturing practice (GMP) regulations is to so carefully control the process of manufacturing that product defects will be prevented from occurring. This concept is frequently expressed as 'quality must be built into each batch of drug product.' *See* FDA Ex. 18, Declaration of Salvatore Turco, Pharm D., exhibit B attached to Government's Motion for Temporary Restraining Order (Civil No. JH-84-3957 (D. Md.)).

3. I have reviewed the Lists of Observations (FD-483) issued to John D. Copanos & Sons, Inc. (the Copanos firm) following the August-October 1984 inspection and have talked with employees of the United States Food and Drug Administration (FDA) who are familiar with the details of the investigation. Based upon my education, training, and experience, I believe that there are a number of poor manufacturing practices occurring at the Copanos firm. Although there is not enough time to address each of the deficiencies, my views with respect to the more serious deficiencies are as follows:

a. I understand that records have been falsified (*See* FD-483, item 4) for six batches of Amoxicillin for Oral Suspension.

The science of manufacturing pharmaceuticals and the GMP regulations are premised on the presumption that all manufacturing records will be maintained honestly, accurately, and completely. While no system of records can be entirely free of error, drug manufacturing records must reflect the best efforts of the manufacturer to prepare accurate and complete records; records which have been fabricated are wholly unacceptable. The purpose of careful recordkeeping in a drug manufacturing plant is two-fold: First, it serves as a prospective control mechanism to assure that products are properly formulated and manufactured at each step of the process. Second, scrupulous recordkeeping also serves as a means to reconstruct the manufacturing history of a product in the event any problem occurs. For example, if a harmful ingredient has inadvertently been placed in the product, the best way to trace the source of the problem (and prevent recurrence in other batches of drug which contain the safe ingredient) is to examine these records to determine which ingredients were used in the product. In view of the alleged falsification of records referred to above and the uncertain nature and extent of such falsifications, I am unable to place any reliance on the integrity of the recordkeeping practices at the Copanos firm. Consequently, I can have no confidence in the integrity, safety, purity, or quality of the firm's products. My lack of confidence in the products made by the Copanos firm is underscored by the appalling number of serious discrepancies with respect to precisely which raw materials were used in which batches of product. (*See* FD-483, items 6 to 12, 24 and 46).

The alleged record falsifications raise serious questions which extend beyond the involvement of the consultant who acknowledged the fabrications. Thus, other employees at the firm were persuaded by the consultant to counter sign the fictitious batch and control records prepared by the consultant. At a minimum their agreement to sign records which could not have been genuine demonstrates a lack of appreciation of the importance of such records. Moreover, these employees either failed to notify the firm's management about this situation, or did notify management, and no action was taken to correct the problem (e.g., investigating the extent of the problem, terminating employment of the individual employees, recalling the product, notifying the FDA). *Id.*

b. The raw material inventory/use records are kept in pencil, and at least 25 of these records contained one or more missing dates, crossouts, erasures, and erasures with changes and write-overs. None of these changes reflect which person or persons made the changes. (*See* FD-483, item 13).

These records are clerical and should be easy to keep. Generally, they are kept in ink or typed, rather than in pencil. It would appear that the preparation of these records is not very well supervised, because the lack of identification of persons making changes in records is a poor practice which should have been detected and corrected. Further, I cannot understand why the number of omissions and crossouts is so extensive. Errors and changes in production records do occur, but not to this extent. The manner in which these records are kept increases my lack of confidence in the firm's entire manufacturing procedures. *Id.*

c. The investigators found many drums of Amoxicillin for Oral Suspension on hand (not from the falsified batches) that could not be reconciled with the number of drums shown in the batch records. (*See* FDA 483, items 1, 2, 3 and 5). The firm could not account for these discrepancies.

A batch number is any combination of letters, numbers, or symbols from which the complete history of the manufacture, processing, packing, holding, and distribution of a batch of drug product can be determined.

In modern drug manufacturing it is virtually unheard of that drugs or specific in-process or finished material cannot be traced back to batch records with precision. While occasional mistakes in identification of in-process and finished product can occur, the extent of write-overs and the frequent inability to reconcile amounts on hand with batch records is very troubling. At the least, these discrepancies indicate a manufacturing operation that is not adequately controlled. At worst, it suggests a manufacturing operation which lacks integrity. *Id.*

d. There are no records to show whether and, if so, when, laboratory instruments and equipment, including the dissolution equipment, have been calibrated. (*See* FD 483, item 19). (I understand that laboratory personnel interviewed during the inspection had no idea when, if ever, calibration had been done. They stated that it had not been done for the last year or so.) Dissolution testing thermometers have not been calibrated against a National Bureau of Standards (NBS) thermometer as required by the firm's own standard operating procedures (SOP); the firm does not have an NBS thermometer on the premises. (*See* FD 483, item 20).

Sound manufacturing techniques and the GMP regulations (21 CFR 211.194(d)) require that these records be kept because they provide a basis upon which management can be sure that the laboratory equipment is being properly maintained. Proper practice also requires that laboratory control mechanisms used to test the products and their ingredients for identity, purity, and quality must be scientifically sound and appropriate. (*See* 21 CFR 211.160(a)). Laboratory controls include the calibration of instruments, recording devices, and other equipment at suitable intervals in accordance with an established written program. (*See* 21 CFR 211.160(b)(4)).

A specific example of the importance of the foregoing precaution will illustrate my point. Dissolution is the rate at which a drug's active ingredient(s) is (are) released into solution. It is a very important measurement for all oral, solid dosage form drugs such as tablets and capsules and such drugs manufactured by Copanos must pass dissolution testing prior to release. Without proper calibration of the dissolution equipment, little reliance can be placed on the test results obtained. Dissolution equipment is normally calibrated at intervals of at least once every 6 months.

Although I understand that the firm's dissolution equipment has now been calibrated, the fact that this situation was permitted to persist as long as it did indicates that inadequate supervision was provided to the laboratory recordkeeping and equipment maintenance practices.

I would not comfortably rely on any of the results reported from this laboratory that involved the use of the uncalibrated equipment or equipment for which there is no record of calibration. *Id.*

e. Other deficiencies which should be promptly addressed and corrected by the firm include the failure to identify the status of raw materials (e.g., released for use, quarantined, rejected) (*See* FD 483, item 44), the failure to control the labeling with a consequent inability to account for very large numbers of labels (*See* FD 483, items 25 to 36), the failure to identify the status of in-

process materials (*See* FD 483, item 43), and the failure to keep maintenance logs for production equipment. (*See* FD 483, items 38 and 39). *Id*

f. All of the deficiencies discussed above and listed in the FD 483s indicate to me that there are an inadequate number of properly trained personnel to perform and supervise the day-to-day operation of the Copanos firm. *Id.*

4. In conclusion, I share the FDA's concern with respect to the continuing operation of this firm. If I were a consultant to management of the Copanos company, I would recommend that all operations of the firm be suspended until such time as additional employees have been hired; all employees have been properly trained; all production records have been reviewed; all raw materials, in-process and final products have been examined, inventoried and reconciled; and the other aspects of production have been brought under control. *Id.*

The only response in Kanasco's hearing request to this evidence was in the form of a letter to FDA dated November 30, 1984, signed by Kanasco counsel (*See* Kanasco Ex. 14) and subsequently adopted by Kanasco's CGMP expert Mr. Byers. *See* Kanasco Ex. 2, pp. 2 and 3.[5] In this letter (which was dated 1 month after Mr. Hooker's and Dr. Turco's declarations, FDA Ex. 18, had been filed with the district court and served on Kanasco counsel), Kanasco did not deny any of the FDA observations regarding improper recordkeeping. *See* Kanasco Ex. 14, pp. 1 to 13. Instead, the firm offered a wide-ranging variety of excuses and assurances of corrective measures. For example, the firm stated that the consultant (who admitted to FDA that he and other employees had falsified the records), had been seeking "to devise a new and more efficient system" and his "[i]nexperience . . . with the Company numbering and paperwork systems resulted in several problems." *See* Kanasco Ex. 14, November 30, 1984, letter to J.D. Sherry, p. 4. The firm also stated that "an adequate identification protocol for drums in this intermediate stage had not been established, and production personnel had not adequately described the processing status of material on these drum labels (*Id.*, p. 5); * * * batch records * * * were defaced or misplaced * * * and reconstructed [and] [d]uring the process of reconstruction [information] was erroneously inserted into the record." *Id.*, p. 8.

Kanasco's letter assured FDA that the company was "committed to maintaining its good reputation" and "dedicated" to operating in compliance with CGMP regulations. *Id.*, p. 1. The firm also promised that its lot numbering system would be changed, personnel would receive additional training in how to detect batch record errors, a person would be hired to prevent such errors from occurring on line, the inventory records procedure had been changed, a materials management department had been established and would be staffed, and the consultant's contract had been terminated while other employees involved "in the incident" were severly reprimanded. *Id.*, pp. 6 and 7.

While Kanasco offered explanations for its failure to calibrate and/or standardize several pieces of its equipment, no explanations were proferred for its failure to calibrate or standardize dissolution equipment, thermometers, and the polarimeter. Nor did Kanasco offer any explanation for its failure to maintain records to show that calibration and standardization had in fact been performed. *Id.*, pp. 13 and 14. Again, the firm promised correction by ordering the necessary equipment for calibration and standardization. *Id.*, p. 14.

Finally, Kanasco did not deny that a lot of drug product was subpotent and contained particulate matter. *See* FDA Ex. 17.

Kanasco has not presented any specific facts which require an evidentiary hearing on the events described in this section. The uncontested violations which were observed by FDA in 1984, in many cases, not only bore a striking resemblance to those observed in the preceding section (e.g., employees not following company procedures, inadequate recordkeeping, poor maintenance of laboratory equipment, inadequate supervision, production of adulterated and non-sterile products), but also reflected an operation that was not sufficiently controlled and lacked an adequate "number of properly trained personnel to perform and supervise the day-to-day operation of the [Kanasco] firm." *See* FDA Ex. 18, Turco Declaration, paras. 3f and 4. As shown by the ensuing discussion, these and similar CGMP problems have continued at Kanasco.

3. The October 1984 Injunction Suit and November 1984 Agreement

Kanasco does not dispute that after the 1984 inspection, the Government filed a complaint for injunctive relief in the district court (Civil No. JH-84-3957 (D. Md.)). Nor does Kanasco dispute that as a result of that suit, the company and FDA entered into the 1984 Agreement, which, *inter alia*, prohibited Kanasco from manufacturing or shipping any drugs without FDA's prior written authorization. *See* FDA Ex. 19.

4. The Aspartame Products

The NOOH charged:

> In December 1984, FDA learned that during the previous year Kanasco had manufactured numerous batches of oral dosage form products intended for human use using aspartame, a sweetener which at the time had not been approved for use in drugs. Kanasco's batch records did not reflect that aspartame had been used in the products. Instead, the records showed that sodium saccharin, an approved sweetener, had been used in the products. By letter dated January 4, 1985, FDA requested that these lots be recalled to the retail level.
>
> 52 FR 7313.

An FDA official explained the background of these events more fully. He stated:

> During the period November 8, 1984 through February 20, 1985, FDA investigated the use of [a]spartame in Penicillin V Potassium for Oral Solution products manufactured by Copanos. The investigation revealed that the firm had manufactured at least 25 batches of such products in which [a]spartame was used. However, Copanos' batch production and control records for these batches do not declare the use of [a]spartame in the batches. Rather, they showed that sodium saccharin had been used in the products. FDA analyses of samples collected from five of the lots (Copanos lot numbers 904D3JA, 90764JA, 90534JA, 91984JA, and 90964JA) confirmed the presence of [A]spartame in the batches. Because Copanos' batch production and control records for these batches do not declare the use of [A]spartame in the batches, they are false documents. [Three persons] signed the relevant part of these records * * *".
>
> FDA Ex. 35, Second Declaration of Carl I. Turner, p. 6.

When FDA's Baltimore District Office learned of this matter, it sought an opinion regarding the potential health consequences of the substituted sweetener. The agency's Office of Drugs reported as follows:

> Patients with phenylketonuria have a decreased ability to metabolize the amino acid phenylalanine [present in aspartame].

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[5] Mr. Byers' declaration does not refer to the 1984 inspection, to any of the specific batches of product with which FDA noted problems, to any of the specific findings in the Form FD 483, or to Mr. Hooker's and Dr. Turco's declarations. *Compare* Kanasco Ex. 2, *with* FDA Exs. 17 and 18. Mr. Byers states only that from time to time he certified various batches of product for release, and that FDA "released most batches he certified." Kanasco Ex. 2, p. 1. While Mr. Byers' declaration does not so reflect, FDA refused to release many of the products which Kanasco produced in 1984, including but not limited to those for which false batch records had been prepared. *See* FDA. Ex. 45 discussing the "partial lots". Nor does Mr. Byers' declaration reflect the fact that even he was unable to certify that two of these 1984 batches had been produced in compliance with CGMP. *See* FDA Ex. 20, p. 2; 52 FR 7311

Infants and children with this disorder who are not treated with a special diet low in phenylalanine frequently develop severe mental retardation. Taking into consideration the amounts of aspartame reported to be in the oral penicillin solution of up to 10 mg per 5 mg and the usual dosage of penicillin, it is estimated that patients with phenylketonuria would receive an amount of phenylalanine that is about 5% of their recommended dietary intake. The degree of risk posed by this additional intake of phenylalanine over the two or perhaps four week period these patients might receive the penicillin is not known, but there is a potential for some degree of central nervous system damage.

FDA Ex. 22, January 4, 1985 letter to John D. Copanos from Janice F. Oliver. As a result of that information, FDA asked Kanasco to recall the lots in question. *Id.*

Kanasco has not offered any evidence in this proceeding to controvert the events described in this section. The record shows that on December 18, 1984, the firm's president advised FDA that the unapproved ingredient had been added to the lots "inadvertently". FDA Ex. 21. Although it is not necessary to determine in this proceeding whether these occurrences were intentional or inadvertent, the views of the agency's CGMP expert who responded to this same argument when it was presented by Kanasco to the district court, place Kanasco's argument in the proper perspective. He stated:

In a properly run manufacturing facility, these aspartame incidents would not happen because the identity and lot number of each ingredient or mixture of ingredients must be clearly identified on the container. *See* 21 CFR 211.80(d), 211.101 (b) and (c). Also, I do not understand how this error was not discovered until after numerous lots of product had been produced by the firm.

FDA Ex. 35, Declaration of Kenneth E. Avis, p. 6; *See also* FDA Ex. 35, Declaration of Salvatore Turco, p. 5. It is worth noting that two of the persons involved in the aspartame incidents were also involved in the admitted record falsifications during the 1984 inspection. *Compare* FDA Ex. 35, Second Declaration of Carl Turner, paras. 7 and 8, *with Id.*, para. 10(b).

There is no reason to have an evidentiary hearing on this issue. The events are undisputed. These ingredient-substitution incidents are virtually identical to those brought to Kanasco's attention in 1977, 1979, and 1980. *See* FDA Exs. 5, 11, and 14.

5. The February-March 1985 Inspection

With respect to this inspection, the NOOH stated as follows:

In January 1985, a consultant retained by Kanasco certified to FDA that the firm's injectable drug manufacturing operation was in compliance with CGMP. However, when FDA conducted an inspection between February 15 and March 15, 1985, to verify the certification, the agency concluded that the injectable operation was not in compliance with CGMP. The written list of deficiencies, which FDA gave to the firm and discussed with the firm's management, included:

- Failure to validate aseptic processing procedures, sterilization equipment and procedures, gowning procedures, and the water for injection system.
- Failure to have primary barriers, e.g., laminar flow hoods, to control the flow of microbiologically filtered air in critical manufacturing areas such as the sterile filling room (where sterilized products are placed into the pre-sterilized product containers) and the mixing area (where sterilized powders are placed into mixing tanks).
- Failure to assure that positive air pressure was maintained between the aseptic filling room and adjacent areas. Temperature and humidity were not recorded for the filling area, and no limits had been set for these parameters.
- Environmental monitoring of aseptic manufacturing environment was inadequate. Rodac plates were used to monitor surfaces only on a weekly basis. No quantitative microbiological air sampling had been performed. Isolates and flora found in the manufacturing area were not identified. Non viable particulate counts were only conducted under static conditions which did not reflect the actual manufacturing situation.
- Procedures for cleaning and sterilizing manufacturing equipment omitted important steps.
- Microbiological and other testing procedures were inadequate, were not carefully reviewed by supervisory personnel, and failed to follow recognized compendial standards (e.g., sterility test procedures failed to include a control to assure that the firm's analysts could recover low level contaminants; endotoxin test procedures used a control that was 1000 times higher than the compendial standard).

By letter dated March 20, 1985, FDA advised Kanasco that the agency would not authorize the distribution of any injectable drug products which had been made under manufacturing conditions reflected by the February-March 1985 inspection.

52 FR 7313.

One of FDA's CGMP experts in this proceeding made the following observations regarding several of the foregoing deficiencies:

(a) *Processing procedures for the manufacture of aseptically processed sterile drug products were not validated.* (*See* February-March FD 483; items 1, 4, 5, 6, 7 and 14; . . . and 21 CFR 211.113.)

5. There are two ways to make a drug product sterile: by terminal sterilization and by aseptic processing. Terminal sterilization is the sterilization of a product after the components have been placed in the final container. Aseptic processing, the method used by the Copanos company, is the processing and filling of previously sterilized drug powders or liquids into previously sterilized containers, under aseptic, i.e., virtually microorganism-free conditions. The environment in which aseptically processed products are handled and filled must be designed and rigorously controlled to assure that the final products will not become contaminated during the filling process. FDA Ex. 45, June 19, 1986, Declaration of Kenneth E. Avis.

6. It is *essential* that an aseptic process be validated. An aseptic fill process is validated only when it has been *documented* by reliable, technological means to be capable of *consistently* producing a sterile product. Because of inherent statistical limitations (which I will explain more fully below), end-product testing of a portion of a batch cannot provide assurance that each and every vial in the batch is sterile. Accordingly, CGMP practitioners universally recognize that quality must be built into the product at each and every step of its manufacture; quality assurance cannot be "tested into" the product. Validation is the way to assure that the process will consistently do what it is supposed to do. *Id.*

7. Although the Copanos firm aseptically processes its sterile products, the company had not conducted adequate process validation to assure that [products] would consistently be sterile. *Id.*

* * * * *

(b) *The manufacturing environment was not adequately monitored. (See* February–March FD 483, item 3; * * * and 21 CFR 211.42(c)(10)(iv)).

15. In conjunction with validation, it is also necessary to determine the level and nature of contamination present in the manufacturing environment when and where products are being aseptically filled. This type of monitoring is accomplished by taking microbiological samples of the air and surfaces in manufacturing areas, including the aseptic fill area. Only by determining the quantity and type of contamination present in the aseptic area, and by concurrently making every effort to achieve and maintain an ultra clean environment, can a baseline for judging and accepting future production be established. Without such a baseline, there is no proper way to determine whether products were filled in a suitably clean environment. To the extent products are filled in an unclean environment or in an environment whose quality has not been ascertained and documented, assurance of product purity is lacking. *Id.*

16. Prior to the February–March 1985 FDA inspection, the firm had failed to adequately monitor the manufacturing environment for microbiological contamination. The firm's monitoring was inadequate because it was not done under actual manufacturing conditions, surface sampling was not performed, microorganisms were not identified, and volumetric air sampling was not performed to determine the quantity of microorganisms present. Also, the firm's monitoring did not take into account the possible inhibitory effect that ambient penicillin (used in some of the firm's products) would have on the detection of contamination in the manufacturing area if any microorganisms were present . . . In light of these deficiencies, there can be no

adequate assurance that products were produced in an acceptably clean environment. *Id.* * * *

(e) *The aseptic fill area was not suitably designed and maintained to provide adequate protection against contamination. (See* February–March 1985 FD 483, item 2, and 21 CFR 211.42(c)(10) (ii) and (iii).

40. For aseptic processing to be effective, filtered, virtually microorganism-free, air must be provided to the area immediately surrounding the exposed drug components and containers. The filtered air must be supplied directly to the aseptic fill area in a manner that prevents movement of the air from personnel and other potential sources of contamination to the product. Proper environmental control of this filtered air depends upon the use of the primary and secondary microbiological barriers. Design features that make use of the double barrier include hoods, cabinets, or other types of enclosures that serve as the primary barrier around the process, and the room itself, which serves as a secondary barrier. For many years, laminar air flow hoods have been commonly used in the aseptic process to provide this essential protective primary barrier. *Id.*

41. The Copanos firm did not employ laminar flow hoods or any other primary barrier system in the aseptic processing area until early March 1985. Accordingly, * * * any * * * lots which were produced without a primary barrier were even more likely to be exposed to contamination * * *. *Id.*

(f) *The sterilization procedures for the manufacturing tanks, mixing tanks, hoses and holding tanks were inadequate. (See* February–March 1985 FD 483, item 5, and 21 CFR 211.67).

42. Aseptic processing is predicated not only on the cleanliness of the surrounding manufacturing environment, but also on the sterility of the various components (including the bulk drug product) and containers used to manufacture the finished drug. The sterilization of the delivery system used to transport the sterile bulk drug product to the filling operation can be highly complex. The written standard operating procedure relating to the cleaning and sterilization of equipment (e.g., manufacturing tanks and connecting hoses) which the firm used prior to March 20, 1985 was vague and did not provide adequate guidance to assure that critical components would be properly cleaned or sterilized. Inadequate sterilization of delivery equipment provides a potential additional avenue by which products may become contaminated.

Id.; See also FDA Ex. 33, July 29, 1985, Declaration of Edmund Fry, *passim.*

With few exceptions, Kanasco has not contested either the accuracy or the significance of the findings made by the FDA investigators during the February–March 1985 inspection. None of the observations were challenged as being outside the bounds of CGMP. For example, in its March 1985 response to FDA's observations, Kanasco stated as follows:

Aseptic processing procedures [for manufacturing tanks and hoses] were validated by water fills every six months at the same time as environmental testing was performed by an outside consulting firm. Kanasco Ex. 14, March 20, 1985 letter, pp. 1 and 5. * * * [6]

The observation that media fill validation should be performed as an additional stringent test to assure the integrity of aseptic processing procedures was readily accepted. Aseptic processing procedures now have been validated through a media fill, results of which are reported in Attachment 1 * * *. One or more additional media fills will be conducted within the next three months to build a validation history * * * *Id.*, p. 2.

Particle counting under dynamic conditions will be conducted during manufacturing to obtain meaningful "in use" data. A validation history using this parameter will be generated. *Id.* * * *

Laminar flow hoods were reinstalled in the sterile filling room and validated during the course of the inspection. Primary barrier systems for the mixing area are being evaluated to determine their feasibility and suitability. *Id.*, pp. 2 and 3.

Magnahelic gauges have been ordered and will be installed to monitor the positive air pressure in the filling room and to measure pressure differentials among rooms used to manufacture parenteral products * * *. [T]emperature and humidity levels have been established for the powder filling operation, and temperature limits have been set for the liquid filling operation * * * Appropriate temperature and humidity recording devices have been installed. *Id.*, p. 3. * * *

Environmental sampling procedures have been revised. Settling plates and Rodac plates will be used on a daily basis. Plates were checked for their growth-promoting properties. As of February 26, 1985, Penase has been used to assess the inhibitory effect of penicillin on test results * * *. *Id.*, p. 4.

Quantitative microbiological air sampling will be performed using a quantitative air sampler (centralfugal) [sic]. Criteria to identify isolates and flora will be established and incorporated into a revised SOP. *Id.* * * *

The sterilization procedures for the tanks and hoses have been validated . . . . Additionally, the SOP for the sterilization of the system has been revised to particularize the essential steps that must be performed during the sanitizing process . . . . Piping on the gel (manufacturing) tanks has been altered to remove the "dead leg." Filters now fit directly on the manufacturing tanks, thus eliminating the need for a more complex sterilization procedure for piping. * * * *Id.*, p. 5.

Validation of the distilled water (closed system) was not performed at frequent intervals because the constant (daily) testing of the water did not indicate any problems. The SOP did not call for revalidation until daily testing revealed a problem. The system was validated and, because no changes were made to it, revalidation was not regarded as necessary. The Sterile Water for Injection System now has been revalidated. As an additional safeguard, the system will be validated on a regular periodic basis. *Id.*, pp. 5 and 6 * * *

The two drops in the Sterile Water for Injection System in the holding tank room have been removed. A revised SOP provides for a daily flush of the line to the lab and stopper washer. *Id.*, p. 6 * * *

Water directly from the still and feed water to the still will be sampled and tested on a regular periodic basis . . . . The test procedure for determining sterility of water from the Sterile Water for Injection System has been revised to provide for a 100 mL sample. Additionally, LAL testing procedures have been revised to assure that the appropriate positive control is employed. *Id.* * * *

Sterility test procedures have been amended to provide for a periodic positive system control to assure that analysts can recover low level contaminants. *Id.*, p. 7.

At the conclusion of the letter, the company's counsel again assured FDA of Kanasco's desire and ability to comply with CGMP, and asked to be permitted to resume manufacturing injectable drugs. *Id.*, p. 12.

By letter dated April 12, 1985, the Director of the FDA Baltimore District declined Kanasco's request to resume manufacturing injectable drugs. *See* FDA Ex. 26, April 26, 1985 letter to John D. Copanos. Among other things, FDA advised the firm that the single media fill which it had performed in February 1985 had an unacceptable failure rate; that three consecutive, successful media fills were necessary to validate aseptic processing procedures; the firm had not performed any monitoring for particulates during the media fill; the firm's media fill data failed to show that penase had been added to the media (to counteract the inhibitory effect that penicillin might have on the growth of any microorganisms in the media); data submitted by the firm failed to show that quantitative air sampling had been performed, that criteria had not been established to identify isolates and flora found in the facility, or that the agency's observations in the laboratory had been corrected. *Id.*, 2. Moreover, and more importantly, the letter also told Mr. Copanos:

Of far greater importance to us than any particular CGMP observation is the underlying cause of deficiencies that were observed in the laboratory area of your operation. These deficiencies and the ones described in paragraph 12 of the FD 483 lead the agency to conclude that your firm does not have an adequate number of individuals with sufficient training and experience to perform the necessary quality control, quality assurance, and laboratory activities. Indeed, viewed as a whole, the FD 483 underscores

[6] No documentation to support the "water fill" data were ever provided to FDA by the firm. Nor has FDA ever accepted such data from any other firm to validate an aseptic process.

our concerns regarding one of the basic problems which led the agency to pursue regulatory action in the first place: the inadequate number, training and experience of both operating and supervisory personnel associated with manufacture and control of drug products. *Id.*, p. 3.

Kanasco also has not offered any specific facts to counter the agency's assessment of the underlying cause of the observations made by FDA in February and March of 1985. *See* Kanasco Exs. 13 and 14. It is again worth noting that several previously observed deficiencies reappeared during the February–March 1985 inspection (e.g., failure to validate equipment used to aseptically process drugs, failure to establish and record manufacturing parameters, failure to maintain equipment, and failure of management to review and approve manufacturing and testing procedures). *Compare* sections A and B, *supra, with* this section.

In view of the foregoing evidence and Kanasco's response, there is no genuine, substantial dispute requiring an evidentiary hearing with respect to the findings of this inspection.

6. The May 1985 Inspection

The NOOH stated the following with regard to this visit to the Kanasco facility:

In May 1985, FDA returned to Kanasco to evaluate the results of media fills that had been conducted by the firm in April and to inspect the procedures used by the firm's microbiological laboratory. The inspection revealed that the media fills were unsatisfactory and that the firm's microbiological test procedures were inadequate. The FDA–483, which FDA left with the firm, included the following observations:

- Kanasco's sterility test procedures did not include proper controls to assure that low-level contamination would be detected.
- There was no standard test procedure available which reflected the test procedures currently used by the firm.
- A control test used in conjunction with sterility testing did not follow recognized compendial standards.
- Environmental contaminants found in the manufacturing area were not identified.
- Followup investigations had not been conducted to determine the nature or cause of quality control test failures.

52 FR 7314; *See also* FDA Ex. 27, Form FD 483 dated May 8 and 9, 1985.

By letter dated May 10, 1985, FDA again advised Kanasco management that in the agency's opinion the "underlying cause" of the deficiencies which had been observed at the firm appeared to be related to the number, training, and supervision of personnel. After commenting that "[s]ome of these deviations [observed in May 1985] occurred after training had been provided to plant personnel," the letter concluded, FDA is "also concerned about the people who work at the Copanos plant and the adverse impact these past several months may have had on them and their families. However, [the agency] must balance our concerns for them with an equal concern for people who will consume the product produced by the firm." FDA Ex. 28, May 10, 1985 letter to counsel for Kanasco, p. 2.

The FDA expert who reviewed the observations made during the May 1985 inspection and similar observations of Kanasco's laboratory practices had the following to say:

(c) *Laboratory procedures for testing were inadequate and/or not accurately reviewed; laboratory personnel were not adequately trained and supervised.* (*See*, e.g., February-March FD 483, item 12; May 1985 FD 483, items 1 to 4; and 21 CFR 211.192 and 211.194).

17. The laboratory is a critical aspect in making pharmaceutical products. It is supposed to provide a check on the safety, purity, strength, and quality of all components used in making a product, the environment in which the product is assembled, and the finished product itself. The assurance that a product has these characteristics is no better than (but not necessarily as good as) the laboratory procedures and personnel who test the products, their ingredients, and manufacturing environment. *See* FDA Ex. 45, June 19, 1986, Declaration of Kenneth Avis.

18. The deficiencies observed at the Copanos laboratory during the March and May 1985 inspections and uncovered during the Summer of 1985 (e.g., the unavailability of a standard sterility test procedure, failure to periodically test employees' ability to conduct the tests they perform, the use of proper control organisms in test procedures, the practice of the firm's microbiologist not to have her tests independently checked and verified by a second person, the missing and false sterility and pyrogen tests discovered by FDA investigators, and the inability of the firm's microbiologists to follow standard test procedures * * * reflected a lack of supervision and training of the firm's laboratory employees. In view of these deficiencies, I have little confidence in any of the tests performed by this laboratory. *Id.*

The firm has not provided any specific facts to dispute the accuracy or CGMP significance of the FDA's observations made during this inspection. By letter dated May 14, 1985, Kanasco's counsel responded to the observations as follows:

An SOP is being written to include periodic positive system controls employing the foregoing organisms, and the procedure will be instituted upon resumption of manufacture. Kanasco Ex. 13, May 14, 1985 letter from Kanasco to Mr. Thomas Hooker, p. 2. * * *

The SOP for sterility testing has been in the process of revision to conform it to current laboratory procedures. It will be finished and in effect prior to resumption of manufacture. *Id.* * * *

The revised sterility test SOP will eliminate use of other organisms and provide for use of Staphyloccocus aureus as the exclusive positive penase control. *Id.* * * *

As noted above the three bottles of [media] the company found "hazy" have been sent to a laboratory for testing, and the one bottle that visibly displayed growth was determined to contain gram positive rods. Speciation is being conducted on the organism in the bottle that displayed growth. The other three (3) bottles will be speciated if they are contaminated. *Id.*, p. 3 * * *

Speciation has not been performed on a regular periodic basis. The Company will establish an SOP for periodic testing of environmental contaminants, including their speciation. This additional environmental monitoring will go into effect upon resumption of manufacture. Appropriate modifications of cleaning, gowning and other procedures will be made, as may be necessary or desirable, based upon these and other environmental monitoring results. *Id.*

Procedures to investigate distillate water and product samples when a test result exceeds [the specification] for water or is positive for product are being written. *Id.* * * *

In the case of product, retest procedures will be written to conform to official standards. *Id.* * * *

There were typographical errors in SOP 1.3. . . . In actual use the directions received from the supplier of the standard . . . were followed . . . SOP 1.3 has been rewritten to correct the typographical errors. . . . *Id.*, p. 4.

There is no genuine and substantial dispute with respect to these observations which require a hearing. Not only are these deficiencies uncontested, but also they demonstrate the continuing inability or unwillingness of the firm to correct its CGMP deficiencies. As before, many of the problems found in this inspection had been pointed out to the firm during the earlier inspections (e.g., the failure to identify microorganisms found in the facility and the absence of a periodic system control were observed during the February-March 1985 inspection; the failure to follow current official testing procedures was noted in the 1978 and February-March 1985 inspections; the failure to follow company SOPs was noted in the 1978 inspection). In addition, several of the problems observed during this inspection represented unfulfilled promises made during earlier inspections (e.g., in March 1985, Kanasco had promised to institute a periodic systems control and a program to identify plant isolates (*See* Kanasco Ex. 14, pp. 4 to 7)).

Finally, the significance of the problems has not and cannot be

disputed. If the causes of test failures are not investigated, they will almost inevitably be repeated. *See* 21 CFR 211.192. If laboratory employees do not follow current official methodologies and are not supervised to determine that they are following appropriate procedures, assurance of product quality, purity, and identity is diminished.

7. Unauthorized Shipment and Manufacture of Injectable Drugs

The NOOH stated:

In June 1985, FDA learned that Kanasco had shipped several thousand vials of an injectable product to one of its customers in New Jersey. This shipment had not been authorized by FDA and was in violation of the Agreement. Kanasco personnel provided FDA investigators with manufacturing and shipping records which, although Kanasco represented them as being complete, did not reflect the violative shipment.

In July 1985, FDA investigators learned that between January and June 1985, Kanasco had manufactured 23 lots of injectable drug comprising more than one million vials. FDA had only authorized Kanasco to manufacture one batch of injectable product on a "pilot" basis to test the firm's manufacturing process.

52 FR 7314.

The FDA's evidence regarding the circumstances surrounding the unauthorized shipment is as follows:

14. Paragraph 4(a) of the 1984 Agreement prohibits the defendants from shipping in interstate commerce any lot of veterinary drug unless and until they receive written authorization from the FDA to do so. Investigations conducted by FDA investigators have documented that on February 6, 1985, the defendants shipped 2,688 vials of a veterinary injectable drug, dihydrostreptomycin solution (100 mL) lot number 4H314, in interstate commerce before the FDA released the lot for interstate shipment. In fact, by letter that was hand-delivered to the defendants on February 4, 1985, FDA advised the defendants that lot 4H314 'may not be distributed in interstate commerce at this time.' The lot was not released by the FDA until March 1, 1985. *See* FDA Ex. 33, July 29, 1985, Declaration of Carl I. Turner.

15. Documents obtained by FDA from sources independent of the defendants show that 2688 vials of lot 4H314 were labeled with the defendants' Veticare label and shipped on February 6, 1985, to Newark Refrigeration Company, Newark, New Jersey, to the account of Sussex Drug Products Company, Middlesex, New Jersey. *Id.*

16. Further FDA investigation at defendants' plant has documented that in order to cover up the February 6, 1985 shipment of the 2688 vials of lot 4H314, the defendants have withheld from FDA several documents relating to the foregoing shipment (*e.g.*, sales invoice and shipping records) other distribution and labeling records which are required to be maintained by the CGMP regulations. *Id.*

17. Labeling records supplied to FDA investigators by defendants Ellerton and McGraw purport to show that no vials of lot 4H413 were labeled by the defendants with the Veticare label until March 8, 1985, four weeks after the February 6, 1985 shipment actually occurred. These records (which were signed by several of the defendants' employees) were represented by the defendants as covering all labeling operations relating to lot 4H314. *Id.*

18. When requested by FDA investigators to provide documentation of all shipments of lot 4H314, defendants Ellerton and McGraw provided documentation of four shipments, all of which occurred on or after March 8, 1985. The defendants Ellerton and McGraw also provided FDA investigators with a distribution summary which was supposed to record all shipments of lot 4H314. This record did not reflect the February 6, 1985 shipment of lot 4H314. In fact, no record was provided to the investigators which covered the February 6, 1985 shipment. *Id.*

The circumstances surrounding the unauthorized manufacture were as follows:

3. * * * Paragraph 3(c) of the 1984 Agreement prohibits the defendants from manufacturing any veterinary drug products unless and until defendants have received written notification from the FDA that they are in compliance with current good manufacturing practice (CGMP) regulations and may resume the manufacture of veterinary drugs. *Id.*

At a recent meeting which I attended [on July 16, 1985] the defendants and their counsel were told that FDA would authorize resumption of the manufacture of injectable drugs as soon as they had conducted three consecutive successful media fills (to validate their sterile fill process) and provided FDA with scientifically documented explanations as to why previous media fills had been unsuccessful. *Id.*

5. To date, neither of the foregoing events has occurred and the FDA has not notified the defendants that their operations relating to the manufacture of injectable veterinary drugs are in compliance with CGMP requirements. Neither has the FDA authorized the defendants to resume the manufacture of injectable veterinary drugs. *Id.*

6. In a letter dated January 11, 1985, Mr. Thomas L. Hooker, FDA's Baltimore District Director, authorized the defendants to manufacture 'a pilot batch of a veterinary drug' for the limited purpose of allowing the defendants' consultant an opportunity to evaluate defendants' degree of compliance with CGMP requirements. [Exhibit citation omitted.] *Id.*

7. In letters dated February 8 and March 6, 1985, the Baltimore District was notified by the defendants that several lots of veterinary parenteral drug products had been manufactured for evaluation purposes. *Id.* * * *

9. By letter dated March 20, 1985, Mr. Hooker warned defendant John D. Copanos that defendants' manufacture of veterinary drugs without FDA approval was a violation of paragraph 3 of the agreement and warned him to cease the manufacture of veterinary drugs. See [FDA Ex. 25]. *Id.* * * *

11. By letter dated April 12, 1985, Mr. Hooker again advised the defendants that 'the agency does not agree that the facilities, controls, and procedures used by your firm in the production of sterile veterinary drug products are in compliance with CGMP regulations. Accordingly, we are unable at this time to authorize resumption of the manufacture of sterile veterinary drug products.' *See* [FDA Ex. 26]. *Id.* * * *

13. As shown by the declaration of FDA investigator Bruce W. Hartman [FDA Ex. 33], between January 11 and June 15, 1985, the defendants manufactured 23 veterinary parenteral drugs. The only batch which the FDA authorized the defendants to manufacture, the 'pilot' batch, was lot 2A115 produced on January 11, 1985. Although FDA was advised— after the fact—that defendants had produced two other pilot batches, the agency was never told about or authorized any additional production.

Id.; See also FDA Ex. 33, July 1985 Declaration of Bruce Hartman who observed the 23 lots of drug at the Kanasco facility.

Kanasco, in its response to the NOOH, has not offered any specific facts to rebut the foregoing.[7] In fact, a review of the firm's hearing request would not indicate that the events described in this section had ever occurred. These events are not only a clear violation of CGMP which require the maintenance of accurate and complete records (*See.* e.g., 21 CFR 211.25, 211.188 and 211.196), but also are irreconcilable with the entire philosophy of CGMP which presumes that the regulations will be honestly and faithfully followed. As one of the agency's CGMP experts stated:

Although obvious, it is worth recalling that the quality of drug product which a firm

[7] The conclusory, unsubstantiated, and unexplained assurance of Kanasco's expert, Mr. Byers, "[d]uring the two and one-half years I have been involved with Mr. Copanos and the firm, I have found him and his personnel to be trustworthy and honest in all their dealings with me, notwithstanding certain allegations by FDA concerning the integrity of the records in the past" (Kanasco Ex. 2, p. 6), is plainly not sufficient to create a genuine and substantial issue of fact on these issues. 21 CFR 314.200(g); Rule 56(e), F. R. Civ. P.; *Evers* v. *General Motors Corp.*, 770 F.2d 984, 986 (11th Cir. 1985) (expert's affidavit which purports to be based on a review of the evidence but which fails to provide specific facts to back up conclusory allegations, inadequate to defeat summary judgment); *United States* v. *Various Slot Machines on Guam* 658 F.2d 697, 700-01 (9th Cir. 1981) ("in the context of a motion for summary judgment, an expert must back up his opinions with specific facts. * * * It would be an imposition on the trial judge, and make a mockery of summary judgment to hold otherwise"); *See also, Merit Motors* v. *Chrysler Corp.*, 569 F.2d 666, 673 (D.C. Cir. 1977). Moreover, in view of Kanasco's failure to specifically rebut any of the evidence regarding its recordkeeping practices, these items are no longer allegations, but established facts. 52 FR 7311 to 7317.

produces is almost entirely dependant upon the extent to which its employees understand and scrupulously follow CGMP. This is clearly implied in the first substantive section of the CGMP regulations which require that personnel shall 'perform assigned functions in such a manner as to provide assurance that the drug product has the safety, identity, strength, quality, and purity that it purports or is represented to possess.' *See* 21 CFR 211.25.

FDA Ex. 35, October 21, 1985 Second Declaration of Salvatore Turco, para. 6.

In light of the foregoing, it is clear that there are no genuine and substantial issues that require a hearing with respect to the events described in this section.

8. The July 1985 Inspection and Media Fills

The NOOH stated:

In early July 1985, Kanasco conducted three media fills which were either abandoned prematurely by the firm and/or had excessive failure rates. On July 10, while FDA was monitoring two of these media fills, FDA observed several CGMP violations and provided Kanasco with a written list of deficiencies (FDA-483). These observations included:

- Flexible tubing used in the morning fill was reused in the afternoon fill without aseptic storage or proper resterilization.
- Personnel in the aseptic fill room touched exposed portions of their faces with gloved hands.
- Personnel reached across the conveyor which was holding previously sterilized bottles.

52 FR 7314; *See also* FDA Ex. 30, Form FD 483 dated July 12, 1985.

With respect to these and other poor employee practices observed later at Kanasco one of FDA's CGMP experts observed:

(d) *Employees were not adequately trained in aseptic technique.* (*See* e.g., July 12, 1985 FD 483, items 7 to 12; July 15 to 17, 1985 FD 483, items 3 to 6 on p. 1 and items 1 and 2, p. 2; November 1985 FD-483, items 1 and 3; and 21 CFR 211.25. *See* FDA Ex. 45, June 19, 1986 Declaration of Kenneth E. Avis.

20. The FDA's observations in July 1985 show that this firm's employees were not trained in aseptic technique. * * *

21. Because there are countless ways in which an employee can inadvertently cause a product to be contaminated (e.g., by touching exposed portions of the body and then touching the product, placing any portion of the body between the product and the filtered air, not scrupulously following sterilization procedures, or not properly gowning up), it is essential for employees who are involved in making sterile drugs to understand the significance of what they are doing and be able to perform manufacturing operations properly. In fact, employees are perhaps the principal source of product contamination. *See* e.g., Tetzlaff R. F., 'Regulatory aspects of aseptic processing, *in* Pharmaceutical Technology, November 1984, 38, 40, exhibit 1 attached hereto. ("Because employees are a major source of microbial contamination, thorough and continuous training in aseptic techniques is necessary and should be systematically documented as well.") The Parenteral Drug Association regards aseptic technique sufficiently important that it makes and distributes films and other training materials to its members. In fact, many firms make their own films and have specialized programs to train employees in aseptic technique. *Id.*

Kanasco has not come forward with any specific facts to rebut the occurrence or CGMP significance of these observations, and there is no genuine and substantial controversy requiring an evidentiary hearing.

9. FDA Refiles Complaint for Injunctive Relief

As noted in the NOOH, based on the foregoing events, on August 7, 1985, the Government filed its second complaint for injunctive relief in the district court. Civil No. K-85-3356 (D. Md.). *See* FDA Ex. 33, Government's Request to Enter Consent Decree of Permanent Injunction, and attachments thereto. On August 15, 1985, the court entered a show cause order against Kanasco. *See* FDA Ex. 34. 52 FR at 7314.

10. Further Recordkeeping Irregularities

The NOOH stated:

While the [August 15, 1985 show cause order] was pending, and based upon information provided by several Kanasco employees, FDA obtained a criminal search warrant. The evidence obtained from the firm's employees as well as that obtained from the search warrant was presented to the court on August 19, 1985. Among other things, the evidence showed the following:

- Copies of manufacturing batch records for the same lot of product (which should have been identical) were significantly different.
- Sterility and pyrogen test results which were positive (indicating product contamination) obtained under the search warrant were not filed in Kanasco's batch records although test results which were negative (indicating that the products were not contaminated) were filed in the firm's batch records.
- Pyrogen test samples had been sent by Kanasco to a testing facility in New Jersey before product filling had begun at Kanasco (Pyrogen tests can properly be done only on finished product).
- Recording charts used to monitor processing temperatures were not authentic.

52 FR 7314.

The FDA's evidence with respect to these events is as follows:

[Batch Record Discrepancies]

12. (a) On May 1, 1985, the FDA informed Copanos that the agency had tested a sample of Procaine Penicillin G Aqueous Suspension, an injectable antibiotic (Copanos lot number 2A115) for sterility and found it grossly contaminated with bacteria. In various discussions with FDA personnel, and in a letter from his attorney dated June 7, 1985, Mr. Copanos stated that he suspected that the contamination came from raw material active ingredients, Procaine Penicillin G. *See* FDA Ex. 35, August 19, 1985 Declaration of Carl L. Turner.

(b) In August 1985, a Copanos employee gave FDA investigators records which he/she said were copies of original batch records that had been changed. I have compared the records given to the FDA investigators by the Copanos employees with the corresponding pages in the batch production and control records given to FDA by Dr. Ellerton during the course of FDA inspections conducted between June 12 and August 1, 1985. Both sets of records relate to 23 batches of product produced in violation of the [1984] Agreement. (The products reflected in these records are: Procaine Penicillin G Aqueous Suspension (Copanos lot numbers 2A115, 2SC195, 2D045 and 2C205), Penicillin G Benzathine Penicillin G Procaine Aqueous Suspension (Copanos lot numbers 21C225 and 21A185) and Penicillin G Procaine with Dihydrostreptomycin Sulfate Solution (Copanos lot number 1C275)). Although the records given to the FDA investigator by the Copanos employee are identified with the same finished product lot numbers as the records provided to FDA by Dr. Ellerton (and should therefore be identical in all respects), they are significantly different than the batch production and control records given to FDA investigators by Dr. Ellerton. *Id.*

(c) The records from the employee show that one of the active ingredient raw materials which Mr. Copanos had identified as being the possible cause of the contamination in Copanos lot number 2A115 (*See* paragraph 12(a) above), lot number G34032, was used in the manufacture of *five* other lots (Copanos lot numbers 2SC195, 2C205, 21C225, 1C275, 2D045). However, the records received from Dr. Ellerton show that *other* active ingredient raw materials were used in the manufacture of lots 2SC195, 2C205, 21C225, 1C275, and 2D045. Portions of the batch production and control records given to FDA investigators by Dr. Ellerton appear to have been prepared to conceal from the FDA the fact that an active ingredient raw material (lot number G34032) had been used in the manufacture of the above described five lots. [Four] Copanos employees * * * signed the relevant part of the records which Dr. Ellerton provided FDA * * *. *Id.*

13. The records received from the Copanos employee for Penicillin G Procaine Penicillin G Benzathine in Aqueous Suspension (Copanos lot number 21A185) also are different than the batch production and control records for lot 21A185 that FDA received from Dr. Ellerton. The records received from the employee show that specific lots of raw material active ingredients (Copanos lot numbers D674, D807, 70063V2 and 70065V1) were used to ,

manufacture lot number 21A185, whereas the batch production and control records received from Dr. Ellerton show that *another* lot of raw material (Copanos lot number G34032) was used to manufacture this product. The batch production and control record for lot 21A185 given to FDA investigators by Dr. Ellerton appears to have been prepared to show that the raw material (Copanos lot number G34032) was used in only *one* other lot (Copanos lot number 21A185) rather than *five* other lots (Copanos lot numbers 2SC195, 2C205, 21C225, 1C275, and 2D045). [Three] Copanos employees * * * signed the relevant portions of the records which Dr. Ellerton gave to FDA * * *.

Id.; See also FDA Ex. 35, October 22, 1985 Fourth Declaration of Carl I. Turner.

[Sterility Test Record Discrepancies]

16. Partially as the result of a Search Warrant executed at Copanos on August 13, 1985, FDA has obtained copies of sterility tests performed on some of the 23 lots that were manufactured in violation of the [1984] Agreement. These sterility test records show that Copanos' employees tested these lots and found some of them to be contaminated. These results are summarized in the following chart:

Date lot manufactured	Copanos lot No.	Sterility test results obtained from Copanos employees and/or search warrant	See exchange No. 7	Sterility test results in batch records	See exchange No. 7
1/11/85	2A115	3/5/85 (−)	a	1/16/85 (−)	i
		3/5/85 (+)	b	1/16/85 (−)	j
		3/7/85 (+)*	c		
		3/21/85 (−)	d		
		5/6/85 (−)	e		
		5/6/85 (−)	f		
		6/5/85 (+)*	g		
		6/5/85 (+)*	h		
1/17/85	51A175	3/5/85 (+)	k	1/21/85 (−)	m
		3/21/85 (+)	l		
1/19/85	21A185	3/5/85 (+)	n	2/4/85 (−)	p
		3/27/85 (−)	o	3/5/85 (−)	q
4/1/85	1C215	3/22/85 (+)	r	4/8/85 (+)	t
		3/25/85 (−)	s	4/22/85 (−)	u
4/22/85	2D045	5/17/85 (+)	v	4/24/85 (−)	y
		5/21/85 (+)	w	6/5/85 (−)	z
		5/23/85 (+)	x	6/5/85 (−)	aa
4/26/85	1E035	5/1/85 (+)	bb	4/29/85 (−)	cc
		5/10/85 (+)	cc		
		5/15/85 (+)	dd		
5/31/85	1E125 [5A550] [1E095]	5/15/85 (+ Bulk)	ff	6/5/85 (−)	hh
		5/22/85 (− Bulk)	gg	6/5/85 (−)	ii

See FDA. Ex. 35, October 22, 1985 Fourth Declaration of Carl I. Turner, and exhibit 7 attached thereto. (*Indicates a sterility test in which results are not identified with the customary '+' or '−' but are marked with a dot ('.'). However, the microbiologist's notes which accompany these records indicate that something was observed in the tubes on particular dates during the incubation period); *See also, Id.*, August 19, 1985 Declaration of Carl I. Turner.

17. Copanos' batch records for the above listed lots fail to contain many of the sterility test results that were conducted on these products, including (with one exception) all of the positive test results which indicate that the product is contaminated. Under the CGMP regulations, batch records must include complete information relating to laboratory control results. *See* 21 CFR 211.188. Moreover, where, as here, the laboratory test results indicate that a product failed to meet a required specification, the CGMP regulations require the manufacturer to conduct a thorough investigation and make a written report thereof. *See* 21 CFR 211.192. None of the batches listed above contained a record that such an investigation had been conducted. FDA Ex. 35, October 22, 1985 Declaration of Carl I. Turner.

18. Finally, in several instances the finished product sterility test results for lots of product are dated *before* the lots were manufactured. This indicates either that these sterility tests were not conducted on the date indicated on the firm's record or that lots other than the indicated lot (i.e., 'spiked' samples) were actually tested. *Compare* sterility test results for lots 2A295, 1C215 (2 tests), 2SC195, and 2C205, exhibits 8, 9, 10, and 11 [attached to FDA Ex. 35], *with* relevant portion of batch records which show date manufacture was completed, exhibits 8a, 9a, 10a, and 11a. [attached to FDA Ex. 35]. *Id.*

[Pyrogen Test Record Discrepancies]

16. (a). It is the practice of Copanos to send samples of all lots of sterile drugs to Leberco Testing, Inc., Roselle Park, New Jersey (Leberco), an independent laboratory, to be tested for pyrogens. (Pyrogens are the waste product of bacteria which may cause a fever in humans and animals.)

(b). FDA investigators have recently obtained from Leberco copies of records which document the testing of pyrogen samples for particular lots of Copanos products. The dates the pyrogen samples were received in New Jersey have been compared with the dates the lots were filled at Copanos in Maryland. Such tests can properly be done only on finished (filled) product. As shown by the chart below, in at least three instances, the pyrogen samples were received by Leberco *before* Copanos' batch production and control records document the lots had been filled:

Copanos lot No.	Date filling of lot began at Copanos	Date Pyrogen sample was received at Leberco
2C205	4/2/85	3/28/85
2D045	4/26/85	4/24/85
2A295	3/29/85	3/26/85

See FDA Ex. 35, August 19, 1985 Declaration of Carl I. Turner.

17. In one instance, a sample of Iron Dextran, a sterile veterinary drug (Copanos lot number 70F135), was tested on June 18, 1985, and found positive by Leberco (indicating the presence of pyrogens in the product). However, the batch production and control record received from Dr. Ellerton has a pyrogen test result dated July 16, 1985, which is negative. The positive pyrogen test result is not in Copanos' batch record given to FDA. *Id.*

[Recording Chart Record Discrepancies]

18. (a). During the course of FDA investigations at the firm, FDA investigators have reviewed the batch production and control records associated with the manufacture of seven lots of Penicillin G with Dihydrostreptomycin (Copanos lot numbers 1G244, 1G264, 1H224, 1H294, 1K234, 1K264, 1K294). Within these batch production and control records were Taylor temperature recording charts which purportedly documented either the sterilization of the products during their manufacture or the cooling down of the products preparatory to further processing. These Taylor temperature recording charts are graphs in a circular format which are designed to be mounted on a device known as a temperature recording thermometer. The device mechanically records a tracing on a chart which documents the temperatures occurring in the tank over a period of time. Sterilization is a critical stage in the manufacture of these products because the products must be sterile to be used safely.

(b). FDA investigators examined the pen tracings on the temperature recording charts in the batch records for the seven lots cited above. Because the tracings are created by a mechanical arm within the temperature recording box, and reflect temperature changes over time, such tracings are typically smooth and continuous. The tracings on the subject charts are angular and non-continuous. The configurations of the tracings on the charts suggested to the FDA that the tracings on the charts were false and were created by the human hand rather than a mechanical device.

(c). Accordingly, on March 6, 1985, FDA investigators gave photocopies of these Taylor temperature recording charts to an expert in thermal processing to evaluate their authenticity. The expert has stated that, in his opinion, the ink tracings on certain of the temperature recording charts associated with all of the above lots did not appear to be authentic.

Id.; See also Id., October 22, 1985 Declaration of Carl I. Turner, para. 20, discussing additional evidence of these charts.

FDA's expert testimony on these events was as follows:

c. [The Batch Record Discrepancies] This series of incidents reflects an attitude toward drug manufacturing that is virtually serendipitous. The mixing of ingredients for use in a product is a process which must be documented contemporaneously with its occurrence. If, as the firm suggests, [in a legal memorandum, not supported by declarations or other competent evidence], different ingredients were in the manufacturing area when the mixing took place (Defendants' memorandum, 10–13), the batch production records should have reflected the precise ingredients that were in fact used in the product. *See* 21 CFR 211.101(c) and 211.188(b)(4). In my opinion, there can be no reasonable explanation that is consistent with CGMP for the existence of two different sets of batch records relating to the same lot of product. If an error in production is made and detected during the course of production, it must be immediately noted in the batch record and explained subsequently in a written follow-up investigation. *See* 21 CFR 211.192.

In any event, the firm's 'pre-allocation system' explanation for these events is inconsistent with its own batch records and inventory records which show that the ingredients could not properly have been pre-allocated for use in these lots. *See* [FDA Ex. 35] Fourth Declaration of Carl Turner, paras. 12–15. Finally, these lots were manufactured between January and April 1985, long after the substantially similar Amoxicillin problem was brought to the firm's attention. That the problem was not promptly corrected reflects a casual attitude that is inappropriate for a manufacturer of pharmaceutical products. FDA Ex. 35, October 21, 1985, Declaration of Salvatore Turco, para. 4.

d. [The Sterility Test Record Discrepancies] I have reviewed the sterility test results for lots 2D045, 1E035, 1G284, and 1E085 (1E135). I have also read the firm's statement that these tests were not sterility tests, but rather preservative effectiveness checks (*See* Defendants' memorandum, 13–15). Based upon my experience in the parenteral manufacturing industry, I do not believe that these tests represent preservative effectiveness tests. My reasons are the same as those set forth in [FDA Ex. 35] Dr. Avis' Declaration, 10–11. Indeed, if by some remote chance these tests are preservative effectiveness tests, they are wholly inadequate for this purpose and demonstrate a fundamental lack of understanding on the part of the person who conducted the tests and on the part of the supervisors who failed to note, record, and correct the numerous deficiencies in the test methodology.

Another very serious problem is reflected by the firm's records which reflect *finished* product sterility test results that were initiated *before* the lot was manufactured. *See* [FDA Ex. 35] Carl Turner's Fourth Declaration, para. 18. There is no reasonable explanation which comports with CGMP for these discrepancies between the sterility test dates and manufacturing dates. These records coupled with the fact that these tests were not physically incorporated in the batch records suggest to me either that the lots were not manufactured on the dates reflected in the batch records or that the sterility tests were conducted on other lots of drug. In either case, there is an extremely significant problem that must be addressed and corrected before the firm should be allowed to resume making parenteral drugs. *Id.*

e. [Pyrogen Test Record Discrepancies] I have reviewed the pyrogen tests referred to in Mr. Turner's second and fourth declarations [FDA Ex. 35] and compared them with the batch records to which they purport to relate. These pyrogen tests appear to have been conducted before the lots in question were filled and manufacturing was completed. The purpose of the pyrogen test is to determine the level of febrile reaction that will be produced when the product is given to the patient. A pyrogen test is meaningful only if conducted on the finished product. Accordingly, I do not see how it is possible to reconcile the dates of manufacture shown on Copanos batch records for lots 2C205, 2D095 and 2A295 with the pyrogen test dates shown on the Leberco records. This is virtually the identical problem described in the preceding paragraph and represents an equally serious deviation from CGMP. *Id.*

5. * * * I have no confidence in the integrity of the products which have been produced by [this firm] under the conditions described above. Moreover, the explanations provided by the firm for these occurrences reflects a lack of familiarity with CGMP requirements for making injectable drugs.

The firm has gone to great lengths attempting to assure the Court that the CGMP violations were inadvertent. However, in their efforts, the firm has entirely overlooked the fact that its procedures are significant CGMP deficiencies and that the deficiencies have continued long after FDA has brought similar violations to its attention. Indeed, the practices are so egregious that they should not have occurred in the first instance. The history of this firm, including the incomprehensible decision to continue manufacturing drugs after it had agreed in writing with FDA not to do so and after FDA had advised the firm that it was not in compliance with CGMP, persuades me that stronger measures are necessary to bring about and maintain the substantial changes necessary to assure that this firm complies with CGMP. For the reasons stated in Dr. Avis' Declaration, pp. 13 & 14 [FDA Ex. 35], my opinion is not affected by the firms representations with regard to the absence of consumer complaints. Such data, if relevant at all, is far outweighed by the clear evidence which shows that this firm has not followed CGMP in the manufacturing of injectable drugs.

Id.; See also FDA Ex. 35, October 21, 1985 Declaration of Kenneth E. Avis, pp. 7 to 12.

Copanos has not offered any specific facts (or even legal argument) to rebut the occurrence or significance of these facts. These practices constitute violations of CGMP. *See* e.g., 21 CFR 211.180(d) (requiring accurate copies of batch records), 21 CFR 211.188 (requiring complete and accurate batch records), 21 CFR 211.167(a) (requiring appropriate pyrogen and sterility testing), 21 CFR 211.194 (requiring complete laboratory records to be kept with batch records), and 21 CFR 211.100(b) (requiring contemporaneous documentation of process control procedures).

11. The Interim Order of Injunction

On September 5, 1985, the district court entered an agreed-to interim order of injunction. Among other things, the order prohibited Kanasco from making or distributing injectable drugs without prior judicial authorization. The order also required that all oral dosage form drug products be manufactured and tested under the direct supervision of Parke-Davis. FDA Ex. 36, Interim Order dated September 5, 1985 (Civil No. K–85–3356 (D. Md.)). On September 14, 1985, the district court issued a second order requiring Kanasco to show cause why a permanent injunction should not be entered against the firm. FDA Ex. 37, Order to Show Cause dated September 14, 1985.

12. The October 1985 Inspection

The NOOH stated:

In October 1985, FDA investigators visited Kanasco to observe media fills that were being conducted and to collect samples of filled media. During this time, the following observations were made and documented with an FDA–483 which FDA left with the firm:

- There was no backup temperature measuring system for the manufacturing gel tank used to sterilize media and products or for the heat tunnel used to sterilize product containers.
- There was no documentation to validate the sterilization of the delivery system (hoses and filters) used to make suspension-type products.
- The firm's alert limit for monitoring the microbiological quality of the air in sterile manufacturing areas was 10 times too high.

52 FR 7314; *See also* FDA Ex. 38, Form FD–483 dated October 9 to 11, 1985.

In its hearing request, Kanasco did not contest the observations. The firm stated, "A thermometer will be installed on the tank not currently having such a device. Recording temperature measuring devices have been installed on the tunnel used for sterilization/depyrogenation of glassware." Kanasco Ex. 11, p. 1. Kanasco also stated that it "has obtained a slit to agar sampler and will reevaluate this environment, and reissue the SOP as needed prior to manufacture." *Id.*, p. 2. With respect to the lack of documentation to substantiate the validation of the delivery tanks, the firm merely stated

that the test had been done by the water fill method in March of 1985. *Id.* Kanasco neither responded to the allegation regarding missing documentation to support the test it claimed had been done nor supplied the data.

Each of the observations is a violation of CGMP. *See* e.g., 21 CFR 211.94(c) (requiring sterilization and depyrogenation in aseptic processing), 21 CFR 211.113(b) and 211.194(a) (requiring, respectively, validation of procedures and complete laboratory records), 21 CFR 211.42(c)(10)(iv) and 211.113 (requiring, respectively, a system for monitoring environmental conditions and appropriate written procedures to prevent objectionable microorganisms in drug products). The absence of a backup temperature measuring system in the heat tunnel had been noted by FDA in the February-March 1985 inspection. *See* FDA Ex. 24, item 7. At that time Kanasco promised, "[a]dditional temperature sensors have been purchased and a recorder has been ordered; they will be installed within the next few days." Kanasco Ex. 14, p. 7. The firm had also previously been advised that its SOPs needed to be carefully reviewed for errors and completeness. *See* e.g., FDA Ex. 24, items 5, 6, 9, and 12; FDA Ex. 27, items 1, 2, 3, and 6; FDA Ex. 9, items 3 and 4).

13. The November 4, 1985 Consent Decree

The events following the October 1985 inspection described in the NOOH are also not in dispute. On November 4, 1985, Kanasco consented to a Decree of Permanent Injunction. *See* FDA Ex. 39. This decree was substantially similar to the 1984 Agreement. However, it also required that Kanasco obtain FDA's written approval before placing personnel in supervisory positions.

Upon receipt of a certification from the firm's consultant that validation had been successfully accomplished (including completion of additional successful media fills), that a program for revalidation would be established and implemented, that adequately trained supervisory personnel had been hired and reported for duty, and that the Kanasco injectable plant, processes, and personnel were in substantial compliance with CGMP (*See* FDA Ex. 40), FDA allowed the plant to reopen. FDA did not, however, conduct an inspection to verify the consultant's certification prior to the reopening of the plant.

14. The November 25–26, 1985 Inspection and Followup Action

The NOOH stated:

On November 25–26, 1985, FDA conducted a brief inspection of Kanasco to verify the consultant's certification. The FDA inspection disclosed a number of deficiencies which were reduced to writing and provided to the firm. Among other things, the deficiencies included the following:

- No primary barrier or laminar flow hood had been installed at the site where sterile powders are placed into the sterile mixing tank.
- Personnel working in the aseptic compounding area had not been adequately trained. An employee was observed sampling sterile powder without sanitizing his hands, allowing sterilized bags to touch the floor and then placing the bags directly over sterile product mixing tanks, and failing to remove the outer bags for the sterile powder before placing the bags over the sterile product mixing tanks.
- The firm had no system to evaluate the aseptic training of employees.
- Inadequate microbiological test procedures were being used in environmental monitoring of aseptic areas. Surface sampling was not performed during the manufacture of each batch; microorganisms and flora found in the manufacturing area were not identified; the alert limit for monitoring the microbiological quality of the air in sterile manufacturing areas was 10 times too high; the firm failed to investigate a sterility test failure and a negative control contamination; no report had been prepared for a sterility test which had been initiated; and levels of inoculum used at the time of growth-promotion testing were not verified.
- The firm's batch records were signed off to show that a piece of manufacturing equipment had been sterilized when in fact the equipment had not been sterilized.
- Kanasco employees were not following the firm's written standard operating procedures. An in-line filter had not been installed prior to processing product. Other filters, which were used on tanks that hold sterilized product ingredient, had not been sterilized before being put in place and were not tested for integrity after their removal.
- One product had been heated for 15 hours instead of the 1 hour called for in the firm's batch record. This product was later tested by FDA and shown to be subpotent.

52 FR 7314 and 15; *See also* FDA Ex. 44, Form FD–483's for November 25 and 26 and December 3 to 19, 1985 inspections.

The FDA investigators who conducted this inspection testified as follows:

2. On November 25, 26, 1985, I, along with Bruce Hartman, Baltimore District Investigator, and Kevin O'Brien, Baltimore District Microbiologist, conducted an inspection of Kanasco, Ltd./John D. Copanos & Sons, Inc. With respect to the firm's failure to provide adequate training in aseptic techniques to the two operating personnel who compounded sterile suspensions, Mr. Rene J. Barresi, production supervisor, and the individual responsible for directing the aseptic compounding personnel, stated to me that Mr. Carl Allen and Mr. Paul Sturgis, the two operators, are new to the aseptic compounding department and had not received any formal training by him in aseptic techniques. Mr. Byers stated that he had not trained Mr. Allen and Mr. Sturgis in aseptic procedures and that he did not know what training they had received. Mr. Byers also stated that the firm had no system in place to evaluate the performance of these employees. Dr. Ellenton stated that the firm had ordered training materials from the Parenteral Drug Association and that these would be used to train employees. The only evidence which the firm provided for training of Carl Allen consisted of a training summary for training of the SOPs for the sterile distilled water system (SPR 1.1 to 1.8) and the SOPs for sterile production cleaning procedures (SPR 2.1 to 2.13). *See* FDA Ex. 42, December 12, 1985 Declaration of Henry Avallone.

3. During the course of the inspection I noted that the production record for Sterile Procaine Penicillin G Suspension lot 21.186, showed that the solution was supposed to be filtered during transfer to a sterile mixing tank through two sterile Cuno in-line filters. I noted that these Cuno filters were not in the systems and pointed it out to Mr. Barresi. *Id.*

4. On the afternoon of November 26, 1985, we discussed our findings at the conclusion of the inspection. Among those present were John Wanner, Vice President of Operations, Dr. Kenneth Dunlap, Director of Quality Control, Ted Byers, Consultant, and Jerald Oppel, Attorney. I commented that I have seen an improvement in the manufacture of sterile solutions since my initial inspection on February 5, 1985. Also, I commented that documentation and records seem more complete. However, I also stated that I had serious concerns with the procedures employed in the manufacture of sterile suspensions. At no time did I say that the firm's suspension operation was in substantial compliance with CGMP. (The manufacture of solutions is relatively straightforward. Solutions are compounded, filter-sterilized and aseptically filled, similar to the processing of sterile media. However, in the manufacture of suspensions, there is considerable aseptic manipulation involved in the transfer of sterile powder to the sterile vehicle or solution in the tank.) *Id.*

5. In my view, the manufacture of sterile suspensions by this firm should have been halted at the conclusion of my inspection and should remain halted until such time as it can be demonstrated that all employees engaged in the production and control of such products have been thoroughly trained in their jobs (i.e., aseptic technique, following company SOPs, and accurate and complete record-keeping), and the aseptic manufacturing environment has a primary barrier (laminar flow) in place, or it has been demonstrated (by historical documentation of surfaces and air monitoring and on-site verification by FDA) that this critical processing area is suitable for its intended purpose. *Id.*

Another investigator testified as follows:

2. On November 25 and 26, 1985, I, along with Investigator Henry Avallone and Microbiologist Kevin O'Brien, conducted an

inspection of the injectable drug manufacturing processes, procedures, and controls of John D. Copanos & Sons, Inc. (Copanos). At the conclusion of the inspection a list (FD–483) of CGMP deviations was given to and discussed with Mr. John Wanner, Vice President. A true and accurate copy of the FD–483 is attached hereto as [FDA Ex. 41]. The observations were also discussed with Dr. Kenneth Dunlap, Director of Quality Control, Mr. Theodore Byers, consultant for Copanos, and Mr. Jerald Oppel, attorney. The individuals did not deny or refute the factual accuracy of the inspectional observations. *See* FDA Ex. 42, December 12, 1985 Declaration of Bruce Hartman.

3. With respect to the firm's failure to have a primary barrier or laminar flow at the site where sterile penicillin powders are added to the mixing tank (*See* [FDA Ex. 41] FD–483, item 2), Mr. Byers stated that he was aware that the same CGMP deviation was listed on a previous FD–483 given to the firm on March 15, 1985. Mr. Byers said the firm is actively working on a solution to the problem. *Id.*

4. The firm was previously notified on a FD–483 issued on March 15, 1985, of their failure to adequately monitor the environment in the firm's aseptic processing areas by performing surface sampling on a daily basis, and their failure to identify isolates or flora found during environmental monitoring. In response to those observations, the firm advised FDA that they would perform surface sampling on a daily basis and would establish written procedures to identify isolates and flora. These same CGMP deviations were observed during the current inspection (*See* [FDA Ex. 41] FD–483, item 5). *Id.*

5. During the inspection, we reviewed the firm's sterility testing procedures and reports. During a discussion with Mr. Philip Magno, Microbiology Supervisor, Mr. Magno stated that he had observed contamination during a sterility test of a sample of Iron Dextran Injection lot number 70L085. Mr. Magno said he had not conducted an investigation into the test failure. Dr. Dunlap stated that he was unaware of the test failure prior to our discussion of it during the inspection. *Id.*

6. During the inspection, I reviewed the batch production and control record for Iron Dextran Injection lot number 70L115. The record requires that the product be mixed for 1 hour at 180 °F to 185 °F during its manufacture. However, the record had been changed to reflect that part 2 of the batch had been mixed for 15 hours at 180 °F to 185 °F. There was no explanation given in the record for the extended mixing time. *Id.*

7. During the inspection we observed the manufacture of Procaine Penicillin G Suspension lot number 2L185. The firm's written procedure for the assembly and sanitation of the gel tank system requires a hose connection between the tanks. Further, the batch record for the lot bears the initials of the individuals who purportedly assembled and sanitized the system, including all hose connections, prior to beginning the manufacture of the batch. Despite what these records indicated, we observed that the firm's personnel had failed to connect and sanitize a hose from gel tank number 1 to the mixing tank in use. *Id.*

8. At the conclusion of the inspection, we advised the firm's management that, in our opinion, the firm continued to have serious CGMP deficiencies with respect to the manufacture of sterile penicillin suspensions. *Id.*

With few exceptions, the firm did not deny most of these inspectional observations. Instead, in a letter dated December 6, 1985, it offered explanations and promised yet additional corrective measures. For example, with respect to the observation of poor aseptic practices in the compounding area, Kanasco did not deny that the employee had failed to sanitize his gloved hands before sampling sterile powder. In response to the observation regarding placing sterilized bags on the floor, Kanasco stated that the "floor was sanitized". Kanasco Ex. 10, p. 1. The firm also stated that employees had been trained, additional training would be carried out, and that observations as to one employee should not be the basis for concluding that training was inadequate.

With respect to the absence of a primary barrier or laminar flow in the mixing area, Kanasco stated it believed the environment and environmental controls were adequate since air flow had been increased significantly (but to an unspecified rate). Once again, the company stated it was "considering" installation of a primary barrier and when "evaluation" is completed, the equipment would be installed. *Id.*, p. 2.

The firm did not, however, deny that it still had not instituted a system to evaluate the effectiveness of its employee training. In its response, the firm promised to implement such a system.

Nor did Kanasco deny its failure to sterilize vent filters. To the contrary, Kanasco stated, "Procedures for sterilization of the vent filters were in place * * *. In this instance they were not followed * * *. We are reemphasizing the necessity for following our established procedures." *Id.*

Regarding the observation that the batch records reflected that a hose had been sterilized when in fact the hose had not been sterilized, Kanasco stated: "[b]ecause of damage to one flexible hose, it was necessary in this instance, to use only one hose. Since that time, additional hoses have been obtained. Since only one sterilized hose was available, the procedure was temporarily modified to use only one sterilized hose, and thus the sterility of the product was not compromised." *Id.* In short, the firm refused to acknowledge the improper record.

With respect to its continued failure to conduct daily surface monitoring and to identify microorganisms and flora, the firm stated that while such information was "useful," it was not required by CGMP. Nevertheless, the firm promised to initiate such procedures. *Id.*

Kanasco did not deny that its alert limit for monitoring quantitative air sampling was 10 times too high. Nor did it deny that it had failed to conduct an investigation into the sterility test failure and negative control contamination that had occurred. *Id.*, p. 3.

As for the failure to contemporaneously prepare a sterility test report at the time the test was initiated and the failure to verify the level of inoculum at the time of the sterility test, Kanasco stated:

> . . . the initiation of this sterility test was recorded on the sterility test tubes themselves, as observed by the inspectors, but the analyst had not yet transferred the information to the test sheets. The analyst was advised in the future to initiate the test sheet at the same time as labeling the tubes. *Id.*

With regard to the observation that the level of inoculum at the time of inoculation for growth promotion testing was not verified, such practice will not have an adverse effect on the outcome of USP sterility testing since a decrease in numbers would lead to a false negative growth promotion test. This means no growth and that the sterility test would have to be repeated unnecessarily. We wish to point out that the level of inoculum was determined at the time of preparation and could only have decreased. *Id.*

Kanasco did not deny that it had heated one product for a period of 15 hours (at a temperature of 180 °F) even though the manufacturing instructions provided that such heating was to last only 1 hour. *See* FDA Ex. 42, December 6, 1985 letter to John D. Copanos, p. 2.

Finally, Kanasco did not offer any evidence to rebut FDA's finding that, upon analysis, the product was shown to be subpotent. *Id.; See also.* FDA Ex. 41, analytical report.

In short, Kanasco's response does not raise any genuine and substantial issue which warrants a hearing regarding either the observations made by FDA during the November 1985 inspection or subsequent events. The employee practices were conceded to be improper. Kanasco's argument that the sterility of product was not compromised because the floor was "sanitized" is immaterial and incorrect. The argument is not material because the theory of CGMP is that each step of the manufacturing process will provide cumulative assurance of product sterility. *See* e.g., FDA Ex. 18, Turco Declaration, para. 2;

FDA Ex. 45, Avis Declaration, p. 3. ("CGMP practitioners universally recognize that quality must be built into the product at each and every step of its manufacture * * *"); *See also* 21 CFR Part 211, *passim*. It is therefore no answer to say that one deficiency may be ignored because it may, possibly, be mitigated by another precautionary measure.

Moreover, this deficiency has not been shown to have been mitigated. Aside from the employees themselves, the floor is the least clean area in an aseptic facility. It is not only subject to constant traffic of personnel and equipment, but is also the ultimate repository for any contamination which may be present in the surrounding environment. Thus, whether or not the floor in the Kanasco facility may have been sanitized at some unspecified time by an unidentified Kanasco employee using unidentified cleaning materials whose effectiveness has not been demonstrated by documented results, is not a substantial issue which requires an evidentiary hearing.

Kanasco's explanation with respect to the failure to contemporaneously prepare reports of sterility test results also does not raise a genuine or material factual issue. CGMP requires that laboratory "records" include complete and specific data relating to the test. *See* 21 CFR 211.194. This requirement is not met by writing the date the test was begun on a test tube. *See also*, 21 CFR 211.100(b) and 211.160 (requiring documentation at the time of performance).

Kanasco's response with respect to its failure to verify the level of inoculum used in its sterility test procedure is neither responsive nor correct. Kanasco did not contest that the level of inoculum had not been verified or that proper laboratory practice requires verification. *See* 21 CFR 211.165(e). Instead, the firm claimed that the level of inoculum could only have decreased and that a decrease would not have adversely affected the sterility test. First, in the absence of any facts to show when the inoculum was prepared in relation to the sterility test and the conditions under which it was stored, there is no factual basis to assume that the level could only have decreased. Second, the argument misses the point of CGMP. The firm has not followed proper procedures. If its employees cannot be relied upon to routinely and consistently follow procedures (*See* 21 CFR 211.160(e)), there can be no assurance that tests will be conducted so as to prevent problems before they occur.

The only possible factual issues raised in this response are Kanasco's claims that the absence of primary barriers or laminar flow hoods in the mixing area, daily surface monitoring, and identification of organisms and flora in the plant, are not required by CGMP. In light of Kanasco's many uncontroverted violations of CGMP, these issues are neither material nor substantial. Moreover, the Commissioner believes that such measures are required by CGMP. Indeed, in its response to the February-March 1985 inspection, Kanasco stated it had "reinstalled" laminar air flow hoods in the aseptic filling area and claimed it was evaluating the use of laminar flow hoods in the mixing area. Kanasco Ex. 14, p. 2. The firm did not suggest at that time that laminar flow hoods were not required by CGMP. In fact, as noted above, during the November 1985 inspection, Kanasco's consultant, Mr. Byers, characterized the absence of a primary barrier over the mixing area as a CGMP violation. *See* FDA Ex. 42, Declaration of Bruce Hartman, para. 3. *See also* FDA Ex. 33, Declaration of Edmund Fry quoting from the "United States Pharmacopoeia" (1970) ("* * * Proper environmental control depends upon microbiological barriers. Design features that make use of the double barrier include * * * laminar air flow hoods."); FDA Ex. 45, Declaration of Kenneth Avis ("For many years, laminar flow hoods have been commonly used in the aseptic process to provide this essential protective primary barrier.").

Following the February-March 1985 inspection, Kanasco also stated it would revise its SOP's to include surface sampling on a daily basis and identification of microorganisms found in the plant. *See* Kanasco Ex. 14, p. 2. In addition, Kanasco's own SOP's required daily monitoring (dynamic) of the air for microbial contamination. *See* FDA Ex. 42, Kanasco SOP QC 116 dated April 11, 1985. Kanasco has not provided any logical reason why the air should be monitored on a daily basis and the equally critical surface areas, which come in direct contact with product containers and personnel, should not be so monitored. *See also*, FDA Ex. 45, Declaration of Kenneth E. Avis, pp. 7 and 8:

> It is also necessary to determine the level and nature of contamination present in the manufacturing environment when and where products are being aseptically filled. This type of monitoring is accomplished by taking microbiological samples of the air and surfaces in manufacturing areas, including the aseptic fill area. Only by determining the quantity and type of contamination present in the aseptic area, and by concurrently making every effort to achieve and maintain an ultra clean environment, can a baseline for judging and accepting future production be established. Without such a baseline, there is no proper way to determine whether products were filled in a suitably clean environment. To the extent products are filled in an unclean environment or in an environment whose quality has not been ascertained and documented, assurance of product purity is lacking.

In opposition to all of the foregoing, Kanasco, without any explanation or supporting facts, merely alleges that such measures do not fall within CGMP. Such a conclusory allegation is not a specific fact which raises a genuine and substantial issue requiring a hearing. *See* 21 CFR 314.200(g); Rule 56(e), F.R. Civ. P.; *Evers* v. *General Motors Corp.*, 770 F.2d at 986 (expert's conclusions not supported by facts will not defeat summary judgment); *Merit Motors* v. *Chrysler Corp.*, 569 F.2d at 673; *Anderson* v. *Liberty Lobby, Inc.*, ____U.S.____, 106 S.Ct. 2505 (1986) (summary judgment cannot be thwarted by presentation of a scintilla of evidence).

Moreover, the Commissioner finds that the undisputed observations made during this inspection constitute serious violations of CGMP. To this end, several additional points are worth noting. First, despite countless and dramatic warnings about the need to adequately train employees in aseptic technique (*See*, e.g., FDA Exs. 18 and 33, complaints filed in JH–84–3957 and K–85–3356, pp. 12 and 13, and Declaration of Salvatore Turco attached thereto, paras. 3 (b) and (d)); FDA Ex. 26, April 12, 1985 letter from Thomas L. Hooker to John D. Copanos, p. 3; FDA Ex. 28; May 10, 1985 letter from Thomas L. Hooker to counsel for Kanasco), the firm allowed two employees to participate in aseptic compounding of drugs without any apparent training in this process. *See* FDA Ex. 42, Hartman Declaration, para. 2. The CGMP regulations clearly require that personnel be trained "in the particular operations" that they perform. *See* 21 CFR 211.25.

Second, although Kanasco's consultant, Mr. Byers, had certified to FDA on October 31, 1985 that he had "reviewed the personnel" and found them to be "in substantial compliance with CGMP" (*See* FDA Ex. 40, October 31, 1985 Certification of Theodore Byers), on November 25 and 26, 1985, he advised FDA investigators that he had not trained the two employees involved in aseptic compounding, he did not know what training they had received, and that Kanasco had no system in place to evaluate the performance of its

employees. *See* FDA Ex. 42, Avallone Declaration, para. 2. In fact, the lack of adequate training was specifically raised in the Consent Decree of Permanent Injunction which Kanasco had signed just 3 weeks prior to this November 1985 inspection. *See* FDA Ex. 39, p. 5.

Third, as noted above, the need for daily surface sampling and identification of plant isolates had been specifically brought to Kanasco's attention during the February-March 1985 inspection. *See* FDA Ex. 24. Although the firm in its response (and Mr. Byers' by his subsequent adoption thereof) promised that "Rodac plates will be used on a daily basis" and that "criteria to identify isolates and flora will be established and incorporated into a revised SOP" (*See* Kanasco Ex. 14, March 20, 1985 letter to Thomas Hooker, p. 4.), no such action had been taken in the ensuing 8 months. Instead, the firm reversed its earlier position and, without any explanation or documentation, claimed that such procedures were not required by CGMP. *See* 21 CFR 211.42(c)(10)(iv) and 211.113.

Fourth, Kanasco's failures to conduct followup investigations of test failures was cited in the October 1984 Complaint for Injunction (FDA Ex. 18, p. 11), discussed in declarations filed with the district court (*See* e.g., FDA Ex. 35, October 22, 1985 Fourth Declaration of Carl I. Turner, p. 8) and expressly required by the November 1985 Consent Decree. FDA Ex. 39, p. 4. Nevertheless, Kanasco had not conducted an investigation to learn the cause of a sterility test failure that had occurred (with an iron dextran product). *See* FDA Ex. 42, Hartman Declaration, p. 2. In fact, the employee who discovered the test failure did not even advise the quality control director that the test had failed. *Id.; See also,* 21 CFR 211.192 (requiring documented followup investigation of discrepancies).

Fifth, Kanasco's failure to contemporaneously prepare records to reflect all manufacturing and/or testing events was one of the CGMP deficiencies which precipitated the filing of the October 1984 and August 7, 1985 complaints for injunction (*See* FDA Exs. 18 and 33, complaints, *passim*), formed a substantial part of the declarations filed with the district court (*See* e.g., FDA Ex. 18 (Hooker and Turco Declarations), FDA Ex. 33 (Turner Declaration), and FDA Ex. 35 (Second Turner Declaration, Avis Declaration, and Second Turco Declaration), and was explicitly prohibited by the 1985 Consent Decree (*See* FDA Ex. 39, Consent Decree, p. 2.). Nevertheless, Kanasco's manufacturing records continued to reflect the occurrence of events which did not in fact occur (e.g., the production record for a product was signed off to indicate that connecting hosing for two tanks had been sterilized, when in fact only one hose had been sterilized. *See* FDA Ex. 42 Hartman Declaration, para 7; *See also* 21 CFR 211.100 (requiring contemporaneous preparation of batch records).

Finally, the failure of Kanasco employees to follow the firm's SOP's had also been repeatedly brought to the company's attention. *See* e.g., FDA Ex. 7, Form FD–483, items 11 and 12; Ex. 18, 1984 Complaint for Injunction (Civil No. JH–84–3957 (D. Md.)), *passim;* Ex. 35, Second Turner Declaration discussing the 1984 batch record failures, including the aspartame events. Again, however, Kanasco employees failed to follow the firm's own written SOP's (e.g., a product had been heated 15 times longer than called for by the batch record with the result that it was rendered subpotent; air vent filters on the gel tanks had not been tested for integrity when removed nor were the new filters sterilized before being used; another type of filter, used to screen product ingredients, had not been put in place until FDA pointed it out to defendants). *See* FDA Ex. 42, Declarations of Bruce Hartman (paras. 6 and 7) and Henry Avallone, (para. 3.).

Based upon the above inspectional findings, the FDA filed a motion to enforce the 1985 consent decree, asking the district court to order that Kanasco cease the manufacture of all injectable drugs. FDA Ex. 42. On December 17 and 18, 1985, FDA met with Kanasco, at which time the firm provided the agency with assurance that the foregoing deficiencies either had been or were being corrected. Based upon these assurances and without conducting an on-site followup inspection, FDA allowed the firm to resume the manufacture of injectable drugs on December 20, 1985. FDA Ex. 43.

In the spring of 1986, Kanasco submitted a proposal to FDA to release for distribution the 23 lots of product that had been made between January and June of 1985 in violation of the 1984 Agreement. The firm asked that the products be released based upon additional sterility and other tests. In June of 1986, FDA denied Kanasco's request on the ground, *inter alia,* that finished product sterility testing could not provide adequate assurance of product purity. *See* FDA Ex. 45.

Kanasco's response regarding the 23 lots also does not raise a genuine or substantial issue which requires a hearing. Mr. Byers states that he believes the 23 lots of drug produced in violation of the 1984 Agreement are "suitable for sale." Kanasco Ex. 2, p. 5. The issue of whether or not these lots may be distributed is not addressed in this proceeding. The Associate Commissioner for Regulatory Affairs has already decided that issue adversely to Kanasco more than 1 year ago, and the firm has not appealed that ruling to the district court. *See* FDA Ex. 45, June 24, 1986 letter from J.W. Swanson, and exhibits attached thereto. The issue in this proceeding is whether Kanasco has raised a genuine, substantial issue of fact as to whether it was in compliance with CGMP. As shown above, Kanasco has failed to do so with respect to the period of time (January–June 1985) when the 23 lots were manufactured. *See* section E above.

Even if the issue were not addressed for the first time, it would still not involve a genuine or substantial issue of fact. Mr. Byers' conclusion with respect to the 23 lots is based upon the results of finished product sterility testing and his review of production records. Kanasco Ex. 2, p. 5. On many previous occasions and in public fora, Mr. Byers has squarely rejected the notion that finished product sterility testing provides any reliable evidence of the sterility of an entire batch of product. *See* e.g., Byers, T.E., "Is This Trip Really Necessary?", Drug and Cosmetic Industry, January 1982, p. 19 exhibit K attached to FDA Ex. 45 ("[c]ertainly it doesn't take a great statistician to recognize the limitations of the USP sterility test in assaying microbiological quality of the product represented to be sterile"); "Validation—an Essential for Quality Assurance," remarks presented by T.E. Byers at the Parenteral Drug Association's 1978 Annual Convention, New York, New York, pp. 1 and 2, exhibit L attached to FDA Ex. 45 ("[i]t should be obvious to all of you that in * * * [parenteral] products, finished product testing is not minimally sufficient to assure the quality of the products involved, specifically, the sterility attribute. * * * [A]s * * * quality assurance people have known for years * * * quality is not tested into a product, but rather built into a product"); "Validation—Not the Ultimate But an Alternative Approach to Quality Assurance," presented by T.E. Byers at the Annual Convention of The Parenteral Drug Association, New York, New York, November 8, 1978, exhibit E attached to FDA Ex. 45 ("a satisfactory result [in a sterility test] only indicates that no contaminating microorganism has been found in the sample examined in the conditions of the test. The

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extension of this result to the whole of a batch of a product requires the assurance that every unit in the batch has been prepared in such a manner that it would also have passed the test with a high degree of probability. Clearly, this depends on the precautions taken during manufacture," *quoting* the European Pharmacopeia).

In view of Mr. Byers' numerous previous public statements which are contrary to his current testimony and the otherwise universally accepted principle that finished product sterility testing provides little or no assurance of the sterility of an entire batch (*See* e.g., FDA Ex. 45, June 18, 1986 Declaration of Salvatore Turco, p. 8 ("[s]terility * * * tests are a notoriously unreliable means to detect low-level product contamination * * * ."), *Id.*, U.S.P. (XXI) (1985) at 1351 ("[T]he referee sterility test might not detect microbial contamination if present in only a small percentage of the finished articles in the lot because [of] * * * a significant statistical limitation on the utility of the test results"); *Id.*, June 19, 1986 Declaration of Kenneth E. Avis ("the probability that microorganisms will be detected by sterility testing is extremely low. Many scientists have commented on this fact in published works [citations and additional explanation omitted]")), the Commissioner does not accept Mr. Byers' views as sufficient to justify a hearing. A proposition which is so plainly irreconcilable with many previous statements made under circumstances which indicate a degree of reliability at least as high as testimony, is not adequate to thwart summary judgment. *See United States* v. *Various Slot Machines on Guam*, 658 F.2d at 701 ("[e]ven on a motion for summary judgment, a court is not compelled to give weight to an allegation that is incontrovertibly demonstrated to be false"); *Radobenko* v. *Automated Equipment Corp.*, 520 F.2d 540, 544 (9th Cir. 1975) (party should not be allowed to create genuine issue of fact simply by submitting an affidavit contradicting prior testimony); *Barwick* v. *Delotex Corp.* 736 F.2d 946, 960 (4th Cir. 1984) (affidavit contradicting prior testimony given under circumstances where importance of issue was understood found not sufficient to defeat summary judgment which is designed to screen out sham issues of fact).

Nor does Mr. Byers' reliance upon a review of Kanasco's production records sufficiently enhance his testimony to create a genuine issue of fact relating to the 23 lots. Given the history of record falsification at the Kanasco facility, any reliance upon the firm's records is totally unfounded. *See* e.g., FDA Ex. 45, June 19, 1986 Declaration of Kenneth E. Avis, p. 13 ("[w]here, as here, the evidence shows that batch records were not kept honestly, there can be little, if any, confidence that the contents of the products are ascertainable. For example, it is impossible to rely on the firm's manufacturing records [even] to learn the lot numbers and suppliers of each active and inactive ingredient, or, as in the case of the 1984 aspartame lots (where batch records concealed that aspartame had been substituted for sodium saccharin), to determine whether the products even contain the proper inactive ingredients. Nor, in view of the many discrepancies in the dates and signatures on the sterility, pyrogen, shipping, labeling and other records, can the firm's batch records provide any assurance that the various manufacturing steps were performed at the times, by the persons, and/or under the conditions reflected in this company's records. In short, the entire manufacturing history of these products is shrouded in doubt"); and June 18, 1986 Declaration of Salvatore Turco p. 11 ("* * * the batch production records which the firm kept in 1984 and 1985 are wholly unreliable. Given the firm's apparent practice of omitting unsatisfactory results, changing the weight calculations sheets and altering manufacturing, labeling, and shipping records (*See* Turner Declaration [FDA Exs. 33 and 35]), it would not be surprising if the batch records failed to reveal any manufacturing problems.").

As noted above, *See* notes 5 and 7, Mr. Byers has not meaningfully addressed the overwhelming evidence as to the unreliability of this firm's records. For example, Mr. Byers' declaration fails to take into account any of the positive sterility test results (showing product contamination) which Kanasco employees found in these lots but failed to include in the firm's batch records. *See* FDA Ex. 35, October 22, 1985, Declaration of Carl Turner, pp. 6 and 7. Although this and other omissions on Mr. Byers' part were brought to Kanasco's attention in June 1986 by the Associate Commissioner of Regulatory Affairs (*See* FDA Ex. 45, June 18, 1986, Declaration of Salvatore Turco, p. 9; June 19, 1986, Declaration of Kenneth Avis, p. 18), Mr. Byers continues to ignore the firm's own positive sterility test reports or otherwise present specific facts to create a genuine and substantial issue for hearing.

15. The September 1986 Inspection and Response by Kanasco

The NOOH stated:

On September 15 to 29, 1986, FDA inspected the Kanasco injectable manufacturing facility. FDA again found numerous violations of CGMP requirements, including the following:

- Inadequate number and training of operating and supervisory personnel. The firm had no quality assurance director, no quality control director, no microbiological laboratory supervisor, no materials control manager, no formulation supervisor, and no second shift production supervisor.
- Inadequate validation of aseptic facilities and equipment (steam autoclave, sterilization and depyrogenation heat tunnel, homogenizer, and one filling machine). Inadequate validation of gowning procedures. Failure to have a validation procedure or revalidation schedule established for critical manufacturing areas and equipment.
- Failure to have a primary barrier over the mixing tanks where sterile powders are added to sterile liquid.
- A floor drain in the aseptic fill area, which had been stopped up for 3 weeks, contained stagnant water. Stagnant water was observed over the drain during the filling of a product.
- A drug product for human use which was required to be penicillin-free was manufactured in the same area and with the same equipment used to make penicillin-containing product.
- Veterinary drug products which are required to be penicillin-free were manufactured in the same equipment used to make penicillin products and distributed without testing for penicillin cross-contamination.
- Open product containers which had gone through the sterilization depyrogeneration heat tunnel were directed into an inappropriately classified, unvalidated, and inadequately monitored area en route to the aseptic fill area.
- A cover was missing from equipment in the aseptic fill area exposing moving parts, grease deposits, and other debris.
- Wall and floor surface in the aseptic fill area and adjoining areas, which are supposed to be smooth and cleanable, were chipped and broken.
- During a routine clean-up of the aseptic fill area, FDA investigators observed Kanasco employees (ungowned and improperly gowned) entering and exiting clean areas after touching walls, floors, and trash bags in non-clean areas; mopping up stagnant floor drain water with rags and then, with the same rags, cleaning equipment used to fill sterile product and filters used to purify air at the aseptic filling line; and using unapproved, unsterilized, and unvalidated retail cleaning materials (e.g., "Ajax All Purpose Cleaner" and "SOS" steel wool pads) to clean critical equipment in the aseptic fill area.
- Manufacturing and testing equipment were not properly maintained or calibrated (e.g., equipment used to monitor the air quality in manufacturing areas was not calibrated and components were broken; laboratory thermometers were not calibrated and the laboratory autoclave was neither validated nor monitored with a reference

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thermometer; sterilization and depyrogenation heat tunnel belt speed (which determines the time vials are exposed to heat) was neither calibrated nor monitored; and magnahelic gauges used to measure pressure differentials between rooms were not calibrated).

• Air flow patterns were not mapped and air quality in aseptic manufacturing areas was not adequately monitored (e.g., floor and wall surfaces were not being monitored at all; sample locations of other monitored surfaces were not adequately identified; there was virtually no environmental monitoring during second or third shifts; no records were kept to show that appropriate pressure differentials were either monitored or maintained throughout the clean area; monitoring of non viable particulates was not done at all in some months, incompletely done in other months, and exceeded specifications without comment or correction in still other months; during the inspection, actual air flow patterns in the aseptic area were the reverse of what they should have been).

• Environmental monitoring data were unreliable (e.g., there were no logs documenting how media, which Kanasco used to monitor the microbiological quality of the environment, were prepared; the firm did not use positive controls to assure that the media employed to monitor the environment would support growth; and the temperature of the incubator used to culture environmental samples had been out of specification for 4 months).

• Failure to adequately monitor and control water for injection, a component of injectable drug products (e.g., water for injection was not monitored for particulates; a stagnant water line to the bottle washer was not drained before use or on a regular basis, nor had it been sampled for bacteria for 5 months; and end use water quality monitoring records were not signed and dated as reviewed).

• Cleaning procedures for critical manufacturing equipment did not provide for draining or rinsing of dead leg valves which could harbor bacteria and contaminate product. One holding tank valve was opened (after the tank had been cleaned by Kanasco) and found to contain a white suspension.

52 FR 7315 and 7316; *See also* FDA Exs. 47 and 48, Form FD–483 dated September 15 to 29, 1986.

One of the FDA investigators who conducted this inspection testified as follows:

3. During the period of September 15 through September 29, 1986, I, along with FDA Investigator Donald J. Vasbinder, FDA Microbiologist Linda C. English, and FDA Chemist Helen Naviasky, conducted an inspection of the injectable and oral drug manufacturing facilities, equipment, processes, procedures, and controls of Kanasco, Ltd. (formerly trading as John D. Copanos & Sons, Inc.). At the conclusion of the inspection, a list (FD–483) of deviations from FDA's regulations for current good manufacturing practice for finished pharmaceuticals (CGMP) was given to and discussed with Mr. John D. Wanner (Executive Vice President), Dr. Norman V. Ellerton, Mr. Rathi Sethi (a Parke-Davis employee), Mr. Rene Barresi (Production Manager), Dr. Ian Chester (Bulk Plant Manager), and Mr. Jerald Oppel (attorney). A true and accurate copy of the FD–483 is attached hereto [as FDA Ex. 48] * * *. Except for two items on the FD–483, which I deleted during the discussion, the individuals did not deny or refute the factual accuracy or significance of any of the inspectional observations. Also, in a telephone conversation with me on October 1, 1986, Mr. Copanos did not dispute the FD–483 items. Mr. Wanner said that the firm would respond to the FD–483 in writing within thirty days. *Id. See* FDA Ex. 48, October 9, 1986 Declaration of David Pulham.

4. Based upon the inspectional findings and statements from company personnel, it is evident to me that Kanasco, Ltd. (Kanasco) has neither an adequate number of qualified personnel to perform the necessary and critical sterile drug manufacturing operations and testing, nor an adequate number of personnel to supervise those operations. During the inspection, Mr. Wanner and Mr. Byers told me that Kanasco is operating with four critical positions vacant at the company, a quality control/quality assurance director, a formulation supervisor for the day shift, a night shift production supervisor, and a materials control supervisor. In addition, there does not appear to be supervisors for the microbiology and chemistry laboratories. Finally, on September 25, 1986, Mr. Copanos told me that both Mr. Wanner and Mr. Byers may not be with the company much longer. *Id.*

5. On September 17, 1986, both Mr. Wanner and Mr. Theodore Byers, consultant for Kanasco told me that the company has been planning to shut down the injectable operation and make major re-construction and equipment improvements since April 1986. On September 17, 1986, Mr. Wanner, Mr. Byers, Mr. Barresi, and I discussed the firm's plans to renovate its clean room. Mr. Wanner stated that Mr. Copanos had promised him repeatedly over the past five months that the clean room would be completely renovated and re-validated. However, Mr. Wanner said that each attempt to begin such a project was thwarted by a production order from Mr. Copanos. *Id.*

6. During my inspection, I was unable to properly inspect the actual manufacturing of injectable drugs by Kanasco. When the FDA inspection team first entered the plant at 1:25 p.m., the firm was manufacturing an injectable product. However, within five minutes of our arrival, the firm ceased all manufacturing of injectable drugs; after finishing the batch in process late that evening, the firm did not resume manufacturing injectable drugs for the duration of our inspection. When I asked Mr. Wanner what generated a production order, he said that Mr. Copanos decides what to make and when to make it. *Id.*

7. On September 17, 1986, at approximately 7:00 p.m., Mr. Wanner and I agreed that I would inspect the clean room with Ms. M. Araquel, one of the firm's microbiologists, at 9:00 a.m. the next morning. The purpose of this inspection was to observe Ms. Araquel while she was monitoring the microbiological environment in the clean room, and to assess the aseptic conditions of the area. Mr. Wanner, Mr. Byers, and Mr. Barresi all assured me explicitly that, absent an emergency, no one would be entering the clean room until the next morning. However, later that evening at 10:30 p.m., I visited Kanasco to assess operations on the second shift. To my surprise, I found an entire crew of six in the clean room cleaning up and carrying out bags full of trash and miscellaneous debris. *Id.*

8. On September 17, 1986 I asked Mr. Wanner and Mr. Barresi for all gel tank and fill line use logs covering the period January 1, 1986 to the present. There were no non-penicillin human injectable products listed in those logs. Subsequently, Mr. Vasbinder observed a label for a non-penicillin human injectable drug product in a trash can in the print shop. When I asked Mr. Wanner and Mr. Barresi about this non-penicillin product (which was made in the same gel tanks on the same fill line as penicillin-containing products) they said those products were logged in a separate file. Mr. Barresi then gave me the logs in which production of this non-penicillin human injectable drug product was recorded. *Id.*

9. Insofar as I could determine, the firm intends to continue manufacturing injectable drugs despite the violative condition of its facility. On September 17, 1986, Mr. Byers told me that the clean room was closed for renovation. Mr. Wanner, however, disagreed. Mr. Byers then left the room to call Mr. Copanos. When he returned, he said that Mr. Copanos had committed himself to the renovation plan. A few minutes later, Mr. Byers was called from the meeting for a second telephone call. When he returned, he said Mr. Copanos had changed his mind; the clean room was to be kept ready for manufacturing so that production could begin at anytime. *Id.*

10. In my opinion, the manufacture of sterile injectable drugs by Kanasco should cease and remain halted until such time as it can be demonstrated that all equipment and processes have been properly validated, that all equipment and facilities have been properly repaired, that all employees engaged in the production and control of injectable products have been thoroughly and effectively trained in their jobs and responsibilities (e.g., aseptic technique, following company SOP's and CGMP regulations, and maintaining accurate, concurrent and complete records), that proper procedures and practices are implemented in the microbiological monitoring of the manufacturing environment and testing of product, and an adequate number of properly qualified supervisory personnel are hired to fill critical vacancies at the company. The above deficiencies will require weeks, if not months, to correct. *Id.*

An FDA expert who reviewed the inspectional observations, testified as follows:

3. The observations in this FD–483 [FDA Ex. 48] are extensive, serious and constitute

clear violations of current good manufacturing practice. There can be no assurance that products produced under the conditions listed in this FD–483 are either sterile or have the quality, strength and identity characteristics which they purport to possess. In my opinion, this firm should be immediately required to stop all further manufacturing and shipping of injectable drug products until the deficiencies described in the FD–483 have been corrected and FDA. has, by on-site inspection, verified that they have been corrected. *See* FDA Ex. 48, October 9, 1986 Declaration of Kenneth E. Avis.

4. This firm has manufactured and distributed a non-penicillin drug product for human use with the same equipment used to manufacture penicillin-containing products. Also, using the same equipment, the firm has manufactured, released and distributed veterinary non-penicillin products without testing for penicillin contamination. These products are in direct violation of CGMP, *See* 21 CFR 211.42(d) and 211.176, and could result in serious harm or even death to persons or animals who are sensitive to penicillin. *Id.*

5. Because the violations described in this recent FD–483 are virtually identical to those which FDA has repeatedly encountered in the past and since I have already explained the practical significance of these violations, I will not re-explain their significance here. Suffice it to say that I regard the following areas as *some* of the critical matters which must be corrected before manufacturing operations resume:

a. The lack of sufficiently trained operating and supervisory personnel. There are four positions which are currently vacant at the firm: The quality control/quality assurance director, formulation supervisor, night shift supervisor, and materials control supervisor. These are key positions. In fact, the absence of a knowledgeable quality control/quality assurance director who is committed to comply with the law is clearly reflected by the many obviously critical deficiencies listed in the FD–483. This is not to suggest, however, that these vacancies are the only personnel problems at the firm. The firm's operating level employees still have not been adequately trained and still do not understand and practice the most fundamental principles of basic sanitation, much less the more rigorous principles of aseptic technique. The firm's management also appears unknowledgeable and/or unconcerned as to how to establish processes and procedures for aseptic manufacturing. Finally, in the single instance in which employees did recognize the need to stop manufacturing to revalidate an area, they were apparently overruled by Mr. Copanos. In the final analysis, most of the problems at the firm can be traced directly to inadequate training and management.

b. The failure to validate aseptic processes and procedures following major alterations to the manufacturing area. As much time as the firm and FDA have spent discussing the need for regular validation and revalidation, I do not see how this failure was allowed to occur. It could only have been the result of a calculated decision by firm management. It is an inexcuseable and gross departure of CGMP. (While the firm apparently has attempted partial validations, by media fill, of two pieces of equipment, these efforts were grossly inadequate since, among other reasons, they were not conducted under normal manufacturing conditions.)

c. The firm continues to neglect to complete batch records contemporaneously with production, still does not conduct followup investigations when manufacturing errors occur, and still fails to record all data on laboratory test records. Such omissions may be significant even when they occur as isolated events. This firm has been repeatedly cited for these errors since the Summer of 1984.

d. Apparently, the firm continues to view environemtal monitoring of critical manufacturing areas as an inconvenience which it may dispense with as it sees fit. Monitoring is omitted entirely for several months and is incomplete for other months. When excessive contamination is found in the manufacturing area, followup is not routinely performed. As explained previously to this firm and to the Court, monitoring is an essential component of properly made sterile drugs.

e. The firm does not regularly maintain and calibrate important manufacturing and testing equipment. For example, there is no record that equipment used to microbiologically cleanse the air (HEPA filters) is tested or periodically changed.

f. Both the chemistry and microbiology laboratories are deficient. Laboratory personnel do not follow recognized test and control procedures, do not keep adequate records, and do not maintain testing equipment or supplies in a satisfactory condition.

g. Employees continue to disregard the firm's own standard operating procedures.

h. Components used in drugs remain unidentified or improperly identified. In several cases, the same released and quarantined.

i. Sterilized, depyrogenated vials which will contain the actual drug product are held in an ante room area which is not environmentally monitored, has not been validated, and is not classified as to its degree of aseptic cleanliness. This procedure may result in contaminating product containers after they have been sterilized.

j. Basic sanitation is lacking. Employees do not understand how to properly clean an aseptic area. The investigator observed a large pool of stagnant water in a manufacturing area after employees had cleaned the area and while product was being made. Employees were observed wiping the floor and stagnant water with rags and then, without even an intermediate rinse with a disinfectant, wiping equipment used to process sterile drugs. *Id.*

6. In my opinion, the nature and extent of these conditions is such that it would take dedicated and knowledgeable firm many weeks to bring this operation into compliance with CGMP. Qualified people have to be interviewed, hired, familiarized with the firm's procedures and equipment and trained in CGMP and aseptic technique. Many new procedures have to be written; old procedures have to be revised. Operations and equipment have to be validated individually and collectively. Finally, if all these measures are completed, steps must be taken to assure that the firm is and will remain in compliance with CGMP. *Id.*

Another FDA expert, Dr. Turco, shared Dr. Avis' concerns. Dr. Turco testified:

In my opinion, the observations in this most recent FD–483 are *extremely* serious. There can be no assurance that products made under these conditions have the sterility and other characteristics which they must have if they are to be safe and effective for their intended uses. I agree with FDA's evaluation and fully support the agency's request that all injectable operations be halted *immediately* and stay halted until such time as there can be adequate assurance that this operation and its employees have been brought into and will remain in compliance with CGMP. *See* FDA Ex. 48, October 8, 1986 Declaration of Salvatore I. Turco. * * *

4. Because I have explained the importance of the CGMP violations seen at this firm previously and the present violations are essentially the same, I will only summarize some of the matters which I believe are most important. They are as follows:

a. Inadequate number and training of operating and supervising personnel. As the history of this firm so clearly shows, one cannot properly make injectable drugs without the necessary number of qualified personnel.

b. Failure to validate aseptic facilities, equipment, systems and processes. Only regular validation assures that drugs will routinely be made in accordance with CGMP and company specifications. Although this firm apparently conducted successful media fills in October 1985, it has failed to conduct followup validations after significant modifications (e.g., lowering the ceiling in its manufacturing area) were made to its aseptic process. This is inexcusable.

c. Failure to follow elementary rules of sanitation and orderliness. It is impossible to properly make sterile drugs in an environment which is not clean, not cleanable, disorganized and overcrowded. Stagnant water, broken tiles, and improperly identified in-process materials and components are examples of the firm's failure to heed the most basic elements of any manufacturing environment.

d. Failure to regularly maintain and calibrate manufacturing and testing equipment. Self explanatory.

e. Failure to complete manufacturing records concurrently with manufacturing procedures.

f. Failure to regularly and properly monitor the patterns of air flow and microbiological environment in aseptic manufacturing areas.

g. Failure to adequately monitor and control the system used to make water for injection. Water for injection, the vehicle in which the other drug ingredients are mixed, is a critical component of the injectable drugs in which it is used. Without adequate assurance of its sterility, there can be no assurance that the finished product is sterile.

h. Failure to follow basic laboratory procedures for testing of products and control of test apparatus and media. The deficiencies observed in the laboratory reflect that this part of the firm's operation is also understaffed, and inadequately trained and supervised.

i. Cleaning procedures for critical manufacturing equipment do not provide for draining or rinsing valves which may harbor bacteria.

5. There is an additional serious matter about which this Court should be aware. The firm is manufacturing non-penicillin containing products for *human* use in the same area and with the same equipment as penicillin-containing products. This is not only a violation of the regulations, 21 CFR 211.42(d), but also a serious health hazard. If a penicillin sensitive person is inadvertently exposed to even a minute amount of penicillin, the result may be fatal. The same problem is presented by the firm's manufacturing of non-penicillin veterinary products in equipment used to make penicillin products without testing the products for penicillin cross-contamination. *See* 21 CFR 211.176. *Id.*

Finally, an FDA employee who serves as a consultant to the agency's Center for Drugs and Biologics in the development of national and international inspectional programs, regulations, and guidelines for injectable drug manufacturing, testified as follows:

2. I have been employed by the FDA as an investigator for twenty years, during which time I have conducted well over one hundred inspections of sterile product manufacturers located all over the United States and the world. I have read the FD–483 list of inspectional observations issued to Kanasco, Ltd. At the conclusion of the September 15 to 29, 1986, inspection conducted by FDA Investigator David C. Pulham, et al. I have also talked to the investigator and microbiologist who were on the inspectional team. *See* FDA Ex. 48, October 9, 1986 Declaration of Ronald Tetzlaff.

3. In my opinion, the observations on the FD–483 are extremely serious deviations from current good manufacturing practice (CGMP) for an injectable drug manufacturer. * * * *Id.*

4. I regard the following areas to be some of the most critical CGMP deficiencies.

a. * * * It was quite apparent to me, just from reading the FD–483, and before I was advised of the vacant positions at the firm, that there must be a very serious lack of adequate supervision at the firm. Deviations of the magnitude as those listed on this FD–483 are not just isolated instances of failure to adhere to CGMP requirements, but are evidence of a plantwide lack of understanding of the rigorous controls and commitments necessary for making sterile drug products by aseptic processes.

b. The aseptic facilities, equipment, systems, and processes are not in validation * * * Although the firm apparently conducted successful media fills in October 1985 to validate the aseptic filling operation, there were major changes made since that time which would completely destroy the aseptic condition of the filling room. Following the lowering of the ceiling and HEPA filters in the aseptic filling room in November 1985 there was inadequate validation to demonstrate that aseptic conditions had been re-established before resuming production. Since the ceiling was lowered, there has been no integrity testing of HEPA filters to show absence of leaks, no air flow pattern testing, and no pressure differential testing. In fact, during the inspection the flow of air was observed to be from non-aseptic areas, such as a corridor and holding room, into the aseptic room.

c. Furthermore, the firm's attempts to validate other specific pieces of equipment and processes, e.g. the Cozzoli and Diehl Mateer fillers, were insufficient in number and design to validate even these pieces of equipment.

d. It is impossible to assure sterility of drugs made in an environment which is neither clean nor readily cleanable such as was found during the current inspection. For example, the stagnant water on the floor and broken tiles and grout illustrate the firm's failure to adhere to the most basic elements of any drug manufacturing environment * * * The pool of water, with HEPA filtered air blowing over it, is a potential source of microbial contamination of the sterile product.

e. The filling line had a 300 liter surge tank which was located in the filling room which is used for holding sterile product before it is placed in the vial. This tank was not sealed to preclude microorganisms or other contaminants from being drawn into the tank around the unsealed lid. Such a deficiency is, in my opinion, inexcusable in this type of manufacturing facility, and is a very real potential source for the introduction of microbial and particulate contamination into the sterile product.

f. The failure to integrity test the HEPA filters and determine air velocities or air flow patterns in the aseptic areas and the failure to monitor and maintain proper pressure differentials between classified and unclassified areas of manufacturing and the aseptic processing environments are violations of fundamental aseptic processing requirements. The routine failure to monitor the environment during aseptic processing (40% of first shift batches reviewed) and the absence of any environmental testing during the second and third shifts is a blatant violation of CGMP.

g. The firm's cleaning procedures for critical manufacturing equipment used to hold sterile product during filling do not provide for draining or rinsing valves which may harbor microorganisms.

h. The firm does not adequately monitor and control the system used to make water for injection.

i. The firm does not follow basic accepted laboratory procedures for testing environmental and validation samples or drug product sterility. The deficiencies associated with the microbiology laboratory not only reflect inadequate training and supervision, but make it virtually impossible to have confidence that laboratory results are reliable or meaningful. Especially significant are the failures to maintain incubators at suitable temperatures, excessive (by a factor of 200) microbiological challenge levels for media fill growth-promotion tests, insufficient concentration of neutralizing agents to inactivate residual antibiotics in media for media fills, sterility test samples which fail to conform to USP XXI, and the failure to perform bacteriostasis or fungistasis testing for membrane filtration sterility test as specified by USP XXI. *Id.*

In its written response to the Form FD–483, Kanasco conceded the accuracy of many of the investigators' observations. *See* Kanasco Ex. 7. For example, Kanasco did not offer any specific facts to rebut the evidence that key supervisory positions (quality assurance director, microbiological laboratory supervisor, materials control manager, formulation supervisor, and second shift supervisor) had been vacant for some time prior to the September 1986 inspection. Nor did the firm offer any factual rebuttal to the finding that its employee training and evaluation were inadequate. Instead, the firm again promised that "[t]raining of personnel will be further increased and individual performance reviewed * * *. [W]e will continue our efforts to hire additional qualified personnel." Kanasco Ex. 7, October 10, 1986, response to FD–483, pp. 2 and 3. (*See* 21 CFR 211.25 (requiring training and adequate number of qualified supervisory personnel).)

Kanasco admitted that a primary barrier had not yet been installed over the mixing area, and again stated it has been unable to come up with a satisfactory solution to the problem. The firm also suggested that part of the reason for this problem was *FDA's* failure to offer advice on how the problems could be rectified. *Id.*, p. 6. (*See* 21 CFR 211.46 (requiring equipment for adequate control over air pressure, microorganisms, etc.).)

Kanasco admitted that the Manton-Gaulin homogenizer had not been validated, but promised that "this will be done". *Id.*, p. 4. Kanasco conceded that its gowning procedures had not been entirely validated and claimed that the procedures relating to the use of rubber boots in the clean room area "is in progress". *Id.*, p. 6. Kanasco also conceded that "it is true, there is, in some cases, no written revalidation schedule". *Id.* (*See* 21 CFR 211.100 and 211.113(b) (requiring written procedures for process control and validation).)

The firm also did not deny that the floor drain in the aseptic fill area had been stopped up for (at least) 3 weeks and contained stagnant water. Nor did it deny that product was being manufactured while this condition existed. Indeed, Kanasco agreed that the

condition was "undesirable," but suggested that the problem was minimized, *inter alia*, because the water had initially been sterile and "the standing pools are periodically removed by the operators". The firm also promised to replace and regrade the floor. *Id.*, p. 10. (*See* 21 CFR 211.42 and 211.48 (requiring systems and controls to maintain aseptic conditions and adequate plumbing) and 21 CFR 211.22(a) and 211.25 (discussing, respectively, the responsibilities of the quality control unit and the necessity for adequately trained and supervised personnel).)

Kanasco did not deny that it had manufactured a drug product for human use which was required to be penicillin-free in the same area and with the same equipment used to make penicillin-containing products. *Id.*, p. 3. Nor did it deny that it had made veterinary drug products which are required to be penicillin-free in the same equipment used to make penicillin-containing products, and then distributed the products in commerce without having tested for penicillin cross-contamination. *Id.*, p. 3 (*See* 21 CFR 211.42(d) and 211.176 (prohibiting such practices which may cause cross-contamination) and 21 CFR 211.22 and 211.25 (responsibilities of quality control unit, training and supervision of personnel).)

Kanasco did not deny that the bottles which had been sterilized and depyrogenated in the heat tunnel were directed into an inappropriately classified area en route to the aseptic fill area. The firm's response that the room has a HEPA filter over the tunnel outlet and that environmental data show the room to be "satisfactory" (*Id.*, p. 9) does not address the question of whether sterilized and depyrogenated product containers should, as FDA stated, be maintained under class 100 conditions. *Compare* FDA Ex. 47, p. 3, item III A–2, *with* Kanasco Ex. 7, p. 9. (*See* 21 CFR 211.46(b), 211.63, 211.80, and 211.113(b) (requiring equipment and procedures to prevent microbiological contamination).)

Kanasco did not deny that a cover was missing from equipment in the aseptic fill area exposing moving parts, grease deposits, and other debris to products. Instead, it stated that "[t]he back cover for the Cozzoli filler has been replaced." *Id.*, p. 10. (*See* 21 CFR 211.67 (requiring equipment maintenance).)

The firm did not deny that floor and wall titles and grout in the aseptic filling room were chipped, broken or missing, and not readily cleanable. Nor did it deny that surface samples in this area had not been taken since January of 1986. Rather, Kanasco's rejoinder was that "new personnel in the microbiology laboratory during 1986 did not realize that Rodac plates on the walls should have been taken." *Id.*, p. 10. (*See* 21 CFR 211.42(c)(10)(i) (requiring smooth and easily cleanable floors and walls), 21 CFR 211.25 (training and supervision of personnel), and 21 CFR 211.100 (requiring adherence to written process controls).)

Kanasco did not deny any of the objectionable practices observed by the investigators during their unannounced visit on the evening of September 17, 1986. *See* FDA Ex. 47, p. 4. To the contrary, its response served only to underscore what FDA had been pointing out to the firm all along. Kanasco's response was as follows:

> The clean-up crew observed in the clean room on the evening of 9/17/86 was not the normal clean room clean-up crew. They had been labeling a previously filled batch and experienced mechanical problems with the labeler. The supervisor did not have any other work for them to perform and told them to go in the room to clean. The supervisor *has been reprimanded for allowing untrained personnel to go into the clean room.* She was also reprimanded for allowing *them to use unauthorized cleaning agents. We will perform additional GMP training on proper clean-up procedures and proper gowning techniques.* All supervisors have been *told to strictly adhere to our existing policy that only properly trained personnel are to be allowed in the clean room.*

Id., p. 13 (emphasis added). (*See* 21 CFR 211.25 (training and supervision of personnel).)

Kanasco did not deny that the equipment it used to monitor the air quality in manufacturing areas (i.e., the RCS sampler) had not been calibrated, and contained broken parts. Instead, it stated that it was "our intention to eliminate the RCS as our primary method of collecting viable particulate data * * *". *Id.*, p. 17. (*See* 21 CFR 211.67) (requiring maintenance of equipment.)

Kanasco did not deny that its laboratory autoclave had not been validated or monitored with a reference thermometer. *Id.*, p. 31. (*See* 21 CFR 211.160(b)(4) (requiring calibration of laboratory equipment).)

While the firm claimed that it monitored the heat tunnel belt speed, it did not deny that it had not been calibrated. *Id.*, p. 24. Nor did the firm deny that the magnehelic gauges used to measure pressure differentials between rooms had not been calibrated. *Id.*, pp. 18 and 19. (*See* 21 CFR 211.68 (requiring calibration of equipment).)

With respect to environmental monitoring and related practices, Kanasco did not deny that air flow patterns had not been mapped since it lowered the ceiling in aseptic fill areas, the autoclave storage area, and corridor. Instead, the firm promised "air pattern studies will be conducted". Kanasco Ex. 7, p. 19. Kanasco did not deny that its records failed to identify the exact locations where surface samples were taken so that there could be effective followup if a sample were found to be positive. Kanasco Ex. 7, pp. 18 and 10. (*See* 21 CFR 211.42(c)(10)(iv) and 211.194(a)(1) (requiring, respectively, a system for environmental monitoring and laboratory records which identify the source of the sample).) Nor did the firm deny that there was virtually no environmental monitoring during the second or third shifts. In fact, it admitted that such monitoring existing only for 6 days of second shift operations between January and August 1986, and even this monitoring was only for the first 2 hours of an 8-hour shift. *Id.*, p. 18. The firm promised to conduct monitoring during the third shift "in the future". *Id.* (*See* 21 CFR 211.42(c)(10)(iv).)

Kanasco did not deny that there was no record of air pressure differentials throughout the clean room area. *Id.*, p. 18. The firm did not deny that actual air flow patterns in the aseptic area were the reverse of what they should have been. *Id.*, pp. 10 and 11. (*See* 21 CFR 211.46(b).) Nor did Kanasco deny that monitoring for non-viable particulates was not done at all in some months, and incompletely done in others or, that when high counts were recorded, there was no record of comment or correction. Instead, Kanasco argued that its SOP only called for nonviable counts to be conducted "approximately monthly and that it regards the viable counts as more important". *Id.*, p. 18. (*See* 21 CFR 211.42(c)(10(iv), 211.100(a), 211.100(b), and 211.192.) The firm's explanation for the missing data was that they "may have been misplaced due to a change in personnel and disruption of the record filing system immediately after the EPA raid." *Id.* Although 9 months have elapsed since this explanation was made, no further data have been supplied by the firm. (*See* 21 CFR 211.180(c) and 211.194(a)(4) (requiring complete records).)

The firm did not dispute that its environmental monitoring data were unreliable, *inter alia*, because there were no logs kept to document how media, which Kanasco used to monitor the environment, were prepared. Kanasco Ex. 7, p. 30. Nor did the firm deny that it failed to conduct growth-promotion tests to assure that its environmental monitoring media would support growth if any microorganisms

were present in the manufacturing environment. *Id.* Finally, Kanasco did not deny that the temperature of its laboratory incubator used to store the environmental monitoring media had been out of specification for 4 months. *Id.*, p. 17. With respect to all of the foregoing matters, Kanasco claimed (as it had previously when faced with similar criticisms) that "the microbiology laboratory and systems were in the process of review," and that it would "institute a log book for media preparation". *Id.* (*See* 21 CFR 211.160 and 211.194.)

While Kanasco claimed that it had tested two types of media (TSB and fluid thioglycollate broth) for growth-promotion properties when the media were delivered to the firm (Kanasco Ex. 7, p. 30), these media are used by Kanasco only in its sterility test procedures, not to monitor the environment. (*See* 21 CFR 211.194.)

With respect to its water for injection (WFI) system, Kanasco did not deny that it lacked records to document testing for particulates. Instead, the firm claimed that particulate monitoring had been done "by visual inspection" and as an unwritten and unrecorded part of its sterility test procedure; the firm promised to modify its procedure to conform to the USP requirement and record it as a separate test. Kanasco Ex. 7, p. 21. (The USP "test calls for the use of an electronic liquid-borne particle counter system utilizing a light obscuration based sensor or equivalent". USP XXI (1985), p. 1257.) (*See* 21 CFR 211.194.)

Kanasco did not deny that the line in the WFI system to the bottle washer was not drained either before use or on a regular basis. The firm stated, "[a] drain port has been added to the bottle washer and this leg is now being drained daily." Kanasco Ex. 7, p. 22. (*See* 21 CFR 211.63 and 211.67.)

Nor did the firm deny that it had not monitored bottle washer WFI for the past 5 months proceeding the inspection. Instead, the firm argued that this was not necessary because subsequent processing in the heat tunnel would "handle a very high microbial load". Kanasco Ex. 7, p. 22. This response not only demonstrates the fundamental lack of appreciation for the underlying principle of CGMP—quality must be built into the product at each step of its manufacture—but this response also is neither scientific nor specific. Unless Kanasco has monitored and measured the microbial load of its undrained and untested water source, and subjected those specific loads to the specific time and temperature parameters of the heat tunnel used in processing, there is no sound basis for determining whether the system will or will not remove the pyrogens. (*See* 21 CFR 211.110 (control of in-process materials).)

Kanasco did not deny that WFI quality monitoring records had not been signed and dated as reviewed by a second person. Instead, the firm stated that these steps were now being taken. Kanasco Ex. 7, p. 23. (*See* 21 CFR 211.188 and 211.192 (requiring double sign off on production and control records).)

Kanasco did not deny that its written cleaning procedures for critical manufacturing equipment such as formulation, mixing, and holding tanks did not provide a procedure for, or record of, the draining or rinsing of dead leg valves that could harbor bacteria and contaminate the product. The firm promised to revise the procedure to make it more explicit. Kanasco Ex. 7, p. 15. In response to the FDA observation that one tank valve contained a white, unidentified substance after it had been cleaned by the firm, Kanasco argued that the tank had only been "rinsed" after completion of a previous batch and not yet subjected to "pre-manufacturing clean up and sterilization procedure which involves opening all valves." Kanasco Ex. 7, p. 15. Even assuming the truth of this assertion, the failure to have a specific procedure and record of this cleaning step is nevertheless a violation of CGMP. *See* 21 CFR 211.66(b)(3).

An overview of the foregoing observations and Kanasco's response thereto reveals the following: Employee training and supervision continue to be a problem that Kanasco has failed to address with a specific and successful plan. These deficiencies are evidenced not only by the absence of numerous key supervisory personnel, but also by the performance of line and supervisory personnel who, *inter alia:* performed and supervised a routine clean-up procedure that violated many of the basic tenets of aseptic technique; manufactured product while stagnant water remained on the floor of the clean room; made human and veterinary non-penicillin products using equipment and facilities that presented a very real possibility of cross-contamination; allowed new employees to neglect their responsibilities regarding environmental monitoring and the reviewing and signing of manufacturing records; and allowed equipment to be in disrepair and not calibrated. If there were no other findings during this inspection, FDA would, on these facts alone, be justified in concluding that this operation was seriously out of compliance with CGMP.

Insufficiently specific batch records, sign-off procedures; and instructions, and inadequate laboratory records and procedures continued to be a problem despite the fact that these items were explicitly addressed in the 1985 Consent Decree of Permanent Injunction (*See* FDA Ex. 39, pp. 2 and 3) and observed in the proceeding November 25 and 26, 1985 inspection.

The firm continued to offer a variety of excuses for the deficiencies (e.g., the laboratory procedures were in the process of being reviewed, new personnel did not understand that a particular procedure should be followed, FDA has not objected to the practice previously) and additional assurances that the problems would be or already had been corrected. In many cases the firm offered explanations for the deficiencies which served only to highlight its lack of appreciation for the very fundamentals of CGMP (e.g., the problems would have been overcome by another procedure later in the manufacturing process, particulate monitoring was done by visual examination).

It is also worth noting that FDA inspectors were able to observe so many violative conditions even though the firm was not making the product during the inspection. Kanasco ceased manufacturing operations within 5 minutes after FDA investigators entered the plant, and did not resume manufacturing during the remainder of the inspection. FDA Ex. 48, Pulham Declaration, para. 6.

It is Kanasco's responsibility to assure that it is in and remains in compliance with CGMP. Kanasco cannot except FDA to shoulder this responsibility or to serve as Kanasco's quality control unit. Kanasco's position that so long as FDA investigators do not object to a practice or problem, it must be acceptable is not only fundamentally unsound, but also is an underlying cause of the continuing, persistent compliance difficulties this company has experienced.

Finally, it should be pointed out that the above discussion by no means exhausts the list of unrebutted CGMP deficiencies that were observed in the Kanasco facility during the September 1986 inspection. The FDA investigators and microbiologist who visited Kanasco made many observations that were not disputed by the firm (e.g., laboratory employees failed to follow SOP's regarding the length of time that media should be cooked in the autoclave, Kanasco Ex. 7, p. 30; the laboratory failed to maintain a permanent written record of what materials were autoclaved in each cycle, *Id.*, p. 31; the raw material storage area was overcrowded and materials in the area

bore undated "released" and "quarantined" stickers on both sides of the same drum, *Id.*, p. 26; Kanasco personnel were unfamiliar with the temperature control and alarm functions of the conductivity meter used in its WFI system, *Id.*, p. 21; there were no records to document chemical and microbial monitoring of pre-filter and still feedwater or pre-holding tank distillate in the WFI system, *Id.*, the WFI system contained unacceptable threaded fittings and dead legs, and had pump failures with possible back siphonage of stagnant water from the dead legs, *Id.*, employees were allowed to enter the clean room area without monitoring to determine if they were shedding excessive microorganisms, *Id.*, p. 18; an endotoxin study of the heat tunnel failed in March of 1986 and had not been repeated as called for by the firm's own test report, *Id.*, p. 7 and 8.). *See also* Kanasco Ex. 5, *passim*, conceding the accuracy of many of the observations made during the September 1986 inspection, noting corrections that had been taken in some cases, and promising corrective action in others.

Based upon the findings of the foregoing September 1986 inspection and after reviewing Kanasco's written response to the List of Inspectional Observations, the government filed another motion to enforce the 1985 consent decree. *See* FDA Ex. 48. On October 17, 1986, the court entered a temporary order enjoining Kanasco from the further manufacture and shipment of injectable drugs. FDA Ex. 49. On October 28, 1986, Kanasco consented to an order which indefinitely continued the temporary order of injunction. FDA Ex. 50.

16. Events following the September 1986 Inspection: Kanasco's Current Status

The NOOH describes the subsequent events as follows:

On December 2, 1986, FDA representatives met with Kanasco representatives and explained why the firm's written response [to the September 1986 inspection] was unsatisfactory. At this meeting, FDA again advised Kanasco that inadequate training and supervision was a continuing problem at the firm.

On December 29, 1986 and January 27, 1987, Kanasco submitted validation data and other documents to FDA in an effort to show that the firm was in compliance with CGMP. On February 20, 1987, FDA officials met with Kanasco representatives to discuss the situation, and Kanasco advised FDA that it would be ready to resume manufacturing within 10 days to 2 weeks. On February 18 to 20, and 24 to 25, 1987, FDA visited the Kanasco facility to collect data pertaining to the firm's recent submissions and interview its supervisory personnel.

52 FR 7316. The NOOH also describes the results of FDA's review of Kanasco's data and the February 1987 inspection as follows:

Kanasco did not provide any data to show that personnel had received training by qualified individuals that would enable its employees to properly perform assigned functions. Nor was any plan proposed to ensure that Kanasco employees would receive sufficient training on a continuing basis to assure that employees would remain familiar with CGMP requirements or that the firm's employees would be periodically monitored to determine that training had been and would remain effective.

The firm was found to be using an unapproved ingredient in one of its products.

The firm had failed to cover or otherwise protect equipment used to aseptically process and fill sterile products from dust and debris caused by removing floor tiles, grinding concrete, and digging drainage lines through the earth.

Media fills which were conducted did not adequately mimic worst case or even normal production conditions. Media fill records contained unexplained discrepancies. For example, in one instance the firm's records indicated that media was being filled in containers prior to the time that the firm's records showed that a preliminary procedure had been completed. In another instance, dynamic environmental monitoring was performed after the media fill had been completed. In yet another instance, the media fill records showed that residual phenol (used to rinse equipment) exceeded Kanasco's limits without comment or explanation. The media fill records also did not document the performance of procedures with operator signatures. For example, there were no records to show that vials had been washed prior to going through the heat tunnel, the stoppers and seals had been washed prior to autoclaving, or that isopropyl alcohol used for sanitizing critical surfaces had been sterilized.

No data were submitted to validate the system used to deliver product ingredients from gel tanks to mixing tanks or the sterilization filter used in the delivery system. An insufficient number of media fills was conducted on one of two manufacturing tanks used by the firm.

The autoclave used to sterilize container closures and seals, equipment, uniforms, and other material was not adequately validated. For example, no data were presented to show that the load patterns which Kanasco used in its heat penetration studies represented maximum, minimum, or worst case load patterns; none of the load patterns included manufacturing equipment (which may be more difficult to sterlize); no data were submitted to show that the thermocouples used to measure temperatures in the autoclave (or sterilization depyrogenation heat tunnel) had been calibrated; and the reported results for all four of the heat distribution studies did not meet the performance criteria established by the reference work cited by the firm and generally recognized by the industry. The firm was unable to produce raw data to substantiate approximately one half of the autoclave cycles in its validation studies.

In several cases, raw data for heat tunnel endotoxin studies which FDA investigators collected at Kanasco were inconsistent with the firm's reports of those studies. In other cases, the firm was unable to produce raw data to substantiate its findings.

The firm had not installed primary barriers at the sites where sterile powders are placed into the sterile mixing tanks.

There was inadequate provision for ensuring that product containers which had passed through the depyrogenation-sterilization section of the heat tunnel would be maintained in an appropriately classified environment either in the cool down section of the heat tunnel or in the ante room through which they passed en route to the fillroom; the ante room also lacked a primary barrier.

Standard operating procedures for environmental monitoring set forth inappropriate action limits and sample collection frequencies. For example, non viable particulate counts were to be taken approximately once a month in critical manufacturing areas, whereas these samples should be taken on a daily basis; the firm's specification for non viable particulate matter in the area where sterile product is placed in vials in class 500, whereas it should be no more than class 100.

The firm failed to establish specifications for air pressure differentials between various rooms of the clean area.

The firm did not have appropriate specifications for air velocities of its high efficiency particulate air (HEPA) filters or for air change rates in clean areas.

The firm made no commitment to cease the manufacture of non penicillin products for human use in the same facility where penicillin products are made. Nor did the firm commit to cease distribution of non penicillin veterinary products without testing for the presence of penicillin.

Kanasco failed to provide evidence that there would be an adequate number of qualified personnel to supervise the manufacture of injectable products, even on the reduced, two batch per week schedule proposed by the firm. For example, the firm's candidate for Director of Quality Assurance was the same person who had overall responsibility for the injectable facility during the October and November 1985 inspections and who (without FDA's knowledge or written consent as required by the 1985 consent decree) had been serving as Acting Director of Quality Assurance for 6 months prior to the September 1986 inspection, and while exercising that authority failed to prevent the CGMP deficiencies [observed by FDA during the October and November 1985 and September 1986 inspection].

When FDA investigators interviewed this person in February 1987, he stated that his primary experience before coming to Kanasco was in manufacturing, engineering, materials management and cost control, with only "some" exposure to quality control; he had with only "some" exposure to quality control; he had never performed quality

assurance work on a full time basis. Although, as noted above, he stated that he had been serving as Kanasco's Acting Quality Assurance Director for 10 months, he was not familiar with Kanasco's specifications for air quality in critical manufacturing areas. He also did not appreciate that excessive air velocity readings at the face of HEPA filters (used to protect critical manufacturing areas from potential airborne contaminants) could indicate that the filters were not performing this important function. The candidate stated that he would be responsible for reviewing and approving Kanasco's validation protocols and study results, and that he had reviewed and agreed with the analysis and interpretation of the validation data which Kanasco had recently submitted to FDA. However, he was unable to explain how the heat tunnel validation data (which comprised approximately one third of the firm's submission) would be used to determine whether product containers and closures were effectively being sterilized and depyrogenated during actual, day-to-day production. The candidate's understanding of Kanasco's autoclave validation data was also inadequate. For example, he did not recall how many or which organism had been used to challenge the autoclave. In addition, he stated that 10°C would be an acceptable temperature variability in the autoclave, a difference far in excess of any level recognized in the industry or even Kanasco's own criteria.

In several instances, Kanasco's data, which had been reviewed by the candidate for Director of Quality Assurance, provided further confirmation that this person either had not carefully reviewed the data and/or did not understand basic principles of validating an aseptic fill production process. For example, none of Kanasco's protocols for its autoclave, heat tunnels, or media fills sets forth production specifications that were to be validated (e.g., times, temperatures, pressures, load patterns, bottle size, and belt speeds); calculations made to evaluate the performance of the autoclave did not follow procedures generally recognized by the industry; in one heat penetration study, Kanasco improperly assumed what the coldest spot in the autoclave, and then incorrectly concluded that the coldest spot in the autoclave confirmed its initial assumption; although the amount of organisms recovered by Kanasco from spore strips used to validate autoclave effectiveness were significantly inconsistent with the spore strip manufacturer's certificate of analysis, no note of this fact was made.

Kanasco also failed to provide sufficient evidence that its candidate for Director of Quality Control had sufficient background, training or experience to perform his job properly. During the February 1987 discussions, the candidate told FDA investigators that he only intended to serve as quality control manager on an "acting" basis until a permanent replacement could be found. He stated that he had never served as quality control manager in any finished dosage form pharmaceutical plant and had virtually no hands-on experience in aspectic processing operations, environmental monitoring, or gowning techniques. Although he stated that he would be responsible for reviewing and approving all sterility tests, he had no practical experience in conducting the type of sterility test which Kanasco performs on its finished product. This person also was not familiar with Kanasco's procedures and/or specifications for monitoring air quality, air pressure differentials, and temperatures in critical manufacturing areas or the standards upon which those specifications were ultimately based.

This person stated that he too had reviewed and agreed with the approach and interpretation of the results of the autoclave validation data which Kanasco recently submitted to FDA. However, the individual indicated that he did not understand either the bioburden or overkill method of validation (both of which are standard in validation studies) and did not know which method had been used by Kanasco; nor did he know what level of sterility assurance Kanasco's studies had sought to demonstrate. Although the person stated that he would be responsible for releasing products based in part upon his review of autoclave sterilization records such as recording charts and biological indicator spore strips, he did not know how many spore strips should be in each loan pattern, how many load patterns were used by Kanasco, or which organism should be used to monitor the effectiveness of the autoclave. Although the candidate stated that he had reviewed and agreed with Kanasco's heat tunnel validation data and would be responsible for releasing products based in part on a review of temperature recording charts, he was not familiar with the general temperature configuration of the firm's heat tunnel and did not know how many temperature monitors of recording charts were used in normal production. Nor did he know what the acceptable temperature variance was for these recording charts at Kanasco. Finally, this person also failed to note or explain the above-described deficiencies in the validation data submitted by Kanasco. (Although FDA had previously told Kanasco pursuant to the 1985 consent decree that this person could serve as the firm's quality control manager, this advice was given before the September 1986 inspection, solely on the basis of a curriculum vitae and without benefit of an interview. In fact, he did not perform any quality control duties at the injectable facility during 1986.)

52 FR 7316 and 7317.

In its hearing request, Kanasco has again failed to offer specific facts which rebut the NOOH's characterization of its December 1986 and January 1987 submissions to FDA. Thus, with respect to the issue of inadequate training and supervision, Kanasco has not disputed that it failed to come forward with data showing that personnel had been trained to enable them to perform assigned functions, that its employees would receive such training on a continuing basis, or that employees would be periodically monitored to determine that training would be effective. To the contrary, in its January 1987 submission to FDA the firm stated, "Kanasco agrees that some of the practices observed by FDA on the evening of September 17 were unacceptable and will not be tolerated. These observations pointed out of Kanasco management the need for stricter enforcement of existing SOPs and adherence to generally accepted clean room practices. They also point out areas where management could make improvements". Kanasco Ex. 5, p. 4. However, the only remedy proposed by the firm was that "[s]trict enforcement of procedures and acceptable practices has been made a top priority of QA and Production management. * * * Kanasco management has committed itself to developing a more comprehensive and intensive employee training program to supplement its existing program. Outside help will be sought in areas where inhouse expertise may not be available." *Id.* No specifics or data were provided to FDA to particularize how Kanasco intended to implement this promise.

Even after the NOOH issued and after the Directors called for specific data and plans with respect to training, supervision, and monitoring of personnel (*See* 52 FR 7316), the *only* information which Kanasco supplied on this issue was Mr. Byers' single-sentence conclusion, "I have been personally involved in various training sessions in CGMP's and manufacturing processes along with other personnel, including Mr. John Wanner, and believe this program which is ongoing is adequate from a CGMP viewpoint." Kanasco Ex. 2, p. 6, May 15, 1987 Declaration of Theodore E. Byers (emphasis added).

Kanasco's offer of an unsubstantiated, nonspecific promise at this point is insufficient either to show compliance with CGMP or to necessitate an evidentiary hearing. Indeed, the firm still has not stated (even in conclusory fashion) that it employees have received the requisite training and are now ready to assume their assigned functions, much less offered any facts, data, or documentation to support such a conclusion. Nor has Kanasco offered even a conclusory assurance, much less a specific proposal supported by data, that a program is in place to monitor the performance of its employees.

In fact, another of Kanasco's CGMP experts, Dr. Arambulo, had a different impression of Kanasco's operation than Mr. Byers. Dr. Arambulo (whose entire discussion of all facets of Kanasco's CGMP status comprised two pages), stated:

As I have told FDA in the past, and most recently at our February 20, 1987 meeting, *I*

have had some concerns with the training and supervision of Kanasco personnel, but Kanasco has made substantial improvement in these areas, and any remaining problem(s) can be remedied, particularly if the plant is allowed to open initially on a reduced schedule. Therefore, lack of personnel training and supervisory coverage cannot provide a proper basic for FDA's proposed withdrawal of approval of Kanasco's NDAs and NADAs for Kanasco's sterile injectable drug products.

Kanasco Ex. 1, May 21, 1987 Declaration of Angel Arambulo, p. 4. Dr. Arambulo went on to state that based upon his three visits to the Kanasco plant (when it was not in production) and his review of records, many of which relate to personnel, "I have concluded that the stated deficiencies involving CGMPs by * * * Kanasco *are not out of line with similar deficiencies that I have observed in other elements of the pharmaceutical industry.* I am not aware of any instance in which such deficiencies have led to revocation of NDAs or NADAs". *Id.* (emphasis added.)

The foregoing testimony serves only to underscore Kanasco's lack of compliance with CGMP inasmuch as Dr. Arambulo supports FDA's evaluation of the historical lack of training and supervision at Kanasco and lack of compliance with CGMP. While Dr. Arambulo states that the problem "can be remedied," this is not at issue. The issue is whether Kanasco has offered specific facts to show that it was and is in compliance with CGMP. Neither Dr. Arambulo's testimony nor Mr. Byers' testimony makes this showing.

Kanasco's failure to adequately train, supervise, and evaluate the performance of its employees has been repeatedly brought to the firm's attention by the FDA. *See supra, passim.* All of the evidence in this proceeding shows that the firm has failed to correct the problem after it had been brought to its attention. *See* 21 CFR 211.25. On this ground alone, FDA is entitled to summary judgement.

There are more unrebutted facts stemming from the events following the September 1986 inspection which support summary judgment for FDA.

Kanasco's hearing request does not deny that the firm was using an unapproved ingredient (iron dextran) in one of its products. 21 CFR 211.22(c), 211.84(a), 211.84(b), and 211.100(a). This specific problem and ones similar to it have been brought to Kanasco's attention by means of a complaint for forfeiture filed with a district court, a Regulatory Letter, a Notice of Adverse Findings Letter, a letter from the Associate Commissioner of Regulatory Affairs, and similar correspondence. *See* e.g., FDA Exs. 5, 6, 11, 13, and 45.

Nor does the firm's hearing request deny that it failed to cover or otherwise protect equipment used to aseptically process and fill sterile products from dust and debris caused by removing floor tiles and digging in the earth. *See* FDA Ex. 55, containing, *inter alia,* photographs of equipment covered with dust; *See also* 21 CFR 211.67. Kanasco's failure to take adequate precautions to clean and maintain equipment was brought to its attention prior to 1984 *(See* FDA Ex. 7), during the February-March 1985 inspection (*See,* e.g., FDA Ex. 24, item 5), and during the September 1986 inspection (FDA Ex. 47, items III A 1–2, V A–C, and VII G).

Kanasco has not disputed any of the numerous, specific deficiencies which FDA found in its media fill records, including instances in which these records had "unexplained discrepancies" regarding the order in which various procedure were supposed to have been performed, the absence of operator signatures to reflect that various steps were actually performed, the failure to perform followup investigations when limits were exceeded. *Compare* 52 FR 7316, *with* 21 CFR 211.100(b), 211.194(a)(7) to (8), and 211.192. These deficiencies were brought to the firm's attention on many occasions (*See* FDA exhibits, *passim*) and were specificaly prohibited in the 1985 consent decree (*See* FDA Ex. 39, pp. 2 and 3).

Kanasco did not dispute that it failed to provide any data to validate the sterilization filter used in the delivery system. 52 FR 7316. Validation and supporting documentation are clearly called for by the CGMP regulations. 21 CFR 211.113(b), 211.194(a)(4) to (8). Kanasco has been advised of its failures to validate processes and document such validation on numerous occasions in the past. *See* e.g., FDA Exs. 7, 9, 13, 24, 38, 39 (1985 consent decree, pp. 4 and 6), 45, and 47 (item II A–H).

Kanasco did not offer any specific facts to deny that one of its critical pieces of equipment, the steam autoclave, had not been adequately validated in that: (a) no data were submitted to ensure that all representative load patterns, including those involving equipment, had been accounted for; (b) thermocouples used to measure the heat distribution in the validation studies had not been calibrated; (c) the results of all four of its heat distribution studies failed to meet generally recognized criteria that the firm itself referenced; and (d) the firm failed to provide raw data to document approximately one-half of the autoclave cycles which it attempted to study. *Compare* 52 FR 7316, *with* 21 CFR 211.113(b), 211.68, 211.192, and 211.194(a)(4) to (8). As noted, these and similar concerns had been brought to the firm's attention on many previous occasions.

In response to and in contrast with the specific concerns stated in the NOOH regarding the absence of data to validate identified systems and pieces of equipment and specific methodological failures, Kanasco's expert, Mr. Byers, offers the following, "* * * validation or revalidation occurred in every aspect of the sterile product manufacture including such things as validation of * * * sterilization procedures for equipment * * * I was personally involved in revising these procedures, establishing these procedures and observing their implementation. Kanasco Ex. 2, p. 1. Mr. Byers neither mentions the missing data nor addresses the identified systems and equipment discussed in the NOOH, nor does he address any of the methodological failures discussed in the NOOH regarding the manner in which the validation studies were conducted.

Kanasco's other expert, Dr. Arambulo, is even more circumspect on the validation issue. He states, "I have conducted an audit of the validation data, and *the data I reviewed* showed *those system's* [sic] to have been properly validated. Lack of validation cannot be a proper basis for withdrawing approval of Kanasco's NDA's and NADA's for sterile injectable products". Kanasco Ex. 1, pp. 3 and 4 (emphasis added). Dr. Arambulo does not explain what systems and records he is referring to, and what views, if any, he has on any of the specific deficiencies discussed in the NOOH.

Even assuming that Mr. Byers' reference to "sterilization procedures for equipment" relates to one load pattern of the autoclave (which is unlikely since no equipment load patterns were validated) and not to the cleaning of equipment surfaces with disinfectants, neither his nor Dr. Arambulo's general, unexplained, and unsubstantiated assurances are sufficient to raise a genuine and substantial issue of fact. 21 CFR 314.200(g); Rule 56(e), F. R. Civ. P.; *See also,* cases cited *supra* requiring expert conclusions to be supported by facts. Even if these general assurances were deemed adequate to raise a genuine and substantial issue with respect to the status of the autoclave, they do not do so with respect to the gel tank delivery system or the sterilization filter, both of which are critical in the processing of injectable products.

In its hearing request, Kanasco also has not denied that the endotoxin studies upon which it relies to validate its heat tunnel are missing raw data to document the findings claimed by the firm. *See* 21 CFR 211.194(a)(4) to (8). Neither Dr. Arambulo nor Mr. Byers have suggested how they were able to review these critical studies in the absence of raw data. Kanasco has not promised to supply the missing raw data or conduct new validation studies.

Kanasco has not denied that it still has not installed a primary barrier where sterile powders are placed into sterile mixing tanks. *See* 21 CFR 211.46(b). In its January 1987 response, 2 years after the problem was first brought to Kanasco's attention and the firm stated that the situation was "being evaluated", the firm claimed that the use of primary barriers over the mixing tanks "is under evaluation". *Compare* Kanasco Ex. 14, p. 3 (March 20, 1985 response to FD–483), *with* Kanasco Ex. 5, p. 4. Although Mr. Byers states that new hoods are being installed, he does not indicate how many or where the hoods are to be located. *See* Kanasco Ex. 2, p. 6.

Kanasco has not denied that product containers which have been sterilized and depyrogenated in the heat tunnel were not maintained in an appropriately classified (i.e., class 100) environment, either in the cool down section of the tunnel or upon exiting the tunnel en route to the filling room. Unless the sterility of these product containers is maintained after they have been so processed and before they are filled with previously sterilized product, the product may be placed in a nonsterile container. Nor has the firm presented any data to show that these areas will be maintained under class 100 conditions. *See* 21 CFR 211.46, 211.94(c), and 211.113(b).

The firm did not deny that its specification for non-viable particulates in the aseptic filling room was 500 whereas it should have been 100. *Id.* Dr. Arambulo's declaration does not address any environmental data, specifications, or concerns. *See* Kanasco Ex. 1. Mr. Byers merely states that "the environment in which the products are made is consistently within industry standards and practice and acceptable for the production of sterile products." Kanasco Ex. 2, p. 4. He does not address the issue of specifications at all. Nor does he specify the standards and practice "he finds acceptable."

Moreover, Mr. Byers' conclusion is based entirely on a review of Kanasco's records and does not address any of the numerous problems which FDA pointed out regarding the improper manner in which environmental data were collected, including the failure to properly test and control the media used to measure the environment. *See* FDA Ex. 47, pp. 5 to 7 and 11 to 13 discussing, *inter alia*, insufficient frequency of environmental testing, inadequate media control, overcooked media, failure to adequately monitor the temperature of the autoclave used to prepare the media, failure to monitor wall and floor surfaces, and failure to control air pressure between various manufacturing areas. Inasmuch as Kanasco's environmental data are based upon admittedly deficient procedures, the records can provide no reliable basis for accurately judging the condition of the environment. The firm's inadequate environmental specifications had been brought to its attention in October 1985 (*See* FDA Ex. 38) and September 1986 (FDA Ex. 47, item III A 1).

Kanasco has not disputed that it failed to establish any specifications for air pressure between various rooms in the clean area, or appropriate specifications for HEPA filters or air change rates in the clean room area. *See* 21 CFR 211.42(c)(10)(iii). These problems were brought to its attention in the February–March 1985 inspection (*See* FDA Ex. 24, item 2) and the September 1986 inspection (*See* FDA Ex. 47, items III B 2–3, C–2).

Finally, the firm still has not made any commitment to cease the manufacture of non-penicillin drugs for human use in the same facility where human penicillin products are made (21 CFR 211.42(d)), or to stop distributing veterinary non-penicillin products without testing for the presence of penicillin. *See* 21 CFR 211.170. These problems were raised in the September 1986 inspection and the absence of a commitment to cease these operations was specifically noted in the NOOH. 52 FR 7317.

With respect to the qualifications of its supervisory personnel, Kanasco did submit a declaration to rebut the statement in the NOOH that its proposed candidate for director of quality assurance was not qualified to supervise the manufacture of injectable products. *See* Kanasco Ex. 4. The declaration, submitted by the candidate, reviewed his education (a B.S. in Chemical Engineering, a Masters in Chemical Engineering, and an M.B.A. in Management) and background in the pharmaceutical industry prior to coming to Kanasco (including a production supervisor for parenteral and tablet manufacturing for a major pharmaceutical company and several management positions in manufacturing development and pharmaceutical engineering). The candidate stated that "my past educational and work experience demonstrate that I am qualified to be director of Kanasco's quality assurance [and the NOOH] fails to state how my experience is inadequate or what additional experience I need to be 'adequate' to perform my job." *Id.*, p. 3. Finally, the candidate stated that the NOOH's characterization of his interview was inaccurate or misleading for a number of reasons and that the interview itself had been conducted unfairly because he had not been warned that he would be subjected to a "surprise quiz" that could affect Kanasco's NDA's and NADA's. *Id.*, p. 6.

This declaration does not state specific facts that raise a genuine and substantial issue requiring an evidentiary hearing. For the purposes of this notice, the Commissioner accepts as true the candidate's recitation of his education and training. Even if the Commissioner also accepts as true his characterization of the FDA interview process and of the NOOH's review of the interview, the unrebutted evidence in this proceeding shows that, despite his education and background, the candidate has been unable—for a substantial period of time—to satisfactorily perform his duties or apply his experience under actual working conditions at Kanasco.

The candidate's declaration entirely overlooks the most significant and obvious evidence of his lack of qualification to serve as director of quality assurance: the substantial record of his past inadequate performance at Kanasco. The NOOH stated that while this candidate was serving as Kanasco's Executive Vice President and Director of Quality Assurance, he "failed to prevent the CGMP deficiencies" which were observed by FDA in October and November 1985 and September 1986 inspections. 52 FR 7317. These observations included CGMP deficiencies which cannot be squared with any claim that the director of quality assurance is qualified. For example, the uncontroverted record shows that this candidate either ordered or permitted injectable drugs to be produced for a period of at least three weeks in a room where stagnant water was on the floor. (This occurrence not only violates the most basic tenets of aseptic processing, but is inconsistent with even the average person's concept of minimal sanitation.)

The candidate also either allowed or ordered human drugs, that were required to be penicillin-free, to be produced in the same area, and with the same equipment used to make penicillin

products; he also either directed or allowed veterinary drugs that were required to be penicillin-free, to be made with the same equipment used to make penicillin products and to be distributed without testing for penicillin cross-contamination. (Both of these practices are clearly prohibited by the CGMP regulations, have been the subject of countless discussions in the scientific literature for decades, and present a potentially serious hazard to health. *See* FDA Ex. 48, Declaration of Kenneth Avis, p. 2 ("[t]hose procedures are in direct violation of CGMP; *See* 21 CFR 211.42(d) and 211.176, and could result in serious harm or even death to persons or animals who are sensitive to penicillin"); *Id.*, Declaration of Salvatore Turco, p. 4 ("a serious health hazard").)

The candidate also either allowed or permitted manufacturing-related activities to continue on the second shift without adequate supervision and by improperly trained employees. As a result, cleanups of the most critical processing area were conducted in the manner observed by FDA during the September 1986 inspection (*See* 52 FR 7315). The September 1986 inspection viewed as a whole (and taking into account only the FDA observations that are unrebutted) reflects a variety of CGMP deficiencies which span 21 CFR Part 211 from beginning to end. These deficiencies should have been obvious to any qualified person upon a tour of the plant and a review of the records and personnel.

Even after the September 1986 inspection, and as recently as February 1987, this candidate allowed an unapproved ingredient to be used in a product and permitted equipment used to aseptically process and fill sterile products to be exposed to dust and debris. 52 FR 7316. *See also,* 21 CFR 211.67(b)(5).

These practices are not only totally inconsistent with the letter and spirit of CGMP, but are also irreconcilable with a claim of fitness to serve in the role of director of quality assurance.

The CGMP regulations make it clear that mere education, training, and experience in CGMP are not alone sufficient to qualify a person for a particular job in a drug manufacturing facility. Rather, what is required is a combination of those elements which permit a person "to perform assigned functions in such a manner as *to provide assurance that the drug product has the safety, identity, strength, quality, and purity that it purports or* is presented to possess." 21 CFR 211.25(b) (emphasis added). *See also,* discussion of statutory and regulatory framework *supra,* which reflects a Congressional awareness and concern that CGMP requires "key technical and professional personnel" who are capable of providing the requisite assurance. As the undisputed facts of this proceeding readily demonstrate, the past performance of this candidate—despite his theoretical qualifications—renders such an assurance impossible.

Moreover, the candidate has not denied that he assumed his duties without FDA's consent and, therefore, in violation of the 1985 consent decree. This further underscores the candidate's lack of qualifications to serve as director of quality control. If the candidate cannot obey a court order of which he had actual notice (*See* FDA Ex. 39), he cannot be expected to faithfully adhere to the CGMP regulations in a manner that will assure that products will have the characteristics that they purport to have.

An FDA expert's remarks regarding Kanasco's previous director of quality assurance are equally applicable to this candidate. The expert stated:

> [A]s director of quality assurance and quality control for the Copanos firm, [this person] was ultimately responsible for assuring that CGMP are followed in all aspects of production, including recordkeeping. It is [this person's] role to be knowledgeable with respect to CGMP requirements and the principles on which those requirements are based. It is also [his] responsibility to act as the corporate conscience regarding the manner in which manufacturing operations are carried out. [He] either knew of the many CGMP deficiencies occurring at the firm and allowed them to continue for a substantial period of time, or was unaware of their existence. In either event, he failed to exercise sufficient oversight to prevent their occurrence and recurrence. He did not, in short, do his job. Under these circumstances, to allow a person to continue to serve in such a critical position with regard to the manufacture of parenteral drugs would be ill advised.

FDA Ex. 35, Declaration of Kenneth Avis, pp. 15 and 16.

Kanasco's candidate for the director of quality assurance also did not deny the NOOH's statement that *his* review of Kanasco's validation data showed either that he had not looked at the information carefully before submitting it to FDA (even though it was critical to the company's request to resume manufacturing operations) or that he did not understand basic principles of validating an aseptic fill production process. 52 FR 7317. The deficiencies in these data included incomplete protocols, improper calculations, unwarranted assumptions, and failure to note and comment upon glaring inconsistencies in the data. *Id.* In fact, although the candidate claimed that the interview was unfair because he could not consult references and "other appropriate staff members at Kanasco" (*id.*, p. 1), he has failed to address any of the deficiencies listed in the NOOH regarding the validation data despite the passage of 2 months and ample opportunity to consult whatever sources he deemed necessary.

The only other evidence which Kanasco offered to rebut the NOOH's statement regarding this candidate's qualifications was the conclusory statement of Mr. Byers. He stated, "[s]ince I began consulting with Kanasco, the firm has employed personnel in key positions whom I believe to be qualified * * * [this candidate] was hired for various functions in Q.A. * * * [he has] to my observation, performed adequately." Kanasco Ex. 2, pp. 5 and 6. This conclusion lacks any supporting explanation or specific facts and does not address the candidate's total failure to address the numerous, significant violations of CGMP which occurred during the candidate's tenure. Indeed, Kanasco's other expert, Dr. Arambulo, stated on May 21, 1987, that "I have had some concerns with the training and supervision of Kanasco personnel, but * * * any remaining problem(s) can be remedied * * *" *See* Kanasco Ex. 1.

To summarize, the only evidence which Kanasco has presented to support the qualifications of this candidate is the candidate's recitation of his education and experience and a conclusory endorsement of one of Kanasco's two experts. The evidence regarding the candidate's background is at best predictive in nature and has little or no material probative value where, as here, the overwhelming and uncontroverted evidence points entirely in the other direction. To hold an evidentiary hearing under these circumstances would be a fruitless endeavor. *See* e.g., *Anderson* v. *Liberty Lobby, Inc.*, ——— U.S. ———, 106 S.Ct. 2505, 2512 (1986) (summary judgment is appropriate where evidence is so one-sided that movant must prevail as a matter of law); *See also,* 21 CFR 314.200(g); Rule 56(e), F.R. Civ. P.

The candidate that the firm proposed to serve as its director of quality control also submitted a declaration attesting to his qualifications to serve in this capacity. *See* Kanasco Ex. 3. This person described his educational background (including an honors degree in Chemistry and a Ph.D. in Chemical Microbiology) and his work experience (fellowships in bacteriology, immunology, and biochemistry at universities in Canada and England;

research work regarding the composition of bacterial cell walls; 9 years employment in the pharmaceutical industry in England where he helped develop the chemical and fermentation processes used to make antibiotics; and 5 years at Kanasco where he worked in the bulk production plant).

The proposed candidate for director of quality control admitted in his declaration that he had never served as a quality control manager in any finished dosage form pharmaceutical plant, had not personally conducted aseptic processing operations, had no hands-on experience with environmental monitoring, and had not personally conducted the type of sterility tests used by Kanasco. *Id.*, p. 3. He nevertheless contended that he was qualified to serve as the director of quality control because he understood the "mechanics and philosophy" and "general principles" of a sterile operation, and could consult "other Kanasco staff" and appropriate reference materials when the need arose. *Id.*, pp. 3 to 7. Although he too viewed the FDA interview of him during the February 1987 inspection as unfair and the NOOH's characterization of that interview as inaccurate, the candidate was able to identify only three items in the NOOH that he believed were inaccurate. The candidate stated that he was never asked questions regarding the level of sterility assurance used by Kanasco and the organisms that should be used to monitor the effectiveness of the autoclave. He also said that, contrary to what was stated in the NOOH, he was familiar with the general temperature configuration of the autoclave. *Id.* p. 6. (While this candidate suggests that the interview conducted in mid-February was unfair because he was "in the process of familiarizing" himself with the operation of the microbiology quality control laboratory and the sterile production area (*Id.*, p. 4), Kanasco representatives were, almost at the same moment the interview was being conducted, assuring FDA that Kanasco's manufacturing operations could resume within 10 days to 2 weeks. 52 FR 7316.)

This declaration also failed to cite specific facts which raise a genuine and substantial issue of fact requiring an evidentiary hearing. Assuming the truth of the candidate's education and work experience and even assuming further that the NOOH was inaccurate as claimed, the unrebutted evidence discussed below independently establishes that this person can not serve as Kanasco's director of quality control "in such a manner as to provide assurance that [any] drug product [made at Kanasco] has the safety, identity, strength, quality, and purity that it purports or is represented to process." 21 CFR 211.25(b).

The CGMP regulations, 21 CFR 211.22, list the following responsibilities of the quality control unit: (a) "approve or reject all components, drug product containers, closures, in-process materials, packaging material, labeling and drug products, * * *;" review production records to assure that no errors have occurred * * *;" (b) ensure the availability of "[a]adequate laboratory facilities for the testing and approval [or rejection]" of the foregoing; and (c) "* * * approving or rejecting all procedures or specifications impacting on the identity, strength, quality, and purity of the drug product."

The director of quality control is one of the most critical roles in an aseptic process facility. To perform it properly not only requires a substantial background and experience in manufacturing finished dosage form pharmaceuticals in general, but also a specific background in aseptic processes and procedures used to manufacture injectable products. The role also requires working knowledge of the CGMP regulations, applicable scientific references, current developments in the industry, as well as an intimate familiarity with the SOP's used by Kanasco and the interrelationship of those SOP's to each of the foregoing. *See* 21 CFR 211.22 and 211.25.

In view of this candidate's admissions that he (a) had never "served as a Quality Control Manager in a finished dosage form pharmaceutical plant," and (b) had no practical experience with manufacturing aseptically processed drugs (Kanasco Ex. 3, p. 3), there is an inadequate factual basis for claiming that he is qualified to serve as the sole and ultimate authority for releasing and approving sterile products at any pharmaceutical plant, much less an aseptic processing facility with the history of ongoing problems observed at this firm. Despite the candidate's repeated assurances that he is familiar with the "general principles" of a sterile operation, and that he can refer to "relevant SOP's, monographs, the CFR, PDA and other documents" when necessary (*Id.*, p. 7), he has no direct, practical experience either in manufacturing finished dosage form pharmaceuticals or in aseptic processing. Without a considerable measure of practical experience in aseptic processing, there can be no assurance that the candidate would know either when it may be necessary to consult the references or what references should be consulted.

Even less compelling that the candidate's assurance that he is familiar with "general principles" and can refer to appropriate materials, is the candidate's statement that, when necessary, he would consult his staff. *Id.*, p. 5. As director of quality control, his staff would be looking to him for advice. Moreover, the candidate did not identify any of the "staff" to whom he would, or could, turn to seek help in understanding the intricate interrelationship between the myriad pieces of equipment, processes, tests, and records used to make Kanasco's products. Whomever these person(s) may be, the unrebutted record in this proceeding shows that individually and collectively they have been consistently unable to prevent the numerous CGMP deficiencies which have occurred at Kanasco over the years.

By analogy, an engineer who has been educated in aerodynamics and worked in the industry for many years "developing" airplanes may be familiar with the general "principles," "philosophy," and "mechanics" of an airplane. He may know where to find the relevant texts and applicable regulations which relate to the operation of an airplane. These facts, however, do not establish that the person can oversee the construction of airplanes whose safety the public may rely upon with confidence. And, to carry the analogy a step further, the level of assurance is not increased if the engineer claims that, when necessary, he can turn to unidentified other persons each of whom has been employed by a company that has repeatedly been shown to be incapable of properly manufacturing airplanes. Indeed, in view of this candidate's acknowledgement that he "worked in close contact with the Quality Control and Production Departments and * * * was able to contribute effectively to the manufacturing operations" at Kanasco (*Id.*, p. 2), then he too must share the responsibility for the numerous CGMP deficiencies described in the NOOH.

The candidate's declaration provides the best evidence of his lack of qualification by what it omits. This individual, who claimed to be able to make all of the technical decisions necessary to ensure the quality of Kanasco's products, did not address any of the specific CGMP deficiencies stated in the NOOH or any of the specific criticisms which the NOOH identified concerning Kanasco's validation data. Instead, he merely stated that he is (or

will be) familiar with the "general principles" and "philosophy" of a sterile operation.

Nor did the candidate offer any data or facts to show that he even considered, much less devised, a plan to address the following questions raised by the FDA inspectional observations described in the NOOH: How many and which persons would be in the quality control unit that he proposes to head; what will their qualifications and duties be; what documents define the responsibilities and procedures for the quality control unit; and who will train these persons to perform their duties? *See* 21 CFR 211.22 and 211.25. The absence of this information in the candidate's declaration (and Kanasco's hearing request) serves only to highlight the inability of the candidate (and the firm) to appreciate what is expected and required of him (and it).

It should be emphasized that the Commissioner does not seek to denigrate the achievements of this candidate. Nor does the Commissioner seek to detract from his ability to participate, together with other qualified individuals, in carefully defined quality control roles, or even at some later date to serve as a quality control director. However, it is clear that the candidate has failed to present any specific facts to establish that he is presently able to serve as the director of quality control for a firm which seeks to distribute sterile pharmaceutical products to the public.

The foregoing review of the qualifications of Kanasco's candidates for directors of quality control and quality assurance provide an additional, independent basis for summary judgment. Kanasco has failed to present any specific facts which show that there will be an adequate number of qualified persons to supervise the manufacture of injectable drugs. 52 FR 7317. *See also,* 21 CFR 211.25. Instead, the firm has only offered to continue to operate the company using precisely the same persons who led it to this proceeding and the necessity of consent decrees of permanent injunction filed with the district court.

V. Miscellaneous Matters

Both in its memorandum of law and in two of its declarations, Kanasco has raised a variety of arguments to justify its hearing request. For the reasons set forth below, the Commissioner does not believe that any of these contentions raise genuine and substantial issues of fact which warrant an evidentiary hearing.

A. The Claimed "Bad Faith" Review of Validation Data

Kanasco argues that it has submitted approximately 1,000 pages of validation data that the agency failed to consider in "good faith." Kanasco Memo., p. 12. This contention is incorrect. The NOOH described numerous deficiencies with respect to the validation data submitted by Kanasco. *See* 52 FR 7316 and 7317. Kanasco has not offered a single specific fact to challenge the accuracy or significance of any of those deficiences. Instead, it merely alleges that the ciriticisms were made in bad faith. This allegation is not enough to justify a hearing. 21 CFR 314.200(g). Where, as here, the validation data are deficient in a number of respects (including the absence of supporting documentation to support some studies, absence of some studies in total, inconsistencies which raise questions about the authenticity and truthfulness of the records, improper calculations, and inadequate protocols), it is not incumbent on FDA to spend more time cataloging additional deficiencies. Kanasco has had an opportunity to challenge the criticisms, and it has failed to do so.

Nor is Kanasco's request for a hearing on the validation issue in any way enhanced by the conclusory declarations of its experts. As noted, Dr. Arambulo's entire views with respect to the validation question are, "I have conducted an audit of the validation data, and the data I reviewed showed those system's [sic] to have been properly validated". Kanasco Ex. 1, p. 3. Dr. Arambulo does not state what "data" or "systems" he is referring to nor does he address any of the concerns stated in the NOOH. Accordingly, his views do not warrant a hearing.

The same is true with respect to Mr. Byers' views on the validation issue. He states only that he was personally involved in establishing and implementing the "validation and revalidation [which] occurred in every aspect of the sterile product manufacture, including such things as validation of gowning procedures, validation of sterilization procedures for equipment, validation of a Sterile Water for Injection System, and validation of sterile and depyrogenation progress". Kanasco Ex. 2, pg. 3.

In view of Mr. Byers' failure to address any of the specific deficiencies listed in the NOOH, or to offer any specific facts to support his conclusory endorsement of Kanasco's validation data, no hearing is necessary. 21 CFR 314.200(g); Rule 56(e), F. R. Civ. P.; *See also, Evers v. General Motors Corp.,* 770 F.2d at 986; *Merit Motors, Inc.* v. *Chrysler Corp.,* 569 F.2d at 673 (expert's unsupported assumptions and refusal to acknowledge salient facts were not sufficient to "impose the fruitless expenses of litigation that would result from such a limitation on the powers of a court to grant summary judgment"); *United States* v. *Various Slot Machines on Guam,* 658 F.2d at 700–.1.

Mr. Byers also states that he personally participated in conducting the six media fills submitted to FDA in late 1986 as part of the firm's validation data, and that those [and other, previous] media fills showed that Kanasco's manufacturing environment and personnel practices were satisfactory. He goes on to state that "I know of no firm in the industry which has conducted so many media fills [or which] has any better results from their media fills". Kanasco, Ex. 2, p. 4. Again, however, Mr. Byers has ignored the specific deficiencies which the Directors identified in the NOOH regarding the most recent media fills.

Moreover, even if FDA were to view Kanasco's conclusory allegations as specific facts, assume that the specific systems listed by Mr. Byers had been validated, and further assume that there were no deficiencies in the media fills (*But see* e.g., FDA Ex. 32, Avis Declaration; FDA Ex. 45, Avis Declaration, Turco Declaration, and June 24, 1986 letter to Kanasco counsel from the Associate Commissioner of Regulatory Affairs), there would still be no necessity for an evidentiary hearing. While validation is an extremely important aspect of CGMP, it is only one aspect. In fact, it is addressed only by a single sentence in one regulation, 21 CFR 211.113(b).

In view of Kanasco's failure to conform to CGMP in so many other respects, it is not material whether some or even all of its systems were validated. For example, it makes little difference if a company's systems and equipment are validated, if its employees are not trained and supervised to operate and maintain the equipment and systems properly, or cannot be relied upon the follow the manufacturing instructions upon which the validation data are based. Second, inasmuch as "a massive rebuilding and upgrading of the facilities has taken place" (Kanasco Ex. 2, p. 6) since October and November 1986 when media fills were conducted and the systems were validated, many or all of the systems will have to be revalidated. Thus, the quality of the previous validation data is a moot point insofar as the presence capacity of the facility is at issue. *See* e.g., Kanasco Ex. 5; FDA

Ex. 48, Pulham Declaration, para. 5; Avis Declaration, p. 3; and Turco Declaration, p. 2.

B. Promises of Future Compliance.

Kanasco also argues that the declarations of Dr. Arambulo and Mr. Byers show that the firm has taken appropriate efforts to correct CGMP deficiencies observed by FDA personnel during various inspections, and that FDA has failed to acknowledge these efforts.[8] Kanasco Memo., pp. 12 and 13. It is true that Kanasco has made some efforts to comply with CGMP. *See* e.g., Kanasco Ex. 2, p. 6. However, the FDC Act does not say that a manufacturer may continue to produce drugs so long as it is "making an effort" to comply with CGMP. Rather, the manufacturer's NDA's and NADAs may be withdrawn if its facilities, procedures, and personnel are inadequate and were not made adequate within a reasonable time after receipt of written notice specifying the matters complained of. 21 U.S.C. 335(e) and 360b(e)(2)(B). As shown above, the record in this proceeding is replete with evidence showing that Kanasco has repeatedly and continuously failed to respond to numerous CGMP deficiencies brought directly to its attention, e.g., complaints filed with the district court to enjoin the firm, seizures, recalls, and even the NOOH.

Despite all the warnings, many of the same problems found years ago persist today, not only uncorrected, but in some cases unacknowledged. In other instances, where a serious problem appeared to have abated, it reappeared as soon as FDA looked more closely (e.g., the use of unapproved ingredients in product, missing raw data, falsified manufacturing records). Whatever efforts may have been made, or were claimed to have been made, by Kanasco in some areas are overshadowed by the lack of effort and violations in other areas. Moreover, the record in this proceeding also shows many instances in which Kanasco promised to undertake a correction, and then failed to fulfill the promise. For example, Kanasco promised in writing to obey an agreement with FDA, and then began violating that agreement while it was still in its infancy. *See* 52 FR 7314; FDA Ex. 33, Hartman Declaration, Fourth Turner Declaration.

As the Supreme Court stated in *Allee* v. *Medrano*, 416 U.S. 802, 810–11 (1974), when faced with a similar contention, "[i]t is settled that an action for an injunction does not become moot merely because the conduct complained of has terminated, if there is a possibility of recurrence, * * *"); *United States* v. *A.W. Richberg*, 398 F.2d 523, 530 (5th Cir. 1968); *United States* v. *An Article of Drug * * * B Complex Cholinos Capsules*, 362 F.2d 923, 928 (3d Cir. 1956) (cessation of illegal activities "either before or after suit is begun" is no bar to issuance of an injunction).

It is also settled that one has no vested right to conduct a business regulated by the FDC Act in an unlawful manner. *United States* v. *Diapulse Corporation of America*, 457 F.2d 25, 29 (2d. Cir. 1972); *United States* v. *Ellis Research Laboratories, Inc.*, 300 F.2d 550, 554 (7th Cir.), *cert. denied*, 370 U.S. 918 (1962). Indeed, the FDC Act:

> does not provide that parties shall avoid doing such things if it is possible, it provides that it shall not be done at all. A party who cannot prepare proper * * * products under [proper] conditions must cease putting such products into interstate commerce.

United States v. *Lazere*, 56 F. Supp. 730, 733 (N.D. Iowa 1944).

One of Kanasco's experts, Dr. Arambulo, carefully refrained from stating, even at this late date, that Kanasco is in compliance with CGMP. In May 1987, 2 months after the NOOH was published, he stated that he has "had some concerns with the training and supervision of Kanasco personnel, and any remaining problem(s) *can be remedied*." Kanasco Ex. 1, p. 4 (emphasis added). Indeed, as noted, Dr. Arambulo also stated that his review of Kanasco's operation led him to conclude that the "deficiencies involving CGMPs by [Kanasco] are *not out of line with similar deficiencies that I have observed in other elements of the pharmaceutical industry*. *** The alleged violations of current good manufacturing practice regulations stated in the **Federal Register** are correctable." *Id.* p. 5 (emphasis added). Kanasco's other expert, Mr. Byers, could only state in the broadest possible language that some aspects of the firm were in compliance with CGMP. Mr. Byers could not say, however, that Kanasco's facilities and various pieces of equipment were now in compliance with CGMP because the facilities and equipment are still being built. Kanasco Ex. 2, p. 6. Rather, he was necessarily forced to predict that the rebuilt plant "will result" in an adequate facility. *Id.*, p. 7. This prediction is not enough to delay summary judgment. Given the history of this firm, such a prediction can only be viewed as yet another promise to comply with CGMP.

If the record in this case did not reveal that this firm had had such a longstanding history of failing to comply with CGMP or if FDA believed there was a realistic expectation that the rebuilding efforts, to which Kanasco has alluded, were all that was needed to rectify the situation, the agency would not have initiated this proceeding, or continued with it. This is not the case. From the outset and throughout the history of this firm, a fundamental problem has been an insufficient number of qualified personnel to operate the plant and supervise and train employees. These problems will not vanish with a new or rebuilt facility.

For example, Kanasco has stated it is spending substantial amounts of money to replace floor drains and rebuild its microbiology laboratory. Kanasco Memo., p. 14 and 15. FDA has never said that the drains or the laboratory needed to be rebuilt. What is needed is a person who recognizes that when a drain does become clogged—be it an old drain or a new drain—someone will recognize that production must be stopped while the problem is remedied. Similarly, the most modern and well-equipped laboratory in the industry will be of little help if the employees do not follow recognized test procedures, allow equipment to go out of calibration, perform improper calculations, or falsify records.

C. Alleged Failure to Cite Regulations or Rely on Expert Testimony.

Kanasco also claims that the NOOH did not establish the CGMP standards that the firm failed to meet because FDA did not cite its own CGMP regulations or rely on expert opinion to articulate the CGMP standards Kanasco has allegedly violated. Kanasco Memo., p. 15. These contentions are legally and factually without merit.

The failure of the NOOH to correlate the specific deficiencies with specific CGMP regulations has not in any way prejudiced Kanasco. First, Kanasco has not pointed to a single instance in which the firm was unable to correlate the listed deficiencies with particular regulations. Nor can it credibly do so. One of its experts, Mr. Byers, spent 28 years with the FDA during which time he served, *inter alia*, as the agency's Director and Associate Director for Compliance, Bureau of Drugs. Kanasco Ex. 2, p. 1. As Kanasco acknowledges, Mr. Byers "is intimately familiar with FDA's standards and expectations

[8] Kanasco also notes parenthetically that the observations of FDA investigators do not represent the agency's conclusions. Kanasco Memo., p. 12. Where, as here, the agency has adopted virtually all of the investigators' observations in various complaints filed with the district court and declarations filed with the court and in FDA's own administrative proceedings, this contention is irrelevant.

regarding good manufacturing practices." Kanasco Memo., p. 13. Moreover, not one of Kanasco's declarations has identified a specific FDA observation which is not consistent with CGMP. *See* Kanasco Exs. 1 to 4.

In making its "failure to cite a regulation" argument, Kanasco also ignores the fact that the numerous declarations and exhibits filed in this proceeding (and in the district court) do correlate the CGMP deficiencies with the CGMP regulations. *See* FDA Exs., *passim*. Many of these documents have been in Kanasco's possession for years. Kanasco has always been fully apprised of the exact issues in controversy, and has not been misled (or even claimed that it has been misled) by the absence of particular regulatory citations in the NOOH. In short, the company has had full and fair notice of the allegations and a fair opportunity to rebut. Neither due process nor common sense require more.

Kanasco's contention that NOOH is not supported by expert opinion is incorrect and avoids the evidence which the Directors have filed in support of this proceeding. All of the expert declarations quoted in this order were filed with the Dockets Management Branch at the initiation of this proceeding. The registered letter which transmitted the NOOH to Kanasco plainly stated, "[t]he documents in support of this notice have been placed on display with the Dockets Management Branch, Room 4–62, 5600 Fishers Lane, Rockville, MD and are available for public examination between 9:00 a.m. and 4:00 p.m. Monday through Friday." *See* March 9, 1987, Letter to J. D. Copanos, Inc. In addition, another letter advised counsel for the firm that "virtually all of the evidence which is cited in the NOOH (i.e., up to and including the evidence obtained during the September 1986 inspection discussed in the **Federal Register** (52 FR 7316)) has been brought to Copanos' attention during the course of lengthy litigation begun in the United States District Court for the District of Maryland in October of 1984 (Civil No. K–85–3356, D. Md.). Copanos has had ample opportunity to review this evidence and respond to it." *See* April 23, 1987 letter to Robert Dormer, Esq., *in* Docket No. 87N–0078. *See also*, the NOOH, which refers to the documents filed with the district court. 52 FR 7312. Moreover, on May 27, 1987, a representative of the law firm which represents Kanasco asked for and received a copy of approximately 300 pages taken from the FDA exhibits filed in this proceeding. *See* June 10, 1987, Memorandum to Docket No. 87N–0078 from Jenny Butler. Finally, Kanasco's legal memorandum refers to the index of FDA exhibits filed with the Dockets Management Branch which lists, *inter alia*, all of the declarations of the CGMP experts upon which FDA has relied in this order. *See* Kanasco Memo., p. 8 n.7 and 12.

Kanasco cannot make this evidence disappear simply by failing to acknowledge its existence.

D. Alleged Failure to Compare Kanasco with Other Manufacturers

Nor is Kanasco correct in arguing that "FDA has never stated that Kanasco's CGMP inspections were worse or better than similar manufacturing facilities." Kanasco Memo., p. 15. To the contrary, FDA has, on numerous occasions commented on the relative adequacy of Kanasco's CGMP. *See*, e.g., FDA Ex. 35, October 21, 1985 Declaration of Kenneth E. Avis, p. 17 ("[i]n my experience as a consultant to the FDA, I have seen few firms with CGMP problems as significant and longstanding as [Kanasco]"); *id.*, October 21, 1985 Declaration of Salvatore I. Turco ("[i]n my experience as a consultant to the parenteral manufacturing industry and occasionally to the FDA, the type and extent of CGMP violations observed by FDA at this firm are unprecedented"); FDA Ex. 48, October 9, 1986 Declaration of David C. Pelham ("I have been employed by the FDA as an investigator for 12 years, during which time I have inspected approximately 30 manufacturers of sterile injectables drugs, 10 of which were veterinary drug manufacturers. In my opinion, the poor procedures and controls in place at this firm are among the most serious and extensive that I have ever observed.").

E. Alleged Failure to Distinguished Between Human Drugs and Animal Drugs

Equally without merit is Kanasco's argument that "FDA has failed to discuss whether there are differences in CGMP for human as opposed to animal drugs." Kanasco Memo., p. 15. Kanasco's suggestion that there are significant differences in CGMP for human as opposed to animal drugs is itself telling evidence of the firm's attitude toward CGMP. There is no difference. The CGMP regulations plainly state, "[t]he regulations in this part contain the minimum current good manufacturing practice for preparation of drug products for administration to humans or animals." 21 CFR 211.1 *See also*, FDA Ex. 35, October 21, 1985, Declaration of Kenneth E. Avis ("[t]he FDA has one set of regulations which spell out the minimum requirements for * * * CGMP and these regulations apply with equal force to both animal and human drugs").

F. Alleged Failure to Distinguish Between Kanasco's Oral and Injectable Manufacturing Operations

Kanasco's contention that FDA has not given any reason for the implicit determination that CGMP at Kanasco are adequate for oral dosage form drugs but not parenterals (Kanasco Memo., pp. 15 and 16) is not relevant. The agency has broad discretion to decide which proceedings to bring and which not to bring, and which regulatory measures it will apply in those matters it does bring. *Heckler* v. *Chaney*, 470 U.S. 821, 828 (1985). In this proceeding, there is abundant evidence to support the withdrawal of Kanasco's NDA's and NADA's.

Moreover, FDA has never stated that the CGMP at Kanasco's oral dosage form plant are faultless. To the contrary, FDA has pointed out CGMP problems to Kanasco on several occasions, and the agency has taken steps to effect compliance. *See* e.g., FDA Ex. 38, September 5, 1985 Interim Order requiring, *inter alia*, that the oral dosage form plant be fully supervised by employees of Parke-Davis. In the event that these measures prove to be insufficient to correct the situation at the oral dosage form plant, FDA will proceed appropriately. However, as shown by this order, FDA has expended a great many resources trying to bring Kanasco's injectable plant into compliance with CGMP.

G. The "Moving Target" Claim

Kanasco next argues that FDA has applied inconsistent standards to it depending upon which investigator visited the Kanasco facility; as a result, the argument continues, the company has been forced to shoot at "a moving target". Kanasco Memo., p. 15. This argument was raised by Kanasco shortly after the February-March 1985 inspection, and the FDA's response was as follows:

> * * * it has been suggested that the agency's evaluation of the significance of [one investigator's] observations is inconsistent with conclusions reached in prior FDA inspections in which [one investigator] failed to make some of the same observations * * *. For several reasons, we decline to accept this suggestion. First, it implies that all previous inspections of your facility were comprehensive. As you know, this is not the case. Our inspections frequently are conducted for only a limited purpose and are narrow in scope, e.g., to collect samples, to follow up on complaints, or to collect information about a specific product. Therefore, the absence of an

observation during an inspection may simply reflect that the particular process was not examined. The absence of an observation may also reflect that an investigator did not focus on the same points within a process as [another investigator]. Indeed, the explanation for the absence of an observation may well be that the conditions in your plant deteriorated in the intervening [period] between inspections. Second, the absence of a particular observation on a FD-483 does not mean either that the item was not significant or that it was not observed and brought to management's attention. An example of this is [one investigator's] observations regarding the inadequate number and qualifications of personnel at your firm. These concerns were not listed in the FD-483 left with you on March 15, 1985, but were discussed with [Kanasco representatives] during the exit interview. Third, and finally, the fact that FDA did not observe a CGMP deviation does not relieve you of the responsibility to know what CGMP requirements are and to detect and promptly correct deviations from those requirements on your own initiative.

FDA Ex. 26, April 12, 1985 letter to John D. Copanos, p. 3.

Moreover, it is settled that the FDC Act "imposes not only a positive duty to seek out and remedy violations when they occur *but also, and primarily a duty to implement measures that will insure that violations will not occur.*" *United States* v. *Park*, 421 U.S. 658, 672 (1975) (emphasis added).

Finally, Kanasco cites only three examples to support its "moving target" argument (the WFI system, the frequency of monitoring the environment for non-viable particulate contaminants, and new methods for validating the autoclave and heat tunnel). Kanasco Memo., p. 15. Even assuming that these problems had not been raised previously by FDA investigators, there is abundant evidence in this proceeding that these and other "targets," which FDA placed in front of Kanasco, were ignored entirely or only shot at half-heartedly. These matters (e.g., the lack of employee training and supervision, inadequate records and recordkeeping practices, failure of employees to follow company SOP's, failure to investigate test failures promptly, and falsification of manufacturing records) provide ample justification to withdraw Kanasco's NDA's and NADA's.

Nor has Kanasco pointed to a single specific "new method" that it claims FDA raised with respect to validating the heat tunnel and autoclave. Among the deficiencies which FDA pointed out in these areas was the absence of data to show that measuring devices used to validate the autoclave had been calibrated. 52 FR 7316. This requirement is plainly stated in the regulations (*See* 21 CFR 211.68(a)), and even if it were not stated in the regulations, should be apparent to any competent scientist. Another deficiency pointed out in the NOOH was the absence of any raw data to substantiate approximately one-half of the autoclave cycles which Kanasco claimed were validated. 52 FR 7316. The requirement for documentary evidence to support scientific conclusions is also plainly set forth in the CGMP regulations (*See* 21 CFR 211.180 and 211.194) and represents a fundamental concept familiar to anyone involved in drug manufacturing.

H. Claimed Inability to Attract Qualified Personnel

Kanasco next argues that "FDA's determination to destroy Kanasco" is clearly shown by its publication of the NOOH which has made it difficult for Kanasco to attract qualified employees. Kanasco Memo., p. 17. Again, Kanasco cites no specific facts to support this argument. The unrebutted evidence in this proceeding demonstrates quite the opposite. During the course of the inspection which occurred in the summer and fall of 1984—before the Government had filed its first complaint for injunctive relief in the district court—the president of the firm acknowledged that he was unable to attract a sufficient number of qualified persons to work at Kanasco.

Mr. Copanos told FDA investigators that Copanos was understaffed and that the firm did not have enough employees to accompany the investigators and continue operating the plant. He also stated that because of the staff problems, FDA investigators could not get Copanos' production records promptly. On October 3, 1984, Mr. Copanos stated that he had difficulty hiring qualified employees."

FDA Ex. 18, October 18, 1984 Declaration of Thomas L. Hooker, p. 7.

A summary of the evidence relating to Kanasco's current status shows, *inter alia*, the following: (1) Kanasco has not stated any specific facts or offered any documented eivdence to show that its employees have been trained either in general CGMP or in aseptic processing techniques, that its employees would receive such training on a continuing basis, or that a program has been instituted whereby employees would be monitored on a continuing basis to ensure that the training they did receive was effective, 21 CFR 211.25; (2) Kanasco continues to use unapproved ingredients in its injectable products, 21 CFR 211.22(c), 211.84(a), and 211.100(a); (3) Kanasco does not protect equipment used to fill sterile products from contamination prior to use, 21 CFR 211.67(b)(4); (4) Kanasco's recordkeeping is deficient in many respects in that the firm still does not contemporaneously document manufacturing and testing steps at the time of performance, does not have its employees sign and countersign documents showing that significant steps are performed, and does not conduct followup investigations when internal specifications are exceeded, 21 CFR 211.100(b), 211.188(b)(11), 211.194(a)(7) and (8), and 211.192; (5) Kanasco has failed to provide any data to validate the system it uses to deliver product ingredients from gel tanks to mixing tanks, or the sterilization filter used in that delivery system, 21 CFR 113(b); (6) Kanasco has failed to provide data showing either that its steam autoclave has been validated with respect to all representative load patterns, or that the thermocouples used to measure the heat distribution in the autoclave validation studies had been calibrated, 21 CFR 211.113(b), 211.68(a); (7) Kanasco has not provided raw data to substantiate approximately one-half of the autoclave cycles it attempted to validate, 21 CFR 211.113(b) and 211.194(a) (4) to (8); (8) Kanasco has not conducted a followup investigation to determine why its autoclave heat distribution studies failed to meet its own specification, 21 CFR 211.192; (9) Kanasco has not provided documentation to substantiate the endotoxin studies upon which it relies to validate the heat tunnel, 21 CFR 211.194(a) (4) to (8); (10) Kanasco produces human drug products that are required to be penicillin-free in a facility and with equipment used to make penicillin products, and does not test for possible cross-contamination veterinary products which are required to be penicillin-free and which are produced in the same facility and with the same equipment as penicillin products, 21 CFR 211.42(d) and 211.176; (11) Kanasco has not offered any documentation to show that critical manufacturing areas are maintained under class 100 conditions or protected by primary barriers, 21 CFR 211.46(b); (12) kanasco has not shown that it has an adquate number of qualified personnel to operate and supervise its operations, 21 CFR 211.25; and (13) Kanasco claims it is now in the process of upgrading its facility and critical air-handling equipment, which will require it to undertake yet further efforts to revalidate many of its systems.

CGMP does not consist of recruiting experts to testify in vague and conclusory terms that a manufacturer's facility, personnel, and processes are in compliance with CGMP or no less deficient than other manufacturers whose drug applications have not been

withdrawn. *Cf. United States* v. *An Article of Drug * * * 4,680 Pails*, 725 F.2d. 976, 987 (5th Cir. 1984) ("[s]ubstantial evidence [of a drug product's effectiveness] does not consist of the expressed opinions of experts hired to testify on behalf of one party or the other. Instead, it consists of adequate and well-controlled studies * * *"; where data required by the applicable legal standard are not available, summary judgment found to be appropriate); *United States* v. *Articles of Drug * * * Promise Toothpaste*, 624 F.Supp. 776, 783 (N.D. Ill. 1985) ("the manufacturer cannot avoid summary judgment simply by recruiting experts to testify that a particular drug is generally recognized as effective * * *"; where affidavits not based upon well-controlled studies, summary judgment is appropriate). Nor does CGMP consist of promises of corrections, undocumented and partially documented validation studies, or assurances that admittedly false batch records were prepared by well-intentioned employees. *See* Kanasco Exs. 1 and 2.

Rather, CGMP consists of well-trained employees monitored by an adequate number of equally well-trained, qualified supervisors, all of whom are dedicated to following specific written instructions; properly maintained facilities and equipment; accurate, contemporaneously prepared, and complete records which reflect each step in the manufacture and testing of products; and substantiation by reliable and comprehensive documentation that each of the foregoing have occurred and will continue to occur without interruption. 21 CFR Part 211.

VI. Findings

On the basis of the foregoing review of all the evidence submitted and legal arguments offered, the Commissioner finds that the methods used in and the facilities and controls used for, the manufacture, processing, and packing of all sterile injectable drugs produced by Kanasco, including those listed below, are inadequate to assure their identity, strength, quality, and purity, and were not made adequate within a reasonable time after receipt of written notice specifying the inadequacies. 21 U.S.C. 355(e), 360b(e)(2)(B). The products covered by this order are all injectable drugs produced by Kanasco, including the following:

NDA 60–684; Streptomycin sulfate; J. D. Copanos, Inc., 6110 Robinwood Rd., Baltimore, MD 21225.

NDA 60–800; Penicillin G procaine; J. D. Copanos.

NDA 60–896; Penicillin G potassium; J. D. Copanos.

NDA 60–951; Penicillin G sodium; J. D. Copanos.

NDA 61–936; Ampicillin G sodium; J. D. Copanos.

NDA 80–565; Cyanocobalamin; J. D. Copanos.

NADA 12–571; Iron dextran; "Ferron–100;" J. D. Copanos.

NADA 12–627; Prednisolone; "Ramasone;" J. D. Copanos.

NADA 30–728; Iron dextran; J. D. Copanos.

NADA 47–646; Dexamethasone; "Dexasone;" J. D. Copanos.

NADA 49–554; Phenylbutazone; "Buta-Phen;" J. D. Copanos.

NADA 49–552; Oxytocin; J. D. Copanos.

NADA 65–105; Procaine penicillin G and dihydrostreptomycin sulfate; "Veticil;" J. D. Copanos.

NADA 65–120; Dihydrostreptomycin sulfate; J. D. Copanos.

NADA 65–136; Procaine penicillin G; J. D. Copanos.

NADA 65–144; Procaine penicillin G, dihydrostreptomycin sulfate, dexamethasone, and chlorpheniramine maleate; "Dexamycin;" J. D. Copanos.

NADA 65–277; Benzathene penicillin and procaine penicillin G; "Combipen;" J. D. Copanos.

NADA 65–365; Chloramphenicol; "Veticol;" J. D. Copanos.

NADA 93–578; Oxytetracycline; J. D. Copanos.

NADA 124–510; Dexamethasone; J. D. Copanos.

Kanasco has failed to demonstrate the existence of a genuine and substantial issue of fact requiring a hearing. In numerous instances, Kanasco has failed to come forward with any evidence to rebut the facts that demonstrate that its operations were not and are not in compliance with CGMP. In other instances, the company has proffered only denials and conclusory and unsupported allegations that its processes were and are in compliance with the law. Even if the Commissioner were to accept these conclusory allegations as having some weight, such evidence does not present a sufficient area of disagreement to require an evidentiary hearing. Rather, the evidence is "so one-sided that [FDA] must prevail as a matter of law." *Anderson* v. *Liberty Lobby, Inc.*, —— United States ——, 105 S.Ct. at 2512 (1986).

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 505(e), 52 Stat. 1052–1053 as amended (21 U.S.C. 355(e) and sec. 512(e), 82 Stat. 343 (21 U.S.C. 360b(e)), and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Kanasco's motion for summary judgment and request for a hearing are denied, and approval of the above-listed NDA's and NADA's for sterile injectable products, and any other sterile injectable product made by Kanasco, and all amendments and supplements thereto, is hereby withdrawn. Distribution of these drug products in interstate commerce without an approved new drug or new animal drug application is illegal and subject to regulatory action. This order is effective September 8, 1987.

Dated: July 31, 1987.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 87–17828 Filed 8–5–87; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Subcommittee on Foreign Medical Graduates of the Council on Graduate Medical Education; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of September 1987:

Name: Subcommittee on Foreign Medical Graduates of the Council on Graduate Medical Education

Time: September 1, 1987; 8:30 a.m.–6:30 p.m.

Place: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852

Purpose: The Subcommittee reviews and analyzes existing data and information on alien and U.S. foreign medical graduates in training and in practice regarding adequacy of existing data bases, effect of existing policies and procedures regarding distribution, service delivery and international relations.

The Subcommittee will draft a chapter for the first report of the Council. Recommendations will concern the appropriate Federal policies and efforts to be carried out voluntarily by hospitals, schools of medicine and osteopathy, licensing, certifying, and accrediting bodies with respect to issues relating to foreign medical graduates.

Agenda: Agenda items include Panel presentations on: (1) international activities in the public and private sectors, (2) preliminary reports by contractors on studies on services to the indigent and FMG-dependent hospitals and health care quality control, and (3)

the recognition of foreign medical schools.

Anyone requiring information regarding the subject Subcommittee should contact Magdalena Miranda, Subcommittee Principal Staff Liaison, Division of Medicine, Bureau of Health Professions, Room 4C–13, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 30857 Telephone (301) 443–6785.

Agenda Items are subject to change as priorities dictate.

Date: August 3, 1987.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 87–17829 Filed 8–5–87; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–080–07–4213–23; F–85680]

Realty Action: Lease of Public Lands in Alaska for Airport Purposes; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The State of Alaska, Department of Transportation and Public Facilities has requested an airport lease to improve and expand an existing landing strip located within an Air Navigation Site (ANS 164). The State needs the lease in order to obtain Federal funds from the Federal Aviation Administration for the purpose of expanding the airport.

ADDRESSES: Written comments on this Notice should be submitted to the District Manager, Bureau of Land Management, Steese/White Mountains District, 1541 Gaffney Road, Fairbanks, Alaska 99703.

FOR FURTHER INFORMATION CONTACT: Rod Everett, Realty Specialist, at the address given above or telephone (907) 356–5356.

SUPPLEMENTARY INFORMATION: The following described lands in Chicken, Alaska are being considered for lease to the State of Alaska for airport purposes under the Act of May 24, 1928, as amended (49 U.S.C., Appendix 211–213):

Copper River Meridian, Alaska

T. 26 N., R. 18 E.,
Sec. 6: within NE¼
T. 27 N., R. 18 E.,
Sec. 31: within S½

The area described contains 68.094 acres.

The lands being considered will be leased to the State for the purpose of improving and expanding an existing landing strip. Lease of the lands is consistent with the Bureau's planning for this area and would be in the public interest.

The above described lands have been, and remain, segregated from all appropriation under the public land laws, including the mining laws but not the mineral leasing laws, subject to valid existing rights. The subject lands have been segregated by Air Navigation Site withdrawal (ANS 164), and selections by the State of Alaska (F–79586 and F–79587).

For a period of 45 days from the date of this publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager at the above address. Any adverse comments will be reviewed by the State Director, who may vacate, sustain, or modify the realty action and issue a final determination. In the absence of any objections, the final determination of the Department of the Interior will be made in accordance with this Notice.

Dated: July 30, 1987.

Donald E. Rumberg,

Manager, Steese/White Mountains District.

[FR Doc. 87–17814 Filed 8–5–87; 8:45 am]

BILLING CODE 4310–84–M

[CA–940–07–5410–01–ZBJC; CA 20449]

Realty Action; Conveyance of Mineral Interest in California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—conveyance of the reserved mineral interest.

SUMMARY: The private lands described in this notice will be examined for suitability for conveyance of the reserved mineral interest pursuant to section 209(b) of the Federal Land Policy and Management Act of October 21, 1976.

The mineral interest will be conveyed in whole or in part upon favorable mineral examination.

FOR FURTHER INFORMATION CONTACT: Lavonia Silva, California State Office, 2800 Cottage Way, Room E–2841, Federal Office Building, Sacramento, California 95825, (916) 978–4815.

The purpose is to allow consolidation of surface and subsurface ownership, for the lands described below, where there are no known mineral values or in those instances where the reservation of ownership of the mineral interest in the United States interferes with or precludes appropriate non-mineral development of the lands and such development would be a more beneficial use of the lands than its mineral development.

SAN BERNARDINO MERIDIAN

Serial No.	Legal description	Acres	County	Mineral reservation
CA 20449	T. 11 S., R. 4 E., Sec. 36, Lot 3, NW¼SE¼.	71.93	San Diego	100% All Minerals.

Upon publication of this Notice of Realty Action in the **Federal Register** as provided in 43 CFR 2720.1–1(b), the mineral interest owned by the United States in the private lands covered by the application shall be segregated to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate either by publication of an opening order, in the **Federal Register** specifying the date and time of opening; upon issuance of a patent or other document of conveyance to such mineral interest; upon final rejection of the application or two years from the date of filing of the application, whichever occurs first.

Dated: July 30, 1987.

Nancy J. Alex,

Chief, Lands Section Branch of Adjudication and Records.

[FR Doc. 87–17805 Filed 8–5–87; 8:45 am]

BILLING CODE 4310–40–M

[ID-050-07-4212-13-I-22245]

Realty Action; Exchange of Public Land in Jerome and Gooding Counties for Private Land Within Camas County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Exchange of public land in Jerome and Gooding Counties for private land within Camas County, Idaho.

DATE: Comments should be submitted to the Shoshone District Office, Bureau of Land Management, P.O. Box 2B, Shoshone, Idaho, 83352 by September 14, 1987.

Summary: The purpose of the exchange is to acquire the non-Federal grazing land to improve the manageability of the public lands for livestock and wildlife habitat. The exchange is consistent with the Bureau's planning for the lands involved and has been discussed with all affected County Commissioners, Idaho Department of Fish & Game, and the Idaho Department of Water Resources. The public interest will be well served by making the exchange.

The following described public lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716.

T. 7S., R. 16E., Boise Meridian, Gooding County, Idaho,
Sec. 19: Lot 2, SE¼NW¼, SW¼NE¼.
T. 7S., R. 16E., Boise Meridian, Jerome County, Idaho,
Sec. 20: E½;
Sec. 29: W½NE¼, NW¼SW¼.
Containing 545.01 acres.

In exchange for these lands, the Federal Government will acquire non-Federal lands from James E. Campbell described below:

T. 1N., R. 16E., Boise Meridian, Camas County, Idaho,
Sec. 5: SW¼NE¼, W½NW¼, SE¼NW¼, N½SW¼, NW¼SE¼;
Sec. 6: NE¼, NE¼NW¼, NE¼SE¼.
T. 2N., R. 16E., Boise Meridian, Camas County, Idaho,
Sec. 34: Lots 1 & 2, NE¼NE¼, S½NE¼, N½SE¼;
Sec. 35: Lots 3 & 4, NW¼, N½SW¼.
Containing 1130.35 acres.

The value of the lands to be exchanged is approximately equal, and the acreage will be adjusted or money will be used to equalize the values upon completion of the final appraisal of the lands.

There will be a reservation for all minerals to the Federal government on the public lands with no mineral reservations on the offered private land.

The patent when issued will contain the following reservations and conditions to the United States:

1. A right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945;

2. All valid existing rights and reservations of record on the date of patenting.

The publication of this notice in the **Federal Register** will segregate the public lands described above to the extent they will not be subject to appropriation under the public land laws, including the mining laws. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed, and shall be returned to the applicant.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning the exchange, including the environmental analysis and the record of public discussions, is available for review at the Shoshone District Office, 400 West F Street, Shoshone, Idaho, or by calling Mike Austin at (208) 886–2206.

SUPPLEMENTARY INFORMATION: For a period of 45 days from the date of this notice, interested parties may submit comments to the Shoshone District Manager regarding the proposed action. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of Interior.

Dennis Schulze,
Acting District Manager.
Dated: July 29, 1987.

[FR Doc. 87–17838 Filed 8–5–87; 8:45 am]
BILLING CODE 4310-GG-M

[I-23542; ID-030-07-4212-12]

Realty Action; Exchange of Public Lands in Bingham and Bonneville Counties, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; Exchange of Public Lands in Bingham and Bonneville Counties.

SUMMARY: The following described public lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

T. 1 N., R. 32 E., B.M.
Section 25;
T. 1 N., R. 33 E., B.M.
Sec. 2: SE¼SW¼, SW¼SE¼;
Sec. 8: S½;
Sec. 10;
Sec. 11: W½;
Sec. 12: S½;
Sec. 13: N½;
Sec. 21: SE¼;
Sec. 23: SW¼NE¼, NE¼SW¼, W½SE¼;
Sec. 28: SE¼NE¼, NE¼SE¼;
Sec. 31;
Sec. 35: SW¼NW¼, NW¼SW¼, E½SW¼, W½SE¼;
T. 2 N., R. 33 E., B.M.
Sec. 21: NW¼NW¼, S½NW¼, SW¼;
Sec. 23: E½;
Sec. 24;
Sec. 25: N½;
Sec. 28: NW¼NW¼;I26T. 1 N., R. 34 E., B.M.
Sec. 4: lot 4, W½NE¼NW¼, S½NW¼, SE¼, SW¼NW¼SE¼, S½SE¼;
Sec. 5: lots 1, 2, 3, and 4, S½N½;
Sec. 8: SW¼NE¼, E½SE¼;
Sec. 9: NE¼, E½NW¼, S½;
Sec. 10: S½NW¼NW¼, SW¼NW¼, W½SE¼NW¼, SW¼, SW¼NW¼SE¼, SW¼SE¼, S½SE¼SE¼;
Sec. 14: W½NW¼, W½SE¼NW¼, SW¼, SW¼NW¼SE¼;
Sec. 15;
Sec. 17: E½, SE¼NW¼, S½SW¼;
Sec. 19: NE¼, NE¼SW¼, N½SE¼;
Sec. 20: N½NE¼, W½, NE¼SE¼, S½SE¼;
Sec. 21: W½, W½E½;
Sec. 22: E½, NE¼NW¼, S½NW¼, N½SW¼, SE¼SW¼;
Sec. 23: W½NE¼, N½NW¼, W½SW¼, SW¼SE¼SE¼;
Sec. 26: W½NE¼NE¼, SW¼SW¼NE¼, NW¼NW¼, SW¼SW¼, N½SE¼S W¼, SW½NW¼SE¼, NW¼SW¼SE¼;
Sec. 27: N½NE¼, W½, S½SE¼;
Sec. 28: NE¼, NW¼NW¼, E½SE¼;
Sec. 29: NE¼NW¼;
Sec. 32: SW¼NE¼, SW¼,NW¼, SW¼, W½SE¼;
Sec. 33: N½NE¼, SW¼NE¼, E½NW¼, N½SW¼, SE¼;
Sec. 34: N½, N½SW¼, SW¼SW¼, N½SE¼, SE¼,SE¼;
Sec. 35: W½NW¼, W½SW¼, SW¼NE¼SW¼;
T. 2 N., R. 34 E., B.M.
Sec. 7: S½SE¼;
Sec. 18: lots 1 and 4, NE¼NW¼, SE¼SW¼, E½SE¼;
Sec. 19: NE¼;
Sec. 30: S½SE¼;
Sec. 33: W½NW¼NW¼, SW¼NW¼, N½SW¼, SW¼SW¼, W½SE¼SW¼;
Containing 13,952.48 acres.

In exchange for these lands, the Federal Government will acquire scattered sections of non-Federal lands in Butte, Custer, Blaine, Clark, and Bingham Counties from the State of Idaho, described as follows:

T. 3 N., R. 23 E., B.M.
Sec. 36;
T. 2 N., R. 24 E., B.M.
Sec. 16: lots 1, 3, and 4, W½NE¼, NW¼, N½SW¼, NW¼SE¼;
T. 4 N., R. 24 E., B.M.
Sec. 36;
T. 5 N., R. 24 E., B.M.
Sec. 16;
T. 6 N., R. 24 E., B.M.
Sec. 16;
T. 4 N., R. 25 E., B.M.
Sec. 16: W½, SW¼SE¼;
T. 5 N., R. 25 E., B.M.
Sec. 36;
T. 6 N., R. 25 E., B.M.
Sec. 16: E½NE¼, SW¼NE¼, SE¼NW¼, E½SW¼, SE¼;
T. 3 N., R. 26 E., B.M.
Sec. 36;
T. 1 N., R. 27 E., B.M.
Sec. 36;
T. 2 N., R. 27 E., B.M.
Sec. 16 and 36;
T. 3 N., R. 27 E., B.M.
Sec. 36;
T. 1 N., R. 28 E., B.M.
Secs. 16 and 36;
T. 1 N., R. 29 E., B.M.
Sec. 16;
T. 10 N., R. 29 E., B.M.
Sec. 36;
T. 9 N., R. 30 E., B.M.
Sec. 16;
T. 1 S., R. 27 E., B.M.
Sec. 36;
T. 2 S., R. 27 E., B.M.
Sec. 36;
T. 1 S., R. 28 E., B.M.
Sec. 16;
T. 1 S., R. 29 E., B.M.
Secs. 16 and 36;
T. 2 S., R. 31 E., B.M.
Sec. 16;

Containing 14,624.46 acres.

The purpose of the exchange is to dispose of scattered, difficult to manage public land parcels while acquiring State-owned lands which would compliment the Bureau's land management pattern. The exchange would also allow the Bureau to acquire certain State lands containing important wildlife and recreation values. The exchange is consistent with the Bureau's land use planning. The concept of land exchange has been generally discussed with Federal, State, and local governmental agencies, public land user groups, and individuals through participation in the Bureau's land use planning process. The exchange will include both surface and mineral estates.

The value of the lands to be exchanged is approximately equal, and the acreage will be adjusted to equalize the values upon completion of the final appraisal of the lands.

The terms and conditions applicable to the exchange are:

FEDERAL LANDS

1. The reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 USC 945).

2. Those rights for powerline purposes as granted to Utah Power & Light Company under serial number I-0881.

3. Those rights for powerline purposes as granted to Idaho Power Company under serial numbers I-3459 and I-6485.

STATE LANDS

1. Easement 4907—Road easement to the BLM.

2. Easement 568—Road easement to the State Highway Department.

3. Easement 2860—Powerline easement to Utah Power & Light Company.

4. Easement 4130—Road easement to the BLM.

5. Minerals Lease 0-1659—Oil & Gas lease to E.P. Operating Company.

6. Easement 5232—Road easement to the BLM.

7. Easement 4087—Powerline easement to Lost River Electric.

8. Easement 4391—Powerline easement to Lost River Electric.

The publication of this notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed, and shall be returned to the applicant.

The non-Federal lands described above are subject to prior Federal reserved minerals. The prior Federal interests are hereby segregated to the extent that such interests will not be subject to appropriation under the mining laws until a notice pursuant to 43 CFR 2200.3(a) is issued.

Detailed information concerning the exchange, including the environmental analysis, is available for review at the Idaho Falls District Office, 940 Lincoln Road, Idaho Falls, Idaho 83401.

For a period of 45 days interested parties may submit comments to the Idaho Falls District Manager at the address listed above.

Date: July 31, 1987.
Lloyd H. Ferguson,
District Manager.
[FR Doc. 87-17909 Filed 8-5-87; 8:45 am]
BILLING CODE 4310-GG-M

[ID-040-07-4212-14; I-22491, I-23768, I-23339, I-23340]

Realty Action; Sale of Public Land in Lemhi County, ID; Correction

AGENCY: Bureau of Land Management, Interior.

REALTY ACTION: Sale of Public Land in Lemhi County, Idaho; Correction.

SUMMARY: Correction of Notices of Realty Action published in Vol. 52 No. 107, Thursday June 4, 1987, page 21126 (I-23339, I-23340) and Vol. 52 No. 122, Thursday, June 25, 1987, page 23896 (I-22491, I-23768). The notices are corrected by adding the following paragraph:

The segregation on these public lands will expire 270 days from the date of publication in the **Federal Register** or upon issuance of a patent, whichever comes first.

Dated: July 30, 1987.
Jerry W. Goodman,
District Manager.
[FR Doc. 87-17910 Filed 8-5-87; 8:45 am]
BILLING CODE 4310-GG-M

[CO-942-06-4520-12]

Filing of Plats of Survey; Colorado

July 28, 1987.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 a.m., July 28, 1987.

The supplemental plat showing a subdivision of lot 8, section 30, T. 19 S., R. 73 W., Sixth Principal Meridian, Colorado was accepted July 13, 1987.

The supplemental plat prepared to correct the acreage of lot 22, in section 7 and correcting a platting error of the bearing of the N½ mile between sections 7 and 12, on the west boundary, T. 1 N., R. 100 W., Sixth Principal Meridian, Colorado, was accepted July 8, 1987.

The plat representing the dependent resurvey of portions of the First Guide Meridian East (west boundary), north boundary, and subdivisional lines, T. 45 N., R. 9 E., New Mexico Principal Meridian, Colorado, Group No. 819, was accepted July 16, 1987.

The plat representing the dependent resurvey of portions of the First Guide Meridian East (east boundary) and the south boundary, T. 46 N., R. 8 E., New Mexico Principal Meridian, Colorado, Group No. 819, was accepted July 16, 1987.

BEST COPY AVAILABLE

These surveys were executed to meet certain administrative needs of this Bureau.

The plat representing the dependent resurvey of the south boundary, portions of the east and west boundaries, subdivisional lines, and certain mineral surveys, and the metes-and-bounds survey of the Fairview Exchange in section 36, T. 51 N., R. 3½ W., New Mexico Principal Meridian, Colorado, Group No. 758, was accepted July 10, 1987.

The plat representing the dependent resurvey of the east boundary, a portion of the north boundary, and subdivisional lines and the subdivision of certain sections, T. 45 N., R. 4 W., New Mexico Principal Meridian, Colorado, Group No. 767, was accepted July 14, 1987.

These surveys were executed to meet certain administrative needs of the U.S. Forest Service.

The protraction diagram of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 a.m., September 14, 1987.

Protraction Diagram No. 12A, prepared to delineate the remaining unsurveyed public lands in T. 10 S., R. 90 W., Sixth Principal Meridian, Colorado, was approved July 8, 1987.

This diagram was prepared to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215.

Jack A. Eaves,

Chief, Cadastral Surveyor for Colorado.

[FR Doc. 87-17886 Filed 8-5-87; 8:45 am]

BILLING CODE 4310-JB-M

[AK-932-07-4220-10; AA-8904]

Termination of Proposed Withdrawal and Reservation of Lands; Alaska

July 29, 1987.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates the segregative effect of a proposed withdrawal and reservation of lands requested by the U.S. Coast Guard for use as aids to navigation at Gull Island Light, Cohen Island Light, Point Pogibshi Light, and Perl Rock Light, Alaska.

EFFECTIVE DATE: August 6, 1987.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, 907-271-5477.

Notice of a proposed withdrawal and reservation of lands for the U.S. Coast Guard was published in the **Federal Register** on January 12, 1978, Vol. 43, No. 8, page no. 1841, FR Doc. 78-806. The purpose of the application, serial number AA-8904, was for aids to navigation. The lands described in the **Federal Register** publication referred to above are no longer under the jurisdiction of the Federal government, and the application has been denied. At 8:00 a.m., Alaska Daylight Time, on the date of this publication, such lands will be relieved of the segregative effect of the above-mentioned application.

Sue A. Wolf,

Chief, Branch of Land Resources.

[FR Doc. 87-17863 Filed 8-5-87; 8:45 am]

BILLING CODE 4310-JA-M

[AZ-040-07-4322-02]

Safford District Grazing Advisory Board Meeting; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bureau of Land Management (BLM), Safford District announces a forthcoming meeting of the Safford District Grazing Advisory Board.

DATE: Friday, September 11, 1987; 9:00 a.m.

ADDRESS: BLM Office, 425 E. 4th Street, Safford, Arizona 85546.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with Pub. L. 92-463. The agenda for the meeting will include:

1. Guidelines for time control grazing.
2. Policy on maintenance of Range Improvement Projects following a wildfire.
3. Report on Stewardship Conference.
4. Proposed Range Improvement projects for Fiscal Year 1988.
5. Allotment Management Plans to be implemented in Fiscal Year 1988.
6. BLM management update.
7. Business from the floor.

The meeting will be open to the public. Interested groups may make oral statements to the Board between 10:00 p.m. and 11:00 p.m. A written copy of the oral statement may be required to be provided at the conclusion of the presentation. Written statements may also be filed for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 425 E. 4th St., Safford, AZ 85546, by 4:15 p.m., Thursday, September 10, 1987.

Summary minutes of the Board meeting will be maintained in the District Office and will be available for public inspection and reproduction (during regular business hours) within thirty (30) days following the meeting.

Dated: July 29, 1987.

Ray A. Brady,

District Manager.

[FR Doc. 87-17836 Filed 8-5-87; 8:45 am]

BILLING CODE 4310-32-M

[OR-030-4322-02; GP7-257]

Vale District Grazing Advisory Board Meeting; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 92-463 that a meeting of the Vale District Advisory Board will be held on September 17, 1987.

The meeting will begin at 9:00 a.m. in the conference room of the Bureau of Land Management at 100 Oregon Street, Vale, Oregon 97918.

The agenda for the meeting will include: (1) Report on Fiscal Year 1987 Projects, (2) Fiscal Year 1988 Project Plans, and, (3) Discussion and recommendations for the Whitehorse Allotment Management Plan.

The meeting is open to the public. Interested persons may make oral statements to the Board, or may file written statements for the Board's consideration. Anyone wishing to make oral statements must notify the District Manager, Bureau of Land Management, 100 Oregon Street, Vale, Oregon 97918, by September 16, 1987. Depending on the number of persons to make oral statements, a per person time limit may be established by the Dsitrict Manager.

Summary minutes of the Board meeting will be maintained in the District Office and be available during regular business hours for public inspection and reproduction within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: Bill Calkins, District Manager, Vale District, Bureau of Land Management, P.O. Box 700, 100 Oregon Street, Vale, Oregon 97918, (Telephone 503/473-3144).

David Lodzinski,

Acting District Manager.

[FR Doc. 87-17837 Filed 8-5-87; 8:45 am]

BILLING CODE 4310-33-M

[UT-930-4322-02]

Combined District Advisory Board Meetings; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given in accordance with Pub. L. 92-463 that a joint meeting of Utah District Grazing Boards will be held September 9, 10 and 11, 1987. The meeting will begin with a dinner in the Taggart Center on the campus of Utah State University (USU), Logan, Utah at 6:00 p.m. on September 9, 1987. The business meeting on September 10 will begin at 8:00 a.m. in the Eccles Conference Center, USU. The agenda for the business meeting will include:

1. Meeting challenges facing livestock industry.
2. Update on BLM rangeland policy.
3. Report for Range Extension Specialists.
4. Noxious Weed Control.

During the afternoon of September 10 and the morning of September 11 there will be a tour of the Resources Plant Research Lab and the Forage and Range Labs.

The meeting is open to the public. Interested persons must furnish their own transportation. Anyone wishing to participate or present a statement should notify the Public Affairs Office, Utah State Office, 324 South State Street, Suite 301, Salt Lake City, Utah 84111-2303, or telephone (801) 524-3146 by September 4, 1987.

FOR FURTHER INFORMATION CONTACT: Ken Boyer, Range Conservationist, BLM, Utah State Office, at the above address (801) 524-3121).

Dated: July 30, 1987.

Joseph Jewkes,

Acting State Director.

[FR Doc. 87-17908 Filed 8-5-87; 8:45 am]

BILLING CODE 4310-DQ-M

[WY 060-07-4121-02]

Casper District Advisory Council Meeting; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Casper District Advisory Council meeting.

SUMMARY: The Casper District Advisory Council will meet Tuesday, September 22, 1987 in the conference room of the Casper District Office, 1701 East E Street, Casper, Wyoming. The meeting will begin at 9:00 a.m. MDT.

The meeting agenda will include an update on the known geologic structure (KGS) study, a discussion on the impacts of the cultural resource program on drill sites, updates on the Power River Basin resurvey and Operation Respect, a summary of the withdrawal review program, and comments from the public. Other topics may be considered as suggested by council members or the public.

Meetings are open to the public. Persons who desire to address the council are asked to contact Tim Monroe at (307) 261-5101 in advance of the meeting.

Dated: July 29, 1987.

James W. Monroe,

District Manager.

[FR Doc. 87-17906 Filed 8-5-87; 8:45 am]

BILLING CODE 4310-22-M

[WY-040-07-4133-15]

Rock Springs District Advisory Council Meeting; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the Rock Springs District Advisory Council.

DATE: The meeting and tour will be held September 3, 1987, at 8:45 a.m.

ADDRESS: Rock Springs District Office, Bureau of Land Management, U.S. Highway 191 North, Rock Springs, Wyoming.

FOR FURTHER INFORMATION CONTACT: Donald H. Sweep, District Manager, Rock Springs District, Bureau of Land Management, P.O. Box 1869, Rock Springs, Wyoming 82902-1869, (307) 382-5350.

SUPPLEMENTARY INFORMATION: The meeting and tour will begin at 8:45 a.m., Thursday, September 3, at the Kemmerer Resource Area Office Conference Room in Kemmerer. The tour will leave at 9 a.m. sharp and return about 5 p.m. The public is invited to attend; however, BLM will not provide transportation.

The agenda is: Oregon/Mormon Trail Management Briefing and Tour; Update on District Programs; Public Comment Period.

Gene C. Herrin,

Associate District Manager.

July 31, 1987.

[FR Doc. 87-17907 Filed 8-5-87; 8:45 am]

BILLING CODE 4310-22-M

[UT 080-07-4322-02]

Vernal District Grazing Advisory Board; Meeting

July 30, 1987.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Vernal District Grazing Advisory Board meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 92-463, that a meeting of the Vernal District Grazing Advisory Board will be held Wednesday, September 9, 1987, commencing at 8:00 a.m. The meeting will be held in the District Office conference room at 170 South 500 East, Vernal, Utah.

The agenda items will include (1) Range Improvements, (2) Predator and Pest Control, (3) Riparian Area Management Program, (4) Three Corners Rangeland Program Summary Update, (5) Items From The Public, If Any.

The meeting is open to the public. Interested persons wishing to participate or present a statement should notify the District Manager at the above mentioned address or phone him at (801) 789-1362 no later than September 8, 1987.

David E. Little,

District Manager.

[FR Doc. 87-17905 Filed 8-5-87; 8:45 am]

BILLING CODE 4310-DQ-M

Minerals Management Service

Development Operations Coordination Document; ARCO Oil and Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that ARCO Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 0438, Block 175, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Amelia, Louisiana.

DATE: The subject DOCD was deemed submitted on July 27, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of

Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: July 27, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-17867 Filed 8-5-87; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Chevron, U.S.A.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Chevron U.S.A. Inc., Unit Operator of the South Timbalier Block 135 Federal Unit Agreement No. 14-08-001-8669, has submitted a DOCD describing the activities it proposes to conduct on the South Timbalier Block 135 Federal unit. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Leeville, Louisiana.

DATE: The subject DOCD was deemed submitted on July 23, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Steve Dessauer; Minerals Management Service, Gulf of Mexico OCS Region, Production and Development; Development and Unitization Section; Unitization Unit; Telephone (504) 736-2860.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: July 27, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-17869 Filed 8-5-87; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Hughes-Denny Offshore Exploration, Inc.

AGENCY: Mineral Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Hughes-Denny Offshore Exploration, Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 4761, Block 277, West Cameron Area, offshore Louisiana. Proposed plan for the above area provide for the development and production of hydrocarbons with support activities to be conducted from onshore bases located at Cameron, Houma, and Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on July 27, 1987. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m.; Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCD available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Date: July 28, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-17868 Filed 8-5-87; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Texaco U.S.A.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Texaco U.S.A., Unit Operator of the South Marsh Island Block 236 Federal Unit Agreement No. 14-08-0001-20234, has submitted a DOCD describing the activities it proposes to conduct on the South Marsh Island Block 236 Federal unit. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from onshore bases located at Louisa and Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on July 24, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Roy Bongiovanni; Minerals Management Service; Gulf of Mexico OCS Region; Production and Development; Development and Unitization Section; Unitization Unit; Telephone (504) 736-2650.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: July 28, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-17884 Filed 8-5-87; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Elf Aquitaine, Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Elf Aquitaine has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 4664, Block 164, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on July 30, 1987. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: July 31, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-17911 Filed 8-5-87; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[No. MC-C-30038]

Petition for Declaratory Order; American Coach Lines, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of filing of petition for declaratory order.

SUMMARY: American Coach Lines, Inc. (ACL), holds a certificate to conduct regular-route passenger operations that embrace incidental charter rights. The authority permits ACL to operate over routes extending generally between Washington, DC, on the one hand, and, on the other, Baltimore and Frederick, MD. ACL has filed a petition seeking a declaratory order as to whether it may conduct charter operations entirely within the Washington, DC, metropolitan area under this authority, or whether such operations are subject to the jurisdiction of the Washington Metropolitan Area Transit Commission. The Commission has instituted a proceeding and comments on this issue are invited.

DATES: Comments may be filed on or before September 8, 1987.

ADDRESSES: Send an original and 10 copies of comments referring to No. MC-C-30038 to:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

Send one copy of comments to each of petitioner's representatives:

Leonard A. Jaskiewicz, 1730 M Street, NW., Suite 501, Washington, DC 20036

Lawrence E. Lindeman, 805 King Street, Suite 400, Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: James L. Brown, (202) 275-7898

or

Andrew L. Lyon, (202) 275-7291.

SUPPLEMENTARY INFORMATION: The Commission's decision contains additional information. To obtain a copy of the decision, write to the Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423, or call (202) 275-7428.

Authority: 5 U.S.C. 554, 49 U.S.C. 10521(a), 10321, and 10932(c), and Pub. L. No. 86–794.

Decided: July 30, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87–17877 Filed 8–5–87; 8:45 am]

BILLING CODE 7035–01–M

[No. 35940]

Investigation into the Lawfulness of Interchange Arrangements Between the Bangor and Aroostook Railroad and CP Rail at Brownville Junction, ME

AGENCY: Interstate Commerce Commission.

ACTION: Notice of filing of petition by Canadian Pacific Limited (CP Rail) to lift cease and desist order.

SUMMARY: By petition filed May 27, 1987, CP Rail requests that the Commission lift a cease and desist order entered in *Interchange Arrangements Between BAR and CP*, 361 I.C.C. 615 (1979). The Bangor and Aroostook Railroad Company (BAR) submitted a letter in support. The Commission seeks comments from interested parties.

DATES: Comments are due on August 20, 1987. Replies are due on September 15, 1987.

ADDRESSES: Send comments referring to No. 35940 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representatives: Charles H. White, Jr., George M. Pond, Peper Martin, Jensen, Maichel, and Hetlage, 1700 Pennsylvania Ave., NW., Suite 400, Washington, DC 20006–4706.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245.

SUPPLEMENTARY INFORMATION:

By decision in this proceeding at 356 I.C.C. 749 (1977), the Commission found that BAR and CP Rail had entered into an agreement in which BAR unjustifiably routed traffic originating or terminating on its lines via its interchange with petitioner at Brownville Junction, ME, rather than distributing it more evenly with an alternate interchange with the Maine Central Railroad Company (MEC) at Northern Maine Junction, ME. The Commission concluded that, between 1970 and 1974, BAR and petitioner unreasonably discriminated against MEC and its connecting carrier, the Boston and Maine Corporation (B&M), in distributing traffic not specifically routed by a shipper in violation of section 3(4) of the Interstate Commerce Act (now 49 U.S.C. 10701(c)). The Commission ordered BAR to pay damages to MEC and B&M, retained jurisdiction, and directed BAR and petitioner to refrain from further violations of section 3(4). In response to *Bangor & A.R. Co.* v. *I.C.C.*, 574 F.2d 1096 (1st Cir. 1978), the Commission, at 361 I.C.C. 615 (1979), modified its previous cease and desist order by setting more specific parameters of proscribed conduct.

Petitioner seeks removal of that order on grounds that it is contrary to the present Rail Transportation Policy of section 10101a, is anticompetitive, and conflicts with the freedom to contract conferred by section 10713(a). The Commission seeks comments from interested parties.

The petition is available for inspection in the Commission's Public Docket Room 1221. Additionally, a copy of the petition can be obtained from CP Rail's counsel, Charles H. White, Jr., at 1700 Pennsylvania Avenue, NW., Suite 400, Washington, DC 20006, or purchased by writing the Commission's Certification Unit, Room 1312, Interstate Commerce Commission, Washington, DC 20423.

Decided: July 30, 1987.

By the Commission, Chairman Gradison, Vice chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87–17876 Filed 8–5–87; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Consent Decree in Action To Enjoin Discharge of Water Pollutants; Apex Painting and Polishing Co., Inc.

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a consent decree in *United States* v. *Apex Plating and Polishing Co., Inc.*, Civil Action No. 86–0919 (JWB), was lodged with the United States District Court for the District of New Jersey on July 2, 1987. The consent decree establishes a compliance program for the New Jersey plant owned and operated by Apex to bring the plant into compliance with the Clean Water Act, 33 U.S.C. 1251 *et seq.*, and the applicable pretreatment regulations relating to the discharge of pollutants and requires payment of a civil penalty of $17,000.00.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *Apex Plating and Polishing Co., Inc.*, D.J. Ref. No. 90–5–1–1–2532.

The consent decree may be examined at the office of the United States Attorney, District of New Jersey, U.S. Courthouse, 502 Federal Bldg., 970 Broad St., Newark, N.J. 07102; at the Region II office of the Environmental Protection Agency, 27 Federal Plaza, New York, New York 10278; and the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Washington, DC 20530. In requesting a copy, please enclose a check in the amount of $1.50 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87–17839 Filed 8–5–87; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Water Act; Joliet, IL

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on July 28, 1987, a proposed consent decree in *United States* v. *City of Joliet*, Civil Action No. 86–C–2512, was lodged with the United States District Court for the Northern District of Illinois. The proposed consent decree resolves a judicial enforcement action brought by the United States against the City of Joliet for violations of the Clean Water Act.

The proposed consent decree requires the City of Joliet to implement and enforce the provisions of its pretreatment program. Joliet is required to (1) inspect all significant industrial users within six months of entry of the decree; (2) monitor its POTW influent, effluent and sludge on a monthly basis for priority pollutants; (3) take timely and appropriate enforcement action pursuant to its Enforcement Response Procedures to address violations of its pretreatment plan and its Sewer Use Ordinance; and (4) submit to U.S. EPA quarterly reports detailing all actions taken by Joliet pursuant to its pretreatment plan. The proposed decree also requires Joliet to pay a civil penalty of $30,000.

The proposed consent decree may be examined at the office of the United States Attorney, 219 South Dearborn Street, Chicago, Illinois and at the office of Regional Counsel, Environmental

Protection Agency, 230 South Dearborn Street, Chicago, Illinois.

Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87-17840 Filed 8-5-87; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to Clean Water Act; Parker Metals

In accordance with departmental policy, 28 CFR 50.7, notice is hereby given that on July 6, 1987, a proposed consent decree in *United States* v. *Parker Metals,* Civil Action No. 85-3882-S, was lodged with the United States District Court for the District of Massachusetts. The proposed consent decree concerns violations of the general and categorical pretreatment requirements under section 307 and 308 of the Clean Water Act, 33 U.S.C. 1317 and 1318. The proposed consent decree requires the defendants to pay a civil penalty of $250,000; to comply with federal pretreatment standards as set forth in 40 CFR 403.12(b); to submit to the EPA and to the local POTW a Baseline Monitoring Report on cyandie, metals, and total toxic organisms; and to sample and analyze the process wastewater according to a proscribed schedule.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Parker Metals,* D.J. Ref. 90-5-1-1-2450.

The proposed Consent Decree may be examined at the office of the United States Attorney, District of Massachusetts, 1107 John W. McCormack Federal Building, United States Post Office and Courthouse, Boston, Massachusetts 02109, and at the Region I Office of the Environmental Protection Agency, John F. Kennedy Federal Building, Room 2203, Boston, Massachusetts 02203. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.30 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87-17841 Filed 8-5-87; 8:45 am]

BILLING CODE 4410-01-M

Consent Decree in Action to Enjoin Discharge of Water Pollutants; Star Chromium Corp.

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a consent decree in *United States* v. *Star Chromium Corp.,* Civil Action No. 85-4479 was lodged with the United States District Court for the Eastern District of New York on July 29, 1987. The consent decree establishes a compliance program for the New York plant owned and operated by Star Chromium Corp. to bring the plant into compliance with the Clean Water Act, 33 U.S.C. 1251 et seq., and the applicable pretreatment regulations relating to the discharge of pollutants and requires payment of a civil penalty of $22,000.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *Star Chromium Corp.,* D.J. Ref. No. 90-5-1-1-2466.

The consent decree may be examined at the office of the United States Attorney, Eastern District of New York, U.S. Courthouse, 225 Cadman Plaza East, Brooklyn, New York 11201; at the Region II office of the Environmental Protection Agency, 27 Federal Plaza, New York, New York 10278; and the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87-17842 Filed 8-5-87; 8:45 am]

BILLING CODE 4410-01-M

Bureau of Prisons

National Institute of Corrections; Annual Program Plan and Academy Training Schedule for Fiscal Year 1988

The National Institute of Corrections (NIC), U.S. Department of Justice, has released its "Annual Program Plan and Academy Training Schedule for Fiscal Year 1988." The document describes the Institute's program of training, technical assistance, information services, research/evaluation, and policy development projects planned for the next fiscal year. It also describes the Institute's schedule of training seminars to be conducted by the NIC National Academy of Corrections and contains application forms.

To obtain a copy of the document, contact the National Institute of Corrections, 320 First Street, NW., Washington, DC 20534. Telephone 202-724-8449; TDD for hearing impaired, 202-724-3156.

Raymond C. Brown,

Director.

[FR Doc. 87-17870 Filed 8-5-87; 8:45 am]

BILLING CODE 4410-05-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (87-62)]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of agency report forms under OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

DATE: Comments must be received in writing by August 7, 1987. If you anticipate commenting on a form but

find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Clearance Officer of your intent as early as possible.

ADDRESS: Rayburn A. Metcalfe, NASA Agency Clearance Officer, Code NP, NASA Headquarters, Washington, DC 20546; Bruce McConnell, Office of Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer, (202) 453–1090.

Reports

Title: Application for Patent License.
OMB number: 2700–0039.
Type of request: Extension.
Frequency of report: As required.
Type of respondent: Businesses or other for-profit.
Annual responses: 25.
Annual burden hours: 150.
Abstract-need/uses: Pursuant to 35 U.S.C. 209, applicants for patent licenses must submit specific information in support of the application for license. The information is used to decide whether a request is approved or denied.

Rayburn A. Metcalfe,
Acting Director, General Management Division.

[FR Doc. 87–17856 Filed 8–5–87; 8:45 am]
BILLING CODE 7516-01-M

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974; Systems of Records

AGENCY: Office of Personnel Management.
ACTION: Notice.

SUMMARY: This notice proposes the establishment of OPM/CENTRAL–4, Inspector General Case File Records, which is a new Office of Personnel Management (Office) system of records. This system covers case file records maintained on Office employees and other individuals (private sector or other agencies) relating to matters within the purview of the Office's Inspector General function.

DATE: Comments on the routine uses for the OPM/CENTRAL–4 system must be received on or before September 8, 1987.

ADDRESS: Send or deliver written comments to the Assistant Director for Workforce Information, Personnel Systems and Oversight Group, Office of Personnel Management, Room 5415, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: William H. Lynch, (202) 632–5433.

SUPPLEMENTARY INFORMATION: The Office's Inspector General has been maintaining case file records chronologically and by subject matter. However, because the case files will now be retrieved by name or other identifier associated with an individual, they will be considered to be a system of records within the meaning of the Privacy Act. This change in system maintenance is necessitated by use of automated storage media and the need to facilitate records management, including disposal of records according to established retention schedules.

Because these records will contain investigative material created by the Inspector General's staff and, perhaps, information obtained from other Office or agency investigative records, exemptions are being claimed from certain provisions of the Privacy Act regarding access to the files containing source data from systems for which an exemption is already claimed, the accounting of disclosures of the files, and amendment of records. The exemptions claimed for the system will be the subject of a separate **Federal Register** notice of changes to the Office's Privacy Act regulations (5 CFR Part 297).

The establishment of a new system is an action subject to the provisions of the Privacy Act (5 U.S.C. 552a(o)) requiring advance notice to Congress and the Office of Management and Budget. Because the conversion of the method of storage of these records will not occur until the system is established, no waiver of the 60-day advance notice period has been requested.

This notice becomes final, without any further **Federal Register** notice, on November 4, 1987, unless comments received necessitate otherwise.

Office of Personnel Management.
Constance Horner,
Director.

Accordingly, the Office proposes the following new system of records to be identified as OPM/CENTRAL–4, Inspector General Case File Records.

OPM/CENTRAL–4

SYSTEM NAME:

Inspector General Investigations Case Files.

SYSTEM LOCATION:

Office of the Inspector General, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Office employees, certain current and former employees of other Federal agencies, annuitants, and contractors with the Office.

CATEGORIES OF RECORDS IN THE SYSTEM:

Case files contain individual identifiers such as name, date of birth, social security number, employee number, civil service retirement case file number, and related personal information. Case files are created pertaining to matters including the following:

(1) Fraud against the Government; (2) Theft of Government property; (3) Misuse of Government property; (4) Improper personal conduct; (5) Irregularities in awarding contracts; (6) Improper personnel practices; (7) Call detailing case records; and (8) Initiatives arising from the President's Council on Integrity and Efficiency.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE:

Information in case files serves to document the outcome of investigations, reporting the results of investigations to other Office components or agencies for their use in evaluating their programs and imposition of any civil or administrative sanctions, and, if appropriate, reporting the results of the investigations to other agencies for any action deemed appropriate, and for retaining sufficient information to fulfill the reporting requirements of Pub. L. 95–452, Section 5.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used in disclosing information—

a. To designated officers and employees of agencies, offices, and other establishments in the executive, legislative, and judicial branches of the Federal Government having an interest in the individual for employment purposes, including a security clearance or access determination, and the need to evaluate qualifications, suitability, and loyalty to the United States Government.

b. To designated officers and employees of agencies, offices, and other establishments in the executive, legislative, and judicial branches of the Federal Government when such agency, office, or establishment conducts an investigation of the individual for

granting a security clearance, or for making a determination of qualifications, suitability, or loyalty to the United States Government, or access to classified information or restricted areas.

c. To any source from which information is requested in the course of an investigation, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation, and to identify the type of information requested.

d. To the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order when the Office becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

e. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

f. To another Federal agency, to a court or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial proceeding or to comply with the issuance of a subpoena.

g. To provide information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear, when:

(1) The agency, or any component thereof is a party to litigation; or

(2) Any employee of the agency in his or her official capacity is a party to litigation; or

(3) Any employee of the agency in his or her individual capacity, where the Department of Justice or the agency has agreed to represent the employee, or

(4) The United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the agency is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

h. To the National Archives and Records Administration for records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

i. To the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

j. To respond to a request for discovery or for appearance of a witness, when relevant to the subject matter involved in a pending judicial or administrative proceeding.

k. To disclose information to officials of the Merit Systems Protection Board, including the Office of Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions; e.g., as promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

l. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discriminatory practices in the Federal sector, examination of Federal affirmative employment programs, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

m. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, on index cards, on microfilm, or disks.

RETRIEVABILITY:

Records are retrieved by the name, date of birth, social security number, employee number, case file number, or other unique identifying number, or by a combination of such identifiers.

SAFEGUARDS:

Records are maintained in file cabinets secured by combination locks, secured microfilm storage cabinets, and in computers with access limited to only certain employees through the use of individual identifiers and passwords.

RETENTION AND DISPOSAL:

Case files are retained while the person is under investigation and for 10 years after final disposition of the case or any litigation of the matter is completed.

SYSTEM MANAGER AND ADDRESS:

Inspector General, U. S. Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to learn whether this system contains information about them should contact the system manager. So that the record can be located and identified, the requester must furnish the following information:

a. Full name.

b. Date of birth and social security number.

c. Signature

d. Any additional information (e.g., type of investigation conducted, employee number or annuitant CSR number) that the requester believes might be helpful.

RECORD ACCESS PROCEDURE:

Specific records in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a (c)(3) and (d) regarding access to records. The section of this notice titled Systems Exempted from Certain Provisions of the Act, which follows, indicates the kinds of records exempted. Individuals wishing to request access to any records pertaining to them should contact the system manager. Requesters must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth and social security number.

c. Signature.

d. Any additional information (e.g., type of investigation conducted, employee number or annuitant CSR number) that the requester believes may be helpful.

Individuals requesting access must also comply with the Office's Privacy Act regulations regarding verification of identity and access to records (5 CFR 297.201 and 297.203).

CONTESTING RECORD PROCEDURE:

Specific records in this system have been exempted from the Privacy Act provisions at 5 U.S.C. 552a(d) regarding amendment of records. The section of this notice titled Systems Exempted from Certain Provisions of the Act, which follows, indicates the kinds of records exempted. Individuals seeking to amend their records should contact the system manager. Requesters must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth and social security number.

c. Signature.

d. Any additional information (e.g., type of investigation conducted, or employee number or annuitant CSR

number) that the requester believes may be helpful.

Individuals requesting amendment must also comply with the Office's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR 297.201 and 297.208).

RECORD SOURCE CATEGORIES:

Information in this system is obtained from—

a. The individual who is the subject of the case file.

b. The individual's supervisor and co-workers.

c. Other Federal and non-Federal sources who have information relevant to the case.

d. Official records of the Office or another Federal agency.

e. Non-Government record sources.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Office has claimed exemptions from the access (including access to an accounting of disclosure) and amendment provisions of the Privacy Act (5 USC 552a (c)(3) and (d)) for several of its other systems of records under 5 U.S.C. 552a(k) (1), (2), (3), (4), (5), (6), and (7). During the course of developing a case file covered under this system, copies of the exempt records from these other systems may become part of the file. To the extent that this occurs, the Office has claimed the same exemptions for these copies as they have for the original documents.

Additionally, information within the scope of these exemptions may be developed by the Inspector General's staff during an investigation. These same exemptions are claimed for this developed information when the information is—

a. Classified material and pertains to the national defense and foreign policy (552a(k)(1)); or

b. Investigatory material compiled for law enforcement purposes (552a(k)(2)); or

c. Relates to providing protective services to the President or others (552a(k)(3)); or

d. Required by statute to be maintained and used solely as statistical records (552a(k)(4)); or

e. Investigatory material used in making suitability and qualification determinations and its release would reveal the identity of an individual who furnished information under an express or implied promise of confidentiality (552a(k)(5)); or

f. Testing or examining material the release of which would compromise the objectivity or fairness of the testing or examination process (552a(k)(6)); or

g. Evaluation material used to determine potential for promotion in the armed services, but only to the extent that release would reveal the identity of an individual who furnished information under an express or implied promise of confidentiality (552a(k)(7)).

[FR Doc. 87-17808 Filed 8-5-87; 8:45 am]

BILLING CODE 8325-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements: Submittals to OMB on July 31, 1987

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation on July 31, 1987, to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

FOR FURTHER INFORMATION CONTACT: John Chandler, Annette Wilson, or Cordelia Shepherd, Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366-4735, or Gary Waxman or Sam Fairchild, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503, (202) 395-7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial, approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the "For Further Information Contact" paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the "For Further Information Contact" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB on July 31, 1987.

DOT No: 2958
OMB No: 2120-0018
Administration: Federal Aviation Administration
Title: Certification Procedures for Products and Parts, FAR 21
Need for Information: FAA needs this information to show compliance with applicable requirements and determine that products and parts have no unsafe features
Proposed Use of Information: To certify that products and parts have safe features
Frequency: On occasion
Burden Estimate: 44,176 hours
Respondents: Businesses
Form(s): FAA Forms 8110-12, 8130-1, 8130-6, 8130-8, 8130-12

DOT No: 2959
OMB No: 2115-0549
Administration: U.S. Coast Guard
Title: Carriage and Use of Liquefied or Nonliquefied Flammable Gas as Cooking Fuels on Vessels Carrying Passengers for Hire
Need for Information: This requirement is needed to ensure that operational safety is maintained on vessels mentioned above
Proposed Use of Information: This collection of information is used by any person operating the cooking appliance to ensure it is operated in a safe manner
Frequency: On occasion
Burden Estimate: 1,900 hours
Respondents: Owners/operators of passenger carrying vessels
Form(s): None

DOT No: 2960
OMB No: 2115-0094
Administration: U.S. Coast Guard

Title: Safety Approval of Cargo Containers
Need for Information: This information is needed to enforce safety requirements for intermodal containers. Also, the recordkeeping requirement ensures adequate documentation to verify the design type has been designed and tested in accordance with International Convention requirements, and to ensure that U.S. containers are permitted to move freely in international trade by other nations who are signatory to the Convention for Safe Containers
Proposed Use of Information: This information collection requirement is used to: (1) Receive information for plan review and approval; (2) receive information concerning continuous examination program; (3) ensure that no unauthorized changes are made when additional containers are manufactured to an approved design; (4) ensure that adequate documentation is available to verify the approval of an individual container or design type; (5) ensure that periodic examinations are carried out; (6) ensure that container handlers and authorities in other countries will allow free movement of U.S. containers in foreign trade
Frequency: On occasion
Burden Estimate: 29,269.5 Hours
Respondents: Container owners, operators, manufacturers and delegated approval authorities
Form(s): None.

DOT No: 2961
OMB No: 2115–0134
Administration: U.S. Coast Guard
Title: Carrying Persons in Addition to the Crew
Need for Information: This information collection requirement is necessary to allow some cargo vessels and other vessels engaged in certain fisheries to carry persons in addition to the normal crew without meeting the more stringent regulatory requirements. Therefore, this requirement reduces some of the regulatory burdens on some vessels.
Proposed Use of Information: Coast Guard will use this information to ensure that adequate safety is maintained on vessels when additional persons are allowed to be carried on board.
Frequency: On occasion
Burden Estimate: 200 hours
Respondents: Vessel owners/operators
Form(s): None

DOT No: 2962
OMB No: 2115–0106
Administration: U.S. Coast Guard
Title: Plan Approval and Records for Foreign Vessels Carrying Oil in Bulk
Need for Information: This information collection requirement is needed to regulate the design, construction, alteration, repair, maintenance, operation and equipping of foreign vessels entering U.S. waters which carry or are constructed or adapted to carry oil in bulk.
Proposed Use of Information: Coast Guard uses the information to ensure that: (1) Sufficient information is available to determine that a vessel is in compliance with standards prior to issuing the Certificate of Compliance; (2) sufficient information is available to vessel operating personnel to operate the vessels and the equipment required by the regulations safely and in compliance with standards; and (3) a means is available to appeal Coast Guard decisions and for obtaining waivers or exemptions permitted by the regulations.
Frequency: On occasion
Burden Estimate: 189 hours
Respondents: Owners and operators of foreign tank vessels
Form(s): None

DOT No: 2963
OMB No: 2115–0133
By: U.S. Coast Guard
Title: Passenger Vessel Reports
Need for Information: This is a recordkeeping requirement in which the Coast Guard issues a Control Verification Form which verifies that the vessel has been examined and that the applicable standards are met. This requirement is necessary for effective administration of our foreign vessel boarding programs. It is needed to ensure that specified foreign flag vessels meet the applicable federal and international requirements for safety and environmental protection.
Proposed Use of Information: The vessel master, agent or owner uses this requirement as evidence of Coast Guard examination and recent compliance with the requirements.
Frequency: On occasion
Burden Estimate: 5 hours
Respondents: Owners/operators of foreign flag passenger vessel
Form(s): CG–4504

DOT No: 2964
OMB No: 2115–0010
By: U.S. Coast Guard
Title: Recreational Boating Accident Report
Need for Information: Coast Guard needs this information collection requirement to: (1) Develop boat manufacturer standards; (2) gather information on the number of casualties which are alcohol related; and (3) determine the effectiveness and performance of personal flotation devices.
Proposed Use of Information: Coast Guard uses this information to identify possible manufacturer defects in boats or equipment, develop boat manufacturer standards, develop operator requirements, develop safe boating education programs and to publish statistics in accordance with 46 U.S.C. 6102.
Frequency: On occasion
Burden Estimate: 4232 hours
Respondents: Operators of recreational boats and local and state governments
Form(s): CG–3865, CG–3865A

DOT No: 2965
OMB No: 2105–0515
Administration: Office of the Secretary
Title: Commercial Space Transportation: Licensing Regulations
Need for Information: Mission and safety data is required for applications for a Federal Space Launch License
Proposed Use of Information: This information is needed so a decision can be made to grant a launch license or component thereof upon application by a launch firm or payload
Frequency: Upon application
Burden Estimate: 3,000 hours
Respondents: State and local government and businesses
Form(s): None

DOT No: 2966
OMB No: 2125–0074
Administration: Federal Highway Administration
Title: Endorsement for Motor Carrier Policies of Insurance
Need for Information: For the Federal Highway Administration and the Interstate Commerce Commission to determine a motor carrier's compliance with 49 CFR Part 387.
Proposed Use of Information: For a motor carrier to retain the endorsement and its surety bond at its principle place of business and to make the endorsement and surety bond available for public inspection.
Frequency: During period policy is in effect
Burden Estimate: 13,000 hours
Respondents: Affected Motor Carriers
Form(s): MCS–90 and MCS–82

Issued in Washington, DC on July 31, 1987.

Michael O'Hopp,

Acting Director of Information, Resource Management.

[FR Doc. 87–17824 Filed 8–5–87; 8:45 am]
BILLING CODE 4910–62–M

Federal Aviation Administration

[Summary Notice No. PE-87-16]

Exempt Petitions; Summary of Petitions Received and Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Ch. I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: August 26, 1987.

ADDRESS: Send comments on any petition in triplicate to:

Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. ———, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on July 31, 1987.

Leonard E. Smith,

Manager, Program Management Staff.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
25314	Hawaiian Air Taxi Service	14 CFR 135.158	To allow petitioner to operate its DH-114-2X aircraft without an operable pilot heating indication system.
25206	Saab-Scandia-AB	14 CFR 145.71 and 145.73	To allow petitioner to perform maintenance and alteration work on Saab SF340 U.S.-registered aircraft that will fly predominately within the United States.
25291	Pumpkin Air	14 CFR 133.45(e)(1)	To allow petitioner emergency lifesaving Class D rotorcraft-load combination operation under certain conditions when one-engine inoperative hover capability cannot be met under the weight and altitude restrictions of the rotorcraft's type certificate.
23336	Simulator Training, Inc	14 CFR 61.63(d) (2) and (3), 61.157(d)(1), and 121.407(a).	To allow trainees of petitioner, who are applicants for an airline transport pilot certificate or are applying for a type rating to be added to their pilot certificate, to substitute the practical test requirements of § 61.157(a) for those of § 61.63(d) (2) and (3). In addition, to allow trainees of petitioner to complete that portion of the practical test for an airline transport pilot certificate for an additional type rating, as authorized by § 61.157(d), in a simulator. Granted, July 23, 1987.
25771	Cessna Aircraft Company	14 CFR 91.31 and 91.215	To allow operators of Cessna airplane models 550, S550, and 552 to operate their airplanes without a second-in-command pilot. Granted, July 21, 1987.

[FR Doc. 87-17810 Filed 8-5-87; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement, Wyoming County, PA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Wyoming County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Philibert A. Ouellet, District Engineer, Federal Highway Administration, 228 Walnut Street, P.O. Box 1086, Harrisburg, Pennsylvania 17108, Telephone: (717) 782-4422, or Charles M. Mattei, P.E., District Engineer, Pennsylvania Department of Transportation, P.O. Box 111, Scranton, Pennsylvania 18501, Telephone: (717) 963-4010.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Pennsylvania Department of Transportation, will prepare an Environmental Impact Statement (EIS) on a proposal to construct a transportation facility which would serve the traffic needs of Tunkhannock Borough and its surrounding area in Wyoming County, Pennsylvania. This proposed action has been designated as State Route 0006, Section E-10, Tunkhannock By-Pass. The easterly project limit is located on existing U.S. Route 6 approximately 0.9 miles east of the Tunkhannock Borough Line. From this point, the project area extends in a westerly direction for approximately 3.6 miles to its westerly limit which is a point on existing Route 6 approximately 1.0 mile west of the Borough of Tunkhannock.

Presently, the project area is congested due to a signalized intersection in the Central Business District of Tunkhannock Borough. This signalized intersection is located at the county's principal east-west (U.S. Route 6) and north-south (S.R. 0029-0309) roadway intersection. Present day traffic, which is funneled into the borough by the area's highway network and whose flow is dictated by the aforesaid signalized intersection, causes congestion with accompanying delays and safety hazards to both the motorists and pedestrians within the borough's central business district. The existing highway facility within the project limits will not provide future traffic with the required level of service established for a Distributor-Arterial Highway by current design standards.

The proposed project has been under consideration for many years and a variety of alignments have been studied. A Corridor Location Study for this project was completed in September, 1974. This study identified three corridors. These three build alternatives and a no-build alternative will be considered in this EIS.

Alternative A—construction of a new limited access roadway from existing U.S. Route 6 approximately 0.9 miles east of the Tunkhannock Borough line to

a point approximately 1 mile west of the Borough of Tunkhannock. This alternative will be located south of the existing alignment of U.S. Route 6.

Alternative B—upgrading the existing alignment of U.S. Route 6. This alternative includes widening of the existing roadway, resurfacing and signalizing.

Alternative C—construction of a new limited access roadway with the same project limits as Alternative A, but the roadway would be located north of existing U.S. Route 6.

Alternative D—the existing highway facilities would remain the same. This is the "Do Nothing" alternative.

The alternatives will be studied in detail in the area of preliminary engineering, air and noise quality, historical and archaeological resources, traffic/transportation/energy, water resources (including flood plains, water quality and hydrology, and wild and scenic rivers), socioeconomics and land use, farmlands, soils, terrestrial and aquatic ecology, wetlands, hazardous waste sites, section 4(f) resources, and cost analysis of effective alternatives.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who express interest in the proposal. Scoping meetings are planned to be held with the agencies in summer 1987. Public meetings will be held in the area. Public notices of the time and place of these meetings and any required public hearings will be given. Public involvement and interagency coordination will be maintained throughout the development of the EIS.

To assure that the full range of issues related to this proposed action are addressed and that all significant issues are identified, comments or questions concerning this action and the EIS should be directed to the FHWA or PennDOT at the address provided above.

"Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of Executive Order 12372, Intetgovernmental Review of Federal Programs, regarding State and local review of Federal and Federally assisted programs and projects apply to this program."

Issued on: July 31, 1987.

Manuel A. Marks,

Division Administrator, Harrisburg, PA.

[FR Doc. 87-17871 Filed 8-5-87; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Tax Forms Coordinating Committee Release of Tax Forms

The Internal Revenue Service is publishing advance proof copies of several major 1987 Federal tax forms. This release supplements the release of forms in May and June. Included are Forms 1120, 1120A, 1041, 1065, 1120S (and Schedules K–1), and Form 6251. Persons needing proof copies of any of these items may write to: IRS—CADC, 2402 East Empire, Bloomington, IL 61799.

Please note that these proofs are subject to change and OMB approval before being released for printing in early October.

The revised forms include changes required by the Tax Reform Act of 1986. Major changes are circled. Suggestions for improving these forms should be sent by September 4, 1987, to: Tax Forms Committee, ATTN: Early Release, Internal Revenue Service, Room 5577, 1111 Constitution Avenue NW., Washington, DC 20224.

Additional forms relating to nondeductible IRA contributions, passive activity loss limitations, and the home mortgage interest deduction will be released later this month. Also scheduled for release at that time are forms released earlier this year that were subsequently revised due to public comments, IRS forms testing efforts, or internal reviews.

Although IRS is not required to publish copies of the tax forms under section 1505 of the Federal Register Act or section 552 of the Administrative Procedures Act, we are doing so at this time due to wide public interest in changes to the forms caused by the Tax Reform Act of 1986 and to give the forms broad public exposure. We may be unable to give detailed replies to the comments we receive. However, each suggestion will be carefully considered before the final versions of the forms are issued.

Dated: July 31, 1987.

Approved:

Edmund J. Goldweg,

Director, Tax Forms and Publications Division.

BILLING CODE 4830-01-M

Form **1120** — Department of the Treasury, Internal Revenue Service

U.S. Corporation Income Tax Return

For calendar 1987 or tax year beginning ..... , 1987, ending ..... , 19 ....

▶ For Paperwork Reduction Act Notice, see page 1 of the instructions.

OMB No. 1545-0123

1987

Check if a—
A Consolidated return ☐
B Personal Holding Co. ☐
C Business Code No. (See the list in the instructions.)

Use IRS label. Otherwise please print or type.

Name

Number and street

City or town, state, and ZIP code

D Employer identification number

E Date incorporated

F Total assets (See Specific Instructions.) Dollars $ Cents

G Check applicable boxes: (1) ☐ Initial return (2) ☐ Final return (3) ☐ Change in address

Income

1a	Gross receipts or sales ..... b Less returns and allowances ..... Balance ▶		1c
2	Cost of goods sold and/or operations (Schedule A)		2
3	Gross profit (line 1c less line 2)		3
4	Dividends (Schedule C)		4
5	Interest		5
6	Gross rents		6
7	Gross royalties		7
8	Capital gain net income (attach separate Schedule D)		8
9	Net gain or (loss) from Form 4797, line 18, Part II (attach Form 4797)		9
10	Other income (see instructions—attach schedule)		10
11	TOTAL income—Add lines 3 through 10 and enter here ▶		11

Deductions (See instructions for limitations on deductions)

12	Compensation of officers (Schedule E)		12
13a	Salaries and wages ..... b Less jobs credit ..... Balance ▶		13c
14	Repairs		14
15	Bad debts (see instructions)		15
16	Rents		16
17	Taxes		17
18	Interest		18
19	Contributions (see instructions for 10% limitation)		19
20	Depreciation (attach Form 4562) 20		
21	Less depreciation claimed in Schedule A and elsewhere on return 21a		21b
22	Depletion		22
23	Advertising		23
24	Pension, profit-sharing, etc., plans		24
25	Employee benefit programs		25
26	Other deductions (attach schedule)		26
27	TOTAL deductions—Add lines 12 through 26 and enter here ▶		27
28	Taxable income before net operating loss deduction and special deductions (line 11 less line 27)		28
29	Less: a Net operating loss deduction (see instructions) 29a		
	b Special deductions (Schedule C) 29b		29c

Tax and Payments

30	Taxable income (line 28 less line 29c)		30
31	TOTAL TAX (Schedule J)		31
32	Payments: a 1986 overpayment credited to 1987		
	b 1987 estimated tax payments		
	c Less 1987 refund applied for on Form 4466 ( )		
	d Tax deposited with Form 7004		
	e Credit from regulated investment companies (attach Form 2439)		
	f Credit for Federal tax on gasoline and special fuels (attach Form 4136)		32
33	Enter any PENALTY for underpayment of estimated tax—check ▶ ☐ if Form 2220 is attached		33
34	TAX DUE—If the total of lines 31 and 33 is larger than line 32, enter AMOUNT OWED		34
35	OVERPAYMENT—If line 32 is larger than the total of lines 31 and 33, enter AMOUNT OVERPAID		35
36	Enter amount of line 35 you want: Credited to 1988 estimated tax ▶ ..... Refunded ▶		36

Please Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

▶ Signature of officer ..... Date ..... ▶ Title

Paid Preparer's Use Only

Preparer's signature ▶ ..... Date ..... Check if self-employed ☐ ..... Preparer's social security number

Firm's name (or yours, if self-employed) and address ▶ ..... E.I. No. ▶ ..... ZIP code ▶

Proof of August 5, 1987

Form 1120 (1987) Page 2

Schedule A Cost of Goods Sold and/or Operations (See instructions for line 2, page 1.)

1	Inventory at beginning of year	1	
2	Purchases	2	
3	Cost of labor	3	
4a	Additional section 263A costs (see instructions)	4a	
b	Other costs (attach schedule)	4b	
5	Total—Add lines 1 through 4b	5	
6	Inventory at end of year	6	
7	Cost of goods sold and/or operations—Line 5 less line 6. Enter here and on line 2, page 1	7	

8a Check all methods used for valuing closing inventory:

(i) ☐ Cost (ii) ☐ Lower of cost or market as described in Regulations section 1.471-4 (see instructions)

(iii) ☐ Writedown of "subnormal" goods as described in Regulations section 1.471-2(c) (see instructions)

(iv) ☐ Other (Specify method used and attach explanation.) ▶

b Check if the LIFO inventory method was adopted this tax year for any goods (if checked, attach Form 970) . . . . . ☐

c If the LIFO inventory method was used for this tax year, enter percentage (or amounts) of closing inventory computed under LIFO 8c

d Do the rules of section 263A (with respect to property produced or acquired for resale) apply to the corporation? ☐ Yes ☐ No

e Was there any change in determining quantities, cost, or valuations between opening and closing inventory? If "Yes," attach explanation. ☐ Yes ☐ No

Schedule C Dividends and Special Deductions (See Schedule C instructions)

		(a) Dividends received	(b) %	(c) Special deductions multiply (a) X (b)
1	Domestic corporations subject to section 243(a) deduction (other than debt-financed stock)		see instructions	
2	Debt-financed stock of domestic and foreign corporations (section 246A)		see instructions	
3	Certain preferred stock of public utilities		see instructions	
4	Foreign corporations and certain FSCs subject to section 245 deduction		see instructions	
5	Wholly owned foreign subsidiaries and FSCs subject to 100% deduction (sections 245(b) and (c))		100	
6	Total—Add lines 1 through 5. See instructions for limitation			
7	Affiliated groups subject to the 100% deduction (section 243(a)(3))		100	
8	Other dividends from foreign corporations not included in lines 3, 4, or 5			
9	Income from controlled foreign corporations under subpart F (attach Forms 5471)			
10	Foreign dividend gross-up (section 78)			
11	IC–DISC or former DISC dividends not included in lines 1 and/or 2 (section 245(d))			
12	Other dividends			
13	Deduction for dividends paid on certain preferred stock of public utilities (see instructions)			
14	Total dividends—Add lines 1 through 12. Enter here and on line 4, page 1 ▶			
15	Total deductions—Add lines 6, 7, and 13. Enter here and on line 29b, page 1 ▶			

Schedule E Compensation of Officers (See instructions for line 12, page 1.)

Complete Schedule E only if total receipts (line 1a, plus lines 4 through 10, of page 1, Form 1120) are $150,000 or more.

(a) Name of officer	(b) Social security number	(c) Percent of time devoted to business	Percent of corporation stock owned (d) Common	(e) Preferred	(f) Amount of compensation
		%	%	%	
		%	%	%	
		%	%	%	
		%	%	%	
		%	%	%	
		%	%	%	
		%	%	%	
Total compensation of officers—Enter here and on line 12, page 1					

Proof of August 15, 1987

Form 1120 (1987) Page 3

Schedule J Tax Computation (See instructions.)

1 Check if you are a member of a controlled group (see sections 1561 and 1563) . . . . . ▶ ☐

2 If line 1 is checked, see instructions. If your tax year includes June 30, 1987, complete both a and b below. Otherwise, complete only b.

a (i) $ _____ (ii) $ _____ (iii) $ _____ (iv) $ _____

b (i) $ _____ (ii) $ _____

3 Income tax (see instructions to figure the tax; enter this tax or alternative tax from Schedule D, whichever is less). Check if from Schedule D ▶ ☐ 3

4a Foreign tax credit (attach Form 1118) 4a

b Possessions tax credit (attach Form 5735) . . . . . b

c Orphan drug credit (attach Form 6765) c

d Credit for fuel produced from a nonconventional source (see instructions) . . . . . d

e General business credit. Enter here and check which forms are attached ☐ Form 3800 ☐ Form 3468 ☐ Form 5884 ☐ Form 6478 ☐ Form 6765 ☐ Form 8586 . . . e

5 Total—Add lines 4a through 4e 5

6 Line 3 less line 5 6

7 Personal holding company tax (attach Schedule PH (Form 1120)) 7

8 Tax from recomputing prior-year investment credit (attach Form 4255) 8

9a Alternative minimum tax (see instructions—attach Form 4626) 9a

b Environmental tax (see instructions—attach Form 4626) . . . . . b

10 Total tax—Add lines 6 through 9b. Enter here and on line 31, page 1 10

Additional Information (See instruction F.)

	Yes	No
H Did the corporation claim a deduction for expenses connected with:		
(1) An entertainment facility (boat, resort, ranch, etc.)?		
(2) Living accommodations (except employees on business)?		
(3) Employees attending conventions or meetings outside the North American area? (See section 274(h).)		
(4) Employees' families at conventions or meetings? If "Yes," were any of these conventions or meetings outside the North American area? (See section 274(h).)		
(5) Employee or family vacations not reported on Form W-2?		
I (1) Did the corporation at the end of the tax year own, directly or indirectly, 50% or more of the voting stock of a domestic corporation? (For rules of attribution, see section 267(c).) If "Yes," attach a schedule showing: (a) name, address, and identifying number; (b) percentage owned; (c) taxable income or (loss) before NOL and special deductions of such corporation for the tax year ending with or within your tax year; (d) highest amount owed by the corporation to such corporation during the year; and (e) highest amount owed to the corporation by such corporation during the year.		
(2) Did any individual, partnership, corporation, estate or trust at the end of the tax year own, directly or indirectly, 50% or more of the corporation's voting stock? (For rules of attribution, see section 267(c).) If "Yes," complete (a) through (e)		
(a) Attach a schedule showing name, address, and identifying number. Enter percentage owned ▶		
(b) Was the owner of such voting stock a person other than a U.S. person? (See instructions.) Note: *If "Yes," the corporation may have to file Form 5472.* If "Yes," enter owner's country ▶		
(c) Enter highest amount owed by the corporation to such owner during the year ▶		
(d) Enter highest amount owed to the corporation by such owner during the year ▶		
Note: *For purposes of I(1) and I(2), "highest amount owed" includes loans and accounts receivable/payable.*		

	Yes	No
J Refer to the list in the instructions and state the principal: Business activity ▶ _____ Product or service ▶ _____		
K Was the corporation a U.S. shareholder of any controlled foreign corporation? (See sections 951 and 957.) If "Yes," attach Form 5471 for each such corporation.		
L At any time during the tax year, did the corporation have an interest in or a signature or other authority over a financial account in a foreign country (such as a bank account, securities account, or other financial account)? (See instruction F and filing requirements for form TD F 90-22.1.) If "Yes," enter name of foreign country ▶ _____		
M Was the corporation the grantor of, or transferor to, a foreign trust which existed during the current tax year, whether or not the corporation has any beneficial interest in it? If "Yes," the corporation may have to file Forms 3520, 3520-A, or 926.		
N During this tax year, did the corporation pay dividends (other than stock dividends and distributions in exchange for stock) in excess of the corporation's current and accumulated earnings and profits? (See sections 301 and 316.) If "Yes," file Form 5452. If this is a consolidated return, answer here for parent corporation and on Form 851, Affiliations Schedule, for each subsidiary.		
O During this tax year did the corporation maintain any part of its accounting/tax records on a computerized system?		
P Check method of accounting: (1) ☐ Cash (2) ☐ Accrual (3) ☐ Other (specify) ▶ _____		
Q Check this box if the corporation issued publicly offered debt instruments with original issue discount . . . ☐ If so, the corporation may have to file Form 8281.		
R Enter the amount of tax-exempt interest received or accrued during the tax year ▶ _____		
S If you are a member of a controlled group, enter the amount of taxable income for the entire group ▶ _____		

Proof of August 6, 1987

Form 1120 (1987) Page 4

Schedule L Balance Sheets

Assets	Beginning of tax year (a)	Beginning of tax year (b)	End of tax year (c)	End of tax year (d)
1 Cash				
2 Trade notes and accounts receivable				
a Less allowance for bad debts				
3 Inventories				
4 Federal and state government obligations				
5 Other current assets (attach schedule)				
6 Loans to stockholders				
7 Mortgage and real estate loans				
8 Other investments (attach schedule)				
9 Buildings and other depreciable assets				
a Less accumulated depreciation				
10 Depletable assets				
a Less accumulated depletion				
11 Land (net of any amortization)				
12 Intangible assets (amortizable only)				
a Less accumulated amortization				
13 Other assets (attach schedule)				
14 Total assets				
Liabilities and Stockholders' Equity				
15 Accounts payable				
16 Mortgages, notes, bonds payable in less than 1 year				
17 Other current liabilities (attach schedule)				
18 Loans from stockholders				
19 Mortgages, notes, bonds payable in 1 year or more				
20 Other liabilities (attach schedule)				
21 Capital stock: a preferred stock				
b common stock				
22 Paid-in or capital surplus				
23 Retained earnings—Appropriated (attach schedule)				
24 Retained earnings—Unappropriated				
25 Less cost of treasury stock	( )		( )	
26 Total liabilities and stockholders' equity				

Schedule M-1 Reconciliation of Income per Books With Income per Return

Do not complete this schedule if the total assets on line 14, column (d), of Schedule L are less than $25,000.

1 Net income per books		7 Income recorded on books this year not included in this return (itemize)	
2 Federal income tax		a Tax-exempt interest $	
3 Excess of capital losses over capital gains			
4 Income subject to tax not recorded on books this year (itemize)			
		8 Deductions in this tax return not charged against book income this year (itemize)	
5 Expenses recorded on books this year not deducted in this return (itemize)		a Depreciation $	
a Depreciation $		b Contributions carryover $	
b Contributions carryover $			
6 Total of lines 1 through 5		9 Total of lines 7 and 8	
		10 Income (line 28, page 1)—line 6 less line 9	

Schedule M-2 Analysis of Unappropriated Retained Earnings per Books (line 24, Schedule L)

Do not complete this schedule if the total assets on line 14, column (d), of Schedule L are less than $25,000.

1 Balance at beginning of year		5 Distributions: a Cash	
2 Net income per books		b Stock	
3 Other increases (itemize)		c Property	
		6 Other decreases (itemize)	
		7 Total of lines 5 and 6	
4 Total of lines 1, 2, and 3		8 Balance at end of year (line 4 less line 7)	

Proof of Service
July 15, 1987

Form **1120-A**

Department of the Treasury
Internal Revenue Service

U.S. Corporation Short-Form Income Tax Return

To see if you qualify to file Form 1120-A, see instructions.

1235

For calendar 1987 or tax year beginning _____, 1987, ending _____, 19 ____

OMB No. 1545-0890

1987

See Instructions for Initial principal business: A Activity; B Product or service; C Code

Use IRS label. Otherwise, please type or machine print: Name; Number and street; City or town, state, and ZIP code

D Employer identification number (EIN)

E Date incorporated

F Total assets (See Specific Instructions)

Dollars	Cents
$	

G Check method of accounting: (1) ☐ Cash (2) ☐ Accrual (3) ☐ Other (specify) ▶

H Check applicable boxes: (1) ☐ Initial return (2) ☐ Change in address

Income	1a	Gross receipts or sales	b Less returns and allowances	Balance ▶ 1c
	2	Cost of goods sold and/or operations (see instructions)		2
	3	Gross profit (line 1c less line 2)		3
	4	Domestic corporation dividends subject to the Section 243(a)(1) deduction		4
	5	Interest		5
	6	Gross rents		6
	7	Gross royalties		7
	8	Capital gain net income (attach separate Schedule D (Form 1120))		8
	9	Net gain or (loss) from Form 4797, line 18, Part II (attach Form 4797)		9
	10	Other income (see instructions)		10
	11	TOTAL income—Add lines 3 through 10		11
Deductions (See instructions for limitations on deductions.)	12	Compensation of officers (see instructions)		12
	13a	Salaries and wages	b Less jobs credit	Balance ▶ 13c
	14	Repairs		14
	15	Bad debts (see instructions)		15
	16	Rents		16
	17	Taxes		17
	18	Interest		18
	19	Contributions (see instructions for 10% limitation)		19
	20	Depreciation (attach Form 4562)	20	
	21	Less depreciation claimed elsewhere on return	21a	21b
	22	Other deductions (attach schedule)		22
	23	TOTAL deductions—Add lines 12 through 22		23
	24	Taxable income before net operating loss deduction and special deductions (line 11 less line 23)		24
	25	Less: a Net operating loss deduction (see instructions)	25a	
		b Special deductions (see instructions)	25b	25c
Tax and Payments	26	Taxable income (line 24 less line 25c)		26
	27	TOTAL TAX (from Part I, line 6 on page 2)		27
	28	Payments:		
		a 1986 overpayment allowed as a credit		
		b 1987 estimated tax payments		
		c Less 1987 refund applied for on Form 4466	( )	
		d Tax deposited with Form 7004		
		e Credit from regulated investment companies (attach Form 2439)		
		f Credit for Federal tax on gasoline and special fuels (attach Form 4136)		28
	29	Enter any PENALTY for underpayment of estimated tax—Check ▶ ☐ if Form 2220 is attached		29
	30	TAX DUE—If the total of lines 27 and 29 is larger than line 28, enter AMOUNT OWED		30
	31	OVERPAYMENT—If line 28 is larger than the total of lines 27 and 29, enter AMOUNT OVERPAID		31
	32	Enter amount of line 31 you want: Credited to 1988 estimated tax ▶ _____ Refunded ▶		32

Please Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Signature of officer _____ Date _____ Title _____

Paid Preparer's Use Only

Preparer's signature _____ Date _____ Check if self-employed ▶ ☐ Preparer's social security number _____

Firm's name (or yours if self-employed) and address _____ E.I. No. ▶ _____ ZIP code ▶ _____

Proof of August 5, 1987

Form 1120-A (1987) Page 2

Part I Tax Computation (See instructions.) Enter EIN ▶

1	Income tax (See instructions to figure the tax. Enter lesser of this tax or alternative tax from Schedule D.) Check if from Schedule D ▶ ☐	1	
2	Credits. Check if from: ☐ Form 3800 ☐ Form 3468 ☐ Form 5884 ☐ Form 6478 ☐ Form 6765 ☐ Form 8586	2	
3	Line 1 less line 2	3	
4	Tax from recomputing prior-year investment credit (attach Form 4255)	4	
5	Alternative minimum tax (see instructions—attach Form 4626)	5	
6	Total tax—Add lines 3 through 5. Enter here and on line 27, page 1	6	

Additional Information (See instruction F.)

I Was a deduction taken for expenses connected with:
(1) An entertainment facility (boat, resort, ranch, etc.)? Yes ☐ No ☐
(2) Employees' families at conventions or meetings? Yes ☐ No ☐

J Did any individual, partnership, estate, or trust at the end of the tax year own, directly or indirectly, 50% or more of the corporation's voting stock? (For rules of attribution, see section 267(c).) If "Yes," complete (1) and (2) . . . Yes ☐ No ☐
(1) Attach a schedule showing name, address, and identifying number.
(2) Enter "highest amount owed;" include loans and accounts receivable/payable:
(a) Enter highest amount owed by the corporation to such owner during the year ▶
(b) Enter highest amount owed to the corporation by such owner during the year ▶

K Enter the amount of tax-exempt interest received or accrued during the tax year ▶

L (1) If an amount for cost of goods sold and/or operations is entered on line 2, page 1, complete (a) through (c):
(a) Purchases ▶
(b) Additional sec. 263A costs (see instructions) ▶
(c) Other costs (attach schedule) ▶
(2) Do the rules of section 263A (with respect to property produced or acquired for resale) apply to the corporation? Yes ☐ No ☐

M At any time during the tax year, did you have an interest in or a signature or other authority over a financial account in a foreign country (such as a bank account, securities account, or other financial account)? (See instruction F for filing requirements for Form TD F 90-22.1.) . . . Yes ☐ No ☐
If "Yes," write in the name of the foreign country ▶

N During this tax year, did any part of your accounting/tax records maintained on a computer system? . . . Yes ☐ No ☐

O Enter amount of cash distributions and the book value of property (other than cash) distributions made in this tax year ▶

Part II Balance Sheets

		(a) Beginning of tax year	(b) End of tax year
Assets	1 Cash		
	2 Trade notes and accounts receivable		
	a Less: allowance for bad debts	( )	( )
	3 Inventories		
	4 Federal and state government obligations		
	5 Other current assets (attach schedule)		
	6 Loans to stockholders		
	7 Mortgage and real estate loans		
	8 Depreciable, depletable, and intangible assets		
	a Less: accumulated depreciation, depletion, and amortization	( )	( )
	9 Land (net of any amortization)		
	10 Other assets (attach schedule)		
	11 Total assets		
Liabilities and Stockholders' Equity	12 Accounts payable		
	13 Other current liabilities (attach schedule)		
	14 Loans from stockholders		
	15 Mortgages, notes, bonds payable		
	16 Other liabilities (attach schedule)		
	17 Capital stock (preferred and common stock)		
	18 Paid-in or capital surplus		
	19 Retained earnings		
	20 Less cost of treasury stock	( )	( )
	21 Total liabilities and stockholders' equity		

Part III Reconciliation of Income per Books With Income per Return (Must be completed by all filers)

1	Enter net income per books	5	Income recorded on books this year not included in this return (itemize)
2	Federal income tax	6	Deductions in this tax return not charged against book income this year (itemize)
3	Income subject to tax not recorded on books this year (itemize)	7	Income (line 24, page 1). Enter the sum of lines 1, 2, 3, and 4 less the sum of lines 5 and 6
4	Expenses recorded on books this year not deducted in this return (itemize)		

1 1 1 1 1 1 2 2 2 3 3 3 3 3 3 3 4 4 4 4 4 5 5 5 5 5 6 6 6 6 6 7 8
1 1 1 1 1 2 2 2 2 2 3 3 3 3 3 3 3 4 4 5 6 6 7 7 7 7 7 7 8 9 10 11

Proof of August 5, 1987

Form **1041** — Department of the Treasury, Internal Revenue Service

U.S. Fiduciary Income Tax Return

For the calendar year 1987 or fiscal year beginning , 1987, and ending , 19

OMB No. 1545-0092

1987

Check applicable boxes:
- ☐ Decedent's estate
- ☐ Simple trust
- ☐ Complex trust
- ☐ Grantor type trust
- ☐ Bankruptcy estate
- ☐ Family estate trust
- ☐ Pooled income fund
- ☐ Initial return
- ☐ Amended return
- ☐ Final return

Name of estate or trust (grantor type trust, see instructions)

Employer identification number

Name and title of fiduciary

Date entity created

Address of fiduciary (number and street)

Nonexempt charitable and split-interest trusts, check applicable boxes (see instructions):
- ☐ Described in section 4947(a)(1)
- ☐ Not a private foundation
- ☐ Described in section 4947(a)(2)

City, state, and ZIP code

Check if this return is for a short taxable year (see instructions) ▶ ☐

Income	1	Dividends	1
	2	Interest income	2
	3	Income (or losses) from partnerships, other estates or other trusts (see instructions)	3
	4	Net rent and royalty income (or loss) (attach Schedule E (Form 1040))	4
	5	Net business and farm income (or loss) (attach Schedules C and F (Form 1040))	5
	6	Capital gain (or loss) (attach Schedule D (Form 1041))	6
	7	Ordinary gain (or loss) (attach Form 4797)	7
	8	Other income (state nature of income)	8
	9	**Total** income (add lines 1 through 8) ▶	9
Deductions	10	Interest	10
	11	Fiduciary fees	11
	12	Charitable deduction (from Schedule A, line 6)	12
	13	Attorney, accountant, and return preparer fees	13
	14	Other deductions (including taxes) (attach schedule)	14
	15	**Total** (add lines 10 through 14) ▶	15
	16	Adjusted total income (or loss) (subtract line 15 from line 9)	16
	17	Income distribution deduction (from Schedule B, line 17) (see instructions) (attach Schedule K-1 (Form 1041))	17
	18	Estate tax deduction (attach computation)	18
	19	Exemption	19
	20	**Total** (add lines 17 through 19) ▶	20
	21	Taxable income of fiduciary (subtract line 20 from line 16) ▶	21
Please attach check or money order here / Computation of Tax	22	Tax: ☐ a Tax rate schedule or ☐ Schedule D ; b Other tax ; **Total** ▶	22c
	23	**Credits:** a Foreign tax ; b Nonconventional fuel ; **Total** ▶	23c
	24	**Credits:** ☐ Form 3800 ☐ Form 3468 ☐ Form 5884 ☐ Form 6478 ☐ Form 6765 ☐ Form 8586	24
	25	**Total** (add lines 23c and 24) ▶	25
	26	**Balance** (subtract line 25 from line 22c)	26
	27	Recapture of investment credit (attach Form 4255)	27
	28	Alternative minimum tax (attach Form 6251)	28
	29	**Total** (add lines 26 through 28) ▶	29
	30	**Credits:** a Form 2439 ; b Form 4136 ; c Form 6249 ; **Total** ▶	30d
	31	**Payments:** a 1987 estimated tax payments ▶	
		b Paid with extension of time to file (attach Form 2758) ▶ ; c Withheld ▶ ; **Total** ▶	31d
	32	**Total** (add lines 30d and 31d) ▶	32
	33	**Balance of tax due** (subtract line 32 from line 29) (see instructions)	33
	34	**Overpayment** (subtract line 29 from line 32)	34
	35	Amount of line 34 to be: a Credited to 1988 estimated taxes ▶	
		b Treated as paid by trust beneficiaries (Attach Form 1041-T) ▶ **Refunded** ▶	35c
		Check ▶ ☐ if Form 2210 (2210F) is attached (see instructions) **Penalty:** $	

Please Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than fiduciary) is based on all information of which preparer has any knowledge.

▶ Signature of fiduciary or officer representing fiduciary — Date ▶

Paid Preparer's Use Only

Preparer's signature — Date — Check if self-employed ▶ ☐ — Preparer's social security no.

Firm's name (or yours if self-employed) and address — E.I. No. ▶ — ZIP code ▶

For Paperwork Reduction Act Notice, see page 1 of the instructions. Form **1041** (1987)

IRS Processing Copy August 5 1987

Do not complete Schedules A and B for a simple trust or a pooled income fund.

SCHEDULE A.—Charitable Deduction

(Write the name and address of each charitable organization to whom your contributions total $3,000 or more on an attached sheet.)

1 Amounts paid or permanently set aside for charitable purposes from current year's gross income	1		
2 Tax-exempt interest allocable to charitable distribution (see instructions)	2		
3 Balance (subtract line 2 from line 1)	3		
4 Enter the net short-term capital gain and the net long-term capital gain of the current tax year allocable to corpus paid or permanently set aside for charitable purposes	4		
5 Amounts paid or permanently set aside for charitable purposes from gross income of a prior year (see instructions)	5		
6 Total (add lines 3, 4, and 5). Enter here and on page 1, line 12	6		

SCHEDULE B.—Income Distribution Deduction

1 Adjusted total income (Enter amount from page 1, line 16.) (If net loss, enter zero.)	1		
2 Adjusted tax-exempt interest (see instructions)	2		
3 Net gain shown on Schedule D (Form 1041), line 17, column (a) (If net loss, enter zero.)	3		
4 Enter amount from Schedule A, line 4	4		
5 Long-term capital gain included on Schedule A, line 1	5		
6 Short-term capital gain included on Schedule A, line 1	6		
7 If the amount on page 1, line 6, is a capital loss, enter here as a positive figure	7		
8 If the amount on page 1, line 6, is a capital gain, enter here as a negative figure	8		
9 Distributable net income (combine lines 1 through 8)	9		
10 If a complex trust, amount of income for the tax year determined under the governing instrument (accounting income) 10			
11 Amount of income required to be distributed currently (see instructions)	11		
12 Other amounts paid, credited, or otherwise required to be distributed (see instructions)	12		
13 Total distributions (add lines 11 and 12). (If greater than line 10, see instructions.)	13		
14 Enter the total amount of tax-exempt income included on line 13	14		
15 Tentative income distribution deduction (subtract line 14 from line 13)	15		
16 Tentative income distribution deduction (subtract line 2 from line 9)	16		
17 Income distribution deduction (Enter the smaller of line 15 or line 16 here and on page 1, line 17.)	17		

Other Information

	Yes	No
1 If the fiduciary's name or address has changed, enter the old information ▶		
2 Did the estate or trust receive tax-exempt income? (If "Yes," enter the amount here ▶ .....and attach a computation of the allocation of expenses.)		
3 Did the estate or trust have any passive activity income or loss? (If "Yes," enter the amount of any such income or loss on **Form 8582**, Passive Activity Loss Limitations, to figure the allowable loss.)		
4 Did the estate or trust receive all or any part of the earnings (salary, wages, and other compensation) of any individual by reason of a contract assignment or similar arrangement?		
5 At any time during the tax year, did the estate or trust have an interest in or a signature or other authority over a financial account in a foreign country (such as a bank account, securities account, or other financial account)? (See the instructions for question 5.) If "Yes," enter the name of the foreign country ▶		
6 Was the estate or trust the grantor of, or transferor to, a foreign trust which existed during the current tax year, whether or not the estate or trust has any beneficial interest in it? (If "Yes," you may have to file Form 3520, 3520-A, or 926.)		
7 Check this box if this entity has filed or is required to file **Form 8264**, Application for Registration of a Tax Shelter. ▶ ☐		
8 Check this box if this entity is a complex trust making the section 663(b) election ▶ ☐		
9 Check this box if a section 643(e)(3) election is made (attach Schedule D (Form 1041)) ▶ ☐		
10 Check this box if the decedent's estate has been open for more than 2 years (see instructions) ▶ ☐		

Effective on August 5, 1987

BEST COPY AVAILABLE

SCHEDULE K-1 (Form 1041)

Department of the Treasury
Internal Revenue Service

Beneficiary's Share of Income, Deductions, Credits, etc.—1987

for the calendar year 1987, or fiscal year
beginning ....., 1987, ending ....., 19.....

Complete a separate Schedule K-1 for each beneficiary

OMB No 1545-0092

1987

Name of estate or trust ▶

Beneficiary's identifying number ▶	Estate or trust's employer identification number ▶
Beneficiary's name, address, and ZIP code	Fiduciary's name, address, and ZIP code

A. 4-Year Proration.—Fiduciary: Check here ▶ ☐ if this Schedule K-1 is for a short taxable year required by section 1403 of the Tax Reform Act of 1986. **Beneficiary:** If this box is checked, you must prorate the column (b) amounts (except for line 9a) shown below over a four year period beginning with this tax year. (See the instructions on the other side of this schedule.)

(a) Allocable share item	(b) Amount	(c) Calendar year 1987 Form 1040 filers enter the amounts in column (b) on:
1 Dividends		Schedule B, Part II, line 4
2a Net short-term capital gain (or loss)		Schedule D, line 5, column (f) or (g)
b Net long-term capital gain (or loss)		Schedule D, line 12, column (f) or (g)
3 Interest		Schedule B, Part I, line 2
4a Other taxable income (itemize):		
(1) Income (or loss) from passive activities acquired before 10/23/86		Form 8582
(2) Income (or loss) from passive activities acquired after 10/22/86		Form 8582 Schedule E, Part III
(3) Other portfolio income (or loss)		
b Depreciation (including cost recovery) and depletion:		
(1) Attributable to line 4a(1)		Form 8582
(2) Attributable to line 4a(2)		Form 8582 Schedule E, Part III
(3) Attributable to line 4a(3)		
c Amortization deductions (itemize):		
(1) Attributable to line 4a(1)		Form 8582
(2) Attributable to line 4a(2)		Form 8582 Schedule E, Part III
(3) Attributable to line 4a(3)		
5 Estate tax deduction (attach computation)		Schedule A, line 25
6 Excess deductions on termination (attach computation)		Schedule A, line 21
7 Distributable Net Alternative Minimum Taxable Income		Enter on applicable line of Form 6251
8 Foreign taxes (list on a separate sheet)		Form 1116 or Schedule A (Form 1040), line 7
9 Other (itemize):		
a Trust payments of estimated taxes credited to you		Include on Page 2, line 55, Form 1040
b Tax-exempt interest		Enter on Page 1, line 9
c		(Enter on applicable line of appropriate tax form)
d		
e		
f		
g		
h		

Proof of August 5, 1987

Form **1065**

Department of the Treasury
Internal Revenue Service

U.S. Partnership Return of Income

▶ For Paperwork Reduction Act Notice, see Form 1065 Instructions.

For calendar year 1987, or fiscal year beginning _____, 1987, and ending _____, 19___

OMB No. 1545-0099

1987

A Principal business activity

B Principal product or service

C Business code number

Use IRS label. Otherwise, please print or type.

Name

Number and street (or P.O. Box number if mail is not delivered to street address)

City or town, state, and ZIP code

D Employer identification number

E Date business started

F Enter total assets at end of tax year $

G Check accounting method: (1) ☐ Cash (2) ☐ Accrual (3) ☐ Other

H Check applicable boxes: (1) ☐ Final return (2) ☐ Change in address (3) ☐ Amended return

	Yes	No
I Number of partners in this partnership ▶ _____		
J Is this partnership a limited partnership (see the instructions)?		
K Is this partnership a partner in another partnership?		
L Are any partners in this partnership also partnerships?		
M Does the partnership meet all the requirements shown in the Instructions for Question M?		
N Was there a distribution of property or a transfer (for example, by sale or death) of a partnership interest during the tax year? If "Yes," see the Instructions concerning an election to adjust the basis of the partnership's assets under section 754		
O At any time during the tax year, did the partnership have an interest in or a signature or other authority over a financial account in a foreign country (such as a bank account, securities account, or other financial account)? (See the instructions for exceptions and filing requirements for Form TD F 90-22.1.) If "Yes," write the name of the foreign country. ▶ _____		
P Was the partnership the grantor of, or transferor to, a foreign trust which existed during the current tax year, whether or not the partnership or any partner has any beneficial interest in it? If "Yes," you may have to file Forms 3520, 3520-A, or 926		
Q Was this partnership terminated at the end of 1987?		
R Number of months (if less than 12) that this partnership was in operation ▶		
S Check this box if this partnership has filed or is required to file Form 8264, Application for Registration of a Tax Shelter ☐		
T Check this box if this is a partnership subject to the consolidated partnership audit procedures of TEFRA. (See page 6 of the Instructions.) ☐		

Caution: *Include only trade or business income and expenses on lines 1a–21 below. See the instructions for more information.*

Income	1a Gross receipts or sales $ _____	1b Minus returns and allowances $ _____ Balance ▶	1c	
	2 Cost of goods sold and/or operations (Schedule A, line 7)		2	
	3 Gross profit (subtract line 2 from line 1c)		3	
	4 Ordinary income (loss) from other partnerships and fiduciaries (attach schedule)		4	
	5 Net farm profit (loss) (attach Schedule F (Form 1040))		5	
	6 Net gain (loss) (Form 4797, line 18)		6	
	7 Other income (loss)		7	
	8 TOTAL income (loss) (combine lines 3 through 7)		8	
Deductions	9a Salaries and wages (other than to partners) $ _____	Minus jobs credit $ _____ Balance ▶	9c	
	10 Guaranteed payments to partners		10	
	11 Rent		11	
	12 Deductible interest expense not claimed elsewhere on return (see Instructions)		12	
	13 Taxes		13	
	14 Bad debts		14	
	15 Repairs		15	
	16a Depreciation from Form 4562 (attach Form 4562) $ _____	16b Minus depreciation claimed on Schedule A and elsewhere on return $ _____ Balance ▶	16c	
	17 Depletion (*Do not deduct oil and gas depletion.*)		17	
	18a Retirement plans, etc.		18a	
	b Employee benefit programs		18b	
	19 Other deductions (attach schedule)		19	
	20 TOTAL deductions (add amounts in column for lines 9c through 19)		20	
	21 Ordinary income (loss) from trade or business activity(ies) (subtract line 20 from line 8)		21	

Please Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

▶ _____ Signature of general partner ▶ _____ Date

Paid Preparer's Use Only

Preparer's signature ▶ | Date | Check if self-employed ▶ ☐ | Preparer's social security no.

Firm's name (or yours if self-employed) and address ▶ | E.I. No. ▶ | ZIP code ▶

Proof or August 87

Schedule A Cost of Goods Sold and/or Operations

1	Inventory at beginning of year	1	
2	Purchases minus cost of items withdrawn for personal use	2	
3	Cost of labor	3	
4a	Additional section 263A costs (see instructions)	4a	
b	Other costs (attach schedule)	4b	
5	Total (add lines 1 through 4b)	5	
6	Inventory at end of year	6	
7	Cost of goods sold (subtract line 6 from line 5). Enter here and on page 1, line 2	7	

8a Check all methods used for valuing closing inventory:

(i) ☐ Cost

(ii) ☐ Lower of cost or market as described in regulations section 1.471-4

(iii) ☐ Writedown of "subnormal" goods as described in regulations section 1.471-2(c)

(iv) ☐ Other (specify method used and attach explanation) ▶ .....

b Check if the LIFO inventory method was adopted this tax year for any goods (if checked, attach Form 970) ☐

c Do the rules of section 263A (with respect to property produced or acquired for resale) apply to the partnership? ☐ Yes ☐ No

d Was there any change in determining quantities, cost, or valuations between opening and closing inventory? If "Yes," attach explanation. ☐ Yes ☐ No

Schedule H Income (Loss) From Rental Real Estate Activity(ies)

1 In the space provided below, show the kind and location of each rental property. Attach a schedule if more space is needed.

Property A .....

Property B .....

Property C

Rental Real Estate Income		Properties A	Properties B	Properties C	Totals (Add columns A, B, C, and amounts from any attached schedule)
2 Gross Income	2				2
Rental Real Estate Expenses					
3 Advertising	3				
4 Auto and travel	4				
5 Cleaning and maintenance	5				
6 Commissions	6				
7 Insurance	7				
8 Legal and other professional fees	8				
9 Interest expense	9				
10 Repairs	10				
11 Taxes	11				
12 Utilities	12				
13 Wages and salaries	13				
14 Depreciation from Form 4562	14				
15 Other (list)	15				
.....					
.....					
16 Total expenses. Add lines 3 through 15	16				16
17 Net income (loss) from rental real estate activity(ies). Subtract line 16 from line 2. Enter total net income (loss) from all properties on Schedule K, line 2	17				17

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Income (Loss) | Deductions | Credits | Self-Employment | Tax Preference Items | Investment Interest | Foreign Taxes | Other

Form 1065 (1987) Page 3

Schedule K Partners' Shares of Income, Credits, Deductions, etc.

	(a) Distributive share items		(b) Total amount
Income (Loss)	1 Ordinary income (loss) from trade or business activity(ies) (page 1, line 21)	1	
	2 Net income (loss) from rental real estate activity(ies) (Schedule H, line 17)	2	
	3a Gross income from other rental activity(ies) 3a $		
	b Minus expenses (attach schedule) 3b $		
	c Balance net income (loss) from other rental activity(ies) ▶	3c	
	4 Portfolio income (loss):		
	a Interest income	4a	
	b Dividend income	4b	
	c Royalty income	4c	
	d Net short-term capital gain (loss) (Schedule D, line 4)	4d	
	e Net long-term capital gain (loss) (Schedule D, line 9)	4e	
	f Other portfolio income (loss) (attach schedule)	4f	
	5 Guaranteed payments	5	
	6 Net gain (loss) under section 1231 (other than due to casualty or theft)	6	
	7 Other (attach schedule)	7	
Deductions	8 Charitable contributions (attach list)	8	
	9 Expense deduction for recovery property (section 179)	9	
	10 Deductions related to portfolio income (do not include investment interest expense)	10	
	11 Other (attach schedule)	11	
Credits	12a Credit for income tax withheld	12a	
	b Low-income housing credit (attach Form 8586)	12b	
	c Qualified rehabilitation expenditures related to rental real estate activity(ies) (attach schedule)	12c	
	d Credit(s) related to rental real estate activity(ies) other than 12b and 12c (attach schedule)	12d	
	e Credit(s) related to rental activity(ies) other than 12b, 12c, and 12d (attach schedule)	12e	
	13 Other (attach schedule)	13	
Self-Employment	14a Net earnings (loss) from self-employment	14a	
	b Gross farming or fishing income	14b	
	c Gross nonfarm income	14c	
Tax Preference Items	15a Accelerated depreciation of real property placed in service before 1/1/87	15a	
	b Accelerated depreciation of leased personal property placed in service before 1/1/87	15b	
	c Depreciation adjustment on property placed in service after 12/31/86	15c	
	d Depletion (other than oil and gas)	15d	
	e (1) Gross income from oil, gas and geothermal properties	15e(1)	
	(2) Deductions allocable to oil, gas and geothermal properties	15e(2)	
	f Other (attach schedule)	15f	
Investment Interest	16a Interest expense on investment debts	16a	
	b (1) Investment income included on lines 4a through 4f, Schedule K	16b(1)	
	(2) Investment expenses included on line 10, Schedule K	16b(2)	
Foreign Taxes	17a Type of income	17a	
	b Foreign country or U.S. possession	17b	
	c Total gross income from sources outside the U.S. (attach schedule)	17c	
	d Total applicable deductions and losses (attach schedule)	17d	
	e Total foreign taxes (check one): ▶ ☐ Paid ☐ Accrued	17e	
	f Reduction in taxes available for credit (attach schedule)	17f	
	g Other (attach schedule)	17g	
Other	18 Attach schedule for other items and amounts not reported above. See Instructions		

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Form 1065 (1987) Page 4

Schedule L Balance Sheets
(See the Instructions for Question M Before Completing Schedules L and M.)

Assets	Beginning of tax year (a)	Beginning of tax year (b)	End of tax year (c)	End of tax year (d)
1 Cash				
2 Trade notes and accounts receivable				
a Minus allowance for bad debts				
3 Inventories				
4 Federal and state government obligations				
5 Other current assets (attach schedule)				
6 Mortgage and real estate loans				
7 Other investments (attach schedule)				
8 Buildings and other depreciable assets				
a Minus accumulated depreciation				
9 Depletable assets				
a Minus accumulated depletion				
10 Land (net of any amortization)				
11 Intangible assets (amortizable only)				
a Minus accumulated amortization				
12 Other assets (attach schedule)				
13 TOTAL assets				
Liabilities and Capital				
14 Accounts payable				
15 Mortgages, notes, bonds payable in less than 1 year				
16 Other current liabilities (attach schedule)				
17 All nonrecourse loans				
18 Mortgages, notes, bonds payable in 1 year or more				
19 Other liabilities (attach schedule)				
20 Partners' capital accounts				
21 TOTAL liabilities and capital				

Schedule M Reconciliation of Partners' Capital Accounts
(Show reconciliation of each partner's capital account on Schedule K-1 (Form 1065), Question I.)

(a) Capital account at beginning of year	(b) Capital contributed during year	(c) Income (loss) from lines 1, 2, 3c, and 4 of Sch. K	(d) Income not included in column (c), plus nontaxable income	(e) Losses not included in column (c), plus unallowable deductions	(f) Withdrawals and distributions	(g) Capital account at end of year

Designation of Tax Matters Partner

The following general partner is hereby designated as the tax matters partner (TMP) for the tax year for which this partnership return is filed:

Name of designated TMP ▶ Identifying number of TMP ▶

Address of designated TMP ▶

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SCHEDULE K-1 (Form 1065)
Department of the Treasury Internal Revenue Service

Partner's Share of Income, Credits, Deductions, etc.

For calendar year 1987 or fiscal year beginning _____, 1987, and ending _____, 19___.

OMB No. 1545-0099

1987

Partner's identifying number ▶

Partner's name, address, and ZIP code

Partnership's identifying number ▶

Partnership's name, address, and ZIP code

A(1) Is this partner a general partner? . . . ☐ Yes ☐ No

If "yes" to Question A(1):

(2) Did this partner materially participate in the trade or business activity(ies) of the partnership? (See page 11 of the Form 1065 Instructions. Leave blank if no trade or business activities.). . . . ☐ Yes ☐ No

(3) Did this partner actively participate in the rental real estate activity(ies) of the partnership? (See page 11 of the Form 1065 Instructions. Leave blank if no rental real estate activities.). . . . ☐ Yes ☐ No

B Partner's share of liabilities

Nonrecourse. . . . . $ _____

Other . . . . . $ _____

C What type of entity is this partner? ▶

D Enter partner's percentage of:

	(i) Before decrease or termination	(ii) End of year
Profit sharing . . .	____%	____%
Loss sharing . . .	____%	____%
Ownership of capital . . .	____%	____%

E IRS Center where partnership filed return ▶ _____

F Tax Shelter Registration Number ▶ _____

G(1) Did the partner's ownership interest in the partnership increase after Oct. 22, 1986? . . . . ☐ Yes ☐ No

If yes, attach statement. (See page 12 of the Form 1065 Instructions.)

(2) Did the partnership start or acquire a new activity after Oct. 22, 1986? . . . . ☐ Yes ☐ No

If yes, attach statement. (See page 12 of the Form 1065 Instructions.)

H Check here ▶ ☐ if this Schedule K-1 is for a short tax year required by section 706(b).

I Reconciliation of partner's capital account:

(a) Capital account at beginning of year	(b) Capital contributed during year	(c) Income (loss) from lines 1, 2, 3, and 4 below	(d) Income not included in column (c), plus nontaxable income	(e) Losses not included in column (c), plus unallowable deductions	(f) Withdrawals and distributions	(g) Capital account at end of year

Caution: *Refer to attached Partner's Instructions for Schedule K-1 (Form 1065) before entering information from this schedule on your tax return.*

		(a) Distributive share item	(b) Amount	(c) 1040 filers enter the amount in column (b) on:
Income (Loss)	1	Ordinary income (loss) from trade or business activity(ies)		(See Partner's Instructions for Schedule K-1 (Form 1065))
	2	Income or loss from rental real estate activity(ies)		
	3	Income or loss from other rental activity(ies)		
	4	Portfolio income (loss):		
	a	Interest		Sch. B, Part I, line 2
	b	Dividends		Sch. B, Part II, line 4
	c	Royalties		Sch. E, Part I, line 5
	d	Net short-term capital gain (loss)		Sch. D, line 5, col. (f) or (g)
	e	Net long-term capital gain (loss)		Sch. D, line 12, col. (f) or (g)
	f	Other portfolio income (loss) (attach schedule)		(Enter on applicable lines of your return)
	5	Guaranteed payments		(See Partner's Instructions for Schedule K-1 (Form 1065))
	6	Net gain (loss) under section 1231 (other than due to casualty or theft)		
	7	Other (attach schedule)		(Enter on applicable lines of your return)
Deductions	8	Charitable contributions		See Form 1040 Instructions
	9	Expense deduction for recovery property (section 179)		(See Partner's Instructions for Schedule K-1 (Form 1065))
	10	Deductions related to portfolio income		Sch. A, line 21
	11	Other (attach schedule)		(See Partner's Instructions for Schedule K-1 (Form 1065))
Credits	12a	Credit for income tax withheld		See Form 1040 Instructions
	b	Low-income housing credit		Form 8586, line 8
	c	Qualified rehabilitation expenditures related to rental real estate activity(ies) (attach schedule)		(See Partner's Instructions for Schedule K-1 (Form 1065))
	d	Credit(s) related to rental real estate activity(ies) other than 12b and 12c (attach schedule)		
	e	Credit(s) related to rental activity(ies) other than 12b, 12c, and 12d (attach schedule)		
	13	Other credits (attach schedule)		

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Schedule K-1 (Form 1065) (1987) Page 2

		(a) Distributive share item	(b) Amount	(c) 1040 filers enter the amount in column (b) on:
Self-employment	14a	Net earnings (loss) from self-employment		Sch. SE, Part I
	b	Gross farming or fishing income		(See Partner's Instructions for Schedule K-1 (Form 1065))
	c	Gross nonfarm income		
Tax Preference Items	15a	Accelerated depreciation of real property placed in service before 1/1/87		Form 6251, line 5a
	b	Accelerated depreciation of leased personal property placed in service before 1/1/87		Form 6251, line 5b
	c	Depreciation adjustment on property placed in service after 12/31/86		Form 6251, line 4g
	d	Depletion (other than oil and gas)		Form 6251, line 5h
	e	(1) Gross income from oil, gas, and geothermal properties		See Form 6251 Instructions
		(2) Deductions allocable to oil, gas, and geothermal properties		See Form 6251 Instructions
	f	Other (attach schedule)		(See Partner's Instructions for Schedule K-1 (Form 1065))
Investment Interest	16a	Interest expense on investment debts		Form 4952, line 1
	b	(1) Investment income included in Schedule K-1, lines 4a through 4f		(See Partner's Instructions for Schedule K-1 (Form 1065))
		(2) Investment expenses included in Schedule K-1, line 10		
Foreign Taxes	17a	Type of income		Form 1116, Check boxes
	b	Name of foreign country or U.S. possession		Form 1116, Part I
	c	Total gross income from sources outside the U.S. (attach schedule)		Form 1116, Part I
	d	Total applicable deductions and losses (attach schedule)		Form 1116, Part I
	e	Total foreign taxes (check one): ▶ ☐ Paid ☐ Accrued		Form 1116, Part II
	f	Reduction in taxes available for credit (attach schedule)		Form 1116, Part III
	g	Other (attach schedule)		See Form 1116 Instructions
Other	18	Other items and amounts not included in lines 1 through 17g and 19 that are required to be reported separately to you		(See Partner's Instructions for Schedule K-1 (Form 1065))

Property Subject to Recapture of Investment Credit		A	B	C	
	19 Properties:				
	a Description of property (State whether recovery or nonrecovery property. If recovery property, state whether regular percentage method or section 48(q) election used.)				Form 4255, top
	b Date placed in service				Form 4255, line 2
	c Cost or other basis				Form 4255, line 3
	d Class of recovery property or original estimated useful life				Form 4255, line 4
	e Date item ceased to be investment credit property				Form 4255, line 8

Other Information Provided by Partnership:

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Form **1120S** Department of the Treasury Internal Revenue Service

U.S. Income Tax Return for an S Corporation

For the calendar year 1987 or tax year beginning _____, 1987, ending _____, 19__

▶ For Paperwork Reduction Act Notice, see page 1 of the instructions.

OMB No. 1545-0130

1987

A Date of election as an S corporation

Use IRS label. Otherwise, please print or type.

Name

Number and street (P.O. Box number if mail is not delivered to street address)

City or town, state, and ZIP code

B Business code no. (see Specific Instructions)

C Employer identification number

D Date incorporated

E Total assets (see Specific Instructions) Dollars Cents $

F Check applicable boxes: (1) ☐ Initial return (2) ☐ Final return (3) ☐ Change in address (4) ☐ Amended return

G Check this box if this is an S corporation subject to the consolidated S corporation audit procedures of sections 6241 through 6245 (see instructions) ▶ ☐

H Was this corporation in operation at the end of 1987? Yes ☐ No ☐

I How many months in 1987 was this corporation in operation? ▶

Caution: Include only trade or business income and expenses on lines 1a through 20. See the instructions for more information.

Income	1a	Gross receipts or sales _____ b Less returns and allowances _____ Balance ▶	1c	
	2	Cost of goods sold and/or operations (Schedule A, line 7)	2	
	3	Gross profit (subtract line 2 from line 1c)	3	
	4	Net gain (or loss) from Form 4797, line 18 (see instructions)	4	
	5	Other income (see instructions—attach schedule)	5	
	6	TOTAL income (loss)—Combine lines 3 through 5 and enter here ▶	6	
Deductions	7	Compensation of officers	7	
	8a	Salaries and wages _____ b Less jobs credit _____ Balance ▶	8	
	9	Repairs	9	
	10	Bad debts (see instructions)	10	
	11	Rents	11	
	12	Taxes	12	
	13	Total deductible interest expense not claimed or reported elsewhere on return (see instructions)	13	
	14a	Depreciation from Form 4562 (attach Form 4562) $ _____ 14b Minus depreciation claimed or reported on Schedule A and elsewhere on return $ _____ Balance ▶	14c	
	15	Depletion (Do not deduct oil and gas depletion. See instructions.)	15	
	16	Advertising	16	
	17	Pension, profit-sharing, etc. plans	17	
	18	Employee benefit programs	18	
	19	Other deductions (attach schedule)	19	
	20	TOTAL deductions—Add lines 7 through 19 and enter here ▶	20	
	21	Ordinary income (loss) from trade or business activity(ies)—Subtract line 20 from line 6	21	
Tax and Payments	22	Tax:		
	a	Excess net passive income tax (attach schedule) 22a		
	b	Tax from Schedule D (Form 1120S) 22b		
	c	Add lines 22a and 22b	22c	
	23	Payments:		
	a	Tax deposited with Form 7004 23a		
	b	Credit for Federal tax on gasoline and special fuels (attach Form 4136) 23b		
	c	Add lines 23a and 23b	23c	
	24	**TAX DUE** (subtract line 23c from line 22c). See instructions for Paying the Tax ▶	24	
	25	**OVERPAYMENT** (subtract line 22c from line 23c) ▶	25	

Please Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

▶ Signature of officer _____ Date _____ ▶ Title _____

Paid Preparer's Use Only

Preparer's signature ▶ _____ Date _____ Check if self-employed ▶ ☐ Preparer's social security number _____

Firm's name (or yours if self-employed) and address ▶ _____ E.I. No. ▶ _____ ZIP code ▶

Form **1120S** (1987)

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Form 1120S (1987) Page 2

Schedule A Cost of Goods Sold and/or Operations (See instructions for Schedule A.)

1	Inventory at beginning of year	1	
2	Purchases	2	
3	Cost of labor	3	
4a	Additional section 263A costs (attach schedule)	4a	
b	Other costs (attach schedule)	4b	
5	Total—Add lines 1 through 4b	5	
6	Inventory at end of year	6	
7	Cost of goods sold and/or operations—Subtract line 6 from line 5. Enter here and on line 2, page 1	7	

8a Check all methods used for valuing closing inventory:
- (i) ☐ Cost
- (ii) ☐ Lower of cost or market as described in Regulations section 1.471-4 (see instructions)
- (iii) ☐ Writedown of "subnormal" goods as described in Regulations section 1.471-2(c) (see instructions)
- (iv) ☐ Other (Specify method used and attach explanation) ▶

b Check this box if the LIFO inventory method was adopted this tax year for any goods (if checked, attach Form 970) ☐

c If the LIFO inventory method was used for this tax year, enter percentage (or amounts) of closing inventory computed under LIFO 8c

d Do the rules of section 263A (with respect to property produced or acquired for resale) apply to the corporation? ☐ Yes ☐ No

e Was there any change in determining quantities, cost, or valuations between opening and closing inventory? ☐ Yes ☐ No
If "Yes," attach explanation.

Additional Information Required	Yes	No
J Did you at the end of the tax year own, directly or indirectly, 50% or more of the voting stock of a domestic corporation? (For rules of attribution, see section 267(c).) If "Yes," attach a schedule showing: (1) Name, address, and employer identification number; (2) Percentage owned; (3) Highest amount owed by you to such corporation during the year; and (4) Highest amount owed to you by such corporation during the year. (Note: *For purposes of J(3) and J(4), "highest amount owed" includes loans and accounts receivable/payable.*)		
K Refer to the listing of business activity codes at the end of the instructions for Form 1120S and state your principal: Business activity ▶ ..... Product or service ▶		
L Were you a member of a controlled group subject to the provisions of section 1561?		
M Did you claim a deduction for expenses connected with: (1) Entertainment facilities (boat, resort, ranch, etc.)?		
(2) Living accommodations (except for employees on business)?		
(3) Employees attending conventions or meetings outside the North American area? (See section 274(h).)		
(4) Employees' families at conventions or meetings? If "Yes," were any of these conventions or meetings outside the North American area? (See section 274(h).)		
(5) Employee or family vacations not reported on Form W-2?		
N At any time during the tax year, did you have an interest in or a signature or other authority over a financial account in a foreign country (such as a bank account, securities account, or other financial account)? (See instructions for exceptions and filing requirements for form TD F 90-22.1.) If "Yes," enter the name of the foreign country ▶		
O Were you the grantor of, or transferor to, a foreign trust which existed during the current tax year, whether or not you have any beneficial interest in it? If "Yes," you may have to file Forms 3520, 3520-A, or 926		
P During this tax year did you maintain any part of your accounting/tax records on a computerized system?		
Q Check method of accounting: (1) ☐ Cash (2) ☐ Accrual (3) ☐ Other (specify) ▶		
R Check this box if the S corporation has filed or is required to file **Form 8264**, Application for Registration of a Tax Shelter ▶☐		
S Check this box if the corporation issued publicly offered debt instruments with original issue discount ▶☐ If so, the corporation may have to file **Form 8281**, Information Return for Publicly Offered Original Issue Discount Instruments.		

Designation of Tax Matters Person

The following shareholder is hereby designated as the tax matters person (TMP) for the tax year for which this tax return is filed:

Name of designated TMP ▶ Identifying number of TMP ▶

Address of designated TMP ▶

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Form 1120S (1987) Page 3

Schedule K Shareholders' Shares of Income, Credits, Deductions, etc. (See Instructions.)

	(a) Distributive share items			(b) Total amount
Income (Losses) and Deductions				
1	Ordinary income (loss) from trade or business activity(ies) (page 1, line 21)		1	
2a	Gross income from rental real estate activity(ies)	2a		
b	Minus expenses (attach schedule)	2b		
c	Balance net income (loss) from rental real estate activity(ies)		2c	
3a	Gross income from other rental activity(ies)	3a		
b	Minus expenses (attach schedule)	3b		
c	Balance net income (loss) from other rental activity(ies)		3c	
4	Portfolio income (loss):			
a	Interest income		4a	
b	Dividend income		4b	
c	Royalty income		4c	
d	Short-term capital gain (loss) (Schedule D (Form 1120S))		4d	
e	Long-term capital gain (loss) (Schedule D (Form 1120S))		4e	
f	Other portfolio income (loss) (attach schedule)		4f	
5	Net gain (loss) under section 1231 (other than due to casualty or theft)		5	
6	Other income (loss) (attach schedule)		6	
7	Charitable contributions (attach schedule)		7	
8	Section 179 expense deduction (attach schedule)		8	
9	Expenses related to portfolio income (loss) (attach schedule) (see instructions)		9	
10	Other deductions (attach schedule)		10	
Credits				
11a	Jobs credit (attach Form 5884)		11a	
b	Low-income housing credit (attach Form 8586)		11b	
c	Qualified rehabilitation expenditures related to rental real estate activity (attach schedule)			
d	Other credits related to rental real estate activity other than on line 11b or line 11c (attach schedule)		11d	
e	Credit(s) related to rental activity other than on lines 11b, 11c, and 11d (attach schedule)		11e	
12	Other credits (attach schedule)		12	
Tax Preference and Adjustment Items				
13a	Accelerated depreciation of real property placed in service before 1987		13a	
b	Accelerated depreciation of leased personal property placed in service before 1987		13b	
c	Depreciation adjustment on property placed in service after 1986		13c	
d	Depletion (other than oil and gas)		13d	
e	(1) Gross income from oil, gas, or geothermal properties		13e(1)	
	(2) Gross deductions allocable to oil, gas, or geothermal properties		13e(2)	
f	Other items (attach schedule)		13f	
Investment Interest				
14a	Interest expense on investment debts paid or accrued in 1987		14a	
b	(1) Investment income included on lines 4a through 4f, Schedule K		14b(1)	
	(2) Investment expenses included on line 9, Schedule K		14b(2)	
Foreign Taxes				
15a	Type of income			
b	Name of foreign country or U.S. possession			
c	Total gross income from sources outside the U.S. (attach schedule)		15c	
d	Total applicable deductions and losses (attach schedule)		15d	
e	Total foreign taxes (check one): ▶ ☐ Paid ☐ Accrued		15e	
f	Reduction in taxes available for credit (attach schedule)		15f	
g	Other (attach schedule)		15g	
Other Items				
16	Total property distributions (including cash) other than dividend distributions reported on line 18, Schedule K		16	
17	Other items and amounts not included in lines 1 through 16, Schedule K, that are required to be reported separately to shareholders (attach schedule)			
18	Total dividend distributions paid from accumulated earnings and profits contained in other retained earnings (line 26 of Schedule L)		18	

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Schedule L Balance Sheets

Assets	Beginning of tax year (a)	Beginning of tax year (b)	End of tax year (c)	End of tax year (d)
1 Cash				
2 Trade notes and accounts receivable				
a Less allowance for bad debts				
3 Inventories				
4 Federal and state government obligations				
5 Other current assets (attach schedule)				
6 Loans to shareholders				
7 Mortgage and real estate loans				
8 Other investments (attach schedule)				
9 Buildings and other depreciable assets				
a Less accumulated depreciation				
10 Depletable assets				
a Less accumulated depletion				
11 Land (net of any amortization)				
12 Intangible assets (amortizable only)				
a Less accumulated amortization				
13 Other assets (attach schedule)				
14 Total assets				
Liabilities and Shareholders' Equity				
15 Accounts payable				
16 Mortgages, notes, bonds payable in less than 1 year				
17 Other current liabilities (attach schedule)				
18 Loans from shareholders				
19 Mortgages, notes, bonds payable in 1 year or more				
20 Other liabilities (attach schedule)				
21 Capital stock				
22 Paid-in or capital surplus				
23 Accumulated adjustments account				
24 Other adjustments account				
25 Shareholders' undistributed taxable income previously taxed				
26 Other retained earnings (see instructions)				
Check this box if the corporation has subchapter C earnings and profits at the close of the tax year ▶ ☐ (see instructions)				
27 Total retained earnings per books—Combine amounts on lines 23 through 26, columns (a) and (c) (see instructions)				
28 Less cost of treasury stock	( )		( )	
29 Total liabilities and shareholders' equity				

Schedule M Analysis of Accumulated Adjustments Account, Other Adjustments Account, and Shareholders' Undistributed Taxable Income Previously Taxed (If Schedule L, column (c), amounts for lines 23, 24, or 25 are not the same as corresponding amounts on line 9 of Schedule M, attach a schedule explaining any differences. See instructions.)

	Accumulated adjustments account	Other adjustments account	Shareholders' undistributed taxable income previously taxed
1 Balance at beginning of year			
2 Ordinary income from page 1, line 21			
3 Other additions			
4 Total of lines 1, 2, and 3			
5 Distributions other than dividend distributions			
6 Loss from page 1, line 21			
7 Other reductions			
8 Add lines 5, 6, and 7			
9 Balance at end of tax year—Subtract line 8 from line 4			

Proof of August 5, 1987

SCHEDULE K-1 (Form 1120S)
Department of the Treasury
Internal Revenue Service

Shareholder's Share of Income, Credits, Deductions, etc.

For calendar year 1987 or tax year
beginning ..... 1987, and ending ..... 19 ....
▶ For Paperwork Reduction Act Notice, see page 1 of Instructions for Form 1120S.

OMB No 1545 0130
1987

Shareholder's identifying number ▶	Corporation's identifying number ▶
Shareholder's name, address, and ZIP code	Corporation's name, address, and ZIP code

A (1) Shareholder's percentage of stock ownership for tax year ▶ ____ % and (2) Number of shares owned by shareholder at tax year end ▶ ____ (see instructions for Schedule K-1)

B Internal Revenue Service Center where corporation filed its return ▶

C Tax shelter registration number (see Instructions for Schedule K-1) ▶

D Did the shareholder materially participate in the trade or business activity(ies) of the corporation? (See page 8 of the Form 1120S Instructions. Leave the check boxes blank if there are no trade or business activities.) ☐ Yes ☐ No

E Did the shareholder actively participate in the rental real estate activity(ies) of the corporation? (See page 8 of the Form 1120S Instructions. Leave the check boxes blank if there are no rental real estate activities.) ☐ Yes ☐ No

F If (1) question D is checked "No" or income or loss is reported on line 2 or 3 and (2) the shareholder had acquisition(s) of corporate stock after 10/22/86, check here ▶ ☐ and enter the shareholder's weighted percentage increase in stock ownership for 1987 (see instructions for Schedule K-1) ▶ %

G If question D is checked "No" and any activity referred to in question D was started or acquired by the corporation after 10/22/86, check here ▶ ☐ and enter the date of start-up or acquisition in the date space on line 1. Also, if an activity for which income or loss is reported on line 2 or 3 was started after 10/22/86, check the box and enter the start-up date in the date space on line 2 or 3.

H If short tax year shown above was a result of a change in tax year required by section 1378, check ▶ ☐

Caution: *Refer to attached Instructions for Schedule K-1 before entering information from Schedule K-1 on your tax return.*

	(a) Distributive share items	(b) Amount	(c) Form 1040 filers enter the amount in column (b) on:
Income (Losses) and Deductions	1 Ordinary income (loss) from trade or business activity(ies). Date:		See Shareholder's Instructions for Schedule K-1 (Form 1120S).
	2 Income or loss from rental real estate activity(ies). Date:		
	3 Income or loss from rental activity(ies) other than line 2 above. Date:		
	4 Portfolio income (loss):		
	a Interest		Sch. B, Part I, line 2
	b Dividends		Sch. B, Part II, line 4
	c Royalties		Sch. E, Part I
	d Net short-term capital gain (loss)		Sch. D, line 5, col. (f) or (g)
	e Net long-term capital gain (loss)		Sch. D, line 12, col. (f) or (g)
	f Other portfolio income (loss).		(Enter on applicable line of your return.)
	5 Net gain (loss) under section 1231 (other than due to casualty or theft).		Form 4797, line 1
	6 Other income (loss) (attach schedule)		(Enter on applicable line of your return.)
	7 Charitable contributions		See Form 1040 Instructions.
	8 Section 179 expense deduction (attach schedule)		See Shareholder's Instructions for Schedule K-1 (Form 1120S).
	9 Deductions related to portfolio income (attach schedule)		
	10 Other deductions (attach schedule)		
Credits	11a Jobs credit		Form 5884
	b Low-income housing credit		Form 8586
	c Qualified rehabilitation expenditures related to rental real estate activity(ies) (attach schedule)		See Shareholder's Instructions for Schedule K-1 (Form 1120S).
	d Credits related to rental real estate activity(ies) other than on line 11b and 11c (attach schedule)		
	e Credits(s) related to rental activity(ies) other than on line 11b, c, and d (attach schedule)		
	12 Other credits (attach schedule)		
Tax Preference and Adjustment Items	13a Accelerated depreciation of real property placed in service before 1987		Form 6251, line 5a
	b Accelerated depreciation of leased personal property placed in service before 1987		Form 6251, line 5b
	c Depreciation adjustment on property placed in service after 1986		Form 6251, line 4g
	d Depletion (other than oil and gas)		Form 6251, line 5h
	e (1) Gross income from oil, gas, or geothermal properties		See Form 6251 Instructions.
	(2) Gross deductions allocable to oil, gas, or geothermal properties		
	f Other items (attach schedule)		See Shareholder's Instructions for Schedule K-1 (Form 1120S).

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Schedule K-1 (Form 1120S) (1987) Page 2

	(a) Distributive share items	(b) Amount	(c) Form 1040 filers enter the amount in column (b) on:
Investment Interest	14a Interest expense on investments debts paid or accrued in 1987		Form 4952, line 1
	b (1) Investment income included in Schedule K-1, lines 4a through 4f		See Shareholder's Instructions for Schedule K-1 (Form 1120S).
	(2) Investment expenses included in Schedule K-1, line 9		
Foreign Taxes	15a Type of income ▶		Form 1116, Check boxes
	b Name of foreign country or U.S. possession ▶		Form 1116, Part I
	c Total gross income from sources outside the U.S. (attach schedule)		Form 1116, Part I
	d Total applicable deductions and losses (attach schedule)		Form 1116, Part I
	e Total foreign taxes (check one): ▶ ☐ Paid ☐ Accrued		Form 1116, Part II
	f Reduction in taxes available for credit (attach schedule)		Form 1116, Part III
	g Other (attach schedule)		See Form 1116 instructions.
Other Items	16 Property distributions (including cash) other than dividend distributions reported to you on Form 1099-DIV		See Shareholder's Instructions for Schedule K-1 (Form 1120S).
	17 Amount of loan repayments for "Loans from Shareholders"		

Property Subject to Recapture of Investment Credit	A	B	C	
18 Properties:				
a Description of property (State whether recovery or non-recovery property. If recovery property, state whether regular percentage method or section 48(q) election used.)				Form 4255, line 1
b Date placed in service				Form 4255, line 2
c Cost or other basis				Form 4255, line 3
d Class of recovery property or original estimated useful life				Form 4255, line 4
e Date item ceased to be investment credit property				Form 4255, line 8

Supplemental Schedules

19 Supplemental information for lines 6, 8, 9, 10, 11c, 11e, 12, 13f, 15c, 15d, 15f, 15g, or other items and amounts not included in lines 1 through 18 that are required to be reported separately to each shareholder (attach additional schedules if more space is needed):

Proof of August 5, 1987

Form **6251**

Department of the Treasury
Internal Revenue Service

Alternative Minimum Tax—Individuals

▶ Attach to Form 1040 or Form 1040NR. Estates and trusts, use Form 8656.

OMB No. 1545-0227

1987

Attachment Sequence No. 32

Name(s) as shown on Form 1040 | Your social security number

1	Taxable income from Form 1040, line 36		1
2	Net operating loss deduction		2
3	Add lines 1 and 2		3
4	Adjustments:		
a	Standard deduction from Form 1040, line 33b	4a	
b	Medical and dental expense (see instructions)	4b	
c	Miscellaneous itemized deductions from Schedule A, line 24	4c	
d	Taxes from Schedule A, line 8	4d	
e	Interest from Schedule A, line 12b	4e	
f	Other interest adjustments (see instructions)	4f	
g	Depreciation of property placed in service after 1986	4g	
h	Circulation and research and experimental expenditures paid or incurred after 1986	4h	
i	Mining exploration and development costs paid or incurred after 1986	4i	
j	Long-term contracts entered into after 2/28/86	4j	
k	Pollution control facilities placed in service after 1986	4k	
l	Installment sales of certain property	4l	
m	Basis adjustment (see instructions)	4m	
n	Certain loss limitations (see instructions)	4n	
o	Tax shelter farm loss	4o	
p	Passive activity loss	4p	
q	Beneficiaries of estates and trusts (see instructions)	4q	
r	Other (see instructions)	4r	
s	Total adjustments (combine lines 4a through 4r)		4s
5	Tax preference items:		
a	Accelerated depreciation of real property placed in service before 1987	5a	
b	Accelerated depreciation of leased personal property placed in service before 1987	5b	
c	Amortization of certified pollution control facilities placed in service before 1987	5c	
d	Appreciated property charitable deduction	5d	
e	Incentive stock options	5e	
f	Tax-exempt interest from private activity bonds issued after August 7, 1986	5f	
g	Intangible drilling costs	5g	
h	Depletion	5h	
i	Reserves for losses on bad debts of financial institutions	5i	
j	Total tax preference items (add lines 5a through 5i)		5j
6	Combine lines 3, 4s, and 5j		6
7	Alternative tax net operating loss deduction (Do not enter more than 90% of line 6)		7
8	Alternative minimum taxable income (subtract line 7 from line 6)		8
9	Enter: $40,000 ($20,000 if married filing separately; $30,000 if single or head of household)		9
10	Enter: $150,000 ($75,000 if married filing separately; $112,500 if single or head of household)		10
11	Subtract line 10 from line 8. If result is zero or less, enter zero		11
12	Multiply line 11 by 25% (.25)		12
13	Subtract line 12 from line 9. If result is zero or less, enter zero		13
14	Subtract line 13 from line 8		14
15	Multiply line 14 by 21% (.21)		15
16	Alternative minimum tax foreign tax credit		16
17	Tentative minimum tax (subtract line 16 from line 15)		17
18	Regular tax before credits (Form 1040, line 37) minus foreign tax credit (Form 1040, line 44)		18
19	Alternative minimum tax (subtract line 18 from line 17). Enter on Form 1040, line 49		19

Proof of August 5 1987

1987

Department of the Treasury
Internal Revenue Service

Instructions for Form 6251

Alternative Minimum Tax—Individuals

(Section references are to the Internal Revenue Code.)

General Instructions

Paperwork Reduction Act Notice.—We ask for this information to carry out the Internal Revenue laws of the United States. We need it to ensure that taxpayers are complying with these laws and to allow us to figure and collect the right amount of tax. You are required to give us this information.

Changes You Should Note.—The Tax Reform Act of 1986 changed the method for figuring the alternative minimum tax. Some items which previously were tax preference items are now adjustments to taxable income to arrive at alternative minimum taxable income. In addition, certain tax preference items and adjustments have changed.

This form is now used only by individuals to figure their alternative minimum tax. Estates and trusts should use Form 8656 to figure their alternative minimum tax.

Who Must File.—File this form if: (a) You are liable for the alternative minimum tax or your credits are limited by the tentative minimum tax; or (b) Line 6 is more than line 9, and you have one or more adjustments on lines 4(f) through (q), or tax preference items on line 5.

For more information, see **Publication 909**, Alternative Minimum Tax for Individuals.

Partners, Shareholders, etc.—If you are a partner or shareholder of an S corporation, take into account separately your distributive share of items of income and deductions that enter into the computation of your alternative minimum tax adjustments and tax preference items.

Short period return.—If this is a short period return, use the formula in section 443(d) to determine your alternative minimum taxable income and alternative minimum tax.

Nonresident alien individuals.—If you disposed of U.S. real property interests at a gain, see Form 1040NR instructions for a special rule in figuring Form 6251, line 15.

Carryback and carryover of unused credits.—It may be necessary to figure the carryback or carryover of certain unused credits. See the appropriate credit forms and Code sections for more information.

Earned income credit.—If you have an earned income credit, you must reduce that credit by any alternative minimum tax.

Line-by-Line Instructions

Line 4(a).—If you have an amount on Form 1040, line 33(b), enter that amount. If you itemize deductions, enter zero.

Line 4(b).—If you have an entry on Schedule A, line 4, multiply Form 1040, line 31 by 2½% (.025) and enter the result on line 4(b). If the result is more than the amount on Schedule A, line 4, enter the amount from Schedule A, line 4 on line 4(b).

Line 4(d).—Enter your state and local income taxes, real estate taxes, and personal property taxes from Schedule A, lines 5, 6, and 7.

Line 4(f)—Other interest adjustment.—If your mortgage interest deduction includes interest from refinancing your mortgage for an amount above your mortgage balance before refinance, enter on line 4(f) the interest attributable to the excess of your mortgage balance after refinance over your mortgage balance before refinance. However, if the increased mortgage amount was used for property improvements, do not enter the interest attributable to those improvements.

If you have investment interest, refigure Form 4952 (Investment Interest Expense Deduction) through line 7 for purposes of the alternative minimum tax, and include interest on any private activity bond issued after August 7, 1986, as investment interest and investment income. On this Form 4952, do not complete lines 8 through 13, but enter line 7 on line 14. Subtract your recomputed line 15 from 15 of the Form 4952 you used for the regular tax. Include that result on Form 6251, line 4(f). See the instructions below for line 5(f) for definition of private activity bond.

Line 4(g)—Depreciation of property placed in service after 1986, or after 7/31/86 if election was made.—Refigure your depreciation as follows: For property other than real property and property on which the straight line method was used, use the 150 percent declining balance method, switching to straight line for the 1st tax year when that method gives a better result. Use the same class lives and conventions as you used on Form 4562. For residential rental and nonresidential real property, use the straight line method over 40 years. Use the same conventions as you used on Form 4562. Determine your depreciation adjustment by subtracting your recomputed depreciation from the depreciation you took on Form 4562. Enter the difference on line 4(g).

Line 4(h)—Circulation and research and experimental expenditures paid or incurred after 1986.—Refigure your circulation expenditures by amortizing them over three years beginning with the year the expenditures were made. Refigure your research and experimental expenditures by amortizing them over ten years beginning with the year the expenditures were made. Figure your adjustment by subtracting these refigured amounts from the deductions you took under sections 173 and 174(a). Enter the difference on line 4(h). If you had a loss with respect to those expenditures, see section 56(b)(2)(B).

Line 4(i)—Mining exploration and development costs paid or incurred after 1986.—With respect to each mine or other natural deposit (other than an oil, gas, or geothermal well), refigure your expenses by amortizing them over ten years beginning with the year in which the expenses were made. Figure your adjustment by subtracting the refigured amount from the deduction you took under sections 616(a) or 617(a). If you had a loss with respect to those expenditures, see section 56(a)(2)(B).

Line 4(j).—If you entered into a long-term contract after 2/28/86, determine your taxable income from such contract under the percentage of completion method of accounting as modified by section 460(b). Determine the difference between the result using the percentage of completion method and the result you got on the contract when figuring your regular tax, and enter the difference on this line. If the refigured taxable income is less than the result when determining your regular tax, enter the difference as a negative amount.

Line 4(k).—For any certified pollution control facility placed in service after 1986, figure your entry for this line in the same manner you figured line 4(g).

Line 4(l)—Installment sales of certain property.—In the case of any disposition after 3/1/86 of property which is inventory or stock in trade, or other disposition if an obligation arising from such disposition would be an applicable installment obligation under section 453C, determine the income from such disposition without using the installment method. Your adjustment will be the difference between this result and the result you obtained when figuring your regular tax. If this result is less than the result you obtained when figuring your regular tax, enter the difference as a negative amount. If you made an election under section 453C(e)(4), enter zero on this line.

Line 4(m)—Basis adjustment.—If you disposed of property during the year, refigure your gain or loss from such sale taking into consideration your alternative minimum tax adjustments on lines 4(g), (h), (i), and (k). Enter the difference between the gain or loss reported on your tax return for purposes of the regular tax and your recomputed gain or loss. If the recomputed gain is less, or the loss is more, enter the difference as a negative amount.

Line 4(n)—Certain loss limitations.—Refigure your allowable losses from at-risk activities and basis limitations applicable to partnerships and S corporations, taking into account your alternative minimum tax adjustments and tax preference items. See

Program Support Branch 8/6/87

sections 59(h), 465, 704(d), and 1366(d). Enter the difference between the loss reported on your tax return for purposes of the regular tax and your recomputed loss. If the recomputed loss is more than the loss reported for purposes of the regular tax, enter as a negative amount.

Line 4(o).—Figure the amount of any disallowed loss from a tax shelter farm activity as defined in section 464(c) and any other farm activity which is a passive activity under section 469(d). Enter on this line the difference between the amount of such disallowed losses and the amount of losses from these activities which are disallowed for regular tax purposes, such as under the passive activity loss rules. In figuring the amount of the loss, take into consideration your alternative minimum tax adjustments and tax preference items. Any loss entered on this line shall be treated as a deduction allocable to such activity in the first succeeding year.

Line 4(p)—Passive activity loss.—Refigure your passive activity loss taking into consideration your alternative minimum tax adjustments from passive activities and adding back your tax preference items from passive activities. Refigure this loss on Form 8582, but do not complete line 23 of the form, relating to the phase in of the disallowance. Enter on line 4(p) the difference between your recomputed loss and the loss obtained when figuring your regular tax. For purposes of this line, do not take into consideration any losses from tax shelter farm activities.

Line 4(q)—Beneficiaries of estates and trusts, if the Schedule K-1 you received from the estate or trust has an entry on line 7, enter the difference between the distribution you included in income for purposes of the regular tax and the amount included on Schedule K-1(Form 1041), line 7.

Line 4(r)—Other.—At the time Form 6251 and these instructions were developed, Congress was considering legislation that would not allow the deduction for personal exemptions in figuring alternative minimum taxable income.

Line 5(a)—Accelerated depreciation of real property placed in service before 1987.—Enter on this line (never less than zero) the difference between the depreciation you got for this property in determining the regular tax and depreciation as refigured using the straight line method. Figure this amount separately for each property. For 15, 18, or 19-year real property, or low income housing, use the straight line method over 15, 18, or 19 years, using the half-year convention and no salvage value.

Line 5(b)—Accelerated depreciation of leased personal property placed in service before 1987.—For leased personal property, other than recovery property, enter the difference (never less than zero) between the depreciation you got for this property in determining the regular tax and depreciation as refigured using the straight line method. Figure this amount separately for each property.

For leased recovery property, other than 15, 18, or 19-year real property, or low income housing, enter the amount by which your depreciation deduction determined for your regular tax is more than the deduction allowable using the straight line method with a half-year convention, no salvage value, and the following recovery period:

3-year property	5 years
5-year property	8 years
10-year property	15 years
15-year public utility property	22 years

Note: *If the recovery period actually used is longer than the recovery period in 5(a) or 5(b), do not complete those lines with respect to that recovery property.*

Line 5(c)—Amortization of certified pollution control facilities placed in service before 1987.—Enter the amount by which the amortization allowable under section 169 is more than the depreciation deduction otherwise allowable.

Line 5(d)—Appreciated property charitable deduction.—Enter the amount by which your contribution deduction for capital gain and section 1231 property would be reduced if such property was taken into account at its cost or other basis, rather than fair market value.

Line 5(e)—Incentive stock options.—If you received stock by the exercise of an incentive stock option, enter the amount by which the fair market value of the shares at the time of exercise was more than the option price. The basis of the stock is increased by the amount of this tax preference item for purposes of the alternative minimum tax, in determining gain or loss on later disposition of the stock. Adjust the tax preference item by the difference between your taxable gain or loss with this basis adjustment, and the gain or loss reported on your tax return in figuring your regular tax. See sections 57(a)(3) and 422A.

Line 5(f)—Tax-exempt interest.—Enter your interest on private activity bonds issued after August 7, 1986, reduced by any deduction attributable to it. Private activity bonds are bonds where more than 10% of the proceeds are to be used for any private business use and the private security or payment test of section 141(b)(2) is met. A bond is also considered a private activity bond if it meets the private loan financing test of section 141(c).

Line 5(g)—Intangible drilling costs.—Enter the amount by which your excess intangible drilling costs are more than 65 percent of your net income from oil, gas, and geothermal properties.

Figure excess intangible drilling costs as follows: From the allowable intangible drilling and development costs (except costs in drilling a nonproductive well), subtract the amount that would have been allowable if you had capitalized these costs and either amortized them over the 120 months that started when production began, or treated them according to any election you made under section 57(b)(2).

Your net income from oil, gas, and geothermal properties is your gross income from them, minus the deductions allocable to them, except for excess intangible drilling costs and nonproductive well costs.

Figure the line 5(g) amount separately for oil and gas properties which are not geothermal deposits and for oil and gas properties which are geothermal deposits.

Line 5(h)—Depletion.—In the case of mines, wells, and other natural deposits, enter the amount by which your deduction for depletion is more than your adjusted basis of the property at the end of your tax year. Figure the adjusted basis without regard to the depletion deduction and figure the excess separately for each property.

Line 5(i)—Reserves for losses on bad debts of financial institutions.—In the case of a financial institution, enter your share of the excess of the deduction allowable for a reasonable addition to a reserve for bad debts over the amount that would have been allowable had the institution maintained its bad debt reserve for all tax years based on actual experience.

Line 7—Alternative tax net operating loss deduction.—Your alternative tax net operating loss deduction is your net operating loss deduction refigured as follows: For any loss year after 1982, reduce the loss by your tax preference items and by your itemized deductions which were not allowed in figuring alternative minimum tax to the extent those items were included in your net operating loss for that year. Use your alternative minimum taxable income instead of taxable income when figuring the amount of your loss to carry over from one year to the next.

Line 16—Alternative minimum tax foreign tax credit.—Your alternative minimum tax foreign tax credit is your foreign tax credit refigured as follows:

(1) Use and attach a separate Form 1116 for each type of income specified at the top of Form 1116. Print across the top of each Form 1116 used "Alt Min Tax."

(2) Fill in a new Part I using that portion of your taxable income, adjustments and tax preference items from Form 6251, attributable to sources outside the United States.

(3) Fill in a new Part III using your alternative minimum taxable income (Form 6251, line 8) instead of taxable income on line 9. On line 11 enter Form 6251, line 15 less 10% of the amount that would be on that line if Form 6251 was refigured using zero on line 7.

(4) Fill in a new Part IV, but do not enter on Form 6251, line 16 more than Form 6251, line 15 less 10% of the amount that would be on that line if Form 6251 was refigured using zero on line 7.

[FR Doc. 87-17759 Filed 8-5-87; 8:45 am]

BILLING CODE 4830-01-C

Proof

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirements Under OMB Review

AGENCY: United States Information Agency.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C., Chapter 35), agencies are required to submit proposed or established reporting and record-keeping requirements to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the Agency has made such a submission. USIA is requesting a generic clearance of its information-collecting activities among grantees and alumni/ae of USIA-funded educational and cultural exchange activities regarding program effectiveness.

DATE: Comments must be received by August 31, 1987.

Copies: Copies of the Request for Clearance (SP–83), supporting statement, transmittal letter, and other documents submittee to OMB for approval may be obtained from the USIA Clearance Officer. Comments on the items listed should be submitted to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Retta Graham-Hall, United States Information Agency, M/ASP, 301 Fourth Street, SW., Washington, D.C. 20547, telephone (202) 485–7501; and OMB review: Francine Picoult, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Bldg., Washington, DC 20503, telephone (202) 395–7340.

SUPPLEMENTARY INFORMATION: Title: USIA-Supported Educational and Cultural Exchange Activities.

Abstract: In the interest of sound program management, USIA undertakes the collection of information about program effectiveness necessary to the management and evaluation of USIA-funded educational and cultural exchange programs. USIA seeks clearance from OMB for these information-collection activities among grantees and alumni/ae of these programs.

Proposed Frequency of Responses: Maximum annual estimates of total burden for all information collections are as follows:

No. of Respondents—1,700
Recordkeeping Hours—332
Response Hours—1,275
Total annual burden—1,607

Dated: July 30, 1987.

Charles N. Canestro,

Federal Register Liaison.

[FR Doc. 87–17843 Filed 8–5–87; 8:45 am]

BILLING CODE 8230-01-M

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13358, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Carthage: A Mosaic of Ancient Tunisia" (see list [1]) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are importerd pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the American Museum of Natual History, New York, New York, beginning on or about December 1, 1987, to on or about May 15, 1988, at the New Orleans Museum of Art, New Orleans, Louisiana, beginning on or about November 15, 1988, to on or about February 15, 1989, and at the Los Angeles County Museum of Natural History, Los Angeles, California, beginning on or about September 15, 1989, to on or about December 30, 1989, with at least two other intermediate exhibitions, is in the national interest.

Public notice of this determination is ordered to be published in the Federal Register.

Dated: August 4, 1987.

C. Normand Poirier,

Acting General Counsel.

[FR Doc. 87–18057 Filed 8–5–87; 11:20 am]

BILLING CODE 8230-01-M

[1] A copy of this list may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number is 202–485–7976, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547.

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains an extension and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Elaine Norden, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: July 30, 1987.

By direction of the Administrator.

David A. Cox,

Associate Deputy Administrator for Management.

Extension

1. Office of Facilities
2. Daily Report of Workers and Material Daily Log—Formal Contract
3. VA Form 08–6131
4. This information is needed to determine the contractor's compliance with the terms and conditions of the construction contract.
5. Every workday
6. Busineses or other for-profit and Small businesses or organizations
7. 78,000 responses
8. 13,000 hours
9. Not applicable

[FR Doc. 87–17859 Filed 8–5–87; 8:45 am]

BILLING CODE 8320-01-M

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains an extension and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Elaina Norden, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: July 30, 1987.

By direction of the Administrator.

David A. Cox,

Associate Deputy Administrator for Management.

Extension

1. Office of Budget and Finance (Controller)
2. Financial Status Report
3. VA Form 4–5655
4. This information is used to determine eligibility of a person requesting a repayment plan, waiver of a debt, or making a compromise offer.
5. On occasion
6. Individuals or households
7. 250,000 responses
8. 250,000 hours
9. Not applicable

[FR Doc. 87–17860 Filed 8–5–87; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 52, No.151
Thursday, August 6, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NO.: 87-17408.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, August 6, 1987, 10:00 a.m.

THE FOLLOWING ITEM HAS BEEN ADDED TO THE AGENDA:

Draft Advisory Opinion 1987-15—James F. Schoener on behalf of Kemp for President Committee.

DATE AND TIME: Tuesday, August 11, 1987, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, August 13, 1987, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Eligibility Report for Candidates to Receive Presidential Primary Matching Funds.
Proposed Revisions to the Delegate Selection Regulations (11 CFR 110.14).
Draft Advisory Opinion 1987-23—Rand Hoch on behalf of Electro Political Action Committee 323.
Routine Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Marjorie W. Emmons,
Secretary of the Commission.

[FR Doc. 87-17907 Filed 8-4-87; 2:35 p.m.]

BILLING CODE 6715-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, August 12, 1987.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

1. Any items carried forward from a previously anounced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

James McAfee,
Associate Secretary of the Board.

Date: August 4, 1987.

[FR Doc. 87-18018 Filed 8-4-87; 3:53 p.m.]

BILLING CODE 6210-01-M

Corrections

Federal Register
Vol. 52, No. 151
Thursday, August 6, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 377

[Docket No. 70747-7147]

Short Supply Controls and Monitoring

Correction

In rule document 87-16924 beginning on page 28136 in the issue of Tuesday, July 28, 1987, make the following corrections:

1. On page 28136, in the third column, in amendatory instruction 2(e), in the 5th line, "l" should read "m".

2. On page 28137, in the first column, amendatory instruction 10 was incorrectly designated as amendatory instruction 11.

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

Minority Business Development Agency

Financial Assistance Application Announcements; North Carolina

Correction

In notice document 87-17014 beginning on page 28181 in the issue of Tuesday, July 28, 1987, make the following correction:

On page 28181, in the **SUMMARY**, the last sentence should have been two sentences and should have read: "The cost of performance for the first 12 months is estimated at $165,000 for the budget period January 1, 1988 to December 31, 1988. The IBDC will operate in the Cherokee/Ashville, North Carolina Metropolitan Statistical Area (MSA)."

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 410

[Docket Nos. 85N-0322 and BERC-324-F]

Cardiac Pacemaker Registry

Correction

In rule document 87-16592 beginning on page 27756 in the issue of Thursday, July 23, 1987, make the following correction:

PART 410--[CORRECTED]

On page 27765, in the first column, in the Authority, in the third line, "13951" should read "1395l".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-77-AD]

Airworthiness Directives; Boeing Model 737 Series Airplanes

Correction

In proposed rule document 87-15122 beginning on page 25024 in the issue of Thursday, July 2, 1987, make the following correction:

On page 25024, in the second column, in the **DATE** paragraph, in the second line, "August 2, 1987" should read "August 22, 1987".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87-AGL-5]

Proposed Alteration of VOR Federal Airways; Illinois

Correction

In proposed rule document 87-15853 beginning on page 26350 in the issue of Tuesday, July 14, 1987, make the following correction:

On page 26351, in the first column, under **V-340 [Revised]**, in the first line, insert "M" after "063"".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87-AWA-10]

Proposed Alteration of VOR Federal Airways; Expanded East Coast Plan, Phase II

Correction

In proposed rule document 87-15854 beginning on page 26351 in the issue of Tuesday, July 14, 1987, make the following corrections:

1. On page 26352, in the first column, under **V-36[Amended]**, in the seventh line, insert "T" after "310"".

2. On the same page, in the same column, under **V-44[Amended]**, in the 12th line, "211"" should read "221"", and in the 13th line, "BRIDGEPORT" should read "Bridgeport".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Customs Service

Application for Recordation of Trade Name: "Two's Company"

Correction

In notice document 87-17532 appearing on page 28774 in the issue of Monday, August 3, 1987, make the following correction:

In the third column, in the second line "October 3" should read "October 2".

BILLING CODE 1505-01-D

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federal register

Thursday
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Part II

Department of Education

34 CFR Part 650

Jacob K. Javits Fellows Program; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 650

Jacob K. Javits Fellows Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Jacob K. Javits Fellows Program, formerly called the National Graduate Fellows Program. These regulations are needed to implement Title IX, Part C of the Higher Education Act, as amended by the Higher Education Amendments of 1986.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Allen P. Cissell, Jacob K. Javits Fellows Program, Office of Higher Education Programs, Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3022, ROB–3, Washington, DC 20202. Telephone: (202) 732–4415.

SUPPLEMENTARY INFORMATION: The Jacob K. Javits Fellows Program provides fellowships to students for study at the doctoral level in selected fields of the humanities, arts and social sciences. Many of the responsibilities under this program regarding procedures and criteria for selection of fellows and general policies for the program are vested in the Fellowship Board. Members of the Fellowship Board are appointed by the Secretary of Education. These regulations do not establish rules on matters for which the Fellowship Board has responsibility.

Several changes were made in the program by the Higher Education Amendments of 1986. These were:

- The 1986 legislation has changed the name of the National Graduate Fellows Program to the Jacob K. Javits Fellows Program.
- The 1986 legislation requires the secretary to pay $6,000 to each institution for each individual awarded a fellowship and enrolled at such institution.
- The Secretary has determined that the financial need on which the stipend levels are based will be calculated under the provisions of Part F, Title IV of the Higher Education Act, with exceptions as noted for fellows selected in 1985.
- The 1986 legislation requires that stipends shall provide a level of support comparable to that provided by federally funded graduate fellowships in the science and engineering fields. The Secretary has determined that the stipends as calculated under § 650.42 of these regulations are comparable to those provided by federally-funded graduate fellowships in science and engineering.
- On April 15, 1987, the Secretary published a notice of proposed rulemaking (NPRM) for the Jacob K. Javits Fellows Program in the Federal Register (52 FR 12360). The provisions of these final regulations are the same as those of the NPRM except for technical changes. Interested parties were provided 30 days to submit their comments to the Secretary. A summary of the two comments received and the Secretary's responses to these comments follow:

Summary of Comments and Responses

Section 650.42 How are stipends to be administered?

Comment: Both commenters pointed out that the definition of "independent student" in § 650.42(c), applicable to fellowships initially awarded in fiscal year 1986, is based on the definition of "independent student" in the Higher Education Act of 1965 (HEA) prior to the Higher Education Amendments of 1986 (Pub. L. 99–498). Both commenters suggested that the definition of "independent student" be changed to conform with the definition of "independent student" in section 480(d) of the HEA as amended.

Discussion: Under section 933(a) of the HEA, as amended, stipends for Jacob K. Javits Fellows are to be calculated in accordance with measurements of need approved by the Secretary. The Secretary has chosen to use the need analysis system authorized by Part F of Title IV of the HEA, as amended. However, the Secretary has chosen to use the definition of "independent student" for those fellowships awarded in fiscal year 1986 that was in effect at the time of award for the duration of the fellowships. The definition of "independent student" previously in effect is retained for the fellowships awarded in fiscal year 1986. The new definition of "independent student" in the HEA, as amended, will apply for fellowships initially awarded in 1987 and subsequent fiscal years.

Changes: None.

Executive Order 12291

The regulations have been reviewed under Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Paperwork Reduction Act of 1980

These regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 650

Colleges and universities, Education, Fellowships, Grant program-education, Reporting and recordkeeping.

(Catalog of Federal Domestic Assistance Number 84.173—Jacob K. Javits Fellows Program)

Dated: July 21, 1987.

William J. Bennett,

Secretary of Education.

The Secretary amends Part 650 of Title 34 of the Code of Federal Regulations as follows:

PART 650—JACOB K. JAVITS FELLOWS PROGRAM

1. The authority citation for Part 650 is revised to read as follows:

Authority: 20 U.S.C. 1134h–1134k, unless otherwise noted.

2. All references to "National Graduate Fellows Program" throughout Part 650 are revised to read "Jacob K. Javits Fellows Program".

3. In § 650.1, the current text is designated as paragraph (a) and a new paragraph (b) is added to read as follows:

§ 650.1 What is the Jacob K. Javits Fellows Program?

* * * * *

(b) Students awarded fellowships under this program are called Jacob K. Javits Fellows.

(Authority: 20 U.S.C. 1134)

4. Section 650.2 is amended by revising paragraph (b)(4) to read as follows:

§ 650.2 Who is eligible to apply for a fellowship under this program?

* * * * *

(b) * * *

(4) Is a permanent resident of the Trust Territory of the Pacific Islands; and

* * * * *

5. In § 650.4, the definition of "Fellowship Board" is amended by revising the word "President" to read "Secretary", the references to "1956" in the definition of "Act" is revised to read "1965", and the definition of "Fellow" is revised to read as follows:

§ 650.4 What definitions apply to the Jacob K. Javits Fellows Program?

* * * * *

"Fellow" means a recipient of a Jacob K. Javits fellowship under this part.

* * * * *

6. Section 650.5 is amended by revising paragraph (b) to read as follows:

§ 650.5 What does a fellowship award include?

* * * * *

(b) An annual allowance paid to the institution in which the fellow is enrolled of $6000.

* * * * *

§ 650.33 [Amended]

7. In § 650.33, paragraphs (a)(3) and (b) are removed; the designation "(a)" is removed from the introductory text; paragraph (a)(1) is amended by adding "and" at the end of the paragraph; paragraph (a)(2) is amended by removing "; and" and adding a period in its place, and paragraphs (a)(1) and (a)(2) are redesignated as paragraphs (a) and (b) respectively.

8. Section 650.42 is revised to read as follows:

§ 650.42 How are stipends to be administered?

(a) Except as provided in paragraph (c) of this section, an institution shall calculate the amount of a fellow's financial need annually in the same manner as that in which the institution calculates its students' financial need under Part F of Title IV of the Act. For this purpose the institution shall not treat—

(1) Any instructional costs covered by the institutional allowance under § 650.41, as costs of attendance; or

(2) Income derived from a fellow's teaching and research assistantship, that is a required part of the fellow's academic program, as income.

(b) The institution shall pay the fellow a stipend in the amount of the fellow's financial need or $10,000, whichever is less.

(c) For a fellowship initially awarded in fiscal year 1986, the institution shall, in fiscal year 1987 and in each subsequent fiscal year for the duration of the fellowship, calculate the amount of a fellow's financial need under the procedure in paragraph (a) of this section, except that—

(1) Subject to the provisions of paragraphs (c) (2) and (3) of this section, a fellow qualifies as an independent student for an award year if the fellow—

(i) Does not, during any of the relevant years described in paragraph (c)(2) of this section, live for more than six weeks in the home of his or her parent(s) for whom income must be reported;

(ii) Is not, for any of the relevant years described in paragraph (c)(2) of this section, claimed as a dependent for Federal income tax purposes by those parent(s); and

(iii) Does not, during any of the relevant years described in paragraph (c)(2) of this section, receive financial assistance of more than $750 from those parent(s).

(2) Except as provided in paragraph (c)(3) of this section, to qualify as an independent student for any award year—

(i) An unmarried fellow must satisfy the criteria in paragraph (c)(1) of this section for the first calendar year of an award year and the preceding calendar year; and

(ii) A married fellow must satisfy the criteria in paragraph (c)(1) of this section for the first calendar year of the award year.

(3) The Secretary considers any fellow to be an independent student if, before the end of the award year—

(i) The fellow's parents die; or

(ii) The fellow is declared a ward of the court.

(4) As used in this paragraph—

(i) "Award year" means the period of time from July 1 through June 30 of the following year.

(ii) "Parent" means a fellow's natural or adoptive mother or father. A parent also includes a fellow's legal guardian who has been appointed by a court and who is specifically required by the court to use his or her own resources to support the fellow.

(iii) "Parent(s) for whom income must be reported" means a parent for whom income must be reported under the Pell Grant Program regulations, 34 CFR 690.33, as in effect on July 1, 1986. For this purpose, the references in § 690.33 to the date of the fellow's application are considered references to the date the fellow applies for a determination of need under Part F of Title IV of the Act.

(d) If a fellow is enrolled for less than a full academic year, the institution shall pay the fellow a pro rata share of the stipend.

(Authority: 20 U.S.C. 1134j)

[FR Doc. 87-17874 Filed 8-5-87; 8:45 am]

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Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 905 and 990

Technical Changes to Performance Funding System; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 905 and 990

[Docket No. R-87-1343; FR-2355]

Technical Changes to Performance Funding System

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This rule will permit public housing agencies (PHAs) that receive under $25,000 per year in Federal financial assistance to obtain operating subsidy to cover the cost of an annual independent audit, as do the PHAs that receive at least $25,000 per year in Federal financial assistance, even though such an audit is no longer required by HUD regulations for these PHAs. The rule will also remove an obsolete requirement that rentals payable to a PHA must equal at least one-fifth of the incomes of all the families.

EFFECTIVE DATE: October 12, 1987.

FOR FURTHER INFORMATION CONTACT: John Comerford, Financial Management Division, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 426-1872. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: The change to permit audit costs to be covered by operating subsidy for PHAs receiving less than $25,000 in any PHA fiscal year is needed because the current rule (§ 990.108(a)) permits coverage for "the cost of the required IPA audit". Since amendment of 24 CFR Part 44 to implement the Single Audit Act of 1984 (effective November 1, 1985), IPA audits have not been "required" for PHAs receiving less than $25,000 annually in Federal financial assistance, which is defined in Part 44 to include grants (such as operating subsidy, annual contributions for debt service, and modernization funds), loans, loan guarantees, property, cooperative agreements, interest subsidies, insurance or direct appropriations. Before that change, PHAs receiving less than $25,000 annually had been required to obtain an IPA audit and were therefore eligible for operating subsidy specifically to cover the costs of a biennial IPA audit. Since the change to implement the Single Audit Act of 1984 changed the effect of § 990.108 only incidentally—and unintentionally—to eliminate eligibility for subsidy to cover IPA audit costs for these PHAs, this amendment is being made to restore eligibility for such PHA's audit costs. A related change included in this rulemaking is to replace the term "IPA audit" with "independent audit", the meaning given to "IPA audit" in 24 CFR Part 44. This term is used in §§ 905.311, 990.104 and 990.108.

Other technical changes are to add a cross-reference in § 990.109(e)(1), dealing with estimated investment income, to the year end adjustment of estimated investment income found in § 990.110 and to remove § 990.114 in its entirety as obsolete since the implementation in 1985 of statutorily-fixed rents for tenants based on their income.

Justification for Final Rule

It is the policy of this Department to publish for comment, rules relating to public property, loans, grants, benefits, or contracts, despite the exemption for these rules contained in 5 U.S.C. 553 from the requirement to solicit public comment. However, under 24 CFR Part 10, in a particular case, the Department may omit solicitation of public comment before publishing a final rule if comment is not required by statute and solicitation and consideration of public comment are "impracticable, unnecessary or contrary to the public interest."

In this case, the changes being made are technical in nature. The change with respect to "required" audits has substantive impact, but it is beneficial to program participants, restoring eligibility for subsidy to cover audits as a separate item of funding for certain PHAs who were eligible for funding of audits before November 1, 1985. Therefore, the Department has concluded that solicitation of comment is not required by statute and is unnecessary, and that the delay in effectiveness that would be caused by solicitation of comment would be contrary to the public interest.

Findings and Certifications

Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Regulatory Impact

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981 (E.O. 12291). Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with Foreign-based enterprises in domestic or export markets.

Impact on Small Entities

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities, because it consists of technical refinements to existing rules concerning eligibility for public housing operating subsidy.

Regulatory Agenda

This rule was not listed in the Department's Semiannual Regulatory Agenda published on April 27, 1987 (52 FR 14362), under Executive Order 12291 and the Regulatory Flexibility Act.

Paperwork Reduction Act

This rule contains no information collection requirements, as described in the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520).

Catalog

The Catalog of Federal Domestic Assistance Program Number is 14.850, Lower Income Housing Assistance Program (Public Housing).

List of Subjects

24 CFR Part 905

Grant programs: Indians, Low and moderate income housing, Public housing, Homeownership.

24 CFR Part 990

Low and moderate income housing, Public housing.

Accordingly, HUD amends 24 CFR Parts 905 and 990 as follows:

PART 905—INDIAN HOUSING

1. The authority citation for Part 905 continues to read as follows:

Authority: Secs. 3, 4, 5, 6, 9, 11, 12 and 16, U.S. Housing Act of 1937 (42 U.S.C. 1437a, 1437b, 1437c, 1437d, 1437g, 1437i, 1437j, 1437n); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 905.311 [Amended]

2. Section 905.311(b) is amended by removing the words "costs of Independent Public Accountant audits" and replacing them with the words "cost of an independent audit".

PART 990—ANNUAL CONTRIBUTIONS FOR OPERATING SUBSIDY

3. The authority citation for Part 990 continues to read as follows:

Authority: Sec. 9, U.S. Housing Act of 1937 (42 U.S.C. 1437g); sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

§ 990.104 [Amended]

4. Section 990.104(a) is amended by removing the words "costs of Independent Public Accountant (IPA) audits" and replacing them with the words "cost of an independent audit", and by removing the words "the IPA" and replacing them with the words "an independent"

§ 990.105 [Amended]

5. Section 990.105(a)(2) is amended by removing the words "IPA audits" and replacing them with the words "an independent audit".

6. Section 990.108 is amended by revising paragraph (a) to read as follows:

§ 990.108 Other costs.

(a) *Cost of independent audits.* (1) Eligibility to receive operating subsidy for independent audits is considered separately from the PFS. However, the PHA shall not request, nor will HUD approve, an operating subsidy for the cost of an independent audit if the audit has been funded by subsidy in a prior year or the subsidy would create residual receipts after provision for the operating reserve. The PHA's estimate of cost of the independent audit is subject to adjustment by HUD. If the PHA requires assistance in determining the amount of cost to be estimated, the HUD Field Office should be contacted.

(2) A PHA that is required by the Single Audit Act (see 24 CFR Part 44) to conduct a regular independent audit may receive operating subsidy to cover the cost of the audit. The amount shall be prorated between the PHA's Development Cost Budget and its annual Operating Budget, as appropriate. The estimated cost of an independent audit, applicable to the operations of PHA-owned rental housing, is not included in the Allowable Expense Level, but it is allowed in full in computing the amount of operating subsidy under § 990.104, above.

(3) A PHA that is exempt from the audit requirements under the Single Audit Act (24 CFR Part 44) may receive operating subsidy to offset the cost of an independent audit chargeable to operations (after the End of the Initial Operating Period) if the PHA chooses to have an audit.

* * * * *

§ 990.109 [Amended]

7. Section 990.109 is amended by adding, at the end of paragraph (e)(1), the following sentence: See § 990.110(b).

§ 990.114 [Removed]

8. Section 990.114 is removed.

Dated: July 30, 1987.

James E. Baugh,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 87-17888 Filed 8-5-87; 8:45 am]

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RESERVATIONS: Janice Booker, 202-523-5239

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Title 3—

The President

Proclamation 5688 of August 4, 1987

Women's Equality Day, 1987

By the President of the United States of America

A Proclamation

Throughout our history, an American saga of optimism, hard work, quiet heroism, and steady expansion, the contributions of women have been indispensable to this Nation's progress. From Plymouth and Jamestown to the Oregon Trail and the Great Plains, women of strength and determination helped fashion a new life and a new nation from the raw materials of the American wilderness. Their faith in God, their trust in the promise of the New World, and their love for their families steeled them against the rigors of daily living in a harsh and untamed land. Without their commitment, America would never have yielded up the bounty that was the first hallmark of its greatness.

In recognition of these immeasurable contributions and to redress the injustice of denying American women the right to vote, the Nineteenth Amendment was adopted in 1920 to guarantee political equality, the very bedrock of all rights and liberties, to American women. On this August 26, we celebrate the 67th anniversary of the ratification of the Nineteenth Amendment as Women's Equality Day, and we celebrate as well the role that women have won for themselves in our country's democratic process. Political equality has meant a growing panoply of opportunity for women and accelerating economic growth for America. It has reaffirmed the core ideals of the political compacts that built our Nation and sustain it now—the endowment of unalienable rights and unique abilities that each of us possesses from our Creator. It has opened the horizons of achievement and widened the paths of prosperity and personal fulfillment.

On this occasion, then, we must rededicate ourselves to policies and strategies that safeguard equality of opportunity and that help us secure the goals that equality serves: healthy families, good neighborhoods, productive work, true peace, and genuine freedom. America today honors women for all they have done, as pioneers, patriots, parents, and partners, to build happy homes and a strong society.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim August 26, 1987, as Women's Equality Day. I call upon all Americans to mark this occasion with appropriate observances.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of August, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 87-18059
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Presidential Documents

Proclamation 5889 of August 4, 1987

National Alzheimer's Disease Month, 1987

By the President of the United States of America

A Proclamation

Alzheimer's disease is a degenerative brain disorder that causes progressive loss of memory and intellectual function. Those afflicted suffer increasing forgetfulness, confusion, irritability, and other changes in personality and behavior, and sometimes in judgment, concentration, and speech.

The tragedy of Alzheimer's disease has spurred scientists to intensify their efforts to understand what causes the brain to deteriorate. Recently, a research team cloned a gene involved in the wayward biochemistry of the Alzheimer's brain and located this gene on a specific chromosome. This achievement opens new lines of investigation and offers hope that one day we can identify those at risk and develop methods of treatment and prevention.

Until we conquer Alzheimer's disease, we must continue our research efforts, provide the public with information about the disorder, and seek other ways to ease its burden on patients, families, and caregivers. Many people and organizations are already devoted to this effort, including the Federal government's National Institute on Aging and National Institute of Mental Health and the private sector's Alzheimer's Disease and Related Disorders Association, which conducts and promotes research and lends support to families seeking help.

The Congress, by Public Law 100–68, has designated the month of November 1987 as "National Alzheimer's Disease Month" and authorized and requested the President to issue a proclamation in observance of this occasion.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the month of November 1987 as National Alzheimer's Disease Month, and I call upon the people of the United States to observe this month with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of August, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

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Presidential Documents

Memorandum of August 5, 1987

Import Relief Determination Under Section 406 of the Trade Act of 1974 on Ammonium Paratungstate and Tungstic Acid From the People's Republic of China

Memorandum for the United States Trade Representative

Pursuant to sections 406, 202, and 203 of the Trade Act of 1974, as amended (19 U.S.C. 2436, 2252, and 2253), I have determined the action I will take with respect to the report of the United States International Trade Commission (USITC) dated June 5, 1987, concerning the results of its investigation, as requested by the United States Trade Representative, of the domestic industry producing ammonium paratungstate and tungstic acid, provided for in Items 417.40 and 416.40, respectively, of the Tariff Schedules of the United States.

After considering all relevant aspects of the case, including those set forth in section 202(c) of the Trade Act of 1974, I have determined to provide import relief for the domestic industry. Relief should be granted in the form of a negotiated orderly market agreement.

I therefore direct you to negotiate and conclude an orderly marketing agreement and to report the results of such negotiations not later than 50 days from the date of this determination. If such negotiations are not successful, I direct you to prepare and present to me for signature no later than 60 days from the date of this decision a proclamation imposing quantitative restrictions.

Finally, in view of this determination to provide relief, I direct that a review be completed, within 60 days, regarding relevant plans for the operation of the stockpile for the fiscal years 1988 and 1989.

This determination is to be published in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE,
Washington, August 5, 1987.

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 87-020]

Importation of Fruits and Vegetables From Definite Areas or Districts

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Fruits and Vegetables regulations by adding criteria that must be met before we will issue a permit for importation of fruits and vegetables from "definite areas or districts" in a foreign country when that country is infested by injurious insects. These amendments are necessary to protect against the introduction into the United States of injurious insects. We are also making nonsubstantive editorial changes to the proposed rule.

EFFECTIVE DATE: September 8, 1987.

FOR FURTHER INFORMATION CONTACT: Frank Cooper, Staff Officer, Regulatory Services Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 637, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8248.

SUPPLEMENTARY INFORMATION: The Fruits and Vegetables regulations in 7 CFR 319.56 *et seq.* (referred to below as the regulations) impose restrictions on the importation of fruits and vegetables in order to prevent the introduction and dissemination of injurious insects, including fruit and melon flies, that are new to or not widely distributed within and throughout the United States.

The regulations include a provision that fruits and vegetables may be imported under a permit if the Department is satisfied "that their importation from definite areas or districts under approved safeguards prescribed in the permit can be authorized without risk . . . "(§ 319.56-2(e)(2).)

In a document published in the **Federal Register** on January 8, 1987 (52 FR 685-687, Docket No. 86-330), we proposed to amend the regulations by specifying criteria for the importation of fruits and vegetables from definite areas and districts in order to ensure that they are free from injurious insects. Since each definite area or district exists in a country infested by injurious insects, there is an ever-present danger that these insects could spread into the definite area or district.

We also proposed to amend the regulations by specifying criteria that would have to be met to authorize the importation of a fruit or vegetable from certain definite areas or districts.

We solicited comments on the proposal for 30 days, ending February 9, 1987, and received four comments, two from associations, one from a State agency, and one from a foreign embassy. We have considered the comments carefully and discuss below the issues raised by them. Based on the rational set forth in the proposal and in this document, we are adopting the provisions of the proposal with the changes discussed below as a final rule. We are also making nonsubstantive editorial changes to the proposed rule.

Comments

Two commenters indicated that one of our proposed criteria for establishing a definite area or district—that there are no reports in the scientific literature of occurrence in the definite area or district of the country of origin of injurious insects known to attack fruits or vegetables—was a problem because it could exclude areas where such a report was later shown to be in error or where injurious insects were once reported but where they no longer exist or have been eradicated.

We recognized that this criterion might cause confusion and possibly result in the unnecessary elimination of an area from the status of definite area or district under the regulations. We intend to allow a definite area or district to be established only after we determine that the area is free from certain injurious insect species. We believe that the best way to determine the presence or absence of particular insect species in an area is to rely on recent surveys of the area that are performed according to procedures approved by the Animal and Plant Health Inspection Service (APHIS). Therefore, in response to these comments, we are eliminating the scientific literature criterion but will retain the criterion requiring injurious insect surveys that must be approved by the Deputy Administrator, Plant Protection and Quarantine, APHIS.

Two commenters also requested that the regulations make it clear that the procedures concerning surveys and enforcement activities conducted by the countries of origin must be submitted to the Deputy Administrator in writing. We agree, and are therefore requiring the plant protection service of the country of origin to submit to the Deputy Administrator written detailed procedures for the conducting of surveys and the enforcement of requirements to prevent the introduction of injurious insects.

Two commenters questioned the advisability of relying on survey and eradication efforts of foreign countries, and requested clarification of the procedures APHIS would use to monitor compliance with the regulations by foreign countries. APHIS will assign employees from its International Programs office to regularly visit participating countries to observe and report on compliance with this regulation by the countries of origin.

One commenter stated that it is unclear what the requirements are that will prevent the introduction of injurious insects into definite areas and districts. As criterion (2) in the new paragraph (f) states, these requirements must be at least equivalent to the requirements imposed under Chapter III to prevent the introduction into the United States and interstate spread of injurious insects. Chapter III includes a variety of regulatory requirements, including certificate requirements, inspections, treatments, and prohibition or restriction of movement of plant pests and regulated articles that may spread plant pests. It will be necessary for the country of origin to impose those requirements on a definite area or district which are necessary in the opinion of the Deputy Administrator to exclude injurious insects as effectively as they would be excluded in a United States area subject to the regulations in Chapter III.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The primary effect of adoption of this rule will be to establish criteria that the Department will use in making decisions about when to allow importations of fruits and vegetables from definite areas or districts of foreign countries under the provisions of § 319.56–2(e). We do not expect that the rule will have a major effect on the amount or types of fruit imported into the United States, or that there will be any adverse economic effects on small domestic growers and importers. The total annual increase in the amount of fruits and vegetables imported as a result of this rule will be insignificant compared with the total amount of fruits and vegetables imported annually.

We do not expect this rule to increase the costs of affected articles or to impose other economic hardships on any entities involved in importing fruits and vegetables under its provisions.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

Information collection requirements included in this final rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and have been assigned OMB control number 0579–0049.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V).

List of Subjects in 7 CFR Part 319

Agricultural commodities, Imports, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

Accordingly, 7 CFR Part 319 is amended as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for 7 CFR Part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 319.56–1 the paragraph designations are removed; the definitions are placed in alphabetical order; and the following definition is added in alphabetical order to read as follows:

§ 319.56–1 Definitions.

* * * * *

Deputy Administrator. The Deputy Administrator, Plant Protection and Quarantine, or any person to whom the Deputy Administrator has delegated his or her authority.

* * * * *

3. Paragraph (e) of § 319.56–2 is revised to read as follows without revising the language in footnotes 1 and 2:

§ 319.56–2 Restrictions on entry of fruits and vegetables.

* * * * *

(e) Any other fruit or vegetable, except those restricted to certain countries and districts by special quarantine[2] and other orders[1] now in force and by any restrictive order as may hereafter be promulgated, may be imported from any country under a permit issued in accordance with this subpart and upon compliance with the regulations in this subpart, at the ports as shall be authorized in the permit, if the United States Department of Agriculture, after reviewing evidence presented to it, is satisfied that the fruit or vegetable either: (1) Is not attacked in the country of origin by injurious insects, including fruit and melon flies (Tephritidae); (2) has been treated or is to be treated for all injurious insects that attack it in the country of origin, in accordance with conditions and procedures that may be prescribed by the Deputy Administrator; (3) is imported from a definite area or district in the country of origin that is free from all injurious insects that attack the fruit or vegetable, its importation can be authorized without risk, and its importation is in compliance with the criteria of paragraph (f) of this section; or (4) is imported from a definite area or district of the country of origin that is free from certain injurious insects that attack the fruit or vegetable, its importation can be authorized without risk, and the criteria of paragraph (f) of this section are met with regard to those certain insects, provided that all other injurious insects that attack the fruit or vegetable in the area or district of the country of origin have been eliminated from the fruit or vegetable by treatment or any other procedures that may be prescribed by the Deputy Administrator.

* * * * *

4. Paragraph (f) of § 319.56–2 is redesignated as paragraph (g), and the following sentence is added at the end of new paragraph (g):

(Approved by the Office of Management and Budget under control number 0579–0049)

5. A new paragraph (f) is added to § 319.56–2, to read as follows:

* * * * *

(f) Before the Deputy Administrator may authorize importation of a fruit or vegetable under § 319.56–2(e) (3) or (4), he or she must determine that the following criteria have been met: (1) Within the past 12 months, the plant protection service of the country of origin has established the absence of infestations of injurious insects known to attack fruits or vegetables in the definite area or district based on surveys performed in accordance with requirements approved by the Deputy Administrator as adequate to detect these infestations; (2) the country of origin has adopted and is enforcing requirements to prevent the introduction of injurious insects known to attack fruits and vegetables into the definite area or district of the country of origin that are deemed by the Deputy Administrator to be at least equivalent to those requirements imposed under this chapter to prevent the introduction into the United States and interstate spread of injurious insects; and (3) the plant protection service of the country of origin has submitted to the Deputy Administrator written detailed procedures for the conduct of surveys and the enforcement of requirements under this paragraph to prevent the introduction of injurious insects. When used to authorize importation under § 319.56–2(e)(3), the criteria must be applied to all injurious insects that attack the fruit or vegetable; when used to authorize importation under § 319.56–2(e)(4), the criteria must be applied to those particular injurious insects from

which the area or district is to be considered free.

* * * * *

Done at Washington, DC, this 4th day of August, 1987.

William F. Helms,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 87-18022 Filed 8-6-87; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 573]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 573 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 351,393 cartons during the period August 9 through August 15, 1987. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 573 (§ 910.873) is effective for the period August 9 through August 15, 1987.

FOR FURTHER INFORMATION CONTACT: James M. Scanlon, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250-0200, telephone: (202) 447-5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended 7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act. This regulation is consistent with the marketing policy for 1987-88. The committee met publicly on August 4, 1987, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the market is good. It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the Act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1-9, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.873 is added to read as follows:

§ 910.873 Lemon Regulation 573.

The quantity of lemons grown in California and Arizona which may be handled during the period August 9 through August 15, 1987, is established at 351,393 cartons.

Dated: August 5, 1987.

Ronald L. Cioffi,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 87-18121 Filed 8-6-87; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-60-AD; Amdt. 39-5703]

Airworthiness Directives: Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767 airplanes, which requires replacement of an existing 50-ampere circuit breaker with a 35-ampere circuit breaker. This 35-ampere circuit breaker provides current overload protection for the auxiliary power unit (APU) starter transformer rectifier unit (TRU). This amendment is prompted by reports of smoke filling the aft cargo compartment on Model 757 airplanes (which have a design similar to Model 767 airplanes) and open flame at the TRU, resulting from failure of the existing 50-ampere circuit breaker to open when the APU starter motor had seized.

EFFECTIVE DATE: September 13, 1987.

ADDRESSES: The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Terry Rees, Aerospace Engineer, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1941. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires replacement of the APU starter TRU circuit breaker on Boeing Model 767 series airplanes, was published in the

Federal Register on May 6, 1987 (52 FR 16851).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter had no objection to the proposed rule because no U.S. registered airplanes were affected. The commenter stated that the FAA should only issue the AD if any unmodified airplanes are determined to exist. The FAA does not agree. Twenty-six airplanes equipped with 50 ampere circuit breakers were delivered to eight foreign operators. In accordance with existing provisions of the bilateral airworthiness agreements, the FAA must issue the AD to advise the foreign regulatory agencies that an unsafe condition may exist or develop on airplanes. Furthermore, the AD is needed to ensure that, if any of the twenty-six foreign-registered airplanes equipped with 50 ampere circuit breakers are later imported into the United States, the circuit breaker will have been replaced.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule, as proposed.

No Model 767 airplanes of U.S. registry are affected by this AD, since U.S. operators have elected a different system configuration option. However, it is estimated that it will take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor charge will be $40 per manhour. The cost of one 35-ampere circuit breaker per airplane is estimated to be $145 per unit.

For these reasons, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 767 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation of Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised. Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 767 series airplanes specified in Boeing Alert Service Bulletin 767-24A0039, dated March 12, 1987, certificated in any category. Compliance is required as indicated unless previously accomplished.

To minimize the fire hazard associated with overheating of the transformer rectifier unit (TRU) of the auxiliary power unit (APU) starter motor, accomplish the following within 3 months after the effective date of this AD:

A. Replace the 50-ampere circuit breaker used for the APU starter TRU with a 35-ampere circuit breaker in accordance with Boeing Service Bulletin 767-24A0039, dated March 12, 1987, or later FAA-approved revision.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received copies of the appropriate service document from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective September 13, 1987.

Issued in Seattle, Washington, on July 29, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87-17920 Filed 8-6-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 86-NM-81-AD; Amdt. 39-5704]

Airworthiness Directives; McDonnell Douglas Model DC-9-81, -82, and -83 Airplanes, Fuselage Numbers 909 Through 1208

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that would require inspection and replacement, as necessary, of main landing gear retainer assemblies on certain McDonnell Douglas DC-9-80 (MD-80) series airplanes. This AD is prompted by a report of a main landing gear (MLG) wheel separating from the aircraft during landing. This AD is needed to minimize the possibility of a wheel assembly separation during wheel rotation.

EFFECTIVE DATE: September 13, 1987.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-L65 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Jerald R. Bertoe, Aviation Safety Inspection, Manufacturing Inspection Branch, ANM-180L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6343.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive (AD) which requires modification of certain main landing gear retainer assemblies on McDonnell Douglas DC-9-80 (MD-80) series airplanes was published as a Notice of Proposed Rulemaking (NPRM) in the Federal Register on May 8, 1986 (51 FR 17054), and as an amended NPRM on February 19, 1987 (52 FR 5141).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to all comments received.

One commenter requested to be exempt from the proposed rule if the subject retainer assemblies are modified so that the lockpin is secured to the retainer with a lockpin. The FAA notes

that provisions for applying for an alternate means of compliance are included in paragraph B. of the rule.

One commenter objected to the proposed six-month compliance time because of the lack of availability of parts from the manufacturer; however, the commenter did not propose an alternate compliance time. The FAA does not agree that the availability of parts within the proposed compliance time will be a problem to operators. The manufacturer has notified FAA that replacement parts are available when requested in accordance with the Service Bulletin instructions. Therefore, the FAA has determined that the proposed compliance time is appropriate.

In addition, paragraph A. of the final rule has been revised to clarify the requirement that any main landing gear axle nut retainer assembly found to be improperly installed must be replaced prior to further flight.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously mentioned.

It is estimated that 146 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $23,360.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Model DC-9-80 (MD-80) series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-9-81, -82, and -83 series airplanes, fuselage numbers 909 through 1208, certificated in any category. Compliance required as indicated, unless previously accomplished.

To preclude the potential of main landing gear wheel assembly separation from the airplane, accomplish the following:

A. Within 6 months after the effective date of this AD, inspect the main landing gear axle nut retainer in accordance with the accomplishment instructions of McDonnell Douglas Corporation Alert Service Bulletin A32-206 Revision 1, dated July 18, 1986, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region. Any retainer assembly found to be improperly installed must be replaced prior to further flight, in accordance with the service bulletin.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-L65 (54-60). These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This amendment becomes effective September 13, 1987.

Issued in Seattle, Washington, on July 29, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87-17919 Filed 8-6-87; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 371 and 399

[Docket No. 70630-7130]

Clarification of G-COM Procedure

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: General License G-COM (§ 371.6) allows shipment, without a validated export license, to COCOM participating countries of goods described in certain Advisory Notes on the Commodity Control List (CCL), a list of those items subject to Department of Commerce export controls.

The regulation clearly states that eligibility for G-COM is based solely on the technical performance characteristics of the commodity. Nevertheless, some exporters have been uncertain about the application of G-COM to computer peripherals that are not included as part of complete computer systems. Their concern is based on entry 1565A or the CCL, Advisory Note 9(a)(3), which states that computers must be exported as complete systems. This rule clarifies that this is an end-use restriction, not a technical characteristic, and does not prevent individual or bulk exports of peripheral devices under General License G-COM provided the technical parameters are such that the peripheral device would be eligible for export under Advisory Note 9 to ECCN 1565A.

EFFECTIVE DATE: This rule is effective August 7, 1987.

FOR FURTHER INFORMATION CONTACT: John Black or Patricia Muldonian, Regulations Branch, Export Administration, Office of Technology and Policy Analysis, Telephone: (202) 377-2440.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2412(a)), exempts this rule from all requirements of section 553

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of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule also is exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to Vincent Greenwald, Office of Technology and Policy Analysis, Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule does not contain a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 15 CFR Parts 371 and 399

Exports, Reporting and recordkeeping requirements.

Accordingly, the Export Administration Regulations (15 CFR Parts 368–399) are amended as follows:

1. The authority citation for Parts 371 and 399 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223, 50 U.S.C. 1701 *et seq.*; E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 (October 2, 1986); E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

PART 371—[AMENDED]

2. Paragraph (c) of § 371.8 is revised to read as follows:

§ 371.8 General License G–COM: certain shipments to COCOM countries.

* * * * *

(c) *Eligible commodities.* The commodities eligible for export under this general license are described in Advisory Notes in certain entries on the Commodity Control List. When G–COM is applicable, the "Controls for ECCN" section of the CCL entry will include a "G–COM Eligibility" paragraph indicating which Advisory Notes apply. Only those portions of Advisory Notes that relate to technical specifications of commodities are to be considered in determining eligibility. End-use, quantity and other restrictions in the Advisory Notes may be disregarded in determining whether G–COM may be used. For example, Advisory Note 9 to ECCN 1565A, paragraph (a)(3), refers to computers exported as a complete system; this restriction may be ignored in determining the eligibility of exports of peripherals and components, individually or in bulk, separately from systems.

PART 399—[AMENDED]

§ 399.1 [Amended]

3. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1565A is amended by adding the following sentence to the end of the *G–COM Eligibility* paragraph: "Advisory Note 9(a)(3) is an end-use restriction and not a technical restriction; therefore, Advisory Note 9(a)(3) does not prohibit G–COM eligibility."

Dated: August 3, 1987.

Vincent F. DeGain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 87–17967 Filed 8–6–87; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 41

[108.862]

Visas; Nonimmigrant Classes; Temporary Workers

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This action makes final a proposed rule published on April 14, 1987, to prohibit according classification as a nonimmigrant visitor for business (B–1) to nonimmigrant visa applicants seeking entry for certain purposes. This action is consistent with a final rule published by the Immigration and Naturalization Service on December 9, 1986, at 51 FR 44295, and reflects the Department of State's concurrence in the policy set forth in the Service's final rule. This rule affects a small number of aliens who seek to enter the United States temporarily to perform building and construction work.

EFFECTIVE DATE: August 7, 1987.

FOR FURTHER INFORMATION CONTACT: Rudolph Henderson, Legal Adviser's Office, Department of State, Washington, DC 20520, (202) 647–4415.

SUPPLEMENTARY INFORMATION: On December 9, 1986, the Immigration and Naturalization Service published a final rule barring classification and admission as temporary visitors for business of aliens seeking to enter the United States to perform building or construction work. The background of the Service's rule is explained in the Supplementary Information published therewith. The Department has a responsibility to coordinate with the Immigration and Naturalization Service issues involving certain visa-issuance practices. In this instance, the Department believes visa issuing procedures under § 41.25(b) require such coordination. Accordingly, on April 14, 1987, the Department published a proposed amendment to § 41.25(b), which would conform its policies regarding visa issuance to temporary business visitors with the Service's regulations. (51 FR 12001.)

The Supplementary Information in the April 14 notice of proposed rulemaking stated that the Service had confirmed to the Department that its December 9, 1986 amendment to 8 CFR 214.2(b) precludes B–1 nonimmigrant status to any alien seeking to enter the United States to perform building or construction work, whether on-site or in-plant, subject only to an exception for supervision and training as described in the amendment. The Service has confirmed that it does not read the December 9 amendment to allow an additional exception for building or construction work incident to after-sale installation and service or other warranty work after installation. It does not appear that further clarification of that point is needed.

Comments Received

Interested persons were given an opportunity to participate in the proposed rule. Consideration has been given to the two comments received and an analysis follows below.

One commenter asked whether the proposed rule will affect aliens coming into this country to perform work on equipment or machinery. The answer is that the regulation may affect such

aliens if their work constitutes nonsupervisory building or construction work, as described in the regulation. It is not possible to give an advance ruling on what constitutes "building or construction work," since that will depend on the facts of the individual case.

The second commenter expressed some concern that the proposed rule would remove otherwise applicable restrictions on the issuance of B–1 visas to aliens seeking to enter the country to perform supervision or training of others engaged in building or construction work. This was not the intent of the proposal, and the language has been changed to make it clear that persons performing supervision or training of others engaged in building or construction work must be otherwise qualified as B–1 nonimmigrants in order to obtain B–1 visas. With this change, it is clear that the State Department and the INS standards are identical with regard to the non-availability of B–1 visas for aliens seeking to enter the country to perform building or construction work.

In view of the fact that the Service's regulations have been in effect since the date of publication of its final rule, December 9, 1986, this rule will become effective upon publication in the **Federal Register.**

This rule is not considered to be a major rule for purposes of E.O. 12291 nor is it expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 22 CFR Part 41

Visa, Temporary visitors, Nonimmigrants.

Accordingly, the amendments contained in the proposed rulemaking at 52 FR 12001, Part 41, § 41.25 are adopted with the following modifications.

PART 41—[AMENDED]

1. The authority citation for Part 41 continues to read as follows:

Authority: Sec. 104, 66 Stat. 174, 8 U.S.C. 1104; Sec.109(b)(1), Pub. L. 95–105, 91 Stat. 847.

2. The new sentence is added following the second sentence in § 41.25(b) to read as follows:

§ 41.25 Temporary visitors for business or pleasure.

* * * * *

(b) * * * For the purposes of this section building or construction work, whether on-site or in-plant, shall be deemed to constitute purely local employment or labor for hire; provided that the supervision or training of others engaged in building or construction work (but not the actual performance of any such building or construction work) shall not be deemed to constitute purely local employment or labor for hire if the alien otherwise qualified as a B–1 nonimmigrant.

Date: July 13, 1987.

Joan M. Clark,

Assistant Secretary for Consular Affairs.

[FR Doc. 87–17903 Filed 8–6–87; 8:45 am]

BILLING CODE 4710–06–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8149]

Income Taxes; Capitalization and Inclusion in Inventory of Certain Costs; Practical Capacity

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations under section 263A of the Internal Revenue Code of 1986, relating to accounting for costs incurred in the production of property. In addition, the text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the Notice of Proposed Rulemaking in the proposed rules section of this issue of the **Federal Register.** Changes to the applicable tax law were made by the Tax Reform Act of 1986.

DATES: In general, the amendments are effective for costs incurred after December 31, 1986 or, in the case of inventories, for taxable years beginning after December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Paulette C. Galanko of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T), (202) 566–3288, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

On March 30, 1987, proposed and temporary regulations interpreting section 263A of the Internal Revenue Code of 1986 were published in the **Federal Register** (Treasury Decision 8131). This document contains additional amendments to the Income Tax Regulations (26 CFR Part 1) under section 263A of the Code. These amendments conform the regulations to the requirements of section 803 of the Tax Reform Act of 1986 (Pub. L. 99–514), 100 Stat. 2085 (the "Act"). The temporary regulations contained in this document will remain in effect until additional temporary or final regulations are published in the **Federal Register.**

Practical Capacity

Under prior law, § 1.471–11(d)(4) of the full absorption regulations permitted manufacturers of inventory to use the "practical capacity concept" in determining the amounts of fixed indirect production costs which were subject to inclusion in ending inventory. Under the practical capacity concept, taxpayers were required to apportion only a percentage of their fixed indirect production costs to units of production; this percentage corresponded to the percentage of productive capacity at which the particular manufacturing facility was operating. The remaining amounts of fixed indirect production costs were then currently deducted by the taxpayer.

The temporary regulations prohibit the use of the practical capacity concept in accounting for costs under section 263A. The legislative history to section 263A clearly provides that the new uniform capitalization rules are to be patterned after the rules contained in § 1.451–3 of the Income Tax Regulations applicable to "extended period long-term contracts." S. Rep. No. 99–313, 99th Cong., 2d Sess. 141–42 (1986). It is the position of the Internal Revenue Service that the rules of § 1.451–3 do not permit the use of the practical capacity concept. The capitalization rules applicable to extended period long-term contracts contain no provision allowing the use of the practical capacity concept, an exception to the general rules of "full absorption" accounting that apply to the determination of inventoriable costs.

The practical capacity concept conflicts with the principles of the extended period long-term contract regulations which, in order to properly match income and expense, require capitalization of all indirect costs that "directly benefit the performance of extended period long-term contracts, or are incurred by reason of the performance of extended period long-term contracts." section 1.451-3(d)(6)(ii). The use of the practical capacity concept would undermine and conflict with the careful delineation in the extended period long-term contract regulations of certain indirect costs which may be currently expensed and not allocated to production activities (*e.g.*, certain costs of equipment and facilities which are temporarily idle).

Moreover, the fact that the temporary regulations retain certain cost allocation methods available to manufacturers under prior law (e.g., the manufacturing burden rate method, and the standard cost method) does not support the ratification of the practical capacity concept under section 263A. The cost allocation methods retained in the regulations are used to apportion inventoriable costs among different units of production; in contrast, the practical capacity concept identifies which costs are subject to capitalization. Thus, the practical capacity concept effectively functions as a capitalization rule which allows a specified percentage of otherwise inventoriable costs to be currently expensed, with the remaining inventoriable costs to be separately apportioned to units of production under whatever separate cost allocation methods are used by the taxpayer.

The repeal of the practical capacity concept applies under the effective date provisions of section 803(d) of the Act, including section 803(d)(2) which requires a change in method of accounting for inventory taxpayers and a corresponding section 481(a) adjustment. The section 481(a) adjustment is determined by assuming that the capitalization rules of section 263A (including the repeal of the practical capacity concept) applied for all relevant prior years of the taxpayer.

Change in Method of Accounting and Deferred Intercompany Transactions

Section 1.1502–13 of the regulations provides rules with respect to affiliated groups of corporations filing consolidated Federal income tax returns. Under those regulations, gain or loss with respect to certain intercompany transactions may be deferred by members of the affiliated group until such time as certain subsequent events occur. For example, a member of an affiliated group may sell inventory property to another member of the group, and the selling taxpayer may defer recognition of the gain from such sale until the property is sold to a person outside the affiliated group. Moreover, in determining the amount of gain which is deferred by the selling taxpayer in such a situation, the rules of section 263A shall apply in determining the cost of the sold property. See § 1.1502–13(c)(2) as amended by Treasury Decision 8131, published in the Federal Register on March 30, 1987.

Under section 263A, taxpayers are required to change their methods of accounting with respect to inventory property, effective for taxable years beginning after December 31, 1986. The regulations clarify that taxpayers with outstanding balances of deferred intercompany gain or loss as of the beginning of the year of change in method of accounting must revalue the amount of the deferred intercompany gain or loss if such gain or loss pertains to the sale or exchange of inventory property. The deferred intercompany gain or loss must be revalued to an amount equal to the deferred gain or loss which would have resulted had the cost of goods sold for that inventory property been determined under the capitalization rules of section 263A.

Thus, for example, assume that corporation A, a member of an affiliated group filing a consolidated Federal income tax return on a calendar year, manufactures and sells inventory property to corporation B, a member of the same affiliated group, in 1985. As of January 1, 1987, the inventory property is still held by corporation B, based on the particular inventory identification method used by B for Federal income tax purposes, e.g., the last-in, first-out method ("LIFO") or the first-in, first-out method ("FIFO").

The property was sold by A to B in 1985 for $150; the cost of goods sold with respect to the property under the law in effect at the time the inventory was produced (see § 1.471–3) was $100, resulting in a gain of $50 which A deferred under § 1.1502–13(c). The deferred intercompany gain of $50 is still outstanding on A's books and records as of January 1, 1987.

The regulations require A to revalue the amount of the deferred gain, assuming that the rules of section 263A had applied to A's production of the inventory in 1985 and thus had determined the cost of the property. Assume that the cost of the inventory under the capitalization rules of section 263A would have been $110, had the rules applied to A's manufacturing activities in 1985. Under the regulations, A is required to revalue the amount of the deferred gain to $40; moreover, since the revaluation of the deferred gain would result in the omission of $10 of such gain, A is required to increase its section 481(a) adjustment by $10.

The regulations require the revaluation of the deferred gain or loss resulting from sales of inventory property for both inventory property which was produced by the selling taxpayer, and inventory property which was acquired for resale by the selling taxpayer. The regulations provide that, in revaluing the amount of the deferred gain, all of the provisions applicable to the revaluation of inventory property accompanying the taxpayer's change in method of accounting under section 263A shall apply, including, for example, the use of simplified methods and other procedures available to inventory taxpayers under the regulations.

The regulations require the revaluation of the deferred gain or loss from intercompany sales in order to prevent such sales from substantially altering the results which would otherwise occur from the change in method of accounting under section 263A. (See section 263A(h)(1) of the Code). Without such a revaluation of deferred gain or loss, an affiliated group making intercompany sales of inventory property would experience significantly different results under section 263A than inventory taxpayers not making such sales. Such results could be favorable, or unfavorable to the affiliated group, depending on the particular methods of accounting used by members of the group. Moreover, any such differences in result would be inappropriate, in light of the fact that the affiliated sales are not given full, immediate effect for Federal income tax purposes and may, in certain situations, lack economic significance. Thus, based on the foregoing, the regulations require the revaluation of deferred gain or loss from inventory sales under section 263A in order that the transitional rules of section 263A may be applied in an equitable and uniform manner.

The requirement to revalue the amount of deferred intercompany gain or loss applies only for purposes of determining the section 481(a) adjustment that results from the application of the rules of section 263A. The Service, however, is considering the issue of whether to require a similar restatement of deferred intercompany gain or loss in other situations where a change in method of accounting generates a section 481(a) adjustment within a consolidated group.

Availability of Certain Inventory Methods for Property Produced in Farming Businesses

Under the existing regulations, the costs required to be allocated to any plant or animal produced in the trade or business of farming may be determined using reasonable inventory methods such as the farm-price method or the unit-livestock-price method. See §§ 1.263A–1T(c)(5)(i) and 1.471–6. The regulations clarify that, for purposes of section 263A, taxpayers may use the farm-price method or the unit-livestock-price method to determine the costs allocated to any plant or animal produced in the trade or business of farming, regardless of whether such plant or animal is held as inventory by

the taxpayer. Thus, for example, taxpayers may use the unit-livestock-price method to account for the costs of raising livestock which will be used in the trade or business of farming (e.g., a breeding animal or a dairy cow), although the animal in question will not be held or treated as inventory property by the taxpayer. In addition, the regulations contain a clarifying example with respect to the definition of farming under section 263A.

Capitalization of Taxes

Section 1.263A–1T(b)(2)(iii)(I) of the existing regulations generally requires the capitalization of taxes otherwise allowable as a deduction under section 164 (other than income taxes) that relate to labor, materials, supplies, equipment, land or facilities. The regulations modify the reference to section 164 in acknowledgement of the fact that taxes relating to labor, materials, supplies, equipment, land or facilities may be deducted under sections of the Code other than section 164 (*e.g.*, section 162). Thus, under section 263A, taxes relating to the previously enumerated factors are required to be capitalized irrespective of the particular Code section which would otherwise allow the deduction of such taxes.

Use of Simplified Methods

Under the existing regulations, taxpayers producing certain types of property may elect the use of the simplified production method and the simplified service cost method to account for the costs required to be capitalized under section 263A. Similarly, taxpayers acquiring property for resale may elect the use of the simplified resale method to account for their section 263A costs. It is intended that inventory taxpayers electing the use of a particular simplified method shall use such method for purposes of both (i) restating their beginning inventory balances under the change in method of accounting required by section 263A, and (ii) accounting for their inventory costs under section 263A on an ongoing, prospective basis. Taxpayers may not, for example, use a simplified method to restate their beginning inventory balances, and another method to account for their section 263A costs incurred after the effective date of section 263A unless such taxpayers obtain the consent of the Commissioner to change their methods of accounting. Although the Internal Revenue Service believes that the regulations already required the use of the simplified methods in the foregoing manner, the regulations have been amended in order to make this requirement more clear.

Acceleration of Section 481(a) Adjustment

Section 1.263A–1T(e)(3)(iii) of the existing regulations provides that, in certain circumstances, a taxpayer is required to take its section 481(a) adjustment into account over the number of tax years (not to exceed 4) that the taxpayer has used its present method of accounting. The regulations clarify that, for purposes of this particular provision only, the section 481(a) adjustment is to be taken into account ratably over the number of tax years (not to exceed 4) that the taxpayer has engaged in the particular trade or business to which the adjustment applies. Thus, the period over which the section 481(a) adjustment is to be taken into account is not limited to the number of years that the taxpayer has used a particular method of accounting in such trade or business. For example, a taxpayer engaged in the business of producing property for 5 years prior to its taxable year beginning after December 31, 1986 shall, if otherwise allowed under the regulations, take into account the section 481(a) adjustment over a period of 4 years, although such taxpayer changed its method of accounting for the property produced in the particular trade or business within the four year period preceding the year of change under section 263A.

On-Site Storage

Under the present regulations, costs associated with an "on-site storage facility" are not required to be capitalized with respect to inventory property. The present regulations provide that an on-site storage facility is a facility which is physically attached to, and an integral part of, a retail sales facility where the taxpayer sells merchandise stored at the facility to retail customers physically present at the facility. The present regulations provide that a storage or warehousing area operated by a person making sales of goods "wholesale" to persons physically present at the facility who in turn resell the goods to others, is not an on-site storage facility because such sales are not made to retail customers. The regulations clarify that, for purposes of this provision, the term "retail sales" means sales to a "retail customer", i.e., the final purchaser or consumer of the merchandise sold. Thus, the term "retail sales" does not mean sales of goods to an intermediary who resells the goods to others, including a contractor or manufacturer who incorporates the goods into another product which is then sold to customers.

Distribution Costs

The present regulations provide that "distribution costs" are not subject to capitalization under section 263A. Distribution costs are defined as "the costs of delivering goods directly to the customer, *e.g.*, costs incurred in delivering an item from a storage facility to a customer's home." Section 1.263A–1T(d)(3)(ii)(C)(*3*). It is intended that distribution costs include costs incurred in delivering goods directly to an unrelated customer's facility although that customer resells such goods to other persons. The regulations clarify the definition of distribution costs in this regard. Distribution costs do not, however, include internal transportation or delivery costs, such as costs incurred by a taxpayer in moving inventory from the taxpayer's warehouse to its retail store.

Change in Method of Accounting

The present regulations generally require that taxpayers change their method of accounting in order to conform to the capitalization requirements of section 263A. Section 1.263A–1T(e)(11) of the regulations provides that such change in method of accounting shall be automatic if such change in method of accounting is required under that section, *i.e.*, if such change is necessary in order for the taxpayer to properly capitalize and allocate costs with respect to production and resale activities in the manner prescribed in the regulations. The regulations clarify that an automatic change in method of accounting under section 263A includes:

(i) A change in method of accounting whereunder a taxpayer properly expenses certain costs under section 263A which were previously capitalized by the taxpayer under the taxpayer's prior method of accounting; and

(ii) A change in method of accounting whereunder a taxpayer properly capitalizes certain costs under section 263A which were previously expensed by the taxpayer under the taxpayer's prior method of accounting,

regardless of whether such prior methods of accounting were correct or erroneous methods under the law in effect at that time.

The regulations also provide guidance regarding the interaction of the change in method of accounting under section 263A with respect to inventory property, and any other changes in method of accounting which the taxpayer may make for its first taxable year beginning after December 31, 1986. The regulations provide that the taxpayer is deemed to make any change in method of accounting required under section 263A

(and the accompanying section 481(a) adjustment) before making any other changes in methods of accounting for the same taxable year.

Thus, for example, assume a calendar year taxpayer that produces inventory property is required to change its method of accounting under section 263A for its taxable year beginning January 1, 1987. That taxpayer also desires to change from the LIFO to the FIFO method for the same taxable year, and complies with all necessary procedures to effectuate such change, including obtaining the consent of the Commissioner to such change in method of accounting (if required under such procedures). The change in method of accounting required by section 263A shall be deemed to occur first, and such change in method of accounting (including the calculation of the section 481(a) adjustment) shall be based on the taxpayer's inventory records existing as of January 1, 1987, under the LIFO method used by the taxpayer. After the change in method of accounting under section 263A is deemed to be made and the amount of the resulting section 481(a) adjustment is determined, the change in method of accounting from LIFO to FIFO is then deemed to occur.

Tangible Personal Property

The existing regulations provide that section 263A applies to the production of tangible personal property, including the production of property such as films, sound recordings, video tapes, books and other similar property. In the case of a book, the costs of production include the costs incurred in developing, researching, and writing the book (including costs incurred by authors engaged in these activities) as well as the costs incurred in connection with the book's publication. The regulations have been amended in order to make this requirement more clear.

Special Analyses

The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required. A general notice of proposed rulemaking is not required for temporary regulations. Accordingly, the temporary regulations are not subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of these regulations is Paulette C. Galanko of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation with respect to matters of both substance and style.

List of Subjects in 26 CFR Part 1

Income taxes, Accounting, Deferred compensation plans.

Amendments to the Regulations

For the reasons set forth in the preamble, Subchapter A, Part 1, Chapter I of the Code of Federal Regulations are amended as set forth below:

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 continues to read as follows:

Authority: 26 U.S.C. 7805. * * * Section 1.263A–1T also issued under 26 U.S.C. 263A.

Par. 2. Section 1.263A–1T is amended as follows:

1. Paragraph (a)(5)(iii)(A) is revised;
2. Paragraph (b) is amended by revising paragraphs (b)(2)(iii)(I) and by adding paragraphs (b)(2)(vii), (b)(5)(vii) and (b)(6)(vi);
3. Paragraph (c) is amended by revising paragraph (c)(4)(i)(C) and by adding paragraph (c)(5)(iii).
4. Paragraph (d) is amended by revising paragraphs (d)(3)(ii)(A) (*1*), (d)(3)(ii)(C) (*3*) and (*4*), and (d)(5);
5. Paragraph (e) is amended by revising paragraphs (e)(1), (e)(3)(iii), (e)(7)(iii), by adding paragraph (e)(7)(iv) and new examples (4) and (5) to paragraph (e)(9)(ii), by revising paragraph (e)(11)(iii) and adding (e)(11)(v). The revised and added provisions read as follows:

§ 1.263A–1T Capitalization and inclusion in inventory costs of certain expenses (temporary).

(a) *Introduction and effective date.* * * *

(5) *Definitions and special rules.* * * *

(iii) *Tangible personal property*—(A) *General rule.* For purposes of this section, the term "tangible personal property" includes films, sound recordings, video tapes, books and other similar property containing words, ideas, concepts, images or sounds. A sound recording is a work that results from the fixation of a series of musical, spoken, or other sounds, regardless of the nature of the material objects, such as discs, tapes or other phonorecordings, in which such sounds are embodied. This section applies to the production of tangible personal property within the meaning of this paragraph (a)(5)(iii) without regard to whether such property is treated as tangible or intangible under other sections of the Code. Thus, the requirements of this section apply to the costs of the properties enumerated in this paragraph (a)(5)(iii) although such costs may consist of copyrights, licenses, manuscripts, and other items which may be treated as intangible for other purposes of the Code. For example, the costs of producing or developing a book (including teaching aids and other similar property) required to be capitalized under this section include costs incurred by authors in researching, preparing, and writing literary works. In addition, such costs include prepublication expenditures incurred by publishers of books and other similar property, including payments made to authors of literary works, as well as costs incurred by such publishers in the writing, editing, compiling, illustrating, designing and development of books or similar property. Such costs are required to be capitalized under this section without regard to whether such costs are determined to relate to the production of a manuscript or copyright of a book, as opposed to physical costs (e.g., paper and ink) of printing and binding a book. See § 1.174–2(a)(1), which provides that the term "research or experimental expenditures" does not include expenditures incurred for research in connection with literary, historical, or similar projects.

* * * * *

(b) *Capitalization of costs.* * * *

(2) *Types of costs.* * * *

(iii) *Examples of indirect costs.* * * *

(I) Taxes otherwise allowable as a deduction (other than State, local, and foreign income taxes) that relate to labor, materials, supplies, equipment, land or facilities, (other than taxes described in section 164 that are paid or accrued by a taxpayer in connection with the acquisition of property described in paragraph (b)(2)(iii)(J) of this section, and which are treated as part of the cost of such acquired property);

* * * * *

(vii) *Practical capacity.* Notwithstanding any provision to the contrary, the use, directly or indirectly, of the "practical capacity concept" is not permitted under this section. For purposes of this section, the practical capacity concept is defined as any concept, method, procedure, or formula (such as the practical capacity concept described in § 1.471–11(d)(4)) whereunder fixed costs are not capitalized because of the relationship between the actual production at the taxpayer's production facility and the

"practical capacity" of such facility. For purposes of this section, the practical capacity of a facility shall include either the practical capacity or theoretical capacity of the facility, as defined in § 1.471–11(d)(4), or any other similar determination of productive or operating capacity. Under this section, the practical capacity concept may not be used with respect to any activity to which this section applies, *i.e.*, production or resale activities. For purposes of this section, a taxpayer shall not be considered as utilizing the practical capacity concept solely because the taxpayer properly does not capitalize costs described in paragraph (b)(2)(v) of this section, relating to certain costs attributable to temporarily idle equipment.

* * * * *

(5) *Simplified method of accounting for production costs.* * * *

(vii) *Section 481(a) adjustment.* Taxpayers using the simplified production method must use such method for purposes of both allocating costs incurred after the effective date of this section and for revaluing their inventories under the change in method of accounting required under this section. See paragraph (e) of this section for rules relating to the methods permitted for inventory revaluations and the calculation of the adjustment under section 481(a).

(6) *Simplified procedure for allocating mixed service costs.* * * *

(vi) *Section 481(a) adjustment.* Taxpayers using the simplified service cost method must use such method for purposes of both allocating costs incurred after the effective date of this section and for revaluing their inventories under the change in method of accounting required under this section. See paragraph (e) of this section for rules relating to the methods permitted for inventory revaluations and the calculation of the adjustment under section 481(a).

* * * * *

(c) *Special rules for property produced in a farming business.* * * *

(4) *Definitions*—(i) *Farming business.* * * *

(C) (*1*) For purposes of this section, the term "farming business" does not include the processing of commodities or products beyond those activities which are normally incident to the growing, raising or harvesting of such products.

(*2*) Thus, for example, assume the taxpayer, a C corporation, is in the business of growing and harvesting wheat and other grains. The taxpayer processes grain that it has harvested in order to produce breads, cereals, and other similar food products, which it then sells to customers in the course of its business. Although the taxpayer is in the farming business with respect to the growing and harvesting of grain, the taxpayer is not in the farming business with respect to the processing of such grains to produce food products that it sells to customers.

(*3*) Similarly, assume the taxpayer is in the business of raising poultry or other livestock. The taxpayer then uses such livestock in a meat processing operation in which the livestock are slaughtered, processed, and packaged or canned in preparation for their sale to customers. Although the taxpayer is in the farming business with respect to the raising of livestock, the taxpayer is not in the farming business with respect to the meat processing operation.

(*4*) However, under this section the term "farming business" does include processing activities which are normally incident to the growing, raising of harvesting or agricultural products. For example, assume a taxpayer is in the business of growing fruits and vegetables. When the fruits and vegetables are ready to be harvested, the taxpayer picks, washes, inspects, and packages the fruits and vegetables for sale. Such activities are normally incident to the raising of these crops by farmers. The taxpayer will be considered to be in the business of farming with respect to the growing of fruits and vegetables, and the processing activities incident to their harvest.

* * * * *

(5) *Inventory methods*—* * *

(iii) *Availability to property used in trade or business.* The farm-price method or the unit-livestock-price method may be used by any taxpayer to allocate costs to any plant or animal under this section, regardless of whether the plant or animal is held or treated as inventory property by the taxpayer. Thus, for example, a taxpayer may use the unit-livestock-price method to account for the costs of raising livestock which will be used in the trade or business of farming (e.g., a breeding animal or a dairy cow) although the property in question is not inventory property.

* * * * *

(d) *Definitions and special rules relating to property acquired for resale* * * *

(3) *Simplified method of accounting for resale costs* * * *

(ii) *Costs required to be capitalized.* * * *

(A) *Off-site storage or warehousing*—(*1*) *Definition.* (*i*) Costs attributable to the operation of off-site storage or warehousing facilities ("off-site storage facilities") under this section are required to be capitalized with respect to inventory.

(*ii*) For purposes of this section, an off-site storage facility is defined as any storage or warehousing facility that is not an on-site storage facility. An on-site storage facility is a facility which is physically attached to, and an integral part of, a retail sales facility where the taxpayer sells merchandise stored at the facility to retail customers physically present at the facility ("on-site sales").

(*iii*) For purposes of this section, a retail customer is defined as the final consumer of the merchandise in question. A retail customer does not include a person who resells the merchandise to others, such as a contractor or manufacturer who incorporates the merchandise into another product for sale to customers. A facility where sales are made to both retail customers physically present at the facility and to persons acquiring merchandise for resale to others (regardless of whether such persons are physically present at the facility) is a dual function facility which shall be accounted for under the provisions of paragraph (d)(3)(ii)(A)(*2*) of this section.

(*iv*) Thus, for example, a catalog or mail order center which stores merchandise for shipment to customers who purchase such merchandise through orders placed over the telephone, or orders delivered in the mail, is not an on-site storage facility, and thus is treated as an off-site storage facility.

(*v*) Similarly, a "pooled stock facility" which functions as a "back-up" regional storage facility for particular retail sales outlets in the nearby area is not an on-site storage facility, and is thus treated as an off-site storage facility.

(*vi*) Moreover, a storage or warehousing area operated by a person making sales of goods "wholesale" to persons physically present at the facility who in turn resell the goods to others, is not an on-site storage facility because such facility is not an integral part of a retail sales facility.

* * * * *

(C) *Handling, processing, assembly, and repackaging.* * * *

(*3*) *Exception for distribution costs.* For the purpose of this paragraph (d)(3), handling costs shall not include distribution costs. Distribution costs are defined as the costs of delivering goods directly to an unrelated customer, *e.g.*, costs incurred in delivering an item from a storage facility to a customer's home or a customer's sales facility where the item will be resold. Except as provided

in paragraph (d)(3)(ii)(C)(*4*) of this section, distribution costs do not include costs of transporting an item from a storage facility to a store or outlet of the taxpayer where the sale of the item occurs.

(*4*) *Custom delivery of ordered items.* Costs incurred in delivering goods froma storage facility to a store of the taxpayer where the sale of the goods occurs are presumed to be handling costs allocable to the property and not distribution costs incurred for delivery of goods directly to the customer. This presumption can be overcome only if the taxpayer can demonstrate that a delivery to the taxpayer's store or other selling location is made to fill an identifiable order of a particular customer (placed by such customer before the delivery of the goods occurs) for the particular goods in question. Factors that may demonstrate the existence of a specific, identifiable delivery include the following:

(*i*) The customer has paid for the item in advance of delivery;

(*ii*) The customer has submitted a written order for the item;

(*iii*) The item is not normally available at the retail store for on-site customer purchases; or

(*iv*) The item will be returned to the storage facility (and not held for sale at the store or selling location) if the customer cancels an order.

* * * * *

(5) *Section 481(a) adjustment.* Taxpayers using the simplified resale method must use such method for purposes of both allocating costs incurred after the effective date of this section and for revaluing their inventories under the change in method of accounting required under this section. See paragraph (e) of this section for rules relating to the methods permitted for inventory revaluations and the calculation of the adjustment under section 481(a).

(e) *Inventories*—(1) *In general.* (i) Under this section, taxpayers are required to change their method of accounting with respect to inventory property, effective for taxable years beginning after December 31, 1986. The required change in method of accounting applies to inventory produced by the taxpayer, as well as to inventory acquired by the taxpayer for resale. The change in method of accounting is to be made by revaluing the items or costs included in beginning inventory in the year of change as if the new capitalization rules of section 263A and this section had been in effect during all prior periods. In revaluing inventory costs under this procedure, all of the capitalization provisions of this section (*e.g.*, the requirement to capitalize the entire amount of tax depreciation and cost recovery allowances with respect to equipment and facilities and the repeal of the practical capacity concept), shall apply to all inventory costs accumulated in prior periods. The necessity to revalue beginning inventory as if the new capitalization rules had been in effect for all prior periods includes, for example, the revaluation of costs or layers incurred in taxable years preceding the transition period to the full absorption method of inventory costing as described in § 1.471–11(e), regardless of whether a taxpayer employed a "cut-off" method under those regulations. The difference between the inventory as originally valued and the inventory as revalued by applying the new capitalization rules is equal to the amount of the adjustment required under section 481(a). For example, with respect to inventories of films, sound recordings, video tapes, books, and other similar property, the taxpayer shall revalue the costs of such items under the principles of this paragraph (e)(1).

(ii) Pursuant to the change in method of accounting required under this section, taxpayers are required to revalue the amount of deferred gain or loss resulting from the sale or exchange of inventory property in a deferred intercompany transaction, to an amount equal to the deferred gain or loss that would have resulted had the cost of goods sold for that inventory property been determined under the capitalization rules of this section. The requirement of the preceding sentence shall apply with respect to both property produced by the taxpayer, or property acquired by the taxpayer for resale. In addition, the requirements of this paragraph shall apply only to the deferred gain or loss of the taxpayer as of the beginning of the year of change in method of accounting required under this section. (See § 1.1502–13(c)(2), which separately requires that the capitalization rules of this section shall apply in determining the cost of goods sold for deferred intercompany transactions occurring after the effective date of section 263A.)

Corresponding changes to the adjustment required under section 481(a) shall be made with respect to any adjustment of the deferred gain or loss required under this paragraph. Moreover, the requirements of this paragraph shall apply regardless of whether the taxpayer has any items in beginning inventory as of the year of change in method of accounting. The terms "deferred gain or loss" and "deferred intercompany transaction" as used herein are defined in § 1.1502–13.

(iii) The provisions of paragraph (e)(1)(ii) of this section are illustrated by the following example.

(A) *Example.* Assume that corporation A, a member of an affiliated group of corporations filing a consolidated federal income tax return on a calendar year, manufactures and sells inventory property to corporation B, a member of the same affiliated group, in 1985. The gain from the sale of the inventory property is deferred by A under § 1.1502–13(c) of the regulations. As of the beginning of the year of change in method of accounting (January 1, 1987), the inventory property is still held by corporation B based on the particular inventory method of accounting used by B for Federal income tax purposes (e.g., LIFO or FIFO). The property was sold by A to B in 1985 for $150; the cost of goods sold with respect to the property under the law in effect at the time the inventory was produced (see § 1.471–3) was $100, resulting in a gain of $50 which A deferred under § 1.1502–13(c). The deferred intercompany gain as of January 1, 1987, with respect to the transaction, is $50.

(B) Under this section, A is required to revalue the amount of deferred intercompany gain resulting from the sale of the inventory property to an amount equal to the deferred gain which would have resulted had the cost of goods sold for that inventory property been determined under the capitalization rules of this section. Assume that the cost of the inventory under the capitalization rules of this section would have been $110, had the capitalization rules applied to A's manufacture of the property in 1985. Thus, A is required to revalue the amount of deferred gain to $40 (i.e., $150 less $110), necessitating a negative adjustment to the deferred gain of $10. Moreover, A is required to increase its section 481(a) adjustment by $10 in order to prevent the omission of such amount by virtue of the decrease in the deferred intercompany gain.

(iv) In determining the amount of intercompany gain which would have resulted had the cost of goods sold for that inventory property been determined under the capitalization rules of this section, a taxpayer may use the other methods and procedures otherwise properly available to that particular taxpayer in revaluing inventory under this section, including, if appropriate, the various simplified methods provided in this section and the various procedures described in paragraph (e) of this section.

* * * * *

(3) *Timing of section 481(a) adjustment* * * *

(iii) If paragraph (e)(3)(ii) of this section does not apply, the section 481(a) adjustment is to be taken into account ratably over the number of tax years (not to exceed 4) that the taxpayer has engaged in the particular trade or

business of producing property or acquiring property for resale to which the adjustment applies.

* * * * *

(7) *Adjustments to inventory costs from prior years.* * * *

(iii) *Exceptions from general rule.* Costs which are described in this paragraph (e)(7) (iii) shall be eligible for the restatement adjustment procedure under paragraph (e)(9) of this section even though such costs do not otherwise meet the requirements for such eligibility under the provisions of paragraph (e)(7)(i) of this section. Except as provided in this paragraph (e)(7)(iii), no other costs shall be eligible for the restatement procedure unless those costs satisfy the requirements of paragraph (e)(7)(i) of this section. Costs described in this paragraph which are eligible for the restatement adjustment procedure are:

(A) Costs attributable to different depreciation and cost recovery ("depreciation") methods used for Federal income tax purposes, except that no adjustment shall be made for "applicable pre-cutoff years" as defined in paragraph (e)(8) of this section; and

(B) Differences in the percentage of fixed indirect production costs which were expensed due to unutilized capacity by taxpayers in prior years using the practical capacity concept, as described in § 1.471-11(d)(4), subject to the consecutive year requirement as described in paragraph (e)(7)(iv) of this section. Moreover, any taxpayer adjusting the revaluation factor with respect to practical capacity shall make such adjustment after the revaluation factor is adjusted for all other eligible costs as permitted under this section. In addition, if such other eligible costs are fixed indirect production costs, the adjustments attributable to such eligible costs shall be taken into account in determining the amount of fixed indirect production costs which are utilized in adjusting the revaluation factor with respect to the practical capacity concept.

(iv) *Consecutive year requirement.* Any taxpayer adjusting the revaluation factor to reflect differences in the percentages of fixed indirect production costs which were expensed under the practical capacity concept, shall only make such adjustments for consecutive years. Thus, for example, assume a taxpayer's beginning inventory balance as of the year of change in method of accounting consists of costs accumulated in years 1983, 1982, 1980 and 1978. The taxpayer may not apply the restatement adjustment procedure with respect to the practical capacity concept for the years 1983 and 1980, unless such procedure is similarly applied for 1982. However, the taxpayer may apply the restatement adjustment procedure only to the year 1983 (or for the years 1983 and 1982), with no restatement adjustment with respect to the practical capacity concept occurring for earlier years.

* * * * * *

(9) *Restatement adjustment procedure.* * * *

(ii) *Examples of restatement adjustment procedure.* * * *

Example (4). Assume that taxpayer A is eligible to make a restatement adjustment by virtue of differences in the percentage of fixed indirect production costs which were expensed under the practical capacity concept. Assume that during the revaluation period, A's production facilities functioned, on a weighted average basis, at 80 percent of practical capacity. Assume the revaluation factor before adjustment of data to reflect the differences in operating capacity is the same factor as in example (1), *i.e.*, a percentage restatement change for 1984 of .29. A determines that during the taxable year 1983, A's facilities operated at 70 percent of capacity. Under the restatement procedure, A determines, using reasonable assumptions and estimates, the total amount of inventoriable costs under A's prior method of accounting which would have been incurred in 1984, had the facilities been operating at 70 percent of capacity for that year. Using this information, A determines that the total inventoriable costs under A's prior method of accounting for 1984 would have been $36,000. (This difference is attributable to the fact that A's facilities functioned at a higher rate of capacity in 1983 than in 1984). The total inventoriable costs under this section continue to be $45,150. The restatement adjustment determined under this paragraph would then be equal to .19. A would make similar calculations with respect to 1985 and 1986. The weighted average of such amounts for each of the three years in the revaluation period would then be determined as in the example in paragraph (e)(6)(iv)(C) of this section. Such weighted average would be used to revalue the cost layer for 1983. With respect to cost layers incurred during the revaluation years, no adjustment of the revaluation factor would occur. As provided in paragraph (e)(7)(iv) of this section, any taxpayer using the restatement adjustment procedure with respect to the practical capacity concept must do so for consecutive years.

Example (5). Assume the same facts as in example (4), except that during the taxable year 1983, B's facilities functioned at 50 percent of capacity. Using this information, B determines that the total inventoriable costs under B's prior method of accounting for 1984 would have been $32,000 had the facilities been operating at 50 percent of capacity for that year. The total inventoriable costs under this section continue to be $45,150. The restatement adjustment determined under this paragraph would then be equal to .41. A would make similar calculations with respect to 1985 and 1986. The weighted average of such amounts for each of the three years in the revaluation period would then be determined as in the example in paragraph (e)(6)(iv)(C) of this section. Such weighted average would be used to revalue the cost layer for 1983. With respect to cost layers incurred during the revaluation years, no adjustment of the revaluation factor would occur.

* * * * * *

(11) *Change in methods of accounting.* * * *

(iii) *Definition of changes in method required.* For purposes of this paragraph (e)(11), a change in method of accounting is required under this paragraph (e)(11) if such change is necessary in order for the taxpayer to properly capitalize and allocate costs with respect to production and resale activities in the manner prescribed in this section. A change in method of accounting may be described in the preceding sentence irrespective of whether the taxpayer's previous method of accounting resulted in the capitalization of more (or fewer) costs than the costs required to be capitalized under this section, and irrespective of whether the taxpayer's previous method of accounting was a correct method under the law in effect at that time. A change in method of accounting is not required under this paragraph (e)(11) if such change relates to factors other than those described herein. For example, a required change in method of accounting does not include a change from an inventory valuation method to another inventory valuation method, such as—

(A) A change from LIFO (or FIFO) to FIFO (or LIFO); or

(B) A change in accounting method for an inventory of securities from market value to cost.

In addition, a required change in method of accounting does not include a change within inventory valuation methods, such as a change from the "double-extension" method to the "link-chain method", or a change in the method used for determining the number of pools.

* * * * * *

(v) *Ordering rule for other changes in method of accounting.* A change in method of accounting required under this section for any taxable year shall be deemed to occur prior to any other change in method of accounting for such taxable year. Thus, for example, assume a calendar year taxpayer who produces inventory property is required to change its method of accounting under this section for its taxable year beginning January 1, 1987. The taxpayer also desires to change from the LIFO to the

FIFO method for the same taxable year, and complies with all necessary procedures to effectuate such change, including obtaining the consent of the Commissioner to such change in method of accounting, if required under such procedures. The change in method of accounting required by section 263A shall be deemed to occur first, and such change in method of accounting (including the calculation of the section 481(a) adjustment) shall be based on the taxpayer's inventory records existing as of January 1, 1987, under the LIFO method used by the taxpayer. After the change in method of accounting under section 263A is deemed to be made, and the amount of the resulting section 481(a) adjustment is determined, the change in method of accounting from LIFO to FIFO is then deemed to occur.

There is need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impractical to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved:

J. Roger Mentz,

Assistant Secretary of the Treasury.

July 29, 1987.

[FR Doc. 87-17954 Filed 8-4-87; 3:27 pm]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 50

[AD-FRL-3244-2]

National Ambient Air Quality Standards for Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: The EPA is correcting errors in the preamble to the revisions to the national ambient air quality standards for particulate matter and in Appendix K of 40 CFR Part 50 published in the **Federal Register** on July 1, 1987 (52 FR 24634).

FOR FURTHER INFORMATION CONTACT: John H. Haines at (919) 541-5533.

SUPPLEMENTARY INFORMATION: EPA promulgated revisions to the national ambient air quality standards for particulate matter on July 1, 1987 (52 FR 24634). A review of that notice resulted in the identification of several production errors in the preamble and in Appendices J and K. These production errors have been corrected by the Office of the Federal Register in a notice published on July 14, 1987 (52 FR 26401) and in a subsequent notice published elsewhere in today's **Federal Register**. In addition, EPA identified errors in the preamble and Appendix K which are discussed below and are corrected by this notice. These corrections address typographical and editing errors as well as the omission of the sigma (Σ) in formulas 2, 3, 4, 5, and 6 of Appendix K.

Date: August 1, 1987.

J. Craig Potter,

Assistant Administrator for Air and Radiation.

Editorial Note: An additional correction to this document appears elsewhere in the Corrections Section of this issue.

The following corrections are made in FRL 3141-9(a), Revisions to the National Ambient Air Quality Standards for Particulate Matter published in the **Federal Register** on July 1, 1987 (52 FR 24634).

1. On page 24634, column 2, under **SUPPLEMENTARY INFORMATION,** line 11, change "$13.50 microfiche," to "$13.50 microfiche),".

2. On page 24639, column 2, first full paragraph, line 25 change "mouthbreathing" to "mouth breathing".

3. On page 24641, column 1, fourth paragraph, line 8, change "suhject" to "subject".

4. On page 24642, column 1, first paragraph, line 2, change "expnsed" to "exposed" and column 2, first full paragraph, line 2, change "Lawther et al. (1970) judged to provide" to "Lawther et al. (1970) was judged to provide".

5. On page 24645, column 2, bottom paragraph, line 3, change "Section IV" to "section III".

6. On page 24646, column 2, first full paragraph, line 13, change "concentrations of in TSP," to "concentrations of TSP,"; second full paragraph, line 8, change "(SP, Table 2-1)" to "(SPA, Table 2-1)"; and line 15, change "(Pace et al." to "(Pace et al.,".

7. On page 24647, column 2, the first sentence of the second full paragraph which reads, "In Section 4.0 the term "reproducibility" has been changed to "precision" and the specification for PM_{10} samplers has been changed from 15 percent or better to 7 percent or 5 $\mu g/m^3$, whichever is higher." is revised to read as follows:

"In Section 4.0 the term "reproducibility" has been changed to "precision" and the specification for PM_{10} sampler has been changed from 15 percent or better to 5 $\mu g/m^3$ for PM_{10} concentrations below 80 $\mu g/m^3$ and 7 percent for PM_{10} concentrations above 80 $\mu g/m^3$.".

8. On page 24648, column 1, the third and fourth sentences of the third full paragraph which read "When temperature and pressure corrections to flow indicator readings are required, existing temperature and pressure at the time the readings are taken (or daily average values during the sampling period in some cases) must be used. Likewise, the calculations section has been changed to require that the average barometric pressure and average ambient temperature during the sampling period be used to calculate Q std." are deleted.

9. On page 24649, column 1, first full paragraph, line 5, change "addendum" to "addenda" and third full paragraph, line 4, change "(SP, p. 32)." to "(SPA, p. 36)."; column 2, fourth paragraph, line 4, change "substantial limits on fine mass, and" to "substantial limits on fine mass."; column 3, under "Comments:", line 27, change "morbid" to "morbidity" and under "Agency Response:", line 2, change "analysis" to "analyses".

10. On page 24652, column 1, under "Agency Response:", line 17, change "(SP," to "(SPA," and column 3, under "Agency Response:" regarding soiling and nuisance, line 14, change "indicate that it is relatively more" to "indicates that it is relatively more".

11. On page 24653, column 1, under "Agency Response:", line 7, change "reviewers" "reviewers'" and line 32, change "Identification and (Use of Air Quality" to "Identification and Use of Air Quality"; column 2, last paragraph, change "Response:" to "Agency Response:".

12. On page 24657, column 2, under "Chapter 12:", line 8, change "Significance" to "significance".

13. On page 24660, column 3, line 2, change "et al., 1980; Dassen et al., 1986)" to "et al., 1982; Dassen et al., 1986)".

14. On page 24661, column 2, line 7, change "1000 μm" to "100μm".

15. On page 24662, column 2 below Table 1, line 17, change "150 $\mu g/m^3$." to "250 $\mu g/m^3$.".

Appendix K—[Corrected]

16. On page 24667, column 1, Section 1.0, second paragraph, line 15 of Appendix K, change "standard" to "standards".

17. On page 24667, column 2, Section 2.2 of Appendix K, the last sentence which reads "The expected annual arithmetic mean is rounded to the

nearest 1 $\mu g/m^3$ before comparison with the annual primary standard (fractional values equal to or greater than 0.5 are to be rounded up)." is corrected to read "The expected annual arithmetic mean is rounded to the nearest 1 $\mu g/m^3$ before comparison with the anual standards (fractional values equal to or greater than 0.5 are to be rounded up).".

18. On page 24667, column 3, Section 3.0 of Appendix K, change "Computational formulas for the 24-hour standard" to "Computational formulas for the 24-hour standards".

19. On page 24668, column 1, line 17 of Appendix K, change "$_q$" to "q" and line 24, change "years" to "year".

20. On page 24668, the following formulas in Appendix K are corrected:

Formula (2) is corrected to read

$$e = \sum_{q=1}^{4} e_q$$

formula (3) is corrected to read

$$e_q = (N_q/m_q) \times \sum_{j=1}^{m_q} (v_j/k_j)$$

formula (4) is corrected to read

$$\bar{x}_q = (1/n_q) \times \sum_{i=1}^{n_q} x_i$$

and lines 6 and 7 under formula (4) which read "x_i=the ith concentration value recorded in the quarter." are corrected to read "x_i=the ith concentration value recorded in the quarter.".

formula (5) is corrected to read

$$\bar{x} = (1/4) \times \sum_{q=1}^{4} \bar{x}_q$$

21. On page 24669, column 2, line 4 of Appendix K, change "means" to "mean".

22. On page 24669 of Appendix K, the formula which reads

$\bar{x} = (1/4) \times (52.4 + 75.3 + 82.1 + 63.2 = 68.25$ or 68.3

is corrected to read

$\bar{x} = (1/4) \times (52.4 + 75.3 + 82.1 + 63.2 = 68.25$ or 68.3

23. On page 24669, formula (6) in Appendix K is corrected to read

$$\bar{x}_q = (1/m_q) \times \sum_{j=1}^{m_q} \sum_{i=1}^{k_j} (x_{ij}/k_j)$$

[FR Doc. 87-17983 Filed 8-6-87; 8:45 am]
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40 CFR Parts 51 and 52

[AD-FRL-3244-8]

PM_{10} Group I and Group II Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: List of PM_{10} Group I and Group II areas.

SUMMARY: On July 1, 1987, the EPA promulgated national ambient air quality standards (NAAQS) for particulate matter with an aerometric diameter of a nominal 10 micron of less (PM_{10}) (see 52 FR 24634). The EPA also promulgated policies and regulations by which it will implement the PM_{10} NAAQS (52 FR 24672). In accordance with these policies, EPA has categorized areas of the Nation into three groups based on the likelihood that the existing State implementation plan (SIP) must be revised to protect the PM_{10} NAAQS. Areas with a strong likelihood of violating the PM_{10} NAAQS and requiring substantial SIP revisions were placed in Group I; areas where attainment of the PM_{10} NAAQS is uncertain and the SIP may require only slight adjustment were placed in Group II; and areas with a strong likelihood of attaining the PM_{10} NAAQS, and therefore probably having an adequate control strategy, were placed in Group III.

By this notice, EPA is identifying the Group I and Group II areas in each State. The remainder of the State not in Group I or II is placed in Group III.

ADDRESSES: Information supporting the placement of each area in Group I, II, or III can be obtained from the respective EPA Regional Office which services the particular State. The addresses of the Regional Offices are:

- State Air Programs Branch, EPA, Region I, JFK Federal Building, Boston, Massachusetts 02203.
- Air Programs Branch, EPA, Region II, 26 Federal Plaza, New York, New York 10278.
- Air Programs Branch, EPA, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107.
- Air Programs Branch, EPA, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30365.
- Air and Radiation Branch, EPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.
- Air Programs Branch, EPA, Region VI, Allied Bank Tower, 1445 Ross Avenue, Dallas, Texas 75202-2733.
- Air Branch, EPA, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101.
- Air Programs Branch, EPA, Region VIII, 999 18th Street, Suite 1300 Denver, Colorado 80202-2413.
- Air Programs Branch, EPA, Region IX, 215 Fremont Street, San Francisco, California, 94105.
- Air Programs Branch, EPA, Region X, 1200 6th Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Kenneth Woodard, Standards Implementation Branch (MD-15), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. Telephone: (919) 541-5351 (FTS 629-5351).

SUPPLEMENTARY INFORMATION:

I. Background

On July 1, 1987 (52 FR 24672), EPA promulgated in 40 CFR Parts 51 and 52 policies and regulations by which it will implement the PM_{10} NAAQS. The EPA's policies for developing SIP's for PM_{10} are discussed fully in section IV.C. of the preamble to that Federal Register (52 FR 24679). Also as noted in that preamble, section 110(a)(1) of the Clean Air Act (Act) requires that each State adopt and submit, within 9 months after revision of a NAAQS, a SIP providing for attainment and maintenance of the primary NAAQS as expeditiously as practicable but no later than 3 years from the date EPA approves the SIP.

Due to a lack of PM_{10} ambient monitoring data, EPA considered different ways of implementing this requirement, including simply calling upon States to develop and submit a full PM_{10} attainment demonstration and control strategy for every area of the country within the 9-month period. The EPA believes, however, that such a requirement would be unreasonable in many areas. An analysis of ambient total suspended particulate (TSP) data for 1984-1986 in conjunction with the methodology described in EPA's "probability guideline" (Procedures for Estimating Probability of Nonattainment of a PM_{10} NAAQS Using Total

Suspended Particulate Matter or PM_{10} Data, EPA 450/4–86–017) indicates that there could be from 50 to 150 counties in which the PM_{10} NAAQS will not be attained. While these numbers are the best indication at this time of the potential nonattainment situation for PM_{10}, they are only estimates and will probably change as new ambient PM_{10} data become available. The estimates are, however, useful as an indication of the degree of PM_{10} SIP development that may eventually be necessary. The key point is that many of the 3141 counties in the Nation may need no additional particulate matter SIP provisions to meet the revised NAAQS. Thus, for many areas, the existing TSP SIP's may already provide for timely attainment and maintenance of the PM_{10} NAAQS. To call upon areas that almost certainly have adequate SIP's to resubmit those SIP's along with full attainment demonstrations would be unnecessary and therefore wasteful of limited State resources.[1]

There are, also, several areas where available data indicate that air quality may be close to the level of the NAAQS. Many of these areas may actually be shown, with more ambient data, to be in attainment or may need only minor SIP changes. Therefore, EPA believes that a demand for immediate submissions of attainment demonstrations and control strategies for all of these areas is unreasonable when additional PM_{10} air quality data could provide a more clear picture of the status of the area. On the other hand, due to applicable Act requirements and the potential environmental risk, the Administrator did not consider it reasonable to permit delay in the development of PM_{10} control programs for areas with severe air quality problems until adequate PM_{10} data were available to show that the area was violating the PM_{10} NAAQS.

For the reasons given immediately above, EPA adopted a policy by which it is dividing all areas of the country into three categories: (1) Areas with a strong likelihood of violating the PM_{10} NAAQS and requiring substantial SIP adjustment (Group I), (2) areas where attainment of the standards is possible and existing SIP's probably need less adjustment (Group II), and (3) areas with a strong likelihood of attaining the PM_{10} NAAQS and therefore needing only adjustments to the applicable prevention of significant deterioration/new source review (PSD/NSR) and monitoring provisions in their SIP's (Group III).

The EPA used a three-step process to categorize areas into Groups I, II, and III. First, where only ambient TSP data or limited amounts of PM_{10} data were available, EPA in cooperation with State agencies used those data and the probability guideline to classify areas preliminarily as Group I, II, or III. The EPA presumed that, at a minimum, the (1) areas with a probability of not attaining the PM_{10} standard of at least 95 percent fit into Group I, (2) areas with a probability of between 20 and 95 percent fit into Group II, and (3) areas with a probability of less than 20 percent fit into Group III.

Second, EPA's Regional Offices, after consulting with the appropriate State and local agencies, evaluated the existing TSP SIP's, available existing source data, and other relevant information for each area in their jurisdiction (1) to see whether information other than the probability of nonattainment justified changing the group for an area, and (2) to determine the appropriate group for areas that the EPA could not classify under the first step because ambient TSP data were unavailable.

Third, to insure national consistency, all grouping was reviewed by representatives of EPA's Headquarters staff and Regional Offices.

The EPA has completed the process of categorizing areas and the Group I and II areas are listed by State in the following section of this notice. Any area of a State not listed as Group I or II is considered to be in Group III.

The requirements and schedules for developing PM_{10} SIP's are different for Group I, II, and III areas. Immediate action to develop a full SIP that will bring about attainment and maintenance of the PM_{10} NAAQS is required for Group I areas because they have a strong likelihood of violating the NAAQS and requiring substantial revision of the existing SIP. Since the attainment status of Group II areas is uncertain, time is allowed for additional monitoring of ambient PM_{10} concentrations before revision of the existing control strategy is required. Group III areas have a strong likelihood of attaining the PM_{10} NAAQS. Therefore, for Group III areas, the State need only submit SIP revisions for the preconstruction review program and monitoring network (52 FR 24681) within 9 months. The requirements for SIP development for each group are discussed fully at 52 FR 24680–24682.

The Group I and II areas of concern are generally described below as a county, a township, or a planning area. These descriptions are only the initial definitions of the areas that must be investigated in the SIP development process. In the process of monitoring and modeling PM_{10} concentrations and determining the extent of sources of PM_{10} emissions that impact the areas, the States will better define the boundaries of the area that is or may be violating the standards.

In 1977, Congress added section 107(d)(1) to the Act which required EPA to designate areas as nonattainment, unclassifiable, or attainment for the NAAQS existing at that time. In 40 CFR Part 81, EPA made such designations for TSP. Since the PM_{10} NAAQS is being implemented under the provisions of section 110 of the Act, such designations are not necessary for PM_{10}. Thus, EPA will not make such designations for PM_{10} (see 52 FR 24682). However, EPA will retain the TSP designations to implement the requirements of Part C of the Act relating to PSD (see 52 FR 24685).

II. List of Areas

Separate lists of Group I and Group II areas follow. They are listed by county within each State. The area of concern or planning area within the county is specified where appropriate.

GROUP I AREAS

State and Counties	Area of Concern
Alaska:	
Anchorage	Anchorage.
Juneau	Juneau.
Arizona:	
Cochise	Paul Spur/Douglas area.
Pinal	Hayden/Miami area and Phoenix planning area.
Gila	Hayden/Miami area.
Maricopa	Phoenix planning area.
Yuma	Yuma planning area.
Pima	Rillito planning area.
California:	
Inyo	Owens Valley planning area and Searles Valley planning area.
Mono	Mammoth Lakes planning area.
Fresno	San Joaquin Valley.
Kern	San Joaquin Valley and Searles Valley planning area.
Kings	San Joaquin Valley.
Tulare	San Joaquin Valley.
Los Angeles	LA metropolitan area.
California:	
Orange	LA metropolitan area.
Riverside	South Coast Air Basin and Coachella Valley.
San Bernardino	South Coast Air Basin and Searles Valley planning area.
Imperial	Imperial Valley planning area and Yuma planning area.
Colorado:	
Archuleta	Pagosa Springs.
Adams	Denver metropolitan area.
Denver	Denver metropolitan area.
Arapahoe	Denver metropolitan area.
Jefferson	Denver metropolitan area.
San Miguel	Telluride.
Prowers	Lamar.
Pitkin	Aspen.

State and counties
Alabama:
Jefferson.
Alaska:
Fairbanks.
Arizona:
Coconino
Graham
Navajo
Apache
Santa Cruz
Pima
Cochise
Pinal
California:
Santa Clara
San Joaquin
Stanislaus
Kern
Los Angeles
Colorado:
Adams
Boulder
Delta
Eagle
El Paso

[1] Developing a sound attainment demonstration is generally resource intensive. It requires an in-depth study of the emission characteristics of specific sources in the demonstration area and a thorough evaluation of the anticipated effects of various emission levels from those sources. The EPA estimates it could require up to 4 work years and $250,000 to develop a SIP for each area found to be violating the NAAQS.

GROUP I AREAS—Continued

State and Counties	Area of Concern
Fremont	Canyon City.
Connecticut:	
New Haven	Interstate 95 corridor.
Fairfield	Interstate 95 corridor.
Idaho:	
Ada	Boise.
Shoshone	Pinehurst.
Bonner	Sandpoint.
Bannock	Pocatello.
Power	Pocatello.
Illinois:	
Madison	County.
Cook	County.
Indiana:	
Lake	County.
Porter	County.
Maine:	
Aroostook	Presque Isle.
Michigan:	
Wayne	County.
Minnesota:	
Ramsey	County.
Montana:	
Flathead	Kalispell.
Lincoln	Libby.
Lake	Ronan, Polson.
Missoula	Missoula.
Rosebud	Lame Deer.
Silver Bow	Butte.
Nevada:	
Washoe	Reno planning area.
Clark	Las Vegas planning area.
New Mexico:	
Dona Ana	County.
Ohio:	
Cuyahoga	County.
Jefferson	County.
Oregon:	
Jackson	Medford and White City.
Josephine	Grants Pass.
Lane	Eugene and Springfield.
Klamath	Klamath Falls.
Texas:	
El Paso	County.
Utah:	
Salt Lake	Salt Lake metropolitan area and Magna.
Utah	Provo.
West Virginia:	
Brooke	Follansbee area.
Washington:	
King	Seattle metropolitan area.
Pierce	Tacoma metropolitan area.
Spokane	Spokane.
Yakima	Yakima.
Thurston	Lacey.
Walla Walla	Wallula.
Wyoming:	
Sheridan	Sheridan.

GROUP II AREAS

State and counties	Area of concern
Alabama:	
Jefferson	North Birmingham and Leeds.
Alaska:	
Fairbanks	Fairbanks.
Arizona:	
Coconino	Flagstaff planning area.
Graham	Safford planning area.
Navajo	Show Low and Joseph City planning areas.
Apache	Show Low planning area.
Santa Cruz	Nogales planning area.
Pima	Ajo and Tucson planning areas.
Cochise	Tucson planning area.
Pinal	Casa Grande planning area.
California:	
Santa Clara	County.
San Joaquin	County.
Stanislaus	County.
Kern	Southeast Desert Air Basin.
Los Angeles	Southeast Desert Air Basin.
Colorado:	
Adams	Brighton.
Boulder	Longmont.
Delta	Delta.
Eagle	Vail.
El Paso	Colorado Springs.
Garfield	Glenwood Springs, Rifle.
Gunnison	Crested Butte.
Routt	Steamboat Springs.
Mesa	Grand Junction, Fruita.
Weld	Greeley.
Guam: Piti	County.
Idaho: Caribou	Conda.
Illinois:	
LaSalle	Oglesby.
Randolph	Baldwin.
Macon	Decatur.
Rock Island	Rock Island, Moline.
Will	Joliet.
St. Clair	East St. Louis.
DuPage	Addison.
Indiana:	
Marion	Subpart of Indianapolis.
Vigo	Terre Haute.
Iowa:	
Cerro Gordo	Mason City.
Linn	Cedar Rapids.
Polk	Des Moines.
Kansas:	
Wyandotte	Kansas City.
Kentucky:	
Boyd	Catlettsburg and Ashland.
Maryland:	
Baltimore	Baltimore.
Michigan:	
Saginaw	Carrollton.
Monroe	Monroe.
Minnesota:	
Hennepin	Minneapolis.
St. Louis	Duluth and Iron Range.
Itasca	Iron Range.
Lake	Two Harbors twp.
Stearns	St. Cloud twp.
Montana:	
Blaine	Hays.
Flathead	Columbia Falls.
Deer Lodge	Anaconda.
Lewis & Clark	Helena.
Sanders	Thompson Falls.
Lincoln	Eureka.
Nebraska:	
Cass	Weeping Water.
Douglas	Omaha.
Nevada:	
Lander	Battle Mountain area.
Humbolt	Battle Mountain area.
Elko	Battle Mountain area.
Eureka	Battle Mountain area.
New Jersey:	
Hudson	Jersey City.
Camden	Camden.
New York:	
Onondaga	Solvay.
New Mexico:	
Bernalillo	County.
Grant	County.
Santa Fe	County.
Sandoval	County.
Taos	County.
Ohio:	
Wyandot	Carey.
Scioto	New Boston.
Trumbull	Warren, Howland twp.
Lorain	Sheffield twp.
Butler	Middletown.
Seneca	Thompson twp.
Sandusky	Jackson twp.
Belmont	Martins Ferry.
Columbiana	East Liverpool.
Franklin	Columbus.
Hamilton	Cincinnati.
Mahoning	Youngstown.
Montgomery	Dayton.
Richland	Mansfield.
Stark	Canton.
Summit	Akron.
Oklahoma:	
Comanche	County.
Oregon:	
Deschutes	Bend.
Multnomah	Portland.
Union	La Grande.
Lane	Oakridge.
Pennsylvania:	
Allegheny	County.
Philadelphia	Bridesburg—Port Richmond.
Erie	County.
Lawrence	County.
Mercer	County.
Puerto Rico:	
San Juan	San Juan.
South Dakota:	
Pennington	Rapid City.
Texas:	
Dallas	County.
Harris	County.
Lubbock	County.
Nueces	County.
Virginia:	
Bumham	County.
West Virginia:	
Hancock	County.
Brooke	Remainder of county not in Group I.
Washington:	
Benton	Kennewick.
King	Bellevue.
Wisconsin:	
Brown	De Pere.
Milwaukee	Milwaukee.
Waukesha	Waukesha.
Douglas	Superior.
Dane	Madison.
Wyoming:	
Fremont	Lander.

Authority: Sections 110 and 301 of the Act give the Administrator authority to adopt policies necessary to implement NAAQS.

Date: August 3, 1987.

Craig Potter,

Assistant Administrator for Air and Radiation.

[FR Doc. 87-17980 Filed 8-6-87; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Parts 51 and 52

[AD-FRL-3244-3]

Regulations for Implementing Revised Particulate Matter Standards; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: The EPA is correcting errors in the regulations for implementing the revised particulate matter standards which appeared in the Federal Register on July 1, 1987 (52 FR 24672).

FOR FURTHER INFORMATION CONTACT: Mr. Daniel deRoeck at (919) 541-5593 (FTS 629-5593).

SUPPLEMENTARY INFORMATION: The EPA has promulgated revisions to its regulations for the review of new and modified sources and the prevention of significant deterioration of air quality. These revisions address the fact that EPA has revised its national ambient air quality standards for particulate matter. The revised regulations contained errors

which are described briefly below and are corrected by this notice.

Date: August 1, 1987.

J. Craig Potter,

Assistant Administrator, for Air and Radiation.

In rule document 87–13709 beginning on page 24672 in the issue of Wednesday, July 1, 1987, make the following corrections:

§ 51.165 [Corrected]

1. On page 24713 in the second column, the section heading "§ 51.151 Permit requirements" should read "§ 51.165 Permit requirements."

§ 51.166 [Corrected]

2. On page 24713 in the third column, § 51.166(i)(10), in the seventh line, "§ 52.21(i)(11)(i)(iii)" should read "§ 52.21(i)(11)."

Appendix S—[Corrected]

3. On page 24714 in the second column, in the instructions for amendment of Appendix S in the third line, "section 11.A.10(i) should read "section II.A.10(i)."

[FR Doc. 87–17985 Filed 8–6–87; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket No. 85-388; RM-5167]

Rural Cellular Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; Extension of time.

SUMMARY: This document extends the time for filing petitions for reconsideration of the *Rural Cellular Radio Service Order on Reconsideration*, 52 FR 22461 (June 12, 1987). The filing period is being extended as a result of corrections (published in the August 6, 1987 **Federal Register**) made to the order after the deadline for filing petitions for reconsideration had passed.

DATE: Petitions for Reconsideration must be filed by September 8, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Gerald Mark Goldstein, Mobile Services Division, Common Carrier Bureau; Tele: 202–632–6450.

Kevin J. Kelley,

Chief, Mobile Services Division, Common Carrier Bureau.

[FR Doc. 87–17994 Filed 8–6–87; 8:45 am]
BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 52, No. 152
Friday, August 7, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 501, 543, 544, 545, 546, and 551

[No. 87-827]

Corporate Governance; Technical Amendment

Date: August 4, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule; technical correction.

SUMMARY: The Federal Home Loan Bank Board ("Board") is amending its proposed rule entitled Corporate Governance, Parts III and IV, to remove the reference to the conservators' and receivers' proposed regulation (portion of Corporate Governance IV) adopted by the Board on November 8, 1985 (50 FR 48970 (Nov. 27, 1985)) from the scope of the 60-day comment period established by the Board for Corporate Governance Parts III and IV (52 FR 25870 (July 9, 1987)).

EFFECTIVE DATE: August 7, 1987.

FOR FURTHER INFORMATION CONTACT: Kathryn R. Norcross, Attorney, (202) 377-6383, PSLIC Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW, Washington, DC 20552.

SUPPLEMENTARY INFORMATION: On June 22, 1987, the Board proposed further extensive revisions to its regulations regarding the corporate governance of Federal associations in order to update and clarify these regulations (52 FR 25870 (July 9, 1987)). Due to the magnitude of various proposed revisions regarding corporate governance, the Board had previously presented certain of the proposals in parts issued separately for public comment. Overall, the proposed regulations would reorganize portions of Subchapter C (the regulations for federally chartered associations) and amend and add sections to provide a more cohesive and complete body of rules for the corporate governance of Federal associations. Part I was proposed on September 13, 1985, 50 FR 38932 (Sept. 25, 1985). Part II was proposed on November 22, 1985, 50 FR 52482 (Dec. 24, 1985). Revisions of the Board's current regulations governing conservators' and receivers' were proposed on November 8, 1985, 50 FR 48970 (Nov. 27, 1985) as a portion of Corporate Governance Part IV. The comment periods on these previously issued proposals have expired. On June 22, 1987, the Board proposed for public comment Parts III and those portions of Part IV not proposed by the Board on November 8, 1985. In the summary to Parts III and IV, the Board invited comments on Parts I and II in conjunction with Parts III and IV.

By its action today, the Board wishes to clarify the portion of the summary printed in the Federal Register of Thursday, July 9, 1987 at page 25870, first and second columns, concerning the solicitation of comments. The Board intends to solicit comments on Parts I and II of Corporate Governance, previously proposed, and these aspects of Parts III and IV proposed on June 22, 1987, for a 60-day comment period to expire on September 8, 1987. The Board did not intend to solicit comments on the revisions to the Board's regulations governing conservators and receivers which were proposed on November 8, 1985 as part of Corporate Governance, Part IV. The comment period on that proposal expired on January 28, 1986.

Pursuant to 12 CFR 508.11 and 508.14, the Board finds that, because of the minor, technical nature of this corrective amendment, notice and public comment are unnecessary, as is the 30-day delay of the effective date.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87-18017 Filed 8-6-87; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-72-AD]

Airworthiness Directives; Avions Marcel Dassault—Breguet Aviation Falcon 10 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive (AD), applicable to certain Falcon 10 series airplanes, that would require periodic inspections of the electrical grounding connection for the air conditioning freon compressor motor, repair of the local structure if damage due to electrical arcing is present, and ultimate replacement of the grounding cable. This proposal is prompted by the discovery of four instances of structural damage due to electrical arcing across the grounding connection, which had been loosened by vibration of the compressor motor. This condition, if not corrected, could lead to further instances of structural damage.

DATES: Comments must be received no later than September 30, 1987.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-72-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the AMD-BA Representative, c/o Falcon Jet Corporation, Teterboro Airport, Teterboro, New Jersey 07608. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth W. Meyer, Systems and Equipment Branch, ANM-130S, Seattle Aircraft Certification Office; telephone (206) 431-1939. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications, should identify the regulatory docket number and be submitted in duplicate to the address specified above. All

communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-72-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The French Direction Générale de l'Aviation Civile (DGAC) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition which may exist in Falcon 10 airplanes. There have been reports of structural damage found in the fuselage frames and skin of four Falcon 10 airplanes. The damage was caused by electrical arcing across a loose electrical grounding connection for the air conditioning freon compressor motor. The grounding connection may become loose due to the vibration of the compressor itself.

Avions Marcel Dassault—Breguet Aviation (AMD-BA) issued Service Bulletin AMD-BA F10-262, dated December 22, 1986, which describes procedures for periodic inspections and testing of the electrical grounding connection. It also describes the process for replacing the grounding cable with an installation which is not susceptible to vibration. When the grounding cable has been replaced in accordance with the service bulletin, the periodic inspections and testing are no longer necessary. The DGAC has declared this Service Bulletin to be mandatory, and has issued Airworthiness Directive 86-188-21(B), dated December 23, 1986, which requires compliance with the service bulletin.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require periodic inspections and testing of the grounding connection for the air conditioning freon compressor motor until the modified grounding cable has been installed, in accordance with the service bulletin previously mentioned. Any structural damage found would be required to be repaired in a manner approved by the FAA.

It is estimated that 140 airplanes of U.S. registry would be affected by this AD, that it would require approximately 8 manhours per airplane to accomplish the required replacement of the ground cable, and that the average labor cost would be $40 per manhour. The cost of materials is estimated to be $20 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $47,600.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($340). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Avions Marcel Dassault—Breguet Aviation (AMD-BA): Applies to all Falcon 10 airplanes, certificated in any category, unless AMD-BA modification M736 has been accomplished. Compliance is required as specified, unless previously accomplished.

To prevent structural damage to aircraft frames and skin in the vicinity of the electrical grounding connection for the air conditioning freon compressor motor, accomplish the following:

A. Within 30 days after the effective date of this AD, and thereafter at intervals not to exceed 30 days, conduct a visual inspection and a resistance test of the electrical grounding connection, located on frame 35, for the air conditioning freon compressor motor. Perform the inspection and test in accordance with the AMD-BA Service Bulletin F10-262, dated December 22, 1986 [reference Maintenance Manual Chapter 20-40-40].

1. If the measured resistance value of the grounding connection bonding exceeds the limits referenced in paragraph B. of the Accomplishment Instructions of the service bulletin, prior to further flight repair the grounding connection in accordance with the service bulletin.

2. If the resistance value specified for the grounding connection bonding cannot be obtained, prior to further flight install a new grounding cable in accordance with paragraph C. of the Accomplishment Instructions of the service bulletin.

B. Within 4 months after the effective date of this AD, install a new electrical grounding cable for the air conditioning freon compressor motor, in accordance with the Accomplishment Instructions of AMD-BA Service Bulletin F10-262, dated December 22, 1986.

C. Installation of a new electrical grounding cable for the air conditioning freon compressor motor, in accordance with AMD-BA Service Bulletin F10-262, dated December 22, 1986, constitutes terminating action for the repetitive inspection and testing requirements of paragraph A., above.

D. Any structural damage due to the effects of existing electrical arcing across a loose grounding connection identified during the inspections required by paragraph A., above, must be repaired, prior to further flight, in a manner approved by the FAA.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this proposal who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the AMD-BA Representative, c/o Falcon Jet Corporation, Teterboro Airport, Teterboro, New Jersey 07608.

These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on July 30, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-17922 Filed 8-6-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 87-NM-97-AD]

Airworthiness Directives: Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, which would require modification of the plastic inner window on the passenger door mid liner panel. This proposal is prompted by a report of a loose inner window (dust cover) which interfered with the movement of the upper liner and prevented the door from opening fully. This condition, if not corrected, could cause the door to jam during an emergency, thus delaying and possibly jeopardizing successful emergency evacuation of an airplane.

DATE: Comments must be received no later than September 30, 1987.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-97-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. The information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Roger S. Young, Airframe Branch, ANM-120S; telephone (206) 431-1929. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-97-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

One operator reported that a passenger door on a Boeing Model 767 airplane could not be opened more than 2.5 feet in the manual mode. Investigation showed that the plastic inner window (dust cover) that is bonded to the door mid liner panel had come loose and interfered with the normal movement of the upper liner, preventing the door from being opened. A subsequent fleet inspection by the operator found a large percentage of loose inner windows.

The airplane manufacturer conducted a test with the mid liner window displaced slightly from its normal position and the door in the emergency mode. During this test, the door jammed when it was approximately 61 inches open, as compared to the normal opening size of 72 inches. The escape slide deployed and inflated normally. In another test with the window displaced further (maximum displacement) from its normal position, the window came loose when the door was opened in the emergency mode and the door opened fully.

The FAA has reviewed and approved Boeing Alert Service Bulletin 767-25A0092, dated June 18, 1987, which describes a modification procedure to install aluminum retainers along the top and bottom of the window to mechanically secure the window to the door liner. This modification will assure that the inner window does not come loose.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require inspection and subsequent modification of the inner window on the door mid liner in accordance with the service bulletin previously mentioned.

It is estimated that 77 airplanes of U.S. registry would be affected by this AD, that it would take approximately 16 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The cost of materials is estimated at $200 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $64,680.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model 767 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 767 series airplanes listed in Boeing Alert Service Bulletin 767–25A0092, dated June 18, 1987, certificated in any category. Compliance required as indicated, unless previously accomplished.

To ensure that the entry and service doors cannot become jammed due to a loose mid liner dust cover, accomplish the following:

A. Within the next 30 days after the effective date of this AD, and thereafter at intervals not to exceed 90 days, visually inspect the door mid liner for evidence of dust cover disbonding. Disbonding is identified by the dust cover moving away from edges of the reveal. If the dust cover shows evidence of disbonding, prior to further flight, modify the dust cover in accordance with Boeing Alert Service Bulletin 767–25A0092, dated June 18, 1987, or later FAA-approved revisions.

B. Modification of the dust cover in accordance with Boeing Service Bulletin 767–25A0092, dated June 18, 1987, or later FAA-approved revisions, constitutes terminating action for the repetitive inspection requirements of paragraph A., above.

C. Within the next 18 months after the effective date of this AD, modify all dust covers in accordance with Boeing Service Bulletin 767–25A0092, dated June 18, 1987, or later FAA-approved revisions.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124–2207. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on July 30, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87–17924 Filed 8–6–87; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 87–NM–78–AD]

Airworthiness Directives; McDonnell Douglas Model DC–9–81, –82, and –83 Series Airplanes Equipped With Honeywell, Inc., P/N HG280D80 Digital Air Data Computers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–81, –82, and –83 series airplanes, which would require inspection and modification, if necessary, of certain Honeywell Digital Air Data Computers (DADC). This proposal is prompted by reports of erroneous information being transmitted to the Digital Flight Guidance Computer (DFGC) from the DADC. This condition, if not corrected, could lead to an aircraft stall close to the ground during an automatic pilot or flight director go-around maneuver.

DATES: Comments must be received no later than September 30, 1987.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 87–NM–78–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Honeywell, Incorporated, Commercial Aviation Division Technical Services, Mail Station MN23–6345, P.O. Box 889, Minneapolis, Minnesota 55440. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Richard S. Saul, Aerospace Engineer, Systems and Equipment Branch, ANM–132L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514–6323.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 87–NM–78–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

During an automatic go-around maneuver on a McDonnell Douglas Model DC–9–80 series airplane demonstration flight for the FAA, a simulated engine loss resulted in an electrical transient, which caused the Honeywell P/N HG280D80 Digital Air Data Computer (DADC) to send an erroneous low value of computed airspeed to the Digital Flight Guidance Computer (DFGC). The DFGC used this value as a go-around speed reference and generated a large pitch-up command when it compared the actual airspeed to the erroneous reference airspeed. The automatic go-around demonstration was terminated by the pilot when the stick shaker was activated by the stall warning system.

Investigation by Honeywell indicated that a complementary metal oxide semiconductor random access memory chip installed on Microcomputer Circuit Card Assembly (CCA) A1 could output erroneous computed airspeed, Mach, and total pressure data, without a failure warning, in the event of a power interrupt to the DADC. Modification 8 to the DADC, which consists of the addition of a transistor to the circuitry on CCA A1, prevents this from occurring. This transistor had been previously incorporated by Honeywell as a product improvement on DADC manufactured since May 1983, but no marking of any kind was put on the DADC to identify it as having incorporated the transistor. DADC manufactured after February 1987,

however, have the transistor incorporated and the modification is identified by a Modification 8 marking on the DADC.

The FAA has reviewed and approved McDonnell Douglas Corporation Service Bulletin 34–177, dated April 28, 1987, which describes inspection procedures to determine if Modification 8 is incorporated in the Honeywell P/N HG280D80 DADC installed on Model DC–9–80 series airplanes. Honeywell Service Bulletin HG280D80–34–09, dated March 15, 1987, referenced in the McDonnell Douglas service bulletin, provides instructions for inspection of all Honeywell P/N HG280D80 DADC and CCA A1 units, and modification instructions to bring any unit without the transistor to a Modification 8 level.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require inspection and modification, if necessary, of Honeywell P/N HG280D80 DADC within 12 months after the effective date of this (AD), in accordance with the service bulletin previously mentioned.

It is estimated that 366 airplanes of U.S. registry would be affected by this AD, that it would take approximately 4.2 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $61,488.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($168). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC–9–81, –82, and –83 series airplanes, as listed in McDonnell Douglas Service Bulletin 34–177, dated April 28, 1987, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent erroneous information from being transmitted to the Digital Flight Guidance Computer (DFGC) from the Digital Air Data Computer (DADC) in the event of an electrical transient, accomplish the following:

A. Within 12 months after the effective date of this airworthiness directive (AD), inspect Honeywell P/N HG280D80 DADC in affected airplanes to determine if Modification 8 has been installed, in accordance with Part 2 of the Accomplishment Instructions of McDonnell Douglas Service Bulletin 34–177, dated April 28, 1987, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

1. If Modification 8 has been installed and identified, no further action is necessary.

2. If Modification 8 has been installed but not identified, identify the DADC in accordance with the service bulletin.

3. If Modification 8 has not been installed, modify and identify the DADC in accordance with the service bulletin.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications, C1–L00 (54–60) (for Service Bulletin 34–177); or Honeywell, Incorporated, Commercial Aviation Division Technical Services, Mail Station MN23–6345, P.O. Box 889, Minneapolis, Minnesota 55440 (for Service Bulletin HG280D80–34–09). These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

Issued in Seattle, Washington, on July 30, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87–17923 Filed 8–6–87; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR–37–87]

Capitalization and Inclusion in Inventory of Certain Costs; Practical Capacity

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to accounting for production costs incurred in producing property and acquiring property for resale. Changes to the applicable tax law were made by the Tax Reform Act of 1986. The text of those temporary regulations also serves as the comment document for this proposed rulemaking.

DATE: Written comments and requests for a public hearing must be delivered by October 6, 1987. In general, the amendments are proposed to be effective for costs incurred after December 31, 1986, or, in the case of inventories, for taxable years beginning after December 31, 1986.

ADDRESS: Send comments and requests for public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR–37–87) Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Paulette C. Galanko of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T), (202) 566–3288, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations (designated by a "T" following the section citation) in the Rules and Regulations portion of this issue of the **Federal Register** amend Part 1 of Title 26 of the Code of Federal Regulations. These amendments are proposed to

conform the regulations to the requirements of section 803 of the Tax Reform Act of 1986 (Pub. L. 99–514), 100 Stat. 2085. For the text of the temporary regulations, see FR Doc. 87–17954 (T.D. 8148) published in the Rules and Regulations portion of this issue of the Federal Register. The preamble to the temporary regulations provides a discussion of the rules. The final regulations, which this document proposes to base on those temporary regulations, would amend Part 1 of Title 26 of the Code of Federal Regulations.

Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact analysis is not required. Although this document is a notice of proposed rulemaking that solicits public comments, the Internal Revenue service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted comments. If a public hearing is held, notice of the time and place will be published in the Federal Register.

Drafting Information

The principal author of these regulations is Paulette C. Galanko of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation on matters of both substance and style.

List of Subjects in 26 CFR Part 1

Income taxes, Accounting, Deferred compensation plans.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 87–17955 Filed 8–4–87; 3:29 pm]

BILLING CODE 4830–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 50 and 52

[AD–FRL–3244–4]

PM_{10} Fugitive Dust Policy

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of comment period for proposed policy statement.

SUMMARY: On July 1, 1987, at 52 FR 24716, EPA proposed three alternatives to its existing fugitive dust policy to address the new particulate matter standard known as PM_{10}. That notice requested that comments be filed on or before July 31, 1987. At the request of the American Mining Congress (AMC), EPA is extending the comment period until August 31, 1987.

DATE: All comments must be submitted on or before August 31, 1987.

ADDRESSES: Comments on the alternative fugitive dust policies should be submitted (in triplicate if possible) to the Central Docket Section (LE–132), U.S. Environmental Protection Agency, Attention: Docket Number A–87–01, 401 M Street, SW., Washington, DC 20460. The Docket is located in Room 4, South Conference Center, and is available for public inspection between 8:00 a.m. and 3:00 p.m. on weekdays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Kenneth Woodard, Standards Implementation Branch (MD–15), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. Telephone: (919) 541–5351 (FTS 629–5351).

SUPPLEMENTARY INFORMATION: Since 1977, EPA has allowed States with rural fugitive dust areas (RFDA's) to discount fugitive dust in developing and enforcing a State implementation plan (SIP) for attainment and maintenance of the national ambient air quality standards (NAAQS) for particulate matter (PM).

On July 1, 1987, at 52 FR 24634, EPA announced its final decisions concerning the indicator and levels of the NAAQS for PM and the requirements for implementing those new standards. Also, on July 1, 1987, EPA solicited comments on alternative SIP requirements for RFDA's and on the adequacy of the definitions which are used in identifying RFDA's. The EPA requested that comments be submitted within 30 days or by July 31, 1987.

By a letter of July 15, 1987, Larry A. Boggs, representing the AMC, requested the comment period be extended by 30 days to allow them to develop meaningful comments. (A copy of that letter has been placed in Docket A–87–01.) The EPA believes that such a request is reasonable and is therefore extending the comment period on the proposal for the Fugitive Dust Policy until August 31, 1987.

Authority: Sections 110 and 301 of the Clean Air Act give the Administrator authority to adopt policies necessary to implement NAAQS.

Date: August 1, 1987.

J. Craig Potter,

Assistant Administrator for Air and Radiation.

[FR Doc. 87–17969 Filed 8–6–87; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[A–6–FRL–3243–7]

Approval and Promulgation of Implementation Plan for the State of Louisiana; Good Engineering Practice-Stack Height Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rulemaking.

SUMMARY: This Federal Register notice proposes approval of Louisiana Air Quality Regulations Sections 17.41.1–17.14.3 for Good Engineering Practice-Stack Height (GEP–SH) and Dispersion Techniques. This proposed GEP–SH SIP revision is intended to implement section 123 of the Clean Air Act, as amended, and Federal regulations at 40 CFR Part 51. If approved, it will enable the State to ensure that the degree of emission limitation required for the control of any air pollutant under its SIP is not affected by that portion of any stack height which exceeds GEP–SH or by any other dispersion technique.

Through today's notice, EPA solicits public comments on its proposed approval of the Louisiana State GEP–SH regulations. The rationale for the proposed approval is contained in this notice and further documented in a *Technical Support Document* which is available for public review.

DATE: Comments must be received on this proposed action on or before September 8, 1987.

ADDRESSES: Written comments should be submitted to the address below:

Mr. Thomas H. Diggs, Chief, SIP New Source Section (6T–AN), Air Programs Branch, Air, Pesticides and Toxics Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202

Copies of the State's submittal and EPA's *Technical Support Document* along with other information are available for inspection during normal business hours at the following locations. Interested persons wishing to examine these documents should make an appointment with the appropriate office at least twenty-four hours before the visiting day.

Environmental Protection Agency, Region 6, Air, Pesticides and Toxics Division, Air Programs Branch, SIP New Source Section, 1445 Ross Avenue, Dallas, Texas 75202

Louisiana Air Quality Division, Louisiana Department of Environmental Quality, 325 North Fourth Street, P. O. Box 44096, Baton Rouge, Louisiana 70804

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Diggs; Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, telephone (214) 655–7214.

SUPPLEMENTARY INFORMATION: Section 123 of the Clean Air Act, amended August 1977, regulates the manner in which techniques for dispersion of pollutants from a source may be considered in setting emission limitations. Specifically, section 123 requires that the degree of emission limitation shall not be affected by the portion of a stack which exceeds GEP–SH or by "any other dispersion technique."

To fulfill this requirement of the Act, EPA initially promulgated GEP–SH regulations limiting stack height credits and other dispersion techniques at 47 FR 5864 (February 8, 1982). Portions of those regulations were successfully challenged in the U.S. Court of Appeals for the D.C. Circuit. See *Sierra Club* v. *EPA*, 719 F.2d 436 (D.C. Cir. 1983), resulting in their revision at 50 FR 27892 (July 8, 1985). Since then, the regulations have been renumbered as part of a comprehensive restructuring and consolidation of EPA's SIP development regulations. See 51 FR 40656 (November 7, 1986). Today's **Federal Register** proposal uses the current numbers for citation.

Pursuant to section 406 (d)(2) of the Clean Air Act Amendments of 1977, EPA has required that all States (1) review and revise, as necessary, their SIPs to include provisions that limit stack height credits and dispersion techniques in accordance with the EPA's July 8, 1985, revised regulations and (2) review all existing emission limitations to determine whether any of these limitations have been affected by impermissible stack height credits above GEP or by any other dispersion techniques and, if so, to prepare revised limitations consistent with their revised SIPs. Today's proposal concerns only the first of these requirements. Although the State of Louisiana has reviewed and evaluated emission limitations of the existing sources by using the criteria provided in the **Federal Register** notice of July 8, 1985, EPA will publish the results of this review and revisions, if any, to emission limitations of the affected sources under a separate notice.

On July 18, 1986, the Governor of Louisiana submitted a copy of the Louisiana GEP–SH Air Quality Regulations, Sections 17.14.1–17.14.3, adopted by the Secretary of the Department of Environmental Quality (LDEQ) on May 20, 1986, as a proposed SIP revision together with supporting documents. With one exception, the LDEQ GEP–SH regulations are equivalent to the Federal regulations found at 40 CFR 51.100(z), 40 CFR 51.100(ff)–(kk), 40 CFR 51.118, 40 CFR 51.164, and, indeed, are largely identical thereto except for minor changes to accommodate the State's regulatory format. EPA's preliminary determination indicates that the State's regulations and procedures are adequate and effective for implementation of the Federal stack height and dispersion technique regulations and section 123 of the Clean Air Act.

The primary substantive requirements for implementation of section 123 through SIPs are found at 40 CFR 51.118 and 40 CFR 51.164. 40 CFR 51.118(a) requires that SIPs provide that "the degree of emission limitation required for any source for control of any air pollutant must not be affected by so much of any source's stack height that exceeds good engineering practice or by any other dispersion technique." Section 17.14.2 of the LDEQ regulations adopts this provision verbatim.

40 CFR 51.118(a) additionally requires that SIPs "provide that before a State submits to EPA a new or revised emission limitation that is based on a good engineering practice stack height that exceeds the height allowed by § 51.100(ii) (1) or (2), the State must notify the public of the availability of the demonstration study and must provide opportunity for public hearing on it." Because it provides that the State "administrative authority will notify the public of the availability of any stack height demonstration and will provide opportunity for public hearing on it," Section 17.14.2 of the LDEQ regulation complies with this requirement. Although the State regulation does not itself indicate that such emission limitations will be submitted to EPA for review as SIP amendments, the Secretary of the LDEQ committed the State to submit SIP revisions to EPA for all cases subject to this section of the regulations in a letter dated September 23, 1986. Like the Federal regulation, Section 17.14.2 also indicates that it "does not restrict, in any fashion, the actual stack height of any source," and includes the same "grandfather clause" as 40 CFR 51.118(b).

With one exception, Section 17.14.3 of the State regulations similarly replicates, and thus satisfies, 40 CFR 51.164. That federal regulation requires, however, that "before a State issues a permit to a new or modified source based on a good engineering practice stack height that exceeds the height allowed by § 51.100(ii) *(1) or (2)*, The State must notify the public of the availability of the demonstration study and must provide opportunity for public hearing." [Emphasis added.] There is an apparent clerical error in Section 17.14.3, insofar as it fails to include a reference to subsections (2) or (3) of Section 17.14.1(e), the equivalents of subsections (i) and (ii) or 40 CFR 51.100(ii).

As a result of this inadvertent error, the State regulation incorrectly suggests that there is an approvable method for determining GEP–SH other than those prescribed by 40 CFR 51.100(ii) and Section 17.14.1(e), and that new or modified source emission limitations developed pursuant to Section 17.14.1(e)(3) need not be subjected to public review. Prior to final approval of Louisiana's GEP–SH SIP revision, LDEQ must amend this area of the regulation to resolve EPA's concern.

In addition to the required implementing regulations, Louisiana has adopted definitions essential for their meaningful application. The State regulatory definitions for "emission limitation and emission standard" [Section 17.14.1(a)], "stack" [Section 17.14.1(b)], "a stack in existence" [Section 17.14.1(c), "dispersion technique" [Section 17.14.1(d)], "good engineering practice stack height" [Section 17.14.1(e)], "nearby" [Section 17.14.1(f), and "excessive concentration" [Section 17.14.1(g)], replicate the Federal regulatory definitions at 40 CFR 51.100(z), 40 CFR 51.100(ff), 40 CFR 51.100(gg), 40 CFR 51.100(hh), 40 CFR 51.100(ii), 40 CFR 51.100(jj), and 40 CFR 51.100(kk), respectively.

The Office of Management and Budget has exempted this proposed rule from the requirements of section 3 of Executive Order 12291.

Pursuant to 5 U.S.C. 605, the Administrator of EPA has categorically certified that no proposed or final SIP

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approval will have a significant economic impact on a substantial number of small entities. See 46 FR 8709 (January 27, 1981). This proposal need not, therefore, be accompanied by a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur Oxide, Nitrogen Dioxide, Lead, Particulate Matter, Carbon Monoxide, and Hydrocarbons.

Authority: 42 U.S.C. 7401–7642.

Date: March 25, 1987.

Frances E. Phillips,

Acting Regional Administrator.

[FR Doc. 87–17986 Filed 8–6–87; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[A–4–FRL–3243–6; NC–022]

Approval and Promulgation of Implementation Plans; North Carolina; Durham County, Carbon Monoxide (CO) Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is today proposing to approve the North Carolina CO State Implementation Plan (SIP) revision for Durham County. The SIP revision was submitted to EPA by the North Carolina Division of Environmental Management (NCDEM) on December 5, 1986.

Through reductions in CO emissions achieved by the Federal Motor Vehicle Control Program (FMVCP) and transportation control measures (TCMs), North Carolina has demonstrated attainment of the National Ambient Air Quality Standards (NAAQS) for CO by December 31, 1987. These revisions meet the requirements of the Clean Air Act (CAA) and EPA policy.

The public is invited to submit written comments on this proposed action.

DATE: To be considered, comments must reach us on or before September 8, 1987.

ADDRESSES: Written comments should be addressed to Thomas Hansen of EPA Region IV's Air Programs Branch (see EPA Region IV address below). Copies of the materials submitted by North Carolina may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365

Department of Natural Resources and Community Development, Division of Environmental Management, P.O. Box 27687, Raleigh, North Carolina 27611

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Hansen, Air Programs Branch, EPA Region IV, at the above address and telephone number 404/347–4292 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: Durham County, North Carolina was officially designated attainment on March 3, 1978 for CO (43 FR 8962 at 9020), negating the need for a Part D SIP revision. On May 10, 1979 (44 FR 27558), EPA promulgated the Ambient Air Quality Surveillance regulations (40 CFR Part 58). Pursuant to these regulations, the monitoring network in Durham County was expanded. Analysis by EPA and the State of North Carolina of ambient CO measurements collected in the Durham area indicated that, on a number of occasions, recorded levels of CO had exceeded the eight-hour NAAQS.

For areas with a fully approved SIP, showing attainment, but which did not attain, EPA on February 3, 1983 (48 FR 4972), announced its intention to treat such areas as "substantially inadequate" to assure attainment under section 110(a)(2)(H) of the CAA. EPA policy stated that CO SIP calls should be made in all cases where the highest second high measured concentration is greater than or equal to 12.6 mg/m³ (11 ppm), using the two most current years of data available. A review of the latest available data for Durham County at that time (1982 and 1983) resulted in a design value of 16.7 mg/m³. On September 18, 1984, the Governor of the State of North Carolina requested EPA concurrence for the State to revise its SIP for CO, obviating the need for a section 110(a)(2)(H) call by EPA. On October 15, 1984, EPA approved the proposed action by the Governor on condition that the State of North Carolina commit to completing its SIP revision within one year. A proposed schedule was submitted within 60 days of EPA's concurrence, detailing how this would be accomplished.

Emission Inventory

There are two primary sources of carbon monoxide emissions in the Durham area, stationary sources and mobile sources. A 1983 stationary source inventory was compiled by the NCDEM using the national emissions data system for area sources and the permitting/reporting system used for major combustion sources. Eleven stationary CO source categories were analyzed and summed, resulting in stationary source emissions of 3,310 tons/year. County-wide emissions from mobile sources were also developed using vehicle miles of travel (VMT), by speed class, and MOBILE–3, EPA's mobile source emission model. Mobile source emissions for base year 1983 were calculated to be 43,280 tons/year, or 93% of the CO emissions which occurred in Durham County.

Level of Control Required

The National Ambient Air Quality Standards (NAAQS) for CO are 35 parts per million (ppm) or 40 milligrams per cubic meter (mg/m³) for one hour and 9 ppm or 10mg/m³ over eight hours, not to be exceeded more than once per year. There have been no monitored exceedances of the one-hour CO standard in Durham County. However, there have been numerous eight-hour exceedances resulting in a design value, i.e., highest second high CO concentration, of 16.7 mg/m³.

Detailed analysis of the monitored violations, including modelling and traffic data analysis, indicates an areawide problem in the central business district (CBD) of Durham. A "rollback technique" was therefore used to calculate the required CO reduction. This technique involves linearly rolling back the design value to the standard and reducing emissions by the percentage difference. Since 1984 design value for Durham County is 16.7 mg/m³, a 43% reduction in emissions is required by December 31, 1987, to attain the 10 mg/m³ eight-hour CO NAAQS.

Attainment Demonstration

The State and local Departments of Transportation developed detailed 1984 VMT data for the Durham CBD and projected this base data to 1987. Using approrpiate emission factors from MOBILE–3, an 1984 and 1987 emissions inventory was developed for the Durham CBD. A comparison of the 1984 to the 1987 mobile source emissions inventory for the Durham CBD shows a reduction in CO emissions of 56.4%, considerably more than the required 43%.

The primary reasons for these reductions are the Federal Motor Vehicle Control Program (FMVCP) and various transportation control measures that impact the CBD. The TCMs include the incorporation of a computerized traffic signal system and the completion of the Fayetteville-Elizabeth connector. The implementation of tese TCMs accounts for the increased travel speeds in the CBD. Furthermore, traffic in the downtown area has been declining during the past five years, resulting in decreased CBD VMT. This trend has now reversed, but only a modest one to

two percent growth rate is projected for the next three to four years.

Intersection Hot Spot Analysis

Ambient monitoring data for CO is currently available at one intersection in Durham County. The Roxboro Road monitoring site was established in Durham on Duke Street near the intersection of Roxboro Road as a middle scale site. The site was operational in October, 1982, but was shut down in April, 1984, due to consistently low values. Therefore, evaluation of both current and projected air quality was made using approrpiate modeling techniques. A general screening process was used to rank the most congested intersections in the County. The Durham Traffic Engineering Division formulated a list of fifteen intersections in and around Durham. This list included the most likely candidates for high CO concentrations, based on the volume of traffic and the amount of associated congestion. TEXIN, a model developed by the Chemical Engineering Department and the Texas Transportation Institute at Texas A&M University, was then used to rank all fifteen intersections. The five intersections expected to have the worst air quality impacts at the end of 1987 were subjected to more detailed analysis.

A CO dispersion model refered to as CAL3Q was used. This model takes into account the emissions from queued vehicles that take place at signalized intersections. It is a modfication of the CALINE-3 model developed by the State of California. EPA's Office of Air Quality Planning and Standards recommended the use of this model. The only emission controls accounted for were those associated with the FMVCP. The worst of these intersections is projected to have a maximum eight-hour concentration of 8.1 ppm, well below the 9 ppm, eight hour standard.

Because of EPA's close involvement in the detailed analysis work and throughout this process, the technical appendices prepared by the NCDEM will serve as the technical support document for this approval action.

Proposed Action:

Based on the above discussion, EPA is proposing the approval of the post-1982 North Carolina CO SIP revision for Durham County. The plan revision satisfactorily meets all Part D requirements of the Clean Air Act.

Since the State of North Carolina is not required to revise their CO control strategy or change their rules or regulations to assure attainment of the CO NAAQS in Durham County, there is no material to be incorporated by reference.

The Agency views this proposal as a noncontroversial amendment and anticipates no adverse comments.

The public is invited to participate in this rulemaking by submitting written comments on the proposed action.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Carbon monoxide.

Authority: 42 U.S.C. 7401–7642.

Dated: March 25, 1987.

Lee A. DeHihns, III,

Acting Regional Administrator.

[FR Doc. 87–17986 Filed 8–6–87; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Parts 795, 796 and 799

[OPTS–42088B; FRL–3244–5]

Solid Waste Chemicals; Proposed Test Rule; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: EPA is extending the comment period for the proposed test rule on 73 Office of Solid Waste (OSW) chemicals for 30 days until August 27, 1987 as a result of a request for extension by the Chemical Manufacturers Association (CMA). This extension of the comment period will allow industry additional time to examine the OSW docket relevant to this rulemaking. Due to confusion regarding the location of the supporting information in the OSW docket, EPA is extending the comment period to provide interested parties full opportunity to review the supporting documents in the OSW rulemaking record.

DATES: Written comments on the proposed rule should be submitted on or before August 27, 1987. Requests to make oral comments at a public meeting were submitted to the Agency on July 14, 1987, and a public meeting will be held August 11, 1987.

ADDRESSES: Address written comments in triplicate identified by the document control number OPTS–42088A to: TSCA Public Information Office (TS–793), Office of Pesticide and Toxic Substances, Environmental Protection Agency, Room NE–G004, 401 M St., SW., Washington, DC 20460.

The public record supporting this action is available for inspection in Room NE–G004 at the above address from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Room E–543, 401 M St., SW., Washington, DC 20460, (202) 554–1404.

SUPPLEMENTARY INFORMATION: Proposed rulemaking for 73 Office of Solid Waste chemicals (40 CFR 799.5055 *Hazardous waste constituents subject to testing*) was published in the **Federal Register** of May 29, 1987 (52 FR 20336). EPA made a finding of "may present an unreasonable risk of injury to human health" for the 73 chemicals under section 4(a)(1)(A) of Toxic Substances Control Act (TSCA). On July 24, 1987, CMA requested an extension of the comment period for 60 days (Ref. 1) based on the assumption that EPA had added materials to the rulemaking record. EPA notes that all of the information supporting this proposed rule has been available in either the TSCA or OSW docket throughout the comment period. However, due to confusion regarding the location of the supporting information in the OSW docket, EPA is extending the public comment period for 30 days to provide interested parties full opportunity to review the supporting documents in the OSW rulemaking record. The OSW docket relevant to this rulemaking (Docket No. 3001) is located in Room LG–100 (sub-basement), U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC.

Reference

(1) CMA. Letter, request for extension of comment period, from David F. Zoll, Chemical Manufacturers Association, Washington, DC, to John A. Moore, Assistant Administrator, Office of Pesticides and Toxic Substances, U.S. Environmental Protection Agency, Washington, DC (July 24, 1987).

Authority: 15 U.S.C. 2603, 2611, 2625.

Dated: July 31, 1987

Susan F. Vogt,

Acting Director, Office of Toxic Substances.

[FR Doc. 87–17991 Filed 8–6–87; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

46 CFR Part 586

[Docket No. 87-6]

Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Peru Trade

AGENCY: Federal Maritime Commission.

ACTION: Notice of Availability of Peruvian Ministerial Resolution No. 027-87-TC/AC.

SUMMARY: This gives notice of the availability at the Federal Maritime Commission of an English translation of Peruvian Ministerial Resolution No. 027-87-TC/AC which was promulgated to implement a Memorandum of Understanding reached on May 1, 1987, between the Governments of the United States and Peru.

ADDRESS: Copies may be obtained from: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5740.

SUPPLEMENTARY INFORMATION: The Commission instituted this proceeding by Notice of Proposed Rulemaking ("Proposed Rule") published in the **Federal Register** on April 13, 1987 (52 FR 11832), to address apparent conditions unfavorable to shipping in the United States/Peru trade ("the Trade") pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b). Comments on the Proposed Rule were originally due on May 13, 1987. However, by Notice of May 11, 1987 ("May Notice") (52 FR 18408), this period was extended until July 3, 1987.

In its May Notice, the Commission noted that a Memorandum of Understanding ("MOU"), signed on May 1, 1987 between the Governments of Peru and the United States, appeared to be a significant development which may be expected to affect access of non-Peruvian-flag carriers to the Trade. Accordingly, the Commission extended the comment period in order to obtain the views of interested persons on this development.

The Commission has granted two further extensions of time for commenting on the Proposed Rule due to the delay in the promulgation of the Peruvian regulations to implement the MOU. Comments are presently due on August 10, 1987.

The Government of Peru has now issued its regulations implementing the MOU. These regulations, Peruvian Ministerial Resolution No. 027-87-TC/AC ("Resolution"), were signed on July 27, 1987. Commision staff has translated the regulations from Spanish into English. This informal translation is available to interested persons in the Commission's Office of the Secretary. Interested parties are invited to comment on this Resolution in connection with any comments submitted on the Proposed Rule by August 10, 1987.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 87-17873 Filed 8-6-87; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 95

[PR Docket No. 87-265; FCC 87-241]

General Mobile Radio Service (GMRS)

AGENCY: Federal Communications Commission.

ACTION: Proposed rules.

SUMMARY: The FCC has proposed to modify the rules in the General Mobile Radio Service (GMRS) to better accommodate recent developments in personal use and changes in technology. Systems licensed to non-individuals before the release date of this proposal would be grandfathered. These rules are being proposed in order to promote personal use of the GMRS.

DATES: Comments are due on or before November 30, 1987. Reply comments are due on or before December 31, 1987.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: John J. Borkowski, Special Services Division, Private Radio Bureau, (202) 632-4964.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making*, PR Docket No. 87-265, adopted July 16, 1987, and released July 31, 1987.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 21 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rule Making

The FCC has proposed to modify the rules in the General Mobile Radio Service (GMRS) to better accommodate recent developments in personal use and changes in technology. To this end, the FCC has proposed to limit eligibility for GMRS system licensing only to individuals. Systems licensed to non-individuals before the release date of this proposal would be grandfathered. To facilitate transient use of repeaters, the FCC proposed to permit use of a GMRS system's repeater by any other GMRS licensees or family members the licensee permits. The FCC also proposed to allow a GMRS station operator to be any other GMRS licensee or family member for whom the licensee is willing to take responsibility.

To permit more efficient and effective use of the GMRS spectrum, rules were proposed to permit each GMRS licensee to select the channel or channel pair for the stations in a GMRS system as needed (with some limitations near the Canadian border). Only one channel or channel pair could be used at a given time by any station.

To accommodate personal GMRS users with mobile equipment who have only occasional need for base station communications, the FCC proposed to create a small base station using the same regulatory approach as the GMRS small control station. A small base station would employ no more than five watts effective radiated power and would employ an antenna no more than twenty feet above the ground or above the building or tree on which it is mounted. Small base stations would be allowed the same frequency tolerance as mobile stations.

Seven interstitial frequencies would be added as channels in the GMRS. The three 462 MHz interstitial channels would be solely for mobile station and small base station use. The four 467 MHz interstitial channels would be restricted to non-voice communications solely for the purpose of repeater control, and limited to five watts maximum effective radiated power.

As part of its continuing regulatory review the FCC also proposed: (1) To make certain changes to the GMRS rules to conform to new Field Operations Bureau classification of certain field offices; (2) to remove advisory rules recommending that GMRS radios be repaired only by technicians approved by some organization with the

consensus of GMRS users, because there is no such organization in this service; and (3) to update the FCC addresses for filing GMRS applications.

This is a non-restricted notice and comment rule making proceeding. *See* § 1.1231 of the Commission's rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that the proposed rule will not, if promulgated, have a significant economic impact on a substantial member of small entities. Although these proposed changes allow the personal radio community greater flexibility and convenience, they will not cause a significant economic impact on small entities.

The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to decrease the information collection burden which the Commission imposes on the public. This proposed reduction in information collection burden is subject to approval by the Office of Management and Budget as prescribed by the Act.

Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before December 31, 1987. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

The proposed amendments to the Commission's rules are issued under the authority contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r).

Ordering Clause

It is ordered, That a copy of this Notice shall be sent to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 95

General mobile radio.

William J. Tricarico,

Secretary.

Subparts A and E of Part 95 of Chapter I of Title 47 of the Code of Federal Regulations would be amended as follows:

PART 95—PERSONAL RADIO SERVICES

Subpart A—General Mobile Radio Service (GMRS)

1. The authority citation for Part 95 would continue to read:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

2. Section 95.1 would be revised to read:

§ 95.1 The General Mobile Radio Service (GMRS).

(a) The *GMRS* is a mobile radio service available to individuals for brief two-way messages to facilitate the activities of licensees and their immediate family members. Each licensee manages a system consisting of one or more stations.

(b) An individual eligible for licensing under this subpart is eligible to obtain an authorization in the 31.0 to 31.3 GHz band for personal communications, provided that the technical standards in Part 94 applicable to the band are observed. Individuals applying for stations in the 31.0 to 31.3 GHz band for personal communications must use FCC Form 402.

(c) Entities other than individuals eligible for licensing in the GMRS under prior rules which were granted authorizations prior to [the release date of the *Notice*] may continue to operate in accordance with such authorizations and may renew them (see § 95.5(b)), but only to facilitate the business of the licensee.

3. Paragraphs (a) and (b) of § 95.3 would be revised to read:

§ 95.3 License required.

(a) An individual must obtain a license (a written authorization from the FCC for a GMRS system or for a station in a GMRS system) before transmitting on any stations in the GMRS at any point (a geographical location) within or over the territorial limits of any area where radio services are regulated by the FCC.

(b) An individual may obtain a license for a station in the GMRS only if the station is part of that individual's GMRS system.

* * * * *

4. Section 95.5 would be revised to read:

§ 95.5 License eligibility.

(a) An individual is eligible to obtain a new license if that individual is eighteen years of age or older and is not a representative of a foreign government.

(b) Entities other than individuals not eligible to obtain a new license under paragraph (a) of this section but which were authorized in the GMRS under prior rules before [the release of this *Notice*] may renew their existing authorizations (see § 95.89), but may not modify any such existing authorizations to:

(1) Increase the power of any transmitter;

(2) Increase the number of mobile units;

(3) Add any stations:

(4) Increase any antenna heights;

(5) Change any land station locations; or

(6) Change area of operation.

5. Paragraph (a) of § 95.7 would be revised to read:

§ 95.7 Channel sharing.

(a) Channels or channel pairs used by GMRS systems are available only on a shared basis and will not be assigned for the exclusive use of any licensee. All operators and licensees must cooperate in the selection and use of channels to reduce interference and to make the most effective use of the facilities.

* * * * *

6. Paragraph (e) of § 95.25 would be redesignated as paragraph (f). A new paragraph (e) would be added to § 97.25 to read:

§ 95.25 Land station description.

* * * * *

(e) A small base station is any base station that:

(1) Has an antenna no more than 6.1 meters (20 feet) above the ground or above the building or tree on which it is mounted (see § 95.51); and

(2) Transmits with no more than 45 watts effective radiated power.

* * * * *

7. Section 95.29 would be revised to read:

§ 95.29 Channels available.

(a) The licensee of the GMRS system must select the channel or channel pair for the stations in the GMRS system (see § 95.75(c)) from the following lists:

(1) For a base station, mobile relay station, fixed station, or mobile station, the following 462 MHz (megahertz) channels:

462.550	462.625	462.700
462.575	462.650	462.725
462.600	462.675	

(2) For a mobile station, control station, or fixed station in a duplex system, the following 467 MHz channels:

467.550	467.625	467.700
467.575	467.650	467.725
467.600	467.675	

(b) Only one channel or one channel pair (one 462 MHz channel and its counterpart 5 MHz spaced 467 MHz channel) may be used by a station in a GMRS system in the simplex mode.

(c) Only one channel pair may be used by a station in a GMRS system in the duplex mode. (An example of a channel pair is channel 462.600 MHz and channel 467.600 MHz.)

(d) Mobile units and small base stations may also use the following 462 MHz channels:

462.5625 462.6125 462.6375

(1) These channels may only be used for voice communication.

(2) These channels may be used only when the following conditions are met:

(i) All stations operating on these channels must transmit with no more than 5 watts effective radiated power;

(ii) These channels may be used only for simplex two-way voice communications to other stations authorized to operate on them; and

(iii) Paging is not permitted on these frequencies.

(e) Mobile units and small control stations may also use the following 467 MHz channels:

467.5625 467.6375
467.6125 467.7125

(1) These channels may only be used as non-voice control channels.

(2) These channels may be used only when the following conditions are met:

(i) All stations operating on these channels must transmit with no more than 5 watts effective radiated power;

(ii) These channels may be used only for one-way non-voice control link transmissions to mobile relay stations;

(iii) Paging is not permitted on these control channels; and

(iv) Transmissions on these control frequencies may not exceed five seconds in duration in any sixty-second period.

(f) Fixed stations authorized before March 18, 1968, located 100 or more miles from the geographic center of urbanized areas of 200,000 or more population as defined in the U.S. Census of Population, 1960, Vol. 1, Table 23, page 50 which were authorized to operate on frequencies other than those listed in this section may continue to operate on their originally assigned frequencies provided that they cause no interference to the operation of stations in any of the Part 90 private land mobile radio services.

8. Section 95.37 would be revised to read:

§ 95.37 Considerations near the Canadian border.

A GMRS station may not transmit on the following frequencies within the specified distances from these points in Canada, unless previously authorized to do so by the FCC:

(a) 462.550 MHz within 75 miles of Montreal, Quebec.

(b) 462.5625 MHz within 50 miles of Malton and Sarnia, Ontario.

(c) 462.575 MHz within 75 miles of Mirabel, Ontario and Pointe aux Trembles and Verdun, Quebec.

(d) 462.6125 MHz within 50 miles of Don Mills and Sarnia, Ontario.

(e) 462.625 MHz within 75 miles of Malton, Ontario and Montreal and Varennes, Quebec.

(f) 462.650 MHz within 75 miles of Hamilton and Scarborough, Ontario and Montreal, Quebec.

(g) 462.675 MHz within 75 miles of Kingston, London, Manheim, Ottawa and Toronto, Ontario, and Montreal and Quebec, Quebec.

(h) 462.700 MHz within 75 miles of the U.S.-Canadian border.

(i) 462.725 MHz within 75 miles of Burlington, Ontario.

(j) 467.5625 MHz within 50 miles of Malton, Sarnia and Toronto, Ontario, and Montreal, Quebec.

(k) 467.6125 MHz within 50 miles of Sarnia and Downsmills, Ontario and the Province of Quebec.

(l) 467.6375 MHz within 50 miles of Malton, Ontario, and Montreal and Varennes, Quebec.

(m) 467.650 MHz within 75 miles of the U.S.-Canadian border.

(n) 467.7125 MHz within 50 miles of Ingersoll, Niagara Falls, Fonthill and Welland, Ontario.

9. Section 95.39 would be revised to read:

§ 95.39 Considerations near certain FCC field offices.

The FCC may impose additional restrictions on a land station in a GMRS system if it is at a point within 4.8 kilometers (3 miles) of a field office equipped with long-range direction-finding equipment (formerly called a monitoring station) and the station's transmissions degrade, obstruct, or repeatedly interrupt the operation of the equipment at the FCC field office. Before applying for a license to put a land station at such a point, or before applying to change anything in a station already licensed for such a point, you should consult the FCC by writing to the Chief, Field Operations Bureau, Federal Communications Commission, Washington, DC 20554.

10. Paragraph (f) of § 95.51 would be revised to read:

§ 95.51 Antenna height.

* * * * *

(f) The antenna for a small base station or for a small control station must not be more than 6.1 meters (20 feet) above the ground or above the building or tree on which it is mounted.

11. Paragraphs (c) and (f) introductory text of § 95.53 would be revised to read:

§ 95.53 Mobile station communication points.

* * * * *

(c) A mobile station unit may transmit communications through a mobile relay station in another GMRS system, with the permission of that system's licensee, to:

(1) Control stations in the other GMRS system; and

(2) Mobile station units of any GMRS system.

* * * * *

(f) A mobile station unit must not transmit communications, without the GMRS system licensee's permission, through a mobile relay station in another GMRS system, for retransmission to:

* * * * *

12. Paragraph (b) introductory text § 95.57 would be revised to read:

§ 95.57 Mobile relay station communication points.

* * * * *

(b) A mobile relay station in a GMRS system must not automatically retransmit, without the GMRS system licensee's permission, communications between:

* * * * *

13. Paragraph (a) of § 95.71 would be revised to read:

§ 95.71 Applying for a new or modified license.

(a) An individual applies for a license for a new GMRS system by filling out an application form, attaching all additional information required, and sending it to the FCC. A licensee applies to modify a license for an existing GMRS system using the same forms and in the same manner as applying for a new GMRS system. A non-individual licensee whose station was licensed prior to [the release date of this *Notice*] may not make a major modification in the system (see § 95.5(b)).

(1) All applicants except governmental entities should submit their applications, together with the filing fee, to the Federal Communications Commission, General Mobile Service, P.O. Box 360373M, Pittsburgh, PA 15251–6373.

(2) Governmental entities should submit their applications to the Federal Communications Commission, Attention: GMRS, Gettysburg, PA 17326.

* * * * *

14. Paragraph (c) of § 95.73 would be revised to read:

§ 95.73 System licensing.

* * * * *

(c) One form must be used to apply for the following stations in GMRS system:

(1) The mobile stations;

(2) All small base stations (see § 95.25(e));

(3) All small control stations (see §95.25(d)); and

(4) No more than six land stations which have antennas more than 6.1 meters (20 feet) high (see § 95.51).

* * * * *

15. Paragraphs (c), (g) introductory text, (g)(3), (h) introductory text, (i) introductory text, (j) and (n) would be revised and paragraph (g)(4) would be added to § 95.75 to read:

§ 95.75 Basic information.

* * * * *

(c) For fixed stations authorized before March 18, 1968, pursuant to § 95.29(f), or if the applicant so chooses pursuant to § 95.85(f), transmitting channel or channel pair;

* * * * *

(g) Transmitter power as follows:

* * * * *

(3) For a small base station, no more than five watts effective radiated power.

(4) For all other stations, output power in watts.

(h) Each land station point (except small base stations and small control stations);

* * * * *

(i) Each control point for each remotely controlled land station (see § 95.127), including small base stations and small control station;

* * * * *

(j) Antenna height (see § 95.51) and antenna ground elevation for each land station, except for small base stations and small control stations;

* * * * *

(n) *Emission designator.* In the GMRS, F3E will be considered to include use of a selective calling tone or tone or digitally operated squelch (a message to call a particular station) in conjunction with voice communications;

* * * * *

16. Paragraph (b) of § 95.83 would be revised to read:

§ 95.83 Additional information for stations with antennas higher than normally allowed.

* * * * *

(b) Base stations control stations with antenna heights greater than 20 feet must be spearately identified on Form 574 (see § 95.25 (d) and (e) and § 95.51(f)).

17. In § 95.85, paragraphs (d) and (e) would be revised, and a new paragraph (f) would be added to read:

§ 95.85 Additional information for stations near United States borders.

* * * * *

(d) Has an associated control station with other than 20 degrees beamwidth;

(e) Is part of a GMRS system that includes stations or units intended for communication with stations or units in other GMRS systems or in other radio services; or

(f) Is going to transmit on a specified channel or channel pair.

* * * * *

18. A new paragraph (c) would be added to §95.89 to read:

§ 95.89 Renewing a license.

* * * * *

(c) An entity other than an individual authorized before [the date of release of this *Notice*] is eligible to renew its license(s) if:

(1) The entity is:

(i) A partnership, and each partner is eighteen years of age or older;

(ii) A corporation;

(iii) An association;

(iv) A state, territorial or local government unit; or

(v) Other legal entity; and

(2) The entity is not;

(i) A foreign government;

(ii) A representative of a foreign government; or

(iii) A federal government agency.

19. Paragraph (c)(2) of § 95.103 would be revised to read:

§ 95.103 Licensee duties.

* * * * *

(c) * * *

(2) If the status of a licensed entity other than an individual changes (for example, when a corporation is dissolved and a new corporation stands in its place, or a partnership becomes a corporation), the licensee must send the license to the FCC for cancellation (see §95.117(b)).

20. Paragraph (b) of § 95.109 would be revised to read:

§ 95.109 License not transferable.

* * * * *

(b) If the licensee sells or gives away any GMRS system equipment, the new owner may not operate that equipment unless he/she is authorized to do so;

(1) By a license granted under Part 95;

(2) By FCC Form 574–T (see 95.71(b)); or

(3) Under another existing authorization (see § 95.33 or 95.179).

21. Paragraph (b)(2) of § 95.113 would be removed and reserved.

22. Paragraphs (b) introductory text, (b)(2) and (c) of § 95.117 would be revised to read:

§ 95.117 Where to contact the FCC.

* * * * *

(b) Write to the Federal Communications Commission, Attention: GMRS, Gettysburg, PA 17326:

* * * * *

(2) To file an application for a governmental entity (see § 95.71);

* * * * *

(c) Write to the Federal Communications Commission, General Mobile Service, P.O. Box 360373M, Pittsburgh, PA 15251–6373, to file an application for a new GMRS system or to modify or renew the license for an existing GMRS system, unless the application is for a governmental entity (see §§ 95.71 and 95.89).

23. Section 95.121 would be removed and reserved.

24. Paragraph (b)(3) of § 97.129 would be removed and reserved. Also, paragraph (d) of § 95.129 would be revised to read:

§ 95.129 Station equipment.

* * * * *

(d) Every small base station and every small control station must use an antenna no more than 6.1 meters (20 feet) high (§ 95.25 (d) and (e)).

25. Paragraph (a) and the heading of § 95.131 would be revised to read:

§ 95.131 Servicing station transmitters.

(a) The station licensee shall be responsible for the proper operation of the station at all times and is expected to provide for observations, servicing and maintenance as often as may be necessary to ensure proper operation.

* * * * *

26. Paragraph (b)(2) of § 95.133 would be revised to read:

§ 95.133 Modification to station transmitters.

* * * * *

(b) * * *

(2) In accordance with the original manufacturer's instructions.

27. A new paragraph (e) would be added to § 95.135 to read:

§ 95.135 Transmitter power limits.

* * * * *

(e) A small base station must employ no more than five watts effective radiated power.

28. Section 95.137 would be revised to read:

§ 95.137 Moving a small base station or a small control station.

(a) A small base station (see § 95.25(e)) or a small control station (see § 95.25(d)) in a GMRS system may be moved from the point specified on the license to any other point where radio services are regulated by the FCC.

(b) The licensee must file an application to modify the GMRS system (see § 95.71) to show the new point within 30 days after the small base station or the small control station is moved.

29. Section 95.139 would be revised to read:

§ 95.139 Adding a small base station or a small control station.

(a) If a GMRS system is licensed under the system licensing procedure (see § 95.73), one or more small base stations or small control stations may be added to the GMRS system at any point where radio services are regulated by the FCC.

(b) The licensee must file an application to modify the GMRS system (see § 95.71) within 30 days after each small base station or small control station is added.

(c) If a GMRS system is not licensed under the system licensing procedure, the licensee must obtain a license for the modified GMRS system before adding a small base station or a small control station.

(d) Entities grandfathered in the GMRS under § 95.5(b) may not add any small base stations or small control stations pursuant to this section.

30. Section 95.175 would be amended by revising the introductory text for the section to read:

§ 95.175 Cooperation in sharing channels.

The station operator must cooperate in *sharing* each channel with station operators of other stations by:

* * * * *

31. The first two sentences of paragraph (b), the introductory text of paragraph (c), and paragraphs (d), (e) and (f) of § 95.179 would be revised to read:

§ 95.179 Individuals who may be station operators.

* * * * *

(b) The licensee of any GMRS system authorized before [the release date of this *Notice*] may permit certain other individuals to be station operators. These individuals may only communicate messages to facilitate the licensee's business activities. * * *

(c) The licensee of any GMRS system authorized before [the release date of this *Notice*] may permit a telephone answering service employee to be a station operator if:

* * * * *

(d) A GMRS system licensee may also permit other GMRS licensees for whom the licensee is willing to accept responsibility to be station operators in that licensee's GMRS system.

(e) The provisions of § 95.33 regarding cooperative use do not apply to or govern the authority of a GMRS licensee to designate station operators in accordance with the provisions of this section.

(f) Except for emergency communications (see § 95.143), only persons specified in paragraphs (a) through (c) may be GMRS station operators.

Subpart E—Technical Regulations

32. Paragraphs (a) and (c) of § 95.621 would be revised to read:

§ 95.621 GMRS transmitter frequencies.

(a) The GMRS transmitter frequencies are the following channels:

462 MHz Channels	*467 MHz Channels*
462.5500	467.5500
462.5625	467.5625
462.5750	467.5750
462.6000	467.6000
462.6125	467.6125
462.6250	467.6250
462.6375	467.6375
462.6500	467.6500
462.6750	467.6750
462.7000	467.7000
462.7250	467.7125
	467.7250

* * * * *

(c) The GMRS transmitter channel frequency tolerance must be maintained within the following percentages:

Station class	Tolerance (percent)
Mobile, small base, control (including small control)	0.0005
Base (except small base), mobile relay, fixed	0.00025

[FR Doc. 87-17885 Filed 8-6-87; 8:45 am]
BILLING CODE 4712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 70750-7150]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues this rule to propose modifications to the regulations implementing the Pacific Coast Groundfish Fishery Management Plan which governs domestic and foreign fishing for groundfish in the exclusive economic zone off the coasts of Washington, Oregon, and California. Comments are invited. This action is necessary for enforcement purposes and to reconcile certain inconsistencies between Federal and State groundfish regulations. It is intended to improve coordination between Federal and State management jurisdictions and to strengthen enforcement of domestic groundfish regulations.

DATE: Comments on this proposed rule are invited until September 8, 1987.

ADDRESSES: Comments on this proposed rule may be submitted to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115; or E. Charles Fullerton, Director, Southwest Region, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten, 206-526-6150; or E. Charles Fullerton, 213-514-6196.

SUPPLEMENTARY INFORMATION:

Background

Under the Magnuson Fishery Conservation and Management Act (Magnuson Act), the Pacific Coast Groundfish Fishery Management Plan (FMP) was prepared by the Pacific Fishery Management Council (Council) and approved by the Secretary of Commerce (Secretary) on January 4, 1982. The FMP has been amended two times, and the implementing regulations governing domestic fishing are codified at 50 CFR Part 663.

This action would change the Federal groundfish regulations to facilitate enforcement and resolve inconsistencies between Federal and State regulations. The proposed regulatory changes were discussed and recommended to the Secretary by the Council at its September 1986 meeting. The proposed changes are described below. Similar changes have been proposed for the Fishery Management Plan for Commercial and Recreational Salmon Fisheries off the Coasts of Washington, Oregon, and California (52 FR 19774; May 27, 1987).

Issue 1—Processing inspection. Under 16 U.S.C. 1861(b), authorized officers are empowered to conduct inspection of a fishing vessel in connection with enforcement of the Magnuson Act with or without a warrant, and to exercise any other lawful authority. The Federal groundfish regulations make it unlawful to refuse to permit an authorized officer to board a fishing vessel subject to a person's control for purposes of conducting any search or inspection in connection with the enforcement of the Magnuson Act or its implementing regulations. The proposed rule would broaden this prohibition to clarify the

authority of authorized officers to enter buildings, vehicles, piers, or dock facilities where groundfish may be found by making it unlawful for a person in control to refuse such entry.

The proposed regulation is identical to one approved in *Lovgren v. Byrne*, 787 F.2d 857 (3rd Cir. 1986), in which the court found that the regulatory provision was necessary for enforcement of the Magnuson Act, and that entry into dockside facilities by authorized officers without a warrant was reasonable under the Fourth Amendment to the Constitution. Broadening of the existing groundfish regulation to include dock and transport areas also comports with the requirements of the Magnuson Act, does not unnecessarily intrude on reasonable privacy interests of those in industry, and furthers the strong Federal interest in protecting natural resources in U.S. waters. By adding a definition of "areas of custody," the scope of inspection is limited to only those times when and those places where groundfish may be found.

Issue 2—False statements. 18 U.S.C. 1001 makes it a criminal offense punishable by a fine of up to $10,000 or five years' imprisonment, or both, to make false statements concerning any matter under the jurisdiction of any department or agency of the United States. Current Federal groundfish regulations do not contain a similar provision although violators would be subject to Federal criminal prosecution under 18 U.S.C. 1001. Inclusion of such provision will promote effective enforcement of the groundfish regulations, and will make false statements subject to the civil penalty and forfeiture sanctions of the Magnuson Act, which in most cases are sufficient remedies for violations in lieu of criminal prosecution. The proposed rule would prohibit making any false statement, oral or written, to an authorized officer about the taking, catching, harvesting, possession, landing, purchase, sale, or transfer of groundfish. Identical provisions appear in other regional fisheries regulations promulgated under the Magnuson Act.

Issue 3—Gear inspection. The cutting or freeing of gear by fishermen while fishing to prevent inspection by authorized officers is not specifically prohibited by the Federal groundfish regulations. The proposed rule would make it unlawful to refuse to submit fishing gear under a person's control to inspection by an authorized officer or to interfere with or prevent, by any means, such an inspection. The rule is necessary to ensure that authorized officers have the ability to enforce gear restrictions. Similar provisions appear in other regional fisheries regulations promulgated under the Magnuson Act, and in State fisheries regulations.

Classification

The proposed rule is published under authority of section 305(g) of the Magnuson Act, as amended by Pub. L. 99-659. The Administrator, before publishing a final rule, will take into account the data, views, and comments received during the comment period.

This action is not expected to alter the nature or intensity of environmental impacts which were addressed in the supplemental environmental impact statement (SEIS) prepared by the Council for the FMP or in the environmental assessments for the two amendments to the FMP. Notices of availability of the SEIS and environmental assessments were published on February 12, 1982, 47 FR 6483; March 20, 1984, 49 FR 10318; and October 31, 1986, 51 FR 39766; respectively.

The Administrator of NOAA has determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. The proposed changes to the regulatory text will not impose any direct costs on industry and will not affect competition, employment, investment, productivity or innovation. While no costs are expected from the action, benefits will occur from more effective regulations through enhanced enforcement and a reduction in administrative costs.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. This is because the measures to be implemented are technical in nature and serve to clarify the intent and scope of existing legal authorities. As a result, these measures are not expected to alter fishing practices or impose costs on the industry.

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

The Administrator has determined that this rule does not directly affect the coastal zone of any State with an approved coastal zone management program.

List of Subjects in 50 CFR Part 663

Fisheries, Fishing.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 3, 1987.

William E. Evans,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

PART 663—[AMENDED]

For the reasons set forth in the preamble, 50 CFR Part 663 is proposed to be amended as follows:

1. The authority citation for 50 CFR Part 663 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 663.2, the definition of "areas of custody" is added in alphabetical order to read as follows:

§ 663.2 Definitions.

* * * * *

Areas of custody means any vessels, buildings, vehicles, piers, or dock facilities where fish may be found.

* * * * *

3. In § 663.7, paragraph (b) is revised, the period following paragraph (o) is changed to a semicolon, and paragraphs (p) and (q) are added to read as follows:

§ 663.7 General prohibitions.

* * * * *

(b) To refuse to allow an authorized officer to board a fishing vessel or to enter areas of custody subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of the Magnuson Act, this part, or any other regulation promulgated under the Magnuson Act;

* * * * *

(p) To make any false statement, oral or written, to an authorized officer concerning the taking, catching, harvesting, possession, landing, purchase, sale, or transfer of any fish; or

(q) To refuse to submit fishing gear subject to such person's control to inspection by an authorized officer, or to interfere with or prevent, by any means, such an inspection.

[FR Doc. 87-17936 Filed 8-6-87; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 52, No. 152
Friday, August 7, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 87-074]

Genetically Engineered Tobacco Plant; Determination of Plant Pest Risk Status

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Animal and Plant Health Inspection Service (APHIS) has reviewed a protocol submitted by the E. I. DuPont de Nemours and Company, Inc., Wilmington, Delaware, for the field testing of genetically engineered herbicide resistant tobacco plants. Based upon the data submitted in the protocol, APHIS has made a determination of the plant pest risk of the genetically engineered tobacco plants. APHIS has concluded that the proposed field testing of the genetically engineered tobacco plants does not present a risk of plant pest introduction or dissemination.

ADDRESS: Copies of the APHIS opinion letter may be obtained by contacting Margaret Huggins, Biotechnology and Environmental Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 406, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–7602.

FOR FURTHER INFORMATION CONTACT: Mr. Terry L. Medley, Director, Biotechnology and Environmental Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 406, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–7602.

SUPPLEMENTARY INFORMATION:

On March 10, 1987, the E. I. DuPont de Nemours & Co., Inc., of Wilmington, Delaware, submitted to the Animal and Plant Health Inspection Service (APHIS) a protocol for the field testing of genetically engineered herbicide resistant tobacco plants in Newcastle County, Delaware. The genetically engineered tobacco plants were altered by the addition of a single gene from a noncommercial variety of tobacco, for the purpose of making the plants resistant to a sulfonylurea herbicide. The field testing is designed to evaluate the performance of the tobacco plants against the herbicide.

The Federal Plant Pest Act, as amended (7 U.S.C. 150aa through 150jj), and regulations issued thereunder, requires APHIS to prevent the introduction and dissemination of plant pests in the United States. Pursuant to the request of E. I. DuPont de Nemours & Co., Inc., APHIS has reviewed the DuPont protocol to determine the plant pest risk of the genetically altered tobacco plants. APHIS has determined that the proposed field trial of the genetically engineered tobacco plants does not present a risk of plant pest introduction or dissemination. The APHIS determination is not in the form of a "permit," but rather is an opinion letter which concludes that the genetically altered tobacco plants do not present a risk of plant pest introduction or dissemination.

The basis for this determination was as follows:

1. The plasmid of *Agrobacterium tumefaciens* used to infect and transform the subject tobacco plants was biologically "disarmed" and that transformed tobacco cells were treated with an antibiotic to rid them of *A. tumefaciens*. Therefore, it is extremely unlikely that the plasmid used to transfer to the tobacco plants the acetolactate synthase (ALS) gene and the antibiotic marker would be able to incite disease in the recipient plant or to escape and infect other plants in the environment.

2. Both the Kanamycin (antibiotic marker) and sulfonylurea (herbicide) resistance genes have been stably incorporated into the genome of the recipient tobacco plants. The risk of horizontal movement of these genetic traits from the experimental tobacco plants into the genetic environment is negligible because of their stable incorporation and the complete lack of a suitable mechanism to vector the genetic material.

3. The donor organism used to supply the herbicide resistant ALS gene was another noncommercial variety of tobacco. During the approximately 300 year history of the cultivation of tobacco, it has never exhibited any plant pest characteristics such as weediness. The other gene, Kanamycin resistance, which is also involved in the transformation of the tobacco, has no inherent plant pest characteristics, and functions only as a genetic marker in the initial cell selection process following transformation. Therefore, it poses no plant pest risk.

4. It appears that the subject plants will grow in such a way that there will be no significant risk of plant material from the field testing surviving in the environment beyond the termination of the experiment, or becoming mixed with the genetic material of other tobacco populations outside of the test site at the Newcastle County, Delaware, facility. It appears that the combination of the physical environment and management practices outlined in the protocol, create a nonpropogative environment.

Done in Washington, DC, this 3rd day of August 1987.

William F. Helms,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 87-17949 Filed 8-6-87; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 87-073]

Genetically Engineered Tobacco Plant; Determination of Plant Pest Risk Status

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Animal and Plant Health Inspection Service (APHIS) has reviewed a protocol submitted by the Northrup King Company, Stanton, Minnesota, for the field testing of genetically engineered herbicide resistant tobacco plants. Based upon the data submitted in the protocol, APHIS has made a determination of the plant pest risk of the genetically engineered tobacco plants. APHIS has concluded that the field testing of the genetically engineered tobacco plants does not

present a risk of plant pest introduction or dissemination.

ADDRESS: Copies of the APHIS opinion letter may be obtained by contacting Margaret Huggins, Biotechnology and Environmental Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 406, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–7602.

FOR FURTHER INFORMATION CONTACT: Mr. Terry L. Medley, Director, Biotechnology and Environmental Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 406, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–7602.

SUPPLEMENTARY INFORMATION:

On March 20, 1987, the Northrup King Company, Stanton, Minnesota, submitted to the Animal and Plant Health Inspection Service (APHIS) a protocol for the field testing of genetically engineered herbicide resistant tobacco plants in Scotland County, North Carolina. The genetically engineered tobacco plants were altered by the addition of a single gene from a noncommercial variety of tobacco, for the purpose of making the plants resistant to a sulfonylurea herbicide. The field testing is designed to evaluate the performance of the tobacco plants against the herbicide.

The Federal Plant Pest Act, as amended (7 U.S.C. 150aa through 150jj), and regulations issued thereunder, requires APHIS to prevent the introduction and dissemination of plant pests in the United States. Pursuant to the Northrup King Company request, APHIS has reviewed the Northrup King protocol to determine the plant pest risk of the proposed field trial of genetically engineered tobacco plants. APHIS has determined that the proposed field trial of the genetically engineered tobacco plants does not present a risk of plant pest introduction or dissemination. The APHIS determination is not in the form of a "permit," but rather is an opinion letter which concludes that the genetically engineered tobacco plants do not present a risk of plant pest introduction or dissemination.

The basis for this determination was as follows:

1. The plasmid of *Agrobacterium tumefaciens* used to infect and transform the subject tobacco plants was biologically "disarmed" and that the transformed tobacco cells were treated with an antibiotic to rid them of *A. tumefaciens*. Therefore, it is extremely unlikely that the plasmid used to transfer to the tobacco plants the acetolactate synthase (ALS) gene and the antibiotic marker would be able to incite disease in the recipient plant or to escape and infect other plants in the environment.

2. Both the Kanamycin (antibiotic marker) and sulfonylurea (herbicide) resistance genes have been stably incorporated into the genome of the recipient tobacco plants. The risk of horizontal movement of these genetic traits from the experimental tobacco plants into the genetic environment is negligible because of their stable incorporation and the complete lack of a suitable mechanism to vector the genetic material.

3. The donor organism used to supply the herbicide resistant ALS gene was another noncommerical variety of tobacco. During the approximately 300 year history of the cultivation of tobacco, it has never exhibited any plant pest characteristics such as weediness. The other gene, Kanamycin resistance, which is also involved in the transformation of the tobacco, has no inherent plant pest characteristics, and functions only as a genetic marker in the initial cell selection process following transformation. Therefore, it poses no plant pest risk.

4. It appears that the subject plants will grow in such a way that there will be no significant risk of plant material from field testing surviving in the environment beyond the termination of the experiment, or becoming mixed with the genetic material of other tobacco populations outside of the test site at the Scotland County, North Carolina, facility. It appears that the combination of the physical environment and management practices outlined in the protocol, create a nonpropogative environment.

Done in Washington, DC, this 3rd day of August 1987

William F. Helms,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 87–17950 Filed 8–6–87; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 87–082]

Genetically Engineered Tomato Plant; Determination of Plant Pest Risk Status

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Animal and Plant Health Inspection Service (APHIS) has reviewed a protocol submitted by the Monsanto Company, St. Louis, Missouri, for the field testing of genetically engineered disease resistant tomato plants. Based upon the data submitted in the protocol, APHIS has made a determination of the plant pest risk of the genetically engineered tomato plants. APHIS has concluded that the field testing of the genetically engineered tomato plants does not present a risk of plant pest introduction or dissemination.

ADDRESS: Copies of the APHIS opinion letter may be obtained by contacting Margaret Huggins, Biotechnology and Environmental Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 406, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–7602.

FOR FURTHER INFORMATION CONTACT: Mr. Terry L. Medley, Director, Biotechnology and Environmental Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 406, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–7602.

SUPPLEMENTARY INFORMATION:

On March 24, 1987, the Monsanto Company of St. Louis, Missouri, submitted to the Animal and Plant Health Inspection Service (APHIS) a protocol for the field testing of genetically engineered disease resistant tomato plants in Jersey County, Illinois. The genetically engineered tomato plants were altered by the addition of a single gene, coat protein (CP), from the tobacco mosaic virus (TMV) for the purpose of making the plants resistant to TMV. The field testing is designed to evaluate the performance of the tomato plants against TMV under field conditions.

The Federal Plant Pest Act, as amended (7 U.S.C. 150aa through 150jj), and regulations issued thereunder, requires APHIS to prevent the introduction and dissemination of plant pests in the United States. Pursuant to the Monsanto Company request, APHIS has reviewed the Monsanto protocol to determine the plant pest risk of the proposed field trial of genetically engineered tomato plants. APHIS has determined that the proposed field trial of the genetically engineered tomato plants does not present a risk of plant pest introduction or dissemination. The APHIS determination is not in the form of a "permit," but rather is an opinion letter which concludes that the genetically engineered tomato plants do

not present a risk of plant pest introduction or dissemination.

The basis for this determination was as follows:

1. The plasmid of *Agrobacterium tumefaciens* used to infect and transform the subject tomato plants was biologically "disarmed" and that the transformed tomato cells were treated with an antibiotic to rid them of *A. tumefaciens*. Therefore, it is extremely unlikely that the plasmid used to transfer to the tomato plants the TMV–CP gene and the antibiotic marker would be able to incite disease in the recipient plant or to escape and infect other plants in the environment.

2. Both the Kanamycin (antibiotic marker) and the TMV resistance genes have been stably incorporated into the genome of the recipient tomato plants. The risk of horizontal movement of these genetic traits from the experimental tomato plants into the genetic environment is negligible because of their stable incorporation and the complete lack of a suitable mechanism to vector the genetic material.

3. The donor organism was TMV and the specific gene utilized was that for only the TMV–CP. There is no evidence in the published literature that the TMV–CP gene is responsible for any disease symptoms, infectivity, or damage associated with the TMV, and the construct of the chimeric TMV–CP gene has been published in a reviewed scientific journal. Only 0.1% of the total cellular protein of the transformed tomato plants will be TMV–CP, therefore, the stable incorporation of the TMV–CP gene does not pose a risk of plant pest introduction or dissemination. The other gene, Kanamycin resistance, which is also involved in the transformation of the tomato, has no inherent plant pest characteristics, and functions only as a genetic marker in the initial cell selection process following transformation. Therefore, it poses no plant pest risk.

4. It appears that the subject plants will grow in such a way that there will be no significant risk of plant material from field testing surviving in the environment beyond the termination of the experiment, or becoming mixed with the genetic material of other tomato populations outside of the test site of the Jersey County, Illinois, facility. It appears that the combination of the physical environment and management practices outlined in the protocol, create a nonpropogative environment.

Done in Washington, DC, this 3rd day of August 1987.

William F. Helms,

Deputy Administrator, Plant Protection and Quarantine Animal and Plant Health Inspection Service.

[FR Doc. 87–17948 Filed 8–6–87; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 87–083]

Genetically Engineered Tomato Plant; Determination of Plant Pest Risk Status

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Animal and Plant Health Inspection Service (APHIS) has reviewed a protocol submitted by the Monsanto Company, St. Louis Missouri, for the field testing of genetically engineered herbicide resistant tomato plants. Based upon the data submitted in the protocol, APHIS has made a determination of the plant pest risk of the genetically engineered tomato plants. APHIS has concluded that the field testing of the genetically engineered tomato plants does not present a risk of plant pest introduction or dissemination.

ADDRESS: Copies of the APHIS opinion letter may be obtained by contacting Margaret Higgins, Biotechnology and Environmental Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 406, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–7602.

FOR FURTHER INFORMATION CONTACT: Mr. Terry L. Medley, Director, Biotechnology and Environmental Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 406, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–7602.

SUPPLEMENTARY INFORMATION:

On March 12, 1987, the Monsanto Company of St. Louis, Missouri, submitted to the Animal and Plant Health Inspection Service (APHIS) a protocol for the field testing of genetically engineered herbicide resistant tomato plants in Jersey County, Illinois. The genetically engineered tomato plants were altered by the addition of a single gene, from a *Petunia hybridia* cell line for the purpose of making the plants resistant to glyphosate herbicide. The field testing is designed to evalaute the performance of the tomato plants against the herbicide under field conditions.

The Federal Plant Pest Act, as amended (7 U.S.C. 150aa through 150jj), and regulations issued thereunder, requires APHIS to prevent the introduction and dissemination of plant pests in the United States. Pursuant to the Monsanto Company request, APHIS has reviewed the Monsanto protocol to detemine the plant pest risk of the proposed field trial of genetically engineered tomato plants. APHIS has determined that the proposed field trial of the genetically engineered tomato plants does not present a risk of plant pest introduction or dissemination. The APHIS determination is not in the form of a "permit," but rather is an opinion letter which concludes that the genetically engineered tomato plants do not present a risk of plant pest introduction or dissemination.

The basis for this determination was as follows:

1. The plasmid of *Agrobacterium tumefaciens* used to infect and transform the subject tomato plants was biologically "disarmed" and that the transformed tomato cells were treated with an antibiotic to rid them of *A. tumefaciens*. Therefore, it is extremely unlikely that the plasmid used to transfer to the tomato plants, the 5-enolpyruvylshikimate-3-phosophate synthase (EPSP synthase) gene and the antibiotic marker would be able to incite disease in the recipient plant or to escape and infect other plants in the environment.

2. Both the Kanamycin (antibiotic marker) and the herbicide resistance genes have been stably incorporated into the genome of the recipient tomato plants. The risk of horizontal movement of these genetic traits from the experimental tomato plants into the genetic environment is negligible because of their stable incorporation and the complete lack of a suitable mechanism to vector the genetic material.

3. The donor organism used to supply the herbicide resistance EPSP synthase gene was from a *Petunia hybridia* cell line and the specific gene isolated was that for only a glyphosate resistant EPSP synthase. There is no evidence in the published literature that the EPSP synthase gene or the donor plant are responsible for any plant disease, plant pest characteristics or damage. The production of EPSP synthase, which catalyzes a step in the shikimate pathway is a normal constituent of plants, and EPSP synthase would be found in a nontransformed tomato plant. The level of EPSP synthase in a plant or the specific form of the enzyme (isozyme) have never been implicated in

or contributing to the risk of plant pest introduction or dissemination. The other gene, Kanamycin resistance, which is also involved in the transformation of the tomato, has no inherent plant pest characteristics, and functions only as a genetic marker in the initial cell selection process following transformation. Therefore, it poses no plant pest risk.

4. It appears that the subject plants will grow in such a way that there will be no significant risk of plant material from the field testing surviving in the environment beyond the termination of the experiment, or becoming mixed with the genetic material of other tomato populations outside of the test site at the Jersey County, Illinois, facility. It appears that the combination of the physicial environment and management practices outlined in the protocol, create a nonpropogative environment.

Done in Washington, DC, this 3rd day of August 1987.

William F. Helms,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 87-17951 Filed 8-6-87; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 87-084]

Genetically Engineered Tomato Plant; Determination of Plant Pest Risk Status

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Animal and Plant Health Inspection Service (APHIS) has reviewed a protocol submitted by the Monsanto Company, St. Louis, Missouri, for the field testing of genetically engineered insect resistant tomato plants. Based upon the data submtted in the protocol, APHIS has made a determination of the plant pest risk of the genetically engineered tomato plants. APHIS has concluded that the field testing of genetically engineered tomato plants does not present a risk of plant pest introduction or dissemination.

ADDRESS: Copies of the APHIS opinion letter may be obtained by contacting Margaret Huggins, Biotechnology and Environmental Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 406, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-7602.

FOR FURTHER INFORMATION CONTACT: Mr. Terry L. Medley, Director, Biotechnology and Environmental Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 406, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-7602.

SUPPLEMENTARY INFORMATION: On March 24, 1987, the Monsanto Company of St. Louis, Missouri, submitted to the Animal and Plant Health Inspection Service (APHIS) a protocol for the field testing of genetically engineered insect resistant tomato plants in Jersey County, Illinois. The genetically engineered tomato plants were altered by the addition of a single gene, delta-endotoxin from *Bacillus thuringiensis* (B.t.), for the purpose of making the plants resistant to insects. The field testing is designed to evaluate the performance of the tomato plants against insects under field conditions.

The Federal Plant Pest Act, as amended (7 U.S.C. 150aa through 150jj), and regulations issued thereunder, requires APHIS to prevent the introduction and dissemination of plant pests in the United States. Pursuant to the Monsanto Company request, APHIS has reviewed the Monsanto protocol to determine the plant pest risk of the proposed field trial of genetically engineered tomato plants. APHIS has determined that the proposed field trial of the genetically engineered tomato plants does not present a risk of plant pest introduction or dissemination. The APHIS determination is not in the form of a "permit," but rather is an opinion letter which concludes that the genetically engineered tomato plants do not present a risk of plant pest introduction or dissemination.

The basis for this determination was as follows: 1. The plasmid of *Agrobacterium tumefaciens* used to infect and transform the subject tomato plants was biologically "disarmed" and that the transformed tomato cells were treated with an antibiotic to rid them of *A. tumefaciens*. Therefore, it is extremely unlikely that the plasmid used to transfer to the tomato plants the B.t. delta-endotoxin gene and the antibiotic marker would be able to incite disease in the recipient plant or to escape and infect other plants in the environment.

2. Both the Kanamycin (antibiotic marker) and the B.t. delta-endotoxin genes have been stably incorporated into the genome of the recipient tomato plants. The risk of horizontal movement of these genetic traits from the experimental tomato plants into the genetic environment is negligible because of their stable incorporation and the complete lack of a suitable mechanism to vector the genetic material.

3. The donor organism used to supply the insect resistance gene was B.t. There is no evidence in the published literature that the B.t. delta-endotoxin gene or the donor microbe are responsible for any plant disease, plant pest characteristics, or damage. The use of B.t. as an insecticide, has an EPA approved label, as well as a longstanding record of safety. The amount of B.t. delta-endotoxin present in the tomato plants will be one-sixth the amount normally applied in a single application of the commercially available biological insecticide. The other gene, Kanamycin resistance, which is also involved in the transformation of the tomato, has no inherent plant pest characteristics, and functions only as a genetic marker in the initial cell selection process following transformation. Therefore, it poses no plant pest risk.

4. It appears that the subject plants will grow in such a way that there will be no significant risk of plant material from the field testing surviving in the environment beyond the termination of the experiment, or becoming mixed with the genetic material of other tomato populations outside of the test site at the Jersey County, Illinois, facility. It appears that the combination of the physical environment and management practices outlined in the protocol, create a nonpropagative environment.

Done in Washington, DC, this 3rd day of August 1987.

William F. Helms,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 87-17952 Filed 8-6-87; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF COMMERCE

International Trade Administration

Performance Review Board Membership

This notice announces the appointment by the Department of Commerce Under Secretary for International Trade, S. Bruce Smart, of the Performance Review Board for ITA. This is a revised list of membership which includes previous members as listed in the April 29, 1987, Federal Register Announcement (52 FR 15526) with additional members added to serve out the remainder of the one year term. The purpose of the International Trade Administration PRB is to review performance actions for recommendations to the appointing authority as well as other related

matters. The names of the PRB members are:

International Trade Administration

Franklin Vargo, Chairman, Deputy Assistant Secretary for Europe
Joseph Spetrini, Deputy to the Deputy for Import Administration
T. Fleetwood Mefford, Deputy Assistant Secretary for Domestic Operations
Michael Coursey, Director, Office of Investigations
John Evans, Deputy to the Deputy Assistant Secretary for Trade Adjustment Assistance
Maureen Smith, Director, Office of Japan
Rolf D. Luft, Deputy Assistant Secretary for Services
J. Hayden Boyd, Director, Office of Consumer Goods
Marilyn Wagner, Assistant General Counsel for Administration

Dated: July 22, 1987.

James T. King, Jr.

Personnel Officer, ITA.

[FR Doc. 87-17966- Filed 8-6-87; 8:45 am]

BILLING CODE 3510-25-M

National Bureau of Standards

Senior Executive Service; Membership of General Performance Review Board

The purpose of the General Performance Review Board (GPRB) is to review performance agreements, appraisals, ratings, and recommended actions pertaining to employees in the Senior Executive Service and to make appropriate recommendations to the Director of NBS concerning such matters in such a manner as will assure the fair and equitable treatment of senior executives. The GPRB performs its review functions for all NBS senior executives except those who are members of the NBS Executive Board and those who are members of the GPRB.

The following individual has been newly appointed by the Director of NBS to membership on the GPRB:

Dr. William Tolles, Superintendent Chemistry Division, Code 6100, Naval Research Laboratory, Washington, DC 20375-5000, Expiration of term: December 31, 1988.

FOR FURTHER INFORMATION CONTACT: Mrs. Elizabeth W. Stroud, Chief, Personnel Division, National Bureau of Standards, Gaithersburg, MD 20899, telephone 301-975-3003

Date: July 29, 1987.

Ernest Ambler,

Director.

[FR Doc. 87-17968 Filed 8-6-87; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Marine Mammals; Issuance of Permit; Glacier Bay National Park and Preserve (P394)

On May 5, 1987, notice was published in the Federal Register (52 FR 16428) that an application had been filed by the Glacier Bay National Park and Preserve, Bartlett Cove, Gustavus, Alaska 99826, to take humpback whales (*Megaptera novaeangliae*)by harassment.

Notice is hereby given that on July 31, 1987 as authorized by the provisions of the Marine Mammal Protection Act (16 U.S.C. 1361-1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Issuance of this Permit as required by the Endangered Species Act of 1973 is based on a finding that such Permit; (1) was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this Permit; (3) and will be consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This Permit was also issued in accordance with and is subject to parts 220-222 of Title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

The Permit is available for review by interested persons in the following offices:

Director, Permit Division, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Room 805, Washington, DC; and

Director, Alaska Region, National Marine Fisheries Service, 709 West 9th Street, Federal Building, Juneau, Alaska 99802.

Dated: July 9, 1987.

Dr. Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 87-18025 Filed 8-6-87; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Permit Modification; Loro Parque (P365), Modification No. 1 to Permit No. 558

Notice is hereby given that pursuant to the provisions of § 216.22 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), and Section C.4 of Public Display Permit No. 558 issued to Loro Parque, S.A. Puerto de la Cruz, Tenerife, Spain, on July 9, 1986 (51 FR 26176), said Permit is modified as follows:

Section A is modified by adding:

2. The Permit Holder is authorized to take a ninth Atlantic bottlenose dolphin (*Tursiops truncatus*) by the means described in the application.

This modification became effective on July 31, 1987.

The permit, as modified, and documentation pertaining to the modification are available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Rm 805, Washington, DC.

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415.

Date: July 3, 1987

Dr. Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 87-18026 Filed 8-6-87; 8:45 am]

BILLING CODE 3510-22-M

[Modification No. 3 to Permit No. 493]

Marine Mammals; Permit Modification; West Coast Whale Research Foundation

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216) and § 220.24 of the regulations on endangered species (50 CFR Parts 217-227), Scientific Research Permit No. 493 issued to the West Coast Whale Research Foundation, c/o Elizabeth A. Mathews, Applied Sciences 273, Center Marine Studies, University of California at Santa Cruz, California 95064, on February 28, 1985 (50 FR 9481), as modified on October 4, 1985 (50 FR 41550), and March 6, 1987 (52 FR 7007) is further modified as follows:

Section A.2 is added:

2. An unspecified number of all cetacean species may be inadvertently harassed during the course of observational and photographic activities.

Section B.1 is deleted and replaced by:

1. The research shall be conducted by the means, in the areas and for the purposes set forth in the application and the modification requests.

This Modification is effective on July 31, 1987.

As required by the Endangered Species Act of 1973 issuance of this modification is based on a finding that such modification (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of the modification, and (3) will be consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This modification was issued in accordance with, and is subject to Parts 220–222 of Title 50 CFR of the National Marine Fisheries Service regulations governing endangered species permits (39 FR 41367), November 27, 1974.

The Permit, as modified, is available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW. Rm. 805, Washington, DC

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415;

and

Director, Alaska Region, National Marine Fisheries Service, 709 9th Street, Juneau, Alaska 99802.

Dated: July 31, 1987.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 87–17938 Filed 8–6–87; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Receipt of Application; Correction

On Friday, July 17, 1987, notice was published in the **Federal Register**, Volume 52, Number 137, page 27067, that an application had been filed by the All-Union Research Institute of Marine Fisheries and Oceanography, USSR Ministry of Fisheries, 17 V. Krasnoselskaya, Moscow, for a permit to take 200 Pacific walrus (*Odobenus rosmarus)* and 300 bearded seals *(Erignathus barbatus)* for scientific research.

It should read:

3. Name and Number of Marine Mammals:

Bearded seals *(Erignathus barbatus)*.....200

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs.

July 31, 1987.

[FR Doc. 87–17937 Filed 8–6–87; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Change in Officials Authorized to Issue Export Visas for Certain Cotton and Man-Made Fiber Textile Products from Turkey

August 4, 1987.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, DC, (202) 377-4212.

The Government of Turkey has notified the United States Government under the terms of the Bilateral Cotton and Man-Made Fiber Textile Agreements of October 18, 1985, as amended and extended, and July 30 and August 1, 1986 that Onder Yavuz, Secretary General of the Uludag Exporters' Union, has replaced Attila Kucukkayalar as an official authorized to issue export visas for cotton and man-made fiber textile products from Turkey. The following is a complete list of officials of the Government of Turkey who are currently authorized to issue export visas:

Tuncer Ogun
Sahap Ozdemir
Muzaffer Colpan
Mustafa Hasim Boyacioglu
Menmet Sevim
Mumin Tasyurek
Guner Alptekin
Zubeyde Oguzcan
Erhan Ozkebapci
Onder Yavuz

The purpose of this notice is to advise the public of this change.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–17982 Filed 8–6–87; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Membership of the Office of the Secretary of Defense Performance Review Board

SUMMARY: This notice announces the appointment of the members of the Performance Review Board (PRB) of the Office of the Secretary of Defense, DoD Field Activities, the Organization of the Joint Chiefs of Staff, the U.S. Court of Military Appeals, the Strategic Defense Initiative Organization, and the U.S. Mission to NATO. The publication of PRB membership is required by 5 U.S.C. 4314(c)(4).

The Performance Review Board provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance and performance awards to the Secretary of Defense.

EFFECTIVE DATE: August 1, 1987.

FOR FURTHER INFORMATION CONTACT: Ms. Sharon Bobb, Chief, Senior Executive Service and Classification Division, Directorate for Personnel and Security, WHS, Office of the Secretary of Defense, Department of Defense, the Pentagon, (202) 697–6304.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4). The following is a standing register of executives appointed to the OSD PRB; specific PRB panels will be constituted from this standing register. Executives listed will serve a one-year renewable term, effective August 1, 1987.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

August 2, 1987.

OSD Performance Review Board Membership

Adams, Benson D.
Alderman, Craig, Jr.
Alderman, Karen A.
Alewine, Ralph W., III
Alluisi, Earl A.
Amlin, Gary W.
Anderson, David L.
Anderson, Maynard C.
Andreoni, Alan J.
Armor, David J.
Austin, Charles L.
Bader, George W.
Bahnsen, Peter F.
Bain, James D.
Bangert, William A.
Barber, John P.
Barker, Robert B.
Barringer, Philip E.
Batjer, Marybel
Bechtold, Richard C.
Bergmann, Walter B., III
Berlincourt, Ted G.
Bernard, Charles W.
Bertapelle, Arthur H.
Berteau, David J.
Bialick, Irving
Blackstead, Joseph H.
Bleach, Richard D.
Bloom, Jerald E.
Bolino, John V.
Boone, William S.
Brand, Rupert
Brandenstein, Albert E.
Briskin, Manuel
Brooks, James W., Jr.
Bryan, Pete A.
Bryen, Stephen D.
Buckley, Sheila R.
Buzalski, Ernest A.

Campbell, Leonard G.
Campbell, Thomas P.
Carabello, John M.
Carnahan, James W.
Carroll, William H.
Casciotti, John A.
Cavallini, Nathaniel M.
Cavaney, William T.
Cevasco, Francis M., Jr.
Chaker, Lucien
Charles, Sandra L.
Christie, Deborah P.
Christie, Thomas P.
Christle, Gaylord E.
Chu, David S.C.
Cipolla, Frank P.
Clark, Ronald H.
Coakley, William F.
Colocotronis, Gregory L.
Compton, James M.
Conroy, Matthew J.
Conte, Albert V.
Cooke, David O.
Coonce, William C.
Cratch, Geoffrey A.
Crossman, George R.
Croteau, Robert J.
Crouch, Horace J.
Dashiell, Thomas R.
Davidson, Ronald A.
Dexter, John E.
Dix, Donald M.
Dixon, Dennie W.
Dominguez, Raymond
Donnelly, John F.
Donnelly, Richard E.
Dube, Lawrence P.
Dyer, James L.
Earich, Douglas R.
Early, William N.
Eaton, Nelson W.
Ehlers, Arthur H., Jr.
Ellison, Bobby
Ello, John V.
Ely, Gerald L
Entzminger, John N., Jr.
Epstein, David F.
Ewing, Blair G.
Fair, Harry D., Jr.
Farbrother, Douglas O.
Fields, Craig I.
Finsterle, James C.
Fisher, Herbert L.
Fites, Jeanne B.
Flinn, John A.
Foley, Donald H.
Fountaine, D. Diane
Frederick, William G.D.
Fredericksen, Donald N.
Freeman, Claire E.
Freeman, L. Walter, Jr.
Funk, Kennerly W.
Gaffney, Frank J., Jr.
Gaffney, Henry H., Jr.
Garnett, Thomas F., Jr.
Genalis, Paris
Gentzel, Charles R.
Gilliat, Robert L.
Gissendanner, Dean A.
Glaister, Clyde O.
Goldberg, Alfred
Gontarek, Stanley J.
Goodwyn, James C.
Graham, Douglas R.
Graham, Robert W.
Granahan, Thomas F.
Granato, Dennis J.
Gray, Anthony W., Jr.
Greenlee, Donald R.
Greinke, Everett D.
Grieco, Anthony R.
Griffin, Kirk A.
Hammond, John H.
Hanmer, Stephen R., Jr.
Harrison, Michael E.
Hart, William E.
Haughton, Claiborne D., Jr.
Hawkins, Charles A., Jr.
Heaston, Robert J.
Hinds, Jim E.
Hinman, Kenneth R.
Hoffman, Fred S.
Hoffman, George J.
Holaday, Duncan A.
Horn, James C.
Horn, Sally K.
Horton, Cyril F.
Howe, Richard G.
Huffington, Michael
Hulcher, Gregory D.
Infosino, Charles J.
Ioffredo, Michael L.
Ionson, James A.
Jackson, Karl D.
Jajko, Walter
Jefferson, Ralph H.
Johnson, Darel S.
Jones, Jeffrey A.
Joseph, Robert G.
Karabatsos, Elizabeth B.
Kauvar, Gerald B.
Kelly, Clinton W., III
Kelly, James A.
Kendall, Cynthia
Kendall, Frank, III
Kerber, Ronald L.
Kern, Vincent D., II
Kimmel, H. Steven
Kloske, Dennis E.
Kniaz, Leon
Kopcsak, George C.
Kraft, Herbert H., Jr.
Kunsberg, Philip H.
Kupelian, Vahey S.
Lanoue, Robert J.
Larson, Loren R.
Laughlin, John L.,
Lay, Christopher D.
Leary, William H., III
Lebo, Jerry A.
Ledesma, Richard R.
Lee, David A.
Leftwich, Norma B.
Legere, Laurence J.
Leonard, Michael
Leyden, Donovan K.
Lindstrom, Talbot S.
Lomacky, Olen
Lose, Graydon I.
Loveland, Trafton J.
Lubarsky, Albert
Luquire, Joseph W.
Lynch, John E.
MacCallum, John M., Jr.
Mansfield, John E.
Margolis, Milton A.
Marquet, Louis C.
Marquitz, William T.
Marshall, Andrew W.
Martin, C. Joseph
Martin, John David
Maynard, Egbert D., Jr.
Mazzuchi, John E.
McAleer, John P. III
McCarty, Thomas F.
McDonald, William M.
McGrath, Michael F.
McKalip, Homer D.
McMormack, Robert C.
McNeill, John H.
McNicol, David L.
McQuality, James A.
Meehan, Patrick J., Jr.
Melburn, Michael J.
Mestrovich, Michael J.
Meth, Martin A.
Michael, Louis G.
Michel, Werner E.
Millburn, George P.
Miller, Franklin C.
Miller, James H.
Minichiello, Lee P.
Minneman, Milton J.
Mintz, Jeanne S.
Mittino, John A.
Moody, Kevin C.
Moore, Robert A.
Moore, Robert H.
Morgan, John D.
Morris, Herbert K.
Morrison, James W.
Muckerman, Joseph E., II
Mullen, Robert L.
Murrell, Billy C.
Nelson, Ronald R.
Newhall, David H.
Niederlehner, Leonard
O'Bryon, James F.
Oakley, Bobby B.
Oplinger, Gerald G.
Osterholz, John L.
Pallas, Spiros G.
Pantuso, Francis P.
Pennington, Arthur W.
Persh, Jerome
Pflock, Karl T.
Phillips, Gary R.
Pope, Barbara S.
Quetsch, John R.
Quin, Thomas P.
Rauner, Robert M.
Reay, James H.
Reinhard, Manfred J.
Reynolds, Richard A.
Rizer, Jordan E.
Roll, Charles R., Jr.

Rona, Thomas P.
Roosild, Sven A.
Ropka, Lawrence
Rosamond, John B.
Roske, Vincent P. Jr.
Rudd, Glenn A.
Ruffine, Richard S.
Russ, John M.
Schafer, Carl J., Jr.
Schmidt, Raymond E.
Schneider, Mark B.
Schneider, Robert L.
Schneiter, George R.
Sellman, Wayne S.
Sevin, Eugene
Shapiro, Edward J.
Shapiro, Howard H.
Sharkey, William J., Jr.
Shaw, Dennis R.
Sheils, Marylou
Shilling, David M.
Shorey, Russell R.
Shuck, Joanne D.
Siebert, George W.
Siewert, Raymond F., Jr.
Smith, Frederick, C.
Smith, Gordon A.
Smith, John E.
Sommer, Peter R.
Soule, Robert R.
Spector, Eleanor R.
Springett, John P.
St. John, Adrian II
Stansberry, Kent G.
Stone, Robert A.
Sullivan, Gerald D.
Sullivan, Peter M.
Sungenis, Joseph R.
Tapparo, Frank A.
Tillson, John C.F.
Trosch, Dennis H.
Tyler, John T., Jr.
VanWagenen, James S.
Verkoski, John E.
Viilu, Andrus
Welch, Thomas J.
Wigg, David G.
Wilcox, Benjamin A.
Williams, Robert M.
Wolthuis, Robert K.
Woodruff, Lawrence W.
Woods, James L.
Woodworth, John A.
Young, Leo
Yurcisin, Peter
Zdankiewicz, Edward

OSD Performance Review Board Membership

deGraffenreid, Kenneth E.
Whealen, John T.
MacPherson, J. Randolph
Reed, William H.
Newton, Fred J.
Quill, John J.
O'Brien, Thomas J.
Schwalls, Robert G.
Ewald, Thomas E.
Maclin, James F., Jr.
Sicilia, Thomas G.
Hustead, Toni S.
Kabeiseman, Karl W.
Obloy, Edward J.
Vander Schaaf, Derek J.

[FR Doc. 87-17969 Filed 8-6-87; 8:45 am]
BILLING CODE 3810-01-M

Department of the Army

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Date of Meeting 21 August 1987.

Time of Meeting: 0800-1600 hours.

Place: Science Applications International Corporation McLean, Virginia.

Agenda: The ASB Ad Hoc Subgroup on U.S. Army CECOM RD&E Center Effectiveness Review will meet to review draft report material. This meeting will be open to the public. Any person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the Committee. The Army Science Board Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,
Administrative Officer, Army Science Board.

[FR Doc. 87-18032 Filed 8-6-87; 8:45 am]
BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Procurement and Assistance Management Directorate

Restriction of Eligibility for Grant Award

AGENCY: Procurement and Assistance Management Directorate, Department of Energy (DOE).

ACTION: Notice.

SUMMARY: DOE announces that, pursuant to 10 CFR 600.7(b), it intends to renew, on a restricted eligibility basis, a grant to the Coalition of Northeastern Governors (CONEG) to organize and carry out a Regional Biomass Program in the Northeast Area of the Northern Tier States.

The grant is being renewed for a 1-year period beginning August 9, 1987. The estimated amount is $650,000.

Procurement Request No.: 05-870R21389.001.

Project Scope: This grant renewal is to continue a Regional Biomass Program in the Northeast Area of the Northern Tier States. The primary purpose is to implement biomass research and development, technology utilization, and technology transfer on a regional basis in a manner which will maximize the participation of the public and private sectors of each State. CONEG has the unique capability to equally represent all of the States in the Northeast subregion and involve the appropriate private and public interest groups in the States. CONEG is an existing, regionally organized consortium with background experience in management of similar activities. Eligibility for this study is, therefore, restricted to CONEG.

FOR FURTHER INFORMATION CONTACT: Bryan D. Walker, (ER-122), Research Management Branch, Research and Waste Management Division, U.S. Department of Energy, Oak Ridge, Tennessee 37831, (615-576-0716).

Issued in Oak Ridge, Tennessee, on July 21, 1987.

Peter D. Dayton,
Procurement and Contracts Division, Oak Ridge Operations.

[FR Doc. 87-18031 Filed 8-6-87; 8:45 am]
BILLING CODE 6450-01-M

Economic Regulatory Administration

[Docket No. PP-85]

Application by Westmin Resources Limited for a Presidential Permit

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of application by Westmin Resources Limited for a permit to construct, connect, operate and maintain electric transmission facilities at the international border between the United States and Canada.

SUMMARY: Westmin Resources Limited (Westmin) has applied to the Economic Regulatory Administration (ERA) for a Presidential permit to construct, connect, operate and maintain electric transmission facilities at the international border between the U.S. and Canada. The proposed transmission facilities will connect two locations in British Columbia and only pass through Alaska. These facilities will not interconnect with any existing U.S. transmission facilities.

FOR FURTHER INFORMATION CONTACT:

Anthony J. Como, Department of Energy, Economic Regulatory Administration (RG-22), 1000 Independence Avenue,

SW., Washington, DC 20585, (202) 586–5935

Lise Courtney M. Howe, Department of Energy, Office of General Counsel (GC–41), 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–2900

SUPPLEMENTARY INFORMATION: On July 17, 1987, Westmin applied to the ERA, pursuant to Executive Order 10485, as amended, for a Presidential permit to construct a 35 kilovolt transmission line which would cross the U.S. international border from British Columbia, Canada, pass through the State of Alaska, and re-enter British Columbia at a second point on the U.S. international border. This application is contained in Docket No. PP–85. The proposed facilities would be used to transmit electric energy from an existing powerplant located in Stewart, British Columbia, to a new mine to be developed by Westmin in British Columbia, about 10 miles north of Hyder, Alaska. These transmission facilities will not connect with any existing U.S. transmission lines and no electric energy will flow to or from any U.S. electric utility as a result of this project.

The proposed line would extend about 11.2 miles through Alaska, with about 2.5 miles constructed underground and about 8.7 miles constructed above ground on wooden poles. All construction in Alaska would be within the right-of-way of the existing Granduc Road. The applicant has indicated that routing of the line through Alaska is required because of inaccessible terrain on the British Columbia side of the border.

Any person desiring to be heard or to protest this application for a Presidential permit should file a petition to intervene or protest with the Economic Regulatory Administration, Room GA–093, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, in accordance with §§ 385.211 or 385.214 of the Rules of Practice and Procedure (18 CFR 385.211, 385.214).

Any such petitions and protests should be filed on or before September 8, 1987. Protests will be considered by ERA in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application will be made available, upon request for public inspection and copying, at the Department of Energy's Freedom of Information Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC from 8:00 a.m. to 4:00 p.m., Monday through Friday.

Issued in Washington, DC, on August 3, 1987.

Robert L. Davies,

Director Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87–18028 Filed 8–6–87; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 87–17–NG]

Order Granting Blanket Authorization to Import Natural Gas From Canada; PeopleService, Inc.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of order granting blanket authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting PeopleService, Inc. (PSI), blanket authorization to import natural gas from Canada. The order issued in ERA Docket No. 87–17–NG authorizes PSI to import up to 200 Bcf over a two-year period for sale in the domestic spot market.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA–076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585, (202) 586–9478. The docket is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holiday.

Issued in Washington, DC, July 31, 1987.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR. Doc. 87–17978 Filed 8–6–87; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 87–13–NG]

Order Granting Blanket Authorization To Import Natural Gas; Suncor Inc.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of order granting blanket authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Suncor Inc. (Suncor) blanket authorization to import natural gas. The order issued in ERA Docket No. 87–13–NG authorizes Suncor to import up to 36.5 Bcf of natural gas over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA–076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585, (202) 586–9478. The docket is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holiday.

Issued in Washington, DC, July 28, 1987.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR. Doc. 87–17979 Filed 8–6–87; 8:45 am]

BILLING CODE 6450–01–M

[Docket No. ERA C&E–87–51; OFP Case No. 65047–9368–20, 21, 22–24]

Order Granting an Exemption Pursuant to the Powerplant and Industrial Fuel Use Act of 1978 to Midway-Sunset Cogeneration Co.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Order granting exemption.

SUMMARY: On April 13, 1987, Midway-Sunset Cogeneration Company (MSCC or petitioner) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent exemption from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) for its proposed cogeneration facility to be located in Kern County, California.

Title II of the Act prohibits the construction or operation of a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source. The exemption petition was based on cogeneration. The final rule containing the criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules setting forth criteria and procedures for petitioning for this type exemption are found at 10 CFR 503.37.

Pursuant to section 212(c) of the Act and 10 CFR 503.37, ERA hereby issues this order granting a permanent exemption from the prohibitions of FUA for the proposed powerplant at the aforementioned installation.

The basis for ERA's order is provided in the **"SUPPLEMENTARY INFORMATION"** section below.

DATES: In accordance with section 702(a) of FUA, this order and its provisions shall take effect on October 6, 1987.

FOR FURTHER INFORMATION CONTACT:

Xavier Puslowski, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA–093, Washington, DC 20585, Telephone (202) 586–4708

or

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Room 6A–113, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 586–6947

The public file containing a copy of this order and other documents and supporting materials on this proceeding is available on request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E–190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

SUPPLEMENTARY INFORMATION: FUA prohibits the construction and operation in certain new baseload powerplants with the capability to use coal or alternate fuel unless an exemption has been granted ERA. The petitioner has filed a petition for a permament exemption to use natural gas or oil as a primary energy source in its facility located in Kern County, California.

Procedural Requirements

In accordance with the procedural requirements of FUA and 10 CFR 501.3(d), ERA published its Notice of Acceptance of Petition for Exemption and Availability of Certification relating to this petition in the **Federal Register** on May 14, 1987 (52 FR 18267), commencing a 45-day public comment period pursuant to section 701(c) of FUA. Copies of the petition were provided to the Environmental Protection Agency as required by section 701(f). During the comment period, interested persons were afforded an opportunity to request a public hearing. The comment period closed on June 29, 1987; no comments were received and no hearing was requested.

Order Granting Permanent Exemption

Based upon the entire record of this proceeding, ERA has determined that the petitioner has satisfied all of the eligibility requirements for the requested exemption as set forth in 10 CFR 503.37, and pursuant to section 212(c) of FUA, ERA hereby grants the petitioner's permanent exemption for the powerplant to be installed at its facility in Kern County, California permitting the use of natural gas or oil as a primary energy source in the units.

Pursuant to section 702(c) of the Act and 10 CFR 501.69 any person aggrieved by this order may petitition for judicial review at any time before the 60th day following the publication of this order in the **Federal Register.**

Issued in Washington, DC, on August 3, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87–18029 Filed 8–6–87; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Research

Magnetic Fusion Advisory Committee; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Magnetic Fusion Advisory Committee.

Date and Time:

Tuesday, September 1, 1987, 8:30 a.m.–4:30 p.m.

Wednesday, September 2, 1987, 8:30 a.m.–12:30 p.m.

Location: Hanford Engineering Development Laboratory (HEDL), Tri-Cities University Center Auditorium, 100 Sprout Road, Richland, Washington 99352.

Contact: Thomas G. Finn, Office of Fusion Energy, Office of Energy Research ER–50.2, U.S. Department of Energy, Mail Stop J–204, Washington, DC 20545, Phone: (301) 353–4941.

Purpose of the Committee

To provide advice to the Secretary of Energy on the Department's Magnetic Fusion Energy Program, including periodic reviews of elements of the program and recommendations of changes based on scientific and technological advances or other factors; advice on long-range plans, priorities, and strategies to demonstrate the scientific and engineering feasibility of fusion; advice on recommended appropriate levels of funding to develop those strategies and to help maintain appropriate balance between competing elements of the program.

MFAC—Agenda Outline

September 1, 1987

1. 8:30 a.m. Welcome
2. Status of Program—J. Clarke
3. MFAC Panel 17 Report—D. Baldwin et. al.
4. MFAC Discussion
   Lunch
5. MFAC Discussion
6. Public Comments
7. Status of Compact Ignition Tokamak (CIT)—Bruce Montgomery
8. Discussion of New Charges—F. Ribe
9. HEDL Presentation
10. Public Comments
    4:45 Tour of Fast Flux Test Facility (FFTF)

MFAC—Agenda 2nd Day

September 2, 1987

1. 8:30 a.m. MFAC/Panel 17 Interactions
2. Status of ITER—K. Fowler
3. Discussion of New Charges
4. Public Comments
   (Adjourn 12:30 p.m.)

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Thomas G. Finn at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes

Available for public review and copying approximately 30 days following the meeting at the Public Reading Room, Room 1E190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on August 4, 1987.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 87–18030 Filed 8–6–87; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER87–93–000 et al.]

Electric Rate and Corporate Regulation Filings; Central Power and Light Co. et al.

Take notice that the following filings have been made with the Commission:

1. Central Power and Light Co.

July 31, 1987.

[Docket No. ER87-93-000]

Take notice that on July 7, 1987, Central Power and Light Company and West Texas Utilities Company tendered for filing pursuant to a letter from Mr. Jerry R. Milbourn dated January 9, 1987, a revision to Interchange Sales Tariffs that will serve to complete the filing of this docket on November 10, 1986.

Central Power and Light Company requests an effective date of October 15, 1986 as originally requested and therefore requests a waiver of the Commission's notice requirements.

Copies of the filing have been served upon the Public Utilities Board of the City of Brownsville, Texas and to the Public Utilities Commission of Texas.

Comment date: August 14, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. Detroit Edison Co.

August 3, 1987.

[Docket No. ER87-550-000]

Take notice that on July 28, 1987, Detroit Edison Company tendered for filing a letter agreement dated January 2, 1987, between Detroit Edison and General Public Utilities which constitutes a redetermination of the fixed charge rate applicable to transactions under Amendment No. 6 among Consumers Power Company, Detroit Edison Company, and Toledo Edison Company, dated June 1, 1982, for the sale of Specific Capacity Power to General Public Utilities. This Amendment has been denoted as the Detroit Edison Company Rate Schedule FERC No. 11. Detroit Edison states that the redetermination of the fixed charge rate was made pursuant to the terms of Amendment No. 6.

Detroit Edison states that the letter agreement establishes the fixed charge rate at 15.75% for service rendered on and after January 1, 1987, and is subject to redetermination during the term of Amendment No. 6 in accordance with section 7.12. Detroit Edison stated the redetermination reflects both the currently authorized return on equity contained in the Michigan Public Service Commission Order No. U-7660 and the reduction of the effective corporate income tax rate from 46% to 40% for 1987; the effect of both of these items being a reduction of 0.695% in the fixed charge rate from that used in the initial agreement. This determination will decrease the monthly demand charge to $461,803 in accordance with sections 7.11 and 7.12 of Service Schedule G.

Detroit Edison states that copies of the filing were served upon Consumers Power Company, Cleveland Electric Illuminating Company, General Public Utilities Corporation, Toledo Edison Company, and Michigan Public Service Commission.

Detroit Edison requests waiver of the notice requirements to permit a retroactive effective date of January 1, 1987 for the 15.175% fixed charge rate.

Comment date: August 17, 1987, in accordance with Standard Paragraph E at the end of this notice.

3. Florida Power & Light Co.

August 3, 1987.

[Docket No. ER87-549-000]

Take notice that on July 27, 1987, Florida Power & Light Company (FPL) tendered for filing a document entitled Amendment Number Five to Agreement to Provide Specified Transmission Service Between Florida Power & Light Company and City of Tallahassee and a document entitled Schedule TX Operating Agreement Between Florida Power & Light Company and City of Tallahassee, which document supplements Amendment Number Five.

FPL states that under Amendment Number Five, FPL will transmit power and energy for City of Tallahassee as is required in the implementation of its interchange agreement with the Jacksonville Electric Authority.

FPL further states that the Schedule TX Operating Agreement defines the methodology used to determine the additional incremental cost under section I.4 of Amendment Number Five.

FPL requests that waiver of § 35.3 of the Commission's Regulations be granted and that the proposed Amendment and the proposed Operating Agreement be made effective immediately. FPL states that copies of the filing were served on City of Tallahassee.

Comment date: August 17, 1987, in accordance with Standard Paragraph E at the end of this notice.

4. Houston Lighting & Power Co.

August 3, 1987.

[Docket No. ER83-657-001]

Take notice that on July 22, 1987, Houston Lighting & Power Company (HL&P) tendered for filing pursuant to Letter Order dated January 26, 1987, a compliance filing of Transmission Service Agreements (TSA) for the service under HL&P's Tariff that is now being taken by each of the four operating companies of the Central and South West System: Public Service Company of Oklahoma, Southwestern Electric Power Company, Central Power & Light Company and West Texas Utilities Company (the Companies).

HL&P states that these four Companies have made no formal request for service as required by HL&P's Tariff. HL&P nevertheless tendered TSA's to these Companies. HL&P also states that these Companies have failed to executed TSA's for any service under the Tariff. Consequently, each Companies' utilization of the HL&P system is unauthorized within the meaning of section 2.6 of HL&P's Tariff.

Copies of this filing have been served upon Public Service Company of Oklahoma, Southwestern Electric Power Company, Central Power & Light Company and West Texas Utilities Company.

Comment date: August 17, 1987, in accordance with Standard Paragraph E at the end of this notice.

5. Idaho Power Co.

July 31, 1987.

[Docket No. ER87-347-000]

Take notice that on July 22, 1987, Idaho Power Company tendered for filing as a supplement to its earlier filed Interconnection Agreement, a Certificate of Concurrence by Sierra Pacific Power Company.

Comment date: August 14, 1987, in accordance with Standard Paragraph E at the end of this notice.

6. Montana Power Co.

July 31, 1987.

[Docket No. ER87-547-000]

Take notice that on July 27, 1987, Montana Power Company (MPC) tendered for filing pursuant to section 205 of the Federal Power Act its application to join the Western Systems Power Pool.

MPC has requested waiver of the notice provisions of section 35.3 of the Commission's Regulations in order to permit its membership in the Western Systems Power Pool to be effective on June 2, 1987.

Comment date: August 14, 1987, in accordance with Standard Paragraph E at the end of this document.

7. New England Hydro Transmission Corp. et al.

August 3, 1987.

[Docket No. ER87-386-001]

Take notice that on July 27, 1987, New England Hydro Transmission Corp., et al. tendered for filing pursuant to the Commission's Order, amendments to the following rate schedules:

New England Hydro-Transmission Corp.

Rate Schedule FERC No. 1

New England Hydro-Transmission Electric Co., Inc.

Rate Schedule FERC No. 1
New England Power Co.
Rate Schedule FERC No. 329
Boston Edison Co.
Rate Schedule FERC No. 152

New England Hydro Transmission Corp. states that these amendments remove from the contracts certain provisions which would prohibit intervention in certain future rate of return filings.

Copies of this filing have been served upon those on the service limit.

Comment date: August 17, 1987, in accordance with Standard Paragraph E at the end of this notice.

8. Portland General Electric

July 31, 1987.

[Docket No. ER87-548-000]

Take notice that on July 27, 1987, Portland General Electric Company (Portland) tendered for filing (i) an Amendment No. 1 to the PGE Rate Schedule FERC No. 22, the agreement entitled Pacific-Portland Sales and Exchange Agreement dated August 25, 1972, and the Assignment Agreement among Portland, Pacific Gas and Electric Company, and Southern California Edison Company (Edison) dated February 9, 1973, (ii) and the Certificate of Concurrence for Southern California Edison Company. This Amendment No. 1 modifies Edison's obligations to Portland under the Assignment Agreement in partial consideration for Edison's performance of its obligations under the Long-Term Power Sale and Exchange Agreement between Portland and Edison dated July 31, 1986. Amendment No. 1 has no effect on the rights and obligations of Pacific Gas and Electric Company.

PGE requests an effective date of January 1, 1986 and therefore requests a waiver of the Commission's notice requirements.

Copies of the filing have been served upon Southern California Edison, Pacific Gas and Electric Company, and the Oregon Public Utility Commission.

Comment date: August 14, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 87-17995 Filed 8-6-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CI64-546-001 et al.]

Natural Gas Company; Applications for Certificates, Abandonments of Service and Petitions To Amend Certificates [1]; ARCO Oil and Gas Co., Division of Atlantic Richfield Co. et al.

August 3, 1987.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before August 17, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,
Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
CI64-546-001, D, Jul. 6, 1987.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, Texas 75221.	Northern Natural Gas Company, Division of Enron Corp., Kiowa Creek (Douglas) Field, Beaver, Lipscomb, Ellis Counties, Oklahoma.	(1)	
CI64-947-000, D, Jul. 13, 1987.	....do	Ivanhoe Field, Beaver County, Oklahoma.	(1)	
CI65-453-002, D, Jul. 24, 1987.	....do	Ozona Field, Crockett County, Texas	(1)	
CI87-763-000 (CI67-173), B, Jul. 13, 1987.	....do	....do	(1)	
CI67-182-001, D, Jul. 17, 1987.	....do	Catesgy—Gage—Midler *et al.*, Ellis County, Oklahoma.	(2)	
CI67-182-002, D, Jul. 17, 1987.	....do	....do	(3)	
CI64-1511-000, D, Jul. 17, 1987.	....do	Montana Dakota Utilities Co., Pavillion Field, Freemont County, Wyoming.	(1)	
CI64-1511-001, D, Jul. 17, 1987.	....do	....do	(4)	

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

BEST COPY AVAILABLE

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
CI82-220-001, D, Jul. 6, 1987.	....do....	Cimarron Transmission Company, Southeast Marietta Field, Love County, Oklahoma.	(1)....	
CI87-755-000 (CI66-572), B, Jul. 6, 1987.	....do....	KN Energy, Inc., Beauchamp Field, Stanton County, Kansas.	(1)....	
CI61-498-000, D, Jul. 13, 1987.	....do....	Transwestern Pipeline Company, Kermit and S. Kermit Fields, Winkler County, Texas.	(1)....	
CI62-1287-000, D, Jul. 13, 1987.	....do....	West Texas Gathering Company, Kermit and S. Kermit Fields, Winkler County, Texas.	(1)....	
CI87-745-000 (G-8493), B, Jul. 6, 1987.	....do....	Tennessee Gas Pipeline Company, a Division of Tenneco Inc., Cecil Noble Field, Colorado County, Texas.	(5)....	
CI87-744-000 (CI60-426), B, Jul. 6, 1987.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company.	Tennessee Gas Pipeline Company, a Division of Tenneco Inc., New Refugio Field, Refugio County, Texas.	(6)....	
CI87-756-000 (G-8493), B, Jul. 9, 1987.	....do....	Schiller Gas Unit; Cecil Noble Field, Colorado County, Texas.	(7)....	
G-10739-002, D, Jul. 6, 1987.	....do....	Texas Eastern Transmission Corporation, Chicolete Creek *et al.* Fields, Live Oak County, Texas.	(8)....	
CI87-782-000 (G-4545), B, Jul. 20, 1987.	....do....	Transcontinental Gas Pipe Line Corp., Mineral Field, Bee County, Texas.	(9)....	
G-4544-003, D, Jul. 20, 1987.	....do....	Blocks 75 and 76, Clayton Field, Live Oak County, Texas.	(10)....	
CI87-766-000 (G-4535), B, Jul. 13, 1987.	....do....	Ray-Wilcox Field, Bee County, Texas....	(10)....	
G-19222-000, D, Jul. 17, 1987.	....do....	Panhandle Eastern Pipe Line Company, Camrick Gas Area, Texas County, Oklahoma.	(11)....	
CI61-1766-000, D, Jul. 17, 1987.	....do....	....do....	(11)....	
G-3894-028, D, Jul. 20, 1987.	....do....	United Gas Pipe Line Company, Redfish Bay—Mustang Island, Nueces County, Texas.	(12)....	
CI73-856-001, D, Jul. 20, 1987.	....do....	State Tract 395, S.W. Redfish Bay Field, Nueces County, Texas.	(12)....	
G-18748-004, D, Jul. 17, 1987.	....do....	El Paso Natural Gas Company, Clear Lake Field, Beaver County, Oklahoma.	(13)....	
G-3894-029, D, Jul. 20, 1987.	....do....	Natural Gas Pipeline Company of America, Block 85, Clayton Field, Live Oak County, Texas.	(14)....	
G-9980-002, D, Jul. 13, 1987.	....do....	Carmick Gas Area, Texas County, Oklahoma.	(15)....	
CI63-538-005, D, Jul. 13, 1987.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company.	Northwest Central Pipeline Corporation, Northwest Lovedale Field, Harper County, Oklahoma.	(16)....	
CI87-762-000 (CI75-144), B, Jul. 13, 1987.	....do....	Trunkline Gas Company, South Marsh Island Block 261 Area, Offshore Louisiana.	(17)....	
CI70-1067-003, D, Jul. 27, 1987.	....do....	ANR Pipeline Company, Eugene Island Area, Offshore Louisiana.	(18)....	
CI87-740-000 (CI78-409), B, Jul. 6, 1987.	Cities Service Oil and Gas Corp., P.O. Box 300, Tulsa, Okla. 74102.	Sec. 22-23N-16W, Major County, Oklahoma.	(19)....	
CI87-739-000 (CI66-1250), B, Jul. 6, 1987.	....do....	Consolidated Gas Transmission Corp., Young and Perry Townships, Jefferson County, Pennsylvania.	(20)....	
CI87-778-000 (CI70-961), B, Jul. 20, 1987.	....do....	ANR Pipeline Company, SW/4 NW/4, N/2 NW/4, SE/4 NW/4, SW/4, Sec. 23-23N-16W, and W/2 NW/4, NW/4 SW/4, Sec. 26-23N-16W, Major County, Oklahoma.	(21)....	
CI87-775-000, F, Jul. 20, 1987.	....do....	Texas Eastern Transmission Corporation, May Field, Kleberg County, Texas.	(22)....	

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
CI87-757-000 (CI67-522), B, Jul. 9, 1987.	....do	United Gas Pipe Line Company, Sections 15, 17, 20, 21, and 22-17N-1W, Jackson Parish, Louisiana.	(23)	
CI87-722-000 (CI73-328), B, June 25, 1987.	....do	Tennessee Gas Pipeline Company, a Division of Tenneco Inc., Ship Shoal Block 94 OCS-G-1983, Offshore Louisiana.	(24)	
CI64-1387-001, D, Jul. 13, 1987.	Sun Exploration & Production Co., P.O. Box 2880, Dallas, Texas 75221-2880.	El Paso Natural Gas Company, Coyanosa Field, Pecos County, Texas.	(25)	
CI87-779-000 (CI62-438), B, Jul. 20, 1987.	....do	Halley Field, Winkler County, Texas	(26)	
CI62-1237-000, D, Jul. 23, 1987.	....do	Jalmat Field, Lea County, New Mexico	(27)	
CI87-743-000 (CI66-906), B, Jul. 6, 1987.	....do	Panhandle Eastern Pipeline Company, Oshel Field, Woods County, Oklahoma.	(28)	
CI68-33-001, D, June 26, 1987.	Sun Exploration & Production Co	Lone Star Gas Company, a Division of ENSERCH Corporation, Big Mineral Creek Field, Grayson County, Texas.	(29)	
CI87-742-000 (G-14943), B, Jul. 6, 1987.	....do	Tennessee Gas Pipeline Company, a Division of Tenneco Inc., North Sun (K-1 Sand) Field, Starr County, Texas.	(30)	
CI87-795-000 (G-5135), B, Jul. 28, 1987.	....do	Transcontinental Gas Pipe Line Corp., La Gloria Field, Jim Wells County, Texas.	(31)	
G-14753-000, D, Jul. 27, 1987.	....do	Pointe Au Fer Field, Terrebonne Parish, Louisiana.	(32)	
CI87-794-000 (G-16846), B, Jul. 28, 1987.	....do	Natural Gas Pipeline Company of America, La Gloria Field, Jim Wells County, Texas.	(31)	
G-11661-000, D, Jul. 24, 1987.	....do	Texas Eastern Transmission Company, Bethany Field, DeSoto Parish, Louisiana.	(33)	
G-12012-001, D, Jul. 10, 1987.	Union Oil Company of California, P.O. Box 7600, Los Angeles, Calif. 90051.	Northern Natural Gas Company, Division of Enron Corp., Harper Ranch Field, Clark County, Kansas.	(34)	
CI64-1494-000, D, June 29, 1987.	....do	Arkla Energy Resources, a division of Arkla, Inc., Southwest Lacy Field, Kingfisher County, Oklahoma.	(35)	
CI64-1444-000, D, Jul. 24, 1987.	....do	Colorado Interstate Gas Company, Patrick Draw Field, Sweetwater County, Wyoming.	(36)	
CI87-768-000, A, Jul. 15, 1987.	Amoco Production Company, P.O. Box 50879, New Orleans, La. 70150.	Transcontinental Gas Pipe Line Corp., High Island Area, Blocks A-382, A-571, A-572, A-573, A-595 and A-596, Offshore Texas.	(37)	
CI87-765-000 (G-5663), B, Jul. 13, 1987.	....do	Natural Gas Pipeline Company of America, East Bay City Field, Matagorda County, Texas.	(38)	
G-6378-001, D, Jul. 27, 1987.	Kerr-McGee Corporation, P.O. Box 25861, Oklahoma City, Okla. 73125.	Colorado Interstate Gas Company, Baughman A-1 Well, Sec. 16-T5N-R9E, Keyes, Field, Cimarron County, Oklahoma.	(39)	
CI68-873-000, D, Jul. 27, 1987.	....do	Federal 1-35 Well, Sec. 35-T31S-R45W, Vilas Field, Baca County, Colorado.	(40)	
CI87-725-000 (CI72-487), B, June 26, 1987.	Champlin Petroleum Company, 1400 Smith Street, Suite 1500, Houston, Texas 77002.	Panhandle Eastern Pipe Line Company, Greenwood Field, Morton County, Kansas.	(41)	
CI87-741-000 (G-2999), B, Jul. 6, 1987.	....do	Tennessee Gas Pipeline Company, a Division of Tenneco Inc., El Ebanito Field, Starr County, Texas.	(42)	
CI62-0944-001, D, Jul. 27, 1987.	Conoco Inc., P.O. Box 2197, Houston, Texas 77252.	El Paso Natural Gas Company, Arrowhead E-M-E Field, Lea County, New Mexico.	(44)	
G-6355-000, D, Jul. 23, 1987.	....do	Arrowhead Field, Lea County, New Mexico.	(45)	
CI87-791-000, B, Jul. 27, 1987.	Sierra Exploration Company, 405 N. St. Marys, Suite 1010, San Antonio, Texas 78205.	El Paso Natural Gas Corporation, East Chapa Field, Live Oak County, Texas.	(46)	

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
CI87-753-000, B, Jul. 21, 1987.	Wayne Moore, 403 N. Marienfield, Midland, Texas 79701.	San Juan Basin Area, New Mexico	(47)	
CI87-792-000, B, Jul. 27, 1987.	Bounty Production Company, P.O. Box 1478, Houston, Texas 77251-1478.	United Gas Pipe Line Company, S. Cabeza Creek Field, Goliad County, Texas.	(48)	
CI87-769-000, B, Jul. 14, 1987.	W.W. Rucks, III and Rucks & Sirera, 110 Oil Center Drive, Lafayette, La. 70505.	Hollywood and Houma Fields, Terrebonne Parish, Louisiana.	(49)	
CI87-771-000 (CI60-580-000), B, Jul. 17, 1987.	The George R. Brown Partnership, 4700 First City Tower Building, 1001 Fannin Street, Houston, Texas 77002-6708.	Abbeville Field, Vermilion Parish, Louisiana.	(50)	
CI87-723-000 (CI80-74), B, June 24, 1987.	ENSTAR Corporation, P.O. Box 2120, Houston, Texas 77252-2120.	Columbia Gas Transmission Corporation, Florence Field, Vermilion Parish, Louisiana.	(51)	
CI87-781-000, E, Jul. 21, 1987.	Diamond Shamrock Offshore Partners, Limited Partnership, LTV Center, Suite 1400, 2001 Ross Avenue, Dallas, Texas 75201-2916.	Block A-471, High Island Area, South Addition, Offshore Texas.	(52)	
CI87-780-000, B, Jul. 20, 1987.	Grey Eagle Const. Co., C.F. Shewey, P.O. Box 108, Kermit, W. Va. 25674.	Stafford District, Mingo County, West Virginia.	(53)	
CI87-774-000, F, Jul. 20, 1987.	Mobil Oil Exploration & Producing Southeast Inc. (Partial Succ. in interest to Orlando-SOI Partnership), Nine Greenway Plaza, Suite 2700, Houston, Texas 77046.	Transcontinental Gas Pipe Line Corp., Eugene Island Block 116, Offshore Louisiana.	(54)	
CI87-752-000, B, Jul. 7, 1987.	Bogert Oil Company, 2601 N.W. Expressway, Suite 1000W, Oklahoma City, Okla. 73112-7183.	ANR Pipeline Company, Sec. 9-T17N-R17W, Putnam Field, Dewey County, Oklahoma.	(55)	
CI87-773-000, E, Jul. 20, 1987.	Chevron U.S.A. Inc. (Succ. in interest to Texaco U.S.A.), P.O. Box 7309, San Francisco, Calif. 94120-7309.	West Cameron Block 17, Offshore Louisiana.	(57)	
CI87-732-000, June. 29, 1987.	The Louisiana Land and Exploration Co., P.O. Box 60350, New Orleans, La. 70160.	Tennessee Gas Pipeline Company, a Division of Tenneco Inc., Caillou Island Field, Terrebonne Parish, Louisiana.	(58)	
CI87-789-000 (CI80-26), B, Jul. 27, 1987.	Mobil Oil Corporation, Nine Greenway Plaza, Suite 2700, Houston, Texas 77046.	Panhandle Eastern Pipe Line Company, Teapot Reservoir in the SE/4 of Section 2 and the W/2 NE/4 and SE/4 NE/4 of Sec. 11-T33N-R68W, Converse County, Wyoming.	(59)	
CI87-770-000, B, Jul. 14, 1987.	Williford Energy Company, 8023 E 63rd Pl, Box 35507, Tulsa, Okla. 74153.	Panhandle Eastern Pipe Line Company, Selman #1-6 Sec. 6-26N-18W, Edith South Field, Woodward County, Oklahoma.	(60)	
CI87-777-000 (CI63-1567), B, Jul. 20, 1987.	Sohio Petroleum Company, P.O. Box 4587, Houston, Texas 77210.	N.W. Midwell Field, Cimarron County, Oklahoma.	(61)	
CI87-726-000, B, June 26, 1987.	Geo R. Shaw, *et al*	Lerado Field, Reno County, Kansas	(62)	
CI87-748-000 (CI70-780), B, Jul. 7, 1987.	Phillips Petroleum Company, 990-G Plaza Office Bldg., Bartlesville, Okla. 74004.	West Gruver Field, Hansford County, Texas.	(63)	
CI87-733-000 (CI83-249), B, June 29, 1987.	Tenneco Oil Company, P.O. Box 2511, Houston, Texas 77001.	THC Pipeline Company, Various Fields, Offshore Texas and Louisiana.	(65)	
CI87-465-000, F, May 1, 1987.	Sonat Exploration Company (Succ. in Interest to Petro-Lewis Funds, Inc.), P.O. Box 1513, Houston, Texas 77251-1513.	Florida Gas Transmission Company, Mississippi Canyon Blocks 151, 194 and 195, Offshore Louisiana.	(66)	
CI63-1045-000, F, June 29, 1987.	Samson Resources Company (Succ. in Interest to Hunt Oil Company), Samson Plaza, Two West Second Street, Tulsa, Okla. 74103.	Arkla Energy Resources, a division of Arkla, Inc., Anthon Area, Custer County, Oklahoma.	(67)	
CI77-735-004, D, June 5, 1987.	Odeco Oil & Gas Company, P.O. Box 61780, New Orleans, La. 70161.	Trunkline Gas Company, South Timbalier 86 Field, Offshore Louisiana.	(69)	
CI87-787-000, F, Jul. 27, 1987.	Kerr-McGee Corporation (Succ. in interest to Deltaus Corporation), P.O. Box 25861, Oklahoma City, Okla. 73125.	Texas Gas Transmission Corporation and Northern Natural Gas Company, Division of Enron Corp., Carthage Field, Panola County, Texas and Ozona Field, Crockett County, Texas.	(70)	

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
CI87-793-000, B, Jul. 24, 1987. CI87-790-000 (G-11255), B, Jul. 27, 1987.	Texaco Producing Inc., P.O. Box 52332, Houston, Texas 77052. Highland Resources, Inc., 4700 First City Tower Building, 1001 Fannin Street, Houston, Texas 77002-6708.	Phillips Petroleum Company, Eunice Plant, Lea County, New Mexico. Tennessee Gas Pipeline Company, a Division of Tenneco Inc., Hahl-Webb Gas Unit, Government Wells Field, Duval County, Texas.	[71]..... [72].....	

[1] Effective 1-1-87, ARCO assigned its interest in certain acreage to Hondo Oil and Gas Company.
[2] Effective 1-1-87, ARCO assigned its interest to Ladd Petroleum Corporation.
[3] Effective 1-1-87, ARCO assigned its interest to Sohio Petroleum Company.
[4] Effective 1-1-87, ARCO assigned its interest to Wind River-Pavillion Ltd.
[5] ARCO no longer holds an interest in the acreage covered by the contract. Two Leases were assigned to Howard Wagner in 1972; all other leases were surrendered prior to 1975, and Contract was cancelled effective 10-1-85.
[6] By Assignment effective 2-1-87, ARCO assigned its interest in certain acreage to Kamlok, Inc.
[7] The Unit was plugged in 1969 and leases surrendered prior to 1974. Contract was cancelled 10-1-85.
[8] ARCO assigned its interest in certain acreage to Patton Oil Corporation by Partial Assignment executed 3-6-86.
[9] Effective 5-1-86, ARCO assigned its interest to Enron Oil and Gas Company and Petrus Oil Company.
[10] Effective 5-1-86, ARCO assigned its interest to Petrus Oil Company and Mobil Producing Texas and New Mexico, Inc.
[11] Effective 1-1-87, ARCO assigned its interest to Exxon Company, USA, Subsidiary of Exxon Corporation.
[12] Effective 4-1-87, ARCO assigned its interest to Pi Energy.
[13] Effective 1-1-87, ARCO assigned its interest to Maynard Oil Company.
[14] Effective 5-1-86, ARCO assigned its interest to Mobil Producing Texas and New Mexico, Inc. and Murphy Oil USA, Inc.
[15] Effective 1-1-87, ARCO assigned its interest to Exxon Corporation.
[16] Effective 1-1-87, ARCO assigned its interest to Ward Petroleum Corporation.
[17] Contract with Trunkline Gas Company reached the end of its own terms 1-1-85. There is no production and no plans for future development.
[18] By Farmout Agreement and Partial Assignment effective 2-15-83, ARCO assigned its interest in certain acreage to Samedan Oil Corporation.
[19] Cities Service assigned its interest in the Harmon #1 Well and lease in NW/4, SW/4 NE/4 and W/2 SE/4, Sec. 22-23N-16W, Major County, Oklahoma, by Term Mineral Conveyance and Bill of Sale to Unit Corporation, executed 4-22-87, effective 4-1-87.
[20] By Assignment of Oil and Gas Leases and Bill of Sale executed 5-4-87, effective 1-1-87, Cities sold all of its wells and assigned its interest in the oil and gas leases ½ to J & J Enterprises, Inc. and ½ to Consolidated Gas Transmission Corporation.
[21] Cities Service assigned its interest in gas produced from the Federal #1 and Harmon wells and leases in SW/4 NW/4, N/2 NW/4, SE/4 NW/4, operating rights from surface to 8,485 feet in SW/4 Sec. 23-23N-16W and W/2 NW/4, NW/4 SW/4 Sec. 26-23N-16W, Major County, Oklahoma, to Unit Corporation executed 4-22-87, effective 4-1-87.
[22] Effective 7-1-85, Cities Service Oil and Gas Corporation acquired 5.292% interest in the May Field Unit, Kleberg County, Texas from Egret Energy Corporation.
[23] There is currently no production attributable to Cities' interest from the remaining leases under the contract. The leases are only in effect as a result of production from zones in which Cities has no interest, and Cities anticipates no future drilling activities.
[24] Production from Ship Shoal Block 94 OCS-G-1983 ceases in 1981. All wells were plugged and abandoned and lease expired 7-7-86.
[25] Sun assigned its interest in Property No. 637210, James Neal to Bentley & Laing.
[26] Property sold to Sage Energy Co. on 7-1-87.
[27] Property assigned 1-2-86, by Conveyance and Agreement to Doyle Hartman, James A. Davidson, Michael L. Klein, and John H. Hendrix Corporation.
[28] By Assignment and Bill of Sale 12-1-86, property was sold to Bill Bowers.
[29] Sun assigned its interest in Property No. 546360, Beulah Hazlip, to E.A. Karper, E.A. Karper, Jr. and John P. Karper.
[30] Lease expired 4-14-87.
[31] Last lease expired.
[32] Sun assigned interest in Property No. 765384, T-2050' RA SUA (#16); and No. 864907, Mary S. Nelson (#14) to Mobil Oil Exploration & Producing Southeast, Inc.
[33] Sun assigned its gas rights only in the Pettit & Hosston formations to Eli Rebich.
[34] Union Oil Company of California assigned a certain lease under Docket No. G-12012 to Trepco Production Company.
[35] Union Oil Company of California assigned certain leases to GAW Oil Company.
[36] Union Oil Company of California assigned certain leases under Docket No. CI64-1444 to Euroamerican Energy Group, Inc.
[37] Applicant is filing under Gas Purchase Contract, dated 6-25-87, as amended by blanket contract amendment dated 11-12-86.
[38] By assignment effective 10-1-85, Amoco sold its interest in various properties from the surface down to and including the subsurface vertical depth of 12,685 feet. There are no further development plans for the lower zones and no known recoverable reserves.
[39] Well was plugged and abandoned.
[40] This well never produced, was shut-in upon completion and the Bureau of Land Management terminated the lease due to cessation of production.
[41] Champlin Petroleum Company has assigned all rights, title and interest in the dedicated acreage to MM Resources, Inc.
[42] Champlin Petroleum Company has assigned all rights, title and interest in the dedicated acreage to Tenneco Oil Company.
[43] Not used.
[44] Operating rights in depths from the surface of the earth to the base of the Grayburg Formation underlying Lot 3 and the NE/4 SW/4 Sec. 7-T19S-R37E, Lea County, New Mexico have been conveyed to Lewis B. Burleson. Corrects filing received 7-23-87 (CI62-944-000).
[45] Effective 12-1-86, Conoco Inc. conveyed unto Lewis B. Burleson, its operating rights from the surface to the base of the Grayburg Formation underlying the NE/4 SE/4 and NW/4 SE/4 Sec. 7-T19S-R37E, Lea County, New Mexico.
[46] Continued impairment of El Paso Natural Gas Company's ability to purchase gas from these leases in quantities sufficient to maintain them in full force and effect.
[47] Applicant requests three-year limited abandonment. Applicant desires to make all its owned and shared gas reserves available to the spot market. The current deliverability is approximately 70 Mcf/month. The gas is NGPA section 104 (replacement contract or recompletion gas). Applicant request a pregranted abandonment for a period of three years.
[48] Continued impairment of United Gas Pipe Line Company's ability to purchase gas from these leases in quantities sufficient to maintain them in full force and effect.
[49] United Gas Pipe Line Company nominated zero gas from field in April 1986. United requested and received a limited-term blanket abandonment certificate from FERC. Release Agreement from United dated 7-9-87.
[50] The George R. Brown Partnership has no interest in any of the leases dedicated under the Gas Purchase Contract having assigned its remaining interest in the leases by Assignment effective 6-5-86, to Great Southern Oil & Gas Co., a small producer; and has made no gas sales from the dedicated acreage attributable to its interest since October, 1985.

[51] The producing acreage was conveyed to Byars Oil and Gas, Inc. effective 6–1–87. ENSTAR Corporation no longer has an interest in said acreage.

[52] By Assignment of Undivided Interest in Oil and Gas Lease made effective 4–1–87, FMP Operating Company, a Limited Partnership assigned its 15% right, title and interest in and to Federal Oil and Gas Lease OCS–2690 to applicant.

[53] This well had a delivery line approximately 6,000 feet in length and needs to be replaced. With anticipated decrease in gas prices plus the small amount of deliverability from this well, it would not be profitable to relay the line. Applicant can lay approximately 800 feet to the Consolidated Gas Company line and deliver gas from this well.

[54] MOEPSI acquired certain interests in Eugene Island Block 116, from OSP by assignment dated 2–4–87, to be effective 12–3–86.

[55] Applicant requests a permanent abandonment of a sale to ANR Pipeline Company. The gas purchase contract has expired. The well is currently shut-in and not producing. Applicant requests a pregranted abandonment for a period of three years. Applicant proposes to sell the gas in the spot market.

[56] Not used.

[57] Texaco assigned all of its interest in the West Cameron Block 17 Field to Chevron effective 1–1–87.

[58] Union's Gas Purchase Agreement with Tennessee dated 3–3–80, as ratified by LL&E on 3–3–80, and subsequently amended by Master Agreement dated 3–30–87 between LL&E and Tennessee.

[59] By Assignment dated 10–8–86, effective 10–1–86, MOC Assignor, assigned to Flag-Redfern Oil Company, Assignee, all of its right, title and interest in and to that certain producing acreage in the SE/4 of Section 2 and the NE/4 of Sec. 11–T33N–R68W, Converse County, Wyoming.

[60] Recompletion unsuccessful. Well dry.

[61] Sohio's non-producing lease No. 343–6068, SE/4 Sec. 27–T3N–R9ECM (160 net acres), was released in September, 1965.

[62] Reserves depleted.

[63] On 9–15–81, the Anderson F #1U (Upper Morrow Zone) and the Anderson F #1L (Lower Morrow Zone) was plugged. Gas production had ceased and additional rework was uneconomical.

[64] Not used.

[65] Cancellation of Gas Purchase and Sales Agreement with THC Pipeline Company.

[66] By assignment dated 9–26–86, effective 9–1–86, Petro-Lewis Funds, Inc. assigned certain acreage to Sonat Exploration Company.

[67] By Assignment dated 4–12–85, effective 3–1–95, Hunt Oil Company assigned certain acreage to Samson Resources Company.

[68] Not used.

[69] By assignments (two) effective 12–4–85, Odeco assigned a 15% interest in the OCS–G–1555 and OCS–G–0605 leases to Minatome Corporation.

[70] Kerr-McGee acquired its interest from Delta US effective 7–1–85.

[71] Applicant's contract with Phillips terminates effective 8–5–87.

[72] The unit well for the 160 acre gas unit, the Hahl-Webb Unit #1, the sole producing well on the dedicated acreage, ceased to produce in August, 1981; Highland's lease reverted to the mineral owners for lack of production and the Gas Purchase Contract expired at the end of its five year term, 1–1–82.

[73] Not used.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 87–17996 Filed 8–6–87; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. CS73–80, et al.]

Natural Gas Company; Applications for Small Producer Certificates [1]; John Snyder, Robert D. Snyder, Overseas Management, Inc. and Snyder Oil Co. (John Snyder, Robert D. Snyder and Overseas Management, Inc.), et al.

August 3, 1987.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Commission's Regulations thereunder for a small producer certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make a protest with reference to said applications should on or before August 17, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Kenneth F. Plumb,
Secretary.

Docket No.	Date filed	Applicant
CS73–80	[1] 7–15–87	John Snyder, Robert D. Snyder, Overseas Management, Inc. and Snyder Oil Company (John Snyder, Robert D. Snyder and Overseas Management, Inc.), c/o John, Hengerer & Esposito, 1120 19th Street, NW., Suite 400, Washington, DC 20036.
CS73–285	[2] 7–14–87	R.N. Hillin, dba Hillin Production Company (Robert Neil Hillin), P.O. Box 152, Odessa, Texas 79760.
CS75–154	[3] 6–9–87	Curtis J. Little Oil & Gas, Curtis J. Little Estate, Curtis Little Trust, Sylvia F. Little, Susan L. Little, Robert O. Little, Susan L. Little Trust and Robert O. Little Trust (Curtis J. Little), P.O. Box 1258, Farmington, NM 87499.
CS86–47–000	[4] 7–22–87	Zilkha Energy Co. (SKZ Inc.) Suite 3200, 1201 Louisiana Street, Houston, TX 77002–5229.
CS87–81–000	7–2–87	BK Petroleum, Inc., P.O. Box 826, Farmington, NM 87499.
CS87–82–000	7–13–87	Questa Energy Corp., P.O. Box 19297, Amarillo, TX 79114.
CS87–83–000	7–13–87	Trepco Production CO., Inc., 6600 S. Council Road., Oklahoma City, OK., 73169.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No.	Date filed	Applicant
CS87-84-000	7-16-87	Pro-Gas, Inc., P.O. Box 6243, Midland, TX 79711.
CS87-85-000	7-17-87	Bell & Kinley Co., 5560 A NW 72nd Street, Oklahoma City, OK. 73132.
CS87-86-000	7-20-87	W.C. Martin, Inc., 3220 North Freeway, Suite 120, Fort Worth, TX 76111.
CS87-87-000	7-20-87	Petro-Ventures, Inc., Suite 545 Triad Center, 501 NW Expressway, Oklahoma City, OK 73118.

[1] Letter dated and received July 15, 1987, requesting that sales by Snyder Oil Company be covered under the small producer certificate issued to John Snyder, Robert D. Snyder and Overseas Management, Inc.

[2] Letter dated July 9, 1987, received July 14, 1987, advising that Robert Neil Hillin is the owner of Hillin Production Company, and as the sole proprietor operates as R.N. Hillin, dba Hillin Production Company.

[3] Letter dated June 3, 1987, received June 8, 1987, as supplemented by letter dated June 26, 1987, received July 8, 1987, advising that Curtis J. Little is deceased and requesting that the small producer certificate issued to Curtis J. Little in Docket No. CS75-154 be redesignated under the names of his heirs and successors whose names are Curtis J. Little Oil & Gas, Curtis J. Little Estate, Curtis Little Trust, Sylvia F. Little, Susan L. Little, Robert O. Little, Susan L. Little Trust and Robert O. Little Trust.

[4] Letter dated and received July 22, 1987, requesting redesignation of small producer certificate.

[FR Doc. 87-17997 Filed 8-6-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA87-2-63-000]

Proposed Changes in FERC Gas Tariff; Carnegie Natural Gas Co.

August 4, 1987.

Take notice that Carnegie Natural Gas Company ("Carnegie") on July 31, 1987, tendered for filing as a part of its FERC Gas Tariff, First Revised Volume No. 1, six copies each of the following revised tariff sheets:

Third Revised Sheet No. 47
Third Revised Sheet No. 48

The above revised tariff sheets are being issued to reflect purchased gas cost Carnegie has experienced from its pipeline supplier, Texas Eastern Transmission Corporation ("TETCO"), and from a modification of purchase pattern in its producer purchases. The effect of such cost increases is to change its demand component from $10.0944/Dth to $10.0064/Dth and its commodity component from $2.6444 to $2.7245, the combined effect of which results in an overall increase of its combined effect of which results in an overall increase of its LVWS Rate. Carnegie's current interruptible rate of $2.9763/Dth is likewise increased to $3.0534 for its LVIS Rate.

The proposed effective date of the above tariff sheets is September 1, 1987.

Carnegie respectfully requests waiver of any provisions of its tariff, and any Regulations that the Commission may deem necessary to accept the above tariff sheets to be effective September 1, 1987, so as to have said rate change commence on the first day of a billing period.

Copies of the filing were served on Carnegie's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 11, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Carnegie's filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 87-17998 Filed 8-6-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA87-5-21-000 and TA82-1-21-001 et al.]

Proposed Changes in FERC Gas Tariff; Columbia Gas Transmission Corp.

August 4, 1987.

Take notice that Columbia Gas Transmission Corporation (Columbia) on July 31, 1987, tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1, to be effective September 1, 1987:

One hundred and nineteenth Revised Sheet No. 10
Tenth Revised Sheet No. 16A2
Forty-ninth Revised Sheet No. 64

Columbia states that the sales rates set forth on One hundred and nineteenth Revised Sheet No. 10 reflect an overall decrease of 64.94¢ per Dth in the Commodity rate and overall increase of $.937 per Dth in the Demand-1 rate and 5.00¢ per Dth in the Demand-2 rate.

These rates are comprised of the following:

(1) A Current Purchased Gas Cost Adjustment Applicable to Sales Rate Schedules;

(2) Unrecovered Purchased Gas Cost Surcharges;

(3) A negative surcharge adjustment (Benchmark Surcharge) to provide for the flow-through over the twelve-month period ending August 31, 1988, of 50% of the Decrease in Gas Costs for the twelve months ending March 31, 1987, pursuant to Article II of the April 4, 1985 Stipulation and Agreement in Docket No. TA82-1-21-001, *et al.*; and

(4) A surcharge adjustment to provide for the recovery of carrying charges related to take-or-pay reimbursements billed by Panhandle Eastern Pipe Line Company and Tennessee Gas Pipeline Company pursuant to Commission approved settlements in Docket Nos. RP83-5-000 and RP83-8-000, respectively.

In addition, the transportation rates set forth on Tenth Revised Sheet No. 16A2 reflect a decrease in the Fuel Charge component of 1.04¢ per Dth.

Copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 11, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to

intervene. Copies of Columbia's filings are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-17999 Filed 8-6-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-168-012]

Proposed Changes in FERC Gas Tariff; Columbia Gas Transmission Corp.

August 3, 1987.

Take notice that Columbia Gas Transmission Corporation (Columbia) on July 31, 1987 tendered for filing the following sheets to its FERC Gas Tariff, Original Volume No. 1:

To Be Effective April 1, 1987

Third Substitute One hundred and fifteenth Revised Sheet No. 16
Second Substitute Eighth Revised Sheet No. 16A2
Seventh Revised Sheet No. 17
Fifth Revised Sheet No. 26
Substitute First Revised Sheet Nos. 89-89F

To Be Effective May 11, 1987

Second Substitute One hundred and seventeenth Revised sheet No. 16

To Be Effective July 1, 1987

One hundred and eighteenth Revised Sheet No. 16
Ninth Revised Sheet No. 16A2

Columbia also tendered for filing Tenth Revised Sheet No. 693 to Original Volume No. 2 of its FERC Gas Tariff, to be effective July 1, 1987.

Columbia states that such changes are necessary to comply with ordering paragraphs (C) and (D) of the Commission's March 31, 1987 Order Granting Rehearing in Part and Rejecting Rehearing as Moot, 38 FERC ¶ 61,342 and with ordering paragraphs (A) and (B) of the Commission's July 16, 1987 Order Granting Rehearing in Part and Denying Clarification, 40 FERC ¶ 61,030 in this proceeding.

The filing also includes (1) a reconciliation of book and tax depreciable net plant as of June 30, 1987; (2) a comparison of the per book accumulated deferred income taxes and the associated reserve recomputed using the reduced federal income tax rate as ordered at 34 percent; and (3) a plan for refunding the excess tax reserve reflected in this recomputation and to account for the tax-on-tax effects of the foregoing calculations.

Columbia states that if the issue of the appropriate accumulated depreciation reserve level at April 1, 1987 pending before Presiding Administrative Law Judge Charles E. Bullock is ultimately decided adversely to Columbia, the refund level in the plan would have to be reduced. Columbia also states that while the filing provides for a refund of excess federal taxes, a deficiency in state deferred taxes still exists and that an addback has been reflected in the state tax calculation in order to properly fund this deficiency over the remaining twenty-three month period of the eleven-year period set forth in Article VI of the Stipulation and Agreement in Docket No. RP80-146.

A copy of the filing has been served upon each of Columbia's jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 11, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18000 Filed 8-6-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-167-010]

Proposed Changes in FERC Gas Tariff; Columbia Gulf Transmission Co.

August 4, 1987.

Take notice that Columbia Gulf Transmission Company (Columbia Gulf) on July 31, 1987 tendered for filing revised changes in its FERC Gas Tariff, Original Volume No. 1 and Original Volume No. 2 to become effective July 1, 1987.

Columbia Gulf states that such tariff sheets are necessary to place its rates into effect in accordance with the Federal Energy Regulatory Commission Order issued March 31, 1987 and July 16, 1987 at Docket Nos. RP86-167 and RP86-168.

The tariff sheets encompass Columbia Gulf's rate filing herein of February 27, 1987, with adjustments to its Revised Cost of Service to reflect the reduction in the Federal corporate income tax rate from 46% to 34% effective July 1, 1987; the "Reverse South Georgia" method of refunding the "excess" deferred tax reserve in FERC Account No. 282; and addback of deficiency in state deferred tax reserve.

Copies of this filing were served upon all of Columbia Gulf's jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's rules of practice and procedure. All such motions or protests should be filed on or before August 11, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Columbia Gulf's filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18001 Filed 8-6-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-3-22-000 (PGA87-2) (IPR87-2) and (RD&D87-3)]

Proposed Changes in FERC Gas Tariff; Consolidated Gas Transmission Corp.

August 4, 1987.

Take notice that Consolidated Gas Transmission Corporation (Consolidated) on July 31, 1987, filed the following revised tariff sheets:

Fourteenth Revised Sheet No. 31
First Revised Sheet Nos. 121 through 127 and 130 through 135
Second Revised Sheet Nos. 128, 129 and 136
Alternate Fourteenth Revised Sheet No. 31

Consolidated has included in its filing:

(a) A change in the current cost of gas of 28.23 cents per dekatherm commodity and (23) cents per dekatherm demand;

(b) A surcharge of 16.35 cents per dekatherm to recoup amounts accumulated in Account 191, Unrecovered Purchased Gas costs;

(c) A refund credit of 8.16 cents per dekatherm to flow through supplier refunds.

As part of its filing, Consolidated has revised section 12 of its tariff (PGA clause) in order to reduce the seasonal rate variations that have been the subject of recent customer and state commission concern.

Copies of the filing were served upon Consolidated's sales customers as well as interested state commissions.

Concurrently with these PGA changes, Consolidated also includes a separately stated rate surcharge to recover its funding of take-or-pay payments made by Tennessee Gas Pipeline Company under the procedures approved in the Commission's order issued on April 16, 1985, in *Columbia Gas Transmission Corporation v. Tennessee Gas Pipeline Company, et al.*, in Docket Nos. RP83–8, *et. al.* The take-or-pay surcharge is 0.03 cents per dekatherm.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All motions or protests should be filed on or before August 11, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–18002 Filed 8–6–87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID–2206–000]

Notice of Filing; H. L. Culbreath

August 3, 1987.

Take notice that on July 29, 1987, H. L. Culbreath filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Chairman of the Board, President and Director—Tampa Electric Co.
Director, NCNB Corp.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 17, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–18003 Filed 8–6–87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA87–54–000]

Petition for Adjustment; Forman Exploration Co.

Issued August 3, 1987.

On July 1, 1987, Forman Exploration Company (Forman) filed with the Federal Energy Regulatory Commission a petition for adjustment pursuant to Commission Order No. 399–A,[1] section 502(c) of the Natural Gas Policy Act of 1978–A,[2] and Subpart K of the Commission's Rules of Practice and Procedure.[3] Forman seeks waiver of its obligations attributable to royalty payments to the State of Louisiana. Under Commission Order Nos. 399, 399–A, and 399–B, these refunds were due by November 5, 1986,[4] but this deadline has been postponed.[5]

Forman states that the Louisiana Department of Natural Resources, Office of Mineral Resources, State Mineral Board, adopted a resolution October 9, 1985, refusing to refund overpaid royalties under Commission Order Nos. 399, 399–A, and 399–B. Forman states that it considers the refund obligations uncollectible as a result. Forman requests release subject to any change in the State Mineral Board's position. Should the State of Louisiana change its position and refund overpaid royalties, Forman states that it will promptly remit these refund obligations.

The procedures applicable to the conduct of this waiver proceeding are found in Subpart K of the Commission's rules of practice and procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of Rules 214 and 1106 of the Commission's rules of practice and procedure. All motions to intervene must be filed within 15 days after publication of this notice in the Federal Register.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–18004 Filed 8–6–87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87–772–000]

Application; Matagorda Island Exploration Corp.

August 3, 1987.

Take notice that on July 17, 1987, Matagorda Island Exploration Corporation (Applicant), of P.O. Box 1330, Houston, Texas 77251–1330, filed an application pursuant to 18 CFR 154.92(d) and 154.94, and 157.23 *et seq.*, for a Certificate of Public Convenience and Necessity to continue the sales of natural gas previously authorized to be sold by various Parties (the Parties) named therein under the contracts listed on Attachment I hereto. The sales of gas by the Parties have been previously been covered under Small Producer Certificates of Public Convenience and Necessity issued to Stevens County Oil and Gas Company in Docket No. CS72–178 or Union National Bank of Wichita, as Executor of the Estate of Walter F. Kuhn, deceased in Docket No. CS 71–158. The rights and interest of the Parties in various counties in Kansas were assigned to Applicant effective December 1, 1986.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 14, 1987, filed with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to

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[1] Refunds Resulting from Btu Measurement Adjustments, 49 FR 48353 (November 28, 1984); FERC Stats. & Regs. [Regulations Preambles 1982–1985] ¶ 30,612.

[2] 15 U.S.C. 3412(c) (1982).

[3] 18 CFR 385.1101 through 385.1117 (1986).

[4] 49 FR 37735 at 37740 (September 26, 1984), FERC Stats. & Regs. [Regulations Preambles 1982–1985] ¶ 30,597 at 31,150. In Order No. 399, the Commission established refund procedures for charges for natural gas that exceeded NGPA ceilings as a result of Btu measurements based on the water vapor content of the gas "as delivered," rather than on a water saturated basis. In so doing, the Commission was implementing the decision in Interstate Natural Gas Association of America v. Federal Energy Regulatory Commission, 716 F.2d 1 (D.C. Cir. 1983), cert. denied, 465 U.S. 1109 (1984).

[5] In Order No. 399–C, issued November 5, 1986, the Commission postponed the November 5, 1986 deadline for payment of Btu refunds attributable to royalty payments for any first seller that has a petition on file with the Commission seeking waiver of or postponement of the deadline to pay Btu refunds attributable to royalty payments.

be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,
Secretary.

ATTACHMENT I TO APPLICATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY OF MATAGORDA ISLAND EXPLORATION CORPORATION

Contract No.	Rate schedule No.	Contract date	Field	Purchaser	Applicable rate	Effective date of rate establishment
1		11-18-55	Hugoton	Greeley Gas Co	$.75	12-01-86
					$.327	12-01-86
2		11-18-55	Hugoton	Greeley Gas Co	$.327	12-01-86
					$.25	12-01-86
3		01-04-56	Hugoton	KN Energy, Inc	$.327	12-01-86
4		10-17-44	Hugoton	Northern Natural Gas Co	$.327	12-01-86
					$.827	12-01-86
					$3.151	12-01-86
5		06-07-75	Hugoton	Northern Natural Gas Co	$1.237	12-01-86
6		08-23-48	Hugoton	Northern Natural Gas Co	$.827	12-01-86
7		09-09-47	Hugoton	Northern Natural Gas Co	$.327	12-01-86
					.827	12-01-86
8		05-01-59	Hugoton & Panoma Council Grove.	Panhandle Eastern Pipe Line Co	$.827	12-01-86
					$2.206	12-01-86
					$2.909	12-01-86
					$3.151	12-01-86
					$4.749	12-01-86
9		03-11-60	Hugoton	Panhandle Eastern Pipe Line Co	$.827	12-01-86
10		12-06-60	Hugoton, Gentzler & Panoma Council Grove.	Panhandle Eastern Pipe Line Co	$.827	12-01-86
					$2.206	12-01-86
					$3.151	12-01-86
					$4.749	12-01-86
11		11-01-57	Hugoton Wilburton N Greenwood.	Panhandle Eastern Pipe Line Co	$.827	12-01-86
					$4.749	12-01-86
12		09-01-59	Hugoton	Panhandle Eastern Pipe Line Co	$.827	12-01-86
13		05-10-61	Hugoton & Panoma Council Grove.	Panhandle Eastern Pipe Line Co	$.327	12-01-86
					$.827	12-01-86
					$3.151	12-01-86

[FR Doc. 87-18005 Filed 8-6-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA87-3-26-001]

Proposed Changes in Rates; Natural Gas Pipeline Co. of America

August 4, 1987.

Take notice that on July 27, 1987, Natural Gas Pipeline Company of America (Natural) tendered for filing the following tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1, to be effective September 1, 1987:

Substitute Sixty-sixth Revised Sheet No. 5
Substitute Thirty-third Revised Sheet No. 5A

Natural states that the purpose of the instant filing is to amend Natural's semi-annual PGA unit rate adjustment (including revised surcharge) filed on July 23, 1987 to partially comply with the Commission's Opinion Nos. 256 and 256-A. The partial compliance relates to Natural's Canadian purchases from ProGas Ltd. Natural states that it has deferred making a compliance filing respecting Great Lakes' charges until the Commission acts on relevant Great Lakes proceedings.

Natural states that the overall effect of the amendment reduces Natural's DMQ-1 demand and entitlement rates by $.07 and .16¢, respectively, while increasing Natural's DMQ-1 commodity rate by 3.26¢. Corresponding adjustments were made to Natural's other rates and charges to maintain the same rate design relationship. Natural requests that the amendment become effective September 1, 1987, the same date on which Natural's regular PGA will become effective.

A copy of this filing is being mailed to Natural's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 11, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make portestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 87-18006 Filed 8-6-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CI87-776-000]

Application; Odeco Oil & Gas Co.

August 3, 1987.

Take notice that on July 20, 1987, Odeco Oil & Gas Company (Applicant), of P.O. Box 61780, New Orleans, Louisiana 70161, filed an application pursuant to sections 4 and 7 of the Natural Gas Act (NGA), 15 U.S.C. 717 (c) and (f), and the provisions of 18 CFR Part 157, of the Commission's Regulations, for a blanket certificate of public convenience and necessity to authorize a sale of natural gas for resale in interstate commerce and confer pregranted abandonment for sales of gas actually sold under the certificate. Applicant proposes to sell natural gas produced by Applicant and Applicant's working interest owners from reservoirs located in the Outer Continental Shelf which have not been previously committed.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 17, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18007 Filed 8-6-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP77-253-025 et al.]

Proposed Changes in FERC Gas Tariff; Panhandle Eastern Pipe Line Co.

August 4, 1987.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on July 28, 1987 tendered for filing the following sheets to its FERC Gas Tariff, Original Volume No. 2:

Rate Schedule TS-2

Seventh Revised Sheet No. 986
Ninth Revised Sheet No. 987
Third Revised Sheet No. 1006
Third Revised Sheet No. 1021
Third Revised Sheet No. 1034
Third Revised Sheet No. 1047

Rate Schedule TS-3

Third Revised Sheet No. 1089
Sixth Revised Sheet No. 1091
Third Revised Sheet No. 1113
Third Revised Sheet No. 1126

Rate Schedule TS-4

Sixth Revised Sheet No. 1712
Fourteenth Revised Sheet No. 1733
Fourteenth Revised Sheet No. 1741
Fourteenth Revised Sheet No. 1749
Fourteenth Revised Sheet No. 1759
Eleventh Revised Sheet No. 1760.5

Rate Schedule TS-5

Fifth Revised Sheet No. 1812
Fifth Revised Sheet No. 1813
Fourteenth Revised Sheet No. 1834
Fourteenth Revised Sheet No. 1842

Rate Schedule TS-6

Second Revised Sheet No. 3019
Second Revised Sheet No. 3020
Second Revised Sheet No. 3043
Second Revised Sheet No. 3057
Second Revised Sheet No. 3071
Second Revised Sheet No. 3084

Panhandle proposes that these tariff sheets become effective July 1, 1987.

Panhandle states that such changes are made to amend Rate Schedules TS-2, TS-3, TS-4, TS-5 and TS-6 for the transportation and storage of natural gas on behalf of various Panhandle customers, with Michigan Consolidated Gas Company, Interstate Storage Division (ISD). Specifically, such changes are made to incorporate ISD's current storage and transportation charges in Docket No. RP84-13-004 pursuant to the Commission Order issued May 12, 1987.

A copy of this filing has been served on the various Panhandle storage customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such petitions or motions should be filed on or before August 11, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18008 Filed 8-6-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-785-000]

Application; Phillips 66 Natural Gas Co.

August 3, 1987.

Take notice that on July 22, 1987, Phillips 66 Natural Gas Company (Phillips 66 NGC), of 990-G Plaza Office Building, Bartlesville, Oklahoma 74004, filed an application pursuant to sections 4 and 7 of the Natural Gas Act (NGA) and Parts 154 and 157 of the Commission's Regulations for (1) blanket sales certificates of public convenience and necessity authorizing sales into interstate commerce of any gas subject to Natural Gas Act jurisdiction; (2) pregranted abandonment of any such sale; and (3) waiver of requirements for filing and maintaining rate schedules.

The gas that Phillips 66 NGC would be purchasing and reselling under the blanket certificate would be gas released under other LTA authorizations, gas released pursuant to the Order No. 451 series, or any other natural gas subject to the Commission's Natural Gas Act jurisdiction which has been freed from requirements for continued deliveries to the previously certificated producer.

Phillips 66 NGC requests that the Commission waive Part 154 of its regulation as to the establishment and maintenance of rate schedules. Phillips 66 NGC requests permission to automatically collect the appropriate monthly adjustment under the Commission's wellhead ceiling price regulations without the filing of blanket affidavits pursuant to §154.94(h). In addition, Phillips 66 NGC requests that, to the extent it qualifies for collection for any applicable allowances under Section 110 of the Natural Gas Policy Act of 1978 and Subpart K, Part 271 of the Commission's regulations, it be permitted to collect such allowance without filing of affidavits pursuant to §154.94(k) of the Commission's regulations.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 17, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18009 Filed 8-6-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-724-000]

Application for Permanent Abandonment; Pogo Producing Co.

August 3, 1987.

Take notice that on June 26, 1987, as supplemented on July 20, 1987, Pogo Producing Company ("Pogo") filed an

application pursuant to section 7(b) of the Natural Gas Act and §§ 2.77 and 157.30 of the Commission's Regulations requesting authority to permanently abandon sales of natural gas from Eugene Island Blocks 295 and 330 and East Cameron 295, Offshore Louisiana, certificated by the Commission in Docket Nos. CI73–477 and CI73–546 and covered under Pogo's FERC Gas Rate Schedule Nos. 1, 2 and 3.

Pogo states that the pipeline purchaser of the gas from these producing properties, Sea Robin Pipeline Company (Sea Robin), has terminated its purchases of the Pogo production certificated in Docket Nos. CI73–477 and CI73–546. Pogo states that in October 1986 Sea Robin notified Pogo that it was electing to act under the economic provisions of the parties' gas purchase contracts and Pogo exercised its right to terminate the contracts rather than accept the provisions offered by Sea Robin. Shortly after the date of contract termination, February 22, 1987, Sea Robin totally ceased its purchases of Pogo production from the subject properties.

Because Sea Robin's purchases of Pogo production certificated in the above-referenced dockets totally ceased shortly after cancellation of the underlying gas purchase contracts between Pogo and Sea Robin, Pogo requests that the instant application be considered under the Commission's procedure for expedited abandonment prescribed in § 2.77 of the Commission's Regulations.[1]

Pogo states that while the sales covered herein are eligible for release under Sea Robin's limited-term abandonment program authorized by the Commission's June 17, 1987, order in Docket No. CI87–595–000 and CI87–597–000, 39 FERC ¶ 61,311 (1987), Pogo would prefer the greater flexibility and certainty afforded by permanent abandonment authority. With permanent abandonment authority, Pogo states it will be able to market is production for the short term under the authority of independent marketer LTA programs, *e.g.: Entrade Corp., et al.*, 38 FERC ¶ 61,344 (1987), and, at such time as Pogo may enter a long-term arrangement for the sale of its production, it may apply to the Commission for its own authority to make sales for resale in interstate commerce.

Pogo states that the deliverability is approximately 75.652 MMcf/d. The gas is NGPA section 104 flowing (26%), 1973–1974 biennium (1%), post 1974 (6%), 102(d) (20%) and optional certificate procedure Order No. 455 gas (47%).

Since applicant alleges that it is subject to substantially reduced takes without payment and has requested that its application be considered on an expedited basis, all as more fully described in the attached tabulation and in the applications which are on file with the Commission and open to public inspection, any person desiring to be heard or to make any protest with reference to said application should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–18010 Filed 8–6–87; 8:45 am]

BILLING CODE 6717–01–M

[1] The United States Court of Appeals for the District of Columbia vacated the Commission's Order No. 436 on June 23, 1987. In vacating Order No. 436, the Court rejected challenges to the Commission's statement of policy in § 2.77 of its Regulations. Section 2.77 states that the Commission will consider on an expedited basis applications for certificate and abandonment authority where the producers assert they are subject to substantially reduced takes without payment.

[Docket No. CI87–735–000]

Application for Limited-Term Abandonment With Pregranted Abandonment for Sales Under Small Producer Certificate

August 3, 1987

Take notice that on June 30, 1987, as supplemented by letter dated July 20, 1987, Total Minatome Corporation (Total), filed an application pursuant to section 7(b) of the Natural Gas Act and § 2.77 of the Commission's rules. Total requests three-year limited-term abandonment of the excess natural gas sold to Northern Natural Gas Company, Division of Enron Corp., from the Gomez Field, Pecos County, Texas. Total requests three-year pregranted abandonment for any sales for resale in interstate commerce of the released gas. A small producer certificate was issued to Minatome Corporation in Docket No. CS86–30–000. Minatome Corporation states that it changed its name to Total Minatome Corporation, effective May 1, 1987.

In support of its application Total states it is subject to substantially reduced takes without payment.[1] The deliverability is 16 MMcf/d. The gas is NGPA section 104 Certain Permian Basin Area. Northern is currently taking approximately 10% of the deliverability from the subject wells.

Since Total alleges that it is subject to substantially reduced takes without payment and has requested that its application be considered on an expedited basis, all as more fully described in the application which is on file with the Commission and open to public inspection, any person desiring to be heard or to make any protest with reference to said application should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in a proceeding must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Total to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–18011 Filed 8–6–87; 8:45 am]

BILLING CODE 6717–01–M

[1] The United States Court of Apeals for the District of Columbia vacated the Commission's Order No. 436 on June 23, 1987. In vacating Order No. 436, the Court rejected challenges to the Commission's statement of policy in § 2.77 of its Regulations. Section 2.77 states that the Commission will consider on an expedited basis applications for certificate and abandonment authority where the producers assert they are subject to substantially reduced takes without payment.

[Docket No. RP87-81-000]

Petition For Declaratory Order; Transcontinental Gas Pipe Line Corp. and Texas Eastern Transmission Corp.

August 4, 1987.

Take notice that on July 27, 1987, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, and Texas Eastern Transmission Corporation (TETCO), P.O. Box 2521 Houston, Texas 77252, filed in Docket No. RP87-81-000 a petition pursuant to Rule 207 of the Commission's Rules of Practice and Procedure (18 CFR § 385.207) for a declaratory order declaring that a proposed exchange of gas between Transco and TETCO may be done pursuant to rate schedules on file with the Commission without subjecting either Transco ot TETCO to the open-access provisions of Order No. 436.

The petition states that there currently exists an agreement between TETCOP and Transco which provides for the exchange of natural gas by mutual dispatching agreement. Service under the agreement has been certificated under the Natural Gas Act and the agreement is on file as TETCO's Rate Schedule X-14 and Transco's Rate Schedule X-4.

TETCO currently renders service to Consolidated Edison Company of New York, Inc., The Brooklyn Union Gas Company and Long Island Lighting Company (New York LDC's), making deliveries of gas to the New York LDC's at TETCO's measuring and regulating station No. 858 into a pipeline jointly owned by the New York LDC's. On May 11, 1987, the pipeline was taken out of service for upgrading and will remain out of service until mid-September 1987. TETCO likewise has facilities out-of-service. Pending the return to service of the facilities, TETCO proposes to make deliveries of gas to the New York LDC's through an exchange of gas with Transco at existing interconnections between their systems, with delivery of the gas by Transco to the New York LDC's through existing delivery points, all pursuant to the previously certificated exchange agreement.

In the past, it is stated, Transco had been assisting TETCO in making deliveries to the New York LDC's by accepting deliveries of gas at existing interconnections and transporting the gas pursuant to the open-access provisions of Order No. 436. However, Transco has recently chosen to terminate open-access transportation. The petition states that TETCO believes that Transco can perform the exchange service pursuant to Rate Schedules X-4 and X-14 for the benefit of the new York LDC's. However, it is stated, Transco has replied that it believes the rate schedules do not apply to service for the benefits of the New York LDC's and that undertaking transportation pursuant to these rate schedules would subject Transco to the open-access provisions of Order No. 436. Therefore, TETCO has requested that the Commission issue an order declaring that Rate Schedules X-4 and X-14 are operable in the circumstances described above and that operation of the above described certificated exchange agreement between TETCO and Transco will not subject them to the open-access provisions of Order No. 436.

Any person desiring to be heard or to make any protest with reference to said petition should on or before August 19, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18012 Filed 8-6-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-2-30-000]

Change in Tariff; Trunkline Gas Co.

August 4, 1987.

Take notice that on July 31, 1987, Trunkline Gas Company (Trunkline) tendered for filing Fifty-Sixth Revised Sheet No. 3-A and Fourteenth Revised Sheet No. 3-B to its FERC Gas Tariff, Original volume No. 1.

The proposed effective date of these revised tariff sheets is September 1, 1987.

Trunkline states that these revised tariff sheets reflect a commodity rate decrease of (3.42¢) per Dt. to implement Trunkline's annual PGA unit rate adjustment pursuant to section 18 of the General Terms and Conditions of Trunkline's Tariff. Trunklines further states that the revised tariff sheets filed herewith reflect Projected Incremental Pricing Surcharges in accordance with section 21 of the General Terms and Conditions of Trunkline's Tariff.

To the extent required, if any Trunkline requests that the Commission grant such waivers as may be necessary for acceptance of the tariff sheets submitted herewith, to become effective September 1, 1987, as previously described. This filing is subject to Trunkline's rights respecting unresolved prior PGA and rate filings.

Copies of this letter and enclosures are being served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such petitions or protests should be filed on or before August 11, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18013 Filed 8-6-87; 8:45 am]

BILLING CODE 6717-01-M

[Dockets Nos. CI87-665-000 and CI87-668-000]

Application for Permanent Abandonment and Blanket Certificate With Pregranted Abandonment; Union Oil Co. of California

August 3, 1987.

Take notice that on June 2 and June 22, 1987, as supplemented July 24, 1987, Union Oil Company of California (Union) filed applications pursuant to section 7 of the Natural Gas Act and § 2.77 of the Commission's rules. Union requests authorization for a permanent abandonment of its sale of gas in Docket No. CI87-665-000 to El Paso Natural Gas Company (El Paso) from the PBM Unit #1, Gomez Field, Pecos County, Texas, and for a three year blanket limited-term certificate with pregranted abandonment in Docket No. CI87-668-000 to sell such natural gas in interstate commerce.

In support of its applications Union states that the contract dated March 13,

1987, expired May 10, 1987, and El Paso has not offered a new contract. The sale was made under a certificate issued in Docket No. CI87-1366 and covered under Union's FERC Gas Rate Schedule No. 177. For sometime El Paso has taken substantially less gas without payment from the property.[1] Now that the contract has expired Union states that El Paso will not take any gas volumes from the PBM Unit #1. Union's interest consists of approximately 600 Mcf/day of section 104 flowing gas. Union desires to seek a new buyer, or buyers.

Since Union indicates its well is experiencing substantially reduced takes without payment and has requested that its application be considered on an expedited basis, all as more fully described in the application which is on file with the Commission and open to public inspection, any person desiring to be heard or to make any protest with reference to said application should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in a proceeding must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Union to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18014 Filed 8-6-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-795-000]

Application Val Gas, L.P.

August 3, 1987.

Take notice that, pursuant to sections 4 and 7 of the Natural Gas Act ("NGA"), 15 U.S.C. 717c and 717f, and Parts 154 and 157 of the Federal Energy Regulatory Commission ("Commission") Regulations Under the NGA, 18 CFR Parts 154 and 157, Val Gas, L.P. ("Val Gas") filed on July 24, 1987, an application which requests (1) an order (a) issuing a blanket certificate of public convenience and necessity for the sale for resale of gas (including gas qualifying under sections 102(d), 104, 106(a), 107(c)(5), 108 and 109 of the Natural Gas Policy Act ("NGPA")) in interstate commerce by Val Gas and any producer from whom Val Gas purchases gas, (b) issuing a blanket certificate of public convenience and necessity for sales for resale of gas in interstate commerce by producers through Val Gas as their agent, and (c) authorizing pre-granted abandonment of sales authorized in (a) and (b) above.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 17, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385 .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18015 Filed 8-6-87; 8:45 am]

BILLING CODE 6717-01-M

[1] The United States Court of Appeals for the District of Columbia vacated the Commission's Order No. 436 on June 23, 1987. In vacating Order No. 436, the Court rejected challenges to the Commission's statement of policy in § 2.77 of its Regulations. Section 2.77 states that the Commission will consider on an expedited basis applications for certificate and abandonment authority where the producers assert they are subject to substantially reduced takes without payment.

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3243-9]

Environmental Impact Statements; Availability

Responsible Agency

Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements Filed July 27, 1987 Through July 31, 1987

EIS No. 870259, DSuppl, COE, CA, Sacramento River Bank Protection Project, Butte Basin Reach Stabilization, Updated Information, Butte and Glenn Counties, Due: September 21, 1987, Contact: Mike Welsh (916) 551-1861.

EIS No. 870260, Final, COE, IA-415 Highway Modifications, Segment C, IA-415 and NW 78th Street to Barrier Dam Roadway, Saylorville Lake Recreation Areas, Access Roadway Improvement Under Section III of the Water Resource Act 1976, Polk County, Due: September 8, 1987, Contact: Jon Duyvejonck (309) 788-6361.

EIS No. 870261, Draft, FHW, IN, US 231/ Wabash River Crossing Relocation and Construction, County Road 350S to West Lafayette, Wabash River, Tippecanoe County, Due: September 21, 1987, Contact: James Threlkeld (317) 269-7494.

EIS No. 870262, FSuppl, COE, OK, Clayton (Sardis) Lake, Jackfork Creek, Dam and Lake Construction, Daisy to Sardis Lake Access Road Construction, Additional Information, Due: September 8, 1987, Contact: Paul Mace (918) 581-7857.

EIS No. 870263, DSuppl, USA, WA, Fort Lewis Military Installation, Fort Lewis and Yakima Firing Center, High-Technology Motorized Division Conversion, 9th Infantry Division, Updated Information, Due: September 21, 1987, Contact: Gary Stedman (206) 967-5337.

EIS No. 870264, Draft, EPA, FL, Charlottee Harbor Ocean Dredged Material Disposal Site, Permanent Designation, Due: September 21, 1987, Contact: Sally Turner (404) 347-2126.

EIS No. 870265, Draft, BLM, AZ, CA, Yuma District Wilderness Study Areas Wilderness Designation, Recommendations, Due: November 20, 1987, Contact: Darwin Snell (602) 726-6300.

EIS No. 870266, Final, BLM, CO, Wolf Ridge Nahcolite Solution Mine, Construction and Operation, Piceance Basin, Plan Approval, Rio Blanco County, Due: September 8, 1987, Contact: Willy Frank (303) 878-3601.

EIS No. 870267, Final, BLM, NV, Wells Resource Areas, Wilderness Study Areas Wilderness Designation, Recommendations, Elko County, Due: September 8, 1987, Contact: Rodney Harris (702) 738-4071.

EIS No. 870268, Final, BLM, CO, Gunnison Basin, American Flats and Silverton Planning Units, Wilderness Study Areas Wilderness Designation, Recommendations, Due: September 8, 1987, Contact: Terry Reed (303) 641-0471.

Dated: August 4, 1987.
Richard E. Sanderson,
Director, Office of Federal Activities.
[FR Doc. 87-18035 Filed 8-6-87; 8:45 am]
BILLING CODE [illegible]

[ER-FRL-3244-5]

Environmental Impact Statements and Regulations; Availability of EPA Comments Prepared July 20, 1987 Through July 24, 1987

Availability of EPA comments prepared July 20, 1987 through July 24, 1987 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act (CAA) and section 102(2)(c) of the National Environmental Policy Act (NEPA) as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076/73. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the Federal Register dated April 24, 1987 (52 FR 13749).

Draft EISs

ERP No. DS-BLM-K08005-00, Rating EC2, Devers-Palo Verde No. 2, 500 kV Transmission Line Project, Construction and Operation, Right-of-Way Grant, Additional Alternatives, CA and AZ. *Summary:* EPA expressed environmental concerns because the draft supplemental EIS did not demonstrate the project's compliance with the section 404(b)(1) Guidelines of the Clean Water Act, which regulate the discharge of dredged or fill material into waters of the U.S., including riparian areas and desert washes that could be impacted by project features.

ERP No. D-FHW-E40708-GA, Rating EC2, Mansell Rd./GA-400 Interchange Extension, Mansell Rd./Old Roswell Rd. Intersection to Old Alabama Rd./Turner Rd., 404 Permit, GA. *Summary:* EPA's concerns were the lack of a Wetlands Mitigation Plan, design year Level of Service values (air quality), detailed analysis of only one build alternative, and noise impacts. As a result, more information was requested in these areas and additional consideration of noise documentation and abatement. EPA also requested that the close consultation with local governments contributing to funding be continued.

ERP No. D-SFW-L64036-AK, Rating EC2, Yukon Delta Nat'l Wildlife Refuge, Long Term Mgmt. Plan and Wilderness Review, AK. *Summary:* EPA's major concern involved the requirement for additional funding and staff level increases in order to fully implement the management directives encompassed by each alternative. The draft EIS noted that the funding and staff levels would have to more than double to fully implement any of the four alternatives. EPA suggested that the final EIS discuss the funding process and present contingency plans for implementing each alternative in the event that funding is inadequate.

ERP No. D-USA-L11007-WA, Rating EC2, Yakima Firing Center Expansion of Military Training Center, Land Acquisition, Fort Lewis Military Installation, 9th Infantry Division, WA. *Summary:* The draft EIS identifies, generally, a number of significant environmental resources and ecosystems that will be affected by the proposed training center expansion. However, the EIS does not respond adequately to a number of environmental issues EPA raised during the scoping process. These issues include: Air quality impacts, noise mitigation, water quality impacts, and justification for the need for the two Columbia River crossing sites.

Final EISs

ERP No. F-AFS-L65098-ID, Challis Nat'l Forest, Land and Resource Mgmt. Plan, ID. *Summary:* EPA's major concern with the final EIS and Forest Plan is that the interrelationship between major components of the forest management process is not clearly described. Also the level of detail and commitment for monitoring was not commensurate with the sensitivity of the resources in the Forest nor the inadequacy of the existing data base.

ERP No. F-FHW-D40213-DE, US-13 Relief Route Construction, DE-7 to US 113/US 13, 404 Permit, DE. *Summary:* EPA's review found that the final EIS satisfactorily addressed earlier concerns regarding the draft EIS. However, EPA is concerned about the lack of clarity in some sections of the final EIS and recommends their modification.

ERP No. FS-FHW-E40150-FL, Port Everglades Expressway/I-595 Construction, I-95/FL-736/Davie Blvd. Improvement, S. Fork New River to Broward Blvd., FL. *Summary:* EPA was primarily concerned that the final supplemental EIS did not indicate whether the proposed project was considered in an areawide hydrocarbon burden analysis as the project area is in a nonattainment for ozone area. Although this and other air quality concerns were orally resolved, follow-up documentation was requested. EPA also requested follow-up regarding noise impacts, the need for a clearer commitment for noise abatement, and planned additional noise studies.

Regulation

ERP No. R-FCC-A99077-00, 47 CFR Part 80, Protection From Potentially Hazardous Environmental Radiofrequency Radiation From Ship Earth Stations and Ship Radar Stations (52 FR 18409). *Summary:* EPA is concerned that the minimal voluntary requirements of the FCC's proposed rule do not provide sufficient protection to human health from radiofrequency (RF) radiation and urges FCC to take a more active role in this effort.

Dated: August 4, 1987.
Richard E. Sanderson,
Director, Office of Federal Activities.
[FR Doc. 87-18036 Filed 8-6-87; 8:45 am]
BILLING CODE [illegible]

[OPTS-59247; FRL-3243-3]

Test Market Exemption Applications

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of four applications for exemption, provides a summary, and requests comments on the appropriateness of granting the exemption.

DATE: Written comments by August 24, 1987.

ADDRESS: Written comments, identified by the document control number "[OPTS-59247]" and the specific TME number should be sent to: Document Control Officer (TS-790), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. L-100, 401 M Street, SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances,

Environmental Protection Agency, Rm. E–611, 401 M Street, SW., Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TMEs received by EPA. The complete non-confidential document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

T 87–21

Close of Review Period. August 30, 1987.
Manufacturer. Henkel Corporation.
Chemical. (G) Polyalkoxylated polyamide.
Use Production. (S) Softener on textile substrates. Prod. range: 0 to 10,000 lbs/yr.

T 87–22

Close of Review Period. August 30, 1987.
Manufacturer. Henkel Corporation.
Chemical. (G) Polyalkoxylated polyamide.
Use/Production. (S) Softener on textile substrates. Prod. range: 0 to 10,000 lbs/yr.

T 87–23

Close of Review Period. August 30, 1987.
Manufacturer. Henkel Corporation.
Chemical. (G) Polyalkoxylated polyamide.
Use/Production. (S) Softener on textile substrates. Prod. range: 0 to 10,000 lbs/yr.

T 87–24

Close of Review Period. August 30, 1987.
Manufacturer. Henkel Corporation.
Use/Production. (S) Softener on textile substrates. Prod. range: *Chemical.* (G) Polyalkoxylated polyamide. 0 to 10,000 lbs/yr.

Dated: July 31, 1987.

Denise Devoe,

Acting Division Director, Information Management Division.

[FR Doc. 87–17884 Filed 8–6–87; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–53245A; FRL–3243–2]

Certain Chemical; Approval of Test Marketing Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for a test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA). TME–87–19. The test marketing conditions are described below:

EFFECTIVE DATE: July 31, 1987.

FOR FURTHER INFORMATION CONTACT: Keith Cronin, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, RM. E–611, 401 M St. SW., Washington, DC 20460, (202–382–3769).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME–87–19. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present any unreasonable risk of injury to health or the environment. The production volume must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME–87–19. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the Company shall maintain the following records until five years after the dates they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantity of the TME substance produced and the date of manufacture.

2. The applicant must maintain records of dates of the shipment to each customer and the quantities supplied in each shipment.

3. The applicant must maintain copies of the bills of lading that accompany each shipment of the TME substance.

T–87–19

Date of Receipt: June 12, 1987.
Notice of Receipt: June 29, 1987 (52 FR 24217).
Applicant: Confidential.
Chemical: (G) A flourinated polyol.
Use: (G) Industrial protective coating.
Production Volume: Confidential.
Number of Customers: Confidential.
Worker Exposure: Confidential.
Test Marketing Period: Eighteen Months.
Commencing on: Date of Manufacture.
Risk assessment: No significant health or environmental concerns were identified. The estimated worker exposure and environmental release of the test market substance are expected to be low. The test market substance will not present any unreasonable risk of injury to health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: July 31, 1987.

Susan F. Vogt,

Acting Director, Office of Toxic Substances.

[FR Doc. 87–17885 Filed 8–6–87; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–51686; FRL–3241–8]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of twenty-seven such PMNs and provides a summary of each.

DATES: Close of Review Period:

P 87–1435—October 13, 1987
P 87–1436 and 87–1437—October 14, 1987

P 87-1438, 87-1439, 87-1440 and 87-1441—October 17, 1987
P 87-1442, 87-1443, 87-1444, 87-1445 and 87-1446—October 18, 1987
P 87-1447, 87-1448, 87-1449, 87-1450, 87-1451, 87-1452 and 87-1453—October 19, 1987
P 87-1454, 87-1455, 87-1456, 87-1457, 87-1458, 87-1459, 87-1460 and 87-1461—October 20, 1987

Written comments by:

P 87-1435—September 13, 1987
P 87-1436 and 87-1437—September 14, 1987
P 87-1438, 87-1439, 87-1440 and 87-1441—September 17, 1987
P 87-1442, 87-1443, 87-1444, 87-1445 and 87-1446—September 18, 1987
P 87-1447, 87-1448, 87-1449, 87-1450, 87-1451, 87-1452 and 87-1453-September 19, 1987
P 87-1454, 87-1455, 87-1456, 87-1457, 87-1458, 87-1459, 87-1460 and 87-1461—September 20, 1987

ADDRESS: Written comments, identified by the document control number "[OPTS-51686]" and the specific PMN number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. L-100, 401 M Street, SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the PMNs received by EPA. The complete non-confidential PMNs are available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 87-1435

Manufacturer. Confidential.
Chemical. (G) Sodium salt of thiocarbonate sulfonate.
Use-Production. (G) Plating additive—contained use. Prod. range: Confidential.

P 87-1436

Importer. Wacker Chemicals (USA), Incorporated.
Chemical. (S) Dodecanoic acid, ethenyl ester.
Use-Import. (S) Industrial monomer for polymerization. Import range: Confidential.

P 87-1437

Manufacturer. Confidential.
Chemical. (G) Ester of alkenyl succinic anhydride.
Use/Production. (G) Alkaline sizing agent in paper processing. Prod. range: Confidential.
Toxicity Data. Acute oral: >5.0 g/kg; Acute dermal: >2.0 g/kg; Irritation: Skin—Irritant, Eye—Irritant; LC_{50} 96 hour (Fathead minnow): >1.0 mg/1.

P 87-1438

Manufacturer. Cardolite Corporation.
Chemical. (G) Dodecylphenol polymer with formaldehyde polyamine resin.
Use/Production. (S) Industrial and commercial curing agent (hardener) for epoxy resins. Prod. range: Confidential.

P 87-1439

Importer. Confidential.
Chemical. (G) Quarternary ammonium salt.
Use/Import. (S) Antistatic agent. Import range: Confidential.

P 87-1440

Importer. Marubeni America Corporation.
Chemical. (S) Propanenitrile, 3-[[4-[(dichloro-2-benzothiazolyl) azo]-3-methylphenyl]ethylamino]-.
Use/Import. (S) Commercial dye for polyester fibres. Import range: 10,000 kg/yr.
Toxicity Data. Acute oral: 5,000 mg/kg; Ames test: Positive; TLm 48 hours (Orange Medaka): 100 parts per million (ppm).

P 87-1441

Importer. Marubeni America Corporation.
Chemical. (S) Propanamide, N-[2-[(5,7,-dibromo-2,1-benzisothiazol-3-yl)azo]-5-(diethylamino)phenyl]-.
Use/Import. (S) Commercial dye for polyester fibres. Import range: 10,000 kg/yr.
Toxicity Data. Acute oral: 5,000 mg/kg; Ames test: Positive; TLm 48 hours (Orange Medaka): 77 ppm.

P 87-1442

Importer. Albright and Wilson Incorporated.
Chemical. (G) Alkyl acrylate polymer.
Use/Import. (S) Industrial pour point depressant. Import range: Confidential.

P 87-1443

Importer. Albright and Wilson Incorporated.
Chemical. (G) Alkyl methacrylate polymer.
Use/Import. (S) Industrial, commercial and consumer viscosity index improver for automatic transmission fluids. Import range: Confidential

P 87-1444

Importer. Albright and Wilson Incorporated.
Chemical. (G) Alkyl methacrylate polymer.
Use/Import. (S) Industrial, commercial and consumer viscosity index improver for lubricants. Import range: Confidential.

P 87-1445

Importer. Albright and Wilson Incorporated.
Chemical. (G) Alkyl methacrylate polymer.
Use/Import. (S) Industrial, commercial and consumer viscosity index improver for automatic transmission fluids. Import range: Confidential.

P 87-1446

Manufacturer. Confidential.
Chemical. (G) Substituted epoxy resin.
Use/Production. (G) Open use industrial coating. Prod. range: Confidential.

P 87-1447

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Stearic acid—ester with 2.2'.2" nitrilotris[ethanol] quarternized.
Use/Production. (G) Industrial softener/lubricant. Prod. range: 25,500 to 68,000 kg/yr.

P 87-1448

Manufacturer. Confidential.
Chemical. (G) Halogenated unsaturated polyester.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 87-1449

Importer. CIBA-GEIGY Corporation.
Chemical. (S) Phosphorous acid, diphenyl tetradecyl ester.
Use/Import. (G) Stabilizer for polymers. Import range: Confidential.

P 87-1450

Importer. Confidential.
Chemical. (G) Substituted naphthalene.
Use/Import. (G) Highly dispersive use. Import range: Confidential.
Toxicity Data. Acute oral: >3,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Skin sensitization: Non-sensitizer; Phototoxicity: Non-toxic.

P 87-1451

Importer. CIBA-GEIGY Corporation.
Chemical. (S) Phosphorous acid, phenyl ditetradecyl ester.

Use/Import. (G) Stabilizer for polymers. Import range: Confidential.
Toxicity Data. Acute oral: 4,979 mg/kg; Irritation: Skin—Moderate, Eye—Minimal.

P 87-1452

Manufacturer. Confidential.
Chemical. (G) Polyester polyurethane polymer.
Use/Production. (S) Fabric coating. Prod. range: Confidential.

P 87-1453

Manufacturer. Confidential.
Chemical. (S) 1*H*-Imidazole-1-carboximidic acid, methylenebis (2,6-dimethyl-4,1-phenylene) ester.
Use/Production. (G) Open, non dispersive use. Prod. range: 45 to 2,000 kg/yr.
Toxicity Data. Acute oral: 10 g/kg; Irritation: Skin Non-irritant, Eye—Irritant; Ames test: Non-mutagenic.

P 87-1454

Manufacturer. Confidential.
Chemical. (G) Polyalkyloxylated formaldehyde resin.
Use/Production. (G) Additive used in the energy production industry. Prod. range: Confidential.

P 87-1455

Manufacturer. Confidential.
Chemical. (G) Polyalkoxylated quarternary ammonium compound.
Use/Production. (G) Additive used in the electronic industry. Prod. range: Confidential.

P 87-1456

Manufacturer. Adhesive Coatings Company.
Chemical. (S) Polyamine urea-formaldehyde condensate.
Use/Production. (S) Industrial epoxy curing agent. Prod. range: 300,000 to 500,000 kg/yr.

P 87-1457

Manufacturer. The Dow Chemical Company.
Chemical. (G) Substituted benzene.
Use/Production. (S) Site-limited and industrial chemical intermediate. Prod. range: Confidential.

P 87-1458

Manufacturer. The Dow Chemical Company.
Chemical. (G) Polybenzoxazole.
Use/Production. (G) Textile and reinforced plastics. Prod. range: Confidential.

P 87-1459

Manufacturer. The Dow Chemical Company.
Chemical. (G) Substituted benzene.
Use/Production. (S) Site-limited and industrial chemical intermediate. Prod. range: Confidential.

P 87-1460

Manufacturer. Confidential.
Chemical. (G) Substituted phenyl substituted(methoxyphenyl alkanamide).
Use/Production. (G) Chemical intermediate. Prod. range: 1,000 to 3,000 kg/yr.

P 87-1461

Manufacturer. Confidential.
Chemical. (G) Aliphatic polyester polyurethane.
Use/Production. (G) Polymeric industrial coating component. Prod. range: 5,000 to 30,000 kg/yr.

Date: July 27, 1987.

Denise Devoe,

Acting Division Director, Information Management Division.

[FR Doc. 87-17741 Filed 8-6-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59523; FRL-3241-9]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 48066)(40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of five such PMNs and provides a summary of each.

DATES: Close of Review Period:
Y 87-201, 87-202 and 87-203—August 10, 1987
Y 87-204 and 87-205—August 11, 1987

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemption received by EPA. The complete non-confidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 87-201

Importer. Nippon Gohsei (USA), Company, Ltd.
Chemical. (G) Partially crosslinked saturated polyester.
Use/Import. (S) Commercial and consumer toner for electrography.
Import range: 30,000 to 100,000 kg/yr.

Y 87-202

Importer. Nippon Gohsei (USA), Company, Ltd.
Chemical. (G) Medium molecular weight linear saturated polyester.
Use/Import. (S) Commercial and consumer toner for electrography.
Import range: 30,000 to 100,000 kg/yr.

Y 87-203

Manufacturer. Sicpa Industries of America, Incorporated.
Chemical. (G) Uralkyd resin.
Use/Production. (S) Site-limited and commercial manufacture of printing inks. Prod. range: Confidential.

Y 87-204

Importer. Confidential.
Chemical. (G) Polyether block polyamide copolymer.
Use/Import. (S) Molding resin and coating powder. Import range: Confidential.

Y 87-205

Manufacturer. Reichhold Chemicals, Incorporated.
Chemical. (G) Carboxylated styrene—acrylic latex.
Use/Production. (G) Industrial coatings. Prod. range: Confidential.

Date: July 27, 1987.

Denise Devoe,

Acting Division Director, Information Management Division.

[FR Doc. 87-17747 Filed 8-6-87; 8:45 am]

BILLING CODE 6560-50-M

[OW-2-FRL-3239-8]

Proposed Determination To Prohibit or Restrict the Specification of an Area for Use as a Disposal Site

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Section 404(c) of the Clean Water Act authorizes the Environmental Protection Agency (EPA) to prohibit or restrict the discharge of dredged or fill material at defined sites in waters of the United States (including wetlands) if EPA determines, after notice and opportunity for hearing, that use of the site for discharge of dredged or fill material would have an unacceptable adverse effect on various resources, including wildlife. EPA's Regional Administrator, Region II, has reason to believe that the unauthorized discharge of fill and the proposed discharge of fill into wetlands by the Russo Development Corporation—71 Hudson Street, Hackensack, New Jersey—within the Hackensack Meadowlands in Carlstadt, New Jersey for the purpose of building warehouses may have unacceptable adverse effects on wildlife. Accordingly, this notice announces the Regional Administrator's proposed determination to prohibit or restrict the discharge of dredged or fill material at the site and seeks public comment on his proposal.

Public Hearing

EPA will schedule a public hearing if there is a significant degree of public interest, or if Russo Development Corp., as landowner and permit applicant, requests one. If a public hearing is scheduled, public notice of a hearing will be issued and will contain: (1) Reference to this public notice of the proposed determination, (2) the date, time, and place of the hearing and, (3) a brief description of the nature and purpose of the hearing including the rules and procedures.

The public hearing would be scheduled no earlier than 21 days from the date of this notice of proposed determination. Requests for a public hearing should be submitted within 15 days of the date of this notice.

DATES: All comments on this proposed determination to prohibit or restrict the use of the Russo site for the discharge of dredged or fill material should be submitted to the person listed under **ADDRESSES** within 60 days of the date of this notice.

ADDRESSES: Comments should be sent to Mr. Mario Del Vicario, Chief, Marine and Wetlands Protection Branch, U.S. Environmental Protection Agency Region II, 26 Federal Plaza, New York, NY 10278.

FOR FURTHER INFORMATION CONTACT: Mr. Mario Del Vicario, Chief, Marine and Wetlands Protection Branch, U.S. EPA Region II, 26 Federal Plaza, New York, NY 10278, (212) 264–5170.

SUPPLEMENTARY INFORMATION:

I. Description of the Section 404(c) Process

The Clean Water Act, 33 U.S.C. 1251 *et seq.*, prohibits the discharge of pollutants, including dredged and fill material, into the waters of the United States (including wetlands) except in compliance with, among other things, section 404, 33 U.S.C. 1344. Section 404 authorizes the Secretary of Army, acting through the Chief of Engineers, to authorize the discharge of dredged or fill material at specified sites through the application of environmental guidelines developed by EPA in conjunction with the Secretary or where warranted by the economics of anchorage and navigation, except as provided in section 404(c). Section 404(c) authorizes the Administrator of EPA, after notice and opportunity for hearing, to prohibit or restrict the use of a defined site for disposal of dredged or fill material where he determines that such use would have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife or recreational areas.

Regulations published in 40 CFR Part 231 establish the procedures to be followed by EPA in exercising its section 404(c) authority. Whenever the Regional Administrator has reason to believe that use of a site may have an unacceptable adverse effect on the pertinent resources, he may begin the process by notifying the Corps of Engineers and the applicant that he intends to issue a proposed determination under section 404(c). Unless the applicant or the Corps persuades the Regional Administrator that there will not be unacceptable adverse impacts or identifies corrective measures satisfactory to the Regional Administrator within 15 days, the Regional Administrator publishes a notice in the **Federal Register** of his proposed determination, soliciting public comment and offering an opportunity for a public hearing. Today's notice represents this step in the process.

Following the public hearing and the close of the comment period, the Regional Administrator decides whether to withdraw his proposed determination or prepare a recommended determination. If he prepares a recommended determination, he then forwards it and the complete administrative record compiled in the Region to the Assistant Administrator for Water at EPA's headquarters for a final decision affirming, modifying, or rescinding the recommended determination. The Corps of Engineers and the applicant are provided with another opportunity for consultation before this final decision is made. It is important to note that this section 404(c) action is being initiated in response to an after-the-fact permit action by the Corps pursuant to 33 CFR 326.3(e) and, therefore, primarily involves existing unauthorized fill. EPA may follow up this section 404(c) action with an enforcement action with respect to the unauthorized fill.

II. Description of the Site

A. Russo Site

Prior to filling in 1981, the Russo site was characterized by 57.5 acres of palustrine emergent marsh, dominated by common reed (*Phragmites australis*) and blue joint grass (*Calamagrostis canadensis*). Groupings of aspen (*Populus tremuloides*) and ephemeral ponds were interspersed within the tract. The site is situated within a larger palustrine emergent marsh along the Hackensack River commonly referred to as the Empire tract of the Hackensack Meadowlands. This tract was cut off from tidal river flow by dikes placed in the 1920's. The Russo site receives upland drainage and storm water runoff from adjacent areas and transfers this drainage via ditches dredged on site in the 1920's to Moonachie Creek which drains to the Hackensack River. Moonachie Creek has had a tide gate at its confluence with the Hackensack River since the 1920's.

Historically the site has impounded large areas of water. For example, during construction of the western spur of the New Jersey Turnpike from 1969 to 1971 ditches within the Empire Tract were filled with fill material and drainage was blocked. The Empire tract including the Russo site became an impoundment area with standing water. When turnpike construction was finished in 1971 the drainage ditches were re-dredged. No further maintenance of these ditches or those on the Russo site has occurred since then. In addition, severe storm events in conjunction with the inadequate drainage provided by unmaintained ditches on the Russo site have resulted in storm water retention and

impoundment related to storm water back-up upstream of the Moonachie Creek tide gate.

Between 1981 and 1985 the Russo Development Corporation discharged 52.5 acres of fill material, shot rock (a fill mixture of clean dirt and rock) from excavation sites in New York, on the site without Department of the Army authorization. Six warehouses were constructed on 44 of the 52.5 acres of fill and are currently tenanted; 8.5 acres of fill remain undeveloped. The remaining five acres of wetland on site which did not receive fill have developed into a freshwater pond edged by cattail (*Typha* sp.) and common reed. The Russo Development Corporation has sought after-the-fact Department of the Army authorization to maintain the 52.5 acres of fill and authorization to discharge fill material into the remaining 5 wetland acres for the purpose of constructing more warehouses. The Russo site was/ and remains wetlands and waters of the United States pursuant to 33 CFR 328.3 and 40 CFR 230.3. The site therefore is subject to regulations under section 404 of the Clean Water Act and a Department of the Army 404 permit is required to discharge fill onto the site. This permit issuance must be in compliance with the section 404(b)(1) Guidelines.

Currently, muskrat, waterfowl and a variety of rodents have been observed on the remaining five wetland acres on site. Historical accounts of wildlife use, prior to or at the time of discharge of 52.5 acres of fill, list grey fox (occasional), rabbit, pheasant, waterfowl, woodcock, killdeer and, marsh-associated songbirds. In addition, waterfowl utilization was high when the Russo site impounded large areas of water. Prior to discharge of fill the site functioned in sediment and toxicant retention, contributing to water purification. After discharge of fill, 52.5 acres of the site was transformed from a reed, blue-joint grass and interspersed emergent vegetative community into an upland industrial building complex. The discharge of fill resulted in a higher site elevation, a complete change in substrate and hydrology with the consequent loss of occasional open water impoundment, the loss of ephemeral ponds, the loss of wetland vegetation and animal communities associated with wetland habitat, and the loss of sediment and toxicant retention capacities.

B. The Hackensack Meadowlands District

The Russo site is part of the Hackensack Meadowlands ecosystem. The 7,000–8,000 acres of wetlands contained therein provide habitat for many species of waterfowl, wading birds, shorebirds, passerines, raptors, and various mammals, reptiles and amphibians.

While the Meadowlands perform critical environmental functions, they are under intense development pressure. In fact, the Hackensack Meadowlands Development Commission (HMDC) reports that the wetlands acreage in the Meadowlands District decreased from 10,521 to 7,800 acres between 1972 and 1984. The HMDC Master Zoning Plan provides for development of approximately an additional 2,200 acres of wetlands.

Because of the concern that development in the wetlands and flood-plain areas of the Meadowlands would conflict with section 404 of the Clean Water Act, the Fish and Wildlife Coordination Act of 1958, and other federal policies, EPA and the U.S. Fish and Wildlife Service (FWS) presented recommendations to the Corps of Engineers in 1981 concerning potential permit reviews. In particular, EPA and FWS divided the Meadowlands into marginal and critical wetlands categories. The Agencies anticipated that permits could be granted for "marginal wetlands", provided adequate compensation and other appropriate permit conditions were imposed. The Russo site was designated in this category. For "critical, high quality, and extremely productive wetlands," EPA and FWS indicated that they would be likely to recommend permit denial. If a permit were issued, compensation of at least two wetland acres for every acre lost would be necessary.

While the 1981 policy reflected an initial effort to distinguish among wetlands, it was based on a preliminary and limited data base. Consequently, EPA in late 1985 initiated an Advanced Identification study within the Hackensack Meadowlands with the support of other federal and state agencies. The study is evaluating wetland values, as well as impacts of the intense development pressures to these wetlands, in much greater detail. It is EPA's expectation that the results of the study will serve as a template for future section 404 permit decisions in the Meadowlands. During this time frame, HMDC will also be revising its Master Plan for a number of reasons, including the fact that the Master Plan has not been subject to review for consistency with the National Environmental Policy Act and section 404 of the Clean Water Act.

III. Proceedings to Date

For the reasons stated earlier, a Department of the Army permit is required to discharge fill onto the Russo site. The Russo Development Corporation has sought an after-the-fact Department of the Army permit for the existing and proposed work previously described.

The Corps of Engineers issued Public Notice 12360–85600–J1 for this application on August 28, 1985 proposing to maintain the 52.5 acres of unauthorized fill, to authorize 5 further acres of fill for the purpose of constructing warehouses and to require mitigation for the entire 57.5 acres. The Corps has approved Russo Development Corp.'s mitigation proposal which includes enhancement of existing wetlands within the Hackensack Meadowlands to provide a 0.5:1 (enhance:lost) value-for-value compensation for the wetlands lost and a deed restriction securing permanent preservation of 28 wetland acres owned by the applicant in Troy Meadows of the Passaic River basin (i.e., outside of the Hackensack River basin).

The Corps advised EPA of its intention to issue the permit as requested by the Russo Development Corporation with the mitigation discussed above. EPA Region II reiterated previously expressed objections to the project and requested 2:1 complete and appropriate mitigation to replace the functions and values provided by all 57.5 acres. EPA did not seek removal of the warehouses on the 44 acres that had been illegally filled, since restoration was unlikely to return the site to its previous wetland state.

EPA sought to resolve its concerns through procedures established by the federal agencies under section 404(q) of the Act (see the 404(q) Memorandum of Agreement, November 1985). Section 404(q) directs the Corps and EPA to enter into an agreement to coordinate and expedite permit decision making. In October 1986 correspondence, the Regional Administrator requested notification of the Corps of Engineers permit decision on the Russo application in accordance with these procedures. Accordingly, on December 22, 1986 the Corps submitted a preliminary Notice of Intent to Issue (NII) a permit to EPA and other federal agencies. In response (December 24, 1986), the Regional Administrator requested a meeting with the Division Engineer and suspension of further actions on the permit application. Following their January, 1987 meeting, the New York District Corps reexamined the preliminary NII

and submitted a final NII maintaining the Corps decision to issue a permit without the mitigation EPA considered necessary. In April 20, 1987 correspondence the Assistant Administrator for Water, requested that the Assistant Secretary of the Army (Civil Works) refer the New York District Corps decision to a higher level for re-evaluation. The Assistant Secretary denied EPA's request.

Having exhausted these procedures for resolution of EPA's concerns, the Regional Administrator initiated section 404(c) procedures through which the EPA Administrator may exercise a veto over the specification by the Corps of Engineers of a site for the discharge of dredged or fill material. The Regional Administrator notified the District Engineer and the Russo Development Corp. (May 26, 1987) of his intent to issue a Public Notice on his proposed section 404(c) determination and notified each that there would be a 15 day consultation period to resolve his concern regarding the significant adverse effects. The Corps and the Russo Development Corp. responded (May 27, 1987 and June 10, 1987 respectively) concluding that the project did not pose any unacceptable adverse effects. The consultation period closed on June 11, 1987. Following a review of responses received from the Corps and the applicant, the Regional Administrator concluded that no new information had been provided and, therefore, he was not persuaded that there would be no unacceptable adverse effects from the existing and proposed fill.

IV. Basis for Proposed Determination

A. Section 404(c) Criteria

The Clean Water Act requires that exercise of the final section 404(c) authority be based on a determination of "unacceptable adverse effect" on municipal water supplies, shellfish beds, fisheries, wildlife or recreational areas. The regulations define unacceptable adverse effect:

> Impact on an aquatic or wetland ecosystem which is likely to result in significant degradation of municipal water supplies or significant loss of or damage to fisheries, shellfishing, or wildlife habitat or recreation areas. In evaluating the unacceptability of such impacts, consideration should be given to the relevant portions of the section 404(b)(1) Guidelines (40 CFR Part 230). (40 CFR 231.2 (e))

The preamble to the 404(c) regulations explains that one of the basic functions of section 404(c) is to police the application of the section 404(b)(1) Guidelines.

Those portions of the guidelines relating to significant degradation of waters of the U.S. (40 CFR 230.10(c)), to minimizing adverse impacts to aquatic resources (40 CFR 230.10(d)) and to the determination of cumulative effects on the aquatic ecosystem (40 CFR 230.11(g)) are of particular importance to evaluating the unacceptability of environmental impacts in this case. Compliance with the Guidelines requires that no discharge of dredged or fill material shall be permitted if it causes or contributes to significant degradation of waters of the U.S. Effects contributing to significant degradation include but are not limited to the loss of wildlife habitat or the loss of a wetland's capacity to assimilate nutrients. Compliance with the guidelines requires that no discharge be permitted unless appropriate and practicable steps have been taken to minimize adverse impacts of the discharge on the aquatic ecosystem. In addition, the guidelines state that the permitting authority should collect and solicit information concerning cumulative impacts and document and consider this information during the decision-making process. Thus, it is appropriate under section 404(c) to take into account whether the project has or will result in significant degradation to aquatic resources, particularly wildlife habitat, or whether the proposed mitigation is adequate to offset the impacts of the Russo project.

B. Impacts to Filling the Russo Site

As discussed previously, the existing and proposed fill has/will replace the wetland soils, vegetation and hydrology with impervious surface resulting in a loss of the site's sediment and toxicant retention capabilities. In addition, the existing and proposed fill is and will be a source of pollutants to adjacent aquatic areas during rainfall events.

Beyond these general but very significant environmental impacts, EPA believes wildlife has and will be significantly affected by the fill at the Russo site. Historical accounts of wildlife use prior to or at the time discharge of the fill list wetland-associated songbirds and waterfowl, woodcock, killdeer, pheasant, rabbit and, occasional grey fox. Loss of 52.5 acres of habitat is likely to have disturbed at least the marsh-related species, particularly in view of development north and west of the project site also encroaching on wildlife habitat. FWS and the Corps have characterized the 52.5 acres of the Russo site as low to moderate habitat prior to its being filled. FWS has explained that this rating is based upon the lack of diversity of wildlife habitat because of the monotypic vegetative cover. In addition, FWS noted, and EPA agrees, that the site provided the wildlife habitat functions of a Meadowlands wetland and supported wetland-associated wildlife even though the habitat was monotypic. Moreover, FWS considers the five acres Russo seeks to fill to be a good quality wetland.

The five remaining acres which have not yet been filled consist of a 3 acre pond and 2 acres of palustrine emergent marsh with phragmites, cattail, dwarf spikerush, and juncus spp. This freshwater pond with associated emergent vegetation contributes to the diversity of wetlands within the Meadowlands District and provides quality habitat of food and cover to wetland-associated wildlife, especially waterfowl, wading birds, and muskrat. Loss of the additional five acres can therefore be expected to adversely affect wetland associated wildlife.

In addition to the direct loss of the Russo site, there is reason to conclude that there may be more far-reaching repercussions on wildlife values. Because of the extensive past losses of wetlands in the Meadowlands, EPA believes there is cause to conclude that the past and future fill of the Russo site is likely to contribute to cumulative adverse impacts on wildlife. As mentioned above, gradual and continual wetland development has diminished the Meadowlands District's wetlands by 2,721 acres (10,521 to 7,800) and, the Hackensack Meadowlands Development Commission's Master Plan provides for the development of an approximate additional 2,200 acres. The U.S. Fish and Wildlife Service has designated wetland areas within the eastern flyway, a category into which the Hackensack Meadowlands falls, as priority areas in their Waterfowl Management Plan (May 1986). The Service reports that the degradation of migration and wintering habitat have contributed to long-term downward trends in some duck populations. In those periods when the Russo site impounded large areas of water, waterfowl were numerous on the site. In addition, population declines would be expected for those less mobile wetland-associated species such as muskrat and other rodents, reptiles and amphibians. Ecological theory suggests that disturbed animal populations do not necessarily simply shift into remaining habitat. Depending on the habitat's carrying capacity disturbed populations may perish or displace other organisms which may perish.

There is not a great deal of existing information in the record identifying the

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specific values and functions provided by the formerly existing wetlands. For that reason EPA strongly encourages the public to submit any relevant information. EPA believes, though, that the Meadowlands environment cannot tolerate the loss of the Russo site unless the ecological values the site served/serves are compensated for.

In order for filling of the site to be consistent with the section 404(b)(1) Guidelines, EPA believes adequate mitigation must be provided to assure replacement of the wildlife values and functions, thereby stemming the net loss of wildlife habitat in the Meadowlands.[1] Wetland enhancement and creation to provide complete compensation for wetland values lost would constitute appropriate mitigation in this case.

It appears, however, that adequate mitigation will not be provided. Russo has offered only to compensate on a 0.5:1 value-for-value basis by enhancing existing wetlands within the Meadowlands District and to place a deed restriction on 23 acres of wetlands it owns outside the District.

The information provided to date on the proposed mitigation does not identify a particular site and is too limited to evaluate the anticipated ecological gains and the probability of success. Thus, contrary to EPA's and FWS's consistent comments that 1:1 to 2:1 value-for-value compensation is necessary to prevent net loss of wetland values and functions, the proposed mitigation is unlikely to accomplish that goal. Moreover, the deed restriction affords only questionable environmental benefit since the wetland site would already be protected from significant degradation under section 404 in the event that the discharge of fill were proposed.

[1] Since EPA's first response to the Corp's Public Notice of Russo's application for a permit in September, 1985, EPA has consistently stated that mitigation to replace wetland functions and values is required. However, in the fall of 1986, EPA questioned not only the adequacy of Russo's mitigation proposal but also whether there were not, in fact, practicable alternatives to using the Russo site for constructing warehouses. EPA has taken the position that mitigation cannot be used to compensate for avoidable losses; i.e., where there are practicable alternatives to filling a wetland site. Consequently, EPA suggested that (1) mitigation providing value-for-value replacement be required for the 44 acres that have been filled and contain warehouses, (2) restoration be required for the 8.5 acres that have been filled but contain no warehouses and, (3) that a permit be denied to fill the remaining 5 wetland acres. However, assessing the existence of practicable alternatives in the context of an after-the-fact permit raises particularly difficult analytical issues that go far beyond those raised in this particular permit application. Consequently, I have decided not to pursue the practicable alternatives issues in this section 404(c) action.

EPA consequently has concluded that the loss of 57.5 acres of wetlands, taken in the context of the cumulative loss of wetland acreage occurring in the Hackensack Meadowlands, could result in signficant loss and damage to wildlife habitat areas. Unless and until the Russo Corporation agrees to provide adequate mitigation as described above, it is EPA's view that an after-the-fact permit for 52.5 acres and a pre-discharge permit for five acres could result in unacceptable adverse impacts to wildlife within the meaning of section 404(c) and 40 CFR 231.2(e). Accordingly, EPA proposes to prohibit the use of the Russo site for discharge of fill material under the conditions reflected in the permit the Corps proposes to issue. Thus, the fill of the five remaining acres of wetlands would be prohibited. In addition, EPA may initiate enforcement action with respect to the unauthorized fill of the 52.5 acres in order to achieve appropriate restoration of or mitigation for the filled area.

V. Solicitation of Comments

EPA would like to obtain comments on: (1) Whether or not the impacts of such discharge would represent an unacceptable adverse effect as described in section 404(c) of the Clean Water Act; (2) the vegetative and hydrologic characteristics of the subject site and observations of or information concerning wildlife on the site prior to and after the placement of fill material; (3) observations of or information concerning wildlife in wetlands similar to the subject site and in the Hackensack Meadowlands in general; (4) what corrective action, if any, could be taken to reduce the adverse impacts of the discharge; (5) the need for a public hearing and; (6) whether the Regional Administrator should recommend to the Assistant Administrator for Water the determination to prohibit or restrict the discharge of dredged or fill material on the site. Comments should be submitted within 60 days of the date of publication of this Federal Register notice to the person listed above under ADDRESSES. All comments received will be fully considered by the Regional Administrator in making his decision to prepare a recommended determination to prohibit or restrict filling of the Russo site or to withdraw this proposed determination.

Christopher J. Daggett,

Regional Administrator.

[FR Doc. 87-17187 Filed 8-6-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067-0142

Title: Hazard Identification, Capability Assessment, and Multi-Year Development Plan (HICA/MYDP) for Local Governments

Abstract: FEMA requires consistent information on the status of State and local emergency management and the impact of FEMA funds on improving capability. HICA/MYDP data has established a nationwide baseline on State and local hazards, current capability, and resource requirements. Data is being used to set program priorities, prepare the FEMA budget, allocate funds, and provide reports to Congress.

Type of Respondents: State or local governments

Number of Respondents: 3,410

Burden Hours: 55,910

Frequency of Recordkeeping or Reporting: Annually

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C Street, SW., Washington, DC 20472.

Comments should be directed to Francine Picoult, (202) 395-7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 87-17953 Filed 8-6-87; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties

may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–003945A–003.
Title: Port of Oakland Terminal Agreement.
Parties:
Port of Oakland
Maersk Line Pacific, Ltd.

Synopsis: The proposed agreement extends original term of Agreement No. 224–003945A–003 for an additional three months to October 31, 1987.

By Order of the Federal Maritime Commission.
Dated: August 3, 1987.
Joseph C. Polking,
Secretary.
[FR Doc. 87–17974 Filed 8–6–87; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

August 3, 1987.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received on or before August 17, 1987.

ADDRESS: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or delivered to room B–2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B–1122 between 8:45 a.m and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Robert Fishman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822).

Proposal to approve under OMB delegated authority the extension, without revision, of the following reports:

1. Report title: Agreement of Domestic and Foreign Nonmember Banks
Agency form number: FR T–1, T–2
OMB Docket number: 7100–0191
Frequency: On occasion
Reporters: Domestic and foreign nonmember banks
Annual reporting hours: 8½
Small businesses are not affected.

General Description of Report

This information collection is mandatory (15 U.S.C. 78h,w) and is not given confidential treatment.

This report is filed by nonmember banks, both domestic and foreign, which agree to comply with all statutes and regulations applicable to member banks relating to credit extended to broker-dealers on the collateral of registered securities.

2. *Report title:* Notice of Proposed Stock Redemption
Agency form number: FR 4008
OMB Docket number: 7100–0131
Frequency: On occasion
Reporters: Bank holding companies
Annual reporting hours: 2,250
Small businesses are not affected.

General Description of Report

This information collection is mandatory (12 U.S.C. 1844) and is given confidential treatment (5 U.S.C. 552(b)(4), (6), and (8)).

The filing of this notice is required of a bank holding company proposing to purchase or redeem its shares when the gross consideration to be paid for such purchase or redemption is equal to 10 percent or more of the company's consolidated net worth over any 12-month period.

Board of Governors of the Federal Reserve System, August 3, 1987.
William W. Wiles,
Secretary of the Board.
[FR Doc. 87–17931 Filed 8–6–87; 8:45 am]
BILLING CODE 6210–01–M

Formations of; Acquisitions by; and Mergers of Bank Holding Companies; Bank of New Hampshire Corp. et al.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 31, 1987.

A. Federal Reserve Bank of Boston (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Bank of New Hampshire Corporation,* Manchester, New Hampshire; to acquire 100 percent of the voting shares of The Suncook Bank, Suncook, New Hampshire.

2. **Fleet Financial Group, Inc.,** Providence, Rhode Island; to acquire 100 percent of the voting shares of Norstar Bancorp, Inc., Albany, New York; and thereby indirectly acquire Norstar Bank of Upstate New York, Albany, New York, Norstar Bank of Long Island, Hempstead, New York, Norstar Bank, N.A., Buffalo, New York, Norstar Bank of the Hudson Valley, N.A., Newburgh, New York, Norstar Bank of Commerce, New York, New York, Norstar Bank of Maine, Portland, Maine, and Norstar Bank of Central New York, Syracuse, New York.

D. Federal Reserve Bank of Cleveland (Martin E. Abrams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Huntington Bancshares Incorporated,* Columbus, Ohio; to acquire 100 percent of the voting shares of Citizens State Bank, Silverton, Ohio.

C. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *BOL Bancshares, Inc.,* New Orleans, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of BOS Bancshares, Inc., Metairie, Louisiana; and thereby indirectly acquire Bank of Louisiana in New Orleans, New Orleans, Louisiana, Fidelity Bank and Trust Company, Slidell, Louisiana, and Bank of the South, Metairie, Louisiana.

D. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Exchange International Corporation,* Chicago, Illinois; to acquire 100 percent of the voting shares of Farmer's State Bank of Sheffield, Illinois, Sheffield, Illinois.

E. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Lincolnland Bancorp, Inc.,* Dale, Indiana; to acquire 100 percent of the voting shares of Chrisney State Bank, Chrisney, Indiana.

F. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Hoff Investment Corporation,* Lisco, Nebraska, the parent of Dalton State Bank, Dalton, Nebraska; to merge with First Nebraska Bancs, Inc., Sidney, Nebraska; and thereby indirectly acquire First National Bank-Sidney, Sidney, Nebraksa.

2. *Garden Banc Shares, Inc.,* Hutchinson, Kansas, the parent of The Fourth Bank of Garden City, N.A., Garden City, Kansas; to merge with Southwest Kansas Banc Shares, Inc., Hutchinson, Kansas; and thereby indirectly acquire The First National Bank of Meade, Meade, Kansas.

Board of Governors of the Federal Reserve System, August 3, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-17027 Filed 8-6-87; 8:45 am]

BILLING CODE 6210-01-M

Formations of; Applications by; and Mergers of Bank Holding Companies; Farmers Bancorp Inc.; Correction

This notice corrects a previous Federal Register notice (FR Doc. 87-17019) published at page 28192 of the issue for Tuesday, July 28, 1987.

Under the Federal Reserve Bank of St. Louis, the entry for FBT Corporation is revised to read as follows:

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Farmers Bancorp Inc.,* Blytheville, Arkansas; to become a bank holding company by acquiring 100 percent of the voting shares of Farmers Bank and Trust Company, Blytheville, Arkansas, which engages in general insurance activities pursuant to the state law.

Comments on this application must be received by August 20, 1987.

Board of Governors of the Federal Reserve System, August 3, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-17032 Filed 8-6-87; 8:45 am]

BILLING CODE 6210-01-M

Acquisitions of Companies Engaged in Permissible Nonbanking Activities; Fleet Financial Group, Inc., et al.

The organizations listed in this notice have applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than August 31, 1987.

A. Federal Reserve Bank of Boston (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Fleet Financial Group, Inc.,* Providence, Rhode Island; to acquire Norstar Leasing Services Inc., Albany, New York; and thereby engage in equipment leasing and commercial lending pursuant to § 225.25 (b)(1) and (b)(5) of the Board's Regulation Y.

2. *Fleet Financial Group, Inc.,* Providence, Rhode Island; to acquire Norstar Auto Lease Inc., Albany, New York; and thereby engage in automobile leasing pursuant to § 225.25(b)(5) of the Board's Regulation Y.

3. *Fleet Financial Group, Inc.,* Providence, Rhode Island; to acquire Norstar Investment Advisory Services, Inc., Rochester, New York; and thereby engage in portfolio management and investment advice pursuant to § 225.25(b)(4) of the Board's Regulation Y.

4. *Fleet Financial Group, Inc.,* Providence, Rhode Island; to acquire Norstar Trust Company, Rochester, New York; and thereby engage in trust and financial management services pursuant to § 225.25(b)(3) of the Board's Regulation Y.

5. *Fleet Financial Group, Inc.,* Providence, Rhode Island; to acquire Norstar Mortgage Corporation, Westbury, New York; and thereby

engage in origination and servicing of residential mortgage loans and the provision of related advisory services pursuant to § 225.25 (b)(1) and (b)(4) of the Board's Regulation Y.

6. *Fleet Financial Group, Inc.*, Providence, Rhode Island; to acquire Chapdelaine & Company Government Securities, Inc., New York, New York; and thereby engage in acting as a broker of government securities on behalf of other brokers who are principal dealers in such securities pursuant to § 225.25(b)(16) of the Board's Regulation Y.

7. *Fleet Financial Group, Inc.*, Providence, Rhode Island; to acquire Norlife Reinsurance Company, Phoenix, Arizona; and thereby engage in acting as a reinsurer of credit life, credit accident and health insurance and mortgage life and mortgage accident and health insurance sold in connection with extensions of credit to consumers pursuant to § 225.25(b)(8) of the Board's Regulation Y.

8. *Fleet Financial Group, Inc.*, Providence, Rhode Island; to acquire Adams, McEntee & Company, Inc., New York, New York; and thereby engage in the sale and underwriting of state and municipal securities and brokerage of certain mutual fund shares pursuant to § 225.25(b)(16) of the Board's Regulation Y.

9. *Fleet Financial Group, Inc.*, Providence, Rhode Island; to acquire Altman, Brown & Everett Inc., Albany, New York; and thereby engage in actuarial and employee benefits consulting services pursuant to Board Order dated June 19, 1985.

10. *Fleet Financial Group, Inc.*, Providence, Rhode Island; to acquire Norstar Brokerage Corporation, New York, New York, and its wholly-owned subsidiary NB Clearing Corporation, New York, New York; and thereby engage in retail discount brokerage services pursuant to § 225.25(b)(15) of the Board's Regulation Y.

11. *Fleet Financial Group, Inc.*, Providence, Rhode Island; to acquire Norstar Data Services Inc., Albany, New York; and thereby engage in data processing services to affiliates of the parent company and, in the past, to third persons pursuant to § 225.25(b)(7) of the Board's Regulation Y.

B. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Manufacturers Hanover Corporation*, New York, New York; to acquire receivables of an office of BarclaysAmerican/Financial, Inc., Colorado Springs, Colorado; and thereby engage in making and servicing loans and selling as agent or broker credit-related life, accident and health and property and casualty insurance pursuant to § 225.25(b)(1) and (8)(ii) and (iv) of the Board's Regulation Y.

C. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *MCorp*, Dallas, Texas; to acquire Kalvar Corporation, Minneapolis, Minnesota; and thereby engage in providing to others financially related data processing and data transmission, services, facilities and data bases; or access to them pursuant to § 225.25(b)(7) of the Board's Regulation Y.

2. *MCorp Financial, Inc.*, Wilmington, Delaware; to acquire Kalvar Corporation, Minneapolis, Minnesota; and thereby engage in providing to others financially related data processing and data transmissions, services, facilities and data bases; or access to them pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 4, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-17929 Filed 8-6-87; 8:45 am]

BILLING CODE 6210-01-M

Application To Engage De Novo in Permissible Nonbanking Activities; Fleet Financial Group, Inc.

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 31, 1987.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Fleet Financial Group, Inc.*, Providence, Rhode Island, to acquire Norstar Trust Company of Florida, National Association, Naples, Florida; and thereby engage in general trust services pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 3, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-17930 Filed 8-6-87; 8:45 am]

BILLING CODE 6210-01-M

Acquisitions of Shares of Banks or Bank Holding Companies; Nancy M. Haugner et al.

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 31, 1987.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Nancy M. Haugner*, Lincoln, Nebraska; to acquire an additional .3

percent of the voting shares of Martell Financial Services, Inc., Martell, Nebraska.

2. *Lynne M. Morris*, Lincoln, Nebraska; to acquire an additional .3 percent of the voting shares of Martell Financial Services, Inc., Martell, Nebraska.

3. *Jay D. Peters*, Lincoln, Nebraska; to acquire an additional .1 percent of the voting shares of Martell Financial Services, Inc., Martell, Nebraska.

4. *Susan M. Symon*, Leawood, Kansas; to acquire an additional .3 percent of the voting shares of Martell Financial Services, Inc., Martell, Nebraska.

5. *William M. Symon, Jr.*, Leawood, Kansas; to acquire an additional .1 percent of the voting shares of Martell Financial Services, Inc., Martell, Nebraska.

6. *C.B. Graft, Clinton*, Oklahoma; to acquire an additional 2.49 percent of the voting shares of Thomas Bancshares, Inc., Thomas, Oklahoma, and thereby indirectly acquire Bank of Thomas, Thomas, Oklahoma.

B. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *S.W. Cauthorn*, Del Rio, Texas; to acquire 5.07 percent of the voting shares of Westex Bancorp, Inc., Del Rio, Texas, and thereby indirectly acquire The First State Bank, Bracketville, Texas, Del Rio Bank and Trust Company, Del Rio, Texas, and Sutton County National Bank, Sondra, Texas.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Larry Williams or Marianne Williams* (joint tenants), Boise, Idaho; to acquire 19.29 percent of the voting shares of American Ban Corporation, Boise, Idaho, and thereby indirectly acquire American Bank of Commerce, Boise, Idaho.

Board of Governors of the Federal Reserve System, August 3, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-17928 Filed 8-6-87; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Information Collection Being Reviewed by the Office of Management and Budget; Multiple Award Schedule (MAS) Data Collections

AGENCY: Office of Administration, GSA.

SUMMARY: Under the Paperwork Reduction Act of 1980 (44 U.S.C. Ch. 35), the General Services Administration (GSA) requests the Office of Management and Budget (OMB) to approve information collections in use under interim control number 3090-0235 that was granted by OMB on April 30, 1987.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Rodney P. Lantier, GSA Clearance Officer, General Services Administration (CAID), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Edward J. McAndrew, Office of Acquisition Policy (202-566-1224).

SUPPLEMENTARY INFORMATION:

a. Background. In March 1985, a request to approve an information collection was submitted to OMB with a proposed revision to the MAS policy statement that was published in the **Federal Register** for comment. In response, OMB stated that certain material in the statement should be incorporated in the General Services Administration Acquisition Regulation (GSAR), specifically, the Discount Schedule and Marketing Data (DSMD) sheets, the Price Reductions clause, and the Economic Price Adjustment (EPA) clause. Thus, GSA has developed a change to the GSAR incorporating the DSMD sheets and the Price Reductions clause. Comments received in response to the December 10, 1985, and the September 3, 1986, **Federal Register** notices have been incorporated, when appropriate, in this GSAR. GSAR Change 18 issued October 18, 1985, incorporated the EPA clause.

b. Purpose. The information collections submitted for approval require: (1) Prospective offerors responding to MAS solicitations to submit sales, discount, and marketing data to support pricing judgments in negotiated MAS contracts; (2) the reporting of price reductions to the customer(s) identified as the basis of the award in MAS contracts; and (3) the submitting of pricing data to support an MAS contractor's request for an economic price adjustment in Federal Supply Service MAS contracts.

c. Annual Reporting Burden. Estimated as follows: DSMD sheets, 6,740 respondents and 101,100 hours; Price Reductions clause, 1,830 respondents and 12,720 hours; Economic Price Adjustment clause, 2,914 respondents and 2,186 hours.

d. Copies of Proposal. Copies of the proposals may be obtained from the Directives and Reports Management Branch (CAID), Room 3015, GS Building, Washington, DC 20405, or call (202) 566-0666.

Dated: July 29, 1987.

Emily C. Karam,

Director, Information Management Division.

[FR Doc. 87-17939 Filed 8-6-87; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Supplemental Funds Available for Fiscal Year 1987; Cooperative Agreements for Acquired Immunodeficiency Syndrome (AIDS) Prevention Projects

Introduction

The Centers for Disease Control announces the availability of supplemental funds in the amount of $27 million for Fiscal Year 1987 for cooperative agreements for Acquired Immunodeficiency Syndrome (AIDS) Prevention Projects. The following information is provided to permit the orderly receipt and review of applications and the timely award of supplemental funds for cooperative agreements to support AIDS Prevention Projects as described in the **Federal Register** on March 6, 1987 (52 FR 7028). These funds are available to only those agencies eligible under the above announcement, i.e., the official public health agencies of States, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, the Northern Mariana Islands, and American Samoa, and local governments which have reported at least 2,000 cases of AIDS. Applications from agencies other than those listed above are not solicited and will not be accepted.

Authority

These projects are authorized under section 301(a) of the Public Health Service Act (42 U.S.C. 241(a)), as amended; and section 311(b) of the Public Health Service Act (42 U.S.C. 243(b)), as amended; and section 318 of the Public Health Service Act (42 U.S.C. 247(c)), as amended. The Catalog of Federal Domestic Assistance Number is 13.118.

Background and Purpose

On May 1, $24.4 million were awarded to 58 State, territorial, and local health

departments to conduct AIDS Prevention Projects. The purpose of those awards was to assist State and local health departments in reducing the spread of AIDS and Human Immunodeficiency Virus (HIV) by the following mechanisms: (1) Establishing or maintaining AIDS health education/risk reduction (HE/RR) programs for the general public and high risk groups; (2) maintaining counseling and testing services that confidentially and effectively target individuals at high risk for AIDS and educate them about ways to prevent transmission of HIV infection through sexual activity, parenteral drug use, and donating blood, semen, or body fluids; and (3) evaluating the effectiveness of those programs and services in reducing the transmission of HIV.

Availability of Funds

Additional funds in the amount of $27 million have become available under the 1987 supplemental appropriations act. Of this amount, $20 million is available for AIDS prevention activities, primarily counseling, testing, and partner notification efforts, as announced in the Federal Register on March 6, 1987 (52 FR 7028). The remaining $7 million is available for competing awards to support initiatives targeted to minority populations. Priority consideration will be given to areas with comparatively large numbers of diagnosed AIDS cases, or other evidence of increased risk among minorities.

Eligible agencies that did not apply under the previous announcement may apply competitively under this announcement.

Other Information

Information on application procedures may be obtained from Nancy C. Bridger, Supervisory Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE, Room 321, Mailstop E14, Atlanta, Georgia 30305, or by calling (404) 262-6575 or FTS 236-6575. Technical assistance may be obtained from Willard Cates, M.D., M.P.H., Division of Sexually Transmitted Diseases, Center for Prevention Services, Centers for Disease Control, Atlanta, Georgia, 30333, telephone (404) 329-2552 or FTS 236-2552.

Dated: August 3, 1987.

Glenda S. Cowart,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 87-17917 Filed 8-6-87; 8:45 am]

BILLING CODE 4160-18-M

Cooperative Agreement To Conduct an Integrated Chronic Disease Control/Prevention Demonstration Program; Availability of Funds for Fiscal Year 1987

Introduction

The Centers for Disease Control (CDC) announces the availability of funds in Fiscal Year 1987 to support a cooperative agreement with the Florida Department of Health and Rehabilitative Services to conduct an integrated chronic disease control/prevention demonstration program in Duval County. This is not a formal request for application. Assistance will be provided only to the Florida Department of Health and Rehabilitative Services for support of this project. No other applications are solicited or will be accepted.

Authority

This cooperative agreement is authorized under section 301(a) of the Public Health Services Act (42 U.S.C. 241(a)) as amended. The Catalog of Federal Domestic Assistance Number is 13.283.

Background and Purpose

A major emphasis of the CDC Chronic Disease strategic plan is to promote integration of many categorical chronic disease efforts at the local level, as well as coordination of chronic disease prevention activities within CDC. Toward this end, CDC must begin to address the issue of increasing States' capacity to prevent and control the health problems associated with chronic diseases. The proposed project will establish a community-based integrated chronic disease program which can be replicated in other settings to bring about long term reductions in the prevalence of risk factors and chronic disease. The project will be accomplished through mobilization of existing community resources, community diagnosis of chronic disease determinants, and implementation of population specific community interventions.

Florida administers several local health departments which are conducting comprehensive chronic disease control programs. These programs include cardiovascular disease, hypertension, diabetes, cancer, health promotion, health education, and chronic disease epidemiology under one supervisory level within the organization. Florida has integrated chronic disease care activities with primary care under a single funding mechanism. Florida has a chronic disease advisory board which provides advice and assistance and on which all voluntary agencies are represented. Florida is in a position to conduct extensive evaluation of all chronic disease activities. In addition, Florida has the experience, linkages, and staffing necessary to conduct the project.

Availability of Funds

Approximately $183,000 will be available in Fiscal Year 1987 to fund this cooperative agreement. It is expected that the cooperative agreement will begin on or before September 15, 1987, and will be funded for a 12-month budget period within a 5-year project period. Continuation awards will be made on the basis of satisfactory progress in meeting project objectives and on the availability of funds. The funding estimate outlined above may vary and is subject to change.

Other Submissions and Review Requirements

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Information

Information may be obtained from Marsha Driggans, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE, Room 321, Atlanta, GA 30333, telephone (404) 262-6575, or from Lisle House, Chief, Program Services Branch, Division of Diabetes Control, Center for Prevention Services, Centers for Disease Control, Atlanta, GA 30333, telephone (404) 321-2310.

Dated: August 3, 1987.

Glenda S. Cowart,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 87-17918 Filed 8-6-87; 8:45 am]

BILLING CODE 4160-18-M

Family Support Administration

Disapproval of a State Plan Submitted by New York State; Hearing

AGENCY: Department of Health and Human Services, Family Support Administration.

ACTION: Notice of hearing.

SUMMARY: By designation of the Family Support Administration, a member of the Departmental Grant Appeals Board will hold a hearing pursuant to 45 CFR Part 213 concerning the Family Support Administration's disapproval of a State plan amendment submitted by New York State.

Date: 9:00 a.m., Tuesday, September 29, 1987.

Place: Room 317A & B, Leo W. O'Brien Federal Building, Corner of Clinton Avenue & North Pearl Street, Albany, New York 12207.

Requests to Participate: Requests to participate as a party or as amicus curiae must be submitted to the Departmental Grant Appeals Board in the form specified at 45 CFR 213.15 by August 24, 1987.

FOR FURTHER INFORMATION CONTACT: M. Terry Johnson, Supervisory Attorney, Departmental Grant Appeals Board, Department of Health and Human Services, Room 451–F, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, Telephone Number (202) 475–0014.

SUPPLEMENTARY INFORMATION:

Notice of hearing is hereby given as set forth in the following letter, which has been sent to the New York State Department of Social Services.

Washington, DC, August 3, 1987.

Alan A. Pfeffer, Special Counsel, New York State Department of Social Services, Bureau of Deferrals and Disallowances, 40 North Pearl Street, Albany, New York 12243

and

Gail N. Mancher, Assistant Regional Counsel, Region II, Department of Health and Human Services, Jacob K. Javits Federal Building, 26 Federal Plaza, New York, New York 10278

Counsel

This letter is in response to the May 15, 1987 petition for hearing filed by the New York State Department of Social Services (State) in which it seeks reconsideration of the Family Support Administration's (FSA) disapproval of the State's proposed state plan amendment submitted as Transmittal No. 85–22 (the proposed plan amendment). In the proposed amendment to the State's plan for implementing Title IV–A of the Social Security Act (Aid to Families with Dependent Children, or AFDC) the State adopted a presumption as to the status of an essential person as defined in section 407(a) of the Act.

Pursuant to 45 CFR 213.21, I have designated Judith A. Ballard, a Departmental Grant Appeals Board Member, to preside at the hearing, which will be conducted under the procedures in 45 CFR Part 213. Pursuant to 45 CFR 201.4, a hearing has been scheduled to be held on Tuesday, September 29, 1987, at 9:00 a.m., in Room 317A & B, Leo W. O'Brien Federal Building, Corner of Clinton Avenue & North Pearl Street, Albany, New York 12207. A verbatim transcript will be taken.

The issues to be considered at the hearing include:

1. Whether the proposed plan amendment violates section 402(a)(7) of the Social Security Act, as amended, or 45 CFR 233.20(a)(2)(vi)(b).

2. Whether FSA's decision to reject the proposed plan amendment exceeds its authority under section 402(a)(7) of the Act.

3. Whether the regulatory provision at 45 CFR 233.20(a)(2)(vi)(b) exceeds the plain language of section 402(a)(7) of the Act.

4. Whether the proposed plan amendment violates section 406(b)(2) of the Act and 45 CFR 234.60 of the regulations.

5. Whether the Agency violated its own regulations at 45 CFR 201.3 by failing to act on the proposed plan amendment during the time period prescribed in that regulation and, if so, what effect that alleged violation has on the Agency's authority to reject the amendment.

6. Whether the disapproval of the proposed amendment causes New York to be treated differently from other states that have approved state plans having essential person components and, if so, what effect this disparate treatment has on the Agency's disapproval of the amendment.

A copy of this letter will appear as a Notice in the Federal Register and any person wishing to request recognition as a party will be entitled to file a petition pursuant to 45 CFR 213.15(b) with the Departmental Grant Appeals Board within 15 days after that notice has been published. A copy of the petition should be served on each party of record at that time. The petition must explain how the issues to be considered at the hearing have caused them injury and how their interest is within the zone of interests to be protected by the governing Federal statute. 45 CFR 213.15(b)(1). In addition, the petition must concisely state (i) petitioner's interest in the proceeding, (ii) who will appear for petitioner, (iii) the issues on which petitioner wishes to participate, and (iv) whether petitioner intends to present witnesses. 45 CFR 213.15(b)(2). Any party may, within 5 days of receipt of such petition, file comments thereon; the presiding officer will subsequently issue a ruling on whether and on what basis participation will be permitted.

Any interested person or organization wishing to participate as amicus curiae may also file a petition with the Board, which shall conform to the requirements at 45 CFR 213.15(c). This petition should be filed no later than September 18, 1987, to permit the presiding officer an adequate opportunity to consider and rule upon it.

Any further inquiries, submissions, or correspondence regarding this matter should be filed in an original and two copies with Ms. Ballard at the Departmental Grant Appeals Board, Room 451–F, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, where the record in this matter will be kept. Each submission must include a statement that a copy of the material has been sent to the other party, identifying when and to whom the copy was sent. For convenience please refer to Board Docket No. 87–116.

Wayne A. Stanton,

Administrator, Family Support Administration.

Wayne A. Stanton,

Administrator, Family Support Administration.

[FR Doc. 87–17985 Filed 8–6–87; 8:45 am]

BILLING CODE 4150–04–M

Food and Drug Administration

[Docket No. 87E–0230]

Determination of Regulatory Review Period for Purposes of Patent Extension; Therakos Uvar® System

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for the Therakos UVAR® System and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that medical device.

ADDRESS: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) generally provides that a patent may be extended for a period of up to 5 years so

long as the patented item (human drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under that act, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 158(g)(3)(B).

FDA recently approved for marketing the medical device product known as the Therakos UVAR® System which is indicated for use in the ultraviolet-A irradiation, in the presence of the photoactive drug methoxsalen (8-methoxypsoralen, or 8–MOP), of extracorporeally circulating leukocyte-enriched blood in the palliative treatment of the skin manifestations of cutaneous T-cell lymphoma (CTCL) in persons enrolled under the notice of claimed investigational exemption for a new drug (IND), IND No. 29,904, who have not been responsive to other forms of treatment. The sale, distribution, and use of this device is limited to investigators participating in IND No. 29,904. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for U.S. Patent No. 4,428,744 from Frederic A. Bourke, Jr., Eleanor F. Bourke, Richard L. Edelson, and the Edelson Trust. The Patent and Trademark Office requested FDA's assistance in determining the product's eligibility for patent term restoration, and in a letter dated July 9, 1987, FDA advised the Patent and Trademark Office that the medical device had undergone a regulatory review period and that the medical device represented the first permitted commercial marketing or use. This **Federal Register** notice now represents FDA's determination of the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Therakos UVAR® System is 946 days. Of this time, 589 days occurred during the testing phase of the regulatory review period, while 357 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date a clinical investigation involving this device was begun:* September 6, 1984.

The applicant correctly claims that the investigational device exemption for this device was conditionally approved on January 26, 1984. However, FDA regulations at 21 CFR 812.42 explicitly state that an investigation or part of an investigation shall not begin until an institutional review board (IRB) and FDA have both approved "the application or supplemental application relating to the investigation or part of an investigation." Thus, although the IDE was conditionally approved, the investigation could not begin until an IRB approved the investigation. FDA records indicate that IRB approval was obtained on September 6, 1984, and, therefore, September 6, 1984, is the date on which a clinical investigation could begin.

2. *The date an application was initially submitted with respect to the device under section 515 of the Federal Food, Drug, and Cosmetic Act:* April 17, 1986.

FDA has verified the applicant's claim that the premarket approval application (P860003) was submitted on April 17, 1986.

3. *The date the application was approved:* April 8, 1987.

The applicant claims that the device was approved on April 10, 1987. However, FDA records indicate that P860003 was approved on April 8, 1987.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 2 years of patent extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before October 6, 1987, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before February 3, 1988, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 4, 1987.

Allen B. Duncan,

Acting Associate Commissioner for Health Affairs.

[FR Doc. 87–17980 Filed 8–6–87; 8:45 am]

BILLING CODE 4160–01–M

Social Security Administration

Issuance of Acquiescence Rulings

AGENCY: Social Security Administration, HHS.

ACTION: Notice.

SUMMARY: Social Security Acquiescence Rulings are published under the authority of the Commissioner of Social Security. These Rulings explain the manner in which the Social Security Administration (SSA) applies decisions of the United States Courts of Appeals, which conflict with SSA policy, when adjudicating claims under title II and title XVI of the Social Security Act and Part B of the Black Lung Benefits Act. The rulings are effective upon the date of publication and are available to the public.

On June 4, 1986, the issuance and availability of the first 14 rulings was announced by notice in the **Federal Register** (51 FR 20354). This notice announces the issuance and availability of 12 additional rulings which have been issued during the period from May 20, 1986 through March 31, 1987. Brief descriptions of these rulings follow. The parenthetical number which follows each ruling number refers to the Circuit involved.

AR 86–15(6)

Effective Date: May 20, 1986.

Boyland v. Califano, 633 F. 2d 430 (6th Cir. 1980); *Parker v. Schweiker*, 673 F.2d 160 (6th Cir. 1982); *Childress v. Secretary of Health and Human Services*, 679 F.2d 623 (6th Cir. 1982)—The "contribution to support" requirement of section 216(h)(3)(C)(ii) of the Social Security Act

Issue

Whether, when determining if a worker's contributions to the support of his illegitimate child are regular and substantial, the Secretary must consider the financial circumstances of the worker and the child.

Explanation of How SSA Will Apply These Decisions Within the Circuit

This ruling applies only to cases where the child resides in Michigan, Ohio, Kentucky, or Tennessee at the time of determination or decision at any level of administrative review, i.e., initial, reconsideration, administrative law judge hearing or Appeals Council.

In a claim for surviving child's benefits under section 216(h)(3)(C)(ii) of the Social Security Act (42 U.S.C. 416(h)(3)(C)(ii)) where the worker's income had been irregular or insubstantial, the substantiality and regularity of the worker's contributions to the applicant's support must be evaluated in light of the financial resources of both the worker and the child's household.

AR 86-16(2)

Effective Date: May 20, 1986.

Damon v. Secretary of Health, Education and Welfare, 557 F.2d 31 (2nd Cir. 1977)—Child's Benefits: Support of Child Adopted After Worker's Entitlement to Benefits—Title II of the Social Security Act

Issue

Whether payments to foster parents by the State of Vermont on behalf of a foster child are public assistance to the child or compensation to the foster parent which can be considered the foster parent's income in determining whether the one-half support requirement of section 202(d)(8)(D)(ii) of the Social Security Act is met.

Explanation of How SSA Will Apply the Decision Within the Circuit

This ruling applies only to cases where the child resides in a State in the Second Circuit (New York, Connecticut, or Vermont) and the State law treats foster care payments as payments to the foster parent and not assistance payments to the child at the time of the determination or decision at any administrative level of review, i.e., initial, reconsideration, administrative law judge hearing or Appeals Council.

In a claim for child's benefits under section 202(d)(8)(D)(ii) of the Social Security Act (42 U.S.C. 402(d)(8)(D)(ii)), where the worker was receiving payments as a foster parent for a foster child whom the worker adopted after the worker became entitled to Social Security benefits, the payments are to be treated as income of the foster parent in determining whether such parent contributed one-half of the adopted foster child's support for purposes of section (d)(8)(D)(ii).

AR 86-17(2)

Effective Date: May 21, 1986.

Owens v. Schweiker, 692 F.2d 80 (9th Cir. 1982) Child's Benefits—Title II of the Social Security Act

Issue

Whether, for purposes of determining a child's status under section 216(h)(2)(A) of the Social Security Act, the Secretary must apply the State law of intestate succession in effect at the time of the worker's death, rather than the law in effect at the time of the Secretary's determination.

Explanation of How SSA Will Apply the Decision Within the Circuit

This ruling applies only to cases where the child resides in Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Northern Mariana Islands, Oregon, or Washington at the time of determination or decision at any level of administrative review, i.e., initial, reconsideration, administrative law judge hearing or Appeals Council.

In a claim for surviving child's benefits involving section 216(h)(2)(A) of the Social Security Act (42 U.S.C. 416(h)(2)(A)), to determine the right of the child to inherit under the intestacy law in the State of the worker's domicile at the time of death, the law which is in effect at the time of the determination or decision at any level of administrative review, i.e., initial, reconsideration, administrative law judge hearing or Appeals Council review, shall be applied to determine the child's entitlement to benefits.

AR 86-10(5)

Effective Date: May 22, 1986.

Woodson v. Schweiker, 656 F.2d 1169 (5th Cir. 1981) Interpretation of the Deemed Marriage Provision—Title II of the Social Security Act

Issue

Whether an applicant who cannot establish that she is the legal wife or widow of a worker, can establish entitlement to wife's, widow's or mother's benefits on his earnings record under the provision for deeming a marriage valid set forth in section 216(h)(1)(B) of the Social Security Act (the Act), 42 U.S.C. 416(h)(1)(B), where (1) another individual previously has been entitled to benefits on the worker's earnings record under section 202 (b), (e) or (g) of the Act, 42 U.S.C. 402 (b), (e) or (g),[1] but (2) such individual is no longer entitled to benefits.[2]

Explanation of How SSA Will Apply the Decision Within the Circuit

This ruling applies only in cases where the applicant seeking to invoke the deemed marriage provision resides in Mississippi, Louisiana or Texas at the time of the determination or decision at any level of administrative review, i.e., initial, reconsideration, administrative law judge hearing or Appeals Council.

When a claimant seeks to establish her status as the wife or widow of a worker on the basis of the deemed marriage provision and the legal widow was previously entitled, claimant's entitlement will not be barred because the legal widow was previously entitled to wife's, widow's or mother's benefits under section 202 (b), (e) or (g) of the Act.[3] This ruling applies equally to claims for husband's, widower's and father's benefits. See footnote 2. In such cases, the application of the deemed spouse will be adjudicated as though the legal spouse had not been entitled, except that the "deemed spouse" will not be entitled to wife's, widow's or mother's benefits for any months prior to the month after the month in which the former beneficiary's benefits terminated. Once the applicant has

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[1] Respectively, the paragraphs of this section set forth the conditions for entitlement for wife's, widow's and mother's insurance benefits. As more fully set forth in the Act, (1) wife's benefits are benefits paid to the wife of a worker who is entitled to benefits either on the basis of her age, or on the basis that she has in her care a child of the worker who is entitled to benefits; (2) widow's benefits are benefits paid to the widow of an insured worker on the basis of her age; and (3) mother's benefits are benefits paid to a widow on the basis that she has in her care a child of the worker who is entitled to benefits.

[2] This ruling applies equally to an individual seeking to establish entitlement to husband's, widower's or father's benefits by invoking the provisions of section 216(h)(1) of the Act, where another individual previously has been entitled to husband's, widower's or father's benefits under section 202 (c), (f) or (g), 42 U.S.C. 402 (c), (f) or (g). As more fully set forth in the Act, these categories of benefits are analogous to wife's, widow's and mother's benefits, respectively, as described in footnote 1.

[3] In *Woodson*, the widow's remarriage was the event which terminated her entitlement to benefits on the worker's account. However, the court's holding is based on the fact that her status as a widow within the meaning of section 216(h)(1)(B) has ended, and would apply equally where the former beneficiary's entitlement had terminated for some other reason. Under the Act and regulations, there are certain situations in which a widow's remarriage does not terminate her entitlement to benefits. See 20 CFR 404.337 and 404.341. The *Woodson* case does not involve a remarriage which comes within the terms of an exception, and this ruling is not applicable to cases which come within the terms of an exception.

become entitled to benefits under the deemed marriage provisions by application of this ruling, her continuing entitlement should be determined in accordance with regular SSA policies and procedures.[4]

AR 86-19(11)

Effective Date: May 22, 1986.

Woodson v. Schweiker, 656 F.2d 1109 (5th Cir. 1981) Interpretation of the Deemed Marriage Provision Title II of the Social Security Act

Issue

Whether an applicant who cannot be establish that she is the legal wife or widow of a worker, can establish entitlement to wife's, widow's or mother's benefits on his earnings record under the provision for deeming a marriage valid set forth in section 216(h)(1)(B) of the Social Security Act (the Act), 42 U.S.C. 416(h)(1)(B), where (1) another individual previously has been entitled to benefits on the worker's earnings record under section 202 (b), (e) or (g) of the Act, 42 U.S.C. 402 (b), (e) or (g),[5] but (2) such individual is no longer entitled to benefits.[6]

Explanation of How SSA Will Apply the Decision Within the Circuit

This ruling applies only in cases where the applicant seeking to invoke the deemed marriage provision resides in Alabama, Florida and Georgia at the time of the determination or decision at any administrative level of review, i.e., initial, reconsideration, administrative law judge hearing or Appeals Council.[7]

When a claimant seeks to establish her status as the wife or widow of a worker on the basis of the deemed marriage provision and the legal widow was previously entitled, claimant's entitlement will not be barred because the legal widow was previously entitled to wife's, widow's or mother's benefits under section 202(b), (e) or (g) of the Act.[8] This ruling applies equally to claims for husband's, widower's and father's benefits. See footnote 6. In such cases, the application of the deemed spouse will be adjudicated as though the legal spouse had not been entitled, except that the "deemed spouse" will not be entitled to wife's, widow's or mother's benefits for any months prior to the month after the month in which the former beneficiary's benefits terminated. Once the applicant has become entitled to beneifts under the deemed marriage provisions by application of this ruling, her continuing entitlement should be determined in accordance with regular SSA policies and procedures.[9]

AR 86-20(6)

Effective Date: May 23, 1986.

Grigg v. Finch, 418 F.2d 661 (6th Cir. 1969) Correction of an individual's earnings record to reflect self-employment income for years in which the individual did not timely file an income tax return

Issue

Whether, after the statutory time limitation for correcting an earnings record has expired, the absence of an entry of self-employment income for a year in which no timely tax return of self-employment income was filed is conclusive evidence that no self-employment income was derived by the worker in that year.

Explanation of How SSA Will Apply the Decision Within the Circuit

This ruling applies only where the claimant resides in Michigan, Ohio, Kentucky, or Tennessee at the time of the determination or decision at any level of administrative review, i.e., initial, reconsideration, administrative law judge hearing or Appeals Council review.

When evaluating a request by a worker for an amendment of his or her earnings record to reflect alleged self-employment income for a year in which the worker did not file an income tax return reflecting self-employment income and for which the statutory time limitation for filing an income tax return and for correcting the earnings record has run, SSA will credit the worker with the appropriate self-employment income for that year only where all of the following conditions are met: (1) The worker's receipt of self-employment income is documented by Internal Revenue Service Forms 1099 (2) timely filed by disinterested third parties (3) reflecting the payment of self-employment income to the worker in the period alleged.[10]

AR 86-21(2)

Effective Date: July 3, 1986.

Adams v. Weinberger, 521 F.2d 656 (2d Cir. 1975) Contributions to Support re: Posthumous Illegitimate Child—Title II of the Social Security Act

Issue

Whether the contributions for support by the father of an unborn child commensurate with the needs of the unborn child at the time of the father's death establish support of the child in order to entitle the child to survivor's benefits as a deemed child, even through the contributions to the child or the

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[4] Under SSA's policy, entitlement of a claimant under the deemed marriage provision is possible where the beneficiary previously entitled to wife's, widow's or mother's benefits has died or where the beneficiary's marriage to the insured worker was dissolved by divorce or annulment. The earliest possible month of entitlement for the deemed spouse would be the month of the former beneficiary's death, or, if applicable, dissolution of the marriage to the insured worker. Therefore, in this situation, both SSA policy and circuit law would permit use of the deemed marriage provision to entitle the deemed spouse.

[5] Respectively, the paragraphs of this section set forth the conditions for entitlement for wife's, widow's and mother's insurance benefits. As more fully set forth in the Act, (1) wife's benefits are benefits paid to the wife of a worker who is entitled to benefits either on the basis of her age, or on the basis that she has in her care a child of the worker who is entitled to benefits; (2) widow's benefits are benefits paid to the widow of an insured worker on the basis of her age; and (3) mother's benefits are benefits paid to a widow on the basis that she has in her care a child of the worker is entitled to benefits.

[6] This ruling applies equally to an individual seeking to establish entitlement to husband's, widower's, or father's benefits by invoking the provisions of section 216(h)(1) of the Act, where another individual previously has been entitled to husband's, widower's or father's benefits under section 202 (c), (f) or (g), 42 U.S.C. 402 (c), (f) of (g). As more fully set forth in the Act, these categories of benefits are analogous to wife's, widow's and mother's benefits, respectively, as described in footnote 5.

[7] *Woodson* was decided on September 25, 1981, when the States which now comprise the Eleventh Circuit were part of the Fifth Circuit. Under the holding in *Bonner v. City of Pritchard, Alabama*, 661 F.2d 1206 (11th Cir. 1981), Fifth Circuit decisions issued prior to October 1, 1981 are precedents for the Eleventh Circuit. Accordingly, a Ruling of Acquiescence on *Woodson* is provided for Eleventh Circuit residents.

[8] In *Woodson*, the widow's remarriage was the event which terminated her entitlement to benefits on the worker's account. However, the court's holding is based on the fact that her status as a widow within the meaning of section 216(h)(1)(B) has ended, and would apply equally where the former beneficiary's entitlement had terminated for some other reason. Under the Act and regulations, there are certain situations in which a widow's remarriage does not terminate her entitlement to benefits. See 20 CFR 404.337 and 404.341. The *Woodson* case does not involve a remarriage which comes within the terms of an exeption, and this ruling is not applicable to cases which come within the terms of an exception.

[9] Under SSA's policy, entitlement of a claimant under the deemed marriage provision is possible where the beneficiary previously entitled to wife's, widow's or mother's benefits had died or where the beneficiary's marriage to the insured worker was dissolved by divorce or annulment. The earliest possible month of entitlement for the deemed spouse would be the month of the former beneficiary's death, or, if applicable, dissolution of the marriage to the insured worker. Therefore, in this situation, both SSA policy and circuit law would permit use of the deemed marriage provision to entitle the deemed spouse.

[10] It is significant to note that the Form 1099 will reflect only the gross amount of money paid to the worker. In order to determine the *amount* of self-employment income to be credited to the worker's earnings record, it will be necessary to determine the net earnings from the self-employment (i.e., the amount receive as reflected in the Form 1099 should be reduced by the amount of the worker's deductible expenses.)

child's mother were not regular and substantial.

Explanation of How SSA Will Apply the Decision With the Circuit

This ruling applies only to cases involving an applicant for child's benefits as a deemed child under section 216(h)(3)(C)(ii) of the Social Security Act who resides in Connecticut, New York, or Vermont at the time of the determination or decision at any level of administrative review, i.e., initial, reconsideration, administrative law judge hearing or Appeals Council review and who was born after the worker died.

Such an applicant will be deemed to be the worker's child when satisfactory evidence establishes that the worker is the father of the child and the worker's contributions to his unborn child were commensurate with the needs of the unborn child at the time of the worker's death, even though those contributions were not regular and substantial.

AR 86-22(4)

Effective Date: July 3, 1986.

Parsons v. Health and Human Services, 762 F.2d 1188 (4th Cir. 1985)—Contributions to Support re: Posthumous Illegitimate Child—Title II of the Social Security Act

Issue

Whether the contributions for support by the father of an unborn child commensurate with the needs of the unborn child at the time of the father's death establish support of the child in order to entitle the child to survivor's benefits as a deemed child, even through the contributions to the child or the child's mother were not regular and substantial.

Explanation of How SSA Will Apply the Decision Within the Circuit

This ruling applies only to cases involving an applicant for child's benefits as a deemed child under section 216(h)(3)(C)(ii) of the Social Security Act who resides in Maryland, Virginia, West Virginia, South Carolina or North Carolina at the time of the determination or decision at any level of administrative review, i.e., initial, reconsideration, administrative law judge hearing or Appeals Council review and who was born after the worker died.

Such an applicant will be deemed to be the worker's child when the worker's contributions to his unborn child were commensurate with the needs of the unborn child at the time of the worker's death, even though those contributions were not regular and substantial.

AR 86-23(9)

Effective Date: July 3, 1986.

Doran v. Schweiker, 661 F.2d 605 (9th Cir. 1982) Contributions to Support re: Posthumous Illegitimate Child—Title II of the Social Security Act

Issue

Whether the contributions for support by the father of an unborn child commensurate with the needs of the unborn child at the time of the father's death establish support of the child in order to entitle the child to survivor's benefits as a deemed child, even though the contributions to the child or the child's mother were not regular and substantial. Further, whether the Secretary in determining if the worker was "contributing to the support" of the unborn child, must consider such contributions in relation to the worker's economic circumstances.

Explanation of How SSA Will Apply the Decision Within the Circuit

This ruling applies only to cases involving an applicant for child's benefits as a deemed child under section 216(h)(3)(c)(i) of the Social Security Act who resides in Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Northern Mariana Islands, Oregon or Washington at the time of the determination or decision at any level of administrative review, i.e., initial, reconsideration, administrative law judge hearing or Appeals Council review and who was born after the worker died.

Such an applicant will be deemed to be the worker's child when satisfactory evidence establishes that the worker is the father of the child and the worker's contributions to his unborn child were commensurate with the needs of the unborn child at the time of the worker's death, even though those contributions were not regular and substantial. The economic circumstances of the worker (i.e., ability to contribute) will also be taken into account in determining whether the worker was contributing to the claimant's support.

AR 86-24(10)

Effective Date: September 26, 1986.[11]

Hansen v. Heckler, 783 F.2d 170 (10th Cir. 1986); *Elliott v. Heckler*, No. 84-2055 (10th Cir. 1986); Invalidation of the Not Severe Regulations—Titles II and XVI of the Social Security Act

Issue

Whether an individual's impairment(s), alone or in combination, may be found not severe, hence not disabling under the sequential evaluation process based only on medical evidence which establishes that the impairment(s) would have no more than a minimal effect on the individual's ability to work even if the individual's age, education or work experience were specifically considered.

Explanation of How SSA Will Apply the Decisions Within the Circuit

This ruling applies to cases involving an applicant for disability insurance benefits and/or Supplemental Security Income benefits based on disability who resides in Wyoming, Utah, Colorado, Kansas, New Mexico or Oklahoma at the time of the determination or decision at any level of administrative review, i.e., initial, reconsideration, administrative law judge hearing or Appeals Council review.

The disability determinations of such applicants will begin as usual with the first step of the sequential evaluation process involving whether the claimant is performing or has performed substantial gainful activity during the period at issue. Adjudication will be as follows:

(1) *Initial Cases*—In cases where a determination is not directed at step one, proceed directly to a consideration of whether the applicant's impairment(s) meets or equals a listed impairment in Appendix 1, and, if necessary, to subsequent steps of the sequential evaluation process.

(2) *Continuing Disability Review Cases*—In cases where a determination is not directed at steps one, two, or five of the sequential evaluation process for continuing disability review cases, proceed to a consideration of current ability to engage in substantial gainful activity, i.e., assess residual functional capacity based on all current impairments and determine whether the person can still do work done in the past. If necessary, proceed to subsequent steps of the sequential evaluation process. See 20 CFR 404.1594(f) (6) and (7); 416.994(b)(5) (vi) and (vii).

AR 86-25(9)

Effective Date: October 20, 1986.

Fogner v. Heckler, 779 F.2d 541 (9th Cir. 1985)—Applicability of section 1127 of the Social Security Act

[11] Since the "nonsevere" issue is presently before the United States Supreme Court in *Bowen v. Yuckert, cert. granted*, 106 S.Ct. 1967 (1986), this ruling is to be applied only until such time as a decision is issued in *Yuckert*.

Issue

Whether section 1127 of the Social Security Act applies to determinations or decisions made before July 1, 1981 (its effective date) but processed for payment after that date.

Explanation of How SSA Will Apply the Decision Within the Circuit

This ruling applies to claims involving an applicant for benefits under both title II and title XVI whose entitlement to title II retroactive benefits was determined prior to July 1, 1981 but whose award certificate for title II benefits was not issued until July 1, 1981 or later and who resides in Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Northern Mariana Islands, Oregon or Washington at the time of the determination or decision at any level of administrative review, i.e., initial, reconsideration, administrative law judge hearing or Appeals Council review.

If, prior to July 1, 1981, such a person is determined to be entitled to retroactive title II benefits ("determined" as defined by the Court of Appeals) but his or her award certificate is not issued until July 1, 1981 or later, section 1127 of the Social Security Act will not apply and no reduction of retroactive monthly Social Security benefits for months in which SSI payments were received will be required.

AR 87-1(6)

Effective Date: January 6, 1987.

Webb v. Richardson, 472 F.2d 529 (6th Cir. 1972)—Attorneys' Fees—Single Fee, Not to Exceed 25 Percent of Past-Due Benefits, Set by Tribunal Which Ultimately Upholds the Claim—Title II of the Social Security Act.

Issue:

Whether the tribunal, which ultimately allows an individual's retirement, survivor's or disability insurance (title II) claim, may approve an attorney's fee covering services provided during the entire appeal process and whether such approved fee is limited to 25 percent of the past-due benefits.

Explanation of How SSA Will Apply the Decision Within the Circuit.

This ruling applies only to title II cases involving the allowance of an individual's claim and subsequent application for approval of an attorney's fee in cases where the individual resides in Kentucky, Michigan, Ohio or Tennessee at the time of the fee petition determination at any level of administrative review, i.e., initial, reconsideration, administrative law judge hearing or Appeals Council review.

In all cases, the tribunal (meaning either the Federal Court system or the Social Security Administration) which ultimately allows the individual's claim will set a single attorney's fee covering services provided before either or both tribunals during the entire appeal process. The amount of such approved fee may not exceed 25 percent of the past-due benefits. This 25 percent maximum applies to cases which are pursued no further than the administrative level as well as to cases where there is court involvement.

FOR FURTHER INFORMATION CONTACT: Lita Drapkin, Legal Assistant, 3-B-4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594-7336.

Paperwork Reduction Act

This notice does not impose recordkeeping or reporting requirements on the public.

Dated: July 15, 1987.

Dorcas R. Hardy,

Commissioner of Social Security.

[FR Doc. 87-17945 Filed 8-6-87; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-030-07-4332-09; FES87-32]

Availability of Final Environmental Impact Statement for the Gunnison Basin and American Flats—Silverton Planning Units; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of Final Environmental Impact Statement (EIS) on the Wilderness Recommendations for the Gunnison Basin and American Flats—Silverton Planning Units, Montrose District, Colorado.

SUMMARY: This EIS assesses the environmental consequences of managing five Wilderness Study Areas (WSAs) as wilderness or nonwilderness. The alternatives analyzed included: (1) A No Wilderness/No Action alternative for each WSA; (2) an All Wilderness alternative for each WSA, and (3) one or more Partial Wilderness alternatives for each WSA.

The names of the WSAs analyzed in the EIS, their total acreage, and the proposed action for each are as follows:

Area	Acres nonsuitable	Acres suitable
Raddoud Peak (CO-030-208)	10,175	30,400
Handies Peak (CO-30-241)	16,875	7,865
American Flats (CO-030-217)	3,205	1,536
Bill Hare Gulch (CO-030-085)	370	0
Larson Creek (CO-030-086)	900	0
	25,625	39,790

The Bureau of Land Management wilderness proposals will ultimately be forwarded by the Secretary of the Interior to the President and from the President to the Congress. The final decision on wilderness designation rests with Congress. In any case, no final decision on these proposals can be made by the Secretary during the 30 days following the filing of this EIS. This complies with the Council on Environmental Quality Regulations, 40 CFR 1506.10B(2).

SUPPLEMENTARY INFORMATION: A limited number of individual copies of the EIS may be obtained from the Area Manager, Gunnison Resource Area, 216 North Colorado, Gunison, CO 81230. Copies are also available for inspection at the following locations:

Department of the Interior, Bureau of Land Management, 18th & C Street, NW., Washington, DC 20240

Bureau of Land Management, Colorado State Office, 2850 Youngfield Street, Lakewood, CO 80215

Bureau of Land Management, Montrose District, 2465 S. Townsend, Montrose, CO 81401.

FOR FURTHER INFORMATION CONTACT: Bob Schmidt, Acting District Manager, Montrose District, 2465 S. Townsend, Montrose, CO 81401.

Dated: July 30, 1987.

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 87-17769 Filed 8-6-87; 8:45 am]

BILLING CODE 4310-JB-M

[CO-030-07-4410-08]

Availability of the Draft Uncompahgre Basin Resource Management Plan/ Environmental Impact Statement and Draft Wilderness Technical Supplement; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of the Draft Uncompahgre Basin Resource Management Plan/Environmental Impact Statement and Draft Wilderness Technical Supplement, and notice of three proposed areas for designation as Areas of Critical Environmental

Concern (ACECs) and either Research Natural Areas or Outstanding Natural Areas in one or more of the alternatives.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969 and the Federal Land Policy and Management Act of 1976, the Bureau of Land Management has prepared the Draft Uncompahgre Basin Resource Management Plan/Environmental Impact Statement (RMP/EIS) and Draft Wilderness Technical Supplement (WTS).

DATE: Comments must be received by November 5, 1987.

ADDRESS: Comments should be sent to: Robert E. Vecchia, RMP Team Leader, Bureau of Land Management, Uncompahgre Basin Resource Area, 2505 South Townsend Avenue, Montrose, Colorado 81401.

FOR FURTHER INFORMATION CONTACT: Robert E. Vecchia, RMP Team Leader, Bureau of Land Management, Uncompahgre Basin Resource Area, 2505 South Townsend Avenue, Montrose, Colorado 81401; Telephone: 249–2244. Single copies may be obtained from this address.

SUPPLEMENTARY INFORMATION: Four management alternatives for the 483,077 acres of public land in the Uncompahgre Basin Planning Area of the Uncompahgre Basin Resource Area in west-central Colorado were analyzed in the Draft RMP/EIS.

The Continuation of Current Management Alternative represents the existing management guidance. This alternative corresponds to the No Action Alternative required by the NEPA.

The Production Alternative would continue multiple-use management but would promote the development, production, and transportation of resources providing and producing minerals, food, timber, and fiber.

The Conservation Alternative would continue multiple-use management but would promote the conservation and protection of resources such as wilderness, cultural sites, wildlife habitats, watershed, and recreation areas.

The Preferred Alternative was developed based on the analysis of the other three alternatives. It would continue multiple-use management by protecting important environmental values and sensitive resources while allowing development of resources which provide important goods and services.

The Draft RMP/EIS also identifies three areas proposed for designation as ACECs:

A 1,895-acre portion of Escalante Canyon west of Delta, Colorado, would be considered for special designation. This area contains several federally-listed threatened and endangered plant species and two unique plant associations. The area also receives significant recreational use. Specifically, this area is located in T. 51 N., R. 13 W., sections 19, 20, 21, 22, 27, 28, 29, and 30, New Mexico Principal Meridian.

An area comprised of two tracts totalling 377 acres eight miles east of Montrose, Colorado, would be considered for special designation. The tracts contain a large population of a listed endangered specie and significant populations of a candidate specie. Specifically, this area is located in T. 49 N., R. 8 W., Sections 18 and 19; T. 48 N., R. 8 W., section 6; and T. 48 N., R. 9 W., section 1, New Mexico Principal Meridian.

An 80-acre site consisting mainly of a volcanic geological structure with high-value scientific, interpretive, and scenic characteristics northeast of Crawford, Colorado, would be considered for special designation. Specifically, this area is located in T. 15 S., R. 91 W., section 27, 6th Principal Meridian.

The Draft WTS analyzes in detail various alternatives for the three Wilderness Study Areas (WSAs) within the planning area. The WSAs total 41,865 acres.

Public hearings to receive oral and/or written comments on the Draft RMP/EIS and Draft WTS will be held at the following times and locations:

September 22, 1987: 7:30 p.m. to 9:30 p.m., Memorial Hall, Main Street at 1st Street, Hotchkiss, Colorado.

September 24, 1987: 7:30 p.m. to 9:30 p.m., Ramada Inn Foothills, 11595 West 6th Avenue, Lakewood, Colorado.

September 29, 1987: 7:30 p.m. to 9:30 p.m., BLM Montrose District Office, 2465 South Townsend Avenue, Montrose, Colorado.

An informational open house will precede each public hearing. The open house session will begin at 6:30 p.m. at each location.

Tom Walker,

Associate State Director.

July 14, 1987.

[FR Doc. 87–16710 Filed 8–6–87; 8:45 am]

BILLING CODE 4310–JB–M

[NV–930–07–4332–09; FES 87–33]

Availability of Final Environmental Impact Statement for Wells Wilderness; Nevada

AGENCY: Department of Interior, Bureau of Land Management.

ACTION: Notice of Availability of Final Environmental Impact Statement (EIS) on the Wilderness Recommendations for the Wells Resource Area, Elko District, Nevada.

SUMMARY: This EIS assesses the environmental consequences of managing four Wilderness Study Areas (WSAs) as wilderness or nonwilderness. The alternatives analyzed included: (1) A No wilderness alternative for each WSA, (2) an All Wilderness alternative for each WSA, and (3) a Partial Wilderness alternative(s) for each WSA.

The names of the WSAs analyzed in the EIS, their total acreage, and the proposed action for each are as follows:

WSA	Acres suitable	Acres nonsuitable
Bluebell WSA	41,324	14,341
Goshute Peak WSA	81,004	8,786
South Pequop WSA	34,544	6,546
Bad Lands WSA	8,415	1,011
Total	145,287	30,684

The Bureau of Land Management wilderness proposals will ultimately be forwarded by the Secretary of the Interior to the President and from the President to the Congress. The final decision on wilderness designation rests with Congress. In any case, no final decision on these proposals can be made by the Secretary during the 30 days following the filing of this EIS. This complies with the Council on Environmental Quality Regulations, 40 CFR 1506.10B(2).

SUPPLEMENTARY INFORMATION: A limited number of individual copies of the EIS may be obtained from the District Manager, Elko District, P.O. Box 831, Elko, NV 89801, or call (702) 738–4071. Copies are also available for inspection at the following locations:

Department of the Interior, Bureau of Land Management, 18th & C Street, NW., Washington, DC 20240

Bureau of Land Management, Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, NV 89520

Bureau of Land Management, Elko District, P.O. Box 831, Elko, NV 89801.

FOR FURTHER INFORMATION CONTACT: Rodney Harris, District Manager, at 3900 E. Idaho Street or Elko District, P.O. Box 831, Elko, NV 89801.

Dated: July 31, 1987.

Bruce Blanchard,

Director Office of Environmental Project Review.

[FR Doc. 87–17770 Filed 8–16–87; 8:45 am]

BILLING CODE 4310–HC–M

[AZ-050-06-4332-09]

Availability of Yuma District Draft Wilderness Environmental Impact Statement; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of Yuma District Draft Wilderness Environmental Impact Statement.

SUMMARY: The Yuma District Draft Wilderness Environmental Impact Statement assesses the environmental consequences of managing 22 wilderness study areas as wilderness or nonwilderness. The alternatives assessed include: (1) An "All Wilderness Alternative" for each wilderness study area; (2) a "No Wilderness Alternative" for each wilderness study area; (3) "Partial Wilderness Alternatives" for ten of the wilderness study areas; and (4) "Enhanced Wilderness Alternatives" for two of the wilderness study areas.

The names of the wilderness study areas and the acreages recommended suitable and nonsuitable under the Proposed Action are shown in the following table.

WSA	Acres recommended	
	Suitable	Nonsuitable
Dead Mtns. No. Add	0	1,015
Dead Mtns. So. Add	0	630
Chemehuevi Mtns. Add	0	195
Chemehuevi/Needles Add	960	0
Needles Eastern Add	0	465
Crossman Peak	19,250	19,340
Mohave Wash	58,018	46,347
Whipple Mountains Add	1,260	120
Gibraltar Mountain	15,675	9,585
Planet Peak	16,430	1,215
Cactus Plain	82,325	8,035
Swansea	11,795	29,895
East Cactus Plain	13,735	0
Big Maria Mtn. No. Add	0	415
Big Maria Mtn. So. Add	0	1,420
South Trigo Mountains	0	4,500
Trigo Mountains	29,095	7,775
Kofa Unit 3 So. Add	0	2,400
Kofa Unit 4 No. Add	1,380	520
Kofa Unit 4 So. Add	0	11,220
Little Picacho Peak Add	0	2,915
Muggins Mountains	8,855	5,600
Total	235,818	157,407

The Bureau of Land Management draft wilderness recommendations are available for public review and comment. Public hearings will be held in Lake Havasu City, Parker, Yuma, and Phoenix, Arizona, and in Blythe, California. The schedule for these hearings is as follows:

Date and time	Location
09/15/87—7–9 p.m. MST	Rancho Viejo Elementary School (Auditorium), 930 South Avenue C, Yuma, Arizona.
09/16/87—7–9 p.m. MST	Havasupai Elementary School Gymnasium, 980 Cashmere Blvd., Lake Havasu City, Arizona.
09/22/87—7–9 p.m. MST	Wallace School Gymnasium (Dome), 1650 Navaho, Parker, Arizona.
09/23/87—7–9 p.m. PDT	Ruth Brown School (Cafetorium), 241 North Seventh Street, Blythe, California.
09/29/87—7–9 p.m. MST	Maricopa County Board of Supervisors Auditorium, 205 West Jefferson, Phoenix, Arizona.

Comments received during the review period will be considered in the later decisionmaking process and included in the final wilderness environmental impact statement. The Bureau of Land Management wilderness recommendations will ultimately be forwarded by the Secretary of the Interior and the President to Congress. The final decision on wilderness designation rests with Congress.

DATE: Written comments should be submitted to the Yuma District Manager and must be received on or before November 20, 1987.

FOR FURTHER INFORMATION CONTACT: J. Darwin Snell, District Manager, Yuma District Office, 3150 Winsor Avenue, P.O. Box 5680, Yuma, Arizona 85364, telephone 602–726–6300.

SUPPLEMENTARY INFORMATION: Copies of the draft environmental impact statement may be obtained from the District Manager at the above address. Copies are also available for inspection at the following locations: Department of the Interior, Bureau of Land Management, 18th and C Streets, NW., Washington, DC 20240; and Arizona State Office, Bureau of Land Management, Public Room, 3rd Floor, 3707 N. 7th St., Phoenix, Arizona 85014.

D. Dean Bibles,

State Director, Arizona.

Date: July 28, 1987.

[FR Doc. 87–17768 Filed 8–6–87; 8:45 am]

BILLING CODE 4310-32-M

[M–63929(ND); MT–030–06–4212–14]

Realty Action; Competitive Sale; Morton County, ND

AGENCY: Bureau of Land Management, Dickinson District, Interior.

ACTION: Notice of Realty Action M–63929(ND), competitive sale of public land in Morton County, North Dakota.

SUMMARY: The following described land has been determined to be suitable for disposal under section 203 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1713 at no less than the appraised fair market value of $5,600.00.

Fifth Principal Meridian, North Dakota

T. 135 N., R. 81 W.
Sec. 6, Lot 6, NE1/4SW1/4.
Containing 74.84 acres.

The land will be offered for sale by sealed bid utilizing competitive bidding procedures. The sale will be held at 10:00 A.M. MDT on September 30, 1987 at the Dickinson District Office, 202 East Villard, Dickinson, North Dakota.

The subject land is located approximately 20 miles south of Mandan, North Dakota. The tract has legal and physical access. The tract is isolated and generally unused by the public. It does not contain significant resource values that would justify retention. It is difficult and uneconomical to manage as part of the public land system and not suitable for management by another federal agency. Transfer of the land to private ownership will benefit the public interest and provide for more efficient land management.

The proposed land sale is consistent with the Bureau's proposed land use plan for the Dickinson District. Final approval of the proposed land use plan is anticipated September 1987.

SUPPLEMENTARY INFORMATION: The publication of this notice segregates the public lands described above from settlement, exchange, location, and entry under the public land laws, including the mining laws, but not sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976 for a period of two years from the date of publication. The sale will be made subject to:

1. A reservation to the United States of a right-of-way for ditches or canals in accordance with 43 U.S.C. 945.

2. The reservation to the United States of all minerals.

3. All valid existing rights (e.g., rights-of-way and leases of record).

Bidding Information

The land will be sold by sealed bids. Bids delivered or sent by mail will be considered only if received by the Bureau of Land Management, Dickinson District Office, Box 1229, 202 East Villard, Dickinson, ND 58602 prior to 10:00 A.M. on September 30, 1987. Each sealed bid must be accompanied by a certified check, postal money order, draft, or cashier's check made payable to the Department of the Interior, Bureau of Land Management for not less than one-fifth of the amount of the sealed bid. The sealed envelope must be marked

with the sale date and case number as follows:

Sealed Bid
Public land sale M-63929(ND)
September 30, 1987

Oral bidding will be used when two or more valid high sealed bids of equal amounts are received. Oral bidding will involve only those parties submitting the high bids.

The highest qualifying bid shall be publicly declared.

If the land is not sold at this sale, it will be offered over-the-counter until sold or until the sale is cancelled. Offers to purchase the land in an over-the-counter transaction, if one is necessary, shall be by sealed bid. The bids will be opened 10:00 A.M. MDT/MST the second Friday of each month. Bids must be received no later that 4:00 P.M. the day before the sale to be considered. Other bidding information given in this notice applies.

Comment Period

For a period of 45 days from the date of the notice, interested parties may submit comments to the Bureau of Land Management at the address shown below. Any adverse comment will be evaluated by the Bureau of Land Management Montana State Director, who may sustain, vacate, or modify this realty action. In absence of any objection, this realty action will become the final determination of the Department of the Interior.

Further Information

Information related to the sale, including the environmental assessment and land report, is available for review at the Dickinson District Office, 202 East Villard, Box 1229, Dickinson, North Dakota 58602.

Bidder Information

The bidder must be a United States citizen, or in the case of a corporation, subject to the laws of any state or the United States. A state, state instrumentality, or political subdividion submitting a bid must be authorized to hold property. Any other entity submitting a bid must be legally capable of holding and conveying lands or interests therein under the laws of the State of North Dakota.

Bids must be submitted by the principal or his agent.

Final Details

Once the high bid is accepted, the successful bidder shall submit the remainder of the full bid price within 30 days of the date of the sale. Failure to submit the required amount within the allotted time will result in cancellation of the sale, and the deposit will be forfeited.

The successful bidder, if other than the grazing lessees, shall allow 180 days from the time patent is issued, for the grazing lessees to salvage materials used to construct authorized range improvement projects and to perform reclamation measures. The owners of the improvements are as follows: Anton Gangl—fence 1320 feet long; Robert Gangl—fence 1535 feet long; Regina Gangl—fence 1320 feet long.

All bids will either be returned, accepted or rejected within 60 days of the sale date.

Dated: July 30, 1987.

William F. Kresh,
District Manager.

[FR Doc. 87-17942 Filed 8-6-87; 8:45 am]
BILLING CODE 4310-DN-M

[OR-943-07-4220-11; GP-07-216-OR-40870]

Realty Action: Conveyance of Public Land; Order Providing for Opening of Lands); Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 70 acres of public land out of Federal ownership. This action will also open 8.25 acres of reconveyed land to surface entry.

EFFECTIVE DATE: September 14, 1987.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregan 97208, (Telephone 503-231-6905).

SUPPLEMENTARY INFORMATION:

1. Notice is hereby given that in an exchange of lands made pursuant to section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, a patent has been issued transferring 70 acres of land in Crook Country, Oregon, from Federal to private ownership.

2. In the exchange, the following described land has been reconveyed to the United States:

Willamette Meridian

T. 17 S., R. 22 E.,
Sec. 17, all the portion of the NE¼NE¼ lying north of Oregon Highway 380.

The area described contains 8.25 acres in Crook County.

3. At 8:30 a.m., on September 14, 1987, the land described in paragraph 2 will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on September 14, 1987, will be considered as simultaneously filed at that time. Those recieved thereafter will be considered in the order of filing.

4. The mineral estate in the land described in paragraph 2 was not reconveyed to the United States and remains out of Federal ownership.

Dated: July 30, 1987.

B. LaVelle Black,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87-17941 Filed 8-6-87; 8:45 am]
BILLING CODE 4310-33-M

Bureau of Mines

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request extending the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau's clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202-395-7340.

Title: Consolidated Consumers' Report
Abstract: Respondents supply the Bureau of Mines with domestic production and consumption data on nonfuel mineral commodities. This information is published in Bureau of Mines publications including the *Mineral Industry Survey* (MIS), *Minerals Yearbook* Volume I, II, and III, *Mineral Facts and Problems*, *Mineral Commodity Summaries*, *Mineral Commodity Profiles*, and *Minerals and Materials/A Bimonthly Survey* for use by private organizations and other government agencies.
Bureau Form Number: 6-1109-MA
Frequency: Monthly/Annually
Description of Respondents: Operations that consume ferrous metals.
Annual Responses: 5,098
Annual Burden Hours: 5,098

Bureau Clearance Officer: James T. Hereford (202) 634–1125.

David S. Brown,

Acting Director, Bureau of Mines.

July 27, 1987.

[FR Doc. 87–17971 Filed 8–6–87; 8:45 am]

BILLING CODE 4310-53-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 326]

Investigation of Tank Car Allowance System

AGENCY: Interstate Commerce Commission.

ACTION: Notice of reconvening of the Joint Negotiating Committee (JNC).

SUMMARY: The JNC is reconvening to negotiate changes to the mileage allowance formula, equalization rule, and other related matters in light of the Commission's decision in No. 35404, *General American Transp. Corp.* v. *Indiana Harbor Belt Railroad Co., et al.* (not printed), served March 12, 1987 (*Indiana Harbor*).

DATES: Negotiations will resume on September 14, 1987 at 10:00 A.M., Local Time, at the Marriott O'Hare, Chicago, IL. By August 17, 1987, interested parties who have not previously participated in the JNC, but who wish to do so, should submit the name of their designated representative to:

Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423

Sidney H. Bonser, President, Union Tank Car Company, 111 W. Jackson Blvd., Chicago, IL 60604

Edward D. Olmo, Manager, Land Transportation, Shell Oil Company, 1 Shell Plaza, P.O. Box 2463, Houston, TX 77252–2463

Walter P. Barrett, Executive Vice President, Union Pacific Railroad, 1416 Dodge Street, Room 830, Omaha, NE 68179

Parties that have participated in the JNC should be represented by their previously designated representatives or their successors.

SUPPLEMENTARY INFORMATION: In *Indiana Harbor* the Commission found that rail carriers may charge for movements of privately owned cars to and from private facilities for ordinary maintenance and repair. The Commission stated that car suppliers could recover those costs through mileage allowances. The purpose of the JNC meeting is to initiate negotiations to address the issues raised by *Indiana Harbor.* This notice is published pursuant to a JNC request that the Commission help publicize the meeting.

Additional information is contained in the Commission's *Indiana Harbor* decision. To purchase a copy of the full decision write to T. S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–5403.

This action will not significantly affect either the quality of the human environment or energy conservation.

Decided: July 31, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87–17975 Filed 8–6–87; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31083]

Sisseton Southern Railway Co. Exemption Change in Operator; SLA Property Management

Sisseton Southern Railway has filed a notice of exemption to become the replacement operator selected by SLA Property Management for its line between Milbank, SD (milepost 0), and Sisseton, SD (milepost 38), a distance of 38 miles. The line has been operated by Dakota Rail, Inc., under Finance Docket No. 29896. Any comments must be filed with the Commission and served on George A. Huff, Gen. Mgr., P.O. Box 436, Chamberlain, SD 5732.[1]

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: July 31, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87–17977 Filed 8–6–87; 8:45 am]

BILLING CODE 7035-01-M

[1] The Railway Labor Executives' Association (RLEA) filed an unsupported request for labor protection, claiming that this transaction is subject to the mandatory labor protection provisions of 49 U.S.C. 11347. The United Transportation Union has asked to become a party to this protest. Since this transaction involves an exemption from 49 U.S.C. 10901, this reliance on section 11347 is misplaced, since it only applies to transactions under sections 11344–11346.

[Finance Docket No. 27590 (Sub-No. 1)]

Trailer Train Co. et al.; Approval of the Pooling of Car Service With Respect to Flat Cars; Correction [1]

AGENCY: Interstate Commerce Commission.

ACTION: Institution of proceeding.

SUMMARY: The Commission is instituting a proceeding to consider the application of Trailer Train Company (Trailer Train) and certain railraods under 49 U.S.C. 11342 to amend the Pooling Agreement and Form A Car Contract approved by the Commission in *American Rail Box Car Co.-Pooling,* 347 I.C.C. 862 (1974).

DATES: Verified statements supporting or opposing the application must be filed by August 31, 1987. Verified replies must be filed by September 14, 1987.

ADDRESSES: Send pleadings, referring to Finance Docket No. 27590 (Sub-No. 1) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Applicants' representatives: Paul R. Duke, Covington & Burling, 1201 Pennsylvania Avenue, NW. P.O. Box 7566, Washington, DC 20044

Robert J. Williams, William A. Callison, Trailer Train Company, 101 North Wacker Drive, Chicago, IL 60606

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245.

SUPPLEMENTARY INFORMATION: The following railroads are applicants in this proceeding: The Atchison, Topeka and Santa Fe Railway Company; Burlington Northern Railroad Company; Chicago and North Western Transportation Company; Consolidated Rail Corporation; CSX Transportation, Inc.; The Denver and Rio Grande Western Railroad Company; Florida East Coast Railway Company; Grand Trunk Western Railroad Company; Illinois Central Gulf Railroad Company; The Kansas City Southern Railway Company; Missouri-Kansas-Texas Railroad Company; Missouri Pacific Railroad Company; Norfolk and Western Railway Company; Richmond, Fredericksburg and Potomac Railroad Company; St. Louis Southwestern Railway Company; Soo Line Railroad Company; Southern Pacific Transportation Company; Southern Railway Company; and Union Pacific Railroad Company.

The Railroad applicants and Trailer Train are seeking approval of, and authorization from, the Commission for

[1] The notice, served and published July 30, 1987, omitted the Southern Pacific Transportation Company from the list of railroad applicants.

a fifteen-year extension of the arrangement for the pooling of flatcar service approved by the Commission in 1974. The extension, which has been assented to by all of the participants in the pooling, is part of an agreement among the railroad applicants and Trailer Train for a realignment of the ownership interests in Trailer Train held by the various railroads. Applicants allege that the extension is required to ensure the continuation of Trailer Train's operations for the foreseeable future.

Interested persons may submit verified statements by the dates set forth above. Copies of the application and the supporting verified statements can be examined in the Commission's Public Docket File, Room 1221, in Washington, DC. Copies may also be obtained from applicants' representatives.

Applicants assert that the requested Commission action will not significantly affect either the quality of the human environment or energy conservation. Any opposing statement may include a statement indicating the presence or absence of any impact of the requested Commission action on energy conservation, energy efficiency, or the environment. If any such impacts are alleged, the statement must be accompanied by supporting data, indicating the nature and degree of the anticipated impact.

Decided: July 24, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceeding.

Noreta R. McGee,

Secretary.

[FR Doc. 87-17976 Filed 8-6-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application; Ayerst-Wyeth Pharmaceutical Inc.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on June 19, 1987, Ayerst-Wyeth Pharmaceutical Inc., State Road 3 Kilometer 142.1, P.O. Box 2880, Guayama, Puerto Rico 00654, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Dihydrocodeine (9120)	II
Bulk dextropropoxyphene (non-dosage forms) (9273).	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than September 8, 1987.

Dated: August 3, 1987.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 87-17914 Filed 8-6-87; 8:45 am]

BILLING CODE 4410-09-M

Importation of Controlled Substances; Application; Norac Co., Inc.

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(h)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with section 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on June 26, 1987, Norac Company, Inc., 405 South Motor Avenue, P.O. Box F, Azusa, California 91702, made application to the Drug Enforcement Administration to be registered as an importer of Ibogaine (7260), a basic class controlled substance in Schedule I.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than September 8, 1987.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e) and (f). As noted in a previous notice at 40 FR 43745-46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e) and (f) are satisfied.

Dated: August 3, 1987.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 87-17915 Filed 8-6-87; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40

U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1 Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, Organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

District of Columbia:
DC87-1 (Jan. 2, 1987) ..... p. 86.
Delaware:
DE87-2 (Jan. 2, 1987) ..... p. 101.
New Jersey:
NJ87-2 (Jan. 2, 1987) ..... pp. 610-619, pp. 621-623.
NJ87-3 (Jan. 2, 1987) ..... pp. 636-639, pp. 642, 644.
NJ87-4 (Jan. 2, 1987) ..... pp. 660-663.
Pennsylvania:
PA87-8 (Jan. 2, 1987) ..... p. 916.
PA87-19 (Jan. 2, 1987) ..... p. 978.
PA87-21 (Jan. 2, 1987) ..... p. 990.
PA87-23 (Jan. 2, 1987) ..... pp. 1006-1007.
West Virginia:
WV87-3 (Jan. 2, 1987)..... pp. 1212, 1214, pp. 1217-1219.

Volume II

Michigan:
MI87-12 (Jan. 2, 1987)..... p. 504.
Minnesota:
MN87-8 (Jan. 2, 1987)..... pp. 561-577.
Missouri:
MO87-3 (Jan. 2, 1987)..... pp. 610-612.
Texas:
TX87-18 (Jan. 2, 1987) ..... pp. 986-988.
Listing by location (index)..... pp. xxxvi-xxxviii.

Volume III

Colorado:
CO87-3 (Jan. 2, 1987)..... pp. 114-115.
Oregon:
OR87-1 (Jan. 2, 1987)..... p. 283.
Washington:
WA87-1 (Jan. 2, 1987) ..... pp. 330-352b.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the Country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 31st day of July 1987.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 87-17804 Filed 8-6-87; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 87-83]

NASA Guidelines for United States Commercial Enterprises for Space Station Development and Operations

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of NASA Guidelines for U.S. Commercial Enterprises for Space Station Development and Operations.

SUMMARY: These guidelines are derived from NASA's Commercial Space Policy which implements the commercial intent of President Reagan's National Space Policy. They are intended to provide a framework to encourage U.S. commercial enterprise investment and involvement in the development and operation of the Space Station.

(a) NASA welcomes and encourages participation in Space Station development and operations by U.S. commercial enterprises which seek to develop with private funds Space Station systems and services.

(b) NASA will entertain proposals for commercial development and operation of space Station systems and services with the goal of achieving agreements between NASA and the enterprise.

(c) Agreements shall be for specific services with responsibilities and interfaces clearly defined and shall be focused on achievement of objectives in specific time periods.

(d) NASA will provide, where appropriate, incentives to the enterprise.

(e) NASA safety standards will be applied where appropriate; standards such as reliability and quality assurance

will be applied based on criticality to Space Station functions.

(f) NASA will protect proprietary rights; and will ask for privately-owned data only when necessary to carry out its responsibilities.

(g) U.S. commerical enterprises may, where appropriate, enter into agreements with NASA to receive technical assistance, including access to NASA data and facilities.

(h) U.S. commercial enterprises will retain responsibility for sustaining engineering, operational support, financing and spare parts for their services.

(i) U.S. commerical enterprises may offer their services to Space Station participants.

Andrew J. Stofan,

July 31, 1987.

Associate Administrator for Space Station.

[FR Doc. 87-17981 Filed 8-6-87; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-325 and 50-324]

Environmental Assessment and Finding of No Significant Impact; Carolina Power and Light Co., Brunswick Steam Electric Plant, Units 1 and 2

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption for Units 1 and 2 of the Brunswick Steam Electric Plant located in Brunswick County, North Carolina from the requirements of Appendix R to 10 CFR Part 50 to Carolina Power & Light Company (the licensee).

Environmental Assessment

Identification of Proposed Action

The exemption would grant relief from 10 CFR Part 50, Appendix R, Section III.J, for Fire Zone CB-23 located in Fire Area CB-23E. The exemption request is limited to providing separate emergency lighting units for the operation of safe shutdown equipment from the control room area.

The licensee's exemption request and the bases therefor are contained in a letter dated December 1, 1986, and supplemented February 20, 1987.

The Need for the Proposed Action

The proposed exemption is from Section III.J of Appendix R to 10 CFR Part 50, which requires that emergency lighting units with at least an 8-hour battery power supply be provided in all areas needed to operate safe shutdown equipment. This requirement extends to the access and egress routes of the subject areas, as well. The licensee currently has emergency control room lighting powered by the emergency diesel generators upon loss of offsite power, and by station batteries should the emergency diesel generators fail.

Environmental Impacts of Proposed Action

The proposed exemption would permit acceptance of the existing emergency lighting systems in the control room (which is common to both Units 1 and 2) as equivalent to the 8-hour battery powered emergency lighting units required by the regulation. The exemption covers only the provision of emergency lighting units needed for operation of safe shutdown equipment in the control room area. This exemption will not affect containment integrity, nor the probability of facility accidents. Thus, post-accident radiological releases will not be greater than previously determined, nor will the granting of the proposed exemption otherwise affect radiological plant effluents, or result in any significant occupational exposure. Likewise, the exemption will not affect non-radiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Because it has been concluded that there is no measurable environmental impact associated with the proposed exemption, any alternatives to the exemption will have either no environmental impacts or greater environmental impacts.

The principal alternative to granting the exemption would be to deny the requested exemption. Such action would not reduce environmental impacts of the Brunswick Steam Electric Plant Units 1 and 2 operations and would not enhance the protection of the environment.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Final Environmental Statement for Brunswick Steam Electric Plant, Units 1 and 2, dated January 1974.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based on the foregoing environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further information with respect to this action, see the application for exemption dated December 1, 1986, as supplemented February 29, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW, Washington, DC and at the Southport-Brunswick County Library, 109 W. Moore Street, Southport, North Carolina 28461.

Dated at Bethesda, Maryland, this 3rd day of August 1987.

For the Nuclear Regulatory Commission.

Bart Buckley,

Acting Director, Project Directorate II-1, Division of Reactor Projects I-II.

[FR Doc. 87-17992 Filed 8-6-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-458]

Exemption; Gulf States Utilities Co., Cajun Electric Power Cooperative, (River Bend Station, Unit 1)

I.

The Gulf States Utilities Company, et al. (the licensee), is the holder of Facility Operating License No. NPF-47 which authorizes operation of the River Bend Station, Unit 1, at reactor core power levels not in excess of 2894 megawatts thermal. The facility is a boiling water reactor located at the licensee's site in West Feliciana Parish, Louisiana. The license provides, among other things, that the facility is subject to all rules, regulations and orders of the Commission now or hereafter in effect.

II.

Paragraphs III.C.3 and III.D.3 of Appendix J to 10 CFR Part 50, require that containment isolation valves, which may provide a pathway for leakage of containment atmosphere, be tested on at least a 24-month frequency for comparison with the limiting value of 0.6 L_a for Type B and Type C tests.

The Gulf States Utilities Company proposed a one-time extension to this 24-month surveillance interval for conducting Type C tests on 5 containment isolation valves. The current testing interval is to be extended until the first refueling outage, which is scheduled to begin on September 15, 1987. The extensions requested for leak testing these valves vary from 5 days to 29 days as shown in the following table:

Valve	Extension days	Description/system	Size (inch)
G33*MOVF004	29	RWCU Pump Suction	6
G33*MOVF054	29	RWCU Pump Discharge	4
C11*VF122	16	CRD Supply to Containment	2
SWP*MOV507A	05	SW Supply	12
SWP*V174	05	SW Supply	12

The staff has found that approval of the proposed extension is warranted and that the proposed extension should be authorized by the granting of this one-time exemption so that the River Bend Station, Unit 1, may continue to operate until shutdown for the first refueling outage.

III

The NRC has evaluated the licensee's basis for requesting the extension in the surveillance interval and finds that not granting this exemption would require the licensee to shut down the plant on or about August 16, 1987 to conduct the testing. The granting of this exemption is likely to result in a negligible reduction in containment integrity during the 5 to 29-day extension period. In evaluating the changes to the Technical Specifications and the associated exemption, the staff reviewed the licensee's technical justifications for the requested extension. The staff reviewed the licensee's position that a shutdown would be required to perform these tests. The staff reviewed the previous leakage test results on the specific valves subject to the request for exemption and has found that there is ample margin between the leak rate values previously measured and the limiting values in Appendix J to accommodate any additional degradation likely to occur during the period of the extension. The details of the above described review are discussed in the enclosed Safety Evaluation. Based on the above information provided by the licensee and the staff's evaluation of the licensee's submittals, the NRC staff concludes that the licensee has provided an adequate basis for the conclusion that postponing the subject local leak rate tests until the first refueling outage is likely to have little effect on containment integrity.

The Commission's regulations in 10 CFR 50.12 state that the Commission will not consider granting an exemption unless special circumstances are present.

In its letter of March 10, 1987 as supplemented June 9 and July 8, 15, and 30, 1987, the licensee addressed one of those special circumstances which is applicable to this request for exemption.

The licensee states that the special circumstances of 10 CFR 50.12(a)(2)(v) are present in that the exemption would provide only temporary relief from the applicable regulation and became necessary because the preoperational testing was scheduled to be consistent with a projected fuel load date of April 1985. The intent of the scheduling was to allow adequate time for the first cycle of operation so as to satisfy the 24-month Type B and C testing requirements of Technical Specification 4.6.3.1.d at the first refueling outage. However, the low power license was not issued until August 29, 1985 and commercial operation occurred in June 1986. Only five valves require a surveillance extension out of a total population of 166 valves at River Bend Station that are associated with Technical Specification 4.6.3.1.d and Type C outleakage testing. The exemption is temporary because these five valves will be tested during the refueling outage scheduled to begin September 15, 1987. In addition, the licensee has committed to make a good faith effort to conduct these surveillances within the current frequency if an outage of sufficient length occurs. On June 16, 1987, the River Bend Station entered an unscheduled outage. The licensee stated that five surveillance tests, for which surveillance interval extensions had been requested, had been performed during this outage. However, the surveillance tests of the five valves for which an exemption was requested, were not performed because of considerations of ALARA, equipment availability, and test duration which would have added a significant length of time to the outage. The licensee stated that the summer months are a time of high system demand and other sources of power in the licensee's system were not available such that the River Bend Station could be maintained out of service for the extended period. Therefore, the staff concluded that special circumstances of 10 CFR 50.12(a)(2)(v) associated with this request for an exemption, have been demonstrated by the licensee. Accordingly, the NRC staff finds that operation of River Bend Station, Unit 1, during the proposed extension period is acceptable.

Therefore, the staff finds that the proposed temporary exemption from 10 CFR Part 50, Appendix J, Paragraph III.D.3 is acceptable.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the proposed exemption is authorized by law, will not endanger life or property or the common defense and security and is otherwise in the public interest. Therefore, the Commission hereby grants the exemption as follows:

An exemption is granted from the requirement to conduct Type C testing on containment isolation valves at an interval no greater than 24 months as stated in 10 CFR 50, Appendix J, Paragraph III.D 3.. This exemption is granted for the period specified in the licensee's request for exemption dated March 10, 1987, as supplemented July 8, 1987 (from current test deadline dates which begin August 16, 1987 until the first refueling outage which is scheduled to begin on September 15, 1987) and is only applicable to five valves in the River Bend Station as listed in Section II. of this exemption.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of the exemption will have no significant impact on the environment (52 FR 28054).

A copy of the Commission's Safety Evaluation dated July 31, 1987 related to this action is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW. Washington, DC, and at the Government Documents, Department, Louisiana State University, Baton Rouge, Louisiana 70803.

This Exemption is effective on August 16, 1987 and is to expire at the start of the first refueling outage.

Dated at Bethesda, Maryland, this 31st day of July 1987.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Director, Division of Reactor Projects, III, IV, V and Special Projects.

[FR Doc. 87-17993 Filed 8-6-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-171]

Consideration of Issuance of Amendment to Possession-Only License and Opportunity for Prior Hearing; Peach Bottom Atomic Power Station, Unit No. 1, Philadelphia Electric Co.

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Possession-Only License No. DPR-12 issued to Philadelphia Electric Company (the licensee) for the Peach Bottom Atomic Power Station, Unit No. 1 (the facility) located in York County, Pennsylvania. The amendment is in response to the licensee's application dated November 24, 1975, as revised March 4, 1987. The amendment would accomplish the following: (1) Extend the expiration date of license No. DPR-12 to December 24, 2015; (2) delete authority

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to possess special nuclear and source material; (3) delete the license reference to a fission product trapping system and neutron sources; and (4) revise the Technical Specifications in response to the licensee's application. The facility is permanently shut down, there is no fuel on-site and the licensee intends to maintain the facility in a shutdown, safe storage mode until after Units 2 and 3 are also shut down. At that time all residual radioactivity would be removed and the license terminated.

By Amendment No. 6, dated July 14, 1975, the Commission revised License No. DPR–12 to possess-but-not-operate status. In the related Safety Evaluation and Environmental Assessment the Commission found the decommissioning plan involving long term on-site storage of residual activity was acceptable.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By September 8, 1987, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject provisional operating license, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" as set forth in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission, or an Atomic Safety and Licensing Board designated by the Commission, or the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary of the Commission or the Chairman of the designated Atomic Safety and Licensing Board will issue a Notice of Hearing or an appropriate Order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board for up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the Order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC by the above date. When petitions are filed during the last ten (10) days of the notice period this is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Mr. Herbert N. Berkow: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** Notice. A copy of the petition should also be sent to the Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 and to Mr. Troy B. Conner, Jr., Esq., 1747 Pennsyulvania Avenue, NW., Washington, DC 20006, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1) (i) through (v) and 2.714(d)

For further details with respect to this action, see the application for amendment dated November 24, 1975 as revised March 4, 1987, which is available for public inspection at the Commission Public Document Room 1717 H Street, NW., Washington, DC 20555 and at the Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Dated at Bethesda, Maryland, this 3d day of August 1987.

For The Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Standardization and Non-Power Reactor Project Directorate, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 87–17994 Filed 8–6–87; 8:45 am]

BILLING CODE 9010–01–M

OFFICE OF MANAGEMENT AND BUDGET

Policy Guidance on Electronic Collection of Information

August 3, 1987.

SUMMARY: The Office of Management and Budget (OMB) solicits public comment in the development of policy guidance concerning the electronic collection of information. The proposed policy requires agencies to certify that they have considered use of electronic information collection techniques as a means to reduce burden on respondents and costs to the government.

DATE: Comments from the public should be submitted no later than October 6, 1987.

ADDRESS: Comments should be addressed to: J. Timothy Sprehe, Office of Information and Regulatory Affairs, Room 3235 New Executive Office Building, Office of Management and Budget, Washington, DC 20503. Telephone: (202) 395–4814.

SUPPLEMENTARY INFORMATION: OMB has a statutory responsibility under the

Paperwork Reduction Act, as amended, (44 U.S.C. Chapter 35), to establish government-wide policies that reduce the Federal paperwork burden, to enhance the appropriate application of information technology, to develop and implement uniform and consistent information resources management policies, and to oversee the development of information management principles, standards, and guidelines and to promote their use. In 1985, OMB issued OMB Circular No. A–130, Management of Federal Information Resources (50 FR 52730–52751, December 24, 1985), publication of which provided a general policy framework for the management of Federal information resources.

A basic assumption of Circular No. A–130 is that the use of up-to-date information technology offers opportunities to improve the management of government programs. One potentially useful application of information technology is the use of current technology in the government's information collections. Such use is consistent with a 1986 amendment to the Paperwork Reduction Act which stated that one of the Act's purposes is:

> . . . to ensure that automatic data processing, telecommunications, and other information technologies are acquired and used by the Federal Government in a manner which . . . wherever practicable and appropriate, reduces the information processing burden for the Federal Government and for persons who provide information to and for the Federal Government. (44 U.S.C. 3501 (5))

The U.S. House of Representatives, Committee on Government Operations, also recommended that OMB furnish central guidance and coordination concerning the electronic collection and dissemination of information (House Report No. 99–560, April 29, 1986).

The General Accounting Office also recommended that OMB establish written policies to encourage the use of information technology for collecting information as a means of reducing burden on the government and the public and improving the efficiency and effectiveness of agency operations (GAO Report GAO/GGD–83–39, April 11, 1983). In 1983, GAO suggested, among other things, that:

—The Health Care Financing Administration (HCFA) could significantly increase its savings by automating the submission of more Medicare claims. Medicare forms used by institutional health service providers to bill HCFA for services rendered to Medicare beneficiaries accounted for 12.4 million respondent burden hours. GAO estimated HCFA could have immediately saved the government $1.3 million by automating claims in FY 1981, and that the potential cost savings could reach $5.4 million per year.

—The Bureau of the Census could double the volume of automated Shipper's Export Declaration (SED) reports and reduce costs significantly by encouraging electronic submission of reports. The SED forms are used by exporters and freight forwarders to report export statistics to Census for compilation of U.S. foreign trade statistics. The SED response burden was 1.67 million hours; automation could have saved the Census Bureau $183,000 in FY 1981 and could potentially yield $1.7 million in savings per year.

For FY 1987, HCFA estimated that 65 percent of Medicare hospital or institutional bills and 32 percent of Medicare physician claims will be electronically transmitted, reducing HCFA's paperwork burden by 5.6 million hours. For FY 1986, the Census Bureau's SED response burden was 1.3 million hours. Respondents electronically filed 1.7 million out of a total of 9.2 million forms, or 19 percent of the total, and these electronic filings saved the Census Bureau approximately $500,000 in processing costs.

More recently, many agencies have initiated programs aimed at accomplishing the electronic collection of substantial bodies of information from the public.

—The Internal Revenue Service (IRS) is broadening its experimental program for electronic filing of individual income tax returns. Qualified return preparers electronically transmitted individual income tax returns for tax year 1986 to the IRS on behalf of clients. Electronic returns were filed from seven metropolitan areas (up from three in the prevous year), and taxpayers filing in three of these areas were able to elect to have their refunds directly deposited in their bank, savings and loan, or credit union accounts. The principal advantages of electronic filing are: (1) Taxpayers will receive refunds 2 to 3 weeks faster than if their returns had been filed on paper; (2) return preparers will be able to serve clients more efficiently; (3) the cost to IRS of processing, storing, and retrieving these returns will be substantially reduced; and (4) taxpayers requesting participation in the IRS direct deposit program will obtain their refunds even more quickly and conveniently.

—The U.S. Customs Service has initiated the Customs Automated Commercial System (ACS) to link electronically import-export brokers and shippers with Customs' computer system, and thereby reduce the paperwork flow between Customs and the public. ACS enables brokers to transmit directly to Customs the information about their client's cargo necessary to assess the proper tariff. Customs is able to release the cargo more quickly, determine the proper tariff, and obtain payment from the broker periodically instead of obtaining payment at the time the tariff is computed for each individual shipment. A reduction of approximately one million burden hours is anticipated by late 1988.

—Since 1984, the Social Security Administration (SSA) has been encouraging employers to report wage data (W–2 forms) electronically. SSA expects to receive over 60 million W–2s electronically in 1986 and 105 million by 1989. All employers with more than 500 employees must report electronically after January 1, 1987; after January 1, 1988, all employers with more than 250 employees will also be covered. The primary benefits from electronic collection have been a reduction in the duplication of effort entailed in paper transactions, receipt of better service from SSA, and enhanced efficiencies in information handling. SSA has particularly benefited from more timely posting of earnings as well as reductions in manual activities, errors, and backlogs of paper, tape, and diskette handling. SSA expected a paperwork burden reduction of over 1.3 million hours due to this initiative in FY 1986 and an additional 1.9 million hour reduction in FY 1987.

—The Federal Maritime Commission is studying the feasibility of electronic filing of maritime tariffs. The current cost to the Commission of manually processing incoming tariff filings is approximately $485,300 annually. The filings impose an annual burden of 330,000 hours on the public.

—The Securities and Exchange Commission's (SEC) electronic filing project, Electronic Data Gathering, Analysis, and Retrieval (EDGAR), is designed to automate filing, processing, and dissemination of 7 million pages of filings. The pilot program for electronic receipt and processing of filings has operated since 1984, and SEC has issued a Request for Proposal for the operational system. This system should improve the effectiveness of SEC processing of filings and ensure rapid, timely disclosure of information to investors and the financial

community. EDGAR will affect almost all of the 38.5 million hour paperwork burden imposed by SEC.

—The Department of Education is testing the feasibility of major electronic collection projects involving student aid programs: The Gateway and Pell Grant Pilot projects. The Gateway project would provide for electronic processing of the Fiscal Operations Report and Application to Participate, a major reporting requirement for campus-based programs. Respondents may transmit online or via diskette. The Pell Grant Pilot project encompasses the electronic transfer of information associated with the Student Aid Report. The total size of the data collections affected by these activities exceeds 300,000 burden hours annually.

—During FY 1987, the Federal deposit Insurance Corporation (FDIC) plans to achieve a reduction of 41,448 hours in the Call Reports (Reports of Condition and Income), prepared quarterly by insured State nonmember commercial banks. Part of the reduction would be achieved by adopting techniques for generating the Call Reports electronically. FDIC estimates that the average bank saves four hours each reporting period by using computers to produce its Call Reports.

—The Department of Transportation (DOT) is investigating electronic filing of international air cargo and passenger tariffs, and has formed a government-industry advisory committee to study the matter. There are currently more than one million effective international fares, rates, and rules on file at DOT, and its Office of International Aviation reviews new filings at the rate of more than 500 pages per day, a rate that is steadily increasing. Manual handling of international aviation tariffs has become unmanageable.

—The Energy Information Administration (EIA), Department of Energy, has sucessfully implemented a microcomputer-based data collection for reporting radioactive waste from civilian nuclear reactors. EIA provides respondents with microcomputer software and data diskettes. Respondents verify and update the previous year's data and enter current year data on the data diskettes. EIA analysts review, edit, and verify the received data on microcomputers, and then transfer clean data files to the EIA mainframe computer for storage, aggregation, and distribution. EIA finds that the system reduces reporting errors and greatly speed the reporting cycle.

These agencies have found that the application of automated data processing to government information collections can enhance the capability of agencies to meet program objectives more efficiently and effectively. In some cases, respondents report reductions in paperwork burden and other efficiencies such as convenience and more timely receipt of benefits. Benefits to the agencies of automated information collection may include resource savings due to:

—Better targeting of program resources;
—More effective and hence less costly monitoring of programs;
—Cost avoidance from reductions in error rates;
—Decreased costs of information reporting or capture; and
—Increased timeliness in processing and disseminating information.

In light of these agency programs and Congressional views, OMB is considering issuance of policy guidance to encourage all executive branch agencies to explore the use of automated techniques for collection of information. When final, this guidance will be issued as an appendix to OMB Circular No. A–130, Management of Federal Information Resources.

The purpose of this policy guidance is, first, to cause agencies systematically to take account of potential management efficiencies derivable from electronic information collection, and second, to ensure that agencies consider the major legal and policy issues that arise in connection with such collection.

The policy guidance that OMB has under consideration, and concerning which OMB seeks public comment, follows.

Policy on Electronic Collection of Information

1. General Policy

For all collections of information subject to the Paperwork Reduction Act (44 U.S.C., Chapter 35), agencies shall certify when submitting the information collections for OMB approval, that they have considered use of electronic collection techniques as a means to reduce burden on respondents and costs to the government.

2. Feasibility of Electronic Information Collection

a. Agencies should examine their information collection to determine whether conditions favor the electronic collection of information. Conditions favorable to electronic collection include:

(1) The agency routinely converts the information collected to electronic format;

(2) A substantial proportion of respondents are known to possess the necessary information technology and to maintain the information in electronic form;

(3) Conversion to electronic reporting, if mandatory will not impose substantial costs or other adverse effects on respondents, especially small business entities;

(4) The information collection seeks a relatively large volume of data and/or reaches a large number of respondents;

(5) The information collection is relatively frequent; i.e., annually or more frequently; and

(6) The content and format of the information sought by the information collection does not change significantly over several years.

b. Where most of the foregoing conditions are present, electronic collection may be advantageous, and agencies should conduct benefit-cost analyses to determine whether the benefits of electronic collection, including dollar savings and reduction in paperwork burden, outweigh the capitalization and other costs both to the government and to respondents.

c. Where agencies determine that benefits outweigh costs, they should actively pursue the design and development of electronic collection systems.

3. Design and Development

a. In designing and developing electronic information collecting systems, agencies should ensure that records subject to the Privacy Act, and information permitted to be exempted from disclosure under the Freedom of Information Act or any other legislative or regulatory provision, are adequately and properly protected.

b. Agencies should avoid designing and developing electronic collection systems in which sector contractors are expected to pay for the costs of governmental functions associated with systems.

c. Agencies should consider private sector capabilities for performing cost benefit analyses and in the design, development, and implementation of electronic information collection systems.

d. In designing and developing an electronic information collection system, agencies should consult regularly with the likely respondents to the information collection and try to accommodate their suggestions.

e. Where mandatory electronic reporting is imposed, agencies should develop procedures permitting waiver from electronic reporting for those

respondents who may incur unreasonable costs.

f. Where agencies plan to electronically disseminate the information collected electronically, they should design and develop systems so as to integrate collection and dissemination into the same systems insofar as possible.

g. Where electronically collected records are subject to disclosure under the Freedom of Information Act or are to be made publicly accessible for any other reason, agencies should provide for such access in the design and development of the collection system.

h. Agencies should incorporate records management and archival considerations in the design, development, and implementation of electronic information collection systems in accordance with the Federal Records Act (44 U.S.C. 29, 31, and 33).

James C. Miller III,
Director.
[FR Doc. 87-17972 Filed 8-6-87; 8:45 am]
BILLING CODE 3110-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review of Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon written request, copy available from: Securities and Exchange Commission, Office of Consumer Affairs, Washington, DC 20549.

Revised

Rules 701, 702 and 703 and Form 701. File No. 270-306.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3510 *et seq.*), the Securities and Exchange Commission has submitted for OMB approval Rules 701, 702 and 703 and Form 701 which provide an exemption for offers and sales of securities pursuant to the terms of a compensatory employee benefit plan or employment contract from the registration requirements of the Securities Act of 1933. The number of affected entities is approximately 500 per year at an average of one hour each.

Submit comments to OMB Desk Officer: Mr. Robert Neal, (202) 395-7340, Office of Information and Regulatory Affairs, Commerce and Lands Branch, Room 3228 NEOB, Washington, DC 20530.

Jonathan G. Katz,
Secretary.
July 30, 1987.
[FR Doc. 87-17982 Filed 8-6-87; 8:45 am]
BILLING CODE 8010-01-M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon written request, copy available from: Securities and Exchange Commission, Office of Consumer Affairs, 450 Fifth Street, NW., Washington, DC 20549.

Extension

Form ADV-S—File No. 270-43
Rule 2a-7—File No. 270-258
Form S-6—File No. 270-181

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq*), the Securities and Exchange Commission has submitted for extension of OMB approval Form ADV-S under the Investment Advisers Act of 1940, Rule 2a-7 under the Investment Company Act of 1940, and Form S-6 under the Securities Act of 1933.

Form ADV-S is an annual report required of registered investment advisers. Approximately 12,000 investment advisers each file form ADV-S once a year. The form takes about 1 hour to prepare.

Rule 2a-7 permits investment companies, particularly money market funds, to use the penny rounding or amortized cost valuation methods to compute current net asset value per share. The rule affects about 407 investment companies, each of which spends approximately 125 hours to comply.

Form S-6 is used for registration of securities under the Securities Act of 1933 by unit investment trusts registered under the Investment Company Act of 1940. Unit investment trusts file approximately 1,776 Forms S-6 annually. The form takes an average of 200 hours to prepare.

Comments should be submitted to OMB Desk Officer: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503.

Jonathan G. Katz,
Secretary.
July 31, 1987.
[FR Doc. 87-17983 Filed 8-6-87; 8:45 am]
BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

July 31, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

American Presidents Co., Ltd.
Convertible Exchangeable 3.50 Cumulative, Par Value $.01 (File No. 7-0327)
Cigna Corp.
Convertible Preferred A 2.75, No Par Value (File No. 7-0328)
Coastal Corp.
Convertible Exchangeable Cumulative Preferred G, Par Value .33 1/3 (File No. 7-0329)
Cummins Engine Co., Inc.
Convertible Depository Exchangeable 3.50, No Par Value (File No. 7-0330)
Enron Corp.
2nd Convertible Preferred, 10.50, No Par Value (File No. 7-0331)
Environmental Systems Co.
Convertible Exchangeable Preferred, 1.75 Series A, No Par Value (File No. 7-0332)
Federal Paper Board Co., Inc.
Convertible Cumulative 2.875 Preferred, Par Value $1.00 (File No. 7-0333)
Goodrich (B.F.) Co.
3.50 Convertible Preferred D, Par Value $1.00 (File No. 7-0334)
Household International, Inc.
Convertible Voting 6.25 Cumulative, No Par Value (File No. 7-0335)
I.C.H. Corp.
Convertible Exchangeable A 1.75, No Par Value (File No. 7-0336)
International Minerals & Chemicals Corp.
3.75 Convertible Exchangeable Cumulative, Par Value $.01 (File No. 7-0337)
International Minerals & Chemical Corp.
3.25 Convertible Exchangeable Cumulative, Par Value $1.00 (File No. 7-0338)
National Semiconductor Corp.
Convertible Depository Exchangeable Preferred, No Par Value (File No. 7-0339)
Inland Steel Industries, Inc.
Convertible Preferred Series B, 4.75, No Par Value (File No. 7-0340)

These securities are listed and registered on one or more other national securities exchange and are reported in

the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 21, 1987, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-17958 Filed 8-6-87; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

July 31, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Dillard Department Stores, Inc.
Class A, Common Stock, No Par Value (File No. 7-0307)
Clemente Global Growth Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-0308)
Putnam High Income Convertible Bond Fund
Shares of Beneficial Interest (File No. 7-0309)
Ohio Matress Corp.
Common Stock, $1.00 Par Value (File No. 7-0310)
International Multifoods Corp.
Common Stock, $.10 Par Value (File No. 7-0311)
Pannill Knitting Co., Inc.
Common Stock, $.01 Par Value (File No. 7-0312)
Transco Exploration Partners, Ltd.
Depository Units (File No. 7-0313)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 21, 1987, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-17959 Filed 8-6-87; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

July 31, 1987.

The above name national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Allegeheny Ludlum Corp.
Common Stock, $.10 Par Value (File No. 7-0301)
Glaxo Holdings PLC
Adjustable Depository Receipts, No Par Value (File No. 7-0302)
Viacom, Inc.
Cumulative Exchangeable, Redeemable, Preferred, $.01 Par Value, (File No. 7-0303)
The Computer Factory, Inc.
Common Stock, $.01 Par Value (File No. 7-0304)
Thermedics, Inc.
Common Stock, $.10 Par Value (File No. 7-0305)
Nuveen Municipal Value Fund
Common Stock, $.01 Par Value (File No. 7-0306)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 21, 1987, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-17960 Filed 8-6-87; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

July 31, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Navistar International Corp.
$6.00 Cumulative Preferred Series G, Par Value $1.00 (File No. 7-0314)
Potlach Corp.
3.75 Convertible Exchangeable Preferred Series B Cumulative, No Par Value (File No. 7-0315)
Southland Corp.
Convertible Exchangeable Preferred Series A Cumulative, No Par Value (File No. 7-0316)
Staley Continental, Inc.
3.50 Convertible Preferred, No Par Value (File No. 7-0317)
Todd Shipyards Corp.
Convertible Exchangeable Preferred Series A 3.08, Par Value $1.00 (File No. 7-0318)
Tosco Corp.
Convertible Preferred Series E, 2.375 Cumulative, Par Value $1.00 (File No. 7-0319)
Transco Energy Co.
Convertible Preferred $4.75 Cumulative, No Par Value (File No. 7-0320)
Travelers Corp.
Convertible Exchangeable Preferred, 4.16 Series A, No Par Value (File No. 7-0321)
Union Pacific Corp.

Convertible Preferred Series A, 7.25 Cumulative, No Par Value (File No. 7–0322)

Unisys Corp.

Convertible Preferred Series A 3.75, Par Value $1.00 (File No. 7–0323)

USF & G Corp.

Convertible Exchangeable Preferred, Series A 4.10, No Par Value (File No. 7–0324)

Weyerhaeuser Co.

Convertible Exchangeable Preferred 2.625, Par Value $1.00 (File No. 7–0325)

Warner Communications, Inc.

Convertible Preferred Series A 3.625, Par Value $1.00 (File No. 7–0326)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 21, 1987, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz

Secretary.

[FR Doc. 87–17961 Filed 8–6–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–24764; File No. SR–MSRB–87–6]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change

The Municipal Securities Rulemaking Board ("MSRB") submitted on June 16, 1987, a proposed rule change (File No. SR–MSRB–87–6) pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4. The proposed rule change adds new rule G–10, which requires municipal securities dealers to deliver a copy of the MSRB's investor brochure [1] to a customer upon receipt of a written complaint from the customer concerning a municipal securities transaction. The proposed rule change also amends MSRB Rule G–8(a)(xii), which requires dealers to keep a record of all written customer complaints and what actions the dealer took in response. The amendment to Rule G–8(a)(xii) requires the dealer to annotate the written complaint file to reflect the mailing of the brochure. This will enable regulatory agencies to inspect for compliance with Rule G–10 through periodic review of the file.

Notice of the proposed rule change was given in Securities Exchange Act Release No. 24626 (June 22, 1987), 52 FR 24081. The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB, and, in particular, the requirements of section 15B and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: July 31, 1987.

[FR Doc. 87–17956 Filed 8–6–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–24763; File No. SR–MSRB–87–5]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change

The Municipal Securities Rulemaking Board ("MSRB") submitted on June 11, 1987, a proposed rule change pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder, to amend MSRB rule A–16 relating to arbitration fees and deposits.

The proposed rule change revises the MSRB's schedule of arbitration fees and deposits to conform them to amendments to the Uniform Arbitration Code. The rule change adjusts the amounts of deposit required in several dispute amount brackets; most notably, it imposes a higher fee for claims involving more than $500,000.

Notice of the proposed rule change was given in Securities Exchange Act Release No. 24620 (52 FR 24080, June 26, 1987). No comments were received.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB, and, in particular, the requirements of section 15B and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 31, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–17957 Filed 8–6–87; 8:45 am]

BILLING CODE 8010–01–M

[File No. 0–7016]

Notice and Opportunity for Hearing; Bacardi Corp.

August 4, 1987.

Notice is hereby given that Bacardi Corporation ("Applicant") has filed a certification pursuant to sections 12(g) and (H) of the Securities Exchange Act of 1934, as amended, (the "1934 Act") for the termination of Applicant's registration under section 12(g) of the 1934 Act and the suspension of the duty to file reports under sections 13 and 15(d) of the 1934 Act.

For a detailed statement of the information presented, all persons are referred to the certification on Form 15 which is on file at the offices of the Commission in the Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

Notice is further given that any interested person not later than August 31, 1987, may submit to the Commission in writing his views on any substantial facts bearing on the certification or the desirability of a hearing thereon. Any such communication or request for a hearing should be addressed: Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of facts and law raised by the certification which he desires to controvert.

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[1] The investor brochure contains information about the MSRB and summarizes MSRB rules designed to protect municipal securities investors.

Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponement thereof. At any time after that date, an order granting the application may be issued upon request or upon the Commission's motion.

By the Commission.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-18089 Filed 8-6-87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-15904; 812-6726]

Application; Triad Mortgage Acceptance Corp.

July 31, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: Triad Mortgage Acceptance on behalf of certain trusts ("Trusts") established by it.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from all provisions of the 1940 Act.

Summary of Application: Applicant seeks a conditional order exempting certain trusts ("Trusts") established by it from all provisions of the 1940 Act in connection with the issuance of collateralized mortgage obligations and the sale of beneficial ownership interests in such Trusts.

Filing Date: The application was filed on May 18, 1987 and amended on July 28, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on August 25, 1987. Request a hearing in writing, giving the nature of your interest, the reason, for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, Triad Mortgage Acceptance Corp., Suite 700, 550 Kearny Street, San Francisco, California 94108.

FOR FURTHER INFORMATION CONTACT: Denis R. Molleur, Staff Attorney (202) 272-2363, or Curtis R. Hilliard, Special Counsel (202) 272-3030 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant, a Delaware corporation organized in March 1985, is wholly-owned by Thrift Investment Services ("TIS"), a California limited partnership. Applicant is a limited purpose finance corporation organized to facilitate the financing of long-term residential mortgages on one-to-four family and multi-family residences through the issuance, directly or through the formation of one or more Trusts, of one or more series of bonds secured by such mortgages. Applicant will not engage in any business or investment activities unrelated to such purpose. The exemption requested in this application pertains only to the business activities of the Applicant in connection with the organization of the Trusts, the Trusts' proposed issue and sale of Bonds (as described below) and the proposed sale of beneficial interests in such Trusts.

2. Each Trust will issue one or more series ("Series") of bonds ("Bonds"), secured primarily by Mortgage Certificates,[1] pursuant to a terms indenture incorporating by reference standard indenture provisions (collectively, an "Indenture") between a Trust and a commercial bank acting as trustee for the bondholders ("Bond Trustee"). Each Indenture will be subject to the provisions of the Trust Indenture Act of 1939 or appropriately exempt therefrom. Each Trust will be created pursuant to an agreement ("Trust Agreement") between Applicant, acting as depositor, and a bank, trust company or other fiduciary (expected to be Wilmington Trust Company) acting as owner trustee ("Owner Trustee"). It is anticipated that the Owner Trustee will enter into a bond administration agreement with respect to each Trust whereby TIS will provide certain management services in connection with the issuance of the Bonds.

3. In the case of each Series of Bonds: (a) Payments on the mortgage loans underlying the Mortgage Certificates securing the Bonds will be the primary source of funds for payments of principal and interest due on such Bonds; (b) the Bonds will be secured by collateral consisting primarily of Mortgage Certificates having an aggregate Collateral Value (as defined in the Indenture) at least equal to the outstanding principal balance of such Bonds; (c) scheduled available principal and interest payments on the Mortgage Certificates securing the Bonds (together with any required payments from any reserve funds with respect to the Bonds) plus income received thereon at the assumed reinvestment rate will be sufficient to make the interest payments on and amortize the principal of such Bonds by their stated maturities; and (d) the Mortgage Certificates will be pledged in their entirety by each Trust to the Bond Trustee and will be subject to the lien of the related Indenture.

4. The Applicant may sell some or all of its equity interest in such Trusts ("Trust Certificates") to institutional or non-institutional investors which customarily engage in the purchase of mortgages and mortgage-related securities, in transactions not constituting a public offering under section 4(2) of the Securities Act of 1933 ("1933 Act").

Applicant's Legal Conclusions

1. The sale of Trust Certificates will will not alter the payment of cash flows under any Indenture, including the amounts to be deposited in the collection account or any reserve fund created pursuant to an Indenture to support payments of principal and interest on the Bonds.

2. The interests of the Bondholders will not be compromised or impaired by the ability of Applicant to sell beneficial interests in each Trust and there will not be a conflict of interest between the Bondholders and Owners for several reasons: (a) The Bond Collateral that will be deposited in each Trust will not be speculative in nature; (b) the Bonds will be issued only if an independent nationally recognized statistical rating agency has rated such Bonds in one of the two highest rating categories; (c) the

[1] The "Mortgage Certificates" collateralizing the Bonds will be limited to fully modified pass-through mortgage-backed certificates fully guaranteed as to principal and interest by the Government National Mortgage Corporation ("GNMA Certificates"), Mortgage Participation Certificates issued by the Federal Home Loan Mortgage Corporation ("FHLMC Certificates"), Guaranteed Mortgage Pass-Through Certificates issued by the Federal National Mortgage Association ("FNMA Certificates"), and reinvestment earnings and distributions on such Mortgage Certificates. In addition to the Mortgage Certificates directly securing the Bonds, a Series may have additional collateral which may include certain collection accounts and reserve funds as specified in the related Indenture (collectively with the Mortgage certificates, "Collateral" or "bond Collateral").

relevant Indenture subjects the Bond Collateral, all income distributions thereon and all proceeds from a conversion, voluntary, of any such collateral to a first priority perfected security interest in the name of the Bond Trustee on behalf of the the Bondholders.

3. Further, neither the Owners nor the Bond Trustee will be able to impair the security afforded by the Mortgage Certificates to the holders of the Bonds ("Bondholders") because without the consent of each affected Bondholder, neither the Owners nor the Bond Trustee will be able to: (1) Change the stated maturity on any Bonds; (2) reduce the prinicipal amount, or the rate of interest on any Bond; (3) change the priority of repayment on any class of any Series of Bonds; (4) impair or adversely affect the Mortgage Certificates securing a Series of Bonds; (5) permit the creation of a lien ranking prior to or in parity with the lien of the related Indenture with respect to the Mortgage Certificates; or (6) otherwise deprive the Bondholders of the security afforded by the lien of the related Indenture.

4. The sale of Trust Certificates will not alter the payment of cash flows under any Indenture, including the amount to be deposited in the collection account or any reserve fund. The aggregate interests of the Owners in the Bond Collateral and the expected returns earned by them will be far less than the payments made to Bondholders. Applicants do not intend to deposit Mortgage Certificates to secure a Series of Bonds the Collateral of which exceeds 110% of the gross proceeds of the Bonds of such Series. Pricing efficiencies mandate that the Bond Collateral does not substantially exceed the amount of such collateral which is required to be pledged in order to satisfy the standards of the rating organization that is rating the Bonds. Thus the excess cash flow from the collateral which is available to Owners always will be far less than the cash flow from the collateral that used to make principal and interest payments to Bondholders. Further, except for the limited rights to substitute Bond Collateral, it will not be possible for the Owners to alter the collateral initially deposits into a Trust, and, in no event will such right to substitute Bond Collateral result in a diminution in the value of quality of such collateral. Therefore, although substituted Bond Collateral may be a different prepayment experience that the original collateral, the interests of the Bondholders will not be impaired because: (a) The prepayment experience of any collateral will be determined by market conditions beyond the control of the Owners, which market conditions are likely to affect all mortgage certificates of similar payment terms and maturities in a similar fashion; (b) the interests of the Owners are not likely to be greatly different from those of the Bondholders with respect to collateral prepayment experience; and (c) to the extent that the Owners may cause the substitution of collateral which has a different prepayment experience that the original collateral, this situation is no different for the Bondholders than the traditional collateralized mortgage obligation structure where bonds are issued by an entity that is a wholly-owned subsidiary.

5. The election by any Trust to be treated as a real estate mortgage investment conduit ("REMIC") will have no effect on the level of the expenses that would be incurred by any such Trust. Administrative fees and expenses will be provided for in a manner satisfactory to the agency or agencies rating the Bonds.

6. The requested order is necessary and appropriate in the public interest because: (1) The applicant and the Trusts are not the type of entities to which the provisions of the 1940 Act were intended to apply; (2) applicant may be unable to proceed with its proposed business if the uncertainties concerning the applicability of the 1940 Act are not removed; (3) applicant's proposed business is intended to serve a recognized and critical public need; and (4) granting of the requested order will be consistent with the protection of investors because they will be protected during the offering and sale of the Bonds by the registration or exemptive provisions of the 1933 Act and thereafter by the Bond Trustee representing their interests under the Indenture; and (5) the disclosure to Owners of a Trust and the limitation of the Owners of each Trust to no more than 100 sophisticated investors provide safeguards adequate to assure that such potential Owner do not require the protection of the 1940 Act.

Applicant's Conditions

Applicant agrees that if an order is granted it will be expressly conditioned on the following:

A. Conditions Relating to the Bonds

(1) Each Series of Bonds will be registered under the 1933 Act, unless offered in a transaction exempt from registration pursuant to section 4(2) of the 1933 Act.

(2) The Bonds will be "mortgage related securities" within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934, and the collateral directly securing the Bonds will be limited to GNMA, FNMA, or FHLMC Certificates.

(3) If new mortgage collateral is substituted, the substitute collateral must: (i) Be of equal or better quality than the collateral replaced; (ii) have similar payment terms and cash flow as the collateral replaced; (iii) be insured or guaranteed to the same extent as the collateral replaced; (iv) meet the conditions set forth in paragraphs (2) and (4) herein. In addition, new collateral may not be substituted for more than 40% of the aggregate face amount of the Mortgage Certificates initially pledged as mortgage collateral. In no event may any mortgage collateral be substituted for any substitute mortgage collateral.

(4) All Mortgage Certificates, funds, accounts or other collateral securing the Series of Bonds will be held by the Bond Trustee or on behalf of the Bond Trustee by an independent custodian. Neither the Bond Trustee nor the custodian will be an affiliate (as that term is defined in Rule 405 under the 1933 Act) of Applicant. The Bond Trustee will be provided with a first priority perfected security or lien interest in and to all Bond Collateral.

(5) Each Series of Bonds will be rated in one of the two highest bond rating categories by at least one nationally recognized statistical rating agency ("Rating Agency") that is not affiliated with Applicant. The Bonds will be considered "redeemable securities" within the meaning of section 2(a)(32) of the 1940 Act.

(6) No less ofter than annually, an indepedent public accountant will report on whether the anticipated payments of principal and interest on the mortgage collateral continue to be adequate to pay the principal of the interest on the Bonds in accordance with their terms. Upon completion, copies of the auditor's report(s) will be provided to the Bond Trustee.

B. Conditions Relating to Variable-Rate Bonds

(1) Each Class of Bonds of a Series bearing a variable interest rate will have a set maximum interest rate.

(2) At the time of the deposit of the Collateral with a Trust, as well as during the term of the Bonds issued by such Trust, the Mortgage Collateral securing such Bonds will have scheduled cash flows sufficient (together with cash available to be withdrawn

from any debt service funds, reserve funds, over-collateralization funds or other funds), together with reinvestment income thereon at assumed reinvestment rates acceptable to the Rating Agency rating the Bonds of such Series, to make timely payments of principal of and interest on the Bonds in accordance with their terms and to pay all of the fees and expenses of the Trust with respect to the Series of Bonds, assuming the maximum interest on each Class of Bonds bearing a variable interest rate. Such Collateral will be paid down as the mortgages underlying the Mortgage Collateral are repaid, but will not be released from the lien of the Indenture prior to payment of the Bonds.

C. Conditions Relating to REMICs

The election by any Trust to be treated as REMIC will have no effect on the level of the expenses that would be incurred by any such Trust. Any Trust that makes a REMIC election will provide for the payment of administrative fees and expenses as set forth in the application, and the anticipated level of fees and expenses will be more than adequately provided for regardless of the method selected.

D. Conditions Relating to the Sale of Certificates of Beneficial Ownership

(1) The Beneficial Owners of each Trust will agree to be bound by the terms of the applicable Trust Agreement.

(2) Trust Certificates in each Trust will be offered and sold only to (i) institutions or (ii) non-institutions which are "accredited investors" as defined in Rule 501(a) of the 1933 Act. Institutional investors will have such knowledge and experience in financial and business matters as to be capable of evaluating the risks of the purchase of the Trust Certificates and understand the volitility of interest rate fluctuaions as they affect the value of mortgages, mortgage-related securities and residual interests in mortgage-related securities, such as those represented by the Trust Certificates. Non-institutional accredited investors will be limited to not more than 15, will purchase at least $200,000 of the Trust Certificates and will have a net worth at the time of purchase that exceeds $1,000,000 (exclusive of their primary residence). In addition, non-institutional accredited investors will have such knowledge and experience in financial and business matters, specifically in the field of mortgage-related securities, as to be capable of evaluating the risks of the purchase of the Trust Certificates and will have direct, personal and significant experience in making investments in mortgage-related securities and because of such knowledge and experience, understand the volatility of interest rate fluctuations as they affect the value of mortgage-related securities and residual interests in mortgage-related securities (such institutional investors and non-institutional investors, "Eligible Investors"). Eligible Investors will be limited to mortgage lenders, thrift institutions, commercial and investment banks, savings and loan associations, pension funds, employee benefit plans, insurance companies, mutual funds, real estate investment trusts or other institutional or knowledgeable non-institution investors as described above which customarily engage in the purchase of mortgages and mortgage-related securities. The Owner-Trustee with respect to a Trust will act as trustee for and the direction of the Beneficial Owners of such Trust.

(3) Each sale of Trust Certificates in a Trust to a Eligible Investor will qualify as a transaction not involving any public offering within the meaning of section 4(2) of the 1933 Act.

(4) The Trust Agreement relating to each Trust will prohibit the transfer of any Trust Certificate in such Trust if there would be more than one hundred Beneficial Owners of such Trust at any time.

(5) The Trust Agreement relating to each Trust will require that each purchaser of a Trust Certificate in such Trust represent that it is purchasing such Trust Certificate for investment purposes and not with a view to distribution thereof, in whole or in part, and that it will hold such Trust Certificate in its own name and not as nominee for undisclosed investors.

(6) The Trust Agreement relating to each Trust will provide that (i) no Beneficial Owner of such Trust may be affiliated with the Bond Trustee for such Trust, (ii) no holders of a controlling (as that term is defined in Rule 405 under the 1933 Act) equity interest in such Trust may be affiliated with either the custodian of the Collateral for a Series of Bonds issued by such trust or the Rating Agency rating the Bonds issued by such trust, and (iii) the Owner-Trustee for such Trust will not purchase any Trust Certificates in such Trust but will function as a legal stakeholder for the assets of such Trust.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-17964 Filed 8-06-87; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made such a submission.

DATE: Comments should be submitted on or before September 8, 1987. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (S.F. 83s), supporting statements, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer: William cline; Small Business Administration, 1441 L Street, NW., Room 200, Washington, DC 20416, Telephone: (202) 653-8538.

OMB Reviewer: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395-7340.

Title: Prompt Payment by Federal Government Questionnaire
Frequency: One-time nonrecurring
Description of Respondents: Businesses that have had Federal contracts are surveyed and their experience with payment by the government is assessed to identify the extent to which the government fails to comply with the prompt Payment Act.
Annual Responses: 1,000
Annual Burden Hours: 500
Type of Request: New
Title: Application for Certification as a Certified Development Company
Form No.: SBA 1246
Frequency: One for each application for certification
Description of Respondents: This form is used by those individuals, companies who wish to become certified.
Annual Responses: 15
Annual Burden Hours: 150

Type of Request: Extension

August 4, 1987.

William Cline,

Chief, Administrative Information Branch, Small Business Administration.

[FR Doc. 87-18033 Filed 8-6-87; 8:45 am]

BILLING CODE 8025-01-M

[License No. 05/05-0207]

Application for a Small Business Investment Company License; ANB Venture Corp.

An application for a license to operate a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 et seq.) has been filed by ANB Venture Corporation, 33 North LaSalle Street, Chicago, Illinois 60690 (Applicant), with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1987).

The officers, directors and sole shareholder of the Applicant are as follows:

Name	Title or relationship	Percent of ownership
James C. Tucker, 1661 North Burling St., Chicago, Illinois 60614.	President, Assistant Secretary, Director.	
Kurt L. Lijedahl, 2626 North Lakeview, Chicago, Illinois 60614.	Executive Vice President, Director.	
Mary C. Moore, 40 East Cedar, Chicago, Illinois 60611.	Secretary, Treasurer.	
Michael E. Tobin, 4620 South Chicago Beach Drive, Chicago, Illinois 60615.	Director	
Ronald J. Grayheck, 737 South Elm Street, Hinsdale, Illinois 60521.	Director	
American National Corporation, 33 North LaSalle Street, Chicago, Illinois 60690.	Sole Shareholder.	100

American National Corporation is a wholly owned subsidiary of First Chicago Corporation which is the parent company of First Capital Corporation of Chicago, a federally licensed small business investment company.

The Applicant, an Illinois corporation, will begin operations with $10,000,000 paid-in capital and paid-in surplus. The Applicant will conduct its activities primarily in the State of Illinois, but will consider investments in businesses in other areas in the United States.

Matters involved in SBA's consideration of the Application include the general business reputation and character of the proposed owner and management, and the probability of successful operations of the company under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act of 1958, as amended, and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L St., NW., Washington, DC 20416.

A copy of this notice shall be published in a newspaper of general circulation in Chicago, Illinois.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: July 29, 1987.

Robert G. Lineberry,

Deputy Associate Administrator.

[FR Doc. 87-18034 Filed 8-6-87; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended July 31, 1987

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 45041

Date Filed: July 27, 1987.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 24, 1987.

Description: Application of British Airways, PLC, pursuant to section 402 of the Act and Subpart Q of the Regulations, requests and amendment to the foreign air carrier permit to add authority for the holder to engage in scheduled foreign air transportation of persons, property and mail, conducted with combination aircraft, between London and San Juan.

Docket No. 45059

Date Filed: July 31, 1987.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: August 28, 1987.

Description: Application of Continental Airlines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations requests a certificate of public convenience and necessity which will authorize Continental to carry passengers, property and mail between Honolulu, Hawaii and Manila, Philippines commencing on or about October 28, 1987.

Docket No. 43722

Date Field: July 27, 1987.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: August 24, 1987.

Description: Amendment No. 1 the Application of Hawaiian Airlines, Inc., pursuant to section 401 of the Act and Subpart Q of the Regulations, requests that it be issued a certificate of public convenience and necessity authorizing it to engage in scheduled air transportation of persons, property and mail between Honolulu and Apia, Western Samoa (both directly and via Pago Pago, American Samoa) and between Honolulu and Papeete, Tahiti; Rarotonga, Cook Islands; Auckland, New Zealand and Sydney, Australia via Pago Pago, American Samoa.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 87-18020 Filed 8-6-87; 8:45 am]

BILLING CODE 4910-62-M

[Docket No. 43446]

Assignment of Proceeding; Japan Charter Authorizations

This proceeding is assigned to Chief Administrative Law Judge William A. Kane, Jr. Future communications regarding the proceeding should be addressed to him at the Office of Hearings, M-50, Room 9228, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-2142.

William A. Kane, Jr.,

Chief Administrative Law Judge.

[FR Doc. 87-18019 Filed 8-6-87; 8:45 am]

BILLING CODE 4910-62-M

[Docket 43446; Order 87-8-5]

Aviation Proceedings; Order Instituting the Japan Charter Authorization Proceeding

AGENCY: Department of Transportation.

ACTION: Institution of the *Japan Charter Authorization Proceeding* and allocation of charters, Docket 43446; Order 87–8–5.

SUMMARY: Under the Interim Aviation Agreement between the United States and Japan, dated September 7, 1982, carriers of each country are allowed to operate up to 300 one-way charters each year. The aeronautical authorities of each country allocate the charter flights among their carriers. For the past two years, the Department has allocated Japan charters on a first-come, first-served basis. Orders 85–10–2 and 86–8–41. Based on an arrangement reached with the Japanese during the discussions held in Tokyo July 22–23, 1987, the Department has decided to allocate 100 of the 300 charters among carriers that operated charters in the U.S.-Japan market during the 1986/1987 charter year for the 14-month period commencing August 1, 1987. The Department has also decided to institute the *Japan Charter Authorization Proceeding*, Docket 43446 to determine (1) which U.S. carriers should be authorized to operate the remaining 200 charters during the 1987/1988 charter year; and (2) the number of charters each of these carriers should be authorized to operate. The proceeding will be conducted by an Administrative Law Judge. The Department is inviting interested direct air carriers to file applications to operate the Japan charters at issue.

DATES: Applications for Japan charter authority and petitions for leave to intervene should be filed by August 14, 1987. Answers and any requests for an oral evidentiary hearing shall be due 7 calendar days thereafter. Petitions for reconsideration of Order 87–8–5 shall be due August 10, 1987; answers shall be due 3 calendar days thereafter. Parties to the docket listed above may obtain a service copy of the order by calling the Documentary Service Division (202) 366–9329 or by writing to the address below.

ADDRESS: Applications (Japan charters), petitions for leave to intervene, petitions for reconsideration and requests for an oral evidentiary hearing should be filed in Docket 43446, addressed to the Documentary Service Division, U.S. Department of Transportation, 400 Seventh Street, SW, Room 4107, Washington, DC 20590, and should be served on all parties in Docket 43446 and the Chief Administrative Law Judge.

Dated: August 3, 1987.

Matthew V. Scocozza

Assistant Secretary for Policy and International Affairs.

[FR Doc. 87–17935 Filed 8–6–87; 8:45 am]

BILLING CODE 4910–62–M

Advisory Committee for Regulatory Negotiation Concerning Nondiscrimination on the Basis of Handicap in Air Travel; Meetings

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Notice; schedule of advisory committee meeting.

SUMMARY: The Department of Transportation gives notice, as required by the Federal Advisory Committee Act (Pub. L. 92–463), of the times and locations of meetings of its Advisory Committee on Regulatory Negotiation (concerning nondiscrimination on the basis of handicap in air travel)..

DATES: Meetings of the Advisory Committee are scheduled on the following dates and at the following locations:

Monday, August 10, 1987—Paralyzed Veterans of America, 801 18th Street, NW., Washington DC, 10th floor conference room.

Tuesday, August 11, 1987—U.S. Department of Transportation, 400 7th Street, SW., Washington DC, Room 3200.

Thursday, August 20, 1987—Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington DC, Room 201. (Note—This represents a change; the meeting was previously scheduled for DOT.)

Wednesday, September 2, 1987—Dirksen Senate Office Building, Room 562, Washington, DC.

Thursday, September 3, 1987—Rayburn House Office Building, Room 2167, Washington, DC.

Wednesday and Thursday, September 9–10, 1987—Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington DC, Room 201.

Wednesday, September 23, 1987—National Federation of the Blind, 1800 Johnson Street, Baltimore, Maryland.

Monday and Tuesday, October 5–6, 1987—U.S. Department of Transportation, 400 7th Street, SW., Washington DC, Room 3200.

Tuesday and Wednesday, October 15–16, 1987—Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington DC, Room 201.

Monday, October 26, 1987—Architectural and Transportation Barriers Compliance Board, Mary Switzer Building, 330 C St., SW., Washington, DC, Room 3065.

Monday, November 2, 1987—U.S. Department of Transportation, 400 7th Street, SW., Washington DC, Room 3200.

Tuesday and Thursday, November 3 and 5, 1987—Paralyzed Veterans of America, 801 18th Street, NW., Washington DC, 10th floor conference room.

Friday, November 6, 1987—U.S. Department of Transportation, 400 7th Street, SE., Washington DC, Room 3200.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, 400 7th Street, SW., Room 10424, Washington DC, 20590. 202–366–9306 (voice); 202–755–7687 (TDD).

SUPPLEMENTARY INFORMATION: The listed meetings of the advisory committee are for the purpose of negotiating the contents of a proposed regulation that would be issued by the Department of Transportation to implement the Air Carrier Access Act of 1986, which prohibits discrimination on the basis of handicap in air travel. The meetings are open to the public. The meetings will begin at 9:30 a.m. and conclude at approximately 4:00 p.m.

The committee has tentatively scheduled discussions of the following subjects on the dates covered by this notice: August 10–11, physical accessibility; August 20, reimbursement and special charges; September 2–3, opportunity for interested persons to provide information to the committee; September 9–10, 23 and October 5–6, conditions of service (e.g., requirements for an attendant, refusals of service, medical certification requirements, limits on the number of disabled passengers on a flight); October 15–16, 26 and November 2–3, seating restrictions (e.g., exit row seating, emergency evacuation procedures); November 5–6, work to finalize a draft NPRM. These subjects of discussion may change; individuals who wish to attend a session on a particular subject should contact Mr. Ashby for current information.

All meetings of the advisory committee are open to the public. However, we call interested persons' attention particularly to the meetings of September 2–3. These meetings are intended to provide an opportunity for interested persons to present information to the committee relevant any of the matters the committee is considering.

All persons who wish to speak during these sessions must contact the committee's chief mediator to schedule their appearance by no later than the close of business, Tuesday, August 25. The mediator will establish times for speakers to make their presentations and may arrange clusters or panels of speakers to address specific topics. The mediator will also attempt to achieve balance in the selection of speakers addressing the committee, so that, for example, a very large number of speakers do not address one issue to the exclusion of opportunities for other issues to be addressed. The chief mediator is: Eileen Hoffman, (202–653–5390), Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington DC 20427.

The Department requests that individuals planning to attend any of the meetings who will need the services of a sign language interpreter so inform the Department at least two days in advance of the meeting date. Interested persons may contact Mr. Ashby for this purpose.

Issued this 3rd day of August, 1987, at Washington DC.

Rosalind A. Knapp,

Deputy General Counsel

[FR Doc. 87–17934 Filed 8–6–87; 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA), Special Committee 159; Minimum Aviation System Performance Standards for Global Positioning System; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 159 on Minimum Aviation System Performance Standards for Global Positioning System to be held on August 31–September 2, 1987, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Remarks; (2) Approval of Minutes of the Sixth Meeting; (3) General Dynamics Service Company Briefing on GPS Test and Evaluation; (4) Review of DOD/FAA Activity on GPS Selective Availability; (5) Review of Documents Submitted for Inclusion in the Committee Report; (6) Assignment of Tasks; (7) Other Business; and (8) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 31, 1987.

Wendie F. Chapman,

Designated Officer.

[FR Doc. 87–17921 Filed 8–6–87; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review.

Date: August 4, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th Pennsylvania Avenue, NW., Washington, DC 20220.

Alcohol, Tobacco and Firearms

OMB Number: 1512–0163
Form Number: ATF F 5210.5 (3068)
Type of Review: Extension
Title: Manufacturer of Tobacco Products Monthly Report

Description: ATF F 5210.5(3068) documents a tobacco products manufacturer's accounting of cigars and cigarettes, smokeless tobacco products. The form describes the tobacco products manufactured, articles produced, received, disposed of and statistical classes of large cigars. ATF examines and certifies entries on these reports so as to identify unusual activities, errors and or omissions.

Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Burden: 2,040 hours
Clearance Officer: Robert Masarsky, (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Internal Revenue Service

OMB Number: 1545–0069
Form Number: IRS Form 104ONR
Type of Review: Revision
Title: U.S. Nonresident Alien Income Tax Return

Description: This form is used by nonresident individuals and foreign estates and trusts to report their income subject to tax and compute the correct tax liability. The information on the return is used to determine whether income, deductions, credits, payments, etc., are correctly figured. Affected public are nonresident individuals, estates and trusts.

Respondents: Individuals or households, Farms, Businesses or other for-profit, Small businesses or organizations
Estimated Burden: 1,013,610 hours
Clearance Officer: Garrick Shear, (202) 566–6150, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 87–18023 Filed 8–6–87; 8:45 am]

BILLING CODE 4810–25–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the object "The Holy Family with Angels" (see below [1]),

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[1] Details concerning the object may be obtained by contacting Mr. John Lindburg of the Office of the General Counsel of USIA. The telephone number is 202–485–7976, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547.

imported from abroad for the temporary exhibition without profit within the United States, is of cultural significance. This object is imported pursuant to a loan agreement with the foreign lender. I also determined that the temporary exhibition or display of the object at the Toledo Museum Of Art in Toledo, Ohio, beginning on or about October 4, 1987, to on or about January 3, 1988, is in the national interest.

Public notice of this determination is ordered to be published in the Federal Register.

Dated: July 30, 1987.

C. Normand Poirier,

Acting General Counsel.

[FR Doc. 87-17940 Filed 8-6-87; 8:45 am]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Commercial Activities, Performance; Cost Comparison Schedules (OMB A-76 Implementation)

AGENCY: Veterans Administration.

ACTION: Notice of change.

SUMMARY: In accordance with the requirements of OMB Circular No. A-76, the Veterans Administration serves notice to the public that the schedule of A-76 cost comparisons within the Department of Medicine and Surgery (DM&S) published on pages 43626-43628 of the Federal Register of October 28, 1985, has been changed. A number of cost comparison studies scheduled to begin in 1985 and 1986 have been rescheduled to begin in 1987, due to extensive construction and replacement initiatives.

The following comprehensive list of the Veterans Administration's A-76 cost comparison studies scheduled to begin in 1987 and 1988 includes rescheduled start dates for some of the previously published DM&S cost comparisons.

FOR FURTHER INFORMATION CONTACT: Brodie C. Covington, Office of Program Analysis and Evaluation, Strategic Management Service (071), Veterans Administration Central Office, 810 Vermont Avenue NW, Washington, DC 20420, (202) 233-2565.

Questions relating to local matters about "contracting out" should be referred to the Director of the VA facility concerned.

Dated: July 30, 1987.

By direction of the Administrator.

David A. Cox,

Associate Deputy Administrator for Management.

Study	Starting date	Location
Grounds Maintenance.	September 1988	VAMC Minneapolis, MN.
Laundry/ Dry Cleaning.	September 1987	VAMC Knoxville, IA.
	September 1987	VAMC Fargo, ND.
	September 1987	VAMC Canandaigua, NY.
	September 1987	VAMC Mountain Home, TN.
	September 1987	VAMC Leavenworth, KS.
	September 1987	VAMC Spokane, WA.
	September 1987	VAMC Erie, PA.
	December 1987	VAMC Pittsburg, PA (HD).
	January 1988	VAMC Biloxi/Gulfport, MS.
	January 1988	VAMC Sheridan, WY.
	January 1988	VAMC Buffalo, NY.
	January 1988	VAMC Perry Point, MD.
	February 1988	VAMC Rosenburg, OR.
	March 1988	VAMC Dallas, TX.
	April 1988	VAMC Portland, OR.
	June 1988	VAMC Clarksburg, WV.
Switchboard	September 1987	VAMC Brockton, MA.
	September 1987	VAMC Brooklyn, NY.
	September 1987	VAMC Hines, IL.
	March 1988	VAMC East Orange, NJ.
	March 1988	VAMC Milwaukee, WS.
Transcription	April 1988	VAMC Portland, OR.
VCS Food Service.	September 1987	VAMC Minneapolis, MN.
	April 1988	VAMC Portland, OR.
Warehouse	September 1987	VAMC San Francisco, CA.
	September 1987	VAMC Pittsburgh, PA (UD).
	November 1987	VAMC Hines.
	December 1987	VAMC San Antonio, TX.
	June 1988	VAMC Augusta, GA.
	July 1988	VAMC Miami, FL.
	August 1988	VAMC Indianapolis, IN.
	October 1988	VAMC East Orange, NJ.
Data Processing Centers (DPC).	Spring 1990	VA DPC Austin, TX.
	Spring 1991	VA DPC Philadelphia, PA.
	Deleted	VA DPC Washington, D.C.
Motor Vehicle/ Transportation.	Deleted	VA Central Office Washington D.C.

[FR Doc. 87-17946 Filed 8-6-87; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF ENERGY

Procurement and Assistance Management Directorate

NPR-1 Natural Gas Liquid Products Sales

AGENCY: U.S. Department of Energy (DOE).

ACTION: Solicitation of comments on proposed changes to NPR-1 liquid products sales contract provisions.

SUMMARY: U.S. Department of Energy (DOE) solicits written comments and suggestions on its proposed changes to the contractual provisions under which natural gas liquids (propane, butane, and natural gasoline) are to be sold from Naval Petroleum Reserve No. 1 (NPR-1), Kern County, California (10 U.S.C. Chapter 641). DOE is preparing a draft solicitation incorporating the proposed revisions which focus on establishing a price adjustment factor for calculating prices for natural gas liquids.

DATES: Parties interested in obtaining a copy of this draft solicitation should submit a request to the address below. A presolicitation conference will be conducted in Los Angeles, California on August 21, 1987, to discuss the proposed changes. The draft solicitation will provided details on this conference. Written comments on the draft solicitation must be received by August 28, 1987, in order for DOE to consider them before the next sale. In addition, the Department's representatives will, at the time of the presolicitation conference, provide answers to written questions received prior to August 19, 1987.

ADDRESS: Requests for the draft solicitation and comments on the proposed changes should be addressed to: Ms. Trudy Wood, Contracting Officer, United States Department of Energy, Office of Procurement Operations, MA-453.1, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-1020.

Issued in Washington, DC on August 6, 1987.

Berton J. Roth,

Director, Procurement and Assistance Management Directorate

[FR Doc. 87-18185 Filed 8-6-87; 12:30 pm]

BILLING CODE 6450-01-M

Corrections

Federal Register
Vol. 52, No. 152
Friday, August 7, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 50

[AD-FRL 3141-9(a)]

Revisions to the National Ambient Air Quality Standards for Particulate Matter

Correction

In rule document 87-13707 beginning on page 24634 in the issue of Wednesday, July 1, 1987, make the following corrections:

1. On page 24637, in the first column, in the fourth line "10 G6mm" and "5-7 G6mm" should read "10 μm"and "5-7 μm" respectively. In the fifth line "G6mm" should be removed and "μm" inserted in its place.

2. On the same page, in the same column, in the second complete paragraph, in the 24th line "G6m" should read "μm".

3. On page 24639, in the second column, in the first complete paragraph, in the 13th line "G6mm" should read "μm" and in the 24th line "<" should read ">".

4. On page 24666, in the first column, in the 17th line from the bottom of the column "(Q_a)" should read "$(\bar{Q}_a)$".

5. On the same page, in the second column, "Q_{std}" should read "$\bar{Q}_{std}$" wherever it appears.

6. On the same page and in the same column, in the 29th and 33rd line, "Q_a" should read "$\bar{Q}_a$".

Note.—For an Environmental Protection Agency correction to this document, see the Rules Section of this issue.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51679; FRL-3218-8]

Certain Chemicals Premanufacture Notices

Correction

In notice document 87-13593 beginning on page 22678 in the issue of Monday, June 15, 1987, make the following correction:

On page 22680, in the first column, in premanufacture notice **P 87-1213**, in the eighth line, "3,000" should read "3,300".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51684; FRL-3234-8]

Certain Chemicals Premanufacture Notices

Correction

In notice document 87-16321 beginning on page 27259 in the issue of Monday, July 20, 1987, make the following correction:

On page 27259, in the second column under **P 87-1355**, in the third line, "nitrophenoxy" was misspelled.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPP-50669; FRL-3227-3]

Pesticides; Issuance of Experimental Use Permits; American Cyanamid Co., et al.

Correction

In notice document 87-15082 beginning on page 25066 in the issue of Thursday, July 2, 1987, make the following correction:

On page 25067, in the first column, under *612-EUP-3*, in the sixth line, "monourea" was misspelled.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPP-240075; FRL-3232-2]

State Registrations of Pesticides

Correction

In notice document 87-15891 beginning on page 26559 in the issue of Wednesday, July 15, 1987, make the following correction:

On page 26559, in the second column, under **Arizona**, in the second line, "FM" should read "TM".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[PP 7G3468/T545; FRL-3231-9]

Avermectin; Establishment of Temporary Tolerances

Correction

In notice document 87-15892 beginning on page 26561 in the issue of Wednesday, July 15, 1987, make the following correction:

On page 26561, in the third column, under **FOR FURTHER INFORMATION CONTACT**, in the second line, "14" should read "15".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 862

[Docket No. 78N-2285]

Clinical Chemistry and Clinical Toxicology Devices; General Provisions and Classifications of 220 Devices

Correction

In rule document 87-9858 beginning on page 16102 in the issue of Friday, May 1, 1987, make the following corrections:

1. On page 16106, in the second column of the table for Subpart B, in the second line from the bottom, the superior "*" should read superior "*2".

2. On page 16107, in the second column of the table for Subpart D, in the last line, superior "2" should read

superior "1"; and in the sixth and eighth lines from the bottom, superior "1" should read superior "2".

3. On page 16115, in the third column, in the table, between the fourth and fifth entries, insert the entry "Ophthalmic Devices Panel.....January 28, 1982; 47 FR 3694-3749 (proposals).".

§ 862.1385 [Corrected]

4. On page 16128, in the second column, in § 862.1385(a), the sixth and seventh lines should read:

"(HOCH$_2$- C(=O)-CH$_2$OH)

moiety on the steriod nucleus in urine."

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Inconsistency Ruling No. IR-19; Docket No. IRA-39]

Nevada Public Service Commission Regulations Governing Transportation of Hazardous Materials

Correction

In notice document 87-14811 beginning on page 24404 in the issue of Tuesday, June 30, 1987, make the following corrections:

1. On page 24404, in the first column, in the last full paragraph from the bottom, in the third line "inconsistency" should be one word.

2. On page 24406, in the second column, in the second from last paragraph, in the second line from the bottom in the quoted material "subsequently" should read "subsequent".

3. On the same page, in the third column, in the 12th line, "and" should read "or".

4. On page 24408, in the second column, in the 12th line, "many" should read "may".

5. On the same page, in the third column, in the second complete paragraph, in the seventh line, "implementation" was misspelled.

6. On page 24409, in the second column, in the first complete paragraph, in the fifth line, "issuances" should read "issuance".

7. On the same page, in the third column, in the fourth complete paragraph, in the first line "*Expedition*" should read "*Expediting*".

8. On the same page, in the same column and paragraph, in the third line from the bottom "for" should read "to".

9. On page 24410, in the second column, in the fourth paragraph, in the seventh line, "carts" should read "cars".

10. On the same page, in the third column, in the last complete paragraph, in the second line from the bottom, "currently" should read "current".

11. On page 24411, in the second column, in the last line, "inconsistent" should be one word.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Inconsistency Ruling No. IR-20; Docket No. IRA-37]

Triborough Bridge and Tunnel Authority Regulations Governing Transportation of Radioactive Materials and Explosives

Correction

In notice document 87-14812 beginning on page 24396 in the issue of Tuesday, June 30, 1987, make the following corrections:

1. On page 24396, in the third column, in the fifth paragraph, in the 10th line, "requirement" was misspelled.

2. On the same page, in the third column, in the last paragraph, in the fourth line "Section 102" should read "(Section 102)".

3. On page 24397, in the first column, in the second complete paragraph, in the fourth line from the bottom, "consequences" was misspelled.

4. On the same page, in the second column, in the first complete paragraph, in the fifth line from the bottom, "maybe" should read "may be".

5. On page 24399, in the third column, in paragraph (3), in the next to last line, remove "he".

6. On page 24400, in the second column, the 16th and 17th lines from the bottom of the page were part of the applicants' statements and should have appeared in smaller type. The next paragraph should have had quotation marks before and after it.

7. On the same page, in the third column, in the first complete paragraph, in the 11th line from the bottom, "caused" should read "causes".

8. On the same page, in the same column, in the same paragraph, in the ninth line from the bottom, after "study" insert "of a ".

9. On page 24401, in the first column, in the last paragraph, in the seventh line from the bottom, "expected" should read "excepted".

10. On the same page, in the third column, in the second complete paragraph, in the seventh line from the bottom, "Queens" was misspelled.

BILLING CODE 1505-01-D

federal register

Friday
August 7, 1987

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Proposed Alteration of the Burbank-Glendale-Pasadena Airport, CA, Airport Radar Service Area; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87-AWA-21]

Proposed Alteration of the Burbank-Glendale-Pasadena Airport, CA, Airport Radar Service Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the Burbank-Glendale-Pasadena Airport, CA, Airport Radar Service Area (ARSA). This proposal would adjust the lateral limits of the ARSA to exclude airspace in several areas of the present ARSA which do not receive adequate radar and/or communications coverage commensurate with the ARSA program and associated services. The proposal will exclude additional surface area in the vicinity of Whiteman Airport to accommodate airport traffic patterns.

DATES: Comments must be received on or before October 15, 1987.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Western-Pacific Region, Attention: Manager, Air Traffic Division, Docket No 87-AWA-21, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Robert Laser, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9255.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-AWA-21." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to modify the Burbank-Glendale-Pasadena Airport ARSA as follows:

1. Eliminate the area between eight and ten miles between the San Fernando Reservoir and the Simi Valley Freeway. This airspace is predominently utilized by flight transiting the Newhall Pass. The terminus for radar and communications coverage in the vicinity of this sector of the ARSA very nearly approximates the northern boundary of the ARSA. Consequently, aircraft seldom are capable of complying with the ARSA requirement for communicating with air traffic control (ATC) prior to encroachment upon the boundary of this airspace. Furthermore, ATC service is derogated as aircraft must be identified, provided ARSA service and transitioned to the Tower at Van Nuys or Unicom at Whiteman within a very short flight distance.

2. Eliminate the area between five and ten miles to the east between the 090° bearing and the 104° bearing. Adequate radar and communication coverage does not exist in this segment below 4,000 feet MSL.

3. Eliminate the surface area east of a direct line from a point originating at the 004° bearing, five-mile radius to the 090° bearing, five-mile radius. Adequate radar and communication coverage below 3,500 feet MSL does not exist in this area.

4. Expand the surface area exclusion around Whiteman Airport. This area would be increased to a 1.75-mile radius of the Whiteman Airport to accommodate the variety and numbers of aircraft which are frequently in the traffic pattern and better enable those aircraft to maintain a traffic pattern which is clear of ARSA surface areas.

The elimination of ARSA airspace in each of the above instances is directly attributable to reduced ATC service capability at altitudes affected by terrain features. Coverage by radar and/or communication equipment is limited to line of sight. Terrain prevents an acceptable degree of coverage in certain portions of the ARSA. Temporary loss of radio or radar coverage is not an uncommon situation when operating at certain altitudes when the ATC facility is located in close proximity to higher terrain. Normally this is not considered an adverse factor in ATC's ability to provide services, as instrument flight rules (IFR) operations are conducted at altitudes which ensure adequate coverage, and visual flight rules (VFR) operations are advisory in nature with voluntary pilot participation. To the maximum extent practicable, FAA, in the development of regulatory airspace, ensures adequate coverage is provided.

Regulatory Evaluation

The proposed modifications to the Burbank-Glendale-Pasadena Airport ARSA are intended to improve the utility of the affected airspace. The proposal to eliminate a small amount of airspace from the ARSA is not expected to result in any costs associated with a reduction in the controlled airspace. The affected airspace currently is not within sufficient radar and/or communications coverage necessary to provide ARSA services because of terrain features. Adjusting the ARSA boundaries will not alter this situation. Reconfiguring the ARSA to more accurately reflect the terrain characteristics will improve the

efficiency of its operations, and various users, especially the users of Whiteman Airport, will benefit from the restoration of this airspace.

The FAA has determined that the economic impact of this proposal is so minimal as not to require further regulatory evaluation. A copy of the regulatory evaluation for the original Burbank-Glendale-Pasadena ARSA is available for review in FAA Airspace Docket No. 85–AWA–2. For the reasons listed above, this proposal (1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

International Trade Impact Analysis

This proposed regulation will only affect terminal airspace operating procedures at one location within the United States. As such, it will have no affect on the sale of foreign aviation products or services in the United States, nor will it affect the sale of United States aviation products or services in foreign countries.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. Small entities are independently owned and operated small businesses and small not-for-profit organizations. The RFA requires agencies to review rules that may have a significant economic impact on a substantial number of small entities.

Throughout the ARSA program the FAA has attempted to eliminate potentially adverse impacts on satellite airports within five-nautical miles of ARSA centers and the small businesses based at these airports, as well as flight training, soaring, ballooning, parachuting, ultralight, and banner towing activities, by developing special procedures to accommodate these activities through local agreements between ATC facilities and the affected organizations, or in some cases, providing exclusions for these airports. This modification of the Burbank-Glendale-Pasadena Airport ARSA will slightly expand the exclusion in the vicinity of Whiteman Airport and ease local operations for this airport.

For these reasons, the FAA certifies that the proposed amendment, if adopted, will not result in a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required under the terms of the RFA.

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.501 [Amended]

2. Section 71.501(a) is amended as follows:

Burbank-Glendale-Pasadena Airport, CA [Revised]

That airspace extending upward from the surface to and including 4,800 feet MSL within a 5-mile radius of the Burbank-Glendale-Pasadena Airport (lat. 34°12'02" N., long. 118°21'27" W.) excluding that airspace below 3,500 feet MSL within a 1.75-mile radius of the Whiteman Airport (lat. 34°15'35" N., long. 118°24'45" W.) and excluding that airspace below 3,500 feet MSL east of a direct line from a point 5 miles on the 004° bearing from the airport to a point 5 miles on the 090° bearing from the airport; and that airspace extending upward from 3,500 feet MSL to and including 4,800 feet MSL within a 10-mile radius of the Burbank-Glendale-Pasadena Airport from the 104° bearing clockwise to the 004° bearing from the airport excluding that airspace south of the north boundary of the Los Angeles, CA, Terminal Control Area, and excluding that airspace beyond an 8-mile radius north and east of the 294° bearing, and excluding that airspace beyond 5 miles north and east of a line from a point 8 miles on the 343° bearing from the airport to a point 5 miles on the 004° bearing from the airport.

Issued in Washington, DC, on August 3, 1987.

Sbelomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

BILLING CODE 4910-13-M

AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

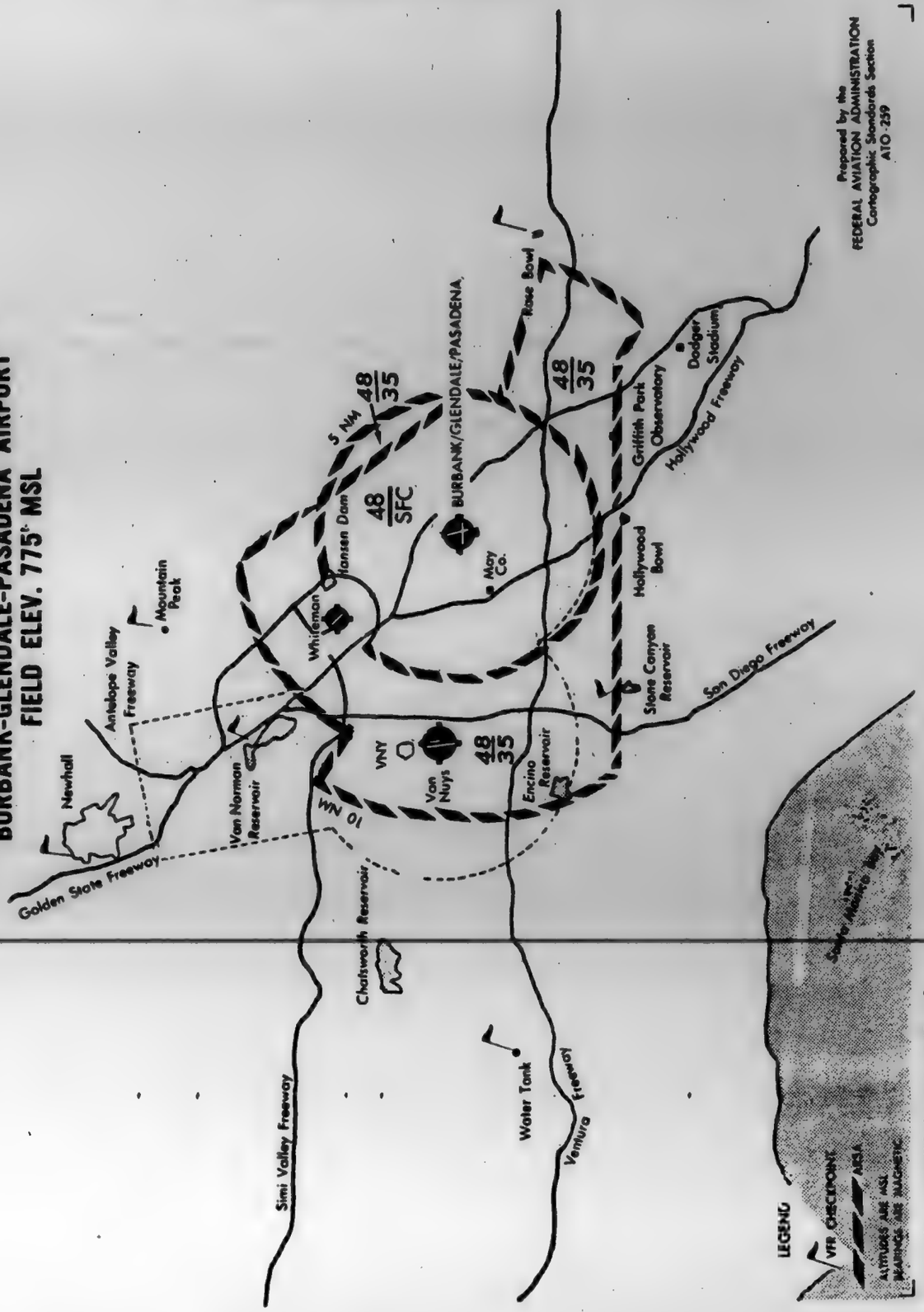

[FR Doc. 87-17925 Filed 8-6-87; 8:45 am]

BILLING CODE 4910-13-C

federal register

Friday
August 7, 1987

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Proposed Establishment of Airport Radar Service Areas; Notice of Proposed Rulemaking

BEST COPY AVAILABLE

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87-AWA-24]

Proposed Establishment of Airport Radar Service Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish an Airport Radar Service Area (ARSA) at three locations—Fayetteville Municipal/Grannis Field Airport, NC; Pope Air Force Base (AFB), NC, and Shaw AFB, SC. Each location is an airport at which a nonregulatory Terminal Radar Service Area (TRSA) is currently in effect. Establishment of each ARSA would require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at each of the affected locations would promote the efficient control of air traffic and reduce the risk of midair collision in terminal areas.

DATES: Comments must be received on or before November 7, 1987. Informal airspace meeting dates are as follows: Fayetteville Airport, NC, and Pope AFB, NC—October 6, 1987; and Shaw AFB, SC—October 7, 1987.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC-204], Airspace Docket No. 87-AWA-24, 800 Independence Avenue, SW., Washington, DC 20591.

The informal airspace meeting places are as follows:

Fayetteville Municipal/Grannis Field Airport and Pope AFB, NC, ARSA's
Time: 7:00 p.m.
Location: Fayetteville Technical Institute Auditorium, 2201 Hull Road, Fayetteville, NC

Shaw AFB, SC, ARSA
Time: 7:30 p.m.
Location: Shaw AFB NCO Club, Shaw AFB, SC, Note: Enter Shaw AFB through main gate

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

The informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Robert L. Laser, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9255.

SUPPLEMENTARY INFORMATION:

Comments Invited

This notice involves three locations. Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No 87-AWA-24." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

Meeting Procedures

In addition to seeking written comments on this proposal, the FAA will hold informal airspace meetings for the proposed ARSA locations in order to receive additional input with respect to the proposal. The dates, times, and places for these meetings are listed above. Persons who plan to attend the meetings should be aware of the following procedures to be followed:

(a) The meetings will be informal in nature and will be conducted by the designated representative of the Administrator. Each participant will be given an opportunity to make a presentation.

(b) There will be no admission fee or other charge to attend and participate. The meetings will be open to all persons on a space-available basis. The FAA representative may accelerate the agenda to enable early adjournment if the progress of the meetings is more expeditious than planned.

(c) The meetings will not be recorded. A summary of the comments made at these meetings will be filed in the docket.

(d) Position papers or other handout material relating to the substance of the meetings may be accepted. Participants submitting handout materials should present an original and two copies to the presiding officer. There should be an adequate number of copies provided for further distribution to all participants.

(e) Statements made by FAA participants at the meetings should not be taken as expressing a final FAA position.

Agenda

Presentation of Meeting Procedures
FAA Presentation of Proposal
Public Presentations and Discussion

Background

On April 22, 1982, the National Airspace Review (NAR) plan was published in the Federal Register (47 FR 17448). The plan encompassed a review of airspace use and procedural aspects of the ATC system. Among the main objectives of the NAR was the improvement of the ATC system by increasing efficiency and reducing complexity. In its review of terminal airspace, NAR Task Group 1-2 concluded that TRSA's should be replaced. Four types of airspace configurations were considered as replacement candidates, of which Model B, since redesignated ARSA, was the consensus recommendation.

In response, the FAA published NAR Recommendation 1-2.2.1, "Replace Terminal Radar Service Areas with Model B Airspace and Service" in Notice 83-9 (July 28, 1983; 48 FR 34286) proposing the establishment of ARSA's at the Robert Mueller Municipal Airport,

Austin, TX, and the Port of Columbus International Airport, Columbus, OH. ARSA's were designated at these airports on a temporary basis by SFAR No. 45 (October 28, 1983; 48 FR 50038) in order to provide an operational confirmation of the ARSA concept for potential application on a national basis.

Following a confirmation period of more than a year, the FAA adopted the NAR recommendation and, on February 27, 1986, issued a final rule (50 FR 9252; March 6, 1985) defining an ARSA and establishing air traffic rules for operation within such an area. Concurrently, by separate rulemaking action, ARSA's were permanently established at the Austin, TX, and Columbus, OH, airports and also at the Baltimore/Washington International Airport, Baltimore, MD, (50 FR 9250; March 6, 1985). The FAA has stated that future notices would propose ARSA's for other airports at which TRSA procedures were in effect.

Additionally, the NAR Task Group recommended that the FAA develop quantitative criteria for proposing to establish ARSA's at locations other than those which are included in the TRSA replacement program. The task group recommended that these criteria take into account, among other things, traffic mix, flow and density, airport configuration, geographical features, collision risk assessment, and ATC capabilities to provide service to users. This criteria has been developed and is being published via the FAA directives system.

The FAA has established ARSA's at 89 locations under a paced implementation plan to replace TRSA's with ARSA's. This is one of a series of notices to implement ARSA's at locations with TRSA's.

Related Rulemaking

This notice proposes ARSA designation at three locations identified as candidates for an ARSA in the preamble to Amendment No 71–10 (50 FR 9252). Other candidate locations will be proposed in future notices published in the Federal Register.

The Current Situation at the Proposed ARSA Locations

A TRSA is currently in effect at the locations at which ARSA's are proposed in this notice. A TRSA consists of the airspace surrounding a designated airport where ATC provides radar vectoring, sequencing, and separation for all aircraft operating under instrument flight rules (IFR) and for participating aircraft operating under visual flight rules (VFR). TRSA airspace and operating rules are not established by regulation, and participation by pilots operating under VFR is voluntary, although pilots are urged to participate. This level of service is known as Stage III and is provided at all locations identified as TRSA's. The NAR task group recommended the replacement of most TRSA's with ARSA's.

A number of problems with the TRSA program were identified by the task group. The task group stated that because there are different levels of service offered within the TRSA, users are not always sure of what restrictions or privileges exist, or how to cope with them. According to the task group, there is a shared feeling among users that TRSA's are often poorly defined, are generally dissimilar in dimensions, and encompass more area than is necessary or desirable. There are other users who believe that the voluntary nature of the TRSA does not adequately address the problems associated with nonparticipating aircraft operating in relative proximity to the airport and associated approach and departure courses. There is strong advocacy among user organizations that terminal radar facilities should provide all pilots the same service, in the same way, and, to the extent feasible, within standard size airspace designations.

Certain provisions of FAR § 91.87 add to the problem identified by the task group. For example, aircraft operating under VFR to or from a satellite airport and within the airport traffic area (ATA) of the primary airport are excluded from the two-way radio communications requirement of § 91.87. This condition is acceptable until the volume and density of traffic at the primary airport dictates further action.

The Proposal

The FAA is considering an amendment to § 71.501 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish ARSA's at the following three locations: Fayetteville Municipal/Grannis Field Airport, NC; Pope AFB, NC, and Shaw AFB, SC. Fayetteville Municipal/Grannis Field Airport is a public airport, while Pope AFB and Shaw AFB are military airports at which nonregulatory TRSA's are currently in effect. The proposed locations are depicted on charts in Appendix 1 to this notice.

FAA regulations, 14 CFR 91.88, define ARSA and prescribe operating rules for aircraft, ultralight vehicles, and parachute jump operations in airspace designated as an ARSA.

The ARSA rule provides in part that, prior to entering the ARSA, any aircraft arriving at any airport in an ARSA or flying through an ARSA must: (1) Establish two-way radio communications with the ATC facility having jurisdiction over the area, and (2) while in the ARSA, maintain two-way radio communications with that ATC facility. For aircraft departing from the primary airport within the ARSA, two-way radio communications must be maintained with the ATC facility having jurisdiction over the area. For aircraft departing a satellite airport within the ARSA, two-way radio communications must be established as soon as practicable after takeoff with the ATC facility having jurisdiction over the area, and thereafter maintained while operating within the ARSA.

All aircraft operating within an ARSA are required to comply with all ATC clearances and instructions and any FAA arrival or departure traffic pattern for the airport of intended operation. However, the rule permits ATC to authorize appropriate deviations to any of the operating requirements of the rule when safety considerations justify the deviation or more efficient utilization of the airspace can be attained. Ultralight vehicle operations and parachute jumps in an ARSA may only be conducted under the terms of an ATC authorization.

The FAA adopted the NAR task group recommendation that each ARSA be of the same airspace configuration insofar as practicable. The standard ARSA consists of airspace within 5 nautical miles of the primary airport extending from the surface to an altitude of 4,000 feet above that airport's elevation, and that airspace between 5 and 10 nautical miles from the primary airport from 1,200 feet above the surface to an altitude of 4,000 feet above that airport's elevation. Proposed deviation from the standard has been necessary at some airports due to adjacent regulatory airspace, international boundaries, topography, or unusual operational requirements.

Definitions, operating requirements, and specific airspace designations applicable to ARSA may be found in 14 CFR Part 71, §§ 71.14 and 71.501, and 14 CFR Part 91, §§ 91.1 and 91.88.

For the reasons discussed under "Regulatory Evaluation," the FAA has determined that this proposed regulation is not a "major rule" under Executive Order 12291 and is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Regulatory Evaluation

The FAA has conducted a Regulatory Evaluation of the proposed

establishment of these additional ARSA sites. The major findings of that evaluation are summarized below, and the evaluation is available in the regulatory docket.

a. Costs

Costs which potentially could result from the establishment of additional ARSA sites fall into the following categories:

(1) Air traffic controller staffing, controller training, and facility equipment costs incurred by the FAA.

(2) Costs associated with the revision of charts, notification of the public, and pilot education.

(3) Additional operating costs for circumnavigating or flying over the ARSA.

(4) Potential delay costs resulting from operations within an ARSA rather than a TRSA.

(5) The need for some operators to purchase radio transceivers.

(6) Miscellaneous costs.

It has been the FAA's experience, however, that these potential costs do not materialize to any appreciable degree, and when they do occur, they are transitional, relatively low in magnitude, or attributable to specific implementation problems that have been experienced at a very small minority of ARSA sites. The reasons for these conclusions are presented below.

FAA expects that the additional ARSA sites proposed in this notice can be implemented without requiring additional controller personnel above current authorized staffing levels, because participation at these TRSA locations is already quite high, and the reduced separation standards permitted in ARSA's will allow controllers to absorb the slight increase in participating traffic by handling all traffic much more efficiently. Further, because controller training will be conducted during normal working hours, and existing TRSA facilities already operate the necessary radar equipment, FAA does not expect to incur any appreciable implementation costs. Essentially, the FAA will modify its terminal radar procedures at the proposed ARSA sites in a manner that will make more efficient use of existing resources.

No additional costs are expected to be incurred because of the need to revise sectional charts to remove TRSA airspace depictions and incorporate the new ARSA airspace boundaries. Changes of this nature are routinely made during charting cycles, and the planned effective dates for newly established ARSA's are scheduled to coincide with the regular 6-month chart publication intervals.

This rulemaking proceeding and process will satisfy much of the need to notify the public and educate pilots about ARSA operations. The informal public meeting being held at each location where an ARSA is being proposed provides pilots with the best opportunity to learn both how an ARSA works and how it will affect their local operations. The expenses associated with these public meetings are considered costs attributable to the rulemaking process; however, any public information costs following establishment of a new ARSA are strictly attributable to the ARSA. The FAA expects to distribute a Letter to Airmen to all pilots residing within 50 miles of ARSA sites explaining the operation and configuration of the ARSA finally adopted. The FAA also has issued an Advisory Circular on ARSA's. The combined Letter to Airmen and prorated Advisory Circular costs have been estimated to be approximately $500 for each ARSA site. This cost is incurred only once upon the initial establishment of an ARSA.

Information on ARSA's following the establishment of additional sites will also be disseminated at aviation safety seminars conducted throughout the country by various district offices. These seminars are regularly provided by the FAA to discuss a variety of aviation safety issues and, therefore, will not involve additional costs strictly as a result of the ARSA program. Additionally, no significant costs are expected to be incurred as a result of the follow-on user meetings that will be held at each site following implementation of the ARSA which will allow users to provide feedback to the FAA on local ARSA operations. These meetings are being held at public or other facilities which are being provided free of charge or at nominal cost. Further, because these meetings are being conducted by local FAA facility personnel, no travel, per diem, or overtime costs will be incurred by regional or headquarters personnel.

FAA anticipates that some pilots who currently transit a TRSA without establishing radio communications or participating in radar services may choose to circumnavigate the mandatory participation airspace of an ARSA rather than participate. Some minor delay costs will be incurred by these pilots because of the additional aircraft variable operating cost and lost crew and passenger time resulting from the deviation. Other pilots may elect to overfly the ARSA, or transit below the 1,200 feet above ground level (AGL) floor between the 5- and 10-nautical-mile rings. Although this will not result in any appreciable delay, a small additional fuel burn will result from the climb portion of the altitude adjustment (which will be offset somewhat by the descent).

FAA recognizes that the potential exists for delay to develop at some locations following establishment of an ARSA. The additional traffic that the radar facilities will be handling as a result of the mandatory participation requirement may, in some instances, result in minor delays to aircraft operations. FAA does not expect such delay to be appreciable. FAA expects that the greater flexibility afforded controllers in handling traffic as a result of the reduced separation standards will keep delay problems to a minimum. Those that do occur will be transitional in nature, diminishing as facilities gain operating experience with ARSA's and learn how to tailor procedures and allocate resources to take fullest advantage of the increased efficiencies due to the implementation of the ARSA. This has been the experience at most of the locations where ARSA's have been in effect for the longest period of time and is the recurring trend at the locations that have been more recently designated.

The FAA does not expect that any operator will find it necessary to install radio transceivers as a result of establishing the ARSA's proposed in this notice. Aircraft operating to and from primary airports already are required to have two-way radio communications capability because of existing airport traffic areas and, therefore, will not incur any additional costs as a result of the proposed ARSA's. Further, the FAA has made an effort to minimize these potential costs throughout the ARSA program by providing airspace exclusions, or cutouts, for satellite airports located within 5 nautical miles of the ARSA center where the ARSA would otherwise have extended down to the surface. Procedural agreements between the local ATC facility and the affected airports have also been used to avoid radio installation costs.

At some proposed ARSA locations, special situations might exist where establishment of an ARSA could impose certain costs on users of that airspace. However, exclusions, cutouts, and special procedures have been used extensively throughout the ARSA program to alleviate adverse impacts on local fixed base and airport operators. Similarly, the FAA has eliminated potential adverse impacts on existing

flight training practice areas, as well as soaring, ballooning, parachuting, ultralight and banner towing activities, by developing special procedures to accommodate these activities through local agreements between ATC facilities and the affected organizations. For these reasons, the FAA does not expect that any such adverse impact will occur at the candidate ARSA sites proposed in this notice.

b. Benefits

Much of the benefit that will result from ARSA's is nonquantifiable and is attributable to simplification and standardization of ARSA configurations and procedures, which should eliminate much of the confusion currently experienced by pilots when operating in nonstandard TRSA's. Further, once experience is gained in ARSA operations, the air traffic controllers will gain greater flexibility in handling traffic within an ARSA which will enable them to move traffic more efficiently than under the current TRSA's. These expected savings may or may not offset the delay that some sites may experience after the initial establishment of an ARSA, but are expected to eventually provide overall time savings to all traffic, IFR as well as VFR, as both pilots and controllers become more familiar with ARSA operating procedures.

Some of the benefits of the ARSA cannot be specifically attributed to individual candidate airports, but rather will result from the overall improvements in terminal area ATC procedures realized as ARSA's are implemented throughout the country. ARSA's have the potential of reducing both near and actual midair collisions at the airports where they are established. Based upon the experience at the Austin and Columbus ARSA confirmation sites, FAA estimates that near midair collisions may be reduced by approximately 35 to 40 percent. Further, FAA estimates that implementation of the ARSA program nationally may prevent approximately one midair collision every 1 to 2 years throughout the United States. The quantifiable benefits of preventing a midair collision can range from less than $100,000, resulting from the prevention of a minor nonfatal accident between general aviation aircraft, to $300 million or more, resulting from the prevention of a midair collision involving a large air carrier aircraft and numerous fatalities. Establishment of ARSA's at the sites proposed in this notice will contribute to these improvements in safety.

c. Comparison of Costs and Benefits

A direct comparison of the costs and benefits of this proposal is difficult for a number of reasons. Many of the benefits of the rule are nonquantifiable, and it is difficult to specifically attribute the standardization benefits, as well as the safety benefits, to individual candidate ARSA sites.

FAA expects that any adjustment problems that may be experienced at the ARSA locations proposed in this notice will only be temporary, and that once established, the ARSA's will result in an overall improvement in efficiency in terminal area operations. This has been the experience at the vast majority of ARSA sites that have already been implemented. In addition to these operational efficiency improvements, establishment of the proposed ARSA sites will contribute to a reduction in near and actual midair collisions. For these reasons, FAA expects that establishment of the ARSA sites proposed in this notice will produce long term, ongoing benefits that will far exceed their costs, which are essentially transitional in nature.

International Trade Impact Analysis

This proposed regulation will only affect terminal airspace operating procedures at selected airports within the United States. As such, it will have no effect on the sale of foreign aviation products or services in the United States, nor will it affect the sale of United States aviation products or services in foreign countries.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. Small entities are independently owned and operated small businesses and small not-for-profit organizations. The RFA requires agencies to review rules that may have a significant economic impact on a substantial number of small entities.

The small entities that potentially could be affected by implementation of the ARSA program include the fixed-base operators, flight schools, agricultural operators and other small aviation businesses located at satellite airports within 5 nautical miles of the ARSA center. If the mandatory participation requirement were to extend down to the surface at these airports, where under current regulations participation in the TRSA and radio communication with ATC is voluntary, operations at these airports might be altered, and some business could be lost to airports outside of the ARSA core. FAA has proposed to exclude many satellite airports located within 5 nautical miles of the primary airport at candidate ARSA sites to avoid adversely impacting their operations and to simplify coordinating ATC responsibilities between the primary and satellite airports. In some cases, the same purposes will be achieved through Letters of Agreement between ATC and the affected airports that establish special procedures for operating to and from these airports. In this manner, FAA expects to eliminate any adverse impact on the operations of small satellite airports that potentially could result from the ARSA program. Similarly, FAA expects to eliminate potentially adverse impacts on existing flight training practice areas, as well as soaring, ballooning, parachuting, ultralight, and banner towing activities, by developing special procedures that will accommodate these activities through local agreements between ATC facilities and the affected organizations. FAA has utilized such arrangements extensively in implementing the ARSA's that have been established to date.

Further, because the FAA expects that any delay problems that may initially develop following implementation of an ARSA will be transitory, and because the airports that will be affected by the ARSA program represent only a small proportion of all the public use airports in operation within the United States, small entities of any type that use aircraft in the course of their business will not be adversely impacted.

For these reasons, the FAA certifies that the proposed regulation, if adopted, will not result in a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required under the terms of the RFA.

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.501 [Amended]

2. Section 71.501 is amended as follows:

Fayetteville Municipal/Grannis Field Airport, NC [New]

That airspace extending upward from the surface to and including 4,200 feet MSL within a 5 mile radius of the Fayetteville Municipal/Grannis Field Airport (lat. 34°59'26"N., long. 78°52'50" W.) and that airspace within a 10.mile radius of the Fayetteville Municipal/Grannis Field Airport extending upward from 1,400 feet MSL to and including 4,200 feet MSL, excluding that airspace within Restricted Area R-5311. This airport radar service area is effective during the specific days and hours of operation of the Fayetteville Tower and Approach Control Facility as established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

Pope AFB, NC [New]

That airspace extending upward from the surface to and including 4,200 feet MSL within a 5-mile radius of the Pope AFB (lat. 35°09'58" N., long. 79°01'03" W.) and that airspace extending upward from 1,400 feet MSL to and including 4,200 feet MSL within a 10.mile radius of the Pope AFB, excluding that airspace within Restricted Area R-5311 and excluding that airspace within the Fayetteville Municipal/Grannis Field Airport, Airport Radar Service Area. This airport radar service area is effective during the specific days and hours of operation of the Pope AFB Tower and Fayetteville Approach Control Facility as established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

Shaw AFB, SC [New]

That airspace extending upward from the surface to and including 4,200 feet MSL within a 5-mile radius of the Shaw AFB (lat. 33°58'05" N., long. 80°28'46" W.) and that airspace extending upward from 1,500 feet MSL to and including 4,200 feet MSL within a 10-mile radius of the Shaw AFB, excluding that airspace below 1,500 feet MSL within a 2-mile radius of the Sumter Municipal Airport (lat. 33°59'42" N., long. 80°21'45" W.) and excluding that airspace within Restricted Area R-600.2

Issued in Washington, DC, on August 3, 1987.

Shelomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

BILLING CODE 4910-13-M

AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

FAYETTEVILLE, NORTH CAROLINA
POPE AFB
FIELD ELEV. 218' MSL

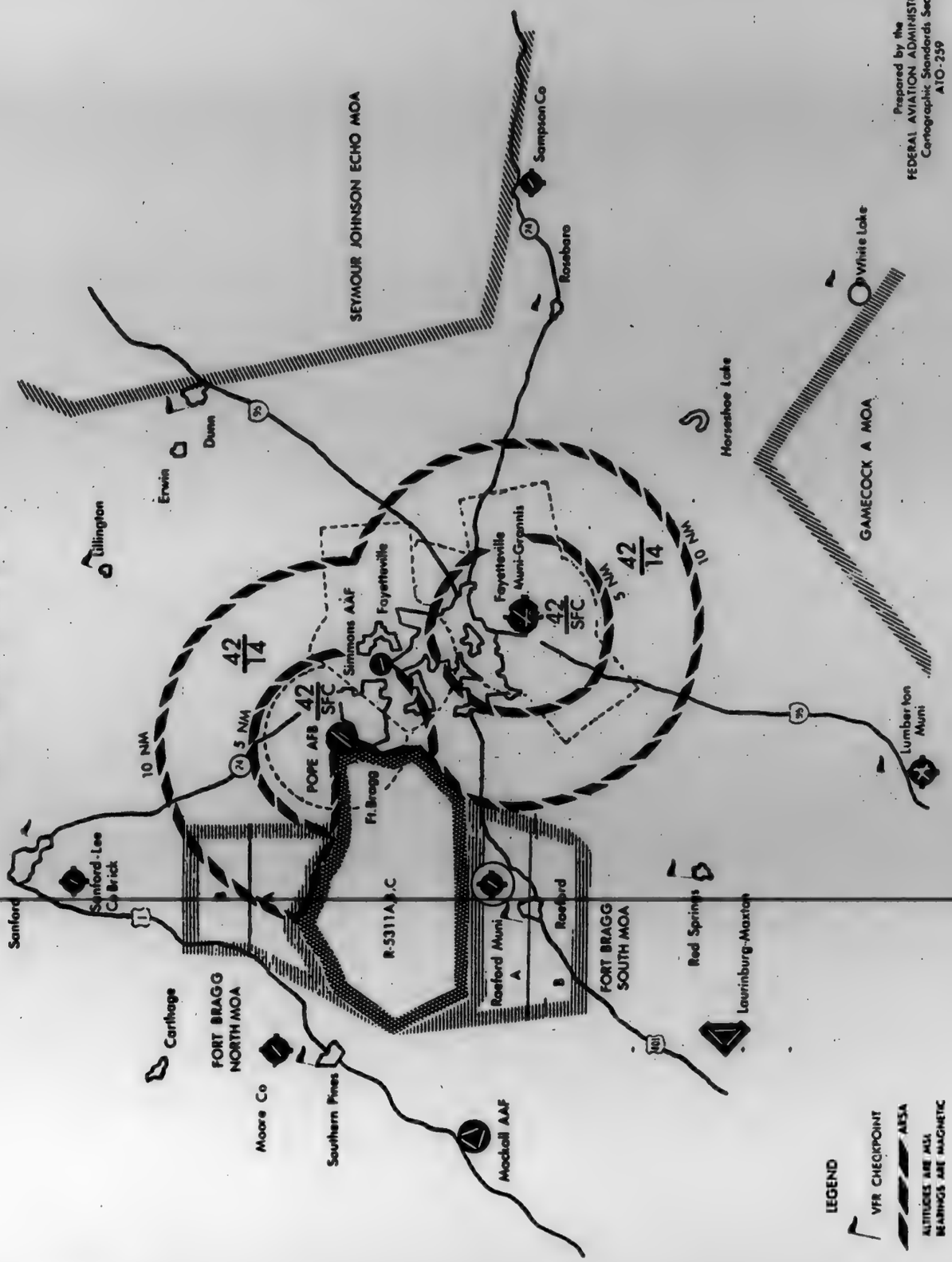

AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

SHAW AFB
FIELD ELEV. 241' MSL

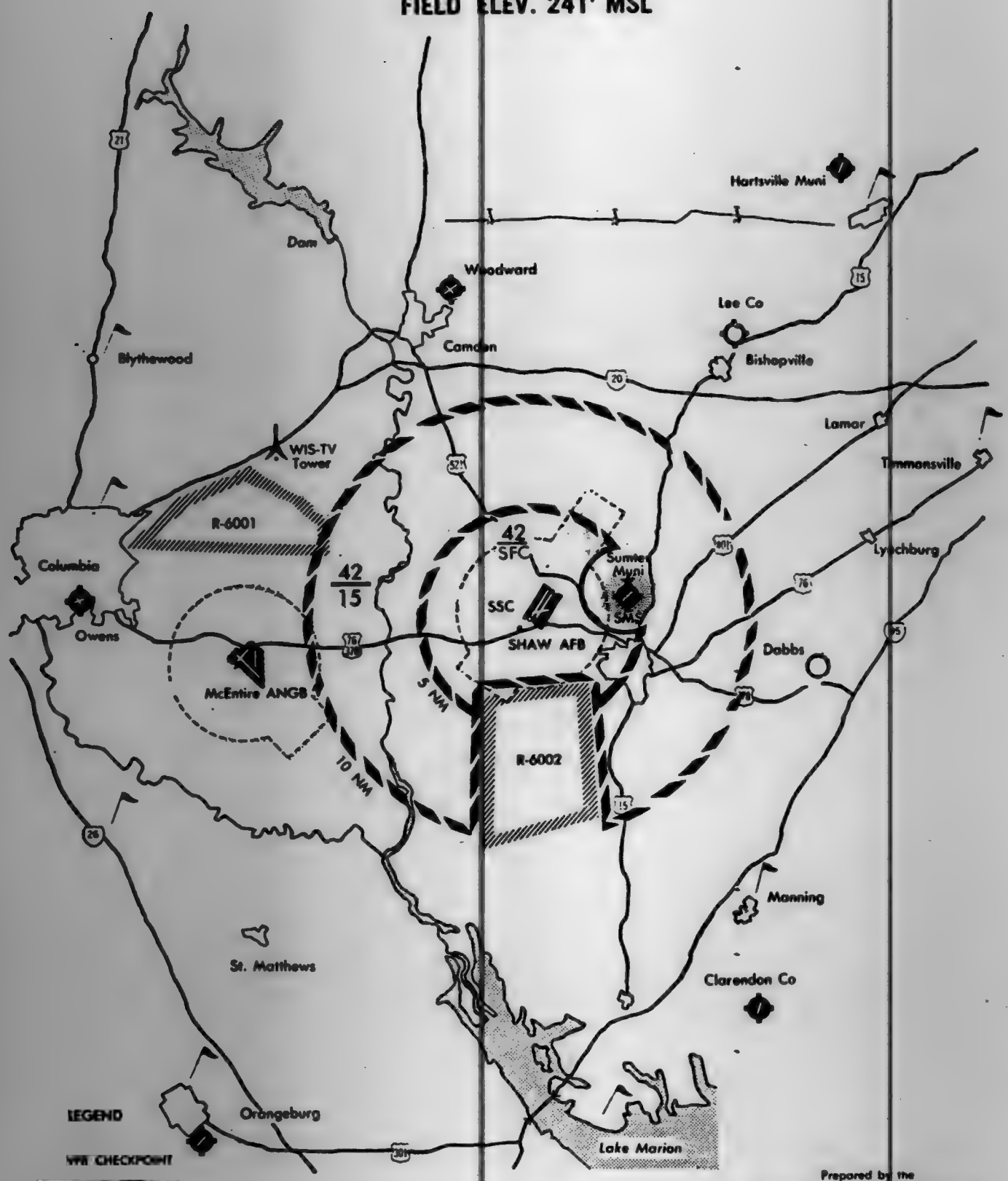

Prepared by the
FEDERAL AVIATION ADMINISTRATION
Cartographic Standards Section
ATO-250

[FR Doc. 87-17928 Filed 8-6-87; 8:45 am]

BILLING CODE 4910-13-C

federal register

Friday
August 7, 1987

Part IV

Department of Agriculture

Cooperative State Research Service

Competitive Research Grants Program for Fiscal Year 1988; Solicitation of Applications for the Competitive Research Grants Program; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Competitive Research Grants Program for Fiscal Year 1988; Solicitation of Applications for the Competitive Research Grants Program

Applications are invited for competitive grant awards under the Competitive Research Grants Program administered by the Office of Grants and Program Systems, Cooperative State Research Service, for fiscal year 1988.

The authority for this program is contained in section 2(b) of the Act of August 4, 1965, as amended (7 U.S.C. 450i(b)). Under this program, subject to the availability of funds, the Secretary may award competitive research grants, for periods not to exceed five years, for the support of research projects to further the programs of the Department of Agriculture. Proposals may be submitted by any State agricultural experiment station, college, university, other research institution or organization, Federal agency, private organization, corporation, or individual. Proposals for scientists at non-United States organizations will not be considered for support.

Application Regulations

Regulations applicable to this program include the following: (a) The regulations governing the Competitive Research Grants Program, 7 CFR Part 3200 (49 FR 5570, February 13, 1984, as amended by 50 FR 5499, February 8, 1985), which set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals and the awarding of grants, and regulations relating to the post-award administration of grant projects; and (b) the USDA Uniform Federal Assistance Regulations, 7 CFR Part 3015, as amended.

Specific Research Areas To Be Supported in Fiscal Year 1988

Standard project grants and a small number of continuation grants will be awarded to support basic research in selected areas of the biological sciences related to agriculture and human nutrition.

The Competitive Research Grants Program covers the following categories:

Plant Science
Human Nutrition
Animal Science
Biotechnology

The research categories of plant and animal science and human nutrition have been considered by a number of scientific groups to possess exceptional opportunity for fundamental scientific discovery and for contributing, in the long run, to applied research and development vitally needed on high-priority food and nutrition problems.

The major initiative in biotechnology research that began in fiscal year 1985 will continue for fiscal year 1988. It is designed to provide opportunities to address research problems in all categories of agricultural science including plants, animals, insect pests, and microorganisms associated with these biota. It is anticipated that this research will advance broadly the Nations competitive advantages in the food, feed, fiber and natural resource processes. Consideration will be given to research proposals that address fundamental questions in the areas noted below and that are consistent with the long-range agricultural needs of the Nation. If you intend to submit a Biotechnology proposal, it should be submitted to one of the research program areas listed below where the subject matter is most appropriate.

While basic guidelines are provided to assist members of the scientific community in assessing their interest in the program areas and to delineate certain important areas where new information is needed, the guidelines are not meant to provide boundaries or to detract from the creativity of potential applicants. USDA encourages the submission of innovative projects in the so-called "high-risk" category as well as those that may have a more certain payoff potential. In all instances, innovative research will be given high priority.

Agriculturally important organism(s) should be used to accomplish the research objectives. The use of other organisms as experimental model systems must be justified relative to the goals of the appropriate research program area and to the long-term objectives of USDA.

Workshops or symposia that bring together scientists to identify research needs, update information, or advance an area of research are recognized as integral parts of research efforts. Support for a limited number of such meetings covering subject matter encompassed by this Competitive Research Grants solicitation will be considered.

Individuals who have recently received a doctoral degree and wish to have further research experience before embarking on an independent career may submit proposals describing the research they wish to perform related to the program areas described in this solicitation.

To be considered for funding during fiscal year 1988, proposals from these individuals must be postmarked according to the dates established in this solicitation.

Interested individuals should contact the appropriate program staff for further information. The following specific research areas (program areas) and guidelines are provided as a base from which proposals may be developed:

1.0 *Plant Biological Stress Including Molecular Plant Pathology, Weed Science, Entomology and Nematology.* Plants are exposed to many stresses that may adversely affect their productivity and usefulness to man. This program area will support research on stresses on plants arising from their interactions with other plants or other biological agents and their control agents such as weeds, insects, nematodes, fungi, bacteria, viruses, and mycoplasma-like organisms. The ultimate goal of the research supported in this area is to reduce losses in plant productivity from damage caused by biologically generated stresses. This program area will emphasize studies that enhance our understanding of (a) how stressful interactions are established between plants and other biological agents; (b) how plants react to stresses generated by interactions with biological agents; and (c) how damage from such interactions may be reduced or eliminated. The interactions may be studied at any number of levels (i.e., population, organismal, cellular, and molecular) and by various approaches including genetics, molecular biology, and biochemistry.

Within this context, one of the goals of this program area is to understand the molecular basis for the organisms response to these stresses and to identify which of the genetic or cellular systems involved in these responses can be manipulated by techniques in biotechnology. Research on plants, plant-associated insects or microorganisms should emphasize: (a) Identification, isolation, transfer, regulation, and expression of genes involved in biological stresses; (b) physiological/biochemical-genetic analyses of identified genes or gene products involved in biological stress; and (c) fundamental or molecular mechanisms underlying stress responses, injury, tolerance, resistance, and avoidance at the molecular, cellular, and organismal levels.

Proposals may include studies on plants separated from stress-causing organisms or on stress-causing organisms separated from their target plants. However, proposals should

indicate how the anticipated information will be relevant to an understanding of the causes, consequences, and avoidance of biologically generated stresses on plants. The research supported in this program area will focus on the identification of new approaches that will be both effective and compatible with social and environmental concerns.

To expedite processing and review of the large number of proposals submitted in the broad subject area of Plant Biological Stress, proposals will be evaluated under two subprogram areas:

1.1 *Plant Pathology/Weed Science* and
1.2. *Entomology/Nematology*, each of which will have a separate deadline date for submission of proposals.

Within the guidelines described above, the Plant Pathology/Weed Science subprogram area will consider all proposals for research addressing plant pathogens or weeds affecting plant stress. The Entomology/Nematology subprogram area will consider all proposals for research addressing arthropods or nematodes stressing the plant.

2.0 *Plant Genetic Mechanisms and Plant Molecular Biology.* The goal of this program area is to encourage new approaches for the development of genetically superior varieties of agricultural crops. Proposals should be directed toward obtaining novel combinations or gene modifications. One of the major limiting factors for the application of biotechnology to agriculture is the lack of basic information about genes. Studies addressing the basic cellular, molecular, and genetic processes which contribute new information required for the development of novel approaches to crop improvement will be given high priority. This research should increase our understanding of the structure, function, regulation, and expression of genes. This program area will emphasize the following but will not exclude other new or unusual approaches to crop improvement: (a) Identification, isolation, and characterization of genes and gene products; (b) relationships between gene structure and function; (c) regulatory mechanisms of gene expression; (d) interactions between nuclear and organellar genes, and between extrachromosomal and chromosomal genes; (e) mechanisms of gene recombination and transposition; (f) molecular basis of chromosomal replication; (g) cell and tissue culture studies designed to increase our knowledge of the basic molecular, biochemical, and cellular processes involved in regenerating whole plants from single cells; (h) development of cellular and molecular methods for identifying plant characteristics or genes which are important targets for genetic manipulation; (i) development of molecular and cellular methods for crop improvement using gene transfer or genetic engineering technology; (j) development of new methods for producing, selecting, and transferring agronomically important qualitative and quantitative traits; and (k) basic genetic studies on the alteration and utilization of unadapted and wild germplasm.

3.0 *Biological Nitrogen Fixation and Metabolism.* The most common limiting nutrient for plant growth is nitrogen. The presence of soil nitrogen is due to past accretions in nature, biological nitrogen fixation, or the application of nitrogenous fertilizer. The latter represents a significant energy input in cropping and ultimately increases food costs. Thus, the enhancement of biological nitrogen fixation capacity in plant-soil microbial associations is of major importance. Research aimed at understanding nitrogen-fixing mechanisms and related nitrogen metabolism in both symbiotic and free-living organisms as well as the fate of fixed nitrogen in the plant is of high priority.

In general, the objectives of this program area include building a foundation of basic information concerning nitrogen fixation as it relates to enhancing the process in currently known systems and in providing a base for developing new nitrogen-fixing associations, by genetic transfer or other means, for crop species not now possessing such capability. Moreover, the process of nitrification, the assimilation and utilization of ammonia and nitrate, and denitrification all play important roles in plant growth.

Examples of research encompassed in this program area include: (a) Structure and mechanism of action of nitrogenase; the regulation of nitrogenase activity and synthesis; the relationship between nitrogenase and hydrogenase activities in nitrogen-fixing organisms; (b) energetics of the nitrogen fixation process including competitive processes within the plant; (c) infection by *Rhizobium* and conditions for effective nodulation; basis of the recognition process between symbiotic organisms; factors controlling symbiont specificity; competition in the soil; (d) nitrogen-fixing capabilities of *Actinomycetes*, *Azospirillum* spp., Cyanobacteria, and other organisms potentially important in supplying nitrogen needs of plants; (e) relation between the fixation process and the processes of assimilation, nitrification, and denitrification; (f) development of methods for the *in situ* measurement of nitrification and denitrification and determination of the actual extent of these processes in nature; (g) analysis of the distribution of denitrifying and nitrifying bacteria and elucidation of control mechanisms operating on nitrogen transformations in the major species; (h) metabolism of fixed nitrogen including the enzymes involved in the assimilation and dissimilation of fixed nitrogen in bacteria and crop plants and the partitioning of fixed nitrogen into various gene products or plant organs; and (i) efficiency of nitrogen utilization by crop plants in the production of food proteins.

Emphasis in program priorities will be on innovative approaches which may contribute to a more thorough understanding of nitrogen cycling encompassing biochemistry, molecular biology, cellular and developmental biology, genetics and genetic manipulation, and other relevant life science disciplines including suitable techniques of biotechnology. An understanding of these processes is essential to the devlopment of strategies which maximize nitrogen fixation, minimize inputs of nitrogenous fertilizers, and optimize their utilization in agriculture.

4.0 *Photosynthesis.* Photosynthetic efficiency is an important factor in crop productivity. Basic research which provides information on limiting processes of photosynthesis and associated carbon metabolism will lead to a greater understanding of those factors which affect the ability of the plant to produce a usable product.

Research is needed in the following major subareas: (a) Genetic and cellular manipulation to improve photosynthetic efficiency in plants including studies of the chloroplast and nuclear genomes, analyses of regulatory steps controlling both nuclear and extra-nuclear photosynthetic gene expression and their interactions; (b) aspects of photosynthetic energy conversion, including such areas as early events in photon capture by photosynthetic systems and the mechanisms of charge separation, the structure and function of photosynthetic membranes and membrane constituents, and the associated chemical and physical reactions; (c) photosynthetic carbon assimilation including mechanisms of CO_2 fixation, biochemistry and molecular biology of photosynthetic and related biosynthetic pathways, photorespiration, and aspects of cellular metabolism regulating these reactions; (d) control q photo-synthate partitioning.

translocation, and utilization; (e) factors controlling development and senescence of the photosynthetic apparatus; and (f) photosynthetic process in leaves, whole plants, and canopies including, but not limited to, involvement of the stomatal apparatus.

Other research designed to generate new information leading to a basic understanding of photosynthesis and its accompanying processes also may be considered a part of this program.

5.0 *Molecular and Cellular Mechanisms of Plant Growth and Development.* Suboptimal growth and development are limiting factors in plant productivity. A basic understanding of the developmental processes in agriculturally important plants is largely lacking, but new experimental approaches are being developed through advances in molecular and cellular biology. The goal of this program area is to encourage the use of emerging techniques for the investigation of the developmental processes, as well as to increase fundamental knowledge that will provide a basis for biotechnological manipulation of plant growth and development.

This research area will place emphasis on, but not be limited to, studies of (a) cellular and molecular mechanisms controlling growth and developmental processes, including reproduction, differentiation, and senescence; and (b) metabolic processes related to growth and development. Projects designed to identify molecular, cellular, and organismal targets for genome manipulation also are encouraged.

6.0 *Genetic and Molecular Mechanisms Controlling Plant Responses to Physical and Environmental Abiotic Stresses.* Physical stresses prevent the expression of the full genetic potential of an organism's productivity and set limits on where and when it thrives. A major goal of this program area is to understand the molecular and cellular bases for the organism's responses to these abiotic stresses and to identify which of the genetic systems involved in these responses can be manipulated. Research on plants should emphasize: (a) Identification, isolation, transfer, and expression of genes that are regulated by, or involved in, stresses; (b) physiological-genetic and biochemical-genetic analyses of identified genes or genomic segments that are likely to affect performance under stress; (c) molecular mechanisms underlying coordination of organismal responses to stress; (d) fundamental mechanisms of stress responses, injury, tolerance, and avoidance at the molecular, cellular, and organismal levels; and (e) laboratory and field investigations on the physiology of the organism that contribute to an understanding of the causes, consequences, and avoidance of stresses, rather than simply describing the effects of stress.

7.0 *Human Nutrition.* Proposals are invited in the area of human requirements for nutrients. Support will not be provided for clinical research, demonstration or action projects, nor for surveys of the nutritional status of population groups.

Research in this program area is intended to contribute to the improvement of human nutritional status by increasing our understanding of requirements for nutrients. The objective is to support basic, creative research that will help to fill gaps in our knowledge about nutrient requirements, bioavailability, the interrelationships of nutrients, and the nutritional value of foods that are consumed in the U.S. and of the nutrient condition of healthy individuals, as all of these relate to human nutrient requirements. Special attention will be given to applications involving innovative approaches designed to improve methods of research and investigation that will increase the reliability and validity of data concerned with the quantitative evaluation of nutrient requirements and nutrient condition. Studies of the biochemical and molecular basis for nutrient requirements are encouraged, answering questions as to why a particular nutrient is required, and what its function is in the cell. Also, studies of the molecular biology of factors interacting with nutrients, such as receptors, carrier proteins and binding proteins, are encouraged.

The use of animals as model systems should be justified.

Proposals dealing with processing techniques in food technology should be clearly oriented toward determination of human nutrient requirements. Proposals which concern utilization or production of a food commodity should emphasize the relationship to specific human nutrient requirements. It is especially important that proposals emphasize innovative, fundamental research.

8.0 *Animal Science (Reproductive Physiology).* Suboptimal reproductive performance in domestic farm animals is the major factor limiting more efficient production of animal food products. This failure to achieve maximal reproductive efficiency is due to problems related to puberty, ovulation, corpus luteum formation and function, insemination, fertilization, prenatal death, and poor survival of offspring.

The economic loss to the producer and increased costs of animal food products to the consumer due to inefficient reproductive performance makes the requirement for new knowledge in this area a high priority. Although the exact needs may vary from species to species and region to region, there are areas where additional fundamental research is crucial.

This program area will support innovative research in the following categories: (a) Mechanisms affecting embryo survival, endocrinological control of embryo development, mechanisms of embryomaternal interactions, and embryo implantation; (b) gamete physiology, primarily gametogenesis including maturation processes, follicle growth, ovulation, corpus luteum formation and function, and superovulation; fundamental processes of fertilization, mechanisms regulating gamete survival *in vitro*, and basic questions regarding gamete transport; and (c) parturition, postpartum interval to conception, and neonatal survival.

Emphasis will be on innovative approaches which may contribute to a thorough understanding of the reproductive processes in animals primarily raised for food and fiber production.

The use of experimental model systems should be justified relative to the objectives of this research.

Proposals on the development of methods for *in vitro* manipulation and preservation of animal gametes and embryos will be considered, but overall objectives of such studies should be related to the development of fundamental knowledge.

9.0 *Animal Molecular Biology.* One of the major limiting factors for the application of biotechnology to agriculture is the lack of basic information about genes. The primary objective of this program area is to increase our understanding of the structure, organization, function, regulation, and expression of genes in animals and their associated infectious agents and microorganisms.

This program area will emphasize the following categories of research: (1) Identification, isolation, characterization, and expression of genes and gene products; (b) relationships between gene structure and function; (c) regulatory mechanisms of gene expression; (d) interactions between nuclear and organellar genes, and between extrachromosomal and chromosomal genes; (e) mechanisms of gene recombination and transposition; (f) molecular basis of chromosomal

replication; and (g) mechanisms of interaction with beneficial or deleterious microorganisms or infectious agents.

The program encourages additional basic research directed toward understanding the genetic and molecular mechanisms controlling animal responses to physical and biological stresses. Topics include the organism's interaction with the stresses and identification of the genetic systems involved in the interaction that can be manipulated through molecular genetic techniques. Research may emphasize (a) identification, isolation, transfer, and expression of genes or gene systems that are regulated by, or involved in, stress; (b) biochemical genetic analysis of genome segments that are likely to affect performance under stress; (c) molecular mechanisms underlying coordination of organismal responses to stress; and (d) fundamental mechanisms of stress responses at the molecular level.

10.0 *Molecular and Cellular Mechanisms of Animal Growth and Development.* Suboptimal growth and development are limiting factors in animal productivity. Yet, a basic understanding of the developmental processes in agriculturally important animals is largely lacking. New experimental approaches are being developed through advances in molecular and cellular biology. The goal of this program area is a basic understanding of the developmental processes in agriculturally important animals as well as to increase fundamental knowledge that will provide a basis for biotechnological manipulation of animal growth and development. This research area will place emphasis on, but not be limited to, studies of (a) cellular and molecular mechanisms controlling growth and developmental processes, including reproduction, differentiation, and senescence; (b) molecular and cellular biological studies of metabolic processes related to growth and development; and (c) identification of molecular, cellular, and organismal targets for genome manipulation.

This program area also encourages basic research in *Genetic, Molecular, and Cellular Mechanisms Controlling Animal Responses to Physical and Biological Stresses* that impinge upon growth and development. Research should address the molecular basis for the organism's interaction with these stresses and the identification of genetic systems causing these responses which can be manipulated. Research may emphasize (a) identification, isolation, transfer, and expression of genes that are regulated by, or involved in, stresses; (b) physiological-genetic and biochemical-genetic analyses of identified genes or genomic segments that are likely to affect performance under stress; (c) molecular and cellular mechanisms underlying coordination of organismal responses to stress; (d) fundamental mechanisms of stress responses, injury, tolerance, and avoidance at the cellular and molecular levels; and (e) cellular physiology of the organism that contributes to an understanding of the causes, consequences, and avoidance of stress, rather than simply describing the physiological effects of stress. Proposals addressing research on infectious agents should be sent to the Animal Molecular Biology panel.

How to Obtain Application Materials

Please note that potential applicants who were on the Competitive Research Grants mailing list for fiscal year 1987, or who recently requested placement on the list for fiscal year 1988, will automatically receive copies of this solicitation, the Grant Application Kit, and the regulations governing the Competitive Research Grants Program, 7 CFR Part 3200 (49 FR 5570, February 13, 1984, as amended). All others may request copies from: Proposal Services Unit, Grants Administrative Management, Office of Grants and Program Systems, Cooperative State Research Service, U.S. Department of Agriculture, Room 005, J.S. Morrill Building, 15th & Independence Avenue SW., Washington, DC 20251–2200; telephone (202) 475–5049.

What to Submit

An original and 14 copies of each proposal submitted are requested. This number of copies is necessary to permit thorough, objective peer evaluation of all proposals received before funding decisions are made.

Renewal proposals should include a clearly identified progress report and any reprints or preprints of publications resulting from the funded research. Resubmissions of unsuccessful proposals should clearly indicate what changes have been made in the proposal.

Each copy of each proposal must include a Form CSRS–661, "Grant Application," which is included in the Grant Application Kit. Proposers should note that one copy of this form, preferably the original, must contain pen-and-ink signatures of the principal investigator(s) and the authorized organizational representative. Each project description is expected by the members of review committees and the staff to be complete in itself. It should be noted that reviewers are not required to read beyond 15 pages of the project description to evaluate the proposal. Proposals beyond this limit are therefore subject to non-review and return. It would be helpful for reviewers if the vitae of key project personnel were limited to three (3) or four (4) pages.

All copies of a proposal must be mailed in one package. Due to the volume of proposals received, proposals submitted in several packages are very difficult to identify. Also, please see that each copy of each proposal is *stapled securely* in the upper left-hand corner. DO NOT BIND. Information should be typed on one side of the page only. Every effort should be made to ensure that the *proposal contains all pertinent information when initially submitted.* Prior to mailing, compare your proposal with the "Application Requirements" checklist contained in the Grant Application Kit and instructions contained in the regulations governing the Competitive Research Grants Program, 7 CFR Part 3200.

Applicants must not submit the same research proposal in the same fiscal year to different research program areas within the Competitive Research Grants Program and all of the CSRS Special Grants Programs. Duplicate proposals, essentially duplicate proposals, or predominantly overlappping proposals will be returned without review.

Submission of more than one proposal from the same principal investigator in the same fiscal year is strongly discouraged.

Excessive numbers of co-principal investigators and collaborators create conflicts of interest problems during the review and award processes. Multiple co-principal investigators and collaborators, beyond those required for genuine multidisciplinary studies, are strongly discouraged.

Where and When to Submit Grant Applications

Proposals submitted to the research program areas in this notice (e.g., 2.0 Plant Genetic Mechanisms and Plant Molecular Biology) will be assigned by the staff of the Competitive Research Grants office to the most appropriate peer review panel. If necessary, further information may be obtained from the responsible Associate Program Manager at the telephone numbers given below. Each research grant application must be submitted to: Competitive Research Grants Program, c/o Grants Administrative Management, Office of Grants and Program Systems, Cooperative State Research Service,

U.S. Department of Agriculture, Room 005, J.S. Morrill Building, 15th and Independence Avenue SW., Washington, DC 20251–2200. To be considered for funding during fiscal year 1988, proposals *must be postmarked* by the following dates and received in time to permit adequate peer panel review:

Postmark dates	Peer review panels/ program areas	Contacts
Nov. 2, 1987	7.0 Human Requirements for Nutrients.	475-5034
Nov. 2, 1987	10.0 Molecular and Cellular Mechanisms of Animal Growth and Development.	475-3356
Nov. 2, 1987	2.0 Plant Genetic Mechanisms and Plant Molecular Biology.	475-5042
Nov. 9, 1987	4.0 Photosynthesis	475-5030
Nov. 9, 1987	1.2 Entomology/ Nematology.	475-5114
Dec. 7, 1987	1.1 Plant Pathology/ Weed Science.	475-5176
Jan. 8, 1987	5.0 Molecular and Cellular Mechanisms of Plant Growth and Development.	475-5042
Jan. 8, 1988	8.0 Genetic and Molecular Mechanisms Controlling Plant Responses to Physical and Environmental Stresses.	475-5176
Jan. 25, 1988	6.0 Animal Science (Reproductive Physiology).	475-5034
Feb. 8, 1988	3.0 Biological Nitrogen Fixation and Metabolism.	475-5035
Feb. 8, 1988	9.0 Animal Molecular Biology.	475-3356

Workshop or symposia proposals may be submitted at any time. Allow sufficient time for review and processing of a proposal. Contact appropriate program staff for estimate of time required.

Special Instructions

The Competitive Research Grants Program should be indicated in Block 7 and the applicable program area should be indicated in Block 8 of Form CSRS–661 provided in the Grant Application Kit. *Select one program area only.* The *number* assigned to the applicable program area also must be cited in Block 8 of Form CSRS–661. A final determination of the program area will be made by the program and/or appropriate peer panel.

SUPPLEMENTARY INFORMATION: The Competitive Research Grants Program is listed in the Catalog of Federal Domestic Assistance under No. 10.206. For reasons set forth in the Final rule-related Notice to 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials. In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the collection of information requirements contained in this notice have been approved under OMB Document No. 0524–0022.

The award of any grants under the Competitive Research Grants Program during FY 1988 is subject to the availability of funds. One copy of each proposal that is *not* selected for funding will be retained for a period of one year. The remaining copies will be destroyed.

Done at Washington, DC, this 4th day of August 1987.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 87–18021 Filed 8–6–87; 8:45 am]

BILLING CODE 3410-22-M

federal register

Friday
August 7, 1987

Part V

Department of Housing and Urban Development

Office of the Secretary

Intergovernmental Review of Agency Programs and Activities; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N-87-1615; FR-2119]

Intergovernmental Review of Agency; Programs and Activities

AGENCY: Office of the Secretary, HUD.

ACTION: Notice identifying programs subject to 24 CFR Part 52, Intergovernmental Review of the Department of Housing and Urban Development Programs and Activities.

SUMMARY: This notice contains a list of all HUD programs by Catalog of Federal Domestic Assistance (CFDA) Number that are subject, in whole or in part, to the intergovernmental review process under 24 CFR Part 52 and a list of those programs that are not subject to Part 52. It also indicates, for certain programs, the specific activities that are subject to the intergovernmental review process. This notice updates the lists that were published on February 13, 1987, at 52 FR 4754 by changing the program coverage for CFDA No. 14.852, Comprehensive Improvement Assistance Program (CIAP). It also adds CFDA No. 14.231, Emergency Shelter Grants Program to Table I (programs subject to Part 52). This Program is subject to Part 52 to the extent that it involves reallocations of grants for site-specific applications involving major rehabilitation of, or conversion of buildings to, emergency shelters. CFDA No. 14.178, Transitional Housing Demonstration Program, is added to Table II (programs not subject to Part 52).

EFFECTIVE DATE: August 7, 1987.

FOR FURTHER INFORMATION CONTACT: Dr. Drew Allbritten, Executive Assistant to the Deputy Under Secretary for Intergovernmental Relations, Room 10184, Department of Housing and Urban Development, Washington, DC 20410. Telephone (202) 755-6732. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR 52.3, on February 13, 1987, the Department published at 52 FR 4754, the lists of HUD programs subject to the intergovernmental review procedures in 24 CFR Part 52 and of HUD programs not subject to Part 52.

Comprehensive Improvement Assistance Program (CIAP)

In the February 13, 1987, notice the Department also proposed an additional change in program coverage with respect to CFDA No. 14.852, Comprehensive Improvement Assistance Program.

CIAP was then subject to the intergovernmental review procedures under Part 52 without any express limitations on coverage. Because much of the work performed under the various modernization programs under CIAP clearly does not directly affect State and local governments, the Department proposed to limit the applicability of the Part 52 procedures to CIAP to circumstances similar to those that apply to the other assisted housing programs. HUD proposed that a CIAP application would be subject to the Part 52 procedures only if it involves substantial rehabilitation and involves: (1) a change in the use of land; (2) an increase in project density; or (3) a change from rental to homeownership.

The Department received one public comment on this proposed change. The commenter, a Public Housing Agency, recommended that all CIAP activities be excluded from the Part 52 procedures on the ground that, even without these procedures, a State or local government could disapprove any of the three types of activities listed above through denial of building permits, zoning restrictions, local ordinances, or State law. There is no basis under Executive Order 12372 or the OMB guidelines, however, to exclude a program because a State or local government may have its own authority to regulate the activity. The intergovernmental review procedures are intended to provide an opportunity for State and local governments, acting through a State process, to have their comments considered by a Federal agency that is carrying out an activity that may have a direct effect on them. The Department believes that its proposed coverage for CIAP provides State and local governments the opportunity to comment on those CIAP activities that could have a direct effect on them and is, therefore, revising the CIAP coverage as proposed.

Transitional Housing Demonstration and Emergency Shelter Grants Programs

Section 101(g), Pub. L. 99-500 (approved October 18, 1986), and Pub. L. 99-591 (approved October 30, 1986), making appropriations as provided in H.R. 5313, 99th Cong., 2d Sess. (1986), authorized two new programs to assist the homeless—the Transitional Housing Demonstration Program and the Emergency Shelter Grants Program. The Department published a notice of proposed guidelines for the Transitional Housing Demonstration Program on February 25, 1987, at 52 FR 5587. This notice sought public comment (due April 14, 1987) on the proposed implementation of this program. Section 5. (viii) of the notice (52 FR at 5597) stated that the Department proposed to exclude this Program under the OMB criterion that permits exclusion of research and development programs. The Department did not receive any comments concerning the proposed exclusion of the Transitional Housing Demonstration Program. Notice of final guidelines was published on June 9, 1987, (52 FR 21743), which states in section 6. (viii) that 24 CFR Part 52 does not apply to applications under this Program. This notice, accordingly, lists CFDA No. 14.178, Transitional Housing Demonstration Program, in Table II, HUD Programs Not Subject to 24 CFR Part 52.

On December 17, 1986, the Department published a proposed rule and program requirements for fiscal year 1987 (51 FR 45278, comments due February 17, 1987), which, in accordance with the statutory mandate, both sought public comment to develop a final effective rule and provided the requirements for the immediate implementation of the Emergency Shelter Grants Program. This document did not expressly address the Part 52 procedures, but implemented the Program without providing for intergovernmental review. One commenter on the Emergency Shelter Grants Program proposed rule noted the omission of any reference to Part 52 procedures.

The Department has added CFDA No. 14.231, Emergency Shelter Grants Program to Table I, HUD Programs Subject to 24 CFR Part 52. Only an application, however, that (1) involves a reallocation of grant amounts to a grantee, (2) involves the major rehabilitation of an emergency shelter or conversion of a building to an emergency shelter, and (3) is site specific is subject to Part 52.

The Emergency Shelter Grants Program provides broad discretion for a grantee to determine the specific use for the grant within statutorily created categories of eligible activities. HUD does not normally review specific sites, but considers a general Homeless Assistance Plan. Indeed, emergency shelter grants initially are allocated by a formula that is based on the Community Development Block Grant (CDBG) Entitlement and States Program allocation. These emergency shelter grants, as do the CDBG entitlement grants, clearly fall within the OMB exclusion for financial transfers over which the Federal agency has no funding discretion or authority to approve specific sites or projects. HUD,

however, also may reallocate grant amounts that are returned or unused. These reallocations are made on a review of Homeless Assistance Plans and do not normally involve HUD approval of specific sites. A reallocation, therefore, is normally a financial transfer with the grantee retaining ultimate decisionmaking authority for the specific use of the grant and is not subject to Part 52. The Department, however, will subject those applications to the intergovernmental review process when HUD is considering site specific applications that could directly affect State and local governments, namely, conversion of a building to an emergency shelter or major rehabilitation of an emergency shelter. These limitations on program coverage are comparable to the existing limitations on program coverage for the Department's multifamily insurance programs and assisted housing programs.

Description of Tables of Programs

To aid the reader, this notice contains all HUD programs currently listed in the Catalog of Federal Domestic Assistance. Table I contains a list of all HUD programs that are subject, in whole or in part, to Part 52. Related programs are listed together and limitations on program coverage are identified. Table II contains a list of all HUD programs that are completely excluded from Part 52 intergovernmental procedures. The programs are listed by Catalog of Federal Domestic Assistance Number.

Please note that because a program is listed in Table I does not necessarily mean that a particular State has selected the program to be covered by the State's intergovernmental review process. Interested parties should contact the appropriate State Single Point of Contact (SPOC) to determine whether a program listed in Table I has been selected by that State for intergovernmental review.

Finding

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Authority: Executive Order 12372 (July 14, 1982; 47 FR 30959); sec. 401(b), Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4231(b)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: July 29, 1987.

Samuel R. Pierce, Jr.,

Secretary.

Intergovernmental Review of HUD Program Under 24 CFR Part 52

Table I—HUD Programs Subject to 24 CFR Part 52

Programs marked with an asterisk (*) are subject to section 204 of the Demonstration Cities and Metropolitan Development Act of 1966. Any program, even though otherwise subject to 24 CFR Part 52, is excluded to the extent it involves a federally recognized Indian tribe.

HOUSING—FEDERAL HOUSING COMMISSIONER

CFDA No.	24 CFR part	Program name	Comments
14.112	234	Mortgage Insurance—Construction or Substantial Rehabilitation of Condominium Projects.	1
14.115	213	Mortgage Insurance—Development of Sales Type Cooperative Projects	1
14.116	244	Mortgage Insurance—Group Practice Facilities	
14.123	207	Mortgage Insurance—Housing in Older, Declining Areas	1, 3
14.124	213	Mortgage Insurance—Investor Sponsored Cooperative Housing	1
14.125	205	Mortgage Insurance—Land Development	
14.126	213	Mortgage Insurance—Management Type Cooperative Projects	
14.127	207	Mortgage Insurance—Manufactured (Mobile) Home Parks	1
14.128	242	Mortgage Insurance—Hospitals	1
14.129	232	Mortgage Insurance—Nursing Homes, Intermediate Care Facilities and Board and Care Homes.	1
14.134	207	Mortgage Insurance—Rental Housing	1
14.135	221	Mortgage Insurance—Rental Housing for Moderate Income Families	1
14.137	221	Mortgage Insurance—Rental and Cooperative Housing for Low and Moderate Income Families, Market Interest Rate.	1
14.138	231	Mortgage Insurance—Rental Housing for the Elderly	1
14.139	220	Mortgage Insurance—Rental Housing in Urban Renewal Areas	1
14.151	241	Supplemental Loan Insurance—Multifamily Rental Housing	1
14.156	880, 881, 883, 884, and 885.	Lower Income Housing Assistance Program	2
14.157	885	Housing for the Elderly or Handicapped	2
14.174	850	Housing Development Grants	2
14.176	251	Mortgage Insurance—Section 221(d) Coinsurance for the Construction or Substantial Rehabilitation of Multifamily Housing Projects.	1

1. An application under these multifamily mortgage insurance programs is subject to 24 CFR Part 52 if it involves insurance of advances; (A) For the construction of a project; or (B) substantial rehabilitation of a project, but only if the project being substantially rehabilitated involves: (i) A change in use of the land, (ii) an increase in project density, or (iii) a change from rental to cooperative or condominium housing.

2. An application under these assisted housing programs is subject to 24 CFR Part 52, if it involves construction or substantial rehabilitation, but only if the project being substantially rehabilitated involves: (a) A change in use of the land, (b) an increase in project density, or (c) a change from rental to cooperative or condominium housing. Applications under the Section 8 Certificate Program the Section 8 Moderate Rehabilitation Program, and the Section 8 Voucher Program, which are all included under CFDA No. 14.156 and 24 CFR Part 882, are not subject to 24 CFR Part 52.

3. A single family (one-to-four units) application under CFDA No. 14.123 is not subject to 24 CFR Part 52.

COMMUNITY PLANNING AND DEVELOPMENT

CFDA No.	24 CFR part	Program name	Comments
14.218	570	Community Development Block Grants/Entitlement *	4
14.221	570	Urban Development Actions Grants	
14.231	575	Emergency Shelter Grants Program	5

4. Only those portions of final statements under CFDA No. 14.218 that consist of planning or construction of a water or sewage facility in a metropolitan area are subject to Part 52 procedures. HUD may be unable to accomodate state process recommendations concerning particular activities since HUD has only limited authority to refuse to fund an eligible activity.

5. Only an application that involves a reallocation of grant amounts to a grantee, involves the major rehabilitation of an emergency shelter or conversion of a building to an emergency shelter, and is site specific is subject to Part 52 procedures.

FAIR HOUSING AND EQUAL OPPORTUNITY

CFDA No.	24 CFR part	Program name	Comments
14.401	111	Fair Housing Assistance Plan	6

6. An application under CFDA No. 14.401 is subject to Part 52 procedures if it is for type II—competitive funding.

POLICY DEVELOPMENT AND RESEARCH

CFDA No.	24 CFR part	Program name	Comments
14.506		Mortage Insuance—Experimental Projects Other Than Housing	7
14.509	203	Mortage Insurance—Experimental Rental Housing	8

7. An application, under CFDA No. 14.506, that must meet the requirements for Title X, Land Development and New Communities (see CFDA No. 14.125) is subject to 24 CFR Part 52. An application that must meet requirements for Title XI Group Practice Facilities (see CFDA 14.116) is also subject to 24 CFR Part, except such an application that involves substantial rehabilitation is subject to 24 CFR Part 52 only if it involves: (a) A change in use of the land; or (b) an increase in project density.

8. An application, under CFDA NO. 14.509, that involves substantial rehabilitation is subject to 24 CFR Part 52 only if the project involves: (a) A change in use of the land; (b) an increase in project density; or (c) a change from rental to cooperative or condominum housing.

PUBLIC AND INDIAN HOUSING

CFDA No.	24 CFR part	Program name	Comments
14.850	941	Public Housing	9,11
14.851	904	Low Income Housing—Homeownership Opportunities for Low/Income Families.	9,11
14.852	968	Public Housing—Comprehensive Improvement Assistance Program	10,11

9. An application under CFDA No. 14.850 or 851 is subject to 24 CFR Part 52, if it involves construction or substantial rehabilitation, but only if the project being substantially rehabilitated involves: (a) A change in use of land; (b) an increase in project density; or (c) a change from rental to homeownership.

10. An application under CFDA No. 14.852 is subject to 24 CFR Part 52 if the application involves substantial rehabilitation and involves: (1) A change in the use of the land; (2) an increase in project density; or (3) a change from rental to homeownership.

11. An application, under these programs, that involves Indian housing is not subject to 24 CFR Part 52.

Table II—HUD Programs Not Subject To 24 CFR Part 52

HOUSING—FEDERAL HOUSING COMMISSIONER

CFDA No.	24 CFR part	Program name
14.103	235	Interest Reduction Payments—Rental and Cooperative Housing for Lower Income Families.
14.108	203	Rehabilitation Mortgage Insurance.
14.110	201	Manufactured (Mobile) Home Insurance—Financing Purchase of Manufactured Homes as Principal Residences of Borrowers.
14.117	203	Mortgage Insurance—Homes.
14.119	203	Mortgage Insurance—Homes for Disaster Victims.
14.120	221	Mortgage Insurance—Homes for Low and Moderate Income Families.
14.121	203	Mortgage Insurance—Homes in Outlying Areas.
14.122	220	Mortgage Insurance—Homes in Urban Renewal Area.
14.130	240	Mortgage Insurance—Purchase by Homeowners of Fee Simple Title From Lessors.
14.132	213	Mortgage Insurance—Purchase of Sales-Type Cooperative Housing Units.
14.133	234	Mortgage Insurance—Purchase of Units in Condominiums.
14.140	237	Mortgage Insurance—Special Credit Risks.
14.141	271	Nonprofit Sponsor Assistance Program.

HOUSING—FEDERAL HOUSING COMMISSIONER—Continued

CFDA No.	24 CFR part	Program name
14.142	201	Property Improvement Loan Insurance for Improving All Existing Structures and Building of New Nonresidential Structures.
14.149	215	Rent Supplements—Housing and Lower Income Families.
14.155	207	Mortgage Insurance for the Purchase or Refinancing of Existing Multifamily Housing Projects.
14.159	203	Section 245 Graduated Payment Mortgage Program.
14.161	204	Single-Family Home Mortgage Coinsurance.
14.162	201	Mortgage Insurance—Combination and Manufactured (Mobile) Home Lot Loans.
14.163	203	Mortgage Insurance—Cooperative Financing.
14.164	219	Operating Assistance for Troubled Multifamily Housing Projects.
14.165	203	Mortgage Insurance—Homes—Military Impacted Areas.
14.166	222	Mortgage Insurance—Homes for Members of the Armed Services.
14.167	207	Mortgage Insurance—Two Year Operating Loss Loans, Section 223(d).
14.168	1700 to 1730	Land Sales—Parcels of Subdivided Land.
14.169		Housing Counseling Assistance Program.
14.170		Congregate Housing Services Program.
14.171	3280 to 3283	Manufactured Housing Construction and Safety Standards.
14.172	203	Mortgage Insurance—Growing Equity Mortgages.
14.173	255	Section 223(f)—Coinsurance for the Purchase or Refinancing of Existing Multifamily Projects.
14.178		Transitional Housing Demonstration Program.
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14.219	570	Community Development Block Grants/Small Cities.
14.220	510	Section 312 Rehabilitation Loans.
14.222	590	Urban Homesteading.
14.223	571	Indian Community Development Grant Program.
14.225	570	Community Development Block Grants/Secretary's Discretionary Fund/Insular Areas.
14.227	570	Community Development Block Grants/Secretary's Discretionary Fund/Technical Assistance Program.
14.228	570	Community Development Block Grants/State Program.
14.230	511	Rental Rehabilitation.
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14.400	105	Equal Opportunity in Housing.
14.402		Nondiscrimination in Federally Assisted Programs (On the Basis of Age).
14.402		Nondiscrimination in Federally Assisted Programs (On the Basis of Age).
14.403	120	Community Housing Resource Board Program.
14.404	1	Nondiscrimination in Federally Assisted Programs (On the Basis of Handicap).
14.406	570	Nondiscrimination in the Community Planning and Development Block Grant Programs (On the Basis of Race, Color, National Origin, Sex, Handicap or Age).
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14.506		General Research and Technology Activity.
14.507	233	Mortgage Insurance—Experimental Homes.
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[FR Doc. 87-17944 Filed 8-6-87; 8:45 am]
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Part VI

The President

Executive Order 12604—Presidential Board of Advisors on Private Sector Initiatives

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Presidential Documents

Title 3—

The President

Executive Order 12604 of August 5, 1987

Presidential Board of Advisors on Private Sector Initiatives

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), and in order to extend the life of the Presidential Board of Advisors on Private Sector Initiatives, it is hereby ordered that Executive Order No. 12528 of August 8, 1985, is amended as follows:

Section 1(a) is amended to increase the maximum number of members of the Board from 30 to 35.

Section 4(a) is amended to read:

"The Board shall terminate on July 1, 1989, unless sooner extended."

Ronald Reagan

THE WHITE HOUSE,
August 5, 1987.

[FR Doc. 87-16167
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S. 1020/Pub. L. 100-83

To confer the honorary status of Librarian of Congress Emeritus on Daniel J. Boorstin. (Aug. 4, 1987; 101 Stat. 549; 1 page) Price: $1.00

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Monday
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WHAT IT IS AND HOW TO USE IT

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1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
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4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: September 29, at 9 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: Janice Booker, 202-523-5239

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Part 304

Freedom of Information Act Fee Schedule Revision

AGENCY: Administrative Conference of the United States.

ACTION: Final rule.

SUMMARY: This rule revises the fee schedule used by the Administrative Conference of the United States to process requests made under the Freedom of Information Act (FOIA), 5 U.S.C. 552. The rule amends 1 CFR Part 304 to bring the Conference's regulations into conformance with the Freedom of Information Reform Act of 1986, Pub. L. 99–570, sections 1801 through 1804, and the Office of Management and Budget (OMB) fee schedule and guidelines published on March 27, 1987 (FR 10012).

EFFECTIVE DATE: September 11, 1987.

FOR FURTHER INFORMATION CONTACT: Michael W. Bowers, Administrative Conference, 2120 L Street, NW., Suite 500, Washington, DC, telephone: (202) 254–7020.

SUPPLEMENTARY INFORMATION: This rule implements provisions of the Freedom of Information Reform Act of 1986, Pub. L. 99–570, sections 1801 through 1804, which amended the Freedom of Information Act's fee provisions. The FOIA Reform Act requires each Federal agency to promulgate fee regulations conforming to guidelines issued by the Office of Management and Budget, 5 U.S.C. 552(a)(4)(A)(i). OMB published a final fee schedule and guidelines on March 27, 1987 (FR 10012).

Accordingly, the Administrative Conference published an interim rule, and solicited public comment thereon, on June 16, 1987 (*see* FR 22753). The Conference received three comments in response to its request for comments. Following is a section-by-section summary and response to the comments:

Section-by-Section Analysis

Section 304.6(a) Definitions. One comment criticized the interim rule's definition of "commercial use request", which was taken directly from OMB's guidelines. The comment argued that Congress intended that requests from public interest groups, labor unions, libraries, and the news media should not be treated as commercial use requests subject to review costs. While agreeing that requests from such entities normally will not be commercial use requests, the Conference believes OMB is correct in focusing on the use to be made of the requested information rather than on the identity of the requester. Therefore, the Conference does not adopt a presumption that particular classes of requesters are not within the definition.

One commenter criticized the interim rule's definition of "educational institution," which again is taken from OMB's guidelines. OMB's definition was adapted from the Department of Education definition in 20 U.S.C. 1681(c). The commenter recommended that the term "educational institution" include all entities recognized by the Internal Revenue Service as "organized and operated exclusively for * * * educational purposes." 26 U.S.C. 501(c)(3). The Conference agrees with OMB that the Tax Code and IRS interpretations are too general to provide useful guidance for imposition of fees under the Freedom of Information Act. The Conference believes that OMB's definition is sufficiently broad to permit it to assess fees consistent with the statutory scheme. In addition, it should be noted that requesters not meeting the definition of "educational institution" still may request waiver of fees, *see* § 304.6(f). Therefore, the Conference makes no change to the definition of "educational institution."

All three comments addressed the interim rule's definition of "representative of the news media." The commenters' primary concern is that the definition invites agencies to judge the newsworthiness of requested information when charging fees. While appreciating their concern, the commenters' recommendations would read the word "news" out of the Act. The Conference agrees with OMB's analysis (*see* FR 10014–10015) and, therefore, makes no change in the definition.

Section 304.6(f) Waiver or reduction of fees. One commenter criticized the interim rule for neglecting "to mention suitable criteria to determine whether the fee waiver standard [in the Act] has been met." The commenter suggested criteria based on statements made by congressional sponsors of the FOIA Reform Act. The Conference has decided to not adopt this suggestion, preferring instead to apply the statutory standard on a case-by-case basis when requests for waiver or reduction are made.

Section 304.6(h) Advance payment of fees. One commenter stated that the Conference's rule should reflect the Reform Act's presumption against advance payments, except in specified circumstances. The Conference agrees with this suggestion and has modified its rule accordingly.

Section 304.6(i)(1) Charges for unsuccessful search. One commenter recommended that this provision expressly refer to an opportunity for the requester to confer with agency personnel to discuss reformulating the request to meet the requester's needs at lower cost. The Conference agrees with this suggestion and has modified its rule accordingly

Section 304.6(i)(2) Aggregating requests to avoid fees. One commenter criticized the interim rule for failing to include a presumption *against* agency aggregation of requests when requests are made *more* than thirty days apart, as "put forth by the OMB in its guidelines." However, the Conference understands OMB's guidelines to suggest that agencies might reasonably adopt a presumption that requests filed within thirty days of each other are part of a single request, *see* OMB Uniform Freedom of Information Act Fee Schedule and Guidelines, FR 10012 at 10016. The Conference has decided to not adopt any presumption to apply in this situation and, therefore, makes no change in this provision

The same commenter urged the Conference to adopt the OMB guidelines' prohibition on aggregation of multiple requests on unrelated subjects from the same requester. The Conference adopts this suggestion.

List of Subjects in 1 CFR Part 304

Freedom of information, Privacy.

Title 1, Part 304 of the CFR is amended as follows:

PART 304—[AMENDED]

The interim rule published in the Federal Register of Tuesday, June 16, 1987 at page 22753 is adopted as final with the following changes:

1. The authority citation for Subpart A of 1 CFR Part 304 continues to read, as follows:

Authority: 5 U.S.C. 552, as amended; 5 U.S.C. 571–576.

2. Section 304.3 is amended by revising paragraph (d), as follows:

§ 304.3 Requests for records.

* * * * *

(d) The requester will be notified promptly of the determination made pursuant to paragraph (c) of this section. If the determination is to release the requested record, such record shall promptly be made available. If the determination is not to release the record, the person making the request shall, at the same time he is notified of such determination, be notified of:

(1) The reason for the determination;

(2) The name and title or position of each person responsible for the denial of the request; and

(3) His right to appeal the determination in writing to the Chairman of the Administrative Conference, who shall render a decision on an appeal within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal. The requester shall be notified promptly of the Chairman's decision and, if the appeal is denied, the reasons therefor and the requester's right to seek judicial review of such determination pursuant to the provisions of the Freedom of Information Act, 5 U.S.C. 552(a)(4).

3. Section 304.6 is amended by adding introductory text to paragraph (h), by adding a sentence to the end of paragraph (i)(1), and by adding a sentence to the end of paragraph (i)(2), as follows:

§ 304.6 Schedule of fees and methods of payment.

* * * * *

(h) *Advance payment of fees.* The Conference will not require a requester to make an advance payment *i.e.*, payment before work is commenced or continued on a request, except in the following situations.

(i) * * *

(1) * * * However, as provided in paragraph (g)(4) of this section, a requester will be given the opportunity to confer with agency personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(2) * * * However, the Conference will not aggregate multiple requests on unrelated subjects from one requester.

Dated: August 5, 1987.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 87-17913 Filed 8-7-87; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 93 and 99

[Docket No. 86-073]

Importation of Elephants, Hippopotami, Rhinoceroses, and Tapirs

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes regulations on importing elephants, hippopotami, rhinoceroses, and tapirs into the United States. These animals present a significant risk of carrying ectoparasites (such as ticks, mites, and lice) that can spread communicable livestock diseases. The regulations are necessary to prevent the ectoparasites from coming into contact with and affecting livestock in the United States.

EFFECTIVE DATE: September 9, 1987.

FOR FURTHER INFORMATION CONTACT: Dr. Harvey A. Kryder, Import-Export and Emergency Planning Staff, VS, APHIS, USDA, Room 809, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; 301–436–8695.

SUPPLEMENTARY INFORMATION:

Background

We proposed, in a document published in the Federal Register on April 2, 1986 (51 FR 11316–11321), to amend 9 CFR, Chapter I, Subchapter D, by establishing regulations on the importation of elephants, hippopotami, rhinoceroses, and tapirs. The regulations are necessary to prevent ectoparasites carried by these animals from being introduced into the United States and transmitting diseases to livestock in the United States. The regulations were proposed as a new Part 93.

The document of April 2, 1986, invited the submission of written comments on the proposed rule on or before June 2, 1986. We received 14 comments from private individuals, wild animal brokers and importers, and representatives of an association of zoological parks and aquariums, a circus, a veterinary medical association, and a livestock conservation institute. Two commenters supported the proposed rule as written; 12 objected to various provisions. All the objections are discussed below.

Except as noted below, the provisions of the proposed rule have been adopted for the reasons given in the proposal and in this document.

Comments

We received four comments concerning the requirements in proposed § 93.3(a) that elephants, hippopotami, rhinoceroses, and tapirs must be imported into the United States within 14 days after the proposed date of arrival stated in the import permit. The commenters asserted that 14 days would not allow for delays commonly experienced in shipping large animals. Commenters suggested: (1) 30 days; (2) 45 days; (3) 30–60 days, with notification of the port veterinarian not more than 48 hours before the animals arrive; and (4) 30 days, with notification of port veterinarian not more than 72 hours before the animals arrive. To give importers more flexibility, we have changed § 93.3 in the final rule to require that elephants, hippopotami, rhinoceroses, and tapirs be imported into the united States not more than 30 days after the proposed date of arrival stated in the import permit, with notification of the port veterinarian at least 72 hours before the animals arrive. We believe this change will allow for reasonable delays during shipment and at the same time ensure that inspectors and facilities are available for the animals when they arrive.

We received one comment concerning the requirements in proposed §§ 93.3 and 93.4 that animals imported into the United States be accompanied by an import permit and a health certificate. The commenter asserted that two pieces of paper should not be required and suggested a dual purpose import permit/health certificate form such as that used in importing birds. We have not changed the proposed rule based on this comment. The form used in importing birds is pertinent only to birds. Most other animals imported under 9 CFR, Chapter I, Subchapter D, are brought into the United States accompanied by a health certificate from the country of origin and an import permit issued by Veterinary Services. If we adopted the commenter's suggestion, we would have to develop a single form for use with elephants, hippopotami, rhinoceroses, and tapirs, and, because health certification requirements for these animals are not the same as for other

animals, the new form could be used only for elephants, hippopotami, rhinoceroses, and tapirs. Since few importers handle only elephants, hippopotami, rhinoceroses, and tapirs, a specialized form for these animals would present importers with an added burden rather than a reduced burden.

We received one comment concerning the requirement in proposed § 93.4(a)(2) that elephants, hippopotami, rhinoceroses, and tapirs be treated for ectoparasites in the country of origin within 3 to 14 days of being loaded for transport to the United States. The commenter asserted that the animals should be treated within 48 hours of loading because a 3- to 14-day interval would allow time for the animals to become reinfested in the country of origin. We believe there is a possibility of the animals becoming reinfested or of some ectoparasite remaining no matter when treatment is performed in the country of origin. Because of this possibility, we also require the animals to be treated after they arrive in the United States. If the two treatments are too close together, however, the pesticide may be toxic to the animals. We believe that treating animals at least 3 days but not more than 14 days before loading them for shipment will destroy most ectoparasites on the animals without danger of overexposing the animals to pesticides. Therefore, we have made no change to the timeframe for treating animals for ectoparasites in the country of origin. However, to reduce the chances of reinfestation in the country of origin, § 93.4(a)(3) in the final rule requires that animals, after being treated for ectoparasites in accordance with § 93.4(a)(2), must be allowed to have physical contact with or share a pen or bedding materials with any elephant, hippopotamus, rhinoceros, or tapir not in the same shipment to the United States.

We received one comment concerning the requirement in proposed § 93.4(a)(2) that elephants, hippopotami, rhinoceroses, and tapirs be treated for ectoparasites in the country of origin by being thoroughly wetted with a pesticide applied either with a spray-dip machine or with a sprayer with a hand-held nozzle. The commenter asked who is authorized to spray the animals. We do not specify any particular person because it doesn't matter who sprays the animals as long as the treatment is supervised by the individual who signs the health certificate. This has been clarified in the final rule.

We received two comments concerning the methods in proposed §§ 93.4(a)(2) and 93.6(b) for applying pesticides to elephants, hippopotami, rhinoceroses, and tapirs. As mentioned above, proposed § 93.4(a)(2) requires the animals to be treated in the country of origin by being thoroughly wetted with a pesticide applied "either with a spray-dip machine or with a sprayer with a hand-held nozzle." Proposed § 93.6(b) requires the animals to be treated after arrival in the United States (either at the port of entry or at a facility provided by the importer) with a "permitted dip." One commenter asserted that animals should be dipped and not sprayed because spray treatments might miss some ectoparasites. The second commenter asserted that animals should be sprayed and not dipped because dipping large and potentially aggressive animals would be dangerous to the animals and to personnel assisting. We have made no change to the proposed rule based on these comments. Our experience with both spray and dip treatments indicates that either treatment, when combined with inspection, is effective in destroying ectoparasites Section 93.4(a)(1) requires the individual who signs the health certificate in the country of origin to certify that he or she inspected the animal and found the animal free of ectoparasites no more than 72 hours before the animal was loaded for shipment to the United States. Section 93.6(b) requires treatment either at the port of entry or at a facility provided by the importer "for as many times as necessary until the inspector finds no ectoparasites." We believe the decision to dip or spray an animal should rest with the person performing the treatment, based on available facilities and the particular animal involved, among other things. We intended in the proposal to permit either method of treatment. Our intention may not have been clear, however, from the term "permitted dip" in proposed § 93.6(b). In the final rule, therefore, we have modified proposed § 93.6(b) to clarify that treatment may be by either dipping or spraying.

We have also made one minor change to proposed § 93.4(a)(2) to allow treatment in a "dip vat" as well as by sprayer or spray-dip machine. Dipping animals in a vat is an acceptable and common method of applying pesticides to large animals. We inadvertently omitted the term "dip vat" from the proposal.

We received three comments concerning the requirement in proposed § 93.4(a)(3) that the name and concentration of the pesticide to be used to treat animals for ectoparasites in the country of origin must be listed on the application for an import permit and must have been approved by the Deputy Administrator. The commenters asserted that if only certain pesticides and concentrations will be acceptable to the Deputy Administrator, a specific list of approved pesticides and concentrations should be published. It is not our intention to specify which pesticides and concentrations may be used, since the choice in a particular case would depend on many variables. Therefore, we have amended the proposed rule to delete the requirement that the type and concentration of the pesticide to be used in the country of origin must have been approved by the Deputy Administrator. However, as proposed, the final rule does require that the pesticide and concentration used be adequate to kill the types of ectoparasites likely to infest the animal to be imported and that the name and concentration of the pesticide to be used in the country of origin be listed on the import permit. We need this information to determine whether the pesticides and concentrations to be used are adequate to destroy the ectoparasites most likely to be on the animals. As a service to importers, § 93.4(a)(4) in the final rule states that a list of recommended pesticides and concentrations may be obtained from Veterinary Services.

We received one comment concerning the document required by proposed § 93.5 for declaration upon arrival. The commenter asserted that VS Form 17–29 is sufficient for this purpose and that no new form is needed. The document referred to in proposed § 93.5 is VS Form 17–29. This has been clarified in the final rule.

We received one comment concerning proposed § 93.6(a), which restricts the ports at which elephants, hippopotami, rhinoceroses, and tapirs may be imported into the United States. Proposed § 93.6(a) provides that these animals may be imported at: (1) A port of entry determined by the Deputy Administrator to have adequate facilities for inspection, treatment, and incineration under § 93.6 and to have inspectors available to perform the necessary services; or (2) at a port of entry determined by the Deputy Administrator to have inspectors available to perform the services required under § 93.6 if the animals will be inspected and treated at a facility provided by the importer and approved for this purpose by the Deputy Administrator. The commenter asked whether a list of approved ports would be published and suggested that animals be allowed to enter at other ports on a case-by-case basis. Four ports now have

adequate facilities for inspection, treatment, and incineration under § 93.6 and have inspectors available to perform the necessary services. They are the ports listed in 9 CFR 92.3(a): Los Angeles, California; Miami, Florida; Honolulu, Hawaii; and Newburgh, New York. The intent of the proposal was to allow animals to enter at these ports or, on a case-by-case basis, at other ports if the Deputy Administrator determined that an inspector could be made available at the port to perform the services required under § 93.6 if the animals would be inspected and treated at a facility provided by the importer and approved for this purpose by the Deputy Administrator. We have revised § 93.6(a) in the final rule to clarify that elephants, hippopotami, rhinoceroses, and tapirs imported into the United States may enter at Los Angeles, California; Miami, Florida; Honolulu, Hawaii; and Newburgh, New York; or, a case-by-case basis, at another port under the conditions described above.

We received one comment suggesting that zoos be approved as facilities for inspection and treatment of imported elephants, hippopotami, rhinoceroses, and tapirs. We have made no change to the proposed rule based on this comment. Under proposed § 93.6(a)(2), individual zoos may be approved as facilities for inspection and treatment of these animals. We cannot give blanket approval to all zoos, however, since individual zoos may or may not have adequate facilities for inspection and treatment required by § 93.6.

We received one comment concerning the requirement in proposed § 93.6(b)(2)(i) that animals be placed on a "concrete or other nonporous surface" for inspection and treatment. The commenter suggested that the surface should be "well-sealed concrete or other nonporous material." We have made no change to the proposed rule based on this comment because "well-sealed concrete" could be slippery, creating a hazard for both animals and people. A surface of unsealed concrete could be adequately cleaned and disinfected.

We received one comment concerning proposed §§ 93.6(b)(3) and 93.6(b)(4), which require incineration or disinfection of shipping crates and incineration of hay, straw, feed, bedding, and similar material placed with an animal before its final treatment for ectoparasites. Apparently thinking these requirements would apply only at a port of entry, the commenter asserted that the final rule should address disposal of crates, bedding, etc., at facilities provided by an importer. We intended the requirements in proposed § 93.6(b)(3) and (b)(4) to apply both at ports of entry and at facilities provided by an importer and have changed the format of proposed § 93.6 to clarify this.

We received one comment concerning the removal of waste materials from shipping crates at ports of entry. Proposed § 93.2(b)(5)(ii) states that at the port of entry, "as much hay, straw, feed, bedding, and other similar material as can feasibly be removed from the shipping crate shall be removed and incinerated." The commenter asserted that removing soiled bedding and other waste materials from shipping crates would be extremely risky if the animal remains in the shipping crate, and that uncrating and recrating the animal to allow cleaning also would be dangerous. We have made no change to the proposed rule based on this comment. Proposed § 93.6(b)(5)(ii) stipulates removal and incineration of as much hay, straw, feed, bedding, and other material "as can feasibly be removed." This requirement allows a judgment to be made in each case as to how much, if any, waste material can be safely removed from a shipping crate at a port of entry.

We received one comment asserting that sealing of crates at a port of entry, as required by proposed § 93.6(b)(5)(iii), could present problems if animals need food or water before reaching final destination. We have made no change to the proposed rule based on this comment. Proposed § 93.6(b)(5)(iii) requires sealing of shipping crates with an official seal of the United States Department of Agriculture. This seal is a serially numbered lock used to ensure that animals are not removed from the crates before reaching their final destination. Locking a shipping crate with this seal does not prevent food and water from being placed inside the crate.

We received one comment concerning the requirement in proposed § 93.6 that waste materials removed from shipping crates be incincerated. The commenter stated that current practice at one port is to deposit waste from shipping containers in dumpsters use exclusively for material prohibited from entering the United States. The commenter suggested that this practice be permitted for waste from crates used to ship elephants, hippopotami, rhinoceroses, and tapirs. Hay, straw, feed, bedding, and other materials removed from crates used to ship elephants, hippopotami, rhinoceroses, and tapirs are likely to carry disease-carrying ectoparasites and must be incinerated to ensure that the ectoparasites are destroyed. If waste were placed loose in dumpsters, or any other unsealed container, even if the waste were later incinerated, there would be a risk of ectoparasites escaping. The final rule, therefore, requires all waste removed from a shipping crate or vehicle in accordance with § 93.6 to be sealed in plastic bags and incinerated under the supervision of an inspector. Waste sealed in plastic bags could be placed in a dumpster if the waste is incinerated under the supervision of an inspector.

We received several comments concerning the requirements in proposed § 93.6 for inspecting and treating elephants, hippopotami, rhinoceroses, and tapirs for ectoparasites upon arrival in the United States.

Six commenters asserted that inspection and treatment should be accomplished at final destination in the United States rather than at a port of entry. They also asserted that any requirement to remove animals from crates at a port of entry should be deleted because uncrating and recrating animals could be very dangerous. We have made no change to the proposed rule based on these comments. Proposed § 93.(b)(2) allows animals to be inspected and treated at either a port of entry or a facility provided by the importer. If an animal is to be inspected and treated at a facility provided by the importer, uncrating at the port of entry would not be necessary.

One commenter asserted that a licensed veterinarian, rather than an inspector, should be responsible for inspecting animals and supervising the treatment of animals, incineration of waste, and handling of shipping crates at final destination. The commenter suggested that the licensed veterinarian could then report to an inspector that the requirements of this part had been met. Although a licensed veterinarian could perform these tasks, medical expertise is not required, and we believe it would be more efficient for an inspector to do the work, since an inspector would have to be present anyway to remove United States Department of Agriculture seals from shipping crates. Furthermore, because it would be the inspector's responsibility to ensure that the animals are free from ectoparasites and that all waste and crates are properly handled, we believe the inspector should personally perform or supervise the work. To clarify the inspector's role, we have added the phrase, "under the supervision of an inspector," to relevant paragraphs in § 93.6 in the final rule.

One commenter asserted that, after being unloaded at a facility provided by an importer, animals should be allowed

time to recover before being subjected to inspection and treatment. The commenter suggested that the animals be isolated during this time in a facility with an impervious floor and where measures could be taken to contain and destroy any ectoparasites which might drop off the animals. Allowing animals time to recover between unloading and inspection and treatment would not seem to present a disease risk if the animals are isolated as suggested. Therefore, we have added a provision to § 93.6 in the final rule to allow up to 24 hours between unloading and inspection of animals at a port of entry or facility provided by the importer. Twenty-four hours would give the animals adequate time to rest and would allow inspection and treatment to be performed during normal working hours if the animals arrive at night. If inspection and treatment are not performed upon unloading, the animal must be isolated from all other animals, except those in the same shipment, and kept in a facility with a nonporous floor and where any ectoparasites that may drop off the animal can be contained and destroyed.

One commenter pointed out that elephants and other large animals may be shipped uncrated in the holds of ships of aircraft, and suggested that holds of ships and aircraft be included in a definition of shipping crate. We agree that the rule needs to address the shipping of animals in cargo holds, and therefore we have changed § 93.6 to require cleaning and disinfecting of any means of conveyance used to transport any such animals which are not in a shipping crate.

One commenter asserted that the following animals should be exempt from the regulations in proposed Part 93: (1) Tapirs; (2) animals imported to zoos accredited by the American Association of Zoological Parks and Aquariums (AAZPA); and (e) animals imported from Canada. We do not agree that tapirs should be exempt from the regulations. Tapirs, as well as elephants, hippopotami, and rhinoceroses, present a significant risk of bringing into the United States ectoparasites that can transmit livestock diseases. Neither do we agree that animals imported to AAZPA zoos should be exempt from the regulations. Animals imported to AAZPA zoos are not bound to remain in the zoos and could, if moved to rangeland, come into contact with domestic livestock. However, we have added provisions to § 93.6 of the final rule to exempt elephants, hippopotami, rhinoceroses, and tapirs imported into the United States from Canada under the following circumstances: (1) The elephants, hippopotami, rhinoceroses, or tapirs were not imported into Canada during the year preceding their importation into the United States; and (2) The elephants, hippopotami, rhinoceroses, or tapirs did not, during the year preceding their importation into the United States, have any physical contact with or share a pen or bedding materials with elephants, hippopotami, rhinoceroses, or tapirs that were imported into Canada during that year. Under these circumstances, elephants, hippopotami, rhinoceroses, or tapirs would not carry ectoparasites that could transmit diseases such as heartwater or tick typhus. These ectoparasites are not native to Canada, and Canada treats all elephants, hippopotami, rhinoceroses, or tapirs it imports for ectoparasites. Furthermore, any ectoparasites that might be missed by the treatment could not survive the cold temperatures of a Canadian winter, and elephants, hippopotami, rhinoceroses, and tapirs held in captivity in Canada are not confined in winter to heated buildings. Consequently, elephants, hippopotami, rhinoceroses, and tapirs imported into Canada would not present a disease risk because of ectoparasites after 1 year in Canada.

One commenter asserted that the regulations in proposed Part 93 should not apply to animals exported from the United States by a licensed U.S. exhibitor and then imported back into the United states by the exhibitor, especially if the animals have been exhibited only in Canada. A provision exempting elephants, hippopotami, rhinoceroses, and tapirs from the regulations in this part if they were exported from the United States to Canada and then imported back into the United States accompanied by a United States health certificate has been added to § 93.6 in the final rule. The United States health certificate is required to ensure that the animal which was exported from the United States to Canada is the animal which is returned to the United States.

One commenter asserted that the regulations in proposed Part 93 should not apply to animals that have been held in captivity until imported into the United States. Except as noted above for animals from Canada, we have made no change to the proposed rule based on this comment. Animals held in captivity in countries other than Canada may carry ectoparasites that could transmit diseases to livestock in the United States. However, under § 93.6, "Other importations," exemptions may be made on a case-by-case basis when the Deputy Administrator determines that the animals would not present a risk of carrying ectoparasites into the United States.

One commenter suggested adding to the proposed rule requirements to quarantine, test, and treat elephants, hippopotami, rhinoceroses, and tapirs for internal parasites. While we agree that testing and treating for internal parasites would be desirable, no practical way now exists to ensure the animals are free from internal parasites after treatment. If practical methods of testing animals for internal parasites are developed, we will consider incorporating this suggestion into the regulations.

Finally, one commenter suggested that user fees be collected to cover the cost of inspection and treatment required by proposed § 93.6. Because we have no specific authority at this time to collect user fees for this purpose, we have made no change to the proposed rule based on this comment. However, we are reviewing the situation and may consider charging for inspection and treatment of imported elephants, hippopotami, rhinoceroses, and tapirs in the future if we receive authority to do so.

Miscellaneous

We have also made several nonsubstantive editorial changes.

Executive Order 12291 and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a major rule. Based on information compiled by the Department, we have determined that this rule would not have a significant impact on the economy; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not have any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Based on statistics concerning past importations of elephants, hippopotami, rhinoceroses, and tapirs, it is anticipated that fewer than 100 of these animals will be imported annually into the United States. Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catelog of Federal Domestic Assistance under No. 10.025 and is subjet to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V.)

Paperwork Reduction Act

Information collection requirements contained in this rule have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) under OMB control number 0579-0040.

List of Subjects

9 CFR Part 93

Animal diseases, Ectoparasites, Elephants, Hippopotami, Imports, Livestock and livestock products, Rhinoceroses, Tapirs, Transportation, Wildlife.

9 CFR Part 99

Administrative practice and procedure.

Accordingly, we are amending 9 CFR, Chapter I, Subchapter D as follows:

PART 93—[REDESIGNATED AS PART 99]

§ 99.10 [Amended]

1. Part 93 is redesignated as Part 99 and § 99.10 is amended by changing the reference "93.1" to "99.1."

2. A new Part 93 is added to read as follows:

PART 93—IMPORTATION OF ELEPHANTS, HIPPOPOTAMI, RHINOCEROSES, AND TAPIRS

Sec.
93.1 Definitions.
93.2 Prohibitions.
93.3 Import permit.
93.4 Health certificate.
93.5 Declaration upon arrival.
93.6 Ports of entry, inspection, and treatment.
93.7 Animals refused entry.
93.8 Other importations.

Authority: 21 U.S.C. 111, 134a, 134b, 134c, 134d, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 93.1 Definitions.

The following terms, when used in this part, shall be construed as defined. Those terms used in the singular form in this part shall be construed as the plural form and vice versa, as the case may demand.

Accredited veterinarian. A veterinarian approved by the Deputy Administrator in accordance with Part 161 of this chapter to perform functions specified in Parts 1, 2, 3, and 11 of this chapter, and Subchapters B, C, and D of this chapter; and to perform functions required by cooperative State-Federal disease control and eradication programs.

Deputy Administrator. The Deputy Administrator, Veterinary Services, or any official in Veterinary Services to whom authority has been delegated or may hereafter be delegated to act in the Deputy Administrator's stead.

Enter (entered, entry) into the United States. To introduce into the commerce of the United States after release from government detention.

Import (imported, importation) into the United States. To bring into the territorial limits of the United States.

Incinerate (incinerated). To reduce to ash by burning.

Inspector. An employee of Veterinary Services who is authorized to perform the function involved.

Person. Any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other legal entity.

United States. All of the several States of the United States, the District of Columbia, Guam, the Northern Mariana Islands, Puerto Rico, the Virgin Islands of the United States, and all other territories and possessions of the United States.

United States health certificate. An official document issued by a Veterinary Services representative or an accredited veterinarian at the point of origin of a movement of animals. It must show the identification tag, tattoo, or registration number of each animal to be moved; the age and sex of each animal to be moved; the number of animals covered by the document; the points of origin and destination; the consignor; and the consignee.

Veterinary Services. The Veterinary Services unit of the Animal and Plant Health Inspection Service of the United States Department of Agriculture.

Veterinary Services representative. An individual employed by Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, and authorized to perform the function involved.

§ 93.2 Prohibitions.

Elephants, hippopotami, rhinoceroses, or tapirs shall not be imported or entered into the United States unless in accordance with this part.

§ 93.3 Import permit.

(a) An elephant, hippopotamus, rhinoceros, or tapir shall not be imported into the United States unless accompanied by an import permit issued by Veterinary Services and unless imported into the United States within 30 days after the proposed date of arrival stated in the import permit. The port veterinarian must be notified of the date of arrival at least 72 hours before the animal arrives in the United States.

(b) An application for an import permit must be submitted to the Import-Export Operations Staff, Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782. Application forms for import permits may be obtained from this staff.

(c) The completed application shall include the following information:

(1) The name and address of the person intending to export an elephant, hippopotamus, rhinoceros, or tapir to the United States;

(2) The name and address of the person intending to import an elephant, hippopotamus, rhinoceros, or tapir into the United States;

(3) The species, breed, and number of elephants, hippopotami, rhinoceroses, or tapirs to be imported;

(4) The purpose of the importation;

(5) The port of embarkation;

(6) The name and concentration of the pesticide intended to be used to treat the elephant, hippopotamus, rhinoceros, or tapir for ectoparasites prior to the animal being transported to the United States;

(7) The mode of transportation;

(8) The route of travel;

(9) The port of entry in the United States and, if applicable, the address of the facility to be provided by the importer for inspection, treatment, and incineration pursuant to § 93.6 of this part;

(10) The proposed date of arrival in the United States; and

(11) The name and address of the person to whom the elephant, hippopotamus, rhinoceros, or tapir will be delivered in the United States.

(d) After receipt and review of the application by Veterinary Services, an import permit indicating the applicable conditions under this part for importation into the United States shall be issued for the importation of the elephant, hippopotamus, rhinoceros, or tapir described in the application if such animal appears to be eligible to be imported. Even though an import permit has been issued for the importation of an elephant, hippopotamus, rhinoceros, or tapir, the animal may be imported only if all applicable requirements of this part are met.

§ 93.4 Health certificate.

(a) An elephant, hippopotamus, rhinoceros, or tapir shall not be imported into the United States unless accompanied by a health certificate either signed by a salaried veterinarian of the national veterinary services of the country where the inspection and treatment required by this section occurred or signed by a veterinarian authorized by the national veterinary services of such country and endorsed by a salaried veterinarian of the national veterinary services of such country (the endorsement representing that the veterinarian signing the health certificate was authorized to do so), certifying:

(1) That the elephant, hippopotamus, rhinoceros, or tapir was inspected by the individual signing the health certificate and found free of any ectoparasites not more than 72 hours before being loaded on the means of conveyance which transported the animal to the United States; and

(2) That the elephant, hippopotamus, rhinoceros, or tapir was treated for ectoparasites at least 3 days but not more than 14 days before being loaded on the means of conveyance which transported the animal to the United States. The animal shall have been treated, under the supervision of the individual signing the health certificate, by being thoroughly wetted with a pesticide applied with either a sprayer with a hand-held nozzle, a spray-dip machine, or a dip vat; and

(3) That the elephant, hippopotamus, rhinoceros, or tapir, after being treated for ectoparasites in accordance with paragraph (b)(2) of this section, did not have physical contact with or share a pen or bedding materials with any elephant, hippopotamus, rhinoceros, or tapir not in the same shipment to the United States; and

(4) The name and concentration of the pesticide used to treat the animal (such pesticide and the concentration used must be adequate to kill the types of ectoparasites likely to infest the animal to be imported; a list of recommended pesticides and concentrations may be obtained from the Import-Export Operations Staff, Veterinary Service, Animal and Plant Health Inspection Service, United States Deparatment of Agriculture, 6505 Belcrest Road, Hyattsville, Maryland 20782); and

(5) The name and address of the consignor and consignee.

§ 93.5 Declaration upon arrival.

Upon arrival of an elephant, hippopotamus, rhinoceros, or tapir at a port of entry, the importer of the importer's agent shall notify Veterinary Services of the arrival by giving an inspector a completed VS Form 17–29, "Declaration of Importation for Animals, Animal Semen, Birds, Poultry, and Eggs for Hatching." (This form is available from the Import-Export Operations Staff, Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, 6505 Belcrest Road, Hyattsville, Maryland 20782.) It must state:

(a) The port of entry;

(b) The date of arrival;

(c) The import permit number;

(d) The name of the carrier and identification of the means of conveyance;

(e) The name and address of the importer;

(f) The name and address of the broker;

(g) The country from which the elephant, hippopotamus, rhinoceros, or tapir was shipped;

(h) The number, species, and purpose of importation of the elephant, hippopotamus, rhinoceros, or tapir; and

(i) The name and address of the person to whom the elephant, hippopotamus, rhinoceros, or tapir will be delivered.

§ 93.6 Ports of entry, inspection, and treatment.[1]

(a) An elephant, hippopotamus, rhinoceros, or tapir shall be imported into the United States only:

(1) At Los Angeles, California; Miami, Florida; Honolulu, Hawaii; and Newburgh, New York; or

(2) On a case-by-case basis, at another port of entry if:

(i) The animals will be inspected and treated at a facility provided by the importer;

(ii) The Deputy Administrator has determined that the importer's facility is adequate for inspection, treatment, and incineration required under this section;

(iii) The Deputy Administrator has determined that an inspector is available to perform at the importer's facility the services that are required under this section; and

(iv) The Deputy Administrator has determined that an inspector is available to perform at the port of entry the services that are required under this section if the animals will be inspected and treated at a facility provided by the importer.

(b) An elephant, hippopotamus, rhinoceros, or tapir shall be entered into the United States only under the following conditions:

(1) Any documents accompanying the animal shall be subject to inspection by an inspector at the port of entry;

(2) If the animal is to be moved from the port of entry to a facility provided by the importer:

(i) At the port of entry the animal shall be subject to as much inspection by an inspector as is feasible and shall be sprayed or dipped, as feasible, under the supervision of an inspector and with a permitted dip listed in § 72.13(b) of this chapter;

(ii) At the port of entry, as much hay, straw, feed, bedding, and other material as can feasibly be removed from the shipping crate or vehicle containing the animal shall be removed, sealed in plastic bags, and incinerated by the importer under the supervision of an inspector;

(iii) At the port of entry, the shipping crate or the vehicle containing the animal shall be sealed by an inspector with an official seal of the United States Department of Agriculture;

(iv) If the animal is moved from the port of entry in a shipping crate, plastic must be fastened around the shipping crate so that all animal waste, hay, straw, feed, bedding, and other material accompanying the animal are retained inside the crate, but not so as to interefere with ventilation, feeding, and watering of the animal;

(v) After the arrival of the animal at the facility provided by the importer, the seal shall be broken by an inspector;

(3) The animal shall be inspected by an inspector within 24 hours of being unloaded at the port of entry or at a facility provided by the importer, and shall be treated under the supervision of an inspector, as follows:

(i) The animal shall be removed from its shipping crate or cargo hold, placed on a concrete or other nonporous surface, and physically inspected for ectoparasites by an inspector. If inspection and treatment are not performed upon unloading, the animal must be isolated from all other animals, except those in the same shipment, and kept in a facility with a nonporous floor and where any ectoparasites that may drop off the animal can be contained and destroyed, until the animal has been inspected and treated;

(ii) If the inspector finds no ectoparasites, the animal shall be sprayed or dipped one time in accordance with label instructions with a permitted dip listed in § 72.13(b) of this chapter; or

(iii) If the inspector finds ectoparasites, the animal shall be

[1] Importers must also meet all requirements of the U.S. Department of the Interior regulations relevant to the importation of elephants, hippopotami, rhinoceroses, and tapirs, including regulations concerning ports of entry.

sprayed or dipped in accordance with label instructions with a permitted dip listed in § 72.13(b) of this chapter for as many times as necessary until the inspector finds no ectoparasites; and thereafter the animal shall be sprayed or dipped one additional time in accordance with label instructions with a permitted dip listed in § 72.13(b) of this chapter;

(4) All hay, straw, feed, bedding, and other material that has been placed with the animal at any time prior to the final treatment referred to in paragraph (b)(3) of this section, and any plastic sheet used to wrap any shipping crate, shall be sealed in plastic bags and incinerated under the supervision of an inspector;

(5) Any shipping crate shall be, under the supervision of an inspector, either cleaned and disinfected using a disinfectant listed in § 71.10 of this chapter or incinerated; and if the shipping crate is cleaned and disinfected, it shall then be treated under the supervision of an inspector with a permitted dip listed in § 72.13(b) of this chapter;

(6) Any means of conveyance used to transport an animal not in a shipping crate shall be, under the supervision of an inspector, cleaned and disinfected using a disinfectant listed in § 71.10 of this chapter and then treated with a permitted dip listed in § 72.13(b) of this chapter.

§ 93.7 Animals refused entry.

Any elephant, hippopotamus, rhinoceros, or tapir refused entry into the United States for noncompliance with the requirements of this part shall be removed from the United States within a time period specified by the Deputy Administrator or shall be considered abandoned by the importer, and pending removal or abandonment, the animal shall be subject to such safeguards as the inspector determines necessary to prevent the possible introduction of ectoparasites into the United States. If such animal is not removed from the United States within such time period or is abandoned, it may be seized, destroyed, or otherwise disposed of as the Deputy Administrator determines necessary to prevent the possible introduction of ectoparasites into the United States.

§ 93.8 Other importations.

(a) Elephants, hippopotami, rhinoceroses, and tapirs are exempt from the regulations in this part under the following circumstances:

(1) They are imported from Canada and are accompanied by a document signed by a salaried veterinarian of the Canadian Government that states:

(i) They were not imported into Canada during the year preceding their importation into the United States; and

(ii) They did not, during the year preceding their importation into the United States, have physical contact with or share a pen or bedding materials with any elephant, hippopotamus, rhinoceros, or tapir imported into Canada during that year; or

(2) They were exported into Canada from the United States and then imported back into the United States accompanied by a United States health certificate.

(b) Notwithstanding other provisions in this part, the Deputy Administrator may in specific cases allow the importation and entry of elephants, hippopotami, rhinoceroses, or tapirs into the United States other than as provided for in this part under such conditions as the Deputy Administrator may prescribe to prevent the introduction of ectoparasites into the United States.

Done in Washington, DC, this 4th day of August 1987.

J.K. Atwell,

Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 87-18125 Filed 8-7-87; 8:45 am]

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 9

Charges for the Production of Records

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations by revising the charges for copying records publicly available at the NRC Public Document Room in Washington, DC. The amendment is necessary in order to reflect the change in copying charges resulting from the Commission's award of a new contract for the copying of records.

EFFECTIVE DATE: July 9, 1987.

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-492-7086.

SUPPLEMENTARY INFORMATION: The NRC maintains a Public Document Room (PDR) at its headquarters at 1717 H Street, NW, Washington, DC. The PDR contains an extensive collection of publicly available technical and administrative records that the NRC receives or generates. Requests by the public for the duplication of records at the PDR have traditionally been accommodated by a duplicating service contractor selected by the NRC. The schedule of duplication charges to the public established in the duplicating service contract is set forth in 10 CFR 9.14 of the Commission's regulations. The NRC has recently awarded a new duplicating service contract. The revised fee schedule reflects the changes in copying charges to the public that have resulted from the awarding of the new contract for the duplication of records at the PDR.

Because this is an amendment dealing with agency practice and procedures, the notice provisions of the Administrative Procedure Act do not apply pursuant to 5 U.S.C. 553(b)(A). In addition, the PDR users were notified on July 2, 1987, that the new contract was being awarded and that the new prices would go into effect on July 9, 1987. Good cause exists to dispense the usual 30-day delay in the effective date because the amendment is of a minor and administrative nature dealing with agency procedures.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Backfit Analysis

This final rule pertains solely to minor administrative procedures of the NRC; therefore, no backfit analysis has been prepared.

List of Subjects in 10 CFR Part 9

Freedom of Information, Penalty, Privacy, Reporting and recordkeeping requirements, Sunshine Act.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendment to 10 CFR Part 9.

PART 9—PUBLIC RECORDS

1. The authority citation for Part 9 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

2. In § 9.14, paragraph (a)(1) is revised to read as follows:

§ 9.14 Charges for production of records.

(a)(1) Charges for the copying of records at the NRC Public Document Room (PDR), 1717 H Street, NW, Washington, DC by the copying service contractor are as follows:

(i) Six cents per page for paper copy to paper copy, except for engineering drawings and any other records larger than 17 x 11 inches for which the charges vary as follows depending on the reproduction process that is used: Xerographic process—$1.50 per square foot for large documents or engineering drawings (random size up to 24 inches in width and with variable length) reduced or full size; Photographic process—$7.00 per square foot for large documents or engineering drawings (random size exceeding 24 inches in width up to a maximum size of 42 inches in length) full size only.

(ii) Six cents per page for microform to paper copy, except for engineering drawings and any other records larger than 17 x 11 inches for which the charge is $1.25 per square foot or $3.00 for a reduced size print (18 x 24 inches).

(iii) One dollar per microfiche to microfiche.

(iv) One dollar per aperture card to aperture card.

* * * * *

Dated at Bethesda, Maryland, this 28th day of July 1987.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 87-18110 Filed 8-7-87; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-CE-14-AD; Amdt. 39-5669]

Airworthiness Directives; Piper Aircraft Corp., Models PA-28 and PA-32 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises Airworthiness Directive (AD) 87-08-08, Amendment 39-5615, applicable to Piper Models PA-28 and PA-32 Series airplanes. This revision will relieve the unintentional burden on PA-28-201T owners/operators by exempting this model from compliance with this AD. The FAA has learned that this model was unintentionally included in the applicability statement and this revision will correct this error. In addition, the following changes are required for clarification: (1) Include reference to Piper Service Letter No. 997 to provide detailed instructions on wing removal; (2) clarify the area to be inspected; and (3) change the mailing address for the inspection reports.

EFFECTIVE DATE: August 12, 1987.

ADDRESSES: Piper Service Letter No. 997 dated May 14, 1987, applicable to this AD may be obtained from Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960. This information may be examined at the Rules Docket, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Compliance: As prescribed in the body of the AD.

FOR FURTHER INFORMATION CONTACT: Charles L. Perry, ACE-120A, Aerospace Engineer, Airframe Branch, Atlanta Aircraft Certification Office, FAA, Suite 210, 1669 Phoenix Parkway, Atlanta, Georgia 30349; Telephone (404) 991-2910.

SUPPLEMENTARY INFORMATION: AD 87-08-08, Amendment 39-5615 (52 FR 15302; April 28, 1987), applicable to Piper Models PA-28 and PA-32 Series airplanes, was issued to require: (1) Removal of both wings and a visual inspection with a 10-power magnifying glass and a dye-penetrant inspection of the wing lower spar caps; (2) replacement of any spars found to be cracked; and (3) visual inspection of the wing upper skin for cracks and repair as required. The Piper Model PA-28-201T was unintentionally included in the applicability statement of this AD, and creates a burden on the PA-28-201T owners/operators since the inspection on this airplane is unnecessary. In addition to the above changes, the following changes are incorporated into this revision:

1. Piper Service Letter No. 997, dated May 14, 1987, Wing Removal and Reinstallation, is inserted into paragraph (a) of the AD in lieu of those instructions to provide more detailed removal and reinstallation instructions.

2. Paragraph (b) of the AD is changed to require inspection "from the wing skin line" rather than "from two inches outboard," because the inspection area is immediately adjacent to the outboard row of fasteners and there is no reason to remove wing skin in order to inspect under that portion of the wing.

3. Paragraph (d) of the AD is changed to require the report of the results from the inspections be sent to the National Safety Data Branch, AVN-120, P.O. Box 25082, Oklahoma City, Oklahoma 73125; Telephone (405) 686-4391.

Therefore, the FAA is revising AD 87-08-08, Amendment 39-5615 (52 FR 15302; April 28, 1987), applicable to Piper Models PA-28 and PA-32 Series airplanes, by removing the Piper Model PA-28-201T from the applicability statement and adding the above changes that are only clarifying in nature. Since this action removes an unnecessary burden or owners/operators, notice and public procedure hereon are impractical and contrary to public interest, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is not major under Section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to remove an unnecessary and costly burden on certain owners/operators. If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption "**ADDRESSES**" at the location identified.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89

§ 39.13 [Amended]

2. By revising and reissuing AD 87-08-08, Amendment 39-5615 [52 FR 15302; April 28, 1987], as follows: Revise the applicability statement to read.

Applies to Model PA-28 Series (all serial numbers (S/N)) except the Model PA-28-230; Model PA-28-201T (S/N 28-7921001 through 28-7921091); Model PA-32-260 (S/N 32-1 through 32-7800008); and Model PA-32-300 (S/N 32-40006 through 32-7840252) airplanes certificated in any category.

Change paragraphs (a), (b), and (d) to read as follows:

(a) Remove both wings in accordance with Piper Service Letter No. 987, dated May 14, 1987.

(b) Visually inspect, using a 10-power minimum glass and a dye-penetrant method or equivalent, for cracks in the wing lower spar cap from the wing skin line outboard of the outboard row of wing attach bolt holes to an area midway between the second and third row of bolt holes from the outboard row.

(d) Within five days after completion of the inspections specified in this AD, report the results of the inspections, both positive and negative findings, to the National Safety Data Branch, AVN-120, P.O. Box 25082, Oklahoma City, Oklahoma 73125; Telephone (405) 686-4391. Reports can be made either by telephone or by letter, but must include the owner's name and telephone number, airplane model and S/N, total airframe time, type of operation, and inspection results. (Reporting approved by the Office of Management and Budget under OMB No. 2120-0056.)

This amendment revises AD 87-08-06, Amendment 39-5615.

This amendment becomes effective August 12, 1987.

Issued in Kansas City, Missouri, on July 23, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 87-18042 Filed 8-7-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-ASW-41; Amdt. 39-5682]

Airworthiness Directives; Costruzioni Aeronautiche Giovanni Agusta S.p.A. Model A109A and A109A II Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD) which requires an initial inspection and repetitive checks for cracks in the tail rotor blade grip on Agusta Model A109A and A109A II helicopters. This amendment is needed to clarify that the inspections are required only for tail rotor blades Part Numbers (P/N) 109-0132-02-11 and -15.

DATES: Effective Date: August 30, 1987.

Compliance: As indicated in the body of the AD.

ADDRESSES: The applicable service information may be obtained from Agusta Aviation Corporation NE. Service Center, Norcom and Red Lion Roads, Philadelphia, Pennsylvania 19154.

A copy of the service bulletin is contained in the Rules Docket, Office of the Regional Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76193-0007.

FOR FURTHER INFORMATION CONTACT: John Varoli, Manager, Brussels Aircraft Certification Office, Federal Aviation Administration, c/o American Embassy, APO New York 09667-1011, or Robert Weaver, Rotorcraft Standards Staff, Federal Aviation Administration, Fort Worth, Texas 76193-0111, telephone (817) 624-5122.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations by amending Amendment 39-5043 (50 FR 18240), AD 84-13-06, which requires an initial inspection and repetitive checks for cracks in the tail rotor grip and replacement with a serviceable part, as necessary, on certain Agusta A109A and A109A II helicopters, was published in the Federal Register on March 19, 1987.

This proposal was prompted because after issuing Amendment 39-5043, the FAA determined that the manufacturer had designed new, improved parts which provided an equivalent level of safety without daily checks or special 25-hour inspections. Therefore, the FAA proposed to amend Amendment 39-5043 by making it applicable only to Agusta Model A109A and A109A II helicopters equipped with tail rotor blades P/N 109-0132-02-11 or -15. The AD will not be applicable to the new, improved blades, P/N 109-0132-02-121.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received. Accordingly, the proposal is adopted without change.

The FAA has determined that this regulation only involves a maximum of 46 aircraft with a cost of only $1,600 per fleet inspection ($35 per aircraft). Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By amending Amendment 39-5043 (50 FR 18240; March 19, 1987), AD 84-13-06, by revising the applicability paragraph to limit the AD to Model A109A and A109A II series helicopters equipped with P/N 109-0132-02-11 or -15 tail rotor blades and by revising paragraphs (a) and (b) as follows:

Costruzioni Aeronautiche Giovanni Agusta S.p.A.: Applies to Model A109A and A109A II series helicopters certificated in any category and equipped with P/N 109-0132-02-11 or -15 tail rotor blades.

Compliance is required as indicated unless already accomplished.

* * * * *

(a) Within the next 10 hours' time service, inspect the tail rotor blade grip in accordance with Part I of Agusta Service Bulletin (SB) 109-51, Revision A, or an FAA-approved equivalent, and at each additional 25 hours' time in service, accomplish the inspection of Part III of Agusta SB 109-51, Revision A, or an FAA-approved equivalent.

(b) Prior to the first flight of each day, comply with Part II of the accomplishment instructions of Agusta SB 109-51, Revision A, or an FAA-approved equivalent. This accomplishment may be conducted by the pilot.

* * * * *

This amendment becomes effective August 30, 1987.

Issued in Fort Worth, Texas, on July 10, 1987.

Don P. Watson

Acting Director, Southwest Region.

[FR Doc. 87-18115 Filed 8-7-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-AWP-27]

Revision to Napa, CA, Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The Napa, CA, Airport weather observations are taken by air traffic control tower personnel and are not available when the tower is closed. Since one of the requirements to have a control zone is that a federally certificated weather observer shall take hourly and special weather observations at the airport, this action changes the effective hours of the Napa, CA, control zone to match the hours of operation of the air traffic control tower.

EFFECTIVE DATE: 0901 U.t.c., January 14, 1988.

FOR FURTHER INFORMATION CONTACT: Frank T. Torikai, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261; telephone (213) 297–1648.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to Part 71 of the Federal Aviation Regulations changes the hours of the Napa, CA, control zone to match the hours of operation of the Air Traffic Control Tower. I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor amendment in which the public would not be particularly interested. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71), is amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Napa, CA [Revised]

Within a 3-mile radius of Napa County Airport (lat. 38°12'48" N., long. 122°16'47" W.). This control zone is effective from 0700 to 2000 hours local time, daily or during specific dates and times established by a Notice to Airmen which will thereafter be continuously published in the Airport/Facility Directory.

Issued in Los Angeles, California, on July 29, 1987.

James A. Holwegar,

Assistant Manager, Air Traffic Division Western-Pacific Region.

[FR Doc. 87–18114 Filed 8–7–87; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 429

Rule on Cooling-Off Period for Door-to-Door Sales

AGENCY: Federal Trade Commission.

ACTION: Announcement of results of review under the Regulatory Flexibility Act.

SUMMARY: Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and a published Plan for Periodic Review of Commission Rules (46 FR 35118) (1981), the Federal Trade Commission has conducted a review of the Rule on a Cooling-Off Period for Door-to-Door Sales (16 CFR Part 429). The Commission concludes that based on this review there is continued need for the Rule and that there is no reason to believe that the Rule has had a significant impact on a substantial number of small entities. Although this review does not indicate the Rule should be changed, for the reasons set forth in a document published elsewhere in this issue, the Commission is proposing certain non-substantive Rule modifications and proposed exemptions.

FOR FURTHER INFORMATION CONTACT: Lewis Franke, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, Phone 202–326–3009.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act requires the Federal Trade Commission to conduct a periodic review of rules issued by the Commission which have or will have a significant economic impact upon a substantial number of small entities and, if it has such impact, whether the particular rule should be amended to minimize any sigificant economic impact on small entities (5 U.S.C. 601 *et seq.*). The Rule on a Cooling-Off Period for Door-to-Door Sales was promulgated by the Commission on October 26, 1972 (37 FR 22933 (1972)). The Rule makes it an unfair or deceptive act or practice for the seller of consumer goods or services with a purchase price of $25.00 or more, who sells away from the place of business to fail to furnish to the buyer certain information regarding the buyer's right to cancel the sale within three business days from the date of the transaction and to give the buyer a full refund of any downpayment upon the buyer's cancellation.

For the purpose of this review, on March 3, 1983, the FTC published a notice in the Federal Register soliciting public comments on the Rule's impact on small entities (48 FR 9032 (1983)).

Questions were posed on: (1) The continued need for the Rule, (2) the burdens, if any, compliance with the Rule places on small entities, (3) changes, which should be made to minimize any economic impact the Rule has had on small business, (4) the extent to which the Rule overlaps, duplicates or conflicts with other rules, and (5) any changed conditions that may have occurred which affect the Rule. Thirteen organizations, consisting of trade associations, companies, and county consumer affairs offices, submitted comments.

Based on the comments received there is no basis to conclude that the Rule has had a significant economic impact on a substantial number of small entities. The comments also indicate that there is a continued need for the Rule. Changes in the Rule were suggested but there was insufficient information upon which to conclude that such changes would minimize the economic impact on small business entities.

With respect to the Rule's relationship to other rules, while there are some differences between the Commission's Rule and state and local rules, they are not such as to warrant repeal or modification of the Commission Rule. Nor have changed conditions occurred since promulgation of the Rule warranting such action.

List of Subjects in 16 CFR Part 429

Trade practices.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 87-18062 Filed 8-7-87; 8:45 am]

BILLING CODE 6750-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 33

Regulation of Domestic Exchange-Traded Commodity Option Transactions; Exemptive Provision

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commission recently proposed to amend Part 33 of its regulations governing domestic exchange-traded commodity option transactions. The Commission proposed new regulation § 33.11 to ensure consistency with other Commission regulations and to facilitate requests for relief from certain provisions of Part 33. The Commission has decided to adopt those amendments to Part 33, as proposed. Thus, regulation § 33.11, as adopted, provides that the Commission, upon written request or upon its own motion, may exempt any person from any provision of Part 33 (except for §§ 33.9 and 33.10) if it finds that such action is not contrary to the public interest.

EFFECTIVE DATE: Effective on August 10, 1987.

FOR FURTHER INFORMATION CONTACT: Harold L. Hardman, Office of the General Counsel, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: 254-9880.

SUPPLEMENTARY INFORMATION: On June 11, 1987 (52 FR 22333), the Commission published for comment in the **Federal Register** a proposed amendment to Part 33 of its regulations. That proposed amendment would have added new § 33.11, which would allow the Commission expressly to permit the granting of relief from the provisions of Part 33 in appropriate cases.

The Commission received two comments on this proposal, both of which generally supported the proposed revision. One commentor suggested that the Commission amend proposed rule § 33.11 to exclude from the exemptive authority not only regulations §§ 33.9 and 33.10 (regarding unlawful activities and fraud) but also regulation § 33.3 which declares unlawful commodity option transactions which are not traded on a designated contract market and marketed by registered commodity professionals. The Commission, in proposing § 33.11, did not intend to use its exemptive authority in § 33.11 to allow the trading of options on other than designated contract markets or marketing by unlicensed persons. Indeed, Part 33 of the Commission's regulations governs only the trading of commodity options on contract markets. Rather, the Commission intended that § 33.11 would provide a means of lessening restrictions on exchange-traded commodity option transactions in appropriate cases. Thus, the Commission believes it would be inappropriate and unnecessary to adopt this commentator's suggestion.

The Commission, for reasons set out above and in the June 11 **Federal Register** release, has determined to adopt regulation § 33.11, as proposed. Thus, § 33.11, as adopted, provides that the Commission, upon written request or upon its own motion, may exempt any person from any provision of Part 33 (except §§ 33.9 and 33.10) if it finds, in its discretion, that it would not be contrary to the public interest to grant such exemption. The Commission reiterates, however, that this action is not intended to suggest that the Commission will freely grant exemptive relief from the provisions of Part 33. The Commission will move cautiously in this regard. Thus, any request for exemptive relief must provide in detail why such relief should be granted by the Commission and why, in particular, such relief will not contravene the purposes of the regulations.

The Commission has determined to make this rule effective upon publication. The Administrative Procedure Act provides that a substantive rule which grants or recognizes an exemption or relieves a restriction does not require a 30 day period before the rule can become effective. *See* 5 U.S.C. 553(d). Since this rule is a "substantive rule which grants or recognizes an exemption," as provided in 5 U.S.C. 553(d), it may be placed into effect immediately upon publication.

Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of those rules on small entities. The Commission previously has determined that contract markets are not "small entities" for purposes of the Regulatory Flexibility Act. *See* 47 FR 18618 (April 30, 1982).

The rule, as adopted, relates to the trading of options on contract markets and thus, does not have a significant economic impact on a substantial number of small entities. The Commission further notes that § 33.11 is an exemptive provision which should not place any additional burden on any affected entity. Accordingly, the Chairman, on behalf of the Commission, certifies, pursuant to section 3(a) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this regulation will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. Chapter 35, requires agencies no later than the publication of a notice of proposed rulemaking in the **Federal Register** to forward to the Director of the Office of Management and Budget a copy of any proposed rule which contains a collection of information requirement. 44 U.S.C. 3504(h)(1). Because the regulation adopted herein does not contain a collection of information requirement, 44 U.S.C. 3502(4), or an information collection request, 44 U.S.C. 3502(11), the Commission has determined that the provisions of the Paperwork Reduction Act do not apply.

List of Subjects in 17 CFR Part 33

Commodity exchange, Commodity exchange designation procedures, Commodity exchange rules, Commodity futures, Commodity options.

For the reasons set forth in the preamble, Part 33 of the Code of Federal Regulations is amended as follows:

PART 33—REGULATION OF DOMESTIC EXCHANGE-TRADED COMMODITY OPTION TRANSACTIONS

1. The authority citation for Part 33 would continue to read as follows:

Authority: 7 U.S.C. 2, 2a, 4, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 7b, 8, 9, 11, 12a, 12c, 13a, 13a-1, 13b, 19 and 21 unless otherwise noted.

2. Section 33.11 is added to read as follows:

§ 33.11 Exemptions.

The Commission may, by order, upon written request or upon its own motion, exempt any person, either unconditionally or on a temporary or other conditional basis, from any provisions of this Part, other than §§ 33.9 and 33.10, if it finds, in its discretion, that it would not be contrary

to the public interest to grant such exemption.

Issued in Washington, DC on August 4, 1987, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87-18046 Filed 8-7-87; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 131

[Docket No. 81N-204C]

Milk, Lowfat Milk, and Skim Milk, Pasteurization Requirements for Fluid Milk Products for Consumer Use

AGENCY: Food and Drug Administration.

ACTION: Final rule; termination of stay.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the stay of that portion of the standard of identity for milk, lowfat milk, and skim milk products that concern the requirement that certified fluid milk products for consumer use be pasteurized is terminated. Elsewhere in this issue of the **Federal Register** under 21 CFR Part 1240—Control of Communicable Diseases, FDA is taking action to require that milk and milk products, certified and noncertified, in final package form for human consumption in interstate commerce be pasteurized.

EFFECTIVE DATE: September 9, 1987.

FOR FURTHER INFORMATION CONTACT: Robert J. Lahan, Center for Food Safety and Applied Nutrition (HFF-302), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0162.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 9, 1972 (37 FR 18392), FDA, under section 401 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 341), proposed to revise existing standards of identity and to establish new standards of identity for certain milk and cream products. This notice included an FDA proposal to require that each of the listed milk and cream products be pasteurized.

In the **Federal Register** of October 10, 1973 (38 FR 27924), FDA published a final rule which included the requirement that milk products moving in interstate commerce be pasteurized. In deciding upon the pasteurization requirement, FDA reasoned that pasteurization was the only way to assure the destruction of pathogenic microorganisms that might be present.

Following publication of the final rule, FDA received one request for a hearing and an accompanying set of objections on the pasteurization requirement for certified raw milk. The procedures used in producing certified raw milk are significantly different from those used in producing raw milk in general in that they must comport with the methods and standards established by the American Association of Medical Milk Commissions, a private organization that provides to its members guidelines for the production of certified raw milk. Only dairies that employ the Association's techniques have the right to use the term "certified" on their products. The objections, which pertained only to certified raw milk, were based on two premises: (1) Certified raw milk is a safe product, and (2) section 401 of the Act (21 U.S.C. 341) does not provide authority to establish a standard of identity solely for health reasons.

In the preamble of the **Federal Register** of December 5, 1974, (39 FR 42351), FDA announced that the objections raised a substantial issue of fact with regard to whether pasteurization is needed for certified raw milk and that a hearing would be conducted. Accordingly, FDA stayed this requirement for certified raw milk.

This stayed requirement for certified raw milk has been rendered moot by the agency's issuance elsewhere in this issue of the **Federal Register** of a final rule requiring that all milk and milk products, certified and noncertified, in final package form for human consumption in interstate commerce be pasteurized. This fianl rule was issued in response to a decision by the United States District Court for the District of Columbia ordering "that the Food and Drug Administration and the Secretary of Health and Human Services publish in the **Federal Register**, a proposed rule banning the interstate sale of all raw milk and raw milk products, both certified and non-certified, pursuant to the provisions of 5 U.S.C. section 553 and complete all rulemaking proceedings in accordance with this Court's opinion within one hundred eighty (180) days." *Public Citizen* v. *Heckler*, 653 F. Supp. 1229, 1242 (D.D.C. 1986). The proposal was published in the **Federal Register** of June 11, 1987 (52 FR 22340).

Therefore, consistent with the court decision, the agency is announcing that the stay of that portion of the standards of identity for milk, lowfat milk, and skim milk products that concern the requirement that certified fluid milk products for consumer use be pasteurized is hereby terminated.

List of Subjects in 21 CFR Part 131

Cream, Food standards, Milk, Yogurt.

PART 131—MILK AND CREAM

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701(e), 52 Stat. 1046, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10); *It is ordered* that the stay announced in the preamble of the **Federal Register** of December 5, 1974 (39 FR 42351) is terminated.

Dated: August 5, 1987.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-18191 Filed 8-6-87; 3:14 pm]

BILLING CODE 4160-01-M

21 CFR Part 1240

[Docket No. 81N-204C]

Requirements Affecting Raw Milk for Human Consumption in Interstate Commerce

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final regulation requiring that milk and milk products in final package form for human consumption in interstate commerce be pasteurized. The final regulation does not apply to the interstate transportation of raw (unpasteurized) milk to dairy processing plants for pasteurization or to raw milk products in intrastate commerce. The final regulation also does not apply to milk and milk products for which an alternative to pasteurization is established in a standard of identity regulation.

EFFECTIVE DATE: September 9, 1987.

FOR FURTHER INFORMATION CONTACT: Robert J. Lenahan, Center for Food Safety and Applied Nutrition (HFF-302), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0162.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 11, 1987 (52 FR 22340), FDA issued a notice of proposed rulemaking in response to a decision by the United States District Court for the District of Columbia ordering "that the Food and Drug Administration and the Secretary of Health and Human Services publish in the **Federal Register**, a

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proposed rule banning the interstate sale of all raw milk and raw milk products, both certified and non-certified, pursuant to the provisions of 5 U.S.C. section 553 and complete all rulemaking proceedings in accordance with this Court's opinion within one hundred eighty (180) days." *Public Citizen* v. *Heckler*, 653 F. Supp. 1229, 1242 (D.D.C. 1986). The notice proposed a pasteurization requirement for all milk and milk products in final package form in interstate commerce. The proposed requirement did not apply to the interstate shipment of raw milk to dairy plants for pasteurization or to products for which procedures are provided by regulation (such as in 21 CFR Part 133, which pertains to the curing of certain varieties of cheese).

The agency invited public comment on the proposal. Because of the time constraint imposed upon the agency by the Court in ordering the completion of "all rulemaking proceedings," FDA limited the comment period to 30 days. In this notice, the agency is issuing a final rule based on the proposal.

The provisions of the Public Health Service Act that relate to communicable disease (42 U.S.C. 216, 243, 264, and 271) form the legal basis for the final rule. The Public Health Service Act authorizes the Department of Health and Human Services (HHS) to make and enforce such regulations as "are necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the States * * * or from one State * * * into any other State" (42 U.S.C. 264(a)). Five regulations banning the distribution of products have been published under this section: § 1240.60 *Shellfish* (21 CFR 1240.60); § 1240.62 *Turtles, intrastate and interstate* (21 CFR 1240.62); § 1240.65 *Psittacine birds* (21 CFR 1240.65); § 1240.70 *Lather brushes* (21 CFR 1240.70); and § 1240.75 *Garbage* (21 CFR 1240.75). Additional support for the final rule is found in sections 402(a) (1), (3), and (4) and 701(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 342(a) (1), (3), and (4) and 371(a)). Under these sections, FDA is authorized to promulgate regulations for preventing adulterated or contaminated food, such as unpasteurized milk containing harmful microorganisms, from entering interstate commerce.

I. Background

A. Standard of Identity Proceedings

Over the years, FDA regulation of milk and milk products, in conjunction with State and local dairy associations, has been pervasive. A brief history of this proceeding reveals that the final rule is consistent with past agency action and will not have a burdensome impact on milk producers.

In the **Federal Register** of September 9, 1972 (37 FR 18392), FDA, under section 401 of the act (21 U.S.C. 341), proposed to revise existing standards of identity and to establish new standards of identity for certain milk and cream products. This notice included an FDA proposal to require that each of the listed milk and cream products be pasteurized.

In the **Federal Register** of October 10, 1973 (38 FR 27924), FDA published a final rule which included the requirement that fluid milk products moving in interstate commerce be pasteurized. In deciding upon the pasteurization requirement, FDA reasoned that pasteurization was the only way to assure the destruction of pathogenic microorganisms that might be present.

Following publication of the final rule, FDA received one request for a hearing and an accompanying set of objections on the pasteurization requirement for certified raw milk. The procedures used in producing certified raw milk are significantly different from those used in producing raw milk in general in that they must comport with the methods and standards established by the American Association of Medical Milk Commissions, a private organization that provides to its members guidelines for the production of certified raw milk. Only dairies that employ the Association's techniques have the right to use the term "certified" on their products. The objections, which pertained only to certified raw milk, were based on two premises: (1) Certified raw milk is a safe product, and (2) section 401 of the act (21 U.S.C. 341) does not provide authority to establish a standard of identity solely for health reasons.

In the **Federal Register** of December 5, 1974 (39 FR 42351), FDA announced that the objections raised a substantial issue of fact with regard to whether pasteurization is needed for certified raw milk and that a hearing would be conducted. Accordingly, FDA stayed this requirement for certified raw milk. Elsewhere in this issue of the **Federal Register**, the agency is announcing that the stay of December 5, 1974 (39 FR 42351), concerning certified raw milk, is terminated.

The requirement for pasteurization for all other milk and milk products covered by the new standards of identity was made final in the December 5, 1974, final rule. Therefore, since December 1974 any such milk product that is in final package form for human consumption moving in interstate commerce, but that is not pasteurized, is misbranded. See section 403(g) of the act (21 U.S.C. 343(g)). Most milk and milk prouducts in final package form for human consumption in intrastate commerce are also required by various State laws to be pasteurized.

B. Citizen Petition

On April 10, 1984, the Health Research Group (HRG) of Public Citizen, a privately-funded advocacy organization, petitioned the Secretary of HHS to "promulgate a regulation banning all sales, interstate and intrastate,of raw (unpasteurized) milk and raw milk products in the United States."

C. Public Hearing (October 11 and 12, 1984)

In the **Federal Register** of August 3, 1984 (49 FR 31065), FDA announced a public hearing to receive information on whether milk and milk products sold for human consumption should be pasteurized. The notice, published in part in response to the citizen petition, encouraged interested persons to present information, data, and views on the following issues:

1. Whether the consumption of raw milk, including certified raw milk and raw milk products, is of public health concern; and

2. If the answer to issue 1 is yes, whether requiring pasteurization of raw milk, including certified raw milk and raw milk products, is the most reasonable regulatory option.

The notice of hearing stressed that the purpose of the hearing was to develop an administrative record upon which sound agency action could be based. The hearing resulted in a 330-page transcript and well over 300 comments totaling approximately 4,000 pages.

Over 30 witnesses either submitted written testimony or testified at the public hearing. Most of the witnesses testifying against any Federal regulation of raw milk and raw milk products acknowledged that associations between the consumption of raw milk and the onset of disease have been reported, but pointed out that many other foods, against which no similar Federal action is contemplated, also present sources of exposure to harmful microorganisms. Other witnesses asserted that the "relative risk" of contracting communicable disease from raw milk, in particular certified raw milk, is low when compared to other potential sources of infection.

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Several witnesses testified that, in the absence of a definitive case-control study, there is no way to determine whether the apparent association between drinking raw milk and being infected by harmful microorganisms is causal, and encouraged HHS to sponsor such a study rather than ban raw milk.

Many witnesses testified in favor of some form of ban on raw milk. These witnesses argued that the risks associated with the consumption of raw milk, including certified raw milk, outweigh any benefits from its consumption.

D. Court Related Developments

On September 19, 1984, after FDA had announced the public hearing, but before the hearing was held, HRG filed suit in Federal district court to compel HHS to promulgate a regulation banning all sales, interstate and intrastate, of raw milk and raw milk products in the United States.

On January 14, 1985, in *Public Citizen* v. *Heckler*, 602 F. Supp. 611 (D.D.C. 1985), the Court held that there had been unreasonable delay in deciding whether there should be additional Federal regulation of raw milk as requested in the April 10, 1984, HRG petition and ordered HHS to respond to the petition.

By letter dated March 15, 1985, the Commissioner of Food and Drugs denied the petition, stating that the agency would not ban either interstate or intrastate sales of raw milk (Ref. 18). The letter acknowledged that "raw milk, including certified raw milk, is a vehicle for the transmission and spread of communicable diseases," but concluded that a Federal ban on the interstate shipment of raw milk would not be the most appropriate means of dealing with the health problems posed by unpasteurized milk and milk products, and would have minimal public health benefit, given the current patterns of distribution and sale of these products. The letter further explained that FDA's authority to prohibit the intrastate sale of raw milk was at least questionable and that, in any case, State and local authorities were fully able to take action to ban the product should they consider it appropriate to do so.

Following FDA's denial of its citizens' petition, HRG again filed suit in the Federal district court, this time seeking judicial review of the agency action. HRG asked the Federal district court to compel HHS to initiate a new rulemaking proceeding banning both interstate and intrastate sales of raw milk.

In *Public Citizen* v. *Heckler*, 653 F. Supp. 1229 (D.D.C. 1986), the Court ruled that the agency's denial of the HRG petition was arbitrary and capricious in light of the record compiled in the proceeding before the agency. The Court concluded that the record presents "overwhelming evidence of the risks associated with the consumption of raw milk, both certified and otherwise * * *" and is "replete with credible evidence of the danger of raw milk consumption, and the support of various organizations, both within and without the Government, for a federally imposed interstate ban," (653 F. Supp. at 1238). The Court went on to state that the evidence FDA has accumulated concerning raw milk "conclusively" shows that raw and certified raw milk are unsafe (653 F. Supp. at 1232, 1241). According to the Court, "There is no longer any question of fact as to whether the consumption of raw milk is unsafe." (653 F.2d at 1241). The Court ruled that FDA should propose a rule "banning the interstate sale of all raw milk and raw milk products, both certified and noncertified * * *." (653 F. Supp. at 1242). The Court also found that there was no indication that a rule banning the intrastate shipment of raw milk would be necessary to carry out an interstate ban.

II. Comments on the Proposed Regulation

A. Overview

Numerous comments were received on the agency's proposed regulation. Three comments opposed the requirement that raw milk be pasteurized. All the remaining comments favored the proposed rule on the basis that the risks associated with consuming raw milk, including certified raw milk, outweigh any benefits from its consumption. Comments favoring the proposed rule include the American Academy of Pediatrics, the National Milk Producers, the National Association of State Departments of Agriculture, the Centers for Disease Control, and numerous State departments of health.

In its comments opposing a final rule, Stueve's Natural (Stueve) (formerly Alta-Dena Dairy) urged FDA not to ban certified raw milk because it is safe and has never been shown to cause illness. Stueve also suggested that individuals have the right to freely choose whether the benefits of raw milk outweigh its potential risks. Moreover, Stueve contended that raw milk, in particular certified raw milk, is being singled out for unwarranted, selective attention by FDA and other public health authorities because other ready-to-consume foods are, naturally or by viture of cross-contamination, major sources of disease and are not subject to strict Government regulation. Similarly, Stueve argued that contaminated or improperly pasteurized milk represents a far more serious health hazard than does raw milk. Stueve also questioned whether pasteurization would kill *Salmonella dublin* (*S. dublin*) microorganisms and whether a requirement for pasteurization of milk would have any significant impact on the public health. Stueve submitted data and information in support of its contentions.

Congressman William E. Dannemeyer also filed comments opposing a final rule. In addition to identifying the same issues Stueve raised, the Congressman stressed the nutritional and immunologic benefits of raw milk.

Based on its review and evaluation of all data and information submitted, FDA has concluded that these contentions are unconvincing when considered in light of the known, documented health risks associate with the consumption of raw milk, as discussed below.

B. The Association Between Raw Milk and the Outbreak of Disease

The administrative record compiled as a result of the hearing and rulemaking process demonstrates that there is an association between the consumption of raw milk and the outbreak of disease (Refs. 1 through 12 and 14 through 16). The record also demonstrates an association between the consumption of certified raw milk and the outbreak of disease, particularly among consumers who are young, elderly, or infirm (Refs. 1 through 12 and 16).

In its comments, however, Stueve argued that raw milk and certified raw milk have never been shown to "cause" disease. The argument is based on the fact that the data and information that associate the consumption of raw milk with the outbreak of disease are not the result of blinded, prospective case-control studies but rather the result of epidemiological, retrospective evaluations of case studies. Epidemiological investigations are not designed to establish causation per se but rather to test the strength of an "association" between an event and a possible cause.

The record of this proceeding reveals that on the basis of epidemiological evidence "the role of unpasteurized dairy products, including raw and certified raw milk, in the transmission of disease has been established repeatedly" (Ref. 4; see also Refs. 1 through 3, 5 through 12, and 14 through 16). For example, the California Department of Health Services (CDHS) has reported that 50 percent of all the *S.*

dublin infection cases reported in California in 1984 invovled the use of certified raw milk. According to CDHS, no other risk factor has been prevalent among cases. For example, even though *S. dublin* is host adapted to cattle, only a small percent (15 percent or less) of cases report use of either lightly cooked or uncooked beef or beef products. CDHS concluded that the relative risk of contracting *S. dublin* is 158 times greater for those Californians who consume certified raw milk than for those who do not drink any form of raw milk (Refs. 3 and 12). CDHS considered this relative risk "extremely large and among the largest obtained in any epidemiologic investigation." (CDHS' observations are consistent with those discussed in the preamble to the proposed rule (52 FR 22342 and 22343). Under these circumstances, to conduct the type of studies Stueve would seem to be calling for would appear not only unnecessary but also ethically questionable.

C. Selective Enforcement

In an October 1984 survey, CDC addressed the type of selective enforcement issues raised by Stueve (Ref. 4). CDC pointed out that other ready-to-consume foods of domestic animal origin are subjected to processing procedures designed to render them safe for consumption and are microbiologically monitored for adequacy of processing. Raw foods of animal origin, such as chicken, may also be contaminated with microorganisms such as *Salmonella* and *Campylobacter*, but are normally cooked before consumption. CDC noted that extensive efforts are routinely made by public health agencies to inform the public of the hazards and the proper cooking procedures for these products. For other foods, like oysters, that are often consumed raw, CDC noted that practical measures to eliminate the contamination are not available. A practical measure—pasteurization—is available for milk and milk products. Under these circumstances, the agency finds no merit in any argument that raw milk in interstate commerce is wrongly being singled out for regulation.

D. Certification

Raw milk, no matter how carefully produced, may be unsafe. Accordingly, raw milk products may be unsafe. Examinations of cattle and of milk handlers can be done only at intervals. Consequently, pathogenic organisms may enter the milk during these intervals and be transmitted to humans before the presence of the organisms or the existence of a disease condition in cattle or handlers is discovered.

Moreover, it has not been shown to be feasible to perform routine bacteriological tests on the raw milk itself to determine the presence or absence of all pathogens and thereby ensure that it is free from infectious organisms.

In the past, supporters of certified raw milk pointed to standards such as total bacterial counts as proof of safety, but the high incidence of disease associated with certified raw milk is strong evidence that these standards are unreliable indexes of safety. In addition, the American Association of Medical Milk Commissions, the entity that "certifies" raw milk, recently deleted any mention of *Salmonella*, a known pathogen, from its standards (Ref. 17).

Thus, in FDA's view, "certification" does not provide a reliable index of whether milk or milk products are contaminated with pathogenic bacteria. For example, certified raw milk cannot be certified free of *Salmonella* organisms (Ref. 13). Milk is an excellent vehicle of infection because its fat content protects pathogens from gastric acid, and, being fluid, it has a relatively short gastric transit time. Opportunities for the introduction and persistence of *Salmonella* organisms on dairy premises are numerous and varied, and technology does not exist to eliminate *Salmonella* infection from dairy herds or to preclude the re-introduction of *Salmonella* organisms. Moreover, recent studies show that cattle can carry and shed *S. dublin* organisms for many years and demonstrated that *S. dublin* organisms cannot be routinely detected in cows that are "mammary gland" shedders (Ref. 13).

In light of the foregoing, FDA concludes that the certification process alone provides no assurance that raw milk is free of *Salmonella* and other harmful organisms.

E. Effectiveness of Requiring Pasteurization as a Means of Controlling Disease

Stueve contended that the effects of past bans on raw milk in Scotland and (on a temporary basis) in California support the proposition that the overall rate of *S. dublin* related outbreaks from all possible sources of exposure will not decline if a ban on certified raw milk and raw milk products is imposed.

Stueve did not submit data or information adequate to support these conclusions, and information available to the agency on the effects of the ban on raw milk in Scotland contradicts Stueve's contention of no effect. During 1980 through 1982, 3 years before the pasteurization requirement in Scotland went into effect, there were 14 outbreaks of milk-borne *Salmonella* infections involving over 1,080 people. In the year that followed the ban of raw milk, only two small outbreaks involving a total of nine persons who consumed raw milk at a local dairy farm were reported (Ref. 17).

It is true that the population exposed to certified raw milk in interstate commerce is relatively small compared to the population exposed to other sources of *S. dublin* (Ref. 12), and that one would, therefore, not expect a significant change in the rate of *Salmonella* infection in the overall population if interstate sales were banned as a result of this rule. Such expectations regarding the effect of a ban on the overall rate of *Salmonella* infections are not dispositive, however, in light of the fact that the relative risk of infection for those who do consume raw milk, including certified raw milk, appears to be quite large. The proposed ban on all raw milk would eliminate the risk arising from milk and milk products in interstate commerce.

Stueve also contended that heating milk at 80 °C for 30 minutes (one form of pasteurization) would not completely kill *S. dublin* microorganisms. Stueve submitted no data in support of this proposition, but did refer to an unpublished 1961 (later published in 1962) paper for its authority. The paper appears to be based on laboratory procedures now recognized as totally inadequate for thermal resistance testing since they allow a portion of the bacterial population to receive incomplete heating and to appear to be thermoresistant survivors. All information available to the agency documents that pasteurization, when performed as prescribed in the final rule, effectively eliminates *S. dublin* as well as numerous other harmful microorganisms.

F. Health Benefits of Consuming Raw Milk

The theoretical health benefits of raw milk have never withstood scientific scrutiny. Conversely, the fact that raw milk presents a substantially greater inherent risk of infectious disease has been documented repeatedly. Numerous articles have reported that pasteurization has either no effect or practically no effect on the major nutrients in milk. These reports also document that pasteurization has little or no effect on milk's protein, minerals, riboflavin, fat, carbohydrate, niacin, pantothenic acid, vitamin B_6, vitamin A, vitamin D, vitamin E, and vitamin K (Rej. 19). Also, a recent investigation found that pasteurization of human milk

profoundly reduces the number of bacteria but does not significantly affect the milk's immunological factors (Re. 20). Based upon this and related information contained in the administrative record, FDA concludes that pasteurization does not significantly change the nutritive or immunologic value of milk and that the risks associated with the consumption of raw milk, including certified raw milk, outweigh any alleged health benefits that may arise from consuming raw milk and certified raw milk.

III. Alternatives to a Ban

In proposing to require raw milk and raw milk products in final package form for direct human consumption, including certified raw milk, to be pasteurized before being shipped in interstate commerce, the agency requested comments on possible alternatives to such a requirement. The overwhelming majority of the comments that addressed alternatives opposed any approach other than ban.

One alternative the agency suggested for comment was the use of labeling to ensure that consumers who voluntarily choose to consume raw milk are informed as to the risks inherent in that choice. Although Stueve indicated support for the concept of consumer choice in its comments, no appropriate labeling was suggested in comments on the proposed rule; in fact, all comments (including Stueve) opposed labeling. The effectiveness of labeling to address a public health problem like that presented by the consumption of raw milk and raw milk products was questioned on several grounds. For example, the risk of infection from consuming raw milk and raw milk products does not arise from the misuse or abuse of the product but rather from its customary food use. Consumers are not generally expected to take any additional steps to reduce the potential risk and are poorly equipped to assess the likelihood of infection. The infirm, the elderly, and the young are particularly susceptible to serious risks of infection presented by consuming raw milk and raw milk products and, in many cases, may not have the ability or the opportunity to understand the risks identifed in labeling. For these reasons, the agency concludes that labeling is not an acceptable alternative approach.

The agency also requested comments on whether available laboratory methods and analytical methodologies would permit rapid detection of harmful bacteria and could be used either alone or in conjunction with labeling as an alternative to banning raw milk and raw milk products in interstate commerce.

In reponse, Stueve and Flavorcraft, Inc., who objected to the pasteurization requirement, identified several possible methodologies, each of which is too time consuming (no shorter than 24 hours in duration) to be of practical value in the dairy industry. In addition to the problems noted above (Section II. C), the short shelf life of milk and the existence of multiple organisms that may pose human health concerns remain major obstacles to relying on a system designed to detect microorganisms. Regarding this subject, the agency agrees with the comment of the American Academy of Pediatrics: "The fact is that there is no laboratory test available that will simultaneously and instantaneously screen for brucellosis, tuberculosis, salmonellosis, listeriosis * * *." Existing screening technologies are an inadequate alternative to pasteurization as a means of ensuring the safety of milk and milk products (Ref. 17).

IV. Conclusion

As noted in Section I. A, most milk and milk products in interstate commerce are pasteurized. Some unpasteurized milk and milk products, particularly certified raw milk and raw milk products, are currently shipped in interstate commerce. As noted in the preamble to the proposal, however, the amount of such products in interstate commerce is small. Currently, Stueve is the only producer of certified raw milk in the United States. Stueve distributes its raw milk products primarily within the State of California. Accordingly, the health problems associated with raw milk and raw milk products appear, as Stueve contends, to be associated mostly with products shipped intrastate. For this reason, FDA has been of the view that State and local authorities may be better situated to deal with the public health problems attributable to unpasteurized milk and that an interstate ban would have a limited effect on these problems (Ref. 18).

Comments disagreed with this view, contending, in effect, that any form of raw milk in interstate commerce poses a health risk and, therefore, Federal regulation in this area is appropriate. The Court held a similar view: "Federal regulation is warranted regardless of the absolute volume of certified raw milk sold interstate." (653 F. Supp. at 1240.)

The difference in viewpoint between the agency and the Court and comments received has concerned the appropriate way to use Federal resources and the level of government that is best suited to dealing with problems created by raw milk, not the fact that unpasteurized milk and milk products present health risks. FDA recognizes that the pasteurization requirement for raw milk and raw milk products shipped in interstate commerce is legally and scientifically defensible. In light of the opinions expressed in the comments; the documented risks presented by raw milk, including raw milk and raw milk products; the fact that such products are, indeed, shipped in interstate commerce; and the likelihood that a pasteurization requirement for such products in interstate commerce will result in some benefit to the public health, FDA has concluded that the use of Federal authority and resources to eliminate health problems caused by the interstate shipment of raw milk is justifiable. Accordingly, the agency believes that a final rule requiring the pasteurization of all raw milk and raw milk products in interstate commerce should issue in this proceeding. The final rule does not apply to the interstate transportation of raw (unpasteurized) milk to dairy processing plants for pasteurization or to raw milk and raw milk products in intrastate commerce. The final rule also does not apply to milk and milk products for which an alternative to pasteurization is established in a standard of identity regulation published pursuant to 21 U.S.C. 341.

V. Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the proposed rule of June 11, 1987 (52 FR 22340). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

VI. Economic Impact

In accordance with the Regulatory Flexibility Act, the agency previously considered the potential effects that this rule would have on small entities, including small businesses. In accordance with section 605(b) of the Regulatory Flexibility Act, the agency has determined that no significant impact on a substantial number of small entities would derive from this action. FDA has not received any new information or comments that would alter its previous determination.

In accordance with Executive Order 12291, FDA has previously analyzed the potential economic effects of this final rule. As announced in the proposal, the agency has determined that the rule is not a major rule as defined by the Order. The agency has not received any new

information or comments that would alter its previous determination.

VII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Morrison, F. R., Research Program Specialist, Department of Health Services, Health and Welfare Agency, State of California, letter to Paul M. Fleiss, July 7, 1983, Re: "Attack rates for *S. dublin* Infection and Raw Milk Use."
2. Richwald, G. A., et al., UCLA School of Public Health, "An Assessment of Risks Associated with Raw Milk Consumption in California," March 31, 1986.
3. Lyman, D. O., Chief, Health Protection Division, Department of Health Services, Health and Welfare Agency, State of California, letter and report to FDA, August 30, 1984, Re: "Disease in California Associated with Certified Raw Milk."
4. Potter, M. E., et al., "Unpasteurized Milk, The Hazards of a Health Fetish," *Journal of the American Medical Association*, 252 (15): 2048–2052, October 19, 1984.
5. Chin, J., "Raw Milk: A Continuing Vehicle for the Transmission of Infectious Disease Agents in the United States," *Journal of Infectious Diseases*, 146 (3): 440–441, September 1982.
6. Morbidity and Mortality Weekly Report, "*Salmonella dublin* and Raw Milk Consumption—California," April 13, 1984, Centers for Disease Control, HHS/PHS.
7. Werner, S. B., et al., "Association Between Raw Milk and Human *Salmonella dublin* Infection," *British Medical Journal*, July 28, 1979.
8. Fierer, J., "Invasive *Salmonella dublin* Infections Associated with Drinking Raw Milk," *Western Journal of Medicine*, 138 (5): 765–768, May 1983.
9. Potter, M. E., Veterinary Epidemiologist, Center for Infectious Diseases, Centers for Disease Control, HHS/PHS, Presentation on the Adverse Health Effects on Consuming Raw or Unpasteurized Milk, September 1984.
10. Foege, W. H., Assistant Surgeon General, Director, Centers for Disease Control, HHS/PHS, letter to J. C. Bolton, May 27, 1983, Re: "The Safety of Raw Milk and Its Association With Human Diseases."
11. Sharp, J. C. M., Consultant Epidemiologist, Communicable Diseases (Scotland) Unit, Ruchill Hospital, Glasgow, letter to M. E. Potter, Centers for Disease Control, HHS/PHS, May 29, 1984, Re: "Experience in Scotland of Milk-Borne Infection Subsequent to the Introduction of Compulsory Pasteurization on August 1, 1983."
12. Werner, S. B., Medical Epidemiologist, Infectious Disease Section, Department of Health Services, Health and Welfare Agency, State of California, letter to J. Bolton, July 12, 1983, Re: "Statistics on How the Risk of Contracting *S. dublin* Infections in Association With Raw Milk Exposure Compares With that in Persons Not Using Raw Milk."
13. Currier, R. W., "Raw Milk and Human Gastrointestinal Disease: Problems Resulting from Legalized Sale of 'Certified Raw Milk,'" *Journal of Public Health Policy*, pp. 228–234, September 1981.
14. Korlath, J., et al., "A Point-Source Outbreak of Campylobacteriosis Associated with Consumption of Raw Milk," *Journal of Infectious Diseases*, 152 (3): 592–596, 1985.
15. Osterholm, M., et al., "An Outlook of a New Recognized Chronic Diarrhea Syndrome Associated with Raw Milk," *JAMA*, 256 (4): 484–490, 1986.
16. Werner, S. Benson, Department of Health Services, Health and Welfare Agency, State of California, letter dated July 10, 1987, to Dockets Management Branch, FDA, Re: "Requirements Affecting Raw Milk for Human Consumption in Interstate Commerce—Docket No. 81N–204C."
17. Strain, James E., Executive Director, American Academy of Pediatrics, letter to Dockets Management Branch, FDA, July 13, 1987, Re: "Requirements Affecting Raw Milk for Human Consumption in Interstate Commerce—Docket No. 81N–204C."
18. Letter dated March 15, 1985, from the Commissioner of Food and Drugs to Sidney M. Wolfe.
19. National Dairy Council, statement relative to the comparison of the nutrient content of raw versus pasteurized milk products.
20. Goldbaum, R. M., et al, "Rapid High-Temperature Treatment of Human Milk," *Journal of Pediatrics*, 104 (3): 380–385, March 1984.

List of Subjects in 21 CFR Part 1240

Communicable diseases, Public health, Travel restrictions, Water supply.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and the Public Health Service Act, it is proposed that Part 1240 be amended as follows:

PART 1240—CONTROL OF COMMUNICABLE DISEASES

1. The authority citation for 21 CFR Part 1240 is revised to read as follows:

Authority: Secs. 215, 311, 361, 368, 58 Stat. 690, 693, 703 as amended, 706 (42 U.S.C. 216, 243, 264, 271); 21 CFR 5.10, 5.11.

2. By adding new § 1240.61 to Subpart D to read as follows:

§ 1240.61 Mandatory pasteurization for all milk and milk products in final package form intended for direct human consumption.

(a) No person shall cause to be delivered into interstate commerce or shall sell, otherwise distribute, or hold for sale or other distribution after shipment in interstate commerce any milk or milk product in final package form for direct human consumption that has not been pasteurized except where alternative procedures are provided by regulation, such as Part 133 of this chapter for curing of certain cheese varieties.

(b) Except as provided in paragraphs (c) and (d) of this section, the terms "pasteurization," "pasteurized," and similar terms shall mean the process of heating every particle of milk and milk product in properly designed and operated equipment to one of the temperatures given in the following table and held continuously at or above that temperature for at least the corresponding specified time:

Temperature	Time
145 °F (63 °C) [1]	30 minutes.
161 °F (72 °C) [1]	15 seconds.
191 °F (89 °C)	1 second.

[1] If the fat content of the milk product is 10 percent or more, or if it contains added sweeteners, the specified temperature shall be increased by 5 °F (3 °C).

Temperature	Time
194 °F (90 °C)	0.5 second.
201 °F (94 °C)	0.1 second.
204 °F (96 °C)	0.05 second.
212 °F (100 °C)	0.01 second.

(c) Eggnog shall be heated to at least the following temperature and time specification:

Temperature	Time
155 °F (69 °C)	30 minutes.
175 °F (80 °C)	25 seconds.
180 °F (83 °C)	15 seconds.

(d) Neither paragraph (b) nor (c) of this section shall be construed as barring any other pasteurization process that has been recognized by the Food and Drug Administration to be equally efficient in the destruction of microbial organisms of public health significance.

Frank E. Young,

Commissioner of Food and Drugs.

Otis R. Bowen,

Secretary of Health and Human Services.

Dated: August 6, 1987.

[FR Doc. 87–18190 Filed 8–6–87; 3:13 pm]

BILLING CODE 4160-01-M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Parts 22 and 51

[108.863]

Schedule of Fees for Consular Services and Refund of Fees

AGENCY: Department of State, Bureau of Consular Affairs.

ACTION: Final rule.

SUMMARY: The Department of State is amending its regulations to provide that refunds of fees or other payments for

amounts totaling $5.00 or less will not be made unless specifically requested by the person who has overpaid. The amendment will eliminate the cost to the Department and to the Treasury of processing and mailing checks that is not commensurate with the amounts involved. The amendment to the regulation will save the Government a considerable amount of money and time.

EFFECTIVE DATE: August 10, 1987.

FOR FURTHER INFORMATION CONTACT: William B. Wharton, Director, Office of Citizenship Appeals and Legal Assistance, Telephone (202) 326-6172.

SUPPLEMENTARY INFORMATION: Present regulations provide for the refund of any excess fees submitted to the Department or posts abroad with a passport application or a request for other consular services. When individuals remit payments in excess of the amount due, the Department deposits the payments directly into the U.S. Treasury and then requests the Treasury to refund any excess.

It has been established that refunds of $5.00 or less are not cost effective. Approximately 65 percent of refunds are for overpayments of two dollars or less. The cost of processing these refunds far exceeds the amounts to be refunded. The Comptroller General in Decision B-220942 has approved that refunds of overpayments of $5.00 or less should not be made unless specifically claimed.

Under the provisions of the Regulatory Flexibility Act (5 U.S.C. 301 *et. seq.*), it is certified that this rule will not have a significant economic impact on a substantial number of small entities.

The provisions of the Paperwork Reduction Act do not apply. (44 U.S.C. Ch. 35). On February 25, 1987, at 52 FR 5549 the Department of State published a Proposed Rule to amend the regulations at 22 CFR 22.6 and 51.64. Interested parties were invited to submit written comments by April 27, 1987. No comments were received.

List of Subjects

22 CFR Part 22

Foreign Service, Passports and visas.

22 CFR Part 51

Passports and visas.

PART 22—[AMENDED]

1. The authority citation for Part 22 is revised to read as follows:

Authority: Secs. 3, 4, 63 Stat. 111, as amended; 22 U.S.C. 211a; 214, 2651, 2658, 3921, 4219; 31 U.S.C. 9701; E.O. 10718, 22 FR 4632; E.O. 11295, 31 FR 10603; 3 CFR, 1954–1958 Comp. p. 507 unless otherwise noted.

2. Section 22.6 is revised to read as follows:

§ 22.6 Refund of fees.

(a) Fees which have been collected for deposit in the Treasury are refundable:

(1) As specifically authorized by law (See 22 U.S.C. 214a concerning passport fees erroneously charged persons excused from payment, 22 U.S.C. 218 concerning passport fees in cases where the appropriate representative in the United States of a foreign government refuses a visa and 46 U.S.C. 8 concerning fees improperly imposed on vessels or seamen);

(2) When the principal officer at the consular post where the fee was collected (or the officer in charge of the consular section at a combined diplomatic/consular post) finds upon review of the facts that the collection was erroneous under applicable law; and

(3) Where determination is made by the Department of State with a view to payment of a refunded in the United States in cases which it is impracticable to have the facts reviewed and refunded effected by and at the direction of the responsible consular office.

See § 13.1 of this chapter concerning refunds of fees improperly exacted by consular officers who have neglected to return the same.

(b) Refunds of $5.00 or less will not be paid to the remitter unless a claim is specifically filed at the time of payment for the excess amount. An automatic refund on overpayments due to misinformation or mistakes on the part of the Department of State will be made.

PART 51—[AMENDED]

3. The authority citation for Part 51 is revised to read as follows:

Authority: 44 Stat. 887; 63 Stat. 111, as amended; 22 U.S.C 211a–218, 2651, 2658; E.O. 11295, 31 FR 10603; 3 CFR, 1966–1970 Comp. p. 507, unless otherwise noted.

4. In § 51.64 a new paragraph (e) is being added:

§ 51.64 Refunds.

* * * * *

(e) For procedures on refunds of $5.00 or less see § 22.6(b) of this title.

Date: July 17, 1987.

For the Secretary of State.

Joan M. Clark,

Assistant Secretary, Bureau of Consular Affairs.

[FR Doc. 87-18083 Filed 8-7-87; 8:45 am]

BILLING CODE 4710-06-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Approval of an Amendment to the Ohio Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval of a proposed amendment submitted by the State of Ohio as a modification to its permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendment consists of changes to Ohio's Reclamation Board of Review procedural rules. OSMRE published a notice in the Federal Register on April 10, 1987 (52 FR 11692), announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment. The public comment period ended May 11, 1987. A public hearing was not held because no one requested to testify.

After providing opportunity for public comment and conducting a thorough review of the program amendment, the Director has determined that the amendment meets the requirements of SMCRA and the Federal regulations. Thus the Director is approving this amendment.

EFFECTIVE DATE: August 10, 1987.

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43232; Telephone: (614) 866-0578.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program

On August 16, 1982, the Ohio program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background, revisions, modifications, and amendments to the Ohio program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program can be found in the August 10, 1982 Federal Register (47 FR 34688). Subsequent actions concerning the conditions of approval and program

amendments are identified at 30 CFR 935.11 and 935.15.

II. Submission of Proposed Amendment

By letter dated January 28, 1987, the Ohio Department of Natural Resources, Division of Reclamation submitted proposed amendments to the Reclamation Board of Review (RBR) rules at Ohio Administrative Code (OAC) sections 1513–3–02, 1513–3–03, 1513–3–04, 1513–3–08, 1513–3–19, and 1513–3–21. The proposed amendments were submitted to satisfy an OSMRE requirement that the standards used by the RBR to award costs and attorney's fees be as effective as Federal counterparts. The amendments were also submitted to reflect changes in statutory language of Ohio Revised Code (ORC) section 1513.02(F)(3) and to include other changes in RBR procedures.

The April 10, 1987 **Federal Register** announced receipt of the proposed amendment and invited public comment on its adequacy (52 FR 11692).

III. Summary Description of Proposed Amendment

The proposed changes include amending OAC 1513–3–02(D) (5) and (6), 1513–3–04(D)(6) and 1513–3–19(F) (1), (2), (3), and (4) to reflect changes in the statutory language of O.R.C. 1513.02(F)(3). The amendments change "an escrow account" to "a penalty fund." OAC 1513–3–03(F) is amended to include langauge prohibiting ex parte communications between the Board and parties, or representatives of parties, regarding substantive issues of a pending case.

OAC 1513–3–08(G) is amended to include language prohibiting the RBR from granting temporary relief in cases where such relief would result in the issuance of a coal mining and reclamation permit.

The amendments proposed in OAC 1513–3–21(E) (3), (4), and (5) were required by OSMRE so that the Ohio rule would be no less effective than the Federal counterpart regulations. These amendments set forth the standards which the Board will apply in determining whether an award of costs and attorneys' fees is appropriate in a case before the RBR.

IV. Public Comments

The public comment period announced in the April 10, 1987 **Federal Register** ended May 11, 1987. No comments were received. The public hearing scheduled for April 30, 1987 was not held since no person requested an opportunity to testify at the hearing.

V. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment submitted to OSMRE by the State of Ohio on January 28, 1987. All revisions are found to be no less stringent than SMCRA and no less effective than the Federal regulations.

VI. Director's Decision

Based upon the findings, the Director is approving the amendment as submitted on January 28, 1987 and is amending Part 935 of 30 CFR Chapter VII to implement this decision.

VII. Procedural Requirements

1. Compliance with the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 935

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: August 3, 1987.

Brent Wahlquist,

Acting Deputy Director, Operations and Technical Services, Office of Surface Mining Reclamation and Enforcement.

PART 937—OHIO

30 CFR Part 935 is amended as follows:

1. The authority citation for Part 937 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. Paragraph (a) of § 935.12 is removed and reserved, to read as follows:

§ 935.12 State program provisions disapproved.

* * * * *

(a) [Reserved]

3. Paragraph (cc) is added to § 935.15 to read as follows: § 935.15 Approval of regulatory program amendments.

* * * * *

(cc) The following amendments submitted to OSMRE on January 28, 1987, were approved effective August 10, 1987: Ohio Administrative Code sections 1513–3–02, 1513–3–03, 1513–3–04, 1513–3–08, 1513–3–19, and 1513–3–21.

4. Paragraph (a) of § 935.16 is removed and reserved, to read as follows:

§ 935.16 Required program amendments

* * * * *

(a) [Reserved]

[FR Doc. 87–18040 Filed 8–7–87; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 09–87–14]

Special Local Regulations; East River Classic, Niagara River, North Tonawanda, NY

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the East River Classic to be held on the Niagara River. This event will be held on 13 September 1987. The regulations are needed to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATES: These regulations are effective from 10:00 A.M. until 1:30 P.M. on September 13, 1987.

FOR FURTHER INFORMATION CONTACT: CWO Gerald M. Trackim, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522–3982.

SUPPLEMENTARY INFORMATION: On June 11, 1987 the Coast Guard published a notice of proposed rule making in the Federal Register for these regulations [52 FR 22347). Interested persons were requested to submit comments and no comments were received.

Drafting Information

The drafters of this regulation are CWO Gerald M. Trackim, project officer, Office of Search and Rescue and LCDR C.V. Mosebach, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The East River Classic will be conducted on the Niagara River on 13 September 1987. This event will have an estimated 50 power boats which could pose hazards to navigation in the area. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (U.S. COAST Guard Station Buffalo, NY).

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectator craft into the area for the duration of the event. This should have a favorable impact on commercial facilities providing services to the spectators. Any impact on commercial traffic in the area will be negligible.

Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended to add a temporary § 100.35–0914 to read as follows:

§ 100.35–0914 East River Classic—Niagara River.

(a) *Regulated area:* That portion of the east branch of the Niagara River, from the South Grand Island Bridge to an east-west line from the south entrance of the Niagara River Yacht Club, including the waters surrounding Tonawanda island.

(b) *Special local regulations.* (1) The above area will be closed to navigation or anchorage from 10:00 a.m. (local time) until 1:30 p.m. on 13 September 1987.

(2) Vessels desiring to transit the restricted area may do so only with prior approval of the Patrol Commander (U.S. Coast Guard Station, Buffalo, NY) and when so directed by that officer. The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Vessels will be operated at a no wake speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. These rules shall not apply to participants in the event or vessels of the patrol, in the performance of their assigned duties.

(3) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with the orders of the Patrol Vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) Effective Dates: These regulations will become effective and terminate on 13 September 1987.

Dated: July 29, 1987.

A.M. Danielsen,

RADM, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 87–18134 Filed 8–7–87; 8:45 am]

BILLING CODE 4910–14–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Parts 1250 and 1258

Freedom of Information Act Procedures

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: This rule implements the Freedom of Information Reform Act (Pub. L. 99–570) as it relates to requests for NARA administrative records. This rule does not affect requests by the public for records created by other Federal agencies and transferred to the custody of the Archivist of the United States.

This rule also makes a minor unrelated change to the NARA fee schedule published in 36 CFR Part 1258 to remove the copyflow process as a published reproduction service. Copy flow reproductions (paper copies made from microfilm) are processed by contractors whose prices are subject to change at any time. In accordance with 36 CFR 1258.12(i), NARA will quote the price in effect at the time a copyflow reproduction is requested

EFFECTIVE DATE: The rule is effective August 10, 1987.

FOR FURTHER INFORMATION CONTACT: Adrienne C. Thomas or Nancy Allard at 202–523–3214 (FTS 523–3214).

SUPPLEMENTARY INFORMATION: NARA issued a notice of proposed rulemaking on April 24, 1987 [52 FR 13724]. Comments were received from two public citizens groups and one Government agency.

One commenter contended that 44 U.S.C. 2116(c), which applies to fees charged for records transferred to the Archivist's custody, does not satisfy the test specified in the Office of Management and Budget (OMB) guidelines implementing the Freedom of Information Reform Act of 1986 (Reform Act) for a qualifying statute (52 FR 10012–10020). For the following reasons, NARA rejects this contention.

First, the plain language of the Reform Act supports the NARA position that the Reform Act does not prohibit NARA from charging requesters for the cost of reproducing records transferred to NARA's custody. Section 552(a)(4)(A)(vi) of Title 5, United States Code, states that: "Nothing in this subparagraph [meaning 5 U.S.C. 552(a)(4)(A)] shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records." Breaking this provision down into its component parts, (a)(4)(A)(vi) sets forth three criteria which must be satisfied by an agency's fee statute before the Reform Act's fee and fee waiver provisions will give way: (1) The agency's fee statute must provide for the charging of fees for the reproduction of records controlled by the agency; (2) the statute must provide for the setting of the level of fees to be charged; and, (3), the statute must provide for the reproduction of "particular types of records."

Section 2116(c) of Title 44, United States Code, satisfies all three criteria. It states, in part, that:

> The Archivist may charge a fee set to recover the costs for making or authenticating copies or reproductions of materials transferred to his custody. Such fee shall be fixed by the Archivist at a level which will recover, so far as practicable, all elements of such costs, and may, in the Archivist's discretion, include increments for the estimated replacement cost of equipment.

The first criterion set by the Reform Act for determining whether an agency's fee provisions supersede the Freedom of Information Act's (FOIA) fee provisions is satisfied easily by 44 U.S.C. 2116(c), which expressly states that the Archivist "* * * may charge a fee * * *." for reproducing records in his custody. The argument that 44 U.S.C. 2116(c) does not supersede the FOIA's fee and fee waiver provisions, as set forth in the Reform Act, "because it merely permits, but does not require the NARA to establish fees," misconstrues the plain language of the Reform Act. Nowhere does the Reform Act state that an agency's fee statute must require fees to be charged or collected, only that the agency's fee statute "provide" for the charging of fees.

Section 2116(c) also satisfies the other two criteria laid out in 5 U.S.C. 552(a)(4)(A)(vi). The second criterion requires that a fee statute provide for setting the level of fees to be charged. The language in 44 U.S.C. 2116(c), "[s]uch fee shall be fixed * * * at a level which will recover, so far as practicable, all elements of such costs, and may * * * include increments for the estimated replacement cost of equipment," meets this requirement. The third criterion requires that a fee statute designate particular types of records. Section 2116(c) does this by authorizing the Archivist to charge fees only for the reproduction of "* * * materials transferred to his custody."

Looking at the legislative history of 44 U.S.C. 2116(c), it is evident that the word "may" has been used as a grant of power, and not as a permissive action. Prior to 1936, the Archivist did not possess the authority even to provide requesters with copies of the records in his custody. In that year, however, Pub. L. 74–756 (49 Stat. 1821), the predecessor to the present 44 U.S.C. 2116(c), was enacted granting this authority to the Archivist; it stated, in part, that:

> The Archivist * * * may make or reproduce and furnish * * * copies of any of the * * * archives or records in his custody that are not exempt from examination as confidential or protected by subsisting copyright, and may charge therefore a fee sufficient to cover the cost or expenses thereof.

This statute appears to be permissive in nature, because it uses "may" instead of "shall". However, there is no question that, if an individual had appeared at the National Archives Building in 1937, had requested copies of records in the Archivists' custody that were not exempt from examination or protected by copyright, and had paid the copying fee, the Archivist would have been required to provide copies of the records requested. For this reason, Congress' use of the word "may", both in the 1936 Act described above and in 44 U.S.C. 2116(c), must be treated as a grant of power and not of discretion.

NARA's reading of the phrase, "[t]he Archivist may charge a fee * * *," is supported by a careful reading of the rest of 44 U.S.C. 2116(c). In addition to stating that the Archivist is authorized to charge a fee for the reproduction of records transferred to his custody, this statute also states that:

> Such fee shall be fixed by the Archivist at a level which will recover, so far as practicable, all elements of such costs, and may, in the Archivist's discretion, include increments for the estimated replacement cost of equipment.

If, as the commenter states, the word "may" must always be read as investing the empowered official with discretion, then Congress' use of the phrase, "in the Archivist's discretion," is superfluous. NARA does not assume this to be the case, however. It is apparent, from the plain language of 44 U.S.C. 2116, that Congress, in expressly granting to the Archivist the discretion to include certain costs in the fee charged for the reproduction of records transferred to his custody, saw a need to draw a distinction between the Archivist's discretion in this regard and his lack of discretion in deciding whether to charge a fee at all.

NARA believes that section 6b of the OMB guidelines strengthens NARA's position regarding 44 U.S.C. 2116(c). This section states, in its entirety, that:

> A "statute specifically providing for setting the level of fees for particular types of records" [5 U.S.C. 552(a)(4)(A)(vi)] means any statute that specifically requires a government agency, such as the Government Printing Office (GPO) or the National Technical Information Service (NTIS), to set the level of fees for particular types of records, in order to:
>
> (1) Serve both the general public and private sector organizations by conveniently making available government information;
>
> (2) Ensure that groups and individuals pay the cost of publications and other services which are for their special use so that these costs are not borne by the general taxpaying public;
>
> (3) Operate an information dissemination activity on a self-sustaining basis to the maximum extent possible; or
>
> (4) Return revenue to the Treasury for defraying, wholly or in part, appropriated funds used to pay the cost of disseminating government information. Statutes, such as the User Fee Statute, which only provide a general discussion of fees without explicitly requiring that an agency set and collect fees for particular documents do not supersede the Freedom of Information Act under section (a)(4)(A)(vi) of that statute.

NARA finds the distinction drawn by the OMB between the fee statute of the NTIS, on the one hand, and the User Fee Statute, 31 U.S.C. 9701, on the other, to be especially pertinent. The NTIS fee statute, codified at 15 U.S.C. 1153, states, in part, that:

> The Secretary [of Commerce] is authorized to . . . establish . . . a schedule or schedules of reasonable fees or charges for . . . documents or other publications furnished under this chapter. It is the policy of this chapter, to the fullest extent feasible and consistent with the objectives of this chapter, that . . . the general public shall not bear the cost of publications and other services which are for the special use and benefit of private groups and individuals . . . .

Just like 44 U.S.C. 2116(c), 15 U.S.C. 1153 is a statute specifically providing for setting the level of fees for particular types of records.

Finally, NARA's conclusion that 44 U.S.C. 2116(c) supersedes the Reform Act's fee and fee waiver provisions is supported by contrasting this statute with the User Fee Statute, which states, in pertinent part, that: "The head of each agency * * * may prescribe regulations establishing the charge for a service or thing of value provided by the agency." (31 U.S.C. 9701(b)). The User Fee Statute clearly fails to satisfy the three criteria set forth in 5 U.S.C. 552(a)(4)(A)(vi) and identified above. In contrast, Congress specifically provided for setting the level of fees for particular types of records, records transferred to the Archivist's custody, in 44 U.S.C. 2116.

For all of the reasons set forth above, NARA cannot accept the commenter's contention that 44 U.S.C. 2116(c) fails to qualify as a superseding statute under the Reform Act.

Another commenter contended that the OMB Guidelines are in certain instances not supported by, or are contrary to, the legislative history of the Reform Act. The commenter suggested that the OMB Guidelines, insofar as they are incorporated into NARA's regulation, be changed. Specifically, the commenter suggested alternative definitions for "commercial use," "educational institution," and "representatives of the news media."

NARA rejects the commenter's suggested alternative definitions. Congress made it clear that each agency should develop regulations based on OMB's guidelines for a uniform schedule of fees. NARA's regulations are in conformance with OMB's guidelines on this section, and therefore are considered not only appropriate but also consistent with the requirements of the Reform Act.

The commenter also claimed that NARA's procedure in § 1250.42(a)(1) for determining fee waive eligibility is cumbersome and elaborate. We believe that the commenter misunderstood the proposed procedure whereby NARA may request clarification of a requester's fee category when the requester claims to belong to a category for which certain fees are waived, e.g., news media representative or educational institution, but provides no justification for that category. NARA does not intend to question requesters who provide clear evidence that their request falls into a particular category. We have modified § 1250.42(a)(i) to clarify when NARA will request additional information.

A Government agency suggested that NARA consider incorporating into its final rule the Department of Justice guidelines for evaluating fee waiver or reduction requests. NARA has concluded not to incorporate the Department of Justice guidelines in its final rule. The guidelines were not available to NARA during drafting of the proposed rule, and to submit a proposed change in the rule for public comment at this date would only further delay issuance of the final rule. Further, NARA has traditionally received few requests for fee waivers and anticipates no future change in this pattern of requests. Should NARA determine at a future date to incorporate additional guidelines governing the granting of fee waivers, comments from the public will be sought before issuance of a final rule.

This rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on small business entities.

List of Subjects

36 CFR Part 1250

Freedom of information.

36 CFR Part 1258

Archives and records.

For the reasons set forth in the preamble, Charter XII of Title 36 is amended as follows:

PART 1250—PUBLIC AVAILABILITY OF NARA ADMINISTRATIVE RECORDS AND INFORMATIONAL MATERIALS

1. The authority citation for Part 1250 continues to read as follows:

Authority: 44 U.S.C. 2104(a); 5 U.S.C. 552.

2. Section 1250.12 is revised to read as follows:

§ 1250.12 Availability of records.

NARA administrative records are available to the greatest extent possible in keeping with the spirit and intent of the FOIA. Requesters should address their requests to the office designated in § 1250.54. The person making the request need not have a particular interest in the subject matter, nor provide justification for the request except to the extent necessary to determine the requester's category for fee assessment purposes as explained in § 1250.42. The FOIA requirement that records be available to the public refers only to records in existence when the request is submitted. The Act does not require an agency to compile or create information or records in response to a FOIA request.

§ 1250.38 through 1250.46 [Removed]

3. In Subpart C, § 1250.38 through 1250.46 are removed and § 1250.30 is revised to read as follows:

§ 1250.30 General.

NARA makes available for public inspection and copying the materials described in paragraph (a)(2) of the FOIA (5 U.S.C. 552(a)(2)), which are listed in § 1250.32, and an Index of those materials as described in § 1250.34, at the National Archives Building located at 7th and Pennsylvania Avenue, NW., Washington, DC. Copying services are available at fees specified in § 1250.40.

§§ 1250.50—1250.80 (Subparts D Through F)—[Redesignated as Subparts E Through G]

4. Subparts D through F, consisting of § 1250.50 through 1250.80, are redesignated as Subparts E through G. The respective section numbers in each subpart are unchanged.

5. A new Subpart D—Fees, consisting of § 1250.37 through 1250.46, is added to read as follows:

Subpart D—Fees

Sec.
1250.37 Definitions.
1250.38 Search fees.
1250.39 Review fees.
1250.40 Reproduction fees.
1250.41 Other fees.
1250.42 Fees applicable to categories of requesters.
1250.43 Prepayment of fees.
1250.44 Waiver or reduction of fees.
1250.45 Form of payment.
1250.46 Payment collection.

Subpart D—Fees

§ 1250.37 Definitions.

"Commercial-use requester" means a requester seeking information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

"Educational-institution request" means a request from a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education which operates a program or programs or scholarly research. The request must serve the scholarly research goals of the institution or school rather than the individual goals of the requester. A request from a student in furtherance of the completion of a course of instruction does not qualify as an educational institution request.

"Freelance-journalist" means an individual who qualifies as a representative of the news media because the individual can demonstrate a solid basis for expecting publication through a news organization, even though not actually in its employ. A publication contract would be the clearest proof of a solid basis, but the individual's past publication history may also be considered in demonstrating this solid basis.

"News media representative" means a person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public.

"Non-commercial scientific institution" means an institution that is not operated on a basis that furthers the commercial, trade, or profit interests of any person or organization, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

"Other requesters" means any individual who is not a commercial-use requester, a representative of the news media, a freelance-journalist, or one associated with an educational or non-commercial scientific institution whose research activities conform to the definition above. This term does not include requests from records subjects for records about themselves filed in NARA's systems of records; such requests are handled in accordance with 36 CFR Part 1202.

§ 1250.38 Search fees.

(a) The search fee is $10 per hour or fraction thereof when clerical/administrative staff manually search for records responsive to a request, and $18 per hour or fraction thereof when NARA must use professional staff to manually search for the requested records because clerical/administrative staff would be unable to locate them. The search fee for computerized searches is the wage (plus 16 percent fringe benefits) of the computer operator per hour or fraction thereof plus the actual computer operating costs.

(b) NARA may charge for search time spent in trying to locate NARA records which are responsive to the request regardless of whether or not any responsive records are identified. NARA will not engage in line-by-line search when merely duplicating an entire document is feasible and would prove to be a less expensive and quicker method of complying with the request.

(c) When the search includes nonpersonnel expenditures to locate and identify requested information (e.g., transport or travel costs, etc.), the applicable fee is the direct cost to NARA.

(d) NARA will charge for the aggregate of all time spent in searching for documents responsive to a series of requests when NARA reasonably believes a requester or group of requesters is dividing a request into a series of requests to evade assessment of applicable fees.

§ 1250.39 Review fees.

(a) NARA will not charge review fees for time spent resolving general legal or policy issues regarding the application of exemptions.

(b) The review fee is $24 per hour or fraction thereof, for time spent in activities set forth in paragraphs (d)(1), (d)(2), and (d)(3) of this section.

(c) NARA will charge only commercial-use requesters review fees.

(d) NARA may charge for the time spent engaged in the following activities to determine "review time" subject to review fees:

(1) Time spent examining all documents that are responsive to a request to determine whether any portion of any document is exempt from mandatory disclosure regardless of whether any information is ultimately withheld.

(2) Time spent excising information and otherwise preparing records for release (except preparing the copies that will be made available to the requester).

(3) The aggregate of all time spent in reviewing documents to determine whether any portion of any document is permitted to be withheld when NARA reasonably believes that a requester or group of requesters is dividing a request into a series of requests to evade the assessment of applicable fees.

(d) A fee of $.20 per page will be charged for making working copies of pages from which information must be excised.

§ 1250.40 Reproduction fees.

(a) *Electrostatic reproductions.—(1) Prepared by NARA staff.* Paper reproductions of NARA paper records made by NARA staff will be furnished for $.20 a page.

(2) *Self-service.* At NARA facilities with self-service electrostatic copiers, requesters may make reproductions of released documents for $.10 a page.

(b) *Reproductions from electromagnetic media.* Direct costs to NARA for staff time for programming, computer operations, and printouts or magnetic tape to reproduce the requested data will be charged requesters.

(c) *Other media.* The cost for reproduction of records from or to other media will be provided upon request. NARA will charge the direct costs to NARA of providing the reproduction.

§ 1250.41 Other Fees.

(a) *Mailing costs.* Actual postage and shipping costs will be charged when the requester asks for special methods such as express mail.

(b) *Certification.* A fee of $2.00 will be charged for each certification.

(c) *Interest.* Interest charges on unpaid fees will be charged beginning on the 31st day after billing at the rate prescribed in 31 U.S.C. 3717, and will accrue from the date of the billing.

§ 1250.42 Fees applicable to categories of requesters.

(a) *NARA policy.* (1) NARA will assess fees on the basis of the category of the requester as defined in § 1250.37. The initial request should include sufficient information for NARA to determine the category of the requester. If sufficient information is not provided for NARA to make a determination, NARA will seek clarification from the requester before assigning a requester to a specific category and before beginning to process the request. If a requester disagrees with a NARA category-of-requester determination, this determination may be appealed, following the procedures set forth in § 1250.58.

(2) NARA will not assess fees otherwise chargeable if the aggregate of all applicable fees is less than $10.

(3) If NARA estimates that total applicable search and reproduction charges are likely to exceed $25, NARA will notify the requester of the estimated amount of fees, unless the requester has indicated in advance a willingness to pay fees as high as those anticipated. The requester will be offered the opportunity to confer with a NARA official with the object of reformulating the request to meet the requester's need at a lower cost.

(4) For those requests eligible for 2 hours free search time, NARA may begin charging for computerized search time once the cost of the search (including the operator time and the cost of operating the computer to process the request) equals the equivalent dollar amount of two hours of a manual search by a clerical/administrative employee.

(b) *Commercial-use requesters.* Commercial-use requesters, as defined in § 1250.37, who make requests for reasonably described records will be assessed the following fees:

(1) Search fees as set forth in § 1250.38;

(2) Review fees as set forth in § 1250.39

(3) Reproduction fees as set forth in § 1250.40; and

(4) Other fees as set forth in § 1250.41, as applicable.

(c) *Educational and non-commercial scientific institution requesters.* When NARA receives a request from a qualified educational institution or a non-commercial scientific institution requester, as defined in § 1250.37, for reasonably described records, NARA will assess:

(1) Reproduction costs as set forth in § 1250.40, except the first 100 pages or their equivalent will be provided free; and

(2) Other costs as set forth in § 1250.41, if applicable. NARA will not charge search or review fees.

(d) *Requesters who are qualified representatives of the news media or qualified freelance-journalists.* When NARA receives a request from a qualified representative of the news media or freelance-journalist, as defined

in § 1250.37, for reasonably described records, NARA will assess reproduction fees as set forth in § 1250.40, except the first 100 pages or their equivalent will be provided free. NARA will not charge search or review fees.

(e) *Requests from other requesters.* When NARA receives a request from an individual defined as "other requesters" in § 1250.37 for reasonably described records, NARA will assess:

(1) Search fees as set forth in § 1250.38 for any search time in excess of two hours of manual search or its computerized search equivalent;

(2) Reproduction fees as set forth in § 1250.40, as applicable, except the first 100 pages or their equivalent will be provided free; and

(3) Other fees as set forth in § 1250.41, if applicable.

§ 1250.43 Prepayment of fees.

(a) NARA may require prepayment of all fees when:

(1) Applicable fees are likely to exceed $250, and

(i) The requester has no history of payment;

(ii) After notifying a requester who has a history of prompt payment of FOIA fees of the estimated fees, NARA does not receive satisfactory assurances of full payment: Or

(2) A requester has previously failed to pay a fee and interest charges within 30 days of the date of billing.

(b) The amount of the prepayment will be the anticipated fees for the current request, and if applicable, any previously assessed fees and any interest which have not been received by NARA.

§ 1250.44 Waiver or reduction of fees.

(a) Any request for waiver or reduction of a fee shall be included in the initial letter requesting access to NARA records under § 1250.54. The waiver or reduction request should explain how release of the requested information is likely to benefit the public by contributing significantly to the public understanding of the operations or activities of the government, and why the information is not primarily in the commercial interest of the requester.

(b) Documents shall be furnished without a fee or at a reduced fee if NARA determines that the information is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(c) If NARA denies a request for a waiver or reduction of a fee, the requester may appeal this denial, following the procedures set forth in § 1250.58.

§ 1250.45 Form of payment.

Requesters shall pay fees by check or money order payable to: "National Archives and Records Administration" and addressed to the official named by NARA in its correspondence.

§ 1250.46 Payment collection.

As provided for in the Debt Collection Act of 1982 (Pub. L. 97–365), NARA may employ collection agencies and may disclose information concerning nonpayment of fees to consumer reporting agencies when fees have not been paid within 31 days of billing.

§ 1250.50 [Amended]

6. Section 1250.50 is amended by removing in paragraph (a) the words "Subpart E" and inserting in their place the words "Subpart F".

7. Section 1250.58(c) is revised to read as follows:

§ 1250.58 Appeal within NARA.

* * * * *

(c) The requester shall appeal in writing and include a brief statement of the reasons why NARA should release the records, or in the case of a requester category determination, why the requester should be considered to be a member of a different category, or, if an appeal from a denial of a fee reduction or waiver request, how disclosure of the information is likely to contribute significantly to public understanding of the operations or activities of government and is not a request primarily intended to benefit the commerical, trade, or profit interests of the requester. The appeal letter shall include the words "Freedom of Information Appeal" on both the face of the appeal letter and the envelope, and the requester shall enclose with the appeal letter a copy of the initial request and denial. NARA has 20 workdays after receipt of an appeal to make a determination with respect to the appeal. The 20-workday time limit begins when the Deputy Archivist receives the appeal.

* * * * *

8. Section 1250.70(a)(7) is revised to read as follows:

§ 1250.70 Categories of records exempt from disclosure under the FOIA.

(a) * * *

(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

PART 1258—FEES

9. The authority citation for Part 1258 continues to read:

Authority: 44 U.S.C. 2116(c).

10. Section 1258.2(c)(7) is added to read as follows:

§ 1258.2 Applicability.

* * * * *

(c) * * *

(7) Reproductions of NARA administrative records made in response to FOIA requests under Part 1250 of this chapter. Fees for such reproductions are found in § 1250.40 of this chapter.

* * * * *

§ 1258.12 [Amended]

11. Section 1258.12 is revised by removing in paragraph (c)(3) the words "From negative (copyflow), per foot . . . $0.55".

Dated: July 20, 1987.

Frank G. Burke,

Acting Archivist of the United States.

[FR Doc. 87–18062 Filed 8–7–87; 8:45 am]

BILLING CODE 7515-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-3245-3]

Colorado; Schedule of Compliance for Modification of Hazardous Waste Programs

July 20, 1987.

AGENCY: U.S. Environmental Protection Agency, Region VIII.

ACTION: Notice of Colorado compliance schedule to adopt program modifications.

SUMMARY: On September 22, 1986, EPA promulgated a final rule specifying deadlines for State program modifications, and published requirements for States to be placed on a compliance schedule to adopt the necessary program modifications. EPA is today publishing a compliance schedule for Colorado to modify the State program in accordance with § 271.21(g) to adopt the Federal program modifications.

FOR FURTHER INFORMATION CONTACT: Charles L. Brinkman, Project Officer, (303) 293-1794 8HWM-WM, 999 18th Street, Suite 500, Denver, Colorado 80202-2405.

SUPPLEMENTARY INFORMATION:

A. Background

Final authorization to implement the Federal hazardous waste program within the State is granted by EPA if the Agency finds the State program: (1) Is "equivalent" to the Federal program, (2) is "consistent" with the Federal program and other State programs, and (3) provides for adequate enforcement [section 3006(b)], [40 U.S.C. 6226(b)]. EPA regulations for final authorization appear at 40 CFR 271.1 through 271.24. In order to retain authorization, a State must revise its program to adopt new Federal requirements by the deadlines and procedures specified in 40 CFR 271.21. See 51 FR 33712, September 22, 1986, for a complete discussion of these procedures and deadlines.

B. Colorado

Colorado recieved final authorization of its hazardous waste program on November 2, 1984. (49 FR 41036, October 19, 1984). Colorado also received final authorization to implement its hazardous waste program for the hazardous component of radioactive mixed waste on October 24, 1986, (51 FR 37729, October 24, 1986). Today EPA is publishing a compliance schedule for Colorado to modify its program to reflect the following Federal program requirements:

- Availability of Information, section 3006(f); and,
- Modifications in the Federal Program for Non-HSWA Cluster I including:

Chlorinated Aliphatic Hydrocarbon Listing—48 FR 5308
Listing Warfarin and Zinc Phosphide—49 FR 19922
Lime Stabilized Pickle Liquor Sludge—49 FR 23284
Interim Status Standards—Applicability—49 FR 46095
Corrections to Test Methods Manual—49 FR 47391
Satellite Accumulation—49 FR 49571
Redefinition of Solid Waste—50 FR 614
Interim Status Standard for Landfills—50 FR 16044

The State has agreed to modify its program according to the following schedule:

(1) Complete regulatory revision to provide Colorado authority to implement section 3006(f), August 15, 1987.

(2) Colorado expects to submit an application to EPA for authorization of the above mentioned program revisions by October 1, 1987.

Authority

This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: July 24, 1987.

James Scherer,
Regional Administrator.

[FR Doc. 87-18193 Filed 8-7-87; 8:45 am]
BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-26

[FPMR Temp. Reg. E-88]

Special Buying Services

AGENCY: Federal Supply Service, GSA.

ACTION: Temporary regulation.

SUMMARY: This regulation contains a reinstatement of GSA policy of accepting FEDSTRIP and MILSTRIP requisitions from domestic activities for local purchase items (acquisition advice code (AAC) L) and non-NSN items (a Federal supply group or class only rather than a national stock number).

DATES: *Effective date:* August 10, 1987.

Expiration date: February 1, 1988.

Comments due on or before: October 1, 1987.

ADDRESS: Comments should be addressed to: General Services Administration (FCI), Washington, DC 20406.

FOR FURTHER INFORMATION CONTACT: Mr. Edward W. Kirk, Inventory and Requisition Management Division (703-557-7487).

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) has determined that this is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101-26

Government property management.

Authority: Sec. 205(c) (63 Stat. 390; 40 U.S.C. 486(c)).

In 41 CFR Chapter 101, the following temporary regulation is added to the appendix at the end of Subchapter E to read as follows:

Federal Property Management Regulations

Temporary Regulation E-88

July 20, 1987.

To: Heads of Federal agencies
Subject: Special buying services

1. *Purpose.* This regulation revises the policy concerning special buying services performed by GSA.

2. *Effective date.* This regulation is effective upon publication in the Federal Register.

3. *Expiration date.* This regulation will expire on February 1, 1988, unless sooner superseded or canceled.

4. *Applicability.* The provisions of this regulation apply to all executive agencies.

5. *Background.*

a. GSA reduced the scope of special buying services provided to domestic activities of executive agencies (activities located within the 50 States, the District of Columbia, Puerto Rico, and the Virgin Islands) because of budget constraints. This reduction has

had an adverse effect on GSA's customers; consequently, GSA has decided to reinstate two segments of the special order program.

b. Effective April 20, 1987, GSA reestablished its policy of accepting FEDSTRIP and MILSTRIP requisitions from domestic activities for the following items, but only when advice code 2A (Item is not locally obtainable through manufacture, fabrication or procurement) is cited in card columns 65–66 of the requisition.

(1) Local purchase items (acquisition advice code (AAC) L); and

(2) Non-NSN requisitions (requisitions with a Federal Supply group or class only in the NSN field).

c. GSA will continue to reject requisitions for items which are available from Federal Supply Schedule contractors (AAC I) and terminal items (AAC Y) when received from domestic activities, even if advice code 2A or 2F (Item known to be coded "obsolete" but still required for immediate consumption) is cited.

d. GSA will continue to support the requirements of domestic activities for those items identified as direct delivery under a central contract (AAC H) and nonstock centrally procured (AAC J).

6. *Explanation of changes.* Paragraph (b) of § 101–26.102–1 is revised to read as follows:

(b) Upon request, GSA will perform the purchasing services specified in this Part 101–26; except as shown below.

(1) Requisitions for items identified as local purchase (acquisition advice code (AAC) L) will be accepted from domestic activities (activities located within the 50 States, the District of Columbia, Puerto Rico, and the Virgin Islands) which do not have procurement capability. Requisitions must cite advice code 2A to be accepted.

(2) Requisitions for non-NSN items (a Federal supply class or group only in the NSN field) will be accepted from domestic activities when advice code 2A is cited in the requisition.

(3) Requisitions for items available from Federal Supply Schedule contracts (AAC I) will not be accepted by GSA. Domestic activities are authorized to submit their requirements directly to the contractor.

7. *Effect on other directives.* This regulation supersedes the provisions of § 101–26.102–1(b).

8. *Agency comments and assistance.* Comments or inquiries concerning this regulation should be submitted to the General Services Administration (FCI), Washington, DC 20406, not later than October 1, 1987, for consideration and possible incorporation into a permanent regulation.

T.C. Golden,

Administrator of General Services.

[FR Doc. 87–18079 Filed 8–7–87; 8:45 am]

BILLING CODE 6820–24–M

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41 CFR Part 101–26

[FPMR Amdt. E–262]

Procurement of Motor Vehicles

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This regulation changes the number of consolidated procurements made by GSA each year on behalf of agencies for sedans, station wagons, and light trucks and revises the schedules for agencies to submit orders to GSA for these types of vehicles. The regulation also established a consolidated program for the procurement of medium and heavy trucks and provides for a change in GSA's centralized leasing program. The changes in the consolidated procurement program provided in this regulation are designed to correlate the ordering of vehicles with current production practices in the industry and thereby expedite delivery to Federal agencies.

EFFECTIVE DATE: April 1, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Charles E. Norberg, Automotive Commodity Center (703/557–0562).

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101–26

Government property management.

PART 101–26—PROCUREMENT SOURCES AND PROGRAMS

1. The authority citation for Part 101–26 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

Subpart 101–26.5—GSA Procurement Programs

2. Section 101–26.501 is amended to revise the text identifying standard vehicles in paragraphs (a), (b), and (c), and the introductory text in paragraph (d), as follows:

§ 101–26.501 Purchase of new motor vehicles.

(a) * * *

Sedans, class IA-small, class IB-subcompact, or class II-compact; station wagons, class IB-subcompact or class II-compact vehicles, as described in Federal standard No. 122; and light trucks as defined in Federal standard Nos. 292 and 307. (Federal standards Nos. 122, 292, and 307 as used in this section mean the latest editions.) Requisitions submitted to GSA for motor vehicles shall be in conformance with the requirements of Subpart 101–38.1.

* * * * *

(b) Requisitions submitted to GSA for new passenger vehicles and light trucks shall contain a certification by the agency head or designee that the acquisition is in conformance with Pub. L. 94–163 and Executive Order 12375. The certification may be placed on the requisition or on an appropriate attachment thereto. Agency passenger vehicle requisitions omitting this certification will be processed provided that the certification is forthcoming from the requisitioning agency.

(c) Trucks shall be requisitioned in accordance with the provisions of this § 101–26.501 and the following:

(1) Light trucks in accordance with Federal standard Nos. 292 and 307; and

(2) Medium and heavy trucks in accordance with the latest editions of Federal specification Nos. KKK–T–2107, 2108, 2109, 2110, 2111, and Federal specification No. KKK–B–1579.

(d) Selection of additional systems or equipment in vehicles shall be made by the requiring agency and shall be based on the need to provide for overall safety, efficiency, economy, and suitability of the vehicle for the purposes intended pursuant to § 101–38.104–2.

* * * * *

3. Section 101–26.501–1 is amended by revising paragraphs (a) and (b) to read as follows:

§ 101–26.501–1 General.

* * * * *

(a) DOD shall submit to GSA for procurement its orders for purchase in the United States for all commercial-

type passenger motor vehicles (FSC 2310), including buses and trucks (FSC 2320) up to 11,000 pounds gross vehicle weight (GVW) except the following:

(1) Buses convertible to ambulances;

(2) Trucks convertible to ambulances;

(3) Trucks 4X4, dump, 9,000 GVW with cut-down cab; and

(4) Any commercial trucks above 11,000 pounds GVW.

(b) When it is determined by the ordering activity that requirements for passenger motor vehicles and trucks indicate the need for procurement by buying activities other than GSA, a request for waiver justifying the procurement shall be submitted in writing to the General Services Administration (FCA), Washington, DC 20406. GSA will notify agencies in writing whether a waiver has been granted. Justification may be based on the urgency of need or the fact that the vehicle has unique characteristics, such as special purpose body or equipment, requiring the agency personnel to closely supervise installation of the equipment by the contractor; e.g., when a medical van is to be equipped with Government- or contractor-supplied equipment. Requests for procurement through sources other than GSA will be handled on an individual basis provided full justification is submitted therefore.

* * * * *

4. Section 101–26.501–2 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 101–26.501–2 Consolidated purchase program.

(a) To achieve maximum benefits and economies, GSA (except as noted in § 101–26.501–1(a)), makes consolidated procurement of all motor vehicle types each year as follows:

(1) Two volume procurements of sedans and station wagons of the types covered by Federal standard No. 122, excluding family buys;

(2) Two volume procurements of the types covered by Federal standard Nos. 292 and 307, excluding family buys; and

(3) Three volume procurements of the types covered by Federal specification Nos. KKK–T–2107, 2108, 2109, 2110, 2111, and Federal specification No. KKK–B–1579.

(b) Volume consolidated purchases are made after consolidation of requirements in accordance with the date set forth in § 101–26.501–4(a). Agencies should submit their requirements for the types of vehicles covered by Federal standard Nos. 122, 292, 307, Federal specification Nos. KKK–T–2107, 2108, 2109, 2110, and Federal specification No. KKK–B–1579 that can be competitively procured, to the General Services Administration (FCA), Washington, DC 20406, in time for inclusion in the appropriate consolidated purchase as scheduled in § 101–26.501–4(a).

(c) When justified as indicated in § 101–26.501–4, requirements for sedans, station wagons, and light, medium, and heavy trucks will be consolidated and procured on a monthly basis.

* * * * *

5. Section 101–26.501–3 is amended to revise the introductory paragraph and paragraph (b) to read as follows:

§ 101–26.501–3 Submission of orders.

Orders for all motor vehicles shall be submitted on GSA Form 1781, Motor Vehicle Requisition—Delivery Order, or DD Form 448, Military Interdepartmental Purchase Request (MIPR), to the General Services Administration (FCA), Washington, DC 20406, and shall contain required FEDSTRIP data for mechanized processing. The Department of Defense shall ensure that appropriate MILSTRIP data are entered on DD Form 448.

* * * * *

(b) Requisitions for vehicles within the category of Federal standard Nos. 122, 292, or 307, but for which deviations from such standards are required, unless already waived by the Director, Automotive Commodity Center (FCA), Federal Supply Service, GSA, Washington, DC 20406, shall include with the requisition a justification supporting each deviation from the standards and shall contain a statement of the intended use of the vehicles, including a description of the terrain where the vehicles will be used. Prior approval of deviations shall be indicated on the requisitions by citing the waiver authorization number.

* * * * *

6. Section 101–26.501–4 is amended by revising paragraphs (a) and (b)(2) and removing paragraph (b)(3), as follows:

§ 101–26.501–4 Procurement time schedules.

(a) *Volume consolidated purchases.* Requisitions covering vehicle type included in Federal standard Nos. 122, 292, 307, Federal specification Nos. KKK–T–2107, 2108, 2109, 2110, 2111, and Federal specification No. KKK–B–1579 will be consolidated for volume procurement unless a statement is included justifying the need for delivery other than the delivery times indicated in this section. Requisitions containing a statement of justification will be handled on a monthly basis in accordance with this section, or on an emergency basis in accordance with § 101–26.501–4(c).

TIME SCHEDULE FOR VOLUME CONSOLIDATIONS

Vehicle Category	Consolidation Date
A. Sedans and station wagons of types covered by Federal standard No. 122.	June 1 to Nov. 15
	Nov. 16 to May 31.
B. Light trucks of types covered by Federal standards Nos. 292 and 307.	June 16 to Dec. 1
	Dec. 2 to June 15.
C. Medium and heavy trucks in accordance with Federal specifications Nos. KKK–T–107, 2108, 2109, 2110, 2111, and KKK–B–1579.	March 10 to Aug. 9.
	Aug. 10 to Dec. 15.
	Dec. 16 to March 9.

(b) * * *

(2) Solicitations issued in July for the consolidated purchase of vehicles will cover only the requirements of those executive agencies with requisitions required by § 101–26.501–1 to be placed with GSA. (Submission of requirements for vehicles in categories (i) and (ii), above, is mandatory to the extent provided in § 101–26.501–1.)

7. Section 101–26.501–6 is amended by revising paragraph (c) to read as follows:

§ 101–26.501–6 Forms used in connection with delivery of vehicles.

* * * * *

(c) *Instructions to Consignee Receiving New Motor Vehicles Purchased by General Services Administration (formerly GSA Form 6317).* This information is printed on the reverse of the consignee copy of the delivery order. Personnel responsible for receipt and operation of Government motor vehicles should be familiar with the instructions and information contained in the document entitled "Instructions to Consignee Receiving New Motor Vehicles Purchased by General Services Administration."

8. Section 101–26.501–8 is amended by revising the addresses of manufacturers in paragraph (a), revising paragraph (b), and removing paragraph (c) as follows:

§ 101–26.501–8 Notification of vehicle defects.

* * * * *

(a) * * *

Addresses of Manufacturers

American Motor Corp., Fleet Sales Department, 27777 Franklin Road, Southfield, MI 48034, (for Jeep, Renault, Eagle, and American Motors vehicles only).

LTV Aerospace and Defense Co., AM General Division, 701 West Chippewa Avenue, South Bend, IN 46623. (Formerly AM General of the American Motors Corporation.)

Ford Parts and Service Division, Service Engineering Office, 3000 Schaefer Road, PO Box 1904, Dearborn, MI 48121.

Director of Services, FWD Corporation, 105 East 12th Street, Clintonville, WI 54929.

Navistar International, Inc., 7927 Jones Branch Drive; Suite 400, McLean, VA 22102. (Formerly known as International Harvester Co.)

Chrysler Corporation, Product Investigations and Government Liaison, PO Box 1057, Detroit, MI 48288.

General Motors Corporation:

Chevrolet Motor Division, Service Department, Chevrolet Central Office, 30007 Van Dyke Avenue, Warren, MI 48090.

Buick Motor Division, Service Department, 902 East Hamilton Avenue, Flint, MI 48550.

Oldsmobile Motor Division, Service Department, 920 Townsend Street, Lansing, MI 48921.

Pontiac Motor Division, Service Department, One Pontiac Plaza, Pontiac, MI 48053.

GMC Truck and Bus Group, Federal Government Sales, 31 Judson Street, Pontiac, MI 48058.

Mack Trucks, Inc., 2100 Mack Blvd., PO Box M, Allentown, PA 18105–5000.

Thomas Built Buses, Inc., 1408 Courtesy Road, PO Box 1849, High Point, NC 27261.

Supervisor, Vehicle Service and Safety Programs, Volvo White Truck Corporation, PO Box D–1, Greensboro, NC 27402.

(b) When motor vehicles are manufactured by a concern other than one for which an address is shown in § 101–26.501–8(a) and the address of the manufacturer is not known, agencies shall inform GSA of the vehicle location address. In these cases, agencies shall forward the vehicle location address to the General Services Administration (FCA), Washington, DC 20406. GSA will forward the vehicle location address to the manufacturer or advise the agency concerned.

9. Section 101–26.501–9 is revised to read as follows:

§ 101–26.501–9 Centralized motor vehicle leasing program.

GSA has a centralized leasing program to provide an additional source of motor vehicle support to all Federal agencies. This program relieves Federal agencies that use it from both the time constraints and administrative costs associated with independently entering into lease contracts. The centralized leasing program covers subcompact, compact, and midsize sedans, station wagons, and certain types of light trucks (pickups and vans). Participation in the centralized leasing program is mandatory on all executive agencies of the Federal Government (excluding the Department of Defense and the U.S. Postal Service) within the 48 contiguous States and Washington, DC. However, agencies must obtain GSA authorization to lease in accordance with § 101–39.205 prior to using these established mandatory use contracts. For further information on existing contracts, including vehicles covered, rates, and terms and conditions of the contract(s), contact General Services Administration (FCA), Washington, DC 20406.

Dated: July 16, 1987.

T.C. Golden,

Administrator of General Services.

[FR Doc. 87–18078 Filed 8–7–87; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6654

[ID–943–0704220–10; I–8858]

Public Land Order No. 6648; Idaho, Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order corrects an error which appears in the general heading and summary of Public Land Order No. 6648.

EFFECTIVE DATE: August 10, 1987.

FOR FURTHER INFORMATION CONTACT: William E. Ireland, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706 208–334–1597.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

The title and summary in Public Land Order No. 6648 of May 28, 1987, in FR Doc. 87–12678, published on page 21035 in the issue of Thursday, June 4, 1987, are hereby corrected as follows:

The title of page 21035, which reads "Public Land Order No. 6586; Correction" is hereby corrected to read "Public Land Order No. 6586; Correction."

The summary on page 21035, line 3 which reads "Public Land Order No. 6566" is hereby corrected to read "Public Land Order No. 6586."

J. Steven Griles,

Assistant Secretary of the Interior.

[FR Doc. 87–18040 Filed 8–7–87; 8:45 am]

BILLING CODE 4310-DQ-M

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43 CFR Public Land Order 6653

[NM–943–07–4220–10; NM NM 52905]

Partial Revocation of Public Land Order No. 6525; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes Public Land Order No. 6525 insofar as it affects 3,275.28 acres of public land withdrawn in aid of a proposed land exchange with the Public Service Company of New Mexico. The above 3,275.28 acres will remain closed to surface entry and mining pending transfer to the Navajo Tribe, but have been and will remain open to mineral leasing.

EFFECTIVE DATE: August 10, 1987.

FOR FURTHER INFORMATION CONTACT: Kay Thomas, BLM, New Mexico State Office, P.O. Box 1449, Santa Fe, New Mexico 87504–1449, 505–988–6589.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Order No. 6525, which withdrew public lands in aid of a proposed land exchange with the Public Service Company of New Mexico, is hereby revoked insofar as it affects the following described lands:

New Mexico Principal Meridian

T. 23 N., R. 12 W.,
  Sec. 31, lots 1, 2, 3, 4, E½, E½W½.
T. 23 N., R. 13 W.
  Sec. 13, NW¼, S½;
  Sec. 14;
  Sec. 15, N½NW¼;
  Secs. 23 and 24;
  Sec. 28, SW¼.

The area described aggregate 3,275.28 acres in San Juan County.

2. At 10 a.m. on August 10, 1987, the lands described below, simultaneously shall be restored and open to selection by the Navajo Tribe, pursuant to Section 11 of Public Land 93–531, 88 Stat. 1716 (25 U.S.C. 640d–10); as amended by Section 4 of Public Law 96–305, 94 Stat. 930 (25 U.S.C. 640d–10); and Section 106 of Public Law 98–603, 98 Stat. 3157 (30 U.S.C. 181).

New Mexico Principal Meridian

T. 23 N., R. 12 W.,
Sec. 31, lots 1, 2, 3, 4, E½, E½W½.
T. 23 N., R. 13 W.,
Sec. 13, NW¼, S½;
Sec. 14;
Sec. 15, N½NW¼;
Secs. 23 and 24.

The area described aggregates 3,115.28 acres in San Juan County.

3. At 10 a.m. on August 10, 1961, the lands described below, simultaneously shall be restored and opened to exchange with the Navajo Tribe pursuant to Public Law 97–287, 96 Stat. 1225.

New Mexico Principal Meridian

T. 23 N., R. 13 W.,
Sec. 28, SW¼.

The area described aggregates 160 acres in San Juan County.

J. Steven Griles,

Assistant Secretary of the Interior.

August 3, 1987.

[FR Doc. 87–18041 Filed 8–7–87; 8:45 am]

BILLING CODE 4310-FB-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172 and 173

[Docket No. HM–126D; Amdt. Nos. 171–94, 172–110, 173–203]

Bulk Packagings and Miscellaneous Amendments

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This action is being taken to incorporate into the Department's Hazardous Materials Regulations definitions for bulk packaging and nonbulk packaging, and to make other miscellaneous changes including required identification of materials in bulk packagings. This action is necessary to improve identification of hazardous materials during transportation for emergency response purposes.

EFFECTIVE DATE: These amendments are effective on February 1, 1988. However, compliance with the regulations as amended herein, is authorized as of August 10, 1987.

FOR FURTHER INFORMATION CONTACT: Darrell L. Raines, Chief, Exemptions and Regulations Termination Branch, DHM–12, Standards Division, Office of Hazardous Materials Transportation, Research and Special Programs Administration, Department of Transportation, Washington, DC 20590, (202) 366–4488.

SUPPLEMENTARY INFORMATION: On September 27, 1984, RSPA published a Notice of Proposed Rulemaking, Docket No. HM–126D; Notice No. 84–11 [49 FR 38164] which proposed several changes in Parts 171, 172, and 173 regarding odorization of liquefied petroleum gas (LPG). Also, the notice proposed five minor revisions, plus a definition and marking requirements for "bulk packaging".

In Part 171, the notice proposed that § 171.8 be amended to add definitions for "Bulk packaging", "Liquefied petroleum gas" and "Non-bulk packaging".

In Parts 172 and 173, several changes were proposed regarding LPG. Also, the Notice proposed changes regarding marking of bulk packagings. Because of the wide range of comments received, from complete support to direct opposition, RSPA has withdrawn that portion of the rulemaking concerning the definition and odorization requirements for LPG from this docket, and it will be handled under a separate docket.

Excluding the comments received pertaining to LPG, only ten commenters responded to the remaining proposed amendments. Seven commenters supported the proposal to define "bulk packaging".

Three commenters suggested the proposed "bulk packaging" definition be revised so as to make a clear distinction between packagings of 110 gallons or less and bulk packagings. RSPA agrees that this has merit, and the definition of "bulk packaging" is revised accordingly. However, RSPA has chosen 450 liters (118.9 gallons) and 400 kilograms (881 pounds) as the threshold figure for defining bulk packaging, in order to be consistent with the United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations). The definition of "Portable tank" has been revised accordingly. The definitions for "bulk packaging" and "non-bulk packaging" are consistent with those proposed under Docket HM–181 (52 FR 16482) published on May 5, 1987.

In § 172.328, paragraph (d)(1) is adopted essentially as proposed, except that the words "orange panels" are added after the word "placards", to permit display of identification numbers on orange panels.

No exception was taken to the proposed revision of paragraph (e) in § 172.328 to make it consistent with the special provisions in § 172.336 (c)(4) and (c)(5) for transporting several different materials under one identification number marking.

Four commenters recommended minor changes to the proposed bulk packaging marking § 172.331. These commenters took exception to the proposed marking of the identification number on each side and each end of small bulk packages such as flexible intermediate bulk containers or 500 liter cryogenic liquid dewar flasks. RSPA agrees that this proposed requirement is excessive, and the final rule is revised to require these types of packagings to be marked on two opposing sides only.

In § 172.332, paragraph (c)(1) is revised without notice to eliminate an inconsistency in the regulations by authorizing the white background of the 4-inch by 8½ inch identification number markings on placards to be outlined with a solid or dotted line border.

One commenter recommended that the proposed change in paragraph (g) of § 172.334 be included in paragraph (b) since they are very similar. RSPA agrees with this commenter and has revised paragraph (b) of § 172.334 accordingly.

The proposed amendment to paragraph (b) of § 172.336 is rewritten to clarify that the plain white square-on-point configuration is an alternative identification number display to the orange panel for those materials for which placards are not required.

One commenter requested that § 172.338 not be amended as proposed, because nothing has occurred since the present wording was adopted to justify another amendment. RSPA is revising the proposed wording to require the replacement of white square-on-point display configurations when two or more identification number displays are missing or destroyed.

No comments were received regarding the placarding of rail cars transporting an Explosive A containing a Poison A. Therefore, paragraph (e) in § 172.510 is amended as proposed.

Section 172.332 is amended for editorial purposes. In § 173.29, the section title is revised by deleting the reference to particular type packagings. Paragraph (e) is added, as proposed, except that the word "bulk" is removed.

Based on limited information available concerning size and nature of entities likely to be affected, I certify that this regulation will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Also, in view of the type of changes, the RSPA has further determined that this rulemaking (1) is not "major" under Executive Order 12291; (2) is not "significant" under DOT Regulatory Policies and Procedures [44 FR 11034; February 26, 1979]; (3) will not

affect not-for-profit enterprises, or small governmental jurisdictions; and (4) does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321 et seq.). A regulatory evaluation is not considered necessary because the anticipated impact is minimal.

List of Subjects

49 CFR Part 171

Hazardous materials transportation, Definitions.

49 CFR Part 172

Hazardous materials transportation, Labeling, marking, and placarding.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers.

In consideration of the foregoing, 49 CFR Parts 171, 172 and 173 are amended as follows:

PART 171—GENERAL INFORMATION REGULATIONS, AND DEFINITIONS

1. The authority citation for Part 171 is revised to read as follows:

Authority: 49 U.S.C. 1802, 1803, 1804, and 1808; 49 CFR Part 1.

2. In § 171.8 the definitions for "Bulk packaging" and "Non-bulk packaging" are added in the appropriate alphabetic sequence and the definition of "Portable tank" is revised to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

"Bulk packaging" means a packaging, other than a vessel or a barge, including a transport vehicle or freight container, in which hazardous materials are loaded with no intermediate form of containment and which has: (1) An internal volume greater than 450 liters (118.9 gallons) as a receptacle for a liquid; (2) a capacity greater than 400 kilograms (881.8 pounds) as a receptacle for a solid; or (3) a water capacity greater than 1000 pounds (453.6 kilograms) as a receptacle for a gas as defined in § 173.300.

* * * * *

"Non-bulk packaging" means a packaging which has (1) an internal volume of 450 liters (118.9 gallons) or less as a receptacle for a liquid; (2) a capacity of 400 kilograms (881.8 pounds) or less as a receptacle for a solid; or (3) a water capacity of 1000 pounds (453.6 kilograms) or less as a receptacle for a gas as defined in § 173.300.

* * * * *

"Portable tank" means a bulk packaging (except a cylinder having a water capacity of 1000 pounds or less) designed primarily to be loaded onto, or on, or temporarily attached to a transport vehicle or ship and equipped with skids, mountings, or accessories to facilitate handling of the tank by mechanical means. It does not include a cargo tank, tank car, multi-unit tank car tank, or trailer carrying 3AX, 3AAX, or 3T cylinders.

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS

3. The authority citation for Part 172 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, and 1808; 49 CFR Part 1.

4. In § 172.326, paragraph (d)(1) is added to read as follows:

§ 172.326 Portable tanks.

* * * * *

(d) * * *

(1) Each person who offers a motor carrier a portable tank for transportation in a transport vehicle or freight container shall provide the motor carrier with the required identification numbers on placards, orange panels, or the white square-on-point configuration, as appropriate, for each side and each end of the transport vehicle or freight container from which identification numbers on the portable tank are not visible.

* * * * *

5. In § 172.328, paragraph (e) is revised to read as follows:

§ 172.328 Cargo tanks.

* * * * *

(e) A cargo tank marked with the name or identification number of a hazardous material may not be used to transport any other material unless that marking:

(1) Is removed;

(2) Is changed to identify the hazardous material in the cargo tank; or

(3) Conforms with § 172.336 (c)(4) or (c)(5) of this part.

6. Section 172.331 is added to read as follows:

§ 172.331 Bulk packagings other than portable tanks, cargo tanks, tank cars and multi-unit tank car tanks.

(a) This section prescribes marking requirements for bulk packagings other than portable tanks (see § 172.326), cargo tanks (see § 172.328), tank cars and multi-unit tank car tanks (see § 172.330).

(b) No person may offer for transportation or transport a bulk packaging unless the packaging is marked as prescribed in §172.332 or § 172.336(b), as appropriate, with the identification number specified for the material in § 172.101 or § 172.102, when authorized—

(1) On two opposing sides, for a packaging of 1,000 gallons (3,785.4 liters or 133.7 cubic feet) or less capacity;

(2) On each side and each end, for a packaging of greater than 1,000 gallons (3,785.4 liters or 133.7 cubic feet) capacity.

(c) The provisions of paragraph (b) do not apply to cylinders permanently installed on a tube trailer motor vehicle if the identification numbers are displayed as prescribed on each side and each end of the motor vehicle.

(d) Each person who offers a motor carrier a hazardous material in a bulk packaging for transportation shall provide the motor carrier with the required identification numbers on placards of plain white square-on-point display configurations, as authorized, or shall affix orange panels containing the required identification numbers to the packaging prior to or at the time the material is offered for transportation, unless the packaging is already marked with the identification number as required by this subpart.

(e) Each person who offers a bulk packaging containing a hazardous material for transportation shall affix to the packaging the required identification numbers on orange panels, square-on-point configurations or placards, as appropriate, prior to, or at the time the packaging is offered for transportation unless it is already marked with identification numbers as required by this subchapter.

(f) No person may mark a bulk packaging with the name or identification number of a hazardous material that is not in the bulk packaging.

(g) A bulk packaging that is required to be marked with the name or identification number of a hazardous material must remain marked unless it is—

(1) Reloaded with a material that requires another marking or no marking; or

(2) Cleaned and purged of all residue.

7. Section 172.332 is amended by revising paragraphs (a) and (c)(1) to read as follows:

§ 172.332 Identification number markings.

(a) *General.* When required by §§ 172.326, 172.328, 172.330, or 172.331 of this subpart, identification numbers shall be displayed on orange panels or placards as specified in this section or, when appropriate, on white square-on-

point configurations as prescribed in § 172.336(b).

* * * * *

(c) * * *

(1) The identification number shall be displayed across the center area of the placard in 3½ inch (89 mm.) black Alpine Gothic or Alternate Gothic No. 3 numerals on a white background 4 inches (10 cm.) high and approximately 8½ inches (21.5 cm.) wide and may be outlined with a solid or dotted line border.

* * * * *

8. Section 172.334 is amended by revising paragraphs (a) and (b) and adding paragraph (g) to read as follows:

§ 172.334 Identification numbers; prohibited display.

(a) No person may display an identification number on a POISON GAS, RADIOACTIVE, EXPLOSIVES A, EXPLOSIVES B, BLASTING AGENTS OR DANGEROUS placard.

(b) No person may display an identification number on a placard, orange panel or white square-on-point display configuration unless—

(1) The identification number is specified for the material in § 172.101 or § 172.102 (when authorized);

(2) The identification number is displayed on the placard, orange panel or white square-on-point configuration authorized by § 172.332 or § 172.336(b), as appropriate, and any placard used for display of the identification number corresponds to the hazard class of the material specified in § 172.504;

(3) Except as provided under § 172.336 (c)(4) or (c)(5) the package, freight container, or transport vehicle on which the number is displayed contains the hazardous material associated with that identification number in § 172.101 or § 172.102.

* * * * *

(g) No person shall add any color, number, letter, symbol, or word other than as specified in this subchapter, to any identification number marking display which is required or authorized by this subchapter.

9. In § 172.336, paragraph (b) introductory text is revised to read as follows:

§ 172.336 Identification numbers; special provisions and exceptions.

* * * * *

(b) For hazardous materials in hazard classes for which hazard warning placards are not specified (e.g., ORM–A, B, C, D, or E), identification numbers, when required, must be displayed on either orange panels (see § 172.332(b)) or on a plain white square-on-point display configuration having the same outside dimensions as a placard. In addition, for materials in hazard classes for which placards are specified and identification number displays are required, but for which identification numbers may not be displayed on the placards authorized for the material (see § 172.334(a)), identification numbers must be displayed on orange panels or on the plain white square-on-point display configuration in association with the required placards. An identification number displayed on a white square-on-point display configuration is not considered to be a placard.

* * * * *

10. Section 172.338 is revised to read as follows:

§ 172.338 Replacement of identification numbers.

If more than one of the identification number markings on placards, orange panels, or white square-on-point display configurations that are required to be displayed are lost, damaged or destroyed during transportation, the carrier shall replace all the missing or damaged identification numbers as soon as practicable. However, in such a case, the numbers may be entered by hand on the appropriate placard, orange panel or white square-on-point display configuration providing the correct identification numbers are entered legibly using an indelible marking material. When entered by hand, the identification numbers must be located in the white display area specified in § 172.332. This section does not preclude required compliance with the placarding requirements of Subpart F of this subchapter.

11. Section 172.510 is amended by adding paragraph (e) to read as follows:

§ 172.510 Special placarding provisions; Rail.

* * * * *

(e) *Chemical ammunition.* Each rail car containing Class A explosive ammunition which has the additional hazard of Poison A must be placarded EXPLOSIVES A and POISON GAS.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

12. The authority citation for Part 173 continues to read as follows:

Authority: 49 U.S.C 1803, 1804, 1805, 1806, 1807, and 1808; 49 CFR Part 1.

13. In § 173.29, the section title is revised and paragraph (e) is added to read as follows:

§ 173.29 Empty packagings.

* * * * *

(e) No person may offer for transportation, and no carrier may accept or transport, an empty packaging containing the residue of a hazardous material unless each opening is securely closed and free from leaks.

Issued in Washington, DC, on August 3, 1987 under authority delegated in 49 CFR Part 1.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

[FR Doc. 87–17933 Filed 8–7–87; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611

[Docket No. 70101–7001]

Pacific Coast Groundfish Fishery; Preliminary Reassessment and Request for Comments

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of preliminary reassessment to authorize foreign fishing and request for comments.

SUMMARY: NMFS issues a preliminary reassessment of domestic annual harvest (DAH) and domestic annual processing (DAP) for Pacific whiting and announces its intent to increase DAH and the total allowable level of foreign fishing (TALFF) of Pacific whiting in the exclusive economic zone (EEZ) off Washington, Oregon, and California. The DAH would be increased by 2,250 metric tons (mt) to accommodate additional joint venture processing (JVP) needs. The TALFF would be increased by releasing the remaining 36,750 mt of the 39,000 mt reserve which is surplus to domestic needs. This action would not affect the amount of fish processed by the domestic industry, but would increase the amount harvested by the domestic industry and would provide the flexibility to allow additional allocations of Pacific whiting to foreign countries, if appropriate.

DATE: Comments must be submitted on or before August 25, 1989.

ADDRESS: Send comments to Rolland A. Schmitten, Director, Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten, 206–526–6150.

SUPPLEMENTARY INFORMATION:

Background

The implementing regulations for the Pacific Coast Groundfish Fishery Management Plan (FMP) at 50 CFR 611.70 and Part 663 state that the Secretary of Commerce (Secretary) annually specifies a numerical optimum yield (OY), DAH, DAP, JVP, TALFF, and a reserve for Pacific whiting. Regulations at § 611.70(d) (1) and (2) also establish procedures to reassess DAH, DAP, and JVP on or about July 1 each year, and to increase TALFF during the fishing year by any part of the reserve that the Secretary determines will not be harvested by U.S. fishermen.

The following table lists the 1987 fishing year initial specifications for Pacific whiting (52 FR 682, January 8, 1987) and the specification changes for DAH, JVP, and TALFF indicated by this preliminary reassessment.

SPECIFICATION CHANGES FOR FISHING YEAR JANUARY 1, 1987 THROUGH DECEMBER 31, 1987 [IN METRIC TONS]

Terms	Pacific Whiting	
	Initial specifications	Preliminary reassessment
OY	185,000	No change.
DAH	129,000	131,250
DAP	15,000	No change.
JVP	114,000	116,250
TALFF	27,000	33,750
Reserve	39,000	-0-

The initial DAP and JVP for 1987 were based on the projected needs of the U.S. industry, as surveyed by the NMFS Northwest Region in December 1986. The industry was surveyed again in June 1987 to determine whether there was any change in the domestic intent and capacity to harvest and process Pacific whiting, and U.S. catch, effort, and processing performance were projected to the end of the fishing year. The results of the June survey indicate that, although the initial DAP is adequate for the remainder of 1987, the initial JVP and DAH need to be increased by 2,250 mt to meet all domestic needs. There is no current information to indicate any biological problem with the stock or any need to reassess OY. Because only 2,250 mt of the reserve will be needed by U.S. harvesters during the remainder of 1987, the remaining 36,750 mt is available for release to TALFF.

The purpose of releasing the portion of the Pacific whiting reserve surplus to domestic needs is to provide the flexibility to allow additional allocations to foreign countries, if appropriate. There is no certainty that any or all of the additional TALFF will be allocated to foreign countries during 1987.

Classification

The preliminary reassessment of DAH and DAP and the proposed release of the Pacific whiting reserve are based upon the most recent data available. The action is taken under the authority of 50 CFR 611.70(d) (1) and (2), is in compliance with Executive Order 12291, and is covered by the regulatory flexibility analysis and environmental impact statement prepared for the authorizing regulations. The action contains no collection of information requirement for purposes of the Paperwork Reduction Act.

The public has had opportunity to comment on the preliminary reassessment of DAP, JVP, and DAH, and the proposed release of the Pacific whiting reserve at the July 1987 meeting of the Pacific Fishery Management Council held in Millbrae, California. Written public comments also will be accepted for 15 days after publication of this notice in the **Federal Register.**

(16 U.S.C. 1801 *et seq.*)

List of Subjects 50 CFR Part 611

Fisheries, Foreign relations, Reporting and recordkeeping requirements.

Dated: August 5, 1987.

William E. Evans,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 87-18129 Filed 8-7-87; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 661

[Docket No. 70845-7085]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustment, closure, and request for comments.

SUMMARY: NOAA announces an inseason adjustment of the commercial salmon fishery in the exclusive economic zone (EEZ) from Cape Blanco, Oregon, to Point Delgada, California. The Director, Northwest Region, NMFS (Regional Director), has determined in consultation with the NMFS Southwest Region, the Pacific Fishery Management Council (Council), the Oregon Department of Fish and Wildlife (ODFW), and the California Department of Fish and Game (CDFG), that the commercial fishery quota of 130,000 chinook salmon prior to September 8 for the area should be reduced to 119,200 chinook salmon because of the number of Klamath River fall chinook caught in all ocean areas south of Cape Falcon. The quota modification will result in the closure of the commercial season from Sisters Rocks to Mack Arch. The adjustment is necessary to conform to the preseason announcement of 1987 management measures. This action is intended to ensure conservation of chinook salmon.

DATES: This notice and closure of the commercial fishery from Sisters Rocks to Mach Arch are effective on August 5, 1987. Comments on this closure will be received until August 20, 1987.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, NMFS, BIN C15700, 7600 Sand Point Way NE., Seattle, WA 98115-0070; or E. Charles Fullerton, Director, Southwest Region, MNPS, 300 S. Ferry Street, Terminal Island, CA 90731-7415. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the same address.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten at 206-526-6150, or E. Charles Fullerton at 213-514-6196.

SUPPLEMENTARY INFORMATION: Management measures for 1987 were effective on May 1, 1987 (52 FR 17264, May 6, 1987). The 1987 commercial season for all salmon species from Cape Blanco to Point Delgada was established as June 1 through the earliest of September 7 or the attainment of the chinook or coho quota. The preseason chinook quota of 115,000 fish was reduced inseason to 113,300 fish (52 FR 24296, June 30, 1987), to account for a harvest in excess of the quota by an earlier commercial fishery from Sisters Rocks to Chetco Point. The general area fishery was closed on June 25, 1987, when it was projected that the revised quota had been met (52 FR 24297, June 30, 1987).

Two additional subarea commercial fisheries are scheduled in the zone. The first, from Sisters Rocks to Mack Arch, is scheduled to begin the later of August 22 or upon attainment of the general area chinook quota. The second, from Trinidad Head to Punta Gorda, is scheduled to begin on September 8.

With respect to commercial seasons from Cape Blanco to Point Delgada prior to September 8, the preseason regulations also provide that—

"* * * Troll quotas may be adjusted on or about July 29 depending upon the number of chinook needed to complete the recreational season and the projected harvest of Klamath River fall chinook in all ocean areas south of Cape Falcon * * *. In addition, any quota

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overage or underage from the chinook harvest in the earlier troll fisheries from Cape Blanco to Point Delgada will be subtracted from or added to the quota for the all-except-coho fishery from Sisters Rocks to Mack Arch." (Table 1, footnote i)

Representatives of the Salmon Plan Development Team (Team) conferred on July 29, 1987. The Team projected that the recreational fishery in the zone would harvest 45,600 chinook during the season. In addition, using the Klamath River impact model, the Team projected that 163,700 fall chinook of Klamath River origin would be caught in all ocean fisheries south of Cape Falcon even with no more commercial fishing between Cape Blanco and Point Delgada. The Team recommended an adjusted commercial quota in the zone prior to September 8 of 119,200 chinook salmon based on inseason factors including projected ocean impacts on Klamath River fall chinook.

Based on the best available information, 109,747 chinook were landed in the general area commercial fishery which ended on June 25, 1987, and 9,400 chinook were landed in a subarea commercial fishery from Sisters Rocks to Chetco Point which ended on May 14, totaling 119,147 chinook salmon in both fisheries.

For the above reasons, NOAA issues this notice to adjust the commercial quota from Cape Blanco to Point Delgada prior to September 8 from 130,000 to 119,200 chinook. Since the adjusted commercial quota in the zone prior to September 8 has been met, the subarea commercial fishery from Sisters Rocks to Mack Arch beginning the later of August 22 or attainment of the general area chinook quota is closed. This notice does not apply to other fisheries which may be operating in this or other areas.

The Regional Director consulted with the Chairman of the Council and representatives of ODFW and CDFG regarding the adjustment to the commercial chinook quota in the zone prior to September 8, and the closure of the subarea commercial fishery from Sisters Rocks to Mack Arch which was to begin the later of August 22 or upon attainment of the general area chinook quota. The ODFW and CDFG representatives confirmed that Oregon and California will manage the commercial fishery in State waters adjacent to this area of the EEZ in conformance with this Federal action.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

(16 U.S.C 1801 *et seq.*)

Dated: August 5, 1987.

William E. Evans,

Assistant Administrator For Fisheries National Marine Fisheries Service.

[FR Doc. 87-18126 Filed 8-5-87; 4:49 pm]

BILLING CODE 3510-22-M

VOL 52 ISS 153 AG 10 1987 UMI

Proposed Rules

Federal Register
Vol. 52, No. 153
Monday, August 10, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 994

[Docket No. EMO-1]

Egg Marketing Order; Establishment of Programs Relating to Research, Consumer Education, and Advertising

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum results: Termination of rulemaking proceeding.

SUMMARY: This document announces that the requisite number of producers voting in a referendum and the volume of production represented by producers voting failed to approve an egg marketing order. Therefore, the proposed order published in the Federal Register on April 6, 1987, will not become effective and this proceeding is terminated.

DATE: The termination is effective August 10, 1987.

FOR FURTHER INFORMATION CONTACT: Janice L. Lockard, Poultry Division, AMS, USDA, Washington, DC 20250. Phone (202) 382-8132.

SUPPLEMENTARY INFORMATION: On April 6, 1987, a decision on a proposed egg marketing agreement and referendum order were published in the Federal Register (52 FR 10984). The proposed marketing order provided for a 22-member national board consisting of producers and handlers and one public research, consumer education, advertising, promotion, and product development for eggs, spent fowl, and products thereof. The proposed order also provided for mandatory nonrefundable assessments levied on egg handlers. The first year assessment rate for research and promotion programs would have been set at one-half cent on each dozen eggs first handled. Subsequent maximum annual one-fourth cent increases up to a 1-cent maximum rate would have been allowed following appropriate rulemaking procedures and approval of the Secretary.

The proposed order was authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and was formulated on the record of a public hearing held during the months of January, February, and March 1986. The Notice of Hearing was published in the Federal Register on December 165, 1985 (50 FR 51344). The Recommended Decision was published in the Federal Register on October 24, 1986 (51 FR 37822).

In accordance with the procedure for conduct of referenda (7 CFR 900.700-707), producers who owned 10,000 or more laying hens during the 3-month representative period December 1, 1986-February 28, 1987, and who were engaged in commercial egg production during that period and at the time of voting were eligible to vote. The referendum was conducted by mailed ballot May 25-June 19, 1987.

Results of the referendum show that of the 1,106 valid ballots cast, 471 producers voted in favor (43 percent) and 635 producers (57 percent) voted against the proposed order. In addition, 53 percent of the production represented by these voting producers favored the order and 47 percent were opposed. As provided in section 8(c)(8) of the Agricultural Marketing Agreement Act of 1937, the proposed order would become effective only if approved by at least two-thirds of the producers voting or by voting producers representing at least two-thirds of the volume of production by all voters. Since neither of these requirements was met, the proposed order shall not become effective and the proceeding is terminated.

This action does not affect the Egg Research and Promotion Order (7 CFR 1250.301 through 1250.363) authorized by and issued pursuant to the Egg Research and Consumer Information Act (7 U.S.C. 2701 *et seq.*). That order continues in effect.

Signed at Washington, DC on August 5, 1987.

Karen K. Darling,

Deputy Assistant Secretary, Marketing and Inspection Service.

[FR Doc. 87-18124 Filed 8-7-87; 8:45 am]
BILLING CODE 3410-02-M

Rural Electrification Administration

7 CFR Part 1736

Electric Standards and Specifications

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Electrification Administration (REA) proposes to revise 7 CFR Chapter XVII, REA Regulations, Part 1736, Electric Standards and Specifications, by revising REA Bulletin 50-70(U-1), REA Specification for 15 kV and 25kV Primary Underground Power Cable. This bulletin contains the REA material specifications for underground power cable. The primary changes being proposed consist of: (1) Removing high molecular weight polyethylene as an acceptable insulating material; (2) increasing the minimum average insulation layer thickness from 175 to 220 mils for 15 kilovolt (kV) cable and from 280 to 320 mils for 25 kV cable; (3) requiring the application of an electrically insulating outer jacket on all such cables; and (4) modifying the present requirement to test each reel of cable produced to detect excessive partial discharge.

DATE: Public comments must be received by REA no later than October 9, 1987.

ADDRESS: Submit written comments to the Director, Electric Staff Division, Rural Electrification Administration, U.S. Department of Agriculture, Washington, DC 20250-1500.

FOR FURTHER INFORMATION CONTACT: Mr. James Dedman, Electrical Engineer, Electric Staff Division, Rural Electrification Administration, U.S. Department of Agriculture, Washington, DC 20250-1500, telephone (202) 382-9091. A copy of the proposed revised bulletin and the Draft Impact Analysis describing the options considered in developing this proposed rule and the impact of implementing each option are available from Mr. Dedman, at the above address.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 et seq.), the Rural Electrification Administration proposes to revise 7 CFR Chapter XVII, REA Regulations, Part 1736, Electric Standards and Specifications, by revising REA Bulletin 50-70(U-1), REA

Specification for 15 kV and 25 kV Primary Underground Power Cable.

This action has been reviewed in accordance with Executive Order 12291, Federal Regulation. This action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies; or (3) result in significant adverse effects on competition, employment investment or productivity, and, therefore, has been determined to be "not major."

REA has concluded that promulgation of this rule will not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq. (1976)) and, therefore, does not require an environmental impact statement or an environmental assessment.

This proposed regulation contains no information or recordkeeping requirements which require approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 et seq.). This action does not fall within the scope of the Regulatory Flexibility Act. This program is listed in the Catalog of Federal Domestic Assistance as 10.850, Rural electrification Loans and Loan Guarantees. For the reasons set forth in the final rule related Notice to 7 CFR Part 3015 Subpart V in 50 FR 47034, November 14, 1985, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with state and local officials.

Background

The Rural Electrification Administration (REA) maintains a system of bulletins that contain construction standards and specifications for materials and equipment which are applicable to electric system facilities constructed by REA electric borrowers in accordance with the REA loan contract. These standards and specifications contain standard construction units and material items and equipment units commonly used in REA electric and telephone borrowers' systems.

REA Bulletin 50–70(U–1), REA specification for 15 kV and 25 kV Primary Underground Power Cable, contains REA's requirements relative to the purchase of underground power cables by REA electric borrowers. The requirements in Bulletin 50–70(U–1) are minimum requirements and are based primarily on specifications of national standards setting organizations such as the Association of Edison Illuminating Companies (AEIC) and the Insulated Cable Engineers Association (ICEA). Bulletin 50–70(U–1) was last revised in 1984.

In recent years, cables purchased and installed by many REA electric borrowers have failed long before the end of the anticipated life of the cables. Since these prematurely failed cables were designed and manufactured in accordance with Bulletin 50–70(U–1) and the referenced national standards, REA has concluded that Bulletin 50–70(U–1) should be revised to exceed some requirements of the national standards.

The primary cause of underground cable failures is the formation and growth of electrochemical "trees" in the insulation layer of the cables. The tree-like voids usually form at impurities or voids in the insulation material. The growth of the trees is accelerated by moisture in the insulation layer and high voltage stress.

High molecular weight polyethylene (HMW) insulated cables have performed very poorly regarding failure due to trees. All manufacturers of underground cable have ceased production of HMW cables. In 1986, REA removed HMW cables from REA Bulletin 43–5, List of Materials Acceptable for Use on Systems of REA Electrification Borrowers. REA believes that the removal of HMW from Bulletin 50–70(U–1) is certainly justified. This proposed action does not pertain to cables insulated with high molecular polyethylene with tree retardant additives (HMW–TR).

The voltage stress (measured in volts per mil) on the insulation of underground cable is a function of the voltage present and the thickness of the insulation layer (in mils). Increasing the thickness of the insulation wall will decrease the voltage stress and, therefore, retard the growth of trees in the insulation layer. Presently, Bulletin 50–70(U–1) requries the average thickness of the insulation layer to be at least as large as 175 mils for cables rated at 15 kilovolts (kV) and 260 mils for 25 kV cables. This proposed action would raise the minimum wall thickness to 220 mils for 15 kV cables and 320 mils for 25 kV.

The cables used on systems of REA electric borrowers are almost always buried in direct contact with the earth. They are, therefore, in constant contact with moisture, a major contributing factor in the growth of trees. Bulletin 50–70(U–1) presently allows, but does not require, the application of an electrically insulating jacket as an outer protective covering on underground cables. The jacket provides mechanical protection which decreases the likelihood of moisture contact with the insulation layer within. REA believes that the use of jackets on underground cables should be required in Bulletin 50–70(U–1).

The national standards and Bulletin 50–70(U–1) require manufacturers of underground cable to test each reel of cable to detect excessive partial discharge which could damage the insulation layer. REA proposes to revise its requirement to allow an optional procedure under which a manufacturer could demonstrate to REA's satisfaction that the manufacturer can produce cables without excessive partial discharge and that its insulation material is sufficiently resistant to damage caused by excessive partial discharge, should it occur. Demonstration of resistance to partial discharge would be required on each manufacturing run of cable produced by the manufacturer.

The other changes in this proposed action are primarily clerical in nature.

List of Subjects in 7 CFR Part 1736

Electric utilities, Engineering standards, Incorporation by reference.

In view of the above, REA hereby proposes to amend 7 CFR Part 1736.

PART 1736—ELECTRIC STANDARDS AND SPECIFICATIONS

1. The authority citation for Part 1736 continues to read as follows:

Authority: 7 U.S.C. 901 et seq., 7 U.S.C. 1921 et seq.

§ 1736.97 [Amended]

2. In § 1736.97, paragraph (b) is amended by revising the entry for Bulletin 50–70(U–1) to read as follows:

§ 1736.97 Incorporation by reference of electric standards and specifications.

* * * * *

(b) *List of Bulletins.*

* * * * *

Bulletin 50–70(U–1), REA Specification for 15 kV and 25 kV Primary Underground Power Cable (Effective Date)

* * * * *

Dated: August 3, 1987.

Harold V. Hunter,

Administrator.

[FR Doc. 87–18058 Filed 8–7–87; 8:45 am]

BILLING CODE 3410–15–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: Section 121.5(a) of Title 13 of the Code of Federal Regulations, the Small Business Administration's (SBA's) Rules and Regulations, provides that the time of size for small business set-asides is the date upon which the business submits its bid or offer. In contrast, section 4(g) of Small Business Innovation Research (SBIR) Policy Directive No. 65 01 2, published in the Federal Register on January 8, 1986, 50 FR 917, 919, provides that the time at which the size of a concern is determined for either Phase I or Phase II SBIR awards is the date of award. This proposed rule would amend § 121.5(a) of SBA's regulations to make time of size for Phase I and Phase II SBIR awards consistent with the SBIR Policy Directive.

DATES: Comments should be submitted on or before September 9, 1987.

ADDRESS: Written comments should be addressed to Richard J. Shane, Assistant Administrator for Innovation, Research & Technology, Small Business Administration, 1441 L Street NW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Richard J. Shane (202) 653–7875.

SUPPLEMENTARY INFORMATION: Section 121.5(a) of Title 13 of the Code of Federal Regulations, the Small Business Administration's (SBA's) Rules and Regulations, provides that the size of a concern (including its affiliates) for Government procurements is determined as of the date of its written self-certification as a small business as part of the concern's submission of a bid or offer. There has been some confusion as to whether this general provision was intended to apply to SBA's Small Business Innovation Research (SBIR) Program. Such an application would severely limit the pool of potential SBIR applicants, disrupting the SBIR program and the accompanying benefits which flow to the Federal Government. This proposed rule, if promulgated in final form, would adopt the provision regarding the time at which size is determined set forth in the SBIR Policy Directive.

Public Law 97–219, 96 Stat. 221, amended section 9(j) of the Small Business Act, 15 U.S.C. 631, *et sec.*, to establish a government-wide SBIR Program. The law directed SBA to develop, issue and maintain a SBIR Program policy directive to be used as guidance by the participating Federal agencies. SBA published the current SBIR Policy Directive, SBIR Policy Directive No. 65 01 2, in the Federal Register on January 8, 1985, 50 FR 917. Policy Directive 65 01 2 represents the second major revision to the original SBIR policy directive. From the outset, the SBIR policy directives have set the date of award as the date at which size is determined for both Phase I and Phase II SBIR awards. The reason for this policy is that many SBIR proposals are made by individuals who are affiliated with a corporation or a university at the time the proposal is submitted. The date of award time of size determination permits these individuals to submit proposals while still being employed by a corporation or university. The SBIR award date is then generally 2–3 months after notification is made that a proposal has been selected for award. An individual would have this time to divest himself/herself from the corporation or university to be an eligible small entity at the date of award. Only ongoing, active businesses could submit proposals if the time at which size was determined was the date that the SBIR proposal was submitted.

SBA's size regulations were never changed to take into account the time of size policy developed for the SBIR Program. The program has operated under the assumption that the Policy Directive was controlling. The inconsistency between this policy and the size regulations has only recently come to the SBA's attention. Consistent with the Administrative Procedure Act, SBA is providing a 30-day comment period to conform the rule and the Policy Directive as expeditiously as possible.

SBA certifies that this rule, if adopted in final form, would not constitute a major rule for the purpose of Executive Order 12291. It should have no economic effect and should not result in an increase in costs or prices since businesses and Federal agencies participating in the SBIR Program have been utilizing the time of size policy set forth in the SBIR Policy Directive since the Program's inception. This rule would merely conform SBA's size regulations to this policy.

SBA certifies that, if finalized, this proposed rule would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et *seq.* As previously stated, this rule will merely conform SBA's size regulations to take into account the SBIR time of size policy for Phase I and Phase II SBIR awards which has been followed since the Program's inception. Small entities seeking to participate in the SBIR Program will follow the same procedures which were being followed before the effective date of this rule. This rule contains no reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 13 CFR Part 121

Small business, Small business size standards.

Accordingly, Part 121 of 13 CFR is proposed to be amended as follows:

PART 121—[AMENDED]

1. The authority citation for Part 121 continues to read as follows:

Authority: Secs. 3(a) and 5(b)(6) of the Small Business Act, 15 U.S.C. 632(a) and 634(b)(6).

2. Section 121.5 is proposed to be amended by revising paragraph (a) to read as follows:

§ 121.5 Small business for Government procurement.

(a) A small business concern for the purpose of Government procurement is a concern, including its affiliates, which is not dominant in the field of operation in which it is bidding on Government contracts and can further qualify under the criteria set forth in this section. Except for Phase I and Phase II awards under SBA's Small Business Innovation Research (SBIR) Program, the size status of a concern (including its affiliates) is determined as of the date of its written self-certification as a small business as part of the concern's submission of a bid or offer. For purposes of Phase I and Phase II awards under SBA's SBIR Program, the size status of a concern is determined as of the date of the award. An opinion rendered by SBA to a contracting officer on the basis of published or commonly known information and without the benefit of an SBA inquiry is not considered an SBA size determination.

* * * * * *

Date: August 4, 1987.

James Abdnor,

Administrator.

[FR Doc. 87–18100 Filed 87–87; 8:45 am]

BILLING CODE 8025-01-M

VOL 52 ISS 153 AG 10 1987 UMI

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-93-AD]

Airworthiness Directives: British Aerospace Model H.S. 748 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to all Model H.S. 748 series airplanes with large freight doors, which would require inspection and adjustment, repair, or replacement, if necessary, of the large freight door locking mechanism components, and installation of a placard to warn crew members to depressurize the cabin before opening the large freight door. This proposal is prompted by a report of an incident where, due to an unserviceable pressure lock system, the large freight door was opened in flight while the cabin was pressurized. The door detached from the fuselage, causing severe damage. This condition, if not corrected, could lead to loss of the large freight door and damage to the airplane.

DATES: Comments must be received no later than September 9, 1987.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-93-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Donald L. Kurle, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1946. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing data for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No.87-NM-93-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion: The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition which may exist on certain BAe Model H.S. 748 series airplanes. An incident occurred where the large freight door was opened in flight while the cabin was pressurized. The door detached from the fuselage, causing severe damage. Opening the door was made possible by an unserviceable pressure lock system. This condition, if not corrected, could lead to loss of the large freight door and severe damage to the airplane.

British Aerospace (BAe) issued Service Bulletin 52/129, dated May 1986, which describes procedures to check the correct operation of the large freight door locking mechanism, and to check the pressure lock assemblies for any damage, distortion, and/or wear. The CAA has classified this service bulletin as mandatory.

British Aerospace issued a second H.S. 748 Service Bulletin 11/7, dated December 1, 1986, which describes installation of a placard to indicate that the airplane must be depressurized before opening its large freight door. The CAA has also classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulatorys and the applicable bilateral airworthiness agreements.

Since this condition is likely to exist or develop or airplanes of this same type design registered in the United States, an AD is proposed which would require inspection and adjustment, repair, or replacement, if necessary, of the large freight door locking mechanism components, and installation of a placard warning crew members to depressurize the cabin before opening the large freight door, in accordance with the service bulletins previously mentioned.

It is estimated that 3 airplanes of U.S. registry would be affected by this AD, that it would take approximately 6 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $720.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not a major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($240). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation Safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

BRITISH AEROSPACE: Applies to all Model H.S. 748 series airplanes with a large freight door, certificated in ay category.

Compliance required within the next 90 days after the effective date of this AD, unless previously accomplished.

To prevent inadvertent opening of the freight door in flight, accomplish the following:

A. Inspect the large freight door shoot bolt lever, barometric (pressure lock) lever, bellows assembly, dry air cartridge and microswitches for damage, distortion and/or wear in accordance with British Aerospace Service Bulletin 52/129, dated May 1986. If any damage, distortion and/or wear is discovered as a result of the inspection required by this paragraph, prior to further flight, adjust, repair, or replace the affected components, in accordance with British Aerospace Service Bulletin 52/129, dated May 1986.

B. Insall a placard to indicate that the aircraft must be depressurized before opening its large freight door, in accordance with British Aerospace Service Bulletin 11/7, dated December 1, 1986.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington on July 31, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-18116 Filed 8-7-87; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 861-0050]

Tarrant County Medical Society; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, the Tarrant County Medical Society, of Fort Worth, Texas, to agree not to restrict, regulate or declare unethical any doctor's truthful advertising. Respondent also would be required to agree to provide, for 10 years, written notice to any doctor whose advertising it intends to challenge, and allow that doctor a reasonable opportunity to respond.

DATE: Comments must be received on or before October 9, 1987.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: FTC/S-3115, Elizabeth Gee, Washington, DC. 20580. (202)326-2756.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission act, 38 State. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Doctors, Physicians, Trade practices.

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent Tarrant County Medical Society (TCMS), and it now appearing that TCMS is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between TCMS and its duly authorized officer and/or its attorney, and counsel for the Federal Trade Commission that:

1. TCMS is a corporation organized, existing, and doing usiness under and by virtue of the laws of the State of Texas, with its mailing address at 3855 Tulsa Way, Fort Worth, Texas 76107.

2. TCMS admits all of the jurisdictional allegations set forth in the draft of complaint here attached.

3. TCMS waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and informationin respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify TCMS, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by TCMS that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules of Practice, the Commission may, without further notice to TCMS, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in deposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to TCMS's address stated in this agreement shall constitute service. TCMS waives any right it may have to any other manner of service. The complaint attached hereto may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement

may be used to vary or contradict the terms of the order.

7. TCMS has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. TCMS further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after the order becomes final.

Order

I

For purposes of this order, the following definitions shall apply:

A. "TCMS" means respondent Tarrant County Medical Society, its officers, councils, committees, boards, representatives, agents, employees, successors, and assigns; and

B. "Adverse action" means the revocation or suspension of, or refusal to grant, membership in TCMS, or the disciplining or penalizing of any physician.

II

It is ordered, that TCMS, directly or indirectly, or through any device, shall forthwith cease and desist from:

Restricting, regulating, declaring unethical, impeding, interfering with, or advising against the advertising or publishing by any person or organization of information about the prices, terms, or conditions of sale of physicians' services, or of any information about physicians' services, facilities, or equipment which are offered for sale or made available by physicians or by any organization with which physicians are affiliated, including but not limited to restricting or attempting to restrict the content, format, size, or frequency of any such advertisements or publications.

Nothing contained in this order shall prohibit TCMS from formulating, adopting, disseminating to its members, and enforcing reasonable ethical guidelines governing the conduct of its members with respect to representations, including unsubstantiated representations, that TCMS reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act.

III

It is further ordered, that TCMS shall cease and desist from:

A. For a period of ten (10) years after service of this order, taking any adverse action against a person alleged to have violated any rule, policy, guideline, or ethical standard relating to physician advertising without first providing such person with written notice of the allegations against such person and without providing such person a reasonable opportunity to respond. The notice required by this part shall, at a minimum, clearly specify the rule, policy, guideline, or ethical standard alleged to have been violated, the specific conduct that is alleged to have violated the rule, policy, guideline, or ethical standard, and the reasons the conduct is alleged to have violated the rule, policy, guideline, or ethical standard; and

B. Failing to maintain for five (5) years following the taking of any action referred to in this part of the order, in a separate file segregated by the name of any person against whom such action was taken, any document that embodies, discusses, mentions, refers, or relates to the action taken and any allegation relating to it.

IV

It is further ordered, that TCMS shall:

A. For a period of five (5) years, commencing on the date this order is served, provide each applicant for membership in TCMS with a copy of this order at the time the applicant applies for membership;

B. Within sixty (60) days after service of this order, publish a copy of the complaint and this order in the *Physician,* or in any successor publication, with the same prominence as regularly published feature articles;

C. Within fifteen (15) days after service of this order, remove from TCMS' documents entitled "Board of Censors Agenda for Meeting with Provisional Members" and "Board of Censors Meeting with Applicants for Membership," and any other existing ethical or policy statement or guideline of TCMS, any provision, interpretation or statement which is inconsistent with Part II of this order, and within sixty (60) days after service of this order, publish, in the manner described in Part IV.B. of this order, a copy of the revised versions of such statements, guidelines, or interpretations to each of its members;

D. Within sixty (60) days after service of this order, send to the Southwest Bell Telephone Company supervisor in charge of professional advertising a copy of this order and accompanying complaint;

E. Within ninety (90) days after service of this order, and at any time the Commission, by written notice, may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which TCMS has complied with this order; and

F. For a period of five (5) years after service of this order, maintain and make available to the Commission staff for inspection and copying upon reasonable notice, records adequate to describe in detail any action taken in connection with the activities covered by Parts II and III of this order, including but not limited to any advice or interpretation rendered with respect to advertising involving any physician.

V

It is further ordered, that TCMS shall notify the Commission at least thirty (30) days prior to any proposed change in the respondent, such as dissolution or reorganization resulting in the emergence of a successor corporation or association, or any other change in the corporation or association which may affect compliance obligations arising out of this order.

Tarrant County Medical Society—Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from the Tarrant County Medical Society ("Medical Society") located in Ft. Worth, Texas. The agreement would settle charges by the Commission that the proposed respondent violated Section 5 of the Federal Trade Commission Act by combining or conspiring to interfere with competition among physicians in Tarrant County by restricting its members from disseminating information to consumers through truthful, non-deceptive advertising.

The proposed consent order has been placed on the public record for 60 days for reception of comments by interested persons. Comments received during this period will become part of the public record. After 60 days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Complaint

A complaint has been prepared for issuance by the Commission along with the proposed order. It alleges that in furtherance of this conspiracy, the Medical Society, through its Board of Censors, has restricted the amount, duration and size of advertising announcements that its members place in newspapers. The complaint alleges, for example, that the Medical Society distributed restrictions to members that limit advertising announcements in

newspapers to 10 days and one-column inch in size.

In addition, the complaint alleges that through its Board of Censors, the Medical Society has attempted to restrict the number of telephone directory listings its members place and the size of their print.

The complaint further alleges that the purposes or effects of the combination or conspiracy have been to restrain trade unreasonably and injure consumers in the following ways among others:

A. Vigorous competition among physicians is impeded;

B. Physicians are being deterred from advertising truthful information in the media about their prices, services, and qualifications; and

C. Consumers are being deprived of receiving truthful information about physicians' prices, services, and qualifications.

The Proposed Consent Order

Part I of the proposed consent order contains definitions of terms used in the order.

Parts II of the order prohibits the Medical Society from interfering with, restricting, or advising against the advertising or publishing of information about the prices, terms, or conditions of sale of physicians' services by physicians or organizations with which physicians are affiliated, including restricting the content, format, size, or frequency of such advertisements or publications.

Part II of the order also contains a proviso stating that the order does not prohibit the Medical Society from formulating or enforcing reasonable ethical guidelines with respect to advertising by the Society's members that is false or deceptive under Section 5 of the Federal Trade Commission Act.

Part III.A. of the proposed consent order requires that the Medical Society, before taking any adverse action against any person alleged to have violated any Medical Society policy or ethical standard relating to physician advertising, provide that person with written notice of the allegation and a reasonable opportunity to respond. Part III.B. requires the Medical Society to maintain a file relating to any such adverse action for 5 years.

Part IV.A. requires, for a period of five years, that the Medical Society give each applicant for membership a copy of the order. Part IV.B. requires, within 60 days after service of the order, that the Medical Society publish a copy of the complaint and order in its publication, the *Physician.*

Part IV.C. of the proposed consent order requires the Medical Society, within 15 days after service of the order, to remove from Medical Society documents entitled "Board of Censors Agenda for Meeting with Provisional Members" and "Board of Censors Meeting with Applicants for Membership", and any other ethical or policy statement or guideline of the Medical Society, any provisions that are inconsistent with Part II of the order.

Part IV.D. requires the Medical Society to send a copy of the order and accompanying complaint to the Southwest Bell Telephone Company supervisor in charge of professional advertising.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 87-18064 Filed 8-7-87; 8:45 am]

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16 CFR Part 13

[Docket No. 9187]

Jerome Milton, Inc., et al; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Chicago, Illinois maker of Shane toothpaste from claiming that Shane cures or alleviates the symptoms of canker or cold sores, or reduces tooth sensitivity, unless it has at least one well-controlled clinical test to substantiate the claim. Respondent would be required to have at least two well-controlled clinical tests to substantiate claims that the product reduces plaque more effectively than any other oral hygiene product or that it cures or alleviates gingivitis or periodontitis.

DATE: Comments must be received on or before October 9, 1987.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave. NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: FTC/S-4002, William Haynes, Washington, DC 20580. (202) 326-3088.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Toothpaste, Trade practices.

In the matter of Jerome Milton, Inc., a corporation, and Jerome Milton Schulman, individually and as an officer of Jerome Milton, Inc.

Agreement Containing Consent Order To Cease and Desist

The agreement herein, by and between Jerome Milton, Inc., a corporation, by its duly authorized officer, and Jerome Milton Schulman, individually and as an officer of said corporation, hereinafter sometimes referred to as respondents, and their attorney, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Respondent Jerome Milton, Inc., is an Illinois corporation with its office and principal place of business located at 4350 West Ohio Street, Chicago, Illinois 60624.

Respondent Jerome Milton Schulman is an officer of Jerome Milton, Inc. He formulates, directs, and controls the policies, acts and practices of Jerome Milton, Inc., and his address is the same as that of Jerome Milton, Inc.

2. Respondents have been served with a copy of the complaint issued by the Federal Trade Commission charging them with violation of Sections 5 and 12 of the Federal Trade Commission Act, and have filed answers to said complaint denying said charges.

3. Respondents admit all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. Respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of facts and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) All claims under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the respondents, in which event it will take such action as it may consider appropriate.

6. This agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in the complaint issued by the Commission on September 25, 1984.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may, without further notice to respondents, (1) issue its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to respondents' addresses as stated in this agreement shall constitute service. Respondents waive any right they might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or to contradict the terms of the order.

8. Respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

9. By acceptance of this agreement and the issuance of the proposed complaint and order contemplated thereby, the Federal Trade Commission takes no position on the legality of the marketing of Shane toothpaste, or of any other food, drug, or device covered by the proposed order, under the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 301 *et seq.*

Order

I

It is ordered that respondents Jerome Milton, Inc., a corporation, its successors and assigns, and its officers, and Jerome Milton Schulman, individually and as an officer of Jerome Milton, Inc., and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale, or distribution of Shane toothpaste, any other toothpaste, or any other oral hygiene product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that any such product:

a. Cures or alleviates the symptoms of canker sores (recurrent aphthous stomatitis) or cold sores (herpes simplex type I lesions);

b. Reduces the sensitivity of teeth to hot and cold substances;

c. Is useful in the diagnosis, cure, mitigation, treatment, or prevention of disease in man;

d. Reduces plaque more effectively than any other toothpaste or oral hygiene product; or

e. Cures or alleviates the gum problems associated with gingivitis or periodontitis, unless at the time of making such representation, respondents possess and rely upon competent and reliable evidence that substantiates the representation.

For purposes of paragraphs a and b, above, "competent and reliable evidence" shall include at least one adequate and well-controlled, double-blind clinical study that conforms to accepted designs and protocols and is conducted by persons qualified by training and experience to do so;

For purposes of paragraphs d and e, above, "competent and reliable evidence" shall include at least two adequate and well-controlled, double-blind clinical studies that conform to accepted designs and protocols and are conducted by different persons, independently of each other, with such persons being qualified by training and experience to conduct such studies;

For purposes of paragraph c, above, "competent and reliable evidence" shall mean test(s), analysis(es), research project(s), or study(ies) in which the evidence has been objectively obtained and evaluated by persons qualified to do so, using procedures generally accepted in the relevant profession to yield accurate results;

Provided, however, with respect to any representation covered by this Part of the Order other than a claim concerning superior or comparative efficacy, if the Food and Drug Administration promulgates any standard, or any advisory review panel appointed by the Food and Drug Administration has issued a monograph, establishing that such representation is true, then in lieu of the above studies the respondents may rely on the Food and Drug Administration's standard or the panel's monograph as long as it has not been superseded and remains in effect.

II

It is further ordered that respondents, their successors and assigns, for at least three (3) years after the date of the last dissemination of the representation, shall maintain and upon request make available to the staff of the Commission for inspection and copying copies of, and dissemination schedules for, every advertisement containing any representation(s) about oral hygiene product(s), copies of all evidence relied on for such representation(s), and copies of any document(s) in the possession or control of respondents, their successors and assigns contradicting or qualifying any such representation.

III

It is further ordered that respondents shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate respondent such as dissolution, assignment, or sale, resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of the Order.

IV

It is further ordered that the individual respondent named herein shall promptly notify the Commission of the discontinuance of his present business or employment and, for a period of five (5) years after the date of service of this

Order, shall promptly notify the Commission of each affiliation with a new business or employment, each such notice to include the individual respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged, as well as a description of respondent's duties and responsibilities in connection with the business or employment.

V

It is further ordered that the respondents shall distribute a copy of this Order to each of the corporate respondent's operating divisions and to all present and future employees, agents, or representatives engaged in the preparation and placement of advertising and that the corporate respondent shall secure from each such person a signed statement acknowledging receipt of the Order.

VI

It is further ordered that the respondents shall, within sixty (60) days after the date of service of this Order, file with the Commission a report in writing, signed by the individual respondent and a responsible officer for the corporate respondent, setting forth in detail the manner and form in which they have complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Jerome Milton, Inc., and Jerome Milton Schulman.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that the respondents Jerome Milton, Inc., and Jerome Milton Schulman, an officer of the company, claimed in their advertising for Shane toothpaste that:

- The use of Shane will cure or alleviate the symptoms of canker sores, cold sores, and the gum problems associated with gingivitis and periodontitis;
- Shane is superior to other toothpastes in reducing or eliminating plaque;
- The use of Shane will lessen the sensitivity of the teeth to hot and cold substances.

According to the complaint, the respondents represented that they had a reasonable basis for these claims, when, it fact, they did not. Therefore, the respondents' claims were deceptive.

The consent order contains provisions designed to remedy the advertising violations charged. Thus Part I of the proposed order requires the respondents to have competent and reliable evidence before claiming that Shane or any other oral hygiene product.

a. Cures or alleviates the symptoms of canker or cold sores;

b. Reduces tooth sensitivity;

c. Is useful in the diagnosis, cure, mitigation, treatment, or prevention of disease;

d. Reduces plaque more effectively than any other oral hygiene product; or

e. Cures or alleviates gingivitis or periodontitis.

The order defines the term "competent and reliable evidence" differently for these claims. More specifically, for purposes of claims a and b the term is defined as including at least one well-controlled clinical trial; for purposes of claim c as meaning test(s) or study(ies) using generally accepted professional procedures; and for purposes of claims d and e as including at least two well-controlled clinical trials.

The proposed order also contains standard compliance provisions, including a three (3) year recordkeeping provision requiring retention of materials that support future ad claims, as well as those that contradict or qualify claims.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 87-18070 Filed 8-7-87; 8:45 am]

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16 CFR Part 429

Rule on Cooling-Off Period for Door-to-Door Sales

AGENCY: Federal Trade Commission.

ACTION: Proposed rule and exemptions.

SUMMARY: Federal Trade Commission ("Commission") is proposing non-substantive amendments to § 429.1 (a) and (b) of the Rule on a Cooling-Off Period for Door-to-Door Sales (16 CFR Part 429). The Rule presently requires that the seller of goods or services covered by the Rule provide the buyer with a completed Notice of Cancellation form in duplicate, which shall be attached to the contract or receipt and easily detachable, with certain mandatory language. The proposed amendments would permit more flexible alternative methods of compliance with the Notice requirements of the Rule, without lessening consumer rights. The Commission is also proposing exempting sales of automobiles and products such as arts and crafts which are offered for sale at temporary places of business, from the Rule's application pursuant to section 18(g) of the Federal Trade Commission Act.

All interested persons are hereby given notice of the opportunity to submit written data, views and and arguments concerning these proposals.

DATES: Comments will be accepted on or before October 9, 1987.

ADDRESS: Send comments to Secretary, Federal Trade Commission, 6th and Pennsylvania Avenue, NW., Washington, DC 20580. Submissions should be marked "Cooling-Off Rule—Amendment" and "Cooling-Off Rule—Exemptions".

FOR FURTHER INFORMATION CONTACT: Lewis Franke, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, Phone 202-326-3009.

SUPPLEMENTARY INFORMATION: The Rule on a Cooling-Off Period for Door-to-Door Sales was promulgated by the Commission on October 26, 1972 (37 FR 22933 (1972)). The Rule makes it an unfair or deceptive act or practice for the seller of consumer goods or services with a purchase price of $25.00 or more, who sells away from its place of business, to fail to furnish to the buyer certain information including the buyer's right to cancel the sale within three business days from the date of the transaction and to give the buyer a full refund of any downpayment upon the buyer's cancellation.

On March 3, 1983 the Commission published a notice in the **Federal Register** (48 FR 9032-4 (1983)), soliciting public comments on two 1981 Commission-sponsored studies. The purpose of this notice was to determine whether based upon the studies or other information provided in the comments consideration should be given to modifying the requirements of the Rule as they apply to all segments of industry. Thirteen organizations, consisting of trade associations, companies, and county consumer affairs offices, submitted comments.

Questions were posed on, (1) modifying the Rule to permit simplifying the contract and Notice form required by the Rule, (2) excluding "money back guarantees" and party sales from the Rule's coverage, (3) limiting coverage of the Rule, for example, by raising the $25.00 exempted amount, (4) broadening coverage of the Rule to include, for example, telephone solicitations, (5) whether companies are complying with the Rule and (6) cancellation rates.

Several comments were favorable to the idea of simplifying the Notice form by incorporating it into the contract or receipt. There was also some support for exempting unconditional "money back guarantees". There was no support for exempting party sales from the Rule's coverage and no consensus on raising the exempted amount above $25.00.[1] There was support though for broadening the Rule to cover telephone solicitations because certain businesses have switched from selling via door-to-door sales to telephone solicitations. Little meaningful information was received in response to questions on compliance with the Rule and cancellation rates.

Based on the comments received by the Commission and the two 1981 studies, the Commission is of the opinion that of the modifications proposed, permitting more flexible methods of complying with the Rule's Notice is most likely to yield a net improvement in the application of the Rule.

Simplification of Notice Requirements

The duplicate Notice requirement is necessary to insure that the consumer is able to retain one Notice which contains his/her cancellation rights and obligations under the Rule and to use the other Notice to cancel the transaction should the consumer decide to do so. However, these objectives can be satisfactorily met without some of the rigidities of the present Notice requirements.

The Commission therefore proposes two non-substantive amendments that do not affect the substantive rights of consumers and sellers.

First, the Commission proposes that sellers be afforded the opportunity to select the method of providing the Notices to buyers. In place of the requirement that each seller furnish a completed form in duplicate "which shall be attached to the contract or receipt and easily detachable," a seller would be in compliance with the duplicate Notice requirement as long as the seller furnishes the buyer with duplicate Notices, one of which the buyer can retain for reference and another for mailing to cancel the transaction.

This would permit, for example, the use of a contract or receipt with the reverse side containing one "Notice of Cancellation" and an attached "Notice" to be used by the buyer should the buyer decide to cancel. Another alternative method of complying with the duplicate Notice requirement would be for the seller to give the buyer two copies of the contract or receipt with both having the Notice on the reverse side of the contract or receipt.

However, regardless of the method used, the seller must insure that in the event of cancellation the buyer is able to retain a complete copy of the contract. For example, in the case of a two-page contract the seller is not permitted to place the required duplicate Notice on the contract in such a way that when the buyer returns one of the Notices, a portion of the contract is removed as well. To preclude this type of situation, as well as other similar situations, the Commission is proposing that the Rule specify that irrespective of the location of the two Notices, the buyer must be able to retain one complete copy of the contract or receipt in the event of cancellation. This is consistent with the Commission's intent when it promulgated the Rule in 1972 (37 FR 22933, 22949 (1972)).

Regardless of the method selected by the seller to satisfy the duplicate Notice provision of the Rule, the buyer must know where to find the copies of the Notice if the disclosure and retention aspects of the Rule are to be effective. Thus for those sellers who do not attach both copies of the Notice to the contract or receipt, the last sentence of the summary notice required by paragraph (a) of the Rule must be appropriately altered by the seller so as to include sufficiently specific information to enable the consumer to easily locate the copies. Of course, if both copies of the Notice are attached to the contract, no change in the current summary notice would be required.

The Commission believes that this proposed simplification satisfies our original purpose in adopting these notice provisions. As in the current Rule, the proposed simplification continues to insure that the buyer will receive two easily-located copies of the Notice and remain fully informed of his/her rights. Further, the proposed simplification continues to insure that in the event of cancellation the buyer must be able to retain a complete copy of the contract or receipt. However, by providing the seller with increased flexibility in complying with the duplicate Notice provisions of the Rule, the Commission expects that the policy objectives of those provisions will be attained at a lower cost (including paperwork-related costs) to the seller and ultimately to the consumer.

Second, the Commission proposes giving sellers the option to shorten the Notice by eliminating the sections that are inapplicable to the particular transaction. Much of the mandatory language in the Notice is not applicable to many direct sales. Many of these sales do not involve property traded-in, negotiable instruments, or property being delivered prior to the expiration of the three day cooling-off period. If adopted this proposal would further reduce paperwork-related costs incurred by sellers in complying with the Rule. Shortening the Notice would also benefit the consumer. Fewer sections in the Notice should increase the likelihood of the consumer's reading and understanding key provisions of all documents involved. Elimination of inapplicable language could be accomplished by inserting the words "where applicable" in the paragraph preceding the verbatim statement set forth in the required Notice.

Exemption for Sellers of Certain Products at Temporary Locations

Public Auto Auction Inc. requested the Commission to exempt the company from the requirements of the Cooling-Off Rule on March 4, 1986.[2] The petitioner states that it believes that sales of used cars by various dealers at central but temporary locations would not constitute sales at a "place of business" of the dealers and therefore would subject those transactions to the Rule.[3] As a basis for its petition, Public

[1] The Commission is denying the requests of five parties, made in October 1986, for an increase in the exempted dollar amount to at least $50. That Walker Research Inc. study indicated that by far the most frequently cited source of Rule-induced costs stems from the paperwork burden associated with the Notice of Cancellation forms. The Commission today is proposing an optional method of complying with the Notice provision of the Rule, which if adopted would substantially reduce these paperwork-related costs. Any additional cost savings from raising the exempted dollar amount do not appear sufficient to justify the expenditure of resources in a full rulemaking proceeding.

[2] Letter dated February 28, 1986, with Participation Agreement, Supplemented by letter dated June 25, 1986.

[3] The rule applies to transactions with a purchase price of $25 or more made at a place other than the seller's "place of business." 16 CFR 429.1 and Note 1(a). A place of business is defined under Note 1 (d) of the Rule as a "main or permanent branch office or local address of a seller."

alleges that subjecting these sales to the Rule's requirements is unfair to the sellers because it would result in economic hardship to them.

Section 18(g) (1) of the Federal Trade Commission Act provides that:

> Any person to whom a rule under subsection (a) (1) (B) of this section applies may petition the Commission for an exemption from such rule.

The information supplied by Public Auto Auction indicates that cars are sold directly to interested buyers by the dealers and that each dealer supplies licensed sales personnel for this purpose.[4] Public sponsors the auction but does not act as a dealer.[5]

On the basis of the information submitted it appears that Public is not a seller within the meaning of the Rule and therefore it lacks the requisite standing under section 18(g) (1) to petition the Commission. The Commission therefore denies the petition.

Under section 18 (g) (2) however, the Commission may on its own motion exempt classes of persons. Section 18(g) (2) provides in part that:

> If, on its own motion or on the basis of a petition * * * the Commission finds that the application of a [trade regulation] rule to any person or class of persons is not necessary to prevent the unfair or deceptive act or practice to which the rule relates, the Commission may exempt such person or class from all or part of such rule.

The Commission has reason to believe that sales of autos at public auctions by established companies and arts and crafts at fairs which are sales made at temporary places of business should be exempted from the Rule's coverage because the application of the Rule to these sellers may "not be necessary to prevent the unfair or deceptive practices to which the rule relates."

The Rule was promulgated by the Commission due to five problems associated with sales made away from the seller's principal place of business. These problems are: (1) Deception by the seller in getting inside the door; (2) high pressure sales tactics; (3) misrepresentation as to the quality, price or characteristics of the product; (4) payment of high price for low quality merchandise; and (5) the nuisance created by the uninvited visit of the salesperson to the home (37 FR 22937–22940 (1972)

Although the Rule is primarily directed toward door-to-door sales, the Commission also expressed concern in promulgating the Rule, with the practices of itinerant salesmen who solicit customers at restaurants, shops and other places and with the possibility that salespeople would attempt to evade the Rule's application by luring the consumer outside his/her home by subterfuge. The Commission therefore broadened the definition of a "door-to-door" sale to include those sales made away from the seller's place of business. The Commission, in the Rule's Statement of Basis and Purpose, quoted favorably a comment noting "that a limitation in the [comparable] New York statute restricted its applicability to sales in the home and that this had resulted in the invasion by salesmen of factories, shops, and other places." 37 FR 22947. The Commission also stated:

> The need for such a provision is fairly obvious as restriction of the effect of the rule to contracts signed in the home would lead to all sorts of subterfuges to get the consumer out of his home to sign.

Id. at n.126.

Clearly then the Rule was intended to apply to sales made at locations other than the buyer's home. A literal reading of the definition of "door to door" sale would include a host of away from home transactions not contemplated by the Commission when it issued the Rule. Included are the sales which are the subject of the petition and sales of arts and crafts at fairs. Two circumstances surrounding transactions at a public car auction and at arts and crafts fairs do not appear to engender the concerns expressed by the Commission in adopting the Rule. First, in patronizing these temporary business locations, consumers are likely well aware of the purpose of the sellers in establishing these temporarily locations, viz., to sell cars or arts and crafts. Second, the degree to which a consumer feels free to decline to listen to a sales pitch and to refuse to purchase the product appears to be no less than if the consumer had instead patronized the seller's permanent business location. For these transactions, the existence of both of these circumstances indicate the absence of the equivalent of a deceptive "door-opener" and subterfuge; the absence of the kind of high-pressure sales tactics characterizing in-home sales, which may result in a purchase simply to convince the sales agent to cease using the tactics; and the absence of the nuisance aspects of in-home sales that the Rule sought to remedy. The extent of successful price and quality misrepresentation that may accompany in-home sales is unlikely to occur in these transactions because the consumer can peruse the wares of different vendors at the auction or the fair as well as vendors at permanent business locations. Thus, it does not appear, nor does the Commission have any evidence, that the underlying reasons for the Rule apply to these types of transactions. The Commission is therefore staying application of the Rule to sellers of automobiles at temporary places of business and sellers of arts and crafts at fairs pending the outcome of this proceeding.

In determining whether to exempt sellers of the above-stated products at temporary places of business, the Commission seeks comments and data on all relevant issues, including the following:

(1) Whether, and to what extent, any of the unfair or deceptive acts and practices the Rule is designed to prevent have been committed by the sellers; (2) whether and to what extent, there would be a realistic potential for the occurrence of such abuses after an exemption were granted; (3) whether there are identifiable factors, such as the circumstances in which these transactions occur, which sufficiently differentiate these sellers from others covered by the Rule to explain the absence, if that is the case, of significant past abuses which the Rule is designed to remedy, and to make it unlikely that the person or class would engage in such abuses in the future; (4) whether these or other special circumstances or characteristics would minimize the risk of abuse, mitigate its impact, or otherwise make applicability of the Rule unnecessary; and (5) if an exemption is warranted, (a) the proper definition of the class of persons sharing the characteristics that make application(s) of the Rule unnecessary; (b) whether the exemption, if granted, should be limited to those sellers having permanent places of business; (c) whether and to what extent these sellers suffer economic harm by complying with the Rule?

Written comments will be accepted for a period of 60 days and may be filed in person or mailed to the Secretary, Federal Trade Commission, 6th & Pennsylvania Avenue, NW., Washington, DC 20580. Comments should be identified as "Cooling-Off Rule-Amendments" or "Cooling-Off Rule Exemptions" depending on which proposal the comments relate.

List of Subjects in 16 CFR Part 429

Trade practices.

For the reasons set forth in the preamble, the Commission proposes to amend 16 CFR Part 429 as follows:

PART 429—[AMENDED]

1. The authority citation for Part 429 continues to read as follows:

> Authority: 15 U.S.C. 41–58.

[4] Letter dated February 28, 1986, page 2.

[5] "Participation Agreement", page 1.

2. In § 429.1 the following text would be added to the end of paragraph (a) and the introductory text of paragraph (b) would be revised to read as follows:

§ 429.1 The Rule.

* * * * *

(a) * * *

(The seller may select the method of providing the buyer with the duplicate notice of cancellation form set forth in paragraph (b) of this section, *Provided however,* that in the event of cancellation the buyer must be able to retain a complete copy of the contract or receipt. Furthermore, if both forms are not attached to the contract or receipt, the seller is required to alter the last sentence in the statement above to conform to the actual location of the forms)

(b) Fail to furnish each buyer, at the time he signs the door-to-door sales contract or otherwise agrees to buy consumer goods or services from the seller, a completed form in duplicate, captioned "NOTICE OF CANCELLATION", which shall (where applicable) contain in ten point bold face type the following information and statements in the same language, e.g., Spanish, as that used in the contract.

* * * * *

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 87-18071 Filed 8-7-87; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Parts 41 and 42

[90-210]

Visas; Documentation of Immigrants and Nonimmigrants, Under the Immigration and Nationality Act, as Amended

AGENCY: Department of State.

ACTION: Notice of Proposed rulemaking.

SUMMARY: This proposed rulemaking would implement numerous amendments to the Immigration and Nationality Act which were enacted by the 99th Congress. The changes would include: The elimination of the submission of duplicate immigrant visa documentation; the elimination of the fingerprinting requirement; the establishment of new nonimmigrant visa classifications and immigrant visa categories and their corresponding visa symbols; the extension of derivative foreign state chargeability to the alien spouse and/or child following to join the principal alien in certain cases; and the modification of certain grounds of ineligibility. The proposed changes would improve visa issuance processing and would affect certain nonimmigrant and immigrant visa applicants as discussed in the supplementary information. These changes are required by statute.

DATE: Comments must be received on or before September 11, 1987.

ADDRESS: Stephen K. Fischel, Chief, Legislation and Regulations Division, Visa Services, Washington, DC 20520 (202) 663-1204.

FOR FURTHER INFORMATION CONTACT: Stephen K. Fischel or Guida Evans-Magher, Legislation and Regulations Division, Visa Services, Washington, DC 20520 (202) 663-1204; 663-1206.

SUPPLEMENTARY INFORMATION:

Summary of Changes

The "Immigration and Nationality Act Amendments of 1986" removes the requirement of fingerprinting visa applicants; eliminates the requirement that all documentation for immigrant visas be submitted in duplicate thus limiting to one the number of copies of documents which must be submitted in support of an immigrant visa and abolishing the retention of duplicate immigrant visas; provides for an alien spouse or child, who is following to join the principal alien, to derive the foreign state chargeability of the principal alien; and repeals the provisions of section 212(a)(24) of the Immigration and Nationality Act, as amended, which had become obsolete with passage of time and changes in international travel. Section 25(a) of the Act of September 26, 1961, and sections (1) and (2) of the Act of October 24, 1962 are also repealed.

Section 2(a) of the Immigration Marriage Fraud Amendments adds section 216 to the Immigration and Nationality Act to provide conditional permanent resident status for certain alien spouses and sons and daughters. To conform with those amendments § 42.12 to Title 22, Part 42, is being amended by adding new classification symbols to identify issuance of visas to certain alien spouses of U.S. citizens or lawful permanent resident aliens who are subject to the provisions of section 216. Section 6 of the act provides new language which permanently bars an alien from receiving a visa if such alien has been found ineligible under section 212(a)(19) of the INA on the basis of fraud or misrepresentation which occurred before, on, or after November 10, 1986, the date of enactment of Pub. L. 99-639. The amendments broaden the grounds of ineligibility under the provisions of section 212(a)(19) to apply not only to the processing of a visa or the seeking of entry into the United States, but also to the procuring of any other benefit under the INA in cases where fraud or willful misrepresentation of a material fact has been used at any time to obtain such benefits.

Section 301 of the "Immigration Reform and Control Act of 1986" adds new language to section 101(a)(15)(H)(ii) of the Immigration and Nationality Act which establishes a separate classification (H-2A) for temporary agricultural workers in order to provide a legal method for agricultural employers to import certain needed foreign temporary workers. Section 41.12 to Title 22, Part 41 is amended to reflect the changes in visa classification symbols necessitated by the language in section 301 of this act. Section 312 adds section 101(a)(27)(H) to the INA which grants special immigrant status to certain officers and employees of international organizations and their immediate family members. The special immigrant status is available to four classes of aliens and requires that they meet the designated time periods of status, residence, and physical presence before the date of application and that they apply for special status within defined time frames. Because the provisions of section 312 directly affect the list of classification symbols contained in § 42.12 to Title 22, this proposed rule amends that section to reflect the new symbols.

"The Omnibus Drug Enforcement, Education, and Control Act of 1986" amends the INA to broaden the scope of the provisions of section 212(a)(23) to encompass all drugs listed by the Drug Enforcement Administration (21 CFR Chapter II) as controlled substances. The new provisions apply to aliens convicted before, on, or after October 27, 1986, the date on which the law was enacted, and who enter the United States after the date of enactment of Pub. L. 99-570.

Background Information

Pub. L. 99-653, "The Immigration and Nationality Act Amendments of 1986" was signed into law on November 14, 1986. This act is also known as the "Consular Efficiency bill" in that it provides for improved consular procedures and eliminates certain provisions in the Immigration and Nationality Act which have become obsolete. Section 4 of the act amends the provisions of section 202(b) of the INA to extend the privilege of alternate foreign state chargeability to a spouse or

child who is following to join a principal alien thus further preventing separation of those family members who might follow to join the spouse or parent in the United States at a later date.

Section 5(a) removes the requirement under section 221(a) of the INA that a consular officer must be in possession of a duplicate copy of the original immigrant visa as well as create and maintain a file of duplicate copies. Section 5(b) of the act amends section 221(b) of the INA to repeal the fingerprinting requirement of all visa applicants. The amendment eliminates unnecessary administrative procedures and waste of resources.

Paragraph (a) of section 6 of the act removes the requirement under paragraph (b) of section 222 of the INA that an immigrant visa applicant must submit duplicate copies of the visa application and its supporting documents. The procedural amendments to the INA provided by this section and section 5(a) of the act eliminate significant workload from the immigrant visa process and provide for a more efficient consular operation. Section 7(a) of the act repeals section 212(a)(24) of the INA. Section 11 repeals section 25(a) of the Act of September 26, 1961, and sections (1) and (2) of the Act of October 24, 1962. These sections have become obsolete or have been superseded by other changes to the INA.

Pub. L. 99–639, "Immigration Marriage Fraud Amendments of 1986" was signed into law on November 10, 1986.

Pursuant to the provisions of section 2(a) of the Marriage Fraud Act, new symbols are being added to the listing of classification symbols provided in Title 22, Part 42 § 42.12 of the Code of Federal Regulations. The "conditional" symbols identify those aliens whose marriages were entered into less than two years prior to the date of visa issuance and who are potentially subject to the conditional provisions of section 2(a) of this act.

The Marriage Fraud Act also provides that any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure, or has sought to procure or has procured a visa, other documentation or entry into the United States or other benefit provided under Pub. L. 99–639, will be permanently ineligible to receive a visa under the provisions of section 212(a)(19) of the INA. Prior to this amendment, a finding of ineligibility based on material misrepresentation in the processing of a visa or other documentation would permanently bar an alien from obtaining a visa. A finding of ineligibility based on material misrepresentation in seeking entry into the United States, however, would constitute only a temporary bar, thus allowing for visa issuance even though the alien previously had been found excludable. By replacing the language "seeks to enter" with "entry" section 6 of Pub. L. 99–639 renders an alien permanently ineligible under both findings of ineligibility. The term "other benefits" is intended to refer to any immigration benefit or entitlement provided for in the Immigration and Nationality Act, including, for example, adjustment of status.

Pub. L. 99–603, "Immigration Reform and Control Act of 1986", also known as the Simpson-Rodino Act, was signed into law on November 6, 1986. The amendment by section 301 of this act to section 101(a) (15) (H)(ii) of the INA provides for a new nonimmigrant classification of aliens coming to the United States to perform temporary or seasonal agricultural labor or services. The H–2A temporary worker classification enables agricultural employers or representatives of agricultural employers to recruit and process for admission to the U.S. certain needed agricultural workers. An amendment to reflect procedural changes to Title 22, Part 41 §41.110 was published in an earlier issue of the **Federal Register**. This rule amends § 41.12 to add a new subclass of nonimmigrant temporary workers—H–2A—and to redesignate the current H–2 classification for other temporary workers as H–2B. The symbol for aliens whose labor certifications were filed prior to June 1, 1987 will continue to be the current H–2 symbol. Aliens whose labor certifications are filed on or after June 1, 1987 will be classified as temporary workers under the new H–2A or H–2B symbols.

The addition of section 101(a)(27)(I) to the Immigration and Nationality Act by section 312 of this act provides for new classes of special immigrants. These special immigrantes are subdivided into three groups of potential eligible aliens who, while maintaining status as nonimmigrants under the provisions of section 101(a)(15)(G) of the INA, (1) have resided and been physically present in the United States for required periods of time preceding the application for the special immigrant provisions and (2) who apply for an immigrant visa or adjustment of status within defined time frames applicable to their group. All eligible applicants classifiable under section 101(a)(27(I)(i)—unmarried sons or daughters of an officer or employee of an international organizations—, section 101(a)(27)(I)(ii)—surviving spouse of an officer or employee of an international organization—, and section 101(a)(27)(I)(iii)—retired officer or employee of an international organization, must also meet the applicable criteria listed in (1) and (2) above.

The fourth group of potential eligible aliens classifiable under section 101(a)(27)(I)(iv) are the spouses of retired officers or employees accorded special immigrant status under section 101(a)(27)(I)(iii) who are accompanying or following to join such retired officers or employees. In addition to the new classification symbols for the special classes of immigrants, section 312 of this act also provides for a new nonimmigrant classification (N) under section 101(a)(15) of the INA. This proposed rule amends the related regulations in Title 22, Part 41, 41.12, and Part 42, 42.12, Code of Federal Regulations to reflect the classification symbols for the new classes of aliens.

Pub. L. 99–570 "Omnibus Drug Enforcement, Education, and Control Act of 1986", also known as the Anti-Drug Abuse Act of 1986, was signed into law on October 10, 1986. Section 675 of the act amends the provisions of section 212(a)(23) of the INA to make an alien convicted of a violation of, or conspiracy to violate any law or regulations . . . . relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802), ineligible to receive a visa. The scope of section 212(a)(23) is expanded in that it now applies to all substances listed in the controlled substances list of Schedules I through V to 21 CFR, Chapter II, rather than to specifically enumerated drugs or narcotics in section 212(a)(23) itself.

Furthermore, the provisions of section 212(a)(23) of now apply to convictions for any violation relating to any such controlled substances rather than a conviction for an activity specifically listed in the statute (8 U.S.C. 1101 et. seq.).

This rule is not considered to be a major rule for purposes of E.O. 12291 nor is it expected to have significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects

22 CFR Part 41

Aliens, Ineligible classes, Nonimmigrants, Visas.

22 CFR Part 42

Aliens, Immigrants, Ineligible classes Visas, Accordingly, the Department proposes to amend Title 22, Chapter I, Parts 41 and 42 as follows:

PART 41—DOCUMENTATION OF NONIMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

1. The authority citation for Part 41 is revised to read as follows:

Authority: Sec. 104, 66 Stat. 174; 8 U.S.C. 1104; 109(b)(1), Pub. L. 95–105, 91 Stat. 847.

2. Section 41.12 is amended by inserting H–2A and H–2B symbols between the H–1 and H–3 classification symbols, and inserting N–8 and N–9 symbols after the "M–2" classification symbol information and before the "Nato" classification symbols as follows:

§ 41.12 Classification symbols.

* * * * *

Class	Citation	Symbol to be inserted in visa
* * * * * * *		
Temporary worker performing agricultural services unavailable in the United States	101(a)(15)(H)(ii)(a); 100 Stat. 3411	H-2A
Temporary worker performing other services unavailable in the United States	101(a)(15)(H)(ii)(b); 100 Stat. 3411	H-2B
* * * * * * *		
The parent of an alien child classified SK-3 under section 101(a)(27)(I)(i)	101(a)(15)(N); 100 Stat. 3359	N-8
The child of parent classified N-8 of all of aliens classified SK-1; SK-2; SK-4 under section 101(a)(27)(I)(ii), (iii), or (iv).	101(a)(15)(N); 100 Stat. 3359	N-9
* * * * * * *		

3. In § 41.91, paragraph (a)(19) (i) is revised and (a)(19)(iii) is removed, (a)(23) is revised and (a)(24) is removed and reserved as follows:

§ 41.91 Aliens ineligible to receive visas.

(a) * * *

(19) *Fraud and misrepresentation.* (i) Any alien who, by fraud or willfully misrepresentating a material fact, seeks to procure, or has sought to procure, or has procured a visa, other documentation, or entry into the United States or other benefit provided under the Act shall be ineligible under section 212(a)(19); provided, that the provisions of this paragraph are not applicable if the fraud or misrepresentation was committed by an alien at the time the alien sought entry into a country other than the United States or obtained travel documents as a bona fide refugee and the refugee was in fear of being repatriated to a former homeland if the facts were disclosed in connection with an application for a visa to enter the United States; provided further, that the fraud or misrepresentation was not committed by such refugee for the purpose of evading the quota or numerical restrictions of the U.S. immigration laws, or investigations of the alien's record at the place of former residence or elsewhere in connection with an application for a visa.

* * * * *

(23) *Controlled Substance Violations.* An alien shall be ineligible to receive a nonimmigrant visa under the provisions of section 212(a)(23) of the Act, as amended, as a result of a conviction for a violation of, or for conspiracy to violate any law or regulation relating to a controlled substance, as defined in the Controlled Substances Act, (21 U.S.C. 802), which occurred before, on, or after October 27, 1986.

* * * * *

4. In § 41.116, paragraphs (b)(1) and (2) are removed, and paragraph (b)(3) is redesignated as paragraph (b) as follows:

§ 41.116 Registration and Fingerprinting.

* * * * *

(b) *Fingerprinting.* An alien may be required by the consular officer, * * *

* * * * *

PART 42—DOCUMENTATION OF IMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

1. The authority citation for Part 42 is revised to read as follows:

Authority: Sec. 104, 66 Stat. 174, 8 U.S.C. 1104; Sec. 109(b)(1), Pub. L. 95–105, 91 Stat. 847.

2. In § 42.12, paragraph (a) is removed; paragraph (b) is amended by adding new immigrant visa classification symbols after the symbol "SJ–2" at the end of the list, and is redesignated as paragraph (a); paragraphs (c) and (d) are redesignated as paragraphs (b) and (c) and are revised to read as indicated below.

§ 42.12 Classification symbols.

A visa issued to an immigrant alien within one of the classes described in this section shall bear a symbol to show the classification of the alien.

(a) The following symbols shall be used in cases of aliens who are special immigrants:

Class	Section of the law	Symbol to be inserted in visa
* * * * * * *		
Retired officer or employee classified G-4 under section 101(a)(15)(G)(iv)	101(a)(27)(I)(iii); 100 Stat. 3434	SK-1
Spouse of retired officer or employee classified SK-1	101(a) (27)(I)(iv); 100 Stat. 3434	SK-2
Unmarried son or daughter of a present or former officer or employee classified G-1 under section 101(a)(15)(G)(iv)	101(a) (27)(I)(ii) 100 Stat. 3434	SK-3
A spouse classified G-4 or N-9 who is the survivor of a deceased officer or employee classified G-4 under section 101(a)(15)(G)(iv).	101(a) (27)(I)(iii); 100 Stat. 3434	SK-4

(b) The following symbols shall be used in cases of aliens who qualify as immediate relatives:

Class	Section of the law	Symbol to be inserted in visa
Spouse of U.S. citizen	201(b)	IR-1
Spouse of U.S. citizen (conditional status)	201(b); 216(a), 100 Stat. 3537	CR-1
Child of U.S. citizens	201(b)	IR-2
Child of U.S. citizens (conditional status)	201(b); 216(a), 100 Stat. 3537	CR-2

Class	Section of the law	Symbol to be inserted in visa
Orphan adopted abroad by U.S. citizen	201(b)	IR-3
Orphan to be adopted by U.S. citizen	201(b)	IR-4
Parent of U.S. citizen	201(b)	IR-5

(c) The following symbols shall be used in cases of immigrants who are subject to the numerical restrictions specified in section 201(a) of the Act:

Class	Section of the law	Symbol to be inserted in visa
First preference: Unmarried son or daughter of U.S. citizen	203(a)(1)	P1-1
First preference: Child of alien classified P1-1	203(a)(6)	P1-2
Second preference: Spouse of alien resident	203(a)(2)	P2-1
Second preference: Spouse of alien resident (conditional status)	203(a)(2); 216(a), 100 Stat. 3537	C2-1
Second preference: Unmarried son or daughter of alien resident	203(a)(2)	P2-2
Second preference: Unmarried son or daughter of alien resident (conditional status)	203(a)(2); 216(a), 100 Stat. 3537	C2-2
Second preference: Child of alien classified P2-1 or P2-2	203(a)(6)	P2-3
Second preference: Child of alien classified C-1 or C-2 (conditional status)	203(a)(6); 216(a), 100 Stat. 3537	C2-3
Third preference: Professional or highly skilled immigrant	203(a)(3)	P3-1
Third preference: Spouse of alien classified P3-1	203(a)(5)	P3-2
Third preference: Child of alien classified P3-1	203(a)(5)	P3-3
Fourth preference: Married son or daughter of U.S. citizen	203(a)(4)	P4-1
Fourth preference: Married son or daughter of U.S. citizen (conditional status)	203(a)(4); 216(a), 100 Stat. 3537	C4-1
Fourth preference: Spouse of alien classified P4-1	203(a)(6)	P4-2
Fourth preference: Spouse of alien classified C4-1 (conditional status)	203(a)(6); 216(a), 100 Stat. 3537	C4-2
Fourth preference: Child of alien classified P4-1	203(a)(6)	P4-3
Fourth preference: Child of alien classified C4-1	203(a)(6); 216(a), 100 Stat. 3537	C4-3
Fifth preference: Brother or sister of U.S. citizen twenty-one years of age or older	203(a)(5)	P5-1
Fifth preference: Spouse of alien classified P5-1	203(a)(6)	P5-2
Fifth preference: Child of alien classified P5-1	203(a)(6)	P5-3
Sixth preference: Needed skilled or unskilled worker	203(a)(6)	P6-1
Sixth preference: Spouse of alien classified P6-1	203(a)(6)	P6-2
Sixth preference: Child of alien classified P6-1	203(a)(6)	P6-3
Nonpreference immigrant	203(a)(7)	NP-1-

§ 42.27 [Removed and reserved]

3. Section 42.47 is removed and reserved.

4. Section 42.51 is revised to read:

§ 42.51 Exception for accompanying child.

If necessary to prevent the separation of a child from the alien parent or parents, an immigrant child, including a child born in a dependent area, may be charged to the same foreign state to which a parent is chargeable, if the child is accompanying or following to join the parent, in accordance with section 202(b)(1) of the Act.

5. Section 42.52 is revised to read:

§ 42.52 Exception for spouse.

If necessary to prevent the separation of husband and wife, an immigrant spouse, including a spouse born in a dependent area, may be charged to the foreign state to which the spouse is chargeable if accompanying or following to join the spouse, in accordance with section 202(b)(2).

6. In § 42.91, paragraph (a)(19)(i) is revised and (a)(19)(iii) is removed, (a)(23) is revised and (a)(24) is removed and reserved, as follows:

§ 42.91 Aliens ineligible to receive visas.

(a) * * *

(19) *Fraud and misrepresentation.* (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure, or has sought to procure, or has procured a visa, other documentation, or entry into the United States or other benefit provided under the Act shall be ineligible under section 212(a)(19); provided, that the provisions of this paragraph are not applicable if the fraud or misrepresentation was committed by an alien at the time the alien sought entry into a country other than the United States or obtained travel documents as a bona fide refugee and the refugee was in fear of being repatriated to a former homeland if the facts were disclosed in connection with an application for a visa to enter the United States; provided further, that the fraud or misrepresentation was not committed by such refugee for the purpose of evading the quota or numerical restrictions of the U.S. immigration laws, or investigation of the alien's record at the place of former residence or elsewhere in connection with an application for a visa.

* * * * *

(23) *Controlled substance violations.* An alien shall be ineligible to receive an immigrant visa under the provisions of section 212(a)(23) of the Act, as amended, as a result of a conviction for a violation of, or for conspiracy to violate any law or regulation relating to a controlled substance, as defined in the Controlled Substance Act, (21 U.S.C. 802), which occurred before, on, or after October 27, 1986.

* * * * *

7. Section 42.111(b) is revised to read:

§ 42.111 Supporting documents.

* * * * *

(b) *Documents required.* An alien applying for an immigrant visa shall be required to furnish, if obtainable: a copy of each required police certificate; a certified copy of any existing prison record, military record, and record of birth; and a certified copy of all other records or documents which the consular officer considers necessary.

* * * * *

8. Section 42.116(b) is revised to read as follows:

§ 42.116 Registration and fingerprinting.

* * * * *

(b) *Fingerprinting.* An alien may be required at any time prior to the execution of Form OF-230 to have a set of his fingerprints taken if such procedure is necessary for purposes of identification or investigation.

9. In § 42.125, paragraphs (a) and (b) are amended by revising their first sentences, and paragraph (c) is removed as follows:

§ 42.125 Issuance of new or replacement visas.

(a) *New immigrant visa for an alien not subject to numerical limitation.* An immediate relative within the meaning of section 201(b) of the Act, or a special immigrant described in section 101(a)(27) of the Act, who establishes that his visa has been lost or mutilated and has expired, or that he will be unable to use it during the period of its validity, may be issued a new visa at the same or any other consular office upon payment of the statutory application and visa fees if the immigrant is at that time found qualified to receive such visa. Prior to issuing a new immigrant visa * * *

(b) *Replacement of immigrant visa for an alien subject to numerical limitations.* An immigrant documented under section 203 of the Act who establishes that he was or will be unable to use it during the period of its validity because of reasons beyond his control and for which he is not responsible, may be issued a replacement immigrant visa under the original number during the same fiscal year in which the original visa was issued, if the number has not been returned to the Department upon payment anew of the statutory application and visa fees, if the immigrant is at that time found qualified to receive such a visa. Prior to issuing a new immigrant visa * * *

10. Paragraph (a) of § 42.130 is amended by removing the last four sentences and inserting new language after the third sentence to read as follows:

§ 42.130 Procedure in refusing visas

(a) Refusal procedure. * * * Each document related to the refusal shall then be attached to Form OF–230 for retention in the refusal files. Any document not related to the refusal shall be returned to the applicant. If the grounds of ineligibility may be overcome by the presentation of additional evidence and the applicant indicates an intention to submit such evidence, all documents may, with the consent of the alien, be retained in the consular files for a period not to exceed one year. If the refusal has not been overcome within one year, any documents not relating to the refusal shall be removed from the file and returned to the alien.

* * * * *

Dated: July 21, 1987.

Joan M. Clark,

Assistant Secretary for Consular Affairs.

[FR Doc. 87–17947 Filed 8–7–87; 8:45 am]

BILLING CODE 4710-06-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 925

Public Comment Period and Opportunity for Public Hearing on an Amendment to the Missouri Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for a public comment period and for a public hearing on the substantive adequacy of amendments submitted by the State of Missouri to amend its permanent regulatory program (hereinafter referred to as the Missouri Program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to the Missouri regulatory program concerning backfilling and grading, revegetation, use of explosives, signs and markers, permit application requirements, penalty assessment, and liens for reclamation on abandoned mined lands.

This notice sets forth the times and locations that the proposed amendment is available for public inspection, the comment period during which interested persons may submit written comments on the proposed program amendment, and information pertinent to the public hearing.

DATES: Comments not received on or before 4:00 p.m. September 9, 1987 will not necessarily be considered.

If requested, a public hearing on the proposed modifications will be held on September 4, 1987 beginning at 10:00 a.m. at the location shown below under **"ADDRESSES"**.

ADDRESSES: Written comments should be mailed or hand delivered to: Office of Surface Mining Reclamation and Enforcement, Kansas City Field Office, 1103 Grand Avenue, Room 502, Kansas City, Missouri 64106.

If a public hearing is held, its location will be at: Office of Surface Mining Reclamation and Enforcement, Kansas City Field Office, 1103 Grand Avenue, Room 502, Kansas City, Missouri 64106.

See **"SUPPLEMENTARY INFORMATION"** for addresses where copies of the Missouri program amendment and administrative record on the Missouri program are available. Each requestor may receive, free of charge, one single copy of the proposed program amendment by contacting the OSMRE Kansas City Field Office listed above.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Kovacic, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 1103 Grand Avenue, Room 502, Kansas City, Missouri 64106; Telephone: (816) 374–5527.

SUPPLEMENTARY INFORMATION:

Availability of Copies

Copies of the Missouri program amendment, the Missouri program, and the administrative record on the Missouri program are available for public review and copying at the OSMRE offices and the office of the State regulatory authority listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays:

Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 1103 Grand Avenue, Room 502, Kansas City, Missouri 64106; Telephone (816) 374–5527.

Office of Surface Mining Reclamation and Enforcement, 1100 L Street, NW, Room 5131, Washington, DC 20240; Telephone: (202) 343–5447.

Missouri Department of Natural Resources, Land Reclamation Program, 205 Jefferson Street, P.O. Box 176, Jefferson City, Missouri 65102; Telephone: (314) 751–4041.

Written Comments

Written comments should be specific, pertain only to those issues proposed in this rulemaking, and include explanations in support of the comment recommendations. Comments received after the time indicated under **"DATES"** or at locations other than Kansas City, Missouri, will not necessarily be considered and included in the Administrative Record for this final rulemaking.

Public Hearing

Persons wishing to comment at a public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by the close of business August 25, 1987. If no one requests to comment at a public hearing, the hearing will not be held.

If only one person requests to comment, a public meeting rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Filing of a written statement at the time of the hearing is requested and will greatly assist the transcriber. Submission of written statements in

advance of the hearing will also allow OSMRE officials to prepare appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

Persons wishing to meet with OSMRE representatives to discuss the proposed amendment may request a meeting at the OSMRE office listed in "ADDRESSES" by contacting the person listed under "FOR FURTHER INFORMATION CONTACT".

All such meetings are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

Background

On February 1, 1980, the Secretary of the Interior received a proposed regulatory program from the State of Missouri. On November 21, 1980, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary conditionally approved the Missouri program (45 FR 77017–77028).

Information pertinent to the general background of the permanent program submission, as well as the Secretary's findings, and the disposition of comments, and explanations of the condition of approval of the Missouri program can be found in the November 21, 1980 Federal Register. Subsequent actions concerning the Missouri program are identified in 30 CFR 925.15 and 925.16.

Proposed Amendment

On June 22, 1987, the State of Missouri submitted to OSMRE an amendment to its approved permanent regulatory program. The amendment consists of proposed modifications to Missouri's regulations concerning backfilling and grading, revegetation, use of explosives, signs and markers, permit application requirements, penalty assessment, and liens for reclamation on abandoned mined lands.

The proposed changes are summarized briefly below.

Backfilling and Grading Requirements

1. Missouri proposes to amend rule 10 CSR 40–3.110(6) on regrading or stabilizing rills and gullies. The proposed amendment establishes a more well-defined shedule for initial stabilization and permanent repair of two size classes of rills and gullies in areas that have been regraded and topsoil replaced. The schedule sets out a time frame for treating all rills and gullies that are greater than nine inches in depth, or those that are less than nine inches in depth but may adversely affect performance standards in the areas of land use, vegetative cover, or off-site water quality standards.

Revegetation Requirements

2. Missouri proposes to amend rule 10 CSR 40–3.120(8) (A) and (D) to more accurately define the reclamation scheduled for backfilling and rough grading, establishing of a vegetative cover, conditions and requirements for Phase II liability release, and conditions for review of Phase II liability variance requests. The proposal gives the permittee the opportunity to develop a unique reclamation schedule that must be as contemporaneous as the approved schedule. Initial seeding, rather than completion of backfilling and rough grading, is used as the starting point of the time period allowed for establishing a permanent vegetative cover and submittal of a Phase II liability release request. Requirements that a Phase II liability variance request be reviewed as a major permit revision are deleted.

Use of Explosives

3. Missouri proposes to amend rules 10 CSR 40–3.050 for surface coal mining operations, and 10 CSR 40–3.210 for underground coal mining operations. The permanent program performance standards of the use of explosives are completely revised so that they closely parallel the Federal regulations at 30 CFR 816.61 through 816.68 and 30 CFR 817.61 through 817.68. Some differences still exist between the two programs as indicated by the following:

4. There is no provision in 10 CSR 40–3.210(1)(C) or 10 CSR 40–3.050(1)(C) for the possession and filing of certificates of blaster certification at the permit area as in 30 CFR 816.61(C)(2) and 30 CFR 817.61(C)(2).

5. Missouri requires at least 40 days for notification of preblast surveys in 10 CSR 40–3.050(2)(A) and 10 CSR 40–3.210(2)(A) rather than the 30 days required in 30 CFR 816.62(a) and CFR 817.62(a).

6. Missouri requires in 10 CSR 40–3.050(2)(D) and 10 CSR 40–3.210(2)(D) that a person who disagrees with a survey must file a description of the disagreement within 45 days of receipt of the survey. This requirement is not found in 30 CFR 816.62(d) and 30 CFR 817.62(d).

7. Missouri requires, in addition to the requirement of 30 CFR 816.62 and 30 CFR 817.62, that the Director be provided a list of persons notified for a pre-blast survey. The list must show who has agreed to a survey and who has refused 30 days prior to initiation of blasting in 10 CSR 40–3.050(2)(F) and 10 CSR 40–3.210(2)(F).

8. Missouri requires, in addition to the requirements of 30 CFR 816.62 and 30 CFR 817.62, that the property owner be advised that the pre-blast survey will be made at no cost to the property owner in 10 CSR 40–3.050(2)(G) and 10 CSR 40–3.210(2)(G).

9. Missouri defines periodic monitoring, required in 30 CFR 816.67(b)(2) and 30 CFR 817.67(b)(2), as "one blast every three months (the first quarter to commence the first day of the month in which blasting is initiated)". The record of the monitored event is to be submitted to the Director 15 days subsequent to the end of the quarter, as required in 10 CSR 40–3.050(5)(B)(2)(A) and 10 CSR 40–3.210(5)(B)(2)(A).

10. Missouri requires, in addition to the requirements of 30 CFR 816.67(d)(2) and 30 CFR 816.67(d)(2), that ground vibration not exceed specified limits at "commercial buildings" in 10 CSR 40–3.050(5)(D)(2)(A) and 10 CSR 40–3.210(5)(D)(2)(A).

Signs and Markers

11. Missouri proposes to amend rules 10 CSR 40–3.010(6) for surface coal mining operations and 10 CSR 40–3.170(6) for underground coal mining operations. The proposal deletes the specifications for blasting signs which are now given as proposed in 10 CSR 40–3.050 and 10 CSR 40–3.210.

Permit Application Requirements

12. Missouri proposes to amend 10 CSR 40–6.010(3)(C) to correct the citation of several Federal acts.

13. Missouri proposes to amend 10 CSR 40–6.010(5)(c) to include the requirement that technical information presented in the permit application "shall be planned by or under supervision of a qualified professional in the subject area".

14. Missouri proposes to amend 10 CSR 40–6.030(2)(C) to expand the listing of notices of violations to include any subsidiary, affiliate, or persons controlled by or under common control with the applicant.

15. Missouri proposes to amend 10 CSR 40–6.050(4) to delete listing blast pattern specifications that are also required in 10 CSR 40–3.050(6). The applicant is now requested to provide a plan showing how the applicant will comply with the appropriate performance standards for controlling adverse effects of blasting operations. The applicant must address a plan that meets the limitations for ground vibration and air blast. The applicant must also describe his blast monitoring system and seek specific approval for a blast plan that proposes to blast closer than 500 feet from an active underground mine.

16. Missouri proposes to amend 10 CSR 40–6.070(2)(C) to require permit application notification to the local office of the Soil Conservation Service, the local U.S. Army Corps of Engineers district engineer, and the National Park Service.

17. Missouri proposes to amend 10 CSR 40–6.070(6) to delete the entire section and rewrite it to more closely parallel 30 CFR 773.13(d) relating to public availability of permit applications.

18. Missouri proposes to amend 10 CSR 40–6.070(7)(E) to require that the applicant has the burden of establishing compliance with the program.

19. Missouri proposes to amend 10 CSR 40–6.070(8)(M) to require the applicant to satisfy the requirements of a long-term, intensive agricultural post-mining land use prior to permit application.

20. Missouri proposes to amend 10 CSR 40–6.090(4)(E) to require that the applicant has the burden of establishing compliance with the program.

21. Missouri proposes to amend 10 CSR 40–6.090(6)(A)(3) to correct a regulation citation from "10 CSR 40–7.020(4)" to "10 CSR 40–7.050".

22. Missouri proposes to amend 10 CSR 40–6.090(9) to change the required approval from the commission to the director.

23. Missouri proposes to amend 10 CSR 40–6.090(10) to delete the existing language and replace it with language that closely parallels that of 30 CFR 774.17(b), (c), (d), (e), and (f) concerning transfer, assignment, or sale of permit rights.

24. Missouri proposes to amend 10 CSR 40–6.090(11) by deleting this section, made unnecessary after amending 10 CSR 40–6.090(10).

25. Missouri proposes to amend 10 CSR 40–6.100(2)(C) to include the listing of notices of violation by any subsidiary, affiliate, or persons controlled by or under common control with the applicant.

Penalty Assessment

26. Missouri proposes to amend 10 CSR 40–8.040(3)(B)(1) to make several wording changes to improve accuracy in the area of violation history.

27. Missouri proposes to amend 10 CSR 40–8.040(3)(B)(2)(A) to add language that will detail how points are assigned for assessing extent of potential or actual damage.

28. Missouri proposes to amend 10 CSR 40–8.040(3)(B)(2)(C) to add language that will detail how points are assigned for assessing violations of administrative requirements.

29. Missouri proposes to amend 10 CSR 40–8.040(3)(B)(2)(A)(II) to add language that will detail how points are assigned for negligence.

30. Missouri proposes to amend 10 CSR 40–8.040(3)(B)(3)(A)(III) to add language that will detail how points are assigned for violations that occur through a greater degree of fault than negligence.

31. Missouri proposes to amend 10 CSR 40–8.040(3)(B)(4)(A) to add language that will detail how points are substracted based on good faith.

32. Missouri proposes to amend 10 CSR 40–8.040(3)(B)(4)(D) to state that an operator will not necessarily be disqualified from good faith points because of an extended abatement period.

Reclamation of Private Lands

33. Missouri proposed to amend 10 CSR 40–9.060(2)(A) to delete the existing language and replace it with language that closely parallels 30 CFR 882.12 concerning appraisals of reclaimed land.

34. Missouri proposes to amend 10 CSR 40–9.060(3)(A) to make several wording changes for greater accuracy concerning liens on reclaimed land.

35. Missouri proposes to amend 10 CSR 40–9.060(3)(B) to closely parallel the language of 30 CFR 882.13(b) concerning the recording of liens on reclaimed land.

36. Missouri proposes to amend 10 CSR 40–9.060(4)(A) to closely parallel the language of 30 CFR 882.14(a) concerning satisfaction of liens.

Therefore, the Director of OSMRE is seeking public comment on the adequacy of the proposed program amendments. Comments should specifically address whether the proposed amendments are as stringent as SMCRA and no less effective than its implementing regulations.

Additional Determinations

1. *Compliance with the National Environmental Policy Act.* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act.* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for action directly related to approval or conditional approval of State regulatory programs. Therefore, for this action OSMRE is exempt from the requirement to prepare a Regulatory Impact Analysis, and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act.* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 925

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: July 30, 1987.

Raymond L. Loverie,

Assistant Director, Western Field Operations, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 87–18049 Filed 8–7–87; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD–FRL–3242–9]

Organic Solvent Cleaning (Degreasing); Initiation of Regulatory Investigation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice requesting public participation in information gathering for organic solvent cleaning.

SUMMARY: The EPA is considering development of national emissions standards for hazardous air pollutants (NESHAP) for organic solvent cleaners under section 112 of the Clean Air Act. These standards would control

emissions of trichloroethylene (TCE), perchloroethylene (PCE), and methylene chloride (MC) from both existing and new solvent cleaners. The EPA is also considering concurrent development of new source performance standards (NSPS) under section 111 of the Clean Air Act for control of volatile organic compounds (VOC) emissions from solvent cleaners. The types of equipment that would be regulated include cold cleaners, parts washers, open top vapor degreasers, conveyorized degreasers, and other organic vapor generating devices used in cleaning or drying. The purpose of this notice is to advise the public that regulatory activities are being considered and to identify interested parties who would participate in the information gathering activities for standards development.

DATE: Comments must be submitted on or before October 9, 1987.

ADDRESS: Written comments should be submitted to Mr. Robert E. Rosensteel, Chemicals and Petroleum Branch (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–5808.

FOR FURTHER INFORMATION CONTACT: Mr. David A. Beck, Chemicals and Petroleum Branch (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–5421.

SUPPLEMENTARY INFORMATION: The EPA proposed NSPS for organic solvent cleaners on June 11, 1980 (45 FR 39766) under the provisions of section 111 of the Clean Air Act. These standards would have limited emissions of VOC, as well as five halogenated solvents (TCE, PCE, MC, trichlorotrifluoroethane (CFC113), and 1,1,1-trichloroethane) from new, modified, or reconstructed cleaners. In Aprill 1981 (46 FR 22768), the Agency deferred the effective date of the proposed NSPS to address technical concerns raised during the public comment period by organic solvent cleaning equipment manufacturers. Work was subsequently delayed to allow time for further investigation of health effects of the five halogenated solvents and to make decisions on whether they should be listed and regulated as hazardous air pollutants under Section 112. Based on more recent health effects data, the Agency published notices of intent to list two of the five solvents as hazardous air pollutants: TCE (50 FR 52422; December 23, 1985), and PCE (50 FR 52880; December 26, 1985). A decision to study MC under Section 112 was included in an advance notice of proposed rulemaking jointly published by the EPA Office of Air and Radiation (OAR) and the Office of Toxic Substances (50 FR 42037; October 17, 1985). Notices of the EPA's intent not to list as hazardous air pollutants were published for CFC–113 (50 FR 24313; June 10, 1985) and 1,1,1-trichloroethane (50 FR 24314; June 10, 1985). The decisions on CFC–113 and 1,1,1-trichloroethane were based on health effects from direct exposure to these chemicals. The health effects resulting from stratospheric ozone depletion (potentially caused by CFC–113 and 1,1,1-trichloroethane) are currently being studied under Part B of the Clean Air Act.

An Interagency Chlorinated Solvents Working Group (ICSWG) was established in December 1985 to determine the most effective regulatory authorities for addressing multimedia releases of the chlorinated solvents from organic solvent cleaning and three other source categories. The OAR, as a part of this group, is pursuing development of standards for solvent cleaning under sections 111 and 112 of the Clean Air Act. This decision could be superseded at a later date as a result of the ongoing ICSWG activities, or solvent cleaning could be regulated under two or more authorities.

The EPA is seeking to identify interested parties who would participate in the information gathering activities for standards development. Participation may include technical discussions with EPA representatives, comments on draft EPA technical documents and regulations, and submittal of information pertinent to organic solvent cleaner emissions, controls, cost of control, and control implementation.

Solvent cleaning operations are used in a wide variety of industries. Manufacturing and service industries that would be affected by the standards being considered are listed below by their Standard Industrial Classification (SIC) code.

SIC	Industry
20	*Food and Kindred Products*
205	Bread and Other Bakery Products, Except Cookies and Cakes
25	Metal Furniture.
254	Partitions and Fixtures.
259	Miscellaneous Furniture and Fixtures.
33	Primary Metals.
332	Iron and Steel Foundries.
335	Nonferrous Rolling and Drawing.
336	Nonferrous Foundries.
339	Miscellaneous Primary Metal Products.
34	Fabricated Products.
342	Cutlery, Hand Tools, and Hardware.
343	Plumbing and Heating (except Electrical).
344	Fabricated Structural Metal Products.
345	Screw Machine Products, Bolts, etc.
346	Metal Forgings and Stampings.
347	Metal Services.
348	Ordnance and Accessories.
349	Miscellaneous Fabricated Metal Products.
35	Non-Electric Machinery.
351	Engines and Turbines.
352	Farm and Garden Machinery.
353	Construction and Related Machinery.
354	Metalworking Machinery.
355	Special Industrial Machinery.
356	General Industrial Machinery.
357	Office of Computing Machines.
358	Refrigeration and Service Machinery.
359	Miscellaneous Machinery (except Electrical).
36	Electric Equipment.
361	Electric Distributing Equipment.
362	Electrical Industrial Apparatus.
364	Electric Lighting and Wiring Equipment.
366	Communication Equipment.
367	Electronic Components and Accessories.
369	Miscellaneous Electrical Equipment and Supplies.
37	Transportation Equipment.
371	Motor Vehicles and Equipment.
372	Aircraft and Parts.
376	Guided Missiles, Space Vehicles, Parts.
379	Miscellaneous Transportation Equipment.
38	Instruments and Clocks.
381	Engineering and Scientific Instruments.
382	Measuring and Controlling Devices.
39	Miscellaneous Manufacturing Industries.
40	Railroad Transportation.
401	Railroads—Maintenance.
45	Air Transportation.
456	Air Transport—Maintenance.
55	Automotive Dealers and Gasoline Service Stations.
551	Motor Vehicle Dealers (New and Used).
554	Gasoline Service Stations.
75	Automotive Repair, Services, and Garages.
753	Auto Repair.

BEST COPY AVAILABLE

Dated: July 31, 1987.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 87-17881 Filed 8-7-87; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 228

[OW-4-FRL-3245-1]

Ocean Dumping; Proposed Site Designation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to designate four sites in the Gulf of Mexico as EPA-approved ocean dumping sites for the dumping of dredged material. These sites are located one each offshore Pensacola, Florida and Mobile, Alabama and two offshore Gulfport, Mississippi. This action is to designate acceptable ocean dumping sites for the current and future disposal of dredged material.

DATE: Comments must be received on or before September 9, 1987.

ADDRESSES: Send comments to: Sally Turner, Chief, Marine Protection Section, Water Management Division, U.S. Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, GA 30365.

The file supporting these proposed site designations is available for public inspection at the following locations:

EPA Public Information Reference Unit (PIRU), Room 2904 (rear), 401 M Street, SW., Washington, DC 20460

EPA Region IV, 345 Courtland Street, NE., Atlanta, GA 30365

FOR FURTHER INFORMATION CONTACT: Reginald Rogers, 404/347-2126.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 et seq. ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On December 23, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. These proposed site designations are within Region IV and are being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, § 228.4) state that ocean dumping sites will be designated by promulgation in this Part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977, (42 FR 2461 *et seq.*), and was extended on August 19, 1985, (50 FR 33338). The list established the existing sites at Pensacola, Mobile, and Gulfport as interim sites and extended their periods of use until December 31, 1988. Interested persons may participate in this proposed rulemaking by submitting written comments within 30 days of the date of this publication to the address given above.

B. EIS Development

Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, ("NEPA") requires that Federal agencies prepare an Environmental Impact Statement (EIS) on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EIS's in connection with ocean dumping site designations such as these [See 39 FR 16186 (May 7, 1984)].

EPA has prepared a draft and final EIS entitled, "Environmental Impact Statement (EIS) for Pensacola, Florida, Mobile, Alabama, and Gulfport, Mississippi Ocean Dredged Material Disposal Site Designation." The action discussed in the EIS is the final designation for continuing use of ocean dredged material disposal sites near Pensacola, Florida, Mobile, Alabama, and Gulfport, Mississippi. The purpose of the proposed action is to designate an environmentally acceptable location for ocean disposal of dredged materials. The need for ocean disposal is assessed on a case-by-case basis as part of the process of evaluating ocean disposal projects.

The EIS discusses the need for the designation and examines ocean disposal site alternatives to this proposed action. The EIS evaluated near-shore, mid-shelf and shelf-break alternatives sites using the general criteria and specific factors contained in the Ocean Dumping Regulations. The EIS presents information needed to evaluate the suitability of ocean disposal areas for final designation for continuing use and is based on one of a series of disposal site environmental studies.

On Friday, February 13, 1987, a notice of availability of the Final EIS (FEIS) for public review and comment was published in the **Federal Register** [52 FR 4658 (February 13, 1987)]. Anyone desiring a copy of the FEIS may obtain one from the EPA address above. Four responses were received from EPA's request for comments on the FEIS and are addressed below.

Letters of comment from the Alabama State Historical Commission, Federal Highway Administration, and U.S. Army Corps of Engineers, South Atlantic Division, each supported the four site designations as presented in the FEIS. The Corps correctly stated that the date given in the FEIS for the expiration of the interim sites (January, 1985) was incorrect. The correct date for expiration of the interim sited is December, 1988.

The State of Florida responded with specific comments from different State departments concerning the Pensacola site. The Florida Department of Environmental Regulation (FDER) questioned the need to expand the boundaries of the interim Pensacola site for the final designation, disagreed with EPA's criteria for determining if dredged material was predominantly sand (the Pensacola site will be designated only for disposal of predominantly sand dredged material), and comment that site management plans were not specified.

The reasons for expanding the boundaries of the interim Pensacola site from .64 square nautical miles to 2.5 square nautical miles are given on page 2-6 of the Final EIS. The expanded area represents the area which the Corps has advised EPA has been historically used for dredged material disposal. In addition, the expanded area allows EPA to monitor disposal activities at the site and provides the flexibility to alter disposal techniques or employ other contingency measures as the monitoring results dictate.

It is not intended for the entire disposal site to be used at random. Rather, disposal will be confined to certain portions of the site, as determined in the development of a site management plan, and monitored for impacts. If the monitoring results indicate significant mounding, migration or adverse effects, the expanded site provides an adequate area for disposal techniques, rates, and discharge points to be altered. The larger site allows changes in disposal operations to minimize the effects of disposal.

EPA determined in the Final EIS that disposing significant quantities of silt and clay at the proposed Pensacola site could present water quality disturbances associated with high turbidities and transport of fine sediments in the water column. If significant quantities of fine material remain in the water column the potential exists for the transports of these

materials to the shore. Therefore, EPA proposed to restrict the Pensacola site for only predominantly sand sediments. The restriction requires that only sediments in which the majority of samples tested showed a median grain size of >.125 mm and a composition of less than 10% fines could be disposed of at the site. FDER commented that the term "majority" could possibly allow the disposal of too many fine particles. EPA will review the information required by the Ocean Dumping Regulations (ODR) 40 CFR 225.2 for each actual use of the Pensacola site which is proposed. The ODR require that this information include the characteristics and composition of dredged materials proposed for disposal. EPA will ensure that the materials have been shown to be predominantly coarse grained based on the grain size analysis of samples taken at intervals sufficient to characterize the reach. EPA believes that such consideration of the grain size data on a use-by-use basis gives a reasonable assurance that significant quantities of silt and clay will not be disposed of at the site. Specific criteria, such as the number of samples to be taken or the number of samples that must fall into a given grain size range, should not be specified at the site designation stage because each use must be evaluated accordingly to the characteristics of the reach or reaches to be dredged.

The disposal site management plan was mentioned only in general terms in the FEIS. A more detailed plan is included in Section F of this proposed rule. However, specific monitoring plans can be developed only when detailes about a disposal project are known.

The Florida Department of Natural Resources (FDNR) commented that the proposed designation of the Pensacola site would require an easement from the State of Florida. EPA believes that the mere designation of the Pensacola site as an environmentally suitable location for disposal of dredged material does not encroach on State sovereignty over submerged lands. As stated in the FEIS, does not consider State requirements for leases or easements for activities using State waters applicable to EPA's site designations. Such designations do not authorize any use for ocean dumping. They are essentially statements of EPA's judgments about the environmental suitability of the site as a potential repository for dredged material. By designating the Pensacola site, EPA does not express approval of any particular disposal project there. Each project must be evaluated on a case-by-case basis. It is through project evaluation that a decision is reached as to the most appropriate disposal option.

FDNR also expressed opposition to the disposal of beach quality material in the proposed site and recommended that the designation be restricted to prevent disposal of beach quality materials.

Since EPA has determined that the proposed Pensacola site is environmentally suitable for coarse grained beach-compatible materials, the Agency does not believe it is appropriate to restrict the site designation such that beach-compatible material cannot be disposed there.

C. Coastal Zone Management and Endangered Species Coordination

Pursuant to the Coastal Zone Management Act (CZMA) EPA has reviewed the Costal Zone Management Plans (CZMP) of the States of Alabama and Mississippi. Based on this review, EPA has determined that the proposed action is consistent with the CZM plans of these States. On October 7, 1984, letters expressing EPA's determination of CZMP consistency were sent to Alabama and Mississippi. No comments were received from either State. After reviewing Florida's CZMP, EPA also determined that the proposed action to be consistent with this plan. On March 16, 1987, the State of Florida responded to EPA's consistency determination and indicated that the State would not concur with EPA's determination unless EPA took the following steps:

1. Condition the disposal site to allow only the disposal of dredged material that is predominantly sand as defined by a median grain size of >.125 mm and composition of <10% fines.
2. Provide description of disposal site management practices.
3. Include the State in monitoring plan development.
4. Specify contingencies to be implemented if the material moves off site or impacts to marine biota are detected.
5. Obtain an easement for use of the state-owned submerged lands.
6. Limit the size of the site to the dimensions of the interim site.

EPA has reported to Florida's requirements for concurrence as follows:

1. EPA has agreed to condition its Pensacola site designation so as to allow the disposal of only dredged material that is predominantly sand as defined by a median grain size of >.125 mm and composition of <10% fines.
2. A description of the general disposal site management practices is given in Section F below. Specific monitoring plans for the Pensacola site, based on information about specific uses of the site, will be developed as that information becomes fully available.
3. As indicated in the FEIS, the development of specific monitoring plans for EPA-designated disposal sites is coordinated with the appropriate state and federal agencies. Therefore, the State of Florida will be included in the process of developing specific monitoring plans for the proposed Pensacola site.
4. As more fully discussed in Section F below, EPA will take appropriate steps, including the modification or termination of the site designation, if significant adverse effects are revealed through site monitoring.
5. EPA does ot believe that State requirements for leases or easements are relevant to disposal site designations which, for reasons discussed in Section B above, do not encroach upon State sovereignty over submerged lands. The National Oceanographic and Atmospheric Administration, the federal agency responsible for overseeing the implementation of the federal consistency provisions of the CZMA, has advised EPA and the State of Florida, by letter dated April 23, 1987, that no valid finding of inconsistency to the Florida CMP may be based on a requirement that EPA obtain a lease or easement related to its site designation.
6. As discussed in Section B above, the larger site reflects the area which the Corps has indicated was used for past disposal. This size is also recommended in implementing the management plan set forth in Section F below, including contingency actions contemplated.

For the reasons outlined above EPA continues to believe in the correctness of its determination that the Pensacola site designation is consistent with the Florida CMP to the maximum extent practicable as required by section 307 of the CZMA.

Pursuant to section 7 of the Endangered Species Act the National Marine Fisheries Service and the U.S. Fish and Wildlife Service have concurred with EPA's conclusion that these site designations will not affect the endangered or threatened species or their habitat under federal jurisdiction.

D. Proposed Site Designation

The proposed Pensacola site is located approximately 1.5 nautical miles (nmi) from Perdido Key and occupies an area of about 2.48 square nautical miles. Water depths within the area average 11 meters. The coordinates of the site are as follows:

30°17'24" N; 87°18'30" W. 30°15'36" N; 87°17'48" W.
30°17'00" N; 87°19'30" W. 30°15'15" N; 87°19'18" W.

The site will be designated for the disposal of predominantly sand-sized dredged material only.

The proposed Mobile site is located approximately 4.2 nmi from Mobile Point and occupies an area of approximately 4.8 nmi². Water depths in the area average 14 meters. The coordinates of the site are as follows:

30°10'00" N., 88°07'42" W. 30°08'30" N., 88°05'12" W.
30°10'24" N., 88°08'12" W. 30°08'30" N., 88°08'12" W.
30°08'24" N., 88°04'42" W.

The two proposed Gulfport sites lie, one to the east and one to the west of Ship Island Bar Channel. The eastern site is approximately 1.2 nmi from Ship Island containing an area of approximately 2.47 nmi² in depths averaging 9.1 m. The western site is approximately 0.7 nmi from Ship Island and contains an area of approximately 5.2 nmi² in water depths averaging 8.2 m. The coordinates of the sites are as follows:

Eastern	*Western*
30°11'10" N., 88°58'24" W.	30°12'00" N., 89°00'30" W.
30°11'12" N., 88°57'30" W.	30°12'00" N., 88°59'30" W.
30°07'36" N., 88°54'24" W.	30°11'00" N., 89°00'00" W.
30°07'24" N., 88°54'48" W.	30°07'00" N., 88°59'30" W.
	30°06'36" N., 88°57'00" W.
	30°10'30" N., 89°00'36" W.

E. Regulatory Requirements

Five general criteria are used in the selection and approval for continuing use of ocean disposal sites. Sites are selected so as to minimize interference with other marine activities, to keep any temporary perturbations from the dumping from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts beyond the site boundaries at an early stage. Where feasible, locations off the Continental Shelf and other sites that have been historically used are to be chosen. If at any time disposal operations at a site cause unacceptable adverse impacts, further use of the site will be restricted or terminated.

The proposed sites conform to the five general criteria except for the preference for sites located off the Continental Shelf. There are no existing sites off the Continental Shelf; and EPA has determined, based on the information presented in the EIS, that no environmental benefit would be obtained by selecting new sites off the Continental Shelf instead of historically-used sites.

The Ocean Dumping Regulations at 40 CFR 228.6 also lists 11 specific criteria used in evaluating a proposed disposal site to assure that the general criteria are met. These 11 criteria constitute an environmental assessment of the impact on the site for disposal. The criteria are used to make comparisons between the alternative sites and are the basis for final site selection. The characteristics of the proposed sites are reviewed below in terms of these 11 criteria.

1. Geographical position, depth of water, bottom topography, and distance from coast [40 CFR 228.6(a)(1)]

Geographical positions and distances from the coast for each site are given above. Water depth at the proposed Pensacola site ranges from 8 to 18 meters; the bottom topography slopes to the south-southwest and is sandy. Water depths at the Mobile site range from 12 to 16 meters; the bottom slopes gradually to the southwest and is composed of fine sand and silt. Water depths at the two Gulfport sites range from 6 to 9 meters; the bottom at each site slopes to the southeast and is composed of silt, clay, and fine sand.

2. Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases [40 CFR 228.6(a)(2)]

The proposed Pensacola and Mobile sites are in the vicinity of Pensacola Bay and Mobile Bay, respectively, which are important nursery and spawning areas for species of fish and shrimp. The Gulfport proposed sites are in the vicinity of Mississippi Sound, which similarly constitutes a productive nursery and spawning area. In addition, the Gulfport sites are located within one nautical mile or less of Ship Island pass, an important passage area for these species. Movement of nekton into estuaries occurs mainly from January to June; migration back into the Gulf typically occurs from August to December. Seasonal variations in abundances of nekton at the sites are expected to coincide with the migration patterns of coastal species. No effect on these areas or the species migration has been detected from past use of the sites.

3. Location in relation to beaches and other amenities [40 CFR 228.6(a)(3)]

The proposed sites have predominantly sand to silt and clay (Gulfport) bottoms, with associated species characteristic of northeastern Gulf waters. These sites do not represent unique habitats, but rather constitute small areas within the larger nearshore area. There are, however, fish havens/artificial reefs in the nearshore areas which may represent unique habitat areas. For instance, an extensive fish haven is located approximately one nautical mile south of the proposed Mobile site. Bottom currents may periodically transport dumped material toward this sensitive area. However, previous disposal at the site has not impacted this area. Transport of dumped material off Pensacola and Gulfport is not as great a concern because fish havens are located at greater distances from the sites.

Amenity areas in the vicinity of the Pensacola site are Pensacola Bay, Fort Pickens State Park Aquatic Preserve (part of Gulf Islands National Seashore), and beaches on Perdido Key and Santa Rosa Island. The site is located 2.3 to 1.5 nmi from these areas. Prevailing southwesterly currents should not transport dumped material toward Pensacola Bay and local beaches. The site is limited to the disposal of sand-sized dredged material only to further reduce the chance of significant movement of the material in the water column.

Amenity areas in the vicinity of the Mobile site include Mobile Bay and beaches on Dauphin Island and Ft. Morgan Peninsula. Casino Pier, a 500- to 600-foot pier, is also an important attraction on Dauphin Island. The Mobile site is located at least 4 nmi from these areas, and dumped dredged material should not affect them because of this distance.

Amenity areas in the vicinity of the Gulfport sites include the Mississippi Sound and Ship Island (part of Gulf Islands National Seashore). The sites are located 0.7 and 1.2 nmi from the island, where swimming, fishing, hiking, and picnicking take place. Although prevailing currents should carry dumped sediments away from the island during most of the year, there remains the potential that dumped material may be periodically redistributed toward the island. However freshwater inputs in the area also add suspended sediments to the area waters. Past disposal at the Gulfport sites has not indicated that material dispersion has resulted in any impacts to amenity areas.

4. Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packing the waste, if any [40 CFR 228.6(a)(4)]

Material dumped in the past at the Pensacola, Mobile and Gulfport ocean disposal sites has originated from dredging of the Entrance Channel, Bar

Channel and Ship Island Bar Channel, respectively. Quantities of material dredged and the frequency of dredging operations have varied in the past and are expected to vary in the future. Dredging is on an as-needed basis and is scheduled according to availability of funds and equipment. Thus, the quantities of material to be dumped at the proposed sites depend on the dredging requirements of the respective areas. All material dumped at ocean disposal sites must comply with the requirements of the Ocean Dumping Regulations (40 CFR Part 227) and must be environmentally acceptable for ocean disposal.

Analysis of material dredged from the Pensacola Entrance Channel shows that 93 percent of the material is sand. Because the sediments are composed primarily of sand and occur in areas of high wave energy, the sediments were determined to be suitable for ocean disposal at the Pensacola site. However, periodic grain size testing of the material will be done to ensure that its characteristics have not changed and that further analyses are not required. In January 1985 the Corps of Engineers, Mobile District published a draft EIS (SEIS) titled *Draft Supplemental Environmental Impact Statement Mobile Harbor, Alabama, Channel Improvements Offshore Dredged Material Disposal.* That SEIS describes the modification of the Mobile Channel system which will result in approximately 55,559,000 cubic yards of new work material. A portion of this material will be disposed in the Mobile site proposed for designation in this notice. This material consists of a combination of fine sands (Bar Channel), silts, and clays. Additionally 4.4 million cubic yards of annual maintenance material is proposed for ocean disposal once the channel modifications are complete. Samples of the channel material have been tested by bioassay and the results indicate the material is suitable for ocean disposal. Dredged material from the Gulfport Harbor Bar Channel may be considered substantially the same as the substrate at the disposal site.

Hopper dredges are used for the maintenance dredging of the Pensacola Entrance Channel, Mobile Bar Channel, and Gulfport Ship Island Bar Channel. The material dredged in the Mobile channel modifications would be excavated by hydraulic dredge using dump scows and tugboats to transport the material to the disposal area. The dredged material is not packaged in any way and is released when the bottom doors of the hoppers are opened while the vessel is underway. Barges may also be used for disposal operations at the sites.

5. Feasibility of surveillance and monitoring [40 CFR 228.6(a)(5)]

Surveillance of each site could be conducted by either U.S. Coast Guard aircraft or day-use boats. Because of the proximity of the existing Gulfport sites to Ship Island, use of shore-based observers may be possible. Monitoring is feasible at all sites.

Monitoring by EPA, the Corps of Engineers, and permittees, as required, will continue for as long as the sites are used. If evidence of significant adverse environmental effects is found, EPA will take appropriate steps to limit or terminate dumping at the sites. The monitoring plans are based on site use and will be coordinated with the appropriate federal and state agencies. For further discussion of the management/monitoring plan see Section F.

6. Dispersal, horizontal transport and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any [40 CFR 228.6(a)(6)]

In shallow water nearly all coarse-grain dredged material falls to the bottom immediately after dumping. Only a small portion of the finer fraction is lost from the main settling surge, and this portion settles as flocculated particles. The finer particles usually take much longer to reach the bottom than the coarser fraction. Because dredged sediments from Gulfport and Mobile consist of fine-grained particles, turbidity plumes may persist longer at these sites than at the Pensacola site, which will receive coarser-grained material. However, after measuring turbidity effects before, during, and after dredging on the background levels, disposal appears insignificant when compared to the effects of shrimping, beach nourishment and natural weather events.

Sediment dispersion and transport in the nearshore area is controlled by prevailing wave energy, longshore drift, and storm-induced waves and currents. There is a strong westward-flowing longshore current along the Gulf side of the barrier islands, with speeds averaging 1 to 2.5 knots (kn) and increasing to 2.5 to 5 kn when augmented by tidal flows. Westward sediment transport is most dramatically illustrated in the westward drift of the barrier islands. The SEIS for the Mobile Channel improvements also indicates that sediment transport is predominately in the westward direction.

The existing and nearshore alternative sites are located aproximately 1 to 7 nmi offshore and probably have somewhat slower current speeds than near the barrier islands.

The flushing characteristics of the nearshore region are generally good during the winter. However, during the summer, density stratification may occur, thereby potentially restricting vertical mixing.

7. Existence and effects of current and previous discharges and dumping in the area (including cumulative effects) [40 CFR 228.6(a)(7)]

The existing sites have been used since at least 1970. During the period 1970 to 1981, approximately 3, 4, and 5 million cubic yards were dumped at the Pensacola, Mobile, and Gulfport existing sites, respectively. Surveys by EPA and a contractor did not detect significant adverse or cumulative effects from previous dredged material disposal. Species and abundance of infauna and epifauna generally were similar between the existing site and reference stations and similar to those described for comparable nearshore regions of the northeastern Gulf. Trace metal and CHC concentrations in epifauna collected with the disposal sites were low and below U.S. Food and Drug Administration action levels for fish and shell fish. In addition, water column and sediment parameters measured at the existing sites were typically similar in value to measurements taken at the reference stations. Also, values were generally within or below levels reported in the literature for the area and, where applicable, were within the quality criteria for marine waters.

One exception, however, occurred at Gulfport. Significantly higher lead concentrations were detected in exisiting site sediments than in reference station sediments. However, sediment composition was also different between the sites: Existing site sediments were predominantly silt and clay, and reference station sediments were primarily sand. The higher metal concentration in the existing site sediments is probably related to grain size, since it is commonly reported that higher metal concentrations are generally associated with finer-grained sediments such as those which naturally occur off the Mississippi Delta. However, dredge sediments from Gulfport contained higher concentrations of mercury, cadmium, and lead than either the existing site or reference station, indicating that metal enrichment of disposal site sediments could result from dumping. In any event

metal concentrations in the existing Gulfport site sediments were within ambient ranges reported for nearshore sediments of the northeastern Gulf. Monitoring at the site will continue to evaluate the metal concentrations.

Although no long-term or irreversible effects of disposal at the existing sites were evident from survey data, temporary or reversible effects may include: (1) Increases in suspended sediment concentrations; (2) localized mounding; (3) possible releases of ammonia, phosphorus, and some trace constituents; and (4) smothering of some benthic organisms.

Natural concentrations of suspended particulates in the area are high and seasonally variable due to river discharge and re-suspension of nearshore bottom sediments. Because of high background turbidity levels, the effects of temporary increases in turbidity from dredged material disposal should be minimal.

Discrete mounds of dreged material may occur as a result of dumping activities. However, dumped material should be transported and dispersed by currents and storm-induced flows; thus decreasing the likelihood of significant accumulation and shoaling within the disposal sites. Significant mounding occurs when a hazard to navigation is evident. It is recognized that mounding of the material to a lesser extent could be beneficial to the area in providing relief as a biological attraction.

Smothering of some benthic organisms, particularly species of limited motility such as tube-dwelling polychaetes, has probably resulted from dredged material disposal. However, results of the Dredged Material Reserach Program studies indicate that recolonization of affected areas is fairly rapid when the site is located in a high-energy environment and dredged materials are similar in composition to disposal site sediments.

8. Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance and other legitimate uses of the ocean [40 CFR 228.6(a)(8)]

Extensive commercial shipping, commercial and recreational fishing, recreational activities, and some scientific investigations occur throughout the nearshore region. Hopper dredges, tugs and scows must operate in shipping lanes when dredging and traveling to and from the disposal site; however, intermittent use of a site should not impede commercial shipping traffic within the shipping channels. Hazards to navigation are lessened by use of the U.S. Coast Guard's Area Vessel Traffic System, extra caution and awareness by the captains of hopper dredges, and the Corps of Engineers Navigation Bulletins to mariners with dredging schedules.

Commercial and recreational fishing occurs, but it is not geographically limited to the vicinity of the proposed sites. Major fisheries exist for menhaden and shrimp in the nearshore region off Gulfport and Mobile. However, the disposal site represents only a small portion of the total fishing area available. Offshore Pensacola, commercial and sportfishing operations center primarily around hardbottom, artificial reef, and wreck areas. The Pensacola existing and alternative sites have predominantly sand bottoms; therefore, disposal activities should not interfere with major fishing activities in the area.

Other recreational activities in the nearshore region include boating, scuba diving, and swimming. The Pensacola and Gulfport existing sites are near the boundaries of the Gulf Islands National Seashore; the National Park Service has not noted any significant resource impacts from use of the existing sites. With the possible exception of a wreck in the existing Mobile site (reportedly at the southwestern boundary), the sites do not have unique features that would attract visitors. Intermittent use of the sites for disposal operations should not interfere with occasional recreational use of the areas.

No existing oil and gas structures are in the vicinity of the Pensacola and Gulfport sites. However, gas wells are located in the vicinity of the existing Mobile site. It is not expected that site use would interfere with the oil and gas exploration and development operations.

No mineral extraction, desalination projects, or fish and shellfish culture occur in the vicinity of the existing and alternative sites. Intermittent use of the sites should not interfere with scientific investigations which may be conducted in the area, nor does dredged material disposal interfere with any other legitimate uses of the ocean.

9. The existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys. [40 CFR 228.6(a)(9)]

The existing water quality is primarily affected by discharges from coastal rivers and bays and from anthropogenic inputs into nearshore waters. River discharges contribute appreciable quantities of suspended particulates, particularly near the Mississippi Delta, and, to a lesser extent, nutrients and trace pollutants to nearshore waters. Periodic storms influence the water quality and ecology of the area.

Phytoplankton and zooplankton studies have not been conducted at the existing or alternative sites; however, diatoms reportedly dominate phytoplankton populations and copepods dominate zooplankton populations in nearshore Gulf waters. Plankton abundances are generally highest during spring and summer.

Shrimp and some fish species dominate the epifaunal community of the sites and are typical of those reported from northeastern Gulf coastal waters. Several of the species observed are common over sand and fine sediments, including shrimp, sea catfish, sand seatrout, flounder, and tonguefish. Seasonal variations in abundances of nekton at the nearshore sites are expected to coincide with the migration patterns of dominant coastal species.

The benthic community of the proposed sites is generally dominated by deposit-feeding organisms. Differences in species composition, diversity, and abundances among the existing sites appear to be related to sediment types and are consistent with distributional trends reported in the literature.

Site surveys show that water quality and biological characteristics between areas within and adjacent to the proposed sites are generally similar. Therefore, dredged material disposal at the proposed sites does not appear to significantly alter existing water quality or ecology. Results of Dredged Material Research Project studies indicate that changes in water quality from dredged material disposal are temporary, lasting minutes to hours, depending on dilution, mixing characteristics, and parameter measured. Similarly, changes in the benthic community, which is most likely to be affected by dredged material disposal, were only temporary in high-energy, nearshore regions; and areas are generally repopulated within months.

10. Potentiality for the development or recruitment of nuisance species in the disposal site [40 CFR 228.6(a)(10)]

Surveys of the sites have not detected the development or recruitment of nuisance species. Organisms collected within the sites were similar to those collected in adjacent reference stations. There are no components in the dredged materials or consequences of their disposal that would attract nuisance species.

11. Existence at or in close proximity to the site of any significant natural or cultural features of historical importance [40 CFR 228.6(a)(11)]

No resources of historical importance occur within the existing Pensacola or Gulfport sites. However, there are shipwrecks and unidentified obstructions in the vicinity of the sites. A shipwreck is located 0.7 nmi north of the Pensacola existing site; two unidentified obstructions occur at the southeastern and northeastern boundaries of the western Gulfport site, and two unidentified shipwrecks occur within one nmi to the south and northeast of this site. A steel schooner reportedly lies at the western boundary of the existing Mobile site.

F. Site Management

The overall management of these sites is the responsibility of EPA. Currently a Memorandum of Understanding is being developed between the Corps of Engineers, South Atlantic Division, and EPA to effectively use the available resources of each agency for overall site management.

In general, site management will begin with the review of proposed projects for conformity to the Ocean Dumping Regulations. The projects will be reviewed to ensure that the need for ocean disposal exists, and that the material is suitable for ocean disposal at the proposed site. The locations within the site where dumping for a particular project may occur will be specified. The user of the site will report actual dumping information such as the types and quantities of materials disposed, and the LORAN coordinates where the actual disposal occurred.

Subsequent monitoring surveys will concentrate on the portion of the site which has been used according to site use reports. Monitoring objectives will be to: (1) Detect presence of material, (2) determine the extent of mounding or dispersion of the material, (3) determine migratory pattern of the material, if any (4) determine any impact associated with the migration, if any, and (5) determine if more intensive monitoring is required. The monitoring techniques available include underwater video and still photography, bathymetric measurements, side scan sonar, sediment physical, chemical, and biological analyses, water quality analysis and fish trawls. The techniques utilized for each survey will be based on a demonstrated need, on the results of past monitoring surveys at the site and the extent of disposal operations at the site.

If no significant accumulation of the material beyond the site boundary is detected, and mounding in the area used for disposal is not significant, the same area will continue to be used for disposal. If mounding becomes significant or if significant accumulation of material beyond the site boundaries is evident, the discharge point for future disposal operations will be moved to another area within the designated disposal site, and any impacts of the migration or mounding beyond the site boundaries will be assessed. If evidence of significant adverse environmental effects is found, EPA will take appropriate steps to limit or terminate dumping at the site.

At this time only the Mobile disposal site has a specific monitoring plan as disposal at the site is scheduled to begin in late 1987. The site will be monitored for impacts as well as benefits gained from creating a mound in the area. Further details on the Mobile monitoring plan may be obtained by writing EPA at the address given above. Specific plans will also be developed for the Pensacola and Gulfport sites when more specific information is available concerning the types and quantities of materials proposed for disposal. Each monitoring plan will contain quality assurance and quality control measures and will be coordinated with all appropriate state and federal agencies.

G. Proposed Action

The designation of the Pensacola, Mobile, and two Gulfport sites as EPA approved Ocean Dumping Sites is being published as a proposed rulemaking. Overall management of these sites is the responsibility of the Regional Administrator of EPA Region IV.

It should again be emphasized that a site designation does not constitute or imply EPA's approval of disposal of materials at sea. Before dumping of dredged material at the site may commence, the Corps of Engineers must evaluate a permit application according to EPA's ocean dumping criteria. If a Federal project is involved, the Corps must also evaluate the proposed dumping in accordance with those criteria. In either case, EPA has the right to disapprove the actual dumping if it determines that environmental concerns under the Act have not been met.

H. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this proposed action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this proposal does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which will result in its being classified by the Executive Order as a "major" rule. Consequently, this proposed rule does not necessitate preparation of a Regulatory Impact Analysis.

This proposed rule does not contain any information collection requirements subject to office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 228

Water pollution control.

Date: August 3, 1987.

Lee A. DeHihns III,

Acting Regional Administrator, Region IV.

In consideration of the foregoing, Subchapter H of Chapter I of Title 40 is proposed to be amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Part 228 is proposed to be amended by removing paragraph (a)(1)(i)(H) from § 228.12 and by adding paragraphs (b)(37), (38) and (39) to read as follows:

§ 228.12 Delegation of management authority for interim ocean dumping sites.

* * * * *

(b)* * *

(37) Pensacola, Florida Dredged Material Disposal Site—Region IV.
Location: 30°17'24" N.; 87°18'30" W.; 30°17'00" N.; 87°19'50" W.; 30°15'36" N.; 87°17'48" W.; 30°15'15" N.; 87°19'18" W.
Size: 2.46 square nautical miles.
Depth: Average 11 meters.
Primary use: Dredged Material.
Period of use: Continuing use.
Restrictions: Disposal shall be limited to dredged materials which are shown to be predominantly sand (defined by median grain size greater than 0.125 mm and a composition of < 10% fines) and which meet the Ocean Dumping Criteria.

(38) Mobile, Alabama Dredged Material Disposal Site—Region IV
Location: 30°10'00" N.; 88°07'42" W.; 30°10'24" N.; 88°05'12" W.; 30°09'24" N.; 88°04'42"

W.; 30°06'30" N.; 88°05'12" W.; 30°06'30" N.; 88°06'12" W.;
Size: 4.8 nmi².
Depth: Average 14 meters.
Primary use: Dredged materials.
Period of use: Continuing use.
Restrictions: Disposal shall be limited to dredged materials which meet the Ocean Dumping Criteria.
(39) Gulfport, Mississippi Dredged Material Disposal Sites—Region IV
Location: Eastern Site 30°11'10" N.; 88°58'24" W.; 30°11'12" N.; 88°57'30" W.; 30°07'36" N.; 88°54'24" W.; 30°07'24" N.; 88°54'48" W.;
Western Site 30°12'00" N.; 89°00'30" W.; 30°12'00" N.; 88°59'30" W.; 30°11'00" N.; 89°00'00" W.; 30°07'00" N.; 88°56'30" W.; 30°06'36" N.; 88°57'00" W.; 30°10'30" N.; 89°00'36" W.
Size: Eastern—2.47 nmi². Western—5.2 nmi².
Depth: Eastern—9.1 m Western—8.2m.
Primary use: Both sites—Dredged material.
Period of use: Both sites—Continuing use.
Restrictions: Disposal shall be limited to dredged materials which meet the Ocean Dumping Criteria.

[FR Doc. 87-18095 Filed 8-7-87; 8:45 am]
BILLING CODE 4910-14-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 27

[CGD 86-025]

Equipment Standards for Uninspected Fish Processing Vessels; Correction

AGENCY: Coast Guard, DOT.

ACTION: Advance notice of proposed rulemaking; correction.

SUMMARY: This document corrects the address and procedure for ordering Navigation and Vessel Inspection Circular (NVIC) 5-86, "Voluntary Standards for U.S. Uninspected Commercial Fishing Vessels" previously published in the **Federal Register** July 9, 1987 (52 FR 25890)

ADDRESSES: The address appearing on page 25890, in the second column, paragraph 2, is changed to read as follows:

Navigation and Vessel Inspection Circular (NVIC) 5-86 will be made available for examination or copying between the same hours and at the same location as noted above. Additionally, NVIC 5-86 is available at local U.S. Coast Guard Marine Inspection and Marine Safety Offices or through the Marine Safety Center in Washington, DC. If ordering through the Marine Safety Center include the NVIC number (NVIC 5-86) along with a check or money order, in the amount of $11.00 payable to the "Treasury of the United States," to Commanding Officer, Marine Safety Center, 2100 Second Street, SW., Washington, DC 20593-0001, ATTN: NVICs.

FOR FURTHER INFORMATION CONTACT: LCDR William J. Morani, Jr., (202)267-1055.

J.W. Kime,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety, Security and Environmental Protection.

August 5, 1987.

[FR Doc. 87-18133 Filed 8-7-87; 8:45 am]
BILLING CODE 4910-14-M

National Highway Traffic Safety Administration

49 CFR Part 580

[Docket Number 87-09: Notice 2]

Odometer Disclosure Requirements; Extension of Comment Period

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This notice extends the comment period on the notice of proposed rulemaking published on July 17, 1987 regarding odometer disclosure requirements. The comment period was scheduled to close on September 15, 1987. NHTSA has received a petition from the American Association of Motor Vehicle Administrators (AAMVA) asking that the comment period be extended so that a unified response can be submitted. NHTSA has concluded that a response representing the comments and concerns of all states would be useful and that NHTSA should have the opportunity to consider such data before proceeding with this rulemaking. Accordingly, the comment period for the notice of proposed rulemaking is extended for 15 days.

DATE: The comment period for Docket No. 87-09; Notice 1 is extended so that it closes on September 30, 1987.

ADDRESS: Written comments should refer to Docket No. 87-09, Notice 1 and should be submitted to: Docket Section, Room 5109, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. [Docket hours are 8:00 a.m. to 4:00 p.m.]

FOR FURTHER INFORMATION CONTACT: Judith Kaleta, Office of the Chief Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-1834).

SUPPLEMENTARY INFORMATION: NHTSA published a notice of proposed rulemaking regarding odometer disclosure requirements at 52 FR 27022, July 17, 1987. The comment period for that proposal was scheduled to close on September 15, 1987.

NHTSA has received a petition from the American Association of Motor Vehicle Administrators (AAMVA) asking that the comment period be extended for 30 days. The reason offered for the extension was that using the procedural approach AAMVA laid out to analyze and develop a unified response, there would not be sufficient time to meet the closing date for comments.

NHTSA has carefully considered this request, bearing in mind the agency's attempt to inform all those involved in selling and leasing motor vehicles and the AAMVA since the enactment of the Truth in Mileage Act about the new law; that the provisions of the Act concerning the title of a vehicle and the disclosure of a vehicle's mileage become effective on April 29, 1989; and that these provisions will result in changes to many state motor vehicle titling laws and title forms. A unified response might yield some significant comments and NHTSA wants the opportunity to examine this information before proceeding with this rulemaking. To give NHTSA this opportunity and to allow the interested public more time to analyze the information which is currently available, NHTSA has decided to extend the comment period for this rulemaking an additional 15 days.

Erika Z. Jones,

Chief Counsel.

August 5, 1987.

[FR Doc. 87-18069 Filed 8-5-87; 1:10 pm]
BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 52, No. 153
Monday, August 10, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

State of Wisconsin Nonpoint Source Water Pollution Abatement Program; Determination of Primary Purpose of Program Payments and Benefits for Consideration as Excludable From Income

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of Determination.

SUMMARY: The Secretary of Agriculture has determined that all state payments made under the State of Wisconsin Nonpoint Source Water Pollution Abatement Program have been made primarily for the purpose of soil and water conservation, and protecting or restoring the environment. This determination is in accordance with section 126(b) of the Internal Revenue Code of 1954, as amended by section 543 of the Revenue Act of 1978 and the Technical Corrections Act of 1979. The determination permits recipients of these payments to exclude them from gross income to the extent allowed by the Internal Revenue Service.

FOR FURTHER INFORMATION CONTACT: Director, Bureau of Water Grants, Wisconsin Department of Natural Resources, P.O. Box 7921, Madison, Wisconsin 53707, (608) 266–7555; or Director, Land Treatment Program Division, Soil Conservation Service, USDA, P.O. Box 2890, Washington, DC 20013, (212) 382–1870.

SUPPLEMENTARY INFORMATION: Section 126 of the Internal Revenue Service Code of 1954, as amended by the Revenue Act of 1978 and the Technical Correction Act of 1979, 26 U.S.C. 126, provides that certain payments made to persons under state conservation programs may be excluded from the recipient's gross income for federal tax purposes if the Secretary of Agriculture determines that payments are made "primarily for the purpose of soil and water conservation, protecting or restoring the environment, improving forests, or providing a habitat for wildlife . . . ." The Secretary of Agriculture evaluates these conservation programs on the basis of criteria set forth in 7 CFR Part 14 and makes a "primary purpose" determination for the payments made under each program. Before there may be an exclusion, the Secretary of the Treasury must determine that the payments made to a person under these conservation programs do not substantially increase the annual income derived from the property benefited by the payments.

The State of Wisconsin Nonpoint Source Water Pollution Abatement Program is authorized by s. 144.25, Wisconsin Statutes. It is funded through annual state appropriations to provide financial assistance to municipalities and individual landowners or operators to implement best management practices to control nonpoint sources of water pollution in conformance with approved areawide water quality management plans. Cost-share payments accomplish one or more of the following purposes:

1. To conserve soil and water by reducing runoff and the amount of sediment in runoff; and

2. To protect or restore the environment by preventing or reducing pollutants generated from nonpoint sources which discharge to surface or groundwater resources.

Procedural Matters

The Department of Agriculture has classified this determination as "not major" in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512–1. The Secretary has determined that these program provisions will not result in an annual effect on the economy of $100 million or more; will not cause a major increase in cost to consumers, individuals, industries, government agencies, or geographic regions; and will not cause significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A State of Wisconsin Nonpoint Source Water Pollution Abatement Program "Primary Purpose Determination for Federal Tax Purposes, Record of Decision," has been prepared and is available upon request from the Director, Land Treatment Program Division, Soil Conservation Service, P.O. Box 2890, Washington, DC 20013; or the Director, Bureau of Water Grants, Wisconsin Department of Natural Resources, P.O. Box 7921, Madison, Wisconsin 53707, (608) 266–7555.

Determination

As required by section 126(b) of the Internal Revenue Code of 1954, as amended, I have examined the authorizing legislation, regulations, and operating procedures of the State of Wisconsin Nonpoint Source Water Pollution Abatement Program. In accordance with the criteria set out in 7 CFR Part 14, I have determined that payments made and benefits provided under this program are for purposes of soil and water conservation, protecting or restoring the environment, or providing wildlife habitat. Subject to further determination by the Secretary of the Treasury, this determination permits property owners to exclude from gross income, for federal income tax purposes, payments made and benefits resulting from the Wisconsin Nonpoint Source Water Pollution Abatement Program.

Signed at Washington, DC, on August 4, 1987.

Richard E. Lyng,

Secretary.

[FR Doc. 87–18123 Filed 8–7–87; 8:45 am]

BILLING CODE 3410–21–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: Quarterly Report on Working Capital and Long-Term Dept
Form Number: Agency—QFR–105 (R–2); OMB—0607–0435
Type of Request: Extension of a currently approved collection

Burden: 220 respondents; 660 reporting hours
Needs and Uses: Working capital posistions are a fundamental aspect of business financial conditions. The Bureau of Economic Analysis uses these data in the gross national product system of accounts and for benchmarking its monthly estimates of corporate inventories. Also, the Federal Reserve System relies upon these data for direct imput into calculation of the flow of funds accounts and industry analysis. In addition, numerous private research organizations depend upon this series to conduct corporate financial studies
Affected Public: Businesses or other for profit institutions
Frequency: Quarterly
Respondent's Obligation: Voluntary
OMB Desk Officer: Francine Picoult 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3228 New Executive Office Building, Washington, DC 20503.

Dated: August 5, 1987

Edward Michals,

Department Clearance Officer, Office of Management and Organization.

[FR Doc. 87–18120 Filed 8–7–87; 8:45 am]

BILLING CODE 3516-87-M

International Trade Administration

[A–307–701]

Initiation of Antidumping Duty Investigation; Certain Electrical Conductor Aluminum Redraw Rod from Venezuela

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of certain electrical conductor aluminum redraw rod (redraw rod) from Venezuela are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of ths action so that it may determine whether imports of redraw rod from Venezuela cause, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before August 28, 1987, and we will make ours on or before December 21, 1987.

EFFECTIVE DATE: August 10, 1987.

FOR FURTHER INFORMATION CONTACT: Mary Martin of Jessica Wasserman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377–2830 or 377–1442.

SUPPLEMENTARY INFORMATION:

The Petition

On July 14, 1987, we received a petition filed in proper form by the Southwire Company on behalf of the U.S. industry producing redraw rod. In compliance with the filing requirements of 19 CFR 353.36, the petition alleges that imports of redraw rod from Venezuela are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that such imports cause of threaten material injury to, a U.S. industry.

Initiation of Investigation

Under section 732(c) of the Act, we must determine within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on redraw rod and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether redraw rod from Venezuela is being, or is likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination on or before December 21, 1987.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS") by January 1, 1988. In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* ("*TSUSA*") item numbers and the appropriate HS item numbers with our product description on a test basis, pending Congressional approval. As with the *TSUSA*, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the *TSUSA* item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all customs offices have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The product covered by this investigation is certain electrical conductor aluminum redraw rod from Venezuela which is wrought rod of aluminum which is electrically conductive and contains not less than 99 percent aluminum by weight as provided for in *TSUSA* item numbers 618.520 and 618.1540. This product is currently classifiable under HS item numbers 7604.10.30 and 7604.29.30.

United States Price and Foreign Market Value

Petitioner based United States price on Census Bureau import statistics (IM–146) for redraw rod imported from Venezuela. Census Bureau statistics report the F.A.S. value of the imported goods. Petitioner based foreign market value on two Venezuelan producer's price quotes. Based on a comparison of United States price and foreign market value, petitioner alleged dumping margins of 15 to 33 percent. After analysis of petitioner's allegations and supporting data, we conclude that a formal investigation is warranted.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will also allow the ITC access to all privileged and business proprietary information in our files, provided it confirms that it will not disclose such information, either publicly or under an administrative protective order, without the express

written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by August 28, 1987, whether there is a reasonable indication that imports of redraw rod from Venezuela materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

August 3, 1987.

[FR Doc. 87-18050 Filed 8-7-87; 8:45 am]

BILLING CODE 3510-DS-M

[C-307-702]

Initiation of Countervailing Duty Investigation: Certain Electrical Conductor Aluminum Redraw Rod From Venezuela

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Venezuela of certain electrical conductor aluminum redraw rod ("redraw rod"), as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the U.S. countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) of this action, so that it may determine whether imports of redraw rod from Venezuela cause or threaten material injury to a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before August 28, 1987, and we will make ours on or before October 7, 1987.

EFFECTIVE DATE: August 10, 1987.

FOR FURTHER INFORMATION CONTACT: Thomas Bombelles or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-3174 or 377-2438.

SUPPLEMENTARY INFORMATION:

The Petition

On July 14, 1987, we received a petition filed in proper form by the Southwire Company on behalf of the U.S. industry producing redraw rod. In compliance with the filing requirements of 19 CFR 355.26, the petition alleges that manufacturers, producers, or exporters in Venezuela of redraw rod receive subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), and that such imports cause or threaten material injury to a U.S. industry.

Since Venezuela is a "country under the Agreement" within the meaning of section 701(b) of the Act, the ITC is required to determine whether imports of the subject merchandise from Venezuela cause or threaten material injury to a U.S. industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth allegations necessary for the initiation of a countervailing duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on redraw rod and have found that it meets these requirements. Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Venezuela of redraw rod, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the Act. If our investigation proceeds normally, we will make our preliminary determination on or before October 7, 1987.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS") by January 1, 1988. In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* (*"TSUSA"*) item numbers and the appropriate HS item numbers with our product description on a test basis, pending Congressional approval. As with the *TSUSA*, the HS item numbers are provided for convenience and Customs purposes. The written descrioptions remain dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the *TSUSA* item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all Customs offices have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The product covered by this investigation is certain electrical conductor aluminum redraw rod, which is wrought rod of aluminum which is electrically conductive and contains not less than 99 percent aluminum by weight as provided for in *TSUSA* item numbers 618.1520 and 618.1540. This product is currently classifiable under HS item numbers 7604.10.30 and 6704.29.30.

Allegations of Subsidies

The petition lists a number of practices by the Government of Venezuela (GOV) which allegedly confer subsidies on manufacturers, producers, or exporters in Venezuela of redraw rod. We are initiating an investigation on the following programs:

- Government Financial Assistance on Terms Inconsistent with Commercial Considerations
  - —Government Loans on Terms Inconsistent with Commerical Considerations
  - —Government Loan Guarantees
  - —Assumption of Hard Currency Debt
  - —Tax Contributions to Cover Debt Service Costs
- Export Subsidies
  - —Perferential Export Financing (FINEXPO)
  - —Export Certificates
  - —Multiple Exchange Rates
  - —Perferential Pricing for Inputs used to Produce Exports
- Sales Tax Exemptions
- Import Duty Reductions
- Perferential Tax Incentives

We are not initiating an investigation on the following program:

Government Equity Infusions

Petitioner alleges that the GOV is expected to provide capital to a group headed by Suramericana de Aleaciones Laminados, C.A. (SURAL), a private company, to fund a new smelter, and that any GOV equity infusions into its aluminum products industry are inconsistent with commercial considerations.This new smelter would supply SURAL's aluminum rod and wire plant. In order for the Department to

investigate an allegation on equity, the petition must contain: (1) Evidence of government equity participation, and (2) a showing that such participation may be on terms inconsistent with commercial considerations.

Although the petition contains information that the GOV, in conjunction with Austrian concerns, plans to invest in a new smelter project for SURAL, the petition does not provide any evidence that SURAL, or even the aluminum industry, has been losing money or is otherwise unattractive to private investors. Since petitioner has not provided any information that GOV equity investments in SURAL would be inconsistent with commercial considerations, we are not initiating an investigation on this allegation.

As a standard practice in our countervailing duty questionnaires, we ask for information on the ownership structure of each firm and for financial statements. If the information provided in response to these standard questions shows that the GOV holds equity in SURAL, and that SURAL has incurred financial losses, we will examine this issue further.

Notification of ITC

Section 702(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will also allow the ITC access to all privileged and business proprietary information in our files, provided that it confirms that it will not disclose such information, either publicly or under an administrative protective order, without the express written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determined by August 28, 1987, whether there is a reasonable indication that imports of redraw rod from Venezuela cause or threaten material injury to a U.S. industry. If its determination is negative, this investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 702(c)(2) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

August 3, 1987.

[FR Doc. 87-18051 Filed 8-7-87; 8:45 am]

BILLING CODE 3510-DS-M

National Bureau of Standards

Senior Executive Service; Membership of General Performance Review Board

The purpose of the Limited Performance Review Board (LPRB) is to review performance agreements, appraisals, ratings, and recommended actions pertaining to employees in the Senior Executive Service and to make appropriate recommendations to the Director of NBS concerning such matters in such a manner as will assure the fair and equitable treatment of senior executives. The LPRB will perform its review functions for all NBS senior executives who are members of the NBS Executive Board (except the NBS Deputy Director) and those who are members of the General Performance Review Board.

The following individual has been newly appointed by the Director of NBS as Chairman, LPRB.

Dr. Burton H. Colvin, Director for Academic Affairs, Office of the Director, National Bureau of Standards, Gaithersburg, MD 20899, Expiration of term: December 31, 1988

FOR FURTHER INFORMATION CONTACT: Mrs. Elizabeth W. Stroud, Chief, Personnel Division, National Bureau of Standards, Gaithersburg, MD 20899, telephone 301-975-3003.

Date: August 4, 1987.

Ernest Ambler,

Director.

[FR Doc. 87-18052 Filed 8-7-87; 8:45 am]

BILLING CODE 3510-13-M

[Notice 1]

National Fire Codes; Request for Comments on NFPA Technical Committee Reports

AGENCY: National Bureau of Standards, DOC.

ACTION: Notice of request for comments.

SUMMARY: The National Fire Protection Association (NFPA) revises existing standards and adopts new standards twice a year. At its Fall Meeting in November or its Annual Meeting in May, the NFPA acts on recommendations made by its technical committees.

The purpose of this notice is to request comments on the technical reports which will be presented at NFPA's 1988 Annual Meeting. The publication of this notice by the National Bureau of Standards (NBS) on behalf of NFPA is being undertaken as a public service; NBS does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

DATES: Technical Committee Reports are available for distribution on July 31, 1987. Comments received on or before October 9, 1987, will be considered by the NFPA before final action is taken on the proposals.

ADDRESS: The 1988 Annual Technical Committee Reports are available from NFPA, Publications Department, Batterymarch Park, Quincy, Massachusetts 02269. (The single copy price is $5.00 to cover postage and handling.) Comments on the reports should be submitted to Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, Batterymarch Park, Quincy, Massachusetts 02269.

FOR FURTHER INFORMATION CONTACT: Arthur E. Cote, P.E., Secretary, Standards Council, at above address, (617) 770-3000.

SUPPLEMENTARY INFORMATION:

Background

Standards developed by the technical committees of the National Fire Protection Association (NFPA) have been used by various Federal agencies as the basis for Federal regulations concerning fire safety. The NFPA standards are known collectively as the National Fire Codes. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR Part 51.

Revisions of existing standards and adoption of new standards are reported by the technical committees at the NFPA's Fall Meeting in November or at the Annual Meeting in May of each year. The NFPA invites public comment on its Technical Committee Reports

Request for Comments

Interested persons may participate in these revisions by submitting written data, views, or arguments to Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, Batterymarch Park, Quincy, Massachusetts 02269. Commentors may use the forms provided for comments in the Technical Committee Reports. Each person submitting a comment should include his or her name and address, identify the notice, and give reasons for any recommendations. Comments received on or before October 9, 1987, will be considered by the NFPA before final action is taken on the proposals.

Copies of all written comments received and the disposition of those comments by the NFPA committees will be published as the Technical

Committee Documentation by March 25, 1988, prior to the Annual Meeting.

A copy of the Technical Committee Documentation will be sent automatically to each commentor. Action on the Technical Committee Reports (adoption or rejection) will be taken at the Annual Meeting, May 16–19, 1988, at the Los Angeles Convention Center, Los Angeles, California, by NFPA members.

Ernest Ambler,

Director

Date: July 27, 1987.

1988 Annual Meeting Technical Committee Reports

Documents and the action proposed on each document follow:

Action Code is: C—Complete Revision; P—Partial Amendments; N—New; T—Tentative Adoption; R—Reconfirmation; and W—Withdrawal.

NEPA No.	Title	Action
16A	Installation of Closed-Head Foam-Water Sprinkler Systems.	P.
21	Steam Fire Pumps, Operation and Maintenance of.	W.
26	Valves Controlling Water Supplies for Fire Protection Supervision of.	P.
36	Solvent Extraction Plants	P.
52	CNG Systems on Motor Vehicles and Fueling.	P.
54	Systems National Fuel Gas Code.	P.
70E	Electrical Safety Requirements for Employee Work Places.	P.
77	Static Electricity	P.
120	Coal Preparation Plants	R.
124	Underground Diesel Mining Equipment.	N.
129	Fire Hydrants, Uniform Marking of.	P.
395	Flammable and Combustible Liquids on Farms & Isolated Construction Projects.	P
410	Aircraft Systems Maintenance	R.
654	Plastics Industry, Prevention of Dust Explosions in.	R.
655	Sulfur Fires and Explosions, Prevention of.	R.
802	Nuclear Reactors	P.
803	Light Water Nuclear Power Plants.	P.
906M	Fire Incident Field Notes	N.
907M	Investigation of Fires of Electrical Origin.	C.
1124	Fireworks Manufacture Storage & Transportation of.	P.
1125	Manufacture of Model Rocket Engines.	N.
1914 (existing 1904).	Testing Fire Department Aerial Devices.	C.
1973	Protective Gloves for Fire Fighters.	R.
1982	Personal Alert Safety Systems	R.

[FR Doc 87–18076 Filed 8–7–87; 8:45 am]

BILLING CODE 3510–13–M

[Notice 2]

National Fire Codes; Request for Proposals for Revision of Standards

AGENCY: National Bureau of Standards, DOC.

ACTION: Notice of request for proposals.

SUMMARY: The National Fire Protection Association (NFPA) proposes to revise some of its fire safety standards and requests proposals from the public to amend existing NFPA fire safety standards. The propose of this request is to increase public participation in the system used by NFPA to develop its standards. The publication of this notice of request for proposals by the National Bureau of Standards (NBS) on behalf of NFPA is being undertaken as a public service; NBS does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

DATES: Interested persons may submit proposals on or before the dates listed with the standards.

ADDRESS: Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, Batterymarch Park, Quincy, Massachusetts 02269.

FOR FURTHER INFORMATION CONTACT: Arthur E. Cote, P.E., Secretary, Standards Council, at above address. (617) 770–3000.

SUPPLEMENTARY INFORMATION:

Background

The National Fire Protection Association (NFPA) develops fire safety standards that are known collectively as the National Fire Codes. Federal agencies frequently use these standards as the basis for developing Federal regulations concerning fire safety. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR Part 51.

Request for Proposals

Interested persons may submit amendments, supported by written data, views, or arguments to Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, Batterymarch Park, Quincy, Massachusetts 02269. Proposals should be submitted on forms available from the NFPA Standards Administration Office.

Each person must include his or her name and address, identify the document and give reasons for the proposal. Proposals received before or by 5:00 P.M. E.D.S.T. on the closing date indicated will be acted on by the Committee. The NFPA will consider any proposal that it receives on or before the date listed with the standard.

At a later date, each NFPA Technical Committee will issue a Technical Committee Report which will include a copy of written proposals that have been received and an account of their disposition by the NFPA Committee. Each person who has submitted a written proposal will receive a copy of the report.

Ernest Ambler,

Director.

Date: August 4, 1987.

NFPA No.	Title	Prop. Closing Date
NFPA 12–1985	Carbon Dioxide	July 17, 1987.
NFPA 12A–1987	Halon 1301	Jan. 15, 1988.
NFPA 12B–1985	Halon 1211	Jan. 15, 1988.
NFPA 13–1987	Installation of Sprinkler Systems	July 17, 1987.
NFPA 13D–1984	Sprinkler Systems for One- & Two-Family Dwellings & Mobile Homes	July 17, 1987.
NFPA 13E–1984	Fire Department Operations in Properties Protected by Sprinkler and Standpipe Systems	July 17, 1987.
NFPA 14–1986	Installation of Standpipe & Hose Systems	July 15, 1988
Proposed:		
NFPA 14A	Testing, Inspection & Maintenance of Standpipe Systems	Aug. 17, 1987
NFPA 17–1985	Dry Chemical Extinguishing Systems	Jan. 15, 1988.
NFPA 17A–1988	Liquid Agent Extinguishing Systems	Jan. 15, 1988
NFPA 20–1987	Centrifugal Fire Pumps	Jan. 15, 1988.
NFPA 31–1987	Oil Burning Equipment	July 15, 1988.
NFPA 32–1985	Drycleaning Plants	July 15, 1988.
NFPA 33–1985	Spray Application Using Flammable & Combustible Materials	July 17, 1987.
NFPA 34–1987	Dip Tanks Containing Flammable & Combustible Liquids	July 17, 1987
NFPA 45–1986	Fire Protection for Laboratories Using Chemicals	Open.
NFPA 50A–1984	Gaseous Hydrogen Systems at Consumer Sites	May 29, 1987
NFPA 50B–1985	Liquefied Hydrogen Systems at Consumer Sites	May 29, 1987.
NFPA 51B–1984	Acetylene Cylinder Charging Plants	May 29, 1987.

NFPA No.	Title	Prop. Closing Date
NFPA 58-1986	Liquefied Petroleum Gases	Sept. 25, 1987.
NFPA 59-1984	Liquefied Petroleum Gases at Utility Gas Plants	Sept. 25, 1987.
NFPA 61A-1984	Manufacturing & Handling Starch	July 17, 1987.
NFPA 61C-1984	Fire & Dust Explosions in Feed Mills	July 17, 1987.
NFPA 61D-1984	Fire & Dust Explosions in the Milling of Agriculture Commodities for Human Consumption	July 17, 1987.
NFPA 70-1987	National Electric Code	Nov. 6, 1987.
NFPA 72A-1987	Local Protective Signaling Systems	July 15, 1988.
NFPA 72B-1986	Auxiliary Protective Signaling Systems	July 15, 1988.
NFPA 72C-1986	Remote Station Protective Signaling Systems	July 15, 1988.
NFPA 72D-1986	Proprietary Protective Signaling System	July 15, 1988.
NFPA 72F-1985	Emergency Voice/Alarm Communication Systems	July 17, 1987.
NFPA 72G-1985	Notification Appliances for Protective Signaling Systems	July 17, 1987.
NFPA 74-1984	Household Fire Warning Equipment	July 17, 1987.
NFPA 78-1986	Lightning Protection Code	Jan. 15, 1988.
NFPA 80-1986	Fire Doors & Windows	July 17, 1987.
Proposed:		
NFPA 85H	Prevention of Combustion Hazards in Atmospheric Fluidized Bed Combustion Systems	July 17, 1987.
Proposed:		
NFPA 85I	Stoker Operations	July 17, 1987.
NFPA 90A-1985	Air Conditioning & Ventilating Systems	July 17, 1987.
NFPA 90B-1984	Warm Air Heating & Air Conditioning Systems	July 17, 1987.
NFPA 91-1983	Blower & Exhaust Systems for Dust, Stock & Vapor Removal or Conveying	Jan. 15, 1988.
NFPA 96-1984	Removal of Smoke & Grease-Laden Vapors from Commercial Cooking Equipment	Jan. 13, 1989.
NFPA 99-1987	Health Care Facilities	July 15, 1988.
NFPA 105-1985	Smoke & Draft Control Door Assemblies	July 17, 1987.
NFPA 231E-1984	Storage of Baled Cotton	July 17, 1987.
Proposed:		
NFPA 264	Heat Release Rates Using Oxygen Consumption Calorimeter	July 17, 1987.
Proposed:		
NFPA 298	Chemicals & Wildland Fire Control	July 17, 1987.
Proposed:		
NFPA 299	Fire Hazard Assessment & Development Standards for Wildland Fire Areas	July 17, 1987.
NFPA 302-1984	Motor Craft	July 17, 1987.
NFPA 321-1987	Basic Classification of Flammable & Combustible Liquids	Jan. 15, 1988.
NFPA 325M-1984	Fire Hazard Properties of Flammable Liquids, Gases and Volatile Solids	Jan. 15, 1988.
NFPA 327-1987	Cleaning or Safeguarding Small Tanks and Containers	July 14, 1989.
NFPA 328-1987	Control of Flammable & Combustible Liquids and Gases in Manholes & Sewers	July 14, 1989.
NFPA 329-1987	Underground Leakage of Flammable & Combustible Liquids	July 14, 1989.
NFPA 385-1985	Tank Vehicles for Flammable and Combustible Liquids	July 15, 1988.
NFPA 386-1985	Portable Shipping Tanks	July 15, 1988.
NFPA 402M-1984	Aircraft Rescue Fire Fighting Procedures	Oct. 1, 1987.
NFPA 407-1985	Aircraft Fuel Servicing	Oct. 1, 1987.
NFPA 408-1984	Aircraft Hand Fire Extinguishers	Oct. 1, 1987.
NFPA 409-1985	Aircraft Hangers	Oct. 1, 1987.
NFPA 414-1984	Aircraft Rescue & Fire Fighting Vehicles	Oct. 1, 1987.
NFPA 422-1984	Aircraft Fire Investigators Manual	Oct. 1, 1987.
NFPA 423-1983	Construction & Protection of Aircraft Engine Test Facilities	Oct. 2, 1987.
Proposed:		
NFPA 471	Professional Competence for Hazardous Materials Response Personnel	July 17, 1987.
Proposed:		
NFPA 472	Hazardous Materials Management	July 17, 1987.
Proposed:		
NFPA 473	Hazardous Materials Incident Management	July 17, 1987.
NFPA 496-1986	Purged & Pressurized Enclosures for Electrical Equipment in Hazardous Locations	Sept. 1, 1987.
NFPA 512-1984	Truck Fire Protection	Jan. 15, 1988.
NFPA 513-1984	Motor Freight Terminals	Jan. 15, 1988.
NFPA 704-1985	Identification of Fire Hazards of Materials	July 15, 1988.
Proposed:		
NFPA 820	Waste Water Treatment Plants	July 17, 1987.
Proposed:		
NFPA 906M	Fire Incident Field Notes	May 8, 1987.
NFPA 910-1985	Protection of Library Collections from Fire	Jan. 1, 1989.
NFPA 911-1985	Protection of Museum Collections from Fire	Jan. 1, 1989.
NFPA 1123-1982	Public Display of Fireworks	Oct. 1, 1987.
NFPA 1201-1984	Organization for Fire Services	Oct. 16, 1987.
NFPA 1202-1982	Organization of a Fire Department	Oct. 16, 1987.
NFPA 1231-1984	Water Supplies for Suburban & Rural Fire Fighting	July 17, 1987.
NFPA 1901-1984	Public Fire Prevention Criteria	Oct. 16, 1987.
NFPA 1931-1984	Fire Department Ground Ladders	Open.
NFPA 1932-1984	Service Testing of Fire Department Ground Ladders	Open.

[FR Doc. 87-18077 Filed 8-7-87; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council's Bycatch Committee will convene a public meeting, August 18–20, 1987, at the Northwest and Alaska Fisheries Center, National Marine Fisheries Service, 7600 Sand Point Way, NE., Seattle, WA, to review information on various management approaches for bycatch species in the Gulf of Alaska and Bering Sea/Aleutian Islands. The public meeting will convene at 9 a.m. on August 18 in Room 2079, Building 4.

FOR FURTHER INFORMATION CONTACT: Steve Davis, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 274–4563.

Date: August 3, 1987.

Henry R. Beasley,

Director, Office of International Affairs, National Marine Fisheries Service.

[FR Doc. 87–18065 Filed 8–7–87; 8:45 am]

BILLING CODE 3510-22-M

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlanta Fishery Management Council and its Committees will convene separate public meetings with a closed personnel session (not open to the public), August 31, 1987 through September 2, 1987, at the Council's Headquarters (address below), to discuss snapper/grouper, large pelagics, king and Spanish mackerel, habitat and environmental protection, as well as other fishery management business. A detailed agenda will be available to the public on or about August 21, 1987.

FOR FURTHER INFORMATION CONTACT: Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407; telephone: (803) 571–4366.

Date: August 4, 1987.

Henry R. Beasley,

Director, Office of International Affairs, National Marine Fisheries Service.

[FR Doc. 87–18066 Filed 8–7–87; 8:45 am]

BILLING CODE 3510-22-M

Permits; Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of issuance of experimental fishing permits.

SUMMARY: This notice announces the issuance of eighty-six experimental fishing permits (EFPs) to U.S. fishermen to harvest soupfin sharks and other shark species with gill nets in the exclusive economic zone (EEZ) north of 38° N. latitude. The permits authorize the use of experimental fishing gear to harvest groundfish which is otherwise prohibited by Federal regulations. This action is authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP) and its implementing regulations.

DATES: 85 permits effective from July 1 to October 31, 1987, 1 permit effective from July 15, 1987 to July 14, 1988.

ADDRESS: A copy of the permits may be obtained from Rolland A. Schmitten, Director, Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten, 206–526–6150.

SUPPLEMENTARY INFORMATION: The FMP and its implementing regulations at 50 CFR Part 663 specify that EFPs may be issued to authorize fishing which is otherwise prohibited by the FMP and its regulations. The procedures for issuing EFPs are contained in the regulations at 50 CFR 663.10.

Eighty-six EFP applications to harvest sharks using gill nets in the EEZ north of 38° N. latitude were received by the NMFS Northwest Regional Office. Current groundfish regulations at 50 CFR 663.26 do not authorize the use of drift gillnets or set nets (anchored gillnets) north of 38° N. latitude to harvest groundfish. The Federal groundfish management unit includes soupfin, leopard, and spiny dogfish sharks. All of the applicants requested EFPs to harvest soupfin, leopard, and spiny dogfish sharks taken incidentally in drift gill nets in a fishery that targets on thresher shark, a species that is not managed under the FMP, but by the adjacent States. One applicant also requested an EFP to target on soupfin sharks using set nets. A notice acknowledging receipt of the applications, describing the proposals, and requesting public comment was published in the **Federal Register** on June 22, 1987 (52 FR 23489). Two public comments were received, both of which opposed issuance of the permits because of concerns about potential marine mammal and seabird entanglement in gill nets. The applications were considered by the Pacific Fishery Management Council (Council), including the directors of the fishery management agencies of Washington, Oregon, California, and Idaho, during a telephone conference call meeting on June 22, 1987. The Council recommended that NMFS issue the EFPs with appropriate restrictions and limitations so that information on the experimental fishery could be obtained. The NMFS Regional Director, after having considered all factors including concerns for potential marine mammal and seabird entanglement in this experimental gear, issued the EFPs as recommended under the provisions of 50 CFR 663.10.

Eighty-five EFPs were issued that authorize harvest of soupfin, leopard, and spiny dogfish sharks taken incidentally in drift gill nets in State-permitted fisheries targeting on thresher shark from July 1, 1987, to October 31, 1987, in the EEZ off the coasts of Washington and Oregon. Under the terms and conditions of the permits, each vessel must have an experimental fishing permit issued by either Washington or Oregon which restricts the fishery to at least five nautical miles offshore, requires a minimum sixteen inch mesh, and restricts the vessel to the use of one net not to exceed 1000 fathoms in length. Permittees are required to maintain detailed logs on the fishing operation and allow an observer to accompany the vessel if so requested.

One additional EFP authorizes the experimental use of set nets to fish for soupfin sharks with an incidental catch of other groundfish species in the EEZ north of 42° N. latitude. The permit is valid for one specified vessel based in Oregon, from July 15, 1987, to July 14, 1988. Under the terms and conditions of the EFP, sets may not be made in waters shallower than thirty fathoms nor closer than five nautical miles to shore. The nets must have a minimum nine-inch mesh webbing and no more than 400 fathoms of net can be fished simultaneously. The permittee is required to maintain detailed logs on the fishing operation and allow an observer to accompany the vessel if so requested.

Further details or a copy of the permits may be obtained from the NMFS Regional Director at the above address.

(16 U.S.C. 1801 *et seq.*)

Dated: August 5, 1987.

William E. Evans,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 87–18130 Filed 8–7–87; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1987 Proposed Additions and Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions and deletions to procurement list.

SUMMARY: The Committee has received proposals to add to and delete from Procurement List 1987 commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.

DATE: Comments must be received on or before: September 9, 1987.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557–1154.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure commodities and the service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and the service to Procurement List 1987, November 3, 1986 (51 FR 39945).

Commodities

Flashlight
8230–00–781–3671
Sewing Kit
8315–01–222–0679

Service

Janitorial/Custodial, U.S. Department of Justice, Northwestern Bank Building, 1405 Eye Street, NW., Washington, D.C.

Deletions

It is proposed to delete the following services from Procurement List 1987, November 3, 1986 (51 FR 39945):

Services

Commissary Shelf Stocking and Custodial Service, Randolph AFB, Texas
Grounds Maintenance, U.S. Customs House, 6 World Trade Center, New York, New York

E.R. Alley, Jr.,
Acting Executive Director.

[FR Doc. 87–18109 Filed 8–7–87; 8:45 am]
BILLING CODE 6820–33–M

Procurement List 1987 Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1987 a commodity to be produced by and services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: September 9, 1987.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: On January 20, May 22, and June 5, 1987, the Committee for Purchase for the Blind and Other Severely Handicapped published notices (52 FR 2145, 19376, and 21344) of additions to Procurement List 1987, November 3, 1986 (51 FR 39945).

After consideration of the relevant matter presented, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77 and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the commodity and services listed.

c. The action will result in authorizing small entities to provide the commodity and services procured by the Government.

Accordingly, the following commodity and services are hereby added to Procurement List 1987:

Commodity

Test Set, Lead
6625–01–121–0510
(50% of the Government's Requirements)

Service

Commissary Warehouse Service, Cannon Air Force Base, New Mexico
Commissary Warehouse Service, McConnell Air Force Base, Kansas
Janitorial Service, Federal Records Center, 9700 Page Boulevard, Overland, Missouri

C. W. Fletcher,
Executive Director.

[FR Doc. 87–18108 Filed 8–7–87; 8:45 am]
BILLING CODE 6820–33–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 87–23–NG]

Order Granting Blanket Authorization To Import Natural Gas From Canada; Chevron Natural Gas Service, Inc.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of order granting blanket authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Chevron Natural Gas Services, Inc. (Chevron Gas), blanket authorization to import natural gas from Canada. The order issued in ERA Docket No. 87–23–NG authorizes Chevron Gas to import up to 73 Bcf over a two-year period.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA–076, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 4, 1987.

Constance L. Buckley,
Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87–18131 Filed 8–7–87; 8:45 am]
BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3245–4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a) (2) (B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the Federal Register a notice of proposed information collection requests (ICRs) that EPA has forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The ICRs that follow are available for review and comment.

FOR FURTHER INFORMATION CONTACT: Patricia Minami, (202) 382–2712 (FTS 382–2712) or Jackie Rivers, (202) 382–2740 (FTS 382–2740).

Office of Air and Radiation

Title: NSPS Subpart HH—Information Requirements for the Lime Manufacturing Industry (EPA ICR #1167). (This is a renewal without change of a currently approved collection.)

Abstract: Lime manufacturing plants must notify EPA of the date of construction or reconstruction, start-up, shutdown, and malfunction; and of the results of each performance test. Owners/operators not using wet scrubbers must install, calibrate, maintain, and operate a continuous monitoring system to monitor opacity. Facilities using multiple exhaust fabric filters may make daily Method 9 opacity observations in lieu of a continuous monitoring system. Quarterly excess emission reports (semiannual, if Method 9 is used) are required. The States and/or EPA use the data to ensure compliance with the standards, to target inspections, and, when necessary, as evidence in court.

Respondents: Owners and operators of lime manufacturing plants.

Estimated Annual Burden: 2408 hours.

Office of Pesticides and Toxic Substances

Title: Affirmation of Non-Multinational Status (EPA ICR #0612). (This is a renewal without change of a currently cleared collection.)

Abstract: Anyone seeking to obtain registrant-submitted health and safety data under FIFRA must meet the requirements of FIFRA Section 19(g): that is, they must not be affiliated with a foreign or multinational pesticide producer and must not deliver the data to such a producer. By signing the affirmation from, requestors certify that they meet the requirements.

Respondents: Anyone seeking certain health and safety data available under FIFRA.

Estimated Annual Burden: 150 hours.

* * * * * * *

Agency PRA Clearance Requests Completed by OMB

EPA ICR #0983, NSPS for Petroleum Refinery Industry (Subpart GGG), was approved 7/23/87 (OMB #2060–0067; expires 7/31/90).

* * * * * * *

Send comments on the above abstract(s) to:

Patricia Minami, PM–223, U.S. Environmental Protection Agency, Information and Regulatory Systems Division, 401 M Street SW., Washington, DC 20460

and

Nicolas Garcia (ICR 1167) and Timothy Hunt (ICR 0612), Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, 726 Jackson Place, NW., Washington, DC 20503

Date: August 3, 1987.

Daniel J. Fiorino,

Director, Information and Regulatory Systems Division.

[FR Doc. 87–18096 Filed 8–7–87; 8:45 am]

BILLING CODE 6560-50-M

[FRL–3244–7]

Performance Evaluation Reports for Fiscal Year 1986 Section 105 Grants; Missouri, Kansas, Iowa, Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of grantee performance evaluation reports.

SUMMARY: EPA's grant regulations (40 CFR 35.150) require the Agency to conduct yearly performance evaluations of the progress of the approved State-EPA Agreements. EPA's regulations (40 CFR 56.7) require that the Agency make available the evaluation reports. EPA has conducted reports on the Missouri Department of Natural Resources, Nebraska Department of Environmental Control, Iowa Department of Natural Resources, and Kansas Department of Health and Environment. These reports were conducted to assess the agencies' performance under the grants made to them by EPA pursuant to section 105 of the Clean Air Act.

ADDRESSES: Copies of the reports are available for public inspection at the EPA's Region VII Office, 726 Minnesota Avenue, Kansas City, Kansas 66101, in the Air and Toxics Division.

FOR FURTHER INFORMATION CONTACT: Carol D. LeValley at (913) 236–2893 (FTS 757–2893).

Date: July 28, 1987.

Morris Kay,

Regional Administrator.

[FR Doc. 87–18098 Filed 8–7–87; 8:45 am]

BILLING CODE 6560-50-M

[FRL–3245–2]

Hazardous Waste; Transfer of Data to Contractor

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of transfer of data and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) will transfer to its contractor, Research Triangle Institute (RTI), information which has been, or will be, submitted to EPA under section 3007 of the Resource Conservation and Recovery Act (RCRA), including subsequent amendments through 1984. RTI is assisting the EPA in the development of air emission standards for the treatment, storage, and disposal of hazardous wastes. RTI will need access to the data submitted to EPA under section 3007 of RCRA for the purpose of listing and delisting hazardous wastes in the organic chemicals, inorganic chemicals, petroleum refining, plastics, pesticides, dyes and pigments, coke by-products, wood preserving, rubber processing, and chlorinated organics manufacturing industries and data submitted for the purpose of documenting the applicability and effectiveness of treatment technologies for best demonstrated available technology (BDAT) regulations. Some of the information may have a claim of business confidentiality.

DATE: The transfer of confidential data submitted to EPA will occur no sooner than August 17, 1987.

ADDRESS: Comments should be sent to Dina Villari, Document Control Officer, Office of Solid Waste, Information Management Staff (WH–563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Comments should be identified as "Transfer of Confidential Data."

FOR FURTHER INFORMATION CONTACT: Dina Villari, Document Control Officer, Office of Solid Waste, Information Management Staff (WH–563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202)

382–4670. For technical information, contact Mr. James F. Durham, Office of Air Quality Planning and Standards, Emission Standards and Engineering Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, (919) 541–5672.

SUPPLEMENTARY INFORMATION:

I. Transfer of Data

In November 1984, Congress enacted amendments to RCRA requiring the Agency to investigate the magnitude of the area (noncombustion) source air emissions from the treatment, storage, and disposal of hazardous wastes and to develop standards for monitoring and control, as needed to protect human health and the environment. A major portion of this program involves identifying the generators and managers of these wastes, the types of wastes being generated and managed, and the way the wastes are treated, stored, or disposed.

Under EPA Contract No. 68–02–4326, RTI will assist the Office of Air Quality Planning and Standards in estimating emissions from the treatment, storage, and disposal of hazardous wastes.

The information being transferred to RTI was previously collected by other Agency contractors for the purpose of listing and delisting hazardous wastes in the organic chemicals, inorganic chemicals, petroleum refining, plastics, pesticides, dyes and pigments, coke by-products, wood preserving, rubber processing, and chlorinated organics manufacturing industries and for the purpose of documenting the applicability and effectiveness of treatment technologies for BDAT regulations. Some of the information being transferred may have been, or will be, claimed as confidential business information (CBI).

In accordance with 40 CFR 2.305(h), EPA has determined that RTI requires access to CBI submitted to EPA under section 3007 of RCRA to perform work satisfactorily under the above-noted contract. The EPA is issuing this notice to inform all submitters of information under section 3007 of RCRA that EPA may transfer to this firm, on a need-to-know basis, CBI specific to the organic chemicals, inorganic chemicals, petroleum refining, plastics, pesticides, dyes and pigments, coke by-products, wood preserving, rubber processing, and chlorinated organics manufacturing industries and CBI submitted for BDAT regulations. Upon completing their use of material submitted, RTI will return all such materials to the EPA.

RTI has been authorized to have access to RCRA CBI under the EPA "Contractor Requirements for the Control and Security of RCRA Confidential Business Information" security manual. EPA has approved the security plan of its contractor and will inspect the facility and approve it prior to RCRA CBI being transmitted to the contractor. Personnel from this firm will be required to sign nondisclosure agreements and be briefed on appropriate security procedures before they are permitted access to confidential information, in accordance with the "RCRA Confidential Business Information Security Manual" and the Contract Requirements Manual.

Dated: June 9, 1987.

J. W. McCraw,

Acting Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. 87–18099 Filed 8–7–87; 8:45 am]

BILLING CODE 6560–50–M

[FRL 3235–5]

Office of Policy, Planning and Evaluation; OPPE/Workshop; Weight of Evidence/Hazard Identification for Non-Cancer Health Effects; Meeting

The following meeting will be sponsored by the U.S. Environmental Protection Agency (US EPA), Office of Policy, Planning and Evaluation (OPPE) and will be open to the public for observation limited by the space available:

Date: August 26–28, 1987

Time: 8:00 a.m. to 5 p.m., August 26; 8:00 a.m. to 5 p.m., August 27; 8:00 a.m. to 12 noon, August 28.

Place: Old Town Holiday Inn, Alexandria, Virginia 22307

Purpose: To assemble expert technical personnel to develop weight-of-evidence schemes for hazard identification for different risk assessments on non-cancerous health effects. Interested members of the public are invited to attend.

Additional information may be obtained from: Susan Perlin, OPPE, US EPA, 401 M Street SW., Washington DC 20460. Telephones: FTS: 382–5869; Commercial: 202–382–5869.

Craig R. McCormack,

Pharmacologist, Science-Policy Integration Branch, Office of Policy, Planning and Evaluation.

[FR Doc. 87–18535 Filed 8–7–87; 8:45 am]

BILLING CODE 6560–50–M

[ECAO–R–150; ECAO–R–183; FRL–3243–5]

Superfund Program; Indoor Air Quality Implementation Plan

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of Availability of Report to Congress.

SUMMARY: On July 2, 1987, the report, EPA Indoor Air Quality Implementation Plan, was submitted to Congress as required under section 403(d) of the Superfund Amendments and Reauthorization Act of 1986. EPA is now making the report publicly available.

ADDRESSES: Interested parties may purchase copies of the report from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161. The report titles, EPA and NTIS publication numbers, and approximate costs are as follows:

- EPA Indoor Air Quality Implementation Plan, EPA–600/8–87/031, PB87–210720, $11.95.
- Appendix A: Preliminary Indoor Air Pollution Information Assessment, EPA–600/8–87/014, PB87–210738, $30.95.
- Appendix B: FY 87 Indoor Air Research Program, EPA–600/8–87/032, PB87–210746, $13.95.
- Appendix C: EPA Radon Program, EPA–600/8–87/038, PB87–210753, $9.95.
- Appendix D: Indoor Air Resource History (Published with Appendix C).
- Appendix E: Indoor Air Reference Data Base, EPA–600/8–87–016, PB87–210761, $18.95
- Set: PB87–210712, $60.00.

After August 14, 1987, a limited number of copies will be available from the EPA locations listed below:

ORD Publication Center, CERI–FRN, U.S. Environmental Protection Agency, 26 West St. Clair Street, Cincinnati, OH 45268, (513) 569–7562 or FTS/684–7562

Public Information Center, U.S. Environmental Protection Agency, 401 M Street, SW (SE Mall, G Level), Washington, DC 20460, (202 382–2080 or FTS/382–3019

The report is also available for inspection and copying at the EPA headquarters library or at any of its regional offices.

FOR FURTHER INFORMATION CONTACT: Mr. Norman Childs (919) 541–2229 or FTS/629–2229, or Ms. Darcy Campbell (919) 541–4477 or FTS/629–4477.

SUPPLEMENTARY INFORMATION: Title IV of the Superfund Amendments and Reauthorization Act of 1986—Radon Gas and Indoor Air Quality Research—mandates that EPA submit to Congress

a plan for implementing its indoor air and radon research program. In this legislation Congress specifies that the research program shall include the areas of characterization and monitoring, health effects, demonstration methods and information dissemination. On April 10, 1987, the Agency submitted to Congress a partial description of its implementation plan, including the detailed radon gas component and a description of the Agency's plans for coordinating the indoor air and radon programs. The report, EPA Indoor Air Quality Implementation Plan, supplements that report by providing a substantially more detailed assessment of the current state of knowledge about indoor air pollution and the Agency's near-term plans for fulfilling the statutory requirements of Title IV.

The report concisely establishes the policy context for indoor air research and the Agency's near-term implementation plan. There are also five appendices to the report that provide a summary of current information on indoor air quality, a description of the Agency's current indoor air research projects, a detailed description of the Agency's radon activities, EPA's indoor air resource history, and a compilation of indoor air literature references.

Date: July 30, 1987.

Vaun A. Newill,

Assistant Administrator for Research and Development.

[FR Doc. 87-18097 Filed 8-7-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 207-010640-001
Title: Armada/GLTL East Africa Service
Parties: Armada Great Lakes/East Africa Service, Ltd. Great Lakes Transcaribbean Line GmbH
Synopsis: The proposed amendment would provide that neither party may terminate the agreement prior to March 31, 1988 and restricts use of the agreement trade name in the event of the agreement's dissolution. It would also make certain non-substantive changes and would restate the agreement.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary,

Dated: August 5, 1987.

[FR Doc. 87-18106 Filed 8-7-87; 8:45 am]

BILLING CODE 6735-01-M

FEDERAL RESERVE SYSTEM

Formations of; Acquisitions by; and Mergers of Bank Holding Companies; Central and Southern Holding Co. et al.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 31, 1987.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Geogria 30303:

1. *Central and Southern Holding Company*, Milledgeville, Georgia; to acquire 100 percent of the voting shares of Bank of Greensboro, Greensboro, Georgia.

B. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *First BancShares, Inc., of Cold Spring*, Cold Spring, Minnesota, to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Cold Spring, Cold Spring, Minnesota.

Board of Governors of the Federal Reserve System,

James McAfee,

Associate Secretary of the Board.

August 4, 1987

[FR Doc. 87-18055 Filed 8-7-87; 8:45 am]

BILLING CODE 6210-01-M

Acquisition of Shares of Banks or Bank Holding Companies; Robert R. Fletcher et al.

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 3, 1987.

A. Federal Reserve Bank of Atlanta (Rober E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Robert K. Fletcher*, Clearwater, Florida; to acquire 45.02 percent of the voting shares of Bank of St. Petersburg, St. Petersburg, Florida.

B. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Harold Estes*, Lufkin, Texas; to acquire 12.5 percent of the voting shares of Newton Bancshares, Inc., Beaumont, Texas; and thereby indirectly acquire First National Bank of Newton, Beaumont, Texas.

2. *Robert C. Hext*, Bon Wier, Texas; to acquire 12.5 percent of the voting shares of Newton Bancshares, Inc., Beaumont,

Texas; and thereby indirectly acquire First National Bank of Newton, Beaumont, Texas.

3. *James T. Hughes, Sr.*, Newton, Texas; to acquire 12.5 percent of the voting shares of Newton Bancshares, Inc., Beaumont, Texas; and thereby indirectly acquire First National Bank of Newton, Beaumont, Texas.

4. *Paul N. Hughes*, Newton, Texas; to acquire 12.5 percent of the voting shares of Newton Bancshares, Inc., Beaumont, Texas; and thereby indirectly acquire First National Bank of Newton, Beaumont, Texas.

5. *T.S. Hughes*, Newton, Texas; to acquire 12.5 percent of the voting shares of Newton Bancshares, Inc., Beaumont, Texas; and thereby indirectly acquire First National Bank of Newton, Beaumont, Texas.

6. *James Elray King*, Jasper, Texas; to acquire 12.5 percent of the voting shares of Newton Bancshares, Inc., Beaumont, Texas; and thereby indirectly acquire First National Bank of Newton, Beaumont, Texas.

7. *Bill Walker*, Newton, Texas; to acquire 12.5 percent of the voting shares of Newton Bancshares, Inc., Beaumont, Texas; and thereby indirectly acquire First National Bank of Newton, Beaumont, Texas.

Board of Governors of the Federal Reserve System.

James McAfee,

Associate Secretary of the Board.

August 4, 1987.

[FR Doc. 87-18056 Filed 8-7-87; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

General Policy Statement; Commission Action; Public Guidance; Votes

AGENCY: Federal Trade Commission.

ACTION: General policy statement.

SUMMARY: The Federal Trade Commission is issuing the following general policy statement for public guidance in identifying the kinds of Commission actions in which Commissioners' votes will ordinarily be placed on the public record.

EFFECTIVE DATE: August 10, 1987.

FOR FURTHER INFORMATION CONTACT: Alex Tang, Attorney, Office of the General Counsel, Federal Trade Commission, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326-2447.

SUPPLEMENTARY INFORMATION: The following general policy statement identifies the kinds of Commission actions in which Commissioners' votes will ordinarily be placed on the public record in accordance with § 4.9(b)(1)(ii) of the Commission's Rules of Practice, 16 CFR 4.9(b)(1)(ii). This statement is issued pursuant to the Commission's revision of Rule 4.9 published at 50 FR 50779. (December 12, 1985).

This statement of general policy is not subject to notice and comment under the Administrative Procedure Act. 5 U.S.C. 553(b)(A). The requirements of the Regulatory Flexibility Act also do not apply. 5 U.S.C. 601(2).

Commissioners' Votes to be Placed on the Public Record Pursuant to Rule 4.9(b)(1)(ii)

As stated in Commission Rule 4.9(b)(1)(ii), 16 CFR 4.9(b)(1)(ii), the Commission's policy is to disclose all final votes on matters of public record. The following list, with cross references to relevant sections of Rules 4.9(b), is designed to illustrate the kinds of Commission actions that will ordinarily come within this policy. The Commission may withhold votes on those occasions where the underlying matter is properly nonpublic. Votes on matters not included on this list may be disclosed if the matters are of public record.[1]

Commission Organization and Procedures (§ 4.9(b)(1))

Promulgation of, amendments to, and repeals of rules of practices and procedures, including organizational changes
Delegations of authority

Industry Guidance and Rulemaking (§ 4.9(b)(2), (3))

Approval of advisory opinions
Promulgation of, amendments to, and repeals of trade regulation rules, other rules and regulations, guides and enforcement policy statements; also, decisions to take such actions subject to further public comment
Rulings on such rulemaking activity
Action on petitions for exemption from rules
Changes in effective dates of rules
Reopenings of rulemaking proceedings

Investigations (§ 4.9(b)(4))

Rulings on petitions to quash compulsory process and on motions to reconsider such rulings
Votes to close initial and full phase investigations (including compliance investigations)

[1] Normally, votes will be made public at the time the underlying decision is announced or made part of the public record. Thus, for example, a decision to seek preliminary injunctive relief would not be disclosed until the action is filed in Federal district court.

Adjudicative Proceedings (§ 4.9(b)(5))

Issuance and amendment of administrative complaints
Rulings during the course of adjudicative proceedings, including rulings on interlocutory motions and appeals
Issuance of final orders and opinions
Rulings on petitions for reconsideration

Civil Actions (§ 4.9(b)(5)(v))

Authorization of actions to enforce compulsory process, of injunctions, and of other court actions
Authorization of judicial appeals in court actions

Reopening Final Orders (§ 4.9(b)(5)(vii), (6)(iv))

Decisions on petitions to reopen and modify or vacate Commission orders to cease and desist
Decisions to reopen and modify orders pursuant to court order
Issuance and disposition of orders to show cause why orders to cease and desist should not be modified

Consent Agreements (§ 4.9(b)(6))

Acceptance of consent agreements for placement on public record
Rulings on requests for extensions of comment periods
Rejections of consent agreements after the close of comment periods
Decisions and orders issued after the close of comment periods

Compliance (§ 4.9(b)(7))

Actions to receive and file or reject compliance reports and supplemental compliance reports
Rulings on extensions of time to comply with Commission orders
Decisions concerning requests for approval of divestitures pursuant to order
Stays of enforcement of orders or suspension of compliance with rules

Access to Record (§ 4.9(b)(8) (i)))

Rulings on Freedom of Information Act requests or appeals

Sunshine Act Votes (§ 4.9(b)(8) (ii), (iii), (iv))

Votes under the Sunshine Act to close Commission meetings, to hold certain meetings with less than 7 days' notice, or to change meeting times, places or subject matter

Miscellaneous (§ 4.9(b)(10))

Approval of articles, papers, FTC reports, speeches and public testimony
Clearance requests referred to the Commission

Votes to authorize filings in state or federal agency proceedings

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 87-18063 Filed 8-7-87; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Epidemiology of HIV Infection Among Imprisoned Drug Users

AGENCY: National Institute on Drug Abuse, HHS.

ACTION: Notice of intent to conduct research on conditions affecting prisoners as a class.

SUMMARY: The Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA) has awarded a grant for the study of Human Immunodeficiency Virus (HIV) and drug abuse among prisoners. Because the participants in the study will be incarcerated, regulations at 45 CFR Part 46.306(a)(2)(iii) concerning prisoners as subjects apply. The regulatory requirements of 45 CFR Part 46 have been met; therefore, ADAMHA intends to commence this research.

FOR FURTHER INFORMATION CONTACT: Roy W. Pickens, Ph.D., Director, Division of Clinical Research, National Institute on Drug Abuse, ADAMHA, 5600 Fishers Lane, Rockville, Maryland 20857.

SUPPLEMENTARY INFORMATION: A research study on the transmission of Human Immunodeficiency Virus (HIV) is being conducted under authority of section 301(a) of the Public Health Service Act (42 U.S.C. 241(a)), as amended. The objective of this study is to identify the prevalence of and risk factors for HTLV-III/LAV/HIV infection among entrants into prison, and, more specifically, for parenteral drug users within this group.

The regulatory requirements of 45 CFR Part 46 pertaining to research involving prisoners as subjects have now been met. In addition, this project has been reviewed by a special ethical advisory board established by the National Institutes of Health Office of Prevention from Research Risks. All recommendations by the board are being adhered to. ADAMAHA intends to commence the conduct of this research.

Donald Ian Macdonald,

Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 87-18047 Filed 8-7-87; 8:45 am]

BILLING CODE 4160-20-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Statement of Organization, Functions and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA) **Federal Register** Vol. 46, No. 223, p. 56919, dated Thursday, November 19, 1981) is amended to indicate a reorganization of the Office of the Associate Administrator for Operations (AAO). The reorganization establishes the Office of Program Planning and Coordination to be attached to the AAO. It will be responsible for integrating and focusing all Operations' efforts, resources, and capabilities toward achieving initatives of the Administrator and Associate Administrator for Operations.

The specific changes to Part F. are as follows:

- Section FP.10, The Office of the Associate Administrator for Operations is amended to include a new organizational component to read as follows:

E. Office of Program Planning and Coordination (FP-1).

- Section FP.20, The Office of Associate Administrator for Operations is amended to include a new functional statement to read as follows:

E. Office of Program Planning and Coordination (FP-1).

Develops and manages systems for integrating and focusing all Operations' efforts, resources, and capabilities toward achieving initiatives of the HCFA Administrator and the Associate Administrator for Operations. Establishes and implements integrated and coordinated Operations-wide management planning processes. Plans, coordinates, and monitors execution of major Operations projects through administration of the workplanning and performance monitoring programs. Plans, directs, and coordinates the Operations performance appraisal systems. Formulates and coordinates policies and positions on management programs having Operations-wide impact, including management and organizational analysis; financial management; budget; and manpower utilization programs. Develops and implements AAO program and administrative delegations of authority. Coordinates and monitors the development of Operations-wide ADP plans and information strategies. Designs, develops, and manages Operations-wide management information systems. Coordinates the preparation of Operations-wide budget. Develops AAO financial management objectives, and plans, prepares, justifies, presents and monitors execution of the Operations budget. Furnishes financial management advice to the Associate administrator for Operations and provides liaison on Operations fiscal matters with HCFA's Office of Management and Budget.

Date: July 16, 1987.

William L. Roper,

Administrator.

[FR Doc. 87-18087 Filed 8-7-87; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N-87-1720]

The Performance Review Board; Appointments

AGENCY: Office of the Secretary, Department of Housing and Urban Development.

ACTION: Notice of appointments.

SUMMARY: The Department of Housing and Urban Development announces the appointments of Carl D. Covitz as Chairperson, Judith L. Hofmann as Vice-Chairperson, Peter Kaplan, Lawrence Goldberger, James T. Chaplin, Janice S. Golec, and J. Michael Dorsey (alternate member) to the Departmental Performance Review Board. Their address is: Department of Housing and Urban Development, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Persons desiring any further information about the Performance Review Board and its members may contact Gail L. Lively, Director, Office of Personnel and Training, Department of Housing and Urban Development, Washington, DC 20410, telephone (202) 755-5500. (This is not a toll free number.)

BEST COPY AVAILABLE

Date: July 29, 1987.

Samuel R. Pierce, Jr.

Secretary, Department of Housing and Urban Development.

[FR Doc. 87-16128 Filed 8-7-87; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974—Establishment of Notice of Systems of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior proposes to establish a new notice describing a system of records maintained by the Office of Surface Mining Reclamation and Enforcement (OSMRE). The notice is titled "Applicant/Violator System (AVS)—Interior, OSMRE-9", and describes records maintained by OSMRE on unabated violations and unpaid civil penalties assessed under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The system of records will be used to control the issuance of mining permits to applicants who have outstanding violations, or who are affiliated with entities that have unabated cessation orders, unpaid civil penalties, or delinquent fees under the SMCRA. The new notice is published in its entirety below.

As required by Section 3 of the Privacy Act of 1974, as amended (5 U.S.C. 552a(o)), the Office of Management and Budget, the President of the Senate, and the Speaker of the House of Representatives have been notified of this action.

5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment. The Office of Management and Budget in Appendix I to its Circular A-130 requires a 60-day review period for such proposals. Therefore, written comments on this proposal can be addressed to the Department Privacy Act Officer, Office of the Secretary (PIR), Room 7357, Main Interior Building, U.S. Department of the Interior, Washington, DC 20240. Comments received on or before October 13, 1987, will be considered. The notice shall be effective as proposed without further publication at the end of the comment period, unless comments are received which would require a contrary determination.

Dated: July 30, 1987.

Oscar W. Mueller, Jr.,

Director, Office of Management Analysis.

Interior/OSMRE-9

SYSTEM NAME:

Applicant/Violator System (AVS)—Interior, OSMRE-9.

SYSTEM LOCATION:

Office of Surface Mining Reclamation and Enforcement(OSMRE), Department of the Interior Washington, D.C. 20240 and field locations. For specific addresses of field locations contact the System Manager at the address given below. Major system hardware is located at the National Center, Geological Survey, 12201 Sunrise Valley Drive, Reston, Virginia 22092.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system contains names of coal mining permit holders and applicants; individuals and entities who own or control coal mining permit holders and applicants; operators for and agents of coal mining permit holders and applicants; individuals and entities responsible for unabated federal violations, unpaid federal civil penalties or outstanding abandoned mine land reclamation fees arising under the Surface Mining Control and Reclamation Act of 1987, 30 U.S.C. 1201 et seq. (SMCRA); and individuals or entities who own or control individuals or entities responsible for unabated federal violations, unpaid federal civil penalties or outstanding abandoned mine land reclamation fees arising under the SMCRA.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Coal Mining Permit Application information and Permit information such as individuals listed in the application or permit (names, addresses, and social security numbers, if available), bond and acreage information; (2) violator information obtained from OSMRE enforcement records, state enforcement records, and abandoned mine land records; (3) ownership and control information on coal mining operations obtained from the aforementioned records, the Mine Safety and Health Administration legal identity forms and other MSHA records, State Corporation Commission and Secretary of State records, clerk of court records, company or operator financial reports and investigative reports provided to OSMRE under contract.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 et seq.; and the February 1, 1985, Revised Court Order in *Save Our Cumberland Mountains, Inc., et al.* v. *William P. Clark, et al.*, Civil No. 81-2134 (D.D.C. 1985).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATAGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The primary uses of the records are to: (a) Serve as a tool for OSMRE and State regulatory authorities to determine if any individuals or entity who owns or is in control of a coal mining permit or application for a permit was or is in control of any entity with an unabated OSMRE or State cessation order, unpaid civil penalty, or delinquent abandoned mine land fee prescribed by SMCRA; (b) enable OSMRE and State regulatory authorities to take appropriate action to withhold or revoke permits of entities or individuals in violation of SMCRA; (c) develop data on coal mining activities on a nationwide basis; (d) provide statistics by company, region; judicial district, statye and nationwide for management purposes; (e) enable OSMRE and State regulatory authorities to effectively monitor their program requirements. Disclosures outside the Department of the Interior may be made: (1) To the appropriate Federal, State, local or foreign agency responsible for investigating, prosecuting, enforcing or implementing statute, rule, regulation, or order when the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) to the Internal Revenue Service when disclosure will enable OSMRE to collect civil penalties due it from violators or to collect delinquent abandoned mine lands fees; (3) to a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office; (4) to public interest groups as may be required under a February 1, 1985, Revised Court Order in *Save Our Cumberland Mountains, Inc., et al.* v. *William P. Clark, et al.*, Civil No. 81-2134 (D.D.C. 1985); (5) to the U.S. Department of Justice or a court or other adjudicative body of competent jurisdiction when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior

determines that the disclosure is relevant or necessary to the litigation and is compatible with purpose for which the records were compiled.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)), or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in manual form in file cabinets and recorded on computer usuble media.

RETRIEVABILITY:

Data is retrievable by numerous combinations or data fileds such as assigned index number, company name, individual name, State, permit number, violation numbers and amount(s) due.

SAFEGUARDS:

Maintained with safeguards meeting the requirements of 43 CFR 2.51 for computerized and manual records. Manual records are maintained in OSMRE areas occupied by OSMRE personnel during working hours with buildings locked and/or guarded during nonworking hours.

RETENTION AND DISPOSAL:

Data stored on computer usable media will be retained until it is determined that the data is not longer needed or required. Manual records will be retained to serve as verification and back-up material. ADP printout records will be disposed of periodically when superseded. Records are retained and disposed of in accordance with OSMRE Records Disposition Authority NC1–433–80–1, Item No. 302–06.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Division of Systems Development and Implementation Information Systems Management, Office of Surface Mining, 1951 Constitution Avenue, NW., Washington, D.C. 20240.

NOTIFICATION PROCEDURE:

To determine whether information is maintained on you in this system, write to the Systems Manager. See 43 CFR 2.60 for form of request.

RECORD ACCESS PROCEDURE:

To see your records, write the system Manager. Describe as specifically as possible the records sought and mark the request "Privacy Act Request for Access." See 43 CFR 2.63 for required content of request.

CONTESTING RECORD PROCEDURES:

A petition for amendment shall be addressed to the System Manager and must meet the content requirement of 43 CFR 2.71. The petition for amendment must be submitted in writing.

RECORD SOURCE CATEGORIES:

(1) Federal and State Coal Mining Permit files both manual and computerized. (2) OSMRE and State Regulation Program files, both manual and computerized. (3) Mine Safety and health Administration (MSHA) Legal Identity Forms and other records. (4) Individual, Operator and Company financial reports. (5) MSHA R–31 Controller Information Data Base. (6) State Corporation Commission, Secretary of State, Taxation bureaus and Clerk of Court Records. (7) Individual or Company Net Worth Determination reports. (8) Department of the Interior Solicitor Files. (9) OSMRE contractors who prepare investigative reports.

[FR Doc. 87–18080 Filed 8–7–87; 8:45 am]

BILLING CODE 4310-05-M

Bureau of Land Management

[ES–040–07–4520–12; ES–037535, Group 22]

Filing of Plat of Dependent Resurvey; Missouri

August 3, 1987.

1. The plat to the dependent resurvey of a portion of the south boundary (Standard Parallel North), Township 34 North, Range 1 East, a portion of the south boundary, and a portion of the subdivisional lines, Township 33 North, Range 1 East, Fifth Principal Meridian, Missouri, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on September 17, 1987.

2. The dependent resurvey was made at the request of the United States Forest Service.

3. All inquiries or protests concerning the technical aspects of the dependent resurvey must be sent to the Deputy State Director for Cadastral Survey and Support Services, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304 prior to 7:30 a.m., September 17, 1987.

4. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Lane J. Bouman,

Deputy State Director for Cadastral Survey and Support Services.

[FR Doc. 87–18045 Filed 8–7–87; 8:45 am]

BILLING CODE 4310-GJ-M

DEPARTMENT OF JUSTICE

Lodging of Consent Degree Pursuant to the Clean Air Act; Wastex Research, Inc.

In accordance with the Department policy, 28 CFR 50.7, notice is hereby given that on July 28, 1987, a proposed consent decree in *United States* v. *Wastex Research, Inc.*, was lodged with the United States District Court for the Southern District of Illinois. The proposed consent decree resolves a judicial enforcement action brought by the United States against Wastex for violations of the Resource Conservation and Recovery Act (RCRA) at its fuel blending facility in East St. Louis, Illinois.

The proposed consent decree requires Wastex to comply with RCRA provisions regarding the receipt and shipping of wastes, compliance with storage provisions, analyses of existing drummed waste, disposal of that waste based on the analyses, and development and funding of a closure plan.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, U.S. Department of Justice, Washington, DC, and should refer to *United States* v. *Wastex Research, Inc.*, D.J. Ref. 90–7–1–287.

The proposed consent decree may be examined at the office of the United States Attorney, Room 330, 750 Missouri Avenue, East St. Louis, Illinois 62201, and at the Region V office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting

a copy, please enclose a check in the amount of $3.00 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land & Natural Resources Division.

[FR Doc. 87-18061 Filed 8-7-87; 8:45 am]

BILLING CODE 4410-201-M

Foreign Claims Settlement Commission

Privacy Act of 1974; Systems of Records

AGENCY: Foreign Claims Settlement Commission of the United States, Justice Department.

ACTION: Notice of Privacy Act systems of records.

SUMMARY: The Foreign Claims Settlement Commission of the United States herewith publishes an updated Notice of its Privacy Act Systems of Records. Publication of such notice is required under subsection (e)(4) of the Privacy Act of 1974 (5 U.S.C. 552a(e)(4)).

This update is necessary in order to reflect the Commission's transfer, for administrative purposes, to the Department of Justice in 1980 as an independent agency within the Department, and also to reflect changes in the Commission's organization, the location of some of its records systems, and the deletion of one system (Justice/FCSC-26, "Rosters of Prisoners of War and Civilian Internees") due to the release of those records to the National Personnel Records Center in St. Louis, MO.

EFFECTIVE DATE: August 10, 1987.

ADDRESS: 1111 20th Street NW., Room 400, Washington, DC 20579.

FOR FURTHER INFORMATION CONTACT: Judith H. Lock, Administrative Officer. 202/653-6155 or TDD 202/653-5112.

Foreign Claims Settlement Commission Privacy Act of 1974

Notice of Systems of Records

Pursuant to 5 U.S.C. 552a(e)(4), the Foreign Claims Settlement Commission hereby publishes the systems of records as currently maintained by the agency.

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Justice/FCSC-1

SYSTEM NAME:

Indexes of Claimants (Alphabetical)—FCSC.

SYSTEM LOCATION:

Foreign Claims Settlement Commission, 1111 20th Street, NW., Washington, DC 20579.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Maintained on all individuals who filed claims for compensation under the statutes administered by the Foreign Claims Settlement Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

3 x 5 index cards and data processing print-out indexes containing names of claimants, claim and decision numbers, date and disposition of claims, addresses and dates of birth.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used by authorized Commission personnel for identification of individual claims and to obtain information concerning disposition of claims where record systems have been destroyed.

The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A-19, at any stage of the legislative coordination and clearance process as set forth in that circular.

A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions,

is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper index cards contained in metal cardex containers. Data processing index print-outs stored on shelves in cardboard binders.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Security guards in building. Records maintained in locked rooms accessible only to authorized Commission personnel.

RETENTION AND DISPOSAL:

Permanent records. Disposition will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful.

SYSTEM MANAGER AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 1111 20th Street NW., Washington, DC 20579. 202/653–6155 or TDD 202/653–5112.

NOTIFICATION PROCEDURE:

Set forth in Part 504 of Title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained and information obtained by actions taken by the Foreign Claims Settlement Commission as a result of adjudication of individual claims.

Justice/FCSC—2

SYSTEM NAME:

Bulgaria, Claims Against (1st Program)—FCSC.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. Nationals who suffered certain property losses or damages in Bulgaria prior to August 9, 1955.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim application form containing name and address of claimant and representative, if any; date and place of birth or naturalization; nature and amount of claim; description, ownership, and value of property; and evidence to support claim for the purpose of receiving compensation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title III, International Claims Settlement Act of 1949, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records were used for the purpose of adjudicating claims of individuals; issuance of decisions concerning eligibility to receive compensation under the Act; notifications to claimants of rights to appeal; and preparation of certifications of awards, if any, to Treasury Department for payment by authorized FCSC personnel. Names and other data furnished by claimants used for verifying citizenship status with INS. Law enforcement: In the event that a system of records maintained by FCSC to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions,

is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claim number. File folders retrieved from Records Center by claim number. Alphabetical index used for identification of claim (see system "Justice/FCSC–1" above).

SAFEGUARDS:

Under security safeguards at Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful. This system of records was retired to the Washington National Record Center after the completion of the claims program on August 9, 1959.

SYSTEM MANAGER AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 1111 20th Street NW., Washington, DC 20579. 202/653–6155 or TDD 202/653–5112.

NOTIFICATION PROCEDURE:

Set forth in Part 504 of Title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

Justice/FCSC—3

SYSTEM NAME:

Bulgaria, Claims Against (2nd Program)—FCSC.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

US Nationals who suffered property losses in Bulgaria between August 9, 1955, and July 2, 1963.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim application form containing name and address of claimant and representative, if any, date and place of birth or naturalization; nature and amount of claim; description, ownership, and value of property; and evidence to

support claim for the purpose of receiving compensation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title III, International Claims Settlement Act of 1949, as amended, and US-Bulgarian Claims Agreement of July 2, 1963.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records were used for the purpose of adjudicating claims of individuals; issuance of decisions concerning eligibility to receive compensation under the Act; notifications to claimants of rights to appeal; and preparation of certifications of awards, if any, to Treasury Department for payment by authorized FCSC personnel. Names and other data furnished by claimants used for verifying citizenship status with INS. Law enforcement: In the event that a system of records maintained by FCSC to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. the United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions,

is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claim number. File folders retrieved from Records Center by claim number. Alphabetical index used for identification of claim (see system "Justice/FCSC–1" above).

SAFEGUARDS:

Under security safeguards at Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful. This system of records was retired to the Washington National Records Center after the completion of the claims program on December 24, 1971.

SYSTEM MANAGER AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 1111 20th Street NW., Washington, DC 20579. 202/653–6155 or TDD 202/653–5112.

NOTIFICATION PROCEDURE:

Set forth in Part 504 of Title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

Justice/FCSC—4

SYSTEM NAME:

Certification of Awards—FCSC

SYSTEM LOCATION:

Foreign Claims Settlement Commission, 1111 20th Street, NW., Washington, DC 20579.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals receiving awards under the International Claims Settlement Act of 1949, as amended, and War Claims Act of 1948, as amended.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names and addresses of claimants and amounts of awards certified to Treasury Department for payment. Name and address of claimant's representative, if any, also included in certification voucher.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

International Claims Settlement Act of 1949, as amended, and War Claims Act of 1948, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Award certifications prepared by authorized FCSC personnel and forwarded to Treasury Department for payment in accordance with statutory authority and Treasury Department regulations and procedures.

The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions,

is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by

the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Contained in file folders.

RETRIEVABILITY:

By voucher number and date of certification.

SAFEGUARDS:

Building has building guards. Records are maintained in file cabinets in locked rooms.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful.

SYSTEM MANAGER AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 1111 20th Street NW., Washington, DC 20579. 202/653–6155 or TDD 202/653–5112.

NOTIFICATION PROCEDURE:

Set forth in Part 504 of Title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

From award portion of decisions as determined by FCSC.

Justice/FCSC—5

SYSTEM NAME:

China, Claims Against—FCSC.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

US nationals who suffered property losses, death and disability in mainland China arising between October 1, 1949, and May 11, 1979.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim application form containing name and address of claimant and representative, if any; date and place of birth or naturalization of claimant; nature and amount of claim; description, ownership and value of property; and evidence to support claim.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Titles I and V, International Claims Settlement Act of 1949, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Adjudication of claims, issuance of decisions as to the validity and amounts of claims and issuance of certifications to each individual claimant as to amount determined by FCSC officials and personnel. Such amounts and copies of FCSC decisions were certified to the Secretary of State and to the Secretary of the Treasury. Law enforcement: In the event that a system of records maintained by FCSC to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute, particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claim number. File Folders retrieved from Records Center by claim number. Alphabetical index used for identification of claim (see system "Justice/FCSC–1" above).

SAFEGUARDS:

Under security safeguards at Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful.

SYSTEM MANAGER AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 1111 20th Street NW., Washington, DC 20579. 202/653–6155 or TDD 202/653–5112.

NOTIFICATION PROCEDURE:

Set forth in Part 504 of Title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

Justice/FCSC—6

SYSTEM NAME:

Civilian Internees (Vietnam)—FCSC.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

American citizens held by a hostile force in Southeast Asia during Vietnam conflict.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim application form contains name and address, date and place of birth,

birth certificates. Verification of internment furnished by State Department contains names, addresses and inclusive dates of internment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 5(i), War Claims Act of 1948, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Adjudication of claims of American citizens and certification of awards to Treasury Department for payment by authorized FCSC personnel. Law enforcement: In the event that a system of records maintained by FCSC to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed by claim number. Cross-referenced by alphabetical index cards (see system "Jusice/FCSC–1" above).

SAFEGUARDS:

Under security safeguards at Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful.

SYSTEM MANAGER AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 1111 20th Street NW., Washington, DC 20579. 202/653–6155 or TDD 202/653–5112.

NOTIFICATION PROCEDURE:

Set forth in Part 504 of Title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom record is maintained.

Justice/FCSC—7

SYSTEM NAME:

Correspondence (General)—FCSC.

SYSTEM LOCATION:

Foreign Claims Settlement Commission, 1111 20th Street, NW., Washington, DC 20579.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Generally, US nationals suffering losses in foreign countries; also inquiries from Congressmen.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence containing names and addresses of individual, description and location of property or other types of losses. Inquiries generally are related to claims, Commission procedures and other related matters not included under the "Correspondence (Inquiries concerning claims in foreign countries)" system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

For dissemination of requested information to individuals by FCSC personnel. Correspondence may be referred to other concerned agencies on matters not within the jurisdiction of FCSC.

The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Alphabetical in file cabinets.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Security guards in building. Records maintained in file cabinets in locked rooms accessible only to authorized Commission personnel.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful.

SYSTEM MANAGER AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 1111 20th Street NW., Washington, DC 20579. 202/653–6155 or TDD 202/653–5112.

NOTIFICATION PROCEDURE:

Set forth in Part 504 of Title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

Justice/FCSC—8

SYSTEM NAME:

Correspondence (Inquiries Concerning Claims in Foreign Countries)—FCSC.

SYSTEM LOCATION:

Foreign Claims Settlement Commission, 1111 20th Street NW., Washington, DC 20579.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

US nationals suffering losses in foreign countries; inquiries from Congressmen.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence containing names and addresses of individuals and description and location of property or other types of losses. Inquiries generally are related to claims programs administered by FCSC. Records also include those transferred from State Department which may relate to such programs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, sec. 4(d) International Claims Settlement Act of 1949, as amended, and sec. 216, War Claims Act of 1948, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

For dissemination of information by authorized FCSC personnel to individuals making inquiries concerning various claims programs authorized under the International Claims Settlement Act of 1949, as amended, the War Claims Act of 1948, as amended, international claims agreements, and for notification purposes for newly authorized claims programs under which individuals may be affected.

The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivision,

is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Alphabetical in file cabinets.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Security guards in building. Records maintained in file cabinets in locked rooms accessible only to authorized Commission personnel.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful.

SYSTEM MANAGER AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 1111 20th Street NW., Washington, DC 20579. 202/653–6155 or TDD 202/653–5112.

NOTIFICATION PROCEDURE:

Set forth in Part 504 of Title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

Justice/FCSC—9

SYSTEM NAME:

Cuba, Claims Against—FCSC.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

US nationals who suffered property losses, death and disability in Cuba since January 1, 1959.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim application form containing name and address of claimant and representative, if any; date and place of birth or naturalization; nature and amount of claim; description, ownership, and value of property; and evidence to support claim, including medical and death records in claims involving death and disability.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title V, International Claims Settlement Act of 1949, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Adjudication of claims, issuance of decisions as to the validity and amounts of claims and issuance of certifications to each individual claimant as to amount determined by FCSC officials and personnel. Such amounts and copies of FCSC decisions were certified to the Secretary of State pending conclusion of any claims settlement agreement between US and Cuba. Law enforcement: In the event that a system of records maintained by FCSC to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or

particular program statute or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions,

is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claim number. File Folders retrieved from Records Center by claim number. Alphabetical index used for identification of claim (see system "Justice/FCSC–1" above).

SAFEGUARDS:

Under security safeguards at Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful.

SYSTEM MANAGER AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission,1111 20th Street NW, Washington, DC 20579. 202/653–6155 or TDD 202/653–5112.

NOTIFICATION PROCEDURE:

Set forth in Part 504 of Title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained

Justice/FCSC—10

SYSTEM NAME:

Czechoslovakia, Claims Against (1st and 2nd Programs)—FCSC.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

US nationals who suffered property losses in Czechoslovakia from January 1, 1945, to August 8, 1958 (1st Program) and from August 9, 1958 to February 2, 1982 (2nd Program).

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim application form containing name and address of claimant and representative, if any; date and place of birth or naturalization; nature and amount of claim; description, ownership, and value of property; and evidence to support claim for the purpose of receiving compensation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title IV, International Claims Settlement Act of 1949, as amended (1st Program) and the Czechoslovakian Claims Settlement Act of 1981 (2nd Program).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records were used for the purpose of adjudicating claims of individuals; issuance of decisions concerning eligibility to receive compensation under the Act; notifications to claimants of rights to appeal; and preparation of certifications of awards, if any, to Treasury Department for payment by authorized by FCSC personnel. Names and other data furnished by claimants used for verifying citizenship status with INS. Law enforcement: In the event that a system of records maintained by FCSC to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions,

is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claim number. File Folders retrieved from Records Center by claim number. Alphabetical index used for identification of claim (see system "Justice/FCSC–1" above).

SAFEGUARDS:

Under security safeguards at Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful.

SYSTEM MANAGER AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 1111 20th Street NW., Washington, DC 20579. 202/653–6155 or TDD 202/653–5112.

NOTIFICATION PROCEDURE:

Set forth in Part 504 of Title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

Justice/FCSC—11

SYSTEM NAME:

East Germany, Registration of Claims Against—FCSC.

SYSTEM LOCATION:

Foreign Claims Settlement Commission, 1111 20th Street, NW., Washington, DC 20579.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

US nationals who suffered certain property losses in East Germany.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claims registration form containing name and address of claimant and representative, if any; date and place of birth or naturalization; nature and amount of claim; description, ownership, and value of property; and evidence to support claim for the purpose of receiving compensation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title I, International Claims Settlement Act of 1949, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information received from individuals on registration forms is for use in preparation of statistical reports which will form the basis for further discussions by the State Department for negotiations between the Governments of the United States and the German Democratic Republic for the settlement of claims of US nationals not otherwise settled. Registration forms filed will be used by FCSC personnel in the distribution of formal claim application forms in case a claims settlement agreement is reached at a future date.

The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions,

is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Numerical order in file cabinets. Cross-reference alphabetical index.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Building employs security guards. Records are maintained in locked room accessible only to authorized FCSC personnel.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful.

SYSTEM MANAGER AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 1111 20th Street NW., Washington, DC 20579. 202/653–6155 or TDD 202/653–5112.

NOTIFICATION PROCEDURE:

Set forth in Part 504 of Title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

Justice/FCSC—12

SYSTEM NAME:

Federal Republic of Germany, Questionnaire Inquiries From—FCSC.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals suffering losses in Eastern European countries, including Germany.

CATEGORIES OF RECORDS IN THE SYSTEM:

Questionnaires from Federal Republic of Germany (Ausgleichsamt) containing name, address, date and place of birth or naturalization; description and location of property. Such information was furnished to Federal Republic of Germany by US residents who filed claims under the West German Federal Compensation Laws (BEG).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To inform Federal Republic Of Germany Equalization of Burdens offices whether individuals who filed claims for losses compensable under the West German Federal Compensation Laws (BEG) also filed claims with the Foreign Claims Settlement Commission

under US claims statutes and received compensation under such statutes for the same losses. Information furnished to FRG obtained from FCSC decisions or claim applications from individuals who filed claims with FCSC.

The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions,

is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Under security safeguards at Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful.

SYSTEM MANAGER AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 1111 20th Street NW., Washington, DC 20579. Telephone: 202/653–6155 or TDD 202/653–5112.

NOTIFICATION PROCEDURE:

Set forth in Part 504 of Title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Questionnaire from Federal Republic of Germany (Equalization of Burdens Office).

Justice/FCSC—13

SYSTEM NAME:

Payroll records—FCSC.

SYSTEM LOCATION:

Justice Department, Payroll Services Center, 633 Indiana Ave., NW., Washington, DC 20530. Copies held by FCSC, 1111 20th Street NW., Washington, DC 20579.

CATEGORIES OF RECORDS IN THE SYSTEM:

Varied payroll records, including, among other documents, time and attendance sheets; payment vouchers; comprehensive listing of employees; health benefits records; requests for deductions; tax forms, W–2 forms, overtime requests; leave data; retirement records. Records are used by FCSC and Justice Department employees to maintain adequate payroll information for the employees, and otherwise by FCSC and Justice Department employees who have a need for the record in the performance of their duties.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C., generally.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Appendix under General Personnel Files. Records also are disclosed to GAO for audits; to the Internal Revenue Service for investigation; and to private attorneys, pursuant to a power of attorney.

A copy of an employee's Department of the Treasury Form W–2, Wage and Tax Statement, also is disclosed to the State, city, or other local jurisdiction which is authorized to tax the employee's compensation. The record will be provided in accordance with a withholding agreement between the State, city, or other local jurisdiction and the Department of the Treasury, pursuant to 5 U.S.C. 5516, 5517, or 5520, or, in the absence thereof, in response to a written request from an appropriate official of the taxing jurisdiction to the Administrative Office, Foreign Claims Settlement Commission, 1111 20th Street NW., Washington, DC 20579. The request must include a copy of the applicable statute or ordinance authorizing the taxation of compensation and should indicate whether the authority of the jurisdiction to tax the employee is based on place of residence, place of employment, or both.

Pursuant to a withholding agreement between a city and the Department of the Treasury (5 U.S.C. 5520), copies of executed city tax withholding certificates shall be furnished the city in response to written request from an appropriate city official to the Administrative Office.

In the absence of a withholding agreement, the Social Security Number will be furnished only to a taxing jurisdiction which has furnished this agency with evidence of its independent authority to compel disclosure of the Social Security Number, in accordance with Section 7 of the Privacy Act, Pub. L. 93–579.

A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions,

is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and microfilm.

RETRIEVABILITY:

Social Security Number.

SAFEGUARDS:

Stored in guarded building; released only to authorized personnel.

RETENTION AND DISPOSAL:

In accordance with General Records Schedule 2, GSA Federal Property Management Regulations.

SYSTEM MANAGERS AND ADDRESSES:

Justice Department Payroll Services Center, 633 Indiana Avenue NW., Washington, DC 20530, and Administrative Office, Foreign Claims Settlement Commission, 1111 20th Street NW., Washington, DC 20579. 202/653–6155 or TDD 202/653–5112.

NOTIFICATION PROCEDURE:

Set forth in Part 504 of Title 45, Code of Federal Regulations.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

The subject individual; the FCSC.

Justice/FCSC—14

SYSTEM NAME:

General Personnel Files—FCSC.

SYSTEM LOCATION:

Justice Department Personnel Office, 10th and Pennsylvania Avenue NW., Washington, DC 20530. Copies held by Administrative Office, Foreign Claims Settlement Commission, 1111 20th Street NW., Washington, DC 20579.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Commission employees and former employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

General personnel information, including, among other data, training and travel records, applications, position descriptions, request for and notification of personnel action, employee performance ratings and promotion appraisals, time and attendance records, security clearances, titles, SCD, DOB, grade, salary, employment history, home address, age, marital status, SSN, home telephone number, resume, and letters of recommendation. System contains copies of Office of Personnel Management and Justice Department personnel forms, including, among others: fingerprint chart, security investigation data for sensitive position, data for noncritical-sensitive position, US savings bond authorization, physical fitness inquiry for motor vehicle operators, application for leave, personal qualifications statement, operational emergencies relocation site, recommendation for performance recognition, employee appraisal, payroll change slip, organizational roster, notice of injury or occupational disease, claim for reimbursement for expenditures, statement of earnings, promotion appraisal, and receipt for property.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C., generally.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Appendix. Completion of agency forms for request for personnel actions, security clearances, training authorizations, travel authorizations, time and attendance records, reports, etc. Also used for issuing passes, etc. Information is used "in house" for personnel evaluation and management. Information is disclosed to persons outside the agency for verifying employment/salary, preparing letters of reference at the request of the employee, making travel and training arrangements, supplying data to non-Federal attorneys directories, and furnishing copies of performance appraisals to other government agencies when employees have applied for jobs elsewhere.

The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

Appendix

In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

A record from this system of records may be disclosed as a routine use to a Federal, State or local agency maintaining civil, criminal or other relevant enforcement information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of security clearance, grant or other benefit.

A record from this system of records may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision in the matter.

A record from this system of records may be disclosed to an authorized appeal grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an employee. A record from this system of records may be disclosed to the United States Office of Personnel Management in accordance with the agency's responsibility for evaluation and oversight of Federal personnel management.

A record from this system of records may be disclosed to officers and employees of a Federal agency for purposes of audit; used by Administrative Officer and other authorized agency employees; used for convenient reference to personnel information needed on a daily basis to complete reports, make payroll adjustments, take personnel action, and meet other administrative requirements within the Commission and Justice Department; used also to supply information, as requested by employees, to persons outside the agency.

The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

A record from this system of records may be disclosed to officers and employees of the Justice Department in connection with administrative services provided to this agency by the Department.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files and computer printouts.

RETRIEVABILITY:

Manual by name, grade, title.

SAFEGUARDS:

Filed in guarded buildings; records are available to authorized persons only.

RETENTION AND DISPOSAL:

In accordance with General Records Schedule 1, GSA Federal Property Management Regulations.

SYSTEM MANAGERS AND ADDRESSES:

Justice Department Personnel Office, 10th and Pennsylvania Avenue NW., Washington, DC 20530, and Administrative Office, Foreign Claims Settlement Commission, 1111 20th Street NW., Washington, DC 20579. 202/653–6155 or TDD 202/653–5112.

NOTIFICATION PROCEDURE:

Set forth in Part 504 of Title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Official personnel records, Commission and Justice Department Personnel and Finance Offices. Supervisors, letters of reference or commendation furnished by agency officials or persons from private industry, educational information supplied by colleges and universities, and the individual.

Justice/FCSC—15

SYSTEM NAME:

General Financial Records—FCSC.

SYSTEM LOCATION:

Justice Department Finance Office, Justice Management Division, 601 D Street NW., Washington, DC 20530. Copies held by Administrative Office, Foreign Claims Settlement Commission, 1111 20th Street NW., Washington, DC 20579.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Commission employees and former employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

SF 1038, Application and account for advance of funds; Vendor register and vendor payment tape. Information is used by accounting technicians to maintain adequate financial information and by other officers and employees of the Justice Department and Commission who have a need for the record in the performance of their duties.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. generally.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Appendix under General Personnel Files. Records also are released to GAO for audits; to the IRS for investigation; and to private attorneys, pursuant to a power of attorney.

The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions,

is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and tape.

RETRIEVABILITY:

Manual and automated by name.

SAFEGUARDS:

Stored in guarded building; released only to authorized personnel.

RETENTION AND DISPOSAL:

In accordance with General Records Schedule 1, GSA Federal Property Management Regulations.

SYSTEM MANAGERS AND ADDRESSES:

Justice Department Finance Office, Justice Management Division, 601 D Street NW., Washington, DC 20530, and Administrative Office, Foreign Claims Settlement Commission, 1111 20th Street NW., Washington, DC 20579. 202/653–6155 or TDD 202/653–5112.

NOTIFICATION PROCEDURE:

Set forth in Part 504 of Title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

The subject individual; the Commission.

Justice/FCSC—16

SYSTEM NAME:

Hungary Claims Against (1st Program)—FCSC.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

US nationals who suffered property losses or damages in Hungary prior to August 9, 1955.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim application form containing name and address of claimant and representative, if any; date and place of birth or naturalization; nature and amount of claim; description, ownership, and value of property; and evidence to support claim for the purpose of receiving compensation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title III, International Claims Settlement Act of 1949, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records were used for the purpose of adjudicating claims of individuals; issuance of decisions concerning eligibility to receive compensation under the Act; notifications to claimants of rights to appeal; and preparation of certifications of awards, if any, to Treasury Department for payment by authorized FCSC personnel. Names and other data furnished by claimants used for verifying citizenship status with INS. Law enforcement: In the event that a system of records maintained by FCSC to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions,

is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claim number. File Folders retrieved from Records Center by claim number. Alphabetical index used for identification of claim (see system "Justice/FCSC–1" above).

SAFEGUARDS:

Under security safeguards at Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful.

SYSTEM MANAGER AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 1111 20th Street NW., Washington, DC 20579. 202/653–6155 or TDD 202/653–5112.

NOTIFICATION PROCEDURE:

Set forth in Part 504 of Title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

Justice/FCSC—17

SYSTEM NAME:

Hungary, Claims Against (2nd Program)—FCSC.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

US nationals who suffered property losses in Hungary between August 9, 1955, and March 6, 1973.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim application form containing name and address of claimant and representative, if any; date and place of birth or naturalization; nature and amount of claim; description, ownership, and value of property; and evidence to support claim for the purpose of receiving compensation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title III, International Claims Settlement Act of 1949, as amended, and US-Hungarian Claims Agreement of March 6, 1973.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records were used for the purpose of adjudicating claims of individuals; issuance of decisions concerning eligibility to receive compensation under the Act; notifications to claimants of rights to appeal; and preparation of certifications of awards, if any, to Treasury Department for payment by authorized FCSC personnel. Names and other data furnished by claimants used for verifying citizenship status with INS. Law enforcement: In the event that a system of records maintained by FCSC to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as: set forth in that circular.

A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions,

is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claim number. Alphabetical index used for identification of claim (see system "Justice/FCSC–1" above).

SAFEGUARDS:

Under security safeguards at Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful.

SYSTEM MANAGER AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 1111 20th Street NW., Washington, DC 20579. 202/653–6155 or TDD 202/653–5112.

NOTIFICATION PROCEDURE:

Set forth in Part 504 of Title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

Justice/FCSC—18

SYSTEM NAME:

Italy, Claims Against (1st Program)—FCSC.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

US nationals who suffered losses to property attributable to Italian military action arising out of World War II.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim application forms containing name and address of claimant and representative, if any; date and place of birth or naturalization; nature and amount of claim; description, ownership, and value of property; and evidence to support claim for the purpose of receiving compensation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title III, International Claims Settlement Act of 1949, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records were used for the purpose of adjudicating claims of individuals; issuance of decisions concerning eligibility to receive compensation under the Act; notifications to claimants of rights to appeal; and preparation of certifications of awards, if any, to Treasury Department for payment by authorized FCSC personnel. Names and other data furnished by claimants used for verifying citizenship status with INS. Law enforcement: In the event that a system of records maintained by FCSC to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions,

is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claim number. File Folders retrieved from Records Center by claim number. Alphabetical index used for identification of claim (see System "Justice/FCSC–1" above).

SAFEGUARDS:

Under security safeguards at Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful. This system of records was retired in the Washington National Records Center after the completion of the claims program on August 9, 1959.

SYSTEM MANAGER AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 1111 20th Street NW., Washington, DC 20579. 202/653–6155 or TDD 202/653–5112.

NOTIFICATION PROCEDURE:

Set forth in Part 504 of Title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

Justice/FCSC—19

SYSTEM NAME:

Italy, Claims Against (2nd Program)—FCSC.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

US nationals who suffered certain property losses attributable to military action arising out of World War II. Benefits extended to late US nationals, persons who did not file under the 1st Italian Claims Program and for property losses arising in territory ceded pursuant to the Treaty of Peace with Italy, which claims had been excluded under the 1st program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim application forms containing name and address of claimant and representative, if any; date and place of birth or naturalization; nature and amount of claim; description, ownership, and value of property; and evidence to support claim for the purpose of receiving compensation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title III, International Claims Settlement Act of 1949, as amended by Pub. L. 85–604.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records were used for the purpose of adjudicating claims of individuals; issuance of decisions concerning eligibility to receive compensation under the Act; notifications to claimants of rights to appeal; and preparation of certifications of awards, if any, to Treasury Department for payment by authorized FCSC personnel. Names and other data furnished by claimants used for verifying citizenship status with INS. Law enforcement: In the event that a system of records maintained by FCSC to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions,

is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claim number. File folders retrieved from Records Center by claim number. Alphabetical index used for identification of claim (see system "Justice/FCSC–1" above).

SAFEGUARDS:

Under security safeguards at Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful. This system of records was retired to the Washington National Records Center after the completion of the claims program on December 24, 1971.

SYSTEM MANAGER AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 1111 20th Street NW., Washington, DC 20579. 202/653–6155 or TDD 202/653–5112.

NOTIFICATION PROCEDURE:

Set forth in Part 504 of Title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

Justice/FCSC—20

SYSTEM NAME:

Micronesia, Claims Arising In—FCSC.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Inhabitants of Micronesia, including US nationals, who suffered damages to property, disability and death arising out of World War II and arising during the period from the dates of the securing of the various islands of Micronesia to July 1, 1951.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim application forms containing name and address of claimant and representative, if any; date and place of

birth or naturalization; nature and amount of claim; description, ownership, and value of property; and evidence to support claim for the purpose of receiving compensation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Micronesian Claims Act of 1971.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records were used for the purpose of adjudicating claims of individuals; issuance of decisions concerning eligibility to receive compensation under authority of the Micronesian Claims Act of 1971; notifications to claimants of rights to appeal; and preparation of certifications of awards, if any, to Secretary of Interior for payment by authorized personnel of Foreign Claims Settlement Commission assigned to duty in the Trust Territory of the Pacific Islands and locally hired employees of the Micronesian Claims Commission. Upon completion of the program, the Commission was required under the Micronesian Claims Act to certify to the FCSC, the Secretary of the Interior,and the Congress of the United States (1) a list of all claims allowed and the amounts awarded, (2) a list of all claims disallowed and (3) a copy of the decision rendered in each case.

The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claim number. Alphabetical index used to identify claim (see system "Justice/FCSC–1" above).

SAFEGUARDS:

Under security safeguards at Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful.

SYSTEM MANAGER AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 1111 20th Street NW., Washington, DC 20579. 202/653–6155 or TDD 202/653–5112.

NOTIFICATION PROCEDURE:

Set forth in Part 504 of Title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

Justice/FCSC—21

SYSTEM NAME:

Panama, Claims Against–FCSC.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

US nationals who suffered loss of property in Panama as a result of a judgment of the Supreme Court of Panama on October 20, 1931, nullifying title to certain land in Panama.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim application form containing name and address of claimant and representative, if any; date and place of birth or naturalization; description, ownership, and value of property, and evidence to support claim for the purpose of receiving compensation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title I, International Claims Settlement Act of 1949, as amended, and Panamanian Claims Convention of 1950.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records were used for the purpose of adjudicating claims of individuals; issuance of decisions concerning eligibility to receive compensation under the Act; notifications to claimants of rights to appeal; and preparation of certifications of awards, if any, to Treasury Department for payment by authorized FCSC personnel. Names and other data furnished by claimants used for verifying citizenship status with INS. Law enforcement: In the event that a system of records maintained by FCSC to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions,

is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claim number. File folders retrieved from Records Center by claim number. Alphabetical index used for identification of claim (see system "Justice/FCSC–1" above).

SAFEGUARDS:

Under GSA security safeguards at Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful. This system of records was retired to the Washington National Records Center after completion of the claims program on December 31, 1954.

SYSTEM MANAGER AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 1111 20th Street NW., Washington, DC 20579. 202/653–6155 or TDD 202/653–5112.

NOTIFICATION PROCEDURE:

Set forth in Part 504 of Title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

Justice/FCSC—22

SYSTEM NAME:

Poland, Registration of Claims—FCSC.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

US nationals who suffered property losses in Poland due to nationalization or other taking of such property.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim registration form containing name and address of claimant and representative, if any, date and place of birth or naturalization, description, ownership, date of loss and value of property lost.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title I, International Claims Settlement Act of 1949, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information received from individuals on registration forms was used in the preparation of statistical reports which served as basis of discussions by the State Department in negotiations between the Governments of the United States and Poland for the settlement of claims of US nationals. Registration forms also used by authorized Commission personnel for distribution of formal application forms upon conclusion of Polish Claims Agreement of July 6, 1960.

The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions,

is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed alphabetically by name.

SAFEGUARDS:

Under security safeguards at Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful.

SYSTEM MANAGER AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 1111 20th Street NW., Washington, DC 20579. 202/653–6155 or TDD 202/653–5112.

NOTIFICATION PROCEDURE:

Set forth in Part 504 of Title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

Justice/FCSC—23

SYSTEM NAME:

Poland, Claims Against—FCSC.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

US nationals who suffered property losses in Poland due to nationalization or other taking of such property.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim application form containing name and address of claimant and representative, if any; date and place of

birth or naturalization; nature and amount of claim; description, ownership, and value of property; and evidence to support claim for the purpose of receiving compensation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title I, International Claims Settlement Act of 1949, as amended, and US-Poland Claims Agreement of July 16, 1960.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records were used for the purpose of adjudicating claims of individuals; issuance of decisions concerning eligibility to receive compensation under the Act; notifications to claimants of rights to appeal; and preparation of certifications of awards, if any, to Treasury Department for payment by authorized FCSC personnel. Names and other data furnished by claimants used for verifying citizenship status with INS. Law enforcement: In the event that a system of records maintained by FCSC to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions,

is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claim number. File folders retrieved from Records Center by claim number. Alphabetical index used for identification of claim (see system "Justice/FCSC–1" above).

SAFEGUARDS:

Under security safeguards at Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful. This system of records was retired to the Washington National Records Center after the completion of the claims program on March 31, 1966.

SYSTEM MANAGER AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 1111 20th Street NW., Washington, DC 20579. 202/653–6155 or TDD 202/653–5112.

NOTIFICATION PROCEDURE:

Set forth in Part 504 of Title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

Justice/FCSC—24

SYSTEM NAME:

Prisoners of War (Pueblo)—FCSC.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the US Armed Forces or any persons (military or civilian) assigned to duty on the USS Pueblo who were captured by military forces of North Korea on January 23, 1968, and held prisoner by such forces.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim application form containing name and address of claimant, date and places of birth, branch of service and military service number. In case of death, date, place and name of spouse, names, address and date of birth of surviving children, name and address of parents and VA claim number. Proof of death if no VA claim.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 6(e), War Claims Act of 1948, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records were used for adjudication of claims for detention benefits, issuance of decisions concerning eligibility of claimant to receive compensation; notifications to claimants of rights to appeal; and preparation of certifications of awards to Treasury Department for payment by authorized Commission personnel. Verifications from State Department include names and addresses and inclusive dates of detention.

The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions,

is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By claim number. Cross-referenced by alphabetical index cards which contain claim numbers (see system "Justice/FCSC–1" above).

SAFEGUARDS:

Under security safeguards at the Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful.

SYSTEM MANAGER AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 1111 20th Street NW., Washington, DC 20579. 202/653–6155 or TDD 202/653–5112.

NOTIFICATION PROCEDURE:

Set forth in Part 504 of Title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

Justice/FCSC—25

SYSTEM NAME:

Prisoners of War (Vietnam)—FCSC.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of Armed Forces of the United States who were captured and held by a hostile force during the Vietnam conflict beginning February 28, 1961.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim application form containing name and address of claimant; date and place of birth, branch of service and military service number. In case of death, date, place, name of spouse, names, addresses and dates of birth of surviving children, name and address of parents and VA claim number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 6(f), War Claims Act of 1948, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records used for adjudication of claims for detention benefits; issuance of decisions concerning eligibility of claimants to receive compensation; notifications to claimants of rights of appeal; and preparation of certification of awards to Treasury Department for payment by authorized Commission personnel. Verification of captured status obtained from rosters or casualty reports furnished by the respective military establishments.

The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions,

is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claim number. File folders retrieved from Records Center by claim number. Alphabetical index used for identification of claim (see system "Justice/FCSC–1" above).

SAFEGUARDS:

Under security safeguards at Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful.

SYSTEM MANAGER AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 1111 20th Street NW., Washington, DC 20579. 202/653–6155 or TDD 202/653–5112.

NOTIFICATION PROCEDURE:

Set forth in Part 504 of Title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

Justice/FCSC—26

SYSTEM NAME:

Rumania, Claims Against (1st Program)—FCSC.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

US nationals who suffered certain property losses or damages in Rumania prior to August 9, 1955.

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CATEGORIES OF RECORDS IN THE SYSTEM:

Claim application form containing name and address of claimant and representative, if any; date and place of birth or naturalization; nature and amount of claim; description, ownership, and value of property; and evidence to support claim for the purpose of receiving compensation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title III, International Claims Settlement Act of 1949, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records were used for the purpose of adjudicating claims of individuals; issuance of decisions concerning eligibility to receive compensation under the Act; notifications to claimants of rights to appeal; and preparation of certifications of awards, if any, to Treasury Department for payment by authorized FCSC personnel. Names and other data furnished by claimants used for verifying citizenship status with INS. Law enforcement: In the event that a system of records maintained by FCSC to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions,

is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claim number. File Folders retrieved from Records Center by claim number. Alphabetical index used for identification of claim (see system "Justice/FCSC–1" above).

SAFEGUARDS:

Under security safeguards at Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful. This system of records was retired to the Washington National Records Center after the completion of the claims program on August 9, 1959.

SYSTEM MANAGER AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 1111 20th Street NW., Washington, DC 20579. 202/653–6155 or TDD 202/653–5112.

NOTIFICATION PROCEDURE:

Set forth in Part 504 of Title 45, Code of Federal Regulations

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

Justice/FCSC—27

SYSTEM NAME:

Rumania, Claims Against (2nd Program)—FCSC.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

US nationals who suffered certain property losses in Rumania between August 9, 1955 and March 30, 1960.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim application form containing name and address of claimant and representative, if any; date and place of birth or naturalization; nature and amount of claim; description, ownership, and value of property; and evidence to support claim for the purpose of receiving compensation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title III, International Claims Settlement Act of 1949, as amended, and the US-Rumania Claims Agreement of March 30, 1960.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records were used for the purpose of adjudicating claims of individuals; issuance of decisions concerning eligibility to receive compensation under the Act; notifications to claimants of rights to appeal; and preparation of certifications of awards, if any, to Treasury Department for payment by authorized FCSC personnel. Names and other data furnished by claimants used for verifying citizenship status with INS. Law enforcement: In the event that a system of records maintained by FCSC to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions,

is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claim number. File folders retrieved from Records Center by claim number. Alphabetical index used for identification of claim (see system "Justice/FCSC–1" above).

SAFEGUARDS:

Under security safeguards at Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful. This system of records was retired to the Washington National Records Center after the completion of the claims program on December 25, 1971.

SYSTEM MANAGER AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 1111 20th Street NW., Washington, DC 20579. 202/653–6155 or TDD 202/653–5112.

NOTIFICATION PROCEDURE:

Set forth in Part 504 of Title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

Justice/FCSC—28

SYSTEM NAME:

Soviet Union, Claims Against—FCSC.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

US nationals suffering loss of property in Russia prior to November 16, 1933, and claims by individuals based upon liens acquired with respect to propery in the US assigned to US Government by the Soviet Government under Litvinov Assignment of November 16, 1933.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim application form containing name and address of claimant and representative, if any; date and place of birth or naturalization; nature and amount of claim; description, ownership, and value of property; and evidence to support claim for the purpose of receiving compensation.

AUTHORITY FOR MAINTENANCE IN THE SYSTEM:

Title III, International Claims Settlement Act of 1949, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records were used for the purpose of adjudicating claims of individuals; issuance of decisions concerning eligibility to receive compensation under the Act; notifications to claimants of rights to appeal; and preparation of certifications of awards, if any, to the Treasury Department for payment authorized by FCSC personnel. Names and other data furnished by claimants used for verifying citizenship status with INS. Law enforcement: In the event that a system of records maintained by FCSC to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions,

is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claim number. File folders retrieved from Records Center by claim number. Alphabetical index used for identification of claim (see system "Justice/FCSC–1" above).

SAFEGUARDS:

Under security safeguards at Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful. This system of records was retired to the Washington National Records Center after the completion of the claims program on August 9, 1959.

SYSTEM MANAGER AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 1111 20th Street NW., Washington, DC 20579. 202/653–6155 or TDD 202/653–5112.

NOTIFICATION PROCEDURE:

Set forth in Part 504 of Title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

Justice/FCSC—29

SYSTEM NAME:

Yugoslavia, Claims Against (1st Program)—FCSC.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

US nationals who suffered property losses in Yugoslavia prior to July 19, 1948.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim application form containing name and address of claimant and representative, if any; date and place of birth or naturalization; nature and amount of claim; description, ownership, and value of property; and evidence to support claim for the purpose of receiving compensation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title I, International Claims Settlement Act of 1949, as amended, and US-Yugoslavia Claims Agreement of July 19, 1948.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records were used for the purpose of adjudicating claims of individuals; issuance of decisions concerning eligibility to receive compensation under the Act; notifications to claimants of rights to appeal; and preparation of certifications of awards, if any, to Treasury Department for payment by authorized FCSC personnel. Names and other data furnished by claimants used for verifying citizenship status with INS. Law enforcement: In the event that a system of records maintained by FCSC to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions,

is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claim number. File folders retrieved from Records Center by claim number. Alphabetical index used for identification of claim (see system "Justice/FCSC–1" above).

SAFEGUARDS:

Under security safeguards at Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful. This system of records was retired to the Washington National Records Center after the completion of the claims program on December 31, 1954.

SYSTEM MANAGER AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 1111 20th Street NW., Washington, DC 20579. 202/653–6155 or TDD 202/653–5112.

NOTIFICATION PROCEDURE:

Set forth in Part 504 of Title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

Justice/FCSC—30

SYSTEM NAME:

Yugoslavia, Claims Against (2nd Programs)—FCSC.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

US nationals who suffered losses in Yugoslavia which occurred between July 19,1948, and November 5, 1964.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim application form containing name and address of claimant and representative, if any; date and place of birth or naturalization; nature and amount of claim; description, ownership, and value of property; and evidence to

support claim for the purpose of receiving compensation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title I, International Claims Settlement Act of 1949, as amended, and US-Yugoslavia Claims Agreement of November 5, 1964.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records were used for the purpose of adjudicating claims of individuals; issuance of decisions concerning eligibility to receive compensation under the Act; notifications to claimants of rights to appeal; and preparation of certifications of awards, if any, to Treasury Department for payment by authorized FCSC personnel. Names and other data furnished by claimants used for verifying citizenship status with INS. Law enforcement: In the event that a system of records maintained by FCSC to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

A record from this system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions,

is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claim number. File folders retrieved from Records Center by claim number. Alphabetical index used for identification of claim (see system "Justice/FCSC–1" above).

SAFEGUARDS:

Under security safeguards at Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful. This system of records was retired to the Washington National Records Center after the completion of the claims progra'" on July 15, 1969.

SYSTEM MANAGER AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 1111 20th Street NW., Washington, DC 20579. 202/653–6155 or TDD 202/653–5112.

NOTIFICATION PROCEDURE:

Set forth in Part 504 of Title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

Justice/FCSC—31

SYSTEM NAME:

German Democratic Republic, Claims Against—FCSC.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. nationals who suffered certain property losses in the German Democratic Republic.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim application form containing name and address of claimant and representative, if any; date and place of birth or naturalization; nature and amount of claim; description, ownership and value of property; and evidence to support claim for the purpose of receiving compensation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title IV, International Claims Settlement Act of 1949, as amended.

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records were used for the purpose of adjudicating claims of individuals; issuance of decisions concerning eligibility to receive compensation under the Act; notification to claimants of rights to appeal; and preparation of certifications of awards, if any, to Treasury Department for payment. Names and other data furnished by claimants used for verifying citizenship status with INS. The information contained in this system of records is considered by the Commission to be public information which may be disclosed as a routine use to interested persons who make inquiries about the claims program or individual claims therein, including but not limited to Members of Congress or congressional staff, staff of the Office of Management and Budget, other persons interested in the work of the Commission, and members of the news media. Law Enforcement: In the event that a system of records maintained by FCSC to carry out its functions indicates a violation or potential violation of law, whether civil or criminal or regulatory in nature, and whether arising by general statute or particular program statute or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto.

The information contained in this system of records will be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB

Circular No. A-19, at any stage of the legislative coordination and clearance process as set forth in that circular.

A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC is determines that the litigation is likely to affect it or any of its subdivisions,

is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claim number. Alphabetical index used for identification of claim (see system "Justice/FCSC-1" above.

SAFEGUARDS:

Under security safeguards at Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal in accordance with 44 U.S.C. 3301-3314 when such records are determined no longer useful.

SYSTEM MANAGER AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 1111 20th Street NW., Washington, DC 20579; 202-653-6155 or TDD 202/653-5112.

NOTIFICATION PROCEDURE:

Set forth in Part 504 of Title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Claimant on whom the record is maintained.

Justice/FCSC-32

SYSTEM NAME:

General War Claims Program—Justice/FCSC.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

US nationals who suffered certain property losses during World War II.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim application forms containing name and address of claimant and representative, if any; date and place of birth or naturalization; nature and amount of claim; description, ownership, and value of property; and evidence to support claim for the purpose of receiving compensation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title II of War Claims Act of 1948, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records were used for the purpose of adjudicating claims; issuance of decisions concerning eligibility to receive compensation under the Act; notifications to claimants of rights to appeal; and transmittal of awards, if any, to Treasury Department for payment by authorized by FCSC personnel. Names and other data furnished by claimants used for verifying citizenship status with INS. Law enforcement: In the event that a system of records maintained by FCSC to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A-19, at any stage of the legislative coordination and clearance process as set forth in that circular.

A record from this system of records may be disclosed as a routine use to a member of Congress or to a Congressional staff member in response to an inquiry of the congressional office made at the request of the individual about whom the record is maintained.

A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions,

is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claim number. Alphabetical index used for identification of claim (see system "Justice/FCSC-1" above).

SAFEGUARDS:

Under security safeguards at Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301-3314 when such records are determined no longer useful.

SYSTEM MANAGER AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 1111 20th Street NW., Washington, DC 20579. 202/653-6155 or TDD 653-5112.

NOTIFICATION PROCEDURE:

Set forth in Part 504 of Title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Claimant on whom the record is maintained.

Justice/FCSC—33

SYSTEM NAME:

Vietnam, Claims for Losses Against—FCSC.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Natural and juridical persons who allege losses against Vietnam.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim application forms containing name and address of claimant and representative, if any; date and place of birth or naturalization; nature and amount of claim; description, ownership, and value of property; and evidence to support claim for the purpose of receiving compensation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title VII, International Claims Settlement Act of 1949, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records were used for the purpose of adjudicating claims of individuals; issuance of decisions concerning eligibility to receive compensation under the Act; notifications to claimants of rights to appeal; and preparation of certifications of awards, if any, to Treasury Department for payment. Names and other data furnished by claimants used for verifying citizenship status with INS. The information contained in this system of records is considered by the Commission to be public information which may be disclosed as a routine use to interested persons who make inquiries about the claims program or individual claims therein, including but not limited to members of Congress, Congressional staff, staff of the Office of Management and Budget, other persons interested in the work of the Commission, and members of the news media.

Law Enforcement: In the event that a system of records maintained by FCSC to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

The information contained in this system of records will be disclosed to the Office of Management and Budget, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that circular.

A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions

is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claim number. Alphabetical index used for identification of claim (see system "Justice/FCSC–1" above).

SAFEGUARDS:

Under security safeguards at Washington National Records Center.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful.

SYSTEM MANAGER AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 1111 20th Street NW., Washington, DC 20579. 202/653–6155 or TDD 202/653–5112.

NOTIFICATION PROCEDURE:

Set forth in Part 504 of Title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

Justice/FCSC—34

SYSTEM NAME:

Ethiopia, Claims for Losses Against—FCSC.

SYSTEM LOCATION:

Foreign Claims Settlement Commission, 1111 20th Street NW., Washington, DC 20579.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Natural and juridical persons who allege losses against Ethiopia.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claims information including name and address of claimant and representative, if any; date and place of birth or naturalization; nature and amount of claim; description, ownership, and value of property; and evidence to support claim for the purpose of receiving compensation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title I, International Claims Settlement Act of 1949, as amended, and the December 19, 1985 Compensation Agreement between the Government of the United States of America and the Provisional Military Government of Socialist Ethiopia.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records are used for the purpose of adjudicating claims of individuals; issuance of decisions concerning eligibility to receive compensation under the Act; notifications to claimants of rights to appeal; and preparation of certifications of awards, if any, to the Treasury Department for payment. Names and other data furnished by claimants used for verifying citizenship status with INS. The information contained in this system of records is considered by the Commission to be public information which may be

disclosed as a routine use to interested persons who make inquiries about the claims program or individual claims therein, including but not limited to members of Congress, Congressional staff, staff of the Office of Management and Budget, other persons interested in the work of the Commission, and members of the news media.

Law Enforcement: In the event that a system of records maintained by FCSC to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity or

iii. Any employee of the FCSC in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions

is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claim number. Alphabetical index used for identification of claim (see system "Justice/FCSC–1" above).

SAFEGUARDS:

Building employs security guards. Records maintained in locked room accessible to authorized FCSC personnel.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be made in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful.

SYSTEM MANAGER AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 1111 20th Street NW., Washington, DC 20579. 202/653–6155 or TDD 202/653–5112.

NOTIFICATION PROCEDURE:

Set forth in Part 504 of Title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Claimant on whom the record is maintained.

Judith H. Loch,

Administrative Officer.

[FR Doc. 87–19024 Filed 8–7–87; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–19,839]

Termination of Investigation; BWP, Inc., Midland, TX

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated in response to a worker petition received on June 29, 1987 which was filed on behalf of workers at BWP, Incorporated, Midland, Texas.

All workers were separated from the subject firm more than one year prior to the date of the petition. Section 223 of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC this 27th day of July 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 87–18037 Filed 8–7–87; 8:45 am]

BILLING CODE 4510–30–M

Mine Safety and Health Administration

[Docket No. M–87–179–C]

Petition for Modification of Application of Mandatory Safety Standard; BethEnergy Mines Inc.

BethEnergy Mines Inc., Route 19, Eighty Four, Pennsylvania 15330 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Mine No. 58 (I.D. 36–00957), and its Eighty Four Complex (I.D. No. 36–00958), both located in Washington County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows: 1. The petition concerns the use of a locked padlock to secure battery plugs to machine-mounted battery receptacles on permissible, mobile battery-powered machines.

2. Petitioner states that maintaining locks on the mobile-powered equipment presents problems because the padlocks either disappear, or the locks are forced open or not used.

3. As an alternate method, petitioner proposes to use a metal retaining device which would be bolted to the battery receptacle. The plug would be firmly secured by a hand-operated, spring-loaded pin which would be attached to the retainer device. This device will secure the plug as well as a padlock does, and it provides the added benefit of staying in place and being more accessible when access is needed. The locking devices will be designed, installed and used to prevent the threaded rings that secure the battery plugs to the battery receptacles from unintentionally loosening and will be attached to prevent accidental loss. In addition, the locking devices will be securely attached to the battery receptacles to prevent accidental loss of the devices.

4. Operators of permissible, mobile, battery-powered machines affected by this modification will be trained in the proper use of the locking device, the hazards of breaking battery-plug connections under load, and the hazards of breaking battery-plug connections in areas of the mine where electric equipment is required to be permissible.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These

comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 9, 1987. Copies of the petition are available for inspection at that address.

Dated: July 30, 1987.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-18036 Filed 8-7-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-175-C]

Petition for Modification of Application of Mandatory Safety Standard; Jim Walter Resources, Inc.

Jim Walter Resources, Inc., P.O. Box C-79, Birmingham, Alabama 35283 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery charging stations, substations, compressor stations, shops and permanent pumps) to its No. 7 Mine (I.D. No. 01-01410) located in Tuscaloosa County, Alabama. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that air currents used to ventilate structures or areas enclosing electrical installations be coursed directly into the return.

2. Petitioner has electrical installations which are located such that all entries close to them are maintained as intake airways. There are no return airways available for ventilating these installations.

3. As an alternate method, petitioner proposes that:

(a) The electric equipment will be housed in a fireproof structure equipped with automatic closing fire doors activated by thermal devices;

(b) The electric equipment will be protected with thermal devices designed to remove incoming power. Grounded phase protective devices protecting three-phase equipment will be adjusted to remove incoming power at not more that 40 percent of the available fault current;

(c) An automatic fire suppression system will be installed and maintained;

(d) The electric equipment will contain no flammable cooling liquid or flammable hydraulic oil;

(e) Rectifying substations providing power to trolley systems will be protected by direct current circuit breakers with reverse current protection;

(f) No combustible materials will be stored or allowed to accumulate in the fireproof enclosure;

(g) Firefighting equipment will be provided on the outside of the fireproof structure;

(h) A signal, activated by a suitable sensor, will be located so that it can be seen or heard by a responsible person; and

(i) The electical equipment and fire suppression devices will be examined weekly.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 9, 1987. Copies of the petition are available for inspection at that address.

Date: July 30, 1987.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-18039 Filed 8-7-87; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notice (87-84)

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Ad Hoc Review Team on General Aviation.

DATE AND TIME: September 2, 1987, 8:30 a.m. to 4:30 p.m.; September 3, 1987, 8:30 a.m. to 4:30 p.m.; September 4, 1987, 8:30 a.m. to 2:00 p.m.

ADDRESS: National Aeronautics and Space Administration, Langley Research Center, Building 1219, Room 225, Hampton, VA 23665.

FOR FURTHER INFORMATION CONTACT: Mr. Louis J. Williams, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202-453-2798.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee (AAC) was established to provide overall guidance and direction to the aeronautics research and technology activities in the Office of Aeronautics and Space Technology (OAST). Special ad hoc teams were formed to address specific topics. The ad hoc team on General Aviation, chaired by Mr. John Olcott, is comprised of nine members. The meeting will be open to the public up to the seating capacity of the room (approximately 50 persons including the team members and other participants).

Type of Meeting: Open.

Agenda:

September 2, 1987

8:30 a.m.—Opening Remarks.

9 a.m.—Langley Research Center General Aviation Research Overview.

9:45 a.m.—Briefings—Langley Research Center General Aviation Research Program.

4:30 p.m.—Adjourn.

September 3, 1987

8:30 a.m.—Review Team Discussions and Drafting of Final Report.

4:30 p.m.—Adjourn.

September 4, 1987

8:30 a.m.—Drafting of Final Report.

2 p.m.—Adjourn.

Dated: August 3, 1987.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 87-18053 Filed 8-7-87; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

[Docket 40-2061]

Draft Supplement to the Final Environmental Statement for the Rare Earths Facility, West Chicago, Dupage County, IL; Kerr-McGee Chemical Corp.

By Federal Register Notice published June 29, 1987 (52 FR 24229), the U.S. Nuclear Regulatory Commission (the Commission) announced the availabiltiy of a Draft Supplement to the Final Environmental Statement (DSFES) related to the decommissioning of Kerr-

McGee Chemical Corporation's Rare Earths Facility located in West Chicago, Illinois, with comments on the DSFES from interested persons due to the Commission by August 17, 1987.

To order to ensure that sufficient time is allowed for public comment, the Commission hereby extends the comment period for the DSFES for an additional 45 days, with comments due for the Commission's consideration by October 1, 1987. Comments should be addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Fuel Cycle Safety Branch. All comments received by the Commission will be made available for public inspection at the Commission's Public Document Room in Washington, DC and the Local Public Document Room in West Chicago, Illinois.

Dated at Silver Spring, Maryland, this 30th day of July 1987.

For the U.S. Nuclear Regulatory Commission.

Leland C. Rouse,

Chief, Fuel Cycle Safety Branch Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 87-18111 Filed 8-7-87; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE U.S. TRADE REPRESENTATIVE

Trade Policy Staff Committee; Review and Solicitation of Public Comment: Proposed Modification of the List of Articles Eligible for Duty-Free Treatment Under the U.S. Generalized System of Preferences (GSP) To Remove Molybdenum Ore, Concentrates and Oxides, Expedited Review

I. Initiation of Expedited Review

On August 4, the Trade Policy Staff Committee (TPSC) announced (52 FR 28896) the list of cases accepted for review in the 1986 annual review of the GSP program. The purpose of this notice is to announce that the TPSC has granted a request from Cyprus Minerals Company to conduct the review of case numbers 87-26, 87-27, 87-HS-22, and 87-HS-23 on an expedited basis.

In light of the TPSC's decision to expedite its review of the subject cases, the public hearing and comment period specified in (53 FR 28896) will not apply to these cases. A separate public hearing will be held and comments will be accepted on these cases as described below.

II. Public Hearing and Comment Period

The GSP Subcommittee of the Trade Policy Staff Committee invites submissions in support of or in opposition to the cases that are the subject of this notice. All such submissions should conform to 15 CFR 2007, particularly §§ 2007.0, 2007.1(a)(1), 2007.1(a)(2), and 2007.1(a)(3).

A hearing will be held on September 2 beginning at 10:00 a.m. in room 403, 600 17th Street NW, Washington, DC. provided that requests to testify are received as specified below. The hearing will be open to the public and the transcript will be made available for public inspection or purchase from the reporting company

Requests to present oral testimony in connection with public hearings should be accompanied by twenty copies, in English, of all written briefs or statements and should be received by the Chairman of the GSP Subcommittee no later than the close of business Wednesday, August 26. Oral testimony before the GSP Subcommittee will be limited to five minute presentations that summarize or supplement information contained in briefs or statements submitted for the record. Post-hearing briefs or statements will be accepted if submitted in twenty copies, in English, no later than close of business Wednesday, September 16. Rebuttal briefs should be submitted in twenty copies, in English, by close of business Friday, October 2.

Parties not wishing to appear may submit written briefs or statements in twenty copies, in English, in connection with articles or countries under consideration in the public hearings, provided that such submissions are filed by Wednesday, September 16 and conform with the regulations cited above.

All submissions should be submitted in 20 copies, in English, to the Chairman of the GSP Subcommittee of the Trade Policy Staff Committee, 600 17th Street NW., Room 517, Washington, DC. 20506. Information submitted in connection with the hearings will be subject to public inspection by appointment with the staff of the GSP Information Center, except for information granted "business confidential" status pursuant to 15 CFR 2003.6 and 15 CFR 2006.10. Briefs or statements must be submitted in twenty copies in English. If the document contains business confidential information, twenty copies of a nonconfidential version of the submission along with twelve copies of the confidential version must be submitted. In addition, the document containing confidential information should be clearly marked "confidential" at the top and bottom of each and every page of the document. The version that does not contain business confidential information (the public version) should also be clearly marked at the top and bottom of each and every page (either "public version" or "nonconfidential").

All communications with regard to this review should be addressed to the GSP Subcommittee, Office of the U.S. Trade representative, 600 17th Street NW, Room 517, Washington, DC 20506. Questions may be directed to the GSP Information Center at (202) 395-6971.

Donald M. Phillips,

Chairman, Trade Policy Staff Committee.

[FR Doc. 87-18226 Filed 8-7-87; 8:45 am]

BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-24770; File No. SR-NASD-87-23]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

The National Association of Securities Dealers, Inc. ("NASD") submitted on April 27, 1987, a proposed rule change, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] amending Article III, sections 21(b) and 41, of the NASD Rules of Fair Practice and the Board of Governors' Interpretation on Prompt Receipt and Delivery of Securities to clarify the applicability of NASD short sale rules to various types of securities.[3]

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 24641, June 25, 1987) and by publication in the **Federal Register** (52 FR 25102, July 2, 1987). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

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For the Commission, by the Division of Market Regulation pursuant to delegated authority 17 CFR 200.30-3(a)(12).

Jonathan G. Katz,

Secretary.

Dated: August 3, 1987.

[FR Doc. 87-18090 Filed 8-7-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24769; File No. SR-PSE-86-26]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change

I. Introduction

On December 1, 1986, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change specifying new requirements for PSE floor members who act as both market makers and floor brokers.

The proposed rule change was noticed in Securities Exchange Act Release No. 24511 (May 26, 1987), 52 FR 20816 (June 3, 1987). No comments were received on the proposed rule change.

II. Description of Proposed Rule Change

The proposed rule change adds three new provisions to section 80 of PSE Rule VI (Restriction on Acting as Market Maker and Floor Broker). As presently drafted, section 80 generally prohibits a PSE market maker from acting as a floor broker on the same business day with respect to option contracts covering the same underlying security. New paragraph (b) states that a member acting as both a market maker and a floor broker whose quarterly total contract volume as a market maker exceeds that as a floor broker shall be given a principal appointment and comply with the terms of section 79, Commentary .04.[3] New paragraph (c) specifies that with the exception of those members who are sole proprietors and/or those who are given primary appointments, members who act as both floor brokers and market makers will be limited to trading 100 contracts per month as a market maker. Finally, new paragraph (d) provides that members who wish to act in the capacity of both market makers and floor brokers must apply for and receive approval through the PSE Options Appointments and Options Floor Trading Committees.

III. Discussion

In its rule filing submission to the Commission, the PSE stated that it has permitted its floor members to act as both market makers and floor brokers since the inception of listed options trading on the Exchange. The only restrictions placed on such members were that they not act as such in the same options during the same trading session, and, as a policy matter, if their principal business was as a market maker, that they be given a primary appointment and comply with the trading requirements accompanying such appointment. The Exchange believes that in today's environment this system which permits a floor member to be registered in both capacities may create possible abuses to the specialist exempt credit provided for in Securities Exchange Act Rule 15c3-1(c)(2)(x)(F)(1). Specifically, the Exchange believes that a firm may nominate a floor member to act in both capacities. The floor member then would act primarily as an independent floor broker. At the same time, however, the same firm might submit orders from off the trading floor, in the name of the floor broker/market maker, to other sections of the floor, with such orders enjoying the treatment afforded market maker orders and receiving specialist exempt credit. Such abuse is difficult to detect and thus the Exchange proposes these rule changes as a deterrent to such possible abuse.

The Exchange believes that by excluding sole proprietors and those members who would be assigned a principal appointment, the rights of those members who legitimately act in both capacities would be preserved. Sole proprietors, by their very nature, are single trading entities and would not be in a position to both enjoy the privilege of floor brokering while at the same time entering orders from off the floor. Members who are principally appointed to trading pits have certain requirements ensuring that in return for exempt credit, these members meet affirmative and negative obligations with respect to market making in such appointments.

The Exchange believes that the principal impact of the rule proposal will be on firms that would abuse the specialist exempt credit privilege by nominating an independent floor broker and then placing trades, from off the floor, as though they were initiated by such floor members. The Exchange believes that the proposed rule change is specifically in keeping with section 6(b)(5) of the Act, in that it is designed to prevent the fraudulent acts and practices described above and to promote just and equitable principles of trade.

IV. Conclusion

The Commission believes that the proposed rule change is an appropriate measure to curb possible trading abuses and will serve to ensure that such abuses as described above are subject to Exchange disciplinary action. Specifically, the rule should operate to dissuade PSE member firms and other floor members from attempting to illegally benefit from the specialist exempt credit provision of the Act. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6,[4] and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Jonathan G. Katz,

Secretary.

Dated: August 3, 1987.

[FR Doc. 87-18091 Filed 8-7-87; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #6540]

Declaration of Disaster Loan Area; New Jersey

Jersey City, New Jersey, constitutes a disaster area because of damages from a fire which occurred on July 15, 1987. Eligible small business without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury until the close of business on May 4, 1988, at the address listed below:

Disaster Area 1 Office, Small Business Administration, 15-01 Broadway, Fair Lawn, New Jersey 07410

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[1] 15 U.S.C. 78s(b)(1) (1982.

[2] 17 CFR 240.19b-4 (1986).

[3] Commentary .04. generally requires that at least 50% of the trading activity in any quarter of a market maker who has an appointment as a principal market maker be in classes of option contracts to which his principal appointment extends. The PSE has indicated that market makers who are given primary zone appointments pursuant to new paragraph (b) will be required to comply with the terms of this commentary for a minimum time period of one trading quarter.

[4] 15 U.S.C. 78f (1982).

[5] 15 U.S.C. 78s(b)(2) (1982).

[6] 17 CFR 200.30-(a)(12) (1986).

or other locally announced locations.

The interest rate for eligible small business concerns without credit available elsewhere is 4 percent and 9.5 percent for eligible small agricultural cooperatives without credit available elsewhere.

(Catalog of Federal Domestic Assistance Program No. 59002)

Date: August 4, 1987.

James Abdnor,

Administrator.

[FR Doc. 87-18102 Filed 8-7-87; 8:45 am]

BILLING CODE 8025-01-M

[License No. 09/09-5369]

Issuance of a Small Business Investment Company License; Best Finance Corp.

On April 23, 1986, a notice was published in the Federal Register (Vol. 51, No. 78, PG. 15403) stating that an application has been filed by Best Finance Corporation, Los Angeles, CA with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies [13 CFR 107.102 (1987)) for a license as a small business investment company.

Interested parties were given until close of business May 23, 1986, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(d) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 09/09-5369 on June 24, 1987, to Best Finance Corporation to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: July 24, 1987.

[FR Doc. 87-18191 Filed 8-7-87; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice: CM-8/1097]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea; Working Group on Stability, Load Lines, and on Safety of Fishing Vessels; Meeting

The working Group on Stability, Load Lines and on Safety of Fishing Vessels of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on 24 August 1987 in room 2415 at 0930 a.m. at Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593.

The purpose of the meeting is to discuss the national positions for Session 32 scheduled for September 2-11, 1987. Items of principal interest on the agenda for this session are:

- Subdivision of Dry Cargo Ships,
- Intact Stability of All Ships,
- SOLAS Convention Chap. II-I,
- Review of Stability for Mobile Drilling Units,
- Voluntary Guidelines for Fishing Vessel Safety.

Members of the public may attend up to the seating capacity of the room.

For further information contact Mr. W.A. Cleary, Jr., U.S. Coast Guard Headquarters (G-MTH-3), 2100 Second Street SW., Washington, DC 20593. Telephone: (202) 267-2988.

Dated: July 27, 1987.

Richard C. Scissom,

Chairman, Shipping Coordinating Committee.

[FR Doc. 87-18084 Filed 8-7-87; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 87-8-6; Docket 43742]

Amendment of Sovereign Immunity Waivers in Foreign Air Carrier Permits

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of Final Order (Order 87-8-6); Docket 43742.

SUMMARY: Effective August 4, 1987, the Department of Transportation amends the operating authority of all foreign air carriers to require them to waive sovereign immunity from the jurisdiction of U.S. courts in all cases (a) that are based on their operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or (b) are based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States.

FOR FURTHER INFORMATION CONTACT: Patricia N. Snyder, Office of the General Counsel, C-20, U.S. Department of Transportation, 400 7th Street SW., Washington, DC 20590, (202) 366-5621.

SUPPLEMENTARY INFORMATION: The complete text of Order 87-8-6 is available for inspection from our Documentary Services Division at the above address.

Dated: August 4, 1987.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 87-18074 Filed 8-7-87; 8:45 am]

BILLING CODE 4910-62-M

[Order 87-8-7]

Fitness Determination of Aero Virgin Islands Corp.; Order to Show Cause

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of Commuter Air Carrier Fitness, Determination—Order 87-8-7, Order to Show Cause.

SUMMARY: The Department of Transportation is proposing to find that Aero Virgin Islands Corp., is fit, willing, and able to provide commuter air service under section 419(c)(2) of the Federal Aviation Act.

Responses: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P-56, Department of Transportation, 400 7th Street, SW., Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than August 20, 1987.

FOR FURTHER INFORMATION CONTACT: Kathy A. Lusby, Air Carrier Fitness Division, Department of Transportation, 400 7th Street SW., Washington, DC 20590, (202) 366-9721.

Dated: August 4, 1987.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 87-18073 Filed 8-7-87; 8:45 am]

BILLING CODE 4910-62-M

[Order 87-8-8; Docket 44887]

Application of Command Airways, Inc. for Certificate Authority Under Subpart Q; Order to Show Cause

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of Order to Show Cause (Order 87-8-8), Docket 44887.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Command Airways, Inc., fit and awarding it a certificate of public convenience and

necessity to engage in interstate and overseas scheduled air transportation.

DATE: Persons wishing to file objections should do so no later than August 20, 1987.

ADDRESSES: Objections and answers should be filed in Docket 44887 and addressed to the Documentary Services Division, Department of Transportation, 400 7th Street, SW., Room 4107, Washington, DC, 20590, ans should be served on the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Janet A. Davis, Air Carrier Fitness Division, P–56, U.S. Department of Transportation, 400 7th Street SW., Washington, DC 20590, (202) 366–2341.

Dated: August 4, 1987.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 87–18072 Filed 8–7–87; 8:45 am]

BILLING CODE 4910–62–M

[Order 87–8–9; Docket 44852]

Application of Yutana Airlines for Certificate Authority Under Subpart Q; Order to Show Cause

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of Order to Show Cause, (Order 87–8–9), Docket 44852.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Yutana Airlines fit and awarding it a certificate of public convenience and necessity to engage in interstate and overseas scheduled air transportation.

DATE: Persons wishing to file objections should do so no later than August 20, 1987.

ADDRESSES: Objections and answers to objections should be filed in Docket 44852 and addressed to the Documentary Services Division (C–55, Room 4107), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC, 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Carol A. Woods, Air Carrier Fitness Division, (P–56, Room 6420), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2340.

Dated: August 5, 1987.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 87–18075 Filed 8–7–87; 8:45 am]

BILLING CODE 4910–62–M

Coast Guard

[CGD–87–052]

Public Hearing on the Norfolk and Southern Railway Bridge Across the Upper Mississippi River, Mile 309.9, at Hannibal, MO

AGENCY: Coast Guard, DOT.

ACTION: Notice of public hearing.

SUMMARY: The U.S. Coast Guard announces a forthcoming public hearing for the presentation of views concerning the alteration of the Norfolk and Southern Railway Bridge.

DATE: The meeting will be held at 7:00 p.m., Thursday, September 17, 1987.

ADDRESS: The meeting will be held in the Tom Sawyer Room of the Holiday Inn, 4141 Market Street, Hannibal, Missouri 63401.

FOR FURTHER INFORMATION CONTACT: Mr. Roger Wiebusch, Second Coast Guard District, 1430 Olive Street, St. Louis, Missouri, (314) 425–4607.

SUPPLEMENTARY INFORMATION: Complaints have been received alleging that the bridge is unreasonably obstructive to navigation. Information available to the Coast Guard indicates that there were 17 marine collisions with the bridge since 1968. These collisions have caused moderate to heavy damage to the bridge. Based on this information, the bridge appears to be a hazard to navigation. This may require increasing the horizontal and vertical clearances on the bridge to meet the needs of navigation. All interested parties shall have full opportunity to be heard and to present evidence as to whether any alteration of this bridge is needed, and if so, what alterations are needed giving due consideration to the necessities of free and unobstructed water navigation. The necessities of rail traffic will also be considered.

Any person who wishes may appear and be heard at this public hearing. Persons planning to appear and be heard are requested to notify the Commander, Second Coast Guard District, 1430 Olive Street, St. Louis, Missouri 63103–2398, telephone (314) 425–4607, any time prior to the hearing indicating the amount of time required. Depending upon the number of scheduled statements, it may be necessary to limit the amount of time allocated to each person. Any limitations of time allocated will be announced at the beginning of the hearing. Written statements and exhibits may be submitted in place of or in addition to oral statements and will be made a part of the hearing record. Such written statements and exhibits may be delivered at the hearing or mailed in advance to the Commander, Second Coast Guard District. Transcripts of the hearing will be made available for purchase upon request.

Dated: August 4, 1987.

Martin H. Daniell,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation.

[FR Doc. 87–18135 Filed 8–7–87; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Noise Exposure Map; Receipt of Noise Compatibility Program and Request for Review; Port Columbus International Airport, Columbus, OH

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the city of Columbus for Port Columbus International Airport (CMH) under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for CMH under Part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before January 24, 1988.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is July 28, 1987. The public comment period ends September 10, 1987.

FOR FURTHER INFORMATION CONTACT: Henry A. Lamberts, Federal Aviation Administration, Great Lakes Region, Airports Division, AGL–610, 2300 East Devon Avenue, Des Plaines, Illinois 60018 (312) 694–7387.

Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds

that the noise exposure maps submitted for CMH are in compliance with applicable requirements of Part 150, effective July 28, 1987. Further, the FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before January 24, 1988. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations, Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatible program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The city of Columbus submitted to the FAA on March 26, 1987, noise exposure maps, descriptions and other documentation whch were produced during the FAA Part 150 Study conducted at CMH from May 3, 1985 to January 30, 1987. It was requested that the FAA review this material as the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the city of Columbus. The specific maps under consideration are depicted as Noise Exposure Map—1985 and Noise Exposure Map—1990 in the submissions. The FAA has determined that these maps for CMH are in compliance with applicable requirements. This determination is effective July 28, 1987. The FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local reponsibilities are not changed in any way under Part 150 or through the FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for CMH on March 26, 1987. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs. But further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before January 24, 1988.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW, Room 617, Washington, DC

Federal Aviation Administration, Great Lakes Region, Airports Division, 2300 East Devon, Des Plaines, IL 60018

Federal Aviation Administration, Detroit Airports District Office, East Willow Run Airport, 8800 Beck Road, Belleville, MI 48111

Port Columbus International Airport, 4600 East Seventeenth Avenue, Columbus, OH 43219

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Des Plaines, Illinois, July 28, 1987.

Peter A. Serini,

Acting Manager, Airports Division Great Lakes Region.

[FR Doc. 87-18113 Filed 8-7-87; 8:45 am]

BILLING CODE 4910-13-M

Maritime Administration

[Docket S-811]

Application for Temporary Permission for Service to Hawaii; American President Lines, Ltd.

Notice is hereby given that American President Lines, Ltd. (APL) by letter dated July 30, 1987, has requested temporary written permission to permit its subsidized vessels operating in Line A service as set forth in its Operating-Differential Subsidy Agreement, Contract MA/MSB-417, to call weekly at Hawaii to provide service from California to Hawaii. The temporary authority is sourght by APL pending final decision in APL's application for permanent authority to serve Hawaii, Docket S-801, which is in the hearing process.

APL would perform weekly calls at Hawaii westbound with sailings in APL's subsidized Line A service en route to Guam and Taiwan. The service would be performed with three C8 and two C8 Pacesetter vessels. APL comments, for the period of the temporary service pending final decision in Docket S-801, that (1) it will adhere to the rate structure established by Matson Navigation Company, Inc., (2) it will not carry more westbound Hawaii cargo than approximately half of that which

has been recently carried by United States Lines, Inc., (USL) (3) it will carry no eastbound Hawaii/mainland cargo, and (4) it will not commence sailings until USL's weekly service is actually suspended.

Any person, firm or corporation having any interest (within the meaning of section 805(a)) in APL's application and desiring to submit comments must by 5:00 p.m. on August 18, 1987 file written comments in triplicate with the Secretary, Maritime Administration, together with petition for leave to intervene. The petition shall state clearly and concisely the grounds of interest, and the alleged facts relied on for relief.

If no petition for leave to intervene is received within the specified time or if it is determined that petitions filed do not demonstrate sufficient interest to warrant a hearing, the Maritime Administration will take such action as may be deemed appropriate.

In the event petitions regarding the relevant section 805(a) issues are received from parties with standing to be heard, a hearing will be held, the purpose of which will be to receive evidence under section 805(a) relative to whether the proposed operations (a) could result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or intercoastal service, or (b) would be prejudicial to the objects and policy of the Act.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies)

By Order of the Maritime Administrator.

Dated: August 5, 1987.

Joel C. Richard,

Assistant Secretary.

[FR Doc. 87-18161 Filed 8-7-87; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: August 3, 1987

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury, Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: 1066 and Schedule Q (Form 1066)
Type of Review: New Collection
Title: U.S. Real Estate Mortgage Investment Conduit Income Tax Return Schedule Q—Quarterly Notice to Residual Interest Holder of REMIC Taxable Income or Net Loss Allocation.
Description: Form 1066 and Schedule Q (Form 1066) are used by a real estate mortgage investment conduit (REMIC) to figure its tax liability and income and other tax-related information to pass through to its residual holders. IRS uses the information to determine the correct tax liability of the REMIC and its residual holders.
Respondents: Business or other for-profit, Small businesses or organizations
Estimated Burden: 3,828 hours

OMB Number: New
Form Number: 8612
Type of Review: New Collection
Title: Return of Excise Tax on Undistributed Income of Real Estate Investment Trusts.
Description: Form 8612 is used by real estate investment trusts to compute and pay the excise tax on undistributed income imposed under section 4981 of the Internal Revenue Code. IRS uses the information to verify that the correct amount of tax has been reported.
Respondents: Businesses or other for-profit
Estimated Burden: 20 hour

OMB Number: 1545-0010
Form Number: W-4
Type of Review: Revision
Title: Employee's Withholding Allowance Certificate
Description: Employees file this form to tell employers (1) the number of withholding allowances claimed, (2) the dollar amount they want withholding increased each pay period, and (3) if they are entitled to claim exemption from withholding. Employers use this information to figure the correct tax to withhold from the employee's wages.
Respondents: Individuals or households
Estimated Burden: 14,329,462 hours

OMB Number: 1545-0096
Form Number: 1042 and 1042S
Type of Review: Revision
Title: Annual Withholding Tax Return for U.S. Source Income of Foreign Persons, and Foreign Person's U.S. Income Subject to Withholding
Description: Forms 1042 and 1042S are used by withholding agents to report tax withheld at source on payment of certain income paid to nonresident alien individuals, foreign partnerships, or foreign corporations. The Service uses this information to verify that the correct amount of tax has been withheld and paid to the U.S.
Respondents: Individuals or households, Businesses or other for-profit
Estimated Burden: 581,248 hours

OMB Number: 1545-0130
Form Number: 1120S, Schedule D and Schedule K-1
Type of Review: Revision
Title: U.S. Income Tax Return for an S Corporation, Capital Gains and Losses, and Shareholder's Share of Income, Credits, Deductions, etc.—1987
Description: Form 1120S, Schedule D (Form 1120S), and Schedule K-1 (Form 1120S) are used by an S Corporation to figure its tax liability and income and other tax-related information to pass through to its shareholders. Schedule K-1 is given to shareholders to assist them in preparing their separate income tax returns. IRS uses the information to determine the correct tax for the S Corporation and its shareholders.
Respondents: Farms, Businesses or other for-profit, Small businesses or organizations
Estimated Burden: 10,195,805 hours

OMB Number: 1545-0575
Form Number: 5330
Type of Review: Revision
Title: Return of Excise Taxes Related to Employee Benefit Plans
Description: Internal Revenue Code sections 4971, 4972, 4973(a), 4975, 4976, 4977, 4978, 4979, 4979A, and 4980 impose various excise taxes in connection with employee benefit plans. Form 5330 is used to compute and collect these taxes.
Respondents: Individuals or households, Businesses or other for-profit
Estimated Burden: 13,118 hours
Clearance Officer: Garrick Shear, (202) 566-6150, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 87-18054 Filed 8-7-87; 8:45 am]

BILLING CODE 4810-25-M

Customs Service

[T.D. 87-97]

Recordation of Trade Name; Continental Foods, Inc. (S.A.)

AGENCY: Customs Service, Treasury.

ACTION: Denial of recordation.

SUMMARY: On March 31, 1987, a notice of application for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "Continental Foods, Inc. (S.A.)" was published in the Federal Register (52 FR 10287).

The notice advised that before final action was taken on the application, consideration would be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation and received not later than June 1, 1987. Only one response was received in opposition to the notice.

Upon consideration of the views of the opposition, the Customs Service has decided not to record the trade name "Continental Foods, Inc. (S.A.)" for the following reasons:

(1) Staley Continental, Inc., is the owner of nine (9) incontestable federal registered trade-marks "CONTINENTAL" "CONTINTENTAL COFFEE," and "CFS CONTINENTAL." Nos. 708-480, 762,953, 994,804, 838,487, 838,488, 967,463, 400,719 and 652,134, for bouillon, packaged soup mix, and a broad range of other food products.

(2) The recordation by the Custom Service of the trade name "CONTINENTAL FOODS, INC. (S.A.)" could confuse the public as to the source of the products marketed under that trade name.

(3) The possible purchase of a defective product sold under the trade name "CONTINENTAL FOODS, INC. (S.A.)" could damage the reputation of Staley Continental, Inc., for quality product, bearing any or all of the nine trademarks owned by that corporation.

For the foregoing reasons, the Customs Service has determined that the recordation of the subject trade name by the applicant in contrary to Staley Continental's rights and interest, and accordingly, the application is denied.

DATE: August 10, 1987.

FOR FURTHER INFORMATION CONTRACT: Samuel A. Crandle, Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue NW., Washington, DC 20229, (202-566-5765).

Dated: August 4, 1987.

Steven Pinter,

Chief, Entry, Licensing and Restricted Merchandise Branch.

[FR Doc. 87-18112 Filed 8-7-87; 8:45 am]

BILLING CODE 4820-02-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. (2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "East German Medals, FIDEM '87" (see list [1]) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the FIDEM exhibition in Colorado Springs, Colorado, beginning on or about September 8, 1987, to on or about September 22, 1987, is in the national interest.

Public notice of this determination is ordered to be published in the Federal Register.

Dated: August 4, 1987.

C. Normand Poirier,

Acting General Counsel.

[FR Doc. 87-18088 Filed 8-7-87; 8:45 am]

BILLING CODE 8230-01-M

[1] A copy of this list may be obtained by contacting Constance Jordan of the Office of the General Counsel of USIA. The telephone number is 202-485-8501, and the address is Room 700, U.S. Information Agency, 301 4th Street SW., Washington, DC 20547.

Corrections

Federal Register
Vol. 52, No. 153
Monday, August 10, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59824; FRL-3234-7]

Certain Chemicals Premanufacture Notices

Correction

In notice document 87-16323 beginning on page 27258 in the issue of Monday, July 20, 1987, make the following corrections:

1. On page 27259, in the first column, under Y 87-188, in the third line, "acrylic" was misspelled.

2. On the same page, in the same column, under Y 87-189, in the fifth line, "dispersant" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Medical Examiner/Coroner Information Sharing Program; Program Announcement and Notice of Availability of Funds for FY 1987

Correction

In notice document 87-16582 beginning on page 27586 in the issue of Wednesday, July 22, 1987, make the following corrections:

1. On page 27586, in the third column, under *A. Purpose*, in paragraph 3., in the fourth line, "in proving" should read "in improving".

2. On page 27587, in the first column, in the first paragraph f., in the fifth line, "or" should read "of".

3. On the same page, in the same column, in paragraph 2. b., in the sixth line, "cases" should read "causes".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 413, 441, 482, and 485

[BERC-451-P]

Medicare and Medicaid Programs; Organ Procurement Organizations and Organ Procurement Protocols

Correction

In proposed rule document 87-17505 beginning on page 28666 in the issue of Friday, July 31, 1987, make the following corrections:

1. On page 28667, in the third column, five lines from the bottom, "Transportation" should read "Transplantation".

2. On page 28668, in the first column, in the 12th line from the bottom, and in the second column, in the second line, "Transportation" should read "Transplantation".

§413.178 [Corrected]

3. On page 28674, in the second column, in § 413.178(d)(1), in the 10th line, "a" should read "or" and in the 11th line, "laboretery" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87-AWA-12]

Proposed Alteration of VOR Federal Airways; Expanded East Coast Plan Phase II

Correction

In proposed rule document 87-15962 beginning on page 26490 in the issue of Wednesday, July 15, 1987, make the following correction:

§ 71.123 [Corrected]

On page 26491, in the third column, under § 71.123, the fifth heading should read:

V-143 [Amended]

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87-AWA-9]

Proposed Alteration of VOR Federal Airways; Expanded East Coast Plan; Phase II

Correction

In proposed rule document 87-15960 beginning on page 26485 in the issue of Wednesday, July 15, 1987, make the following corrections:

1. On page 26485, in the third column, under **Availability of NPRM's**, in the eighth line, the telephone number should read "(202) 267-3484".

§ 71.123 [Corrected]

2. On page 26486, in the first column, in § 71.123, under **V-3 [Amended]**, in the 10th line, "004°" should read "044°".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87-AWA-14]

Proposed Alteration of VOR Federal Airways; Expanded East Coast Plan--Phase II

Correction

In proposed rule document 87-15963 beginning on page 26491 in the issue of Wednesday, July 15, 1987, make the following corrections:

§ 71.123 [Corrected]

On page 26492, in the third column, in § 71.123, under **V-162**, in the fifth line, "190°(20°M)" should read "191°T(201°M)"; and in the seventh line, "032°" should read "INT Huguenot 032°".

BILLING CODE 1505-01-D

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federal register

Monday
August 10, 1987

Part II

Department of Education

34 CFR Part 762

Office of Educational Research and Improvement Fellows Program; Final Regulations

VOL 52 ISS 153 AUG 10 1987 UMI

DEPARTMENT OF EDUCATION

34 CFR Part 762

Office of Educational Research and Improvement Fellows Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues regulations to govern the Office of Educational Research and Improvement (OERI) Fellows Program. Under this program, the Secretary may award fellowships to individuals to enable them to conduct independent research in the field of education and in fields related to education. These regulations specify how an individual applies for a fellowship, what conditions for eligibility must be met by an applicant, where the fellowship will be conducted, how a fellow is selected, what the responsibilities of a fellow will be, and how the amount of a fellowship is determined.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Steve Clements, U.S. Department of Education, Office of Educational Research and Improvement, 555 New Jersey Avenue NW., Room 600, Washington, DC 20208, (202) 357–6059.

SUPPLEMENTARY INFORMATION:

Background

The OERI Fellows Program is authorized under section 405(d)(5) of the General Education Provisions Act (20 U.S.C. 1221e(d)(5)). Fellowships may include stipends and allowances for subsistence and travel expenses as provided under Title 5 of the United States Code.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, one party submitted comments on the proposed regulations. An analysis of the comments follows. Substantive issues are discussed under the section of the regulations to which they pertain.

On May 4, 1987, the Secretary published a notice of proposed rulemaking (NPRM) for the OERI Fellows Program in the **Federal Register** (52 FR 16362). The provisions of these final regulations are the same as those in the NPRM except for technical changes.

§ 762.21—What criteria does the Secretary use to rate the fellows?

Comment: The commenter felt that a more substantive definition of "high quality" would be informative.

Response: No change has been made. It is the purpose of the review to determine the quality of the applications.

§§ 762.22 and 762.31—How does the Secretary determine the amount of a fellowship? What is the duration of a fellowship?

Comment: The commenter suggested that a fellow may be employed full-time during hours which do not conflict with his fellowship project (e.g., 3 pm–11 pm), and wanted to know how the Secretary would determine the amount of the stipend under those circumstances.

Response: No change has been made. Under those circumstances, the amount of a stipend would be determined on a case by case basis; however, it is the intent of the Secretary that a full-time fellow would not have other regular employment. The purpose of basing the stipend on current salary is to allow the fellow to pursue research of OERI and during that period not have to engage in other employment.

§ 762.22—How does the Secretary determine the amount of a Fellowship?

Comment: The commenter asked if the use of Government Transportation Requests is assumed, or is the fellow allowed to obtain the lowest possible fares elsewhere.

Response: No change has been made. It is the government's intention that the fellow will travel when necessary using the most economical means consistent with applicable federal regulations.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 762

Education, Educational research, Fellowships, Teachers.

(Catalog of Federal Domestic Assistance Number 84.117, Educational Research and Development)

Dated: July 15, 1987.

William J. Bennett,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations by adding a new Part 762 to read as follows:

PART 762—OFFICE OF EDUCATIONAL RESEARCH AND IMPROVEMENT FELLOWS PROGRAM

Subpart A—General

Sec.

762.1 What is the Office of Educational Research and Improvement Fellows Program?
762.2 Who is eligible for a fellowship?
762.3 What types of projects may a fellow conduct under this program?
762.4 What regulations apply?
762.5 What definitions apply?

Subpart B—How Does an Individual Apply for a Fellowship?

762.10 How does an individual apply for a fellowship?

Subpart C—How Does the Secretary Award a Fellowship?

762.20 How is a fellow selected?
762.21 What criteria does the Secretary use to rate the fellows?
762.22 How does the Secretary determine the amount of a fellowship?
762.23 What payment methods may the Secretary use?
762.24 What are the procedures for payment of a fellowship award directly to a fellow?
762.25 What are the procedures for payment of a fellowship award through the fellow's employer?

Subpart D—What Conditions Must Be Met by a Fellow?

762.30 Where may the fellowship project be conducted?
762.31 What is the duration of a fellowship?
762.32 What reports are required?

Authority: 20 U.S.C. 1221e, unless otherwise noted.

Subpart A—General

§ 762.1 What is the Office of Educational Research and Improvement Fellows Program?

Under the Office of Educational Research and Improvement (OERI) Fellows Program, the Secretary provides Federal financial assistance enabling individuals to make contributions to the

improvement of education by engaging in educational research.

(Authority: 20 U.S.C. 1221e)

§ 762.2 Who is eligible for a fellowship?

(a) Only individuals are eligible to be recipients of fellowships.

(b) Any individual who has training and experience that indicates that he or she has the potential to conduct educational research is eligible to apply for assistance under this program.

(c) An individual must be a citizen of the United States to be eligible for a fellowship under this program.

(Authority: 20 U.S.C. 1221e)

§ 762.3 What types of projects may a fellow conduct under this program?

A fellow shall conduct an educational research project addressing one or more areas—

(a) Teaching and learning, including educational institutions and academic disciplines, the economic, social, and policy context of education, and research findings and proven exemplary practices which may be adopted to improve the quality of educational practice;

(b) Education statistics, pertinent to the present condition of education, trends in education and what does and does not work in education;

(c) Library resources and services;

(d) Procedures and techniques for dissemination of education information to policymakers at the Federal, State, and local levels, the education community and the general public; and

(e) Other areas either proposed by the applicant and determined by the Secretary to be worthy of support or established by the Secretary.

(Authority: 20 U.S.C. 1221e)

§ 762.4 What regulations apply?

The regulations in this Part 762 apply to this program.

(Authority: 20 U.S.C. 1221e)

§ 762.5 What definitions apply?

(a) *Definitions in EDGAR.*

(1) The following terms used in this part are defined in 34 CFR 77.1:

Department
EDGAR
Secretary

(2) The definitions in 34 CFR 77.1 of "Applicant", "Application", "Award", and "Project" do not apply to this part.

(b) *Other definitions.* The following definitions also apply to this part:

"Applicant" means an individual requesting a fellowship under this program.

"Application" means a written request for a fellowship under this program.

"Award" means an amount of funds provided for fellowship activities.

"Educational research" means one or more of the following activities in education or fields related to education: basic and applied research, planning, surveys, assessments, evaluations, investigations, experiments, development, and demonstrations.

"Fellow" means a fellowship recipient under this part.

"Fellowship" means an award made to an individual to carry out an educational research project in OERI.

"Project" means the work to be engaged in by the fellow during the period of the fellowship.

(Authority: 20 U.S.C. 1221e)

Subpart B—How Does an Individual Apply for a Fellowship?

§ 762.10 How does an individual apply for a fellowship?

An individual shall apply to the Secretary for a fellowship award in response to an application notice published by the Secretary in the Federal Register.

(Authority: 20 U.S.C. 1221e)

Subpart C—How Does the Secretary Award a Fellowship?

§ 762.20 How is a fellow selected?

The Secretary rates applications using the criteria in § 762.21 and then determines the order in which the applications will be selected. The Secretary may consider the following in making this determination:

(a) The rating of the applications based on the criteria.

(b) Whether the selection of an application would increase the subject matter diversity of fellowship projects awarded under this program.

(Authority: 20 U.S.C. 1221e)

§ 762.21 What criteria does the Secretary use to rate the fellows?

The Secretary uses the following criteria in evaluating each applicant for a fellowship:

(a) *Quality of the plan for the proposed activity.* (40 Points) The Secretary reviews the quality of each proposed project to ensure that—

(1) The design of the project is of high quality;

(2) The applicant's project relates to the purposes of the fellowship program; and

(3) The applicant's project is feasible.

(b) *Significance of the proposed project.* (20 Points) The Secretary assesses the significance of each proposed project to ensure that—

(1) The project addresses important issues in American education;

(2) Project results will benefit American education; and

(3) The project will enhance education practice.

(c) *Qualification of the applicant.* (40 Points) The Secretary reviews the qualifications of each applicant to ensure—

(1) The appropriateness and quality of the education and experience of the applicant as they may be related to the proposed project; and

(2) Demonstrated ability to produce a final product which is comprehensive and useful.

(Authority: 20 U.S.C. 1221e)

§ 762.22 How does the Secretary determine the amount of a fellowship?

The amount of a fellowship includes—

(a) A stipend, based on—

(1) The fellow's current annual salary prorated for the length of the fellowship; or

(2) If a fellow has no current salary, the fellow's education and experience; and

(b) A subsistence allowance and necessary travel expenses related to the fellowship, consistent with Title 5 U.S.C. Chapter 57.

(Authority: 20 U.S.C. 1221e)

§ 762.23 What payment methods may the Secretary use?

(a) The Secretary may pay a fellowship award directly to the fellow or through the fellow's employer.

(b) The secretary considers the preferences of the fellow in determining whether to pay a fellowship award directly to the fellow or through the fellow's employer; however, the Secretary pays a fellowship award through the fellow's employer only if the employer enters into an agreement with the Secretary to comply with the provisions of § 762.25.

(Authority: 20 U.S.C. 1221e)

§ 762.24 What are the procedures for payment of a fellowship award directly to the fellow?

(a) If the Secretary pays a fellowship award directly to the fellow, after the Secretary determines the amount of a fellowship award, the fellowship recipient shall submit a payment schedule to the Secretary for approval. The Secretary advises the recipient to the approved schedule.

(b) If the fellow does not complete the fellowships, the fellow shall return to the Secretary a prorated portion of the stipend and any unused subsistence allowance and travel funds at the time

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and in the manner required by the Secretary.

[Authority: 20 U.S.C. 1221e]

§ 762.25 What are the procedures for payment of a fellowship award through the fellow's employer?

(a) If the Secretary pays a fellowship award through the fellow's employer, the employer shall submit a payment schedule to the Secretary for approval.

(b) The employer shall pay the fellow the stipend and subsistence allowance according to the payment schedule approved by the Secretary. If the fellow does not complete the fellowship, the fellow shall return to the employer a prorated portion of the stipend and any unused subsistence allowance and travel funds. The employer shall return the funds to the Secretary at the time and in the manner required by the Secretary. The employer shall also return to the Secretary any portion of the stipend and subsistence allowance and travel funds not yet paid by the employer to the fellow.

[Authority: 20 U.S.C. 1221e]

Subpart D—What Conditions Must be Met by a Fellow?

§ 762.30 Where may the fellowship project be conducted?

A fellow carries out a project at OERI in Washington, D.C. unless the Secretary determines that unusual circumstances exist and authorizes the fellow to carry out all or part of the project elsewhere.

[Authority: 20 U.S.C. 1221e]

§ 762.31 What is the duration of a fellowship?

The Secretary awards a fellowship for at least four and no more than 12 months of full-time activity, or the equivalent in less than full-time participation.

[Authority: 20 U.S.C. 1221e]

§ 762.32 What reports are required?

A fellow shall submit a final report to the Secretary no later than 90 days after the completion of the fellowship. Each report must contain a description of the activities conducted by the fellow and a thorough analysis of the degree to which the objectives of the project have been achieved. In addition, the report must include a detailed discussion of how the results of the educational research could be utilized to enhance educational practice in the United States.

[Authority: 20 U.S.C. 1221e]

(Approved by the Office of Management and Budget under control number 1850-0610)

[FR Doc. 87-18061 Filed 8-7-87; 8:45 am]

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Federal Register

Monday
August 10, 1987

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Proposed Alteration of the Los Angeles Terminal Control Area, California; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87-AWA-31]

Proposed Alteration of the Los Angeles Terminal Control Area; California

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the Los Angeles, CA, Terminal Control Area (TCA). This proposal would raise the upper limits of the TCA to 12,500 feet mean sea level (MSL) to enable air traffic control (ATC) to provide terminal ATC service to arriving and departing turbojet aircraft in a TCA environment throughout transition to and from the enroute structure. The proposal additionally would extend the lateral limits of the TCA, east and south, to 30 miles from the airport, to provide an area wherein ATC can provide TCA control and services throughout critical maneuvering phases of flight operations in the terminal area. This would also consolidate several existing subareas which would simplify dual flight rules (VFR) transient operations outside TCA airspace and enhance the ability of pilots to identify the vertical and lateral TCA boundaries.

DATES: Comments must be received on or before December 9, 1987.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Western-Pacific Region, Attention: Manager, Air Traffic Division, Docket No. 87-AWA-31, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Robert Laser, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9255.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-AWA-31." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Public Meeting Schedule

The schedule for the public meeting will be published at a later date. The FAA intends to convene several informal airspace meetings in conjunction with this proposal, which will be held at various locations throughout the southern California area. Dates and locations will be announced at least 60 days prior to each meeting.

Agenda

—Presentation of Meeting Procedures
—FAA Presentation of Proposal
—Public Presentations and Discussion

Meeting Procedures

In addition to seeking written comments on this proposal, the FAA will hold informal airspace meetings in order to receive additional input with respect to the proposal. Persons who plan to attend the meetings should be aware of the following procedures to be followed:

(a) The meetings will be informal in nature and will be conducted by the designated representative of the Administrator. Each participant will be given an opportunity to make a presentation.

(b) The meetings will begin in the early evening at a time convenient to the general public. There will be no admission fee or other charge to attend and participate. The meetings will be open to all persons on a space available basis. The FAA representative may accelerate the meeting agenda to enable early adjournment if the progress of any meeting is more expeditious than planned.

(c) The meetings will not be recorded. A summary of the comments made at the meetings will be filed in the docket.

(d) Position papers or other handout material relating to the substance of the meetings may be accepted. Participants submitting handout materials should present an original and two copies to the presiding officer before distribution. There should be an adequate number of copies provided for further distribution to all participants.

(e) Statements made by FAA participants at the meetings should not be taken as expressing a final FAA position.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to modify the Los Angeles TCA as follows:

1. Raise the upper limit of the Los Angeles TCA to 12,500 feet above mean sea level (MSL). TCA's are established to provide the highest practical level of safety for the greatest number of aircraft and enplaned passengers in the congested airspace surrounding large terminal hubs. This is accomplished by providing air traffic control (ATC) with an increased capability to provide separation within that airspace by ensuring that all aircraft are subject to specific operating rules, pilot and equipment requirements. Flight operations within the Los Angeles TCA require a two-way communication

capability; very high frequency omni-directional radio range (VOR) or tactical air navigational aid (TACAN); a radar transponder with 4096 code and automatic pressure altitude reporting capability; and a private pilot certificate or better to takeoff or land at an airport within the TCA. As a result, ATC has information on and control of all flights within the confines of the TCA, including aircraft position, altitude, direction of flight and pilot intentions as well as any additional information ATC deems appropriate. This significantly improves ATC's ability to separate aircraft, provide essential services and promote safety of flight for a high volume of enplaned passengers.

ATC contains large turbine-powered aircraft within the confines of the TCA airspace when operating to or from the primary airport. However, the present 7,000-foot upper limit of the Los Angeles TCA does not afford an area whereby aircraft transitioning between the enroute structure and the terminal structure can be provided the level of ATC service and safety provided by TCA airspace. Raising the upper limit of the Los Angeles TCA to 12,500 feet MSL would ensure that these aircraft are provided the level of ATC service desired throughout a critical phase of flight.

2. Raise the upper limit of the surface area in Area A from 2,500 feet MSL to 3,000 feet MSL and the base of the upper portion of Area A to 5,000 feet MSL. Currently, aircraft executing a missed approach at Los Angeles International Airport must turn in order to ensure required separation from aircraft departures. This turn places additional workload on the controller and pilot, and in many cases causes the aircraft executing the missed approach to fly beyond the boundary of the TCA, in close proximity to an area where aircraft are operating VFR. Raising the altitude in this segment from 2,500 feet to 3,000 feet MSL would eliminate such turns and contain the aircraft within the lateral limits of the TCA. This would increase the level of safety in the immediate vicinity of the airport.

Area A would continue to provide the VFR flight corridor that currently enables aircraft to transit over Los Angeles International Airport without being subject to the operating and pilot and equipment requirements of the TCA, and without mixing with large turbojet aircraft. This corridor is configured to enable transit at 3,500 feet MSL southeast bound and 4,500 feet MSL northwest bound. This adjustment would not alter the present VFR transit procedures and would continue to provide an area in which aircraft transiting in opposite directions through the VFR corridor may provide their own separation.

3. Alter the radials which define Area B by one degree to make the area easier to identify.

4. Enlarge Area C to the south, thereby encompassing an additional area approximately 2 miles wide which would permit more effective containment of west arrivals and east departures. Many of these east departures require a right turn to proceed west prior to turning on course. The proposed additional airspace would facilitate containment of these departures until they attain sufficient altitude to remain above the base of the TCA.

5. Enlarge Area D to the west, at the same time creating a simplified boundary by reducing the number of reference VOR's. This would provide additional maneuvering airspace for aircraft on downwind for approach to Los Angeles International Airport and on departure to the northeast.

6. Reduce Area E north to enhance the overall simplification of the TCA design.

7. Extend Area F south and east to the 20-mile DME of the Los Angeles VORTAC. This area is utilized extensively for departures and for arrivals from the south. Within this area a complex mix of traffic exists due to operations conducted to/from adjacent airports in the southern area of Los Angeles. The current configuration does not provide an area in which ATC can ensure the containment of aircraft in the TCA. The proposed change would provide the additional airspace necessary to contain these arrivals and departures within the TCA.

8. Extend Area G. With a base altitude of 6,000 feet MSL, Area G as extended would provide an area in which to contain aircraft operations during climb and descent profiles while transitioning between the terminal and enroute structure. The present outer limits of the Los Angeles TCA do not provide sufficient lateral dimensions to ensure aircraft are contained within the TCA until they are clear of the highly congested environment of the Los Angeles area. Extending this lateral boundary would provide a greater level of safety. The FAA believes sufficient airspace would be available below the TCA to allow operations by nonparticipating aircraft transiting through the area or operating to or from airports located in the Los Angeles area. This outer area would normally extend to 30 miles in all directions. However, due to terrain and other factors, the FAA proposes to delete the portion of this area north of the Ventura VORTAC 069° radial and the Paradise VORTAC 287° radial from the TCA configuration. Due to present delegation of airspace responsibility among ATC facilities, that airspace between 20 and 30 miles of the Los Angeles VORTAC, west of the Los Angeles 184° radial and south of the Ventura 089° radial, which is primarily over water, is not being included in this proposal. However, should these facilities' airspace assignments be realigned or a change in air traffic flow occur, future alteration of the TCA to encompass this area may be warranted.

9. Extend Area H to the south, to ensure that departure flight paths are contained within the TCA.

10. Extend Area J toward the south, to ensure departures are contained within the TCA and provide additional maneuvering airspace for turbojet aircraft arrivals.

11. Raise the base altitude of Area K to 5,000 feet MSL. The northern portion of the TCA would be simplified and would provide additional airspace north and west of Los Angeles available to nonparticipating aircraft conducting VFR operations.

ICAO Considerations

As part of this proposal relates to navigable airspace outside the United States, this notice is submitted in consonance with the International Civil Aviation Organization (ICAO) International Standards and Recommended Practices.

Applicability of International Standards and Recommended Practices by the Air Traffic Operations Service, FAA, in areas outside domestic airspace of the United States is governed by Article 12 of, and Annex 11 to, the Convention on International Civil Aviation, which pertains to the establishment of air navigational facilities and services necessary to promoting the safe, orderly, and expeditious flow of civil air traffic. Their purpose is to ensure that civil flying on international air routes is carried out under uniform conditions designed to improve the safety and efficiency of air operations.

The International Standards and Recommended Practices in Annex 11 apply in those parts of the airspace under the jurisdiction of a contracting state, derived from ICAO, wherein air traffic services are provided and also whenever a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting such responsibility may

apply the International Standards and Recommended Practices in a manner consistent with that adopted for airspace under its domestic jurisdiction.

In accordance with Article 3 of the Convention on International Civil Aviation, Chicago, 1944, state aircraft are exempt from the provisions of Annex 11 and its Standards and Recommended Practices. As a contracting state, the United States agreed by Article 3(d) that its state aircraft will be operated in international airspace with due regard for the safety of civil aircraft.

Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator is consulting with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

Regulatory Evaluation Summary

Benefit-Cost Analysis

The regulatory evaluation prepared for this NPRM examines the benefit and cost aspects of modifying the Los Angeles TCA. The NPRM amends Part 71 of the Federal Aviation Regulations. This NPRM would enhance safety primarily by raising the ceiling of the TCA from 7,000 to 12,500 feet MSL, altering the lateral limits to 30 miles from the primary airport except to the north, and consolidating several existing subareas within the TCA. In addition, this proposed rule would enable ATC to provide additional TCA service to arriving and departing aircraft throughout transition to/from the terminal and enroute environment and would provide additional airspace in which aircraft perform operations throughout maneuvering phases of flight within the TCA.

This proposed rule is based on recommendations from the FAA regarding the improvement of safety. Such safety improvements would be accomplished by the improved containment of Los Angeles International Airport operations in protected airspace; the simplification of transient operations; and the enhancement of the pilot's ability to readily identify the vertical and horizontal boundaries of the Los Angeles TCA.

a. Costs

The FAA estimates the total cost expected to accrue from implementation of the proposed rule to be $5,319,000 (discounted present value, 10%, 10 years). This cost represents additional equipment, training and 12 air traffic controllers.

The total cost estimate does not include the cost of additional avionics or circuitous flight routes for general aviation aircraft operators who fly VFR and do not currently have the necessary avionics to enter the TCA. Ordinarily, as a result of this NPRM, such aircraft operators would have to either acquire the necessary avionics (namely, an altitude encoding transponder required for Mode C transmission) or circumnavigate as much as 20 additional miles out of the way. However, since another proposed rulemaking action may require such equipment, it is assumed for the purpose of this evaluation that no additional cost would accrue from this NPRM. (See Notice 87-7, "Terminal Control Area (TCA) Classification and TCA Pilot and Equipment Requirements," 52 FR 22918, June 16, 1987.) This assessment is based on the assumption that the FAA would adopt the proposed rule change that would require aircraft located within a 30-mile radius of the Los Angeles International Airport to be equipped with Mode C capability. It is assumed that this NPRM would not impose additional costs on general aviation operators who fly VFR and do not have Mode C capability, because they would be required to be equipped with such equipment by a separate rule adopted prior to the probable effective date of this proposal. If, however, the FAA does not adopt the other proposed rule change, some general aviation operators who fly VFR and who do not have the necessary avionics to enter the TCA would incur an additional cost of compliance. The FAA estimates this cost, which would represent additional operation cost incurred as a result of circumnavigating those expanded areas of the TCA, to be $2.6 million (discounted) over the next 10 years. Since these types of aircraft are operated primarily by individuals, they would more than likely elect to circumnavigate the expanded areas of the TCA rather than purchase the necessary avionics (more than $1,300 per aircraft) to fly through the TCA.

b. Benefits

The FAA considers increased safety to be the prime factor in proposing alterations to the Los Angeles TCA, as described in this proposal. These proposed alterations would increase the amount of airspace included in the TCA and thus provide positive control and assured separation to a greater number of aircraft operating in the highly congested airspace surrounding the Los Angeles TCA. This proposal would also simplify the configuration of the Los Angeles TCA, thereby enhancing the pilot's ability to identify the vertical and lateral boundaries of the TCA.

In a FAA report entitled, "An Analysis of Selected Near Midair Collisions (December 1986)," it is suggested that the equipment and operating requirements imposed on aircraft operating within TCA's significantly reduce collision risk. Therefore, expanding the airspace encompassed by the TCA, and thus the equipment and operating requirements associated with that airspace as proposed would increase the safety level both in and around the Los Angeles TCA. For example, a midair collision occurred between an Aeromexico DC-9 and a Piper Archer PA-28-181 on August 31, 1986, killing 85 people. The collision occurred 20 miles southeast of Los Angeles International Airport over Cerritos, CA, at an approximate altitude of 6,500 feet MSL, which is inside the TCA. The Piper was not equipped with an altitude encoding transponder and, as such, did not possess the required altitude reporting capability; hence, the aircraft had entered the TCA without ATC's knowledge. If the proposed expanded requirements had been in effect, this accident may have been avoided.

The purpose behind these proposed alterations is to prevent future accidents similar to the midair collision that took place over Cerritos, CA, in August 1986. Although this proposal may not have prevented that particular accident, the FAA believes that this proposal would reduce the probability of other accidents in this region even while the already high traffic levels in the Los Angeles TCA continue to grow. In 1985 there were 546,000 operations at Los Angeles International Airport. The FAA predicts that this number will grow to 634,000 by the year 2000. Long Beach Airport, which is in close proximity to the Los Angeles TCA in its present configuration and would underlie a part of the TCA if this proposal is implemented, had 398,000 operations in 1985. There are other heavily trafficked airports in the Los Angeles region including Van Nuys, Burbank and Santa Ana. Traffic levels at all of these airports are expected to grow into the next century.

The FAA strongly believes that this NPRM would help to reduce the probability of a future midair collision, especially in an era of continually increasing levels of traffic in this already congested area. Although the FAA does not believe that an accident of the magnitude of that which occurred over Cerritos, CA, in August 1986, which amounted to $53 million (discounted) in

monetary damages, would happen again, the benefits associated with preventing an accident of one quarter that magnitude would significantly outweigh the costs of this proposal. Expressed in monetary terms, the benefits associated with avoiding such an accident would be approximately $13 million in 1987 dollars (discounted present value, 10%, 10 years). If, however, the FAA does not adopt the proposed rule change previously noted in the cost section, potential benefits from this NPRM could increase to $26 million over the next 10 years.

In view of the dicussion set forth in this evaluation, the FAA believes that the benefits, especially in terms of increased safety, of this proposal significantly outweigh the costs that may be imposed as a result of its implementation.

The Regulatory Evaluation that has been placed in the docket contains additional information related to the costs and benefits that are expected to accrue from the implementation of this NPRM.

International Trade Impact Statement

This proposed rule would have no effect on the sale of foreign aviation products or services in the United States, nor would it affect the sale of United States products or services in foreign countries. This is because only the FAA would incur costs by this NPRM for those reasons previously discussed in the cost section.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires agencies to review rules which may have "a significant economic impact on a substantial number of small entities."

The small entities which could be potentially affected by the implementation of this notice are unscheduled operators of aircraft for hire (SIC 4511) who own nine or fewer aircraft.

Ordinarily, operators of aircraft for hire could be impacted by this proposal by the Mode C capability requirement for aircraft operating in a Group I TCA. However, if the prior Mode C rulemaking is adopted by the FAA, such aircraft operating in the Los Angeles TCA would be required to have Mode C capability prior to a reasonable effective date for this proposal. Even if the rule proposed in Notice 87–7 is not adopted, only a small portion of small entities, within the meaning of the Regulatory Flexibility Act, would be affected. This is because virtually all aircraft used in commercial operations in the southern California area are already equipped with Mode C.

The other costs which were estimated in this regulatory evaluation, such as additional equipment, and hiring and training additional air traffic controllers, would be incurred by the FAA and would not impact any small entity.

Conclusion

For the reasons set forth above under Regulatory Evaluation, the proposed rule (1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). It is certified that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 14 CFR Part 71

Aviation safety, Terminal control areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. Section 71.401(a) is amended as follows:

Los Angeles, CA [Revised]

Primary Airport

Los Angeles International Airport (lat. 33°56'25"N., long. 118°24'10"W.)

Boundaries

Area A. That airspace extending upward from the surface to and including 3,000 feet MSL and from 5,000 feet MSL to and including 12,500 feet MSL bounded on the north by Ballona Creek; on the east by the San Diego Freeway; on the south by Los Angeles VORTAC 090°T(075°M) radial; and on the west by the Pacific Ocean shoreline.

Area B. That airspace extending upward from the surface to and including 12,500 feet MSL beginning at the intersection of the San Diego Freeway and the Los Angeles VORTAC 060°T(045°M) radial then easterly via the Los Angeles VORTAC 060°T(045°M) radial to intercept the Los Angeles VORTAC 10-mile DME arc; then clockwise via the Los Angeles VORTAC 10-mile DME arc to intercept the Los Angeles VORTAC 090°T(075°M) radial; then westerly via the Los Angeles VORTAC 090°T(075°M) radial to intercept the San Diego Freeway; then northerly via the San Diego Freeway to the point of origin.

Area C. That airspace extending upward from 2,000 feet MSL to and including 12,500 feet MSL beginning at the intersection of the Los Angeles VORTAC 060°T(045°M) radial and the Los Angeles VORTAC 15-mile DME fix; clockwise via the Los Angeles VORTAC 15-mile DME arc to intercept the Paradise, CA. 267°T(252°M) radial; then westerly via the Paradise 267°T(252°M) radial to intercept the Los Angeles VORTAC 101°T(086°M) radial; then westerly via the Los Angeles VORTAC 101°T(086°M) radial to the 5-mile DME fix; then counterclockwise via the 5-mile DME arc to the Los Angeles VORTAC 090°T(075°M) radial; then easterly via the Los Angeles VORTAC 090°T(075°M) radial to the Los Angeles VORTAC 10-mile DME arc; then counterclockwise via the 10-mile DME arc to the Los Angeles VORTAC 060°T(045°M) radial; then via the Los Angeles VORTAC 060°T(045°M) radial to the point of origin.

Area D. That airspace extending upward from 2,500 feet MSL to and including 12,500 feet MSL beginning at the intersection of Ventura, CA. VORTAC 090°T(074°M) radial and the Los Angeles VORTAC 023°T(008°M) radial; easterly via the Ventura VORTAC 090°T(074°M) radial to intercept the Paradise VORTAC 267°T(272°M) radial; then via Paradise VORTAC 267°T(273°M) radial to intercept the Los Angeles VORTAC 20-mile DME arc; then clockwise via the 20-mile DME arc to intercept the Paradise VORTAC 267°T(252°M) radial; then west via the Paradise VORTAC 267°T(252°M) radial to intercept the Los Angeles VORTAC 15-mile DME arc; then counterclockwise via the Los Angeles VORTAC 15-mile DME arc to the Los Angeles VORTAC 060°T(045°M) radial; then southwesterly via the Los Angeles VORTAC 060°T(045°M) radial to the San Diego Freeway; then northwesterly via the San Diego Freeway to the Los Angeles VORTAC 023°T(008°M) radial; then northerly via the Los Angeles VORTAC 023°T(008°M) radial to the point of origin.

Area E. That airspace extending upward from 4,000 feet MSL to and including 12,500 feet MSL beginning at the intersection of the Los Angeles VORTAC 20-mile DME fix and the Paradise VORTAC 267°T(272°M) radial; then easterly via the Paradise VORTAC 267°T(272°M) radial to intercept the Los Angeles VORTAC 25-mile DME arc, then clockwise via the Los Angeles VORTAC 25-mile DME arc to intercept the Paradise VORTAC 267°T(252°M) radial; then westerly via the Paradise VORTAC 267°T(252°M) radial to intercept the Los Angeles VORTAC 20-mile DME arc; then counterclockwise via the Los Angeles VORTAC 20-mile DME arc to the point of origin.

Area F. That airspace extending upward from 5,000 feet MSL to and including 12,500 feet MSL beginning at the Los Angeles VORTAC: easterly via the Los Angeles VORTAC 090°T(075°M) radial to the 5-mile DME, then clockwise via the Los Angeles VORTAC 5-mile DME arc to the intersection

of the Los Angeles VORTAC 101°T(086°M) radial; then via the Los Angeles VORTAC 101°T(086°M) radial to intercept the Paradise VORTAC 287°T(252°M) radial; then easterly via the Paradise 287°T(252°M) radial to a point 20-miles from the Los Angeles VORTAC; then clockwise via the Los Angeles VORTAC 20-mile DME arc to intercept the Los Angeles VORTAC 184°T(169°M) radial; then via the Los Angeles VORTAC 184°T(169°M) radial to the point of origin.

Area G. That airspace extending upward from 6,000 feet MSL to and including 12,500 feet MSL beginning at the intersection of the Los Angeles VORTAC 25-mile DME arc and the Paradise VORTAC 287°T(272°M) radial; then via the Paradise VORTAC 287°T(272°M) radial to intercept the Los Angeles VORTAC 30-mile DME arc; then clockwise via the Los Angeles VORTAC 30-mile DME arc to intercept Los Angeles VORTAC 184°T(169°M) radial; then via the Los Angeles VORTAC 184°T(169°M) radial to the Los Angeles VORTAC 20-mile DME arc; then counterclockwise via the Los Angeles VORTAC 20-mile DME arc to intercept the Paradise VORTAC 287°T(252°M) radial; then via the Paradise VORTAC 287°T(252°M) radial to the Los Angeles VORTAC 25-mile DME arc; then counterclockwise via the Los Angeles VORTAC 25-mile DME arc to the point of origin.

Area H. That airspace extending upward from the surface to and including 12,500 feet MSL beginning at the intersection of the Ventura VORTAC 107°T(092°M) radial and the Los Angeles VORTAC 10-mile DME arc; then easterly via Ventura VORTAC 107°T(092°M) radial to intercept the Pacific Ocean shoreline; then via the Pacific Ocean shoreline southeasterly to intercept the Los Angeles VORTAC 184°T(169°M) radial; then via the Los Angeles VORTAC 184°T(169°M) radial to the Los Angeles VORTAC 10-mile DME arc; then clockwise via the Los Angeles VORTAC 10-mile DME arc to the point of origin.

Area J. That airspace extending upward from 2,000 feet MSL to and including 12,500 feet MSL beginning at the intersection of the Santa Monica, CA, VOR 267°T(252°M) radial and the Los Angeles VORTAC 20-mile DME fix; then easterly via the Santa Monica VOR 267°T(252°M) radial to intercept the Los Angeles VORTAC 10-mile DME arc; then counterclockwise via the Los Angeles VORTAC 10-mile DME arc to intercept the Los Angeles VORTAC 184°T(169°M) radial; then south via the Los Angeles VORTAC 184°T(169°M) radial to intercept the Los Angeles VORTAC 20-mile DME arc; then clockwise via the Los Angeles VORTAC 20-mile DME arc to the point of origin.

Area K. That airspace extending upward from 5,000 feet MSL to and including 12,500 feet MSL beginning at the intersection of the Los Angeles VORTAC 20-mile DME arc and the Ventura VORTAC 090°T(074°M) radial; then easterly via the Ventura VORTAC 090°T(074°M) radial to intercept the Los Angeles VORTAC 023°T(008°M) radial; then southerly via the Los Angeles VORTAC 023°T(008°M) radial to intercept Ballona Creek; then southwesterly via Ballona Creek to intercept the Ventura VORTAC 107°T(092°M) radial; then westerly via the Ventura VORTAC 107°T(092°M) radial to intercept the Santa Monica VOR 267°T(252°M) radial; then westerly via the Santa Monica VOR 267°T(252°M) radial to intercept the Los Angeles VORTAC 20-mile DME arc; then clockwise via the Los Angeles VORTAC 20-mile DME arc to the point of origin.

Issued in Washington, DC, on August 5, 1987.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

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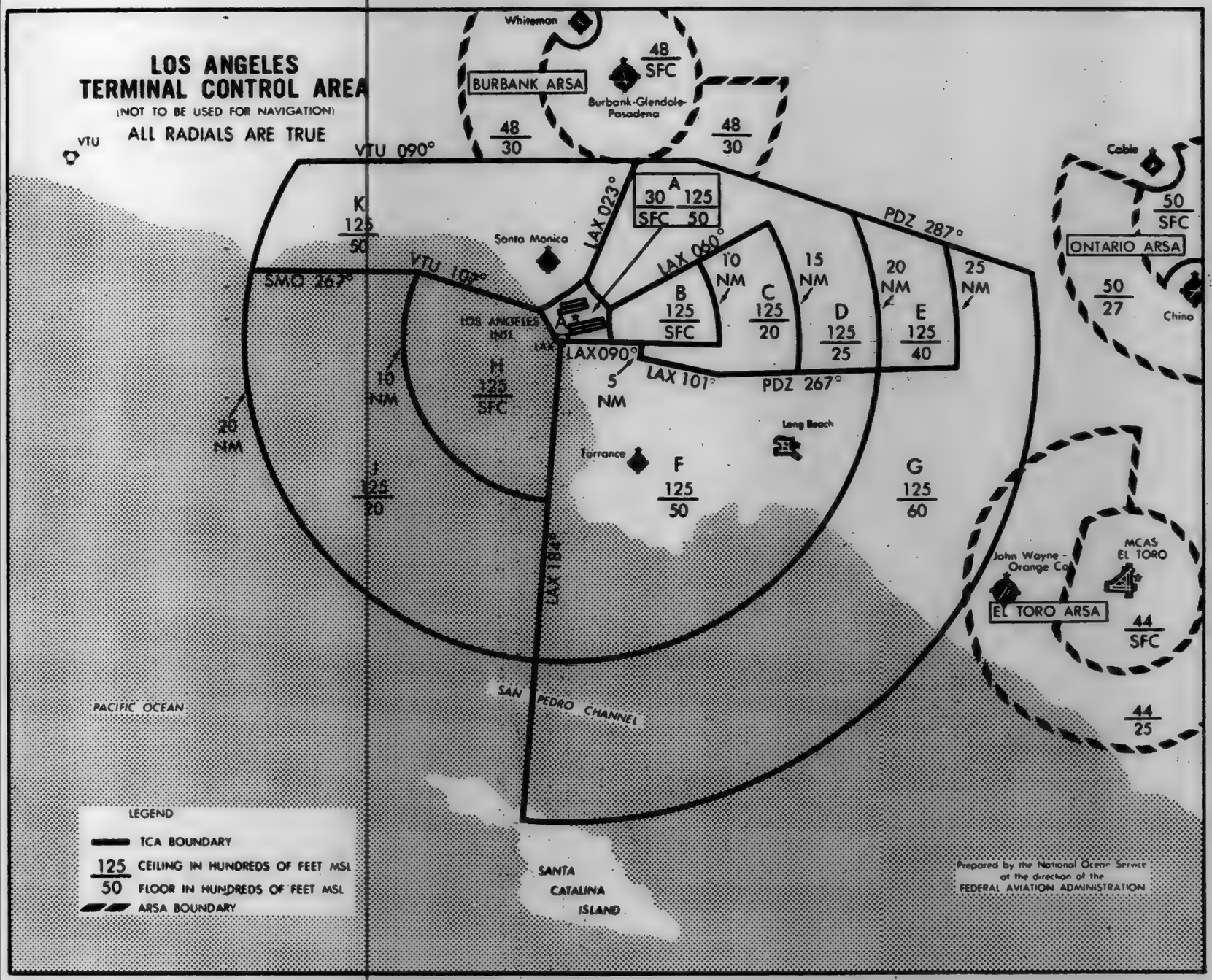

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Part IV

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1910

Hazardous Waste Operations and Emergency Response; Notice of Proposed Rulemaking and Public Hearings

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S-760A]

Hazardous Waste Operations and Emergency Response

AGENCY: Occupational Safety and Health Administration; Labor.

ACTION: Notice of proposed rulemaking and public hearings.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is proposing to amend the OSHA standards for hazardous waste operations and emergency response in 29 CFR 1910.120. OSHA proposes a permanent final standard to replace the interim final rule as required by Congress in the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99-499). The interim final rule was published in the Federal Register on December 19, 1986 (51 FR 45654).

Employees involved in operations covered by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended (CERCLA or "Superfund" Act) [42 U.S.C. 9601 *et seq.*], in certain hazardous waste operations conducted under the Resource Conservation and Recovery Act of 1976 as amended (RCRA) [42 U.S.C. 6901 *et seq.*], and in any emergency response to incidents involving hazardous substances would be covered by this proposed rule.

The issuance of this proposed rule is mandated by section 126(b) of SARA. The proposed rule will regulate employee safety and health at hazardous waste operations and during emergency response to hazardous substance incidents.

Informal public hearings on the subject of this rulemaking are scheduled to afford interested parties with the opportunity to comment on OSHA's proposals.

DATES: 1. Comments and information on this proposal must be received on or before October 5, 1987.

2. The informal public hearings will begin at 9:30 A.M. daily and are scheduled as follows:

October 13-16 and 20-23, 1987; Washington, DC
October 27-30, 1987; San Francisco, CA

3. Notices of intention to appear at the informal public hearings must be postmarked September 21, 1987.

4. Written comments, testimony, and all evidence which will be offered into the informal public hearing record must be postmarked by October 5, 1987. Because of the limited time frame allowed OSHA for development of the final rule as a result of the statutory guidance given in SARA, OSHA does not expect to grant requests for extensions of time for submitting comments in response to this notice.

ADDRESSES: 1. Comments and information on the proposal should be sent in quadruplicate to the Docket Office, Docket No. S-760A, Occupational Safety and Health Administration, Room N-3670, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Comments and information received, notices of intention to appear, testimony and evidence may also be inspected and copied in the Docket Office.

2. The informal public hearings will be held at the following locations:

a. Washington, DC—Frances Perkins Department of Labor Building Auditorium, 200 Constitution Avenue NW., Washington, DC 20210,

b. San Francisco, CA—Ramada Renaissance Hotel, 55 Cyril Magnin St. (Market at 5th Street), San Francisco, CA 94102. 415-392-8000.

3. Notices of intention to appear and testimony and documentary evidence which will be introduced into the informal public hearing record must be sent in quadruplicate to Mr. Thomas Hall, U.S. Department of Labor, Occupational Safety and Health Administration, Division of Consumer Affairs, Room N-3649, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT:
Proposed Rule: Mr. James F. Foster, U.S. Department of Labor, Occupational Safety and Health Administration, Division of Consumer Affairs, Room N-3647, 200 Constitution Avenue, NW., Washington, DC 20210, 202-523-8151.

Public Hearing: Mr. Thomas Hall, U.S. Department of Labor, Occupational Safety and Health Administration, Division of Consumer Affairs, Room N-3647, 200 Constitution Avenue, NW., Washington, DC 20210, 202-523-8615.

SUPPLEMENTARY INFORMATION:

I. Background

The U.S. Environmental Protection Agency estimates that approximately 57 million metric tons of hazardous waste are produced each year in the United States[1]. These wastes must be treated and stored or disposed in a manner that protects the environment from the adverse affects of the various constituents of those wastes.

In response to the need to protect the environment from the improper disposal of these hazardous wastes, Congress, over the years, has enacted several pieces of legislation intended to control the nation's hazardous waste problem. Federal laws passed in 1965 [2] and 1970 [3] initially addressed solid waste disposal. Several other pieces of legislation have been enacted by Congress that have ultimately led to the development of this proposed rule and they are discussed below.

A. The Resource Conservation and Recovery Act of 1976

The first comprehensive, federal effort to deal with the solid waste problem in general, and hazardous waste specifically, came with the passage of the Resource Conservation and Recovery Act of 1976 (RCRA).[4] The act provides for the development of federal and state programs for otherwise unregulated land disposal of waste materials and for the development of resource recovery programs. It regulates anyone engaged in the creation, transportation, treatment, and disposal of "hazardous wastes." It also regulates facilities for the disposal of all solid wastes and prohibits the use of open dumps for solid wastes in favor of requiring sanitary landfills.

There are however many hazardous waste disposal sites that were created prior to the passage of RCRA. These sites are often abandoned and contain unknown quantities of unknown wastes.

B. The Comprehensive, Environmental Response, Compensation and Liability Act of 1980

In response to the need to clean-up and properly reclaim these pre-RCRA sites Congress enacted the Comprehensive, Environmental Response, Compensation and Liability Act of 1980 (CERCLA) [5] commonly known as "Superfund." Superfund established two related funds to be used for the immediate removal of hazardous substances released into the environment. Superfund is intended to establish a mechanism of response for the immediate clean-up of hazardous waste contamination from accidental

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[1] U.S. Environmental Protection Agency, *Everybody's Problem Hazardous Waste* at 1 (1980).

[2] Solid Waste Disposal Act, Pub. L. No. 89-272, 79 Stat 99.

[3] Resource Recovery Act, Pub. L. No. 91-512, 84 Stat 1427 and Pub. L. 93-14, 87 Stat II.

[4] 42 U.S.C. 6901 *et seq.*

[5] 42 U.S.C. 9601 *et seq.*

spills and from chronic environmental damage such as is associated with abandoned hazardous waste disposal sites.

The treatment and disposal of hazardous wastes under RCRA and CERCLA creates a significant risk to the safety and health of employees who work in treatment and disposal operations. Exposure to hazardous wastes through skin contact, skin absorption and inhalation pose the most significant risks to employees. Employee exposure to these risks occurs when employees respond to hazardous waste emergencies, when they work with hazardous wastes during storage, treatment and disposal operations or when they participate in the clean-up of abandoned-waste sites.

This risk of exposure and the need for protecting employees exposed to hazardous wastes is addressed in the "Superfund Amendments and Reauthorization Act of 1986" (SARA).

C. Superfund Amendments and Reauthorization Act of 1986

On October 17, 1986, the President signed into law the "Superfund Amendments and Reauthorization Act of 1986" (SARA).[6] As part of SARA, in § 126 of Title I, Congress addressed the risk of injury to employees by providing that the Secretary of Labor ("Secretary") issue interim final worker protection regulations within 60 days after the date of enactment of SARA that would provide no less protection for workers engaged in hazardous waste operations than the protections contained in the U.S. Environmental Protection Agency's (EPA) "Health and Safety Requirements for Employees Engaged in Field Activities" manual (EPA Order 1440.2) dated 1981, and the existing OSHA standards under Subpart C of 29 CFR Part 1926. OSHA published those interim final regulations in the Federal Register on December 19, 1986 (51 FR 45654). A correction notice was published on May 4, 1987 (52 FR 16241). With the exception of a few provisions that had delayed start-up dates, OSHA's interim final regulations became effective on December 19, 1986 in accordance with section 126(e), and apply to all regulated workplaces until the final rule developed under sections 126(a)–(d) and proposed today becomes effective.

Section 126(a) of SARA provides that the Secretary shall "... pursuant to section 6 of the Occupational Safety and Health Act of 1970, promulgate standards for the health and safety of employees engaged in hazardous waste operations." These standards must be promulgated within one year after the date of enactment of SARA. This notice initiates the development of those standards by issuing proposed regulations as indicated in section 126(b) of SARA. SARA further provides in section 126(b), that the proposed regulations address, as a minimum, certain worker protection provisions. These are: site analysis, training, medical surveillance, personal protective equipment, engineering controls, maximum exposure limits, informational programs, materials handling, new technology programs, decontamination procedures, and emergency response. While some of these worker protection provisions were addressed in the interim final rule, this proposed rule will address, as a minimum, all provisions under section 126(b) of SARA.

Pursuant to section 126(c) of SARA, the final regulations promulgated under section 126(a) are to take effect one year after the date they are promulgated. Section 126(c) also provides that the final regulations are to include each of the worker protection provisions listed in section 126(b) unless the Secretary determines that the evidence in the public record developed during this rulemaking and considered as a whole does not support inclusion of any such provision.

This proposed rule has been adapted from the language of the interim final rule. Changes have been made to address more fully the provisions which Congress had directed the Agency to cover in the proposal. OSHA utilized the language from the EPA manual entitled "Health and Safety Requirements for Employees Engaged in Field Activities" (1981) and the language of OSHA's safety and health standards in Subpart C of 29 CFR Part 1926 to develop the interim final rule, and much of that same language is also used in this proposal. The interim final rule also contains language taken from various documents issued either jointly or by the EPA, OSHA, the U.S. Coast Guard, and the National Institute for Occupational Safety and Health (NIOSH), and that language has also been used in preparing this proposed rule.

OSHA has specifically used the joint OSHA/EPA/USCG/NIOSH manual entitled, *"Occupational Safety and Health Guidance Manual for Hazardous Waste Site Activities"* (Preamble Reference 6), as an outline in preparing the interim rule and this proposal. This manual was developed as a result of the collaborative efforts of professionals representing the four agencies. These professionals, who are knowledgeable in hazardous waste operations, worked with over 100 experts and organizations in the development of the criteria contained in this manual. The manual was published in October 1985 and is public information. The manual is a guidance document for managers responsible for occupational safety and health programs at inactive hazardous waste sites. The manual is intended for use by government officials at all levels and contractors involved in hazardous waste operations. The manual provides general guidance and is intended to be used as a preliminary basis for developing a specific health and safety program for hazardous waste operations. Further, the major subject areas listed in section 126(b) of SARA are nearly identical to the major chapters in the manual. The language of the proposed rule also clarifies some confusion in the interim rule that OSHA has identified since the promulgation of the interim final rule.

II. Summary and Explanation of the Standard

Paragraph (a)—Scope, application, and definitions

In paragraph (a)(1), *Scope*, OSHA proposes to use the scope of the interim final rule for Hazardous Waste Operations and Emergency Response as published in the Federal Register on December 19, 1986 (51 FR 45654) with some modification. The scope of the interim rule included the following:

(i) Hazardous substance response operations under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended (CERCLA), including initial investigations at CERCLA sites before the presence or absence of hazardous substances has been ascertained;

(ii) Major corrective actions taken in clean-up operations under the Resource Conservation and Recovery Act of 1976 as amended (RCRA);

(iii) Operations involving hazardous waste storage, disposal and treatment facilities regulated under 40 CFR Parts 264 and 265 pursuant to RCRA, except for small quantity generators and those employers with less than 90 days accumulation of hazardous wastes as defined in 40 CFR 262.34;

(iv) Hazardous waste operations sites that have been designated for clean-up by state or local governmental authorities; and

(v) Emergency response operations for releases or substantial threats of releases of hazardous substances, and post-emergency response operations to such releases at all workplaces including those not defined in paragraphs (a)(1)(i) through (a)(1)(iv).

OSHA is proposing to modify paragraph (a)(1) of the interim rule by

[6] Pub. L. 99-499.

moving the exception in paragraph (a)(1)(iii) to paragraph (a)(2)(iii) and by editorially revising the structure and text of the language of the interim rule without changing the scope in the proposal. The modifications to the text are to organize the various subparagraphs on scope into proper groups of coverage.

To further clarify scope, non-emergency response coverage has been left in paragraph (a)(1) and emergency response coverage has been given its own paragraph in (a)(2). The scope for emergency response has been clarified as well. The change makes clear that it is employers whose employees have a "reasonable possibility" of engaging in emergency response operations are covered. Employers whose employees would not have such a reasonable possibility are not covered.

Who is Covered?

The scope of this rulemaking has been a major issue during the development and promulgation of the interim final rule and this proposal. OSHA is requesting specific comment on whether our interpretation of scope is too broad or too narrow.

The proposed standard would cover the same three basic areas covered by the interim final rule.

I. CERCLA Facilities

For the purposes of this proposal, CERCLA sites include hazardous substance response operations at sites regulated under 40 CFR 300, Subpart F, RCRA closure activities conducted under 40 CFR 265, Subpart G, those sites similar to CERCLA sites that have been designated for clean-up by State or local governments.

II. RCRA Facilities

OSHA would also continue to regulate RCRA treatment, storage and disposal (T/S/D) facilities. T/S/D facilities range from the typical generator with a hazardous waste storage area to the large, complex hazardous waste dump. EPA estimates that approximately 80 percent of all generators also treat, store, or dispose of their hazardous wastes and thereby qualify as a T/S/D facility. Over 30,000 T/S/D facilities notified EPA in 1980 that they would qualify for regulation under section 3004 of RCRA.

The term "T/S/D" is commonly used to refer to the three different hazardous waste management activities that are regulated under RCRA section 3004, and which thus require a permit under RCRA section 3005. For the purposes of this rule treatment, storage, and disposal facilities are defined as follows:

A "treatment facility" involves any place of employment where any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to recover energy or material resources from the waste, or so as to render such waste non-hazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduce in volume.[7]

The term "storage facility" refers to any place of employment used to hold hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.[8]

The term "disposal facility" refers to any place of employment used for the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharge into any water, including ground waters.[9]

The following T/S/D facilities would not be covered by this rulemaking:

1. Facilities that dispose of hazardous waste by means of ocean disposal pursuant to a permit issued under the Marine Protection, Research, and Sanctuaries Act.

2. The disposal of hazardous waste by underground injection pursuant to a permit issued under the Safe Drinking Water Act underground injection control program.

3. A publicly owned treatment work (POTW) which treats or stores hazardous wastes which are delivered to the POTW by a transport vehicle or vessel or through a pipe.

4. T/S/D facilities which operate under a state hazardous waste program authorized pursuant to RCRA section 3006.

5. Facilities authorized by a state to manage industrial or municipal solid waste, if the only hazardous waste handled by such a facility is otherwise excluded from regulation pursuant to the special requirements for small generators (See 40 CFR 261.5).

6. A facility which treats or stores hazardous wastes that are subject to the special requirement for hazardous wastes which are used, reused, recycled or reclaimed. Note, however, that as provided by 40 CFR 261.6(b), a facility must obtain a permit as a storage facility if it stores "listed" hazardous wastes, mixtures including a "listed" hazardous waste, or sludges, prior to use, reuse, recycling, or reclaimation.

7. The accumulation of hazardous waste by generators for 90 days or less.

8. Farmers who dispose of waste pesticides from their own use in compliance with 40 CFR 262.51.

9. Owners or operators of a "totally enclosed treatment facility." A totally enclosed treatment facility is one where the treatment of hazardous waste which is directly connected to an industrial production process which is conducted and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment. An example is a pipe in which waste acid is neutralized.

10. Owners and operators of elementary neutralization units and waste-water treatment units.

11. Persons taking immediate action to treat and contain spills. Note that after immediate response activities are completed, any hazardous waste spill residue or debris is subject to full regulation.

12. Transporters storing manifested wastes in approved containers at a transfer facility for 10 days or less.

13. The acts of adding absorbent material to hazardous waste in a container and adding hazardous waste to absorbent material in a container, if the materials are added when wastes are first placed in the container.[10]

III. Emergency Response

This proposal would also continue to cover emergency response to releases of hazardous substances at all sites including non-CERCLA and non-RCRA sites.

OSHA believes that Congress intended the proposed rule to have such coverage. This is indicated by the language of SARA as well as the legislative history.

The language of section 126(a) mandates safety and health standards for the protection of employees engaged "in hazardous waste operations." The term "hazardous waste operation" is not limited in the legislation and a response to spills of hazardous substance on the highway or from a railway tank car in order to control and contain the hazardous substance (which has become a waste once it is not contained) is in the common sense meaning a hazardous waste operation.

This interpretation is reinforced by the fact that SARA is a free-standing

[7] 40 CFR 260.10(a).
[8] *Id.*
[9] *Id.*

[10] 40 CFR 265.1(c), 264.1(c), *as amended*, 47 FR 8306 (February 25, 1982).

statutory provision and not an amendment to CERCLA. The clear Congressional intent then is to provide protection to employees whenever they deal with hazardous wastes.

In addition section 126(d)(4) discussing training for emergency response personnel utilizes the very broad term "hazardous emergency situation." Section 126 (g)(1) indicates that training grants may be given independently for emergency response training separate from hazardous waste removal training. Section 126(b)(11) also indicates emergency response is an independent concept separate from hazardous waste removal operations. For those and other reasons OSHA believes section 126 is intended to cover emergency response to hazardous substances whether on a CERCLA or RCRA site or elsewhere. However, the clarified language in the scope sections makes it clear the only employers whose employees have the reasonable possibility of engaging in emergency response are covered.

Emergency response employees who respond or will respond to incidents involving hazardous substances are covered by this proposed rule to the extent that they are exposed to hazardous substances. State and local government employees in states that have agreements with OSHA under section 18 of the OSH Act must be regulated by state regulations at least as effective as these to protect public employees. Those state regulations must be issued within six months of the date of promulgation of any final rule resulting from this rulemaking.

Municipal or other sanitary landfills that handle domestic wastes would not normally be regulated by this proposed rulemaking. Similarly, waste paper or scrap metal operations would not normally be regulated because of the type of wastes they handle. However, both types of operations could be regulated if they have clean-ups for or handle hazardous wastes meeting the scope provisions of the standard.

Also, employees at hazardous waste sites who will not be exposed to, or do not have the potential to be exposed to, hazardous substances are not covered by this proposal. The provisions of these regulations are designed to protect employees who have exposures, and would not be needed for those employees who do not.

Operations with no exposure to hazardous substances, i.e., road building for site access, construction of or the setting up of temporary facilities in the clean zone, or the closure of a RCRA site involving the building of a clay cap over hazard wastes, are considered to be construction activities covered by the standards in 29 CFR Part 1926.

The scope and application provisions carry out the intent of Congress and are consistent with good occupational safety and health policy. Employees performing clean-up operations under CERCLA, RCRA (corrective actions) and state or local government designated sites—generally those employees likely to have the highest exposures to hazardous substances over a longer period—would be covered by virtually all the provisions of this proposal. Employees exposed to hazardous wastes in routine RCRA hazardous waste operations, who are regularly exposed to hazardous wastes but in a more controlled environment, would be covered by the more limited requirements of paragraphs (l) and (o) of this proposal. Emergency response workers, exposed usually for short periods to often unknown but possibly high levels of hazardous substances, would have the specific provisions of paragraph (l) directed towards this situation.

How Are They Covered?

In paragraph (a)(3), *Application*, OSHA proposes to designate the specific requirements of the proposal which apply or do not apply to the work activities covered by the proposed rule. In paragraph (a)(3)(i) the employer would have to comply with the standards in 29 CFR Parts 1910 and 1926, as well as with the requirements specifically covered in this proposed rule. If there is a conflict or overlap, the more protective provisions would apply. Since this proposed rule does not cover all of the hazards present at hazardous waste operations, other OSHA standards in Parts 1910 and 1926 would apply. Other OSHA standards regulate many other hazards, and OSHA wants to make clear that the other standards continue to apply. Also, hazardous waste operators who are not within the proposed scope of this standard would continue to be regulated by the Parts 1910 and 1926 standards.

In paragraph (a)(3)(ii) OSHA proposes that all paragraphs of this section except paragraph (o) would apply to hazardous wastes operations at CERCLA sites, at major corrective action at RCRA sites, and at sites designated for clean-up by state and local governments. This part of the proposal has been taken directly from the interim final rule.

In paragraph (a)(3)(iii), OSHA proposes that the requirements set forth in paragraph (o) of this section would specifically apply only to the hazardous waste operations at RCRA sites which are involved in treatment, storage, disposal and handling of hazardous waste. The proposed limited exclusion of small quantity generators and less than 90-day accumulators would exclude from these regulations certain operations, such as dry cleaners and gas stations, which come within the purview of RCRA, but are not hazardous waste operators in the normal meaning of the term. The exclusion would depend upon the employer's decision to provide or not provide emergency response by employees to releases of, or substantial threats of releases of, hazardous substance.

OSHA proposes to exempt totally small quantity generators and less than 90 day accumulators from the rule if they *do not* provide emergency response by their employees to releases of, or substantial threats of releases of, hazardous substances. OSHA further proposes to exempt small quantity generators and less than 90 day accumulators from all parts of the rule except paragraph (l) when they do provide emergency response by their employees to releases of, or substantial threats of releases of, hazardous substances.

OSHA recognizes that many small quantity generators and less than 90 day accumulators consist of smaller businesses with limited employee populations (less than 10 employees). Since most of these establishments rely on the emergency response services of local fire and rescue departments, OSHA is providing relief from these proposed standards when the employer can show that employees will not be exposed to hazardous substances as a result of providing employee emergency response. In cases where such establishments do provide employee emergency response, and thereby expose employees to hazardous substances, OSHA is proposing that such employers meet the emergency response requirements of paragraph (l) of this proposed rule.

Without these exemptions, these proposed regulations could be interpreted to cover gas stations, dry cleaners, and other small businesses which temporarily store small quantities of a hazardous waste. These businesses are not engaged in hazardous waste operations as that term is conceived of normally. In addition, it is not believed that Congress intended such businesses to be covered. They do not present the relatively high exposure to a number of hazardous health risks to employees that hazardous waste sites typically do.

The approximately 4,000 RCRA sites where reasonably large quantities of hazardous wastes are regularly handled,

treated and stored would be covered by the proposed rule. This reflects the legislative intent, meets the normal meaning of hazardous waste operations and covers the type of safety and health hazards that this regulation is designed to control. This limited exclusion reflects an exemption previously contained in paragraph (a)(1)(iii) of the interim final rule.

In paragraph (a)(3)(iv) OSHA proposes that the requirements set forth in paragraph (l) of this section would specifically apply to the work conducted by emergency response personnel when they respond to hazardous substance emergency incidents. Emergency response personnel include non-employees (i.e., firefighters, EMS personnel, and police) as well as employees.

OSHA requests comment on its approach to coverage and its determination of which provisions apply to various types of operations. It also requests comment on whether other operations should be and are intended to be covered by Congress, and whether specific operations should be excluded because of low exposures.

In paragraph (a)(4), *Definitions*, OSHA proposes to define various terms used in this rulemaking. The definitions for hazardous substances and hazardous wastes have been taken from the U.S. Environmental Protection Agency (EPA) and U.S. Department of Transportation (DOT) regulations and include those used in the interim rule. OSHA is proposing to modify some of the definitions used in the interim rule where some confusion occurred over the meaning of some of the definitions used in the interim rule. For example, the definition for "emergency response" has been modified to indicate more clearly the type of response that OSHA will be regulating. The definition used in the interim rule implied to many readers of that rule that any response to incidental spills would be considered emergency response. The agency did not intend to regulate employee response to incidental spills that could be cleaned-up or stabilized by the employees in the immediate spill area without the need of a coordinated spill-control response from throughout the workplace. Further, the agency did not want to cover releases of hazardous substances that did not expose employees to exposures of hazardous substances above the established permissible exposure limits of this rule.

The term "established exposure levels" is defined to indicate the levels which, if exceeded for 30 or more days per year, trigger medical surveillance of the exposed employees. The term includes not only OSHA established PELs, but also exposure limits suggested by NIOSH and ACGIH. OSHA feels that it is appropriate to go beyound the OSHA established PELs in triggering medical surveillance because of the broadly-worded language in section 126(b)(3), which requires medical surveillance for workers engaged in hazardous waste operations "which would expose them to toxic substances."

The term "permissible exposure limits" is defined as the inhalation or dermal permissible exposure limit specified in 29 CFR Part 1910, Subpart Z. These limits indicate the exposure levels to be achieved by the hierarchy of controls listed in paragraph (g)(1)(i). Employers must set appropriate exposure levels to determine PPE use for substances listed by ACGIH and NIOSH taking into account the levels recommended by those organizations.

The definition in the proposal has been changed from the interim rule. Limits not set by OSHA, NIOSH and ACGIH have been excluded. They would not be generally known and would not have the sanction of an official organization.

OSHA is also incorporating a definition for "qualified individual," a person who has qualifications by training and experience for the task(s) for which the individual is responsible. That definition is rather general, but a detailed requirement for each task would lead to a lengthy and inflexible regulation.

The use of other agency definitions has been proposed to assure consistency and compatibility between this proposed rule and the rules and regulations of the EPA and DOT. The remaining definitions have been taken for the most part from SARA, the four agency manual (Reference 6) or existing OSHA standards.

OSHA requests comment on whether its definitions of hazardous waste, health hazard and hazardous substance are consistent with EPA and DOT practice. OSHA requests comment on whether the term "established permissible exposure limit" achieves its goals.

Paragraph (b)—General Requirements

In paragraph (b)(1)(i) OSHA is proposing to require employers to develop and implement a safety and health program for employees involved in hazardous waste operations. The proposed rule makes it clear that the program is to be in writing. That was implicit in the interim rule. The program needs to be in writing so that employers and employees know clearly what to do to handle hazardous substances. If it were not in writing uncertainty could lead to injury and overexposures.

Such programs are part of the requirements mandated in section 126(b)(7) of SARA. Subpart C of 29 CFR Part 1926 requires such a program in § 1926.20(b), and EPA Order 1440.2, on page 5, further requires training in "safety plan development." OSHA's experience also establishes that a safety and health program is necessary to protect employees so that hazards are assessed and control programs are systematically laid out. OSHA section 6(b) health standards require a compliance plan to set forth a health program to protect employees from regulated hazards.

The proposed employer's safety and health program would have to provide for an organizational structure, a comprehensive workplan, and a site-specific safety and health plan as proposed in paragraph (b)(1)(ii) through (b)(1)(iv). The site-specific safety and health plan would have to address the anticipated safety and health hazards of each work operation or activity, and the means to eliminate the hazards or to effectively control them to prevent injury or illness.

The site-specific safety and health plan is necessary to help protect employee safety and health. There are many hazards at a hazardous waste operation which need to be determined and addressed prior to the exposure of employees. The proposed plan provides that this will be done in a systematic manner so that hazards will not be missed, and so that needed protective action will not be overlooked. The approach used has been adapted from reference 6.

The general requirements found in paragraph (b)(2) through (b)(13) of the interim final rule would be eliminated by this proposal. These paragraphs of the interim final rule merely directed the reader to the appropriate paragraphs of the interim final rule for the specific regulations on a topic. The paragraphs of the interim final rule served only as an index for the interim final rule and OSHA does not believe such an index is necessary for this proposal. The duty requirement for compliance with specific requirements is implicit in the paragraphs addressing a specific hazard.

Paragraph (b)(2) would require that site excavations be shored or sloped as appropriate and the employers comply with Subpart P of 29 CFR Part 1926 for site excavations created during initial site preparation or during hazardous waste operations. The language of (b)(2)

is the same as paragraph (b)(14) of the interim rule. OSHA considers that those provisions already apply, but they are specifically cross referenced because they are particularly important since significant excavation activity often occurs on hazardous waste sites.

Paragraph (b)(3) would require employers to notify contractors and subcontractors of the hazards identified by the employer at hazardous waste operations. The language of (b)(3) is the same as paragraph (b)(15) of the interim rule. Sections 126(b)(2) and 126(e) of SARA indicate Congress's specific interest in protecting employees of contractors, and in involving contractors in the safe operation of hazardous waste sites. This provision would assist the contractor in becoming aware of the operational risks so that the contractor's employees may be better protected.

Paragraph (c)—Site Characterization and Analysis

The employer needs to know the hazards faced by employees in order to develop and implement effective control measures. Site characterization provides the information needed to identify site hazards and to select employee protection methods. The more accurate, detailed, and comprehensive the information available about a site, the more the protective measures can be tailored to the actual hazards that the employees may encounter. Congress clearly intended that such a requirement be included. Section 126(b)(1) of SARA provides that the proposal include "requirements for a formal hazard analysis of the site . . . ." Therefore, OSHA is proposing to use the language from the interim rule as the language for the proposed paragraph (c).

It is important to recognize that site characterization is a continuous process. At each phase of site characterization, information is obtained and evaluated to define the potential hazards of the site. This assessment is to be used to develop a safety and health plan for the next phase of work. In addition to the formal information gathering that takes place during the phases of site characterization described above, all site personnel should be constantly alert for new information about site conditions.

Paragraph (d)—Site Control

This paragraph would require the employer to develop a site control program, as part of the employers' site safety and health plan, to minimize potential contamination of employees. This program would be a part of the safety and health program required by paragraph (b). Several items, such as establishing work zones, need to be considered so that employees know the hazards in different areas, and this will keep out of hazardous areas where their presence is not required.

Site control is especially important in emergency situations. Paragraph (d)(2) would describe the minimum basic components of a program to control the activities and movements of employees and equipment at a hazardous waste site.

The text proposed in this paragraph has been adapted from the interim rule. The need for site control is called for in item 9 of the EPA Order 1440.2. In addition, Subpart C of 29 CFR Part 1926 provides for regular inspection of job sites so hazards on the site can be controlled.

Paragraph (e)—Training

The proposed rule includes specific provisions for initial and routine training of employees before they would be permitted to engage in hazardous waste operations that could expose them to safety and health hazards. Section 126(b)(2) of SARA requires initial and routine training to be included in the proposal. The intent of the proposed training provisions is to provide employees with the knowledge and skills necessary to perform hazardous waste clean-up operations with minimal risk to their safety and health.

The proposed requirements for training in paragraph (e) address the needs of employees who will be working at CERCLA sites, certain RCRA sites, and sites designated for clean-up by state or local governments.

The proposed provisions include a minimum of 40 hours of initial instruction off the site, and a minimum of three days of actual field experience under the direct supervision of a trained and experienced supervisor, at the time of job assignment. Congress has specifically imposed these hour and day requirements under section 126(d) of SARA for the proposed final standard. The proposed requirement is a one-time effort by the employer for each employee covered by this standard. Employees do not need to be retrained for 40 hours at each site at which they work. Employees who have received the required training at one site can use that training to meet this requirement at other sites even if it involves a different employer.

There are often many hazards at a waste site. The employee would be trained to recognize the hazards and appropriate work practices to minimize those hazards. The employee would also be well trained in the use of respirators and other forms of personal protective equipment. Without training, that equipment may not be used effectively and may not provide adequate protection. An extensive training program is necessary to assure that employees can use personal protective equipment effectively. The proposed paragraph would specify the items needed for effective training to avoid hazards.

Managers and supervisors at the waste site who are directly responsible for hazardous waste site operations would require the same training as that of employees under this proposal, and at least eight additional hours of specialized training on managing hazardous waste operations. Since these managers and supervisors are responsible for directing others, it is necessary to enhance their ability to provide guidance and to make informed decisions. Section 126(d)(2) of SARA provides that there shall be eight hours of additional training for supervisors and managers.

The provisions also propose that employees be retrained on an annual basis on relevant matters such as review of health hazards and the use of personal protective equipment. Employees at hazardous waste operations face serious health and safety risks. Reminders are needed of this and of work practices necessary to avoid hazards. Personal protective equipment provides much of this protection. If there is no retraining in the use, care and maintenance of personal protective equipment, such equipment is unlikely to be properly utilized to provide adequate protection. The proposal would provide eight hours of annual retraining. The EPA manual for refresher training (item #10) requires this amount of training.

In all areas of training, whether it be for general site employees, supervisors at the site, or for the use of specific equipment, the level of training provided shall be consistent with the worker's job function and responsibilities. Refresher training shall be supplied to reemphasize the initial training and to update employees on any new policies or procedures.

Section 126(d)(3) of SARA requires that the proposal include provisions for certification that an employee has received the training required by the standard. Section 126(d)(1) provides that the proposal not require training for employees who have already received equivalent training. The proposed standard has provisions to meet this directive.

OSHA requests comment as to whether this or a greater or lesser

amount of training is appropriate for those operations.

Paragraph (f)—Medical surveillance

The proposed rule includes specific provisions for baseline, periodic and termination medical examinations. Section 126(b)(3) of SARA provides that the proposal include requirements for medical examinations of workers engaged in hazardous waste operations. In addition, the EPA manual referred to in section 126(e) of SARA has more detailed requirements for initial or baseline, periodic and termination medical examinations. The clear Congressional direction is to provide a comprehensive medical surveillance program for employees engaged in hazardous waste operations where it is medically prudent.

In paragraph (f)(1)(i) OSHA proposes that medical surveillance is to be provided to employees who have been or are expected to be exposed to hazardous substances or health hazards above established permissible exposure limits without regard to the use of respirators for 30 or more days in a 12-month period, or who wear respirators 30 days during the year. These are the employees who will be at a greater health risk, and employees who wear respirators need to be examined to determine whether they can safely do so as a routine matter. Some dividing line is needed, because employees who might be present on a hazardous waste site only a few days a year, or working in areas such as offices on the periphery of the hazardous area where exposures are low, would not have a special requirement for medical surveillance as a result of their employment. Their likely cumulative exposures to toxic chemicals would be very low, probably not significantly higher than the general population. The EPA manual indicates some dividing line is appropriate because it directs medical surveillance only for employees "routinely" exposed.

It is proposed in paragraph (f)(1)(ii) that wearing respirators for any part of each of 30 days would require medical surveillance because such usage indicates routine exposure to toxic chemicals. There is no requirement that there be 240 hours of respirator use before medical surveillance is required. Similarly being exposed over established safe levels to several chemicals each for less than 30 days, but totalling more than 30 days per year, requires medical surveillance. This exposure indicates routine exposures to hazardous substances and also combinations of chemicals, and may cause synergistic effects creating greater health hazards than exposure to an individual chemical.

For employees who may have been exposed during an emergency incident to hazardous substances at concentrations above the permissible exposure limits without the necessary personal protective equipment being used, and for employees who are injured due to overexposure during an emergency incident, OSHA is proposing in paragraph (f)(1)(iii) that a medical examination or consultation be made available by the employer to affected employees for each incident. A continued medical surveillance program for these employees is not proposed to be required unless they also are covered under the provisions of paragraphs (f)(1)(i) and (f)(1)(ii) as discussed above.

In paragraph (f)(2), OSHA is proposing the frequencies for medical examinations and consultations to be provided to employees.

OSHA's proposal would require an initial or baseline medical examination, either prior to the start-up date for employees who are currently working at hazardous waste sites or prior to initial assignment to an area where medical examinations will be required. The purpose or the intent of baseline medical examinations is to take a detailed medical history, and where possible to develop a health baseline prior to any exposures so as to be able to evaluate changes which may be connected to hazardous substance exposures. In addition, the initial examination would permit evaluation of whether the employee can appropriately wear a respirator, and whether the employee has preexisting conditions which would make exposure to hazardous substances inappropriate. An initial examination has been required by other OSHA health standards, and is recommended in Reference 6 and required by the EPA.

The periodic examinations are required yearly. OSHA's experience in other health standards has been that this is an appropriate period, and it is also recommended by Reference 6. EPA's medical monitoring program guidelines cross-referenced in the EPA manual recommends baseline annual examination generally, as well as a termination examination. It is reasonable to determine periodically whether exposures have induced medical changes and to identify conditions caused by chemicals at an early stage to permit more effective treatment. In some circumstances, the physician may advise more frequent examinations. OSHA requests comment on whether yearly or another frequency for periodic examinations is most appropriate.

Examinations are also to be provided when the employee brings to the employer's attention signs or symptoms indicating possible overexposure to hazardous substances. The employee is to be trained in recognizing what symptoms may indicate that the employee has been exposed to a hazardous substance. Examples of such systems may be dizziness or rashes. Examinations are also required, when medically appropriate, during emergencies when exposure to higher levels is possible. For example, a urinary phenol test is appropriate for employees exposed to high levels of benzene.

Finally, employees who have been required to have medical examinations must also be given an examination upon termination of employment, or upon reassignment to an area where medical examinations are not required. This examination is proposed to detect conditions which have developed prior to departure and is recommended by the EPA program. The proposed provision does not require a termination examination if the employee has had an examination within the prior six months. The EPA guideline has that exception, but qualifies it only if the employee has had no significant exposures in the interval. OSHA requests comments on the appropriate provisions for a termination examination.

In paragraph (f)(3), OSHA would establish the content of medical examinations and consultations provided to employees.

In situations where most of the employees on the site have similar exposures, the protocol may be similar for all employees. Where different groups of employees on the site have substantially different exposures, several different protocols may be appropriate for the site's workers depending on exposures.

There are a number of sources for guidance on specific medical examination protocols. Chapter 5 of Reference 6 provides such guidance by groups of chemicals likely to be present on a site. It references other authorities. The manual should be supplied to the physician. It is also a basis for the medical surveillance program required by this paragraph. In addition, the EPA medical monitoring program guidelines referenced by the EPA manual provides guidance on specific protocols.

In paragraph (f)(4), OSHA proposes that the medical examination would have to be provided under the supervision of a licensed physician. As

provided by section 6(b)(7) of the OSH Act, the employer would have to pay the cost of the examination. In addition, provisions are proposed so that the employee is not discouraged from taking the examination. The examination would have to be given at a reasonable time and place. If given during regular working hours, it is proposed that the employees shall receive their normal pay for that time. If the examination is given outside regular working hours, it is proposed that the employee shall be paid regular wages for the time spent taking and waiting for the examination.

In paragraph (f)(5), OSHA proposes that the appropriate medical tests and examinations depend on the substances to which an employee is exposed, and to whether or not the employee wears a respirator. As employees on hazardous waste sites may be be exposed to differing substances, the proposed paragraph can not specifically state the required tests. Consequently the proposal states that the employer provide to the physician information on exposures, respirator use, and duties on the site. The physician is then to determine the appropriate medical surveillance protocol in terms of specific tests and examinations. As a result of the employer specifying duties, the physician can also judge whether the employee can handle the physical difficulty of the work. OSHA requests comment on whether it should include protocol for medical surveillance, and if so what that protocol should be.

In paragraph (f)(6) OSHA is proposing that the physician make a report to the employer of medical conditions which may make the employee at increased risk to work at the site, and any recommendations on limitations on use of respirators and other PPE as a result of the medical conditions. This will provide guidance for the safe employment of the employee at the site. Under the proposal, the physician could not reveal to the employer diagnoses or conditions unrelated to employment, but could inform the employee directly of those conditions and any and all occupationally related conditions. OSHA requests comment on whether medical removal protective provisions are medically necessary, feasible and appropriate.

In paragraph (f)(7) OSHA would that appropriate records be kept to assist in future evaluation of the employee's health. Secondarily, this information may assist in research on occupational related disease. It is proposed that records should be kept pursuant to the provisions of 29 CFR 1910.20. Full consideration was given in that standard to appropriate retention periods.

OSHA specifically requests comment on whether these or other criteria are the most appropriate for determining which employees should receive medical surveillance, taking into account both medical and administrative factors.

Paragraph (g)—Engineering Controls, Work Practices, and Personal Protective Equipment

It is proposed that anyone entering a hazardous waste site be protected against potential hazards. The purpose of proposing engineering controls, work practices, and personal protective equipment (PPE) is to shield or isolate employees from the chemical, physical, and biologic hazards that may be encountered at a hazardous waste site. Careful selection and use of appropriate engineering controls, work practices, and PPE should protect any employee from health and other hazards, including hazards to the respiratory system, skin, eyes, face, hands, feet, head, body, and hearing.

Congress required in section 126(b) (4) and (5) of SARA that the proposal have provisions for the use of engineering controls and personal protective equipment. Section 126(b)(6) states that the proposal shall contain "requirements for maximum exposure limitations for workers engaged in hazardous waste operations." In addition existing OSHA regulations which apply in general to hazardous waste operations, in 29 CFR Part 1910, Subpart Z, require exposures to various toxic and hazardous substances to be controlled with engineering controls if feasible, otherwise with PPE.

Paragraph (g)(1) would carry over the existing requirements of the interim rule. It provides that toxic and hazardous substances regulated by OSHA are to be controlled to the permissible exposure limit with engineering controls if feasible. If such control is not feasible, the exposure is to be controlled with PPE.

Paragraph (g)(2) would provide that to achieve as appropriate established exposures levels for substances not regulated by OSHA in Subpart Z, the employer may use an appropriate combination of engineering controls, work practices, and PPE.

OSHA believes that the approach in paragraph (g)(2) accurately reflects Congress' guidance. OSHA requests comment on whether the approach it has followed is appropriate for hazardous waste operations and is protective of workers, taking into account that in some circumstances engineering controls are not available for those operations, and also the large number of chemicals which may be present at such sites.

OSHA is currently considering upgrading its respirator program requirements and is reviewing its current methods of compliance policy to determine if revision would be appropriate. A proposed rule on methods of compliance is scheduled for later in 1987. If as a result of this review the general policy is modified, these modifications would also apply to this standard.

Examples of engineering controls which may be feasible are pressurized cabs on materials handling equipment, or pressurized control rooms in materials handling areas. However, in many cases personal protective equipment will be the only feasible means for providing protection to employees engaged in hazardous waste operations.

It is proposed that the selection of personal protective equipment (PPE) be based on the information obtained during the site characterization and analysis, as is proposed by paragraph (g)(3)(i) of this standard. Once an estimate of the types of hazards and their potential concentration has been obtained, the proper respirators and protective clothing can be selected based on the performance characteristics of the PPE relative to the site hazards and work conditions, as is proposed by paragraph (g)(3)(ii) of the standard. These requirements are derived from Reference 6, and are also supported by a NIOSH document, "Personal Protective Equipment for Hazardous Materials Incidents: A Selection Guide." These two documents also support the proposals of paragraphs (g)(3)(iii) and (g)(3)(iv) which would require positive pressure respirators with escape provisions to be used in IDLH atmospheres, and totally-encapsulating chemical protective suits to be used where skin absorption of the substance would result in an IDLH situation.

Paragraph (g)(3)(v) would require that the level of protection provided by PPE selection be increased when additional information onsite conditions show that increased protection is necessary. The purpose of this regulation is to assure that employees do not become exposed to levels of hazardous substances above what is permitted after initial monitoring has been completed. It is possible that increased protection may become necessary due to unexpected releases of unknown substances or due to new

information developed about the substances being cleaned up.

Paragraph (g)(3)(vi) would require that PPE be chosen to keep exposures at or below established permissible exposure limits. This is a restatement of paragraph (g)(3)(vi) of the interim rule.

Proper respirator selection, as proposed by this standard, involves providing a sufficient protection factor through the type of respirator used, respirator fitting, worksite conditions, and a respirator selection and use program. Proper protective clothing selection, as proposed by this standard, involves choosing protective clothing made of materials and construction which will prevent breakthrough of hazardous substances by permeation and penetration, or will reduce the level of exposure to a safe level during the employee's duration of contact. Information on the performance characteristics of PPE is available from MSHA/NIOSH certifications, test reports and manufacturer's literature. OSHA is proposing an Appendix B that would provide non-mandatory guidelines on classifying substance hazards at four levels (A, B, C, and D), and on matching four levels of appropriate protection provided by different protective ensembles. These guidelines may be used as a basis for protective clothing selection, and the selection further refined when more information is obtained, as proposed in paragraph (g)(3)(v) of the standard. (In certain circumstances, this standard would specify the appropriate level of protection. See paragraph (c)(4)(iii).) Paragraph (g)(3)(vi) would cross-reference the existing requirements to select and use PPE pursuant to the requirements of 29 CFR 1910, Subpart I.

In paragraph (g)(4), OSHA proposes to require totally-encapsulating suit materials used for Level A protection (the highest level of protection) to provide protection from the specific hazards which have been identified as requiring that level of protection. The purpose of this proposal is to be certain that the suit selected is comprised of materials which will provide the necessary protection, since no one material will provide protection from all hazards. Paragraphs (g)(4)(ii) and (g)(4)(iii) would require totally-encapsulating suits to be capable of maintaining positive air pressure to help prevent inward leakage of hazardous substances, and to be capable of preventing inward gas leakage of more than 0.5 percent. These proposals, which are based on testing of totally-encapsulating suits, are included to establish a minimum level of suit performance so that their level of protection can be quantified for proper selection. OSHA is proposing in Appendix A to list the example test methods for totally-encapsulating chemical protective suits. OSHA believes that a higher degree of leak protection than 0.5 percent may be appropriate if both practical suits and test methods exist to achieve and demonstrate greater levels of protection. OSHA also believes that a qualitative test method utilizing a non-hazardous challenge agent or a quantitative test method for the suits would be preferable. It requests comments on these issues.

In paragraph (g)(5), OSHA would require a PPE program to be established as part of the site safety and health plan. This proposal is based upon reference 6, 29 CFR 1926.28, EPA manual items 4 and 7(g), and is included since PPE will be the only protection feasible for employee protection, in most cases, and because the amount of protection afforded by PPE is dependent upon so many factors, such as selection, fit, work duration and conditions, and decontamination. The PPE program would be required to insure that the level of protection afforded by PPE is sufficient and continues to be sufficient for employee safety during hazardous waste operations.

Paragraph (h)—Monitoring

It is essential that employers be provided with accurate information on employee exposures in order to implement the correct PPE, engineering controls, and work practices. Airborne contaminants can present a significant threat to employee safety and health. Thus, identification and quantification of these contaminants through air monitoring is an essential component of a safety and health program at a hazardous waste site. Reliable measurements of airborne contaminants are useful for selecting personal protective equipment, determining whether engineering controls can achieve permissible exposure limits and which controls to use, delineating areas where protection is needed, assessing the potential health effects of exposure, and determining the need for specific medical monitoring. Section 126(b) of SARA also mandates the inclusion of the necessary monitoring and assessment procedures in this proposed rule.

In paragraph (h)(1), OSHA proposes to require that air monitoring be used to identify and quantify airborne levels of hazardous substances. This language has been taken from the interim final rule.

In paragraph (h)(2), OSHA is proposing to require monitoring for airborne hazardous substances at uncontrolled hazardous waste sites. The purpose is to detect IDLH conditions, flammable conditions, or exposures to hazardous substances. Over exposure limits can be detected and controls can be instituted or suitable PPE selected and worn to protect employees from the hazard. Representative initial monitoring would be required for these conditions. Subsequent monitoring would be required whenever the possibility of an IDLH or flammable atmosphere has developed.

In paragraph (h)(3), OSHA proposes that additional monitoring is necessary when, as a result of various changes, increased exposures are suspected. No specific interval of monitoring is proposed because of the variations present at each individual work station. Monitoring would not be required just because a condition changes; it would be necessary only when the change may lead to higher exposures.

In paragraph (h)(4), OSHA proposes to continue requiring personal monitoring of high-risk employees as is contained in paragraph (h)(4) of the interim final rule. The language of the proposal differs from that of the interim rule, however, the requirement remains the same. A note has also been proposed to clarify the intent of the proposed requirement. The language of this paragraph was adapted from reference 6.

Because of the large number of substances which may be present at a hazardous waste site, OSHA does not believe it is possible to specify a detailed monitoring protocol as it has done in substance specific standards. OSHA requests comment on whether alternate monitoring provisions would be more appropriate.

Paragraph (i)—Informational Programs

Congress provided in § 126(b)(7) of SARA that the proposal include an "Informational Program" to "inform workers engaged in hazardous waste operations of the nature and degree of toxic exposure likely as a result of such hazardous waste operation." Paragraph (i) in the proposal is designed to carry out this Congressional directive.

Paragraph (i) provides that employees, contractors, and subcontractors (or their representatives) be informed of the hazardous substances health hazards and other hazards to which they are exposed.

Employees covered by this proposal will normally be informed as part of their initial and refresher training

required by paragraph (e). Some of the training time required in paragraph (e) can be allocated to this information so that this provision does not increase training time over that which Congress has directed.

This provision is intended to cover employees who are exposed to greater hazards than the general employee population. Consequently a clerk in an office on the periphery of a site who does not enter the operations part of a site, and is exposed only to background levels of hazardous substance, would not be covered. Employees who regularly enter the operations areas on the site and are exposed to levels significantly over background would be covered.

The information program should concentrate on those substances which will create the greater risk to the employee, either because of their hazardousness or because of the likely higher degree of exposure, and for which precautions are most essential. For example, a level of exposure not higher than background to a general population would not normally require notification. Similarly a level of exposure above background, but well below established permissible exposure limits of chemicals, would not require the specific notification of this provision.

The identification of exposure level provisions are tied in with the monitoring provision of the standard, and do not create requirements to monitor additional to those created elsewhere in this proposed standard. Similarly there is no requirement to make risk estimates or to undertake original research on the degree of risks. The requirement is to inform the employee, contractor, or subcontractor of estimates in the literature or made by authoritative organizations. As the employers here are in the business of handling hazardous wastes, they should be familiar with this literature in order to manage their operations properly. Therefore extensive literature searches should not be necessary.

OSHA requests comments on whether these or other provisions of the proposal are a more effective method than the method used in the interim final rule for informing employees of the hazards they face in a manner that concentrates on the more important hazards and the methods by which they can be controlled.

Paragraph (j)—Handling Drums and Containers

In paragraph (j), OSHA is proposing procedures for the handling of drums and containers. The handling of drums and containers at hazardous waste sites poses one of the greatest dangers to hazardous waste site employees. Hazards include detonations, fires, explosions, vapor generation, and physical injury resulting from moving heavy containers by hand and working around stacked drums, heavy equipment, and deteriorated drums. While these hazards are always present, proper work practices can minimize the risks to site personnel. Section 126(b)(8) of SARA directs that the proposal contain provisions on the handling and storage of hazardous substances and this paragraph addresses that concern.

Containers (less than 30 gallons) are also handled during characterization, removal of their contents and during other operations. Many of the hazards encountered during the handling of drums also occur during the handling of smaller containers. The relative size of a smaller container when compared to the size of a drum is no indication of the degree of hazard posed by the container. They both should be treated in accordance with the level of hazard posed by their contents not by their size. The language used in this paragraph was adapted from Reference 6.

Paragraph (k)—Decontamination

Section 126(b)(10) of SARA provides that the OSHA proposal contain requirements for decontamination procedures. Decontamination is a necessary practice to protect those employees properly who may be exposed to hazardous substances. Decontamination provisions protect an employee from being exposed to hazardous substances which might otherwise be on the employee's PPE when it is removed. OSHA is proposing that a decontamination plan be developed and implemented before any employees or equipment may enter areas on site where potential exists for exposure to hazardous substances.

As proposed in this standard, decontamination procedures and areas must be developed to minimize hazardous exposures to employees whose equipment and PPE are being decontaminated, as well as to employees who are assisting in the decontamination of workers and equipment. These measures are proposed since without proper procedures and decontamination areas, employees may be unknowingly exposed to hazardous substances which have contacted or otherwise adhered to equipment and clothing. OSHA is also proposing that all employees be decontaminated and that all clothing, equipment and decontamination fluids and equipment be decontaminated or disposed of before leaving a contaminated area. These provisions are proposed so that contaminated persons and materials do not leave the "hot zone" and thereby expose other employees and persons to hazardous substances.

Decontamination methods and cleaning fluids must be matched to the particular hazardous substance at the site in order for the decontamination procedures to be effective in removing the hazards from PPE and other equipment. No one decontamination fluid will be effective for all hazardous substances. As proposed in this standard, the decontamination program must be effective and it must be monitored by the site safety and health supervisor to maintain its effectiveness. These proposals are made so that employees are not exposed to hazardous substances by re-using PPE and other equipment which are still contaminated.

Effective employee decontamination also requires clean change rooms and showers. There must be an area where the employees can remove the contaminated work clothing and where it will not contaminate the employees' street clothing. In addition, the employees must be able to shower after removing contaminated work clothing and then go into a clean area where the employee can put on street clothing. Paragraph (k) contains these decontamination requirements. Somewhat different provisions are required for sites of less than six-month duration because more permanent facilities are not as feasible for short-term operations. The language used in this paragraph was adapted from reference 6.

Paragraph (l)—Emergency Response

Section 126(b)(11) of SARA specifically provides that the proposal contain "requirements for emergency response." In addition, the EPA manual under items 4 and 9, and 29 CFR 1926.23 and 1926.24 require preparations and planning for emergencies. Congress made its intent clear that emergency planning and response is an important part of any employer's safety and health program, and directed that it is to be addressed in the proposed rule.

The Congressional concerns on toxic emergencies is discussed in *Task Force on Toxic Emergencies*, Environmental and Energy Study Conference Special Report, September 18, 1986. This report stresses the need for training of emergency response personnel as well as emergency response planning and related areas.

In paragraph (l)(1)(i), *Emergency Response, General*, OSHA is proposing

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that employers who are involved in emergency response to hazardous waste incidents develop and implement an emergency response plan for emergencies. Employers would have to inform all their employees about the emergency response plan. The plan would also have to be available for use prior to the start of work on the site. It would have to be in writing and available for inspection by employees, their representatives, and OSHA personnel. OSHA proposes to exempt employers from the rest of paragraph (l) if they provide an emergency action plan in accordance with 29 CFR 1910.38 that requires the total and immediate evacuation of employees from the release site.

In paragraph (l)(1)(ii), OSHA is proposing that the emergency response plan include the following elements: (1) Recognition of emergencies; (2) methods or procedures for alerting employees onsite; (3) evacuation procedures and routes to places of refuge or safe distances away from the danger area; (4) means and methods for emergency medical treatment and first aid; (5) line of authority for employees; (6) decontamination procedures; and (7) site control means and methods for evaluating the plan.

Local fire departments, police departments or emergency medical services would also be required to have an emergency response plan. These employees which may be called upon to respond to hazardous substance emergency incidents involving a railroad tank car, motor carrier tank truck or to a plant location where they do not regularly work are considered involved in emergency response activities at other than hazardous waste clean-up sites under this section. However, work by maintenance or repair personnel who are called upon to replace a leaking valve or a section of pipe damaged by an unexpected release, or to restore a highway surface or railroad track bed that may have been damaged in an accident causing the release of a hazardous substance, are not considered as being part of the "emergency response" for the purpose of this proposal. Such employees routinely respond to accident sites to restore equipment to a functional level after an accident has occurred. Typically the accident scene will have been declared "non-hazardous" in regards to employee exposure to hazardous substances. Should a health exposure exist, these employees would be covered by OSHA's General Industry health standards in Subpart Z. Safety hazards related to their work would be covered by the appropriate Part of Title 29 related to their work (i.e., 1910, 1926, etc.)

The emergency response plan would have to include the incident command system required in paragraph (l)(3) of this section. OSHA believes that a generic emergency response plan is feasible for employers.

In paragraph (l)(3), *Emergency response at hazardous waste clean-up sites*, OSHA is proposing requirements for emergency response at hazardous waste clean-up sites. The title for this paragraph would be changed from the title *"On-site emergency response"* as used in the interim rule to *"Emergency response at hazardous waste clean-up sites"* to clarify the intent of the type of response OSHA is proposing to cover in this paragraph. Further the term "on-site" would be replaced with the phrase "at hazardous waste clean-up site" as appropriate.

An employer's emergency response personnel at hazardous waste clean-up site operations must have the same basic training as for the other employees involved in routine hazardous waste clean-up operations plus the training needed to develop and retain the necessary skills for anticipated emergency response activities. CERCLA sites, major corrective actions at RCRA sites, sites designated for clean-up by state and local governments and other similar hazardous waste clean-up sites require more training because there is the possibility of uncontrolled hazards.

Note.—Emergency response personnel from other places of employment of different employers who respond to the site must comply with the training requirements of paragraph (l)(3).

In paragraph (l)(3), *Emergency response at other than hazardous waste clean-up sites*, OSHA is proposing requirements for emergency response at other than hazardous waste clean-up sites. The title for this paragraph would be changed from the title *"Off-site emergency response"* as used in the interim rule to *"Emergency response at other than hazardous waste clean-up sites"* to clarify the intent of the type of response OSHA is proposing to cover in this paragraph. Further the term "off-site" would be replaced with the phrase "at other than hazardous waste clean-up site" as appropriate.

Fire departments, emergency medical and first-aid squads, fire brigades, and other similar emergency response teams would have to conduct monthly training sessions for their employees, except as provided in (l)(3)(i)(A)(*3*) and (l)(3)(i)(A)(*4*). Regular training is needed so that the employees with responsibility for controlling, containing and extinguishing fires of hazardous substances know the proper techniques and equipment to use. They must also know the appropriate PPE to use and how to wear it and how to coordinate with fellow employees. Without this knowledge their lives would be in jeopardy. The training needs to be recurring because quick decisions will have to be made in the dangerous emergencies of chemical fires, acid spills, poisonous fumes, etc. where there often will not be time to consult manuals and the information needs to be fresh and accurate in the employees' minds.

Some changes have been made in the proposal from the interim rule. The interim rule required 24 hours of training and monthly sessions. OSHA believes that is a reasonable amount of training required and it is retained as an option in the proposal.

However, a prescription of a number of hours does not necessarily indicate proficiency and employees could develop proficiency in fewer hours. Therefore, OSHA is proposing an alternative. The alternative would provide that employees be trained sufficiently so that they demonstrate competency in the relevant areas of their duties.

In addition, the interim rule clarifies that training need be given only to those employees who will be engaged in controlling toxic chemical fires and containing spills. Employees who may be first on the scene, but not expected to engage in response activities, may be trained only in hazard recognition if they are instructed to call others to control hazardous substance spills and fires. Employees for whom there is no reasonable possibility of making an emergency response need not be trained in making such a response.

In addition, the proposal clarifies that the intent of the training requirements is to ensure that fully-trained personnel are available to respond to hazardous substance emergencies. Accordingly, each individual emergency response organization is not required to have a fully-trained hazardous substance response team if arrangements have been made in advance to ensure that such a team is available to respond in a reasonable period if summoned. If any emergency response organization chooses to rely on an outside team for hazardous substance emergencies, then its members must be sufficiently trained to recognize that an emergency situation exists which requires the intervention of the designated hazardous spill response team and to know how the spill response team should be contacted. An

example may be a metropolitan area in which an emergency spill team is available to respond immediately to spills anywhere within the area. In such a case, each emergency response organization in the area would not have to train individual member to the degree specified in paragraph (l)(3)(i)(A)(*1*) if the members knew when and how to call in the designated spill response team.

However, the employees fully trained must be sufficient to handle reasonable possible emergency response situations. There are additional requirements for HAZMAT teams because they face the greater hazards of stopping leaks of hazardous chemicals.

It is noted that OSHA does not have direct jurisdiction over state and local government employees. OSHA state plan states must regulate state and local government employees in the state. State and local government employees in non-OSHA state plan states will be covered by EPA. [See section 126(f) of SARA.]

Training sessions on activities such as breathing apparatus use, hose handling and preplanning may be used as training subjects for the monthly sessions, provided hazardous substance incident operations are included in the presentation, discussion or drill. It is proposed that these training sessions and drills contain at least 24 hours of training on an annual basis.

It is also proposed that an incident command system be established by employers for the incidents that will be under their control, and that the system be interfaced with the other organizations or agencies who may respond to such an incident. The National Transportation Safety Board, as a result of its investigation of hazardous materials incidents, has consistently recommended that better state and local emergency response planning be done to reduce the loss of life and property, and that a system using a command post and on-scene commander be implemented. (See *Special Investigation Report. On-scene Coordination Among Agencies at Hazardous Materials Accidents*, NTSB–HZM–79–3, September 13, 1979; and *Multiple Vehicle Collisions and Fire, Caldecott Tunnel near Oakland, California*, NTSB/HAR–83/01, National Transportation Safety Board, Washington, DC, April 7, 1982, for further information.) OSHA is proposing that where available, state and local district emergency response plans would be utilized in developing the incident command system and the emergency response plan to assure compatability with the other emergency responding agencies or employers.

In paragraph (l)(4), *Hazardous materials teams*, OSHA is proposing to require employers, who utilize specially trained teams involved in intimate contact with controlling or handling hazardous substances, to provide special training for the affected employees in such areas as care and use of chemical protective clothing, techniques and procedures for stopping or controlling leaking containers, and decontamination of clothing and equipment after hazardous substance incidents. The employer would have to implement a medical surveillance program in accordance with the proposed requirements of paragraph (f) of this section. It should be noted that employees of employers covered by paragraph (a)(2)(ii) already would receive these protections as a result of other provisions in this proposal. However, this paragraph does not require any employer to form or organize a hazardous materials team. It only applies when such a team has been organized and utilized.

In paragraph (l)(5)(i), OSHA is proposing to require that employers who will be involved in cleaning up hazardous waste after the emergency response activities are concluded, comply with the same requirements that apply to others involved with hazardous waste clean-up operations. These hazardous waste clean-up operations will be typically accomplished by special contractors, and not by those agencies involved in responding to the initial emergency incident.

However, this paragraph does not apply to those employees who clean-up a spill in their work area which did not involve an emergency response by the fire brigade, fire department or similar organization.

After an emergency response incident is brought under control on plant property, and post-emergency clean-up of hazardous materials begins, paragraph (l)(5)(ii) would permit the employer whose facility was affected by the incident to use plant employees to decontaminate the workplace. This provision has been addressed and permitted in the past by specific OSHA health standards such as 29 CFR 1910.1017(h)(2)(i), 29 CFR 1910.1008(d)(2) and others. The employees who may take part in the clean-up would have to have completed the full training program required in 29 CFR 1910.1200, and the respirator training required in 29 CFR 1910.134. Emergency action plans would have to be provided in accordance with § 1910.38(a). Any appropriate safety and health training required by the specific tasks to be completed as part of the clean-up effort would also have to be provided. Employers whose employees will be performing post-emergency cleaning of workplaces would be exempt from paragraph (l)(5)(i) of this section if they comply fully with paragraph (l)(5)(ii) of this section.

OSHA requests comment on whether the proposals it has made and distinctions it has drawn for emergency response are appropriate, or whether improvements can be made.

Paragraph (m)—Illumination

In paragraph (m), *Illumination*, OSHA is proposing to require certain minimum illumination levels for work areas that are occupied by employees. OSHA was mandated by SARA in section 126(e) to include illumination requirements in the interim final rule published in December 1986. OSHA believes that the intent of Congress is to provide coverage concerning illumination, and has therefore proposed to regulate it in this proposed final standard. The provisions come from OSHA's construction industry requirements for illumination at construction sites issued at 29 CFR 1926.56. SARA calls upon OSHA to use the requires of Subpart C in Part 1926. Subpart C references the requirements of Subpart D which contains § 1926.56. OSHA request comment on whether these or other provisions are more appropriate for hazardous waste operations.

Paragraph (n)—Sanitation for Temporary Worksites

In paragraph (n), *Sanitation for temporary worksites*, OSHA is proposing minimum requirements for potable and non-potable water supplies, toilet facilities, and other areas related to sanitation at temporary workplaces. OSHA was mandated by SARA in section 126(e) to include sanitation requirements in the interim final rule. The provisions in this proposed standard come from OSHA's construction industry requirements for sanitation at construction sites issued at 29 CFR 1926.51 with one addition. SARA calls upon OSHA to use the requirements of Subpart C in Part 1926. Subpart C references the requirements of Subpart D which contains § 1926.51. OSHA is proposing to expand the referenced construction standard in this rulemaking with requirements for showers and change rooms. Regulation of these facilities was not a part of the interim final rule. The proposed addition has been made to address the installation and operation of employee

showers and change rooms at worksites where clean-up operations are expected to take six months or more to complete.

OSHA requests comment on whether these or other provisions are more appropriate for hazardous waste operations.

Paragraph (o)—Operations Conducted Under the Resource Conservation and Recovery Act of 1976 (RCRA)

OSHA is proposing a separate paragraph for operations conducted at worksites involving hazardous waste storage, disposal and treatment operating under the Resource Conservation and Recovery Act of 1976 (RCRA). This separate paragraph of requirements is appropriate because RCRA site operations (not including major corrective actions and their associated hazards which are similar to CERCLA sites, and are covered by the main part of the standard) generally are different from the operations and hazards found on a CERCLA clean-up site. For example, RCRA sites that would be covered by this paragraph tend for the most part to be fixed on-going operations involving the receiving, processing, storage, treatment, and disposal of hazardous wastes or substance from outside sources. CERCLA sites, on the other hand, are temporary emergency clean-up operations involving often undefined and substantial quantities of hazardous substances.

Consequently hazards should be better controlled and more routine and stable for the RCRA sites covered by this paragraph, and therefore less extensive requirements are appropriate. OSHA requests comment on whether the provisions of paragraph (o) are appropriate for general RCRA sites.

In paragraph (p), *New technology programs*, OSHA proposes to address new technology programs. New technology programs are intended to provide employees with means to become aware of new equipment, processes, and procedures that may contribute to improving their safety and health on the job. Paragraph (b)(9) of SARA also requires the agency to address new technology programs as part of this proposal.

III. References

1. Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99–499.

2. Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA or "Superfund"), Pub. L. 96–510, December 11, 1980, 94 Stat. 2767.

3. Resource Conservation and Recovery Act of 1976 (RCRA), Pub. L. 94–580, October 21, 1976, 90 Stat. 2795.

4. "Health and Safety Requirements for Employees Engaged in Field Activities," Environmental Protection Agency Order 1440.2, U.S. Environmental Protection Agency, July 12, 1981.

5. Subparts C and D of 29 CFR Part 1926.

6. "Occupational Safety and Health Guidance Manual for Hazardous Waste Site Activities," Occupational Safety and Health Administration, Environmental Protection Agency, U.S. Coast Guard, and National Institute for Occupational Safety and Health, DHHS (NIOSH) Publication No. 85–115, October 1985.

IV. Issues for Comment

OSHA requests comments on all issues raised by this proposal, including the issues specifically raised throughout the preamble. OSHA also requests comment on the following issues:

1. Ninety days after the promulgation of the final OSHA regulations that result from this notice of proposed rulemaking, section 126 (f) of the Superfund Amendment and Reauthorization Act of 1986 (SARA) requires the Administrator of the Environmental Protection Agency (EPA) to promulgate standards identical to those promulgated by OSHA pursuant to this rulemaking for employees of State and local governments in each state which does not have in effect an approved State plan under section 18 of the Occupational Safety and Health Act of 1970. EPA is to provide standards for the health and safety protection of employees engaged in hazardous waste operations. Does the requirement that EPA apply identical standards to employees of State and local governments engaged in hazardous waste operations raise any issues about the substance of the standards that would not be raised by their application to other workers? EPA will conduct its own rulemaking to define those employees to whom the standards will apply.

2. OSHA has defined the term "established permissible exposure limit" to cover the many hazardous substance and health hazards possibly present in hazardous waste operations. Is another definition or term more appropriate and, if so, how should it be defined? Should several terms be used for different purposes, such as site entry or guidance on use of PPE? How should OSHA determine safe levels of exposure for unknown substances or mixtures of substance?

3. In order to perform a Regulatory Impact Analysis and a Regulatory Feasibility Analysis for the final standard, OSHA requests information concerning the following general topics: The type, number, and characteristics of the contractors and other entities involved in hazardous waste operations; the number of potentially affected employees at hazardous waste operations; the available fatality, injury, and illness statistics associated with hazardous waste operations; current industry practices in hazardous waste operations; the potential costs of compliance; and the potential economic impact of the proposed standard upon the economy and upon small entities. In addition to any other information that is supplied on these issues, OSHA is particularly interested in information concerning the specific questions found in Issues 4 through 18. OSHA already has substantial information in these areas, but more information would be helpful in improving the regulation and making more detailed estimates of impacts.

4. What type of contractors and other entities are involved in hazardous waste operations? How many are there? What are their characteristics? What is the typical scale of clean-up operations? Numerous local construction contractors may be employed in clean-up activities at uncontrolled hazardous waste sites. What are the characteristics of these firms? Are they typical of construction firms (particularly excavation contractors) in general or not? Are these contractors able to specialize in work at uncontrolled hazardous waste sites?

5. For investigation and clean-up of uncontrolled hazardous waste sites, can you estimate the split between government and privately funded clean-up work? Can you describe/estimate the components of the privately funded work between (1) private actions in direct response to government enforcement efforts, (2) voluntary private actions (apparently) preceding direct enforcement actions, (3) voluntary private actions in preparation for sale of property, and (4) voluntary private actions without any encouragement from enforcement or other external factors? The government-funded work at uncontrolled hazardous waste sites may continue for a decade or more. Can you estimate the duration of work in the private sector? What are the differences, if any, between clean-up project characteristics of government sponsored activities and private clients?

6. How often do emergency spills occur at a clean-up site, and how often do they occur off the site? How many of

these emergency spills are cleaned up by private contractors? Are these private contractors the same as those contractors performing hazardous waste clean-ups on hazardous waste clean-up sites? How often are emergency spills cleaned up by state and local employees? How many fires occur that require state and local firefighters to enter a hazardous waste site?

7. Do industrial establishments with industrial fire brigades generally ask those brigades to respond to in-house hazardous material spills or releases? If not, who does respond? Are other response groups designated? What provisions do other establishments (i.e., those without brigades) make for responses to hazardous material spills or releases?

8. How may private HAZMAT teams (response groups) are there? Are many of the teams designated for responses for several emergency networks (e.g., for responding to CHEMNET emergencies, Chlorine Institute emergencies and others)? How many HAZMAT specialists, advisors or consultants, or other groups are there that may respond to incidents but who do not physically get involved in the response action?

9. How many employees are exposed to hazardous substances during clean-ups at a typical CERCLA site, at a typical RCRA site; and at an emergency spill? What are the typical hazardous substances found at a CERCLA site and at a RCRA site? What are the typical exposure levels? How many average daily hours of exposure to site hazards would a typical employee face during clean-up operations, and during final site reclamation work? At how many waste sites does the average employee work during a year? What are the training and experience levels of these employees? What is the labor turnover rate? What percentage of these employees have previously worked at CERCLA or RCRA sites?

10. The proposed standard covers employers and employees engaged in operations regulated under 40 CFR Parts 264 and 265 pursuant to RCRA. Are there other RCRA operations involving hazardous waste handling covered by other Parts in Title 40 of the Code of Federal Regulations which OSHA should include in the scope of this standard? Are there any other paragraphs of this proposal not specifically referenced in paragraph (o) for applicability to RCRA sites that should be made applicable to RCRA sites?

11. What are the current industry practices with respect to the provisions in the proposed standard? What actions would be necessary for compliance? Does the current degree of compliance depend upon the type of site? Are there any provisions that would, in some specific situations, be either technologically or economically infeasible? What would those specific situations be?

12. How much training is being provided for various types of employees? Who has provided this training? How often is training repeated? Are truck drivers who haul the hazardous substance from the site trained and, if so, to what extent and by whom? Are monthly drills or other training provided for emergency responders to spills?

13. What preparations are made for emergency situations that may arise at CERCLA or RCRA hazardous waste sites?

14. What are the typical practices concerning air monitoring? How extensive is the information concerning the specific hazardous substances at a CERCLA site and at a RCRA site?

15. Do employees receive medical exams prior to the first site assignment? Are exit exams provided? Are medical exams given annually? Are these exams given to HAZMAT team members? Which tests and analyses are included in the medical exam?

16. Is personal protective equipment used in accordance with the proposed standard? If not, why not? Is a self-contained breathing apparatus worn at all times during emergencies with hazardous substances? If not, what types of instances might not require their use?

17. What sources of fatality, illness, or injury statistics are available for hazardous waste operations? What are the causes of these fatalities and injuries? What types of site characteristics or employee actions have contributed to fatalities and injuries? Are there specific cases of acute or chronic illnesses occurring to employees performing hazardous waste operations? Would specific provisions in the proposed standard have prevented these cases? Which provisions?

18. What would be the unit costs of complying with each of the provisions for which there is current non-compliance? What would be the annual costs by provision and by site? What would be the capital costs? What would be the one-time expenditures? What would be the typical total, annual and capital costs of compliance for a contractor? What would be the typical receipts, profits, and investment of these firms? To what extent would this cost of compliance be passed onto the price of the clean-up operation? What would be the typical impact of compliance upon the price charged to clean-up of a CERCLA site, a RCRA site, and a private site? Would small entities be faced with an adverse impact that would be significantly greater than the adverse impact faced by the larger entities? If so, what particular provisions would cause this impact?

19. OSHA is proposing certain training requirements for employees who are expected to work with hazardous substances. The Agency proposes to require certification to show that training has been completed. Should it set criteria for the persons doing the training? Is the requirement of a written certification upon completion of training given to the employee sufficient to show that training has been completed? With regard to the various training requirements in the standard, should OSHA require specific training courses or curriculum? What should a training certification include? If the employer is allowed to certify that an employee has been trained, what format should this certification follow?

20. In the issue of medical surveillance and the surveillance records necessary to show employee exposures, how should OSHA provide for records transfer when an employee moves from one job site to another job site, or from one employer to another employer?

21. Test methods for evaluating the performance of totally-encapsulating chemical protective suits are included in Appendix A of this standard. A pressure test using compressed air and a qualitative leak test using vapors from concentrated aqueous ammonia are included. Are these test methods adequate for ensuring the integrity of totally-encapsulating chemical protective suits? Are other test methods available which would be more suitable? Is there a danger to employees from the use of such a volume of concentrated aqueous ammonia?

22. The standard and appendices do not contain any test methods for other chemical protective clothing such as overalls, chemical-splash suits and chemical-resistant gloves. Are there any tests methods available which evaluate the performance of these types of protective clothing and gloves as they would perform when worn? Is there a need to include test methods for chemical protective clothing and gloves?

23. The standard requires that clothing and equipment leaving a contaminated area be appropriately disposed of or decontaminated. What methods are available to evaluate the effectiveness of decontamination procedures? What methods are available to determine when decontaminated clothing and

equipment are safe to reuse? What guidelines or procedures are available to ensure proper disposal of contaminated clothing and equipment?

24. The practical health benefit of annual medical examinations for workers in hazardous waste operations may be, however, uncertain. Hazardous waste operations often involve exposure to numerous chemicals some of which may be unknown, to which workers may be exposed once, intermittently, or regularly. Consequently, it may not be possible to determine in advance what particular biological markers are relevant in determining over-exposure; which medical tests should be conducted; or even if the same medical tests should be conducted with each yearly examination. One consequence of this uncertainty may be over-testing—the application of a battery of medical tests simply in order to cover the full spectrum of possibilities. Such testing would be costly and in some circumstances of limited health benefit, and would not assure the worker that health effects have not occurred as a result of over-exposure. This situation differs from that in most other activities regulated by OSHA, in which specific exposures have been identified and specific tests can be conducted to determine if workers have been over-exposed.

Since, in some circumstances, it may not be possible to determine in advance what doctors should look for in workers engaged in hazardous waste operations, it may be more useful to follow the initial or baseline exam with periodic examinations of those workers who show symptoms indicating sensitivity or possible over-exposure to hazardous substances. Follow-up exams would occur at intervals recommended by the physician. The effectiveness of this approach in identifying workers in need of medical surveillance would be enhanced by worker training on recognition of symptoms indicating possible over-exposures. OSHA solicits comments on the appropriateness and effectiveness of this alternative to annual medical examinations.

V. Regulatory Impact Analysis, Regulatory Flexibility Analysis and Environmental Impact Assessment

Introduction. Executive Order 12291 (46 FR 13197, February 19, 1981) requires that a regulatory impact analysis be conducted for any rule having major economic consequences for the national economy, individual industries, geographical regions, or levels of government. In addition, the Regulatory Flexibility Act of 1980 (Pub. L. 96–353, 94 Stat. 1164 [5 U.S.C. 601 *et seq.*]) requires the Occupational Safety and Health Administration (OSHA) to determine whether a proposed regulation will have a significant economic impact on a substantial number of small entities, and the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*) requires the agency to assess the environmental consequences of regulatory actions.

In order to comply with these requirements, OSHA has prepared a Preliminary Regulatory Impact and Regulatory Flexibility Analysis (PRIA) for the proposed hazardous waste operations and emergency response standard. This analysis includes a profile of the industries that would be affected, the estimated number of employees who would be at risk from occupational exposures to hazardous wastes, technological feasibility, costs, benefits, and an overall economic impact of the proposed standard. The PRIA is available in the OSHA Docket Office.

Data Sources. The primary sources of information for this analysis are an April 1986 report by The Eastern Research Group (ERG) entitled, "Preparation of Data to Support A Regulatory Analysis and Environmental Assessment of the Proposed Standard for Working at Hazardous Waste Sites." Most of the information contained in this report was gathered from Environmental Protection Agency sources, industry sources, experts in the area of hazardous waste management, etc. OSHA welcomes additional comments and all information supplied will be carefully reviewed and evaluated for incorporation into the Regulatory Impact Analysis (RIA) that will accompany the final rule.

Industry Profile. The proposed standard would affect about 20,000 uncontrolled hazardous waste sites, about 4,000 hazardous waste operations conducted under the Resource Conservation and Recovery Act (RCRA) of 1976, about 13,600 spills of hazardous materials that occur annually outside a fixed facility, and about 11,000 spills of hazardous materials that annually occur inside a fixed facility. The firms that would be affected by this proposed standard are as follows: about 100 contractors that perform hazardous waste cleanups; about 50 engineering or technical services firms that perform hazardous waste preliminary assessments or site investigations and remedial investigations or feasibility studies for hazardous waste site cleanups; about 300 RCRA-regulated commercial treatment, storage and disposal facilities; about 3,700 RCRA-regulated facilities that are operated by a hazardous waste generator; about 28,000 fire departments; about 750 private hazardous materials (HAZMAT) response teams; and about 22,000 manufacturers that use in-house personnel who respond to emergency spills of hazardous material within the facility.

Population at Risk. As many as 1,191,950 employees may be at risk from exposure to hazardous waste. Of these 1,191,950 employees, about 12,100 are employed at government-mandated uncontrolled hazardous waste site cleanups, about 52,700 are employed at RCRA-regulated facilities, about 944,500 are firefighters, about 7,500 are private HAZMAT members, and about 176,600 are members of industrial fire brigades that provide in-plant emergency responses to hazardous materials spills. Most of these employees, however, do not work full-time around hazardous waste. In fact, nearly all of the 1,120,580 firefighters and industrial fire brigade personnel who are at risk are annually exposed to hazardous materials for only a few hours. Virtually all of the public firefighters will be directly regulated by either individual state OSHA standards or the U.S. EPA standard.

Feasibility. The proposed standard does not require the use of any large-scale capital equipment that is not currently used in normal work operations. In addition, each proposed provision requires equipment and work practices that are currently available. Thus, OSHA has preliminarily determined that the proposed standard is technologically feasible.

Benefits. Numerous case studies indicate that exposures to hazardous waste cause adverse health consequences. Compliance with the proposed standard, therefore, would prevent employee fatalities and illnesses resulting from these acute and chronic exposures. OSHA has not quantified the expected reduction in the number of these occupational fatalities and illnesses because time was not sufficient to conduct field data collections on current and future exposures to hazardous waste. The probability that a significant number of excess fatalities and illnesses will occur in the absence of a proposed standard was clearly recognized by Congress in its mandate to OSHA to promulgate a standard within one year from the date that the Superfund Amendments and Regulations Act (SARA) became law. Compliance with the proposed standard will reduce the number of these fatalities and injuries by reducing

employee exposures to hazardous waste.

Cost of Compliance. OSHA has used current work practices as its baseline for estimating the cost of full compliance with the proposed standard. This estimated cost does not include any cost that is currently being incurred by employers as part of their work practices because those work practices, and therefore those costs, would continue whether or not the proposed standard were promulgated.

TABLE A—TOTAL ANNUAL COST OF COMPLIANCE FOR THE PROPOSED STANDARD

[Millions of 1986 dollars]

Provision	Government-mandated cleanups of uncontrolled waste sites	RCRA-regulated facilities	Fire departments	Private HAZMAT teams	Fire brigades	Total
Monitoring	2.606					2.606
Medical	1.262	13.686		1.463		16.611
Training:						
(Direct)	(3.148)	(6.929)	(24.052)	(0.317)	(19.526)	(53.982)
(Indirect)	(17.500)	(–)	(–)	(–)	(–)	(17.500)
	20.648	6.929	24.052	0.317	19.526	71.482
Decontamination	2.047		5.667	0.627	3.529	11.890
SCBA	0.225		4.250	0.228	4.979	4.682
Emergency Response Plans		0.157	3.341	0.098	1.819	5.415
Emergency Plan Rehearsal		1.320				1.320
Operating Procedures		0.426				0.426
Plan to Minimize Exposure			5.707	0.153	3.084	8.944
PPE Plan			5.376	0.055	1.040	7.271
TECP			11.200	0.155		11.355
Other	1.362		0.101	0.005		1.468
Total	28.152	22.718	59.714	3.101	34.787	146.472

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis, as derived from ERG report [1, Appendix C].

As seen in Table A, OSHA has estimated that the total annualized incremental cost of full compliance with the proposed standard would be about $148.472 million, of which $28.152 million would be spent by contractors on government-mandated uncontrolled hazardous waste site cleanups, $22.718 million would be spent by operators on RCRA-regulated facility cleanups and operations, $59.714 million would be spent by fire departments, $3.101 million would be spent by private HAZMAT teams, and $34,787 million would be spent by industrial fire brigades.

Although OSHA's proposed standard does not directly cover state and local government employees, SARA requires that the U.S. EPA adopt the standard to cover state and local government employees in non-state plan states, and the OSH Act requires that state plan states adopt a comparable standard to cover state and local government employees. Thus, virtually all of the $59.714 million cost to fire departments will be directly mandated by either the individual states or the U.S. EPA.

The provision with the largest annual cost of compliance is the employee training provision ($71.482 million), followed by the medical surveillance provision ($16.611 million), the provision requiring the decontamination of personnel and equipment ($11.890 million), and the provision governing the use of totally encapsulating chemical protective (TECP) suits ($11.355 million).

Economic Impacts. Most of the incremental cost of compliance will be paid by the government or the private firm responsible for the hazardous waste cleanup and OSHA has calculated that it is economically feasible for every affected industry or group to comply with the proposed standard. There may be an impact upon some labor markets as a consequence of the proposed provision that only sufficiently experienced employees, or employees certified to have received a week's training at an appropriate training facility, will be allowed to work on hazardous waste site. This proposed provision would effectively curtail the current practice of using local subcontractors to provide short-term employees for hazardous waste site cleanups and limit the number of employees eligible to work at hazardous waste sites. This, in turn, may increase future wage rates and the cost of hazardous waste site cleanups.

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, the Assistant Secretary has preliminary assessed the expected impacts of the proposed standard on small entities. Based on the available information, OSHA has determined that the proposed standard may have some impact upon some small entities. The cost of training an employee for five days prior to working at a hazardous waste site cleanup would substantially reduce the use of subcontractor labor on a one-time basis. Thus, some local subcontractors face a potential reduction in hazardous waste site cleanup work. The majority of this subcontracted work will probably be performed by those subcontractors who concentrate upon this type of work. Subcontractors who have performed cleanup work but who do not elect to train employees needed to qualify for future work will probably be excluded from working in this market. OSHA does not have information concerning the importance of this potential loss of future business for some local subcontractors. Therefore, OSHA is soliciting information on this issue and any comments received will be carefully reviewed and evaluated for incorporation into the RIA that will accompany the final rule.

Environmental Impact Assessment—Finding of No Significant Impact

OSHA has reviewed the interim final and proposed standards for hazardous waste operations and emergency response and has concluded that no significant environmental impacts are likely to result from the promulgation of these regulations. OSHA reserves the right to perform additional environmental analyses that may be appropriate as a result of information and comments received in response to this Notice.

In OSHA's December 19, 1986, interim final rule for the protection of workers engaged in hazardous waste and emergency response operations, information was solicited from the public on various issues, including possible environmental impacts on the

regulation. To date, no comments have been received on the question of environmental impact. On the basis of the review detailed below, and in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 [42 U.S.C. 4321, *et seq.*], the Council on Environmental Quality (CEQ) NEPA regulations (40 CFR Part 1500, *et seq.*), and the Department of Labor's implementing regulations for NEPA compliance (29 CFR Part 11), the Assistant Secretary has determined that the proposed rule will not have a significant impact on the external environment.

The preceding description of the proposed standard and its supporting rationale, together with the following discussion, constitute OSHA's environmental assessment and finding of no significant impact.

In most OSHA regulatory actions, two environments may be affected: (1) the workplace environment, and (2) the general human environment external to the workplace, including impacts on air and water pollution, solid waste, and energy and land use. The proposal for hazardous waste operations, however, is unique in that it focuses on the external environment because during these operations, the workplace and the external environment are usually one and the same. The proposed rule is also unusual in that it is the first regulation since the passage of the Occupational Safety and Health Act of 1070 (the Act) to be mandated specifically by Congress under Section 126 of the Superfund Amendments and Reauthorization Act of 1986 (SARA). As indicated in earlier sections of this Notice, the provisions of Section 126 detail those protection that OSHA must include for workers at hazardous waste and emergency response operations. For example, Section 126 requires that provisions for site analysis, training, and medical surveillance, among other, be included in the proposed rule. In addition, there is a wide range of OSHA, EPA, and other standards that already apply to some activities that occur at hazardous waste sites and during emergency response operations. For example, there are existing OSHA standards that cover construction activities, onsite machinery and equipment, selection and use of persons protective equipment, handling of toxic and explosive materials, and general environmental and safety issues such as walking-working surfaces, noise, and illumination. Moreover, the interim final and proposed rules, in many instances, either reflect OSHA regulations, procedures adopted by other federal agencies (e.g., EPA), or practices that are commonly used by those knowledgable in hazardous waste and emergency response operations. To illustrate, Subsection (j)(6) of the proposed standard requires special controls for handling laboratory waste packs, and these controls have already become accepted practice during such operations. To the extent that existing standards, rules, or standard operating procedures are incorporated into this rule, no significant change in the environment is anticipated.

As the interim final and proposed rules largely follow current operating practices, and the technology is available to implement the OSHA provisions, compliance is not anticipated to be a difficulty. For example, section (c)(4)(iii) of the interim final rule proposes that if preliminary site evaluation cannot identify hazards or suspected hazards at the site, a Level B ensemble of personal protective equipment shall be used and direct-reading instruments shall also be carried. OSHA analysis indicates that these procedures are already accepted industry practice.

Potential Positive Environmental Effects. While OSHA does not anticipate any significant environmental effects as a result of this proposal, there is a potential for some beneficial impacts. In general, the work practices and procedures requirements of the proposal improve worker effectiveness and reduce the incidence of employee injury. Their indirect result should be to reduce the likelihood of environmental releases of hazardous materials. (Virtually all provisions of the proposed standard can be categorized in this manner, because once they are implemented, they will have a positive influence on worker safety and performance.) Because these requirements also provide guidance for routine reactions to situations encountered in emergencies, they may help to reduce the severity of such emergencies. Additional potentially positive impacts might be categorized as follows: (1) Direct benefits associated with reduced incidences in, or the severity of, the release of hazardous materials, and (2) indirect benefits associated with the improved flow of information and increased worker awareness of hazardous materials or with improved worker preparedness (either for normal site operations or for unexpected accidents). The following discussion highlights those provisions with potentially beneficial environmental effects.

Paragraph (h)—Monitoring

The requirements of this provision will increase the amount of monitoring for airborne hazardous substances at uncontrolled hazardous waste sites. In some cases, hazardous materials will be detected, and steps will be taken to more quickly control the release to the atmosphere, thereby providing an environmental benefit.

Paragraph (j)—Handling Drums and Containers

A number of specific requirements of this paragraph will result in potentially positive environmental impacts. Relevant subsections include those for inspecting drums and containers; making salvage drums or absorbents available; initiating a spill containment program; emptying unsound drums and containers; requiring ground penetrating radar; and decontamination procedures. These are discussed briefly in the following sections.

Inspection of drums/containers before moving [(j)(1)(ii)]. This section would require that drums and containers be inspected for their integrity prior to handling and moving. Under current practices at hazardous waste clean-up sites, drums and containers are often handled with mechanized equipment (e.g., a barrel grapple on a backhoe arm) before being inspected; if unsound drums rupture or leak, any soil contaminated by the rupture or leak is removed for disposal upon completion of drum handling operations. The proposed provision will, through worker awareness, increase the probability of averting ruptures and leakage. In addition, any hazardous materials in containers that cannot be moved without rupturing will have to be transferred to safe containers (as required in (j)(1)(vii)), with obvious positive environmental effect. These procedures should reduce the volume of contaminated soil requiring disposal; they should also lower the possibility that leachate or runoff will carry contaminants offsite. This requirement does not have an impact on emergency response actions because the routines outlined are already standard procedure.

Availability of salvage drums/absorbents [(j)(1)(vi)]. This provision specifies that salvage drums or containers as well as suitable amounts of proper absorbent be kept available for use in areas where spills, leaks, or ruptures might occur. This requirement will result in increased availability of salvage drums and spill absorbents at uncontrolled hazardous waste sites and

in emergency response situations where spills are imminent, thereby reducing the environmental consequences related to spills of hazardous materials. In those instances where salvage drums/absorbents would have been inadequate without this requirement, there is a potential benefit to the environment.

Implement a spill containment program [(j)(1)(vii)]. The purpose of this provision is to develop a program to be implemented, in the event of a major spill, that would contain and isolate hazardous materials being transferred into containers and drums. To the extent that this program is implemented, there is a potential for reducing the negative environmental effects that occur as a result of spills, leakage, etc. This requirement should reduce the environmental impact of potential spills at clean-up sites.

Empty unsound drums/containers [(j)(1)(viii)]: Unsound containers often rupture during handling operations. This provision requires that drums and containers that cannot be moved without spillage, leakage, or rupture be emptied into a sound container. This requirement should reduce the incidence of drum and container rupture and would provide concomitant environmental benefits.

Use of ground penetrating radar to estimate depth and location of containers [(j)(1)(ix)]. At present, when preliminary investigations at hazardous waste sites indicate that buried drums or containers may be present, ground penetrating systems are frequently used to determine the depth and location of the drums. The requirements of this provision will very likely cause an increase in the use of these systems, thereby reducing the number of instances in which buried containers would go undetected or where undetected containers would be accidently ruptured during excavation activities. Where it applies, the requirement will help prevent accidental ruptures and spills, improve the thoroughness of remedial actions, and benefit the site environment.

Develop decontamination procedures [(k)]. The requirement to clean and decontaminate equipment, personnel, and personal protective equipment will prevent the migration of hazardous substances out of the worksite, thereby benefitting the surrounding environment. It will also eliminate or minimize the contamination of personnel. Decontamination is already standard practice at most cleanup sites.

Inform Contractors of Existing Hazards [(b)(15)]. Under this provision, contractors are to be informed of any "fire, explosion, health or other safety hazards" that are present. By ensuring that contractors know the location and nature of site hazards, this requirement reduces the possibility that contractor activities will result in inadvertent releases or spills of hazardous materials.

Gather Information Before Site Entry [(c)(3)]. Among the various requirements for site evaluation are those for information to be gathered regarding the (a) pathways for hazardous substance dispersion, and (b) status and capability of emergency response teams. These procedural requirements will result in an increased ability to predict and prevent movement offsite of hazardous materials, mitigate emergency situations quickly and effectively, and reduce the possibility or severity of contaminant release. Since the requirements of this section mirror current practices, compliance should be accomplished with little difficulty.

Provide worker training [(e)]. Training is required for all workers who are, or could be, exposed to hazardous substances, health hazardous, or safety hazards. In addition, all managers or supervisors responsible for employees at hazardous waste operations must receive preparatory training. This training assures that site activities will be carried out by qualified personnel, with the knowledge and ability to fulfill their job functions in a safe and responsible manner. To the extent that this occurs, there is a potential benefit to the environment (in emergency response situations, this training should assure a more efficient and effective cleanup of hazardous materials or a quicker response to avert further hazardous material releases).

Informational programs [(i)]. These provisions include requirements for a site safety and health plan, pre-entry briefings, and site inspections. The site plan provides information on key personnel, risk analyses for each site task and operation, employee training assignments, personal protective equipment, medical surveillance, frequency and types of air monitoring, personal monitoring, and environmental sampling techniques, site control measures, decontamination procedures, standard operating procedures, emergency response contingency plans, and entry procedures for confined spaces. These requirements will not directly affect the existing environment; their purpose is to provide workers with the information necessary to carry out their activities safely. To the extent that this occurs, there is a potential benefit to the environment. For example, implementing comprehensive site plans could reduce the incidence of accidental releases of hazardous materials. Similarly, requiring pre-entry briefings will reduce the likelihood of employees unknowingly encountering contaminants or allowing their improper release or disposal.

Emergency response plan [(l)(1)]. The development and implementation of a response plan for emergencies provide for greater worker preparedness. In emergencies, workers should be able to respond more quickly and effectively, thereby benefitting the environment.

Potentially negative impacts. Finally, it is necessary to consider the potential for adverse impacts to the environment that might occur as a result of the proposed standard. In some situations, there may be a potential for negative effects on the environment. Any potential negative impacts, however, are not expected to be significant. To illustrate, negative impacts may occur if there is an increase in the time required to implement specific cleanup and spill response activities, or to implement safe work practices or procedures required by the proposal. Any such effects are likely to be negligible, however. For example, CERCLA sites where site plans have not been developed there could be a potential negative impact as result of the time it might take to develop such a plan. In these cases, however, since site cleanup activities are carried out on a specific EPA timetable, it is not anticipated that OSHA requirements will alter these time frames. In fact, OSHA's intent was expressed clearly in the preamble to the interim final rule: ". . . It is not OSHA's intention that emergency actions necessary to protect the public safety and health be prevented because in a particular circumstance it is not feasible to carry out particular requirements of this standard in the time needed to respond to the emergency." In emergency response situations, therefore, OSHA work practices and procedures should not cause significant delays in response or slow the mitigation of environmental effects because, in most cases, response teams already have established operating procedures similar to those in OSHA's proposed rule.

Another potential negative impact may result from the requirement that salvage drums and absorbents be readily available. This may increase the number of repacked hazardous waste drums and the amount of spent absorbent used, which could add to the amount of material that would require safe disposal. Similarly, the requirement for implementation of proper decontamination procedures for all equipment, personal protective gear, and personnel at hazardous waste

emergencies, cleanup sites, and RCRA sites may result in an increase in the frequency and use of decontamination materials. This, in turn, could generate a larger volume of spent decontamination fluids which would then require proper handling and disposal. Again, any such impact should be negligible since decontamination is largely standard procedure for most hazardous waste operations. A possible exception may be during activities that take place in the early stages of site evaluation before cleanup, or at spill responses, where decontamination procedures are not yet standardized.

Conclusion. To the extent that the proposed work practices and procedures are implemented, increased worker awareness and preparedness will result in a safer and more healthful work environment, which may indirectly benefit the environment. Any negative impacts that may occur as a result of the implementation of these work practices or procedures are expected to be negligible. Based upon this assessment and the information presented earlier in the preamble, OSHA concludes that no significant environmental changes are anticipated as a result of the proposal. OSHA will review any comments or information received in response to this Notice and reserves the right to perform additional environmental analysis, if necessary.

VI. International Trade

OSHA has evaluated the potential impact that this proposed standard would have upon international trade. OSHA has determined that the proposed standard would have a minimal potential impact upon the prices of products, so that there would be no effective change in the level of exported or imported products.

VII. Recordkeeping

The proposed standard contains "collection of information" (recordkeeping) requirements pertaining to preparation of a written safety and health plan, site characterization and analysis, site control, training, medical surveillance, emergency controls, work practices, PPE, monitoring, informational programs, handling drums and containers, decontamination, emergency response planning, and emergency response drills. In accordance with 5 CFR Part 1320 (Controlling Paperwork Burdens on the Public), OSHA has submitted the proposed recordkeeping requirements to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments regarding the proposed recordkeeping requirements may be directed to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer of the Occupational Safety and Health Administration, Washington, DC 20503.

VIII. State Plan States

This Federal Register document proposes to amend an interim final rule (§ 1910.120, "Hazardous Waste Operations and Emergency Response") in Subpart H of 29 CFR Part 1910, OSHA's general industry standards on hazardous materials. The 25 States with their own OSHA approved occupational safety and health plans must develop a comparable standard applicable to both the private and public (State and local government employees) sectors within six months of the publication date of a permanent final rule or show OSHA why there is no need for action, e.g., because an existing state standard covering this area is already "at least as effective" as the new Federal standard. These states are Alaska, Arizona, California, Connecticut (for state and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York (for state and local government employees only), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming. After the effective date of a final Federal rule, until such time as a state standard is promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate, in these states.

IX. Public Participation—Public Hearings

Interested persons are invited to submit written data, views, and arguments with respect to OSHA's proposed rule. These comments must be postmarked on or before October 5, 1987 and submitted in quadruplicate to the Docket Officer, Docket S–760A, Room N–3670, U.S. Department of Labor, Washington, DC 20210. Written submissions must clearly identify the specific provisions of the proposal which are addressed and the position taken with respect to each issue.

The data, views, and arguments that are submitted will be available for public inspection and copying at the above address. All timely submissions received will be made a part of the record of this proceeding. The preliminary regulatory impact assessment, regulatory flexibility assessment, and the exhibits cited in this document will be available for public inspection and copying at the above address. OSHA invites comment concerning the conclusions reached in the economic impact assessment.

OSHA recognizes that there may be interested persons who, through their knowledge of safety or their experience in the operations involved, would wish to endorse or support certain provisions of the standard. OSHA welcomes such supportive comments, including any pertinent accident data or cost information which may be available, in order that the record of this rulemaking will present a balanced picture of the public response on the issues involved.

Notice of Intention to Appear at the Informal Hearings

Pursuant to section 6(b)(3) of the OSHA Act, informal public hearings will be held on this proposal as follows (see the beginning of this notice for specific addresses):

October 13–16 and 20–23, 1987; Washington, DC

October 27–30, 1987; San Francisco, CA

Persons desiring to participate at the informal public hearing must file a notice of intention to appear by September 21, 1987. The notice of intention to appear must contain the following information:

1. The name, address, and telephone number of each person to appear;
2. The capacity in which the person will appear;
3. The city where the person intends to appear;
4. The approximate amount of time required for the presentation;
5. The specific issues that will be addressed;
6. A detailed statement of the position that will be taken with respect to each issue addressed; and
7. Whether the party intends to submit documentary evidence and, if so, a detailed summary of the evidence.

Filing of Testimony and Evidence Before the Hearing

Any party requesting more than ten (10) minutes for presentation at the informal public hearing, or who will submit documentary evidence, must provide in quadruplicate, the complete text of testimony including all documentary evidence to be presented at the informal public hearing. These materials must be provided to Mr. Thomas Hall, OSHA Division of Consumer Affairs at the address given in the "ADDRESSES" section of this notice by October 5, 1987.

Each submission will be reviewed in light of the amount of time request in the Notice of Intention to Appear. In instances where the information contained in the submission does not

justify the amount of time requested, a more appropriate amount of time will be allocated and the participant will be notified of that fact prior to the informal public hearings.

Any party who has not substantially complied with the above requirement may be limited to a ten-minute presentation and may be requested to return for questioning at a later time.

Any party who has not filed a notice of intention to appear may be allowed to testify, as time permits, at the discretion of the Administrative Law Judge, but will not be allowed to question witnesses.

Notices of intention to appear, testimony and evidence will be available for inspection and copying at the Docket Office, Docket S–760A, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–3670, 200 Constitution Avenue, NW., Washington, DC 20210. (202) 523–7894.

Conduct of Hearings

The informal public hearings will commence at 9:30 a.m. at the scheduled locations with the resolution of any procedural matters relating to the proceeding. The informal public hearing will be presided over by an Administrative Law Judge who will have the power necessary and appropriate to conduct a full and fair informal public hearing as provided in 29 CFR Part 1911, include the power to:

1. Regulate the course of the proceedings;

2. To dispose of procedural requests, objections and comparable matters;

3. To confine the presentation to the matters pertinent to the issues raised;

4. To regulate the conduct of those present at the informal public hearing by appropriate means;

5. In the Judge's discretion, to question and permit questioning of any witness; and

6. In the Judge's discretion, to keep the record open for a reasonable time to receive written information and additional data, views, and arguments from any person who has participated in the oral proceedings.

Following the close of the informal public hearing, the presiding Administrative Law Judge will certify the record of the informal public hearing to the Assistant Secretary of Labor for Occupational Safety and Health. The notice of proposed rulemaking will be reviewed in light of all testimony and written submissions received as part of the record, and the proposed standard will be modified or a determination will be made not to modify the proposed standard based on the entire record of the proceeding.

List of Subjects in 29 CFR Part 1910

Containers, Drums, Emergency response, Flammable and combustible liquids, Hazardous materials, Hazardous substances, Hazardous wastes, Incorporation by reference, Materials handling and storage, Personal protective equipment, Storage areas, Training, Waste disposal.

Authority

This document has been prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Pursuant to section 126 of the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99–499), sections 6 and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 657), section 4 of the Administrative Procedures Act (5 U.S.C. 553), 29 CFR Part 1911 and Secretary of Labor's Order 9–83 (48 FR 35736), it is proposed to amend 29 CFR Part 1910 by revising § 1910.120, Hazardous Waste Operations, as set forth below.

Signed at Washington, DC this 5th day of August 1987.

John A. Pendergrass,

Assistant Secretary of Labor.

For the reasons set out in the preamble, Title 29, Part 1910, of the Code of Federal Regulations is amended as follows:

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

1. The authority citation for Subpart H of Part 1910 is proposed to be amended by adding the following citation:

Authority:

* * * * *

Section 1910.120 issued under the authority of Section 126 of the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99–499), Sections 6 and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 657), sections 3 and 4 of the Administrative Procedure Act (5 U.S.C. 552(a), 553), 29 CFR Part 1911 and Secretary of Labor's Order 9–83 (48 FR 35736).

2. Section 1910.120 of Title 29 of the Code of Federal Regulations is proposed to be revised to read as follows:

§ 1910.120 Hazardous waste operations and emergency response.

(a) *Scope, application, and definitions*—(1) *Scope for operations other than emergency response.* This section covers employers and employees engaged in the following operations:

(i) Operations involving hazardous substances that are conducted under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended (42 U.S.C. 9601 *et seq.*) (CERCLA), including initial investigations at CERCLA sites before the presence or absence of hazardous substances has been ascertained;

(ii) Clean-up operations involving major corrective actions conducted under the Resource Conservation and Recovery Act of 1976 as amended (42 U.S.C. 6901 *et seq.*) (RCRA);

(iii) Operations at hazardous waste sites that have been designated for clean-up by state or local governmental authorities; and

(iv) Storage, treatment, and disposal facilities involving hazardous wastes regulated under 40 CFR Parts 264 and 265 pursuant to RCRA; and

(2) *Scope for emergency response operations.* This section also covers employers whose employees have a reasonable possibility of engaging in emergency response operations for releases of, or substantial threats of releases of, hazardous substances without regard to the location of the hazard.

(3) *Application.* (i) All requirements of Part 1910 and Part 1926 of Title 29 of the Code of Federal Regulations apply pursuant to their terms to hazardous waste operations whether covered by this section or not. In addition, the provisions of this section apply to operations covered by this section. If there is a conflict or overlap, the provision more protective of employee safety and health shall apply without regard to 29 CFR 1910.5(c)(1).

(ii) All paragraphs of this section except paragraph (o) apply to operations involving hazardous substances conducted under CERCLA, major corrective actions taken in clean-up operations under RCRA, and hazardous waste operations that have been designated for clean-up by state or local governmental authorities.

(iii) Only the requirements of paragraphs (l) and (o) of this section apply to those operations involving hazardous waste treatment, storage, and disposal facilities regulated under 40 CFR Parts 264 and 265.

Exceptions: For small quantity generators and generators with less than 90 days accumulation of hazardous wastes who have emergency response teams that respond to releases of, or substantial threats of releases of, hazardous substances, only paragraph (l) is applicable. Small quantity generators and generators with less than 90 days

accumulation of hazardous wastes who do not have emergency response teams that respond to releases of, or substantial threats of releases of, hazardous substances are exempt from the regulations of this section.

(iv) Paragraph (l) of this section applies to all emergency response operations for releases of, or substantial threats of releases of, hazardous substances including those releases of or substantial threats of releases that occur at worksites other than those sites identified in paragraphs (a)(2)(i) through (a)(2)(iii) of this section.

(4) *Definitions. "Buddy system"* means a system of organizing employees into work groups in such a manner that each employee of the work group is designated to observe the activities of at least one other employee in the work group. The purpose of the buddy system is to provide rapid assistance to those other employees in the event of an emergency.

"Decontamination" means the removal of hazardous substances from employees and their equipment to the extent necessary to preclude the occurrence of foreseeable adverse health effects.

"Emergency response" means a coordinated response effort by employees from outside the immediate release area or by outside responders (i.e., mutual aid groups, local fire departments, etc.) to an occurrence which results, or is likely to result, in an uncontrolled release of a hazardous substance. Responses to incidental releases of hazardous substances where the substance can be absorbed, neutralized, or otherwise controlled at the time of release by employees in the immediate release area are not considered to be emergency responses within the scope of this standard. Responses to releases of hazardous substances where the concentration of a hazardous substance is below the established permissible exposure limits established in this standard are not considered to be emergency responses.

"Established exposure levels" means the inhalation or dermal permissible exposure limit specified in 29 CFR Part 1910, Subpart Z; or if none is specified, the exposure limits in "NIOSH Recommendations for Occupational Health Standards" dated 1986 incorporated by reference, or if neither of the above is specified, the standards specified by the American Conference of Governmental Industrial Hygienists in their publication "Threshold Limit Values and Biological Exposure Indices for 1986–87" dated 1986 incorporated by reference. The two documents incorporated by reference are available for purchase from the following:

NIOSH, Publications Dissemination, Division of Standards Development and Technology Transfer, National Institute for Occupational Safety and Health, 4676 Columbia Parkway, Cincinnati, OH 45226, (513) 841–4287

American Conference of Governmental Industrial Hygienists, 6500 Glenway Ave., Building D–7, Cincinnati, OH, 45211–4438, (513) 661–7881

and are available for inspection and copying at the OSHA Docket Office, Docket No. S–760, Room N–3671, 200 Constitution Ave., NW., Washington, DC 20210.

"Facility" means (A) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, storage container, motor vehicle, rolling stock, or aircraft, or (B) any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel.

"Hazardous materials (HAZMAT) team" means an organized group of employees, designated by the employer, who are knowledgeable and specifically trained and skilled to handle and control leaking containers or vessels, use and select special chemical protective clothing and perform other duties associated with accidental releases of hazardous substances. The team members perform responses to releases of hazardous substances for the purpose of control or stabilization of the release. A HAZMAT team is not a fire brigade nor is a typical fire brigade a HAZMAT team. A HAZMAT team, however, may be a separate component of a fire brigade.

"Hazardous substance" means any substance designated or listed under (A) through (D) below, exposure to which results or may result in adverse affects on the health or safety of employees:

(A) Any substance defined under section 101(14) of CERCLA;

(B) Any biological agent and other disease-causing agent as defined in section 104 (33) of CERCLA;

(C) Any substance listed by the U.S. Department of Transportation as hazardous materials under 49 CFR 172.101 and appendices; and

(D) Hazardous waste.

"Hazardous waste" means (A) a waste or combination of wastes as defined in 40 CFR 261.3, or (B) those substances defined in 49 CFR 171.8.

"Hazardous waste operation" means any operation conducted within the scope of this standard involving employee exposure to hazardous wastes, hazardous substances, or any combination of hazardous wastes and hazardous substances.

"Hazardous waste site" or "site" means any facility or location within the scope of this standard at which hazardous waste operations take place.

"Health hazard" means a chemical, mixture of chemicals or a pathogen for which there is statistically significant evidence based on at least one study conducted in accordance with established scientific principles that acute or chronic health effects may occur in exposed employees. The term "health hazard" includes chemicals which are carcinogens, toxic or highly toxic agents, reproductive toxins, irritants, corrosives, sensitizers, hepatotoxins, nephrotoxins, neurotoxins, agents which act on the hematopoietic system, and agents which damage the lungs, skin, eyes, or mucous membranes. Further definition of the terms used above can be found in Appendix A to 29 CFR 1910.1200.

"IDLH" or *"Immediately dangerous to life or health"* means an atmospheric concentration of any toxic, corrosive or asphyxiant substance that poses an immediate threat to life or would cause irreversible or delayed adverse health effects or would interfere with an individual's ability to escape from a dangerous atmosphere.

"Oxygen deficiency" means that concentration of oxygen by volume below which air supplying respiratory protection must be provided. It exists in atmospheres where the percentage of oxygen by volume is less than 19.5 percent oxygen.

"Permissible exposure limit" means the inhalation or dermal permissible exposure limit specified in 29 CFR Part 1910, Subpart Z.

"Post emergency response" means that portion of an emergency response performed after the immediate threat of a release has been stabilized or eliminated and clean-up of the site has begun. If post emergency response is performed by an employer's own employees as a continuation of initial emergency response, it is considered to be part of the initial response and not post emergency response.

"Qualified person" means a person with specific training, knowledge and experience in the area for which the person has responsibility.

"Site safety and health supervisor (or official)" means the individual located on a hazardous waste site who is responsible to the employer and has the authority and knowledge necessary to implement the site safety and health

plan and verify compliance with applicable safety and health requirements.

"Small quantity generator" means a generator of hazardous wastes who in any calendar month generates no more than 1000 kilograms (2210 pounds) of hazardous waste in that month.

(b) *General requirements*—(1) *Safety and health program*—(i) *General.* Employers shall develop and implement a written safety and health program for their employees involved in hazardous waste operations. The program shall be designed to identify, evaluate, and control safety and health hazards and provide for emergency response for hazardous waste operations. The program shall incorporate as separate chapter the following:

(A) Organizational structure chapter;

(B) A comprehensive workplan chapter; and

(C) A site-specific safety and health plan chapter.

(ii) *Organizational structure chapter.* (A) The organizational structure chapter shall establish the specific chain of command and specify the overall responsibilities of supervisors and employees. It shall include at a minimum, the following elements:

(*1*) A general supervisor who has the responsibility and authority to direct all hazardous waste operations.

(*2*) A site safety and health supervisor who has the responsibility and authority to develop and implement the site safety and health plan and verify compliance.

(*3*) All other personnel needed for hazardous waste site operations and emergency response and their general functions and responsibilities.

(*4*) The lines of authority, responsibility, and communication.

(B) The organizational structure shall be reviewed and updated as necessary to reflect the current status of waste site operations.

(C) The original organizational structure plan and any changes to the overall organizational structure shall be made available to all affected employees.

(iii) *Comprehensive workplan chapter.* The comprehensive workplan chapter shall address the tasks and objectives of site operations and the logistics and resources required to reach those tasks and objectives.

(A) The comprehensive workplan shall address anticipated clean-up activities as well as normal operating procedures.

(B) The comprehensive workplan shall define work tasks and objectives and identify the methods for accomplishing those tasks and objectives.

(C) The comprehensive workplan shall establish personnel requirements for implementing the plan.

(D) The comprehensive workplan shall provide for the implementation of the training required in paragraph (e) of this section.

(E) The comprehensive workplan shall provide for the implementation of the required informational programs required in paragraph (i) of this section.

(F) The comprehensive workplan shall provide for the implementation of the medical surveillance program described in paragraph (f) of this section.

(iv) *Site-specific safety and health plan chapter.* The site safety and health plan, which is part of the overall safety and health program shall be available on the site for inspection by employees, their designated representatives, and OSHA personnel, shall address the safety and health hazards of each phase of site operation; and include the requirements and procedures for employee protection.

(A) The site safety and health plan, as a minimum, shall address the following:

(*1*) Names of key personnel and alternates responsible for site safety and health, including a site safety and health supervisor.

(*2*) A safety and health risk or hazard analysis for each site task and operation found in the workplan.

(*3*) Employee training assignments to assure compliance with paragraph (e) of this section.

(*4*) Personal protective equipment to be used by employees for each of the site tasks and operations being conducted as required by the personal protective equipment program in paragraph (g)(5) of this section.

(*5*) Medical surveillance requirements in accordance with the program in paragraph (f) of this section.

(*6*) Frequency and types of air monitoring, personnel monitoring, and environmental sampling techniques and instrumentation to be used including methods of maintenance and calibration of monitoring and sampling equipment to be used.

(*7*) Site control measures in accordance with the site control program required in paragraph (d) of this section.

(*8*) Decontamination procedures in accordance with paragraph (k) of this section.

(*9*) An emergency response plan meeting the requirements of paragraphs (l)(1)(i) and (l)(1)(ii) of this section for safe and effective responses to emergencies, including the necessary PPE and other equipment.

(*10*) Confined space entry procedures.

(B) Pre-entry briefings shall be held prior to initiating any site activity and at such other times as necessary to ensure that employees are apprised of the site safety and health plan and that this plan is being followed.

(C) Inspections shall be conducted by the site safety and health supervisor or, in the absence of that individual, another individual acting on behalf of the employer as necessary to determine the effectiveness of the site safety and health plan. Any deficiencies in the effectiveness of the site safety and health plan shall be corrected by the employer.

(*11*) When major spills may be anticipated due to the type of work involved, a spill containment program meeting the requirements of paragraph (j)(1) of this section shall be included.

(2) *Site excavation.* Site excavations created during initial site preparation or during hazardous waste operations shall be shored or sloped as appropriate to prevent accidental collapse in accordance with Subpart P of 29 CFR Part 1926.

(3) *Contractors and sub-contractors.* (i) An employer who retains contractor or sub-contractor services for work in hazardous waste operations shall inform those contractors, sub-contractors, or their representatives of any potential fire, explosion, health, safety or other hazards of the hazardous waste operation that have been identified by the employer including the employer's information program.

(ii) The safety and health program required in paragraph (b)(1) of this section shall be made available to any subcontractor or its representative who will be involved with the hazardous waste operation and employees, their designated representatives, and OSHA personnel.

(c) *Site characterization and analysis.* Hazardous waste sites shall be evaluated in accordance with this paragraph to identify specific site hazards and to determine the appropriate safety and health control procedures needed to protect employees from the identified hazards.

(1) A preliminary evaluation of a site's characteristics shall be performed prior to site entry by a qualified person in order to aid in the selection of appropriate employee protection methods prior to site entry. Immediately after initial site entry, a more detailed evaluation of the site's specific characteristics shall be performed by a qualified person in order to further identify existing site hazards and to further aid in the selection of the appropriate engineering controls and

personal protective equipment for the tasks to be performed.

(2) All suspected conditions that may pose inhalation or skin absorption hazards that are immediately dangerous to life or health (IDLH) or other conditions that may cause death or serious harm, shall be identified during the preliminary survey and evaluated during the detailed survey. Examples of such hazards include, but are not limited to, confined space entry, potentially explosive or flammable situations, visible vapor clouds, or areas where biological indicators such as dead animals or vegetation are located.

(3) The following information to the extent available shall be obtained by the employer prior to allowing employees to enter a site:

(i) Location and approximate size of the site.

(ii) Description of the response activity and/or the job task to be performed.

(iii) Duration of the planned employee activity.

(iv) Site topography.

(v) Site accessibility by air and roads.

(vi) Pathways for hazardous substance dispersion.

(vii) Present status and capabilities of emergency response teams that would provide assistance to hazardous waste clean-up site employees at the time of an emergency.

(viii) Hazardous substances and health hazards involved or expected at the site and their chemical and physical properties.

(4) Personal protective equipment (PPE) shall be provided and used during initial site entry in accordance with the following requirements:

(i) Based upon the results of the preliminary site evaluation, an ensemble of PPE shall be selected and used during initial site entry which will provide protection to a level of exposure below established permissible exposure limits for known or suspected hazardous substances and health hazards, and which will provide protection against other known and suspected hazards identified during the preliminary site evaluation.

(ii) During initial site entry an escape self-contained breathing apparatus of at least five minutes' duration shall be carried by employees or kept available at their immediate work station if positive-pressure self-contained breathing apparatus is not used as part of the entry ensemble.

(iii) If the preliminary site evaluation does not produce sufficient information to identify the hazards or suspected hazards of the site, an ensemble providing protection equivalent to Level B PPE shall be provided as minimum protection, and direct reading instruments shall be used as appropriate for identifying IDLH conditions. (See Appendix B for a description of Level B hazards and the requirements for Level B protective equipment.)

(iv) Once the hazards of the site have been identified, the appropriate PPE shall be selected and used in accordance with paragraph (g) of this section.

(5) The following monitoring shall be conducted during initial site entry when the site evaluation produces information that shows the potential for ionizing radiation or IDLH conditions, or when the site information is not sufficient to reasonably eliminate these possible conditions:

(i) Monitoring for hazardous levels of ionizing radiation.

(ii) Monitoring the air with appropriate test equipment for IDLH and other conditions that may cause death or serious harm (combustible or explosive atmospheres, oxygen deficiency, toxic substances).

(iii) Visually observing for signs of actual or potential IDLH or other dangerous conditions.

(6) Once the presence and concentrations of specific hazardous substances and health hazards have been established, the risks associated with these substances shall be identified. Employees who will be working on the site shall be informed of any risks that have been identified. In situations covered by the Hazard Communication Standard, 29 CFR 1910.1200, training required by that standard need not be duplicated.

Note.—Risks to consider include, but are not limited to:

a. Exposures exceeding the appropriate established Permissible Exposure Limits (PELs), Threshold Limit Values (TLVs), or Recommended Exposure Limits (RELs), etc.

b. IDLH Concentrations.

c. Potential Skin Absorption and Irritation Sources.

d. Potential Eye Irritation Sources.

e. Explosion Sensitivity and Flammability Ranges.

(7) Any information concerning the chemical, physical, and toxicologic properties of each substance known or expected to be present on site that is available to the employer and relevant to the duties an employee is expected to perform shall be made available to the affected employees prior to the commencement of their work activities.

(8) An ongoing air monitoring program in accordance with paragraph (h) of this section shall be implemented after site characterization has determined the site is safe for the start-up of operations.

(d) *Site control.* Appropriate site control procedures shall be implemented before clean-up work begins to control employee exposure to hazardous substances.

(1) A site control program for protecting employees which is part of the employer's safety and health program required in paragraph (b) of this section shall be developed during the planning stages of a hazardous waste operation clean-up and modified as necessary as new information becomes available.

(2) The site control program shall, as a minimum, include: A site map; site work zones; the use of a "buddy system"; site communications; the standard operating procedures or safe work practices; and, identification of the nearest medical assistance.

(e) *Training.* Initial or review training meeting the requirements of this paragraph shall be provided to employees before they are permitted to engage in hazardous waste operations that could expose them to hazardous substances, safety, or health hazards.

(1) All employees (such as but not limited to equipment operators and general laborers) exposed to hazardous substances, health hazards, or safety hazards shall be thoroughly trained in the following:

(i) Names of personnel and alternates responsible for site safety and health;

(ii) Safety, health and other hazards present on the site;

(iii) Use of personal protective equipment;

(iv) Work practices by which the employee can minimize risks from hazards;

(v) Safe use of engineering controls and equipment on the site;

(vi) Medical surveillance requirements including recognition of symptoms and signs which might indicate overexposure to hazards; and

(vii) The contents of paragraphs (7) through (10) of the site safety and health plan set forth in paragraph (b)(1)(iv)(A) of this section.

(2) All employees shall at the time of job assignment receive a minimum of 40 hours of initial instruction off the site, and a minimum of three days of actual field experience under the direct supervision of a trained, experienced supervisor. Workers who may be exposed to unique or special hazards shall be provided additional training. The level of training provided shall be consistent with the employee's job function and responsibilities.

(3) On-site management and supervisors directly responsible for, or who supervise employees engaged in,

hazardous waste operations shall receive training as provided in paragraph (e)(1) and (e)(2) of this section, and at least eight additional hours of specialized training at the time of job assignment on such topics as, but not limited to, the employer's safety and health program and the associated employee training program, personal protective equipment program, spill containment program, and health hazard monitoring techniques.

(4) Trainers shall be qualified to instruct employees about the subject matter that is being presented in training.

Note.—Trainers can show their qualifications by having the knowledge or training equivalent to a level of training higher than the level they are presenting. This may be shown by academic degrees, training courses completed and/or work experience.

(5) Employees shall not be permitted to participate in field activities until they have been trained to a level required by their job function and responsibility.

(6) Employees and supervisors that have received and successfully completed the training and field experience specified in paragraphs (e)(1), (e)(2) and (e)(3) of this section shall be certified by their instructor as having completed the necessary training. A written certificate shall be given to each person so certified. Any person who has not been so certified nor meets the requirements of paragraph (e)(9) of this section shall be prohibited from engaging in hazardous waste operations.

(7) Employees who are engaged in responding to hazardous emergency situations at hazardous waste clean-up sites that may expose them to hazardous substances shall be trained in how to respond to expected emergencies.

(8) Employees specified in paragraph (e)(1), and managers and supervisors specified in paragraph (e)(3) of this section, shall receive eight hours of refresher training annually on the items specified in paragraph (e)(1) and/or (e)(3) of this section and other relevant topics.

(9) Employers who can show that an employee's work experience and/or training has resulted in initial training equivalent to that training required in paragraphs (e)(1), (e)(2), and (e)(3) of this section shall not be required to provide the initial training requirements of those paragraphs. Equivalent training includes the training that existing employees might have already received from actual site work experience.

(f) *Medical surveillance.* Medical surveillance shall be provided in accordance with this paragraph for employees exposed or potentially exposed to hazardous substances or health hazards or who wear respirators.

(1) *Employees covered.* A medical surveillance program which is part of the employer's safety and health program required in paragraph (b) of this section or required in paragraphs (l)(4) or (o)(3) of this section, shall be instituted by the employer for:

(i) All employees who are or may be exposed to hazardous substances or health hazards at or above the established exposure levels for these substances, without regard to the use of respirators, for 30 days or more a year,

(ii) All employees who wear a respirator for 30 days or more a year or as required by § 1910.134.

(iii) All employees who are injured due to overexposure from an emergency incident involving hazardous substances or health hazards.

(2) *Frequency of medical examinations and consultations.* Medical examinations and consultations shall be made available by the employer to each employee covered under paragraph (f)(1) of this section on the following schedules:

(i) For employees covered under paragraphs (f)(1)(i) and (f)(1)(ii):

(A) Prior to assignment;

(B) At least once every twelve months for each employee covered;

(C) At termination of employment or reassignment to an area where the employee would not be covered if the employee has not had an examination within the last six months;

(D) As soon as possible upon notification by an employee that the employee has developed signs or symptoms indicating possible overexposure to hazardous substances or health hazards or that the employee has been exposed above the established exposure levels in an emergency situation;

(E) At more frequent times, if the examining physician determines that an increased frequency of examination is medically necessary.

(ii) For employees covered under paragraph (f)(1)(iii) and for all employees who may have been exposed during an emergency incident to hazardous substances at concentrations above the established exposure levels without the necessary personal protective equipment being used:

(A) As soon as possible following the emergency incident;

(B) Additional times, if the examining physician determines that follow-up examinations or consultations are medically necessary.

(3) *Content of medical examinations and consultations.* (i) Medical examinations required by paragraph (f)(2) of this section shall include a medical and work history (or updated history if one is in the employee's file) with special emphasis on symptoms related to the handling of hazardous substances and health hazards, and to fitness for duty including the ability to wear any required PPE under conditions (i.e., temperature extremes) that may be expected at the work site.

(ii) The content of medical examinations or consultations made available to employees pursuant to paragraph (f) shall be determined by the examining physician.

(4) *Examination by a physician and costs.* All medical examinations and procedures shall be performed by or under the supervision of a licensed physician, and shall be provided without cost to the employee, without loss of pay, and at a reasonable time and place.

(5) *Information provided to the physician.* The employer shall provide one copy of this standard and its appendices to the examining physician, and in addition the following for each employee:

(i) A description of the employee's duties as they relate to the employee's exposures.

(ii) The employee's exposure levels or anticipated exposure levels.

(iii) A description of any personal protective equipment used or to be used.

(iv) Information from previous medical examinations of the employee which is not readily available to the examining physician.

(v) Information required by § 1910.134.

(6) *Physician's written opinion.* (i) The employer shall obtain and furnish the employee with a copy of a written opinion from the examining physician containing the following:

(A) The results of the medical examination and tests if requested by the employee.

(B) The physician's opinion as to whether the employee has any detected medical conditions which would place the employee at increased risk of material impairment of the employee's health from work in hazardous waste operations or emergency response, or from respirators use as required by § 1910.134.

(C) The physician's recommended limitations upon the employee's assigned work.

(D) A statement that the employee has been informed by the physician of the results of the medical examination and any medical conditions which require further examination or treatment.

(ii) The written opinion obtained by the employer shall not reveal specific findings or diagnoses unrelated to occupational exposure.

(7) *Recordkeeping.* (i) An accurate record of the medical surveillance required by paragraph (f) of this section shall be retained. This record shall be retained for the period specified and meet the criteria of 29 CFR 1910.20.

(ii) The record required in paragraph (f)(7)(i) of this section shall include at least the following information:

(A) The name and social security number of the employee;

(B) Physicians' written opinions, recommended limitations, and results of examinations and tests;

(C) Any employee medical complaints related to exposure to hazardous substances;

(D) A copy of the information provided to the examining physician by the employer, with the exception of the standard and its appendices.

(g) *Engineering controls, work practices, and personal protective equipment for employee protection.* Engineering controls, work practices, personal protective equipment, or a combination of these shall be implemented in accordance with this paragraph to protect employees from exposure to hazardous substances and health hazards.

(1) *Engineering controls, work practices and PPE for substances regulated in Subpart Z.* (i) Engineering controls and work practices shall be instituted to reduce and maintain employee exposure to or below the permissible exposure limits for substances regulated by 29 CFR Part 1910, Subpart Z, except to the extent that such controls and practices are not feasible.

Note.—Engineering controls which may be feasible include the use of pressurized cabs or control booths on equipment, and/or the use of remotely operated material handling equipment. Work practices which may be feasible are removing all non-essential employees from potential exposure during opening of drums, wetting down dusty operations and locating employees upwind of possible hazards.

(ii) Whenever engineering controls and work practices are not feasible, PPE shall be used to reduce and maintain employee exposures to or below the permissible exposure limits or dose limits for substances regulated by 29 CFR Part 1910, Subparts G and Z.

(iii) The employer shall not implement a schedule of employee rotation as a means of compliance with permissible dose limits except when there is no other feasible way of complying with the airborne or dermal dose limits for ionizing radiation.

(2) *Engineering controls, work practices, and personal protective equipment for substances not regulated in Subpart Z.* An appropriate combination of engineering controls, work practices, and personal protective equipment shall be established to reduce and maintain employee exposure to or below appropriate exposure levels for hazardous substances and health hazards not regulated by 29 CFR Part 1910, Subparts G and Z taking into account the established exposure levels.

(3) *Personal protective equipment selection.* (i) Personal protective equipment (PPE) shall be selected and used which will protect employees from the hazards and potential hazards they are likely to encounter as identified during the site characterization and analysis.

(ii) Personal protective equipment selection shall be based on an evaluation of the performance characteristics of the PPE relative to the requirements and limitations of the site, the task-specific conditions and duration, and the hazards and potential hazards identified at the site.

(iii) Positive pressure self-contained breathing apparatus, or positive pressure air-line respirators equipped with an escape air supply, shall be used in IDLH conditions.

(iv) Totally-encapsulating chemical protective suits (Protection equivalent to Level A protection as specified in Appendix B) shall be used in conditions where skin absorption of a hazardous substance may result in an IDLH situation.

(v) The level of protection provided by PPE selection shall be increased when additional information on site conditions show that increased protection is necessary to reduce employee exposures below established permissible exposure limits for hazardous substances and health hazards. (See Appendix B for guidance on selecting PPE ensembles.)

Note.—The level of employee protection provided may be decreased when additional information on site conditions show that decreased protection will not result in increased hazardous exposures to employees.

(vi) Personal protective equipment shall be selected and used to meet the requirements of 29 CFR Part 1910, Subpart I, and additional requirements specified in this section.

(4) *Totally-encapsulating chemical protective suits.* (i) Totally-encapsulating suit materials used for Level A protection shall protect employees from the particular hazards which are identified during site characterization and analysis.

(ii) Totally-encapsulating suits shall be capable of maintaining positive air pressure. (See Appendix A.)

(iii) Totally-encapsulating suits shall be capable of preventing inward test gas leakage of more than 0.5 percent. (See Appendix A.)

(5) *Personal protective equipment (PPE) program.* A written personal protective equipment program, which is part of the employer's safety and health program required in paragraph (b) of this section or required in paragraph (1)(4) of this section, shall be established for hazardous waste operations which shall be part of the site-specific safety and health plan. The PPE program shall address the following elements:

(i) Site hazards,

(ii) PPE selection,

(iii) PPE use,

(iv) Work mission duration,

(v) PPE maintenance and storage,

(vi) PPE decontamination,

(vii) PPE training and proper fitting,

(viii) PPE donning and doffing procedures,

(ix) PPE inspection,

(x) PPE in-use monitoring,

(xi) Evaluation of the effectiveness of the PPE program, and

(xii) Limitations during temperature extremes, and other appropriate medical considerations.

(h) *Monitoring.* Monitoring shall be performed in accordance with this paragraph to assure proper selection of engineering controls, work practices and personal protective equipment so that employees are not exposed to levels which exceed established permissible exposure limits for hazardous substances.

(1) Air monitoring shall be used to identify and quantify airborne levels of hazardous substances and health hazards in order to determine the appropriate level of employee protection needed on site.

(2) Upon initial entry, representative air monitoring shall be conducted to identify any IDLH condition, exposure over established exposure levels, exposure over a radioactive material's dose limits or other dangerous condition such as the presence of flammable atmospheres or oxygen-deficient environments.

(3) Periodic monitoring shall be conducted when the possibility of an IDLH condition or flammable atmosphere has developed or when there is indication that exposures may have risen since prior monitoring. Situations where it shall be considered

whether the possibility that exposures have risen are when:

(i) Work begins on a different portion of the site.

(ii) Contaminants other than those previously identified are being handled.

(iii) A different type of operation is initiated (e.g., drum opening as opposed to exploratory well drilling).

(iv) Employees are handling leaking drums or containers or working in areas with obvious liquid contamination (e.g., a spill or lagoon).

(v) A sufficient reasonable interval has passed so that exposures may have significantly increased.

(4) After hazardous waste clean-up operations commence, the employer shall monitor those employees likely to have the highest exposures to hazardous substances and health hazards likely to be present above established permissible exposure limits by using personal sampling frequently enough to characterize employee exposures. The employer may utilize a representative sampling approach by documenting that the employees and chemicals chosen for monitoring are based on the criteria stated above.

Note.—It is not required to monitor employees engaged in site characterization operations covered by paragraph (c) of this section.

(i) *Informational programs.* Employers shall develop and implement a program, which is part of the employer's safety and health program required in paragraph (b) of this section, to inform employees, contractors, and subcontractors (or their representative) actually engaged in hazardous waste operations of the nature, level and degree of exposure likely as a result of participation in such hazardous waste operations. Employees, contractors and subcontractors working outside of the operations part of a site are not covered by this standard.

(j) *Handling drums and containers.* Hazardous substances and contaminated soils, liquids, and other residues shall be handled, transported, labeled, and disposed of in accordance with this paragraph.

(1) *General.* (i) Drums and containers used during the clean-up shall meet the appropriate DOT, OSHA, and EPA regulations for the wastes that they contain.

(ii) When practical, drums and containers shall be inspected and their integrity shall be assured prior to being moved. Drums or containers that cannot be inspected before being moved because of storage conditions (i.e., buried beneath the earth, stacked behind other drums, stacked several tiers high in a pile, etc.) shall be moved to an accessible location and inspected prior to further handling.

(iii) Unlabelled drums and containers shall be considered to contain hazardous substances and handled accordingly until the contents are positively identified and labeled.

(iv) Site operations shall be organized to minimize the amount of drum or container movement.

(v) Prior to movement of drums or containers, all employees exposed to the transfer operation shall be warned of the potential hazards associated with the contents of the drums or containers.

(vi) U.S. Department of Transportation specified salvage drums or containers and suitable quantities of proper absorbent shall be kept available and used in areas where spills, leaks, or ruptures may occur.

(vii) Where major spills may occur, a spill containment program, which is part of the employer's safety and health program required in paragraph (b) of this section, shall be implemented to contain and isolate the entire volume of the hazardous substance being transferred.

(viii) Drums and containers that cannot be moved without rupture, leakage, or spillage shall be emptied into a sound container using a device classified for the material being transferred.

(ix) A ground-penetrating system or other type of detection system or device shall be used to estimate the location and depth of buried drums or containers.

(x) Soil or covering material shall be removed with caution to prevent drum or container rupture.

(xi) Fire extinguishing equipment meeting the requirements of 29 CFR Part 1910, Subpart L, shall be on hand and ready for use to control incipient fires.

(2) *Opening drums and containers.* The following procedures shall be followed in areas where drums or containers are being opened:

(i) Where an airline respirator system is used, connections to the bank of air cylinders shall be protected from contamination and the entire system shall be protected from physical damage.

(ii) Employees not actually involved in opening drums or containers shall be kept a safe distance from the drums or containers being opened.

(iii) If employees must work near or adjacent to drums or containers being opened, a suitable shield that does not interfere with the work operation shall be placed between the employee and the drums or containers being opened to protect the employee in case of accidental explosion.

(iv) Controls for drum or container opening equipment, monitoring equipment, and fire suppression equipment shall be located behind the explosion-resistant barrier.

(v) When there is a reasonable possibility of flammable atmospheres being present, material handling equipment and hand tools shall be of the type to prevent sources of ignition.

(vi) Drums and containers shall be opened in such a manner that excess interior pressure will be safely relieved. If pressure cannot be relieved from a remote location, appropriate shielding shall be placed between the employee and the drums or containers to reduce the risk of employee injury.

(vii) Employees shall not stand upon or work from drums or containers.

(3) *Material handling equipment.* Material handling equipment used to transfer drums and containers shall be selected, positioned and operated to minimize sources of ignition related to the equipment from igniting vapors released from ruptured drums or containers.

(4) *Radioactive wastes.* Drums and containers containing radioactive wastes shall not be handled until such time as their hazard to employees is properly assessed.

(5) *Shock sensitive wastes.*

Caution.—Shipping of shock sensitive wastes may be prohibited under U.S. Department of Transportation regulations. Employers and their shippers should refer to 49 CFR 173.21 and 173.50.

As a minimum, the following special precautions shall be taken when drums and containers containing or suspected of containing shock-sensitive wastes are handled:

(i) All non-essential employees shall be evacuated from the area of transfer.

(ii) Material handling equipment shall be provided with explosive containment devices or protective shields to protect equipment operators from exploding containers.

(iii) An employee alarm system capable of being perceived above surrounding light and noise conditions shall be used to signal the commencement and completion of explosive waste handling activities.

(iv) Continuous communications (i.e., portable radios, hand signals, telephones, as appropriate) shall be maintained between the employee-in-charge of the immediate handling area and the site safety and health supervisor or command post until such time as the handling operation is completed. Communication equipment or methods

that could cause shock sensitive materials to explode shall not be used.

(v) Drums and containers under pressure, as evidenced by bulging or swelling, shall not be moved until such time as the cause for excess pressure is determined and appropriate containment procedures have been implemented to protect employees from explosive relief of the drum.

(vii) Drums and containers containing packaged laboratory wastes shall be considered to contain shock-sensitive or explosive materials until they have been characterized.

(6) *Laboratory waste packs.* In addition to the requirements of paragraph (j)(5) of this section, the following precautions shall be taken, as a minimum, in handling laboratory waste packs (lab packs):

(i) Lab packs shall be opened only when necessary and then only by an individual knowledgable in the inspection, classification, and segregation of the containers within the pack according to the hazards of the wastes.

(ii) If crystalline material is noted on any container, the contents shall be handled as a shock-sensitive waste until the contents are identified.

(7) *Sampling drums and containers.* Sampling of containers and drums shall be done in accordance with a sampling procedure which is part of the site safety and health plan developed for and available to employees and others at the specific worksite.

(8) *Shipping and transport.* (i) Drums and containers shall be identified and classified prior to packaging for shipment.

(ii) Drum or container staging areas shall be kept to the minimum number necessary to identify and classify materials safely and prepare them for transport.

(iii) Staging areas shall be provided with adequate access and egress routes.

(iv) Bulking of hazardous wastes shall be permitted only after a thorough characterization of the materials has been completed.

(9) *Tank and vault procedures.* (i) Tanks and vaults containing hazardous substances shall be handled in a manner similar to that for drums and containers, taking into consideration the size of the tank or vault.

(ii) Appropriate tank or vault entry procedures meeting paragraph (b)(1)(iv)(A)(*10*) of this section shall be followed whenever employees must enter a tank or vault.

(k) *Decontamination.* Procedures for all phases of decontamination shall be developed and implemented in accordance with this paragraph.

(1) A decontamination procedure shall be developed, communicated to employees and implemented before any employees or equipment may enter areas on site where potential for exposure to hazardous substances exists.

(2) Standard operating procedures shall be developed to minimize employee contact with hazardous substances or with equipment that has contacted hazardous substances.

(3) Decontamination shall be performed in geographical areas that will minimize the exposure of uncontaminated employees or equipment to contaminated employees or equipment.

(4) All employees leaving a contaminated area shall be appropriately decontaminated; all clothing and equipment leaving a contaminated area shall be appropriately disposed of or decontaminated.

(5) Decontamination procedures shall be monitored by the site safety and health supervisor to determine their effectiveness. When such procedures are found to be ineffective, appropriate steps shall be taken to correct any deficiencies.

(6) All equipment and solvents used for decontamination shall be decontaminated or disposed of properly.

(7) Protective clothing and equipment shall be decontaminated, cleaned, laundered, maintained or replaced as needed to maintain their effectiveness.

(8) Employees whose non-impermeable clothing becomes wetted with hazardous substances shall immediately remove that clothing and proceed to shower. The clothing shall be disposed of or decontaminated before it is removed from the work zone.

(9) Unauthorized employees shall not remove protective clothing or equipment from change rooms.

(10) Commercial laundries or cleaning establishments that decontaminate protective clothing or equipment shall be informed of the potentially harmful effects of exposures to hazardous substances.

(11) Where the decontamination procedure indicates a need for regular showers and change rooms outside of a contaminated area, they shall be provided and meet the requirements of 29 CFR 1910.141. If temperature conditions prevent the effective use of water then other effective means for cleansing shall be provided and used.

(l) *Emergency response.* Emergency response at hazardous waste operation incidents shall be conducted in accordance with this paragraph.

(1) *General*—(i) *Emergency response plan.* An emergency response plan shall be developed and implemented by all employers within the scope of this section to handle anticipated emergencies prior to the commencement of hazardous waste operations. The plan shall be in writing and available for inspection and copying by employees, their representatives and OSHA personnel. Employers who will evacuate their employees from the workplace when an emergency occurs and who do not permit any of their employees to respond to assist in handling the emergency are exempt from the requirements of this paragraph if they provide an emergency action plan complying with section 1910.38(a) of this part.

(ii) *Elements of an emergency response plan.* The employer shall develop an emergency response plan for emergencies which shall address, as a minimum, the following:

(A) Pre-emergency planning.

(B) Personnel roles, lines of authority, training, and communication.

(C) Emergency recognition and prevention.

(D) Safe distances and places of refuge.

(E) Site security and control.

(F) Evacuation routes and procedures.

(G) Decontamination.

(H) Emergency medical treatment and first aid.

(I) Emergency alerting and response procedures.

(J) Critique of response and follow-up.

(K) PPE and emergency equipment.

(2) *Emergency response at hazardous waste clean-up sites*—(i) *Training.* (A) Training for emergency response employees at clean-up operations shall be conducted in accordance with paragraph (e) of this section for employers covered by paragraph (a)(1)(i) through (iii) of this section and in accordance with paragraph (o)(5) of this section for those employers covered by paragraph (a)(1)(iv) of this section.

(B) Employers who can show that an employee's work experience and/or training has resulted in training equivalent to that training required in paragraph (l)(2)(i)(A) of this section shall not be required to provide the initial training requirements of those paragraphs. Equivalent training includes the training that existing employees might have already received from actual site work experience.

(ii) *Procedures for handling emergency incidents.* (A) In addition to the elements for the emergency response plan required in paragraph (l)(1)(ii) of this section, the following elements shall

be included for emergency response plans:

(*1*) Site topography, layout, and prevailing weather conditions.

(*2*) Procedures for reporting incidents to local, state, and federal governmental agencies.

(B) The emergency response plan shall be a separate section of the Site Safety and Health Plan.

(C) The emergency response plan shall be compatible and integrated with the disaster, fire and/or emergency response plans of local, state, and federal agencies.

(D) The emergency response plan shall be rehearsed regularly as part of the overall training program for site operations.

(E) The site emergency response plan shall be reviewed periodically and, as necessary, be amended to keep it current with new or changing site conditions or information.

(F) An employee alarm system shall be installed in accordance with 29 CFR 1910.165 to notify employees of an emergency situation; to stop work activities if necessary; to lower background noise in order to speed communication; and to begin emergency procedures.

(G) Based upon the information available at time of the emergency, the employer shall evaluate the incident and the site response capabilities and proceed with the appropriate steps to implement the site emergency response plan.

(3) *Emergency response at sites other than hazardous waste clean-up sites*—(i) *Training.* Employers shall provide the training specified by this paragraph for those employees for whom there exists the reasonable possibility of responding to emergencies at sites other than hazardous waste clean-up sites.

(A) *Emergency response organizations or teams.* Employees on emergency response organizations or teams such as fire brigades, fire departments, plant emergency organizations, hazardous materials teams, spill response teams and similar groups with responsibility for emergency response shall be trained to a level of competence to protect themselves and other employees in the recognition of health and safety hazards, methods to minimize the risk from safety and health hazards, safe use of control equipment, selection and use of appropriate personal protective equipment, safe operating procedures to be used at the incident scene, techniques of coordination with other employees to minimize risks, appropriate response to over exposure from health hazards or injury to themselves and other employees and recognition of subsequent symptoms which may result from over exposures.

(*1*) Competency may be demonstrated by 24 hours of training annually in those areas with training sessions at least monthly or by demonstrations by the employee of competency in those areas at least quarterly.

(*2*) A certification shall be made of the training or competency and if certification of competency is made, the employer shall keep a record of the methodology used to demonstrate competency.

(*3*) An employer of employees for whom the reasonable possibility of responding to emergencies at other than hazardous waste clean-up sites exists need not train all such employees to the degree specified in paragraph (l)(3)(i)(A)(*1*) of this section if the employer divides the work force such that sufficient employees who have responsibility to control the emergency have the training specified in this paragraph and other employees who may first respond to the incident have sufficient awareness training to recognize that an emergency response situation exists and are instructed in that case to summon the employees who are fully trained and not attempt control activities for which they are not trained.

(*4*) An employer of employees for whom the reasonable possibility exists of responding to emergencies at other than hazardous waste clean-up sites need not train such employees to the degree specified in paragraph (l)(3)(i)(A)(*1*) of this section if:

(*i*) arrangements have been made in advance for a fully-trained emergency response team to respond in a reasonable period; and

(*ii*) employees who may come to the incident first have sufficient awareness training to recognize that an emergency response situation exists and are instructed to call the designated fully-trained emergency response team for assistance.

(B) *Specialist employees.* Employees who, in the course of their regular job duties, work with and are trained in the hazards of specific materials covered by this standard, and who will be called upon to provide technical advice or assistance at a hazardous substance release incident, are exempt from the monthly training sessions required in paragraph (l)(3)(i)(A) of this section. They must, pursuant to paragraph (l)(3)(i)(A) however, receive at least 24 hours of training annually or demonstrate competency in the area of their specialization.

(C) *Skilled support personnel.* Personnel, not necessarily an employer's own employees, who are needed to perform immediate emergency support work that cannot reasonably be performed in a timely fashion by an employer's own employees, and who will be or may potentially be exposed to the hazards at an emergency response scene, are not required to have the 24 hours of annual training or demonstrate the competency required for the employer's regular employees. However, the senior official cited in paragraph (l)(3)(ii) of this section shall ensure that these personnel are given an initial briefing at the site of emergency response prior to their participation in that response that shall include instruction in the wearing of appropriate personal protective equipment, what chemical hazards are involved, and what duties are to be performed. All appropriate safety and health precautions provided to the employer's own employees shall be used to assure the safety and health of these personnel.

(ii) *Procedures for handling emergency response.* (A) The senior official responding to an emergency at other than hazardous waste clean-up sites involving a hazardous substance or health hazard shall establish and become the individual in charge of a site-specific Incident Command System (ICS). All emergency responders and their communications shall be coordinated and controlled through the individual in charge of the ICS assisted by the senior official present for each employer.

Note: The "senior official" at an off-site emergency response is the most senior official on the site who has the responsibility for controlling the operations at the site. Initially it is the senior officer on the first-due piece of responding emergency apparatus to arrive on the incident scene. As more senior officers arrive (i.e., fire chief, battalion chief, site coordinator, etc.) the position is passed up the line of authority.

(B) The individual in charge of the ICS shall identify, to the extent possible, all hazardous substances or conditions present and shall address as appropriate site analysis, use of engineering controls, maximum exposure limits, hazardous substance handling procedures, and use of any new technologies.

(C) Based on the hazardous substances and/or conditions present, the individual in charge of the ICS shall implement appropriate emergency operations, and assure that the personal protective equipment worn is appropriate for the hazards to be encountered. However, personal protective equipment shall meet, at a minimum, the criteria contained in 29

CFR 1910.156(e) when worn while performing fire fighting operations beyond the incipient stage.

(D) Employees engaged in emergency response and exposed to hazardous substances shall wear positive pressure self-contained breathing apparatus while engaged in emergency response until such time that the individual in charge of the ICS determines through the use of air monitoring that a decreased level of respiratory protection will not result in hazardous exposures to employees.

(E) The individual in charge of the ICS shall limit the number of emergency response personnel at the emergency site to those who are actively performing emergency operations. However, operations in hazardous areas shall be performed using the buddy system in groups of two or more.

(F) Back-up personnel shall stand by with equipment ready to provide assistance or rescue. Qualified basic life support personnel, as a minimum, shall also stand by with medical equipment and transportation capability.

(G) The individual in charge of the ICS shall designate a safety official, who is knowledgable in the operations being implemented at the emergency response site, with specific responsibility to identify and evaluate hazards and to provide direction with respect to the safety of operations for the emergency at hand.

(H) When activities are judged by the safety official to be an IDLH condition and/or to involve an imminent danger condition, the safety official shall have the authority to alter, suspend, or terminate those activities. The safety official shall immediately inform the individual in charge of the ICS of any actions taken to correct these hazards at an emergency scene.

(I) After emergency operations have terminated, the individual in charge of the ICS shall implement appropriate decontamination procedures.

(J) When deemed necessary for meeting the tasks at hand, approved self-contained compressed air breathing apparatus may be used with approved cylinders from other approved self-contained compressed air breathing apparatus provided that such cylinders are of the same capacity and pressure rating. All compressed air cylinders used with self-contained breathing apparatus shall meet U.S. Department of Transportation and National Institute for Occupational Safety and Health criteria.

(4) *Hazardous materials teams (HAZMAT).* (i) Employees who are members of a HAZMAT team shall be given training in accordance with paragraph (l)(3) of this section that includes the care and use of chemical protective clothing, and procedures to be followed when working on leaking drums, containers, tanks, or bulk transport vehicles.

(ii) Members of HAZMAT teams shall receive a base line physical exam and have medical surveillance as required in paragraph (f) of this section.

(iii) Chemical personal protective clothing and equipment to be used by HAZMAT team members shall meet the requirements of paragraph (g) of this section.

(5) *Post-emergency response operations.* Upon completion of the emergency response, if it is determined that it is necessary to remove hazardous substances, health hazards, and materials contaminated with them (such as contaminated soil or other elements of the natural environment) from the site of the incident the employer conducting the clean-up shall comply with one of the following:

(i) Meet all of the requirements of paragraphs (b) through (n) of this section; or

(ii) Where the clean-up is done on plant property using plant or workplace employees, such employees shall have completed the training requirements of the following: 29 CFR 1910.38(a); 1910.134; 1910.1200, and other appropriate safety and health training made necessary by the tasks that they are expected to be performed. All equipment to be used in the performance of the clean-up work shall be in serviceable condition and shall have been inspected prior to use.

(m) *Illumination.* Areas accessible to employees shall be lighted in accordance with the requirements of this paragraph.

(1) Work areas shall be lighted to not less than the minimum illumination intensities listed in the following Table H–102.1 while any work is in progress:

TABLE H–102.1—MINIMUM ILLUMINATION INTENSITIES IN FOOT-CANDLES

Foot-candles	Area or operations
5	General site areas.
3	Excavation and waste areas, accessways, active storage areas, loading platforms, refueling, and field maintenance areas.
5	Indoors: warehouses, corridors, hallways, and exitways.
6	Tunnels, shafts, and general underground work areas. (Exception: Minimum of 10 foot-candles is required at tunnel and shaft heading during drilling, mucking, and scaling. Mine Safety and Health Administration approved cap lights shall be acceptable for use in the tunnel heading.)
10	General shops (e.g., mechanical and electrical equipment rooms, active storerooms, barracks or living quarters, locker or dressing rooms, dining areas, and indoor toilets and workrooms.)
30	First aid stations, infirmaries, and offices.

(n) *Sanitation at temporary workplaces.* Facilities for employee sanitation shall be provided in accordance with this paragraph.

(1) *Potable water.* (i) An adequate supply of potable water shall be provided on the site.

(ii) Portable containers used to dispense drinking water shall be capable of being tightly closed, and equipped with a tap. Water shall not be dipped from containers.

(iii) Any container used to distribute drinking water shall be clearly marked as to the nature of its contents and not used for any other purpose.

(iv) Where single service cups (to be used but once) are supplied, both a sanitary container for the unused cups and a receptacle for disposing of the used cups shall be provided.

(2) *Nonpotable water.* (i) Outlets for nonpotable water, such as water for firefighting purposes shall be identified to indicate clearly that the water is unsafe and is not to be used for drinking, washing, or cooking purposes.

(ii) There shall be no cross-connection, open or potential, between a system furnishing potable water and a system furnishing nonpotable water.

(3) *Toilets facilities.* (i) Toilets shall be provided for employees according to the following Table H–102.2.

TABLE H–102.2—TOILET FACILITIES

Number of employees	Minimum number of facilities
20 or fewer	One.
More than 20, fewer than 200.	One toilet seat and 1 urinal per 40 employees.
More than 200	One toilet seat and 1 urinal per 50 employees.

(ii) Under temporary field conditions, provisions shall be made to assure that at least one toilet facility is available.

(iii) Hazardous waste sites not provided with a sanitary sewer shall be provided with the following toilet facilities unless prohibited by local codes:

(A) Chemical toilets;

(B) Recirculating toilets;

(C) Combustion toilets; or

(D) Flush toilets.

(iv) The requirements of this paragraph for sanitation facilities shall not apply to mobile crews having transportation readily available to nearby toilet facilities.

(v) Doors entering toilet facilities shall be provided with entrance locks controlled from inside the facility.

(4) *Food handling.* All food service facilities and operations for employees shall meet the applicable laws, ordinances, and regulations of the jurisdictions in which they are located.

(5) *Temporary sleeping quarters.* When temporary sleeping quarters are provided, they shall be heated, ventilated, and lighted.

(6) *Washing facilities.* The employer shall provide adequate washing facilities for employees engaged in operations where hazardous substances may be harmful to employees. Such facilities shall be in near proximity to the worksite; in areas where exposures are below established permissible exposure limits and which are under the controls of the employer; and shall be so equipped as to enable employees to remove hazardous substances for themselves.

(7) *Showers and change rooms.* When hazardous waste clean-up or removal operations commence on a site and the duration of the work will require six months or greater time to complete, the employer shall provide showers and change rooms for all employees exposed to hazardous substances and health hazards involved in hazardous waste clean-up or removal operations.

(i) Showers shall be provided and shall meet the requirements of 29 CFR 1910.141(d)(3).

(ii) Change rooms shall be provided and shall meet the requirements of 29 CFR 1910.141(1). Change rooms shall consist of two separate change areas separated by the shower area required in paragraph (n)(7)(i). One change area, with an exit leading off the worksite, shall provide employees with a clean area where they can remove, store, and put on street clothing. The second area, with an exit to the worksite, shall provide employees with an area where they can put on, remove and store work clothing and personal protective equipment.

(iii) Showers and change rooms shall be located in areas where exposures are below the established permissible exposure limits. If this cannot be accomplished, then a ventilation system shall be provided that will supply air that is below the established permissible exposure limits.

(iv) Employers shall assure that employees shower at the end of their work shift and when leaving the hazardous waste site.

(o) *Certain Operations Conducted Under the Resource Conservation and Recovery Act of 1976 (RCRA).* Employers conducting operations specified in paragraph (a)(2)(iii) of this section shall:

(1) Develop and implement a written safety and health program for employees involved in hazardous waste operations which shall be available for inspection by employees, their representatives and OSHA personnel. The program shall be designed to identify, evaluate and control safety and health hazards in their facilities for the purpose of employee protection, and provide for emergency response meeting the requirements of paragraph (l) of this section and it shall address as appropriate site analysis, engineering controls, maximum exposure limits, hazardous waste handling procedures and uses of new technologies;

(2) Implement a hazard communication program as part of the employer's safety and program meeting the requirements of 29 CFR 1910.1200.

Note.—The exemptions provided in § 1910.1200 are applicable to this section.

(3) Implement a medical surveillance program meeting the requirements of paragraph (f) of this section;

(4) Develop and implement a decontamination procedure in accordance with paragraph (k) of this section, and

(5)(i) Develop and implement a training program, which is part of the employer's safety and health program, for employees involved with hazardous waste operations to enable each employee to perform their assigned duties and functions in a safe and healthful manner so as not to endanger themselves or other employees. The initial training shall be for 24 hours and refresher training shall be for eight hours annually.

(ii) Employers who can show by an employee's previous work experience and/or training that the employee has had training equivalent to the initial training required by this paragraph, shall be considered as meeting the initial training requirements of this paragraph as to that employee. Equivalent training includes the training that existing employees might have already received from actual site work experience. Employees who have received the initial training required by this paragraph shall be given a written certificate attesting that they have successfully completed the necessary training.

(p) *New technology programs.* (1) The employer shall develop and implement procedures for the introduction of effective new technologies and equipment developed for the improved protection of employees working with hazardous waste clean-up operations, and the same shall be implemented as part of the site safety and health program to assure that employee protection is being maintained.

(2) New technologies, equipment or control measures available to the industry, such as the use of foams or other means to suppress the level of air contaminates while excavating the site or for spill control, shall be evaluated by employers or their representatives to determine their effectiveness before implementing their use on a large scale for employee protection. Such evaluations shall be made available to OSHA upon request.

Appendices to § 1910.120—Hazardous Waste Operations and Emergency Response

Note.—*The following appendices serve as non-mandatory guidelines to assist employees and employers in complying with the appropriate requirements of this section. However paragraph 1910.120(g) makes mandatory in certain circumstances the use of Level A and Level B PPE protection.*

Appendix A—Personal Protective Equipment Test Methods

This appendix sets forth the non-mandatory examples of tests which may be used to evaluate compliance with paragraphs 1910.120 (g)(4)(ii) and (iii). Other tests and other challenge agents may be used to evaluate compliance.

A. *Totally-encapsulating chemical protective suit pressure test.*

1.0—*Scope.*

1.1 This practice measures the ability of a gas tight totally-encapsulating chemical protective suit material, seams, and closures to maintain a fixed positive pressure. The results of this practice allow the gas tight integrity of a total-encapsulating chemical protective suit to be evaluated.

1.2 Resistance of the suit materials to permeation, penetration, and degradation by specific hazardous substances is not determined by this test method.

2.0—*Definition of terms.*

2.1 *"Totally-encapsulated chemical protective suit (TECP suit)"* means a full body garment which is constructed of protective clothing materials; covers the wearer's torso, head, arms, and legs; may cover the wearer's hands and feet with tightly attached gloves and boots; completely encloses the wearer by itself or in combination with the wearer's respiratory equipment, gloves, and boots.

2.2 *"Protective clothing material"* means any material or combination of materials used in an item of clothing for the purpose of isolating parts of the body from direct contact with a potentially hazardous liquid or gaseous chemicals.

2.3 *"Gas tight"* means, for the purpose of this test method, the limited flow of a gas under pressure from the inside of a TECP suit to atmosphere at a prescribed pressure and time interval.

3.0—*Summary of test method.*

3.1 The TECP suit is visually inspected and modified for the test. The test apparatus

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is attached to the suit to permit inflation to the pre-test suit expansion pressure for removal of suit wrinkles and creases. The pressure is lowered to the test pressure and monitored for three minutes. If the pressure drop is excessive, the TECP suit fails the test and is removed from service. The test is repeated after leak location and repair .

4.0—*Required Supplies.*

4.1 Source of compressed air.

4.2 Test apparatus for suit testing, including a pressure measurement device with a sensitivity of at least 1/4 inch water gauge.

4.3 Vent valve closure plugs or sealing tape.

4.4 Soapy water solution and soft brush.

4.5 Stop watch or appropriate timing device.

5.0—*Safety Precautions.*

5.1 Care shall be taken to provide the correct pressure safety devices required for the source of compressed air used.

6.0—*Test Procedure.*

6.1 Prior to each test, the tester shall perform a visual inspection of the suit. Check the suit for seam integrity by visually examining the seams and gently pulling on the seams. Ensure that all air supply lines, fittings, visor, zippers, and valves are secure and show no signs of deterioration.

6.1.1 Seal off the vent valves along with any other normal inlet or exhaust points (such as umbilical air line fittings or face piece opening) with tape or other appropriate means (caps, plugs, fixture, etc.). Care should be exercised in the sealing process not to damage any of the suit components.

6.1.2 Close all closure assemblies.

6.1.3 Prepare the suit for inflation by providing an improvised connection point on the suit for connecting an airline. Attach the pressure test apparatus to the suit to permit suit inflation from a compressed air source equipped with a pressure indicating regulator. The leak tightness of the pressure test apparatus should be tested before and after each test by closing off the end of the tubing attached to the suit and assuring a pressure of three inches water gauge for three minutes can be maintained. If a component is removed for the test, that component shall be replaced and a second test conducted with another component removed to permit a complete test of the ensemble.

6.1.4 The pre-test expansion pressure (A) and the suit test pressure (B) shall be supplied by the suit manufacturer, but in no case shall they be less than; A = three inches water gauge and B=two inches water gauge. The ending suit pressure (C) shall be no less than 80 percent of the test pressure (B); i.e., the pressure drop shall not exceed 20 percent of the test pressure (B).

6.1.5 Inflate the suit until the pressure inside is equal to pressure "A", the pre-test expansion suit pressure. Allow at least one minute to fill out the wrinkles in the suit. Release sufficient air to reduce the suit pressure to pressure "B", the suit test pressure. Begin timing. At the end of three minutes, record the suit pressure as pressure "C" the ending suit pressure. The difference between the suit test pressure and the ending suit test pressure (B-C) shall be defined as the suit pressure drop.

6.1.6 If the suit pressure drop is more than 20 percent of the suit test pressure B during the three-minute test period, the suit fails the test and shall be removed from service.

7.0—*Retest Procedure.*

7.1 If the suit fails the test check for leaks by inflating the suit to pressure A and brushing or wiping the entire suit (including seams, closures, lens gaskets, glove-to-sleeve joints, etc.) with a mild soap and water solution. Observe the suit for the formation of soap bubbles, which is an indication of a leak. Repair all identified leaks.

7.2 Retest the TECP suit as outlined in Test procedure 6.0.

8.0—*Report.*

8.1 Each TECP suit tested by this practice shall have the following information recorded:

8.1.1 Unique identification number, identifying brand name, date of purchase, material of construction, and unique fit features, e.g., special breathing apparatus.

8.1.2 The actual values for test pressures A, B, and C shall be recorded along with the specific observation times. If the ending pressure (C) is less than 80 percent of the test pressure (B), the suit shall be identified as failing the test. When possible, the specific leak location shall be identified in the test records. Retest pressure data shall be recorded as an additional test.

8.1.3 The source of the test apparatus used shall be identified and the sensitivity of the pressure gauge shall be recorded.

8.1.4 Records shall be kept for each pressure test even if repairs are being made at the test location.

Caution

Visually inspect all parts of the suit to be sure they are positioned correctly and secured tightly before putting the suit back into service. Special care should be taken to examine each exhaust valve to make sure it is not blocked.

Care should also be exercised to assure that the inside and outside of the suit is completely dry before it is put into storage.

B. *Totally-encapsulating chemical protective suit qualitative leak test.*

1.0—*Scope.*

1.1 This practice semi-qualitatively tests gas tight totally-encapsulating chemical protective suit integrity by detecting inward leakage of ammonia vapor. Since no modifications are made to the suit to carry out this test, the results from this practice provide a realistic test for the integrity of the entire suit.

1.2 Resistance of the suit materials to permeation, penetration, and degradation is not determined by this test method.

2.0—*Definition of terms.*

2.1 *"Totally-encapsulated chemical protective suit (TECP suit)* means a full body garment which is constructed of protective clothing materials; covers the wearer's torso, head, arms, and legs; may cover the wearer's hands and feet with tightly attached gloves and boots; completely encloses the wearer by itself or in combination with the wearer's respiratory equipment, gloves, and boots.

2.2 *"Protective clothing material"* means any material or combination of materials used in an item of clothing for the purpose of isolating parts of the body from direct contact with a potentially hazardous liquid or gaseous chemicals.

2.3 *"Gas tight"* means, for the purpose of this test method, the limited flow of a gas under pressure from the inside of a TECP suit to atmosphere at a prescribed pressure and time interval.

2.4 *"Intrusion Coefficient"* means a number expressing the level of protection provided by a gas tight totally-encapsulating chemical protective suit. The intrusion coefficient is calculated by dividing the test room challenge agent concentration by the concentration of challenge agent found inside the suit. The accuracy of the intrusion coefficient is dependent on the challenge agent monitoring methods. The larger the intrusion coefficient the greater the protection provided by the TECP suit.

3.0—*Summary of recommended practice.*

3.1 The volume of concentrated aqueous ammonia solution (ammonia hydroxide NH_4OH) required to generate the test atmosphere is determined using the directions outlined in 6.1. The suit is donned by a person wearing the appropriate respiratory equipment (either a self-contained breathing apparatus or a supplied air respirator) and worn inside the enclosed test room. The concentrated aqueous ammonia solution is taken by the suited individual into the test room and poured into an open plastic pan. A two-minute evaporation period is observed before the test room concentration is measured, using a high range ammonia length of stain detector tube. When the ammonia vapor reaches a concentration of between 1000 and 1200 ppm, the suited individual starts a standardized exercise protocol to stress and flex the suit. After this protocol is completed, the test room concentration is measured again. The suited individual exits the test room and his stand-by person measures the ammonia concentration inside the suit using a low range ammonia length of stain detector tube or other more sensitive ammonia detector. A stand-by person is required to observe the test individual during the test procedure; aid the person in donning and doffing the TECP suit; and monitor the suit interior. The intrusion coefficient of the suit can be calculated by dividing the average test area concentration by the interior suit concentration. A colorimetric indicator strip of bromophenol blue is placed on the inside of the suit face piece lens so that the suited individual is able to detect a color change and know if the suit has a significant leak. If a color change is observed the individual shall leave the test room immediately.

4.0—*Required supplies.*

4.1 A supply of concentrated aqueous ammonia (58 percent ammonium hydroxide by weight).

4.2 A supply of bromophenol/blue indicating paper, sensitive to 5–10 ppm ammonia or greater over a two-minute period of exposure. [(pH 3.0 (yellow) to pH 4.6 (blue)]

4.3 A supply of high range (0.5–10 volume percent) and low range (5–700 ppm) detector tubes for ammonia and the corresponding sampling pump. More sensitive ammonia

detectors can be substituted for the low range detector tubes to improve the sensitivity of this practice.

4.4 A shallow plastic pan (PVC) at least 12":14":1" and a half pint plastic container (PVC) with tightly closing lid.

4.5 A graduated cylinder or other volumetric measuring device of at least 50 milliliters in volume with an accuracy of at least ±1 milliliters.

5.0—*Safety precautions.*

5.1 Concentrated aqueous ammonium hydroxide, NH_4OH, is a corrosive volatile liquid requiring eye, skin, and respiratory protection. The person conducting the test shall review the MSDS for aqueous ammonia.

5.2 Since the established permissible exposure limit for ammonia is 50 ppm, only persons wearing a self-contained breathing apparatus or a supplied air respirator shall be in the chamber. Normally only the person wearing the total-encapsulating suit will be inside the chamber. A stand-by person shall have a self-contained breathing apparatus, or a supplied air respirator available to enter the test area should the suited individual need assistance.

5.3 A method to monitor the suited individual must be used during this test. Visual contact is the simplest but other methods using communication devices are acceptable.

5.4 The test room shall be large enough to allow the exercise protocol to be carried out and then to be ventilated to allow for easy exhaust of the ammonia test atmosphere after the test(s) are completed.

5.5 Individuals shall be medically screened for the use of respiratory protection and checked for allergies to ammonia before participating in this test procedure.

6.0—*Test procedure.*

6.1.1 Measure the test area to the nearest foot and calculate its volume in cubic feet. Multiply the test area volume by 0.2 milliliters of concentrated aqueous ammonia solution per cubic foot of test area volume to determine the approximate volume of concentrated aqueous ammonia required to generate 1000 ppm in the test area.

6.1.2 Measure this volume from the supply of concentrated aqueous ammonia and place it into a closed plastic container.

6.1.3 Place the container, several high range ammonia detector tubes, and the pump in the clean test pan and locate it near the test area entry door so that the suited individual has easy access to these supplies.

6.2.1 In a non-contaminated atmosphere, open a pre-sealed ammonia indicator strip and fasten one end of the strip to the inside of the suit face shield lens where it can be seen by the wearer. Moisten the indicator strip with distilled water. Care shall be taken not to contaminate the detector part of the indicator paper by touching it. A small piece of masking tape or equivalent should be used to attach the indicator strip to the interior of the suit face shield.

6.2.2 If problems are encountered with this method of attachment, the indicator strip can be attached to the outside of the respirator face piece being used during the test.

6.3 Don the respiratory protective device normally used with the suit, and then don the TECP suit to be tested. Check to be sure all openings which are intended to be sealed (zippers, gloves, etc.) are completely sealed. DO NOT, however, plug off any venting valves.

6.4 Step into the enclosed test room such as a closet, bathroom, or test booth, equipped with an exhaust fan. No air should be exhausted from the chamber during the test because this will dilute the ammonia challenge concentrations.

6.5 Open the container with the pre-measured volume of concentrated aqueous ammonia within the enclosed test room, and pour the liquid into the empty plastic test pan. Wait two minutes to allow for adequate volatilization of the concentrated aqueous ammonia. A small mixing fan can be used near the evaporation pan to increase the evaporation rate of the ammonia solution.

6.6 After two minutes a determination of the ammonia concentration within the chamber should be made using the high range colorimetric detector tube. A concentration of 1000 ppm ammonia or greater shall be generated before the exercises are started.

6.7 To test the integrity of the suit the following four minute exercise protocol should be followed:

6.7.1 Raising the arms above the head with at least 15 raising motions completed in one minute.

6.7.2 Walking in place for one minute with at least 15 raising motions of each leg in a one-minute period.

6.7.3 Touching the toes with a least 10 complete motions of the arms from above the head to touching of the toes in a one-minute period.

6.7.4 Knee bends with at least 10 complete standing and squatting motions in a one-minute period.

6.8 If at any time during the test the colorimetric indicating paper should change colors, the test should be stopped and sections 6.10 and 6.12 initiated (See ¶ 4.2).

6.9 After completion of the test exercise, the test area concentration should be measured again using the high range colorimetric detector tube.

6.10 Exit the test area.

6.11 The opening created by the suit zipper or other appropriate suit penetration should be used to determine the ammonia concentration in the suit with the low range length of stain detector tube or other ammonia monitor. The internal TECP suit air should be sampled far enough from the enclosed test area to prevent a false ammonia reading.

6.12 After completion of the measurement of the suit interior ammonia concentration the test is concluded and the suit is doffed and the respirator removed.

6.13 The ventilating fan for the test room should be turned on and allowed to run for enough time to remove the ammonia gas. The fan shall be vented to the outside of the building.

6.14 Any detectable ammonia in the suit interior (five ppm ammonia (NH_3) or more for the length of stain detector tube) indicates that the suit has failed the test. When other ammonia detectors are used a lower level of detection is possible, and it should be specified as the pass/fail criteria.

6.15 By following this test method, an intrusion coefficient of approximately 200 or more can be measured with the suit in a completely operational condition.

7.0—*Retest procedures.*

7.1 If the suit fails this test, check for leaks by following the pressure test in test A above.

7.2 Retest the TECP suit as outlined in the test procedure 6.0.

8.0—*Report.*

8.1 Each gas tight totally-encapsulating chemical protective suit tested by this practice shall have the following information recorded.

8.1.1 Unique identification number, identifying brand name, date of purchase, material of construction, and unique suit features; e.g., special breathing apparatus.

8.1.2 General description of test room used for test.

8.1.3 Brand name and purchase date of ammonia detector strips and color change data.

8.1.4 Brand name, sampling range, and expiration date of the length of stain ammonia detector tubes. The brand name and model of the sampling pump should also be recorded. If another type of ammonia detector is used, it should be identified along with its minimum detection limit for ammonia.

8.1.5 Actual test results shall list the two test area concentrations, their average, the interior suit concentration, and the calculated intrusion coefficient. Retest data shall be recorded as an additional test.

8.2 The evaluation of the data shall be specified as "suit passed" or "suit failed", and the date of the test. Any detectable ammonia (five ppm or greater for the length of stain detector tube) in the suit interior indicates the suit has failed this test. When other ammonia detectors are used, a lower level of detection is possible and it should be specified as the pass fail criteria.

Caution

Visually inspect all parts of the suit to be sure they are positioned correctly and secured tightly before putting the suit back into service. Special care should be taken to examine each exhaust valve to make sure it is not blocked.

Care should also be exercised to assure that the inside and outside of the suit is completely dry before it is put into storage.

Appendix B—General Description and Discussion of the Levels of Protection and Protective Gear

This appendix sets forth information about personal protective equipment (PPE) protection levels which may be used to assist employers in complying with the PPE requirements of this section.

As required by the standard, PPE must be selected which will protect employees from the specific hazards which they are likely to encounter during their work on-site.

Selection of the appropriate PPE is a complex process which must take into consideration a variety of factors. Key factors involved in this process are identification of the hazards, or suspected hazards; their routes of potential hazard to employees

(inhalation, skin absorption, ingestion, and eye or skin contact); and the performance of the PPE *materials* (and seams) in providing a barrier to these hazards. The amount of protection provided by PPE is material-hazard specific. That is, protective equipment materials will protect well against some hazardous substances and poorly, or not at all, against others. In many instances, protective equipment materials cannot be found which will provide continuous protection from the particular hazardous substance. In these cases the breakthrough time of the protective material should exceed the work durations, or the exposure after breakthrough must not pose a hazardous level.

Other factors in this selection process to be considered are matching the PPE to the employee's work requirements and task-specific conditions. The durability of PPE materials, such as tear strength and seam strength, must be considered in relation to the employee's tasks. The effects of PPE in relation to heat stress and task duration are a factor in selecting and using PPE. In some cases layers of PPE may be necessary to provide sufficient protection, or to protect expensive PPE inner garments, suits or equipment.

The more that is known about the hazards at the site, the easier the job of PPE selection becomes. As more information about the hazards and conditions at the site becomes available, the site supervisor can make decisions to up-grade or down-grade the level of PPE protection to match the tasks at hand.

The following are guidelines which an employer can use to begin the selection of the appropriate PPE. As noted above, the site information may suggest the use of combinations of PPE selected from the different protection levels (i.e., A, B, C, or D) as being more suitable to the hazards of the work. It should be cautioned that the listing below does not fully address the performance of the specific PPE material in relation to the specific hazards at the job site, and that PPE selection, evaluation and re-selection is an ongoing process until sufficient information about the hazards and PPE performance is obtained.

Part A. Personal protective equipment is divided into four categories based on the degree of protection afforded. (See Part B of this appendix for further explanation of Levels A, B, C, and D hazards.)

I. *Level A*—To be selected when the greatest level of skin, respiratory, and eye protection is required.

The following constitute Level A equipment; it may be used as appropriate:

1. Pressure-demand, full face-piece self-contained breathing apparatus (SCBA), or pressure-demand supplied air respirator with escape SCBA, approved by the National Institute for Occupational Safety and Health [NIOSH].
2. Totally-encapsulating chemical-protective suit.
3. Coveralls.*
4. Long underwear.
5. Gloves, outer, chemical-resistant.
6. Gloves, inner, chemical-resistant.
7. Boots, chemical-resistant, steel toe and shank.
8. Hard hat (under suit).*
9. Disposable protective suit, gloves and boots (depending on suit construction, may be worn over totally-encapsulating suit).
10. Two-way radios (worn inside encapsulating suit).

II. *Level B*—The highest level of respiratory protection is necessary but a lesser level of skin protection is needed.

The following constitute Level B equipment; it may be used as appropriate:

1. Pressure-demand, full-facepiece self-contained breathing apparatus (SCBA), or pressure-demand supplied air respirator with escape SCBA (NIOSH approved).
2. Hooded chemical-resistant clothing (overalls and long-sleeved jacket; coveralls; one or two-piece chemical-splash suit; disposable chemical-resistant overalls).
3. Coveralls.*
4. Gloves, outer, chemical-resistant.
5. Gloves, inner, chemical-resistant.
6. Boots, outer, chemical-resistant steel toe and shank.
7. Boot-covers, outer, chemical-resistant (disposable).*
8. Hard hat.
9. Two-way radios (worn inside encapsulating suit).
10. Face shield.*

III. *Level C*—The concentration(s) and type(s) of airborne substance(S) is known and the criteria for using air purifying respirators are met.

The following constitute Level C equipment; it may be used as appropriate:

1. Full-face or half-mask, air purifying respirators (NIOSH approved).
2. Hooded chemical-resistant clothing (overalls; two-piece chemical-splash suit; disposable chemical-resistant overalls).
3. Coveralls.*
4. Gloves, outer, chemical-resistant.
5. Gloves, inner, chemical-resistant.
6. Boots (outer), chemical-resistant steel toe and shank.*
7. Boot-covers, outer, chemical-resistant (disposable).*
8. Hard hat.
9. Escape mask.*
10. Two-way radios (worn under outside protective clothing).
11. Face shield.*

IV. *Level D*—A work uniform affording minimal protection, used for nuisance contamination only.

The following constitute Level D equipment; it may be used as appropriate:

1. Coveralls.
2. Gloves.*
3. Boots/shoes, chemical-resistant steel toe and shank.
4. Boots, outer, chemical-resistant (disposable).*
5. Safety glasses or chemical splash goggles*.
6. Hard hat.
7. Escape mask.*
8. Face shield.*

Part B. The types of hazards for which levels A, B, C, and D protection are appropriate are described below:

I. *Level A*—Level A protection should be used when:

1. The hazardous substance has been identified and requires the highest level of protection for skin, eyes, and the respiratory system based on either the measured (or potential for) high concentration of atmospheric vapors, gases, or particulates; or the site operations and work functions involve a high potential for splash, immersion, or exposure to unexpected vapors, gases, or particulates of materials that are harmful to skin or capable of being absorbed through the intact skin;
2. Substances with a high degree of hazard to the skin are known or suspected to be present, and skin contact is possible; or
3. Operations must be conducted in confined, poorly ventilated areas, and the absence of conditions requiring Level A have not yet been determined.

II. Level B protection should be used when:

1. The type and atmospheric concentration of substances have been identified and require a high level of respiratory protection, but less skin protection;

Note.—This involves atmospheres with IDLH concentrations of specific substances that do not represent a severe skin hazard; or that do not meet the criteria for use of air-purifying respirators.

2. The atmosphere contains less than 19.5 percent oxygen; or
3. The presence of incompletely identified vapors or gases is indicated by a direct-reading organic vapor detection instrument, but vapors and gases are not suspected of containing high levels of chemicals harmful to skin or capable of being absorbed through the intact skin.

III. Level C protection should be used when:

1. The atmospheric contaminants, liquid splashes, or other direct contact will not adversely affect or be absorbed through any exposed skin;
2. The types of air contaminants have been identified, concentrations measured, and an air-purifying respirator is available that can remove the contaminants; and
3. All criteria for the use of air-purifying respirators are met.

IV. Level D protection should be used when:

1. The atmosphere contains no known hazard; and
2. Work functions preclude splashes, immersion, or the potential for unexpected inhalation of or contact with hazardous levels of any chemicals.

Note.—As stated before, combinations of personal protective equipment other than those described for Levels A, B, C, and D protection may be more appropriate and may be used to provide the proper level of protection.

Appendix C—Compliance Guidelines

1. *Occupational Safety and Health Program.* Each hazardous waste site clean-up effort will require an occupational safety and health program headed by the site

* Optional, as applicable.

coordinator or the employer's representative. The program will be designed for the protection of employees at the site. The purpose of the program will need to be developed before work begins on the site and implemented as work proceeds. The program is to facilitate coordination and communication among personnel responsible for the various activities which will take place at the site. It will provide the overall means for planning and implementing the needed safety and health training and job orientation of employees who will be working at the site. The program will provide the means for identifying and controlling worksite hazards and the means for monitoring program effectiveness. The program will need to cover the responsibilities and authority of the site coordinator or the employer's manager on the site for the safety and health of employees at the site, and the relationships with contractors or support services as to what each employer's safety and health responsibilities are for their employees on the site. Each contractor on the site needs to have its own safety and health program so structured that it will smoothly interface with the program of the site coordinator.

Also those employers involved with treating, storing or disposal of hazardous waste as covered in paragraph (e) must have implemented a safety and health plan for their employees. This program is to include the hazard communication program required in paragraph (o)(1) and the training required in paragraph (o)(5) as parts of the employers comprehensive overall safety and health program. This program is to be in writing.

Each site or workplace safety and health program will need to include the following: (1) Policy statements of the line of authority and accountability for implementing the program, the objectives of the program and the role of the site safety and health supervisor or manager and staff; (2) means or methods for the development of procedures for identifying and controlling workplace hazards at the site; (3) means or methods for the development and communication to employees of the various plans, work rules, standard operating procedures and practices that pertain to individual employees and supervisors; (4) means for the training of supervisors and employees to develop the needed skills and knowledge to perform their work in a safe and healthful manner; (5) means to anticipate and prepare for emergency situations and; (6) means for obtaining information feedback to aid in evaluating the program and for improving the effectiveness of the program. The management and employees should be trying continually to improve the effectiveness of the program thereby enhancing the protection being afforded those working on the site.

Accidents on the site or workplace should be investigated to provide information on how such occurrences can be avoided in the future. When injuries or illnesses occur on the site or workplace, they will need to be investigated to determine what needs to be done to prevent this incident from occurring again. Such information will need to be used as feedback on the effectiveness of the program and the information turned into positive steps to prevent any reoccurrence. Receipt of employee suggestions or complaints relating to safety and health issues involved with site or workplace activities is also a feedback mechanism that can be used effectively to improve the program and may serve in part as an evaluative tool(s).

2. *Training.* The employer is encouraged to utilize those training programs that have been recognized by the National Institute of Environmental Health Sciences through its training grants program. These training and educational programs are being developed for employees who work directly with hazardous substances. For further information about these programs contact: National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709.

The training programs for employees subject to the requirements of paragraph (e) of this standard are expected to address: the safety and health hazards employees should expect to find on sites; what control measures or techniques are effective for those hazards; what monitoring procedures are effective in characterizing exposure levels; what makes an effective employer's safety and health program; what a site safety and health plan should include; and, employee's responsibilities under OSHA and other regulations. Supervisors will need training in their responsibilities under the safety and health program and its subject areas such as the spill containment program, the personal protective equipment program, the medical surveillance program, the emergency response plan and other areas.

Training programs for emergency service organizations are available from the U.S. National Fire Academy, Emmitsburg, MD and the various state fire training schools. The International Society of Fire Service Instructors, Ashland, MA is another resource.

The training programs for employees covered by the requirements of paragraph (l)(3) of this standard are expected to address: the need for and use of personal protective equipment including respirators; the decontamination procedures to be used; preplanning activities for hazardous substance incidents including the emergency response plan; company standard operating procedures for hazardous substance emergency responses; the use of the incident command system and other subjects. Hands-on training should be stressed whenever possible. Critiques done after an incident which include any evaluation of what worked and what did not and how can we do better the next time may be counted as training time.

For hazardous materials teams, the training will need to address the care, use and/or testing of chemical protective clothing including totally encapsulating suits, the medical surveillance program, the standard operating procedures for the use of plugging and patching equipment and other subject areas.

Officers and leaders who may be expected to be in charge at an incident will need to be fully knowledgeable of their company's incident command system. They will need to know where and how to obtain additional assistance and be familiar with the local district's emergency response plan.

Technical experts or medical experts or environmental experts that work with hazardous materials in their regular jobs, who may be sent to the incident scene by the shipper, manufacturer or governmental agency to advise and assist the person in charge of the incident need not have monthly training sessions, however, they will be required to have the 24 hours of training on an annual basis. Their training must include the care and use of personal protective equipment including respirators; knowledge of the incident command system; and those areas needed to keep them current in their respective field as it relates to safety and health involving specific hazardous substances.

Those employees who work for public works departments or special equipment operators who operate bulldozers, sand trucks, backhoes, etc., who may be called to the incident scene to provide emergency support assistance, will need at least a safety and health briefing before entering the area of potential or actual exposure. These specially skilled persons, who have not been a part of the emergency plan and do not meet the required training hours, must be made aware of the hazards they face and be provided all necessary protective clothing and equipment required for their tasks. If respirators are to be worn, the specially skilled person shall be trained in accordance with § 1910.134 before proceeding into the hazardous area to do their assigned job.

3. *Decontamination.* Decontamination procedures should be tailored to the specific hazards of the site, and will vary in complexity and number of steps, depending on the level of hazard and the employee's exposure to the hazard. Decontamination procedures and PPE decontamination methods will vary depending upon the specific substance, since one procedure or method will not work for all substances. Evaluation of decontamination methods and procedures should be performed, as necessary, to assure that employees are not exposed to hazards by re-using PPE. References in Appendix D may be used for guidance in establishing an effective decontamination program.

4. *Emergency response plans.* States, along with designated districts within the states, will be developing or have developed emergency response plans. These state and district plans are to be utilized in the emergency response plans called for in this standard. Each employer needs to assure that its emergency response plan is compatible with the local plan. In addition, the Chemical Manufacturers' Association (CMA) is another helpful resource in formulating an effective emergency response plan. Also the current Emergency Response Guidebook from the U.S. Department of Transportation, CMA's CHEMTREC and the Fire Service Emergency Management Handbook should be used as [illegible].

Appendix D—References

The following references may be consulted for further information on the subject of this notice:

1. OSHA Instruction DFO CPL 2.70—January 29, 1986, *Special Emphasis Program: Hazardous Waste Sites.*

2. OSHA Instruction DFO CPL 2–2.37A—January 29, 1986, *Technical Assistance and Guidelines for Superfund and Other Hazardous Waste Site Activities.*

3. OSHA Instruction DTS CPL 2.74—January 29, 1986, *Hazardous Waste Activity Form, OSHA 175.*

4. *Hazardous Waste Inspections Reference Manual,* U.S. Department of Labor, Occupational Safety and Health Administration, 1986.

5. Memorandum of Understanding Among the National Institute for Occupational Safety and Health, the Occupational Safety and Health Administration, the United States Coast Guard, and the United States Environmental Protection Agency, *Guidance for Worker Protection During Hazardous Waste Site Investigations and Clean-up and Hazardous Substance Emergencies.* December 18, 1980.

6. *National Priorities List,* 1st Edition, October 1984; U.S. Environmental Protection Agency, Revised periodically.

7. *The Decontamination of Response Personnel,* Field Standard Operating Procedures (F.S.O.P.) 7; U.S. Environmental Protection Agency, Office of Emergency and Remedial Response, Hazardous Response Support Division, December 1984.

8. *Preparation of a Site Safety Plan,* Field Standard Operating Procedures (F.S.O.P.) 9; U.S. Environmental Protection Agency, Office of Emergency and Remedial Response, Hazardous Response Support Division, April 1985.

9. *Standard Operating Safety Guidelines;* U.S. Environmental Protection Agency, Office of Emergency and Remedial Response, Hazardous Response Support Division, Environmental Response Team; November 1984.

10. *Occupational Safety and Health Guidance Manual for Hazardous Waste Site Activities,* National Institute for Occupational Safety and Health (NIOSH), Occupational Safety and Health Administration (OSHA), U.S. Coast Guard (USCG), and Environmental Protection Agency (EPA); October 1985.

11. *Protecting Health and Safety at Hazardous Waste Sites: An Overview,* U.S. Environmental Protection Agency, EPA/625/9–85/006; September 1985.

12. *Hazardous Waste Sites and Hazardous Substance Emergencies,* NIOSH Worker Bulletin, U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, National Institute for Occupational Safety and Health; December 1982.

13. *Personal Protective Equipment for Hazardous Materials Incidents: A Selection Guide;* U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, National Institute for Occupational Safety and Health; October 1984.

14. *Fire Service Emergency Management Handbook,* International Association of Fire Chiefs Foundation, 101 East Holly Avenue, Unit 10B, Sterling, VA 22170, January 1985.

15. *Emergency Response Guidebook,* U.S. Department of Transportation, Washington, DC, 1983.

16. *Report to the Congress on Hazardous Materials Training, Planning and Preparedness,* Federal Emergency Management Agency, Washington, DC, July 1986.

17. *Workbook for Fire Command,* Alan V. Brunacini and J. David Beageron, National Fire Protection Association, Batterymarch Park, Quincy, MA 02269, 1985.

18. *Fire Command,* Alan V. Brunacini, National Fire Protection, Batterymarch Park, Quincy, MA 02269, 1985.

19. *Incident Command System,* Fire Protection Publications, Oklahoma State University, Stillwater, OK 74078, 1983.

20. *Site Emergency Response Planning,* Chemical Manufacturers Association, Washington, DC 20037, 1986.

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1987. The CFR volume issued as of Apr. 1, 1980, should be retained.

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[5] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[7] No amendments to this volume were promulgated during the period Oct. 1, 1985 to Sept. 30, 1986. The CFR volume issued as of Oct. 1, 1985 should be retained.

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Presidential Documents

Title 3—

The President

Proclamation 5690 of August 7, 1987

Amending the Generalized System of Preferences

By the President of the United States of America

A Proclamation

1. Pursuant to section 502 (a) and (c) of the Trade Act of 1974, as amended (the Trade Act) (19 U.S.C. 2462 (a) and (c)), and having due regard for the eligibility criteria set forth therein, I have determined that it is appropriate to designate Greenland as a beneficiary developing country for purposes of the Generalized System of Preferences (GSP).

2. Previously, under the terms of section 504 (a) and (c) of the Trade Act, as amended (19 U.S.C. 2464 (a) and (c)), I determined that it was appropriate to provide for the termination of GSP benefits for imports from Mexico under Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202) item 470.85, effective July 1, 1985. In light of revised statistics made available to me by the Bureau of Census, I have determined that such benefits for such tariff item should not have been terminated. Accordingly, I have determined that imports from Mexico under TSUS item 470.85 during the period from July 1, 1985, through June 30, 1986, inclusive, should have been afforded the preferential tariff treatment provided under the GSP.

3. Section 604 of the Trade Act (19 U.S.C. 2483) directs the President to embody in the TSUS the substance of relevant provisions of statutes affecting import treatment, and actions thereunder.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, acting under the authority vested in me by the Constitution and the statutes of the United States of America, including but not limited to sections 502, 504, and 604 of the Trade Act, do proclaim that:

(1) General headnote 3(e)(v)(A) to the TSUS, listing those countries whose products are eligible for benefits of the GSP, is modified by inserting in alphabetical order in the list of non-independent countries and territories "Greenland".

(2) In order to afford benefits of the GSP to certain products of Mexico during the period from July 1, 1985, through June 30, 1986—

(a) TSUS item 470.85 is modified by deleting "A*" and by inserting in lieu thereof "A"; and

(b) General headnote 3(c)(iii) to the TSUS (later redesignated as general headnote 3(e)(v)(D)), listing those articles that are eligible for benefits of the GSP when imported from all designated beneficiary countries except those listed opposite those articles, is modified by deleting "470.85 . . . Mexico".

(3)(a) Annex III to Executive Order 12519 of June 13, 1985, listing articles that are eligible for benefits of the GSP when imported from all designated beneficiary countries except those specified in general headnote 3(c)(iii) to the TSUS, is amended by striking TSUS item "470.85".

(4) Annex IV to Proclamation 5365 of September 5, 1985, is superseded to the extent inconsistent with this Proclamation.

(5)(a) The amendments made by paragraph (1) of this Proclamation shall be effective with respect to articles both: (i) imported on or after January 1, 1976,

and (ii) entered, or withdrawn from warehouse for consumption, on or after the date of the signing of this Proclamation.

(b) The remaining amendments made by this Proclamation shall be effective with respect to articles both: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after July 1, 1985, and before the close of June 30, 1986.

IN WITNESS WHEREOF, I have hereunto set my hand this 7 day of Aug. in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 87-18440
Filed 8-10-87; 10:19 am]
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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272 and 275

[Amdt. No. 295]

Food Stamp Program, Miscellaneous Quality Control Amendments

AGENCY: Food and Nutrition Service USDA.

ACTION: Interim rule.

SUMMARY: This rule implements amendments to the Food Stamp Act by section 1537(a) of the Food Security Act of 1985, Pub. L. 99–198, 99 Stat. 1354 (1985) (hereinafter, "Pub. L. 99–198"). Section 1537(a) of the Act excuses State agencies from quality control (QC) liability resulting from use of information received from an automatic Federal information exchange system, provided that information is correctly processed by the State agency. It reflects new statutory time limits for the Department to notify State agencies of their error rates and liabilities and to begin collecting QC liability amounts.

DATES: Comments must be received on or before October 13, 1987, to be assured of consideration. This action is effective retroactive to October 1, 1985.

ADDRESSES: Comments should be submitted to Joseph Pinto, Supervisor, Certification Policy and Quality Control Section, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, USDA, Alexandria, Virginia 22302. All written comments will be available for public inspection at the offices of the Food and Nutrition Service (FNS) during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday), at Room 706, 3101 Park Center Drive, Alexandria, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. Pinto, at the above address, or by telephone at (703) 756–3471.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

This has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512–1. The Department has classified this rule as non-major. The rule's effect on the economy will be less than $100 million. The rule will have no effect on costs or prices. Competition, employment, investment, productivity and innovation will remain unaffected. There will be no effect on the competition of United States-based enterprises with foreign-based enterprises.

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980, Pub. L. 96–354, 94 Stat. 1164 (1980). S. Anna Kondratas, Acting Administrator of the Food and Nutrition Service, has certified that this rule does not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This action does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB).

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule and related Notice(s) to 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983) this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Interim Rule

Pursuant to 5 U.S.C. 553(b)(A), public comment on this rulemaking prior to implementation is not required because it is an interpretative rule. In addition, S. Anna Kondratas, Administrator of the Food and Nutrition Service (FNS), has determined, pursuant to 5 U.S.C. 553(b)(B), that public comment on this rulemaking prior to implementation is impracticable and contrary to public interest. This rule is effective retroactively to October 1, 1985 because Pub. L. 99–198 specifically requires this effective date. However, because the Department believes that the rule may be improved by public comment, comments are solicited on this rule for 60 days. All comments received will be analyzed and any appropriate changes in the rule will be incorporated in the subsequent publication of a final rule. In addition, this rule will be effective less than 30 days following its publication, again, because it is an interpretative rule and because of the statutorily mandated effective date. (See 5 U.S.C. 553(d)(2),(3).)

Effective Date Justification

The provisions regarding Federal automated information exchange systems and Federal timeframes for notifying States of error rates and liabilities and initiating collection action are effective retroactively to October 1, 1985, the beginning of the Fiscal Year 1986 review period. The Food Security Act of 1985, section 1537(a), requires that these provisions be effective retroactive to that date.

Background

Automated Federal Information Exchange (FIX) Systems and QC Liability

State agencies often use automated Federal information exchange (FIX) systems such as the social security Beneficiary and Earnings Data Exchange (BENDEX) and the supplemental security income State Data Exchange (SDX) systems for verification purposes and to make mass changes in such benefits. Pub. L. 99–198 amended section 16(d) of the Food Stamp Act to provide that State agencies shall not be liable for errors that result from use by the State agency of information received from an automatic information exchange system made available by any Federal department or agency, provided that the information was correctly processed by the State agency. This provision applies to all FIX systems if the information is correctly processed by the State agency. The FIX systems specifically include the BENDEX and SDX systems. The House Report indicates that this type of error should be reported for program management purposes but it should be excluded from error rate liability determinations. H.R. Rep. No. 271, part I, 99th Cong., 1st Sess., 161 (1985). Pub. L. 99–198 provides that this liability exemption shall be effective beginning

with the fiscal year 1986 reporting period.

This interim rule amends current regulations to indicate that FIX variances are to be excluded by State agencies from QC error determinations and error rates. The Department believes this is administratively more feasible than (1) requiring the calculation of two error rates, one with FIX variances and one without, or (2) requiring States to report one error rate with FIX variances and then request a good cause waiver of the liability amount resulting from the variances. The exclusion would apply only if the State agency correctly processed the information for its intended use. For example, the correct item for the correct household must be used, and the most recent information available to the State agency must be used.

Information regarding FIX variances will still be used for program management purposes; H.R. Rep. No. 271, *supra*, 161. The FIX variances will be recorded during the State QC review, and corrective action will be required by the State agency on an individual case basis. In addition, State agencies will be required to report these variances to FNS.

Error Rate and Error Rate Liability Timeframes

Pub. L. 99-198 also amended section 16(d) of the Food Stamp Act to require State agencies to expeditiously report data on their operations to the Department for purposes of determining their QC error rates and liabilities. It also requires the Department to establish the payment error rates, determine State liability and notify States of such determination within nine months following the end of each fiscal year reporting period. Accordingly, this rule amends the regulations to specify that FNS must notify States of payment error rates and liability for each fiscal year reporting period prior to July 1 of the year following the end of that reporting period.

The same amendment also requires the Department to initiate efforts to collect amounts owned by State agencies for QC liabilities for each fiscal year before the end of the next fiscal year (September 30), subject to the conclusion of any formal or informal appeal procedure. The Department is revising the regulations to specify that FNS must initiate collection action for each QC claim by the end of the fiscal year following the reporting period in which the claim arose, unless an appeal relating to the claim is pending. Such appeals include arbitration cases, requests for good cause waivers, and administrative and judicial appeals pursuant to section 14 of the Food Stamp Act.

The language of the statute and the legislative history indicate that, if a State fails to submit QC data to FNS expeditiously and FNS determines that, as a result, it is unable to meet the statutory timeframes, then FNS is not bound by the timeframes with regard to that State.

The statute provides that States must submit "expeditiously data . . . sufficient for" FNS to determine the State's error rate. It is obvious that, in cases where States fail to meet this obligation, Congress could not have intended FNS to be bound by the timeframes; strict adherence to the timeframes in such instances could compromise the integrity of the State's error rate. The House Committee Report states that under the timeframe provision, "The Secretary would be required, *to the maximum extent feasible*, to establish claims and initiate collections by the srart (sic) of the fourth quarter of the fiscal year following the fiscal year for which State performance is being measured." H.R. Rep. No. 271, *supra*, 316 (emphasis added).

Implementation

Automated Federal Information Exchange Systems, Error Rate Timeframes, and Error Rate Liability Timeframes

The Department is requiring implementation retroactively to the beginning of the Fiscal Year 1986 review period, in accordance with Pub. L. 99-198, Section 1537(a).

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

7 CFR Part 275

Administrative practice and procedure, Food stamps, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, Parts 272 and 275 of Chapter II of Title 7, *Code of Federal Regulations* are amended as follows.

1. The authority citation appearing after the table of contents for Parts 272 and 275 continues to read as follows:

Authority: 7 U.S.C. 2011-2029.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. Section 272.1 is amended by adding a new paragraph (g)(91) to read as follows:

§ 272.1 General terms and conditions.

* * * * * *

(g) *Implementation.* * * *

(91) *Amendment No. 295—(i) Automated Federal information exchange systems.* States' QC liability exemption for errors resulting from proper use of a Federal automatic information exchange system is effective beginning with the Fiscal Year 1986 reporting period.

(ii) *FNS timeframes.* The timeframes for notifying States of their payment error rates and payment error rate liabilities, if any, and the timeframe by which FNS must initiate collection action on claims for such liabilities are effective beginning with the Fiscal Year 1986 reporting period.

PART 275—PERFORMANCE REPORTING SYSTEM

3. 7 CFR 275.12 is amended by adding a new paragraph (d)(2)(v); and by adding a new paragraph (f)(3) to read as follows:

§ 275.12 Review of active cases.

* * * * * *

(d) * * *

(2) * * *

(v) Any variance resulting from use by the State agency of information received from automated Federal information exchange (FIX) systems, provided that such information is correctly processed for its intended uses by the State agency. Automated FIX systems include but are not limited to the Beneficiary and Earnings Data Exchange and State Data Exchange systems.

* * * * * *

(f) *Reporting of review findings.* * * *

(3) *Automated Federal Information Exchange System Errors.* Variances resulting from the use by the State agency of information received from automated Federal information exchange systems, which are excluded in accordance with § 275.12(d)(2)(v), shall be coded and reported as variances. They shall not, however, be used in determining a State's error rates.

* * * * * *

4. In § 275.23, new paragraph (e)(7) is added to read as follows:

§ 275.23 Determination of State agency program performance.

* * * * * *

(e) * * *

(7) *FNS Timeframes.* FNS shall notify State agencies of their payment error rates and payment error rate liabilities, if any, within nine months following the end of each fiscal year reporting period to which they pertain. FNS shall initiate collection action on each claim for such liabilities before the end of the fiscal year following the end of the fiscal year reporting period in which the claim arose unless an appeal relating to the claim is pending. Such appeals include arbitration cases, requests for good cause waivers, and administrative and judicial appeals pursuant to section 14 of the Food Stamp Act. FNS is not bound by the timeframes referenced in this subparagraph in cases where a State fails to submit QC data expeditiously to FNS and FNS determines that, as a result, it is unable to calculate the State's payment error rate and payment error rate liability within the prescribed timeframe.

Date: August 5, 1987.

Anna Kondratas,

Administrator.

[FR Doc. 87-18158 Filed 8-10-87; 8:45 am]

BILLING CODE 3410-30-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 154, 157, 270, 271 and 284

[Docket Nos. RM86-3-078 and 079; Order No. 451-C]

Ceiling Prices, Old Gas Pricing Structure; Order Denying Rehearing

Issued August 5, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order Denying Rehearing.

SUMMARY: The Federal Energy Regulatory Commission is denying rehearing of Order No. 451-B, which amended and clarified Order Nos. 451-A and 451. The final rule adopted in those orders established a new alternative ceiling price for old gas priced under sections 104 and 106 of the Natural Gas Policy Act of 1978. The final rule also established a "good faith negotiation rule" with which producers must comply before collecting a higher price under an existing contract, absent voluntary renegotiation of the contract. In denying rehearing, the Commission reaffirms Order No. 451-B, which amended the regulations implementing the good faith negotiation rule to clarify the effect of assignments on the parties' rights under that rule.

FOR FURTHER INFORMATION CONTACT: Charles Schultz, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8141.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

Order No. 451-C

Order Denying Rehearing [1]

Issued August 5, 1987.

On June 3, 1987, the Commission issued Order No. 451-B [2] amending the final rule adopted in Order Nos. 451 [3] and 451-A.[4] That rule modified the price structure of old natural gas and established regulations governing implementation of the revised price structure. Order No. 451-B prospectively modified the good faith negotiation procedure established by the rule to prohibit circumvention of purchasers' rights through assignment of contractual rights. The Commission has received two timely applications for rehearing or clarification of Order No. 451-B [5] and one motion to dismiss the requests for rehearing.[6] Because the petitioners raise no issues regarding the Commission's decision to apply the limitation on contract eligibility prospectively, other than those which the Commission has already considered and addressed, the Commission denies rehearing of Order No. 451-B.

The Commission Orders:

(A) The requests for rehearing of Order No. 451-B by Arkla Inc. and ANR Pipeline Company and Colorado Interstate Gas Company are denied.

(B) Mobil Oil Corporation's motion to dismiss the requests for rehearing of Order No. 451-B is denied.

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[1] Order Nos. 451 and 451-A are currently on appeal before the United States Court of Appeals for the Fifth Circuit in Mobil Oil Exploration Company and Mobil Oil Producing Southeast v. FERC, No. 86-4040 *et al.* (5th Cir. Dec. 15, 1986). The record in Order No. 451-B has not yet been filed before the court.

[2] 52 FR 21669 (June 9, 1987).

[3] 51 FR 22168 (June 18, 1986).

[4] 51 FR 46782 (December 24, 1986).

[5] Arkla Inc., RM86-3-078, July 6, 1987; ANR Pipeline Company and Colorado Interstate Gas Company, RM86-3-079, July 6, 1987.

[6] Mobil Oil Corporation, July 15, 1987. Mobil's motion to dismiss the petitions will be denied since, as stated in note 1 above, the record in this proceeding and the Commission's jurisdiction to act on the petitions have been retained.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18216 Filed 8-10-87; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Regulations No. 4]

Federal Old-Age, Survivors, and Disability Insurance; Wage Coverage

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: The Social Security Administration (SSA) is revising five of its regulations on wage coverage under Social Security. These amended regulations are as follows:

(1) We shall exclude from an employee's wages the cash value of the meals and lodging furnished the employee by the employer when these items are furnished for the employer's convenience.

(2) We shall no longer (with certain exceptions) exclude from an employee's wages the employer's payment of the employee's social security tax liability (i.e., Federal Insurance Contributions Act (FICA) tax).

(3) We shall—(a) Exclude from an employee's wages the employer payments paid after the year the employee became entitled to disability insurance benefits if the employee performed no services for such employer *in* the pay period in which payment is made, and (b) no longer exclude from an employee's wages the employer payments paid to an employee after the employee became age 62 if these payments are paid *for* a period in which the employee did not work.

(4) We shall enlarge the scope of entitlement to the deemed wages provided to persons who were interned during the World War II period at a place operated by the United States Government for interning United States citizens of Japanese ancestry.

(5) We shall bar (with certain exceptions) deemed wage credits to members of the uniformed services who fail to complete a minimum service period of either 24 months of active duty or the full period the individual was called to active duty.

EFFECTIVE DATE: These regulations are effective August 11, 1987.

FOR FURTHER INFORMATION CONTACT: C.H. Campbell, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, [301] 597–3402.

SUPPLEMENTARY INFORMATION: The five rules to be amended and our amendments are as follows:

Amendment That Excludes From an Employee's Wages the Value of the Meals and Lodging Furnished the Employee for the Employer's Convenience

According to current regulations, the value of meals and lodging furnished to an employee by an employer is wages if—

(1) Both employer and employee understand that the meals and lodging are to be furnished on a regular basis; or

(2) The value of these items comprises a large part of total employee pay.

This regulation was based on SSA's interpretation of section 209 of the Act and was consistent with the Internal Revenue Service's (IRS') interpretation of its parallel provision, section 3121(a) of the Internal Revenue Code (the IRC). Under this interpretation, an employee's wages included the value of the meals and lodging furnished the employee on a regular basis. The U.S. Supreme Court, however, in its opinion in *Rowan Companies, Inc.* v. *United States*, 452 U.S. 247 (1981), invalidated this interpretation as not being in accord with congressional intent. According to the Supreme Court decision, Congress intended the same statutory definition of wages with respect to the value of meals and lodging furnished an employee to apply under the Federal Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), and the income tax provisions of the IRC. Consequently, the rule in section 119 of the IRC excluding the value of the meals or lodging furnished for the employer's convenience from the employee's gross income applies also under the Social Security Act. This Supreme Court holding was incorporated into the Social Security Act by section 327 of Pub. L. 98–21—"The Social Security Amendments of 1983" as amended by section 2662(g) of Pub. L. 98–369, "The Deficit Reduction Act of 1984."

We had originally intended that our proposed regulation amendment implementing *Rowan* apply only to meals and lodging furnished on or after June 8, 1981, the date of the Supreme Court's decision. However, we decided to apply the holding retroactively. Thus, our amended regulation, without stating an inception date, will provide that the value of meals and lodging furnished the employee for the convenience of the employer is excluded from an employee's wages when—

(1) In the case of meals, they are provided at the employer's place of business; and

(2) In the case of lodging, the employee is required to accept the lodging on the employer's premises as a condition of employment.

The section of the regulations that we are revising to implement *Rowan* also contains a rule on excluding the value of fringe benefits from an employee's wages. Fringe benefits means the facilities and privileges that an employer may provide to his or her employee. The enactment of section 531 of Pub. L. 98–369 (the Deficit Reduction Act of 1984), which enacted the current section 132 of the IRC, made this rule invalid with respect to fringe benefits provided on or after January 1, 1985. Section 132 of the IRC was further amended by section 1853 of Pub. L. 99–514, the "Tax Reform Act of 1986." Consequently, we are amending this rule to show that it applies only to fringe benefits provided to employees prior to January 1, 1985. After IRS publishes final regulations to implement these fringe benefit provisions of the IRC, we will further amend this rule to cover periods after January 1, 1985.

Amendment That Excludes From an Employee's Wages an Employer's Payment of the Employee's Social Security Tax Liability

Our current regulations provide that wages do not include the employer's payment (without deduction from the employee's pay) of—

(1) The tax imposed on employees by the Federal Insurance Contributions Act (FICA); or

(2) Any payment required from an employee under a State unemployment compensation law.

The revised regulation will conform to the provisions of sections 1141(a)(2) and 1141(c) of Pub. L. 96–499 (the Omnibus Reconciliation Act of 1980) which amended section 209(f) of the Act. The amended section 209(f) provides that this wage exclusion applies on or after January 1, 1981 only to:

(1) Payments made on behalf of an employee working in—

(i) Domestic service in the private home of the employer; or

(ii) Agricultural labor.

(2) Payments made beginning January 1, 1981 through December 31, 1983 on behalf of an employee who works for a State or local government, if—

(i) The employer payments are for amounts equivalent to the employee's FICA share or State unemployment compensation contribution; and

(ii) The State or local government had in effect on October 1, 1980 a practice of paying a substantial portion of this amount.

Amendments Concerning Excluding or Not Excluding Employer Payments From an Employee's Wages: Payments for or in Nonwork Periods Paid to Employees Who Attain Age 62 or Are Entitled to Disability Insurance Benefits

The current regulations exclude from wages an employer's payment to an employee for a period in which the employee did not work where the employee—

(1) Has attained age 62, or

(2) Is entitled to disability insurance benefits.

We are amending this regulation, in accordance with Pub. L. 98–21, section 324(c)(3)(B), which repealed section 209(i) of the Act, to provide that the exclusion of payments to employees who have attained age 62 applies only to remuneration paid before January 1, 1984.

We are also amending this regulation as it applies to employer payments that are paid in a period of non-work to an employee who is a disability insurance beneficiary. This amendment is necessary because of SSA's acquiescence in an Internal Revenue Service (IRS) interpretation of section 3121(a)(15) of the Internal Revenue Code (IRC) (which corresponds to section 209(o) of the Act). Under this IRS interpretation, an employer's payments to an employee after the calendar year of disability benefit entitlement are not wages if the employee did not work for such employer in the period the payments were received. Thus, these payments are not wages, even if they were paid for a period that preceded disability benefit entitlement in which the employee did work, provided they were received after the year of disability benefit entitlement in a period in which the employee did not work.

Amendment to Enlarge the Scope of Entitlement to the Deemed Wage Credits Provided to Japanese and Americans Interned During the World War II Period

The current regulations provide for granting wage credits to United States citizens of Japanese ancestry who were interned during any period of time from December 7, 1941 through December 31, 1946 in places operated by the United States Government within the United States. Additionally, the regulations provide that certification of internment

is to be obtained from the Department of Defense.

We are enlarging the scope of the entitlement to these wage credits in accordance with another interpretation of section 201 of the Act (which is the statutory basis for granting these wage credits). Under our amended regulations, the citizenship or ancestry of any internee confined in an internment camp will not be relevant to qualification for these wage credits. Additionally, our amended regulations will provide that the certification of internment is now obtained from the Archivist of the United States or his or her representative.

Amendment to Bar the Deeming of Wage Credits to Members of the Uniformed Services Who Fail to Complete the Minimum Service Requirement

The current regulation that implements section 229(a) of the Social Security Act provides deemed wage credits, up to a maximum of $1,200 per year, as additional Social Security wage credits to members of the uniformed services. We are amending this regulation because of a minimum active duty service requirement that service members in most cases must satisfy to receive these credits. Our amended regulation is based on the following provisions from two statutory enactments affecting section 229(a) of the Act:

(1) Section 408 of Pub. L. 97–306 (Codified in 38 U.S.C. section 3101A)

The proposed rule based on this statutory enactment applies to:

(1) Persons who enlist in the Armed Forces for the first time on or after September 8, 1980; and

(2) Other members of the uniformed services whose active duty begins on or after October 14, 1982; and who—

(a) Had not previously served 24 months of active duty; or

(b) Were not discharged from prior service for the convenience of the government (i.e., under section 1171 of title 10 of the U.S. Code).

Under this enactment, the minimum active duty period for granting wage credits to these persons is 24 months of service or the full period called to active duty if the person served fewer than 24 months of active duty. However, there are the following exceptions to these minimum service requirements:

(a) Discharge or release from active duty for the convenience of the government (i.e., section 1171 of title 10 of the U.S. Code);

(b) Discharge or release from active duty for hardship (i.e., section 1173 of Title 10 of the U.S. Code);

(c) Discharge or release from active duty or release from active duty for disability incurred or aggravated in the line of duty; or

(d) The establishment of entitlement to compensation under Chapter 11 of Title 38 of the U.S. Code for service connected disability or death.

(2) Section 1002 of Pub. L. 98–342 (Formerly Codified at 10 U.S.C. Section 977)

This statutory enactment, although repealed, can apply concurrently with the provisions of section 408 of Pub. L. 97–306 to an individual who enlisted in a regular component of the Armed Forces for the first time on or after September 8, 1980 *and whose military service ended prior to October 14, 1982.* Based on section 1002 of Pub. L. 98–342, such an individual can receive wage credits for each month of service and is exempted from the minimum service requirement if he or she:

(a) Was discharged because of disability (i.e., under Chapter 61 of Title 10 of the U.S. Code); or

(b) Was later found to have a disability which resulted from injury or disease incurred or aggravated during enlistment which was not caused by misconduct or during unauthorized absence.

The proposed regulation also provides for granting wage credits regardless of the duration of the period of active duty if the person dies while on active duty.

Response to Public Comments on the Notice of Proposed Rulemaking (NPRM)

A 60-day comment period was provided by the October 28, 1986 NPRM (51 FR 39397). We received the following comments:

Comment: It is unfair to include as wages an employer's payment of (1) the employee's share of the FICA tax and (2) the employee's payment under a State unemployment compensation law. This is an attempt to add a tax on a tax.

Response: This regulation change was mandated by section 1141 (a)(2) and (c) of Pub. L. 96–499 (Omnibus Reconciliation Act of 1980). We are implementing a statutory provision. Congress intended to eliminate the wage exclusion in the situation where the employer paid the employee's share of the Social Security tax or the State unemployment compensation tax because such payment constitutes remuneration to the employee.

Comment: The certification of a person's internment during the World War II era is made by the Archivist of the United States or his or her representative.

Response: This comment is correct and § 404.1060(e) is accordingly revised.

Regulatory Procedures

Executive Order 12291

These regulations have been reviewed under Executive Order 12291 and do not meet any of the criteria for a major regulation.

The regulations having a cost impact of over $100 million a year are the following: (1) Including an employer's payment of the employee's FICA tax as part of the employee's wages; and (2) Excluding the value of food and lodging provided by an employer from an employee's wages. The first regulation would result in increased contributions to the Social Security trust funds; the second regulation would result in decreased contributions to the trust fund. These two regulations represent in one case implementation of a statutory enactment and in the other case implementation of a Supreme Court decision and subsequent statutory enactment. Therefore, neither regulation can be considered a major regulation because they merely implement the law with no regulatory discretion in the manner of implementation. The three other regulations involve negligible costs. In view of the foregoing, a regulatory impact analysis is not required.

Paperwork Reduction Act

These regulations impose no reporting/recordkeeping requirements requiring the Office of Management and Budget clearance.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities. The proposed regulation based on legislation that limits an employer from using his or her payment of an employee's Social Security tax liability as a wage exclusion does relate to small entities since a few businesses had applied this wage exclusion to their employees' wages. However, the use by small businesses of this wage exclusion provision had never been widespread and the economic impact on such entities should therefore be minimal. The proposed regulation based on the U.S. Supreme Court decision in *Rowan Companies, Inc.* v. *United States*, 452 U.S. 247 (1981), and the subsequent codification, requiring employers to exclude from employees' wages the value of meals and lodging furnished for the employers' convenience, cause

minor administrative costs but result in overall cost savings to such employers. It is anticipated this regulation causes minimal overall economic impact. The remaining proposed regulations would largely affect individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Programs: No. 13.802 Social Security Disability Insurance; No. 13.803 Social Security—Retirement Insurance; No. 13.805 Social Security—Survivors Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors, and disability Insurance.

Dated: June 8, 1987.

Dorcas R. Hardy,

Commissioner of Social Security.

Approved: July 7, 1987.

Otis R. Bowen,

Secretary of Health and Human Services.

Title 20, Chapter III, Part 404, Subparts K and N of the Code of Federal Regulations are amended as follows:

1. The authority citation for Subpart K continues to read as set forth below and the authority citations following the sections in Subpart K are removed.

Authority: Secs. 205(a), 209, 210, 211, 229(b) 230, 231 and 1102 of the Social Security Act, 42 U.S.C 405(a), 409, 410, 411, 429(a), 430, 431 and 1302 and 5 U.S.C. Appendix.

2. Section 404.1043 is revised as set forth below:

§ 404.1043 Facilities or privileges—meals and lodging.

(a) *Excluding the value of employer provided facilities or privileges from employee gross income prior to January 1, 1985.* (1) Generally, the facilities or privileges that an employer furnished an employee prior to January 1, 1985 are not wages if the facilities or privileges—

(i) Were of relatively small value; and

(ii) Were offered or furnished by the employer merely as a means of promoting the health, good will, contentment, or efficiency of the employees.

(2) The term "facilities or privileges" for the period prior to January 1, 1985 is intended to include such items as entertainment, medical services, and so-called "courtesy" discounts on purchases.

(b) *Meals and lodging.* The value of the meals and lodging furnished to an employee by an employer for reasons of the employer's convenience is not wages if—

(1) The meals are provided at the employer's place of business; and

(2) The employee, in the case of lodging, is required to accept lodging on the employer's business premises as a condition of employment.

3. Section 404.1055 is revised as set forth below:

§ 404.1055 Payments by an employer of employee's tax or employee's contributions under State law.

(a) *Before January 1, 1991.* Before January 1, 1991, we did not include as wages any payment by an employer that was not deducted from the employee's salary (or for which reimbursement was not made by the employee) of either—

(1) The tax imposed by section 3101 of the Code (employee's share of "social security tax"); or

(2) Any payment required from an employee under a State unemployment compensation law.

(b) *Beginning January 1, 1991.* Beginning January 1, 1991, the employer payments described in paragraph (a) of this section are wages with the following exceptions:

(1) Payments made on behalf of an employee employed in:

(i) Domestic service in the private home of the employer, or

(ii) Agricultural labor.

(2) Payments made beginning January 1, 1991 through December 31, 1993 on behalf of an employee who works for a State or local government, and—

(i) The employer payments are for amounts equivalent to the employee's FICA share or State unemployment compensation contribution; and

(ii) The State or local government had in effect on October 1, 1990 a practice of paying at least a substantial portion of this amount.

4. Section 404.1059 is amended by revising paragraph (g) as follows:

§ 404.1059 Special situations.

* * * * *

(g) *Payments to employees for non-work periods.*—(1) *Payments to an employee after the employee attained age 62.*

(i) *Payments prior to January 1, 1984.*—(A) We do not include as wages any payment made by an employer to an employee (including a corporate officer) prior to January 1, 1984 in a calendar month after the employee attains age 62, when the payments are for a period—

(*1*) Throughout which an employment relationship exists; and

(*2*) In which the employee did not work for the employer (even if subject to call for the performance of work).

(B) If the employee does any work for the employer in the period the payments are earned, the payments are not excluded from wages under this provision. Also, vacation or sick pay is not excluded from wages under this paragraph. The term "sick pay" as used in this paragraph includes "sick leave" payments made by a State, a political subdivision, or an instrumentality to an employee for a period during which he or she was absent from work due to illness.

(ii) *Payments on or after January 1, 1984.*—We include as wages any payment made by an employer to an employee (including a corporate officer) on or after January 1, 1984 in a calendar month after the employee attains age 62 for a period in which the employee did not work unless excluded under some other provision (e.g., sick payments made after 6 calendar months following the last calendar month the employee worked for the employer).

(2) *Payments to an employee who is entitled to disability insurance benefits.* We do not include as wages any payments made by an employer to an employee if at the time such payment is made—

(i) The employee is entitled to disability insurance benefits under the Act;

(ii) The employee's entitlement began before the calendar year in which the employer's payment is made; and

(iii) The employee performed no work for the employer in the period in which the payments were paid by such employer (regardless of whether the employee worked in the period the payments were earned).

* * * * *

5. Section 404.1060 is amended by revising paragraphs (a) and (e) as set forth below:

§ 404.1060 Deemed wages for certain individuals interned during World War II.

(a) *In general.* Persons who were interned during any period of time from December 7, 1941, through December 31, 1946, by the United States Government at a place operated by the Government within the United States for the internment of United States citizens of Japanese ancestry are deemed to have been paid wages (in addition to wages actually paid) as provided in paragraph (c) of this section during any period after attaining age 16 while interned. This provision is effective for determining entitlement to, and the amount of, any monthly benefit for months after December 1972, for determining entitlement to, and the amount of, any lump-sum death payment in the case of

a death after December 1972, and for establishing a period of disability.

* * * * *

(c) *Certification of interment.* The certification concerning the interment is made by the Archivist of the United States or his or her representative. After the interment has been verified, wages are deemed to have been paid to the interree.

6. The authority citation for Subpart N continues to read as follows:

Authority: Secs. 205 (a) and (p), 210 (l) and (m), 215(b), 217, 229 and 1102 of the Social Security Act; 42 U.S.C. 405 (a) and (p), 410 (l) and (m), 415(h), 417, 429 and 1302.

7. Section 404.1341 is amended by revising paragraphs (a) and (c) and by adding paragraph (d) as set forth:

§ 404.1341 Wage credits for a member of a uniformed service.

(a) *General.* In determining your entitlement to, and the amount of your monthly benefit (or lump sum death payment) based on your wages while on active duty as a member of the uniformed service after 1950, and for establishing a period of disability as discussed in § 404.132, we add wage credits to the wages paid you as a member of that service. The amount of the wage credits, the applicable time periods, the wage credit amount limits, and the requirement of a minimum period of active duty service for granting these wage credits, are discussed in paragraphs (b), (c), and (d) of this section.

* * * * *

(c) *Limits on wage credits.* The amount of these wage credits cannot exceed—

(1) $1200 for any calendar year, or

(2) An amount which when added to other earnings causes the total earnings for the year to exceed the annual earnings limitation explained in §§ 404.1047 and 404.1098(b).

(d) *Minimum active-duty service requirement.* (1) If you enlisted for the first time in a regular component of the Armed Forces on or after September 8, 1980, you must complete the shorter of 24 months of continuous active duty or the full period that you were called to active duty to receive these wage credits, unless:

(i) You are discharged or released from active duty for the convenience of the government in accordance with section 1171 of Title 10 of the U.S. Code or because of hardship as specified in section 1173 of Title 10 of the U.S. Code;

(ii) You are discharged or released from active duty for a disability incurred or aggravated in line of duty;

(iii) You are entitled to compensation for service-connected disability or death under Chapter 11 of Title 38 of the U.S. Code;

(iv) You die during your period of enlistment; or

(v) *You were discharged prior to October 14, 1982,* and your discharge was—

(A) Under Chapter 61 of Title 10 of the U.S. Code; or

(B) Because of a disability which resulted from an injury or disease incurred in or aggravated during your enlistment which was not the result of your intentional misconduct and did not occur during a period of unauthorized absence.

(2) If you entered on active duty as a member of the uniformed services as defined in § 404.1330 *on or after* October 14, 1982, having neither previously completed a period of 24 months' active duty nor been discharged or released from this period of active duty under section 1171, Title 10 of the U.S. Code (i.e., convenience of the government), you must complete the shorter of 24 months of continuous active duty or the full period you were called or ordered to active duty to receive these wage credits, unless:

(i) You are discharged or released from active duty for the convenience of the government in accordance with section 1171 of Title 10 of the U.S. Code or because of hardship as specified in section 1173 of Title 10 of the U.S. Code;

(ii) You are discharged or released from active duty for a disability incurred or aggravated in line of duty;

(iii) You are entitled to compensation for service-connected disability or death under Chapter 11 of Title 38 of the U.S. Code; or

(iv) You die during your period of active service.

[FR Doc. 87-18088 Filed 8-10-87; 8:45 am]
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Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Center for Devices and Radiological Health

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations on exemption of electronic products from performance standards for electronic products and on granting and withdrawing variances from these standards. This amendment delegates authority to make decisions on exemptions and variances to the Director and Deputy Director of the Office of Compliance and to the Director and Deputy Director of the Office of Standards and Regulations in the Center for Devices and Radiological Health (CDRH). This redelegation of authority will expedite the handling of requests for variances and exemptions by decentralizing the approval of actions to the decisionmaking level.

EFFECTIVE DATE: August 11, 1987.

FOR FURTHER INFORMATION CONTACT: Marjorie J. Shandruk, Office of Management and Operations (HFA-340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4976.

SUPPLEMENTARY INFORMATION: FDA is amending § 5.86 *Variances from performance standards for electronic products* (21 CFR 5.86) and § 5.87 *Exemption of electronic products from performance standards and prohibited acts* (21 CFR 5.87) by adding to the list of delegates the Director and Deputy Director, Office of Compliance, and the Director and Deputy Director, Office of Standards and Regulations, Center for Devices and Radiological Health.

Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs, Part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR Part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552; 7 U.S.C. 2217; 15 U.S.C. 638, 1451 *et seq.*; 21 U.S.C. 41 *et seq.*, 61-63, 141 *et seq.*, 301-392, 467f(b), 679(b), 801 *et seq.*, 823(f), 1031 *et seq.*; 35 U.S.C. 156; 42 U.S.C. 219, 241, 242(a), 242a, 242l, 242n, 243, 262, 263, 263b through 263n, 264, 265, 300u *et seq.*, 1395y and 1395y note, 3246b(b)(3), 4331(a), 10007, and 10008; Federal Caustic Poison Act (44 Stat. 1406); Federal Advisory Committee Act (Pub. L. 92-463); E.O. 11490, 11921.

2. Part 5 is amended by revising §§ 5.86 and 5.87 to read as follows:

§ 5.85 Variances from performance standards for electronic products.

The following officials are authorized to grant and withdraw variances and issue notices of availability of any approved variance or any amendment or extension thereof, from the provisions of performance standards for electronic products established in Subchapter J of this chapter:

(a) The Director and Deputy Director, Center for Devices and Radiological Health (CDRH).

(b) The Director and Deputy Director, Office of Compliance, CDRH.

(c) The Director and Deputy Director, Office of Standards and Regulations, CDRH.

§ 5.87 Exemption of electronic products from performance standards and prohibited acts.

The following officials are authorized to exempt from performance standards any electronic product intended for use by departments or agencies of the United States under section 358(a)(5) of the Public Health Service Act (the act) and to exempt an electronic product or class of products from all or part of the provisions of section 360B(a) of the act under section 360B(b) of that act:

(a) The Director and Deputy Director, Center for Devices and Radiological Health (CDRH).

(b) The Director and Deputy Director, Office of Compliance, CDRH.

(c) The Director and Deputy Director, Office of Standards and Regulations, CDRH.

Dated: July 31, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-18145 Filed 8-10-87; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 73

[Docket No. 86C-0495]

Mica; Addition of Listing for Use in Dentifrices That are Drugs as Well as Cosmetics; Change in Specification for Fineness

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the color additive regulations to provide for the safe use of mica in dentifrices that are drugs as well as cosmetics and is changing the fineness specification for mica to permit a larger average particle size distribution. This action responds to a petition filed by the Procter & Gamble Co.

DATES: Effective September 11, 1987. Except as to any provisions that may be stayed by the filing of proper objections; objections by September 10, 1987.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: JoAnn Ziyad, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-426-9463.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of February 3, 1987 (52 FR 3349), FDA announced that a color additive petition (CAP 7C0207) had been filed by the Procter & Gamble Co., Cincinnati, OH 45241, proposing that § 73.1496 (21 CFR 73.1496) be amended to provide for the safe use of mica ($K_2Al_4(Al_2Si_6O_{20})(OH)_4$ or, alternatively, $H_2KAl_3(SiO_4)_3$) in dentifrices that are drugs as well as cosmetics. The petitioner also proposed a change in the fineness specification for mica to permit, but not require, a larger average particle size distribution. The purpose of the change in fineness is to increase the versatility of mica as a pearlescent color additive. The petition was filed under section 706 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 376).

FDA has evaluated the data in the petition and data supporting the previous regulations involving this color additive. In support of its claim that mica is safe for use in dentifrices that are drugs as well as cosmetics, the petitioner submitted references to a number of animal toxicity studies for the color additive. These animal studies were previously used to support the safety of the currently permitted use of mica (21 CFR 73.1496 and 73.2496). The studies include an acute oral toxicity study in rats, an acute eye application study in rabbits, an acute dermal application study in rabbits, a subchronic eye irritation study in rabbits, and a 4-week dermal evaluation in rabbits. These studies did not reveal evidence of local or systemic toxic effects from the administration of mica under these experimental conditions of use. On the basis of these studies, the agency concludes that the use of mica that complies with the new fineness specification in dentifrices that are drugs as well as cosmetics is safe.

The petitioner has also requested a change in fineness specification to allow for the use of a larger average particle size by dropping the requirement that 80 percent pass through a 200-mesh sieve. The agency has determined that this change will have no effect on the safety of the color additive because an increase in particle size would only serve to inhibit the potential absorption of mica from the gastrointestinal tract and therefore reduce the potential for systemic adverse effects. Consequently, this change in particle size will not make the use of this color any less safe than its use in the currently regulated form, and FDA is amending § 73.1496 as set forth below.

Because one of the chemical formulas for mica (potassium aluminum silicate) set forth in § 73.1496(a) was inadvertently represented as $K_2Al_4(Al_2Si_6O_{20})(OH_4)$, the agency is correcting that formula in the regulation to read "$K_2Al_4(Al_2Si_6O_{20})(OH)_4$."

In accordance with § 71.15 (21 CFR 71.15), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in § 71.15, the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before September 10, 1987, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for

which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. FDA will publish notice of the objections that the agency has received or lack thereof in the Federal Register.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 73 is amended as follows:

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

1. The authority citation for 21 CFR Part 73 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); 21 CFR 5.10.

2. In § 73.1496 by revising the entry for "Identity" in paragraph (a)(1), "Specifications" in paragraph (b), and "Uses and restrictions" in paragraph (c) to read as follows:

§ 73.1496 Mica.

(a) *Identity.* (1) The color additive mica is a white powder obtained from the naturally occurring mineral, muscovite mica, consisting predominantly of a potassium aluminum silicate, $K_2Al_4(Al_2Si_6O_{20})(OH)_4$ or, alternatively, $H_2KAl_3(SiO_4)_3$. Mica may be identified and semiquantitatively determined by its characteristic X-ray diffraction pattern and by its optical properties.

* * * * *

(b) *Specifications.* Mica shall conform to the following specifications and shall be free from impurities other than those named to the extent that such other impurities may be avoided by good manufacturing practice:

Fineness, 100 percent shall pass through a 100-mesh sieve.

Loss on ignition at 600–650 °C, not more than 2 percent.

Lead (as Pb), not more than 20 parts per million.

Arsenic (as As), not more than 3 parts per million.

Mercury (as Hg), not more than 1 part per million.

(c) *Uses and restrictions.* Mica may be safely used in amounts consistent with good manufacturing practice to color dentifrices and externally applied drugs, including those for use in the area of the eye.

* * * * *

Dated: August 5, 1987.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-18206 Filed 8-10-87; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 176

[Docket No. 78F-0480]

Indirect Food Additives; Paper and Paperboard Components

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 2-amino-2-methyl-1-propanol as a dispersing agent in pigment suspensions to be applied as coatings to paper and paperboard products intended for food-contact use. This action responds to a food additive petition filed by International Minerals & Chemical Corp. The petition was subsequently transferred to Angus Chemical Co.

DATES: Effective August 11, 1987; objections by September 10, 1987.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Falci, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5090.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of January 25, 1980 (45 FR 6174), FDA announced that a food additive petition (FAP 0B3486) had been filed by International Minerals & Chemical Corp., P.O. Box 207, Terre Haute, IN 47808. Responsibility for the petition was subsequently transferred to Angus Chemical Co., 2211 Sanders Rd., Northbrook, IL 60062. The petition proposed that § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) and § 176.180 *Components of paper and paperboard in contact with dry food* (21 CFR 176.180) be amended to provide for the safe use of 2-amino-2-methyl-1-propanol as a dispersing agent in pigment suspensions to be applied as coatings to paper and paperboard products intended for food-contact use.

FDA, in its evaluation of the safety of this additive, reviewed the safety of both the additive and the starting materials used to manufacture the additive. Although 2-amino-2-methyl-1-propanol has not been found to cause cancer, it may contain minute amounts of 2-nitropropane as a byproduct of its production. That chemical, 2-nitropropane, has been shown to cause cancer in test animals. Residual amounts of reactants and manufacturing aids, such as this chemical, are commonly found as contaminants in chemical products, including food additives.

The agency published a proposal in the Federal Register of December 1, 1978 (43 FR 56247), to amend 21 CFR 175.105 by deleting the provision for the food additive use of 2-nitropropane as a component of adhesives intended for use in food packaging and to list the additive as a substance prohibited from addition to human food in 21 CFR Part 189. The agency intends to take further action on this proposal at a future date.

FDA's evaluation of any risks created by the presence of 2-nitropropane as an impurity is based on different considerations than its evaluation of the safety of the use of this chemical as a food additive, however. Therefore, FDA concludes that it can proceed with this rulemaking independently of the latter evaluation.

I. Determination of Safety

Under section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), the so-called "general safety clause" of the statute, a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. The concept of safety embodied in the Food Additives Amendment of 1958 is explained in the legislative history of the provision: "Safety requires proof of a reasonable certainty that no harm will result from the proposed use of an additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable

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circumstance." H. Rept. 2284, 85th Cong., 2d Sess. 4 (1958). This definition of safety has been incorporated into FDA's food additive regulations (21 CFR 170.3(i)). The anticancer or Delaney Clause of the Food Additives Amendment (section 409(c)(3)(A) of the act (21 U.S.C. 348(c)(3)(A))) provides further that no food additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal.

In the past, FDA has often refused to approve the use of an additive that contained or was suspected of containing even minor amounts of a carcinogenic chemical, even though the additive as a whole had not been shown to cause cancer. The agency now believes, however, that developments in scientific technology and experience with risk assessment procedures make it possible for FDA to establish the safety of additives that contain carcinogenic chemicals but that have not themselves been shown to cause cancer.

In the preamble to the final rule permanently listing D&C Green No. 6, published in the Federal Register of April 2, 1982 (47 FR 14138), FDA explained the basis for approving the use of a color additive that had not been shown to cause cancer, even though it contains a carcinogenic impurity. Since that decision, FDA has approved the use of other color additives and food additives on the same basis.

An additive that has not been shown to cause cancer, but that contains a carcinogenic impurity, may properly be evaluated under the general safety clause of the statute using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive.

The agency's position is supported by *Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984). That case involved a challenge to FDA's decision to approve the use of D&C Green No. 5, which contains a carcinogenic chemical but has not itself been shown to cause cancer. Relying heavily on the reasoning in the agency's decision to list this color additive, the United States Court of Appeals for the Sixth Circuit rejected the challenge to FDA's action and affirmed the listing regulation.

II. Safety of Petitioned Use

FDA estimates that the petitioned use of 2-amino-2-methyl-1-propanol in paper and paperboard products that contact dry food and fatty food will result in levels of exposure to this additive that are quite small. FDA does not ordinarily consider chronic testing to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Refs. 1 and 2), and the agency has not required such testing here. Because 2-amino-2-methyl-1-propanol has not been shown to cause cancer, the anticancer clause does not apply to it.

FDA has evaluated the safety of this additive under the general safety clause, considering all available data and using risk assessment procedures to estimate the upper bound limit of risk presented by the carcinogenic chemical that may be present as an impurity in the additive. Based on this evaluation, the agency has concluded that the additive is safe under the proposed conditions of use.

The risk assessment procedures that FDA used in this evaluation are similar to the methods that it has used to examine the risk associated with the presence of minor carcinogenic impurities in various other food and color additives that contain carcinogenic impurities (see, e.g., 49 FR 13018, 13019; April 2, 1984). This risk evaluation of the carcinogenic impurity 2-nitropropane has two aspects: (1) Assessment of the worst case exposure to the impurity from the proposed use of the additive and (2) extrapolation of the risk observed in the animal bioassays to the conditions of probable exposure to humans.

A. 2-Nitropropane

Based on the fraction of the daily diet that may be in contact with surfaces containing 2-amino-2-methyl-1-propanol and on the levels of 2-nitropropane that may be present in the additive (Ref. 3), FDA estimated the hypothetical worst case exposure to 2-nitropropane from the use of this additive in pigmented coatings contacting dry food and fatty food to be 1.0 nanogram per person per day. The agency used data in three carcinogenic bioassays on 2-nitropropane to estimate the upper bound limit of lifetime human risk from exposure to this chemical stemming from the proposed use of 2-amino-2-methyl-1-propanol (Refs. 4 through 7). The results of the bioassays on 2-nitropropane demonstrated that the material was carcinogenic for rats under the conditions of the study. The test material caused significantly increased incidences of hepatocellular tumors in male and female rats by the inhalation route.

The Center for Food Safety and Applied Nutrition's Cancer Assessment Committee reviewed these bioassays and other relevant data available in the literature and concluded that the findings of carcinogenicity were supported by this information on 2-nitropropane. The committee further concluded that an estimate of the upper bound level of lifetime human risk from potential exposure to 2-nitropropane stemming from the proposed use of 2-amino-2-methyl-1-propanol could be calculated from the bioassays.

The agency used a quantitative risk assessment procedure (linear proportional model) to extrapolate from the dose used in the animal experiment to the very low doses encountered under the proposed conditions of use. This procedure is not likely to underestimate the actual risk from very low doses and may, in fact, exaggerate it because the extrapolation models used are designed to estimate the maximum risk consistent with the data. For this reason, the estimate can be used with confidence to determine to a reasonable certainty whether any harm will result from the proposed conditions and levels of use of the food additive.

Based on a worst case exposure of 1.0 nanogram per person per day, FDA estimates that the upper bound limit of individual lifetime risk from the potential exposure to 2-nitropropane from the use of 2-amino-2-methyl-1-propanol is 6×10^{-10} or less than 1 in 1 billion. Because of numerous conservatisms in the exposure estimate, lifetime averaged individual exposure to 2-nitropropane is expected to be substantially less than the estimated daily intake, and, therefore, the calculated upper bound limit of risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from the exposure to 2-nitropropane that might result from the proposed use of 2-amino-2-methyl-1-propanol.

B. Need for Specifications

The agency has also considered whether a specification is necessary to control the amount of the 2-nitropropane impurity in the food additive. The agency finds that a specification is not necessary for the following reasons: (1) Because of the low level at which 2-nitropropane may be expected to remain as an impurity following production of the additive, the agency would not expect this impurity to become a component of food at other than extremely small levels; and (2) the upper bound limit of lifetime risk from exposure to this impurity, even under worst case assumptions, is very low, less than 1 in 1 billion.

C. Conclusion on Safety

FDA has evaluated the data in the petition and other relevant material and concludes that the proposed uses for the additive in paper and paperboard

products in contact with dry food and fatty food are safe, and that § 176.170 should be amended as set forth below.

FDA also concludes that listing of the additive in § 176.180 *Components of paper and paperboard in contact with dry food* is not necessary and would be redundant because this section provides by cross-reference for the use of ingredients listed in § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* for dry-food contact. Therefore, this final rule only lists the additive in § 176.170.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. Under FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25), an action of this type would require an abbreviated environmental assessment under 21 CFR 25.31a(b)(1).

References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Carr, G. M., "Carcinogenicity Testing Programs," *in* "Food Safety: Where Are We?" Committee on Agriculture, Nutrition, and Forestry, United States Senate, p. 59, July 1979.

2. Kokoski, C.J., "Regulatory Food Additive Toxicology," *in* "Chemical Safety Regulation and Compliance," Edited by F. Homburger and J.K. Marquis, S. Karger, New York, NY, pp. 24–33, 1985.

3. Memorandum dated September 25, 1985, from Food Additive Chemistry Evaluation Branch to Indirect Additives Branch, "FAP OB3486—International Minerals and Chemical Corporation— Exposure to 2-Nitropropane."

4. Griffin, T.B., K.F. Benitz, R. Coulston, and I. Rosenblum, "Chronic Inhalation Toxicity of 2-Nitropropane in Rats" (Abstract No. 3). *The Pharmacologist*, 20:145, 1978.

5. Griffin, T.B., F. Coulston, and A.A. Stein, "Chronic Inhalation Exposure of Rats to Vapors of 2-Nitropropane at 22 ppm," *Ecotoxicology Environmental Safety*, 4:267–281, 1980.

6. Griffin, T.B., A.A. Stein, and F. Coulston, "Histologic Study of Tissue and Organs From Rats Exposed to Vapors of 2-Nitropropane at 25 ppm," *Ecotoxicology Environmental Safety*, 5:194–201, 1981.

7. Lewis, T.R., C.E. Ulrich, and W.M. Busey, "Subchronic Inhalation Toxicity of Nitromethane and 2-Nitropropane," *Journal of Environmental Pathology and Toxicology*, 2:233–248, 1979.

Objections

Any person who will be adversely affected by this regulation may at any time on or before September 10, 1987 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 176

Food additives, Food packaging, Paper and paperboard.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 176 is amended as follows:

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR Part 176 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. In § 176.170(a)(5) by alphabetically inserting a new item in the list of substances to read as follows:

§ 176.170 Components of paper and paperboard in contact with aqueous and fatty foods.

* * * * *

(a) * * *

(5) * * *

List of substances	Limitations
* * * * *	
2-Amino-2-methyl-1-propanol (CAS Reg. No. 124–68–5).	For use as a dispersant for pigment suspensions at a level not to exceed 0.25 percent by weight of pigment. The suspension is used as a component of coatings for paper and paperboard in contact only with food of the types identified in paragraph (c) of this section, Table 1, under types V, VIII, and IX and under conditions of use described in paragraph (c) of this section, Table 2, conditions of use E through G.
* * * * *	

Dated: August 4, 1987.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 87–18142 Filed 8–10–87; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 177

[Docket No. 86F–0412]

Indirect Food Additives; Polymers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of the cross-linked polyamide reaction product of 1,3,5-benzenetricarbonyl trichloride and piperazine as a reverse osmosis membrane intended for use in contact with food. This action responds to a petition filed by FilmTec Corp.

DATES: Effective August 11, 1987; objections by September 10, 1987.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Edward J. Machuga, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of December 31, 1986 (51 FR 47311), FDA announced that a petition (FAP 6B3904) had been filed by FilmTec Corp., 7200 Ohms Lane, Minneapolis, MN 55435, proposing that § 177.2550 *Reverse osmosis membranes* (21 CFR 177.2550) be amended to provide for the safe use of cross-linked polyamide prepared by the polymerization of 1,3,5-benzenetricarbonyl trichloride with piperazine as a reverse osmosis membrane intended for use in contact with food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that 21 CFR 177.2550(a) should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before September 10, 1987, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Food Safety and Applied Nutrition, Part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR Part 177 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 177.2550 is amended by revising paragraph (a) to read as follows:

§ 177.2550 Reverse osmosis membranes.

* * * * *

(a) *Identity.* For the purpose of this section, the reverse osmosis membrane consists of a cross-linked high molecular weight polyamide reaction product of 1,3,5-benzenetricarbonyl trichloride with 1,3-benzenediamine (CAS Reg. No. 83044–99–8) or piperazine (CAS Reg. No. 110–85–0). The membrane is on the food-contact surface, and its maximum weight is 62 milligrams per square decimeter (4 milligrams per square inch) as a thin film composite on a suitable support.

* * * * *

Dated: August 3, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87–18143 Filed 8–10–87; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8149]

Income Tax; Taxable Years Beginning After December 31, 1986; OMB Control Numbers Under the Paperwork Reduction Act; Limitation on Corporate Net Operating Loss Carryforwards

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to corporate ownership changes and the limitation on corporate net operating loss carryforwards under section 382 of the Internal Revenue Code of 1986 ("Code"). The temporary regulations provide guidance relating to the section 382 limitation on corporate net operating loss carryforwards when there is an ownership change within the meaning of section 382. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the Federal Register.

DATES: The temporary regulations are effective August 11, 1987, and apply generally to any ownership change, within the meaning of section 382, occurring after December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Keith E. Stanley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T) or telephone (202) 566–3458 (not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Background

This document provides temporary regulations to be added to the Income Tax Regulations (26 CFR Part 1) under section 382 of the Internal Revenue Code of 1986. The temporary regulations provide guidance regarding the section 382 limitation on corporate net operating

loss carryforwards and certain unrealized losses that is applicable to a corporation with respect to which an ownership change within the meaning of section 382 has occurred. Section 382 was amended by section 621 of the Tax Reform Act of 1986 (Pub. L. 99–514; 100 Stat. 2085) (the "Act").

II. Explanation of Provisions

The Act substantially altered the manner in which 382 limits the use of net operating loss ("NOL") carryforwards and certain unrealized losses. Section 382, as amended by the Act, applies in the event of a substantial change in the stock ownership of the loss corporation that occurs during a limited time period (an "ownership change"). These temporary regulations relate principally to issues that arise in connection with determining whether an ownership change has occurred.

After an ownership change occurs with respect to a loss corporation, section 382 limits the amount of taxable income against which NOL carryforwards and certain unrealized built-in losses of the corporation may be applied. The limitation is applied annually and is equal to a prescribed percentage rate, multiplied by the value of the stock of the loss corporation immediately before the ownership change.

A. Overview of Ownership Change

In general, an ownership change occurs if the percentage of stock of a loss corporation owned by one or more "5-percent shareholders" has increased by more than 50 percentage points over the lowest percentage of such stock that was owned by those persons at any time during the testing period. The determination whether an ownership change has occurred is made by adding together the separate increases in percentage ownership of each 5-percent shareholder whose percentage ownership interest in the loss corporation has increased over such shareholder's lowest percentage ownership interest at any time during the testing period. The testing period (described below) generally is the three-year period that precedes any date on which the loss corporation is required to make the determination of whether an ownership has occurred.

Under the temporary regulations, the determination whether an ownership change has occurred is generally made as of the close of any date (a "testing date") on which there is an owner shift (described below), an equity structure shift (described below), or a transaction in which an option (or other similar interest) is acquired by a 5-percent shareholder (or a person who would be a 5-percent shareholder if the option were exercised). The temporary regulations require that a loss corporation file an information statement with its income tax return for each taxable year that it is a loss corporation, primarily to provide information concerning ownership of its stock on certain testing dates.

In general, in determining whether an ownership change has occurred, all transactions (whether related or unrelated) occurring during the testing period that affect the stock ownership of any 5-percent shareholder whose percentage of stock ownership has increased as of the close of the testing date are taken into account. Because an increase in stock ownership is measured by reference to the lowest percentage of stock owned by a 5-percent shareholder at any time during the testing period, if a 5-percent shareholder disposes of loss corporation stock and subsequently reacquires all or a portion of such stock during the testing period, the increase resulting from the subsequent acquisition is taken into account in determining whether an ownership change has occurred (even if the percentage ownership between the first and last day of the testing period is the same or has decreased).

The determination of the percentage ownership interest of any shareholder is made on the basis of the relative fair market value of the loss corporation stock owned by the shareholder to the total fair market value of the outstanding stock of the loss corporation. In general, all stock of the loss corporation, except certain preferred stock described in section 1504(a)(4), is taken into account. (The definition of stock is discussed further below.) The temporary regulations reserve a paragraph under which changes in percentage ownership may be disregarded if they are attributable solely to fluctuations in value. The Internal Revenue Service invites comments on this issue.

The temporary regulations provide that, if more than one transaction occurs on a testing date, all of the transactions are deemed to occur simultaneously at the close of the day. Accordingly, stock ownership by a person who acquires and disposes of stock on the same day is not taken into account under the temporary regulations. Rather, the percentage stock ownership of the 5-percent shareholders immediately after the close of the testing date is compared to the lowest percentage of stock owned by such shareholders at any time during the testing period.

B. Testing Period

As described above, the testing period is generally the three-year period ending on any testing date. Because a new testing period begins on the day following any ownership change, however, a loss corporation is not required to take into account transactions occurring on or before the date of the most recent ownership change in determining whether a subsequent ownership change has occurred. In addition, a testing period does not begin until a corporation is a loss corporation (*e.g.*, a corporation with NOL carryforwards or significant unrealized losses). Shifts in ownership that occur before the date that a corporation becomes a loss corporation thus are disregarded.

C. Owner Shift

An owner shift is defined as any change in the ownership of the stock of the loss corporation that affects the percentage of stock owned (directly and by attribution) by any person who is a 5-percent shareholder. Thus, an owner shift includes (but is not limited to) the following transactions: (1) A purchase or disposition of loss corporation stock by a 5-percent shareholder; (2) a section 351 exchange that affects the percentage of stock owned by a 5-percent shareholder; (3) a decrease in the outstanding stock of a loss corporation (*e.g.*, by virtue of redemption) that affects the percentage of stock owned by a 5-percent shareholder; (4) an issuance of loss corporation stock that affects the percentage of stock owned by a 5-percent shareholder; and (5) an equify structure shift that affects the percentage of stock owned by a 5-percent shareholder.

Under the temporary regulations, transfers of stock between persons who are not 5-percent shareholders generally are not taken into account. Thus, actual transfers of loss corporation stock between shareholders of the loss corporation who, in their individual capacities, are not 5-percent shareholders are disregarded even if the transfers are between shareholders that are segregated into separate groups of shareholders (as described below).

D. Equity Structure Shift

An equity structure shift is any tax-free reorganization within the meaning of section 368, other than certain divisive reorganizations, and mere changes in form (as defined in section 368(a)(1)(F)). Although section 382 and the temporary regulations separately define transactions as equity structure shifts and owner shifts, any equity

structure shift that affects the pecentage of loss corporation stock owned by a 5-percent shareholder also constitutes an owner shift. Under the temporary regulations, therefore, no substantive differences (other than for purposes of the statutory effective date) result from a transaction being defined as an equity structure shift. For this reason, the temporary regulations do not include an exercise of the regulatory authority in section 382(g)(3)(B) to treat some owner shifts, namely taxable reorganization-type transactions and public offerings, as equity structure shifts. Rather, the segregation rules (described below) accomplish the result intended under section 382(g)(3)(B), as explained in the accompanying legislative history (*see* H. Rep. 99–841, 99th Cong., 2d Sess., 176–178 (1986) (Statement of Managers)), even though the transactions are not designated as equity structure shifts. The Internal Revenue Service has taken this into account for purposes of establishing the effective dates (described below) for the portion of the temporary regulations providing segregation rules applicable to transactions with respect to which the regulatory authority contained in section 382(g)(3)(B), as provided in the Statement of Managers, was required to be exercised prospectively (*i.e.*, certain public offerings).

E. 5-Percent Shareholder

The temporary regulations identify four categories of shareholders that are 5-percent shareholders. First, an individual who has either a direct ownership interest or an indirect ownership interest (by virtue of an ownership interest in any one entity) in loss corporation stock of at least five percent is a 5-percent shareholder. Second, the direct shareholders of the loss corporation (both individuals and entities) who own less than five percent of loss corporation stock (referred to in the temporary regulations as "public shareholders"), as described further below, are aggregated together as a group that is a single 5-percent shareholder. Third, the owners (other than individual 5-percent shareholders referred to above) of an entity that has a five percent or more direct or indirect ownership interest in the loss corporation are also generally aggregated together as a group that is a separate 5-percent shareholder. Finally, as discussed further below, the temporary regulations provide a mechanism to segregate the groups of shareholders referred to above into two or more separate groups following certain enumerated transactions, with each such group being a 5-percent shareholder.

In general, through the attribution rules discussed below, section 382 measures ownership changes among persons who are the ultimate beneficial owners of five percent or more of the stock of a loss corporation. Certain rules of administrative convenience are provided under the temporary regulations, however, to lessen a loss corporation's obligation to account for certain small interests and to ascertain the identities of persons who may own several small indirect interests in the loss corporation. In this regard, the temporary regulations provide a rule for the determination of the percentage stock ownership of a 5-percent shareholder that requires an ownership interest to be taken into account only to the extent that the interest (whether direct or indirect by virtue of the attribution rules described below) constitutes five percent or more of the loss corporation stock. For example, if individual A owns two percent of loss corporation stock through one first tier entity and four percent through another first tier entity, A is not a 5-percent shareholder unless certain other provisions of the temporary regulations that alter the rule of administrative convenience apply. (See the discussion of actual knowledge regarding stock ownership and anti-abuse rules, below.) Similarly, individual A is not a 5-percent shareholder even if he also owns a two percent direct ownership interest in the loss corporation.

Furthermore, under the temporary regulations, the loss corporation has no obligation to take into account the actual identity of the owner of an indirect ownership of less than five percent. As discussed further below, this rule restricts the inquiry that the loss corporation must make to identify its ultimate beneficial shareholders. If, for example, a first tier entity (an entity that owns a direct interest in the loss corporation of five percent or more) owns 100 percent of the loss corporation (*i.e.*, the loss corporation is a wholly owned subsidiary), the loss corporation is required to determine the identity of the owners of the first tier entity, and their respective ownership interest, to the same extent that it would have to determine the identity and ownership interests of the shareholders having a direct ownership interest in loss corporation. If, on the other hand, a first tier entity owns only five percent of the stock of the loss corporation, the loss corporation must take into account the indirect ownership of an owner of the first tier entity only if there is a person who owns 100 percent of the first tier entity.

F. Attribution Rules

In determining stock ownership, the constructive ownership rules of section 318, with significant modifications, apply to attribute loss corporation stock owned by a corporation or other entity. The principal modification to the constructive ownership rules require attribution of stock from a corporation to its shareholders without regard to the 50 percent stock ownership limitation in section 318(a)(2)(c). A second significant modification to the constructive ownership rules is that stock attributed from an entity to its owners is not treated as owned by the entity. Accordingly, loss corporation stock owned, directly or constructively, by an entity is attributed to all of its owners and is not treated as owned by the entity.

As noted above, the temporary regulations modify the statutory attribution rules so that, in effect, a particular shareholder (or owner of another entity) generally is treated as constructively owning loss corporation stock if the application of the attribution rules would cause such shareholder (or other owner) to own constructively five percent or more of loss corporation stock. Any stock owned by a corporation (or other entity) that is not attributed to a particular shareholder (or other owner) under this rule is attributed to the public owners of the corporation (or other entity), and, under the aggregation rules described below, the ownership interests of these owners generally are aggregated and treated as owner by a separate 5-percent shareholder. Moreover, stock owned by an entity that owns less than five percent of loss corporation stock is not attributed to the owners of the entity. Rather, such an entity is treated as an individual who owns the stock.

As noted above, the attribution rules are designed to provide a mechanism for tracking the changes in ownership by the ultimate beneficial owners of the loss corporation. The regulations therefore provide rules to allow a loss corporation to establish the extent, if any, to which there is common ownership among different entities for the purpose of avoiding an ownership change (or any increase in stock ownership). Thus, for example, the mere formation of a holding company to own all of the stock of the loss corporation, unaccompanied by a change in the beneficial ownership of the loss corporation, is not an owner shift, because, under the attribution rules, the

persons who directly owned the loss corporation stock before the transaction continue to own constructively such stock thereafter. Conversely, the attribution rules result in an ownership change where more than 50 percent of loss corporation stock is purchased indirectly through an acquisition of stock in the loss corporation's parent corporation.

G. Option Attribution Rule

Subject to certain exceptions provided in the temporary regulations, the owner of an option is treated as owning the underlying stock if such treatment would cause an ownership change. In applying this option attribution rule to determine whether an ownership change occurs, the analysis is made separately with respect to each option holder (and each combination of such persons), so that, in appropriate cases, certain options will be deemed exercised while others may not. This determination is first made on the date an option is issued and is repeated on any subsequent testing date that occurs (as a result of other transactions) while the option is outstanding.

The option attribution rule ignores any contingency relating to the exercise of the option. An option subject to a contingency, therefore, is treated in the same manner as an option that is not contingent. In addition, a person (including the loss corporation) generally is treated as owning stock that may be acquired pursuant to any warrant, convertible debt, other instruments that are convertible into stock, a put, a risk of forfeiture, a contract to acquire or sell stock or any similar interest, under the same rules that are applicable to an option. The types of rights to acquire stock that are subject to this rule thus may include rights that are not treated as options under section 318(a)(4).

The regulations provide for certain circumstances in which the operation of the option attribution rule is limited. For example, the temporary regulations exclude from the application of the option attribution rule certain long-held options with respect to actively traded stock, options outstanding following an ownership change, certain types of buy-sell agreements and several other options or similar interests. The Internal Revenue Service, in promulgating these exceptions from the option attribution rule, has attempted to include as many rights as possible without compromising the purpose of the rule. Comments are invited, however, with respect to additional options or similar rights that should be added to the list of exceptions.

The regulations also prevent the application of the option rule at a time that a corporation has incurred only *de minimis* amount of losses. This limitation is intended to prevent use of the option attribution rule to commence a new testing period (by causing an ownership change) at a time that the application of section 382 would not have a material adverse impact upon the utilization of a loss corporation's NOL carryforwards and unrealized built-in losses.

If an option that lapses or is forfeited caused an ownership change under the temporary regulations, the loss corporation may file amended tax returns (subject to any applicable statute of limitations) for prior years as if the corporation had not been subject to the special limitations.

The temporary regulations disregard the actual exercise of any option in existence immediately before and after an ownership change if the option is exercised by the person who owned the option immediately before the ownership change. The actual exercise of any other option, however, is not disregarded, and is taken into account under the rules that are generally applicable to transfers of stock.

In addition, if the actual exercise of an option occurs on or before 120 days after the date the option is treated as exercised, the loss corporation may ignore the deemed exercise under the option attribution rule and take into account only the actual exercise of the option to determine the date on which the ownership change occurs. Accordingly, even though an option (or contract) to acquire more than 50 percent of loss corporation stock would ordinarily result in an ownership change on the date of the option (or contract), the loss corporation may treat the ownership change as occurring on a date that the actual acquisition of stock occurs during the ensuing 120-day period. This provision is intended to avoid the necessity of valuing stock (and determining whether any built-in gains or losses exist) at a time prior to the date that actual control is acquired.

H. Stock

The temporary regulations provide that the term "stock" generally means stock other than limited, preferred stock described in section 1504(a)(4), except that such stock is not excluded for purposes of determining the value of the loss corporation under section 382(e). Preferred stock that would be described in section 1504(a)(4), but for the fact that it is entitled to vote solely as a result of dividend arrearages, nevertheless does not constitute stock and is disregarded. Furthermore, certain stock that is not described in section 1504(a)(4) (such as voting preferred stock) is disregarded if (1) as of the time of its issuance or transfer to (or by) a 5-percent shareholder, the likely participation of such interest in future corporate growth is disproportionately small when compared to the value of such stock as a proportion of the total value of the outstanding stock of the corporation, (2) treating the stock as not constituting stock would result in an ownership change, and (3) the amount of the losses of the corporation is not *de minimis*. As is the case of preferred stock described in 1504(a)(4), stock that is otherwise treated as not constituting stock under the temporary regulations is taken into account for purposes of determining the value of the loss corporation under section 382(e).

The temporary regulations also treat certain interests that do not constitute stock as stock if (1) as of the time of its issuance or transfer to (or by) a 5-percent shareholder (or a person that would be a 5-percent shareholder if the interest not constituting stock were treated as stock), such interest offers a potential significant participation in the growth of the corporation, (2) treating the interest as stock would result in an ownership change, and (3) the amount of the losses of the corporation is not *de minimis*. Thus, for example, a financial instrument that generally is treated as debt for Federal income tax purposes nevertheless may be treated as stock under the temporary regulations if such debt offers a potential significant participation in the growth of the loss corporation. An ownership interest that it treated as stock under the temporary regulations is taken into account for purposes of determining the value of the loss corporation under section 382(e).

I. Aggregation Rules

Aggregation rules are applied under the temporary regulations to all stock ownership by (1) public shareholders (persons who directly own less than five percent of loss corporation stock) and (2) owners of any first tier entity (or higher tier entity) who each indirectly own less than five percent of the stock of the loss corporation. Under the temporary regulations, stock owned by any such group of persons generally is treated as being owned by a separate 5-percent shareholder (referred to in the temporary regulations as "public group"). In general, therefore, all of the stock of a widely held loss corporation is treated as owned by a single 5-percent shareholder. Similarly, a loss corporation that is owned, in part, by a

widely held corporate shareholder that owns five percent or more of the loss corporation stock and, in part, by public shareholders will, under the aggregation rules, be treated as owned by two separate public groups that are 5-percent shareholders—one owning the stock owned by public shareholders and the other owning the stock indirectly owned by the owners of the corporate shareholder.

The temporary regulations presume that no person who is a member of a public group identified under the aggregation rules has an ownership interest in another public group. As noted above, this presumption may, however, be rebutted to establish the extent of common ownership among the members of any two public groups.

J. Segregation Rules

As a result of various types of transactions enumerated in the regulations, the public shareholders of a loss corporation may be segregated into two or more separate groups (also referred to in the temporary regulations as "public groups"), each of which is treated as a separate 5-percent shareholder (regardless of whether the group owns as much as five percent of loss coporation stock). For example, public shareholders who receive loss corporation stock as the result of an equity structure shift or any other transaction to which section 1032 applies are segregated and treated separately from the public shareholders that owned stock of the loss corporation prior to the transaction. Thus, for example, public shareholders who receive stock of a widely held corporation in a new stock issuance are segregated from the public shareholders who own stock prior to the transaction, and the group of public shareholders that acquire stock in the offering is treated as a separate 5-percent shareholder whose percentage stock ownership has increased. A similar rule applies in the case of the issuance of a right to acquire stock for purposes of testing whether the option attribution rule will be applicable to treat the persons acquiring the rights to acquire stock as having acquired the underlying stock.

In addition, if the public shareholders surrender stock in exchange for property other than stock (*e.g.*, a cash redemption), those shareholders are segregated immediately before the transaction from all other public shareholders so that the public shareholders who continue to own stock are treated as a separate 5-percent shareholder whose percentage stock ownership has increased as a result of the transaction.

Finally, the segregation rules apply to any transaction in which a first tier entity or an individual 5-percent shareholder of the loss corporation transfers a direct ownership interest in the stock of the loss corporation to public shareholders of the loss corporation. In such a case, the acquiring shareholders are segregated from any continuing public shareholders, and are treated as a separate 5-percent shareholder whose percentage ownership has increased. The application of this portion of the segregation rules, while not affecting the determination of whether an ownership change has occurred with respect to the disposition described in the preceding sentence, may affect such a determination in connection with acquisitions on any subsequent testing date.

In analyzing shifts in ownership on any testing date following application of the segregation rules, if the loss corporation (or an entity with a five percent or more direct or indirect ownership interest in the loss corporation) has two or more groups of shareholders that are treated as separate 5-percent shareholders then, unless a different proportion is otherwise established, acquisitions of stock shall be treated as being made proportionately from each public group immediately before such acquisition.

Similar segregation rules are applicable under the temporary regulations in the case of any transactions described above that involve a first tier entity or a higher tier entity that owns five percent or more of the loss corporation.

K. Presumptions Regarding Stock Ownership

The temporary regulations provide the loss corporation with an ability to establish the identity of its 5-percent shareholders under two different rules that are designed to reduce the burdens of compliance with section 382. With respect to loss corporation stock that is described in Rule 13d–1(d) of Regulation 13D–G, promulgated under the Securities and Exchange Act of 1934 ("registered stock"), a loss corporation may rely on the existence or absence of filings under Schedules 13D and 13G as of a date to identify the corporation's shareholders (both individuals and entities) who have a direct ownership interest of five percent or more. Depending upon the particular securities rule applicable to the shareholders, Schedules 13D and 13G will enable a loss corporation to establish stock ownership as of a date by providing information to the loss corporation either shortly after an acquisition or shortly after the close of the year in which the acquisition occurs. With respect to registered stock of any entity that has a direct or indirect ownership interest in the loss corporation, the loss corporation similarly is permitted to identify those persons who indirectly own five percent or more of the loss corporation stock by virtue of an ownership interest in any such entity. Thus, if all of the stock of the loss corporation and all of the stock of each entity that has a five percent or more direct (or indirect) ownership interest in the loss corporation is registered stock, the loss corporation may, subject only to its actual knowledge to the contrary (described below) and certain anti-abuse rules (described below), conclusively establish the identity of its 5-percent shareholders solely by reference to the filings of Schedules 13D and 13G.

The second part of the rule provides the loss corporation with an ability to determine shifts in the indirect ownership of its stock without regard to the actual identity of the ultimate beneficial owners of the loss corporation. Under this rule, a loss corporation may rely on a statement, signed under penalties of perjury, by any entity with a five percent or more ownership interest in the loss corporation, to establish the extent, if any, to which the ownership interests of any such entity's owners have changed as of the testing date. This rule may not be relied upon by the loss corporation if: (1) It knows that such a statement is false or (2) the statement is offered by an entity that has either a direct or an indirect ownership interest of 50 percent or more of the stock of the loss corporation. As under the safe harbor rule for registered stock (described above), the application of this rule is also subject to the loss corporation's actual knowledge of contrary information (described below) and certain anti-abuse rules (described below).

L. Actual Knowledge Regarding Stock Ownership

Under a special rule, the presumptions regarding stock ownership otherwise supplied by the temporary regulations are unnecessary to the extent the loss corporation has actual knowledge of such ownership and therefore are made inapplicable in such a case. In general, to the extent that the loss corporation has actual knowledge of stock ownership that is inconsistent with the regulatory presumptions regarding stock

ownership (and shifts in ownership) with respect to the loss corporation on any testing date (or acquires such knowledge before the date that the income tax return of the loss corporation is filed for the taxable year in which the testing date occurs), the loss corporation must take such stock ownership into account for purposes of determining whether an ownership change occurs on that testing date. If the actual knowledge is acquired after such income tax return is filed, the loss corporation is permitted to, but need not, take such information into account for purposes of redetermining whether an ownership change occurred on that testing date. Thus, subject to any applicable statute of limitations, the loss corporation may file an amended income tax return.

M. Duty to Inquire Regarding Stock Ownership

On each testing date, the loss corporation is required to determine both the stock ownership and the changes in the stock ownership during the testing period for only the following four categories of persons: (1) Any individual shareholder who has a direct ownership interest of five percent or more in the loss corporation, (2) any entity with a direct ownership interest of five percent or more in the loss corporation, (3) any entity with an indirect ownership interest of five percent or more in the loss corporation, and (4) any individual who has an indirect ownership interest of five percent or more in the loss corporation, through any one of the entities described above. The regulations relieve the loss corporation of any obligation to make any other inquiries regarding the owners of the stock of the loss corporation.

N. Anti-Abuse Rule

If the ownership interests in a loss corporation are structured to take advantage of the presumptions and rules of administrative convenience contained in the temporary regulations and thereby to avoid treating a person as a 5-percent shareholder (or to permit the loss corporation to presume that a 5-percent shareholder's ownership interest remains unchanged) for a principal purpose of circumventing the section 382 limitation, then, with respect to the interests so structured, (1) any regulatory limitation upon the application of the attribution rules is made inapplicable, (2) the determination of whether a person is a 5-percent shareholder and the percentage stock ownership interest of such person in the loss corporation shall take into account each direct and indirect ownership interests and (3) the loss corporation must determine the actual ownership interest of any such 5-percent shareholder. This anti-abuse rule applies even if the loss corporation does not have actual knowledge regarding the ownership interests involved.

Thus, although the temporary regulations ordinarily would not take into account each of the less than five percent ownership interests in the loss corporation that a person (who, unknown to the loss corporation, actually owns five percent or more of the loss corporation) may own through his ownership interests in entities other than the loss corporation, those interests each would be taken into account if they were structured with a principal purpose of avoiding the application of the section 382 limitation. For example, if individual A acquires a loss corporation by making equal capital contributions to each of eleven newly formed corporations, and the contributions, in turn, are used by each such corporation for the acquisition of a 4.64 percent ownership interest in the loss corporation, individual A would be treated as a 5-percent shareholder that acquires 51 percent of the loss corporation, and the loss corporation is thus subject to the section 382 limitation, without regard to the loss corporation's actual knowledge of A's ownership interests.

III. Effective Dates

In general, section 382 applies to any ownership change that occurs immediately after an owner shift or an equity structure shift that occurs after December 31, 1986, or any other event occurring after such date that requires the determination of whether an ownership change has occurred (*e.g.*, the issuance of a warrant by the loss corporation). A special rule is provided for reorganizations (constituting both equity structure shifts and owners shifts) completed pursuant to plans adopted before January 1, 1987, so that the transaction will be treated as occurring at the time such the plan was adopted. For purposes of determining whether an ownership change occurs at any time after May 5, 1986, the testing period may commence no earlier than May 6, 1986.

For purposes of determining whether an ownership change has occurred for any testing before September 4, 1987, the regulations make inapplicable (1) the aggregation rules to stock acquired by a first tier entity or higher tier entity before May 6, 1986, (2) the segregation rules governing transactions (other than dispositions of stock) involving loss corporations, except in the case of an equity structure shift in which more than one corporation is a party to the reorganization, (3) the segregation rules governing transactions (other than dispositions of stock involving first tier entities or higher tier entities, except in the case of an equity structure shift in which more than one corporation is a party to the reorganization and (4) the segregation rules governing dispositions of stock, except in the case of a dispositions of stock acquired after May 5, 1986, by an entity with a five percent or more direct or indirect ownership interest in the loss corporation or an individual 5-percent shareholder. Under the temporary regulations, however, the loss corporation may elect to apply the aggregation and segregation rules to transactions occurring before September 4, 1987, but only if all such rules are applied on any testing date occurring after May 5, 1986.

In addition, the portions of the temporary regulations regarding the treatment of stock as not constituting stock and the treatment of interests other than stock as stock do not apply to stock or interests issued (or transferred) before September 4, 1987. Finally, several special effective date rules apply to options (and other similar interests), certain bankruptcy transactions, and public offerings by domestic building and loan associations.

Non-Applicability of Executive Order 12291

The Commissioner of Internal Revenue has determined that this temporary regulation is not a major rule subject to review under Executive Order 12291 and that a regulatory impact analysis, therefore, is not required.

Regulatory Flexibility Analysis

A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, the temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Paperwork Reduction Act

The collections of information contained in these regulations have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The requirements have been approved by OMB under control number 1545-0123.

Drafting Information

The principal author of this temporary regulation is Keith E. Stanley of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel

from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both in matters of substance and style.

List of Subjects

26 CFR 1.301–1—1.385–6

Income taxes, Corporations, Corporate distributions, Corporate adjustments, Reorganizations.

26 CFR Part 602

OMB control number under the Paperwork Reduction Act, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Parts 1 and 602 are amended as follows:

PART 1—[AMENDED]

Paragraph 1. The authority citation for 26 CFR Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * * § 1.382–2T also issued under 26 U.S.C. 382(g)(4)(C), 26 U.S.C. 382(i), 26 U.S.C. 382(k)(1), 26 U.S.C. 382(k)(6), 26 U.S.C. 382(l)(3), and 26 U.S.C. 382(m).

Par. 2. There is inserted in the appropriate place a new § 1.382–1T. The new section reads as follows:

§ 1.382–1T Limitation on net operating loss carryforwards and certain built-in losses following ownership change (temporary).

In order to facilitate use of § 1.382–2T, this section lists the paragraphs, subparagraphs, and subdivisions contained in § 1.382–2T.

(a) *Ownership change.*
(1) In general.
(2) Events requiring a determination of whether an ownership change has occurred.
(i) Testing date.
(ii) Information statement required.
(iii) Records to be maintained by loss corporation.
(b) *Nomenclature and assumptions.*
(c) *Computing the amount of increases in percentage ownership.*
(1) In general.
(2) Example.
(3) Related and unrelated increases in percentage stock ownership.
(4) Example.
(d) *Testing period.*
(1) In general.
(2) Effect of a prior ownership change.
(3) Commencement of the testing period.
(i) In general.
(ii) Exception for corporations with net unrealized built-in loss.
(4) Disregarding testing dates.
(5) Example.
(e) *Owner shift and equity structure shift.*
(1) Owner shift.
(i) Defined.
(ii) Transactions between persons who are not 5-percent shareholders disregarded.
(iii) Examples.
(2) Equity structure shift.
(i) Tax-free reorganizations.
(ii) Transactions designated under section 382(g)(3)(B) treated as equity structure shifts.
(iii) Overlap of owner shift and equity structure shift.
(iv) Examples.
(f) *Definitions.*
(1) Loss corporation.
(i) In general.
(ii) Distributor or transferor loss corporation in a transaction under section 381.
(iii) Separate accounting required for losses of an acquiring corporation and a distributor or transferor loss corporation.
(2) Old loss corporation.
(3) New loss corporation.
(4) Successor corporation.
(5) Predecessor corporation.
(6) Shift.
(7) Entity.
(8) Director ownership interest.
(9) First tier entity.
(10) 5-percent owner.
(11) Public shareholder.
(12) Public owner.
(13) Public group.
(14) Higher tier entity.
(15) Indirect ownership interest.
(16) Highest tier entity.
(17) Next lower tier entity.
(18) Stock.
(i) In general.
(ii) Treating stock as not stock.
(iii) Treating interests not constituting stock as stock.
(iv) Stock of the loss corporation.
(19) Change date.
(20) Year.
(21) Old section 382.
(22) Pre-change loss.
(23) Unrelated.
(24) Percentage ownership interest.
(g) *5-percent shareholder.*
(1) In general.
(2) Determination of whether a person is a 5-percent shareholder.
(3) Determination of the percentage stock ownership interest of a 5-percent shareholder.
(4) Examples.
(5) Stock ownership presumptions in connection with certain acquisitions and dispositions of loss corporation stock.
(i) In general.
(ii) Example.
(h) *Constructive ownership of stock.*
(1) In general.
(2) Attribution from corporations, partnerships, estates and trusts.
(i) In general.
(ii) Limitation on attribution from entities with respect to certain interests.
(iii) Limitation on attribution from certain entities.
(iv) Examples.
(3) Attribution to corporations, partnerships, estates and trusts.
(4) Option attribution.
(i) In general.
(ii) Examples.
(iii) Contingencies.
(iv) Series of options.
(v) Interests that are similar to options.
(vi) Actual exercise of options.
(A) In general.
(B) Actual exercise within 120 days of deemed exercise.
(vii) Effect of deemed exercise of options on the outstanding stock of the loss corporation.
(A) Right of obligation to issue stock.
(B) Right or obligation to acquire outstanding stock by the loss corporation.
(C) Effect on value of old loss corporation.
(viii) Options that lapse or are forfeited.
(ix) Option rule inapplicable if pre-change losses are de minimis.
(x) Options not subject to attribution.
(A) Long-held options with respect to actively traded stock.
(B) Right to receive or obligation to issue a fixed dollar amount of value of stock upon maturity of certain debt.
(C) Right or obligation to redeem stock of the loss corporation.
(D) Options exercisable only upon death, disability or mental incompetency.
(E) Right to receive or obligation to issue stock as interest or dividends.
(F) Options outstanding following an ownership change.
(*1*) In general.
(*2*) Example.
(G) Right to acquire loss corporation stock pursuant to a default under loan agreement.
(H) Agreement to acquire or sell stock owned by certain shareholders upon retirement.
(xi) Certain transfers of options disregarded.
(xii) Exercise of an option that has not been treated as stock.
(5) Stock transferred under certain agreements.
(6) Family attribution.
(i) [Reserved]
(j) *Aggregation and segregation rules.*

(1) Aggregation of public shareholders and public owners into public groups.
(i) Public group.
(ii) Treatment of public group that is a 5-percent shareholder.
(iii) Presumption of no cross-ownership.
(iv) Identification of the public groups treated as 5-percent shareholders.
(A) Analysis of highest tier entities.
(B) Analysis of other higher tier entities and first tier entities.
(C) Aggregation of the public shareholders.
(v) Appropriate adjustments.
(vi) Examples.
(2) Segregation rules applicable to transactions involving the loss corporation.
(i) In general.
(ii) Direct public group.
(iii) Transactions to which segregation rules apply.
(A) In general.
(B) Certain equity structure shifts and transactions to which section 1032 applies.
(*1*) In general.
(*2*) Examples.
(C) Redemption-type transactions.
(*1*) In general.
(*2*) Examples.
(D) Acquisition of loss corporation stock as the result of the ownership of a right to acquire stock.
(*1*) In general.
(*2*) Example.
(E) Transactions identified in the Internal Revenue Bulletin.
(F) Issuance of rights to acquire loss corporation stock.
(*1*) In general.
(*2*) Example.
(iv) Combination of de minimis public groups.
(A) In general.
(B) Example.
(v) Multiple transactions.
(A) In general.
(B) Example.
(vi) Acquistions made by either a 5-percent shareholder or the loss corporation following application of the segregation rules.
(3) Segregation rules applicable to transactions involving first tier entities or higher tier entities.
(i) Dispositions.
(ii) Example.
(iii) Other transactions affecting direct public groups of a first tier entity or higher tier entity.
(iv) Examples.
(v) Acquistions made by a 5-percent shareholder, a higher tier entity, or a first tier entity following application of the segregation rules.
(k) *Operating rules.*
(1) Presumptions regarding stock ownership.
(i) Stock subject to regulation by the Securities and Exchange Commission.
(ii) Statements under penalties of perjury.
(2) Actual knowledge regarding stock ownership.
(3) Duty to inquire as to actual stock ownership in the loss corporation.
(4) Ownership interests structured to avoid the section 382 limitation.
(5) Example.
(6) First tier entity or higher tier entity that is a foreign corporation or entity. [Reserved.]
(l) *Changes in percentage ownership which are attributable to fluctuations in value.* [Reserved]
(m) *Effective date.*
(1) In general.
(2) Plan of reorganization.
(3) Earliest commencement of the testing period.
(4) Transitional rules.
(i) Rules provided in paragraph (j) of this section for testing dates before September 4, 1987.
(ii) Example.
(iii) Rules provided in paragraph (j) of this section for testing dates on or after September 4, 1987.
(iv) Rules provided in paragraphs (f)(18) (ii) and (iii) of this section.
(v) Rules provided in paragraph (a)(2)(ii) of this section.
(5) Bankruptcy proceedings.
(i) In general.
(ii) Example.
(6) Transactions of domestic building and loan associations.
(7) Transactions not subject to section 382.
(i) Application of old section 382.
(ii) Effect on testing period.
(iii) Termination of old section 382. [Reserved]
(8) Options issued or transferred before January 1, 1987.
(i) Options issued before May 6, 1986.
(ii) Options issued on or after May 6, 1986 and before September 18, 1986.
(iii) Options issued on or after September 18, 1986 and before January 1, 1987.
(9) Examples.

Par. 3. There is inserted in the appropriate place a new § 1.382–2T. The new section reads as follows:

§ 1.382–2T Definition of ownership change under section 382, as amended by the Tax Reform Act of 1986 (temporary).

(a) *Ownership change*—(1) *In general.* A corporation is a new loss corporation and thus subject to limitation under section 382 only if an ownership change has occurred with respect to such corporation. An ownership change occurs with respect to a corporation if it is a loss corporation on a testing date and, immediately after the close of the testing date, the percentage of stock of the corporation owned by one or more 5-percent shareholders has increased by more than 50 percentage points over the lowest percentage of stock of such corporation owned by such shareholders at any time during the testing period. See paragraph (a)(2)(i) of this secton for the definition of testing date. See paragraph (d) of this section for the definition of testing period. See paragraphs (f) (1) and (3) of this section for the respective definition of loss corporation and new loss corporation. See paragraph (g) of this section for the definition of 5-percent shareholder.

(2) *Events requiring a determination of whether an ownership change has occurred*—(i) *Testing date.* Except as otherwise provided in this paragraph (a)(2)(i), a loss corporation is required to determine whether an ownership change has occurred immediately after any owner shift, any equity structure shift, or any transaction in which an option with respect to stock of the loss corporation is—

(A) Transferred to (or by) a 5-percent shareholder (or a person who would be 5-percent shareholder if the option were treated as exercised), or

(B) Issued by the loss corporation, a first tier entity, or a higher tier entity that owns five percent or more of the loss corporation (determined without regard to the application of paragraph (h)(2)(i)(A) of this section).

Notwithstanding the preceding sentence, any transfer of stock of the loss corporation (or an option with respect to such stock) in any of the circumstances described in section 382(l)(3)(B), or any equity structure shift that is not also an owner shift, is not an event that requires the loss corporation to make a determination of whether an ownership change has occurred. For purposes of this section, each date on which a loss corporation is required to make a determination of whether an ownership change has occurred is referred to as a testing date, all computations of increases in percentage ownership are to be made as of the close of the testing date, and any transactions described in this paragraph (a)(2)(i) that occur on that date are treated as occurring simultaneously at the close of the testing date. See paragraphs (e) (1) and (2) of this section for the respective definitions of owner shift and equity structure shift. See paragraphs (f) (9) and (14) of this section for the respective definitions of first tier entity and higher tier entity.

(ii) *Information statement required.* A loss corporation must file a statement with its income tax return for each

taxable year that it is a loss corporation. The statement must—

(A) Indicate whether any testing dates occurred during the taxable year;

(B) Identify each testing date, if any, on which an ownership change occurred;

(C) Identify the testing date, if any, that occurred during and closest to the end of each of the three month periods ending on March 31, June 30, September 30 and December 31 during the taxable year, regardless of whether an ownership change occurred on the testing date,

(D) Identify each 5-percent shareholder on each such testing date;

(E) State the percentage ownership of the stock of the loss corporation for each 5-percent shareholder as of each such testing date and the increase, if any, in such ownership during the testing period; and

(F) Disclose the extent to which the loss corporation relied upon the presumptions regarding stock ownership under paragraph (k)(i) of this section to determine whether an ownership change occurred on any identified testing date.

(iii) *Records to be maintained by loss corporation.* A loss corporation shall keep such records as are necessary to determine: (A) The identity of its 5-percent shareholders, (B) the percentage of its stock owned by each such 5-percent shareholder, and (C) whether the section 382 limitation is applicable. Such records shall be retained so long as they may be material in the administration of any internal revenue law.

(b) *Nomenclature and assumptions.* For purposes of the example in this section—

(1) L is a loss corporation, and, if there is more than one loss corporation, they are designated as L_1, L_2, L_3, etc.

(2) P is a corporation that is not a loss corporation, and, if there is more than one such corporation, they are designated as P_1, P_2, P_3, etc.

(3) HC is a corporation whose assets consist solely of the stock of other corporations.

(4) E is an entity other than a corporation (e.g., a partnership), and, if there is more than one such entity, they are designated as E_1, E_2, E_3, etc.

(5) Unless otherwise stated—

(i) A, B, C, D, AA, BB, CC, and DD are unrelated individuals who own interests in corporations or other entities only to the extent expressly stated,

(ii) All corporations have one class of stock outstanding and each share of stock has the same fair maket value as each other share,

(iii) The capital structure of the loss corporation and its business do not change over time, and

(iv) The rules of paragraphs (k) (2) and (4) of this section are not applicable.

(6) Public L represents a group of unrelated individuals and entities that own direct (and not indirect) stock ownership interests in loss corporation L, each of whom owns less than five percent of the stock of the loss corporation, and, if there is more than one loss corporation, such groups are designated as Public L_1, Public L_2, Public L_3, etc.

(7) Public P represents a group of unrelated individuals and entities that own direct (and not indirect) stock ownership interests in corporation P, each of whom owns less than five percent of the stock of the corporation, and, if there is more than one corporation, such groups are designated as Public P_1, P_2, P_3, etc.

(8) Public E represents a group of unrelated individuals and entities that own direct (and not indirect) ownership interests in entity E, each of whom owns less than five percent of the entity, and, if there is more than one entity, such groups are designated as Public E_1, Public E_2, Public E_3, etc.

(c) *Computing the amount of increases in percentage ownership*—(1) *In general.* In order to determine whether an ownership change has occurred on a testing date, the loss corporation must identify each 5-percent shareholder whose percentage of stock ownership in the loss corporation immediately after the close of the testing date has increased, compared to such shareholder's lowest percentage of stock ownership in such corporation at any time during the testing period. The amount of the increase in the percentage of stock ownership in the loss corporation of each 5-percent shareholder must be computed separately by comparing the percentage ownership of each such 5-percent shareholder immediately after the close of the testing date to such shareholder's lowest percentage ownership at any time during the testing period. Each such increase in the percentage ownership of a 5-percent shareholder is then added together with any other such increases of other 5-percent shareholders to determine whether an ownership change has occurred. Because only those 5-percent shareholders whose percentages of stock ownership have increased are taken into account, a 5-percent shareholder is disregarded if his percentage of stock ownership, immediately after the close of the testing date, has decreased (or has remained the same), compared to his lowest percentage ownership interest on any previous date during the testing period.

(2) *Example.*

(i) A and B each own 40 percent of the outstanding L stock. The remaining 20 percent of the L stock is owned by 100 unrelated individuals, none of whom own as much as five percent of L stock ("Public L"). C negotiates with A and B to purchase all their stock in L.

(ii) The acquisitions from both A and B are completed on September 13, 1990. C's acquisition of 80 percent of L stock results in an ownership change because C's percentage ownership has increased by 80 percentage points as of the testing date, compared to his lowest percentage ownership in L at any time during the testing period (0 percent).

(3) *Related and unrelated increases in percentage stock ownership.* The determination whether an ownership change has occurred is made without regard to whether the changes in stock ownership of the loss corporation (by one or more 5-percent shareholders) result from related or unrelated events.

(4) *Example.*

(i) L has outstanding 200 shares of common stock. A, B and C respectively own 100, 50 and 50 shares of the L stock. On January 2, 1988, A sells 60 shares of L stock to B. Thus, B's percentage ownership interest in L increases by 30 percentage points, from 50 shares to 110 shares. On January 1, 1989, A purchases C's entire interest in L. Thus, A's percentage ownership interest in L increases by 25 percentage points, compared to his lowest percentage ownership interest in L, from 40 shares immediately following the January 2, 1988 sale to B to 90 shares. Even though A's ownership interest in L as of January 1, 1989 has decreased, compared to his 50 percent ownership interest at the beginning of the testing period, A is a 5-percent shareholder who must be taken into account for purposes of the computation required under paragraph (c)(1) of this section because his interest in L on that testing date (45 percent) has increased, compared to his lowest percentage ownership interest in L at any time during the testing period (20 percent following the sale to B).

(ii) Accordingly, although A and B jointly have increased their aggregate total ownership interest in L between January 2, 1988 and January 1, 1989 by only 25 percentage points (*i.e.*, the total ownership interest in L held by A and B at all times is not less than a 75 percent interest), the total of their separate increases in the percentage stock ownership of L, compared to their respective lowest percentage ownership interests at any time during the testing period, is 55 percentage points. Thus, an ownership change occurs as a result of A's acquisition of L stock on January 1, 1989.

(d) *Testing period*—(1) *In general.* Except as otherwise provided in paragraphs (d) and (m) of this section, the testing period for any testing date is the three-year period ending on the testing date. See paragraph (a)(2)(i) of

this section for the definition of testing date.

(2) *Effect of a prior ownership change.* Following an ownership change, the testing period for determining whether a subsequent ownership change has occurred shall begin no earlier than the first day following the change date of the most recent ownership change. See paragraph (f)(19) of this section for the definition of change date.

(3) *Commencement of the testing period*—(i) *In general.* Except as otherwise provided in paragraph (d)(3)(ii) of this section, the testing period for any loss corporation shall not begin before the earlier of the first day of either—

(A) The first taxable year from which there is a loss or excess credit carryforward to the first taxable year ending after the testing date, or

(B) The taxable year in which the testing date occurs.

(ii) *Exception for corporations with net unrealized built-in loss.* Paragraph (d)(3)(i) of this section shall not apply if the corporation has a net unrealized built-in loss (determined after application of section 382(h)(3)(B)) on the testing date, unless the loss corporation establishes the taxable year in which the net unrealized built-in loss first accrued.

In that event, the testing period shall not begin before the earlier of—

(A) The first day of the taxable year in which the net unrealized built-in loss first accrued, or

(B) The day described in paragraph (d)(3)(i) of this section. See section 382(h) for the definition of net unrealized built-in loss.

(4) *Disregarding testing dates.* Any testing date that occurs before the beginning of the testing period shall be disregarded for purposes of this section.

(5) *Example.*

(i) A owns all 100 outstanding shares of L stock. A sells 40 shares to B on January 1, 1988. C purchases 20 shares of L stock from A on July 1, 1991. In determining if an ownership change occurs on the July 1, 1991 testing date, B's acquisition of L stock is disregarded because it occurred before the testing period that ends on such testing date. Thus, B's ownership interest in L does not increase during the testing period, and no ownership change results from C's acquisition.

(ii) The facts are the same as in (i), except that throughout the period during which B negotiated his stock purchase transaction with A, B knew that C intended to attempt to acquire a significant stock interest in L. Also, B and C have been partners in a number of significant business ventures. The result is the same as in (i).

(e) *Owner shift and equity structure shift*—(1) *Owner shift.*— (i) *Defined.* For purposes of this section, an owner shift is any change in the ownership of the stock of a loss corporation that affects the percentage of such stock owned by any 5-percent shareholder. See paragraph (g) of this section for the definition of a 5-percent shareholder. An owner shift includes, but is not limited to, the following transactions:

(A) A purchase of disposition of loss corporation stock by a 5-percent shareholder,

(B) A section 351 exchange that affects the percentage of stock owned by a 5-percent shareholder,

(C) A redemption or a recapitalization that affects the percentage of stock owned by a 5-percent shareholder,

(D) An issuance of loss corporation stock that affects the percentage of stock owned by a 5-percent shareholder, and

(E) An equity structure shift that affects the percentage of stock owned by a 5-percent shareholder.

(ii) *Transactions between persons who are not 5-percent shareholders disregarded.* Transfers of loss corporation stock between persons who are not 5-percent shareholders of such corporation (and between members of separate public groups resulting from the application of the segregation rules of paragraphs (j)(2) and (3)(iii) of this section) are not owner shifts and thus are not taken into account. See paragraph (h)(4)(xi) of this section for a similar rule applicable to transfers of options.

(iii) *Examples.*

Example (1). A has owned all 1000 shares of outstanding L stock for more than three years. On June 15, 1988, A sells 300 of his L shares to B. This transaction is an owner shift. No other 5-percent shareholder has increased his percentage ownership of L stock during the testing period. Thus, the owner shift resulting from B's acquisition does not result in an ownership change, because B has increased his stock ownership in L by only 30 percentage points.

Example (2). The facts are the same as in Example (1). In addition, on June 15, 1989, L issues 100 shares to each of C, D and AA. The stock issuance is an owner shift. The transaction, however, does not result in an ownership change, because B, C, D and AA (the 5-percent shareholders whose stock ownership has increased as of the testing date, compared to any other time during the testing period) have increased their percentage of stock ownership in L by a total of only 46.2 percentage points during the testing period (by 23.1 percentage points [300 shares/1300 shares] for B, and 7.7 percentage points [100 shares/1300 shares] for each of C, D and AA].

Example (3). All 1000 shares of L stock are owned by a group of 100 unrelated individuals, none of whom own as much as five percent of L stock ("Public L"). Several of the members of Public L sell their L stock, amounting to a 30 percent ownership interest in L, to B on June 15, 1988. The sale of stock to B is an owner shift. Between June 16, 1988 and June 15, 1989, each of the remaining individuals in Public L sells his stock to another person who is not a 5-percent shareholder. Under paragraph (e)(1)(ii) of this section, trading activity among the members of Public L is disregarded and does not result in an owner shift. On June 15, 1989, L issues 100 shares to each of C, D and AA. The only sale transactions by members of Public L that are taken into account in determining whether an ownership change occurs on June 15, 1989 are the sales to B on June 15, 1988. Because B, C, D and AA together have increased their percentage ownership of L stock as a result of B's purchase and the stock issuance by an amount not in excess of 50 percentage points during the testing period ending on June 15, 1988, an ownership change does not occur on that date.

Example (4). The facts are the same as in Example (2). In addition, on December 15, 1989, L redeems 200 of the L shares from A. The redemption is an owner shift that results in an ownership change, because B, C, D and AA are 5-percent shareholders whose percentage ownership of L increase by a total of 54.6 percentage points during the testing period (by 27.3 percentage points [300 shares/1100 shares] for B and 9.1 percentage points [100 shares/1100 shares] for each of C, D and AA).

Example (5). L is owned entirely by 10,000 unrelated shareholders, none of whom owns as much as five percent of the stock of L ("Public L"). Accordingly, Public L is L's only 5-percent shareholder. See paragraph (j)(1) of this section. There are one million shares of common stock outstanding. On December 1, 1988, L issues two million new shares of its common stock to members of the public, none of whom owned any L stock prior to the issuance. Following the public offering, no shareholder of L owns, directly or indirectly, five percent or more of L stock. Under paragraph (j)(2) of this section, however, all of the newly issued stock is treated as acquired by a 5-percent shareholder ("Public NL") that is unrelated to Public L. Therefore, the public offering constitutes an owner shift that results in an ownership change because Public NL's percentage of stock ownership in L increased by 66⅔ percentage points (two million shares acquired in the public offering/three million shares outstanding following the offering) over its lowest percentage ownership during the testing period (0 percent prior to the offering).

Example (6). The facts are the same as in Example (5), except that L issues only 500,000 new shares of L stock on December 1, 1988, and Public NL's percentage ownership interest in L increases by only 33⅓ percentage points (500,000 shares acquired in the public offering/1.5 million shares outstanding following the offering). During the two years following December 2, 1988, 14 percent of the stock outstanding on that date is sold over a public stock exchange. On December 3, 1990, A purchases five percent of L stock (75,000 shares) over a public stock exchange. The purchase of five percent of L

stock by A is an owner shift and is presumed to have been made proportionately from Public L and Public NL under paragraph (j)(1)(vi) of this section. Under paragraph (e)(1)(ii) of this section, transfers of L stock in transactions not involving A (*i.e.*, in transactions among or between members of separate public groups resulting from the application of paragraphs (j) (2) and (3) of this section) are not taken into account, and do not constitute owner shifts. (Transfers between members of Public NL and Public L, which are treated as separate 5-percent shareholders solely by virtue of paragraph (j)(2) of this section, are disregarded even if L has actual knowledge of any such transfers.) A and Public NL, the only 5-percent shareholders whose interests in L have increased during the testing period, have increased there respective stock ownership by only 38⅔ percentage points—five percentage points for A [75,000 shares/1.5 million shares outstanding] and 31⅔ percentage points for Public NL [((500,000 shares issued in the public offering)—(5 percent × 500,000 shares presumed to have been acquired by A)) /1.5 million shares outstanding]. Accordingly, there is no ownership change with respect to L notwithstanding that, taking into account the public trading, a change of more than 50 percentage points in the ultimate beneficial ownership of L stock occurred during the three-year period ending on the December 3, 1990 testing date.

Example 7. The facts are the same as in Example 6, except that five percent of the L stock has always been owned by P which, in turn, has always been owned by Public P. On December 6, 1990, P sells all of its L stock over a public stock exchange. Although the trading of P stock among persons that are not 5-percent share-holders (without regard to the segregation rules of paragraph (j) of this section) are disregarded under paragraph (e)(1)(ii) of this section, the disposition of the L stock by P is not disregarded because the L stock is transferred in a transaction that is subject to paragraph (j)(3)(i) of this section.

(2) *Equity structure shift*—(i) *Tax-free reorganizations.* An equity structure shift is any reorganization within the meaning of section 368 with respect to which the loss corporation is a party to the reorganization, except that such term does not include a reorganization described in—

(A) Section 368(a)(1) (D) or (G) unless the requirements of section 354(b)(1) are met, or

(B) Section 368(a)(1)(F).

(ii) *Transactions designated under section 382(g)(3)(B) treated as equity structure shifts.* [Reserved]

(iii) *Overlap of owner shift and equity structure shift.* Any equity structure shift that affects the percentage of loss corporation stock owned by a 5-percent shareholder also constitutes an owner shift. See paragraph (e)(i)(E) of this section

(iv) *Examples.*

Example (1). A owns all of the stock of L and B owns all of the stock of P. On October 13, 1988, L merges into P in a reorganization described in section 368a(1)(A). As a result of the merger, A and B own 25 and 75 percent, respectively, of the stock of P. The merger is an equity structure shift (and, because it affects the percentage of L stock owned by 5-percent shareholders, it also constitutes an owner shift). On the October 13, 1988 testing date, B is a 5-percent shareholder whose stock ownership in the loss corporation following the merger has increased by 75 percentage points over his lowest percentage of stock ownership in L at any time during the testing period (0 percent prior to the merger). Accordingly, an ownership change occurs as a result of the merger. P is thus a new loss corporation and L's pre-change losses are subject to limitation under section 382. See paragraph (f)(1)(iii) of this section requiring P to account separately for L's pre-change losses.

Example (2). (*i*) A owns 100 percent of L_1 stock and B owns 100 percent of L_2 stock. On January 1, 1988, L_1 merges into L_2 in a reorganization described in section 368(a)(1)(A). Immediately after the merger, A and B own 40 percent and 60 percent, respectively, of the L_2 stock. There is an equity structure shift (as well as an owner shift) with respect to both L_1 and L_2 on January 1, 1988.

(*ii*) Because the percentage of L_2 stock owned by B immediately after the merger (60 percent) increases by more than 50 percentage points over the lowest percentage of the stock of L_1 owned by B during the testing period (0 percent prior to the merger), there is an ownership change with respect to L_1. L_2 is a new loss corporation and thus, under paragraph (f)(1))(iii) of this section, the pre-change losses of L_1 must be accounted for separately by L_2 from the losses of L_2 (immediately before the ownership change) and are subject to limitation under section 382.

(*iii*) L_2 is a new loss corporation because it is a successor corporation to L_2. There is no ownership change with respect to L_2, however, because A's stock ownership in L_2 increased by only 40 percentage points (to 40 percent) over the amount owned by A prior to the merger (0 percent). Therefore, the pre-change losses of L_2 are not limited under section 382 as a result of the merger, but must be separately accounted for under paragraph (f)(1)(iii) of this section.

Example (3). The result in Example (2) would be the same if L_1 had survived the merger (*i.e.*, L_2 merged into L_1) with A and B owning 40 and 60 percent, respectively, of L_1 stock. L_1's pre-change losses would be accounted for separately and limited under section 382 and the pre-change losses of [2] would be accounted for separately under paragraph (f)(1)(iii) of this section, but would not be limited under section 382. See paragraph (f)(1)(ii) for the treatment of [2] following the transaction.

Example (4). The facts are the same as Example (2), except, instead of acquiring [1] in a merger, [2] acquires all of the [1] stock from A on January 1, 1988, solely in exchange for stock representing a 40 percent interest in [2], in a reorganization described in section 368(a)(1)(B). The acquisition of stock by [2] is an equity structure shift (as well as an owner shift) with respect to [1] that results in an ownership change with respect to [1] because the percentage of [1] stock owned by B immediately after the reorganization (60 percent, by virtue of B's ownership of [2] through the operation of the constructive ownership rules of paragraph (h) of this section) increases by more than 50 percentage points over the lowest percentage of [1] stock owned by B at any time during the testing period (0 percent prior to the reorganization). The acquisition also results in an equity structure shift and an owner shift with respect to [2], but [2] incurs no ownership change, because A's stock ownership in [2] increased by only 40 percentage points over the percentage of [2] stock owned by A prior to the reorganization (0 percent).

(f) *Definitions.* For purposes of this section—

(1) *Loss corporation*—(i) *In general.* The term "loss corporation" means a corporation entitled to use a net operating loss carryforward or having a net operating loss for the taxable year in which an owner shift, equity structure shift or other transaction described in paragraph (a)(2)(i) of this section occurs (determined for purposes of this paragraph (f)(1) without regard to whether the corporation is a loss corporation). The term loss corporation also includes any corporation with a net unrealized built-in loss (determined for purposes of this paragraph (f)(1) by treating the date on which such determination is made as the change date). See section 382(h)(3) for the definition of net unrealized built-in loss. Any predecessor or successor to a loss corporation described in this paragraph (f)(1) also is a loss corporation.

(ii) *Distributor or transferor loss corporation in a transaction under section 381.* Notwithstanding that a loss corporation ceases to exist under state law, if its net operating loss carryforwards (or other items described in section 381(c)) are succeeded to and taken into account by an acquiring corporation in a transaction described in section 381(a), such loss corporation shall be treated as continuing in existence until—

(A) Any pre-change losses (determined as if the date of such transaction were the change date) are fully absorbed or expire under section 172, and

(B) Any net unrealized built-in losses (determined as if the date of such transaction were the change date) may no longer be treated as pre-change losses.

Following a transaction described in the preceding sentence, the stock of the acquiring corporation shall be treated as the stock of the loss corporation for purposes of determining whether an

ownership change occurs with respect to the pre-change losses and net unrealized built-in losses that may be treated as pre-change losses of the distributor or transferor corporation.

(iii) *Separate accounting required for losses of an acquiring corporation and a distributor or transferor loss corporation.* Pre-change losses (determined as if the testing date were the change date and treating the amount of any net unrealized built-in loss as a pre-change loss) that are succeeded to and taken into account by an acquiring corporation in a transaction to which section 381(a) applies must be accounted for separately from losses of the acquiring corporation for purposes of applying this section. See Example (2) of paragraph (e)(2)(iv) of this section.

(2) *Old loss corporation.* The term "old loss corporation" means any corporation with respect to which there is an ownership change and that was a loss corporation immediately before the ownership change.

(3) *New loss corporation.* The term "new loss corporation" means a corporation with respect to which there is an ownership change if, immediately after such change, it is a loss corporation. A successor corporation to the corporation described in the preceding sentence also is a new loss corporation.

(4) *Successor corporation.* A successor corporation is a distributee or transferee corporation that succeeds to and takes into account items described in section 381(c) from a loss corporation as the result of an acquisition of assets described in section 381(a).

(5) *Predecessor corporation.* A predecessor corporation is a distributor or transferor corporation that distributes or transfers its assets to an acquiring corporation in a transaction described in section 381(a).

(6) *Shift.* As the context may require, a shift means an equity structure shift, an owner shift or both.

(7) *Entity.* An entity is any corporation, estate, trust, association, company, partnership, or similar organization.

(8) *Direct ownership interest.* A direct ownership interest means the interest a person owns in an entity, including a loss corporation, without regard to the constructive ownership rules of paragraph (h) of this section.

(9) *First tier entity.* A first tier entity is an entity that, at any time during the testing period, owns a five percent or more direct ownership interest in the loss corporation.

(10) *5-percent owner.* A 5-percent owner is any individual that, at any time during the testing period, owns a five percent or more direct ownership interest in a first tier entity or a higher tier entity. See paragraph (g) of this section for rules to determine whether, as a result of the constructive ownership rules of paragraph (h) of this section, a 5-percent owner is a 5-percent shareholder.

(11) *Public shareholder.* A public shareholder is any individual, entity, or other person with a direct ownership interest in a loss corporation of less than five percent at all times during the testing period.

(12) *Public owner.* A public owner is any individual, entity, or other person that, at all times during the testing period, owns less than a five percent direct ownership interest in a first tier entity or any higher tier entity.

(13) *Public group.* A public group is a group of individuals, entities, or other persons each of whom owns, directly or constructively, less than five percent of the loss corporation. See paragraphs (g) and (j) of this section for the rules applicable to identify public groups and to determine whether a public group is a 5-percent shareholder.

(14) *Higher tier entity.* A higher tier entity is any entity that, at any time during the testing period, owns a five percent or more direct ownership interest in a first tier entity or in any higher tier entity.

(15) *Indirect ownership interest.* An indirect ownership is an interest a person owns in an entity determined solely as a result of the application of the constructive ownership rules of paragraph (h) of this section and without regard to any direct ownership interest (or other beneficial ownership interest) in the entity.

(16) *Highest tier entity.* A highest tier entity is a first tier entity or a higher tier entity that is not owned, in whole or in part, at any time during the testing period by a higher tier entity.

(17) *Next lower tier entity.* The next lower tier entity with respect to a first tier entity is the loss corporation. The next lower tier entity with respect to a higher tier entity is any first tier entity or other higher tier entity in which the higher tier entity owns, at any time during the testing period, a five percent or more direct ownership interest.

(18) *Stock*—(i) *In general.* Except as provided in this paragraph (f)(18), the term "stock" means stock other than stock described in section 1504(a)(4). Notwithstanding the preceding sentence, stock that is not described in section 1504(a)(4) solely because it is entitled to vote as a result of dividend arrearages shall be treated as so described and thus shall not be considered stock. Stock described in section 1504(a)(4), however, is not excluded for purposes of determining the value of the loss corporation under section 382(e). The determination of the percentage of stock of any corporation owned by any person shall be made on the basis of the relative fair market value of the stock owned by such person to the total fair market value of the outstanding stock of the corporation.

(ii) *Treating stock as not stock.* Any ownership interest that otherwise would be treated as stock under paragraph (f)(18)(i) of this section shall not be treated as stock if—

(A) As of the time of its issuance or transfer to (or by) a 5-percent shareholder, the likely participation of such interest in future corporate growth is disproportionately small when compared to the value of such stock as a proportion of the total value of the outstanding stock of the corporation,

(B) Treating the interest as not constituting stock would result in an ownership change, and

(C) The amount of the pre-change loss (determined as if the testing date were the change and treating the amount of any net unrealized built-in loss as a pre-change loss) is more than twice the amount determined by multiplying (*1*) the value of the loss corporation (as determined under section 382(e)) on the testing date, by (*2*) the long-term tax exempt rate (as defined in section 382(f)) for the calendar month in which the testing date occurs. Stock that is not treated as stock under this paragraph (f)(18)(ii), however, is taken into account for purposes of determining the value of the loss corporation under section 382(e).

(iii) *Treating interests not constituting stock as stock.* Any ownership interest that would not be treated as stock under paragraph (f)(18)(i) of this section (other than an option that is subject to paragraph (h)(4) of this section) shall be treated as constituting stock if—

(A) As of the time of its issuance or transfer to (or by) a 5-percent shareholder (or a person who would be a 5-percent shareholder if the interest not constituting stock were treated as stock), such interest offers a potential significant participation in the growth of the corporation,

(B) Treating the interest as constituting stock would result in an ownership change, and

(C) The amount of the pre-change losses (determined as if the testing date were the change date and treating the amount of any net unrealized built-in loss as a pre-change loss) is more than twice the amount determined by multiplying

(*1*) The value of the loss corporation (as determined under section 382(e)) on the testing date, by

(*2*) The long-term tax exempt rate (as defined in section 382(f)) for the calendar month in which the testing date occurs.

An ownership interest is that treated as stock under this paragraph (f)(18)(iii) is taken into account for purposes of determining the value of the loss corporation under section 382(e).

(iv) *Stock of the loss corporation.* The stock of the loss corporation means stock of such corporation within the meaning of this paragraph (f)(18) and, as the context may require, includes any indirect ownership interest in the loss corporation.

(19) *Change date.* The change date means the date on which a shift (or any other transaction described in paragraph (a)(2)(i) of this section) that is the last component of an ownership change occurs.

(20) *Year.* A year, or any multiple thereof, means a 365-day period (or a 366-day period in the case of a leap year), or any multiple thereof, unless the year is specifically identified as a taxable year.

(21) *Old section 382.* Old section 382 means section 382, as in effect prior to the effective date of section 382 in the Tax Reform Act of 1986 (the "Act"), but taking into account section 621(f)(2) of the Act.

(22) *Pre-change loss.* The term pre-change loss means—

(i) Any net operating loss carryforward of the old loss corporation to the taxable year ending on the change date or in which the change date occurs,

(ii) Any net operating loss of the old loss corporation for the taxable year in which the ownership change occurs to the extent such loss is allocable to the period in such year on or before the change date, and

(iii) Any recognized built-in loss for any recognition period taxable year (within the meaning of section 382(h)).

(23) *Unrelated.* Any two persons are unrelated if the constructive ownership rules of paragraph (h) of this section do not apply to treat either person as owning stock that is owned, directly or constructively, by the other person.

(24) *Percentage ownership interest.* A person's percentage ownership interest in—

(i) A corporation shall be determined under the rules of this section that are applicable to the determination of a shareholder's percentage stock ownership interest in a loss corporation (see paragraphs (f)(18) (i) through (iii) of this section),

(ii) A partnership shall be equal to the relative fair market value of such person's partnership interest to the total fair market value of all outstanding partnership interests, determined without regard to any limited and preferred partnership interest that is described in paragraph (h)(2)(ii)(C) of this section,

(iii) A trust shall be determined in accordance with the principles of section 318(a)(2)(B) for determining the constructive ownership of stock,

(iv) An estate shall be determined in accordance with the principles of section 318(a)(2)(A) for determining the constructive ownership of stock, and

(v) All other entities shall be determined by reference to the person's relative economic interest in the entity, taking into account all of the relevant facts and circumstances.

(g) *5-percent shareholder*—(1) *In general.* Subject to the rules of paragraphs (k) (2) and (4) of this section, the term "5-percent shareholder" means—

(i) An individual that owns, at any time during the testing period,

(A) A direct ownership interest in the stock of the loss corporation of five percent or more or

(B) An indirect ownership interest in the stock of the loss corporation of five percent or more by virtue of an ownership interest in any one first tier entity or higher tier entity,

(ii) A public group, of either a first tier entity or a higher tier entity, identified as a 5-percent shareholder under paragraph (j)(1)(iv) (A) or (B) of this section,

(iii) A public group of the loss corporation identified as a 5-percent shareholder under paragraph (j)(1)(iv)(C) of this section, and

(iv) A public group, of the loss corporation, a first tier entity or a higher tier entity, identified as a 5-percent shareholder under paragraph (j) (2) or (3) of this section. An individual owning five percent or more of the stock of the loss corporation at any time during the testing period is a 5-percent shareholder notwithstanding that the individual may own less than five percent of the stock of the loss corporation on the testing date. See paragraph (g)(5)(i)(B) of this section for rules permitting a loss corporation to make an adjustment in cases described in the preceding sentence.

(2) *Determination of whether a person is a 5-percent shareholder.* Except as provided in paragraphs (k) (2) and (4) of this section, a person shall be treated as constructively owning stock of the loss corporation pursuant to paragraph (h)(2) of this section only if the loss corporation stock is attributed to such person in the person's capacity as a higher tier entity or a 5-percent owner of the first tier entity or higher tier entity from which such stock is attributed. See paragraph (k)(3) of this section for rules explaining the extent of the obligation of the loss corporation to determine the identity of its 5-percent shareholders. Nothing in this paragraph (g)(2), however, shall limit the attribution of loss corporation stock under section 318(a)(2) and paragraph (h) of this section to a public owner.

(3) *Determination of the percentage stock ownership interest of a 5-percent shareholder.* Subject to the rules of paragraphs (k)(2) and (4) of this section, in determining a 5-percent shareholder's percentage ownership interest in the loss corporation, the shareholder's direct ownership interest, if any, and each indirect ownership interest that he may have in the loss corporation in his capacity as a 5-percent owner of any one first tier entity or higher tier entity, if any, are required to be added together and taken into account with respect to such shareholder only to the extent that each such direct or indirect ownership interest constitutes five percent or more of the stock of the loss corporation.

(4) *Examples.*

Example (1) (i) Twenty percent of L stock is owned by A, 10 percent is owned by P_1, 20 percent is owned by E, a joint venture, and the remaining 50 percent of L stock is owned by Public L. P_1 is owned 15 percent by B and 85 percent by Public P_1. E is owned 30 percent by P_2 and 70 percent by P_3, which, in turn, are owned by Public P_2 and Public P_3, respectively.

(ii) The ownership structure of L is illustrated by the following chart:

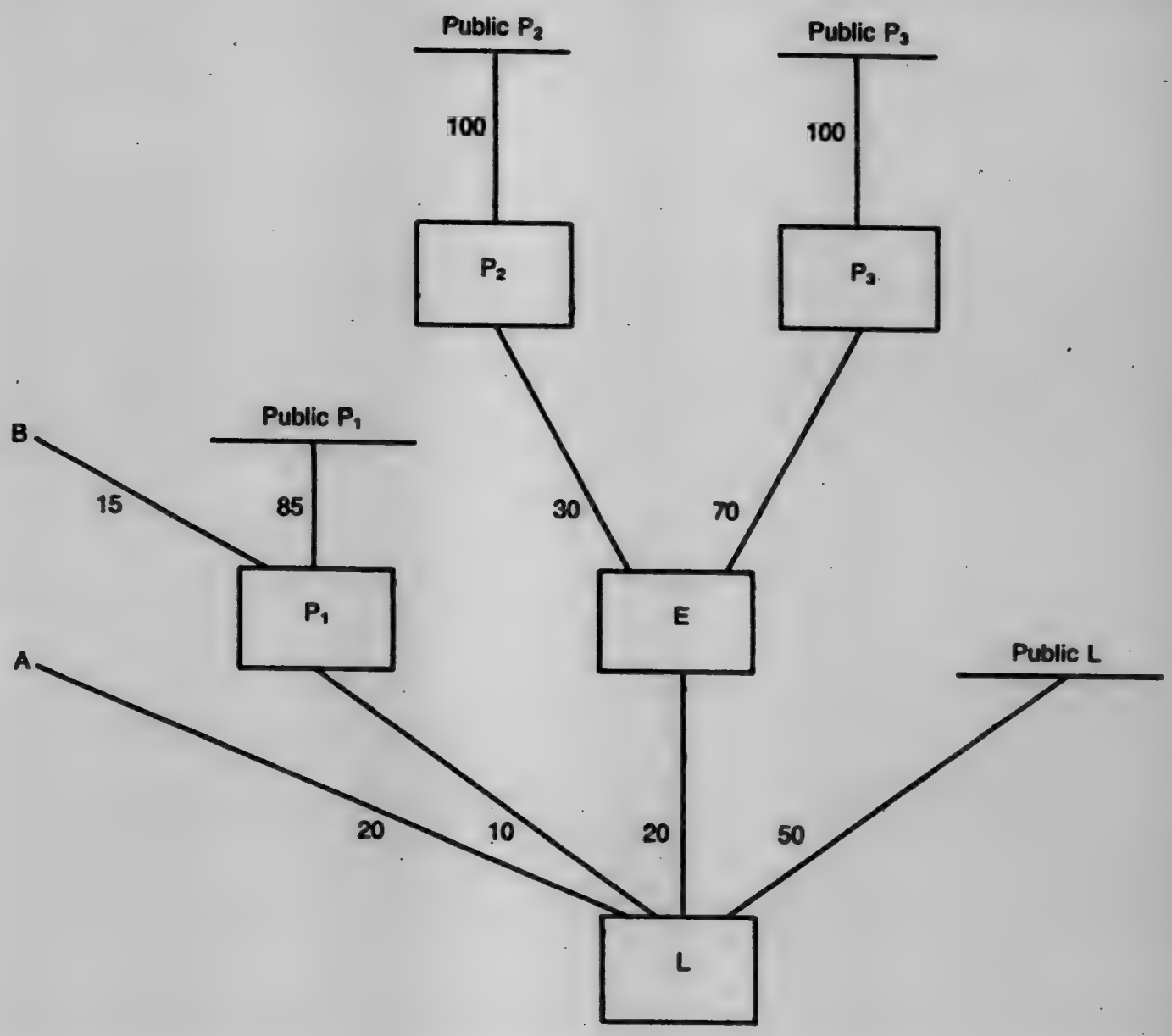

(iii) P_1 and E, each of which has a direct ownership interest in L of five percent or more, are first tier entities. The shareholders with direct ownership interests in L who individually own less than five percent of L are public shareholders (Public L). B, who has a direct ownership interest of five percent or more in P_1, is a 5-percent owner of P . P_2 and P_3, each of which has a direct ownership interest in a first tier entity (E) of five percent or more, are higher tier entities with respect to L and, because neither entity is owned at any time during the testing period by a higher tier entity, they also are highest tier entities. The shareholders of P_2 and P_3 (Public P_2 and Public P_3, respectively) are public owners of such entities, because none of those shareholders own five percent or more of either entity at any time during the testing period.

(iv) A, who has a 20 percent direct ownership interest in L, is a 5-percent shareholder of L. Because, by application of the constructive ownership rules of paragraph (h) of this section, B owns only 1.5 percent of L stock in his capacity as a 5-percent owner of P_1 (15 percent ownership of $P_1 \times$ 10 percent ownership of L), B is not a 5-percent shareholder of L, even though he is a 5-percent owner of P_1. Under the rules of paragraph (j) of this section, therefore, B is treated as a member of Public P_1. See Example (3) of paragraph (j)(1)(vi) of this section for a determination of which public owners and public shareholders constitute public groups that are treated as 5-percent shareholders of L.

Example (2) (i) The facts are the same as in Example (1), except that P_3 is owned 60 percent by C, 30 percent by P_4, and 10 percent by Public P_3. The stock of P_4 is owned by a group of persons (Public P_4), none of whom own five percent or more of the stock of P_4.

(ii) The ownership structure of L is illustrated by the following chart:

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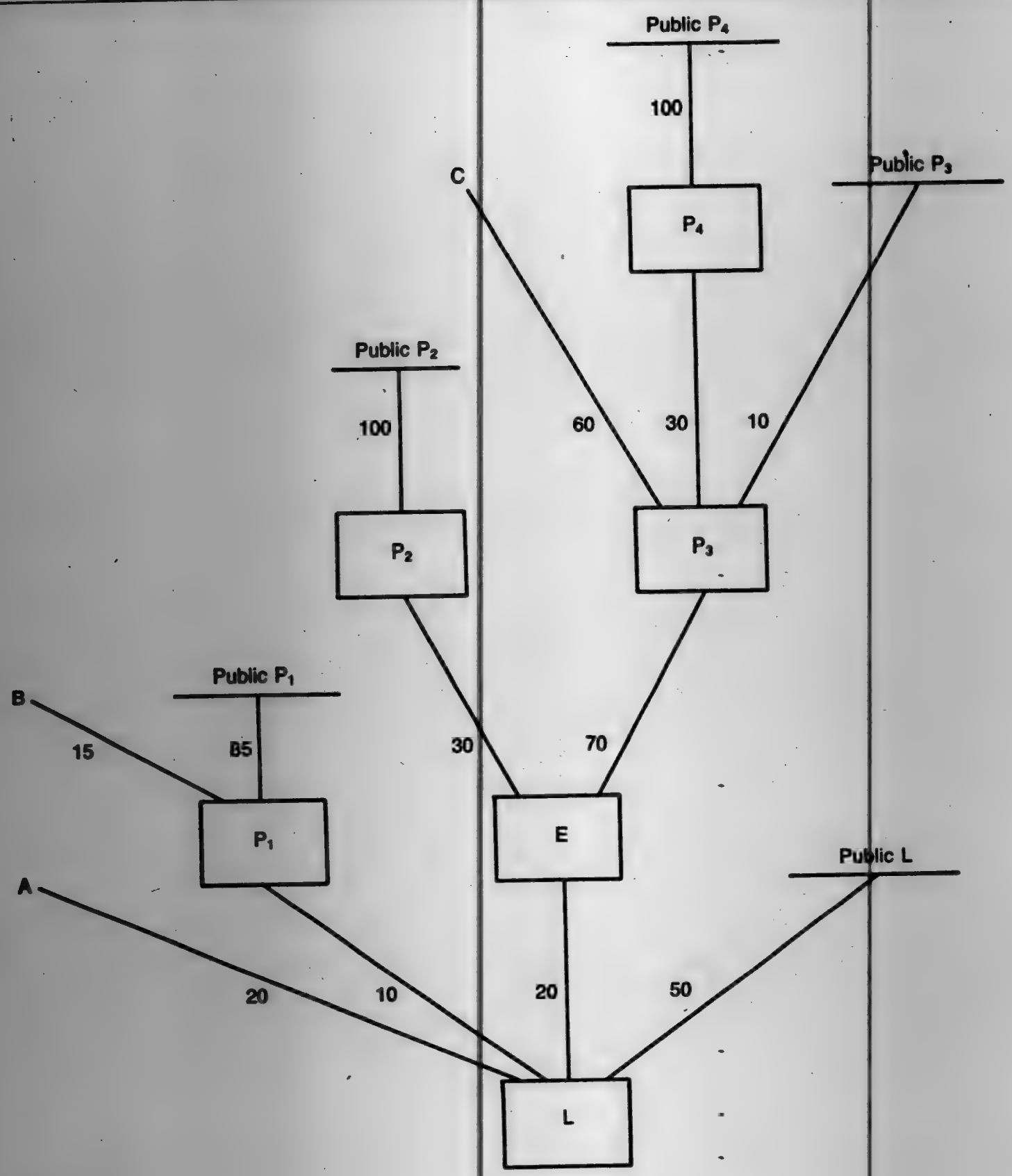

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(iii) The defined terms are the same as in Example (1), except that P_3 is a higher tier entity, not a highest tier entity, because five percent or more of P_3 is, in turn, owned by another entity (P_4). P_4, which owns five percent or more of a higher tier entity (P_3), also is a higher tier entity and, because it is not owned at any time during any testing period by any entity that is also a higher tier entity, P_4 is a highest tier entity. All of the shareholders of P_4, none of which own a direct ownership interest of five percent or more in P_4, are public owners of P_4.

(iv) C is a 5-percent owner of P_3 and, under the constructive ownership rules of paragraph (h) of this section, C indirectly owns 8.4 percent of L ([60 percent ownership of P_3] × [70 percent ownership of E] × [20 percent ownership of L]), in his capacity as a 5-percent owner of P_3. B is a 5-percent owner of P_1 and, under the constructive ownership rules of paragraph (h) of his section, B owns 1.5 percent of L ([15 percent ownership of P_1] × [10 percent ownership of L]) in his capacity as a 5-percent owner of P_1. Therefore, C is a 5-percent shareholder of L, but B is not a 5-percent shareholder of L, even though he is a 5-percent owner of P_1. See Example (4) of paragraph (j)(1)(vi) of this section for a determination of which public owners and public shareholders constitute public groups that are treated as separate 5-percent shareholders of L.

Example (3). (i) L is owned 30 percent by A and 70 percent by P. A owns six percent of P stock and the balance (94 percent) is owned equally by 500 unrelated shareholders ("Public P").

(ii) A is a 5-percent shareholder because he directly owns 30 percent of L. Even though A is a 5-percent owner of P, A's 4.2 percent indirect ownership interest in L (six percent ownership interest in P × P's 70 percent ownership of L) is generally not taken into account in determining A's ownership interest, because such indirect ownership interest is less than five percent. Instead, A's 4.2 percent indirect interest is treated under paragraph (j)(1)(iv) of this section as owned by Public P. If, however, L has actual knowledge of A's less-than-five-percent indirect ownership interest in L and is thus subject to paragraph (k)(2) of this section, or paragraph (k)(4) of this section otherwise applies, L must take A's total 34.2 percent ownership interest into account in determining A's percentage ownership in L.

Example (4). The facts are the same as in Example (3), except that A owns ten percent of P's stock. Because A's indirect ownership interest in L in his capacity as a 5-percent owner of P is five percent or more, both A's 30 percent direct ownership interest in L and his seven percent indirect ownership interest in L (10 percent ownership interest in P × P's 70 percent ownership of L) are taken into account in determining his ownership interest in L, without regard to L's actual knowledge or whether paragraph (k)(4) of this section applies.

(5) *Stock ownership presumptions in connection with certain acquisitions, and dispositions of loss corporation stock*—(i) *In general.* For purposes of this section—

(A) If an individual owns less than five percent of the stock of a loss corporation during the testing period (excluding the testing date) and acquires an amount of such stock so that the individual becomes a 5-percent shareholder on the testing date, the loss corporation may treat any interest in the loss corporation owned by such individual prior to that acquisition as owned by a public group during the period of such individual's ownership of that interest and as not owned by the 5-percent shareholder during the same period, and

(B) If a 5-percent shareholder's percentage ownership interest in the loss corporation is reduced to less than five percent, the loss corporation may presume that the remaining stock owned by such 5-percent shareholder immediately after such reduction is the stock owned by such shareholder for each subsequent testing date having a testing period that includes the date on which the reduction occurred as long as such shareholder continues to own less than five percent of the stock of the loss corporation. In that event, such ownership interest shall be treated as owned by a separate public group for purposes of the rules of paragraph (j)(2)(vi) of this section.

(ii) *Example.*

L has 100,000 shares of stock outstanding. All of the L stock is owned equally by 40 unrelated, individual shareholders, including A (who owns 2.5 percent of L stock). Because no person owns as much as five percent of L stock, Public L is the only 5-percent shareholder of L. See paragraph (j)(1) of this section. A purchases 5,000 shares of L stock over a public stock exchange on June 8, 1989. The purchase is an owner shift. When added to his ownership interest before that date (the testing date), A owns 7,500 shares of L stock (7.5 percent). Under paragraph (g)(5)(i)(A) of this section, L may treat A and Public L as having owned 0 percent and 100 percent, respectively, at all times prior to June 8, 1989 (rather than having owned 2.5 percent by A and 97.5 percent by Public L, even if L has actual knowledge of A's less than five percent ownership interest). The increase in A's stock ownership of L as of June 8, 1989 thus would be 7.5 percentage points, rather than 5.0 percentage points, for purposes of determining whether an ownership change occurs on that testing date and any subsequent testing date.

(h) *Constructive ownership of stock*—(1) *In general.* Subject to certain modifications set forth in this section and section 382(l)(3), the constructive ownership rules of section 318(a) generally apply for purposes of determining ownership of loss corporation stock.

(2) *Attribution from corporations, partnerships, estates and trusts*—(i) *In general.* Stock owned (directly or indirectly) by an entity shall be attributed to its owners—

(A) Except as otherwise provided in this section, by treating the stock attributed pursuant to section 318(a)(2) as no longer being owned by the entity from which it is attributed, and

(B) If attribution is from a corporation, without regard to the 50 percent stock ownership limitation contained in section 318(a)(2)(C).

(ii) *Limitation on attribution from entities with respect to certain interests.* Section 318(a)(2) shall not apply to treat the stock of the loss corporation that is owned directly by a first tier entity (or indirectly by any higher tier entity) as being indirectly owned by any person that has an ownership interest in the first tier entity (or any higher tier entity) to the extent that such interest is (or is attributable to)—

(A) Stock of any such entity that is described in section 1504(a)(4),

(B) Any ownership interest in any such entity that does not constitute stock under paragraph (f)(18)(ii) of this section, or

(C) If the entity is not a corporation, any ownership interest in any such entity that has characteristics similar to the interests described in paragraph (h)(2)(ii) (A) or (B) of this section.

The ownership interests described in this paragraph (h)(2)(ii) shall not be taken into account in determining a person's percentage ownership interest in an entity under paragraph (f)(24) of this section.

(iii) *Limitation on attribution from certain entities.* For purposes of this section, except as provided in paragraphs (k)(2) and (4) of this section, each of the following shall be treated as an individual who is unrelated to any other owner (direct or indirect) of the loss corporation—

(A) Any entity other than a higher tier entity that owns five percent or more of the loss corporation stock (determined without regard to paragraph (h)(2)(i)(A) of this section) on a testing date, a first tier entity or the loss corporation,

(B) A qualified trust described in section 401(a),

(C) Any State, any possession of the United States, the District of Columbia, the United States (or any agency or instrumentality thereof), any foreign government, or any political subdivision of any of the foregoing, and

(D) Any other person designated by the Internal Revenue Service in the Internal Revenue Bulletin.

Stock of a loss corporation that is owned by any such person shall thus not

be attributed to any other person for purposes of this section. See paragraph (g)(2) of this section limiting attribution from a first tier entity or a higher tier entity to any person that is not a 5-percent owner or a higher tier entity.

(iv) *Examples.*

Example (1). All the stock of L is owned by A. B and C respectively own 70 and 30 percent of the outstanding P stock. P acquires 60 percent of the outstanding L stock from A on July 1, 1988 (a testing date). After the acquisition, P is a first tier entity and a higher tier entity of L. B and C are each 5-percent owners of P and also are 5-percent shareholders of L having a 42 percent and 18 percent stock ownership interest in L, respectively, through the operation of the constructive ownership rules of paragraph (h) of this section. Because B and C together have increased their ownership in L by more than 50 percentage points during the testing period ending on the testing date (60 percent on the testing date and 0 percent prior thereto), an ownership change occurs with respect to L on July 1, 1988.

Example (2). The facts are the same as in Example (1), except that B and C are not shareholders in a corporation, but instead are partners in a general partnership, E. B and C respectively own 70 percent and 30 percent of E. E acquires 60 percent of the L stock on July 1, 1988. The results are the same as in Example (1).

Example (3). The facts are the same as in Example (1), except that the acquisition is accomplished in a transaction that qualifies under section 351(a). In that transaction, HC is formed through (i) a contribution of money by P in exchange for 60 shares of HC common stock and (ii) a contribution of all the outstanding shares of L stock plus cash by A in exchange for 40 shares of HC common stock and 30 shares of HC preferred stock that is described in section 1504(a)(4). The respective values of each share of HC stock, common and preferred, are equal. The stock of L is attributed to A through his interest in HC common stock, but not through his interest in HC preferred stock (see paragraph (h)(2)(ii)(A) of this section). Thus, A is treated as owning indirectly only 40 percent of L. B and C are 5-percent shareholders of L having indirect ownership interests in L of 42 percent and 18 percent, respectively, through their ownership of HC common stock. The results are therefore the same as in Example (1).

(3) *Attribution to corporations, partnerships, estates and trusts.* Except as otherwise provided by regulation under section 382 or by the Internal Revenue Service in the Internal Revenue Bulletin, the rules of section 318(a)(3) shall not apply in determining the ownership of stock under this section.

(4) *Option attribution*—(i) *In general.* Solely for the purpose of determining whether there is an ownership change on any testing date, stock of the loss corporation that is subject to an option shall be treated as acquired on any such date, pursuant to an exercise of the option by its owner on that date, if such deemed exercise would result in an ownership change. The preceding sentence shall be applied separately with respect to—

(A) Each class of options (*i.e.*, options with terms that are identical, issued by the same issuer, and issued on the same date) owned by each 5-percent shareholder (or person who would be a 5-percent shareholder if the option were treated as exercised), and

(B) Each 5-percent shareholder, each owner of an option who would be a 5-percent shareholder if the option were treated as exercised, and each combination of such persons.

(ii) *Examples.*

Example (1) (i) A owns all of the 100 shares of outstanding L stock. A grants options for the purchase of his L stock, exercisable for 10 years from the date of issuance, in the following transactions: An option to B for four shares (issued January 1, 1988), an option to C for six shares (issued June 1, 1989), and an option to D for 15 shares (issued July 30, 1989). On July 30, 1990, A sells 41 shares of his L stock to BB.

(ii) Pursuant to paragraph (a)(2)(i) of this section, the date on which each option is acquired is a testing date. The issuance of options to acquire L stock to each of B, C, and D is not treated as an acquisition of the underlying stock on any such testing date since such treatment with respect to any one of the option owners (or any combination thereof) would not have resulted in an ownership change on any of those testing dates.

(iii) The date on which BB acquires 41 shares also is a testing date. BB's acquisition of 41 percent of the L stock, taken together with the shift in ownership that would result if the options held by B, C and D were exercised, would result in an ownership change, because the stock owned or treated as owned by Public L (a group including only B, the sole shareholder who owns less than five percent of L stock), C, D and BB would have increased by 66 percentage points (four, six, 15, and 41 percentage points, respectively) during the testing period. Subject to paragraph (h)(4)(ix) of this section, the options are treated as exercised and an ownership change occurs on July 30, 1990, pursuant to paragraph (h)(4)(i) of this section. Accordingly, no new testing period can begin before July 31, 1990. Under paragraph (h)(4)(x)(F) of this section, the option attribution rules of paragraph (h)(4)(i) of this section shall not be applicable with respect to any of the options owned by B, C, and D immediately before the ownership change until such time, if any, that such options are transferred to (or by) 5-percent shareholder (or a person who would be a 5-percent shareholder if such option were exercised). In addition, the subsequent exercise of any of those options by A, B, or C (the persons owning such options immediately before the ownership change) is disregarded. See paragraph (h)(4)(vi) of this section. Also see paragraph (h)(4)(viii) of this section for the treatment of options that lapse or are forfeited.

(iv) The facts are the same as in *(i)*, except that the sale of A's 41 shares of L stock to BB occurs on July 30, 1995. Because the options are treated as exercised and the related stock is treated as acquired on the July 30, 1995 testing date, the results are the same as described in *(iii)*.

Example (2) (i) A owns all of the outstanding 100 shares of the stock of L. On July 22, 1988, the value of A's stock in L is $500 and the following agreements are entered into: (i) A sells 40 shares of his L stock to B for $200, (ii) in exchange for $10, A grants B an option to acquire the balance of his L stock for $305 at any time before July 22, 1992, and (iii) L grants A an option to acquire 100 shares of L stock at a price of $800 exercisable until such time as B's option is no longer outstanding.

(ii) If the stock subject to the options owned by both A and B were treated as acquired on the July 22, 1988 testing date, B would have increased his ownership interest in L by only 50 percentage points to 50 percent ([40 shares purchased + 60 shares acquired pursuant to the option]/200 outstanding shares of L stock, including 100 shares deemed outstanding pursuant to the option issued to A by L) as compared with 0 percent prior to July 22, 1988. In determining whether the options with respect to the stock of L would, if exercised, result in an ownership change, paragraph (h)(4)(i)(B) of this section requires that such options be treated as exercised separately with respect to each 5-percent shareholder, each person who would be a 5-percent shareholder if the option were treated as exercised or each combination of such persons. Therefore, by treating the option owned by A as not having been exercised and the option owned by B as having been exercised, B's interest in L increases by 100 percentage points during the testing period. An ownership change with respect to L therefore results from the transactions occurring on July 22, 1988.

(iii) *Contingencies.* Except as provided in paragraph (h)(4)(x)(D) of this section, the extent to which an option is contingent or otherwise not currently exercisable shall be disregarded for purposes of this section.

(iv) *Series of options.* For purposes of this section, an option to acquire an option with respect to the stock of the loss corporation, and each one of a series of such options, shall be considered as an option to acquire such stock.

(v) *Interests that are similar to options.* For purposes of this section,

(A) An interest that is similar to an option includes, but is not limited to, a warrant, a convertible debt instrument, an instrument other than debt that is convertible into stock, a put, a stock interest subject to risk of forfeiture, and a contract to acquire or sell stock, and

(B) Any such interest shall be treated as an option.

(vi) *Actual exercise of options*—(A) *In general.* The actual exercise of any

option in existence immediately before and after an ownership change, whether or not the option was treated as exercised in connection with the ownership change under paragraph (h)(4)(i) of this section, shall be disregarded for purposes of this section, but only if the option is exercised by the 5-percent shareholder (or person who would have been a 5-percent shareholder if the options owned by such person had been exercised immediately before the ownership change) who owned the option immediately before and after such ownership change.

(B) *Actual exercise within 120 days of deemed exercise.* If the actual exercise of an option occurs on or before the end of the period which is 120 days after the date on which the option is treated as exercised under paragraph (h)(4)(i) of this section, the loss corporation may elect to treat paragraphs (h)(4)(i) and (vi)(A) of this section as not applying to such option and take into account only the acquisition of loss corporation stock resulting from the actual exercise of the option. An election under this paragraph (h)(4)(vi)(B) shall have no effect on the determination of whether an ownership change occurs, but shall apply only for the purpose of determining the date on which the change date occurs. An election under this paragraph (h)(4)(vi)(B) shall be made in the statement described in paragraph (a)(2)(ii) of this section.

(vii) *Effect of deemed exercise of options on the outstanding stock of the loss corporation*—(A) *Right or obligation to issue stock.* Solely for purposes of determining whether an ownership change has occurred under paragraph (h)(4)(i) of this section, the deemed exercise of an option with respect to unissued stock (or treasury stock) of a corporation shall result in a corresponding increase in the amount of its total outstanding stock.

(B) *Right or obligation to acquire outstanding stock by the loss corporation.* Solely for purposes of determining whether an ownership change has occurred under paragraph (h)(4)(i) of this section, the deemed exercise of a right to transfer outstanding stock to the issuing corporation (or a right of the issuing corporation to acquire its stock) shall result in a corresponding decrease in the amount of its total outstanding stock.

(C) *Effect on value of old loss corporation.* The deemed exercise of an option with respect to unissued stock (or treasury stock) under paragraph (h)(4)(i) of this section shall have no effect on the determination of the value of the old loss corporation and the computation of the section 382 limitation. See section 382(l)(1)(B) disregarding capital contributions made during the two-year period preceding the change date for purposes of computing the section 382 limitation.

(viii) *Options that lapse or are forfeited.* If an option that is treated as exercised under paragraph (h)(4)(i) of this section lapses unexercised or the owner of such option irrevocably forfeits his right to acquire stock pursuant to the option, the option shall be treated for purposes of this section as if it never had been issued. In that case, the loss corporation may file an amended return for prior years (subject to any applicable statute of limitations) if the section 382 limitation was thus inapplicable. If paragraph (h)(4)(i) of this section applied to an option (or options) with respect to a taxable year for which an income tax return has not been filed by the date that the option (or options) lapses or is irrevocably forfeited, the loss corporation may treat paragraph (h)(4)(i) of this section as inapplicable to such option (or options).

(ix) *Option rule inapplicable if pre-change losses are de minimis.* Paragraph (h)(4)(i) of this section shall not apply to treat the stock of the loss corporation as acquired by the owner of an option if, on a testing date, the amount of pre-change losses (determined as if the testing date were a change date and treating the amount of any net unrealized built-in loss as a pre-change loss) is less than twice the amount determined by multiplying.

(A) The value of the loss corporation (as determined under section 382(e)) on the testing date, by

(B) The long-term tax exempt rate (as defined in section 382(f)) for the calendar month in which the testing date occurs.

(x) *Options not subject to attribution.* Paragraph (h)(4)(i) of this section shall not apply to—

(A) *Long-held options with respect to actively traded stock.* Any option with respect to stock of the loss corporation which stock is actively traded on an established securities market (within the meaning of section 1273(b)) for which market quotations are readily available, if such option has been continuously owned by the same 5-percent shareholder (or a person who would be a 5-percent shareholder if such option were exercised) for at least three years, but only until the earlier of such time as—

(*1*) The option is transferred by or to a 5-percent shareholder (or a person who would be a 5-percent shareholder if such option were exercised), or

(*2*) The fair market value of the stock that is subject to the option exceeds the exercise price for such stock on the testing date. For purposes of this paragraph (h)(4)(x)(A), options with respect to the stock of a loss corporation that are assumed (or substituted) in a reorganization and converted into options with respect to the stock of another party to the reorganization shall not be treated as transferred, provided that there are no changes in the terms of the options, other than that the stock that may be acquired pursuant to the option is that of another party to the reorganization and that the amount of stock subject to the option is adjusted only to reflect the exchange ratio for the exchange of stock of the loss corporation in the reorganization.

(B) *Right to receive or obligation to issue a fixed dollar amount of value of stock upon maturity of certain debt.* Any right to receive or obligation to issue stock pursuant to the terms of a debt instrument that, in economic terms, is equivalent to nonconvertible debt because the right to receive stock of the issuer of a fixed dollar amount is based upon the fair market value for such stock determined at or about the date the stock is transferred pursuant to such right or obligation (*i.e.*, the amount of the stock transferred pursuant to the option is equal to a fixed dollar amount, divided by the value of each share of such stock at or about the date of the stock transfer). This paragraph (h)(4)(x)(B) shall not apply if the method for determining the fair market value of the stock of the issuer is intended to or, in fact, provides the owner of the debt instrument with a participation in any appreciation of any stock of the issuer.

(C) *Right or obligation to redeem stock of the loss corporation.* Any right or obligation of the loss corporation to redeem any of its stock at the time such stock is issued, but only to the extent such stock is issued to persons who are not 5-percent shareholders immediately before the issuance.

(D) *Options exercisable only upon death, disability or mental incompetency.* Any option entered into between owners of the same entity (or an owner and the entity in which the owner has a direct ownership interest) with respect to such owner's ownership interest in the entity that is exercisable only upon the death, complete disability or mental incompetency of such owner.

(E) *Right to receive or obligation to issue stock as interest or dividends.* Any right to receive or obligation to issue stock of a corporation in payment of interest or dividends by the issuing corporation. (For an example illustrating

this exception, see paragraph (j)(2)(iv)(B) of this section.)

(F) *Options outstanding following an ownership change—(1) In general.* Any option in existence immediately before and after an ownership change, whether or not the option was treated as exercised in connection with the ownership change under paragraph (h)(4)(i) of this section, but only so long as the option continues to be owned by the 5-percent shareholder (or person who was treated as a 5-percent shareholder) who owned the option immediately before and after such ownership change.

(*2*) *Example (i)* A, B, C and D own all of the outstanding stock of L. A owns 70 shares of L stock and each of B, C and D own 10 shares of L stock. On July 12, 1988, L issues warrants to each of its shareholders entitling them to acquire an additional 8.5 shares of L stock for each share of stock owned.

(*ii*) If B, C and D, but not A, each exercise their respective rights to acquire an additional 85 shares of L stock (10 shares × 8.5 shares that may be acquired for each share owned) on July 12, 1988, their combined ownership interest in L on that date would exceed 80 percent (255 shares deemed to be acquired + 30 shares actually owned)/355 shares outstanding (actual and deemed)). B, C and D thus would increase their ownership interest in L by 50.3 percentage points during the testing period, causing an ownership change, because, under paragraph (h)(4)(i)(B) of this section, the options are treated as exercised if the exercise would cause an ownership change.

(*iii*) Following the ownership change, paragraph (h)(4)(i) of this section applies to prevent A's right to acquire 595 shares of L stock (70 shares x 8.5 shares that may be acquired for each share owned) or the rights held by B, C, or D, to be treated as exercised on any subsequent testing date, except to the extent that those rights are transferred. To the extent any of those options are transferred following the ownership change, paragraph (h)(4)(i) of this section will apply to any such options on the date of the transfer and on any subsequent testing date.

(G) *Right to acquire loss corporation stock pursuant to a default under a loan agreement.* Any right to acquire stock of a corporation by a bank (as that term is defined in section 581), an insurance company (as that term is defined in § 1.801–3(a)), or a trust qualified under section 401(a) solely as the result of a default under a loan agreement entered into in the ordinary course of the trade or business of such bank, life insurance company or qualified trust.

(H) *Agreement to acquire or sell stock owned by certain shareholders upon retirement.* Any option entered into between noncorporate owners of the same entity (or a noncorporate owner and the entity in which the owner has a direct ownership interest) with respect to such owner's ownership interest in the entity, but only if each of such owners actively participate in the management of the entity's trade or business, the option is issued at a time that the loss corporation is not a loss corporation and the option is exercisable solely upon the retirement of such owner. An option with terms described in both this paragraph (h)(4)(x)(H) and in paragraph (h)(4)(x)(D) of this section shall also not be subject to paragraph (h)(4)(i) of this section.

(xi) *Certain transfers of options disregarded.* Transfers of options between persons who are not 5-percent shareholders (and between members of separate public groups resulting from the application of the segregation rules of paragraphs (j)(2) and (3)(iii) of this section) are not taken into account. Transfers of options in any of the circumstances described in section 382(l)(3)(B) are also disregarded and the transferee shall be treated as having owned the option for the period that it was owned by the transferor.

(xii) *Exercise of an option that has not been treated as stock.* The acquisition of stock pursuant to the actual exercise of an option (other than an option described in paragraph (h)(4)(vi)(A) of this section) shall not be disregarded.

(5) *Stock transferred under certain agreements.* Notwithstanding paragraph (h)(4) of this section, no shift results solely because under section 1058(a)—

(i) A shareholder transfers stock of a corporation pursuant to an agreement that meets the requirements of section 1058(b), or

(ii) A person having rights under such an agreement exchanges those rights for stock identical to the stock transferred pursuant to the agreement.

(6) *Family attribution.* For purposes of this section—

(i) Paragraphs (1) and (5)(B) of section 318(a) shall not apply,

(ii) An individual and all members of his family described in section 318(a)(1) shall be treated as one individual,

(iii) Subject to paragraph (k)(2) of this section, paragraph (h)(6)(ii) of this section shall not apply to members of a family who, without regard to that paragraph (h)(6)(ii), would not be 5-percent shareholders, and

(iv) If under paragraph (h)(6)(ii) of this section, an individual may be treated as a member of more than one family, and each family that is treated as one individual is a 5-percent shareholder (or would be treated as a 5-percent shareholder if such individual were treated as a member of such family), then such individual shall be treated only as a member of the family that results in the smallest increase in the total percentage stock ownership of the 5-percent shareholders on the testing date and shall not be treated as the member of any other family.

(i) [Reserved]

(j) *Aggregation and segregation rules.* For purposes of this section, except as provided in paragraphs (k) (2) and (4) of this section—

(1) *Aggregation of public shareholders and public owners into public groups—* (i) *Public group.* Under this paragraph (j), a loss corporation or other entity can be treated as owned, in whole or in part, by one or more public groups. A public group can include public shareholders, public owners, and 5-percent owners who are not 5-percent shareholders of the loss corporation.

(ii) *Treatment of a public group that is a 5-percent shareholder.* Each public group that is treated as a 5-percent shareholder under paragraph (g)(1) (ii), (iii) or (iv) of this section shall be treated as one individual. See paragraph (j)(2)(iv) for a rule combining certain de minimis public groups.

(iii) *Presumption of no cross-ownership.* The public owners, 5-percent owners who are not 5-percent shareholders and public shareholders in any public group, subject to paragraphs (j)(2)(iii), (k)(2) and (k)(4) of this section, are presumed not to be members of any other public group. It also is presumed that each such person is unrelated to all other shareholders (direct and indirect) of the loss corporation. See paragraph (h)(6)(iii) of this section. The members of a public group that exists by virtue of its direct ownership interest in an entity are presumed not to be members (and not to be related to a member) of any other public group that exists at any time by virtue of its direct ownership interest in any other entity. To the extent that the presumptions adopted in this paragraph (j)(1)(iii) are not applicable because the loss corporation has actual knowledge of facts to the contrary and is thus subject to paragraph (k)(2) of this section, public shareholders, public owners and 5-percent owners who are not 5-percent shareholders may be aggregated into additional public groups.

(iv) *Identification of the public groups treated as 5-percent shareholders—*(A) *Analysis of highest tier entities.* The loss corporation must identify first tier entities and higher tier entities in order to identify any highest tier entities that must be identified under paragraph (k)(3) of this section. The loss corporation must then identify any 5-percent owners of each such highest tier entity who indirectly own, at any time during the testing period, five percent or

more of the loss corporation through the ownership interest in such highest tier entity. Under paragraph (g)(1)(i)(B) of this section, any such 5-percent owner is a 5-percent shareholder. See paragraph (k)(3) of this section for rules explaining the extent of the obligation of the loss corporation to determine the identity of its shareholders. Each person who has an ownership interest in any highest tier entity and who is not treated as a 5-percent shareholder (*i.e.*, persons who are public owners or 5-percent owners who are not 5-percent shareholders) is a member of the public group of that highest tier entity. A public group, so identified, that indirectly owns five percent or more of the loss corporation on the testing date is treated under paragraph (g)(1)(ii) of this section as a 5-percent shareholder. If the public group so identified owns less than five percent of the loss corporation on the testing date, such public group is treated as part of the public group of the next lower tier entity.

(B) *Analysis of other higher tier entities and first tier entities.* The analysis and aggregation of public groups described in paragraph (j)(1)(iv)(A) of this section is repeated for any next lower tier entity and successively for any next lower tier entity of any entity described in this paragraph (j)(1)(iv)(B) until applied to each first tier entity.

(C) *Aggregation of the public shareholders.* The public shareholders are aggregated and, under paragraph (g)(1)(iii) of this section, are treated as a public group that is a 5-percent shareholder without regard to whether such group, at any time during the testing period, owns five percent or more of the loss corporation. For this purpose, if the public group of any first tier entity indirectly owns less than five percent of the loss corporation on the testing date, and is thus not treated as a 5-percent shareholder, but is treated as part of the public group of the loss corporation under paragraph (j)(1)(iv)(A) or (B) of this section, the ownership interest of that group is included in the public group of the loss corporation referred to in the preceding sentence.

(v) *Appropriate adjustments.* A loss corporation may apply the principles of paragraph (g)(5) of this section with respect to—

(A) Any public group that is treated as a 5-percent shareholder on the testing date if such public group, at any time during the testing period, was treated as part of the public group of the next lower tier entity, or

(B) Any public group that is treated as part of the public group of a next lower tier entity if such public group, at any time during the testing period, was part of the public group of a higher tier entity that was treated as a 5-percent shareholder and had a direct or indirect ownership interest in such lower tier entity.

(vi) *Examples.*

Example (1)(i) All of the stock of L is owned by 1,000 shareholders, none of whom own as much as five percent of L stock ("Public L"). All of the stock of P is owned by 150,000 shareholders, none of whom own as much as five percent of P stock ("Public P"). Between July 12, 1988 and August 13, 1988, P purchases all of the L stock through a series of transactions on the public stock exchange. P's percentage of direct stock ownership in L increases from 4.9 percent to five percent on July 15, 1988, and from 50 percent to 51 percent on July 30, 1988.

(*ii*) Before July 15, 1988, P is a public shareholder of L. On and after July 15, 1988, P is a first tier entity (and a higheat tier entity) of L. Accordingly, under the rules of paragraph (j)(1) of this section, Public P, on and after July 15, 1988, is treated as a public group that is a 5-percent shareholder. Each acquisition by P on and after such date affects the percentage of L stock that is owned by Public P and thus constitutes an owner shift.

(*iii*) Immediately after the transaction on July 30, 1988, P owns 51 percent of L stock. Under paragraph (j)(1)(iv)(A) of this section, Public P thus owns 51 percent of L. Under paragraph (j)(1)(iv)(C) of this section, Public L, the public group that includes the public shareholders of L, is treated as a 5-percent shareholder that owns 49 percent of L. Under paragraph (j)(1)(iii) of this section, Public L and Public P are presumed not to have any common members and it is also presumed that no member of either public group is related to any other member of either of the two public groups.

(*iv*) Assuming that the presumption provided in paragraph (j)(1)(iii) of this section (*i.e.*, that no person owns stock in both P and L) is not rebutted to any extent, Public P is treated as a 5-percent shareholder whose stock ownership in L, as of the July 30, 1988 testing date, has increased by 51 percentage points over its lowest percentage of stock ownership in L at any time during the testing period (0 percent prior to July 12, 1988). Accordingly, an ownership change with respect to L occurs as a result of P's acquisition on July 30, 1988. L is thus a new loss corporation and its pre-change losses are subject to limitation under section 382.

Example (2)(i) All of the stock of P is owned by 1,000 unrelated shareholders, none of whom owns as much as five percent of P stock. L_4 is a wholly owned subsidiary of P. On January 2, 1988, P distributes all of the L_4 stock pro rata to its shareholders.

(*ii*) Prior to the stock distribution, the public owners of P are members of a public group ("Public P") that is treated as a 5-percent shareholder owning 100 percent of the stock of L_4.

See paragraph (j)(1)(iv)(A) of this section. Following the stock distribution to the P shareholders, L_4 is owned by 1,000 public shareholders that are members of a public group ("Public L_4") that is treated as a 5-percent shareholder owning 100 percent of the stock of L_4. See paragraph (j)(1)(iv)(C) of this section.

(*iii*) Public P and Public L_4 are treated as unrelated, individual 5-percent shareholders under paragraph (j)(1)(iii) of this section. Although the members of one public group are presumed not to be members of any other public group under paragraph (j)(1)(iii) of this section, L_4 has actual knowledge that all of its public shareholders immediately following the distribution (Public L_4) received L_4 stock pro rata in respect to the outstanding P stock and thus were also members of Public P. Applying paragraph (k)(2) of this section, the loss corporation may take into account the identity of ownership interests between Public L_4 and Public P to establish that Public L_4 did not increase its percentage ownership in L_4. Accordingly, the transaction would not constitute an owner shift.

Example (3)(i) The facts are the same as in Example (1) of paragraph (g)(4) of this section. Thus, 20 percent of L stock is owned by A, 10 percent is owned by P_1, 20 percent is owned by E, a joint venture, and the remaining 50 percent of L stock is owned by Public L. P_1 is owned 15 percent by B and 85 percent by Public P_1. E is owned 30 percent by P_2 and 70 percent by P_3, which are owned by Public P_2 and Public P_3, respectively. See Example (1)(ii) of paragraph (g)(4) of this section for a chart illustrating this ownership structure.

(*ii*) The public owners of P_2 and P_3 (Public P_2 and Public P_3, respectively), are public groups that are treated as 5-percent shareholders of L, because each such public group indirectly owns five percent or more of L stock (six percent by Public P_2 [(30 percent ownership of E)×(20 percent ownership of L)] and 14 percent by Public P_3 [(70 percent ownership of E)×(20 percent ownership of L)]). The public owners of P_1 ("Public P_1"), who indirectly own 8.5 percent of L stock [(85 percent ownership of P_1)×(10 percent ownership of L)] and B, who indirectly owns 1.5 percent of L and is thus included in Public P_1 under paragraph (j)(1)(iv)(A) of this section, are members of a public group that is treated as a 5-percent shareholder of L that owns ten percent of L stock. Finally, the public group of L ("Public L") is a 5-percent shareholder that owns 50 percent of L. Accordingly, A, Public L, Public P_1 (including B), Public P_2, and Public P_3 are the only 5-percent shareholders of L.

Example (4)(i) The facts are the same as Example (3) above, except that P_3 is owned 60 percent by C, 30 percent by P_4, and 10 percent by P_5. The stock of P_4 is publicly traded and is owned by Public P_4. The facts are thus the same as in Example (2) in paragraph (g)(4) of this section. See Example (2)(ii) of paragraph (g)(4) of this section for a chart illustrating this ownership structure.

(*ii*) The public owners of P_4(a highest tier entity) are members of a public group that indirectly owns 4.2 percent of L [[30 percent ownership of P_3]×[70 percent ownership of E]×[20 percent ownership of L]). For purposes of identifying public groups that are 5-.percent shareholders, L is not required to identify P_4 as a highest tier entity under

paragraph (k)(3) of this section because P_4 does not own five percent or more of L stock. Moreover, under paragraph (h)(2)(iii) of this section, P_4 generally is treated as an individual from which there is no attribution of loss corporation stock. The public group of P_3 (including P_4) indirectly owns 5.6 percent of L ([40 percent of P_3]×[70 percent ownership of E]×[20 percent of L]), and is thus a 5-percent shareholder of L. The public groups of P_2 and P_1 (both Public P_1 and B), respectively, also own five percent or more of L stock and are thus 5-percent shareholders of L. In addition, the public group of L is a 5-percent shareholder regardless of whether it owns five percent of L stock. Accordingly, A, Public L, Public P_3 (including P_4), Public P_2, and Public P_1 (including B), are the only 5-percent shareholders of L.

Example (5). *(i)* On September 4, 1987, L is owned 14 percent by each of A and B, 30 percent by each of P_1 and P_2, four percent by each of C and P_3, and two percent by each of D and AA. P_1 is owned 30 percent by each of A, B, and P_4 and 10 percent by D. P_2 is owned 70 percent by A, 10 percent by each of B and D, six percent by DD and four percent by C. AA owns 100 percent of the stock of P_3. P_4 is owned 60 percent by C and 20 percent by each of BB and CC.

(ii) The ownership structure of L is illustrated by the following chart:

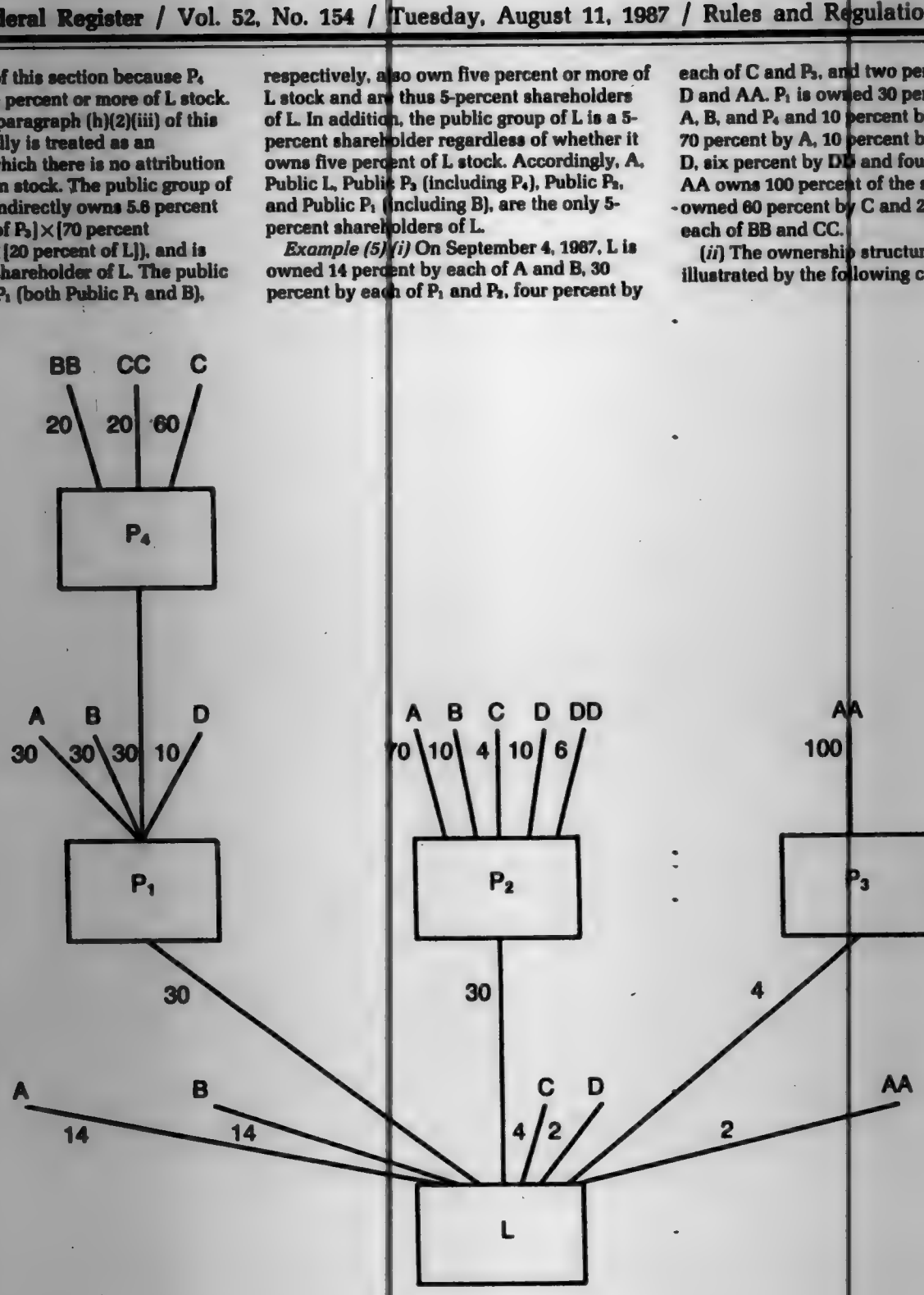

(iii) In order to identify L's 5-percent shareholders and their respective ownership interests in L on September 4, 1987, the rules of paragraph (j)(1) of this section apply to identify the public groups that are treated as separate 5-percent shareholders. Analysis begins with any highest tier entity, such as P_4. Each of P_4's shareholders is a 5-percent owner of P_4. C[4] owns 5.4 percent of L in his capacity as a 5-percent owner of P_4 and therefore is a 5-percent shareholder. Notwithstanding that C actually owns, directly and by attribution, 10.6 percent of L (four percent directly, 5.4 percent indirectly through P_4, and 1.2 percent through P_3), C's ownership interest in L as a 5-percent shareholder is presumed to include only the 5.4 percent indirect ownership through P_4. (Under paragraphs (g) and (k)(2) of this section, however, L must account for C's direct and indirect ownership interests in determining whether an ownership change occurs on any testing date if it has actual knowledge of such ownership on or berfore the date that its income tax return is filed for the taxable year that includes the testing date). Although BB and CC are each 5-percent owners of P_4, they are not 5-percent shareholders and therefore are members of the public group of P_4. Because the public group of P_4 indirectly owns only 3.6 percent of L, it is treated under paragraph (j)(1)(iv)(A)

of this section as part of the public group of the next lower tier entity, P_1.

(*iv*) With respect to P_1, a first tier entity, each of its shareholders are 5-percent owners. Because A and B each indirectly own nine percent of L as 5-percent owners of P_2 and A indirectly owns 21 percent of L as a 5-percent owner of P_3, they are each 5-percent shareholders without regard to their direct ownership interests in L. A's ownership interest in L as a 5-percent shareholder is 44 percent (14 percent directly, nine percent in his capacity as a 5-percent owner of P_1, and 21 percent in his capacity as a 5-percent owner of P_3). B's ownership interest in L as a 5-percent shareholder is 23 percent (14 percent directly and nine percent in his capacity as a 5-percent and nine percent in his capacity as a 5-percent owner of P_1). B's ownership interest as a 5-percent shareholder does not include the three percent interest he owns indirectly through P_3. (Under paragraphs (g) and (k)(2) of this section, however, L must account for B's direct and indirect ownership interests, including his three percent interest through P_3, in determining whether an ownership change occurs on any testing date if L has actual knowledge of such ownership on or before the date that its income tax return is filed for the taxable year that includes the testing date.) D is a 5-percent owner of P_1. Although D owns eight percent of L (two percent directly, three percent indirectly through P_1, and three percent indirectly through P_3), he is not a 5-percent shareholder because he does not own five percent or more of L stock either directly or in his capacity as a 5-percent owner of either P_1 or P_3. (Under paragraphs (g) and (k)(2) of this section, however, L must account for D's direct and indirect ownership interests in determining whether an ownership change occurs on any testing date to the extent L has actual knowledge of such ownership amounting to five percent or more of L stock before the date that its income tax return is filed for the taxable year that includes the testing date.) The public group of P_1 (comprised of the public group of P_4 and D's direct ownership interest in P_1) has a 6.6 percent interest in L and is therefore treated as a separate 5-percent shareholder.

(*v*) With respect to highest tier entity P_3, D is a 5-percent owner who is not a 5-percent shareholder for the reason described in the preceding subdivision. DD is a 5-percent owner of P_2, who is not a 5-percent shareholder, because DD indirectly owns only 1.8 percent of L. Assuming that L does not have actual knowledge of B's and C's direct ownership interest in P_2, those interests are accounted for in computing the ownership interest are accounted for in computing the ownership interest of the public group of P_2. Therefore, each of P_2's shareholders, except A who is a 5-percent shareholder in his capacity as a 5-percent owner of P_3, are treated as members of the public group of P_3 that owns nine percent of L and is thus treated as a separate 5-percent shareholder.

(*vi*) Because the direct ownership interest of P_3 is less than five percent, it is a public shareholder. Therefore, assuming that L does not have actual knowledge of C's, D's, or AA's direct and/or indirect ownership interests in L, the public group of L is a separate 5-percent shareholder owning 12 percent of L (comprised of the direct ownership interests of C, D, AA and P_3).

(2) *Segregation rules applicable to transactions involving the loss corporation*—(i) *In general.* For purposes of this section, if—

(A) A transaction is described in paragraph (j)(2)(iii) of this section, and

(B) The loss corporation has one or more direct public groups immediately before and after the transaction,

the stock owned by such direct public group or groups is subject to the segregation rules described in paragraph (j)(2)(iii) of this section for purposes of determining whether an ownership change has occurred on the date of the transaction (and on any subsequent testing date with a testing period that includes the date of such transaction). See paragraph (j)(3) of this section for the application of the rules of this paragraph (j)(2) to transactions involving first tier entities or higher tier entities.

(ii) *Direct public group.* For purposes of this section, a direct public group is any public group of the loss corporation described in paragraph (j)(1)(iv)(C) of this section or any public group of the loss corporation resulting from the application of paragraph (j)(2)(iii) or (j)(3)(i) of this section.

(iii) *Transactions to which segregation rules apply*—(A) *In general.* The segregation rules of this paragraph (j)(2)(iii) apply to any transaction described in paragraph (j)(2)(iii) (B), (C), (D), (E), or (F) of this section in the manner specified. The presumptions adopted by this paragraph (j)(2)(iii) shall not apply only if, and to the extent that, the loss corporation either has actual knowledge of facts to the contrary regarding its stock ownership and is thus subject to paragraph (k)(2) of this section, or is subject to paragraph (k)(4) of this section. Any direct public group that is required to be identified as a result of a transaction described in paragraph (j)(2)(iii) of this section shall be treated as a 5-percent shareholder under paragraph (g)(1)(iv) of this section without regard to whether such group, at any time during the testing period, owns five percent or more of the loss corporation stock. To the extent that the presumptions are rebutted, the public shareholders, public owners and 5-percent owners who are not 5-percent shareholders may be aggregated into additional public groups.

(B) *Certain equity structure shifts and transactions to which section 1032 applies*—(*1*) *In general.* In the case of—

(*i*) A transaction that is an equity structure shift that also is described in section 381(a)(2) and in which the loss corporation is a party to the reorganization, or

(*ii*) A transfer of the stock of the loss corporation (including treasury stock) by the loss corporation in any other transaction to which section 1032 applies,

each direct public group that exists immediately after such transaction shall be segregated so that each direct public group that existed immediately before the transaction is treated separately from the direct public group that acquires stock of the loss corporation in the transaction. The direct public group that acquires stock of the loss corporation in the transaction is presumed not to include any members of any direct public group that existed immediately before the transaction. For purposes of this paragraph (j)(2)(iii)(B), a person is treated as acquiring stock of the loss corporation in a reorganization as the result of the person's ownership interest in another corporation that succeeds to the loss corporation's pre-change losses (determined as if the testing date were the change date and treating the amount of any net unrealized built-in loss as a pre-change loss) in a transaction to which section 381(a)(2) applies. In determining whether a transaction is described in section 1032 for purposes of this paragraph (j)(2)(iii)(B), the transfer by the loss corporation of any interest not constituting stock that is treated as stock under paragraph (f)(18)(iii) of this section shall be treated as the transfer of stock.

(*2*) *Examples.*

Example (1) (*i*) P_1 owns 60 percent of the stock of L. The remaining L stock (40 percent) is owned by Public L. A owns 40 percent of the P_1 stock. The remaining P_1 stock (60 percent) is owned by Public P_1. P_2 is a publicly traded corporation owned by shareholders who each own less than five percent of P_2 stock (Public P_2).

(*ii*) On May 22, 1988, L merges into P_2 in a transaction described in section 368(a)(1)(A), with the shareholders of L receiving an amount of P_2 stock equal to 70 percent of the value of P_2 immediately after the reorganization.

(*iii*) Immediately before the merger, L's 5-percent shareholders were Public L (40 percent), Public P_1 (36 percent), and A (24 percent). Although the shareholders of P_2 (immediately before the merger) do not acquire any stock in the merger, they are treated as acquiring a direct ownership interest in the loss corporation in the reorganization because P_2 succeeds to the pre-change losses of L in a transaction to which section 381(a)(2) applies. As a result of the merger, which constitutes a transaction described in (j)(2)(iii)(B)(*1*) of this section, L's direct public group, Public L, must be

segregated from the direct public group that would otherwise exist after the transaction (Public L and Public P_2). Public L, the direct public group that exists before the merger, has a continuing 28 percent interest in the loss corporation [70 percent of P_2 shares received in the merger x 40 percent shares of L owned prior to the merger] that must be segregated from the interests acquired by Public P_2.

(*iv*) In addition, Public P_1, which owns five percent or more of the stock of P_2 through P_1's ownership interest in P_2, also is segregated from any other public group (*i.e.*, both Public L and Public P_2) under paragraph (j)(1) of this section. Therefore, under paragraphs (j)(1) and (2) of this section, Public P_2 (excluding the members of Public L and Public P_1 immediately before the merger) is treated as a separate public group and 5-percent shareholder.

(*v*) The only 5-percent shareholder whose interest in the loss corporation, P_2, has increased during the testing period is Public P_2. Its interest has increased by 30 percentage points. Accordingly, no ownership change results from the merger. For purposes of measuring the shift in ownership of P_2 on any subsequent testing date with a testing period that includes May 22, 1988 (the date on which L merged into P_2), Public P_2 will continue to be treated as a direct public group, separate from Public L (the members of which own P_2 stock as a result of the merger) and Public P_1.

Example (2)(*i*) P and L are each owned by 21 equal shareholders. Each of 14 of the shareholders of P and L are owners of both corporations ("common owners"). L has actual knowledge of this cross ownership. therefore, as a group, these persons own 66⅔ percent of each of P and L. P stock has a value of $600 and L stock has a value of $400.

(*ii*) P merges into L under section 368(a)(1)(A) on June 10, 1988. Ordinarily, the direct public group of L that exists immediately before the transaction would be segregated from the direct public group that acquires stock in the merger (the public group of P immediately before the merger). In view of the common ownership of P and L, however, a third group may be created under paragraph (j)(2)(iii)(A) of this section so that L's owners following the merger would be: The common owners (66⅔ percent), Public L, less the common owners, 13 1/3 percent), and Public P, less the common owners (20 percent). Accordingly, the only 5-percent shareholder increasing its ownership interest by 20 percentage points and no ownership change occurs as a result of the merger.

Example (3)(*i*) L is entirely owned by Public L. L commences and completes a public offering of common stock on January 22, 1988, with the result that its outstanding stock increases from 100,000 shares to 300,000 shares. No person owns as much as five percent of L stock following the public offering.

(*ii*) The public offering of L stock is a transaction to which section 1032 applies. Immediately before the public offering, L's only 5-percent shareholder was Public L, a direct public group. Therefore, Public L (as in existence immediately before the transaction) must be segregated from the direct public group that would otherwise exist immediately after the transaction. Under paragraph (j)(2)(ii)(B)(*1*) of this section, the acquisition of 200,000 shares of L stock in the public offering must be treated as acquired by a direct public group ("New Public L") that is separate from Public L. Each such public group is treated as an individual that is a separate 5-percent shareholder. See paragraphs (g)(1)(iv) and (j)(1)(ii) of this section.

(*iii*) As a result of the public offering, L has two 5-percent shareholders, Public L and New Public L, which own 33⅓ percent and 66⅔ percent of the stock of L, respectively. Because the members of New Public L are presumed not to be members of Public L (and not to be related to any such members), the ownership interest of New Public L immediately prior to the offering of stock was 0 percent.

(*iv*) New Public L is a 5-percent shareholder that has increased its ownership interest in L by more than 50 percentage points during the testing period (by 66⅔ percentage points). Thus, there is an ownership change with respect to L. For purposes of subsequent transactions, Public L and New Public L will not be segregated into two public groups because a new testing period commences on the day following the change date, January 23, 1988 (*i.e.*, any subsequent testing date will not have a testing period that includes the date of the public offering).

Example (4). The facts are the same as in Example (3), but L establishes that 60,000 shares of the newly issued L stock were acquired by its shareholders of record on the date of the stock issuance (*i.e.*, members of Public L, referred to as Acquiring Public L) by persons owning 27 percent of the L stock immediately before the stock issuance. Accordingly, L has actual knowledge that New Public L acquired no more than 140,000 shares of L stock in the public offering. Under paragraphs (j)(2)(iii) and (k)(2) of this section, New Public L may be treated as having increased its ownership interest in L by 46⅔ percentage points (140,000 shares acquired in the offering/300,000 shares outstanding). L also has actual knowledge that the members of Public L owning 27 percent of L stock immediately before the stock issuance (27,000 shares/100,000 shares outstanding) own 29 percent of L stock immediately after such issuance ([27,000 shares + 60,000 shares acquired in the offering]/300,000 shares outstanding). Assuming that L chooses to take its actual knowledge into account for purposes of determining whether an ownership change occurred on January 22, 1988, Public L is segregated into two direct public groups immediately before the stock issuance so that the two percentage point increase in the ownership interest in L by Acquiring Public L is taken into account. The total increased ownership interest in L by New Public L and Acquiring Public L on the testing date over their lowest ownership interest during the testing period is 48 2/3 percent. Thus, no ownership change occurs with respect to L.

Example (5)(*i*) L is owned entirely by 10,000 unrelated individuals, none of whom own as much as five percent of L stock ("Public L"). P is owned entirely by 1,500 unrelated individuals, none of whom own as much as five percent of P stock ("Public P"). On December 22, 1988, L acquires all of the P stock from Public P in exchange for L stock representing 25 percent of the value of L, in a transaction described in section 368(a)(1)(B).

(*ii*) Under paragraph (j)(2)(iii)(B)(*1*) of this section, Public L, the direct public group that owns L stock immediately before and after the transaction to which section 1032 applies, is treated separately from Public P, the direct public group that acquires L stock in the transaction. Because Public P's percentage ownership interest in L increases to only 25 percent (as compared with 0 percent before the acquisition), no ownership change occurs. For purposes of determining whether an ownership change occurs on any testing date with a testing period that includes December 22, 1988, Public L and Public P will continue to be treated as separate 5-percent shareholders.

(*iii*) See Example (4) in paragraph (j)(3)(iv) of this section for the application of paragraph (j)(2)(iii)(B) of this section to a reorganization under section 368(a)(1)(B) in which the loss corporation is acquired.

(C) *Redemption-type transactions*—(*1*) *In general.* In the case of a transaction in which the loss corporation acquires its stock in exchange for property, each direct public group that exists immediately before the transaction shall be segregated at that time (and thereafter) so that the stock that is acquired in the transaction is treated as owned by a separate public group from each public group that owns the stock that is not acquired. For purposes of the preceding sentence, the term property shall include stock described in section 1504(a)(4) and stock described in paragraph (f)(18)(ii) of this section. Each direct public group that owned the stock that is acquired in the transaction is presumed not to own any such stock immediately after the transaction.

(*2*) *Examples.*

Example (1). L is entirely owned by Public L. There are 500,000 shares of L stock outstanding. On July 12, 1988, L acquires 150,000 shares of its stock for cash. Because L's acquisition is a redemption, Public L is segregated into two different public groups immediately before the transaction (and thereafter) so that the redeemed interests ("Public RL") are treated as part of a public group that is separate from the ownership interests that are not redeemed ("Public CL"). Therefore, as a result of the redemption, Public CL's interest in L increases by 30 percentage points (from 70 percent (350,000/500,000) to 100 percent) on the July 12, 1988 testing date. Because the resulting increase is not more than 50 percentage points, no ownership change occurs. For purposes of determining whether an ownership change occurs on any subsequent testing date having a testing period that includes such redemption, Public CL is treated as a 5-percent shareholder whose percentage

ownership interests in L increased by 30 percentage points as a result of the redemption.

Example (2). L is entirely owned by Public L. There are 250,000 shares of L common stock outstanding. On April 22, 1988, L acquires 100,000 shares of its outstanding common stock in exchange for 100,000 shares of preferred stock described in section 1504(a)(4). (The transaction thus constitutes a recapitalization within the meaning of section 368(a)(1)(E).) As a result of the recapitalization, which is a transaction described in paragraph (j)(2)(iii)(C) of this section, Public L is segregated into two different public groups immediately before the transaction (and thereafter) so that the stock acquired by L is treated as owned by a public group ("Public RL") that is separate from the public group that owns the stock that is not so acquired ("Public CL"). Therefore, as a result of the transaction, Public CL's interest in L increases by 40 percentage points (from 60 percent to 100 percent). Because the resulting increase is not more than 50 percentage points, no ownership change occurs. For purposes of determining whether an ownership change occurs on any subsequent testing date with a testing period that includes the date of the recapitalization, Public CL is treated as a separate 5-percent shareholder whose percentage ownership interest increased by 40 percentage points as a result of the redemption type transaction.

(D) *Acquisition of loss corporation stock as the result of the ownership of a right to acquire stock—(1) In general.* In the case of a deemed acquisition of stock of the loss corporation as the result of the ownership of a right issued by the loss corporation to acquire such stock (see paragraph (h)(4) of this section), each direct public group that exists immediately after such acquisition shall be segregated so that each direct public group that existed immediately before the transaction is treated separately from the direct public group that is deemed to acquire stock of the loss corporation as a result of the ownership of the right to acquire such stock. The direct public group that is treated as acquiring stock of the loss corporation in the transaction is presumed not to include any members of any direct public group that existed immediately before the transaction. In applying the rules of paragraph (h)(4) of this section, the segregation rules of this paragraph (j)(2)(iii)(D) shall apply before making the determination required under that paragraph (h)(4) of this section.

(2) Example.

(i) L has 700,000 shares of common stock outstanding. Public L owns all of the outstanding L common stock. On May 20, 1988, L issues a class of debentures to the public that, in the aggregate, may be converted into 300,000 shares of L common stock. On September 7, 1988, P_1 acquires 210,000 shares of L common stock over a public stock exchange. None of the L debentures have been converted as of that date.

(ii) By virtue of L's issuance of convertible debentures, May 20, 1988 is a testing date. See paragraph (a)(2)(i) of this section. Immediately before the issuance of the convertible debentures, L's only 5-percent shareholder was Public L, a direct public group. Therefore, under paragraph (j)(2)(iii)(D) of this section, Public L must be segregated from the direct public group that would otherwise exist immediately after the transaction for the purpose of applying paragraph (h)(4) of this section, so that any acquisition of L stock through the conversion of L's debentures is treated as made by a public group other than Public L ("New Public L"). Assuming the largest increase in the total percentage stock ownership of New Public L on the testing date (see paragraph (h)(4) of this section), New Public L would have increased its ownership interest in L by 30 percentage points. Therefore, the stock of L would not be treated as acquired pursuant to a deemed conversion of the L debentures on May 20, 1988, under paragraph (h)(4) of this section, because the conversion would not cause an ownership change.

(iii) P_1's acquisition of L common stock results in second testing date. For the purpose of applying paragraph (h)(4) of this section, Public L must again be segregated from the direct public group that would otherwise result from conversion of the debentures, so that a deemed acquisition of L stock through the conversion of L's debentures on September 7, 1988 is treated as made by a public group other than Public L ("New Public L"). As on the previous testing date, New Public L would have increased its ownership interest in L by 30 percentage points if it were treated as having acquired L common stock pursuant to the conversion of the L debentures. The increase in New Public L's ownership, taken together with P_1's 21 percentage point ownership increase in L during the testing period [210,000 shares deemed converted/(700,000 (actual) + 300,000 (deemed) shares outstanding)], results in an ownership change.

(E) *Transactions identified in the Internal Revenue Bulletin.* Any transaction that is designated by the International Revenue Service in the Internal Revenue Bulletin shall be subject to the rules, as provided in such bulletin, similar to the rules described in this paragraph (j)(2)(iii).

(F) *Issuance of rights to acquire loss corporation stock—(1) In general.* In the case of any transaction that is described in paragraph (j)(2)(iii) (B), (D) or (E) of this section in which the loss corporation issues rights to acquire its stock to the members of more than one public group, those rights shall be presumed to be exercised pro rata by each such public group as those rights are actually exercised.

(2) Example.

(i) L, which has six million shares outstanding, is owned entirely by Public L and P is owned entirely by Public P. On November 30, 1988, P merges into L in a transaction qualifying under section 368(a)(1)(A) with Public P receiving four million shares of L stock as a result of the reorganization. Under paragraph (j)(2)(iii)(B) of this section, Public L and Public P continue to be treated as separate public groups following the merger. Pursuant to the plan of reorganization, L also issues an amount of warrants in L stock pro rata to Public L and Public P that, if exercised, would result in the issuance of an additional two million shares of L stock. On November 30, 1989, when only one-half of the outstanding warrants have been exercised, A acquires all of the unexercised warrants.

(ii) Without regard to the warrants distributed in reorganization, Public P's ownership interest in L increases by 40 percentage points on November 30, 1988, relative to its lowest ownership interest in L at any time during the testing period (0 percent prior to the merger). For purposes of determining whether an ownership change occurs on November 30, 1988, the segregation rules of paragraphs (j)(2)(iii) (B) and (D) of this section does not require that a third direct public group be separately identified and treated as acquiring the warrants, because L has actual knowledge that Public L and Public P acquired the distributed warrants in proportion to their respective ownership interests in L stock. Because the largest increase in the ownership of L on the testing date results from treating only Public P as exercising the distributing warrants, in which event, its ownership interest would increase by 44.4 percentage points [(four million shares acquired in the merger + 800,000 shares deemed acquired]/10.8 million (actual and deemed) shares outstanding), the issuance of the warrants by L does not cause an ownership change on November 30, 1988.

(iii) Under paragraph (j)(2)(iii)(F)(*1*) of this section, each actual exercise of warrants to acquire one million shares of L stock between November 30, 1988 and November 30, 1989 is treated as made pro rata by Public L and Public P (600,000 shares to Public L and 400,000 shares to Public P). Accordingly, as a result of the actual exercises of warrants during that period the ownership interests of the only 5-percent shareholders, Public L and Public P, are proportionately increased.

(iv) A's acquisition of the all of the outstanding warrants on November 30, 1989 requires the determination whether there has been an ownership change with respect to L, because A would be 5-percent shareholder under paragraph (g)(1)(i) of this section owning 8⅓ percent of the L stock if the acquired warrants were exercised (one million shares deemed acquired/12 million (actual and deemed) shares outstanding). See paragraph (a)(2)(i) of this section. Under paragraph (h)(4)(i) of this section, A is not treated as having exercised those warrants, because an ownership change would not results. (Public P's 36⅔ percentage point increase [(four million shares acquired in the merger + 400,000 shares deemed acquired)/ 12 million (actual and deemed) shares

outstanding] and A's 8⅓ percentage point increase is not greater than 50 percentage points).

(iv) *Combination of de minimis public groups*—(A) *In general.* Notwithstanding paragraph (j)(2)(iii)(A) of this section, any public group first identified during a taxable year, as a result of any transaction described in paragraph (j)(2)(iii) (B), (D), (E), or (F) of this section, that owns less than five percent of loss corporation stock may be combined, at the option of the loss corporation, with any other such groups also first identified as a result of any such transaction that occurs during such taxable year.

(B) *Example.*

(*i*) L is widely held with no person owning as much as five percent of the L stock at any time ("Public L"). L's taxable year ends on December 31. On January 1, 1989, L issues a class of debt maturing on December 31, 2019 ("Class A Debentures") with respect to which it will semi-annually issue L stock in discharge of its interest obligation. In addition, L issues an amount of L stock to the public in two separate transactions during 1989. As a percentage of the L stock outstanding at the close of L's taxable year on December 31, 1989, L issued .45 percent of its stock on each of two dates in payment of interest with respect to the Class A Debentures. 4.5 percent of its stock in the first stock offering and six percent of its stock in the second stock offering. During 1990, L did not issue stock other than in payment of interest with respect to the Class A Debentures. As a percentage of L stock outstanding on December 31, 1990, L issued .41 percent of its stock on each of two dates during 1990 with respect to its outstanding debt.

(*ii*) Under paragraph (h)(4)(x)(E) of this section, L's obligation to issue stock in satisfaction of the interest with respect to the Class A Debentures until December 31, 2019, is not subject to paragraph (h)(4)(i) of this section and thus is taken into account only as such stock is issued.

(*iii*) The application of the segregation rules of paragraphs (j)(2) (iii)(B) and (iv) of this section require the identification of at least two additional, separate direct public groups during 1989. First, the persons who acquire six percent of L stock in a public offering to which section 1032 applies must be treated as a separate 5-percent shareholder ("Public 1L"). See paragraph (j)(2)(iii)(B) of this section. Even though this group was first identified in 1989, it may not be combined with other public groups also first identified in 1989 because it owns five percent or more of L stock. Second, although each of the three other issuances of L stock during the year ordinarily result in the identification of an additional, separate direct public group, each such direct public group may be combined with the two other such groups into a single public group ("Public 2L"). As of the end of 1989, Public 2L would own a total of 5.4 percent of the stock of L.

(*iv*) The application of the segregation rules of paragraphs (j)(2) (iii)(B) and (iv) of this section require the identification of at least one additional, direct public group during 1990. Because each additional, direct public group first identified in 1990 acquires less than five percent of L stock, they may be combined into a single public group ("Public 3L") owning .82 percent of the stock of L. Public 3L is treated as a five percent shareholder even though it owns less than five percent of the stock of L. See paragraph (j)(2)(iv)(A) of this section.

(v) *Multiple transactions*—(A) *In general.* If a transaction (or any part thereof) is described by more than one subdivision of paragraph (j)(2)(iii) of this section, each such subdivision shall apply to the transaction (or each part of the transaction) in the manner that results in the largest increase in the percentage stock ownership by the 5-percent shareholders.

(B) *Example.*

(*i*) All of the common stock of L is owned by 1,000 unrelated persons, none of whom owns as much as five percent of the L stock ("Public CL"). L has outstanding a class of preferred stock described in section 1504(a)(4) that is owned in equal amounts by 500 unrelated persons ("Public PL").

(*ii*) On September 4, 1988, L rearranges its capital structure by redeeming 70 percent of the common stock owned by 700 of the shareholders in exchange for cash. In addition, all of the preferred stock is exchanged for a new class of common stock (nonvoting) representing 40 percent of the value of L.

(*iii*) With respect to the part of the transaction that is treated as a redemption under paragraph (j)(2)(iii)(C) of this section (the exchange of common stock for cash), Public CL is segregated into two different public groups immediately before the transaction (and thereafter) so that the owners of the redeemed stock ("Public RCL") are treated as part of a public group that is separate from the public group comprised of the owners of the stock that is not redeemed ("Public CCL"). As a result of the redemption, Public CCL's percentage ownership interest in L thus increases by 30 percentage points from 30 percent to 60 percent (taking into account all transactions occurring on the testing date, because the change in ownership is measured under paragraph (a)(1)(i) of this section by reference to each 5-percent shareholder's ownership interest immediately after the testing date). In addition, the exchange of preferred stock for nonvoting common stock is a transaction to which section 1032 applies. Under paragraph (j)(2)(v) of this section, the part of the transaction to which section 1032 applies is also subject to the segregation rules in the manner specified in paragraph (j)(2)(iii)(B) of this section. Accordingly, Public PL, the direct public group that acquires L nonvoting common stock in exchange for L preferred stock, must be treated as a separate public group from the other direct public groups, Public CCL and Public RCL. As a separate public group, Public PL's percentage stock ownership in L increases by 40 points (as compared to 0 percent prior to the transaction).

(*iv*) In summary, Public CCL increases its percentage ownership in L by 30 percentage points and Public PL increases its percentage ownership by 40 percentage points. Consequently, an ownership change occurs with respect to L on September 4, 1988.

(vi) *Acquisitions made by either a 5-percent shareholder or the loss corporation following application of the segregation rules.* Unless a different proportion is established by either the loss corporation or the Internal Revenue Service, the acquisition of loss corporation stock by either a 5-percent shareholder or the loss corporation on any date on which more than one public group of the loss corporation exists by virtue of the application of the rules of this paragraph (j)(2) shall be treated as being made proportionately from each public group existing immediately before such acquisition. See paragraph (g)(5)(i)(B) of this section for the application of this paragraph to the ownership interest of a 5-percent shareholder that owns less than five percent of the stock of the loss corporation on the testing date.

(3) *Segregation rules applicable to transactions involving first tier entities or higher tier entities*—(i) *Dispositions.* If a loss corporation is owned, in whole or in part, by a public group (or groups), the rules of paragraphs (j)(2) (iii)(B) and (iv) of this section shall apply to any transaction in which a first tier entity or an individual that owns a direct ownership interest in the loss corporation of five percent or more transfers a direct ownership interest in the loss corporation to public shareholders. Therefore, each direct public group that exists immediately after such a disposition shall be segregated so that the ownership interests of each public group that existed immediately before the transaction are treated separately from the public group that acquires stock of the loss corporation as a result of the disposition by the individual or first tier entity. The principles of this paragraph (j)(3)(i) shall also apply to transactions in which an ownership interest in a higher tier entity that owns five percent or more of the loss corporation (determined without regard to the application of paragraph (h)(2)(i)(A) of this section) or a first tier entity is transferred to a public owner or 5-percent owner who is not a 5-percent shareholder.

(ii) *Example.*

(A) L is owned equally by Public L, P and E. Public L consists of 150 equal, unrelated

shareholders. P is owned by Public P, a group consisting of 1,500 equal, unrelated shareholders. E is a partnership and none of its partners are 5-percent owners. On October 22, 1988, E sells its entire interest in L over a public stock exchange. No individual or entity acquires as much as five percent of L's stock as the result of E's disposition of the L stock.

(B) The disposition of the L stock by E is a transaction that causes the segregation of L's direct public group that exists immediately before the transaction (Public L) from the direct public group that acquires L stock in the transaction (Public EL). As a result, L has three 5-percent shareholders, Public L, Public P (through the application of paragraph (j)(1) of this section) and Public EL, each of which owns 33⅓ percent of L stock. Therefore, Public EL is a 5-percent shareholder that has increased its ownership interest in L by 33⅓ percentage points during the testing period. For purposes of subsequent transactions, Public L and Public EL will continue to be treated as separate direct public groups until any subsequent testing date that does not have a testing period that includes E's disposition of L stock.

(iii) *Other transactions affecting direct public groups of a first tier entity or higher tier entity.* The rules of paragraphs (j)(2) (i), (iii), (iv) and (v) of this section shall apply to transactions described in such paragraphs that involve either a higher tier entity that owns five percent or more of the loss corporation (determined without regard to the application of paragraph (h)(2)(i)(A) of this section) or a first tier entity. In applying those rules for purposes of this paragraph (j)(3)(iii), each direct public group of a first tier entity or a higher tier entity is any public group of any such entity identified in paragraph (j)(1)(iv) (A) or (B) of this section or resulting from the application of this paragraph (j)(3)(iii). The principles of paragraph (j)(2)(iii)(C) of this section also shall apply to any transaction that has the effect of a redemption-type transaction (e.g., an acquisition by the loss corporation of stock in a first tier entity).

(iv) *Examples.*

Example (1). The facts are the same as in Example (1) of paragraph (j)(2)(iii)(B)(*2*) of this section, except that Public L and P_1 own 40 percent and 60 percent, respectively, of the stock of HC which, in turn, owns 100 percent of L and HC merges into P_1. Under paragraph (j)(3)(iii) of this section, the rules of paragraph (j)(2)(iii)(B) of this section apply to segregate HC's direct public group (Public L) immediately before the merger from the direct public group (Public P_2) that acquires loss corporation stock in the merger. The consequences of the merger of HC into P_2 are thus the same as in Example (1) of paragraph (j)(2)(iii)(B)(*2*) of this section.

Example (2) (*i*) Twenty-five individual shareholders each own four percent of L ("Public L"). Public L is therefore the only 5-percent shareholder of L. Each of the shareholders of L contribute their L stock to a newly formed corporation, HC. In exchange for their contribution of L stock, HC issues 100 percent of each of its two classes of common stock (voting and nonvoting).

(*ii*) The formation of HC, a first tier entity of L, is a transaction to which section 1032 applies. Under paragraph (j)(3)(iii) of this section, the rules of paragraphs (j)(1)(iii) and (j)(2)(iii)(B) of this section are applied to this transaction with the result that the shareholders of HC, immediately after the issuance of HC stock, are presumed not to include any persons that previously had a direct or indirect ownership interest in L. The presumption underlying those rules, however, is rebutted by establishing that all of the HC stock outstanding immediately after the transaction was issued solely in exchange for L stock. Thus, Public HC (immediately after the transaction) and Public L (immediately before the transaction) would be treated owned by the same direct public group.

Example (3) (*i*) All of the stock of L is owned by unrelated shareholders, none of whom owns as much as five percent of L stock. P also is owned by unrelated shareholders, none of whom owns as much as five percent of P stock. On November 22, 1988, P incorporates P_1 with a contribution of P stock. Immediately thereafter, P_1 acquires all of the properties of L in exchange for its P stock in a forward triangular merger qualifying under sections 368 (a)(1)(A) and (a)(2)(D). The P stock transferred by P_1 equals 45 percent of the total outstanding P stock.

(*ii*) Immediately before the merger of L into P_1, P's only 5-percent shareholder was Public P, a direct public group of P. The rules of paragraph (j)(2)(iii)(B) of this section thus apply to the transaction under paragraph (j)(3)(i) of this section since P, a first tier entity, is a party to the reorganization described in such paragraph. Although Public P does not acquire any stock in the merger, it is treated as acquiring stock in the loss corporation, P_1, because such corporation succeeds to the pre-change losses of L in a transaction to which 381(a) applies. As a result of the merger, Public P, the direct public group of P that exists immediately before the merger, must be segregated from the direct public groups acquiring P stock in the reorganization. Public P is, therefore, treated as acquiring 55 percent of the outstanding stock of the loss corporation, P_1, in the transaction. The transaction, therefore, results in an ownership change for P_1.

Example (4) (*i*) L is owned 20 percent by A and 80 percent by 1,000 unrelated individuals and entities, none of whom owns as much as five percent of L stock ("Public L"). P is owned 10 percent by B, 40 percent by E, and 50 percent by 5,000 unrelated individuals, none of whom owns as much as five percent of P stock ("Public P"). E is owned 30 percent by C and 70 percent by 30 unrelated individuals, none of whom owns as much as five percent of E ("Public E").

(*ii*) On October 31, 1987, P acquires all of the L stock from A and Public L in exchange for P stock representing 20 percent of the value of P (determined immediately after the acquisition) in a transaction described in section 368(a)(1)(B). After the acquisition, P is owned eight percent by B, 32 percent by E, four percent by A, and 56 percent by 6,000 unrelated individuals, none of whom owns as much as five percent of P. Because L is wholly owned by P immediately after the acquisition, L, under paragraph (j)(1) of this section, is treated as owned as follows: Eight percent by B, 9.6 percent by C (through C's ownership interest in E, a highest tier entity, and E's ownership interest in P, a first tier entity), 22.4 percent by Public E (through its ownership interest in E and E's ownership interest in P), four percent by A, and 56 percent by the shareholders who each own less than five percent of L through their ownership interest in P.

(*iii*) Under paragraph (j)(3)(iii) of this section, the rules of paragraph (j)(2)(iii)(B) of this section apply to the reorganization since the transaction involved a first tier entity of L. Thus, the direct public group of P that exists immediately after the transaction must be segregated into two public groups—the direct public group of P that existed immediately before the acquisition (Public P) is treated separately from the direct public group consisting of the persons who acquire P stock in the transaction (Public L). Accordingly, immediately after the reorganization, Public P and Public L own 40 percent and 16 percent of L, respectively. See paragraph (h) of this section. (Under paragraph (g)(5)(ii)(B) of this section, L may treat the four percent of L stock owned by A immediately after the reorganization as the amount of L stock owned by A for each subsequent testing date having a testing period that includes the reorganization.)

(*iv*) In summary, after applying the rules of paragraphs (j) (1) and (3) of this section, L is treated as owned as follows:

5-percent shareholder	Percentage ownership interest
A	4.0
B	8.0
C	9.6
Public E	22.4
Public P	40.0
Public L	16.0

(*v*) The reorganization results in an ownership change, because B, C, Public E and Public P, all of whom are 5-percent shareholders, together have increased their percentage ownership in L by 80 percentage points as compared to their lowest percentage ownership in L at any time during the testing period (0 percent prior to the acquisition).

(v) *Acquisitions made by a 5-percent shareholder, a higher tier entity, or a first tier entity following application of the segregation rules.* The rules of paragraph (j)(2)(vi) of this section shall apply to the acquisition of an ownership interest in a first tier entity (or higher tier entity) if more than one direct public group of any such entity are segregated under the rules of this paragraph (j)(3).

Accordingly, an acquisition by such an entity or a 5-percent shareholder of any ownership interest in such an entity shall be treated as made proportionately from the direct public groups resulting from the application of this paragraph (j)(3).

(k) *Operating rules*—(1) *Presumptions regarding stock ownership.* Subject to paragraphs (k) (2) and (4) of this section, for purposes of applying paragraphs (f), (g), (h), and (j)(1) of this section—

(i) *Stock subject to regulation by the Securities and Exchange Commission.* With respect to loss corporation stock that is described in Rule 13d–1(d) of Regulation 13D–G (or any rule or regulation to generally the same effect), promulgated by the Securities and Exchange Commission under the Securities and Exchange Act of 1934 ("registered stock"), a loss corporation may rely on the existence and absence of filings of Schedules 13D and 13G (or any similar schedules) as of any date to identify all of the corporation's shareholders who have a direct ownership interest of five percent or more (both individuals and first tier entities) on such date. A loss corporation may similarly rely on the existence and absence of such filings as of any date with respect to registered stock of any first tier entity or any higher tier entity to identify the 5-percent owners of any such entities on such date who indirectly own five percent or more of the loss corporation stock, and are thus 5-percent shareholders, and to identify any higher tier entities of such entities.

(ii) *Statements under penalties of perjury.* A loss corporation may rely on a statement, signed under penalties of perjury, by an officer, director, partner, trustee, executor or similar responsible person, on behalf of a first tier entity or a higher tier entity to establish the extent, if any, to which the ownership interests of any 5-percent owners or higher tier entities with respect to such entities have changed during a testing period. A loss corporation may not rely on such a statement (A) that it knows to be false or (B) that is made by either a first tier entity or higher tier entity that owns 50 percent or more of the stock of the loss corporation. For purposes of the preceding sentence, any first tier entities and higher tier entities that are known by the loss corporation to be members of the same controlled group (within the meaning of section 267(f)) shall be treated as one corporation.

(2) *Actual knowledge regarding stock ownership.* For purposes of this section (other than paragraphs (g)(5) and (j)(1)(v) of this section), to the extent that the loss corporation has actual knowledge of stock ownership on any testing date (or acquires such knowledge before the date that the income tax return is filed for the taxable year in which the testing date occurs) by—

(i) An individual who would be a 5-percent shareholder, but for the application of paragraphs (h)(2)(iii), (h)(6)(iii) or (g)(3) of this section, or

(ii) A 5-percent shareholder that would be taken into account, but for paragraphs (h)(2)(iii), (h)(6)(iii) or (g)(3) of this section,

the loss corporation must take such stock ownership into account for purposes of determining whether an ownership change has occurred on that testing date. If a loss corporation acquires such knowledge after such income tax return is filed, the loss corporation may take such ownership into account for purposes of determining whether an ownership change occurred on that testing date and, if appropriate, file an amended income tax return (subject to any applicable statute of limitations). To the extent the loss corporation has actual knowledge on or after any testing date regarding the ownership interest in the loss corporation by members of one public group (described in paragraphs (g)(1) (ii), (iii) or (iv) of this section) and the ownership interest of those members in the loss corporation as members in another such public group, the loss corporation may take such ownership into account for purposes of determining whether an ownership change occurred on that testing date.

(3) *Duty to inquire as to actual stock ownership in the loss corporation.* For purposes of this section, the loss corporation is required to determine the stock ownership on each testing date (and, except as otherwise provided in this section, the changes in the stock ownership during the testing period) of—

(i) Any individual shareholder who has a direct ownership interest of five percent or more in the loss corporation,

(ii) Any first tier entity,

(iii) Any higher tier entity that has an indirect ownership interest of five percent or more in the loss corporation (determined without regard to paragraph (h)(2)(i)(A) of this section), and

(iv) Any 5-percent owner who indirectly owns five percent or more of the stock of the loss corporation in his capacity as a 5-percent owner in any one first tier entity or higher tier entity.

The loss corporation does not have any obligation to inquire or to determine facts relating to the stock ownership of any shareholders other than those described in the preceding sentence. In addition, the loss corporation does not have any obligation to inquire or to determine if the actual facts relating to the stock ownership of any shareholder are consistent with the ownership interests of the loss corporation as determined by applying the presumptions and other rules of paragraphs (g), (h), (j) or (k)(1) of this section.

(4) *Ownership interest structured to avoid the section 382 limitation.* For purposes of this section, if the ownership interests in a loss corporation are structured by a person with a direct or indirect ownership interest in the loss corporation to avoid treating a person as a 5-percent shareholder (or to permit the loss corporation to rely on the presumption provided in paragraph (g)(5)(i)(B) of this section) for a principal purpose of circumventing the section 382 limitation, then—

(i) Paragraph (h)(2)(iii) of this section shall not apply with respect to the ownership interests so structured and the constructive ownership rules of paragraph (h)(2)(i) of this section shall thus apply to attribute stock from any entity without regard to the amount of stock it owns in the loss corporation or any other corporation,

(ii) Paragraphs (g) (2) and (3) of this section shall be modified with respect to the ownership interests so structured so that the ownership interest of a person includes all of an individual's direct and indirect ownership in the loss corporation, without regard to whether each such interest represents five percent or more of the stock of the loss corporation, and

(iii) Paragraph (g)(5)(i)(B) of this section shall not apply with respect to the ownership interests so structured so that the ownership interest of a person takes into account his actual ownership interest in the loss corporation.

This paragraph (k)(4) shall apply, however, only if application would result in an ownership change.

(5) *Example.*

L is owned by 25 individuals who each own four percent of the outstanding L stock. A purchases 40 percent of L stock from such shareholders on August 13, 1988. Thereafter, B plans to acquire 15 percent of the L stock. B is advised concerning the potential application of section 382 to L. On February 1, 1989, B acquires a 15 percent interest in L pursuant to a program in which each of four corporations, P_1 through P_4, each of which is wholly-owned by B, acquire a 3.75 percent interest in L. A principal purpose of acquiring the L stock through four corporations is to avoid treating B as owning any ownership interest in L amounting to as much as five percent, and thus to circumvent the section 382 limitation by avoiding an ownership

change. Under paragraph (k)(4) of this section, the limitation on the constructive ownership rules of paragraph (h)(2)(iii) of this section are disregarded and B is treated as a 5-percent shareholder owning 15 percent of the stock of L by virtue of his ownership interests in P_1 through P_3, notwithstanding paragraph (g)(2) of this section. Accordingly, an ownership change occurs with respect to L.

(6) *First tier entity or higher tier entity that is a foreign corporation or entity.* [Reserved]

(l) *Changes in percentage ownership which are attributable to fluctuations in value.* [Reserved.]

(m) *Effective Date*—(1) *In general.* Except as provided in this paragraph (m), section 382 shall apply to any ownership change that occurs immediately after an owner shift or an equity structure shift that occurs after December 31, 1986, or any other event occurring after such date that requires the determination of whether an ownership change has occurred under paragraph (a)(2)(i) of this section. In the case of an equity structure shift (including an equity structure shift that also constitutes an owner shift), any equity structure shift completed pursuant to a plan of reorganization adopted before January 1, 1987, shall be treated as occurring on the date such plan was adopted. Therefore, section 382 shall apply to any ownership change occurring immediately after—

(i) An owner shift (excluding an owner shift that also constitutes an equity structure shift) that occurs on or after January 1, 1987,

(ii) An equity structure shift that occurs after December 31, 1986, if it is completed pursuant to a plan of reorganization adopted on or after January 1, 1987, or

(iii) Any transfer or issuance of an option, or other interest that is similar to an option, that occurs on or after January 1, 1987 and that is taken into account under paragraph (a)(2)(i) of this section.

With respect to equity structure shifts completed pursuant to plans adopted before January 1, 1987, section 382 shall be inapplicable only if the equity structure shift that is treated as occurring on the date the plan of reorganization for such shift was adopted (or other event occurring after the adoption of such plan) results in an ownership change before January 1, 1987. In that event, a new testing period for the loss corporation shall begin on the day after such ownership change.

(2) *Plan of reorganization.* For purposes of paragraph (m)(1) of this section, a plan of reorganization shall be treated as adopted on the earlier of—

(i) The first date that the boards of directors of all the parties to the reorganization have adopted the plan or have recommended adoption to their shareholders, or

(ii) The date the shareholders approve such reorganization.

If there is an ownership change with respect to a subsidiary as the result of a reorganization of the parent, the treatment of the subsidiary under this paragraph (m)(2) shall be governed by the classification of the parent-level transaction. For purposes of the preceding sentence, a corporation shall be treated as a subsidiary of another corporation only if the other corporation owns stock in that corporation meeting the requirements of section 1504(a)(2).

(3) *Earliest commencement of the testing period.* For purposes of determining if an ownership change has occurred at any time after May 5, 1986, the testing period shall begin no earlier than May 6, 1986. Under paragraph (d)(4) of this section, therefore, shifts in the ownership of stock of the loss corporation prior to May 6, 1986 are disregarded.

(4) *Transitional rules*—(i) *Rules provided in paragraph (j) of this section for testing dates before September 4, 1987.* For purposes of determining whether an ownership change occurs for any testing date before September 4, 1987,

(A) The rules of paragraph (j)(1) of this section shall apply only to stock of the loss corporation acquired after May 5, 1986, by any first tier entity or higher tier entity and shall not apply to any stock acquired by such an entity on or before that date,

(B) The rules of paragraph (j)(2) of this section shall apply only to equity structure shifts in which more than one corporation is a party to the reorganization and shall not apply to any other transactions, and

(C) The rules of paragraph (j)(3) of this section shall apply only to—

(*1*) Dispositions of stock acquired by an individual, a first tier entity or higher tier entity after May 5, 1986 (and shall not apply to dispositions of stock acquired on or before such date), and

(*2*) Equity structure shifts in which more than one corporation is a party to the reorganization (and shall not apply to any other transactions).

For any testing date before September 4, 1987, however, the loss corporation is permitted to apply all of the rules of paragraph (j) of this section. A loss corporation that applies the rules of paragraph (j) of this section under the preceding sentence must apply all of the rules of such paragraph in determining whether any ownership change occurs on any testing dates after May 5, 1986.

(ii) *Example.*

(*i*) L is owned entirely by 10,000 unrelated individuals, none of whom owns as much as five percent of the stock of L ("Public L"). P is owned entirely by 1,000 unrelated individuals, none of whom owns as much as five percent of the stock of P ("Public P").

(*ii*) Between March 1, 1987 and June 1, 1987, P acquires 45 percent of L stock in a series of transactions. On June 15, 1987, L redeems 20 percent of the L stock from Public L.

(*iii*) Under paragraph (m)(4)(i)(A) of this section, the rules of paragraph (j)(1) of this section apply to the acquisitions made by P, because they occurred after May 5, 1986. Accordingly, following those acquisitions, the stock of L is owned 45 percent by Public P and 55 percent by Public L. Because the increase in the percentage ownership by Public P as a result of P's stock purchases is not more than 50 percent, no ownership change occurs as the result of P's purchases.

(*iv*) On or after September 4, 1987, the rules of paragraph (j)(2)(iii)(C) of this section apply to treat any L stock that is redeemed as owned by a public group that is separate from the public group owning the stock that is not redeemed. (Under paragraph (j)(2)(iii)(C) of this section, the continuing shareholders of Public L, who owned 35 percent of the stock of L before the redemption ([55 percent—20 percent]/100 percent) increase their ownership interest in L by 8.8 percentage points as a result of such redemption (43.8 percent—35 percent)). Those rules, however, do not apply to the June 15, 1987 redemption because it occurs before the date that paragraph (j)(2)(iii) of this section generally is effective. (Until September 4, 1987, paragraph (j)(2)(iii) of this section generally is effective only for equity structure shifts in which more than one corporation is a party to the reorganization.) Solely because of the application of paragraph (j)(1) of this section to P's acquisitions of L stock, Public P's ownership interest in L as a result of the redemption has increased from 45 percentage points to 56.2 percentage points which, compared to its lowest percentage ownership interest at any time during the testing period (0 percent prior to March 1, 1987), is a more than 50 percentage point increase thus causing an ownership change with respect to L on June 15, 1987.

(iii) *Rules provided in paragraph (j) of this section for testing dates on or after September 4, 1987.* For purposes of determining whether an ownership change occurs for any testing date on or after September 4, 1987, the rules of paragraphs (j) (2) and (3) of this section shall not apply to identify any public group resulting from—

(A) Any transaction described in such paragraphs (j) (2) and (3), unless that transaction is also described in paragraph (m)(4)(i) (B) or (C) of this section, or

(B) Any disposition of stock acquired on or before May 5, 1986, but only if such disposition or other transaction

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occurs before September 4, 1987. Thus, for example, the rules of paragraph (j)(2)(iii)(D) of this section shall apply only to rights to acquire stock of the loss corporation issued on or after such date.

(iv) *Rules provided in paragraphs (f)(18) (ii) and (iii) of this section.* For purposes of determining whether an ownership change occurs for any testing date, the rules of paragraphs (f)(18) (ii) and (iii) of this section apply only to stock (or any other ownership interest) that is—

(A) Issued on or after September 4, 1987, or

(B) Transferred to (or by) a person who is a 5-percent shareholder (or would be a 5-percent shareholder if paragraph (f)(18)(iii) of this section were applicable) on or after September 4, 1987.

(v) *Rules provided in paragraph (a)(2)(ii) of this section.* The information statement required under paragraph (a)(2)(ii) of this section is not required to be filed with respect to any taxable year for which the due date (including extensions) of the income tax return of the loss corporation is on or before October 5, 1987.

(5) *Bankruptcy proceedings*—(i) *In general.* In the case of a reorganization described in section 368(a)(1)(G) or an exchange of debt for stock in a Title 11 or similar case (within the meaning of section 368(a)(3)), section 382 shall not apply to any ownership change resulting from such a reorganization or proceeding if a petition in such case was filed with the court before August 14, 1986. Accordingly, any shift in ownership in the loss corporation arising out of such reorganization or proceeding shall not be taken into account for purposes of determining whether an ownership change occurs on any testing date that occurs after December 31, 1986.

(ii) *Example.*

(*i*) L filed a petition in bankruptcy on September 29, 1985. As a result of a title 11 bankruptcy reorganization of L that is confirmed by a court on February 2, 1988, there is a shift in the ownership of L so that JK increased her interest in L by 24 percentage points relative to her lowest ownership interest in L during the testing period. JK is the only 5-percent shareholder of L following the reorganization whose interest in L increased as a result of the transaction. On December 25, 1988, GK purchases 42 percent of the outstanding stock of L from shareholders other than JK.

(*ii*) There is no ownership change on December 25, 1988 because the 24 percentage point increase in JK's ownership interest in L is not taken into account under paragraph (m)(6)(i) of this section.

(*iii*) The facts are the same as in (*i*), except that the acquisitions by JK and GK occurred on August 5, 1986 and September 26, 1986, respectively. Because paragraph (m)(6)(i) of this section is only applicable with respect to the determination of whether an ownership change has occurred on any testing date that occurs after December 31, 1986, there is an ownership change as a result of GK's acquisition on September 26, 1986. Accordingly, section 382 is inapplicable to such ownership change under paragraph (m)(1) of this section because it occurred prior to January 1, 1987. Under paragraph (d)(2) of this section, the testing period for determining whether an ownership change occurs on any subsequent testing date shall commence no earlier than September 27, 1986.

(6) *Transactions of domestic building and loan associations.* The rules of paragraph (j)(2)(iii)(B) of this section (and the application of those rules by virtue of paragraph (j)(3) of this section) shall not apply to a public offering of stock by a domestic building and loan association described in section 591 (or any corporation that owns stock in the association meeting the requirements of section 1504(a)(2)) prior to January 1, 1989. In the case of any transaction described in the preceding sentence, any transitory ownership of stock by any entity that is an underwriter shall be disregarded so that the rules of paragraph (j)(1) of this section shall not apply to treat such stock as owned by the owners of the underwriter and thus the rules of paragraph (j)(3)(i) of this section shall not apply to the disposition of such stock by the underwriter. For purposes of this paragraph (m)(7)—

(i) Ownership shall be considered transitory only with respect to an underwriter acquiring stock in a firm commitment underwriting to the extent the stock is disposed of pursuant to the offer (but in no event later than sixty (60) days after the initial offering) and,

(ii) To the extent a transaction may be described both by paragraph (j)(2)(iii)(B) of this section and any other provision of paragraph (j) (2)(iii) or (3) of this section, paragraph (j)(2)(v)(A) of this section shall not apply and the transaction shall be treated as described solely by paragraph (j)(2)(iii)(B) of this section.

(7) *Transactions not subject to section 382*—(i) *Application of old section 382.* Old section 382 shall not apply to a loss corporation on or after the date on which an ownership change occurs, but only if such ownership change results in the application of the section 382 limitation (as defined in section 382(b)) with respect to the loss corporation.

(ii) *Effect on testing period.* The application of old section 382 to a transaction is disregarded for purposes of paragraph (d)(2) of this section unless the transaction that results in such application is the last component of an ownership change after May 5, 1986 that is not subject to section 382 under the effective date rules of this paragraph (m) (*e.g.*, an ownership change occurring as the result of an individual's purchase of more than 50 percent of L stock on any date on or before December 31, 1986).

(iii) *Termination of old section 382.* [Reserved]

(8) *Options issued or transferred before January 1, 1987*—(i) *Options issued before May 6, 1986.* An option issued before May 6, 1986, is subject to the rules of paragraph (h)(4) of this section only if it is transferred by (or to) a 5-percent shareholder (or a person who would be a 5-percent shareholder if the option were treated as exercised) on or after such date. In all other cases, such an option shall not be subject to paragraph (h)(4)(i) of this section, but shall be subject to paragraph (h)(4)(xii) of this section. Thus, for example, a warrant to acquire stock of the loss corporation issued before May 6, 1986 shall not be subject to paragraph (h)(4) of this section unless the warrant is transferred by (or to) a 5-percent shareholder. The exercise of such a warrant, however, would be taken into account as required by this paragraph (m)(8)(i) and paragraph (h)(4)(xii) of this section.

(ii) *Options issued on or after May 6, 1986 and before September 18, 1986.* An option issued or transferred on or after May 6, 1986, and before September 18, 1986, is subject to the rules of paragraph (h)(4) of this section.

(iii) *Options issued on or after September 18, 1986 and before January 1, 1987.* An option issued or transferred on or after September 18, 1986, and before January 1, 1987, is subject to the rules of paragraph (h)(4) of this section, except that the option shall be treated for purposes of this section as if it never had been issued in the event that either—

(A) The option lapses unexercised or is irrevocably forfeited by the holder thereof, or

(B) On the date the option was issued, there was no significant likelihood that such option would be exercised within the five-year period from the date of such issuance and a purpose for the issuance of the option was to cause an ownership change prior to January 1, 1987.

(9) *Examples.* The rules of this paragraph (m) may be illustrated by the following examples.

Example (1) (i) A owns all 100 outstanding shares of L stock. A sells 11 shares to B on January 1, 1986. The January 1, 1986 testing date is disregarded under paragraph (m)(3) of

this section. A sells another 40 shares to B on January 1, 1988. B's second stock purchase is an owner shift that does not result in an ownership change. B's percentage ownership interest on the testing date (51 percent) is only 40 percentage points greater than the lowest percentage of L stock owned by B at any time during the testing period (11 percent on and after May 6, 1988).

(ii) The facts are the same as in (i). In addition A sells 20 shares of his L stock to C on July 1, 1990. C's stock purchase is an owner shift. Because B and C together have increased their respective ownership interests in L by 40 and 20 percentage points relative to their lowest percentage stock ownership interests in L at any time during the testing period, C's purchase causes an ownership change. The testing period for any subsequent ownership change begins on the first day following C's acquisition, July 2, 1990.

Example (2) (i) C has owned 100 percent of L since March 22, 1980. On October 13, 1988, P merges into L. As a result of the merger, 40 percent of L stock is acquired by A, the sole shareholder of P. The merger of P into L is both an equity structure shift and an owner shift. The transaction, however, is not an ownership change with respect to L, because A's percentage ownership interest has increased by only 40 percentage points. On August 22, 1987, B purchases 15 percent of the L stock from C. B's purchase constitutes an owner shift resulting in an ownership change that is subject to section 382 because the aggregate increases in percentage ownership by B and C (respectively 40 percent and 15 percent) is more than 50 percentage points.

(ii) The facts are the same as in (i), except that the plan of reorganization is adopted on October 13, 1988, and the merger is completed on July 22, 1987. The result is the same as in (i).

(iii) The facts are the same as in (ii), except that the reorganization is completed on August 22, 1987, and B's purchase of the L stock occurs one month earlier, on July 22, 1987. Assume that after the reorganization on August 22, 1987, A and B own 40 percent and 15 percent, respectively, of L stock. Although the merger occurred pursuant to a plan of reorganization adopted before 1987, L is subject to section 382 following the equity structure shift, because the merger would not have caused an ownership change if it had been completed in 1988 after the commencement of the L's testing period.

(iv) The facts are the same as in (ii), except that B's purchase occurs on June 7, 1988. Assume that immediately after the reorganization on August 22, 1987, A and B own 40 percent and 15 percent, respectively, of L stock. Since the reorganization pursuant to a plan adopted before 1987, taken together with the other shifts in the ownership of L's stock between May 5, 1988, and December 31, 1988, would have caused an ownership change, section 382 does not apply as a result of the merger. Since an ownership change occurs as a result of the merger, L's testing period for purposes of any subsequent ownership change begins on October 14, 1988.

(v) The facts are the same as in (iv), except that B makes an additional purchase from C of one percent of L's stock on February 14, 1987. The result is the same as in (iv). B's additional purchase, however, is taken into account for the purpose of determining whether there is a second ownership change with respect to L.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for 26 CFR Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 5. Section 602.101(c) is amended by inserting in the appropriate place in the table "§ 1.382–1T . . . 1545–0123".

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: July 29, 1987.

J. Roger Mentz,

Assistant Secretary of the Treasury.

[FR Doc. 87–18104 Filed 8–5–87; 3:47 pm]

BILLING CODE 4830-01-M

POSTAL SERVICE

39 CFR Parts 10 and 20

Code of Ethical Conduct for Postal Service Employees

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule which implements Executive Orders 11222 and 11590, establishes the Code of Ethical Conduct for Postal Service Governors, adopted by the Board of Governors of the Postal Service on July 7, 1987.

Like the Executive Orders, this Code is designed to prevent conflicts of interest which could undermine public confidence in the integrity of the Board of Governors and its members.

EFFECTIVE DATE: August 11, 1987.

FOR FURTHER INFORMATION CONTACT: Charles D. Hawley, (202) 268–2971.

SUPPLEMENTARY INFORMATION: This Code, which implements Executive Orders 11222 and 11590, establishes standards of conduct for Governors of the Postal Service. It was adopted by a unanimous vote of the Board of Governors at its meeting on July 7, 1987, and approved by the Director, Office of Government Ethics, on July 14, 1987, as agency ethics regulations must be. The newly adopted Code complements the Code of Ethical Conduct for other officers and employees of the Postal Service which is published as Part 447 of 39 CFR. The standards generally prohibit types of activity which, although not in all instances inherently improper, may be seen as tending to bias a Governor in favor of particular persons who have dealings with the Postal Service.

Specifically, the Code sets forth regulations pertaining to business and financial interests; outside employment; the acceptance of gifts, entertainment, and other favors; ethical conduct advisory services; and post-employment activities. The regulations regarding post-employment activities incorporate those applicable provisions in the Code of Ethical Conduct for Postal Employees, 39 CFR 447.33 and 447.34, which detail the post-employment restrictions contained in 18 U.S.C. 207. The Code also sets forth regulations regarding the filing of nonpublic financial disclosure reports.

The Code, which is an appendix to the By-Laws of the Board of Governors, will comprise a new Part 10 of 39 CFR. The existing Part 10, which relates to international mail service, will be renumbered as Part 20 of 39 CFR.

List of Subjects

39 CFR Part 10

Conflicts of interest.

39 CFR Part 20

Foreign relations, Postal Service.

For the reasons set out in the preamble, Title 39, Chapter I, Subchapters A and B of the Code of Federal Regulations are amended as set forth below.

PART 10—[REDESIGNATED AS PART 20]

1. In Subchapter B, Part 10 is redesignated as Part 20.

2. In Subchapter A, Part 10 is added as follows:

PART 10—CODE OF ETHICAL CONDUCT FOR POSTAL SERVICE GOVERNORS

Subpart A—Basic Purpose and Applicability

Sec.
10.11 Introduction.
10.12 Code of Ethics for Government Service.

Subpart B—Standards of Conduct

10.21 General.
10.22 Conflicts of interest—financial.

10.23 Conflicts of interest—employment.
10.24 Conflicts of interest—gifts, entertainment, and favors.

Subpart C—Ethical Conduct Advisory Services and Post-employment Activities

10.31 Advisory service.
10.32 Post-employment activities.

Subpart D—Reports of Employment and Financial Interests

10.42 Financial disclosure reports.

Authority: 39 U.S.C. 401, 18 U.S.C. 207(j); E.O. 11222, 30 FR 6469, 3 CFR 1965 Supp., p. 10, as amended by E.O. 11580, 36 FR 7831, 3 CFR Part 405 (1972); 5 CFR 735.104.

Subpart A—Basic Purpose and Applicability

§ 10.11 Introduction.

Executive Order 11222 sets forth standards of ethical conduct for Government officers and employees. It directs agencies to issue regulations which both implement the Order and supplement it with regulations of special applicability to the particular functions and activities of the agency. Accordingly, the Board of Governors has established this Code of Ethical Conduct for Postal Service Governors.

§ 10.12 Code of Ethics for Government Service.

The Code of Ethics for Government Service, adopted by Joint Resolution of the 85th Congress, properly calls for the best from all who are in public service and should be followed by all Postal Service Governors.

Code of Ethics for Government Service

Any person in Government service should:

1. Put loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department.
2. Uphold the Constitution, laws, and legal regulations of the United States and of all governments therein and never be a party to their evasion.
3. Give a full day's labor for a full day's pay; giving to the performance of his duties his earnest effort and best thought.
4. Seek to find and employ more efficient and economical ways of getting tasks accomplished.
5. Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept, for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.
6. Make no private promises of any kind binding upon the duties of office, since a Government employee has no private word which can be binding on public duty.
7. Engage in no business with the Government, either directly or indirectly, which is inconsistent with the conscientious performance of his governmental duties.
8. Never use any information coming to him confidentially in the performance of governmental duties as a means for making private profit.
9. Expose corruption wherever discovered.
10. Uphold these principles, ever conscious that public office is a public trust.

Subpart B—Standards of Conduct

§ 10.21 General.

(a) *General Principles.* A Governor shall avoid any action, whether or not specifically prohibited by this Code, which might result in or create the appearance of:

(1) Giving preferential treatment to any person;

(2) Impeding Postal Service efficiency or economy;

(3) Losing complete independence or impartiality;

(4) Making a Postal Service decision outside official channels; or

(5) Affecting adversely the confidence of the public in the integrity of the Postal Service.

(b) No Governor shall use his or her position with the Postal Service to coerce, or give the appearance of coercing, a person to provide financial benefit to him- or herself or another person.

(c) No Governor shall directly or indirectly use, appear to use, or allow the use of, his or her official position or information obtained as a result of his or her position to further any private interest, whether his or her own or that of another person.

(d) For the purposes of the conflict of interest statutes found at Chapter 11 of Title 18 of the United States Code, the Director, Office of Government Ethics has determined that Governors of the Postal Service are special Government employees within the meaning of 18 U.S.C. 202.

(e) The conduct expected and required of a Governor will often depend on the particular facts of each instance. Although detailed regulations cannot practically be prescribed that will cover every situation, the following rules provide guidance and illustrate the manner in which the general principles should be applied.

§ 10.22 Conflicts of interest—financial.

(a) *General principles.* No Governor may have a financial interest, direct or indirect, that conflicts substantially, or appears to conflict substantially, with his or her duties and responsibilities to the Postal Service. For the purposes of this Code, a Governor's interests include those of his or her spouse, his or her minor child or children, and other individuals related to the Governor by blood who are residents of the Governor's household.

(b) No Governor shall enter into any contract with the Postal Service or otherwise have an interest in any contract with the Postal Service unless there has been a prior determination by an ethics official that the interest is so minor that no realistic possibility of a conflict of interest, or the appearance of a conflict of interest, exists. No such determination is required, however, if:

(1) The interest results solely from the Governor's ownership of publicly traded securities of a corporation or the Governor's service as a fiduciary of a trust or estate that owns such publicly traded securities; and

(2) Neither the contract, nor a transaction of which it is a part, requires action by the Board.

(c) No Governor shall engage, directly or indirectly, in a financial transaction as a result of, or primarily relying on, information obtained as a result of his or her position as Governor.

(d) No Governor shall sell or lease property to the Postal Service.

(e) No Governor shall recommend or suggest the employment of any private person offering services as a consultant, agent, attorney, expeditor or the like for the purpose of assisting a private party in any negotiations, transactions or other business with the Postal Service.

(f) Section 203 of title 18, United States Code, prohibits any Governor, as a special Government employee, from soliciting or accepting any fee or other compensation for services rendered by him- or herself or another person in representing any person other than the United States before any executive department, agency, court martial, officer or commission in relation to any proceeding or other particular matter involving a specific party or parties in which a Governor has participated personally and substantially during his or her term.

(g) section 208(a) of Title 18, United States Code, prohibits participation by any Governor in any decision or other matter in which, to the Governor's knowledge, he or she, any entity of which he or she is an employee, director, partner, or other fiduciary, or

any person or organization with whom he or she is negotiating or has any arrangement concerning prospective employment, has a financial interest. Although this statute applies even though the interest is minimal, section 208(b) permits the application of section 208(a) to be waived, if it is properly determined that the interest is not so substantial as to be deemed likely to affect the integrity of the services which may be expected from a Governor.

§ 10.23 Conflicts of interest—employment.

(a) *General principles.* No Governor shall accept employment, compensation, payment of expense, or any other thing of monetary value under circumstances in which acceptance may result in, or create the appearance of, a conflict of interest.

(b) No Governor shall engage in outside employment or other outside activity not compatible with the full and proper discharge of the duties and responsibilities of his or her position as Governor. To this end, each Governor should avoid the following:

(1) Working for any person with whom the Governor has official dealings on behalf of the Postal Service;

(2) Acting as consultant to any person who has a contract with the Postal Service or who the Governor has reason to believe intends to obtain, or seek to obtain, such a contract.

(3) Being employed by, or engaging in professional practice for, a person whose business interests are:

(i) Substantially dependent upon, or may be significantly affected by, postal rates, fees or classifications; or

(ii) Substantially dependent upon providing goods or services to or for use in connection with the Postal Service.

(c) No Governor shall engage in any activity for compensation, or accept any outside employment, or receive any salary or other thing of monetary value which is, directly or indirectly, a form of compensation from a private source for his or her services to the Postal Service.

(d) No Governor shall engage in, or be associated with an entity that is principally engaged in, the private business of delivering any type of mailable matter in substantial competition with the Postal Service.

(e) Section 205 of Title 18, United States Code, prohibits any Governor, as a special Government employee, from acting as agent or attorney in representing a private party before any department, agency, court, court-martial, officer, or commission in connection with any claim, proceeding or other particular matter involving a specific party or parties in which a Governor has participated personally and substantially during his or her term.

(f) No Governor shall use his or her official title, position, or authority in the endorsement or advertisement of a commercial product or service.

(g) Within the limitations imposed by this section, a Governor may engage in teaching, lecturing, and writing. He or she shall not, however, receive compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance whose subject matter is devoted substantially to the responsibilities, programs, or operations of the Postal Service, or which draws substantially on official data or ideas which have not become part of the body of public information.

§ 10.24 Conflicts of interest—gifts, entertainment, and favors.

(a) *General principles.* No Governor shall solicit or accept for him- or herself or another person any gift, favor, entertainment, meal, loan, or other thing of value from any person who:

(1) Has, or is seeking to obtain, contractual or other business or financial relations with the Postal Service;

(2) Conducts operations or activities that are regulated by the Postal Service; or

(3) Has interests that may be substantially affected by the performance or non-performance of the Governor's official duties.

(b) Notwithstanding the provisions of paragraph (a) of this section, a Governor may:

(1) Accept such gift or other thing of value when the circumstances make it clear that it is family or personal relationships (such as those of parent, child, so spouse) rather than the business of the persons concerned which are the motivating factors;

(2) Accept food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting or similar event where he or she is properly in attendance and where payment by the Governor is impracticable;

(3) Accept loans from banks or other financial institutions on customary terms in order to finance proper and usual activities, such as home mortgage loans; and

(4) Accept unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars and other items of nominal intrinsic value.

(c) When a Governor travels on official business he or she should use commercial transportation at Postal Service expense.

(d) No Governor shall except a gift, present, decoration, or any other thing from a foreign government unless authorized in accordance with the Foreign Gifts and Decorations Act, 5 U.S.C. 7432.

Subpart C—Ethical Conduct Advisory Services and Post-employment Activities

§ 10.21 Advisory service.

(a) The General Counsel is the Ethical Conduct Officer and Designated Agency Ethics Official of the Postal Service.

(b) A Governor may obtain advice and guidance on questions of conflicts of interest covered by this Code from the General Counsel or from a designated assistant.

(c) If the General Counsel determines that there is a conflict of interest, or the appearance of a conflict of interest, on the part of a Governor, he or she shall bring this to the attention of the Governor or shall notify the Chairman of the Board of Governors, or the Vice Chairman, as appropriate.

§ 10.22 Post-employment activities.

Governors of the Postal Service are subject to the restrictions on the post-employment activities of special Government employees imposed by section 207 (a) and (b)(i) of Title 18, United States Code. These post-employment restrictions are set out in the Code of Ethical Conduct for Postal Employees, §§ 447.33 and 447.34 of this title.

Subpart D—Reports of Employment and Financial Interests

§ 10.41 Financial disclosure reports.

(a) *Requirement of submission of reports.* The Director of the Office of Government Ethics has ruled that Governors of the Postal Service are not required to file financial disclosure reports that are open to the public. In practice, nonetheless, Governors are asked to complete a non-public financial disclosure report at the time of their nomination and annually thereafter in accordance with this section

(b) *Person with whom reports should be filed and time for filing.* (1) A Governor shall file a financial disclosure report with the General Counsel on or

before May 15 of each year when the Governor has been in office for more than 60 consecutive calendar days during the previous year.

(2) The General Counsel may, for good cause shown, grant to a Governor an extension of up to 45 days. An additional extension of up to 45 days may be granted by the Director of the Office of Government Ethics for good cause shown.

(c) *Information required to be reported.* Each report shall be a full and complete statement, on the form prescribed by the General Counsel and the Office of Government Ethics and in accordance with instructions issued by him or her. The form currently in use is Standard Form 278.

(d) *Reviewing reports.* (1) Financial disclosure reports filed in accordance with the provisions of this section shall, within 60 days after the date of filing, be reviewed by the General Counsel who shall either approve the report, or make an initial determination that a conflict or appearance thereof exists. If the General Counsel determines initially that a conflict or the appearance of a conflict exists, he or she shall inform the Governor of his determination.

(2) If the General Counsel considers that additional information is needed to complete the report or to allow an adequate review to be conducted, he or she shall request the reporting Governor to furnish that information by a specified date.

(3) The General Counsel shall refer to the Chairman of the Board of Governors or the Vice Chairman the name of any Governor he or she has reasonable cause to believe has wrongfully failed to file a report or has falsified or wrongfully failed to report required information.

(e) *Custody of and public access to reports—(1) Retention of reports.* Each report filed with the General Counsel shall be retained by him or her for a period of six years. After the six-year period, the report shall be destroyed unless needed in connection with an investigation then pending.

(2) *Confidentiality of reports.* The financial disclosure reports filed by Postal Service Governors shall not be made public.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 87-18189 Filed 8-10-87; 8:45 am]

BILLING CODE 7710-12-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 70845-7085]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California; Closure and Request for Comments

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure and request for comments.

SUMMARY: NOAA announces the closure of the recreational salmon fishery in the exclusive economic zone (EEZ) from the Queets River to Leadbetter Point, Washington, at midnight, August 6, 1987, to ensure that the chinook salmon quota is not exceeded. The Director, Northwest Region, NMFS (Regional Director), has determined in consultation with representatives of the Pacific Fishery Management Council, the Washington Department of Fisheries (WDF) and the Oregon Department of Fish and Wildlife (ODFW), that the recreational fishery quota of chinook salmon for the subarea will be reached by that time. The closure is necessary to conform to the preseason announcement of 1987 management measures. This action is intended to ensure conservation of chinook salmon.

DATES: Closure of the EEZ from the Queets River to Leadbetter Point, Washington, to recreational salmon fishing is effective at 2400 hours local time, August 6, 1987. Comments on this closure will be received until August 21, 1987.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, NMFS, BIN C15700, 7600 Sand Point Way N.E., Seattle, WA 98115-0070. Information relevant to notice has been compiled in aggregate form and is available for public review during business hours at the same address.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten, 206-526-6150.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR Part 661 specify at § 661.21(a)(1) that "When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by publishing a notice in the Federal Register under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

Management measures for 1987 were effective on May 1, 1987 (52 FR 17264, May 6, 1987). The 1987 recreational fishery for all salmon species from the Queets River to Leadbetter Point, Washington, was established as June 28 through the earliest of September 24 or the attainment of a quota of either 74,300 coho salmon or 28,000 chinook salmon. Subarea quotas were modified during the season (52 FR 27560, July 22, 1987; 52 FR 29019, August 5, 1987). The current chinook quota for the subarea is 27,675 fish.

Based on the best available information, the recreational fishery catch in the subarea is projected to reach the 27,675 chinook quota by midnight, August 6, 1987.

Therefore, NOAA issues this notice to close the recreational salmon fishery in the EEZ from the Queets River to Leadbetter Point, Washington, effective 2400 hours, local time, August 6, 1987. This notice does not apply to treaty Indian fisheries or to other fisheries which may be operating in this or other areas.

The Regional Director consulted with the Chairman of the Pacific Fishery Management Council and the representatives of WDF and ODFW regarding a closure of the recreational fishery between the Queets River and Leadbetter Point, Washington. The Director of WDF confirmed that Washington will close the recreational fishery in state waters adjacent to this subarea of the EEZ in accordance with this notice.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

(16 U.S.C. 1801 *et seq.*)

Dated: August 6, 1987.

William E. Evans,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 87-18303 Filed 8-7-87; 12:14 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 52, No. 154
Tuesday, August 11, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Part 221

[Docket No. R-0608; Regulation U]

Credit by Banks for the Purpose of Purchasing or Carrying Margin Stock

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board proposes to amend Regulation U to exempt banks, when making loans of $100,000 or less, from the requirement that Federal Reserve Form U–1 must be executed. This will have the effect of restoring the compliance mechanism for loans of $100,000 or less to the status that existed prior to 1968 when the mandatory form was first required.

DATE: Comments should be received by August 27, 1987.

ADDRESS: Comments, which should refer to Docket No. R–0608, may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551, or delivered to Room B–2223 between 8:45 a.m. and 5:15 p.m. weekdays. Comments received may be inspected in Room B–2223 between 8:45 a.m. and 5:15 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Laura Homer, Securities Credit Officer, or Scott Holz, Attorney, Division of Banking Supervision and Regulation, (202) 452–2781; or for any user of a Telecommunication Device for the Deaf (TDD), Ernestine Hill or Dorothea Thompson, (202) 452–3244.

SUPPLEMENTARY INFORMATION: In order to reduce the paperwork burden imposed by the requirement in Regulation U that a Federal Reserve Form U–1 be executed for every loan secured by any margin stock, the Board is proposing an amendment to Regulation U. The amendment will delete this requirement for loans of $100,000 or less.

Initial Regulatory Flexibility Analysis

The Board's Initial Regulatory Flexibility Analysis indicates that this proposed amendment, if adopted, is expected to reduce paperwork burden on small banks and, therefore, will have no adverse economic impact on a substantial number of small entities. Comments are invited on the statement. The amendment reduces information collection requirements.

List of Subjects in 12 CFR Part 221

Banks, Banking, Credit, Federal Reserve System, Investments, Margin, Margin Requirements, Reporting and recordkeeping requirements, Securities.

For the reasons set out in this notice, and pursuant to the Board's authority under sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78g and w), the Board proposes to amend 12 CFR Part 221 as follows:

PART 221—[AMENDED]

1. The authority citation for Part 221 is revised to read as follows:

Authority: 15 U.S.C. 78c, 78g, 78h and 78w.

2. Section 221.3 is proposed to be amended by revising paragraph (b), redesignating (c)(i) and (ii) as (c)(1) and (2), and revising (c)(1) as follows:

§ 221.3 General requirements.

* * * * *

(b) *Purpose statement.* (1) Except for credit extended under paragraph (c) of this section, whenever a bank extends credit secured directly or indirectly by any margin stock in an amount exceeding $100,000, the bank shall require its customer to execute Form FR U–1 (OMB No. 7100–0115), which shall be signed and accepted by a duly authorized officer of the bank acting in good faith.

(c) *Purpose statement for revolving credit or multiple-draw agreements.* (1) If a bank extends credit, secured directly or indirectly by any margin stock in an amount exceeding $100,000, under a revolving credit or other multiple-draw agreement, Form FR U–1 can either be executed each time a disbursement is made under the agreement, or at the time the credit arrangement is originally established.

* * * * *

By order of the Board of Governors of the Federal Reserve System, August 5, 1987.
William W. Wiles,
Secretary of the Board.
[FR Doc. 87–18138 Filed 8–10–87; 8:45 am]
BILLING CODE 6210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 179

Life Estates and Future Interests

April 23, 1987.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rulemaking.

SUMMARY: The Bureau of Indian Affairs is proposing to add a new regulation for the administration of life estates and future interests in Indian land. The regulation cite the authorities and enunciate the policies and procedure which are to be followed in such administration. These regulations are being proposed to address the need for a clearly stated uniform policy. Application of the Indian Land Consolidation Act (96 Stat. 2517; 25 U.S.C. 2201–11) and the increasing sophistication in business practices on Indian land make it necessary and desirable that the Secretary promulgate these regulations.

DATES: Comment should be received on or before October 13, 1987.

ADDRESSES: Comments should be sent to the Chief, Branch of Titles and Research, Division of Real Estate Services, Bureau of Indian Affairs, MS–4520 MIB, 1951 Constitution Ave., NW., Washington, DC 20245.

FOR FURTHER INFORMATION CONTACT: Howard Piepenbrink, Chief, Branch of Titles and Research, Bureau of Indian Affairs, Room 4520, Main Interior Building, 18th and C Streets NW., Washington, DC; Telephone Number (202) 343–5473; or by mail, at the address listed above.

SUPPLEMENTARY INFORMATION: The proposed rules are the result of efforts of a Task Force appointed by the Deputy to the Assistant Secretary - Indian Affairs (Trust and Economic Development) which met in Phoenix, Arizona, on October 21–23, 1986, and March 24–25,

1987. This proposal would add a new Part 179 to Title 25 of the Code of Federal Regulations to set forth the authorities, policy, and procedures to be followed in the administration of life estates and future interests in Indian land. At the present time, there are no regulations specifically dealing with life estates and future interests, even though these have become increasingly prevalent in the activities of Indians and the Bureau of Indian Affairs.

The following is a list of proposed sections and the reasons for each:

Section 179.1

The Secretary of the Interior is charged by various statutes with the responsibility to probate Indian trust estates, and, under certain circumstances to administer Indian lands and funds. The Secretary has the authority to promulgate regulations as to how such responsibilities will be implemented. These regulations establish procedure governing the Secretary's administration of life estates and future interests in Indian trust property.

Section 179.2

This section contains definitions of key terms in the proposed regulations. The Secretary is responsible for probating the estates of individual Indians who died possessed of interests in land held through trust or restricted fee patents, or who have received or been devised trust or restricted interests in lands under a variety of circumstances. Therefore, the definitions have been drafted as broadly as possible to include all of the various circumstances. The definitions also cover interests held in lands acquired by tribes either through sale or devise by tribal members, escheats resulting from section 207 of the Indian Land Consolidation Act, or by any other means. The terms "principal" and "income" have been defined in accordance with the generally accepted understanding of those terms as applied to life estates and future interests. Definitions of other terms, such as "vested remainderman" and "contingent remainderman", will depend upon applicable laws.

Section 179.3

There are no Federal statutes of general applicability governing the administration of life estates and future interests by the Bureau of Indian Affairs. Some consideration was given to the creation of a uniform Federal rule of law through the rulemaking process. However, such a rule would in many cases create anomalous and inconsistent results since, under 25 U.S.C. 348, the Secretary must apply State law in ascertaining heirs and distributing property. In order to ensure that the same body of law is applied to all aspects of the determination and administration of estates, this section requires that the State law be used to determine basic rights and incidents of life estates and future interests, in the absence of Federal or Tribal law to the contrary. The regulations do, however, make inapplicable any State law regarding the appointment and duties of private trustees, as such provision is inconsistent with the Secretary's authority to administer trust lands and funds. The use of State law to the extent provided herein, does not affect, nor does it imply to affect, the sovereignty and/or jurisdiction of Federally-recognized Indian tribes.

Section 179.4

Ideally, rights and privileges of a life tenant, his/her entitlement to income, royalties, bonuses, penalties, trespass damages, etc., should be spelled out in the document creating the life estate. In many cases, however, they are not spelled out. Thus, because of the heirship problem, the increasing numbers of life estates prompted by the Indian Land Consolidation Act, and the needs of many individual Indians, several parties have suggested that the Secretary should deviate from the general common law rules of life estates and tailor administration of Indian lands to produce immediate benefits for life tenants, vested remainderman, and/or contingent remainderman. Certain problems associated with the administration of life estates, and problems faced by interest holders in such estates do warrant a slight deviation from general common law rules.

This section provides that, in those cases where the document that created the life estate is not specific as to the distribution of proceeds, or where the life tenant and vested remainderman cannot reach an agreement on how to distribute such proceeds, or where by such document or agreement or by application of State law the open mine doctrine does not apply, the Secretary will: (a) Pay all rent and income to the life tenant (the common law rule); and (b) interpret bonuses received from the execution of contracts involving the life estate and corpus as being "signing money," i.e., money given as an additional incentive for the execution of the contract, and pay one-half of the bonus to the life tenant and one-half to the remainderman (There is a split among the States as to whether, under common law, a bonus is income or principal. This regulation will create a uniform rule); and (c) in the case of mineral contracts, follow the normal common law rule and invest the principal and make only interest payments to the life tenant, except whenever the administrative cost of investment is disproportionately high, e.g., investment expense exceeds interest income (as might occur with the investment of principal derived from a small gravel permit, etc.), the following (d) shall be utilized; and (d) in all other instances, make an immediate distribution of the principal to the life tenant and vested remainderman based on the value of the life estate (In the event of a contingent remainderman, his/her share will be placed in a special account.)

Section 179.5

This section establishes a uniform method for determining the value of life estates and remainders. Tables A(1) and A(2), which currently also appear in 26 CFR 20.2031–10, have been selected because of their widespread use by the Internal Revenue Service which also deals with life estates and future interests, and because the 6% interest rate is representative of the historic market rate of return where real property is of primary concern.

Section 179.6

This section provides for the formal recordation of death certificates or other evidence of death, for life tenants, and for recordation of renunciations when executed by life tenants.

The policy of the Department of the Interior is, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding the proposed rule to the locations identified in the Addresses section of this preamble.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*).

The Department of the Interior has determined that this proposed rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

This rule does not contain information collection requirements which require the approval of the Office of

Management and Budget under 44 U.S.C. 3501 *et seq.*

The proposed rule is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

The primary author of this document is Howard Piepenbrink, Chief, Branch of Titles and Research, Bureau of Indian Affairs, Room 4520, Main Interior Building, 18th and C Sts., NW., Washington, DC 20245; Telephone Number (202) 343–5473.

List of Subjects in 25 CFR Part 179

Future interests, Indians—lands, Life estates.

For the reasons set out in the preamble, Part 179 of Title 25, Chapter I of the Code of Federal Regulations is proposed to be added as set forth below.

PART 179—LIFE ESTATES AND FUTURE INTERESTS

Sec.

179.1 Purpose and scope.
179.2 Definitions.
179.3 Application of State law.
179.4 Distribution of principal and income.
179.5 Value of life estates and remainders.
179.6 Notice of termination of life estate.

Authority: 86 Stat. 530; 86 Stat. 744; 94 Stat. 537; 25 U.S.C. 2, 9, 372, 373, 487, 607, and 2201–11.

Cross Reference: For regulations pertaining to income, rents, profits, bonuses and principal from Indian lands and the recording of title documents pertaining thereto, see Parts 150, Land Records and Title Documents; 152, Sale of Certain Indian Lands; 162, Leasing and Permitting; 163, General Forest Regulations; 166, General Grazing Regulations; 169, Rights of Way over Indian Lands; 170, Roads of the Bureau of Indian Affairs; 212, leasing of Allotted Lands for Mining; 213, Leasing Restricted Lands of Members of the Five Civilized Tribes of Oklahoma for Mining; 215, Lead and Zinc Mining Operations and Leases, Quapaw Agency.

§ 179.1 Purpose and scope.

These regulations set forth the authorities, policy and procedures governing the administration of life estates and future interests in Indian lands by the Secretary of the Interior.

§ 179.2 Definitions.

"Agency" means an Indian Agency or other field unit of the Bureau of Indian Affairs having the Indian land under its immediate jurisdiction.

"Income" means the rents and profits of real property and the interest on invested principal.

"Indian Land" means all lands held in trust by the United States for individual Indians or tribes; or all lands, titles to which are held by individual Indians or tribes, subject to Federal restrictions against alienation or encumbrance.

"Principal" means the corpus and capital of an estate as opposed to the income.

"Secretary" means the Secretary of the Interior or authorized representative.

"Superintendent" means the designated officer in charge of an Agency.

§ 179.3 Application of State law.

Rules of life estates and future interests to be applied on Indian land are those prescribed by the laws of the State in which the land is located, unless by Federal law or regulation a different rule is prescribed or recognized. State laws concerning the appointment and duties of private trustees, shall not apply.

§ 179.4 Distribution of principal and income.

In all cases where the document creating the life estate does not specify a distribution of proceeds; or where the vested remainderman and life tenant have not entered into a written agreement approved by the Secretary providing for the distribution of proceeds; or where by such document or agreement or by the application of State law the open mine doctrine does not apply; the Secretary shall;

(a) Distribute all rents and profits, as income, to the life tenant.

(b) Consider any contract bonus as incentive for the execution of the contract, and distribute one-half each to the life tenant and the remainderman.

(c) In the case of mineral contracts, invest the principal, with interest income to be paid the life tenant during the life estate, except in those instances where the administrative cost of investment is disproportionately high, in which case § 179.4(d) shall apply. The principal will be distributed to the remainderman upon termination of the life estate.

(d) In all other instances, distribute the principal immediately according to the formulas set forth in 25 CFR 179.5, investing all proceeds attributable to any contingent remainderman in an account, with disbursement to take place upon determination of the contingent remainderman.

§ 179.5 Value of life estates and remainders.

(a) The value of a life estate shall be determined by the formula: Value of Life Estate=P×L, where P=Value of principal, and L=Life estate factor for the age and sex of the life tenant, as shown in Column 3 on Tables A(1) and A(2).

(b) The value of a remainder shall be determined by the formula: Value of Remainder=P×R, where P=Value of principal, and R=Remainder factor for the age and sex of the life tenant, as shown in Column 4 on Tables A(1) and A(2).

TABLE A(1)—SINGLE LIFE MALE, 6 PERCENT, SHOWING THE PRESENT WORTH OF AN ANNUITY, OF A LIFE INTEREST, AND OF A REMAINDER INTEREST

(1)—Age	(2)—Annuity	(3)—Life estate	(4)—Remainder
0	15.8175	0.9305	0.06295
1	16.0362	.96217	.03783
2	16.0370	.96170	.03830
3	16.0009	.96053	.03947
4	15.9841	.95905	.04095
5	15.9572	.95732	.04268
6	15.9233	.95540	.04460
7	15.8895	.95331	.04669
8	15.8505	.95105	.04895
9	15.8101	.94861	.05139
10	15.7653	.94598	.05402
11	15.7194	.94316	.05684
12	15.6698	.94019	.05981
13	15.6180	.93708	.06292
14	15.5651	.93391	.06609
15	15.5119	.93069	.06931
16	15.4576	.92746	.07254
17	15.4031	.92419	.07581
18	15.3481	.92089	.07911
19	15.2918	.91751	.08249
20	15.2339	.91403	.08597
21	15.1744	.91046	.08954
22	15.1130	.90678	.09322
23	15.0497	.90298	.09702
24	14.9847	.89884	.10116
25	14.9075	.89445	.10555
26	14.8287	.88972	.11028
27	14.7442	.88465	.11535
28	14.6542	.87925	.12075
29	14.5588	.87353	.12647
30	14.4584	.86750	.13250
31	14.3528	.86117	.13883
32	14.2418	.85451	.14549
33	14.1254	.84752	.15248
34	14.0034	.84020	.15980
35	13.8758	.83255	.16745
36	13.7426	.82455	.17545
37	13.6036	.81622	.18378
38	13.4591	.80755	.19245
39	13.3090	.79854	.20146
40	13.1538	.78923	.21077
41	12.9934	.77960	.22040
42	12.8279	.76967	.23033
43	12.6574	.75944	.24056
44	12.4819	.74891	.25109
45	12.3013	.73808	.26192
46	12.1158	.72695	.27305
47	11.9253	.71552	.28448
48	11.7309	.70385	.29615
49	11.5330	.69198	.30802
50	11.3329	.67997	.32003
51	11.1308	.66785	.33215
52	10.9267	.65560	.34440
53	10.7200	.64320	.35680
54	10.5100	.63060	.36940
55	10.2960	.61776	.38224
56	10.0777	.60466	.39534
57	9.8552	.59131	.40869
58	9.6297	.57778	.42222
59	9.4028	.56417	.43583
60	9.1753	.55052	.44948
61	8.9478	.53687	.46313
62	8.7202	.52321	.47679
63	8.4924	.50954	.49046
64	8.2642	.49585	.50415
65	8.0353	.48212	.51788
66	7.8050	.46836	.53164
67	7.5763	.45458	.54542

TABLE A(1)—SINGLE LIFE MALE, 6 PERCENT, SHOWING THE PRESENT WORTH OF AN ANNUITY, OF A LIFE INTEREST, AND OF A REMAINDER INTEREST—Continued

(1)—Age	(2)—Annuity	(3)—Life estate	(4)—Remainder
68	7.3462	.44077	.55923
69	7.1145	.42869	.57131
70	6.8823	.41294	.58706
71	6.6481	.39689	.60311
72	6.4123	.38474	.61526
73	6.1752	.37051	.62949
74	5.9373	.35624	.64376
75	5.6990	.34194	.65806
76	5.4602	.32761	.67239
77	5.2211	.31327	.68673
78	4.9825	.29895	.70105
79	4.7469	.28481	.71519
80	4.5164	.27098	.72902
81	4.2955	.25773	.74227
82	4.0879	.24527	.75473
83	3.8924	.23354	.76646
84	3.7029	.22217	.77783
85	3.5117	.21070	.78930
86	3.3259	.19955	.80045
87	3.1450	.18870	.81130
88	2.9703	.17822	.82178
89	2.8052	.16831	.83169
90	2.6536	.15922	.84078
91	2.5102	.15097	.84903
92	2.3917	.14350	.85650
93	2.2801	.13681	.86319
94	2.1802	.13081	.86919
95	2.0891	.12535	.87465
96	1.9997	.11998	.88002
97	1.9145	.11487	.88513
98	1.8331	.10999	.89001
99	1.7554	.10532	.89468
100	1.6812	.10087	.89913
101	1.6101	.09661	.90339
102	1.5416	.09250	.90750
103	1.4744	.08846	.91154
104	1.4085	.08451	.91561
105	1.3334	.08000	.92000
106	1.2452	.07471	.92529
107	1.1196	.06718	.93282
108	.9043	.05426	.94574
109	.4717	.02830	.97170

TABLE A(2)—SINGLE LIFE FEMALE, 6 PERCENT, SHOWING THE PRESENT WORTH OF AN ANNUITY, OF A LIFE INTEREST, AND OF A REMAINDER INTEREST

(1)—Age	(2)—Annuity	(3)—Life estate	(4)—Remainder
0	15.8972	0.95383	0.04617
1	16.2234	.97370	.02630
2	16.2287	.97372	.02628
3	16.2180	.97308	.02692
4	16.2038	.97217	.02783
5	16.1850	.97110	.02890
6	16.1646	.96988	.03011
7	16.1421	.96853	.03147
8	16.1172	.96703	.03297
9	16.0910	.96541	.03459
10	16.0634	.96355	.03635
11	16.0293	.96176	.03824
12	15.9958	.95975	.04025
13	15.9577	.95764	.04236
14	15.9236	.95543	.04457
15	15.8856	.95314	.04686
16	15.8460	.95076	.04924
17	15.8048	.94829	.05171
18	15.7620	.94572	.05428
19	15.7172	.94303	.05697
20	15.6701	.94021	.05979
21	15.6207	.93724	.06276
22	15.5687	.93412	.06588
23	15.5141	.93085	.06915
24	15.4568	.92739	.07261
25	15.3958	.92375	.07625

TABLE A(2)—SINGLE LIFE FEMALE, 6 PERCENT, SHOWING THE PRESENT WORTH OF AN ANNUITY, OF A LIFE INTEREST, AND OF A REMAINDER INTEREST—Continued

(1)—Age	(2)—Annuity	(3)—Life estate	(4)—Remainder
26	15.3322	.91993	.08007
27	15.2652	.91591	.08409
28	15.1946	.91168	.08832
29	15.1208	.90725	.09275
30	15.0432	.90259	.09741
31	14.9622	.89773	.10227
32	14.8775	.89265	.10735
33	14.7888	.88733	.11267
34	14.6960	.88176	.11824
35	14.5989	.87593	.12407
36	14.4975	.86985	.13015
37	14.3915	.86349	.13651
38	14.2811	.85687	.14313
39	14.1663	.84998	.15002
40	14.0466	.84281	.15719
41	13.9227	.83536	.16464
42	13.7940	.82764	.17236
43	13.6604	.81962	.18038
44	13.5219	.81131	.18869
45	13.3781	.80269	.19731
46	13.2290	.79374	.20626
47	13.0746	.78448	.21552
48	12.9147	.77488	.22512
49	12.7496	.76498	.23502
50	12.5793	.75476	.24524
51	12.4039	.74423	.25577
52	12.2232	.73339	.26661
53	12.0367	.72220	.27780
54	11.8436	.71062	.28938
55	11.6432	.69859	.30141
56	11.4353	.68612	.31388
57	11.2200	.67320	.32680
58	10.9980	.65988	.34012
59	10.7703	.64622	.35378
60	10.5376	.63226	.36774
61	10.3005	.61803	.38197
62	10.0587	.60352	.39648
63	9.8116	.58871	.41129
64	9.5592	.57355	.42645
65	9.3005	.55803	.44197
66	9.0352	.54211	.45789
67	8.7639	.52583	.47417
68	8.4874	.50924	.49076
69	8.2068	.49241	.50759
70	7.9234	.47540	.52460
71	7.6371	.45823	.54177
72	7.3480	.44088	.55912
73	7.0588	.42341	.57659
74	6.7645	.40587	.59413
75	6.4721	.38833	.61167
76	6.1788	.37073	.62927
77	5.8845	.35307	.64693
78	5.5910	.33546	.66454
79	5.3018	.31811	.68189
80	5.0195	.30117	.69883
81	4.7482	.28489	.71511
82	4.4892	.26935	.73065
83	4.2399	.25439	.74561
84	3.9927	.23956	.76044
85	3.7401	.22441	.77559
86	3.5016	.21010	.78990
87	3.2790	.19674	.80326
88	3.0719	.18431	.81569
89	2.8808	.17285	.82715
90	2.7058	.16241	.83759
91	2.5502	.15301	.84699
92	2.4116	.14470	.85530
93	2.2901	.13741	.86259
94	2.1839	.13103	.86897
95	2.0891	.12535	.87465
96	1.9997	.11998	.88002
97	1.9145	.11487	.88513
98	1.8331	.10999	.89001
99	1.7554	.10532	.89468
100	1.6812	.10087	.89913
101	1.6101	.09661	.90339
102	1.5416	.09250	.90750
103	1.4744	.08846	.91154
104	1.4085	.08439	.91561

TABLE A(2)—SINGLE LIFE FEMALE, 6 PERCENT, SHOWING THE PRESENT WORTH OF AN ANNUITY, OF A LIFE INTEREST, AND OF A REMAINDER INTEREST—Continued

(1)—Age	(2)—Annuity	(3)—Life estate	(4)—Remainder
105	1.3334	.08000	.92000
106	1.2452	.07471	.92529
107	1.1196	.06718	.93282
108	.9043	.05426	.94574
109	.4717	.02830	.97170

§ 179.6 Notice of termination of life estate.

Upon receipt of a renunciation of interest or notice of death of an Indian or non-Indian who died possessed of a life estate in Indian land, the Superintendent having jurisdiction thereof shall file a copy of the renunciation or death certificate or other evidence of death with the appropriate Bureau of Indian Affairs' Land Titles and Records Office for recording.

Ross O. Swimmer,

Assistant Secretary, Indian Affairs.

[FR Doc. 87-18085 Filed 8-10-87; 8:45 am]

BILLING CODE 4310-02-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[LR-106-86]

Limitation on Corporate Net Operating Loss Carryforwards

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is adding temporary regulations pertaining to section 382 of the Internal Revenue Code of 1986 ("Code"), which was amended by section 621 of the Tax Reform Act of 1986. The temporary regulations provide the necessary guidance for determining when there is an ownership change resulting in a limitation on corporate net operating loss carryforwards under section 382. The text of the temporary regulations also serves as the comment document for this notice of proposed rulemaking.

Dates for Comments and Requests for a Public Hearing

Written comments and requests for a public hearing must be delivered or mailed by October 13, 1987.

ADDRESS: Send comments or requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T [LR–106–86], 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Keith E. Stanley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T) or telephone (202) 566–3458 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations published in the Rules and Regulations portion of this issue of the Federal Register add temporary regulations §§ 1.382–1T and 1.382–2T to Part 1 of Title 26 of the Code of Federal Regulations ("CFR"). The final regulations which are proposed to be based on the temporary regulations would be added to Part 1 of Title 26 of the CFR. The final regulations would provide the necessary guidance with respect to the determination of when there is an ownership change that results in a limitation on corporate net operating loss carryforwards under section 382. Section 382 of the Code was amended by section 621 of the Tax Reform Act of 1986 (Pub. L. 99–514, 100 Stat. 2085). For the text of the temporary regulations, see T.D. 8149 published in the Rules and Regulations portion of this issue of the Federal Register. The preamble to the temporary regulations explains the added regulations.

Regulatory Flexibility Act and Executive Order 12291

Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the notice and public procedure requirements of 5 U.S.C. 553 do not apply because the rules provided herein are interpretive. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6). The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis therefore is not required.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of time and place will be published in the Federal Register. The collection of information requirements contained herein have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on the requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, DC 20503. The Internal Revenue Service requests persons submitting comments to OMB also send copies of the comments to the Service.

Drafting Information

The principal author of these regulations is Keith E. Stanley of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both in matters of substance and style.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 87–18105 Filed 8–5–87; 3:47 pm]

BILLING CODE 4830–01–M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Docket No. 535]

Western Connecticut Highlands Viticultural Area; Connecticut

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of a viticultural area in Connecticut to be known as Western Connecticut Highlands. The proposed viticultural area is made up of all of Litchfield County and parts of Fairfield, New Haven and Hartford Counties. The petition was submitted by a winery located in the proposed viticultural area. ATF believes that the establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will help consumers identify the wines they may purchase. The establishment of viticultural areas also allows wineries to further specify the origin of wines they offer for sale to the public.

DATE: Written comments must be received by September 25, 1987.

ADDRESS: Send written comments to: Chief, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044–0385 (Notice No. 535).

Copies of the petition, the proposed regulations, the appropriate maps, and written comments will be available for public inspection during normal business hours at: ATF Reading Room, Office of Public Affairs and Disclosure, Room 4406, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Edward A. Reisman, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226 (202) 566–7626.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) revising regulations in 27 CFR, Part 4.

These regulations allow the establishment of definite viticultural areas.

On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added a new Part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be ued as appellations of origin.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguished by geographical features, the boundaries of which have been delineated in Subpart C of Part 9.

Section 4.25a(e)(2) outlines the procedure for proposing a viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include—

(a) Evidence that the name of the proposed viticultural area is locally

and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. maps with the boundaries prominently marked.

Petition

ATF has received a petition proposing a viticultural area encompassing the western highlands area of Connecticut which borders on New York and Massachusetts. The proposed viticultural area is to be known as Western Connecticut Highlands. The petition was submitted by Mr. & Mrs. William Hopkins of Hopkins Vineyard, New Preston, Connecticut.

Within the proposed Western Connecticut Highlands viticultural area there are four wineries, with others being established. In addition, there are six grape growers. Overall the area covers approximately 1,570 square miles or 1,004,550 acres.

Evidence of Name

According to the petitioner, the proposed name Western Connecticut Highlands is descriptive of the rolling hills and small mountains in the western part of Connecticut which are different from the surrounding area in Connecticut, southwestern Massachusetts and southeastern New York state.

The petitioner provided documentation from various sources to support only the name Western Highlands. The name Western Highlands has been used by the Connecticut Agricultural Experimental Station, and the U.S. Soil Conservation Service in the publication *Soils of Connecticut*, Bulletin #787, December 1980, by Hill, Sauter and Gonick, to describe the area. The name Western Highlands is also commonly referred to on the General Soil Map of Connecticut. The petitioner also included excerpts from the book *Connecticut: A New Guide* by William Bixby (Scribner's, 1974). The excerpts gave a description of the Western Highlands region as well as other regions of Connecticut.

The petitioner acknowledges that the area is locally called Western Highlands. However, the petitioner chose the proposed viticultural area name Western Connecticut Highlands because that name would distinguish the area from all other highland areas in the United States.

Evidence that the boundaries are as spcified in the petiton. The petitioner claims that the boundary of the proposed viticultural area is based on distinguishing geographic features as well as established and proposed grape-growing in the area. One U.S.G.S. map was submitted by the petitioner with the proposed boundaries prominently marked on it. The boundary description may be found in the regulations section in the back of this document. The petitioner believes the basis for recognition of this boundary is supported by the name Western Highlands in reference material and the unique geography and climate found only in this section of Connecticut.

Evidence Relating to the Geographic Features such as Climate, Soil, Elevation, Physical Features, etc., which set the proposed Western Connecticut Highlands viticultural area apart from the surrounding areas.

(a) Physical Features

According to the petitioner, Connecticut's area is small, but its 5,000 square miles contain more variety of terrain than many larger states. The state can be divided into four physiographic zones: (1) The Coastal Lowlands or Coastal Plain (Long Island Sound influence), (2) the Central Lowlands or Central Valley (Connecticut River influence), (3) the Western Highlands and (4) the Eastern Highlands.

The Coastal Lowlands and Central Valley have elevations ranging from 0 to less than 500 feet above sea level. The long broad central Valley actually begins far to the north in New Hampshire, Vermont and Massachusetts.

The Western and Eastern features are somewhat similar in climate and other features but are geographically separated by the Central Valley. There are some bonded wineries and grape growers in the eastern Highlands. There are no bonded wineries located in the Central Valley.

The Western Highlands are an extension of the Green Mountain and Taconic Ranges to the north in Massachusetts with the general elevation in the proposed viticultural area varying from 200 to 1,500 feet above sea level. The Western Highlands are generally more rugged than the corresponding Eastern Highlands which have altitudes varying from 200 to 1,000 feet above sea level.

(b) Precipitation

Snowfall is heavier in the proposed Western Connecticut Highlands than anywhere else in the state, and ranges from 35 to 100 inches annually. Long-term records indicate that there is considerable variation in seasonal amounts of snowfall in the proposed viticultural area; in one location more than 130 inches fell in one year, during another year at the same location only 37 inches fell. Snowfall varies throughout the State, lighter along the Coastal Lowlands and heavier in the northwest portion of the proposed viticultural area. The northwestern portion of the proposed viticultural area receives about 100 inches of snow annually. At the Coastal Lowlands the average annual rainfall is lower than in the Western Highlands.

(c) Temperature

The Eastern and Western Highlands have mean annual temperatures of 47° F. and 46° F., respectively. The mean annual temperature for the Coastal Lowlands is 50° F. and the Central Valley is 49°. Because of their relatively low elevation the Coastal Lowlands and Central Valley have warmer climates than the proposed area. The climate of the Coastal Lowlands and to some extent the climate of the Central Valley are also greatly influenced by the moderating effect of the Long Island Sound.

The winters in Connecticut are not as long, or as severe, as they are in the northern New England states. In the fall, freezing temperatures throughout the Connecticut regions usually begin about the middle of November, and end by the last week in March along the Coastal Lowlands and early in April in the Western and Eastern Highlands.

The area to the west of the proposed viticultural area is the Hudson River Region, a complex distinct geological region characterized by the Hudson River Valley and surrounding hills. This area has been a grape-growing region for over 300 years. In 1982, the Hudson River Region (encompassing approximately 3,500 square miles) was established as an American viticultural area.

Immediately north of the proposed viticultural area is the Berkshire Mountain region of Massachusetts and further north is the Green Mountain Range. The Berkshire Mountain region is similar in broad physiography to the proposed viticultural area. However, it

is further north than the Western Connecticut Highlands and has a slightly cooler climate. The elevation is higher in the Green Mountain Range which is further into the northern interior, resulting in a more rugged terrain, colder average temperatures, and a shorter growing season than the proposed viticultural area and the Berkshire Mountain Range.

(d) Soils and Geography

The soils within the proposed Western Connecticut Highlands viticultural area are predominantly formed in glacial till derived from gneiss, schist and granite. The Hollis-Charlton, Paxton-Woodbridge, Charlton-Hollis, and Stockbridge-Farmington-Amenia soils are the most commonly found soil series of the Western Connecticut Highlands. The Eastern Highlands also have the same soils except that the Stockbridge-Farmington-Amenia soils are only found in the Western Connecticut Highlands.

The north-south strip of lowland bisected by the Connecticut River comprises the Central Valley, which extends northerly from the Long Island Sound into Massachusetts. Although broken with occasional traprock ridges, most of the land is gently sloping with productive agricultural soils.

The Central Valley is dominated by soils formed in glacial till derived from sandstone, shale, conglomerate and basalt. The Wethersfield-Holyoke-Broadbrook, Penwood-Manchester, Windsor-Ninigret-Merrimac, Elmwood-Buxton-Scantic, and Hadley-Winooski soils are the most commonly found soil series of the Central Valley. These soil series are not found in the Western or Eastern Highlands.

Connecticut's southern boundary is formed by 253 miles of irregular shoreline on the Long Island Sound. Along this shore, stretches a narrow strip of fairly level land designated as the Coastal Lowlands. The coastline is characterized by alternating limited sections of sandy beach, rocky bluffs, and salt water marshes, indented with numerous small coves and inlets. This area is greatly influenced by the moderating temperatures of the Long Island Sound.

Based on the petitioner's evidence provided in this notice, it is his opinion that the proposed Western Connecticut Highlands viticultural area defines a grape-growing region with unique climate and growing conditions different from the surrounding area.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal because the notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. The proposal will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

It has been determined that this proposed rulemaking is not classified as a "major rule" within the meaning of Executive Order 12291, 46 FR 13193 (1981) because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographical regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this notice because no requirement to collect information is proposed.

Public Participation—Written Comments

ATF requests comments from all interested persons concerning this proposed viticultural area. ATF especially requests comments concerning the proposed name "Western Connecticut Highlands." ATF requests evidence that the proposed area is locally and/or nationally known as "Western Connecticut Highlands." ATF also notes that there may be other possible names such as Western Highlands, Western Highlands (Connecticut) or Western Highlands of Connecticut. Comments concerning other possible boundaries or names for this proposed viticultural area will be given full consideration.

Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of the person submitting a comment is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his or her request in writing, to the Director within the 45-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Drafting Information

The principal author of this document is Edward A. Reisman, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Viticultural areas, Consumer protection, Wine.

Authority and Issuance

27 CFR Part 9—*American Viticultural Areas* is amended as follows:

PART 9—[AMENDED]

Paragraph 1. The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. The table of contents in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.122 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.122 Western Connecticut Highlands.

Par. 3. Subpart C is amended by adding § 9.122 to read as follows:

Subpart C—Approved American Viticultural Areas

§ 9.122 Western Connecticut Highlands.

(a) *Name.* The name of the viticultural area described in this section is "Western Connecticut Highlands."

(b) *Approved map.* The appropriate map for determining the boundaries of the "Western Connecticut Highlands". Viticultural area is 1 U.S.G.S. 1:125,000 series map. It is titled State of Connecticut, Compiled in 1985, Edition of 1986.

(c) *Boundary.* The boundary of the proposed Western Connecticut Highlands viticultural area is as follows:

(1) The beginning point is where Connecticut Route #15 (Merritt Parkway) meets the Connecticut-New York State line near Glenville, CT, in the Town of Greenwich.

(2) The boundary proceeds approximately 80 miles northerly along the Connecticut-New York State line to the northwest corner of Connecticut at the Town of Salisbury (Connecticut-New York-Massachusetts State line);

(3) The boundary proceeds approximately 32 miles east along the Connecticut-Massachusetts State line to the northeast border of the Town of Hartland;

(4) The boundary proceeds approximately 5 miles south along the eastern boundary of the Town of Hartland to the northeast corner of the Town of Barkhamstead (Litchfield-Hartford County line);

(5) The boundary then proceeds south approximately 25 miles along the Litchfield-Hartford County line to the southeast corner of the Town of Plymouth (Litchfield-Hartford-New Haven County line);

(6) The boundary then proceeds approximately 7 miles west along the Litchfield-New Haven County line to Connecticut Route #8 at Waterville in the Town of Waterbury;

(7) The boundary proceeds approximately 25 miles south along Connecticut Route #8 to the intersection of Connecticut Route 15 (Merritt Parkway) near Nichols in the Town of Trumbull;

(8) The boundary proceeds approximately 32 miles west along Connecticut Route 15 (Merritt Parkway) to the beginning point.

Approved: August 3, 1987.

Stephen E. Higgins,

Director.

[FR Doc. 87-18186 Filed 8-10-87; 8:45 am]

BILLING CODE 4810-31-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 265, and 270

[FRL-3246-1]

Permitting Mobile Hazardous Waste Treatment Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Tentative response to petition; extension of comment period.

SUMMARY: The purpose of this notice is to extend the public comment period on the regulatory exclusion portion of the Agency's June 3, 1987 tentative response to a petition submitted by the Hazardous Waste Treatment Council (HWTC) (52 FR 20914). The agency will accept comment until September 3, 1987, solely on the regulatory exclusion issues raised in section III.D of the June 3, 1987 notice (see 52 FR 20926–20928). The comment period for the remainder of the June 3 proposal and tentative response to the petition remains unaffected and closes on August 3, 1987.

EPA received a request for an extension of the comment period on the regulatory exclusion portion of the June 3 notice from the HWTC. The basis of the request was that more time was needed to provide data and adequately respond to the questions raised in the notice regarding conditional regulatory exclusions from the RCRA permitting requirements. Therefore, to ensure that the HWTC and other commentors have adequate time to prepare their comments on these issues, we are taking this opportunity to lengthen the comment period by 30 days, from August 3 to September 3, 1987.

DATES: The deadline for submitting written comments on the regulatory exclusion issues in section III.D of the June 3, 1987 notice is extended from August 3, 1987 to September 3, 1987.

ADDRESSES: Members of the public must submit an original and two copies of all their comments to: EPA RCRA Docket (S–212), 401 M Street, SW., Washington, DC 20460. Communications should identify the docket number F–87–PMTU–FFFF. The EPA RCRA docket is located at the U.S. Environmental Protection Agency, Sub-basement, 401 M Street, Washington, DC 20460. The docket is open from 9:00–4:00 Monday through Friday, except for Federal holidays. To review docket materials, the public must make an appointment by calling 475–9327. The public may copy a maximum of 50 pages from any one regulatory docket at no cost. Additional copies cost $.20 per page.

FOR FURTHER INFORMATION CONTACT: RCRA hotline at (800) 424–9346 (in Washington, DC, call 382–3000) or Robin Anderson, (202) 382–4498, Office of Solid Waste (WH–563), U.S. Environmental Protection Agency, Washington, DC 20460.

Date: August 3, 1987.

Jack McGraw,

Acting Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. 87–18212 Filed 8–10–87; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

46 CFR Parts 558, 559, 560, 561, 562, 564, 566, and 569

[Docket No. 87-9]

Filing of Agreements by Common Carriers and Other Persons Subject to the Shipping Act, 1916

AGENCY: Federal Maritime Commission.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission, in connection with its pending proposal to amend its rules governing the filing of agreements by common carriers and other persons subject to the Shipping Act, 1916, requests comments on the termination of the exemption of credit information agreements from that Act's filing and approval requirements.

DATE: Comments due on or before September 10, 1987.

ADDRESS: Send comments (original and fifteen copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573–0001, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT:

Austin L. Schmitt, Acting Director, Bureau of Trade Monitoring, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573–0001, (202) 523–5787

Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573–0001, (202) 523–5740

SUPPLEMENTARY INFORMATION: By Notice of Proposed Rulemaking published in the **Federal Register** on May 4, 1987 (52 FR 16282) pursuant to sections 15, 18(a), 21, 22, 35 and 43 of the Shipping Act, 1916 ("1916 Act"), 46 U.S.C. app. 814, 817(a), 820, 821, 833a and 841a, the Commission invited comments on a proposal to consolidate and amend its rules governing agreements in the domestic offshore trades subject to the 1916 Act. Commenters were particularly requested to address the continuing need for exemptions presently contained in 46 CFR Parts 558 and 559.

The Proposed Rule would consolidate the Commission's rules on 1916 Act agreements under one rule, designated as 46 CFR Part 560, in a manner paralleling the rules under 46 CFR Part 572 governing agreements in U.S. foreign waterborne commerce under the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. 1701 through 1720. It was also proposed that the 1916 Act rules, which were previously derived from rules primarily intended to deal with conditions in the foreign commerce, be amended to make them more compatible with conditions in the domestic offshore commerce. Among other things, the Proposed Rule would incorporate under Part 560 the exemption for credit information agreements now set forth under Part 559.

After further consideration of the issues presented by the exemption of credit information agreements from the filing and approval requirements of the 1916 Act, the Commission is requesting comment on a proposal to terminate the exemption. This Supplemental Notice of Proposed Rulemaking is being issued pursuant to section 35 of the 1916 Act, 46 U.S.C. App. 833a, among other authorities, and serves to notify all interested parties of the proposed termination of this exemption, and to give all interested parties an opportunity to be heard through the filing of written comment in accordance with section 35 of the 1916 Act.

The existing exemption for credit information agreements appears at 46 CFR 559.2(e) which states:

> *"Credit information agreement"* means an agreement between common carriers by water or their duly appointed representatives which provides only for the collection, compilation and exchange of credit experience information. Under such an agreement, the parties cannot discuss or agree on any matter which is required to be published in a tariff pursuant to the Shipping Act, 1916 or any rule published pursuant thereto.

The Commission is now further proposing via this Supplemental Notice of Proposed Rulemaking to terminate the current exemption for this class of agreements under the 1916 Act, since credit is an important factor in price competition and should be placed under regulatory scrutiny. The distinction between the sharing of credit information and the collective formation of credit policy and pricing can easily become blurred. The significance of credit information agreements to price competition would therefore appear to militate against their being exempted from the 1916 Act's filing requirements, in order that the Commission can ensure that the 1916 Act's standards are adhered to. Moreover, there would appear to be no reason to treat this class of agreements differently under the 1916 Act and the 1984 Act.

In this connection, the Commission wishes to note that it recognizes that the sharing of certain credit information is inherent in the process of forming collective credit rules generally interstitial to collective ratemaking authority. Thus, where parties already have collective ratemaking authority and wish to form a credit information agreement, depending on the contents of that agreement, they may already have all the authority they require and may not need to file an additional credit information agreement for approval.

Additionally, the Commission wishes to note that the termination of the exemption would not result in a bar to the formation of credit information agreements, but would merely require the parties to comply with the 1916 Act's filing and approval requirements.

The Commission, therefore, invites comments on the termination of the exemption of credit information agreements in the context of its pending rulemaking proposal to combine all of its rules pertaining to agreements subject to the 1916 Act under Part 560. Because this is a modification of the original proposal, the comment period in this proceeding is reopened and extended an additional thirty days after publication of this Supplemental Notice of Proposed Rulemaking in the **Federal Register** for the sole purpose of receiving comments on the credit information agreement exemption. Issuance of a Final Rule in this proceeding will be held in abeyance pending the Commission's consideration of the comments filed in response to this Supplemental Notice of Proposed Rulemaking.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 87-18203 Filed 8-10-87; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

49 CFR Part 647

[Docket No. 87-B]

Project Management Oversight

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: Section 324 of the Surface Transportation and Uniform Relocation Assistance Act of 1987, Pub. L. 100-17, effective April 2, 1987 (the Act), permits the Urban Mass Transportation Administration (UMTA) to use up to ½ of 1 percent of the funds made available in each fiscal year under UMTA's major capital programs for project management oversight of major capital projects. Section 324 also requires a grantee constructing a major capital project to prepare and, upon UMTA approval, to implement a project management plan. The section further requires that its provisions be implemented by a regulation. Accordingly, this notice of proposed rulemaking seeks comment on UMTA's proposed implementation of the requirements of section 324 of the Act.

DATE: Comments should be received by October 13, 1987.

ADDRESS: Comments should be addressed to Docket Clerk, Docket 87-B, UMTA, Department of Transportation, Room 9316, 400 7th Street, SW., Washington, DC 20590. Comments will be available for review by the public at this address from 9:00 a.m. through 5:30 p.m., Monday through Friday. Commenters wishing acknowledgement of their comments should include a stamped, self-addressed postcard with their comments. The Docket Clerk will time and date stamp the card and return it to the commenter.

FOR FURTHER INFORMATION CONTACT: For general program questions: Frank McCarron, Office of Grants Management, Room 9315, UMTA, 400 7th St., SW., Washington, DC 20590, (202) 366-2440. For legal matters: Daniel Duff, Assistant Chief Counsel, Room 9316, same address, (202) 366-4063.

SUPPLEMENTARY INFORMATION:

I. Discussion

A. Background

A few years ago the Urban Mass Transportation Administration (UMTA) reviewed the way in which it provided oversight of the construction of major

capital projects. After examining a number of other Federal and related agency oversight programs, UMTA concluded that it was important to increase its independent oversight of significant UMTA-funded projects. In light of the budget deficit, however, UMTA did not want to expand its staff to address the problem. As a result, UMTA developed a national project management oversight program for major capital projects. Under this program, UMTA assigned independent contractors, paid by and directly reporting to UMTA, to perform project management oversight functions on major capital projects. The contractors reported to UMTA staff, thus allowing UMTA to more carefully monitor significant capital projects.

The program was immediately useful to UMTA and its grantees. There were, however, significant funding problems. UMTA was not authorized to use funds from any of its major capital programs to provide for such a program, and instead had to rely on funding from its smaller research and study programs. This problem was resolved when Congress, in both the FY 1986 and FY 1987 DOT appropriation acts, authorized UMTA to use up to ½ of 1 percent of the funding available under its major capital programs in each of those fiscal years to contract directly with independent contractors for project management oversight.

In 1985, in light of the funding made available in the appropriation acts, UMTA undertook a competitive procurement. As a result, UMTA retained ten highly qualified national firms as support contractors. Currently nine of the ten contractors are actively working on fourteen separate assignments that cover twenty-three different projects. In making assignments, considerable efforts are taken to make certain that there are no real or apparent conflicts of interest between the UMTA contractors and the projects assigned to them. Once assigned to a project, the contractor monitors the grantee's overall implementation of the project and reports directly to UMTA on the grantee's general management of the project. Such reports emphasize project cost, schedule and quality.

B. Statutory Program

Because of the success and usefulness of this initiative, a project management oversight program was included in UMTA's recently enacted reauthorization legislation (the Surface Transportation and Uniform Relocation Assistance Act of 1987). Section 324 of that Act authorizes UMTA to use funds from its capital programs for project management oversight. In any fiscal year, UMTA may use up to ½ of 1 percent of the funds available under sections 3, 9, and 18 of the Urban Mass Transportation Act of 1964, as amended, 23 U.S.C. 103(e)(4) (interstate transfer—transit projects), and the National Capital Transportation Act of 1969 (the Washington, DC, Metrorail system) for project management oversight. In addition, section 324 requires a grantee constructing a major capital project to prepare a project management plan and, upon UMTA approval, to implement such plan.

Section 324 further requires UMTA to issue regulations to implement its provisions. This notice of proposed rulemaking is issued in response to that requirement.

C. The Proposed Regulation

Section 647.4 describes UMTA's authority to contract directly for project management oversight using funds from its major capital programs, and provides a 100 percent Federal share for any such contracts. In accordance with section 324 of the Act, this section also requires a grantee to provide UMTA and its contractors reasonable access to its records and construction sites. Essentially, each of these provisions reflects the way UMTA has been administering the program.

Section 647.5 reflects the language of section 324 of the Act by requiring a grantee constructing a major capital project with UMTA funds to submit a project management plan to UMTA for review and approval. The grantee will be advised during the grant approval process when its plan should be submitted to UMTA. (Section 647.5(a).) Under section 324 of the Act, UMTA must approve the grantee's plan within 60 days of submission, or explain to the grantee why additional time is required. (Section 647.5(a) (1) and (2).) If a plan is disapproved, UMTA must explain why. (Section 647.5(a)(3).) This section also provides that the grantee shall submit updates to its plan periodically as requested by UMTA. (Section 647.5(d).) These updates are to include such items as revisions to the project budget and schedule, financing, and ridership estimates.

Section 647.6 covers the contents of a grantee project management plan and reflects the elements specified in the statute. The elements, which essentially are self-explanatory, include the following components.

—Adequate recipient staff organization, complete with well-defined reporting relationships, statements of functional responsibilities, job descriptions, and job qualifications;
—A budget covering the project management organization, appropriate consultants, property acquisition, utility relocation, systems demonstration staff, audits, and such miscellaneous payments as the recipient may be prepared to justify;
—A construction schedule;
—A document control procedure and recordkeeping system;
—A change order procedure which includes a documented, systematic approach to the handling of construction change orders;
—Organizational structures, management skills, and staffing levels required throughout the construction phase;
—Quality control and quality assurance functions, procedures, and responsibilities for construction and for system installation and integration of system components;
—Materials testing policies and procedures;
—Internal plan implementation and reporting requirements;
—Criteria and procedures to be used for testing the operational system or its major components; and
—The recipient's commitment to make monthly submissions of project budget and project schedule to the Administrator.

In specifying the contents of the plan, section 324 of the Act states that the plan "* * * shall, as required in each case by the Secretary, provide for * * *." the above-listed elements. It is UMTA's view that in certain circumstances not all of these elements may be necessary or appropriate. Arguably, the language "as required in each case by the Secretary" provides some discretion to the Administrator in determining the proper contents of each plan. Section 647.6(b) thus would permit the Administrator, upon application of a grantee or on his own initiative, to waive certain requirements upon a clear showing that any of the elements are unnecessary.

Under the "Definitions" section, at § 647.3, there is one key definition that UMTA particularly seeks comment on. That definition is "major capital project," which triggers both project management oversight on the part of UMTA and the project management plan that a grantee must prepare. We have defined "major capital project" generally based on our experience with the program to date. Clearly, any new fixed guideway (i.e., a new start) or extension to a fixed guideway funded by UMTA should be subject to project

management oversight, which the first part of the definition requires. (The definition of "fixed guideway" is the same as that in section 12(c)(2) of the Urban Mass Transportation Act of 1964, as amended.) In addition, any project involving a significant expenditure of Federal funds, such as those rail modernization projects funded by UMTA that have been subject to UMTA's full funding contract concept, also is covered. (A full funding contract establishes the maximum amount of Federal funding for a project and requires a grantee to pay the rest.) In general, the cost of new start and rail modernization projects included in the definition of major capital projects will exceed $100 million.

Recognizing, however, that there may well be projects that do not meet these criteria but in fact require project management oversight, we have included a catchall provision that permits the Administrator to decide whether a particular project should be subject to the program. Any such determination would be guided by such factors as degree of difficulty of the project, its uniqueness, or past construction problems on the part of a particular grantee.

Finally, in accordance with the statute, the definition provides that it does not apply to any project which is exclusively for the acquisition of vehicles or other rolling stock, or for the performance of vehicle maintenance or rehabilitation.

It should also be pointed out that the requirements of this regulation do not affect UMTA's oversight of other projects not covered by this regulation. UMTA continues to provide oversight of its projects, particularly through the triennial review process, periodic reviews and other administrative practices.

II. Regulatory Impacts

A. Executive Order 12291

This action has been reviewed under Executive Order 12291, and it has been determined that it is not a major rule. It will not result in an annual effect on the economy of $100 million or more. Moreover, this regulation is not significant under the Department's Regulatory Policies and Procedures. UMTA finds that economic impact of this regulation is so minimal that a full regulatory evaluation is not necessary.

B. Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Pub. L. 96–354, UMTA certifies that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Act.

C. Environmental Impacts

This proposed regulation would not adversely affect the environment.

D. Paperwork Reduction Act

The collection of information requirements in this rule is subject to the Paperwork Reduction Act, Pub. L. 96–511, 44 U.S.C. Chapter 35. Section 324(e) of the Act specifically requires a grantee constructing a major capital project to prepare a plan and submit it to UMTA for approval. These requirements are reflected in this rule and are being submitted to the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB) for approval.

List of Subjects in 49 CFR Part 647

Government contracts, Grant programs—Transportation, Mass transportation.

Dated: August 5, 1987.

Alfred A. DelliBovi,

Deputy Administrator.

III. New 49 CFR Part 647

Accordingly, for the reasons described in the preamble, 49 CFR Chapter VI would be amended by adding new Part 647 to read as follows:

PART 647—PROJECT MANAGEMENT OVERSIGHT

Sec.

647.1 Purpose.
647.2 Scope.
647.3 Definitions.
647.4 Project Management Oversight.
647.5 Grantee Project Management Plan.
647.6 Contents of a Grantee Project Management Plan.

Authority: Section 324, Pub. L. 100–17, 101 Stat. 235, 49 U.S.C. 1619.

§ 647.1 Purpose.

This part implements section 324 of the Surface Transportation and Uniform Relocation Assistance Act (Pub. L. 100–17), which authorizes UMTA, by delegation of the Secretary of Transportation, to contract directly with any person to oversee construction in connection with a major capital project funded by UMTA. The rule also implements section 324 of the Act by requiring a recipient of Federal financial assistance from UMTA to prepare and carry out a project management plan in connection with a major capital project the recipient is undertaking.

§ 647.2 Scope.

This rule applies to a recipient of Federal financial assistance undertaking a major capital project using funds made available under the Urban Mass Transportation Act of 1964, as amended, 23 U.S.C. 103(e)(4), or the National Capital Transportation Act of 1969.

§ 647.3 Definitions.

As used in this part:

(a) "Act" means the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Pub. L. 100–17).

(b) "Administrator" means the Administrator of the Urban Mass Transportation Administration or the Administrator's designee.

(c) "Days" means calendar days.

(d) "Major capital project" means a project that:

(1) Involves the construction of a new fixed guideway segment, or extension of an existing fixed guideway, for use by bus or rail;

(2) Rehabilitates or modernizes an existing fixed guideway or segment of guideway pursuant to a full funding contract with UMTA; or

(3) The Administrator determines is major.

The term does not apply to any project which is exclusively for the acquisition of vehicles or other rolling stock, or for the performance of vehicle maintenance or rehabilitation.

(e) "Fixed guideway" means any public transportation facility which utilizes and occupies a separate right-of-way or rails for the exclusive use of public transportation service including, but not limited to, this fixed rail, automated guideway transit and exclusive facilities for buses and other high occupancy vehicles, and also means a public transportation facility which uses a fixed catenary system and utilizes a right-of-way useable by other forms of transportation.

(f) "Full funding contract" means an agreement between UMTA and a grantee that specifically limits the amount of Federal funding for a particular project.

(g) "UMTA" means the Urban Mass Transportation Administration.

§ 647.4 Project Management Oversight.

(a) The Administrator may use up to ½ of 1 percent of the funds made available each fiscal year under sections 3, 9, or 18 of the Urban Mass Transportation Act of 1964, as amended, 23 U.S.C. 103(e)(4), or 14(b) of the National Capital Transportation Act of 1965, to contract with any person to provide a project management oversight service in connection with a major capital project funded under any such section.

(b) Project management oversight of a major capital project by UMTA begins

as soon as practicable, preferably during the preliminary engineering stage of a project. This oversight function is administered by UMTA staff with outside contractor support as dictated by specific circumstances.

(c) A contract entered into by the Administrator with a contractor to perform project management oversight services shall provide for the payment by the Administrator of 100 percent of the cost of carrying out the contract.

(d) A grantee constructing a major capital project with UMTA funds shall provide the Administrator and contractors chosen by the Administrator such access to its records and construction sites as may reasonably be required.

§ 647.5 Grantee Project Management Plan.

(a) A grantee undertaking a major capital project with UMTA funds shall submit a project management plan, prepared in accordance with § 647.6, to the Administrator within the time period specified at the time of grant approval.

(1) The Administrator shall review and approve a plan, or modification of a previously approved plan, within 60 days of submission of a completed plan.

(2) If the plan is not approved within 60 days, the Administrator shall advise the grantee how much additional time will be required to complete the review and what changes, if any, are necessary.

(3) If the Administrator disapproves the plan, the Administrator will inform the grantee of the reasons for such disapproval.

(b) Upon approval of the plan by the Administrator, the grantee shall implement the plan.

(c) If an approved plan requires substantial modification, the grantee shall submit the proposed changes, with an explanation, to the Administrator.

(d) The grantee shall submit periodic updates to the project management plan. Such updates shall include, but not be limited to:

(1) Project budget;

(2) Project schedule;

(3) Financing;

(4) Ridership estimates; and

(5) Where applicable, the status of local efforts to enhance ridership when estimates are contingent, in part, upon the success of such efforts.

(e) The grantee shall submit to the Administrator on a monthly basis current data on the project's budget and schedule on a monthly basis.

§ 647.6 Contents of a Grantee Project Management Plan.

(a) Except as provided in paragraph (b) of this section, a grantee's project management plan shall include:

(1) Adequate recipient staff organization, complete with well-defined reporting relationships, statements of functional responsibilities, job descriptions, and job qualifications;

(2) A budget covering the project management organization, appropriate consultants, property acquisition, utility relocation, systems demonstration staff, audits, and such miscellaneous payments as the recipient may be prepared to justify;

(3) A construction schedule;

(4) A document control procedure and recordkeeping system;

(5) A change order procedure which includes a documented, systematic approach to the handling of construction change orders;

(6) Organizational structures, management skills, and staffing levels required throughout the construction phase;

(7) Quality control and quality assurance functions, procedures, and responsibilities for construction and for system installation and integration of system components;

(8) Materials testing policies and procedures;

(9) Internal plan implementation and reporting requirements;

(10) Criteria and procedures to be used for testing the operational system or its major components;

(11) The recipient's commitment to make monthly submissions of project budget and project schedule to the Administrator.

(b) Upon the request of a grantee, or on his own initiative, the Administrator may waive any of the elements in paragraph (a) of this section that the Administrator deems are not necessary for a particular plan.

[FR Doc. 87-18132 Filed 8-10-87; 8:45 am]
BILLING CODE 4910-57-M

Notices

Federal Register
Vol. 52, No. 154
Tuesday, August 11, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration.
Title: Statement by Ultimate Consignee and Purchaser.
Form Number: Agency—ITA–629P, EAR 375.2; OMB—0625–0136.
Type of Request: Extension of the expiration date of a currently approved collection.
Burden: 38,000 respondents; 19,633 reporting/recordkeeping hours.
Needs and Uses: Through the use of Form ITA–629P, the foreign consignee and or purchaser is required to provide information regarding the disposition of the licensed commodities and technology. The information is used by the Export Administration to determine whether or not the commodities are appropriate for the ultimate consignees stated end-use. In the event of a diversion, Export Administration also uses the information as a means to revoke or deny future export privileges.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations.
Frequency: On occasion/recordkeeping.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: John Griffen, 395–7340.

Agency: International Trade Administration.
Title: Swedish Consignee's Letter of Assurance.
Form Number: Agency—EAR 372.5; OMB—0625–0142.
Type of Request: Extension of the expiration date of a currently approved collection.
Burden: 300 respondents; 160 reporting/recordkeeping hours.
Needs and Uses: The United States is concerned that reexports of U.S. commodities/technology may fall into undesirable hands, and be diverted to the Soviet Union. Export Administration needs assurance that consignees in Sweden have a record of compliance with the Export Administration Act. The end-use assurances are needed due to the fact that Sweden does not unilaterally control the transit of non-Swedish origin commodities. Prelicense checks are conducted by diplomatic staff in some instances. The U.S. exporter, however, can request his Swedish customers to affirm that they will uphold the Export Administration requirements and agree to provide information on the disposition of U.S. licensed goods.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations.
Frequency: On occasion/recordkeeping.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: John Griffen, 395–7340.

Agency: International Trade Administration.
Title: Record of Validated License Shipments.
Form Number: Agency—EAR 386.2(d); OMB—0625–0051.
Type of Request: Extension of the expiration date of a currently approved collection.
Burden: 80,000 respondents; 6,666 reporting/recordkeeping hours.
Needs and Uses: Through the Record of Validated License Shipments procedure, the U.S. export license holder must supply information regarding the disposition of the licensed commodities and technology. The purpose of this procedure is to prevent shipments to unauthorized destinations.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations.
Frequency: On occasion/recordkeeping.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: John Griffen, 395–7340.

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NE., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to John Griffen, OMB Desk Officer, Room 3228, New Executive Office Building, Washington, DC 20503.

Dated: August 5, 1987.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87–18188 Filed 8–10–87; 8:45 am]

BILLING CODE 3510–CW–M

Foreign-Trade Zones Board

[Order No. 362]

Approval of Extension of Manufacturing Authority For the Berg Steel Pipe Corporation Operation in Foreign-Trade Zone 65, Panama City, FL

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board (the Board) adopts the following order:

Whereas, the Panama City Port Authority (PCPA), Grantee of Foreign-Trade Zone (FTZ) 65, has applied to the Board for an extension of Berg Steel Pipe Corporation's (BSPC) authority to use zone procedures for its steel pipe manufacturing operations at its plant in FTZ 65;

Whereas, the application was accepted for filing on June 27, 1986, and notice inviting public comment was given in the **Federal Register** on July 11, 1986 (Docket No. 23–86, 51 FR 25225);

Whereas, BSPC was given authority to manufacture pipe in FTZ 65 for a limited time ending March 1, 1987, when the zone was approved in 1981 (Board Order 171, 46 FR 8072);

Whereas, BSPC's authority was temporarily extended to August 31, 1987 (Board Order 345, 52 FR 7286);

Whereas, BSPC has made a commitment to purchase only domestic steel and foreign steel licensed under

the President's Steel Program while the program is in effect;

Whereas, the examiners committee which investigated the application has found that the proposal would be in the public interest provided that approval is given for a limited time; and,

Whereas, the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations would be satisfied, and that approval of the application would be in the public interest, provided that approval is subject to a time limit extending one year beyond the present expiration of the President's Steel Program;

Now, therefore, the Board hereby orders:

That BSPC is authorized to use zone procedures for its steel pipe manufacturing operations in FTZ 65 for a period ending September 30, 1990. The authority given in this Order is subject to settlement locally by the District Director of Customs and the District Army Engineer regarding compliance with their respective requirements relating to foreign-trade zones.

Signed at Washington, DC, this 31st day of July 1987.

Paul Freedenberg,

Assistant Secretary of Commerce for Trade Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 87-18231 Filed 8-10-87; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. 8-87]

Application for Subzone for U.S. Shoe Corporation Plant; Foreign-Trade Zone 46; Cincinnati, OH

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Cincinnati Foreign-Trade Zone, Inc., grantee of FTZ 46, requesting special-purpose subzone status for the storage and distribution facilities of U.S. Shoe Corporation in Cincinnati, Ohio, within the Cincinnati Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on July 17, 1987.

U.S. Shoe is a retailing and footwear manufacturing firm with 1985 sales of $1.9 billion. Headquartered in Cincinnati, it has 16 footwear manufacturing plants in 7 states.

The proposed subzone is for the company's primary raw material and finished product storage and distribution center, covering 15 acres at Eastwood and Kingsley Drives, Cincinnati. Raw materials for footwear production are received, stored, and distributed to U.S. manufacturing plants. Some 35 percent of the materials are sourced abroad. The facility also receives finished footwear from the company's production plants and directly from abroad for distribution in the U.S. and abroad. These operations employ close to 300 persons.

No manufacturing approvals are being sought. Zone procedures will allow the company to defer duty payment on the raw materials and finished footwear sourced abroad. Zone savings will contribute to the company's overall cost reduction program, improving its international competitiveness.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; John F. Nelson, District Director, U.S. Customs Service, North Central Region, 6th Floor, Plaza Nine Bldg., 55 Erieview Plaza, Cleveland, OH 44114; and Colonel Robert L. Oliver, District Engineer, U.S. Army Engineer District Louisville, P.O. Box 59, Louisville, KY 40201.

Comments concerning the proposed subzone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before September 18, 1987.

A copy of the application is available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, 9504 Federal Office Building, 550 Main Street, Cincinnati, OH 45202

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania, NW., Washington, DC 20230

Dated: August 5, 1987.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 87-18232 Filed 8-10-87; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Export Trade Certificate of Review; Gerhardt Holding Co., Inc.

Editorial Note.—In the issue of July 8, 1987, on pages 25621 and 25622, a notice of export trade certificate of review (Application No. 86-00011) was inadvertently printed twice and the following notice was omitted.

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of application for an amendment to an export trade certificate of review.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an amendment to an Export Trade Certificate of Review. This notice summarizes the amendment and requests comments relevant to whether the certificate should be amended.

FOR FURTHER INFORMATION CONTACT: George Muller, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A certificate of review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Reviews, application number 84-A0024."

OETCA has received the following application for an amendment to Export Trade Certificate of Review #84-00024, which was issued on September 20, 1984 (49 FR 37821, September 26, 1984 and 49

FR 38964, October 2, 1984) and amended effective July 15, 1985 (50 FR 36126, September 5, 1985).

Applicant: Gerhardt Holding Company, Inc., 819 Central Avenue, P.O. Box 10161, Jefferson (New Orleans), Louisiana 70161

Application #: 84–A0024

Date Deemed Submitted: June 22, 1987.

Members (in addition to applicant):

Gerhardt's, Inc., Jefferson (New Orleans), LA

Gerhardt's, Inc., Houston, TX

Gerhardt's, International, Inc., Houston, TX

Gerhardt's, Inc., Odessa, TX

Gerhardt's, Inc., Ventura, CA

Gerhardt's S.A. de C.V., Tlalnepantla, Mexico

Summary of the Application

Gerhardt's, Inc., of Louisiana was issued an export trade certificate of review on September 20, 1984 (Application #84–00024) (49 FR 37821, September 26, 1984 and 49 FR 38964, October 2, 1984) and an amended certificate effective July 15, 1985 (Application #84–00024) (50 FR 36126, September 5, 1985). Members of its certificate currently are: Gerhardt's, Inc. (Houston, TX); Gerhardt's, Inc. (Odessa, TX); and Gerhardt's International, Inc. (Houston, TX).

Gerhardt's Holding Company, Inc. seeks to amend the certificate for Gerhardt's, Inc. of Louisiana to make the following changes:

1. The certificate holder will be changed from Gerhardt's, Inc. to its controlling entity, Gerhardt Holding Company, Inc.

2. Gerhardt's, Inc. of Louisiana is no longer the certificate holder and will be added as a "Member" of the certificate.

3. Gerhardt's, Inc. of California and Gerhardt S.A. de C.V. of Mexico will be added as "Members" of the certificate.

4. "Taking title to goods" will be added to "Export-Related Services" under "Export Trade".

5. Under "Export Trade Activities and Methods of Operation," Gerhardt Holding Company, Inc. seeks certification to establish the resale price of Products in Export Trade.

Date: June 30, 1987.

George Muller,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 87–15434 Filed 7–7–87; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

[Modification No. 1 to Permit No. 552]

Marine Mammals; Permit Modification; Dr. Gerald L. Kooyman

Notice is hereby given that pursuant to the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Scientific Research Permit No. 552 issued to Dr. Gerald L. Kooyman, Physiological Research Laboratory, Scripps Institution of Oceanography, University of California, La Jolla, California 92093, is modified as follows:

Section A is deleted and replaced by:

A. Numbers and Kinds of Marine Mammals

The following species shall be obtained from beached/stranded rehabilitated or captive born stocks:

1. Up to 10 harbor seals (*Phoca vitulina*) of which seven (7) may be used in open physiological studies and released at the conclusion of the experiments provided they meet the criteria in Special Conditions B.3 and 8.

2. Up to 15 California sea lions (*Zalophus californianus*) of which five (5) may be used in open ocean work may be released if they meet the criteria in Special Conditions B.3 and 8."

Section B.1 is Deleted and Replaced by

1. The research shall be conducted by the means and for the purposes set forth in the Application and Modification request.

Section B.3 is Deleted and Replaced by

3. Animals authorized for release into the open ocean must appear robust and able to adopt to feeding in the wild. All other animals no longer needed for research shall be returned to the facility from which they were obtained if that facility has agreed to the return. The return of animals to other than the source facility shall be coordinated through the Stranding Coordinator, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415 (213/514–6196).

Section B.8 Through B.11 are Added

8. Animals which can not be used for open ocean studies are:

a. Beached/stranded animals that have been determined "unreasonable" by the authority at the facility in which they were rehabilitated; and

b. Captive born animals.

9. The Permit Holder must make arrangements for visual monitoring of the animals for at least 30 days post-release or escape to determine whether and how the animals are readapting to the wild.

10. Every feasible effort shall be made to recover, treat, and provide for any released/escaped animals that show signs of aberrant behavior, stress, or starvation as a result of their inability to readapt to the wild. If necessary to ensure the well-being of animals, such efforts should include making arrangements for captive maintenance.

11. The annual report of activities required by Special Condition B.5 should include the results of post-release monitoring, particularly in regard to its background with respect to human contact.

This Modification becomes effective on August 5, 1987.

The Permit, as modified, is available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Room 805, Washington, DC; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415.

Dated: July 31, 1987.

Nancy Foster,

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 87–18194 Filed 8–10–87; 8:45 am]

BILLING CODE 3510-22-M

[P77#27]

Marine Mammals; Issuance of Permit; Southwest Fisheries Center National Marine Fisheries Service

On April 15, 1987, notice was published in the **Federal Register** (52 FR 12227) that an application had been filed by the Southwest Fisheries Center, National Marine Fisheries Service, to take harbor seals (*Phoca vitulina*) for scientific research.

Notice is hereby given that on August 4, 1987, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 through 1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine

BEST COPY AVAILABLE

Fisheries Service, 1825 Connecticut Avenue, NW., Room 805, Washington DC; and
Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415.

Dated: August 4, 1987.

Nancy Foster,
Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 87–18195 Filed 8–10–87; 8:45 am]
BILLING CODE 3510-22-M

Coastal Zone Management Federal, Consistency Appeal by Exxon Company, U.S.A. From an Objection by the California Coastal Commission

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of stay.

On July 31, 1987, the Acting Secretary of Commerce issued an Order granting a stay in the Federal consistency appeal of Exxon Company, U.S.A. Exxon's appeal is taken from an objection by the California Coastal Commission (Commission) to Exxon's proposed expanded development and production from the Santa Ynez Unit (SYU) pursuant to its offshore option.

In a letter dated June 2, 1987, the Chairman of the County of Santa Barbara Board of Supervisors (County) requested that the Secretary stay the appeal to allow the permitting by the County of a modified onshore option. Both Exxon and the Attorney General for the State of California, on behalf of the Commission, endorsed the County's request for a stay.

The Order stays the proceedings indefinitely pending the issuance of permits for the modified onshore option. The Order provides that the Secretary will lift the stay upon request by any party informing the Secretary that the timely permitting of the modified onshore option with acceptable conditions is unlikely to occur.

FOR ADDITIONAL INFORMATION CONTACT: Katherine A. Pease, Assistant General Counsel for Ocean Services, Office of General Counsel, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC 20235 (202) 673–5200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Dated: August 6, 1987.

James W. Brennan,
Acting General Counsel.

[FR Doc. 87–18190 Filed 8–10–87; 8:45 am]
BILLING CODE 3510-08-M

Patent and Trademark Office

Special Status for Patent Applications Relating to Superconductivity

In his Remarks of July 28, 1987, to the Federal Conference On Commercial Applications Of Superconductivity, the President stated that "We need to strengthen patent laws to increase protection for manufacturing processes and speed up the patent process so that it can keep pace with the fast-paced world of high technology." The President also noted that "to most of us laymen, superconductivity was a completely new term, but it wasn't long before we learned of the great promise it held out to alter our world for the better—a quantum leap in energy efficiency that would bring with it a host of benefits, not least among them a reduced dependence on foreign oil, a cleaner environment, and a stronger national economy." The President's Superconductivity Initiative of even date included, as a major administrative component, a proposal "Directing the Patent and Trademark Office to accelerate the processing of patent applications and adjudication of disputes involving superconductivity technologies when requested by the applicants to do so."

In accordance with the President's proposal, the Patent and Trademark Office will, on request, accord "special" status to all patent applications for inventions involving superconductive materials. Examples of such inventions would include those directed to the superconductive materials themselves as well as to their manufacture and application. In order that the Patent and Trademark Office may implement this procedure, we invite all applicants, desiring to participate in this program to request that their applications be accorded "special" status. Such requests should be in writing, should identify the application by serial number and filing date, and should be accompanied by a statement under 37 CFR 1.102 that the invention involves superconductive materials. No fee is required. The statement must be the Patent and Trademark Office. Decisions whether to accord "special" status on the basis of a request will be made by the appropriate Group Director.

Requests should be addressed to the Commissioner of Patents and Trademarks, Washington, DC 20231.

Dated: August 5, 1987.

Donald J. Quigg,
Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 87–18209 Filed 8–10–87; 8:45 am]
BILLING CODE 3510-16-M

COMMISSION ON MERCHANT MARINE AND DEFENSE

Meeting

Summary: The Commission on Merchant Marine and Defense was established by Pub. L. 98–525 (as amended), and the Commission was constituted in December 1986. The Commission's mandate is to study and report on problems relating to transportation of cargo and personnel for national defense purposes in time of war or national emergency, the capability of the Merchant Marine to meet the need for such transportation, and the adequacy of the shipbuilding mobilization base to support naval and merchant ship construction. In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the Commission announces the following meeting:

Dates and times: Monday, August 17, 1987; Beginning 9:00 a.m.; Tuesday, August 18, 1987, Beginning 9:00 a.m.; Wednesday, August 19, 1987, Beginning 9:00 a.m.

Place: Suite 520 4401 Ford Avenue, Alexandria, Virginia, 22301–0268;

Type of meeting: Closed.

Contact person: Allan W. Cameron, Executive Director, Commission on Merchant Marine and Defense, Suite 520, 4401 Ford Avenue, Alexandria, Virginia 22301–0268, Telephone (202) 756–0411.

Purpose of meeting: To receive

additional information pertaining to the needs of the national defense for the Merchant Marine and the shipbuilding industry, and to discuss and to deliberate facts and opinions obtained from briefing and public hearings.

Supplementary information: The executive meetings of the Commission will be closed to the public pursuant to 5 U.S.C. 552b(c)(1) and 552b(c)(9) in the interests of national security and to protect proprietary information provided to the Commission in confidence.

Allan W. Cameron,

Executive Director, Commission on Merchant Marine and Defense.

[FR Doc. 87-18160 Filed 8-10-87; 8:45 am]

BILLING CODE 3820-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

August 7th, 1987.

The USAF Scientific Advisory Board Ad Hoc Committee on Minuteman III Penetration Aids will meet from August 26th through 28th, 1987, at the Pentagon, Washington, DC from 8:00 am to 5:00 pm each day. The purpose of the meeting is to review, discuss and evaluate the effectiveness of penetration aids being developed for the Minuteman III ICBM.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202-697-4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 87-18448 Filed 8-10-87; 11:13 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.023]

Invitation of Applications for New Awards for Fiscal Year 1988

Title of Program: Research in Education of the Handicapped.

Purpose: To assist research and related purposes, and to conduct research, surveys, or demonstrations, relating to the education of handicapped children.

Applications Available: August 21, 1987.

Applicable Regulations: (a) The Research in Education of the Handicapped Program Regulations, 34 CFR Part 324, (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, and 78, and (c) the Biennial-Funding Priorities published in the **Federal Register** on March 10, 1987 at 52 FR 7386.

Priorities: The Secretary announces, pursuant to 34 CFR 75.105(c)(3), 34 CFR 324.30, and the Biennial-Funding Priorities noted above, the following prorities for fiscal year 1988. The Secretary will give an absolute preference to applications that meet any of these priorities.

Field-Initiated Research Projects

This priority provides support for a broad range of field-initiated research projects focusing on the education of handicapped children and youth consistent with the purpose of the program as stated in 34 CFR 324.1.

Student-Initiated Research Projects

This priority provides support to postsecondary students to initiate and direct a broad range of research and research-related projects focusing on the education of handicapped children consistent with the purpose of the program as stated in 34 CFR 324.1.

Home and School Cooperation in Social and Motivational Development

This priority supports research projects that identify strategies and students in the elementary grades. Projects must explore practices and experiences at home, in school, and in the community that result in the development of self-esteem, feelings of self-confidence and independence which have been found to be related to the achievement of handicapped students. Projects must research the cooperative involvement of parents, educational personnel, and guidance and other related service personnel in planning and implementing those strategies and experiences. Applications submitted under this priority must provide a conceptual framework, based on previous research, that shows the hypothesized relationships between the home, school, and community practices and experiences to be studied and the development of self-esteem, self-confidence, and independence by handicapped students. Procedures and instruments that will be used to measure self-esteem, self-confidence, and independence must also be specified.

For Applications or Information Contact: Linda Glidewell, U.S. Department of Education, Office of Special Education Programs, Division of Innovation and development, 400 Maryland Avenue SW., (Switzer Building, Room 3094-M/S 2313), Washington, DC 20202. Telephone: (202) 732-1099.

Program Authority: 20 U.S.C. 1441-1444.

Supplementary Information and Requirements: None.

Dated: August 6, 1987.

Madeleine Will,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

APPLICATION NOTICES FOR FISCAL YEAR 1988

Title and CFDA No.	Deadline for transmittal of applications	Available funds	Estimated range of awards	Estimated size of awards	Estimated number of awards	Project period in months
Field—Initiated Research Projects (CFDA No. 84.023C1)	10/09/87	$2,000,000	$30,000-$150,000	$100,000	20	Up to 60.
Student—Initiated Research Projects (CFDA No. 84.023B1)	02/16/88	$150,000	$3,000-$12,000	$8,000	20	Up to 18.
Home and School Cooperation in Social and Motivational Development (CFDA No. 84.023T1).	10/30/87	$1,050,000	$140,000-$160,000	$150,000	7	Up to 48.

[FR Doc. 87-18221 Filed 8-10-87; 8:45 am]

BILLING CODE 4000-01-M

[Program (CFDA No.: 84.167)]

Invitation of Applications for New Awards Under the Library Literacy

Purpose: Provides grants not to exceed $25,000 each to State and local public libraries to support literacy projects.

Deadline for Transmittal of Applications: November 20, 1987.

Deadline for Intergovernmental Review Comments: January 20, 1988.

Applications Available: September 18, 1987.

Available Funds: The Administration's budget request for fiscal year 1988 does not include funds for this program. However, applications are being invited to allow sufficient time to evaluate applications and complete the grant process before the end of the fiscal year, should the Congress appropriate funds for this program.

Estimated Average Size of Awards: $20,000.

Estimated Number of Awards: 250.

Project Period: 12 months.

Applicable Regulations: (a) The Library Services and Construction Act Library Literacy Program Regulations, 34 CFR Part 769, and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 79.

For Applications or Information Contact: Frank A. Stevens, Director, Library Development Staff, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 402L, Washington, DC 20208–1430. Telephone (202) 357–6315.

Program Authority: 20 U.S.C. 351 *et seq.*

Dated: August 6, 1987.

Ronald P. Preston,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 87–18179 Filed 8–10–87; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No: 84.163A]

Invitation of Applications for New Awards Under the Library Services and Construction Act Basic Grants to Indian Tribes and Hawaiian Natives Program for Fiscal Year 1988

Purpose: Provides basic grants to eligible Indian tribes and to eligible Hawaiian native organizations to establish or improve public library services for Indian tribes and Hawaiian natives.

Deadline for Transmittal of Applications: October 15, 1987.

Deadline for Intergovernmental Review Comments: December 14, 1987.

Applications Available: August 31, 1987.

Available Funds: The Administration's budget request for fiscal year 1988 does not include funds for this program. However, applications are being invited to allow sufficient time to evaluate applications and complete the grant process before the end of the fiscal year, should the Congress appropriate funds for this program.

Estimated Average Size of Awards: $3,700. (Actual amount to be determined by final appropriation.)

Estimated Number of Awards: 200.

Project Period: 12 months.

Applicable Regulations: (a) The Library Services and Construction Act Basic Grants to Indian Tribes and Hawaiian Natives Program Regulations, 34 CFR Part 771, and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 79.

For Applications or Information Contact: Frank A. Stevens, Director, Library Development Staff, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 402M, Washington, DC 20208–1430. Telephone (202) 357–6315.

Program Authority: 20 U.S.C. 351 *et seq.*

Dated: August 6, 1987.

Ronald P. Preston,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 87–18180 Filed 8–10–87; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No.: 84.163B]

Invitation of Applications for New Awards Under the Library Services and Construction Act Special Projects Grants to Indian Tribes and Hawaiian Natives Program for Fiscal Year 1988

Purpose: With funds remaining after Basic Grants are awarded, the program provides discretionary grants to eligible Indian tribes and to eligible Hawaiian native organizations to establish or improve public library services for Indians and Hawaiian natives.

Deadline for Transmittal of Applications: May 6, 1988.

Deadline for Intergovernmental Review Comments: July 5, 1988.

Applications Available: March 14, 1988.

Available Funds: The Administration's budget request for fiscal year 1988 does not include funds for this program. However, applications are being invited to allow sufficient time to evaluate applications and complete the grant process before the end of the fiscal year, should the Congress appropriate funds for this program.

Estimated Average Size of Award: $67,000.

Estimated Number of Awards: 17.

Project Period: 12 months.

Applicable Regulations: (a) The Library Services and Construction Act Special Projects Grants to Indian Tribes and Hawaiian Natives Program Regulations, 34 CFR Part 772, and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 79.

For Applications or Information Contact: Frank A. Stevens, Director, Library Development Staff, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 402M, Washington, DC 20208–1430. Telephone: (202) 357–6315.

Program Authority: 20 U.S.C. 351 *et seq.*

Dated: August 6, 1987.

Ronald P. Preston,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 87–18181 Filed 8–10–87; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Morgantown Energy Technology Center; Financial Assistance Award to the State of Alaska (Grant)

AGENCY: U.S. Department of Energy (DOE), Morgantown Energy Technology Center.

ACTION: Notice of restriction of eligibility for grant award.

SUMMARY: The DOE, Morgantown Energy Technology Center, in accordance with 10 CFR 600.7(b), gives notice of its plans to award a 12-month grant to the State of Alaska, Department of Natural Resources, Division of Geological and Geophysical Surveys, in the amount of $91,800 on a 45/55 cost-shared basis.

The DOE has determined that restriction to the State of Alaska is appropriate based upon the following information:

The DOE and the State of Alaska have entered into an agreement relating to fossil energy resource characterization, research and technology development, and technology transfer to advance the application of new technologies to the Alaskan reserves of crude oil, natural gas, heavy oil, tar sand oil, coal, shale oil, methane hydrates, and peat, and may include scientific activities and investigations of underlying environmental concerns.

This project will focus on research to develop an on-line North Slope bibliography. The on-line North Slope bibliography will consist of a computerized bibliographic listing of all pertinent geologic literature for the North Slope of Alaska, including Arctic National Wildlife Refuge. This bibliography will list geologic literature by author, subject, geographic area, or other specified search-and-retrieval criteria. The resulting list of references will be readily available on-line or as a conventional hard copy document and will benefit all parties interested in issues relevant to the area.

These activities to research the application of new technologies to the arctic fossil energy reserves are in furtherance of the DOE mission and the Alaskan objectives to ensure a

continued supply of fossil fuels to the consumer in a safe, economic and environmentally acceptable manner. Since the State of Alaska has been charged with research in support of Alaska resource development, has an ongoing program (facilities, equipment and personnel), and is an integral part of the Alaskan infrastructure involved in resources recovery issues, it is uniquely qualified to carry out the work under this grant. Therefore, it has been determined that it is appropriate to award this grant to the State of Alaska on a restricted eligibility basis.

FOR FURTHER INFORMATION CONTACT: Brenda L. Summers, I–07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507–0880, Telephone: (304) 291–4340, Procurement Request No. 21–87MC24052.000.

Ronald E. Cone,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

Dated: July 23, 1987.

[FR Doc. 87–18223 Filed 8–10–87; 8:45 am]

BILLING CODE 6405–10–M

Morgantown Energy Technology Center; Financial Assistance Award to the University of Alaska (Grant)

AGENCY: U.S. Department of Energy (DOE), Morgantown Energy Technology Center.

ACTION: Notice of restriction of eligibility for grant award.

SUMMARY: The DOE, Morgantown Energy Technology Center, in accordance with 10 CFR 600.7(b), gives notice of its plans to award a 12-month grant to the University of Alaska in the amount of $50,000 on a 50/50 cost-sharing basis.

The DOE has determined that restriction to the University of Alaska is appropiate based upon the following information:

The DOE and the State of Alaska have entered into an agreement relating to fossil energy resource characterization, research and technology development, and technology transfer to advance the application of new technology to the Alaskan reserves of crude oil, natural gas, heavy oil, tar sand oil, coal, shale oil, methane hydrates, and peat, and may include scientific activities and investigations of underlying environmental concerns. The University of Alaska has been designated in the agreement as a unit of the State for purposes of activities that may be conducted under this agreement.

This project will focus on research to assess and characterize the extent of natural gas in the arctic, and compare the technology, environmental, and economic issues associated with options for Alaskan natural gas use and conversion for assimilation into a meaningful development strategy.

These activities to research the application of new technologies to the arctic fossil energy reserves are in furtherance of the DOE mission and the Alaskan objectives to ensure a continued supply of fossil fuels to the consumer in a safe, economic and environmentally acceptable manner. Since the University of Alaska has been charged with research in support of Alaska resource development, has an ongoing program (facilities, equipment and personnel), and is an integral part of the Alaskan infrastructure involved in resources recovery issues, it is uniquely qualified to carry out the work under this grant. Therefore, it has been determined that, in cooperation with the State of Alaska, it is appropriate to award this grant to the University of Alaska on a restricted eligibility basis.

FOR FURTHER INFORMATION CONTACT: Brenda L. Summers, I–07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507–0880, Telephone: (304) 291–4340, Procurement Request No. 21–87MC24219.000.

Ronald E. Cone,

Director, Acquisition and Assistance Division, Mortantown Energy Technology Center.

Date: July 23, 1987.

[FR Doc. 87–18224 Filed 8–10–87; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[Docket No. ERA C&E 87–58; Certification Notice—3]

Filing of Certification of Compliance; Coal Capability of New Electric Powerplants Pursuant to Provisions of the Powerplant and Industrial Fuel Use Act, as Amended; Central Jersey Energy Associates, Ltd., et al.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (section 201(a)). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d) to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. Thirteen owners or operators of proposed new electric base load powerplants have filed self certifications in accordance with section (d). Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION: The following companies filed self certifications:

Name	Date received	Type facility	Megawatt capacity	Location
Central Jersey Energy Associates, Ltd., Windsor, NJ	7–27–87	Combined Cycle	280	Windsor, NJ.
Gordonsville Energy Associates, Gordonsville, VA	7–27–87	Combined Cycle	300	Gordonsville, VA.
North Jersey Energy Associates, Ltd., Sayreville, NJ	7–27–87	Combined Cycle	140	Sayreville, NJ.
Central Virginia Energy Associates, Mechanicsville, VA	7–27–87	Combined Cycle	300	Mechanicsville, VA.
South Virginia Energy Associates, Glen Allen, VA	7–27–87	Combined Cycle	260	Glen Allen, VA.
North Virginia Energy Associates, Manassas, VA	7–27–87	Combined Cycle	420	Manassas, VA.

Name	Date received	Type facility	Megawatt capacity	Location
Howell Energy Associates, Howell, NJ	7-27-87	Combined Cycle	140	Howell, NJ.
Fredericksburg Energy Associates, Fredericksburg, VA	7-27-87	Combined Cycle	300	Fredericksburg, VA.
Northeast Energy Associates, Bellingham, MA	7-27-87	Combined Cycle	280	Bellingham, MA.
South Jersey Energy Associates, Williamstown, NJ	7-27-87	Combined Cycle	140	Williamstown, NJ.
International Paper Company, Oswego, NY	7-28-87	Combined Cycle	50	Oswego, NY.
International Paper Company, Corinth, NY	7-25-87	Combined Cycle	40	Corinth, NY.
[illegible] Cogen, Bethpage, NY	7-24-87	Combined Cycle	50	Bethpage, NY.

Amendments to FUA on May 22, 1987 (Pub. L. 100–42) altered the general prohibitions to include only new electric baseload powerplants and to provide for the self certification procedure. Pertinent provisions are restated in the appendix to this notice.

Issued in Washington, DC, on August 3, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

Appendix—"Sec. 201. Coal Capability of New Electric Powerplants: Certification of Compliance

(a) General Prohibitions

Except to such extent as may be authorized under subtitle B, no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source.

(b) Capability To Use Coal or Alternate Fuel

An electric powerplant has the capability to use coal or another alternate fuel for purposes of this section if such electric powerplant—

(1) Has sufficient inherent design characteristics to permit the addition of equipment (including all necessary pollution devices) necessary to render such electric powerplant capable of using coal or another alternate fuel as its primary energy source; and

(2) Is not physically, structurally, or technologically precluded from using coal or another alternate fuel as its primary energy source.

Capability to use coal or another alternate fuel shall not be interpreted to require any such powerplant to be immediately able to use coal or another alternate fuel as its primary energy source on its initial day of operation.

(c) Applicability To Base Load Powerplants

(1) This section shall apply only to base load powerplants, and shall not apply to peakload powerplants or intermediate load powerplants.

(2) For the purposes of this section, hours of electrical generation pursuant to emergency situations, as defined by the Secretary and reported to the Secretary, shall not be included in a determination of whether a powerplant is being operated as a base load powerplant.

(d) Self-Certification

(1) In order to meet the requirement of subsection (a), the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source shall certify to the Secretary prior to construction or prior to operation as a base load powerplant in the case of a new electric powerplant operated as a peakload powerplant or intermediate load powerplant, that such powerplant has capability to use coal or another alternate fuel, within the meaning of subsection (b).

Such certification shall be effective to establish compliance with the requirement of subsection (a) as the date it is filed with the Secretary. Within 15 days after receipt of a certification submitted pursuant to this paragraph, the Secretary shall publish in the **Federal Register** a notice reciting that the certification has been filed.

(2) The Secretary within 60 days after the filing of a certification under paragraph (1), may require the owner or operator of such powerplant to provide such supporting documents as may be necessary to verify the certification".

[FR Doc. 87–18186 Filed 8–10–87; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 86–43–NG]

Order Granting Authorization To Import Natural Gas; Granite State Gas Transmission, Inc.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of order granting authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Granite State Gas Transmission, Inc. (Granite State), an authorization to import Canadian natural gas. The import authorization allows Granite State to import up to 25,000 Mcf of Canadian natural gas per day on an interruptible, best-efforts basis from November 1, 1987, through October 31, 1988. Beginning on November 1, 1988, and extending through March 31, 1999, the import authorization allows Granite State to increase its imports to a total of 40,000 Mcf of natural gas per day, with up to 25,000 Mcf per day on a firm basis and an additional daily quantity of up to 15,000 Mcf on an interruptible basis.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA–076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 5, 1987.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87–18225 Filed 8–10–87; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. ER87–552–000]

Notice of Filing; Commonwealth Edison Co.

August 5, 1987.

Take notice that Commonwealth Edison Company on July 30, 1987 tendered for filing proposed changes in its FERC Electric Service Tariff Rate 79A.

The Company states that the filing is required to comply with the provisions of a previously approved Electric Service Contract with the City of Rochelle. Because the City of Rochelle is a partial requirements customer and is not dependent upon the Company for its entire electric supply, it is impossible to predict the increase in revenue resulting from the proposed rate schedule. However, based upon actual firm energy supplied to the City of Rochelle for the 12 months ended June 1987, increased

rate effective October 1, 1987 will result in increased annual revenues of approximately $13,488.

Copies of the filing were served upon the City of Rochelle and the Illinois Commerce Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 18, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18169 Filed 8-10-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER87-551-000]

Notice of Filing; Florida Power & Light Co.

August 5, 1987.

Take notice that on July 30, 1987, Florida Power & Light Company (FPL) tendered for filing an agreement entitled Stanton Test Energy Transmission Service Agreement Between Florida Power & Light Company and the Florida Municipal Power Agency (Stanton Test Energy Agreement).

Under the Stanton Test Energy Agreement FPL has agreed to provide transmission service on an if and when available basis for each specified Florida Municipal Power Agency (FMPA) Participating Member in order for that FMPA Participating Member to receive its proportionate share of test energy from the Stanton No. 1 which Orlando Utilities Commission (OUC) banked for such FMPA Participating Members' accounts during the testing period of Stanton No. 1.

The FMPA Participating Members are the City of Homestead, Florida; Fort Pierce Utilities Authority; City of Lake Worth, Florida; City of Starke, Florida; City of Vero Beach, Florida; and Utility Board of the City of Key West, Florida.

FMPA has requested service under the Stanton Test Energy Agreement to commence on July 11, 1987. FPL, therefore, requests a waiver of Section 35.3 of the Commission's Regulations and that the Stanton Test Energy Agreement be made effective on July 11, 1987. Accordingly, FPL is authorized to represent that FMPA supports this request for a waiver.

Copies of the filing were served upon FMPA, the FMPA Participating Members and the Florida Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 18, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18170 Filed 8-10-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER87-553-000]

Notice of Filing; Florida Power & Light Co.

August 5, 1987.

Take notice that on July 31, 1987, Florida Power & Light Company (FPL) tendered for filing a revised Attachment A to each of the respective Agreements entitled: (1) Stanton Transmission Service Agreement Between Florida Power & Light Company and the Florida Municipal Power Agency (Stanton Transmission Agreement); and (2) Stanton Tri-City Transmission Service Agreement Between Florida Power & Light Company and the Florida Municipal Power Agency (Stanton Tri-City Transmission Agreement).

Under the Agreements, FPL has agreed to provide transmission service for each FMPA Participating Member's entitlement share of FMPA's ownership interest in Orlando Utilities Commission (OUC) Curtis H. Stanton Energy Center Unit One (Stanton No. 1), a coal fired steam electric power plant being constructed by OUC. The FMPA Participating Members under the Stanton Transmission Agreement are: City of Homestead, Florida; Fort Pierce Utilities Authority; City of Lake Worth, Florida; City of Starke, Florida; and City of Vero Beach, Florida. The FMPA Participating Members under the Stanton Tri-City Transmission Agreement are City of Homestead, Florida; Fort Pierce Utilities Authority and Utility Board of the City of Key West, Florida.

These Attachments A have been revised pursuant to section 7.1.1 of the Agreements to delineate the original Contract Demand of each FMPA Participating Member for transmission services provided under each of the respective Agreements. Each revised Attachment A supersedes and replaces in its entirety the blank Attachment A to each of the respective Agreements that were filed in Docket No. ER87-154 and approved by the Commission on February 19, 1987.

Copies of the filing were served upon Florida Municipal Power Agency, the FMPA Participating Members and the Florida Public Service Commission.

FPL requests that waiver of § 35.3 of the Commission's Regulation be granted and that these revised Attachments A be made effective July 1, 1987, the date of the commercial operation of Stanton Unit No. 1.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 18, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18171 Filed 8-10-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL87-52-000]

Notice of Filing; Midland Cogeneration Venture Limited Partnership

August 5, 1987.

Take notice that on July 29, 1987, Midland Cogeneration Venture Limited Partnership (MCV Partnership), pursuant to 5 USCA 554(e) and Rule 207(a)(2) of the Commission's Rules of Practice and Procedure, 18 CFR 385.207, tendered for a declaratory order to

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remove uncertainty about the meaning of "subsidiary" as used in the Commission's rules defining ownership criteria for qualifying facilities, 18 CFR 292.206 as promulgated under the Public Utility Regulatory Policies Act of 1978.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 18, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18172 Filed 8-10-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP85-150-000, RP85-150-002, RP85-200-000, RP85-200-006, RP86-97-000 and RP86-97-017]

Filing of Refund Report; Natural Gas Pipeline Co. of America

August 5, 1987.

Take notice that on July 27, 1987, Natural Gas Pipeline Company of America (Natural) tendered for filing its Report of Distribution of Refunds for Docket No. RP85-150 for the period January 1, 1986 through April 30, 1987 and Docket No. RP86-97 for the period July 1, 1986 through April 30, 1987.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests must be filed on or before August 12, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18173 Filed 8-10-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP85-150-000, RP85-150-002, RP85-200-000, RP85-200-006, RP86-97-000 and RP86-97-017]

Filing of Refund Report; Natural Gas Pipeline Co. of America

August 5, 1987.

Take notice that on July 27, 1987, Natural Gas Pipeline Company of America (Natural) tendered for filing its Report of Distribution of Refunds for Docket No. RP85-150 for the period January 1, 1986 through April 30, 1987 and Docket No. RP86-97 for the period July 1, 1986 through April 30, 1987.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests must be filed on or before August 12, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18217 Filed 8-10-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TF87-7-50-000]

Proposed Change in Rates; Northern Natural Gas Co.

August 5, 1987.

Take notice that on July 29, 1987, Northern Natural Gas Company (Northern) tendered for filing the following tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1:

Substitute Forty-Fifth Revised Sheet No. 4b
Forty-Sixth Revised Sheet No. 4b
Substitute Thirteenth Revised Sheet No. 4b.1
Fourteenth Revised Sheet No. 4b.1

and the following tariff sheets to its FERC Gas Tariff, Original Volume No. 2:

Substitute Fifty-Second Revised Sheet No. 1c
Fifty-Third Revised Sheet No. 1c

Northern states that the purpose of the tariff sheets is to reflect a decrease in Northern's base average commodity cost of purchased gas. Northern adds that the effect of such reduction in purchased gas costs is a 3.7 cents per Mcf decrease in the commodity rate for Northern's jurisdictional market area sales and field area sales.

Northern requests that the tariff sheets be given an effective date of August 1, 1987.

Copies of Northern's filing were mailed to each of Northern's gas utility customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 12, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18174 Filed 8-10-87; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51687; FRL-3245-7]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice announces receipt

of forty-nine such PMNs and provides a summary of each.

DATES: Close of Review Period:

P 87–1462, 87–1463, 87–1464, 87–1465, 87–1466, 87–1467, 87–1468, 87–1469, 87–1470, 87–1471, 87–1472, 87–1473, 87–1474, 87–1475, 87–1476, 87–1477, 87–1478, and 87–1479—October 21, 1987

P 87–1480, 87–1481, 87–1482, 87–1483, 87–1484, 87–1485, 87–1486, 87–1487, 87–1488, 87–1489, 87–1490, 87–1491, 87–1492, 87–1493, and 87–1494—October 24, 1987

P 87–1495, 87–1496, 87–1497, 87–1498, 87–1499, 87–1500, 87–1501, and 87–1502—October 25, 1987

P 87–1503, 87–1504, 87–1505, 87–1506, and 87–1507—October 26, 1987

P 87–1508, 87–1509, and 87–1510—October 27, 1987.

Written comments by:

P 87–1462, 87–1463, 87–1464, 87–1465, 87–1466, 87–1467, 87–1468, 87–1469, 87–1470, 87–1471, 87–1472, 87–1473, 87–1474, 87–1475, 87–1476, 87–1477, 87–1478, and 87–1479—September 21, 1987

P 87–1480, 87–1481, 87–1482, 87–1483, 87–1484, 87–1485, 87–1486, 87–1487, 87–1488, 87–1489, 87–1490, 87–1491, 87–1492, 87–1493, and 87–1494—September 24, 1987

P 87–1495, 87–1496, 87–1497, 87–1498, 87–1499, 87–1500, 87–1501, and 87–1502—September 25, 1987

P 87–1503, 87–1504, 87–1505, 87–1506, and 87–1507—September 26, 1987

P 87–1508, 87–1509, and 87–1510—September 27, 1987.

ADDRESS: Written comments, identified by the document control number "[OPTS–51687]" and the specific PMN number should be sent to: Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, Room L–100, 401 M Street SW., Washington, DC 20460, (202) 554–1305.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Room E–611, 401 M Street SW., Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the PMNs received by EPA. The complete non-confidential PMNs are available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 87–1462

Manufacturer. E.I. du Pont de Nemours and Company, Inc.

Chemical. (G) Phosphoric acid, mixed alkyl alcohol esters; triethanolamine salts.

Use/Production. (G) Fiber finish component. Prod. range: Confidential.

Toxicity Data. Irritation: Skin—Mild, Eye—Mild; Inhalation: Slightly toxic.

P 87–1463

Manufacturer. E.I. du Pont de Nemours and Company, Inc.

Chemical. (G) Phosphoric acid, mixed alkyl alcohol esters, potassium salts.

Use/Production. (G) Fiber finish component. Prod. range: Confidential.

Toxicity Data. Irritation: Skin—Moderate, Eye—Moderate.

P 87–1464

Manufacturer. E.I. du Pont de Nemours and Company, Inc.

Chemical. (G) Phosphoric acid, mixed alkyl alcohol esters, triethanolamine.

Use/Production. (G) Fiber finish component. Prod. range: Confidential.

P 87–1465

Manufacturer. E.I. du Pont de Nemours and Company, Inc.

Chemical. (G) Phosphoric acid, mixed alkyl alcohol esters, triethanolamine salt.

Use/Production. (G) Fiber finish component. Prod. range: Confidential.

P 87–1466

Manufacturer. E.I. du Pont de Nemours and Company, Inc.

Chemical. (G) Phosphoric acid, mixed alkyl alcohol ester, amine salt.

Use/Production. (G) Fiber finish component. Prod. range: Confidential.

Toxicity Data. Irritation: Skin—Moderate.

P 87–1467

Manufacturer. E.I. du Pont de Nemours & Company, Inc.

Chemical. (G) Phosphoric acid, mixed alkyl alcohol ester; potassium salts.

Use/Production. (G) Fiber finish component. Prod. range: Confidential.

Toxicity Data. Irritation: Skin—Moderate, Eye—Moderate; Inhalation: Slightly toxic; LC_{50}: 48 hr. (Daphnia Magna): > 5,600 parts per million (ppm) LC_{50}: 96 hr. (Fathead minnows): 450 ppm.

P 87–1468

Manufacturer. E.I. du Pont de Nemours and Company, Inc.

Chemical. (G) Phosphoric acid, mixed linear alcohol ester, triethanolamine salts.

Use/Production. (G) Fiber finish component. Prod. range: Confidential.

Toxicity Data. Irritation: Skin—Slight, Eye—Slight.

P 87–1469

Manufacturer. Confidential.

Chemical. (G) Fatty acids, C_{18}-unsaturated, dimers, polymers with a diamine and a monoamine.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 87–1470

Manufacturer. Confidential.

Chemical. (G) Fatty acids, C_{18}-unsaturated, dimers, polymers with a diol, ethylenediamine and a mono basic acid.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 87–1471

Manufacturer. SpecialtyChem Products Corporation.

Chemical. (G) Aryloxyalkyl halide.

Use/Production. (G) Intermediate. Prod. range: Confidential.

P 87–1472

Manufacturer. Confidential.

Chemical. (G) Tertiary amine salt.

Use/Production. (G) Catalyst for contained use. Prod. range: Confidential.

P 87–1473

Manufacturer. Confidential.

Chemical. (G) Tertiary amine salt.

Use/Production. (G) Catalyst for contained use. Prod. range: Confidential.

P 87–1474

Manufacturer. Confidential.

Chemical. (G) Tertiary amine salt.

Use/Production. (G) Catalyst for contained use. Prod. range: Confidential.

P 87–1475

Manufacturer. Confidential.

Chemical. (G) Tertiary amine salt.

Use/Production. (G) Catalyst for contained use. Prod. range: Confidential.

P 87–1476

Manufacturer. Confidential.

Chemical. (G) Tertiary amine salt.

Use/Production. (G) Catalyst for contained use. Prod. range: Confidential.

P 87–1477

Manufacturer. Confidential.

Chemical. (G) Tertiary amine salt.

Use/Production. (G) Catalyst for contained use. Prod. range: Confidential.

P 87–1478

Manufacturer. Confidential.

Chemical. (G) Tertiary amine salt.

Use/Production. (G) Catalyst for contained use. Prod. range: Confidential.

P 87-1479

Manufacturer. Confidential.
Chemical. (G) Tertiary amine salt.
Use/Production. (G) Catalyst for contained use. Prod. range: Confidential.

P 87-1480

Importer. Shin-Etsu Silicones of America, Incorporated.
Chemical. (S) Polymer of 2,4,6,-trimethyl-2,4,6-tris(3,3,3-trifluoropropyl) cyclotrisiloxane and phenyltrichlorosilane.
Use/Import. (S) Industrial ingredient for silicone rubber compound. Import range: 300 to 800 kg/yr.

P 87-1481

Importer. Confidential.
Chemical. (G) Vinyl acrylic copolymer.
Use/Import. (S) Industrial, commercial and consumer general purpose coating and modifier for coatings, inks and adhesives. Import range Confidential.

P 87-1482

Importer. Confidential.
Chemical. (G) Vinyl acrylic copolymer latex.
Use/Import. (S) Industrial, commercial and consumer general purpose coating and modifier for coatings, inks and adhesives. Import range: Confidential.

P 87-1483

Importer. Confidential.
Chemical. (G) Vinyl acrylic copolymer latex.
Use/Import. (S) Industrial, commercial and consumer general purpose coating and modifier for coatings, inks and adhesives. Import range: Confidential.

P 87-1484

Manufacturer. Confidential.
Chemical. (G) Alkanolamine phosphates.
Use/Production. (S) Component of corrosion inhibitor concentrate and inhibited solvent for hydrocarbon extraction process. Prod. range: Confidential.

P 87-1485

Importer. Confidential.
Chemical. (G) Fluorinated acrylic copolymer.
Use/Import. (G) Oil and water-proofing agent. Import range: Confidential.
Toxicity Data. Acute oral: 75,250 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant.

P 87-1486

Manufacturer. Confidential.
Chemical. (G) Silane-modified polyurethane polyvinyl alcohol copolymer.
Use/Production. (G) Open, non-dispersive use. Prod. range: 7,200 to 40,000 kg/yr.

P 87-1487

Manufacturer. Confidential.
Chemical. (G) Crosslinked halogenated rubber.
Use/Production. (G) Thermoplastic resin for medical applications and for dynamics parts. Prod. range: Confidential.

P 87-1488

Manufacturer. Confidential.
Chemical. (G) Crosslinked halogenated rubber.
Use/Production. (G) Thermoplastic resin for sheeting and for molded articles. Prod. range: Confidential.
Toxicity Data. Irritation: Skin—Non-irritant.

P 87-1489

Manufacturer. Confidential.
Chemical. (G) Crosslinked halogenated rubber.
Use/Production. (G) Thermoplastic resin for medical applications and for dynamic parts. Prod. range: Confidential.
Toxicity Data. Irritation: Skin—Non-irritant.

P 87-1490

Manufacturer. Confidential.
Chemical. (G) Crosslinked halogenated rubber.
Use/Production. (G) Thermoplastic resin for sheeting and molded articles. Prod. range: Confidential.
Toxicity Data. Irritation: Skin—Non-irritant.

P 87-1491

Manufacturer. Confidential.
Chemical. (G) Crosslinked halogenated rubber.
Use/Production. (G) Thermoplastic resin for medical applications and dynamic parts. Prod. range: Confidential.
Toxicity Data. Irritation: Skin—Non-irritant.

P 87-1492

Manufacturer. Confidential.
Chemical. (G) Crosslinked halogenated rubber.
Use/Production. (G) Thermoplastic resin for sheeting and molded articles. Prod. range: Confidential.
Toxicity Data. Irritation: Skin—Non-irritant.

P 87-1493

Manufacturer. Confidential.
Chemical. (G) Reaction product between halogenated rubbers.
Use/Production. (G) Theroplastic resin for sheeting and molded articles. Prod. range: Confidential.

P 87-1494

Manufacturer. Confidential.
Chemical. (G) Crosslinked halogenated rubber.
Use/Production. (G) Thermoplastic resin for medical applications and dynamics parts. Prod. range: Confidential.
Toxicity Data. Irritation: Skin—Mild.

P 87-1495

Manufacturer. E.I. du Pont de Nemours and Company, Inc.
Chemical. (G) Copolyether ester.
Use/Production. (G) Liner and film. Prod. range: Confidential.
Toxicity Data. Irritation: Skin-Non-irritant.

P 87-1496

Manufacturer. NL Industries, Incorporated.
Chemical. (G) Polyurethane resin.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 87-1497

Manufacturer. Confidential.
Chemical. (G) Mono substituted aryl diol.
Use/Production. (S) Site-limited chemical intermediate. Prod. range: Confidential.

P 87-1498

Importer. Roure Bertrand Dupont, Incorporated.
Chemical. (S) Butene-2-oic acid, cyclohexyl ester.
Use/Import. (S) Industrial, commercial and consumer frangance ingredient. Import range: 100 to 500 kg/yr.
Toxicity Data. Acute oral: > 8,000 mg/kg; Irritation: Eye—Minimal.

P 87-1499

Importer. Biddle Sawyer Corporation.
Chemical. (S) Pentasodium[u-7-[[3,3'-dihydroxy-4'-[[6-hydroxy-8-sulfo-2(3-sulfophenyl)-2*H*-naphtho[1,2-*d*]triazol-]-yl]azo] [1,1'-biphenyl]-4-yl]azo]-8-hydroxy-1,3,6-naphthalenetrisulfonato (9-)]]dicuprate(5-).
Use/Import. (S) Direct dye for textile. Import range: 40,000 kg/yr.

P 87-1500

Importer. Jarchem Industries, Incorporated.
Chemical. (S) Mixture of 2-octyl-1-decanol and 2-hexyl-1-dodecanol.

Use/Import. (S) Industrial base for ethoxylation; solvent perfumes; emollient for cosmetics; and lubricant-machinery, etc., textiles. Import range: 20,000 to 200,000 kg/yr.

P 87-1501

Importer. Jarchem Industries, Incorporated.

Chemical. (S) 2-Decyl tetradecanol.

Use/Import. (S) Lubricant for textiles and machinery; ethoxylation; and emollient for cosmetics. Import range: 40,000 to 200,000 kg/yr.

P 87-1502

Importer. Jarchem Industries, Incorporated.

Chemical. (S) Mixture of 2-hexyl-1-decanol; 2-hexyl-1-dodecanol; 2-octyl-1-decanol; and 2-octyl-1-dodecanol.

Use/import. (S) Industrial lubricant-machinery; base for ethoxylation; emollient for cosmetics; and solvent perfumes. Import range: 60,000 to 500,000 kg/yr.

P 87-1503

Importer. Confidential.

Chemical. (G) Alkyl aryl phosphonium halide.

Use/Import. (G) Open, non-dispersive use. Import range: Confidential.

P 87-1504

Manufacturer. Confidential.

Chemical. (G) Urethane-modified water reducible alkyd resin.

Use/Production. (S) Air-dry water reducible varnish, stains and enamels. Prod. range: Confidential.

P 87-1505

Manufacturer. Confidential.

Chemical. (G) Imide-anhydride-olefin polymer.

Use/Production. (G) Oil additive. Prod. range: Confidential.

P 87-1506

Manufacturer. Minnesota Mining and Manufacturing Company.

Chemical. (G) Fluorochemical sulfonate ester.

Use/Production. (G) Electronic liquid. Prod. range: Confidential.

P 87-1507

Importer. Fairmount Chemical Company Incorporated.

Chemical. (G) Methylene-bis-benzotriazole.

Use/Import. (S) Ultra-violet stabilizer. Import range: Confidential.

P 87-1508

Manufacturer. Iovite, Incorporated.

Chemical. (S) Alkyd polymer.

Use/Production. (S) Industrial in manufacture of printing inks. Prod. range: 8,000 to 10,000 kg/yr.

P 87-1509

Manufacturer. Products Research and Chemical Corporation.

Chemical. (S) 2-Ethanol,1,1-thiobis, ethanol, 2-mercapto, reaction product with propylene oxide, 1,3-propanediol, 2-ethyl-2[hydroxy methyl] 3-thiahept-5-ene-1-ol.

Use/Production. (S) Industrial prepolymer for manufacture of thiol terminated polymer and reactive plasticizer for vucanizable rubbers, sealants, adhesives and coatings. Prod. range: 100,000 to 450,000 kg/yr.

P 87-1510

Importer. Marubeni America Corporation.

Chemical. (S) Styrene-glycidyl methacrylate copolymer.

Use/Import. (S) Industrial cimpatiblizing agent for polymer blends. Import range: Confidential.

Date: August 3, 1987.

Denise Devoe,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 87-18214 Filed 8-10-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59248; FRL-3245-6]

Test Market Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5(a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of four applications for exemption, provides a summary, and requests comments on the appropriateness of granting this exemption.

DATE: Written comments by: August 28, 1987.

ADDRESS: Written comments, identified by the document control number "[OPTS-59248]" and the specific TME number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Room L-100, 401 M Street, SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room E-611, 401 M Street SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the TME application received by EPA. The complete non-confidential application is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

T 87-25.

Close of Review Period. September 9, 1987.

Importer. Dai Nippon Printing Company, Ltd.

Chemical. (S) Polymer of 3-(2-aminoethyl) amino propyl methyl, dimethyl polysiloxane and dimethyl, methyl 3-(oxiranylmethoxy)-propyl polysiloxane.

Use/Import. (S) Consumer silicone coating agent for heat transfer recording materials. Import range: 100 to 300 kg/yr.

T 87-26

Close of Review Period. September 9, 1987.

Importer. Dai Nippon Printing Company, Ltd.

Chemical. (G) 1-Amino-4-hydroxy-2-(4-alkylphenoxy) anthraquinone.

Use/Import. (S) Consumer dye for heat transfer recording materials. Import range: 20 to 100 kg/yr.

T 87-27

Close of Review Period. September 9, 1987.

Importer. Dai Nippon Printing Company, Ltd.

Chemical. (G) 4-(4-N,N-dialkyl amino-2-alkyl phenyl)-imino-2-(alkyl carbamoyl)-1-oxo-1,4-dihidro naphthalene.

Use/Import. (S) Consumer dye for heat transfer recording materials. Import range: 20 to 100 kg/yr.

T 87-28

Close of Review Period. September 9, 1987.

Importer. Dai Nippon Printing Company, Ltd.

Chemical. (G) Polymer with vinylacetal polymers, polyoxiethylene alkylether phosphoricacid, sodium polyoxiethylene alkenylether phosphate and polyisocyanate.

Use/Import. (S) Consumer heat resisting slipping agent for heat transfer recording material. Import range: 1,500 to 3,000 kg/yr.

Date: August 3, 1987.

Denise Devoe,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 87-18213 Filed 8-10-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL HOME LOAN BANK BOARD

Appointment of Receiver; French Market Homestead, Metairie, LA

Notice is hereby given that pursuant to the authority contained in section 406(c)(2) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(2) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for French Market Homestead, Metairie, Louisiana on August 6, 1987.

Dated: August 6, 1988.

By the Federal Home Loan Bank Board.

John M. Buckley, Jr.,

Secretary.

[FR Doc. 87-18236 File 8-10-87; 8:45 am]

BILLING CODE 6720-01-M

Acceptance of Appointment as Liquidator; French Market Homestead, Metairie, LA

Notice is hereby given that pursuant to the authority contained in section 406(c)(1) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1) (1982), and as directed by the Federal Home Loan Bank Board the Federal Savings and Loan Insurance Corporation on August 6, 1987, accepted appointment by the Commissioner of Financial Institutions for the State of Louisiana, pursuant to §§ 6:873 and 6:880 of the Louisiana Revised Statutes Annotated, as liquidator for French Market Homestead, Metairie, Louisiana, for the purpose of liquidation.

Dated: August 6, 1988.

By the Federal Home Loan Bank Board.

John M. Buckley, Jr.,

Secretary.

[FR Doc. 87-18235 File 8-10-87; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interest parties may inspect and obtain a copy of each agreement at the Washington, DC. Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200014.

Title: Philadelphia Port Corporation Terminal Lease Agreement.

Parties:

Philadelphia Port Corporation
Delaware Operating Company

Synopsis: The proposed agreement provides for the lease of the Packer Avenue Marine Terminals, including the berths, cranes, crane rails, equipment maintenance, container storage and related facilities thereon.

Agreement No.: 224-200015.

Title: Maryland Port Administration Terminal Agreement.

Parties:

Maryland Port Administration
Seapac Services, Inc.

Synopsis: The proposed agreement leases premises at the Dundalk Marine Terminal to Seapac Services, Inc. for three years. The agreement affords Seapac a discount percentage of the tariff rates based on annual tonnage levels. Seapac guarantees to Maryland Port Administration a minimum of 200,000 gross cargo tons by direct liner service.

Agreement No.: 224-010764-001.

Title: Encinal Terminals Agreement.

Parties:

Encinal Terminals
California Stevedore and Ballast Co.

Synopsis: The proposed agreement provides additional premises to the lease including Berths 1, 2 and 3 along with other structures, offices space and underground storage tanks. Encinal reserves the exclusive right to perform or have its affiliate, Alameda Liquid Bulk Terminal perform all terminal and stevedore work associated with any liquid bulk cargo related to Berths 1, 2, 3 or 5.

Agreement No.: 224-002827-004.

Title: Termination of Encinal Terminals Lease Agreement.

Parties:

Encinal Terminals
Crescent Wharf and Warehouse Company

Synopsis: The proposed terminates the basic Lease Agreement; effective July 30, 1987.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: August 6, 1987.

[FR Doc. 87-18204 Filed 8-10-87; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

August 5, 1987.

Background

Notice is hereby given of the submission of proposed information collection(s) to the Office of Management and Budget (OBM) for its review and approval under the Paperwork Reduction Act (Title 44 U.S.C. Chapter 35) and under OMB regulations on Controlling Paperwork Burdens on the Public (5 CFR Part 1320). A copy of the proposed information collection(s) and supporting documents is available from the agency clearance officer listed in the notice. Any comments on the proposal should be sent to the OMB desk officer listed in the notice. OMB's usual practice is not to take any action on a proposed information collection until at least ten working days after notice in the Federal Register, but occasionally the public interest requires more rapid action.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822).

OMB Desk Officer—Robert Fishman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7340).

Request For OMB Approval To Revise The Following Report

1. *Report title:* Reports of Condition and Income.

Agency form number: FFIEC 301-034

OMB Docket number: 7100-0036
Frequency: Quarterly
Reporters: State member banks
Annual reporting hours: Small businesses are affected.

General description of report: This information collection is mandatory [12 U.S.C. 324] and is given partial confidential treatment.

State member banks are required to file detailed schedules of assets, liabilities, and capital accounts in the form of a condition report and summary statement; detailed schedule of operating income and expense, sources and dispotition of income, and changes in equity capital in the form of an income statement; and a variety of supporting schedules. Data are used for supervisory and monetary policy purposes.

Board of Governors of the Federal Reserve System, August 5, 1987.
William W. Wiles,
Secretary of the Board.
[FR Doc. 87-18139 Filed 8-10-87; 8:45 am]
BILLING CODE 6210-01-M

Formations of; Acquisitions by; and Mergers of Bank Holding Companies; Comerica Inc., et al.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested of persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 31, 1987.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Comerica Incorporated,* Detroit, Michigan; to acquire 100 percent of the voting shares of Comerica-Midwest, N.A., Toledo, Ohio.

2. *Shoreline Financial Corportion,* Benton Harbor, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Inter-City Bank, Benton Harbor, Michigan, and Citizens Trust and Savings Bank, South Haven, Michigan.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *J.R. Montgomery Bancorporation,* Lawton, Oklahoma; to acquire an additional 0.5 percent of the voting shares of Fort Sill National Bank, Fort Sill, Oklahoma.

Board of Governors of the Federal Reserve System, August 5, 1987.
James McAfee,
Associate Secretary of the Board.
[FR Doc. 87-18140 Filed 8-10-87; 8:45 am]
BILLING CODE 6210-01-M

Acquisition of Shares of Banks or Bank Holding Companies; Merlin Zitzner

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 31, 1987.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Merlin Zitzner;* to acquire up to 1,000 shares of The Baraboo Bancorporation, Inc., Baraboo, Wisconsin.

Board of Governors of the Federal Reserve System, August 5, 1987.
James McAfee,
Associate Secretary of the Board.
[FR Doc. 87-18141 Filed 8-10-87; 8:45 am]
BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Cooperative Agreement With National Research Council, National Academy of Sciences; Availability of Funds for Fiscal Year 1987

Introduction

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of funds in Fiscal Year 1987 for a cooperative agreement with the National Research Council, National Academy of Sciences (NRC/NAS) for the purpose of furthering the scientific and technical foundations of environmental sciences and public health. This is not a formal request for applications. Assistance will be provided only to the NRC/NAS for the continued support of this project. No other applications are solicited or will be accepted.

Authority

Section 104(i) (1) and (5) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) authorizes this cooperative agreement. The Catalog of Federal Domestic Assistance Number has been requested.

Background

Created by a Congressional charter in 1863, the National Academy of Sciences is a private honorary society dedicated to the furtherance of science and the use of science for the general welfare. The Academy established the National Research Council in 1916 as a means for securing the active participation of specialists from universities, the industry, and the government in the Academy's work.

ATSDR is required to maintain both exposure and disease registries, and to determine the relationship between exposure to toxic substances and illness. This cooperative agreement will assist in the identification of research needs, data links and research priorities. This will be done through specific studies dealing with:

- Risk perception and communication,
- Biological bases for neurotoxicology and models for assessing risk,
- Advances in assessing chemical exposure, and

• Natural and *in situ* exposure studies of animals in environmental health research.

Advances in these areas will ensure that the best scientific methods are applied to the evaluation of the public health impact of hazardous wastes and the identification of methods to eliminate or control any resulting adverse effects on public health. The information developed should have a positive impact on the research agenda of the scientific community at large. The NRC/NAS established its Board of Environmental Studies and Toxicology (BEST) to provide advice for the general welfare of the nation on scientific questions affecting the development of environmental toxicology, environmental epidemiology and related fields. Because of the unique abilities of NRC/NAS as a non-biased source of technical and scientific expertise in these areas, it is the only organization capable of carrying out the activities contemplated under this cooperative agreement.

Availability of Funds

Approximately $1,425,000 will be available in Fiscal Year 1987 to fund this cooperative agreement. It is expected that the agreement will begin on or about September 30, 1987, and depending upon the availability of funds, will be funded in 12-month budget periods within a 5-year project period. Continuation awards will be made on the basis of satisfactory progress in meeting project objectives and on the availability of funds. The funding estimate outlined above may vary and is subject to change.

Other Submissions and Review Requirements

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Information

Information may be obtained from Mr. Luther DeWeese, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 E. Paces Ferry Road N.E., Atlanta, GA 30305, telephone (404) 262–6575. Technical assistance may be obtained from Richard I. Gerber, Project Officer, Extramural Program Branch, Office of External Affairs, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, Atlanta, GA 30333, telephone (404) 454–4630.

Dated: August 4, 1987.

James O. Mason,

Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 87–18136 Filed 8–10–87; 8:45 am]

BILLING CODE 4160-70-M

Establishment; Board of Scientific Counselors

Pursuant to Federal Advisory Committee Act, 5 U.S.C. Appendix 2, the Agency for Toxic Substances and Disease Registry announces the establishment by the Secretary of Health and Human Services, on July 28, 1987, of the following Federal advisory committee;

Designation

Board of Scientific Counselors, Agency for Toxic Substances and Disease Registry (ATSDR)

Purpose

This Board will provide advice and guidance to the Administrator, Agency for Toxic Substances and Disease Registry, on ATSDR programs to ensure scientific quality, timeliness, utility, and dissemination of results. Specifically, the Board will advise on the adequacy of science in ATSDR-supported research, emerging problems that require scientific investigation, accuracy and currency of the science in ATSDR reports, and program areas to emphasize and/or to de-emphasize. Authority for this Committee will expire July 28, 1989, unless the Secretary of Health and Human Services, with the concurrence of the Committee Management Secretariat, General Services Administration, formally determines that continuance is in the public interest.

Dated: August 4, 1987.

Elvin Hilyer,

Associate Director for Policy Coordination.

[FR Doc. 87–18137 Filed 8–10–87; 8:45 am]

BILLING CODE 4160-20-M

Food and Drug Administration

[Docket No. 87N–0254]

FD&C Red No. 3; Availability of Final Report of FD&C Red No. 3 Peer Review Panel

AGENCY: The Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the final report of the FD&C Red No. 3 Peer Review Panel (the Panel). FDA convened this panel of expert government scientists to evaluate the available data, information, and views on FD&C Red No. 3 and to determine whether there is any potential risk posed by human exposure to the color. The Panel members were selected from FDA and other agencies in the Public Health Service. The Panel has completed its work and the final report is available to the public on request.

ADDRESS: A copy of the report is available for review at, and individual copies may be obtained from, the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857. (Send two self-addressed adhesive labels to assist the Branch in processing your requests.)

FOR FURTHER INFORMATION CONTACT: Paul D. Lepore, Office of Regulatory Affairs (HFC–230), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2390.

SUPPLEMENTARY INFORMATION: FD&C Red No. 3 is a color additive that is permanently listed for use in food and drugs and provisionally listed for use in cosmetics. During 1986, FDA certified 252,543 pounds of FD&C Red No. 3 for all uses. FDA's evaluation of the petition for permanent listing of this additive and other information raised issues concerning the mechanism of carcinogenesis of FD&C Red No. 3 and suggested that the color should be regulated under the general safety requirements, rather than the anticancer clauses, of the Federal Food, Drug, and Cosmetic Act. To address these issues, FDA convened the Panel, which was charged with evaluating the available data, information, and views and providing justified answers to the following questions:

(1) Do the data indicate a secondary mechanism of action with respect to FD&C Red No. 3 and allow determination of any potential risk posed by human exposure to this color?

(2) If not, then what further studies or analyses are necessary to resolve the issues and provide an adequate basis for risk assessment?

(3) In the interim, what concerns relative to human health, if any, would be posed by continued use of this additive while such studies and analyses are conducted and evaluated?

The agency's decision to establish the scientific peer review panel is consistent with the recommendations contained in several recent publications (see, e.g., (1) National Academy of Sciences, "Risk Assessment: Managing the Process," NAS Press, Washington, DC, 1983; (2) Office of Science and Technology

Policy, "Chemical Carcinogens: A Review of the Science and Its Associated Principles," published in the Federal Register of March 14, 1985 (50 FR 10371); (3) Committee to Coordinate Environmental and Related Programs, "Risk Assessment and Risk Management of Toxic Substances, a Report to the Secretary, April, 1985"). The agency has previously used the peer review approach to resolve questions on FD&C Red No. 3 as well as other color additives (see the notice of availability D&C Red No. 8, D&C Red No. 9, D&C Red No. 19, D&C Red No. 37, D&C Orange No. 17, and FD&C Red No. 3; Availability of the Final Report of the Color Additive Scientific Review Panel, 51 FR 7856, March 6, 1986).

The Panel has completed its work and has formally submitted its final report to FDA. The report summarizes the available data on FD&C Red No. 3 and presents risk estimates for its current uses. FDA is making the report available to the public on request.

A copy of the report is available for review at, and individual copies of the report may be obtained from, the Dockets Management Branch (address above). Requests for copies should be identified with the docket number found in brackets in the heading of this document.

Dated: August 5, 1987.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-18208 Filed 8-10-87; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86A-0513/AP]

Chocolate or Chocolate Flavor Labeling of Food Products; Availability of Advisory Opinion

AGENCY: The Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it has issued an advisory opinion concerning the proper labeling of food products containing chocolate or considered to be chocolate flavored.

ADDRESS: Requests for single copies of FDA's letter (Docket No. 86A-0513/AP) may be submitted to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857. (Send two self-addressed adhesive labels to assist the Branch in processing your requests.)

FOR FURTHER INFORMATION CONTACT: Raymond E. Newberry, Division of Regulatory Guidance (HFF-314), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-485-0195.

SUPPLEMENTARY INFORMATION: In response to a letter from the Chocolate Manufacturers Association, FDA has provided an advisory opinion on the proper labeling of food products that purport to be "chocolate" or are considered to have a "chocolate flavor." A copy of a letter defining the policy is available for public examination in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. The opinion, though advisory, does not preclude persons from seeking further clarification on specific issues. Failure to abide by the policy established through the advisory opinion may result in regulatory action after consideration of relevant facts. Requests for single copies of the advisory opinion letter should refer to Docket No. 86A-0513/AP and be submitted to the Dockets Management Branch.

Dated: August 5, 1987.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-18207 Filed 8-10-87; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[BERC-394-PN]

Medicare Program; Proposed Additions to and Deletions From the Current List of Covered Surgical Procedures for Ambulatory Surgical Centers

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed notice.

SUMMARY: This notice announces proposed additions and deletions to the current list of surgical procedures for which facility services are covered when the procedures are performed in an ambulatory surgical center (ASC). The proposed additions and deletions contained in this proposed notice result from new data that show that some of the surgical procedures on the current ASC list do not meet the criteria that they be commonly performed on an inpatient basis in hospitals or are not commonly performed in physicians' offices. In this notice, we are also soliciting public comments on additional procedures to be added to the current list of approved ASC procedures.

DATE: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on October 13, 1987.

ADDRESS: Mail comments to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-394-PN, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC-394-PN. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of this document, in Room 309-G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Rita McGrath, (301) 594-6719.

SUPPLEMENTARY INFORMATION:

I. Background

Section 934 of Pub. L. 96-499, the Omnibus Reconciliation Act of 1980, amended sections 1832(a)(2) and 1833 of the Social Security Act (the Act) to authorize Medicare Part B coverage for facility services furnished in connection with certain surgical procedures performed in an ambulatory surgical center (ASC). (42 CFR 416.60 and 416.61). In addition, for those procedures performed in the ambulatory surgical facility or on an outpatient basis in a hospital, 100 percent of the physician's reasonable charge is paid if the physician accepts assignment. (Under the usual procedures, Medicare reimburses 80 percent of the physician's reasonable charge and the beneficiary is responsible for remainder (42 CFR 405.240).

Section 1833(i)(1) of the Act requires the Secretary to specify, in consultation with appropriate medical organizations, surgical procedures that, although appropriately performed in an inpatient hospital setting, may also be performed safely in certain ambulatory settings. The report accompanying the legislation (Report of the Committee on the Budget to Accompany H.R. 7765, H.R. Rep. No. 96-1167, 96th Cong., 2d Sess. 390 (1980)

explained that Congress intended that procedures currently performed on an ambulatory basis, especially in physicians' offices, that do not generally require the more elaborate facilities of an ASC, should not be included in the list of covered procedures.

In line with this Congressional intent, our regulations (42 CFR 416.65) specify the following four requirements regarding the range of covered ASC services.

1. Procedures on the list are to be those commonly performed on an inpatient basis but which also may, consistent with accepted medical practice, be performed in an ambulatory surgical facility.

2. The list is to exclude procedures that are commonly performed, or that may be safely performed, in physicians' offices.

3. Procedures should be limited to those requiring a dedicated operating room and not requiring an overnight stay.

4. The list should not contain procedures excluded from Medicare coverage.

We recognize that for individuals with certain medical conditions, a procedure on the list may be safely performed only on an inpatient basis. The choice of operating site remains a matter for the professional judgement of the patient's physician.

A list of services meeting these criteria was first published on August 5, 1982 (47 FR 34099). An expanded list is being published as a final notice elsewhere in this issue of the **Federal Register**. That list also deletes certain items resulting from comments to the February 16, 1984 notice (49 FR 6023). Section 9343 of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509) provides that, by July 1, 1987 and annually thereafter, the Secretary must review and update ASC payment rates; in addition, the list of procedures must be reviewed and updated by April 21, 1987 and every 2 years thereafter. In developing the expanded list, we reviewed the usual site of service for all current and planned covered ASC procedures. In the process, we discovered that a number of currently covered procedures are commonly performed on an inpatient basis or are commonly performed in physicians' offices, and thus do not meet the criteria set forth in our regulations. As a result, we are proposing to remove those procedures from the list.

II. Data Base Used to Determine Those Procedures to be Deleted From the ASC List

We evaluated the usual site of service of surgical procedures considered for coverage under the ASC benefit based on the Part B Medicare Data files (BMAD), which are maintained centrally as a component of the Medicare statistical system. These files consist of data sets produced from information maintained by the Medicare carriers in (1) prevailing charge screen files, (2) beneficiary history files, and (3) physician/supplier history files. One of the BMAD files is the procedure file, from which source data are extracted to create an array of every procedure code used by each carrier in processing Medicare claims. The procedure file includes such data elements as frequency, submitted charges, allowed charges, and denied services. These variables can be arrayed for each procedure code by site of service (for example, physician's office, ASC, inpatient hospital, outpatient hospital) and by type of service (for example, surgical service).

The procedure file is constructed from 100 percent of the bills processed annually by carriers reporting procedures using the HCFA Common Procedure Coding System (HCPCS). The source data that we used in assessing site of service are claims processed in calendar year 1984. The 1984 file excludes claims processed by carriers servicing Texas, Utah, Michigan, Georgia and New Jersey because in that year those carriers did not report using HCPCS codes.

When we arrayed currently covered ASC services by site of service, we found that many of them were not commonly furnished on an inpatient basis or were furnished in physicians' offices a majority of the time. Based on these data, it would be contrary to our regulations and program objectives to continue to cover them when performed in an ASC. We decided that if a procedure is performed on an inpatient basis 20 percent of the time or less, or in physicians' offices 50 percent of the time or more, it should not be covered in an ASC. Based on our analysis of available claims payment data, we believe these levels best reflect the legislative objectives of (1) moving procedures from the more expensive hospital setting to the less expensive ASC setting and (2) preventing the migration of procedures from the less expensive physicians' office setting to the ASC. We will monitor our claims experience under the new approved ASC list in order to assure that the 20/50 threshhold rule we have applied continues to achieve these objectives.

We applied these tests to the current list of over 400 individual CPT–4 codes. We identified 48 procedures with an inpatient frequency of 20 percent or less and tentatively deleted them from the list. We then reviewed the remaining procedures and tentatively deleted 27 additional procedures that are performed in physicians' offices 50 percent of the time or more. Before placing them on the list of proposed deletions, we reviewed the list to see if the simple statistical tests, used alone, produced any problems relative to limited consistency. We identified 3 procedures that would have been proposed for deletion on the basis of the data alone, but which we propose to retain on the current ASC list for the following reasons:

11446 Excision-Benign Lesions-Excision, other benign lesion (unless listed elsewhere), face, ears, eyelids, nose, lips, mucous membrane; lesion diameter over 4.0 cm

11646 Excision-Malignant Lesions-Excision, malignant lesion, face, ears, eyelids, nose, lips; lesion diameter over 4.0 cm

Although Part B data indicate that these procedures were frequently performed in physicians' offices, we decided not to delete them from the list because to do so would lead to inconsistencies in the coverage of excisions of benign and malignant lesions of the skin over 4.0 cm in diameter. The excision of any benign or malignant skin lesion over 4.0 cm in diameter is covered.

28296 Hallux valgus (bunion) correction, with or without sesamoidectomy; by phalanx osteotomy

Although Part B data indicate that this procedure is performed in physicians' offices more than half the time, we decided not to delete it from the list because to do so would lead to inconsistency in the coverage of bunion surgery. All methods of bunion correction (currently described by 8 CPT–4 codes) are covered.

We have identified 72 procedure codes that we propose to delete.

III. Provisions of the Proposed Notice

We propose to delete the following procedure codes from the current ASC list:

Integumentary System

11200 Excision, skin tags, multiple fibrocutaneous tags, any area; up to 15

11201 each additional ten lesions

11401	Excision, benign lesion, except skin tag (unless listed elsewhere), trunk, arms or legs; lesion diameter 0.5 to 1.0 cm
11402	lesion diameter 1.0 to 2.0 cm
11403	lesion diameter 2.0 to 3.0 cm
11404	lesion diameter 3.0 to 4.0 cm
11421	Excision, benign lesion, except skin tag (unless listed elsewhere), scalp, neck, hands, feet, genitalia, lesion diameter 0.5 to 1.0 cm
11422	lesion diameter 1.0 to 2.0 cm
11423	lesion diameter 2.0 to 3.0 cm
11441	Excision, other benign lesion (unless listed elsewhere), face, ears, eyelids, nose, lips, mucous membrane; lesion diameter 0.5 to 1.0 cm
11442	lesion diameter 1.0 to 2.0 cm
11443	lesion diameter 2.0 to 3.0 cm
11444	lesion diameter 3.0 to 4.0 cm
11600	Excision, malignant lesion, trunk, arms, or legs; lesion diameter up to 0.5 cm
11601	lesion diameter 0.5 to 1.0 cm
11602	lesion diameter 1.0 to 2.0 cm
11603	lesion diameter 2.0 to 3.0 cm
11604	lesion diameter 3.0 to 4.0 cm
11620	Excision, malignant lesion, scalp, neck, hands, feet, genitalia; lesion diameter up to 0.5 cm
11621	lesion diameter 0.5 to 1.0 cm
11622	lesion diameter 1.0 to 2.0 cm
11623	lesion diameter 2.0 to 3.0 cm
11624	lesion diameter 3.0 to 4.0 cm
11640	Excision, malignant lesion, face, ears, eyelids, nose, lips; lesion diameter up to 0.5 cm
11641	lesion diameter 0.5 to 1.0 cm
11642	lesion diameter 1.0 to 2.0 cm
11643	lesion diameter 2.0 to 3.0 cm
11644	lesion diameter 3.0 to 4.0 cm
11750	Excision of nail and nail matrix, partial or complete (eg, ingrown or deformed nail) for permanent removal)
	Musculoskeletal
21310	Treatment of closed or open nasal fracture without manipulation
26060	Tenotomy, subcutaneous, single, each digit
26460	Tenotomy, extensor, hand or finger, single, open, each
26567	Osteotomy for correction of deformity; phalanx
28008	Fasciotomy, plantar and/or toe, subcutaneous
28010	Tenotomy, subcutaneous, toe; single
28011	multiple
28200	Repair or suture of tendon, foot, flexor, single; primary or secondary, without free graft, each tendon
28230	Tenotomy, open, flexor; foot, single or multiple (separate procedure)
28232	toe, single (separate procedure)
28234	Tenotomy, open, extensor, foot or toe
28240	Tenotomy or release, adductor hallucis muscle
28264	Capsulotomy, midtarsal (Heyman type procedure)
28270	Capsulotomy for contracture; metatarsophalangeal joint, with or without tenorrhaphy, single each joint (separate procedure)
28272	interphalangeal joint, single, each joint (separate procedure)
28285	Hammertoe operation; one toe (e.g., interphalangeal fusion, filleting, phalangectomy) (separate procedure)
28286	for cock-up fifth toe with plastic skin closure, (Ruiz-Mora type procedure)
28306	Osteotomy, metatarsal, base or shaft, single, for shortening or angular correction; first metatarsal
28308	other than first metatarsal
28310	Osteotomy for shortening, angular or rotational correction; proximal phalanx, first toe (separate procedure)
28312	other phalanges, any toe
	Respiratory System
30630	Repair nasal septal perforations
31505	Laryngoscopy, indirect (separate procedure); diagnostic
31510	with biopsy
31525	Laryngoscopy, direct; diagnostic, except newborn
	Digestive System
41100	Biopsy of tongue; anterior two-thirds
45910	Dilation of rectal structure (separate procedure) under anesthesia other than local
	Urinary System
52000	Cystourethroscopy; (separate procedure)
53600	Dilation of urethral stricture by passage of sound, or urethral dilator male; initial
53601	subsequent
53620	Dilation of urethral stricture by passage of filiform and follower, male; initial
53621	
53660	Dilation of female urethra including suppository and/or instillation; initial
53661	subsequent
53665	Dilation of female urethra, general or conduction (spinal) anesthesia
	Female Genital System
57400	Dilation of vagina under anesthesia
	Culdoscopy, diagnostic
	Eye and Ocular Adnexa
66800	Discission of lens capsule; incisional technique (needling of lens); initial
67801	Excision of chalazion; multiple, same lid
68700	Plastic repair of canaliculi
68830	Probing of nasolacrimal duct, with or without irrigation, unilateral or bilateral; with insertion of tube or stent (without general anesthesia)
	Auditory System
69420	Myringotomy including aspiration and/or eustachian tube inflation

IV. Suggested Procedures to be Added to the Current ASC List

After the close of the comment period for the proposed notice published on February 16, 1984 (49 FR 6023), on which we based our recent expansion of the list of covered procedures, we received requests that other new procedures be added to the current ASC list. One in particular is Extracorporeal Shockwave Lithotripsy (ESWL). We are particularly interested in receiving comments regarding the appropriateness of categorizing lithotripsy as a surgical procedure and performing it in a surgical environment. We are soliciting comments on the addition of this procedure and any other new procedures to the current ASC list.

Please send comment and suggestions regarding the addition of ESWL (CPT–4 procedure code 50590) and any other procedures to the address indicated at the beginning of this proposed notice. Comments providing data indicating whether the suggested procedure meets the requirements specified in 42 CFR 416.65 for covered surgical procedures (including whether ESWL is an eligible surgical procedure), and information that could be used to determine an appropriate payment rate, are particularly invited.

V. Regulatory Impact Statement and Regulatory Flexibility Analysis

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish an initial regulatory impact analysis for any proposed notices that are likely to meet criteria for a "major rule". A major rule is one that would result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or any geographical regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprise in domestic or export markets.

The great majority of the services billed under these codes in our available claims data were furnished in doctors' offices. We do not expect this notice to result in a significant shift of site of service, or to only a small proportion of all procedures being performed in ASCs. More than 75 percent of the approved claims that were submitted under the codes we propose to delete were for services furnished in physicians' offices, and less than one percent were for

services furnished in ASCs. Although there were fewer ASCs in 1984 than at present, we do not believe that these services are being frequently furnished in them, and do not expect these deletions would affect their revenues significantly.

In view of the large number of procedures being added to the list of covered ASC procedures through a separate notice elsewhere in this issue of the **Federal Register**, we believe that affected ASCs would not experience a significant adverse impact from the proposed deletions. We would continue to cover these procedures when furnished in physicians' offices. Further, if one of the affected services were furnished in an ASC, we would pay the physician's charge under the usual rules, although we would not pay the ASC facility fee.

These deletions would result in some program savings. For the most part, the affected procedures would be furnished in physicians' offices, with the result that no separate payment would be made to the facility. We would also realize some savings through paying 80 percent rather than 100 percent of the reasonable charge when the physician accepts assignment. (For all procedures on the ASC list, if a physician furnished the procedure either in an ASC or in a hospital outpatient department, and accepts assignment, we pay 100 percent of the reasonable charge.) Due to this situation, some beneficiaries may experience an increase in coinsurance liability. However, since the great majority of these services are already furnished in physicians' offices and reimbursed at the 80 percent level, we estimate the aggreagate reduction in Medicare program expenditure to be negligible, and we do not expect the effect on beneficiaries' liability to be significant.

VI. Reporting and Recordkeeping Requirements

This proposed notice contains no information collection requirements. Consequently, they need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

VII. Response to Comments

Because of the large number of pieces of correspondence we normally receive on proposed regulations, we cannot acknowledge or respond to them individually. However, we will consider all comments that are received by the end of the comment period and, if we proceed with a final rule, we will respond to those comments in the preamble to that rule.

(Sec. 1833(i)(1) of the Social Security Act (42 U.S.C. 1395(i)(1); 42 CFR 416.65))

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 14, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 87-18220 Filed 8-10-87; 8:45 am]

BILLING CODE 4120-01-M

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; National Diabetes Advisory Board; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Diabetes Advisory Board on September 14, 1987, from 8:30 a.m. to approximately 5 p.m., at the Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, Virginia 22032. The meeting, which will be open to the public, is being held to discuss the Board's activities and to continue evaluation of the implementation of the long-range plan to combat diabetes mellitus. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Mr. Raymond M. Kuehne, Executive Director, National Diabetes Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 496-6045, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his office.

Dated: August 5, 1987.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 87-18197 Filed 8-10-87; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Diabetes and Digestive and Kidney Diseases; National Digestive Disease Advisory Board; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Digestive Diseases Advisory Board on September 28, 1987, from 8:30 a.m. to approximately 5 p.m., at the Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, Virginia 22032. The meeting, which will be open to the public, is being held to discuss the Board's activities and to continue evaluation of the implementation of the long-range digestive diseases plan. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Mr. Raymond M. Kuehne, Executive Director, National Digestive Diseases Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 496-6045, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his office.

Dated: August 5, 1987.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 87-18198 Filed 8-10-87; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Diabetes and Digestive and Kidney Diseases; National Kidney and Urologic Diseases Advisory Board; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Kidney and Urologic Diseases Advisory Board on October 5 and 6, 1987, from 8 a.m. to approximately 5 p.m. on October 5 and from 8 a.m. to approximately 4 p.m. on October 6, at the Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, Virginia 22032. The meeting, which will be open to the public, is being held to discuss the Board's activities and the development of a long-range plan to combat kidney and urologic diseases. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Mr. Raymond M. Kuehne, Executive Director, National Kidney and Urologic Diseases Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 496-6045, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his office.

Dated: August 5, 1987.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 87-18199 Filed 8-10-87; 8:45 am]

BILLING CODE 4140-01-M

Office of Child Support Enforcement

Privacy Act of 1974; Revision To Existing System of Records

AGENCY: Office of Child Support Enforcement (OCSE), HHS.

ACTION: Notice of revision of Privacy Act System of Records.

SUMMARY: Notice is hereby given that OCSE is amending one of its system of

records, the Federal Parent Locator Service, DHHS/OCSE No. 09-90-0074. This system was last published at 47 FR 45547, October 13, 1982. The notice is being changed to reflect a change in the system name, system location, system manager(s) and address.

EFFECTIVE DATE: August 11, 1987.

FOR FURTHER INFORMATION CONTACT: Donna Bonar, Location Collection and Services Branch, Office of Child Support Enforcement, 330 C Street, SW., Room 2517, Washington, DC 20201, (202) 245-1757.

The applicable text of the system of records is revised to read as follows:

09-90-0074

SYSTEM NAME:

The Federal Parent Locator Service and Federal Tax Offset System, HHS/OCSE.

* * * * *

SYSTEM LOCATION:

Office of Child Support Enforcement, Department of Health and Human Services, 330 C Street, SW., Room 2518, Washington, DC 20201, (202) 245-1647.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Director, Program Operations Division, Office of Child Support Enforcement, Department of Health and Human Resources, 330 C Street, SW., Room 2518, Washington, DC 20201.

* * * * *

Approval.

Wayne A. Stanton,

Director, Office of Child Support Enforcement.

[FR Doc. 87-18202 Filed 8-10-87; 8:45 am]

BILLING CODE 4150-04-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974; Revision and Deletion of Notices of Systems of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 522a), notice is hereby given that the Department of the Interior is deleting one and revising two systems of records notices maintained by the Office of Personnel in the Office of the Secretary. Except as noted below, all changes being published are editorial in nature, and reflect organization changes and other minor administrative revisions which have occurred since the publication of the material in the **Federal Register** on August 21, 1980 (45 FR 55839). The two revised notices are published in their entirety below.

One notice entitled "Arbitrators Evaluation Records—Interior, Office of the Secretary—73", previously published on June 7, 1982 (47 FR 24655), is being deleted from the Department's inventory of Privacy Act systems of records notices. The arbitrators evaluation records are no longer used or maintained by the Office of Personnel.

Both notices published below are revised to streamline references to systems locations, and clarify existing routine disclosures for litigation purposes and to congressional offices. Also, the disposal statements in both notices are amended to conform to guidelines issued by the Assistant Archivist for Records Administration, National Archives and Records Administration, in his memorandum to Agency Records Officers dated June 11, 1985.

Since these changes do not involve any new or intended use of the information in the systems of records, the notices shall be effective August 11, 1987. Additional information regarding these revisions may be obtained from the Department Privacy Act Officer, Office of the Secretary (PMA), Room 7357, Main Interior Building, U.S. Department of the Interior, Washington, DC 20240.

Dated: July 28, 1987.

Oscar W. Mueller, Jr.,

Director, Office of Management Analysis.

INTERIOR/OS-77

SYSTEM NAME:

Unfair Labor Practice Charges/Complaints—Interior, Office of the Secretary—77.

SYSTEM LOCATION:

Records for pertinent employees of each bureau and office and maintained at the locations shown for the System Managers listed below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Interior employees filing unfair labor practices charges/complaints.

CATEGORIES OF RECORDS IN THE SYSTEM:

Formal charge and complaint; name, address, and other personal information about complainant, transcript of hearing (if held), and information about other personnel in complainant's work unit, as relevant.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 11491, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary uses of the records are to administer charges or complaints of unfair labor practices. Disclosures outside the Department of the Interior may be made (1) to the Department of Labor and to the Federal Labor Relations Council for settlement of the complaint or appeal; (2) to the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were complied; (3) of information indicating a violation or potential violation of a statute, regulation, rule, order or license, to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license; (4) to a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Name and docket or case number.

SAFEGUARDS:

Records are locked in lockable metal file cabinets or in metal file cabinets in secured rooms or secured premises with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Records are disposed of in accordance with General Records Schedule No. 1, Item 29.

SYSTEM MANAGER(S) AND ADDRESS:

(a) Chief, Division of Labor Management Relations, Office of the Secretary, Office of Personnel, Division of Labor Management Relations, 19th and C Streets NW., Washington, DC 20240.

(b) Labor Relations Officer, Bureau of Indian Affairs, Division of Personnel

Mamagement, 1951 Constitution Avenue NW., Washington, DC 20245.

(c) Labor Relations Officer, Bureau of Mines, Division of Personnel, Branch of Compensation and Labor Relations, 19th and C Streets NW., Washington, DC 20240.

(d) Personnel Officer, Geological Survey, National Center, 12201 Sunrise Valley Drive, Reston, VA 22092.

(e) Labor Relations Officer, National Park Service, Division of Personnel, Branch of Labor Management Relations, 19th and C Streets NW., Washington, DC 20240.

(f) Personnel Officer, U.S. Fish and Wildlife Service, Division of Personnel Management and Organization, 19th and C Streets NW., Washington, DC 20240.

(g) Labor Relations Officer, Bureau of Reclamation, 19th and C Streets NW., Washington, DC 20240.

(h) Labor Relations Officer, Bureau of Land Management, Division of Personnel (530), 19th and C Streets NW., Washington, DC 20240.

(i) Chief, Branch of Employee Relations and Training, Minerals Management Service, Personnel Division, 1110 Herndon Parkway, Herndon, VA 22070.

(j) Chief, Branch of Policies and Progams, Office of the Secretary, 19th and C Streets NW., Washington, DC 20240.

(k) Labor Relations Officer, Office of Surface Mining, Division of Personnel, 1951 Constitution Avenue NW., Washington, DC 20245.

NOTIFICATION PROCEDURE:

Inquiries regarding the existence of records should be addressed to the appropriate System Manager. A written, signed request stating that the requester seeks information concerning records pertaining to him is required. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access may be addressed to the appropriate System Manager. The request must be in writing and be signed by the requester. The request must meet the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment should be addressed to the appropriate System Manager and must meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Subject to complaint, colleagues and supervisors of complainant and management officials.

INTERIOR/OS–78

SYSTEM NAME:

Negotiated Grievance Procedure Files—Interior, Office of the Secretary–78.

SYSTEM LOCATION:

Records for pertinent employees of each bureau and office are maintained at the locations shown for the System Managers listed below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Interior employees filing grievances/complaints.

CATEGORIES OF RECORDS IN THE SYSTEM:

Formal charge and complaint; name, address, and other personal information about complainant, transcript of hearing (if held) and information about other personnel in complianant's work unit, as relevant.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 11491, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary uses of the records are to administer employee grievances. Disclosures outside the Department of Interior may be made (1) to the Federal Labor Relations Council; (2) to the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (3) of information indicating a violation or potential violation of a statute, regulation, rule, order or license, to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license; (4) to a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file orders.

RETRIEVABILITY:

Name and Docket or Case number.

SAFEGUARDS:

Records are located in lockable metal file cabinets or in metal file cabinets in secured premises with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Records are disposed of in accordance with General Records Schedule No. 1, Item 31.

SYSTEM MANAGER(S) AND ADDRESS:

(a) Chief, Division of Labor Management Relations, Office of the Secretary, Office of Personnel, Division of Labor Management Relations, 19th and C Streets, NW., Washington, DC 20240.

(b) Labor Relations Officer, Bureau of Indian Affairs, Division of Personnel Management, 1951 Constitution Avenue NW., Washington, DC 20245.

(c) Labor Relations Officer, Bureau of Mines, Division of Personnel, Branch of Compensation and Labor Relations, 19th and C Streets, NW., Washington, DC 20240.

(d) Personnel Officer, Geological Survey, National Center, 12201 Sunrise Valley Drive, Reston, Virginia 22092.

(e) Labor Relations Officer, National Park Service, Division of Personnel Branch of Labor Management Relations, 19th and C Streets NW., Washington, DC 20240.

(f) Personnel Officer, U.S. Fish and Wildlife Service, Division of Personnel Management and Organization, 19th and C Streets, NW., Washington, DC 20240

(g) Labor Relations Officer, Bureau of Reclamation, 19th and C Streets, NW., Washington, DC 20240.

(h) Labor Relations Officer, Bureau of Land Management, Division of Personnel (530) 19th and C Streets NW., Washington, DC 20240.

(i) Chief, Branch of Employee Relations and Training, Minerals Management Service, Personnel Division, 1110 Herndon Parkway, Herndon, VA 22070.

(j) Chief, Branch of Policies and Office Programs, of the Secretary, 19th and C Streets, NW., Washington, DC 20240

(k) Labor Relations Officer, Office of Surface Mining, Division of Personnel, 1951 Constitution Avenue, NW., Washington, DC 20245

NOTIFICATION PROCEDURE:

Inquiries regarding the existence of records should be addressed to the appropriate System Manager. A written, signed request stating that the requester

seeks information concerning records pertaining to him is required. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access may be addressed to the appropriate System Manager. The request must be in writing and be signed by the requester.

CONTESTING RECORD PROCEDURES:

A petition for amendment should be addressed to the appropriate System Manager and must meet the content requirements of 43 CFR 2.71. The request must meet the content requirements of 43 CFR 2.63.

RECORD SOURCE CATEGORIES:

Subject complainant, colleagues and supervisors of complainant and management officials.

[FR Doc. 87-18146 Filed 8-10-87; 8:45 am]

BILLING CODE 4310-RJ-M

Bureau of Indian Affairs

Proposed Finding for Federal Acknowledgement of the San Juan Southern Paiute Tribe

August 4, 1987.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.9(f) (formerly 25 CFR 54.9(f)), notice is hereby given that the Assistant Secretary proposes to acknowledge that the San Juan Southern Paiute Tribe, c/o Mrs. Evelyn James, P.O. Box 2956, Tuba City, Arizona 86045, exists as an Indian tribe within the meaning of Federal law. This notice is based on a determination that the group satisfies the seven mandatory criteria set forth in 25 CFR 83.7. Therefore, the San Juan Southern Paiute Tribe meets the requirements necessary for a government-to-government relationship with the United States.

Members of the San Juan Southern Paiute Tribe live on lands in north central Arizona which were traditionally and aboriginally Southern Paiute. Today's members are predominantly lineal descendants of the Southern Paiute Indians whose ancestors have inhabited this area since first sustained contact with Euro-Americans around 1850. Both historically and up through the present day, the petitioner has been repeatedly identified by scholars, local non-Indians, Federal officials, other Southern Paiute bands, and members of the Navajo Tribe both as Southern Paiute and as a distinct body of people. This has occurred even in contexts where close interaction with the Navajos and some acculturation to Navajo culture has been evident.

While the San Juan Paiutes once occupied a much larger portion of the land in the region than they do now, the previous broader occupation has diminished to two communities separated by approximately 90 miles—the southern community around Willow Springs, and the northern community around Paiute Canyon/Navajo Mountain. Owing to steady population increases and westward expansion among the Navajos in the late 19th century, San Juan Paiute lands were eventually absorbed and included within the Navajo Reservation. From 1908 to 1922 the San Juan Paiutes had their own reservation, but it too was ultimately annexed to the Navajo Reservation.

Today both San Juan Paiute communities, whose residents form a common kinship group, are located on the Navajo Reservation, but are still explicitly identified as Paiute communities. Extensive economic cooperation in agriculture and grazing exists between family groups in both communities. The primary context in which social distinction occurs is one between San Juan Paiutes and Navajos. Although both are residents of the same geographical area and have social links and interactions between them, the San Juan Paiutes have not been incorporated into the kinship relations which are primary for traditional Navajo social organization. Moreover, separate economic resources for agriculture and grazing have been maintained between the two tribes. While there is some San Juan Paiute acculturation to Navajo ways—more in some families than in others—important social distinctions remain, with little evidence of Paiute acculturation to Navajo kinship patterns, political institutions, or central aspects of Navajo religion.

The San Juan Paiutes have maintained leadership and internal political decision-making processes, exercising tribal political authority since earliest sustained historical contact. This internal governmental process has operated independent of the control of traditional and modern political processes of the Navajo Tribe. While ethnographic data indicate that the San Juan Paiutes were a single socially unified and distinct body in the 1850's which considered of at least two political units with separate leadership, by 1873 the group had become a single political unit, and was so considered by a Government commission. Tribal leaders served as spokesmen for the entire tribe and were concerned with external affairs. The traditional system was based on consensus decision-making and non-coercive leaders who were influential because of their prestige, knowledge of Paiute culture, social maturity, and ability to gain the support of kinsmen for whom they spoke. Meetings were a central and indispensable part of the political structure. A written description of the governing process of the tribe and the formerly unwritten criteria for membership were submitted with the tribe's petition, in fulfillment of 25 CFR 83.7(d). Individuals on the tribe's membership roll met the stated criteria for membership, which include lineal descent from Southern Paiute ancestry and social participation in the tribe.

One-hundred nineteen of the 188 San Juan Paiutes who appear on the roll which the tribe submitted for Federal acknowledgment also appear on the Bureau's updated 1940 reservation-wide census which has been adopted by the Navajo Tribe as the "official roll of the Navajo Tribe." These individuals have been determined not to be members of the Navajo Tribe within the meaning of "member of an Indian tribe" as defined in the acknowledgment regulations (25 CFR 83.1(k)). This is based on a detailed analysis of the circumstances surrounding the creation and maintenance of that roll and the appearance of the names of many of the Paiutes on it. This analysis is described in detail in the Bureau's technical reports accompanying this proposed finding. Accordingly, it has been concluded that the San Juan Southern Paiutes are not composed principally of members of another tribe and therefore meet the requirements of criterion f of the regulations.

No evidence was found to show that the San Juan Southern Paiute Tribe has been the subject of Federal legislation which has expressly terminated or forbidden a relationship with the United States Government.

Based on this preliminary factual determination, we conclude that the San Juan Southern Paiute Tribe meets all of the criteria in 25 CFR 83.7. We therefore conclude that the tribe should be granted Federal acknowledgment under 25 CFR Part 83.

Section 83.9(g) of the regulations provides that any individual or organization wishing to challenge the proposed finding may submit factual or legal arguments and evidence to rebut the evidence relied upon. This material must be submitted within 120 calendar days from the date of publication of this notice.

BEST COPY AVAILABLE

Under § 83.9(f) of the regulations, a report summarizing the evidence for the proposed decision will be available to the petitioners and interested parties upon written request. Comments and requests for a copy of the report should be addressed to the Office of the Assistant Secretary—Indian Affairs, 1951 Constitution Avenue, NW., Mail Stop 32–SIB, Washington, DC 20245, Attention: Branch of Acknowledgment and Research.

After consideration of the written arguments and evidence rebutting the proposed finding and within 60 days after the expiration of the 120-day response period, the Assistant Secretary will publish the final determination regarding the petitioner's status in the Federal Register as provided in 25 CFR 83.9(h).

Hazel E. Elbert,

Acting Assistant Secretary, Indian Affairs.

[FR Doc. 87–18211 Filed 8–10–87; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[CO–010–07–4322–02]

Craig District Grazing Advisory Board Meeting

Time and Date: September 2, 1987, at 10:00 a.m.

Place: Craig District Office, 455 Emerson Street, Craig, Colorado.

Status: Open to public; interested persons may make oral statements between 10:00 a.m. and 11:00 a.m., or may file written statements.

Matters to be Considered

1. Proposed grazing regulation changes.
2. Presentation on riparian system management.
3. Area reports including updates on land use and activity planning, and proposed FY '88 range improvement lists.
4. Status report on FY '87 range improvement projects.
5. Expenditure of Grazing Advisory Board Funds.

Contact Person for more Information: John Denker, Craig District Office, 455 Emerson Street, Craig, Colorado, Phone: 303–824–8261.

Dated: August 3, 1987.

David C. Nylander,

Acting District Manager.

[FR Doc. 87–18149 Filed 8–10–87; 8:45 am]

BILLING CODE 4310-JB-M

[MT–020–07–4410–02]

Miles City District Advisory Council, Montana; Meeting

AGENCY: Bureau of Land Management, Miles City District Office.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 92–463 that a meeting of the Miles City District Advisory Council will be held Thursday, September 10, 1987, at 10 a.m. in the conference room at the Miles City District Office, Garryowen Road west of Miles City, Montana 59301

The agenda is as follows:

1. Status of wild horse policy and program.
2. Update on riparian policy and program.
3. Update on grasshopper and weed control programs, including consideration of council resolution on weed control funding.
4. Review of FY 88 District budget.

The meeting is open to the public. The public may make oral statements before the Advisory Council or file written statements for the Council's consideration. Depending upon the number of persons wishing to make oral statement, a per person time limit may be established. Summary minutes of the meeting will be maintained in the Bureau of Land Management District Office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: District Manager, Miles City District, Bureau of Land Management, P.O. Box 940, Miles City, Montana 59301. Telephone: (406) 232–4331.

Darrell G. Pastorius,

Acting District Manager.

[FR Doc. 87–18150 Filed 8–10–87; 8:45 am]

BILLING CODE 4310-DN-M

[AZ–020–41–5410–10–ZADJ; A–22922]

Mineral Interest Application; Arizona

ACTION: Notice of receipt of conveyance of mineral interest application A–22922.

Notice is hereby given that pursuant to Section 209 of the Act of October 21, 1976, 90 Stat. 2757, Space Biosphere Ventures has applied to purchase the mineral estate described as follows:

Gila and Salt River Meridian, Arizona

T. 10 S., R. 14 E.,
Sec. 12, SE¼.
T. 10 S., R. 15 E.,
Sec. 7, lots 1, 2, 3, 4.

Additional information concerning this application may be obtained from the Area Manager, Phoenix Resource Area, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Upon publication of this notice in the **Federal Register**, the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interests, upon final rejection of the application or two years from the date of filing of the application, July 17, 1987, whichever occurs first.

Herman L. Kast,

Acting District Manager.

Date: July 27, 1987.

[FR Doc. 87–18151 Filed 8–10–87; 8:45 am]

BILLING CODE 4310-32-M

[AZ–020–41–5410–10–ZADG; A–22525]

Mineral Interest Application, Arizona

ACTION: Notice of Receipt of Conveyance of Mineral Interest Application A–22525.

Notice is hereby given that pursuant to section 209 of the Act of October 21, 1976, 90 Stat. 2757, William B. Leach has applied to purchase the mineral estate described as follows:

Gila and Salt River Meridian, Arizona

T. 8 N., R. 5 W.,
Sec. 26, NW¼NW¼.

Approximately 40 acres, Yavapai County.

Additional information concerning this application may be obtained from the Area Manager, Phoenix Resource Area, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Upon publication of this notice in the **Federal Register**, the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interests, upon final rejection of the application or two years from the date of filing of the application,

December 12, 1988, whichever occurs first.

Date: July 31, 1987.

Herman L. Kast,

Acting District Manager.

[FR Doc. 87-18152 Filed 8-10-87; 8:45 am]

BILLING CODE 4310-33-M

[AA 680 07 4132 02]

Information Collection Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for Approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202-395-7313.

Title: Surface Management of Public Lands Under the U.S. Mining Laws.

Abstract: Section 302(b) of the Federal Land Policy and Management Act of 1976 requires that "In managing the public lands the Secretary (of the Interior) shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the (Public) lands." The regulations promulgated at 43 CFR Part 3809, are the Secretary's regulations regulating surface disturbance and ensuring reclamation on mining claims and sites located under the mining laws on public land under the Bureau of Land Management's administration.

Bureau Form Number: None.

Frequency: Respondent only files a plan of operation or notice once for any given operation. Additional filings are not required unless the operator proposed to modify the operations.

Description of Respondents: Respondents may range from individuals to multi-national corporations.

Annual Responses: 2300

Annual Burdens Hours: 4600

Bureau Clearance Officer: Richard Iovaine, 202-653-8853

Robert H. Lawton,

Assistant Director, Energy and Mineral Resources.

July 1, 1987.

[FR Doc. 87-18147 Filed 8-10-87; 8:45 am]

BILLING CODE 4310-84-M

[AA-48583-BU]

Proposed Reinstatement of a Terminated Oil and Gas Lease; Alaska

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease AA-48583-BU has been received covering the following lands:

Copper River Meridian, Alaska

T. 13 N., R. 7 W.,
Sec. 30, NW¼NW¼.

(39.25 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from April 1, 1987, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA-48583-BU as set out in section 31 (d) and (e) of the Mining Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective April 1, 1987, subject to the terms and conditions cited above.

Constance R. Van Horn,

Acting Chief, Branch of Mineral Adjudication.

Dated: August 3, 1987.

[FR Doc. 87-18153 Filed 8-10-87; 8:45 am]

BILLING CODE 4310-JA-M

[CA-940-07-4520-12; C-11-87]

Filing of Plat of Survey; California

July 30, 1987.

1. This supplemental plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

San Bernardino Meridian, Riverside County

T. 5 S., R. 16 E.

2. This supplemental plat of the North ½, of Section 5, Township 5 South, Range 16 East, San Bernardino Meridian, California, was accepted July 8, 1987.

3. This supplemental plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This supplemental plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Public Information Section.

[FR Doc. 87-18154 Filed 8-10-87; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-07-4520-12; Group 923]

Filing of Plat of Survey; California

July 30, 1987.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, San Francisco County

T. 2 S., R. 6 W.

2. This plat representing the dependent resurvey of a portion of the Golden Gate National Recreation Area (GGNRA), and the survey of a 1.90 acre parcel of land, in Block No. 1582 of the City and County of San Francisco, for inclusion within the GGNRA, Township 2 South, Range 6 West, Mount Diablo Meridian, California, under Group No. 923, was accepted July 14, 1987.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the National Park Service and the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Public Information Section.

[FR Doc. 87-18155 Filed 8-10-87; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-07-4520-12; Group 923]

Filing of Plat of Survey; California

July 30, 1987.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Marin County
T. 1 S., R. 5 W.

2. This plat representing the dependent resurvey of a portion of the exterior boundries of the Golden Gate National Recreation Area (GGNRA), and the survey of Aquatic Park within the GGNRA, in Township 1 South, Range 5 West, Mount Diablo Meridian, California, under Group No. 923, was accepted July 14, 1987.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the National Park Service and the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Herman J. Lyttge,
Chief, Public Information Section.
[FR Doc. 87–18156 Filed 8–10–87; 8:45 am]
BILLING CODE 4310-46-M

[WY–920–07–4111–15; W–96232]

Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

August 4, 1987.

Pursuant to the provisions of Pub. L. 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease W–96232 for lands in Big Horn County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessees have agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent respectively.

The lessees have paid the required $500 administrative fee and $106.25 to reimburse the Department for the cost of this Federal Register notice. The lessees have met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–96232 effective June 1, 1986, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,
Chief, Leasing Section.
[FR Doc. 87–18241 Filed 8–10–87; 8:45 am]
BILLING CODE 4310-22-M

National Park Service

Intention To Negotiate Concession Permit; Gettysburg Tours, Inc.

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession permit with Gettysburg Tours, Inc., authorizing it to continue to provide tram transportation and bicycle rental facilities and services for the public within Everglades National Park for a period of five (5) years from December 1, 1987 through November 30, 1992.

This permit renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing permit which expires by limitation of time on November 30, 1987, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the permit and in the negotiation of a new permit as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated. Interested parties should contact the Regional Director, Southeast Region, 75 Spring Street, SW., Atlanta, Georgia 30303, for information as to the requirements of the proposed permit.

Robert M. Baker,
Regional Director, Southeast Region.
[FR Doc. 87–18162 Filed 8–10–87; 8:45 am]
BILLING CODE 4310-70-M

Intention to Negotiate Concession Contract; Virginia Peaks of Otter Co.

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with Virginia Peaks of Otter Company authorizing it to continue to provide food service, lodging, merchandising, service station and transportation facilities and services for the public on the Blue Ridge Parkway for a period of twenty (20) years from December 1, 1988, through November 30, 2008.

An assessment of the environmental impact of this proposed action has been made and it has been determined that it will not significantly affect the quality of the environment, and that it is not a major Federal action having significant impact on the environment under the National Environmental Policy Act of 1969. The environmental assessment and finding of no significant impact may be reviewed in the office of the Superintendent, Blue Ridge Parkway.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on November 30, 1988, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR 51.5.

The Secertary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated. Interested parties should contact the Regional Director, Southeast Region,75 Spring Street, SW., Atlanta Georgia 30303, for information as to the requirements of the proposed contract.

C. W. Ogle,
Acting Regional Director, Southeast Region.
[FR Doc. 87–18163 Filed 8–10–87; 8:45 am]
BILLING CODE 4310-70-M

National Register of Historic Places; Pending Nominations; Alabama et al.

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 1, 1987. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for

evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by August 26, 1987.

Amy Schlagel,

Acting Chief of Registration, National Register.

ALABAMA

Clark County

Jeffersonville, *Jeffersonville Historic District,* Roughly bounded by Court Ave., Graham St., Ohio River, & I–65

Dallas County

Selma, *Skinner Marcus Meyer, House,* 2612 Summerfield Rd.

Jefferson County

Brimingham, *West End Masonic Temple,* 1346 Tuscaloosa Ave.

Lawrence County

Courtland, *MacMahon, John, House,* Jct. S. Lane & Jefferson St.

Winston County

Double Spring, *Winston County Courthouse,* Addison Rd.

ARIZONA

Maricopa County

Phoenix, *Phoenix Homesteads Historic District,* Roughly bounded by Flower & Twenty-eighth Sts., Pinchot Ave., & Twenty-sixth St.

Yuma County

Martinez Lake Site (Site No. AZ–050–0210)

FLORIDA

Hillsborough County

Tampa, *Curtis, William E., House,* 808 E. Curtis St.

St. Johns County

St Augustine, *Old St. Johns County Jail,* 167 San Marco Ave.

GEORGIA

Candler County

Metter, *South Metter Residential Historic District,* .S. Kennedy, S. Roundtree, S. Lewis & S. Leroy

Chattooga County

Cloudland vicinity, *Camp Juliette Low,* GA 157

Greene County

Greensboro, *Baber, Dr. Calvin M., House (Greensboro MRA),* Penfield Rd.
Greensboro, *Church of the Redeemer (Greensboro MRA),* Jct. of Main & North Sts.
Greensboro, *Commercial Historic District (Greensboro MRA),* Broad & Main Sts.
Greensboro, *(Greensboro Depot (Greensboro MRA),* West St.
Greensboro, *King-Knowles-Gheesling House (Greensboro MRA),* North St.
Greensboro, *Leila, Mary, Cotton Mill and Village (Greensboro MRA),* NE of downtown Greensboro, vicinity of Mill, W. Cherry, N. Laurel, Sycamore, Spring, West, & Richland Sts.
Greensboro, *North Street-East Street Historic District, (Greensboro MRA),* North, East, Greene, & Walnut Sts.
Greensboro, *Poullain, Phillip, House (Greensboro MRA),* Penfield Rd.
Greensboro, *South Street-Broad Street-Main Street-Laurel Street Historic District (Greensboro MRA),* South, Broad, Main, and Laurel Sts.
Greensboro, *South Walnut Street Historic District (Greensboro MRA),* S. Walnut, E. South, & E. Broad Sts.
Greensboro, *Springfield Baptist Church (Greensboro MRA),* Canaan Circle

LOUISIANA

Rapides Parish

Meeker, *Jones, Wade H., House,* Meeker Rd.

MICHIGAN

Grand Traverse

Fife Lake vicinity, *Fife Lake-Union District No. 1 Schoolhouse,* 5020 Fife Lake Rd.

NEW HAMPSHIRE

Cheshire County

Winchester, *Conant Public Library,* Main St.
Winchester, *Winchester Town Hall,* Main St..

Grafton County

Haverhill, *Haverhill Corner Historic District,* NH 10 from N. Piedmont to bisection of NH 25 & Court St.

Hillsborough County

Nashua, *Nashua Manufacturing Company Historic District,* Factory & Pine Sts.

Merrimack County

Concord, *Downing, Lewis, Jr., House,* 33 Pleasant St.

Stafford County

Dover, *Garrison Hill Park and Tower,* Abbie Sawyer Memorial Dr.

NEW YORK

Allegany County

Wellsville, *Wellsville Erie Depot,* Depot St.

Westchester County

Croton-on-Hudson, *Croton North Railroad Station,* Senasqua Rd.

NORTH CAROLINA

Rockingham County

Eden, *Boone Road Historic District,* Roughly 400 & 500 blks. Boone Rd., 400 blk. Chestnut & 500 blk. Glovenia Sts., & 200 blk. Highland Dr.
Eden, *Leaksville Commerical Historic District,* 622–656 Washington & 634 Monore Sts.

TEXAS

Bexar County

Randolph AFB, *Base Administration Building,* Building 100

VIRGINIA

Fairfax County

Fairfax, *City of Fairfax Historic District,* Jct. of VA 236 & VA 123

WASHINGTON

Clallam County

Port Angeles, *Clallam County Courthouse,* 319 Linclon St.

Lewis County

Pe Ell, *Holy Cross Polish National Catholic Church,* Third & Queen Sts.

San Juan County

Eastsound vicinty, *Crow Valley School,* Crow Valley Rd.

[FR Doc. 87–18164 Filed 8–10–87; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–287X]

Port Huron and Detroit Railroad Co.; Exemption; Abandonment in St. Clair County, MI; Corrected Notice

AGENCY: Interstate Commerce Commission.

ACTION: Correction to effective date of notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Commission exempts the Port Huron and Detroit Railroad Company (PH&D) from the requirement of prior approval under 49 U.S.C. 10903 *et seq.,* to abandon a 4.35-mile line of railroad in St. Clair County, MI, between Valuation Station 600+00 (milepost 14.64) at or near Belle River, and the end of the line at or near Valuation Station 829+55 (milepost 18.99) in Marine City, subject to the employee protective conditions imposed in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). A prior notice was published at 52 FR 19410 on May 22, 1987 erroneously indicating an effective date of May 2, 1987. This notice corrects that error.

DATE: This exemption was effective on June 22, 1987.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area).

Decided: August 3, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners

Sterrett, Andre, and Simmons. Vice Chairman Lamboley concurred in the result.

Noreta R. McGee,

Secretary.

[FR Doc. 87-18175 Filed 8-10-87; 8:45 am]

BILLING CODE 7035-01-M

[No. MC-C-30044]

Motor Carriers; James River Corp. of Virginia; Transportation Through Woodland, California; Petition for Declaratory Order

AGENCY: Interstate Commerce Commission.

ACTION: Notice of filing of a petition for declaratory order.

SUMMARY: Upon petition by James River Corporation of Virginia, the Commission has instituted a declaratory order proceeding to determine whether the transportation of paper products from a warehouse at Woodland, CA to customers at other points in California is interstate or intrastate in nature. Superior Transportation Systems, Inc., and Interstate Distributor Company joined in the petition. The majority of the paper products are stored temporarily after an initial movement from out-of-State manufacturing facilities. They are transported from Woodland by I.C.C. authorized motor contract carriers under proportional rate schedules containing storage-in-transit provisions.

DATES: Persons interested in participating in this proceeding should so advise the Commission in writing by August 26, 1987.

A list of interested parties will then be compiled and served. Petitioners will have 10 days from the service date of that list to serve each party on the list and the Commission with a copy of each of their comments. Other parties will then have 35 days from the service date of the service list to submit their comments to the Commission and to petitioners' representatives. Petitioners will have 50 days from the service date of the service list to reply.

ADDRESSES: Send an original and 10 copies to comments referring to No. MC-C-30044 to:

Case Control Branch, Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423

Send one copy of comments to each of petitioners' representatives:

William P. Jackson, Jr., P.O. Box 1240, Arlington, VA 22210

and

Timothy H. Lee, 25200 Southwest Parkway, Wilsonville, OR 97070

and

Gary R. McLean, P.O. Box 99909, Tacoma, WA 98499-0909

FOR FURTHER INFORMATION CONTACT:

Ronald Thomas (202) 275-7912

or

Andrew L. Lyon (202) 275-7691

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission decision. Copies are available for purchase from T.S. InfoSystems, Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357.

Dated: July 27, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Vice Chairman Lamboley would have entertained a request for oral hearing.

Noreta R. McGee,

Secretary.

[FR Doc. 87-18176 Filed 8-10-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telepone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW, Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Revision

Bureau of Labor Statistics

Consumer Expenditure Diary and Interview Survey Questionnaires and Cover Letters

1220-0050; CE-300, CE-301, CE-302, CE-302 Supp., CE-303 (L1, L2, L5, CE-380, CE-383, CE-680, CE-801, CE-802, CE-803 (L)

Daily, Diary; Quarterly, Interview

Individuals or households

52,700 responses; 90,539 hours; 11 forms

The Consumer Expenditure Surveys gather detailed information on expenditures, income and other related subjects to periodically update the Consumer Price Index. The published data provide a continuing measurement of changes in consumer expenditure patterns for economic analysis.

Employment Standards Administration

Certificate of Medical Necessity

1215-0113; CM-893

Annually

Businesses or other for-profit; small businesses or organizations

10,000 responses; 54,000 hours; 1 form

The CM-893 is completed by the miner's doctor and is used by DCMWC

to determine if the miner beneficiary meets the specific impairment standards to qualify for durable medical equipment, home nursing care and/or pulmonary rehabilitation.

Employment and Training Administration

Experience Rating Report
1205–0164; ETA 204
Annually
State or local governments
53 respondents; 2,120 hours; 1 form

Measures experience rating, permitting calculation of experience rating index (ERI); permits analysis of factors influencing rates, equity, and soundness of the system.

Reinstatement

Pension and Welfare Benefits Administration

Prohibited Transaction Class Exemption 81–8
Other
Businesses and other for-profit
57,675 responses; 9,613 hours

This class exemption exempts from the prohibited transaction restrictions of ERISA the investment of plan assets which involve the purchase or other acquisition, holding sale, exchange or redemption by or on behalf of an employee benefit plan of certain types of short-term investments.

Prohibited Transaction Class Exemption 82–63
On occasion
Business and other for-profit
10,800 responses; 1,800 hours

The class exemption allows the payment of compensation under certain conditions for the provision by an employee benefit plan fiduciary of securities lending services to the plan.

Prohibited Transaction Class Exemption 77–8
Other
Business and other for profit; small businesses or organizations
8,580 responses; 1,430 hours

The class exemption exempts from the prohibited transaction restrictions of ERISA the sale of individual life insurance or annuity contracts by a plan to participants, relatives of participants, employers any of whose employees are covered by the plan, or other employee benefit plans which are parties in interest.

ERISA Exemption Procedure 75–1, Exemption Procedure Under Section 408(a) of ERISA
On occasion
Business or other for-profit; non-profit institutions; small business or organizations
525 respondents; 14,938 hours

The ERISA Exemption Procedure provides guidance to the affected public regarding the procedures to be followed and the information to be supplied to the Department when requesting an exemption from the ERISA prohibited transaction provisions.

Final Regulation/Alternative Method of Compliance for Certain Simplified Employer Pensions 2520.104–49
1210–0034
Annually
Businesses or other for profit; Small businesses or organizations
500 responses; 42 hours; 1 form

In keeping with section (408) of the IRC, the regulation provides an alternative type of reporting and disclosure arrangement for Simplified Employee Pensions (SEPs) that is easier to establish and administer than otherwise required under ERISA.

Prohibited Transaction Class Exemption 80–83
Recordkeeping
Business or other for-profit
1 hour

This class exemption exempts from the prohibited transaction provisions of ERISA certain transactions involving an employee benefit plan's purchase of securities which may aid the issuer of the securities to reduce or retire indebtedness to a party in interest.

ERISA Advisory Opinion Procedure 76–1
On occasion
Business or other for-profit; small businesses or organizations
121 respondents; 1,815 hours

The procedure is utilized by plan fiduciaries, administrators and other individuals when requesting a legal interpretation from the Department regarding specific facts and circumstances (an Advisory Opinion).

Signed at Washington, DC, this 4th day of August, 1987.

Marizetta L. Scott,

Acting Departmental Clearance Officer.

[FR Doc. 87–18228 Filed 8–10–87; 8:45 am]

BILLING CODE 4510-23-M

Employment and Training Administration

Federal Committee on Apprenticeship; Public Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92–0463; 5 U.S.C. App. 1) of October 6, 1972, notice is hereby given that the Federal Committee on Apprenticeship (FCA) will conduct an open meeting on August 19, 1987, from 1:30 p.m. to 4:00 p.m. at the Washington Hilton Hotel, 1919 Connecticut Avenue, NW, Washington, DC.

The agenda for the meeting on August 19 will include:

1. Swearing in New Members.
2. Welcoming Remarks.
3. Members of the Committee will be given the opportunity to express their views on apprenticeship.
4. Members of the public will be given time to express their thoughts on apprenticeship.

Communications to the Executive Secretary should be addressed as follows: Mrs. M.M. Winters, Bureau of Apprenticeship and Training, ETA, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–4644, Washington, DC 20210.

Signed at Washington, DC, this 4th day of August 1987.

Roger Semerad,

Assistant Secretary of Labor.

[FR Doc. 87–18230 Filed 8–10–87; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply For Worker Adjustment Assistance; General Motors Corp., et al.

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 21, 1987.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 21, 1987.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC this 3rd day of August 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers/firm	Location	Date received	Date of petition	Petition No.	Articles produced
AC Spark Plug Div., General Motors (UAW)	Oak Creek, WI	8/3/87	7/22/87	19,968	Automobiles.
AT&T Information Systems (CWA)	Solon, OH	8/3/87	7/20/87	19,969	Computers.
AT&T Information Systems (CWA)	Charlotte, NC	8/3/87	7/20/87	19,970	Telecommunication Products.
American Lacquer (Workers)	Miami, FL	8/3/87	7/17/87	19,971	Furniture.
Baker Metal Products, Inc. (Workers)	Dallas, TX	8/3/87	7/6/87	19,972	Aluminum.
Big Chief Drilling Co. (Workers)	Oklahoma City, OK	8/3/87	7/22/87	19,973	Oil and Gas.
Bofors Nobel, Inc. (Workers)	Muskegon, MI	8/3/87	7/21/87	19,974	Dichlorobenzaline.
C.F. Industries (O.C.A.W.)	Terre Haute, IN	8/3/87	7/28/87	19,975	Fertilizers.
Cyprus Thompson Creek Mining Co. (Company)	Clayton, ID	8/3/87	7/27/87	19,976	Molybdemun Oxide.
Energy Exchange (Workers)	Oklahoma City, OK	8/3/87	7/24/87	19,977	Oil and Gas.
Gates Molded Products (IAMAW)	Houston, TX	8/3/87	7/16/87	19,978	Molded Products.
J.B. Stuart Plant, Kenney Shoe Corp. (Workers)	Glenville, WV	8/3/87	7/21/87	19,979	Shoes.
Lameon/Crocker Petroleum Corp. (Company)	Lafayette, LA	8/3/87	7/10/87	19,980	Oil and Gas.
Manitowoc Shipbuilding, Inc	Manitowoc, WI	8/3/87	7/24/87	19,981	Cranes, Excavators, Winches and Debarkers.
Motorola/Oak Hill Plant (Workers)	Austin, TX	8/3/87	5/20/87	19,982	Circuits.
SKF Automotive Products (UAW)	Casey, IL	8/3/87	7/20/87	19,983	Automotive Products.
Trico Products Corp. (UAW)	Buffalo, NY	8/3/87	7/27/87	19,984	Windshield Wipers.
Teledyne Continental Motors (UAW)	Muskegon, MI	8/3/87	8/3/87	19,985	Trucks.
Utica Cutlery Co. (UTICA)	Utica, NY	8/3/87	7/24/87	19,986	Flatware.

[FR Doc. 87-18229 Filed 8-10-87; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL SCIENCE FOUNDATION

Open Meeting of the Advisory Committee For Design, Manufacturing, and Computer-Integrated Engineering

National Science Foundation announces the following meeting:

Name: Advisory Committee for Design, Manufacturing, and Computer-Integrated Engineering (DMCE)

Date and Time: August 27–28, 1987, 9:00 a.m.–5:00 p.m., August 27; 9:00 a.m.–3:00 p.m., August 28

Place: National Science Foundation, 1800 G Street, NW., Washington, DC, Room 543

Type of Meeting: Open

Contact Person: Dr. Michael Wozny, Division Director, DMCE, Room 1108, National Science Foundation, Telephone: 202/357-7508

Summary Minutes: Dr. Wozny

Purpose of Meeting: To provide advice, recommendations, and counsel on major goals and policies pertaining to the Division of Design, Manufacturing, and Computer-Integrated Engineering

Summarized Agenda: Discussions on issues, opportunities and future directions for the Division in Design, Manufacturing, and Computer-Integrated Engineering; discussion of the DMCE budget for FY 1987; discussion of budget issues with the NSF Assistant Director for Engineering, as well as other items.

M. Rebecca Winkler,

Committee Management Officer.

August 6, 1987.

[FR Doc. 87-18247 Filed 8-10-87; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee on Waste Management; Meeting

The ACRS Subcommittee on Waste Management will hold a meeting on August 17, 18 and 19, 1987, Room 1046, 1717 H Street NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Monday, August 17, 1987—8:30 a.m. until the conclusion of business

Tuesday, August 18, 1987—8:30 a.m. until the conclusion of business

Wednesday, August 19, 1987—8:30 a.m. until the conclusion of business

On Monday, August 17, the Subcommittee will review and discuss the Office of Research's HLW and LLW research program plans for FY 1988-FY 1992, the solidification of LLW, and the Subcommittee's July 28, 1987 visit to the University of Arizona and its field test site near Superior, Arizona.

On Tuesday, August 18, the Subcommittee will review and discuss the NMSS Division of High Level Waste Management's program plans for FY 1988-FY 1992, NRC's comments on the DOE Draft Mission Plan Amendment, the Q-List Generic Technical Position (GTP), DHLW's recent QA mini-audit of a portion of the DOE Los Alamos National Laboratory work on geologic repositories, and the Subcommittee's July 29–30, 1987 visit to the DOE Nevada Nuclear Waste Project Office, Yucca Mountain and other Nevada test site facilities.

On Wednesday, August 19, the Subcommittee will review and discuss the NMSS Division of Low Level Waste Management and Decommissioning's program plans for FY 1988–FY 1992, the Environmental Standard Review Plan for LLW sites, and status reports on DOE's uranium recovery program, EPA's LLW Standard, state LLW compacts, greater than Class C wastes, mixed wastes, alternatives to shallow-land burial for DOE low-level wastes, and foreign commercial LLW programs.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee may exchange preliminary views regarding matters to be considered during the balance of the meeting. The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Owen S. Merrill (telephone 202/634–1413) between 8:15 a.m and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: August 5, 1987.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 87–18222 Filed 8–10–87; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Information Collection for OMB Review

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980, (Title 44 U.S. Code Chapter 35), this notice announces a collection of information from the public which has been submitted to OMB for clearance. Standard Form 177, Statement of Physical Ability for Light Duty Work, is used to collect information from applicants for positions in the competitive service about their physical capacity to perform the duties of sedentary and moderately active jobs. The SF 177 is used by agencies in lieu of requesting or requiring medical examinations to determine qualifications for these positions. There are 678 individuals who respond annually for a total burden of 113 hours. For copies of this proposal, call William C. Duffy, Agency Clearance Officer, on (202) 632–7714.

DATE: Comments on this proposal should be received on or before August 21, 1987.

ADDRESS: Send or deliver comments to:

William C. Duffy, Agency Clearance Officer, Officer of Personnel Management, 1900 E. Street NW., Room 6410, Washington DC 20415,

and

Richard Eisinger, Information Desk Officer, Office of Information, Office of Management and Budget, Room 3002, New Executive Office Building, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Raleigh Neville, (202) 632–6817.

Office of Personnel Management.

James E. Colvard,

Deputy Director.

[FR Doc. 87–18215 Filed 8–10–87; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Surry and James City Counties, VA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Surry and James City Counties, Virginia.

FOR FURTHER INFORMATION CONTACT: George E. Kirk, Jr., District Engineer, Federal Highway Administration, P.O. Box 10045, Richmond, Virginia 23240–0045, Telephone: (804) 771–2380.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Virginia Department of Transportation (VDOT) will prepare an Environmental Impact Statement (EIS) on a proposal to provide an improved crossing of the James River along Route 31 between Surry and James City Counties.

The proposed project will consist of the study of several alternatives to relieve congestion at the existing Jamestown Ferry which crosses the James River from Surry County to James City County.

Various build alternatives within the study area will be analyzed.

There are also three alternatives to the proposed project under consideration:

1. Null or No-Build Condition—to evaluate the traffic impacts of maintaining the existing ferry service.

2. Ferry Service Improvement—to evaluate the ability of an improved ferry service to accommodate the transportation demands in the study area.

3. Mass Transit—to evaluate the ability of mass transit to accommodate the transportation demands in the study area.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies and to private organizations and citizens who have previously expressed interest in this proposal. No formal scoping meeting is scheduled at this time. The DEIS will be available for public and agency review and comment. Following publication of the DEIS, a public hearing will be held. Public notice will be given of the time and place of the hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the DEIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of Executive Order 12372 regarding State and local review of Federal and Federally assisted programs and projects apply to this program.)

Issued on: August 4, 1987.

George E. Kirk, Jr.,

District Engineer, Richmond, Virginia.

[FR Doc. 87–18157 Filed 8–10–87; 8:45 am]

BILLING CODE 4910-22-M

Research and Special Programs Administration

Applications For Renewal or Modification of Exemptions or Applications To Become a Party To An Exemption

AGENCY: Office of Hazardous Materials Transportation, Research and Special Programs Administration, DOT.

ACTION: List of applications for renewal or modification of exemptions or application to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. This notice is abbreviated to

expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier Federal Register publications, they are not repeated here. Except as otherwise noted, renewal application are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comment period closes August 27, 1987.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT:

Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

Application	Applicant	Renewal of exemption
4453-X	Laverty Supply, Inc., Indianola, IA.	4453
4453-X	Armstrong Explosives Co., New Galilee, PA.	4453
4453-X	Northern Ohio Explosives, Inc., Forest, OH.	4453
4453-X	Belmont Mine Supply, Company, Inc., Flushing, OH.	4453
4459-X	Allied Healthcare Products, Inc., St. Louis, MO.	4459
5206-X	Kesco, Inc., Kittanning, PA.	5206
5895-X	Explosive Technology, Inc., Fairfield, CA.	5895
6589-X	International Safety Devices, Inc., Hesperia, CA (See footnote [1]).	6589
6861-X	U.S. Department of Defense, Falls Church, VA.	6861
6902-X	Great Lakes Chemical Corp., El Dorado, AR.	6902
7035-X	Owens-Illinois, Inc., Toledo, OH.	7035
7056-X	Henkel Corp., Morristown, NJ.	7056
7544-X	Eastman Kodak Co., Rochester, NY (See footnote [2]).	7544
7616-X	Consolidated Rail Corp. (CONRAIL), Philadelphia, PA.	7616
7835-X	Wilson Oxygen and Supply, Inc., Austin, TX.	7835
8063-X	Taylor-Wharton, Division of Harsco Corp., Indianapolis, IN (See footnote [3]).	8063
8573-X	Alstar Co., Tracy, CA	8573
8640-X	Fruehauf Corp., Omaha, NE.	8640
8651-X	Rockwell International Corp., Canoga Park, CA.	8651
8698-X	Union Carbide Corp., Danbury, CT.	8698
8708-X	Great Lakes Chemical Corp., El Dorado, AR.	8708
8716-X	GTE Products Corp., Waltham, MA.	8716
8723-X	Atlas Powder Co., Dallas, TX (See footnote [4]).	8723
8750-X	Applied Cos., San Francisco, CA.	8750
8757-X	Y-Z Industries, Inc., Snyder, TX (See footnote [5]).	8757
8814-X	Structural Composites Industries, Inc., Pomona, CA.	8814
8888-X	Nalco Chemical Co., Naperville, IL.	8888
9061-X	SSI Group, Ltd., Fairfield, KY.	9061
9130-X	Bio-Lab, Inc., Decatur, GA.	9130
9130-X	Hydrotech Chemical Corp., Marietta, GA.	9130
9140-X	Crown Rotational Molded Products, Inc., Marked Tree, AR (See footnote [6]).	9140
9142-X	EVA Eisenbahn-Verkehrsmittel GmbH, Dusseldorf, West Germany.	9142
9150-X	Hoover Group, Inc., Beatrice, NE.	9150
9174-X	McDonnell Douglas Corp., St. Louis, MO.	9174
9181-X	GTE Products Corp., Waltham, MA.	9181
9340-X	Pioneer Plastics & Services Co. Ltd., Brampton, Ontario, CN (See footnote [7]).	9340
9346-X	Witco Corp., Bradford, PA.	9346
9372-X	Gearhart Industries, Inc., Fort Worth, TX.	9372
9381-X	Pacific Smelting Co., Torrance, CA.	9381
9416-X	Mobay Corp., Kansas City, MO (See footnote [8]).	9416
9436-X	Union Carbide Corp., Danbury, CT.	9436
9456-X	Dow Corning Corp., Midland, MI.	9456
9460-X	Tracor Aerospace (formerly Tracor MBA), East Camden, AR.	9460
9464-X	Broco, Inc., Rialto, CA	9464
9480-X	E.I. du Pont de Nemours & Co., Inc., Wilmington, DE.	9480
9480-X	Airco, The BOC Group, Inc., Murray Hill, NJ.	9480
9519-X	Transchem, Inc., South Bend, IN (See footnote [9]).	9519
9528-X	U.S. Department of Defense, Falls Church, VA.	9528
9529-X	Viskase Corp., Chicago, IL.	9529
9533-X	B.A.G. Corp., Dallas, TX (See footnote [10]).	9533
9666-X	Stauffer Chemical Co., Westport, CT (See footnote [11]).	9666
9692-X	Halliburton Services, Duncan, OK (See footnote [12]).	9692
9697-X	E.I. du Pont de Nemours & Co., Wilmington, DE (See footnote [13]).	9697
9711-X	Konica USA, Inc./ Konica Business Machine USA, Inc., Englewood Cliff, NJ (See footnote [14]).	9711
9732-X	Shell Oil Co., Houston, TX (See footnote [15]).	9732
9748-X	Grief Bros. Corp., Springfield, NJ (See footnote [16]).	9748

[1] Reinstatement of exemption that authorizes the shipment of materials in non-DOT specification cylinders.

[2] To authorize an additional non-DOT specification fiberboard box as overpack for shipment of materials classed as corrosive material.

[3] To authorize alternative packagings for the shipment of refrigerated liquids classed as nonflammable gases.

[4] To authorize MC 306 and MC 307 cargo tanks as alternative packagings for bulk shipments of materials classed as blasting agents.

[5] To authorize natural gas, classed as flammable gas, and crude oil, classed as flammable liquid, for shipment in non-DOT specification stainless steel cylinders.

[6] To authorize an optional stainless steel bottom discharge fitting and value assembly on non-DOT specification polyethylene portable tank for shipment of certain corrosive flammable or oxidizer liquid.

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[7] To authorize a flammable liquid as an additional commodity for shipment in non-DOT specification polyethylene portable tanks.

[8] To renew and to authorize rail as an additional mode of transportation.

[9] To authorize an alternative non-DOT specification packaging for shipment of materials classed as corrosive material or flammable liquid or a material classed as oxidizer.

[10] To authorize shipment of a material classed as poison B in non-DOT specification packaging identified as flexible intermediate bulk containers.

[11] Reinstatement of exemption that authorizes materials classed as metal alkyls solution for shipment in DOT 4BA and 4BW cylinders, which are hydrostatically tested every 10 years rather than 5 years.

[12] To authorize an alternative packaging description and an additional material, classed as corrosive material, for shipment in the DOT specification 57 portable tanks.

[13] To authorize shipment of waste antimony pentachloride, corrosive material, in out of test DOT 105A300W and DOT 105A500W tank cars to an additional location.

[14] To authorize rail and air shipments of a corrosive material in a polyethylene bag, packed inside a corrogated fiberboard carton then a maximum of two cartons overpacked in a DOT specification 12B box.

[15] To authorize rail as an additional mode of transportation.

[16] To authorize water as an additional mode of transportation.

Application No.	Applicant	Parties to exemption
4453-P	Viking Explosives & Supply, Inc., Hibbing, MN.	4453
6296-P	Rhone-Poulenc AG Co., Monmouth Junction, NJ.	6296
6434-P	Rhone-Poulenc AG Co., Research Triangle Park, NC.	6434
6686-P	Goss Inc., Glenshaw, PA.	6686
6691-P	Industrial Gas Distributors, Inc., Billings, MT.	6691
7052-P	ECO Energy Conversion, Somerville, MA.	7052
7052-P	Mercury Instruments, Inc., Cincinnati, OH.	7052
7052-P	Computer Components Corp., Dallas, TX.	7052
7595-P	Rhone-Poulenc AG Co., Research Triangle Park, NC.	7595
7607-P	Phoenix Safety Associates, Ltd., Phoenixville, PA.	7607
8335-P	Keegan Technology & Testing Associates, Inc., Newark, NJ.	8335
8426-P	Rich-Sand Service Co., Orcutt, CA.	8426
8445-P	Rhone-Poulenc AG Co., Research Triangle Park, NC.	8445
8451-P	Explosive Technology, Inc., Fairfield, CA.	8451
8518-P	M & G Services, Inc., Rio Vista, CA.	8518
8567-P	ACE Pipe Cleaning, Inc., Kansas City, MO (See Footnote [1]).	8567
8723-P	Austin Powder Co., Cleveland, OH.	8723
9015-P	Olin Chemicals Group, Stamford, CT.	9015
9181-P	U.S. Department of Defense, Falls Church, VA.	9181
9277-P	Rhone-Poulenc AG Co., Research Triangle Park, NC.	9277
9623-P	Quick Supply Co., Des Moines, IA.	9623
9718-P	EUROTAINER, 75008 Paris, France.	9718
9769-P	Safety-Kleen Corp., Elgin, IL.	9769
9769-P	Safety-Kleen Envirosystems Co., Inc., Manati, PR.	9769

[1] To reinstate the exemption that authorizes the shipment of waste masterials, including mixtures, classed as flammable liquid, corrosive material or poison B in non-DOT specification cargo tanks.

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with section 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on August 6, 1987.

Suzanne Hedgepeth,

Chief, Exemption Branch, Office of Hazardous Materials Transportation.

[FR Doc. 87-18238 Filed 8-10-87; 8:45 am]

BILLING CODE 4910-60-M

Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATE: Comment period closes September 10, 1987.

Address comments to: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

New Exemptions

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9517-N	Hoover Group, Inc., Beatrice, NB	49 CFR Part 173, Subpart F., 173.119, 173.125, 173.266.	To authorize shipment of corrosive liquids, flammable liquids or an oxidizer in a reusable non-DOT specification steel-jacketed polyethylene portable tank of 275 gallon capacity. (modes 1, 2, 3)
9518-N	Olin Corp., Stamford, CT	49 CFR 173.31, Note a	To authorize a one time shipment of chlorine, classed as nonflammable gas and poison, in a DOT Specification 105A500W tank cars that is out of test. (mode 2)
9519-N	Halliburton Co., Duncan, OK	49 CFR 173.119, 173.245, 173.249	To authorize shipment of materials classed as corrosive liquids or flammable liquids in non-DOT Specification portable tanks, either manifolded together within a frame mounted on a truck chassis or separated on a flatbed truck. (mode 1)
9520-N	Custom Chemical Packaging Co., Springfield, OH.	49 CFR 172.101, 172.400, 172.404, 172.504, 173.119, 173.119, 173.244, 173.245, 173.345, 173.346, 175.3.	To authorize shipment of materials classed as corrosive materials, flammable liquids and poison B in non-DOT specification packaging of maximum one gallon capacity. (modes 1, 2, 4)
9521-N	Custer State Corp., Titusville, PA	49 CFR 173.119	To authorize shipment of crude oil, classed as flammable liquid, in non-DOT specification cargo tanks comparable to DOT Specification MC-307 cargo tanks. (mode 1)

NEW EXEMPTIONS—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9822-N	U.S. Department of Defense, Washington, DC	49 CFR 173.328(a)(2), 175.3	To authorize shipment of poison liquids, n.o.s., classed as Poison A, in packagings provided for in Section 173.[illegible]31(b)(1). (modes 1, 4)
9823-N	Moog Inc., Carleton Group, East Aurora, NY	49 CFR 173.302, 175.3	To authorize shipment of helium, compressed, classed as non-flammable gas, in a non-refillable non-DOT specification cylinder. (modes 1, 2, 4)
9824-N	Maremont Corp., Nashville, TN	49 CFR 173.3[illegible](f)(2)(iii), 173.306(f)(3)(i), 175.3.	To authorize shipment of nitrogen, compressed, classed as nonflammable gas, in an accumulator. (modes 1, 2, 4)
9825-N	Sequoyah Fuels Corp., Oklahoma City, OK	49 CFR 173.403(n)(4), 173.425(c)(2)	To authorize transport of raffinate sludge, classed as radioactive-LSA, with radioactivity concentration greater than the limit established, in DOT Specification MC-312 cargo tanks. (mode 1)
9826-N	Composite Container Corp.—Kentucky, Louisville, KY.	49 CFR 173.60, 173.61, 173.64, 173.93	To authorize the shipment of explosives, classed as Class A or Class B, in non-DOT specification Co-polymer (polyethylene and polypropylene) drums. (modes 1, 2, 3)
9827-N	Mobay Corp., Kansas City, MO	49 CFR 173.359	To authorize shipment of organophosphorus pesticide, mixture, liquid, n.o.s., classed as Poison B, in a DOT Specification 34 polyethylene container. (modes 1, 2)
9828-N	Mobay Corp., Kansas City, MO	49 CFR 173.365	To authorize shipment of azinphos methyl, mixture, solid, classed as Poison B, in water soluble packets inside lined chipboard cartons overpacked in DOT Specification 12B65 fiberboard boxes. (modes 1, 2)
9829-N	Tora Express, Inc., Monroe, LA	49 CFR 172.101, 172.204, 173.27, 175.30(a)(1), 175.320(b), Part 107, Subpart B, Appendix B.	To authorize carriage by cargo-only aircraft those Class A, B and C explosives that are not permitted or are in quantities greater than prescribed for air shipment. (mode 4)
[illegible]-N	Worthington Cylinders, Columbus, OH	49 CFR 175.3, 178.51	To authorize manufacture, mark and sale of non-DOT Specification stainless steel cylinders to transport those materials authorized in DOT specification 4BA cylinders. (modes 1, 2, 3, 4, 5)
[illegible]-N	L'Air Liquide, Sassenage, France	49 CFR 172.101, 173.315(a), 178.338	To authorize manufacture, mark and sell of non-DOT Specification portable tanks, insulated with vacuum plus gas helium shield, for shipping helium refrigerated liquid, classed as nonflammable gas. (modes 1, 3)
[illegible]-N	L'Air Liquide, Sassenage, France	49 CFR 172.101, 173.315(a), 178.338	To authorize manufacture, mark and sell of non-DOT Specification portable tanks, insulated with vacuum plus gas helium shield, for shipping Helium refrigerated liquid, classed as nonflammable gas and hydrogen refrigerated liquid, classed as flammable gas. (modes 1, 3)
[illegible]-N	Wacker Chemicals (USA), Inc., Canaan, CT	49 CFR 173.364	To authorize shipment of monochloroacetone, classed as an irritating material, in DOT Specification 51 portable tanks. (modes 1, 3)

This notice of receipt of applications for new exemptions is published in accordance with section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on August 6, 1987.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 87-18239 File 8-10-87; 8:45 am]

BILLING CODE [illegible]

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Amendment to Department Circular—Public Debt Series—No. 19-87]

7⅝% Treasury Notes, Series AB-1989

Washington, July 29, 1987.

Department of the Treasury Circular, Public Debt Series No. 19-87, dated July 16, 1987, as supplemented, descriptive of 7⅝% Treasury Notes of Series AB-1989, is hereby amended effective July 29, 1987. The notes will be auctioned Thursday, July 30, 1987.

The same numbered paragraph of Department of the Treasury Circular, Public Debt Series—No. 19-87, is hereby amended and replaced with the following paragraph. The other terms and conditions remain unchanged.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239, prior to 1:00 p.m., Eastern Daylight Saving time, Thursday, July 30, 1987. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Wednesday, July 29, 1987, and received no later than Friday, July 31, 1987.

The foregoing Amendment was effected under authority of Chapter 31 of Title 31, United States Code. Notice and public procedures thereof are unnecessary as the fiscal policy of the United States is involved.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 87-18177 Filed 8-10-87; 8:45 am]

BILLING CODE [illegible]

[Supplement to Department Circular—Public Debt Series—No. 19-87]

Treasury Notes, Series AB-1989

Washington, July 31, 1987.

The Secretary announced on July 30, 1987, that the interest rate on the notes designated Series AB-1989, described in Department Circular—Public Debt Series—No. 19-87 dated July 16, 1987, will be 7⅝ percent. Interest on the notes will be payable at the rate of 7⅝ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 87-18178 Filed 8-10-87; 8:45 am]

BILLING CODE [illegible]

Public Information Collection Requirements Submitted to OMB for Review

Dated: August 6, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: 8613
Type of Review: New Collection
Title: Return of Excise Tax on Undistributed Income of Regulated Investment Companies
Description: Form 8613 is used by regulated investment companies to compute and pay the excise tax on undistributed income imposed under

section 4982. IRS uses the information to verify that the correct amountof tax has been reported.
Respondents: Businesses or other for-profit
Estimated Burden: 201 hours

OMB Number: 1545–0190
Form Number: 4876A
Type of Review: Extension
Title: Election to be Treated as an Interest Charge DISC
Description: A domestic corporation and its shareholders must elect to be an interest charge domestic international sales corporation (IC–DISC). Form 4876A is used to make the election. The form provides IRS with information to determine that the corporation qualifies to be an interest charge DISC, the number of shareholders, and the tax year of the corporation and its principal shareholder.
Respondents: Businesses or other for-profit
Estimated Burden: 1,000 hours

OMB Number: 1545–0191
Form Number: 4952
Type of Review: Revision
Title: Investment Interest Expense Deduction
Description: Form 4952 is used by taxpayers who paid or accrued interest on money borrowed to purchase or carry investment property. The form is used to compute the allowable deduction for interest on investment indebtedness and the information obtained is necessary to verify the amount actually deducted.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations
Estimated Burden: 130,305 hours

OMB Number: 1545–0865
Form Number: 8264
Type of Review: Revision
Title: Application for Tax Shelter Registration Number
Description: Organizers of certain tax shelters are required to register them with the IRS using Form 8264. (Other persons may have to register the tax shelter if the organizer doesn't.) We use the information to give the tax shelter a registration number. Sellers of interests in the tax shelter furnish the number to investors who report the number on their tax returns.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations
Estimated Burden: 138,477 hours

OMB Number: 1545–0901
Form Number: 1098
Type of Review: Revision
Title: Mortgage Interest Statement
Description: Form 1098 is used by mortgagors who in a trade or business receive $600 or more of mortgage interest payments to report the amount of interest paid by an individual.
Respondents: Individuals or households, Businesses or other for-profit
Estimated Burden: 6,034,805 hours

Clearance Officer: Garrick Shear (202) 566–6150, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Alcohol, Tobacco and Firearms

OMB Number: 1512–0115
Form Number: ATF F 5220.4 (2140)
Title: Monthly Report—Export Warehouse Proprietor
Description: Proprietors who are qualified to operate export warehouses that handle untaxpaid tobacco products are required to file a monthly report. This report summarizes all transactions by the proprietor including receipts, dispositions and on-hand quantities. ATF F 5220.4 (2140) is used for product accountability and is examined by regional office personnel.
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Burden: 2,343 hours

OMB Number: 1512–0156
Form Number: ATF F 2987 (5210.8)
Title: Computation of Tax and Agreement to Pay Tax on Puerto Rican Cigars and Cigarettes
Description: ATF F 2987 (5210.8) is used to calculate the tax due on cigars and cigarettes manufactured in Puerto Rico and shipped to the U.S. The form identifies the taxpayer, cigars or cigarettes by tax class and a certification by U.S. Customs official as to the amount of shipment, and that the shipment has been released to the U.S.
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Burden: 150 hours

Clearance Officer: Robert Masarsky (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Dale A. Morgan,
Departmental Reports, Management Officer.
[FR Doc. 87–18240 Filed 8–10–87; 8:45am]
BILLING CODE 4810–25–M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 154
Tuesday, August 11, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Tuesday, August 4, 1987, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Application of Atico Bank, an operating noninsured institution located at 101 SE. Second Avenue, Miami, Florida, for Federal deposit insurance.

Application of College Savings Bank, a proposed new bank to be located at 5 Vaughn Drive, West Windsor, New Jersey, for Federal deposit insurance.

The Board further determined, by the same majority vote, that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of recommendations relating to the Corporation's assistance agreements with certain insured banks.

The Board further determined, by the same majority vote, that no earlier notice of these changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters added to the agenda in a meeting open to public observation; and that the matters added to the agenda could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: August 5, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87-18306 Filed 8-7-87; 12:11 pm]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Tuesday, August 4, 1987, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Request of The Wolfeboro Savings Bank (In Organization), Wolfeboro, New Hampshire, for an extension of time of the approval of Federal deposit insurance.

Request of Counting House Bank (In Organization), Warsaw, Indiana, for modification of a condition imposed in granting the Corporation's consent to merge and establish three branches.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver liquidator, or liquidating agent of those assets:

Case No. 47,071-NR
Penn Squre Bank, National Association, Oklahoma City, Oklahoma

By the same majority vote, the Board further determined that no earlier notice of the changes in the subject matter of the meeting was practicable.

Dated: August 5, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87-18307 Filed 8-7-87; 12:11 pm]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Thursday, August 13, 1987, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Applications for Federal deposit insurance:

Gateway American Bank of Florida, a proposed new bank to be located at 1451 NW. 62nd Street, Fort Lauderdale, Florida.

Everett Mutual Savings Bank (FSB), an operating noninsured Federal savings bank located at 1502 Wall Street, Everett, Washington.

Application for consent to purchase assets and assume liabilities and establish one branch:

United Jersey Bank/Mid State, Hazlet Township (P.O. Hazlet), New Jersey, an insured State nonmember bank, for consent to purchase certain assets of and assume the liability to pay deposits made in the Bey Lea Branch of Jersey Shore Savings and Loan Association, Toms River, New Jersey, a non-FDIC-insured institution, and for consent to establish that branch as a branch of United Jersey Bank/Mid State.

Application for consent to purchase assets and assume liabilities and establish three branches:

The Hocking Valley Bank of Athens Company, Athens, Ohio, an insured State nonmember bank, for consent to purchase certain assets of and assume the liability to pay deposits made in the Main Office, the East State Street Branch, and the 18 North Court Street Drive-in Facility of The Security Bank, Athens, Ohio, and for consent to establish the three offices as branches of The Hocking Valley Bank of Athens Company.

Application for consent to purchase assets and assume liabilities:

Citibank (Maryland), National Association, Towson, Maryland, for consent to purchase certain assets of and assume the liability to pay deposits made in the Pikesville Branch of Standard Federal Savings & Loan Association, Gaithersburg, Maryland a non-FDIC-insured institution.

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Memorandum and Resolution re: Amendment to Part 338 of the Corporation's rules and regulations, entitled "Fair Housing," which amendment would eliminate from the data-gathering requirement home-equity loans, as well as home improvement, maintenance, and repair loans.

Memorandum re: Petition requesting the Corporation to issue a regulation establishing criteria for determining when a bank being considered for open bank assistance under section 13(c) of the Federal Deposit Insurance Act has met the "essentiality test" of that statute.

Review of FDIC's financial performance:

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Request for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: August 6, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87–18320 Filed 8–7–87; 1:54 pm]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Thursday, August 13, 1987, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Recommendation regarding the Corporation's assistance agreement with an insured bank.

Discussion Agenda:

Application for Federal deposit insurance:

College Savings Bank, a proposed new bank to be located at 5 Vaughn Drive, West Windsor, New Jersey.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

Matters relating to the possible closing of certain insured banks:

Names and locations of banks authorized to be exempt from disclosure pursuant to the provisons of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: August 6, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87–18321 Filed 8–7–87; 1:54 pm]

BILLING CODE 6714-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Friday, August 14, 1987.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m., two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: August 7, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–18360 Filed 8–7–87; 3:29 pm]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 12:00 Noon, August 17, 1987.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 7, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–18361 Filed 8–7–87; 3:29 pm]

BILLING CODE 6210-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of August 10, 17, 24, and 31, 1987.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of August 10

Thursday, August 13

3:30 p.m.

Affirmation/Discussion and Vote (public meeting)

A. Beaver Valley Full Power Operating License (Tentative)

Week of August 17—Tentative

No Commission Meetings

Week of August 24—Tentative

No Commission Meetings

Week of August 31—Tentative

Wednesday, August 2

10:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

ADDITIONAL INFORMATION: Request for Hearing on Denial of Senior Reactor Operator's License at Beaver Valley, Unit 1 was *affirmed* on Thursday, August 6, 1987.

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Robert McOsker, (202) 634–1410.

Robert B. McOsker,
Office of the Secretary.
August 6, 1987.

[FR Doc. 87–18359 Filed 8–7–87; 3:19 pm]
BILLING CODE 7590-01-M

POSTAL SERVICE BOARD OF GOVERNORS

At its meeting on August 3, 1987, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting scheduled for August 31, 1987, in Washington, DC. The meeting will concern consideration of a contract for systems engineering and technical assistance support.

The meeting is expected to be attended by the following persons: Governors Griesemer, McConnell, Nevin, Pace, Peters, Ryan and Setrakian; Postmaster General Tisch; Deputy Postmaster General Coughlin; Secretary to the Board Harris; and General Counsel Cox.

The Board determined that pursuant to section 552b(c)(9)(B) of title 5, United States Code, and section 7.3(i) of Title 39, Code of Federal Regulations, discussion of this matter is exempt from the open meeting requirement of the Government in the Sunshine Act, [5 U.S.C. 552b(b)], because it is likely to disclose information, the premature disclosure of which would likely frustrate implementation of a proposed procurement action.

In accordance with section 552b(f)(1) of Title 5, United States Code, and § 7.6(a) of Title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting may properly be closed to public observation pursuant to section 552b(c)(9)(B) of Title 5, United States Code, and § 7.3(i) of Title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

David F. Harris,
Secretary.
[FR Doc. 87–18249 Filed 8–11–87; 10:03 am]
BILLING CODE 7710-12-M

STATE JUSTICE INSTITUTE

TIME AND DATE:
9:00 a.m. to 5:00 p.m., August 17, 1987.
9:00 a.m. to 5:00 p.m., August 18, 1987.

PLACE: State Justice Institute, 120 South Fairfax Street, Alexandria, Virginia 22314.

STATUS: The meeting will be closed from 9:00 a.m. until 11:00 a.m. both days to discuss matters exempted from public discussion, pursuant to 5 U.S.C. section 552b(c)

MATTERS TO BE CONSIDERED:

Portions Open to The Public

Consideration of Applications submitted for Institute funding.

Portions Closed to The Public

Discussion of internal personnel practices and procedures.

CONTACT PERSON FOR MORE INFORMATION: David I. Tevelin, Executive Director, State Justice Institute, 120 South Fairfax Street, Alexandria, Virginia 22312, (703) 684–6100.

David I. Tevelin,
Executive Director.
[FR Doc. 87–18248 Filed 8–7–87; 9:47 am]
BILLING CODE 6820-SC-M

Corrections

Federal Register
Vol. 52, No. 154
Tuesday, August 11, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

Redelegations of Authorities to Positions in the Federal Disability Determination Service

Correction

In notice document 87-17022 beginning on page 28196 in the issue of Tuesday, July 28, 1987, make the following correction:

On page 28197, in the first column, in the third line, "of" should read "or".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status and Critical Habitat Designation for the Inyo Brown Towhee

Correction

In rule document 87-17383 beginning on page 28780 in the issue of Monday, August 3, 1987, make the following corrections:

§ 17.95 [Corrected]

On page 28786, in § 17.95(b), the two maps were not legible and are republished below.

1. In § 17.95(b)(10), the map is republished as follows:

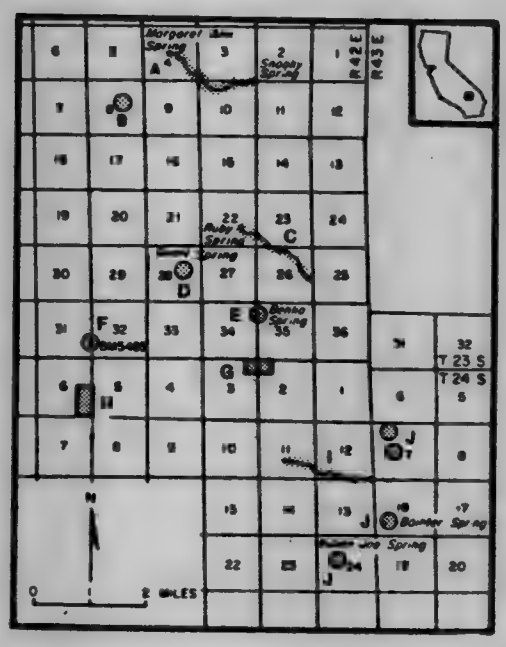

21. In § 17.95(b)(11), the map is republished as follows:

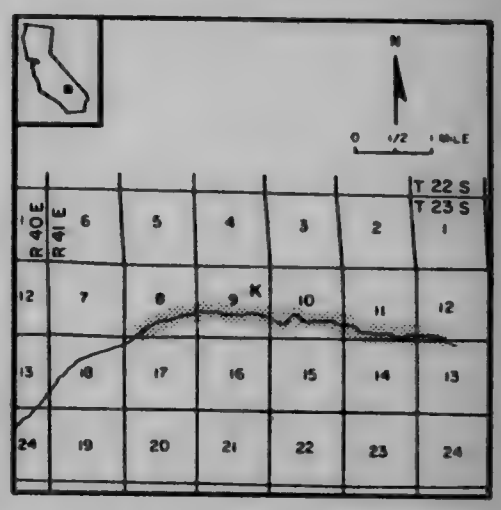

BILLING CODE 1505-01-D

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federal register

Tuesday
August 11, 1987

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Establishment of an Experimental Population of Southern Sea Otters; Final Rule and Record of Decision

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Establishment of an Experimental Population of Southern Sea Otters

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) issues a final rule governing a reintroduction of southern sea otters (*Enhydra lutris nereis*) at, and containment of them in the immediate vicinity of, San Nicolas Island, Ventura County, California for two purposes: (1) To implement a primary recovery action for a federally listed "threatened" species, and (2) to obtain data for assessing translocation and containment techniques, population dynamics, the ecological relationships of sea otters and the nearshore community, and the effects on the donor population of removal of individual otters for translocation. This experimental population will be established and managed under the authorities and guidelines of Pub. L. 99–625, 100 Stat. 3500 (1986).

EFFECTIVE DATE: This rule becomes effective on August 11, 1987.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 NE. Multnomah Street, Suite 1650, Portland, Oregon 97232, or the Office of Sea Otter Coordination, Room E–1818, 2800 Cottage Way, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Mr. Wilbur Ladd, U.S. Fish and Wildlife Service, Office of Sea Otter Coordination, Room E–1818, 2800 Cottage Way, Sacramento, California 95825 (916/978–4873) or FTS: 460–4873.

SUPPLEMENTARY INFORMATION:

Background

Species Account

The Secretary of the Interior determined in 1977 (42 FR 2968, January 14, 1977) that the southern sea otter (*Enhydra lutris nereis*) was a threatened species for purposes of the Endangered Species Act (ESA), as amended (16 U.S.C. 1531 *et seq*). Contributing to this determination was the fact that the historic sea otter population was reduced to near extinction due to commercial fur harvesting in the 1700's and 1800's. The southern sea otter (also referred to as California sea otter) presently numbers 1,300–1,400 animals and ranges from Año Nuevo, Santa Cruz County, to the Santa Maria River, San Luis Obispo County, California. Although the California population and its range has significantly increased since Federal and State bans on commercial and other hunting in 1911 and 1913, respectively, the still small population size and range, about 10 percent of historical California levels, and the otter's vulnerability to oil contamination warrant a threatened classification.

The sea otter, unlike most marine mammals, does not have blubber to provide insulation from the chilling effect of the ocean. The otter's dense pelage provides insulation and, if matted by oil or some other contaminant, the insulation is effectively eliminated and animals may die from hypothermia. The 1977 listing recognized that substantial quantities of petroleum products are shipped along the California coast, moving near the southern sea otter range, and are also transferred at marine terminals near the northern and southern ends of the range. Oil tanker traffic was and still is believed to pose the greatest oil spill risk to sea otters, although offshore outer continental shelf (OCS) oil development is currently increasing the oil spill risks. This latter risk was not a consideration when the species was listed as threatened in 1977.

In 1976, the California Department of Fish and Game (CDFG) estimated that the population numbered close to 1,800 and was increasing annually at about 5 percent. Recent information, however, indicates that the population has not grown significantly at least since the mid-1970's and may have declined somewhat over the past 10 to 15 years. As determined through studies started in 1982, this lack of growth is most likely attributable to sea otters becoming accidentally entangled and drowning in large-mesh gill and trammel nets set in nearshore waters by the local halibut fishery. CDFG biologists estimated that an average of 80 sea otters drowned annually between 1982 and 1984 and that losses ranged from 49 to 168 per year between 1973 and 1984. This threat to the population was neither recognized nor considered in the 1977 determination. The State of California has twice recently enacted legislation designed to substantially reduce or eliminate the accidental drowning of sea otters in large-mesh gill and trammel nets.

The status of southern sea otters was reviewed in the Service's 5-year review (May 1984). The review recognized the deteriorated state of the population (i.e., no growth and possibly a decline over the past 10 to 15 years, and activities in the area that can influence the population including OCS oil and gas development and incidental drowning in gill and trammel set nets) and the importance of moving rapidly forward with the major recovery tasks, including establishment of at least one additional population.

Pursuant to the ESA and Marine Mammal Protection Act (MMPA), the Service must utilize its authorities to recover the southern sea otter. The Service developed a recovery plan for the southern sea otter that was approved in 1982. This plan addresses the Service's responsibilities specifically under ESA and more generally under the MMPA. It examines possible means to protect and restore the southern sea otter and concludes that, along with completing the other recovery plan tasks, the most effective means of recovering the population is to establish at least one new colony sufficiently removed from the present range such that a large-scale oil spill could not contact both the new colony and existing population simultaneously.

For purposes of ESA the Service believes present population growth characteristics are inadequate for natural recolonization of historical, albeit not all, habitat within a reasonable period. Therefore, the Service is planning to establish at least one colony within historical range, in an area that is abundant with prey, kelp, and other habitat requirements, relatively free of toxic pollution, and sufficiently distant from the existing range so that a catastrophic oil spill will not likely contact both the existing population and the new colony of southern sea otters.

The Service contracted with James Dobbin Associates, Inc. in 1981 to map the location of and compile ecological and socioeconomic data for potential translocation zones along the Pacific coast of Washington, Oregon and California. Based on a variety of criteria, four coastal zones were delineated as having the highest potential for successful translocations: Northern Washington; southern Oregon; northern California; and San Nicolas-Santa Barbara Islands, southern California. For reasons discussed more fully herein, San Nicolas Island is considered the preferred site.

Summary of Major Issues, Comments and Recommendations

The Proposed Rule was submitted for public review concurrently with a Draft

Environmental Impact Statement (DEIS) on the proposed translocation. The Proposed Rule was published in the **Federal Register** on August 15, 1986, at which time all interested parties were invited to comment on the proposal during the comment period that extended through November 17, 1986. Commentors were advised that two separate documents were being made available for their review and that comments should be submitted on each of them. Only a few agencies, individuals and organizations identified comments as being specific to the Proposed Rule; however, many comments were received on certain aspects of the DEIS, such as the translocation plan (Appendix B), that were also pertinent to the Proposed Rule. This summary of comments has, therefore, been developed to address the major issues and concerns raised and recommendations made during the comment period, regardless if the comments were identified as being specific to the Rule, as long as the concern was pertinent to the Rule as well as to the DEIS. There were numerous comments received that were not considered to be major that are not discussed in the major issues below. Readers are referred to the Final EIS (FEIS) for specific responses to all comments received on the DEIS, including comments that are pertinent to both the Rule and DEIS but were not specifically directed to the Proposed Rule itself. A typed and signed copy of the Proposed Rule was incorporated into the DEIS as Appendix C, and was also distributed under separate cover after being published in the **Federal Register** on August 15, 1986.

Appropriate State and Federal agencies, County governments, representatives of scientific organizations and institutions and other interested parties were provided copies of the DEIS and Proposed Rule and requested to comment. A paid notice was published once during the week of August 24, 1986, in newspapers of general circulation in the areas potentially affected by the proposal; these included the following:

Coos Bay–North Bend World; Coos Bay, OR
Eugene Register–Guard; Eugene, OR
Eureka Times Standard; Eureka, CA
Ukiah Journal; Ukiah, CA
San Luis Obispo Telegram-Tribune; San Luis Obispo, CA
San Francisco Chronicle; San Francisco, CA
Monterey Peninsula Herald; Monterey, CA
Santa Cruz Sentinel; Santa Cruz, CA
The Press-Courier; Oxnard, CA
Los Angeles Times; Los Angeles, CA
Star Free Press; Ventura, CA

In addition to the paid advertisements, the Service sent a general news release on the proposal, the availability of the DEIS and Rule, and information on public hearings to approximately 500 other newspapers, radio stations, television stations and organizations in California and Oregon to further ensure that the public was aware of the Service's proposal. Three public hearings were conducted to provide additional opportunity for public comments on the proposal. The hearings were held in Ventura (September 24, 1986) and Monterey, California (September 22, 1986); and Brookings, Oregon (September 17, 1986). Approximately 435 people attended the hearings, and 97 provided testimony. Fifty-four of the 97 individuals who testified did not submit written comments (tallied below).

During the 94-day comment period, 953 (written) comment letters were received on the DEIS and Proposed Rule. Few commentors identified their comments as being specific to thc Proposed Rule, but many comments on the DEIS were also applicable to the Rule and, thus, were considered in preparing both the FEIS and Final Rule. Of the 1,007 individuals and organizations that submitted oral or written comments on the proposal, 821 (81.5 percent) were in support, 140 (13.9 percent) opposed and 46 (4.6 percent) were neutral. We received one petition with 2,169 signatures that expressed concern that translocation to San Nicolas Island would jeopardize the diversity of the shellfish ecosystem throughout the Channel Islands and urged immediate zonal management. Of the 15 Federal and State agencies that commented on the proposal, two expressed support, including the Marine Mammal Commission which strongly supported the proposal and urged implementation in 1987, and 13 neither supported nor opposed the proposal, but offered comments and recommendations for consideration in preparing the Final Rule and FEIS. One elected California official expressed concern about the economic impact of the proposal on fisheries, and concluded that the potential adverse impact on the southern California sport and commercial fisheries resulting from a translocation to San Nicolas Island far outweighs the benefits to the southern sea otter. The California Resources Agency (Department of Fish and Game) in general supports recovery actions for the southern sea otter but indicated that before the Department could support this specific plan for translocation, the management zone boundary would have to be moved from Point Conception north to Point Sal or at least a "buffer" would have to be established between Point Sal and Point Conception where otter numbers could be kept low to facilitate restricting southward range expansion of the existing population beyond Point Conception.

After analysis of the comments received, the FEIS, with an attached draft final rule; was published on May 8, 1987. The rule has been widely publicized and the public is well aware of the narrow window of opportunity, beginning in mid-August, during which field activities must take place. If activities cannot begin near the outset of this narrow window, the entire project is likely to be delayed for 1 year, thus adversely affecting southern sea otter recovery.

Comment 1: Management of the existing population of California sea otters is not addressed in the translocation plan.

Service Response: The translocation plan has been prepared to comply with requirements set forth in Public Law (Pub. L.) 99–625, special legislation enacted in November 1986 which specifically authorizes and establishes requirements for translocating California sea otters. Legislative history of Pub. L. 99–625 states that the translocation plan is to provide for implementation of an important component of the Recovery Plan and that, while addressing a number of general issues related to the long-term management of California sea otters, it is primarily a planning mechanism for the translocation itself. It further states that specifications concerning long-term management of the California sea otter, including establishment of recovery goals and future translocation needs should be addressed in its next update of the Recovery Plan. The translocation plan, according to Congress, is not intended to replace the Recovery Plan as the primary long-term management document. The Service has committed to initiating a long-term management plan for the existing population immediately following the decisionmaking process on translocation. Implementation of the translocation plan will, however, constitute a form of "zonal management" involving the existing population. This will occur as a result of designating the entire Southern California Bight, from Point Conception south to Mexico including all offshore islands except San Nicolas, Begg Rock, and the translocation zone as a "no-

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otter" zone. This designation will result in preventing the existing population from reoccupying historical habitat south of Point Conception through natural range expansion. In the absence of the translocation to San Nicolas Island, no such "no-otter" zone or other population management scheme is contemplated in the foreseeable future for the existing population, which is expected to expand into the Southern California Bight within the next 10–20 years without such a program.

Comment 2: The translocation plan contains insufficient detail regarding the relationship of the translocation to ESA section 7 determinations, including criteria for an "established population", as required by Pub. L. 99–625.

Service Response: The translocation plan adequately addresses all of the requirements and the intent of Pub. L. 99–625. The plan provides detailed guidelines, criteria, milestones and assumptions the Secretary will utilize in making jeopardy or non-jeopardy determinations under section 7 of the ESA. It specifically addresses how the experimental population will be factored into the section 7 analysis at various growth stages after the initial translocation of otters is undertaken. The description points out, however, that the status of the parent population will be a major factor considered in the outcome of any section 7 consultation involving either the parent or experimental population. The translocation plan also contains a specific definition for an "established experimental population" that takes into account its size, productivity, dispersal tendency, sex composition and general health. The plan describes how this definition relates to consideration of projects through the section 7 process.

Comment 3: The translocation plan contains insufficient detail regarding relationship of translocation to the overall status and recovery of the sea otter, as required by Pub. L. 99–625, and insufficient discussion of other delisting criteria.

Service Response: The translocation plan, section on the Relationship of Translocation to the Overall Status of the Southern Sea Otter, provides clarification of recovery criteria, including an example of a scenario that would represent a recovered population. It addresses future translocation needs for recovery purposes by indicating that the initial translocation could be sufficient if it resulted in a successfully established population (based on specific criteria), the parent population is showing sustained growth in size and range and the other Recovery Plan criteria were met. The example presented further defines an approach to achieving recovery goals. To go beyond what is now contained in the translocation plan would be inconsistent with the statements in the Congressional Record (131 Cong. Rec. H6468, July 29, 1985) that "The translocation plan is to provide for the implementation of an important component of the Recovery Plan. While addressing a number of general issues related to the long-term management of California sea otters, it is primarily a planning mechanism for the translocation itself. Specifications with respect to long-term management of the California sea otter, including establishment of recovery goals and future translocation needs, should also be contained in the Recovery Plan for the California sea otter. The Fish and Wildlife Service is expected to address these aspects in its next update of the Recovery Plan. The translocation plan itself, while discussing these issues, is not intended to replace the Recovery Plan as the primary long-term management document." This interpretation was reaffirmed by Senator Cranston in remarks made during Senate consideration of H.R. 4531 which was enacted as Pub. L. 99–625. *See* 132 Cong. Rec. Section 17322 (October 18, 1986).

The plan also specifies that a delisting review would be initiated upon the new population meeting the criteria for "establishment." The plan has been modified to reiterate the additional recovery criteria that must be achieved in order to consider delisting, and the five factors that must be evaluated during any consideration of delisting.

Comment 4: The translocation plan suggests that additional translocations may be needed to remove excess otters from the San Nicolas translocation or management zones or from the existing population for recovery purposes. The Service has not identified the locations of these additional translocation sites or under what circumstances additional translocations would be needed, nor has it evaluated the environmental and socioeconomic consequences of subsequent translocations.

Service Response: The translocation plan suggests that moving excess otters from the translocation or management zone to other unoccupied sites as the experimental population approaches carrying capacity would be one of several possible options to prevent significant dispersal from the zone, which could increase the problem of maintaining the management zone free of otters. Public Law 99–625 requires that otters removed from the management zone be placed either in the range of the existing population or into the translocation zone. If additional translocation sites are needed in the future, any proposal for additional translocations would have to comply with National Environmental Policy Act procedures. It is too speculative to consider at this time the sites that may be considered in the future because environmental and socioeconomic conditions may change significantly in the future. With regard to additional translocations from the existing population for recovery purposes, the Congressional Records of July 29, 1985, and October 18, 1986, respectively, state that the translocation plan is primarily a planning mechanism for the translocation itself and that future translocation needs should be addressed in the next update of the Recovery Plan.

Comment 5: The size of the translocation zone is too large; it should only include waters out to the 15-fathom isobath, which includes the normal habitat of otters. Furthermore, the size of the zone should be reduced or eliminated in the future if oil spill response capability is established in the immediate vicinity of San Nicolas Island.

Service Response: Public Law 99–625 requires that the translocation zone be defined to include the normal habitat of the sea otter plus a buffer area to insulate the experimental population from the adverse effects of activities that may occur outside of the translocation zone. In delineating the buffer area, Congress has indicated the Service should take into account factors such as wind and wave patterns, offshore currents and other oceanographic variables, as well as the type and magnitude of the activities that may adversely affect the experimental population. The translocation plan and Rule define normal sea otter habitat as all nearshore waters surrounding San Nicolas Island and Begg Rock out to a depth of 15 fathoms. The types of activities identified that may adversely affect the experimental population included incidental entanglement in large-mesh gill and trammel set nets and activities that could result in accidental oil spills, e.g., OCS oil development and tankship accidents. The buffer area was then delineated based on the estimated time it would take to respond, with existing response equipment that is based on Santa Barbara, and to control or divert an oil spill occurring at the perimeter of the zone before it moved into 15-fathoms or shallower waters where otters would be expected to be affected. Such a buffer would also include the area where incidental

entanglement in fishing nets might occur. The translocation zone thus defined extends some 10 to 19 nautical miles seaward from the 15 fathom isobath around San Nicolas Island, depending on the offshore wind and current patterns in the area. The Service believes this is a reasonable approach that fully complies with the requirements and intent of Pub. L. 99–625. The major variable is the location of significant at-sea oil spill containment and clean-up equipment. Currently, such equipment is based in Santa Barbara, with additional capability stationed offshore near Point Conception. Public Law 99–625 provides authority to modify the translocation or management zone boundaries, as well as other aspects of the plan, to accommodate new information such as significant improvements in oil spill response capability. Such modifications would, however, need to follow rulemaking and public review procedures.

Comment 6: Public Law 99–625 was enacted by Congress to authorize translocation, management and containment of an experimental population of California sea otters. The Rule must be revised to comply with this as the sole authority for conducting the proposed translocation.

Service Response: The Rule has been modified throughout to comply with requirements of Pub. L. 99–625 (formerly H.R. 1027 and H.R. 4531). The Proposed Rule anticipated enactment of Pub. L. 99–625 and was developed to comply with such legislation in the event it did become law.

Comment 7: The Service has not demonstrated ability to contain the experimental population using non-lethal methods, and the containment strategy does not provide a rapid enough response to effectively maintain the management zone free of otters.

Service Response: The Service has selected San Nicolas Island in part because it is believed to offer the greatest potential for self-containment due to the wide, deep, food-barren ocean channels surrounding it. As described in the Translocation Plan (Appendix B of the EIS), sea otter capture techniques are well developed. Further research and development is underway by the California Department of Fish and Game (CDFG) to refine and improve the existing techniques by utilizing an underwater re-breather device which CDFG believes could be a major breakthrough in decreasing the time it takes to capture specific otters. Research currently getting started in Alaska, funded by the Service, is designed to evaluate and develop techniques to influence fecundity of sea otters, and may prove useful in the future to decrease population pressures in certain situations (such as an island-based population) that otherwise may result in an increase in dispersal tendencies. The Minerals Management Service is currently contracting for studies on techniques to influence sea otter movements. All of these studies will, collectively, add to and enhance our ability to capture and remove otters from the management zone or otherwise assist the Service in containment of the translocated otters. However, even without these, the existing methods have demonstrated repeatedly that with sufficient effort otters can be captured under a variety of conditions. The very process of capturing specific numbers, ages and sexes of otters from specific locations in the present range for translocation purposes should further verify our ability to capture and move a relatively large number (up to 70 over 1–2 months) of specified individuals. Provided weather and sea conditions permit, the number of otters that can be captured in any period of time is directly dependent on the number of crews available to conduct capture operations. To accomplish containment in the future, the number of crews may have to be increased, either permanently or temporarily in order to remove otters from the management zone as required by Pub. L. 99–625. In view of the state of the art in capture techniques, the commitment of the Service to have a crew available at all times to respond to reports of otters in the management zone, and the research and development of new and improved techniques now underway or expected to be carried out in the future, the Service believes that effective containment can be carried out to the extent required in this Rule and Pub. L. 99–625.

The containment strategy has been modified to provide a more responsive posture for capturing and removing otters from the management zone. Instead of requiring repeated and verified sightings of otters in the management zone for a week or more, as in the Proposed Rule, the Final Rule indicates that capture crews will be mobilized after receiving verified sightings of one or more otters in the management zone, as soon as weather and sea conditions permit. This response procedure is expected to provide greater likelihood that otters will not cause significant damage to fisheries or otherwise affect other legitimate uses of the management zone. It will also result in a greater likelihood that otters dispersing into the management zone, where they are less protected, will be safely captured and placed into the range of the parent population or into the translocation zone before they are harmed as a result of incidental take from otherwise lawful activities, such as entanglement in fishing nets, in the management zone.

Comment 8: As an alternative to translocating otters to San Nicolas Island, the Service should consider translocating them to the northern Washington coast or consider transporting Alaskan otters to California in the event the existing California population is decimated. The Service's genetic and taxonomic arguments in the DEIS for not considering these alternatives are not convincing.

Service Response: The reasons for not considering the alternative of translocating sea otters to Washington are discussed in detail in Section III.C.2., Alternatives That Will Not Be Addressed in the EIS, of the Draft and Final EIS. To summarize the discussion in Section III.C.2., a small population of otters of Alaskan origin has been reestablished along the northern Washington Coast. The issue of whether or not California otters are taxonomically or genetically different has been debated in the literature for years and remains unresolved. In the 1977 listing of the California sea otter as threatened, the Service acknowledged the unresolved taxonomic issues, and noted that resolution of the issue was not pertinent to the decision of whether or not the California otter should be listed because the Endangered Species Act provided for listing of geographically separate populations as well as taxonomically distinct species and subspecies. In preparing the final listing rule, the Service took a conservative view that, ultimately, the taxonomic issue could be resolved in favor of separate subspecies, so the listing utilized the subspecific designation, *Enhydra lutris nereis*. In accordance with the subspecific listing status of the southern sea otter in the list of threatened and endangered species, the Service finds that mixing two subspecies, as would occur if California otters were translocated to Washington, could result in hybrid offspring which would not be protected under the Endangered Species Act. Thus, such mixing would not only fail to promote recovery of the listed California sea otter, but could actually adversely affect the listed subspecies by tainting the gene pool sought to be conserved. Section III.C.2. of the EIS has been modified to address the suggested possibility of removing the Alaskan otters now found in Washington and replacing them with California otters. It

also acknowledges that, if the entire California population was destroyed, consideration would be given to using Alaskan otters to try and establish a new sea otter population in California as a last resort measure, but this could not be considered an affirmative recovery action. The Section also discusses other factors, such as lack of significant natural barriers, that contribute to the Washington site not being acceptable as a viable alternative.

Comment 9: There are no guarantees that funding for containment will continue to be available into the future.

Service Response: No guarantees can be made about budgets in future years; however, the Congressional directive contained in Pub. L. 99–625 that the management zone must be maintained free of otters is clear evidence of what Congress expects of the Service. Congress has indicated that it intends to monitor the effectiveness of the Service's containment effort. The Draft and Final EIS and this Rule address the possibility of loss of future Federal funding. The section entitled Criteria for a Failed Translocation describes actions that would be taken, in consultation with the State and Marine Mammal Commission, if containment becomes impossible due to decreases in funding. The section entitled Funding Mechanisms describes the potential for State and private funding to assist with translocation and containment efforts.

Comment 10: The northern boundary of the management zone should be placed at Point Sal instead of Point Conception to protect fisheries between these two points, to enhance the safety of field crews working to remove otters from the management zone, and to increase the likelihood that otters from the existing population will not spread into the important fisheries of the Southern California Bight south of Point Conception. If this is not possible, establish the area between Point Conception and Point Sal as a buffer zone (now referred to as population thinning zone).

Service Response: The management zone boundary was proposed to be established at Point Conception, which, as required by Pub. L. 99–625, means that any otter, regardless of whether it originates at San Nicolas Island or the mainland parent population, must be removed from any location south of Point Conception except the San Nicolas Island translocation zone. In a letter dated April 5, 1985, to the Chairman of the House Subcommittee on Fisheries and Wildlife Conservation and the Environment, the Director of California Department of Fish and Game indicated that establishment of a no-otter zone at Point Conception would meet the State's desire that sea otters not be allowed to reoccupy historical habitat in the Southern California Bight south of Point Conception, where important shellfisheries developed during the absence of otters.

Despite discussions involving interested parties and Congressional representatives, Pub. L. 99–625 was enacted without provision for such a thinning zone. Therefore, the Service declined to include it as part of the translocation plan. The Service acknowledges, however, that such a thinning zone, using non-lethal capture and removal methods, may be a feasible way of alleviating a problem, should it arise, of population buildup and pressures in the immediate vicinity of the management zone boundary. Use of any such thinning technique should, however, be approached cautiously through a scientific research protocol. While this approach is mentioned in the translocation plan and this Final Rule as one possible way of alleviating serious problems of maintaining the management zone free of otters, authority for such an action would have to be secured prior to its use, either through legislative amendments, scientific research permits or through the Marine Mammal Protection Act process for waiving the moratorium on taking (if delisting occurs and an optimum sustainable population (OSP) is achieved).

With regard to the recommendation that the management zone boundary be placed at Point Sal instead of Point Conception, the Service believes this, too, would not be consistent with the provisions or intent of Pub. L. 99–625. Section 1(b)(4) of Pub. L. 99–625 requires specification of a management zone that, (A) surrounds the translocation zone, and (B) does not include the existing range of the parent population or adjacent range where expansion is necessary for the recovery of the species. The Congressional intent of this provision is described in House Report 99–124 and Congressional Records for H.R. 1027 and H.R. 4531.

Specifically, the House Report states, "The reference to 'adjacent range where expansion is necessary for the recovery of the species * * * is intended to make it clear that in establishing the management zone the Secretary shall not establish a boundary of the management zone that is coterminous with the existing range of the population, which presently extends to the Pismo Beach-Santa Maria River area on the south. Thus, for example, in the event that San Nicolas Island is chosen as the translocation site, the management zone should not include all of the area up to the southern end of the existing range. On the other hand, in the event the Secretary establishes a boundary line for the management zone at Point Conception, such a line would allow for expansion of the range of the sea otter beyond its present range and would fully comply with the requirements of this provision. This provision does not require the Service to make a formal determination of the ultimate extent of the range that is necessary for the overall recovery of the species." H.R. Rep. No. 99–124, 99th Cong., 1st Sess. at 15 (1985).

The Congressional Record of July 29, 1985, further discusses the intent of the management zone. It states, "The management zone is that area surrounding the translocation zone from which the translocated animals are to be excluded. The management zone is intended to minimize potential conflicts, within that zone, between fisheries and other resource uses and the translocated sea otters." 131 Cong. Rec. H6467 (July 29, 1985). Point Sal is only 5 miles from the present range of California sea otters. This stretch of 5 miles is characterized by sandy bottoms and generally poor quality sea otter habitat. Thus, for all intents and purposes, these 5 miles would not provide any additional habitat "needed for recovery of the species" as required by Pub. L. 99–625. Therefore, placing the management zone boundary at Point Sal would not meet the requirements of Pub. L. 99–625.

Comment 11: If the Service perceives that activities such as oil spills occurring outside of the translocation zone as defined in the Proposed Rule could adversely impact the experimental population, then the translocation zone boundary should be enlarged to prevent any activity in the management zone from affecting otters in the translocation zone.

Service Response: The translocation zone has been delineated based on the requirements of Pub. L. 99–625, i.e., that it must have appropriate characteristics for furthering the conservation of the species, and on reasonable assumptions as to the time it would probably take to respond to and control an oil spill occurring outside the zone boundary. It also takes into account the potential for incidental entanglement of otters in fishing set-nets. It should be recognized that, in accordance with Pub. L. 99–625, the protection afforded to otters in the translocation zone is through prohibitions on incidental take, directed takings, and Endangered Species Act section 7 consultations for Federal

activities. The Service has reassessed the boundaries as delineated in the Proposed Rule and finds them to be appropriate for this intended purpose. The Service interprets Pub. L. 99–625 to provide the authority to promulgate changes in the regulation whereby the boundaries of the translocation or management zone could be modified to reflect new information or significantly could be modified to reflect new information or significantly changed conditions.

Comment 12: The preferred site (San Nicolas Island) is the nearest of all sites to current Outer Continental Shelf (OCS) activities and is in an area of moderate potential for discovery of hydrocarbons. Clarification is needed why this site was selected in view of its proximity to OCS development.

Service Response: It is correct that the San Nicolas Island site is the closest of all sites considered to ongoing OCS activity, which is extensive in much of southern California. No OCS development activity has been initiated in the two alternative sites, northern California and southern Oregon, although they are listed in the Secretary's proposed 5-year plan for future OCS lease sales. There are, however, no leased tracts in the San Nicolas Island translocation zone and the closest are at least 35 miles away from the Island. The major ongoing OCS activity occurs in the Santa Barbara Channel area, which is 60 miles or more to the north of San Nicolas. Ongoing activity is not expected to affect or be affected by the presence of the experimental population. An oil spill-sea otter risk analysis was conducted to determine the relative risk of oil spills affecting San Nicolas Island, the present range, and the alternative translocation sites considered. The results indicated that San Nicolas Island is a relatively safe site compared to the present range, with the probability of sea otter mortality due to an oil spill contacting the present range being about 2.4 times greater than for oil spills to cause mortality of otters at San Nicolas. Tankship accidents, rather than OCS activity, were determined to be the likely cause of such mortality at San Nicolas. The results of the risk analysis are included in the Final EIS, Section VI.B.2., and Technical Support Document 3. The risk of spills causing sea otter mortality in the northern California zone was about twice as great as for San Nicolas Island, and the risk in the southern Oregon zone was less than half the risk at San Nicolas. With regard to effects on future OCS development, the area around San Nicolas has been deleted from previous sales due to potential conflicts with Navy activities which are conducted by Pacific Missile Test Center personnel based on San Nicolas Island. Since Navy activities around the Island are not expected to decrease, and their importance is expected to increase in the future, it may be reasonable to assume that future sales in southern California will also consider deletion of the waters around San Nicolas. The State has indicated it has no plans to develop oil within State waters around San Nicolas and the Governor has recommended to the Secretary that waters to at least 6 miles seaward of the Island be deleted from the 5-year leasing plan. According to information provided to the Service by Minerals Management Service, the OCS lands within the translocation zone may contain a mean net economic value of oil and gas resources amounting to $142–284 million, and Minerals Management Service estimates a 1 percent chance of finding economically recoverable oil and gas resources within the translocation zone. The risked mean resource value of those resources, then, would be only $1.4–2.8 million, less than any of the alternative sites.

Comment 13: The economic effects of translocation on sport and commercial fisheries are greatly underestimated and an Economic Regulatory Impact Analysis should be completed.

Service Response: Data to evaluate socioeconomic effects of the translocation on fisheries were obtained from the California Department of Fish and Game (CDFG), Statistical Branch, and National Marine Fisheries Service. There seemed to be general consensus, based on public testimony and communications with representatives of the California Department of Fish and Game, that fishermen have over the years under-reported their catches at San Nicolas Island, partly due to the system used by CDFG for reporting catches and partly due to fishermen not wanting to make public the lucrative fishing around San Nicolas. The Service has updated its data to incorporate into the Final EIS the latest two additional years of landings (1984, 1985) and has noted the values now estimated by affected fishermen of their recent landings around San Nicolas. Even with the updated data, the economic impact does not meet the criteria for the Rule to be considered a "major" Rule as defined in Executive Order 12291 and, thus, no Regulatory Impact Analysis is required. The reader is referred to Volume III (Comments and Responses) of the Final EIS for further discussion on economic impacts and changes made to improve and update estimates of fishery values affected by the improve and update estimates of fishery values affected by the translocation.

Comment 14: There is no guarantee that translocation will lead to delisting or zonal management of the existing population. These must be guaranteed.

Service Response: The Service cannot guarantee that the translocation will ensure recovery and delisting because there are other recovery objectives and delisting criteria that must also be met. The status of the parent population would also have to be factored into any consideration of delisting. The section of the Rule, Relationship of the Translocation to the Status of the Southern Sea Otter, describes in some detail how the translocation fits into the overall recovery requirements for the species. Without translocation it is very unlikely that the species would be recovered or delisted or that any form of zonal management would occur anytime in the foreseeable future. The translocation plan will implement a significant form of long-term zonal management in that it establishes an otter (translocation) zone where the experimental population will be substantially protected, and a no-otter (management) zone wherein otters will be prevented, via non-lethal means, from becoming established. The management zone encompasses the entire Southern California Bight south of Point Conception, including U.S. waters around all offshore islands (except San Nicolas, Begg Rock and the translocation zone) and the mainland coast. This would result in the *de facto* prevention of the existing population from expanding its range into southern California (which is otherwise expected to occur within the next 10–20 years) thus implementing a zonal management program involving the existing population.

Comment 15: The translocation plan does not address the total number of otters that will be needed to achieve the species' optimum sustainable population (OSP) level in California. This must be addressed.

Service Response: The Service agrees that the Draft EIS and Rule do not provide an estimate of the southern sea otters' OSP. Producing an OSP estimate is irrelevant to the purposes of the translocation, i.e., (1) to eliminate the possibility that more than a small proportion of the existing population will be decimated by any single natural or man-caused catastrophe, and (2) to gather data for assessing translocation and containment techniques, population

status, and the influence of sea otters on the nearshore marine ecosystem in order to understand better the characteristics of a population within its OSP range. The first purpose is directed toward recovery of the species pursuant to the Endangered Species Act (ESA), and the second is to better understand OSP for the sea otter, pursuant to the requirements of the Marine Mammal Protection Act (MMPA). By definition, a species listed as threatened or endangered under the ESA is automatically classified as "depleted," or below its OSP, under the MMPA. The OSP question will be dealt with in a separate long-term management planning process described in the Introduction of the Draft and Final EIS. This position is supported by statements in the Congressional Records of July 29, 1985 (House) and October 18, 1986 (Senate) when considering legislation to authorize the translocation.

Comment 16: Carrying capacity of San Nicolas Island is too small to achieve the desired recovery and research purposes. It could also result in another genetic bottleneck.

Service Response: The estimated minimum carrying capacity of San Nicolas Island is 280, and a more likely estiamte is 400–500. Although a site that had a higher carrying capacity may help the population reach its optimum sustainable population (OSP) under the MMPA more rapidly, San Nicolas Island is expected to meet the minimum requirements for a reserve colony for recovery purposes pursuant to the ESA, as described in the sections on Relationship of the Translocation to the Overall Status of the Southern Sea Otter, and Definition of an Established Experimental Population. In addition to meeting the minimum requirements for a reserve colony, San Nicolas has the added advantage over other sites of comparatively lower economic impact to fisheries and a better physical situation for minimizing dispersal and enhancing our ability to contain the experimental population. With regard to the possibility of having another genetic bottleneck, this is unlikely because the Service intends to periodically move a small number of otters (up to five per year) from the parent population to San Nicolas Island specifically to maintain the genetic exchange between the parent and translocated sea otter populations.

Comment 17: Potential adverse impacts of Navy activities on the experimental population make San Nicolas Island a poor choice.

Service Response: The potential impacts of Navy activities at San Nicolas have been evaluated in Section VI.B.2.c. of the Final EIS. The impacts of Navy activities on sea otters around the Island are expected to be insignificant. Pinnipeds are common in the same nearshore waters that would be used by sea otters. There is no evidence that members of these species have been adversely affected by any of the Navy's activities. The threatened Guadalupe fur seal is also an historical occupant of the Island and is now beginning to reestablish itself there in small numbers. There is no evidence that Navy activities will adversely affect the use of the Island by that listed species. Furthermore, while Pub. L. 99–625 specifically exempts defense-related actions from the formal section 7 consultation requirements for actions that may affect the experimental population, they are required to informally confer with the Service on any activities that are likely to jeopardize the southern sea otter. A Memorandum of Understanding will be prepared with the Navy to provide greater assurance that the Navy's activities will not adversely affect the experimental sea otter population.

Comment 18: The translocation plan should define habitat of sea otters to include all waters to a depth of 20 fathoms, not 15 fathoms, as indicated by gill net fishing closures in the present range out to 20 fathoms.

Service Response: It is important to distinguish between sea otter habitat (i.e., the area normally used by sea otters for foraging, rafting, resting, etc.) and the limit required for a gill net closure. In some parts of the pesent range sea otters forage or raft in waters deeper than 15 fathoms; however, this appears to be atypical—most foraging and resting occurs in shallower waters. At the translocation site, there is an abundance of food resources and kelp in waters less than 15 fathoms so otters would not normally be expected to be found in waters deeper than 15 fathoms. Thus, in calculating the translocation zone, the 15-fathom contour is used to define the habitat of the otters. In the unique situation along the current range where a number of otters have been observed drowned in fishing nets set outside the 15-fathom State fishing closure, all have been observed caught in nets set at 15 or 16 fathoms. Of the 220 miles of coastline now occupied, less than 10 percent has been closed to this type of fishing as far out as 20 fathoms. The unique bathymetry that has necessitated these closures in the present range does not appear to occur around San Nicolas. Public Law 99–625 also requires a buffer area to be included in the translocation zone, in addition to the normal habitat of the otter. In the Service's view, the area between 15 and 20 fathoms would be considered a buffer for purposes of fishing restrictions to prevent incidental entanglement of otters. Thus, statements are included in the Final EIS and this Rule that the Service expects the State to close the area out to 20 fathoms around San Nicolas to large mesh gill and trammel set-net fishing. Even if no such closure is invoked by the State, the incidental taking of sea otters in fishing nets would still be a violation of the Endangered Species Act and Marine Mammal Protection Act anywhere in the translocation zone which extends 10–19 nautical miles seaward of the 15-fathom isobath, far beyond the 20-fathom depth curve.

Comment 19: All oil development should be prohibited anywhere within the translocation zone, as implied by definition in Public Law 99–625 that this zone should have appropriate characteristics for furthering conservation of the species.

Service Response: Public Law 99–625 establishes the requirements as to the protections afforded the experimental population within the translocation zone. It requires that the formal Endangered Species Act section 7 consultation process be used to consider federally permitted activities within the zone such as oil resource development. Congress imposed this process rather than a total prohibition on any particular activity. Proposals for oil development within the translocation zone would necessarily be viewed as the Service currently views such activities in the section 7 process, that is, to determine if the action is likely to jeopardize the continued existence of the southern sea otter population as a whole, and, if a jeopardy situation exists, attempt to identify reasonable and prudent alternatives, and to identify reasonable and prudent measures to minimize the impacts of incidental take if such take is anticipated. Once the sea otter has recovered to the point where the species is delisted, the section 7 process would no longer be required, but the protections of the Marine Mammal Protection Act and the prohibitions of Pub. L. 99–625 on incidental and directed take would still apply with regard to the otters within the translocation zone.

Comment 20: Successful establishment of one new population would not, by itself, significantly dilute the impacts of a major oil spill nor would it be sufficient to allow delisting More than one new colony may be needed and other recovery plan objectives must be met.

Service Response: The Service agrees that one successful translocation in itself is not sufficient for delisting the sea otter. All the tasks identified under Objective 1 of the Recovery Plan Outline must be accomplished prior to the Service proposing to delist the sea otter. Delisting the sea otter will require evaluating all the factors put forth under section 4(a) of the Endangered Species Act. However, as stated in the Rule, section on Relationship of the Translocation to the Overall Status of the Southern Sea Otter, the successful establishment of one additional independent colony could achieve one of the three delisting criteria. The decision as to whether or not more than one translocation is needed will depend on the status of the parent population at the time and the degree to which the other two delisting criteria had been met. The translocation plan and Rule, in the section entitled Relationship of the Translocation to the Overall Status of the Southern Sea Otter, contain an example of a scenario in which a single translocation would be sufficient for recovery if the other delisting criteria had been adequately addressed and the status of the parent population is improving. This section has also been revised to clarify that the status of the parent population would also have a bearing on whether or not one additional colony would be sufficient to meet this delisting criteria, and to describe the factors that would have to be evaluated and satisfactorily addressed prior to delisting. In view of the purposes of establishing the reserve colony, i.e., to replenish a damaged parent population and establish a viable, self-sustaining entity that would be distant enough from the parent population that a single catastrophic oil spill would not impact both populations, the Service feels that the establishment of a colony that met the criteria described for "an established population" would substantially contribute to the overall recovery of the population. The idea of establishing a second colony was not intended simply to dilute the threat of an oil spill, but also to ensure that there would be a viable part of the population that could never be affected by the same serious spill that may impact the existing population. A colony meeting the establishment criteria in this Rule would not only accomplish that objective but would also serve the added function of providing a certain number of replacement animals on a sustained basis to repair the parent population if it ever became necessary to do so.

Comment 21: In view of the numerous threats made about harming the otters if translocation proceeds to San Nicolas Island, the Service should maintain a strong law enforcement presence at the Island for at least 5 years.

Service Response: The Rule has been modified to provide that at least two enforcement officers will be assigned specifically to protect the experimental population for at least 3–5 years, and longer if a hostile environment still exists. Before reducing the enforcement effort, the situation would be analyzed to determine if such reductions would be likely to result in harm to the new population. In addition, the long-term presence of Navy and Service Research personnel should serve to deter illegal harassment of the colony. If serious enforcement problems arise, Service Special Agents from other areas would be brought into the investigation to supplement the on-site enforcement officers.

Comment 22: Discussion of birth control or lethal culling as methods of controlling growth and dispersal of the experimental population, a threatened species, is inappropriate and should be deleted from the translocation plan and Rule.

Service Response: Public Law 99–625 requires the Service to maintain the management zone otter-free using non-lethal techniques. The Service's preferred course is to allow natural factors to drive population growth and maintain equilibrium density with little or no dispersal. However, non-lethal management techniques, in addition to capture and removal, will be considered if necessary to maintain the management zone. The Rule, under Containment Strategy, has been revised to clarify that additional authority would be required if lethal taking were to ever be considered. Although not authorized at present, the Service believes that limited use of lethal controls may at some point need to be considered as a last resort option for maintaining the management zone free of otters. Thus, it is only prudent to mention in this section that such taking may eventually require legislative consideration, although it is not authorized at present. Consideration of any additional authority to allow such taking would require extensive public involvement. Zonal management of sea otters will likely be an important part of the Service's long-term program to manage and protect sea otters throughout the range of the species. The Service has been urged to consider zonal management of sea otters by the Marine Mammal Commission as well as the State. The Service also recognizes that zonal management of sea otters in California, by culling or other lethal means, probably will never be an acceptable procedure to most people. Thus, the only option for limiting population growth, once all areas designated as "otter zones" are full, may be through the reduction of fecundity. The Service recognizes that its principal responsibility at present is to help improve the status of the California population. However, if efforts to recover the population are successful, population limitation may be necessary at some time in the future. Since non-lethal techniques to limit sea otter population growth are not yet available, the Service has proposed a sequence of activities, outlined in the translocation plan and Rule, to develop such techniques. Field tests will be done in Alaska. The Service has no intention of using any such limiting techniques on the California population until it is fully recovered, and then only after thorough consultation with the California Department of Fish and Game, the Marine Mammal Commission, and the interested public.

Comment 23: The proposed action has no long-term management plan for the existing sea otter population. There must be a long-term plan before translocation can be agreed to.

Service Response: The Service acknowledges that the translocation plan and Rule do not address the full range of management issues associated with the existing population, but it does go far in addressing both recovery and zonal management issues in that it establishes the entire Southern California Bight, except for the San Nicolas Island translocation zone, as a "no-otter" zone. The question of OSP for sea otters is highly complex, far more than simply deciding where otters should be and where they should not. It may require years, and additional studies, to develop a final OSP figure for southern sea otters. Because of the complexity and likely extended period needed to address the OSP questions, we do not agree that accomplishing the principal recovery objective of establishing a reserve colony should have to wait until the OSP issue is resolved. The Service has committed to initiating a process to develop a long-term management plan immediately after the decisionmaking process on translocation is completed. This view is supported by the House and Senate Congressional Records on H.R. 1027 and H.R. 4531, which state that long-term management, recovery goals, and future translocation needs should be

addressed in the next update of the recovery plan and that the translocation plan itself is not intended to replace the recovery plan as the primary long-term management document. They also clearly state that the translocation plan is primarily a planning mechanism for the translocation itself.

Comment 24: The translocation plan (Appendix B of the Draft and Final EIS) should be incorporated in its entirety into the Final Rule in order to fully comply with H.R. 4531.

Service Response: The Final Rule has been prepared to meet the specific requirements set forth in Pub. L. 99–625 and its legislative history for development of a plan. The Rule as now written contains all the elements required by Pub. L. 99–625. The translocation plan contained in Appendix B of the Draft and Final EIS is merely an expanded discussion of elements contained in the Rule and its content was developed through the rulemaking and National Environmental Policy Act process. The elements of the Appendix B translocation plan that are legally required by Pub. L. 99–625 have been incorporated into the Final Rule.

Comment 25: The Criteria for a Failed Translocation are not responsive enough. The timeframe for deciding whether or not the translocation has failed is too long. The State should be able to request immediate termination action by the Service. If funding for containment is not adequate at any time, the translocation should be declared a failure.

Service Response: The Service disagrees. There must be flexibility to deal with problems, if they arise. The State is a cooperator and will be fully involved in the monitoring of any problem and fully consulted in any decision to declare the translocation a failure. Furthermore, it would require another rulemaking procedure to propose the initial relocation. The Service and State, in consultation with the Marine Mammal Commission, need adequate time and flexibility to evaluate and seek solutions to problems before terminating the project and removing the experimental population.

Comment 26: In the Service's definition of an "established experimental population", one commentor disagrees with including a recruitment figure along with a total number or, if the recruitment figure is essential, the definition should be broadened to include other options including (1) a total experimental population of 170 or carrying capacity, whichever is the lower number, and (2) a total experimental population of 150 males and females with a positive growth rate over a 3-year period. Under one definition of "recruitment", the 20-recruit criterion may never be reached, or the criterion would not continue to be met as the population approaches carrying capacity. The commentor disagrees also with the Service's assumption that the reserve colony must serve as a source of otters to repair a damaged parent population. Its only purpose should be to exist as a viable, self-sustaining population. Anything beyond that is a bonus and should be considered as a "harvestable surplus" for replenishing the parent population, but should not be a requirement for the reserve colony.

Service Response: The Service believes these alternative criteria are not needed for the following reasons: (1) The definition of recruitment has been clarified in the Final Rule; it does not mean population growth, rather it means the number of pups that survive and become independent juveniles (subadults); (2) recruitment as defined and clarified in the text is vital for the purposes of recovery of the sea otters; (3) the definition of an established population has been broadened and now takes into consideration the situation where recruitment may diminish below 20 otters per year as the population approaches carrying capacity; and (4) should the sex and age ratios shift to be similar to those found in the existing population, even at a colony size less than the expected minimum carrying capacity (i.e., 280 otters), the recruitment criteria should still be met. For example, with a population size of 150 sea otters, approximately 75 would likely be females (50 percent) of which about 56 (75 percent of 75) would be of breeding age, from which about 42 (75 percent) would pup annually. Assuming a 50 percent pup mortality, approximately 21 pups would be recruited from that colony. With a population of 280 otters, there may be nearly twice that number of pups recruited. The Service also disagrees with the recommendation to delete the criterion for an "established population" of 20 recruits. The purpose of the second population is more than simply serving as a viable, self-sustaining entity; it must have the additional utilitarian purpose of restoring the population as a whole should the parent population be decimated. In order to accomplish this, the experimental population must be of sufficient size and reproductive viability to withstand the sustained removal of at least 25 animals per year in order to reestablish a population or repair a seriously damaged parent population should it be necessary to do so. The implication of not having this utilitarian purpose is that, even if the parent population were decimated, the surviving experimental population would be sufficient to perpetuate the species with no need to use it to restore a population elsewhere. If that were the case, which the Service does not accept, a much larger second population would be needed than what San Nicolas Island is expected to support or, alternatively, several other populations would be needed at other sites. The available information on habitat quality and carrying capacity at San Nicolas Island, combined with the numbers and sex composition of the animals to be translocated (primarily females), strongly suggests that the recruitment of at least 20 young into the experimental population for 3 to 5 years should be readily achieved, possibly by the end of the first 5 years. To clear up confusion that may exist on the term "recruitment", the term is meant, for purposes of defining an established population and protection and recovery needs for the sea otter, as the number of young-of the-year that successfully enter the population during the year as weaned, independent subadults (juveniles). Recruitment is not synonymous with net increase or growth of the population for this purpose. This clarification has been added to the translocation plan and Rule, section on Relationship of the Translocation to the Overall Status of the Southern Sea Otter, Definition of an Established Experimental Population. The definition of an established experimental population has also been revised and clarified to take into consideration the situation that, as the population approaches or reaches carrying capacity (equilibrium density), recruitment may be slowed considerably due to density-dependent factors such as lower reproductive rate or high pup mortality.

Comment 27: The amended listing table for the experimental population should be modified to correct information on the existing population concerning the scientific and common name, to delete reference to the subspecies name, and to modify the historical range to include all of Alaska and Canada.

Service Response: This Final Rule does not amend the original listing, except to add a section to establish an experimental population. To modify the original listing would require a separate rulemaking procedure under section 4 of the Endangered Species Act. The suggested change, were it to be made, would indicate that the Alaskan population is also listed as threatened,

which is not supported by available data.

Comment 28: The proposed management zone would preclude sea otters from ever being restored to historical habitat now incorporated into the Channel Islands National Park. Since it is the policy of the National Park Service to restore native species where possible and practical, the Service should at least include Santa Barbara Island in the translocation zone.

Service Response: The Service notes that the plan, if successful, will result in prevention of sea otters from reoccupying historical habitat under National Park Service jurisdiction in coastal southern California, unless San Nicolas Island were to be added to the National Park System in the future. Limiting the new colony to San Nicolas Island would achieve the recovery plan objective of establishing a reserve breeding colony, while mitigating and minimizing the impacts to fisheries and other concerns. The Service is committed to initiating a long-term management plan for the existing mainland population in which recommendations will be made for future distribution and population objectives. The restoration of southern sea otters to other areas in the National Park System (outside of the management zone) that have historical sea otter habitat should be considered in the long-term management plan. Please also refer to Section II.A.4. of the Final EIS which summarizes the criteria used in the three–year mapping and evaluation project conducted by James Dobbin Associates, Inc. None of the Islands of the Channel Islands National Park, with the exception of Santa Barbara Island, were deemed suitable as a translocation zone for recovery purposes. Because of their proximity to tanker transportation routes and of significant conflicts with fisheries, these islands were deemed less suitable. Thus, none of the other islands of the Channel Islands National Park were included in the areas given final consideration in the Environmental Impact Statement. The Service agrees that the inclusion of Santa Barbara Island would lend itself well to a joint Fish and Wildlife Service–National Park Service effort to protect the new colony, as well as enhance the enjoyment and education of Park visitors to Santa Barbara Island. The inclusion of Santa Barbara Island in the translocation zone would, however, result in additional impacts by sea otters at the site and could make containment more difficult to achieve. Because of its close proximity to the mainland and other islands, translocation of sea otters to Santa Barbara Island would increase the potential for dispersal of sea otters to other islands and the mainland where fisheries and other activities could be adversely affected.

Comment 29: The research activities associated with translocation could have a significant adverse impact on pinniped populations and the threatened Guadalupe fur seal at San Nicolas Island.

Service Response: The Service has been in contact with National Marine Fisheries Service (NMFS) regarding the potential impact of the activity on the Guadalupe fur seal, and on November 12, 1985, in a letter from the Regional Director, Southwest Region, National Marine Fisheries Service to the Acting Regional Director, Region 1, U.S. Fish and Wildlife Service, NMFS indicated that translocation of sea otters to San Nicolas Island will not adversely affect the Guadalupe fur seal. The Service has been conducting studies at San Nicolas since 1980. There is no evidence that these activities along the shores of San Nicolas Island have been any more disruptive to marine bird and mammal populations than other research activities, and probably less disruptive than many. All research activities on the Island have been closely coordinated with Pacific Missile Test Center Senior Biologist Mr. Ron Dow, with the intent of minimizing possible detrimental effects of human presence on the Island's wildlife. It should be noted that none of the baseline sites in littoral habitats are in areas where pinnipeds typically haul out. One site at which Service biologists are studying the dynamics of black abalone population is near a California sea lion *(Zalophus)* haul-out area; however, this site is visited only during winter when disturbance to *Zalophus* is probably minimal and these visits are coordinated with Mr. Dow's office. There is no indication that sampling of the subtidal sites, or any of the other diving activities being or planned to be undertaken by the Service at San Nicolas Island, have adversely affected pinnipeds other than to attract sea lions. All possible care will be taken to minimize disturbance to presently occurring populations of marine birds and mammals at San Nicolas Island. All activities on the Island are presently, and will continue to be, coordinated with Mr. Dow's office. In addition, the Service will consult with the Southwest Fisheries Center, NMFS, to assure that the increased activities of Service researchers on the Island pose no threat to existing pinniped populations. Radio tracking and observational studies will generally be done from vantage points offering some elevation above sea level that are away from shore. It is highly unlikely that these activities will disturb pinnipeds any more than those resulting from ongoing research activities, including hands-on tagging of adult and newborn pinnipeds, surveys, behavioral and physiological studies, etc. Sea otter surveys are most effectively done by flying offshore and looking downward and inshore toward the animals. It is anticipated that the survey aircraft will remain at least several hundred meters offshore during the surveys, usually much farther. In order to be certain that these activities do not disturb hauled-out pinnipeds (by stampeding them into the water), test flights will be made to determine the altitude and distance from shore that can be flown without disturbing the animals. Surveys will be done using methods determined to be least disruptive to other species of birds and mammals already living on the Island. These preliminary studies and activities will also be coordinated closely with NMFS and Mr. Ron Dow, or their designated representatives.

Comment 30: The Service should shift much of the preamble discussions of the Rule relative to the Relationship of Translocation to the Status of the Species and to Future Endangered Species Act section 7 Determinations into the Regulation Promulgation which amends § 17.84 of Part 17, Code of Federal Regulations, in order to comply with Pub. L. 99–625.

Service Response: Public Law 99–625 requires the translocation plan to be developed through rulemaking procedures for public review and comment which has been done through the issuance of a Proposed and this Final Rule. Public Law 99–625 does not, in the Service's view, require every detail of the translocation plan or preamble discussions to be codified as part of the final regulation. Congress, in enacting Pub. L. 99–625 several months after the Proposed Rule had been published, did not indicate that the Service had misinterpreted the intent of the law, and did not provide additional direction.

Comment 31: The suggestion was made that a new definition be added to the regulation for a "stabilized population" and that the definition of "carrying capacity" be included in the regulation as well as the preamble.

Service Response: Both definitions have been added to the regulation because they have very important meanings in terms of how the translocation relates to future Endangered Species Act section 7

determinations. These definitions help clarify the growth stages of the experimental population on which section 7 analyses will be based.

Comment 32: The suggestion was made that additional background information, taken from the Recovery Plan, should be added to the regulation to help place the importance of translocation to the overall recovery effort into better perspective.

Service Response: The passages have been added to the regulation as suggested since they are taken directly from the Recovery Plan and do add perspective on the role of translocation. Statements have been added that the successful establishment of this experimental population could fully satisfy the first of three criteria (i.e., establishment of at least one additional colony) described in the Recovery Plan. This is qualified, however, by pointing out that the parent population must also be increasing and expanding its range from its present size and distribution in order to meet the broader criterion that the overall population must be increasing at a sustainable rate in a large enough area of its original habitat that only a small proportion of the population could be decimated by any single natural or man-caused catastrophe. This is consistent with the discussion in the preamble and the example given of a scenario that would represent a "recovered population."

Comment 33: The Service was requested to include definitions and discussion of the growth stages of the experimental population in the regulation as well as the preamble and translocation plan, including transplant stage, initial growth and reestablishment stage and post-establishment and growth stage.

Service Response: The Service declines. These stages are all discussed in the preamble of this Rule. The key milestones of the growth stages—stabilized population, established population, and carrying capacity—are defined in the regulation. The Service sees no utility in including the additional, lengthy descriptions of each growth stage in the regulation since the milestones, which are defined in the regulation, are the critical factors in determining how each growth stage influences section 7 (ESA) analyses and possible delisting actions.

Comment 34: In several places of the Proposed Rule, several commentors suggested that the terms "the primary criterion" be used rather than terms such as "a key criterion" when referring to the relationship of translocation to overall recovery of the species.

Service Response: The importance and relevance of the translocation to recovery is explained throughout the Rule. To utilize the suggested phrase "the primary criterion" diminishes the importance of the other recovery criteria as well as the status of the parent population. The Service believes that meeting the other criteria, as well as having a healthy, expanding and growing parent population, are of equal importance to the translocation. Therefore, the suggested changes have not been made.

Comment 35: One commentor suggested that a procedure be included in the regulation whereby the Service would publish notice in the **Federal Register** of the population estimate, if the Service estimates the size to be either 70 or 150 animals, and to invite public comment concerning whether the population is "stabilized" or "established." It was also suggested that the regulation include a process whereby a person may petition the Service to determine that the translocated population is "established" or "stabilized" and require the Service to make findings and publish notice in the **Federal Register** within 180 days of the estimated size and status of the translocated population.

Service Response: The commentor provides no justification or rationale for why this lengthy, expensive and time consuming process is needed, or why existing procedures would not accomplish their objective. Since the definitions of "stabilized" and "established" are generally relevant only from the standpoint of conducting section 7 analyses or initiating a delisting review, there are already formal procedures in place to describe the status of the experimental population. The Biological Opinion issued for any section 7 consultation would contain appropriate data and conclusions on the status of both the experimental and parent populations. Once the Service determines that the experimental population meets the "established" criteria, it will conduct what is comparable to a 5-year status review as well as a delisting review, the results of which would be made available to the public. Additionally, section 4 (b) and (c) of the ESA already provide for petitioning the Service for a reclassification of a listed species and for publication of the results of 5-year reviews, respectively. Thus, the Service declines to incorporate the additional formal public notice and review procedures suggested.

Comment 36: The suggestion was made that the Criteria for a Failed Translocation be included in the regulation as well as in the preamble of the Rule.

Service Response: The Criteria for a Failed Translocation are critical to whether or not the experimental population will achieve its intended purposes or have to be terminated, which would involve Service evaluation and informal rulemaking procedures. Because they hold such importance to the future continuation of the experimental population as well as to future conflicts with fisheries and other uses in the translocation and management zones, the Service agrees with the suggestion and has incorporated the Criteria for a Failed Translocation into the final regulation.

Comment 37: The suggestion was made that a particular quote from a recent Jeopardy Biological Opinion rendered by the Service on full development of oil and gas resources in the northern Santa Maria Basin be included in the regulation. The quote, taken from the Conservation Recommendation section of the Opinion, describes the linkage between a successful translocation to future section 7 determinations and the overall recovery of the species. It indicates that future conflicts between OCS oil and gas development and sea otters can be significantly diminished or avoided if the recovery effort is accelerated and a second colony can be established over the next 5–10 years.

Service Response: The quote in the Opinion was actually in reference to the discussion in the Proposed Rule and translocation plan for this translocation which already contains substantial discussion of the relationship of translocation to future section 7 determinations and recovery of the species. The Service does not believe the quote adds to what is already discussed in the translocation plan and Rule, so the suggested addition has not been adopted.

Comment 38: One commentor suggested that, in addition to considering the existence of a translocated population both qualitatively and quantitatively for section 7 purposes during the initial growth and reestablishment stage, the translocated otters should be viewed as having greater value to the population as a whole than an equal number of otters in the parent population. The rationale given for this suggestion is that otters at the new site are exposed to a lower risk than the parent population and because, even during this stage, the translocated otters could possibly be used to re-populate a damaged parent population.

Service Response: The Service disagrees with the rationale for the suggestion. To say that the translocated otters have a greater worth than otters in the parent population during the initial growth and reestablishment stage because they are subject to a lower degree of risk would be a superficial and arbitrary weighting of the worth of an individual. During this stage in particular, the experimental population would not be expected to be able to supply animals in the numbers needed (25 or more per year) to restore a damaged parent population and still remain a viable, self-sustaining breeding colony. Furthermore, even after the experimental population has "stabilized" and is showing positive signs of eventually becoming an established population, its ultimate fate is still uncertain. Its status is precarious and its numbers during this stage may not even be any greater than the original number translocated. The experimental population at this stage may or may not be able to survive on its own as a self-sustaining entity, and a translocation back to the mainland, should the parent population be decimated, would add to the stress of the original relocation to a new environment. Thus, a case might even be made that, during this stage, the value of a member of the experimental population could be less than that of an otter in the parent population. Thus, the Service sees no justifiable reason to view otters in the experimental population during this stage as having greater value than the same number in the parent population. Thus, the change has not been made in the Rule.

Comment 39: One commentor suggested that language be added to the regulation that "once the population is established, the Service shall assume that the primary goal of the Recovery Plan has been accomplished and, therefore, that the risk to the sea otter from a major oil spill has been reduced to an acceptable level."

Service Response: The Service disagrees with the suggestion because, as discussed under previous comments, such a statement would diminish, even ignore, the importance of the other criteria and objectives in the Recovery Plan as well as the status of the parent population. As already described in the Rule, establishment would trigger a delisting review, but the status of the other recovery criteria and parent population would be important factors in determining if the risk of oil spills to the sea otter had been reduced to an acceptable level. No change has been made in the regulation or preamble to reflect this suggestion.

Description of Action

The Service will establish through translocation a colony of southern sea otters at San Nicolas Island, Ventura County, California. As required by Pub. L. 99–625, two zones, a "translocation zone" and an otter-free "management zone," will be established. The colony will be protected, studied and contained within the specified translocation zone (see IDENTIFICATION OF ZONES segment of the Preamble, infra). Surrounding the translocation zone is the management zone wherein sea otters will be removed if they are found there to minimize potential conflicts with other uses of the resources, to protect those otters because the management zone has less stringent protection measures for sea otters, and to evaluate existing, and, as necessary, develop additional techniques for containing sea otters.

This rule, once implemented, will simultaneously aim for the achievement of these primary objectives: (1) Meeting one essential criterion for recovery and potential delisting of the southern sea otter population under the Endangered Species Act (ESA), and (2) obtaining information and furthering research objectives necessary for present and future management decisions and better understanding and defining the optimum sustainable population (OSP) for this population under the Marine Mammal Protection Act (MMPA). The proposed rule was written in a format that addressed three possible legislative authorities that the Service believed could exist at the time a final rule was published. Since the publication of the proposed rule, Congress passed H.R. 4531 on October 18, 1986, and the President signed into effect Pub. L. 99–625 on November 7, 1986, which parallels one of the legislative scenarios described in the proposed rule. Appropriate modifications have been made in this Final Rule to reflect this legislative authority which is described under the LEGISLATIVE AUTHORITY section of the Preamble.

Pre-Translocation Phase

Activities during this phase emphasize: (1) Assessment of the existing population and the acquisition and analysis of behavioral data, (2) development of a plan for capturing and holding sea otters for translocation, including determination of the optimum size, age, and sex composition of the translocated colony, (3) collection of baseline data on the ecosystem at the translocation site, and (4) completing the public notice and review requirements of the National Environmental Policy Act and Administrative Procedures Act.

1. Assessment of the Existing Population

Insofar as possible, it is necessary to evaluate the possible impacts of removing animals from the existing population for the purpose of translocation, and to develop a monitoring program to test hypotheses concerning expected impacts and to detect and measure unforeseen impacts. Present monitoring programs are done mainly by the Service and California Department of Fish and Game (CDFG). Population surveys are, at present, conducted twice annually by using the following techniques.

Most of the coastline within the range of the population, being accessible by road, is surveyed from shore by teams of two observers each. The remaining areas are surveyed from aircraft. Behavioral studies are being done by observing tagged (flipper-tagged and radio-implanted) and untagged individual sea otters in some portions of the range. The principal emphasis of these studies is to obtain better information on population trend, distribution, movement, diet, and activity patterns.

An increased effort will be devoted to obtaining behavior and movement information from individuals marked with flipper tags and implanted radio transmitters prior to the translocation. During the year prior to the translocation, up to 30 individuals from the parent population will be instrumented with radios that have a predicted battery life of about 2 years. About half of the radioed animals will be among the translocated individuals. The use of radio telemetry according to this design will allow documentation of 24-hour time budgets, foraging behavior, social interactions, and movement patterns before and after the animals are translocated. These data will be used to compare behaviors and movements of individuals before and after the translocation, at both the mainland capture site and the translocation site, as well as to understand better the effects of translocation on the parent population.

2. Removal of Animals From the Existing Population

Limited information is presently available from which to make a judgment on the optimum number, and the age and sex composition of animals to be translocated. Jameson et al.'s (1982) review of previous translocations of sea otters in the eastern North Pacific Ocean indicates a correlation between

success rate and size of the translocated population. However, there are limits to the practicality of this correlation. Logistics, effects of removal on the donor population, and the potential for rapidly achieving and exceeding the minimum estimated carrying capacity (280) for the San Nicolas Island translocation zone, which could conceivably result in a population crash and ultimately a lower equilibrium density for some time period, are factors that must be considered. Based on these findings, and considering that the future welfare of the existing population probably would be best served by minimizing the number of animals taken from it while maximizing the likelihood of success, up to 70 animals will be moved from the existing population to the translocation site in the first year. The limit of 70 animals is set so that the removal will not exceed the expected population growth rate of 5 percent, assuming the current population numbers about 1,400. The estimated long-term growth rate for the population prior to the recently experienced entanglement mortality was about 5 percent per year (CDFG 1976).

No more than 250 animals will be moved in total from the existing population for translocation purposes. Strategies for years 2, 3, 4, 5 and beyond will be governed by the success of preceding effort. Translocation of additional animals will be terminated once a relatively stable group of 70 animals at San Nicolas Island, including both males and females, has been achieved. If, as expected, most of the translocated animals remain within the translocation zone, there will be no supplemental translocation in subsequent years except for genetic enhancement (if necessary) from the parent population involving up to 5 otters per year. However, if a substantial decline is seen in the population or serious imbalance in the sex ratio, additional animals may be moved to ensure success of the translocation.

Most, but not all, of the translocated animals will be sexually immature (i.e., independent, up to about 2 years of age). By selecting young animals for the translocated population, it is expected that post-release dispersal will be minimized and that the future growth rate of the population will be maximized (Kenyon 1969). A further advantage of mainly using juveniles is that they are less likely to interact aggressively while in captivity or following release. The sex ratio of the immature animals selected for translocation will be approximately 4 females to 1 male, although a range of from 3.5:1 to 6:1 will be considered acceptable.

Of the animals translocated each year, up to 20 will be adults. The purpose of moving adults will be to compare movement patterns, particularly dispersal tendencies away from the translocation site, between adult and juvenile sea otters as well as to provide a small number of sexually mature animals that could begin reproducing almost immediately. In selecting animals for translocation, an adult sex ratio of 3 females to 1 male, or 15 females to 5 males will be sought.

3. Studies at the Translocation Site

Since 1980 the Service has been conducting a monitoring program of the intertidal and shallow subtidal ecosystems at San Nicolas Island. The purposes of this program are: (1) To determine the dynamics of nearshore communities relatively free of human influence, in order to contribute to the eventual determination or refinement of an OSP level for sea otters in California pursuant to the MMPA; and (2) to establish baseline ecological information in order to document the range of influences that sea otters, should they be restored there, would have on various components of nearshore communities by comparing changes which occur following translocation with a pre-translocation data base. Densities of abalone, sea urchins, other invertebrates, fish, and kelps, and percent cover of the benthic algal association, are surveyed twice annually at each sample site. Lobster populations are also being surveyed twice annually in late spring and late summer. Kelp canopies are photographed twice annually using aerial infrared techniques, once during the summer maximum extent of the canopy and once during its late winter minimum extent. Data from this program should adequately document spatial and temporal patterns of the sea otter's influence on the coastal ecosystem.

Translocation Phase

Activities during this phase will consist of capture, transport, and release of sea otters. These activities could last 5 years or more, depending on their success, although it is expected that most of this phase will be completed in the first year.

All capture, transport, and release activities will be done if possible between mid-August and mid-October. Earlier in the summer, strong northwesterly winds blow along the coast of California. These winds create heavy seas that would be a detriment to capture operations, although the release site itself is well protected from prevailing weather. After mid-October, the probability of winter storms from the North Pacific Ocean greatly increases. Although capture operations could be halted during such periods with no serious consequences, an inopportune storm could have catastrophic effects at the holding and release sites by increasing work hazards, as well as posing and release sites by increasing work hazards, as well as posing dangers to the otters.

1. Capture, Holding and Tagging

Capture locations will be selected preferably from about the southern one-third of the current range, primarily on the basis of logistical convenience, availability of desired age and sex groups, and welfare of the animals. Techniques proven to be effective and safe in previous translocations and other research on sea otters will be used. Simultaneous capture operations will be centered at Point Piedras Blancas and Morro Bay because both locations offer adequate harboring facilities for small boats.

Point Piedras Blancas is the only location well within the existing sea otter range that is logistically suitable for capturing sea otters. All sex and age classes are present and available for capture near Point Piedras Blancas. At least two sites in the vicinity of Piedras Blancas contain small concentrations of immature male and female sea otters. The primary capture area will extend from Cambria in the south to Salmon Creek in the north. After capture, sea otters will be shuttled to temporary holding facilities. In most cases, individuals will be in transit for no longer than 4 hours.

In the event that the desired number and composition of animals cannot be obtained from the areas described above, it is possible that additional individuals will be taken from the north end of the population's range near Monterey and Santa Cruz. These individuals will be captured from the area between Yankee Point and Point Santa Cruz.

Animals will be captured by: (1) Diver held devices (as developed by CDPG), (2) dip nets used from a small boat (as currently used by Service research personnel at Point Piedras Blancas for catching newly independent otters) or, (3) surface entangling nets (as used by the Service in California and Alaska, and by the Alaska Department of Fish and Game in Alaska). The dip net technique will probably be used extensively since it has been used very successfully in previous research

projects for capturing immature sea otters. Most of the translocated animals will be sexually immature, and most of the pups born in any year are weaned and become independent from their mothers by fall, which is judged to be the most suitable time of year for the translocation.

Each captured animal will be placed in a holding box (approximately 20" wide, 36" long, 24" deep) similar to those developed by the Departments of Fish and Game in Alaska and California. These boxes have proven to be safe and effective for transporting sea otters short distances. Each individual will be taken to the docking facility and carried, or transported by truck, to the holding facilities and then, for translocation to San Nicolas Island, the sea otters will be trucked to the respective local airports.

Under optimum conditions, all animals to be translocated in a given year will be held at the capture sites or holding facilities prior to their movement to San Nicolas Island. All animals are expected to be captured within three weeks. If logistic or weather-related difficulties are encountered, it may be necessary to spread the translocation effort over a period of up to 60 days. Under these circumstances, smaller groups of otters will be maintained at holding facilities, with two or more separate transport and release operations. At least 24 otters will be moved to San Nicolas Island during the first transport. All animals will be examined at the holding facility by a veterinarian (with experience treating marine mammals) before they are moved to the Island. The animals will be fed fish fillets and squid (*ad libitum*), supplemented by other shellfish species as available. Males and females will be held in separate tanks, and isolated from public view or disturbance to the greatest extent practicable. Twenty-four hour security and observation will be provided at all times when otters are in captivity. Handling of otters in captivity will be kept to a minimum.

All individuals will be tagged with color-coded temple tags on the interdigital webbing of the rear flippers, in varying combinations of color and position which allow identification of individuals from a distance. A permanent mark or tag, such as a small ear tag (as used by CDFG, Ames et al. 1983) and miniature transponders (implanted subdermally) will also be used to help assure "in hand" recognition of individuals in case flipper tags are lost. As previously described under "Assessment of the Existing Population," up to 30 individuals will be captured up to one year before each transplant period and implanted with radio transmitters. Approximately half of these animals will be recaptured and translocated.

Animals will be weighed and their sex determined at the time of capture. Blood samples from some of the animals will be taken for genetic and veterinary studies. Teeth will be examined for general condition at the time of capture. Each animal will be injected with tetracycline, if safe and effective doses can first be determined by the Service or veterinary community, in order to provide a potential marker for future age and growth studies. Only animals judged to be in good health by the veterinarian will be moved to the translocation site. Sick animals will be released or treated by the veterinarian and then released in the capture area upon recovery.

2. Transport

The animals will be transported from the holding facilities to San Nicolas Island by aircraft. If necessary, the cargo area will be air conditioned to 65 °F or less to prevent the animals from overheating. Animals will be accompanied and kept under surveillance while in flight. During transport, the animals will be held in individual cages. The animals will not be fed during transport. They will be sprinkled with cold water or ice if there are indications of overheating.

Under optimum conditions of weather with high capture rate, animals will be flown in several groups to San Nicolas Island. The flight will take place once all animals are in hand and judged to be in good condition. The animal will be offloaded from the aircraft at San Nicolas onto trucks, and driven immediately to the release site.

3. Release

Animals will be held in floating pens which will be securely anchored in the sand bottom at Daytona Beach, San Nicolas Island. This site is protected from onshore winds and heavy seas, which normally are from the northwest during summer and fall. It is the most suitable anchorage at San Nicolas Island and there is road access to the area.

A series of 8 to 10 floating holding pens will be used and there will be no more than 15 individuals in any pen. Males and females will be held separately. Unusually aggressive animals will be isolated from the others. The holding pens will be approximately 12' long by 12' wide by 6" deep, and constructed of a frame of aluminum tubing covered by 2" stretch nylon net. The pens will be buoyed with styrofoam blocks attached to the outside such that about two-thirds of the pens' depth is submerged. A haul-out platform for the otters will be provided on the interior of each pen. This pen design has been used successfully in previous sea otter research.

A charter vessel, with large freezer capacity to store food, will anchor and standby at Daytona Beach during the entire period that animals are being held in the floating pens. This vessel will provide a platform for 24-hour surveillance of the animals while they are in captivity at San Nicolas Island. In addition, it will serve as a food storage facility. While in captivity at San Nicolas Island, the animals' diet will be supplemented with locally common food resources. If necessary, additional food could be air freighted from Point Mugu Naval Air Station to San Nicolas Island, and put aboard the vessel.

The animals will be held from two to five days in floating pens at the release site. It is thought that this interval will allow the animals to recover from the stress of transit and to become more accustomed to the area. The animals will be released passively by opening the floating pens and allowing them to leave at will. To encourage feeding in their new environment, the otters will not be fed during the last 6 hours in captivity. The release will take place shortly after dawn in order to allow maximum time during daylight for the animals to visually orient to their new environment, and to allow shore-based of southern California that are not now occupied by sea otters. If dispersal from San Nicolas Island were to result in return to the existing population, no further effort will be made to capture the dispersing animals and return them to the translocation site except as described under Containment Efforts. If dispersal were from San Nicolas Island to some other location, the animals will be captured, and depending on the circumstances, returned and released to either the donor population or the translocation site, with return to the donor population being preferred.

Ecosystem level studies at San Nicolas Island primarily will involve monitoring littoral and sublittoral baseline stations (this includes populations of abalone, sea urchins, and fishes), kelp canopy distribution and abundance, and lobster populations. These studies will continue at the present level of effort with adjustments as needed to improve design or sampling sufficiency. This information, in conjunction with the pre-translocation data base and the population level

studies, will provide documentation of changes in the structure of the nearshore ecosystem as the sea otter population increases from low to high densities. Additional studies will be done on: (1) The population biology of red and black abalones, (2) lobster populations, (3) plant-herbivore interactions, (4) reef fish populations, and (5) socioeconomic issues, such as the effects on kelp harvesting, shellfish and finfish harvest, and recreational activities. These studies will be necessary to understand the nature and causes of change brought about by the sea otters, and the potential effects of such changes on recreational and socioeconomic activities as well as effects on the experimental population itself and its optimum sustainable population level.

2. Containment Efforts

Because it is an island with abundant prey in surrounding waters and is separated from other shallow water areas where food is available by long distances of deep open ocean, dispersal away from San Nicolas Island is expected to be negligible, at least prior to attainment of carrying capacity. As the animals approach carrying capacity, an increase in dispersal to nearby islands and perhaps the southern California coast might occur. It would be possible to limit the population at or below carrying capacity and thus prevent large-scale dispersal away from the island, by one of the following techniques: (1) Selective removal of animals from the translocation zone using non-lethal methods and relocation to the parent population; or (2) imposing birth control measures on some of the individuals within the translocation zone.

The Service and CDFG will jointly manage an effort to locate otters that may disperse from the translocation zone into the management zone. This effort will rely heavily on public participation/reporting. A "hot line" number will be established and publicized so that individuals who observe otters in the management zone could report the number and location of sea otters observed. The Service will seek appropriate agreements with other Federal and State agencies that have jurisdiction within the management zone (e.g., CDFG, Navy, National Marine Fisheries Service and National Park Service) to assist in reporting, verifying and capture of otters and protection of other resources in the areas where capture and removal operations will be conducted. Aerial reconnaissance by CDFG and/or the Service will be initiated if studies at the translocation site indicate that a significant proportion (e.g., 10–20 percent) of the animals may have dispersed from the translocation zone. Radio-implanted otters that leave the translocation zone will be tracked to the extent possible. If verified sightings of one or more sea otters are made at any location within the management zone, field crews will be mobilized as soon as weather and sea conditions permit to capture and remove the otter(s) from the zone.

Capture will be done by experienced State and/or Federal personnel using one or more of the same techniques used in the translocation effort, such as: (1) Diver-held devices; (2) surface entangling nets; or (3) dip nets. Additional techniques, such as injection of immobilizing drugs with darts, will be developed in the future, if deemed necessary. Captured otters will be returned to either the translocation zone or to the existing range. Most will either be returned to the original capture site in the existing range or released in the vicinity of Monterey Bay where their behavior will be compared with those returned to the original capture site. Animals either will be flown or moved by air-conditioned van to the release site. If not already implanted, captured animals will, to the extent possible, be implanted with a radio transmitter in order to obtain detailed information on their behavior following their release.

Capture and relocation will serve as an effective containment technique as long as there is available habitat where sea otters are desired. Public Law 99–625 requires that otters captured in the management zone must be returned either to the translocation zone or the range of the parent population. Eventually, after all such areas are occupied, population stabilization may require an artificial balancing of overall births and deaths (Hofman 1985). Therefore, research will be initiated to identify and evaluate techniques for limiting population growth by reducing fecundity. This work will be done in three stages, including a thorough review of literature on birth control in other wild mammal populations, laboratory experiments to test the most promising techniques if any are identified, and then field experiments in Alaska with Alaskan sea otters. Other techniques such as culling, or non-lethal thinning of the donor population, to minimize dispersal into the management zone would require additional authority.

3. Protection of Translocated Population

At least two enforcement officers will be integrated into the translocation effort. The officers will establish regular contacts with the other parties involved in the translocation process, develop a working knowledge of the sea otter recovery and research program and potential law enforcement problems, and develop a cooperative enforcement arrangement with other agencies with jurisdictional responsibilities, e.g., U.S. Coast Guard, National Marine Fisheries Service, California Department of Fish and Game, U.S. Navy, and National Park Service to assist with protecting the experimental population in the most effective and efficient manner possible. The officers will be equipped with a sea-going vessel and equipment to carry out frequent enforcement patrol and surveillance to minimize the chance of harassment or other illegal activities affecting the translocated sea otters. Both the on-site officers and the translocation research team will be monitoring the new colony, therefore, any illegal activities will likely be observed and enforcement actions taken. At a minimum, the officers will be needed for the duration of the actual translocation and for at least 3–5 years thereafter, after which their continued full-time need will be evaluated.

Legislative Authority

Public Law 99–625 enacted on November 7, 1986 is the primary Federal legislative authority under which this translocation plan will be implemented. In enacting Pub. L. 99–625 Congress has provided the authority and established the requirements for translocating, establishing and managing a second colony of California sea otters. This special legislative authority, similar to section 10(j) of the ESA, provides for the establishment, containment, and management of an experimental population of California sea otters pursuant to a translocation plan which must be developed by regulation and administered by the Service in cooperation with the appropriate agency of the State of California. Pub. L. 99–625. Section 1(b) 100 Stat. 3500 (1986). Pursuant to the requirements of section 1(b) of Pub. L. 99–625, this translocation plan must include the following:

(1) The number, age, and sex of sea otters that will be relocated.

(2) The manner in which the sea otters will be captured, translocated, released, monitored, and protected.

(3) The specification of a zone (herein referred to as the "translocation zone") to which the experimental population will be relocated. This translocation zone must have appropriate characteristics for furthering the conservation of southern sea otters.

(4) The specification of a zone (herein referred to as the "management zone") that— (A) Surrounds the translocation

zone; and (B) does not include the existing range of the parent population or adjacent range where expansion is necessary for the recovery of the species.

The purpose of the management zone is to: (i) Facilitate the management of sea otters and the containment of the experimental population within the translocation zone, and (ii) to prevent, to the maximum extent feasible, conflict with other fishery resources within the management zone by the experimental population. Any sea otter found within the management zone must be treated as a member of the experimental population. The Service will use all feasible non-lethal means and measures to capture any sea otter found within the management zone and return it to either the translocation zone or the range of the parent population.

(5) Measures, including an adequate funding mechanism, to isolate and contain the experimental population.

(6) A description of the relationship of the implementation of the translocation plan to the status of the species under the [Endangered Species] Act and to determinations of the Secretary under section 7 of the Act.

While the experimental population of sea otters generally is to be treated as a threatened species for purposes of the ESA, section 1(f) of Pub. L. 99-625 provides that, for purposes of implementing the translocation plan, no act by authorized Service or State officials that is necessary to effect the relocation or management of any sea otter under the plan may be treated as a violation of either the ESA or the MMPA.

Identification of Zones

Section 1(b) of Pub. L. 99-625 requires the translocation plan to specify two zones for the experimental population, a translocation zone and a management zone. Public Law 99-625, Section 1(b) 100 Stat. 3500 (1986). The translocation zone is the area in which California sea otters are to be relocated, and it must have appropriate characteristics for furthering the conservation of the species, including occupiable habitat and a buffer to insulate the experimental population from adverse effects of activities that may occur outside the translocation zone. The management zone is to surround the translocation zone, but cannot include the existing range of the parent population or adjacent range where expansion of the parent stock is necessary for recovery of the species. The purposes of the management zone are to facilitate management and containment of the experimental population and to minimize to the maximum extent feasible conflict between the experimental population and fishery resources and oil and gas exploration and development activities. Any sea otter found within the management zone is to be returned to either the translocation zone or to the range of the parent population. Public Law 99-625, Section 1(b)(4) 100 Stat. 3500 (1986).

This rule establishes a translocation zone for the experimental population at San Nicolas Island, the nearby islet of Begg Rock, and surrounding waters within the following coordinates:

North Latitude/West Longitude

33°27.8'/119°34.3'
33°20.5'/119°15.5'
33°13.5'/119°11.8'
33°06.5'/119°15.3'
33°02.8'/119°26.8'
33°08.8'/119°46.3'
33°17.2'/119°56.9'
33°30.9'/119°54.2'

The translocation zone boundary is drawn taking into account the availability of food resources, rafting sites and kelp beds as well as wind and wave patterns, offshore currents and other oceanographic variables and the types and magnitude of activities that may adversely affect the experimental population. 131 Cong. Rec. H6467 (July 29, 1985). Waters surrounding San Nicolas Island out to at least the 15-fathom contour within these coordinates provide highly suitable habitat for California sea otters. Historically, sea otters were present at San Nicolas Island in considerable numbers. Kelp forests flourish near the island and prey species such as abalone, sea urchins, crabs, clams and mussels are abundant. A buffer area is added to that area identified as sea otter habitat (i.e., coastal waters within the 15-fathom contour). This buffer area is based on wind and sea conditions, projected movement of oil from hypothetical oil spills and response time required to contain or divert those spills using one or more of the existing oil spill response vessels. The area delineated by the coordinates of the translocation zone provides sufficient response time to intercept and divert or possibly contain an oil spill occurring anywhere outside the translocation zone before it could reach sea otter habitat within the 15-fathom contour around the Island, provided weather and sea conditions permit effective deployment of containment equipment. The translocation zone is also large enough to provide a buffer between sea otter habitat and fishing activities in the management zone that may result in incidental entanglement.

The management zone set forth in this rule consists of all waters, islands, islets, and land areas seaward of mean high tide subject to the jurisdiction of the United States, including State tidelands, located south of Point Conception, California (34°28.9' N. Latitude), except for any area within the translocation zone. The management zone surrounds the translocation zone and begins approximately 50 miles to the south of the southern limit of the existing range of the parent population which is at the Santa Maria River. Thus, as required by Pub. L. 99-625, the management zone surrounds the translocation zone and does not include any of the existing range of the parent population or any adjacent range where natural expansion may be necessary for recovery of the species. As discussed later in this preamble, the Service will use all feasible non-lethal means and measures to capture any sea otter found within the management zone and return it to either the translocation zone or to the range of the parent population. Capture and relocation of sea otters found in the management zone will serve to contain the experimental population, to minimize conflicts between sea otters and fishing and oil and gas exploration and development activities in the management zone, and to protect those otters because the management zone has less stringent protection for otters.

Protective Regulations

Pub. L. 99-625 generally provides that any member of the experimental population of California sea otters shall be treated as a threatened species. Pub. L. 99-625, section 1(c), 100 Stat. 3500 (1986). Section 9(a)(1)(G) of the ESA prohibits any violation of a regulation pertaining to a threatened species promulgated by the Secretary pursuant to authority provided by the ESA. 16 U.S.C. 1538(a)(1)(G). Section 4(d) of the ESA authorizes the Secretary to issue protective regulations for threatened species. 16 U.S.C. 1533(d).

Pub. L. 99-625 provides several exceptions to otherwise enforceable restrictions for California sea otters belonging to the experimental population. Regardless of the zone, no act by an authorized Service or State official that is necessary to effect the relocation or management of a California sea otter under the translocation plan may be treated as a violation of the ESA or the MMPA. Pub. L. 99-625, section 1(f), 100 Stat. 3500 (1986). Within the translocation zone,

Pub. L. 99–625 provides an exception to sections 7(a)(2) and the incidental taking provisions of the ESA for "defense-related agency actions" which the law defines as agency action carried out directly by a military department. However, section 7(a)(4) of the ESA (the informal conference process) will apply to defense-related actions occurring within the translocation zone. Within the management zone, Pub. L. 99–625 provides an exception from taking prohibitions of the ESA and MMPA for incidental taking during the course of an otherwise lawful activity.

Within both the translocation zone and the management zone, this rule will, with some exceptions, impose all of the prohibitions provided for endangered species by 50 CFR 17.21(a)–(f). Section 4(d) of the ESA authorizes the Secretary to impose with respect to a threatened species any or all prohibitions applicable to endangered species. 16 U.S.C. 1533(d). For both zones, this rule provides an exception to the prohibitions for actions by authorized Service or California Department of Fish and Game officials or their designated agents that are necessary to effect relocation or management of a California sea otter under the translocation plan. For both zones, this rule provides an exception to the prohibitions for any action authorized by a threatened species permit pursuant to 50 CFR 17.32 (for example, a permit authorizing research involving an experimental population sea otter to be carried out by a university or college).

With regard to the translocation zone, this rule provides an exception to the prohibitions for incidental taking during the course of a defense-related agency action carried out directly by a military department. The term "military department" does not include the Coast Guard. See H.R. Rep. No. 99–124, 99th Cong., 1st Sess. 18 (1985). As discussed previously, this exception is required by Pub. L. 99–625, section 1(c). Because the Service will be conferring with the Navy through the ESA section 7(a)(4) process on any action that is likely to jeopardize the continued existence of the listed sea otters, and will develop a Memorandum of Understanding with the Navy, the Service does not anticipate that Navy operations on the island or its surrounding waters will adversely affect an experimental population of California sea otters.

Within the management zone, this rule provides an exception to the prohibitions for incidental taking that occurs during the course of an otherwise lawful activity. As discussed previously, this exception is required by Pub. L. 99–625 to avoid conflicts between sea otters and fishing activities, oil and gas exploration and development, and other resource-related activities. See H.R. Rep. No. 99–124, 99th Cong., 1st Sess. 3, 16–17 (1985); 131 Cong. Rec. H6468 (July 29, 1985). For the reasons given above, the Service finds that the protective regulations contained in this rule are necessary and advisable for the conservation of the experimental population of sea otters.

Applicability of Section 7(a)(2) Within the Translocation and Management Zones

Under section 7(a)(2) of the ESA, Federal agencies must ensure that any action authorized, funded, or carried out by them is not likely to jeopardize the continued existence of an endangered species or a threatened species or result in the destruction or adverse modification of designated critical habitat. Any Federal action that "may affect" an endangered or threatened species or critical habitat must be evaluated through formal consultation under section 7. The southern sea otter, a threatened species, is generally protected by this interagency consultation requirement.

Pub. L. 99–625 establishes precise limits on the applicability of section 7(a)(2) to an experimental sea otter population. Under Pub. L. 99–625 the location of the Federal action is controlling: If the proposed Federal action is to be implemented within the translocation zone (except for defense-related agency actions and actions initiated prior to the enactment of Pub. L. 99–625), then the requirements of section 7(a)(2) would apply; if the proposed action is to be implemented within the management zone (although adverse effects could spill over into the translocation zone), then section 7(a)(2) does not apply, unless the proposed action "may affect" the parent population of southern sea otters. Pub. L. 99–625 further provides that the informal conference requirement of section 7(a)(4) of the ESA applies to Federal activities within the management zone and to defense-related activities (*i.e.*, actions directly implemented by a military department) in either zone.

Containment

Pub. L. 99–625 requires, as a component of the translocation plan, that the Service describe measures, including an adequate funding mechanism, to isolate and contain the experimental population. The legislation emphasizes the importance of maintaining an otter-free management zone in order to prevent, to the maximum extent feasible, conflict with fishery and other resources within the management zone by the experimental population. Pub. L. 99–625 delegates broad authority to capture and remove, by non-lethal means, otters from any location within the management zone, including units of the National Park System or marine sanctuaries. *See* 131 Cong. Rec. H6467 (July 29, 1985). The legislative history for Pub. L. 99–625 specifically acknowledges that members of the parent population may occur within the management zone and requires their removal in order to maintain that zone free of otters. 131 Cong. Rec. H6467 (July 29, 1985) states that successful implementation of a "zonal management" concept could greatly improve the recovery of the sea otter by reducing threats to the species and by reducing conflicts with other resources. Containment of the experimental population at San Nicolas Island by maintaining the surrounding management zone as otter-free will result in implementation of zonal management for southern California south of Point Conception since maintenance of the otter-free zone associated with the experimental population will also result in prevention of natural expansion of the parent population into any area of the management zone south of Point Conception in southern California.

The methodology for conducting the containment effort was described previously under "Post-Translocation Phase, 2. Containment Efforts." If verified sightings of one or more sea otters are made at any location within the management zone where they could impact fisheries or be in danger from incompatible activities, field crews will be mobilized to capture and remove the otter(s) from the zone as soon as weather and sea conditions permit.

With regard to containment, it will be desirable to determine when the population is approaching carrying capacity of the habitat within the translocation zone. This should be evident from information that would be obtained in the monitoring program. The following changes are expected as the population approaches carrying capacity: (i) The growth of the population is expected to decline; (ii) juvenile mortality rate is expected to increase to about 70 percent or higher; (iii) the time spent foraging is expected to increase from 20–30 to over 50 percent of the total time budget; and (iv) the diet is expected to diversify to include less nutritious prey and prey that requires more energy to obtain.

As discussed earlier in this document, a minimum of about 10 years is expected for the population to reach carrying capacity. Dispersal away from San Nicolas Island is expected to be negligible, at least prior to attainment of carrying capacity. As the animals approach carrying capacity, dispersal to nearby islands and perhaps the southern California coast may occur. It would be possible to limit the population at or below carrying capacity, and thus prevent large-scale dispersal away from the Island and possibly maintain a higher reproductive rate, by one of the following three techniques: (i) Capturing animals from the population for translocation elsewhere, (ii) imposing birth control measures on some of the individuals; or (iii) selective or random culling of the population which would require changes in statutory authority if lethal means were to be considered. A permanent Sea Otter Management and Coordination Office will be established and maintained at a field location near the "management zone." The Office will coordinate the containment effort, verify and respond to reports of otters in the management zone, maintain public relations and interagency coordination and cooperation, serve as a contact point and source of information for the public and other agencies, continue to coordinate the overall recovery program for the California sea otter, and take the lead in working with the State(s) on a long-term management plan for the southern sea otter. The Office will work closely with State biologists to remove otters from the management zone.

Funding Mechanisms

Successful implementation of this plan depends on an adequate commitment of funding and personnel. The Service will seek funding through its normal Congressional appropriations process. Contributions from other Federal sources and non-Federal sources may also be obtained. Federal funding will be administered through the U.S. Fish and Wildlife Service. Although the Service cannot obligate funds for which it has not received an appropriation, the Service has funding in the FY-87 budget for translocation, research, protection, and containment of the experimental population.

The Service can also enter into interagency agreements for the transfer of Federal funds from another agency to the Service. Such an agreement will be sought when interagency cooperation would facilitate achieving mutual program policies, requirements, or goals. Also, unexpended balances of Federal funds may be available for grants for specific activities and can be granted by the Service to States that have entered into cooperative agreements under section 6 of the ESA. Research, management, protection and containment of the translocated population will be considered an appropriate use of such funds while the species is listed under the ESA. The State of California may also request grants in Wildlife Restoration (Pittman-Robertson) Act, or, under section 110 of the MMPA for these purposes, subject to the availability of funds.

Non-Federal funding could be received through donations, and such donations will be administered through the National Fish and Wildlife Foundation.

Effects on Recovery and Section 7 Determinations

Pub. L. 99-625 requires that the translocation plan contain a description of the relationship of implementation of the plan to the status of the species under the ESA and to determinations of the Secretary under section 7 of the ESA. The following section describes those relationships. Terminology used reflects the language contained in Pub. L. 99-625, as well as in the ESA. Throughout this discussion, the terms new population, experimental population, and colony are used interchangeably when referring to the translocated otters.

Relationship to the Status of the Species

The recovery plan for the southern sea otter contains five goals and numerous objectives that must be accomplished for the species to be considered for removal from the Federal list of endangered and threatened species. The five broad goals are to: (1) Minimize the risk of oil spills; (2) minimize the possible effects of oil spills; (3) minimize vandalism, harassment, and incidental take of sea otters; (4) monitor recovery progress of the existing population and any new colonies; and (5) integrate recovery plans into development and management plans of local coastal governments. This translocation is intended to address primarily the goal of minimizing the possible effects of oil spills. Specifically, the recovery plan states the following in regard to delisting, which is directly relevant to the relationship of a translocation to the overall status of the species:

> Delisting should be considered when the southern sea otter population is stable or increasing at sustainable rates in a large enough area of their original habitat that only a small proportion of the population would be decimated by any single natural or man-caused catastrophe. To reach this point: (1) at least one additional population of sea otters must be established outside the current population range, (2) the existing population of sea otters and its habitat must be protected, and (3) the threat from oil spills or other major environmental changes must be minimized.

The recovery plan specifically describes the importance of translocation to recovery and delisting where it states the following:

> Sea otter translocation, if properly designed and implemented, should provide the necessary foundation for ultimately obtaining the Recovery Plan's objective and restoring the southern sea otter to a non-threatened status and maintaining OSP by: (i) Establishing a second colony (or colonies) sufficiently distant from the present population such that a smaller portion of southern sea otters will be jeopardized in the event of a large-scale oil spill, and (ii) establishing a data base for identifying the optimal sustainable population level for the sea otter. Subsequently the number and location of additional translocations that may be necessary to obtain the optimal level should be determined.

The successful establishment of the experimental population to be carried out pursuant to this rule should fully satisfy the first criterion specified above from the Recovery Plan, provided that the parent population is showing sustained growth and expanding its range from its present size and distribution. However, if such growth and expansion is not occurring, the establishment of a single new population may not be sufficient to satisfy the broader criterion that the population must be increasing at a sustainable rate in a large enough area of its original habitat that only a small proportion of the population would be decimated by any single natural or man-caused catastrophe.

In order to consider whether recovery is attained, the other criteria, as well as the status of the parent population, would need to be evaluated in depth to determine whether or not oil spill and other major environmental or population threats are minimized to the maximum extent practicable. Although progress toward achievement of all five recovery plan goals would have to be evaluated and each goal met before delisting could occur, the establishment of at least one additional colony would be a prerequisite to consideration of delisting in order to meet the recovery plan requirements.

The relationship of translocation to the status of the California sea otter population, from an ESA standpoint, would change sequentially through distinct stages. The critical element in the sequence is the point at which the experimental population would be

determined by the Service to be "established," based on specific scientific criteria. The Service defines "established experimental population" as one which meets the following criteria: (1) An estimated minimum of 150 healthy male and female sea otters residing within the translocation zone, little or no emigration into the management zone occurring, and a minimum annual recruitment of 20 sea otters into the experimental population occurs within the translocation zone for at least 3 years of the latest five-year period; or (2) replacement yield is sufficient to maintain the experimental population at or near carrying capacity during the post-establishment and growth phase or the carrying capacity phase of the experimental population. Recruitment, for this purpose, means young-of-the-year that are weaned, independent from their mothers, and are entered into the population as subadults (juveniles).

The population estimate would be derived by the Service from periodic ground and aerial counts conducted by the Service and/or California Department of Fish and Game, or designated agents thereof, with appropriate adjustment factors to account for visibility or other counting technique biases. Annual recruitment would be derived by the Service using a combination of factors such as known pup production and mortality and annual growth of the experimental population as a whole as evidenced by results from periodic counts and population estimates.

The minimum of 150 otters estimated to be residing within the translocation zone and minimum annual recruitment of 20 are based on the expectation that this combination should be sufficient to be self-sustaining and to supply at least 25 primarily immature otters per year for 1 to 3 years if it became necessary for replenishing the parent population in the event of a catastrophic event such as a large oil spill. A minimum of 25 immatures is believed necessary based on empirical evidence from previous translocation efforts in which sea otters from Alaska have been used to attempt to reestablish populations in other areas of historic habitat (Jameson et al. 1982). The figure of 25 is believed to be a reasonable minimum number that, if translocated, for the most part would remain in an area and form a breeding nucleus from which repopulation through natural reproduction might occur. Carrying capacity, a threshold that would be determined through research, would not necessarily have to be reached in order for the new population to be considered established.

In addition to defining when the experimental population would be considered established, criteria are also needed to describe the circumstances in which the Service would consider the translocation to have failed. The translocation would generally be considered to have failed if one or more of the following conditions exist:

(1) If, after the first year following initiation of translocation or any subsequent year, no translocated otters remain within the translocation zone and the reasons for emigration or mortality cannot be identified and/or remedied;

(2) If, within three years from the initial transplant, fewer than 25 otters remain and the reasons for emigration or mortality cannot be identified and/or remedied;

(3) If, after two years following the completion of the transplant phase, the experimental population is declining at a significant rate and the translocated otters are not showing signs of successful reproduction (i.e., no pupping is observed); however, termination of the project under this and the previous criterion may be delayed if reproduction is occurring and the degree of dispersal into the management zone is small enough that the effort to continue to remove otters from the management or no-otter zone would be acceptable to the Service and the California Department of Fish and Game (CDFG).

(4) If the Service determines, in consultation with CDFG and the Marine Mammal Commission, that otters are dispersing from the translocation zone and are becoming established within the management zone in sufficient numbers to demonstrate that containment cannot be successfully accomplished. This standard is not intended to apply to situations in which individuals or small numbers of otters are sighted within the management zone or temporarily manage to elude capture. Instead, it is meant to be applied when it becomes apparent that, over time (one year or more), otters are relocating from the translocation zone to the management zone in such numbers that: (1) An independent breeding colony is likely to become established within the management zone, or (2) they could cause economic damage to fishery resources within the management zone. It is expected that the Service could make this determination within a year provided Service could make this determination within a year provided sufficient information is available;

(5) If the health and well-being of the experimental population should become threatened to the point that the colony's continued survival is unlikely, despite the protections given to it by the Service, State, and applicable laws and regulations. An example would be if an overriding military action for national security were proposed that would threaten to devastate the colony and removal of the otters was determined to be the only viable way of preventing the loss of the individuals.

If, based on any one of these criteria, the Service concludes, after consultation with CDFG and Marine Mammal Commission, that the translocation has failed to produce a viable, contained experimental population, this rulemaking will be amended to terminate the experimental population, and all otters remaining within the translocation zone will be captured and placed back into the range of the parent population. Efforts to maintain the management zone free of otters would then be curtailed after all reasonable efforts had been made to remove all otters that were still within the management zone at the time of the decision to terminate the experimental population. Reasonable efforts would include efforts up to the point that the Service and CDFG jointly determine that further efforts would be futile.

Prior to declaring the translocation a failure, a full evaluation would be conducted into the probable causes of the failure. If the causes could be determined and legal, reasonable remedial measures identified and implemented, consideration would be given to continuing to maintain the experimental population. If such reasonable measures could not be identified and implemented, the results of the evaluation would be published in the Federal Register with a proposed rulemaking to terminate the experimental population.

The following is a general description of the stages of growth and establishment of the experimental population, and how they will relate to the status of the California sea otter population as a whole. Figure C.1 is a schematic illustration of the stages of growth and establishment of an experimental sea otter population.

Size of Experimental Population

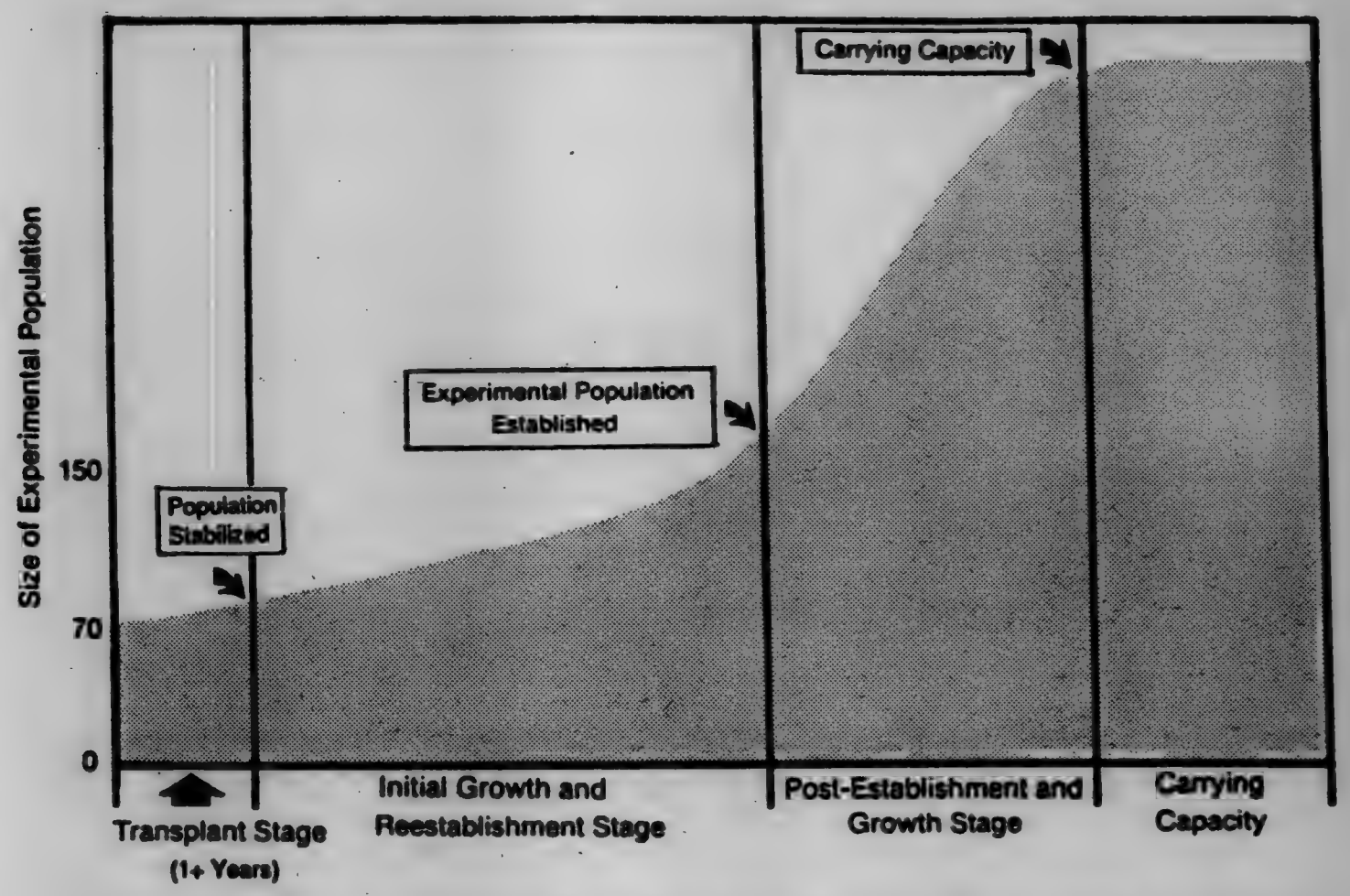

Figure C.1. Stages of establishment and growth of an experimental population of sea otters.

1. Transplant Stage

This constitutes the approximately one-year period during which sea otters from the parent population will be actively captured and relocated to the translocation site. Up to 70 otters will be moved to the site during the first year, supplemented as necessary with no more than 70 individuals in any subsequent year, although numbers in subsequent years are expected to be much less than 70. If, as expected, most of the translocated otters remain within the translocation zone until population growth due to natural reproduction can be demonstrated, there will be no supplemental translocation to the site in subsequent years except for occasional small numbers (up to five per year) to provide for genetic exchange with the parent population. However, if a substantial decline is seen in the population or a serious imbalance in the sex ratio occurs, additional otters may be moved to the site in subsequent years. Translocation will not exceed an annual maximum of 70 or a total of 250 sea otters. Based on this strategy, and if a sufficient mix of healthy male and female otters (equal to or greater than the number of otters that were released from the holding pens, or 70 otters, whichever is less) exists within the translocation zone and are apparently sedentary and showing little or no sign of dispersing from the zone, the transplant period will end. The population would thus be considered "stabilized" and is expected to enter into the initial growth and reestablishment stage. This could occur after the first year or perhaps later if supplements are necessary. A status review of the parent population, comparable to the five-year reviews required by the ESA, will be conducted near the beginning of translocation to serve as a baseline for evaluating recovery progress.

2. Initial Growth and Reestablishment Stage

This comprises the period between the end of the transplant stage (i.e., the population is stabilized) and the point at which the criteria for establishment of the experimental population are met. It is a period of intense observation of both the experimental population and the parent population. The primary focus will be to evaluate how well the new population is adapting to its new environment and, in particular, its reproduction and dispersal tendencies. It is also a period for evaluating the effects of translocation on the parent populaton, including effects on growth, range expansion or range recession. The initial growth and reestablishment period will likely be at least 5–6 years, depending on how long it takes for the nucleus of the new population to achieve the "established state" recruitment criteria and to reach a minimum estimated size of 150.

After the new population is deemed to be established, the Service will evaluate the overall success of the translocation and relate it to the recovery plan goals and criteria and the previous five-year and annual status reviews of the

population as a whole. The southern sea otter will be eligible for delisting consideration if the translocation is successful (i.e., the population established), the other recovery tasks satisfied, and the parent population is increasing and expanding its range. Upon achieving all three criteria the Service will initiate procedures for delisting. The Secretary's determination of the status of the sea otter must consider the following factors pursuant to section 4(a) of the Endangered Species Act: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence. Research on the experimental population and related changes in the ecosystem will continue, as will containment and maintenance of the designated management zone as otter-free by the Service and/or CDFG.

It is conceivable that, under ideal conditions, nearly all of the 15 adult females and some of the 40 females translocated as immatures could be reproducing within the first 2–3 years of the initial growth and reestablishment stage; however, the new population could not be deemed established until a minimum population estimate of 150 in combination with a minimum annual recruitment of 20 for at least 3 of the last 5 years had been achieved. If recruitment and population growth did not occur at this rate initially, the period of initial growth and reestablishment would continue until the criteria for establishment were met, or until it was determined that the experimental population had failed. The translocation is designed to maximize the chance of success, thus, it is likely that the experimental population will become established relatively quickly after completion of the transplant phase.

The Service does not consider the mere presence of sea otters in the translocation zone as an indication that a new population is established. If a catastrophic event were to decimate a portion of the parent population, it is possible that the relocated otters could be used to restore the damaged portion of the parent population; however, it would also likely eliminate the value of the new population to serve as a reserve colony for providing stock to restore subsequently damaged areas and it could eliminate the reproductive viability of the colony such that the remaining animals could not be self-sustaining. Therefore, to be considered established it must be a reproductively viable unit, capable of maintaining itself even if 25 animals are removed each year for 1 to 3 years or replacement yield is sufficient to maintain the experimental population at or near carrying capacity during the post-establishment and growth phase or carrying capacity phase for purposes of repairing damage to the parent population. Ultimately, the translocation zone should have a carrying capacity capable of supporting a population large enough to supply at least 25 mostly immature animals yearly on a sustained basis for purposes of repopulating areas of the existing range in the event that a catastrophic event decimates a portion of the parent population.

A single additional reproductively viable population of sea otters could be sufficient for recovery of the species pursuant to ESA. Thus, it is possible that recovery and delisting could occur with a single successful translocation, assuming that other recovery tasks are satisfied.

3. Post-Establishment and Growth Phase

This is the period after the experimental population is deemed established and actively growing toward the carrying capacity of the habitat within the translocation zone. During this period, intensive research and monitoring will continue in order to document changes in the nearshore ecosystem of the translocation zone, and the behavior, reproduction, and dispersal tendencies of otters in the experimental population.

During the post-establishment and growth stage, the experimental population will contribute to the total size of the California sea otter population and its numbers and location will be added to those of the parent population when describing the population size and distribution of the California sea otter for any purpose.

Under the current approved recovery plan, recovery criteria are not defined in terms of specific population goals, but, rather, by the need to establish at least one additional colony and protect the existing mainland population in California. Because establishment of the experimental population, along with achievement of other recovery plan goals, could be sufficient to consider delisting from the threatened species list, the addition of otters during the post-establishment and growth stage of the experimental population normally would not influence the overall status of the California sea otter for ESA purposes since this component of the recovery plan would have been satisfied upon the experimental population becoming established. However, if a catastrophic event were to decimate all or a large part of the parent population, the size of the experimental population would be a factor in determining whether or not the California sea otter should remain listed as "threatened" or reclassified as "endangered."

4. Carrying Capacity

This represents the point at which the experimental population reaches the carrying capacity of its habitat, defined as an ecological state in which the numbers of animals remain relatively constant and in balance with the available food supply (assuming that population growth is limited by food availability), also referred to as "equilibrium density." It is expected that, as the new population approaches carrying capacity, the growth rate will decline, the dispersal tendency of some otters may increase, natural juvenile mortality will accelerate, the time spent foraging by the otters will increase significantly, and the diet will become measurably more diversified. At this point, the growth rate of the colony might have slowed or even stopped.

Attainment of an equilibrium density in the experimental population will not necessarily influence the legal status of the southern sea otter population for purposes of ESA, beyond that which occurs at the time the new colony is deemed established. This is because the initial establishment of the experimental population will be sufficient to consider delisting if the other recovery tasks have been met.

To summarize the relationship of translocation to the status of the California sea otter pursuant to ESA, this relationship will be time-phased and will vary with the stages of growth of the translocated population. The recovery plan states that in order for recovery and delisting from the Federal list of endangered and threatened species to occur, a number of criteria must be met. A key one is that at least one additional population must be established outside the current range but separated from the existing population such that it would not be possible for a large oil spill to contact and decimate both the new colony (or colonies) and the existing population. The definition of "established" is pivotal to a description of the relationship to the population as a whole. The experimental population will not be sufficient to meet one of the criteria for delisting under ESA until the Service deems the new population to be established. The minimum time required will probably be

five years after the actual translocation begins, and it may be longer, depending primarily on the recruitment and mortality rates and the degree to which the experimental otters remain within the translocation zone. Both the transplant and initial growth and reestablishment stages must occur before the new population can be judged to be established. During these two stages, the experimental population will have no influence on, nor help to improve, the legal status of the southern sea otter under ESA, although during the initial growth and reestablishment stage the number of otters within the translocation zone will be added to those in the donor population for purposes of conducting ESA section 7 consultations if there are at least as many otters in the zone as were moved there during the transplant stage and if successful reproduction is occurring in the translocation zone.

Once the new population is deemed established, removal of the southern sea otter from the threatened list could be considered, although delisting will depend on the degree to which other recovery criteria have also been met. The Service will conduct a formal status review relative to the donor population near the beginning of translocation, and again at the time the experimental population is deemed established. This would provide the basis for evaluating the requisite factors to be considered prior to delisting the species.

An example of the conditions that may constitute meeting the recovery objectives is if: (1) The donor population has for the most part been consistently increasing in range and number (above the 1982 baseline); (2) the level of oil spill and related risks is minimized; (3) an oil spill response plan has been implemented and does afford measurable protection (i.e., good likelihood of capturing, cleaning, and rehabilitating oiled sea otters, and a good likelihood of containing and cleaning up an oil spill); (4) incidental take, vandalism, and harassment have been minimized; (5) habitat quality and biological parameters are not adversely changing to the detriment of the population; and (6) the experimental colony is determined to be established. This should achieve the desired goal for sea otter recovery, i.e., that the California sea otter population is naturally capable of withstanding perturbations of an environmental or man-caused nature.

Subsequent to the population becoming established as a viable breeding colony, it is anticipated that it would enter a growth stage, during which it would grow toward carrying capacity. During the post-establishment and growth stage, and at carrying capacity, the experimental population normally will influence the legal status (pursuant to ESA) of the overall California population no more than when it was initially deemed to be established, but the size and health of the experimental population will be a significant factor in evaluating whether the level of threat to the species continues to warrant listing under the ESA. One potential deviation from this would be if the parent population were to be substantially diminished; should that occur, the size of the experimental population at that point would have a bearing on whether the remaining sea otters remain classified as threatened or should be reclassified as endangered, or relisted if a delisting action had previously been completed.

Relationship to Future ESA Section 7 Determinations

The discussion, terms, and conclusions described under the previous section are directly applicable to this section. Pursuant to Pub. L. 99–625 formal section 7 consultations will be generally required relative to the experimental population (prior to delisting), regardless of its size or growth stage for all Federal actions that are proposed to be undertaken within the translocation zone that are not defense-related and that may affect the experimental population. Within the management zone, no formal consultations will be required for actions that may affect the experimental population (unless the action may affect the donor population), but pursuant to section 7(a)(4) the Federal agency proposing the action will be required to informally confer with the Service on projects that are likely to jeopardize the continued existence of the southern sea otter.

During the transplant and initial growth and reestablishment stages, it will not be known if the experimental population will eventually take hold and become a viable, self-perpetuating unit. Therefore, it cannot be considered as available for restoring a damaged parent population, and thus will not contribute significantly to recovery. However, for section 7 purposes, after the translocated population has stabilized and then during the growth and reestablishment stage, the numbers associated with the experimental population will be added to those of the parent population if they are at least equal to the number originally translocated to the translocation zone and successful reproduction is occurring. For example, if there are 100 sea otters in the translocation zone, at least some of which are reproducing successfully, and 1,400 in the parent population, the total population of California sea otters will be considered to equal 1,500 for purposes of evaluating a Federal project through section 7 consultation. Once the translocated otters become stabilized and enter into the initial growth and reestablishment stage, but before meeting the criteria for an established population, the experimental population will have an existence value that will be taken into consideration for section 7 purposes, both quantitatively and qualitatively. Its numbers will be added to those of the parent population in order to analyze impacts of a Federal action on the southern sea otter population as a whole. Moreover, as part of the analysis of the impacts on the population as a whole, the impacts of proposed Federal actions will be analyzed in a manner to clearly determine the relative risk to each of the two populations (parent population and experimental population). It is assumed, based on the oil spill risk analysis that was conducted for the translocation, that no single oil spill or similar event could affect both the parent population and experimental population, and it is expected that the otters present in the translocation zone will be relatively healthy, productive and well adjusted to their new environment during the initial growth and reestablishment stage.

Although the estimated size of both the parent population and experimental population will be combined for section 7 purposes, the reduction in the likelihood of a jeopardy opinion will probably be only a small fraction and probably not quantifiable. When considering adverse effects and incidental take associated with a proposed project and cumulative effects that may affect the donor population, the number of otters removed from the donor population for translocation purposes will have to be taken into consideration for projects proposed during the transplant stage. However, since only a maximum of 70 will be translocated the first year, and probably only small supplements taken if needed during subsequent years, there will not likely be any measurable effect on section 7 opinions relative to the parent population after the first year of the translocation.

Once the experimental population becomes established, but prior to the formal delisting of the southern sea otter, the existence of the experimental population will affirmatively influence

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determinations of non-jeopardy, and it will be considered part of the overall southern sea otter population for section 7 purposes in direct proportion to its size. For example, if the experimental population numbered 150 and the donor population 1,300, for section 7 purposes the southern sea otter population would number 1,450, and the projected impacts from the project would be based on the proportion of the 1,450 that could be affected. In addition to simply adding the sizes of both the donor and experimental populations together, the experimental population will also be available to annually contribute at least 25 mostly immature otters for restoring a damaged donor population. This potential contribution will be factored into a section 7 biological opinion in its assessment of impacts of the proposed Federal project and the time required for the donor population to recover itself from the expected impacts of the Federal project. The fact that two viable, geographically separate populations exist at that point will reduce the likely extent of impacts from the proposed Federal action on the species as a whole and, thus, affect determinations of jeopardy and non-jeopardy pursuant to section 7.

With regard to determinations of jeopardy or non-jeopardy, as the experimental population grows toward the maximum number that its habitat can support, i.e., carrying capacity, the likelihood of jeopardy determinations for Federal actions will decrease proportionally for comparable projects with comparable types of impacts. Thus, there will be an inverse relationship between the size of the experimental population (after establishment occurs) and the likelihood of jeopardy determinations associated with section 7 consultations on projects affecting either the parent or the experimental population. Figure C.2. graphically describes this hypothetical relationship. However, the status of the experimental population is not the only factor that will be considered in section 7 evaluations. The status of the donor population, as well as the baseline environmental or population threats at the time and cumulative impacts of future non-Federal actions expected to occur and affect either population at the time of the consultation, will also be taken into account. Once the experimental population becomes established and the southern sea otter delisted, no further section 7 consultations will be required relative to either the parent or experimental populations. If a catastrophic event were to completely decimate the parent population subsequent to the species being delisted, the experimental population could be considered for re-listing as threatened or endangered, but such re-listing would follow the normal listing procedures prescribed under section 4(a) of the Endangered Species Act, including a rulemaking process and opportunity for public review and comment.

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Relative Likelihood of "jeopardy" Biological Opinions

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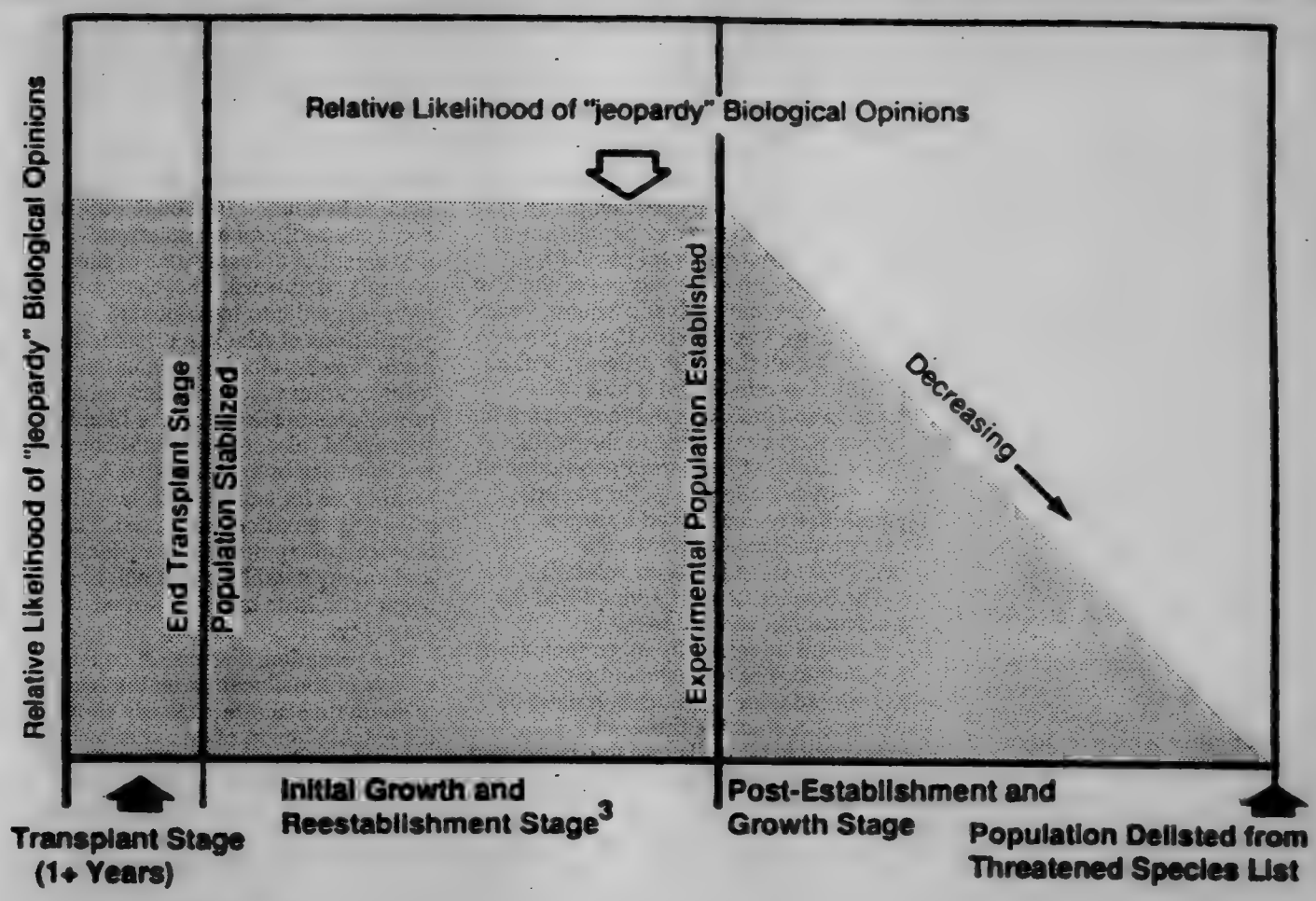

Figure C.2.
Hypothetical relationship between establishment and growth of an experimental population of southern sea otters and the relative likelihood of "jeopardy" Biological Opinions being rendered under the Endangered Species Act Section 7 consultation process.[1,2]

[1]Length of each stage on the horizontal axis does not necessarily represent real time.

[2]Actual Biological Opinions rendered would be contingent upon the magnitude of impacts expected to result from the specific project and the current status and trend of the parent (donor) population, as well as the size and status of the experimental population.

[3]During the Initial Growth and Reestablishment Stage, a measurable decrease in the likelihood of a "jeopardy" Biological Opinion is possible, depending on the the actual size and status of the experimental population, but not likely. The existence of a reproducing aggregation of otters separate from the parent population that would not be affected by impacts to parent population would be taken into consideration in Biological Opinions rendered during the Initial Growth and Reestablishment stage.

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Translocation as a Conservation Measure

Pursuant to the Congressional directive in the Committee Report (H.R. Rep. No. 99–124, 99th Cong. 1st Sess. 16 (1985)), the Service has used section 10(j)(2)(A) of the ESA as guidance in evaluating the possible effect of the translocation on the parent population. The following criteria were considered in making such an evaluation:

(1) Any possible adverse effects on extant populations of (southern sea otters) as a result of removal of individual * * * for introduction elsewhere;

(2) The likelihood that any such experimental population will become established and survive in the foreseeable future;

(3) The relative effects that establishment of an experimental population will have on the recovery of the species; and

(4) The extent to which the introduced population may be affected by existing or anticipated Federal or State actions or private activities within or adjacent to the experimental population area. 50 CFR 17.81(b).

The previous discussion on the relationship of the success of a translocation to the ultimate recovery of southern sea otters clearly shows that the successful establishment of an experimental population will further the conservation of the southern sea otter; the following discussion explains the basis for the Service's finding in accordance with the four criteria.

Although a short-term reduction in the size of the parent population of southern sea otters will result as a consequence of translocation, any adverse effects of removal of no more than 70 mostly immature otters the first year and only supplemental removals in subsequent years if needed should be temporary and diminished by natural growth and expansion of the parent population, and will be outweighed by the achievement of a primary recovery criterion that can result from a successful translocation. The short-term reduction in size of the existing (parent) population will be proportionate to or less than the numbers translocated depending on the degree to which the removal of animals compensates for some level of natural mortality in the parent population. However, the numbers, sex and age of otters removed will be carefully selected to avoid any lasting effects on the parent population. Otters will be individually caught, removed and then translocated in small groups. Up to 70 animals will be translocated the first year, with only minor supplemental translocations in subsequent years, if necessary, to help ensure that the translocated population is successfully established or for genetic exchange purposes. The number to be taken in any one year is less than the normal recruitment rate of the population. As designed in the translocation plan, monitoring of the parent population as well as the experimental population should determine the success of the first year's effort and each subsequent year's effort as well as the effect(s) on the parent population. The program will be modified or terminated if new information indicates that continuing the project may be adverse to the health and viability of the parent population of southern sea otters (e.g., the parent population is diminished by some catastrophic event prior to the transplant stage being completed).

The Service has determined that the translocation will not result in significant adverse effects on the parent population. The impacts and risks associated with translocation must be weighed against the threat of catastrophic oil spills and the associated risks to the parent population if this action is not undertaken. If the translocation is successful, one outcome would be the establishment of a new colony of southern sea otters, which would ameliorate the species' present vulnerability to oil spills that, if they occurred, could jeopardize the continued existence of the southern sea otter.

There is a strong likelihood that an experimental population of southern sea otters released at San Nicolas Island will become established within 10 years after translocation is begun, and possibly in as few as 5 years. Current information indicates that necessary habitat requirements exist around San Nicolas Island to support a viable breeding colony of sea otters, and, although further field research would be of benefit in assessing particular habitat needs and population dynamics of a translocated population, the Service believes that the prospects for a successful translocation are excellent.

Since 1965, translocation of Alaskan sea otters has been successfully used for restoration purposes in southeast Alaska, northern Washington, and the Canadian Province of British Columbia. Although early efforts to translocate Alaskan otters to St. George Island (Pribilof Islands) failed, their failure is attributed mainly to inexperience in transportation, care, and limited knowledge of physiological requirements of sea otters and the harsh ice conditions that occurred around the Island after translocation was carried out. The procedural problems have since been rectified (via research studies and modification in care and transportation techniques) as illustrated by subsequent, successful releases in other areas. Alaskan sea otters were successfully released in Oregon; however, subsequent monitoring studies noted a decline in number (although pupping had occurred) and a concurrent movement of at least some of the animals northward. These animals may have merged into translocated populations of Alaskan otters to the north. The Service has evaluated past translocation success in developing procedures to maximize the likelihood of successful release and establishment of southern sea otters. Effective, humane techniques for capturing, relocating and releasing sea otters now exist. The Service anticipates that translocation and colony establishment will likely occur with little or no abnormal mortality.

The preceding discussion on the effects of translocation on the recovery of southern sea otters clearly shows that the establishment of an experimental population of otters is essential to the recovery of the species. The factors outlined earlier in the preamble, in the section entitled "Effects on Recovery and ESA Section 7 Determinations," have been considered by the Service in reaching the conclusion that the establishment of a new sea otter colony—one that is not subject to the same risk of loss faced by the parent population from a catastrophic oil spill—will improve the recovery potential for the southern sea otter.

Lastly, although some Federal, State, and private activities on and near San Nicolas Island could affect the experimental population, these impacts are expected to be minor, if they occur at all. Appropriate measures are proposed to protect the translocated otters from more serious threats. Despite the fact that the experimental population will not be risk-free, the Service finds that, after balancing all relevant factors, the translocation will further the conservation of southern sea otters.

San Nicolas Island is within the boundary of the Southern California oil and gas outer continental shelf (OCS) lease offering area (Point Buchon to the California-Mexico border). The Department of the Interior, Minerals Management Service has offered lease sales for tracts in this general area in 1966, 1968, 1975, 1979, 1982, and 1984. The next proposed sale that could include the San Nicolas Island area is scheduled for 1989. If tracts around the Island were leased, it is unlikely that

development would occur before 1992 since an exploratory program would be conducted first to determine if any recoverable reserves are present. The oil and gas industry has expressed some interest in the general area (i.e., the outer banks and basins); however, tracts offshore San Nicolas Island have been regularly deleted from previous sales to avoid potential military (Navy) conflicts. Naval activities on and around San Nicolas Island include automated tracking of missiles and submarines with some infrequent nearshore field exercises that involve firing of live ammunition in limited areas. To date, such activities have not adversely affected the sizeable populations of other marine mammals that inhabit waters near the island. Because the Service will coordinate with the Navy in developing a Memorandum of Understanding for operations on the Island, and if Naval activities are likely to jeopardize the southern sea otter the Service will enter into informal conferral on Navy activities pursuant to section 7(a)(4) of the ESA, the Service believes military activities will not pose significant threats to the reintroduced colony. The closest blocks with active oil and gas leases are located about 30 miles northwest of San Nicolas Island. Deletions are made on a lease sale-by-lease sale basis and, therefore, withdrawal of tracts around the Island from future sales is not a certainty. Oil development in waters immediately surrounding San Nicolas Island could significantly affect the introduced colony if an oil spill were to occur, but in view of the conflict between OCS development and military activities in the area and the outcomes of previous lease sales around San Nicolas, it is doubtful that development in the immediate vicinity will occur in the foreseeable future. Furthermore, proposed oil development plans within the translocation zone would be subject to formal ESA section 7(a)(2) consultation with the Service, a requirement that would likely ensure that the development would not jeopardize the continued existence of the species and would minimize any possible incidental take. To date, there has been no interest expressed by the State to lease tidelands around San Nicolas Island for oil development. The State has designated the waters surrounding San Nicolas Island an Area of Special Biological Significance (ASBS). The State and Regional Water Resources Control Boards prohibit the direct discharge of wastes into an ASBS or its immediate vicinity, petroleum discharges included. This designation provides an added measure of protection to sea otters at San Nicolas Island.

A State-controlled action that may affect southern sea otters is the setting of commercial gill and trammel fishing nets in sea otter habitat. Sea otters have been incidentally entangled and drowned in large-mesh set nets that are typically used to catch halibut in their present range. Mortality in these nets has, until recently, resulted in the average annual loss of about 6 percent of the population (an average of 80 otters per year, 1982–84). The effect this activity would have on a reintroduced colony is expected to be minimal because the State has taken a position that areas where such incidental taking of sea otters might occur will be closed to fishing with this type of gear. In view of previous actions by the CDFG and State Legislature, it is reasonable to believe that the State will close any area where sea otters are translocated out to a depth of at least 15 fathoms (the depth that SSO's normally inhabit) or farther if necessary to eliminate sea otter entanglement. Enforcement of such closures would be carried out by State agents, and Service agents would enforce the prohibition against incidentally taking sea otters around San Nicolas Island. If the State did not close the portion of the translocation zone that otters would inhabit to such fishing activities, the prohibition against incidental take under Pub. L. 99–625 would still be enforceable by the Service.

It also is important to recognize that an unknown number of southern sea otters in their present mainland range are illegally shot annually. Sea otters off San Nicolas Island will be vulnerable to this malicious act if specific measures are not taken to prevent it. Although no individuals have yet been convicted for shooting otters in the currently occupied range, the relatively small size, isolation, and difficult access to San Nicolas Island, and the intense research, monitoring and law enforcement effort designed to protect this experimental population should minimize or eliminate the likelihood that otters will be illegally taken there.

National Environmental Policy Act (NEPA)

A Final Environmental Impact Statement pursuant to NEPA is now available to the public at the Regional Office and Office of Sea Otter Coordination, U.S. Fish and Wildlife Service, at the address listed above.

Formal Consultation

As required by section 7(a)(2) of the ESA, the Service has concluded formal consultation on translocation of southern sea otters to San Nicolas Island. The biological opinion states that the proposed translocation is not likely to jeopardize the continued existence of southern sea otters.

Executive Order 12291, Paperwork Reduction Act and Regulatory Flexibility Act

The Service has determined that this is not a major rule as defined by Executive Order 12291, that the rule will not have a significant economic effect on a substantial number of small entities as described in the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and that the rule does not contain any information collection or record keeping requirements as defined in the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* These conclusions were reached after conducting an analysis that is documented in a Determination of Effects of Rules, which is on file and available for public review at the address listed under "For Further Information Contact."

The translocation of southern sea otters to San Nicolas Island, may cause economic impacts to commercial and sport fisheries; oil and gas exploration, development and production; mariculture; and commercial kelp harvest. However, the total economic impacts of this action, on an annual basis, will be substantially less than $100 million, and there will not be a major increase in costs or prices for consumers, individual industries, Federal, State or local governmental agencies, or geographic regions as a result of implementation of this Rulemaking. Lastly, the rule does not generate significant adverse effects to competition, employment, investment, productivity, innovation, or to the ability of domestic enterprises to compete with foreign enterprises in domestic or international markets.

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Kenyon, K.W. 1969. The sea otter in the eastern Pacific Ocean. N. Amer. Fauna 68:1–352.

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List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Marine mammals, Fish, Plants (agriculture).

Regulation(s) Promulgation

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is hereby amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 is revised to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

2. § 17.11(h) is amended by revising the entry for "Otter, southern sea" under MAMMALS in the list of endangered and threatened wildlife as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
Otter, southern sea	*Enhydra lutris nereis*	West Coast, USA (WA, OR, CA) south to Mexico (Baja, California).	Entire, except where listed below	T	21, 254	NA	NA
Do	do	do	All areas subject to U.S. jurisdiction south of Pt. Conception, CA (34°26.9' N. Lat.) (Note: status governed by Pub. L. 99–625, 100 Stat. 3500.).	[See 17.84(d)]	21, 254	NA	17.84(d)

3. Section 17.84 is amended by adding paragraph (d) as set forth below:

§ 17.84 Special rules—Vertebrates.

* * * * *

(d) Southern sea otter (*Enhydra lutris nereis*).

(1) *Definitions.* The definitions set out in § 17.3 apply to this paragraph (d). For purposes of this paragraph—

(i) The term "defense-related agency action" means an agency action proposed to be carried out directly by a military department, which does not have as its intended purpose the taking of southern sea otters. For purposes of this definition, the United States Coast Guard is not a military department.

(ii) The term "management zone" means that area delineated in paragraph (d)(5)(i) of this section which surrounds the translocation zone and separates the translocation zone from the existing range of the parent population and adjacent range where expansion of the parent population is necessary for the recovery of southern sea otters.

(iii) The term "member of the experimental population of southern sea otters" includes any southern sea otter, alive or dead, found within the translocation zone or the management zone, and any part or product of any such southern sea otter.

(iv) The term "parent population" means the population of southern sea otters existing along the central California coast north of the management zone.

(v) The term "translocation zone" means the area delineated in paragraph (d)(4)(i) of this section within which an experimental population of southern sea otters is released and contained.

(vi) The term "established experimental population of southern sea otters" means a translocated population that meets the following criteria: An estimated combined minimum of 150 healthy male and female sea otters residing within the translocation zone, little or no emigration into the management zone occurring, and a minimum annual recruitment to the experimental population in the translocation zone of 20 sea otters for at least 3 years of the latest 5-year period, or replacement yield sufficient to maintain the experimental population at or near carrying capacity during the post-establishment and growth phase or carrying capacity phase of the experimental population.

(vii) The term "stabilized population" is a population of sea otters within the translocation zone at the conclusion of the movement of animals from the parent population, except for purposes of genetic enhancement, which (A) is equal to or greater than the number of otters that were released from the holding pens alive and healthy, or 70 otters, whichever is less, and (B) is exhibiting growth. A stabilized population would represent the point at which the experimental population shifts from the transplant stage to the initial growth and reestablishment stage.

(viii) The term "carrying capacity" means the ecological state in which the numbers of sea otters within the translocation zone remain relatively constant and in balance with the available food supply.

(2) *Description of experimental population.* The experimental population of southern sea otters shall include all southern sea otters found within the translocation zone or the management zone. The Service will translocate no more than 70 southern sea otters during the first year, supplemented as necessary with up to 70 otters per year in subsequent years from the parent population to the translocation zone. Although a maximum of 250 southern sea otters may be moved from the parent population in order to establish the experimental population in the translocation zone, it is not likely that supplemental translocation after the initial 70 will involve more than small numbers of southern sea otters, although under this plan a maximum of 70 could be moved if needed in each year up to a total of 250. Of the animals translocated each year, up to 20 will be adults, at a sex ratio of about 3:1, females to males. The remainder will be weaned, immature otters. The sex ratio of the immature otters selected for translocation will be approximately 4 females to 1 male.

(3) *Translocation process.* (i) *Capture.* Capture locations will be selected primarily from the southern third of the range of the parent population. Sea

otters will be captured between early August and mid-October using: diver-held devices, dip nets, surface entangling nets, or other methods which may be proven to be safe and effective in the future. All captured otters will be tagged and examined by a veterinarian experienced in treating marine mammals. During the year prior to each translocation effort, a maximum of 30 otters will be captured and implanted with radio transmitters for observation and study of behavior. Up to 15 of these animals will be recaptured and translocated.

(ii) *Transport.* All animals to be translocated will be held in specially constructed holding facilities prior to their movement to the translocation zone. Access to and care of animals will be restricted to Federal and State personnel and designated agents directly involved with the translocation. Each captured animal will be placed in a carrying cage and transported by truck to the local airport, from which point they will be flown to the translocation zone. From there they will be trucked to the release site. No fewer than 20 animals will be moved to the translocation zone at a single time.

(iii) *Release.* The animals will be held for up to five days in secured floating pens at the release site. No more than 10 individuals will be held in any pen, and males and females will be held separately. The animals will be released passively by opening the floating pens and allowing them to leave at will.

(iv) *Monitoring.* Monitoring will be conducted on both the parent population and the experimental population by State and Federal biologists and their designated agents. Monitoring the parent population will be done to determine the effects of removal of otters on the growth and range expansion or recession of the parent population. Monitoring of the parent population will continue at least through the translocation period and into the foreseeable future. Monitoring of the experimental population will begin with the first release of translocated otters and will continue at least until either the new population reaches the carrying capacity of the habitat and establishes an equilibrium density or the translocation is determined to have failed. Monitoring will include intensive studies of changes in key components of the nearshore ecosystem of the translocation zone including benthic organisms, kelp and finfish. Monitoring, using ground and aerial observations, will also include intensive observation and documentation of the movements, distribution, foraging and reproductive behavior, dispersal tendencies, growth and reproductive rates, prey selection, and social interactions of sea otters in the experimental population. Results of monitoring the experimental population and the parent population will also be compared and evaluated.

(v) *Protection.* At least two law enforcement officers will be specifically assigned, at least for the initial three- to five-year period after the actual translocation of animals, to conduct patrols and prevent illegal taking of southern sea otters in the translocation zone. Cooperative enforcement arrangements will be developed with other agencies having law enforcement activities in the area such as the U.S. Coast Guard, National Marine Fisheries Service, California Department of Fish and Game, U.S. Navy, and National Park Service to assist with protecting the experimental population.

(4) *Translocation zone.* (i) There is established a translocation zone for southern sea otters comprised of San Nicolas Island, Begg Rock, and the surrounding waters within the following coordinates:

N. Latitude/W. Longitude
33°27.8'/119°34.5'
33°20.5'/119°15.5'
33°13.5'/119°11.8'
33°08.5'/119°15.3'
33°02.6'/119°26.8'
33°08.8'/119°46.3'
33°17.2'/119°56.9'
33°30.9'/119°54.2'

(ii) A map depicting the translocation zone is set forth below:

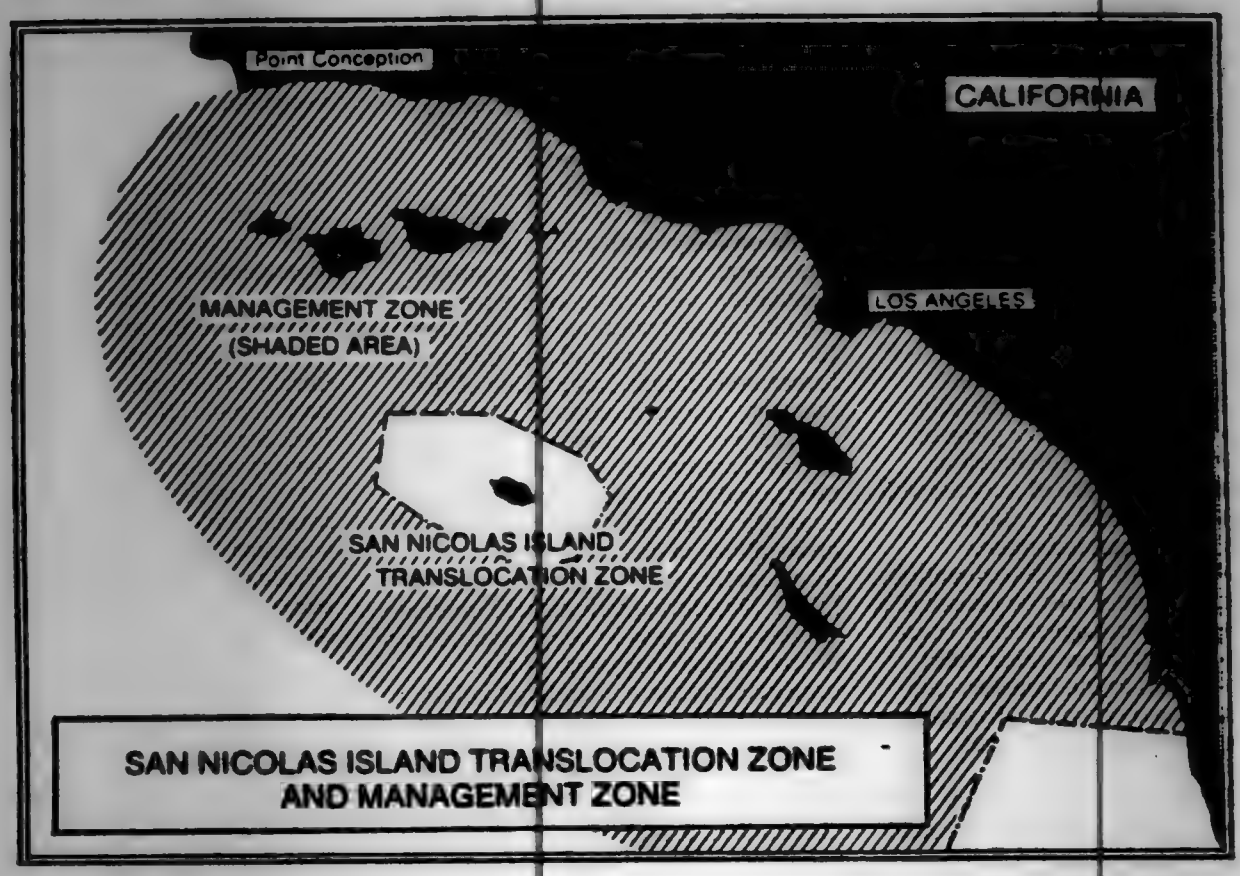

SAN NICOLAS ISLAND TRANSLOCATION ZONE AND MANAGEMENT ZONE

Translocation Zone Coordinates: (North Latitude/West Longitude)	Management Zone:
33°27.8'/119°34.3', 33°20.5'/119°15.5' 33°13.5'/119°11.8', 33°06.5'/119°15.3' 33°02.8'/119°26.8', 33°08.8'/119°46.3' 33°17.2'/119°56.9', 33°30.9'/119°54.2'	All U.S. areas south of Point Conception (34°26.9' N. Latitude) except the translocation zone.

(iii) *Prohibitions.* Except as provided in paragraph (d)(4)(iv), all of the provisions in § 17.21 (a) through (f) shall apply to any member of the experimental population of southern sea otters within the translocation zone.

(iv) *Exceptions.* The prohibitions of paragraph (d)(4)(iii) shall not apply to:

(A) Any act by the Service, the California Department of Fish and Game, or an authorized agent of the Service or the California Department of Fish and Game that is necessary to effect the relocation or management of any southern sea otter under the provisions of this paragraph;

(B) Any taking of a member of the experimental population of southern sea otters that is incidental to, and not the purpose of, the carrying out of a defense-related agency action as defined in paragraph (d)(1)(i) of this section; or

(C) Any act authorized by a permit issued under § 17.32.

(5) *Management zone.* (i) There is established a management zone for southern sea otters comprised of all waters, islands, islets, and land areas seaward of mean high tide subject to the jurisdiction of the United States located south of Point Conception, California (34°26.9' N. Latitude), except for any area within the translocation zone delineated in paragraph (d)(4)(i) of this section.

(ii) A map depicting the management zone is set forth in paragraph (d)(4)(ii) of this section.

(iii) *Prohibitions.* Except as provided in paragraph (d)(5)(iv), all of the provisions in § 17.21 (a) through (f) shall apply to any member of the experimental population of southern sea otters within the management zone.

(iv) *Exceptions.* The prohibitions of paragraph (d)(5)(iii) shall not apply to:

(A) Any act by the Service, the California Department of Fish and Game, or an authorized agent of the Service or the California Department of Fish and Game that is necessary to effect the relocation or management of any southern sea otter under the provisions of this paragraph;

(B) Any taking of a member of the experimental population of southern sea otters that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity within the management zone delineated in paragraph (d)(5)(i) of this section; or

(C) Any act authorized by a permit issued under § 17.32.

(6) *Containment.*—The following containment measures, listed in order of preference, will be employed to prevent significant emigration of southern sea otters from San Nicolas Island and occupation of habitat within the management zone:

(i) Capture of animals within the management zone for return to the experimental population or to the range of the parent population using non-lethal means. If verified sightings of one or more sea otters are made at any location within the management zone, field crews will be mobilized as soon as weather and sea conditions permit, to capture and remove the otter(s) from the zone. Capture will be done by experienced State and/or Federal personnel or other designated agents, using one or more of the same techniques used in the translocation effort, such as diver-held devices; surface entangling nets; dip nets; or other effective methods which may be developed for capturing sea otters in the future. Animals either will be flown or moved by air-conditioned van to the release site.

(ii) Artificial reduction of fecundity for some sea otters within the experimental population. [Reserved]

(iii) Selective or random, non-lethal removal of members of the experimental population within the translocation zone. [Reserved]

Containment measures will be administered by the Fish and Wildlife Service's Office of Sea Otter Management and Coordination (OSOMC), in consultation and cooperation with the California Department of Fish and Game. The OSOMC will work closely with State biologists to remove otters from the management zone. Federal funding received through the normal appropriations process will be used for research, protection, and containment of the experimental population. Grants to the State of California under 16 U.S.C. 1535, may be employed to facilitate the measures outlined above. Public donations for management and containment of the experimental population will be accepted with assistance from the National Fish and Wildlife Foundation.

(7) *Effects of translocation on recovery and interagency cooperation.*—(i) *Background.* The Recovery Plan specifically describes the importance of translocation to the delisting of the southern sea otter under the Endangered Species Act. The Plan states:

> Sea otter translocation, if properly designed and implemented, should provide the necessary foundation for ultimately obtaining the Recovery Plan's objective and restoring the southern sea otter to a non-threatened status and maintaining OSP by: (i) Establishing a second colony (or colonies) sufficiently distant from the present population such that a smaller portion of southern sea otters will be jeopardized in the event of a large-scale oil spill, and (ii) establishing a data base for identifying the optimal sustainable population level for the sea otter.

Thus the translocation, and establishment of a population of sea otters has been identified by the Recovery Plan as a critical action necessary for the recovery and delisting of the species. With regard to the relationship of a successful translocation to the initiation of a delisting action under the Endangered Species Act. The Plan states:

> Delisting should be considered when the southern sea otter population is stable or increasing at sustainable rates in a large enough area of their original habitat that only a small proportion of the population would be decimated by any single natural or man-caused catastrophe. To reach this point: 1) At least one additional population of sea otters must be established outside the current population range, 2) the existing population of sea otters and its habitat must be protected, and 3) the threat from oil spills or other major environmental changes must be minimized.

The successful establishment of the experimental population to be carried out pursuant to this rule should fully satisfy the first criterion specified above from the Recovery Plan, provided that the parent population is showing sustained growth and expanding its range from its present size and distribution. However, if such growth and expansion is not occurring, the establishment of a single new population may not be sufficient to satisfy the broader criterion that the population must be increasing at a sustainable rate in a large enough area of their original habitat that only a small proportion of the population would be decimated by any single natural or man-caused catastrophe.

(ii) *Effect on recovery.* The translocation will not influence the legal status of the species until such time as the Service determines that the experimental population is established. Once established, other factors such as the status of the parent population and completion of other recovery tasks will be considered. If the experimental population becomes established and the other recovery tasks identified in the recovery plan for the southern sea otter are attained, the southern sea otter will be eligible for consideration for delisting in accordance with the requirements of 50 CFR 424.11(d). If a catastrophic event were to significantly diminish the parent population, the size of the experimental population would be a factor in determining whether or not the southern sea otter should remain listed as "threatened" or reclassified as "endangered," or if relisting should be considered if a delisting action had been completed.

(iii) *Effect on interagency cooperation.* In determining the likelihood of jeopardy or non-jeopardy opinions for proposed Federal actions that "may affect" southern sea otters, the probability of jeopardy determinations will decrease proportionally for comparable projects with comparable types of impacts as the experimental population grows from the point of being established toward the maximum number that its habitat can support, i.e., carrying capacity. Thus, there is an inverse relationship between the size of the experimental population (after being determined to be established) and the probability of jeopardy determinations associated with section 7 consultations under the Endangered Species Act for projects affecting either the parent or the experimental population. However, the status of the experimental population is not the only factor to be considered in section 7 evaluations. The status of the parent population, as well as the cumulative impacts, baseline level of threats, and effects of the action on either population, will also be taken into account. In addition to considering the size of the experimental population, the contribution that such population could make toward helping restore a damaged parent population will also be a factor that will be considered during section 7 evaluations. For section 7 purposes, once the translocated otters become stabilized and enter into the initial growth and reestablishment stage, but before meeting the criteria for an established population, the experimental population will have an existence value that will be taken into consideration both quantitatively and qualitatively. Its numbers will be added to those of the parent population for purposes of analyzing the impacts of a Federal action on the southern sea otter population. Moreover, during the initial growth and reestablishment stage, as part of the analysis of the impacts on the population as a whole, the impacts of proposed Federal actions will be analyzed to clearly determine the relative risk to each of the two populations (parent population and the experimental population).

(8) *Determination of a failed translocation.*—The translocation would generally be considered to have failed if one or more of the following conditions exists:

(i) If, after the first year following initiation of translocation or any subsequent year, no translocated otters remain within the translocation zone and the reasons for emigration or mortality cannot be identified and/or remedied;

(ii) If, within three years from the initial transplant, fewer than 25 otters remain in the translocation zone and the reason for emigration or mortality cannot be identified and/or remedied;

(iii) If, after two years following the completion of the transplant phase, the experimental population is declining at a significant rate and the translocated otters are not showing signs of successful reproduction (i.e., no pupping is observed); however, termination of the project under this and the previous criterion may be delayed if reproduction is occurring and the degree of dispersal into the management zone is small enough that the efforts to continue to remove otters from the management zone are acceptable to the Service and California Department of Fish and Game;

(iv) If the Service determines, in consultation with the affected State and Marine Mammal Commission, that otters are dispersing from the translocation zone and becoming established within the management zone in sufficient numbers to demonstrate that containment cannot be successfully accomplished. This standard is not intended to apply to situations in which individuals or small numbers of otters are sighted within the management zone or temporarily manage to elude capture. Instead, it is meant to be applied when it becomes apparent that, over time, otters are relocating from the translocation zone to the management zone in such numbers that: (A) An independent breeding colony is likely to become established within the management zone, or (B) they could cause economic damage to fishery resources within the management zone. It is expected that the Service could make this determination within a year provided sufficient information is available;

(v) If the health and well-being of the experimental population should become threatened to the point that the colony's continued survival is unlikely, despite the protections given to it by the Service, State, and applicable laws and regulations. An example would be if an overriding military action for national security was proposed that would threaten to devastate the colony and removal of the otters was determined to be the only viable way of preventing the loss of the individuals.

(vi) If, based on any one of these criteria, the Service concludes, after consultation with the affected State and Marine Mammal Commission, that the translocation has failed to produce a viable, contained experimental population, this rulemaking will be amended to terminate the experimental population, and all otters remaining within the translocation zone will be captured and all healthy otters will be placed back into the range of the parent population. Efforts to maintain the management zone free of otters will be curtailed after all reasonable efforts have been made to remove all otters that are still within the management zone at the time of the decision to terminate the translocated population. A joint State-Service consultation will determine when all reasonable efforts have been made and additional efforts would be futile.

(vii) Prior to declaring the translocation a failure, a full evaluation will be conducted into the probable causes of the failure. If the causes could be determined, and legal and reasonable remedial measures identified and implemented, consideration will be given to continuing to maintain the translocated population. If such reasonable measures cannot be identified and implemented, the results of the evaluation will be published in the Federal Register with a proposed rulemaking to terminate the experimental population.

Dated: August 5, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87-18192 Filed 8-10-87; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 17

Record of Decision for Translocation of Southern Sea Otters To Establish an Experimental Population

AGENCY: U.S. Fish and Wildlife Service (Service), Interior.

ACTION: Notice of record of decision.

SUMMARY: This notice makes available to the public the Record of Decision (Record) on the proposal by the Fish and Wildlife Service to translocate a number of southern sea otters from the existing central California population for purposes of establishing and containing an experimental population. The Record was prepared in accordance with Council on Environmental Quality Regulations, 40 CFR 1505.2. The decision is based on information contained in: the Final Environmental Impact Statement (Impact Statement) and draft Final Rule, which were filed with the Environmental Protection Agency on May 1, 1987, and became available to the public on May 8, 1987; public comments received on the Final Impact Statement as well as on a scientific research permit application filed with the Federal Wildlife Permit Office; a biological opinion rendered by the Service, pursuant to section 7 of the Endangered Species Act, on the proposed translocation; legislative history and specific requirements of legislation, Public Law 99-625 (Pub. L.), enacted into law November 7, 1986, to authorize a translocation of California sea otters; a coastal zone consistency determination submitted to the California Coastal Commission on March 17, 1987; other pertinent scientific and technical data; and actions taken by the California Fish and Game Commission on an application for a State scientific research permit and California Coastal Commission on the Service's coastal zone consistency determination.

Alternative 1, the preferred alternative, has been selected as the best alternative for minimizing the effects of oil spills and for conducting scientific research on the relationship between southern sea otters and the marine ecosystem. It is also the environmentally preferred alternative. Alternative 1 involves translocation of up to 250 sea otters from their current central California range over a period of 5 years or longer to a translocation zone encircling San Nicolas Island, Ventura County, offshore of southern California for the purpose of establishing an experimental population. Mitigation of effects of translocated sea otters on fisheries and other marine resource uses includes the establishment of a management zone encompassing the waters of the remainder of southern California south of Point Conception that will be maintained free of otters by non-lethal capture and removal. The action is designed to carry out a major recovery and restoration objective for the sea otter in California, listed as "threatened" under the Endangered Species Act and considered "depleted" under the Marine Mammal Protection Act. The regulations for implementing Alternative 1 as a Final Rule to amend 50 CFR 17.84 appear elsewhere in today's Federal Register.

DATE: This Record of Decision is effective on August 5, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Wilbur Ladd, Office of Sea Otter Coordination, U.S. Fish and Wildlife Service, Room E–1818, 2800 Cottage Way, Sacramento, California 95825, (916) 978–4873.

SUPPLEMENTARY INFORMATION: The southern (or California) sea otter was listed in 1977 as "threatened" under the Endangered Species Act of 1973, as amended and, as such, is considered "depleted" under the Marine Mammal Protection Act of 1972, as amended. The primary factors contributing to its threatened status were the population's reduced size and range compared to historical levels, which were about 10 times larger than at present, and the vulnerability of sea otters to the effects of an oil spill such as might occur from a tanker accident. Since its 1977 listing, the status of the species has not improved while the risk of an oil spill along the central California coast has increased, primarily as a result of increasing volumes of oil being transported near the otters' range.

A recovery plan for the southern sea otter, approved in 1982, identifies establishment of at least one additional breeding colony as a principal objective that would be necessary in order to restore the California population to a non-threatened, recovered status. Furthermore, it is the primary goal of the Marine Mammal Protection Act that depleted marine mammals be restored to and maintained within their optimum sustainable population level, consistent with maintenance of the health and stability of the marine ecosystem. In 1980 the Marine Mammal Commission, which monitors implementation of the Marine Mammal Protection Act, advised the Service to proceed with the decisionmaking process necessary to establish a second colony of California sea otters, to conduct research necessary to understand the optimum sustainable population, and to consider a plan for zonal management of sea otters in which certain zones would be dedicated to sea otter protection and certain other zones would be designated as otter-free to minimize conflicts between sea otters and fisheries and other marine resource uses. In 1984, the Service published a report that identified four areas having the best potential for a successful translocation, based on a series of criteria. These included San Nicolas Island, California; the coast of northern California; the coast of southern Oregon; and the coast of northern Washington. This report served as the basis for further evaluation, investigation, and analysis by the Service in an Impact Statement.

In June 1984 the Service published a Notice of Intent to prepare an Impact Statement on establishment of an experimental population of southern sea otters, which initiated an intensive public involvement process.

During the public review of the Impact Statement and the rulemaking process the California Department of Fish and Game, interest groups and some private individuals expressed concern that existing authorities under the Marine Mammal Protection Act may be too restrictive to allow for long-term containment and management of an experimental population of sea otters. In order to address these and other concerns about the translocation, Congress solicited input from agencies and interest groups having an involvement in the issue. This Congressional interest ultimately resulted in the enactment of special legislation, Pub. L. 99–625, in November 1986 that authorizes and establishes procedures and requirements for a translocation of California sea otters. Public Law 99–625, which generally reflected a consensus approach as to how a translocation should be conducted, directs that a translocation plan be developed by rulemaking procedures and implemented in cooperation with the appropriate State agency.

The plan must contain the following:

(1) The number, age, and sex of sea otters proposed to be relocated.

(2) The manner in which sea otters will be captured, translocated, released, monitored, and protected.

(3) The specification of a zone (referred to as the "translocation zone") to which the experimental population will be relocated. The zone must have appropriate characteristics for furthering the conservation of the species.

(4) The specification of a zone (referred to as the "management zone") that—

(A) Surrounds the translocation zone; and

(B) Does not include the existing range of the parent population or adjacent range where expansion is necessary for the recovery of the species.

The purpose of the management zone is: (i) To facilitate the management of sea otters and containment of the experimental population within the translocation zone, and (ii) to prevent, to the maximum extent feasible, conflict with other fishery resources within the management zone by the experimental population. Any sea otter found within the management zone shall be treated as a member of the experimental population. The Service shall use all feasible non-lethal means and measures to capture any sea otter found within the management zone and return it to either the translocation zone or to the range of the parent population.

(5) Measures, including an adequate funding mechanism, to isolate and contain the experimental population.

(6) A description of the relationship of the implementation of the plan to the status of the species under the [Endangered Species] Act and to determinations of the Secretary [of the Interior] under section 7 of that Act.

The legislative history leading up to the enactment of the Pub. L. 99–625, in House Report 99–124 dated May 15, 1985, recognizes that establishment of a management (otter-free) zone that includes waters south of Point Conception would result in preventing the existing population from expanding its range to historic habitat south of Point Conception. The House Report acknowledged that setting the management zone boundary at Point Conception would allow for expansion beyond the sea otter's present range and would fully comply with the requirements of the legislation.

Alternatives Considered

The following alternatives were considered for accomplishing the purposes of minimizing the effects of an oil spill or similar event on the southern sea otter population and of conducting in-depth research on the population dynamics of sea otters and their relationship to and influence on the marine ecosystem:

1. Translocation to San Nicolas Island, Ventura County, California, and containment within a translocation zone that includes the intermediate nearshore waters of San Nicolas Island and a buffer area. This is identified in the Final Impact Statement as the preferred alternative in that it would meet the requirements for achieving the purposes for translocating otters while having the least environmental and socioeconomic impacts.

2. Translocation to a 185-mile segment of coast in northern California and containment within a translocation zone that includes the intermediate nearshore waters of the coast between Duncans Landing, Sonoma County, and False Cape Rock, Humboldt County, and a buffer area.

3. Translocation to a 70-mile segment of coast in southern Oregon and containment within a translocation zone that includes the intermediate nearshore waters between Cape Blanco and Brookings, Curry County, and a buffer area.

4. Translocation of sea otters in conjunction with additional management and range restriction of the existing population. This alternative involves translocation to and containment of otters at one of the sites described in the first three alternatives but, in addition, it would include a management zone between Point Sal (adjacent to the existing range) and Point Conception, California, which would be specifically managed to prevent expansion of the existing sea otter population into southern California.

5. Increased protection to the existing population, without a translocation, to reduce the threat of oil spills to the existing population. This alternative involves a variety of measures to reduce oil spill risks and effects to the present California sea otter population. Measures include establishment of mandatory-use tanker transport lanes at least 15 miles offshore, prohibition of future offshore oil and gas leasing and production within at least 15 miles of the existing sea otter range, prohibition of tankships from carrying petroleum products to or from major ports within the sea otter range, and procurement and maintenance of two seagoing tugs within the sea otter range to assist disabled tankers to avoid oil spills. Additional Federal legislation, agreements with the International Maritime Organization and promulgation of new regulations by U.S. Coast Guard would be required.

6. No action. This alternative assumes the status quo. The oil spill risks and effects to the present population would not be reduced. The species would continue to be protected as a threatened species under the Endangered Species Act and designated as depleted under the Marine Mammal Protection Act. Impacts on and conflicts with fisheries and other marine resource uses would increase above the present level as the existing population expands its range.

Basis for the Decision

A Draft Impact Statement was made available for public review and comment for 94 days, beginning August 15, 1986. During that period three public hearings were also conducted on the proposal. Based on comments received, a Final Impact Statement was completed and its availability announced in the **Federal Register** on May 8, 1987. Comments obtained from these public reviews were considered to the fullest extent possible leading to this Record of Decision.

Under Alternative 1, sea otters translocated to San Nicolas Island would be allowed to inhabit the available habitat adjacent to the 22-mile perimeter of the island. Within the translocation zone, which includes the sea otter habitat and a buffer area that extends 10–19 nautical miles seaward of the otter's habitat, otters would be given protections similar to those for the existing population. Within this translocation zone, predation by otters on shellfish resources is expected to result in the decline and eventual loss of the commercial and probably sport fisheries for abalone, sea urchins, and possibly spiny lobsters around the island. The commercial catch of these species represents 7–16 percent ($142,000–$354,000) of the total annual catch of these species in the Santa Barbara area (which includes ports in Ventura, Santa Barbara, and San Luis Obispo Counties). Prohibitions on incidental taking of sea otters in commercial fishing nets would be enforced within the translocation zone, thus a small proportion of the existing southern California gillnet fishery, representing about 2 percent or $28,000 annual income of the southern California gillnet landings, would be displaced by the presence of sea otters around San Nicolas Island.

A high quality sport fishery for lobster and abalone would be adversely affected and would probably eventually be lost. The fishery is estimated to represent up to 9 percent of the southern California sport dive boat income, or up to $281,000 net economic value per year.

Estimates of oil and gas resources within the translocation zone are low, with an estimated 1 percent chance of finding recoverable resources, thus the presence of otters (and associated potential restrictions placed on oil development under the Endangered Species Act or State law) would have a negligible impact on oil and gas development.

Predation of otters on dense populations of sea urchins (an algae feeder) in the translocation zone is predicted to result in a substantial increase in commercially available kelp (algae) supplies, an increse of possibly 50 percent or more.

An experimental abalone mariculture project would be precluded from achieving any significant commercial production due to otter predation on abalone; however, the technique for open-ocean abalone mariculture has not been well developed except in Japan where its success is attributed to intensive management and constant removal of all natural abalone predators, a type of management unlikely to ever be permitted on a publicly owned area such as the waters surrounding San Nicolas. Upon issuance of the mariculture lease, the California Fish and Game Commission advised the lessee that the lease would not prejudice future decisions on reintroductions of marine species.

The San Nicolas Island translocation zone meets all the criteria for a translocation site, it is the environmentally preferred alternative, and it has the least socioeconomic impact of the sites considered. The attributes of San Nicolas Island are: (1) It is within the historic range of the southern sea otter, (2) it contains excellent sea otter habitat and food resources, (3) it is relatively inaccessible to the general public (due to its 62-mile distance offshore and its being under U.S. Navy control), which enhances the Service's ability to protect the otters from vandalism and harassment, (4) it is a zone where research can be conducted under a nearly ideal before-and-after research design, (5) its isolated offshore island location increases the likelihood that otters would remain there and not disperse in large numbers, and (6) it is a zone where the risk of oil spills affecting the experimental population would be less than half the risk of such spills to the existing population and the chance that both the experimental and the existing sea otter population could be affected by the same oil spill is almost non-existent. The Service and the Navy have agreed in principle to conclude a Memorandum of Understanding to further the conservation of an experimental sea otter population at San Nicolas Island. This memorandum will cover such topics as access by the Service and notification of the Service prior to weapons testing.

Although small in size, the San Nicolas Island translocation zone is expected to meet the biological needs and recovery plan criterion for establishing a second population of sea otters. The minimum estimated carrying capacity is 280 sea otters. The minimum size colony and productivity needed for this colony to be considered "established" is 150 healthy otters and at least 20 young recruited annually into the new population for 3 out of 5 years with few otters dispersing from the zone. These criteria for an established population should be met relatively easily at San Nicolas and could conceivably be met within 5 or 6 years after translocation begins.

Although significant changes in the marine ecosystem are expected with reintroduction of otters to the San Nicolas translocation zone, the change would be toward a kelp forest ecosystem dominated by sea otters, similar to that which existed prior to

eradication of sea otters by commercial fur hunters in the 18th and 19th centuries. The existing level of commercial shellfish harvest around San Nicolas Island is not expected to continue once sea otters have reoccupied the habitat available around the island, estimated to take about 5 years.

Because the reintroduction of sea otters to waters surrounding San Nicolas island would have adverse impacts on fisheries in particular, the translocation plan developed for Alternative 1, as required by Pub. L. 99–625, would establish a management, or otter-free, zone from which any sea otter would be captured and removed using non-lethal means. The area encompassed by this zone includes all U.S. waters south of Point Conception, including those along the mainland as well as the offshore islands except the San Nicolas Island translocation zone. Maintenance of this management zone free of otters is the principal mitigation feature of the proposal for fisheries and other environmental and socioeconomic impacts. Implementation of this management zone would confine the impact of translocated sea otters on fisheries to the immediate vicinity around San Nicolas Island. In addition, it would prevent the existing population from expanding its range into major shellfish and gillnet fisheries of southern California south of Point Conception. Such range expansion is expected to occur within the next 10 to 20 years, and possibly sooner, in the absence of the management zone proposed in this translocation plan. If the existing population should expand into southern California unrestricted, its impact on commercial and sport fisheries would be many times greater than those projected to result from implementation of Alternative 1. The Alternative 1 plan would provide for additional range expansion both north and south of the present range, it would provide for establishment and protection of a second population of California sea otters for recovery and research purposes, and it would preclude significant conflicts between sea otters and fisheries and other marine resource uses throughout southern California coastal waters south of Point Conception, except within the San Nicolas Island translocation zone. The reintroduction of sea otters to the San Nicolas translocation zone would not eliminate any marine species from the nearshore waters, but it would reduce the densities and average size of the main sea otter prey species. Because of the high degree of protection afforded to the southern sea otter population as a whole from the effects of a major oil spill, and because of the lower adverse environmental and socioeconomic impacts that would result (compared to other alternatives), Alternative 1 is considered to be the environmentally preferable alternative.

Under Alternative 2, translocation of sea otters would result in otters occupying the available nearshore waters along about 185 miles of northern California coastline over a 47-year period. The otters would be protected within this translocation zone similar to the existing population. As with Alternative 1, predation by otters on shellfish within the translocation zone would result in the decline and eventual loss of the nearshore commercial fisheries for sea urchin and dungeness crab and the sport fishery for abalone. The commercial catch within the translocation zone represents about 2 percent of the total northern California catch for urchins and crabs. The sport abalone take from the translocation zone represents virtually 100 percent of the sport abalone fishery in northern California, estimated to be worth about $11,565,000 in annual net economic value, which, if lost, would result in an estimated additional annual loss to the regional economy of about $7,582,000. Oil and gas resources within the northern California translocation zone are believed to be substantial, valued at about $2.5–5.0 billion, with a 57 percent chance of finding recoverable resources. Therefore, the effect on future offshore oil and gas development could be substantial depending on restrictions imposed under the Endangered Species Act or State law as a result of the otters' presence. Sea otter predation on sea urchins could result in an increase in kelp, but at present there is no commercial kelp harvest in northern California so the potential increase in kelp may not have any social or economic benefit. There is no known shellfish mariculture operation that would be affected in northern California.

Northern California contains excellent sea otter habitat and meets the criteria for being suitable as a potential translocation site. However, the length of the zone and its ease of public access would make protection of the colony and research on population dynamics and sea otter influence on the marine ecosystem more difficult than at the San Nicolas site. Containment of otters within the translocation zone would be expected to be more difficult than at an island site, and maintenance of the otter-free management zone (which includes the coast between Duncans Landing and San Francisco Bay on the south and between Eureka and the Oregon border on the north) would not prevent the existing sea otter population from expanding into important fishery areas in southern California. The carrying capacity of the translocation zone is larger than San Nicolas and is estimated to be 1,120–1,200 sea otters, thus it could readily meet the purposes for establishing a second colony.

The Alternative 2 plan would, similar to Alternative 1, provide for additional range expansion both north and south of the present range, it would provide for establishment and protection of a viable second population of California sea otters, and it would preclude conflicts between sea otters and fisheries and other marine resource uses within the surrounding management zone. However, since few significant fisheries exist in the northern California management (no-otter) zone and since it would not prevent the existing sea otter population from expanding into important fishery areas of southern California, the ability to provide mitigation by use of the management zone may not be fully realized.

Translocation to the southern Oregon coast, under Alternative 3, would result in otters occupying available nearshore habitat along a 70-mile stretch of coastline over a 29-year period. They would be protected within the translocation zone similar to the existing California population. As with Alternatives 1 and 2, predation by otters on shellfish within the translocation zone would result in the decline and eventual loss of the nearshore commercial fishery for dungeness crab and sport razor clam fishery. The commercial catch of crabs within the translocation zone represents about 27 percent of the total Oregon crab landings, with an average net annual value of nearly $1.6 million. A maximum of 5 percent of the sport razor clamming trips occur within the translocation zone, estimated to have a value of $153,000 per year. With the loss of this fishery, the regional economy would annually lose an additional $100,000 of fishermen's expenditures. Oil and gas resources within the zone are believed to be very limited, with a 7 percent chance of finding recoverable reserves. Thus little or no impact on oil and gas development would be expected as a result of the otters' presence. There are no known commercial mariculture or kelp operations in the southern Oregon translocation zone. As with Alternatives 1 and 2, southern Oregon would meet the criteria for being suitable as a

potential translocation site. Like Alternative 2, the length of the zone and ease of public access would make protection of the colony and research on population dynamics and influence on the marine ecosystem more difficult than at the San Nicolas site. Containment of otters within the translocation zone is expected to be more difficult than at an island site. Maintenance of the otter-free management zone (which includes the coast between False Cape and Crescent City, California, on the south, and near Cape Blanco to Yaquina Head, Oregon, on the north) would not prevent the existing sea otter population from expanding into important fishery areas in either southern or northern California. The carrying capacity of the translocation zone is estimated at 720–1,200 sea otters, thus this alternative could meet the purposes for establishing a second colony. The Alternative 3 plan, similar to Alternatives 1 and 2, would provide for additional range expansion both north and south of the present range, it would provide for establishment and protection of a viable second population of California sea otters, and it would preclude conflicts between sea otters and fisheries and other marine resource uses within the surrounding management zone. However, since few significant fisheries exist in the southern Oregon management zone and since it would not prevent the existing California population from expanding into important fishery areas of southern and northern California, the ability to provide mitigation by use of the management zone may not be fully realized.

Alternative 4 would produce results and impacts similar to Alternatives 1, 2, or 3, depending on the site chosen for translocation; however, Alternative 4 would produce the additional consequence of restricting the numbers of sea otters that may eventually be allowed to reoccupy the section of historic habitat located between Point Sal (5 miles south of the existing range) and Point Conception. Management of sea otters in this manner would require legislative changes regardless of which of the three sites were selected for translocation. The general results of Alternatives 1 and 4 would be nearly the same if San Nicolas Island was chosen as the translocation site. However, if northern California or southern Oregon were chosen under Alternative 4, it would result in restriction of southward expansion of the present range in addition to establishment of a translocation and management zone, and their associated costs and environmental consequences, at the northern California or Oregon site.

Alternative 5 would take an entirely different approach to reducing the threat and impacts of oil spills to sea otters. It would place major restrictions on future oil development and transportation within the existing sea otter range as well as require two seagoing tug boats to be stationed in the range to assist disabled tankers. No sea otter translocation would be undertaken, and no management or containment of the existing sea otter population would occur. While the direct impacts of a translocation on fisheries would be avoided initially, there would be no restriction in the expected growth and range expansion (assuming that this alternative actually results in a reduced risk of oil spills) of the existing population, thus, eventually sea otters would reoccupy major fishery areas in southern California. Under these circumstances, fishery impacts would be far greater than under the preferred alternative. Furthermore, although placing restrictions on oil development and transportation could reduce overall risks of oil spills to sea otters and other coastal and marine resources, securing the restrictions would be a lengthy process. It would involve, among other things, new Federal legislation and subsequent rulemaking to establish mandatory requirements for vessel operators, approvals by the International Maritime Organization and Congressional appropriations for procurement and operation of seagoing tugs. The lengthy process to implement this alternative and the uncertainty of ever being able to implement certain components would delay the protections for sea otters and, thus, the existing population would remain vulnerable to the possibility of decimation due to a catastrophic oil spill. The immediate and long-term costs of Alternative 5 would be considerably greater than any of the other alternatives, including the preferred alternative.

Alternative 6 would maintain the status quo. There would be no translocation and assocated environmental and socioeconomic impacts, no immediate protection of the sea otter population from oil spills, and no aggressive effort to recover the population except as might occur through Endangered Species Act section 7 consultations and State and Federal actions to curb incidental entanglement of otters in fishing nets and intentional illegal killings. The southern sea otter would continue to be protected as a threatened species, and may even be considered for endangered status if oil spill or other threats increase above current levels or the population status deteriorates. Immediate adverse environmental impacts on fisheries would be avoided; however, unlike with the preferred alternative, the existing population would be expected to grow and expand its range without restriction (if no major perturbation, such as an oil spill, were to decimate the population). In the long run, this would likely result in greater impacts to fisheries, oil development, and other marine uses as the range expands.

If translocation to establish at least one additional colony was precluded indefinitely, the recovery plan for the southern sea otter would require revision to incorporate new strategies to promote recovery under the Endangered Species Act. Selection of either Alternative 5 or 6 would preclude the opportunity for effectively answering most of the research questions to be addressed under the preferred alternative. This research would help scientists to better understand the relationship of sea otters to the marine ecosystem and, thus, aid in restoring the California sea otter to an optimum sustainable population, a goal of the Marine Mammal Protection Act.

Biological Opinion

On March 6, 1987, the Service's Regional Director signed a biological opinion, issued pursuant to section 7 of the Endangered Species Act, on the effects of the proposed translocation of the southern sea otter. The opinion is included in the Final Impact Statement as Appendix I. The biological opinion concluded the following:

> The proposed translocation of southern sea otters to San Nicolas Island, California, is a well designed recovery action that is expected to result in the establishment of a new colony of otters at San Nicolas Island. The plan provides for careful monitoring and evaluations of the project to maximize the opportunity for success while minimizing negative impacts on the parent population. Therefore, it is our biological opinion that the proposed translocation of southern sea otters to San Nicolas Island is not likely to jeopardize the continued existence of the species.

The opinion also includes 18 non-mandatory conservation recommendations which, if implemented, may further minimize impacts of translocation on sea otters and generally improve chances for the species' recovery. The Service intends to implement the 18 conservation recommendations to the maximum extent feasible. Details were provided in

a letter to the California Coastal Commission dated May 18, 1987.

Coastal Zone Consistency Determination

In compliance with Federal regulations and the Coastal Zone Management Act which require that any Federal project that will directly affect the coastal zone must be undertaken in a manner consistent, to the maximum extent practicable, with the State's approved coastal zone management program, the Service submitted a consistency determination to the California Coastal Commission (Coastal Commission) on March 17, 1987, for review and concurrence. The determination (included in the Final Impact Statement as Appendix J) concluded that the proposed translocation would be, to the maximum extent practicable, consistent with the California Coastal Zone Management Program. The Coastal Commission staff expressed concern about two aspects of the translocation in particular: (1) Impacts on fisheries, and (2) the Service's ability (financial and physical) to carry out the principal mitigation feature of maintaining an otter/free management zone on a continuing basis. The staff concluded that the protections afforded fisheries by the management zone throughout the remainder of southern California, except in the San Nicolas translocation zone, would offset the direct fisheries impacts around San Nicolas but only if the Service is fully successful in keeping the management zone otter-free. In order to keep the Coastal Commission informed regarding the results of the containment effort, the Service agreed to provide an annual status report to the Coastal Commission as well as other agencies.

The Coastal Commission held a public hearing on the Service's consistency determination on July 7, 1987. Prior to the hearing, Coastal Commission staff prepared a comprehensive report and recommendation on the proposal. The staff recommended that the Coastal Commission concur with the Service's determination that the project is consistent and would be conducted in a manner consistent, to the maximum extent practicable, with the California Coastal Management Program.

At the conclusion of the July 7 public hearing, the Coastal Commission voted to concur with the Service's determination of consistency.

California Fish and Game Commission

Public Law 99–625 provides that the translocation must be administered by the Service in cooperation with the appropriate State agency. California has enacted legislation that forbids the taking of sea otters in the absence of a scientific research permit. In the 43 CFR 24.4(i)(5)(i), the national fish and wildlife policy states:

> Federal agencies of the Department of the Interior shall . . . [c]onsult with the States and comply with State permit requirements in connection with the activities listed below, except in instances where the Secretary of the Interior determines that such compliance would prevent him from carrying out his statutory responsibilities: In carrying out research programs involving the taking or possession of fish and wildlife or programs involving reintroduction of fish and wildlife. . . .

Accordingly, the Service applied to the California Fish and Game Commission for a State scientific research permit on May 15, 1987, to conduct the translocation. The Service has worked very closely with the California Department of Fish and Game (Department) to develop a mutually acceptable translocation plan that would promote recovery of the southern sea otter while minimizing impacts on the State's fisheries, particularly those in southern California. The Department had reviewed and commented on a number of drafts of the translocation plan, proposed regulations, and impact statements over the nearly 3-year decisionmaking process. On May 21, 1987, the Department recommended to the Fish and Game Commission that the Service be issued a State research permit to conduct the translocation. Consistent with the Department's recommendation, a Federal research permit is being issued to the Department to carry out research on the existing California sea otter population designed to evaluate the effectiveness of several non-lethal containment methods. Specifically this permit authorizes research in three phases. The first phase would result in the take of 20 sea otters from the southern end of their range and extralimital areas south of their current range. These otters would then be released in the northern portion of their current range. This phase will study factors influencing the return of otters to their point of capture. The second phase would involve the capture and removal of all sea otters entering an experimentally established no-otter zone during a 3-year period. The third phase would involve non-lethal reduction in density in the experimental area to determine factors influencing movement and range expansion. This phase would not commence until a fully developed research proposal, based on the results of the first two phases, has been submitted along with a permit renewal or amendment request, at which time comments will be sought from the Marine Mammal Commission and Section 7 consultation will be reinitiated. Also, the Service and the Department have agreed in principle to a Memorandum of Understanding that sets forth the terms and conditions under which the translocation would proceed and the respective roles and responsibilities of the two agencies.

The Fish and Game Commission held a hearing on June 24, 1987, on the proposed translocation permit. However, due to a procedural error under State law regarding notice that they intended to utilize the Federal Impact Statement in making their decision, the Fish and Game Commission did not make a determination on the permit. Instead the Fish and Game Commission has scheduled another hearing for August 7, 1987, and a vote on the permit on August 18, 1987. No otters will be captured for translocation purposes until after August 18, 1987.

Restricted Timeframe for Implementation

The period between the middle of August and the middle of October is the only time during the year that acceptable weather conditions in the capture and release areas can be expected. Fog or storms are prevalent at most other times. Due to the number of otters of specific ages and sexes that must be captured and translocated, the operation will probably require 6–8 weeks to carry out and it must be done when weather and sea conditions are compatible. Thus, the narrow window of time between mid-August and mid-October is the only time that it would be safe to conduct the translocation. If the field work could not be started in August, the project would have to be delayed nearly a full year until next August, with the result that California sea otters would continue to be concentrated in their existing range, where they are vulnerable to oil spills and other catastrophic environmental perturbations, for another year.

Policy Considerations

The Service's extensive analysis of data in its Draft and Final Impact Statements, proposed rulemaking, and public comments thereon; a nearly 3-year study of potential translocation sites and related conflicts prior to initiating a formal decisionmaking process; specific direction from the U.S. Congress; a biological opinion on the effects of the proposal; and the Service's 3-year public involvement process have, collectively, provided a sound basis for

making a decision on the proposed translocation. Alternative 1, the preferred alternative, would, in the view of the Service, clearly promote the recovery of the southern sea otter, meet the spirit and letter of Pub. L. 99-625, and minimize impacts on the environment and other marine resource uses. The Service's preferred alternative incorporates a major mitigation feature that is specifically authorized and required by Federal legislation—the establishment and maintenance of an otter-free management zone. The management zone is economically important to the fishery interests in the region. Implementation of the translocation plan will culminate in a "zonal management" plan to address sea otter-fisheries conflicts in southern California. This has been long sought by the Department and fisheries interests, recommended to the Service by the Marine Mammal Commission, mandated by Congress, and agreed to by environmental groups and other interests. The Department supports the plan and the Coastal Commission agrees that it is consistent, to the maximum extent practicable, with the State's Coastal Zone Management Program. I concur in the judgments of the Service and in the cooperative approach to resolving the longstanding issue of sea otter translocation in California. All practicable means to avoid or minimize environmental or socioeconomic harm have been incorporated into the translocation plan and implementing regulations, which will be published separately in the **Federal Register**.

Conclusion

Based on a careful review and consideration of Pub. L. 99-625, the Environmental Impact Statement, proposed rulemaking prepared by the Service and public comments received thereon, consideration by the California Coastal Commission and Fish and Game Commission, and other relevant factors reflected in the Administrative Record, I select Alternative 1 as the best alternative to achieve the stated purposes of minimizing the effects of oil spills on this threatened population, studying the relationship of sea otters to the marine ecosystem, and implementing Pub. L. 99-625.

Dated: August 5, 1987.

Susan Recce,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87-18193 Filed 8-10-87; 8:45 am]

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Part III

Information Security Oversight Office

32 CFR Part 2003

National Security Information Standard Forms; Final Rule

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INFORMATION SECURITY OVERSIGHT OFFICE

32 CFR Part 2003

National Security Information Standard Forms

AGENCY: Information Security Oversight Office (ISOO).

ACTION: Final rule.

SUMMARY: This is an amendment to 32 CFR 2003.20. The purpose of this amendment is to add at the end of paragraph (h)(1) a sentence to clarify further the definition of "classifiable" as used in the Standard Form 189, "Classified Information Nondisclosure Agreement."

EFFECTIVE DATE: August 11, 1987.

FOR FURTHER INFORMATION CONTACT: Steven Garfinkel, Director, ISOO. Telephone: (202) 535–7251.

SUPPLEMENTARY INFORMATION: This amendment to 32 CFR Part 2003 is issued pursuant to § 5.2(b)(7) of Executive Order 12356.

List of Subjects in 32 CFR Part 2003

Classified information, Executive orders, Information, National security information, Security information.

32 CFR Part 2003 is amended as follows:

PART 2003—NATIONAL SECURITY INFORMATION—STANDARD FORMS

1. The authority citation for 32 CFR Part 2003 continues to read:

Authority: Sec. 5.2(b)(7) of E.O. 12356.

Subpart B—Prescribed Forms

2. Section 2003.20(h)(1) is revised to read as follows:

§ 2003.20 [Amended]

(h) * * *

(1) As used in paragraph 1 of SF 189, the term, "classifiable information" refers to information that meets all the requirements for classification under Executive Order 12356, or under any other Executive order or statute that prohibits the unauthorized disclosure of information in the interest of national security, but which, as a result of negligence, time constraints, error, lack of opportunity or oversight, has not been marked as classified information. A party to SF 189 would violate its nondisclosure provisions only if he or she disclosed without authorization classified information or information that he or she knew, or reasonably should have known, was classified, although it did not yet include required classification markings. The term "classifiable" does not include any information that is not otherwise required by statute or Executive order to be protected from unauthorized disclosure in the interest of national security.

Dated: August 6, 1987.

Steven Garfinkel,

Director, Information Security Oversight Office.

[FR Doc. 87–18210 Filed 8–10–87; 8:45 am]

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Part IV

Department of Education

Office of Special Education and Rehabilitative Services

Experimental and Innovative Training Program; Notice of Funding Priorities for Fiscal Year 1987

BEST COPY AVAILABLE

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Experimental and Innovative Training Program; Funding Priorities for Fiscal Year 1987

AGENCY: Department of Education, Office of Special Education and Rehabilitative Services.

ACTION: Notice of final funding priorities for fiscal year 1987.

SUMMARY: The Secretary announces annual funding priorities for training grants under the Experimental and Innovative Training Program in order to ensure effective use of program funds and to direct funds to areas of identified personnel need during fiscal year 1987. The Secretary will give an absolute preference to applications that meet the terms of the priorities.

EFFECTIVE DATE: These final annual funding priorities take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of these final annual funding priorities, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Toby Lawrence, Division of Resource Development, Office of Developmental Programs, Rehabilitation Services Administration, Department of Education, 400 Maryland Avenue, SW., (Switzer Building, Room 3328—M/S 2312), Washington, DC 20202. Telephone: (202) 732–1351.

SUPPLEMENTARY INFORMATION: Grants for the Experimental and Innovative Training Program are authorized by Title III, section 304 of the Rehabilitation Act of 1973, as amended. Program regulations for the Experimental and Innovative Training Program are established at 34 CFR Part 387. The purpose of the Experimental and Innovative Training Program is to support projects designed to develop new types of rehabilitation personnel and to demonstrate the effectiveness of these new types of personnel in providing rehabilitation services to persons with severe disabilities and to develop new and improved methods of training rehabilitation personnel to achieve more effective delivery of rehabilitation services by State and other rehabilitation agencies.

A notice of proposed annual funding priorities was published in the Federal Register (52 FR 18782–83) on May 19, 1987, and the public was given 30 days to comment. There are no significant differences between the final priorities and the proposed priorities.

Summary of Comments and Responses

Twenty-one comments were received in response to the notice of proposed annual funding priorities. The comments and the Secretary's response are summarized below:

Comment: The commenters recommended that the notice be changed to allow the submittal of applications that focus on the training of rehabilitation counseling personnel for service delivery to individuals with severe disabilities.

Response: The comments suggested that the commenters do not believe that traumatic brain-injury and specific learning-disability are severe disabilities. Traumatic brain-injury and learning-disability are considered severe disabilities under section 7(15)(A) of the Rehabilitation Act of 1973, as amended. In addition, since the purpose of this program is to develop and demonstrate the effectiveness of new types of personnel in providing services to persons with severe disabilities, and is stated as such in the regulations, it is expected that all training supported under this program will prepare personnel to work with individuals with severe disabilities. Because of a lack of services to the traumatically brain-injured and learning disabled, the Secretary has identified traumatic brain-injury and learning-disability as specific areas of priority in fiscal year 1987 to encourage the development of new training in those areas.

In addition, in a separate notice of closing date published in the Federal Register on June 9, 1987, the Secretary announced the availability of funds under the Rehabilitation Long-Term Program for the training of rehabilitation personnel in certain long-term training fields and program areas, including in the area of supported employment. Because supported employment programs are directed to the delivery of services to individuals with severe disabilities, rehabilitation personnel trained in supported employment training programs must be specifically prepared for the provision of services to individuals with severe disabilities. No changes were made in the proposed priorities.

Priorities

In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications submitted under the Experimental and Innovative Training Program that address the priorities described below. An absolute preference is one which permits the Secretary to select only those applications that meet the described priorities.

Priority 1

The training under this priority must address the training of rehabilitation counselors and supervisors of rehabilitation counselors in State vocational rehabilitation agencies. The training must upgrade their knowledge and improve their skills: (1) To use diagnostic and evaluative techniques in identifying learning-disabled adults and determining the severity of their disabilities; (2) to interpret diagnostic, psychological, and educational background information and relate such information to the functional capacities of, and any proposed vocational planning for, learning-disabled adults; (3) to determine and substantiate the eligibility of learning-disabled adults to receive services; and (4) to plan effective rehabilitation programs for, and deliver rehabilitation services to, learning-disabled adults. The training must emphasize improving the capacity of these personnel to develop linkages between providers of special education and vocational rehabilitation services and enhance coordination and transition among service providers. The training must include technical assistance to Rehabilitation Continuing Education Programs to increase their capacity to train employed personnel to provide improved rehabilitation services to learning-disabled individuals. Program regulations for the Rehabilitation Continuing Education Programs are established at 34 CFR Part 389. Such technical assistance is intended to ensure the integration and replication of training supported under this priority by Rehabilitation Continuing Education Programs. In addition, written training materials and visual aids must be developed and made available to Rehabilitation Continuing Education Programs for their use in training rehabilitation personnel to provide effective services to learning-disabled adults.

Priority 2

The training under this priority must address the training of rehabilitation counselors and supervisors of rehabilitation counselors in State vocational rehabilitation agencies to provide effective rehabilitation services to traumatically brain-injured adults. The training must improve their skills: (1) To determine and substantiate the eligibility of traumatically brain-injured

adults to receive rehabilitation services; (2) to evaluate the functional capacities of traumatically brain-injured adults; (3) to plan effective vocational and independent living rehabilitation programs for, and deliver vocational and independent living rehabilitation programs to, traumatically brain-injured adults; (4) to coordinate community resources in the rehabilitation plan to address their needs; and (5) to develop jobs for and place traumatically brain-injured adults in employment. The training must include technical assistance to Rehabilitation Continuing Education Programs in providing rehabilitation services to traumatically brain-injured adults. Such technical assistance is intended to ensure the integration and replication of training supported under this priority by Rehabilitation Continuing Education Programs. In addition, written training materials and visual aids must be developed and made available to Rehabilitation Continuing Education Programs for their use in training rehabilitation personnel to provide effective rehabilitation services to traumatically brain-injured adults.

A separate competition will be conducted for the two priorities described above. Each application must respond to only one of the priorities.

(29 U.S.C. 774)

(Catalog of Federal Domestic Assistance No. 84.129, Rehabilitation Training Program)

Dated: July 23, 1987.

William J. Bennett,

Secretary of Education.

[FR Doc. 87-18187 Filed 8-10-87; 8:45 am]

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Part V

Department of Health and Human Services

National Institutes of Health

Recombinant DNA; Notice of Advisory Committee Meeting and Proposed Actions Under Guidelines for Research

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Advisory Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee at the National Institutes of Health, Building 31C, Conference Room 6, 9000 Rockville Pike, Bethesda, Maryland 20892, on September 21, 1987, from approximately 9 a.m. to adjournment at approximately 5 p.m. This meeting will be open to the public to discuss:

Amendment of Guidelines;
Proposed revision of Guidelines to refer specifically to research with plants and animals; and
Other matters to be considered by the Committee.

Attendance by the public will be limited to space available. Members of the public wishing to speak at the meeting may be given such an opportunity at the discretion of the Chair.

Dr. William J. Gartland, Executive Secretary, Recombinant DNA Advisory Committee, National Institutes of Health, 12441 Parklawn Drive, Suite 58, Rockville, Maryland 20852, telephone (301) 770–0131, will provide materials to be discussed at the meeting, rosters of committee members, and substantive program information. A summary of the meeting will be available at a later date.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual Programs listed in the *Catalog of Federal Domestic Assistance* are affected.

Dated: August 3, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–18200 Filed 8–10–87; 8:45 am]

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Recombinant DNA Research; Proposed Actions Under Guidelines

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice of proposed actions under NIH Guidelines for Research Involving Recombinant DNA Molecules.

SUMMARY: This notice sets forth proposed actions to be taken under the National Institutes of Health (NIH) Guidelines for Research Involving Recombinant DNA Molecules. Interested parties are invited to submit comments concerning these proposals. These proposals will be considered by the Recombinant DNA Advisory Committee (RAC) at its meeting on September 21, 1987. After consideration of these proposals and comments by the RAC, the Director of the National Institutes of Health will issue a decision on these proposals in accord with the NIH Guidelines.

DATES: Comments received by September 4, 1987, will be reproduced and distributed to the RAC for consideration at its September 21, 1987, meeting.

ADDRESS: Written comments and recommendations should be submitted to the Director, Office of Recombinant DNA Activities 12441 Parklawn Drive, Suite 58, Rockville, MD 20852. All comments received in timely response to this notice will be considered and will be available for public inspection in the above office on weekdays between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Background documentation and additional information can be obtained from the Office of Recombinant DNA Activities (ORDA), 12441 Parklawn Drive, Suite 58, Rockville, Maryland 20852, (301) 770–0131.

SUPPLEMENTARY INFORMATION: The NIH will consider the following actions under the NIH Guidelines for Research Involving Recombinant DNA Molecules:

I. Proposed Amendment of Section I–C

This proposed amendment of Section I–C was initially published for comment in the **Federal Register** of March 11, 1987 (52 FR 7525), prior to a scheduled RAC meeting on June 15, 1987. The June 15, 1987, meeting was postponed and rescheduled on September 21, 1987. Accordingly, this proposed amendment of Section I–C is being published again for comment.

Section I–C of the NIH Guidelines currently reads as follows: *"I–C General Applicability.*

"The Guidelines are applicable to all recombinant DNA research within the United States or its territories which is conducted at or sponsored by an institution that receives any support for recombinant DNA research from the National Institutes of Health (NIH). This includes research performed by the NIH directly.

"An individual receiving support for research involving recombinant DNA must be associated with or sponsored by an institution that can and does assume the responsibilities assigned in these Guidelines.

"The Guidelines are also applicable to projects done abroad if they are supported by NIH funds. If the host country, however, has established rules for the conduct of recombinant DNA projects, then a certificate of compliance with those rules may be submitted to NIH in lieu of compliance with the NIH Guidelines. The NIH reserves the right to withhold funding if the safety practices to be employed abroad are not reasonably consistent with the NIH Guidelines."

In a letter dated January 9, 1987, Mr. Edward Lee Rogers of Washington, DC, Counsel for the Foundation on Economic Trends and Jeremy Rifkin, has proposed that the following text be inserted after the first sentence of the third paragraph of section I–C:

"For purposes of the preceding sentence, the term 'project' includes any research or development of the recombinant organism or other product or process in question, including all such work that is reasonably forseeable when the NIH support is received. NIH support includes both money grants and any type of in-kind support, including research conducted directly by NIH, supplies, equipment, the use of facilities, and biological research materials. NIH support has been given where the source of funds or in-kind support is, directly or indirectly, the NIH.

II. Proposal to Add Bacillus Stearothermophilis to Appendix C–V

Drs. Richard Novick and June Polak of the Public Health Research Institute of the City of New York, Inc., have requested that *Bacillus stearothermophilis* be added to Appendix C–V, *Extrachromosomal Elements of Gram Positive Organisms.* Information on genetic exchange involving this organism is provided in the submission to ORDA.

III. Proposal to Modify and Amend the "Guidelines for Research Involving Recombinant DNA Molecules" to Refer Specifically to Research with Plants and Animals

It has been recognized that the NIH Guidelines for Research Involving Recombinant DNA Molecules do not include specific guidelines for containment of research involving whole plants and animals even though many scientific experiments involving recombinant DNA are now possible and often conducted with these whole organisms.

On June 26, 1986, the U.S. Department of Agriculture (USDA) issued an "Advanced Notice of Proposed USDA Guidelines for Biotechnology Research (51 FR 23367). A notice in the December 9, 1986, Federal Register (51 FR 44397) stated that USDA would be proposing new provisions relating to agricultural research for inclusion in the NIH Guidelines in lieu of the Advanced Notice of Proposed USDA Guidelines for Biotechnology Research published on June 26, 1986. USDA organized a workshop in Arlington, VA, on December 13–15, 1986, in part to develop proposed guidelines for plants and animals. Proposed changes to the NIH Guidelines developed by USDA were reviewed and revised by an NIH Working Group on Revision of the Guidelines which met on June 22 and July 16, 1987.

In this proposal, language has been developed to modify Sections II and III of the NIH Guidelines to refer specifically to containment for research with whole plants and animals. Containment is described in the proposed amendments Appendix P for plants and Appendix Q for animals. The suggested modifications and additions will provide guidance to the Institutional Biosafety Committees (IBCs) and Principal Investigators (PIs) to assure safe conduct of such experiments.

ORDA and NIH staff will make necessary editorial modifications to the proposed changes after review by the RAC and prior to incorporation into the NIH Guidelines.

1. Section II of the NIH Guidelines

2. It is proposed that the following language be added to Section II, *Containment*, before the final paragraph:

3. "Physical containment conditions within laboratories, described in Appendix G, may not always be appropriate for all organisms because of their physical size, the number of organisms needed for an experiment, or the particular growth requirements of the organism. Likewise, biological containment for microorganisms described in Appendix I is not appropriate for all organisms and for higher eukaryotic organisms in particular. Considerable information exists, however, on the design of research facilities and experimental procedures applicable to higher organisms carrying recombinant DNA either integrated into the genome or into microorganisms associated with the higher organism as a symbiont, pathogen, or other relationship. This information includes types of facilities for physical containment of organisms other than in traditional laboratories, and practices for limiting or excluding unwanted establishment, transfer of genetic information, and dissemination of organisms beyond an intended location based on both physical and biological containment principles. Research conducted in accordance with these conditions effectively confines the organism."

4. "For research involving plants, four biosafety levels (BL1–P to BL4–P) are described in Appendix P. Biosafety Level 1 for plants (BL1–P) is designed to provide a moderate level of containment for specific recombinant DNA research involving plants and is recommended for experiments for which there is no recognizable and predictable risk to the environment in the event of accidental release or for which there is convincing biological evidence that precludes the possibility of survival, transfer, or dissemination of the recombinant DNA molecules into the environment. Biosafety Level 2 for plants (BL2–P) is designed to provide greater containment of plants and certain associated organisms and is recommended for experiments in which there is a recognized possibility of survival, transmission, or dissemination of the recombinant DNA-containing organisms but the consequence of such a release has a predictably minimal biological impact in the event of inadvertent release. Biosafety Level 3 (BL3–P) and Biosafety Level 4 (BL4–P) for plants describe additional containment conditions for research with plants and certain pathogens and other organisms that require special containment because of their recognized potential for significant detrimental impact on managed or natural ecosystems."

5. "BL1–P relies upon accepted scientific practices for conducting research in most ordinary greenhouse or growth chamber facilities and incorporates accepted procedures for good pest control and cultural practices. Such facilities and procedures, through providing a modified and protected environment for propagation of plants and of microorganisms associated with the plants, also provide a degree of containment that adequately controls sexual and vegetative reproduction and minimizes the potential for release of biologically viable plants, plant parts, and microorganisms associated with them. BL2–P and BL3–P also rely upon accepted scientific practices for conducting research in greenhouses with organisms infecting or infesting plants in a manner that minimizes or prevents inadvertent contamination of plants within or surrounding the greenhouse. BL4–P describes facilities and practices known to provide containment of certain exotic plant pathogens.

6. "For research with animals that are of a size or have growth requirements that preclude the use of conventional primary containment systems used for small laboratory animals, four biosafety levels (BL1–N to BL4–N) are described in Appendix Q."

7. "Biosafety Level 1 for animals (BL1–N) describes containment which is used for animals in which the germ line has been modified through recombinant DNA techniques (transgenic animals) and is designed to eliminate the possibility of sexual transmission of the modified genome or transmission of recombinant-DNA-derived viruses known to be transmitted only vertically (i.e., transmitted from animal parent to offspring only by sexual reproduction). Procedures, practices, and facilities follow classical methods of avoiding genetic exchange between animals."

8. "Biosafety Level 2 for animals (BL2–N) describes containment which is used for transgenic animals and animals associated with recombinant-DNA-derived organisms and is designed to eliminate the possibility of vertical or horizontal transmission. Procedures, practices, and facilities follow classical methods of avoiding genetic exchange between animals or controlling arthropod transmission."

9. "Biosafety Level 3 for animals (BL3–N) and Biosafety Level 4 for animals (BL4–N) describe higher levels of containment which are used for research with certain transgenic animals and with agents posing a recognized hazard."

10. *Section III of the NIH Guidelines.*

11. It is proposed that Section III–B, *Experiments That Require IBC Approval Before Initiation*, be changed as follows:

12. Proposed changes in Section III–B–1, *Experiments Using Human or Animal Pathogens (Class 2, Class 3, Class 4, or Class 5 Agents [1]) as Host-Vector Systems:*

13. These changes specify in the NIH Guidelines the containments recommended for research with

recombinant-DNA-containing pathogens which involves whole animals.

14. Section III–B–1–a currently reads:

15. "Experiments involving the introduction of recombinant DNA into Class 2 agents can be carried out at BL2 containment."

16. It is proposed that the following text be added to the end of Section III–B–1–a:

17. "Experiments with such agents shall be carried out with whole animals at BL2 or BL2–N containment."

18. Section III–B–1–b currently reads:

19. "Experiments involving the introduction of recombinant DNA into Class 3 agents can be carried out at BL3 containment."

20. It is proposed that the following text be added at the end of Section III–B–1–b:

21. "Experiments with such agents can be carried out with whole animals at BL3 or BL3–N containment."

22. Section III–B–1–c currently reads:

23. "Experiments involving the introduction of recombinant DNA into Class 4 agents can be carried out at BL4 containment."

24. It is proposed that the following text be added at the end of Section III–B–1–c:

25. "Experiments with such agents shall be carried out with whole animals at BL4 or BL4–N containment."

26. Section III–B–1–d currently reads:

27. "Containment conditions for experiments involving the introduction of recombinant DNA into Class 5 agents will be set on a case-by-case basis following ORDA review. A U.S. Department of Agriculture (USDA) permit is required for work with Class 5 agents [18, 20]."

28. It is proposed that the following text be added at the end of Section III–B–1–d:

29. "Experiments with such agents shall be carried out with whole animals at BL4 or BL4–N containment."

30. Proposed changes in Section III–B–4, *Recombinant DNA Experiments Involving Whole Animals or Plants.* These changes clarify the organisms to which this section applies and the containment recommended for research.

31. It is proposed that the title of Section III–B–4 be changed to read:

32. "*Recombinant DNA Experiments Involving Whole Animals*" since Item #43 proposes a new Section III–B–5 entitled: "*Recombinant DNA Experiments Involving Whole Plants.*"

33. It is proposed that the following text be inserted into Section III–B–4 prior to Section III–B–4–a:

34. "This section covers experiments involving whole animals, both those in which the animal's genome has been altered by recombinant DNA techniques and experiments involving viable recombinant-DNA-modified microorganisms tested on whole animals. For the latter, other than viruses which are only vertically transmitted, the experiments may not be carried out at BL1–N containment; a minimum containment of BL1 or BL2–N is required."

35. Section III–B–4–a currently reads: "Recombinant DNA, or RNA molecules derived therefrom, from any source except for greater than two-thirds of a eukaryotic viral genome may be transferred to any non-human vertebrate organism and propagated under conditions of physical containment comparable to BL1 and appropriate to the organism under study [2]. It is important that the investigator demonstrate that the fraction of the viral genome being utilized does not lead to productive infection. A USDA permit is required for work with Class 5 agents [18,20]."

36. It is proposed that Section III–B–4–a be revised to read as follows:

37. "Recombinant DNA, or RNA molecules derived therefrom, from any source except for a eukaryotic viral genome may be transferred to any non-human vertebrate or any invertebrate organism and propagated under conditions of physical containment comparable to BL1 or BL1–N and appropriate to the organism under study [2]. Animals containing sequences from viral vectors are exempt if the sequences do not lead to transmissible infection either directly or indirectly as a result of complementation or recombination in animals. For experiments involving recombinant DNA modified Class 2, 3, 4, or 5 organisms (1) using whole animals, see Section III–B–1."

38. Section III–B–4–b currently reads:

39. "For all experiments involving whole animals and plants and not covered by Section III–B–4–a, the appropriate containment will be determined by the IBC (22)."

40. It is proposed that Section III–B–4–b be changed to read:

41. "For experiments involving whole animals and not covered by Section III–B–1 or Section III–B–4–a, the appropriate containment will be determined by the IBC (22,23)."

42. It is proposed that a new Section III–B–5 be added for experiments with whole plants. This proposed new section would read as follows:

43. "Section III–B–5, *Recombinant DNA Experiments Involving Whole Plants.*

"Experiments to genetically engineer plants by recombinant DNA methods, to utilize such plants for other experimental purposes (e.g., response to stress), to propagate such plants, or to use plants together with microorganisms or insects containing recombinant DNA, can be conducted under the following containment conditions. If experiments involving whole plants are not described in III–B–5 and do not fall under Section III–A or Section III–D, they are included in Section III–C."

44. *Note.*—For recombinant DNA experiments falling under III–B–5–a, III–B–5–b, III–B–5–c, and III–B–5–d, physical containment requirements can be reduced to the next lower level by appropriate biological containment practices, such as conducting experiments on a virus with an obligate insect vector in the absence of the vector or using a genetically attenuated strain.

45. "Section III–B–5–a. BL3–P or BL2–P + BC containment is recommended for experiments involving most exotic (23) infectious agents with recognized potential for serious detrimental impact on managed or natural ecosystems when the exotic agent is modified by recombinant DNA techniques and is associated with whole plants.

46. "III–B–5–b. BL3–P containment is recommended for experiments involving plants containing cloned genomes of readily transmissible exotic (23) infectious agents with recognized potential for serious detrimental effects on managed or natural ecosystems in which there exists the possibility of reconstituting the complete and functional genome of the infectious agent by genomic complementation *in planta.*"

47. "III–B–5–c. BL4–P containment is recommended for experiments with a small number of readily transmissible exotic (23) infectious agents, such as the soybean rust fungus (Phakopsora pachyrhizi) and maize streak or other viruses in the presence of their specific arthropod vectors, that have the potential of being serious pathogens of major U.S. crops."

48a. "III–B–5–d. BL3–P containment is recommended for experiments involving sequences encoding potent vertebrate toxins introduced into plants or associated organisms."

48b. BL3–P or BL2–P + BC is recommended for experiments with microbial pathogens of insects or small animals associated with plants if the recombinant DNA-modified organism has a recognized potential for serious detrimental impact on managed or natural ecosystems.

49. It is proposed that the following new footnote, number 23, be added to

Section V, and that it be cited as indicated above in Section III–B–5:

50. "23. In accordance with accepted scientific and regulatory practices of the discipline of plant pathology, an exotic plant pathogen (e.g., virus, bacterium, fungus) is one not known to occur within the United States [18]. Recognition as to whether a pathogen has a potential for serious detrimental impact on managed (agricultural, forest, grassland) or natural ecosystems should be made by the PI and IBC, in consultation with scientists knowledgeable of plant diseases, crops and ecosystems in the geographic area of the research. Examples of serious detrimental impacts are provided by plant pathogens that can significantly reduce the yield of a major crop plant and by pathogens of beneficial insects, such as pollinators. A listing of all possible cases is not appropriate for these Guidelines."

51. To accommodate new Section III–B–5, renumber present Section III–B–5 to III–B–6. It would read:

52. "III–B–6, *Experiments Involving More than 10 Liters of Culture*. The appropriate containment will be decided by the IBC. Where appropriate, Appendix K, *Physical Containment for Large-Scale Uses of Organisms Containing Recombinant DNA Molecules*, should be used."

53. It is proposed to add at the end of this section:

54. "Appendix K describes containment conditions BL1–LS through BL4–LS."

55. Section III–C, *Experiments That Require IBC Notice Simultaneously with Initiation of Experiments*, states that all experiments not included elsewhere in these NIH Guidelines can be conducted at BL1.

56. It is proposed that the first two paragraphs of the current Section III–C be numbered as Section III–C–1, that the final paragraph of the current Section III–C be numbered III–C–2, and that the following language be added as Section III–C–3:

57. "Section III–C–3. *Experiments Involving Whole Plants*. Section III–C–3 covers experiments involving recombinant DNA-modified whole plants, and/or experiments involving recombinant DNA-modified organisms associated with whole plants, except those that fall under Section III–A, III–B, or III–D. It should be emphasized that knowledge of the organism(s) and judgment based on accepted scientific practices should be used in all cases in selecting the appropriate level of containment under the NIH Guidelines.

For example, if the genetic modification has the objective of increasing pathogenicity or converting a non-pathogenic organism into a pathogen, then a higher level of containment may be appropriate, depending on the organism, its mode of dissemination , and its target organisms. By contrast, a lower level of containment may be appropriate for small animals associated with many types of recombinant DNA-modified plants."

58. "Section III–C–3–a. BL1–P is recommended for all experiments with recombinant DNA-containing plants and plant associated microorganisms not covered below in Section III–C–3–b or in other sections of the NIH Guidelines (see above). Such experiments include, for example, those involving recombinant DNA-modified plants that are not noxious weeds or cannot interbreed with noxious weeds. Also included are those involving whole plants and recombinant DNA-modified non-exotic [23] microorganisms that have no recognized potential for rapid and widespread dissemination and for serious detrimental impact on managed or natural ecosystems (e.g., *Rhizobium* spp., *Agrobacterium* spp.)

59. "Section III–C–3–b. BL2–P or BL1–P + biological containment (BC) is recommended for the following experiments involving plants:"

60. "Section III-C-3-b-(1). Plants modified by recombinant DNA that are noxious weeds or can interbreed with noxious weeds."

61. "Section III-C-3-b-(2). Plants in which the introduced DNA represents the complete genome of a non-exotic infectious agent [23]."

62. "Section III-C-3-b-(3). Plants associated with recombinant DNA-modified non-exotic microorganisms which have a recognized potential for serious detrimental impact on managed or natural ecosystems [23]."

63. "Section III-C-3-b-(4). Plants associated with recombinant DNA-modified exotic microorganisms which have no recognized potential for serious detrimental impact on managed or natural ecosystems [23]."

64. "Section III-C-3-b-(5). Experiments with recombinant DNA-modified insects or small animals associated with plants, or with insects or small animals with recombinant DNA-modified microorganisms associated with them if the recombinant DNA-modified organism has no recognized potential for serious detrimental impact on managed or natural ecosystems [23]."

65. Under Section III-D-5 of Section III–D, *Exempt Experiments*, certain classes of recombinant DNA molecules are exempt from the NIH Guidelines and are listed in Appendix C. Appendix C–I specifies that most recombinant DNA molecules containing less than one half of a eukaryotic viral genome are exempt from the NIH Guidelines when propagated and maintained in cells in tissue culture.

66. The following sentence is proposed as an addition to Appendix C–I for clarification of plant cell cultures which are induced to regenerate into whole plants. Without this sentence a strict interpretation of the NIH Guidelines would require IBC prior approval for the transition from a cell culture to a differentiated plant since it would be a whole plant and subject to Section III–B–5.

67. It is proposed to add to Appendix C–I after the first paragraph the following:

68. "Whole plants regenerated from plant cells and tissue cultures are covered by this exemption provided they remain axenic cultures even though they differentiate into embryonic tissue and regenerate into plantlets."

69. *Appendix G.* Proposal to Modify Appendix G, *Physical Containment.* It is proposed that the following text be added at the very beginning of Appendix G:

70. "Appendix G specifies physical containment for standard laboratory experiments and defines Biosafety Level 1 to Biosafety Level 4 (BL1–BL4). For large scale (over 10 liters) research or production, Appendix K replaces Appendix G; it defines Biosafety Level 1-Large Scale to Biosafety Level 4-Large Scale (BL1–LS to BL4–LS). For certain work with plants, Appendix P replaces Appendix G; it defines Biosafety Level 1-Plants to Biosafety Level 3-Plants (BL1–P to BL3–P). For work animals, Appendix Q replaces Appendix G; it defines Biosafety Level 1-Animals to Biosafety Level 4-Animals (BL1–N to BL4–N)."

71. *Appendix P.* It is proposed that the following text be added to the NIH Guidelines as Appendix P:

72. "Appendix P, *Physical and Biological Containment for Recombinant DNA Research Involving Plants* This appendix specifies physical and biological containment conditions and practices suitable to the greenhouse conduct of experiments involving recombinant DNA-containing plants, as well as plant-associated microorganisms and small animals. All provisions of the NIH Guidelines shall apply to plant research activities with the following modifications:"

73. "Appendix P shall replace Appendix G when the research plants are of a size, number, or have growth requirements that preclude the use of containment described in Appendix G.

The plants covered in Appendix P include but are not limited to mosses, liverworts, macroscopic algae, and vascular plants including terrestrial crops, forest, and ornamental species."

74. "Plant-associated microorganisms include viroids, virusoids, viruses, bacteria, fungi, protozoans, and certain small algae. They include microorganisms that have a benign or beneficial association with plants, such as certain Rhizobium species, as well as micro-organisms known to cause plant diseases. The NIH Guidelines also apply to microorganims which are being modified with the objective of fostering an association with plants."

75. "Plant-associated small animals include those insects that: (1) Have an abligate association with plants, (2) are plant pests, (3) are plant pollinators, or (4) transmit plant disease agents, as well as other small animals, such as nematodes, for which tests of biological properties necessitate the use of plants. Microorganisms associated with such small animals as, for example, pathogens or symbionts are also included."

76. "The Institutional Biosafety Committee shall include at least one scientist with expertise in plant, plant pathogen, or plant pest containment principles when experiments utilizing Appendix P require IBC prior approval."

77. "Appendix P–I, *General Plant Biosafety Levels.*"

78. "The principal purpose of plant containment is to avoid unintentional transmission of a recombinant DNA-containing plant genome, including nuclear or organelle hereditary material, or release of recombinant DNA-derived organisms associated with plants."

79. "The containment principles are based on the recognition that the organisms to which they apply pose no health threat to humans or higher animals (unless deliberately modified to do so), and that the containment minimizes the possibility of an unanticipated deleterious effect on organisms and ecosystems outside of the experimental facility. Examples of deleterious effects to be minimized are the inadvertent spread of a serious pathogen from a greenhouse to a local agricultural crop or the unintentional introduction and establishment of an organism in a new ecosystem."

80. "Four biosafety levels, referred to as BL1–P, BL2–P, BL3–P, and BL4–P are established in Section II of the NIH Guidelines. The selection of containment levels required for research involving recombinant DNA molecules in or associated with plants is specified in Section III of the NIH Guidelines. The biosafety levels are described in Appendix P–II. The descriptions include: (1) Greenhouse practices, and (2) special greenhouse facilities for physical containment."

81. "The biosafety levels are designed to provide differential levels of biosafety for plants in the absence or presence of other experimental organisms that contain recombinant DNA. These biosafety levels, in conjunction with biological containment described in Appendix P–III, provide flexible approaches to assure research is conducted safely."

82. "In experiments in which plants are grown within BL1–BL4 laboratory facilities, including plant tissue culture rooms, growth chambers within laboratory facilities, or on open benches, containment practices described for Biosafety Levels 1–4 in Appendix G in these NIH Guidelines shall be followed. Additional practices should be added by the principal investigator or IBC as needed from the descriptions in Appendix P–III if botanical reproductive structures are produced and have the potential of being released."

83. "Appendix P–II, *Physical Containment Levels.*"

84. "Appendix P–II–A, *BL1–P (Biosafety Level 1—plants).*"

85. "Appendix P–II–A–1, *Standard Practices—BL1–P.*"

86. "Access to the greenhouse is limited or restricted at the discretion of the principal investigator when experiments are in progress."

87. "Personnel are required to read instructions on BL1–P greenhouse practices and procedures and to follow them."

88. "All procedures are performed in accordance with practices appropriate to the experimental organism. A greenhouse practices manual is prepared to describe these practices. It should advise personnel of potential consequences if practices are not followed and outline contingency plans in the event containment loss results in release of organisms with recognized potential for serious detrimental impact."

89. "A log is kept of experimental plant, microorganisms, or small animals that are brought in or removed from the greenhouse facility."

90. "Experimental organisms are rendered biologically inactive by appropriate methods before disposal outside of the greenhouse facility."

91a. "A program is utilized to control undesired species, such as weed, rodent, or insect pests and pathogens, by methods appropriate to the organisms and in accordance with applicable state and federal laws."

91b. "Insects and other motile macroorganisms are housed in appropriate cages. If macroorganisms, such as flying insects or nematodes, are released within the greenhouse, precautions are taken to minimize escape beyond the facility."

91c. "A sign incorporating the universal biohazard symbol and the name of the recombinant DNA-modified organism(s) is posted on greenhouse access doors."

91d. "Experiments involving other organisms which require a containment level lower than BL1–P may be conducted in the same greenhouse concurrently with those requiring the BL1–P level provided all work is conducted in accordance with BL1–P greenhouse practices."

92. "Appendix P–II–A–2, *Facilities—BL1–P.*"

93a. "The term 'greenhouse' refers to a permanent structure with walls, roof, and floor designed and utilized principally for growing plants in a controlled and protected environment. Walls and roof are usually constructed of transparent or translucent material to allow passage of sunlight for plant growth. The term 'greenhouse facility' includes the actual greenhouse rooms or compartments for growing plants plus all immediately contiguous hallways and headhouse areas, and is considered part of the confinement area."

93b. "The floor may be of gravel or other porous material but, at a minimum, impervious (e.g., concrete) walkways are recommended."

93c. "Windows and other openings in the walls and roof of the greenhouse compartments may be open for ventilation as needed for proper operation and require no special barrier to contain or exclude pollen, microorganisms, or small flying animals (e.g., insects, birds). Screens to exclude the latter are, however, utilized in most standard greenhouses and are recommended."

94. "Appendix P–II–B, *BL2–P (Biosafety Level 2—plants).*"

95. "Appendix P–II–B–1, *Standard Practices—BL2–P.*"

96. "Access to the greenhouse is limited or restricted at the discretion of the principal investigator to individuals directly involved in the experiments when they are in progress."

97. "Personnel are required to read instructions on BL2–P greenhouse practices and procedures and to follow them."

98. "All procedures are performed in accordance with accepted greenhouse practices appropriate to the experimental organisms. A greenhouse

practices manual is prepared to describe these practices. It should advise personnel of potential consequences if practices are not followed and outline contingency plans in the event containment loss results in release of organisms with recognized potential for serious detrimental impact."

99. "A log is kept to experimental plants, microorganisms, or small animals that are brought into or removed from the greenhouse facility. Materials containing experimental microorganisms that are brought into or removed from the greenhouse facility in a viable or intact state are transferred in a closed nonbreakable container."

100. "Experimental organisms are rendered biologically inactive by appropriate methods before disposal outside of the greenhouse facility. Decontamination of run-off water is not required. If part of the greenhouse is gravel or similar material, appropriate treatments should be made periodically to eliminate any organisms potentially entrapped by the gravel."

101. "Insects and other motile macroorganisms are housed in appropriate cages. If microorganisms, such as flying insects or nematodes, are released within the greenhouse, precautions are taken to minimize escape from the facility."

102. "A program is utilized to control undesired species, such as weed, rodent, or insect pests and pathogens, by methods appropriate to the organisms and in accordance with applicable State and Federal laws."

103a. "A sign incorporating the universal biohazard symbol and the name of the recombinant DNA-modified organism is posted on greenhouse access doors. The presence of organisms having a recognized potential for serious detrimental impacts to managed or natural ecosystems should also be indicated on these signs when used in the greenhouse."

103b. "Experiments involving other organisms which require a containment level lower than BL2–P may be conducted in the same greenhouse concurrently with those requiring the BL2–P level provided all work is conducted in accordance with BL2–P greenhouse practices."

104. "Appendix P–II–B–2, *Facilities—BL2–P*."

105. "The term 'greenhouse' refers to a permanent structure with walls, roof, and floor designed and utilized principally for growing plants in a controlled and protected environment. Walls and roof are usually constructed of transparent or translucent material to allow passage of sunlight for plant growth."

106a. "A greenhouse floor of an impervious material such as concrete is recommended, but gravel or other porous material under benches is acceptable unless propagules of experimental organisms are readily disseminated through soil."

106b. "Windows and other openings in the walls and roof of the greenhouse compartments may be open for ventilation as needed for proper operation if fitted with No. 30 mesh (or finer) fly screens to exclude small flying animals (e.g., insects, birds). No special barrier to contain pollen or microorganisms is required."

107. "If intake fans are used, measures must be taken to minimize the ingress of insects. Louvers or fans shall be constructed so as not to open unless the fan is in operation."

108. "An autoclave for treatment of contaminated greenhouse materials is available in the facility."

109. "BL2–P greenhouse containment requirements can be satisfied by using a growth chamber or growth room within a building, provided that the external physical structure limits access and escape of macroorganisms in a manner that satisfies the intent of the foregoing clauses."

110. "Appendix P–II–C, *BL3–P (Biosafety Level 3—plants)*."

111. "Appendix P–II–C–1, *Standard Practices—BL3–P*."

112a. "Access to the greenhouse is restricted to individuals whose presence is required for program or support purposes and are authorized to enter. The principal investigator has the final responsibility for assessing each circumstance and determining the individuals to be authorized."

112b. "Personnel are required to read instructions on BL3–P practices and to follow them."

113a. "All practices are in accordance with practices appropriate to the experimental organism(s). A greenhouse practices manual is prepared to describe these practices. It should advise personnel of potential consequences if practices are not followed and outline contingency plans in the event containment loss results in the release of organisms with recognized potential for serious detrimental impact."

113b. "A log is kept of experimental plants, microorganisms, or small animals that are brought into or removed from the greenhouse facility. Materials containing experimental microorganisms to be brought into or removed from the greenhouse facility in a viable or intact state are transferred in a nonbreakable sealed secondary container. The surface of the secondary container is decontaminated prior to removal from the greenhouse by passage through a chemical disinfectant or fumigation chamber, or by an alternative procedure demonstrated to be effective against the experimental organism, if at the time of transfer the same plant species, hosts, or vectors are present within the effective dissemination distance of propagules of the experimental organism(s)."

114. "All experimental materials, except those that are to remain in a viable or intact state for experimental purposes, are sterilized in an autoclave or rendered biologically inactive by an alternate effective method before removal from and disposal outside of the greenhouse facility. This includes water that comes in contact with experimental microorganisms or with material exposed to them, as well as all contaminated equipment and supplies."

115. "A program is implemented to control undesired species, such as weed, rodent, or insect pests and pathogens, by methods appropriate to the organisms and in accordance with applicable State and Federal laws."

116. "Insects and other motile macroorganisms are housed in cages appropriate to the organisms and experiments are conducted within cages designed to contain the motile organisms."

117. "A sign incorporating the universal biohazard symbol and the name of the recombinant DNA-modified organism is posted on greenhouse access doors. The presence of organisms having a recognized potential for serious detrimental impacts to managed or natural ecosystems should also be indicated on these signs when used in the greenhouse."

118. All procedures are performed carefully to minimize the creation of aerosols and excessive splashing of potting material/soil during watering, transplanting and all experimental manipulations."

119. Disposable clothing or solid front or wrap-around gown, scrub suit, or other appropriate clothing is worn in the greenhouse if deemed necessary by the principal investigator because of potential dissemination of the experimental microorganism(s), and removed upon exit from the greenhouse. The protective clothing worn in the greenhouse is decontaminated prior to laundering or disposal. Personnel thoroughly wash their hands upon exiting the greenhouse."

120. Experiments involving other organisms which require a containment level lower than BL3–P may be conducted in the same greenhouse concurrently with those requiring the

BL3–P level provided all work is conducted in accordance with BL3–P greenhouse practices.

121. "Appendix P–II–C–2, *Facilities—BL3–P*."

122. "The term 'greenhouse' refers to a permanent structure with walls, roof, and floor designed and utilized principally for growing plants in a controlled and protected environment. Walls and roof are usually constructed of transparent or translucent material to allow passage of sunlight for plant growth. The term 'greenhouse facility' includes hallways and headhouse areas immediately contiguous to the actual greenhouse rooms or compartments for growing plants, and is considered part of the containment area."

123. "The floor of the greenhouse is of concrete or other impervious material with provision for collection and decontamination of liquid run-off."

124. "Windows are closed and sealed. All glazing is resistant to breakage. The need to maintain negative pressure should be considered when constructing or renovating the greenhouse."

125. "The greenhouse is a permanent, closed, self-contained structure with a continuous covering which is separated from areas open to unrestricted traffic flow. The greenhouse has impervious floors, such as concrete, with provision for collection and decontamination of liquid run-off. The need to maintain negative pressure should be considered when constructing or renovating the greenhouse. Passage through two sets of lockable self-closing doors is the basic requirement for entry into the greenhouse."

126. "The greenhouse facility is surrounded by a security fence or is protected by an equivalent means of security."

127. "The internal walls, ceilings, and floors are resistant to penetration by liquids and chemicals to facilitate cleaning and decontamination of the area. All penetrations in these structures and surfaces, such as plumbing and utilities, are sealed."

128. "It is recommended that bench tops and other work surfaces have seamless surfaces impervious to water and resistant to acids, alkalis, organic solvents, and moderate heat."

129. "A hand-washing facility is located near the greenhouse exit door."

130. "An autoclave for decontaminating materials is available within the facility. A double door autoclave for decontaminating materials passing out of the facility is recommended, but not required."

131. "Vacuum lines are protected with high efficiency particulate air (HEPA) or equivalent filters and liquid disinfectant traps."

132. "An individual supply and exhaust air ventilation system is provided. The system maintains pressure differentials and directional airflow as required to assure flows inward from areas outside the greenhouse."

133a. "The exhaust air from the facility is filtered through HEPA filters and discharged to the outside. The filter chambers are designed to allow *in situ* decontamination before filters are removed and to facilitate certification testing after they are replaced. Air supply filters shall be 80–85% average efficiency by the ASHRAE Standard 52–68 test method using atmosphere dust. Air supply fans are equipped with backflow damper that will close when the air supply fan is off. The supply and exhaust airflow is interlocked to assure inward (or zero) airflow at all times."

133b. "The BL3–P greenhouse containment requirement can be met by a growth chamber or growth room within a building, provided that the location, access, airflow patterns, and provisions for decontamination of experimental materials and supplies meet the intent of the foregoing clauses of the present section."

134. "Appendix P–II–D, *BL4–P (Biosafety Level 4—plants)*."

135. "Appendix P–II–D–1, *Standard Practices—BL4–P*."

136. "Only persons whose presence in the greenhouse is required for program or support purposes are authorized to enter. The principal investigator has the final responsibility for assessing each circumstance and determining who may enter or work in the greenhouse during experiments. Access to the facility is limited by means of secure, locked doors; accessibility is managed by the greenhouse director, local biosafety officer, or other person responsible for physical security of the facility. Before entering, persons are advised of the potential environmental hazards and instructed in appropriate safeguards for ensuring environmental safety. Persons authorized to enter the facility comply with the instructions and all other applicable entry and exit procedures. A record of all personnel indicating the date and time of each entry and exit is maintained."

137. "Personnel enter and leave the facility only through the clothing change and shower rooms. Personnel shower each time they leave the facility. Personnel use the airlocks to enter or leave the laboratory only in an emergency. During an emergency, every reasonable effort should be made to prevent the possible transport of viable propagules from containment."

138. "A greenhouse operations manual is prepared and adopted. The manual includes contingency plans to be implemented in the event of the unintentional release of experimental organisms. Personnel are required to read instructions on practices and procedures and to follow them."

139. "A warning sign incorporating the universal biohazard symbol is posted on all access doors. The sign identifies the plants, microorganisms, and animals in use, lists the name of the principal investigator, greenhouse director, or other responsible person(s) and indicates any special requirements for entering the area."

140. "Experimental materials to be brought into or to be removed from the greenhouse in a viable or intact state are put in a nonbreakable, sealed primary container and then enclosed in a nonbreakable, sealed secondary container which is removed from the facility through a chemical disinfectant or fumigation chamber, or an airlock designed for this purpose. A log is kept of all experimental material entering and leaving the greenhouse."

141. "Supplies and materials needed in the facility are brought in by way of the double-doored autoclave, fumigation chamber, or airlock which is appropriately decontaminated between each use. After securing the outer doors, personnel within the facility retrieve the materials by opening the interior door of the autoclave, fumigation chamber, or airlock. These doors are secured after materials are brought into the facility."

142. "No materials, except for experimental materials that are to remain in a viable or intact state, are removed from the maximum containment greenhouse unless they have been autoclaved. Equipment or material which might be damaged by high temperatures or steam is decontaminated by other methods such as gaseous or vapor methods in an airlock or chamber designed for this purpose."

143. "Water that comes in contact with experimental material treated with microorganisms (e.g., run-off from watering plants) is collected and decontaminated before disposal."

144. "Standard microbiological procedures are followed for decontamination of contaminated equipment and materials. Spray or liquid waste or rinse water from containers used to apply the experimental microorganisms shall be decontaminated before disposal."

145. "Street clothing is removed in the outer clothing change room and kept there. Complete laboratory clothing (may be disposable) including undergarments, pants, and shirts or jumpsuits, shoes, and hats is provided and worn by all personnel entering the facility. When leaving the laboratory and before proceeding into the shower area, personnel remove their laboratory clothing and store it in a locker or hamper in the inner change room. All laboratory clothing must be autoclaved before laundering."

146. "Greenhouse accidents involving inadvertent release or spills of microorganisms are reported immediately to the laboratory director and other authorities as appropriate. Written records of such accidents are prepared and maintained."

147. "Insects or other microorganisms used in conjunction with experiments requiring BL4–P level physical containment shall be housed in appropriate cages. When appropriate to the organism, experiments are conducted within cages designed to contain the motile organism."

148. "A chemical control program is implemented to eliminate undesired pests and pathogens in accordance with state and federal laws."

149. "Experimental microorganisms assigned to a containment level lower than BL4–P may be tested in a BL4–P greenhouse concurrently with microorganisms assigned to BL4–P provided that the tests are conducted in accordance with BL4–P greenhouse practices. When the experimental microorganisms in use require a containment level lower than BL4–P, greenhouse practices will reflect the level of containment required by the highest containment level microorganisms being tested."

150. "Appendix P–II–D–2, *Facilities—BL4–P.*"

151. "The maximum containment greenhouse facility consists of either a separate building or a clearly demarcated and isolated zone within a building. The need to maintain negative pressure should be considered when constructing or renovating the facility. Access doors to the greenhouse are self-closing and lockable. Outer and inner change rooms separated by a shower are provided for personnel entering and leaving the facility. A double-doored autoclave, fumigation chamber, or ventilated airlock is provided for passage of those materials, supplies, or equipment which are not brought into the facility through the change room."

152. "The greenhouse facility is surrounded by a security fence or is protected by an equivalent means of security."

153. "Walls, floor, and ceiling of the greenhouse are constructed to form a sealed internal shell which facilitates fumigation and is animal and insect proof. These internal surfaces are resistant to penetration and degradation by liquids and chemicals, thus facilitating cleaning and decontamination of the area. All penetrations (plumbing, utilities) in these structure and surfaces are sealed. Sewer vents and other ventilation lines contain HEPA filters. HEPA filter must be certified annually."

154. "It is recommended that bench tops and other work surfaces have seamless surfaces impervious to water and resistant to acids, alkalis, organic solvents, and moderate heat."

155. "A double-doored autoclave is provided for decontaminating materials passing out of the facility. The autoclave door which opens to the area external to the facility is sealed to the outer wall and automatically controlled so that the outside door can only be opened after the autoclave "sterilization" cycle has been completed."

156. "A pass-through dunk tank fumigation chamber, or an equivalent decontamination method is provided so that materials and equipment that cannot be decontaminated in the autoclave can be safely removed from the facility."

157. "Liquid effluents from sinks, floors, and autoclave chambers are decontaminated by heat or chemical treatment before being released from the maximum containment facility. Liquid wastes from shower rooms and toilets may be decontaminated with chemical disinfectants or by heat in the liquid waste decontamination system. The procedure used for autoclaving or chemically decontaminating liquid wastes is evaluated by appropriate standard procedures for autoclaved wastes. The procedure is evaluated mechanically and biologically by using a recording thermometer and an indicator microorganism with a defined heat susceptibility pattern. If liquid wastes are decontaminated with chemical disinfectants, the chemical used is of demonstrated efficacy against the target or indicator microorganisms."

158. "If there is a central vacuum system, it does not serve areas outside the facility. In-line HEPA filters are placed as near as practicable to each use point or vacuum service cock. Other liquid and gas services to the facility are protected by devices that prevent backflow. HEPA filters must be certified annually."

159. Windows are closed and sealed. All glazing is resistant to breakage (e.g., double pane tempered glass or equivalent)."

160. "An individual supply and exhaust air ventilation system is provided. The system maintains pressure differentials and directional airflow as required to assure flows inward from areas outside of the greenhouse. Differential pressure transducers are used to sense pressure levels. If a system malfunctions, the transducers sound an alarm. A backup source of electricity is provided to run the air handling equipment if the main power source should fail. The supply and exhaust airflow is interlocked to assure inward (or zero) airflow at all times. The integrity of the greenhouse must have an air leak rate (decay rate) not to exceed 7% per minute (logarithm of pressure against time) over a 20-minute period at 2" of water gauge pressure. Nominally, this is 0.05" of water gauge pressure loss in 1 minute at 2" water gauge pressure."

161. "The exhaust air from the facility is filtered through HEPA filters and discharged to the outside so that it is dispersed away from occupied buildings and air intakes. The filter chambers are designed to allow *in situ* decontamination before filters are removed and to facilitate certification testing after they are replaced. HEPA filters are provided to treat air supplied to the facility. HEPA filters must be certified annually."

162. "Appendix P–III, *Biological Containment Practices.*"

163. "An appropriate selection of the following biological containment practices can be used to meet the containment requirements for a given organism. The present list is not exhaustive and there may be other ways of preventing effective dissemination, by which is meant dissemination leading to the establishment in the environment of the organism or its genetic material with deleterious consequences to managed or natural ecosystems."

164. "Appendix P–III–A, *Plants.* Effective dissemination of plants by pollen or seed can be prevented by one or more of the following:"

165. "Covering reproductive structures to prevent pollen dissemination at flowering and seed dissemination at maturity."

166. Removing reproductive structures, employing male sterile strains or terminating the experiment and harvesting the plant material prior to the reproductive stage."

167. "Ensuring that the experimental plants flower at a time of year when no

cross-fertile plant is flowering within the normal pollen dispersal range of the experimental plant."

168. Ensuring that no cross-fertile plant is growing within the experimental plant's known pollen dispersal range."

169. "Appendix P–III–B. *Microorganisms.* Effective dissemination of microorganisms beyond the confines of the greenhouse can be prevented by one or more of the following:"

170. "Confining all operations to injections of microorganisms or other biological procedures, including genetic manipulation, that limit replication or reproduction of viruses and microorganisms, or sequences derived from microorganisms, to internal plant parts or adherent surfaces of plants."

171. "Ensuring that no organism that can serve as a host or promote the transmission of the virus or microorganism is present within a distance that the airborne virus or microorganism may be expected to be disseminated."

172. "Carrying out the experiment at a time of year when plants that can serve as a host are either not growing or are not susceptible to productive infection."

173. "Using viruses and other microorganism (or their genomes) with insect or animal vectors in the absence of the vectors."

174. Using microorganisms that have an obligate association with the plant."

175. "Using microorganism that are genetically disabled to minimize survivial outside of the research facility, or whose natural mode of transmission requires injury of the target organism or in some other way assures that inadvertent release is unlikely to initiate a productive infection of organisms outside of the experimental facility."

176. "Appendix P–III–C, *Microorganisms.* Effective dissemination of insects and other small animals can be prevented in the following way:"

177. "Insects: using non-flying, flight-impaired or sterile insects."

178. "Other animals: using non-motile or sterile strains."

179. "Conducting the experiment at a time of year that precludes the survival of escaping organisms."

180. "Effluent treatment: collecting run-off water and allowing it to evaporate or treating it chemically to prevent escape of organisms with run-off water."

181. "Using animals that have an obligate association with a plant that is not present within the organism's dispersal range."

182. "Appendix Q."

183. "Appendix Q, *Physical and Biological Containment for Recombinant DNA Research Involving Animals.*"

184. "This appendix of the NIH Guidelines specifies containment and confinement practices for research involving recombinant DNA molecules in animals or for microorganisms associated with animals. All provisions of the NIH Guidelines shall apply to animal research activities with the following modifications:"

185. "Appendix Q shall replace Appendix G when the research animals are of a size or have growth requirements that preclude the use of containment for laboratory animals. Some animals may require other types of containment (4). The animals covered in Appendix Q are those species normally categorized as animals including but not limited to cattle, swine, sheep, goats, horses, and poultry."

186. "The Institutional Biosafety Committee (IBC) shall include at least one scientist with expertise in animal containment principles when experiments utilizing Appendix Q require IBC prior approval."

187. "The institution shall establish and maintain a health surveillance program for personnel engaged in animal research involving viable recombinant DNA-containing microorganisms which require BL3 or greater containment in the laboratory."

188. "Appendix Q–1, *General Consideration.*"

189. "Appendix Q–1–A, *Containment Levels.* The containment levels required for research involving recombinant DNA molecules in or associated with animals is based on classification of experiments in Section III of the NIH Guidelines. For the purpose of animal research, four levels of containment are established. These are referred to as BL1–N, BL2–N, BL3–N, and BL4–N and are described in the following sections of Appendix Q. The descriptions include: (1) standard practices, (2) special practices for physical and biological containment, and (3) special animal containment facilities."

190. "Appendix Q–I–B, *Disposal of Animals.*"

191. "When an animal covered by Appendix Q containing recombinant DNA or a recombinant DNA-derived organism is euthanized or dies, the carcass must be disposed of to avoid its use as food for human beings or animals unless food use is specifically authorized by an appropriate Federal agency. A record must be maintained of the experimental use and disposal of each animal or group of animals for three years."

192. "Appendix Q–II, *Physical and Biological Containment Levels.*"

193. "Appendix Q–II–A, *Biosafety Level 1 for Animals—BL1–N.*"

194. "Appendix Q–II–A–1, *Standard Practices—BL1–N.*"

195. "Appendix Q–II–A–1–a. Access to the containment area shall be limited or restricted when experimental animals are being held."

196. "Appendix Q–II–A–1–b. All genetically engineered neonates will be permanently marked within 72 hours after birth, if their size permits. If their size does not permit marking, their containers should be marked. In addition, transgenic animals should contain distinct assayable DNA sequences which allow identification of transgenic animals from among non-transgenic animals."

197. "Appendix Q–II–A–2, *Special Practices—BL1–N.*"

198. "Appendix Q–II–A–2–a. The containment areas will be locked."

199. "Appendix Q–II–A–2–b. The containment area will be patrolled or monitored at frequent intervals."

200. "Appendix Q–II–A–2–c. A double barrier shall be provided to separate male(s) and female(s) animals, unless reproductive studies are part of the experiment or other measures are taken that avoid reproductive transmission."

201. "Appendix Q–II–A–2–d. Reproductive incapacitation can be utilized if needed."

202. "Appendix Q–II–A–2–e. The animal containment area shall be in accordance with Federal law and animal care requirements."

203. "Appendix Q–II–A–3, *Special Animal Facilities—BL1–N.* Animals must be confined in securely fenced areas or otherwise confined but do not have to be in enclosed structures (animal rooms) to minimize the possibility of theft or unintentional release."

204. "Appendix Q–II–B, *Biosafety Level 2 for Animals—BL2–N.*"

205. "Appendix Q–II–B–1, *Standard Practices—BL2–N.*"

206. "Appendix Q–II–B–1–a. All genetically engineered neonates will be permanently marked within 72 hours after birth, if their size permits. If their size does not permit marking, their containers should be marked. In addition, transgenic animals should contain distinct and biochemically assayable DNA sequences which allow identification of transgenic animals from among non-transgenic animals.

207. "Appendix Q–II–B–1–b. Appropriate steps should be taken to

prevent horizontal transmission or exposure of laboratory personnel. If the agent used as vector is known to be transmitted by a particular route, such as an arthropod, special attention should be given to preventing spread by that route. In the absence of specific knowledge of a particular route of transmission, all potential means of horizontal transmission, such as arthropods, contaminated bedding, or animal waste, etc., should be prevented."

208. "Appendix Q–II–B–1–c. Eating, drinking, smoking, and applying cosmetics are not permitted in the work area."

209. "Appendix Q–II–B–1–d. Persons shall wash their hands after handling materials involving organisms containing recombinant DNA molecules and animals, and when they leave the containment area."

210. "Appendix Q–II–B–2, *Special Practices—BL2–N.*"

211. "Appendix Q–II–B–2–a. The containment areas will be locked."

212. "Appendix Q–II–B–2–b. The containment area will be patrolled or monitored at frequent intervals."

213. "Appendix Q–II–B–2–c. A double barrier shall be provided to separate male(s) and female(s) animals, unless reproductive studies are part of the experiment or other measures are taken that avoid reproductive transmission."

214. "Appendix Q–II–B–2–d. Reproductive incapacitation can be utilized if needed."

215. "Appendix Q–II–B–2–e. The containment building will be controlled and have a lockable access."

216. "Appendix Q–II–B–2–f. Contaminated materials that are to be decontaminated at a site away from the laboratory shall be placed in a durable leakproof container which shall be closed before being removed from the laboratory."

217. "Appendix Q–II–B–2–g. The director shall establish policies and procedures whereby only persons who have been advised of the potential hazard and who meet any specific entry requirements (e.g., vaccination) may enter the laboratory or animal rooms."

218. "Appendix Q–II–B–2–h. When the animal research requires special provisions for entry (e.g., vaccination), a hazard warning sign incorporating the universal biohazard symbol shall be posted on all access doors to the animal work area."

219. "The hazard warning sign shall identify the agent, animal species, list the name and telephone number of the director or other responsible person(s), and indicate the special requirement(s) for entering the laboratory."

220. "Appendix Q–II–B–2–i. Laboratory coats, gowns, smocks, or uniforms shall be worn while in the animal area or attached laboratory. Before leaving for nonlaboratory areas (e.g., cafeteria, library, administrative offices), this protective clothing shall be removed and left in the work entrance area.

221. "Appendix Q–II–B–2–j. Animals of the same or different species not involved in the work being performed shall not be permitted in the animal area."

222. "Appendix Q–II–B–2–k. Special care shall be taken to avoid skin contamination with microorganisms containing recombinant DNA. Impervious and/or protective gloves shall be worn handling experimental animals and when skin contact with the infectious agent is unavoidable."

223. "Appendix Q–II–B–2–l. Hypodermic needles and syringes shall be used only for parenteral injection and aspiration of fluids from laboratory animals and diaphragm bottles. Only needle-locking syringes or disposable syringe-needle units (i.e., needle is integral to the syringe) shall be used for the injection or aspiration of fluids containing organisms that contain recombinant DNA. Extreme caution shall be used when handling needles and syringes to avoid autoinoculation and the generation of aerosols during use and disposal. Needles shall not be bent, sheared, replaced in the needle sheath or guard or removed from the syringe following use. The needles and syringe shall be promptly placed in a puncture-resistant container and decontaminated, preferably by autoclaving, before discard or reuse."

224. "Appendix Q–II–B–2–m. All incidences involving spills and accidents which result in environmental release or exposures of animals or laboratory workers to organisms containing recombinant DNA molecules shall be immediately reported to the director. Medical evaluation, surveillance, and treatment shall be provided as appropriate and written records shall be maintained. If necessary, the area will be appropriately decontaminated."

225. "Appendix Q–II–B–2–n. When appropriate and giving consideration to the agent(s) handled, baseline serum samples shall be collected and stored for animal care and other at-risk personnel. Additional serum specimens may be collected periodically depending on the agents handled or the function of the facility."

226. "Appendix Q–II–B–2–o. A biosafety manual shall be prepared or adopted. Personnel shall be advised of special hazards and shall be required to read instructions on practices and procedures and to follow them."

227. "Appendix Q–II–B–2–p. Biological materials to be removed from the animal containment area in a viable or intact state shall be transferred to a nonbreakable, sealed primary container and then enclosed in a nonbreakable, sealed secondary container. All containers, primary and secondary, shall be disinfected before removal from the facility. Advance approval for transfer of material must be obtained from the director. Such packages containing viable agents can only be opened in a facility having equivalent or higher physical containment unless the agent is biologically inactivated or is nonreproductive."

228. "Appendix Q–II–B–3, *Special Animal Facilities—BL2–N.*"

229. "Appendix Q–II–B–3–a. All animals shall be contained within an enclosed structure (animal room or equivalent) to avoid the possibility of theft or unintentional release and avoid access of arthropods. The special provision to avoid the entry or escape of arthropods from the animal areas may be waived if the agent in use is known not to be transmitted by arthropods."

230. "Appendix Q–II–B–3–b. The animal laboratory area shall be designed so that is can be easily cleaned."

231. "Appendix Q–II–B–3–c. Surfaces shall be impervious to water and resistant to acids, alkalis, organic solvents, and moderate heat."

232. "Appendix Q–II–B–3–d. If the building has windows that open, they shall be fitted with fly screens."

233. "Appendix Q–II–B–3–e. An autoclave for decontaminating laboratory wastes shall be available."

234. "Appendix Q–II–C, *Biosafety Level 3 for Animals—BL3–N.*"

235. "Appendix Q–II–C–1, *Standard Practices—BL3–N.*"

236. "Appendix Q–II–C–1–a. All genetically engineered neonates will be permanently marked within 72 hours after birth, if their size permits. If their size does not permit marking, their containers should be marked. In addition, transgenic animals should contain distinct and biochemically assayable DNA sequences which allow identification of transgenic animals among non-transgenic animals."

237. "Appendix Q–II–C–1–b. Appropriate steps should be taken to prevent horizontal transmission or exposure of laboratory personnel. If the agent used as vector is known to be transmitted by a particular, route, such as an arthropod, special attention

should be given to preventing spread by that route. In the absence of specific knowledge of a particular route of transmission, all potential means of horizontal transmission, including arthropods, contaminated bedding, or animal waste should be prevented."

238. "Appendix Q–II–C–1–c. Eating, drinking, smoking, and applying cosmetics are not permitted in the work area."

239. "Appendix Q–II–C–1–d. If experiments involving other organisms which require lower levels of containment are to be conducted in the same area concurrently with experiments requiring BL3–N containment, they shall be conducted in accordance with BL3–N practices."

240. "Appendix Q–II–C–1–e. Persons shall wash their hands after handling materials involving organisms containing recombinant DNA molecules and animals and when they leave the animal area."

241. "Appendix Q–II–C–1–f. Animal holding areas shall be decontaminated at least once a day and after any spill of viable material."

242. "Appendix Q–II–C–1–g. All procedures shall be performed carefully so as to minimize the creation of aerosols."

243. "Appendix Q–II–C–2. *Special Practices—BL3–N.*"

244. "Appendix Q–II–C–2–a. The containment areas will be locked."

245. "Appendix Q–II–C–2–b. The area will be patrolled or monitored at frequent intervals."

246. "Appendix Q–II–C–2–c. A double barrier shall be provided to separate male(s) and female(s) animals unless reproductive studies are part of the experiment or other measures are taken that avoid reproductive transmission. Reproductive incapacitation can be utilized if needed."

247. "Appendix Q–II–C–2–d. The containment building will be controlled and have a lockable access."

248. "Appendix Q–II–C–2–e. All animals must be euthanized at the end of their experimental usefulness and the carcasses shall be decontaminated before disposal in an approved manner. Documents regarding animal experimental use and disposal shall be maintained in a permanent log book."

249. "Appendix Q–II–C–2–f. The director shall establish policies and procedures whereby only persons who have been advised of the potential hazard and who meet any specific entry requirements (e.g., vaccination) and who comply with all entry requirements may enter the laboratory or animal rooms."

250. "Appendix Q–II–C–2–g. When the animal research requires special provisions for entry (e.g., vaccination), a hazard warning sign incorporating the universal biohazard symbol shall be posted on all access doors to the animal work area. The hazard warning sign shall identify the agent, animal species, list the name and telephone number of the director, or other responsible person(s) and indicate the special requirement(s) for entering the laboratory.

251. "Appendix Q–II–C–2–h. Full protective clothing that protects the individual (e.g., scrub suits, coveralls, uniforms) shall be worn in the animal area. Clothing shall not be worn outside the animal containment zone, and it shall be decontaminated before being laundered.

252. "Appendix Q–II–C–2–i. Animals of the same or different species not involved in the work being performed shall not be permitted in the animal area."

253. "Appendix Q–II–C–2–j. Special care shall be taken to avoid skin contamination with microorganisms containing recombinant DNA. Impervious and/or protective gloves shall be worn when handling experimental animals and when skin contact with the infectious agent is unavoidable.

254. "Appendix Q–II–C–2–k. Hypodermic needles and syringes shall be used only for parenteral injection and aspiration of fluids from laboratory animals and diaphragm bottles. Only needle-locking syringes or disposable syringe-needle units (i.e., needle is integral to the syringe) shall be used for the injection or aspiration of fluids containing organisms that contain recombinant DNA molecules. Extreme caution shall be used when handling needles and syringes to avoid autoinoculation and the generation of aerosols during use and disposal. Needles shall not be bent, sheared, replaced in the needle sheath or guard or removed from the syringe following use. The needle and syringe shall be promptly placed in a puncture-resistant container and decontaminated, preferably by autoclaving, before discard or reuse."

255. "Appendix Q–II–C–2–l. All incidences involving spills and accidents which result in environmental release or exposures of animals or laboratory workers to organisms containing recombinant DNA molecules shall be immediately reported to the laboratory director. Medical evaluation, surveillance, and treatment shall be provided as appropriate and written records shall be maintained. If necessary, the area will be appropriately decontaminated.

256. "Appendix Q–II–C–2–m. When appropriate, and giving consideration to the agent(s) handled, baseline serum samples shall be collected and stored for animal care and other at-risk personnel. Additional serum specimens may be collected periodically depending on the agents handled or the function of the facility."

257. "Appendix Q–II–C–2–n. A biosafety manual shall be prepared or adopted. Personnel shall be advised of special hazards and shall be required to read instructions on practices and procedures and to follow them."

258. "Appendix Q–II–C–2–o. Biological materials to be removed from the animal containment laboratory in a viable or intact state shall be transferred to a nonbreakable, sealed primary container and then enclosed in an nonbreakable, sealed secondary container. All containers, primary and secondary, shall be disinfected before removal from the facility. Advance approval for transfer of material must be obtained from the director. Such packages containing viable agents can only be opened in another BL3–N facility unless the agent is biologically inactivated or is nonreproductive. Special safety testing, decontamination procedures, and IBC approval are required to move agents or tissue/organ specimens from a BL3–N facility to one with a lower containment classification."

259. "Appendix Q–II–C–2–p. Animal room doors and gates or other closures shall be kept closed when experiments are in progress."

260. "Appendix Q–II–C–2–q. The work surfaces of containing equipment shall be decontaminated when work with organisms containing recombinant DNA molecules is finished. Where feasible, plastic-backed paper toweling shall be used on nonporous work surfaces to facilitate clean-up."

261. "Appendix Q–II–C–2–r. Molded surgical masks or respirators shall be worn in rooms containing experimental animals."

262. "Appendix Q–II–C–3, *Special Animal Facilities—BL3–N.*"

263. "Appendix Q–II–C–3–a. All animals shall be contained within an enclosed structure (animal room or equivalent) to avoid the possibility of theft or unintentional release and avoid access of arthropods. The special provision to avoid the entry or escape of arthropods from the animal areas may be waived if the agent in use in known not to be transmitted by arthropods."

264. "Appendix Q–II–C–3–b. The interior surfaces of walls, floors, and ceilings shall be impervious to water and resistant to acids, alkalis, organic

solvents, and moderate heat, so that they can be easily cleaned. Penetrations in these surfaces shall be sealed to facilitate decontaminating the area."

265. "Appendix Q–II–C–3–c. Windows in the laboratory shall be closed, sealed, and breakage resistant."

266. "Appendix Q–II–C–3–d. An autoclave for sterilizing animals and wastes shall be available, preferably within the containment area. If feasible, a double door autoclave is preferred and should be positioned to allow removal of material from the containment zone."

267. "Appendix Q–II–C–3–e. The animal area shall be separated from all other areas. Passage through two sets of doors is the basic requirement for entry into the animal area from access corridors or other contiguous areas. Physical separation of the animal containment area from access corridors or other laboratories or activities will be provided by a double-doored clothes change room, equipped with integral showers and airlock."

268. "Appendix Q–II–C–3–f. Liquid effluent from containment equipment, sinks, biological safety cabinets, animal rooms, primary barriers, floor drains, and sterilizers are decontaminated by heat treatment before being released into sanitary system(s). The procedure used for heat decontamination of liquid wastes is to be monitored with a recording thermometer. The waste is to be monitored for biological activity by introducing an appropriate indicator microorganism with a defined heat susceptibility pattern, and culturing samples of treated waste for presence of the organism."

269. "Appendix Q–II–C–3–g. All perimeter joints and opening must be sealed to form an insect-proof structure."

270. "Appendix Q–II–C–3–h. Access doors to the containment area shall be self-closing."

271. "Appendix Q–II–C–3–i. An exhaust air ventilation system is provided. This system creates directional airflow that draws air into the animal room through the entry area. The building exhaust can be used for this purpose if the exhaust air is not recirculated to any other area of the building, is discharged to the outside, and is dispersed away from occupied areas and air intakes. Personnel must verify that direction of the airflow (into the animal room) is proper. The exhaust air from the animal room that does not pass through biological safety cabinets or other primary containment equipment can be discharged to the outside without being filtered or otherwise treated. If the agent is transmitted by aerosol, then the exhaust air must pass through a HEPA filter. Heating, Ventilation, Air Conditioning (HVAC) supply and exhaust ducts should comply with the NIH Laboratory Safety Monograph or superseding volumes."

272. "Appendix Q–II–C–3–j. Vacuum lines shall be protected with high efficiency particulate air (HEPA) filters and liquid disinfectant traps."

273. "Appendix Q–II–C–3–k. In lieu of open housing in the special animal room, animals held in a BL3–N area may be housed in partial-containment caging systems, such as Horsfall units or gnotobiotic systems, or other special containment primary barriers. Prudent judgment must be exercised to implement this ventilation system and its discharge location and the animal species."

274. "Appendix Q–II–C–3–l. Each animal area shall contain a sink for handwashing. The sink shall be foot, elbow, or automatically operated and shall be located near the exit door."

275. "Appendix Q–II–C–3–m. Restraining devices for animals may be required to avoid damage to the integrity of the containment facility."

276. "Appendix Q–II–D. *Biosafety Level 4 for Animals—BL4–N.*"

277. "Appendix Q–II–D–1, *Standard Practices—BL4–N.*"

278. "Appendix Q–II–D–1–a. All genetically engineered neonates will be permanently marked within 72 hours after birth if their size permits. If their size does not permit marking, their containers should be marked. In addition, transgenic animals should contain distinct and biochemically assayable DNA sequences which allow identification of transgenic animals from among nontransgenic animals."

279. "Appendix Q–II–D–1–b. All contaminated liquid or solid wastes shall be decontaminated before disposal."

280. "Appendix Q–II–D–1–c. Eating, drinking, smoking, and applying cosmetics are not permitted in the work area."

281. "Appendix Q–II–D–1–d. If experiments involving other organisms which require lower levels of containment are to be conducted in the same area concurrently with experiments requiring BL4–N containment, they shall be conducted in accordance with BL4–N practices."

282. "Appendix Q–II–D–1–e. Persons shall wash their hands after handling materials involving organisms containing recombinant DNA molecules and animals, and when they leave the animal area."

283. "Appendix Q–II–D–1–f. Animal holding areas shall be decontaminated at least once a day and after any spill of viable material."

284. "Appendix Q–II–D–1–g. All procedures shall be performed carefully so as to minimize the creation of aerosols."

285. "Appendix Q–II–D–1–h. Persons under 18 years of age shall not be permitted to enter the animal area."

286. "Appendix Q–II–D–1–i. The work surfaces of containment equipment shall be decontaminated when work with organisms containing recombinant DNA molecules is finished. Where feasible, plastic-backed paper toweling shall be used on nonporous work surfaces to facilitate clean-up."

287. "Appendix Q–II–D–2, *Special Practices—BL4–N.*"

288. "Appendix Q–II–D–2–a. The containment areas will be locked."

289. "Appendix Q–II–D–2–b. The area will be patrolled or monitored at frequent intervals."

290. "Appendix Q–II–D–2–c. A double barrier shall be provided to separate male and female animals. Animal isolation barriers shall be sturdy and be accessible for cleaning."

291. "Appendix Q–II–D–2–d. Reproductive incapacitation can be utilized if needed."

292. "Appendix Q–II–D–2–e. The animal containment area shall be in accordance with Federal law and animal care requirements."

293. "Appendix Q–II–D–2–f. The containment building will be controlled and have a lockable access."

294. "Appendix Q–II–D–2–g. All wastes from animal rooms and laboratories shall be appropriately decontaminated before disposal."

295. "Appendix Q–II–D–2–h. No materials, except for biological materials that are to remain in a viable or intact state, shall be removed from the maximum containment laboratory unless they have been autoclaved or decontaminated. Equipment or material which might be damaged by high temperatures or steam shall be decontaminated by gaseous or vapor methods in an airlock or chamber designed for this purpose."

296. "Appendix Q–II–D–2–i. The director shall establish policies and procedures whereby only persons who have been advised of the potential hazard and who meet any specific entry requirements (e.g., vaccination) may enter the laboratory or animal room."

297. "Appendix Q–II–D–2–j. When the animal research requires special provisions for entry (e.g., vaccination), a hazard warning sign incorporating the universal biohazard symbol shall be posted on all access doors to the animal

work area. The hazard warning sign shall identify the agent, animal species, list the name and telephone number of the director, or other responsible person(s) and indicate the special requirement(s) for entering the laboratory."

298. "Appendix Q–II–C–2–k. Personnel shall enter and leave the facility only through the clothing change and shower rooms. Street clothing shall be removed in the outer clothing change room and kept there. Complete laboratory clothing, including undergarments, pants, and shirts or jumpsuits, and shoes shall be provided and used by all personnel entering the facility. When leaving the BL4–N zone and before proceeding into the shower area, personnel shall remove their laboratory clothing in the inner change room and with appropriate discard for sterilization. Personnel shall shower each time they leave the facility. Personnel shall use the airlocks to enter or leave the laboratory only in an emergency."

299. "Appendix Q–II–D–2–l. When personnel ventilated suits are required, the animal personnel shower entrance/exit zone will be equipped with a chemical disinfectant shower to decontaminate the surface of the suit before the worker leaves the area. A neutralization or water dilution device will be integral with the chemical desinfectant discharge piping before it enters the heat sterilization system. Entry to this area is through an airlock fitted with airtight doors."

300. "Appendix Q–II–D–2–m. The ventilated head hood or a one-piece positive pressure suit that is ventilated by a life-support system shall be worn by all personnel entering the rooms containing experimental animals when appropriate."

301. "Appendix Q–II–C–2–n. The life support system for the ventilated suit or head hood will be equipped with alarms and emergency back-up breathing air tanks. The exhaust air from the suit area is filtered by two sets of HEPA filters installed in series or incinerated. A duplicate filtration unit, exhaust fan, and an automatically starting emergency power source are provided. The air pressure within the suit area is to be greater than that of any adjacent area. Emergency lighting and communication systems are provided. A double-doored autoclave is provided for decontaminating waste materials to be removed from the suit area."

302. "Appendix Q–II–D–2–o. Hypodermic needles and syringes shall be used only for parenteral injection and aspiration of fluids from laboratory animals and diaphragm bottles. Only needle-locking syringes or disposable syringe-needle units (i.e., needle is integral to the syringe) shall be used for the injection or aspiration of fluids containing organisms that contain recombinant DNA molecules. Extreme caution shall be used when handling needles and syringes to avoid autoinoculation and the generation of aerosols during use and disposal. Needles shall not be bent, sheared, replaced in the needle sheath or guard or removed from the syringe following use. The needles and syringe shall be promptly placed in a puncture-resistant container and decontaminated, preferably by autoclaving, before discard or reuse."

303. "Appendix Q–II–D–2–p. A system shall be set up for reporting laboratory accidents and exposures which result in overt exposures to organisms containing recombinant DNA molecules, employee absenteeism and for the medical surveillance of potential laboratory-associated illnesses. Written records are prepared and maintained. An essential adjunct to such a reporting-surveillance system is the availability of a facility for quarantine, isolation, and medical care of personnel with potential or known laboratory-associated illnesses."

304. "Appendix Q–II–D–2–q. When appropriate with giving consideration to the agents handled, baseline serum samples shall be collected and stored for animal care and other at-risk personnel. Additional serum specimens may be collected periodically depending on the agents handled or the function of the facility."

305. "Appendix Q–II–D–2–r. A biosafety manual shall be prepared or adopted. Personnel shall be advised of special hazards and shall be required to read instructions on practices and procedures and to follow them."

306. "Appendix Q–II–D–2–s. Biological materials to be removed from the animal maximum containment laboratory in a viable or intact state shall be transferred to a nonbreakable, sealed primary container and then enclosed in a nonbreakable, sealed secondary container which shall be removed from the facility through a disinfectant dunk tank, fumigation chamber, or an airlock designed for this purpose. Advance approval for transfer of material must be obtained from the director. Such packages containing viable agents can only be opened in another BL4–N facility unless the agent is biologically inactivated or is nonreproductive. Special safety testing, decontamination procedures, and IBC approval are required to move agents or tissue/organ specimens from a BL4–N facility to one with a lower containment classification."

307. "Appendix Q–II–D–2–t. Animal room doors and gates shall be kept closed when experiments are in progress."

308. "Appendix Q–II–D–2–u. Molded surgical masks or respirators shall be worn in rooms containing experimental animals."

309. "Appendix Q–II–D–2–v. Vacuum lines shall be protected with high efficiency particulate air (HEPA) filters and liquid disinfectant traps."

310. "Appendix Q–II–D–2–w. A log book signed by all personnel shall indicate the date and time of each entry and exit."

311. "Appendix Q–II–D–2–x. Supplies and materials needed in the facility shall be brought in by way of the double-doored autoclave, fumigation chamber, or airlock which is appropriately decontaminated between each use. After securing the outer doors, personnel within the facility shall retrieve the materials by opening the interior doors of the autoclave, fumigation chamber, or airlock. These doors shall be secured after materials are brought into the facility."

312. "Appendix Q–II–D–3, *Special Animal Facilities—BL4–N.*"

313. "Appendix Q–II–D–3–a. All animals shall be contained within an enclosed structure (animal room or equivalent) to minimize the possibility of theft or unintentional release and avoid access of nonexperimental arthropods."

314. "Appendix Q–II–C–3–b. The interior surfaces of walls, floors, and ceilings shall be impervious to water and resistant to acids, alkalis, organic solvents, and moderate heat so that they can be easily cleaned. Penetrations in these surfaces shall be sealed to facilitate decontaminating the area."

315. "Appendix Q–II–D–3–c. Windows in the laboratory shall be closed, sealed, and breakage resistant."

316. "Appendix Q–II–D–3–d. An autoclave, incinerator, or other effective means to decontaminate animals and wastes shall be available, preferably within the containment area. If feasible, a double-door autoclave is preferred and positioned to allow removal of material from the containment zone."

317. "Appendix Q–II–D–3–e. Liquid effluent from containment equipment, sinks, biological safety cabinets, animal rooms, primary barriers, floor drains, and sterilizers is decontaminated by heat treatment before being released into sanitary system(s). Liquid wastes from shower rooms and toilets may be decontaminated with chemical

disinfectants or by heat in the liquid waste decontamination system by methods shown to be effective. The procedure used for heat decontamination of liquid wastes is to be monitored with a recording thermometer and waste is to be monitored for biological activity by introducing an appropriate indicator microorganism with a defined heat susceptibility pattern, and culturing samples of treated waste for presence of the organism. If liquid wastes from the shower room are decontaminated with chemical disinfectants, the chemical used is of demonstrated efficiency against the target or indicator microorganisms. Chemical disinfectants must be neutralized or diluted before release into general effluent waste systems."

318. "Appendix Q–II–D–3–f. All equipment and floor drains will be equipped with deep traps (minimally 5 inches). Floor drains will be fitted with isolation plugs or fitted with automatic water fill devices."

319. "Appendix Q–II–D–3–g. All perimeter joints and openings must be sealed to form an insect-proof structure."

320. "Appendix Q–II–D–3–h. Access doors to the containment area shall be self-closing."

321. "Appendix Q–II–D–3–i. The BL4–N laboratory shall provide a double barrier to prevent the release of recombinant DNA containing microorganisms into the enviornment. Design of the facility will provide that, should the barrier of the inner facility be breached, the outer barrier will prevent release into the environment. The animal area shall be separated from all other areas. Passage through two sets of doors is the basic requirement for entry into the animal area from access corridors or other contiguous areas. Physical separation of the animal containment area from access corridors or other laboratories or activities will be provided by a double-doored clothes change room equipped with integral showers and airlock."

322. "Appendix Q–II–D–3–j. A necropsy room will be provided within the BL4–N containment area."

323. "Appendix Q–II–D–3–k. Each animal area shall contain a sink for handwashing. The sink shall be foot, elbow, or automatically operated and shall be located near the exit door."

324. "Appendix Q–II–D–3–l. A ducted exhaust air ventilation system shall be provided. This system shall create directional airflow that draws air into the laboratory through the entry area. The exhaust air shall not be recirculated to any other area of the building, shall be discharged to the outside, and shall be dispersed away from the occupied areas and air intakes. Personnel must verify that the direction of the airflow (into the animal rooms) is proper."

325. "Appendix Q–II–D–3–m. Exhaust air from BL4–N containment zone must be double HEPA filtered or treated by passing through a certified HEPA filter and an air incinerator before release to the atmosphere. Double HEPA filters are required in the supply air system in a BL4–N containment zone. Heating Ventiliation Air Conditioning (HVAC) supply and exhaust ducts and filter housing should comply with the NIH Laboratory Safety Monograph or supeseding volumes."

326. "Appendix Q–II–D–3–n. Restraining devices for animals may be required to avoid damage to the integrity of the containment facility."

327. "Appendix Q–II–D–3–o. All HEPA filters' frames and housings must be certified to have nodetectable smoke [dioctylphthalate (DOP)] leaks when the exit face (direction of flow) of the filter is scanned above 0.01 percent when measured by a linear or logarithmic photometer. The instrument shall have a threshold sensitivity of at least 1×10^{-3} micrograms per liter for 0.3 micrometer diameter DOP particles and a challenge concentration of 80–120 micrograms per liter. The air sampling rate should be at least 1 cfm (28.3 liters per minute)."

328. "Appendix Q–II–D–3–p. If an air incinerator is used in lieu of the second HEPA filter(s), it must be biologically challenged to prove all viable test agents are sterilized. The biological challenge must be minimally 1×10^{8} organisms per cubic foot of airflow through the incinerator. It is universally accepted if bacterial spores are used to challenge and verify that the equipment is capable of sterilizing spores then assurance is provided that all other known agents will also be sterilized by the parameters established to operate the equipment. Test spores meeting this criterion are *Bacillus subtilis var. Niger* or *Bacillus Stearothermophilis*. The operating temperature of the incinerator shall be continously monitored and recorded during use."

329. "Appendix Q–II–D–3–q. The supply water distribution system must be fitted with a backflow preventer or break tank."

330. "Appendix Q–II–D–3–r. All utilities, liquid and gas services, are protected with devices that avoid backflow."

331. "Appendix Q–II–D–3–s. Sewer and other atmospheric ventilation lines must be equipped with minimally a single HEPA filter. Condensate drains from these type housings must be appropriately connected to a contaminated or sanitary drain system. The drain position in the housing will dictate which system is to be used."

332. "Appendix Q–III, *Footnotes and References for Appendix Q."*

333. "[1] If recombinant DNA is derived from a Class 2 organism requiring BL2 for laboratory research, personnel shall have specific training in handling pathogenic agents and are to be directed by knowledgeable scientists."

334. "[2] Personnel who handle pathogenic and potentially lethal agents must have specific training and must be supervised by knowledgeable scientists who are experienced in working with these agents. BL3–N containment also minimizes escape of recombinant DNA-containing organisms from exhaust air or waste material from the containment zone."

335. "[3] Microorganisms in Classes 4 and/or 5 pose a high individual risk of life-threatening diseases to personnel and/or animals. Special approval must be obtained from USDA/APHIS,to import class 5 agents."

336. Laboratory staff have specific and thorough training in handling extremely hazardous infectious agents, and they understand the primary and secondary containment functions of the standard and special practices, the containment equipment, and the laboratory design characteristics. They are supervised by knowledgeable scientists who are trained and experienced in working with these agents and in the special containment facilities."

337. "Within work areas of the facility, all activities are confined to the specially equipped animal rooms or support areas. The maximum animal containment area and support areas have special engineering and design features to avoid microorganisms being disseminated into the environment via exhaust air or waste disposal."

338. "[4] Other research with nonlaboratory animals that may not appropriately be conducted under conditions described in Appendix Q can be conducted safety by applying practices routinely used for controlled culture of these biota. In aquatic systems, for example, BL1 equivalent conditions could be met by utilizing growth tanks that provide adequate physical means to avoid the escape of the aquatic species, its gametes, and introduced exogenous genetic material. A mechanism should be provided to ensure that neither the organisms nor their gametes can escape into the supply or discharge system of the rearing

container (e.g. tank, aquarium, etc.). Acceptable barriers include appropriate filter, irradiation, heat treatment, chemical treatment, etc. Moreover, the top of the rearing container should be covered to avoid escape of the organism and its gametes. In the event of tank rupture, leakage, or overflow, the construction of the room containing these tanks should prevent the organisms and gametes from entering the building's drains before the organism and its gametes have been inactivated."

339. "Other types of non-laboratory animals may be accommodated by laboratory Biosafety levels 1 to 4 specified in Appendix G or Biosafety Levels 1–3 for plants described in Appendix P. Examples might include certain nematodes, insects and certain forms of smaller animals."

340. "It is proposed that the following new footnote, number 7, be added to Appendix B–IV, *Footnotes and References of Appendix B.*"

341. "[7] The containment requirements for derivatives of pathogenic strains that are attenuated by deletion or other means that prevent reversion to pathogenicity can be lowered by the IBC."

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual Programs listed in the *Catalog of Federal Domestic Assistance* are affected.

Dated: August 5, 1987.

James C. Hill,

Acting Director, National Institute of Allergy and Infectious Diseases.

[FR Doc. 87–18201 Filed 8–10–87; 8:45 am]

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Part VI

Department of Education

34 CFR Part 309

Handicapped Children's Early Education Program; Implementation of New Requirements and Announcement of Funding Priorities; Final Regulations and Notice

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DEPARTMENT OF EDUCATION

34 CFR Part 309

Early Education for Handicapped Children

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Handicapped Children's Early Education Program (HCEEP) authorized by section 623 of Part C of the Education of the Handicapped Act (EHA). These final regulations are needed to implement new requirements under the EHA amendments of 1986 (Pub. L. 99-457) and to revise selection criteria for awards under this program. The intended effect of these final regulations is to clarify statutory requirements and to improve the operation of the program.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Ruth Ward, Early Childhood Branch, Department of Education, 330 C Street, SW. (Switzer Building, Room 4611-M/S 3409), Washington, DC 20202. Telephone: (202) 732-1045.

SUPPLEMENTARY INFORMATION: The HCEEP provides Federal financial assistance for a variety of programs and activities designed to address the special problems of children with handicaps, birth through age eight—including demonstration and outreach projects, and other programs authorized under the EHA amendments of 1986 (e.g., research and training activities, research institutes, experimental programs, and a technical assistance development system). The following changes in the existing HCEEP regulations implement the EHA amendments of 1986 (Pub. L. 99-457):

(1) Experimental programs have been added;

(2) Research and training activities (previously authorized under section 624 of the EHA, but now authorized under section 623) have been added;

(3) Early childhood research institutes to carry on sustained research and to generate and disseminate new information on preschool and early intervention programs for young children with handicaps and their families have been added;

(4) The State planning, development, and implementation grant provisions for preschool and early intervention have been deleted. Under Pub. L. 99-457, States may conduct these activities under (1) the preschool grant program (section 619 of the EHA), and (2) the new program for infants and toddlers with handicaps.

In addition to the changes required by the statute, these regulations add new selection criteria for all of the programs and activities that are authorized under this part. With regard to training projects, the Secretary may use selection criteria under this part or Part 318 (Training Personnel for the Education of the Handicapped program). It is expected that, the selection criteria for Part 318 will apply if appropriate for the preservice training priority.

These final regulations do not apply to contracts, which are subject to Title 48 of the Code of Federal Regulations. A technical assistance development system designed "to assist entities operating experimental demonstration, and outreach programs, and to assist State agencies to expand and improve services provided to handicapped children" is now authorized under section 623 of the EHA. That system will be implemented through a Request for Proposal (RFP), which will be published in the *Commerce Business Daily*.

On May 13, 1987, the Secretary published a notice of proposed rulemaking for the Handicapped Children's Early Education Program in the Federal Register (52 FR 18174). The comments received in response to that notice and the Secretary's responses are summarized below:

Comment: One commenter suggested that Subpart D should apply not just to experimental, demonstration, and outreach projects but also to the technical assistance development system, research projects, training projects, and research institutes.

Response: A change has been made. The statute establishes the postaward conditions and matching requirements contained in Subpart D only for experimental, demonstration, and outreach projects. However, the Subpart D heading has been changed to indicate that these requirements and conditions apply only to experimental, demonstration, and outreach projects.

Comment: One commenter suggested that the words "and their families" be added in Subpart A (§§ 309.1(a), 309.3(a), and 309.3(c)) to emphasize the statute's focus on families and family-centered activities.

Response: A change has been made. The Secretary agrees that the words should be added to emphasize the focus of the statute.

Comment: One commenter suggested deleting the word "educational" from § 309.3(a) as unnecessary.

Response: A change has been made. The Secretary considers all types of experimental projects that compare alternative and innovative practices related to early intervention, preschool and early education services for children with handicaps and their families. The word "educational" is deleted, and the types of projects the Secretary considers are added.

Comment: One commenter suggested indicating in the introductory clause of § 309.3 that the Department may also offer financial assistance in the form of contracts under this part.

Response: No change has been made. Although the Department may enter contractual arrangements for activities authorized by section 623 of the EHA, the regulatory provisions of Part 309 do not apply to contracts. Specific requirements for proposed contracts will be contained in the individual Requests for Proposals published in *Commerce Business Daily*.

Comment: One commenter suggested adding technical assistance projects to the list of activities in § 309.3 that the Secretary may fund under these regulations.

Response: No change has been made. Section 623 authorizes a technical assistance development system that the Department has decided to support through a contract. These regulations do not apply to contracts. While other technical assistance projects are not authorized by the statute, technical assistance activities may be part of experimental, demonstration, and outreach projects that are supported under this part.

Comment: One commenter suggested that the selection criteria for training projects be expanded to include consideration of the project's relationship to the State's Part B Comprehensive System of Personnel Development (CSPD), Part H CSPD, and State licensure or certification standards.

Response: A change has been made. The Secretary has included these factors under § 309.21(c)(3).

Comment: One commenter recommended adding to the selection criteria at § 309.21(f)(2) that applicants indicate how they will ensure that all personnel are qualified and meet the highest requirement in the State for employment in the profession for which they provide services.

Response: No change has been made. Under § 309.21(f), the Secretary evaluates the qualifications of personnel in relation to the goals of the project.

Comment: One commenter suggested adding the Part H lead agency to the list of agencies with which experimental, demonstration, and outreach projects must coordinate under § 309.30(b).

Response: No change has been made. The scope of § 309.30(b) includes all agencies eligible to serve as Part H lead agency.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency of authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 309

Education, Education of the handicapped, Education—research, Grants program—education, Preschool, Reporting and record keeping requirements, Teachers.

(Catalogue of Federal Domestic Assistance Number 84.024, Early Education for Handicapped Children)

Dated: July 24, 1987.

William J. Bennett,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations by revising Part 309 to read as follows:

PART 309—HANDICAPPED CHILDREN'S EARLY EDUCATION PROGRAM

Subpart A—General

Sec.

309.1 What is the Handicapped Children's Early Education Program (HCEEP)?
309.2 Who is eligible for an award?
309.3 What activities may the Secretary fund?
309.4 What regulations apply to this program?
309.5 What definitions apply to this program?

Subpart B—How Does One Apply for an Award?

309.10 What separate applications must an applicant submit?
309.11 How does the Secretary select and announce funding priorities under this program?

Subpart C—How Does the Secretary Make an Award?

309.20 How does the Secretary evaluate an application?
309.21 What selection criteria does the Secretary use?
309.22 Are awards for experimental demonstration, and outreach projects geographically dispersed?

Subpart D—What Conditions Must Be Met After an Award by Experimental, Demonstration, and Outreach Projects?

309.30 What conditions must be met by recipients of experimental, demonstration, and outreach projects?
309.31 What are the matching requirements for experimental, demonstration, and outreach projects?

Authority: 20 U.S.C. 1423, unless otherwise noted.

Subpart A—General

§ 309.1 What is the Handicapped Children's Early Education Program (HCEEP)?

The HCEEP supports activities that are designed—

(a) To address the special problems of children with handicaps, birth through age eight, and their families; and

(b) To assist State and local entities in expanding and improving programs and services for these children and their families.

(Authority: 20 U.S.C. 1423)

§ 309.2 Who is eligible for an award?

Public agencies and nonprofit private organizations are eligible for a grant or cooperative agreement under this part. In addition, profitmaking organizations are eligible under § 309.3(e) and (f).

(Authority: 20 U.S.C. 1423)

§ 309.3 What activities may the Secretary fund?

The Secretary may provide financial assistance in the form of a grant or cooperative agreement under this part to support the following activities:

(a) *Experimental projects.* These projects support the design of investigative models that compare alternative and innovative practices related to early intervention, preschool, and early education services for children with handicaps and their families.

(b) *Demonstration projects.* These projects assist in developing and implementing preschool and early intervention program practices that establish specific strategies and products worthy of dissemination and replication.

(c) *Outreach projects.* These projects support the replication of established practices to assist other agencies and organizations in expanding and improving services to children with handicaps and their families.

(d) *Research institutes.* These institutes are designed to carry on sustained research to generate and disseminate new information on preschool and early intervention programs.

(e) *Research projects.* These projects are designed to identify and meet the full range of special needs of children covered under this part.

(f) *Training projects.* These projects support the training of personnel for programs specifically designed for children with handicaps.

(Authority: 20 U.S.C. 1423)

§ 309.4 What regulations apply to this program?

The following regulations apply to grants and cooperative agreements under this program:

(a) The Education Department General Administrative Regulations (EDGAR) established in Title 34 of the Code of Federal Regulations in—

(1) Part 74 (Administration of Grants);

(2) Part 75 (Direct Grant Programs);

(3) Part 77 (Definitions that Apply to Department Regulations);

(4) Part 78 (Education Appeal Board); and

(5) Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(b) The regulations in this Part 309.

(Authority: 20 U.S.C. 1423)

§ 309.5 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Contract
Department
EDGAR
Fiscal year
Grant
Local educational agency
Nonprofit
Nonpublic
Private
Project
Public
Secretary
State
State educational agency

(b) *Definitions in 34 CFR Part 300.* The following terms used in this part are defined in 34 CFR Part 300. The section of Part 300 that contains the definition is given in parentheses:

Handicapped children (§ 300.5)
Include (§ 300.6)
Parent (§ 300.10)
Related services (§ 300.13)
Special education (§ 300.14)

(c) *Other definitions.* As used in this part, "Act" means the Education of the Handicapped Act, as amended.

(Authority: 20 U.S.C. 1423)

Subpart B—How Does One Apply for an Award?

§ 309.10 What separate applications must an applicant submit?

Applicants for assistance under this part must submit a separate application for each activity in § 309.3 that is announced for competition.

(Authority: 20 U.S.C. 1423)

§ 309.11 How does the Secretary select and announce funding priorities under the program?

The Secretary may establish as a priority any activity in § 309.3.

(Authority: 20 U.S.C. 1423)

Subpart C—How Does the Secretary Make an Award?

§ 309.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application under this part on the basis of the criteria in § 309.21.

(b) The Secretary awards up 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 1423)

§ 309.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate applications unless, with regard to training projects, he determines that the selection criteria in 34 CFR Part 318 are more appropriate:

(a) *Importance.* (15 points)

(1) The Secretary reviews each application to determine the extent to which the proposed project addresses concerns in light of the purposes of this part.

(2) The Secretary considers—

(i) The significance of the problem or issue to be addressed;

(ii) The extent to which the project is based on previous research findings related to the problem or issue;

(iii) The numbers of individuals who will benefit; and

(iv) How the project wil address the identified problem or issue.

(b) *Impact.* (15 points)

(1) The Secretary reviews each application to determine the probable impact of the proposed project in meeting the needs of children with handicaps, birth through age eight, and their families.

(2) The Secretary considers—

(i) The contribution that project findings or products will make to current knowledge and practice;

(ii) The methods used for dissemination of project findings or products to appropriate target audiences; and

(iii) The extent to which findings or products are replicable, if appropriate.

(c) *Technical soundness.* (35 points)

(1) The Secretary reviews each application to determine the technical soundness of the project plan.

(2) In reviewing applications under this part, the Secretary considers—

(i) The quality of the design of the project;

(ii) The proposed sample or target population, including the numbers of participants involved and methods that will be used by the applicant to ensure that participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition;

(iii) The methods and procedures used to implement the design, including instrumentation and data analysis; and

(iv) The anticipated outcomes.

(3) With respect to training projects in applying the criterion in paragraph (c)(2)(iii) of this section, the Secretary considers—

(i) The curriculum, course sequence, and practice leading to specific competencies; and

(ii) The relationship of the project to the comprehensive system of personnel development plans required by Parts B and H of the Act, and State licensure or certification standards.

(4) In addition to the criteria in paragraph (c)(2) of this section, the Secretary, in reviewing outreach projects, also considers—

(i) The agencies to be served through outreach activities;

(ii) The current services, their location, and anticipated impact of outreach assistance for each of those agencies;

(iii) The model demonstration project upon which the outreach project is based, including the effectiveness of the model program with children, families, or other recipients of project services; and

(iv) The likelihood that the demonstration project will be continued and supported by funds other that those available through this part.

(d) *Plan of operation.* (10 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary considers—

(i) The extent to which the management plan will ensure proper and efficient administration of the project:

(ii) Clarity in the goals and objectives of the project;

(iii) The quality of the activities proposed to accomplish the goals and objectives;

(iv) The adequacy of proposed timeliness for accomplishing those activities; and

(v) Effectiveness in the ways in which the applicant plans to use the resources and personnel to accomplish the goals and objectives.

(e) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application to determine the quality of the plan for evaluating project goals, objectives, and activities.

(2) The Secretary considers the extent to which the methods of evaluation are appropriate and produce objectives and quantifiable data.

(f) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use.

(2) The Secretary considers—

(i) The qualifications of the project director and project coordinator (if one is used);

(ii) The qualifications of each of the other key project personnel;

(iii) The time that each person referred to in paragraphs (f)(2) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant will ensure that personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(3) The Secretary considers experience and training in areas related to project goals to determine qualifications of key personnel.

(g) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application to determine adequacy of resources allocated to the project.

(2) The Secretary considers the adequacy of the facilities and the equipment and supplies that the applicant plans to use.

(h) *Budget and cost-effectiveness.* (5 points)

(1) The Secretary reviews each application to determine if the project has an adequate budget.

(2) The Secretary considers the extent to which—

(i) The budget for the project is adequate to undertake project activities; and

(ii) Costs are reasonable in relation to objectives of the project.

(Authority: 20 U.S.C. 1423)

§ 309.22 Are awards for experimental, demonstration, and outreach projects geographically dispersed?

To the extent feasible, the Secretary, in addition to using the selection criteria in § 309.21, geographically disperses awards for experimental, demonstration, and outreach projects throughout the Nation in urban as well as rural areas.

(Authority: 20 U.S.C. 1423(a)(3))

Subpart D—What Conditions Must Be Met After an Award By Experimental, Demonstration, and Outreach Projects?

§ 309.30 What conditions must be met by recipients of experimental, demonstration, and outreach projects?

(a) Experimental, demonstration, and outreach projects must include services and activities that are designed to—

(1) Facilitate the intellectual, emotional, physical, mental, social, speech, language development, and self-help skills of children with handicaps, birth through age eight;

(2) Encourage the participation of the parents of those children in the development and operation of projects under this part;

(3) Acquaint the community in which the project is located with the problems and potentialities of those children;

(4) Offer training about exemplary models and practices to State and local personnel who provide services to children with handicaps, birth through age eight; and

(5) Support the adoption of exemplary models and practices in States and local communities.

(b) Experimental, demonstration, and outreach projects must be coordinated with State and local educational agencies, and appropriate public and private health and social service agencies, in order to—

(1) Inform those agencies of the nature and purposes of the assisted project's activities or services; and

(2) Provide opportunities for the project staff to coordinate their activities with staff of other agencies.

(Authority: 20 U.S.C. 1423(a) (1), (2))

§ 309.31 What are the matching requirements for experimental, demonstration, and outreach projects?

(a) Federal financial participation for an experimental, demonstration, or outreach project may not exceed 90 percent of the total annual costs of development, operation, and evaluation of the project.

(b) The Secretary may waive the matching requirement in paragraph (a) of this section in the case of an arrangement entered into with governing bodies of Indian tribes located on Federal or State reservations and with consortia of those bodies if they are able to demonstrate that insufficient resources are available.

(Authority: 20 U.S.C. 1423(a)(4))

[FR Doc. 87-18188 Filed 8-10-87; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Handicapped Children's Early Education Program

AGENCY: Department of Education.

ACTION: Notice of final annual funding priorities.

SUMMARY: The Secretary announces annual funding priorities for the Handicapped Children's Early Education Program. These priorities support early childhood research institutes required by the Education of the Handicapped Act, as amended by the Education of the Handicapped Act Amendments of 1986, Pub. L. 99-457.

EFFECTIVE DATE: These final annual funding priorities take effect either 45 days after publication in the Federal Register or later if Congress takes certain adjournments. If you want to know the effective date of these final annual funding priorities, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Linda Glidewell, Division of Innovation and Development, Office of Special Education Programs, Department of Education, 300 "C" Street SW., (Switzer Building, Room 3084—M/S 2313), Washington, DC 20202. Telephone: (202) 732-1099.

SUPPLEMENTARY INFORMATION: The Handicapped Children's Early Education Program (HCEEP) was established under Pub. L. 91-230 on April 13, 1970, and is currently authorized by section 623 of Part C of the Education of the Handicapped Act, as amended. The purpose of the program is to support a variety of activities designed to address the special problems of handicapped children from birth through age eight including experimental, demonstration, and outreach projects, research and training activities, early childhood research institutes, and a technical assistance development system. These priorities will establish two early childhood research institutes. The first institute will be established to develop new or improved interventions for infants and toddlers with handicaps who, because of the nature of their disabilities, require extended medical care in hospital intensive care units and who may require life-supporting technologies and systems of health care. The second institute will be established to develop, evaluate, and disseminate new or improved curricula and materials (for preservice, inservice, and self-study use) for training special education and related service personnel to deliver intervention services to infants and toddlers with handicaps and their families.

Summary of Comments and Responses

A notice of proposed annual funding priorities was published in the Federal Register on May 13, 1987 at 52 FR 18180. The public was given thirty days in which to comment. The comments and the Department's responses are summarized below:

Comment: One commenter recommended that the language in both priorities which requires the institutes to provide research training and experience for at least 10 graduate students annually be revised to indicate that graduate students be selected from a variety of professions.

Response: No change has been made. The language of both priorities, as written, would not preclude an applicant from providing research training and experience for graduate students from a variety of professions.

Comment: One commenter recommended that "professional associations" be listed along with institutions of higher education and other agencies that the Early Childhood Research Institute on Personnel is expected to work with in developing new or improved training curricula and materials. The commenter also recommended that "professional associations" be listed along with institutions of higher education and other agencies for inservice training activities designed to assist personnel in learning about effective training curricula and materials.

Response: A change has been made. "Professional associations" have been listed along with institutions of higher education and other agencies that the Early Childhood Research Institute on Personnel is expected to work with in developing new or improved training curricula and materials. Also, "professional associations" are now listed along with institutions of higher education and other agencies for inservice training activities designed to assist personnel in learning about effective training curricula and materials.

Comment: One commenter recommended that when referring to the provision of speech or language services and the profession, the preferred term is "speech-language pathology services" and "speech-language pathology."

Response: A change has been made. The reference to "speech/language" has been changed to the preferred term, "speech-language pathology."

Priorities

In accordance with the Education Department General Administrative Regulations at 34 CFR 75.105(c)(3), and subject to available funds, the Secretary will give an absolute preference to each application submitted in response to one of the following priorities. Each application must provide satisfactory assurance that the recipient will use funds made available to conduct one of the following activities:

Priority 1: Early Childhood Research Institute—Intervention

This priority will establish an Early Childhood Research Institute to develop new or improved interventions for infants and toddlers with handicaps who, because of the nature of their disabilities, require extended medical care in hospital intensive care units and who may require life-supporting technologies and systems of health care. The institute's purpose will be to conduct a program of research and development designed to produce information and materials that can be used in concert with the provision of intensive health care and that promote the developmental progress of these children. The institute's research and development activities must produce information and materials that can be used within intensive care units and that facilitate the successful transition of the child to the home and to community-based services. The research and development activities must consist of two major areas of inquiry.

First, the institute must conduct a program of research to develop new or improved procedures related to the identification, referral, and intervention process. The institute's research must include, but need not be limited to, studies that: (1) develop exemplary practices related to physician referral, initial family counseling, and tracking of the child's progress and services; (2) identify effective practices and procedures for forming and involving a multidisciplinary team to plan services for the child and family; (3) establish criteria and procedures for enlisting the services of different State agencies, including the State Protection and Advocacy agency or other child protection groups; (4) develop exemplary models for determining the point in the child's life when nonmedical interventions can be appropriately and safely implemented; (5) identify a variety of effective nonmedical interventions that are keyed to child developmental needs, child medical needs, family needs and characteristics,

and the potential for delivering these services within a hospital intensive care unit; and (6) develop new or improved interventions that will facilitate the transition of the child to the home and to community-based services.

Second, the institute must conduct a program of research to develop new or improved organizational structures related to the identification, referral, and intervention process. The institute's research must include, but need not be limited to, studies that: (1) Identify the full range of services and personnel needed in a comprehensive hospital-based intensive care unit; (2) develop model organizational structures (including roles, responsibilities, lines of authority, communication, and coordination) for a comprehensive hospital-based intensive care unit; (3) identify exemplary models for involving parents, siblings, friends, and extended family with a multi-disciplinary team; (4) develop procedures to prevent or solve role conflicts among team members; and (5) identify alternative approaches to team composition and team member roles in providing intervention and transitional services.

In carrying out its research activities, the institute must provide research training and experience for at least 10 graduate students annually.

In addition to conducting the activities described above, the institute must commit approximately 20% of its budget to inservice training activities. These training activities must be designed to assist hospital intensive care unit staff to learn about new or improved procedures and organizational structures to serve infants and toddlers with handicaps and their families. The training activities must be based on the results of the institute's research findings, already published information, and existing exemplary procedures and organizational structures.

Priority 2: Early Childhood Research Institute—Personnel

The priority will establish an Early Childhood Research Institute to develop, evaluate, and disseminate new or improved curricula and materials (for preservice, inservice, and self-study use) for the training of special education and related service personnel to deliver intervention services to infants and toddlers with handicaps and their families. The goal of the institute will be to produce validated, replicable training curricula that can be used across settings, disciplines, and disciplinary training programs to prepare personnel to deliver effective services and to work effectively within multi-disciplinary teams. The final materials must be developed for broad application, including their use by existing training programs that currently prepare no specialists for this age group.

In developing new or improved training curricula and materials, the institute is expected to work with institutions of higher education, professional associations, and other agencies that have nationally recognized training programs in one or more of the relevant disciplinary areas (special education, speech-language pathology and audiology, occupational therapy, physical therapy, psychology, social work, nursing, or nutrition). To take advantage of current best practices, institute researchers shall examine the curricula and materials now being implemented in exemplary training programs and use these as a point of departure in the institute's research and development program. In developing a series of training modules for each special education and related service area, the institute must, where appropriate, take advantage of overlap and commonalities in training content. The institute must also develop the curricula and materials in a manner that is responsive to different training uses. For example, some potential trainers will view their trainees as specialists not generalists. In those instances, the curricula and materials must be sufficently flexible to accommodate this training approach, but contain enough information about other disciplines to enable effective communication and coordination of services. In other instances, the training program may be aimed at producting trainees for more generalist roles, such as those that may be required in rural areas, in which more extensive knowledge of delivering different services is required. In either instance, however, the training curricula and materials must develop trainee skills in working with parents and families, interacting with professionals from other disciplines, determining when other specialists must be consulted, developing an individualized family service plan, and accessing emerging information and research findings in the trainee's own and related disciplinary areas.

For each disciplinary area the institute must conduct a series of evaluation studies of the different versions of the training materials. In addition to addressing other goals and objectives established for the evaluations, curricula and material must be evaluated with respect to their effectiveness in preservice, inservice, and self-study applications.

In carrying out its research and development activities, the institute must provide research training and experience for at least 10 graduate students annually.

In addition to conducting the activities described above, the institute must commit approximately 20% of its budget to inservice training activities. These training activities must be designed to assist personnel in institutions of higher education, professional associations, and other agencies in learning about effective training curricula and materials for this population. The training activities must be based on the results of the institute's research and development activities, already published information about training programs, and existing exemplary training programs.

Period of Award

The Secretary will approve cooperative agreements with a project period of 60 months subject to the requirements of 34 CFR 75.253(a) for continuation awards. In determining whether to continue the institute for the last two years of the project period, in addition to considering the factors in 34 CFR 75.253(a), the Secretary will also consider the recommendation of a review team consisting of three external experts selected by the Secretary and designated Federal program officials. The serivces of the review team are to be performed during the last half of the institute's second year, and will replace that year's annual evaluation which the recipient is required to perform under 34 CFR 75.590. During all other years of the project, the recipient must comply with 34 CFR 75.590. Costs associated with the services to be performed by the three external members of the review team are to be incorporated into the applicant's proposed budget. In developing its recommendation, the review team will consider, among other factors, the following:

(1) The timeliness and the effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the recipient of the cooperative agreement and its subgrantees; and

(2) the degree to which the institute's research design and methodological procedures demonstrate the potential for producing significant new knowledge and products.

(20 U.S.C. 1423)
(Catalog of Federal Domestic Assistance Number 84.024; Handicapped Children's Early Education Program)

Dated: July 17, 1987.

William J. Bennett,
Secretary of Education.

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Part VII

Department of Education

34 CFR Part 629

Veterans Education Outreach Program; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 629

Veterans Education Outreach Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations for the Veterans Education Outreach Program, formerly called the Veterans Cost-of-Instruction Payments Program. These amendments are needed to conform the regulations to the changes made in section 420A of Title IV of the Higher Education Act of 1965 by the Higher Education Amendments of 1986, Pub. L. 99-498 (October 17, 1986), and to establish criteria for the Secretary to exercise the authority to waive certain expenditure requirements of the program for individual institutions.

EFFECTIVE DATE: The regulations take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Neil McArthur, Division of Higher Education Incentive Programs, Office of Postsecondary Education, U.S. Department of Education, Room 3022, ROB-3, 400 Maryland Avenue SW., Washington, DC 20202-3327. Telephone: (202) 732-4406 .

SUPPLEMENTARY INFORMATION: The Veterans Education Outreach Program provides Federal financial assistance on a formula basis to all eligible institutions of higher education to provide certain services to veterans.

The Secretary makes several changes to conform the regulations to the Higher Education Amendments of 1986:

Name Change. The name of the program is changed from the "Veterans Cost-of-Instruction Payments (VCIP) Program" to the "Veterans Education Outreach Program (VEOP)."

Availability of Awards. Awards made under VEOP are now available for expenditure by the institution over a period not to exceed two academic years.

Minimum Award. The minimum award an institution may receive is now $1,000, subject to the availability of appropriations.

Award Amounts. In addition to payments for the two categories of veterans described in prior law, an eligible institution will now receive a payment of $100 for each undergraduate student who has received an honorable discharge from military service but who is no longer eligible to or does not receive educational benefits under 38 U.S.C. Chapter 31 or 34.

Summary of Comments and Responses

On Wednesday, June 24, 1987 the Secretary published a notice of proposed rulemaking for the Veterans Education Outreach Program in the Federal Register (52 FR 23774). One comment was received from the public. No significant changes have been made in the final regulations.

Comment: The commenter sought clarification of § 629.20(a)(3) regarding the $100 payment. He wanted to know if all honorably discharged veterans could be included in the student enrollment count, regardless of when they served (i.e., World War II, Korean War, Vietnam War, etc.).

Response: No change has been made. The statute does not impose any limitations on when a veteran's military service was rendered.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Assessment of Educational Impact: In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 629

Adult education, Colleges and universities, Education, Reporting and recordkeeping requirements, Veterans.

(Catalog of Federal Domestic Assistance Number 84.065: Veterans Education Outreach Program)

Dated: August 4, 1987.

Thomas K. Turnage

Administrator, Veterans Administration.

Dated: July 28, 1987.

William J. Bennett,

Secretary of Education.

The Secretary revises Part 629 of Title 34 of the Code of Federal Regulations to read as follows:

PART 629—VETERANS EDUCATION OUTREACH PROGRAM

Subpart A—General

Sec.
629.1 What is the Veterans Education Outreach Program?
629.2 Who is eligible for an award?
629.3 What definitions apply?
629.4 What regulations apply?
629.5 What activities may a grantee support with VEOP funds.

Subpart B—How Does an Eligible Institution Apply for an Award?

629.10 What are the application requirements?

Subpart C—How Does the Secretary Make an Award?

629.20 How does the Secretary calculate the amount of the award?

Subpart D—What Conditions Must a Grantee Meet?

629.30 How must a grantee use its award?
629.31 What are the matching requirements?
629.32 When must a grantee submit a proposed budget?

Authority: 20 U.S.C. 1070e-1, unless otherwise noted.

Subpart A—General

§ 629.1 What is the Veterans Education Outreach Program?

The Veterans Education Outreach Program (VEOP) provides Federal financial assistance to institutions of higher education to provide certain services to veterans.

(Authority: 20 U.S.C. 1070e-1)

§ 629.2 Who is eligible for an award?

An institution of higher education, or any branch thereof which is located in a different community from that in which the parent institution is located, is eligible to receive an award if the institution or branch has—

(a) At least 100 veterans with honorable discharges in attendance as undergraduate students on April 16 of the current year; or

(b) Received an award under the Veterans Cost-of-Instruction Payments (VCIP) Program for a continuous period of three of the five most recent fiscal years ending on or before September 30, 1985.

(Authority: 20 U.S.C. 1070e-1)

§ 629.3 What definitions apply?

The following definitions apply to the regulations in this part:

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Applicant
Application

Award
Department
EDGAR
Fiscal year
Grant period
Grantee
Secretary
State

(b) *Other definitions that apply to this part.* The following additional definitions apply to this part:

"Academic year" means a period beginning on July 1 and ending the following June 30.

"Counseling" means professional consultation on educational, vocational, personal, or family problems.

"Disabled veteran" means a veteran who—

(1) Is entitled to compensation, or who but for the receipt of military retired pay would be entitled to compensation, under laws administered by the Veterans' Administation;

(2) Was discharged or released from active duty because of a service-connected disability; or

(3) Has been certified by a physician as having a disability.

"Full-time student" means a student who is enrolled for the equivalent of not less than 12 semester hours and is being charged for tuition on the basis of the institution's full-time fee schedule.

"Institution of higher education" is defined in section 1201(a) of the Higher Education Act of 1965, as amended.

"Instructional expenses in academically related programs" means the funds expended by an instructional department of an institution of higher education for salaries, office expenses, equipment, and research.

"Outreach" means a coordinated, community-wide program of reaching veterans to encourage enrollment in, and completion of, postsecondary education, with special emphasis on educationally disadvantaged veterans, service-connected disabled veterans, other disabled or handicapped veterans, and incarcerated veterans within the institution's service area, including activities to determine their needs and to make appropriate referral and follow-up arrangements with relevant service agencies, as needed to encourage such enrollment and completion.

"Recruitment" means a concerted effort to enroll veterans in postsecondary training programs available at the institution or elsewhere.

"Special education programs" means remedial, tutorial, and motivational programs designed to promote success in postsecondary education.

"Student" means a person in attendance at an institution of higher education.

"Undergraduate student" means a student who is enrolled in an undergraduate course of study at an institution of higher education and has not been awarded a baccalaureate or first professional degree.

"Veteran" means a person who—

(1) Served on active duty in the Armed Forces for a continuous period of more than 180 days and was discharged or released with other than a dishonorable discharge;

(2) Was discharged or released from active duty in the Armed Forces because of a service-connected disability; or

(3) Is receiving or is eligible to receive benefits under 38 U.S.C. Chapter 30.

(Authority: 20 U.S.C. 1070e–1, 1088)

§ 629.4 What regulations apply?

The following regulations apply to the Veterans Education Outreach Program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 74 (Administration of Grants).

(2) 34 CFR Part 75 (Direct Grant Programs).

(3) 34 CFR Part 77 (Definitions that apply to Department Regulations).

(4) 34 CFR Part 78 (Education Appeal Board).

(b) The regulations in this Part 629.

(Authority: 20 U.S.C. 1070e–1, 1088)

§ 629.5 What activities may a grantee support with VEOP funds?

(a) Except as provided in § 629.30(b)(2), a grantee may use VEOP funds only for the following activities:

(1) Maintaining an office of veterans' affairs which has responsibility for veterans' outreach, recruitment, special education programs, and the provision of educational, vocational, and personal counseling to veterans.

(2) Carrying out programs designed to prepare educationally disadvantaged veterans for postsecondary education for which they are receiving benefits under 38 U.S.C. Chapter 34, Subchapter V.

(3) Carrying out active outreach (with special emphasis on service-connected disabled veterans, other disabled or handicapped veterans, incarcerated veterans, and educationally disadvantaged veterans), recruiting, and counseling activities, through the use of funds available under federally assisted work-study programs (with special emphasis on the veteran-student services program under 38 U.S.C. 1685).

(4) Carrying out an active tutorial assistance program for veterans, including disseminating information regarding the program, with special emphasis on making maximum use of the benefits available under 38 U.S.C. 1692.

(5) Assisting in the readjustment, rehabilitation, personal counseling, and employment needs of veterans.

(6) Coordinating activities carried out under this part with the Veterans Administration's—

(i) Readjustment counseling program authorized under 38 U.S.C. 612A; and

(ii) Programs of veterans employment and training authorized under the Job Training Partnership Act and under 38 U.S.C. Chapters 41 and 42.

(7) After the institution has carried out the activities described in paragraphs (a)(1)–(6) of this section, defraying instructional expenses in academically related programs.

(b) An institution may not use VEOP funds for a school or department of divinity or for any religious worship or sectarian activity.

(c) A grantee may use VEOP funds to pay travel expenditures only if the travel expenditures are incurred in connection with recruitment and outreach activities, or attendance at Department-sponsored meetings providing technical assistance or Department-approved professional meetings.

(Authority: 20 U.S.C. 1070e–1)

Subpart B—How Does an Eligible Institution Apply for an Award?

§ 629.10 What are the application requirements?

(a) An institution applying for funds under this part must submit an application in the form prescribed by the Secretary.

(b) Each application must contain the following:

(1) Information that shows the institution is eligible for an award under this part.

(2) Information necessary for the Secretary to determine the amount of the payment to which the applicant would be entitled.

(3) An assurance that the institution, during the fiscal year for which payment is sought, will expend the amounts required under § 629.31.

(4) Plans, policies, assurances, and procedures to ensure that the institution will—

(i) Make an adequate effort to carry out the activities described in § 629.5(a)(1) through (6); and

(ii) Use any awarded funds remaining, after the institution has carried out the activities described in § 629.5(a) (1) through (6), solely to defray instructional expenses in its academically related programs.

(5) An assurance that the institution will not use VEOP funds for a school or department of divinity or for any religious worship or sectarian activity.

(6) An assurance that the institution will submit to the Secretary the reports required by § 629.32.

(Authority: 20 U.S.C. 1070e–1)

(Approved by the Office of Management and Budget under control number 1840–0064)

Subpart C—How Does the Secretary Make an Award?

§ 629.20 How does the Secretary calculate the amount of the award?

(a) Except as otherwise provided in this section, for each veteran who is in attendance as a full-time undergraduate student, the Secretary pays to each eligible applicant the following:

(1) $300 for each veteran who is receiving—

(i) Vocational rehabilitation under 38 U.S.C. Chapter 31; or

(ii) Educational assistance under 38 U.S.C. Chapter 34.

(2) $150 for each veteran who—

(i) Has been the recipient of educational assistance under 38 U.S.C. Chapter 34, Subchapter V;

(ii) Has a service-connected disability as defined in 38 U.S.C. 101(16); or

(iii) Is a disabled veteran as defined in § 629.3.

(3) $100 for each veteran other than those listed in paragraphs (a)(1) and (a)(2) of this section, who has received an honorable discharge from military service but who is no longer eligible to, or does not, receive educational benefits under 38 U.S.C. Chapter 31 or 34.

(b) The Secretary reduces the amount of payment awarded for each veteran attending the institution on a less than full-time basis in proportion to the degree to which that person is attending on a less than full-time basis.

(c) The total payment that the Secretary makes in any fiscal year to an institution, or to an eligible branch thereof, is at least $1,000 but does not exceed $75,000.

(d) The Secretary apportions funds which become available as a result of the limitation on payments described in paragraph (c) of this section so that all grantees under this part receive—

(1) A payment of $9,000 or the amount to which it is entitled under paragraphs (a) and (b) of this section for that fiscal year (but not less than $1,000), whichever is lesser; and

(2) Additional amounts up to the $75,000 maximum for each eligible institution or eligible branch thereof.

(e) If the amount appropriated for any fiscal year is not sufficient to make payments in the amounts to which all applicants are entitled, the Secretary ratably reduces those payments. If any amounts become available for a fiscal year after such reductions have been imposed, the Secretary increases the reduced payments on the same basis as they were decreased.

(Authority: 20 U.S.C. 1070e–1)

Subpart D—What Conditions Must a Grantee Meet?

§ 629.30 How must a grantee use its award?

(a) Except as provided in paragraph (b) of this section, a grantee shall use—

(1) At least 90 percent of the amount it receives under this part, or the amount of funds needed to carry out the activities described in § 629.5(a)(1), whichever is greater, to carry out those activities;

(2) Any remaining awarded funds subject to this 90 percent limitation to carry out the activities described in § 629.5(a) (2) through (6); and

(3) Any remaining awarded funds—

(i) First, to carry out the activities described in § 629.5(a) (2) through (6); and

(ii) Then, to defray instructional expenses in its academically related programs.

(b)(1) The Secretary may waive the expenditure requirements of paragraphs (a) (1) and (2) of this section if he determines that the grantee is capable of adequately carrying out the activities described in § 629.5(a) (1) through (6) using less than 90 percent of its award. An institution that receives such a waiver may use any awarded funds remaining after carrying out the activities described in § 629.5(a) (1) through (6) to defray instructional expenses in its academically related programs, subject to any limitations imposed by the Secretary.

(2) In making the determination described in paragraph (b)(1) of this section, the Secretary may consider all aspects of the institution's programs for veterans, including, but not limited to the following:

(i) *Administration.* (A) Adequate identification of the veteran population in the institution's service area and adequate assessment of its needs related to postsecondary education;

(B) The employment of an adequate number of qualified staff members to support veterans' activities and services;

(C) The provision of adequate, prominently located, and accessible housing for the institution's office of veterans' affairs, in light of the institution's veteran student enrollment and physical environment; and

(D) The coordination of veterans' services with other campus services available to veterans, such as admissions, student financial assistance, counseling, job placement, and programs carried out by the Veterans Administration pursuant to 38 U.S.C.

(ii) *Outreach.* The establishment and maintenance of—

(A) Contact with veterans in the institution's service area;

(B) An effective procedure for assessing veterans' needs, problems, and interests related to postsecondary education; and

(C) An effective referral service involving agencies providing assistance in areas such as housing, employment, health, recreation, vocational and technical training, and financial assistance as such services are related to encouraging the pursuit of postsecondary education.

(iii) *Recruitment.* The establishment and maintenance of procedures for bringing veterans into programs of postsecondary education most suited to their educational and career aspirations, including such techniques as publications, use of mass media, and personal contacts.

(iv) *Special Education Programs.* The establishment and maintenance of support from appropriate departments of the institution for special remedial, motivational, and tutorial programs for veteran students.

(v) *Counseling.* The establishment and maintenance of ready access by veteran students to professional assistance and consultation on personal, family, educational, and career problems.

(c) If an institution cannot carry out all of the activities described in § 629.5(a) (1) through (6) due to limited veteran enrollment, the Secretary may permit one or more of the required activities to be carried out through a consortium agreement with one or more institutions of higher education.

(d) An award made in any fiscal year remains available for expenditure by the grantee for up to two academic years.

(Authority: 20 U.S.C. 1070e–1)

§ 629.31 What are the matching requirements?

(a) During the fiscal year for which it receives an award, a grantee shall expend from non-Federal sources—

(1) For all academically related programs of the institution, an amount at least as great as the average amount it expended for such programs during the three years preceding the grant year; and

(2) For the activities described in § 629.5(a), an amount at least as great as the amount of the grant.

(b) The Secretary applies the rules in 34 CFR Part 74, Subpart G, in assessing an institution's compliance with paragraph (a)(2) of this section.

(Authority: 20 U.S.C. 1070e–1)

§ 629.32 When must a grantee submit a proposed budget?

The grantee shall submit a proposed budget for the use of the funds it is awarded in any fiscal year under this program to the Secretary within 90 days of receipt of notice of its award.

(Authority: 20 U.S.C. 1070e–1)

(Approved by the Office of Management and Budget under control number 1840–0054)

[FR Doc. 87–18182 Filed 8–10–87; 8:45 am]

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Tuesday
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Part VIII

Department of Health and Human Services

Centers for Disease Control

National Institute for Occupational Safety and Health; Cooperative Agreements to Support Sentinel Event; Notification Systems for Occupational Risks (SENSOR) in State Health Departments; Availability of Funds for Fiscal Year 1987

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

National Institute for Occupational Safety and Health; Cooperative Agreements To Support Sentinel Event; Notification Systems for Occupational Risks (SENSOR) in State Health Departments; Availability of Funds for Fiscal Year 1987

The National Institute for Occupational Safety and Health (NIOSH) solicits applications for cooperative agreements to provide assistance for: (1) Developing targeted, sentinel provider-based reporting activities in State health departments for selected occupational disorder; (2) enhancing the capability of State health departments, in collaboration with existing State expertise, to direct intervention and prevention activities to reported cases, co-workers of the cases, and the workplace; and (3) providing documented model(s) for use by other States that illustrate the development and implementation of occupational illness and injury reporting and intervention activities where no prior activity of this nature had existed. Awards will be made to State health departments both with and without prior activity in occupational disorder reporting *and* subsequent intervention.

Authority

The legislative authority for this program is contained in the Occupational Safety and Health Act and the Federal Mine Safety and Health Act; section 301(a) of the Public Health Service Act; and Title 31 U.S.C. 6301 and 6305. The Catalog of Federal Domestic Assistance number is 13.262

Program Objectives

Objectives of these cooperative agreements are to:

A. Assist State health departments in developing and/or refining targeted, sentinel provider-based reporting systems for selected occupational disorders.

B. Enhance the capability of State health departments to direct appropriate and effective intervention and prevention effors to the reported cases, the co-workers of the case, and the workplace.

C. Provide the opportunity for State health departments to evaluate the effectiveness of various methods of targeted sentinel reporting and intevention so that the most effective methods can be utilize by States.

D. Provide a collaborative focus for occupational health expertise already in existence in States.

E. Contribute to a better understanding of occupational hazards experienced by hazardous waste workers.

F. Ultimately reduce the occurrence and burden of occupational disorders in individual States and in the United States.

Eligibility Requirements

Eligible applicants are the official State Public Health agencies, including the District of Columbia, the Commonwealth of Pureto Rico, and any Territory or possession of the United States. Awards will be limited to States because of the appropriateness of utilizing State and related public health authorities for intervention into occupational health and safety problems.

Availability of Funds

Approximately $700,000 will be available in Fiscal Year 1987 to fund two to five Cooperative Agreements. The duration of these Cooperative Agreements is expected to be from 1 to 5 years. Each year is renewable subject to satisfactory performance and availability of resources.

Cooperative Activities

1. recipient Activities

a. Develop, implement, and maintain a targeted, sentinel provider-based reporting system for selected occupational disorder(s) linked to response and intervention efforts, to include:

(1) Designation of and maintenance of regular contact with sentinel providers in order to assist in recognition and receipt of case reports of selected occupational disorder(s). These disorders include one or more of the following: Carpal tunnel syndrome, lead poisoning/elevated blood lead levels in adults, noise-induced hearing loss, occupational asthma, pesticide poisoning, and/or silicosis. Other occupational disorders (e.g., burn injuries, asbestos-related disease, confined space injuries, etc.) may be placed under surveillance if justified by the State program.

(2) Sensitive, confidential attention to reported cases, including case confirmation and determination of appropriate, prioritized follow-up.

(3) Screening of co-workers of cases for possible disease, as appropriate.

(4) Coordination and/or conduct of appropriate and effective evaluation of worksite factors potentially responsible for the case.

(5) Preparation and distribution in the medical and public health communities, and to sentinel providers, of regular summaries of the characteristics of reported cases and resulting actions.

b. Draw upon and collaborate with occupational safety and health expertise available in the State from academic institutions, NIOSH Occupational Safety and Health Educational Resource Centers, occupational health groups, and other elements of State government (e.g., State labor departments), in order to provide technical consultation and training in a wide variety of occupational health issues, as well as consultative assistance to sentinel reporters and to the workplace.

c. Identify and evaluate the appropriateness of existing State legislation or other means available to maintain the confidential medical components of individual case reports, and to support sensitive case follow-up and workplace intervention activities.

d. Demonstrate the value of this surveillance effort to hazardous waste workers, in particular, through targeted follow-up of case reports of occupational disorders in workers associated with hazardous waste activities. Although the primary goals of the proposed provider-based identification and reporting of occupational disorders are intervention at the workplace and primary prevention activities, summary reviews of case reports also will provide information about hazards in relatively new occupations and activities through case report follow-up activities. In particular, we know very little about the specific occupational hazards and resulting health effects experienced by the thousands of workers at risk from exposure to hazardous waste or hazardous materials incidents. As case reports of occupational disorders associated with hazardous waste activities are reviewed and summarized, information about exposures and adverse health effects in hazardous waste workers and emergency response workers will allow more specific prevention activities in this new and expanding industry, and more specific training in the recognition and control of such hazards.

e. Evaluate the activities and outcomes of the targeted, provider-based reporting activities and interventions, including assessments of the degree of case ascertainment, number of workers affected by the program, effectiveness of worksite consultations and recommendations,

and appropriateness of the types of targeted sentinel reporters to the occupational condition(s) under surveillance.

2. CDC/NIOSH Activities

a. Provide technical assistance in all phases of the development, implementation, and maintenance of the reporting, consultation, training, and intervention activities.

b. Provide guidance on occupational conditions appropriate for reporting and intervention, to include recommended reporting guidelines and epidemiologic case definitions for carpal tunnel syndrome, lead poisoning/elevated blood lead levels in adults, noise-induced hearing loss, occupational asthma, pesticide poisoning, and silicosis.

c. Provide technical assistance in the evaluation of the results of the reporting and intervention activities.

d. Provide epidemiologic assistance and collaboration in the summarization, analyses, and distribution of information on reported cases and resulting actions.

e. Coordinated, among the States, the identification of the most effective methods and techniques for case reporting, intervention, and prevention activities.

Application Submission and Deadline

The original and two copies of the application should be submitted on Form PHS 5161–1 (revised 3–86) on or before August 17, 1987, to: Henry Cassell, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Atlanta, Georgia 30305.

A. Deadline

Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or

2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly-dated U.S. Postal Service postmark or obtain a legibly-dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

B. Late Applications

Applications which do not meet the criteria in A. 1. or 2. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Application Content

Applications must include a narrative which includes the following:

A. Briefly states the applicant's understanding of the need or problem to be addressed and the purpose of this Cooperative Agreement.

B. Documents the applicant's ability to provide staff, knowledge, and other resources required to perform the responsibilities in this project, and describe the approach to be used in carrying out those responsibilities.

C. Describes clearly the objectives of the project, the steps to be taken in planning and implementing this project, and the respective responsibilities of the applicant, CDC, and any other entities for carrying out those steps.

D. Provides a proposed schedule for accomplishing each of the activities to be carried out in this project, and a method for evalulating the accomplishments.

E. Describes the names, qualifications, and time allocations of the professional staff to be assigned to this project; the support staff available for performance of this project; and the facilities, space, and equipment available for performance of this project.

F. Specifies a proposed plan for administering this project, and the name, qualifications, and time allocations of the individual whom the applicant proposes to make responsible for its administration.

G. Provides a detailed budget which indicates (1) anticipated costs for personnel travel, communications and postage, equipment, and supplies and (2) the sources of funds to meet those needs.

Reviews

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Review and Evaluation Criteria

The application will be reviewed in accordance with PHS Grants Administration Manual, Part 134, Objective Review of Grant Applications. An ad hoc committee will be convened to determine the merit of the application which will be based on the following:

A. Technical Approach

1. The applicant's understanding of the objectives of the proposed reporting and intervention activity.

2. Appropriate selection of one or more occupational conditions for reporting based upon documented and/or perceived risk to workers in the State, and documentation of the existence of relevant business and industry from which the conditions might arise.

3. Appropriate designation of proposed targeted sentinel reporters (e.g., pulmonary specialists and/or occupational specialists for silicosis, laboratories for elevated blood lead levels, etc.), and plans to explore other approaches to targeted case-finding.

4. Plans and capability to provide for maintenance of the confidential nature of individual case reports as medical information, and sensitivity to the need for careful management of each reported case especially with regard to his/her employment status.

5. Plans to provide consultation and training in the recognition of occupational disorders.

6. An approach to the development of feasible evaluation techniques for the reporting and intervention activities.

7. Proposed schedule for accomplishing the activities of the cooperative agreement, and a reasonable proposed budget which is consistent with the intended use of the CDC funds.

B. Background, Experience, and Capability

1. Experience of the proposed staff in conducting demonstration projects and other types of research and, in particular, the qualifications of the proposed project coordinator.

2. Experience in conducting, or intent and ability to direct and implement, directly or through collaborative association, workplace evaluations and issuance of workplace-specific recommendations for hazard abatement.

3. Identification of existing occupational health expertise in the State, especially in State government (e.g., State labor departments), and plans for creative coordination of and collaboration with this expertise for the purpose of implementing the proposed reporting, intervention, consultation, and training efforts.

C. State Commitment

1. Existence of prior and current occupational health activities and/or plans for new activities especially as they relate to varied approaches to the surveillance of occupational illness and injury (e.g., use of existing data sources, such as death certificates, for trend surveillance).

2. Ability and willingness to incorporate surveillance for occupational disorders as an integral part of State public health programs for identification, investigation, control, and prevention of disease, including the possibility of providing needed

additional State/local funds and/or staff time.

3. The proportion of the project coordinator's time that the State is willing to make available to the program.

Information

Information on application procedures, copies of application forms, and other material may be obtained from: Henry Cassell, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Atlanta, Georgia 30305, Telephone: (404) 262-6575.

Technical assistance may be obtained from: Patricia A. Honchar, M.S., Ph.D., Chief, Surveillance Coordinating Activity, Office of the Director, National Institute for Occupational Safety and Health, Centers for Disease Control, Atlanta, Georgia 30333, Telephone: (404) 329-3901; FTS 236-3901.

Dated: August 7, 1987.

Larry W. Sparks,

Executive Officer, National Institute for Occupational Safety and Health.

[FR Doc. 87-18423 Filed 8-10-87; 10:21 am]

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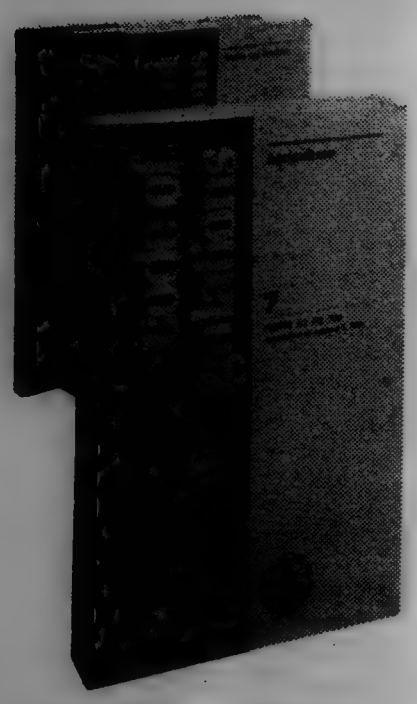

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THE FEDERAL REGISTER

WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: September 29, at 9 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: Janice Booker, 202-523-5239

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Federal Register
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Wednesday, August 12, 1987

Presidential Documents

Title 3—

The President

Proclamation 5661 of August 10, 1987

National Civil Rights Day, 1987

By the President of the United States of America

A Proclamation

As he journeyed to Washington, D.C., to assume the Presidency in 1861, Abraham Lincoln captured the essence of the American dream in a speech at Philadelphia's Independence Hall, the site where our Founders gathered 200 years ago to frame the Constitution whose bicentennial we now celebrate. Exercising his unique genius for profound thought in plain language, Lincoln said that "The great principle or idea" assuring our permanence as a nation is its promise "that all should have an equal chance."

The struggle to see that promise fulfilled has continued in our own era and, through the civil rights movement, has inspired new Federal laws that seek to guarantee that "equal chance" by prohibiting discrimination against any citizen on the basis of race, gender, ethnicity, age, or handicap. We can be proud of the progress we have made in securing the civil rights of all Americans. Racial segregation has been proscribed. Employment discrimination is barred. Federal statutes now outlaw housing bias, safeguard every citizen's precious right to vote, and require that people with disabilities be provided accessibility and be treated without discrimination. The misguided few who use force or violence to interfere with others' enjoyment of their civil rights face swift and sure criminal prosecution.

Despite these steps forward, much still remains to be done to make Lincoln's promise a reality and to fulfill the dream shared by leaders like Dr. Martin Luther King, Jr., Susan B. Anthony, and Mary McLeod Bethune. The example of these Americans, and of so many other brave men and women, reminds us of the tasks that belong to each of us as citizens of this great Nation. We must work to see the civil rights laws strongly enforced and to ensure that every branch of government—at every level—renders justice to individuals without regard to race, sex, color, religion, nationality, or condition of handicap. In this way, we can move toward the day when the rights of every human being to "life, liberty, and the pursuit of happiness" are secured forever.

The Congress, by Public Law 99–482, has designated August 12, 1987, as "National Civil Rights Day" and authorized and requested the President to issue a proclamation in observance of this event. Twenty-four years ago this month, Dr. Martin Luther King, Jr. led a march in Washington, D.C. to demonstrate the need for civil rights legislation. On this occasion let us pay tribute to his memory and to the memory of all those who fought for justice and equal opportunity before the law.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim August 12, 1987, as National Civil Rights Day. I call upon the people of the United States to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of August, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 87-18546
Filed 8-11-87; 10:18 am]
Billing code 3195-01-M

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Rules and Regulations

Federal Register
Vol. 52, No. 155
Wednesday, August 12, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1603

Vesting Under the Thrift Savings Plan

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Interim rule with request for comments.

SUMMARY: The Federal Retirement Thrift Investment Board (the Board) was established by Pub. L. No. 99–335 (June 6, 1986), the Federal Employees' Retirement System Act of 1986, (codified principally at 5 U.S.C. 8401–8479), as amended by Pub. L. 99–509, the Omnibus Budget Reconciliation Act of 1986, and Pub. L. 99–556, the Federal Employees' Retirement System Technical Corrections Act of 1986, to administer the Thrift Savings Plan for federal employees. Regulations of the Board are contained in Title 5, CFR, Chapter VI, Parts 1600–1699. The Executive Director is publishing in Part 1603 interim regulations concerning vesting of amounts in the accounts of participants in the Thrift Savings Plan.

DATES: Interim rules effective April 1, 1987; comments must be received on or before October 1, 1987.

ADDRESSES: Comments may be sent to James B. Petrick, Federal Retirement Thrift Investment Board, P.O. Box 18899, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: James B. Petrick (202) 653–2573.

SUPPLEMENTARY INFORMATION: Part 1603 sets forth the rules concerning vesting under the Thrift Savings Plan. 5 U.S.C. 8432(g) provides that participants shall be immediately vested in all contributions made on their behalf to the Thrift Savings Plan, except for all 1% basic government contributions, described in 5 U.S.C. 8432(c)(1), made for the period beginning after January 1, 1987. These basic contributions, plus attributable earnings, are forfeited if an employee leaves government service with less than the required number of years of federal civilian service. 5 U.S.C. 8432(g) requires three years of service for most employees before they are vested in their basic 1% government contribution. For certain other employees (including Members of Congress and Congressional employees), only two years of service are required. Civilian service for purposes of vesting under the Thrift Savings Plan is all non-military service that is creditable toward an annuity under 5 CFR Parts 831 or 842, including service that is not covered by retirement deductions under those Parts, and service for which such deductions have been refunded. It also includes service for non-federal entities which is treated under law as service for the Federal Government. The Board will use the same calculations for determining a "year of service" as used by all Federal agencies and which are set forth in the applicable parts of the Federal Personnel Manual.

Section 1603.1 sets forth the definitions applicable to this Part. Section 1603.2 states the following basic vesting rules: (1) All amounts in a CSRS employee's account are immediately vested; (2) all amounts in a FERS employee's account are immediately vested except for the basic 1% government contribution and attributable earnings. Section 1603.3 describes those FERS employees who are vested in this contribution after either two years or three years, respectively.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only internal government procedures related to the Thrift Savings Plan.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Waiver of Notice or Proposed Rulemaking and 30-day Delay of Effective Date: Pursuant to 5 U.S.C. 553(b)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and for making these regulations effective in less than 30 days. Participating employees began separating from government service on April 1, 1987, the day the plan began operations. Accordingly, the Plan must process forfeitures immediately.

List of Subjects in 5 CFR Part 1603

Employee benefit plans, Government employees, Retirement, Pensions.

Federal Retirement Thrift Investment Board.

Francis X. Cavanaugh,
Executive Director.

Title 5 of the Code of Federal Regulations is amended to add Part 1603 to Chapter VI to read as follows:

PART 1603—VESTING

Sec.
1603.1 Definitions.
1603.2 Vested portions of individual account.
1603.3 Service requirements.

Authority: 5 U.S.C. 8474 (b)(5) and (c)(1).

§ 1603.1 Definitions.

Terms used in this Part shall have the following meaning:

"Administrative expenses" means expenses of the Federal Retirement Thrift Investment Board payable under the provisions of 5 U.S.C. 8437.

"Basic 1% contribution" means any government contribution made on behalf of a FERS employee pursuant to 5 U.S.C. 8432(c)(1), plus net earnings attributable to that contribution.

"Civilian service" means any non-military service which is creditable under either 5 U.S.C. 8411 or subchapter III of chapter 83 of title 5, U.S.C., determined without regard to any time limitations, any deposit or redeposit requirements contained in those statutory provisions, any requirement that the individual become subject to either of those statutory provisions after performing the service involved, or any requirement that the individual give notice in writing to the official by whom that individual is paid of that individual's desire to become subject to the retirement system established by either Chapter 83 or Chapter 84 of Title 5, United States Code.

"CSRS employee" means "employee" as defined in 5 U.S.C. 8331(1) or "Member" as defined in 5 U.S.C. 8331(2).

"FERS employee" means "employee" as defined in 5 U.S.C. 8401(11) or "Member" as defined in 5 U.S.C. 8401(20).

"Individual account" means the total of all sums contributed on behalf of an employee pursuant to 5 U.S.C. 8351 or 8432, plus net earnings.

"Net earnings" means earnings minus applicable administrative expenses.

"Separation from government service" means any separation of more than three days and includes separation resulting from the death of the employee.

"Vested" means those amounts in an individual account which are nonforfeitable upon the employee's separation from government service.

"Year of civilian service" means a year of service calculated under Subchapter S-3 of Supplement 831-1 of the Federal Personnel Manual.

§ 1603.2. Vested portions of individual account.

(a) All amounts in a CSRS employee's individual account are immediately vested.

(b) Except as provided in paragraph (c) of this section, all amounts in a FERS employee's individual account are immediately vested.

(c) The basic 1% contribution shall be forfeited upon separation from government service if the separation begins before the employee meets the applicable service requirements, as set forth in section 1603.3.

§ 1603.3. Service requirements.

(a) Except as provided in paragraph (b) of this section, all FERS employees shall be vested in their basic 1% contribution upon completing three years of civilian service.

(b) FERS employees shall be vested in their basic 1% contribution upon completing two years of civilian service if, upon separation from government service, they are serving in one of the following positions:

(1) A position in the Senior Executive Service as a non-career appointee (as defined in 5 U.S.C. 3132(a)(7));

(2) Positions listed in 5 U.S.C. 5312, 5313, 5314, 5315 or 5316;

(3) A position placed in level IV or level V of the Executive Schedule, pursuant to 5 U.S.C. 5317;

(4) A position in the Executive Branch which is excepted from the competitive service by the Office of Personnel Management because of the confidential and policy-determining character of the position; or

(5) A Member of Congress or a Congressional employee.

[FR Doc. 87-18620 Filed 8-11-87; 8:45 am]

BILLING CODE 6715-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 704

Conservation Reserve Program; Erosion Eligibility and Liquidated Damages; Correction

AGENCY: Agricultural Stabilization and Conservation Service, Commodity Credit Corporation, USDA.

ACTION: Interim rule, correction.

SUMMARY: This action corrects the preamble of the interim rule published at 52 FR 27535 on Wednesday, July 22, 1987, to set forth the effective date of the interim rule. The fact that the interim rule was to be effective upon the date of publication was referred to in the Supplementary Information but was not set forth in the preamble.

FOR FURTHER INFORMATION CONTACT: James R. McMullen, Director, Conservation and Environmental Protection Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013, (202) 447-6221.

The preamble for the interim rule amending CFR Part 704 which was published on July 22, 1987, at 52 FR 27536 is corrected by revising the paragraph captioned "Date" to read as follows:

"DATES: This interim rule shall be effective July 22, 1987. Comments must be received on or before September 21, 1987 to be assured of consideration."

Signed at Washington, DC August 6, 1987.

Vern Neppl,

Acting Administrator, Agricultural Stabilization and Conservation Service, Executive Vice President, Commodity Credit Corporation.

[FR Doc. 87-18301 Filed 8-11-87; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF ENERGY

10 CFR Part 862

[Docket No. DP-RM-86-101]

Restrictions on Aircraft Landing and Air Delivery at Department of Energy Nuclear Sites

AGENCY: Defense Programs, Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy is promulgating regulations prohibiting the operation or use of aircraft on designated sites and air delivery from above or contiguous to designated sites. "Air delivery" is defined in the regulations as delivering or retrieving a person or object by airborne means, including but not limited to, aircraft. Other activities prohibited by the regulations include removal or movement of a downed aircraft from or on a designated site without prior authorization from DOE; failure to comply with a DOE order to remove a downed aircraft from a designated site; and violation of certain FAA regulations over a designated site. The regulations are not applicable to (1) aircraft operating pursuant to official business of the Federal Government; (2) aircraft over-flying or in the process of landing pursuant to official business of a state or local law enforcement authority with prior notification to DOE; or (3) aircraft in the process of landing on a DOE site due to circumstances beyond the control of the operator and with prior notification to DOE, if possible. Aircraft described in (2) and (3) above, however, are within the scope of this part upon landing at a DOE designated site.

The regulations also establish a voluntary minimum altitude of 2,000 ft. above the terrain to which the regulations apply for all aircraft. This complements more stringent FAA restrictions or prohibitions regarding airspace over certain DOE property, specifically the Pantex Plant, Amarillo, Texas; the Nevada Test Site, Las Vegas, Nevada; the Lawrence Livermore Laboratory, Site 300, Tracy, California and Los Alamos National Laboratory, Los Alamos, New Mexico. In all cases where one exists, the more stringent FAA restriction or prohibition takes precedence over this voluntary minimum altitude.

EFFECTIVE DATE: September 11, 1987.

FOR FURTHER INFORMATION CONTACT:

John H. Hnatio, Office of Safeguards and Security, DP 343.4, Department of Energy, Germantown, Washington DC, 20545, (301) 353-2478

Jo Ann Williams, Office of the Assistant General Counsel for Nuclear Affairs, GC 31, Department of Energy, Washington DC, 20585, (202) 586-6975.

SUPPLEMENTARY INFORMATION:

I. Background
II. Regulatory Requirements
III. Analysis of Public Comments
IV. Modifications

I. Background

The DOE has the responsibility for nuclear energy research and development, including naval nuclear propulsion, and for the design, development, and production of the Nation's nuclear weapons. DOE also has the responsibility for protecting and defending the facilities dedicated to these programs and the highly sensitive, valuable, and hazardous resources located at these facilities. The establishment of a security policy regarding aircraft landing and air delivery is one segment of a comprehensive DOE effort to ensure the protection of its nuclear facilities. These regulations are also promulgated in response to the concerns for greater airspace security at these facilities expressed by the National Security Council, the Congress, and the General Accounting Office.

These regulations are modeled after regulations of the National Park Service regarding aircraft landing and air delivery at 36 CFR 2.17.

II. Regulatory Requirements

A. National Environmental Policy Act

The National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) requires federal agencies to prepare detailed statements on major Federal actions significantly affecting the quality of the human environment. The DOE has determined that these regulations do not significantly affect the quality of the human environment; therefore, the preparation of an Environmental Impact Statement is not required.

B. Executive Order No. 12291

It has been determined that these regulations are not a major rule subject to the requirements of Executive Order No. 12291 (46 FR 13193, February 19, 1981). This determination is based on the fact that the regulations are not likely: (1) To result in an annual effect on the economy of $100 million or more; (2) to result in a major increase in costs or prices for industries; Federal, State, or local Government agencies; or geographic regions; or (3) to cause a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

These regulations were submitted to the Director of the Office of Management and Budget for a 10 day review period as required by section 3(c)(3) of Executive Order 12291. The Director has concluded his review under that Executive Order and had no comments.

C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the DOE certifies that sections 603 and 604 of the Act do not apply to these regulations. This certification is based on the fact that these regulations will not have a significant economic impact on a substantial number of small entities since they only establish a security policy regarding aircraft for DOE sites.

D. Paperwork Reduction Act

These regulations do not impose a collection of information requirement; therefore, it is not necessary to submit them to the Office of Management and Budget for review under the Paperwork Reduction Act (44 U.S.C. 3501 through 3520).

III. Analysis of Public Comments

A notice of proposed rulemaking was published on pages 35518–35521 of the Federal Register of October 6, 1986. The comment period ended on November 20, 1986. Public hearings were held in Las Vegas, Nevada on October 28, 1986 and in Washington, DC on October 30, 1986. Written comments were received from one private citizen. No one requested an opportunity to speak at either hearing.

The one letter received expressed concern that it would be difficult to comply with the voluntary 2000 ft. (AGL) minimum altitude when operating near DOE's Pinellas Plant which is near the St. Petersburg International Airport in Florida. Specifically, the commenter indicated his fear that pilots who did not comply with the voluntary minimum altitude standard would be subject to the criminal penalties set out in the proposed regulations at § 862.4(f).

Clearly, DOE does not intend that criminal sanctions be applied to those who do not comply with the voluntary minimum altitude standard. In choosing a voluntary standard, DOE sought to balance its national security concerns with the need of pilots and the flying public for accessibility to airspace and airports. DOE recognizes that there will be occasions when aircraft will need to fly below the voluntary minimum over its designated sites, particularly with respect to landing and take-off patterns. For example, aircraft using the St. Petersburg International Airport near the Pinellas Plant mentioned above and the Allegheny County Airport near the Bettis Atomic Power Laboratory will not be able to observe the 2,000 ft. minimum altitude. The notice designating a site as being covered by these regulations will indicate if DOE has determined that a minimum altitude lower than 2,000 ft. (AGL) is appropriate. However, DOE does request that where no need exists to fly below the 2,000 ft. (AGL) minimum altitude, aircraft exceed that altitude to assist DOE in the protection of its facilities and resources, as well as, for their own safety.

The commenter also requested that DOE indicate how the aviation industry will be informed about the rule. DOE is notifying the public by promulgation of this rule in the Federal Register and will designate sites to which the regulations apply by future Federal Register notices. DOE is also working with the FAA to assure that FAA advisory circulars are issued and aeronautical charts marked. Managers of Operations may also notify the public by press release about site designation.

IV. Modifications

After further consideration, DOE determined that certain modifications to the proposed regulations were desirable. Changes have been made in format and language for clarity.

Rather than apply these regulations to all its nuclear sites, DOE has decided to limit application to sites designated by DOE through notice in the Federal Register. Designation procedures are set forth in a new § 862.7.

The procedures for removal of aircraft have been revised to assure that aircraft owners are accorded due process. Financial obligations of the aircraft owner to DOE are also set forth with greater specificity.

The proposed rule contained a provision relating to radio communication between aircraft and designated DOE sites. It was DOE's original intention that this final rule would substitute a provision that stated that a frequency had been dedicated by the National Telecommunications and Information Administration (NTIA). Necessary licensing actions have not been completed. DOE intends to publish an amendment to these regulations designating frequencies to be used for air to ground communication at designated sites as soon as all licensing is effected.

List of Subjects in 10 CFR Part 862

Security measures, Penalties, Nuclear energy, Aircraft.

For reasons set out in the preamble, 10 CFR Chapter III is amended as set forth below.

Issued at Washington DC this 30 day of July, 1987.

Troy E. Wade, II,

Acting Assistant Secretary for Defense Programs.

Part 862 is added to 10 CFR Chapter III to read as follows:

PART 862—RESTRICTIONS ON AIRCRAFT LANDING AND AIR DELIVERY AT DEPARTMENT OF ENERGY NUCLEAR SITES

Sec.
862.1 Purpose.
862.2 Scope.
862.3 Definitions.
862.4 Prohibitions and penalties.
862.5 Procedures for removal of downed aircraft.
862.6 Voluntary minimum altitude.
862.7 Designation of sites.

Authority: 42 U.S.C. 2201(b), 2201(i) and 2278(a).

§ 862.1 Purpose.

The purpose of this part is to set forth Department of Energy, hereinafter "DOE", security policy regarding aircraft and air delivery on nuclear sites under the jurisdiction of DOE pursuant to the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.).

§ 862.2 Scope.

(a) This part applies to all persons or aircraft entering or otherwise within or above areas within the boundaries of lands or waters subject to the jurisdiction, administration, or in the custody of the DOE at sites designated by DOE.

(b) This part is not applicable to: (1) Aircraft operating pursuant to official business of the Federal Government; (2) aircraft over-flying or in the process of landing pursuant to official business of a state or local law enforcement authority with prior notification to DOE; or (3) aircraft in the process of landing on a DOE site due to circumstances beyond the control of the operator and with prior notification to DOE, if possible.

(c) Aircraft in (b)(2) and (b)(3) of this section are within the scope of this part upon landing at a DOE designated site.

§ 862.3 Definitions.

(a) Air delivery. Delivering or retrieving a person or object by airborne means, including but not limited to, aircraft.

(b) Aircraft. A manned a unmanned device or any portion thereof, that is commonly used or intended to be used for flight in the air, including powerless flight. Such devices include but are not limited to any parachute, hovercraft, helicopter, glider, airplane or lighter than air vehicle.

(c) Boundary. A delineation on a map of Federal interest in land or water utilized by DOE pursuant to the Atomic Energy Act of 1954, as amended:

(1) Authorized by Congress, or

(2) Published pursuant to law in the Federal Register, or

(3) Filed or recorded with a State or political subdivision in accordance with applicable law.

(d) Designated site. An area of land or water identified in accordance with § 862.7 of this part.

(e) Downed aircraft. An aircraft that is on a designated site due to emergency landing or for any other reason.

(f) Manager of Operations. The Manager of a DOE Operations Office, the Manager of the Pittsburgh Naval Reactors Office, the Manager of the Schnectady Naval Reactors Office and, for designated sites administered directly by DOE Headquarters, the Director of the Office of Safeguards and Security.

§ 862.4 Prohibitions and penalties.

(a) The following activities are prohibited by his part:

(1) Operation or use of aircraft on lands or waters of designated sites.

(2) Air delivery to or from designated sites.

(3) Removal or movement of downed aircraft, or participation in the removal or movement of downed aircraft, from or on a designated site unless prior authorization is obtained pursuant to § 862.5 of this part.

(4) Failure to remove a downed aircraft from a designated site in accordance with an order issued by the cognizant DOE Manager of Operations under § 862.5 of this part.

(5) Violation of Federal Aviation Administration regulations regarding minimum altitudes and prohibited flight maneuvers over a designated site.

(b) A person willfully engaging in activities prohibited by this Part may be subject to the imposition of criminal penalties set forth in sections 223 and 229 of the Atomic Energy Act, as amended [42 U.S.C. 2273 and 2278(a)].

§ 862.5 Procedures for removal of downed aircraft.

(a) An aircraft on or brought on to a designated site, except as provided in § 862.2 (b)(1), shall not be moved within or removed from such areas except as provided for in this section. All such aircraft are subject to full inspection by DOE security personnel upon landing upon order of the Manager of Operations or his designee. Any attempt to depart or remove the aircraft from a designated site without clearance obtained pursuant to this section, may be assumed to be indicative of hostile intent by security forces at such sites.

(b)(1) The cognizant DOE Manager of Operations for a designated site may, on his own initiative, issue a written order to the owner or operator of a downed aircraft to require the removal of that aircraft from the site within 20 days of this notice. Such an order shall specify:

(i) The date upon which removal operations must be completed;

(ii) The times and means of access to and from the downed aircraft to be removed;

(iii) The manner of removal; and

(iv) An estimate of the cost of removal to DOE for which the owner or operator will be held liable if removal is accomplished by DOE.

(2) The owner or operator of the downed aircraft may file a written petition, supported by affidavits, to the cognizant Manager of Operations requesting that the order be modified or set aside. The petition may be granted by the Manager of Operations for good cause shown, upon a finding that it is clearly consistent with the national security, public safety, and federal property interests. Such petition must be filed at least 10 days prior to the date upon which removal is to be initiated, as specified in the order. The written decision of the Manager of Operations shall be a final agency action.

(c)(1) The owner of a downed aircraft may petition the cognizant Manager of Operations of permission to move or remove the downed aircraft from or within a designated site. The petition must provide assurances that the owner will fully compensate DOE for all costs incurred or damages experienced as a result of landing or removal through a contact for services. The Manager of Operations may, for good cause shown, waive part or all of the compensation which might otherwise be due DOE.

(2) The Manager of Operations may deny such petition in whole or part and prohibit removal of a downed aircraft upon finding that:

(i) The removal of a downed aircraft would create an unacceptable safety or security risk;

(ii) The removal of a downed aircraft would result in excessive resource loss of property damage or an unacceptable disruption of federal activities;

(iii) The removal of downed aircraft is impracticable or impossible;

(iv) The owner has failed to provide adequate assurances that all costs incurred or damages experienced by DOE due to landing or removal of aircraft will be fully paid immediately upon removal by the owner under a contract for services;

(v) An inspection of the aircraft has not been conducted by DOE security personnel.

(3) In the event that such petition is granted in whole or part, the cognizant Manager of Operations may issue an order, as set forth in (b)(1) (i) through (iv) of this section. In the event that a petition is denied in whole or part, the Manager of Operations shall issue a written decision which shall set forth the reasons for such denial.

(d) Failure to comply with an order issued by the Manager of Operations pursuant to this section is basis for DOE to consider the downed aircraft to be abandoned property. DOE may take whatever measures it deems necessary when it determines that downed aircraft is abandoned property.

(e) Notwithstanding (b) and (c), the Manager of Operations may move or remove a downed aircraft from such an area upon oral or written notification to the owner or operator of such aircraft upon a finding that national security or operational requirements necessitate expedited movement or removal. The owner or operator may be held jointly and separately liable for all expenses incurred by DOE in the movement or removal of such aircraft. Such expenses shall be deemed to be incurred through an implied contract at law for services.

§ 862.6 Voluntary minimum altitude.

In addition to complying with all applicable FAA prohibitions or restrictions, aircraft are requested to maintain a minimum altitude of 2,000 feet above the terrain of a designated site. Applicable FAA prohibitions or restrictions take precedence over this voluntary minimum altitude.

§ 862.7 Designation of sites.

(a) DOE shall designate sites covered by this part as deemed necessary, consistent with the national security and public safety, through notice in the **Federal Register**.

(b) This part shall be effective as to any facility, installation, or real property on publication in the **Federal Register** of the notice designating the site.

(c) Upon designation of a site, the cognizant Manager of Operations may inform the public of such designation through press release or posting of notice at airfields in the vicinity of the designated site.

[FR Doc. 87-18340 Filed 8-11-87; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 399

[Docket No. 70629-7129]

Carbon-Bonded Carbon Thermal Insulating Materials; Addition to Commodity Control List

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: Export Administration maintains the Commodity Control List (CCL), which contains those items controlled for export by the Department of Commerce. This rule adds an entry, numbered 1734A, to the CCL covering certain low density, rigid, carbon-bonded, fibrous or non-fibrous carbon thermal insulating materials. The addition of this entry results from the review of the system of strategic export controls maintained by the United States and certain allied countries through the Coordinating Committee (COCOM).

EFFECTIVE DATE: This rule is effective August 12, 1987.

FOR FURTHER INFORMATION CONTACT: John Black or Patricia Muldonian, Regulations Branch, Office of Technology and Policy Analysis, Export Administration, Telephone: (202) 377-2440. For technical questions on carbon thermal insulating materials, call Jeffrey Tripp, Capital Goods Technical Center, Office of Technology and Policy Analysis, Export Administration, Telephone: (202) 377-1309.

SUPPLEMENTARY INFORMATION:

Saving Clause

Shipments of items removed from general license authorizations as a result of this regulation that were on dock for lading, on lighter, laden aboard an exporting carrier, or enroute aboard a carrier to a port of export pursuant to actual orders for export before (two weeks after date of publication) may be exported under the general license provisions up to and including (four weeks after date of publication). Any such items not actually exported before midnight (four weeks after date of publication) require a validated export license.

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule also is exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to Vincent Greenwald, Office of Technology and Policy Analysis, Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule mentions a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This collection has been approved by the Office of Management and Budget under control number 0625-0001.

List of Subjects in 15 CFR Part 399

Exports, Reporting and recordkeeping requirements.

Accordingly, the Export Administration Regulations (15 CFR Parts 368-399) are amended as follows:

PART 399—[AMENDED]

1. The authority citation for 15 CFR Part 399 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 97-145 of December 29, 1981 and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223, 50 U.S.C. 1701 *et seq.*; E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub.

L. 99-449 (October 2, 1986); E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

§ 399.1 Supplement 1, Group 7 [Amended]

2. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), a new entry 1734A is added (in numerical order, disregarding the first digit) reading as follows:

1734A Low density, rigid, carbon-bonded, fibrous or non-fibrous carbon thermal insulating materials as described in this entry.

Controls for ECCN 1734A

Unit: Report in "lbs."
Validated License Required: Country Groups QSTVWYZ
GLV $ Value Limit: $1,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations
Processing Code: CM
Reason for Control: National security
Special Licenses Available: None

List of Materials Controlled by ECCN 1734A

Low density, rigid, carbon-bonded, fibrous or non-fibrous carbon thermal insulating materials having all of the following characteristics:

(a) A capability of operating at temperatures greater than 2273 K (2000°C);

(b) A density greater than 100 kg/m³ and less than 300 kg/m³;

(c) A compressive strength greater than 0.1 MPA and less than 1.0 MPA;

(d) A flexural strength of greater than 1.0 MPA; *and*

(e) A carbon content of greater than 99.9% of total solids.

Date: August 7, 1987.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 87-18342 Filed 8-11-87; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regs. No. 16]

Pension Funds for Deeming Purposes and Grandfathering Provisions

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: We are amending our regulations to include a rule that pension funds are not counted as resources for deeming purposes and to make explicit in our grandfathering rules that a Supplemental Security Income (SSI) "supplemental security income benefit" means a Federal benefit only and does not include any State supplementation.

EFFECTIVE DATE: These regulations are effective September 1, 1987.

FOR FURTHER INFORMATION CONTACT: Henry D. Lerner, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594-7463.

SUPPLEMENTARY INFORMATION: These regulations finalize two new rules which were published in the **Federal Register** on November 8, 1982 (47 FR 50511) as a Notice of Proposed Rulemaking (NPRM). These new rules deal with pension funds for deeming purposes and a grandfathering provision. We provided a 60-day comment period and no comments were received on these two rules. We have already published several final rules from the 1982 NPRM. Once these final rules are published, we will formally withdraw all remaining portions of the NPRM.

Under section 1614(f) of the Act, when an individual applies for or receives SSI benefits and we consider the individual's own resources, we also deem (consider to belong to the individual) resources of an individual's ineligible spouse who lives in the same household, ineligible parent or spouse of a parent (if the eligible individual is a child) who lives in the same household as the child, and sponsor or the spouse of such sponsor (if the eligible individual is an alien). In addition, we deem the resources of an "essential person" under section 211(a)(1)(B) of Pub. L. 93-66. However, the Secretary has authority under sections 1614(f) (1) and (2) of the Act not to deem the resources of an ineligible spouse, or ineligible parent (or spouse of a parent) " to the extent determined by the Secretary to be inequitable under the circumstances." This authority does not extend to the other sources of deeming named.

For reasons of equity, we are adding new rules to the deeming situations in paragraphs (a) and (b) of 20 CFR 416.1202 (which were 20 CFR 416.1262 and 416.1263 in the NPRM). Pension funds owned by an ineligible spouse or ineligible parent or spouse of a parent will not be counted as an eligible individual's resources. We define pension funds as funds held in individual retirement accounts (IRA), as described by the Internal Revenue Code, or in work-related pension plans (including such plans for self-employed individuals, sometimes referred to as Keogh plans). Amounts distributed from a pension fund to a pensioner will count as income to the pensioner that can be deemed to a spouse or child.

We believe it is inequitable to jeopardize the future of a person whose resources are deemed so that another individual's current needs can be met. This requirement is especially burdensome because deeming is often a temporary situation which ceases, for example, when a child reaches age 18 or a couple no longer lives together in the same household. In order to be supportive of families, we believe it is preferable to permit a spouse or parent to provide for his or her own future while recognizing the current needs of the otherwise eligible individual. Therefore, we will not count pension funds owned by an ineligible spouse, ineligible parent or ineligible spouse of a parent.

We will continue our policy of counting the equity value of these funds (including any interest accrued) as an available resource to an applicant or recipient who is the owner of a pension fund, and those owned by an essential person, eligible spouse of an applicant or beneficiary, or a sponsor (or spouse of a sponsor) or an alien.

It is fair and correct to count the pension funds of an applicant/recipient because SSI is a current needs-based program. Consequently, the individual's own current needs must outweigh his or her future needs.

We are not changing the treatment of pension funds owned by an essential person or sponsor (or spouse of a sponsor) of an alien because in these cases, the Act does not authorize the Secretary to decline to deem income and resources when he or she determines such deeming is inequitable.

We are modifying our policy on the alternative resource rules at 20 CFR 416.1260(a)(2) (which was 20 CFR 416.1261(a)(4) in the NPRM). These alternative resource rules apply to persons who receive SSI benefits because they are aged, blind or disabled and were transferred from State programs to the Federal SSI program when it began in January 1974. Under section 1611(g) of the Act, these persons must have received State assistance payments for the aged, blind or disabled for December 1973 under the provisions of the State plan which was in effect for October 1972, must continue to live in the same State, and must continue to be eligible for SSI benefits. We have added

a statement that an "SSI benefit" means a Federal benefit only and does not include any State supplementation. Prior to the rules on the counting of income which were published in the Federal Register on October 3, 1980 (45 FR 65541), SSA interpreted an SSI benefit for the purpose of the alternative income rules to include receipt of a State supplementary payment. The income regulations qualified the rule by limiting an SSI benefit to a Federal payment. The qualification was necessary to implement the alternative income rules in a manner consistent with the Act. The alternative rules on resources are, therefore, being revised to make them consistent with the income rules and the Act. We intend to apply this new interpretation in a limited manner so that it will have only future effect and will not be applied to any beneficiary who received the advantage of a broader definition of an SSI benefit prior to publication of these final rules.

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because these rules affect only individuals and States. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

These regulations impose no additional reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance Program No. 13.807, Supplemental Security Income program)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI).

Dated: December 1, 1986.

Dorcas R. Hardy,

Commissioner of Social Security.

Approved: March 13, 1987.

Otis R. Bowen,

Secretary of Health and Human Services.

Subpart L of Part 416 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

PART 416—[AMENDED]

1. The authority citation for Subpart L of Part 416 is revised to read as follows and all other authority citations which appear throughout Subpart L are removed:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f) and 1631(d) of the Social Security Act, as amended; Sec. 211 of Pub. L. 93–66; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f) and 1383(d).

2. In § 416.1202, paragraphs (a) and (b) are revised to read as follows:

§ 416.1202 Deeming of resources.

(a) *Married individual.* In the case of an individual who is living with a person not eligible under this part and who is considered to be the husband or wife of such individual under the criteria in §§ 416.1806 and 416.1811, such individual's resources shall be deemed to include any resources, not otherwise excluded under this subpart, of such spouse whether or not such resources are available to such individual. In addition to the exclusions listed in § 416.1210, pension funds which the ineligible spouse may have are excluded. "Pension funds" are defined as funds held in individual retirement accounts (IRA), as described by the Internal Revenue Code, or in work-related pension plans (including such plans for self-employed individuals, sometimes referred to as Keogh plans).

(b) *Child.* In the case of a child (as defined in § 416.1856) who is under age 18, such child's resources shall be deemed to include any resources, not otherwise excluded under this subpart, of an ineligible parent of such child (or the ineligible spouse of a parent) who is living in the same household (as defined in § 416.1851) as such child, whether or not available to such child, to the extent that the resources of such parent (or such spouse of a parent) exceed the resource limits described in § 416.1205. (If the child is living with only one parent, the resource limit for an individual applies. If the child is living with both parents (or one parent and his or her spouse), the resource limit for an individual and spouse applies.) In addition to the exclusions listed in § 416.1210, pension funds which the ineligible parent or spouse of a parent may have are also excluded. "Pension funds" are defined in paragraph (a) of this section. As used in this section, the term "parent" means the natural or adoptive parent of a child and "spouse of a parent" means the spouse (as defined in § 416.1806) of such natural or adoptive parent.

* * * * *

3. In § 416.1260, paragraph (a)(2) is revised to read as follows:

§ 416.1260 Special resource provision for recipients under a State plan.

(a) * * *

(2) Has not, since December 1973, been ineligible for an SSI benefit for a period exceeding 6 consecutive months. An SSI benefit means a Federal benefit only; it does not include any State supplementation.

* * * * *

[FR Doc. 87-18310 Filed 8-11-87; 8:45 am]

BILLING CODE 4190-11-M

Food and Drug Administration

21 CFR Part 178

[Docket No. 85F-0441]

Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of a stabilized chlorine dioxide solution for use as a sanitizing rinse for food-processing equipment. This action responds to a petition filed by Bio-Cide International, Inc.

DATES: Effective August 12, 1987; objections by September 11, 1987. The Director of the Office of the Federal Register approves the incorporation by reference of certain publications at 21 CFR 178.1010, effective August 12, 1987.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of October 25, 1985 (50 FR 43467), FDA announced that a petition (FAP 5H3889) had been filed by Bio-Cide International, Inc., 1111 North Flood Ave. (now 2845 Broce Dr., P.O. Box 2700), Norman, OK 73070, proposing that § 178.1010 *Sanitizing solutions* (21 CFR 178.1010) be amended to provide for a stabilized chlorine dioxide solution for use as a sanitizing rinse for food-processing equipment.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed use of the food additive is safe, and that the regulations should be amended in 21 CFR 178.1010 by adding new paragraphs (b)(34) and (c)(29).

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before September 11, 1987, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Food Safety and Applied Nutrition, Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 178.1010 is amended by adding new paragraphs (b)(34) and (c)(29) to read as follows:

§ 178.1010 Sanitizing solutions.

* * * * *

(b) * * *

(34) An aqueous solution of an equilibrium mixture of oxychloro species (predominantly chlorite, chlorate, and chlorine dioxide) generated either (i) by directly metering a concentrated chlorine dioxide solution, prepared just prior to use, into potable water to provide the concentration of available chlorine dioxide stated in paragraph (c)(29) of this section, or (ii) by acidification of an aqueous alkaline solution of oxychloro species (predominantly chlorite and chlorate) followed by dilution with potable water to provide the concentration of available chlorine dioxide described in paragraph (c)(29) of this section.

(c) * * *

(29) Solutions identified in paragraph (b)(34) of this section should provide, when ready to use, at least 100 parts per million and not more than 200 parts per million available chlorine dioxide as determined by the method titled "Iodometric Method for the Determination of Available Chlorine Dioxide (50–250 ppm available ClO_2)," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Center for Food Safety and Applied Nutrition (HFF–310), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L. St. NW., Washington, DC 20408.

* * * * *

Dated: August 3, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87–18287 Filed 8–11–87; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Parts 41 and 42

[SD–108.861]

Visas: Documentation of Nonimmigrants and Immigrants; Ineligible Classes

AGENCY: Department of State, Bureau of Consular Affairs.

ACTION: Final rule.

SUMMARY: This final rule amends 22 CFR 41.91(a)(9) & (10) and 42.91(a)(9) & (10) relating to certain ineligible classes of aliens by adopting principles set forth by the Board of Immigration Appeals (BIA) with regard to foreign convictions and by extending them to domestic judicial determinations as well. This final rule affects an alien's eligibility to receive a visa because of criminal offenses involving moral turpitude committed prior to the age of eighteen pursuant to the precedent decisions rendered by the Board of Immigration Appeals in the cases of *Matter of Ramirez-Rivero* and *Matter of De La Nues*.

EFFECTIVE DATE: May 13, 1987.

FOR FURTHER INFORMATION CONTACT: Stephen K. Fischel, Chief, Legislation and Regulations Division, Visa Services, or Guida Evans-Magher, Consular Affairs Specialist, Washington, DC 20520 (202) 663–1204 or (202) 663–1206.

SUPPLEMENTARY INFORMATION: As a result of decisions made by the Board of Immigration Appeals in the *Matter of Ramirez-Rivero* and the *Matter of De La Nues*, new standards were set defining treatment of juvenile delinquency by foreign courts. Standards established by Congress in the Federal Juvenile Delinquency Act (FJDA), as amended, govern whether an offense is to be considered an act of juvenile delinquency or a crime by U.S. standards. In addition, the Comprehensive Crime Control Act of 1984 further amended the FJDA by lowering the minimum age from 16 to 15 for prosecution of a juvenile as an adult

and by permitting trial of youths between the age of 15 and 18 years as adults for felonies involving violence and for certain offenses relating to drugs.

On May 13, 1987, the Department published at 52 FR 17942 an Interim Rule amending §§ 41.91(a)(9) and (10) and 42.91(a)(9) and (10) in order to bring Department regulations in compliance with United States standards on conduct constituting an act of juvenile delinquency. Since the decisions of the BIA (*Matter of Ramirez-Rivera*, 18 I&N Dec. 133 and *Matter of De la Nuez*, 18 I&N Dec. 140) and subsequent amendments to the FJDA are in conflict with State Department regulations, these amendments are promulgated to conform with these decisions and the FJDA amendments relating to criminal offenses committed by certain aliens prior to age fifteen or between the ages of fifteen and eighteen.

Comment Received

Interested persons were given the opportunity to submit written comments on the Interim Rule on or before June 5, 1987. One comment has been received and its analysis follows.

The single commenter suggested that the new standards for juvenile treatment were more restrictive than current law and recommended further that consular officials "retain" discretion to waive ineligibility for aliens between the ages of 15 and 17 years.

Under current regulations at 22 CFR 41.91(a)(9)(iii), 22 CFR 41.91(a)(10)(i), 22 CFR 42.91(a)(9)(iv), and 22 CFR 42.91(a)(10)(ii) an alien is not ineligible to receive a visa under the provisions of section 212(a)(9) and (10) of the Immigration and Nationality Act by reason of having been tried and treated as a juvenile by a juvenile court for the commission of an offense involving moral turpitude provided the alien was under the age of eighteen years at the time the offense was committed. As many foreign jurisdictions do not have juvenile courts, many aliens under the age of eighteen years are tried as adults and, thus, are often found to be ineligible for visa issuance. The new regulations treat all aliens uniformly according to federal standards established under the Federal Juvenile Delinquency Act (FJDA). This treatment is considered to be less restrictive, especially for those aliens convicted in jurisdictions where no juvenile court system exists. Furthermore, under the current law as well as under the new law, consular officers possess no authority to exercise discretion in applying the statutory and regulatory standards under the provisions of section 212(a)(9) and (10) of the Act. Thus, this change does not remove any "discretion" from consular officers adjudicating cases within the purview of sections 212(a)(9) and (10) of the Act as suggested.

This rule is not considered to be a major rule for purposes of E.O. 12291 nor is it expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 22 CFR Parts 41 and 42

Visas, Aliens, Nonimmigrants, Immigrants, Ineligible classes.

In view of the foregoing, Interim Rule 108–858, amending 22 CFR Parts 41 and 42, published at 52 FR 17942, May 13, 1987, is adopted as a final rule without amendments and is republished for the convenience of the user. The effective date of May 13, 1987 is retained.

PART 41—VISAS: INELIGIBLE CLASSES OF NONIMMIGRANTS

1. The authority citation for Part 41 continues to read as follows:

Authority: Sec. 104, 66 Stat. 174, 8 U.S.C. 1104; sec. 109(b)(1), 91 Stat. 847.

2. Section 41.91(a)(9)(iii) is revised to read:

§ 41.91 Aliens ineligible to receive visas.

(a) *Aliens ineligible under the provisions of section 212(a) of the Act.*

* * * * *

(9) *Crime involving moral turpitude.*

* * *

(iii) An alien shall not be ineligible to receive a visa under section 212(a)(9) of the Act by reason of any offense committed prior to the alien's fifteenth birthday. Nor shall an alien be ineligible to receive a visa under section 212(a)(9) of the Act by reason of any offense committed between the alien's fifteenth and eighteenth birthdays unless such alien was tried and convicted as an adult for a felony involving violence as defined in section 1(1) and section 16 of Title 18 of the United States Code. An alien tried and convicted as an adult for one of the foregoing violent felony offenses committed after having attained the age of fifteen years shall be subject to the provisions of section 212(a)(9) of the Act regardless of whether at that time juvenile courts existed within the jurisdiction of the conviction.

* * * * *

3. Section 41.91(a)(10)(i) is revised to read:

§ 41.91 Aliens ineligible to receive visas.

(a) *Aliens ineligible under the provisions of section 212(a) of the Act.*

* * * * *

(10) *Conviction of two or more offenses.* * * *

(i) An alien shall not be ineligible to receive a visa under section 212(a)(10) of the Act by reason of any offense committed prior to the alien's fifteenth birthday. Nor shall an alien be ineligible to receive a visa under section 212(a)(10) of the Act by reason of any offense committed between the alien's fifteenth and eighteenth birthdays unless such alien was tried and convicted as an adult for a felony involving violence as defined in section 1(1) and section 16 of Title 18 of the United States Code. An alien tried and convicted as an adult for one of the foregoing violent felony offenses committed after having attained the age of fifteen years and who has also been convicted of at least one other such offense or any other offense committed as an adult, shall be subject to the provisions of section 212(a)(10) of the act, regardless of whether at that time juvenile courts existed within the jurisdiction of the conviction.

* * * * *

PART 42—VISAS: INELIGIBLE CLASSES OF IMMIGRANTS

1. The authority citation for Part 42 continues to read as follows:

Authority: Sec. 104, 66 Stat. 174, 8 U.S.C. 1104; sec. 109(b)(1), 91 Stat. 847.

2. Section 42.91(a)(9)(iv) is revised to read:

§ 42.91 Aliens ineligible to receive visas.

(a) *Aliens ineligible under the provisions of section 212(a) of the Act.*

* * * * *

(9) *Crime involving moral turpitude.*

* * *

(iv) An alien shall not be ineligible to receive a visa under section 212(a)(9) of the Act by reason of any offense committed prior to the alien's fifteenth birthday. Nor shall an alien be ineligible to receive a visa under section 212(a)(9) of the Act by reason of any offense committed between the alien's fifteenth and eighteenth birthdays unless such alien was tried and convicted as an adult for a felony involving violence as defined in section 1(1) and section 16 of Title 18 of the United States Code. An alien tried and convicted as an adult for one of the foregoing violent felony offenses committed after having attained the age of fifteen years shall be subject to the provisions of section

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212(a)(9) of the Act regardless of whether at that time juvenile courts existed within the jurisdiction of the conviction.

* * * * *

3. Section 42.91(a)(10)(ii) is revised to read:

§ 41.91 Aliens ineligible to receive visas.

(a) *Aliens ineligible under the provisions of section 212(a) of the Act.*

* * * * *

(10) *Conviction of two or more offenses.* * * *

(ii) An alien shall not be ineligible to receive a visa under section 212(a)(10) of the Act by reason of any offenses committed prior to the fifteenth birthday. Nor shall any alien be ineligible to receive a visa under section 212(a)(10) of the Act by reason of any offense committed between the alien's fifteenth and eighteenth birthday unless such alien was tried and convicted as an adult for a felony involving violence as defined in section 1(1) and section 16 of Title 18 of the United States Code. An alien, tried and convicted as an adult for one of the foregoing violent felony offenses committed after having attained the age of fifteen years, and who has also been convicted of at least one other such offense or any offense committed as an adult, shall be subject to the provisions of section 212(a)(10) of the Act, regardless of whether at that time juvenile courts existed within the jurisdiction of the conviction.

* * * * *

Dated: July 8, 1987.

Joan M. Clark,

Assistant Secretary for Consular Affairs.

[FR Doc. 87-18343 Filed 8-11-87; 8:45 am]

BILLING CODE 4710-06-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 40

[DoD Directive 5500.7]

Standards of Conduct; Correction

AGENCY: Office of the Secretary, DOD.

ACTION: Final rule amendment.

SUMMARY: This document corrects omissions and typographical errors in the Standard of Conduct final rule, previously published on June 19, 1987 (32 CFR Part 40).

EFFECTIVE DATE: May 6, 1987.

ADDRESS: Office of General Counsel, Standards of Conduct Office, Pentagon, Washington, DC 20301-1600.

FOR FURTHER INFORMATION CONTACT: David W. Reams or Randi E. DuFresne, telephone (202) 697-5305.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 40

Conflict of interests.

Accordingly, 32 CFR Part 40 is amended as follows:

PART 40—[AMENDED]

1. The authority citation for Part 40 continues to read as follows:

Authority: E.O. 11222; Pub. L. 87-651; 3 U.S.C. 301.

2. Section 40.3 is amended by adding the following definition in alphabetical order:

§ 40.3 Definition.

* * * * *

Employment (and all variations). Except where expressly defined differently, this term is used in a broad sense to include services performed as a consultant, lawyer, agent or other kind of assistant, part-time or full-time, either for a defense contractor or a DoD Component.

* * * * *

3. Section 40.4 is amended by adding paragraph (b)(3)(iii)(B), (C) and (iv) to read as follows:

§ 40.4 Policy.

* * * * *

(b) * * *
(3) * * *
(iii) * * *

(B) This prohibition does not preclude speeches before such organizations by DoD officials if the speech is designed to express an official position in a public forum.

(C) This prohibition does not preclude volunteer efforts on behalf of charitable or nonprofit organizations by individuals who do not use their official titles in relation to solicitations and who do not solicit from individuals or entities with whom they do business in their official capacity. See DoD Directive 5410.18 and 5410.19.

(iv) *Relationship with Defense Contractor.* DoD personnel shall not use the Department's relationship with defense contractors or potential defense contractors to induce, coerce, or seek any favors or actions other than those authorized by the contract, or by law.

* * * * *

§ 40.6 [Amended]

4. In § 40.6 paragraphs (d)(2)(iii) (A), (B), and (C), change "November 7, 1986" to read "November 8, 1985."

5. Section 40.7 is amended by adding paragraphs (b)(4)(iv), (c), and (d).

§ 40.7 Digest of laws.

* * * * *

(b) * * *
(4) * * *

(iv) *Exceptions to post Government service restrictions.* (A) The restrictions of 18 U.S.C. 207 do not apply to communications made solely for the purpose of furnishing scientific or technological information in accordance with procedures established by the DoD Component concerned.

(B) The restrictions of 18 U.S.C. 207 do not apply when the Head of a DoD Component, in accordance with established procedures, certifies that a former officer or employee has outstanding scientific or technological qualifications and that the U.S. national interest would be served by that person's participation in a particular matter.

(c) *Laws particularly applicable to retired regular officers*—(1) *Claims.* (i) A retired regular officer of the Armed Forces may not, within two years of retirement, act as agent or attorney for prosecuting any claim against the Government, or assist in the prosecution of such a claim, or receive any gratuity or any share of or interest in such a claim in consideration for having assisted in the prosecution of such a claim, if such claim involves the Military Department in which service he or she holds a retired status. See 18 U.S.C. 283.

(ii) A retired Regular officer of the Armed Forces may never act as agent or attorney for prosecuting any claim against the Government, or assist in the prosecution of such a claim, or receive any gratuity or any share of or interest in such a claim in consideration for having assisted in the prosecution of such a claim if such a claim involves any subject matter with which he or she was directly connected while on active duty. See 18 U.S.C. 283.

(2) *Selling.* (i) A retired Regular officer is prohibited, at all times, from representing any person in the sale of anything to the Government through the Military Department in which service he or she holds a retired status. See 18 U.S.C. 281.

(ii) Payment may not be made from any appropriation to an officer on a retired list of the Regular Army, the Regular Navy, the Regular Air Force, the Regular Marine Corps, the Regular Coast Guard, the National Oceanic and Atmospheric Administration, or the Public Health Service, for a period of three years after his or her name is placed on that list, who is engaged for himself, herself or others in selling, or contracting or negotiating to sell, supplies or war materials to an agency

of the Department of Defense, the Coast Guard, the National Oceanic and Atmospheric Administration, or the Public Health Service. See 37 U.S.C. 801(b) as amended, October 9, 1962.

(iii) For the purpose of this statute, "selling" means:

(A) Signing a bid, proposal, or contract,

(B) Negotiating a contract.

(C) Contacting an officer or employee of any of the foregoing departments or agencies to obtain or negotiate contracts, negotiate or discuss changes in specifications, price, cost allowances, or other terms of contract, or settle disputes concerning performance of a contract, or

(D) Any other liaison activity with a view toward the ultimate consummation of a sale although the actual contract subsequently is negotiated by another person.

(3) *Employment with the Department of Defense.* A retired regular officer of the Armed Forces may not be appointed to a position in the civil service in the Department of Defense (including nonappropriated fund instrumentalities) within 180 days following retirement unless the following conditions set out in DoD Directive 1402.1 are met:

(i) The appointment is authorized by the Secretary of a Military Department, or designee, and, if applicable, by the Office of Personnel Management,

(ii) The minimum rate of basic pay for the position has been increased under 5 U.S.C. 5305, or

(iii) A state of national emergency exists.

(d) *Other laws applicable to DoD personnel.* Engaging in the following activities may subject present and former DoD personnel to criminal or other penalties:

(1) Aiding, abetting, counseling, commanding, including, or procuring another to commit a crime under any criminal statute (see 18 U.S.C. 201);

(2) Concealing or failing to report to proper authorities the commission of a felony under any criminal statute if such personnel knew of the actual commission of the crime (see 18 U.S.C. 4);

(3) Conspiring with one or more persons to commit a crime under any criminal statute or to defraud the United States, if any party to the conspiracy does any act to effect the object of the conspiracy (see 18 U.S.C. 371);

(4) Lobbying with appropriated funds (see 18 U.S.C. 1913);

(5) Disloyalty and striking (see 5 U.S.C. 7311, 18 U.S.C. 1918);

(6) Disclosure of classified information (see 18 U.S.C. 793 and 798, 50 U.S.C. 783), and disclosures of trade secrets and other confidential information (see 18 U.S.C. 1905);

(7) Habitual use of intoxicants to excess (see 5 U.S.C. 7352);

(8) Misuses of a Government vehicle (see 31 U.S.C. 638a(c)(2));

(9) Misuse of the mailing privilege (see 18 U.S.C. 1719);

(10) Deceit in an examination or personnel action in connection with Government employment (see 18 U.S.C. 1917);

(11) Committing fraud or making false statements in a Government matter (see 18 U.S.C. 1001);

(12) Mutilating or destroying a public record (see 18 U.S.C. 2071);

(13) Counterfeiting and forging transportation requests (see 18 U.S.C. 641);

(14) Embezzlement of Government money or property (see 18 U.S.C. 641); failing to account for public money (see 18 U.S.C. 643); private use of public money (see 18 U.S.C. 653); and embezzlement of the money or property of another person in the possession of an employee by reason of his Government employment (see 18 U.S.C. 654);

(15) Unauthorized use of documents relating to claims from or by the Government (see 18 U.S.C. 285);

(16) Certain political activities (see 5 U.S.C. 7321–7327), and 18 U.S.C. 600, 601, 602, 603, 606, and 607, which apply to civilian employees and see DoD Directive 1344.10, which applies to military personnel);

(17) Any person (including a special Government employee) who is required to register under the Foreign Agents Registration Act of 1938 (see 18 U.S.C. 219), serving the Government as an officer or employee (the section does not apply to retired regular officers who are not on regular duty, or reserves who are not on active duty or who are on active duty for training, or a special Government employee in any case in which the department Head certifies to the Attorney General that his or her employment by the United States Government is in the national interest);

(18) Soliciting contributions for gifts or giving gifts to superiors, or accepting gifts from subordinates (see 5 U.S.C. 7351, which applies only to civilian employees; regulations set out at D.2.c.(1) in this part govern military personnel);

(19) Accepting of excessive honoraria (see 2 U.S.C. 44li);

(20) Accepting, without statutory authority, any present emolument, office or title, or employment of any kind whatever, from any king, prince, or foreign state by any person holding any office or profit in or trust of the Federal Government, including all retired military personnel and regular enlisted personnel (U.S. Constitution, Art. I, Sec. 9, cl.8, exceptions to this prohibition are authorized under 37 U.S.C. 908);

(21) Union activities of military personnel (10 U.S.C. 976);

(22) Violation of merit system principles (see 5 U.S.C. 2301);

(23) Prohibited personnel practices (see 5 U.S.C. 2302);

(24) Civilian presidential appointees occupying full-time positions, appointment to which is required to be made with the advice and consent of the senate, in any calendar year earning outside income in excess of 15 percent of their Government salary (see 5 U.S.C. 210, Appendix 4);

(25) Employment of an officer of the Regular Navy or the Regular Marine Corps, other than a retired officer, by a person furnishing naval supplies or war materials to the United States (see 37 U.S.C. 801(a)).

§ 40.14 [Amended]

6. Section 40.14 is amended by italicizing the first sentence of paragraph (a), which is the heading, and lower-casing the word "Entities."

Linda M. Lawson,

Alternate, OSD Federal Register Liaison Officer, Department of Defense.

August 5, 1987.

[FR Doc. 87–18119 Filed 8–11–87; 8:45 am]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[OW–4–FRL–3244–8]

Ocean Dumping; Final Cancellation of Site Designations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today cancels the designation of two ocean dumping sites which are currently designated on an interim basis. This action is being taken because there is no projected future need for these sites. These sites will be removed from the list of "Approved Interim and Final Ocean Dumping Sites."

EFFECTIVE DATE: These cancellations shall be effective September 11, 1987.

ADDRESS: Send comments to: Ms. Sally Turner, Environmental Protection Agency, Water Management Division, Marine and Estuarine Branch, Marine

Protection Section, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Ms. Salley Turner, 404/347-2126.

The file supporting these site cancellations is available for public inspection at the following locations:

EPA Public Information Reference Unit (PIRU), Room 2904 (rear), 401 M Street, SW., Washington, DC 20460
EPA Region IV, 345 Courtland Street, NE, Atlanta, GA 30365

SUPPLEMENTARY INFORMATION: EPA published revised Ocean Dumping Regulations and Criteria in the **Federal Register** on January 11, 1977 (42 FR 2462 et seq.). Section 228.12 contains a list of "Approved Interim and Final Ocean Dumping Sites."

This list was amended on December 9, 1980, (45 FR 80142 et seq.) to extend the interim designation of some ocean dumping sites and cancel the designation of six industrial sites and one dredged material site. At that time EPA stated its intention to identify additional ocean dumping sites for which there is no projected future need.

Two such sites have now been identified, and EPA is cancelling the interim designation of these sites based upon recommendations from the Corps of Engineers.

On Monday, June 1, 1987, EPA proposed the cancellation of these sites in the **Federal Register** (52 FR 20429). The proposed rulemaking contained information regarding the sites and the circumstances surrounding the recommendation for cancellation. These sites with their identifying coordinates are listed below:

1. Ponce de Leon Inlet, FL:
   29°06'05"N., 80°55'50"W.
   29°06'10"N., 80°55'40"W.
   29°05'34"N., 80°55'10"W.
   29°05'28"N., 80°55'20"W.
2. St. Augustine Harbor, FL:
   29°51'33"N., 81°15'24"W.
   29°51'33"N., 81°15'00"W.
   29°50'33"N., 81°15'00"W.
   29°50'33"N., 81°15'24"W.

The comment period on the proposed rulemaking closed on July 1, 1987. No comments were received on the proposed rule.

Action

The cancellation of these two sites as EPA Interim Approved Ocean Dumping Sites is being published as final rulemaking.

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis.

EPA has determined that this action will not have a significant impact on small entities. No small entities are using or, as far as EPA is aware, are planning to use these sites in the near future. Furthermore, the cancellation of these site designations will have no effect on the economy or cause any of the other effects which would result in its being classified as a "major" action. Consequently, this final rule does not necessitate the preparation of a Regulatory Flexibility Analysis or Regulatory Impact Analysis.

This final rule does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. et seq.

List of Subject in 40 CFR Part 228

Water pollution control.

Dated: July 31, 1987.

Lee A. DeHihns, III,

Acting Regional Administrator, Region IV.

In consideration of the foregoing, Part 228 of Title 40 is amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

§ 228.12 [Amended]

2. Section 228.12(a)(3) is amended by removing from the list of dredged material sites the following two ocean dumping sites:

St. Augustine Harbor, FL:
29°51'33"N., 81°15'24"W.
29°51'33"N., 81°15'00"W.
29°50'33"N., 81°15'00"W.
29°50'33"N., 81°15'24"W.
Ponce de Leon Inlet, FL:
29°06'05"N., 80°55'50"W.
29°06'10"N., 80°55'40"W.
29°05'34"N., 80°55'10"W.
29°05'28"N., 80°55'20"W.

[FR Doc. 87-18093 Filed 8-11-87; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 261

[SHW-FRL-3246-2]

Hazardous Waste Management System: Identification and Listing of Hazardous Waste; Final Exclusion Rule

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is granting final exclusions from the lists of hazardous wastes contained in 40 CFR Part 261 for certain solid wastes generated by General Electric, Shreveport, LA and Keymark Corporation, Fonda, NY. This action responds to delisting petitions received by the Agency under 40 CFR 260.20 and 260.22 to exclude wastes on a "generator-specific" basis from the hazardous waste lists.

EFFECTIVE DATE: August 12, 1987.

ADDRESSES: The public docket for this final rule is located in the Sub-basement, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, and is available for public viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The reference number for this docket is "F-87-GEEF-FFFFF." The public may copy a maximum of 50 pages of materials from any one regulatory docket at no cost. Additional copies cost $.20/page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline, toll-free at (800) 424-9346, or (202) 382-3000. For technical information, contact Myles Morse, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-4768.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under 40 CFR 260.20 and 260.22, facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous waste contained at 40 CFR 261.31 and 261.32. Petitioners must provide sufficient information to EPA to allow the Agency to determine that (1) the waste to be excluded is non-hazardous based upon the criteria for which it was listed, and (2) that no other hazardous constituents are present in the wastes at levels of regulatory concern.

B. History of this Rulemaking

General Electric Company (General Electric) and Keymark Corporation (Keymark) each petitioned the Agency to exclude from hazardous waste control specific wastes they currently or previously generated. After evaluating these petitions, on November 27, 1985, EPA proposed to exclude specific wastes generated by thirteen facilities, including General Electric and Keymark (see 50 FR 48911-48967, November 27,

1985) from the lists of hazardous waste contained at 40 CFR 261.31 and 261.32. Six of these facilities were granted final exclusions in earlier notices. Five of the proposed exclusions will be addressed in future notices. This notice addresses only the delisting petitions for the General Electric Company, located in Shreveport, Louisiana and the Keymark Corporation, located in Fonda, New York.

II. Disposition of Exclusion Petitions

A. General Electric Company

1. Proposed Exclusion

General Electric petitioned the Agency to exclude its waste-water treatment sludge from EPA Hazardous Waste No. F006, based upon the absence or immobilization of the listed constituents in this waste. In the proposed rule, the Agency concluded that data submitted by General Electric substantiate their claim that the listed constituents of concern are either not present in concentrations of regulatory concern or are present in essentially immobile forms. As required by the Hazardous and Solid Waste Amendments of 1984, General Electric also provided data on other non-listed hazardous constituents from materials used in their manufacturing process which, therefore, would be expected to be present in the petitioned waste. An evaluation of these data indicated that no other hazardous constituents are present in this waste at levels of regulatory concern and that the waste does not exhibit any of the characteristics of hazardous waste. (See 50 FR 48949, November 27, 1985 and 51 FR 27063, July 29, 1986 for a more detailed description of why the Agency proposed to grant General Electric's petition.)

2. Agency Response to Public Comments

The Agency received comments from one commenter regarding the proposed rule. This commenter believes that the Agency should deny this petition since the facility did not submit groundwater monitoring data. The commenter believes that the Agency cannot evaluate adequately the potential health and environmental hazard of the waste without these data. The Agency proposed a decision on General Electric's petition on what was then considered a complete petition. At that time EPA did not, as a matter of policy, require compliance with Subpart F and submission of groundwater monitoring data as a part of the delisting demonstration. EPA as a matter of equity, therefore, has not now required General Electric to submit groundwater monitoring data. Today's final decision is based solely on the Agency's chemical and dispersion modeling evaluation of the waste itself.

The Agency's VHS model was used to predict what the concentration of constituents would be in the groundwater at a hypothetical downgradient compliance point. The VHS model considers the mobility of constituents from a specified volume of the petitioned waste. That evaluation indicated that no hazardous constituents would be present at the downgradient compliance point above levels of regulatory concern. EPA believes this evaluation is sufficient to allow a final exclusion determination to be made. The Agency agrees with the commenter, however, that groundwater monitoring data is additional useful information to aid evaluation of a delisting petition. In general, facilities petitioning for exclusion of a waste managed on-site are expected to be in compliance with the requirements of 40 CFR Part 264 or 265 and should submit, as part of their petition, four quarters of groundwater monitoring data from a monitoring system determined to be adequate under Subpart F of those regulations. As a matter of policy, however, the Agency has previously acted on several delisting petitions without groundwater monitoring data including: facilities that have previously received final decisions or received a waiver from the groundwater monitoring requirements through state agencies or EPA's Regional offices (such waivers include existing consent agreements and Subpart F waivers obtained under § 265.90(c) or § 264.90(b)). The agency will in the future publish guidance describing our policy to require submission of groundwater monitoring data.

The commenter also stated that EPA should not make the proposed exclusion final until an appropriate methodology for evaluating the potential for groundwater contamination from surface impoundments is available.

The VHS model was designed to predict the potential behavior of wastes managed in landfills. One of the primary differences between modeling the behavior of wastes in landfills and surface impoundments is the consideration of hydraulic head in impoundments. Hydraulic head tends to force leachate into the aquifer, displacing ground water, and resulting in potentially higher concentrations at the receptor well. We believe the landfill version of the VHS, being a conservative model, is a reasonable tool for the evaluation of wastes managed in impoundments. A number of conservative assumptions in the model support its application to impounded wastes. For example, the VHS landfill model assumes no attenuation, including no hydrolysis, no biodegradation, and no photolysis; each of these mechanisms may be significant in an impoundment scenario. The VHS landfill scenario also assumes the use of the EP Leachate results (or the results of the Organic Leachate Model (OLM) which is an empirical model of the Toxicity Characteristic Leaching Procedure (TCLP) and EP results); the EP assumes an acetic acid leaching media from a municipal landfill which generally will overestimate leaching potential in an aqueous impoundment, as well as a 20 to 1 dilution factor for a municipal landfill which will underestimate the dilution which is expected to occur in most impoundments and thus overestimates the leachate concentration for impoundments. We therefore believe that the VHS model is the best model currently available to evaluate data included in delisting petitions. While we are evaluating possible revisions to the VHS model for surface impoundments, the Agency will continue its current delisting process of evaluating impounded wastes using the landfill version of the VHS model.

3. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that General Electric's wastewater treatment sludge contains concentrations of the materials for which it was originally listed below levels of regulatory concern. For these reasons, the Agency believes that the waste is not hazardous and as such should be excluded from hazardous waste control. The Agency, therefore, is granting a final exclusion to General Electric for its wastewater treatment sludge resulting from phosphatizing and painting of steel parts, drawing and enameling of aluminum wire, non-cyanide plating processes, and deaeration of transformer oil listed as EPA Hazardous Waste No. F006, generated at its Shreveport, Louisiana facility. The Agency notes that the exclusion remains in effect unless the waste varies from that originally described in the petition (*i.e.*, the waste is altered as a result of changes in the manufacturing or treatment processes). The current exclusion applies only to the processes covered by the original demonstration. The facility may file a new petition if it alters its processes. The facility must treat its wastes as hazardous, however, until a new exclusion is granted.

B. Keymark Corporation

1. Proposed Exclusion

Keymark petitioned the Agency for a one-time exclusion for its wastewater treatment sludge contained in an on-site impoundment from EPA Hazardous Waste No. F019, based upon the absence or immobilization of the listed constituents in this waste. Data submitted by Keymark substantiate their claim that the listed constitutents of concern are either not present in concentrations of regulatory concern or are present in essentially immobile forms. As required by the Hazardous and Solid Waste Amendments of 1984, Keymark also provided data on other non-listed constituents from materials used in their manufacturing process, and therefore, expected to be present in the petitioned waste. An evaluation of these data indicated that no other hazardous constituents are present in this waste at levels of regulatory concern and that the waste does not exhibit any of the characteristics of hazardous waste. (See 50 *FR* 48922–48924, November 27, 1985 for a more detailed description of why the Agency proposed to grant Keymark's petition.)

2. Agency Response to Public Comments

(The same comments were received on both the General Electric and Keymark proposed grant decisions. See the Agency's Response to Public Comments for the General Electric Company also published in today's notice.)

3. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that Keymark's wastewater treatment sludge is not hazardous and as such should be excluded from hazardous waste control. The Agency, therefore, is granting a one-time exclusion to Keymark Corporation for its wastewater treatment sludge resulting from the chemical conversion coating of aluminum listed as EPA Hazardous Waste No. F019 generated at its Fonda, New York facility and contained in an on-site impoundment.

III. Effective Date

This rule is effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six month period to come into compliance. This is the case here since this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense which would be imposed on the petitioners by an effective date six months after promulgation and the fact that such a deadline is not necessary to achieve the purpose of section 3010, we believe that these exclusions should be effective immediately upon promulgation. These reasons also provide a basis for making this rule effective immediately under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

IV. Limited Effect of Federal Exclusion

States are allowed to impose requirements that are more stringent than EPA's pursuant to section 3009 of RCRA. State programs thus need not include those Federal provisions which exempt persons from certain regulatory requirements. For example, States are not required to provide a delisting mechanism to obtain final authorization. If the State program does include a delisting mechanism, however, that mechanism must be no less stringent than that of the Federal program for the State to obtain and keep final authorization.

As a result of enactment of the Hazardous and Solid Waste Amendments of 1984, any State which had delisting programs prior to the Amendments must become reauthorized under the new provisions.[1] To date, only one State (Georgia) has received reauthorization for their delisting program. The final exclusions granted today, therefore, are issued under the Federal program. The States, however, can still decide whether to exclude these wastes under their State (non-RCRA) program. Since a petitioner's waste may be regulated under a dual system (*i.e.*, both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact their State regulatory authority to determine the current status of their wastes under State law.

V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This rule to grant exclusions is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding wastes generated at two specific facilities from EPA's lists of hazardous wastes, thereby enabling these facilities to treat their wastes as non-hazardous.

[1] RCRA Regulation Statutory Interpretation #4: Effect of Hazardous and Solid Waste Amendments of 1984 on State Delisting Decisions, May 16, 1985, Jack W. McGraw, Acting Assistant Administrator for the Office of Solid Waste and Emergency Response.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment, a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effect will be to reduce the overall cost of EPA's hazardous waste regulations. Accordingly, I hereby certify that this regulation will not have a significant impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling.

Authority: Sec. 3001 RCRA, 42 U.S.C. 6921.

Dated: August 3, 1987.

Jeffery D. Denit,

Acting Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Sections 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

Appendix IX—[Amended]

2. In Appendix IX, add the following wastestreams in alphabetical order to Table 1 as indicated:

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
General Electric Company.	Shreveport Louisiana.	Wastewater treatment sludges (EPA Hazardous Waste No. F019) generated from electroplating operations and contained in four on-site treatment ponds on August 12, 1987

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
Keymark Corp.	Fonda, New York.	Wastewater treatment sludges (EPA Hazardous Waste No. F019) generated from the chemical conversion coating of aluminum and contained in [illegible] on August 12, 1987. This is a one-time exclusion.

[FR Doc. 87-18314 Filed 8-11-87; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 261

[SHW-FRL-3246-3]

Hazardous Waste Management System: Identification and Listing of Hazardous Waste; Final Exclusion Rule

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is granting a final exclusion from the lists of hazardous wastes contained in 40 CFR Part 261 for certain solid wastes generated by Bommer Industries Incorporated, Landrum, SC. This action responds to a delisting petition received by the Agency under 40 CFR 260.20 and 260.22 to exclude wastes on a "generator-specific" basis from the hazardous waste lists.

EFFECTIVE DATE: August 12, 1987.

ADDRESSES: The public docket for this final rule is located in the Sub-basement, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, and is available for public viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The reference number for this docket is "F-87-BMAN-FFFFF." The public may copy a maximum of 50 pages of materials from any one regulatory docket at no cost. Additional copies cost $.20/page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline, toll-free at (800) 424-9346, or (202) 382-3000. For technical information, contact Myles Morse, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M. Street SW., Washington, DC 20460, (202) 382-4788.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under 40 CFR 260.20 and 260.22, facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous waste contained at 40 CFR 261.31 and 261.32. Petitioners must provide sufficient information to EPA to allow the Agency to determine that (1) the waste to be excluded is non-hazardous based upon the criteria for which it was listed, and (2) that no other hazardous constituents are present in the wastes at levels of regulatory concern.

B. History of this Rulemaking

Bommer Industries Incorporated petitioned the Agency to exclude from hazardous waste control certain waste it generated. On November 27, 1985, EPA proposed to exclude specific wastes generated by thirteen facilities, including Bommer Industries Incorporated (see 50 FR 48911-48967, November 27, 1985) from the lists of hazardous waste contained at 40 CFR 261.31 and 261.32. Five of these facilities were granted final exclusions in earlier notices. Seven of the proposed exclusions will be addressed in future notices. This notice addresses only the delisting petition for Bommer Industries Incorporated, located in Landrum, South Carolina.

II. Disposition of Exclusion Petition

A. Bommer Industries Incorporated

1. Proposed Exclusion

Bommer Industries Incorporated (Bommer) petitioned the Agency to exclude the waste contained in its two ponds from EPA Hazardous Waste No. FOO6 based on the low concentration and immobilization of the listed constituents in the waste. In the proposed rule, the Agency concluded that data submitted by Bommer substantiate their claim that the listed constituents of concern are not present at levels of regulatory concern. Furthermore, Bommer submitted data on other non-listed hazardous constituents used in the manufacturing process which would be expected to be present in their petitioned waste. An evaluation of these data indicated that no other hazardous constituents are present in these wastes at levels of regulatory concern and that the wastes do not exhibit any of the characteristics of hazardous waste. (See 50 FR 48912-48915, November 27, 1985 for a more detailed explanation of why EPA proposed to grant Bommer's petition.)

2. Agency Response to Public Comments

The Agency received comments from one commenter regarding the proposed rule. This commenter stated that Bommer had not submitted adequate ground-water monitoring data in order to demonstrate that the ponds are not contaminating the ground water.

Bommer conducted groundwater monitoring and submitted results as part of their original petition. No contamination had been detected at the time the proposal was published. Subsequent to proposal of the exclusion, Bommer submitted additional monitoring data which also show no contamination (these data are available in the public docket and were made available for public comment on April 9, 1987, see 52 FR 11513). These data were collected from one additional downgradient well installed voluntarily by Bommer in May of 1986. Four quarters of data from this well have been reported and show no signs of contamination. The installation of the additional downgradient well and the data obtained, confirm the information originally reported in the petition. Bommer has submitted ground-water monitoring data from a total of one upgradient and four downgradient monitoring wells. Bommer's monitoring system is in compliance with Subpart F requirements for ground-water monitoring. The Agency, therefore, continues to believe that the waste contained in the two evaporation ponds can be delisted.

The commenter also stated that EPA should not make the proposed exclusion final until an appropriate methodology for evaluating the potential for ground-water contamination from surface impoundments is available.

The VHS model was designed to predict the potential behavior of the wastes managed in landfills. One of the primary differences between modeling the behavior of wastes in landfills and surface impoundments is the consideration of hydraulic head in surface impoundments. Hydraulic head tends to force leachate into the aquifer, displacing groundwater, and resulting in potentially higher concentrations at the receptor well. We believe, however, that the landfill version of the VHS, being a conservative model, is a reasonable tool for the evaluation of wastes managed in impoundments. A number of conservative assumptions in the model support its application to impounded wastes. For example, the VHS landfill model assumes no attenuation, including no hydrolysis, no biodegradation, and no photolysis; each of these mechanisms

may be significant in an impoundment scenario. The VHS landfill scenario also assumes the use of the EP leachate results (or the results of the Organic Leachate Model (OLM) which is an empirical model of the Toxicity Characteristic Leaching Procedure (TCLP) and EP results); the EP assumes an acetic acid leaching media for a municipal landfill which generally will overestimate leaching potential in an aqueous impoundment, as well as a 20 to 1 dilution factor for a municipal landfill which will underestimate the dilution which is expected to occur in most impoundments, and thus overestimate the leachate concentrations for wastes from impoundments. We therefore believe the VHS is the best model currently available to evaluate data included in delisting petitions. While we are evaluating possible revisions to the VHS model for surface impoundments, the Agency will continue its current delisting process of evaluating impounded wastes using the landfill version of the VHS model.

3. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that Bommer's sludge contained in the two ponds are not hazardous and as such should be excluded from hazardous waste control. The Agency, therefore, is granting a final exclusion to Bommer Industries Incorporated's Landrum, South Carolina facility for its wastewater treatment sludge from electroplating operations listed as EPA Hazardous Waste No. FOO6. Bommer Industries Incorporated may now manage its petitioned waste as non-hazardous unless the waste exhibits any of the characteristics of hazardous waste. The Agency notes that the exclusion remains in effect unless the waste varies from that originally described in the petition (*i.e.*, the waste is altered as a result of changes in the manufacturing or treatment process). The current exclusion applies only to the process covered by the original demonstration. The facility may file a new petition if it alters its process. The facility must treat its waste as hazardous, however, until a new exclusion is granted.

III. Effective Date

This rule is effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six month period to come into compliance. This is the case here since this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense which would be imposed on the petitioner by an effective date six months after promulgation and the fact that such a deadline is not necessary to achieve the purpose of section 3010, we believe that this rule should be effective immediately. These reasons also provide a basis for making this rule effective immediately under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

IV. Limited Effect of Federal Exclusions

States are allowed to impose requirements that are more stringent than EPA's pursuant to section 3009 of RCRA. State programs thus need not include those Federal provisions which exempt persons from certain regulatory requirements. For example, States are not required to provide a delisting mechanism to obtain final authorization. If the State program does include a delisting mechanism, however, that mechanism must be no less stringent than that of the Federal program for the State to obtain and keep final authorization.

As a result of enactment of the Hazardous and Solid Waste Amendments of 1984, any States which had delisting programs prior to the Amendments must become reauthorized under the new provisions.[1] To date, only one State (Georgia) has received authorization for their delisting program. The final exclusion granted today, therefore, is issued under the Federal program. The States, however, can still decide whether to exclude these wastes under their State (non-RCRA) programs. Since a petitioner's waste may be regulated by a dual system (*i.e.*, both Federal (RCRA) and State (non-RCRA) programs), the petitioners are urged to contact their State regulatory authority to determine the current status of their wastes under State law.

V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This rule to grant an exclusion is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding wastes generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling the facility to treat its waste as non-hazardous.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment, a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effect will be to reduce the overall cost of EPA's hazardous waste regulations. Accordingly, I hereby certify that this regulation will not have a significant impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling.

Authority: Sec. 3001 RCRA, 42 U.S.C. 6921.

Date: August 3, 1987.

Jeffery D. Denit,

Acting Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Sections 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

Appendix IX—[Amended]

2. In Appendix IX, add the following wastestream in alphabetical order to Table 1 as indicated:

[1] RCRA Regulation Statutory Interpretation #4: Effect of Hazardous and Solid Waste Amendments of 1984 on State Delisting Decisions, May 16, 1985, Jack W. McGraw, Acting Assistant Administrator for the Office of Solid Waste and Emergency Response.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
Bommer Industries Incorporated.	Landrum, South Carolina.	Wastewater treatment sludges (EPA Hazardous Waste No. F006) generated from their electroplating operations and contained in evaporation ponds #1 and #2 on August 12, 1987.

[FR Doc. 87-18315 Filed 8-11-87; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-323; RM-5296]

Radio Broadcasting Services; Haughton, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 279A to Haughton, Louisiana as that community's first FM channel in response to a petition filed by Haughton Broadcasting Company. With this action, this proceeding is terminated.

DATES: Effective September 21, 1987; The window period for filing applications will open on September 22, 1987, and close on October 22, 1987.

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-323, adopted July 9, 1987, and released August 4, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

12. Section 73.202(b), the Table of FM Allotments is amended by adding the entry of Channel 279A at Haughton, Louisiana.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-18250 Filed 8-11-87; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-378; RM-5415]

Television Broadcasting Services; Wiggins, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots UHF Television Channel 56+ to Wiggins, Mississippi, in response to a petition filed by South Mississippi Broadcasting Company, Inc. This allotment could provide a second commercial television service for Wiggins. Channel 56 is allotted to Wiggins with a site restriction 10.6 miles west. The site restriction will prevent a conflict with noncommercial educational television Channel *56, Panama City, Florida. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 21, 1987.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-378, adopted July 9, 1987, and released August 4, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.606 [Amended]

2. In § 73.606(b), the Table of TV Allotments under Mississippi, is amended by adding UHF Channel 56+ to Wiggins.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-18252 Filed 8-11-87; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-451; RM-5461]

Radio Broadcasting Services; Taft, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, at the request of Tareeca J. McKee, allocates Channel 282A to Taft, Oklahoma, as the community's first local FM service. Channel 282A can be allocated to Taft in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.1 kilometers (3.2 miles) southwest to avoid a short-spacing to Station KWGS, Channel 206C1, Tulsa, Oklahoma, and to Station KTCS-FM, Channel 260, Fort Smith, Arkansas. With this action, this proceeding is terminated.

DATES: Effective September 21, 1987; the window period for filing applications will open on September 22, 1987, and close on October 22, 1987.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-451, adopted July 9, 1987, and released August 4, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73.

PART 73—[AMENDED]

Radio broadcasting

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Oklahoma is amended by adding Taft, Channel 262A.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-18251 Filed 8-11-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-224; RM-5256]

Radio Broadcasting Services; Green Valley, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 246A to Green Valley, Arizona, as that community's second local FM service, in response to a petition filed by Crystal Sets, Inc. With this action, this proceeding is terminated.

DATES: Effective September 21, 1987; The window period for filing applications on Channel 246A at Green Valley, Arizona, will open on September 22, 1987, and close on October 22, 1987.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634-6530, regarding the allocation. For information related to the application process contact Audio Services Division, FM Branch, (202) 632-6908.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-224, adopted July 16, 1987, and released August 6, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended by adding Channel 246A to the entry for Green Valley, Arizona.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-18322 Filed 8-11-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-114; RM-5078, 5218]

Radio Broadcasting Services; Clarkesville and Cleveland, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 275A to Clarkesville, Georgia, at the request of Radio Habersham, Inc., and allots Channel 270A to Cleveland, Georgia, in lieu of Channel 275A, in response to a petition filed by Terry W. Barnhardt. The allotments could provide for a first FM service at each community.

DATES: Effective September 24, 1987; the window period for filing applications on Channel 275A at Clarksville, Georgia, and Channel 270A at Cleveland, Georgia, will open on September 25, 1987, and close on October 26, 1987 With this action this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-114, adopted July 13, 1987, and released August 6, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended for Georgia by adding Clarkesville, Channel 275A, and Cleveland, Channel 270A.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-18323 Filed 8-11-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-314; MR-5030 and RM-5586]

Radio Broadcasting Services; Brewer, Old Town and Skowhegan, ME

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates FM Channel 282B to Brewer, Maine, and modifies the license of Station WGUY-FM to specify Channel 282B in lieu of Channel 265A, in response to a petition filed by Stone Communications, Inc. In order to accommodate the channel upgrade at Brewer, it is necessary to substitute Channel 300A for Channel 261A at Skowhegan, Maine. Charles J. Saltzman is the applicant for Channel 261A at Skowhegan, and filed comments in support of the *Notice*. In response to a counterproposal filed by The Penobscot Indian Nation in this proceeding, we shall allocate FM Channel 297B to Old Town, Maine, as that community's first broadcast service. There is a site restriction 5.5 kilometers (3.4 miles) north of Old Town for Channel 297B. Canadian concurrence has been obtained for the allocation of the above channels since the communities are within 320 kilometers of the common U.S.-Canadian border. Additionally, the proposals for Brewer and Old Town, Maine must conform with the technical requirements of § 73.1030(c) (1)–(5) of the Rules regarding protection to the Commission's monitoring station at Belfast, Maine. With this action, this proceeding is terminated.

DATE: Effective September 24, 1987; The window period for filing applications for FM Channel 297B at Old Town, Maine, will open on September 25, 1987, and close on October 26, 1987.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–314, adopted July 9, 1987, and released August 6, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Maine is amended by removing Channel 265A and adding FM Channel 262B at Brewer, by removing FM Channel 261A and adding FM Channel 300A at Skowhegan, and by adding Channel 297B at Old Town.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–18324 Filed 8–11–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 86–475; RM–5572]

Radio Broadcasting Services; Deming and Las Cruces, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes noncommercial educational Channel 218A for unoccupied and unapplied for Channel 209A at Las Cruces, NM, and substitutes noncommercial educational Channel 219A for unoccupied and unapplied for Channel 218A at Deming, NM, at the request of the Associated Students of New Mexico State University Publications and Communications Board. Both channels can be allocated in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. Mexican concurrence has been received since Las Cruces and Deming are located within 320 Kilometers (199 miles) of the U.S.-Mexican border. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 21, 1987.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–475, adopted July 13, 1987, and released August 6, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.504 [Amended]

2. Section 73.504(a), the Table of Noncommercial Educational FM Allotments for Deming, New Mexico is amended by adding Channel 219A and removing Channel 218A, and for Las Cruces, New Mexico, by adding Channel 218A and removing Channel 209A.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–18325 Filed 8–11–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–44; RM–5602]

Radio Broadcasting Services; Healdton, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, at the request of Thomas Broadcasting, Inc., substitutes Channel 289C2 for Channel 288A at Healdton, Oklahoma, and modifies the license of Station KTYX(FM) to specify operation on the higher powered channel. Channel 289C2 can be allocated to Healdton in compliance with the Commission's minimum distance separation requirements with a site restriction of 21.3 kilometers (13.2 miles) southwest. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 22, 1987.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–44, adopted July 21, 1987, and released August 6, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M street, NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Healdton, Oklahoma, is amended by removing Channel 288A and adding Channel 289C2.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–18327 Filed 8–11–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 86–452; RM–5448]

Radio Broadcasting Services; Sherman, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 261A to Sherman, Texas, as that community's second FM service, at the request of KTXO, Inc. A site restriction of 7.6 kilometers (4.7 miles) northeast of Sherman is required. With this action, this proceeding is terminated.

DATES: Effective September 21, 1987; The window period for filing applications will open on September 22, 1987, and close on October 22, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–452, adopted July 16, 1987, and released August 6, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202, the Table of FM Allotments is amended by adding Channel 281A under Sherman, Texas.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–18328 Filed 8–11–87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85–223; RM–5034, RM–5165]

Radio Broadcasting Services; Barre and Montpelier, VT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 284C2 for Channel 244A at Montpelier, Vermont, and modifies the license of Station WNCS(FM) to specify operation on the new frequency, at the request of Montpelier Broadcasting, Inc. A site restriction of 9.2 kilometers (5.7 miles) southwest of the city is required. Concurrence by the Canadian government has been obtained. This action further dismisses the proposal to substitute Channel 284C2 for Channel 296A at Barre, Vermont (RM–5034) at the request of Radio Barre, Inc. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 24, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 85–223, adopted July 13, 1987, and released August 6, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Vermont, by removing Channel 244A and adding 284C2 to Montpelier.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–18329 Filed 8–11–87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86–474; RM–5438]

Radio Broadcasting Services; Marietta, Ohio and Ravenswood, WV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 271B1 for Channel 271A at Marietta, Ohio and modifies the license of Station WEYQ–FM to specify operation on the new frequency, at the request of Employee Owned Broadcasting Corp. In addition this document substitutes Channel 291A for 272A at Ravenswood, West Virginia and modifies the construction permit for Station WRAU(FM) to specify operation on the new frequency in order to accomplish the Marietta substitution. The substitution could provide Marietta with its first wide area FM station. A site restriction of 18.1 kilometers (11.2 miles) southwest of Marietta is required. Canadian government has concurred. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 21, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–474, adopted July 21, 1987, and released August 6, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended, under Ohio, by removing Channel 271A and adding 271B1 for Marietta and under West Virginia, by removing Channel 291A and adding 272A for Ravenswood.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–18328 Filed 8–11–87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86–245; RM–5224]

Television Broadcasting Services; Stuart, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots UHF television Channel 59 to Stuart, Florida, as a first television service at the request of The Steel Partnership, Inc. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 21, 1987.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–245, adopted July 15, 1987, and released

August 6, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of TV Allotments is amended for Florida, by adding Channel 59 to Stuart.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-18330 Filed 8-11-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Parts 90 and 94

Private Land Mobile Radio Services and Private Operational-Fixed Microwave Service; Editorial Amendments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission is editorially amending various sections of Parts 90 and 94 of its rules to correct typographical errors and omissions of publication to restore intended meanings to the affected sections.

EFFECTIVE DATE: August 12, 1987.

FOR FURTHER INFORMATION CONTACT: Eugene Thomson, Private Radio Bureau, telephone (202) 634-2443.

SUPPLEMENTARY INFORMATION: Authority for this action is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), and § 0.231(d) of the Commission's Rules. Provisions of 5 U.S.C. 553 concerning public notice, administrative procedure, and effective date do not apply because the amendments are either editorial or are corrections to typographical errors.

List of Subjects

47 CFR Part 90

Private land mobile radio services.

47 CFR Part 94

Private operational-fixed microwave service.

Rule Changes

Parts 90 and 94 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

The authority citation for Part 90 continues to read as follows:

Authority: Sections 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

§ 90.7 [Amended]

1. In § 90.7, the definition for *Geographic center* is amended by changing "paragraph (h) of § 90.365" to "§ 90.635".

§ 90.17 [Amended]

2. In § 90.17, the Local Government Radio Service Frequency Table in paragraph (b) is amended by changing the class of station(s) on frequencies 37.10, 37.18 and 37.26 MHz from "Fixed, base or mobile" to "Base or mobile".

§ 90.19 [Amended]

3. In § 90.19, the Police Radio Service Frequency Table in paragraph (d) is amended by changing "38.18" to "39.18", and "952 and above" to "928 and above" and moving that entry to follow "851-866".

4. In § 90.25, paragraph (c)(19) is revised to read as follows:

§ 90.25 Forestry-conservation radio service.

(c) * * *

(19) Available only on a shared basis with stations in other services, and subject to no protection from interference due to the operation of industrial, scientific, or medical (ISM) devices. In the 2483.5-2500 MHz band, no applications for new stations or modification to existing stations to increase the number of transmitters will be accepted. Existing licensees as of July 25, 1985, or on a subsequent date following as a result of submitting an application for license on or before July 25, 1985, are grandfathered, and their operation is co-primary with the Radiodetermination Satellite Service.

* * * * *

§ 90.53 [Amended]

5. In § 90.53, paragraph (b)(29)(iii) is amended by changing "§ 90.365(h)" to read "Table 1 of § 90.635".

§ 90.63 [Amended]

6. In § 90.63, paragraph (d)(19) is amended by changing the words "2483.5-250 MHz" to "2483.5-2500 MHz".

7. In § 90.73, the Special Industrial Radio Service Frequency Table in paragraph (c) is corrected by removing the first of the double-entered frequency "33.12" MHz. Additionally, paragraph (d)(23) is revised as follows:

§ 90.73 Special industrial radio service.

* * * * *

(d) * * *

(23) Available only on a shared basis with stations in other services, and subject to no protection from interference due to the operation of industrial, scientific, or medical (ISM) devices. In the 2483.5-2500 MHz band, no applications for new stations or modification to existing stations to increase the number of transmitters will be accepted. Existing licensees as of July 25, 1985, or on a subsequent date following as a result of submitting an application for license on or before July 25, 1985, are grandfathered, and their operation is co-primary with the Radiodetermination Satellite Service.

* * * * *

§ 90.75 [Amended]

8. In § 90.75, the present second paragraph (c)(24) is revised and redesignated as (c)(43). The Business Radio Service Frequency Table in paragraph (b) is amended by removing limitation 26 from frequency 464.500 MHz, and changing limitation 24 to limitation 43 for the 2450-2500 MHz frequency band. Paragraph (c)(15) is revised, and in the Table of Airports included in paragraph (c)(25)(viii), the latitude in the reference coordinates for the Chicago-Wheeling-Palwaukee Airport (PWK) in the Chicago, IL-Northwest, IN region is corrected from "42°64'08"N" to "42°06'48"N".

§ 90.75 Business radio service.

* * * * *

(c) * * *

(15) Except as noted in paragraph (c)(25), operation on this frequency is limited to a maximum output power of 20 watts.

* * * * *

(43) Frequencies in this band are available on a shared basis with stations in other services, and subject to no protection from interference caused

by the operation of industrial, scientific, or medical (ISM) devices. In the 2483.5–2500 MHz band, no applications will be accepted for new stations. Stations in the 2483.5–2500 MHz band that were licensed as a result of applications filed on or before July 25, 1985, are grandfathered, and their operation is co-primary with the Radiodetermination Satellite Service.

* * * * *

§ 90.79 [Amended]

9. In § 90.79, the Manufacturers Radio Service Frequency Table in paragraph (c) is amended by changing "75–80" to "75.60".

§ 90.91 [Amended]

10. In § 90.91, the Railroad Radio Service Frequency Table in paragraph (b) is amended by changing "76.60" to "72.60", "169.172" to "169 to 172", "406.413" to "406 to 413", and "450.470" to "450 to 470".

§ 90.103 [Amended]

11. In § 90.103, the first and second sentences of paragraph (c)(9) are combined and revised to read "This band is allocated to the Radiolocation Service on a secondary basis to other fixed or mobile services and must accept any harmful interference that may be experienced from such services or from the industrial, scientific, and medical (ISM) equipment operating in accordance with Part 18 of this chapter.

§ 90.129 [Amended]

12. In § 90.129, paragraph (o) introductory text is amended by changing "90.81(d)(13)" to "90.81(d)(14)".

§ 90.207 [Amended]

13. In § 90.207, paragraph (k) is amended by changing the designators "F3Y" to "F1E or G1E", and "F9Y" to "F1D, F2D, G1D, or G2D".

§ 90.261 [Amended]

14. In § 90.261, the list of frequencies in paragraph (b) is amended by changing the frequencies "457.050, 457.100" the first time they appear to "453.050, 453,100".

§ 90.266 [Amended]

15. In § 90.266, paragraph (g) is amended by changing "§ 90.81(d)(13)" to "§ 90.81(d)(14)" and "§ 90.129(n)" to "§ 90.129(o)".

16. In § 90.267, the table in paragraph (b) titled Offset Channels Available in Services Indicated is amended to include the frequencies 453.8125, 453.8375, 453.8625, and 453.8675 MHz, to change frequency "465.0825" to "465.0875", and to remove footnote 1 from frequencies 461.0125, 465.8675 and 466.0125 as follows:

§ 90.267 Assignment and use of 12.5 kHz frequency offsets.

* * * * *

(b) * * *

Offset Channels Available in Services Indicated

* * * * *

453.8125	PF, PH, PL, PO, PP
453.8375	PF, PH, PL, PO, PP
453.8625	PF, PH, PL, PO, PP
453.8675	PF, PH, PL, PO, PP

* * * * *

§ 90.303 [Amended]

17. In § 90.303, the table in paragraph (a) titled Frequency Availability for Land Mobile Use is amended by changing the latitude of New York/N.E.N.J. from "40°45'16" " to "40°45'06" ".

§ 90.477 [Amended]

18. In § 90.477, the table of urbanized areas in paragraph (d)(3) is amended by changing the superscripts of all latitude and longitude entries from the incorrect form xxx'xx'xx" to the proper form xxx°xx'xx". The latitude of New York, N.Y. northeastern N.J. is corrected by changing "40°45'08" " to "40°45'06" ".

19. To correct omissions, the combined frequency list in § 90.555(b) is amended with the following changes: adding IF as an eligible service for the frequencies 31.48, 31.52, 31.64, 31.72, 31.76, 43.02, 43.28, 43.36, 43.40, 43.52, 452.100, 452.200, 452.225, 452.250, 452.275, 452.350, 452.400, and 452.450 MHz; adding IS as an eligible service for the frequencies 153.335, 153.350, 153.365, 153.380 and 153.395 MHz; adding frequencies 462.325 and 462.350 MHz, in numerical order, to the list with IX as the only eligible service; adding the frequency band "1427 to 1435" MHz, in numerical order, to the list with eligibility available to all services except RS and limited to fixed, base or mobile use as shown below; removing the frequency 161.2; and changing the service for 466.450 from IF to IT.

§ 90.555 Combined frequency listing.

* * * * *

(b) * * *

Frequency	Services	Special limitations
462.325	IX	
462.350	IX	
1427–1435	All Svcs. exc. RS	Fixed, base or mobile

20. In § 90.613, the last sentence of the introductory text is revised, both the Table of 806–821/851–866 MHz Channel Designations and the Table of 896–901/935–940 MHz Channel Designations are amended to change mobile frequencies to base frequencies, and revise the entries set out below as follows:

§ 90.613 Frequencies available.

* * * Only the upper half of the frequency pair is listed in the table.

TABLE OF 806–821/851–866 MHz CHANNEL DESIGNATIONS

Channel No.	Base frequency (MHz)
1	851.0125
41	852.0125
81	853.0125
121	854.0125
161	855.0125
201	856.0125
241	857.0125
281	858.0125
321	859.0125
361	860.0125
396	.8875
401	861.0125
441	862.0125
481	863.0125
521	864.0125
561	865.0125

TABLE OF 896–901/935–940 MHz CHANNEL DESIGNATIONS

Channel No.	Base frequency (MHz)
1	935.0125
80	936.0125
160	937.0125
240	938.0125
320	939.0125

§ 90.617 [Amended]

21. Section 90.617 is amended by changing "160 km" to "140 km (87.0 miles)" in paragraph (a) and "160 km (100 miles)" to "140 km (87.0 miles)" in paragraphs (b), (c), and (d).

§ 90.635 [Amended]

22. In § 90.635, the longitude in Table 1 of New York-northeastern New Jersey is amended by changing "73° 50'39"" to "73° 59'39"".

23. The following paragraphs are removed and reserved:

90.17(d)(2)	90.71(d)(1)
90.19(f)(2)	90.73(e)(2)
90.21(d)(2)	90.73(e)(3)
90.23(d)(1)	90.79(e)(2)
90.25(d)(2)	90.81(e)(1)
90.53(c)(2)	90.89(d)(1)
90.63(e)(2)	90.91(d)(1)
90.65(d)(2)	90.93(d)(1)
90.67(d)(2)	90.95(e)(1)
90.69(d)(2)	

§ 90.271 [Amended]

24. In § 90.271, paragraph (d) is removed.

PART 94—PRIVATE OPERATIONAL-FIXED MICROWAVE SERVICE

The authority citation for Part 94 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

25. In § 94.15, paragraph (b)(3) is revised to read as follows:

§ 94.15 Policy governing the assignment of frequencies.

* * * * *

(b) * * *

(3) In either case, the application must contain the names of the licensees and the call signs of the stations that were considered in conducting the engineering analysis. Further, applicants and licensees will be expected to cooperate promptly and fully in the exchange of technical information necessary to performing frequency engineering analysis and, in the event of technical differences, cooperate in resolving these differences. Engineering analyses prepared pursuant to this section shall include the FCC ID number of the transmitter and the make and model numbers for all antennas the applicant proposes to use.

* * * * *

§ 94.25 [Amended]

26. In § 94.25, paragraph (k) is removed.

§ 94.27 [Amended]

28. In § 94.27, paragraph (a) introductory text is amended by changing the date "July 1976" to "August 1985", and paragraph (a)(3) is amended by changing the word "licensee" to "license".

29. In § 94.31, paragraph (a) is revised to read as follows:

§ 94.31 Supplemental information to be submitted with application.

* * * * *

(a) Any statements or showings required by § 94.15 or § 94.63;

* * * * *

29. In § 94.45, the last sentence of paragraph (b) introductory text is revised to read as follows and (b) (1) and (2) are removed:

§ 94.45 Changes in authorized station requiring modification.

* * * * *

(b) * * * The notice shall be sent to the Federal Communications Commission, Gettysburg, PA 17325 and a copy shall be maintained with the license of each station until a new license is issued.

§ 94.61 [Amended]

30. In § 94.61(b), the last sentence in footnote 22 for the list of frequency bands is removed.

31. In § 94.63, paragraph (e)(3) is revised to read as follows:

§ 94.63 Interference protection criteria for operational fixed stations.

* * * * *

(e) * * *

(3) Any decrease in antenna height or transmitter output power.

* * * * *

§ 94.65 [Amended]

32. In § 94.65, the listing of paired frequencies in paragraph (g)(3) is amended by changing the second column entry for "6870.0" from "68.30" to "6830.0". Also, the introductory text of paragraph (j)(5) is amended by changing "20 HMz" to "20 MHz".

§ 94.67 [Amended]

33. In § 94.67, the table of frequency bands is amended by changing "2180 to 2220" to "2180 to 2200", and "10,500 to 10,680" to "10,550 to 10,680".

Also, in the amendment published March 9, 1987, on page 7146, Amendment 67 which began "The table in paragraph (a) of § 94.67 . . ." should have read "The table in § 94.67 . . .", and remove the "(a) * * *" which follows the section heading.

[FR Doc. 87-17815 Filed 8-11-87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 509

[Docket No. 83-17; Notice 3]

OMB Control Number Display for Information Collection Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Technical amendment.

SUMMARY: The Office of Management and Budget (OMB) has promulgated a regulation requiring all agencies to display the OMB control number assigned to all regulations that contain information collection requirements, by publishing those control numbers in the Federal Register. In compliance with this regulation, NHTSA established a new Part 509 in Title 49 of the Code of Federal Regulations. This Part was last updated in 1985. This amendment updates Part 509 to reflect the changes that have occurred since 1985. This update is intended to ensure that the public will be informed of the current OMB control numbers assigned to NHTSA regulations.

EFFECTIVE DATE: August 12, 1987.

FOR FURTHER INFORMATION CONTACT: Stephen Kratzke, Office of Chief Counsel, NHTSA, Room 5219, 400 Seventh Street SW., Washington, DC 20590 (202-366-2992).

SUPPLEMENTARY INFORMATION: OMB is authorized by the Paperwork Reduction Act of 1980 (44 U.S.C. 3516) to promulgate rules, regulations, or procedures necessary to carry out the purposes of the Paperwork Reduction Act. Pursuant to this authority, OMB promulgated 5 CFR Part 1320, *Controlling Paperwork Burdens of the Public.* 5 CFR 1320.7(f)(2) requires all agencies to display the OMB control number for regulations that contain information collection requirements, by publishing those control number in the **Federal Register.**

In response to this regulation, NHTSA published a new Part 509 on November 8, 1983 (48 FR 51310). Part 509 sets forth all the OMB control numbers that have been assigned to NHTSA's regulations. The agency updated the regulation on October 1, 1985 (50 FR 40023). Since that date, there have been many changes and additions to the OMB control numbers assigned to NHTSA's regulations. This technical amendment updates Part 509 to reflect those changes, so that the public will be accurately informed of the

OMB control numbers currently assigned to NHTSA's regulations.

Publication of this technical amendment updating Part 509 simply satisfies the requirements of 5 CFR Part 1320. It imposes no obligations or responsibilities on any party, nor does it alter any existing obligations. Accordingly, NHTSA finds for good cause that notice and opportunity for comment are unnecessary, and this technical amendment is effective on the date this notice is published.

NHTSA has analyzed the impacts of this action and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. This update does not affect any existing duties or obligations under NHTSA regulations, and will have no cost impacts. Therefore, a full regulatory evaluation has not been prepared.

For the same reasons, NHTSA has determined that this update will not significantly affect the human environment, after considerations in accordance with the National Environmental Policy Act. Likewise, I hereby certify that this update will not have a significant impact on a substantial number of small entities, after making the evaluations required by the Regulatory Flexibility Act.

List of Subjects in 49 CFR Part 509

Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Part 509 is amended as follows:

PART 509—[AMENDED]

1. The authority citation for Part 509 continues to read as follows:

Authority: 44 U.S.C. 3507.

2. Section 509.2 is revised to read as follows:

§ 509.2 Display.

49 CFR Part or section containing information collection requirement	OMB control No.
Part 512	2127-0025
Part 537	2127-0019
Part 542	2127-0539
Part 543	2127-0542
Part 544	2127-0547
Section 551.45	2127-0040
Part 552	2127-0046
Part 556	2127-0045
Part 557	2127-0038
Part 566	2127-0043
Consolidated owner's manual requirements for vehicles and equipment §§ 571.126, 571.205, 571.208, 571.210, and 575.105)	2127-0541
Consolidated labeling requirements for Tires and Rims (Parts 569 and 574, §§ 571.109, 571.110, 571.117, 571.119, and 571.120)	2127-0503
Consolidated labeling requirements for Vehicles excluding VIN (Part 567, §§ 571.105, 571.205, and 571.209)	2127-0512
Consolidated VIN and Theft Prevention Standard Labeling Requirements (Part 541, 565, and 567 and § 571.115)	2127-0510
section 571.106	2127-0052
section 571.116	2127-0521
section 571.205	2127-0008
section 571.213	2127-0511
section 571.217	2127-0505
section 571.218	2127-0518
Part 573	2127-0004
Part 574	2127-0050
Part 575 Excluding UTQGS	2127-0049
section 575.104 (UTQGS)	2127-0519
Part 576	2127-0042
Part 580	2127-0047
Part 585	2127-0535

Issued on August 7, 1987.

Diane K. Steed,

Administator.

[FR Doc. 87-18349 Filed 8-11-87; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 25

Revision of the General Provisions for Subpart E; Fees and Charges to Include Criteria for Establishing and Collecting Entrance Fees on National Wildlife Refuges

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) is amending Subpart E of 50 CFR Part 25 by setting forth criteria to provide for the designation of Entrance Fee Areas, the establishment and collection of entrance fees on designated national wildlife refuges (NWR), and that failure to pay the established entrance fees shall constitute a violation of existing refuge rules and regulations. The purpose of this rulemaking is to establish regulations concerning entrance fee collection as authorized by the Emergency Wetlands Resources Act of 1986 (the Act). Designation of refuges that will charge a fee and the amount of that fee will be accomplished at the Regional level pursuant to posting and public notification as provided by existing regulations.

EFFECTIVE DATE: August 12, 1987.

FOR FURTHER INFORMATION CONTACT: James F. Gillett, Division of Refuges, U.S. Fish and Wildlife Service, Room 2343, 18th and C Streets, NW., Washington, DC 20240; Telephone (202) 343-4311.

SUPPLEMENTARY INFORMATION: The Emergency Wetlands Resources Act (16 U.S.C. 3901 *et seq.*) authorizes the Secretary of the Interior (Secretary) to charge entrance fees at designated NWRs (except in Alaska) provided that: (1) The level of visitation for recreational purposes is high enough to justify the collection of fees for admission permits for economic reasons, (2) there is a practical mechanism in existence for implementing and operating a system of collecting fees for admission permits and (3) imposition of a fee for admission permits is not likely to result in undue economic hardship for a significant number of visitors to the refuge. These criteria will be applied with regard to the local area within which a particular refuge is located. The collection of entrance fees will shift a portion of the economic burden for use of these refuges from the general public to the direct user, consistent with the intent of the Act.

In determining the ability of certain refuges to implement and operate a fee collection system for admission permits, practical considerations include the Service's capability to construct and staff entrance facilities and to control access. Considering the criteria for establishing fees as stipulated in section 201 of the Act, refuges that have levels of visitation for recreational purposes high enough to justify the collection of fees for admission permits will not charge more than $3 per person or $7.50 per noncommercial vehicle at designated refuges. A valid single visit permit, Golden Eagle, Age, or Access Passport or a valid Federal Duck Stamp will allow the holder and those accompanying the holder in a noncommercial vehicle entry onto a designated refuse without further charge. In other than a noncommercial vehicle the spouse, children or parents of/and accompanying a holder are permitted entry without further charge. Local notification, as provided in 50 CFR 25.31, will be given regarding seasons during which entrance fees will be charged and the rates for daily entrance.

On May 11, 1987, at 52 FR 17613, the Service published a proposed rule to revise 50 CFR Part 25 (General Provisions for Fees and Charges) to include criteria for establishing and collecting entrance fees on NWRs. These criteria will have to be considered before any refuge may start collecting entrance fees for recreational purposes. Once these criteria are met and the public is notified, a refuge may collect entrance fees. National wildlife refuges currently being considered as sites for the collection of entrance fees are: Aransas (TX), Bosque Del Apache (NM), Chincoteague (VA), Desota (IA), Ding Darling (FL), Dungeness (WA), Edwin B. Forsythe (Brigantine Division) (NJ), Hobe Sound (FL), Kilauea Point (HI),

Loxahatchee (FL), Montezuma (NY), Muscatatuck (IN), Ottawa (OH), Parker River (MA), National Bison Range (MT), Seney (MI), Sequoyah (OK), Sherburne (MN) and St. Marks (FL).

Department of the Interior policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. The majority of comments received on the proposed rule did not address the criteria themselves but the amounts proposed to be charged on the refuges listed above. These comments are being considered by each Regional Office and will be incorporated into the final selection of refuges and the fees to be collected. General issues on entrance fee collection on refuges are addressed in the following section.

Responses to Comments Received

Issue: Guidelines for visitation thresholds, the economic basis for these thresholds, discussion of voluntary fee collection and guidelines for establishing a monitoring program should have been included in the rule.

Response: The geography, demography and economy of each Region and refuge constitute a tremendous variety of factors to take into consideration when applying the criteria set forth in the Act to determine which refuges may collect entrance fees. It is not the intent of this rulemaking to discuss in detail the many factors and procedures involved in determining which refuges may collect fees, but to establish as regulations the basic criteria for this determination as set forth in the Act. Thes factors and procedures will be discussed on a refuge and Regional level as the selection process continues.

Issue: Too much revenue will be going back into the Migratory Bird Fund (70%) and not enough will be going back into the collecting refuge (30%).

Response: These percentages were mandated by law (Emergency Wetland Resources Act of 1986). To amend those percentages would take an act of Congress.

Issue: No entrance fees should ever be collected on NWRs.

Response: The Congress realized that with an ever increasing use of NWRs by the public and fewer tax dollars available for wetland protection and refuge operations and maintenance, revenue needed to be generated from other sources. The purpose of the proposed rule was therefore to comply with the intent of the Act by notifying the public that entrance fees will be collected on selected NWRs that have met the criteria set forth in the Act and that these criteria will be included in 50 CFR Part 25 by way of this final rulemaking.

Issue: Imposition of an entrance fee would be an economic hardship for the elderly on a fixed income, for children or groups of children, or for low income families.

Response: The Golden Age Passport, one form of entrance permit, is FREE and available to anyone 62 years of age or older. Also, anyone accompanying a holder of this passport in a noncommercial vehicle can enter FREE of charge. This passport must be picked up in person and is available at any NWR collceting entrance fees, any Service Regional Office or any National Park. Children under the age of 16 can also enter FREE. For those in low income families, the purchase of a $10 Federal Duck Stamp, one type of entrance permit, should not present an undue economic burden. For those who like to use a refuge every day of the year, a $10 Federal Duck Stamp would allow those people to enjoy the refuge for only .02 cents a day. Again, with this type of permit, anyone accompanying the holder of it in a noncommercial vehicle can get in FREE. Federal Duck Stamps can be purchased by ANYONE at post offices or at the refuge collecting entrance fees.

Issue: Many commenters feel that national wildlife refuges are established for recreational enjoyment.

Response: Few national wildlife refuges are established for the purpose of public recreation. Public recreation on a refuge is a permitted activity only if it is compatible with the primary purpose of the refuge such as the protection of migratory bird habitat. With increased pressure to use refuges for public recreation, managment of that recreation, such as maintaining auto-tour routes, boardwalks or enforcement staffing, can impact the revenue needed to manage the primary purposes of those refuges. To balance the revenue needed to manage a refuge for habitat and recreation, the collection of entrance fees is a practical means of generating revenue and shifting the burden for use of refuges from the general public to the direct user.

Conformance With Statutory and Regulatory Authorities

The Emergency Wetlands Resources Act of 1986, authorizes the Secretary to charge fees for admission permits at designated units of the National Wildlife Refuge System provided certain criteria are met. The purpose of this rulemaking is to set forth the criteria for designating refuges as entrance fee areas, to establish a process through which actual entrance fee areas will be identified, and to provide for penalties for evasion of the entrance fee regulations.

Economic Effect

Executive Order 12291 requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more, or major increase in costs or prices for consumers, individual industries, government agencies or geographic regions. The purpose of the Act is to provide additional revenues for the conservation of wetland resources of the Nation and for the operation and maintenance of refuges. The Determination of Effects has been completed and analyzes the economic impacts. Based on this determination, the Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Environmental Considerations

This rulemaking, consistent with the intent of the Act, will set forth the criteria used to establish entrance fees which will generate revenue for the conservation of wetland resources of the Nation and for the operation and maintenance of refuges, thereby adding to the protection and management of the environment. No NEPA determination is required because "[t]he issuance of special regulations for public use of FWS-managed land, which maintain essentially the permitted level of use and do not continue a level of use that has resulted in adverse environmental effects," is a categorical exclusion (516 DM 6, App. 1).

Because this rule constitutes an interpretative rule under 5 U.S.C. 553(d)(2), merely creating a process and framework within which individual entrance fee decisions can be made based upon local area comments and conditions, the rule will be effective upon publication.

Nancy A. Marx, Division of Refuges, U.S. Fish and Wildlife Service, Washington, DC 20240, is the primary author of this final rulemaking document.

List of Subjects in 50 CFR Part 25

Administrative practice and procedure, Concessions, National Wildlife Refuge System, Safety, Wildlife refuges.

Accordingly, Part 25 of Chapter I of Title 50 of the *Code of Federal Regulations* is amended as set forth below:

PART 25—[AMENDED]

1. The authority citation for Part 25 is revised to read as follows:

Authority: 16 U.S.C. 460k, 664, 668dd, 715i, and 3901 *et seq.*

2. In Subpart E § 25.51 is revised and §§ 25.52 through 25.57 are added as follows. As revised, Subpart E reads as set forth below:

Subpart E—Fees and Charges

Sec.
25.51 General provisions.
25.52 Designation.
25.53 Establishment of single visit entrance fees.
25.54 Posting and public notification.
25.55 Refuge admission permits.
25.56 Enforcement.
25.57 Exceptions and exemptions.

Subpart E—Fees and Charges

§ 25.51 General provisions.

Reasonable charges and fees may be established for public recreational use of and, except in Alaska, entrance onto national wildlife refuges. Regulations regarding recreational use fees are contained in 36 CFR Part 71. Regulations regarding entrance fees are contained in this Subpart E.

§ 25.52 Designation.

To be designated as an "Entrance Fee Area", a unit of the National Wildlife Refuge System must be found to demonstrate that:

(a) The level of visitation for recreational purposes is high enough to justify the collection of fees for admission permits for economic reasons;

(b) There is a practical mechanism in existence for implementing and operating a system of collecting fees for admission permits; and

(c) Imposition of a fee for admission permits is not likely to result in undue economic hardship for a significant number of visitors to the unit.

§ 25.53 Establishment of single visit entrance fees.

Entrance fees established for single visit permits at a designated Entrance Fee Area shall consider the following criteria with regard to the local area within which the refuge is located:

(a) The direct and indirect cost to the Government.

(b) The benefits to the permit holder.

(c) The public policy or interest served.

(d) The comparable fees charged by non-Federal public agencies.

(e) The economic and administrative feasibility of fee collection.

§ 25.54 Posting and public notification.

The public shall be notified that an entrance fee is charged through refuge publications and posted designation signs in accordance with § 25.31 of this part.

§ 25.55 Refuge admission permits.

(a) Unless otherwise provided, persons entering an Entrance Fee Area shall obtain and be in possession of a valid admission permit.

(b) The following five types of permits allowing entrance onto an Entrance Fee Area will be available for issue or purchase at such area and, except for refuge-specific permits, at Fish and Wildlife Service Regional and Washington, DC Offices, and at other locations as may be designated.

(1) Single visit permit with a charge not to exceed $3 per person or $7.50 per noncommercial vehicle (single visit can be defined as 1–15 days, dependent upon a determination of the period of time reasonably and ordinarily necessary for such a visit at a particular refuge unit).

(2) Golden Eagle Passport.

(3) Golden Age Passport.

(4) Golden Access Passport.

(5) Federal Migratory Bird Hunting and Conservation (Duck) Stamp. To be valid, the Duck Stamp must be current and bear the signature of the holder on the front.

§ 25.56 Enforcement.

Permits issued or used for entrance onto Entrance Fee Areas are nontransferable. Failure to pay the entrance fee, to display upon request of an authorized official a valid permit, or to comply with other entrance fee provisions, rules or regulations, will be subject to the penalties prescribed in 50 CFR 28.31.

§ 25.57 Exceptions and exemptions.

At Entrance Fee Areas:

(a) Special admission permits for uses, such as group activities, may be issued.

(b) No entrance fee shall be charged for persons under 16 years of age.

(c) No entrance fee shall be charged for travel by private noncommercial vehicle over any road or highway established as part of the National Federal Aid System (defined in 23 U.S.C. 101), which is commonly used by the public as a means of travel between two places which are outside the Entrance Fee Area.

(d) No entrance fee shall be charged for travel by private noncommercial vehicle over any road or highway to any land in which such person has a property interest if such land is within any Entrance Fee Area.

(e) Persons accompanying the holder of a valid single visit permit, Federal Duck Stamp or Golden Eagle, Age, or Access Passport in a single, private, noncommercial vehicle shall be entitled to general entrance.

(f) Where entry is by any means other than single, private, noncommercial vehicle, the spouse, children, or parents accompanying the holder of a valid single visit permit, Federal Duck Stamp or Golden Eagle, Age, or Access Passport shall be entitled to general entrance.

Date: July 22, 1987.

Susan Recce,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87-18227 Filed 8-11-87; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 70645-7065]

Ocean Salmon Fisheries Off the Coast of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustments and closure; request for comments.

SUMMARY: NOAA announces (1) the inseason adjustment of the chinook quota for the commercial fishery from Carroll Island, Washington, to the U.S.-Canada border, and (2) closure of the commercial fishery in the exclusive economic zone (EEZ) in the same area. The Director, Northwest Region, NMFS (Regional Director), has determined in consultation with representatives of the Pacific Fishery Management Council, Oregon Department of Fish and Wildlife (ODFW), and Washington Department of Fisheries (WDF), that this adjustment and closure meet the criteria for inseason adjustment to management measures, and that they are necessary to conform with the established schedule for allocation of salmon to commercial and recreational fisheries

and to ensure conservation of chinook salmon.

DATES: This inseason adjustment and closure of the EEZ from Carroll Island, Washington, to the U.S.-Canada border to commercial salmon fishing is effective at 24 hours local time, August 7, 1987. Comments on this closure will be received until August 22, 1987.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, NMFS, BIN C15700, 7600 Sand Point Way NE., Seattle, WA 98115–0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the same address.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten, 206–526–6150.

SUPPLEMENTARY INFORMATION: The ocean salmon fisheries are managed under a framework fishery management plan (FMP); management measures appear at 50 CFR Part 661. An amendment to the plan (52 FR 4116, February 10, 1987) authorizes inseason adjustments to management measures if the adjustments are consistent with fisherey regimes established by the U.S.-Canada Pacific Salmon Commission, ocean escapement goals, conservation of the salmon resource, any adjudicated Indian fishing rights, and the ocean allocation scheme in the framework amendment. In addition, all inseason adjustments must be based on consideration of the following factors: Predicted sizes of salmon runs; harvest quotas and hooking mortality limits for the area and total allowable impact limitations if applicable; amount of recreational, commercial, and treaty Indian catch for each species in the area to date; amount of recreational, commercial, and treaty Indian fishing effort in the area to date; estimated average daily catch per fisherman, predicted fishing effort for the area to the end of the scheduled season; and other factors as appropriate.

In its preseason notice of 1987 management measures (52 FR 17264, May 6, 1987), NOAA announced that the commercial fishery from the U.S.-Canada border to Cape Falcon would be partitioned into three seasons. Each season is managed by both a chinook and a coho quota. In addition, the non-Indian ocean commercial and recreational fisheries north of Cape Falcon are managed not to exceed either (1) an overall 106,000 chinook quota, or (2) impacts on Skagit River natural coho stocks equivalent to the overall preseason quota north of Cape Falcon of 342,100 coho salmon.

The commercial fishery for all salmon species except coho north of Cape Falcon began on May 1 and closed on May 18, when it was projected that a chinook quota of 42,400 fish had been met. Actual landings in the May commercial fishery totaled 39,800 chinook.

An all-species season from the Queets River to Cape Falcon was established in the preseason notice as July 25 through July 27, and from July 31 through the earlier of the attainment of either 121,200 coho salmon or 15,000 chinook salmon. The subarea chinook quota subsequently was increased to 17,600 fish because of the under-quota harvest in the May fishery (52 FR 24298, June 30, 1987). In addition, the initial three-day opening was shortened to two days, July 25 and July 26; the closed period was changed from July 28–30 to July 27–29; the conservation zone at the mouth of the Columbia River was extended to 10 nautical miles for this fishery; and the area 3 to 10 miles offshore from North Head to the Queets River was closed to slow the anticipated high catch of chinook salmon (52 FR 28321, July 29, 1987). Based on the best available information, landings in the two-day all-species season are projected to total 22,100 chinook, 4,500 chinook more than the subarea quota for this fishery.

An all-species season from Carroll Island, Washington, to the U.S.-Canada border, to target on pink salmon, was established in the preseason notice to begin the earlier of August 15 or attainment of an 8–to–1 coho catch ratio in a test fishery, through the earlier of attainment of either a 4,000 chinook subarea quota or a 20,000 coho subarea quota. The test fishery is expected to harvest up to 200 chinook salmon, which are counted toward attainment of the commercial chinook quota north of Cape Falcon, Oregon.

NOAA has determined, after consideration of the factors specified for inseason adjustments, that an adjustment of the commercial chinook quota from Carroll Island to the U.S.-Canada border to account for the over-quota harvest in the July commercial all-species season and closure of the commercial fishery in the same subarea meet the criteria for inseason adjustments and are required to maintain the non-Indian commercial/recreational allocation scheme in the framework FMP. Accordingly, this notice (1) adjusts the chinook quota for the all-species season from Carroll Island to the U.S.-Canada border from 4,000 chinook to zero, and (2) closes the commercial fishery in the EEZ of the same area, effective 2400 hours local time, August 7, 1987. This notice does not apply to treaty Indian fisheries or to other fisheries which may be operating in this or other areas.

The additional 500 chinook taken in excess of the quota for the July commercial fishery, and any chinook taken in the August test fishery, will be applied against the overall 106,000 chinook quota for the area north of Cape Falcon in determining when the recreational fishery north of Cape Falcon must be closed.

The Regional Director consulted with the Chairman of the Pacific Fishery Management Council and the representatives of WDF and ODFW regarding an adjustment of the commercial chinook quota for the area from Carroll Island to the U.S.-Canada border and closure of the commercial fishery in that area. The WDF representative confirmed that Washington will manage the commercial fishery in State waters adjacent to this subarea of the EEZ in accordance with this notice.

Other Matters

This action is authorized by 50 CFR 661.23 and in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

(16 U.S.C. 1801 et seq.)

Dated: August 7, 1987.

James W. Brennan,

Acting General Counsel.

[FR Doc. 87–18355 Filed 8–7–87; 3:03 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 52, No. 155
Wednesday, August 12, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 531

Eligibility of District of Columbia Government Employees for Superior Qualifications Appointments

AGENCY: Office of Personnel Management.

ACTION: Proposed regulations.

SUMMARY: The Office of Personnel Management (OMP) is proposing to revise the regulations under which agencies may appoint candidates who possess superior qualifications to positions at grades GS–11 and above at rates above the base of the grade. The regulations would permit agencies to appoint employees of the Government of the District of Columbia at advanced rates under the same conditions as other candidates. Currently, the regulations prohibit appointment of DC Government employees at advanced rates unless the appointees have a break in service of a least 90 days following their DC Government employment.

DATE: Comments must be received on or before October 13, 1987.

ADDRESS: Written comments may be sent to Curtis J. Smith, Associate Director for Career Entry, Office of Personnel Management, Room 6F08, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Tracy E. Spencer, (202) 632–6817.

SUPPLEMENTARY INFORMATION: Section 5333 of title 5, United States Code, requires that most new appointments to positions under the General Schedule be made at the base of the grade, However, under 5 U.S.C. 5333(a), new appointments to positions at grades GS–11 and above may be made at rates above the base of the grade when the higher salrary rates are justified by appointee's superior qualifications and existing pay or by a special need of the Government for the appointees' services. Appointments made under this provision are commonly called superior qualifications appointments.

The statutory authority is intended to afford a recruiting incentive to attract superior candidates into the Federal service. Once employees enter the Federal service their pay upon movement from one position to another is governed by 5 U.S.C. 5334, under which pay is based on salary previously earned in *Federal* employment. To carry out the statutory intent, OPM's regulations state that superior qualifications appointments must be either new appointments or reappointments of individuals who have had a break in service of at least 90 days since their last Federal or DC Government employment.

Until implementation of the Home Rule Act, the General Schedule pay system covered positions in the District of Columbia as well as the Federal Government. Salaries earned with the DC Government were considered in accordance with 5 U.S.C. 5534, when setting pay for DC Government employees who moved into the Federal service. Therefore, the regulatory prohibition against giving superior qualifications appointments to current DC Government employees merely applied the same conditions to the DC employees as to Federal employees covered by the same pay system.

Under the Home Rule Act, however, the DC Government established a separate personnel system. DC Government employees are no longer covered by the laws and regulations governing pay in the Federal service, and their D.C. salaries may no longer be considered as a basis for setting pay under 5 U.S.C. 5534. The situation of DC employees recruited for Federal jobs is now comparable to that of State and local government employees, who must usually enter Federal service at the base of the appropriate General Schedule grade.

Federal agencies may, however, use the superior qualifications appointment authority to match the salaries of State and local employees who possess unusually high or unique qualifications for positions at GS–11 and above and whose pay exceeds the base salary rate. The same authority should be available to assist Federal agencies in recruiting top quality DC Government employees.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only certain appointees to positions in Federal agencies.

List of Subjects in 5 CFR Part 531

Administrative practice and procedures, Government employees, Personnel Management Office, wages.

Office of Personnel Management.

James E. Colvard,
Deputy Director.

Accordingly, OPM proposes to amend 5 CFR Part 531 as follows:

PART 531—[AMENDED]

1. The authority citation for Part 531 is revised to read as follows, and the authority citations following any subparts or sections are removed:

Authority: 5 U.S.C. 5115, 5338, and Chapter 54; Section 531.203 issued under 5 U.S.C. 5333 and 5334; Section 531.204 issued under 5 U.S.C. 5334 and 5402; Section 531.205 issued under 5 U.S.C. 5305 and 5402, E.O. 11721, as amended; Section 531.305 issued under 5 U.S.C. 5333, E.O. 11721, as amended; Subpart D issued under 5 U.S.C. 5301, 5335, and 5338, E.O. 11721, as amended; Subpart E issued under 5 U.S.C. 5336 and 5338, E.O. 11721, as ameded.

§ 531.203 [Amended]

2. In § 531.203, the first sentence of paragraph (b)(2) is amended to remove the words "or employment with the Government of the District of Columbia."

[FR Doc. 87–18304 Filed 8–11–87; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 286

[INS Number: 1025-87]

Immigration User Fee

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to add a new 8 CFR Part 286 to reflect certain provisions of the Department of Justice Appropriation Act, 1987, concerning the collection and remittance of the Immigration User Fee (IUF). This action provides the necessary guidance to administer the IUF provisions.

DATE: Written comments must be received by October 13, 1987.

ADDRESS: Please submit written comments, in triplicate, to Director, Policy Directives and Instructions, Immigration and Naturalization Service, Room 2011, 425 I Street NW., Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT: Charles S. Thomason, Jr., Systems Accountant, Finance Branch, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, Telephone: (202) 633-4705.

SUPPLEMENTARY INFORMATION: Section 101(b) subsection 205 of the Department of Justice Appropriation Act, 1987 (the Act, Pub. L. 99-591) establishes the collection, payment, and remittance of a specific user fee (fee) for the immigration inspection or preinspection of passengers (with certain exceptions) arriving in the United States (U.S.) aboard commercial aircraft or commercial vessels. Prior to the enactment of this legislation, the Immigration and Naturalization Service (INS) had no general legal authority to collect a fee for the inspection or preinspection of passengers arriving in or departing from the U.S. In addition to establishing the fee, the Act sets forth certain limitations or conditions concerning collection of the fee, and authorizes the promulgation of such rules and regulations as many be necessary to carry out the provisions of the new law.

A Notice of Statutory Provision was published on November 17, 1986, at 51 FR 41547, for informational purposes.

An issue has arisen regarding an apparent conflict between section 286 of the Act and 8 U.S.C. 1353b regarding carrier liability for overtime payment to INS inspectors. It appears that except for inspectional services provided to scheduled airline flights pursuant to section 286(g), the master, owner, agent, or consignee of any vessel or conveyance arriving in the United States from a foreign port may remain liable for overtime charges pursuant to 8 U.S.C. 1353b. We have requested a legal opinion from the Department of Justice regarding this issue. Until a response is received, the INS will not bill for overtime charges under 8 U.S.C. 1353b. However, should a decision be made that such billing is required, billing for overtime charges will resume.

In compliance with 5 U.S.C. 605b, the Commissioner of INS certifies that the rule would not have a significant economic impact on a substantial number of small entities. This rule would not be a major rule within the meaning of section 1(b) of E.O. 12291. This rule contains information collection requirements under the Paperwork Reduction Act which will be submitted to the Office of Management and Budget.

List of Subjects in 8 CFR Part 286

Aircraft, Immigration, Reporting and recordkeeping requirements, Vessels.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

The following new Part 286 would be added to read as follows:

PART 286—IMMIGRATION USER FEE

Sec.

286.1 Definitions.
286.2 Fee for arrival of passengers aboard commercial aircraft or commercial vessels.
286.3 Exceptions.
286.4 Liability for payment of fee.
286.5 Fee collection.
286.6 Provision of immigration inspection and preinspection services.
286.7 Payment and statement procedures.
286.8 Tour wholesalers.
286.9 Maintenance of records.
286.10 Penalties.
286.11 Disposition of excess receipts.

Authority: 8 U.S.C. 1103 and 1356; Pub. L. 99-591.

§ 286.1 Definitions.

"Commercial aircraft" means any civilian aircraft being used to transport persons or property for compensation or hire.

Commercial vessel" means any civilian vessel being used to transport persons or property for compensation or hire.

"Originated" means, with regard to a journey, the initial point of departure in an individual's itinerary, e.g. an air/sea journey which includes a flight from Miami to an exempt location, then a cruise from the exempt location to a non-exempt location, a return cruise to that or any other exempt location, and then a return flight to Miami, would have originated in the United States (U.S.).

"Port of entry" means a port or place designated by the Commissioner of Immigration and Naturalization (INS) at which an alien may apply for admission into the United States. This includes Guam and the U.S. Virgin Islands.

§ 286.2 Fee for arrival of passengers aboard commercial aircraft or commercial vessels.

As required by section 286(b) of the Immigration and Nationality Act, as amended, the Attorney General shall charge and collect a $5.00 user fee (fee) per individual for the immigration inspection of each passenger (with certain exceptions) aboard a commercial aircraft or commercial vessel, arriving at a port of entry in the U.S., or for the preinspection of a passenger in a place outside of the U.S. prior to such arrival.

§ 286.3 Exceptions.

The fee set forth in § 286.2 shall not be assessed for the following categories of arriving passengers:

(a) Persons whose journey originates in the following exempt locations: Canada, Mexico, a territory or possession of the U.S., or any adjacent island. The U.S. territories and possessions include American Samoa, Guam, and Northern Mariana Islands, Puerto Rico and the U.S. Virgin Islands. The adjacent islands include all of the islands in the Caribbean Sea, the Bahamas, Bermuda, St. Pierre, Miguelon, and the Turks and Caicos Islands (all other locations in the world are non-exempt);

(b) Persons directly connected with the operation, navigation, or business of the aircraft or vessel including working crew, deadheading crew, FAA inspectors, sky marshals, and airline or vessel employees on official business;

(c) Diplomats, except for U.S. diplomats who can show that their names appear on the accreditation listing maintained by the U.S. Department of State. In lieu of such listing an individual diplomat may present appropriate proof of diplomatic status to include possession of a diplomatic passport or visa (A-1 and 2, G-1 thru 4), or diplomatic identification card issued by a foreign government;

(d) Persons departing and returning to the U.S. without having touched a nonexempt location (persons departing and returning to the U.S. whose itinerary

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includes a non-exempt location are subject to the fee);

(e) Persons arriving as passengers on any aircraft or vessel used exclusively in the governmental service of the U.S. or a foreign government, including any agency or political subdivision thereof, so long as the aircraft or vessel is not carrying persons or merchandise for commercial purposes. Passengers on commercial aircraft or commercial vessels under contract to the U.S. Department of Defense (DOD) are exempted if they have been precleared abroad under a joint DOD/INS military inspection program;

(f) Persons arriving on an aircraft or vessel due to an emergency of forced landing when the original destination of the aircraft or vessel was a non-exempt location; and

(g) Persons transiting the U.S. and not processed by INS. This does not include transit without visa (TWOV) passengers.

§ 286.4 Liability for payment of fee.

The fee specified in § 286.2 shall be collected under the following circumstances:

(a) When through tickets or travel documents are issued indicating travel to the U.S. which originates in a non-exempt location;

(b) When through tickets or travel documents are issued indicating travel to, or round trip from, the U.S. and the air only, sea only, or air/sea combination itinerary includes travel to or from a non-exempt location;

(c) When through tickets or travel documents are issued in an exempt location indicating an arrival in the U.S. following a stopover in a non-exempt location; or

(d) When passengers arrive in the U.S. in transit from a non-exempt location and are processed by INS. This includes TWOV passengers.

§ 286.5 Fee collection.

Persons who issue tickets or travel documents on or after December 1, 1986, are responsible for the collection of the fee at the time the ticket or travel document is issued from all passengers transported into the U.S. for whom the fee applies. The ticket or travel document shall be marked to indicate that the required fee has been collected from the passenger. If the ticket or travel document is not so marked and was issued in a foreign country, the fee shall be collected and remitted by the departing carrier upon departure of the passenger from the U.S. If collected at time of departure from the U.S., the departing carrier shall issue a receipt to the passenger. U.S. and foreign-based tour wholesalers who contract for passenger space and issue non-carrier tickets will collect and remit the fee in the same manner as the carrier.

§ 286.6 Provision of immigration inspection and preinspection services.

The immigration services required to be provided to passengers upon arrival in the U.S. on scheduled airline flights shall be provided at no cost (other than the fee to commerical aircraft passengers) at:

(a) Immigration serviced ports or entry; and

(b) Places located outside of the U.S. at which an immigration officer is stationed for the purpose of providing such immigration services.

§ 286.7 Payment and statement procedures.

(a) Payment should be made to the Immigration User Fee Account, Department of the Treasury, via Treasury Financial Communications System (TFCS), using Agency Location Code (ALC) 15 12 0003 no later than 31 days after the close of the calendar quarter in which the fees are collected. Late payments will be subject to interest and penalty charges as provided for in the Debt Collection Act of 1982 (Pub. L. 97–365).

(b) If the issuing carrier has not collected the required fee from passengers, the departing carrier shall collect the fee and remit it as provided in paragraph (a) of this section.

(c) Concurrent with TFCS transmission, each person making such payment shall send a hard copy statement to INS, Office of the Comptroller, Room 6307, 425 I Street NW., Washington, DC 20536 showing:

(1) Name and address of the party remitting payment;

(2) Taxpayer identification number of the party remitting payment;

(3) Calendar quarter covered by the payment;

(4) Number of tickets or travel documents issued without collection of the fee; and

(5) Amounts collected and remitted.

(d) If unable to use TFCS, payment (with the above information) may be made by check or money order payable in U.S. dollars to the Comptroller, INS, at the address shown in paragraph (c) of this section. Refunds for unused transportation should be netted against the next subsequent payment.

(e) Yearly, each airline, vessel company, and tour wholesaler remitting such fees shall submit a certified assurance statement from their independent public accountant to the Comptroller, INS, at the address shown in paragraph (c) of this section attesting to the degree of compliance with the law and to the accuracy of remittances of fees collected. This statement would present any material exceptions found during the examination. Certification statements are due within ninety (90) days after the close of each remitter's fiscal year.

(f) The Attorney General reserves the right to conduct an independent audit of any airline, vessel company, or tour wholesaler not providing certification pursuant to paragraph (e) of this section. Further, the Attorney General reserves the right to conduct an independent audit of any airline, vessel company, or tour wholesaler making such payments to insure compliance with the law and the accuracy of the remittances of fees collected. In order to insure compliance, the Commissioner of INS may issue a subpoena on Form I-138 requiring the production of records, evidence, and witnesses for use in the enforcement of this paragraph.

§ 286.8 Tour wholesalers.

Carriers contracting with a U.S. or foreign-based tour wholesaler are responsible for notifying the Comptroller, INS, in writing, at the address shown in § 286.7(c) of all flights or voyages contracted, the number of spaces contracted for, and the name, address and taxpayer identification number of the tour wholesaler within 31 days after the close of the calendar quarter in which such a flight or voyage occurred.

§ 286.9 Maintenance of records.

Each airline, vessel company, and tour wholesaler affected by this rule shall maintain all such documentation necessary for INS or its representative(s) to verify the accuracy of fees collected and remitted and to otherwise determine compliance under the law. Such documentation shall be maintained for a period of 2 years from the date of fee collection. Affected companies shall timely advise the Comptroller, INS, in writing, at the address shown in § 286.7(c) of the name, address, and telephone number of a responsible officer who shall be able to verify any records required to be maintained under this section. The Comproller, INS, shall also be promptly notified of any changes in the identifying information submitted.

§ 286.10 Penalties.

Failure of any carrier to comply with the provisions of section 286 of the Immigration and Nationality Act and 8

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CFR Part 286 shall subject it to one or more of the following:

(a) Termination of all existing agreements under the provisions of section 238 of the Immigration and Nationality Act; and/or

(b) Suspension of en route inspections.

§ 286.11 Disposition of excess receipts.

At the end of each two year adjustment period, all money remaining in the Immigration User Fee Account shall be transferred to the general fund of the Treasury of the United States.

Dated: July 21, 1987.

Alan C. Nelson,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 87-18165 Filed 8-11-87; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 1 and 2

[Docket No. 87-111]

Animal Welfare; Definition of Terms and Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension and reopening of comment period for proposed rule.

SUMMARY: We published a document entitled "Animal Welfare: Definition of Terms and Regulations" in the Federal Register on May 22, 1987, extending by 30 days the public comment period for two proposed rules. So that we may consider comments received after the comment period closed on July 1, 1987, we are extending and reopening the comment period from July 1, 1987, until 15 days after publication of this notice. This action will also enable other interested persons to submit comments for our consideration.

DATE: Consideration will be given only to comments postmarked or received on or before August 27, 1987.

ADDRESS: Send written comments to Dr. R.L. Crawford, Senior Staff Veterinarian, Animal Care Staff, Veterinary Services, APHIS, USDA, Room 756, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Numbers 84-010 and 84-027. Comments received may be inspected at Room 756 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. R.L. Crawford, Senior Staff Veterinarian, Animal Care Staff, VS, APHIS, USDA, Room 756, Federal Building, Hyattsville, MD 20782, 301-436-8383.

SUPPLEMENTARY INFORMATION:

On March 31, 1987, we published in the **Federal Register** [52 FR 10292-10322, Docket Numbers 84-010 and 84-027] two proposals to amend the animal welfare regulations in 9 CFR Parts 1 and 2. Those proposals would, respectively, amend the section defining terms used in the animal welfare regulations and revise those regulations to comply with the amendments to the Animal Welfare Act contained in Pub. L. 99-198, enacted in December 1985.

The notice of extension of comment period we published on May 22, 1987, in the **Federal Register** [52 FR 19358, Docket No. 87-088] provided for submission of written comments until July 1, 1987. So that we may consider comments received after that date, we are extending and reopening the public comment period until 15 days after publication of this notice. During this period, other interested persons may also submit their comments for our consideration.

Done in Washington, DC, this 7th day of August 1987.

B.G. Johnson,

Acting Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 87-18407 Filed 8-11-87; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

12 CFR Part 1101

Description of Office, Procedures, Public Information

AGENCY: Federal Financial Institutions Examination Council (Council).

ACTION: Proposed rule.

SUMMARY: This proposed regulation implements recent amendments to the Freedom of Information Act (FOIA). The amendments concern Exemption 7 of the FOIA (relating to law enforcement records) and the provisions of the FOIA concerning fees and fee waivers. The proposed regulation, and the Council's FOIA regulations in general, affect public disclosure of information by the Council. This proposed regulation also updates the Council's address.

DATE: Comments must be received on or before September 25, 1987.

ADDRESS: Send comments to Robert J. Lawrence, Executive Secretary, Federal Financial Institutions Examination Council, 1776 G Street, Suite 701, Washington, DC, 20006.

FOR FURTHER INFORMATION CONTACT: Robert M. Fenner, General Counsel, National Credit Union Administration, 1776 G Street, NW., Washington, DC, 20456, telephone: (202) 357-1030.

SUPPLEMENTARY INFORMATION:

Background and General Information

The Freedom of Information Reform Act of 1986 (Pub. L. 99-570) (FOIRA) amended the FOIA (5 U.S.C. 552) by modifying Exemption 7 and by supplying new provisions relating to charging and waiving fees. FOIRA required that Federal agencies issue regulations, pursuant to notice and public comment, specifying a schedule of fees and procedures for determining when fees should be waived or reduced. The fee schedule must conform to guidelines issued by the Office of Management and Budget (OMB).

FOIRA stated that agencies should promulgate regulations by April 25, 1987, (the 180th day after its enactment). Because of the date of publication of OMB guidelines (March 27, 1987), the Council's August 1987, meeting was the earliest that a proposed regulation could be promulgated. A final rule will be issued after the expiration of the 30-day comment period on the proposed regulation. Fees, fee waivers, and reductions of fees processed by the Council on or after (the date of this proposed rule), will be made pursuant to the current § 1101.4(b)(5) of the Council's Regulations or this proposed regulation, whichever is more beneficial to the requester.

The change to Exemption 7 of the FOIA is incorporated into the Regulations (*see* proposed § 1101.4(b)(1)(vii) of the Council's Regulations). Exemption 7 exempts from disclosure certain records or information compiled for law enforcement purposes. The amended version of Exemption 7 adds language to allow for exemption based on a reasonable expectation of harm from disclosure. The amended Exemption 7 also adds explanatory language describing a confidential source. Lastly, the change provides for exemption if release of the information "would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law." It is anticipated that Exemption 7 would be used by the Council only rarely, if at all, in processing FOIA requests.

The basic change made by the FOIRA to the fee provisions is the establishment of five classes of FOIA requesters: (1) Commercial; (2) educational institutions; (3) noncommercial scientific institutions; (4) representatives of the news media; and (5) all others. Commercial requesters will be charged for the direct costs of reviews, search and duplication of records. Educational institutions, noncommercial scientific institutions and representatives of the news media will be charged fees for direct costs of duplication with the first 100 pages provided free of charge. All other requesters will be charged fees for direct costs of search and duplication, with two hours of search time and 100 pages of duplications provided free of charge. Prior to the FOIRA, requesters were not classified and charges were made in all cases for search and duplication.

Also, as previously indicated, the FOIRA amended the FOIA with respect to waiver or reduction of fees. Under FOIRA, documents are to be furnished without a fee or with a reduced fee if "disclosure of the information is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." Before the amendments, the waiver or reduction of fees occurred when an agency determined that such waiver or reduction was in the "public interest because furnishing the information can be considered as primarily benefitting the general public."

The Council's proposed regulation is largely self-explanatory. The regulation contains the basic requirements of the FOIRA amendments and also reflects OMB's guidelines. Readers desiring further information are referred to the proposed and final guidelines issued by OMB (*see* 52 FR 1982, 10012, January 16, 1987, and March 27, 1987) for a full explanation of all sections, except § 1101.4(b)(ii)(5)(H) (waiver and/or reduction of fees). While the numbering system and titles of some subsections in the FFIEC's proposed regulation differ from the OMB guidelines, the substance of the rule is generally the same. Proposed § 1101.4(b)(ii)(5)(H) is based upon guidelines issued by the Department of Justice. The Department of Justice guidelines were not published in the **Federal Register**, but are available upon request from the Council at the address listed above.

Regulatory Procedures

Regulatory Flexibility Act

The Council has determined and certifies that the proposed amendments, if adopted, will not have a significant economic impact on a substantial number of small entities. The proposed regulations do not place burdens on requesters of information under the FOIA. Accordingly, the Council has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

The proposed regulation does not contain any collection requirements. It does not impose burdens on requesters of information under the FOIA.

List of Subjects in 12 CFR Part 1101

FOIA exemptions, Criminal investigations, Schedule of fees, Waivers or reductions of fees.

By the Federal Financial Institutions Examination Council on August 4, 1987.

Robert J. Lawrence,

Executive Secretary, Federal Financial Institutions, Examination Council.

August 6, 1987.

Accordingly, the Council proposes to amend its regulations as follows:

1. The authority citation for Part 1101 is revised to read as follows:

Authority: 5 U.S.C. 552; 12 U.S.C. 3307.

§ 1101.3 [Amended]

2. Section 1101.3(e) is revised to read:

* * * * *

(e) *Council address.* Council offices are located at 1776 G Street, NW., Suite 701, Washington, D.C., 20006.

§ 1101.4 [Amended]

3. Section 1101.4(b)(1)(vii) is revised to read:

* * * * *

(b) * * *

(1) * * *

(vii) Records or information compiled for law enforcement purposes, including records relating to a proceeding by a financial institutions regulatory agency for the issuance of a cease and desist order, or order of suspension or removal, or assessment of a civil money penalty and the granting, withholding, or revocation of any approval, permission, or authority, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings; (B) would deprive a person of a right to a fair trial or an impartial adjudication; (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy; (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source; (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or (F) could reasonably be expected to endanger the life of physical safety of any individual.

4. Section 1101.4(b)(5) is revised to read:

* * * * *

(b) * * *

(5) *Fees for document search, review, and duplication; waiver and reduction of fees—*

(i) *Definitions.*

(A) *Direct costs* means those expenditures which the Council actually incurs in searching for, duplicating, and reviewing documents to respond to a FOIA request.

(B) *Search* means all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Searches may be done manually or by computer using existing programming.

(C) *Duplication* means the process of making a copy of a document necessary to respond to a FOIA request.

(D) *Review* means the process of examining documents located in response to a request that is for a commercial use (*see* §1101.4(b)(5)(i)(E)) to determine whether any portion of any document located is permitted to be withheld and processing such documents for disclosure.

(E) *Commercial use request* means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(F) *Educational institution* means a preschool, an elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institute of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(G) *Noncommercial scientific institution* means an institution that is not operated on a "commercial" basis as that term is referenced in

§ 1101.4(b)(5)(i)(E), and which is operated solely for the purposes of conducting scientific research, the results of which are not intended to promote any particularly product or industry.

(H) *Representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public.

(ii) *Fees to be charged.* The Council will charge fees that recoup the full allowable direct costs it incurs. The Council may contract with the private sector to locate, reproduce, and/or disseminate records. Provided however, that the Council has ensured that the ultimate cost to the requester is no greater than it would be if the Council performed these tasks. Fees are subject to change as costs change. In no case will the Council contract out responsibilities which the FOIA provides that it alone may discharge, such as determining the applicability of an exemption, or determining whether to waive or reduce fees.

(A) *Manual searches and review.* The Council will charge fees at the following rates for manual searches for and review of records:

(*1*) If search/review is done by clerical staff, the hourly rate for GS–7, step 5, plus 16 percent of the rate to cover benefits;

(*2*) If search/review is done by professional staff, the hourly rate for GS–13, step 5, plus 16 percent of the rate to cover benefits.

(B) *Computer searches.* The Council will charge fees at the hourly rate for GS–13, step 5, plus 16 percent of the rate to cover benefits, plus the hourly cost of operating the computer for computer searches for records.

(C) *Duplication of records.*

(*1*) The per-page fees for paper copy reproduction document is $.25;

(*2*) The fee for documents generated by computer is the hourly rate for the computer operator (at GS 7, step 5 plus 16 percent for benefits if clerical staff and GS 13, step 5 plus 16 percent for benefits if professional staff) plus the cost of materials (computer paper, tapes, labels, etc).

(*3*) If any other method of duplication is used, the Council will charge the actual direct cost of duplicating the documents.

(D) If search, duplication and/or review is provided by personnel of member agencies of the Council, fees will reflect their actual hourly rates plus 16 percent for benefits.

(E) *Fees to exceed $25.* If the Council estimates that duplication and/or search fees are likely to exceed $25, it will notify the requester of the estimated amount of fees, unless the requester has indicated in advance his/her willingness to pay fees as high as those anticipated. In the case of such notification by the Council, the requester will then have the opportunity to confer with Council personnel with the object of reformulating the request to meet his/her needs at a lower cost.

(F) *Other services.* Complying with requests for special services is entirely at the discretion of the Council. The Council will recover the full costs of providing such services to the extent it elects to provide them.

(G) *Restriction on assessing fees.* The Council will not charge fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself.

(H) *Waiving or reducing fees.* The Council shall waive or reduce fees under this section whenever disclosure of information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(*1*) The Council will make a determination of whether the public interest requirement above is met based on the following factors:

(*i*) The subject of the request: Whether the subject of the requested records concerns the operations or activities of the government;

(*ii*) The informative value of the information to be disclosed: Whether the disclosure is likely to contribute to an understanding of government operations or activities;

(*iii*) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to public understanding;

(*iv*) The significance of the contribution to the public understanding: Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities.

(*2*) If the public interest requirement is met, the Council will make a determination on the commercial interest requirement based upon the following factors:

(*i*) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and if so

(*ii*) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large in comparison with the public interest in disclosure; that disclosure is primarily in the commercial interest of the requester.

(*3*) If the required public interest exists and the requester's commercial interest is not primary in comparison to it, the Council will waive or reduce fees.

(iii) *Categories of requesters.*

(A) *Commercial use requesters.* The Council will assess fees for commercial use requesters which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Commercial use requesters are not entitled to two hours of free search time nor 100 free pages of reproduction of documents.

(B) *Requesters who are representatives of the news media, educational and noncommercial scientific institution requesters.* The Council shall provide documents to requesters in these categories for the cost of reproduction alone, excluding fees for the first 100 pages.

(C) *All other requesters.* The Council shall charge requesters who do not fit into any of the categories above fees which recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without a fee.

(D) All requesters must specifically describe records sought.

(iv) *Interest on unpaid fees.* The Council may begin assessing interest charges on an unpaid bill starting on the 31st day following the day on which the bill was sent. Interest will be at the rate prescribed in Section 3717 of Title 31 U.S.C. and will accrue from the date of the billing.

(v) *Fees for unsuccessful search and review.* The Council may assess fees for time spent searching and reviewing, even if it fails to locate the records or if records located are determined to be exempt from disclosure.

(vi) *Aggregating requests.* A requester(s) may not file multiple requests each seeking portions of a document or documents, solely in order to avoid payment of fees. If this is done, the Council may aggregate any such requests and charge accordingly. In no case will the Council aggregate multiple requests on unrelated subjects from the same requester.

(vii) *Advance payment of fees.* The Council will not require a requester to

make an assurance of payment or an advance payment unless:

(A) The Council estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250. The Council will notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up the full estimated charges in the case of requesters with no history of payment; or

(B) A requester has previously failed to pay a fee charged in a timely fashion. The Council may require the requester to pay the full amount owed plus any applicable interest as provided in subsection 1101.4(b)(5)(iv) or demonstrate that he/she has, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before the Council begins to process a new request or a pending request from that requester.

(C) When the Council acts under § 1101.4(b)(5)(vii) (A) or (B), the administrative time limits prescribed in subsection (a)(6) of the FOIA (i.e., 10 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits) will begin only after the Council has received the fee payments described.

[FR Doc. 87-18205 Filed 8-11-87; 8:45 am]

BILLING CODE 6715-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 202, 203, 206, 112, and 218

43 CFR Parts 3480

Coal Product Valuation; Reopening of Public Comment Period

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rule; Reopening of public comment period.

SUMMARY: The Minerals Management Service (MMS) is reopening the public comment period on its proposal to amend the product valuation regulations for coal. MMS is requesting additional public comment on specific issues.

DATES: MMS must receive comments by 4:00 p.m. M.S.T. on or before October 13, 1987.

ADDRESS: Requests for the materials mentioned herein and written comments should be mailed to: Minerals Management Service, Royalty Management Program, Rules and Procedures Branch, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 628, Denver, Colorado 80225, Attention: Dennis C. Whitcomb.

FOR FURTHER INFORMATION CONTACT: Dennis Whitcomb, Chief, Rules and Procedures Branch, telephone (303) 231-3432, (FTS) 320-3432.

SUPPLEMENTARY INFORMATION: On January 15, 1987, MMS issued a notice of proposed rulemaking to amend the product valuation regulations for coal (52 FR 1840). The original public comment period was 90 days. MMS subsequently reopened the comment period on July 9, 1987, for 14, days. (52 FR 25887). During the second comment period, MMS received some significant comments from principal interested parties raising issues which merit further consideration and response from the public. To allow for this further consideration, MMS is reopening the comment period for 60 days to give interested persons an opportunity to obtain from MMS copies of the comments described below and then to provide a response for MMS to consider indeveloping a final rulemaking.

One of the significant comments was submitted jointly on behalf of the coal and electric utility industries by the National Coal Association, Edison Electric Institute, American Mining Congress, American Public Power Association, National Rural Electric Cooperative Association, and the Western Fuels Association, Inc. The proposal submitted by these parties includes a comprehensive, section-by-section set of revisions to the MMS' January proposed rulemaking, including justification for the suggested modifications. The most significant revisions suggested by this comment is to remove the valuation standards contained in the proposed rules and substitute instead the concepts of "gross royalty value" and "net royalty value." Essentially, the industry would base royalty values on the Internal Revenue Code's (IRC) concept of "gross income from property" used for depletion calculations under IRC section 613 and implmenting regulations. This "gross royalty value" would be increased by amounts for royalties and reduced by processing allowances and amounts based on Federal Black Lung excise taxes, Abandoned Mine Land fees and State and local taxes (such as severance taxes). The resulting figure would be the "net royalty value." This valuation starting point differs from the proposed MMS rules principally by excluding any amounts received for State and local taxes, transportation from the lease to the delivery point, and any beneficiation. (Under the proposed MMS rules, allowances would be provided for some of these amounts.)

MMS intends to evaluate the industry proposal and compare its approach with the MMS proposal, including dollar impacts, ease of administration, and consistency with basic MMS valuation principles. To facilitate this review, MMS requests that interested persons review the entire industry proposal and provide responses. MMS is particularly interested in whether any States have considered the approach suggested in the industry proposal for State taxation purposes or for royalty purposes. Copies of the industry proposal are available from MMS at the address listed in the **ADDRESS** section of this notice.

MMS also received a brief response to the industry proposal from Governor Sullivan of Wyoming, questioning some of the basic concepts in that proposal such as whether it is not simpler to start from gross proceeds under arm's length contracts as proposed by MMS. MMS will provide copies of Governor Sullivan's comments with the industry proposal and would like to receive responses from industry and others regarding the questions raised by Governor Sullivan.

During the comment period, MMS also received a comprehensive set of section-by-section comments from Indian representatives. Although the Indian comments do not include a proposal as significantly different from the MMS proposed rules as the industry proposal, the Indian comments nevertheless raise a number of significant issues related to valuation for Indian leases such as the role of the indian lessor in approving processing and transportation allowances. The MMS specifically requests further public comment on the various matters raised in the Indian comments. Copies are available from MMS at the address listed in the **ADDRESS** section of this notice.

Commenters are requested to be as specific as possible with their comments. Where practicable, the comment should identify the section of the MMS proposed rule, industry proposal, or Indian comments being addressed.

Date: August 6, 1978.

William D. Bettenberg,

Director, Minerals Management Service.

[FR Doc. 87-18312 Filed 8-11-87; 8:45 am]

BILLING CODE 4310-MR-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-284, RM-5794]

Radio Broadcasting Services; Reidsville, NC, and Marion, VA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Beasley Broadcasting of Reidsville, North Carolina, Inc. seeking the substitution of Class C Channel 271 for Channel 271C1 at Reidsville and the modification of its license for Station WWMO(FM) to specify operation on the higher powered channel. This document also proposes the substitution of Channel 273A for Channel 272A at Marion, Virginia, and the modification of the license of Emerald Broadcasting, Inc. for Station WOLD–FM to specify the new channel. The allocation of Channel 271 at Reidsville specifies a site restriction of 26.4 kilometers (16.4 miles) west to accommodate the site specified in its pending application (BPH–860825IE). This site restriction does not negate the existing grandfathered short-spacings to Stations WRXL, Richmond, Virginia, and WLIT–FM, Gastonia, North Carolina. However, with the substitution of channels at Marion, there are no additional short-spacings. The allocation of Channel 273A at Marion specifies a site restriction of 7.4 kilometers (4.6 miles) north northwest to accommodate relocation of Station WOLD–FM's antenna to Walker Mountain. An *Order to Show Cause* is directed to Emerald Broadcasting, Inc. concerning the modification of Station WOLD–FM to specify operation on Channel 273A.

DATES: Comments must be filed on or before September 28, 1987, and reply comments on or before October 13, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Jack W. Whitley, Esq., Baker & Hostetler, 1050 Connecticut Avenue, NW., Suite 1100, Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–284, adopted July 13, 1987, and released August 4, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73:

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–18259 Filed 8–11–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–281, RM–5847]

Radio Broadcasting Services; Chelan, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Northcentral Broadcasting Co., licensee of Stations KOZI–FM and AM, Chelan, Washington, proposing the substitution of Class C2 Channel 228 for Channel 228A at Chelan and modification of the station license to specify operation on the higher class channel, as that community's first wide area FM station. Concurrence by the Canadian government must be obtained.

DATES: Comments must be filed on or before September 13, 1987, and reply comments on or before October 13, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Lee W. Shubert, Esquire, Haley, Bader & Potts, 2000 M Street, NW., Suite 600, Washington, DC 20036 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–281, adopted July 16, 1987, and released August 5, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allotments Branch, Mass Media Bureau.

[FR Doc. 87–18260 Filed 8–11–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 87–280, RM–5787]

Radio Broadcasting Services; Rhinelander, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Oneida Broadcasting Company, licensee of Station WRHN(FM), Channel 262C2, Rhinelander, Wisconsin, proposing the substitution of Channel 262C1 for Channel 262C2 at Rhinelander and modification of its license to specify the

higher class frequency. A site restriction of 3.1 kilometers (1.9 miles) east of the community is required, which is the present site of Station WRHN(FM). Concurrence by the Canadian government must be obtained.

DATES: Comments must be filed on or before September 28, 1987, and reply comments on or before October 13, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Kathryn R. Schmeltzer, Esquire John J. McVeigh, Esquire, Fisher, Wayland, Cooper & Leader, Suite 800, Washington, DC 20007 (Counsels to petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–280, adopted July 16, 1987, and released August 5, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time of Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1291 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–18281 Filed 8–11–87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87–283, RM–5804]

Radio Broadcasting Services; Holyoke, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Virginia K. Cutforth seeking the allotment of FM Channel 222C2 to Holyoke, Colorado as that community's first local broadcast service.

DATES: Comments must be filed on or before September 28, 1987, and reply comments on or before October 13, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Virginia K. Cutforth, 865 South Irving Street, Denver, CO 80219.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–283, adopted July 16, 1987, and released August 5, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–18284 Filed 8–11–87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87–285, RM–5813]

Radio Broadcasting Services; Boothbay Harbor, ME

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Bay Communications, Inc., proposing the substitution of Channel 244B1 for Channel 244A at Boothbay Harbor, Maine, and modification of the license for Station WCME(FM) at Boothbay Harbor to specify the higher class of channel. This proposal could provide a first wide coverage area station for the community. Canadian concurrence is required for the substitution of channels and proposals must conform with the technical requirements of § 73.1030(c) (1) through (5) of the Rules regarding protection to the Commission's monitoring station at Belfast, Maine.

DATES: Comments must be filed on or before September 28, 1987, and reply comments on or before October 13, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Arthur Stambler, PC 1801 L Street, NW., Suite 200, Washington, DC 20036 (Counsel for the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–285, adopted July 13, 1987, and released August 4, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-18257 Filed 8-11-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-306, RM-5837]

Radio Broadcasting Services; Albert Lea and Red Wing, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Communications Properties, Inc., proposing the substitution of FM Channel 235C2 for Channel 237A at Albert Lea, Minnesota, and modification of its license for Station KCPI-FM to specify operation on Channel 235C2. To accommodate Channel 235C2 at Albert Lea, two channel substitutions would be necessary. Channel 287C2 must be substituted for 235A at Stewartville and Channel 290A would be substituted for Channel 288A at Red Wing, Minnesota. Channel 235A was allocated to Stewartville in MM Docket 84-231, *First Report and Order*, 49 FR 3514, January 25, 1985. Stewartville would retain its numerical sequence of 68 and applications for Channel 287C2 would be accepted in that order. Channel 287C2 would have a site restriction 23.1 kilometers southwest of the community. Channel 288A is licensed to Station KWNG(FM), Red Wing, Minnesota and Channel 290A can be substituted at Red Wing at Station KWNG(FM)'s existing site.

DATES: Comments must be filed on or before September 28, 1987, and reply comments on or before October 13, 1987.

ADDRESS: Christopher Reynolds, Dempsey & Koplovitz, 1401 New York Avenue, NW., Suite 630, Washington, DC 20005 (counsel for the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-306, adopted July 9, 1987, and released August 5, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-18258 Filed 8-11-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-276, RM-5714]

Radio Broadcasting Services; Agana, GU

AGENCY: Federal Communication Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Serafin M. Dela Cruz which proposes to allot Class C Channel 270 to Agana, Guam, as its fifth FM service.

DATES: Comments must be filed on or before October 1, 1987, and reply comments on or before October 16, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Serafin M. Dela Cruz, P.O. Box 2832, Saipan, CM 96950 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is summary of the Commission's Notice of Proposed Rule Making MM Docket No. 87-276, adopted July 20, 1987, and released August 6, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-18332 Filed 8-11-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-277, RM-5771]

Radio Broadcasting Services; St. Joseph, TN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests

comments on a petition by Raymon and Brenda Chandler proposing the allotment of Channel 288A to St. Joseph, Tennessee, as that community's first FM service. A site restriction of 9.2 kilometers (5.7 miles) northwest of the city is required.

DATES: Comments must be filed on or before October 1, 1987, and reply comments on or before October 16, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Lawrence J. Bernard, Jr., Esquire, Ward & Mendelsohn, P.C., 1100 17th Street, NW., Suite 900, Washington, DC 20036 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–277, adopted July 21, 1987, and released August 6, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–18333 Filed 8–11–87; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 87–276, RM–5716]

Radio Broadcasting Service; Seabrook, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Roy E. Henderson, licensee of Station KLEF–FM, Channel 221A, Seabrook, Texas, proposing the substitution of Channel 221C2 for 221A at Seabrook and modification of his license to specify the higher class frequency. The proposal could provide a first wide area coverage station at Seabrook. A site restriction of 20.3 kilometers (12.6 miles) southeast of the city is required.

DATES: Comments must be filed on or before October 1, 1987, and reply comments on or before October 16, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows:

Richard J. Hayes, Jr., Esquire, Attorney at Law, 1359 Black Meadow Road, Spotsylvania, Virginia 22553, (Counsel to petitioner).

Roy E. Henderson, 889 Timber Cove Drive, Seabrook, Texas 77586, (Petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–276, adopted July 21, 1987, and released August 6, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–18334 Filed 8–11–87; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 87–282, RM–5569]

Radio Broadcasting Services; Fort Bragg, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Charles W. and Josephine R. Stone, d.b.a. Fort Bragg Broadcasting Company, which seeks the allotment of Channel 244A to Fort Bragg, CA, as that community's third local FM broadcast service.

DATES: Comments must be filed on or before September 28, 1987, and reply comments on or before October 13, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel as follows: Daniel F. Van Horn, Esq., Arent, Fox, Kintner, Plotkin & Kahn, 1050 Connecticut Avenue, NW., Washington, DC 20036–5339.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–282, adopted July 16, 1987, and released August 5, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-18255 Filed 8-11-87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 73-34; Notice 09]

Federal Motor Vehicle Safety Standards School Bus Body Joint Strength

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Reopening of comment period.

SUMMARY: This notice reopens the comment period for an advance notice of proposed rulemaking (ANPRM) published June 19, 1987, requesting comment on three basic items, all related to FMVSS No. 221, *School Bus Body Joint Strength* including exemption of the maintenance access panels, modified test procedures, and a dynamic test for school bus floors. NHTSA is granting a request to extend the comment period so that the petitioner may submit the results of dynamic tests it intends to conduct. Petitioner asserts that its tests have not been performed before, and that the results may have a substantial bearing on this ANPRM.

DATE: The comment period for Docket No. 733-34, Notice 08 now closes October 15, 1987.

ADDRESS: Comments should refer to Docket No. 73-34, Notice 08, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC, 20590. The telephone number is (202) 366-4949.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Williams, (202) 366-4919.

SUPPLEMENTARY INFORMATION: On June 19, 1987, NHTSA published an ANPRM requesting comment on several items, including whether it is appropriate to continue its exemption of school bus maintenance access panels from the body joint strength requirements of Standard 221 (52 FR 23314.) In the June 19 document, the agency sought comments on a number of questions relating to the test procedures for school bus joints. The agency also noted continuing assertions that Standard 221 apparently is imprecise and ambiguous, and that these problems, in the Standard raise further questions of whether it is enforceable.

On July 24, 1987, NHTSA received a petition submitted in behalf of Thomas Built Buses (Thomas), asking that the agency extend the comment period for 60 days. In support of its petition, Thomas asserted that it was sponsoring dynamic tests the results of which would supply data relevant to appropriate school bus floor strength standards and test methods to evaluate the efficacy of such standards. Thomas requested the extension so that it might present its test data in response to the ANPRM.

NHTSA also received a letter from the National Association of State Directors of Pupil Transportation Services (State Directors), stating the organization's belief that a "re-evaluation" of Standard 221 is "warranted," and suggesting extending the comment period.

NHTSA has considered the requests and finds that this information would be useful in the agency's current evaluation of the Standard. Further, the agency wishes to be responsive to the State Directors assertion that the activities of state school transportation organizations are restrained in the summer.

For the preceding reasons, the agency finds that there is good cause for reopening the comment period, and further finds that reopening the comment period is in the public interest. Therefore, NHTSA reopens the comment period, which expired August 3, 1987, until October 15, 1987.

Issued: August 7, 1987.

Ralph J. Hitchcock,

Acting Associate Administrator for Rulemaking.

[FR Doc. 87-18350 Filed 8-11-87; 8:45 am]

BILLING CODE 4910-59-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1039

[Ex Parte No. 346 (Sub-No. 19A)]

Petition for Exemption; Boxcar Provisions; Delaware Otsego Corp.

AGENCY: Interstate Commerce Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to add a provision to its boxcar exemption and rules [49 CFR 1039.14] stating that seven named Class III railroads will no longer be regarded as Class III or unaffiliated Class II carriers for the purpose of exemption and rules. The seven railroads and Delaware Otsego Corporation, which controls them, have asked that they not be afforded the special treatment for Class III and unaffiliated Class II carriers contained in the exemption and rules. The effect of the proposed provision would be to exempt boxcar traffic transported by the seven railroads from joint rate regulation, to enable them to exercise the empty car provisions of the rules, and to allow other carriers to exercise the empty car provisions with respect to the cars of these seven railroads.

DATES: Comments are due September 1, 1987. Petitioner may reply by September 21, 1987.

ADDRESSES: An original and 15 copies of any comments referring to Ex Parte No. 346 (Sub-No. 19A) should be sent to:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of comments should also be sent to petitioners' representatives as follows:

William P. Quinn, Eric M. Hocky, Rubin, Quinn and Moss, 1800 Penn Mutual Tower, 510 Walnut Street, Philadelphia, PA 19106.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245.

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission's decision. Copies of the decision are available from the Office of the Secretary, Room 2215, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 275-7428 (TDD for hearing impaired: (202) 275-1721.

This action will not significantly affect

either the quality of the human environment or energy conservation.

List of Subjects in 49 CFR Part 1039

Agricultural commodities, Intermodal transportation, Railroads.

Decided: July 30, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

Part 1039 of Title 49 of the Code of Federal Regulations would be amended as follows:

PART 1039—CONTRACTS AND EXEMPTIONS

1. The authority citation for Part 1039 would continue to read as follows:

Authority: 49 U.S.C. 10321, 10505, 10713, 10762, 11105, and 11122; and 5 U.S.C. 553.

2. Section 1039.14 would be amended by adding paragraph (c)(6) as follows:

§ 1039.14 Boxcar transportation exemption and rules.

* * * * *

(c) * * *

(6) The following carriers are not regarded as Class III or unaffiliated Class II carriers for the purpose of this section:

Central New York Railroad Corporation
Cooperstown and Charlotte Valley Railway Corporation
Fonda, Johnstown & Gloversville Railroad Corporation
Lackawaxen and Stourbridge Railroad Corporation
New York, Susquehanna and Western Railway Corporation
Rahway Valley Railroad Company
Staten Island Railway Corportation

* * * * *

[FR Doc. 87-18298 Filed 8-11-87; 8:45 am]

BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 52, No. 155
Wednesday, August 12, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

August 7, 1987.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

• Federal Crop Insurance Corporation
Crop Insurance Acreage Report (Selected Crops)
FCI–19
Annually
Individuals or households; Farms; 346,930 responses; 173,465 hours; not applicable under 3504(h)
Peter F. Cole (202) 447–3325
• Federal Grain Inspection Service
Reporting and Recordkeeping Requirement (USGSA and AMA of '46)
FGIS–922 and FGIS–943
Recordkeeping; occasion
State or local governments; Businesses or other for-profit; 2,705 responses; 9,019 hours; not applicable under 3504(h)
Robert "E" Soderstorm (202) 382–0231
• Soil Conservation Service
Agriculture and Urban Damage Surveys
SCS ECN 1–8
On occasion
Individuals or households; State or local governments; Farms; Businesses or other for-profit; Small businesses or organizations; 2,600 responses; 5,800 hours; not applicable uner 3504(h)
Gail Updegraff (202) 447–2307

Reinstatement

• Agricultural Stabilization and Conservation
Record of Transfer of Allotment or Quota
ASCS–375
On occasion
Individuals or households; Farms; 232,750 responses; 58,188 hours; not applicable under 3504(h)
Sarah J. Matthews (202) 475–5012
• Agricultural Stabilization and Conservation Service
Application for Review of Farm Marketing Quota
MQ–53
On occasion
Individuals or households; Farms; 256 responses; 64 hours; not applicable under 3504(h)
Sarah J. Matthews (202) 475–5012
• Farmers Home Administration
7 CFR 1933–I, Self-Help Technical Assistance Grants
Recordkeeping; On occasion
State or local governments; Non-profit institutions; 1,927 responses; 2,747 hours; not applicable under 3504(h)
Jack Holston (202) 382–9736

Revision

• Farmers Home Administration
Borrower Acknowledgement of Notice of Intent to Take Adverse Action and Agreement for the use of Proceeds/ Release of Chattel Security and/or Farm Income
FmHA 1924–26, 1962–1
On occasion
Individuals or households; Farms; 220,000 responses; 65,400 hours; not applicable under 3504(h)
Jack Holston (202) 382–9736

Jane A. Benoit,
Departmental Clearance Officer.

[FR Doc. 87–18604 Filed 8–11–87; 8:45 am]
BILLING CODE 3410–01–M

Cooperative State Research Service

Animal Health Science Research Advisory Board; Meeting

According to the Federal Advisory Committee Act of October 6, 1972, Pub. L. 92–463, Cooperative State Research Service announces the following meeting:

Name: Animal Health Science Research Advisory Board.

Date: September 3, 1987.

Time: 8:30 a.m.

Place: Room 3056, South Agriculture Building, U.S. Department of Agriculture, 12th and Independence, SW., Washington, DC 20250.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: The Board will consult with and advise the Secretary of Agriculture on implementing animal health and disease research programs. Recommendations will be made also on priorities of research in these programs.

Board Names and Agenda: Available from contact person below.

Contact Person: Dyarl D. King, Executive Secretary, Animal Health Science Research Advisory Board, Cooperative State Research Service, U.S. Department of Agriculture, Washington, DC 20251–2200, telephone (202) 447–6428.

Done at Washington, DC, this 30th day of July, 1987.

John Patrick Jordan,

Administrator.

[FR Doc. 87-18302 Filed 8-11-87; 8:45 am]

BILLING CODE 3410-22-M

Soil Conservation Service

Record of Decision; Middle Big Nemaha Watershed, Nebraska

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of availability of Record of Decision.

SUMMARY: Ron E. Hendricks, responsible Federal official for projects administered under the provisions of Pub. L. 83-566, 16 U.S.C. 1001-1008, in the State of Nebraska, is hereby providing notification that a record of decision to proceed with the installation of the Middle Big Nemaha Watershed project is available. Single copies of this record of decision may be obtained from Ron E. Hendricks at the address shown below.

FOR FURTHER INFORMATION CONTACT: Ron E. Hendricks, State Conservationist, Soil Conservation Service, Federal Building, Room 345, 100 Centennial Mall North, Lincoln, NE 68508-3866, telephone 402-471-5300.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Date: August 4, 1987.

Ron E. Hendricks,

State Conservationist.

[FR Doc. 87-18281 Filed 8-11-87; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration
Title: Statement of Financial Interests for Regional Fishery Management Councils' Members and Regional Directors
Form Number: Agency—N/A; OMB—N/A
Type of Request: New Collection
Burden: 50 respondents; 25 burden hours
Needs and Uses: Section 302(k) of the Magnuson Fishery Conservation and Management Act, as amended by Pub. L. 99-659 requires disclosure by nominees to, executive directors, and members of the Fishery Management Councils of any financial interest in any harvesting, processing, or marketing activity. Information is required to be made available for public inspection.
Affected Public: Individuals
Frequency: On occasion, once every three years thereafter
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: John Griffen, 395-7340

Agency: National Oceanic Atmospheric Administration
Title: Fish Tagging Report
Form Number: Agency—NOAA 88-162; OMB—0648-0009
Type of Request: Extension of the expiration date of a currently improved collection
Burden: 2833 respondents; 85 burden hours
Needs and Uses: The cooperative Marine Game Fish Program was initiated in 1963 as part of a comprehensive research program. This program attempts to determine the migratory patterns and other biological information of billfishes, tunas and sharks by having anglers tag and release their catch. Information is used by the National Marine Fisheries Service for the purpose of developing management criteria.
Affected Public: Individuals
Frequency: On occasion
Respondent's Obligation: Voluntary
OMB Desk Officer: John Griffen, 395-7340

Agency: National Oceanic and Atmospheric Administration
Title: Report of Transmitting Antenna Construction, Alteration, or Removal
Form Number: Agency—NOAA 76-10; OMB—0625-0096
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 780 respondents; 195 burden hours
Needs and Uses: NOAA is charged through various laws with the collection, verification, compilation, printing, and distribution of accurate aeronautical charts to be used in air commerce. This data collection is used to produce the charts.
Affected Public: State or local governments; businesses and other for-profit institutions; federal agencies; non-profit institutions; small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Mandatory
OMB Desk Officer: John Griffen, 395-7340

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to John Griffen, OMB Desk Officer, Room 3228, New Executive Office Building, Washington, DC 20503.

Dated: August 7, 1987.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87-18408 Filed 8-11-87; 8:45 am]

BILLING CODE 3510-CW-M

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with § 353.53a or § 355.10 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review

Not later than August 31, 1987, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in August, for the following periods:

	Period
Antidumping Duty Proceeding:	
Cadmium from Japan	08/01/86-07/31/87
Industrial nitrocellulose from France	08/01/86-07/31/87
High capacity pagers from Japan	08/01/86-07/31/87
Tapered roller bearings four inches or less in outside diameter, and certain components thereof from Japan	08/01/86-07/31/87
Clear sheet glass from Taiwan	08/01/86-07/31/87
Titanium sponge from the Union of Soviet Socialist Republics	08/01/86-07/31/87
Petroleum wax candles from the People's Republic of China	02/19/86-07/31/87
Acrylic sheet from Japan	08/01/86-07/31/87
Countervailing Duty Proceeding:	
Live swine from Canada	04/01/86-03/31/87
Low-fuming brazing copper rod and wire from New Zealand	08/01/86-07/31/87
Pipes and tubes from Thailand	01/01/86-12/31/86
Carbon steel wire rod from Zimbabwe	06/04/86-12/31/86

Seven copies of the request should be submitted to the Deputy Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230.

The Department wil publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by August 31, 1987.

If the Department does not receive by August 31, 1987 a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Date: August 6, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 87-18409 Filed 8-11-87; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Groundfish Management Team will convene a public meeting, August 26-28, 1987, at 8 a.m., to prepare a draft annual status of stocks document; finalize draft Amendment #3 to the fishery management plan; review catch projections for certain groundfish species, and review sablefish resource assessment reports. Other issues related to groundfish fishery management may be discussed also.

The public meeting will convene at the National Marine Fisheries Service, Northwest and Alaska Fisheries Center, 7600 Sand Point Way, NE., Building 4, Room 2079, Seattle, WA. For further information about the public meeting, contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 221-6352.

Dated: August 7, 1987.

Henry R. Beasley,

Director, Office of International Affairs, National Marine Fisheries Service.

[FR Doc. 87-18308 Filed 8-11-87; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Amended Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The date and location as published in the **Federal Register** (52 FR 29053, August 5, 1987) for the public meeting of the Pacific Fishery Management Council's Limited Entry Committee has been changed as follows:

From

August 18-19, 1987 at 10 a.m., at the Pacific Council's Offices, Metro Center, Room 330, 2000 SW. First Avenue, Portland, OR

To

August 19-29, 1987 at 10 a.m., at the Holiday Inn, Portland Airport, Tampico Room, 8439 NE. Columbia Boulevard, Portland, OR. All other information in the original agenda remains unchanged.

For further information about the public meeting, contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 221-6352.

Date: August 6, 1987.

Henry R. Beasley,

Director, Office of International Affairs, National Marine Fisheries Service.

[FR Doc. 87-18309 Filed 8-11-87; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Intent To Grant Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Automotated Precision, Inc. having a place of business in Gaithersburg, MD, an exclusive right in the United States to manufacture, use, and sell products embodied in the invention entitled "Three and Five Axis Laser Tracking System," U.S. Patent Application Serial Number 6-834,728. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within 60 days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 87-18313 Filed 8-11-87; 8:45 am]

BILLING CODE 3510-04-M

Intent To Grant Exclusive Patent License; Oligogen

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Oligogen, having a place of business in Menlo Park, CA, an exclusive right in the United States and certain foreign countries to manufacture, use, and sell products embodied in the invention entitled "Phosphorothioate Analogues of Oligodeoxyribonucleotides As Inhibitors for Replication and Cytopathic Effects of HTLV-III Retroviruses and Other Foreign Nucleic Acids," U.S. Patent Application S.N. 7-030,073. The patent rights in this invention are assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209

and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS, receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 87-18282 Filed 8-11-87; 8:45 am]

BILLING CODE 3510-04-M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.153]

Invitation of Applications for New Awards under the Business and International Education Program for Fiscal Year 1988

Purpose: Provides grants to enhance international academic programs of higher education institutions and expand the capacity of the business community to engage in international economic activities.

Deadline for transmittal of Applications: November 9, 1987.

Applications available: September 11, 1987.

Available funds: The Administration's budget request for fiscal year 1988 does not include funds for this program. However, applications are bing invited to allow for sufficient time to evaluate applications and complete the grant process before the end of the fiscal year, should the Congress appropriate funds for this program. The following estimates are based upon the FY 1987 appropriation.

Estimated Range of Awards: $40,000 to $135,000.

Estimated Average Size of Awards: $80,000.

Estimated Number of Awards: 15.

Project Period: Up to 24 months.

Applicable Regulations: (a) Business and International Education Program, 34 CFR Part 661, and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77 and 78.

For Applications or Information Contact: Susanna C. Easton, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3053, ROB 3, Washington, DC 20202. Telephone: 202-732-3502.

Program Authority: 20 U.S.C. 1130-1130b.

Dated: August 6, 1987.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 87-18364 Filed 8-11-87; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Prairie View A&M University et al.; Restricted Eligibility for Grant Award

AGENCY: Albuquerque Operations Office, DOE.

ACTION: Notice of Restricted Eligibility for Grant Award.

SUMMARY: The Department of Energy (DOE) Albuquerque Operations Office, in accordance with 10 CFR 600.7(b), gives notice of its plans to restrict eligibility for the award of grants to Prairie View A&M University, Prairie View Texas, Central State University, Wilberforce, Ohio and Langston University, Langston, Oklahoma. These grants, which are pursuant to 42 U.S.C. 5813(11), are designed to assure an adequate supply of manpower for the accomplishment of energy research and development programs, by sponsoring and assisting in education and training activities in institutions of higher education, and are part of the Department's Cooperative Education Program, (Federal Personnel Manual, Chapter 308). DOE considers it necessary to restrict eligibility for award of financial assistance to these three institutions in order to increase the number of qualified Blacks in the Albuquerque Operations work force and ultimately to overcome the under-representation of Blacks in the Department's work force, thereby accomplishing one of the objectives of the cooperative education program, that of supporting equal employment opportunity. DOE selected Prairie View A&M University, Central State University and Langston University because (1) each institution is a historically Black college or university as referenced in Executive Order 12320, dated September 15, 1981, (2) each institution's prior participation in the Department's Black Cooperative Education Program, (3) each institution's proximity to Albuquerque Operations facilities; and (4) each institution's record of providing qualified Blacks for recruitment into the Department's work force.

FOR FURTHER INFORMATION CONTACT: Grace M. Tilton, U.S. Department of Energy, Albuquerque Operations Office, Contracts & Industrial Relations Division, P.O. Box 5400, Albuquerque, NM 87115, (505) 846-3101.

Issued in Albuquerque, NM, August 4, 1987.

V.V. Berniklau,

Assistant Manager for Administration.

[FR Doc. 87-18299 Filed 8-11-87; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 5090-005]

Intent To Prepare Environmental Impact Statement and To Hold Scoping Session and Public Meeting; City of Idaho Falls

August 5, 1987.

The City of Idaho Falls filed on November 29, 1984, an application for license for the Shelley Hydroelectric Project, FERC No. 5090. The proposed project would be constructed on the Snake River near the City of Shelley in Bingham County, Idaho.

The Commission staff has determined that issuance of a license for the proposed hydroelectric project would constitute a major federal action significantly affecting the quality of the human environment. The staff therefore intends to prepare an environmental impact statement (EIS) in accordance with the National Environmental Policy Act. Environmental impacts of the proposal and possible alternatives will be discussed in the EIS. A scoping document will follow this public notice and will be sent to all recipients of this notice prior to the scoping session and public meeting.

Scoping Session

Interested persons and agencies are invited to participate in a scoping session to discuss environmental impact issues associated with the proposed Shelley Project. The scoping session will be held on Wednesday, September 16, 1987, starting at 9:00 a.m., at the City Council Chambers, Electric Light Division Building, 140 South Capital Street, Idaho Falls, Idaho.

Scoping sessions are used by the Commission staff for the following: (1) To present environmental issues that have been identified for coverage in the EIS to the public and to experts familiar with the project; (2) to receive input from the public and experts on the issues presented; (3) to clarify the significance of issues; (4) to identify additional issues for treatment in the EIS; and (5) to identify issues that do not merit treatment in the EIS. Agencies and

individuals with environmental expertise and concerns are encouraged to attend the meeting and to assist the Commission's staff with the determination of issues to be addressed in the EIS.

Public Meeting

Interested officials and members of the public are invited to express their views about the project in a public meeting. The public meeting will be held on Wednesday, September 16, 1987, starting at 7:00 p.m., at the Senior Citizen Center, 193 West Pine Street, Shelley, Idaho.

At the public meeting persons may give their statements orally or in writing. The meeting will be recorded by a stenographer, and all statements (oral and written) will become part of the public meeting record. In addition, the public meeting record will remain open until October 5, 1987, and anyone may submit written comments on the project until that time. Comments should be addressed to Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, and should clearly show the project name and number (Shelley Hydroelectric Project, FERC No. 5090–005) on the first page. For additional information, contact John Estep, the EIS coordinator, at (202) 376–1979.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–18274 Filed 8–11–87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER87–557–000]

Notice of Filing; Central Vermont Public Service Corp.

August 6, 1987.

Take notice that on July 31, 1987, Central Vermont Public Service Corporation (CVPS) tendered for filing as an initial rate schedule a letter amending the System Sales Agreement (Agreement) between the Unitil Power Corporation (Unitil) and Central Vermont Public Service Corporation. The Amended Agreement, dated June 23, 1987, provides for the sale of 25 MW of capacity and related energy from the CVPS system to Unitil and the purchase by Unitil of energy and capacity from the CVPS system.

Unitil shall pay CVPS a monthly capacity charge of $9.35 per KW/month as well as an energy charge and a transmission charge. An October 31, 1987 effective date has been requested.

Copies of the filing were served upon the respective jurisdictional customers of the parties hereto, as well as the Vermont Public Service Board and the New Hampshire PUC. CVPS further states that the filing is in accordance with Section 35 of the Commission's Regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 20, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–18276 Filed 8–11–87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER87–373–000]

Notice of Filing; Iowa Public Service Co.

August 6, 1987.

Take notice that on July 23, 1987 Iowa Public Service Company (IPS) tendered for filing its Second Amendment containing additional documentation for an executed Firm Power Interchange Service Agreement dated November 15, 1985 and the First Amendment to Firm Power Interchange Service Agreement date November 21, 1986, whereby Iowa Public Service Company will supply the LaPorte City Municipal Utilities, LaPorte City, Iowa with firm electric capacity, commencing December 31, 1985 and continuing through December 31, 2000. Iowa also filed an executed Agreement for LaPorte City Connection dated December 19, 1985 by which Iowa Electric Light and Power Company will provide transmission service to implement the Firm Power Agreement.

IPS requests an effective date of December 23, 1985, and therefore requests a waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C., 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 20, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–18277 Filed 8–11–87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER87–558–000]

Notice of Filing; Kansas City Power & Light Co.

August 6, 1987.

Take notice that on August 3, 1987, Kansas City Power & Light Company (KCPL) tendered for filing with the Commission proposed changes in Service Schedules for Firm Power Service to supersede and replace Service Schedules for Firm Power Service in contracts and agreements with the following wholesale customers:

1. City of Marshall, Missouri (Marshall), FPC No. 83
2. Missouri Public Service Company (MPS), FPC No. 74
3. City of Higginsville, Missouri (Higginsville), FERC No. 91
4. City of Salisbury, Missouri (Salisbury), FERC No. 100
5. City of Slater, Missouri (Slater), FERC No. 97
6. City of Carrollton, Missouri (Carrollton), FERC No. 88

The proposed changes would decrease revenues from jurisdictional sales revenues by $246,245.19 based on the 12-month period ending September 30, 1985.

These new Schedules are filed in compliance with a Joint Offer of Settlement in Docket No. ER86–273–001 approved by the Commission by order dated July 31, 1986. The result of the change will be to reduce the test year increase reflected by the rates in the present rate schedules from the Company's Missouri Sales for Resale customers from 16.6111% to 9.14% over test year revenues.

A copy of the filing was sent to each customer affected and to the Missouri Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825

North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 20, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18278 Filed 8-11-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CF87-535-000]

Application for Commission Certification of Qualifying Status of a Small Power Production Facility; South Valley Power Corp.

August 3, 1987.

On July 21, 1987, South Valley Power Corporation (Applicant), of 551 Pruett Road, P.O. Box 752, Calexico, California 92231 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in section 11, approximately one mile north of Calexico, in Imperial County, California. The facility will consist of a steam generator and a turbine generator. The primary energy source will be biomass comprised of agricultural and wood wastes. Approximately two percent of the total annual energy input to the facility will be natural gas, which will be used for start-up. However, in no event, such fossil fuel uses will exceed 25% of the total energy input to the facility during any calendar year period. The electric power production capacity of the facility will be 5 MW.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

[FR Doc. 87-18275 Filed 8-11-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER87-555-000]

Filing; Public Service Electric and Gas Co.

August 6, 1987.

Take notice that on July 31, 1987, Public Service Electric and Gas Company (PSE&G) tendered for filing an initial Rate Schedule to provide transmission service to EF Union, Inc. (EF Union). The Rate Schedule provides for a monthly transmission service charge of $1.65 per kilowatt plus $.00048 per kilowatthour for the delivery of the net electric power output of EF Union's qualifying cogeneration facility to be located in the City of Union, Union County, New Jersey to Jersey Central Power and Light Company.

PSE&G request, with the customer's consent, a waiver of the Notice Requirements of § 35.3(a) of the Commission's Regulations so that the Rate Schedule can be submitted for filing at this time and PSE&G further requests that the filing be made effective within sixty (60) days of the date of this filing.

PSE&G states that a copy of this filing has been served by mail upon the customer and the New Jersey Board of Public Utilities.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 20, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18279 Filed 8-11-87; 8:45 am]

BILLING CODE 6717-01-M

Filing; Wisconsin Power and Light Co.

[Docket No. ER87-554-000]

August 6, 1987.

Take notice that on July 31, 1987, Wisconsin Power and Light Company, tendered for filing proposed changes in its W-1, W-2, and W-3 Electric Service Tariffs, Wholesale For Resale. The Company has proposed interim changes which would decrease revenues from W-1 customers by $102,000, from W-3 Customers by $1,380,000 and increase revenues from W-2 by $114,000 for the twelve months ending July 31, 1988. In addition, the Company is seeking permanent annual decrease of $107,000 in W-1 revenues and $1,196,000 in W-3 revenues, and permanent annual increases in W-2 revenues of $129,000, all based on the same 12-month period ending July 31, 1988.

Wisconsin Power and Light Company states that the proposed overall decrease in wholesale revenues reflects declining operating costs. By its filing, the Company is requesting that the interim changes for the W-1 and W-3 customers become effective on August 1, 1987 and accordingly seeks a waiver of the Commission's notice requirements. The Company seeks an effective date of September 30, 1987 for the W-2 tariff but asks that the Commission suspend the proposed W-2 rates until the earlier of a data mutually agreeable to the Company and the W-2 customers or an initial in this proceeding after hearing.

Copies of the filing were served upon the affected jurisdictional customers and the Public Service Commission of Wisconsin.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 20, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Any person wishing to become a party must file a motion to intervene. Copies

of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 87-18289 Filed 8-11-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. QF85-526-001]

Application for Commission Recertification of Qualifying Status of a Cogeneration Facility; Watson Cogeneration Co. and ARCO Petroleum Products Co.

August 7, 1987.

On July 21, 1987, Watson Cogeneration Company, 1801 E. Sepulveda Blvd., Carson, California 90745 and ARCO Petroleum Products Company, 333 Michelson Drive, Irvine, California 92730 (collectively "Applicant"), submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the Watson Refinery, in Carson, California. The facility will consist of four combustion turbine-generators, four supplementally fired heat recovery steam generators (HRSG) and two extraction steam turbine-generators. The extracted steam together with steam from the HRSG will be used in the refinery for process operations, predominantly for process heat and steam turbine drives. The primary energy source will be natural gas supplemented with refinery gas and refinery supplied butane. The net electric power production capacity of the facility will be 365 MW. Installation of the facility was expected to begin on August 1, 1986 with date of commercial operation in December, 1987.

By order issued November 7, 1985, the Director of the Office of Electric Power Regulation granted certification of the facility as a cogeneration facility under Docket No. QF85-526-000.

The recertification is requested due to change of ownership of the facility from ARCO Petroleum Products Company to Watson Cogeneration Company and ARCO Petroleum Products Company. Products Cogeneration Company ("PCC") holds a 51% ownership interest in Watson, and Camino Energy Company ("Camino") holds a 49% ownership interest in Watson. PCC is a Delaware corporation and is a wholly-owned subsidiary of Atlantic Richfield Company ("ARCO"), a Delaware corporation. Camino is a California corporation and is a wholly-owned subsidiary of mission Energy Company, which is a wholly-owned subsidiary of Southern California Edison Company ("SCE"), a California corporation and an electric utility within the meaning of the Public Utilities Regulatory Policies Act. All other facilities' characteristics remain unchanged.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed in the Federal Register on or before August 24, 1987. Protests will be considered by the Commisison in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 87-18287 Filed 8-11-87; 8:45 am]
BILLING CODE 6717-01-M

Southwestern Power Administration

Federal Hydroelectric Power; Power Allocation Policy

AGENCY: Southwestern Power Administration, DOE.

ACTION: Adoption of a policy for the allocation of power and energy from Federal hydroelectric power projects.

SUMMARY: In 1980, the Southwestern Power Administration (SWPA) adopted a Final Power Allocation which allocated existing and known future Federal hydroelectric peaking capacity and associated energy to perference customers in the SWPA marketing area. That Power Allocation was published in the Federal Register (45 FR 19032) dated March 24, 1980. By letter dated January 24, 1984, President Reagan set forth a policy which requires Federal agencies to negotiate reasonable non-Federal funding prior to the start of construction for new Federal hydroelectric power projects (new Federal projects). The 1980 SWPA Power Allocation does not address the allocation of power and energy from construction of new Federal projects with funds advanced by non-Federal entities. As a result of these changing conditions, SWPA believed a policy was needed to address the allocation of power and energy that may become available for marketing from existing and new, Federally and non-Federally funded, hydroelectric power projects.

A notice of intent to develop an additional power and energy allocation policy was published in the Federal Register (50 FR 7639) dated Febrary 25, 1985. A proposed policy for the allocation of power and energy from new Federal projects constructed with non-Federal funds was published in the Federal Register (50 FR 25316) dated June 18, 1985. Interested parties were given the opportuntity to comment on the proposed policy by July 18, 1985. SWPA carefully considered all of the comments received. A revised proposed policy was published in the Federal Register (51 FR 37228) dated October 20, 1986, for the allocation of power and energy to be generated at all new Federal projects. Interested parties were invited to comment on the revised proposed policy by November 20, 1986. SWPA has carefully considered all of the comments received on the revised proposed policy and hereby announces a policy for the allocation of power and energy from existing and new, Federally and non-Federally funded, Federal projects in the SWPA marketing area.

This policy does not affect the selection of non-Federal entities willing to provide funding, prior to the start of construction for new projects, since such selection will be a separate process and will be a joint effort of SWPA and the U.S. Army Corps of Engineers (Corps). Selection procedures and criteria for project sponsor selection will be developed by SWPA and the Corps.

DATE: The policy for allocation of power and energy is hereby adopted, effective August 12, 1987.

ADDRESS: Questions may be mailed to: Francis R. Gajan, Director of Power Marketing, Southwestern Power Administration, Department of Energy, P.O. Box 1619, Tulsa, Okkahoma 74101.

FOR FURTHER INFORMATION CONTACT: Francis R. Gajan, Director of Power Marketing, (918) 581-7529.

SUPPLEMENTARY INFORMATION: The SWPA markets hydroelectric power and energy from 23 operating multipurpose projects constructed and operated by the Corps. The SWPA's marketing area includes the states of Arkansas, Kansas, Louisiana, Missouri, Oklahoma, and Texas.

SWPA supports the construction of the following projects provided that they are economically feasible, environmentally acceptable, and marketable. Additional hydroelectric power projects are being studied by the Corps. All of the proposed projects will probably require advance non-Federal funding.

PROPOSED CORPS PROJECTS PRESENTLY SUPPORTED BY SWPA

Proposed project	River basin	State	Proposed installed capacity (in MWs)	Estimated average annual energy (in GWHs)
Mayo Lock & Dam	Arkansas	OK	32.9	136.0
Fort Gibson Units 5&6	Grand	OK	22.5	38.9
Denison Units 3&4	Red	TX	70.0	50.2
Lock & Dam #9	Arkansas	AR	37.5	194.0
Toad Suck Ferry Lock & Dam	Arkansas	AR	15.0	77.1
Lock & Dam #26	Mississippi	IL	165.0	708.0
Norfork Units 3&4	North Fork	AR	86.0	4.4
Lock & Dam #2	Arkansas	AR	107.64	384.5
Lock & Dam #3	Arkansas	AR	36.66	154.3
Lock & Dam #4	Arkansas	AR	26.84	123.0
Lock & Dam #5	Arkansas	AR	33.36	154.8
David Terry L&D	Arkansas	AR	33.36	154.6
Lock & Dam #	Red	LA	25.0	96.0
Lock & Dam #2	Red	LA	26.0	114.5
Lock & Dam #3	Red	LA	57.0	197.0
Lock & Dam #4	Red	LA	33.9	122.0
Lock & Dam #5	Red	LA	43.1	151.0
Totals			850.76	2,822.1

SWPA subscribes to the following general principles regarding new Federal projects: First, new Federal projects which are economically feasible, environmentally acceptable, and marketable should be developed. Second, new generation projects and transmission projects should represent the lowest cost, long term power and energy supply to customers consistent with sound business principles. Finally, public bodies and cooperatives shall have perference in receiving the power from those new Federal projects.

Following two earlier opportunities for public comment, a revised proposed policy for the allocation of power and energy from new Federal projects constructed with non-federal funds was published in the **Federal Register** (51 FR 37228) dated October 20, 1986. Interested parties were invited to comment on the proposed policy by November 19, 1986. Nine letters containing comments and numerous letters in support of new hydroelectric power construction and the Revised Proposed Power Allocation Policy were received in response to the last publication. Summaries of the comments received on the revised Proposed Power Allocation Policy and SWPA's responses follow. References in the comments are referring to **Federal Register** (51 FR 37228) dated October 20, 1986.

1. *Comment:* The Proposed Power Allocation Policy should be revised to redress an inequity that exists because the non-interconnected or ERCOT portion of Texas has received significantly less than its fair share of SWPA power.

SWPA Response: After evaluation of all comments received, SWPA believes the Power Allocation Policy provides for an equitable procedure for the allocation of power and energy to preference customers in the SWPA marketing area.

2. *Comment:* Entity believes that if there were to be new generation construction at Denison Dam, it should have a right to compete for such power and energy, allocated on a fair share basis.

SWPA Response: All power and energy available for allocation will be allocated in accordance with the Power Allocation Policy which provides an equitable basis for the sharing of resource outputs. The selection of sponsors to provide non-Federal funds for Federal consturction shall be accomplished by the Corps and SWPA, jointly, with full public participation.

3. *Comment:* Prior to any new allocation, SWPA should send a preliminary notice to all its customers as per the theoretical example. This notice should include the information on loans being used for each customer in calculating the new allocation. This would allow SWPA customers to comment on the proposed allocations and to update their loans if different from the information used by SWPA.

SWPA Response: Concur.

4. *Comment:* Request the proposed policy be revised to include additional guidance on how new preference customers should submit application for an allocation, whether the project is Federally or non-Federally funded.

SWPA Response: A notice of intent to develop policy for the selection of new customers to receive Federal hydroelectric power and energy was published in the **Federal Register** (52 FR 4186) on February 10, 1987. The policy for new customer selection would address the guidance requested in this comment. SWPA has scheduled that policy to be completed by the end of 1987.

5. *Comment:* We are concerned by a serious adverse affect that the policy may have on SWPA customers located in the ERCOT region of Texas. The policy permits the financial integration of projects into the SWAP system in exchange for 50 percent of the project power to be allocated to SWPA customers. If operating conditions in Texas remain the same (i.e., no viable interconnections between ERCOT and the Southwest Power Pool), and new projects become financially integraterd into the SWPA system, ERCOT customers purchasing SWPA power under system rates will suffer an increase in rates without the offsetting benefit of additional power allocations. We are concerned that this policy will result in inequitable treatment of certain ERCOT customers.

SWPA Response: Any existing ERCOT customer receiving power and energy from the existing SWPA system and paying system rates would be treated exactly as any other customer receiving power and energy from the existing SWPA system and paying system rates.

6. *Comment:* To allow only one year for a preference customer to make arrangements to receive its allocated power resource may be unduly restrictive because some allocations are

made several years prior to availability of the energy resource. We concur with a time requirement for completion of necessary arrangements for receipt of allocations, but maybe it should be more than one year in some cases.

SWPA Response: The Power Allocation Policy has been written to eliminate the requirement of one year to make transmission arrangements to receive the power. It now provides for one year to sign a contract with SWPA for the allocation.

7. *Comment:* Precedence between a Federal Energy Regulatory Commission (FERC) hydroelectric license and a SWPA-sponsored new Federal hydroelectric project needs to be more clearly stated.

SWPA Response: The FERC has established a policy that a FERC license will not be granted for the construction of hydroelectric power facilities at existing Federal facilities or where Federal facilities have been authorized under public law. Other than the above, we know of no other precedence in the development methodology.

8. *Comment:* A formal financial feasibility procedure should be encouraged.

SWPA Response: We agree. SWPA is developing a policy for the determination of the Marketing Feasibility of Power and Energy from Proposed New Hydroelectric Power Projects. A draft policy was mailed to all SWPA's customers in February 1987, and a completed policy is scheduled by the end of calendar year 1987.

9. *Comment:* Percentage of Construction Funds Provided by the Sponsor—Whether interest paid during construction is included in these calculations needs to be stated since the expense can increase construction costs significantly.

SWPA Response: SWPA does not believe there needs to be a specific reference in the policy since interest during construction is included in the total construction costs analysis.

10. *Comment:* It is premature to state that the Corps has identified the five projects on the Red River as being economically and environmentally acceptable.

SWPA Response: Preliminary information has been furnished to SWPA which shows the Red River projects to be economically feasible and environmentally acceptable. SWPA recognizes that the information could change with further studies, and we have clarified this point.

11. *Comment:* It was suggested that the final policy include a specific provision to guarantee that customers of power generated at isolated projects will continue to receive amounts of capacity and energy equal to that which they now receive under existing contracts. Both SWPA and interested sponsors should be permitted to participate in the feasibility studies conducted by the Corps.

SWPA Response: Existing contracts will be honored through the term of the contract. While the Government is presently committed to an announced policy of not removing a Federal allocation, the Government will not guarantee the disposition of its resources beyond present contract commitments. The Corps encourages participation in water resource studies from other Federal agencies and non-Federal entities.

12. *Comment:* As a practical matter, most preference customers should be able to submit bids below bids of non-preference entities because they do not operate for profit. Nevertheless, they should still be given an opportunity to match a lower bid submitted by a non-preference entity and become the project sponsor if they so desire.

SWPA Response: Energy entity interested in being a project sponsor for a Federal hydroelectric power project will be given a chance to submit a proposal through a public participation process. An opportunity for a preference customer to match a low bid by a non-preference customer will not be given. If a non-preference entity is selected as the project sponsor, power and energy would be marketed to preference entities according to the power allocation policy.

13. *Comment:* Concern was expressed that selection of project sponsors based on the lowest bid may encourage unrealistic bids. SWPA was urged to establish procedures to ensure the accuracy of submitted bids and to force project sponsors to perform pursuant to the terms of their initial bids.

SWPA Response: We agree. The Corps will be overseeing all new design and construction efforts in the SWPA marketing area for Federal hydroelectric power facilities. Binding contracts will be signed between the Government and project sponsors to ensure accuracy and performance of all entities.

14. *Comment:* The methodology proposed in the Revised Proposed Power Allocation Policy contradicts the principles agreed to under the "Settlement Agreement" between the SWPA and the State of Arkansas in the settlement of a Federal lawsuit (No. LR-C-82-807).

SWPA Response: SWPA believes it has complied with all the terms in the referenced "Settlement Agreement." SWPA has investigated many different methodolgies during the development of the Power Allocation Policy. After reviewing the various methods of allocating power and considering the interests of all entities, SWPA believes the methodology in the Power Allocation Policy is the most equitable for everyone involved.

15. *Comment:* It was suggested the revised proposed policy be modified by eliminating references to an "increase in its allocation up to 10 percent of its allocation until such time as that state receives its fair share."

SWPA Response: SWPA believes after evaluation of all comments, the Power Allocation Policy is an equitable process for all entities involved and provides for the widespread use of the hydroelectric power produced in the SWPA marketing area.

16. *Comment:* SWPA should clarify that the "equalization adjustment" specified, would not apply to all potential new hydroelectric power projects, but is limited tho those identified on Page 3 of said revised proposed policy as those currently proposed by the Corps and supported by SWPA.

SWPA Response: The Power Allocation Policy will apply to all new Federal projects as well as allocations of any other Federal power available for allocation in the SWPA marketing area.

Copies of the following Power Allocation Policy will be mailed to all SWPA customers, state agencies, other Federal and non-Federal agencies, and other known interested parties.

Questions on the Power Allocation Policy should be addressed to: Francis R. Gajan, Director of Power Marketing, Southwestern Power Administration, Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101, (918) 581-7529.

Southwestern Power Administration

Policy for the Allocation of Power and Energy From Federal Hydroelectric Power Projects

The Administrator (Administrator) of the Southwestern Power Administration (SWPA) shall allocate all Federal hydroelectric power (in whole kilowatts) and energy that may become available for marketing from existing and new, Federally and non-Federally financed, Federal hydroelectric power projects in proportion to the funds provided by Federal and non-Federal sources relative to the total Federal project expenditures in accordance with the preference provisions of section 5 of the Flood Control Act of 1944 and the following:

BEST COPY AVAILABLE

Section I: Allocation When Financing in Whole or in Part Is With Federal Funds

1. Power from each hydroelectric power project available for allocation shall be divided among the states in SWPA's marketing area in a ratio of the existing SWPA customers' load in each state to the existing SWPA customers' total load. Except that each state which has not reached its fair share of Federal hydroelectric power as determined in the Final Power Allocation of March 24, 1980 (45 FR 19032) shall receive an increase in its distribution up to 10 percent of its distribution until such time as that state receives its fair share. The distribution to states already having a fair share shall be reduced by an amount equal to the total adjustment to states that have not received their fair share divided proportionately among the states that have received a fair share.

2. Ninety percent of the power distributed to each state shall be allocated to the existing SWPA customers in the ratio that each existing SWPA customer's load bears to the sum of the existing SWPA customers' total load in that state.

3. Ten percent of the power distributed to each state shall be allocated to new customers in that state. New customers shall be selected in accordance with SWPA's New Customer Selection Policy. The amount of power to be allocated to a new customer shall be determined on the ratio that each new customer's load bears to the sum of the existing SWPA customers' total load (including the new customer's load) in that state multiplied by the adjusted allocation in that state. If the amount of power to be allocated exceeds the new customer's allocation, the remaining power shall be allocated to the next new customer in line and so forth. Once a new customer receives its allocation, it shall be treated as an existing customer. If the amount to be allocated is less than the new customer's allocation, then that new customer shall be treated as a new customer until such time that it has received its total allocation.

4. Customers with a total allocation greater than 1,000kWs shall receive scheduled energy at a rate rounded to the nearest 1,000 kWs. Customers with a total allocation equal to or greater than 500 kW but less than 1,000 kW shall receive energy at a rate of 1,000 kW on demand. Customers with a total allocation less than 500 kW shall receive energy at a rate of 1,000 kW at SWPA's discretion and not necessarily on the customer's demand. The customer shall receive an average amount of energy equal to the customer's allocated capacity times 1200 hours per year and an opportunity to share in SWPA's supplemental peaking and excess energy when available.

5. Existing and new customers shall have one year from the date of notice of an allocation to negotiate a contract with SWPA. If contracts are not negotiated within that time frame, the allocation not under contract shall be withdrawn and reallocated to new customers within that state in accordance with Section I, paragraph 3, above and this paragraph 5. If contracts are negotiated, the customer shall commence payment for the allocated capacity and 1200 hours of associated energy on the date SWPA declares the project in commercial operation regardless of whether transmission arrangements to receive the power and energy are completed.

Section II: Allocation When Financing Is With Non-Federal Funds

Part A: Funds Provided by Public Bodies or Cooperatives. If a non-Federal sponsor entitled to preference under Section 5 of the Flood Control Act of 1944 provides funds for a new Federal hydroelectric power project and wants Federal hydroelectric power and energy, the Administrator shall allocate to the sponsor a portion of the power and energy not to exceed the percentage of the construction funds provided by the sponsor times the power and energy available for allocation. The allocation shall be determined based on the following factors:

1. If the project is operated and marketed in such a way that it neither impacts nor is supported by other Federal hydroelectric power projects (positive or negative effects on existing system capacity and energy) or does not increase the SWPA system rates, the Administrator shall allocate to the sponsor a portion of the power and energy from the project equal to the percentage of constuction funds provided by the sponsor times the power and energy available for allocation. The power and energy not allocated to the sponsor pursuant to Section II shall be allocated in accordance with Section 1, above.

2. If the project is operated in such a way that it either impacts or is supported by other Federal hydroelectric power projects and will be marketed in such a way that it does not increase system rates, the Administrator shall allocate to the sponsor a portion of the power and energy from the project equal to the percentage of construction funds provided by the sponsor times the power and energy available for allocation adjusted to account for the impacts on, or support furnished by other Federal hydroelectric power projects. The adjustment shall be determined on a project-by-project basis. The adjustment shall reflect the cost of the impacts or loss of system benefits resulting from such impacts. The power and energy not allocated to the sponsor pursuant to Section II shall be allocated in accordance with Section I, above.

3. If the project is operated in such a way that it neither impacts nor is supported by other Federal hydroelectric power projects but is marketed in such a way that it does increase system rates, the Administrator shall allocate to the sponsor a portion of the power and energy from the project equal to the percentage of construction funds provided by the sponsor times the power and energy available for allocation multiplied by 50 percent. The power and energy not allocated to the sponsor pursuant to Section II shall be allocated in accordance with Section 1, above.

4. If the project is operated and marketed in such a way that it either impacts or is supported by other Federal hydroelectric power projects and increases system rates, the Administrator shall allocate to the sponsor a portion of the power and energy from the project in the same manner as Section II, Part A.2 multiplied by 50 percent. The power and energy not allocated to the sponsor pursuant to Section II shall be allocated in accordance with Section I, above.

Part B: Funds Provided by Other Than Public Bodies and Cooperatives. If a non-Federal sponsor not entitled to preference under Section 5 of the Flood Control Act of 1944 provides funds for a new Federal hydroelectric power project and wants Federal hydroelectric power and energy, the Administrator shall allocate all of the marketable power and energy from the project in accordance with the preference provisions of Section 5 of the 1944 Flood Control Act and the state distribution procedures set forth in Section I, above. However, if preference utilities are not ready, willing, and able to accept a portion or all of the new allocation, then the Administrator will allocate the power and energy to the sponsor in accordance with Section II, Part A, above limited to a 5 year term. At the end of the 5 year term and each successive 5 year term, the Administrator shall again allocate that power and energy in accordance with Part B of this Power Allocation Policy.

Part C: Allocation When Non-Federal Sponsor Does Not Desire Power and

Energy. If a non-Federal sponsor provides funds for a new Federal hydroelectric power project and does not want Federal hydroelectric power and energy, the Administrator shall allocate the marketable power and energy in accordance with the factors set forth in Section I, above.

Issued in Tulsa, Oklahoma, July 27, 1987.

Ronald H. Willerton,

Administrator, Southerwestern Power Administration.

[FR Doc. 87-18300 Filed 8-11-87; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL COMMUNICATIONS COMMISSION

Fifth Meeting of the National Public Safety Planning Advisory Committee

The fifth meeting of the National Public Safety Planning Advisory Committee will be held on August 26, 1987, in Room 306 of the Baltimore Convention Center located at 1 West Pratt Street, Baltimore, Maryland. The meeting will start at 9:30 a.m.

All interested parties are invited to attend the meeting. Since this is a technical advisory committee, attendees should be prepared for technical discussions.

The agenda for the fifth meeting will consist of:

1. Approval of the minutes of the last meeting;
2. Status reports from the Chariman and from the Task Group Facilitators;
3. Discussion of emergency medical services;
4. Review and approval of the Final Report.

Any questions regarding the meeting should be directed to Mr. William R. Torak at (202) 632-7025.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-18262 Filed 8-11-87; 8:45 am]

BILLING CODE 6712-01-M

[Report No. W-20]

Window Notice for the Filing of FM Broadcast Applications

Release: July 31, 1987.

Notice is hereby given that applications for vacant FM broadcast allotment(s) listd below may be submitted for filing during the period beginning July 31, 1987 and ending September 10, 1987 inclusive. Selection of a permittee from a group of acceptable applicants will be by the Comparative Hearing process.

Due to the large number of cities allocated under Channel 290 only a portion of the cities are listed in this Notice. A second Public Notice issued this date (Report No. 21) lists the remaining cities giving them a separate closing date.

City	State
Channel 290 A:	
Winfield	AL
Paradise Valley	AZ
Lewes	DE
Englewood	FL
Dock Junction*	GA
Lakeland	GA
Mahomet	IL
Marshall	IL
Whitley City	KY
Berwick	LA
Opelousas	LA
Ava	MO
Channel 290 C:	
Honolulu	HI

* Formerly ARCO, GA.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-18263 Filed 8-11-87; 8:45 am]

BILLING CODE 6712-01-M

[Report No. W-21]

Window Notice for the Filing of FM Broadcast Applications

Release: July 31, 1987.

Notice is hereby given that applications for vacant FM broadcast allotment(s) listed below may be submitted for filing during the period beginning July 31, 1987 and ending September 18, 1987 inclusive. Selection of a permittee from a group of acceptable applicants will be by the Comparative Hearing process.

Due to the large number of cities allocated under Channel 290 only a portion of the cities are listed in this Notice. A second Public Notice issued this date (Report No. 20) lists the remaining cities giving them a separate closing date.

City	State
Channel 290 A:	
Omaha	NE
Rochester	NY
Syracuse	NY
Philipsburg	PA
Loris	SC
St. Stephan	SC
San Diego	TX
Stanton	TX
Lynchburg	VA
Evansville	WI

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-18264 Filed 8-11-87; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 87-287; File Nos. BPH-850712 RC et al.]

Applications for Consolidated Hearing; Brenda R. Tanger et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City and State	File No.	MM Docket No.
A. Brenda R. Tanger, Kansoha, HI.	BPH-850712RC87-287.	
B. FM Kaneohe Limited Partnership, Kaneohe, HI.	BPH-850712RE	
C. Kaneohe Radio, Kansoha, HI.	BPH-850712RG	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading, Applicant(s)

1. Environmental Impact, B, C
2. Comparative, A-C
3. Ultimate, A-C

3. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M

Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87–18338 Filed 8–11–87; 8:45 am]

BILLING CODE 6712–01–M

[MM Docket No. 87–289; File Nos. BPCT–861105KP et al.]

Applications for Consolidated Hearing; Harry J. Turner et al.

1. The Commission has before it the following mutually exclusive applications for a new TV station:

Applicant, City, and State	File No.	MM Docket No.
A. Harry J. Turner, Ashland, KY.	BPCT–861105KP	87–289
B. Calvin Ross, Ashland, KY.	BPCT/861105KU	
C. Video Images Productions, Inc., Ashland, KY.	BPCT–870121KM	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading, Applicant(s)

Site Availability, A, B
Comparative, A, B, C
Ultimate, A, B, C

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

Stephen F. Sewell,

Assistant Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 87–18339 Filed 8–11–87; 8:45 am]

BILLING CODE 6712–01–M

[MM Docket No. 87–286; File Nos. BPH–860203 MH]

Applications for Consolidated Hearing; Nirvana Radio Broadcasting Corp. et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station.

Applicant, City and State	File No.	MM Docket No.
A. Nirvana Radio Broadcasting Corporation, Christiansburg, VA.	BPH–860203MH	87–286
B. Hartka Communications, Corp., Christiansburg, VA.	BPH–860203MI	
C. Jane A. Fifer d/b/a Christiansburg Radio (sic), Christiansburg, VA.	BPH–860203MJ	
D. Gerald Wayne Gallimore, Christiansburg, VA.	BPH–860203ML	
E. Kenneth Clyde Hill, Christiansburg, VA.	BPH–860203MM	
F. Public Radio of Christiansburg, Virginia, Christiansburg, VA.	BPH–860203MN	
G. Valley Radio Corp., Christiansburg, VA.	BPH–860203PC	
H. Augustine D. Henderson d/b/a Christiansburg Media, Christiansburg, VA.	BPH–860203MK	Dismissed.

2. Pursuant to 47 U.S.C. 309(e), the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347 (May 29, 1986). The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading, Applicants

1. Financial Qualifications, G
2. Environmental, G
3. Main Studio, D
4. Comparative, A–G
5. Ultimate, A–G

3. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87–18336 Filed 8–11–87; 8:45 am]

BILLING CODE 6712–01–M

[MM Docket No. 87–291; File Nos. BPCT–861223KL, et al.]

Applications for Consolidated Hearing; Roy Dudley Steed, Jr., et al.

1. The Commission has before it the following mutually exclusive applications for a new TV station:

Applicant, City and State	File No.	MM Docket No.
A. Ray Dudley Steed, Jr., d/b/a Steed Broadcasting, Jamestown, ND.	BPCT–861223KL	87–291
B. Baxter Broadcasting Corp., Jamestown, ND.	BPCT–870327KJ	
C. Red River Broadcast Corp., Jamestown, ND.	BPCT–870330KV	
D. John J. Garofalo d/b/a Skyway Television, Ltd., Jamestown, ND.	BPCT–870331LL	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading, Applicant(s)

1. Minimum Separation, A, D
2. Environmental Impact, B, D
3. Air Hazard, A, B, C, D
4. Satellite, B, C
5. Comparative, A, B, C, D
6. Ultimate, A, B, C, D

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

Stephen F. Sewell,

Assistant Chief, Video Service Division, Mass Media Bureau.

[FR Doc. 87–18337 Filed 8–11–87; 8:45 am]

BILLING CODE 6712–01–M

[MM Docket No. 87-290; File Nos. BPH-850712 QR et al.]

Applications for Consolidated Hearing; the Johns Hopkins Broadcasting Foundation Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City and State	File No.	MM Docket No.
A. The Johns Hopkins Broadcasting Foundation Inc., Hurlock, MD.	BPH-850712QR	87-288
B. Muir Corp., Hurlock, MD.	BPH-850712QS	
C. Benson Broadcasting Co., Hurlock, MD.	BPH-850712QU	
D. EZ101, Inc., Hurlock, MD.	BPH-850712QV	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading, Applicant(s)

1. Comparative, A, B, C, D
2. Ultimate, A, B, C, D

3. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87-18335 Filed 8-11-87; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067-0177
Title: Local Level Civil Rights Compliance Checklist
Abstract: Needed to access compliance with civil-rights statutes. Covers: warning and communications; evacuation and shelter; and emergency operating centers. Will provide inventory of accomplishments and deficiencies, enabling FEMA to offer technical assistance where appropriate.
Type of Responsents: State or local governments
Number of Respondents: 900
Burden Hours: 1,800
Frequency of Recordkeeping or Reporting: On occasion

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C Street, SW., Washington, DC 20472.

Comments should be directed to Francine Picoult, (202) 395-7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Dated: August 7, 1987.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 87-18295 Filed 8-11-87; 8:45 am]

BILLING CODE 6718-01-M

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extensionb of 3067-0175
Title: National Community Volunteer Fire Prevention Program—Partnerships Against Fire
Abstract: The thirty invited participating States and three to five State selected local organizations are awarded grants to develop locally appropriate demonstration project fire prevention programs which can be transferred and/or replicated in other communities. Grantees must complete budget forms and narrative of program plans for both application and progress reports. Program is managed by a contractor who receives applications and reports submitted through Governor's Offices.
Type of Respondents: State or local governments, Non-profit institutions
Number of Respondents: 100
Burden Hours: 9,500
Frequency of Recordkeeping or Reporting: Quarterly, Annually

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C Street SW., Washington, DC 20472.

Comments should be directed to Francine Picoult, (202) 395-7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Dated: August 7, 1987.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 87-18296 Filed 8-11-87; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

Item Submitted for OMB Review

The Federal Maritime Commission hereby gives notice that the following item has been submitted to OMB for review pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3601, et. seq.). Requests for information, including copies of the collection of information and supporting documentation, may be obtained from John Robert Ewers, Director, Bureau of Administration, Federal Maritime Commission, 1100 L Street, NW., Room 12211, Washington, DC 20573, telephone number (202) 523-5866. Comments may be submitted to the agency and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Federal Maritime Commission, within 15 days after the date of the Federal Register in which this notice appears.

Summary of Item Submitted for OMB Review

46 CFR Part 530

FMC requests extension of clearance for 46 CFR Part 530 which provides procedures to encourage the expeditious processing by terminals of trucks laden with cargo for vessels to reduce congestion and delay in the Port of New York. The Commission estimates a respondent universe of 10 with an estimated 10 annual responses and 20 manhour burden. Total cost to the Federal Government is estimated at

$115; total cost to respondents is estimated at $300.

Joseph C. Polking,
Secretary.

[FR Doc. 87-18341 Filed 8-11-87; 8:45 am]
BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

Acquisition of Company Engaged in Nonbanking Activities; First National Cincinnati Corp.

The organization listed in this notice has applied under § 225.23 (a) or (f) of the Board's Regulation Y (12 CFR 225.23 (a) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 4, 1987.

A. Federal Reserve Bank of Cleveland (Martin E. Abrams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *First National Cincinnati Corporation*, Cincinnati, Ohio; to acquire 100 percent of the voting shares of Leshner Financial, Inc., Cincinnati, Ohio, to be renamed Center Capital Group, Inc., Cincinnati, Ohio.

Applicant proposes to engage in the following nonbanking activities through the acquisition of Leshner and its wholly-owned subsidiaries, Midwest Advisory Services, Inc. ("MAS"); MGF Service Corp. ("MGF"); Fourth Street Capital Corporation ("FSCC"); and Robert H. Leshner & Co., Inc. ("RHL"), and its 50 percent owned subsidiary, Financial Independence Trust Advisors, Inc. ("FITA"), all of Cincinnati, Ohio, pursuant to section 4(c)(8) of the Bank Holding Company Act.

Applicant proposes: (1) To provide investment advisory services through MAS and FITA to investment companies pursuant to § 225.25(b)(4)(ii) of the Board's Regulation Y; (2) to provide registrar and transfer agent services, including certain incidental administrative and shareholder services, to investment companies through MAS and MGF pursuant to §§ 225.25(b)(3) and 225.25(b)(4)(ii) of the Board's Regulation Y; (3) to provide securities brokerage services through RHL pursuant to § 225.25(b)(15) of the Board's Regulation Y; (4) to provide portfolio investment advice and securities brokerage on a combined basis through RHL to certain "institutional investors" pursuant to the Board of Governors' Order, *National Westminister Bank PLC*, 72 Federal Reserve Bulletin 584 (1986); and, (5) to engage in permissible trust activities through FSCC pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Applicant proposes to conduct these activities throughout the United States.

Board of Governors of the Federal Reserve System, August 6, 1987.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 87-18269 Filed 8-11-87; 8:45 am]
BILLING CODE 6210-01-M

Formations of; Acquisitions by; and Mergers of Bank Holding Companies; First Paxton Bancorp, Inc., et al.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an appP*.....END OF BAD MAG TAPE BLOCK*uffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 4, 1987.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Paxton Bancorp, Inc.*, Paxton, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank in Paxton, Paxton, Illinois.

2. *Westbank Financial Corporation*, Naperville, Illinois; to acquire 100 percent of the voting shares of First Channahon Bancorp, Inc., Channahon, Illinois; thereby indirectly acquire First Bank of Channahon, Channahon, Illinois.

B. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Bancorp Hawaii, Inc.*, Honolulu, Hawaii; to acquire 100 percent of the voting shares of First National Bank of Arizona, Phoenix, Arizona.

Board of Governors of the Federal Reserve System, August 6, 1987.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 87-18270 Filed 8-11-87; 8:45 am]
BILLING CODE 6210-01-M

Acquisition of Company Engaged in Permissable Nonbanking Activities; Hong Kong and Shanghai Banking Corp.; Correction

This notice corrects a previous Federal Register notice (FR Doc. 87-17018) published at page 28192 of the issue for Tuesday, July 28, 1987.

Under the Federal Reserve Bank of New York, the entry for the Hong Kong and Shanghai Banking Corporation is revised to read as follows:

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Hong Kong and Shanghai Banking Corporation*, Hong Kong; to acquire Ingersoll-Rand Financial Corporation, Woodcliff, New Jersey, and thereby indirectly engage in commercial

financing, real estate lending and equipment leasing pursuant to § 225.25 (b)(1) and (b)(5) of the Board's Regulation Y.

Comments on this application must be received by August 20, 1987.

Board of Governors of the Federal Reserve System, August 6, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-18271 Filed 8-11-87; 8:45 am]

BILLING CODE 6210-01-M

Acquisition of Shares of Banks or Bank Holding Companies; John E. Wertin

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 3, 1987.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *John E. Wertin,* Irvine California; to acquire 80.4 percent of the voting shares of San Clemente Bancorp, San Clemente, California; and thereby indirectly acquire The Bank of San Clemente, San Clemente, California.

Board of Governors of the Federal Reserve System, August 6, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-18272 Filed 8-11-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Proposed Collection of Fees for Sanitation Inspections of Cruise Ships; Extension of Comment Period

A notice of request for public comment on a proposal for collection of fees for vessel sanitation inspections by the Centers for Disease Control (CDC) was published in the **Federal Register** on Friday, July 17, 1987 (52 FR 27060). The notice is amended as follows to extend the comment period:

On page 27060, second column, "**DATE:**" is amended to read: "Comments must be received on or before September 18, 1987."

All other information and requirements in the notice remain the same.

Dated: August 6, 1987.

Glenda S. Cowart,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 87-18242 Filed 8-11-87; 8:45 am]

BILLING CODE 4160-18-M

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), **Federal Register**, Vol. 49, No. 164, pg. 33343, dated Wednesday, August 22, 1984 and **Federal Register**, Vol. 49, No. 228, pg. 46502, dated Monday, November 26, 1984) is amended to reflect the title change of the divisions in the Office of the Actuary (OACT), Office of the Associate Administrator for Management and Support Services. The organizational nomenclature of the OACT divisions is elevated to offices and each office contains a two division substructure. This change places OACT's structure at an equivalent level with other HCFA components.

The specific amendment to Part F. is described below:

- Section FH.20.B.1., the Division of Medicare Cost Estimates (FHG1), Section FH.20.B.2, the Division of Medicaid Cost Estimates (FHG2), and Section FH.20.B.3., the Division of National Cost Estimates (FHG3) are deleted in their entirety and replaced with the following:

1. Office of Medicare Cost Estimates (FHG1)

Evaluates operations of the Medicare trust funds concerning income and outgo and the necessary tax rates for program solvency. Prepares cost estimates for the Hospital Insurance program and the Supplementary Medical Insurance program for use in the President's budget. Develops such variables as the Part B premium rate, the inpatient deductible, the Part A premium rate for voluntary enrollees, and the physicians' economic index applicable to prevailing fees. Develops the payment rates for the annual update of the adjusted average per capita cost (AAPCC) ratebook, which is used to pay health maintenance organizations that enter into a risk contract with HCFA to provide benefits to Medicare enrollees. Computes workload estimates of the impact of modifications in program benefits and financing. Serves as technical consultants throughout the Government on Medicare cost estimate issues.

a. Division of Hospital Insurance (FHG11)

Evaluates operations of the Medicare hospital insurance trust fund concerning income and outgo and the necessary tax rates for program solvency. Prepares cost estimates for the Hospital Insurance (HI) program for use in the President's budget. Develops such variables as the Part A impatient deductible and the Part A premium rate for voluntary enrollees. Computes workload estimates of the impact of modifications in program benefits and financing. Serves as technical consultants throughout the Government on Medicare HI cost estimate issues.

b. Division of Supplementary Medical Insurance (FHG12)

Evaluates operations of the Medicare supplementary medical insurance trust fund concerning income and outgo and the necessary premium and actuarial rates for program solvency. Prepares cost estimates for the Supplementary Medical Insurance (SMI) program for use in the President's budget. Develops such variables as the Part B premium rate and the physicians' economic index applicable to prevailing fees. Computes workload estimates of the impact of modifications in program benefits and fiancing. Serves as technical consultants throughout the Government on Medicare SMI cost estimate issues.

2. Office of Medicaid Estimates and Statistics (FHG2)

Provides cost estimates of the Medicaid program and any proposed legislative changes in the program. Creates and maintains a State-by-State data base relating to the low income population, their health use, and incurred and expected costs. Develops descriptive information detailing and projecting the effect of changes in the economy or national health care system on the Medicaid program. Develops annual Medicaid program budget requirements for the President's budget preparation and presentation, including

the Congressional justification. Prepares long-range program cost estimates, determines gross rates of program cost changes, and revises data requirements for future program costs. Prepares cost estimates for legislative and regulatory proposals affecting Medicaid benefits. Provides actuarial and statistical consultation to other HCFA components, States, or outside organizations. Develops and publishes routine descriptive Medicaid statistical information. Designs and maintains a system containing information about State Medicaid Plan characteristics. Designs and develops the computerized mechanism for collecting person-based Medicaid data used for answering inquiries about Medicaid where disaggregated data is required.

a. Division of Medicaid Cost-Estimates (FHG21)

Provides cost estimates for the Medicaid program including the development of cost estimates for proposed changes in Medicaid or in programs affecting Medicaid and overall costs for years after the current budget year. Develops forecasts of Medicaid expenditures for incorporation into the HCFA budget development process. Studies approaches and research techniques to assist in the development of program forecasts. Compiles data sources for Medicaid cost estimates including current and historical statistics on recipients, eligibles, costs, and demographic characteristics of the Medicaid population and the potential eligible Medicaid population. Provides actuarial consultation to other components of HCFA concerning various proposals and programs affecting the future of the Medicaid program. Provides actuarial consultation to other organizations in the development of computerized data on the Medicaid program. Provides quantitative estimates of the effects of human behavior on the proposed changes in the Medicaid program through the analysis of basic behavioral phenomena.

b. Division of Medicaid Statistics (FHG22)

Collects annual (HCFA–2082) Medicaid program statistical reports for State Medicaid agencies. Works with State Medicaid agencies to correct errors and collect missing information. Conducts consistency checks across data bases to verify the validity of submitted data and makes corrections to current and historical data to produce statistics. Publishes annual Medicaid statistics in various HCFA publication series and produces statistical tables for use by HCFA managers in administering the Medicaid program. Collects special project statistics. (I.E., Early and periodic Screening, Diagnosis, and Treatment and sterilization) to be used by HCFA personnel to administer or monitor special Medicaid programs. Responds to Medicaid data requests from HCFA staff, other agencies in the Department of Health and Human Services, the Executive Office of Management and Budget, members of Congress, other Federal departments, State agencies, public and private higher education institutions and individual researchers. Provides statistical consultation to other components of HCFA concerning the Medicaid program. Designs and develops the computerized mechanisms for collecting person-based Medicaid data. Collects individual eligibility, provider, and claims data from State automated-data systems. Processes these data to verify accuracy of the data consistent with development standards. Provides technical assistance to the States in the development and submittal of these data and maintains ongoing contact with States agencies to maintain a high quality of data submitted. Designs, develops, and maintains a system for computerizing and making available to all components the Medicaid program characteristics data contained in State Medicaid Plans. Designs and develops computer systems to utilize the data collected for statistical and actuarial purposes. Provides technical assistance to other components of HCFA in the development and use of these statistical data as they relate to specific program areas.

3. Office of National Cost Estimates (FHG3)

Monitors prices, utilization, and costs of health care and analyzes their impact on HCFA programs and the implication for the national economy. Develops and conducts studies to estimate, project, and analyze national and State health expenditures and the financial and enrollment experience of private health insurance. Prepares cost estimates of proposed national health initiatives by applying a highly technical multidisciplinary approach. Synthesizes the results of economic and actuarial studies relating to estimating factors such as the interaction between supply and demand or the influences of cost sharing on costs. Develops and establishes methodologies of analyzing health care financing problems. Provides cost estimates for specific health area such as capital, technology, and malpractice. provides technical microanalyses for Administration or Department initiatives (such as prospective payment and cost containment) in response to requests from Congressional members, Governors, and health provider groups which includes calculating the economic effect of the proposal on the health industry, determining growth in health expenditures, and determining cost shifts between providers.

a. Division of Economic and Actuarial Analysis (FHG34)

Conducts economic and actuarial analyses, forecasting, and interpretations of health expenditures, health projections hospital prospective payments, and other Office initiatives. Provides analyses of the past, forecasting the future, and understanding of the distribution and consumption of health care. Conducts demographic studies of populations, both insured and uninsured, for health, prepares both short-range and long-range projections of national health expenditures, and develops and utilizes actuarial as well as micro- and macro-economic methodologies for Office initiatives, such as the creation of input price indices, supporting prospective payment regulatory requirements, and studying age and State distributions of health expenditures.

b. Division of Statistical Analysis (FHG35)

Develops and applies statistical methods, models, and techniques used in the analysis of health expenditures, health projections, hospital prospective payments, and other Office initiatives. Designs statistical data bases and statistical software systems to access, retrieve, and process needed data to support cross-sectional analyses, time series analyses, forecasting, and projections. Creates and applies statistical models and methods needed for economic and actuarial studies of hospital case-mix, hospital reimbursement distributional impacts, health expenditure projections, national health accounts, hospital market baskets, private health insurance, and other Office initiatives, as needed.

Dated: July 15, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

BILLING CODE 4120-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES
HEALTH CARE FINANCING ADMINISTRATION
ASSOCIATE ADMINISTRATOR FOR MANAGEMENT AND SUPPORT SERVICES
OFFICE OF THE ACTUARY

APPROVAL
DATE:
07/15/87

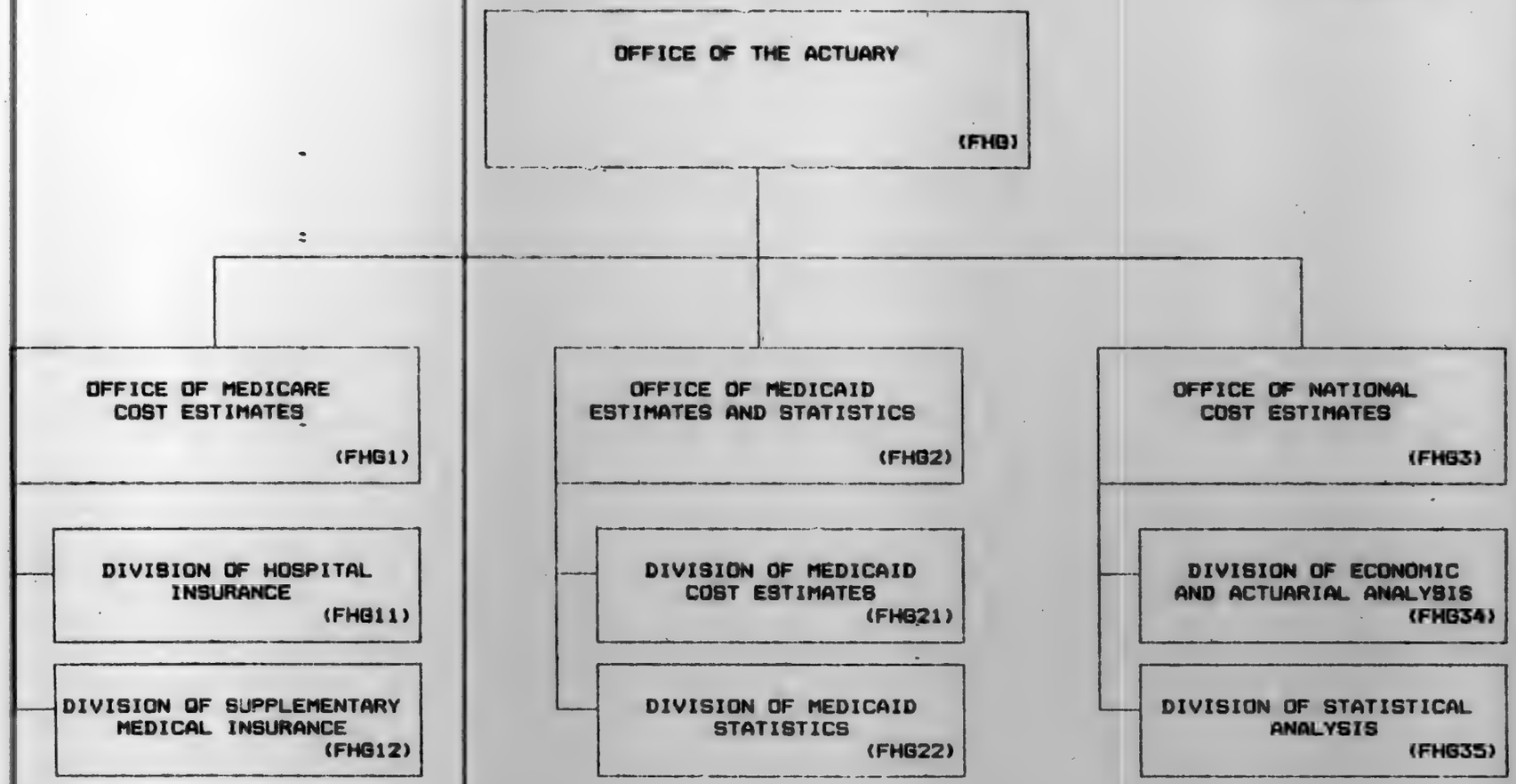

[FR Doc. 87-18127 Filed 8-11-87; 8:45 am]
BILLING CODE 4120-01-C

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-87-1721]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Exectutive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone, (202) 755-6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission; (8) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Rental Schedule
Office: Housing
Description of the Need for the Information and Its Proposed Use: Section 207(a) of the National Housing Act authorizes all project owners to submit this form when requesting an adjustment to project rents. HUD establishes and approves rental charges and utility allowances on the form.
Form Number: HUD-92458
Respondents: Businesses or Other For-Profit, Federal Agencies or Employees, and Non-Profit Institutions
Frequency of Response: Annually
Estimated Burden Hours: 5,333
Status: Extension
Contact: James J. Tahash, HUD, (202) 426-3944, John Allison, OMB (202) 395-6880

Proposal: Recognition Request Documentation
Office: Fair Housing and Equal Opportunity
Description of the Need for the Information and Its Proposed Use: The information collection is necessary to assist HUD in making an assessment with respect to state and local agencies' legal and administrative capabilities to administer their fair housing laws. The agencies seeking recognition must submit copies of Attorney General's opinions, administration and operating information (budget, personnel, etc.), and additional information relative to the agencies abilities to satisfactorily administer their laws or ordinances.
Form Number: None
Respondents: State or Local Governments
Frequency of Respondents: On Occasion
Estimated Burden Hours: 480
Status: Extension
Contact: Maxine B. Cunningham, HUD (202) 755-6455, John Allison, OMB, (202) 395-6880

Proposal: State/Local Referral Agency Report Form
Office: Fair Housing and Equal Opportunity
Discription of the Need for the Information and Its Proposed Use: Section 810(c) of Title VIII of the Civil Rights Act of 1968 requires that HUD notify state and local agencies of any complaint filed under Title VIII which appears to constitute a violation of such state and local law or ordinance. The form is used by HUD as a monitoring tool to keep track of complaint receipts and milestone actions. The form is also used to keep up to date on activities relative to the processing of housing discrimination complaints and to determine if the complainant's rights are being protected.
Form Number: HUD-946
Respondents: State or Local Governments
Frequency of Response: Monthly
Estimated Burden Hours: 2,750
Status: Extension
Contact: Maxine B. Cunningham, HUD (202) 755-0455, John Allison, OMB, (202) 395-6880

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 3, 1987.

John T. Murphy,
Director, Information Policy and Management Division.

[FR Doc. 87-18411 Filed 8-11-87; 8:45 am]
BILLING CODE 4210-01-M

[Docket No. D-87-855]

Office of the Regional Administrator

New York Regional Office; Designation of Order of Succession

AGENCY: Department of Housing and Urban Development.

ACTION: Designation of order of succession.

SUMMARY: The Regional Administrator is designating officials who may serve as Acting Regional Administrator/Regional Housing Commissioner during the absence, disability, or vacancy in the position of Regional Administrator/Regional Housing Commissioner.

EFFECTIVE DATE: This designation is effective July 31, 1987.

FOR FURTHER INFORMATION CONTACT: Adele S. Germain, Director, Administrative and Management Services Division, Office of Administration, New York Regional Office, Department of Housing and Urban Development, 26 Federal Plaza, New York, NY 10278, telephone (212) 264-2761. (This is not a toll-free number.)

Designation

Each of the officials appointed to the following positions is designated to serve as Acting Regional Administrator/Regional Housing Commissioner during the absence, disability, or vacancy in

the position of the Regional Administrator/Regional Housing Commissioner, with all the powers, functions, and duties redelegated or assigned to the Regional Administrator/Regional Housing Commissioner: Provided, that no official is authorized to serve as Acting Regional Administrator/Regional Housing Commissioner unless all preceding listed officials in this designation are unavailable to act by reason of absence, disability, or vacancy in the position:

1. Deputy Regional Administrator
2. Director, Office of Housing
3. Director, Office of Operational Support
4. Executive Assistant to the Regional Administrator
5. Director, Office of Public Housing
6. Director, Office of Community Planning and Development
7. Director, Office of Administration
8. Director, Office of Fair Housing and Equal Opportunity
9. Regional Counsel

This designation supersedes the designation effective December 17, 1986.

Authority: Delegation of Authority, 27 FR 4319 (1962); Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d); and Interim Order II, 31 FR 815 (1966).

Dated: July 31, 1987.

Joseph D. Monticciolo,

Regional Administrator/Regional Housing Commissioner, Region II.

[FR Doc. 87-18412 Filed 8-11-87; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[DEIS 87-22]

Availability of a Draft Environmental Impact Statement for the Proposal To Lease Approximately 103 Acres of the Cabazon Indian Reservation (Near Mecca, California) for a 45 Mega Watt (MW) Biomass Fueled Electric Power Plant in Riverside County, CA

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Draft Environmental Impact Statement is available for public review. Colmac Energy, Inc. (Colmac) proposes to build a 35 MW (net) biomass fueled electric power plant on approximately 103 acres of leased land on the Cabazon Indian Reservation. The plant will be located adjacent to State Highway 111 and the Southern Pacific Railroad mainline about one mile north of the town of Mecca in south central Riverside County, California. Fuel for the plant will consist of agricultural residue, commercial wood wastes, and municipal tree trimmings. No garbage or used tires will be utilized as fuel for the plant. The fuel will be combusted in a fluidized bed boiler to produce steam which will drive a conventional turbine-generator. Electric power will be sold to the Southern California Edison Utility under a power sales agreement. The project will provide offsets for air emissions by eliminating open field burning now being used to dispose of agriculture residues. This notice of availability is being furnished as required by the National Environmental Policy Act (NEPA) Regulations (40 CFR 1502.19) to obtain the comments of Federal agencies which have jurisdiction by law, or special expertise with respect to environmental issues raised in the draft EIS, and to request comments from appropriate state and local agencies and members of the public.

DATE: Written comments should be received within 60 days from the date of publication of this notice. A public hearing to receive comments on the Draft EIS will be held on Thrusday, September 10, 1987, at the Cabazon Indian Reservation, 84245 Indian Springs Road, Indio, California 92201.

ADDRESS: Written comments should be addressed to Mr. Maurice Babby, Area Director, Sacramento Area Office, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Don Knapp, Area Environmental Coordinator, Sacramento Area Office, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, California 95825. (916) 978-4703 or FTS 460-4703.

Individuals wishing copies of this Draft EIS for review should immediately contact Mr. Knapp. Copies have been sent to all agencies and individuals who participated in the scoping process and to all others who requested copies.

SUPPLEMENTARY INFORMATION: The Bureau of Indian Affairs, Department of the Interior, has prepared a Draft EIS concerning construction of a biomass fueled power plant at a stie on the Cabazon Indian Reservation near Mecca, California. The Cabazon Band of Mission Indians, acting through its Business Council, has entered into a lease with Colmac for this purpose, pursuant to a tribal resolution passed in August 1986. Such leases are subject to BIA approval (25 U.S.C. section 415). Also, BIA must finally approve construction of the facility before it may be constructed and operated in accordance with the terms of the lease.

The proposed facility would be located on the Cabazon Indian Reservation, east of State Highway 111, approximately 10 miles southeast of Conchella and about one mile northwest of Mecca in Riverside County, California. The plant would convert approximately 400,000 wet tons per year of truck delivered biomass fuel (tree trimmings, orchard prunings, date palm fronds, grasses, ferns, straws, and commercial wood wastes) into approximately 45 (net) MW of electricity. The electricity will be sold to the Southern California Electric Utility pursuant to an existing power sale contract. An existing 92 kV transmission line and two proposed 115 kV transmission lines owned by the Imperial Irrigation District will be used to interconnect with the Southern California Edison Grid.

The plant's water requirements (approximately 1,100 acre feet per year) would be obtained from on site groundwater wells. Wastewater would be treated on-site and utilized for on-site, non-potable domestic use, dust suppression and possible landscape irrigation. Treatment and disposal will be in accordance with state and local requirements, including those of the Colorado River Basin Water Quality Control Board. Air emissions will be controlled in accordance with Federal, state and regional air quality standards. Separate approval from the Environmental Protection Agency will be required. The plant will utilize open field burning credits to offset all emitted non-attainment air pollutants and their precursors. Ash produced by the plant (approximately 20,000 tons per year) will be managed in accordance with California Department of Health Services procedures and will either be land filled or used as an agricultural soil amendment.

The proposed action will improve and diversify the economic base of the Cabazon Band of Mission Indians. The project also add to long term renewable energy supplies in California, and decrease reliance upon imported oil.

This action will result in increased truck traffic in the immediate area, and as a new source of air emissions from the plant itself. However, the non-attainment pollutants (and their precursors) emitted by the plant would be totally offset through elimination of open field turning of agriculture residues. The project would generate 20,000 tons per year of ash, but would substantially reduce demands on

landfills created by the current practice of the disposal of wood wastes.

The principal alternatives analyzed in the Draft EIS are to build the project as planned, build a smaller project, or not to build the project.

Other Government agencies and members of the public contributed to the planning and evaluation of this proposal and to the preparation of this Draft EIS. The Notice of Intent to prepare this EIS was published in the September 12, 1986, **Federal Register**. A public scoping meeting was held on September 10, 1986. Written comments were also solicited from a large number of local, state and Federal agencies by newspaper notices published on October 21–23, 1986, and by letters transmitted on or about October 17, 1986. An informal interagency workshop was held on March 12, 1987, in Riverside, California.

Agencies and individuals are urged to provide comments on this Draft EIS as soon as possible. All comments received by the dates given above will be considered in preparation of the Final EIS for this proposed action.

Dated: August 7, 1987.

Hazel E. Elbert,

Acting Assistant Secretary: Indian Affairs.

[FR Doc. 87–18357 Filed 8–11–87; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[WY-040-07-4111-09]

Availability of Draft Environmental Impact Statement; Fremont and Teton Counties, WY

AGENCY: Bureau of Land Management (BLM) and U.S. Forest Service (FS), Interior.

ACTION: Public notice of the availability of the Draft Environmental Impact Statement (DEIS) for the Sohare Creek Unit Exploratory Oil Well, Fremont and Teton Counties, Wyoming.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the BLM and FS have prepared, as cooperating agencies, a DEIS for the proposed Sohare Creek Unit Exploratory Oil Well. The well is proposed by Amoco Production Company and would be located in a roadless area in section 35, T.43N., R.112W., about 45 miles northeast of Jackson, Wyoming, in Teton County. The proposal would include construction of an access road and well pad, drilling the well, and if commercial quantities of oil are discovered, installation of production facilities.

DATES: A public hearing on the DEIS will be held beginning at 7 p.m. on Wednesday, September 2, 1987, at the following location:

Americana Snow King Resort, 400 E. Snow King Drive, Jackson, Wyoming 83001

ADDRESSES: Copies of the DEIS and associated technical reports will be available to the public for review on request at the addresses listed below on or about August 12, 1987.

Bureau of Land Management, Rock Springs District Office, P.O. Box 1869, Rock Springs, Wyoming 82902–1869, Phone: (307) 382–5350

U.S. Forest Service, Bridger-Teton National Forest, P.O. Box 1888, Jackson, Wyoming 83001, Phone: (307) 733–2752

FOR FURTHER INFORMATION CONTACT: Comments or questions on the DEIS should be addressed to:

Mr. Alfred Reuter, Sohare Creek Project Leader, Bridger-Teton National Forest, P.O. Box 1888, Jackson, Wyoming 83001, Phone: (307) 733–4755

The end of the DEIS review period is Wednesday, October 12, 1987.

SUPPLEMENTARY INFORMATION: The Draft EIS analyzes potential impacts from a proposed exploratory well to be drilled in Northwestern Wyoming by Amoco Production Company. The DEIS focuses on the impacts of drilling an exploratory well, including the construction and operation of a well pad and access road in Teton County. Access routes to be analyzed include, Kettle Creek in the north, and four other access alternatives including two helicopter alternatives, and the No Action Alternative

The DEIS focuses on issues and concerns identified during the public scoping process: socioeconomics, recreation, wildlife values, visual resources, soil and water resources. An Agency Preferred Alternative has not yet been identified.

Hillary A. Oden,

State Director

[FR Doc. 87–18148 Filed 8–11–87; 8:45 am]

BILLING CODE 4310-22-M

[UT-020-07-4212-09-2411]

Intent To Prepare an Environmental Impact Statement; Salt Lake District; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: The Bureau of Land Management (BLM) intends to prepare an Environmental Impact Statement (EIS) for a proposal to construct a hazardous waste storage, transfer and treatment facility in Tooele County, Utah. Although the facility is proposed to be located on private land (T. 1 S., R. 10 W.), the transportation and utilities corridors would cross Federal land. It has been determined that the granting of proposed rights-of-way and land exchange actions for the project would constitute a major Federal action requiring the preparation of an EIS pursuant to the National Environmental Policy Act of 1969 (NEPA) and the Council on Environmental Quality (CEQ) regulations.

The EIS will analyze the environmental impact of constructing and operating a facility at the proposed site and at alternative sites currently identified as T. 1 N., R. 9 W., and T. 1 S., R. 11 W. A No Action alternative will also be analyzed. All sites would involve consideration of Federal rights-of-way and Federal land exchanges. The State of Utah, Tooele County, and the Environmental Protection Agency would be involved in permitting other aspects of the facility.

The Salt Lake District of BLM will hold two public meetings to receive input for the preparation of the EIS and to identify issues, concerns, and alternatives. The first meeting will be held on August 26, 1987, at the Senior Citizen Center, 120 South Center Street, Grantsville, Utah starting at 7:00 p.m. The second meeting will be held August 27, 1987, in the Department of Natural Resources auditorium, 1636 West North Temple, Salt Lake City, Utah, also starting at 7:00 p.m. For more information contact John Stephenson, Bureau of Land Management, Salt Lake District, 2370 South 2300 West, Salt Lake City, Utah 84119, telephone (801) 524–5348.

Deane H. Zeller,

Salt Lake District Manager.

[FR Doc. 87–18243 Filed 8–11–87; 8:45 am]

BILLING CODE 4310-DQ-M

[OR 39712; OR-943-07-4220-11: GP-07-248]

Conveyance of Public Land; Order Providing for Opening of Land; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 40 acres of public land out of Federal ownership. This action will also open 40 acres of reconveyed land to surface entry.

mining and mineral leasing, except oil and gas leasing.

EFFECTIVE DATE: September 18, 1987.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208 (Telephone 503–231–6905.

SUPPLEMENTARY INFORMATION:

1. Notice is hereby given that in an exchange of lands made pursuant to section 206 of the Act of October 21, 1976, 90 Stat. 43 U.S.C. 1716, a patent has been issued transferring 40 acres of land in Jackson County, Oregon, from Federal to private ownership.

2. In the exchange, the following described land has been reconveyed to the United States.

Willamette Meridian

T. 34 S., R. 1 E.,
Sec. 10, NW¼SW¼.

The area described contains 40 acres in Jackson County.

3. The oil and gas deposits in the land described in paragraph 2 are not in United States ownership and will not be opened to operation of the mineral leasing laws as to oil and gas.

4. At 8:30 a.m., on September 18, 1987, the land described in paragraph 2 will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on September 18, 1987, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

5. At 8:30 a.m., on September 18, 1987, the land described in paragraph 2 will be open to location and entry under the United States mining laws. Appropriation of land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

6. At 8:30 a.m., on September 18, 1987, the land described in paragraph 2, except as provided in paragraph 3, will be open to applications and offers under the mineral leasing laws.

Dated: August 4, 1987.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87–18288 Filed 8–11–87; 8:45 am]

BILLING CODE 4310-33-M

[OR-37365; OR-943-07-4220-11; GP-07-215]

Conveyance of Public Land; Order Providing For Opening of Land; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 34.12 acres of public land out of Federal ownership. This action will also open approximately one acre of reconveyed land to surface entry and mineral leasing. The land remains closed to mining by an existing right-of-way reservation.

EFFECTIVE DATE: September 18, 1987.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208 (Telephone 503–231–6905).

SUPPLEMENTARY INFORMATION:

1. Notice is hereby given that in an exchange of lands made pursuant to section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, a patent has been issued transferring 34.12 acres of land in Coos County, Oregon, from Federal to private ownership.

2. In the exchange, the following described land has been reconveyed to the United States:

Willamette Meridian

T. 25 S., R. 13 W.,
Sec. 26, lots 4 to 16, inclusive, Block 30, Nasburg's Addition to Marshfield.

The area described contains approximately one acre in Coos County.

3. At 8:30 a.m., on September 18, 1987, the land described in paragraph 2 will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on September 18, 1987, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

4. At 8:30 a.m., on September 18, 1987, the land described in paragraph 2 will be open to applications and offers under the mineral leasing laws.

Dated: August 4, 1987.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87–18289 Filed 8–11–87; 8:45 am]

BILLING CODE 4310-33-M

[ES-030-07-4212-11; ES-00157-012; ES-35927]

Realty Action; Recreation and Public Purposes Classification Land Classification for Recreation and Public Purposes, Ottertail County, MN

SUMMARY: The following described parcels have been classified as suitable for disposal to the North Central Camp Cherith, a non-profit organization, by conveyance pursuant to the provisions of the Recreation and Public Purposes Act of 1926 (44 Stat. 741) as amended (43 U.S.C. 869):

Fifth Principal Meridian, Minnesota

1. ES–35927, Ottertail County: T. 137 N., R. 41 W., Sec. 12, Lots 5 and 6, total of 5.57 acres.

The purpose of the conveyance is to provide additional recreation lands for the youth camp.

Any patent issued under this notice shall be subject to the provisions in 43 CFR 2741.8. In the event of noncompliance with the terms of the patent, title to the land shall revert to the United States.

Classification of this land will segregate it from all appropriation except as to applications under the mineral leasing laws and the Recreation and Public Purposes Act. This segregation will terminate upon issuance of a patent, or eighteen (18) months from the date of this Notice, or upon publication of a notice of termination.

Comments: For a period of 45 days from the date of first publication of this notice, interested parties may submit comments to: District Manager, Milwaukee District Office, Bureau of Land Management, P.O. Box 631, Milwaukee, Wisconsin 53201–0631.

FOR FURTHER INFORMATION: Detailed information concerning this application is available for review at the Milwaukee District Office, Suite 225, 310 West Wisconsin Avenue, Milwaukee, Wisconsin 53203, or by calling Larry Johnson at (414) 291–4413.

Bert Rodgers,

District Manager.

[FR Doc. 87–18293 Filed 8–11–87; 8:45 am]

BILLING CODE 4310-GJ-7-00157-012

[AZ-020-07-4212-12; A 20346-H]

Realty Action; Exchange of Public Lands, Maricopa County, AZ

BLM proposes to exchange public land in order to achieve more efficient management of the public land through consolidation of ownership.

The following described public lands are being considered for disposal by exchange pursuant to Section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

Gila and Salt River Meridian, Arizona

T. 4 N., R. 1 E.,
Sec. 12, W½W½SW¼NW¼;
Sec. 23, W½NW¼NW¼SE¼, N½SW¼NW¼SE¼.
T. 5 N., 1 E.,
Sec. 23, N½N½NE¼;
Sec. 24, E½NW¼, NW¼NW¼, E½W½SW¼NW¼, E½SW¼NW¼;
Sec. 27, S½NE¼NE¼SW¼, W½NE¼SW¼, SE¼NE¼SW¼, W½SW¼, SE¼SW¼;
Sec. 28, SW¼NE¼;
Sec. 29, E½E½;
Sec. 30, S½NE¼NE¼, SE¼NE¼;
T. 4 N., R. 1 W.,
Sec. 1, Lots, 1, 2, S½NE¼, SE¼;
Sec. 12, NE¼, E½SE¼;
Sec. 13, E½NE¼;
Sec. 24, W½NW¼, SE¼NW¼, NW¼SW¼.
T. 5 N., R. 1 W.,
Sec. 12, Lots 1–4, W½E½, W½;
Sec. 13, Lots 1–4, W½NE¼, NW¼, N½SW¼, NW¼SE¼;
Sec. 14, All;
Sec. 15, All;
Sec. 22, N½N½, SW¼NW¼.

Containing 4028.74 acres, more or less.

Final determination on disposal will await completion of an environmental analysis.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this Notice will segregate the public lands, as described in this Notice, from appropriation under the public land laws, including the mining laws, but not the mineral leasing laws or Geothermal Steam Act.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the **Federal Register** of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

For a period of forty-five (45) days, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

James E. May,
Acting District Manager.

Dated: August 4, 1987.

[FR Doc. 87-18291 Filed 8-11-87; 8:45 am]
BILLING CODE 4310-32-M

[CO-050-4212-14; C-45633]

Realty Action; Park County, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action C-45633, noncompetitive sale of public land in Park County, Colorado.

SUMMARY: The following described land has been examined and found suitable for direct sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, U.S.C. 1713), at not less than the appraised fair market value. The land will not be offered for sale until 60 days after the date of this notice.

Sixth Principal Meridian, Colorado

T. 9 S., R. 77 W.,
Sec. 20, E½SE¼SW¼, W½SW¼SE¼;
Sec. 29, NW¼NE¼.

Containing 80 acres.

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, until a patent is issued or 270 days from the date of publication of this notice, whichever occurs first. The public land described is being considered for direct sale to Park County for use as part of a bobsled and luge facility proposed for construction and public use. The sale is consistent with the Royal Gorge Management Framework Plan because the tracts are difficult and uneconomic for management by the Bureau of Land Management or any other Federal department or agency.

DATE: Comment period is for up to and including September 28, 1987.

FOR FURTHER INFORMATION CONTACT: Interested parties may submit comments to the District Manager, Canon City District, Bureau of Land Management, 3170 East Main, P.O. Box 311, Canon City, CO 81212.

SUPPLEMENTARY INFORMATION: Objections will be reviewed and this realty action may be sustained, vacated, or modified. In the absence of any objection resulting in vacation or modification, this realty action will become the final determination of the Department of the Interior.

Donnie R. Sparks,
District Manager.

[FR Doc. 87-18292 Filed 8-11-87; 8:45 am]
BILLING CODE 4310-JB-M

[OR-39467; OR-943-07-4220-11; GP-07-253]

Conveyance of Public Land; Order Providing for Opening of Lands; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 80 acres of public land out of Federal ownership. This action will also open 923 acres of reconveyed lands to surface entry. A total of 400 acres will be opened to mining and mineral leasing. The mineral estate in the 523-acre balance was not conveyed to the United States.

EFFECTIVE DATE: September 16, 1987.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208 (Telephone 503-231-6905).

SUPPLEMENTARY INFORMATION:

1. Notice is hereby given that in an exchange of lands made pursuant to section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, a patent has been issued transferring 80 acres of land in Douglas County, Oregon, from Federal to private ownership.

2. In the exchange, the following described lands have been reconveyed to the United States:

Willamette Meridian

Parcel I

T. 21 S., R. 11 W.,
Sec. 31, that portion of lot 4 lying south of State Highway No. 38;
Sec. 32, lot 7 and those portions of lots 5, 6, and 8 lying south of State Highway No. 38;
Sec. 33, those portions of lot 7, S½SW¼, and SW¼SE¼ lying south of State Highway No. 38.
T. 22 S., R. 11 W.,
Sec. 4, N½NW¼NW¼ and N½N½NE¼NW¼;
Sec. 5, lot 1, NW¼NE¼, N½NW¼ and W½NW¼SW¼NW¼, and that portion of the SW¼NW¼ described as follows:

Beginning at the northeast corner of the SW¼NW¼ of Sec. 5, said point being where the southerly edge of a private road crosses the northerly edge of the SW¼NW¼ of Sec. 5; thence along the southerly edge of said private road, 25 feet South of the centerline of said private road, said centerline traverse

being South 62°53' West 236.0 feet; thence North 73°07' West 125.9 feet; thence North 80°48' West 314.4 feet; thence South 67°36' West 25 feet to a point intersecting a north and south quarter line of the SW¼NW¼ of Sec. 5; thence leaving said southerly edge, North 11 feet to the north line of the SW¼NW¼ of Sec. 5; thence East 660 feet to the point of beginning;

Sec. 6, SE¼NE¼, those portions of lots 1, 2, and 3, lying south of State Highway No. 38, and that portion of the SW¼NE¼ described as follows:

Beginning at the northeast corner of the SW¼NE¼ of Sec. 6; thence West along the northerly edge of said SW¼NE¼ of Sec. 6 to a point where it intersects the southerly edge of a private road, a distance of 805 feet; thence along the southerly edge of said private road, 25 feet South of the centerline of said private road, said centerline traverse being South 73°25' East 367.6 feet; thence North 79°48' East 165.3 feet; thence South 79°37' East 205.2 feet; thence 58°23' East 139 feet, more or less, to a point intersecting the easterly edge of the SW¼NE¼ of Sec. 6; thence leaving said southerly edge, North 163 feet to the point of beginning.

Parcel II

T. 22 S., R. 11 W.,

Sec. 3, lot 14 *Excepting Therefrom*, and being more particularly described as follows:

Beginning at the southwest corner of lot 14, Sec. 3; thence North along the west line of said lot 14, 550 feet; thence East parallel to the south line of said lot to the east boundary of said lot; thence Southerly along said east line to the southeast corner of said lot; thence West along the south line of said lot to the point of beginning;

Sec. 4, N½NE¼, S½N½NE¼NW¼, S½NE¼NW¼, S½NW¼NW¼, that portion of the NE¼SE¼ described as follows:

Beginning at an iron pin marking the east quarter corner of said Sec. 4; thence West along the north line of the SE¼ of said Sec. 4, a distance of 417.4 feet to the true point of beginning herein; thence continuing West along said north line, 911.4 feet, more or less, to a point making the southwest corner of the SE¼NE¼ of said Sec. 4; thence South along the west line of the NE¼SE¼ of said Sec. 4, a distance of 1320 feet, more or less, to the southwest corner of said NE¼SE¼; thence Northeasterly (North 34°37' East) a distance of 1604 feet, more or less, to the true point of beginning;

and the S½N½ *Excepting Therefrom* and being more particularly described as follows:

Beginning at the west quarter corner of Sec. 3, said point also being the northwest corner of lot 12 of said Sec. 3; thence North along the west line of said Sec. 3, 417.4 feet; thence West parallel with the south line of the NE¼ of Sec. 4, 417.4 feet; thence South parallel with the west line of said Sec. 3, to the east-west centerline of said Sec. 4; thence East along said centerline, 417.4 feet to the northeast corner of the NE¼SE¼ of said Sec. 4; thence North along the west line of said Sec. 3 to the point of beginning;

Sec. 5, lot 2 and SW¼NE¼;

Excepting from the above parcels any portion lying within State Highway No. 38, and Deans Creek County Road or any part deeded to the State of Oregon through Department of Transportation.

The areas described aggregate 923 acres in Douglas County.

3. At 8:30 a.m., on September 18, 1987, the lands described in paragraph 2 will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on September 18, 1987, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

4. At 8:30 a.m., on September 18, 1987, the land described in Parcel II in paragraph 2 will be open to location and entry under this United States mining laws. Appropriation of land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. section 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

5. At 8:30 a.m., on September 18, 1987, the land described in Parcel II in paragraph 2 will be open to applications and offers under the mineral leasing laws.

Dated: August 4, 1987

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87-18290 Filed 8-11-87; 8:45 am]

BILLING CODE 4310-33-M

[AA-820-87-4112-02]

Information Collection Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau Clearance Officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202-395-7340.

Title: 43 CFR 3160—Onshore Oil and Gas Operations, Non-form Items

Abstract: Federal and Indian (except Osage) oil and gas lessees and operators are required to retain and/or provide data so that proposed operations may be approved or compliance with granted approvals may be monitored.

Bureau Form Numbers: None.

Frequency: Nonrecurring.

Description of Respondents: Lessees and operators of Federal and Indian (except Osage) oil and gas leases.

Annual Responses: 191,960.

Annual Burden Hours: 93,585.

Bureau Clearance Officer: Richard Iovaine, 202-653-8853.

Dated: June 4, 1987.

George F. Brown,

Deputy Assistant Director, Energy and Mineral Resources.

[FR Doc. 87-18283 Filed 8-11-87; 8:45 am]

BILLING CODE 4310-87-M

[CA-020-07-4322-14]

Grazing Advisory Board Meeting and Tour; Susanville District, Susanville, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting and tour.

SUMMARY: Notice is hereby given that the Susanville District Grazing Advisory Board, created under the Secretary of the Interior's discretionary authority on May 14, 1986, will meet on September 14 and September 15, 1987.

The meeting on September 14 will begin at 1:00 p.m. at the Alturas Resource Area Office of the Bureau of Land Management, 120 South Main Street, Alturas, California. On September 15, the Board will tour portions of the Alturas Resource Area. The tour will leave from the front of the Alturas Resource Area Office at 8:00 a.m.

The agenda on September 15 will include an update on Nevada Water Rights, an update on the Wild Horse and Burro Program, an update on Range Improvements for FY88, a discussion of Wild Horse and Burro gathering by Helicopter for FY88, a report on the establishment of a Technical Review Team for the Twin Peaks deer winter

range and a discussion of other items as appropriate.

The tour on September 15 wil be of projects, management, and resource problems in the Alturas Resource Area. The tour will concentrate on the riparian resource and Juniper control. The tour is open to the public. Anyone wishing to make the tour should contact the Alturas Resource Area Office, phone number 916–233–4666, prior to September 11, 1987.

The meeting on September 14 is open to the public. Interested persons may make oral statements to the Board between 3:00 p.m. and 4:30 p.m. on September 14, 1987 or file a written statement for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 705 Hall Street, Susanville, California, 96130, by September 9, 1987. Depending upon the number of persons wishing to make oral statements, a per person time limit may be established.

Summary minutes of the board meeting will be maintained in the District Office, and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Robert J. Sherve,

Acting District Manager.

[FR Doc. 87–18284 Filed 8–11–87; 8:45 am]

BILLING CODE 4310-40-M

[NV–020–4322–02]

Winnemucca District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

SUMMARY: Notice is hereby given in accordance with Pub. L. 94–579 and Section 3, Executive Order 12548, February 14, 1986 that a meeting of the Winnemucca District Grazing Advisory Board will be held on September 15, 1987. The meeting will begin at 10:00 a.m. in the conference room of the Bureau of Land Management Office at 705 East Fourth Street, Winnemucca, Nevada 89445.

The agenda for the meeting will include:

1. Orientation/update of district rangeland management program by the District Manager.
2. Public Statements.
3. Grazing Fee Update.
4. Range Betterment (range improvement) funds: 1987 FY projects; 1988 FY projects.
5. Fire Rehabilitation Update.

The meeting is open to the public. Interested persons may make oral statements for the Board's consideration. Anyone wishing to make an oral statement should notify the District Manager, 705 East Fourth Street, Winnemucca, Nevada 89445 by September 1, 1987. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Summary minutes of the Board meeting will be maintained in the District Office and available for public inspection (during regular business hours) within 30 days following the meeting.

Dated: August 3, 1987.

Frank C. Shields,

District Manager.

[FR Doc. 87–18285 Filed 8–11–87; 8:45 am]

BILLING CODE 4310-HC-M

Off-Road Vehicle Designation, Designation Order; Susanville District, Surprise Resource Area, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of off-road vehicle designation decisions.

Decision

Notice is hereby given relating to the use of off-road vehicles on public lands in accordance with the authority and requirements of Executive Orders 11644 and 11989, and regulations contained in 43 CFR Part 8340. The following described lands under administration of the Bureau of Land Management are designated as open, limited, or closed to off-road motorized vehicle use.

The 769,000 acre area affected by the designation is the Surprise Resource Area of the Susanville District. Two planning units are involved, known as Cowhead/Massacre and Tuledad/Home Camp, which include all public land in the Resource Area. These designations are a result of resource management decisions made in the Management Framework Plans (1976 for Tuledad/Home Camp and 1981 for Cowhead/Massacre). Comments received from public meetings, workshops, and numerous written responses influenced the designation decisions. These decisions are published as final today. Under 43 CFR 4.21, an appeal may be filed within 30 days with the Interior Board of Land Appeals.

A. Open Designation

Area which is designated open comprises approximately 720,000 acres. Open designation was determined to be appropriate for all of Sub Units 2, 3, and 4 of the Cowhead/Massacre Planning Unit. ORV impact is low throughout these Sub Units and restrictions are unnecessary at this time. Some 30,000 acres of Tuledad/Home Camp Planning Unit are currently being used for ORV. These lands are known as the southern sand dunes of Lower Lake, 25 miles from Cedarville, California. Open designation was determined to be appropriate for the non-vegetated portion.

B. Limited Designation

1. Limited Season of Use—79,000 Acres

High Rock Canyon (Sub Unit 1) of the Cowhead/Massacre Planning Unit is located ca. 35 miles south and east of Cedarville, California. Motorized vehicle use in this area is limited to designated routes from February 15 to March 31, except during or immediately following periods of wet weather to protect wildlife habitat and historic resource values.

2. Use Limited to Designated Roads and Trails—685,000 Acres

Motorized vehicle use in the Tuledad/Home Camp Planning Unit, except that area designated as open or closed, is permitted on designated roads and trails which are identified with signs and on maps. This designation also applies to the Cowhead/Massacre (Sub Unit 1) High Rock Area except as noted above in B.1. (Limited Season of Use) when it is closed.

C. Closed Designation

The 1,000 acre area in the vegetated portion of the sand dunes of Lower Lake is closed to motorized vehicle use to protect the fragile ecosystem.

The 79,000 acre High Rock Canyon (Sub Unit 1) of Cowhead/Massacre Planning Unit is closed from February 15 to March 31 and during or immediately following periods of wet weather to protect wildlife habitat and historic resources.

These designations become effective upon publication in the Federal Register and will remain in effect until rescinded or modified by the authorized officer. The documentation describing the impact of these designations is available for inspection at the offices listed below.

ADDRESS: For further information about these designations, contact either of the following Bureau of Land Management Officials:

District Manager, Susanville District Office, 705 Hall Street, P.O. Box 1090, Susanville, CA 96130 (916) 257–5381

Area Manager, Surprise Resource Area, 602 Cressler Street, P.O. Box 460, Cedarville, CA 96104 (916) 279-6101

Date: August 3, 1987.

Lee Delaney,

Authorized Officer.

[FR Doc. 87-18286 Filed 8-11-87; 8:45 am]

BILLING CODE 4321-12-M

[Designation Order WY-060-8702]

Off Road Vehicle Designations; Casper District, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of off-road vehicle designation decision.

SUMMARY: Off road vehicle designations are made for all public lands in Sheridan and Campbell Counties, Wyoming with publication of this notice. All designations are in accordance with the 1985 Buffalo Resource Area Resource Management Plan (RMP).

DATES: The designations become effective with the publication of this notice and will remain in effect until recinded or modified by the authorized officer.

ADDRESSES: Copies of the resource management plan and environmental impact statement describing the impacts of these designations is available for inspection at the following locations:

Bureau of Land Management, Casper District Office, 1701 East E Street, Casper, Wyoming 82601

Bureau of Land Management, Buffalo Resource Area Office, 189 North Cedar, Buffalo, Wyoming 82834

FOR FURTHER INFORMATION CONTACT: James Monroe, Casper District Manager at the Casper address given above, telephone 307/261-5101 or Glenn Bessinger, Buffalo Area Manager at the Buffalo address above, telephone 307/684-5586.

SUPPLEMENTARY INFORMATION: Notice is hereby given relating to the use of off road vehicles on public lands in accordance with the authority and requirements of Executive Orders 11644 and 11989, and regulations contained in 43 CFR Part 8340. The following described lands under administration of the Bureau of Land Management are designated as limited to off road motorized vehicle use.

The 286,797 acre area affected by the designations includes all public lands in Campbell and Sheridan Counties, Wyoming. These designations are a result of resource management decisions made in the 1985 Buffalo RMP. Comments received from public hearings and written responses influenced the designation decisions. These designations are published as final today. Under 43 CFR Part 4, Subpart E, an appeal may be filed within 30 days with the Interior Board of Land Appeals.

Use Limited to Existing Roads and Vehicle Routes—239,997 Acres

This designation was determined appropriate for all 50,730 acres of BLM administered public land in Sheridan County and 189,267 acres (80%) of the public land in Campbell County. Vehicle use on these public lands is limited to roads and vehicle routes in existence at the time of this designation order. Existing roads and vehicle routes may be closed if resource damage is occurring. In these cases, closed road signs will be posted.

Use Limited to Designated Roads and Vehicle Routes—46,800 Acres

This designation was determined appropriate for 46,800 acres (20%) of BLM administered public land in Campbell County. Vehicle use on these public lands is limited to designated roads and vehicle routes which are identified with signs and on maps. Specific areas under this designation are:

Fortification Creek—Approximately 18,930 acres encompassing the Campbell County portion of the Fortification Creek Wilderness Study Area and surrounding areas providing crucial elk habitat;

Dry Creek—Two blocks of public land totaling 7,080 acres located near Rockypoint in the northeastern corner of Campbell County;

Weston Hills—6,870 acres located 29 miles north of Gillette, Wyoming;

Powder River—Two blocks of public land, 6,400 acres, located south of Interstate 90 near the Powder River;

Little Powder River (North and South Units)—3,040 acres approximately 18 miles (south unit) and 43 miles (north unit) north of Gillette, Wyoming;

Whitetail—2,880 acres in north central Campbell County;

Pumpkin Buttes—A prominent natural landmark in southwestern Campbell County containing 1,000 acres of public land.

Travel by over-snow vehicles will be permitted off existing or designated routes provided they are operated in a responsible manner without damaging vegetation or harming wildlife. Any individual or corporation having special access needs may apply to the authorized officer for a permit to deviate from the designation orders.

Date: August 4, 1987.

James W. Monroe,

District Manager.

[FR Doc. 87-18281 Filed 8-11-87; 8:45 am]

BILLING CODE 4310-22-M

Fish and Wildlife Service

[PRT-720484 and PRT-720682]

Receipt of Applications for Permits; William E. Moss and Milwaukee County Zoo

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-720484

Applicant: William E. Moss, McLean, VA

The applicant requests a permit to import the trophy of a sport-hunted bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd of Mr. J. J. de Smit, Irene Game Ranch, Cape Province, Republic of South Africa, to enhance the propagation and survival of the herd.

PRT-720682

Applicant: Milwaukee County Zoo, Milwaukee, WI

The applicant requests a permit to import one captive-bred snow leopard (*Panthera uncia*) from the Metropolitan Toronto Zoo, Ontario, Canada, for captive propagation.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate applicant and PRT number when submitting comments.

Dated: August 6, 1987.

Larry LaRochelle,

Acting Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 87-18273 Filed 8-11-87; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Development Operations Coordination Document; Taylor Energy Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD)

SUMMARY: Notice is hereby given that Taylor Energy Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 3467, Block A–7, Matagorda Island Area, offshore Texas. Proposed plans for the above area provide for the developmemt and production of hydrocarbons will support activities to be conducted from an onshore base located at Port O'Connor, Texas.

DATE: The subject DOCD was deemed submitted on August 3, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public reveiw.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: August 4, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87–18294 Filed 8–11–87; 8:45 am]

BILLING CODE 4310-MR-M

Bureau of Land Management

[CO–030–07–4322–10–1784]

Meeting of the Montrose District Grazing Advisory Board

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of Montrose District Grazing Advisory Board.

SUMMARY: Notice is hereby given that a meeting of the Montrose District Grazing Advisory Board will be held in Gunnison, Colorado.

DATE: Friday, September 11, 1987, at 10:00 a.m., the meeting will convene in the conference room at the Gunnison Resource Area Office, 216 North Colorado, Gunnison, Colorado.

SUPPLEMENTARY INFORMATION: The agenda for the meeting on September 11, 1987, will include:

1. Introductions.
2. Minutes of the previous meeting.
3. Public presentations and requests.
4. Discussion of winter water mitigation plans for the Uncompahgre Valley.
5. Allotment management plans completed this year.
6. New or revised allotment management plan proposals.
7. Discussion of Deserett Livestock Company tour.
8. Presentation of proposed project work for fiscal year 1988.
9. New Advisory Board project proposals.
10. Arrangements for the next meeting.

The meeting is open to the public. Interested persons may make oral statements to the Board between 10:00 a.m. and 11:00 a.m. on September 11, 1987, or file written statements for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 2465 South Townsend, Montrose, Colorado 81401, by September 9, 1987. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Minutes of the Board meeting will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) within thirty (30) days following the meeting.

Further information on the meeting may be obtained at the above address or by calling (303) 249–7791.

Dated: August 5, 1987.

Phillip W. Dwyer,

Acting District Manager.

[FR Doc. 87–18540 Filed 8–11–87; 10:25 am]

BILLING CODE 4310-JB-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–383 (Preliminary)]

Certain Bimetallic Cylinders From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731–TA–383 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or whether the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of certain parts for injection-molding or extrusion machines,[1] provided for in item 678.35 of the Tariff Schedules of the United States, that are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by September 18, 1987.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and B (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: August 4, 1987.

FOR FURTHER INFORMATION CONTACT: Martha Mitchell (202–523–0291), Office of Investigation, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–

[1] Such parts are hollow steel cylinders to whose inner surfaces an alloy of nickel, boron, and silica has been metallurgically bonded, and are, if imported, reported under items 678.3570 and 678.3575 of the Tariff Schedules of the United States Annotated.

0002. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–523–0161.

SUPPLEMENTARY INFORMATION:

Background—This investigation is being instituted in response to a petition filed on August 4, 1987, by Xaloy Inc., Pulaski, VA, and Bimex Corp., Wales, WI.

Participation in the investigation—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parites to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary wll not accept a document for filing without a certificate of service.

Conference—The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m. on August 28, 1987, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Martha Mitchell (202–523–0291) not later than August 24, 1987, to arragne for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions—Any person may submit to the Commission on or before September 2, 1987, a written statement of information pertinent to the subject of the investigation as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 201.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: August 6, 1987.

[FR Doc. 87–18416 Filed 8–11–87; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–273]

Investigation; Certain Cellular Mobile Telephones and Subassemblies and Component Parts Thereof

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 18, 1987, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Motorola, Inc., 1303 East Algonquin Road, Schaumburg, Illinois 60196. The complaint alleges unfair methods of competition and unfair acts in the importation into the United States of certain cellular mobile telephones and subassemblies and component parts thereof, and in their sale, by reason of alleged direct, contributory, and induced infringement of (1) at least claims 1–3 of U.S. Letters Patent 3,728,731; (2) at least claims 37–38, 44, 49, 61–68, 77–83 and 85 of U.S. Letters Patent 4,523,155; (3) at least claims 1, 4, 8, 10 and 15 of U.S. Letters Patent 4,602,218; and (4) at least claims 1–3, 5, 9–10, 24, and 31 of U.S. Letters Patent 4,378,603. The complaint further alleges that with respect to U.S. Letters Patent 3,728,731, U.S. Letters Patent 4,523,155, U.S. Letters Patent 4,378,603, the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

FOR FURTHER INFORMATION CONTACT: Steven Schwartz, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–523–4877.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on August 3, 1987, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation into the United States of certain cellular mobile telephones and subassemblies and component parts thereof, or in their sale, by reason of alleged direct, contributory, and induced infringement of (1) claims 1–3 of U.S. Letters Patent 3,728,731; (2) claims 37–38, 44, 49, 61–68, 77–83 and 85 of U.S. Letters Patent 4,523,155; or (3) claims 1–3, 5, 9–10, 24, and 31 of U.S. Letters Patent 4,378,603, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Motorola, Inc., 1303 East Algonquin Road, Schaumburg, Illinois 60196

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Novatel Communications, Ltd., 1020 64th Avenue NE., Calgary, Alberta, Canada T2E 7V8

Hyundai Electronics Industries Co., Ltd., 12th Floor, Hyundai Building, 140–2, Kye-Dong, Chongro-Ku, Seoul, South Korea

Astec International, 6th Floor, Kaiser Estate, Phase 2, Hung Hom, Kowloon, Hong Kong

Novatel Carcom, Inc., 1923 Bomar Street, Fort Worth, Texas 76103

Novatel Communications, Inc., 2820 Peterson Place, Norcross, Georgia 30071

Hickman Investments, Inc., 1923 Bomar Street, Fort Worth, Texas 76103

(c) Steven Schwartz, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 701 E Street NW., Room 124, Washington, DC 20436, shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's rules of practice and procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules (19 CFR 201.16(d) and 210.21(a)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, DC 20436, telephone 202–523–0471. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

By order of the Commission.

Issued: August 5, 1987.

Kenneth R. Mason,

Secretary.

[FR Doc. 87–18415 Filed 8–11–87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 701-TA-249-1 (Final)]

Certain Light Iron Construction Castings From Brazil

AGENCY: United States International Trade Commission.

ACTION: Termination of investigation.

SUMMARY: On July 30, 1987, the Commission received a letter from counsel to the petitioners in the subject investigation (Collier, Shannon, Rill & Scott) withdrawing their petition. Accordingly, pursuant to § 207.40(a) of the Commission's rules of practice and procedure (19 CFR 207.40(a)), the countervailing duty investigation concerning certain light iron construction castings from Brazil (Investigation No. 701–TA–249–1 (Final)) is terminated.

EFFECTIVE DATE: August 6, 1987.

FOR FURTHER INFORMATION CONTACT: Martha Mitchell (202–523–0291), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impared individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Authority: This investigation is being terminated under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.40 of the Commission's rules (19 CFR 207.40).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: August 6, 1987.

[FR Doc. 87–18417 Filed 8–11–87; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731-TA-342 and 346 (Final)]

Tapered Roller Bearings and Parts Thereof and Certain Housings Incorporating Tapered Rollers From Italy and Yugoslavia

Determination

On the basis of the record [1] developed in the subject investigations, the Commission determines, pursuant to section 735(b)(1) of the Tariff Act of 1930 (19 U.S.C. 1673(b)(1)), that an industry in the United States is materially injured by reason of imports from Italy [2] and Yugoslavia [3] of tapered roller bearings and parts thereof, and certain housings incorporating tapered rollers, all the foregoing provided for in items 680.3040, 680.3832, 680.3834, 680.3938, 680.3940, 681.1010, or 692.3295 of the Tariff Schedules of the United States annotated, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Further, pursuant to section 735(b)(4)(A) of the Act (19 U.S.C. 1673(b)(4)(A)), the Commission determines that the material injury in the investigation by reason of imports from Italy is not by reason of massive imports over a relatively short period to an extent that, in order to prevent such material injury from recurring, it is necessary to impose antidumping duties retroactively on those imports. [4]

Background

The Commission instituted these investigations effective February 6, 1987, following preliminary determinations by the Department of Commerce that imports of the subject merchandise from Italy and Yugoslavia are being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of February 26, 1987 (52 FR 5841). The hearing was held in Washington, DC, on May 21, 1987, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in these investigations to the Secretary of Commerce on August 5, 1987. The views of the Commission are contained in USITC Publication 1999 (August 1987), entitled "Tapered Roller Bearings and Parts Thereof, and Certain Housing Incorporating Tapered Rollers from Italy and Yugoslavia: Determination of the Commission in Investigations Nos. 731–TA–342 and 346 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Chairman Liebeler dissenting.

[3] Chairman Liebeler and Vice-Chairman Brunsdale dissenting.

[4] Commissioner Eckes dissenting.

By order of the Commission.
Kenneth R. Mason,
Secretary.
Issued: August 6, 1987.
[FR Doc. 87-18418 Filed 8-11-87; 8:45 am]
BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Revocation of Registration Denial of Application; Stephen Marcus Levine, M.D.

On March 13, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), directed an Order to Show Cause to Stephen Marcus Levine, M.D. of 3344 A. Lacienega Blvd., Los Angeles, California 90034. The Order to Show Cause sought to revoke DEA Certificate of Registration AL8292118 and to deny Dr. Levine's application for renewal of that registration executed on March 13, 1986, for registration as a practitioner under 21 U.S.C. 823(f). The statutory predicate for the Order to Show Cause was the felony conviction of Dr. Levine in the Superior Court of California, County of Los Angeles, of five counts of unlawfully giving a false name and address in connection with the prescribing of a controlled substance in violation of section 11179 of the California Health and Safety Code, felonies relating to controlled substances.

A registered mail receipt indicates that the Order to Show Cause was received by Dr. Levine's agent on March 21, 1987. There was no response to the Order to Show Cause within the allotted thirty-day period. Therefore, the Administrator concludes that Dr. Levine has waived his opportunity for a hearing on the issues raised by the Order to Show Cause and, pursuant to 21 CFR 1301.54(d) and 1301.54(e), enters this final order based on the record as it appears.

Under 21 U.S.C. 824(a)(2), the Administrator may revoke a registration upon a finding that the registrant has been convicted of a felony relating to controlled substances under state or Federal law. The Administrator finds that Dr. Stephen Levine was convicted of one count of involuntary manslaughter and five counts of unlawfully giving a false name and address in connection with the prescribing of the controlled substance Demerol on April 23, 1986. These charges arose from the death of Myrna R. Levine, wife of Dr. Levine, on May 12, 1984. An autopsy performed by the Los Angeles County Coroner's Office determined the cause of death to be acute meperidine (Demerol) intoxication. The quantity of Demerol found in Myrna Levine's body was 24 to 48 times as great as that found when the drug is normally administered.

Police investigation revealed that Dr. Levine wrote prescriptions for Demerol to Myrna Levine on two occasions in March of 1983 and on one occasion in April of 1983. In July of 1983 Dr. Levine wrote four prescriptions for Demerol to Myrna Levine. In July, 1983, Dr. Levine wrote prescriptions for Dmerol in the name Robert Kaufman and discontinued writing Demerol prescriptions for Myrna Levine. During the period of July, 1983 to May 10, 1984, there were 244 prescriptions for Demerol and one prescription for methadone written by Dr. Levine for Robert Kaufman.

Attempts by investigators to locate Robert Kaufman proved to be fruitless. Although all of the prescriptions issued to Robert Kaufman contained the same address, the owner of the property indicated that not only did he have no knowledge of such an individual, but that the property had not been occupied by anyone during the period that the prescriptions were issued. Furthermore, expert medical examinations revealed that several aspects of Robert Kaufman's medical file (which stated that he was suffering from pancreatic cancer) indicated that it was totally fictitious. A review of the medical file by a handwriting expert for the Los Angeles Police Department indicated that several pages of notes and billing information extending over a substantial chronological period appeared to have been written at the same time. The inescapable conclusion drawn from the investigations and surrounding circumstances was that Robert Kaufman was a fictitious character created to cover up the fact that the Demerol being obtained through Dr. Levine's prescriptions was actually satisfying the addiction of Myrna Levine.

Myrna Levine had been hospitalized numerous times for a variety of undiagnosed disorders. During the course of each hospitalization, Mrs. Levine's addiction to Demerol was discovered by her physicians who then weaned her from her physical dependency so that she was fully detoxified upon discharge. The fact of Myrna Levine's addiction was communicated by the physicians to her husband. Knowledge of Myrna Levine's addiction became widespread during her last hospitalization and resulted in the attempts of staff nurses and a psychologist to help her overcome it.

Expert medical testimony established that the doses of Demerol provided to Myrna Levine through the Robert Kaufman prescriptions were highly excessive; she received up to five times the recommended amount. It was stated that there is no medical justification for doses of such magnitude.

On his application for renewal of his DEA registration, which was executed on March 31, 1986, Dr. Levine indicated that he had pled guilty to five counts of prescribing in a false name and address. He further indicated that the false name and address were for a patient "I examined and who was introduced to me as my father-in-law by my wife." Evidence in the record clearly indicates that Robert Kaufman, the name used on the prescriptions, was a fictitious person. Dr. Levine, however, apparently continues to believe he exists.

Based upon Dr. Levine's felony conviction relating to controlled substances, the Administrator concludes that there is a lawful basis for revoking Dr. Levine's DEA Certificate of Registration and denying his application for renewal. As a neurosurgeon with extensive medical training, Dr. Levine knew, or should have known, that the continuous unlawful furnishing of a narcotic such as Demerol to a known Demerol addict could reasonably be expected to lead to the recipient's death.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) hereby orders that DEA Certificate of Registration AL8292118, previously issued to Stephen Marcus Levine, M.D., be, and it hereby is, revoked. The Administrator further orders that any pending applications be, and they hereby are, denied. This order is effective September 11, 1987.

Date: August 6, 1987.

John C. Lawn,
Administrator.
[FR Doc. 87-18346 Filed 8-11-87; 8:45 am]
BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 87-71; Exemption Application No. D-6355 et al.]

Grant of Individual Exemptions; AmeriTrust Co. et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

BEST COPY AVAILABLE

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

AmeriTrust Company, N.A. (AmeriTrust) Located in Cleveland, OH

[Prohibited Transaction Exemption 87–71; Exemption Application No. D–6355]

Exemption

The restrictions of section 406(b)(2) and 406(b)(3) of the Act shall not apply to the proposed receipt of fees by AmeriTrust from the Financial Reserves Fund, an open-end investment company, for which AmeriTrust performs services, in connection with the investment of funds, through a daily automated sweep arrangement, of those voluntary employees' beneficiary association trusts (the VEBA's) for which AmeriTrust acts as investment manager, custodian or directed trustee, under the terms described in the proposed exemption.[1]

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 5, 1987 at 52 FR 21390.

For Further Information Contact: David Lurie of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Hochman, Salkin and DeRoy Money Purchase Pension Plan (the Plan) Located in Beverly Hills, CA

[Prohibited Transaction Exemption 87–72; Exemption Application No. D–6792]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the cash sale by the Plan of a single family residence in Los Angeles, California (the Property) to Richard Marmaro, a party in interest with respect to the Plan; provided that the cash received from the sale is not less than the fair market value of the Property on the date of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 19, 1987 at 42 FR 18760.

For Further Information Contact: Angelena C. Le Blanc of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

[1] Since the VEBA's are not qualified under section 401 of the Code, there is no jurisdiction under Title II of the Act pursuant section 4975 of the Code. However, there is jurisdiction under Title I of the Act pursuant to section 3(2) of the Act. In addition, the Department is not proposing exemptive relief for transactions covered by section 408(b)(2) of the Act and § 2550.408b–2 of the regulations.

Castro Convertible Employer's Retirement Trust (the Plan) Located in New Hyde Park, NY

[Prohibited Transaction Exemption 87–73; Exemption Application No. D–6813]

Exemption

The restrictions of section 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the leasing of certain real property by the Plan to Casto Convertible Corporation, provided that all of the terms of such lease are as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party.

Effective Date: March 18, 1986.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 10, 1987 at 52 FR 11776.

For Further Information Contact: Ms. Linda M. Hamilton of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Carson Pirie Scott and Company (the Company) Located in Chicago, Illinois

[Prohibited Transaction Exemption 87–74; Exemption Application No. D–6875]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash purchase by the Company of certain real property (the Property) from the Carson/Dobbs Hourly Employees' Pension Plan and the Carson/Dobbs Salaried Employees' Pension Plan (the Plans), which are sponsored by the Company; provided that the purchase price for the Property is no less than the greater of: (1) $950,000 or (2) the Property's fair market value as of the date of such sale; and provided further that all terms of such sale are no less favorable to the Plans than the Plans could obtain in an arms-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 9, 1987 at 52 FR 7239.

Written Comments: The Department received three comments to the proposed exemption and no requests for a hearing. Only one of the comments

addressed substantive issues concerning the proposed transaction. Such issues are summarized as follows:

1. Questions about the existing lease on the Property relating to term of the lease, the amount of rental paid and the lease's provisions regarding maintenance of the Property;

2. Concerns that the property's current fair market value might be adversely affected by the Company's past maintenance of the Property's improvements;

3. A question as to the rate of interest to be paid by the Company on the amount representing the difference between rental actually paid since June 30, 1984 and the Property's fair market rental value since June 30, 1984;

4. A concern that the proposed purchase price for the Property was determined after only two professional appraisals of the Property.

Responses to these comments were submitted to the Department by a representative of the Company and by the Continental Illinois National Bank and Trust Company of Chicago (the Trustee), the trustee of the Plan. The responses are summarized as follows, corresponding in order to the comment summaries listed above:

1. The Company represents that the original term of the lease was thirty years and the that annual rental has been $17,033.50. The Company also refers to Article IV of the lease setting forth the Company's obligation, among other things, to maintain all portions of the Property in a good state of repair and in a clean and orderly condition;

2. The Company represents and the Trustee confirms that the building on the Property has been properly maintained. The Trustee represents that it has inspected the Property and has reviewed the two appraisals of the Property referred to in the Notice of Proposed Exemption. Based on this inspection of the Property and the information contained in the appraisals, the Trustee has determined that the Property's current fair market value has not been adversely affected by the quality of the maintenance of the Property;

3. The Trustee has determined that the interest rate to be applied on the difference between rental actually paid and fair market rental value will be the interest earned by the pooled Short Term Investment Fund I of the Continental Illinois Investment Trust during the applicable periods since June 30, 1984;

4. The Trustee made the determination that only two appraisals were necessary to ascertain the Property's fair market value. The Trustee represents that it reviewed and accepted the two appraisals in combination with an inspection of the Property. Furthermore, the Trustee will arrange for Mr. Andrew W. Runge to update his appraisal of the Property as of the date of the sale. If the Property's fair market value has increased since Runge's appraisal of May 14, 1986, the purchase price of the Property will be increased accordingly.

After consideration of the entire record, the Department has determined to grant the exemption.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Sweeney, Ferrari Endodontic Associates Profit Sharing Plan (the Plan) Located in Pittsburgh, PA

[Prohibited Transaction Exemption 87–75; Exemption Application No. D–6894]

Exemption

The restrictions of section 406(a) 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(C)(1) (A) through (E) of the Code, shall not apply to: (1) The proposed cash sale by Dr. and Mrs. James E. Sweeney (the Sweeneys) of an undivided one-half interest in a parcel of unimproved real property (Lot 2), for the total consideration of $20,000, to Dr. Sweeney's individual account (the Account) in the Plan, provided the amount paid is not greater than the fair market value of the interest in Lot 2 on the date of the sale; and (2) the proposed cash sale by the Account of an undivided one-half interest in another parcel of unimproved real property (Lot 3), for the total consideration of $22,000, to the Sweeneys, provided the amount paid is not less than the fair market value of the interest in Lot 3 on the date of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 12, 1987 at 52 FR 22560.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

Plumbers & Steamfitters Local 60 Pension Fund (the Plan) Located in Metairie, LA

[Prohibited Transaction Exemption 87–76; Exemption Application No. D–6935]

Exemption

(1) The restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply effective April 10, 1987, to the cash purchase by the Plan of a parcel of improved real property (the Property) located in Metairie, Louisiana, from the Plumbers & Steamfitters Local 60 Home Association, Inc., a party in interest with respect to the Plan; (2) the restrictions of section 406(b)(2) of Act shall not apply, effective April 10, 1987, to the lease of space in the Property to the Plumbers & Steamfitters Local 60 Education Trust (the Trust); and (3) the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4775 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply, effective April 10, 1987, to the lease of space in the Property to Gardner, Robein & Healey, a party in interest with respect to the Plan, provided that the terms of the transactions are at least as favorable to the Plan and the Trust as arm's-length transactions between unrelated parties would be.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 21, 1987 at 52 FR 13153.

For Further Information Contact: David Lurie of the Department, telephone (202) 523–8194). (This is not a toll-free number.)

Bermo, Inc. Profit Sharing Plan and Trust (the Plan) Located in Bloomington, Minnesota

[Prohibited Transaction Exemption 87–77; Exemption Application No. D–7039]

Exemption

The restrictions of sections 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to loans of money from the Plan to Bermo, Inc., the sponsor of the Plan, and to the personal guarantee of the loans by a party in interest with respect to the Plan, provided the terms of the loans are at least as favorable as the Plan could obtain in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 5, 1987 at 52 FR 21393.

For Further Information Contact: Paul Kelty of the Department, telephone (202) 523–8196. (This is not a toll-free number.)

InterFirst Corporation Profit Sharing and Savings Plan (the Plan) Located in Dallas, Texas

[Prohibited Transaction Exemption 87–78; Exemption Application No. D–7077]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(b)(1) (A) through (E) of the Code, shall not apply to the extension of credit to the Plan by InterFirst Corporation, the sponsor of the Plan and a party in interest with respect to the Plan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 26, 1987, at 52 FR 19610.

For Further Information Contact: Mr. C.E. Beaver of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Spreitzer, Inc. Profit Sharing Trust (the Plan) Located in Cedar Rapids, Iowa

[Prohibited Transaction Exemption 87–79; Exemption Application No. D–7094]

Exemption

The restrictions of section 406(a)(1), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) The proposed loans of funds (the Loans) for a period of five years by the Plan to Spreitzer, Inc., the Employer and sponsor of the Plan, under the terms and conditions described in the notice of proposed exemption, provided such terms and conditions are not less favorable to the Plan than those obtainable in an arm's length transaction with an unrelated party; and (2) the personal guarantee of the Loans to the Plan by Mr. Joseph Spreitzer, a party in interest with respect to the Plan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 12, 1987 at 52 FR 22561.

Temporary Nature of Exemption: This exemption is temporary in nature and will expire 5 years from the date of the granting of the exemption.

For Further Information Contact: Mrs. Betsy Scott of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 6th day of August, 1987.

Elliot I. Daniel,

Associate Director for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 87–18284 Filed 8–11–87; 8:45 am]

BILLING CODE 4510–29–M

MERIT SYSTEMS PROTECTION BOARD

Privacy Act of 1974; Systems of Records

AGENCY: Office of the Special Counsel, Merit Systems Protection Board.

ACTION: Proposed amendments to routine uses and exemptions of systems of records.

SUMMARY: The purpose of this document is to give notice, pursuant to subsection (e)(11) of the Privacy Act, 5 U.S.C. 552a, and 5 U.S.C. 553, of the intent to amend the routine uses of records required under subsection (e)(4)(D) of the Act and to state exemptions of systems of records as authorized by subsection (k) (2), (5) and (6) of the Act.

DATE: Written comments on the proposed amendments may be submitted by any person. These routine uses and exemptions shall become effective on September 15, 1987 unless comments received before this date justify amendments or deletions.

ADDRESS: Comments should be addressed to the Office of the Special Counsel, 1120 Vermont Avenue, NW., Suite 1100, Washington DC 20005. Comments received will be available for public inspection at the above address between the hours of 9 a.m. and 4 p.m., Monday through Friday, except for Federal holidays.

FOR FURTHER INFORMATION CONTACT: Henry Darnell Lewis, Office of the Special Counsel, 1120 Vermont Avenue, NW., Suite 1100, Washington, DC 20005, telephone (202) 653–8982.

SUPPLEMENTARY INFORMATION: The Office of the Special Counsel was created by Reorganization Plan No. 2 of 1978 (43 FR 36037) and the Civil Service Reform Act of 1978, Pub. L. No. 95–454, 92 Stat. 1111 (1978). By section 204 of the Reorganization Plan and the statute codified at 5 U.S.C. 552(a)(4)(F), 1206, 1303, the Special Counsel is required to investigate any allegation or other indication of a prohibited personnel practice and is authorized to investigate certain other prohibited activity, including but not limited to alleged violations of the Hatch Act and certain other prohibited political activity. Documentation of the official activities of the Office of the Special Counsel will include certain records subject to the provisions of the Privacy Act: Correspondence and complaint files retrieved by the name of a person filing an allegation of a prohibited personnel practice or other prohibited activity; investigative files retrieved by the name of a person pertaining to allegations of prohibited political activity, prohibited personnel practice or other prohibited activity; and litigation-related files retrieved by the name of a non-Government party to a lawsuit. All other files created during the performance of official duties will be indexed and

retrieved by the appropriate subject matter and/or agency involved.

Any suggestions received during the comment period which require changes to this notice will be accommodated by revisions which will be published subsequently in the Federal Register.

Mary F. Wieseman,
Special Counsel.

MSPB/OSC-1

SYSTEM NAME:

OSC Complaint, Litigation and Political Activity Files.

SYSTEM LOCATION:

Office of the Special Counsel, Merit Systems Protection Board, 1120 Vermont Avenue, NW., Suite 1100, Washington, DC 20005.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any person who files an allegation of prohibited personnel practices or other prohibited acitivity or who is accused of such practices or activity, or who is alleged to have participated in prohibited political activity.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence between a person filing an allegation of prohibited personnel practices or other prohibited activity and the Office of the Special Counsel or another agency; statements of alleged prohibited political activity and related reports of investigation, affidavits, correspondence, letters of charges, and administrative determinations; records created or compiled in connection with litigation involving directly or indirectly the Office of the Special Counsel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEMS:

5 U.S.C. 552(a)(4)(F), 1206–1208, 1504, 7321–7325.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES, MAY BE AS FOLLOWS:

a. To disclose the fact that an allegation of prohibited personnel practices or other prohibited activity has been filed;

b. To disclose information to the Office of Personnel Management pursuant to Civil Service Rule 5.4 (5 CFR 5.4), or to obtain an advisory opinion concerning the application or effect of civil service laws, rules, regulations or OPM guidelines in particular situation.

c. To disclose to the Equal Employment Opportunity Commission and any other agency or office concerned with the enforcement of the antidiscrimination laws, information concerning any allegation or complaint of discrimination based on race, color, religion, sex, national origin, age or handicapping condition;

d. To disclose information to the Merit Systems Protection Board or the President upon the filing or referral of a disciplinary action complaint against an employee on the basis of an OSC investigation;

e. To disclose information to an agency, the Merit Systems Protection Board, the Office of Personnel Management and the President in reporting, under 5 U.S.C. 1206(c)(1), the results of investigations which disclose reasonable grounds to believe a prohibited personnel practice has occurred, exists, or is to be taken;

f. To disclose information to Congress in connection with the submission of an annual report on activities of the Special Counsel;

g. To disclose information to any agency or person regarding allegations of prohibited personnel practices or other prohibited activity or prohibited political activity filed against an agency or any employee thereof, for the purposes of conducting an investigation; in transmitting information to an agency under 5 U.S.C. 1206(b) and the OSC procedures established thereunder; or to give notice of the status or outcome of the investigation;

h. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested), where necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the letting of a contract, or the issuance of a license, grant, or other benefit;

i. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circluar No. A-19.

j. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office (made at the request of that individual);

k. To furnish information to the National Archieves and Records Administration in records management inspections conducted under authority of 4 U.S.C. 2904 and 2906;

l. By the Special Counsel in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained or for related work force studies;

m. To disclose relevant and necessary information to the Department of Justice when:

(1) OSC is a party to litigation,

(2) An OSC officer or employee, in an official capacity, is a party to litigation,

(3) An OSC officer or employee, in an individual capacity, is a party to litigation, where the Department of Justice has agreed to represent that officer or employee, or

(4) The United States, and not OSC specifically, is a party to litigation, and OSC determines that the litigation is likely to affect OSC.

In each case, however, disclosure of records or information will be only to the extent compatible with the purpose for which the records were collected, as determined by OSC;

n. To disclose relevant and necessary information when:

(1) OSC is a party to litigation,

(2) An OSC officer or employee, in an official capacity, is a party to litigation,

(3) An OSC officer or employee, in an individual capacity, is a party to litigation, where OSC or the Department of Justice has agreed to represent that officer or employee, or

(4) The United States, and not OSC specifically, is a party to litigation, and OSC determines that the litigation is likely to affect OSC.

In each case, however, disclosure of records or information will be only to the extent compatible with the purpose for which the records were collected, as determined by OSC;

o. To disclose information to the Merit Systems Protection Board to aid in the conduct of special studies by the Board under 5 U.S.C. 1205(a)(3); and

p. To disclose information to the Office of Inspector General or comparable internal inspection audit or oversight office of an agency for the purpose of facilitating the coordination and conduct of investigations and review of allegations within the purview of both the Office of the Special Counsel and the agency Office of Inspector General or comparable office.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders, on lists, index cards, forms, and on computer storage equipment.

RETRIEVABILITY:

These records are retrieved by the name of the person (or the person's

representative, or both) who filed an allegation of a prohibited personnel practice or other prohibited activity, or who is accused of such a practice or activity, or who is alleged to have participated in prohibited political activity.

SAFEGUARDS:

These records are located in lockable metal file cabinets or in secured areas with access limited to those personnel whose official duties require access:

RETENTION AND DISPOSAL:

The National Archives and Records Administration (NARA) retains records concerning prohibited personnel practices and other prohibited activity for three years after the matter or case is closed. Disposal is accomplished by NARA.

SYSTEM MANAGER AND ADDRESS:

William E. Caldwell, 1120 Vermont Avenue, NW, Suite 1100, Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals who wish to inquire whether this system contains information about them should contact the system manager. To assist in the process of locating and identifying records, individuals should furnish the following:

a. Name and address;
b. Date and place of birth;
c. Social security number;
d. A description of the circumstances under which records may have been included in this system.

RECORDS ACCESS PROCEDURE:

Same as notification procedure.

CONTESTING RECORD PROCEDURE:

Individuals who wish to contest records about them should contact the system manager, identify any information they believe should be corrected, and furnish a statement of the basis for the requested correction along with all available supporting documents and materials.

RECORDS SOURCE CATEGORIES:

Information in this system of records is obtained from the subjects of the records, from agency officials, from agency documents, from witnesses, and from any other persons or organizations furnishing information pertinent to the discharge of functions for which the Office of the Special Counsel is responsible.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

a. Complaint, Litigation and Political Activity Files containing investigatory material compiled by the Office of the Special Counsel for law enforcement purposes are exempt to the extent allowed under subsection (k)(2) and (5) of the Privacy Act. This exemption is necessary to protect confidential sources and facilitate the voluntary cooperation of witnesses during inquiries into allegations of prohibited personnel practices or other prohibited activity.

b. Testing or examination material compiled by the Office of the Special Counsel solely to determine individual qualifications for appointment or promotion in the Federal service is exempt to the extent allowed under subsection (k)(6) of the Privacy Act. This exemption is necessary to prevent the disclosure of information which would potentially give an individual an unfair competitive advantage or diminish the utility of established examination procedures.

c. The Office of the Special Counsel reserves the right to assert exemptions for records received from another agency that could be properly claimed by that agency in responding to a request and the Office of the Special Counsel may refuse access to information compiled in reasonable anticipation of a civil action or proceeding, as allowed by subsection (d)(5) of the Privacy Act.

[FR Doc. 87-18043 Filed 8-11-87; 8:45 am]
BILLING CODE 7405-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATE: Comments on this information collection must be submitted by August 28, 1987.

ADDRESSES: Send comments to Mr. Joseph Lackey, Office of Management and Budget, New Executive Office Building, 727 Jackson Place, NW., Room 3002, Washington, DC 20503 (202–395–7316). In addition, copies of such comments may be sent to Ms. Marianna Dunn, National Endowment for the Arts, Administrative Services Division, Room 3203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202–682–5464).

FOR FURTHER INFORMATION CONTACT: Ms. Marianna Dunn, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202–682–5464); from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests the reinstatement of a previously approved collection for which approval has expired and the extension of a currently approved collection. Each entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must ber reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: Theater Application Guidelines FY 1988/89.

Frequency of Collection: One-time.

Respondents: Individuals, state or local governments, and non-profit institutions.

Use: Guideline instructions and applications elicit relevant information from individual artists, nonprofit organizations, and state or local arts agencies that apply for funding under specific Program categories. This information in necessary for the accurate, fair and thorough consideration of competing proposals in the peer review process.

Estimated Number of Respondents: 751.

Estimated Hours for Respondents to Provide Information: 17,167.

Title: Challenge II Grants Application Guidelines FY 1989.

Frequency of Collection: One-time.

Respondents: Non-profit Institutions.

Use: Guideline instructions and applications elicit relevant information from nonprofit organizations that apply for funding under specific Program categories. This information is necessary for the accurate, fair and thorough consideration of competing proposals in the peer review process.

Estimated Number of Respondents: 125.

Estimated Hours for Respondents to Provide Information: 15,000.

Murray R. Welsh,

Director, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 87-18318 Filed 8-11-87; 8:45 am]
BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Bi-weekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular bi-weekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This bi-weekly notice includes all notices of amendments issued, or proposed to be issued from July 20, 1987 through July 31, 1987. The last bi-weekly notice was published on July 29, 1987 (52 FR 28369).

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 11, 1987, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that

the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Arizona Public Service Company et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530 Palo Verde Nuclear Generating Station (PVNGS), Units 1, 2 and 3, Maricopa County, Arizona

Date of amendment request: January 23, 1987, as supplemented by letters dated April 23, June 8 and July 17, 1987

Description of amendment request: The proposed amendments consist of proposed changes to the Technical Specifications (Appendix A to Facility Operating License Nos. NPF-41 for PVNGS, Unit 1, NPF-51 for PVNGS, Unit 2, and NPF-65 for PVNGS, Unit 3).

The proposed changes would revise Technical Specification (Tech Spec) Sections 1.0, 2.0, 3/4.1.1, 3/4.1.2 and 3/4.10.1 to reduce the boration requirements when the reactor is shut down, by modification of the shutdown margin requirements as follows:

(1) A new parameter, K_{N-1}, is proposed and defined as the K_{eff} calculated by considering the actual Control Element Assembly (CEA) configuration and assuming that the partially or fully inserted rod of highest inserted worth is fully withdrawn.

(2) Limiting Conditions for Operation (LCOs) 3.1.1.1 and 3.1.1.2 require that for Modes 1-4, the shutdown margin be greater than or equal to 6% delta K/K and for Mode 5 be greater than or equal to 4% delta K/K. The proposed changes would revise the shutdown margin requirements for Modes 1-5 according to full length CEA position. The revised Tech Spec 3.1.1.1 would be applicable when all full length CEAs are fully inserted and would require that for Modes 3-5, the shutdown margin be greater than or equal to 1% delta K/K. The revised Tech Spec 3.1.1.2 would be applicable when any full length CEA is with drawn and would require that for Modes 1-5, the shutdown margin be greater than or equal to that given in a new Figure 3.1-1A. For a reactor coolant cold leg temperature less than or equal to 500° F, the proposed changes to Tech Spec 3.1.1.2 would also require K_{N-1} to be less than 0.99. The LCO action statements would also be revised to require boration when the above shutdown margin requirements are not met.

Surveillance Requirements 4.1.1.1.1 and 4.1.1.2 require that the shutdown margin be verified at given time intervals to satisfy the LCO requirements. The proposed changes would revise Tech Specs 4.1.1.1.1 and 4.1.1.2 to require that the shutdown margin be verified to the proposed new LCO requirements, as described above. In addition, the proposed changes would require that K_{N-1} be determined to be less than 0.99 at least once every 24 hours.

The associated Bases 3/4.1.1 and 3/4.1.2 would also be revised to reflect the proposed changes.

(3) The Action Statements for LCOs 3.1.2.2, 3.1.2.4, and 3.1.2.6, for Modes 1-4, require in part that when the requirements of the LCOs are not met, boration be carried out to a shutdown margin equivalent to at least 6% delta K/K at 210° F. The proposed changes would delete reference to the current shutdown margin requirements since they would be revised to the proposed values.

(4) LCO 3.1.2.3 currently restricts the number of charging pumps that may be in operation to one pump during plant operation in Mode 5 whenever the reactor coolant level is below the bottom of the pressurizer (i.e., whenever the reactor coolant system (RCS) has been drained for maintenance). The proposed change would delete this restriction from LCO 3.1.2.3 since the revised supporting analysis of an inadvertent deboration event bounds Mode 5 operation with the system partially drained.

(5) Tables 3.1-1 through 3.1-5 specify surveillance intervals during periods when a boron dilution alarm is inoperable. The proposed changes would make these tables more restrictive. The applicability of the surveillance intervals which apply during Mode 5 drained conditions would be expanded to apply any time during Mode 4 or 5 operation whenever the RCS is being cooled by the shutdown cooling system. Several of the surveillance frequencies given in the tables would be changed to be consistent with the supporting analysis. Mode 6 requirements would be deleted from Tables 3.1-1 through 3.1-4 since the K_{eff} range of these tables is above the K_{eff} definition for Mode 6 (i.e., K_{eff} less than 0.95) and, hence, Mode 6 would not apply.

(6) LCO 3.10.1 currently permits suspension of the shutdown margin requirement of Tech Spec 3.1.1.1 for performing measurements of CEA worth and shutdown margin during physics tests, provided that a reactivity equivalent to at least the highest estimated CEA worth is available for trip insertion, or the reactor is subcritical by that amount. The proposed changes would revise LCO 3.10.1 to reflect the new proposed shutdown margin requirements, including K_{N-1}, and to reflect that Tech Spec 3.1.1.2 would be the appropriate reference for shutdown margin requirements instead of Tech Spec 3.1.1.1.

(7) The proposed changes would add Special Test Exception 3.10.9 to allow the facility to suspend the requirements of the proposed revised Tech Specs 3.1.1.1 and 3.1.1.2 for the demonstration of the operability of the control element drive mechanism (CEDM) system during pre-startup tests, provided that no more than one CEA is withdrawn at any time (maximum of seven inches) and the K_{N-1} requirement of proposed Tech Spec 3.1.1.2 is met prior to start of testing. Basis 3/4.10.9 would also be added to reflect this change. This special test exception would allow the operator to perform control element drive mechanism tests prior to startup without being concerned about alternating

between the requirements of proposed Tech Spec 3.1.1.1 (all rods in) and proposed Tech Spec 3.1.1.2 (any rod withdrawn).

(8) As a result of proposed changes (1) through (3), (6) and (7) above, it is necessary to propose changes to setpoints that provide reactor trips in order to prevent the core from exceeding its safety limits in terms of departure from nucleate boiling ratio (DNBR) and local power density. These proposed changes, which are more restrictive, would consist of two parts:

(a) Item B.2 of Table 2.2-1 specifies a trip setpoint for "Excore Neutron Flux - Logarithmic Power Level - High" of less than or equal to 0.798% of rated thermal power, and an allowable value of less than or equal to 0.815% of rated thermal power. The proposed changes would revise the trip setpoint and allowable value to 0.010% and 0.011% of rated thermal power, respectively.

(b) Table notation (c) of Table 3.3-1 and Table notation (5) of Table 2.2-1 state that CPC trips may be manually bypassed below 1% of rated thermal power and the bypass shall automatically be removed when thermal power is greater than or equal to 1% of rated thermal power. The proposed changes would revise the value at which the CPC trip may be manually bypassed and at which the manual bypass is automatically removed, from 1% of rated thermal power to 10 % of rated thermal power.

(9) The proposed changes would renumber Special Test Exception 3.10.9 "Natural Circulation Testing Program" (Unit 1 only) to 3.10.10. This change is necessary so that the Special Test Exception added in item (7) above will be the same section number in the Technical Specifications for all units.

The purpose of the Technical Specifications affected by these proposed changes is to improve ALARA benefits by reducing the amount of makeup water that must be processed during shutdowns while ensuring that an adequate shutdown margin is maintained in the reactor at all times.

Basis for No Significant Hazards Consideration Determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

A discussion of these standards as they relate to the amendment request follows:

Standard 1 - Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The anticipated operational occurrences (AOOs) and accidents that have the potential for being impacted by the proposed changes are steam line break, CEA withdrawal, CEA injection, inadvertent deboration and startup of an inactive reactor coolant pump (RCP). A discussion of how the proposed changes affect the consequences of these AOOs and accidents is presented below.

Standard Review Plan (SRP) Section 15.1.5 requires that steam line break events be evaluated considering potential for fuel damage. If the minimum DNBR during a steam line break event falls below specified limits based on acceptable correlations, fuel damage must be assumed. The results of the limiting steam line break analysis with the proposed changes indicate that the minimum post-trip DNBR remains well above the specified safety limits.

SRP Section 15.4.3 requires that the consequences of an uncontrolled CEA withdrawal from a subcritical or low power startup condition be evaluated on the basis that they are acceptable if the minimum DNBR remains above specified limits based on acceptable correlations. The reevaluation of the limiting CEA withdrawal analysis with the proposed changes indicates that the minimum DNBR will remain above the plant safety limit of 1.231.

SRP Section 15.4.8 requires that for a CEA ejection, the reactivity excursion should not result in a radially averaged enthalpy greater than 280 cal/gm at any axial location in any fuel rod. Reevaluation of the limiting CEA ejection accident concurrent with the introduction of the proposed K_{N-1} requirement ensures that the safety analysis acceptance criterion will be met.

SRP Section 15.4.6 requires that for an inadvertent boron dilution, a minimum time interval of 15 minutes for MODES 1 through 5, and 30 minutes for MODE 6, be available from the time an alarm makes the operator aware of an unplanned boron dilution and before a complete loss of shutdown margin occurs. With the proposed changes, the time to a complete loss of shutdown margin for the limiting inadvertent boron dilution is 52 minutes as compared to 95 minutes for the previously analyzed incident. Therefore, although the available time would be reduced, there is still sufficient time, greater than required minimum intervals, to alert the operator of an unplanned boron dilution prior to a complete loss of shutdown margin.

SRP Section 15.4.4 requires that for a startup of an inactive RCP, fuel clad integrity should be maintained by ensuring that specified acceptable fuel design limits are not exceeded. The results of a limiting startup of an inactive RCP with the proposed changes indicate that the reactor remains subcritical and the specified acceptable fuel design limits are not exceeded, thus maintaining fuel clad integrity.

The proposed change to lower the setpoint of the high logarithmic power trip will provide the trip function earlier than the previous setpoint. This trip provides protection in the event of an inadvertent bank withdrawal from Modes 2 and 3 initial conditions with four RCPs operating. The proposed change to lower the value of power below which the CPC trip can be bypassed, and above which the manual bypass is automatically removed, also provides added protection for an inadvertent CEA bank withdrawal postulated to occur in Modes 3, 4, or 5 with less than four RCPs operating. If the reactor coolant pressure or temperature is outside the CPC wide range trip limits, a continuous reactor trip signal will be generated by all four CPC channels and an immediate reactor trip will terminate an inadvertent CEA bank withdrawal event before significant power is generated. The events in Modes 2 and 3 with four RCPs operating, and the events in Modes 3, 4, and 5 with less than four RCPs operating, have been determined to be less limiting than the CEA bank withdrawal event presented in the Palo Verde Final Safety Analysis Report. Also, the proposed changes do not alter how the CPCs respond to design basis events.

Therefore, operation of the facility in accordance with the proposed changes will not involve a significant increase in probability or consequences of any accident previously evaluated.

Standard 2 - Create the Possibility of a New or Different Kind of Accident from any Accident Previously Evaluated.

The proposed changes do not involve any changes in plant hardware or in plant power operation. Although some of the proposed changes will result in modification to the operating procedures and plant operation in the shutdown modes, operation of the facility in accordance with the proposed changes

will not create the possibility of a new or different kind of accident from any accident previously evaluated since the effects of the changes are within the envelope of previously evaluated accidents.

Standard 3 - Involve a Significant Reduction in a Margin of Safety

The proposed Shutdown Margin for plant operation in the shutdown modes would be reduced, so that the time between the start of an inadvertent boron dilution accident and the complete loss of the shutdown margin would be reduced from 95 minutes to 52 minutes. However, as indicated in the discussion under Standard 1, there is still sufficient time to alert the operator of an unplanned boron dilution accident (15 minutes required in Modes 1 through 5, and 30 minutes required in Mode 6). Also, the lower logarithmic power level trip setpoint and automatic removal of the CPC manual bypass at a lower power level would result in an earlier reactor protective system actuation for the postulated transients. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Based on the above considerations, the Commission proposes to determine that the proposed amendments do not involve any significant hazards considerations.

Local Public Document Room location: Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004.

Attorney for licensees: Mr. Arthur C. Gehr, Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85007.

NRC Project Director: George W. Knighton

Boston Edison Company Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: July 28, 1987.

Description of amendment request: This amendment will revise Technical Specification Table 4.2.A to specify the correct calibration frequency for the reactor high pressure instrument channel. The installation of an Analog Trip System (ATS) at Pilgrim Station required a change to the Technical Specifications. The change was granted by the NRC as Amendment No. 99, which became effective on April 2, 1987. Incorrectly included in both the proposal and Amendment No. 99 was a change to the surveillance frequency of the Reactor High Pressure instrument channel. This instrument channel was not part of the ATS modification, and its Technical Specification surveillance requirements should not have been changed.

Basis for proposed no significant hazards consideration determination: A proposed amendment to an operating license for a facility involves no significant hazards considerations if the three standards of 10 CFR 50.92(c) are met. Pursuant to the provisions of 10 CFR 50.91, the licensee has provided an analysis of no significant hazards considerations using the Commission's standards. The Commission's staff agrees with the licensee's analysis. Each standard of 10 CFR 50.92(c) is discussed in turn.

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change returns the minimum test and calibration frequency for the Reactor High Pressure instrument channel to the frequency specified before Technical Specification Amendment No. 99 was issued. Since the change made to the reactor High Pressure instrument channel by Amendment No. 99 should not have been made, this change returns the surveillance frequency requirements to values that have been previously evaluated and accepted.

2. The proposed amendment will not create the possibility of a new or different kind of accident from an accident previously evaluated.

Since this proposed change will correct a past change to the Technical Specifications by reestablishing the original requirements, there is no possibility of creating a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment will not involve a significant reduction in a margin of safety.

The margin of safety for this instrument channel will be unchanged since the minimum test and calibration frequency will be restored to the original frequency.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Attorney for licensee: W. S. Stowe, Esq., Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Project Director: V. Nerses.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: May 4, 1987

Description of amendment request: This amendment request would revise the surveillance requirements for the containment prestressing system to comply with the draft version of the ASME Boiler and Pressure Vessel Code, Section XI, Subsection IWL and proposed Revision 2 to Regulatory Guide 1.35.

Basis for proposed no significant hazards consideration determination: The licensee has performed an analysis regarding the no significant hazards consideration as follows:

The proposed revision to the surveillance method incorporates current methods of conducting inservice inspections of prestressed concrete containments. The proposed changes incorporate the revisions agreed upon by the NRC and Consumers Power Company in the resolution of SEP Topic III-7.A as described in the Integrated Plant Safety Assessment, NUREG-0820, October 1982. The revisions to the method of conducting lift-off readings and conducting of the laboratory testing and acceptance criteria are acceptable methods per the pending ASME B&PV Code, Section XI, Subsection IWL. There are no changes to the physical part of the surveillance field activities. The deletion of several sections in the specifications is considered editorial to remove obsolete requirements that have been previously accomplished and described in the Updated FSAR. As a result, there is no increase in the probability of occurrence or consequences of an accident or malfunction of equipment and the possibility of a new or different accident has not been created.

The change does not result in a reduction in the margin of safety as defined in the basis of the Specifications as in the FSAR. The revisions in measurement methods, definition of laboratory testing and acceptance criteria do not affect the basis of the Specifications.

Additionally, the number of tendons undergoing complete detensioning has been reduced from the previous requirements. This acceptable reduction ensures the margin of safety of the containment structure is not affected by detensioning and retensioning a larger sample than is necessary to conduct an appropriate surveillance program.

The Commission's staff agrees with this determination and therefore proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Attorney for licensee: Judd L. Bacon, Esq., Consumers Power Company, 212

West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: Martin J. Virgilio.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: May 28, 1987

Description of amendment request: This amendment request would remove the Tables of specific piping snubbers from the Technical Specifications in accordance with the guidance in NRC Generic Letter 84-13, delete the numerical value of the acceptance criterion for drag force for mechanical snubbers, and clarify the functional testing requirements for snubbers of rated capacity greater than 50,000 pounds.

Basis for proposed no significant hazards consideration determination: The licensee has made the following analysis with regard to the significant hazards consideration:

The deletion of Tables 3.20.1 and 3.20.2, "Safety Related Hydraulic and Mechanical Shock Suppressors (Snubbers)," from the Technical Specifications is addressed in NRC Generic Letter 84-13, and is acceptable as long as the Technical Specifications are modified to specify which snubbers are to be operable. This has been done in Technical Specification 3.20 by stating that the only snubbers excluded from Technical Specifications requirements are those snubbers that are installed on non-safety related systems, and then only if their failure, or failure of the system on which they are installed, would have no adverse effect on any safety related system. The snubbers that the proposed requirements are applicable to are those listed in present Tables 3.20.1 and 3.20.2. The information contained in Tables 3.20.1 and 3.20.2 will be retained in Engineering Manual (EM) 09-07, "Testing of Plant Snubbers."

Any future deletion of snubbers now listed in Tables 3.20.1 and 3.20.2 would constitute a specification or facility change and require a subsequent change be made to EM-09-07; thus, requiring a 10 CFR 50.59 Safety Evaluation to be performed and subsequent review by the Plant Review Committee (PRC). These administrative controls governing plant modifications will ensure that neither the probability of occurrence nor the consequences of an accident or malfunction of equipment important to safety are increased by removing the tables from the Technical Specifications. The administrative controls also will ensure the possibility of an accident or malfunction of a different type will not be created with removal of the tables.

The changes in Technical Specification 4.16.1c were made to clarify the plant's current practice of testing 25% of snubbers with rated capacity greater than 50,000 pounds each refueling outage. Snubbers in this category are considered a separate entity from all others which are functionally tested in a representative sample lot consisting of 10% of the total each inspection period per ASME Code, Section XI. Therefore, snubbers of rated capacity greater than 50,000 pounds will receive a higher frequency of testing, so that the possibility of occurrence or consequences of an accident or malfunction of equipment important to safety is decreased.

The deletion of the specific mechanical functional test acceptance criteria value from Technical Specifications will not increase the probability of occurrence of an accident or malfunction of equipment important to safety, because the specific acceptance criteria value will be (as it currently is) controlled in a Technical Specification Surveillance Procedure. This is consistent with the current treatment of hydraulic snubbers and the manner in which acceptance criteria are presented in Standard Technical Specifications. Surveillance Procedures governing the functional testing of both mechanical and hydraulic snubbers are controlled procedures requiring a PRC review, and require a 10 CFR 50.59 Safety Evaluation be performed prior to procedure revision. These administrative controls, including the procedures, reviews, and safety evaluations will ensure the possibility of an accident or malfunction of a different type has not been created by this Technical Specifications Change. With the administrative controls, the deletion of the specific test acceptance criteria will not affect the margin of safety.

The removal of the snubber tables from the Technical Specifications in conjunction with the addition of the redefined Applicability statement in proposed Specification 3.20 does not affect the margin of safety.

The proposed functional test requirements in Specification 4.16.1c and the bases for 4.16 were changed to incorporate the commitment to test 25% of the snubbers with rated capacity greater than 50,000 pounds during each refueling outage. These proposed changes represent additional Technical Specification controls that exceed the required ASME Code, Section XI requirements for sample size (i.e., 25% of the total each refueling outage versus 10% of the total each inspection period). These additional controls will increase the margin of safety that is defined in the basis of the Technical Specifications.

The Commission's staff agrees with this analysis and therefore proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Attorney for licensee: Judd L. Bacon, Esq., Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: Martin J. Virgilio.

Dairyland Power Cooperative, Docket No. 50-409, LaCrosse Boiling Water Reactor, LaCrosse, Wisconsin

Date of amendment request: June 17, 1987

Description of amendment request: The licensee proposes that License No. DPR-45 for the permanently shutdown and defueled LaCrosse Boiling Water Reactor (LACBWR) be amended to: (1) revise the Technical Specifications (TS) to state that the reactor will not be operated; (2) delete TS requirements for reactor nuclear instrumentation channels to be in operation; and (3) delete TS requirements to perform inservice inspection of high pressure primary systems and the TS requirement to use NUREG-0313, Revision 1, to govern repair and replacement of piping.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation and/or maintenance of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed changes with respect to 10 CFR 50.92(c) and has determined that the proposed amendment would not:

(1) involve a significant increase in the probability or consequences of an accident previously evaluated. Removing the TS reference to reactor operation is strictly an administrative change to support the previously

proposed license amendment for possess-but-not-operate status. Eliminating the requirement to keep a nuclear instrumentation channel in operation will have no effect on accident probability or consequences, since the reactor has been permanently shut down and defueled. Terminating inspection of piping that will no longer be used as a pressure boundary and inspection of components which will no longer be utilized cannot increase the probability or consequences of an accident, since there will be no significant adverse consequences if these components fail. Additionally, removing requirements dealing with NUREG-0313, which applies to BWR Coolant Pressure Boundary piping above 200° F, will have no effect on the probability or consequences of an accident, since the plant will not be in the condition for which the NUREG was written;

(2) create the possibility of a new or different kind of accident from any accident previously evaluated. Non-operation of the reactor will not create the possibility of a new type of accident. Eliminating the need to monitor a defueled reactor with nuclear instrumentation cannot cause a new type of accident because there is nothing for the instrumentation to monitor. Terminating inspection of piping and components not required to be operable cannot cause a new type of accident, since unneeded piping and components pose no new accident threat; or

(3) involve a significant reduction in a margin of safety. Cessation of plant operation will not cause a reduction in the margin of safety since the margin of safety relates to plant operation. Eliminating neutron monitoring of a reactor with no fuel assemblies in it cannot reduce the margin of safety. Termination of inservice inspection of unused primary system piping and components and of related systems will have no effect on the margin of safety. Deletion of requirements pertaining to NUREG-0313 will have no effect on the margin of safety, since the primary system is in a cold shutdown status and the NUREG applies to a reactor coolant pressure boundary above 200° F.

Based on the above, the licensee has determined that the proposed amendment does not involve a significant hazards consideration. The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: LaCrosse Public Library, 800 Main Street, LaCrosse, Wisconsin 54601.

Attorney for licensee: Kevin Gallen, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Duquesne Light Company, Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of amendment request: March 9, 1987

Description of amendment request: The proposed amendment covers a number of pages in the Technical Specifications addressing allowable enrichments and configurations for fuel stored in the spent fuel storage pool. The affected specifications are:

1. Section 3.9.14 and an accompanying Table 3.9-1 would be added to specify allowable enrichment and configurations for stored fuel.
2. Basis Section 3/4.9.14 would be added to provide the bases for the above specifications.
3. Section 5.3.1 would be amended to specify a higher enrichment of 4.5 weight percent U-235 (currently 3.3 weight percent), and
4. Section 5.6.1 would be revised to reference appropriate sections in the FSAR where the spent fuel pool criticality analysis can be found.

The proposed new specifications, with associated guidance incorporated into existing administrative controls would permit storage of fuel with up to 4.5 weight percent U-235. The pool would be separated into two regions. Spent fuel pool region 1 would provide for storage of fuel with enrichments up to 4.5 weight percent U-235 in an administratively controlled 2-of-4 cell array and up to 4.0 weight percent U-235 in an administratively controlled 3-of-4 cell array. Region 2 would provide for storage of fuel assemblies with the burnup-dependent enrichment limitations provided in Table 3.9-1. Also, the boron concentration in the spent fuel pool would be specified to be maintained at greater than or equal to 1050 ppm when moving fuel in the spent fuel pool. Sub-criticality would be maintained by limiting fuel assembly interaction and maintaining the minimum boron concentration.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

There is no change in fuel pool hardware, but the associated Updated Final Safety Analysis Report will be changed to include analyses to demonstrate that fuel pool and stored fuel will comply with unchanged performance objectives and limitations (e.g., criticality and heat dissipation). The criticality analysis acceptance criteria (K_{eff} less than 0.95) is consistent with that stated in the FSAR. The segregation of the spent fuel pool into regions 1 and 2 and appropriate administrative constraints ensure that analysis assumptions are valid and that performance criteria would be met when fuel is not being moved. In addition to the administrative constraints available to maintain appropriate fuel storage configurations, the minimum boron concentration will ensure that criticality will not be achieved even if new fuel assemblies were not stored in the specified checkerboard arrays. Fuel assembly decay heat production is a function of core power level, and since the core power level would remain unchanged, the decay heat load on the spent fuel pool cooling system would not be affected by the proposed enrichment limits.

The radiological consequences of the fuel handling accident are dependent, among other factors, upon power level of the reactor. There is no power level change associated with the proposed amendment and since all other factors would not be changed by this amendment, the consequences of the fuel handling accident would not be changed.

No hardware modification is involved and the changes to existing administrative controls involve only prescription of the loading patterns to accommodate a greater variety of fuel assembly enrichments without change in performance, there is no increase in the probability of the fuel handling accident previously analyzed in the FSAR, and there is no possibility of a new or different type of accident from any previously evaluated. Furthermore, there is no change in any acceptance criterion as stated above; therefore there is no reduction of a safety margin.

Accordingly, the staff has made a proposed determination that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: John F. Stolz

Duquesne Light Company, Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of amendment request: June 9, 1987

Description of amendment request: The wall separating the Unit 1 and Unit 2 control rooms was removed to provide a common control room area for the two units. The Beaver Valley Unit 2 accident analyses indicate that the control room must be isolated on a high radiation signal in order to meet 10 CFR Part 50, Appendix A, General Design Criterion 19. This is described in Sections 6 and 15 of the Unit 2 FSAR. As a result, two area radiation monitors were added to the Unit 2 side of the shared control room and two area radiation monitors were installed in the Unit 1 side.

The proposed amendment would impose currently nonexistent specifications on these new radiation monitors. These specifications would be added to Tables 3.3-6 and 4.3-3 of the Technical Specifications.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing certain examples (51 FR 7751). One of these examples of actions involving no significant hazards considerations is example (ii), which is "a change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications." The accidents these new monitors are designed to protect against have been defined in the Unit 2 FSAR and are a result of different licensing criteria applying to Unit 2 compared to Unit 1. Therefore, there is no equivalent accident analysis for Unit 1. The imposition of the requested amendment thus matches the quoted example and the staff, therefore, proposes to determine that the requested amendment involves no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: John F. Stolz

Duquesne Light Company, Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of amendment request: July 1, 1987

Description of amendment request: The proposed amendment would revise the battery (emergency d-c power) surveillance requirements to reflect a design change and the battery manufacturer's recommendation:

(1) The licensee upgraded the design of the batteries in accordance with 1EEE 535-1979, "Qualification of Class 1E Lead Storage Batteries for Nuclear Power Generating Stations." The proposed amendment to Section 4.8.2.3.2 would specify the battery terminal voltages for 59-cell and 60-cell designs in accordance with the manufacturer's recommendation.

(2) Table 3.8-1, "Battery Surveillance requirements," would be revised to impose requirements on cell voltage and electrolyte specific gravity for the new cells, in accordance with the manufacturer's recommendation.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing certain examples (51 FR 7751). One of these examples of actions involving no significant hazards considerations is example (ix) which involves "A repair or replacement of a major component or system important to safety, if ...repair or replacement component or system does not result in a significant change in its safety function or a reduction in any safety limit (or limiting condition of operation) associated with the component or system." The requested amendment matches this example and the staff, therefore, proposes to determine that the requested amendment involves no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: John F. Stolz

Duquesne Light Company, Docket No. 50-412, Beaver Valley Power Station, Unit No. 2, Shippingport, Pennsylvania

Date of amendment request: July 14, 16, 22 and 31, 1987

Description of amendment request: The proposed amendment would revise the lowpower license (NPF-64), or the full-power license if it had been issued to supersede the low-power license, to allow sale and leaseback transactions by each of the four current owners (Duquesne Light Company, Ohio Edison Company, Cleveland Electric Illuminating Company and Toledo Edison Company) relating to their respective ownership interest in Beaver Valley Unit 2 (BVPS-2).

Specifically, the utilities request authorization for transfer of their ownership interests in BVPS-2 to equity investors, and for the simultaneous transfer by the equity investors back to the utilities of a long-term (approximately 29.5 years) possessory leasehold interest of these shares under the terms described in the requests for amendment and other identified documents.

The utilities stated that the equity investors will be third parties not affiliated with them. These equity investors might include electric utilities, or affiliates or subsidiaries thereof, in which case antitrust considerations may be present. Under the proposed transaction, the utilities would remain in possession of their partial interests in the BVPS facilities under leaseholds rather than by virtue of ownership. Duquesne Light Company would continue to be the sole licensed operator of the facility in accordance with the BVPS-2 operating license. Each utility will have the full and exclusive authority and responsibility to exercise and perform all of its rights and duties as a party to the BVPS operating agreement. Each utility will also retain its responsibility for the payment of its share of the operating and maintenance expenses and costs of capital improvements during the term of the leaseholds and thereafter, in the absence of other Commission action, for its share of the cost of decommissioning BVPS-2.

The proposed amendment is similar to two already approved for Palo Verde Nuclear Generating Station, Units 1 and 2, and Perry Nuclear Power Plant, Unit 1.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed

amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed amendment would not change or affect any aspect of the plant design, criteria or operation. The amendment would maintain each utility in possession of its present interests in BVPS-2 and each utility will continue to be obligated to pay its share of all costs of construction, maintenance, operation, capital improvements and decommissioning. The equity investors would not have any rights of possession in, or control over BVPS-2. Duquesne Light Company would continue to be the sole licensee authorized to use and operate the facility.

Based on the above considerations, the staff concludes that the proposed amendment meets the three criteria in 10 CFR 50.92(c), and therefore proposes to determine that the requested amendment involves no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: John F. Stolz

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: May 20, 1987

Description of amendment request: The proposed change would revise the Technical Specifications to reflect the installation of the dedicated emergency feedwater tank which will be the primary source of water for the emergency feedwater (EFW) system, rather than the existing condensate storage tank. Design of the EFW tank was previously reviewed and approved by the NRC staff.

Basis for proposed no significant hazards consideration determination: The licensee stated that the design of the dedicated EFW tank meets or exceeds the design requirements of the existing EFW system primary water source (condensate storage tank). The EFW tank has been designed to withstand the effects of environmental loads including tornado missiles. It has also been designed to provide an increased useable volume of condensate quality water.

The licensee evaluated the proposed change in accordance with the standards of 10 CFR 50.92(c) and, based on the above, determined that operation in accordance with the proposed amendment will not:

(1) Involve a significant increase in the probability or consequence of an accident previously evaluated because of the increased reliability and capability of the EFW tank.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed change introduces no new mode of plant operation and provides for an additional volume of water for the EFW system.

(3) Involve a significant reduction in the margin of safety. This change will increase the margin of safety relative to cooldown of the reactor coolant system because it will increase the cooling capability of the EFW system.

The licensee therefore proposes that this amendment does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's evaluation. Based on the foregoing, the staff proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Crystal River Public Library, 668 NW., First Avenue, Crystal River, Florida 32629

Attorney for licensee: R. W. Neiser, Senior Vice President and General Counsel, Florida Power Corporation, P. O. Box 14042, St. Petersburg, Florida 33733

NRC Project Director: Lester S. Rubenstein

Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: May 13, 1987

Description of amendment request: The amendments would modify the technical specifications dealing with containment atmosphere hydrogen analyzers (TS 3/4.6.4.1). The analyzers provide containment hydrogen concentration indication to control room operators under accident conditions. If the amendments are approved, both St. Lucie Units will have the same hydrogen analyzer technical specifications. Each unit has different technical specifications at the present time.

With regard to Unit 2, the licensee proposes to modify the action statement which deals with an inoperable analyzer, and modify the sample gas requirements. Presently, an inoperable analyzer must be returned to service within 30 days. If it is not returned to service within 30 days, the reactor must be placed in at least a hot standby condition within the next 6 hours. The licensee proposes to modify the action statement such that if the inoperable analyzer is not returned to service within 30 days, a backup grab sample system will be activated within 24 hours and used until the inoperable analyzer is returned to service. Operability of the grab sample system will be confined at least once per 30 days thereafter. The licensee states that if the grab sample system is used in place of the inoperable analyzer, the grab samples would be analyzed for hydrogen concentration at an on-site laboratory.

Sample gases are used to periodically calibrate the analyzers. The present sample gas specifications for Unit 2 state one volume percent hydrogen, balance nitrogen and oxygen, and four volume percent hydrogen, balance nitrogen and oxygen. The licensee proposes to place the word "nominally" before the words "one" and "four." The licensee states that the proposed use of the word "nominally" is to account for slight variations in vendor supplied calibration samples.

In connection with Unit 1, the licensee proposes similar changes and additional changes. Presently, the limiting condition for operation (LCO) states that the containment hydrogen analyzer and grab sample system shall be operable. The licensee proposes to use the words "Two independent containment hydrogen analyzers shall be operable," as the new LCO. This would be the same LCO that is presently contained in the Unit 2 TS. The present action statement requires repair of the hydrogen analyzer or grab sample system within 30 days, if either one is declared inoperable. If repairs are not made within 30 days, the reactor must be placed in at least the hot standby condition within the next 6 hours. The licensee proposes the same action statement proposed for Unit 2 as described above. The hydrogen analyzer for Unit 1 must presently be demonstrated operable at least once every 92 days; the proposed surveillance frequency is 31 days, like Unit 2. The same sample gas requirements as Unit 2 are proposed, namely, adding the word

"nominally" as described above. Oxygen will also be added to the sample gas requirements, like Unit 2. The grab sample system surveillance requirement to demonstrate the system's operability at least once per 92 days by drawing a sample will be deleted, and the grab sample system surveillance will be made part of the action statement, like Unit 2, as described above. Lastly, the licensee proposes to delete the requirement to periodically verify that the analyzer is aligned to receive electrical power from an operable emergency bus.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards considerations exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee addressed the above three standards in the amendment application. In regard to the first standard, the licensee provided the following analysis for the Unit 1 application.

The change to show oxygen as part of the sample gas required for channel calibration is a correction required to bring the Technical Specifications into conformance with the hydrogen analyzer instruction manual. It is purely a wording clarification and has no physical effect on the operation of the hydrogen analyzer. Therefore, this modification does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The inclusion of the grab sample laboratory analysis being a substitution for the local hydrogen analyzer analysis cannot involve a significant increase in the probability or consequences of an accident previously evaluated because:

(a) the same containment sample flow path is used;

(b) the same sample pump is used with the two systems so that the sample through either is the same; and

(c) the method of grab sample laboratory analysis requires a calibration as part of the analysis. This ensures accuracy during analysis.

The proposed changes to show two independent hydrogen analyzers are available do not involve a significant increase in the probability or consequences of an accident previously evaluated because:

(a) the rewording describes the actual hydrogen analyzer system in terms of its components and thus creates a clear presentation of the system's design which is described in FSAR Section 8.2.5;

(b) the changes to the action and surveillance requirements establish the the guidelines to insure that sufficient hydrogen sampling capability is available in the event of an accident.

(c) the electrical power alignment verification is no longer necessary in that each of the redundant subsystems is powered from an independent on-site emergency power source. No single failure can result in a total loss of hydrogen concentration measurement capability.

In addressing the first standard for the Unit 2 application, the licensee provided the following analysis:

The inclusion of the grab sample laboratory analysis being a substitution for the local hydrogen analyzer analysis cannot involve a significant increase in the probability or consequences of an accident previously evaluated because:

(a) the same containment sample flow path is used;

(b) the same sample pump is used with the two systems so that the sample through either is the same; and

(c) the method of grab sample laboratory analysis requires a calibration as part of the analysis. This ensures accuracy during analysis.

In connection with the second standard, the licensee states the following for the Unit 1 application:

A new or different kind of accident than any previously evaluated is not possible as a result of the specification being modified to include oxygen as part of the sample gas because oxygen is part of the calibration process described by the vendor. By accurately describing the gases required for calibration, the method of calibration and the capability of hydrogen monitoring during an accident does not change.

A new or different kind of accident than any previously evaluated is not created by the specification being modified to allow for the laboratory analysis of the grab sample. This grab sample is an alternative method of monitoring the containment atmosphere after an accident and is not a possible cause of a new or different kind of accident.

A new or different kind of accident than any previously evaluated is not created by the specification being modified to indicate that two independent hydrogen analyzers are available for monitoring the containment atmosphere. Providing the operability checks and action statements is a clarification and an administrative change to insure system availability during an accident. This system is for accident monitoring and cannot create a new or different accident.

In addressing the second standard for the Unit 2 application, the licensee provided the following analysis:

Use of the modified specification would not create the possibility of a new or different kind of accident from any accident previously evaluated.

A new or different kind of accident than any previously evaluated is not created by the specification being modified to allow for the laboratory analysis of the grab sample. This grab sample is an alternative method of monitoring the containment atmosphere after an accident and is not a possible cause of a new or different kind of accident.

Regarding the third standard, the licensee states for the Unit 1 application:

The hydrogen analyzers, while being required by Technical Specifications, do not have an active part in the determination of margin of safety. The change in sample gas description, the clarification of system composition, the inclusion of an alternate method of analysis and deleting the surveillance requirement to verify electrical alignment do not change the function or accuracy of the hydrogen analyzer system.

In the case of the Unit 2 application for the third standard, the licensee states:

The hydrogen analyzers, while being required by Technical Specifications, do not have an active part in the determination of margin of safety. The inclusion of an alternate method of analysis does not change the function or accuracy of the hydrogen analyzer system.

The staff has reviewed the licensee's no significant hazards consideration determination analysis. Based upon this review, the staff believes that the licensee has met the three standards.

Based upon the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Lester S. Rubenstein

GPU Nuclear Corporation, Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: June 19, 1987 (TSCR 146)

Description of amendment request: The June 19, 1987 application for license amendment requested three changes to the Technical Specifications. These changes are: (1) add additional condition to Section 4.3.G which would require performing the existing leak tests on the Core Spray Testable Check

Valves, (2) organizational changes of GPU Nuclear Corporation. The amendment would be reflected as changes to the corporate and site organization charts and relevant text in the Technical Specifications, and consists of replacing pages 6-3, 6-4, 6-5, 6-6, 6-7, 6-12 and 6-14 with revised information, and (3) revise Section 6.10.1.C to replace the words "Reportable Occurrence Reports" with "All Licensee Event Reports."

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the probability of a new or different kind of accident from any accident previously evaluated or (3) involve a significant reduction in a margin of safety.

Change 1

The licensee stated that the proposed Change 1 does not involve a significant hazards consideration because:

1. The change would not involve a significant increase in the probability or consequences of an accident previously evaluated. To the contrary, the additional testing requirements decrease the probability of an accident and do not affect the consequences of the accident.

2. The change does not create the possibility of a new or different kind of accident from any previously evaluated. The new requirement is one of frequency, utilizing existing approved test methods.

3. The change does not involve a significant reduction in the margin of safety. The additional testing does not affect the margin of safety.

The staff concurs with the licensee's assessment and proposes to determine that change 1 of the requested amendment involves no significant hazards consideration.

Change 2

In the Amendment Request of June 19, 1987, and in its letter of July 14, 1987, the licensee stated that the proposed changes do not involve a significant hazards consideration because:

The proposed change is similar to Example (i) of the "Amendments not likely to Involve Significant Hazards Consideration" from the Federal Register Vol. 48, No. 67 at 14870 on April 6, 1983.

This change is an administrative change in the corporate organization. As such, this TSCR does not involve significant hazards considerations as stated below.

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The Corporate organization was never determined to be an initiator of any accident previously evaluated in the SAR. Even so, the probability of occurrence or the consequences for any previously evaluated accident are not modified by this change as the functions and responsibilities of affected groups remain essentially unchanged.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

The reorganization does not in itself modify or change an operating parameter for any safety related component. Therefore, this activity does not increase the probability of occurrence or consequence of an equipment malfunction.

This activity modifies in part the Corporate organization by grouping the Nuclear Safety Assessment, Licensing and Long Range Planning functions into one Division. By this arrangement, the organization can provide an independent focus on the issue of safety, and the prioritization of plant modifications. Furthermore, the reorganization does not change the technical resources previously established to perform the quality assurance, radiological and environmental control, training and security functions.

(3) Involve a significant reduction in a margin of safety.

This change does not reduce the margin of safety which was defined in the SAR. The reorganization was a managerial change to increase the awareness of nuclear safety within the organization by the realignment of functional responsibilities. The functions and responsibilities of the functional groups affected by the reorganization remain as described in the Licensing Basis Documents.

The staff concurs with the licensee's assessment and proposes to determine that Change 2 of the requested amendment involves no significant hazards consideration.

Change 3

The licensee stated that this change is purely administrative and involves no technical changes, no new increase in the probability nor consequences of an accident is affected. No new kind nor previously unanalyzed accident is affected. No safety margin of an analyzed accident is affected.

In the staff's letter of December 10, 1986, we requested that GPU Nuclear Corporation change the wording in Technical Specification 6.10 to align with present terminology. Therefore, the staff concurs with the licensee's assessment and proposes to determine that Change 3 of the requested amendment involves no significant hazards consideration.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753

Attorney for licensee: Ernest L. Blake, Jr., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

GPU Nuclear Corporation, Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: July 13, 1987 (TSCR 170)

Description of amendment request: The proposed amendment would add a license condition on an integrated schedule for modifications to the license for TMI-1. This new condition would require the licensee to follow the Plan for the Long Range Planning Program for Three Mile Island, Unit 1 (TMI-1) but would allow changes to the date for the completion of items identified in Categories B and C of the Plan to be changed without a license amendment. Dates for Category A items would be changed in accordance with applicable NRC procedures.

The submittal date for the Plan was inadvertently omitted from the wording of the proposed license condition. The Plan was submitted in the licensee's amendment request dated July 13, 1987 and this date will be considered part of the proposed wording.

Basis for proposed no significant hazards consideration determination: The licensee proposed Technical Specification Change Request (TSCR) No. 170 to add new requirements concerning its long range planning for TMI-1. It has evaluated TSCR 170 to determine if a significant hazards consideration exists. The results of this evaluation are given below in terms of the criteria in 10 CFR 50.92(c):

Generic Letter 85-07, dated May 2, 1985 requested nuclear power plant licensees to document intentions regarding implementation of the Integrated Implementation Schedule concept. GPU Nuclear responded by

letter dated August 27, 1985 indicating our intention to pursue the development of an Integrated Implementation Schedule for both Oyster Creek and Three Mile Island-Unit 1. The proposed license amendment incorporating the Plan for the Long Range Planning Program (which follows) into the operating license by reference as stated above is hereby requested.

This amendment request is to incorporate the Plan for the Long Range Planning Program (LRPP) into the Three Mile Island Nuclear Station-Unit 1 Operating License (DPR-50). The LRPP by itself has no safety function but the projects listed on the Long Range Plan may affect the function of safety systems or components at TMI-1. The LRPP will establish an improved basis for planning, scheduling and implementing significant plant changes.

The primary objectives of the Plan for the LRPP are:

(1) To optimize the allocation of GPUN and NRC resources to those projects necessary to assure safe, reliable and economic plant operation.

(2) To achieve the appropriate balance and prioritization between GPUN initiated projects and NRC required projects.

The Plan contains three categories of projects, as follows:

Category A: All projects involving regulatory issues which have resolutions and/or issue resolution dates mandated by NRC rules, order or license conditions.

Scheduled completion for Category A items will be modified only upon receipt of prior approval from the NRC in accordance with applicable NRC procedures.

Category B: Projects involving issues identified by the NRC and/or GPUN for which written commitments have been made to the NRC by GPUN. The issue resolutions would result in significant (a) plant modifications, (b) procedure revisions, or (c) changes in facility staffing requirements.

GPUN will inform the TMI-1 NRR Project Manager when a change is made to the schedule for a Category B project. GPUN will provide the NRC with written notification of a change including the basis for the change and any compensatory action initiated.

Category C: Other major projects, identified by GPUN or other regulatory agencies.

GPUN will advise the NRC of changes to Category C projects semiannually. The long range planning function is not currently described in any Licensing Basis Document. It was initiated by GPUN in 1984 for Oyster Creek and later in 1985 for TMI-1 to establish controls for the efficient utilization of resources to implement identified projects which significantly impact available resources. The proposed amendment would incorporate this function as a license condition.

The LRPP by itself has no safety function. The projects which comprise the Long Range Plan may affect the function of plant systems important to safety; however, any changes in plant configuration or operation resulting from projects in the Long Range Plan are required to be evaluated separately in accordance with safety review and/or configuration control procedures. The long range planning function results in a prioritization and ranking of projects so that appropriate implementation schedules can be established.

The proposed license amendment does not in and of itself result in any change to Technical Specifications. Therefore, margins of safety stated in Technical Specification bases are not changed.

Significant Hazards Consideration

We have determined, based upon the above discussion, that this license amendment request involves no significant hazards considerations in that operation of TMI-1 in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of any accident previously evaluated; or

2. Create the possibility of a new or different kind of accident from any accident previously evaluated; or

3. Involve a significant reduction in margin of safety.

In summary, the basis for the above determination is as follows:

The establishment as a license condition of the Plan for the Long Range Planning Program by itself performs no safety function. The long range planning function does not directly change plant configuration or operation. Projects contained in the Plan may affect systems important to safety; however, any impact resulting from these projects is evaluated separately in accordance with applicable safety review and/or configuration control procedures. As no changes to Technical Specifications occur as a direct result of this proposed amendment there is no change in margins of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126

Attorney for licensee: Ernest L. Blake, Jr., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: June 18, 1987.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) to increase the leak detection setpoints and allowable values for the reactor water cleanup (RWCU) system heat exchanger room ambient and differential temperatures and decrease the reactor core isolation cooling (RCIC) system isolation trip setpoint and allowable value for the residual heat removal (RHR)/RCIC steam line flow-high. The proposed amendment would modify the TSs as follows:

(1) Item 4.c.1. of Table 3.3.2-2 would be changed to increase the RWCU system isolation trip setpoint for heat exchanger room equipment area temperature high from less than or equal to 98.5° F to less than or equal to 104.5° F and the allowable value would be increased from less than or equal to 101.5° F to less than or equal to 107.5° F. Item 4.d.1. of Table 3.3.2-2 would be changed to increase the RWCU system isolation trip setpoint for heat exchanger room equipment area differential temperature-high from less than or equal to 33° F to less than or equal to 39° F and the allowable value would be increased from less than or equal to 36.5° F to less than or equal to 42.5° F.

(2) Item 5.1. of Table 3.3.2-2 would be changed to reduce the initial RCIC system isolation trip setpoint for RHR/RCIC steam line flow-high from less than or equal to 156 inches of water to less than or equal to 60.7 inches of water and the allowable value would be decreased from less than or equal to 184.5 inches of water to less than or equal to 64.2 inches of water.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or

consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee addressed the above three standards in the amendment application.

(1) Increase the leak detection setpoints and allowable values for the RWCU system heat exchanger room ambient and differential temperatures. With regard to the three standards, the licensee states:

a. No significant increase in the probability or the consequences of an accident previously evaluated results from this change because:

Actual plant operating temperatures were used as the initial temperature from which the resulting temperature caused by a 25 gpm steam leak after one hour was calculated. The subject building zones have been evaluated for effect of environmental qualification of safety related equipment. The required changes to equipment qualifications have been determined and documented. The design bases for leak detection have been unchanged. Other leak detection instrumentation available inside containment are: detection of level increases in containment floor drain sump, equipment drain sump and also monitoring of pump turn on and off times. The containment floor drain sump monitors unidentified leakage and activates an alarm when total leakage reaches 5 gpm. The containment equipment drain sump monitors identified leakage and also alarms in the main control room. In addition, the containment radiation monitors are also available to provide an indication of reactor coolant pressure boundary leakage.

b. This change would not create the possibility of a new or different kind of accident from any accident previously evaluated because:

GSU is selecting setpoints which follow the original setpoint bases and prevent unnecessary or inadvertent isolations yet maintains the margin of safety as defined in the Technical Specification. The primary difference between the previous setpoint and the proposed setpoint is that the current setpoint is based on actual data versus predicted data.

Reviews have been performed to ensure that the existing design of equipment and structures can withstand the higher normal operating temperatures and equipment qualification and qualified life of equipment has been revised as necessary. Changes made do not add new equipment nor do they affect the function or operations of existing equipment or structures.

c. This change would not involve a significant reduction in the margin of safety because:

Calculations have been performed due to higher actual plant temperatures to ensure that the safety margin is maintained. The applied setpoint methodology, utilizing the actual temperature data, accounts for instrument inaccuracies and drift. The original design criterion for the ability to isolate prior to a 25 gpm leak has been maintained. Therefore, no significant reduction in the margin of safety is being proposed.

The proposed amendment, as discussed above, has not changed the system design, function and operation contained in the FSAR. Therefore, it will not increase the probability or the consequences of a previously evaluated event and will not create a new or different event. As a result, the ability to perform, as described in the FSAR, is maintained. Therefore, the proposed changes do not result in a significant reduction in the margin of safety. GSU proposes that no significant hazards are involved.

(2) Decrease the RCIC system isolation trip setpoint and allowable value for the RHR/RCIC steam line flow-high. With regard to the three standards, the licensee states:

a. No significant increase in the probability or the consequences of an accident previously evaluated results from this change because:

The trip setpoint and allowable values are based on an analytical limit equivalent to 125 percent of the maximum steady state flow. The maximum steady state flow is the combined flow of steam to the RHR system while in the steam condensing mode (both A & B Loops) plus the flow of steam to the RCIC turbine. This would be the normal lineup after approximately 30 minutes of steam condensing operation. The trip setpoint and allowable values are adjusted below the analytical limit to allow for instrument and calibration accuracies and instrument drift. The setpoint is established high enough to preclude spurious isolations due to normal operational flows, yet low enough to isolate on postulated break flows of downstream piping.

The decreases in the RCIC/RHR steam line flow-high setpoint reduces the consequences of a steam line break in the RCIC/RHR steam supply lines. The main steam line double ended break is the design basis accident for offsite dose consequences.

b. This change would not create the possibility of a new or different kind of accident from any accident previously evaluated because:

The originally specified trip setpoint of less than or equal to 156" H_2O is equivalent to a flow rate which is below the break flow for an eight inch RHR steam line break but may not have been low enough to isolate on a four inch RCIC steam line break. The proposed setpoint will isolate on both the four and eight inch line breaks for downstream piping.

The function of the RCIC/RHR steam line high flow instrumentation remains the same. The less than or equal to 60.7" H_2O trip setpoint will enable the instrument loop to detect and isolate a double ended line break downstream. This was the intended function as originally designed.

c. This change would not involve a significant reduction in the margin of safety because:

The setpoint is being lowered in the conservative direction. There can only be an increase in the margin of safety associated with this setpoint change.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the analysis.

Local Public Document Room Location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Attorney for licensee: Troy B. Conner, Jr., Esq., Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Jose A. Calvo

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: June 23, 1987

Description of amendment request: The proposed Technical Specification (TS) change would require written administrative controls for the implementation of the Process Control Program (PCP). The PCP contains the current sampling and analysis methods to be used to ensure that radioactive waste from liquid systems are properly prepared for shipment to disposal facilities in accordance with applicable Federal and State regulations. Dry active waste such as compacted trash and contaminated components are not included in the scope of the PCP.

Basis for proposed no significant hazards consideration: The Commission has provided standards for determining whether a significant hazard exists as stated in 10 CFR 50.92 (c). 10 CFR 50.91 requires that at the time a licensee requests an amendment it must provide to the Commission its analysis using the standards in 10 CFR 50.92 about the issue of no significant hazards consideration. The licensee has performed that analysis and we have performed an evaluation in accordance with 10 CFR 50.91 (a) (i) to determine whether this proposed change involves a significant hazards consideration as defined by 10 CFR 50.92. A summary of our evaluation follows. This proposed change does not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change is strictly administrative in nature, and simply requires the implementation of existing procedures in the Technical Specifications.

(2) Create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change is strictly administrative in nature, and simply requires the implementation of existing

procedures in the Technical Specifications.

(3) Involve a significant reduction in a margin of safety. The proposed change is strictly administrative in nature. It does not reduce the margin of safety.

Based on our evaluation, the staff proposes to determine that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Wiscasset Public Library, High Street, P. O. Box 367, Wiscasset, Maine 04578.

Attorney for licensee: J. A. Ritscher, Esq., Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02210.

NRC Project Director: V. Nerses

Mississippi Power & Light Company, System Energy Resources, Inc., South Mississippi Electric Power Association, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: July 6, 1987

Description of amendment request: The proposed amendment would make three changes in the Technical Specifications (TSs): (1) Surveillance Requirement 4.1.5.d.2 would be changed by increasing the setpoint for the relief valve in the standby liquid control system (SLCS); (2) Technical Specifications 3.4.9.2, 3.5.2, 3.7.1.1, 3.9.11.1 and 3.9.11.2 which specify ECCS and shutdown cooling requirements with the plant in Operational Condition 4, "Cold Shutdown" or Condition 5 "Refueling" would be revised by changing the Action Statements to allow entry into the Operational Mode with inoperable equipment provided the associated Action Requirements are met; and (3) Table 3.3.2-1 and Table 4.3.2.1-1 which specify requirements for containment isolation instrumentation would be changed by deleting certain requirements for instrumentation and the associated isolation valves to be operable in refueling shutdowns when handling irradiated fuel in the primary or secondary containment, making core alterations and performing operations with a potential for draining the reactor vessel.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided an analysis of significant hazards considerations in its request for a license amendment. The licensee has concluded with appropriate bases, that the proposed amendment satisfies the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards considerations. The NRC staff has made a preliminary review of the licensee's submittal. A summary of staff's review follows.

Change (1) would allow the SLCS relief valve setpoint to be increased to the maximum value allowed by the ASME Boiler and Pressure Vessel Code. This increase is deemed necessary to minimize inadvertent relief valve actuation due to normal pressure fluctuations caused by operation of the positive displacement pump. Because the proposed increase in the pump relief valve setpoint is within the ASME Code allowable value, the change would not significantly increase the probability of previously evaluated accidents (piping failures). The consequences of previously evaluated accidents remain unchanged since the relief valve will still perform its intended function of preventing the SLCS discharge piping from exceeding its design pressure. Therefore the probability and the consequences of an accident previously evaluated would not be significantly increased. Proposed Change (1) does not create the possibility of a new or different kind of accident from any previously analyzed accident because no changes to equipment or procedures would be made. The proposed change does not involve a significant reduction in a margin of safety because the system integrity is assured and the system reliability is increased. The increase in the SLCS pump relief valve setpoint is allowed by the ASME Code and therefore the system is capable of being operated with the increased setpoint without compromising system integrity. The SLCS would be able to deliver its rated flowrate to the reactor without flow being diverted through the relief valve thereby increasing system reliability.

Change (2) would permit greater flexibility during refueling outages by allowing entry into Operational Conditions 4 or 5 with inoperable ECCS or shutdown cooling equipment provided the associated Action Requirements are satisfied. Technical Specification 3.0.4 prohibits entry into an Operational Condition unless the conditions for the Limiting Condition for Operation (LCO) are met without reliance on provisions contained in the Action Requirements. For the TSs indicated, Change (2) would provide an exception to TS 3.0.4 for those Action Statements which allow continued operation for an unlimited period of time. In Generic Letter 87-09 "Sections 3.0 and 4.0 of the Standard Technical Specifications (STS) on the Applicability of Limiting Conditions for Operation and Surveillance Requirements," dated June 4, 1987, the NRC staff stated that conformance to such Action Statements provide a level of safety commensurate with that achieved by the LCO and an exception to TS 3.0.4 should be allowed. This commensurate level of safety is achieved by demonstrating the operability of alternate methods of shutdown heat removal or reactor coolant circulation, by reactor coolant temperature and pressure monitoring or by suspending all operations that have a potential for draining the reactor vessel. Because a commensurate level of safety is provided by meeting the alternative requirements of the Action Statements, the entry into Operational Mode 4 or 5 with certain inoperable equipment would not: involve a significant increase in the probability or consequences of an accident previously evaluated; or create the possibility of a new or different kind of accident from any accident previously evaluated; or involve a significant reduction in a margin of safety.

Change (3) would delete operability and surveillance requirements for certain containment isolation actuation instrumentation for operational conditions during refueling shutdowns when handling irradiated fuel in primary or secondary containment, making core alterations, and performing operations with a potential for draining the reactor vessel. Since Specification 3.6.4 requires that isolation valves be operable when their associated actuation instrumentation is required to be operable, deletion of operability requirements for the instrumentation also deletes the requirement for operability of their associated isolation valves. The proposed change would delete unnecessarily restrictive requirements for isolation valves to be operable during refueling to permit greater flexibility in scheduling and performing surveillance testing, local leak rate testing and maintenance on these isolation valves. One necessary isolation function during refueling is to ensure secondary containment integrity in the event of an accident when handling fuel, making core alterations, or performing work with a potential for

draining the reactor vessel. Secondary containment integrity during the performance of these operations is assured by Specification 3.6.6 which requires secondary containment penetrations not capable of being closed by operable automatic isolation valves to be closed by deactivated automatic valves or other means such as blind flanges. A second necessary isolation function during refueling is to prevent removal of liquid nuclear poison from the reactor by isolating the reactor water cleanup (RWCU) system in the event the standby liquid control system is actuated. This second isolation function is assured by Valve Group 8 in Item 4.h of Table 3.3.2-1, which is unchanged. A third necessary isolation function during refueling is to prevent bypassing of the radiation monitor in the auxiliary building exhaust monitor by isolating the containment and drywell purge system. This third isolation function is assured by Valve Group 7 in Items 1.a and 1.b of Table 3.3.2-1, which is unchanged. The unnecessary isolation function during refueling which is deleted by this proposed change is the isolation of primary containment and the drywell by valves in Valve Groups 6A, 8 and 10 in Items 1.a and 1.h, Valve Group 6B in Item 1.b, and Valve Group 5 in Item 1.c. Changes to Action Statements 20, 22 and 29 and to surveillance requirements in Table 4.3.2-1 would be made to be consistent with the changes made in operability requirements in Table 3.3.2-1. An editorial change to Item 1.h would also be made. Because Change (3) would eliminate only unnecessary isolation requirements for refueling outage operations, the change would not: involve a significant increase in the probability or consequences of an accident previously evaluated; or create the possibility of a new or different kind of accident from any accident previously evaluated; or involve a significant reduction in a margin of safety.

Accordingly, for the reasons cited above, the Commission proposes to determine that the three proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154

Attorney for licensee: Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036

NRC Project Director: Lester S. Rubenstein

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: July 9, 1987.

Description of amendment request: The amendments would modify the Technical Specifications (TS) to add acceptance criteria for testing airlock doors.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for the application of criteria for no significant hazards consideration determination by providing examples of amendments that are considered not likely to involve significant hazards considerations (48 FR 14870). These examples include:

A change to make a license conform to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations.

10 CFR Part 50 Section III.D.2.b(iv) requires that containment airlock local leak rate test acceptance criteria be stated in the Technical Specifications. The Cooper Nuclear Station Technical Specifications does not presently specify this acceptance criteria. The acceptance criteria are presently specified in plant procedures only. The proposed amendment would not modify the acceptance criteria, but only add them to the Technical Specifications for compliance with the Regulation. The proposed amendment is thus encompassed by the above criterion.

Since the application for amendment involves a change that is encompassed by the criteria for which no significant hazards consideration exists, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305

Attorney for licensee: Mr. G.D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68601.

NRC Project Director: Jose A. Calvo

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of amendment request: May 26, 1987

Description of amendment request: The proposed change will revise Technical Specification 3.9.B.5 and the corresponding bases by reducing the allowable outage from 7 days to 24 hours (with the restriction to be in cold shutdown in the next 24 hours) for one of the two 125 volt DC or 24 volt DC battery systems.

Basis for proposed no significant hazards consideration determination: The proposed change to the allowable outage time is more conservative than the 50 percent reduction in allowable outage time recommended by the NRC but longer than the BWR Standard Technical Specification battery outage time of 2 hours. The justification for the proposed 24-hour allowable outage time is:

1. A two-hour allowable outage time allows for an orderly shutdown only.

2. Twenty-four hours allows for evaluation of the battery system problem and allows for minor repairs; e.g., output breaker repair.

3. Unwarranted shutdowns could be avoided, thus reducing the number of thermal cycles to which the plant is subjected.

The licensee has reviewed the attached proposed changes pursuant to 10 CFR 50.59 and has determined that they do not constitute an unreviewed safety question. The probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the Final Safety Analysis Report (FSAR) have not been increased. The possibility for an accident or malfunction of a different type than any evaluated previously in the FSAR has not been created. There has not been a reduction in the margin of safety as defined in the basis for any Technical Specification. These proposed changes will not result in physical changes to the plant or changes in the way the plant is operated.

NNECO has reviewed the proposed changes in accordance with 10 CFR 50.92 and has concluded that they do not involve a significant hazards consideration in that these changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. This change continues to provide repair time while significantly reducing the period of time a battery may be out of service.

2. Create the possibility of a new or different kind of accident from any previously analyzed in the FSAR. The change will not introduce new failure modes.

3. Involve a significant reduction in a margin of safety. By reducing the allowable outage time, the margin of safety is increased.

The NRC has provided guidance concerning the application of standards in 10 CFR 50.92 by providing certain

examples (51 FR 7751, March 6, 1986). The changes proposed herein are enveloped by example (ii), a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications; e.g., a more stringent surveillance requirement. The proposed change reduces the previously permissible outage period from 7 days to 24 hours.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry, & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: Cecil O. Thomas.

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of amendment request: May 26, 1987

Description of amendment request: The proposed change would clarify the exclusion area boundary. The revised wording would enhance Technical Specification consistency with the design basis plume pathway calculations.

Basis for proposed no significant hazards consideration determination: The proposed change to the Technical Specifications would clarify the exclusion area boundary stating that the nearest site boundary on land is 1,620 feet northeast of the elevated stack, or 2,063 feet northeast of the reactor building.

The licensee has reviewed the attached proposed change pursuant to 10 CFR 50.59 and has determined that it does not constitute an unreviewed safety question. The probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the Final Safety Analysis Report (FSAR) has not been increased. The possibility for an accident or malfunction of a different type than any evaluated previously in the FSAR has not been created. There has not been a reduction in the margin of safety as defined in the basis for any Technical Specification. This proposed change will not result in physical changes to the plant or changes in the way the plant is operated.

The licensee has reviewed the proposed change, in accordance with 10 CFR 50.92, and has concluded that it does not involve a significant hazards consideration in that this change would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. There are no physical changes to the plant as a result of the proposed changes, therefore, previously analyzed accidents are not affected.

2. Create the possibility of a new or different kind of accident from any previously analyzed. This change is administrative, and does not affect plant operations. Therefore, no new accident scenarios are created.

3. Involve a significant reduction in a margin of safety. The proposed change has no effect on any margins of safety.

The NRC has provided guidance concerning the application of standards in 10 CFR 50.92 by providing certain examples (51 FR 7751, March 6, 1986). The changes proposed herein most closely resembles example (i), a purely administrative change to Technical Specifications: for example, a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature. The change serves to clarify the distances used in design basis accident calculations and will also maintain better consistency between Technical Specifications and plume pathway calculations.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry, & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: Cecil O. Thomas.

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of amendment request: June 1, 1987

Description of amendment request: The proposed change will revise Technical Specification 3.7.A.6.c by replacing the phrase "important to safety" with the phrase "necessary to ensure safe plant operation."

Basis for proposed no significant hazards consideration determination: The licensee has reviewed the attached proposed change pursuant to 10 CFR 50.59 and has determined that it does not constitute an unreviewed safety question. The probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the final safety analysis report (FSAR) has not been increased. Additionally, the possibility of an accident or malfunction of a different type than any previously evaluated in the FSAR has not been created. There also has not been a reduction in the margin of safety as defined in the basis for any Technical Specification. This proposed change clarifies which activities are allowed inside containment during reactor operations. It does not change the forty-eight (48) hour limit of Technical Specification 3.7.A.6.c for drywell oxygen concentration greater than 4% (by volume). The change will enhance operator understanding by using the phrase "necessary to ensure safe plant operation" in place of the more ambiguous phrase "important to safety."

The licensee has reviewed the proposed change, in accordance with 10 CFR 50.92, and has concluded that it does not involve a significant hazards consideration in that this change would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated, as this change serves to clarify which activities are allowed inside containment during reactor operations. It does not change the 48-hour limit of Technical Specification 3.7.A.6.c for drywell oxygen concentration greater than 4% by volume.

2. Create the possibility of a new or different kind of accident from any previously analyzed. The change does not alter the 48-hour limit and, therefore, has no potential for creating a new accident.

3. Involve a significant reduction in a margin of safety, in that the change does not increase the probability of failure of the Millstone Unit No. 1 containment or the occurrence or consequences of any design basis accident.

The NRC has provided guidance concerning the application of standards in 10 CFR 50.92 by providing certain examples (51 FR 7751, March 6, 1986). The change proposed herein most closely resembles example (i), a purely administrative change to technical specifications; for example, a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature. This change will clarify which activities are allowed inside containment during reactor operation and will enhance operator understanding by using the phrase "necessary to ensure safe plant operation" rather than using "important to safety."

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

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Attorney for licensee: Gerald Garfield, Esquire, Day, Berry, & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: Cecil O. Thomas.

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: October 14, 1986 and July 21, 1987

Description of amendment request: By applications for license amendments dated October 14, 1986 and July 21, 1987, Northeast Nuclear Energy Company, et al. (the licensee), requested changes to the Technical Specifications (TS) for Millstone Unit 2 as follows: (1) a number of changes to the TS associated with post-TMI plant modifications as addressed in NRC's letter "NUREG-0737 Technical Specifications (Generic Letter No. 83-37)," dated November 1, 1983, (2) Limiting Conditions for Operation (LCOs) and Surveillance Requirements (SR) for the main steam radiation monitors which would be added to existing TS 3/4.3.3.8, "Accident Monitoring Instrumentation," and (3) an instrument identified in TS Table 3.3-11 as the "Safety Valve Position Indicator Acoustic *Flow* Monitor" would now be identified as "Safety Valve Position Indicator Acoustic Monitor."

Basis for proposed no significant hazards consideration determination: On November 1, 1983, a letter was sent by the Director, Division of Licensing, "To All Pressurized Water Reactor Licensees." This Generic Letter (83-37) provided NRC Staff guidance on the content of the TS associated with certain items in NUREG-0737. On October 14, 1986 and July 21, 1987, NNECo filed responses to the Generic Letter for Millstone Unit 2. The following specific changes to the Millstone Unit 2 TS have been proposed:

● *High Point Vents (HPV) - TMI Item II.B.1.* The licensee has proposed a new TS 3/4.4.11 "Reactor Coolant System Vents" to incorporate LCOs and SR for the HPV.

● *Post-Accident Sampling System (PASS) -TMI Item II.B.1.* The licensee has proposed a new TS 6.17 "Pass/ Sampling and Analysis of Plan Effluents" to establish a program for PASS activities.

● *Auxiliary Feedwater System (AFWS) - TMI Item II.E.1.1.* The licensee has proposed a change to TS Table 4.3-2, "Engineered Safety Features Instrumentation Surveillance Requirements" to provide SR for the automatic initiation logic for the AFWS.

● *Noble Gas Effluent Monitors (NGEM) and Containment High Range Monitor (CHRM) - TMI Items II.F.1.1 and II.F.1.3.* The licensee proposes to incorporate TS for the NGEM and CHRM in TS Table 3.3-6, "Radiation Monitoring Instrumentation," and TS Table 4.3-3, "Radiation Monitoring Instrumentation Surveillance Requirements."

● *Containment Pressure Monitor, Containment Water Level Monitors, Core Exit Thermocouples Subcooling Margin Monitor, Reactor Coolant Inventory Tracking - TMI Items II.F.1.4, II.F.1.5 and II.F.2.* The licensee has proposed that LCOs and SRs for the above instrumentation be incorporated in TS Tables 3.3-11, "Accident Monitoring Instrumentation" and 4.3-7, "Accident Monitoring Instrumentation Surveillance Requirements."

● *Containment Hydrogen Monitor - TMI Item II.F.1.6.* The licensee has proposed a change to TS 3.4.6.4.1, "Combustible Gas Control - Hydrogen Monitors." The LCO would be expanded to address the inoperability of both Hydrogen Monitors (the existing TS only addresses the inoperability of a single Hydrogen Monitor.) The SR would add a requirement for monthly functional testing of the hydrogen monitoring channels.

● *Control Room Habitability - TMI Item II.D.3.4.* A revised LCO would be provided to address expanded operability of the control room emergency ventilation system in reactor Modes 1 through 6 (power operation through refueling.) The current LCO addresses operability in Modes 1 through 4 (power operation through hot shutdown.) The SR would lower the maximum allowable control room temperature from 120° F to 100° F.

● *Special Reports* - TS 6.9.2, "Special Reports" would be expanded to incorporate proposed special reports associated with Accident Monitoring Instrumentation (proposed TS 3.3.3.8), Radiation Monitoring Instrumentation (proposed TS 3.3.3.1) and Reactor Coolant System Vents (proposed TS 3.4.11).

In addition to the proposed changes to the TS associated with GL 83-37, the licensee has proposed to add LCOs and SR associated with the Main Steam Line Radiation Monitor to TS Tables 3.3-11 and 4.3-7, respectively.

On March 6, 1986, the NRC published guidance in the **Federal Register** (51 FR 7751) concerning examples of amendments that are not likely to involve a significant hazards consideration. One example of amendments not likely to involve significant hazards considerations is example (ii) which involves "A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications, e.g., a more stringent surveillance requirement." In each case associated with the GL 83-37 TS, and in the case of the TS for the main steam line radiation monitor, the proposed TS represent new requirements or more stringent limitations on existing requirements. Accordingly, the Commission proposes to determine that the proposed changes to the TS, associated with GL 83-37 and the main steam line radiation monitor, involve no significant hazard considerations.

The final change to the TS considered herein involves an existing entry in TS Table 3.3-11 which is described as "Safety Valve Position Indicator Acoustic Flow Monitor." The licensee has proposed deletion of the word "Flow" from the instrument description. The proposed change to the TS would provide consistency with the corresponding entry in TS Table 4.3-7 and does not otherwise change the requirements in the TS.

Another example in 51 FR 7751 of amendments that are not likely to involve a significant hazards consideration is example (i) which involves "A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature." The proposed change to TS Table 3.3-11 provides consistency with TS Table 4.3-7 and, thus, is within example (i) noted above. Accordingly, the Commission proposes to determine that the proposed change to the TS involves no significant hazards considerations.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry and Howard, One Constitution Plaza, Hartford, Connecticut 06103.

NRC Project Director: John F. Stolz

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: March 28, 1986 as supplemented April 9, 1986, March 13 and June 22, 1987.

Description of amendment request: The proposed amendment is in response to NRC's July 2, 1984 Generic Letter 84-15 entitled, "Proposed Staff Actions to Improve and Maintain Diesel Generator Reliability." The changes are intended

to reduce the number of unnecessary diesel generator cold fast starts, thus making them more reliable. This amendment request was previously noticed on May 21, 1986 (51 FR 22243).

During the review of the amendment request, Omaha Public Power District (the licensee) has responded to staff requests for additional details for certain items; and, in addition, made some corrections to the original submittal. Also the licensee has updated the Technical Specification pages involved and made administrative corrections. The submittals made since the original notice and a description of the information contained follows:

1. April 9, 1986 - This submittal provides an administrative correction to the letter which referred to the changes as concerning "surveillance requirements for solid radioactive waste" instead of concerning "the emergency diesel generators."

2. March 13, 1987 - This submittal provides the following:

(a) Deletes the requirement to start the diesel engine in order to comply with the provisions of the Limiting Conditions for Operation for Containment Cooling System. Additionally, the Basis to Technical Specification 2.4 has been revised in order to provide consistency between specification and basis.

(b) Specification 3.7(1)c has been reworded in order to increase its clarity, and the current Specification 3.7(1)f has been designated 3.7(1)e with the frequency changed from annual to refueling. In addition, some specifications have been removed from one specification to another specification. This was done for consistency in that one specification mainly has to do with surveillance and the other with testing.

3. June 22, 1987 - This submittal was requested by the staff to incorporate all the changes that have been discussed with the licensee into one package. All the changes were addressed in the above two submittals.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed changes do not affect reactor operations or accident analyses and have no radiological consequences. Therefore, operation in accordance with the proposed amendment clearly involves no significant hazards consideration because the changes will not:

1. Involve a significant increase in the probability or consequences of an accident or malfunction of equipment previously evaluated in the Safety Analysis Report. These changes are intended to reduce degradation of the emergency diesel generators caused by cold fast starts. Thus, the probability of malfunction of equipment can be considered to have been lessened. Additionally, by conducting the annual overhaul during refueling outages, the possibility of an occurrence at power with one engine tagged out for maintenance is virtually eliminated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated because the same surveillances are performed and only the time period of the fast starts has changed.

3. Involve a significant reduction in a margin of safety. The changes are intended to provide a less severe method of testing of the diesel generators, thus decreasing the likelihood of degradation and wear. By restricting the overhaul to refueling outages, the periods of time with one diesel tagged out for maintenance concerns during normal operation will be limited to necessary maintenance, instead of preventive maintenance which can be accomplished during refueling shutdowns.

In addition, the staff has provided guidance concerning the application of standards for determining whether a significant hazards consideration exists by providing certain examples of amendments that are not likely to involve significant hazards considerations (51 FR 7751). This application is deemed to be similar to example (ii) in that it will achieve consistency throughout the Technical Specifications by placing all diesel generator surveillance requirements in one location. This amendment is also somewhat similar to example (iv) where the relief based upon "acceptable operation" is in part based on NRC reassessment of the testing requirements imposed upon diesel generators. Based upon conclusions drawn from Generic Letter 84-15, the proposed changes are in keeping with the concept of increasing safety by precluding unnecessary wear on the emergency diesel engines.

Accordingly, the Commission proposed to determine that the requested change to Fort Calhoun Technical Specifications involves no significant hazards considerations.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Attorney for licensee: LeBoeuf, Lamb, Leiby, and MacRae, 1333 New Hampshire Avenue, NW., Washington, DC 20036

NRC Project Director: Jose A. Calvo

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: October 29, 1986 (LAR 86-11)

Brief description of amendments: The proposed amendments would change Table 3.6-1, "Containment Isolation Valves," in the Diablo Canyon Nuclear Power Plant combined Technical Specifications for Units 1 and 2 to decrease the required maximum valve closure time for containment ventilation isolation valves FCV-662, FCV-663 and FCV-664 from 10 to 5 seconds. PG&E letter DCL-86-233, dated August 8, 1986, submitted "Qualification of Isolation Capability of 12-Inch Containment Vacuum/Overpressure Relief Valves FCV-662, FCV-663 and FCV-664 After a Loss-of-Coolant Accident" to fulfill a commitment in Supplement 31 to the Diablo Canyon Nuclear Power Plant Safety Evaluation Report. The letter also committed to revise the Technical Specifications to require a maximum 5-second closure time for the subject valves.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined that the proposed change will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the valve isolation time requirement is

being decreased from a maximum of 10 to a maximum of 5 seconds for containment ventilation isolation valves FCV-662, FCV-663, and FCV-664, which is a more conservative isolation time requirement.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed change does not necessitate a physical alteration of the plant or changes in parameters governing normal plant operation.

(3) Involve a significant reduction in a margin of safety because the proposed change conservatively decreases the maximum required closure time for the subject containment ventilation isolation valves.

Accordingly, the licensee has determined that the proposed change to the Technical Specifications involves no significant hazards considerations.

The NRC staff has reviewed the proposed amendments and the licensee's determination and finds it acceptable. Therefore, the staff proposes to determine that the requested amendments involve no significant hazards considerations.

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Attorneys for licensee: Richard R. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120 and Bruce Norton, Esq., c/o Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Project Director: George W. Knighton

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment request: December 24, 1986 (LAR 86-13)

Description of amendment request: The proposed amendments would revise the Diablo Canyon Nuclear Power Plant combined Technical Specifications for Units 1 and 2 to modify Tables 4.3-1, "Reactor Trip System Instrumentation Surveillance Requirements," to change two surveillance intervals not previously addressed in License Amendment Request LAR 85-04. The surveillance test interval in Table 4.3-1 for Functional Unit 20, Reactor Trip System Interlocks, Analog Channel Operational Test, would change from "SU(1)" (prior to each reactor startup) to "R" (at least once per 18 months) for each of the five interlocks. The surveillance test interval in Table 4.3-2 for three Tavg-Low-Low signals, Analog Channel Operational Test, would change from "M" (at least once per 31 days) to "Q" (at least once per 92 days).

The changes to Technical Specification Figures 4.3-1 and 4.3-2 are consistent with WCAP-10271 and the NRC staff's position on treatment of reactor trip system channels shared by the engineering safety features actuation system.

The change to Table 4.3-1 concerning the detector plateau curve is required since the intermediate range and power range neutron flux channels are ion chambers, and thus a detector plateau curve is not applicable.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined that the proposed changes will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed changes relax an operating restriction that was imposed because acceptable operation was not yet demonstrated. Acceptable operation for the proposed change in surveillance intervals has been approved by the NRC in H.R. Denton's July 24, 1985 letter to the Westinghouse Owners Group, which approved WCAP 10271. In addition, the change regarding the detector plateau curve clarifies the Technical Specification to accurately reflect the design of the plant.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes do not necessitate physical alteration of the plant or changes in parameters governing normal plant operation.

(3) Involve a significant reduction in the margin of safety because the proposed change in reactor protection system unavailability is very small because of the proposed change in surveillance intervals. Also, the change regarding the detector plateau curve is to accurately reflect the design of the plant.

Accordingly, the licensee has determined that the proposed changes to the Technical Specifications involve no significant hazards consideration.

The NRC staff has reviewed the proposed amendments and the licensee's determination and finds it acceptable. Therefore, the staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Attorneys for licensee: Richard R. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120 and Bruce Norton, Esq., c/o Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Project Director: George W. Knighton

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment request: March 13, 1987 (LAR 87-03)

Description of amendment request: The proposed amendments would change the Diablo Canyon Nuclear Power Plant combined Technical Specifications for Units 1 and 2 to clarify the requirements of three Technical Specifications. The specific changes consist of the following:

(1) Technical Specification 4.7.5.1, "Control Room Ventilation System," would be revised to clarify the requirements for operating redundant equipment in each train of the control room ventilation system during surveillance testing. The revision would specify the number of hours the heaters must be operating on the control room ventilation system to meet the intent of the specification and address how the redundant equipment of each train of the ventilation system must be tested to meet the surveillance requirements.

(2) Technical Specification 3.3.1, Table 3.3-1, "Reactor Trip System Instrumentation," would be revised to modify Action Statement 2.c to clarify the applicable thermal power level and to delete "at least once every 12 hours" from the Action Statement because the time interval for the quadrant power tilt ratio (QPTR) surveillance is already specified in Technical Specification 4.2.4.2.

(3) Technical Specification 4.3.1.1, Table 4.3-1, "Reactor Trip System

Instrumentation Surveillance Requirements," would be revised to clarify that the plant heat balance surveillance requirement for the power range nuclear instruments is to be performed after 15 percent thermal power is exceeded, but before 30 percent thermal power is reached, or within 24 hours, whichever occurs first.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined that the proposed changes will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed changes clarify surveillance test requirements for the control room ventilation system and the reactor trip system instrumentation, none of which affect the accident analyses contained in the FSAR Update.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes do not necessitate physical alteration of the plant or changes to operating procedures.

(3) Involve a significant reduction in the margin of safety because the proposed changes only clarify the requirements of the Technical Specifications.

Accordingly, the licensee has determined that the proposed changes to the Technical Specifications involve no significant hazards consideration.

The NRC staff has reviewed the proposed amendments and the licensee's determination and finds it acceptable. Therefore, the staff proposes to determine that the amendment requests do not involve a significant hazards consideration.

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Attorneys for licensee: Richard R. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120 and Bruce Norton, Esq., c/o Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Project Director: George W. Knighton

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment request: March 13, 1987 (LAR 87-04)

Description of amendment request: The proposed amendments would revise the Diablo Canyon Nuclear Power Plant combined Technical Specifications for Units 1 and 2 to delete Technical Specification 3.3.3.6 Action Statement f., which states, "Action Statement e. applies to first fuel cycle only and Statement a. and b. shall become effective thereafter," and revise the other applicable action statements to allow continued power operation with the Reactor Vessel Level Indication System (RVLIS) inoperable. The proposed amendments would also revise the format of the action statements of Specification 3.3.3.6 and Table 3.3.10 to be consistent with Specifications 3.3.1 and 3.3.2 in order to provide greater clarity to the operating personnel to address human factors concerns that have been identified.

The licensee has proposed the RVLIS Technical Specification changes because RVLIS is supplemental instrumentation to the subcooling margin monitor and core exit thermocouples, used for evaluating the onset of an inadequate core cooling condition. As such, RVLIS is not included in or derived from the FSAR analyses and evaluation, and the licensee has determined that a shutdown requirement when RVLIS is not operable should not be included in the Technical Specifications.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined that the proposed changes will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the RVLIS is not required for the mitigation of previously evaluated accidents and is not relied upon for reactor trip or initiation of any plant safety systems. Revising the format of Technical Specification 3.3.3.6 action statements to be consistent with the format of Specifications 3.3.1 and 3.3.2 to address human factors concerns that have been identified is a purely administrative change.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes do not necessitate a physical alteration of the plant or changes in parameters governing normal plant operation.

(3) Involve a significant reduction in the margin of safety because the RVLIS is not required in the mitigation of any previously evaluated accident and is not relied upon for reactor trip or initiation of any plant safety system. In addition, the format changes will provide greater clarity to operating personnel to address human factor concerns.

Accordingly, the licensee has determined that the proposed changes to the Technical Specifications involve no significant hazards considerations.

The NRC staff has reviewed the proposed amendment and the licensee's determination and finds it acceptable. Therefore, the staff proposes to determine that the amendment requests do not involve a significant hazards consideration.

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Attorneys for licensee: Richard R. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120 and Bruce Norton, Esq., c/o Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Project Director: George W. Knighton

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment request: May 14, 1987 (Reference LAR 87-07)

Description of amendment request: The proposed amendment would revise the Diablo Canyon Power Plant (DCPP) Technical Specification Table 3.12-1, Radiological Environmental Monitoring

Program, to correct a typographical error and change the location of biological sampling to a location which would provide more meaningful data. The proposed revisions are:

(1) Correct a typographical error on Technical Specification Table 3.12-1, item 1, "Direct Radiation," to list the proper special interest station as 7G2 instead of 7C2.

(2) Change the control sampling location for Technical Specification Table 3.12-1, item 4.b, "Ingestion, Fish and Invertebrates," from sample location areas identified as Pacific Ocean South of Diablo Cove (POS) and Pacific Ocean North of Diablo Cove (PON) to sample location area identified as 7C2. POS is an area about one acre in size located 1/4 mile south of Diablo Cove. PON is an area about one acre in size located 1/4 mile north of Diablo Cove. 7C2 is an area similar in size located approximately 3 miles south of Diablo Cove.

The intent of the sampling required by Table 3.12-1, item 4.b, is to determine the effects of radioactive liquid effluent discharges on certain aquatic animal organisms in Diablo Cove. Presently, sample locations POS and PON are designated as sampling locations not influenced by plant discharge in Table 3.12-1, item 4.b. These sampling locations must not be influenced by radioactive liquid effluent discharges in order to obtain a meaningful analytical comparison. After reviewing the analytical data from samples taken within sample location areas at PON and POS since DCPP has been in operation, the licensee has determined that these locations may be in areas that could be minimally influenced by plant discharge. A new control sample location (7C2) was tested by the licensee during the third and fourth quarters of 1986, and the licensee states that it is an appropriate background location. Control sampling data is currently being collected from sample location areas 7C2, POS, and PON to ensure that the intent of Technical Specification 3.12.1 is being met.

Basis for Proposed No Significant Hazards Consideration Determination: The Commission proposes to determine that this amendment request involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92 a proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined that the proposed revision would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the control sample location change merely ensures that, based on analytical data from samples taken at PON and POS during the plant operational mode, more meaningful data can be collected and analyzed. Another change corrects a typographical error in the description of a sample station.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes do not necessitate physical alteration of the plant or changes in parameters governing normal plant operation.

(3) Involve a significant reduction in the margin of safety because the proposed technical specification revisions do not change the frequency or type of analysis for radioactive isotope concentrations.

Accordingly, the licensee has determined that the proposed changes to the technical specifications involve no significant hazards consideration.

The NRC Staff has reviewed the proposed amendment and the licensee's determination and finds it acceptable. Therefore, the Staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: California Polytechnical State University Library, Government Documents and Maps Department, San Luis Obispo, California, 93407.

Attorney for Licensee: Richard F. Locke, Esq., Pacific Gas and Electric Company, P. O. Box 7442, San Francisco, California 94120 and Bruce Norton, Esq., c/o Pacific Gas and Electric Company, P. O. Box 7442, San Francisco, California 94120.

NRC Project Director: George W. Knighton

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of amendment request: February 20, 1987 and supplemented on June 2, 1987.

Description of amendment request: The proposed amendment to Technical Specification Section 3.1.6 and 3.8.10 is required to affect replacement of certain incontainment radiation monitors with monitors which the licensee believes are necessary to meet leak detection requirements. The change was initiated specifically to help operators detect small (1 GPM) Reactor Coolant System (RCS) leak rates by monitoring containment particulate activity. The proposed amendment would also revise the associated basis of the Technical Specification 3.1.6 to explain the capabilities and limitations of the system. The existing radiation monitors were designed to detect RCS leakage by monitoring both particulate and gaseous activity. These monitors became less effective due to higher containment background gaseous activity which resulted after regulations were changed to restrict the use of containment purge.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning application of standards considered not likely to involve a significant hazards consideration by providing certain examples (51 FR 7751). One example (vii) is a change to make a license conform to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations. The changes proposed by the licensee were initiated to help maintain the RCS leak detection capability after the use of containment purge was restricted by a regulatory change. The changes included in the licensee proposal are minor in nature and are clearly in keeping with regulations. Therefore, the staff proposes to determine that the proposed changes involve no significant hazards consideration.

Local Public Document Room location: Sacramento City-County Library, 828 I Street, Sacramento, California 95814

Attorney for licensee: David S. Kaplan, Sacramento Municipal Utility District, 6201 S Street, P.O. Box 15830, Sacramento, California 95813

NRC Project Director: George W. Knighton

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment requests: February 27, 1987 (TS 82)

Description of amendment requests: Tennessee Valley Authority (TVA) proposes to modify the Sequoyah Nuclear Plant Units 1 and 2 Technical Specifications (TS) to revise the Reactor Coolant System specifications while in Mode 3 to require two reactor coolant loops to be in operation when the reactor trip system breakers are closed. The bases will also be revised to show

the time when two reactor coolant loops are required to provide the necessary heat removal capability.

Basis for proposed no significant hazards consideration determination: In its application dated February 27, 1987 to revise the Sequoyah TS, the licensee provided the following information on the TS change:

In June of 1984, the Westinghouse Safety Review Committee determined that a potential unreviewed safety question exists as the result of the identification of an inconsistency in the assumptions between the accident analysis in the Final Safety Analysis Report (FSAR) and the technical specifications. This issue concerns the number of operating reactor coolant pumps when the plant is between residual heat removal (RHR) operation and hot zero power (HZP). This stage of operation is known as Mode 3 in the Westinghouse Standard Technical Specifications.

The accident analyses in the FSAR which are performed at HZP conditions are intended to bound the colder conditions of Mode 3 between HZP and RHR operation. Of the accident analyses presented in the FSAR, three are performed at HZP; steamline rupture, RCCA ejection, and uncontrolled bank withdrawal from subcritical. However, the only accident requiring reanalysis due to the technical specification inconsistency is the bank withdrawal from subcritical event. The FSAR analysis of the bank withdrawal from subcritical event assumes that all reactor coolant pumps are operating when the plant is at HZP and not operating in a special test. The results of the Westinghouse reanalysis show that two reactor coolant pumps in operation are adequate to meet RCS design limits. Thus, the proposed change to the technical specifications will require two reactor coolant loops to be in operation during Mode 3.

Westinghouse has analyzed the bank withdrawal from subcritical event assuming two pumps in operation at HZP. This accident was analyzed using the current Westinghouse analytical methods to demonstrate that the departure from nucleate boiling ratio (DNBR) remains above the limit value, which is the acceptance criterion for Condition II events. Using the current methods, the uncontrolled RCCA bank withdrawal from subcritical accident is performed in three stages: first, an average core nuclear power transient calculation, then an average core heat flux calculation, and finally the DNBR calculation. The TWINKLE computer code is used to calculate the nuclear power transient, the FACTRAN code to calculate the heat flux, and the THINC code to calculate the DNBR. (These codes are already referenced in the FSAR.) These methods have been previously approved by NRC in the review of the accident analyses on individual plant dockets.

In general, the assumptions listed in FSAR section 15.2.1.2 for the RCCA bank withdrawal from subcritical accident apply to the reanalysis. Additional assumptions used in the reanalysis are:

1. A conservative value for the moderator temperature coefficient was used in the analysis to yield the maximum peak heat flux.

2. The most limiting axial and radial power shapes, associated with having the two highest combined worth sequential control banks in their high worth position, were assumed in the DNB analysis.

3. Two reactor coolant pumps were assumed to be in operation.

The results of the reanalysis show that the minimum DNBR remains above the limiting value at all times during the transient. Therefore, the reactor core and reactor coolant system pumps operating will not be adversely affected, and no cladding damage and no release of fission products to the RCS is predicted in the event of an RCCA withdrawal from subcritical accident with two reactor coolant pumps operating.

Sequoyah placed administrative controls in place on August 10, 1984 to require two reactor coolant loops to be in operation or one reactor coolant loop if the control rods are on the bottom and the control rod drive system is tagged to prevent rod withdrawal. This proposed change adds this requirement to the technical specifications.

The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, about the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92 the licensee has performed and provided the following analysis.

(1) Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No, the reactor coolant pumps (RCPs) play two different roles at hot zero power (HZP). During the startup role, all four RCPs are put in operation to provide additional heat generation desired for startup. In the cooldown role, the number of RCPs in operation varies according to present conditions. The proposed change will require at least two pumps to be running, which provides sufficient heat removal capability for removing core decay heat.

(2) Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No, this change corrects an inconsistency between the FSAR and the technical specifications. The current analysis for a bank withdrawal from subcritical event assumes all four RCPs are running. The results of the Westinghouse reanalysis for only two RCPs running show that the departure from nuclear boiling ratio (DNBR) remains above the limit value, which is the acceptance criterion for this event. Thus, no cladding damage and no release of fission products to the reactor coolant system is predicted as a result of DNB.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

No, of the three accidents analyzed at HZP, the bank withdrawal from subcritical is the only event that requires more than one RCP to be running. The change in the technical specifications from one pump required running to two pumps running will not have any significant impact on the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: John A. Zwolinski

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment requests: April 8, 1987 (TS 87-03)

Description of amendment requests: Tennessee Valley Authority proposes to modify the Sequoyah Nuclear Plant Units 1 and 2 Technical Specifications (TS) by revising TS 3/4.6.2, Depressurization and Cooling Systems, Containment Spray System, for both

units to increase requirements on the Containment Spray System. The amendments would add operability requirements to the Limiting Condition for Operation (LCO) 3.6.2.1 for the residual heat removal (RHR) spray. The associated action statement and surveillance requirements (SR) would be revised accordingly to add requirements on the RHR spray trains. The existing SR would be expanded to clearly identify separate SR for both the RHR spray and containment spray trains. The applicability statement would be revised to exempt the operability requirements for the RHR spray trains in Mode 4. Additionally, two typographical changes would be made to the action statement and SR 4.6.2.1.C of the Unit 1 TS only.

Basis for proposed no significant hazards consideration determination: The containment spray system for each unit at Sequoyah includes four spray headers. Two of these headers belong to redundant trains of containment spray. Each containment spray train has a dedicated pump and heat exchanger, and each train is capable of delivering 4,750 gpm of spray. Containment spray is automatically initiated upon the hi-hi containment pressure signal. The other two headers belong to redundant trains of RHR spray. A total of 2,000 gpm of RHR spray can be provided by either train of the RHR system. RHR spray can only be initiated by manual valve manipulations. The proposed revision would make the containment spray system requirements consistent with the plant's Design Criteria and Final Safety Analysis Report (FSAR). While the necessary operability requirements do exist cumulatively in the current TS under LCOs 3.5.2 and 3.6.2.1, this change would enhance the TS by placing all of the containment spray system requirements in one LCO.

In Mode 4, the RHR system's primary function changes from emergency core cooling to shutdown decay heat removal. The proposed TS for the RHR system would not require RHR spray in Mode 4. The following is a summary of TVA's evaluation which justifies that use of RHR spray will not be necessary in Mode 4.

Assuming a cooldown rate of 50° F per hour, which is stipulated in the Sequoyah General Operating Instruction, "Plant Shutdown from Minimum Load to Cold Shutdown," it would take at least four hours to get from initial shutdown (assume average coolant temperature = 550° F) to Mode 4 (maximum average coolant temperature = 350° F). Per the Function Restoration Guideline, RHR spray is prohibited for at least an hour after the initiation of a LOCA. Based on the above, the earliest time for RHR spray initiation following a LOCA occurring in Mode 1 and Mode 4 is one hour and five hours after shutdown, respectively. A comparison of the decay heat rates given in the Sequoyah FSAR Table 6.2.1-8 for one hour and five hours after shutdown shows that the decay heat rate at five hours is approximately 61 percent of the decay heat rate at one hour. Similarly, the operation of one train of containment spray alone provides 70 percent of the flow rate of one train of containment spray supplemented by one train of RHR spray. Since the decrease in the decay heat rate is greater than the reduction in the containment spray system's capacity, TVA concluded that the spray provided by the RHR spray will not be necessary following a LOCA which is initiated in Mode 4. In addition, the amount of initial blowdown energy released in Mode 4 will be significantly less than a design basis event due to the significantly lower primary coolant temperature.

The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92 about the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92 the licensee has performed and provided the following analysis.

(1) Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed amendment makes the Limiting Condition for Operation 3.6.2.1 regarding the containment spray system's requirements explicitly consistent with the Sequoyah Design Criteria and the FSAR design basis LOCA analysis. The Design Criteria and the FSAR state that one train of RHR spray is needed if a design basis LOCA has occurred and one train of containment spray is lost (Single failure criterion). While the operability of the RHR spray has been assured by existing surveillance requirements in the technical specifications, these requirements will now be appropriately listed or referenced in the containment spray system section.

(2) Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed amendment does not change the plant's design, procedures, or testing. Therefore, it will not create any new accidents.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

No. The proposed amendment can only enhance safety since it will make the technical specifications clearer in regard to the design requirements for the containment spray system. The margin of safety regarding containment integrity as provided for by the containment spray system is not affected.

Additionally, the staff notes that the typographical changes are strictly administrative and therefore are encompassed by example (i) of the Commission's examples of amendments considered not likely to involve significant hazards considerations (51 FR 7751) and do not present a significant hazards consideration.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

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NRC Assistant Director: John A. Zwolinski

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment requests: April 17, 1987 (TS 87-09)

Description of amendment requests: Tennessee Valley Authority proposes to amend the Sequoyah Nuclear Plant Units 1 and 2 Technical Specifications (TS) to add the "Diesel Generator (D/G) System Electrical Board Rooms" to Limiting Condition for Operation 3.7.11.3 as part of the low-pressure CO_2 systems required to be operable to ensure system operation.

Basis for proposed no significant hazards consideration determination: The design criteria for the low-pressure CO_2 system at the Sequoyah Nuclear Plant (SQN) require automatic fire protection for the D/G electric board rooms. These board rooms are safety-related areas containing equipment that is required to be operable for D/G system operation. Inclusion of these areas with those areas currently having TS requirements for an automatic fire

detection system would make the TS consistent with the Sequoyah plant design criteria and the Final Safety Analysis Report (FSAR).

The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92 about the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis.

SQN's fire protection system design is based on the results of a fire hazards analysis covering those areas where an unmitigated fire could affect a unit's ability to reach and maintan a safe shutdown. The analysis involved a detailed review of the plant design and an evaluation of the effects of postualted fires. The results of the analysis are provided in the SQN Fire Protection Program Reevaluation.

An automatic fire detection system is installed in various areas of the plant to give rapid notification of a fire to the main control room and to initiate automatic response where such a need exists. This capability is provided to the D/G electrical board rooms. In the event of a loss of offsite power, these boards are required to provide necessary power supply to miscellaneous equipment for D/G system operation. The addition of the electrical board rooms to the TS will ensure proper surveillance testing of the low-pressure CO_2 system to provide immediate notification and fire protection mitigation.

In its conclusion, the licensee addressed the issue of no significant hazards consideration as follows:

(1) Is the probability of an occurrence or the consequences of an accident previously evaluated in the safety analysis report significantly increased?

No, the fire hazards analysis presented in the FSAR has not been changed. Automatic CO_2 system fire protection is already provided for the D/G electric board rooms and no new modification is required by the proposed change. The additional TS requirement will provide the proper authority to ensure an operable D/G system is not degraded by a fire hazard.

(2) Is the possibility for an accident of a new or different type than evaluated previously in the safety analysis report created?

No, the capability for fire mitigation has not been changed. The proposed change will add the electric board rooms to the limiting conditions for operation for CO_2 systems and thus require the established surveillance testing. The possibility for a new or different type accident has not been created.

(3) Is the margin of safety significantly reduced?

No, the margin of safety has not been reduced because testing requirements and CO_2 system operation will remain the same.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involve no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

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NRC Assistant Director: John A. Zwolinski

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment requests: May 22, 1987 (TS 87-20)

Description of amendment requests: Tennessee Valley Authority (TVA) proposes to modify the Sequoyah Nuclear Plant Units 1 and 2 Technical Specifications to revise the following functions for reactor trip system and engineered safety feature (ESF) actuation system instrumentation: (1) Remove the channel calibration every refueling outage requirement for the reactor trip, P-4 function, from Table 4.3-1, "Reactor Trip System Instrumentation Surveillance Requirements," (2) Clarify the channels to trip for manual containment spray and manual phase "B" isolation in Table 3.3-3, "Engineered Safety Feature Actuation System Instrumentation" to state, "Two switches must be operated simultaneously for actuation," (3) Remove the reactor trip function from high-high steam generator water level signal, Table 3.3-5, "Engineered Safety Features Response Times," and (4) Add an automatic actuation logic requirement for turbine trip, and feedwater isolation, and automatic switchover to containment sump in Tables 3.3-3, 3.3-4 and 4.3-2, providing the total No. of channels, channels to trip, minimum channels operable, applicable modes, and action; extend the time allowed to perform surveillance testing from 1 hour to 2 hours for the Action Statements 15 and 23 in Table 3.3-3 which applies to one channel bypassed; and delete the note in Table 3.3-4. Additionally, for Unit 2 only, a redundant listing of an automatic switchover to containment sump would be deleted from TS Table 4.3-2. An associated footnote in Table 3.3-4, applicable to both units, concerning manual switchover of residual heat removal (RHR) suction from the refueling water storage tank (RWST) to the containment sump would also be deleted.

Basis for proposed no significant hazards consideration determination: The following describes in detail each proposed change:

1. TVA has stated the TS requirement to perform a channel calibration for the P-4 interlock is not practical. A channel calibration, as defined by the TS, shall be the adjustment, as necessary, of the channel output such that it responds with necessary range and accuracy to known values of the parameter which the channel monitors. The P-4 interlock performs its designated function when a 1 of 2 logic is present. The channel output is not dependent on any range or accuracy. As soon as the P-4 contact senses a signal, the channel output is performed. Operability of the channel output is verified by the channel functional test. Also, the proposed change to remove the channel calibration requirement is consistent with the Westinghouse Standard Technical Specifications (STS).

2. The manual actuation logic for containment spray and phase "B" isolation consists of four momentary controls. Actuation will occur only if two associated controls are operated simultaneously. Two controls per set are preferred to prevent inadvertent spray actuation.

The current TS numbers for manual actuation are not correct. The proposed change will correctly reflect the number of controls required for actuation.

3. The ESF system generates a turbine trip and feedwater isolation on high-high steam generator water level. This is to prevent water from entering the steam lines and the turbine. At operations above 50 percent of rated thermal power, once the turbine has been tripped, a reactor trip signal will be generated. Amendment 7 dated June 26, 1981 to the SQN unit 1 facility operating license allowed the deletion of a reactor trip on turbine trip for operation below 50 percent of rated thermal power. Since a reactor trip does not provide for protection of the turbine from water carryover into the turbine as a result of flooding of the steam lines, it should not be listed with the turbine trip in Table

3.3-5 as having a required ESF response time. Furthermore, the proposed change is consistent with the same response time requirements to a high-high steam generator water level event as given in the Westinghouse STS.

4. The automatic actuation logic test applies various simulated input combinations in conjunction with each possible interlock logic state and verifies the required logic output. This testing is already being performed at Sequoyah. The addition of this requirement to the TS will ensure proper controls are in place for complete operability verification and will be consistent with other functional units on the same table and the Westinghouse STS.

The applicable action statement for the automatic actuation logic test allows one channel to be bypassed for up to one hour in order to meet surveillance testing requirements. Because of current problems in meeting the one-hour time requirement, TVA is requesting that this time limit be extended to two hours, provided the other associated channel is operable. The Westinghouse STS presently allow two hours to perform this testing. Additionally, WCAP 10271, Supplement 2, "Evaluation of Surveillance Frequencies and Out of Service Times for the Engineered Safety Features Actuation System," has proposed extending this time limit to four hours based on results of fault tree reliability and risk analysis. TVA believes that adequate reliability exists for the extended two-hour testing time, provided the other associated channel is operable.

Table 4.3-2 of the unit 2 TS as it currently exists, has duplicate entries of item 9, "Automatic Switchover to Containment Sump." The duplication of the two entries was verified by an item-by-item comparison of the two entries. Therefore, the deletion of the redundant entry of item 9 in Table 4.3-2 as it appears on page 38 of the unit 2 TS will not alter the requirements for channel checks, channel calibrations, or channel functional tests; nor will it change the modes for which surveillance is required.

The associated footnote provided temporary relief to the requirements of item 9 of Table 4.3-2. The duration of the relief was to last for 30 days, extending from June 18, 1982, until July 18, 1982. The applicability of this footnote has long since expired, and its deletion will provide for keeping the TS free from obsolete statements.

The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, about the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92 the licensee has performed and provided the following analysis.

Is the probability of an occurrence or the consequences of an accident previously evaluated in the safety analysis report significantly increased?

(1) No. The P-4 interlock performs designated safety functions following a reactor trip. The capability to perform these functions is not dependent on any range or accuracy. Initiation of the safety functions will occur when a 1 of 2 logic is present. Deletion of the P-4 channel calibration will not prevent function capability nor decrease reliability.

(2) No. The added words for containment spray and phase "B" isolation more clearly define actuation requirements. Function capability has not been changed nor reliability decreased.

(3) No. A reactor trip is not expected to occur directly as a result of high-high steam generator water level. The high-high water level signal will generate a turbine trip which will immediately initiate a reactor trip. Removing the response time for a reactor trip from this function does not prevent timely action for a reactor trip, as other applicable response times for a reactor trip remain in effect.

(4) No. The addition of automatic actuation logic testing to the technical specifications is necessary to ensure intended functions assumed in the safety analysis report are reliable. This testing is consistent with other testing requirements in the same table. The extended testing time has been evaluated, and the analysis determined that reliable function operability still exists. The additional testing and increased testing time do not alter the manner in which protection is afforded. Deletion of the redundant surveillance requirement entry and the expired footnote is strictly administrative and does not alter any testing, action, or operating requirements of the plant.

Is the possibility for an accident of a new or different type than evaluated previously in the safety analysis report created?

(1) No. Deletion of the P-4 channel calibration removes an inappropriate test requirement. The channel functional testing will still be performed in a manner to ensure equipment reliability.

(2) No. The proposed change only affects the technical specifications by adding clarification to existing requirements. The mechanism to trip the channels is still the same. No modifications or procedural changes are necessary.

(3) No. The proposed deletion will not result in a change in which reactor trip protection is provided. The manner in which a turbine trip and subsequent reactor trip resulting from a high-high steam generator water level signal would occur has not been changed.

(4) No. The proposed changes will not require any modifications or alter any testing, action, or operating requirements of the plant. Existing testing techniques will be used to satisfy the additional requirements; and present testing, where times have been extended, will be performed the same way. The two items being deleted affect only the technical specifications and are strictly administrative.

Is the margin of safety significantly reduced?

(1) No. The margin of safety has not been changed. Function operability and reliability have not been affected.

(2) No. The margin of safety has not been changed. Clarification has been added to the technical specifications to avoid any confusion in necessary action required for channel trip.

(3) No. The margin of safety has not been changed. The proposed change makes a correction to an inappropriate response time requirement.

(4) The administrative changes will not affect the margin of safety. The additional testing requirements will provide additional assurance of equipment operability. The extended testing time is based on fault tree reliability and risk analysis and will not significantly reduce the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

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NRC Assistant Director: John A. Zwolinski

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment requests: May 22, 1987 (TS 87-18)

Description of amendment requests: Tennessee Valley Authority proposes to modify the Sequoyah Nuclear Plant Units 1 and 2 Technical Specifications to revise the (a) trip setpoint and (b) allowable values for each bus for the reactor coolant pump (RCP) undervoltage (UV) reactor protection channel (Table 2.2-1, functional unit 15) from greater than or equal to 4830 volts and 4761 volts, respectively, to greater than or equal to 5,022 volts and 4,739 volts, respectively.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92 about the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis.

The RCP UV instrument loop consists of a 7200/120 volt potential transformer and an UV relay which provide input to the reactor protection system. The nominal electrical board voltage for the RCPs is 6900 volts. The calculation of the instrument loop accuracy and the resulting safety margin are described in Sequoyah calculation RCP-UV-DEVICE 27. The UV relay setting is based on the Westinghouse safety limit of 68 percent of nominal board voltage for the RCPs, the relay guaranteed actuation value, and the overall channel accuracy.

The instrument loop channel accuracy calculation was performed using the secondary side voltage of the potential transformer. The technical specification values are based on the primary side voltage. Table 1 provides a listing of key primary and secondary side voltages. The nominal UV relay setting is 90 volts, which corresponds to 5400 volts on the primary side. The trip setpoint is considered to be 93 percent of this value or 5,022 volts. This value is based on the manufacturers' guaranteed actuation at 93 percent of the relay setting, as noted in the attached calculation. Actuation of the relay at a higher value is indeterminate; hence, the nominal setting cannot be considered the trip setpoint as used in the technical specifications because actuation is not guaranteed at that value.

The allowable value was calculated using essentially the same setpoint methodology as that used for V. C. Summer, which was reviewed and approved by NRC in NUREG-0717, Supplement 4. The total allowance (TA), defined as the difference between the trip setpoint and safety limit in percent span, is calculated using the trip setpoint and the safety limit.

$$TA = 83.7 - 78.2 \times 100 = 18.33\% \text{ of span}$$

30

The difference between the trip setting and allowable value setting is determined by the smaller of the following two values. In effect, this method provides a conservative allowance for rack effects. The allowable value is used as a trigger value during periodic rack testing. This trigger value ensures that sufficient allowance remains for the rest of the channel to guarantee actuation at the safety limit. T_1 is an arithmetic sum of the rack error components. T_2 is the total allowance minus the statistical computation of the channel error excluding the rack components. Using the smaller of the two values ensures calculations of a conservative trigger value.

The individual values used in these equations are defined in the attached calculation.

$T_1 = (RD + RCA + RMTE + RCSA) = 18.3\%$ of span

$T_2 = TA-[(A + S^2)1/2 + EA]$

where:

$A = PMA^2 + PEA^2 + SPE^2 + STE^2 + RTE^2$

$S = (SCA + SMTE + SD)$

$T_2 = 16.9\%$ of span

T^2 is used to calculate the technical specification allowable value. The UV relay setting corresponding to the allowable value is calculated as follows.

Equivalent Allowable Value Setting = 90 - (.169)(30)

= 84.93 V

To be consistent with technical specification usage, the guaranteed actuation value of 93 percent is used. The allowable value is 78.98 V, or 4,739 V on the primary side.

In summary, the trip setpoint for the RCP UV reactor protection channel has been calculated to be 5,022 V. The corresponding allowable value has been calculated to be 4,739 V.

In its conclusion, the licensee addressed the issues of no significant hazards consideration. It addressed the three factors in 10 CFR 50.92 as follows:

(1) Is the probability of an occurrence or the consequences of an accident previously evaluated in the safety analysis report significantly increased?

No. The change in the trip setpoint and allowable value for the reactor coolant pump undervoltage reactor protection channel to account for overall channel accuracy and measurement and test errors ensures proper operation of this protection function. The change in setpoint decreases the consequences of accidents or transients for which this channel provides protection. The change in setpoint has no effect on the probability of such transients or accidents occurring.

(2) Is the possibility for an accident of a new or different type than evaluated previously in the safety analysis report created?

No. The change in the trip setpoint and allowable values for the reactor coolant pump undervoltage reactor protection channel ensures that the technical specification trip setpoint is conservative with respect to the safety limit. No hardware changes were made. No new or different types of accidents have been introduced by this change in setpoint.

(3) Is the margin of safety significantly reduced?

No. The change in the trip setpoint and allowable values for the reactor coolant pump undervoltage reactor protection channels is conservative. The effects of measurement and test errors have been included in the overall channel accuracy. The increase in the trip setpoint increases the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

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NRC Assistant Director: John A. Zwolinski

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri.

Date of amendment request: March 31, 1987 as supplemented by letters dated April 15, June 5, June 18, July 16, and July 28, 1987. The March 31 application was originally noticed on June 3, 1987 (52 FR 20804).

Description of amendment request: The proposed amendment involves a core reload and would permit operation with Westinghouse Vantage 5 (V-5) fuel assemblies in addition to the Westinghouse Low Parasitic (LOPAR) and Optimized Fuel Assemblies (OFA's) remaining in the core during Cycle 3. Design features of the V-5 fuel include assemblies with up to approximately 4.2 weight percent U-235, integral fuel burnable absorbers, intermediate flow mixers, reconstitutable top nozzles and extended burnup capability. This requires changes to the technical specifications (TS) due to the use of the V5 fuel and use of the following analytical methods: the WRB-2 departure from nucleate boiling (DNB) correlation, the BASH large break loss-of-coolant accident (LOCA) model, the FQ(z) peaking factor, the ANSI/ANS-5.1-1979 decay heat model, and an updated methodology for the calculation of radiological consequences for Chapter 15.0 accidents and transients. Changes to the TS would be made to: reactor core safety limits; overtemperature delta T, overpower delta T and reactor coolant flow allowable values; bases to reflect the WRB-2 DNB correlation; rod drop times; axial flux difference limiting condition for operation (LCO) and Action statements; peaking factor surveillances; DNB parameters; and the volume range for reactor coolant system (RCS) accumulators.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (51 FR 7751) of actions not likely to involve a significant hazards consideration. Example (iii) of this guidance states: "For a nuclear power reactor, a change resulting from a nuclear reactor core reloading, if no fuel assemblies significantly different from those found previously acceptable to the NRC for a previous core at the facility in question are involved. This assumes that no significant changes are made to the acceptance criteria for the technical specifications, that the analytical methods used to demonstrate conformance with the technical specifications and regulations are not significantly changed, and that NRC has previously found such methods acceptable."

The proposed license amendment is directly related to the above example in that the core reload uses V5 fuel which is not significantly different from previous cores at Callaway, the changes to the technical specifications are as a result of the core reload and not because of any significant change made to the acceptance criteria for technical specifications, and the analytical methods used by the licensee in the required reload analyses have been previously found acceptable by the NRC. Therefore, based on the above, the staff proposes to determine that the proposed technical specification changes do not involve a significant hazards consideration.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251 and the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: David L. Wigginton, Acting.

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: June 24, 1987

Description of amendment request: Changes in the Technical Specifications are requested for Cycle 13 operation of the nuclear reactor. The changes are required to allow use of the General Electric fuel type BP8DRB299. The proposed Technical Specification changes are: (1) incorporation of additional Maximum Average Planar Linear Heat Generation Limits (MAPLHGR) for the new fuel; (2) revision to the Minimum Critical Power Ratio (MCPR) limits by eliminating the fuel type dependence; and (3) updating the bases section references associated with certain cycle dependent limits.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for determining whether a proposed amendment involves a significant hazards consideration (48 FR 14870). An example of an amendment that is not likely to involve a significant hazards consideration is "(iii)..., a change resulting from a nuclear reactor core reloading, if no fuel assemblies significantly different from those found previously acceptable to the NRC for a previous core at the facility in question are involved. This assumes that no significant changes are made to the acceptance criteria for the Technical Specifications, that the analytical methods used to demonstrate conformance with the Technical Specifications and regulations are not significantly changed, and that NRC has previously found such methods acceptable."

The staff considers the proposed amendment to be similar to example (iii) since the staff has previously reviewed the fuel design proposed for cycle 13 operation and has found that the operating characteristics and safety margins are acceptable. No changes in the previously accepted analytical methods used to demonstrate conformance with the Technical Specifications and regulations are involved. Therefore, no significant difference in safety to the public is expected.

Since the amendment involves proposed changes for which no significant hazards consideration exists, the staff has made a proposed determination that this application for amendment involves no significant hazards consideration.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Attorney for licensee: John A. Ritscher, Esq., Ropes & Gray, 225 Franklin Street, Boston, Massachusetts 02110.

NRC Project Director: Victor Nerses, Acting Director

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment requests: October 7, 1986, as supplemented June 8, 1987

Description of amendment requests: The proposed amendments would change Section 3.13 of the Surry Technical Specifications (TS) by revising the actions to be taken by Virginia Electric and Power Company (the licensee) while operating with an inoperable, misaligned or dropped control rod. The current TS require implementation of an alternate set of control bank insertion limits if operation is continued with an inoperable or bottomed rod. The licensee has proposed to eliminate the alternate rod insertion limits requirement, and proposed alternate actions to be taken by licensee upon discovery of an inoperable rod. The proposed actions include the requirement for the timely evaluation of peaking factors, shutdown margin and the potential impact of operation with the inoperable rod on the various accident analyses presented in the Updated Final Safety Analysis Report (UFSAR). The proposed actions to be taken by licensee are in closer agreement with the actions delineated in

Standard Technical Specifications for Westinghouse plants.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards in 10 CFR 50.92(c) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in margin of safety.

The licensee has evaluated the changes against the standards provided above and has determined that the changes would involve no significant hazards consideration because:

(1) The changes involve a revision to certain operational constraints. The accident probabilities will not significantly change because no equipment modifications or design changes are involved. The consequences of the accidents affected by an inoperable rod will continue to be bounded by their associated analyses by virtue of the requirement to maintain the power peaking factors, shutdown margin and other significant safety parameters within appropriate design limits. Thus, the probabilities or consequences of an accident previously evaluated will not significantly increase.

(2) The proposed changes involve the actions to be taken by the licensee while operating with an inoperable rod. These actions do not involve any new equipment malfunctions or design changes. The kind of accidents affected by plant operation with an inoperable rod remain the same and have been previously analyzed. Therefore, the proposed changes will not create a possibility of a new or different kind of accident.

(3) The proposed revisions include the requirement for timely evaluation of peaking factors, shutdown margin and the potential impact of operation with the inoperable rod on the various accident analyses presented in the Updated Final Safety Analysis Report. The revised TS include additional surveillance requirements which provide greater assurance that all of the acceptance criteria for the transient analyses presented in UFSAR are met and the appropriate safety margins are maintained. Thus the proposed changes do not involve a significant reduction in the margin of safety.

Therefore, the staff agrees with the licensee's analysis of the three standards and proposes to determine that the proposed amendments do not involve a significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Mr. Michael W. Maupin, Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213.

NRC Project Director: Lester S. Rubenstein

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Arkansas Power & Light Company, Docket No. 50-313, Arkansas Nuclear One, Unit 1, Pope County, Arkansas

Date of application for amendment: January 17, 1986 as supplemented on June 24, 1986 and January 15, 1987.

Brief description of amendment: The amendment approves a change to the Reactor Coolant System pressure setpoint for initiation of High Pressure Injection and Low Pressure Injection. The setpoint is changed from 1500 psig to 1526 psig.

Date of issuance: July 24, 1987.

Effective date: July 24, 1987.

Amendment No.: 108

Facility Operating License No. DPR-51. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 27, 1986 (51 FR 30562). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 24, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Carolina Power & Light Company, North Carolina Eastern Municipal Power Agency, Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit No. 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: May 14, 1987

Brief description of amendment: The amendment modifies Technical Specifications Tables 3.3-11, 4.3-8, and 4.11-1 to allow continuous as well as batch release of secondary system liquid effluents

Date of issuance: July 22, 1987

Effective date: July 22, 1987

Amendment No.: 1

Facility Operating License No. NPF-63: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 3, 1987 (52 FR 20797). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 22, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Richard B. Harrison Library, 1313 New Bern Avenue, Raleigh, North Carolina 27610

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: March 9, 1987

Brief description of amendment: This amendment revises the Fermi-2 Technical Specifications to make editorial and typographical error corrections to Specification 3/4.8.4.3 (MOV Thermal Overload Protection), Specification 3/4.5.1 (ECCS-Operating), and Specification 3/4.6.1.2 (the Bases for Primary Containment Leakage). The change to Specification 3/4.8.4.3 deletes reference in Table 3.8.4.3-1 of Item 12, Valve No. P11-F616, which is no longer applicable for the Condensate Storage and Transfer System design; the change to Specification 3/4.5.1 resequences ECCS-Operating Actions b.2 and b.3 under 3.5.1 by replacing Action b.2 with Action b.3 and by replacing Action b.3 with Action b.2; the change to Bases 3/4.6.1.2 corrects two typographical errors that reference an American National Standard document N45.4-1972, "Leakage-Rate Testing of Containment Structures for Nuclear Reactors." (This document was incorrectly referenced as "N45.5-1972.")

Date of Issuance: July 17, 1987.

Effective Date: July 17, 1987.

Amendment No.: 8

Facility Operating License No. NPF-43: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** April 8, 1987 (52 FR 11359). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 17, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: March 9, 1987 (VP-NO-87-0005)

Brief description of amendment: This amendment revises Fermi-2 Technical Specification 3/4.2.2 to change the average power range monitor (APRM) setpoint action statement extending the action time limit for control rod withdrawal from two to six hours before setdown action is required in order to: (1) establish target patterns; (2) achieve a reasonable power distribution at full power with equilibrium xenon; and (3) ensure that no combination of the Maximum Fraction of Limiting Power Density and Fraction of Rated Thermal Power would result in a Linear Heat Generation Ratio transient peaking factor beyond the one percent plastic strain limit. This amendment also changes the control rod block instrumentation, Table 3.3.6-2 of the Technical Specifications, to delete the asterisks in the "Trip Setpoint" and "Allowable Value" columns for Item 1.a to correct a typographical error (the asterisk does not apply to Item 1.a), and to add "APRM" to the same footnote to clarify the intent of the specification.

Date of Issuance: July 21, 1987

Effective date: July 21, 1987

Amendment No.: 9

Facility Operating License No. NPF-43: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** April 8, 1987 (52 FR 11358). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 21, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Public Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Duquesne Light Company, Docket No. 50-334, Beaver Valley Power Station Unit No. 1, Shippingport, Pennsylvania

Date of application for amendment: February 11, 1987

Brief description of amendment request: The amendment changed the Technical Specifications to revise the reactor coolant system heatup and cooldown curves (Figures 3.4-2 and 3.4-3), and their associated bases.

Date of issuance: July 28, 1987

Effective date: July 28, 1987

Amendment No.: 111

Facility Operating License No. DPR-66. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 8, 1987 (52 FR 11363). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 28, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of application of amendments: April 1, 1987 (L-87-146 for Unit 1 and L-87-147 for Unit 2).

Brief description of amendments: The amendments delete the tables which identify safety-related hydraulic and mechanical snubbers and the first in service inspection requirement which has already been fulfilled. The amendment for Unit No. 1 also deletes a footnote concerning the waiving of mechanical snubber test requirements until startup following the fifth refueling outage, which has already occurred, and corrects a reference.

Date of Issuance: July 27, 1987

Effective Date: July 27, 1987

Amendment Nos.: 83 and 22

Facility Operating License Nos. DPR-67 and NPF-16: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 20, 1987 (52 FR 18979) for Unit 1, and June 3, 1987 (52 FR 20799) for Unit 2. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 27, 1987

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Ft. Pierce, Florida 33450.

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of application for amendments: July 18, 1986, as supplemented on February 20, 1987.

Brief description of amendments: These amendments incorporate plant specific Technical Specifications for the Reactor Vessel Level Monitoring System (RVLMS). The RVLMS has been installed and tested on Turkey Point Units 3 and 4, and is a portion of the Inadequate Core Cooling System (ICCS). The NRC staff reviewed and approved the ICCS for Turkey Point Units 3 and 4. The details and basis for the approval are documented in the staff's Safety Evaluation dated January 28, 1985. The RVLMS portion of the ICCS was approved for implementation prior to the licensee requesting Technical Specifications for the RVLMS. The Technical Specifications are in accordance with the NUREG-0737, Item II.F.2, and the staff's Safety Evaluation referenced above.

Date of issuance: July 28, 1987

Effective date: July 28, 1987

Amendment Nos.: 125 and 119

Facility Operating Licenses Nos. DPR-31 and DPR-41: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 24, 1986 (51 FR

33949). Renoticed May 6, 1987 (52 FR 16946). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 28, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199.

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of application for amendment: March 10, 1987 as supplemented June 9, June 30, July 8, 23, and 27, 1987.

Brief description of amendment: This amendment authorizes one-time extensions to the surveillance intervals for drywell bypass leakage testing and leakage testing of 52 isolation valves and two air systems of the drywell airlock/equipment hatch until the first refueling outage scheduled to begin September 15, 1987.

Date of issuance: August 3, 1987.

Effective date: August 3, 1987.

Amendment No.: 7

Facility Operating License No. NPF-47. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 1, 1987 (52 FR 24550). The licensee's June 30, 1987 submittal withdrew the Technical Specification change request specified in Attachments 1 and 3 to the March 10, 1987 submittal. The July 8, 1987 submittal provided clarification with respect to the surveillance extension for each individual valve. The July 23, 1987 submittal added a double asterisk to TS 4.6.1.3.f which had been inadvertently omitted. The July 27, 1987 submittal provided clarification to the footnotes on the TS pages that the first refueling outage is scheduled to begin on September 15, 1987. These submittals did not alter the NRC staff's determination of no significant hazards as published in the **Federal Register.**

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 31, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: January 13, 1987

Brief description of amendment: The amendment revised the Technical Specifications by adding operability and surveillance requirements for the Broad Range Toxic Gas Detection System.

Date of issuance: July 21, 1987.

Effective date: July 21, 1987.

Amendment No.: 20

Facility Operating License No. NPF-38. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 20, 1987 (52 FR 5858). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 21, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: February 23, 1987.

Brief description of amendment: The amendment revised the Technical Specifications by revising the channel calibration frequency for the Chlorine Detection System from at least once every 18 months to at least once every 31 days.

Date of issuance: July 31, 1987.

Effective date: July 31, 1987.

Amendment No.: 21

Facility Operating License No. NPF-38. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 25, 1987 (52 FR 9577). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 31, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Northeast Nuclear Energy Company, et al., Docket No. 50-245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of application for amendment: February 13, 1987

Brief description of amendment: This amendment will lower the reactor water cleanup system isolation set point from the existing Group 3 Isolation Signal (reactor low water level) to the Group 5 Isolation Signal (reactor low-low water level).

Date of issuance: July 17, 1987.

Effective date: July 17, 1987.

Amendment No.: 4

Facility Operating License No. DPR-21. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 22, 1987 (52 FR 13340). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 17, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: December 24, 1985, as supplemented February 3, 1987

Brief description of amendments: The amendments revise the requirements for diesel generator surveillance testing.

Date of Issuance: July 24, 1987

Effective date: July 24, 1987

Amendment Nos: 15 and 14

Facility Operating Licenses Nos. DPR-80 and PDR-82: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 9, 1986 (51 FR 12232). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 24, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: February 13, 1986

Brief description of amendments: These amendments provide for operability and surveillance tests for certain check valves in the residual heat removal and safety injection systems to ensure adequate pressure isolation between the reactor coolant system and these lower pressure support systems.

Date of Issuance: July 27, 1987

Effective date: July 27, 1987

Amendment Nos: 16 and 15

Facility Operating Licenses Nos. DPR-80 and DPR-82: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 9, 1986 (51 FR 12234). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 27, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Portland General Electric Company, Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of application for amendment: September 10, 1985, as supplemented April 3, 1987

Brief description of amendment: The amendment revises Technical Specification Section 3/4.8.2, Onsite Power Distribution Systems, and its corresponding bases, consistent with the Westinghouse Standard Technical Specifications and editorial corrections.

Date of issuance: July 30, 1987

Effective date: July 30, 1987

Amendment No.: 132

Facilities Operating License No. NPF-1: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 4, 1985 (50 FR 49788). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 30, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Multnomah County Library, 801 S. W. 10th Avenue, Portland, Oregon 97205.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: December 12, 1986, as supplemented April 9, 1987.

Brief description of amendment: The amendment clarified the Service Water System and Reactor Building Cooling Unit response times.

Date of issuance: July 22, 1987

Effective date: July 22, 1987

Amendment No.: 67

Facility Operating License No. NPF-12. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** January 14, 1987 (52 FR 1557). The April 9, 1987 letter provided clarifying information that did not change the initial determination of no significant hazards consideration as published in the **Federal Register.** The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 22, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Tennessee Valley Authority, Dockets Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendments: February 9, 1987 (TS 226)

Brief description of amendments: The amendments change the Technical Specifications to delete one of the alternative actions specified in Table 3.1.A when the Average Power Range Monitor (APRM) High Flux or Inoperative trip channels are inoperable. It also makes minor clarifications and improvements.

Date of issuance: July 17, 1987.

Effective date: July 17, 1987, and shall be implemented within 90 days.

Amendments Nos.: 134, 130, 105.

Facility Operating Licenses Nos. DPR-33, DPR-52 and DPR-68: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 20, 1987 (52 FR 18988). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 17, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: January 29 and March 27, 1987.

Brief description of amendment: The amendment revised Technical Specification 3/4.7.5 regarding the ultimate heat sink to provide clarification and delineate the fact that there are two separate trains of cooling available for the essential service water system.

Date of issuance: July 21, 1987

Effective date: July 21, 1987

Amendment No.: 25

Facility Operating License No. NPF-30: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 28, 1987 (52 FR 5870). The supplemental March 27, 1987 letter, regarding the inoperability of the ultimate heat sink due to level or temperature, is considered a minor change since this revision makes the 3/4.7.5 specification consistent with the existing and more restrictive specification regarding the essential service water system. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 21, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251 and the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: March 27, 1987.

Brief description of amendment: The amendment clarifies Item 6.g of Technical Specification Table 3.3-3 regarding the blocking, during normal plant shutdowns and startups, of auxiliary feedwater start signals which are automatically generated upon the trip of both main feedwater pumps.

Date of issuance: July 29, 1987

Effective date: July 29, 1987

Amendment No.: 26

Facility Operating License No. NPF-30: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 22, 1987 (52 FR 13351). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 29, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251 and the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the

amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing. For exigent circumstances, the Commission has either issued a Federal Register notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U. S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By September 11, 1987, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last

ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (Project Director): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-424, Vogtle Electric Generating Plant, Unit 1, Burke County, Georgia

Date of application for amendment: July 22, 1987

Brief description of amendment: The amendment modifies the Technical Specifications to delete references to phase "A" containment isolation on a containment area high-range radiation signal from specification 3/4.3.2 and also to correct references which are no longer applicable because of that deletion.

Date of Issuance: July 24, 1987.

Effective Date: July 23, 1987

Amendment No.: 2

Facility Operating License No. NPF-68: Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation is contained in a Safety Evaluation dated July 24, 1987.

Local Public Document Room location: Burke County Library, 4th Street, Waynesboro, Georgia 30830.

NRC Project Director: B. J. Youngblood

Dated at Bethesda, Maryland this 6th day of August, 1987.

For the Nuclear Regulatory Commission

Dennis M. Crutchfield,

Director Division of Reactor Projects– III, IV, V and Special Projects

Office of Nuclear Reactor Regulation

[FR Doc. 87-18219 Filed 8-11-87; 8:45 am]

BILLING CODE 7590-01-D

[Docket Nos. 50-250 and 50-251]

Environmental Assessment and Finding of No Significant Impact; Florida Power and Light Co.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of exemptions from the requirements of Appendix R to 10 CFR Part 50 to Florida Power and Light Company (the licensee), for the Turkey Point Plant, Units No. 3 and 4, located in Dade County, Florida.

Environmental Assessment

Identification of Proposed Action

The proposed exemptions would permit alternatives to the technical requirements of Appendix R concerning certain specifically identified fire areas in the Turkey Point Plant, Units 3 and 4. These proposed exemptions are responsive to the licensee's request dated April 25, 1986, as supplemented on February 11, 1987.

The Need for the Proposed Action

The proposed exemptions are needed because the plant-specific features described in the licensee's request regarding the existing fire protection at the plant for these specific areas are the most practical means for meeting the intent of Appendix R and literal compliance would not significantly enhance the fire protection capability and would result in high radiation exposure to workers.

Environmental Impacts of the Proposed Action

The proposed exemptions, based on the existing physical plant design and fire protection features, will provide a degree of fire protection that is equivalent to that required by Appendix R for the affected areas of the plant such that there is no increase in the risk of fires at this facility. Consequently, the probability of fires has not been increased and the post-fire radiological releases will not be greater than previously determined, nor do the proposed exemptions otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with these proposed exemptions.

With regard to potential non-radiological impacts, the proposed exemptions involve features located entirely within the restricted area as defined in 10 CFR Part 20. They do not affect non-radiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemptions.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed exemptions, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the exemptions would be to require rigid compliance with the applicable portions of Section III.G.2 of the Appendix R requirements. Such action would not enhance the protection of the environment, would result in high radiation exposure to workers, as well as unjustified costs for the licensee.

Alternative Use of Resources:

This action involves no use of resources not previously considered in the Final Environmental Statement (operating licenses) for the Turkey Point Plant, Unit Nos. 3 and 4, dated July 1972.

Agencies and Persons Consulted:

The NRC Staff reviewed the licensee's request and did not consult with any other agency or persons.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment. The Commission has, therefore, determined not to prepare an environmental impact statement for the proposed exemptions.

For further details with respect to this action, see the application for exemption dated April 25, 1986, as supplemented on February 11, 1987, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199.

Dated at Bethesda, Maryland this 6th day of August, 1987.

For The Nuclear Regulatory Commission.

Lester S. Rubenstein,

Director, Project Directorate II-2, Division of Reactor Project–I/II.

[FR Doc. 87-18362 Filed 8-11-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-344]

Relocation of Local Public Document Room; Portland General Electric Co.; Trojan Nuclear Plant

Notice is hereby given that the Nuclear Regulatory Commission (NRC) has relocated the local public document room (LPDR) for Portland General Electric Company's Trojan Nuclear Plant from the Library Association of Portland, Multnomah County Library, Portland, to the Branford Price Millar Library, Portland State University, Portland, Oregon.

Members of the public many now inspect and copy documents and correspondence related to the licensing and operation of the Trojan Nuclear Plant at the Portland State University Library, 731 S.W. Harrison Street, Portland, Oregon 97207. The Library is open on the following schedule: Monday through Thursday 8 a.m. to 10 p.m. Summer hours vary.

For further information, interested parties in the Portland area may contact the LPDR directly through Mr. Robert Lockerby, telephone number 503-464-4735. Parties outside the service area of the LPDR may address their request for records to the NRC's Public Document Room, 1717 H Street, NW., Washington, DC 20555, telephone number 202-634-3273

Questions concerning the NRC's local public document room program or the availability of documents at the Trojan LPDR should be addressed to Ms. Jona L. Souder, Chief, Local Public Document Room, Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone number 800-638-8081 toll-free.

Dated at Bethesda, Maryland, this 6th day of August, 1987.

For the Nuclear Regulatory Commission.

Donnie H. Grimsley,

Director, Division of Rules and Records, Office of Administration and Resources Management.

[FR Doc. 87-18363 Filed 8-11-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-269]

Confirmatory Order Modifying License (Effective Immediately); Duke Power Co. (Oconee Nuclear Station, Unit 1)

I

Duke Power Company (DPC or the licensee) is the holder of Facility Operating License No. DPR-38, which authorizes the operation of Oconee Nuclear Station, Unit 1 (the facility) at power levels not to exceed 2568 megawatts thermal for each unit. The facility consists of a pressurized water reactor plant located at the licensee's site in Oconee County, South Carolina.

II

For Oconee Unit 1, the reactor building cooling units (RBCUs) provide decay heat removal after the design-basis accident, which is the loss-of-coolant accident (LOCA). In a post-accident situation, all these coolers operate continuously circulating the steam-air mixture past the cooling tubes of the RBCU to transfer heat from the containment atmosphere to the low-pressure service water (LPSW) system. Also, the low-pressure injuection (LPI) system (in the recirculation mode) cools the water from the reactor building sump. For long-term cooling, the LPI pumps recirculate injected water from the reactor building sump to the core. Heat is transferred through the LPI coolers to the LPSW system.

By telephone on April 3, 1987, and by letter dated April 6, 1987, the licensee informed the NRC staff that recent fouling in the LPSW system (lake water) side of the RBCUs and LPI coolers had resulted in an inability to transfer the total LOCA heat loads. Consequently, the licensee had reduced power level in Unit 1 to a maximum of 91.5% to match LOCA heat transfer requirements with the capability of the degraded heat exchangers.

In its letter of April 6, 1987, the licensee commited (1) to establish new interim maximum allowable power levels, (2) to change the reactor protection system (RPS) high-flux trip setpoints for Unit 1, and (3) to specify that the third non-engineered safeguards LPI pump for Unit 1 must be operable.

On April 10, 1987, the NRC issued an immediately effective Order confirming the licensee's commitments and establishing new interim maximum allowable power levels and corresponding changes to the RPS high-flux trip setpoint for Unit 1 while the LPI system coolers and the RBCUs are in a degraded mode.

By letters dated July 24, 28, 29, and 31, 1987, the licensee informed the NRC of the effects for Unit 1 of elevated water temperatures of Lake Keowee. In the letter dated July 24, 1987, the licensee stated that the lake water temperature is increasing and is expected to exceed the design-basis water temperature (75°F) used in the accident analysis documented in the Final Safety Analysis Report (FSAR) for the plant. The licensee stated that the lake temperature has exceeded 75°F in 9 of the past 11 years.

To determine the impact of higher lake water temperatures on station systems and components, the licensee evaluated the effects of temperatures of 80°F and 85°F. The results of the evaluation indicated that under elevated lake water temperature conditions, there is a need to reduce the maximum allowable power level below that specified by the Order of April 10, 1987. The licensee has committed to reduce power level until the Unit 1 heat exchangers have been fully cleaned and tested. That commitment is confirmed by this order which will be in place until the unit shuts down for refueling at the end of Cycle 10, which is currently scheduled for September 2, 1987. In accordance with the April 10, 1987 Order, the RBCUs and the LPI coolers will be cleaned, tested, evaluated for full-power operation, and approved for full-power operation by the Region II Regional Administrator before they are returned to service following the refueling outage at the end of Cycle 10. That evaluation will consider the impact elevated lake water temperature has on the equipment. In addition, the RPS high flux trip setpoint will be reduced to correspond to the appropriate maximum allowable power level to ensure that the power level will be maintained below the allowed maximum power level.

III

In the July 24 and 29, 1987 letters, the licensee stated that the calculational methods used in determining the heat exchanger performance at the higher lake temperatures were the same as those used and documented in the April 6, 1987 submittal on heat exchanger fouling. The staff had reviewed these methods and found them acceptable before issuing the Confirmatory Order dated April 10, 1987. Using this same calculational technique, the licensee has determined that for Unit 1, power level reductions to 89.6% and 85.3% are appropriate when the lake water temperature exceeds 75° F and 80°F, respectively. These restrictions apply only until the end of Cycle 10 for Unit 1, when the heat exchangers will be cleaned and tested.

The licensee provided a conservative calculation that compared the LOCA heat removal requirements with the current degraded heat exchanger capacity to ensure (1) that the post-LOCA equipment qualification temperature limits will not be exceeded and (2) that required decay heat removal requirements can be satisfied. This calculation indicated that a scram from the power levels set out above will produce decay heat levels within the heat exchanger capabilities. Actual heat transfer and flow rates through the

degraded heat exchangers have been confirmed by testing. The licensee has committed to reduce the RPS high-flux trip setpoint to 91.5% of rated power for lake water temperatures up to 75 °F, to 89.6% for temperatures between 75 °F and 80 °F, and to 85.3% for temperatures between 80 °F and 85 °F. The setpoint reductions will ensure that these power levels are not exceeded until the heat exchanger fouling is corrected. If lake temperatures exceed 85 °F, Unit 1 will be shutdown.

The staff has reviewed the licensee's heat transfer calculational method and assumptions and has reviewed the overpower trip setpoints. On the basis of these reviews, the staff concurs that, with these setpoints, adequate accident heat removal capacity will be maintained with the current degraded heat exchangers and the projected elevated lake water temperatures.

The licensee has also evaluated the effects of the higher lake water temperature on other equipment and has concluded that the accident analysis is not affected. In the submittal dated July 28, 1987, the licensee stated that all of the equipment served by the service water system was purchased with a design inlet water temperature specification of 85 °F, except for the turbine-driven emergency feedwater pump lube oil cooler. This cooler has a design inlet temperature of 78 °F and is designed to control the lube oil temperature to between 130 °F and 160 °F. With the 78 °F inlet temperature, the lube oil cooler has been tested to verify its capability to maintain an oil temperature of 130 °F. Thus a 7 °F increase in inlet water temperature will result in an oil temperature of approximately 137 °F, which is within the 130 °F–160 °F temperature range for acceptable turbine operation. The staff concurs with the licensee's assessment.

In the July 28, 1987 submittal, the licensee also stated that there are 18 temperature sensors that monitor lake water temperature, with the results printed hourly by the plant computer system. The temperature monitoring instrumentation is calibrated during every refueling outage. The peak lake water temperature is also recorded daily. The licensee committed to reduce the power level setpoints to the values indicated above when the lake temperature reaches 74.5 °F and 79.5 °F, as appropriate, to provide assurance that the plant will be operated in accordance with its design basis and within the requirements of the Order.

In the July 28 and 29, 1987 submittals, the licensee further stated that all of the design-basis accidents identified in the FSAR for Oconee Unit 1, and their attending single active failures, have been reviewed. This review confirmed that, with an assumed 85 °F lake water temperature and appropriate reductions in power level, there will be no adverse impact on the public health and safety beyond that identified in the FSAR.

On the basis of the staff's previous approval of the licensee's calculational methodology, the verification of the operability of the components with an increased lake water temperature of 85 °F based upon reduced power levels, and the licensee's assurance that the lake water temperature is being appropriately monitored with action taken to reduce power level and the high-flux reactor trip setpoint as required, I conclude that there is reasonable assurance for safe plant operation until the end of Cycle 10. I further conclude that the heat removal capability provided at the reduced power level is adequate to ensure that no adverse consequences to the health and safety of the public will result beyond those identified in the FSAR.

I find the licensee's commitments acceptable and conclude that the plant's safety can be maintained until the fouling can be corrected and lake water temperatures decrease, and the unit returns to full power. I have determined that these commitments are required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective Order.

IV

Accordingly, pursuant to Sections 103, 161b, and 161i, of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and Part 50, *It Is Hereby Ordered, Effective Immediately*, that license DPR–38, is amended as follows:

(1) If the lake water temperature exceeds 74.5 °F, Oconee Unit 1 operation will be at reduced power levels and the RPS high flux trip setpoint will be reduced, as follows:

(a) If the lake water temperature is equal to or less than 80 °F, the RPS high flux trip setpoint shall be set so that the maximum allowable power level shall not exceed 89.6% rated power;

(b) If the lake water temperature is greater than 79.5 °F but equal to or less than 85 °F, the RPS high flux trip setpoint shall be set so that the maximum allowable power level shall not exceed 85.3% rated power; and

(c). If lake water temperature exceeds 85 °F, Unit 1 shall proceed to shut down in accordance with Technical Specification 3.0.

(2). The peak lake water temperature shall be recorded daily.

(3). Oconee Unit 1 shall not operate at any power level after the end of Cycle 10 unless the Regional Administrator, Region II, has approved the LPI and RBCU coolers for full power operation.

The Regional Administrator, Region II may relax or rescind any of the above conditions upon a showing by the licensee of good cause.

The licensee or any other person who has an interest adversely affected by this Order may request a hearing on this Order within 20 days of the date of its issuance. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A copy shall be sent to the Office of the General Counsel, Assistant General Counsel for Enforcement, at the same address, and the Regional Administrator, Region II, at 101 Marietta Street, NW., Suite 2900, Atlanta, Georgia 30303. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which the petitioner's interest is adversely affected by this Order and should address the criteria set forth in 10 CFR 2.714(d). A Request For Hearing Shall Not Stay The Immediate Effectiveness of This Order.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing. If a hearing is held, the issue to be considered at the hearing shall be whether this Order should be sustained.

Dated at Bethesda, Maryland, this 6th of August 1987.

For The Nuclear Regulatory Commission.

James H. Sniezek,

Deputy Director, Office of Nuclear Reactor Regulation.

[FR Doc. 87–18364 Filed 8–11–87; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service; Consolidated Listing of Schedules A, B, and C Exceptions

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives a consolidated notice of all positions excepted under Schedules A, B, and C as of June 30, 1987, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

SUPPLEMENTARY INFORMATION: Civil Service Rule VI (5 CFR 6.1) requires the

Office of Personnel Management (OPM) to publish notice of all exceptions granted under Schedules A, B, and C. Title 5, Code of Federal Regulations, § 213.103(c), further requires that a consolidated listing, current as of June 30 of each year, shall be published annually as a notice in the **Federal Register**. That notice follows. OPM maintains continuing information on the status of all Schedule A, B, and C excepted appointing authorities. Interested parties needing information about specific authorities during the year may obtain information by contacting the Staffing Policy Division, Room 6504, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415, or by calling (202) 632–6817.

The following exceptions were current on June 30, 1987:

Schedule A

Section 213.3102 Entire executive civil service

(a) Positions of Chaplain and Chaplain's Assistant.

(b) [Reserved]

(c) Positions to which appointments are made by the President without confirmation by the Senate.

(d) Attorneys.

(e) Law clerk trainee positions. Appointments under this paragraph shall be confined to graduates of recognized law schools or persons having equivalent experience and shall be for periods not to exceed 14 months pending admission to the bar. No person shall be given more than one appointment under this paragraph. However, an appointment that was initially made for less than 14 months may be extended for not to exceed 14 months in total duration.

(f) Chinese, Japanese, and Hindu interpreters.

(g) Any nontemporary position the duties of which are part-time or intermittent in which the appointee will receive compensation during his/her service year that aggregates not more than 40 percent of the annual salary rate for the first step of grade GS–3. This limited compensation includes any premium pay such as for overtime, night, Sunday, or holiday work. It does not, however, include any mandatory within-grade salary increases to which the employee becomes entitled subsequent to appointment under this authority. Appointments under this authority may not be for temporary project employment.

(h) Positions in Federal mental institutions when filled by persons who have been patients of such institutions and have been discharged and are certified by an appropriate medical authority thereof as recovered sufficiently to be regularly employed but it is believed desirable and in the interest of the persons and the institution that they be employed at the institution.

(i) Subject to prior approval of OPM, positions requiring temporary, part-time, or intermittent employment in wage board type occupations (i.e., positions excluded from Classification Act coverage by section 202(7) of the Act) on construction or repair work, where the activity is carried on in localities where examination coverage for the positions has not been provided and where because of employment conditions there is a shortage of available candidates for the positions. Appointments under this paragraph shall not extend beyond 1 year and the employment thereunder shall not exceed 180 working days a year. Seasonal employments of a recurring nature are not authorized under this paragraph.

(j) Positions filled by: (1) Appointment of persons previously employed as National Guard Technicians under 32 U.S.C. 709(a) in positions at the same or equivalent grade level, or below, who are applying for or receiving an annuity under the provisions of 5 U.S.C. 8337(h) by reason of a disability that disqualifies them from membership in the National Guard or from holding the military grade required as a condition of their National Guard employment; or (2) reassignment, promotion or demotion within the same agency of former National Guard Technicians originally appointed under this authority.

(k) Positions without compensation provided appointments thereto meet the requirements of applicable laws relating to compensation.

(l) Positions requiring the temporary or intermittent employment of professional, scientific, or technical experts for consultation purposes.

(m) Nonsupervisory positions of custodial laborer (levels 1, 2, and 3) and general laborer (levels 2 and 3) in field establishments outside central office and regional office cities of OPM where examination coverage has not been provided for the positions, as follows:

(1) For temporary, intermittent, or seasonal employment (exclusive of positions covered by paragraph (1) of this section) not to exceed 180 working days a year in the Departments of Agriculture, Commerce, Interior, and Energy, in the Federal Aviation Agency, and in the International Boundary and Water Commission; or

(2) When it is specifically held by OPM that this authority is applicable for employment in localities that are isolated with respect to labor supply and where there is a shortage of available candidates for the positions.

(n) Any local physician, surgeon, or dentist employed under contract or on a part-time or fee basis.

(o) Positions of a scientific, professional, or analytical nature when filled by bona fide members of the faculty of an accredited college or university who have special qualifications for the positions to which appointed. Employment under this provision shall not exceed 130 working days a year.

(p) Positions of a scientific, professional or analytical nature when filled by bona fide graduate students at accredited colleges or universities provided that the work performed for the agency is to be used by the student as a basis for completing certain academic requirements toward a graduate degree. Appointments under this authority may not exceed 1 year, but may be extended for additional period(s) not to exceed 1 year as long as the conditions for appointment continue to be met. The appointment of any individual under this authority shall terminate upon the individual's completion of requirements for the graduate degree.

(q) Positions at grade GS–7 and below when appointees are to assist scientific, professional, or technical employees. Persons employed under this provision shall be: (1) Bona fide high school science or mathematics teachers or (2) bona fide students at high schools or accredited colleges or universities who are pursuing courses related to the field in which employed. The appointment of any individual under this authority shall terminate upon the individual's ceasing to be enrolled in a qualifying educational program or to be employed as a teacher. No person shall be employed under this provision in (i) positions of a routine clerical type or (ii) positions in excess of 1040 working hours a year; except that the 1040 working-hours-a-year limitation shall not apply to positions at grade GS–4 and below which are established in connection with associate degree cooperative education programs. Students enrolled in bachelor's degree cooperative education programs as defined in § 213.3202(a) shall not be employed under this provision. Appointments under this authority may be made only to positions for which qualification standards established under 5 CFR Part 302 are consistent with the education and experience standards established for comparable positions in

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the competitive service. Appointments under this authority may not be used to extend the service limits contained in any other appointing authority.

(r)–(s) [Reserved]

(t) Positions when filled by mentally retarded persons in accordance with written agreements executed between an agency and OPM. Provisions to be included in such agreements are specified in the Federal Personnel Manual. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive status under the provisions of Executive Order 12125 and implementing regulations issued by OPM.

(u) Positions when filled by severely physically handicapped persons who: (1) Under a temporary appointment have demonstrated their ability to perform the duties satisfactorily; or (2) have been certified by counselors of State vocational rehabilitation agencies or the Veterans Administration as likely to succeed in the performance of the duties. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive status under the provisions of Executive Order 12125 and implementing regulations issued by OPM.

(v) Between May 13 and September 30 only, temporary Summer Aid positions the duties of which involve work of a routine nature not regularly covered under the General Schedule requiring no specific knowledge or skills, when filled by youths, either (1) appointed under economic needs standards prescribed by OPM or (2) who are mentally retarded or severely physically handicapped. Youths may not be appointed unless they have reached their 16th birthday. This paragraph shall apply only to positions for which pay is fixed at the highest Federal minimum wage rate established by the Fair Labor Standards Act of 1938, as amended.

(w) Part-time or intermittent positions, the duties of which involve routine work up to and including the GS–4 level of difficulty or equivalent under the Federal Wage System, when filled by bona fide students appointed under the Stay-in-School Program. Students may be appointed if they need the earnings from this employment to continue in school or if they are mentally retarded or severely physically handicapped, provided that the following conditions are met: (1) Appointees are enrolled in or accepted for enrollment as a resident student in a secondary school (or other appropriate school for mentally retarded students) or an institution of higher learning not above the baccalaureate level, accredited by a recognized accrediting body;

(2) Employment does not exceed 20 hours in any calendar week except that students may work full time during any period in which their school is officially closed and during any school vacation period;

(3) While employed, appointees continue to maintain an acceptable school standing, although they need not attend school during the summer;

(4) Appointees meet the economic criteria prescribed by OPM, except that this requirement does not apply to mentally retarded or severely physically handicapped students appointed under the authority; and

(5) Salaries are fixed by the agency head at a level commensurate with the duties assigned and the expected level of performance.

Appointments under this authority may not extend beyond 1 year. *However* such appointments may be made for additional periods of not to exceed 1 year each, if the conditions for initial appointment are still met. Students may not be appointed under this authority unless they have reached their 16th birthday. No new appointments may be made between May 13 and August 31, inclusive.

(x) Positions for which a local recruiting shortage exists when filled by inmates of Federal, District of Columbia, and State (including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands) penal and correctional institutions under work release programs authorized by the Prisoner Rehabilitation Act of 1965, the District of Columbia Work Release Act, or under work release programs authorized by the States. Initial appointments under this authority may not exceed 1 year. An initial appointment may be extended for one or more periods not to exceed one additional year each upon a finding that the inmate is still in a work-release status and that a local recruiting shortage still exists. No person may serve under this authority longer than 1 year beyond the date of that person's release from custody.

(y) Positions at grade GS–2 and below for summer employment as defined in 213.3101(d), of assistants to scientific, professional, and technical employees, when filled by finalists in national science contests.

(z) Not to exceed 30 positions of assistants to top-level Federal officials when filled by persons designated by the President as White House Fellows.

(aa) Scientific and professional research associate positions at GS–11 and above when filled on a temporary basis by persons having a doctoral degree in an appropriate field of study for research activities of mutual interest to appointees and their agencies. Appointments are limited to persons referred by the National Research Council under its post-doctoral research associate program, may not exceed 2 years, and are subject to satisfactory outcome of evaluation of the associate's research during the first year.

(bb) Positions when filled by aliens in the absence of qualified citizens. Appointments under this authority are subject to prior approval of OPM except when the authority is specifically included in a delegated examining agreement with OPM.

(cc) Positions at GS–15 and below when filled by persons identified as Interchange Executives by the President's Commission on Personnel Interchange. Appointments made under this authority may not extend beyond 2 years.

(dd)–(ee) [Reserved]

(ff) Not to exceed 25 positions when filled in accordance with an agreement between OPM and the Department of Justice by persons in programs administered by the Attorney General of the United States under Pub. L. 91–452 and related statutes. A person appointed under this authority may continue to be employed under it after he/she ceases to be in a qualifying program only as long as he/she remains in the same agency without a break in service.

(gg)–(hh) [Reserved]

(ii) Positions of Presidential Intern, GS–9 and 11, in the Presidential Management Intern Program. Initial appointments must be made at the GS–9 level. No one may serve under this authority for more than 2 years, unless extended with OPM approval for up to one additional year. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive appointment under the provisions of Executive Order 12364, in accordance with requirements published in the Federal Personnel Manual.

(jj) Legal intern positions. Appointments under this paragraph shall be confined to bona fide students at recognized law schools who are candidates for J.D. or LL.B. degrees. Appointments under this authority may not exceed 1 year, but may be extended for additional period(s) not to exceed 1 year as long as the conditions for appointment continue to be met. The appointment of any individual under this authority shall terminate upon the individual's graduation from law school.

(kk) [Reserved]

(ll) Positions as needed of readers for blind employees, interpreters for deaf employees and personal assistants for handicapped employees, filled on a full time, part-time, or intermittent basis.

Section 213.3103 Executive Office of the President

(a) *Office of Administration.* (1) Not to exceed 75 positions to provide administrative services and support to the White House office.

(b) *Office of Management and Budget.* (1) Not to exceed 10 positions at grades GS–9/15.

(c) *Council on Environmental Quality.* (1) Professional and technical positions in grades GS–13 through –15 on the staff of the Council.

(d)–(f) [Reserved]

(g) *National Security Council.* (1) All positions on the staff of the Council.

(h) *Office of Science and Technology Policy.* (1) Thirty positions of Senior Policy Analyst, GS–15; Policy Analyst, GS–11/ 14; and Policy Research Assistant, GS–9, for employment of anyone not to exceed 5 years on projects of a high priority nature.

Section 213.3104 Department of State

(a) *Office of the Secretary.* (1) All positions, GS–15 and below, on the staff of the Family Liaison Office, Office of the Under Secretary for Management.

(2)–(5) [Reserved]

(b) *American Embassy, Paris, France.* (1) Chief, Travel and Visitor Unit. No new appointments may be made under this authority after August 10, 1981.

(c) [Reserved]

(d) *International Boundary Commission, United States and Canada.* (1) Temporary and intermittent field employees such as instrument men, foremen, recorders, packers, cooks, and axemen, for not to exceed 180 working days within any one calendar year.

(e) *Bureau of Oceans and International Environmental and Scientific Affairs.* (1) Two Physical Science Administration Officer positions at GS–16.

(f) [Reserved]

(g) *Office of Refugee and Migration Affairs.* (1) Not to exceed 10 positions at grade 5 through 11 on the staff of the office.

(h) *Bureau of Administration.* (1) One Presidential Trip Specialist. No new appointments may be made under this authority after June 11, 1981.

Section 213.3105 Department of the Treasury

(a) *Office of the Secretary.* (1) Not to exceed 20 positions at the equivalent of GS–13 through GS–17 to supplement permanent staff in the study of complex problems relating to international financial, economic, trade and energy policies and programs of the Government, when filled by individuals with special qualifications for the particular study being undertaken. Employment under this authority may not exceed 4 years.

(2) Not to exceed 20 positions, which will supplement permanent staff involved in the study and analysis of complex problems in the area of domestic economic and financial policy. Employment under this authority may not exceed 4 years.

(b) *U.S. Customs Service.* (1) Positions in foreign countries designated as "interpreter-translator" and "special employees," when filled by appointment of persons who are not citizens of the United States; and positions in foreign countries of messenger and janitor.

(2) [Reserved]

(3) Positions of part-time, intermittent, or temporary Customs Inspectors, and Port Directors in Alaska paid at a rate not above GS–9 and for not more than 130 working days in a service year.

(4) [Reserved]

(5) Positions at GS–9 and below of Customs Enforcement Officer, Customs Inspector, Customs Marine Clerk/ Officer, Customs Aid (sampling), Customs Warehouse Officer, Port Director, Interpreter, and Laborer, with duties of a continuing nature that require the part-time or intermittent service of an employee for not more than 700 hours in his/her service year. An individual appointed under this exception may not be employed in the Bureau of Customs under a combination of this and any other exception for more than 700 hours in his/her service year.

(6) Twenty-five positions of Criminal Investigator for special assignments.

(7)–(8) [Reserved]

(9) Not to exceed 25 positions of Customs Patrol Officers in the Papago Indian Agency in the State of Arizona when filled by the appointment of persons of one-fourth or more Indian blood.

(c) *Office of the Comptroller of the Currency.* (1) Not to exceed six positions filled under the Professional Accounting Fellow Program. Appointments under this authority may not exceed 2 years.

(d) [Reserved]

(e) *Internal Revenue Service.* (1) Twenty positions of investigator for special assignments.

(f) [Reserved]

(g) *Bureau of Alcohol, Tobacco, and Firearms.* (1) One hundred positions of criminal investigator for special assignments.

(h) [Reserved]

(i) *Bureau of Government Financial Operations.* (1) Clerical positions at grades GS–5 and below established in Emergency Disbursing Offices to process emergency payments to victims of catastrophes or natural disasters requiring emergency disbursing services. Employment under this authority may not exceed 1 year.

Section 213.3106 Department of Defense

(a) *Office of the Secretary.* (1) Not to exceed 30 positions at grades GS–6/15 in the Defense Mobilization Systems Planning Activity, Office of the Deputy Assistant Secretary of Defense (Mobilization Planning and Requirements.) No new appointments may be made under this authority after March 31, 1988.

(2)–(5) [Reserved]

(6) One Executive Secretary, US–USSR Standing Consultative Commission and Staff Analyst (SALT), Office of the Assistant Secretary of Defense (International Security Affairs).

(b) *Entire Department (including the Office of the Secretary of Defense and the Departments of the Army, Navy, and Air Force.)*

(1) Professional positions in Military Dependent School Systems overseas.

(2) Positions in attache 1 systems overseas, including all professional and scientific positions in the Naval Research Branch Office in London.

(3) Positions of clerk-translator, translator, and interpreter overseas.

(4) Positions of Educational Specialist the incumbents of which will serve as Director of Religious Education on the Staffs of the Chaplains in the military services.

(5) Positions under the program for utilization of alien scientists approved under pertinent directives administered by the Director of Defense Research and Engineering of the Department of Defense when occupied by alien scientists initially employed under the program including those who have acquired United States citizenship during such employment.

(6) Positions in overseas installations of the Department of Defense when filled by dependents of military or civilian employees of the U.S. Government residing in the area. Employment under this authority may not extend longer than 2 months following the transfer from the area or the separation of a dependent's sponsor: *Provided*, that (i) a school employee may be permitted to complete the school year; and (ii) an employee other than a school employee may be permitted to serve up to one additional year when

the military department concerned finds the additional employment is in the interest of management.

(7) Fifteen secretarial and staff support positions at GS–12 or below on the White House Support Group.

(c) *Defense Contract Audit Agency.* (1) Not to exceed two positions of Accounting Fellow, Auditor, GM–511–14, filled under the Accounting Fellowship Program. Appointments under this authority may not exceed 2 years.

(d) *General.* (1) Positions concerned with advising, administering, supervising or performing work in the collection, processing, analysis, production, evaluation, interpretation, dissemination, and estimation of intelligence information, including scientific and technical positions in the intelligence function; and positions involved in the planning, programming, and management of intelligence resources when, in the opinion of OPM, it is impracticable to examine. This authority does not apply to positions assigned to Cryptologic and Communications Intelligence Activities/Functions.

(2) Positions involved in intelligence-related work of the cryptologic intelligence activities of the military departments. This includes all positions of intelligence research specialist, and similar positions in the intelligence classification series; all scientific and technical positions involving the applications of engineering, physical or technical sciences to intelligence work; and professional as well as intelligence technician positions in which a majority of the incumbent's time is spent in advising, administering, supervising, or performing work in the collection, processing, analysis, production, evaluation, interpretation, dissemination, or estimation of intelligence information or in the planning, programming, and management of intelligence resources.

(e) *Uniformed Services University of the Health Sciences.*

(1) Positions of Dean, Associate Dean, Assistant Dean, faculty members, postdoctoral fellows, research associates, senior research associates, and visiting scientists.

(2) Positions established to perform work on projects funded from grants.

(f) *National Defense University.* (1) Not to exceed 16 positions of senior policy analyst, GS–15, at the strategic Concepts Development Center. Initial appointments to these positions may not exceed 6 years, but may be extended thereafter in 1-, 2-, or 3-year increments, indefinitely.

(g) *Defense Communications Agency.* (1) Not to exceed 10 positions at grades GS–10/15 to staff and support the Crisis Management Center at the White House.

Section 213.3107 Department of the Army

(a) *General.* (1) Not to exceed 30 positions on the faculty and staff which are classified in the GS–1700 occupational group and the GS–1410 Librarian series, located at the U.S. Army Russian Institute, Garmisch Germany, and the U.S. Army Foreign Language Training Center Europe, Munich, Germany.

(b) *Aviation Systems Command.* (1) One scientific and professional research position in the U.S. Army Research and Technology Laboratories, the duties of which require specific knowledge of aviation technology in non-allied nations.

(c) *Corps of Engineers.* (1) [Reserved]

(2) Nonsupervisory trades, crafts, and manual labor positions at grades WG–6 and below on survey, construction, short-term maintenance, or floating-plant operations, where because of turnover, lack of housing facilities, mobility of work site, or remoteness of personnel servicing facilities, an adequate labor force can be recruited only by immediate gate hiring on a local basis. This authority can be used only when OPM has determined that it is specifically applicable to a given situation; ordinarily, it will not be used for employment in OPM central office, regional, and branch office cities or in cities where there is a local OPM area office to service the employing establishment.

(d) *U.S. Military Academy, West Point, New York.* (1) Civilian professors, instructors, teachers (except teachers at the Children's School), Cadet Social Activities Coordinator, chapel organist and choir-master, Director of Intercollegiate Athletics, Associate Director of Intercollegiate Athletics, Facility Manager, Building Manager, three Physical Therapists (Athletic Trainers), Associate Director of Admissions for Plans and Programs, Deputy Director of Alumni Affairs; and librarian when filled by an officer of the Regular Army retired from active service, and the military secretary to the Superintendent when filled by a U.S. Military Academy graduate retired as a regular commissioned officer for disability.

(e) *U.S. Army School of the Americas, Fort Benning, Georgia.*

(1) Positions of Translator (Typing), GS–1040–5/9, and Supervisory Translator, GS–1040–11. No new appointments may be made under this authority after December 31, 1985.

(f) [Reserved]

(g) *Defense Language Institute.* (1) All positions of the faculty and staff which are classified in the GS–1700 occupational group, the GS–1040 Language Specialist series, and the GS–303 Bilingual Clerk series, that require either a proficiency in a foreign language or a knowledge of foreign language teaching methods.

(2)–(4) [Reserved]

(h) *Army War College, Carlisle Barracks, Pa.* (1) Five positions of Educational Specialist for employment of not to exceed 1 year: Provided, that such employment may, with the prior approval of OPM, be extended for not to exceed one additional year.

(2) Nine senior policy analyst positions, GS–14/15, at the Strategic Studies Institute, Army War College, with appointments to be made initially for up to 3 years and thereafter extended annually if needed.

(3) Five research oriented faculty positions, GS–14/15, with the U.S. Army War College, at Carlisle Barracks, Pennsylvania, with appointments to be made initially for up to 3 years and thereafter extended annually if needed.

(i) *Defense Systems Management School, Fort Belvoir, Va.*

(1) The Deputy Commandant and professors in grades GS–13 through 15.

(j) *U.S. Military Academy Preparatory School, Fort Monmouth, New Jersey.* (1) Positions of Academic Director, Department Head and Instructor.

Section 213.3108 Department of the Navy

(a) *General.* (1) [Reserved]

(2) Positions of Student Pharmacist for temporary, part time, or intermittent employment in U.S. Naval Regional Medical Centers, hospitals, clinics and departments when filled by students who are enrolled in an approved pharmacy program in a participating non-Federal institution, and whose compensation is fixed under 5 U.S.C. 5351–54. Employment under this authority may not exceed 1 year.

(3) [Reserved]

(4) Not to exceed 50 positions of resident-in-training at U.S. naval regional medical centers, hospitals, and dispensaries which have residency training programs, when filled by residents assigned as affiliates for part of their training from non-Federal hospitals. Assignments shall be on a temporary (full-time or part-time) or intermittent basis, shall not amount to more than 6 months for any person, and shall be applied only to persons whose compensation is fixed under 5 U.S.C. 5351–54.

(5) [Reserved]

(6) Positions of Student Operating Room Technician for temporary, part-time or intermittent employment in U.S. naval regional medical centers and hospitals, when filled by students who are enrolled in an approved operating room technician program in a participating non-Federal institution, whose compensation is fixed under 5 U.S.C. 5351–54. Employment under this authority may not exceed 1 year.

(7) Positions of student social worker for temporary, part-time, or intermittent employment in U.S. naval regional medical centers, hospitals, and dispensaries, when filled by bona fide students enrolled in academic institutions: *Provided*, that the work performed in the agency is to be used by the student as a basis for completing certain academic requirements by such educational institution to qualify for a graduate degree in social work. This authority shall be applied only to students whose compensation is fixed under 5 U.S.C. 5351–54.

(8) Positions of student practical nurse for temporary, part-time, or intermittent employment in U.S. naval regional medical centers, hospitals, and dispensaries, when filled by trainees enrolled in a non-Federal institution in an approved program of educational and clinical training which meets the requirements for licensing as a practical nurse. This authority shall be applied only to trainees whose compensation is fixed under 5 U.S.C. 5351–54.

(9) One Personnel Security Specialist, Naval Personnel Program Support Activity, Bureau of Naval Personnel.

(10) Positions of medical technology intern in U.S. naval regional medical centers, hospitals, and dispensaries, when filled by students enrolled in approved programs of training in non-Federal institutions. Employment under this authority may be filled on a full-time, part-time, or intermittent basis but may not exceed 1 year. This authority shall be applied only to students whose compensation is fixed under 5 U.S.C. 5351–54.

(11) Positions of medical intern at U.S. naval regional medical centers, hospitals, and dispensaries, when filled by persons who are serving medical internships at participating non-Federal hospitals and whose compensation is fixed under 5 U.S.C. 5351–54. Employment under this authority may not exceed 1 year.

(12) Positions of student speech pathologist at U.S. naval regional medical centers, hospitals, and dispensaries, when filled by persons who are enrolled in participating non-Federal institutions and whose compensation is fixed under 5 U.S.C. 5351–54. Employment under this authority may not exceed 1 year.

(13) Positions of student dental assistant in U.S. naval dental centers, clinics, and departments, when filled by students who are enrolled in an approved dental assistant program in a participating non-Federal institution, and whose compensation is fixed under 5 U.S.C. 5351–54. Employment under this authority may not exceed 1 year.

(14) [Reserved]

(15) Marine positions assigned to a coastal or seagoing vessel operated by a naval activity for research or training purposes.

(b) *Naval Academy, Naval Postgraduate School, and Naval War College.* (1) Professors, instructors, and teachers; the Director of Academic Planning, Naval Postgraduate School; and the librarian, organist-choirmaster, registrar, the dean of admissions, and social counselors at the Naval Academy.

(c) *Chief of Naval Operations.* (1) One position at grade GS–12 or above that will provide technical, managerial, or administrative support on highly classified functions to the Deputy Chief of Naval Operations (Plans, Policy, and Operations).

(d) *Military Sealift Command.* (1) All positions on vessels operated by the Military Sealift Command.

(e)–(f) [Reserved]

(g) *Office of Naval Research.* (1) Not to exceed 5 positions of Liaison Scientists, GS–13/15, in the office of Naval Research Branch Office in Japan, when filled by research scientists who have specialized experience in scientific disciplines of current interest to the Department and who have a demonstrated ability to deal with the Japanese scientific community in their disciplines. An appointment under this authority may be made initially for a period not to exceed 2 years. With the prior approval of OPM, total employment under this authority may be for as long as 3 years.

Section 213.3109 Department of the Air Force

(a) *Office of the Secretary.* (1) One Special Assistant in the Office of the Secretary of the Air Force. This position has advisory rather than operating duties except as operating or administrative responsibilities may be exercised in connection with the pilot studies.

(b) *General.* (1) Professional, technical, managerial and administrative positions supporting space activities, when approved by the Secretary of the Air Force.

(2) Sixty positions engaged in interdepartmental defense projects involving scientific and technical evaluations.

(c) Not to exceed 20 professional positions, GS–11 through GS–15, in Detachments 6 and 51, SM–ALC, Norton and McClellan Air Force Bases, California, which will provide logistic support management to specialized research and development projects.

(d) *U.S. Air Force Academy, Colorado.* (1) Positions of Cadet Hostesses, Instructors in Physical Education, Instructors in Music (choirmasters), one Training Instructor (Parachuting), one Training Instructor (Code of Conduct and Evasion), and two Physical Therapists/Athletic Trainers.

(e) Not to exceed five positions, GS–12 through GS–15, in the Specialized Management Office (WR–ALC/QL) at Robins Air Force Base, Georgia, which will provide logistic support management staff guidance for highly sensitive and high priority programs and projects. Employment under this authority is not to exceed May 30, 1988.

(f) *Air Force Office of Special Investigations.* (1) Not to exceed 250 positions of Criminal Investigators/Intelligence Research Specialists, GS–5 through GS–15.

(g) Not to exceed 8 positions, GS–12 through 15, in Headquarters Air Force Logistics Command, DCS Materiel Management, Office of Special Activities, Wright Patterson Air Force Base, Ohio, which will provide logistic support and security management staff guidance to classified research and development projects.

(h) [Reserved]

(i) *Air Force Institute of Technology, Wright-Patterson Air Force Base, Ohio.* (1) Civilian deans and professors.

Section 213.3110 Department of Justice

(a) *General.* (1) Deputy U.S. Marshals employed on an hourly basis for intermittent service.

(2) [Reserved]

(3) U.S. Marshal in the Virgin Islands.

(b) *Immigration and Naturalization Service.* (1) Not to exceed 3,500 positions at grades GS–15 and below engaged in planning for and implementing the processing of claims for resident status which may be submitted by aliens already in the United States as authorized by immigration control and reform legislation. New appointments under this authority may not be made after December 31, 1990.

(2) Not to exceed 500 positions of interpreters and language specialists, GS–1040–5/9.

(c) *Drug Enforcement Administration.* (1) [Reserved]

(2) One hundred and fifty positions of Intelligence Research Agent and/or Intelligence Operation specialist in the GS–132 series, grades GS–9 through GS–15.

(3) Not to exceed 200 positions of Criminal Investigator (Special Agent). New appointments may be made under this authority only at grades GS–7/11.

Section 213.3112 Department of the Interior

(a) *General.* (1) Technical, maintenance, and clerical positions at or below grades GS–7, WG–10, or equivalent in the field service of the Department of the Interior, when filled by the appointment of persons who are certified as maintaining a permanent and exclusive residence within, or contiguous to, a field activity or district, and as being dependent for livelihood primarily upon employment available within the field activity of the Department.

(2) All positions on Government-owned ships or vessels operated by the Department of the Interior.

(3) Temporary or seasonal caretakers at temporarily closed camps or improved areas to maintain grounds, buildings, or other structures and prevent damages or theft of Government property. Such appointments shall not extend beyond 130 working days a year without the prior approval of OPM.

(4) Temporary, intermittent, or seasonal field assistants at GS–7, or its equivalent, and below in such areas as forestry, range management, soils, engineering, fishery and wildlife management, and with surveying parties. Employment under this authority may not exceed 180 working days a year.

(5) Temporary positions established in the field service of the Department for emergency forest and range fire prevention or suppression and blister rust control for not to exceed 180 working days a year: *Provided,* that an employee may work as many as 220 working days a year when employment beyond 180 days is required to cope with extended fire seasons or sudden emergencies such as fire, flood, storm, or other unforeseen situations involving potential loss of life or property.

(6) Persons employed in field positions, the work of which is financed jointly by the Department of the Interior and cooperating persons or organizations outside the Federal service.

(7) All positions in the Bureau of Indian Affairs and other positions in the Department of the Interior directly and primarily related to providing services to Indians when filled by the appointment of Indians. The Secretary of the Interior is responsible, for defining the term "Indian."

(8) Temporary, intermittent, or seasonal positions at GS–7 or below in Alaska, as follows: Positions in non-professional mining activities, such as those of drillers, miners, caterpillar operators, and samplers. Employment under this authority shall not exceed 180 working days a year and shall be appropriate only when the activity is carried on in a remote or isolated area and there is a shortage of available candidates for the positions.

(9) Temporary, part-time, or intermittent employment of mechanics, skilled laborers, equipment operators and tradesmen on construction, repair, or maintenance work for not to exceed 180 working days a year in Alaska, when the activity is carried on in a remote or isolated area and there is a shortage of available candidates for the positions.

(10) Seasonal airplane pilots and airplane mechanics in Alaska, not to exceed 180 working days a year.

(11) Temporary staff positions in the Youth Conservation Corps Centers operated by the Department of the Interior. Employment under this authority shall not exceed 11 weeks a year except with prior approval of OPM.

(12) Positions in the Youth Conservation Corps for which pay is fixed at the Federal minimum rate. Employment under this authority may not exceed 10 weeks.

(b) [Reserved]

(c) *Indian Arts and Crafts Board.* (1) The Executive Director.

(d) [Reserved]

(e) *Office of the Assistant Secretary, Territorial and International Affairs.* (1) [Reserved]

(2) Not to exceed 4 positions of Territorial Management Interns, grades GS–5, GS–7, or GS–9, when filled by territorial residents who are U.S. citizens from the Virgin Islands or Guam; U.S. nationals from American Samoa; or in the case of the Northern Marianas, will become U.S. citizens upon termination of the U.S. trusteeship. Employment under this authority may not exceed 6 months.

(3) [Reserved]

(4) Special Assistants to the Governor of American Samoa who perform specialized administrative, professional, technical, and scientific duties as members of his immediate staff.

(f) *National Park Service.* (1) Park Ranger positions (appropriate specializations) at salaries equivalent to GS–2 through GS–5 to perform practical and technical work supporting the management of Park Service areas and resources in the functional areas of interpretation, resources management, visitor protection, and visitor services; and positions at salaries equivalent to grades GS–6 and GS–7 in which the duties are supervisory or consist of highly specialized technical work in support of National Park Service operations in the functional areas delineated above. The total number of Park Ranger positions at salaries equivalent to GS–6 and GS–7 excepted under this paragraph shall not exceed 200. Employment under this paragraph is limited to persons who meet the qualification standards for each salary level that have been agreed upon by OPM and the Department of the Interior. These standards include as a minimum the following number of previous seasons' experience at a salary equivalent to the next lower grade or equivalent experience in a Federal, State, or local park:

(i) For IGS–7: Two seasons at IGS–6 level in the National Park Service.

(ii) For IGS–6: Two seasons at IGS–5 level in the National Park Service.

(iii) For IGS–5: One season at IGS–4 level or its equivalent in experience.

(iv) For IGS–4: One season at IGS–3 level or its equivalent in experience.

(v) For IGS–3: One season at IGS–2 level or its equivalent in experience.

Employment under this paragraph shall be only for duty that is temporary, intermittent, or seasonal, and no person shall be employed by the same appointing office in the National Park Service under this paragraph or a combination of this and any other excepting authorities in excess of 180 working days a year.

(2) [Reserved]

(3) Seven full-time permanent and 31 temporary, part-time, or intermittent positions in the Redwood National Park, California, which are needed for rehabilitation of the park, as provided by Pub. L. 95–250.

(4) One Special Representative of the Director.

(g) *Bureau of Reclamation.* (1) Appraisers and examiners employed on a temporary, intermittent, or part-time basis on special valuation or prospective-entrymen-review projects where knowledge of local values or conditions or other specialized qualifications not possessed by regular Bureau employees are required for successful results. Employment under this provision shall not exceed 130 working days a year in any individual case: *Provided,* that such employment may, with prior approval of OPM, be extended for not to exceed an additional 50 working days in any single year.

(h) *Office of the Deputy Assistant Secretary for Territorial Affairs.* (1) Positions of Territorial Management Interns, GS–5, when filled by persons selected by the Government of the Trust Territory of the Pacific Islands. No appointment may extend beyond 1 year.

Section 213.3113 Department of Agriculture

(a) *General.* (1) Agents employed in field positions the work of which is financed jointly by the Department and cooperating persons, organizations, or governmental agencies outside the Federal service. Except for positions for which selection is jointly made by the Department and the cooperating organization, this authority is not applicable to positions in the Agricultural Research Service or the Statistical Reporting Service. This authority is not applicable to the following positions in the Agricultural Marketing Service: Agricultural Commodity grader (grain) and (meat), (poultry), and (dairy) agricultural commodity aid (grain), and tobacco inspection positions.

(2)–(4) [Reserved]

(5) Temporary, intermittent, or seasonal employment in the field service of the Department in positions at and below GS–7 and WG–10 in the following types of positions: Field assistants for subprofessional services; caretakers at temporarily closed camps or improved areas; forest workers engaged primarily for fire prevention or suppression activities and other forest workers employed at headquarters other than forest supervisor and regional offices; State performance assistants in the Agricultural Stabilization and Conservation Service; agricultural helpers, helper-leaders, and workers in the Agricultural Research and the Animal and Plant Health Inspection Service; and subject to prior OPM approval granted in the calendar year in which the appointment is to be made, other clerical, trades, crafts, and manual labor positions. Total employment under this subparagraph may not exceed 180 working days in a service year: *Provided,* that an employee may work as many as 220 working days in a service year when employment beyond 180 days is required to cope with extended fire seasons or sudden emergencies such as fire, flood, storm, or other unforeseen situations involving potential loss of life or property. This paragraph does not cover trades, crafts, and manual labor positions covered by paragraphs (i) and (m) of 213.3102.

(6) [Reserved]

(7) Not to exceed 30 Program Assistants, whose experience acquired in positions excepted from the competitive civil service in the administration of agricultural programs at the State level is needed by the Department for the more efficient administration of its programs. No new appointment may be made under this authority after December 31, 1985.

(b) [Reserved]

(c) *Forest Service.* (1) [Reserved]

(2) Positions in Alaska of Laborers, Boat Operaters, Mechanics, Equipment Operators, and Carpenters whose duties require the operation of boats in coastal waters and/or the establishment and maintenance of work camps in remote areas.

(d) *Agricultural Stabilization and Conservation Service.*

(1) Not to exceed 24 positions of Agricultural Program Specialist, GS–1145–7/12, engaged in conversion of ASCS' directives and information system to a completely automated format. Appointments to these positions may be made initially at the GS–7/11 levels and may not exceed September 30, 1989.

(2) Members of State Committees: *Provided,* that employment under this authority shall be limited to temporary intermittent (WAE) positions whose principal duties involve administering farm programs within the State consistent with legislative and Departmental requirements and reviewing national procedures and policies for adaptation at State and local levels within established parameters. Individual appointments under this authority are for 1 year and may be extended only by the Secretary of Agriculture or his designee. Members of State Committees serve at the pleasure of the Secretary.

(3) [Reserved]

(e) *Farmers Home Administration.* (1) [Reserved]

(2) County committeemen to consider, recommend, and advise with respect to the Farmers Home Administration program.

(3) Temporary positions whose principal duties involve the making and servicing of natural disaster emergency loans pursuant to current statutes authorizing natural disaster emergency loans. Appointments under this provision shall not exceed 1 year unless extended for one additional period not to exceed 1 year, but may, with prior approval of OPM, be further extended for additional periods not to exceed 1 year each.

(4)–(5) [Reserved]

(6) Professional and clerical positions in the Trust Territory of the Pacific Islands when occupied by indigenous residents of the Territory to provide financial assistance pursuant to current authorizing statutes.

(f) *Agricultural Marketing Service.* (1) Positions of: Agricultural Commodity Graders, Agricultural Commodity Technicians, and Agricultural Commodity Aids at grades GS–9 and below in the tobacco, dairy, and poultry commodities; Meat Acceptance Specialists at grades GS–11 and below; Clerks at grades GS–4 and below; and Laborers under the Wage System. Employment under this authority is limited to 1280 hours or 180 days in a service year. Until December 31, 1987, Meat Acceptance Specialists engaged in work required by the Food Security Act of 1985 may be employed without regard to the hour limitation.

(2) Positions of: Agricultural Commodity Graders, Agricultural Commodity Technicians, and Agricultural Commodity Aids at grades GS–11 and below in the cotton, raisin, and processed fruit and vegetable commodities. Employment under this authority may not exceed 180 days in a service year. In unforeseen situations such as bad weather or crop conditions, unanticipated plant demands, or increased imports, employees may work up to 240 days in a service year. Cotton Agricultural Commodity Graders, GS–5, may be employed as trainees for the first appointment for an initial period of 6 months for training without regard to the service year limitation.

(3) Milk Market Administrators.

(4) All positions on the staffs of Milk Market Administrators.

(g)–(i) [Reserved]

(j) *Food and Nutrition Service.* (1) [Reserved]

(2) Three hundred and fifty positions of food assistance program specialist, GS–5/7, under the Child Nutrition Summer Feeding Program, for temporary employment not to begin before March 1 and not to exceed September 30 of each year, on a full-time, part-time, or intermittent basis.

(k) [Reserved]

(2) Temporary field positions concerned with the control, suppression, and eradication of emergency livestock and plant diseases and emergency outbreaks of animal and plant pests. Persons appointed under this authority may not be employed in these positions in the Animal and Plant Health Inspection Service for longer than 1 year under this authority, or under a combination of this and any other authorities for excepted appointment that may be appropriate without prior approval of OPM. This authority shall be appropriate only in situations declared by the Secretary of Agriculture

to be emergencies threatening the livestock and plant industries of the country.

(1) *Food Safety and Inspection Service.* (1)–(2) [Reserved]

(3) Positions of meat and poultry inspectors (veterinarians at GS–11 and below and nonveterinarians at appropriate grades below GS–11) for employment on a temporary, intermittent, or seasonal basis, not to exceed 1,280 hours a year.

(m) *Federal Grain Inspection Service.* (1) One hundred and fifty positions of Agricultural Commodity Aid (Grain), GS–2/4; 100 positions of Agricultural Commodity Technician (Grain), GS–4/7; and 60 positions of Agricultural Commodity Grader (Grain), GS–5/9, for temporary employment on a part-time, intermittent, or seasonal basis not to exceed 1,280 hours in a service year.

Section 213.3114 Department of Commerce

(a) *General.* (1)–(2) [Reserved]

(3) Not to exceed 50 scientific and technical positions whose duties are performed primarily in the Antarctic. Incumbents of these positions may be stationed in continental United States for periods of orientation, training, analysis of data, and report writing.

(b) *Office of the Secretary.* (1) One position of Administrative Assistant, GS–301–8, in the Office of Economic Affairs. New appointments may not be made after March 30, 1979.

(c) [Reserved]

(d) *Bureau of the Census.* (1) Managers, supervisors, technicians, clerks, interviewers, and enumerators in the field service, for temporary, part-time or intermittent employment in connection with major economic and demographic censuses or with surveys of a nonrecurring or noncyclical nature: *Provided,* that temporary, part-time employment will be for periods not to exceed 1 year; and that such appointments may be extended for additional periods of not to exceed 1 year each; but that prior OPM approval is required for extension of total service beyond 2 years.

(2) Current Program Interviewers employed on an intermittent or part-time basis in the field service.

(3) Not to exceed 20 professional and scientific positions at grades GS–9 through GS–12 filled by participants in the ASA research trainee program. Employment of any individual under this authority may not exceed 2 years.

(e)–(h) [Reserved]

(i) *Office of the Under Secretary for International Trade.* (1) Thirty positions at GS–12 and above in specialized fields relating to international trade or commerce in units under the jurisdiction of the Under Secretary for International Trade. Incumbents will be assigned to advisory rather than to operating duties, except as operating and administrative responsibility may be required for the conduct of pilot studies or special projects. Employment under this authority will not exceed 2 years for an individual appointee.

(2) Not to exceed 40 positions of Managers and Deputy Managers of International Trade Fairs and Exhibit Programs in foreign countries when the duties require a considerable portion of the employee's time to be spent in foreign countries.

(3) Not to exceed 30 positions in grades GS–12 through GS–15, to be filled by persons qualified as industrial or marketing specialists; who possess specialized knowledge and experience in industrial production, industrial operations and related problems, market structure and trends, retail and wholesale trade practices, distribution channels and costs, or business financing and credit practices applicable to one or more of the current segments of U.S. industry served by the Under Secretary for International Trade, and the subordinate components of his organization which are involved in Domestic Business matters. Appointments under this authority may be made for a period of not to exceed 2 years and may, with prior approval of OPM, be extended for an additional period of 2 years.

(j) *National Oceanic and Atmospheric Administration.* (1) Subject to prior approval of OPM, which shall be contingent upon a showing of inadequate housing facilities, meteorological aid positions at the following stations in Alaska: Barrow, Bethal, Kotzebue, McGrath, Northway, and St. Paul Island.

(2) [Reserved]

(3) All civilian positions on vessels operated by the National Ocean Survey.

(4) Temporary positions required in connection with the surveying operations of the field service of the National Ocean Survey. Appointment to such positions shall not exceed 8 months in any one calendar year.

(k) [Reserved]

(l) *National Telecommunication and Information Administration.* (1) Seventeen professional positions in grades GS–13 through GS–15.

Section 213.3115 Department of Labor

(a) *Office of the Secretary.* (1) Chairman and five members, Employees' Compensation Appeals Board.

(2) Chairman and eight members, Benefits Review Board.

(b) *Bureau of Labor Statistics.* (1) Not to exceed 500 positions involving part-time and intermittent employment for field survey and enumeration work in the Bureau of Labor Statistics. This authority is applicable to positions where the salary is equivalent to GS–6 and below. Employment under this authority may not exceed 1,600 work hours in a service year. No new appointment may be made under this authority after December 31, 1984.

(c) [Reserved]

(d) *Employment and Training Administration.* (1) Not to exceed 10 positions of supervisory manpower development specialist and manpower development specialist, GS–7/15, in the Division of Indian and Native American Programs, when filled by the appointment of persons of one-fourth or more Indian blood. These positions require direct contact with Indian tribes and communities for the development and administration of comprehensive employment and training programs.

Section 213.3116 Department of Health and Human Services

(a) *Saint Elizabeth's Hospital.* (1)–(4) [Reserved]

(5) Fifteen positions of psychodrama trainees, including interns and first- and second-year residents. This authority shall be applied only to positions with compensation fixed under 5 U.S.C. 5351 and 5352.

(6)–(8) [Reserved]

(9) Positions of Chaplain Residents: *Provided,* that employment under this authority shall not exceed 39 months for any individual. This authority shall be applied only to positions whose compensation is fixed in accordance with the provisions of 5 U.S.C. 5351 and 5352.

(10) [Reserved]

(11) Ten positions of group dynamics and group psychotherapy trainees, including interns and residents in the Overholser Training and Research Division. Employment under this authority shall not exceed 2 years, and shall be applied only to positions with compensation fixed under 5 U.S.C. 5351 and 5352.

(12) Ten positions of Interns, Residents and Fellows for work in mental health and deafness. Employment under this authority may not exceed 1 year for any individual.

(13) Fifteen positions of Interns and Residents in Applied and Evaluative Research (Mental Health) Program. Employment under this authority may not exceed 2 years for any individual.

(b) *Public Health Service.* (1) Not to exceed five positions a year of Medical Technologist Resident, GS–644–7/9, in the Blood Bank Department, Clinical Center, of the National Institutes of Health. Appointments under this authority will not exceed 1 year.

(2) Positions at Government sanatoria when filled by patients during treatment or convalescence.

(3) All positions in the Public Health Service Hospital, Carville, La.

(4) Positions concerned with problems in preventive medicine financed or participated in by the Department of Health and Human Services and a cooperating State, county, municipality, incorporated organization, or an individual in which at least one-half of the expense is contributed by the cooperating agency either in salaries, quarters, materials, equipment, or other necessary elements in the carrying on of the work.

(5) Medical and dental interns, externs, and residents; and student nurses.

(6) Positions of scientific, professional, or technical nature when filled by bona fide students enrolled in academic institutions: *Provided,* that the work performed in the agency is to be used by the student as a basis for completing certain academic requirements required by an educational institution to qualify for a scientific, professional, or technical field: *And provided further,* that appropriate exclusions of the positions under the authority of Pub. L. 80–330 have been approved by OPM.

(7) Not to exceed 50 positions associated with health screening programs for refugees.

(8) All positions in the Public Health Service and other positions in the Department of Health and Human Services directly and primarily related to providing services to Indians when filled by the appointment of Indians. The Secretary of Health and Human Services is responsible for defining the term "Indian."

(9) Twelve positions of Therapeutic Radiologic Technician Trainee in the Radiation Oncology Branch, National Cancer Institute. Employment under this authority shall not exceed 1 year for any individual. This authority shall be applied only to positions with compensation fixed under 5 U.S.C. 5351–5356.

(10) Health care positions of the National Health Service Corps for employment of any one individual not to exceed 4 years of service in health manpower shortage areas.

(11) Pharmacy Resident positions at GS–7 in the National Institutes of Health's Clinical Center, Pharmacy Department. Employment in these positions is confined to graduates of approved schools of pharmacy and is limited to a period not to exceed 12 months pending licensure.

(12) Hospital Administration Resident positions at GS–9 in the National Institutes of Health's Clinical Center, Bethesda, Maryland. Employment in these positions is confined to graduates of approved hospital or health care administration programs and is limited to a period not to exceed 1 year.

(13) Not to exceed 30 positions of Cancer Control Science Associate in the Division of Cancer Prevention and Control, National Cancer Institute, National Institutes of Health, for assignments at a level of difficulty and responsibility at or equivalent to GS–11/13. No one may be employed under this authority for more than 3 years, and no more than 10 appointments will be made under the authority in any 1 year.

(14) Not to exceed 30 positions at grades GS–11/13 associated with the postdoctoral training program for interdisciplinary toxicologists in the National Institute of Environmental Health Sciences, National Institutes of Health, Research Triangle Park, North Carolina.

(c) [Reserved]

(d) *Social Security Administration.* (1) Six positions of social insurance representative in the district offices of the Social Security Administration in the State of Arizona when filled by the appointment of persons of one-fourth or more Indian blood.

(2) Seven positions of social insurance representative in the district offices of the Social Security Administration in the State of New Mexico when filled by the appointment of persons of one-fourth or more Indian blood.

(3) Two positions of social insurance representative in the district offices of the Social Security Administration in the State of Alaska when filled by the appointment of persons of one-fourth or more Alaskan Native blood (Eskimos, Indians, or Aleuts).

(e) [Reserved]

(f) *The President's Council on Physical Fitness.* (1) Four staff assistants, The President's Council on Physical Fitness.

(g)–(i) [Reserved].

(j) *Health Care Financing Administration.* (1) [Reserved]

(2) Not to exceed 10 professional positions, GS–9 through GS–15, to be filled under the Health Care Financing Administration Professional Exchange Program. Appointments under this authority will not exceed 1 year.

(k) *Office of the Secretary.* (1) [Reserved].

(2) Not to exceed 10 positions at grades GS–9/14 in the Office of the Assistant Secretary for Planning and Evaluation filled under the Policy Research Associate Program. New appointments to these positions may be made only at grades GS–9/12. Employment of any individual under this authority may not exceed 2 years.

Section 213.3117 Department of Education

(a) Positions concerned with problems in education financed and participated in by the Department of Education and a cooperating State educational agency, or university or college, in which there is joint responsibility for selection and supervision of employees, and at least one-half of the expense is contributed by the cooperating agency in salaries, quarters, materials, equipment, or other necessary elements in the carrying on of the work.

Section 213.3124 Board of Governors, Federal Reserve System

(a) All positions.

Section 213.3127 Veterans Administration

(a) *Construction Division.* (1) Temporary construction workers paid from "purchase and hire" funds and appointed for not to exceed the duration of a construction project.

(b) Not to exceed 400 positions of rehabilitation counselors, GS–3 through GS–11, in Alcoholism Treatment Units and Drug Dependence Treatment Centers, when filled by former patients.

(c) [Reserved]

(d) Not to exceed 600 positions at grades GS–3 through GS–11, involved in the Veterans Administration Vietnam Era Veterans Readjustment Counseling Program. No one may serve under this authority after August 31, 1988.

Section 213.3128 U.S. Information Agency

(a) *Office of Congressional and Public Liaison.* (1) Two positions of Liaison Officer (Congressional), GS–14.

(b) Five positions of Supervisory International Exchange Officer (Reception Center Director), GS–13 and GS–14, located in USIA's field offices of New Orleans, New York, Miami, San Francisco and Honolulu. Initial appointments will not exceed December 31 of the calendar year in which appointment is made with extensions permitted up to a maximum period of 4 years.

Section 213.3130 Securities and Exchange Commission

(a)–(b) [Reserved]

(c) Positions of accountant and auditor, GS–13 through 15, when filled by persons selected under the SEC Accounting Fellow Program, as follows:

(1) Five positions, for employment of any one individual not to exceed 2 years; and

(2) Two additional identical positions, for employment of any one individual not to exceed 90 days, which may be used to provide a period of transition and orientation between Fellowship appointments. These additional identical positions must be filled by persons who either have completed a 2-year Fellowship or have been selected as replacement Fellows for a 2-year term. Appointments of outgoing Fellows under this authority must be made without a break in service of 1 workday following completion of their 2-year terms; incoming Fellows appointed under this provision must be appointed to 2-year Fellowships without a break in service of 1 workday following their 90-day appointments.

(d) Positions of Economist, GS–13 through 15, when filled by persons selected under the SEC Economic Fellow Program. No more than four positions may be filled under this authority at any one time. An employee may not serve under this authority longer than 2 years unless selected under provisions set forth in the Intergovernmental Personnel Act (IPA), 5 U.S.C. 3372(b)(2).

Section 213.3131 Department of Energy

(a) [Reserved].

(b) *Bonneville Power Administration.*

(1) Five Area Managers.

Section 213.3132 Small Business Administration

(a) When the President under 42 U.S.C. 1855–1855g, the Secretary of Agriculture under 7 U.S.C. 1961, or the Small Business Administration under 15 U.S.C. 636(b)(1) declares an area to be a disaster area, positions filled by temporary appointment of employees to make and administer disaster loans in the area under the Small Business Act, as amended. Service under this authority may not exceed 4 years, and no more than 2 years may be spent on a single disaster. Exception to this time limit may only be made with prior OPM approval. Appointments under this authority may not be used to extend the 2-year service limit contained in paragraph (b) below. No one may be appointed under this authority to positions engaged in long-term maintenance of loan portfolios.

(b) When the President under 42 U.S.C. 1855–1855g, or the Secretary of Agriculture under 7 U.S.C. 1961 or the Small Business Administration under 15 U.S.C. 636(b)(1), declares an area to be a disaster area, positions filled by temporary appointment of employees to make and administer disaster loans in that area under the Small Business Act, as amended. No one may serve under this authority for more than an aggregate of 2 years without a break in service of at least 6 months. Persons who have had more than 2 years of service under paragraph (a) of this section must have a break in service of at least 6 months following such service before appointment under this authority. No one may be appointed under this authority to positions engaged in long-term maintenance of loan portfolios.

(c) Positions of Community Economic-Industrial Planner, GS–7 through 12, when filled by local residents who represent the interest of the groups to be served by the Minority Entrepreneurship Teams of which they are members. No new appointments may be made under this authority after May 1, 1977.

Section 213.3133 Federal Deposit Insurance Corporation

(a) All Liquidation Graded, temporary field positions concerned with the work of liquidating the assets of closed banks, of liquidating loans to banks, or of paying the depositors of closed insured banks. New appointments may be made under this authority only during the 5-year period following a bank closing and/or establishment of a consolidated liquidation site.

Section 213.3136 U.S. Soldiers' and Airmen's Home

(a) All positions.

Section 213.3137 General Services Administration

(a) [Reserved]

(b) Not to exceed 25 positions at grades GS–14/15, in order to bring into the agency current industry expertise in various program areas. Appointments under this authority may not exceed 2 years.

Section 213.3141 National Labor Relations Board

(a) Election Examiners for temporary, part-time or intermittent employment in connection with elections under the Labor-Management Relations Act.

Section 213.3142 Export-Import Bank of the United States

(a) One Special Assistant to the Board of Directors, grade GS–14 and above.

Section 213.3146 Selective Service System

(a) State Directors.

(b)–(c) [Reserved]

(d) Executive Secretary, National Selective Service Appeal Board.

Section 213.3148 National Aeronautics and Space Administration

(a) One hundred and fifty alien scientists having special qualifications in the fields of aeronautical and space research where such employment is deemed by the Administrator of the National Aeronautics and Space Administration to be necessary in the public interest.

(b) Not to exceed 40 positions of fully qualified pilot and mission specialists astronauts.

(c)–(e) [Reserved]

(f) Positions of Program Coordinator/Counselor at grades GS–7/9/11 for part-time and summer employment in connection with the High School Students Summer Research Apprenticeship Program.

Section 213.3152 U.S. Government Printing Office

(a) Not to exceed three positions of Research Associate at grades GS–15 and below, involved in the study and analysis of complex problems relating to the reduction of the Government's printing costs and to provision of more efficient service to customer agencies and the public. Appointments under this authority may not exceed 1 year, but may be extended for not to exceed one additional year.

(b) Positions in the printing trades when filled by students majoring in printing technology employed under a cooperative education agreement with the University of the District of Columbia.

Section 213.3154 Federal Home Loan Bank Board

(a) One Secretary, Federal Home Loan Bank Board.

(b) [Reserved]

(c) Positions in the Federal Savings and Loan Insurance Corporation concerned with the work of liquidating the assets of closed insured institutions or the liquidation of loans or the handling of contributions to insured institutions and the purchase of assests therefrom; and positions of the Federal Savings and Loan Insurance Corporation the work of which is

concerned with paying the depositors of closed insured institutions. Appointments under this authority may not exceed 3 years.

Section 213.3156 Commission on Civil Rights

(a) Twenty-five positions at grade GS–11 and above of employees who collect, study, and appraise civil rights information to carry out the national clearinghouse responsibilities of the Commission under Pub. L. 88–352, as amended. No new appointments may be made under this authority after March 31, 1976.

Section 213.3174 Smithsonian Institution

(a) Not to exceed 25 positions at grades GS–11 and below that support planning and production of the Annual American Folklife Festival. Employment under this authority may not exceed 6 months in connection with any one Festival.

(b) All positions located in Panama which are part of or which support the Smithsonian Tropical Research Institute.

(c) One Russian Studies Program Administrator, one East Asian Studies Program Administrator, one International Security Studies Program Administrator, and one Latin American Program Administrator in the Woodrow Wilson International Center for Scholars.

Section 213.3182 National Foundation on the Arts and the Humanities

(a) *National Endowment for the Arts.* (1) Until September 30, 1990, one position of Assistant Director, Artists-in-Education Programs, Office for Partnership, GS–301–14.

(2) Until September 30, 1990, one position of Assistant Director for State Programs.

(3) Until September 30, 1990, one position of Director of Literature Programs.

(4) Until September 30, 1990, one position of Assistant Director of Theatre Programs.

(5) Until September 30, 1990, one position of Director of Folk Arts Programs.

(6) Until September 30, 1990, one position of Director, Opera/Musical Theatre Programs.

(7) Until September 30, 1990, one position of Assistant Director of Opera/Musical Theatre Programs.

(8) Until September 30, 1990, one position of Assistant Director of Literature Programs.

(9) Until September 30, 1990, one position of Director of Locals Test Programs, Office of the Deputy to the Chairman for Public Partnership.

(10) Until September 30, 1990, one position of Deputy Chairman for Public Partnership.

(11) Until September 30, 1990, four Project Evaluators.

(12) Until September 30, 1990, one position of Director of Museum Programs.

(13) Until September 30, 1990, one position of Assistant Director of Folk Arts, Office of the Deputy Chairman for Programs.

(14) Until September 30, 1990, one position of Assistant Director of Music Programs.

(15) Until September 30, 1990, one position of Director of Expansion Arts Programs.

(16) Until September 30, 1990, one position of Director of Media Arts Programs.

(17) Until September 30, 1990, one position of Director, Challenge and Advancement Grant Program.

(18)–(19) [Reserved]

(20) Until September 30, 1990, one position of Director of Inter Arts Program.

(21) Until September 30, 1990, one position of Assistant Director of Expansion of Arts Programs.

(22) Until September 30, 1990, one position of Assistant Director of Media Arts Programs.

(23) Until September 30, 1990, one position of Assistant Director of Design Arts Program.

(24) Until September 30, 1990, one position of Assistant Director of Dance Programs.

(25) Until September 30, 1990, one position of Assistant Director of Visual Arts Programs.

(26) Until September 30, 1990, one position of Assistant Director of Museum Programs.

(27)–(29) [Reserved]

(30) Until September 30, 1990, one position of Director of Education Programs.

(31) Until September 30, 1990, one position of Director of Music Programs.

(32) Until September 30, 1990, one position of Director of Theater Programs.

(33) Until September 30, 1990, one position of Director of Dance Programs.

(34) Until September 30, 1990, one position of Director of Visual Arts Programs.

(35) Until September 30, 1990, one position of Director of Design Arts Program.

(36) [Reserved]

(37) Until September 30, 1990, one Director for State Programs.

(38) Until September 30, 1990, one Director for Artists-in Education Programs.

Section 213.3184 Department of Housing and Urban Development

(a) One position of Special Advisor to the Regional Administrator, GS–301–14, in San Francisco. Employment under this authority may not exceed 2 years.

Section 213.3191 Office of Personnel Management

(a) Not to exceed 500 positions in Federal Job Information Centers, to be filled under the Community Outreach Information Network program. Appointments under this authority may not exceed 90 days, and no one may receive more than one appointment under the authority.

(b)–(c) [Reserved]

(d) Part-time and intermittent positions of test examiners at grades GS–8 and below.

Section 213.3194 Department of Transportation

(a) *U.S. Coast Guard.* (1) Not to exceed 25 positions of Marine Traffic Controller (Pilot), at grade GS–11 and below for temporary, intermittent or seasonal employment in the State of Louisiana. Temporary appointments may not exceed 1 year, and temporary appointees may be reappointed under this authority only after a break in service of at least 6 months. Intermittent or seasonal employment may not exceed 180 working days in a service year, except that this limitation for an individual employee may be extended to 220 days when necessitated by emergencies caused by unusual flooding conditions or high river stages.

(2) Lamplighters.

(3) Professors, Associate Professors, Assistant Professors, Instructors, one Principal Librarian, one Cadet Hostess, and one Psychologist (Counseling) at the Coast Guard Academy, New London, Conn.

(b) *Federal Aviation Administration.* (1) Positions at Washington National and Washington Dulles International Airports. This authority applies only to positions that become vacant before control of the airports is transferred to the Metropolitan Washington Airports Authority and that are filled with the concurrence of the Authority.

(c) *Federal Highway Administration.* (1) Temporary, intermittent, or seasonal employment in the field service of the Federal Highway Administration at grades not higher than GS–5 for subprofessional engineering aide work on the highway surveys and

constructions projects, for not to exceed 180 working days a year, when in the opinion of OPM, appointment through competitive examination is impracticable.

(d) [Reserved]

(e) *Maritime Administration.* (1)–(2) [Reserved]

(3) All positions on Government-owned vessels or those bare-boats chartered to the Government and operated by or for the Maritime Administration.

(4)–(5) [Reserved]

(6) U.S. Merchant Marine Academy, positions of: Professors, Instructors, and Teachers: including heads of Departments of Physical Education and Athletics, Humanities, Mathematics and Science, Maritime Law and Economics, Nautical Science, and Engineering; Coordinator of Shipboard Training; the Commandant of Midshipmen, the Assistant Commandant of Midshipmen; Director of Music; three Battalion Officers; three Regimental Affairs Officers; and one Training Administrator.

(7) U.S. Merchant Marine Academy positions of: Associate Dean; Registrar; Director of Admissions; Assistant Director of Admissions; Director, Office of External Affairs; Placement Officer; Administrative Librarian; Shipboard Training Assistant; three Academy Training Representatives; and one Education Program Assistant.

Section 213.3195 Federal Emergency Management Agency

(a) Field positions at grades GS–15 and below, or equivalent, that are engaged in work directly related to unique response efforts to environmental emergencies not covered by the Disaster Relief Act of 1974, Pub. L. 93–288, as amended. Employment under this authority may not exceed 36 months on any single emergency. Persons may not be employed under this authority for long-term duties or for work not directly necessitated by the emergency response effort.

(b) Not to exceed 30 positions at grades GS–15 and below in the Offices of Executive Administration, General Counsel, Inspector General, Comptroller, Public Affairs, Personnel, Acquisition Management, and the State and Local Program and Support Directorate that are engaged in work directly related to unique response efforts to environmental emergencies not covered by the Disaster Relief Act of 1974, Pub. L. 93–288, as amended. Employment under this authority may not exceed 36 months on any single emergency, or for long-term duties or work not directly necessitated by the emergency response effort. No one may be reappointed under this authority for service in connection with a different emergency unless at least 6 months have elapsed since the individual's latest appointment under this authority.

(c) Not to exceed 350 professional and technical positions at grades GS–5 through GS–15, or equivalent, in Mobile Emergency Response Support Detachments (MERS).

Section 213.3199 Temporary Organizations

(a) Positions at GS–15 and below on the staffs of temporary boards and commissions which are established by law or Executive order for specified periods not to exceed 4 years to perform specific projects. A temporary board or commission originally established for less than 4 years and subsequently extended may continue to fill its staff positions under this authority as long as its total life, including extension(s) does not exceed 4 years. No board or commission may use this authority for more than 4 years to make appointments and position changes unless prior approval of the Office is obtained.

(b) Positions at GS–15 and below on the staffs of temporary organizations established within continuing agencies when all of the following conditions are met: (1) The temporary organization is established by an authority outside the agency, usually by law or Executive order; (2) the temporary organization is established for an initial period of 4 years or less and, if subsequently extended, its total life including extension(s) will not exceed 4 years; (3) the work to be performed by the temporary organization is outside the agency's continuing responsibilities; and (4) the positions filled under this authority are those for which other staffing resources or authorities are not available within the agency. An agency may use this authority to fill positions in organizations which do not meet all of the above conditions or to make appointments and position changes in a single organization during a period longer than 4 years only with prior approval of OPM.

Schedule B

Section 213.3202 Entire Executive Civil Service

The provisions established under paragraphs (a) through (i) are authorized under provisions of E.O. 12015 and support career-related work-study programs. OPM's requirements relating to appointment under paragraphs (a) through (i) will be published in the Federal Personnel Manual. Further, appointments under paragraphs (a) through (i) are subject to all the requirements and conditions governing career or career-conditional appointments, including investigation by OPM to establish an appointee's qualifications and suitability. Appointments of participants may be converted to career or career-conditional at any time within a 120-day period after satisfactory completion of a career-related work-study program.

(a) Student positions established in connection with a bachelor's degree cooperative education program which provide for a formally arranged schedule of attendance at an institution of higher learning combined with at least 26 weeks, or 1040 hours, of study-related work in a Federal agency. The periods of work and study together must satisfy requirements for a bachelor's degree and must provide the experience necessary for a career or career-conditional appointment to administrative, professional or technical positions in the Federal career service upon the student's graduation.

(b) Student positions established in support of cooperative education programs for graduate students which provide for scheduled periods of attendance at a graduate school combined with at least 16 weeks or 640 hours of study-related work in a Federal agency. The periods of work and study must satisfy requirements for the graduate degree and provide experience necessary for career or career-conditional appointment in the Federal career service upon the student's graduation.

(c) Student positions established in connection with associate degree cooperative education programs which provide for formally arranged schedules of attendance at a recognized 2-year educational institution combined with at least 26 weeks or 1040 hours of study-related work in a Federal agency. The periods of work and study together must satisfy the requirements for graduation and must provide the experience necessary for career or career-conditional appointment in selected occupations in the Federal career service upon the student's graduation.

(d) Student positions established in connection with the Harry S. Truman Foundation Scholarship Program under the provisions of Pub. L. 93–642 to permit scheduled periods of attendance at institutions of higher education combined with at least 26 weeks or 1040 hours of study-related work in a Federal agency. The periods of work and study must satisfy requirements of programs established by agreement between the

Harry S. Truman Scholarship Foundation and the employing agency and provide the experience necessary for career or career-conditional appointment in the Federal career service upon the student's graduation.

(e) Positions at shipyards, air rework facilities and other major industrial activities that prepare students at the high school level (upon satisfactory completion of a cooperative education program of at least 1,040 hours) for employment in preapprentice positions or in helper positions at the WG–5 level or below. Agencies may make appointments under this authority only with prior approval of OPM and only under the following conditions:

(1) Employment is limited to skilled trades and crafts occupations having a journeyman level of WG–9 or above;

(2) Not more than 25 percent of appointments to positions in covered occupations will be made annually at any single installation through this conversion authority;

(3) The maximum time during which any student will be employed in the program is 16 months;

(4) Except for conditions specified in this authority, students will be subject to instructions governing all other high school vocational education students in cooperative education programs; and

(5) Any student who completes a program without a diploma must have an authenticated certificate from the school indicating satisfactory completion in his/her personnel folder.

(f) Positions under the Federal Junior Fellowship Program, a career-related work-study program covered under the provisions of E.O. 12015.

(g)–(i) [Reserved]

(j) Special executive development positions established in connection with Senior Executive Service candidate development programs which have been approved by OPM. A Federal agency may make new appointments under this authority for any period of employment not exceeding three years for one individual.

(k) Positions at grades GS–15 and below when filled by individuals who: (1) Are placed at a severe disadvantage in obtaining employment because of a psychiatric disability evidenced by hospitalization or outpatient treatment and have had a significant period of substantially disrupted employment because of the disability; and (2) are certified to a specific position by a State vocational rehabilitation counselor or a Veterans Administration counseling psychologist (or psychiatrist) who indicates that they meet the severe disadvantage criteria stated above, that they are capable of functioning in the positions to which they will be appointed, and that any residual disability is not job related. Employment of any individual under this authority may not exceed 2 years following each significant period of mental illness.

(l) Professional and administrative career (PAC) positions at the GS–5 or GS–7 grade level which are subject to the decree entered on November 19, 1981, by the United States District Court for the District of Columbia in the civil action known as *Luevano* v. *Horner* and numbered as No. 79–271, which were not removed from coverage of the Professional and Administrative Career Examination (PACE) prior to the effective date of the consent decree, and which are to be filled, under the conditions described below, by appointment of individuals other than those who at the time of such appointment already have competitive status in the Federal civil service. When a Federal agency needs to fill a PAC position that was not removed from PACE coverage before the consent decree became effective, and the agency has made maximum use of priority placement sources and has given appropriate consideration to available and qualified status applicants, then OPM may authorize the agency to make a new appointment under this paragraph. Such appointments shall be authorized and made pursuant to such Schedule B requirements for PAC positions as shall be prescribed in the Federal Personnel Manual. Terms of use of this appointment authority shall be established by an appointment authority agreement to be executed for each position excepted from the competitive service pursuant to this authority. An incumbent of a Schedule B PAC position may be appointed to a competitive position upon a demonstration that the employee has met qualifications on the basis of an examination of the employee's experience and such other measures as may be prescribed for such position in civil service laws, rules, and regulations, including the Federal Personnel Manual.

Section 213.3203 Executive Office of the President

(a) [Reserved]

(b) *Office of the Special Representative for Trade Negotiations.* (1) Seventeen positions of economist at grades GS–12 through GS–15.

Section 213.3204 Department of State

(a)–(c) [Reserved]

(d) Twelve positions on the household staff of the President's Guest House (Blair and Blair-Lee Houses).

(e) Four Physical Science Administration Officer positions at GS–11 and GS–12 under the Bureau of Oceans and International Environmental and Scientific Affairs' Science, Engineering and Diplomacy Fellowship Program. Employment under this authority is not to exceed 1 year.

(f) Scientific, professional, and technical positions at grades GS–12 to GS–15 when filled by persons having special qualifications in foreign policy matters. Total employment under this authority may not exceed 4 years.

Section 213.3205 Department of the Treasury

(a) Positions of Deputy Comptroller of the Currency, Chief National Bank Examiner, Assistant Chief National Bank Examiner, Regional Administrator of National Banks, Deputy Regional Administrator of National Banks, Assistant to the Comptroller of the Currency, National Bank Examiner, Associate National Bank Examiner, and Assistant National Bank Examiner, whose salaries are paid from assessments against national banks and other financial institutions.

(b) Not to exceed 10 positions engaged in functions mandated by Public Law 99–190, the duties of which require expertise and knowledge gained as a present or former employee of the Synthetic Fuels Corporation, as an employee of any organization carrying out projects or contracts for the Corporation, or as an employee of a Government agency involved in the Synthetic Fuels Program. Appointments under this authority may not exceed 4 years.

(c) Not to exceed two positions of Accountant (Tax Specialist) at grades GS–13 and above to serve as specialists on the accounting analysis and treatment of corporation taxes. Employment under this paragraph shall not exceed a period of 18 months in any individual case.

(d) Positions concerned with the protection of the life and safety of the President and members of his immediate family, or other persons for whom similar protective services are prescribed by law, when filled in accordance with special appointment procedures approved by OPM. Service under this authority may not exceed (1) a total of 4 years or (2) 120 days following completion of the service required for conversion under Executive Order 11203, whichever occurs first.

Section 213.3208 Department of Defense

(a) *Office of the Secretary.* (1) [Reserved]

(2) Professional positions at GS–11 through GS–15 involving systems, costs, and economic analysis functions in the Office of the Assistant Secretary (Program Analysis and Evaluation); and in the Office of the Deputy Assistant Secretary (Systems Policy and Information) in the Office of the Assistant Secretary (Comptroller).

(3)–(4) [Reserved]

(5) Four Net Assessment Analysts.

(b) *Interdepartmental activities.* (1) Five positions to provide general administration, general art and information, photography, and/or visual information support to the White House Photographic Service.

(c) *National Defense University.* (1) Twenty-one positions of professor, GS–13/15, for employment of any one individual on an initial appointment not to exceed 3 years, which may be renewed in 1-, 2-, or 3-year increments indefinitely thereafter.

(d) *General.* (1) One position of Law Enforcement Liaison Officer (Drugs), GS–301–15, U.S. European Command.

(e) *Office of the Inspector General.* (1) Positions of Criminal Investigator, GS–1811–5/15.

(f) *Department of Defense Polygraph Institute, Fort McClellan, Alabama.* (1) One Director, GM–15.

Section 213.3207 Department of the Army

(a) *U.S. Army Command and General Staff College.* (1) Seven positions of professors, instructors, and education specialists. Total employment of any individual under this authority may not exceed 4 years.

(b) *Brooke Army Medical Center, Fort Sam Houston, Texas.*

(1) Two Medical Officer (Surgery) positions, GS–12, in the Clinical Division, U.S. Army Institute of Surgical Research, whose incumbents are enrolled in medical school surgical residency programs. Employment under this authority shall not exceed 12 months.

Section 213.3208 Department of the Navy

(a) *Naval Underwater Systems Center, New London, Connecticut.* (1) One position of oceanographer, grade GS–14, to function as project director and manager for research in the weapons systems applications of ocean eddies.

(b) All civilian faculty positions of professors, instructors, and teachers on the staff of the Armed Forces Staff College, Norfolk, Virginia.

(c) One Director and four Research Psychologists at the professor or GS–15 level in the Defense Personnel Security Research and Education Center.

Section 213.3209 Department of the Air Force

(a) Not to exceed four interdisciplinary positions for the Air Research Institute at the Air University, Maxwell Air Force Base, Alabama, for employment to complete studies proposed by candidates and acceptable to the Air Force. Initial appointments are made not to exceed 3 years, with an option to renew or extend the appointments in increments of 1, 2, or 3 years indefinitely thereafter.

(b) [Reserved]

(c) One Director of Instruction and 14 civilian Instructors at the Defense Institute of Security Assistance Management, Wright-Patterson Air Force Base, Dayton, Ohio. Individual appointments under this authority will be for an initial 3-year period which may be followed by an appointment of indefinite duration.

(d) Seven positions of professor or associate professor at the Air University, Maxwell Air Force Base, Ala., for employment of any one individual on an initial appointment not to exceed 3 years, which may be renewed in 1-, 2-, or 3-year increments indefinitely thereafter.

Section 213.3210 Department of Justice

(a) Criminal Investigator (Special Agent) positions in the Drug Enforcement Administration. New appointments may be made under this authority only at grades GS–5 through 11. Service under the authority may not exceed 4 years. Appointments made under this authority may be converted to career or career-conditional appointments under the provisions of Executive Order 12230, subject to conditions agreed between the Department and OPM.

(b) Positions of Port Receptionist and Supervisory Port Receptionist, Immigration and Naturalization Service.

(c) Not to exceed 200 positions at grades GS–7 through 15 assigned to regional task forces established to conduct special investigations to combat drug trafficking and organized crime.

(d) Until September 30, 1988, positions, other than those providing routine clerical and administrative support, on the staff of the offices of United States Trustees. Terms of service under this authority shall be established in accordance with provisions of the Bankruptcy Reform Act of 1978 and subsequent applicable legislation.

Section 213.3213 Department of Agriculture

(a) *Office of International Cooperation and Development.*

(1) Positions of a project nature involved in international technical assistance activities. Service under this authority may not exceed 2 years on a single project for any individual. No more than 20 new appointments may be made under this authority in any 12-month period.

(b) *General.* (1) Temporary positions of professional Research Scientists, GS–15 or below, in the Agricultural Research Service and the Forest Service, when such positions are established to support the Research Associateship Program and are filled by persons having a doctoral degree in an appropriate field of study for research activities of mutual interest to appointees and the agency. Appointments are limited to proposals approved by the appropriate Administrator. Appointments may be made for initial periods not exceed 2 years and may be extended for up to two additional years.

Section 213.3214 Department of Commerce

(a) *Bureau of the Census.* (1) [Reserved]

(2) Not to exceed 50 Community Services Specialist positions at the equivalent of GS–5 through GS–12.

(b) [Reserved]

(c) *Minority Business Development Agency.* (1) One position of minority business opportunity specialist at grades GS–9 through GS–15. This authority may not be used for new appointments after December 31, 1977.

(d) *National Telecommunications and Information Administration.* (1) Not to exceed 10 positions of Telecommunications Policy Analysts, grades GS–11 through 15. Employment under this authority may not exceed 2 years.

Section 213.3215 Department of Labor

(a) Positions of Chairman and Member, Wage Appeals Board.

(b) *Office of the Inspector General.* (1) Not to exceed 110 positions of Criminal Investigator (Special Agent), GS–1811–5/15, in the Office of Labor Racketeering.

Section 213.3216 Department of Health and Human Services

(a) *Public Health Service.* (1) Not to exceed 68 positions at GS–11 and below

on the Health and Nutrition Examination Survey teams of the National Center for Health Statistics.

(2) One Public Health Education Specialist, GS–1725–15, in the Centers for Disease Control, Atlanta, Georgia.

(b)–(c) [Reserved]

(d) *National Library of Medicine.* (1) Ten positions of Librarian, GS–7, the incumbents of which will be trainees in the Library Associate Training Program in Medical Librarianship and Biomedical Communications. Employment under this authority is not to exceed 1 year.

Section 213.3217 Department of Education

(a) Seventy-five positions, not in excess of GS–13, of a professional or analytical nature when filled by persons, other than college faculty members or candidates working toward college degrees, who are participating in midcareer development programs authorized by Federal statute or regulation, or sponsored by private nonprofit organizations, when a period of work experience is a requirement for completion of an organized study program. Employment under this authority shall not exceed 1 year.

(b) Fifty positions, GS–7 through GS–11, concerned with advising on education policies, practices, and procedures under unusual and abnormal conditions. Persons employed under this provision must be bona fide elementary school and high school teachers. Appointments under this authority may be made for a period of not to exceed 1 year, and may, with the prior approval of OPM, be extended for an additional period of 1 year.

Section 213.3227 Veterans Administration

(a) Not to exceed 800 principal investigatory, scientific, professional and technical positions at grades GS–11 and above in the medical research program. Employment under this authority may not exceed 7 years for any individual.

Section 213.3228 U.S. Information Agency

(a) *Voice of America.* (1) Not to exceed 150 positions at grades GS–15 and below in the Cuba Service. Appointments may not be made under this authority to administrative, clerical, and technical support positions.

(b) Positions of English Language Radio Broadcast Intern, GS–1001–5/7/9. Employment is not to exceed 2 years for any intern.

Section 213.3231 Department of Energy

(a) Twenty Exceptions and Appeals Analyst positions at grades GS–7 through 11, when filled by persons selected under DOE's fellowship program in its Office of Hearings and Appeals, Washington, D.C. Appointments under this authority shall not exceed 3 years.

Section 213.3234 Federal Trade Commission

(a) Positions filled under the Economic Fellows Program. No more than five new appointments may be made under this authority in any fiscal year. Service of any individual Fellow may not exceed 4 years.

Section 213.3237 General Services Administration

(a) One position of Deputy Director of Network Services.

Section 213.3242 Export-Import Bank of the U.S.

(a) One position of Food Service Worker WG–7804–3/4/5, in the Office of the President and Chairman.

Section 213.3248 National Aeronautics and Space Administration

(a) Not to exceed 40 positions of Command Pilot, Pilot and Mission Specialist candidates at grades GS–7 through 15 in the Space Shuttle Astronaut program. Employment under this authority may not exceed 3 years.

Section 213.3254 Federal Home Loan Bank Board

(a) Positions of Accounting Policy Analyst, GS–13/14/15, in the Office of Examinations and Supervision filled in connection with a fellowship program. Appointments under this authority may not exceed 2 years. No more than three new appointments may be made under this authority during any consecutive 12-month period.

(b) Up to 569 positions at GS–15 and below in the Federal Home Loan Bank Board engaged in exploring methods to promote stability in the thrift industry, restore the industry to profitability, and protect individual savers. No additional appointments may be made under this authority after September 30, 1990.

Section 213.3257 National Credit Union Administration

(a) *Central Liquidity Facility.* (1) All managerial and supervisory positions at pay levels greater than the equivalent of GS–13.

Section 213.3259 ACTION

(a) *Office of Domestic and Anti-Poverty Operations.* (1) Not to exceed 25 positions of Program Specialist at grades GS–9 through GS–15.

(b) *Office of Voluntary Liaison.* (1) Three positions of Program Specialist at grades GS–7 through GS–15.

Section 213.3264 U. S. Arms Control and Disarmament Agency

(a) Twenty-five scientific, professional, and technical positions at grades GS–12 through GS–15 when filled by persons having special qualifications in the fields of foreign policy, foreign affairs, arms control, and related fields. Total employment under this authority may not exceed 4 years.

Section 213.3272 Administrative Office of the U. S. Courts

(a) Not to exceed 18 positions of Federal Probation System Administrator in the Division of Probation, when filled by Federal Probation Officers and/or Pretrial Services Officers on active service in the U.S. Courts.

(b) [Reserved]

(c) Six positions of Clerks Liaison Officer in the Division of Clerks of Court.

Section 213.3274 Smithsonian Institution

(a) *National Zoological Park.* (1) Four positions of Veterinary Intern, GS–8/9/11. Employment under this authority is not to exceed 36 months.

(b) *Freer Gallery of Art.* (1) Not to exceed four positions of Oriental Art Restoration Specialist at grades GS–9 through GS–15.

Section 213.3276 Appalachian Regional Commission

(a) Two Program Coordinators.

Section 213.3282 National Foundation on the Arts and the Humanities

(a) [Reserved]

(b) *National Endowment for the Humanities.* (1) Until September 30, 1990, Humanist Administrator, Reference Materials Programs, Division of Research Programs.

(2) Until September 30, 1990, Humanist Administrator (Assistant Director), Humanities Projects in Higher Education Program, Division of Education Programs.

(3) Until September 30, 1990, Deputy Director, Division of Education Programs.

(4) Until September 30, 1990, Director, Division of Research Grants.

(5) Until September 30, 1990, one position of Director, GS–1701–15, one position of Deputy Director, GS–1701–14, and six positions of Humanist

Administrator, GS–1701–13, Division of State Programs.

(6) Until September 30, 1990, one Director and one Deputy Director, Division of Fellows and Seminars.

(7) Until September 30, 1990, one Humanist Administrator, Fellowships for College Teachers, Division of Fellowships.

(8) Until September 30, 1990, four positions of Humanist Administrator, Media Program, Division of General Programs.

(9) Until September 30, 1990, one position of Humanist Administrator, Humanities Projects in Higher Education, Division of Education Programs.

(10) Until September 30, 1990, one position of Assistant Director for the Elementary and Secondary Education Program, Division of Education Programs.

(11) Until September 30, 1990, one position of Assistant Director for the Museums and Historical Organizations Program, Division of General Programs.

(12) Until September 30, 1990, three positions of Humanist Administrator, Museums and Historical Organizations Program, Division of General Programs.

(13) Until September 30, 1990, two positions of Humanist Administrator, Elementary and Secondary Education Program, Division of Education Programs.

(14) Until September 30, 1990, Director of General Programs.

(15) Until September 30, 1990, one Assistant to the Director, Division of General Programs.

(16) Until September 30, 1990, one Humanist Administrator, Younger Scholars Programs, Division of Fellowships and Seminars.

(17) Until September 30, 1990, one Humanist Administrator, Humanities Programs for Adults, Division of General Programs.

(18) Until September 30, 1990, one position of Director, Division of Education Programs.

(19) Until September 30, 1990, one Humanist Administrator (Assistant Director), Texts Programs, Division of Research Programs.

(20) Until September 30, 1990, one Humanist Administrator, Centers for Advanced Study, Division of Research Programs.

(21) Until September 30, 1990, one Challenge Grants Officer.

(22) Until September 30, 1990, one Assistant Director, Media Program, Division of General Programs.

(23) Until September 30, 1990, one position of Humanist Administrator, Publications Program, Division of Research Grants.

(24) Until September 30, 1990, one Deputy Director, Division of Research Grants.

(25) Until September 30, 1990, one Humanist Administrator, Summer Seminars for College Teachers, Division of Fellowships and Seminars.

(26) Until September 30, 1990, two positions of Humanist Administrator, Humanities Libraries Projects, Division of General Programs.

(27) Until September 30, 1990, one position of Humanities Projects Assessment Officer, GM–15, Office of the Assistant Chairman for Programs.

(28) Until September 30, 1990, one position of Humanist Administrator, Humanities Programs for Adults, Division of General Programs, GS–14.

(29) Until September 30, 1990, one position of Humanist Administrator, GS–1701–14, in the Interpretive Research Programs, Division of Research Programs.

(30) Until September 30, 1990, one Humanist Administrator, Office of Challenge Grants.

(31)–(32) [Reserved].

(33) Until September 30, 1990, one Assistant Director, Special Projects Program, GM–1701–14, Division of General Programs.

(34) Until September 30, 1990, one Humanist Administrator, GS–1701–12, Humanities Projects in Higher Education Program, Division of Education Programs.

(35) Until September 30, 1990, two Humanist Administrators, Humanities Projects in Higher Education Program, Division of Education Programs.

(36) Until September 30, 1990, three Humanist Administrators, Humanities Projects in Higher Education Program, Division of Education Programs.

(37) Until September 30, 1990, one Humanist Administrator, Summer Seminars for Secondary School Teachers, Division of Fellowships and Seminars.

(38) Until September 30, 1990, one Humanist Administrator, Summer Stipends, Division of Fellowships and Seminars.

(39) Until September 30, 1990, one Humanist Administrator, Travel to Collections, Division of Fellowships and Seminars.

(40) Until September 30, 1990, one Humanist Administrator, Translation Program, Reference Works Program, Division of Research Programs.

(41) Until September 30, 1990, one Humanist Administrator, Editions Program, Reference Works Program, Division of Research Programs.

(42) [Reserved]

(43) Until September 30, 1990, one Humanist Administrator, Foundations of American Society Program, Division of Fellowships and Seminars.

(44) Until September 30, 1990, one Humanist Administrator, Humanities Projects in Museums and Historical Organizations, Division of General Programs.

(45) Until September 30, 1990, two Humanist Administrators, Office of Preservation.

(46) Until September 30, 1990, one Director, Office of Preservation.

(47) Until September 30, 1990, one Humanist Administrator (Program Officer), Regrant Programs, Division of Research Programs.

(48) Until September 30, 1990, one Director, Office of Planning and Budget.

(49) Until September 30, 1990, one Humanist Administrator, Tools Program, Reference Materials Program, Division of Research Programs.

(50) Until September 30, 1990, one Humanist Administrator, Access Program, Reference Materials Program, Division of Research Programs.

(51) Until September 30, 1990, one Humanist Administrator, Project Research, Interpretive Research Program, Division of Research Programs.

(52) Until September 30, 1990, one Humanist Administrator, Humanities, Science, and Technology Program, Interpretive Research Program, Division of Research Programs.

Section 213.3285 Pennsylvania Avenue Development Corporation

(a) One position of Civil Engineer (Construction Manager).

Section 213.3291 Office of Personnel Management

(a) Not to exceed eight positions of Associate Director at the Executive Seminar Centers at grades GS–13 and GS–14. Appointments may be made for any period up to 3 years, and may be extended without prior approval for any individual. Not more than half of the authorized faculty positions at any one Executive Seminar Center may be filled under this authority.

(b) Twelve positions of faculty members at grades GS–13 through 15, at the Federal Executive Institute. Initial appointments under this authority may be made for any period up to 3 years and may be extended in 1-, 2-, or 3-year increments indefinitely thereafter.

Section 13.3294 Department of Transportation

(a) *Federal Railroad Administration.*

(1) Regional Director of Railroad Safety, Fort Worth, Texas.

Schedule C

Section 213.3303 Executive Office of the President

Council of Economic Advisors
- CEA 4—Secretary to the Council Member.
- CEA 5—Secretary to the Council Member.

Council on Environmental Quality CEQ 2—Executive Assistant to a Council Member.

Office of Management and Budget
- OMB 8—Secretary to the Deputy Director.
- OMB 11—Secretary to the Associate Director, National Security and International Affairs.
- OMB 12—Administrative Assistant to the Associate Director, Human Resources, Veterans, and Labor.
- OMB 16—Secretary to the Associate Director for Management.
- OMB 21—Confidential Assistant to the Director.
- OMB 23—Staff Assistant to the Administrator, Office of Information and Regulatory Affairs.
- OMB 25—Legislative Assistant to the Assistant Director for Legislative Affairs.
- OMB 31—Executive Secretary to the Executive Associate Director for Budget and Legislation.
- OMB 33—Executive Assistant to the Deputy Director.
- OMB 38—Confidential Secretary to the General Counsel.
- OMB 44—Secretary to the Deputy Director.
- OMB 46—Legislative Assistant to the Assistant Director for Legislative Affairs.
- OMB 48—Legislative Assistant to the Assistant Director for Legislative Affairs.
- OMB 52—Secretary to the Director.
- OMB 56—Secretary to the Director.
- OMB 57—Confidential Secretary to the Associate Director for Natural Resources, Energy and Science.
- OMB 61—Secretary to the Deputy Director.
- OMB 62—Administrative Assistant to the Executive Assistant to the Director.
- OMB 63—Staff Assistant to the Associate Director for Management.
- OMB 64—Writer to the Director.

Office of Science and Technology Policy
- OSTP 1—Confidential Secretary to the Director.

President's Commission on Executive Exchange
- PCEE 1—Confidential Assistant to the Executive Director.
- PCEE 2—Special Assistant to the Executive Director.
- PCEE 4—Secretary (Typing) to the Executive Director.
- PCEE 5—Public Affairs Specialist to the Executive Director.
- PCEE 6—Staff Assistant (Typing) to the Executive Director.
- PCEE 7—Staff Assistant (Typing) to the Executive Director.

Office of the United States Trade Representative
- USTR 10—Confidential Assistant to the United States Trade Representative.
- USTR 13—Confidential Assistant to the General Counsel.
- USTR 14—Confidential Secretary to the United States Trade Representative.
- USTR 20—Deputy Assistant United States Trade Representative.
- USTR 21—Confidential Assistant to the Deputy United States Trade Representative.
- USTR 24—Public Affairs Specialist to the Assistant United States Trade Representative for Public, Private and Intergovernmental Affairs.
- USTR 25—Confidential Secretary to the General Counsel.
- USTR 26—Executive Assistant to the Deputy United States Trade Representative.
- USTR 27—Public Affairs Specialist to the Assistant United States Trade Representative for Public Affairs.
- USTR 28—Congressional Affairs Officer to the Assistant United States Trade Representative for Congressional Affairs.
- USTR 29—Director, Office of Private Sector Liaison, to the Assistant United States Trade Representative for Public and Intergovernmental Affairs.
- USTR 30—Confidential Assistant to the Deputy United States Trade Representative—Geneva.

Section 213.3304 Department of State
- ST 8—Secretary (Steno) to the Secretary.
- ST 38—Staff Assistant to the Under Secretary.
- ST 59—Secretary (Steno) to the Under Secretary for Economic Affairs.
- ST 67—Secretary (Steno) to the Director, Bureau of Politico-Military Affairs.
- ST 79—Special Assistant to the United States Representative to the United Nations.
- ST 81—Secretary (Steno) to the Assistant Secretary, Bureau of Near Eastern and South Asian Affairs.
- ST 83—Assistant Chief of Protocol to the Chief of Protocol.
- ST 90—Foreign Affairs Officer to the Chief of Protocol.
- ST 91—Secretary (Steno) to the Assistant Secretary, Bureau of East Asian and Pacific Affairs.
- ST 100—Secretary (Steno) to the United States Representative to the United Nations.
- ST 102—Special Assistant to the Under Secretary.
- ST 106—Assistant Manager, President's Guest House, to the Chief of Protocol.
- ST 109—Secretary (Steno) to the Director, Management Operations.
- ST 116—Special Assistant to the Counselor.
- ST 117—Confidential Clerk to the Secretary.
- ST 120—Special Assistant to the Spokesman, Office of the Spokesman.
- ST 122—Staff Assistant to the Under Secretary for Management.
- ST 124—Special Assistant to the Assistant Secretary, Bureau of Inter-American Affairs.
- ST 128—Legislative Officer to the Assistant Secretary for Legislative and Intergovernmental Affairs.
- ST 132—Secretary (Typing) to the Assistant Secretary, Bureau of International Organizational Affairs.
- ST 134—Secretary (Steno) to the Deputy Secretary.
- ST 137—Foreign Affairs Officer to the Assistant Secretary, Policy Planning Staff.
- ST 156—Member, Policy Planning Staff to the Chairman, Policy Planning Council.
- ST 161—Secretary (Steno) to the Under Secretary for Management.
- ST 162—Secretary (Steno) to the Assistant Secretary, Bureau of Consular Affairs.
- ST 164—General Manager, President's Guest House.
- ST 168—Staff Assistant to the Legal Adviser.
- ST 173—Special Assistant to the Under Secretary for Management.
- ST 174—Public Affairs Specialist to the Deputy Assistant Secretary for Public Affairs.
- ST 175—Congressional Relations Officer to the Principal Deputy Assistant Secretary for Congressional Relations.
- ST 177—Special Assistant to the Chairman, International Joint Commission.
- ST 178—Secretary (Steno) to the Assistant Secretary for International Narcotics Matters.
- ST 179—Congressional Relations Officer to the Assistant Secretary, Office of Congressional Relations.
- ST 181—Director, Office of Intergovernmental and Public Liaison to the Assistant Secretary

for Legislative and Governmental Affairs.
ST 182—Special Assistant to the Assistant Secretary, Bureau of Consular Affairs.
ST 183—Public Affairs Advisor to the Assistant Secretary, Bureau of Human Rights and Humanitarian Affairs.
ST 184—Special Assistant to the Assistant Secretary, Office of African Affairs.
ST 187—Secretary (Steno) to the Chairman, International Joint Commission.
ST 188—Staff Assistant to the Assistant Secretary for International Narcotics Matters.
ST 190—Special Assistant to the Ambassador-at-Large and Special Advisor to the Secretary.
ST 191—Secretary (Steno) to the Executive Secretary/Special Assistant to the Secretary.
ST 192—Staff Assistant to the Deputy Secretary of State.
ST 195—Staff Assistant to the Assistant Secretary for Congressional Relations.
ST 200—Staff Assistant to the Deputy Secretary of State.
ST 201—Staff Assistant to the Ambassador on Space and Defense Arms and Head of the U.S. Delegation to Geneva.
ST 202—Special Assistant to the Ambassador-at-Large.
ST 203—Special Assistant to the Counselor.
ST 206—Foreign Affairs Officer to the Assistant Secretary, Bureau of International Organization Affairs.
ST 211—Protocol Officer (Visits) to the Chief of Protocol.
ST 213—Special Assistant to the Assistant Secretary for Human Rights and Humanitarian Affairs.
ST 217—Deputy Coordinator to the Coordinator for Public Diplomacy for Latin America and the Caribbean.
ST 221—Special Assistant to the Assistant Secretary for East Asian and Pacific Affairs.
ST 222—Special Assistant to the Assistant Secretary, Bureau of East Asian and Pacific Affairs.
ST 224—Special Assistant to the Assistant Secretary, Bureau of East Asian and Pacific Affairs.
ST 226—Special Assistant to the Assistant Secretary, Bureau of Near Eastern and South Asian Affairs.
ST 229—Special Assistant to the Coordinator for Public Diplomacy for Latin America and the Caribbean.
ST 235—Protocol Officer (Ceremonials) to the Chief of Protocol.
ST 236—Staff Assistant to the Ambassador on Space and Defense Arms and Head of the U.S. Delegation to Geneva.
ST 239—Protocol Clerk to the Chief of Protocol.
ST 242—Special Assistant to the Assistant Secretary, Bureau of Human Rights and Humanitarian Affairs.
ST 242—Protocol Assistant to the Chief of Protocol.
ST 244—Special Assistant to the Assistant Secretary, Bureau of Inter-American Affairs.
ST 245—Foreign Affairs Officer to the Assistant Secretary, Bureau of International Organization Affairs.
ST 246—Secretary (Steno) to the Ambassador at Large for Cultural Affairs.
ST 247—Special Assistant to the Assistant Secretary, Bureau of Inter-American Affairs.
ST 248—Special Assistant to the Deputy Assistant Secretary for International Social and Humanitarian Affairs, Bureau of International Organization Affairs.
ST 249—Staff Assistant to the Deputy Secretary.
ST 250—Public Information Officer to the Deputy Assistant Secretary for International Social and Humanitarian Affairs, Bureau of International Organization Affairs.
ST 251—Special Assistant to the Deputy Assistant Secretary for Policy and Counterterrorism, Bureau of Diplomatic Security.
ST 252—Protocol Officer (Visits) to the Chief of Protocol.
ST 254—Special Assistant to the Under Secretary for Security Assistance, Science, and Technology.
ST 255—Secretary (Steno) to the Deputy Assistant Secretary for Policy and Counterterrorism, Bureau of Diplomatic Security.
ST 256—Policy and Press Advisor to the U.S. Permanent Representative to the U.S. Mission to the Organization of American States.

Section 213.3305 Department of the Treasury

TREA 27—Executive Assistant to the Secretary.
TREA 28—Special Assistant to the Director of the Mint.
TREA 47—Special Assistant to the Assistant Secretary for Legislative Affairs.
TREA 61—Special Assistant to the Assistant Secretary for Public Affairs and Public Liaison.
TREA 74—Confidential Assistant to the Assistant Secretary for Policy Planning and Communications.
TREA 75—Public Affairs Specialist to the Assistant Secretary for Public Affairs and Public Liaison.
TREA 89—Special Assistant to the Assistant Secretary for Legislative Affairs.
TREA 91—Director of Travel and Special Events to the Director, Special Operations Division.
TREA 92—Director, Consumer Affairs, to the Assistant Secretary for Business and Consumer Affairs.
TREA 94—Executive Assistant to the Commissioner of Customs.
TREA 99—Staff Assistant to the Director, Office of Revenue Sharing.
TREA 100—Special Assistant to the Assistant Secretary for Management.
TREA 101—Director, Office of Business Affairs, to the Assistant Secretary for Business and Consumer Affairs.
TREA 102—Staff Assistant to the Commissioner of Customs.
TREA 112—Assistant to the Director, Office of Revenue Sharing.
TREA 113—Executive Assistant to the Special Assistant to the Commissioner of Customs.
TREA 115—Staff Assistant to the Deputy Assistant Secretary for Financial Systems.
TREA 120—Special Assistant to the Assistant Secretary for Policy, Planning and Communications.
TREA 122—Public Affairs Specialist to the Assistant Secretary for Policy, Planning and Communications.
TREA 123—Public Affairs Specialist to the Treasurer.
TREA 125—Congressional Liaison Specialist to the Commissioner of Customs.
TREA 126—Staff Assistant to the Director of the Mint.
TREA 127—Special Assistant to the Assistant Secretary for Management.
TREA 131—Staff Assistant to the Deputy General Counsel.
TREA 132—Deputy Assistant Secretary for Public Liaison to the Assistant Secretary for Public Affairs and Public Liaison.
TREA 139—Director of Scheduling to the Assistant Secretary for Public Affairs and Public Liaison.
TREA 140—Staff Assistant to the Assistant Secretary for Management.
TREA 141—Staff Assistant to the Deputy Assistant Secretary for Public Affairs and Public Liaison.
TREA 144—Staff Assistant to the

Deputy Assistant Secretary for Policy, Planning and Communications.
TREA 147—Travel Assistant to the Deputy Assistant Secretary for Administration.
TREA 148—Director, Special Operations Division, to the Deputy Assistant Secretary for Administration.
TREA 150—Special Assistant to the Deputy Assistant Secretary for Developing Nations, Office of the Assistant Secretary for International Affairs.
TREA 152—Confidential Assistant to the Deputy Assistant Secretary for Public Liaison.
TREA 153—Legislative Specialist to the Assistant Secretary for Legislative Affairs.
TREA 154—Staff Assistant to the Assistant Secretary for Enforcement and Operations.
TREA 156—Special Assistant to the Assistant Secretary for Management.
TREA 157—Congressional Liaison Officer to the Commissioner of Customs.
TREA 158—Confidential Assistant to the Assistant Secretary for Public Affairs and Public Liaison.
TREA 159—Special Assistant to the Deputy Assistant Secretary for Administration.
TREA 160—Confidential Secretary to the Secretary.
TREA 161—Deputy Assistant Secretary for Legislative Affairs.
TREA 163—Staff Assistant to the Assistant Secretary for Management.
TREA 164—Staff Assistant to the Deputy Assistant Secretary for Financial Institutions Policy.
TREA 165—Special Assistant to the Deputy Assistant Secretary for Public Liaison.
TREA 166—Travel Assistant to the Deputy Assistant Secretary for Administration.
TREA 168—Staff Assistant to the Director of the Mint.
TREA 169—Confidential Assistant to the Deputy Assistant Secretary for Administration.
TREA 170—Assistant Director for Travel and Special Event Services to the Director, Special Operations Division.

Section 213.3306 Department of Defense

DOD 3—Private Secretary to the Secretary.
DOD 5—Private Secretary to the Deputy Secretary.
DOD 8—Private Secretary to the Deputy Under Secretary for Research and Engineering (Tactical Warfare Programs).
DOD 9—Private Secretary to the Deputy Under Secretary for Research and Engineering (Strategic and Theater Nuclear Forces).
DOD 10—Private Secretary to the Deputy Under Secretary for Research and Engineering (Research and Advanced Technology).
DOD 13—Private Secretary to the Assistant Secretary (Force Management and Personnel).
DOD 14—Private Secretary to the Assistant Secretary for International Security Affairs.
DOD 18—Private Secretary to the Assistant Secretary (Comptroller).
DOD 19—Personal and Confidential Assistant to the Director, Program Analysis and Evaluation.
DOD 20—Private Secretary to the General Counsel.
DOD 22—Private and Confidential Secretary to the Assistant to the Secretary (Atomic Energy).
DOD 23—Private Secretary to the Military Assistant to the Secretary.
DOD 30—Secretary (Steno) to the Defense Advisor to US NATO.
DOD 31—Private Secretary to the Assistant Secretary for Legislative Affairs.
DOD 33—Personal Secretary to the Deputy Secretary.
DOD 34—Private Secretary to the Principal Deputy Assistant Secretary of Defense for International Security Affairs.
DOD 35—Confidential Assistant to the Executive Secretary.
DOD 37—Assistant to the Secretary for Personnel Security.
DOD 54—Private Secretary to the Judge, U.S. Court of Military Appeals.
DOD 55—Private Secretary to the Chief Judge, U.S. Court of Military Appeals.
DOD 56—Private Secretary to the Judge, U.S. Court of Military Appeals.
DOD 62—Management Officer to the Chairman, President's Intelligence Oversight Board.
DOD 66—Private Secretary to the Physician to the President, White House Support Group.
DOD 73—Private Secretary to the Assistant Secretary of Defense for Health Affairs.
DOD 75—Chauffeur to the Deputy Secretary.
DOD 89—Private Secretary to the Principal Deputy Assistant Secretary (Public Affairs).
DOD 101—Personal and Confidential Assistant to the Director of Net Assessment.
DOD 119—Private Secretary to the Principal Deputy Director, Program Analysis and Evaluation.
DOD 133—Public Affairs Specialist to the Assistant Secretary (Public Affairs).
DOD 148—Private Secretary to the Deputy Under Secretary (Policy).
DOD 171—Special Assistant to the Deputy Assistant Secretary (Reserve Affairs).
DOD 174—Private Secretary to the Under Secretary for Policy.
DOD 175—Personal and Confidential Assistant to the Judge, U. S. Court of Military Appeals.
DOD 187—Special Assistant for African Affairs to the Deputy Assistant Secretary for International Security Affairs.
DOD 194—Private Secretary to the Assistant Secretary (International Security Policy).
DOD 199—Administrative Assistant to the Associate Director, Presidential Personnel Office.
DOD 205—Personal and Confidential Assistant to the Judge, U. S. Court of Military Appeals.
DOD 209—White House Director of Television Services to the Assistant to the President/Director of Support Services.
DOD 212—Private Secretary to the Deputy Under Secretary, Research and Engineering (International Programs and Technology).
DOD 216—Private Secretary to the Principal Deputy Assistant Secretary for International Security Policy.
DOD 217—Private Secretary to the Assistant Secretary (Command, Control, Communications and Intelligence).
DOD 220—Assistant to the Director for Emergency Planning.
DOD 226—Special Assistant to the Assistant Secretary (Health Affairs).
DOD 227—Private Secretary to the Assistant Secretary for Research and Technology/Director, Defense Advanced Research Projects Agency.
DOD 236—Special Assistant to the Assistant Secretary for Public Affairs.
DOD 250—Speechwriter to the Assistant Secretary for Public Affairs.
DOD 251—Assistant to the Deputy Assistant Secretary for East Asian and Pacific Affairs.
DOD 252—Confidential Assistant to the Secretary.

DOD 254—Special Assistant for Emergency Planning to the Assistant Secretary (Acquisition and Logistics).
DOD 255—Personal and Confidential Assistant to the Deputy Secretary.
DOD 259—Deputy Associate Director for Public Liaison to the Special Assistant to the President, White House Support Group.
DOD 261—Special Assistant for European Security and Political Affairs to the Deputy Assistant Secretary (European and NATO Policy).
DOD 262—Special Assistant to the Assistant Secretary (International Security Affairs).
DOD 283—Special Assistant to the Assistant Secretary for International Security Policy.
DOD 285—Special Assistant to the Deputy Assistant Secretary of Defense for East Asian and Pacific Affairs.
DOD 268—Private Secretary to the Senior Judge, U.S. Court of Military Appeals.
DOD 270—Private Secretary to the Director, Strategic Defense Initiative Organization.
DOD 272—Assistant for Policy Analysis to the Deputy Assistant Secretary (European and NATO Policy).
DOD 274—Security Coordinator to the Assistant to the President, White House Support Group.
DOD 275—Assistant for European Security Negotiations to the Deputy Assistant Secretary (Negotiations Policy).
DOD 276—Counselor and Director, Long-Range Policy, to the Deputy Assistant Secretary (Negotiations Policy).
DOD 279—Personal and Confidential Assistant to the Director, Operational Testing and Evaluation.
DOD 280—Staff Assistant to the Principal Deputy Assistant Secretary for Public Affairs.
DOD 282—Assistant for Multilateral Negotiations to the Deputy Assistant Secretary of Defense (Negotiations Policy).
DOD 283—Special Assistant to the Assistant Secretary for Public Affairs.
DOD 284—Special Assistant to the Director, Office of Civilian Health and Medical Programs of the Uniformed Services.
DOD 286—Special Assistant for East African Affairs to the Deputy Assistant Secretary for African Affairs.
DOD 287—Special Assistant for Strategic Defense and Space Arms Control Policy to the Deputy Assistant Secretary of Defense (Nuclear Forces and Arms Control Policy).
DOD 289—Special Assistant and Political/Military Counselor to the United States Ambassador to Austria.
DOD 290—Staff Assistant to the Assistant Secretary for Public Affairs.
DOD 291—Special Assistant for Technology Transfer Policy to the Deputy Under Secretary (Trade Security Policy).
DOD 292—Staff Assistant to the Secretary.
DOD 293—Special Assistant to the Principal Deputy Assistant Secretary (Force Management and Personnel).
DOD 294—Staff Specialist to the Deputy Director, Strategic Defense Initiative Organization.
DOD 295—Special Assistant to the Assistant Secretary (Force Management and Personnel).
DOD 296—Special Assistant to the Assistant Secretary for Legislative Affairs.
DOD 297—Staff Assistant to the Assistant Secretary for Legislative Affairs.
DOD 298—Confidential Assistant to the Under Secretary for Acquisition.
DOD 299—Family Program Coordinator to the Deputy Assistant Secretary (Family Support, Education, and Safety).
DOD 300—Special Assistant for Foreign Intelligence Programs to the Assistant Secretary (Command, Control, Communications, and Intelligence).
DOD 301—Personal and Confidential Assistant to the Assistant Secretary (Acquisition and Logistics).
DOD 302—Special Assistant for National Disaster Medical System to the Assistant Secretary for Health Affairs.
DOD 303—Special Assistant for Strategic Defense Initiative to the Assistant Secretary for Legislative Affairs.

Section 213.3307 Department of the Army

ARMY 1—Staff Assistant to the Secretary.
ARMY 2—Secretary (Steno) to the Under Secretary.
ARMY 3—Secretary (Steno) to the Assistant Secretary of the Army, Manpower and Reserve Affairs.
ARMY 5—Secretary (Steno) to the Assistant Secretary for Installations and Logistics.
ARMY 6—Secretary (Steno) to the Assistant Secretary, Research, Development and Acquisition.
ARMY 21—Secretary (Steno) to the General Counsel.
ARMY 38—Plans Coordinator to the Chief of Public Affairs.
ARMY 41—Assistant Director to the Chairman and Executive Director of the President's Foreign Intelligence Advisory Board.
ARMY 44—Executive Director to the Assistant Secretary, Reserve Affairs.
ARMY 51—Confidential Staff Assistant to the Deputy Director, Office of Private Sector Initiatives.
ARMY 55—Secretary (Steno) to the Assistant Secretary, Financial Management.

Section 213.3308 Department of the Navy

NAVY 2—Staff Assistant to the Secretary.
NAVY 5—Private Secretary to the Assistant Secretary for Financial Management.
NAVY 20—Special Assistant to the Military Assistant to the President.
NAVY 23—Special Assistant to the Military Assistant to the President.
NAVY 24—Private Secretary to the Assistant Secretary (Manpower and Reserve Affairs).
NAVY 25—Special Assistant to the Director, White House Military Office.
NAVY 27—Special Assistant for Emergency Planning to the Military Assistant to the President.
NAVY 31—Staff Assistant to the Under Secretary.
NAVY 32—Private Secretary to the Assistant Secretary for Shipbuilding and Logistics.
NAVY 35—Staff Assistant to the Deputy Assistant Secretary (Logistics).
NAVY 40—Special Assistant to the Deputy Under Secretary (Policy).

Section 213.3309 Department of the Air Force

AF 1—Secretary (Steno) to the Secretary.
AF 2—Secretary (Steno) to the Under Secretary.
AF 3—Secretary (Steno) to the Assistant Secretary for Manpower, Reserve Affairs and Installations.
AF 5—Secretary (Steno) to the Assistant Secretary for Research and Development Logistics.
AF 6—Secretary (Steno) to the Assistant Secretary (Financial Management).
AF 8—Secretary (Steno) to the General Counsel.

AF 17—Administrative Officer to the Assistant to the Vice President for National Security Affairs.
AF 18—Special Assistant to the Assistant to the Vice President for National Security Affairs.
AF 20—Secretary (Steno) to the Military Assistant to the President.
AF 21—Special Assistant to the Military Assistant to the President.
AF 22—Secretary (Steno) to the Assistant to the Vice President for National Security Affairs.
AF 26—Special Assistant to the Assistant Secretary for Manpower, Reserve Affairs and Installations.
AF 28—Special Assistant to the General Counsel.
AF 29—Staff Assistant to the Secretary.
AF 30—Special Assistant to the Assistant to the President/Director of the White House Military Office.
AF 31—Secretary (Steno) to the Assistant to the Vice President for National Security Affairs.
AF 32—Special Assistant to the Assistant Secretary (Financial Management).

Section 213.3310 Department of Justice

JUS 21—Confidential Assistant (Private Secretary) to the Assistant Attorney General, Antitrust Division.
JUS 25—Confidential Assistant (Private Secretary) to the Assistant Attorney General, Criminal Division.
JUS 35—Confidential Assistant (Private Secretary) to the Assistant Attorney General, Office of Legal Counsel.
JUS 70—Special Assistant to the Assistant Attorney General, Civil Rights Division.
JUS 83—Confidential Assistant to the Attorney General.
JUS 93—Secretary (Typing) to the Associate Attorney General.
JUS 100—Confidential Assistant to the Director of Congressional and Public Affairs, Immigration and Naturalization Service.
JUS 133—Secretary (Steno) to the Counselor to the Attorney General.
JUS 135—Staff Assistant to the Assistant Attorney General, Antitrust Division.
JUS 149—Counselor to the Assistant Attorney General, Land and Natural Resources Division.
JUS 152—Secretary and Confidential Assistant to the U.S. Attorney.
JUS 158—Secretary and Confidential Assistant to the U.S. Attorney.
JUS 162—Special Assistant to the Assistant Attorney General, Civil Rights Division.
JUS 167—Special Assistant to the Attorney General.
JUS 170—Special Assistant to the Attorney General.
JUS 176—Associate Director of Public Affairs to the Director, Office of Public Affairs.
JUS 190—Staff Assistant to the Assistant Attorney General, Office of Legal Policy.
JUS 200—Secretary and Confidential Assistant to the U.S. Attorney.
JUS 208—Confidential Assistant to the Director, Office of Public Affairs.
JUS 217—Special Assistant to the Director, Bureau of Justice Statistics.
JUS 219—Special Assistant to the Assistant Attorney General, Tax Division.
JUS 220—Special Assistant to the Assistant Attorney General, Tax Division.
JUS 221—Special Assistant to the Director, Bureau of Justice Statistics.
JUS 227—Staff Assistant to the Director, Community Relations Service.
JUS 228—Attorney-Advisor to the Director, Office of Justice Programs.
JUS 229—Special Assistant to the Director, National Institute of Justice.
JUS 230—Staff Assistant to the Commissioner, Immigration and Naturalization Service.
JUS 234—Confidential Assistant to the Assistant Attorney General for Justice Assistance.
JUS 238—Attorney-Advisor (Tax) to the Deputy Assistant Attorney General, Tax Division.
JUS 240—Special Assistant to the Deputy Assistant Attorney General, Civil Rights Division.
JUS 241—Confidential Assistant and Private Secretary to the Chairman, Foreign Claims Settlement Commission.
JUS 243—Staff Assistant to the Assistant Attorney General, Civil Rights Division.
JUS 244—Special Assistant to the Director, National Institute of Justice.
JUS 245—Attorney-Advisor to the Assistant Attorney General, Land and Natural Resources Division.
JUS 246—Special Assistant to the Deputy Assistant Attorney General, Office of Justice Assistance, Research and Statistics.
JUS 247—Special Assistant to the Commissioner, Immigration and Naturalization Service.
JUS 248—Missing Children Program Coordinator to the Administrator, Office of Juvenile Justice and Delinquency Prevention.
JUS 249—Staff Assistant to the Attorney General.
JUS 251—Confidential Assistant to the Special Assistant to the Attorney General for Cabinet Affairs.
JUS 253—Special Assistant to the Director, Office of Public Affairs.
JUS 258—Executive Assistant to the Administrator, Office of Juvenile Justice and Delinquency Prevention.
JUS 262—Confidential Assistant to the Director, Bureau of Justice Statistics.
JUS 264—Confidential Assistant to the Deputy Assistant Attorney General, Antitrust Division.
JUS 266—Public Affairs Specialist to the Deputy Director, Office of Public Affairs.
JUS 268—Attorney-Advisor (General) to the Assistant Attorney General, Antitrust Division.
JUS 269—Special Assistant to the Assistant Attorney General, Office of Legislative and Intergovernmental Affairs.
JUS 270—Special Assistant to the Assistant Attorney General, Civil Rights Division.
JUS 271—Confidential Assistant to the Assistant Attorney General, Office of Legal Policy.
JUS 272—Attorney-Advisor to the Director, Office of Regulatory and Legislative Affairs.
JUS 275—Deputy Assistant Attorney General, Office of Legal Policy.
JUS 277—Staff Assistant to the Assistant Attorney General/ Chief of Staff.
JUS 279—Confidential Assistant to the Deputy Assistant Attorney General, Office of Legislative Affairs.
JUS 281—Congressional and Public Liaison Officer to the Deputy Assistant Attorney General, Office of Justice Programs.
JUS 282—Assistant Director, Office of Liaison Services.
JUS 284—Senior Liaison Officer to the Administrator, Office of Juvenile Justice and Delinquency Prevention.
JUS 285—Confidential Assistant to the Deputy Assistant Attorney General, Office of Legislative Affairs.
JUS 286—Confidential Assistant to the Director, Office of Liaison Services.
JUS 287—Associate Deputy Attorney General.
JUS 288—Associate Deputy Attorney General.
JUS 291—Senior Liaison Officer to the Director, Office of Liaison Services.
JUS 292—Confidential Assistant to the Director, Office of Liaison Services.
JUS 294—Special Assistant to the Assistant Attorney General, Tax

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Division.
JUS 296—Confidential Assistant to the Associate Deputy Attorney General.
JUS 299—Confidential Assistant to the Senior Special Assistant to the Attorney General.
JUS 300—Special Assistant to the Assistant Attorney General, Civil Rights Division.
JUS 301—Attorney-Advisor (Special Assistant) to the Principal Deputy Assistant Attorney General.
JUS 302—Staff Assistant (Speechwriter) to the Director, Office of Public Affairs.
JUS 303—Research Associate to the Director, Office of Public Affairs.
JUS 304—Confidential Assistant to the Director, Bureau of Justice Statistics.
JUS 306—Assistant Director, Office of Public Affairs.
JUS 307—Attorney-Advisor (Special Assistant) to the Assistant Attorney General, Civil Division.
JUS 308—Confidential Assistant to the Associate Deputy Attorney General.
JUS 309—Senior Liaison Officer to the Director, Office of Liaison Services.
JUS 310—Special Assistant to the Director, Bureau of Justice Assistance.
JUS 311—Special Assistant to the Director, Office of Public Affairs.
JUS 312—Assistant Director, Asylum Policy and Review Unit, Office of Legal Policy.
JUS 313—Executive Secretary to the Deputy Assistant Attorney General, Office of Justice Programs.
JUS 314—Senior Liaison Officer to the Director, Office of Liaison Services.
JUS 315—Confidential Assistant to the Director, National Obscenity Enforcement Unit, Criminal Division.
JUS 316—Social Science Program Manager to the Director, Office for Victims of Crime.
JUS 317—Attorney-Advisor (Counselor) to the Director, Asylum Policy and Review Unit, Office of Legal Policy.
JUS 318—Staff Assistant to the Assistant to the Attorney General and Chief of Staff.
JUS 319—Supervisory Attorney-Advisor (Associate Director), National Obscenity Enforcement Unit, Criminal Division.
JUS 320—Special Assistant to the Assistant Attorney General, Antitrust Division.
JUS 322—Confidential Assistant to the Director, Asylum Policy and Review Unit, Office of Legal Policy.
JUS 323—Confidential Assistant to the Assistant Attorney General, Office of Justice Programs.

Section 213.3311 Federal Judicial Center

FJC 2—Staff Assistant to the Director.

Section 213.3312 Department of the Interior

INT 3—Special Assistant to the Assistant to the Secretary and Director, External Affairs.
INT 18—Special Assistant to the Assistant Secretary, Water and Science.
INT 25—Steward to the Secretary.
INT 73—Staff Assistant to the Executive Assistant to the Secretary.
INT 92—Special Assistant to the Assistant Secretary for Policy, Budget and Administration.
INT 95—Director, Management Analysis Staff, to the Assistant Secretary for Policy, Budget and Administration.
INT 111—Staff Assistant to the Secretary.
INT 112—Confidential Assistant to the Assistant to the Secretary and Director, External Affairs.
INT 141—Executive Assistant to the Commissioner of Reclamation.
INT 143—Special Assistant to the Assistant Secretary, Fish, Wildlife and Parks.
INT 152—Special Assistant to the Deputy Director, National Park Service.
INT 155—Confidential Assistant to the Director, Office of Surface Mining and Reclamation.
INT 165—Special Assistant to the Director, Bureau of Land Management.
INT 170—Special Assistant to the Director, National Park Service.
INT 177—Special Assistant to the Director, Office of Surface Mining.
INT 194—Staff Assistant to the Counselor to the Secretary.
INT 195—Special Assistant to the Assistant Secretary, Territorial and International Affairs.
INT 196—Special Assistant to the Assistant Secretary, Territorial and International Affairs.
INT 201—Special Assistant to the Assistant Secretary, Territorial and International Affairs.
INT 202—Special Assistant to the Director, National Park Service.
INT 204—Special Assistant for Programs to the Counselor to the Secretary.
INT 205—Special Assistant to the Assistant Secretary, Indian Affairs.
INT 215—Confidential Assistant to the Executive Assistant to the Secretary.
INT 220—Special Assistant to the Assistant Secretary, Territorial and International Affairs.
INT 221—Confidential Assistant to the Director, Fish and Wildlife Service.
INT 225—Special Assistant to the Director, Office of Surface Mining.
INT 232—Staff Assistant to the Assistant to the Secretary and Director, External Affairs.
INT 235—Confidential Assistant to the Director, Fish and Wildlife Service.
INT 246—Public Affairs Specialist to the Director, Minerals Management Service.
INT 248—Congressional Liaison Officer to the Director, Bureau of Mines.
INT 250—Special Assistant to the Chief, Office of Congressional Liaison, Bureau of Mines.
INT 252—Staff Assistant to the Associate Director, Offshore Minerals Management, Minerals Management Service.
INT 254—Assistant to the Director, Minerals Management Service.
INT 256—Staff Assistant to the Associate Director, Bureau of Land Management.
INT 259—Special Assistant to the Congressional Liaison Officer, Bureau of Mines.
INT 262—Supervisory Public Affairs Specialist to the Director, Bureau of Land Management.
INT 264—Confidential Assistant to the Special Assistant (Field Representative) to the Secretary.
INT 265—Special Assistant to the Director, Bureau of Land Management.
INT 269—Secretary (Typing) to the Secretary.
INT 271—Special Assistant to the Director, Office of Policy Analysis.
INT 272—Special Assistant to the Assistant Secretary, Policy, Budget and Administration.
INT 274—Congressional Liaison Specialist to the Director, Office of Surface Mining and Reclamation.
INT 277—Staff Assistant to the Assistant Secretary for Indian Affairs.
INT 278—Special Assistant to the Assistant Secretary for Fish, Wildlife and Parks.
INT 279—Deputy Congressional Affairs Officer, Bureau of Land Management.
INT 281—Confidential Assistant to the Inspector General.
INT 282—Confidential Assistant to the Solicitor.
INT 283—Deputy Assistant Secretary for Water.

INT 285—Special Assistant to the Commissioner of Reclamation.
INT 288—Special Assistant to the Director, National Park Service.
INT 290—Congressional Affairs Officer to the Director, Bureau of Land Management.
INT 292—Special Assistant to the Director, Bureau of Land Management.
INT 293—Special Assistant to the Assistant Secretary for Indian Affairs.
INT 294—Special Assistant to the Director, Fish and Wildlife Service.
INT 295—Staff Assistant to the Director, U.S. Geological Survey.
INT 297—Confidential Assistant to the Deputy Solicitor.
INT 298—Special Assistant to the Director, National Park Service.
INT 299—Special Assistant to the Assistant Secretary for Territorial and International Affairs.
INT 300—Special Assistant to the Solicitor.
INT 302—Special Assistant to the Assistant Secretary for Water and Science.
INT 303—Special Assistant to the Commissioner of Reclamation.
INT 304—Special Assistant to the Assistant to the Secretary and Director, Office of Public Affairs.
INT 305—Special Assistant to the Assistant Director of External Affairs, Fish and Wildlife Service.
INT 306—Public Affairs Specialist to the Director, Office of Public Affairs, Bureau of Reclamation.
INT 307—Public Affairs Specialist (Speechwriter) to the Director, Office of Public Affairs, Bureau of Reclamation.
INT 308—Confidential Assistant to the Chief Operating Officer.
INT 309—Special Assistant to the Director, Fish and Wildlife Service.
INT 310—Staff Assistant to the Director, U.S. Geological Survey.

Section 213.3313 Department of Agriculture

AGR 3—Confidential Assistant to the Secretary.
AGR 8—Chauffeur to the Secretary.
AGR 12—Private Secretary to the Under Secretary for International Affairs and Commodity Programs.
AGR 13—Private Secretary to the Assistant Secretary for Food and Consumer Services.
AGR 24—Confidential Assistant to the Administrator, Farmers Home Administration.
AGR 26—Staff Assistant to the Administrator, Farmers Home Administration.
AGR 27—Private Secretary to the Administrator, Farmers Home Administration.
AGR 28—Member, Board of Directors, to the Secretary, Federal Crop Insurance Corporation.
AGR 29—Member, Board of Directors, to the Secretary, Federal Crop Insurance Corporation.
AGR 30—Private Secretary to the Manager, Federal Crop Insurance Corporation.
AGR 31—Confidential Assistant to the Administrator, Agricultural Stabilization and Conservation Service.
AGR 32—Confidential Assistant to the Administrator, Agricultural Stabilization and Conservation Service.
AGR 33—Confidential Assistant to the Administrator, Agricultural Stabilization and Conservation Service.
AGR 34—Confidential Assistant to the Administrator, Agricultural Stabilization and Conservation Service.
AGR 35—Private Secretary to the Administrator, Agricultural Stabilization and Conservation Service.
AGR 44—Private Secretary to the Assistant Secretary for Economics.
AGR 48—Confidential Assistant to the Administrator, Food and Nutrition Service.
AGR 56—Private Secretary to the Assistant Secretary for Governmental and Public Affairs.
AGR 61—Private Secretary to the Assistant Secretary for Natural Resources and Environment.
AGR 62—Confidential Assistant to the Under Secretary for Small Community and Rural Development.
AGR 74—Private Secretary to the Deputy Assistant Secretary for Food and Consumer Services.
AGR 77—Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs.
AGR 81—Confidential Assistant to the Administrator, Farmers Home Administration.
AGR 96—Confidential Assistant to the Assistant Secretary for Natural Resources and Environment.
AGR 102—Confidential Assistant to the Assistant Secretary for Food and Consumer Services.
AGR 103—Confidential Assistant to the Administrator, Foreign Agricultural Service.
AGR 105—Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs.
AGR 108—Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs.
AGR 109—Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs.
AGR 110—Confidential Assistant to the General Counsel.
AGR 111—Confidential Assistant to the Deputy Secretary.
AGR 114—Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs.
AGR 116—Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs.
AGR 118—Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs.
AGR 128—Private Secretary to the Administrator, Federal Grain Inspection Service.
AGR 129—Private Secretary to the Assistant Secretary, Marketing and Inspection Service.
AGR 130—Private Secretary to the Deputy Assistant Secretary, Marketing and Inspection Service.
AGR 136—Confidential Assistant to the Administrator, Food Safety and Inspection Service.
AGR 139—Confidential Assistant to the Executive Assistant to the Secretary.
AGR 141—Confidential Assistant to the Administrator, Food Safety and Inspection Service.
AGR 143—Confidential Assistant to the Administrator, Agricultural Marketing Service.
AGR 151—Executive Assistant to the Administrator, Agricultural Marketing Service.
AGR 154—Confidential Assistant to the Administrator, Food and Nutrition Service.
AGR 157—Confidential Assistant to the Administrator, Foreign Agricultural Service.
AGR 159—Special Representative to the Administrator, Foreign Agricultural Service.
AGR 160—Confidential Assistant to the Administrator, Foreign Agricultural Service.
AGR 164—Confidential Assistant to the Assistant Secretary for Science and Education.
AGR 169—Private Secretary to the Deputy Assistant Secretary for Economics.
AGR 175—Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs.
AGR 177—Special Assistant to the Director, Office of Transportation.
AGR 179—Private Secretary to the Deputy Assistant Secretary for Governmental and Public Affairs.
AGR 182—Assistant to the Administrator, Rural Electrification

Administration.
AGR 183—Confidential Assistant to the Administrator, Food and Nutrition Service.
AGR 184—Office Assistant (Receptionist) to the Executive Assistant to the Secretary.
AGR 186—Confidential Assistant to the Deputy Secretary.
AGR 187—Confidential Assistant to the Assistant Secretary for Food and Consumer Services.
AGR 188—Northeast Area Director to the Deputy Administrator, Office of State and County Operations.
AGR 189—Southeast Area Director to the Deputy Administrator, Office of State and County Operations.
AGR 190—Midwest Area Director to the Deputy Administrator, Office of State and County Operations.
AGR 191—Northwest Area Director to the Deputy Administrator, Office of State and County Operations.
AGR 192—Southwest Area Director to the Deputy Administrator, Office of State and County Operations.
AGR 196—Confidential Assistant to the Administrator, Office of International Cooperation and Development.
AGR 201—Confidential Assistant to the Executive Assistant to the Secretary.
AGR 203—Staff Assistant to the Executive Assistant.
AGR 204—Confidential Assistant to the Assistant Secretary for Science and Education.
AGR 205—Confidential Assistant to the Administrator, Food and Nutrition Service.
AGR 206—Director, Office of the Consumer Advisor to the Assistant Secretary for Food and Consumer Services.
AGR 207—Member, Board of Directors, to the Secretary, Federal Crop Insurance Corporation.
AGR 208—Member, Board of Directors, to the Secretary, Federal Crop Insurance Corporation.
AGR 209—Confidential Assistant to the Chief, Soil Conservation Service.
AGR 210—Staff Assistant to the Administrator, Office of International Cooperation and Development.
AGR 212—Special Assistant to the Assistant Secretary for Administration.
AGR 218—Special Assistant to the Deputy Assistant Secretary for Administration.
AGR 220—Private Secretary to the Deputy Assistant Secretary for Administration.
AGR 222—Confidential Assistant to the Manager, Federal Crop Insurance Corporation.
AGR 224—Director, Congressional and Public Affairs Division, to the Manager, Federal Crop Insurance Corporation.
AGR 225—Confidential Assistant to the Manager, Federal Crop Insurance Corporation.
AGR 226—Confidential Assistant to the Administrator, Food and Nutrition Service.
AGR 228—Confidential Assistant to the Inspector General.
AGR 229—Secretary (Typing) to the Executive Assistant to the Secretary.
AGR 231—Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs.
AGR 232—Confidential Assistant to the Administrator, Farmers Home Administration.
AGR 233—Private Secretary to the Special Assistant to the Secretary.
AGR 234—Confidential Assistant to the Administrator, Office of International Cooperation and Development.
AGR 235—Confidential Assistant to the Administrator, Agricultural Marketing Service.
AGR 236—Confidential Assistant to the Administrator, Animal and Plant Health Inspection Service.
AGR 238—Staff Assistant to the Assistant Secretary for Governmental and Public Affairs.
AGR 242—Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs.
AGR 244—Confidential Assistant to the Chief, Soil Conservation Service.
AGR 247—Private Secretary to the Inspector General.
AGR 250—Private Secretary to the Deputy Under Secretary for International Affairs and Commodity Programs.
AGR 257—Administrator, Human Nutrition Information Service, to the Assistant Secretary for Food and Consumer Services.
AGR 258—Confidential Assistant to the Administrator, Foreign Agricultural Service.
AGR 260—Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs.
AGR 261—Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs.
AGR 262—Confidential Assistant to the Assistant Secretary for Science and Education.
AGR 263—Confidential Assistant to the Assistant Secretary for Natural Resources and Environment.
AGR 265—Staff Assistant to the Assistant Secretary for Governmental and Public Affairs.
AGR 266—Staff Assistant to the Administrator, Food and Nutrition Service.
AGR 267—Staff Assistant to the Assistant Secretary for Governmental and Public Affairs.
AGR 268—Confidential Assistant for Legislative Affairs to the Deputy Administrator, Policy and Program Support, Rural Electrification Administration.
AGR 271—Confidential Assistant to the Secretary.
AGR 273—Confidential Assistant to the Administrator, Foreign Agricultural Service.
AGR 275—Private Secretary to the Deputy Secretary.
AGR 276—Confidential Assistant to the Administrator, Agricultural Research Service.
AGR 277—Confidential Assistant to the Chief, Soil Conservation Service.
AGR 279—Confidential Assistant to the Administrator, Foreign Agricultural Service.
AGR 281—Executive Assistant to the Administrator, Agricultural Stabilization and Conservation Service.

Section 213.3314 Department of Commerce

COM 1—Confidential Assistant to the Secretary.
COM 4—Confidential Assistant to the Secretary.
COM 5—Confidential Assistant to the Special Assistant to the Secretary.
COM 12—Private Secretary to the Deputy Secretary.
COM 16—Confidential Assistant to the General Counsel.
COM 18—Private Secretary to the Deputy General Counsel.
COM 19—Chauffeur to the Secretary.
COM 20—Confidential Assistant to the Deputy Assistant Secretary for Administration.
COM 22—Deputy Director to the Deputy Assistant Secretary for Congressional Affairs.
COM 70—Congressional Liaison Officer to the Assistant Secretary, Economic Development Administration.
COM 114—Private Secretary to the Director, Minority Business Development Agency.
COM 147—Confidential Assistant to the Special Assistant to the Deputy Secretary.
COM 151—Confidential Assistant to the Deputy Secretary.

COM 152—Congressional Liaison Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs.
COM 156—Special Assistant to the Assistant Secretary, Economic Development Administration.
COM 158—International Tourism Officer to the Deputy Under Secretary, Travel and Tourism Administration.
COM 161—Confidential Assistant to the Deputy Under Secretary, International Trade Administration.
COM 162—Confidential Assistant to the Assistant Secretary for International Economic Policy, International Trade Administration.
COM 175—Congressional Liaison Specialist to the Assistant Secretary for Congressional Affairs.
COM 183—Confidential Assistant to the Assistant Secretary for Communications and Information.
COM 184—Confidential Assistant to the Director, National Bureau of Standards.
COM 190—Director, Office of Congressional Affairs, to the Assistant Secretary for Communications and Information.
COM 191—Confidential Assistant to the General Counsel.
COM 192—Legislative Director to the Director, Office of Congressional Affairs.
COM 197—Congressional Liaison Officer to the Deputy Assistant Secretary for Congressional Affairs.
COM 198—Congressional Liaison Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs.
COM 199—Congressional Liaison Specialist to the Deputy Assistant Secretary for Congressional Affairs.
COM 200—Congressional Liaison Officer to the Assistant Secretary for Congressional Affairs.
COM 202—Congressional Liaison Assistant to the Deputy Assistant Secretary for Congressional Affairs.
COM 218—Special Assistant to the Assistant Secretary, National Oceanic and Atmospheric Administration.
COM 220—Confidential Assistant to the Deputy Assistant Secretary for East Asia and the Pacific, International Trade Administration.
COM 222—Private Secretary to the Inspector General.
COM 224—Confidential Assistant to the Under Secretary, International Trade Administration.
COM 247—Private Secretary to the Under Secretary for International Trade.
COM 248—Special Assistant to the Deputy Secretary.
COM 254—Supervisory Public Affairs Specialist to the Director, Minority Business Development Agency.
COM 258—Confidential Assistant to the Deputy Assistant Secretary for Import Administration, International Trade Administration.
COM 259—Confidential Assistant to the Deputy Under Secretary, International Trade Administration.
COM 263—Confidential Assistant to the Assistant Secretary for Trade Development, International Trade Administration.
COM 264—Special Assistant to the Deputy Assistant Secretary, Economic Development Administration.
COM 266—Confidential Assistant to the Assistant Secretary for Trade Administration, International Trade Administration.
COM 267—Confidential Assistant to the Deputy Assistant Secretary for Export Administration, International Trade Administration.
COM 270—Secretary (Typing) to the Special Assistant to the Secretary.
COM 275—Confidential Assistant to the Director, Office of Business Liaison.
COM 278—Confidential Assistant to the Assistant Secretary for Trade Administration, International Trade Administration.
COM 280—Congressional Staff Assistant to the Deputy Assistant Secretary for Congressional Affairs.
COM 282—Special Assistant to the Deputy Assistant Secretary for Congressional Affairs.
COM 285—Deputy Director, Office of Intergovernmental Affairs.
COM 287—Congressional Liaison Assistant to the Deputy Assistant Secretary for Congressional Affair.
COM 288—Confidential Assistant to the Director, Office of Business Liaison.
COM 290—Confidential Assistant to the Director, Office of Business Liaison.
COM 292—Special Assistant to the Deputy Assistant Secretary for Intergovernmental Affairs.
COM 293—Special Assistant to the Director, Office of Intergovernmental Affairs.
COM 294—Confidential Assistant to the Special Assistant to the Secretary.
COM 296—Confidential Aide to the Special Assistant to the Secretary.
COM 297—Confidential Assistant to the Assistant Secretary for Administration.
COM 300—Confidential Assistant to the Deputy Under Secretary for International Trade, International Trade Administration.
COM 301—Special Assistant to the Deputy Assistant Secretary for Import Administration, International Trade Administration.
COM 303—Confidential Assistant to the Assistant Secretary for Administration.
COM 304—Special Assistant to the Under Secretary for Travel and Tourism.
COM 305—Private Secretary to the Under Secretary for Travel and Tourism.
COM 309—Confidential Assistant to the Director, Minority Business Development Agency.
COM 310—Private Secretary to the Deputy Under Secretary for Travel and Tourism.
COM 311—Confidential Assistant to the Special Assistant to the Secretary.
COM 312—Confidential Assistant to the Director General, U.S. and Foreign Commercial Service.
COM 316—Confidential Assistant to the Deputy Assistant Secretary for Trade Information and Analysis, International Trade Administration.
COM 321—Director, Office of Public Affairs to the Under Secretary for International Trade.
COM 324—Confidential Assistant to the Deputy Assistant Secretary for International Economic Policy.
COM 325—Confidential Assistant to the Deputy Assistant Secretary for Africa, Near East, and South Asia, International Trade Administration.
COM 326—Confidential Assistant to the Deputy Assistant Secretary for U.S. and Foreign Commercial Service.
COM 327—Special Assistant to the Deputy Secretary.
COM 329—Congressional Liaison Specialist to the Director, Congressional Affairs, International Trade Administration.
COM 330—Confidential Assistant to the Assistant Secretary for Trade Development, International Trade Administration.
COM 332—Confidential Assistant to the Deputy Assistant Secretary for Capital Goods and International Construction, International Trade Administration.
COM 335—Congressional Liaison Officer to the Deputy Assistant Secretary for Congressional Affairs.
COM 337—Congressional Liaison Specialist to the Assistant Secretary for Congressional and Intergovernmental Affairs.
COM 340—Special Assistant to the

Administrator, National Oceanic and Atmospheric Administration.
COM 342—Confidential Assistant to the Special Assistant to the Deputy Secretary.
COM 343—Confidential Assistant to the Deputy Assistant Secretary for the U.S. and Foreign Commercial Service.
COM 344—Congressional Liaison Specialist to the Under Secretary, International Trade Administration.
COM 345—Confidential Assistant to the Under Secretary, International Trade Administration.
COM 348—Special Assistant to the Director, Office of Public Affairs.
COM 350—Deputy Director to the Director, Office of Business Liaison.
COM 356—Confidential Assistant to the Deputy Director, Minority Business Development Agency.
COM 357—Confidential Assistant to the Director, Office of Export Trading Company Affairs.
COM 360—Congressional Liaison Officer to the Under Secretary for Economic Affairs.
COM 361—Special Assistant to the Director, Bureau of the Census.
COM 362—Congressional Affairs Specialist to the Director, Office of Congressional Affairs, National Oceanic and Atmospheric Administration.
COM 363—Congressional Affairs Specialist to the Director, Office of Congressional Affairs, National Oceanic and Atmospheric Administration.
COM 367—Confidential Assistant to the Director of Policy and Planning, National Oceanic and Atmospheric Administration.
COM 368—Congressional Affairs Specialist to the Director of Congressional Affairs, National Oceanic and Atmospheric Administration.
COM 371—Confidential Assistant to the Director, Office of Legislative Affairs, National Oceanic Atmospheric Administration.
COM 372—Deputy Director, Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration
COM 376—Confidential Assistant to the Special Assistant to the Deputy Secretary.
COM 378—Congressional Liaison Specialist to the Under Secretary for Economic Affairs.
COM 379—Confidential Assistant to the General Counsel.
COM 380—Special Assistant to the Deputy Assistant Secretary for Import Administration, International Trade Administration.
COM 382—Confidential Aide to the Special Assistant to the Secretary.
COM 383—Confidential Assistant to the Assistant Secretary for Economic Development.
COM 384—Special Assistant to the Director, Minority Business Development Agency.
COM 386—Confidential Aide to the Deputy Under Secretary for Travel and Tourism.
COM 389—Confidential Assistant to the Deputy Assistant Secretary for Trade Information and Analysis.
COM 392—Confidential Assistant to the Deputy Assistant Secretary for Basic Industries, International Trade Administration.
COM 393—Special Assistant to the Deputy Assistant Secretary for Congressional Affairs.
COM 394—Supervisory Public Affairs Specialist to the Director, Office of Public Affairs.
COM 396—Assistant Legislative Director to the Director of Congressional Affairs, National Oceanic and Atmospheric Administration.
COM 397—Congressional Affairs Advisor to the Director, Bureau of the Census.
COM 399—Special Assistant to the Deputy Assistant Secretary for Domestic Operations, Economic Development Administration.
COM 400—Confidential Assistant to the Deputy Under Secretary for International Trade, International Trade Administration.
COM 404—Special Assistant to the Deputy Administrator, National Oceanic and Atmospheric Administration.
COM 406—Associate Director, National Oceanic and Atmospheric Administration.
COM 408—Confidential Assistant to the General Counsel.
COM 409—Confidential Aide to the Special Assistant to the Secretary.
COM 411—Secretary to the Deputy Assistant Secretary for Africa, Near East, and South Asia, International Trade Administration.
COM 412—Confidential Assistant to the Deputy Assistant Secretary for Services, International Trade Administration.
COM 413—Confidential Aide to the Special Assistant to the Secretary.
COM 414—Congressional Affairs Specialist to the Legislative Director, National Oceanic and Atmospheric Administration.
COM 415—Congressional Affairs Specialist to the Legislative Director, National Oceanic and Atmospheric Administration.
COM 416—Director, Office of Consumer Affairs.
COM 417—Special Assistant to the Assistant Secretary for Administration.
COM 418—Confidential Assistant to the Under Secretary for Economic Affairs.
COM 419—Confidential Assistant to the Deputy Under Secretary for International Trade.
COM 420—Confidential Assistant to the Director General, U.S. and Foreign Commercial Service.
COM 421—Confidential Assistant to the Deputy Assistant Secretary for Trade Development, International Trade Administration.
COM 422—Confidential Assistant to the Director, Commercial Space Programs.
COM 423—Director of Congressional Affairs to the Assistant Secretary and Commissioner, Patent and Trademark Office.

Section 213.3315 Department of Labor

LAB 3—Special Assistant to the Secretary.
LAB 7—Private Secretary to the Under Secretary.
LAB 17—Senior Liaison Officer to the Deputy Under Secretary for Legislative Affairs.
LAB 18—Associate Deputy Under Secretary for International Labor Affairs.
LAB 25—Executive Director to the Deputy Under Secretary for Congressional Affairs.
LAB 41—Senior Liaison Officer to the Deputy Under Secretary for Congressional Affairs.
LAB 44—Senior Liaison Officer to the Deputy Under Secretary for Congressional Affairs.
LAB 45—Executive Assistant to the Assistant Secretary, Occupational Safety and Health Administration.
LAB 49—Special Assistant to the Assistant Secretary, Occupational Safety and Health Administration.
LAB 55—Staff Assistant to the Deputy Under Secretary for Congressional Affairs.
LAB 64—Special Assistant to the Assistant Secretary, Occupational Safety and Health Administration.
LAB 84—Special Assistant to the Deputy Under Secretary for Labor-Management Relations and Cooperative Programs.
LAB 89—Executive Assistant to the Deputy Under Secretary for Labor-Management Relations and Cooperative Programs.
LAB 91—Confidential Staff Assistant to the Deputy Under Secretary for

Congressional Affairs.
LAB 93—Special Assistant to the Secretary.
LAB 97—Confidential Assistant to the Assistant Secretary, Employment and Training Administration.
LAB 100—Special Assistant to the Deputy Under Secretary for International Labor Affairs.
LAB 103—Secretary's Representative to the Deputy Under Secretary for Intergovernmental Affairs.
LAB 104—Secretary's Representative to the Deputy Under Secretary for Intergovernmental Affairs.
LAB 105—Secretary's Representative to the Deputy Under Secretary for Intergovernmental Affairs.
LAB 106—Secretary's Representative to the Deputy Under Secretary for Intergovernmental Affairs.
LAB 107—Secretary's Representative to the Deputy Under Secretary for Intergovernmental Affairs.
LAB 108—Secretary's Representative to the Deputy Under Secretary for Intergovernmental Affairs.
LAB 109—Secretary's Representative to the Deputy Under Secretary for Intergovernmental Affairs.
LAB 110—Secretary's Representative to the Deputy Under Secretary for Intergovernmental Affairs.
LAB 111—Secretary's Representative to the Deputy Under Secretary for Intergovernmental Affairs.
LAB 112—Secretary's Representative to the Deputy Under Secretary for Intergovernmental Affairs.
LAB 115—Secretary (Typing) to the Secretary's Representative.
LAB 116—Secretary (Typing) to the Secretary's Representative.
LAB 118—Secretary (Typing) to the Secretary's Representative.
LAB 122—Secretary (Typing) to the Secretary's Representative.
LAB 127—Staff Assistant to the Director, Office of Workers' Compensation Programs.
LAB 128—Special Assistant to the Assistant Secretary, Employment and Training Administration.
LAB 129—Special Assistant to the Assistant Secretary, Occupational Safety and Health Administration.
LAB 130—Special Assistant to the Secretary.
LAB 132—Associate Deputy Under Secretary for Congressional Affairs.
LAB 133—Special Assistant to the Director, Women's Bureau.
LAB 141—Staff Assistant to the Director, Office of Workers' Compensation Programs.
LAB 145—Deputy Liaison Officer to the Deputy Under Secretary for Congressional Affairs.
LAB 146—Staff Assistant to the Solicitor.
LAB 151—Special Assistant to the Deputy Director, Women's Bureau.
LAB 152—Special Assistant to the Deputy Director, Women's Bureau.
LAB 154—Senior Liaison Officer to the Deputy Under Secretary for Congressional Affairs.
LAB 159—Special Assistant to the Deputy Under Secretary for International Affairs.
LAB 160—Confidential Assistant to the Secretary.
LAB 171—Special Assistant to the Secretary.
LAB 172—Special Assistant to the Under Secretary.
LAB 174—Special Assistant to the Under Secretary.
LAB 175—Special Assistant to the Under Secretary.
LAB 179—Executive Assistant to the Deputy Under Secretary, Employment Standards Administration.
LAB 180—Senior Liaison Officer to the Deputy Under Secretary for Congressional Affairs.
LAB 183—Special Assistant to the Assistant Secretary, Occupational Safety and Health Administration.
LAB 184—Special Assistant for Public Affairs to the Deputy Under Secretary for Employment Standards.
LAB 186—Special Assistant to the Director, Women's Bureau.
LAB 187—Special Assistant to the Assistant Secretary, Employment and Training Administration.
LAB 189—Special Assistant to the Assistant Secretary, Occupational Safety and Health Administration.
LAB 190—Special Assistant to the Assistant Secretary for Policy.
LAB 191—Staff Assistant to the Secretary of Labor.
LAB 192—Staff Assistant to the Assistant Secretary for Pension and Welfare Benefits Programs.
LAB 196—Executive Assistant to the Assistant Secretary for Veterans' Employment and Training.
LAB 199—Deputy Liaison Officer to the Deputy Under Secretary for Congressional Affairs.
LAB 200—Confidential Staff Assistant to the Assistant Secretary, Employment and Training Administration.
LAB 204—Special Assistant to the Assistant Secretary for Veterans' Employment and Training.
LAB 205—Legislative Analyst to the Deputy Under Secretary for Congressional Affairs.
LAB 208—Deputy Liaison Officer to the Deputy Under Secretary for Congressional Affairs.
LAB 209—Secretary (Steno) to the Assistant Secretary for Veterans' Employment and Training.
LAB 212—Staff Assistant to the Secretary.
LAB 213—Special Assistant to the Assistant Secretary for Education and Training.
LAB 217—Special Assistant to the Deputy Under Secretary for Intergovernmental Affairs.
LAB 219—Special Assistant to the Associate Deputy Under Secretary for Intergovernmental Affairs.
LAB 220—Special Assistant to the Deputy Under Secretary for Public and Intergovernmental Affairs.
LAB 221—Special Assistant to the Deputy Under Secretary for Public and Intergovernmental Affairs.
LAB 224—Confidential Staff Assistant to the Special Assistant to the Assistant Secretary, Mine Safety and Health Administration.
LAB 225—Executive Assistant to the Assistant Secretary, Pension and Welfare Benefits Programs.
LAB 228—Special Assistant to the Assistant Secretary, Occupational Safety and Health Administration.
LAB 230—Special Assistant to the Associate Deputy Under Secretary for Intergovernmental Affairs.
LAB 231—Special Assistant to the Associate Deputy Under Secretary for Intergovernmental Affairs.
LAB 234—Senior Liaison Officer to the Deputy Under Secretary for Congressional Affairs.
LAB 235—Senior Liaison Officer to the Deputy Under Secretary for Congressional Affairs.
LAB 236—Special Assistant to the Associate Deputy Under Secretary for Intergovernmental Affairs.
LAB 237—Deputy Liaison Officer to the Deputy Under Secretary for Congressional Affairs.
LAB 238—Assistant to the Secretary's Representative.
LAB 239—Staff Assistant to the Under Secretary.
LAB 240—Assistant to the Secretary's Representative.
LAB 241—Special Assistant to the Director, Office of Information and Public Affairs.
LAB 243—Deputy Liaison Officer to the Deputy Under Secretary for Congressional Affairs.
LAB 244—Special Assistant to the Secretary.
LAB 245—Assistant to the Secretary's Representative.
LAB 246—Assistant to the Secretary's Representative.
LAB 247—Staff Assistant to the Associate Deputy Under Secretary

for Intergovernmental Affairs.
LAD 348—Staff Assistant to the Associate Deputy Under Secretary for Intergovernmental Affairs.

Section 213.3316 Department of Health and Human Services

HHS 2—Special Assistant to the Chief of Staff.
HHS 5—Writer to the Secretary.
HHS 11—Special and Confidential Assistant to the Under Secretary.
HHS 14—Special Assistant to the Executive Secretary.
HHS 17—Staff Assistant to the Secretary.
HHS 28—Special Assistant to the Executive Secretary.
HHS 53—Confidential Assistant to the Assistant Secretary for Legislation.
HHS 66—Special Assistant to the Deputy Assistant Secretary for Legislation.
HHS 126—Assistant to the General Counsel.
HHS 127—Special Assistant to the Director, Office of Civil Rights.
HHS 167—Executive Director, Federal Council on Aging to the Assistant Secretary for Human Development Services.
HHS 170—Confidential Assistant to the Under Secretary.
HHS 171—Special Assistant/Advisory Committee Officer to the Under Secretary.
HHS 187—Special Assistant to the Deputy Assistant Secretary for Legislation (Health).
HHS 213—Steward to the Secretary.
HHS 217—Confidential Secretary to the Assistant Secretary for Legislation.
HHS 220—Confidential Assistant to the Deputy Assistant Secretary for Planning and Evaluation (Health).
HHS 284—Writer to the Secretary.
HHS 287—Special Initiatives Coordinator to the Secretary.
HHS 273—Special Assistant to the Deputy Assistant Secretary for Legislation.
HHS 276—Special Assistant to the Deputy Commissioner, Food and Drug Administration.
HHS 288—Confidential Assistant to the Associate Administrator for External Affairs, Health Care Financing Administration.
HHS 293—Special Assistant to the Commissioner, Administration for Children, Youth and Families, Office of Human Development Services.
HHS 305—Special Assistant to the Deputy Under Secretary for Intergovernmental Affairs.
HHS 306—Special Assistant to the Director, Office of Policy and Legislation.
HHS 329—Executive Assistant to the Commissioner of Social Security.
HHS 336—Special Assistant to the Deputy Assistant Secretary for Legislation (Human Services).
HHS 339—Confidential Assistant to the Deputy Assistant Secretary, Office of Legislation.
HHS 349—Confidential Assistant to the Executive Assistant.
HHS 359—Congressional Liaison Specialist to the Deputy Assistant Secretary for Legislation.
HHS 361—Congressional Liaison Specialist to the Deputy Assistant Secretary for Legislation.
HHS 368—Director, Office of Intergovernmental Affairs, Health Care Financing Administration.
HHS 372—Special Assistant to the Director, Office of Program Coordination and Review.
HHS 376—Confidential Secretary to the Regional Director.
HHS 385—Special Assistant to the Assistant Secretary for Public Affairs.
HHS 387—Confidential Secretary to the General Counsel.
HHS 389—Special Assistant to the Director, Office of Private Sector Initiatives.
HHS 393—Special Assistant to the Director, Office of Community Services.
HHS 394—Confidential Assistant to the Executive Secretary.
HHS 395—Special Assistant to the Director, Office of Community Services.
HHS 399—Special Assistant to the Assistant Secretary for Human Development Services.
HHS 400—External Affairs Specialist to the Director, Office of Community Services.
HHS 402—Confidential Assistant to the Director, Office of Community Services.
HHS 411—Confidential Assistant to the Associate Commissioner for Governmental Affairs, Social Security Administration.
HHS 414—Director, Division of Legislative Services and Congressional Affairs to the Director of Legislation and Policy, Health Care Financing Administration.
HHS 415—Confidential Assistant to the Secretary.
HHS 418—Confidential Staff Assistant to the Chief of Staff.
HHS 423—Special Assistant to the Associate Commissioner, Administration for Children, Youth and Families, Office of Human Development Services.
HHS 424—Staff Assistant to the Secretary.
HHS 425—Special Assistant to the Executive Assistant to the Secretary.
HHS 428—Director, Office of Legislation and Policy, Health Care Financing Administration.
HHS 427—Executive Director, President's Committee on Mental Retardation.
HHS 430—Director, Office of Intergovernmental Communications to the Associate Commissioner for Family Assistance, Social Security Administration.
HHS 432—Confidential Staff Assistant to the Associate Commissioner for Family Assistance, Social Security Administration.
HHS 434—Confidential Assistant to the Commissioner, Administration for Children, Youth and Families.
HHS 435—Executive Assistant to the Director, Office of Child Support Enforcement.
HHS 436—Associate Commissioner for Family and Youth Services Bureau, Administration for Children, Youth and Families.
HHS 437—Special Assistant to the Director, National Institutes of Health.
HHS 438—Confidential Assistant to the Director, Office of Intergovernmental Affairs, Health Care Financing Administration.
HHS 439—Director, Office of Family Planning, Public Health Service.
HHS 442—Director, Office of Adolescent Pregnancy Programs, Public Health Service.
HHS 443—Confidential Staff Assistant to the Director, Office of Child Support Enforcement.
HHS 446—Special Assistant to the Chief of Staff.
HHS 448—Staff Assistant to the Associate Commissioner for Governmental Affairs, Social Security Administration.
HHS 450—Special Assistant for Minority Health, Public Health Service.
HHS 451—Confidential Staff Assistant to the Director, Office of Community Services.
HHS 452—Special Assistant for Advisory Committees to the Special Assistant/Advisory Committee Officer.
HHS 453—Special Assistant to the Deputy Commissioner for Policy and External Affairs, Social Security Administration.
HHS 454—Confidential Assistant to the Director, Office of Legislation

and Policy, Health Care Financing Administration.
HHS 456—Confidential Assistant to the Administrator, Health Care Financing Administration.
HHS 457—Special Assistant to the Under Secretary.
HHS 458—External Affairs Advisor to the Senior Advisor for External Affairs, Social Security Administration.
HHS 460—External Affairs Advisor to the Senior Advisor for External Affairs, Social Security Administration.
HHS 461—Director, Division of Legislation, to the Director, Office of Legislation and Policy, Health Care Financing Administration.
HHS 462—Special Assistant for Liaison Activities to the Administrator, Alcohol, Drug Abuse and Mental Health Administration, Public Health Service.
HHS 463—Executive Assistant to the Associate Commissioner, Office of Family Assistance.
HHS 464—Confidential Assistant to the Assistant Secretary for Human Development Services.
HHS 465—Associate Commissioner for Governmental Affairs, Social Security Administration.
HHS 466—Special Assistant to the Executive Assistant to the Secretary.
HHS 467—Confidential Assistant to the Director, Office of Community Services, Family Support Administration.
HHS 468—Deputy Director, Office of Community Services, Family Support Administration.
HHS 469—Director, Office of Communications Technology, Social Security Administration.
HHS 470—Confidential Assistant to the Associate Administrator for External Affairs, Health Care Financing Administration.
HHS 471—Director, Policy, Planning and Liaison Staff, Office of Prepaid Health Care, Health Care Financing Administration.
HHS 473—Director, Office of Policy, Planning and Legislation, to the Assistant Secretary for Human Development Services.
HHS 474—Special Assistant to the Deputy Commissioner, Social Security Administration.
HHS 476—Special Assistant to the Deputy Assistant Secretary for Planning and Evaluation (Health Policy).
HHS 477—Special Assistant for Policy Development to the Director, Policy Development Staff, Social Security Administration.
HHS 480—Deputy Director, Office of Congressional/External Affairs, Social Security Administration.
HHS 481—Director, Office of Congressional/External Affairs, Social Security Administration.
HHS 482—Director, Policy Development Staff, Social Security Administration.
HHS 483—Special Assistant to the Commissioner of Social Security.
HHS 486—Special Assistant to the Associate Commissioner, Children's Bureau, Administration for Children, Youth and Families.

Section 213.3317 Department of Education

EDU 6—Special Assistant to the Executive Secretary.
EDU 7—Special Assistant to the Secretary.
EDU 9—Special Assistant to the Assistant Secretary, Office of Elementary and Secondary Education.
EDU 14—Special Assistant to the Deputy Under Secretary for Management.
EDU 16—Confidential Assistant to the General Counsel.
EDU 20—Steward to the Executive Assistant.
EDU 35—Special Assistant to the Secretary.
EDU 37—Special Assistant to the Secretary.
EDU 38—Special Assistant to the Assistant Secretary, Office of Postsecondary Education.
EDU 44—Director of Policy Planning to the Assistant Secretary for Elementary and Secondary Education.
EDU 46—Special Assistant to the Assistant Secretary for Vocational and Adult Education.
EDU 47—Confidential Assistant to the Director, National Institute of Education.
EDU 49—Confidential Assistant to the Deputy Assistant Secretary, Office of Legislation and Public Affairs.
EDU 52—Special Assistant to the Director, Division of Adult Education, Office of Vocational and Adult Education.
EDU 53—Confidential Assistant to the Director, Office of Intergovernmental and Interagency Affairs.
EDU 55—Special Assistant to the Director, Intergovernmental Affairs Staff.
EDU 63—Special Assistant to the Under Secretary.
EDU 66—Special Assistant to the Secretary.
EDU 68—Confidential Assistant to the Deputy Under Secretary for Management.
EDU 70—Confidential Assistant to the Director, Intergovernmental Affairs Staff.
EDU 72—Special Assistant to the Assistant Secretary, Office of Legislation and Public Affairs.
EDU 74—Executive Assistant to the Assistant Secretary for Legislation.
EDU 78—Special Assistant to the Assistant Secretary for Civil Rights.
EDU 86—Confidential Assistant to the Commissioner, Rehabilitative Services Administration.
EDU 88—Special Assistant to the Assistant Secretary for Elementary and Secondary Education.
EDU 94—Confidential Assistant to the Assistant Secretary for Postsecondary Education.
EDU 99—Special Assistant to the Assistant Secretary, Office of Educational Research and Improvement.
EDU 105—Secretary's Regional Representative.
EDU 106—Secretary's Regional Representative.
EDU 107—Secretary's Regional Representative.
EDU 108—Secretary's Regional Representative.
EDU 109—Secretary's Regional Representative.
EDU 110—Secretary's Regional Representative.
EDU 111—Secretary's Regional Representative.
EDU 113—Special Assistant to the Director, Division of Adult Education, Office of Vocational and Adult Education.
EDU 115—Special Assistant to the Deputy Assistant Secretary for Higher Education Programs.
EDU 116—Special Assistant to the Assistant Secretary for Postsecondary Education.
EDU 117—Director, Historically Black Colleges and Universities Staff, Office of Postsecondary Education.
EDU 118—Confidential Assistant to the Counselor to the Secretary/Chief of Staff.
EDU 121—Special Assistant to the Assistant Secretary for Special Education and Rehabilitative Services.
EDU 125—Special Assistant to the Deputy Under Secretary for Intergovernmental and Interagency Affairs.
EDU 127—Special Assistant to the Secretary.
EDU 131—Secretary's Regional Representative.
EDU 133—Special Assistant to the

Deputy Under Secretary for Planning, Budget and Evaluation.
EDU 142—Special Assistant to the Deputy Assistant Secretary for Operations, Office of Civil Rights.
EDU 143—Personal Assistant to the Special Assistant to the Secretary.
EDU 144—Special Assistant to the Comptroller, Office of the Deputy Under Secretary for Management.
EDU 147—Secretary's Regional Representative.
EDU 151—Special Assistant to the Assistant Secretary for Civil Rights.
EDU 152—Special Assistant to the Deputy Under Secretary for Management.
EDU 153—Special Assistant to the Director, Intergovernmental Affairs Staff, Office of Intergovernmental and Interagency Affairs.
EDU 154—Executive Director, Intergovernmental Advisory Council on Education, to the Deputy Under Secretary for Intergovernmental and Interagency Affairs.
EDU 155—Special Assistant to the Under Secretary.
EDU 157—Personal Assistant to the Deputy Under Secretary for Management.
EDU 158—Special Assistant to the Deputy Under Secretary for Intergovernmental and Interagency Affairs.
EDU 163—Special Assistant to the Deputy Assistant Secretary for Student Financial Assistance Programs, Office of Postsecondary Education.
EDU 167—Director, Operations Support Services to the Deputy Assistant Secretary for Operations, Office of Civil Rights.
EDU 168—Special Assistant to the Under Secretary.
EDU 169—Special Assistant to the Executive Assistant to the Under Secretary.
EDU 173—Confidential Assistant to the Assistant Secretary for Civil Rights.
EDU 176—Confidential Assistant to the Assistant Secretary for Special Education and Rehabilitative Services.
EDU 177—Special Assistant to the Assistant Secretary, Office of Legislation and Public Affairs.
EDU 179—Special Assistant to the Executive Assistant to the Secretary for Private Education.
EDU 180—Confidential Assistant to the Counselor to the Secretary.
EDU 181—Deputy Director, Postsecondary Relations Staff, Office of Postsecondary Education.
EDU 185—Staff Assistant to the Secretary's Regional Representative.
EDU 186—Staff Assistant to the Secretary's Regional Representative.
EDU 187—Special Assistant to the Assistant Secretary for Special Education and Rehabilitative Services.
EDU 188—Staff Assistant to the Secretary's Regional Representative.
EDU 189—Legislative Liaison to the Director, Legislative Liaison Staff.
EDU 190—Confidential Assistant to the Deputy Under Secretary for Management.
EDU 192—Deputy Director, Office of Bilingual Education and Minority Languages Affairs.
EDU 193—Executive Secretary to the Chief of Staff.
EDU 195—Special Assistant to the Comptroller, Office of the Deputy Under Secretary for Management.
EDU 196—Special Assistant to the Director, Special Education Programs, Office of Special Education and Rehabilitative Services.
EDU 200—Director, Office of Intergovernmental Affairs to the Deputy Under Secretary for Intergovernmental and Interagency Affairs.
EDU 203—Confidential Assistant to the Executive Assistant to the Under Secretary.
EDU 204—Special Assistant to the Secretary's Regional Representative.
EDU 205—Special Assistant to the Secretary.
EDU 206—Special Assistant to the Director, Office of Intergovernmental Affairs.
EDU 209—Special Assistant to the Deputy Assistant Secretary for Policy and Planning, Office of Educational Research and Improvement.
EDU 210—Special Assistant to the Director, Historically Black Colleges and Universities Staff, Office of Postsecondary Education.
EDU 211—Special Assistant to the Secretary's Regional Representative.
EDU 213—Special Assistant to the Director, Center for International Education.
EDU 214—Special Assistant to the Secretary's Regional Representative.
EDU 216—Confidential Assistant to the Chief of Staff/Counselor to the Secretary.
EDU 218—Special Assistant to the Deputy Assistant Secretary for Higher Education, Office of Postsecondary Education.
EDU 219—Special Assistant to the Director, Office of Legislative Liaison.
EDU 220—Special Assistant to the Director, Programs for the Improvement of Practice, Office of Educational Research and Improvement.
EDU 221—Confidential Assistant to the Under Secretary.
EDU 222—Special Assistant to the Secretary's Regional Representative.
EDU 223—Confidential Assistant to the Chief of Staff/Counselor to the Secretary.
EDU 224—Staff Assistant to the Executive Secretary.
EDU 225—Confidential Assistant to the Director of Public Affairs, Office of Planning, Budget and Evaluation.
EDU 226—Confidential Assistant to the Director of Public Affairs, Office of Planning, Budget and Evaluation.
EDU 228—Special Assistant to the Director, Office of Legislative Liaison.
EDU 229—Executive Assistant to the Deputy Assistant Secretary for Operations, Office of Educational Research and Improvement.
EDU 230—Confidential Assistant to the Executive Secretary.
EDU 232—Special Assistant to the Special Assistant to the Secretary.
EDU 233—Executive Assistant to the Deputy Under Secretary for Intergovernmental and Interagency Affairs.
EDU 237—Special Assistant to the Assistant Secretary for Civil Rights.
EDU 238—Confidential Assistant to the Deputy Under Secretary for Intergovernmental and Interagency Affairs.
EDU 239—Staff Assistant to the Director, Intergovernmental Affairs Staff, Office of Intergovernmental and Interagency Affairs.
EDU 240—Confidential Assistant to the Assistant Secretary for Civil Rights.
EDU 242—Confidential Assistant to the Assistant Secretary for Special Education and Rehabilitative Services.
EDU 246—Special Assistant to the Director, Public Affairs Service, Office of Planning, Budget and Evaluation.
EDU 247—Special Assistant to the Deputy Under Secretary for Student Financial Assistance Programs, Office of Postsecondary Education.
EDU 248—Executive Assistant to the Assistant Secretary for

Postsecondary Education.
EDU 249—Staff Assistant to the Director, Programs for the Improvement of Practice, Office of Educational Research and Improvement.
EDU 250—Special Assistant to the Secretary's Regional Representative.
EDU 251—Special Assistant to the Director, Intergovernmental Affairs, Office of Intergovernmental and Interagency Affairs.
EDU 253—Special Assistant to the Deputy Under Secretary for Intergovernmental and Interagency Affairs.
EDU 254—Director, Postsecondary Relations Staff, to the Deputy Assistant Secretary for Higher Education, Office of Postsecondary Education.
EDU 257—Confidential Assistant to the Deputy Under Secretary for Intergovernmental and Interagency Affairs.
EDU 256—Special Assistant to the Chief of Staff/Counselor to the Secretary.
EDU 259—Confidential Assistant to the Director, Office of Bilingual Education and Minority Languages Affairs.
EDU 261—Special Assistant to the Commissioner, Rehabilitative Services Administration.
EDU 262—Director, Interagency Operations Staff, to the Deputy Under Secretary for Intergovernmental and Interagency Affairs.
EDU 264—Confidential Assistant to the Director, Office of Bilingual Education and Minority Languages Affairs.

Section 213.3318 Environmental Protection Agency

EPA 5—Confidential Assistant to the Deputy Administrator.
EPA 18—Assistant to the Deputy Administrator.
EPA 19—Program Advisor to the Assistant Administrator for Water.
EPA 52—Special Assistant to the Executive Assistant to the Administrator.
EPA 56—Congressional Liaison Specialist to the Director, Office of Congressional Liaison.
EPA 61—Special Assistant to the Assistant Administrator for Administration and Resource Management.
EPA 70—Congressional Relations Officer to the Director, Office of Congressional Liaison.
EPA 75—Congressional Relations Officer to the Deputy Director, Office of Congressional Liaison.
EPA 86—Special Assistant to the Regional Administrator.
EPA 89—Special Assistant to the Assistant Administrator for Water.
EPA 93—Staff Assistant to the Executive Assistant to the Administrator.
EPA 94—Special Assistant to the Regional Administrator.
EPA 99—Staff Assistant to the Deputy Assistant Administrator for Administration and Resources Management.
EPA 100—Staff Assistant to the Associate Administrator.
EPA 103—Staff Assistant to the Assistant Administrator for External Affairs.
EPA 106—Special Assistant to the Director, Office of Public Affairs.
EPA 107—Special Assistant to the Deputy Administrator.
EPA 109—Special Assistant to the Assistant Administrator for Solid Waste and Emergency Response.
EPA 111—Special Assistant to the Director of Public Affairs.
EPA 112—Staff Assistant to the General Counsel.

Section 213.3319 Administrative Conference of the United States

ACUS 2—Secretary (Steno) to the Chairman.
ACUS 4—Staff Assistant to the Chairman.

Section 213.3322 Interstate Commerce Commission

ICC 1—Confidential Assistant to a Commissioner.
ICC 2—Confidential Assistant to a Commissioner.
ICC 3—Confidential Assistant to a Commissioner.
ICC 6—Confidential Assistant to a Commissioner.
ICC 8—Confidential Assistant to the Chairman.
ICC 20—Staff Advisor (Economics) to the Director, Office of Public Assets.
ICC 22—Staff Advisor (Economics) to a Commissioner.
ICC 43—Attorney-Advisor to a Commissioner.
ICC 45—Congressional Liaison Representative to the Director, Office of Legislative and Public Affairs.

Section 213.3323 Overseas Private Investment Corporation

OPIC 1—Chauffeur to the President.
OPIC 22—Assistant to the Treasurer.

Section 213.3325 The Tax Court of the United States

TCOUS 40—Secretary and Confidential Assistant to the Judge.
TCOUS 41—Secretary and Confidential Assistant to the Judge.
TCOUS 42—Secretary and Confidential Assistant to the Judge.
TCOUS 43—Secretary and Confidential Assistant to the Judge.
TCOUS 44—Secretary and Confidential Assistant to the Judge.
TCOUS 45—Secretary and Confidential Assistant to the Judge.
TCOUS 46—Secretary and Confidential Assistant to the Judge.
TCOUS 47—Secretary and Confidential Assistant to the Judge.
TCOUS 48—Secretary and Confidential Assistant to the Judge.
TCOUS 49—Secretary and Confidential Assistant to the Judge.
TCOUS 50—Secretary and Confidential Assistant to the Judge.
TCOUS 51—Secretary and Confidential Assistant to the Judge.
TCOUS 52—Secretary and Confidential Assistant to the Judge.
TCOUS 53—Secretary to the Judge.
TCOUS 54—Secretary and Confidential Assistant to the Judge.
TCOUS 55—Secretary and Confidential Assistant to the Judge.
TCOUS 56—Secretary and Confidential Assistant to the Judge.
TCOUS 57—Secretary and Confidential Assistant to the Judge.
TCOUS 58—Secretary and Confidential Assistant to the Judge.
TCOUS 59—Secretary and Confidential Assistant to the Judge.
TCOUS 60—Secretary and Confidential Assistant to the Judge.
TCOUS 61—Secretary and Confidential Assistant to the Judge.
TCOUS 62—Secretary and Confidential Assistant to the Judge.
TCOUS 63—Secretary and Confidential Assistant to the Judge.
TCOUS 64—Secretary and Confidential Assistant to the Judge.
TCOUS 65—Secretary and Confidential Assistant to the Judge.
TCOUS 66—Trial Clerk to the Judge.
TCOUS 67—Trial Clerk to the Judge.
TCOUS 68—Trial Clerk to the Judge.
TCOUS 69—Trial Clerk to the Judge.
TCOUS 70—Trial Clerk to the Judge.
TCOUS 71—Trial Clerk to the Judge.
TCOUS 72—Trial Clerk to the Judge.
TCOUS 73—Trial Clerk to the Judge.
TCOUS 75—Trial Clerk to the Judge.
TCOUS 76—Trial Clerk to the Judge.

Section 213.3327 Veterans Administration

VA 6—Confidential Assistant to the Administrator.
VA 10—Confidential Assistant to the Administrator.
VA 15—Confidential Assistant to the

Administrator.
VA 30—Confidential Assistant to the Director, Intergovernmental Affairs.
VA 34—Confidential Assistant to the Associate Deputy Administrator for Congressional and Intergovernmental Affairs.
VA 40—Confidential Assistant to the Associate Deputy Administrator for Congressional and Intergovernmental Affairs.
VA 42—Confidential Assistant to the Director, Congressional Affairs.
VA 48—Confidential Assistant to the Administrator.
VA 49—Confidential Assistant to the Administrator.

Section 213.3328 U.S. Information Agency

USIA 2—Special Assistant to the Director.
USIA 14—Special Assistant to the Associate Director for Programs.
USIA 21—Staff Assistant to the Director.
USIA 22—Director, New York Foreign Press Center to the Associate Director for Programs.
USIA 29—Assistant Counselor for Press and Public Affairs to the Counselor for Press and Public Affairs.
USIA 30—Staff Assistant to the Special Assistant to the Director.
USIA 33—Staff Assistant to the Director, Office of Public Liaison.
USIA 34—Special Assistant to the Director, Private Sector Programs.
USIA 37—Staff Assistant to the Special Assistant, Private Sector Liaison.
USIA 40—Staff Specialist to the Special Assistant, Private Sector Liaison.
USIA 42—Secretary (Typing) to the Associate Director for Management.
USIA 56—Staff Specialist to the Director, Office of Private Sector Liaison.
USIA 57—Special Assistant to the Associate Director for Educational and Cultural Affairs.
USIA 58—Special Assistant to the Deputy Director.
USIA 59—Special Assistant to the Deputy Director.
USIA 60—Special Assistant to the Director, Voice of America.
USIA 62—Confidential Assistant to the Director, Voice of America.
USIA 66—Staff Assistant to the Special Assistant (Private Sector Committees).
USIA 67—Chief, Voluntary Visitor Division to the Associate Director for Educational and Cultural Affairs.
USIA 73—Special Assistant to the Associate Director for Educational and Cultural Affairs.
USIA 75—Special Assistant to the General Counsel.
USIA 77—Special Assistant to the Associate Director for Management.
USIA 80—Special Assistant (Media Relations) to the Director, Office of Public Liaison.
USIA 81—Special Assistant to the Associate Director for Programs.
USIA 86—Public Affairs Specialist to the Associate Director for Broadcasting.
USIA 87—Staff Assistant to the Director, Office of Public Liaison.
USIA 88—Special Assistant to the Director, Television and Film Service.
USIA 91—Program Assistant to the Coordinator, U.S.-Soviet Exchange Initiative.
USIA 92—Special Assistant to the Associate Director for Programs.
USIA 93—Program Assistant to the Coordinator, U.S.-Soviet Exchange Initiative.
USIA 94—Special Assistant to the Director, Television and Film Service.
USIA 96—Corporate Liaison Officer to the Associate Director for Programs.
USIA 97—Corporate Liaison Officer to the Associate Director for Programs.

Section 213.3330 Securities and Exchange Commission

SEC 2—Executive Aide (Typing) to the Executive Assistant to the Chairman.
SEC 3—Confidential Assistant to the Commissioner.
SEC 4—Confidential Assistant to the Commissioner.
SEC 5—Confidential Assistant to the Commissioner.
SEC 6—Confidential Assistant to the Commissioner.
SEC 8—Secretary (Steno) to the Chief Accountant.
SEC 9—Secretary to the General Counsel.
SEC 11—Confidential Assistant to the Chairman.
SEC 12—Public Information Officer to the Chairman.
SEC 14—Secretary (Typing) to the Director of Economic and Policy Research.
SEC 15—Secretary (Steno) to the Director, Division of Market Regulation.
SEC 16—Secretary to the Director, Division of Enforcement.
SEC 18—Secretary (Steno) to the Director, Division of Investment Management.
SEC 19—Secretary (Typing) to the Director, Division of Corporate Finance.
SEC 21—Confidential Adviser on Corporate Practices to the Director, Division of Enforcement.

Section 213.3331 Department of Energy

DOE 2—Secretary (Confidential Assistant) to the Secretary.
DOE 8—Staff Assistant to the Assistant Secretary for Conservation and Renewable Energy.
DOE 12—Private Secretary to a Member, Federal Energy Regulatory Commission.
DOE 34—Special Assistant to the Administrator, Bonneville Power Administration.
DOE 40—Legal Advisor to a Member, Federal Energy Regulatory Commission.
DOE 41—Legal Advisor to a Member, Federal Energy Regulatory Commission.
DOE 42—Legal Advisor to a Member, Federal Energy Regulatory Commission.
DOE 43—Technical Advisor to a Member, Federal Energy Regulatory Commission.
DOE 47—Technical Advisor to a Member, Federal Energy Regulatory Commission.
DOE 49—Legal Advisor to a Member, Federal Energy Regulatory Commission.
DOE 59—Staff Assistant to the Director, Office of Energy Research.
DOE 60—Confidential Assistant to a Member, Federal Energy Regulatory Commission.
DOE 68—Confidential Assistant to a Member, Federal Energy Regulatory Commission.
DOE 73—Legal Advisor to a Member, Federal Energy Regulatory Commission.
DOE 75—Legal Adviser to a Member, Federal Energy Regulatory Commission.
DOE 77—Staff Assistant to the Administrative Assistant to the Secretary and Chief of Staff.
DOE 87—Staff Assistant to the Associate Director, Office of Resource Management.
DOE 95—Staff Assistant to the General Counsel.
DOE 105—Confidential Assistant to a Member, Federal Energy Regulatory Commission.
DOE 106—Confidential Assistant to a Member, Federal Energy Regulatory Commission.
DOE 110—Private Secretary to a Member, Federal Energy Regulatory Commission.
DOE 114—Staff Assistant to the

Administrator, Bonneville Power Administration.
DOE 171—Special Assistant to the Assistant Secretary for Conservation and Renewable Energy.
DOE 172—Staff Assistant to the Assistant Secretary for Conservation and Renewable Energy.
DOE 174—Staff Assistant to the Assistant Secretary for Fossil Energy.
DOE 179—Staff Assistant to the General Counsel.
DOE 182—Staff Assistant to the Director, Office of Congressional, Intergovernmental and Public Affairs.
DOE 186—Special Assistant to the Director, Office of External Affairs, Federal Energy Regulatory Commission.
DOE 189—Staff Assistant to the General Counsel.
DOE 190—Staff Assistant to the Secretary.
DOE 195—Staff Assistant to the Director, Minority Economic Impact.
DOE 196—Director, Senate Liaison Branch to the Director, Office of External Affairs, Federal Energy Regulatory Commission.
DOE 200—Staff Assistant to the Deputy Secretary.
DOE 204—Director, Division of Public Liaison, Office of Communications, Office of the Assistant Secretary for Congressional, Intergovernmental and Public Affairs.
DOE 206—Executive Assistant to the Director, Office of Energy Research.
DOE 210—Confidential Assistant (Secretary) to the Assistant Secretary for Fossil Energy.
DOE 212—Confidential Assistant (Secretary) to the Assistant Secretary for Nuclear Energy.
DOE 213—Senate Liaison Specialist to the Deputy Assistant Secretary for Senate Liaison.
DOE 217—Confidential Assistant (Secretary—Steno) to the Director, Office of Regulatory Analysis, Federal Energy Regulatory Commission.
DOE 220—Staff Assistant to the Director, Office of Communications.
DOE 221—Deputy Director, Office of Public Liaison.
DOE 227—Technical Advisor to a Member, Federal Energy Regulatory Commission.
DOE 228—Advisor to a Member, Federal Energy Regulatory Commission.
DOE 229—House Liaison Specialist to the Deputy Assistant Secretary for House Liaison, Office of Congressional, Intergovernmental and Public Affairs.
DOE 234—Director, Office of Public Affairs to the Director, Office of Communications.
DOE 236—Executive Assistant to the Chairman, Federal Energy Regulatory Commission.
DOE 238—Staff Assistant to the Assistant Secretary for Conservation and Renewable Energy.
DOE 243—Staff Assistant to the Assistant Secretary for International Affairs.
DOE 244—Director, Office of Consumer Affairs to the Assistant Secretary for Congressional, Intergovernmental and Public Affairs.
DOE 245—Supervisory Legislative Affairs Specialist to the Assistant Secretary for Congressional, Intergovernmental and Public Affairs.
DOE 246—Staff Assistant to the Assistant Secretary for Conservation and Renewable Energy.
DOE 247—Director, Division of Public Affairs, Federal Energy Regulatory Commission.
DOE 248—Staff Assistant to the Chairman, Federal Energy Regulatory Commission.
DOE 251—Intergovernmental Affairs Specialist to the Director, Office of External Affairs, Federal Energy Regulatory Commission.
DOE 258—Private Secretary to the Chairman, Federal Energy Regulatory Commission.
DOE 263—Staff Assistant to the Assistant Secretary for Management and Administration.
DOE 264—Staff Assistant to the Administrator, Energy Information Administration.
DOE 265—Executive Assistant to the Secretary.
DOE 268—Secretary (Confidential Assistant) to the Assistant Secretary for Management and Administration.
DOE 274—Staff Assistant to the Special Assistant to the Secretary.
DOE 276—Secretary (Confidential Assistant) to the Special Assistant to the Secretary.
DOE 279—Special Assistant to the Assistant Secretary for Nuclear Energy.
DOE 282—Staff Assistant to the Assistant Secretary for International Affairs and Energy Emergencies.
DOE 288—Special Assistant to the Deputy Assistant Secretary for Breeder Reactor Programs.
DOE 291—Confidential Assistant to the Under Secretary.
DOE 292—Chauffeur to the Secretary.
DOE 294—Special Programs Liaison Specialist to the Director, Office of Public Liaison, Office of Congressional, Intergovernmental and Public Affairs.
DOE 296—Staff Assistant to the Assistant Secretary for Conservation and Renewable Energy.
DOE 299—Legislative Affairs Assistant, Program Liaison Division, Office of Congressional, Intergovernmental and Public Affairs.
DOE 301—Secretary (Confidential Assistant) to the Associate Director for Geological Repositories, Office of Civilian Radioactive Waste Management.
DOE 303—Staff Assistant to the Assistant Secretary for Environment, Safety and Health.
DOE 306—Special Assistant to the Assistant Secretary for Defense Programs.
DOE 307—Staff Assistant to the Assistant Secretary for Environment, Safety and Health.
DOE 308—Public Affairs Specialist to the Director, Office of Public Affairs.
DOE 309—Staff Assistant to the Deputy Secretary.
DOE 310—Secretary (Confidential Assistant) to the Deputy Secretary.
DOE 311—Confidential Assistant to the Director, Office of Congressional, Intergovernmental and Public Affairs.
DOE 314—Staff Assistant to the Assistant Secretary for International Affairs and Energy Emergencies.
DOE 315—Staff Assistant to the Director, Office of Energy Research.
DOE 317—Research Assistant to the Director, Office of Energy Research.
DOE 318—Director, Division of Press Services, to the Director, Office of Communications.
DOE 319—Staff Assistant to the Director, Office of Energy Research.
DOE 320—Special Assistant to the Assistant Secretary for Management and Administration.
DOE 321—Staff Assistant to the Director, Office of Congressional, Intergovernmental and Public Affairs.
DOE 323—Special Assistant to the Assistant Secretary for Fossil Energy.
DOE 324—Staff Assistant to the Deputy Assistant Secretary for Energy Emergencies.

DOE 325—Staff Assistant to the Deputy Assistant Secretary for Energy Emergencies.
DOE 326—Staff Assistant to the Director, Office of Communications.
DOE 327—Congressional Affairs Advisor to the Assistant Secretary for Defense Programs.
DOE 328—Staff Assistant to the Principal Deputy Assistant Secretary for Congressional, Intergovernmental and Public Affairs.
DOE 329—Staff Assistant to the Assistant Secretary for Management and Administration.
DOE 330—Staff Assistant to the Assistant Secretary for Management and Administration.
DOE 331—Staff Assistant to the Assistant Secretary for Management and Administration.
DOE 332—Research Assistant to the Assistant Secretary for Management and Administration.
DOE 333—Staff Assistant to the Assistant Secretary for Management and Administration.
DOE 334—Secretary (Confidential Assistant) to the Assistant Secretary for Defense Programs.
DOE 335—Special Assistant for Superconducting Super Colliding Coordination to the Under Secretary.
DOE 336—Staff Assistant to the Deputy Secretary.
DOE 337—Special Assistant to the Assistant Secretary for Management and Administration.
DOE 338—Director, Division of Congressional Affairs, Federal Energy Regulatory Commission.
DOE 339—Special Assistant to the Deputy Assistant Secretary for Energy Emergencies.

Section 213.3332 Small Business Administration

SBA 11—Deputy Assistant Administrator for Congressional and Legislative Affairs.
SBA 18—Special Assistant to the Administrator.
SBA 19—Executive Assistant to the Deputy Administrator.
SBA 30—Special Assistant to the Associate Administrator for Minority Small Business and Capital Ownership Development.
SBA 42—Special Assistant to the Administrator.
SBA 43—Special Assistant to the Assistant Administrator for Congressional and Legislative Affairs.
SBA 45—Special Assistant to the Associate Administrator for Procurement Affairs.
SBA 46—Special Assistant to the Administrator.
SBA 49—Confidential Assistant to the Assistant Administrator for Congressional and Legislative Affairs.
SBA 52—Special Assistant to the Administrator.
SBA 58—Confidential Assistant to the Chief of Staff.
SBA 64—Special Assistant to the Regional Administrator.
SBA 65—Special Assistant to the Regional Administrator.
SBA 68—Special Assistant to the Regional Administrator.
SBA 69—Special Assistant to the Regional Administrator.
SBA 70—Special Assistant to the Regional Administrator.
SBA 71—Special Assistant to the Regional Administrator.
SBA 72—Special Assistant to the Regional Administrator.
SBA 73—Special Assistant to the Regional Administrator.
SBA 76—Executive Assistant to the Director of Women's Business Ownership.
SBA 90—Staff Assistant to the Administrator.
SBA 92—Staff Assistant to the Administrator.
SBA 96—Special Assistant to the Associate Administrator for Management Assistance.
SBA 99—Special Assistant to the Regional Administrator.
SBA 100—Special Assistant to the Regional Administrator.
SBA 103—Confidential Assistant to the Administrator.
SBA 105—Special Assistant to the Administrator.
SBA 106—Director, Office of Private Sector Initiatives to the Associate Deputy Director for Private Sector Initiatives.
SBA 107—Confidential Assistant to the Associate Deputy Administrator for Special Programs.
SBA 115—Special Assistant to the Regional Administrator.
SBA 121—Special Assistant to the Regional Administrator.
SBA 122—Special Assistant to the Regional Administrator.
SBA 123—Special Assistant to the Regional Administrator.
SBA 124—Special Assistant to the Assistant Administrator for Congressional and Legislative Affairs.
SBA 128—Director of Women's Business Ownership to the Associate Administrator for Development.
SBA 133—Director of Veterans Affairs to the Associate Deputy Administrator for Special Programs.
SBA 135—Special Assistant to the Regional Administrator.
SBA 136—Special Assistant to the Regional Administrator.
SBA 138—Special Assistant to the Director, Office of Private Sector Initiatives.

Section 213.3333 Federal Deposit Insurance Corporation

FDIC 2—Secretary to a Member.
FDIC 7—Special Assistant to the Director, Congressional Liaison Staff.
FDIC 9—Legislative Attorney and Advisor to the Director, Office of Congressional and Public Information.

Section 213.3334 Federal Trade Commission

FTC 1—Confidential Assistant to the Chairman.
FTC 2—Director, Office of Public Affairs to the Chairman.
FTC 6—Director of Congressional Relations to the Chairman.
FTC 11—Staff Assistant to a Commissioner.
FTC 12—Staff Assistant to the Director, Office of Public Affairs.
FTC 13—Public Affairs Specialist to the Chairman.
FTC 14—Congressional Liaison Specialist to the Chairman.

Section 213.3337 General Services Administration

GSA 24—Special Assistant to the Commissioner, Public Building Service.
GSA 52—Confidential Assistant to the Commissioner, Public Building Service.
GSA 64—Deputy (External Affairs) to the Associate Administrator for Operations.
GSA 69—Confidential Assistant to the Associate Administrator for Congressional Affairs.
GSA 70—Special Assistant to the Associate Administrator for Public Affairs.
GSA 72—Confidential Assistant to the Assistant Administrator for Federal Supply and Services.
GSA 79—Confidential Assistant to the Regional Administrator.
GSA 82—Special Assistant to the Associate Administrator for Public Affairs.
GSA 83—Confidential Assistant to the Regional Administrator.
GSA 85—Confidential Assistant to the Regional Administrator.

GSA 86—Confidential Assistant to the Regional Administrator.
GSA 87—Confidential Assistant to the Regional Administrator.
GSA 89—Confidential Assistant to the Associate Administrator for Congressional Affairs.
GSA 90—Special Assistant to the Associate Administrator for Congressional Affairs.
GSA 91—Confidential Assistant to the Commissioner, Public Building Service.
GSA 100—Director of Executive Secretariat to the Administrator.
GSA 103—Confidential Assistant to the Director of Executive Secretariat.
GSA 106—Special Assistant to the Associate Administrator for Public Affairs.
GSA 107—Special Assistant to the Executive Director, Office of Information Resources Management.
GSA 109—Confidential Assistant to the Regional Administrator.
GSA 113—Confidential Assistant to the Regional Administrator.
GSA 114—Confidential Assistant to the Regional Administrator.
GSA 115—Confidential Assistant to the Regional Administrator.
GSA 116—Special Assistant to the General Counsel.
GSA 117—Special Assistant to the Associate Administrator for Operations.
GSA 118—Confidential Assistant to the Regional Administrator.

Section 213.3338 Federal Communications Commission

FCC 9—Confidential Assistant to the Chief of Staff.
FCC 10—Legislative Affairs Officer to the Director, Office of Congressional and Public Affairs.
FCC 12—Confidential Staff Assistant to the Managing Director.
FCC 13—Congressional Liaison Specialist to the Legislative Affairs Officer, Office of Congressional and Public Affairs.
FCC 15—Chief, Press and News Media Division, Office of Congressional and Public Affairs.

Section 213.3339 U.S. International Trade Commission

ITC 1—Confidential Assistant to a Commissioner.
ITC 3—Staff Assistant (Economics) to a Commissioner.
ITC 5—Confidential Assistant to a Commissioner.
ITC 6—Staff Assistant (Economics) to a Commissioner.
ITC 7—Special Assistant (Economics) to a Commissioner.
ITC 9—Staff Assistant to the Chairman.
ITC 12—Staff Assistant (Economics) to a Commissioner.
ITC 13—Staff Assistant (Legal) to a Commissioner.
ITC 17—Staff Assistant (Legal) to a Commissioner.
ITS 18—Confidential Assistant to a Commissioner.
ITC 19—Staff Assistant (Economics) to a Commissioner.
ITC 22—Staff Assistant (Legal) to a Commissioner.
ITC 24—Staff Assistant (Legal) to a Commissioner.
ITC 25—Staff Assistant (Legal) to the Chairman.
ITC 26—Staff Assistant (Economics) to the Chairman.
ITC 27—Congressional Liaison to the Chairman.
ITC 30—Confidential Assistant to a Commissioner.
ITC 33—Staff Assistant to a Commissioner.
ITC 34—Staff Assistant (Legal) to a Commissioner.
ITC 35—Confidential Secretary (Typing) to the Chairman.

Section 213.3340 National Archives and Records Administration

NARA 1—Congressional Relations Officer to the Archivist of the United States.

Section 213.3341 National Labor Relations Board

NLRB 2—Confidential Assistant to the Chairman.
NLRB 3—Confidential Assistant to a Board Member.
NLRB 5—Confidential Assistant to a Board Member.
NLRB 9—Confidential Staff Assistant to the General Counsel.

Section 213.3342 Export-Import Bank of the United States

EXIM 2—Private Secretary to the First Vice President and Vice Chairman.
EXIM 3—Administrative Assistant to a Director.
EXIM 4—Administrative Assistant to a Director.
EXIM 5—Administrative Assistant to a Director.
EXIM 12—Secretary (Steno) to the Senior Vice President.
EXIM 16—Administrative Assistant to the General Counsel.
EXIM 24—Secretary (Steno) to the Senior Vice President-Director for Credits and Financial Guarantees.
EXIM 29—Special Assistant to the President and Chairman.
EXIM 31—Deputy Vice President for Public Affairs and Publications to the Vice President for Public Affairs and Publications.
EXIM 32—Special Assistant to the First Vice President and Vice Chairman.

Section 213.3343 Farm Credit Administration

FCA 1—Special Assistant to the Chairman.
FCA 2—Private Secretary to a Board Member.
FCA 3—Executive Assistant to the Chairman.
FCA 4—Deputy Director for Public Affairs to the Director, Office of Congressional and Public Affairs.
FCA 5—Confidential Assistant to the Director, Office of Congressional and Public Affairs.
FCA 6—Executive Assistant to a Board Member.
FCA 7—Private Secretary to a Board Member.
FCA 8—Secretary to the Chairman.
FCA 9—Executive Assistant to a Board Member.

Section 213.3344 Occupational Safety and Health Review Commission

OSHRC 2—Special Assistant to the Chairman.
OSHRC 3—Confidential Assistant to a Commissioner.
OSHRC 10—Special Counsel.

Section 213.3346 Selective Service System

SSS 9—Assistant Director for Government Affairs.
SSS 14—Deputy Director for Congressional Affairs.

Section 213.3347 Federal Mediation and Conciliation Service

FMCS 3—Public Affairs Director to the Executive Director.
FMCS 5—Staff Assistant to the Director.

Section 213.3348 National Aeronautics and Space Administration

NASA 1—Secretary (Steno) to the Administrator.
NASA 2—Secretary (Steno) to the Deputy Administrator.
NASA 10—Special Assistant to the Administrator.

Section 213.3351 Federal Mine Safety and Health Review Commission

FM 1—Secretary (Steno) to a Commissioner.
FM 2—Secretary (Typing) to a Commissioner.
FM 3—Confidential Secretary to a Commissioner.

FM 4—Confidential Secretary to a Commissioner.
FM 6—Attorney-Advisor to the Chairman.
FM 7—Attorney-Adviser (General) to a Commissioner.
FM 8—Attorney-Adviser (General) to a Commissioner.
FM 9—Attorney-Adviser (General) to a Commissioner.

Section 213.3352 Government Printing Office

GPO 7—Confidential Assistant to the Deputy Public Printer.
GPO 10—Confidential Assistant to the Director of Legislative and Public Affairs.
GPO 15—Special Assistant to the Public Printer.

Section 213.3354 Federal Home Loan Bank Board

FHLB 5—Staff Assistant to the Chairman.
FHLB 11—Director, Office of Communications to the Chairman.
FHLB 18—Secretary (Steno) to the Director, Office of District Banks.
FHLB 19—Congressional Liaison to the Executive Staff Director.
FHLB 21—Secretary (Steno) to the Congressional Liaison.
FHLB 31—Staff Assistant to the Director, Office of Communications.
FHLB 36—Deputy Chief of Staff to the Executive Director and Chief of Staff.
FHLB 37—Public Affairs Specialist to the Director, Office of Communications.
FHLB 39—Special Assistant for Legislative and Regulatory Policy to the Chairman.

Section 213.3356 Commission on Civil Rights

CCR 12—Confidential Assistant to a Commissioner.
CCR 13—Confidential Assistant to the Chairman.
CCR 14—Deputy General Counsel to the General Counsel.
CCR 23—Special Assistant to a Commissioner.
CCR 27—Public Affairs Officer to the Staff Director.
CCR 28—Special Assistant to a Commissioner.
CCR 29—Special Assistant to a Commissioner.
CCR 31—Special Assistant to the Staff Director.
CCR 32—Special Assistant to a Commissioner.

Section 213.3357 National Credit Union Administration

NCUA 6—Confidential Assistant to the Chairman.
NCUA 9—Staff Assistant to the Vice Chairman.
NCUA 12—Executive Assistant to the Vice Chairman.
NCUA 15—Secretary (Typing) to the President, Central Liquidity Facility.
NCUA 16—Confidential Assistant to the Board Member.
NCUA 18—Special Assistant to the Chairman.

Section 213.3359 ACTION

ACT 29—Special Assistant to the Director.
ACT 31—Executive Assistant to the Director.
ACT 32—Confidential Assistant to the Associate Director for Domestic and Anti-Poverty Operations.
ACT 37—Special Assistant to the Deputy Director.
ACT 44—Special Assistant to the Associate Director for Domestic and Anti-Poverty Operations.
ACT 48—Special Assistant to the Deputy Director.
ACT 51—Special Assistant to the Assistant Director for Volunteer Liaison.
ACT 62—Special Assistant to the Assistant Director for Volunteer Liaison.
ACT 79—Assistant Director for VISTA and Service Learning Programs to the Associate Director for Domestic and Anti-Poverty Operations.
ACT 82—Staff Assistant to the Associate Director for Legislative, Public, and Intergovernmental Affairs.
ACT 83—Confidential Assistant to the Deputy Director.
ACT 84—Staff Assistant to the Associate Director for Legislative, Public, and Intergovernmental Affairs.
ACT 86—Assistant Director for Legislative Affairs to the Associate Director for Legislative, Public and Intergovernmental Affairs.
ACT 87—Special Assistant to the Assistant Director for VISTA and Service Learning Programs, Office of Domestic and Anti-Poverty Operations.
ACT 88—Confidential. Assistant to the General Counsel.

Section 213.3360 Consumer Product Safety Commission

CPSC 6—Special Assistant to a Commissioner.
CPSC 7—Special Assistant (Legal) to a Commissioner.
CPSC 16—Director, Office of Congressional Relations to the Chairman.
CPSC 20—Special Assistant (Legal) to a Commissioner.
CPSC 23—Staff Assistant to a Commissioner.
CPSC 25—Staff Assistant to a Commissioner.
CPSC 28—Staff Assistant to a Commissioner.
CPSC 31—Special Assistant to the Executive Director.
CPSC 35—Special Assistant to the Chairman.
CPSC 38—Staff Assistant to the Chairman.
CPSC 39—Supervisory Public Affairs Specialist to the Chairman.
CPSC 41—Special Assistant to the Chairman.
CPSC 42—Public Affairs Specialist to the Chairman.
CPSC 46—Special Assistant to the Deputy Executive Director.
CPSC 48—Secretary (Steno) to the Chairman.

Section 213.3364 U.S. Arms Control and Disarmament Agency

ACDA 1—Secretary (Steno) to the Director.
ACDA 2—Private Secretary to the Deputy Director.
ACDA 4—Private Secretary to the Assistant Director for Verification and Intelligence.
ACDA 5—Secretary (Steno) to the Assistant Director for Nuclear and Weapons Control.
ACDA 10—Deputy Director for Congressional Affairs to the Director.
ACDA 11—Congressional Affairs Specialist to the Director, Office of Congressional Affairs.
ACDA 19—Private Secretary to the Special Advisor to the President and Secretary.
ACDA 20—Special Assistant to the Deputy Director for Public Affairs.
ACDA 22—Private Secretary to the Assistant Director for Multilateral Affairs.
ACDA 23—Staff Assistant to the Assistant Director for Multilateral Affairs.
ACDA 24—Special Assistant to the Assistant Director for Multilateral Affairs.
ACDA 27—Special Assistant to the Director.
ACDA 28—Staff Assistant to the Director.
ACDA 29—Congressional Affairs Specialist to the Director, Office of Congressional Affairs.
ACDA 30—Secretary (Steno) to the Special Representative for Arms Control and Disarmament.
ACDA 31—Special Assistant to the

Director.
ACDA 32—Secretary (Typing) to the Assistant Director for Strategic Programs.
ACDA 33—Special Assistant to the Assistant Director for Strategic Programs.

Section 213.3367 Federal Maritime Commission

FMC 2—Confidential Assistant to a Commissioner.
FMC 3—Confidential Assistant to a Commissioner.
FMC 4—Confidential Assistant to a Commissioner.
FMC 5—Confidential Assistant to a Commissioner.
FMC 7—Secretary (Steno) to a Commissioner.
FMC 8—Secretary (Steno) to a Commissioner.
FMC 9—Secretary (Typing) to a Commissioner.
FMC 11—Secretary to the Chairman.
FMC 23—Secretary (Steno) to the Counsel to the Chairman.

Section 213.3368 Agency for International Development

AID 34—Special Assistant to the Assistant Administrator, Bureau for Private Enterprise.
AID 35—Special Assistant to the Director, Office of Private and Voluntary Cooperation.
AID 38—Director, Office of Interbureau Affairs and Special Projects, to the Deputy Assistant Administrator for External Affairs.
AID 39—Special Assistant to the Director, Office of Private and Voluntary Cooperation.
AID 43—Special Assistant to the Assistant Administrator, Bureau for Food for Peace and Voluntary Service.
AID 44—Special Assistant to the Assistant Administrator, Bureau for Food for Peace and Voluntary Service.
AID 45—Deputy Assistant to the Administrator for Public Affairs to the Assistant Administrator, External Affairs.
AID 47—Special Assistant to the Assistant Administrator, Bureau for Food for Peace and Voluntary Service.
AID 48—Special Assistant to the Director of Policy Development and Program Review.
AID 57—Program Operations Assistant to the Director, Office of Private and Voluntary Cooperation.
AID 58—Special Assistant to the Coordinator, Office of Public Diplomacy for Latin America and the Caribbean.
AID 61—Public Affairs Specialist to the Assistant to the Administrator for External Affairs.
AID 64—Special Assistant to the Deputy Assistant Administrator for Management.
AID 65—Supervisory Public Affairs Specialist to the Deputy Assistant Administrator for External Affairs.
AID 67—Administrative Operations Assistant to the Deputy Assistant Administrator for External Affairs.
AID 68—Special Assistant to the Assistant Administrator for Private Enterprise.
AID 69—Public Affairs Specialist to the Supervisory Public Affairs Specialist, Office of Publications.
AID 70—Special Assistant to the Assistant Administrator for Latin America and the Caribbean.
AID 71—Special Assistant to the Deputy Administrator.
AID 73—Special Assistant to the Assistant Administrator for External Affairs.
AID 74—Congressional Liaison Officer to the Associate Director for Legislative Affairs.
AID 78—Program Operations Assistant to the Director, Office of Policy Development and Program Review.
AID 79—Special Operations Assistant to the Assistant Administrator for External Affairs.

Section 213.3372 Administrative Office of United States Courts

AOUSC 4—Supervisory Attorney-Advisor (Legislative) to the Legislative Affairs Officer.
AOUSC 5—Secretary (Steno) to the Deputy Legislative Affairs Officer.
AOUSC 7—Attorney-Advisor (Legislative) to the Deputy Legislative Affairs Officer.
AOUSC 8—Attorney-Advisor (Legislative) to the Legislative and Public Affairs Officer.
AOUSC 9—Public Information Officer to the Legislative and Public Affairs Officer.

Section 213.3376 Appalachian Regional Commission

ARC 8—Legislative and Policy Advisor to the Federal Co-Chairman.
ARC 9—Special Assistant to the Alternate Federal Co-Chairman.

Section 213.3377 Equal Employment Opportunity Commission

EEOC 2—Special Assistant to the Chairman.
EEOC 5—Confidential Assistant to a Member.
EEOC 12—Media Contact Specialist to the Director, Communications Staff, Office of Communications and Legislative Affairs.
EEOC 13—Confidential Assistant to the Chairman.
EEOC 15—Media Contact Specialist to the Director, Communications Staff, Office of Communications and Legislative Affairs.
EEOC 17—Special Assistant to a Member.
EEOC 29—Director, Communications Staff, to the Director, Office of Communications and Legislative Affairs.
EEOC 32—Special Assistant to a Commissioner.
EEOC 37—Social Science Research Specialist to the Director, Office of Program Research.
EEOC 38—Legislative Affairs Specialist to the Director, Office of Congressional Affairs.
EEOC 40—Media Contact Specialist to the Director, Communications Staff, Office of Communications and Legislative Affairs.
EEOC 41—Confidential Assistant to the Director, Office of Communications and Legislative Affairs.

Section 213.3379 Commodity Futures Trading Commission

CFTC 1—Administrative Assistant to the Chairman.
CFTC 3—Administrative Assistant to a Commissioner.
CFTC 4—Administrative Assistant to a Commissioner.
CFTC 5—Administrative Assistant to a Commissioner.
CFTC 6—Administrative Assistant to a Commissioner.
CFTC 7—Supervisory Public Affairs Specialist to the Chairman.
CFTC 12—Special Assistant to a Commissioner.
CFTC 14—Special Assistant to a Commissioner.
CFTC 21—Governmental Affairs Officer to the Chairman.

Section 213.3382 National Endowment for the Arts

NEA 45—Special Assistant to the Chairman.
NEA 49—Associate Deputy Chairman for Programs to the Deputy Chairman for Programs.
NEA 50—Special Assistant (Development) to the Chairman.
NEA 53—Special Assistant (Public Affairs) to the Chairman.

Section 213.3382 National Endowment for the Humanities

NEH 28—Public Affairs Officer to the

Deputy Chairman.
NEH 47—Special Assistant to the Chairman.
NEH 48—Congressional Liaison Officer to the Chairman.
NEH 54—Confidential Assistant to the Director, Institute of Museum Services.
NEH 58—Administrative Assistant to the Chairman.
NEH 59—Secretary to the Chairman.
NEH 60—General Counsel to the Chairman.
NEH 61—Special Assistant to the Chairman.
NEH 62—Administrative Assistant to the Deputy Chairman.

Section 213.3384 Department of Housing and Urban Development

HUD 6—Confidential Assistant to the General Counsel.
HUD 35—Senior Legislative Specialist to the Deputy Assistant Secretary for Legislation.
HUD 37—Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations.
HUD 39—Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations.
HUD 41—Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations.
HUD 45—Assistant for Congressional Relations to the Deputy Assistant Secretary for Legislation.
HUD 60—Supervisory Public Affairs Specialist to the Assistant Secretary for Public Affairs.
HUD 68—Executive Assistant to the Assistant Secretary for Community Planning and Development.
HUD 78—Special Assistant to the Assistant Secretary for Fair Housing and Equal Opportunity.
HUD 120—Special Assistant (Speech Issues) to the Assistant Secretary for Public Affairs.
HUD 126—Special Assistant to the Assistant Secretary for Fair Housing and Equal Opportunity.
HUD 135—Special Assistant to the General Deputy Assistant Secretary for Fair Housing and Equal Employment Opportunity.
HUD 143—Special Assistant to the Director, Executive Secretariat.
HUD 153—Executive Assistant to the President, Government National Mortgage Association.
HUD 160—Special Assistant to the Assistant Secretary for Policy Development and Research.
HUD 172—Special Assistant to the Director, Office of Indian Housing.
HUD 174—Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations.
HUD 175—Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations.
HUD 182—Special Assistant to the Assistant Secretary for Housing.
HUD 184—Senior Assistant for Congressional Relations to the Deputy Assistant Secretary for Legislation and Congressional Relations.
HUD 190—Executive Assistant to the General Deputy Assistant Secretary for Housing.
HUD 192—Special Assistant to the Secretary.
HUD 193—Executive Assistant to the General Counsel.
HUD 195—Special Assistant to the Assistant Secretary for Community Planning and Development.
HUD 198—Special Assistant to the Secretary.
HUD 199—Staff Assistant to the Deputy Assistant Secretary for Multifamily Housing Programs.
HUD 203—Senior Legislative Specialist to the Deputy Assistant Secretary for Legislation.
HUD 206—Intergovernmental Relations Officer to the Deputy Under Secretary for Intergovernmental Relations.
HUD 208—Intergovernmental Relations Officer to the Deputy Under Secretary for Intergovernmental Relations.
HUD 209—Intergovernmental Relations Officer to the Deputy Under Secretary for Intergovernmental Relations.
HUD 215—Executive Assistant to the Deputy Assistant Secretary for Multifamily Housing Programs.
HUD 217—Special Assistant to the Deputy Assistant Secretary for Policy Development.
HUD 218—Executive Assistant to the Regional Administrator.
HUD 222—Staff Assistant to the Regional Administrator.
HUD 224—Special Assistant to the Regional Administrator.
HUD 226—Special Assistant to the Regional Administrator.
HUD 245—Intergovernmental Relations Officer to the Deputy Under Secretary for Intergovernmental Relations.
HUD 247—Executive Assistant to the Assistant Secretary for Housing.
HUD 255—Executive Assistant to the Assistant Secretary for Policy Development and Research.
HUD 259—Special Assistant to the Secretary.
HUD 261—Special Assistant to the Secretary.
HUD 266—Special Assistant to the President, Government National Mortgage Association.
HUD 268—Executive Assistant to the Deputy Assistant Secretary for Policy, Financial Management and Administration.
HUD 274—Special Assistant to the Secretary.
HUD 275—Special Assistant to the Under Secretary.
HUD 276—Staff Assistant to the Assistant Secretary for Housing.
HUD 280—Special Assistant to the Assistant Secretary for Community Planning and Development.
HUD 281—Special Assistant to the Regional Administrator.
HUD 285—Senior Legislative Specialist to the Deputy Assistant Secretary for Legislation and Congressional Relations.
HUD 287—Special Assistant to the Regional Administrator.
HUD 289—Special Assistant to the Deputy Assistant Secretary for Program Policy Development and Evaluation.
HUD 292—Special Assistant to the Assistant Secretary for Community Planning and Development.
HUD 293—Staff Assistant to the President, Government National Mortgage Association.
HUD 312—Special Assistant to the Regional Administrator.
HUD 316—Special Assistant to the Regional Administrator.
HUD 318—Executive Assistant to the General Deputy Assistant Secretary for Public and Indian Housing.
HUD 322—Special Assistant to the Regional Administrator.
HUD 324—Special Assistant to the Regional Administrator.
HUD 325—Executive Assistant to the Assistant to the Secretary for Business Relations/Director, Office of Small and Disadvantaged Business Utilization.
HUD 329—Special Assistant to the Assistant Secretary for Labor Relations.
HUD 335—Special Assistant to the Assistant Secretary for Community Planning and Development.
HUD 336—Special Assistant (Advance) to the Assistant Secretary for Public Affairs.
HUD 337—Special Assistant (Speech Writer) to the Assistant Secretary for Public Affairs.
HUD 339—Special Assistant to the Regional Administrator.
HUD 341—Special Assistant to the

Secretary.
HUD 343—Special Assistant to the Regional Administrator.
HUD 345—Special Assistant to the Deputy Assistant Secretary for Single Family Housing.
HUD 346—Special Assistant to the Deputy Assistant Secretary for Operations and Management.
HUD 351—Special Assistant to the Regional Administrator.
HUD 354—Special Assistant to the Assistant Secretary for Public and Indian Housing.
HUD 356—Executive Assistant to the Regional Administrator.
HUD 359—Special Assistant to the Regional Administrator.
HUD 362—Staff Assistant to the Deputy Assistant Secretary for Housing.
HUD 363—Special Assistant to the Assistant Secretary for Policy Development and Research.
HUD 366—Special Assistant to the Assistant Secretary-Federal Housing Commissioner.
HUD 367—Special Assistant to the Regional Administrator.
HUD 370—Special Assistant to the Assistant Secretary for Public and Indian Housing.
HUD 373—Special Assistant (Speech Issues) to the Assistant Secretary for Public Affairs.
HUD 374—Executive Assistant to the Deputy Under Secretary for Field Coordination.
HUD 376—Special Assistant to the Regional Administrator.
HUD 377—Special Assistant to the Regional Administrator.
HUD 379—Assistant Director for Executive Secretariat Operations to the Executive Assistant to the Secretary.
HUD 382—Staff Assistant (Typing) to the Deputy Under Secretary for Intergovernmental Relations.
HUD 383—Special Assistant to the Regional Administrator.
HUD 384—Special Assistant to the Assistant Secretary for Public and Indian Housing.
HUD 385—Special Assistant (Speech Writer) to the Assistant Secretary for Public Affairs.
HUD 388—Supervisory Public Affairs Specialist to the Assistant Secretary for Public Affairs.
HUD 389—Associate Deputy Assistant Secretary for Policy Development and Research to the Assistant Secretary for Policy Development and Research.
HUD 390—Senior Legislative Specialist to the Deputy Assistant Secretary for Legislation.
HUD 392—Special Assistant for Community Relations to the Regional Administrator.
HUD 393—Associate Deputy Assistant Secretary for Demonstration Projects to the Deputy Assistant Secretary for Policy Development.
HUD 395—Special Assistant to the Regional Administrator.
HUD 396—Special Assistant to the Director, Office of Small and Disadvantaged Business Utilization.
HUD 398—Special Assistant to the Deputy Under Secretary for Field Coordination.
HUD 399—Special Assistant to the Executive Vice President, Government National Mortgage Association.
HUD 401—Special Assistant to the Deputy Assistant Secretary for Multifamily Housing.
HUD 402—Special Assistant to the Deputy Assistant Secretary for Single Family Housing.
HUD 403—Special Assistant to the Regional Administrator.
HUD 404—Special Assistant to the Regional Administrator.
HUD 405—Special Assistant to the Regional Administrator.
HUD 407—Executive Assistant to the Regional Administrator.
HUD 408—Special Projects Coordinator to the Deputy Assistant Secretary for Policy, Financial Management and Administration.
HUD 409—Special Advisor to the Deputy Assistant Secretary for Policy, Financial Management and Administration.

Section 213.3388 President's Commission on White House Fellows

PCWHF 2—Associate Director.
PCWHF 3—Special Assistant to the Director.
PCWHF 4—Confidential Assistant to the Director.

Section 213.3389 National Mediation Board

NMB 49—Special Assistant to the Chairman.
NMB 52—Confidential Assistant to a Member.
NMB 53—Confidential Assistant to a Member.
NMB 54—Confidential Assistant to a Member.

Section 213.3391 Office of Personnel Management

OPM 4—Special Assistant to the Assistant Director for Congressional Relations.
OPM 8—Confidential Assistant to the Director.
OPM 9—Confidential Assistant (Typing) to the General Counsel.
OPM 10—Staff Assistant to the Assistant Director for Public Affairs.
OPM 11—Staff Assistant to the Director, Office of Executive Administration.
OPM 17—Special Assistant to the Associate Director for Administration.
OPM 19—Special Assistant to the Associate Director for Administration.
OPM 21—Special Assistant to the Director, Office of Public Affairs.
OPM 24—Special Assistant to the Director, Office of Government Ethics.
OPM 25—Special Assistant to the Director, Office of Congressional Relations.
OPM 26—Confidential Assistant (Typing) to the Director, Office of Government Ethics.
OPM 28—Congressional Relations Officer to the Assistant Director for Congressional Relations.
OPM 29—Special Assistant to the Director.
OPM 30—Special Assistant to the Director, Office of Public Affairs.
OPM 31—Staff Assistant to the Counselor to the Director.
OPM 32—Confidential Assistant (Typing) to the Deputy General Counsel.
OPM 33—Confidential Assistant to the Assistant Director for Congressional Relations.
OPM 34—Special Assistant to the Director, Office of Public Affairs.

Section 213.3392 Federal Labor Relations Authority

FLRA 1—Staff Assistant (Steno) to the Chairman.
FLRA 8—Staff Assistant to a Member.
FLRA 9—Special Assistant to the General Counsel.
FLRA 10—Deputy for Congressional Affairs, Public Information and Administration to the Chairman.
FLRA 12—Confidential Assistant to the Chairman.

Section 213.3393 Pension Benefit Guaranty Corporation

PBGC 1—Staff Assistant to the Executive Director.
PBGC 6—Staff Assistant to the Executive Director.

Section 213.3394 Department of Transportation

DOT 1—Staff Assistant to the Secretary.
DOT 3—Staff Assistant to the Secretary.

DOT 14—Chauffeur to the Secretary.
DOT 38—Special Assistant to the Administrator, National Highway Traffic Safety Administration.
DOT 43—Confidential Assistant to the Administrator, Saint Lawrence Seaway Development Corporation.
DOT 54—Congressional Liaison Officer to the Director, Office of Congressional Affairs.
DOT 55—Congressional Liaison Officer to the Director, Office of Congressional Affairs.
DOT 56—Special Assistant to the Administrator, Saint Lawrence Seaway Development Corporation.
DOT 57—Confidential Assistant to the Assistant Secretary for Governmental Affairs.
DOT 60—Congressional Liaison Officer to the Director, Office of Congressional Affairs.
DOT 69—Supervisory Public Affairs Specialist to the Administrator, Federal Railroad Administration.
DOT 77—Special Assistant to the Assistant Secretary for Public Affairs.
DOT 100—Supervisory Public Affairs Specialist to the Director, Office of Public and Consumer Affairs, National Highway Traffic Safety Administration.
DOT 105—Secretary (Steno) to the Administrator, Federal Highway Administration.
DOT 115—Special Assistant to the Assistant Administrator for Public Affairs, Federal Aviation Administration.
DOT 121—Deputy Director, Office of Congressional Affairs to the Director of Congressional Affairs.
DOT 122—Special Assistant to the Director, Executive Secretariat.
DOT 126—Director, Office of Public Affairs, to the Administrator, Federal Highway Administration.
DOT 127—Special Assistant to the Assistant Secretary for Budget and Programs.
DOT 128—Special Assistant to the Administrator, Federal Highway Administration.
DOT 142—Intergovernmental Liaison Specialist to the Director, Office of Intergovernmental and Consumer Affairs.
DOT 143—Staff Assistant to the Deputy Administrator, Federal Railroad Administration.
DOT 148—Director, Office of Media Relations to the Assistant Secretary for Public Affairs.
DOT 150—Special Assistant to the Administrator, National Highway Traffic Safety Administration.
DOT 153—Congressional Liaison Officer to the Director, Office of Congressional Affairs.
DOT 157—Secretary (Steno) to the Associate Administrator for Policy and International Aviation, Federal Aviation Administration.
DOT 158—Confidential Secretary to the General Counsel.
DOT 175—Special Assistant to the Assistant Secretary for Policy and International Affairs.
DOT 192—Special Assistant to the Director, Office of Small and Disadvantaged Business Utilization.
DOT 198—Special Assistant to the Administrator, Federal Highway Administration.
DOT 203—Staff Assistant to the Assistant Secretary for Governmental Affairs.
DOT 207—Staff Assistant to the Inspector General.
DOT 208—Director, Executive Secretariat to the Administrator, Urban Mass Transportation Administration.
DOT 209—Special Assistant to the Administrator, Urban Mass Transportation Administration.
DOT 216—Confidential Special Assistant to the Administrator, Federal Aviation Administration.
DOT 218—Staff Assistant to the Director, Office of Congressional Affairs.
DOT 219—Executive Officer to the Director, Executive Secretariat.
DOT 220—Chief, Minority Business Resource Center to the Director, Small and Disadvantaged Business Utilization.
DOT 223—Policy Advisor to the Administrator, National Highway Traffic Safety Administration.
DOT 224—Special Assistant to the Administrator, Urban Mass Transportation Administration.
DOT 225—Special Assistant to the Regional Representative.
DOT 228—Special Assistant to the Associate Administrator for Budget and Policy, Urban Mass Transportation Administration.
DOT 229—Staff Assistant to the Administrator, Maritime Administration.
DOT 231—Policy Advisor to the Associate Administrator for Traffic Safety Programs, National Highway Traffic Safety Administration.
DOT 232—Special Assistant to the Regional Administrator, Urban Mass Transportation Administration.
DOT 233—Special Assistant to the General Counsel.
DOT 237—Special Assistant to the Assistant Secretary for Public Affairs.
DOT 239—Executive Assistant to the Administrator, Maritime Administration.
DOT 240—Special Assistant to the Assistant Administrator for Public Affairs, Federal Aviation Administration.
DOT 243—Special Assistant to the Assistant Secretary for Public Affairs.
DOT 244—Deputy Executive Secretary for Management to the Director, Executive Secretariat.
DOT 250—Staff Assistant to the Assistant Secretary for Governmental Affairs.
DOT 251—Staff Assistant to the Administrator, Maritime Administration.
DOT 252—Director, Executive Secretariat, to the Administrator, National Highway Traffic Safety Administration.
DOT 253—Intergovernmental Affairs Coordinator to the Administrator, Federal Railroad Administration.
DOT 256—Staff Assistant to the Coordinator for Minority Affairs.
DOT 258—Deputy Director, Office of Intergovernmental Affairs.
DOT 263—Special Assistant to the Administrator, Saint Lawrence Seaway Development Corporation.
DOT 268—Staff Assistant to the Assistant Secretary for Public Affairs.
DOT 269—Research Assistant to the Director, Executive Secretariat.
DOT 274—Special Assistant to the Assistant Secretary for Public Affairs.
DOT 276—Special Assistant to the Administrator, Research and Special Programs Administration.
DOT 277—Special Assistant to the Deputy Administrator, Urban Mass Transportation Administration.
DOT 278—Staff Assistant to the Deputy Secretary.
DOT 281—Special Assistant for Intergovernmental Relations to the Administrator, Saint Lawrence Seaway Development Corporation.
DOT 282—Confidential Staff Assistant to the Deputy Administrator, Federal Aviation Administration.
DOT 287—Staff Assistant to the Deputy Secretary.
DOT 288—Deputy Director of Community and Consumer Affairs.
DOT 291—Director, Office of Special Projects to the Assistant Secretary for Public Affairs.
DOT 292—Intergovernmental Liaison Officer to the Director, Office of Intergovernmental and Consumer Affairs.
DOT 294—Special Assistant to the

Associate Deputy Secretary.
DOT 295—Staff Assistant to the Associate Deputy Secretary.
DOT 296—Special Assistant to the Director, Office of External Affairs.

Section 213.3395 Federal Emergency Management Agency

FEMA 3—Director of Congressional Affairs.
FEMA 29—Special Assistant to the Associate Director, State and Local Programs and Support Directorate.
FEMA 33—Director, Office of Regional Operations to the Director.
FEMA 34—Executive Assistant to the Deputy Director.
FEMA 35—Confidential Staff Assistant to the Director, Office of External Affairs.
FEMA 36—Confidential Assistant to the Associate Director, Emergency Operations Directorate.
FEMA 37—Confidential Staff Assistant to the Director, Office of External Affairs.

Section 213.3396 National Transportation Safety Board

NTSB 1—Special Assistant to a Board Member.
NTSB 2—Secretary (Typing) to the Chairman.
NTSB 30—Confidential Assistant to the Chairman.
NTSB 31—Confidential Assistant to a Board Member.
NTSB 32—Confidential Assistant to a Board Member.
NTSB 33—Confidential Assistant to a Board Member.
NTSB 92—Government and Public Affairs Officer to the Managing Director.
NTSB 98—Special Assistant to the Vice-Chairman.
NTSB 102—Special Assistant and Counsel to the Chairman.
NTSB 104—Special Assistant to a Board Member.
NTSB 105—Special Assistant to the Chairman.

Section 213.3396 Architectural and Transportation Barriers Compliance Board

ATBCB 1—Executive Assistant to the Chairman.

U.S. Office of Personnel Management.
James E. Colvard,
Deputy Director.

Authority: 5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954–1958 Comp., p. 219

[FR Doc. 87–18044 Filed 8–11–87; 8:45 am]
BILLING CODE 6325–01–M

Information Collection Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, Chapter 35), this notice announces a request to extend a public information collection. Standard Form 87, Fingerprint Chart, is completed by applicants for Federal positions throughout the Government. OPM uses the information to conduct checks of the FBI fingerprint files as required by Executive Order 10450, Security Requirements for Government Employment, issued April 27, 1953, or various public laws. These checks are part of background investigations conducted for the purpose of determining suitability for Federal employment/security clearance. It is estimated that 51,000 individuals will respond annually for a total burden of 10,200 hours. For copies of this proposal call William C. Duffy, Agency Clearance Officer, on (202) 632–7714.

DATE: Comments on this proposal should be received within 10 working days from the date of this publication.

ADDRESSES: Send or deliver comments to—

William C. Duffy, Agency Clearance Officer, Office of Personnel Management, 1900 E Street, NW., Room 6410, Washington, DC 20415.

and

Richard Eisinger, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503

FOR FURTHER INFORMATION CONTACT: Peter Garcia, (202) 632–8181.

U.S. Office of Personnel Management.
James E. Colvard,
Deputy Director.

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BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–15906; File No. 812–6766]

Application; IDS Life Insurance Company of New York, IDS Life of New York Account 8, and Shearson Lehman Brothers Inc.

August 4, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: IDS Life Insurance Company of New York ("IDS Life of New York"), IDS Life of New York Account 8 ("Variable Account") and Shearson Lehman Brothers Inc. ("Shearson Lehman") (collectively, the "Applicants").

RELEVANT 1940 ACT SECTIONS AND RULES: Exemption requested pursuant to section 6(c) and 17(b) from sections 2(a)(32), 12(d)(1), 17(a), 22(c), 26(a), 27(c)(1), 27(c)(2) and 27(d) of the 1940 Act and Rules 6e–3(T)(b)(12), 6e–3e(T)(b)(13), 6e–3(T)(c)(2) and 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to the extent necessary to permit the offering of flexible premium variable life insurance contracts. Specifically, Applicants seek the relief necessary to permit (1) the definition of the term "Incidental Insurance Benefits" in Rule 6e–3(T)(c)(2) to include the policy's rider for a Waiver of Monthly Deduction for Total Disability (the "Rider"), (2) the assessment of certain Contingent Deferred Issue and Administrative Expense Charges, and (3) the Variable Account to invest in the securities of the Shearson Lehman Brothers Stripped ("Zero Coupon") U.S. Treasury Securities Fund, Series A.

FILING DATE: The application was filed on June 23, 1987.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the requested exemption will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on August 29, 1987. Request a hearing in writing giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney-at-law, by certificate. Request notifications of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. IDS Life Insurance Company of New York and the Variable Account, 14 Computer Drive West, Albany, New York 12205; Shearson Lehman Brothers Inc., 2 World Trade Center, New York, NY 10045.

FOR FURTHER INFORMATION CONTACT: Lewis B. Reich, Special Counsel (202)

BEST COPY AVAILABLE

272-2061, or Clifford E. Kirsch, Staff Attorney, (202) 272-3032.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 253-4300.

Applicants' Representations and Arguments

1. The Variable Account is a separate account of IDS Life of New York. Its subaccounts invest their assets in corresponding portfolios of IDS Life Series Fund, Inc. ("the Fund") or in units of Shearson Lehman Brothers Stripped ("Zero Coupon") U.S. Treasury Securities Fund ("the Trust"). IDS Life of New York is planning on issuing certain Flexible Premium Variable Life Insurance contracts ("Contracts") through the Variable Account.

2. During the first 10 contract years and during the first 10 years following any requested increase in Specified Amount, IDS Life of New York will make a Surrender Charge if the owner surrenders the Contract or the Contract lapses. The Surrender Charge has two parts—the Contingent Deferred Issue and Administrative Expense Charge and the Contingent Deferred Sales Charge. The Contingent Deferred Issue and Administrative Expense Charge reimburses IDS Life of New York for expenses incurred in issuing the Contract such as processing the application (primarily underwriting) and setting up computer records. The maximum Contingent Deferred Sales Charge and the maximum Contingent Deferred Issue and Administrative Expense Charge for the Initial Specified Amount or any requested increase in Specified Amount will be determined on the Contract Date or on the effective date of any such requested increase, as the case may be. In general, these maximum charges remain level for the first five years in the relevant 10-year period, and then reduce in equal monthly increments until they become zero at the end of 10 years.

Definition of Incidental Insurance Benefits

3. Applicants seek relief from Rule 6e-3(T)(c)(2) which defines the term "incidental insurance benefits" to mean insurance benefits that do not vary in amount in accordance with the investment experience of a separate account. Under the Contract, the Contractowner will have the option to elect coverage under the Rider, which provides that in the event of the total disability of the insured, as defined in the Rider, IDS Life of New York will waive the monthly deduction for the cost of insurance, Policy Fee, the cost of any riders, and the death benefit guarantee charge for the next Contract month.

4. In significant respects, the coverage provided by the Rider is a fixed benefit. Under the Rider, IDS Life of New York's obligation to waive the monthly cost of insurance charge, the Contract Fee, the cost of any riders and the death benefit charge for the next contract month is a fixed obligation, and the benefit will be provided irrespective of the investment experience of the Subaccounts (i.e., the monthly cost of insurance charge, the Contract Fee, the cost of any riders and the death benefit charge for the next contract month will be waived regardless of how much the net amount at risk varies).

Contingent Deferred Issue and Administrative Expense Charge

5. The cost-based Issue and Administrative Expense Charge reimburses IDS Life of New York for administrative costs it incurs in issuing the Contract. The maximum amount of this charge is equal to $4 times the number of thousands of dollars of Specified Amount.

6. Applicants submit that imposition of the Issue and Administrative Expense Charge in the form of a deferred charge as part of the Surrender Charge is much more favorable to the Contractowner than the deduction of this charge from premiums paid—the conventional way of imposing such charges. First, the amount of the Contractowner's investment in the Subaccounts is not reduced as it would be if this charge were taken in full in the first Contract Year. Second, the total amount charged to any Contractowner is no greater than it would be if these charges were taken in full in the first Contract Year. Finally, the fact that the entire amount of the charge was not deducted initially will favorably affect the amount of the Death Benefit under Option 2 since cash value will be greater.

7. Applications represent that the Issue and Administrative Expense Charge is the same amount as would have been imposed under the Contract if the expenses of issuing the Contract had been recovered through a front-end charge. In particular, Applicants represent that the Issue and Administrative Expense Charge does not take into account the time value of money (which would increase the charge to factor in the investment cost to IDS Life of New York of deferring the charge). Applicants represent that the Issue and Administrative Expense Charge does not take into account the likelihood that not all Contractowners will lapse or surrender their policies or that some Contractowners may redeem later than others (which would increase the charge for those surrending or lapsing over what they would have paid had all Contractowners been required to pay the Issue and Administrative Expense Charge at the time the Contract is issued.)

The Zero Fund

Operation

8. The Zero Fund is registered under the Act and comprises multiple unit investment trust ("Trust"), each Trust containing U.S. Treasury securities which have been stripped of their unmatured interest coupons, interest coupons which have been stripped from U.S. Treasury securities, and receipts and certificates for such stripped obligations and stripped coupons. The Variable Account will purchase units of each Trust based upon the net transactions by owners. Applicants state that the total offering price of Zero Fund units placed in the Variable Account, whether they are sold to the Variable Account in the primary or secondary market, will include a "transaction charge" paid directly by IDS Life of New York to Shearson Lehman. The Variable Account will not directly pay that charge; instead IDS Life of New York will pay an amount to Shearson Lehman out of its general account assets to compensate Shearson Lehman as the sponsor and principal underwriter of the Zero Fund. Applicants state that the transaction charge ranges from 0.5-2.0 percent of the offering price, depending upon the maturity of the Trusts for which securities are purchased. Thereafter, IDS Life of New York will seek to be reimbursed for the amounts advanced by assessing a charge on the assets of the Variable Account held in the Subaccounts investing in the Zero Fund.

Asset Charge

9. IDS Life of New York and the Variable Account seek relief from the provisions of section 12(d)(1) to allow the Variable Account to acquire the units of the Zero Fund and from sections 26(a)(2) and 27(c)(2) to the extent necessary to permit IDS Life of New York to recover through an asset charge amounts paid by it to Shearson Lehman in connection with acquisition of Zero Fund units. Applicants state the amount of this asset charge is equivalent to an effective annual rate of .25 percent of the account value. This amount may be

increased in the future but in no event will it exceed an effective annual rate of .50 percent of account value.

10. Applicants state that the asset charge is not designed as reimbursement of distribution expenses or to compensate IDS Life of New York for sales efforts, and that the amount of the transaction fee is the same as a charge negotiated at arm's length and imposed by Shearson Lehman as sponsor and market-maker for a unit investment trust in a non-affiliated venture identical in all material respects to the venture described in the application. Applicants believe that having IDS Life of New York pay the transaction charge, with reimbursement by the Variable Account through the asset charge, is desirable in that allocating a proportionate share of the acquisition expenses to all owners who allocate premiums to the Subaccounts of the Variable Account investing in the Zero Fund, rather than permitting the expenses borne by individual owners to vary based upon the timing of their particular allocation (as would be the case if the Variable Account paid the transaction charge directly), benefits owners by stabilizing yield and by creating more equitable results among owners.

11. Applicants assert that it is appropriate to recover interest costs through deduction of the proposed asset charge. IDS Life of New York expects to advance large amounts in the early years in connection with the purchase of units of interests in the Zero Fund, but considerably less in later years because purchases of units (and transaction charges) will diminish since later purchases by owners will be offset by redemptions. Because the asset charge will be designed to recover these charges over the life of each of the Trusts (thus spreading the costs among owners purchasing early in the life of each Trust and those purchasing later), Applicants represent that a significant portion of the costs to IDS Life of New York is the loss of interest on monies advanced caused by the delay in recovery. Given that IDS Life of New York anticipates recovery of the transaction costs over the life of each Trust, Applicants believe that a rate of interest associated with the weighted average maturity of the bonds held by the Trust is the fair and reasonable measure of the time value of the monies advanced by IDS Life of New York. Applicants represent that as to each subaccount of the Variable Account, the rate of interest will be applied to the amounts by which the transaction charges for the subaccount for each quarter exceed the asset charges collected as reimbursement for such charges, plus any amounts (including interest) that were unrecovered at the end of the prior quarter. Applicants further represent that IDS Life of New York will monitor the cumulative amounts collected for each subaccount through this asset charge in comparison with the amounts paid by IDS Life of New York and will not charge any subaccount of the Variable Account more than actual costs.

Affiliated Transactions

12. Applicants request exemption from section 17(a) of the Act to permit the proposed transactions between Shearson Lehman and the Variable Account. Applicants state that all the outstanding voting stock of Shearson Lehman and IDS Life of New York is beneficially owned by American Express Company, and thus Shearson Lehman and the Variable Account are affiliated persons within section 2(a)(3) of the Act. Applicants assert, however, that the conditions set forth in sections 6(c) and 17(b) for the granting of an exemptive order are met under the proposed transactions between Shearson Lehman and the Variable Account.

13. Applicants assert that the consideration the Variable Account will pay Shearson Lehman upon the purchase of Trust units, including, indirectly, the transaction charge, will be fair and reasonable and will not involve overreaching on the part of any person concerned. According to the application, the price at which the Variable Account will purchase and resell units from and to Shearson Lehman will be based upon the offering side evaluation of the underlying securities. Applicants state that a qualified independent evaluator [1] will determine the offering side valuation of the underlying securities for any purchase or sale of units by the Variable Account and that market prices for the underlying securities are usually readily available. Applicants assert that as a result of this independent evaluation of the worth of the underlying securities, the Variable Account will be buying and selling units from Shearson Lehman at a price determined to be at "market," and this evaluation should eliminate any possibility that Shearson Lehman would sell units to the Variable Account at an inflated price or purchase units from the Variable Account at a price below their market value. Applicants state that the presence of Shearson Lehman as market maker enables the Variable Account to receive a better price for units it sells than it might otherwise receive if Shearson Lehman were not standing ready and able to purchase the units at a price based on the offering side of the market. Applicants further state that Shearson Lehman will not be able to influence the Variable Account to purchase or sell units the Variable Account would not otherwise have purchased or sold. The Variable Account that correspond to a Trust. Similarly, the Variable Account will only purchase units from Shearson Lehman as owners choose to direct their purchase payments for Contracts or cash value of existing Contracts to subaccounts of the Variable Account will only sell units when owners surrender their Contract, reallocate cash value from those subaccounts, or make a Contract loan.

14. Applicants note that while IDS Life of New York and Shearson Lehman are affiliated persons, they have separate management and each is operated as a separate "profit center." Applicants represent that the compensation of sales persons selling the Contracts is not dependent upon nor affected by the particular investment vehicle or vehicles to which owners allocate the premiums for or the cash value of the Contracts. Applicants therefore assert that such sales persons are not expected to have a preference as to which investment vehicle or vehicles owners select under the Contract.

15. Applicants represent that if and to the extent the final version of Rule 6e–3 (or any other rule adopted as the final version of Rule 6e–3(T)) imposes on the granting of exemptive relief of the nature requested in this application terms or conditions different from any exemptive relief granted them as a result of this application, they will take all necessary steps to comply with the final version of Rule 6e–3 (or any other rule adopted as the final version of Rule 6e–3(T)).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–18356 Filed 8–11–87; 8:45 am]

BILLING CODE 8010-01-M

[1] Applicants state that the evaluator is not affiliated with Shearson Lehman or IDS Life of New York, nor is the evaluator an affiliate of an affiliate of Shearson Lehman or IDS Life of New York, nor will any successor evaluator for the Zero Fund be so affiliated.

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 87-8-14]

Fitness Determination of Springdale Air Service, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 87-8-14, Order to Show Cause.

SUMMARY: The Department of Transportation is proposing to find that Springdale Air Service, Inc., is fit, willing, and able to provide commuter air service under section 419(c)(2) of the Federal Aviation Act.

Responses: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, Room 6420, Department of Transportation, 400 7th Street, SW., Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than August 21, 1987.

FOR FURTHER INFORMATION CONTACT: Barbara P. Dunnigan, Air Carrier Fitness Division, Department of Transportation, 400 7th Street, SW., Washington, DC 20590, (202) 366-2342.

Dated: August 6, 1987.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 87-18347 Filed 8-11-87; 8:45 am]

BILLING CODE 4910-62-M

[OST Docket No. 22; Notice No. 87-15]

Standard Time Zone Boundaries; Operating Exception for the Burlington Northern Railroad

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Operating Exception.

SUMMARY: The Burlington Northern Railroad is granted an exception from the standard time of the time zones created by Congress. The exception permits operation under mountain time from Texline to Amarillo, Texas, despite the fact that the area is in the central time zone. It does not, however, permit the railroad in its public schedule and notices to show the area as being in other than the central time zone.

EFFECTIVE DATE: August 12, 1987.

FOR FURTHER INFORMATION CONTACT: Joanne Petrie, Office of the General Counsel (C-50), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590; (202) 366-9306.

SUPPLEMENTARY INFORMATION: Under the Standard Time Act of 1918, as amended by the Uniform Time Act of 1966 (15 U.S.C. 260-64), the Secretary of Transportation has authority to issue regulations modifying the boundaries between time zones in the United States in order to move an area from one time zone to another. She also has authority (delegated to the General Counsel) to grant to a railroad an exception from the time zones to permit for internal purposes only operation of a railroad line on one time, despite the fact that it crosses a time zone boundary. Where there is less confusion, railroad operations are less hazardous and more efficient.

The request. The Burlington Northern Railroad Company has formally requested that it be granted an operating exception permitting internal operation of its line between Pueblo, Colorado to Amarillo, Texas, on mountain time. This railroad line is currently bisected by the time zone boundary between central and mountain time at Texline, Texas. Control of trains on this line is now in a single dispatching territory and under the control of one dispatching office, which is located in the mountain time zone. The railroad stated that its personnel are experiencing confusion in understanding and implementing train orders. Directions to track, bridge, and building forces, and to signal and communications employees along the line in question, are also subject to some confusion and misunderstanding. BN stated that the confusion relates primarily to the effective times of such orders and directives.

It alleged that misunderstanding of the times that orders and directives are to be observed could lead to dangerous operating and working conditions. Burlington Northern therefore requested DOT to grant an operational exception that would move the existing operational time zone boundary eastward to Amarillo, Texas. Amarillo is the division point between Burlington Northern's Colorado and Fort Worth Division, and the boundary between dispatching districts. BN noted that Amtrack trains do not operate on the line from Pueblo, Colorado, to Amarillo, Texas, and therefore, the change should have no effect on the public in general.

Decision. Time zone boundaries were created in the United States by the railroads about a hundred years ago to reduce the hazards resulting from confusion over time zone boundaries and to improve scheduling. For example, when two trains use the same track, one must be put in a siding to let the other pass. Knowing what time each train is to reach a certain point is therefore necessary for safety. DOT's experience indicates that confusion about the precise time of train orders and similar railroad directives can cause hazardous conditions. The exception is therefore granted. This exception does not, however, permit the railroad in its public schedule and notices to show the area as being in other than the central time zone. The grant of the exception does not affect the public since it only affects internal operations of the railroad.

Authority: Act of March 19, 1918, as amended by the Uniform Time Act of 1966 and Pub. L. 97-449, 15 U.S.C. 260-64; 49 CFR 1.157(b).

Issued in Washington, DC, on August 6, 1987.

B. Wayne Vance,

General Counsel.

[FR Doc. 87-18419 Filed 8-11-87; 8:45 am]

BILLING CODE 4910-62-M

[Docket 37554]

Order Adjusting the Standard Foreign Fare Level Index

The International Air Transportation Competition Act (IATCA), Pub. L. 96-192, requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seatmile. Order 80-2-69 established the first interim SFFL and Order 87-6-31 set the currently effective two-month SFFL applicable through July 31, 1987.

In establishing the SFFL for the two-month period beginning August 1, 1987, we have projected nonfuel costs based on the year ended March 31, 1987 data, and have determined fuel prices on the basis of the latest experienced monthly fuel cost levels as required to the Department.

By Order 87-8-15 fares may be increased by the following factors over the October 1, 1979, level:

Atlantic, 1.0589.
Latin America, 1.1028.
Pacific, 1.5654.
Canada, 1.1145.

FOR FURTHER INFORMATION CONTACT: Julien R. Schrenk, (202) 366-2441.

By the Department of Transportation.

Dated: August 6, 1987.

Vance Fort,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 87-18348 Filed 8-11-87; 8:45 am]

BILLING CODE 8116-02-M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains an extension and lists the following information (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Elaina Norden, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: August 5, 1987.

By direction of the Administrator.

David A. Cox,

Associate Deputy Administrator for Management.

Extension

1. Department of Veterans Benefits
2. VA Request for Determination of Reasonable Value/HUD Application for Property Appraisal and Commitment
3. VA Form 26-1805
4. This information is needed to determine the reasonable value of properties proposed as security for guaranteed or direct home loans and to require minimum property standards.
5. On occasion
6. Individuals or households
7. 793,210 responses
8. 158,642 hours
9. Not applicable

[FR Doc. 87-18245 Filed 8-11-87; 8:45 am]

BILLING CODE 8320-01-M

Privacy Act of 1974; New System of Records

The Privacy Act of 1974 (5 U.S.C. 522a(e)(4)) requires that all agencies publish in the **Federal Register** a notice of the existence and character of their systems of records. Notice is hereby given that the Veterans Administration is adding a new system of records entitled "PROS/KEYS User Permissions Data Base (67VA30)".

The purpose of the new system of records is to collect, store and retrieve general information about remote users of the Veterans Administraiton Data Processing Center in Austin, Texas. This information will be used to protect automated data processing system resources and copies of production data from intrusion and misuse by unauthorized individuals. The system contains hard copy and magnetic media storage of names, addresses, telephone numbers, VA employee numbers (SSN), and listings of data files and system permisisons. These data will be used to document and verify files and systems that an individual is permitted to access.

A "Report of Intention to Publish a Federal Register Notice of New System of Records" and an advance copy of the new system notice have been provided to the Speaker of the House, the President of the Senate, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), as required by the provisions of 5 U.S.C. 552a(o) and the Privacy Act Guidelines issued by OMB on October 3, 1975 (40 FR 45877).

Release of information from these records will only be made in accordance with the provisions of the Privacy Act of 1974 for the investigatory, judicial, and administrative uses as listed in the body of this Notice. The VA has determined that release of information for these purposes is a necessary and proper use of information in this system of records and that specific routine uses for transfer of this information are appropriate.

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed system of records to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420. All relevant material received before August 27, 1987 will be considered. All written comments received will be available for public inspection at the above address only between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays) until September 10, 1987. Any persons visiting Central Office for the purpose of inspecting any such comments will be received by the Central Office Veterans Services Unit in room 132. Visitors to VA field stations will be informed that the records are available for inspection only in Central Office and will be furnished the above address and room number.

If no public comment is received during the 30-day review period allowed for public comment, or unless otherwise published in the **Federal Register** by the Veterans Administration, the routine use statements included herein are effective September 10, 1987.

Approved: July 20, 1987.

Thomas K. Turnage,

Administrator.

67VA30

SYSTEM NAME:

"PROS/KEYS User Permissions Data Base (67VA30)."

SYSTEM LOCATION:

Hard copy records are maintained in the Office of Information Systems and Telecommunications, Directorate for Operations Management, ADP Support Staff, Interactive Support Division (32C), VA Central Office, Washigton, D.C. 20420. Magnetic Records are maintained by the Veterans Adminstration Data Processing Center, 1615 East Woodward Street, Austin, Texas 78772.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Veterans Administration employees and authorized vendors who have requested and been granted access to the resources of the VA Data Processing Center, Austin, Texas.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records (or information contained in the records) may include: (1) Names of individuals who have requested and been granted access to the resources of the VA Data Processing Center, Austin, Texas; (2) the individuals' job title and Veterans Administration employee number or Social Security number; (3) the individual's office address and phone number; (4) information relating to data file and computer system access permissions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, 210(c).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

2. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to requesting the agency's decision on the matter.

3. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

4. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

5. By the National Archives and Records Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

6. To disclose information to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, the Federal Labor Relations Authority and its General Counsel, or the Equal Employment Opportunity Commission when requested in performance of their authorized duties.

7. To disclose in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

8. Any information in this system may be disclosed to a Federal grand jury, Federal court or a party in litigation, or a Federal agency or party to an administrative proceeding being conducted by a Federal agency, in order for the VA to respond to and comply with the issuance of a Federal subpoena.

9. Any information in this system may be disclosed to a State or municipal grand jury, a State or municipal court or a party in litigation, or to a State or municipal administrative agency functioning in a quasi-judicial capacity or a party to a proceeding being conducted by such an agency, in order for the VA to respond to and comply with the issuance of a State or municipal subpoena; provided, that any disclosure of information made under this routine use must comply with the provisions of 38 CFR 1.511.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The Office of Information Systems and Telecommunications, Directorate for Operations Management, ADP Support Staff, Interactive Support Division (32C), VA Central Office, Washington, D.C. 20420 retains original signed copies of requests for system and data file permissions. These documents are retained in a locked filing cabinet with a one hour burn rating. Data files supporting the automated system are stored in a secured area located at the Veterans Administration Data Processing Center, 1615 East Woodward Street, Austin, Texas 78772. Data files are stored on magnetic disk and, for archival purposes, on magnetic tape.

RETRIEVABILITY:

Paper records are maintained in alphabetical order by the last name of the requester. Access to the automated system is via computer terminal. Standard security precautions are used to prohibit access to only authorized personnel.

SAFEGUARDS:

Paper records are maintained in a manned room during working hours. During non-working hours, there is limited access to the building with visitor control by security personnel; the room where the paper records are kept is locked, and the filing cabinet is secured with a built-in combination lock. Access to the records is on a need-to-know basis only. The automated system is protected by a generalized system security facility and by specific security techniques used within the application that accesses the data file. Access to the system is controlled by both the Interactive Support Division (32C) and the Austin Data Processing Center staff responsible for remote user support (200/40).

RETENTION AND DISPOSAL:

Records will be maintained and disposed of in accordance with the records disposal authority approved by the Archivist of the United States.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the Director (30), Office of Information Systems and Telecommunications, VA Central Office, Washington, D.C. 20420.

NOTIFICATION PROCEDURE:

An individual who wishes to determine whether a record is being maintained by the Office of Information Systems and Telecommunications under his or her name or other personal identifier or who wants to determine the contents of such records should submit a written request or apply in person to the Office of the Director (30).

RECORD ACCESS PROCEDURES:

An individual who seeks access or wishes to contest records maintained under his or her name or other personal identifier may write or call or visit the Office of the Director.

CONTESTING RECORD PROCEDURES:

(See Record Access Procedures above.)

RECORD SOURCE CATEGORIES:

Individuals who have applied for and been granted access permissions to the resources of the Austin Data Processing Center.

[FR Doc. 87-18246 Filed 8-11-87; 8:45 am]
BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 155
Wednesday, August 12, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Monday, August 10, 1987 at 10:00 a.m.

PLACE: Room 117, 701 E Street NW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints:
   1. Drill Indexes (Docket Number 1405).
   2. Toggle Clamps for Clamping, Fixturing, Processing, Original Equipment Manufacturing (Docket Number 1406).
5. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523-0161.

Kenneth R. Mason,

Secretary.

July 31, 1987.

[FR Doc. 87-18413 Filed 8-7-87; 4:28 pm]

BILLING CODE 7020-02-M

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Wednesday, August 19, 1987 at 10:00 a.m.

PLACE: Room 117, 701 E Street, NW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints:
   Certain Nonwoven Gas Filter Elements (Docket Number 1411).
5. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

Kenneth R. Mason,

Secretary.

August 4, 1987.

[FR Doc. 87-18414 Filed 8-7-87; 4:28 pm]

BILLING CODE 7020-02-M

NATIONAL SCIENCE BOARD

DATE AND TIME: August 21, 1987—

8:30 a.m. Closed Session
8:45 a.m. Open Session

PLACE: National Science Foundation Washington, D.C.

STATUS:

Most of this meeting will be open to the public.
Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED AUGUST 21:

Closed Session (8:30-8:45 a.m.)

1. Minutes—June 1987 Meeting
2. NSB and NSF Staff Nominees
3. Grants, Contracts, and Programs

Open Session (8:45-11:30 a.m.)

4. Grants, Contracts and Programs
5. Chairman's Report
6. Minutes—June 1987 Meeting
7. Director's Report
8. Fiscal Year 1989 NSF Budget
9. Presentation on Supernova 1987A
10. Other Business

Thomas Ubois,

Executive Officer.

[FR Doc. 87-18482 Filed 8-10-87; 1:10 pm]

BILLING CODE 7555-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Tuesday, August 18, 1987.

PLACE: Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Marine Accident Report—Fires on Board the Panamanian Tankship SHOUN VANGUARD and the U.S. Tank Barge HOLLYWOOD 3013, Deer Park, Texas, October 7, 1986.
2. Reconsideration of Probable Cause: Marine Accident Report—Near Capsizing of the Charter Passenger Vessel MERRY JANE Bodega, California, February 8, 1986.

FOR MORE INFORMATION CONTACT: Bea Hardesty, Federal Register Liaison Officer.

Bea Hardesty,

Federal Register Liaison Officer.

August 7, 1987.

[FR Doc. 87-18444 Filed 8-10-87; 10:36 am]

BILLING CODE 7533-01-M

Corrections

Federal Register
Vol. 52, No. 155
Wednesday, August 12, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 795

[OPTS-42068A; FRL 3205-9]

Solid Waste Chemicals; Proposed Test Rule

Correction

In proposed rule document 87-12107 beginning on page 20336 in the issue of Friday, May 29, 1987, make the following corrections:

§ 795.54 [Corrected]

1. On page 20354, in § 795.54(b)(1)(iii), in the second column, in the seventh line from the top, "obtaining" should read "obtained".

2. On page 20355, in § 795.54(c)(1)(i), in the second column, in the second line, "$^{14}CO_4$" should read "$^{14}CH_4$".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

[Program Announcement No. 13670-871]

National Resource Center on Child Sexual Abuse

Correction

In notice document 87-17751 beginning on page 29150 in the issue of Wednesday, August 5, 1987, make the following correction:

On page 29153, in the second column, in the 11th line the date should read "July 20, 1987".

BILLING CODE 1505-01-D

UNITED STATES INFORMATION AGENCY

1988-89 Fulbright Teacher Exchange Program

Correction

In notice document 87-17150 appearing on page 28414 in the issue of Wednesday, July 29, 1987, make the following correction:

In the second column, in the fifth complete paragraph, the telephone number in the last two lines should read "(202) 485-2555".

BILLING CODE 1505-01-D

federal register

Wednesday
August 12, 1987

Part II

Environmental Protection Agency

40 CFR Part 268

Hazardous Waste Management System; Land Disposal Restrictions; California List Constituents; Notice of Availability and Request for Comments

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 268

[SWH-FRL-3240-6]

Hazardous Waste Management System; Land Disposal Restrictions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Data Availability and Request for Comment.

SUMMARY: The Environmental Protection Agency is today presenting data and information relating to issues initially noticed for public comment in the December 11, 1986 "California list" land disposal restrictions proposal (51 FR 44714). This information relates to the issues of whether or not to lower the prohibition levels for California list metal-bearing and cyanide-containing wastes, what the lower prohibition levels might be, what treatment standard would be appropriate for these wastes, and whether sufficient national capacity exists to treat these wastes to achieve such standards. This notice provides treatment data corroborating that existing treatment technologies can achieve the suggested prohibition levels for California list metal and cyanide wastes. In addition, the notice includes estimates on the volume of metal and cyanide wastes that would require alternative treatment capacity, and requests additional data and comments on the volumes of wastes that would be affected if EPA lowers the prohibition levels. Furthermore, the Agency is seeking comment on existing treatment capacity and on the time needed to develop new capacity.

This action relates to the requirements of section 3004(d) of the Resource Conservation and Recovery Act (RCRA) which directs EPA to substitute more stringent concentration levels where necessary to protect human health and the environment. The information and comments we receive will be used to aid the Agency in developing final regulations to implement land disposal prohibitions for California list metal and cyanide wastes.

Today's notice also solicits comment on the issue of appropriate pocedures for processing requests for § 268.44 variances from the treatment standard.

DATE: Comments on this notice of data availability and request for comment must be received on or before October 13, 1987.

ADDRESSES: The public must send an original and two copies of their comments to EPA RCRA Docket (S-212), Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Place the Docket Number F-87-LDR6-FFFFF on your comments. The OSW docket is located at: EPA RCRA Docket (LG-100) 401 M Street, SW., Washington, DC 20460. The docket is open from 9:00 a.m. to 4:00 p.m. Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials. Call at 475-9327 for appointments. The public may copy a maxium of 50 pages of material from any one regulatory docket at no cost. Additional copies cost $.20/page.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact the RCRA Hotline, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (800) 424-9346 (toll free) or (202) 382-3000 in the Washington, DC metropolitan area.

For information on specific aspects of this notice, contact: William B. Fortune, or Stephen R. Weil, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-4770.

SUPPLEMENTARY INFORMATION:

I. Background

On December 11, 1986 (51 FR 44714), the Agency proposed to codify the statutory levels for the California list wastes as set forth in section 3004(d) of the Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act (RCRA). In this proposal, the Agency also requested comments and data on an alternative approach that would support lowering the restriction levels for those metals for which Extraction Procedure (EP) toxicity characteristic levels exist. In addition, the Agency requested comment on whether the statutory levels should be lowered for hazardous wastes containing the constituents (nickel, thallium, and cyanides) not covered by the EP toxicity characteristic. 51 FR 44722.

Most of the comments submitted in response to the proposed rule supported codifying the statutory levels, particularly for metal-bearing wastes. These commenters indicated that EPA should not lower the prohibition levels unless it can be demonstrated that the statutory limits are not protective of human health and the environment. Commenters asserted that prohibiting the California list metals at EP toxicity levels (levels at which wastes cannot be managed in Subtitle D facilities) would indicate that Subtitle C landfills do not provide additional protection beyond Subtitle D landfills.

A number of commenters, however, urged the Agency to substitute more stringent prohibition levels for California list metal-bearing wastes. The commenters asserted that the statutory levels are 10,000 times the National Interim Primary Drinking Water Standards (NIPDWS), and as such, are not protective of human health and the environment. The commenters further claim that the affected units receiving these wastes are, at least in some cases, unlined surface impoundments (liquids cannot be disposed in landfills) which are not significantly more protective than Subtitle D facilities. Several of these commenters stated that EPA has available data that support setting lower levels (e.g., data in delisting petition files). They also asserted that it is technologically possible to treat metal-bearing wastes to lower levels, and further, that there is substantial unused capacity for treatment of both metal- and cyanide-bearing California list wastes.

In today's notice, the Agency is requesting further comment on lowering the statutory levels for the liquid hazardous wastes containing the California list metals to levels 100 times the NIPDWS in the filtrate of these wastes (*i.e.*, levels found in the liquid portion by running the Paint Filter Liquids Test), and is providing more information on the substantive basis for such a decision. The Agency also is making available data that could support prohibition levels for nickel, thallium, and cyanide, for which no drinking water standards exist. Should the Agency promulgate prohibitions based on these findings, it would also be necessary to promulgate treatment standards under RCRA section 3004(m). Therefore, the Agency is also presenting data that indicates that metal-bearing and cyanide-containing California list wastes can be treated to achieve the EP or analogous levels (for those constituents for which there are no EP toxicity levels). In addition, the Agency is seeking comment on available alternative treatment and volumes of wastes that could be affected should the Agency finalize a rule lowering prohibition levels and establishing treatment standards.

II. Establishing More Stringent Concentration Levels

A. Rationale for Lowering the Prohibition Levels

Section 3004(d)(2) of RCRA indicates that EPA "shall substitute more stringent concentration levels" for those in the statute "when necessary to protect human health and the environment". As mentioned earlier, the Agency proposed to codify the statutory levels, and at the same time solicited comment on whether it should substitute more stringent concentration levels. 51 FR 44718.

Some commenters suggested that EPA has to make a quantified demonstration that the statutory levels are not protective in order to lower the levels. As indicated in the December 11, 1986 proposed rule (51 FR 44718), the statute and legislative history suggest that the decision in many ways is as much a question of policy as a question of fact. The levels in the California list were adopted essentially for reasons of administrative convenience H. Rep. No. 198, 98th Cong., 1st Sess., 35 (1983). The legislative history states that:

> [T]hese hazardous wastes and specified concentration levels were selected primarily because the State of California has conducted a rulemaking procedure and begun implementing restrictions on these wastes. The specified concentration levels—10,000 times the Interim Primary Drinking water Standards—are a conservative starting point for the analysis. The specified concentrations are not intended to be binding on the Agency. (S. Rep. No. 284 at 17)

The legislative history further expresses concerns that the statutory levels are too high, and authorizes the Agency to substitute more stringent levels, when deemed necessary. This language suggests that the decision in some ways involves the choice of a starting point, largely a policy choice. The Senate report indeed emphasizes (in the context of making any land disposal restriction determinations) the Agency's general discretion to prohibit hazardous wastes:

> [T]he Agency should not start from the point of having to justify the imposition of a land disposal restriction. The presumption is that land disposal is the least preferred management method. This makes the Agency's decision far simpler than if the Act were neutral as to different management options. The Agency should not start from an assumption that it must begin a new research effort or regulatory analysis before any determinations can be made. (S. Rep. No. 284 at 18)

Not only does section 3004(d) clearly allow the Agency to substitute more stringent levels, but a further indication in the statutory structure confirming the Agency's discretion to do so is that any such decision could be characterized as an action taken under the independent authority of section 3004(g). Such a decision—an Agency choice of the order in which to implement its delegated authority—is largely discretionary. In any case, the existence of the overlap with section 3004(g) indicates that disputes over the Agency's choice in lowering levels is in many ways a semantic battle over the means used to achieve the result, a situation where there is particular deference afforded to the Agency's choice. *CMA* v. *NRDC*, 105 S.Ct. 1105, 1112 (1985).

In consideration of this statutory language and legislative history, the Agency requested comment on lowering the statutory levels to the EP toxicity characteristic or similar levels (which are 100 times the NIPDWS or analogous levels as opposed to 10,000 times these concentrations). 51 FR 44716. Furthermore, a change in these levels is supported by the statutory findings of the inherent uncertainties and lack of safety of land disposal (see RCRA sections 1002(b)(7) and 3004(d)(1)(A)), and that the only land disposal units that can receive untreated prohibited waste and be deemed protective of human health and the environment for purposes of the land disposal restrictions program are those satisfying the statutory "no migration" standard (section 3004(d)(1)). When one further considers that these constituents are highly mobile (since they are contained in liquids), indefinitely persistent (except for cyanides), and very toxic (see section 3004(d)(1)(c)), it appears that the statutory prohibition levels require further evaluation.

Commenters on the December 11, 1986 proposed rule stated that more stringent levels are needed to protect human health and the environment. Their reasoning was that, as liquids, these wastes would be managed in surface impoundments since there are already prohibitions on the disposal of liquids in landfills (a statutory provision under RCRA section 3004(c), codified on July 15, 1985, prohibits the placement of bulk or non-containerized liquid hazardous waste or free liquids contained in hazardous waste in any landfill). Surface impoundments generally pose a greater potential for migration out of a unit than do other land disposal units because of the higher liquid head and larger volume of liquids within these units. Moreover, many currently operating interim status surface impoundments are unlined or inadequately lined and thus, the potential for downward seepage of contaminated fluids into ground water is high. A modeling analyses used to evaluate the benefits of proposed leak detection requirements indicated that dissolved constituents can be released at relatively high rates from unlined surface impoundments (May 29, 1987; 52 FR 20270). Of course, there are many cases of ground water contamination resulting from management of waste in surface impoundments that lack proper design and operation. Given the fact that these wastes will often be disposed of in unlined or inadequately lined hazardous waste impoundments, the Agency believes it is appropriate to evaluate whether such disposal at the statutory concentration levels would be protective of human health and the environment.

Release of contaminants in high concentrations could result in human exposure far in excess of health-based levels. The generic land disposal and ground water transport models utilized by the Agency to make policy decisions and for regulatory purposes (e.g., EP model, May 19, 1980, 45 FR 33110; Vertical and Horizontal Spread (VHS) model, November 27, 1985, 50 FR 48886) employ dilution/attenuation factors that estimate the reduction in concentration that would occur as toxicants are transported in ground water from a disposal unit to the point of exposure. The predicted degree of attenuation and dilution is insufficiant to prevent exposure to high levels of contaminants.

For the above reasons, the Agency believes that disposal at the statutory levels could result in migration of hazardous constituents from land disposal units that is not protective of human health and the environment. Under such circumstances, the commenter argue that the Agency's obligation is to substitute more stringent concentration levels. The Agency solicits comment on this tentative conclusion.

B. Suggested Prohibition Levels

In the December 11, 1986 proposed rule, the Agency solicited comment on lowering the statutory levels for those metals for which EP toxicity levels exist and on whether the statutory levels should be lowered for wastes other than those for which EP levels are established. 51 FR 44716 (see also 51 FR 44718). The Agency is considering promulgating prohibitions on the California list metal and cyanide wastes at levels 100 times the NIPDWS (or the analogue, in the case of nickel, thallium, and cyanide) and is today making available data to support these earlier statements. These levels are similar (or in the case of true liquids, identical) to

the current EP toxicity concentrations. Liquid wastes that exceed these concentration levels are defined as hazardous and, therefore, are prohibited from disposal in a sanitary landfil or other type of Subtitle D facility. Most commenters who urged the Agency to lower the prohibition levels favored this alternative. For the California list pollutants for which there is no NIPDWS, namely nickel, thallium, and cyanides, levels at 100 times a minimum health level would also be appropriate. 51 FR 44722. [See section III which discusses appropriate minimum health levels for these contaminants.] The Agency, therefore, is contemplating an approach whereby California list hazardous waste containing greater than 100 times the NIPDWS (or 100 times health based levels for nickel, thallium and cyanides) would be considered prohibited from land disposal (until pretreated, disposed of in a "no migration" unit, or granted a variance) [See Table 1].

In taking this position, EPA again does not believe that the statute requires a hard-and-fast quantification that substituted levels are needed to protect human health and the environment. This is because Congress has already determined that, for purposes of the land disposal restrictions program, disposal of untreated hazardous waste is only protective in "no migration" units. Congress also structured the Act in such a way that any substantial levels could be characterized as a section 3004(g) rule justifiable by reference to the factors in section 3004(g)(2), which do not require quantified showings. Rather, what is involvied is a determination of an appropriate regulatory starting point. The Agency's tentative view is that given the high degree of toxicity and highly mobile form of the California list metals and cyanides, it may be necessary to prohibit these wastes at concentration levels which normally define liquid waste containing these constituents as hazardous.

California list cyanide and metal waste must be liquids, or contain free liquids. EPA has interpreted this statutory language to mean that the waste must fail the Paint Filter Liquids Test (PFLT), and that in determining if such a liquid waste is prohibited, one measures the constituent concentration level in the filtrate from the waste. 52 FR 25765. EPA is contemplating using this same approach for purposes of determining compliance with lower prohibition levels (since the Agency is construing the same statutory language). The Agency is not defining prohibition levels by reference to concentration levels in the EP extract from these wastes. In addition, commenters to the proposed rule urged the agency to avoid use of a simulated leach test (in the case of the proposal, the Toxicity Characteristic Leaching Procedure) to determine if a waste was prohibited. On the one hand many commenters felt such a test inappropriate because it did not suitably model all environmental conditions. Other commenters believed the test is insufficiently aggressive because of a dilution feature incorporated in the test protocol, which is also part of the EP toxicity test. Although the Agency does not necessarily agree with these commenters, they do point up reasons why use of an extraction feature in determining which wastes are prohibited might not represent a reasonable regulatory starting point.

TABLE 1.—HEALTH-BASED LEVELS AND SUGGESTED PROHIBITION LEVELS FOR CALIFORNIA LIST METALS AND CYANIDES (MG/L)

Constituent	NIPDWS	Alternative health-based level *	Suggested prohibition level (in PFLT filtrate)
Arsenic	0.05	–	5.0
Cadmium	0.010	–	1.0
Chromium	0.05	–	5.0
Lead	0.05	–	5.0
Mercury	0.002	–	0.2
Nickel	–	0.5	50.0
Selenium	0.01	–	1.0
Thallium	–	0.009	0.9
Cyanide	–	0.2	20.0

* These levels represent Reference Dose (RfD) values which are based upon data presented in Section III.

III. Proposed Health-Based Levels for Nickel, Thallium, and Cyanide

Today's notice outlines a possible Agency approach with respect to lowering the prohibition levels for California list liquid hazardous wastes containing metals and cyanides to a concentration that equals 100 times the National Interim Primary Drinking Water Standards (NIPDWS). NIPDWS exist for all these constituents identified in these California list waste streams, except nickel, thallium and cyanide.

In the absence of NIPDWS for nickel and thallium, the Agency indicated on December 11, 1986 (51 FR 44722) that, by analogy, one approach would be to use a level that is 100 times less than the statutory requirements. The statutory levels for nickel and thallium had been developed by multiplying the Ambient Water Quality Criteria (AWQC) for these constituents by a factor of 10,000 (the apparent rationale used by the State of California). The AWQC, however, are guidance numbers and not enforceable standards like the NIPDWS. Hence, prohibition levels developed which are based on these criteria may not be protective of human health. In today's notice, the Agency considers using a level that is 100 times a health-based number, known as a Reference Dose. This section makes available results from studies considered in developing the Reference Dose values for these constituents. Copies of the studies discussed in this section are available for inspection in the public docket.

A Reference Dose (RfD) is an estimate (with an uncertainty of one order of magnitude or more) of a lifetime daily dose of a substance which is likely to be without significant risk to human populations. The RfD is estimated by dividing the highest test does of a substance which causes no adverse effect (NOAEL: No observed adverse effect level) in appropriately conducted animal studies (human studies may also be used if appropriate) by a scaling factor (uncertainty factor) that converts an apparently safe daily dose for laboratory animals to a presumed safe daily dose for humans. The RfD may also be derived from the lowest observed adverse effect level (LOAEL) in a similar manner. The RfDs would represent the minimum health level upon which prohibition concentrations for nickel, thallium and cyanide could be based.

A. Nickel

1. Reference Dose Determination

The Agency has not established a drinking water standard for nickel at the present time. However, the Agency has developed a lifetime Health Advisory based on a NOAEL of 5mg/kg/day from a 2-year rat feeding study (Ambrose et al., 1976). Health Advisories are not legally enforceable Federal standards, but are useful as informal guidance for protecting public health in cases of emergency spills or contamination situations. In the Ambrose et al. study (1976), rats were fed a diet containing 0, 100, 1000, or 2500 ppm nickel sulfate (0, 5, 50, or 125 mg/kg/day) for 2 years. Body weights were reduced significantly in both male and female rats fed 2,500 ppm nickel ($p < 0.05$) when compared to the controls. At 1000 ppm, body weights were also reduced in both sexes. Heart-to-body weight ratios were significantly

higher and liver-to-body weight ratios significantly lower ($p < 0.05$) in the 1000 and 2500 ppm groups. No significant effects were reported at 100 ppm (5mg/kg/day). Therefore, the NOAEL identified in this study was 5 mg/kg/day (100 ppm). In this study, rat survival was poor, particularly in control rats of both sexes (44/50); this raises some concern about the interpretation of the results. However, a subchronic study by American Biogenics Corp. (ABC, 1986) also found 5mg/kg/day to be a NOAEL which supports the chronic NOAEL (Ambrose et al., 1976).

In addition to the above rat chronic feeding study, there are other chronic studies available in mice, rats and dogs. In the chronic study in mice (Schroeder et al., 1964), where animals were fed a diet devoid of cadmium and low in other elements, no significant effects were observed at 5 ppm (0.85mg/Ni/Kg/day) nickel in drinking water. In the study with rats (Schroeder et al., 1974), 5 ppm nickel (0.41 mg/kg/day) in drinking water for life led to a significant reduction in body weight of both male and female rats compared to controls; life span was not affected but histopathology revealed an increased incidence ($p < 0.025$) of focal myocardial fibrosis (13.3%) in the experimental group compared to the control. However, results of both the above studies are difficult to interpret because the studies used single doses and also because the diets were deficient in other essential minerals. In the 2-year dog study (Ambrose et al., 1976), in which animals were fed a diet containing 0, 100, 1000 or 2500 ppm nickel (0, 3, 29 or 70 mg/kg/day), the NOAEL identified was 29 mg/kg/day (1000 ppm) based on decreased body and liver weights.

Nickel has also been tested for its reproductive toxicity. In the 3-generation rat reproduction study (Ambrose et al., 1976), rats fed a diet containing 0, 250, 500 or 1000 ppm nickel sulfate (0, 12.5, 25 or 50 mg/kg/day) showed increased stillbirths in the first generation, and decreased pup body weight at 50 mg/kg/day (1000 ppm). Increased stillbirths were also observed in the control group. This study had some statistical design limitations, such as small sample size with the use of pups rather than litters as the unit for comparison. Also, the fact that nickel was administered in the diet caused problems when applying these data to drinking water situations. Schroeder et al., (1971) reported a 3-generation reproduction study in rats administered 5 ppm nickel in drinking water (0.43 mg/kg/day). In this study, neonatal mortality was increased significantly ($p < 0.025$) in all generations of exposed rats compared to controls; the number of runts were increased significantly in the first (F_1) ($p < 0.025$) and third (F_3) ($p < 0.0001$) generations. Average litter size was reduced somewhat in the F_3 generation. The results of this study, however, are difficult to interpret because only 5 pairs of animals were used for mating and the diet was found deficient in trace essential metals (in particular the essential element chromium). Also the results of this study are not reproducible.

Because of the various problems with the available nickel studies (as mentioned earlier), the Agency conducted two studies to determine the effects of nickel on rats. The first study was a 2-generation reproduction study in rats (RT1, 1987) which included a 90-day subchronic non-breeder satellite group. The second was a subchronic gavage study in rats (ABC, 1986).

In the 2-generation reproduction study (RTI, 1987), nickel chloride was administered in drinking water to male and female CD rats (30/sex/group) at dose levels of 0, 50, 250 and 500 ppm (0, 7.3, 30.8, and 51.6 mg/kg/day, estimated) for 90 days prior to breeding. (Ten rats/sex/group comprised a satellite subchronic non-breeder group.) At the 500 ppm dose level there was a significant decrease in the Po maternal body weight along with absolute and relative liver weights. No adverse effect was noted at the 250 ppm level or lower for the Po breeders of the non-breeder satellite. Histopathology was performed on liver, kidney, lung, adrenals, pituitary and reproductive organs to make this assessment.

In the F1a generation (postnatal days 1–4) at the 500 ppm dose level, the number of live pups/litter was significantly decreased, pup mortality was significantly increased, and average pup body weight was significantly decreased in comparison with controls. Similar effects were seen in F1b litters of Po dams exposed to 500 ppm nickel. In the F1b litters of the 50 and 250 ppm dose groups, increased pup mortality and decreased live litter size was seen. However, these effects seen with F1b litters are questionable because the room temperature tended to be 10°F higher than normal at certain times (gestation-postnatal days) along with much lower levels of humidity. As evidenced in the literature, temperatures which are 10°F above the normal during fetal development, cause adverse effects (Edwards, 1986). Therefore, the above results seen at the 50 and 250 ppm dose cannot be considered as genuine adverse effects.

F1b males and females were randomly mated on postnatal day 70 and their offspring (F2a and F2b) were evaluated through postnatal day 21. This phase included teratological evaluations of F2b fetuses. Evaluation of the data indicated that the 500 ppm nickel dose caused significant body weight depression of both mothers and pups, and increased neonatal mortality during the postnatal development. The intermediate dose, 250 ppm nickel, produced transient depression of maternal weight gain and water intake during gestation of the F2b litters. The 50 ppm nickel caused a significant increase in short ribs (11%). However, since this effect was not seen in the two higher dose groups, the reported incidence of short ribs in the 50 ppm group is not considered to be of biological significance.

In the subchronic study (ABC, 1986), nickel chloride in water (0, 5, 35 and 100 mg/kg/day) was administered by gavage to both male and female CD rats (30 animals/sex/group). The data generated in this study included clinical pathology, ophthalmological evaluations, serum biochemistry, body and organ weight changes and histopathological evaluations of selected organs (heart, kidney, liver).

Clinical signs of toxicity, such as lethargy ataxia, irregular breathing, cool body temperature, salivation and discolored extremities, were seen primarily in the 100 mg/kg group; these signs were less severe in animals of the 35 mg/kg group. The 5 mg/kg groups did not show any significant clinical signs of toxicity. Also, there was 100% mortality in the high-dose group; 6/30 males and 8/30 females died in the mid-dose group (35 mg/kg/day). Histopathological evaluation indicated that 3/6 dead males and 5/8 dead females were due to gavage errors. Body weight and food consumption values were consistently lower than controls for the 35 and 100 mg/kg dosed males. Female rats in both high-dose groups had lower body weights than controls but food consumption was unaffected by the test article. At sacrifice, kidney, liver and spleen weights for 35 mg/kg treated males and right kidney weights for 35 mg/kg treated females were significantly lower than controls. Based on the results obtained in this study, the 5 mg/kg/day nickel dose was a NOAEL, whereas the 35 mg/kg/day was a LOAEL for decreased body and organ weights.

Thus, it can be seen that the chronic NOAEL of 5 mg/kg/day derived from the Ambrose et. al. (1976) study is

supported by the subchronic study by ABC, 1986. Using this chronic NOAEL of 5 mg/kg/day, in uncertainty factor of 100 (10 for the uncertainty in the interspecies conversion and 10 for uncertainty in the sensitive human subpopulations) and a modifying factor of 3, the RfD calculated is 0.02 mg/kg/day (the modifying factor is another uncertainty factor, the size of which depends on the assessment of scientific issues not explicitly addressed by the conventional uncertainty factors). The modifying factor of 3 is used because of inadequacies in the reproductive studies (RTI, 1987; Ambrose et. al. 1976). During the gestation and postnatal development of F1b litters in the RTI (1987) study, temperatures were about 10 °F higher than normal at certain times which makes evaluation of this part of the reproductive study impossible. In the Ambrose et. al. (1976) study, there were some statistical design limitations, such as small sample size and use of pups rather than litters as the unit for comparison.

Based on the above RfD of 0.02 mg/kg/day, the concentration of nickel per liter of water consumed by an adult weighing 70 kg and drinking 2L water per day is 0.7 mg/L. This assumes that 100% of the exposure for nickel is via drinking water. However, it has been shown that the nickel intake from diet is between 350–500 ug/day. Therefore, the Agency apportioned the reference dose assuming an average intake of 400 ug/day from diet. The resulting concentration of nickel in drinking water would be 0.5 mg/L.

2. Proposed health-based prohibition level

Based on the above apportioned RfD of 0.5 mg/L, the Agency would consider promulgating a health-based prohibition level for nickel of 50 mg/L in the filtrate from a waste. This value is derived using the assumptions discussed in the May 19, 1986, FR notice (45 FR 33119) which promulgated the Extraction Procedure Toxicity Characteristic.

B. Thallium

1. Reference Dose Determination

There is no drinking water standard for thallium at the present time. The Agency's Reference Dose Workgroup had verified RfDs for various thallium compounds which ranged from 4×10^{-4} $\times 10^{-4}$ mg/kg/day.The RfDs were based on a study by Downs et. al, (1960) in which rats were fed diets containing varying concentrations of thallium acetate for 15 weeks. The NOAEL (No Observed Adverse Effect Level) for thallium indentified in this study was 5 ppm (0.39 mg/kg/day) based on alopecia and increase in kidney weght.

The above study, however, was not adequately performed. There were too few animals per dose group, mortality was very high—100% in the 50 ppm group by week 5, 100% in the 30 ppm group by week 9, and 40% in the control group by week 15, which made interpretation of survival in remaining dose groups difficult. At the 15 ppm level the mortality was ⅘ males and ⅕ females and at the 5 ppm level (the NOAEL) ⅘ males and ⅘ females. The Agency, therefore, had thallium sulfate tested in a rat subchronic study by the Midwest Research Institute (1986). This study was carried out according to the EPA Toxic Substances Control Act (TSCA) Toxicity Testing Guidelines (40 CFR 798.2650) and is available for review in the docket to this rulemaking. In this study, Sprague-Dawley rats (20/sex/group) were treated by gavage with an aqueous solution of thallium acetate at concentrations of 0, 0.01, 0.05 or 0.25 mg/kg/day. The NOAEL identified in this study is 0.25 mg/kg/day. Applying an uncertainty factor of 1000 [10 for uncertainty in the subchronic NOAEL (no chronic studies available), 10 for uncertainty in the interspecies coversion and 10 for uncertainty in the sensitive human subpopulations], the RfD is calculated to be 2.5×10^{-4} mg/kg/day. Based on this RfD, the concentration of thallium per liter of water consumed by an adult weighing 70kg and drinking 2L water per day is 0.9×10^{-2} mg/L. This assumes that 100% of the exposure to thallium is via drinking water. The Agency may revise this number if there are relative source contribution data which document human exposure from other sources such as food, air and possibly the occupational environment.

2. Proposed health-based prohibition level

Based on the above RfD of 0.009 mg/L the Agency would consider promulgating a health-based prohibition level for thallium of 0.9 mg/L in the filtrate from a waste. This value is derived using the assumptions discussed in the May 19, 1980, FR notice (45 FR 33119) which promulgated the Extraction Procedure Toxicity Characteristic.

C. Cyanide

1. Reference Dose Determination

There is no drinking water standard for cyanide. The Agency has a life-time health advisory based on a RfD of 0.02 mg/kg/day. The Agency had verified the RfD based on a study by Howard and Hanzel (1955) in which rats were fed diets, for 104 weeks, that had been fumigated with HCN. The average CN concentrations in food were estimated based on the food consumption and body weight. The daily estimated intake of CN was 4.3 and 10.8 mg/kg/day. Using the NOAEL of 10 mg/kg/day, an uncertainty factor of 100 (10 for uncertainty in the interspecies conversion and 10 for uncertainty in the human subpopulations) and a modifying factor of 5 (to account for the apparent tolerance to cyanide when it is digested with food rather than when it is administered by gavage or by drinking water), the RfD calculated was 0.02 mg/kg/day.

The interpretation of data from the Howard and Hanzel (1955) study is difficult because of the route of administration (in the diet rather than in water) and the manner in which the delivered dose was measured (the CN concentration was estimated based on levels measured at the beginning and end of each food preparation period and by assumption of a first-order rate of loss during the intervening period). The Agency, therefore, conducted a subchronic study (IIT Research Institute, 1987), according to the EPA TSCA Toxicity Testing Guidelines (40 CFR 798.2650). The data is available in the docket to this rulemaking.

In this study, Sprague-Dawley rats (20/sex/dose) were administered CuCN in a 1.5% carboxymethylcellulose (CMC) vehicle by gavage at dose levels ninety to of 0, 0.5, 5 15 or 50 mg/kg/day for ninety-three days. The vehicle control group received CMC only. The untreated control group received neither vehicle nor CuCN, but otherwise was handled in a manner similar to that of treatment groups. The NOAEL identified in this study is 5 mg/kg/day based on significant decreases in the body weight and body weight gain, in serum SGOT level, and in organ weights (kidney, spleen and brain). Based on the NOAEL and using an uncertainty factor of 1000 (10 for uncertainty in the subchronic NOAEL, 10 for uncertainty in the interspecies conversion and 10 for uncertainty in the sensitive human subpopulations) the RfD calculated 0.005 mg/kg/day.

Using this RfD, the concentration of cyanide per liter of water consumed by an adult weighing 70 kg and drinking 2L water per day is 0.2 mg/L. This assumes that 100% of the exposure for CN is via drinking water. This number may change if there are relative source contribution data from other sources such as food, air and possible occupational exposure.

2. Proposed health-based prohibition level

Based on the above verified RfD of 0.2 mg/L, the Agency is considering promulgating a health-based prohibition level for cyanide of 20 mg/L in the filtrate from a waste. This value is derived using the assumptions discussed in the May 19, 1980, FR notice (45 FR 33119) which promulgated the Extraction Procedure Toxicity Characteristic.

D. References

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IV. Establishing Treatment Standards For California List Metals and Cyanides

Statutory Basis for Establishing Treatment Standards

Section 3004(m) of RCRA states that "simultaneously with the promulgation of regulations" prohibiting the land disposal of particular hazardous wastes, EPA shall "promulgate regulations specifying those levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized." Therefore, should the Agency promulgate more stringent prohibition levels, it would also have an affirmative responsibility to establish treatment standards for these metal-bearing and cyanide-containing wastes.

V. Treatment Technology Performance Data Analysis

Several commenters on the December 11, 1986 proposed rule stated that California List metal-bearing and cyanide-containing wastes could be treated below the statutory prohibition levels, and a number of them indicated that treatment at least to levels comparable to the EP regulatory levels were achievable for metals. Specifically, these commenters pointed to delisting petitions and Agency studies as sources of data supporting their positions. In addition, one commenter provided treatment data on California List metals.

In response to the above-mentioned comments, the Agency performed a series of treatment performance data analyses. This section presents the Agency's methodology for performing these analyses, all available treatment data, a discussion of its limitations, and the conclusions derived from the data.

A. Data Analysis Methodology

1. Data Compilation

The Agency's initial activity was to identify data sources germane to a re-analysis of waste treatment of metals and cyanides. This activity included (1) analyzing delisting petitions, (2) reviewing petitions submitted subsequent to the original analysis performed for the proposed rule, (3) assessing Agency data collected in support of other regulatory programs, (4) reviewing available literature, and (5) analyzing data contained in comments submitted in response to the proposed rule. The Agency assembled all data on metals and cyanide treatment regardless of whether the wastes involved would have been classified as a California List waste.

Two criteria were used to edit the data. The First editing rule was that the untreated waste concentration in wastewater for the California List metals and cyanide had to be greater than the EP regulatory levels or health-based prohibition levels. Similarly, leachates from untreated wastes other than wastewaters had to have concentrations greater than the EP regulatory levels or health-based prohibition levels. If leachate data were not available for untreated wastes other than wastewater, the untreated waste concentration for the various metals and cyanide had to be greater than 20 times the EP regulatory levels or health-based prohibition levels. This second editing rule reflects the inherent dilution factor of the EP Toxicity (or TCLP) test. For example, if a raw sludge contained 800 mg/kg of nickel, the EP Toxicity test leachate would have a maximum value of 40 mg/l (or 1/20 of the value of the original composition). The 40 mg/l value assumes no treatment and 100 percent leaching of nickel from the waste. The two editing rules were necessary to ensure that all data evaluated are appropriate for making a determination of whether a waste can be treated to a particular level. It is important to note that for most of the delisting data, leachate values were not available for the untreated wastes; in these cases, EPA included the raw waste and treated waste data set provided that the untreated waste concentration was more than 20 times the EP regulatory levels or health-based prohibition levels.

2. Data Analysis

For each treatment data point, the Agency assessed the specific waste characteristic data that would affect the performance of the technology used to treat the waste. Additionally, the Agency analyzed the pertinent design and operating data associated with the performance of the treatment technology. The specific parameters the Agency included in its analysis can be found in the Applicable Technologies, Section V(B).

The Agency notes that in analyzing these data, it is unable to use the methodology for deriving BDAT levels outlined in the November 7, 1986 solvent rule (51 FR 40590–592). This methodology presupposes a data set from treating relatively well-defined waste treatability groups. California List wastes, however, area a much more diverse set or wastes, containing numerous potential waste treatability groups (51 FR 44727, December 11, 1986).

EPA is not able to establish discrete treatability groups at this time for California List wastes, and consequently is unable to use the November 7 methodology in analyzing these data. Nor is the Agency using these data to derive treatment levels. The data are instead being used as a means of corroborating the Agency's engineering judgment and commenters' assertions that treatment standards reflecting EP regulatory levels (or comparable levels for nickel, thallium, and cyanides) are achieveable.

As additional data are developed for individual metal and cyanide waste streams, the Agency will revise these prohibition levels accordingly. This could be done either pursuant to Section 3004(g) authority, or possibly through analysis of data and other information submitted in response to this notice. Thus, treatment standards under consideration in this notice will serve as an interim measue until EPA re-evaluates these wastes according to the final schedule for land disposal restrictions which was promulgated on May 28, 1986 (51 FR 19300). Should EPA issue a final rule establishing the types of treatment standards discussed here, the Agency would thus characterize its action as a type of interim BDAT (i.e., a treatment standard, in the Agency's judgment, attainable for a very wide spectrum of California List wastes but subject to later reevaluation as individual waste treatability groups and treatment performance on such treatability groups become better defined).

Finally, the Agency notes that the treatment standards under consideration for metal-bearing and cyanide-containing wastes most likely would be expressed as either concentrations in the waste or treated residue using the EP toxicity test or the Toxicity Characteristic Leaching Procedure (TCLP). The Agency's use of the EP toxicity test for purposes of determining compliance will the treatment standards would be consistent with the analytical methodology used for the data that the Agency is examining and noticing for comment. An alternative approach would be to consider use of the TCLP (Appendix I to Part 268-Land Disposal Restrictions; 51 FR 40572, November 7, 1986). Currently, the Agency is reviewing the TCLP to determine if it produces results for these wastes that approximate those from the EP toxicity test. The Agency is requesting comment on the applicability of these possible approaches for purposes of determining compliance with the treatment standards.

B. Applicable Technologies

This section describes the technology and its application, the chemical/physical mechanisms by which treatment is accomplished, the various waste characteristics that affect treatment, and finally the design and operating parameters that are important in optimizing treatment of a particular waste.

The technologies presented below are the technologies that we believe are most applicable to the treatment of California List metals and cyanide. They are: chemical precipitation, stabilization, chromium reduction, cyanide oxidation, high temperature metal recovery, filtration, sludge dewatering, and ion exchange.

1. Chemical Precipitation

a. *Description and Applicability.* Chemical precipitation refers to both the primary step of forming a chemical precipitate and follow-up operations that separate the solid precipitate from the liquid. Equipment required to operate a chemical precipitation system includes the following: a stirred reaction tank, feed systems to introduce treatment chemicals and/or flocculant aids, a settling tank or clarifier, and possibly filtration or centrifugation equipment.

The chemical precipitation treatment technology can be applied to a wide range of wastewaters that contain California List metal wastes.

b. *Basic Principle of Operation.* The basic operating principle of this technology is to chemically convert metal compounds from a soluble to an insoluble form and then to remove the precipitate by settling or other physical separation.

The principal chemicals used to convert soluble metal compounds to the insoluble form are lime ($Ca(OH)_2$), caustic (NaOH), sodium sulfide (Na_2S), and, to a lesser extent, soda ash (Na_2CO_3) and ferrous sulfide (FeS). Removal of the chemical precipitate is generally accomplished by gravity settling, clarification, and/or filtration.

c. *Waste Characteristics Affecting Performance.* The level of metals removal achieved by chemical precipitation treatment may depend on a number of waste characteristics, which include:

- The valence state of the metal;
- Other metals present in the waste;
- Whether the metal exists as a complex;
- High concentrations of dissolved inorganic solids in solution (i.e., salinity);
- Presence of oil and grease in the waste; and the
- Presence of surfactants in the waste.

As shown in Figure 1, for many metals there is a specific pH at which the metal is least soluble (other waste characteristics including temperature and pressure being equal). Also, many metals are amphoteric, meaning that there are both lower and higher pH values at which the metal is more soluble. As a result, when metals are mixed, it is not possible to operate a treatment system at a single pH value that is optimum for all metal removals. Certainly, improved treatment can result from multiple precipitations at a number of pH settings, but it may still be difficult with some combinations of metals and associated concentrations to achieve close to optimum performance.

BILLING CODE 6560-50-M

Solubility (mg/l)

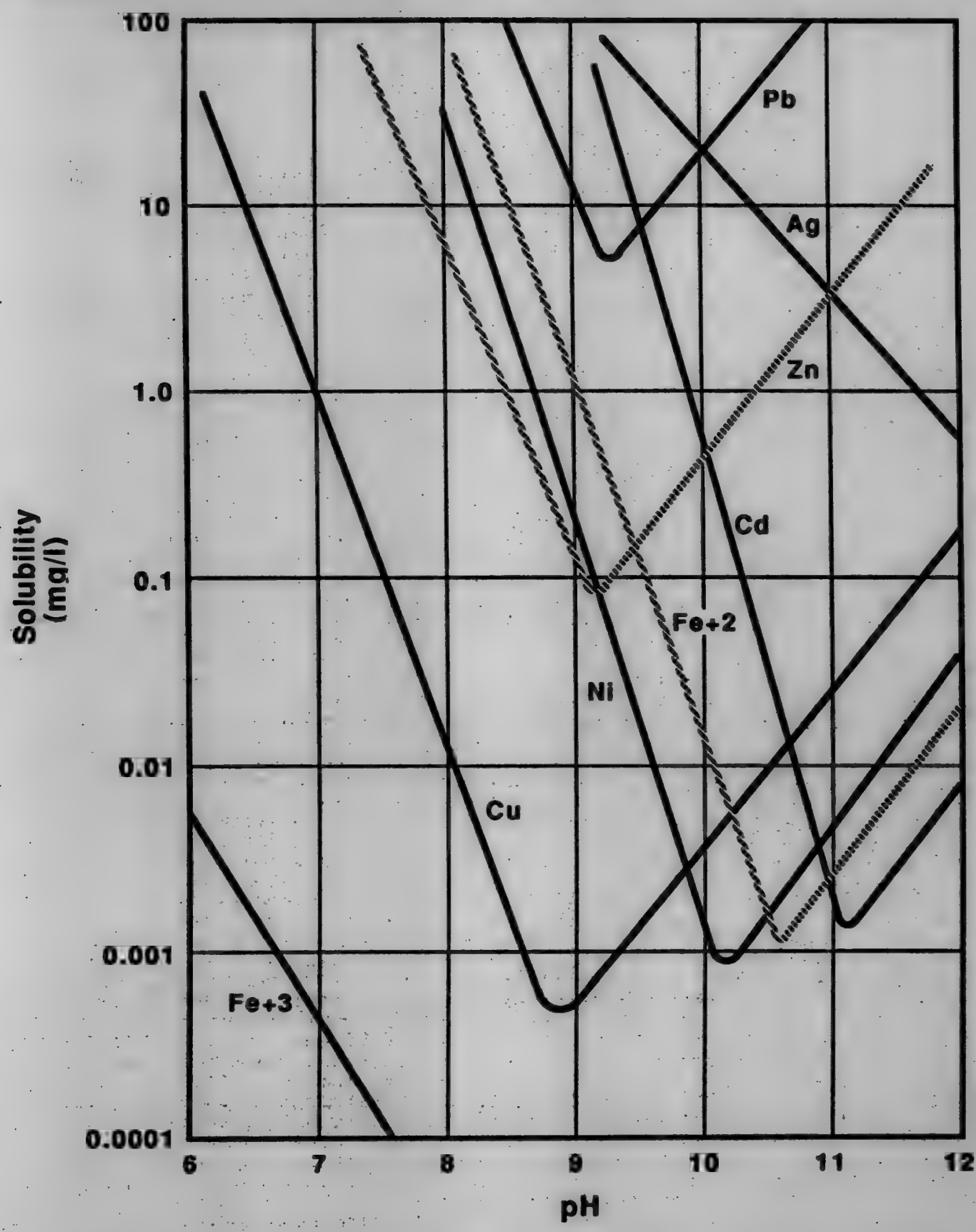

Figure 1. Solubilities of Metal Hydroxides as a Function of pH

BILLING CODE 6560-50-C

Metal complexes consist of a central metal ion surrounded by a group of other organic or inorganic ions or molecules. Examples of complexing molecules are ammonia, amines, methanol, and EDTA. The presence of complexing ions or molecules in solution will generally increase the solubility of a metal by reducing the chemical potential of the free metal ions to combine with precipitating anions such as hydroxide. When metal complexes are present in solution, only a fraction of the total dissolved metal is in free form (i.e., available for the precipitation reaction). Wastes containing complexed metals generally need to be treated at high pH in order to break the complexes and transform the metals to a less-soluble form amenable to chemical precipitation. The degree to which the complexes can be broken may be limited by the equilibrium conditions that exist even at the higher pH.

High concentrations of inorganic dissolved solids may interfere with the precipitation reactions. Higher pH values may be needed to achieve metals removal in these cases.

The presence of oil and grease or surfactants in the waste may also affect the settling characteristics of the solids by creating emulsions that require a long settling time. Removal of these constituents (for example, by thermal emulsion breaking prior to the chemical precipitation step should eliminate this problem.

d. *Design and Operating Parameters Affecting Performance.* The design and operating variables that the Agency evaluates for chemical precipitation systems, to the extent possible, are:

- The specific treatment chemical used to effect precipitation;
- pH;
- Temperature;
- Settling time;
- Feed rate to the settling tank;

and, if filtration is used;

- Pore size; and
- Feed rate to the filter.

(i) The type of reagent is important because these chemicals affect the solubility and settling characteristics of the various precipitated metal compounds.

(ii) The design and control of pH is important because pH is used as a surrogate for reaction completion. In addition, sulfide reagents may cause emission of toxic gases if pH is not properly controlled. In a batch system, control is less difficult than in a continuous system. A continuous system requires a fairly sophisticated automatic control system in order to keep the pH in a relatively narrow range. To the extent possible, the Agency prefers to have continuously recorded data to ensure that the pH is maintained in the proper range during the treatment process.

(iii) Temperature has an effect on the solubility of the chemical precipitate; therefore, the Agency needs to have data on temperature during the treatment process. Unlike pH, the temperature is inherently more stable and data collection can be significantly less frequent. Most chemical precipitation processes are conducted at ambient temperatures.

(iv) Design and control of settling time is important because there are a number of physical parameters that affect how quickly a particle settles. These include the density, shape, and size of the particle.

(v) To ensure that the design settling rate is being maintained during treatment, it is important to have feed rate data.

(vi) Filtration can be used in conjunction with settling or separately. In either case, the Agency needs to know the design pore size and the basis for that determination.

(vii) The Agency also needs data on flow rate to ensure that the operation of the filter is within design specifications during treatment.

2. Stabilization

a. *Description and Applicability.* Stabilization refers to a broad class of treatment processes that physically or chemically reduce the mobility of hazardous constituents in a waste. Other terms that are sometimes used synonymously for stabilization are solidification and fixation. The stabilization treatment system consists of a feed system, a tank equipped with mixing equipment, and a cure area.

This technology has wide application to California List metal wastes. In most instances, the technology is used where the wastes of interest already contain a significant percentage of solids, e.g., metal precipitates in a treatment sludge. Stabilization can be applied to wastewaters.

b. *Underlying Principles of Operation.* The underlying principle of stabilization is the binding of constituents of concern into a solid that is resistant to leaching. The mechanism by which this occurs depends upon the type of stabilization process. Two of the most common are lime/pozzolan-based processes and portland cement-based processes.

In portland cement systems, the waste is mixed in a slurry with anhydrous cement powder, water, and, frequently, pozzolanic additives. The cement powder is a mixture of powdered oxides of calcium, silica, aluminum, and iron produced by kiln burning materials rich in calcium and silica at high temperatures. The major mechanism of stabilization in this system is the formation of hydration products from silicate compounds and water. A calcium silicate hydrate gel forms. This gel then swells and forms the cement matrix composed of interlocking silicate fibrils. At the same time, constituents present in the waste slurry, e.g., hydroxides of calcium and various heavy metals, form the interstices of the cement matrix. Metal ions may also be incorporated into the crystal structure of the cement matrix itself. A rigid mass results from the interlocking fibrils and other components during setting and curing.

Lime/pozzolan processes use the finely divided, noncrystalline silica in pozzolanic material (e.g., fly ash) and the calcium in lime to produce a concrete-like solid of calcium silicate and alumino hydrates. The waste containment is achieved by entrapping the waste in this pozzolan concrete matrix. In actual operation, the waste, water, and a selected pozzolanic material are mixed to a pasty consistency. Hydrated lime is blended into the mixture and the resulting moist material is packed or compressed into a mold and cured over a sufficient time interval.

c. *Waste Characteristics Affecting Performance.* The level of performance for stabilization processes is measured by the amount of constituents that can be leached from the stabilized material. There are two techniques currently recognized by the Agency as measures of leachability. The first is the Extraction Procedure (EP) Toxicity Test (40 CFR 261); the second is the Toxicity Characteristic Leaching Procedure (TCLP) (51 FR 40643, November 7, 1986).

Several waste characteristics affect performance. In the lime/pozzolan system and in the portland cement system, oil, grease, and very fine insoluble materials (i.e., 74×10^{-6} meter particle size) can weaken bonding between waste particles and cement by coating the particles. The presence of certain inoganic compounds (e.g., sodium borate and calcium sulfate) will also interfere with the cementitious reactions, prolonging setting and curing time and weakening bond strenght. Soluble salts of copper, lead, manganese, tin, and zinc may cause large variations in setting and curing time and reduce the dimensional stability of the cured matrix, thereby increasing leachability potential. The presence of certain organic compounds may likewise interfere. In portland

cement systems, large amounts of sulfates will impede setting and react to form calcium sulfoaluminate hydrate, causing swelling and spalling of the stabilized product.

d. *Design and Operating Parameters Affecting Performance.* The design and operating parameters that the Agency evaluates, to the extent possible, are:

- Selection of stabilizing agents and other additives;
- Ratio of waste to stabilizing agents and other additives;
- Mixing; and
- Cure conditions.

(i) The type of stabilizing agent selected and the use of additives will determine the bonding and structure of the stabilized waste solid and, therefore, have an effect on how well waste constituents are incorporated into the solid. Stabilizing agents and other additives must be carefully selected based on the chemical and physical characteristics of the waste to be stabilized. For example, the amount of sulfates in a waste will come into consideration when choosing a lime/pozzolan over portland cement-based system. Lime/pozzolan or a special low alumina, sulfate-resistant cement would be the stabilizing agent of choice, as it would prevent swelling and spalling in the stabilized product. Wastes-solidifying formulations in stabilization processes vary widely, and a variety of materials may be used in conjunction with the stabilizing agent to change performance characteristics. These include soluble silicates, hydrated silica gels, clays, emulsifiers, surfactants, carbon, and zeolites. In portland cement systems, soluble silicates will reduce the interference from metal ions in the waste. Emulsifiers and surfactants will allow the incorporation of immiscible organic liquids. Carbon, silicates, and zeolites will adsorb toxic constituents and be encapsulated within the stabilized solid.

(ii) The amount of stabilizing agents and other additives is a critical parameter in that sufficient stabilizing materials are necessary in the mixture to bind the waste constituents of concern properly, thereby making them less susceptible to leaching. The appropriate ratios of amounts of waste to stabilizing agent and other additives are established after evaluating the waste and the selected stabilization formulation. This may be done by setting up a series of experiments that allow separate leachate and strength testing of different mix ratios. Once established, the ratios are maintained by monitoring the volume and/or weight of the waste and the stabilizing agents and other additives through the use of feed systems.

(iii) The conditions of mixing include the type and duration of mixing. Mixing is necessary to ensure adequate distribution of the waste and the stabilizing agents, thereby resulting in uniform bonding. Insufficient mixing could result in some of the waste constituents of concern not being bound in the solid and thus being susceptible to leaching.

(iv) The conditions of cure include the duration of curing and the ambient curing conditions (temperature and humidity). The duration of curing is a critical parameter to ensure that the waste particles have had sufficient time in which to form a stable solid. The time necessary for complete stabilization to occur depends upon the waste type and the treatment process used. The performance of the stabilized waste (i.e., the levels of constituents in the leachate) will be highly dependent upon whether complete stabilization has occurred. Curing conditions such as ambient temperature and humidity affect the rate of curing and, therefore, could affect the strength of the stabilized solid.

3. Hexavalent Chromium Reduction

a. *Description and Applicability.* The process of hexavalent chromium (Cr^{+6}) reduction involves conversion from the hexavalent form to the trivalent form of chromium. The treatment system essentially consists of a stirred tank with a feed system for adding a "reducing agent" and a system for adding a chemical to adjust pH. This technology has wide application to hexavalent chromium wastes including plating solutions, stainless steel acid baths and rinses, "chrome conversion" coating process rinses, and chromium pigment manufacturing wastes. It is important to note that additional treatment is required to remove trivalent chromium from solution.

b. *Basic Principles of Operation.* The basic principle of treatment is to reduce the valence of chromium in solution (in the form of chromate or dichromate ions) from the valence state of six to the trivalent (+3) state. "Reducing agents" used to effect the reduction include sodium bisulfite, sodium metabisulfite, sulfur dioxide, sodium hydrosulfide, or the ferrous form of iron.

c. *Waste Characteristics that Affect Performance.* The Agency believes that the single waste characteristic that most affects performance of chromium reduction treatment is the presence of other reducible compounds in the waste. Substances such as oils and other metal ions may exhibit a demand for the reducing agent used to treat hexavalent chromium. In these cases, additional reducing agent must be added to satisfy the extra demand. To ensure that enough reducing agent is employed in the batch system, the hexavalent chromium concentration is monitored after completion of treatment. In continuous systems, oxidation-reduction potential (ORP), a surrogate for hexavalent chromium concentration, is measured and controlled.

The literature indicates that solutions of hexavalent chromium up to 1,300 ppm have been treated successfully using reduction technology. More concentrated solutions should be bench tested prior to application of the reduction technology. Additional retention time may be required for satisfactory treatment.

d. *Design and Operating Variables Affecting Performance.* Four design and operating variables that the Agency believes are critical to proper operation are:

- pH control;
- Control of reducing agent feed quantity;
- Type of reducing agent used; and
- Retention time.

(i) The specific pH value chosen (usually acidic) is a function of the reducing agent used. In a batch system the value need not be adhered to rigorously (i.e. within ±1 pH unit) because the reaction will be completed rapidly even with slight variations. Reaction completion is determined, in any case, by measuring hexavalent chromium levels prior to further processing. In continuous systems, however, where oxidation-reduction potential (ORP) sensors are used to control feed of the reducing agent, pH must be controlled precisely, since the ORP value will vary with pH changes.

(ii) In continuous systems, the ORP value is used as a surrogate for the degree of hexavalent chromium treatment, and controls the feed of reducing agent. If the ORP is not controlled in a fairly precise range, insufficient reducing agent may be fed to treat the hexavalent chromium.

(iii) Various reducing agents are available (see Basic Principles of Operation section). Economics and availability usually dictate their use, not the ability to reduce hexavalent chromium. Certain reducing agents will require higher dosage rates than others. Also, some will produce greater quantities of settled solids (such as ferrous iron, which also precipitates ferric hydroxide). Sulfur dioxide, when used as a reducing agent, may liberate

sulfur dioxide gas if not properly maintained and controlled.

(iv) Retention time should be adequate to ensure that the hexavalent chromium reduction reaction goes to completion. In the case of the batch reactor, the retention time is varied by adjusting treatment time in the reaction tank. If the process is continuous, the retention time may be varied by changing flow rates of feed and reagent to the reaction tank.

4. Cyanide Oxidation

a. *Description and Applicability.* Cyanide oxidation is a treatment process which chemically destroys free cyanides found in solution. The cyanide is converted either to a cyanate form or to carbon dioxide and nitrogen. This treatment system consists of a stirred tank or tanks and feed systems for an oxidizing agent and a chemical used to adjust pH.

This technology can be applied to a wide range of cyanide wastes such as those generated from plating copper, zinc and brass; solutions generated by rinsing of residues from cyanide salt heat treating baths; and cyanide metal "passivating" solutions and rinses. In some solutions, however, cyanide is tightly bound to dissolved metals, such as iron, by chemical complexing (i.e., the metal and the cyanide are not easily separated). Therefore, the metal cyanide complex becomes less amenable to chemical oxidation. For some of these "complexed" forms of cyanide, the preferred treatment technology is cyanide precipitation.

b. *Basic Principles of Operation.* In the cyanide ion, the carbon and nitrogen atoms are bound by what is referred to as a triple bond, represented by $-C\equiv N$. When sufficient oxidizing agent is present, the cyanide ion is converted to a cyanate ion, represented by $-O-C\equiv N$ or $O=C=N-$. Further treatment, if used, breaks the triple bond form of cyanate and converts both forms of the cyanate to carbon dioxide and nitrogen gas. The two types of oxidizing agents used most frequently are chlorine-containing materials (e.g., chlorine gas, sodium hypochlorite, or calcium hypochlorite) and ozone gas. A typical reaction showing sodium hypochlorite reacting with sodium cyanide to form sodium cyanate is:

$$NaCN + NaOCl \rightarrow NaCNO + NaCl$$

c. *Waste Characteristics Affecting Performance.* The two waste characteristics that affect performance are the presence of metals and the presence of other oxidizable materials. As noted earlier, many metals form complexes with free cyanide. Complexes of many of the metals, including iron and to some extent nickel, cannot be decomposed by cyanide oxidation techniques. Other technologies such as chemical precipitation of the cyanide complex may be required.

The presence of other oxidizable materials affect the performance of the treatment system. Free cyanide is not the only constituent of wastewater than can be oxidized by chlorine-containing compounds or ozone. Organic materials (such as oils and surfactants) and reduced forms of metals (such as trivalent chromium and ferrous iron) will also react with the oxidizing agents. Consequently, enough oxidizing agent must be added to overcome the demand of both the free cyanide and the other materials.

d. *Design and Operating Variables Affecting Performance.* Four design and operating variables that the Agency monitors, to the extent possible, for effect on performance are:

- pH;
- Oxidizing agent feed quantity;
- Reaction time; and
- Type of oxidizing agent used.

We believe that evaluation of these parameters best provides a reasonable measure of assurance that the system is designed and operated properly.

(i) The pH must be kept in the alkaline range (above 7) in order to ensure that free cyanide is not released as toxic hydrogen cyanide gas to the atmosphere. Also, the pH for each process step must be controlled for the reaction to proceed at a reaction rate sufficient to prevent liberation of toxic cyanogen chloride gas. Additionally, if ORP controls are used to control feed of the oxidizing agent (discussed below), pH control must be very rigorous because the ORP value varies with changes in the pH value.

(ii) The feed quantity of the oxidizing agent (e.g. chlorine and ozone) affects performance. Enough oxidizing agent must be added to react fully with the free cyanide present. For batch systems, the oxidizing agent may be added until chemical analysis shows that no cyanide is detectable. Although detection levels may change somewhat, depending on the composition of the waste, it is generally possible to achieve a detection level of 10 ug/l in the treated waste.[1] For continuous systems, the level of oxidizing agent should be monitored and controlled with an ORP meter. As noted earlier, ORP is sensitive to pH and, therefore, pH must be kept constant during the treatment process.

(iii) Reaction time should be sufficient to ensure that the cyanide destruction reactions have gone to completion. For continuous systems, reaction time is monitored by obtaining data on the flowrate of the waste. If the flowrate is at or below the design value for the volume of the system, and the initial concentration is at or below the design value, then the reaction time would be adequate.

(iv) Each of the oxidizing agents discussed (those containing chlorine and ozone) will work effectively. Consequently, the decision of which to use is usually based on economics and availability. However, different doses of each will be required. Also, for some oxidizing agents, such as ozone, smaller quantities of chemicals (lime or caustic soda) will be required to adjust pH.

5. High Temperature Metals Recovery

a. *Description and Applicability.* The high temperature metal recovery process separates metals from wastes by vaporizing the metals and collecting them. The Waelz kiln method is currently being used on steelmaking electric furnace air pollution control dust (K061). The process may also be applied to certain sludges containing high concentrations of metals.

b. *Basic Principles of Operation.* The metallic wastes that are fed into the kiln are normally in the form of an oxide. Heat is supplied to reduce the oxides to the metallic form and to vaporize the metals. This is not a destructive process, but a conversion to yield a reusable metal product. The Waelz kiln process consists of three steps: (1) the reduction of a metallic oxide, (2) the vaporization of metals, and (3) the recovery of a product. The first two steps are carried out in a kiln where high temperatures and excess carbon reduce the oxides to their metallic form. The primary reaction can be described as:

$$MO + C \rightarrow M + CO$$

where M = metal

Once in their metallic form, the more volatile metals leave the kiln in the air stream where they are reoxidized as particulates and collected in a baghouse. The residual material, stripped of the more volatile metals, is quenched and collected. Both residuals and baghouse

[1] The classical method for cyanide analysis (Method 9010 in EPA Publication SW-846) will detect both free cyanide and cyanide complexes with the exception of the cobalt-cyanide complex. Cyanate is not detected by this method. Cyanate will not form volatile hydrogen cyanide under the distillation procedures and it will not respond to the colorimetric procedure normally used to detect cyanide.

dust may have potential value as products.

c. *Waste Characteristics Affecting Performance.* The recovery of metals from wastes using high temperature processes is dependent on the initial concentration of certain metals and the presence of impurities. These waste characteristics determine whether the process can yield a reusable metal product.

If the initial concentration of recoverable metals in the waste is low, then the purity of the product may also be low. The ability to concentrate a specific metal from a waste to an enriched product is limited when other metals are present. Depending on the concentration of metals to be recovered relative to the concentration of other constituents, the product may not be suitable for reuse.

If the waste contains many metals with similar volatilities, then the product will contain a mixture of these metals. This product may not be reusable if the metals present are incompatible in the reuse. The removal or separation of impurities may not be possible, especially at low concentrations where they may be fixed into a matrix. Operation at higher temperatures may break these bonds, but this could lead to the presence of greater amounts of impurities in the product.

d. *Design and Operating Parameters Affecting Performance.* For the high temperature recovery of metals, the important design and operating parameters are the temperature in the kiln and the residence time.

The reduction of various metallic oxides and the volatilization of the metals occur at different temperatures. An increase in temperature will improve the removal of some constituents, but less volatile metals could also be liberated from the waste if they are present. The exact operating temperature is directly dependent upon the metals present in the waste and the metals being recovered.

The residence time of the material in the kiln also impacts the removal of metals from the waste. Adequate time must be provided for the reduction and volatization of the metals to allow maximum recovery. Due to the temperature dependency of the reactions, the residence time must also be optimized for the waste being fed to the kiln. The residence time is dependent upon the dimensions of the kiln and can be adjusted by varying the rate of rotation and the feed rate.

6. Filtration

a. *Description and Applicability.* Filtration is the operation in which a heterogeneous mixture of fluids and particles are separated by a filter medium that permits the flow of the fluid through the medium, but retains the particles.

Treatment of wastewater for removal of solid particles can be accomplished using either "in-depth" filtration (particles are trapped within the filter medium) or "cake-formation" filtration (filtered solids are stopped at the surface of the medium and buildup on one another to form a cake of increasing thickness). Typically, wastewaters with low concentrations of solid particles (generally below 1,000 ppm) employ in-depth filtration. Wastewaters or sludges with high concentrations of solid particles employ cake-formation filtration. This is commonly known as sludge dewatering. Sludge dewatering is described separately in Section V(D)(7).

In-depth filtration is used to process wastewaters containing relatively low concentrations of solids. Multimedia filtration, pressure or gravity sand filtration, and cartridge filtration are some of the types of equipment used for in-depth filtration. In-depth filtration is typically used as a polishing step for the supernatant after precipitation and settling (clarification) of wastewaters containing metal hydroxide precipitates.

b. *Basic Principals of Operations.* For in-depth filtration, the liquid to be filtered may flow by gravity or under pressure to the filter. For relatively large volume flows granulated media (such as sand or anthracite coal) are used to trap suspended solids within the pore spaces of the media. Wastewater is filtered until excessive pressure is required to maintain the flow or until the flow drops to an unacceptable level. Granular media in-depth filters are cleaned, after they are exhausted, by backwashing with filtered water that has been saved for that purpose. (Backwashing is always upflow to loosen the media granuals and resuspend the entrapped solids.) The backwash water, which may be as much as 10 percent of the volume of the filtered wastewater, is then returned to the treatment system, so that the solids in the backwash water can be settled in the system clarifier.

For relatively low flows, cartridge in-depth filtration can be used. In this case a cylindrically shaped filter media cartridge, such as a matted cloth, is placed within a sealed metal vessel. Wastewater is pumped through the cartridge until the flow drops excessively because of plugging of the media or until the pumping pressure becomes too high. The sealed vessel is then opened and the plugged cartridge removed and replaced with a new cartridge. The plugged cartridge is disposed.

In-depth filtration is capable of removing suspended solids in order to produce a filtrate (effluent) having only a few ppm suspended solids. Hence, if the suspended solids in the influent included insoluble metal hydroxides formed by chemical precipitation, then they could be removed to less than a few ppm.

c. *Waste Characteristics Affecting Performance.* The following characteristics of the waste will affect performance of an in-depth filter:

- Concentration of suspended material;
- Size of suspended particles; and
- Presence of grease and oils.

(i) Concentration—The higher the concentration of suspended solids in the wastewater to be filtered, the more quickly the filter will require backwashing (or removal of the cartridge). Hence, the size of the filter and/or the length of the filtering cycle will be affected.

(ii) Size of particles—Extremely small particles, in the colloidal range, may not be filtered effectively in an in-depth filter and may appear in the filtrate (effluent). To mitigate against this problem, the wastewater clarification system should be modified prior to filtration by the use of appropriate coagulants, modified coagulant dosage, or different chemical precipitation techniques (for instance, lime neutralization usually produces larger particles than caustic soda precipitation).

(iii) Grease and oil—While grease and oils may be, in fact, effectively filtered, and while they may not reduce the effectiveness of filtering suspended solids, they may eventually coat filter media particles in granulated media filters, reducing the length of filter cycles by preventing effective backwashing. To the extent possible, grease and oil should be removed prior to filtration. If they cannot be removed, special backwashing techniques using detergents may be required.

d. *Design and Operating Variables that Affect Performance.* For in-depth filters, the following design and operating variables affect performance:

- Type of filter selected;
- Size of filter selected;
- Pressure of wastewater feed;
- Use of coagulants or filter aids; and
- Backwash technique.

(i) Type of filter—As noted earlier, the two main types of filters are granular media and cartridge. While they are both in-depth, cartridge depth is rarely more than an inch and is suited only to

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low volume wastewaters and/or those with extremely low suspended solids. Usually, to develop the expected cycle time prior to cartridge disposal, several cartridges are placed in parallel. For granulated media filtration, a variety of media types and sizes are available. Also, some granulated media filters feed wastewater from the bottom up and others from the top down. (They are all backwashed from the bottom up.) Typically, when more than one media is used in the same filter (such as graded sand and anthracite coal), a greater capacity can be expected from a given size filter bed. Typically, upflow filtration will allow higher flowrates and trap more particles, but there is the danger of channelling (producing a "hole" in the filter bed through which unfiltered water will flow). The choice of type of filter is usually based on a combination of wastewater characteristics and economics.

(ii) Size of filter—Clearly, the larger the size of a filter, the more wastewater it will accommodate prior to backwashing or filter replacement. This affects performance only in that it may limit the hydraulic capacity of the entire treatment system.

(iii) Pressure of wastewater feed—Again, the higher the filtration pressure, the more rapidly filtration can take place. In any case, once design pressure is reached, the filter must be backwashed or the cartridges must be replaced, thus affecting cycle time and the overall hydraulic capacity of the treatment system.

(iv) Use of coagulants—Coagulants and filter aids can be added to the influent. Generally, these materials make very small particles larger and/or gelatinous particles less gelatinous. Filter runs can thus be lengthened and the clarity of the filtrate should be increased.

(v) Backwash techniques—Backwashing is applicable only to granular media filters, not to cartridge types. If backwash flows are too high, they may "fluidize" the media bed and wash away the filter media. If flow is too low, it may not expand the bed adequately and not remove all of the particles trapped in the fliter media pores. In addition, if after a period of time backwashing becomes ineffective, the addition of detergents and surfactants to the backwash water may be necessary to clean the media bed of greases, oils, and other adherent materials.

7. Sludge Dewatering

a. *Description and Applicability.* This section presents a brief description of sludge dewatering, or cake-formation filtration, that differentiates the technology from in-depth filtration which is presented Section V(B)(6). Cake-formation filtration is applied to sludges, typically those that have settled to the bottom of clarifiers, for additional dewatering. These sludges, which usually contain more than 10,000 ppm suspended solids, can be dewatered to 20 to 50 percent solids.

b. *Basic Principles of Operation.* For cake-formation filtration, settled sludge is either pumped through a cloth-type filter media (such as in a plate and frame filter that allows solid "cake" to build up on the media) or the sludge is drawn by vacuum through the cloth media (such as on a drum or vacuum filter, which also allows the solids to build). In both cases the solids themselves act as a filter for subsequent sludge solids. For a plate and frame type filter, when excessive pressure is required to force the sludge through the media, the filter is opened and the cake is removed for disposal or recovery (or additional treatment, if necessary). For the vacuum type filter, cake is removed continuously after as much water as possible has been drawn out of it. In both types of cake-formation filtration the liquid passing through the filter media is usually too high in suspended solids to be discharged to receiving streams, so it is returned to the treatment system. Also, for a specific sludge, the plate and frame type filter will usually produce a drier cake than a vacuum filter. Other types of cake-formation filters, such as belt filters, are also used for effective sludge dewatering.

c. *Waste Characteristics Affecting Performance.* The following characteristics of the waste will affect performance of a cake-formation type of filter:

- Concentration of suspended material;
- Size of particles; and
- Type of particles.

(i) Concentration—For plate and frame type filters, the more concentrated the inlet solids, the more rapidly cake will build up and the shorter the operating cycle will be. Consequently, these types of pressure filters should be sized accordingly. For vacuum filtration, a cake may not form at all if a minimum solids concentration does not exist in the influent. The higher the influent solids for a vacuum filter, the more firm and more dewatered will be the cake.

(ii) Size of particles—The smaller the particle size, the more the particles tend to go through the filter media. This is expecially true for a vacuum filter. Since the filtrate is usually returned to the treatment system, this tends not to be a major concern unless significantly more particles to through the filter than are trapped on it. For a pressure filter (like a plate and frame), smaller particles may require higher pressures for equivalent throughput, since the smaller pore spaces between particles create resistance to flow.

(iii) Type of particles—Some solids formed during metal precipitation are gelatinous in nature and cannot be dewatered well by cake-formation filtration. In fact, for vacuum filtration a cake may not form at all. In most cases solids can be made less gelatinous by use of the appropriate coagulants and coagulant dosage prior to clarification, or after clarification but prior to filtration. In addition, the use of lime instead of caustic soda in metal precipitation will reduce the formations of gelatinous solids. Also the addition of filter aids to a gelatinous sludge, such as lime or diatomaceous earth, will help significantly. Finally, precoating the filter with diatomaceous earth prior to sludge filtration will assist in dewatering gelatinous sludges.

d. *Design and Operating Variables that Affect Performance.* For cake-formation filters, the following design and operating variables affect performance:

- Type of filter selected;
- Size of filter selected;
- Feed pressure (not applicable to vacuum filters); and
- Use of coagulants or filter aids.

(i) Type of filter—Typically, pressure type cake-formation filters (such as a plate and frame) will yield a drier cake than a vacuum type filter and will also be more tolerant of variations in influent sludge characteristics. Pressure type filters, however, are batch operations, so that when cake is built up to the maximum depth physically possible (constrained by filter geometry), or to the maximum design pressure, the filter is turned off while the cake is removed. A vacuum filter is a continuous device (i.e., cake discharges continuously), but will usually be much larger than a pressure filter with the same capacity. A hybrid device is a belt filter, which mechanically squeezes sludge between two continuous fabric belts.

(ii) Size of filter—As with in-depth filters, the larger the filter, the greater its hydraulic capacity and the longer the filter runs between cake discharge.

(iii) Feed pressure—For plate and frame filters, the higher the maximum pressure, the drier the cake, and the longer the runs prior to cake discharge. It must be noted, however, that for gelatinous solids, excessive pressures may cause the solids to compress in

such a way as to blind the filter and not allow additional sludge to be filtered. For vacuum filters, the maximum amount of vacuum applied is usually not very variable and is limited to about 20 to 25 inches of mercury. Hence, differential pressure is usually not a significant variable in vacuum filtration.

(iv) Use of coagulants—Coagulants and filter aids may be mixed with filter feed prior to filtration, as was the case with in-depth filters. However, their effect is much more dramatic with cake-formation filters, in that it may make the difference in a vacuum filter between no cake and a relatively dry cake. In a pressure filter, coagulants and filter aids will also significantly improve hydraulic capacity and cake dryness. Filter aids, such as diatomaceous earth, can be precoated on cake-formation filters (vacuum or pressure) for particularly difficult to filter sludges. The precoat layer acts somewhat like an in-depth filter in that sludge solids are trapped in the precoat pore spaces. Use of precoats and most coagulants or filter aids significantly increases the amount of sludge solids to be disposed of. However, polyelectrolyte coagulant usage usually does not increase sludge volume significantly because the dosage is low.

8. Ion Exchange

a. *Description and Applicability.* Ion exchange refers to a technology which removes positively charged ions (cations) or negatively charged ions (anions) from solutions and replaces them with other, more desirable, cations or anions.

The ion exchange treatment system consists of a column (or bed) filled with either cation exchange resin or anion exchange resin, through which the wastewater is pumped, usually on a continuous basis. Where it is desired to remove both cations and anions, the cation and anion exchangers are placed in series. (On some specialized systems, both cation and anion exchange resin are contained in the same column.) Additional equipment required are chemical feed systems and pumps used to regenerate the ion exchange columns when they have exhausted their capacity to remove ions.

Cation exchange is applicable to removal of all metal cations in relatively dilute solutions. (Typically, concentrated metal solutions will be pretreated first by chemical precipitation.) Anion exchange is applicable to removal of anionic forms of metals (e.g., chromates and metal complexes) in dilute solutions. It is important to note that a relatively small volume of concentrated wastewater is produced when regenerating an ion exchanger. This concentrated waste stream may be treated for disposal by chemical precipitation and chrome reduction as applicable. If appropriate, it may also be recycled for metal recovery.

b. *Basic Principles of Operation.* An ion exchange resin consists of beads of natural or synthetic material to which either anions or cations are chemically bound. For instance, in a typical cation exchanger the ions are either sodium or hydrogen. When the resin is exposed to a solution containing ions of similar charge, the ions are exchanged for the ions in solution. For instance, if a nickel containing solution is pumped through a sodium-based cation exchanger, the nickel will be removed from solution and replaced with sodium. When the resin is exhausted, and the desired ions are no longer removed from solution (called "breakthrough"), the exchange resin is regenerated by passing a relatively low volume of a very concentrated (percent range) regenerant solution through the column. For instance, in the case of a sodium-based resin, a strong solution of sodium chloride is typically the regenerant solution. The regenerant solution forces the previously removed ions back into solution. This relatively low volume solution, now highly concentrated with the contaminants, must then be treated prior to disposal or for recovery of the cation or anion contaminants. The concentrated metal cations are usually treated by chemical precipitation. Chromates (anions) are reduced to trivalent chromium and then chemically precipitated. Trace cyanides (anions) or metal/cyanide anion complexes may be treated by cyanide oxidation.

c. *Waste Characteristics that Affect Performance.* The waste characteristics that affect performance of ion exchange systems are:

- the concentration and valence of the contaminant in the wastewater;
- The concentration and valence of other ions in the wastewater with the same charge as the contaminant (i.e., positive or negative);
- The amount of suspended solids in the wastewater; and
- The corrosiveness of the wastewater relative to the resin material.

(i) As the concentration and valence of adsorbable ions in the wastewater increases, the size of the resin bed required will increase, or alternatively, the bed will become exhausted more rapidly. This is because a given amount of ion exchange resin has only a specific number of sites at which it can adsorb charged ions. Hence, if the valence is doubled, the sites are used twice as quickly. The same is true if the concentration is doubled.

(ii) Other ions in the wastewater with the same charge as the contaminant will compete for exchange sites on the resin. Hence, a low concentration of the contaminant of concern may be readily removed from a solution with low concentrations of other similarly charged ionic species, but the contaminant will not be removed as efficiently from solutions where high concentrations of similarly charged ions exist. Even if the ion of concern is removed effectively from a solution with high concentrations of similarly charged ions, the resin will become exhausted more rapidly, since it cannot differentiate between the contaminant and similarly charged ionic species.

(iii) Conventional ion exchange systems are downflow, i.e., the wastewater flows down through the resin bed. (Typically, regeneration is accomplished in the upflow mode.) Hence the bed will act as a filtering device. If excessive suspended solids, or grease and oils are contained in the wastewater the bed may clog and require backwashing prior to exhausting its exchange capacity. For some solids or oils backwashing may prove ineffective. Also, some ions tend to oxidize after being removed from solution. For instance Mn^{+2} (manganese) may oxidize to the Mn^{+4} form, which is insoluble. This may permanently foul the exchange sites, so that the resin will require premature replacement.

(iv) Some wastewaters are extremely corrosive to exchange resin materials. For instance strong, hot solutions of chromates will eventually oxidize many resins. Ion exchange capacity will decrease until replacement is required.

d. *Design and Operating Variables Affecting Performance.* The main design and operating parameter that affects the performance of ion exchange systems is the resin quality and quantity. Numerous cation and anion resins are commercially available. Different resins have different exchange capacities, and some have greater affinity than others for specific ions. Certain resins are designed to tolerate corrosive, oxidizing, or high temperature solutions, so that their exchange capacity does not degrade as rapidly with age. Most resins will effectively remove contaminant ions from solutions until they become exhausted. If, however, resin bed exhaustion occurs too frequently, or regeneration requires excessive volumes of regenerant, the type and/or quantity of resin might require changing. In some

instances, pretreatment technologies may be required prior to ion exchange.

When a resin bed is exhausted, this is referred to a "breakthrough", meaning that the ions which were to be removed from the wastewater are no longer being removed. Breakthrough may be detected in many ways. The most common method of detecting breakthrough for hydrogen ion based cation exchangers in series with hydroxyl based anion exchangers is to use an electrical conductivity meter. Before breakthrough, this type of system discharges deionized water, which has very low electrical conductivity. After breakthrough of either or both exchangers, acids, salts, or alkalies will be discharged. These have high conductivities. For hydrogen based cation exchangers or hydroxyl based anion exchangers operating independently (not in series with each other) breakthrough will be indicated by a change in pH, which is easily measured. Prior to breakthrough a hydrogen based cation exchanger discharges an acidic solution. A hydroxyl based anion exchanger discharges an alkaline solution. The pH change in the discharge will rapidly migrate to the pH of the raw waste. For sodium based cation exchangers and chloride based anion exchangers conductivity measurement is also effective in many cases, since the raw waste ions will have a different conductivity than the sodium and/or chloride ions.

The rate at which wastewater is fed to the ion exchanger has little effect on its effectiveness, since ions are adsorbed on the resins almost instantaneously, so long as exchange capacity exists. The limiting factor for the flow rate is the ability of the pump to pump a liquid through a packed resin bed.

C. Treatment Data Summary

This section presents the data reviewed by the Agency that support treatment of California List metals and cyanides to the EP regulatory levels or health-based prohibition levels. Included in this section are a summary of the Agency's available data and information on the treated concentrations of the constituents of concern, waste characteristics, and on design and operating parameters. This section also discusses the Agency's preliminary conclusions with regard to treatment of these wastes to levels equivalent to the EP regulatory level or health-based prohibition levels.

1. Arsenic.

a. *Data Summary.* The Agency has three data points on the treatment of arsenic in wastewater from two facilities. These three data points have arsenic concentrations in the treated wastewater lower than the EP regulatory levels of 5.0 mg/l. Table 2 provides a summary of all available data on the treatment of arsenic in wastewater.

The Agency has 11 data points on the treatment of arsenic in waste *other than wastewater* from three facilities. Of the 11 data points, all 11 have arsenic concentrations in the leachate from the treated waste lower than the EP regulatory level of 5.0 mg/l. Table 3 provides a summary of all available data on the treatment of arsenic in waste other than wastewater.

b. *Data Analysis—Wastewater.* (i) Waste Characteristic Analysis. These three data points reflect treatment by chemical precipitation. The Agency has limited data on the range of waste characteristics pertinent to an evaluation of the performance of this technology. The only available waste characterization data that are important for an engineering analysis involve other metals concentrations.

The treatment data show a maximum influent concentration for arsenic of 160 mg/l, while the literature indicates untreated wastes may have concentrations as high as 430 mg/l. As stated previously in Section V(B)(1), high influent metal concentrations, per se, do not adversely affect treatment; however, high metal concentrations often indicate that the metals are complexed in solution and complexed metal compounds, if not dissociated, could have an adverse effect on treatment.

(ii) Design and Operating Parameters Analysis. For the three data points, the Agency has some design and operating data for two treatment points from one facility that document the operation of the treatment system.

(iii) Discussion. The Agency's best engineering judgment is that the EP regulatory level of 5.0 mg/l for arsenic can be met for the full range of California List wastewaters containing arsenic. In support of this position, the Agency points to the theoretical solubility limit of arsenic precipitates, chemical precipitation theory, and our knowledge of the technologies available to minimize the effects of constituents in the waste that can interfere with treatment performance. Additionally, the available data would not lead us to conclude otherwise.

The Agency recognizes the lack of data on the full range of waste characteristics and design and operating conditions that may affect treatment effectiveness. Therefore, we are soliciting data that would aid the Agency in analyzing treatment performance for arsenic in wastewaters. The specific waste characterization data and design and operating data that the Agency needs are described in Section V(E), Request for Comments.

c. *Data Analysis—Waste Other Than Wastewater.* (i) Waste Characteristics Analysis. As stated above in the Data Summary, all 11 data points achieve the EP regulatory level. Each of these uses stabilization technology for treatment. Four of these data points represents bench-scale tests.

For these data points, the Agency has limited information on the range of waste characteristics pertinent to an evaluation of the performance of this technology. Most of the available waste characterization data that are important for an engineering analysis involve other metal concentrations.

The treatment data have a maximum total arsenic concentration of 12,000 mg/kg. The stabilization data for this data point represent bench-scale treatment.

(ii) Design and Operating Parameters Analysis. For the 11 data points, the Agency has limited design and operating data for four treatment points from two facilities. All of these data points represent bench-scale data.

(iii) Discussion. The Agency's best engineering judgment is that the EP regulatory level of 5.0 mg/l for arsenic can be met in leachate for the full range of California List waste other than wastewater. In support of this position, the Agency points to the facility's ability to change the ratio of stabilizing agents to waste quantities as needed to decrease mobility of the constituent; this assumes that an effective stabilizing agent and/or additives are available. Additionally, the curing conditions (e.g., length of cure and ambient conditions) can be controlled to ensure that the waste particles have had sufficient time to form a stable treated waste. Additionally, all the available data show that the EP regulatory level of 5.0 mg/l for arsenic can be achieved.

The Agency recognizes the lack of data on the full range of waste characteristics and design and operating conditions that may affect treatment effectivness. Therefore, we are soliciting data that would aid the Agency in analyzing treatment performance for arsenic in waste other than wastewater. The specific waste characteristic data and design and operating data that the Agency needs are described in Section V(E), Request for Comments.

TABLE 2.—ARSENIC CONCENTRATION DATA FOR WASTEWATER

Source [a]	Industry	Process generating waste	Treatment process	Waste codes [b]	Waste characterization data		Arsenic concentration data	
					Parameter	Concentration (mg/l)	Untreated	Treated
							Total (mg/l)	Total (mg/l)
Bhattacharyya, et al. [1]	Nonferrous metal production.	NAV	Sulfide and lime precipitation.	NAV	Cadmium	3.5	160	1.8
					Lead	6.0		
					Mercury	0.9		
Bhattacharyya, et al. [2]	Nonferrous metal production.	NAV	Sulfide and lime precipitation.	NAV	Cadmium	14	125	1.9
					Lead	75		
					Mercury	0.8		
Nonferrous metals Dev. Doc	Secondary lead production.	NAV	Hydroxide precipitation, filtration.	D004 D008	Lead	60	6.4	2.9

[a] See Section V(C)(10) for Data Sources.
[b] Waste code as reported in source.
NAV—Not available.

TABLE 3.—ARSENIC DATA FOR WASTE OTHER THAN WASTEWATER

Source [a]	Industry	Process generating waste	Treatment process	Waste codes	Waste characterization data		Arsenic Concentration data			
					Parameter	Concentration	Untreated		Treated	
							Total (mg/kg)	EP-Tox (mg/l)	Total (mg/kg)	EP-Tox (mg/l)
192[b]	NAP	Synthetic waste.	Stabilizations.	NAP	Barium	12,000	NAV	NAV	0.135	
					Cadmium					
					Chromium					
					Lead					
					Mercury					
					Nickel					
					Silver					
					Selenium					
					6,600 mg/kg.					
					10,300 mg/kg.					
					10,900 mg/kg.					
					8,820 mg/kg.					
					11,300 mg/kg.					
					11,100 mg/kg.					
					3,900 mg/kg.					
					7,600 mg/kg.					
192[b]	NAP	Synthetic waste.	Stabilization.	NAP	Barium	3,680 mg/kg	6,400	NAV	NAV	0.139
					Cadmium	5,500 mg/kg				
					Chromium	6,360 mg/kg				
					Lead	3,5800 mg/kg				
					Mercury	600 mg/kg				
					Nickel	5,810 mg/kg				
					Silver	1,760 mg/kg				
					Selenium	4,600 mg/kg				
HAZCO[b]	NAP	Synthetic waste.	Stabilization.	NAP	Cadmium	1,090 mg/kg	2,267	NAV	2,195	<0.5
					Lead	1,872 mg/kg				
					Mercury	1,752 mg/kg				
					Selenium	589 mg/kg				
					Waste lube oil.	858,000 mg/kg.				
					Alcohol	55,000 mg/kg				
					Water	87,000 mg/kg				

TABLE 3.—ARSENIC DATA FOR WASTE OTHER THAN WASTEWATER—Continued

Source *	Industry	Process generating waste	Treatment process	Waste codes	Waste characterization data		Arsenic Concentration data			
					Parameter	Concentration	Untreated		Treated	
							Total (mg/kg)	EP-Tox (mg/l)	Total (mg/kg)	EP-Tox (mg/l)
192*	NAP	Synthetic waste.	Stabilization.	NAP	Barium Cadmium Chromium Lead Mercury Nickel Silver Selenium	18 mg/kg 2,400 mg/kg 1,710 mg/kg 1,170 mg/kg 1,060 mg/kg 1,360 mg/kg 290 mg/kg 750 mg/kg	1,100	NAV	NAV	0.028
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	350	NAV	NAV	0.19
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	310	NAV	NAV	0.12
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	287	NAV	NAV	0.48
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	255	NAV	NAV	0.49
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	144	NAV	NAV	0.15
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	120	NAV	NAV	0.21
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	110	NAV	NAV	0.21

*See Section V(C)(10) for Data Sources.
*Data represent bench-scale test.
CBI—Confidential Business Information.
NAV—Not applicable.
NAP—Not applicable.

2. Cadmium

a. *Data Summary.* The Agency has 16 data points on the treatment of cadmium in wastewaters from 12 facilities. Of the 16 data points, 15 are usable. One data point cannot be used because the laboratory analysis for the effluent was reported at a detection level greater than the EP regulatory level. Of the 15 data points, 13 have cadmium concentrations in the treated wastewater lower than the EP regulatory level of 1.0 mg/l. Chemical precipitation was the treatment technology used for 14 of the 15 data points; ion exchange was used to treat one waste stream. Table 4 provides a summary of all available data on treatment of cadmium in wastewater.

The Agency has 43 data points on the treatment of cadmium in waste *other than wastewater* from eight facilities. Of the 43 data points, 30 have cadmium concentrations in the leachate from the treated waste that are lower than the EP regulatory level of 1.0 mg/l. Table 5 provides a summary of all available data on cadmium in waste other than wastewater.

b. *Data Analysis—Wastewater.* (i) Waste Characteristic Analysis. Of the 13 points that achieve the EP regulatory level, 12 reflect treatment by chemical precipitation, the principal technology for treating cadmium in wastewaters. The Agency has limited data on the range of waste characteristics pertinent to an evaluation of the performance of this technology. Most of the available waste characterization data that are important for an engineering analysis involve other metal concentrations.

The treatment data have a maximum influent concentration for cadmium of 240 mg/l, while the literature indicated untreated wastes may have concentrations as high as 5,000 mg/l. As stated in Section V(B)(1), high influent concentrations, per se, do not adversely affect treatment; however, high metal concentrations often indicate that the metals are complexed in solution and complexed metal compounds, if not disassociated, could have an adverse effect on treatment.

(ii) Design and Operating Parameters Analysis. For the 12 data points that achieve the EP regulatory level, the Agency has some design and operating data for four treatment points from two facilities that document the operation of the facility.

(iii) Discussion. The Agency's best engineering judgment is that the EP regulatory level of 1.0 mg/l for cadmium can be met for the full range of California List wastes containing cadmium. In support of this position, the Agency points to the theoretical solubility limit of cadmium precipitates, chemical precipitation theory, and our knowledge of the technologies available to minimize the effects of constituents in the waste that can interfere with treatment performance. Additionally, the available data would not lead us to conclude otherwise.

In the case of the data point that does not show achievement of the EP regulatory level, the Agency looked at the waste characteristics and treatment design and operation to determine why these values were not attained. Relative to waste characteristics, the waste exhibited high oil and grease and high total dissolved solid values. These parameters can adversely affect the effectiveness of the treatment. We expect that preliminary treatment, such as oil-water separation and/or emulsion breaking, can remedy any problems associated with high oil and grease content. Reducing the high TDS value can be accomplished using ion exchange, but can be a difficult problem to resolve. With regard to our analysis of the design and operation of the treatment system used, the Agency had no data to show that the treatment

system was designed and operated properly; therefore, we cannot conclude that the EP regulatory level is not attainable.

The Agency recognizes the lack of data on the full range of waste characteristics and design and operating conditions that may affect treatment effectiveness. Therefore, we are soliciting data that would aid the Agency in analyzing treatment performance for cadmium in wastewaters. A description of the specific waste characterization data and design and operating data that the Agency needs can be found in Section V(E), Request for Comments.

c. *Data Analysis—Waste Other than Wastewater.* (i) Waste Characteristics Analysis. As stated above in the data summary, 30 of the 43 data points achieve the EP regulatory level. Each of these uses stabilization technology for treatment.

Of the 30 data points that achieve the EP regulatory levels, the Agency has limited data on the range of waste characteristics pertinent to an evaluation of the performance of this technology. Most of the available waste characterization data that are important for an engineering analysis involve other metals and oil and grease concentrations. For the wastes where EP regulatory levels were achieved, the maximum total cadmium concentration was 31,200 mg/kg. The stabilization data for this data point represent bench scale treatment results.

(ii) Design and Operating Parameters Analysis. For the 30 data points that achieve the EP regulatory levels, the Agency has limited design and operating data for six treatment points from four facilities. Three of the data points represent bench scale experimental data.

(iii) Discussion. The Agency's best engineering judgment is that the EP regulatory level of 1.0 mg/l for cadmium can be met in leachate for the full range of California List waste other than wastewater. In support of this position, the Agency points to facility's ability to change the ratio of stabilizing agents to waste quantities as needed to decrease mobility of the constituent; this assumes that an effective stabilizing agent and/or additives are available. Additionally, the curing conditions (e.g., length of cure and ambient conditions) can be controlled to ensure that the waste particles have had sufficient time to form a stable treated waste. Additionally, the Agency's evaluation of the available data would not lead us to conclude otherwise.

In the cases where the treated waste leachate did not achieve the EP regulatory level, the Agency looked at the waste characteristics and treatment design and operation to determine why these values were not attained. Relative to waste characteristics, one of the 13 data points had untreated waste with a high oil and grease content that could have had an adverse affect on the performance of the stabilization technology. Oil and grease can be removed by emulsion breaking or separation in a pretreatment step. For another of the data points that do not achieve the EP regulatory level, the initial concentration is three times the next highest concentration that achieves the EP regulatory levels (98,000 mg/kg vs. 31,200 mg/kg). However, the leachate concentration for this data point is so much higher than for the other data point (98 mg/l vs. <0.01 mg/l) that we believe that stabilization process is not properly designed. EPA has no other waste characteristic data on these data points or other data points, to determine why the EP regulatory levels were not achieved. Relative to analysis of the design and operation of the treatment systems used, the Agency had no data to determine whether poor design or operation contributed to the failure of the systems to achieve the EP regulatory levels.

The Agency recognizes that we lack data on the full range of waste characteristics and design and operating conditions that may affect treatment effectiveness. Therefore, we are soliciting information to aid the Agency in analyzing treatment performance for cadmium in wastes other than wastewater. The specific waste characteristics data and design and operating data that the Agency needs are described in Section V(E), Request for Comments.

TABLE 4.—CADMIUM DATA FOR WASTEWATER

Source[a]	Industry	Process generating waste	Treatment process	Waste codes[b]	Waste characterization data		Cadmium concentration data	
					Parameter	Concentration (mg/l)	Untreated	Treated
							Total (mg/l)	Total (mg/l)
Battery manufacturing dev. doc.	Lead battery manufacturing.	NAV	Ferrite co-precipitation.	NAV	Lead	475	240	0.008
					Mercury	7.4		
					Nickel	1,900		
Frontier Chemical Company.	Battery manufacture.	NAV	Lime precipitation, filtration, carbon adsorption.	D002 D007	Lead	1.1–3.6	2.9–190	0.15–1.4
					TOC	5600–19000		
					Oil & grease	2600–18000		
					TSS	2400–66000		
					TDS	10000–170000		
					Nickel	4.3–500		
Chem Pro Inc.	NAV	NAV	Chemical precipitation.	NAV	Oil & grease	150 mg/kg.	88	0.7
Envirite [4]	TSDF	NAV	Chemical precipitation, filtration.	F006 K062 D003	Chromium	617	23	<5
					Copper	137		
					Lead	136		
					Zinc	135		
					Nickel	382		
					Oil & grease	322		
Bhattacharyya, et al. [2].	Nonferrous metal production.	NAV	Sulfide and lime precipitation.	NAV	Arsenic	125	14	<0.01
					Lead	75		
					Mercury	0.8		

TABLE 4.—CADMIUM DATA FOR WASTEWATER—Continued

Source[a]	Industry	Process generating waste	Treatment process	Waste codes[b]	Waste characterization data		Cadmium concentration data	
					Parameter	Concentration (mg/l)	Untreated	Treated
							Total (mg/l)	Total (mg/l)
Envirite [1]	TSDF	NAV	Chemical precipitation, filtration.	F006 K062 D003 D002	Zinc Hex. Chrom. Chromium Copper Lead Nickel Oil & grease	116 893 2581 138 64 471 26.4	13	<0.15
Envirite [2]	TSDF	NAV	Chemical precipitation, filtration.	F006 K062 D003 D002	Nickel Hex. Chrom. Chromium Copper Lead Oil & grease	470 807 2279 133 54 54	10	<0.5
Envirite [3]	TSDF	NAV	Chemical precipitation, filtration.	F006 K062	D003 D002	Lead Hex. Chrom. Chromium Copper Nickel Zinc Oil & grease	108 769 2314 72 426 171 113	10
Nonferrous metals, dev. doc.	Secondary lead production.	NAV	Hydroxide precipitation, filtration.	D004 D006	Lead	80	6.4	2.9
Battery manufacturing dev. doc.	Lead battery manufacturing.	NAV	Ion exchange	NAV	Hex. chrom. Cyanide Nickel	7.1 9.8 6.2	5.7	<0.01
Battery manufacturing dev. doc.	Lead battery manufacturing.	NAV	Hydroxide precipitation, sedimentation.	NAV	NAV	NAV	3.9	0.08
Bhattacharyya, et al. [1].	Nonferrous metal production.	NAV	Sulfide and lime precipitation.	NAV	Arsenic Lead Mercury	160 6.0 0.9	3.5	<0.02
Battery manufacturing dev. doc.	Lead battery manufacturing.	NAV	Hydroxide precipitation.	NAV	NAV	NAV	2.6	0.055
Batter manufacturing dev. doc.	Zinc battery manufacturing.	NAV	Lime precipitation, settling, filtration.	NAV	Mercury Nickel	100 1100	2.04	0.067
Metal finishing dev. doc.	Metal finishing	NAV	Chemical precipitation, sedimentation.	NAV	NAV	NAV	1.86	0.018
Metal finishing dev. doc.	Metal finishing	NAV	Chemical precipitation, sedimentation.	NAV	NAV	NAV	1.0	0.015

[a] See section V(C)(10) for Data Source.
[b] Waste codes as reported in source.
NAV—Not available.

TABLE 5.—CADMIUM DATA FOR WASTE OTHER THAN WASTEWATER

Source [1]	Industry	Process generating waste	Treatment process	Waste codes [2]	Waste characterization data		Cadmium concentration data			
					parameter	concentration	Untreated		Treated	
							Total (mg/kg)	EP-Tox (mg/l)	Total (mg/kg)	EP-Tox (mg/l)
CBI	CBI	CBI	Stabilization.	NAV [5]	CBI [7]	CBI	98000	[4] NAV	NAV	96
UNH [3]	NAP	Synthetic waste.	Stabilization.	NAP [6]	NAV	NAV	[4] 31200	NAV	NAV	<0.01

TABLE 5.—CADMIUM DATA FOR WASTE OTHER THAN WASTEWATER—Continued

Source [1]	Industry	Process generating waste	Treatment process	Waste codes [2]	Waste characterization data		Cadmium concentration data			
					parameter	concentration	Untreated		Treated	
							Total (mg/kg)	EP-Tox (mg/l)	Total (mg/kg)	EP-Tox (mg/l)
UNH [3]	NAP	Synthetic waste.	Stabilization.	NAP	NAV	NAV	15600	NAV	NAV	<0.01
192 [3]	NAP	Synthetic waste.	Stabilization.	NAP	Barium Chromium Lead Mercury Nickel Silver Arsenic Selenium	6600 mg/kg	10900 mg/kg 8820 mg/kg 11300 mg/kg 11100 mg/kg 3900 mg/kg 12000 mg/kg 7600 mg/kg	10300	NAV	NAV
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	8900	NAV	NAV	3.39
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	9900	NAV	NAV	41.8
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	7104	NAV	NAV	0.097
192 [3]	NAP	Synthetic waste.	Stabilization.	NAP	Barium Chromium Lead Mercury Nickel Silver Arsenic Selenium	3000 mg/kg 6300 mg/kg 3000 mg/kg 600 mg/kg 5000 mg/kg 1760 mg/kg 8400 mg/kg 4600 mg/kg	5500	NAV	NAV	8.7
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	4100	NAV	NAV	49.0
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	3940	NAV	NAV	6.84
UNH [3]	NAP	Synthetic waste.	Stabilization.	NAP	NAV	NAV	3120	NAV	NAV	<0.01
192 [3]	NAP	Synthetic waste.	Stabilization.	NAP	Barium Chromium Lead Mercury Nickel Silver Arsenic Selenium	10 mg/kg 1710 mg/kg 1170 mg/kg 1060 mg/kg 1300 mg/kg 290 mg/kg 1100 mg/kg 750 mg/kg	2400	NAV	NAV	3.3
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	1210	NAV	NAV	0.02
HAZCO [3]	NAP	Synthetic waste.	Stabilization.	NAP	Arsenic Lead Mercury Selenium Waste lube oil. Alcohol Water	2257 mg/kg 1872 mg/kg 1752 mg/kg 599 mg/kg 858000 mg/kg. 55000 mg/kg 87000 mg/kg	1690	NAV	1056L1	
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	517	NAV	NAV	1.05

617	EAF steel production.	EAF steel production.	Stabilization.	K061	Lead Nickel TOC Oil & grease	38000 ppm 200 ppm 0.03–0.04% 0.04–0.06%	600	NAV	NAV	0.02–0.03
688	EAF steel production.	EAF steel production.	Stabilization.	K061	Lead Oil & grease TOC	33618 mg/kg 18–127 102–168 mg/kg.	537–591	NAV	217–255.	0.03–0.04
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	524	NAV	NAV	0.03
192	TSDF	NAV	Lime neutralization,. Chemical fixation,. Stabilization.	K062 D002	Lead Nickel pH	0.12–204 mg/kg. 30–124.8 mg/kg. <1–7.0	[8] 0.11–310	NAV	[8] 6.0	0.02–0.03
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	286	NAV	NAV	0.49
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	241	NAV	NAV	4.19
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	211.0	NAV	NAV	0.29
681	EAF steel production.	EAF steel production.	Stabilization.	K061	Arsenic Lead Selenium	50mg/kg 15000 mg/Kg 70 mg/kg	200	1.4	<200	<0.02–0.02
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	160.4	NAV	NAV	0.042
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	100	NAV	NAV	3.35
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	88.1	NAV	NAV	0.035
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	84	NAV	NAV	0.08
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	80	NAV	NAV	1.14
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	77	NAV	NAV	0.02
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	54.1	NAV	NAV	0.052
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	49	NAV	NAV	0.11
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	38.1	NAV	NAV	0.051
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	38	NAV	NAV	0.06
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	38	NAV	NAV	0.16
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	36.5	NAV	NAV	0.029
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	35.6	NAV	NAV	0.137
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	34	NAV	NAV	0.04
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	33.1	NAV	NAV	0.024
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	27.4	NAV	NAV	0.025
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	27	NAV	NAV	0.035
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	24.3	NAV	NAV	0.026
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	21	NAV	NAV	0.3
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	20.6	NAV	NAV	0.017

[1] See section V(C)(10 for Data Sources
[2] Waste codes as reported in source.
[3] Data represent bench-scale test.
[4] Cadmium concentration in sludge given in test as mg/l. Converted to mg/kg assuming typical sludge density of about 100 lb/ft [3].
[5] NAV—Not available.
[6] NAP—Not applicable.
[7] CBI—Confidential business information.
[8] mg/l

3. Hexavalent Chromium

a. *Data Summary.* The Agency has seven data points on the treatment of hexavalent chromium in wastewater from four facilities. Of the seven data points, all have hexavalent chromium concentrations in the treated wastewater lower than the EP regulatory level of 5.0 mg/l. Table 6 provides a summary of all available data for the treatment of hexavalent chromium in wastewater.

Chemical reduction was the treatment technology used for six of the data points. Ion exchange was applied in the case of the other data point.

The Agency has seven data points for the treatment of hexavalent chromium in waste *other than wastewater* from two facilities. Stabilization was identified as the treatment technology for all of the data points. Of the seven data points, two have hexavalent chromium concentrations in the leachate from the treated waste that are lower than the EP regulatory level of 5.0 mg/l. Table 7 provides a summary of all available data on the treatment of hexavalent chromium in waste other than wastewater.

b. *Data Analysis—Wastewater.* (i) Waste Characteristic Analysis. Of the seven points, six reflect treatment by chemical reduction. The Agency has limited data on the range of waste characteristics pertinent to an evaluation of the performance of this technology. Most of the available waste characterization data that are important for an engineering analysis involve other reducible compounds (mainly metals) in the waste.

The treatment data have a maximum influent concentration for hexavalent chromium of 1,230 mg/l, while the literature indicates untreated wastes may have concentrations as high as 270,000 mg/l. The Agency believes that high hexavalent chromium concentrations, per se, do not adversely affect treatment by hexavalent chromium reduction. Proper adjustment of the reagent dose and sufficient residence time to allow the reaction to go to completion should provide adequate treatment for the range of untreated waste concentrations that the Agency would expect.

(ii) Design and Operating Parameters Analysis. For the seven data points, the Agency has some design and operating data for four treatment points from one facility that can be used to document the operation of the facility.

(iii) Discussion. The Agency's best engineering judgment is that the EP regulatory level of 5.0 mg/l for hexavalent chromium can be met for the full range of California List wastewaters containing hexavalent chromium. In support of this position, the Agency points to chemical reduction theory and our knowledge of the technologies available to minimize the effects of constituents in the waste that can interfere with treatment performance. Additionally, the available data would not lead us to conclude otherwise.

The Agency recognizes that we lack data on the full range of waste characteristics and design and operation conditions that may affect treatment effectiveness. Therefore, we are soliciting information to aid the Agency in analyzing treatment performance for hexavalent chromium in wastewater. The specific waste characterization data and design and operating data that the Agency needs are described in Section V(E), Request for Comments.

c. *Data Analysis—Waste Other than Wastewater.* (i) Waste Characteristic Analysis. As stated above in the data summary, only two of the seven available data points achieve the EP regulatory level for hexavalent chromium. Each of these uses stabilization technology for treatment. The treatment data have a maximum influent concentration for hexavalent chromium of 709,970 mg/kg.

The Agency has no waste characteristics data pertaining to the performance of stabilization for the data reported in Table 7.

(ii) Design and Operating Parameters Analysis. Of the seven data points, the Agency has design and operating data for six of the treatment points to document the operation of the bench scale tests. The design and operating data cover all parameters of the stabilization treatment process that the Agency believes to be significant. However, information was not provided as to the basis of the design conditions and, therefore, it is not possible to determine if the system was optimized.

(iii) Discussion. While data are limited, the concentration of hexavalent chromium in the leachate tended to increase as the concentration in the waste increased. The Agency believes that the performance of stabilization on wastes containing hexavalent chromium is adversely affected by the high solubility of hexavalent chromium compounds, and that treatment of these wastes by hexavalent chromium reduction is the recommended alternative. EP regulatory levels can be attained after the application of chemical reduction technology.

TABLE 6. HEXAVALENT CHROMIUM DATA FOR WASTEWATER

Source [a]	Industry	Process generating waste	Treatment process	Waste codes [a]	Waste characterization data		Hexavalent chromium concentration data	
					Parameter	Concentration (mg/l)	Untreated	Treated
							Total (mg/l)	Total (mg/l)
Envirite [1]	TSDF	NAV	Chemical reduction	F006	Cadmium	10	1230	0.19
				K062	Nickel	470		
				D003	Chromium	2279		
				D002	Copper	133		
					Lead	54		
Envirite [2]	TSDF	NAV	Chemical reduction	F006	Cadmium	10	1180	0.121
				K062	Chromium	2314		
				D003	Copper	72		
				D002	Lead	108		
					Nickel	426		
					Zinc	171		

TABLE 6. HEXAVALENT CHROMIUM DATA FOR WASTEWATER—Continued

Source [a]	Industry	Process generating waste	Treatment process	Waste codes [b]	Waste characterization data		Hexavalent chromium concentration data	
					Parameter	Concentration (mg/l)	Untreated	Treated
							Total (mg/l)	Total (mg/l)
Envirite [3]	TSDF	NAV	Chemical reduction	F006 K062 D003 D002	Cadmium Zinc Chromium Copper Lead Nickel Zinc	13 116 2581 138 64 471 116	1100	0.011
Envirite [4]	TSDF	NAV	Chemical reduction	F006 K062 D003	Zinc Nickel Chromium Copper Lead	71 1414 2236 91 18	1070	0.058
Battery manufacturing	Lead battery manufacturing	NAV	Chemical reduction	NAV	NAV	NAV	25.6	<0.014
Battery manufacturing	Lead battery manufacturing	NAV	Chemical reduction	NAV	NAV	NAV	11.45	<0.005
Battery manufacturing	Lead battery manufacturing	NAV	Ion exchange	NAV	Cadmium Cyanide Nickel	5.7 9.8 6.2	7.1	0.01

[a] See Section V(C)(10) for Data Sources.
[b] Waste codes as reported in source.
NAV—Not available.

TABLE 7. HEXAVALENT CHROMIUM DATA FOR WASTE OTHER THAN WASTEWATER

Source [a]	Industry	Process generating waste	Treatment process	Waste codes	Waste characterization data		Hexavalent chromium concentration data			
					Parameter	Concentration	Untreated	Treated		
								Total EP-Tox (mg/kg) (mg/l)	Total (mg/kg)	EP-Tox (mg/l)
CBI	CBI	CBI	Stabilization	NAV	CBI	CBI	709,970	NAV	NAV	100
UNH [b] [1]	NAP	Synthetic waste.	Stabilization	NAP	NAV	NAV	45,000	NAV	NAV	56.3
UNH [b] [2]	NAP	Synthetic waste.	Stabilization	NAP	NAV	NAV	45,000	NAV	NAV	158.5
UNH [b] [3]	NAP	Synthetic waste.	Stabilization	NAP	NAV	NAV	23,900	NAV	NAV	13.5
UNH [b] [4]	NAP	Synthetic waste.	Stabilization	NAP	NAV	NAV	23,900	NAV	NAV	60.7
UNH [b] [5]	NAP	Synthetic waste.	Stabilization	NAP	NAV	NAV	4,950	NAV	NAV	1.3
UNH [b] [6]	NAP	Synthetic waste.	Stabilization	NAP	NAV	NAV	4,950	NAV	NAV	4.5

[a] See Section V(C)(10) for Data Sources.
[b] These data represent bench-scale test.
NAV—Not available.
NAP—Not available.
CBI—Confidential Business Information.

4. Lead

a. *Data Summary.* The Agency has 16 data points on the treatment of lead in wastewater from ten facilities. Of the 16 data points, 15 have lead concentrations in the treated wastewater lower than the EP regulatory level of 5.0 mg/1. Of the 15 points that achieve the EP regulatory level, all reflect treatment by chemical precipitation. Table 6 provides a summary of all available data for the treatment of lead in wastewaters.

The Agency has 94 data points on the treatment of lead in waste *other than wastewater* from nine facilities. Of the 94 data points, 90 have lead concentrations in the leachate from the treated waste lower than the EP regulatory level of 5.0 mg/1. Of the 90 points that achieve the EP regulatory level, all reflect treatment by

stabilization. Table 9 provides a summary of all available data on lead in waste *other than wastewater.*

b. *Data Analysis—Wastewater.* (i) Waste Characteristic Analysis. Of the 15 data points that achieve the EP regulatory level, all reflect treatment by chemical precipitation, the principal technology for treating lead in wastewaters. The Agency has limited data on the range of waste characteristics pertinent to an evaluation of the performance of this technology. Most of the available waste characterization data that are important for an engineering analysis involve other metal concentrations.

For the one data point where the EP regulatory level was not achieved, the influent level was 1,900 mg/1. As stated previously in Section V(B)(1), high influent concentrations, per se, do not adversely affect treatment; however, high influent metal concentrations often are an indication that the metals are complexed in solution and complexed metal compounds, if not dissociated, could have an adverse effect on treatment.

(ii) Design and Operating Parameter Analysis. For the 15 data points that achieve the EP regulatory level, the Agency has some design and operating data for six treatment points from one facility that document the operation of the facility.

(iii) Discussion. The Agency's best engineering judgment is that the EP regulatory level of 5.0 mg/1 for lead can be met for the full range of California List wastewaters containing lead. In support of this position, the Agency points to theoretical solubility limit of lead precipitates, chemical precipitation theory, and our knowledge of the technologies available to minimize the effects of constituents in the waste that can interfere with treatment performance. In addition, the available data does not lead us to another conclusion.

In the case of the one data point that does not show achievement of the EP regulatory level, there are no additional waste characterization data to indicate why the EP regulatory level was not met. With regard to our analysis of the design and operation of the treatment system used, the Agency had no data to show that the treatment system was designed and operated properly.

The Agency recognizes the lack of data on the full range of waste characteristics and design and operating conditions that may affect treatment effectiveness. Therefore, we are soliciting data that would aid the Agency in analyzing treatment performance for lead in wastewaters. A description of the specific waste characterization data and design and operating data that the Agency needs can be found in Section V(E), Request for Comments.

c. *Data Analysis—Waste Other than Wastewater.* (i) Waste Characterization Analysis. As stated above in the data summary, 90 of the 94 data points show that the EP regulatory level for lead can be achieved. Of the 90 points that achieve the EP regulatory level, all reflect treatment by stabilization. The Agency has limited information on the range of waste characteristics pertinent to an evaluation of the performance of this technology. Most of the available waste characterization data that are important for an engineering analysis involve other metal concentrations.

For the wastes that were stabilized so that the leachate met the EP regulatory level, the highest concentration of lead was 57,000 mg/kg.

(ii) Design and Operating Parameter Analysis. For the 90 data points that achieve the EP regulatory level, the Agency has some design and operating data for four treatment points at four facilities that generally describe the stabilizing agent and ratio of waste to stabilizing agent.

(iii) Discussion. The Agency's best engineering judgment is that the EP regulatory level of 5.0 mg/1 for lead can be met in leachate for the full range of California List waste other than wastewater. In support of this position, the Agency points to the facility's ability to change the ratio of stabilizing agents to waste quantities as needed to decrease mobility of the constituent; this assumes that an effective stabilizing agent and/or additives are available. Additionally, the curing conditions (e.g., length of cure and ambient conditions) can be controlled to ensure that the waste particles have had sufficient time to form a stable treated waste. Additionally, the Agency's evaluation of the available data would not lead us to conclude otherwise.

For the four values that do not achieve the EP regulatory level of 5.0 mg/1, only two of them have waste concentrations higher than wastes which we show to achieve the EP regulatory level (96,200 mg/kg, EP of 938 mg/1; 63,150 mg/kg, EP of 22.8 mg/1). For the first point, the very high leachate value (938 mg/1) indicates that the stabilization process was not well-designed. In the case of the second point, the untreated concentration (63,150 mg/kg) is approximately the same as the concentration in a different waste (57,000 mg/kg) that does achieve the EP regulatory level. The Agency has no other waste characterization data on any of the four values that do not achieve the EP regulatory level that would have us conclude the EP regulatory level cannot be achieved. Additionally, we do not have any design and operating data that show the stabilization processes for the four values that do not achieve the EP regulatory level are well-designed and operated.

The Agency recognizes that we lack data on the full range of waste characteristics and design and operating conditions that may affect treatment effectiveness. Therefore, we are soliciting information to aid the Agency in analyzing treatment performance for lead in wastes other than wastewater. The specific waste characteristics data and design and operating data that the Agency needs are described in Section V(E), Request for Comments.

TABLE 8—LEAD DATA FOR WASTEWATER

Source*	Industry	Process generating waste	Treatment process	Waste codes*	Waste characterization data		Lead concentration data	
					Parameter	concentration (mg/l)	Untreated	Treated
							Total (mg/l)	Total (mg/l)
EWE	Electronic & plating.	NAV	Chemical precipitation.	NAV	Oil & grease	150 mg/kg	1900	02

TABLE 8—LEAD DATA FOR WASTEWATER—Continued

Source[a]	Industry	Process generating waste	Treatment process	Waste codes[b]	Waste characterization data		Lead concentration data	
					Parameter	concentration (mg/l)	Untreated	Treated
							Total (mg/l)	Total (mg/l)
Battery manufacturing.	Lead battery manufacturing.	NAV	Ferrite co-precipitation.	NAV	Cadmium	240	475	0.01
					Mercury	7.4		
					Nickel	1000		
Envirite [2]	TSDF	NAV	Chemical precipitation Filtration.	F006 D003 K062	Zinc	151	212	>0.01
					Hex. Chrom.	0.13		
					Chromium	831		
					Copper	217		
					Nickel	569		
					Oil & Grease	573		
Envirite [6]	TSDF	NAV	Chemical precipitation Filtration.	F006 K062 D003	Chromium	23	106	<0.01
					Cadmium	617		
					Copper	137		
					Zinc	135		
					Nickel	382		
					Oil & grease	322		
Envirite [3]	TSDF	NAV	Chemical precipitation Filtration.	F006 K062 D003 D002	Cadmium	10	108	<0.01
					Hex. Chrom.	769		
					Chromium	2314		
					Copper	72		
					Zinc	171		
					Nickel	426		
					Oil & grease	113		
Bhattacharyya, et al. [2].	Nonferrous metal production.	NAV	Sulfide and lime precipitation.	NAV	Arsenic	125	75	0.2
					Cadmium	14		
					Mercury	0.8		
Envirite [4]	TSDF	NAV	Chemical precipitation Filtration.	F006 K062 D003 D002	Cadmium	13	64	<0.01
					Hex. Chrom.	893		
					Chromium	2581		
					Copper	138		
					Nickel	471		
					Zinc	116		
					Oil & grease	28		
Envirite [5]	TSDF	NAV	Chemical precipitation Filtration.	F006 K062 D003 D002	Cadmium	10	54	<0.10
					Hex. Chrom.	807		
					Chromium	2279		
					Copper	133		
					Nickel	470		
					Oil & grease	54		
Chem Pro Inc.	NAV	NAV	Chemical precipitation Filtration.	NAV	NAV	NAV	32	<0.5
Battery manufacturing.	Lead battery manufacturing.	NAV	Hydroxide precipitation, Sedimentation.	NAV	NAV	NAV	30	0.11
Envirite [1]	TSDF	NAV	Chemical precipitation Filtration.	F006 K062 D003	Hex. Chrom.	917	18	0.01
					Chromium	2236		
					Copper	91		
					Nickel	1414		
					Zinc	71		
					Oil & grease	14		
Metal Finishing Dev. Doc.	Metal finishing	NAV	Chemical precipitation Sedimentation.	NAV	NAV	NAV	9.7	0.14
Metal Finishing Dev. Doc.	Metal finishing	NAV	Chemical precipitation Sedimentation.	NAV	NAV	NAV	8.4	0.10
Metal Finishing Dev. Doc.	Metal finishing	NAV	Chemical precipitation Sedimentation.	NAV	NAV	NAV	6.9	<0.1
Metal Finishing Dev. Doc.	Metal finishing	NAV	Chemical precipitation Sedimentation.	NAV	NAV	NAV	6.9	0.17

TABLE 8—LEAD DATA FOR WASTEWATER—Continued

Source*	Industry	Process generating waste	Treatment process	Waste codes*	Waste characterization data		Lead concentration data	
					Parameter	concentration (mg/l)	Untreated	Treated
							Total (mg/l)	Total (mg/l)
Bhattacharyya, et al. [1].	Nonferrous metal production.	NAV	Sulfide and lime precipitation.	NAV	Arsenic Cadmium Mercury	160 3.5 0.9	6.0	<0.2

* See Section V(C)(10) for Data Sources.
* Waste codes as reported in source.
NAV—Not available.

TABLE 9.—LEAD DATA FOR WASTE OTHER THAN WASTEWATER

Source	Industry	Process generating waste	Treatment process	Waste codes	Waste characterization data		Lead concentration data			
					Parameter	Concentration	Untreated		Treated	
							Total (mg/kg)	EP-Tox (mg/l)	Total (mg/kg)	EP-Tox (mg/l)
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	96200	NAV	NAV	936
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	83150	NAV	NAV	22.5
501	NAV	NAV	Stabilization.	F006	Nickel	4180 mg/kg	57000	125	NAV	0.3
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	50500	NAV	NAV	0.2
617	EAF steel	EAF steel production.	Stabilization.	K061	Cadmium Nickel Arsenic TOC Oil and grease.	200 ppm 40 ppm 0.03–0.04% 0.04–0.06%	38000	NAV	NAV	0.02–0.03
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	35600	NAV	NAV	0.88
681	EAF steel	EAF steel production.	Stabilization.	K061	Arsenic Cadmium Selenium	50 (mg/gk) 200 mg/gk 70 mg/gk	15000	55	000–7000.	<0.01–0.08
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	12500	NAV	NAV	1.19
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	11600	NAV	NAV	14.3
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	10900	NAV	NAV	3.81
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	10900	NAV	NAV	25.8
192*	NAP	Synthetic waste.	Stabilization.	NAP	Barium Cadmium Chromium Mercury Nickel Silver Arsenic Selenium	6600 mg/gk 10300 mg/gk 10900 mg/gk 11300 mg/gk 11100 mg/gk 3900 mg/gk 12000 mg/gk 7600 mg/gk	9820	NAV	NAV	<0.03
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	7911	NAV	NAV	0.84
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	7000	NAV	NAV	0.30
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	6450	NAV	NAV	0.08
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	6260	NAV	NAV	0.28
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	6250	NAV	NAV	1.83
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	5581	NAV	NAV	0.36

TABLE 9.—LEAD DATA FOR WASTE OTHER THAN WASTEWATER—Continued

Source	Industry	Process generating waste	Treatment process	Waste codes	Waste characterization data		Lead concentration data			
					Parameter	Concentration	Untreated		Treated	
							Total (mg/kg)	EP-Tox (mg/l)	Total (mg/kg)	EP-Tox (mg/l)
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	4589	NAV	NAV	0.3
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	4210	NAV	NAV	0.44
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	3800	NAV	NAV	3.77
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	3630	NAV	NAV	1.13
192[1]	NAP	Synthetic waste.	Stabilization.	NAP	Barium Cadmium Chromium Mercury Nickel Silver Arsenic Selenium	3680 mg/kg 5500 mg/kg 6300 mg/kg 600 mg/kg 5810 mg/kg 1760 mg/kg 6400 mg/kg 4600 mg/kg	3580	NAV	NAV	<0.03
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	3510	NAV	NAV	0.36
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	3231	NAV	NAV	0.21
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	2729	NAV	NAV	0.45
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	2680	NAV	NAV	0.42
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	2471	NAV	NAV	1.16
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	2471	NAV	NAV	1.76
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	2000	NAV	NAV	0.12
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	1889	NAV	NAV	0.27
HAZCO[1]	NAP	Synthetic waste.	Stabilization.	NAP	Arsenic Cadmium Mercury Selenium Waste lube oil. Alcohol Water	2267 mg/kg 1090 mg/kg 1752 mg/kg 599 mg/kg 858000 mg/kg 55000 mg/kg 87000 mg/kg	1872	NAV	1813	<0.5
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	1820	NAV	NAV	0.08
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	1808	NAV	NAV	0.24
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	1725	NAV	NAV	1.05
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	1370	NAV	NAV	0.39
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	1360	NAV	NAV	1.13
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	1300	NAV	NAV	1.7
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	1185	NAV	NAV	0.29
192[1]	NAP	Synthetic waste.	Stabilization.	NAP	Barium Cadmium Chromium Mercury Nickel Silver Arsenic Selenium	18 mg/kg 2400 mg/kg 1710 mg/kg 1060 mg/kg 1360 mg/kg 290 mg/kg 1100 mg/kg 750 mg/kg	1170	NAV	NAV	0.09
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	1049	NAV	NAV	0.55
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	800	NAV	NAV	1.41

TABLE 9.—LEAD DATA FOR WASTE OTHER THAN WASTEWATER—Continued

Source	Industry	Process generating waste	Treatment process	Waste codes	Waste characterization data		Lead concentration data			
					Parameter	Concentration	Untreated		Treated	
							Total (mg/kg)	EP-Tox (mg/l)	Total (mg/kg)	EP-Tox (mg/l)
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	663	NAV	NAV	0.62
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	597	NAV	NAV	0.7
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	596	NAV	NAV	0.6
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	577	NAV	NAV	1.82
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	484	NAV	NAV	0.42
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	448	NAV	NAV	0.41
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	362	NAV	NAV	0.365
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	360	NAV	NAV	0.41
638	TSDF	NAV	Stabilization.	NAV	Nickel Selenium TOC Oil & grease	291–314 ppm 0.125–51.8 ppm. 3.35–9.58 ppm 5.0%–18.4%	156–334	NAV	NAV	0.02
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	332	NAV	NAV	0.33
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	327	NAV	NAV	0.37
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	288	NAV	NAV	0.39
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	275	NAV	NAV	0.245
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	270	NAV	NAV	0.3
548	NAV	Electroplating.	Stabilization.	F006	Chromium (tot). Nickel	138000 mg/kg 5610 mg/kg	269	NAV	NAV	0.33
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	236	NAV	NAV	0.39
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	229	NAV	NAV	0.49
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	228	NAV	NAV	0.35
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	221	NAV	NAV	0.11
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	216	NAV	NAV	0.35
192	TSDF	NAV	Stabilization.	K062 D002 F006 F007 F009 F012	Cadmium Nickel pH	0.11–310 mg/l. 30–124.8 mg/l <1.7.0.	0.12–204 °	NAV	165 °	<0.06
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	203	NAV	NAV	0.35
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	198	NAV	NAV	0.34
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	190	NAV	NAV	0.01
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	185	NAV	NAV	0.29
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	182	NAV	NAV	0.02
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	181	NAV	NAV	0.48
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	180	NAV	NAV	0.205
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	160	NAV	NAV	0.26

TABLE 9.—LEAD DATA FOR WASTE OTHER THAN WASTEWATER—Continued

Source	Industry	Process generating waste	Treatment process	Waste codes	Waste characterization data		Lead concentration data			
					Parameter	Concentration	Untreated		Treated	
							Total (mg/kg)	EP-Tox (mg/l)	Total (mg/kg)	EP-Tox (mg/l)
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	169	NAV	NAV	0.4
192	TSDF	NAV	Stabilization.	K062 D002 F009 F006 F012 F007 F017 F018	Chromium Nickel	1527 mg/kg 2020 mg/kg	165	NAV	NAV	0.1
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	164	NAV	NAV	0.2
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	161	NAV	NAV	0.16
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	160	NAV	NAV	0.34
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	159	NAV	NAV	0.06
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	157	NAV	NAV	0.3
548	NAV	Electroplating.	Stabilization.	F006	Chromium Nickel	16700 mg/kg 5050 mg/kg	151	NAV	NAV	0.34
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	144	NAV	NAV	0.28
548	NAV	Electroplating.	Stabilization.	F006	Chromium Nickel	15600 mg/kg 5700 mg/kg	144	NAV	NAV	0.34
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	138.9	NAV	NAV	0.42
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	135	NAV	NAV	0.06
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	132	NAV	NAV	0.65
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	129	NAV	NAV	0.33
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	128	NAV	NAV	0.27
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	127	NAV	NAV	0.08
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	116	NAV	NAV	0.42
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	115	NAV	NAV	0.27
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	114	NAV	NAV	0.47
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	108	NAV	NAV	0.53
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	108	NAV	NAV	0.21
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	108	NAV	NAV	0.53
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	104	NAV	NAV	0.23

* See Section V(C)(10) for Data Sources.
• Waste code reported in delisting petition.
▸ Data represents bench-scale test.
NAV—Not available.
NAP—Not applicable.
CBI—Confidential Business Information.

5. Mercury

a. *Data Summary.* The Agency has five data points on the treatment of mercury in wastewater from four facilities. Of the five data points, all have mercury concentrations in the treated wastewater lower than the EP regulatory level of 0.2 mg/1. Table 10 provides a summary of all available data for treatment of mercury. All five data points reflect treatment by chemical precipitation.

The Agency has 102 data points on the treatment of mercury in waste *other*

than wastewater from three facilities. Of the 102 data points, 96 have mercury concentrations in the leachate from the treated waste lower than the EP regulatory level of 0.2 mg/1. Table 11 provides a summary of all available data for mercury in waste other than wastewater. Of the 102 data points, all reflect treatment by stabilization.

b. *Data Analysis—Wastewater.* (i) Waste Characterization Analysis. All data points reflect treatment by chemical precipitation. The Agency has limited data on the range of waste characteristics pertinent to an evaluation of performance of this technology. Most of the available waste characterization data that are important for an engineering analysis involve other metal concentrations.

The treatment data have a maximum influent concentration for mercury of 110 mg/1. Our review of the literature indicates that untreated wastes may have concentrations as high as 132 mg/1, comparable to the maximum influent concentration contained in the data set.

(ii) Design and Operating Parameter Analysis. The five data points were generated by four different facilities that employed chemical precipitation technologies. The Agency has no available design and operating data for any of the treatment facilities.

(iii) Discussion. The Agency's best engineering judgment is that the EP regulatory level of 0.2 mg/1 for mercury can be met for the full range of California List wastewaters containing mercury. In support of this position, the Agency points to theoretical solubility limits, chemical precipitation theory, and our knowledge of the technologies available to minimize the effects of constituents in the waste that can interfere with treatment performance. Additionally, the available data would not lead us to conclude otherwise.

All five data points show that the EP regulatory level can be achieved. Based on available information, these data cover the range of mercury concentrations that the Agency would expect to be present in untreated California List wastewaters. The Agency recognizes the lack of data on the full range of waste characteristics and design and operating conditions that may affect treatment effectiveness. Therefore, we are soliciting data that would aid the Agency in analyzing treatment effectiveness for mercury in wastewaters. A description of the specific waste characterization data and design and operating data that the Agency needs can be found in Section V(E), Request for Comments.

c. *Data Analysis—Waste Other Than Wastewater.* (i) Waste characterization Analysis. As stated above in the Data Summary, 96 of the 102 data points show that the EP regulatory level for mercury can be achieved. Of the 96 points that achieved the EP regulatory level, all reflect treatment by stabilization. The Agency has limited information on the range of waste characteristics pertinent to an evaluation of the performance of this technology. Most of the available waste characteristics data that are important for an engineering analysis involve other metal concentrations. For the 96 data points which meet EP regulatory levels, the treatment data reflect a maximum untreated level for mercury of 3,720 mg/kg.

(ii) Design and Operating Parameter Analysis. For the 96 data points that achieve the EP regulatory level, the Agency has only limited design and operating data reported from two facilities.

(iii) Discussion. The Agency's best engineering judgment is that the EP regulatory level of 0.2 mg/1 for mercury can be met in leachate for the full range of California List wastes other than wastewaters. In support of this position, the Agency points to the facility's ability to change the ratio of stabilizing agents to waste quantities as needed to decrease mobility of the constituent; this assumes that an effective stabilizing agent and/or additives are available. Additionally, the curing conditions (e.g., length of cure and ambient conditions) can be controlled to ensure that the waste particles have had sufficient time to form a stable treated waste. Additionally, the Agency's evaluation of the available data would not lead us to conclude otherwise.

For the six data points that do not achieve the EP regulatory level, only one has a waste concentration significantly higher than waste concentrations shown to achieve the EP regulatory level. While limited waste characterization data are available, this waste is not shown to contain constituents much different from other wastes which achieve the EP regulatory level. With regard to design and operation of the system, there are no data available to show that the stabilization process for this point was well-designed and operated.

The Agency recognizes that we lack data on the full range of waste characteristics and design and operation conditions that may affect treatment effectiveness. Therefore, we are soliciting information to aid the Agency in analyzing treatment performance for mercury in wastes other than wastewater. The specific waste characteristic data and design and operating data that the Agency needs are described in Section V(E), Request for Comments.

TABLE 10.—MERCURY DATA FOR WASTEWATER

Source [a]	Industry	Process generating waste	Treatment process	Waste codes	Waste characterization data		Mercury concentration data	
					Parameter	Concentration	Untreated	Treated
							Total (mg/l)	Total (mg/l)
Battery Manuf. Dev. Doc.	Zinc battery manufacturing/ Hg0 production.	NAV	Sulfide precipitation.	NAV	NAV	NAV	110	0.06
Battery Manuf. Dev. Doc.	Zinc battery manufacturing.	NAV	Lime precipitation, Settling, Filtration.	NAV	Cadmium Nickel	2.04 mg/l 1,000 mg/l	100	<0.001
Battery Manuf. Dev. Doc.	Lead battery manufacturing.	NAV	Ferrite co-precipitation.	NAV	Cadmium Nickel Lead	240 mg/l 1,000 mg/l 475 mg/l	7.4	0.001
Bhattach aryya, et al. [1].	Nonferrous metal production.	NAV	Sulfide and lime precipitation.	NAV	Arsenic Cadmium Lead	160 3.5 6.0	0.9	0.01

TABLE 10.—MERCURY DATA FOR WASTEWATER—Continued

Source [a]	Industry	Process generating waste	Treatment process	Waste codes	Waste characterization data		Mercury concentration data	
					Parameter	Concentration	Untreated	Treated
							Total (mg/l)	Total (mg/l)
Biotech anyys. et al. [23].	Nonferrous metal production.	NAV	Sulfide and lime precipitation.	NAV	Arsenic Cadmium Lead	125 14 75	0.9	0.012

[a] See Section V(C)(1)(i) for Data Sources.
NAV—Not Available.

TABLE 11.—MERCURY DATA FOR WASTE OTHER THAN WASTEWATER

Source [a]	Industry	Process generating waste	Treatment process	Waste codes	Waste characterization data		Mercury Concentration Data			
					Parameter	Concentration	Untreated	Treated		
							Total (mg/kg)	EP-Tox (mg/l)	Total (mg/kg)	EP-Tox (mg/l)
192 [b]	NAP	Synthetic waste.	Stabilization.	NAP	Barium Cadmium Chromium Lead Nickel Silver Arsenic Selenium	6500 mg/kg 10300 mg/kg 10900 mg/kg 9620 mg/kg 11100 mg/kg 3900 mg/kg 12000 mg/kg 7600 mg/kg	11300	NAV	NAV	25
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	3720	NAV	NAV	0.06
HAZCO [b]	NAP	Synthetic waste.	Stabilization.	NAP	Arsenic Cadmium Lead Selenium Waste lube oil Alcohol Water	2267 mg/kg 1090 mg/kg 1672 mg/kg 589 mg/kg 858000 mg/kg 55000 mg/kg 87000 mg/kg	1752	NAV	1697	0.07
192 [b]	NAP	Synthetic waste.	Stabilization.	NAP	Barium Cadmium Chromium Lead Nickel Silver Arsenic Selenium	18 mg/kg 2400 mg/kg 1710 mg/kg 1170 mg/kg 1360 mg/kg 290 mg/kg 1100 mg/kg 750 mg/kg	1060	NAV	NAV	8.4
192 [b]	NAP	Synthetic waste.	Stabilization.	NAP	Barium Cadmium Chromium Lead Nickel Silver Arsenic Selenium	3680 mg/kg 5500 mg/kg 6300 mg/kg 3580 mg/kg 5810 mg/kg 1780 mg/kg 6400 mg/kg 4600 mg/kg	600	NAV	NAV	8.6
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	554.2	NAV	NAV	0.006
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	253	NAV	NAV	0.11
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	243	NAV	NAV	0.009
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	105	NAV	NAV	0.01
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	90	NAV	NAV	0.002
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	84.3	NAV	NAV	0.001
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	64.9	NAV	NAV	0.001

TABLE 11.—MERCURY DATA FOR WASTE OTHER THAN WASTEWATER—Continued

Source *	Industry	Process generating waste	Treatment process	Waste codes	Waste characterization data		Mercury Concentration Data			
					Parameter	Concentration	Untreated	Treated		
							Total (mg/kg)	EP-Tox (mg/l)	Total (mg/kg)	EP-Tox (mg/l)
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	50	NAV	NAV	0.01
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	49	NAV	NAV	0.008
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	44	NAV	NAV	0.17
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	41	NAV	NAV	12
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	40	NAV	NAV	0.02
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	40	NAV	NAV	0.18
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	38	NAV	NAV	0.02
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	35	NAV	NAV	0.05
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	35	NAV	NAV	0.03
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	34	NAV	NAV	0.05
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	33	NAV	NAV	0.12
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	32	NAV	NAV	0.1
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	31	NAV	NAV	0.011
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	29	NAV	NAV	0.04
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	29	NAV	NAV	0.11
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	28	NAV	NAV	0.11
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	25.48	NAV	NAV	0.0058
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	25	NAV	NAV	0.02
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	24	NAV	NAV	0.03
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	23	NAV	NAV	0.03
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	22	NAV	NAV	0.09
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	22	NAV	NAV	0.14
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	21	NAV	NAV	0.11
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	21	NAV	NAV	0.12
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	20	NAV	NAV	0.02
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	20	NAV	NAV	0.19
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	19	NAV	NAV	0.06
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	19	NAV	NAV	0.03
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	19	NAV	NAV	0.08
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	18	NAV	NAV	0.09
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	18	NAV	NAV	0.13
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	18	NAV	NAV	0.02
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	17	NAV	NAV	0.14

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TABLE 11.—MERCURY DATA FOR WASTE OTHER THAN WASTEWATER—Continued

Source [a]	Industry	Process generating waste	Treatment process	Waste codes	Waste characterization data		Mercury Concentration Data			
					Parameter	Concentration	Untreated		Treated	
							Total (mg/kg)	EP-Tox (mg/l)	Total (mg/kg)	EP-Tox (mg/l)
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	17	NAV	NAV	0.09
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	16	NAV	NAV	0.21
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	16	NAV	NAV	0.06
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	15.22	NAV	NAV	0.0067
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	14	NAV	NAV	0.12
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	14	NAV	NAV	0.02
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	13.8	NAV	NAV	0.0185
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	12.83	NAV	NAV	0.001
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	12	NAV	NAV	0.09
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	12	NAV	NAV	0.06
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	12	NAV	NAV	0.05
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	12	NAV	NAV	0.11
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	11	NAV	NAV	0.11
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	11	NAV	NAV	0.07
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	11	NAV	NAV	0.03
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	10.4	NAV	NAV	0.0174
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	10.3	NAV	NAV	0.006
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	10	NAV	NAV	0.08
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	10	NAV	NAV	0.04
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	10	NAV	NAV	0.9
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	10	NAV	NAV	0.14
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	9.4	NAV	NAV	0.002
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	9.38	NAV	NAV	0.0104
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	8.8	NAV	NAV	0.0085
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	8.6	NAV	NAV	0.0085
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	8.5	NAV	NAV	0.0085
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	8.03	NAV	NAV	0.0109
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	8	NAV	NAV	0.03
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	8	NAV	NAV	0.09
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	8	NAV	NAV	0.04
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	8.1	NAV	NAV	0.045
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	7.91	NAV	NAV	0.0013
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	7.32	NAV	NAV	0.0019

TABLE 11.—MERCURY DATA FOR WASTE OTHER THAN WASTEWATER—Continued

Source *	Industry	Process generating waste	Treatment process	Waste codes	Waste characterization data		Mercury Concentration Data			
					Parameter	Concentration	Untreated	Treated		
							Total (mg/kg)	EP-Tox (mg/l)	Total (mg/kg)	EP-Tox (mg/l)
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	7.24	NAV	NAV	0.0231
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	7	NAV	NAV	0.06
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	6.93	NAV	NAV	0.0096
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	6.67	NAV	NAV	0.0073
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	6.62	NAV	NAV	0.0046
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	6.2	NAV	NAV	0.0043
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	6.1	NAV	NAV	0.002
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	6.1	NAV	NAV	0.0092
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	6	NAV	NAV	0.05
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	6	NAV	NAV	0.02
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	6	NAV	NAV	0.09
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	6	NAV	NAV	0.050
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	5.9	NAV	NAV	0.002
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	5.86	NAV	NAV	0.0024
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	5.8	NAV	NAV	0.01
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	5.74	NAV	NAV	0.0051
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	5.1	NAV	NAV	0.0065
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	5	NAV	NAV	0.02
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	5	NAV	NAV	0.06
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	5	NAV	NAV	0.021
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	5	NAV	NAV	0.05
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	4.91	NAV	NAV	0.0011
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	4.23	NAV	NAV	0.0163
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	4.1	NAV	NAV	0.007

* See Section V(C)(10) for Data Sources.
* Data represents bench-scale test.
NAV—Not available.
NAP—Not applicable.
CBI—Confidential Business Information.

6. Nickel

a. *Data Summary.* The Agency has 35 data points on the treatment of nickel in wastewater from 25 facilities. Of the 35 data points, 34 have nickel concentrations in the treated wastewater lower than the health-based value of 50 mg/1. The treatment technology applied to these wastewaters was chemical precipitation. Table 12 provides a summary of all available data on the treatment of nickel in wastewater.

The Agency has 40 data points on the treatment of nickel in waste *other than wastewater* from six facilities. Of the 40 data points, 38 have nickel lower than the health-based prohibition levels of 50 mg/1. The treatment technology applied to these wastes was stabilization. Table 13 provides a summary of all available data for nickel in waste other than wastewater.

b. *Data Analysis—Wastewater.*

(i) Waste Characteristic Analysis. Of the 34 data points that achieve the health-based prohibition level, all reflect treatment by chemical precipitation. The

Agency has limited data on the range of waste characteristics pertinent to an evaluation of the performance of this technology. Most of the available waste characterization data that are important for engineering analysis involve other metal concentrations.

The treatment data have a maximum influent concentration for nickel of 65,000 mg/1. As stated in Section V(B)(1), high influent concentrations, per se, do not adversely affect treatment; however, high metal concentration often indicate that the metals are complexed in solution and complexed metal compounds, if not dissociated, could have an adverse effect on treatment.

(ii) Design and Operating Parameter Analysis. Of the 34 data points that meet the health-based prohibition level, the Agency has some design and operating data for two data points from two facilities that document the operation of the treatment system. Limited design and operating data are available for the data point that does not meet the health-based prohibition level.

(iii) Discussion. The Agency's best engineering judgment is that the health-based prohibition level of 50 mg/1 for nickel can be met for the full range of California List wastes containing nickel. In support of this position, the Agency points to the theoretical solubility limit of nickel precipitates, chemical precipitation theory, and our knowledge of the technologies available to minimize the effects of constituents in the waste that can interfere with treatment performance. Additionally, the available data would not lead us to conclude otherwise.

In the case of the data point that does not show achievement of the health-based prohibition level, the Agency looked at the waste characteristics and treatment design and operation to determine why the health-based prohibition level was not attained. The only waste characteristic data reported for this point was an oil and grease concentration of 150 mg/1. This level may have been sufficient to interfere with the precipitation process; we would expect that oil and grease can be effectively removed by preliminary treatment such as oil-water separation and/or emulsion breaking.

With regard to our analysis of the design and operation of the treatment system used, the Agency had limited data to determine whether poor design or operation contributed to the failure of the system to achieve the health-based prohibition level.

The Agency recognizes that we lack data on the full range of waste characterization and design and operation conditions that may affect treatment effectiveness. Therefore, we are soliciting information to aid the Agency in analyzing treatment performance for nickel in wastewater. The specific waste characteristics data and design and operating data that the Agency needs are described in Section V(E), Request for Comments.

c. *Data Analysis—Waste Other Than Wastewater.* (i) Waste Characteristics Analysis. As stated above in the Data Summary, 38 of the 40 data points achieve the health-based prohibition level for nickel. All 40 data points reflect treatment by stabilization.

For the 38 data points, the Agency has limited information on the range of waste characteristics pertinent to an evaluation of the performance of this technology. Most of the available waste characterization data that are important for an engineering analysis involve other metal concentrations.

For wastes that were treated to below the health-based prohibition level, the maximum total nickel concentration was 65,000 mg/kg.

(ii) Design and Operating Parameter Analysis. For the 38 data points that achieve the health-based value, the Agency has limited design and operating data for 10 data points from two facilities. For the two data points that do not meet the health-based prohibition level, we have insufficient information to determine whether poor design or operation affected performance.

(iii) Discussion. The Agency's best engineering judgment is that the health-based prohibition level of 50 mg/1 for nickel can be met in leachate for the full range of California List wastes other than wastewater. In support of this position, the Agency points to the facility's ability to change the ratio of stabilizing agents to waste quantities as needed to decrease the mobility of the constituent; this assumes that an effective stabilizing agent and/or additives are available. Additionally, the curing conditions (e.g., length of cure and ambient conditions) can be controlled to ensure that the waste particles have had sufficient time to form a stable treated waste. Additionally, the Agency's evaluation of the available data also would not lead us to conclude that the health-based prohibition level of 50 mg/1 cannot be achieved.

In the cases where the treated waste leachate did not achieve the health-based prohibition level, the Agency looked at the waste characteristics and treatment design and operation to determine why the health-based prohibition level was not attained. Relative to waste characteristics, one of the two data points had untreated waste with high concentrations of various other metals that could have had an adverse affect on the performance of the stabilization technology. The EPA has no waste characteristic data on other parameters in these wastes, such as oil and grease content, organic compounds, and sulfates, all of which can adversely affect the performance of stabilization technology if not adequately removed or immobilized prior to or during stabilization. Relative to analysis of the design and operation of the treatment system used, the Agency has insufficient data to determine whether poor design or operation contributed to the failure of the systems to achieve the health-based prohibition level.

The Agency recognizes that we lack data on the full range of waste characteristics and design and operation conditions that may affect treatment effectiveness. Therefore, we are soliciting information to aid the Agency in analyzing treatment performance for nickel in wastes other than wastewater. The specific waste characteristics data and design and operating data that the Agency needs are described in Section V(E), Request for Comments.

TABLE 12.—NICKEL DATA FOR WASTEWATER

Source[a]	Industry	Process generating waste	Treatment process	Waste codes[a]	Waste Characterization Data		Nickel concentration data	
					Parameter	Concentration (mg/l)	Untreated	Treated
							Total (mg/l)	Total (mg/l)
Envirite [2]	TSDF	NAV	Chemical precipitation, Filtration.	F006 K062 D003 D002	Hex. Chrom. Chromium Copper Zinc Oil & Grease	775 1990 133 3.9 0.25	16330	0.33
Envirite [1]	TSDF	NAV	Chemical precipitation, Filtration.	D002 K062 D003	Hex. Chrom. Chromium Copper Zinc Oil & Grease	0.6 556 88 84 16	6610	0.33
EWE	Electronic & plating	NAV	Chemical precipitation.	NAV	Oil & grease	150	3700	130
Envirite [3]	TSDF	NAV	Chemical precipitation, Filtration.	F006 K062 D003	Hex. Chrom. Chromium Copper Lead Zinc Oil & grease	917 2236 91 18 71 14	1414	0.21
Battery Manufacturing Dev. Doc.	Zinc battery manufacturing.	NAV	Lime precipitation. Settling. Filtration.	NAV	Cadmium Mercury	2.04 100	1100	0.5
Battery Manufacturing Dev. Doc.	Lead battery manufacturing.	NAV	Ferrite coprecipitation.	NAV	Cadmium Lead Mercury	240 475 7.4	1000	0.2
Envirite [9]	TSDF	NAV	Chemical precipitation, Filtration.	D002 F006 D003	Chromium Copper Oil & grease	939 225 204	940	0.33
Envirite [10]	TSDF	NAV	Chemical precipitation, Filtration.	F006 K062 D003	Chromium Copper Oil & grease	395 191 0.035	712	0.33
Envirite [4]	TSDF	NAV	Chemical precipitation, Filtration.	F006 D003 K062	Hex. chrom Chromium Copper Lead Zinc	0.13 831 217 212 151	869	0.36
Envirite [5]	TSDF	NAV	Chemical precipitation, Filtration.	F011 K062 D003 D002	Hex. Chrom. Chromium Copper Zinc Oil & grease	734 2548 149 4 102	588	0.33
Frontier Chemical Company.	Battery manufacturing.	NAV	Chromium reduction, Lime precipitation, Filtration, Carbon adsorption.	D002 D007	TOC Oil & grease TSS TDS Lead Cadmium	5600–19000 2600–18000 2400–60000 10000–170000 1.1–3.8 3.9–180	4.3–600	1.8–2.2
Envirite [6]	TSDF	NAV	Chemical precipitation, Filtration.	F006 K062 D003 D002	Cadmium Hex. Chrom. Chromium Copper Lead Zinc Oil & grease	13 893 2581 138 64 116 28	471	0.33
Envirite [7]	TSDF	NAV	Chemical precipitation, Filtration.	F006 K062 D003 D002	Cadmium Hex. Chrom. Chromium Copper Lead Oil & grease	10 807 2279 133 116 54	470	0.33

TABLE 12.—NICKEL DATA FOR WASTEWATER—Continued

Source*	Industry	Process generating waste	Treatment process	Waste codes*	Waste Characterization Data		Nickel concentration data	
					Parameter	Concentration (mg/l)	Untreated	Treated
							Total (mg/l)	Total (mg/l)
Envirite [8]	TSDF	NAV	Chemical precipitation, Filtration.	F006 K062 D003 D002	Cadmium Hex. Chrom. Chromium Copper Zinc Lead Oil & grease	10 769 2314 72 171 108 113	426	0.4
Envirite [11]	TSDF	NAV	Chemical precipitation, Filtration.	F006 K062 D003	Cadmium Chromium Copper Lead Zinc Oil & grease	23 617 137 136 135 322	382	0.39
Metal Finishing Dev. Doc.	Metal finishing	NAV	Chemical precipitation, Sedimentation.	NAV	NAV	NAV	167	0.3
Metal Finishing Dev. Doc.	Metal finishing	NAV	Chemical precipitation, Sedimentation.	NAV	NAV	NAV	153	0.91
Metal Finishing Dev. Doc.	Metal finishing	NAV	Chemical precipitation, Sedimentation.	NAV	NAV	NAV	142	1.56
Metal Finishing Dev. Doc.	Metal finishing	NAV	Chemical precipitation, Sedimentation.	NAV	NAV	NAV	126	0.57
Metal Finishing Dev. Doc.	Metal finishing	NAV	Chemical precipitation, Sedimentation.	NAV	NAV	NAV	111	0.46
Metal Finishing Dev. Doc.	Metal finishing	NAV	Chemical precipitation, Sedimentation.	NAV	NAV	NAV	108	1.78
Metal Finishing Dev. Doc.	Metal finishing	NAV	Chemical precipitation, Sedimentation.	NAV	NAV	NAV	108	0.76
Metal Finishing Dev. Doc.	Metal finishing	NAV	Chemical precipitation, Sedimentation.	NAV	NAV	NAV	97	0.61
Metal Finishing Dev. Doc.	Metal finishing	NAV	Chemical precipitation, Sedimentation.	NAV	NAV	NAV	94	1.52
Metal Finishing Dev. Doc.	Metal finishing	NAV	Chemical precipitation, Sedimentation.	NAV	NAV	NAV	94	0.60
Metal Finishing Dev. Doc.	Metal finishing	NAV	Chemical precipitation, Sedimentation.	NAV	NAV	NAV	85.3	0.14
Metal Finishing Dev. Doc.	Metal finishing	NAV	Chemical precipitation, Sedimentation.	NAV	NAV	NAV	80.6	1.84

TABLE 12.—NICKEL DATA FOR WASTEWATER—Continued

Source*	Industry	Process generating waste	Treatment process	Waste codes*	Waste Characterization Data		Nickel concentration data	
					Parameter	Concentration (mg/l)	Untreated	Treated
							Total (mg/l)	Total (mg/l)
Metal Finishing Dev. Doc.	Metal finishing	NAV	Chemical precipitation, Sedimentation.	NAV	NAV	NAV	78.7	0.43
Metal Finishing Dev. Doc.	Metal finishing	NAV	Chemical precipitation, Sedimentation.	NAV	NAV	NAV	78.7	0.11
Metal Finishing Dev. Doc.	Metal finishing	NAV	Chemical precipitation, Sedimentation.	NAV	NAV	NAV	76.9	0.06
Metal Finishing Dev. Doc.	Metal finishing	NAV	Chemical precipitation, Sedimentation.	NAV	NAV	NAV	73.0	6.39
Battery Manufacturing Dev. Doc.	Zinc battery manufacturing.	NAV	Lime precipitation, Settling, Filtration.	NAV	NAV	NAV	59.0	1.76
Metal Finishing Dev. Doc.	Metal finishing	NAV	Chemical precipitation, Sedimentation.	NAV	NAV	NAV	53.8	0.45
Metal Finishing Dev. Doc.	Metal finishing	NAV	Chemical precipitation, Sedimentation.	NAV	NAV	NAV	52.5	0.48
Metal Finishing Dev. Doc.	Metal finishing	NAV	Chemical precipitation, Sedimentation.	NAV	NAV	NAV	50.0	7.30

* See Section V(C)(10) for Data Sources.
* Waste codes as reported in source.
NAV—Not available.

TABLE 13. NICKEL DATA FOR WASTE OTHER THAN WASTEWATER

Source *	Industry	Process generating waste	Treatment process	Waste codes *	Waste characterization data		Nickel concentration data			
					Parameter	Concentration	Untreated		Treated	
							Total (mg/kg)	EP-Tox (mg/l)	Total (mg/kg)	EP-Tox (mg/l)
161	NAV	Electroplating.	Stabilization.	F006	Chromium	72000 mg/kg	65000	87	NAV	4.6
591	NAV	NAV	Stabilization.	F006	Lead	42200 mg/kg	13100	60	NAV	5.3
192 *	NAP	Synthetic waste.	Stabilization.	NAP	Barium Cadmium Chromium Lead Mercury Silver Arsenic Selenium	6600 mg/kg 10300 mg/kg 10900 mg/kg 8620 mg/kg 11300 mg/kg 3900 mg/kg 12000 mg/kg 7600 mg/kg	11100	NAV	NAV	59.7
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	8432	NAV	NAV	1.19
548	NAV	Electroplating.	Stabilization.	F006	Chromium	16900 mg/kg	6120	NAV	NAV	0.454
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	6010	NAV	NAV	5.85

TABLE 13. NICKEL DATA FOR WASTE OTHER THAN WASTEWATER—Continued

Source [a]	Industry	Process generating waste	Treatment process	Waste codes [a]	Waste characterization data		Nickel concentration data			
					Parameter	Concentration	Untreated		Treated	
							Total (mg/kg)	EP-Tox (mg/l)	Total (mg/kg)	EP-Tox (mg/l)
548	NAV	Electroplating.	Stabilization.	F006	Chromium	15100 mg/kg	6010	NAV	NAV	0.377
192 [b]	NAP	Synthetic waste.	Stabilization.	NAP	Barium Cadmium Chromium Lead Mercury Silver Arsenic Selenium	3680 mg/kg 5500 mg/kg 6300 mg/kg 3580 mg/kg 600 mg/kg 1760 mg/kg 6400 mg/kg 4600 mg/kg	5810	NAV	NAV	8.9
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	5733	NAV	NAV	8.85
548	NAV	Electroplating.	Stabilization.	F006	Chromium Lead	15600 mg/kg 144 mg/kg	5700	NAV	NAV	0.364
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	5700	NAV	NAV	5.85
548	NAV	Electroplating.	Stabilization.	F006	Chromium Lead	13800 mg/kg 269 mg/kg	5610	NAV	NAV	0.352
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	5388	NAV	NAV	2.26
548	NAV	Electroplating.	Stabilization.	F006	Chromium Lead	16700 mg/kg 151 mg/kg	5050	NAV	NAV	0.373
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	4818	NAV	NAV	3.64
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	4810	NAV	NAV	0.45
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	4280	NAV	NAV	0.52
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	3740	NAV	NAV	0.56
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	3720	NAV	NAV	0.45
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	3530	NAV	NAV	0.46
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	3220	NAV	NAV	0.94
192	TSDF	NAV	Stabilization.	K062 D002 F009 F006 F012 F007 F017 F018	Chromium Iron Zinc	3300 mg/kg 30600 mg/kg 16000 mg/kg	3200	NAV	NAV	15
548	NAV	Electroplating.	Stabilization.	F006	Chromium	9720 mg/kg	3150	NAV	NAV	0.361
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	3068	NAV	NAV	0.09
548	NAV	Electroplating.	Stabilization.	F006	Chromium	9070 mg/kg	2920	NAV	NAV	0.288
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	2780	NAV	NAV	2.67
548	NAV	Electroplating.	Stabilization.	F006	Chromium	9000 mg/kg	2780	NAV	NAV	0.341
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	2680	NAV	NAV	0.62
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	2670	NAV	NAV	0.70
548	NAV	Electroplating.	Stabilization.	F006	Chromium	8580 mg/kg	2590	NAV	NAV	0.366
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	2587	NAV	NAV	2.67
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	2430	NAV	NAV	0.92
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	2160	NAV	NAV	0.42

TABLE 13. NICKEL DATA FOR WASTE OTHER THAN WASTEWATER—Continued

Source [a]	Industry	Process generating waste	Treatment process	Waste codes [a]	Waste characterization data		Nickel concentration data			
					Parameter	Concentration	Untreated		Treated	
							Total (mg/kg)	EP-Tox (mg/l)	Total (mg/kg)	EP-Tox (mg/l)
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	2100	NAV	NAV	0.75
192	TSDF	NAV	Stabilization.	K062 D002 F009 F006 F012 F007 F017 F018	Chromium Iron	1527 mg/kg 165 mg/kg	2020	NAV	NAV	60
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	1930	NAV	NAV	0.90
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	1700	NAV	NAV	0.71
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	1650	NAV	NAV	0.56
192 [b]	NAP	Synthetic waste.	Stabilization.	NAP	Barium Cadmium Chromium Lead Mercury Silver Arsenic Selenium	16 mg/kg 2400 mg/kg 1710 mg/kg 1170 mg/kg 1060 mg/kg 290 mg/kg 1100 mg/kg 750 mg/kg	1360	NAV	NAV	1.04
CBI	CBI	CBI	Stabilization.	NAV	CBI	CBI	1180	NAV	NAV	0.52

[a] See Section V(C)(10) for Data Sources.
[a] Waste codes as reported in source.
[b] Data represent bench-scale test.
NAV—Not available.
NAP—Not applicable.
CBI—Confidential Business Information.

7. Selenium

a. *Data Summary.* The Agency has three data points on treatment of selenium in wastewaters from three facilities. All three are lower than the EP regulatory level of 1.0 mg/1. Table 14 provides a summary of all available data for the treatment of selenium in wastewater.

The Agency has 19 data points on the treatment of selenium in waste *other than wastewater* from six facilities. Of the 19 data points, 16 are lower than the EP regulatory level of 1.0 mg/1. Table 15 provides a summary of all available data for the treatment of selenium in waste other than wastewater.

b. *Data Analysis—Wastewater.* (i) Waste Characteristic Analysis. As stated above, all three of the data points show that the EP regulatory level for selenium in wastewaters can be achieved. All three data points reflect treatment by either lime and/or sodium hydroxide precipitation.

The Agency has limited data on the range of waste characteristics pertinent to an evaluation of the performance of chemical precipitation technology. Most of the available waste characterization data that are important for an engineering analysis involve other metal concentrations.

(ii) Design and Operating Parameters Analysis. Design and operating data were not available for the three data points presented in Table 14.

(iii) Discussion. The Agency's best engineering judgment is that the EP regulatory level of 1.0 mg/1 for selenium can be met for the full range of California List wastes containing selenium. In support of this position, the Agency points to the theoretical solubility limit of selenium precipitates, chemical precipitation theory, and our knowledge of the technologies available to minimize the effects of constituents in the waste that can interfere with treatment performance. Additionally, the available data would not lead us to conclude otherwise.

The Agency recognizes the lack of data on the full range of waste characteristics and design and operating conditions that may affect treatment effectiveness. Therefore, we are soliciting data that would aid the Agency in analyzing treatment performance for cadmium in wastewaters. A description of the specific waste characterization data and design and operating data that the Agency needs can be found in Section V(E), Request for Comments.

c. *Data Analysis—Waste Other Than Wastewater.* (i) Waste Characteristic Analysis. As stated above in the Data Summary, 16 of the 19 data points achieve the EP regulatory level. Each of these uses stabilization technology for treatment. Of the 16 data points that achieve the EP regulatory level, the Agency has limited data on the range of waste characteristics pertinent to an evaluation of this technology. Most of the available waste characterization data that are important for an engineering analysis involve other metals and oil and grease concentrations. For the wastes where EP regulatory levels were achieved, the maximum total selenium concentration was 1000 mg/kg, while other data indicate that these wastes may contain

total selenium concentrations as high as 7,600 mg/kg. The data with 7,600 selenium in the untreated waste represents bench scale treatment results.

(ii) Design and Operating Parameters Analysis. For the 16 data points that achieve the EP regulatory level, the Agency has limited design and operating data for four data points from four facilities. Three of these data points represent bench scale data.

(iii) Discussion. The Agency's best engineering judgment is that the EP regulatory level of 1.0 mg/l for selenium can be met in leachate for the full range of California List waste other than wastewater. In support of this position, the Agency points to the ability of the facility to increase the ratio of stabilizing agents to waste as needed to meet high concentration wastes. Additionally, the curing conditions (e.g., length of cure and ambient conditions) can be controlled to ensure that the waste particles have had sufficient time to form a stable treated waste. The available data also would not lead us to conclude that the EP regulatory level for selenium cannot be achieved.

In the cases where the treated waste leachate did not achieve the EP regulatory level, the Agency looked at the waste characteristics and treatment design and operation to determine why the EP regulatory level was not attained. While we had limited waste characteristic data for these 3 points, we did not find any constituents in these wastes that were significantly different from other wastes achieving the EP regulatory level. We also showed wastes that had initial concentrations of the same order of magnitude achieving the EP regulatory level. Relative to analysis of the design and operation of the treatment systems used, the Agency had no data to determine whether poor design or operation contributed to the failure of the systems to achieve the EP regulatory level.

The Agency recognizes that we lack data on the full range of waste characteristics and design and operation conditions that may affect treatment effectiveness. Therefore, we are soliciting information to aid the Agency in analyzing treatment performance for cadmium wastes other than wastewater. The specific waste characteristics data and design and operating data that the Agency needs are described in Section V(E), Request for Comments.

TABLE 14.—SELENIUM DATA FOR WASTEWATER

Source *	Industry	Process generating waste	Treatment process	Waste codes	Waste characterization data		Selenium concentration data	
					Parameter	Concentration (mg/l)	Untreated total (mg/l)	Treated total (mg/l)
Battery Manufacturing Dev. Doc.	Lead battery manufacturing.	NAV	Lime and sodium hydroxide precipitation.	NAV	Nickel	5.84 mg/kg	30.2	<0.1
Battery Manufacturing Dev. Doc.	Lead battery manufacturing.	NAV	Lime and sodium hydroxide precipitation.	NAV	Nickel	6.86 mg/kg	20.6	<0.1
Battery Manufacturing Dev. Doc.	Lead battery manufacturing.	NAV	Lime and sodium hydroxide precipitation.	NAV	Nickel	5.63 mg/kg	27.4	<0.1

* See Section V(C)(10) for Data Source.
NAV—Not available.

TABLE 15.—SELENIUM DATA FOR WASTE OTHER THAN WASTEWATER

Source *	Industry	Process generating waste	Treatment process	Waste codes*	Waste characterization data		Selenium concentration data			
					Parameter	Concentration	Untreated		Treated	
							Total (mg/kg)	EP-Tox (mg/l)	Total (mg/kg)	EP-Tox (mg/l)
192*	NAP	Synthetic waste.	Stabilization	NAV	Barium	6,600 mg/kg	7,600	NAV	NAV	2.9
					Cadmium	10,300 mg/kg				
					Chromium	10,900 mg/kg				
					Lead	8,820 mg/kg				
					Mercury	11,300 mg/kg				
					Nickel	11,100 mg/kg				
					Silver	3,900 mg/kg				
					Arsenic	12,000 mg/kg				
192*	NAP	do	do	NAV	Barium	3,680 mg/kg	4,600	NAV	NAV	2.0
					Cadmium	5,500 mg/kg				
					Chromium	6,300 mg/kg				
					Lead	3,580 mg/kg				
					Mercury	600 mg/kg				
					Nickel	5,810 mg/kg				
					Silver	1,760 mg/kg				
					Arsenic	6,400 mg/kg				
617	EAF steel production.	Electric arc furnace.	do	K061	Lead	38,000 ppm	1,000	NAV	NAV	0.02-0.04
					Cadmium	600 ppm				
					Chromium	1,100 ppm				
					Nickel	200 ppm				
					TOC	0.3-0.04%				
					Oil & grease	0.04-0.08%				

TABLE 15.—SELENIUM DATA FOR WASTE OTHER THAN WASTEWATER—Continued

Source [+]	Industry	Process generating waste	Treatment process	Waste codes[a]	Waste characterization data		Selenium concentration data			
					Parameter	Concentration	Untreated		Treated	
							Total (mg/kg)	EP-Tox (mg/l)	Total (mg/kg)	EP-Tox (mg/l)
192[b]	NAP	Synthetic waste.	do	NAV	Barium	18 mg/kg	750	NAV	NAV	1.5
					Cadmium	2,400 mg/kg				
					Chromium	1,710 mg/kg				
					Lead	1,170 mg/kg				
					Mercury	1,060 mg/kg				
					Nickel	1,360 mg/kg				
					Silver	280 mg/kg				
HAZCO[b]	NAV	do	do	NAV	Arsenic	1,100 mg/kg	500	NAV	580	<0.1
					Arsenic	2,267 mg/kg				
					Cadmium	1,090 mg/kg				
					Lead	1,872 mg/kg				
					Mercury	1,752 mg/kg				
					Waste lube oil	858,000 mg/kg				
					Alcohol	55,000 mg/kg				
					Water	8,700 mg/kg				
CBI	CBI	CBI	do	NAV	CBI	CBI	80	NAV	NAV	0.28
CBI	CBI	CBI	do	NAV	CBI	CBI	78	NAV	NAV	0.11
681	EAF steel production.	Electric arc furnace.	do	K061	Arsenic	50 mg/kg	70	NAV	10–40	<0.05
					Cadmium	200 mg/kg				
					Lead	15,000 mg/kg				
CBI	CBI	CBI	do	NAV	CBI	CBI	52	NAV	NAV	0.05
638	EAF steel production.	NAV	do	NAV	Chromium	1,120–1,140 ppm	0.13–51.8	NAV	NAV	0.005–0.021
					Nickel	291–314 ppm				
					Lead	156–334 ppm				
					Oil & grease	5.0%–18.4%				
CBI	CBI	CBI	do	NAV	CBI	CBI	48	NAV	NAV	0.41
CBI	CBI	CBI	do	NAV	CBI	CBI	35	NAV	NAV	0.01
CBI	CBI	CBI	do	NAV	CBI	CBI	30	NAV	NAV	0.08
CBI	CBI	CBI	do	NAV	CBI	CBI	26	NAV	NAV	0.05
CBI	CBI	CBI	do	NAV	CBI	CBI	26	NAV	NAV	0.20
CBI	CBI	CBI	do	NAV	CBI	CBI	25	NAV	NAV	0.14
CBI	CBI	CBI	do	NAV	CBI	CBI	24	NAV	NAV	0.14
CBI	CBI	CBI	do	NAV	CBI	CBI	23	NAV	NAV	0.15
CBI	CBI	CBI	do	NAV	CBI	CBI	21	NAV	NAV	0.12

[+] See Section V(C)(10) for Data Sources.
[a] Waste codes are reported in source.
[b] Data represent bench-scale data.
NAV—Not available.
NAP—Not applicable.
CBI—Confidential Business Information

8. Thallium

The Agency does not have treatment data for thallium. We are considering a treatment standard for thallium of 0.9 mg/l as measured by the Extraction Procedure (EP) Toxicity Test (40 CFR 261).

a. *Wastewater.* In the absence of treatment data for thallium in wastewater, the Agency reviewed the theoretical solubility limits of thallium in comparison with the other California List metals. As shown in Table 16, the solubility product for thallium is much lower than for the other California metals. From these data, it appears that chemical precipitation can be used to achieve the EP regulatory level. The Agency solicits data and information that would aid in analyzing treatment performance for thallium in *wastewater.*

b. *Waste Other than Wastewater.* In the absence of treatment data for thallium in waste *other than wastewater,* the Agency reviewed the general literature on waste stabilization. The literature review indicates that pH and solubility are significant factors affecting that solidification. In that pH is a controlled variable and the solubility of thallium is very low at high pH, it appears that it is theoretically possible to achieve the EP regulatory level. The Agency solicits data and information that would aid in analyzing treatment performance for thallium in waste other than wastewater.

TABLE 16.—SOLUBILITY PRODUCTS OF SELECTED METAL HYDROXIDES AND SULFIDES

Metal compound	Ksp
Lead: $Pb(OH)_2$	1.2×10^{-15}
Cadmium; $Cd(OH)_2$ fresh	2.5×10^{-14}
Nickel: $Ni(OH)_2$ fresh	2.0×10^{-15}
Thallium: $Tl(OH)_3$	6.3×10^{-46}
Mercury: $Hg(OH)_2$	3.0×10^{-26}
Arsenic:	
$As^{+3}+3OH$	2.0×10^{-1}
As_2S_3	2.1×10^{-22}

Source: Lange's Handbook of Chemistry.

9. Cyanide

a. *Data Summary.* The Agency has 21 usable data points on the treatment of cyanide in wastewater from four facilities. Of the 21 data points, 20 are lower than the health based value of 20 mg/l. Eighteen of the data points that achieved the health-based prohibition level resulted from cyanide oxidation using ozone, one used alkaline chlorination, and one used electrolytic oxidation. The one data point that did not achieve the health-based prohibition level reflected electrolytic treatment. Table 17 provides a summary of all available data for cyanide in wastewater.

The Agency did not evaluate treatment of cyanide in wastes *other than wastewaters.* We believe treatment other than destruction is inappropriate; therefore, cyanide-containing wastes should not be solidified prior to treatment. We recognize, however, that

wastewater treatment will result in some concentration of cyanide in the residual solids. To exceed the health-based prohibition level of 20 mg/l, this residual concentration would need to be in excess of 400 mg/kg. The Agency does not believe this will be the case. The Agency, therefore, has not included data on treatment of cyanide-bearing sludges in this notice because no available data exist to show that these wastes contain cyanide concentrations that exceed 400 mg/kg.

b. *Data Analysis—Wastewater.* (i) Waste Characterization Analysis. As stated above, 20 of the 21 data points show that the health-based prohibition level for cyanide can be achieved. The Agency has limited data on the range of waste characteristics pertinent to an evaluation of the performance of cyanide oxidation technology. Most of the available waste characteristic data that are important to an engineering analysis involve other metals and total organic carbon.

The treatment data show a maximum influent concentration for cyanide of 75,000 mg/l. The literature indicates untreated wastes may have concentrations of cyanide as high as 100,000 mg/l, comparable to the highest cyanide influent concentrations for which the Agency has treatment data.

(ii) Design and Operating Parameter Analysis. The Agency has limited design and operating data from four facilities. Three of the facilities presented data for one point each and the fourth facility presented operating data for 18 points. The technologies used are ozonation, alkaline chlorination, and electrolytic oxidation.

(iii) Discussion. The Agency's best engineering judgment is that the health-based prohibition level of 20 mg/l for cyanide can be met for the full range of California List wastewaters containing cyanide. In support of this position, the Agency points to the cyanide oxidation theory and our knowledge of the technologies available to minimize the effects of constituents in the waste that can interfere with treatment performance. Additionally, the available data would not lead us to conclude otherwise.

In the case of the data point that does not show achievement of the health-based prohibition level of 20 mg/l, there are insufficient waste characterization data to indicate why the EP regulatory level could not be met. Additionally, for this data point, there is only limited design and operating data reported; however, it appears that insufficient retention time resulted in poor performance.

The Agency recognizes the lack of data on the full range of waste characteristics and design and operating conditions that may affect treatment effectiveness. Therefore, we are soliciting data on waste characteristics that can affect performance for cyanide in wastewaters. A description of the specific waste characterization data and design and operating data that the Agency needs can be found in Section V(E), Request for Comments.

TABLE 17.—CYANIDE DATA FOR WASTEWATER

Source*	Industry	Process generating waste	Treatment process	Waste codes*	Waste characterization data		Cyanide Concentration Data	
					Parameter	Concentration (mg/l)	Untreated total (mg/l)	Treated total (mg/l)
JWPCF	NAV	Plating bath wastes	Electroytic oxidation	NAV	NAV	NAV	75,000	0.2
Chem Pro Inc.	NAV	Plating bath wastes and rinses.	do	NAV	TOC	37,000	16,000	1,000
Frontier Chemical Company.	NAV	Cyanide Drum Rinse	Cyanide oxidation by alkaline chlorination.	F007-F012	TOC Cadmium Lead Nickel	20,000 230 31 1,400	5,600–011,000	<5
Electro-plating Plant	NAV	Electroplating	Cyanide oxidation with ozone	NAV	NAV	NAV	130	0.90
Do	NAV	do	do	NAV	NAV	NAV	107	0.44
Do	NAV	do	do	NAV	NAV	NAV	83	0.86
Do	NAV	do	do	NAV	NAV	NAV	82	0.30
Do	NAV	do	do	NAV	NAV	NAV	76	0.90
Do	NAV	do	do	NAV	NAV	NAV	75	0.65
Do	NAV	do	do	NAV	NAV	NAV	72	0.54
Do	NAV	do	do	NAV	NAV	NAV	69	0.39
Do	NAV	do	do	NAV	NAV	NAV	68	0.41
Do	NAV	do	do	NAV	NAV	NAV	67	0.35
Do	NAV	do	do	NAV	NAV	NAV	66	0.38
Do	NAV	do	do	NAV	NAV	NAV	64	0.70
Do	NAV	do	do	NAV	NAV	NAV	58	0.30
Do	NAV	do	do	NAV	NAV	NAV	53	0.58
Do	NAV	do	do	NAV	NAV	NAV	49	0.10
Do	NAV	do	do	NAV	NAV	NAV	49	0.30
Do	NAV	do	do	NAV	NAV	NAV	48	0.50
Do	NAV	do	do	NAV	NAV	NAV	38	0.14

* See Section V(C)(10) for Data Sources.
* Waste codes as reported in source.
NAV–Not available

10. Data Sources

Battery Manufacturing Dev. Doc.

U.S. Environmental Protection Agency. Development Document for Effluent Limitations Guidelines and Standards for Battery Manufacturing Point Source Category. Volumes I and II. EPA 440/1–84/067. August 1984.

Bhattacharyya, et. al.

Bhattacharyya, D., C. Sund-Hagelberg, K. Schwitzgebel, G.M. Blythe, and F.B. Craig. "Removal of Heavy Metals, Arsenic, and Fluoride from Smelter Effluents by Sulfide–Lime Precipitation." In: Proceedings of the Industrial Wastes Symposia. Las Vegas, NV. 1980.

CHEM PRO

U.S. Environmental Protection Agency, Office of Research and Development. Facility Test Report for

Chemical Processors, Inc., Seattle, Washington. Prepared by Metcalf & Eddy, Inc., under EPA Contract No. 68-03-3166. July 1986.

Electroplating Plant

U.S. Environmental Protection Agency, Office of Research and Development. Briefing—Technologies Applicable to Hazardous Waste. Prepared by Metcalf & Eddy, Inc.

Envirite

U.S. Environmental Protection Agency, Office of Solid Waste. Onsite Engineering Report of Treatment Technology Performance and Operation for Envirite Corporation. Prepared for EPA under EPA Contract No. 68-01-7053. December 1986.

EWE

U.S. Environmental Protection Agency, Office of Research and Development. Facility Test Report for Environmental Waste Enterprises, Eloy, Arizona. Prepared by Metcalf & Eddy, Inc., under EPA Contract No. 68-03-3166. February 1986.

Frontier Chemical Company

U.S. Environmental Protection Agency, Office of Research and Development. Facility Test Report for Frontier Chemical Waste Process, Inc. Prepared by Metcalf & Eddy, Inc., under EPA Contract No. 68-03-3166. November 1985.

HAZCO

Hazco. Technical Fact Sheet for HAZCO Solidification Agents.

JWPCF

Easton, John K. Electrolytic Decomposition of Concentrated Cyanide Plating Wastes. Water Pollution Control Federation Journal. 39:1621-1625. October 1967.

Lange's Handbook of Chemistry

Dean, John A. Lange's Handbook of Chemistry. Twelfth Edition. McGraw-Hill Book Company. 1979. pp. 5-12.

Metal Finishing Dev. Doc.

U.S. Environmental Protection Agency. Development Document for Effluent Limitations Guidelines and Standards for the Metal Finishing Point Source Category. EPA 440/1-83/091. June 1983.

Nonferrous Metals Dev. Doc.

U.S. Environmental Protection Agency. Development Document for Effluent Limitations Guidelines and Standards for the Nonferrous Metals Point Source Category, Volume III. EPA-440/1-83/019-6. March 1983.

UNH

Bishop, Paul L., Steven B. Ransom, and David L. Gress. "Fixation Mechanisms in Solidification/Stabilization of Inorganic Hazardous Wastes." In: Proceedings of the 38th Industrial Waste Conference, ed. John M. Bell. Boston: Butterworth Publishers, 1984, pp. 395-401.

126

Delisting Petition No. 126. Westinghouse Electric Corporation. Waste Code F006.

161

Delisting Petition No. 161. TRW Carr Division. Waste Code F006.

192

Delisting Petition No. 192. Chemlime Corporation. Waste Codes K062, D002, F006, F007, F008, F009, F012.

548

Delisting Petition 548. The General Motors Corporation, Fisher Body Division. Waste Code F006.

591

Delisting Petition No. 591. D.A.B. Industries, Inc. Waste Code F006.

617

Delisting Petition No. 617. Bethlehem Steel Corporation. Waste Code K061.

638

Delisting Petition No. 638. Chemical Waste Management. Waste Code Unspecified.

657

Delisting Petition No. 657. Universal Fasteners, Inc. Waste Codes F006, F008, and F009.

681

Delisting Petition No. 681. Bethlehem Steel Corporation. Waste Code K061.

688

Delisting Petition No. 688. Roanoke Electric Steel Corporation. Waste Code K061.

D. Conclusions.

The Agency has evaluated the technologies used to treat California List metals and cyanide wastes and its best engineering judgment is that wastewater and non-wastewater California List wastes can be treated to achieve EP regulatory levels or health-based prohibition levels for metals and to a level of 20 mg/l for cyanide. Given the potential diversity of California List wastes, the Agency does not believe it possible at this time to establish more tailored treatment standards, and so instead is evaluating treatment standards achievable by a wide group of wastes. More specific determinations will be made when rules establishing treatment standards for Section 3004(g) wastes are promulgated.

Table 18 summarizes the number of treatment data points that achieve the EP regulatory level for each constituent. The Agency does not have treatment data for thallium. For this constituent, we estimated that available treatment could achieve the health-based prohibition level based on a comparison of solubility products for the various California List metals and a review of the critical elements of effective stabilization technology.

TABLE 18.—NUMBER OF DATA POINTS MEETING THE EP VALUE

Constituent	Wastewater		Waste other than wastewater	
	No. of usable data points	No. meeting EP value	No. of usable data points	No. meeting EP value
Arsenic	3	3	11	11
Cadium	16	13	43	30
Hexavalent chromium	7	7	7	2
Lead	16	15	94	80
Mercury	5	5	102	96
Nickel	35	34	40	38
Selenium	3	3	19	16
Thallium				

TABLE 18.—NUMBER OF DATA POINTS MEETING THE EP VALUE—Continued

Constituent	Wastewater		Waste other than wastewater	
	No. of usable data points	No. meeting EP value	No. of usable data points	No. meeting EP value
Cyanide	21	20		

It is EPA's tentative view that these data corroborate that the contemplated treatment standards can be achieved by a wide group of California List wastes.

The treatment data for all constituents are limited, however, particularly with respect to waste characterization data that affect treatment and design and operation of the technologies. The specific data that EPA is lacking for each California List metal and cyanide can be ascertained by combining the treatment technology discussion, which describes the data needed for an engineering analysis of technology performance (Section V(B)), with the data tables that present available data for each treated constituent (Section V(C)). In addition, within the Agency's data analysis discussions for each constituent, we have highlighted the data gaps and/or reported information concerning various aspects of waste characteristics, design, and operating parameters that might affect the Agency's preliminary conclusions that EP regulatory levels and health-based prohibition levels uniformly can be achieved.

EPA is soliciting comments on all aspects of the treatment data presented and is again requesting additional data that would impact on the Agency's preliminary assessment that treatment levels can be established at the EP regulatory levels or at health-based prohibition levels for the California List metals and at a level of 20 mg/l for cyanide. In Section V(E), the Agency describes the specific data needed for its evaluation of additional data on treatment of California List metals and cyanide in wastewaters and wastes other than wastewater.

E. Request for Comments

Throughout this Notice of Data Availability, EPA has indicated that limited data exist to analyze treatment performance for wastes containing California List metals and cyanide. Existing data are only sufficient for corroborating engineering judgment. As noted earlier, the Agency lacks specific treatment data (i.e. waste characterization, design, and operating data) for certain categories of California List metals and cyanides. This section describes the specific waste characterization and design and operating information that should accompany any waste treatment data suppied to the Agency. In this section, we have only provided specific data requests for the technologies associated with the vast majority of the data. For other technologies upon which commenters wish to provide treatment data, the commenter should refer to Section V(B), Applicable Technologies, for a listing of the data needed by the Agency.

1. Wastewaters Containing California List Metals, Except Hexavalent Chromium

For Wastewaters, the principal technology used to treat California List metals (excluding hexavalent chromium) is chemical precipitation.

a. *Waste characterization data.* The specific waste characterization data needed to assess the performance of this technology include:

- Initial metal concentration of untreated wastewater;
- Whether the metal exists as a complex;
- Valence state for the metals, arsenic, chromium, lead, and mercury;
- Other metals present in the waste;
- Presence of high concentrations of dissolved inorganic solids in solution (i.e., salinity);
- Presence of oil and grease in the waste; and
- Presence of surfactants in the waste.

b. *Design data.* The Agency needs design data on the treatment system used to treat the wastes. If a continuous chemical precipitation system was used, EPA needs the following design data:

- Design pH value and the basis for selection of this value (e.g., bench scale jar test results). The commenter should also provide the temperature at which the design tests were performed.
- Design treatment chemical(s) used to achieve the pH value.
- Design settling time, associated untreated waste feed rate and tank size, and the basis for selection of these values (e.g., total suspended solids (TSS) value from bench scale jar tests). Include information on any flocculating or coagulating aids used to improve settling characteristics and reduce required retention times.

For batch treatment systems, the Agency needs the same design information listed above, except it does not request waste feed rate and tank size.

c. *Operating data.* The operating data that the Agency needs to ensure that the design conditions were being achieved during generation of the treatment data are:

- pH and temperature values throughout the treatment period; and
- Untreated wastewater flowrates throughout the treatment period.

For batch systems, the Agency needs the same information except, instead of wastewater flowrate, we need the settling time and/or any operating parameter used as a check to ensure that sufficient settling has been accomplished (e.g., TSS, turbidity, or metal concentration in the treated waste).

2. Wastewaters Containing Hexavalent Chromium

For wastewaters containing hexavalent chromium, the principal treatment technology is chromium reduction.

a. *Waste characterization data.* The specific waste characterization data needed to assess the performance of chromium reduction technology include:

- Initial hexavalent chromium concentration in the untreated wastewater;
- Whether the hexavalent chromium exists as a complex;
- Other metals that could be reduced; and
- Presence of oil and grease in the waste.

b. *Design data.* The Agency needs design data on the treatment system used to treat hexavalent chromium. If a continuous hexavalent chromium reduction system was used, EPA needs the following design data:

- Design ORP (oxidation—reduction potential) value and the basis for selection of this value (e.g., bench scale tests comparing ORP readings with hexavalent chromium concentrations).

The commenter should also provide the associated pH values.

- Design treatment chemical(s).
- Design retention time, associated untreated waste flow rate and tank size, and the basis for selections of these values (e.g., ORP value from bench scale tests).

For batch treatment system, EPA needs the same design data, except it does not request waste feed rate and tank size.

c. *Operating data.* The operating data that the Agency needs to ensure that the design conditions were being achieved during generation of the treatment data are:

- ORP and pH during the treatment period; and
- Untreated wastewater flow rate during the period of treatment.

For batch hexavalent chromium reduction systems, EPA needs the same data except instead of wastewater flowrate, the Agency needs the retention time of the waste during treatment or the operating parameter used to determine that reduction was complete (e.g., hexavalent chromium concentration or ORP).

3. Wastewaters Containing California List Cyanides

For wastewaters containing "free" cyanide, the principal treatment technology is cyanide oxidation.

a. *Waste characterization data.* The specific waste characterization data needed to assess the performance of this technology include:

- Initial concentration of cyanide in the wastewater;
- Presence of metals that complex with cyanide (e.g., iron and nickel);
- Presence of metals that can be oxidized (e.g., trivalent chromium and ferrous iron);
- High levels of oil and grease; and
- High levels of surfactants.

b. *Design data.* The Agency needs design data on cyanide oxidation systems used to treat "free" cyanide wastewaters. If a continuous oxidation system was used, EPA needs the following design data:

- ORP design value and the basis for selection of this value (e.g., bench scale tests comparing ORP readings with "free" cyanide concentration). The commenter should provide the associated pH values;
- Type of oxidizing agent and the basis for selection; and
- Design reaction time, associated flow rate of the waste, and the basis for selection of these values (e.g., cyanide levels in bench scale tests).

For batch treatment systems, the Agency needs the same design information except it is not requesting waste feed rate.

c. *Operating data.* The operating data that the Agency needs to ensure that the design conditions were being achieved during generation of the treatment data are:

- ORP and pH values throughout the treatment period; and
- Untreated wastewater flowrate throughout the treatment period.

For batch systems, the Agency needs the retention time or any operating parameter (e.g., cyanide concentration or ORP) used as a check to ensure sufficient oxidation has been accomplished.

4. Wastes Other Than Wastewater Containing California List Metals

For wastes other than wastewater, stabilization was the treatment technology used in all instances.

a. *Waste characterization data.* The specific untreated waste characterization data that EPA needs are:

- Initial metal concentrations for the untreated waste;
- Initial metal concentrations in the untreated waste leachate;
- Other metals present;
- Presence of certain dissolved inorganic and organic compounds containing metal salts, sulfates and borates that can affect stabilization; and
- Presence of high levels of oil and grease.

b. *Design data.* The Agency also needs the following design data for the stabilization system used to treat the waste:

- Specific stabilizing agent and other additives used and the ratio of waste to stabilizing agent, and the basis for this selection (e.g., bench scale test data). The commenter should also provide the temperature and humidity at which any bench scale or other design-basis tests were performed.
- Design curing time and the basis for selection of this value (e.g., unconformed compressive strength tests of stabilized waste matrix).

c. *Operating data.* The operating data that EPA needs to ensure that design conditions were being achieved during generation of the treatment data are:

- The ratio of waste to stabilizing agent;
- The curing time for the stabilized waste including the basis for determining that the waste was completely stabilized (e.g., compressive strength tests); and
- Ambient temperature and humidity during the curing process.

VI. Alternative Treatment Capacity For California List Metals and Cyanides

A. Volumes Requiring Alternative Capacity

For promulgation of the California list final rule (52 FR 25760, July 8, 1987), EPA estimated that the maximum volumes of metal and cyanide wastes that would require alternative treatment capacity would be 8,440 million gallons of metal wastes per year, and 690 million gallons of cyanide wastes per year (see Background Document for California list wastes—final rule). (These volumes, however, do not include hazardous wastes being injected pursuant to the Underground Injection Control Program.) These volumes represent the maximum possible volume of California list wastes, rather than the volume of wastes which exceed the statutory prohibition levels. The volume estimates are based on the 1981 RIA Mail Survey, which contained very little quantitative concentration data. Therefore, these volumes include all hazardous waste streams that were land disposed and that contained any cyanides or California list metals. The Agency also estimated that of these wastes, 25 million gallons could be cyanide-bearing sludges, and over 1,455 million gallons could be metal-bearing sludges. The Agency expects that these wastes would be treated by solidification or other non-wastewater treatment technologies, while the remaining wastewaters would be treated by wastewater treatment technologies.

EPA recognizes the limitations of the data bases for estimating volumes affected by the California list rule, and thus requests data indicating the volumes of wastes that would be affected if EPA lowers the restriction levels. EPA requests that commenters differentiate among specific metal-bearing (i.e., arsenic, cadmium, chromium, lead, mercury, nickel, selenium, or thallium) and cyanide-containing wastes that currently are land disposed. In addition, the commenters should indicate whether the waste is a wastewater, or a sludge or solid that either is a liquid (as defined by the PFLT) or is derived from treating a liquid waste that contains greater than the prohibition levels (i.e., the EP regulatory levels or analogous health-based levels) of California list constituents discussed in this notice. Commenters should also indicate management methods currently used for these wastes, and address whether the wastes meet the treatment standards under consideration in this notice.

B. Alternative Treatment Capacity

EPA currently has limited information on available alternative treatment for metals and cyanides. Analysis of the 1981 RIA Mail Survey indicated a limited amount of commercial capacity. However, comments on the proposed California list rule indicate that there have been significant changes in commercial capacity since the 1981 survey. Thus, EPA is requesting information on the volume of available commercial capacity for treatment of metals and cyanides capable of achieving the prohibition levels discussed in this notice. In addition, some commenters have indicated that additional on-site capacity exists that could be used to manage California list wastes that were also generated on-site. Certain facilities may already have on-site treatment systems or may have impoundments satisfying the § 268.4 and RCRA section 3005(j)(11) criteria to handle these California list wastes. In addition, some facilities may be able to expand or upgrade their existing treatment capacity quickly to handle their California list wastes. Thus, EPA is requesting information with respect to on-site treatment capacity, particularly capacity built after 1980. In addition, EPA is also requesting information on the time needed to develop new capacity, especially the time needed to develop large treatment systems. Commenters should address all steps in development of capacity: general planning, engineering design and plans, bid solicitation and evaluation, construction and start-up.

C. Possible National Capacity Variances

The greatest volumes of potential California list wastes shown in the 1981 survey are wastewaters managed in surface impoundments. 51 FR 44732. These wastes could require alternative treatment capacity in non-land based units (presumably tanks) or in retrofitted surface impoundments satisfying § 268.4. Commenters to the proposed California list rule have stressed the difficulties in installing alternative treatment systems without substantial delay. EPA has noted that these comments have merit in many cases. If the volumes of metal-bearing and cyanide-containing wastes needing alternative treatment exceed available capacity, the Agency would consider granting national capacity variances.

EPA believes the maximum duration of such a variance would be November 8, 1988, the date on which most interim status surface impoundments must meet minimum technology requirements, or cease receiving, storing or treating hazardous wastes (RCRA section 3005(j)(1)). If affected facilities do not retrofit their surface impoundments to comply with these requirements, these facilities must develop alternative treatment systems on-site (e.g., tank treatment), or transport the wastes off-site for treatment. The Agency expects that facilities which generate certain large volume flows will either retrofit surface impoundments to meet the 3005(j)(1) requirements, or install tank treatment systems as necessary. New capacity developed to comply with the minimum technology requirements, along with existing commercial capacity, should provide sufficient capacity for California list metals and cyanides beyond November 8, 1988. The Agency solicits comments on this tentative conclusion.

VII. Alternative Procedures for Treatability Variances

The Agency noticed for comment in the December 11, 1986 proposed rule the issue of using non-rulemaking procedures for processing treatability variances (§ 268.44). 51 FR 44729. In the recent final rulemaking on California list hazardous wastes (52 FR 25760), the Agency determined that treatment method equivalency petitions (§ 268.42(b)) need not be processed by rulemaking where the relief sought would not have generic applicability and effect. 52 FR 25780. The Agency believes tentatively that this same reasoning could apply to the analogous treatability variance and therefore solicits further comment on the issue of amending § 268.44 so that informal rulemaking procedures are not mandated for all applications.

Dated: July 24, 1987.

J. Winston Porter,

Assistant Administrator.

[FR Doc. 87-17882 Filed 8-11-87; 8:45 am]

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federal register

Wednesday
August 12, 1987

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 310, 341, and 369

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Final Monograph for OTC Antitussive Drug Products; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 310, 341, and 369

[Docket No. 76N-052T]

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Final Monograph for OTC Antitussive Drug Products

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule in the form of a final monograph establishing conditions under which over-the-counter (OTC) antitussive drug products (drug products used to relieve cough) are generally recognized as safe and effective and not misbranded. FDA is issuing this final rule after considering public comments on the agency's proposed regulation, which was issued in the form of a tentative final monograph, and all new data and information on antitussive drug products that have come to the agency's attention. This final monograph is part of the ongoing review of OTC drug products conducted by FDA.

EFFECTIVE DATE: August 12, 1988.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drugs and Biologics (HFN–210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8000.

SUPPLEMENTARY INFORMATION: In the Federal Register of September 9, 1976 (41 FR 38312), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC cold, cough, allergy, bronchodilator, and antiasthmatic drug products, together with the recommendations of the Advisory Review Panel on OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products (Cough-Cold Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. Interested persons were invited to submit comments by December 8, 1976. Reply comments in response to comments filed in the initial comment period could be submitted by January 7, 1977.

In accordance with § 330.10(a)(10), the data and information considered by the Panel were put on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857, after deletion of a small amount of trade secret information.

The agency's proposed regulation, in the form of a tentative final monograph, for OTC cold, cough, allergy, bronchodilator, and antiasthmatic drug products is being issued in the following segments: Anticholinergics and expectorants, bronchodilators, antitussives, nasal decongestants, antihistamines, and combinations. The third segment, the tentative final monograph for OTC antitussive drug products, was published in the Federal Register of October 19, 1983 (48 FR 48576). Interested persons were invited to file by December 19, 1983, written comments, objections, or requests for oral hearing before the Commissioner of Food and Drugs regarding the proposal. Interested persons were invited to file comments on the agency's economic impact determination by February 14, 1984. New data could have been submitted until October 19, 1984, and comments on the new data until December 19, 1984. Final agency action occurs with the publication of this final monograph, which is a final rule establishing a monograph for OTC antitussive drug products.

The agency's final rule, in the form of a final monograph, for OTC cold, cough, allergy, bronchodilator, and antiasthmatic drug products is also being published in segments. Final agency action on OTC antitussive drug products occurs with the publication of this document, which establishes §§ 341.3 (b) and (c), 341.14, 341.74, and 341.90 (b) and (c) for OTC antitussive drug products in Part 341 (established in the Federal Register of October 2, 1986; 51 FR 35326).

The OTC procedural regulations (21 CFR 330.10) now provide that any testing necessary to resolve the safety or effectiveness issues that formerly resulted in a Category III classification, and submission to FDA of the results of that testing or any other data, must be done during the OTC drug rulemaking process before the establishment of a final monograph. Accordingly, FDA is no longer using the terms "Category I" (generally recognized as safe and effective and not misbranded), "Category II" (not generally recognized as safe and effective or misbranded), and "Category III" (available data are insufficient to classify as safe and effective, and further testing is required) at the final monograph stage, but is using instead the terms "monograph conditions" (old Category I) and "nonmonograph conditions" (old Categories II and III).

As discussed in the proposed regulation for OTC antitussive drug products (48 FR 48576), the agency advises that the conditions under which the drug products that are subject to this monograph will be generally recognized as safe and effective and not misbranded (monograph conditions) will be effective 12 months after the date of publication in the Federal Register. Therefore, on or after August 12, 1988, no OTC drug product that is subject to the monograph and that contains a nonmonograph condition, i.e., a condition that would cause the drug to be not generally recognized as safe and effective or to be misbranded, may be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application. Further, any OTC drug product subject to this monograph that is repackaged or relabeled after the effective date of the monograph must be in compliance with the monograph regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the monograph at the earliest possible date.

In response to the proposed rule on OTC antitussive drug products, four drug manufacturers, two health professionals, and two health care professional societies submitted comments. Copies of the comments received are on public display in the Dockets Management Branch. Any additional information that has come to the agency's attention since publication of the proposed rule is also on public display in the Dockets Management Branch.

In proceeding with this final monograph, the agency has considered all comments and objections, and the changes in the procedural regulations.

All "OTC Volumes" cited throughout this document refer to the submissions made by interested persons pursuant to the call-for-data notice published in the Federal Register of August 9, 1972 (37 FR 16029) or to additional information that has come to the agency's attention since publication of the notice of proposed rulemaking. The volumes are on public display in the Dockets Management Branch.

I. The Agency's Conclusions on the Comments

A. General Comment on OTC Antitussive Drug Products

1. One comment contended that OTC drug monographs are interpretive, as opposed to substantive regulations. The comment referred to statements on this

issue submitted earlier to other OTC drug rulemaking proceedings.

The agency addressed this issue in paragraphs 85 through 91 of the preamble to the procedures for classification of OTC drug products, published in the **Federal Register** of May 11, 1972 (37 FR 9464) and in paragraph 3 of the preamble to the tentative final monograph for antiacid drug products, published in the **Federal Register** of November 12, 1973 (38 FR 31260). FDA reaffirms the conclusions stated there. Subsequent court decisions have confirmed the agency's authority to issue substantive regulations by rulemaking. See, e.g., *National Nutritional Foods Association* v. *Weinberger*, 512 F.2d 688, 696–98 (2d Cir. 1975) and *National Association of Pharmaceutical Manufacturers* v. *FDA*, 487 F. Supp. 412 (S.D.N.Y. 1980), *aff'd*, 637 F.2d 887 (2d Cir. 1981).

B. Comments on the Switch of Prescription Antitussives to OTC Status

2. Two comments opposed the agency's proposal to reclassify benzonatate from prescription to OTC status and requested that benzonatate remain a prescription drug because of the possibility of oropharyngeal anesthesia if benzonatate is released in the oral cavity. One comment, submitted by the manufacturer of the only benzonatate product on the market, maintained that the warning statement "Swallow without chewing or dissolving in the mouth. May produce temporary numbness if dissolved in the mouth" is not adequate for OTC use of this drug. The comment stated that, although the product has been marketed as a prescription drug for 24 years with minimal adverse reactions, rapid oropharyngeal anesthesia could result in more severe reactions than temporary numbness, such as choking. The comment added that expanded use of benzonatate by the "unsophisticated consumer," not under professional supervision, could further complicate the issue. The other comment contended that the reading and comprehension levels of the consumer are poor and that public compliance is even poorer. It requested that FDA "think long and hard before turning any more oral medications over to the public for use and abuse." One comment agreed with the agency's proposal to reclassify benzonatate from prescription to OTC status but did not provide any additional information in support of its position.

The agency has reviewed the comments and finds a lack of support in switching benzonatate to OTC status. Only three comments were received, two of which opposed the switch. The agency received no comments from the medical and scientific communities or from consumers on this issue. It should be noted that, in 1981, the manufacturer of the only benzonatate products on the market submitted a supplemental new drug application (NDA) that requested OTC status for the product. Subsequently, based upon a careful review of the prescription drug products (i.e., the approved NDA, the 24-year-marketing history, the available adverse reaction reports, and safety and effectiveness data in the scientific literature), the agency proposed the switch of benzonatate from prescription to OTC marketing status in the tentative final monograph for OTC antitussive drug products (48 FR 28591 to 28592). Although recommending Category I status for the ingredient, the agency recognized that benzonatate has a secondary pharmacological effect as a local anesthetic and that oropharyngeal anesthesia may develop rapidly if the ingredient is released in the oral cavity. Therefore, in the tentative final monograph the agency proposed the warning about swallowing the product without chewing or dissolving it in the mouth, as mentioned by one of the comments.

In proposing this switch, the agency did not permit OTC marketing at that time but stated that public comments submitted in response to the proposed switch should be evaluated before OTC marketing began (48 FR 48561). Likewise, the agency held approval of the supplemental NDA in abeyance, until public comments to the proposed change in status were evaluated. Since that time, the manufacturer has withdrawn its supplemental NDA for OTC status for benzonatate, and in a comment responding to the tentative final monograph (Ref. 1) has requested that benzonatate remain available by prescription only. (See summary of comment above.)

Because of the concerns raised over the agency's proposed labeling, the possibility of anaphylactic reactions, and the possibility of oropharyngeal anesthesia occurring if a benzonatate capsule were chewed or dissolved in the mouth, the agency has determined that benzonatate should only be used under professional supervision. Accordingly, the agency concludes that benzonatate should not be available for OTC use.

References

(1) Comment No. C00192, Docket No. 76N–052T, Dockets Management Branch.

3. One comment objected to OTC status for chlophedianol hydrochloride because the public's reading and comprehension levels are poor to bad, and public compliance is even poorer. The comment stated that the "typical John Q. Public" believes that if one helps, two is better, and three is a miracle, and concluded that FDA should "think long and hard before turning any more oral medications over to the public for use and abuse."

The agency based its decision to switch chlophedianol hydrochloride from prescription to OTC marketing status as an antitussive drug product on a careful review of the approved NDA, the marketing history, the available adverse reaction reports, and safety and effectiveness data in the scientific literature (48 FR 48578 and 48579). The agency proposed labeling for this ingredient that it considered adequate to inform and protect the consumer and made every effort to provide labeling that is comprehensive, clear, and concise. The agency believes that the consumer is capable of reading, understanding, and following the label warnings and directions proposed for this drug. The agency proposed directions for use for chlophedianol hydrochloride to provide for a dose of the drug every 6 to 8 hours, not to exceed 4 doses in 24 hours. The agency has no reason to believe, and the comment did not offer any data to support its contention, that consumers would take 2 to 3 dosage units of this medication despite labeling directions to the contrary. This comment was the only comment received opposing the proposed OTC status of chlophedianol hydrochloride. The comment did not submit any data indicating that this drug should not be available OTC, and the ingredient is being included in this final monograph.

C. Comments on Specific OTC Antitussive Active Ingredients

4. One comment from the Committee on Drugs of the American Academy of Pediatrics opposed the reclassification of camphor-containing ointments from Category III to Category I. Based upon "scientific understanding of the mechanism of action of established antitussive agents," the comment did not believe that camphor would suppress a cough when applied to the chest and neck. The comment stated that the proposed labeling "rub on the throat and chest a thick layer * * * to help the

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vapors rise to reach the nose and mouth" is confusing when considered in conjunction with the proposed warning "Do not take by mouth or place in nostrils." The comment added that skin and mucosal absorption of camphor is well known and that the heavy application of thick layers of camphor subjects the young child to unnecessary risk of toxicity.

A reply comment pointed out that "central action is not the only mechanism for antitussive activity" and stated that "inhalation of the aromatic vapors provides antitussive activity by local or peripheral action, because of the probable local anesthetic/analgesic properties of the aromatics." It added that the latest investigational methods have shown that camphor provides statistically significant reductions in cough, and that FDA reviewed the full reports of these studies, inspected the facilities of the investigators, and reached the same conclusion.

The reply comment stated that there is no justification for banning useful drugs in all dosage forms and concentrations. It recognized the concern regarding accidental ingestion of large overdoses of camphor in camphorated oil by children, but did not agree that the same degree of hazard or mistaken identity applies to the external use of much smaller concentrations of camphor (i.e., 5 percent) in ointment dosage form.

The reply comment included one new study to support the safety of a 5-percent camphor ointment used externally on young children and three new studies to support the safety of a combination drug product containing camphor, eucalyptol, menthol, and thymol used externally in ointment form on young children (Ref. 1). The reply comment added that these studies show that there is no need for the general OTC restriction for children 2 years of age and over in the label warning. The reply comment also stated that current labeling adequately describes directions for use and warnings against "misuse and accidental possession by children." The labeling specifically warns parents to keep the product out of children's reach, not to swallow the product, and not to place it in the nostrils.

The agency notes that the Cough-Cold Panel mentioned several different mechanisms of action by which an antitussive agent suppresses or inhibits cough (41 FR 38338). Among these, an antitussive agent may work directly by diminishing the sensitivity of the cough receptors in the membranes lining the throat and respiratory passages, and it may act indirectly by exerting a soothing action on irritated or inflamed throat tissues. The agency agrees with the reply comment that inhalation of camphor provides antitussive activity by the local or peripheral action of its vapors.

Data from two new studies submitted in response to the advance notice of poroposed rulemaking for OTC cough-cold drug products were reviewed by the agency when preparing the tentative final monograph for OTC antitussive drug products. These data supported the effectiveness of camphor in reducing the number of coughs when compared to a control (48 FR 48579). No data refuting the effectiveness of camphor as an antitussive agent have been submitted, and the agency reaffirms its determination that camphor is an effective topical antitussive agent.

Various panels and the agency have reviewed and evaluated a great deal of data on the safety of camphor at different concentrations in different vehicles. The Advisory Review Panel on OTC Miscellaneous External Drug Products, in its statement concerning OTC drug products containing camphor, published in the **Federal Register** of September 26, 1980 (45 FR 63878), recommentded that the quantity of camphor in OTC drug products be limited to 2.5 percent. The Advisory Review Panel on OTC Topical Analgesic, Antirheumatic, Otic, Burn, and Sunburn Prevention and Treatment Drug Products concluded that camphor is safe for topical use at concentrations up to 11 percent (44 FR 69802 to 69803). After reviewing both Panel reports, the agency stated in the tentative final monograph for OTC external analgesic drug products, published in the **Federal Register** of February 8, 1983 (48 FR 5854), that the camphor concentration in OTC drug products is being limited to 11 percent or lower. In addition, in the **Federal Register** of September 21, 1982 (47 FR 41716), the agency published a final rule declaring camphorated oil products (which contained 20 percent camphor in cottonseed oil) to be new drugs and misbranded because of the potential hazard for poisoning to occur, primarily in infants and young children, based on a large number of accidental ingestions of this product, often mistaken for castor oil, cod liver oil, mineral oil, olive oil, cough medicine, or other drug products. The agency concluded that the benefit from using such products is insignificant when compared to the risk.

The Cough-Cold Panel stated that clinical experience has confirmed that camphor, when applied topically or as an inhalant, is safe in the dose ranges used as an antitussive (41 FR 38344). The agency has found only three reported cases of camphor poisoning due to inhalation or skin absorption (Refs. 2, 3, and 4). In one case, a 15-month-old infant crawled through spirits-of-camphor (containing 10 percent camphor that had been spilled) and subsequently experienced ataxia and brief, generalized, major motor seizures. A year later, the same infant came into contact with a camphorated vaporizer containing 4.81 percent camphor and had another brief major motor seizure. The occurrence of the seizures with two camphor exposures a year apart indicates a specific sensitivity to camphor (Ref. 2). In another case, camphorated oil was applied continually for about 80 hours to the chest of a 2-year-old child. The diagnosis was camphor poisoning, and the child recovered (Ref. 3). The third case was a near fatal incident in a 6-week-old infant after an ointment containing camphor, menthol, and thymol had been rubbed on the infant's chest (Ref. 4). The agency concludes that these three reported nonfatal incidents are not sufficient to demonstrate a lack of safety for 5 percent camphor when used as an antitussive ingredient according to labeling included in this final monograph.

The agency acknowledges that studies have been done to support the safety of using a 5-percent camphor ointment topically on young children (Ref. 1). However, the agency does not agree with the reply comment that the submitted clinical studies demonstrate that the general OTC label warning limiting use of 5 percent camphor in an ointment base to children 2 years of age and older is unnecessary in the labeling of these drug products. In the three reported cases above of camphor poisoning due to inhalation or skin absorption (Refs. 2, 3, and 4), two of the cases, including the near fatality, involved infants under 2 years of age. The reply comment submitted one study in which a 5-percent camphor ointment was applied to 20 newborn babies, ages 6 to 18 days (Ref. 1). The infants were studied for respiratory changes, motor activity, sleep patterns, blood concentrations of camphor, and clinical blood changes. The other studies submitted by the reply comment evaluated the toxic effects of a combination drug product containing camphor, menthol, thymol, and eucalyptol on children and infants (Ref. 1). Although no toxic effects were noted in any of these studies, the agency notes that the studies were performed in the hospital or in pediatric clinics under the close supervision of doctors and nurses. Such use corresponds to the recommended labeling requirement to

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consult a doctor before using camphor-containing ointments in children under 2 years of age. The agency does not believe that unlimited use of camphor-containing ointments would be in the public interest and intends to include the 2-year age limit for such products in this final monograph. This age restriction is consistent with the agency's approach to other externally applied drug products containing camphor (48 FR 5909).

The combination drug product mentioned by the reply comment will be addressed in the tentative final monograph for OTC cough-cold combination drug products that will be published in a future issue of the Federal Register. Any comments regarding the safety of or age limits for cough-cold combination drug products should be submitted to that rulemaking.

The agency concludes, based on the studies submitted, that the use of a properly labeled ointment containing 4.7 to 5.3 percent camphor as an antitussive agent to be used on the chest and neck, even in a thick layer, poses no threat to the consumer (48 FR 48579). Therefore, the agency is including in this final monograph 4.7 to 5.3 percent camphor in a suitable ointment vehicle as an antitussive agent.

References

(1) Reply Comment No. 3, Docket No. 76N-052T, Dockets Management Branch.

(2) Skoglund, R. R., L. L. Ware, Jr., and J. E. Schanberger, "Prolonged Seizures Due to Contact and Inhalation Exposure to Camphor," *Clinical Pediatrics*, 16:901–902, 1977.

(3) Summers, G. D., "Case of Camphor Poisoning," *British Medical Journal*, 2:1008, 1947.

(4) Dupeyron, J. P., F. Quattrocchi, H. Castaing, and P. Fabiani, "Intoxication Aigue Du Nourrisson Par Application Cutanee D'une Pommade Revulsive Locale et Antiseptique Pulmonaire," *European Journal of Toxicology*, 9:313–320, 1976.

5. One comment stated that the safety of eucalyptus oil requires additional investigation. The comment cited a recent journal article by Courtemanche, Li, and Peterson (Ref. 1) concerning toxicity in children following accidental ingestion of eucalyptus oil and stated that the agency should review this information before developing a final monograph for eucalyptus oil-containing products.

A reply comment from a manufacturer of an antitussive product in an external ointment form stated that the journal article cited above concerned a case of accidental ingestion of 25 milliliters (mL) of reportedly pure eucalyptus oil by a 3-year-old child. The reply comment maintained that although this amount of drug has the potential to produce a severe adverse reaction, it bears no relationship to the amount of eucalyptus oil, i.e., 1.8 percent, found in the ointment product. The reply comment stated that more than eight 6-ounce jars of ointment would have to be consumed in order to ingest the quantity of eucalyptus oil (25 mL) reported in the article, and that the consumption of 48 ounces of ointment by a 3-year-old child is impossible, without even considering the availability of the product and the taste deterrence of the unpalatable petrolatum base. The reply comment concluded that the accidental ingestion of eucalyptus oil, as reported in the article, far exceeds the amount that a child could ingest in an ointment dosage form and that the ingredient is safe in ointment form as an antitussive when used as directed.

The agency has reviewed the Cough-Cold Panel's discussion of the safety of eucalyptus oil (41 FR 38347), the Courtemanche, Li, and Peterson reference cited by the comment (Ref. 1), and additional information by Courtemanche, Li, and Peterson (Ref. 2). The Panel acknowledged that fatalities have occurred following doses of eucalyptus oil as small as 3.5 mL, although recovery has occurred after doses of 20 mL and even 30 mL (41 FR 38347). The Panel believed that the data confirmed the safety of eucalyptus oil as an ointment (1.3 percent), for steam inhalation (1.7 percent), as a lozenge (0.2 to 15 milligrams (mg)), and as a mouthwash (0.9 mg/mL solution), but because effectiveness data were insufficient, eucalyptus oil was classified in Category III.

The article cited by the comment contains a brief review of the signs and symptoms of eucalyptus oil toxicity and the types of treatment that may be used (Ref. 1). The article refers to 13 reports of seizures in children, but provides no details of these cases. An abstract by the same authors notes that a 3-year-old child ingested 25 mL of eucalyptus oil (neat) (Ref. 2). Vomiting followed within 15 minutes. Forty-five minutes later the child was alert, smelled of the oil, had no abnormal respiration, and was given 15 mL of ipecac syrup. During the next 20 minutes, the child's neurologic responses rapidly deteriorated, and the child became unresponsive to pain. A gastric lavage was performed, and within 2 hours the child was awake and oriented, no seizures occurred, and the respiratory status remained normal.

After reviewing the data, the agency agrees with the reply comment that this case of ingestion of 25 mL of pure, undiluted eucalpytus oil should not affect the status of the safety of eucalyptus oil in an ointment form because it is highly unlikely that a child would have access to enough ointment to produce a toxic dose equivalent to the ingestion of 25 mL of pure eucalyptus oil. Likewise, the other dosage forms and concentrations of eucalyptus oil recommended as safe by the Panel contain amounts well below a toxic dose.

Because no data were submitted demonstrating the effectiveness of eucalyptus oil for the uses mentioned above, the ingredient is not included in this final monograph. Eucalyptus oil in combination with other active ingredients will be discussed in the tentative final monograph for OTC cough-cold combination drug products that will be published in a future issue of the Federal Register.

References

(1) Courtemanche, N.J., M. Li, and R.G. Peterson, "Coma Following Acute Ingestion of Eucalyptus Oil in a Child," *Veterinary and Human Toxicology*, 25 (Supplement1):46, 1983.

(2) Courtemanche, N. J., M. Li, and R.G. Peterson, "Coma Following Acute Ingestion of Eucalyptus Oil in a Child," *Veterinary and Human Toxicology*, 25:280–281, 1983.

6. One comment requested the agency to place camphor and menthol in Category I as individual OTC antitussive agents for use in a hot steam vaporizer. The comment submitted two new clinical studies to support its request (Refs. 1 and 2).

The agency has reviewed the new data and determined that the two new clinical studies support the reclassification of the individual ingredients camphor and menthol to monograph status as OTC antitussives for use in a hot steam vaporizer at a concentration of 0.05 percent menthol or 0.1 percent camphor in the water of the vaporizer. In the first study (Ref.1), the individual antitussive effect of menthol and camphor vaporized in steam was compared to unmedicated steam. The study involved 40 normal adults (age 18 and older), and cough was induced by citric acid challenge. The data indicated that camphor and menthol produced a statistically significant reduction in cough counts when compared with unmedicated steam at all four post-treatment time points and overall ($p < 0.001$).

The second study (Ref. 2) involved 48 adult subjects with chronic bronchitis and was designed to determine the individual antitussive effect of menthol and camphor vaporized in steam as compared with unmedicated steam. The results demonstrated that menthol and camphor were significantly better than

unmedicated steam at reducing cough: menthol at 0 to 30 minutes ($p < 0.03$), 2½ to 3 hours ($p < 0.01$), and overall, 0 to 3 hours ($p < 0.02$); and camphor at 1½ to 2 hours ($p < 0.03$), 2½ to 3 hours ($p < 0.04$), and overall, 0 to 3 hours ($p < 0.06$). The agency concludes that these studies are acceptable to demonstrate the individual antitussive effectiveness of camphor and menthol for use in steam inhalation. Therefore, the agency is including camphor and menthol in the final monograph for OTC antitussive drug products as antitussives for individual use in a hot steam vaporizer at concentrations of 0.05 percent menthol or 0.1 percent camphor in the water of the vaporizer.

In its report, the Cough-Cold Panel recommended the following specific warning for camphor and menthol for use in a steam vaporizer: "For steam inhalation only. Do not take by mouth" (41 FR 38344 and 38351). The agency agrees with the Panel's recommendation and is including this warning in § 341.74(c)(5)(ii) of this final monograph.

The Panel recommended directions for the individual use of camphor and menthol for steam inhalation (41 FR 38344 and 38351). The agency is accepting the Panel's proposed directions for use with the following exceptions. The Panel based its Category III recommendation on the review of data from a study using a combination drug product containing 7 percent camphor and 3.66 percent menthol and recommended that an initial solution of 7 percent camphor or 3.66 percent menthol be used for preparing the final solution for steam inhalation. In the comment's submissions (Refs. 1 and 2), the initial concentrations of the camphor and the menthol solutions that were used in the studies were 6.2 percent and 3.2 percent, respectively. Based on these studies, in this final monograph, the agency is specifying initial concentrations of 6.2 percent camphor or 3.2 percent menthol in the directions for use for steam inhalation.

Additionally, the Panel proposed that 1 tablespoonful of the initial camphor or menthol solutions per quart of water or 2 teaspoonsful per pint of water be used to prepare the final solutions of camphor and menthol. Assuming that a teaspoonful equals 5 mL (Ref. 3), the agency notes that 1½ teaspoonsful of the initial camphor or menthol solutions per pint of water will result in final solutions of 0.1 percent camphor or 0.05 percent menthol. Therefore, in this final monograph, the agency is specifying the use of 1½ teaspoonsful of the initial solutions per pint of water so that the directions for use are more accurate.

The revised Panel's directions for use of camphor for steam inhalation in § 341.14(d)(2)(iv) of this final monograph are as follows: "*For products containing camphor identified in § 341.14(b)(1) for steam inhalation use.* The product contains 6.2 percent camphor. Adults and children 2 to under 12 years of age: add 1 tablespoonful of solution, for each quart of water, directly to the water in a hot steam vaporizer, bowl, or wash basin; or add 1½ teaspoonsful of solution, for each pint of water, to an open container of boiling water. Breathe in the medicated vapors. May be repeated up to three times daily or as directed by a doctor. Children under 2 years of age: consult a doctor." Following these directions will result in a concentration of 0.1 percent camphor in the water of a vaporizer, bowl, or wash basin.

The agency is including in § 341.74(d)(2)(v) of this final monograph the following directions for use of menthol for steam inhalation: "*For products containing menthol identified in § 341.14(b)(2) for steam inhalation use.* The product contains 3.2 percent menthol. Adults and children 2 to under 12 years of age: add 1 tablespoonful of solution, for each quart of water, directly, to the water in a hot steam vaporizer, bowl, or wash basin; or add 1½ teaspoonsful of solution, for each pint of water, to an open container of boiling water. Breathe in the medicated vapors. May be repeated up to three times daily or as directed by a doctor. Children under 2 years of age: consult a doctor." Following these directions will result in a concentration of 0.05 percent menthol in the water of a vaporizer, bowl, or wash basin.

The agency has also revised the definition for topical antitussive drugs in § 341.3(k), redesignated as § 341.3(c), to read "A drug that relieves cough when inhaled after being applied topically to the throat or chest in the form of an ointment or from a steam vaporizer, or when dissolved in the mouth in the form of a lozenge or compressed tablet" to include use of a steam vaporizer for camphor and menthol in this definition.

The agency's detailed comments and evaluation of the data are on file in the Dockets Management Branch (Ref. 4).

References

(1) Reply Comment No. RCO04, Docket No. 76N–052T, Dockets Management Branch.

(2) Report No. RPTO02, Docket No. 76N–052T, Dockets Management Branch.

(3) "The United States Pharmacopeia XXI—The National Formulary XVI," United States Pharmacopeial Convention, Inc., Rockville, MD, p. 1352, 1985.

(4) Letter from W. E. Gilbertson, FDA, to E. J. Hanus, Richardson-Vicks, Inc., coded LET090, Docket No. 76N–052T, Dockets Management Branch.

D. Comments on Dosages for OTC Antitussives

7. One comment requested that the agency's proposed minimum effective antitussive dose for menthol in a lozenge or compressed tablet dosage form be reduced from 5 mg to 3 mg. The comment submitted new data (study CRD 81–10) in support of the 3 mg dose for menthol (Ref. 1). In addition, the comment objected to the agency's finding in the tentative final monograph that study CRD 73–8, previously reviewed by the Panel, is not acceptable to prove the antitussive effectiveness of a dosage of less than 5 mg for menthol in a lozenge or compressed tablet dosage form (48 FR 48585). The comment stated that the agency's contention that study CRD 73–8 is unacceptable because menthol was not studied as a single ingredient, i.e., citric acid was included in the test lozenge but was not included in the placebo lozenge, is inappropriate. The comment explained that citric acid should be considered an inactive, not an active, ingredient. In addition, the quantity of citric acid included in each lozenge (26.9 mg) was quite small and would not be expected to have any significant therapeutic effect on cough. The comment further argued that the Panel classified citric acid as an "inactive and/or pharmaceutical necessary ingredient" (41 FR 38318).

The agency has reviewed the data and concludes that they are insufficient to support the antitussive effectiveness of menthol in lozenge or compressed tablet dosage forms at doses of less than 5 mg. Study CRD 73–8 (Ref. 2) was a single-blind, crossover, induced-cough study involving 16 normal adult subjects. The study compared the antitussive effectiveness of lozenges containing 1 mg menthol, citric acid, and lemon flavor in a candy base with a control lozenge of the candy base (containing FD & C Yellow No. 5) without menthol, citric acid, or lemon flavor. Test subjects were given six citric acid aerosol challenges over a 1-hour period at 10-minute intervals after a lozenge had completely dissolved in the subject's mouth. The agency agrees with the comment that in this study citric acid can be considered an inactive ingredient. However, the comment's statistical analysis of the data showed that the menthol lozenge had a significantly greater reduction in coughs than the control lozenge for only two of the six citric acid aerosol challenges (p

< 0.05). In addition, the control lozenge significantly reduced cough counts when compared to baseline cough counts for three of the six citric acid aerosol challenges. The comment stated that a three-way analysis of variance indicated that the menthol lozenge treatment produced a larger overall mean reduction in coughs that was significantly different from the control lozenge ($p < 0.005$). The Panel reviewed this study along with several other induced-cough studies and concluded that none of the studies provided sufficient data to classify menthol as an effective antitussive (41 FR 38350 to 38351). In addition, the Panel determined that induced-cough studies of this kind are not adequate alone to demonstrate the effectiveness of an antitussive ingredient. The agency concurs. Therefore, study CRD 73–8 is inadequate to demonstrate the effectiveness of menthol in a lozenge or compressed tablet at doses of less than 5 mg.

Study CRD 81–10 (Ref. 1) was a single-blind, 3-day crossover study involving 48 patients (age 18 to 66) with chronic cough due to stable bronchopulmonary disease. The study compared the antitussive effectiveness of lozenges containing 3 mg menthol in a candy base, a control lozenge of the candy base without menthol, and a lactose capsule placebo. Coughs and cough components were recorded on tape recorders on three consecutive mornings and afternoons. Baseline cough counts were recorded for 1½ hours each morning and afternoon before medication was given. Medication was then given at hourly intervals for three doses and coughs were recorded for an hour after each dose. On the first day of the study, all patients were given a lactose capsule placebo for each dose. On days two and three, according to a randomized schedule, patients also were given either a lozenge containing 3 mg menthol in a candy base or a control lozenge of the candy base without menthol.

The agency's statistical analysis of the raw data for study CRD 81–10 shows some discrepancies in p-values between those reported by the comment and those calculated by the agency, using the same statistical procedure, i.e., the nonparametric crossover model developed by Koch (Ref. 3). The agency found significant differences between the menthol lozenge and the control lozenge at only 2 out of 14 cough-counting time periods for cough counts and only 1 out of 14 cough-counting time periods for cough component counts in contrast to the comment's statistical analysis that found significant differences between the menthol lozenge and the control lozenge at 3 out of 14 cough-counting time periods for cough counts and 2 out of 14 cough-counting time periods for cough component counts.

The apparent discrepancies may be due to differences in data analysis. While the agency applied Koch's procedure on the actual change in cough and cough component counts from the morning baseline counts to the counts following medication, the comment may have used a logarithmic transformation of the cough and cough component data. The agency believes that the data on the actual change in cough and cough component counts is easier to interpret than those based on a logarithmic scale. Further, because a nonparametric procedure was used to evaluate the data, there is no clear rationale for using a logarithmic transformation of the data for the analysis. In addition, the data showed that, regardless of whether the patients were using lozenges containing 3 mg menthol in a candy base, a control lozenge of the candy base without menthol, or a lactose capsule placebo, patients generally obtained a reduction in both cough counts and cough components during each cough-counting time period and obtained greater reductions in cough counts and cough components in the afternoon than in the morning. Consequently, this study is insufficient to support the antitussive effectiveness of a 3-mg dose of menthol in lozenges or compressed tablets.

The agency concludes that the studies above are inadequate to support the antitussive effectiveness of dosages of less than 5 mg for menthol in lozenges or compressed tablets and is not including dosages less than 5 mg in this final monograph.

The agency's comments and evaluations of the data are on file in the Dockets Management Branch (Ref. 4).

References

(1) Finkel, S., and S. Zuckerman, "Cough Drops" (Study CRD No. 81–10), draft of unpublished study, Comment No. C00193 and Report No. RPT004, Docket No. 76N–052T, Dockets Management Branch.

(2) Packman E.W., "Vicks Cough Drops," (Study CRD No. 73–8), draft of unpublished study, OTC Volume 040257.

(3) Koch, G.G., "Note: The Use of Non-Parametric Methods in the Statistical Analysis of the Two-Period Change-Over Design," *Biometrics*, 28(2):577–584, 1972.

(4) Letter from W.E. Gilbertson, FDA, to E.J. Hanus, Richardson-Vicks, Inc., coded LET002, Docket No. 76N–052T, Dockets Management Branch.

8. Referring to the agency's discussion on benzonatate at 48 FR 48591, one comment expressed concern that the statement "The drug should be marketed in an appropriate dosage form that does not release it into the oral cavity * * *" could be interpreted too restrictively. The comment suggested that the standard for determining if a dosage form is suitable should be whether the quantity of benzonatate released in the oral cavity may cause significant anesthesia, not whether any benzonatate is released in the oral cavity. The comment stated that this dosage form concern should not justify depriving the consumer of the availability of an appropriately formulated liquid dosage form of benzonatate, noting that market research data have established that the consumer prefers a liquid dosage form of antitussive agents over other available dosage forms.

The agency has determined that benzonatate will be available by prescription only, and therefore benzonatate is not included in this final monograph. (See comment 2 above.) Any new dosage form for benzonatate must be the subject of an NDA or a supplemental NDA.

9. One comment requested that the directions for use for OTC oral antitussive drug products proposed in the tentative final monograph be modified to improve: (1) The OTC dosage schedules for adults and for children 2 to 12 years of age and (2) the professional dosage directions for children under 2 years of age. The comment specifically addressed the agency's proposed dosage schedule in § 341.74(d)(1)(iv) for dextromethorphan and dextromethorphan hydrobromide and recommended that the dosage schedules for children under the age of 12 have a greater subdivision of age ranges than the dosage schedules proposed in the tentative final monograph. For children under 12 years, the comment recommended eight weight-based and age-related dosage ranges, with both age and weight ranges specified in the labeling, to replace the agency's two proposed age-based ranges in the dosage schedule for dextromethorphan. In addition, the comment recommended that the dosage range for adults and children over 12 years of age be changed from the agency's proposed 10 to 20 mg every 4 hours or 30 mg every 6 to 8 hours, to 20 to 30 mg every 4 to 6 hours. The comment submitted a report and literature references in support of a safe and effective dose range of 0.3 to 0.5 milligram per kilogram (mg/kg) for dextromethorphan and in support of weight-based, age-related dosage

schedules for children under 12 years of age in general (Ref. 1).

The comment contended that its recommended dosage schedule provides the following improvements over the agency's proposed dosage schedule: (1) It consolidates dosages for adults and for children under 12 years of age to a single 4- to 6-hour schedule that brings the dosage within the effective mg/kg dosage range; (2) it provides more age subdivisions for children under 12 years of age to assure more consistent dosage in a particular dosage range; (3) it provides a weight-based dosage schedule for children 2 to under 12 years of age that supplements the age-based dosage schedule; and (4) it provides an age- and weight-based dosage schedule for children under 2 years of age for use by health care professionals.

The comment explained that age-based dosage schedules with wide age ranges are less sensitive to changes and to differences in growth rate than are weight-based schedules. For this reason, dosage schedules that are based on weight, or that are age-related but closely tied to weight, are considered by the professional community to be more accurate for calculating pediatric drug dosages and are commonly used by physicians. In addition, in a report on OTC internal analgesic, antipyretic, and antirheumatic drug products published in the **Federal Register** of July 8, 1977 (42 FR 35346), FDA's Advisory Review Panel on OTC Internal Analgesic and Antirheumatic Drug Products (Internal Analgesic Panel) recommended a pediatric dosage schedule for internal analgesics with six age intervals between the ages of 2 to 12 years. These dosing age intervals for internal analgesics were based on pharmacokinetic and clinical data and were designed to provide a more accurate dosage schedule for children that is consistent with weight and growth parameters for this age group. The comment noted that OTC antitussives and internal analgesics are often combined and requested that the agency adopt a children's dosage schedule for antitussives that is similar to and consistent with the dosage schedule for internal analgesics.

Another comment pointed out that although the Internal Analgesic Panel recognized that antitussive/analgesic combination drug products are rational therapy for concurrent symptoms (42 FR 35493), the dosage range proposed by the agency in § 341.74(d)(1)(iv) for dextromethorphan for children 2 to under 12 years of age is incompatible with the pediatric dosage schedule proposed by the Internal Analgesic Panel for aspirin and acetaminophen. The comment argued that the Internal Analgesic Panel's recommended limitation of the maximum daily pediatric doses of aspirin or acetaminophen to no more than 5 daily doses would preclude a combination drug product containing an internal analgesic ingredient and an antitussive ingredient from providing the maximum permitted daily dose of dextromethorphan, and thereby deprive the child of maximum antitussive benefit. The comment presented the following example: a liquid antitussive/analgesic drug product for use by children 2 to under 11 years of age could be given no more than 5 times a day thus delivering a maximum of 50 mg dextromethorphan. Because the permitted maximum daily dose of dextromethorphan is 60 mg, the child would be "deprived" of an additional 10 mg dextromethorphan.

The comment maintained that dextromethorphan has a wide margin of safety. Quoting the Cough-Cold Panel's report and the agency's tentative final monograph, the comment stated that "there have been no fatalities 'even with doses in excess of 100 times the normal adult dose' " (41 FR 38340) and "because of its low order of toxicity, dextromethorphan is probably the safest antitussive presently available" (48 FR 48561). The comment argued that it is both safe and sound therapy to permit the total daily amount of dextromethorphan proposed for children to be administered in 5 rather than 6 does. Therefore, the comment urged that the limitations on the amount of dextromethorphan in a single dose be increased to permit the pediatric patient to obtain the maximum potential 24-hour benefit of both the analgesic ingredient and the dextromethorphan.

The agency concludes that the data submitted by the comment (Ref. 1) do not support changing the adult dosage schedule for dextromethorphan from 10 to 20 mg every 4 hours, or 30 mg every 6 to 8 hours, to 20 to 30 mg every 4 to 6 hours as requested by the comment. The comment itself notes that, although results of clinical trials show that dextromethorphan is superior to a placebo, there is no uniformity among trials with regard to the dosage at which statistical significance was achieved. It cited studies demonstrating that the minimum effective dose ranges from 5 mg to 30 mg and, as shown in multiple dosing trials, from 6 mg three times daily to 20 mg every 4 hours for two doses, and it stated that the discrepancies among these results could be attributed to study design, end point sensitivity, and inter- and intra-patient variability. Additionally, the comment reanalyzed the data from a published study (Ref. 2) to support its contention that 0.3 to 0.5 mg/kg is the optimum dose for dextromethorphan. The agency questions the validity of using the reanalyzed data to establish an effective dose range for dextromethorphan. The study compared the efficacy of 20 mg dextromethorphan to an active placebo (codeine) and a placebo control, and its results indicated that 20 mg of dextromethorphan is equivalent to 20 mg of codeine and both are superior to placebo. The comment reanalyzed the data by dividing the predetermined 20 mg dextromethorphan dose by the lowest and highest patient weight to obtain an effective dosage range of 0.25 to 0.43 mg/kg (revised by the comment to 0.3 to 0.5 mg/kg). However, because no dose other than 20 mg was used, no conclusions other than the effectiveness of the 20 mg dose can be drawn. For example, if a 15 mg dose had been used and had been equally effective, then the calculated effective range of dextromethorphan would have been 0.1 to 0.32 mg/kg. Furthermore, the subject population of this study is so atypical (16 adult patients with chronic cough due to pulmonary tuberculosis, bronchial carcinoma, or obstructive lung disease) that the mg/kg dosage recommendation obtained from this population should not be extrapolated to a normal population.

The dextromethorphan dosage schedule for adults and children over 12 years of age allows for flexibility in dosages so that manufacturers can write directions for combination products that are applicable to all ingredients in the combination. Therefore, in the absence of data to demonstrate that these proposed dosages are not effective or that alternative doses are superior to the proposed doses, the agency is including in this final monograph the dextromethorphan dosage range it proposed for adults and children over 12 years of age in the tentative final monograph for OTC antitussive drug products.

Several comments (Ref. 3) submitted in response to the tentative final monograph for OTC antihistamine drug products published in the **Federal Register** of January 15, 1985 (50 FR 2200) requested that the agency revise pediatric dosages for OTC drug product categories such as internal analgesics, antitussives, nasal decongestants, and antihistamines to provide consistency among these rulemakings. The comments believed that the dosage schedules should provide: (1) Relatively

fixed dosage forms, (2) sufficient flexibility in the dosage schedules by basing the schedules on weight and age, (3) the ability to correlate dosing with a greater subdivision of standard age breaks, and (4) ease of physician and consumer use.

Because several OTC drug rulemakings could be affected if pediatric dosages are revised, the agency has decided to publish a separate document discussing pediatric dosages for OTC drug products and to defer all issues regarding pediatric dosages to that document. Therefore, the portions of this comment regarding a weight-based, age-related pediatric dosage schedule for dextromethorphan and the pediatric dosage for dextromethorphan when combined with an internal analgesic will be addressed in a future issue of the **Federal Register**. Thus, the dosage schedule for dextromethorphan proposed in the tentative final monograph is included in this final monograph. Should pediatric dosage schedules, in general, be revised in the future, this monograph will be amended accordingly.

References

(1) Comment No. C00197 and Correction No. CR0005, Docket No. 76N–052T, Dockets Management Branch.

(2) Matthys, H., B. Bleicher, and U. Bleicher, "Dextromethorphan and codeine: objective assessment of antitussive activity in patients with chronic cough," *Journal of Internal Medicine Research*, 11:92–100, 1983.

(3) Comment Nos. C00201, C00208, C00210, and C00211, Docket No. 76N–052H, Dockets Management Branch.

10. One comment requested clarification of the professional labeling section (§ 341.90(p)(3), redesignated as §341.90(c)(3)) concerning the distribution of a calibrated dispensing device to ensure accurate dosing when OTC drug products containing codeine are used in children 2 to under 6 years of age (48 FR 48595). The comment stated that it assumed "that the scope and intent of [this] section is limited to professional labeling instructions which the dispensing professional is to provide (along with the calibrated device) to a responsible adult at the time the product is delivered for use." The comment stated that it also assumed that it is not the intent of the proposed labeling to require marketers of codeine preparations to include calibrated dispensing devices with each package of their products. The comment stated that the use of codeine products in children under 6 years of age constitutes a small percentage of the total use of these products and argued that a requirement to include a dispensing device with all codeine products would unnecessarily increase the cost of these drug products to all consumers. The comment stated that calibrated dispensing devices are commercially available to pharmacists and other health care professionals. The comment suggested that the professional labeling be amended to require that health care professionals who dispense codeine preparations for use by children under age 6 provide the calibrated dispensing devices at the time the drug is dispensed. The comment also requested that § 341.90(p)(3) be amended to clarify that FDA intends for marketers of codeine preparations to include professional labeling instructions with their products that the dispensing professional must provide when use of the product will be by children under 6.

The comment correctly states that the agency did not intend that dispensing devices calibrated by age or weight for use in children 2 to under 6 years of age be included in each OTC package of codeine drug products. The inclusion of such devices could imply that OTC use of these products in children under 6 years of age is appropriate without the supervision of a physician. However, the comment erred in assuming that FDA intends for marketers of codeine preparations to include labeling instructions with their products that the dispensing professional "must" provide when the product will be used by children under 6 years of age. The agency intends for marketers of codeine preparations to provide to health professionals (e.g., doctors and pharmacists) the specific dosage information on codeine preparations provided in § 341.90(p)(1), redesignated as § 341.90(c)(1). This information in § 341.90(c)(1) can be provided in a written form that the health care professional can give to the child's parent, or the health care professional can provide the information orally to the parent. Such information should be provided to the consumer only when a physician has recommended the use of the product for a child 2 to under 6 years of age.

Once the dosing information has been provided to a parent, the agency intends for the health care professional either to provide a dispensing device directly to the parent or to instruct the parent to obtain a dispensing device to administer the product. The agency emphasizes that if a manufacturer promotes to health care professionals the use of its codeine antitussive drug product in the 2 to under 6 years of age population, the manufacturer must relate the dosages specified in § 341.90(c)(1) of this monography either to a dispensing device specifically designed for use with its product, or to the use of commercially available calibrated dispensing devices, to ensure that dosages for children 2 to under 6 years of age are measured accurately.

In order to make this intent clear, the agency is revising § 341.90(p)(2), redesignated as § 341.90(c)(2), to read: "Parents should be instructed to obtain and use a calibrated measuring device for administering the drug to the child, to use extreme care in measuring the dosage, and not to exceed the recommended daily dosage" and is adding to § 341.90(p)(1), redesignated as § 341.90(c)(1), the statement "the manufacturer must relate these dosages for its specific product to the use of the calibrated measuring device discussed in paragraph (3) of this section." Also, § 341.90(p)(3), redesignated as § 341.90(c)(3), is revised to read "A dispensing device (such as a dropper calibrated for age or weight) should be dispensed along with the product when it is intended for use in children 2 to under 6 years of age to prevent possible overdose due to improper measuring of the dose."

The agency is also expanding the portion of the required OTC labeling directions in § 341.74(d)(1)(ii) for the antitussive use of codeine preparations concerning children under 6 years of age to read: "Children under 6 years of age: Consult a doctor. A special measuring device should be used to give an accurate dose of this product to children under 6 years of age. Giving a higher dose than recommended by a doctor could result in serious side effects for your child." The agency believes that the additional information will ensure that parents will obtain and use a calibrated measuring device when codeine products are recommended for use in the 2– to under 6–year age group, just as calibrated measuring devices are used with other products, e.g., prescription liquid antibiotic products, intended for use in this age group.

E. Comments on OTC Antitussive Labeling

11. One comment noted its continuing position that FDA cannot legally and should not, as a matter of policy, prescribe exclusive lists of terms from which indications for use for OTC drugs must be drawn, and should not prohibit alternative OTC labeling terminology to describe indications which are truthful, not misleading, and intelligible to the consumer. This comment's views were presented in oral and written testimony submitted to FDA in connection with the September 29, 1982, FDA hearing on the exclusivity policy.

The comment stated that the agency's proposed "other allowable statements" are in fact indications that are not required. The comment contended that these allowable statements are beneficial to consumers in choosing a product appropriate for their symptoms and should be permitted in direct conjunction with approved labeling indications.

A second comment believed that proposed § 341.74 would unnecessarily limit the truthful and not misleading language permitted in labeling for antitussive drug products whether the antitussive is used alone or in combination with a second Category I ingredient from a second pharmacological class. This comment added that the agency's effort to implement the exclusivity policy, by providing in § 341.74(b)(2) for optional alternative statements, does not adequately address the legal problems associated with the exclusivity policy inasmuch as there would remain a preclusion against truthful and not misleading statements. The comment, therefore, suggested that § 341.74 be revised to indicate that the alternative statements set forth in this section be considered to be examples of acceptable alternatives and not a legally binding exclusive list. The comment claimed that such a revision can be accomplished by amending the first paragraph of § 341.74(b)(2) to read:

"*Other Allowable Statements.* In addition to the required information identified in paragraph (b)(1) of this section, the labeling of the product may contain any of the following statements or any similar statement which is neither false nor misleading, provided such statements are neither placed in direct conjunction with information required to appear in the labeling nor occupy labeling space with greater prominence or conspicuousness than the required information."

A third comment stated that the labeling indications in the tentative final monograph are more restrictive than those recommended by the Panel because the indications are limited to the single phrase "temporarily alleviates * * * cough due to minor throat and bronchial irritation as may occur with * * * the common cold * * * or inhaled irritants." Therefore, the comment urged that the "other allowable statements" in the tentative final monograph as well as other alternative language suggested by the comment be permitted for use under the heading "Indications" in place of or in addition to the statement above to allow more flexibility and consumer-oriented language in labeling. (See comment 13 below.)

In the Federal Register of May 1, 1986 (51 FR 16258), the agency published a final rule changing its labeling policy for stating the indications for use of OTC drug products. Under the final rule, the label and labeling of OTC drug products are required to contain in a prominent and conspicuous location, either (1) the specific wording on indications for use established under an OTC drug monograph, which may appear within a boxed area designated "APPROVED USES"; (2) other wording describing such indications for use that meets the statutory prohibitions against false or misleading labeling, which shall neither appear within a boxed area nor be designated "APPROVED USES"; or (3) the approved monograph language on indications, which may appear within a boxed area designated "APPROVED USES," plus alternative language describing indications for use that is not false or misleading, which shall appear elsewhere in the labeling. All required OTC drug labeling other than indications for use (e.g., statement of identity, warnings, and directions) must appear in the specific wording established under an OTC drug monograph.

In the tentative final monograph (48 FR 48593 to 48594), supplemental language relating to indications had been proposed and captioned as *Other Allowable Statements.* Under FDA's revised labeling policy (51 FR 16258), such statements are included at the tentative final stage as examples of other truthful and nonmisleading language that would be allowed elsewhere in the labeling. In accordance with the revised labeling policy, such statements would not be included in a final monograph. However, the agency has decided that, because these additional terms proposed in § 341.74(b)(2) in the tentative final monograph for antitussive drug products have been reviewed by FDA, they should be incorporated, wherever possible, in final OTC drug monographs under the heading "Indications" as part of the indications developed under that monograph. In this case, the agency has incorporated all of the "Other Allowable Statements" proposed in § 341.74(b)(2) of the tentative final monograph in the indications section in this final monograph. (See also comment 12 below).

12. Referring to the "other allowable statement" proposed for antitussives in § 341.74(b)(2)(v) of the tentative final monograph, "alleviates * * * cough * * * to help you get to sleep," one comment proposed that the following alternate phrases also be permitted to make this phrase more meaningful to consumers: "Alleviates * * * cough * * * to let you sleep," and "alleviates * * * cough * * * to let you rest."

The agency agrees that the two statements proposed by the comment (i.e., alleviates * * * cough * * * to let you sleep." and "alleviates * * * cough * * * to let you rest") are merely alternative ways of saying "alleviates * * * cough * * * to help you get to sleep" which appears in § 341.74(b)(2)(v) of the tentative final monograph and are truthful and not misleading statements. However, the agency prefers to use the word "help" instead of "let" for consistency with the previously proposed indication and with the indications used in the final rule for OTC nighttime sleep-aid drug products. Accordingly, the agency is revising the indication by adding the terms "to help you sleep" and "to help you rest" as follows: (Select one of the following: "Alleviates," "Controls," "Decreases," "Reduces," "Relieves," or "Suppresses") (select one of the following: "Cough," "the impulse to cough," or "your cough") "to help you" (select one of the following: "get to sleep," "sleep," or "rest") and is including the revised indication in § 341.74(b)(3)(v) of this final monograph. (See comment 11 above.)

13. Recognizing and appreciating the agency's effort to provide alternative wording in the indications statement set forth in § 341.74(b), one comment urged FDA to also recognize the use of phrases such as "occurring with" or "associated with" instead of "as may occur with." In addition, the comment believed that flexibility must be allowed in the expression of indications for antitussives because many products containing antitussive ingredients are combinations and thus label space is often limited. The comment maintained that the indications section should recognize not only alternative wording but also alternative indications and suggested the following example: "temporarily (followed by one of the permitted alternatives) cough due to minor throat and bronchial irritations/or cough due to minor bronchial irritation/or cough 'occurring'/'associated with the common cold' or 'a cold' or 'inhaled irritants.'"

The agency agrees with the comment that the phrases "occurring with," "associated with," or "as may occur with" may be used interchangeably. The agency also agrees with the comment that flexibility in the expression of antitussive indications is desirable.

Therefore, in this final monograph, the agency is revising the statement of indications in § 341.74(b) to include two indications as follows: (1) "Temporarily" (select one of the following: "alternatives," "calms," "controls," "decreases," "quiets," "reduces," "relieves," or "suppresses") "cough due to" (select one of the following: "minor bronchial irritation" or "minor throat and bronchial irritation") (select one of the following: "As may occur with," "associated with," or "occurring with") (select one of the following: "a cold" or "the common cold") or "inhaled irritants."

(2) "Temporarily," (select one of the following: "alleviates," "calms," "controls," "decreases," "quiets," "reduces," "relieves," or "suppresses") "cough" (select one of the following: "as may occur with," "associated with," or "occurring with") (select one of the following: "A cold," or "the common cold," or "inhaled irritants").

14. One comment objected to the "restrictive nature" of proposed § 341.74(a) in limiting statements of identity for cough medicines to "cough suppressant" or "antitussive (cough suppressant)." The comment urged FDA to allow manufacturers the alternative ways of describing the statement of identity that are set forth in the agency's regulations in 21 CFR 21.61, which require that the label include the established name of the drug, if any, followed by an accurate statement of the general pharmacologic category(ies) of the drug or the principal intended action(s) of the drug, and which provide that, if the drug is a combination that has no established name, the statement of identity may be a prominent and conspicuous statement of the general pharmacological action(s) of the combination or its principal intended action(s) in terms that are meaningful to laymen.

Although recognizing that the term "cough suppressant" is a valid statement of identity for antitussive drug products, the comment stated that an alternative statement such as "controls cough" is as accurate and meaningful a statement of the principal intended actions of these drugs. The comment further contended that the term "antitussive" is descriptive of the general pharmacological category and is equivalent to terms such as "decongestant," "analgesic," and "antihistamine," which are used as examples in § 201.61(b). The comment emphasized the importance of a concise and consistent statement of identity, particularly for drug ingredients used in combination drug products. The comment therefore requested that the proposed statement of identity in § 341.74(a) be amended to allow the term "antitussive" with or without the addition of the term "cough suppressant." The comment also suggested that the phrases "controls non-productive cough," "reduces dry, hacking cough," and "calms and controls dry coughing," etc., are appropriate statements of identity for combination drug products containing an antitussive agent and an expectorant active ingredient.

Although the term "antitussive" accurately describes the pharmacological category of such drugs, the agency believes, as discussed in the tentative final monograph on OTC antitussive drug products (48 FR 48591), that the term "cough suppressant" alone or in conjunction with the term "antitussive" will be better understood by consumers than the term "antitussive" alone. The agency believes that the statements of identity proposed in the tentative final monograph are concise, not confusing, and well recognized by the consumer, and the use of such terms is appropriate in the labeling of combination drug products containing an antitussive and other ingredients. In addition, whenever possible, the agency prefers to use the general pharmacologic category as the statement of identity because information on the principal intended action of the drug product is provided in the indications section of the label. In this case, the wording "controls cough," requested by the comment as a statement of identity, appears in the indications included in § 341.74(b). In instances where the term that describes the pharmacologic category is not appropriate as a statement of identity, the term for the principal intended action is used. For example, the statement of identity for an antihistamine used as an OTC nighttime sleep-aid is "nighttime sleep-aid." For these reasons, the agency has not included the comment's recommended change in the statement of identity. The option of using either "antitussive (cough suppressant)" or "cough suppressant" as the statement of identity, as proposed in the tentative final monograph, is included in this final monograph.

Regarding the comment's recommended statements of identity for a combination of an antitussive active ingredient and an expectorant active ingredient, the agency notes that, to minimize consumer confusion about the labeling of similar marketed products, the labeling of any combination product must contain the statement of identity that is designated in the monograph for each pharmacologic group in the combination product, e.g., "cough suppressant/expectorant." The phrases recommended by the comment, "controls non-productive cough," "reduces dry, hacking cough," and "calms and controls dry coughing," are not statements of identity but are descriptive phrases related to the indications of antitussive drug products. They may appear elsewhere in the labeling of an OTC antitussive drug product (but may not appear in any portion of the labeling required by the monograph and may not detract from such required information) provided they meet the provisions of section 502 of the act (21 U.S.C. 352) relating to misbranding.

15. One comment from a pediatrician stated that the tentative final monograph implies that children under 2 years of age may be most vulnerable to codeine and should not be given the drug; however, nowhere in the labeling for codeine is there a warning against use in children under 2 years of age. The comment emphasized that it is essential that the labeling state that codeine preparations are "totally unsuitable for infants under the age of 2," and added that the proposed statement "consult a doctor" is inadequate. The comment maintained that the vast majority of physicians, other than trained pediatricians, are not aware of the hazards of codeine, and that if a warning against the use of codeine in children under 2 years is not included in the labeling, there may be a continuance of annual deaths in infants due to codeine's respiratory depressant effects.

The agency agrees with the comment that codeine preparations can be hazardous when used in very young children. A review of adverse reactions reported to FDA from the years 1969 to June 1986 reveals eight cases of respiratory depression, apnea, coma, or death associated with the use of codeine-containing drug products in children ranging in age from 3 months to 2½ years (Ref. 1). The agency discussed that hazards of codeine in children in the tentative final monograph on OTC antitussive drug products and proposed that the label of codeine preparations for OTC use limit use to children 6 years of age and over (48 FR 48587). Thus, the label does not provide dosage information for children under 6 years, but states that a doctor must be consulted. The use of codeine in children 2 to under 6 years of age is limited to the supervision of a physician, and dosage information for this age

group is contained in the professional labeling section of the monograph (§ 341.90) (48 FR 48588 and 48595). However, no dosage information regarding the use of codeine in children under 2 years was included in § 341.90 in the tentative final monograph.

Professional labeling is provided to health professionals, but not to the general public. Because health professionals only will be provided with dosage instructions for the use of codeine in children under 6 years, the agency believes that a statement concerning use of codeine in children under 2 years of age should also be included under professional labeling in § 341.90. Such a statement will adequately warn health professionals about the hazards of codeine use in very young children. Therefore, the agency is including the following statement in § 341.90(c)(4): "Codeine is not recommended for use in children under 2 years of age. Children under 2 years may be more susceptible to the respiratory depressant effects of codeine, including respiratory arrest, coma, and death."

Reference

(1) Department of Health and Human Services, Food and Drug Administration, "Annual Adverse Reaction Summary Listings for the Years 1969 to June 1986," OTC Volume 04TFM, Docket No. 76N–052T, Dockets Management Branch.

16. One comment contended that the warning statements for antitussives proposed in § 341.74(c)(1) (i) and (ii) and (2) (i) and (ii) (48 FR 48594) are both difficult to understand and redundant. Referring to the limited labeling space available, the comment proposed that these warning statements could be shortened, as follows, to more simply and clearly communication the warning information to consumers, while still reflecting the valid medical warnings:

(1) For adults—"Do not take this product for chronic cough such as occurs with smoking, asthma, or emphysema. If cough persists for more than one week, or recurs frequently, or is accompanied by excessive mucus, high fever, rash or stubborn headache, consult a doctor."

(2) For children—"Do not administer this product for chronic cough such as occurs with asthma. If cough persists for more than one week, or recurs frequently, or is accompanied by excessive mucus, high fever, rash or stubborn headache, consult a doctor."

The agency believes that the warnings proposed in § 341.74(c)(1) (i) and (ii) and (2) (i) and (ii) are neither difficult to understand nor redundant. The proposed warnings provide necessary information for the consumer to safely and effectively use OTC antitussive drug products. Further, the labeling proposed for these products is not excessive, and there should be adequate labeling space to list the required information on the product label.

The agency has evaluated the revised warnings suggested by the comment and concludes that the warnings are not sufficiently clear and informative. For example, the warning proposed in § 341.74(c)(1)(i) states, "Do not take * * * for persistent or chronic cough * * * or if cough is accompanied by excessive phlegm (mucus) unless directed by a doctor." The revision moves the phrase "cough accompanied by excessive mucus" from the "do not take" restriction and includes it in the second sentence of the warning where there is no such restriction. Thus, this revision changes the intent of the warning and makes it inconsistent with the Panel's recommendations. The Panel discussed conditions in which there is an overproduction of secretions which accumulate in the airway and produce thick sputum (51 FR 38338). Because the suppression of cough by antitussives in such instances would impair clearing of the airway and could be harmful, the Panel recommended that antitussives not be used under such conditions, unless specifically directed by a doctor. The agency agrees with the Panel and believes that consumers should be warned against self-treatment of cough with an antitussive when cough is accompanied by excessive mucus; thus, the restrictive labeling "Do not take" is necessary.

The agency's proposed warning includes the term "phlegm (mucus)." The word "phlegm" is not included in the comment's revision. The agency believes that both terms should be included in the warning because consumers do not always use the terms interchangeably and both terms are helpful to make the warning clearer to consumers. The comment's revision also eliminates the word "persistent" from the first part of the warning. The agency believes that "persistent" should remain, in addition to "chronic," because the two words more broadly describe the type of cough for which OTC antitussives should not be used without consulting a doctor.

Additionally, the comment's revision "Do not take this product for chronic cough such as occurs with smoking, asthma, or emphysema" is a direct restriction against the use of antitussive drugs in persons with these conditions. However, the agency's version includes the phrase "unless directed by a doctor," thus informing persons with these conditions that OTC antitussives might be used under a doctor's supervision.

For the warning proposed in paragraph (ii), the comment's suggested revision eliminates entirely the sentence "A persistent cough may be a sign of a serious condition." The agency believes that this statement provides important information, helps to discourage self-treatment of a continuous, lingering cough with OTC antitussive drug products, and should be retained.

The proposed term "tends to recur" has a wider scope than "recurs frequently," the phrase suggested by the comment. The phrase "tends to recur" is broader because it encompasses coughs that may occur very frequently (e.g., every few days or weeks) to those that occur less often, but still on a relatively frequent basis (e.g., every 1 or 2 months). An individual with any type of cough that tends to recur, whether very frequently or less frequently, should consult a physician. Therefore, the agency is retaining the term "tends to recur." The agency also believes that the phrase "persistent headache" is more commonly used and will be better understood by consumers than the comment's suggested term "stubborn headache."

With regard to the warning for antitussives labeled for children under 12 years of age, the agency believes that although the comment's use of the word "administer" is correct, the word "give" is simpler, shorter, and more easily understood. Therefore, the word "give" is being used in the labeling.

For the reasons above, the comment's suggested revisions are not accepted, and the warnings for antitussives proposed in the tentative final monograph are being included in this final monograph.

17. One comment objected to the proposed elimination of the term "caution(s)" in the labeling of OTC drug products. The comment claimed that to the lay consumer there is a distinct difference between the term "warning(s)" and the term "caution(s)." The comment claimed that a warning precludes use of a product under certain conditions, whereas a caution does not preclude use, but may often alert the consumer to a potential problem, e.g., "Caution: If irritation develops discontinue use and consult a physician." Thus, the word "warning" is harsher than the word "caution." The comment asserted that a "caution" may also be used to add emphasis, e.g., "Caution: Use only as directed." The comment argued that it would undoubtedly dilute the impact of essential warning statements if

"cautions," which require the consumer to take certain precautions while using the product, were intermingled with "warnings," which signal that the product should not be used at all under specified circumstances. The comment emphasized that although both types of statements are usually used to call attention to danger, the distinction is important, particularly when products contain long lists of warnings. The comment added that because the same phrases may be warnings with regard to one class of products and merely cautions with regard to another, the flexibility of both terms is essential in order to prepare accurate and comprehensible labeling.

Section 502(f)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352(f)(2)) states, in part, that any drug marketed OTC must bear in labeling "* * * such adequate warnings * * * as are necessary for the protection of users." Section 330.10(a)(4)(v) of the OTC drug regulations provides that labeling of OTC drug products should include "* * * warnings against unsafe use, side effects, and adverse reactions * * *."

The agency notes that historically there has not been consistent usage of the signal words "warning" and "caution" in OTC drug labeling. For example, in § § 369.20 and 369.21 (21 CFR 369.20 and 369.21), which list "warning" and "caution" statements for drugs, the signal words "warning" and "caution" are both used. In some instances, either of these signal words is used to convey the same or similar precautionary information.

FDA has considered which of these signal words would be most likely to attract consumers' attention to that information describing conditions under which the drug product should not be used or its use should be discontinued. The agency concludes that the signal word "warning" is more likely to flag potential dangers so that consumers will read the information being conveyed. Therefore, FDA has determined that the signal word "warning," rather than the word "caution," will be used routinely in OTC drug labeling that is intended to alert consumers to potential safety problems.

II. Summary of Significant Changes From the Proposed Rule

1. The agency has determined that benzonatate should not be available for OTC use because of the negative comments received, the possible hypersensitivity reactions to the drug, including potential anaphylactic reactions, and possible paralysis of the oropharyngeal area. Therefore, benzonatate is not included in this final monograph. (See comments 2 and 6 above.)

2. In order to allow for flexibility in the expression of antitussive indications, the agency is revising and expanding the statement of indications in § 341.74(b) to include two indications as follows: (1) "Temporarily" (select one of the following: "Alleviates," "calms," "controls," "decreases," "quiets," "reduces," "relieves," or "suppresses") "cough due to" (select one of the following: "minor bronchial irritation" or "minor throat and bronchial irritation") (select one of the following: "as may occur with," "associated with," or "occurring with,") (select one of the following: "a cold" or "the common cold") or "inhaled irritants."

(2) "Temporarily" (select one of the following: "alleviates," "calms," "controls," "decreases," "quiets," "reduces," "relieves," or "suppresses") "cough" (select one of the following: "as may occur with," "associated with," or "occurring with") (select one of the following: "a cold," "the common cold," or "inhaled irritants"). (See comment 13 above.)

3. The agency is not including proposed § 341.74(b)(2), *Other allowable statements*, in this final monograph but is revising and incorporating the statements proposed in that section of the tentative final monograph (except for the statements pertaining to benzonatate in § 341.74(b)(3)(vii)) in the indications section in this final monograph. (See comments 11 and 12 above.)

4. The panel recommended placing camphor and menthol for steam inhalation in Category III because there were insufficient data to demonstrate effectiveness. The agency has reviewed new data and determined that the clinical studies support the reclassification of the individual ingredients from nonmonograph to monograph status as OTC antitussives for steam inhalation. Because the agency agrees with the Panel's recommendation concerning the warning for using camphor and menthol in a steam vaporizer, the agency is including the statement, "For steam inhalation only. Do not take by mouth," in § 341.74(c)(5)(ii) in this final monograph. The agency is also including directions for use of camphor and menthol individually in a hot steam vaporizer in § § 341.74(d)(2) (iv) and (v) in this final monograph. In addition, the agency has revised the definition for *"Topical antitussive drug"* in § 341.3(k), redesignated as § 341.3(c), to include use of a steam vaporizer for camphor and menthol in this final monograph. (See comment 6 above.)

5. The agency has revised and combined several warnings in § 341.74(c) that were proposed as separate warnings for products labeled for use only in children under 12 years of age, for use only in adults, or for use in adults and children under 12 years of age. The agency has revised and combined these warnings for clarity and to eliminate unnecessary repetition of warnings in the monograph. This change in format has also resulted in deletion of the proposed section entitled *"For antitussive products labeled for both adults and children."*

The agency has removed the warning concerning persistent cough as the sign of a serious condition from sections with specific labeling only for adults or only for children under 12 years of age and specified this warning in § 341.74(c)(1) as a general warning required for all antitussive drug products. The agency has revised the heading in § 341.74(c) for warnings for antitussives labeled for adults to read *"For oral and topical antitussives labeled for adults or for adults and children under 12 years of age"* to clarify that the warning "Do not take this product for persistent or chronic cough such as occurs with smoking, asthma, or emphysema, or if cough is accompanied by excessive phlegm (mucus) unless directed by a doctor" is required for products labeled for both adults and children under 12 years of age as well as for adults only.

The agency has removed the warning concerning constipation for drug products containing codeine from sections that specify separate labeling for adults or for children under 12 years of age and specified this warning in § 341.74(c)(4)(i) as a general warning for all drug products containing codeine. To eliminate unnecessary repetition of information in the labeling of drug products containing codeine, the agency has revised and combined the warnings required for codeine products labeled for adults and children under 12 years of age that warn against use of such products in adults and children with a chronic pulmonary disease or shortness of breath or in children who are taking other drugs and included the revised warning in § 341.74(c)(4)(iv) of the monograph.

The agency has also deleted the warning "For external use only. Do not give by mouth or place in nostrils" for products containing camplor or menthol that was proposed for products labeled only for use in children under 12 years of age. The agency is requiring the warning "For external use only. Do not

take this by mouth or place in nostrils" that was proposed for products labeled only for adult use, for all products whether they are labeled only for adults, only for children under 12 years of age, or for adults and children under 12 years of age.

6. In order to assure that parents will obtain and use a calibrated measuring device when codeine products are used in children 2 to under 6 years of age, the agency is expanding that portion of § 341.74(d)(1)(ii) concerning children under 6 years of age to read: "Children under 6 years of age: Consult a doctor. A special measuring device should be used to give an accurate dose of this product to children under 6 years of age. Giving a higher dose than recommended by a doctor could result in serious side effects for your child." (See comment 10 above.)

7. In order to clarify the professional labeling for products containing codeine, the agency is revising § 341.90(p)(2), redesignated as § 341.90(c)(2), to read: "Parents should be instructed to obtain and use a calibrated measuring device for administering the drug to the child, to use extreme care in measuring the dosage, and not to exceed the recommended daily dosage" and is adding to § 341.90(p)(1), redesignated as § 341.90(c)(1), the statement "the manufacturer must relate these dosages for its specific product to the use of the calibrated measuring device discussed in paragraph (3) of this section." Also, § 341.90(p)(3), redesignated as § 341.90(c)(3), is revised to read "A dispensing device (such as a dropper calibrated for age and weight) should be dispensed along with the product when it is intended for use in children 2 to under 6 years of age to prevent possible overdose due to improper measuring of the dose." (See comment 10 above.) Furthermore, the agency is including a statement concerning the hazards of codeine use in children under 2 years of age under professional labeling in § 341.90(c)(4). (See comment 15 above.)

8. The agency is deleting the word "high" (in reference to fever) from the warning for antitussives proposed in § 341.74(c) (1)(ii) and (2)(ii) of the tentative final monograph. Fever can be defined as a body temperature above the normal temperature of 98.6 °F (37 °C). In the same or different disease states, however, fevers may vary significantly. Fever may be low grade, moderate, high, intermittent, or sustained. The particular characteristics of a fever depend on the disease state, and, in many cases, the stage of development of the disease. The word "high" has been deleted from the warning because the agency believes that it is important for the consumer to recognize the presence of fever regardless of whether the fever is high or low.

9. In order to clarify the dosage directions for dextromethorphan and dextromethorphan hydrobromide, the agency is adding the following statement to § 341.74(d)(1)(iii): The dosage is equivalent to dextromethorphan hydrobromide. The antitussive drug products containing dextromethorphan that were marketed at the time of the Panel's review contained the hydrobromide salt of this ingredient, and the dosages were based on this salt. The agency is unaware of any drug products that contained dextromethorphan at the time of the Panel's review. A compendial monograph for dextromethorphan did not become official until 1985 (Ref. 1).

Further, a sustained release drug product approved on October 8, 1982, under an NDA (Ref. 2) contained as its active ingredient dextromethorphan polistirex. The dosage for that product is equivalent to the dosage for dextromethorphan hydrobromide. To be consistent with the drug products reviewed by the Panel and approved by the agency under the NDA, the agency is clarifying that the dosages for drug products containing dextromethorphan be equivalent to the dosages for dextromethorphan hydrobromide.

References

(1) "The United States Pharmacopeia XXI—The National Formulary XVI," United States Pharmacopeial Convention, Inc., Rockville, MD, pp. 298–299, 1985.

(2) Letter from R. Temple, FDA, to L. Gundersen, Pennwalt Corporation, contained in OTC Volume 08TFM, Docket No. 76N–052T, Dockets Management Branch.

10. In a separate rulemaking, paragraph (b) of 21 CFR 1308.15 was redesignated as paragraph (c) (February 28, 1985; 50 FR 8104). Therefore, the agency has revised § 341.14(a)(2) by replacing the reference to paragraph (b) of § 1308.15 with a reference to paragraph (c) of § 1308.15.

11. The agency has redesignated § 341.3(j) as § 341.3(b) and § 341.90(o) as § 341.90(b).

III. The Agency's Final Conclusions on OTC Antitussive Drug Products

Based on the available evidence, the agency is issuing a final monograph establishing conditions under which OTC antitussive drug products are generally recognized as safe and effective and not misbranded. Specifically, the following ingredients are included in this final rule for OTC antitussive use: chlophedianol hydrochloride, codeine ingredients (codeine, codeine phosphate, and codeine sulfate used only in combination in accordance with §§ 329.20 (a), 341.40, and 1308.15(c)), dextromethorphan, dextromethorphan hydrobromide, camphor, and menthol. All other ingredients for OTC antitussive use in this rulemaking are considered nonmonograph ingredients, i.e., beechwood creosite, benzonatate, camphor lozenges, caramiphen edisylate, carbetapentane citrate, cod liver oil, diphenhydramine hydrochloride, elm bark, ethylmorphine hydrochloride, eucalyptol/eucalyptus oil, horehound, hydrocodone bitartrate, menthol lozenges (less than 5 mg and greater than 10 mg), menthol mouthwash, noscapine, noscapine hydrochloride, thymol, and turpentine oil. Any drug product marketed for use as an OTC antitussive drug product that is not in conformance with the monograph (21 CFR Part 341) will be considered a new drug within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(p)) and misbranded under section 502(a) of the act (21 U.S.C. 352(a)) and may not be marketed for this use unless it is the subject of an approved application.

No comments were received in response to the agency's request for specific comment on the economic impact of this rulemaking (48 FR 48576). The agency has examined the economic consequences of this final rule in conjunction with other rules resulting from the OTC drug review. In a notice published in the Federal Register of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that not one of these rules, including this final rule for OTC antitussive drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. 96–354. That assessment included a discretionary Regulatory Flexibility Analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular

rulemaking for OTC antitussive drug products is not expected to pose such an impact on small businesses. Therefore, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

The agency is removing portions of § 369.20, § 369.21, and the exemption for certain drugs limited by NDAs to prescription sale in § 310.201(a)(14) applicable to dextromethorphan hydrobromide because these portions of those regulations are superseded by the requirements of the antitussive final monograph (Part 341). The items being removed include § 310.201(a)(14), the reference to paragraph (14) of § 310.201(a) in the entry for " 'COUGH-DUE-TO-COLD' PREPARATIONS" in § 369.20, and the term "DEXTROMETHORPHAN HYDROBROMIDE" as well as the reference to paragraph (14) of § 310.201(a) from the entry " 'COUGH-DUE-TO-COLD' PREPARATIONS (DEXTROMETHORPHAN HYDROBROMIDE AND CARBETAPENTANE CITRATE)" and by removing the entry "DEXTROMETHORPHAN HYDROBROMIDE PREPARATIONS" in § 369.21.

List of Subjects

21 CFR Part 310

New drugs, Prescription exemption.

21 CFR Part 341

Labeling, Over-the-counter drugs, Bronchodilator drug products.

21 CFR Part 369

OTC drugs, Warning and caution statements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Administrative Procedure Act, Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations is amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR Part 310 is revised to read as follows:

Authority: Secs. 502, 503, 505, 701, 52 Stat. 1051, 1052, 1053, 1055 as amended (21 U.S.C. 352, 353, 355, 371); 5 U.S.C. 553; 21 CFR 5.10 and 5.11.

§ 310.201 [Amended]

2. In Subpart C, § 310.201 is amended by removing paragraph (a)(14) and reserving it for future use.

PART 341—COLD, COUGH, ALLERGY, BRONCHODILATOR, AND ANTIASTHMATIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

3. The authority citation for 21 CFR Part 341 (established in the **Federal Register** of October 2, 1986; 51 FR 35328) is revised to read as follows:

Authority: Secs. 201(p), 502, 505, 701, 52 Stat. 1041–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371); 5 U.S.C. 553; 21 CFR 5.10 and 5.11.

4. In Subpart A, § 341.3 is amended by adding paragraphs (b) and (c), to read as follows:

§ 341.3 Definitions.

* * * * *

(b) *Oral antitussive drug.* A drug that is taken by mouth and acts systemically to relieve cough.

(c) *Topical antitussive drug.* A drug that relieves cough when inhaled after being applied topically to the throat or chest in the form of an ointment or from a steam vaporizer, or when dissolved in the mouth in the form of a lozenge or compressed tablet.

5. In Subpart B, § 341.14 is added, to read as follows:

§ 341.14 Antitussive active ingredients.

The active ingredients of the product consist of any of the following when used within the dosage limits and in the dosage forms established for each ingredient in § 341.74(d):

(a) *Oral antitussives.* (1) Chlophedianol hydrochloride.

(2) *Codeine ingredients.* The following ingredients may be used only in combination in accordance with §§ 329.20(a) and 341.40 and 21 CFR 1308.15(c).

(i) Codeine.

(ii) Codeine phosphate.

(iii) Codeine sulfate.

(3) Dextromethorphan.

(4) Dextromethorphan hydrobromide.

(b) *Topical antitussives.*

(1) Camphor.

(2) Menthol.

6. In Subpart C, § 341.74 is added, to read as follows:

§ 341.74 Labeling of antitussive drug products.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as a "cough suppressant" or an "antitussive (cough suppressant)."

(b) *Indications.* The labeling of the product states, under the heading "Indications," any of the phrases listed in this paragraph (b), as appropriate. Other truthful and nonmisleading statements, describing only the indications for use that have been established and listed in this paragraph, may also be used, as provided in § 330.1(c)(2), subject to the provisions of section 502 of the act relating to misbranding and the prohibition in section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act.

(1) "Temporarily" (select one of the following: "alleviates," "calms," "controls," "decreases," "quiets," "reduces," "relieves," or "suppresses") "cough due to" (select one of the following: "minor bronchial irritation" or "minor throat and bronchial irritation") (select one of the following: "as may occur with," "associated with," or "occurring with") (select one of the following: "A cold" or "the common cold") "or inhaled irritants."

(2) "Temporarily" (select one of the following: "alleviates," "calms," "controls," "decreases," "quiets," "reduces," "relieves," or "suppresses") "cough" (select one of the following: "as may occur with," "associated with," or "occurring with") (select one of the following: "A cold," "the common cold," or "inhaled irritants").

(3) In addition to the required information identified in paragraphs (b)(1) and (2) of this section, the labeling of the product may contain any (one or more) of the following statements:

(i) "Cough suppressant which temporarily" (select one of the following: "Alleviates," "controls," "decreases," "reduces," "relieves," or "suppresses") "the impulse to cough."

(ii) "Temporarily helps you cough less."

(iii) "Temporarily helps to" (select one of the following: "Alleviate," "control," "decrease," "reduce," "relieve," or "suppress") "the cough reflex that causes coughing."

(iv) "Temporarily" (select one of the following: "Alleviates," "controls," "decreases," "reduces," "relieves," or "suppresses") "the intensity of coughing."

(v) (Select one of the following: "Alleviates," "Controls," "Decreases," "Reduces," "Relieves," or "Suppresses") (select one of the following: "Cough," "the impulse to cough," or "your cough") "to help you" (select one of the following: "Get to sleep," "sleep," or "rest").

(vi) *For products containing chlophedianol hydrochloride, codeine ingredients, dextromethorphan, or dextromethorphan hydrobromide identified in § 341.14(a) (1), (2), (3), and*

(4). "Calms the cough control center and relieves coughing."

(vii) *For products containing chlophedianol hydrochloride, dextromethorphan, dextromethorphan hydrobromide, camphor, or menthol identified in § 341.14(a) (1), (3), (4) and (b) (1) and (2).* (a) "Nonnarcotic cough suppressant for the temporary" (select one of the following: "alleviation," "control," "decrease," "reduction," "relief," or "suppression") "of cough."

(*b*) (Select one of the following: "Alleviates," "Controls," "Decreases," "Reduces," "Relieves," or "Suppresses") "cough impulses without narcotics."

(c) *Warnings.* The labeling of the product contains the following warnings under the heading "Warnings":

(1) *For oral and topical antitussives.* "A persistent cough may be a sign of a serious condition. If cough persists for more than 1 week, tends to recur, or is accompanied by fever, rash, or persistent headache, consult a doctor."

(2) *For oral and topical antitussives labeled for adults or for adults and children under 12 years of age.* "Do not take this product for persistent or chronic cough such as occurs with smoking, asthma, emphysema, or if cough is accompanied by excessive phlegm (mucus) unless directed by a doctor."

(3) *For oral and topical antitussives labeled only for children under 12 years of age.* "Do not give this product for persistent or chronic cough such as occurs with asthma or if cough is accompanied by excessive phlegm (mucus) unless directed by a doctor."

(4) *Oral antitussives*—(i) *For products containing codeine ingredients identified in § 341.14(a)(2).* "May cause or aggravate constipation."

(ii) *For products containing codeine ingredients identified in § 341.14(a)(2) when labeled only for adults.* "Do not take this product if you have a chronic pulmonary disease or shortness of breath unless directed by a doctor."

(iii) *For products containing codeine ingredients identified in § 341.14(a)(2) when labeled only for children under 12 years of age.* "Do not give this product to children who have a chronic pulmonary disease, shortness of breath, or who are taking other drugs unless directed by a doctor."

(v) *For products containing codeine ingredients identified in § 341.14(a)(2) when labeled for use in adults and children under 12 years of age.* "Adults and children who have a chronic pulmonary disease or shortness of breath, or children who are taking other drugs, should not take this product unless directed by a doctor."

(5) *Topical antitussives*—(i) *For products containing camphor or menthol identified in § 341.14(b) (1) and (2) in a suitable ointment vehicle.* "For external use only. Do not take by mouth or place in nostrils."

(ii) *For products containing camphor or menthol identified in § 341.14(b) (1) and (2) for steam inhalation use.* "For steam inhalation only. Do not take by mouth."

(d) *Directions.* The labeling of the product contains the following information under the heading "Directions":

(1) *Oral antitussives*—(i) *For products containing chlophedianol hydrochloride identified in § 341.14(a)(1).* Adults: oral dosage is 25 milligrams every 6 to 8 hours, not to exceed 100 milligrams in 24 hours, or as directed by a doctor. Children 6 to under 12 years of age: Oral dosage is 12.5 milligrams every 6 to 8 hours, not to exceed 50 milligrams in 24 hours, or as directed by a doctor. Children under 6 years of age: consult a doctor.

(ii) *For products containing codeine ingredients identified in § 341.14(a)(2).* Adults: Oral dosage is 10 to 20 milligrams every 4 to 6 hours, not to exceed 120 milligrams in 24 hours, or as directed by a doctor. Children 6 to under 12 years of age: Oral dosage is 5 to 10 milligrams every 4 to 6 hours, not to exceed 60 milligrams in 24 hours, or as directed by a doctor. Children under 6 years of age: Consult a doctor. A special measuring device should be used to give an accurate dose of this product to children under 6 years of age. Giving a higher dose than recommended by a doctor could result in serious side effects for your child.

(iii) *For products containing dextromethorphan or dextromethorphan hydrobromide identified in § 341.14(a) (3) and (4).* The dosage is equivalent to dextromethorphan hydrobromide. Adults: Oral dosage is 10 to 20 milligrams every 4 hours or 30 milligrams every 6 to 8 hours, not to exceed 120 milligrams in 24 hours, or as directed by a doctor. Children 6 to under 12 years of age: Oral dosage is 5 to 10 milligrams every 4 hours or 15 milligrams every 6 to 8 hours, not to exceed 60 milligrams in 24 hours, or as directed by a doctor. Children 2 to under 6 years of age: Oral dosage is 2.5 to 5 milligrams every 4 hours or 7.5 milligrams every 6 to 8 hours, not to exceed 30 milligrams in 24 hours, or as directed by a doctor. Children under 2 years of age: consult a doctor.

(2) *Topical antitussives*—(i) *For products containing camphor identified in § 341.14(b)(1) in a suitable ointment vehicle.* The product contains 4.7 to 5.3 percent camphor. Adults and children 2 to under 12 years of age: Rub on the throat and chest as a thick layer. The area of application may be covered with a warm, dry cloth if desired. However, clothing should be left loose about the throat and chest to help the vapors rise to reach the nose and mouth. Applications may be repeated up to three times daily or as directed by a doctor. Children under 2 years of age: consult a doctor.

(ii) *For products containing menthol identified in § 341.14(b)(2) in a suitable ointment vehicle.* The product contains 2.6 to 2.8 percent menthol. Adults and children 2 to under 12 years of age: Rub on the throat and chest as a thick layer. The area of application may be covered with a warm, dry cloth if desired. However, clothing should be left loose about the throat and chest to help the vapors rise to reach the nose and mouth. Applications may be repeated up to three times daily or as directed by a doctor. Children under 2 years of age: consult a doctor.

(iii) *For products containing menthol identified in § 341.14(b)(2) in a lozenge or compressed tablet.* The product contains 5 to 10 milligrams menthol. Adults and children 2 to under 12 years of age: Allow (lozenge or compressed tablet) to dissolve slowly in the mouth. May be repeated every hour as needed or as directed by a doctor. Children under 2 years of age: consult a doctor.

(iv) *For products containing camphor identified in § 341.14(b)(1) for steam inhalation use.* The product contains 6.2 percent camphor. Adults and children 2 to under 12 years of age: Add 1 tablespoonful of solution, for each quart of water, directly to the water in a hot steam vaporizer, bowl, or wash basin; or add 1½ teaspoonsful of solution, for each pint of water, to an open container of boiling water. Breathe in the medicated vapors. May be repeated up to three times daily or as directed by a doctor. Children under 2 years of age: consult a doctor.

(v) *For products containing menthol identified in § 341.14(b)(2) for steam inhalation use.* The product contains 3.2 percent menthol. Adults and children 2 to under 12 years of age: Add 1 tablespoonful of solution, for each quart of water, directly to the water in a hot steam vaporizer, bowl, or wash basin; or add 1½ teaspoonsful of solution, for each pint of water, to an open container of boiling water. Breathe in the medicated vapors. May be repeated up to three times daily or as directed by a doctor. Children under 2 years of age: consult a doctor.

(e) The word "physician" may be substituted for the word "doctor" in any of the labeling statements in this section.

7. In Subpart C, § 341.90 is amended by adding paragraphs (b) and (c), to read as follows:

§ 341.90 Professional labeling.

* * * * *

(b) *For products containing chlophedianol hydrochloride identified in 341.14(a)(1).* Children 2 to under 6 years of age: oral dosage is 12.5 milligrams every 6 to 8 hours, not to exceed 50 milligrams in 24 hours.

(c) *For products containing codeine ingredients identified in § 341.14(a)(2).* (1) Children 2 to under 6 years of age: Oral dosage is 1 milligram per kilogram body weight per day administered in four equal divided doses. The average body weight for each age may also be used to determine dosage as follows: For children 2 years of age (average body weight, 12 kilograms), the oral dosage is 3 milligrams every 4 to 6 hours, not to exceed 12 milligrams in 24 hours; for children 3 years of age (average body weight, 14 kilograms), the oral dosage is 3.5 milligrams every 4 to 6 hours, not to exceed 14 milligrams in 24 hours; for children 4 years of age (average body weight, 16 kilograms), the oral dosage is 4 milligrams every 4 to 6 hours, not to exceed 16 milligrams in 24 hours: for children 5 years of age (average body weight, 18 kilograms), the oral dosage is 4.5 milligrams every 4 to 6 hours, not to exceed 18 milligrams in 24 hours. The manufacturer must relate these dosages for its specific product dosages for its specific product to the use of the calibrated measuring device discussed in paragraph (c)(3) of this section. If age is used to determine the dose, the directions must include instructions to reduce the dose for low-weight children.

(2) Parents should be instructed to obtain and use a calibrated measuring device for administering the drug to the child, to use extreme care in measuring the dosage, and not exceed the recommended daily dosage.

(3) A dispensing device (such as a dropper calibrated for age or weight) should be dispensed along with the product when it is intended for use in children 2 to under 6 years of age to prevent possible overdose due to improper measuring of the dose.

(4) Codeine is not recommended for use in children under 2 years of age. Children under 2 years may be more susceptible to the respiratory depressant effects of codeine, including respiratory arrest, coma, and death.

PART 369—INTERPRETATIVE STATEMENTS RE WARNINGS ON DRUGS AND DEVICES FOR OVER-THE-COUNTER SALE

8. The authority citation for 21 CFR Part 369 is revised to read as follows:

Authority: Secs. 502, 503, 506, 507, 701, 52 Stat. 1050–1052 as amended, 1055–1056 as amended, 55 Stat. 851, 59 Stat. 463 as amended (21 U.S.C. 352, 353, 356, 357, 371); 21 CFR 5.10 and 5.11.

§ 369.20 [Amended]

9. In Part 369, § 369.20 *Drugs; recommended warning and caution statements* is amended by removing the reference to paragraph (14) of § 310.201(a) from the entry " 'COUGH-DUE-TO-COLD' PREPARATIONS."

§ 369.21 [Amended]

10. In Part 369, § *369.21 Drugs; warning and caution statements required by regulations* is amended by removing the term "DEXTROMETHORPHAN HYDROBROMIDE" and by removing the reference to paragraph (14) of § 310.201(a) from the entry " 'COUGH-DUE-TO-COLD' PREPARATIONS (DEXTROMETHORPHAN HYDROBROMIDE AND CARBETAPENTANE CITRATE) and by removing the entry "DEXTROMETHORPHAN HYDROBROMIDE PREPARATIONS."

Dated: May 2, 1987.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 87–18144 Filed 8–11–87; 8:45 am]

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Part IV

Department of Education

34 CFR 350, 351, 352, 353, 354, 355, 356, 357, 358, and 359

National Institute on Disability and Rehabilitation Research; Final Regulations and Notice of Final Funding Priorities for Fiscal Year 1887

DEPARTMENT OF EDUCATION

34 CFR Parts 350, 351, 352, 353, 354, 355, 356, 357, 358, and 359

National Institute on Disability and Rehabilitation Research

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the National Institute on Disability and Rehabilitation Research (NIDRR). These regulations implement certain changes to Titles I and II of the Rehabilitation Act of 1973 made by the Rehabilitation Act Amendments of 1986. The regulations revise the selection criteria for Rehabilitation Research and Training Centers (RRTC's) and Rehabilitation Engineering Centers (REC's) supported by NIDRR, incorporate site visits into the review of applications for grants for amounts above $299,999, provide for the consideration of an applicant's past performance in the evaluation of applications under the RRTC and REC programs, and incorporate certain technical requirements of the amendments.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Betty Jo Berland, National Institute on Disability and Rehabilitation Research, 400 Maryland Avenue SW., Washington, DC, 20202. Telephone (202) 732-1142; deaf or hearing impaired persons who use telecommunication devices for the deaf (TDD) may call (202) 732-1198.

SUPPLEMENTARY INFORMATION: The National Institute on Disability and Rehabilitation Research (NIDRR), created under Title II of the Rehabilitation Act of 1973, as amended by Public Laws 95-602, 98-221, and 99-506, carries out a variety of research and related activities under that statutory authority. On September 10, 1981, the Secretary published final program regulations governing many of those activities (46 FR 45300), and on March 12, 1984, June 18, 1984, and April 26, 1985, revised those regulations (49 FR 9324 and 24978, and 50 FR 16672). The Secretary now amends the regulations to implement changes to the Act affecting NIDRR made by Pub. L. 99-506, the Rehabilitation Act Amendments of 1986, enacted on October 21, 1986. The 1986 amendments made a number of technical changes in the authority governing NIDRR and several significant changes affecting the manner in which applications are reviewed and selected for funding. These revised regulations incorporate the technical changes and also provide new selection criteria for two programs, as well as certain new peer review requirements.

On May 7, 1987, the Secretary published a notice of proposed rulemaking for NIDRR at 52 FR 17368. NIDRR received a number of comments, and several changes have been made to the proposed regulations in response to those comments. A Summary of the Comments and Responses is included as an Appendix to this document. The principal changes are an increase in the number of points awarded to the quality of the research design in the evaluation of applications for Rehabilitation Research and Training Centers (RRTC's), and a concomitant decrease in the maximum number of points awarded for two other selection criteria, relevance and importance of the research program and quality of the organization and management. However, these changes will not become effective until fiscal year 1988, as there was not sufficient time for NIDRR to make these changes effective for 1987 and still fund the Centers for which the Congress has directed funding.

Other changes from the proposed regulations are primarily to clarify the intent of the regulations. These include inserting physical restoration as one of the problem areas to be addressed by NIDRR-supported research; expanding references to rehabilitation of children with handicaps to include infants, toddlers, children, and youth; specifying that peer reviewers must have expertise related to the specific applications under review; including communication factors as subjects of the Research and Demonstration projects program (§ 351.10); and clarifying the requirement that Centers prepare materials in alternate media accessible to individuals with various types of disabilities.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations specified in the order.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority in the United States. Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 350

Administrative practice and procedure, Education, Educational research, Grant programs—education, Handicapped.

34 CFR Parts 351 and 353

Grant programs—education, Research, Vocational rehabilitation.

34 CFR Part 352

Education, Educational research, Grant programs—education, Handicapped, Manpower training programs, Vocational rehabilitation.

34 CFR Part 359

Education, Educational research, Grant programs—education, Handicapped, Vocational rehabilitation.

(Catalog of Federal Domestic Assistance Number 84.133, National Institute on Disability and Rehabilitation Research)

Dated: July 23, 1987.

William J. Bennett,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations by amending Parts 350, 351, 352, 353, 354, 355, 356, 357, 358, and 359 as follows:

PART 350—[AMENDED]

1. The authority citation for Part 350 is revised to read as follows:

Authority: 29 U.S.C. 760-762, unless otherwise noted.

2. The title of Part 350 is revised to read as follows:

PART 350—DISABILITY AND REHABILITATION RESEARCH: GENERAL PROVISIONS

3. In § 350.1, the introductory text of (a) is republished, and the section is amended by revising the section heading, paragraphs (a) (1) and (3), and the citation of legal authority to read as follows:

§ 350.1 Disability and rehabilitation research.

(a) The purposes of activities funded by the Institute are to:

(1) Support the conduct of research and demonstration projects, centers, and related activities that address rehabilitation problems in areas such as physical restoration, vocational rehabilitation, independent living, and community integration for persons with handicaps, including programs of rehabilitation for infants, toddlers, children, and youth with handicaps and persons with handicaps aged sixty or older (fifty-five or older in the case of American Indians), and programs that train persons who provide rehabilitation services or conduct research;

* * * * *

(3) Improve the distribution of technological devices and equipment for persons with handicaps; and

* * * * *

(Authority: Secs. 200, 202, and 204; (29 U.S.C. 760, 761a, and 762))

4. Section 350.2 is amended by revising paragraphs (b) and (c), adding a new paragraph (d), and revising the citation of legal authority to read as follows:

§ 350.2 Who is eligible for assistance under these programs?

* * * * *

(b) Private agencies or organizations;

(c) Institutions of higher education; and

(d) Indian tribes and tribal organizations.

(Authority: Sec. 204(a); 29 U.S.C. 762a)

5. Section 350.3 is amended by revising the introductory text and paragraph (a)(2) to read as follows:

§ 350.3 What regulations apply to these programs?

The following regulations apply to grants under the Disability and Rehabilitation Research Programs—

(a) * * *

(2) Part 75 (Direct Grant Programs), except as noted in 34 CFR 352.33, 352.40, and 359.3;

* * * * *

6. Section 350.4 is amended by revising the introductory text in paragraphs (a) and (b); and also in paragraph (b) by removing the definitions of "Director" and "Handicapped individual" and their corresponding citations of legal authority, by revising the definition of "Institute", and adding new definitions of "American Indian", "Indian tribe", "Individual with handicaps", "Individual with severe handicaps", "Rehabilitation engineering", and "Supported employment", to read as follows:

§ 350.4 What definitions apply to these programs?

(a) The following definitions in 34 CFR Part 77 apply to the programs under Disability and Rehabilitation Research—

* * * * *

(b) The following definitions also apply to programs under Disability and Rehabilitation Research—

* * * * *

"American Indian" means an individual who is a member of an Indian tribe.

(Authority: Sec. 7(20); 29 U.S.C. 706(20))

* * * * *

"Indian tribe" means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaskan native village or regional village corporation, as defined in or established pursuant to the Alaska Native Claims Settlement Act.

(Authority: Sec. 7(21); 29 U.S.C. 706(21))

"Individual with handicaps" means any individual who: (1) Has a physical or mental disability which for that individual constitutes or results in a substantial handicap to employment; and (2) can reasonably be expected to benefit in terms of employability from the provision of vocational rehabilitation services.

(Authority: Sec 7(8)(A); 29 U.S.C. 706(8)(A))

"Individual with severe handicaps" means an individual with handicaps: (1) Who has a severe physical or mental disability that seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of employability; (2) whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and (3) who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculoskeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, other spinal cord conditions, sickle cell anemia, specific learning disability, endstage renal disease, or another disability or combination of disabilities determined on the basis of an evaluation of rehabilitation potential to cause comparable substantial functional limitation.

(Authority: Sec. 7(15)(A); 29 U.S.C. 706(15)(A))

"Institute" means the National Institute on Disability and Rehabilitation Research.

* * * * *

"Rehabilitation engineering" means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of an address the barriers confronted by individuals with handicaps in areas that include education, rehabilitation, employment, transportation, independent living, and recreation.

(Authority: Sec. 7(12); 29 U.S.C. 706(12))

* * * * *

"Supported employment" means competitive work in integrated work settings for individuals with severe handicaps for whom competitive employment has not traditionally occurred, or for whom competitive employment has been interrupted or intermittent as a result of severe disability, and who, because of the handicaps, need on-going support services to perform that work. The term includes transitional employment for individuals with chronic mental illness.

(Authority: Sec. 7(18); 29 U.S.C. 706(18)).

* * * * *

7. Section 350.30 is revised to read as follows:

§ 350.30 What are the peer review panels for these programs?

The Secretary refers each application for a grant under the Disability and Rehabilitation Research Programs to a peer review panel established by the Secretary. Peer review panels review applications on the basis of the applicable selection criteria described in 34 CFR 350.34, 352.31, 353.31, 358.32, or 359.31.

(Authority: Sec. 202(e); 29 U.S.C. 761a(e))

8. Section 350.32 is amended by revising paragraph (a) and the citation of legal authority to read as follows:

§ 350.32 What is the composition of a peer review panel?

(a) The Secretary selects as members of a peer review panel scientists and other experts in rehabilitation or related fields who are qualified, on the basis of training, knowledge, or experience, to give expert advice on the merit of the applications under review. Applications for awards of $60,000 or more, except those for the purposes of evaluation, dissemination of information, or conferences, must be reviewed by a peer

review panel that consists of a majority of non-Federal members.

* * * * * *

(Authority: Secs. 18 and 202(e); 29 U.S.C. 717 and 761a(e))

9. Section 350.33 is amended by revising paragraphs (a), (b), and (e) and the first sentence of paragraph (c) to read as follows:

§ 350.33 How does the Secretary evaluate an application under 34 CFR Parts 351, 354, 355, or 357?

(a) The Secretary evaluates an application under 34 CFR Part 351, 354, 355, or 357 on the basis of the selection criteria in § 350.34.

(b) Each criterion applies to all types of projects under the programs governed by these parts; the elements within each criterion also apply to all of the activities within the projects unless the regulations specifically state that their application is limited to certain types of activities.

(c) The Secretary awards up to five possible points for each criterion. * * * * * * * * * *

(e) The maximum possible score for an application is 100 points.

(Authority: Sec. 202(e); 29 U.S.C. 761a(e))

10. The heading of § 350.34 is revised to read as follows:

§ 350.34 What selection criteria does the Secretary use in reviewing applications under Parts 351, 354, 355, or 357?

* * * * * *

11. In Subpart D, a new § 350.35 is added to read as follows:

§ 350.35 What additional factors does the Secretary consider in reviewing applications under any Institute program:

(a) In making grants of more than $299,999 per year under any Institute program, the Secretary also considers the findings of an on-site review of the applicant. An on-site review is made of the applicant rated most highly by the peer review panel, and, at the discretion of the Secretary, of other applicants that are very highly rated by the peer review panel.

(b) The purpose of an on-site review is to verify certain aspects of the application, including facilites and resources, client populations, staffing, management structure, institutional support, and relations with other agencies, and to clarify certain aspects of the proposed activity if recommended by the members of the peer review panel.

(c) An on-site review is conducted by a group that includes one or more members of the peer review panel that originally reviewed by the application, supplemented by other experts as necessary.

(d) The Secretary uses the findings of the site review to assist in determining the order in which applications are selected for funding.

(Authority: Secs. 204(d)(2); 29 U.S.C. 762(d))

12. In § 350.40, the introductory text of (b)(1) is republished, and the section is amended by revising paragraph (b)(1)(iii) to read as follows:

§ 350.40 What are the matching requirements?

* * * * *

(b)(1) The Secretary may make grants to pay for part or all of the costs of the following activities:

* * * * *

(iii) Research projects concerned with end-stage renal disease, telecommunications, rehabilitation of children with handicaps and persons with handicaps who are aged sixty or older (or American Indians with handicaps who are aged fifty-five or older), attracting and retaining rehabilitation professionals in rural areas, producing and distributing captioned video cassettes for deaf individuals and innovative methods for providing services for children with handicaps and their parents.

* * * * *

PART 351—[AMENDED]

13. The authority citation for Part 351 is revised to read as follows:

Authority: 29 U.S.C. 750–762, unless otherwise noted.

14. The title of Part 351 is revised to read as follows:

PART 351—DISABILITY AND REHABILITATION RESEARCH: RESEARCH AND DEMONSTRATION PROJECTS

§ 351.1 [Amended]

§ 351.10 [Amended]

15. In Part 351, for each section listed in the left column in the list below, remove the phrase in the middle column from wherever it appears in the section, and add the phrase indicated in the right column in its place:

Sec.	Remove	Add
351.1	"handicapped individual", "handicapped individuals", "the most severely handicapped"	"individual with handicaps", "individuals with handicaps", "individuals with the most severe handicaps"
351.10	"handicapped individual"	"individual with handicaps"
	"handicapped individuals" "handicapped children"	"individuals with handicaps" "children with handicaps"
	"handicapped preschool children"	"children of preschool age with handicaps"
	"handicapped individuals aged sixty years and older"	"individuals with handicaps who are aged sixty years and older, or, in the case of American Indians, are aged fifty-five years or older"

16. In § 351.10 the introductory text of the section and the introductory text of paragraph (b) are republished, and the section is amended by revising paragraph (a), revising paragraphs (b)(6) and (7), and the citation of legal authority and adding new paragraphs (b)(8) and (9) to read as follows:

§ 351.10 What types of projects are authorized under this program?

The Research and Demonstration Projects Program provides financial assistance for the following types of projects—

(a) Research and Demonstration Projects as follows—Scientific, technical, methodological, and other investigations into the nature of disability, methods of analyzing disability, and techniques for rehabilitation, including basic research where related to rehabilitation techniques or services; studies and analyses of medical, industrial, vocational, social, recreational, psychiatric, psychological, communicative, economic, and other factors affecting rehabilitation of individuals with handicaps; research concerned with the special problems of homebound and institutionalized individuals; other research related to problems encountered by individuals with handicaps in their daily activities, especially problems related to employment, including supported employment; and demographic studies of individuals with handicaps.

(b) Specialized research activities as follows—

* * * * *

(6) Projects to develop and demonstrate methods to attract and retain professionals to serve in rural areas in the rehabilitation of individuals with handicaps;

(7) Research and demonstration projects related to the provision of services to children of preschool age with handicaps;

(8) Studies of the rehabilitation needs of American Indian populations, and of effective means for delivery of rehabilitation services to American

Indians residing on and off reservations; and

(9) Studies and demonstration programs to develop procedures to encourage development, manufacture, and marketing or orphan technological devices, such as tele-Braille systems for persons who are deaf-blind or special respirators for technology-dependent children, designed to enable individuals with handicaps to achieve independence and access to gainful employment.

(Authority: 204(a), 204(b)(3)–(5), 204(b)(7)–(9), 204(b)(11), 204(b)(14)–(15), and 202(b)(8); 29 U.S.C. 762(a), 762(b)(3)–(5), 762(b)(7)–(9), 762(b)(11), 762(b)(14)–(15), and 761a(b)(8))

PART 352—[AMENDED]

17. The authority citation for Part 352 is revised to read as follows:

Authority: 29 U.S.C. 762(b)(1), unless otherwise noted.

18. The title of Part 352 is revised to read as follows:

PART 352—DISABILITY AND REHABILITATION RESEARCH: REHABILITATION RESEARCH AND TRAINING CENTERS

19. Section 352.10 is amended by revising paragraphs (b) and (d) to read as follows:

§ 352.10 What types of centers are authorized under this program?

* * * * *

(b) The research to be conducted at each center must be based on the particular needs of individuals with handicaps in the geographic area served by the center. Centers may conduct basic research, if related to identifiable rehabilitation techniques or services, as well as applied rehabilitation research; research regarding the medical, psychological, and social aspects of rehabilitation; and research related to vocational rehabilitation, independent living, and the rehabilitation of infants, toddlers, children, and youth with handicaps, individuals with handicaps who are sixty years of age or older, or American Indians with handicaps who are fifty-five years of age or older; and research on problems related to disability in rural areas.

* * * * *

(d) A center may use part of its grant funds to provide to individuals with handicaps services that are connected with its research and training activities.

(Authority: Sec. 204(b)(1); 29 U.S.C. 762(b)(1))

20. Section 352.31 is revised to read as follows:

§ 352.31 What selection criteria are used under this program?

The Secretary evaluates applications under this program according to the following criteria:

(a) *Relevance and importance of the research program.* (20 points)

(Note.—For fiscal year 1987 only, the maximum number of points to be awarded under this criterion is 25 points.)

The Secretary reviews each application to determine to what degree—

(1) The proposed activities are responsive to a priority established by the Secretary and address a significant need of a disabled target population and rehabilitation service providers;

(2) The overall research program of the Center includes appropriate interdisciplinary and collaborative research activities, is likely to lead to new and useful knowledge in the priority area, and is likely to become a nationally recognized source of scientific knowledge; and

(3) The applicant demonstrates that all component activities of the Center are related to the overall objective of the Center, and will build upon and complement each other to enhance the likelihood of solving significant rehabilitation problems.

(b) *Quality of the research design.* (35 points)

(Note.—For fiscal year 1987 only, the maximum number of points to be awarded under this criterion is 25 points.)

The Secretary reviews each application to determine to what degree—

(1) The applicant proposes a comprehensive research program for the entire project period, including at least three interrelated research projects;

(2) The research design and methodology of each proposed activity are meritorious in that—

(i) The literature review is appropriate and indicates familiarity with current research in the field;

(ii) The research hypotheses are important and scientifically relevant;

(iii) The sample populations are appropriate and significant;

(iv) The data collection and measurement techniques are appropriate and likely to be effective;

(v) The data analysis methods are appropriate; and

(vi) The applicant assures that human subjects, animals, and the environment are adequately protected; and

(3) The application discusses the anticipated research results and demonstrates how those results would satisfy the original hypotheses and could be used for planning future research, including generation of new hypotheses where applicable.

(c) *Quality of the training and dissemination program.* (25 points): The Secretary reviews each application to determine the degree to which—

(1) The proposed plan for training and dissemination provides evidence that research results will be effectively disseminated and utilized based on the identification of appropriate and accessible target groups; the proposed training materials and methods are appropriate; the proposed activities are relevant to the regional and national needs of the rehabilitation field; and the training materials and dissemination packages will be developed in alternate media that are usable by people with various types of disabilities;

(2) The proposed plan for training and dissemination provides for—

(i) Advanced training in rehabilitation research;

(ii) Training rehabilitation service personnel and other appropriate individuals to improve practitioner skills based on new knowledge derived from research;

(iii) Training packages that make research results available to service providers, researchers, educators, disabled individuals, parents, and others;

(iv) Technical assistance or consultation that is responsive to the concerns of service providers and consumers; and

(v) Dissemination of research findings through publication in professional journals, textbooks, and consumer and other publications, and through other appropriate media such as audiovisual materials and telecommunications.

(d) *Quality of the organization and management.* (20 points):

(Note.—For fiscal year 1987 only, the maximum number of points to be awarded under this criterion is 25 points.)

The Secretary reviews each application to determine the degree to which—

(1) The staffing plan for the Center provides evidence that the project director, research director, training director, principal investigator and other personnel have appropriate training and experience in disciplines required to conduct the proposed activities; the commitment of staff time is adequate to conduct all proposed activities; and the Center, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

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(2) The budgets for the Center and for each component project are reasonable, adequate, and cost-effective for the proposed activities;

(3) The facilities, equipment, and other resources are adequate and are appropriately accessible to persons with disabilities;

(4) The plan of operations is adequate to accomplish the Center's objectives and to ensure proper and efficient management of the Center;

(5) The proposed relationships with Federal, State, and local rehabilitation service providers and consumer organizations are likely to ensure that the Center program is relevant and applicable to the needs of consumers and service providers;

(6) The past performance and accomplishments of the applicant indicate an ability to complete successfully the proposed scope of work;

(7) The application demonstrates appropriate commitment and support by the host institution and opportunities for interdisciplinary activities and collaboration with other institutions and organizations; and

(8) The plan for evaluation of the Center provides for an annual assessment of the outcomes of the research, the impact of the training and dissemination activities on the target populations, and the extent to which the overall objectives have been accomplished.

(Authority: Secs. 202(e), 202(i)(1), and 204(b)(1); 29 U.S.C. 761a(e), 761a(i)(1)), and 762(b)(1))

(Approved by the Office of Management and Budget under control number 1820-0027.)

21. A new Subpart E, consisting of § 352.40, is added to read as follows:

Subpart E—What Conditions Apply to a Grantee?

§ 352.40 What are the indirect cost requirements for this program?

A host institution with which a center is affiliated may not collect in excess of fifteen percent of the total grant award as indirect cost charges, notwithstanding the provisions in § 75.562 of EDGAR.

(Authority: Sec. 204(b)(1); (29 U.S.C. 762(b)(1))

PART 353—[AMENDED]

22. The authority citation for Part 353 is revised to read as follows:

Authority: 29 U.S.C. 762(b)(2), unless otherwise noted.

23. The title of Part 353 is revised to read as follows:

PART 353—DISABILITY AND REHABILITATION RESEARCH: REHABILITATION ENGINEERING CENTERS

24. Section 353.1 is amended by revising paragraphs (b) and (c) to read as follows:

§ 353.1 What is the rehabilitation engineering program?

* * * * *

(b) Development of systems of technical and engineering information exchange and coordination, including systems to disseminate innovative methods for the delivery of rehabilitation technology services; and

(c) Development of improvements in the distribution of technology devices and equipment to individuals with handicaps.

(Authority: Secs. 200(3), 204(b)(2); 29 U.S.C. 760(3), 762(b)(2)).

25. In § 353.10, the introductory texts of (a) and (b) are republished, and the section is amended by removing the word "and" at the end of paragraph (a)(iii), removing the period at the end of paragraph (a)(iv) and adding, in its place, a semicolon and the word "and", adding a new paragraph (a)(v), and revising paragraph (b)(1), to read as follows:

§ 353.10 What types of projects are authorized under this program?

* * * * *

(a) Establishment and support of Rehabilitation Engineering Research Centers.

* * * * *

(v) The activities of a Center may include developing and demonstrating innovative models for the delivery to rural and urban areas of cost-effective rehabilitation engineering services to address the barriers to employment and independent living needs confronted by individuals with handicaps.

(b) *Research and demonstration* projects of an engineering or technolgical nature as follows—

(1) Studies, analyses, and demonstrations of architectural and engineering design adapted to meet the special needs of individuals with handicaps, and projects to reduce environmental barriers;

* * * * *

26. Section 353.31 is revised to read as follows:

§ 353.31 What selection criteria are used under this program?

(a) *Relevance and importance of the research program.* (25 points) The Secretary reviews each application to determine to what degree—

(1) The proposed activities are responsive to a priority established by the Secretary and address a significant need of a disabled target population and rehabilitation service providers;

(2) The overall research program of the Center includes appropriate interdisciplinary and collaborative research activities, is likely to lead to new and useful knowledge in the priority area and to the development of new technology or new applications of existing technology, and is likely to become a nationally recognized source of information on technology in the priority area; and

(3) The applicant demonstrates that all component activities of the Center are related to the overall objectives of the Center, and will build upon and complement each other to enhance the likelihood of finding solutions to significant rehabilitation problems.

(b) *Quality of the research design.* (25 points) The Secretary reviews each application to determine to what degree—

(1) The applicant proposes a comprehensive program of research for the total project period, including at least three interrelated research projects;

(2) The research design and methodology of each proposed activity are meritorious in that—

(i) The literature review is appropriate and indicates familiarity with the state-of-the-art and current research in rehabilitation technology;

(ii) The research hypotheses are important and scientifically relevant;

(iii) The sample populations are appropriate and significant;

(iv) The data collection and measurement techniques are appropriate and likely to be effective;

(v) The data analysis methods are appropriate; and

(vi) The applicant assures that human subjects, animals, and the environment are adequately protected;

(3) The plan for development, clinical testing, and evaluation of new devices and technology is likely to yield significant products; and

(4) The application discusses the anticipated research results and demonstrates how those results would satisfy the original hypotheses and could be used for planning additional research, including the generation of new hypotheses where applicable.

(c) *Quality of the dissemination and utilization program.* (25 points) The Secretary reviews each application to determine the degree to which—

(1) The proposed plan for dissemination provides evidence that

research results will be effectively disseminated and utilized based on the identification of appropriate and accessible target groups; the proposed activities are relevant to the regional and national needs of the rehabilitation field; and dissemination packages will be prepared in a form usable by individuals with all types of disabilities;

(2) The proposed plan for dissemination and utilization of the research and development provides for—

(i) Orientation programs for rehabilitation service personnel to improve the application of rehabilitation technology;

(ii) Programs which specifically demonstrate means for utilizing rehabilitation technology;

(iii) Technical assistance and consultation that are responsive to concerns of service providers and consumers; and

(iv) Dissemination of reseach findings through publication in professional journals, textbooks, and consumer and other publications, and through other appropriate media such as audiovisual materials and telecommunications, in an effort to make research results accessible to manufacturers, rehabilitation service providers, researchers, educators, disabled individuals and their families, and others; and

(3) There is an appropriate plan to ensure the distribution and utilization of new devices and technology.

(d) *Quality of the organization and management.* (25 points): The Secretary reviews each application to determine the degree to which—

(1) The staffing plan for the Center provides evidence that the principal investigator and other personnel have appropriate training and experience in disciplines required to conduct the proposed activities; the commitment of time for all staff is adequate to conduct all proposed activities; and the Center, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition;

(2) The budgets for the Center and each of the proposed activities are reasonable, adequate, and cost-effective for the proposed activities;

(3) The facilities, equipment, and other resources are adequate and are appropriately accessible to persons with disabilities;

(4) The plan of operations is adequate to accomplish the Center's objectives and to ensure proper and efficient management of the Center;

(5) The proposed relationships with Federal, State, and local rehabilitation service providers and consumer organizations are likely to ensure that the Center program is relevant and applicable to the needs of consumers and service providers;

(6) The past performance and accomplishments of the applicant indicate an ability to complete successfully the proposed scope of work;

(7) The application demonstrates appropriate commitment and support by the host institution and opportunities for interdisciplinary activities and collaboration with other institutions; and

(8) The plan for evaluation of the Center will assess annually the outcomes of the discrete and interrelated research projects, the impact of the training and dissemination activities on the target populations, and the extent to which the overall objectives have been accomplished.

(Authority: Secs. 202(e), 202(i)(1), and 204(b)(2); 29 U.S.C. 761a(e), 761a(i)(1), and 762(b)(2))

(Approved by the Office of Management and Budget under control number 1820–0027.)

PART 354—[AMENDED]

27. The citation of authority for Part 354 is revised to read as follows:

Authority: 29 U.S.C. 762(b)(12), unless otherwise noted.

28. The title of Part 354 is revised to read as follows:

PART 354—DISABILITY AND REHABILITATION RESEARCH: MODEL RESEARCH AND TRAINING PROGRAM

PART 355—[AMENDED]

29. The citation of authority for Part 355 is revised to read as follows:

Authority: 29 U.S.C. 760–762, unless otherwise noted.

30. The title of Part 355 is revised to read as follows:

PART 355—DISABILITY AND REHABILITATION RESEARCH: KNOWLEDGE DISSEMINATION AND UTILIZATION PROGRAMS

PART 356—[AMENDED]

31. The citation of authority for Part 356 is revised to read as follows:

Authority: 29 U.S.C. 761a(d), unless otherwise noted.

32. The title of Part 356 is revised to read as follows:

PART 356—DISABILITY AND REHABILITATION RESEARCH: RESEARCH FELLOWSHIPS

§ 356.30 [Amended]

§ 356.32 [Amended]

33. Part 356 is amended in the sections listed in the left column by removing the name in the middle column and adding in its place the name in the right column, as follows:

Sec.	Remove	Add
356.30(b)(1)	"NIHR"	"The Institute"
356.32(b)	"NIHR"	"Institute's"

PART 357—[AMENDED]

34. The citation of authority for Part 357 is revised to read as follows:

Authority: 29 U.S.C. 760–762, unless otherwise noted.

35. The title of Part 357 is revised to read as follows:

PART 357—DISABILITY AND REHABILITATION RESEARCH: FIELD-INITIATED RESEARCH PROJECTS

§ 357.1 [Amended]

36. In § 357.1, in each paragraph indicated in the left column, remove the name in the middle column and add in its place the name in the right column, as follows:

Sec.	Remove	Add
357.1 (b)	"NIHR"	"Institute"
357.1 (c)	"NIHR"	"Institute"

PART 358—[AMENDED]

37. The citation of authority for Part 358 is revised to read as follows:

Authority: 29 U.S.C. 762(b)(13), unless otherwise noted.

38. The title of Part 358 is revised to read as follows:

PART 358—DISABILITY AND REHABILITATION RESEARCH: INNOVATION GRANTS PROGRAM

PART 359—[AMENDED]

39. The citation of authority for Part 359 is revised to read as follows:

Authority: 29 U.S.C. 777a(a), unless otherwise noted.

40. The title of Part 359 is revised to read as follows:

PART 359—DISABILITY AND REHABILITATION RESEARCH—SPECIAL PROJECTS AND DEMONSTRATIONS FOR SPINAL CORD INJURIES

41. A new § 359.32 is added to Subpart D to read as follows:

§ 359.32 What additional factors does the Secretary consider in making a grant under this program?

In determining which applicants to fund under this program, the Secretary also considers the proposed location of any project in order to achieve, to the extent possible, a geographic distribution of projects.

(Authority: Section 204(b)(3) of the Rehabilitation Act of 1973, as amended; (29 U.S.C. 762(b)(3))

Editorial note: This appendix will not appear in the Code of Federal Regulations.

Appendix—Summary of Comments and Responses

NIDRR received several letters commenting on the proposed rules. A summary of those comments, and the Secretary's responses to them, follows.

Comment: Several commenters urged that NIDRR increase the relative weight assigned to the selection criterion "Quality of the research design" in the evaluation of applications for RRTC's (§ 352.31(b)).

Response: A change has been made. The Secretary has increased the maximum number of points assigned to that criterion from 25 to 35 points. This increase will demonstrate the primacy of the research program in an RRTC without neglecting the other elements of a Center. This change will take effect in fiscal year 1988, so that the fiscal year 1987 competitions that were announced under the Notice of Proposed Rulemaking will be evaluated under the criteria in the NPRM, which assign a maximum of 25 points to that criterion. This change was not made effective for fiscal year 1987 because NIDRR would not have time to notify all applicants, allow them an extension of time to amend or resubmit their applications, and still make the 1987 awards directed by the Congress.

Comment: Several commenters urged that in evaluating applications for Centers, past performance should not be interpreted to give preference to existing RRTC's, expecially if they are applying to be Centers in new priority areas.

Response: No change has been made. The selection criteria apply the standard "the past performance and accomplishments of the applicant indicate an ability to complete successfully the proposed scope of work" to all applicants for RRTC's and REC's, whether or not they have previously held NIDRR Center grants. Each applicant institution thus has an opportunity to describe and document those prior activities that indicate such an ability.

Comment: Several commenters requested that NIDRR make changes in the definitions of "rehabilitation engineering" and "supported employment."

Response: No change has been made. These definitions are provided in the legislation that governs NIDRR, the Rehabilitation Act of 1973, as amended.

Comment: One commenter suggested that references to "children with handicaps" in certain sections be changed to "infants, toddlers, children, and youth with handicaps" to be consistent with nomenclature in related programs.

Response: A change has been made. The Secretary has adopted this wording in the relevant sections of the regulations.

Comment: One commenter suggested that the description of the qualifications of peer reviewers (§ 350.32(a)) should stress that their expertise is in the content area of the applications under review.

Response: A change has been made. The proposed regulations have been amended to make it clear that the members of the peer review panel must have qualifications related to the specific applications under review.

Comment: One commenter suggested that applicants for Centers who may have had poor past records but have corrected the problems be permitted to appeal adverse evaluations or to explain the corrective actions they have taken.

Response: No change has been made. The selection criterion dealing with past performance is only one factor in evaluating an applicant. The applicant is permitted to submit any relevant documentation of institutional and staff capability, including evidence of corrective action.

Comment: Several commenters urged that applicants without past performance records should not be penalized for lack of those records.

Response: No change has been made. The regulations permit applicants to submit documentation of past performance in any activities related to the management and conduct of a research and training activity. The Secretary believes it is valid to assign some value to prior experience as an indicator of future performance, and notes further that this is only one of many selection criteria.

Comment: Some commenters urged that a specified and more significant weight be assigned to the criterion of past performance.

Response: No change has been made. The Secretary believes peer reviewers should consider the factor of past performance in the context of all other factors that indicate the quality of the research and training activity that the applicant is likely to conduct.

Comment: Several commenters suggested that NIDRR change references to the staff of an RRTC in § 352.31(d) to reflect more accurately the different staff positions typically found in RRTC's. They stated that the typical Center has a single project director and several principal investigators, and may have a research director and a training director.

Response: A change has been made. The regulations now refer to a project director, research director, training director, and other key staff.

Comment: One commenter requested that physical restoration or medical rehabilitation be specified in the list of rehabilitation problems in § 350.1(a)(1).

Response: A change has been made. The Secretary agrees that physical restoration is an important area of rehabilitation research and should be emphasized in the regulations.

Comment: Several commenters recommended that site visits be part of the peer review of all highly rated applicants for awards above $299,000 per year.

Response: No change has been made. The regulations (§ 350.35) now permit the Secretary to exercise discretion in deciding to visit as many highly rated applicants as necessary to arrive at a fair decision.

Comment: One commenter suggested that the definition of older American Indians as fifty-five years or older, compared to sixty years or older for all other groups, was discriminatory.

Response: No change has been made. The Rehabilitation Act of 1973, as amended, defines older American Indians as those aged fifty-five years or older, and all other older individuals as those aged sixty years or older.

Comment: One commenter questioned the wisdom of requiring collaborative research in the RRTC's (§ 352.31(a)(2)). The commenter suggested that unusual skill and sophistication are required to conduct that research and that the expertise may not always be available to conduct this activity in an appropriate manner.

Response: No change has been made. The criterion in the regulations refers to "appropriate interdisciplinary and collaborative research activities." This does not require Centers to conduct

collaborative research, and would not even award positive consideration to collaborative research that was other than appropriate. Further, this is only one of the factors that peer reviewers will use in assessing the relevance and importance of the applicant's proposed research program.

Comment: Several commenters suggested that the requirement that Centers develop training packages and materials in forms suitable for individuals with all types of disabilities is unnecessary and impractical. Some commenters suggested that this should be limited to preparing materials in forms accessible to the target group of the particular Center, and others urged that the phrase "when appropriate" be inserted.

Response: A change has been made. The regulations now require that Centers prepare training and related materials in alternate media usable by individuals with a variety of types of disabilities. The Secretary intends that Centers make their materials accessible to a broad range of individuals with disabilities, regardless of whether the disability is a target of the Center's work.

Comment: One commenter suggested NIDRR specify that the site visit to an applicant for a grant should include a non-Federal member of the peer review team.

Response: No change has been made. While it is likely that a non-Federal peer reviewer will be involved in nearly all site visits, the Secretary does not want to preclude the use of a Federal peer reviewer when that individual possesses the most appropriate expertise for the assignment.

Comment: One commenter suggested that, in limiting the indirect charges that RRTC host institutions may collect, NIDRR has made an unnecessary reference to Education Department General Administrative Regulations (EDGAR) provisions concerning limitations on overhead for training.

Response: No change has been made. The indirect cost limitation included in the Rehabilitation Act Amendments of 1986 provides an exception to the EDGAR limitation on indirect costs for training projects as well as to the Common Accounting Procedures of the Office of Management and Budget (OMB). Since Part 75 of EDGAR applies generally to NIDRR research grants, it is necessary to indicate when certain EDGAR provisions are inapplicable.

Comment: One commenter urged that the regulations be amended to permit applicants for REC's to submit videotapes as part of their application packages.

Response: No change has been made. The NIDRR regulations do not address the form in which applicants submit applications, and thus do not preclude the use of videotapes. However, NIDRR cannot guarantee that all peer reviewers will have the facilities to view all types of videotapes. Information affecting the form of applications is contained in the Application Package, a separate document. NIDRR will consider including guide lines for the appropriate use of videotapes in future revisions to its Application Package.

Comment: One commenter suggested that the requirement that the research conducted in an RRTC should be relevant to the needs of individuals with disabilities in the geographic area would exclude individuals from other geographic areas from participating in the research programs.

Response: No change has been made. This provision is included in the Rehabilitation Act of 1973, as amended. The Secretary intends that this provision be met by a Center's providing a sufficient clincial population to conduct research in the specified priority area. NIDRR does not preclude individuals from any area of the country from seeking treatment in any NIDRR-sponsored RRTC.

Comment: One commenter stated that NIDRR should specify that RRTC's must be affiliated with clinical rehabilitation facilities in order to assure relevance to a clinical population.

Response: No change has been made. Linkage with a clinical rehabilitation program is already a requirement for RRTC's.

Comment: One commenter urged that § 351.10 be amended to specifically authorize Research and Demonstration projects to study communication factors affecting rehabilitation.

Response: A change has been made. The Secretary agrees that problems in communication are among the important factors affecting rehabilitations.

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DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research

AGENCY: Department of Education.

ACTION: Notice of final funding priorities for fiscal year 1987.

SUMMARY: The Secretary of Education announces final funding priorities for research activities to be supported under some programs of the National Institute on Disability and Rehabilitation Research (NIDRR) in fiscal year 1987. The Rehabilitation Act Amendments of 1986 directed NIDRR to establish three research centers for specific purposes. At the same time, NIDRR received an increased appropriation for fiscal year 1987; this has enabled the Secretary to fund projects in two additional priority areas.

These priorities were proposed for public comment in the Federal Register of May 7, 1987 at 52 FR 17375. A summary of the public comments and the Secretary's responses to them is included at the end of this notice.

EFFECTIVE DATE: These priorities takes effect either 45 days after publication in the Federal Register or later if Congress takes certain adjournments. If you want to know the effective date of these priorities, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Betty Jo Berland, National Institute on Disability and Rehabilitation Research, (Telephone: (202) 732–1139). Deaf and hearing impaired individuals may call (202) 732–1198 for TDD services.

SUPPLEMENTARY INFORMATION: Authority for the research programs of NIDRR is contained in Section 204 of the Rehabilitation Act of 1973, as amended. Under this program, awards are made to public and private agencies and organizations, including institutions of higher education, Indian tribes, and tribal organizations. NIDRR can make awards for up to 60 months.

The purpose of the awards is for planning and conducting research, demonstrations, and related activities which have a direct bearing on the development of methods, procedures, and devices to assist in providing vocational and other rehabilitation services to individuals with handicaps, especially those with the most severe handicaps.

NIDRR regulations authorize the Secretary to establish research priorities by reserving funds to support particular research activities (see 34 CFR 351.32). In the 1986 Amendments to the Rehabilitation Act, the Congress directed NIDRR to establish a Research and Training Center (RRTC) focusing on the problems of providing rehabilitation services in rural areas and also establish Rehabilitation Engineering Centers (REC's) in Connecticut and South Carolina to demonstrate and disseminate innovative models for delivering cost-effective rehabilitation engineering services.

These final priorities also provide for an additional RRTC in the management of behavioral disorders of developmentally disabled individuals and for a research and demonstration project to develop model systems to integrate case data from rehabilitation agencies, health care providers, and entitlement programs.

The publication of these final priorities does not bind the United States Department of Education to fund projects in any or all of these research areas, unless otherwise specified in statute. Funding of particular projects depends on the quality of the applications received.

The notice establishing the closing date for applications under these priorities was also published in the Federal Register on May 7, 1987 at 52 FR 17378. Potential applicants were advised to submit their applications based on the proposed priorities. There are no changes made in these final funding priorities that would require applicants to modify or resubmit their applications. The closing date for submitting applications under these priorities was July 7, 1987.

The following five priorities represent areas in which NIDRR intends to support research and related activities through grants or cooperative agreements in three programs: the Research and Demonstration Projects Program (R&D), the RRTC program, and the REC program.

Priority for Research and Demonstration Projects (1)

Automated Systems To Integrate Data for Joint Use of Rehabilitation Agencies, Health Care Providers, and Entitlement Programs

The Social Security Disability Insurance program (SSDI) provides income maintenance payments to individuals with disabilities on the basis of medical diagnosis of disability. The disability determination process is administered by a separate Social Security Disability Determination Unit in each state.

At present, it takes an average of sixty days or more to complete a disability determination review. Research findings indicate that rehabilitation can be greatly enhanced if the rehabilitative activity is initiated early in the course of the disability and the claims process.

There is a need to expedite the disability determination process. The records maintained by hospitals, medical rehabilitation centers, and other health care facilities contain extensive data that could be used to expedite the claims process, and that could also be used to assess potential for successful rehabilitation. These data are not now accessible to either the Disability Determination Services or the rehabilitation agencies. A systematic method for data sharing among these agencies involved with disability in its early stages is needed to facilitate both the claims process and rehabilitation.

In the conduct of any research or demonstration activities under this priority, the grantee will be expected to coordinate with the Social Security Administration, which will sponsor the project jointly with NIDRR.

An absolute priority will be given to applications for a project to:

- Develop systematic models for selecting case record information from providers of acute medical care and rehabilitation services on the basis of the claimant records used in the SSDI disability determination process;
- Investigate the feasibility, in terms of time, costs, and computer compatibility, of using automated, computer-based exchange of information between acute-care and rehabilitation facilities and the SSDI Disability Determination Services; and
- Evaluate the potential of developing "expert systems" (computer-based artificial intelligence that supports decision-making), incorporating data from records systems of acute-care and rehabilitation facilities, for use by disability claims examiners.

Priorities for Rehabilitation Research and Training Centers (2)

Management of Behavior Disorders in Individuals With Developmental Disabilities

Individuals with developmental disabilities, as well as their families, service providers, and policymakers, have indicated an increasing preference for participation in the full range of community activities as an alternative to segregated services. However, persons with developmental disabilities often exhibit severe behavior problems that may include physical and verbal abuse of self or others and may result in harm to the disabled individual, other people, or property. Many of the

available behavior management techniques used with this population were developed in segregated settings where aversive procedures were used. Aversive procedures are those that compromise the physical or psychological integrity of the disabled person, and would not normally be accepted in the community if applied to individuals who are handicapped. Since there are obvious constraints on the use of aversive procedures in normal community settings, persons with developmental disabilities often are unable to participate in integrated community settings for work, school, and recreations, and are more likely to be placed in institutions.

NIDRR intends to support an RRTC to conduct comprehensive research, training, and dissemination activities that will contribute to a reduction in the disruptive behavior of individuals with developmental disabilities living in community settings. The Office of Special Education Programs will cooperate with NIDRR in providing guidance to, and review of, this Center. The proposed Center is to develop practical techniques to address severe behavior problems in integrated settings, using non-aversive procedures. Non-aversive procedures are those that avoid the use of any intervention that causes physical injury or severe psychological damage, or that the community would find unacceptable if it were applied to nondisabled members of the population.

Any Center to be supported in response to this priority statement must provide for an advisory committee for the Center which includes significant representation of persons with developmental disabilities, parents, scientists, service providers, educators, and others with expertise in relevant aspects of developmental disability. The Center must also coordinate activities with other research and service centers, and with appropriate State agencies and private associations concerned with problems of developmental disabilities. The RRTC to be funded in response to this priority must have three nationally distributed research and training sites, each of which has a multi-investigator research team. There must be regular contact and collaboration among the sites on research and training.

An absolute priority will be given to applications for a rehabilitation research and training center to:

- Conduct programmatic research that extends theory, information, and applied technologies related to solving behavior problems in community settings, using non-aversive procedures and addressing in a comprehensive and organized manner the full array of causal factors and intervention strategies;
- Analyze patterns of behavior and the usual consequences of disruptive behavior for the purpose of identifying those factors most important for generalization and maintenance of acceptable behavior is community settings;
- Develop intervention strategies to teach and rainforce acceptable behavior, or improve techniques for the maintenance of nondisruptive behavior, and to enhance the potential of pharmacological agents to decrease disruptive behavior;
- Assess the use, in various settings, of positive reinforcement by family members, peers, teachers, coworkers, service providers, or minimally-trained care providers;
- Develop intervention strategies based on non-aversive techniques, that eliminate or significantly reduce disruptive behavior in community settings;
- Develop outcome indicators that measure the effects of these treatments on individuals with developmental disabilities;
- Provide training on the new treatments to community residence care providers, family members, employers, coworkers, teachers, case managers, providers of supported employment, transportation providers, community service providers, peers, and others who interact with persons with developmental disabilities in community settings;
- Involve all investigators in ongoing training and technical assistance on a national scope, making training opportunities available in different geographic areas through subcontract or other satellite arrangements;
- Conduct a series of national meetings to involve researchers, developmentally disabled individuals or family members, community service providers, and educators, to assess needs and disseminate information on new strategies; and
- Serve as an information clearinghouse on non-aversive procedures developed at the Center and at other sources.

Research in Rural Rehabilitation Services

The 1986 Amendments to the Rehabilitation Act direct NIDRR to establish a Center, associated with an institution of higher education, for research and training concerning the delivery of rehabilitation services to rural areas. The Department of Education's Rural Education and Rural Family Education Policy for the 1980's states the Department's intent to "disseminate information to educational institutions and programs serving rural communities" and to "assist in identifying and developing special programs available for handicapped individuals located in rural areas." The policy also supports research that "will focus on effective practices and characteristics of effective rural programs and projects."

It is estimated that about eight and one-half million individuals with disabilities live in rural areas. Many of the problems of disabled individuals in rural areas are unique. It may be necessary to redesign mobility aids, communication devices, and other assistive devices to meet the special conditions of use in rural areas. There is presently no continuing source of rehabilitation engineering expertise specializing in needs of rural disabled persons.

Independent living in rural areas is complicated by transportation problems, isolation, small numbers of disabled individuals available for support networks in any one geographic area, and other limitations of rural life. It is more difficult for rural independent living centers (ILCs) to identify the full array of services needed to implement the independent living concept.

The demand for dissemination and information sharing is greater in rural areas because of the geographic distances and barriers to personal access. Recent developments in the economic and social structures of rural areas will have an impact on the needs of disabled individuals in those areas. For example, population emigration to urban areas, closing of health care facilities and rural hospitals, and problems in maintaining family farms reduce the already limited availability of services and employment opportunities for disabled individuals. Currently, there is no research resource for determining the impact of these issues on disabled people in rural areas.

A critical element of any Center to be carried out under this priority will be the involvement of disabled, rural individuals in planning, developing, and implementing the program activities.

An absolute priority will be given to applications for a Center to:

- Develop methods to adapt or modify technological devices for disabled persons to accommodate the particular circumstances of rural areas;
- Evaluate and document these adaptations and develop a database that can be used to provide information about the availability of modified

devices and funding sources for these adaptations, to a wide range of consumers, service providers, manufacturers or vendors of durable medical supplies, engineers, medical personnel, and public or private rehabilitation counselors, as well as to generalized information resources such as ABLEDATA;

• Conduct programmatic research on the characteristics and needs of rural residents with disabilities, identify the most effective strategies to improve the daily lives and enhance the independence of these individuals, and identify the most effective approaches to the delivery of rehabilitation services and information in rural areas;

• Conduct research on the innovative application of telecommunications technology to problems of health care, rehabilitation, service delivery, and independent living for disabled individuals in rural areas;

• Develop an information system that is accessible through telecommunications devices and that includes the database on adapted technology, as well as other information on resources to assist rural disabled individuals to improve their housing, employment, transportation, attendant care, communications, recreation, or physical function;

• Develop and disseminate accessible materials and training programs targeted to disabled persons and service providers in rural areas, including the staff of independent living programs, in order to increase consumer awareness and professional expertise;

• Develop cooperative linkages to other relevant NIDRR-supported research programs in technology transfer, independent living, and service delivery to dispersed populations; and

• Conduct at least one state-of-the-art conference in a significant aspect of rural rehabilitation service delivery, and develop nationally recognized expertise in the delivery of rehabilitation services and dissemination of rehabilitation-related information to rural areas.

Priorities for Rehabilitation Engineering Centers (2)

Innovative Models for Cost-Effective Rehabilitation Engineering Services

The effective use of technological devices is a component of productive and fulfilling lives for persons with disabilities as it is for able-bodied individuals. Disabled persons use technological devices to replace or improve cognitive and physical functioning. Individuals with disabilities have used technological advances to increase mobility, to enhance employment options, and to enable living and working in normal community settings.

NIDRR currently funds Rehabilitation Engineering Centers for the purpose of developing devices to assist disabled individuals to overcome functional limitations or to modify the environment to facilitate integration of individuals with disabilities into regular community activities. While there is now a considerable amount of technology available, rehabilitation service providers are confronted with the challenge of matching the best available devices with the specific functional limitations or environmental barriers encountered by particular individuals with disabilities.

The 1986 Amendments to the Rehabilitation Act directed NIDRR to establish Rehabilitation Engineering Centers in Connecticut and South Carolina to demonstrate and disseminate innovative models for the delivery of cost-effective engineering services for individuals with disabilities in both urban and rural areas. These Centers must promote the use of engineering and other technological developments to assist in meeting the employment, education, and independent living needs of individuals with severe handicaps, as well as to assist in the identification and removal of barriers confronted by individuals with disabilities and the agencies providing services to them.

These Centers will develop service delivery models that can be implemented by State vocational rehabilitation agencies, independent living centers, or other public or private organizations that provide rehabilitation technology services to individuals with disabilities. The two Centers will coordinate their information dissemination and other activities with each other, as well as with the RRTC on rural rehabilitation and other relevant NIDRR-sponsored programs. A critical element of any Center to be funded under this priority will be the involvement of individuals with disabilities, including those who use rehabilitation technology, in planning, developing, and implementing Center activities.

An absolute priority will be given to applications for Rehabilitation Engineering Centers to:

• Develop and test models of rehabilitation technology service delivery systems that assess functional needs of persons with disabilities, match functional needs with technological devices, using expert systems as appropriate (computer-based artificial intelligence that supports decisionmaking) coordinate the acquisition, modification, and repair of devices, provide training in the use of devices, and evaluate the effectiveness of the devices;

• Evaluate the effectiveness of these models in terms of such factors as cost-effectiveness, quality assurance, management of liability issues, involvement of third-party payers, distribution of devices, responsiveness to rehabilitation service providers and disabled consumers, and other criteria;

• Develop a model for statewide databases, and electronic networks to access them, that identify available technological devices, local sources of devices and engineering services to adapt or fabricate devices, and gaps in available technology, and make these databases accessible to disabled individuals, engineers, rehabilitation service providers, manufacturers and vendors, and other relevant groups, as well as to national information resources such as ABLEDATA;

• Establish continuing education programs to provide accessible training to all relevant groups, including disabled consumers, rehabilitation technologists and counselors, and other service providers on the prescription, use, modification, and maintenance of appropriate technological devices to enhance physical and cognitive functioning, educational and employment opportunities, and independent living in integrated community settings;

• Develop and test training programs specifically designed to train volunteer technology counselors—including disabled users of devices, engineers, and other interested individuals—to assist individuals with disabilities to use technological devices to improve function or environment; and either

1. Establish a Center in Connecticut to accomplish the above objectives, to include the development of a nationally recognized resource for information on the repair and maintenance of technological devices, and the conduct of a state-of-the-art study in that area; or

2. Establish a Center in South Carolina to accomplish the above objectives, to include the development of a nationally recognized resource for information on innovative and effective systems for transportation of disabled individuals to places of employment, and the conduct of a state-of-the-art study in that area.

Summary of Comments and Responses

NIDRR received several letters of comment from the public concerning the proposed priorities. A summary of those

comments, and the Secretary's responses to them, are summarized below. No changes were made to the priorities as a result of the comments.

Comment: One commenter suggested that the priority for automated data exchange between the Social Security Disability Determination Units and rehabilitation agencies and facilities should include data from private practitioners as well as procedures for timely correction of errors that might be made in determinations.

Response: No change has been made. The Secretary agrees that these are worthwhile objectives, but does not want to broaden the scope of this project by requiring grantees to undertake these activities.

Comment: One commenter suggested that the priority for rural rehabilitation should include the development of a telecommunications system for rural service delivery.

Response: No change has been made. The priority as stated does not preclude an applicant from using this approach, and this is certainly one technique to achieve the objectives of the priority. However, the Secretary does not intend to require that all applicants include telecommunications systems in their project proposals.

Comment: One commenter urged that augmentative communication devices should be among those considered in the development of technology service delivery models in the South Carolina and Connecticut Rehabilitation Engineering Centers.

Response: No change has been made. The priority as stated includes all types of technological devices and services that are used by individuals with disabilities.

Comment: One commenter suggested that the priority for managing behavioral problems in individuals with developmental disabilities should focus on persons residing in institutional settings and should focus on emotional disorders as well as behavioral problems.

Response: No change has been made. The Secretary agrees that individuals who reside in institutions should benefit from the interventions developed. However, the purpose of this priority is to develop techniques for dealing with disruptive behavior in integrated settings of individuals with developmental disabilities who reside in the community. Further, the focus of this priority is on treating individuals with developmental disabilities who exhibit problem behaviors. Emotional disorders may or may not be present and may or may not be diagnosed in these individuals, but it is the remediation of disruptive behavior that is the purpose of this priority.

Comment: Several commenters objected to the specification that the two Engineering Centers be located in Connecticut and South Carolina, arguing that NIDRR may not be able to fund the best programs under these restrictions.

Response: No change has been made. The Secretary agrees that under these restrictions NIDRR may not be able to fund the best candidates for establishing two new Engineering Centers. However, the Rehabilitation Act Amendments of 1986 specifically require NIDRR to establish Rehabilitation Engineering Centers in these two States.

(Catalog of Federal Domestic Assistance No. 84.133, National Institute on Disability and Rehabilitation Research)

Dated: July 6, 1987.

William J. Bennett,

Secretary of Education.

[FR Doc. 87-18184 Filed 8-11-87; 8:45 am]

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Part V

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 1, 5, 7, et al.
Federal Acquisition Regulation; Final Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 5, 7, 13, 19, 22, 25, 28, 31, 32, 45, 52, and 53

[Federal Acquisition Circular 84-29]

Federal Acquisition Regulation

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: Federal Acquisition Circular (FAC) 84-29 amends the Federal Acquisition Regulation (FAR) with respect to the following: Public Announcement of Contract Awards; Economic Order Quantities; Small Business Size Standards; Regular Dealer—Specialty Advertising Product Dealer; Bid Guarantee, Optional Overseas; Contracts with Indian Tribal Governments, Correction of FAR 31.107; Reducing Customary Progress Payment Rates; Use of Government Property; Inventory Schedules, Preparing and Submitting Standard Form (SF) 1432; FAR Changes Clauses; Revision of Standard Form (SF) 1436, Settlement Proposal (Total Cost Basis); and Editorial Corrections.

EFFECTIVE DATE: August 24, 1987.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, Telephone (202) 523-4755.

SUPPLEMENTARY INFORMATION:

A. Paperwork Reduction Act

FAC 84-29, Items I, III, V, VI, VII, VIII, IX, X, XI, and XII. The Paperwork Reduction Act (Pub. L. 96-511) does not apply because these final rules do not impose any additional reporting or recordkeeping requirements on the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

FAC 84-29, Item II. The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) as required by 44 U.S.C. 3501, et seq., and have been assigned OMB control number 9000-0082 (see FAR 1.105).

FAC 84-29, Item IV. Coverage on the Paperwork Reduction Act (Pub. L. 96-511) has been handled by the Department of Labor and approved by OMB as required by 44 U.S.C. 3501, et seq., and has been assigned OMB control number 1215-0157 (see FAR 1.105).

B. Regulatory Flexibility Act

FAC 84-29, Item I, III, V, VIII, IX, XI, and XII. Analyses of these revisions indicate that they are not "significant revisions" as defined in FAR 1.501-1; i.e., they do not alter the substantive meaning of any coverage in the FAR having a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of the issuing agencies. Accordingly, and consistent with section 1212 of Pub. L. 98-525 and section 302 of Pub. L. 98-577 pertaining to publication of proposed regulations (as implemented in FAR Subpart 1.5, Agency and Public Participation), solicitation of agency and public views on these revisions is not required. Since such solicitation is not required, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) does not apply.

FAC 84-29, Item II. It is certified that the revised FAR coverage on planning for the purchase of supplies in economic quantities will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) because it does not impose additional mandatory reporting requirements or add new contractual requirements on small businesses. Responses to the prescribed solicitation notice are entirely voluntary and the type of information requested should normally be readily available in small businesses.

FAC 84-29, Item IV. The Department of Labor (DOL) performed a regulatory flexibility analysis at the time DOL issued the final rule in their regulation which this FAR final rule implements. Accordingly, a new analysis is not required for this rule.

FAC 84-29, Item VI. It is certified that this revision to FAR 31.107 does not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) because it merely adds language that was erroneously omitted when the FAR was originally published. FAR Subpart 31.6, which is referenced in FAR 31.107, already makes reference to federally recognized Indian tribal governments. No change in coverage or meaning is intended or made.

FAC 84-29, Item VII. Since the publication of a proposed FAR rule dealing with customary progress payment rates on September 2, 1986 (51 FR 31194), section 9105 of the fiscal year 1987 Department of Defense Appropriations Act (Title IX, Pub. L. 99-500) directed a reduction in progress payment rates of at least 5 percent for DOD contracts. As a consequence, the DOD FAR Supplement has been revised to establish customary progress payment rates for DOD contracts of 75 percent for large business and 80 percent for small businesses.

The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council have decided to implement the originally proposed customary progress payment rates of 80 percent for large businesses and 85 percent for small business in the FAR for application to agencies other that DOD. These are the historical rates that were in effect before the prevailing interest rates of the early 1980's prompted the Government to increase progress payment rates to their present levels of 90 percent for large businesses and 95 percent for small businesses. They are also the rates recommended by a number of Government studies (e.g., Grace Commission and DOD's Defense Financial and Investment Review).

As the vast majority of progress payments made, perhaps as large a percentage as 90 percent, occur under DOD contracts, an insubstantial number of small entities will be affected by the FAR rule. Therefore, it is certified that this revision will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.).

FAC 84-29, Item X. A notice of request for public comments was published in the **Federal Register** on May 23, 1985 (50 FR 21313). Because of the comments received from industry, a proposed rule was published on May 2, 1986 (51 FR 16462). A summary of the initial Regulatory Flexibility Act Analysis was published on May 2, 1986. A final Regulatory Flexibility Analysis has been performed and is on file in the office of the FAR Secretariat.

C. Public Comments

FAC 84-29, Item II. Federal Acquisition Circular (FAC) 84-11, published in the **Federal Register** on August 30, 1985, included an interim rule on planning for the purchase of supplies in economic quantities. As a result of public comments received, that coverage was revised and is hereby published as a final rule. However, FAR sections 14.212 and 15.415 are being finalized without change.

FAC 84-29, Item VII. A notice of the proposed rule was published in the **Federal Register** on September 2, 1986 (51 FR 31194). The Defense Acquisition Regulatory Council and the Civilian

Agency Acquisition Council have considered the public comments solicited. Three of 22 respondents stated that an 85 percent progress payment rate as versus the current 95 percent rate would place too much burden on small business contractors. The Councils believe that reductions in customary progress payment rates for both large and small businesses are in keeping with improvements in the economic environment. For example, the prime interest rate is now in the neighborhood of 7.5 percent as compared to 19 percent when the progress payment rates were raised from 80 percent for large businesses and 85 percent for small businesses.

It is recognized that small businesses have a higher financing burden as described by some of the respondents. However, the higher burdens are the reasons why some of the rules are more liberal for small businesses. Differences in rules include: higher customary progress payment rate (e.g., 85 percent versus 80 percent), lower threshold for incorporating progress payment provisions into contracts, and paying almost all costs on an incurred basis rather than to delay payments until cash disbursements have been made by the contractor. Based on the comments received, the Councils are not persuaded that arguments emphasizing higher small business burdens overcome the significant interest rate decreases which have occurred and the more liberal rules for small businesses already in place.

Consequently, the proposed rule is being adopted as a final rule.

List of Subjects in 48 CFR Parts 1, 5, 7, 13, 19, 22, 25, 28, 31, 32, 45, 52, and 53

Government procurement.

Date: August 6, 1987.

Lawrence J. Rizzi,

Director, Office of Federal Acquisition and Regulatory Policy.

Federal Acquisition Circular

[Number 84–29]

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 84–29 is effective August 24, 1987.

Eleanor R. Spector,

Deputy Assistant Secretary of Defense for Procurement.

August 6, 1987.

Terrence C. Golden,

Administrator, GSA.

July 30, 1987.

S.J. Evans,

Assistant Administrator for Procurement, NASA.

August 6, 1987.

Federal Acquisition (FAC) 84–29 amends the Federal Acquisition Regulation (FAR) as specified below.

Item I—Public Announcement of Contract Awards

FAR 5.303 is revised to allow agencies to announce awards at a minimum dollar threshold other than $3 million if they so desire. This was done to recognize the fact that the same threshold was not suitable for all agencies and to eliminate the need for FAR changes or deviations to accommodate the different needs of disparate agencies.

Item II—Economic Order Quantities

FAR Subpart 7.2 and FAR 52.207–4 which were incorporated in FAC 84–11 as interim rules (see Item II of FAC 84–11 published in the Federal Register on August 30, 1985 [50 FR 35474]) are hereby revised and incorporated as final rules to prescribe policies, procedures, and a contract provision for gathering and using information from offerors to assist the Government in planning the most advantageous quantities in which supplies should be purchased. FAR sections 14.212 and 15.415 are adopted as final rules without change. Under the final coverage, offerors are invited to state an opinion on whether the quantity of supplies proposed to be acquired is economically advantageous to the Government and, if applicable, to recommend a more advantageous quantity, including a quoted unit and total price. FAR 52.207–4 is modified to revise the definition of "economic purchase, quantity" in paragraph (b) of the solicitation provision. A revision to FAR 13.107(d) is added in the final rule to extend the requirements of the interim rule to small purchases. Also, FAR 7.203 is revised to (1) make mandatory, rather than optional, the requirement for civilian agencies to include the provision at FAR 52.207–4 in solicitations for supplies, and (2) provide a number of exemptions where the provision need not be included in solicitations. This FAR amendment implements section 1233 of Pub. L. 98–525 and section 205 of Pub. L. 98–577.

Item III—Small Business Size Standards

FAR 19.102 is revised in the table of industry size standards to reflect corrections made by the Small Business Administration in FR Doc. 87–12906 published in the Federal Register issue of June 8, 1987 (52 FR 21497).

Item IV—Regular Dealer—Specialty Advertising Product Dealer

FAR 22.606–2(b) is revised to comply with the Department of Labor's amendment to the Walsh-Healy Public Contracts Act regulations to provide an alternative definition for a regular dealer in specialty advertising products.

Item V—Bid Guarantee, Optional Overseas

FAR 28.101–1(c) is revised to permit a waiver for bid guarantees for construction work to be performed overseas.

Item VI—Contracts With Indian Tribal Governments

FAR 31.107 is revised to add an erroneously omitted reference to "federally recognized Indian tribal governments" in the applicability language for FAR Subpart 31.6—Contracts With State, Local, and Federally Recognized Indian Tribal Governments.

Item VII—Reducing Customary Progress Payment Rates

FAR Part 32 revised to accomplish the following: (1) Lower the customary progress payment rate for large businesses from 90% to 80% and for small businesses from 95% to 85%, (2) incorporate the progress payment limitations on undefinitized contract actions that had been established under the Defense Procurement Improvement Act of 1986, and (3) provide guidance for situations where more than one progress payment rate is being used

Item VIII—Use of Government Property

FR 45.509–2(b) is revised by (a) establishing a specified dollar level, i.e., an acquisition cost of $5,000 or more, as the threshold for application of the requirements in FAR 45.509–2(b) (1) through (b)(4), and (b) changing the term "package plants and standby lines" to "plants and equipment retained for mobilization."

Item IX—Inventory Schedules, Preparing and Submitting Standard Form (SF) 1432

FAR 45.606–5(e)(4)(ii) is revised to clarify the descriptive information to be included on the SF 1432 when a contractor reports excess special tooling

and special test equipment for disposal action. In order to permit the Government to determine the appropriate disposition and to maximize the reutilization potential, the function performed by, and the end-item application of, the special tooling or the special test equipment must be included on the inventory schedule. An editorial change to 45.606-5(e)(4)(i) is also made.

Item X—FAR Changes Clauses

FAR clauses 52.243-1, 52.243-2, 52.243-3, and 52.243-4 are amended to reinstate the pre-FAR requirement that the contractor must "assert its right to an adjustment" rather than "submit its proposal for adjustment" within 30 days from the receipt of a written order. While this action corrects an unintended policy change which occurred during drafting of the FAR, contractors should not construe this action as a relaxation of the FAR 43.204 requirement for prompt definitization of unpriced change orders.

Item XI—Settlement Proposal (Total Cost Basis), Revision of Standard Form (SF) 1436

FAR 53.249, Termination of contracts (SF's 1034 and 1435 through 1440), is amended in paragraph (a)(3) to allow for the correction of a typographical error on SF 1436. Pending the publication of a new edition of the form, currently dated October 1983, a pen and ink change to Item 7, Section II of the form is authorized and should read, "Total Costs (Items 1 thru 6)."

Item XII—Editorial Corrections

Therefore, 48 CFR Parts 1, 5, 7, 13, 19, 22, 25, 28, 31, 32, 45, 52, and 53 are amended as set forth below.

The interim rule (FAC 84-17) amending Part 25 and sections 52.225-8 and 52.225-9 which was published on May 6, 1986 (51 FR 16802), with a correction on June 10, 1986 (51 FR 20976), is hereby adopted as a final rule without change.

The interim rule (FAC 84-22) amending Part 25, which was published in the Federal Register on August 27, 1986 (51 FR 30618), with a correction published on March 23, 1987 (52 FR 8567), is hereby adopted as a final rule.

1. The authority citation for 48 CFR Parts 1, 5, 7, 13, 19, 22, 25, 28, 31, 32, 45, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Section 1.105 is amended by adding, in numerical order, two FAR segments, each with a corresponding OMB Control Number to read as follows:

1.105 OMB approval under the Paperwork Reduction Act.

FAR segment	OMB control No.
* * * * *	
7.2	9000-0082
* * * * *	
22.606-2(b)	1215-0157
* * * * *	

PART 5—PUBLICIZING CONTRACT ACTIONS

3. Section 5.303 is amended by revising in paragraph (a) the first sentence to read as follows:

5.303 Announcement of contract awards.

(a) * * * Contracting officers shall make information available on awards over $3 million (unless another dollar amount is specified in agency acquisition regulations) in sufficient time for the agency concerned to announce it by Washington, DC time on the day of award. * * *

PART 7—ACQUISITION PLANNING

4. Section 7.203 is revised to read as follows:

7.203 Solicitation provision.

Contracting officers shall insert the provision at 52.207-4, Economic Purchase Quantity—Supplies, in solicitations for supplies. The provision need not be inserted if the solicitation is for a contract under the General Services Administration's multiple award schedule contract program, or if the contracting officer determines that (a) the Government already has the data, (b) the data is otherwise readily available, or (c) it is impracticable for the Government to vary its future requirements.

PART 13—SMALL PURCHASE AND OTHER SIMPLIFIED PROCEDURES

5. Section 13.107 is amended by adding paragraph (d) to read as follows:

13.107 Solicitation and evaluation of quotations.

* * * * *

(d) *Economic purchase quantities (supplies).* Contracting officers shall comply with the economic purchase quantity planning requirements for supplies in Subpart 7.2. If quotations are solicited in writing, contracting officers shall comply with 7.203 and 7.204. If quotations are solicited orally, contracting officers shall orally request the information covered by the provision at 52.207-4 in accordance with the instructions at 7.203 and then comply with 7.204.

PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

19.102 [Amended]

6. Section 19.102 is amended by removing the figure "$0.1" in Major Group 02 for SIC Code 0212-0291 and inserting in its place the figure "$0.5".

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

7. Section 22.606-2 is amended by revising paragraph (b) to read as follows:

22.606-2 Regular dealer.

* * * * *

(b) For certain specific products (lumber and timber products, machine tools, hay, grain, feed or straw, raw cotton, green coffee, petroleum, agricultural liming materials, tea, raw or unmanufactured cotton linters, certain uranium products, used automatic data processing equipment, and specialty advertising products), there are alternate qualifications for regular dealers in which the dealer need not physically maintain a stock. The requirements under the alternative qualifications are in 41 CFR 50-201.101(a)(2) and 50-201.604.

* * * * *

PART 28—BONDS AND INSURANCE

8. Section 28.101-1 is amended by adding paragraph (c) to read as follows:

28.101-1 Policy on use.

* * * * *

(c) The head of the contracting activity may waive the requirement for bid guarantees if it is determined that bid guarantees are not in the best interest of the Government in contracting for construction to be performed overseas.

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

9. Section 31.107 is amended by revising the section title and paragraph (a) to read as follows:

31.107 Contracts with State, local, and federally recognized Indian tribal governments.

(a) Subpart 31.6 provides principles and standards for determining costs

applicable to contracts with State, local, and federally recognized Indian tribal governments. They provide the basis for a uniform approach to the problem of determining costs and to promote efficiency and better relationships between State, local, and federally recognized Indian tribal governments, and Federal Government entities. They apply to all programs that involve contracts with State, local, and federally recognized Indian tribal governments, except contracts with—

* * * * *

31.205-44 [Amended]

10. Section 31.205-44 is amended in the first sentence of paragraph (i) by inserting a comma following the word "tuition".

PART 32—CONTRACT FINANCING

11. Section 32.001 is added to read as follows:

32.001 Definition.

"Contract action," as used in this part, means an action resulting in a contract, as defined in FAR Subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

12. Section 32.102 is amended by revising paragraph (e)(2) to read as follows:

32.102 Description of contract financing methods.

* * * * *

(e) * * *

(2) This type of progress payment may be used as a payment method under agency procedures. Agency procedures must ensure that payments are commensurate with work accomplished, which meets the quality standards established under the contract. Furthermore, progress payments may not exceed 80 percent of the eligible costs of work accomplished on undefinitized contract actions.

13. Section 32.501-1 is amended by revising the first two sentences in paragraph (a) and by adding paragraph (d) to read as follows:

32.501-1 Customary progress payment rates.

(a) The customary progress payment rate is 80 percent, applicable to the total costs of performing the contract. The customary rate for contracts with small business concerns is 85 percent. * * *

* * * * *

(d) In accordance with the Defense Procurement Improvement Act of 1986 (Pub. L. 99-145) and, for civilian agencies, as a matter of policy, progress payments are limited to 80 percent on work accomplished under undefinitized contract actions. A higher rate is not authorized under unusual progress payments or flexible progress payments for the undefinitized actions.

14. Section 32.502-4 is amended by adding paragraph (d) to read as follows:

32.502-4 Contract clauses.

* * * * *

(d) If the nature of the contract necessitates separate progress payment rates for portions of work that are clearly severable and accounting segregation would be maintained (e.g., annual production requirements), the application of separate progress payment rates shall be fully described in a supplementary special provision within the contract. Separate progress payment requests and subsequent invoices shall be submitted by the contractor for the severable portions of work in order to maintain accounting integrity.

15. Section 32.503-6 is amended by revising the following entries in Section II of paragraph (g)(4) to read as follows:

32.503-6 Suspension or reduction of payments.

(g) * * *

(4) * * *

Section II:

* * * * *

Progress payment rate	×80%
Alternate amount to be used	$880,760

* * * * *

16. Section 32.503-8 is amended by removing in the sixth sentence the figure "86.1" and inserting in its place the figure "76.5" and by revising the following entries in the sixth sentence to read as follows:

32.503-8 Liquidation rates—ordinary method.

* * * * *

Result × progress payment rate (4.33 × 80%)	Percent 3.46
Result subtracted from progress payment rate (80%–3.46%)	76.54

17. Section 32.503-10 is amended by revising paragraphs (b)(3)(i), (b)(3)(ii), and (b)(3)(iii) to read as follows:

32.503-10 Establishing alternate liquidation rates.

* * * * *

(b) * * *

(3) * * *

(i) If the progress payment rate is 80 percent, the minimum liquidation rate should be 72.7 percent, computed as follows:

$$\frac{(\$1{,}000{,}000 \times 80\%)}{\$1{,}100{,}000} = 72.7\%$$

(ii) If the progress payment rate is 85 percent, the minimum liquidation rate should be 77.3 percent, computed as follows:

$$\frac{(\$1{,}000{,}000 \times 85\%)}{\$1{,}100{,}000} = 77.3\%$$

(iii) If the contract is subject to CAS limitation on G&A eligible for progress payments (see 32.503-7), an adjusted alternate liquidation rate shall be established by subtracting the estimated G&A not eligible for progress payments from the total estimated contract costs. For example, if the price is $1,100,000, costs are $1,000,000, and unbilled G&A is $47,600, the liquidation rate should be 69.3 percent, computed as follows:

$$\frac{(\$1{,}000{,}000 - \$47{,}600)}{\$1{,}100{,}000} \times 80\% = 69.3\%$$

PART 45—GOVERNMENT PROPERTY

18. Section 45.509–2 is amended by revising paragraphs (b) and (b)(1) to read as follows:

45.509–2 Use of Government property.

* * * * *

(b) With respect to plant equipment with an acquisition value of $5,000 or more, the procedures, as a minimum, shall—

(1) Establish a minimum level of use below which an analysis of need shall be made and retention justified, except for inactive plants and equipment retained for mobilization (the use level may be established for individual items or families of items, depending upon circumstances of use);

* * * * *

19. Section 45.606–5 is amended by revising paragraphs (e)(4)(i) and (e)(4)(ii) to read as follows:

45.606–5 Instructions for preparing and submitting schedules of contractor inventory.

* * * * *

(e) * * *

(4) * * *

(i) *Classification.* Use of a new form for each general classification of special tooling and special test equipment.

(ii) *Description.* Furnish a description which will enable the plant clearance officer or screener to determine the appropriate disposition, including the potential for reutilization. Include tool nomenclature, tool number, related product part number, and function which the tool performs. Designate special tooling usable for maintenance programs by placing the letter "M" in the left-hand column, "For Use of Contracting Agency Only." Provide the end-item application and a brief description of the test function for each unit of special test equipment.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

20. Section 52.207–4 is amended by removing in the title of the provision the date "(JUL 1985)" and inserting in its place the date "(AUG 1987)" and by revising the third sentence in paragraph (b) of the provision to read as follows:

52.207–4 Economic Purchase Quantity—Supplies.

* * * * *

(b) * * * An economic purchase quantity is that quantity at which a significant price break occurs. * * *

52.223–3 [Amended]

21. Section 52.223–3 is amended by inserting a colon in the introductory text following the word "clause" and removing the remainder of the sentence; removing in the title of the clause the date "(APR 1984)" and inserting in its place the date "(AUG 1987)"; removing in the first sentence of paragraphs (a) and (b) of the clause the reference "313A" and inserting in each place the reference "313B"; removing in paragraph (e)(5)(ii) of the clause the reference "52.227–16" and inserting in its place the reference "52.227–14"; and removing the derivation line following "(End of clause)".

22. Section 52.232–5 is amended by removing in the title of the clause the date "(MAY 1986)" and inserting in its place the date "(AUG 1987)"; by revising the first sentence in paragraph (b) of the clause; and by adding paragraph (g) to read as follows:

52.232–5 Payments under fixed-price construction contracts.

* * * * *

(b) The Government shall make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates of work accomplished which meets the standards of quality established under the contract, as approved by the Contracting Officer. * * *

* * * * *

(g) Notwithstanding any provision of this contract, progress payments shall not exceed 80 percent on work accomplished on undefinitized contract actions. A "contract action" is any action resulting in a contract, as defined in FAR Subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

(End of clause)

23. Section 52.232–10 is amended by removing in the title of the clause the date "(JUL 1985)" and inserting in its place the date "(AUG 1987)"; by revising the first sentence in paragraph (a); and by adding paragraph (e) to read as follows:

52.232–10 Payments under fixed-price architect-engineer contracts.

* * * * *

(a) Estimates shall be made monthly of the amount and value of the work accomplished and services performed by the Contractor under this contract which meet standards of quality established under this contract.

* * * * *

(e) Notwithstanding any other provision in this contract, and specifically paragraph (b) of this clause, progress payments shall not exceed 80 percent on work accomplished on undefinitized contract actions. A "contract action" is any action resulting in a contract, as defined in FAR Subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

(End of clause)

24. Section 52.232–16 is amended by removing in the title of the clause, and in the title of Alternate I and Alternate II the date "(APR 1984)" and inserting in each place the date "(AUG 1987); by removing in paragraph (a)(1)(i) of the clause the words "90 percent" and inserting in their place the words "80 percent"; by removing in paragraph (a)(5) and in the first sentence of paragraph (b) of the clause the words "90 percent" and inserting in their place the words "80 percent"; by revising paragraph (j)(3)(i) of the clause; by adding paragraph (k) to the clause; by removing both derivation lines following "(End of clause)" and each derivation line at the end of Alternate I and II; by revising the introductory text of Alternate I and II; by removing in paragraph (a)(1)(i) of Alternate I the words "95 percent" and inserting in their place the words "85 percent"; by redesignating and revising paragraph (k) in Alternate II as paragraph (l); and by adding paragraph (m) in Alternate II to read as follows:

52.232–16 Progress Payments

* * * * *

(j) * * *

(3) * * *

(i) Are substantially similar to the terms of the clause at 52.232–16 Progress Payments, for any subcontractor that is a large business concern, or that clause with its *Alternate I* for any subcontractor that is a small business concern;

* * * * *

(k) *Limitations on Undefinitized Contract Actions.* Notwithstanding any other progress payment provisions in this contract, progress payments may not exceed 80 percent of costs incurred on work accomplished under undefinitized contract actions. A "contract action" is any action resulting in a contract, as defined in Subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes. This limitation shall apply to the costs incurred, as computed in accordance with paragraph (a) of this clause, and shall remain in effect until the contract action is definitized. Costs incurred which are subject to this limitation shall be segregated on Contractor progress payment

requests and invoices from those costs eligible for higher progress payment rates. For purposes of progress payment liquidation, as described in paragraph (b) of this clause, progress payments for undefinitized contract actions shall be liquidated at 80 percent of the amount invoiced for work performed under the undefinitized contract action as long as the contract action remains undefinitized. The amount of unliquidated progress payments for undefinitized contract actions shall not exceed 80 percent of the maximum liability of the Government under the undefinitized contract action or such lower limit specified elsewhere in the contract. Separate limits may be specified for separate actions.

(End of clause)

Alternate I (AUG 1987). If the contract is with a small business concern, change each mention of the progress payment and liquidation rates excepting paragraph (k) to the customary rate of 85 percent for small business concerns (see 32.501–1), delete subparagraphs (a)(1) and (a)(2) from the basic clause, and substitute the following subparagraphs (a)(1) and (a)(2):

* * * * *

Alternate II (AUG 1987). If the contract is a letter contract, add paragraphs (l) and (m). The amount specified in paragraph (m) shall not exceed 80 percent applied to the maximum liability of the Government under the letter contract. Separate limits may be specified for separate parts of the work.

(l) Progress payments made under this letter contract shall, unless previously liquidated under paragraph (b) of this clause, be liquidated under the following procedures:

(1) If this letter contract is superseded by a definitive contract, unliquidated progress payments made under this letter contract shall be liquidated by deducting the amount from the first progress or other payments made under the definitive contract.

(2) If this letter contract is not superseded by a definite contract calling for the furnishing of all or part of the articles or services covered under the letter contract, unliquidated progress payments made under the letter contract shall be liquidated by deduction from the amount payable under the Termination clause.

(3) If this letter contract is partly terminated and partly superseded by a contract, the Government shall allocate the unliquidated progress payments to the terminated and unterminated portions as the Government deems equitable, and shall liquidate each portion under the relevant procedure in subparagraphs (l)(1) and (l)(2) of this clause.

(4) If the method of liquidating progress payments provided in this clause does not result in full liquidation, the Contractor shall immediately pay the unliquidated balance to the Government on demand.

(m) The amount of unliquidated progress payments shall not exceed . . . . *(specify dollar amount).*

25. Section 52.243–1 is amended by revising the introductory text; by removing in the title of the clause the date "(APR 1984)" and inserting in its place the date "(AUG 1987)"; by revising the first sentence of paragraph (c) of the clause; and by removing the derivation lines following "(End of clause)" to read as follows:

52.243–1 Changes—Fixed Price.

As described in 43.205(a)(1), insert the following clause. The 30–day period may be varied according to agency procedures.

* * * * *

(c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. * * *

* * * * *

26. Section 52.243–2 is amended by revising the introductory text; by removing in the title of the clause the date "(APR 1984)" and inserting in its place the date "(AUG 1987)"; by revising the first sentence of paragraph (c) of the clause; and by removing the derivation lines following "(End of clause)" to read as follows:

52.243–2 Changes—Cost-Reimbursement.

As prescribed in 43.205(b)(1), insert the following clause. The 30–day period may be varied according to agency procedures.

* * * * *

(c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. * * *

* * * * *

27. Section 52.243–3 is amended by revising the introductory text; by removing in the title of the clause the date "(APR 1984)" and inserting in its place the date "(AUG 1987)"; by revising the first sentence of paragraph (c) of the clause; and by removing the derivation lines following "(End of clause)" to read as follows:

52.243–3 Changes—Time-and-Materials or Labor-Hours.

As prescribed in 43.205(c), insert the following clause. The 30-day period may be varied according to agency procedures.

* * * * *

(c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. * * *

* * * * *

28. Section 52.243–4 is amended by revising the introductory text; by removing in the title of the clause the date "(APR 1984)" and inserting in its place the date "(AUG 1987)"; by revising the second sentence of paragraph (d) of the clause; by revising the first sentence of paragraph (e) of the clause; and by removing the derivation lines following "(End of clause)" to read as follows:

52.243–4 Changes.

As prescribed in 43.205(d), insert the following clause. The 30–day period may be varied according to agency procedures.

* * * * *

(d) * * * However, except for an adjustment based on defective specifications, no adjustment for any change under paragraph (b) of this clause shall be made for any costs incurred more than 20 days before the Contractor gives written notice as required. * * *

(e) The Contractor must assert its right to an adjustment under this clause within 30 days after (1) receipt of a written change order under paragraph (a) of this clause or (2) the furnishing of a written notice under paragraph (b) of this clause, by submitting to the Contracting Officer a written statement describing the general nature and amount of proposal, unless this period is extended by the Government. * * *

* * * * *

PART 53—FORMS

29. Section 53.249 is amended by revising paragraph (a)(3) to read as follows:

53.249 Termination of contracts (SF's 1034 and 1435 through 1440).

(a) * * *

(3) SF 1436 (10/83), Settlement Proposal (Total Cost Basis). (See 49.602–1(b).) Pending publication of a new edition of SF 1436, Item 7, Section II, is revised to read "Total Costs (Items 1 thru 6)."

* * * * *

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Department of Health and Human Services

Food and Drug Administration

21 CFR Part 872

Medical Devices; Dental Devices Classification; Final Rule and Withdrawal of Proposed Rules

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

21 CFR Part 872

[Docket No. 78N-3830]

Dental Devices; General Provisions and Classifications of 110 Devices

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is classifying 110 dental devices. The preamble to this rule responds to comments received on the proposed regulations regarding classification of these devices. These actions are being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: September 11, 1987.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

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A. Background

In the Federal Register of December 30, 1980 (45 FR 85962-86168), FDA published proposed regulations containing general provisions applicable to the classification of dental devices and individual proposed regulations to classify dental devices in commercial distribution into one or more of three regulatory classes: Class I (general controls), class II (performance standards), and class III (premarket approval).

In this final rule, FDA is classifying 110 devices as follows: 53 devices into class I, 42 devices into class II, 10 devices into class III, and, depending upon a variety of factors, such as intended uses or composition of the devices, 2 devices into class I or class II, 2 devices into class I or class III, and 1 device into class II or class III. To reduce printing costs, FDA is publishing the general provisions and the classifications in one final rule. FDA previously published a separate proposed classification rule and final classification rule for each device.

Classification of medical devices in commercial distribution is required by the Medical Device Amendments of 1976 (Pub. L. 94-295) (the amendments) to the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301-392). The effect of classifying a device into class I is to require that the device continue to meet only the general controls applicable to all devices. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class III is to require each manufacturer of the device to submit to FDA a premarket approval application that includes information concerning safety and effectiveness tests for the device. For a class III device not considered a new drug before the amendments that either was in commercial distribution before May 28, 1976, or that is substantially equivalent to a device that was in commercial distribution before that date, each application for premarket approval must be submitted to FDA on or before February 28, 1990, or 90 days after promulgation of a separate regulation requiring premarket approval of the device, whichever occurs later. Devices that FDA previously regarded as new drugs, or newly offered devices that are not substantially equivalent to a device that was in commercial distribution before the amendments, are classified by statute into class III and already are required to have in effect an approved application for premarket approval. See sections 520(l) and 513(f) of the act (21 U.S.C. 360j(l), 360c(f)).

The preamble to the proposed regulations described the development of the general provisions and the proposed regulations classifying dental devices and the activities of the Dental Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel, now the Dental Devices Panel (the Panel), an FDA advisory committee that makes recommendations to FDA concerning the classification of dental devices. FDA provided a period of 60 days, later extended to 90 days (March 6, 1981; 46 FR 15519), for interested persons to submit written comments on the proposals. The comments received and FDA's responses to the comments are discussed below.

In April 1985, H.R. 2177 (99th Cong. 1st Sess.) was introduced in the U.S. House of Representatives. The bill was a legislative proposal of the Department of Health and Human Services. Among other things, the bill would have (1) amended the act to eliminate the statutory category of class II, (2) made the establishment of a performance standard one of the several general controls that may be made applicable to a device, and (3) streamlined the procedure for establishing standards required by section 514 of the act. If legislation comparable to this bill becomes law, there would be only two categories of devices: class I (general controls) and class II (premarket approval, currently class III). Class II devices would be redesignated as class I devices. Because the proposed legislation contains transitional provisions that convert classifications under the current law to classifications under the proposed law, FDA is continuing to issue classification rules under the current law.

B. FDA's Priorities for Establishing Performance Standards

In the Federal Register of October 23, 1985 (50 FR 43060), FDA published a notice, "Policy Statement; Class III Medical Devices," announcing its policy for setting priorities for initiating proceedings to establish performance standards for medical devices classified into class II. Under the amendments, FDA is required to establish performance standards for class II devices. At this time, however, FDA does not have the resources to establish performance standards for all the devices already classified (or being classified) in class II. Under the amendments, FDA is using the regulatory controls of class I to regulate a device classified into class II until a performance standard is established under section 514 of the act (21 U.S.C. 360d) for a class II device. In the notice above FDA announced it will consider the following factors when setting priorities for establishing performance standards for class II devices:

a. The seriousness of questions concerning the safety and effectiveness of the device; the risks associated with use of the device; the significance of a device to the public health; and the present and projected use of the device;

b. The recommendations of FDA's advisory committees;

c. The impact of an FDA guideline or recommendation;

d. The effect of a Federal standard or other regulatory controls under an authority other than the act;

e. The impact of voluntary standards;

f. The impact of activities authorized under the general controls provisions of the act;

g. The effect of dissemination of information and education efforts;

h. The sufficiency of voluntary corrective actions;

i. Valid scientific evidence developed since classification;

j. The existence of a petition for reclassification;

k. The impact of any other factors that affect a device's safety or effectiveness.

C. Changes in the Name of the Dental Device Advisory Committee

FDA has periodically reorganized its advisory panels for device classification. Most recently, on April 14, 1984, FDA established the Dental Devices Panel (see 49 FR 17446; April 24, 1984). The new panel performs the same functions with respect to dental devices as did its predecessors, the Dental Device Classification Panel (1976–1978) and the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel (1978–1984). Because of several changes in the membership of the advisory committee for dental devices that occurred after the committee had made its classification recommendations, during July 1981, FDA requested the committee to review its original classification recommendations. The new committee reaffirmed all but two of the old committee's recommendations (see paragraphs 11 and 13 of this preamble for the changes).

D. Grouping of Similar Devices—Withdrawal of 67 Dental Proposed Regulations Because of Different Grouping

In this final rule, FDA has grouped together similar devices, thereby reducing the number of separate dental device classifications. FDA issued proposals on 185 devices and is issuing final classifications now on 110 devices, with 10 additional classifications planned in the future.

FDA has now grouped 89 dental devices that were the subjects of FDA's proposals as separate generic types of devices into 22 generic types of devices, thus eliminating the need for 67 final classifications. Elsewhere in this issue of the Federal Register, FDA is withdrawing the 67 proposed dental device classification regulations that now are unnecessary due to the new grouping of dental devices. The remaining 96 generic types of devices that were the subjects of proposals are unaffected by this regrouping. The term "generic type of device" is defined in 21 CFR 860.3(i). Dental devices that are grouped into one generic type of device do not differ significantly in purpose, design, materials, energy source, function, or any other feature related to safety or effectiveness. Consequently, similar regulatory controls are appropriate to provide reasonable assurance of the safety and effectiveness of these devices. FDA has made appropriate changes in the identification of each device being grouped in order to identify more accurately the generic type of device.

The devices being grouped differently from the proposals are identified in this preamble below under "F. LIST OF DENTAL DEVICES." Each generic type of dental device is identified with both the docket number or numbers used for that device in the proposed regulations and the section number of the Code of Federal Regulations at which its classification is being codified. A device listed in the "List of Dental Devices" that is not identified with a section number is being grouped into the generic type of device with a section number listed directly before it. (Thus, for example, *Gold based alloy for clinical use* and *Precious metal alloy for clinical use* are being grouped into the generic type of device *Gold based alloys and precious metal alloys for clinical use* (§ 872.3060)).

The new grouping of dental devices results in 118 generic types of dental devices (185 proposals minus 67 unnecessary proposals). FDA is postponing for now its final classifications of 10 generic types of electrically powered dental devices pending the agency's review of additional data concerning electrical safety (see the next section of this preamble, "E. DENTAL DEVICES NOT BEING CLASSIFIED AT THIS TIME"). Thus, the number of generic types of dental devices based on the 1980 proposals that are being classified in this rule is 108.

Also, in this final rule, FDA is codifying the classifications of two devices that, under applicable statutory procedures, need not have been subjects of proposed classification rules (see the discussions under "K. CODIFICATION OF TWO DEVICES NOT SUBJECTS OF DENTAL PROPOSED REGULATIONS"). With these two additional classifications, in this rule FDA is classifying 110 generic types of dental devices.

E. Dental Devices not Being Classified at This Time

FDA is postponing classification of the following 10 generic types of dental devices in order to review additional data on electrical safety. FDA is considering reproposing these devices for classification into class I. Because of the grouping of similar dental devices as described above, the 10 generic types of devices encompass devices that were the subjects of 20 proposed regulations. The following is a list of the 10 generic types of dental devices that are not being classified in this final rule:

Mechanical denture cleaner
Dental handpiece and accessories
Dental chair with or without operative unit
Oral irrigation unit
Dental operative unit and accessories
Powered toothbrush
AC-powered dental amalgamator
Fiber optic dental light
Heat source for bleaching teeth
Boiling water sterilizer

F. List of Dental Devices

The list below shows, for each dental device, the section of the Code of Federal Regulations at which the classification of that device is being codified (or will be codified), the docket number or numbers of any corresponding proposed classification regulation, and the final classification of the device.

The list includes the 10 generic types of dental devices for which final classification is being postponed. For each of these 10 devices, the section number of the Code of Federal Regulations is in parentheses, the name of the device is identified with footnote "2", and no final classification is provided.

Section	Device	Docket No.	Class
	SUBPART B—DIAGNOSTIC DEVICES		
872.1500	Gingival fluid measurer	78N-2831	I
872.1720	Pulp tester	78N-2834	III
872.1730	Electrode gel for pulp tester	78N-2835	I

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Section	Device	Docket No.	Class
872.1740	Caries detection device	80P-0084	II [1]
872.1800	Extraoral source X-ray system	78N-2836	II
872.1810	Intraoral source X-ray system	78N-2837	II
872.1820	Dental X-ray exposure alignment device	78N-2838	I
872.1830	Cephalometer	78N-2839	II
872.1840	Dental X-ray position indicating device	78N-2840	II
872.1850	Lead-lined position indicator	78N-2841	II
872.1905	Dental X-ray film holder	78N-2842	I
	SUBPART D—PROSTHETIC DEVICES		
872.3050	Amalgam alloy	78N-2843	II
872.3060	Gold based alloys and precious metal alloys for clinical use	78N-2844	II
	Gold based alloy for clinical use	78N-2844	
	Precious metal alloy for clinical use	78N-2845	
872.3080	Mercury and alloy dispenser	78N-2846	I
(872.3100)	AC-powered dental amalgamator [2]	78N-2847	
872.3110	Dental amalgam capsule	78N-2848	I
872.3130	Preformed anchor	78N-2849	I
872.3140	Resin applicator	78N-3024	I
872.3150	Articulator	78N-2850	I
872.3165	Precision attachment	78N-2851	I
	Precision attachment	78N-2851	
	Preformed bar	78N-2852	
872.3200	Resin tooth bonding agent	78N-2853	II
872.3220	Facebow	78N-2854	I
872.3240	Dental bur	78N-2855	I
872.3250	Calcium hydroxide cavity liner	78N-2856	II
872.3260	Cavity varnish	78N-2857	II
872.3275	Dental cement	78N-2858	I, II
	Dental cement	78N-2858	
	Zinc oxide eugenol	78N-2913	
872.3285	Preformed clasp	78N-2859	I
	Preformed clasp	78N-2859	
	Preformed wire clasp	78N-2860	
872.3300	Hydrophilic resin coating for dentures	78N-2861	II
872.3310	Coating material for resin fillings	78N-2862	II
872.3330	Preformed crown	78N-2863	I
872.3350	Gold or stainless steel cusp	78N-2864	I
872.3360	Preformed cusp	78N-2865	I
872.3400	Karaya and sodium borate with or without acacia denture adhesive	78N-2866	I, III
	Acacia and karaya with sodium borate denture adhesive	78N-2866	
	Karaya with sodium borate denture adhesive	78N-2873	
872.3410	Ethylene oxide homopolymer and/or carboxymethylcellulose sodium denture adhesive	78N-2867	I
	Carboxymethylcellulose sodium (40 to 100%) denture adhesive	78N-2867	
	Carboxymethylcellulose sodium (32%) and ethylene oxide homopolymer (13%) denture adhesive	78N-2868	
	Carboxymethylcellulose sodium (49%) and ethylene oxide homopolymer (21%) denture adhesive	78N-2870	
872.3420	Carboxymethylcellulose sodium and cationic polyacrylamide polymer denture adhesive	78N-2869	III
872.3450	Ethylene oxide homopolymer and/or karaya denture adhesive	78N-2871	I
	Karaya denture adhesive	78N-2871	
	Karaya and ethylene oxide homopolymer denture adhesive	78N-2872	
872.3460	Polyacrylamide polymer (modified cationic) denture adhesive	78N-2874	III
872.3480	Carboxymethylcellulose sodium and/or polyvinylmethylether maleic acid calcium-sodium double salt denture adhesive.	78N-2875	I
	Polyvinylmethylether maleic acid calcium-sodium double salt denture adhesive	78N-2875	
	Polyvinylmethylether maleic acid calcium-sodium double salt and carboxymethylcellulose sodium denture adhesive.	78N-2877	
872.3500	Polyvinylmethylether maleic anhydride (PVM–MA), acid copolymer, and carboxymethylcellulose sodium (NACMC) denture adhesive.	78N-2876	III
872.3520	OTC denture cleanser	78N-2878	I
(872.3530)	Mechanical denture cleaner [2]	78N-2879	
872.3540	OTC denture cushion or pad	78N-2880	I, III
	OTC denture cushion	78N-2880	
	OTC denture pad	78N-2881	
872.3560	OTC denture reliner	78N-2882	III
872.3570	OTC denture repair kit	78N-2883	III
872.3580	Preformed gold denture tooth	78N-2884	I
872.3590	Preformed plastic denture tooth	78N-2885	II
872.3600	Partially fabricated denture kit	78N-2886	III
872.3640	Endosseous implant	78N-2887	III
872.3645	Subperiosteal implant material	78N-2888	II
	Titanium subperiosteal implant material	78N-2888	
	Cobalt chrome molybdenum subperiosteal implant material	78N-2889	
872.3660	Impression material	78N-2890	II

Section	Device	Docket No.	Class
872.3670	Resin impression tray material	78N-2891	I
872.3680	Polytetrafluoroethylene (PTFE) vitreous carbon material	78N-2892	II
872.3690	Tooth shade resin material	78N-2893	II
872.3700	Dental mercury	78N-2894	I
872.3710	Base metal alloy	78N-2895	II
872.3730	Pantograph	78N-2897	I
872.3740	Retentive and splinting pin	78N-2898	I
872.3750	Bracket adhesive resin and tooth conditioner	78N-2899	II
872.3760	Denture relining, repairing, or rebasing resin	78N-2900	II
872.3765	Pit and fissure sealant and conditioner	78N-2901	II
872.3770	Temporary crown and bridge resin	78N-2902	II
872.3810	Root canal post	78N-2904	I
872.3820	Root canal filling resin	78N-2905	II, III
872.3830	Endodontic paper point	78N-2906	I
872.3840	Endodontic silver point	78N-2907	I
872.3850	Gutta percha	78N-2908	I
872.3890	Endodontic stabilizing splint	78N-2909	II
872.3900	Posterior artificial tooth with a metal insert	78N-2910	I
872.3910	Backing and facing for an artificial tooth	78N-2911	I
872.3920	Porcelain tooth	78N-2912	II
872.3930	Tricalcium phosphate granules for dental bone repair		III [3]
	SUBPART E—SURGICAL DEVICES		
872.4120	Bone cutting instruments and accessories	78N-2915	II
	Manual bone drill and wire driver	78N-2915	
	Powered bone drill	78N-2917	
	Rotary bone cutting handpiece	78N-2920	
	AC-powered bone saw	78N-2941	
872.4130	Intraoral dental drill	78N-2916	I
(872.4200)	Dental handpiece and accessories [3]	78N-2918	
	Air-powered dental handpiece	78N-2918	
	Belt-driven dental handpiece	78N-2919	
	Contra angle handpiece attachment	78N-2921	
	Direct drive handpiece	78N-2922	
	Foot controller for handpiece	78N-2923	
	Water-powered handpiece	78N-2924	
872.4465	Gas-powered jet injector	78N-2925	II
872.4475	Spring-powered jet injector	78N-2926	II
872.4535	Dental diamond instrument	78N-2929	I
872.4565	Dental hand instrument	78N-2931	I
	Dental hand instrument	78N-2931	
	Endodontic broach	78N-3027	
	Dental wax carver	78N-2914	
	Endodontic pulp canal file	78N-3026	
	Hand instruments for calculus removal	78N-2927	
	Dental depth gauge instrument	78N-2928	
	Plastic dental filling instrument	78N-2930	
	Dental instrument handle	78N-2932	
	Surgical tissue scissors	78N-2945	
	Orthodontic band driver	78N-2952	
	Orthodontic band pusher	78N-2954	
	Orthodontic band setter	78N-2955	
	Orthodontic bracket aligner	78N-2958	
	Orthodontic pliers	78N-2962	
	Orthodontic ligature tucking instrument	78N-2967	
	Forceps for articulation paper	78N-2990	
	Forceps for dental dressing	78N-2991	
	Dental matrix band	78N-2997	
	Matrix retainer	78N-2998	
	Mouth mirror	78N-3000	
	Dental retractor	78N-3007	
	Dental retractor accessories	78N-3008	
	Periodontic or endodontic irrigating syringe	78N-3016	
	Restorative or impression material syringe	78N-3017	
872.4600	Intraoral ligature and wire lock	78N-2933	II
(872.4620)	Fiber optic dental light [3]	78N-2934	
872.4630	Dental operating light	78N-2935	II
	Dental operating light	78N-2935	
	Surgical headlight	78N-2936	
872.4730	Dental injecting needle	78N-2937	I
872.4760	Bone plate	78N-2938	II
872.4840	Rotary scaler	78N-2942	II
872.4850	Ultrasonic scaler	78N-2943	II

Section	Device	Docket No.	Class
872.4880	Intraosseous fixation screw or wire	78N-2946	II
	Intraosseous fixation screw	78N-2946	
	Intraosseous fixation wire	78N-2946	
872.4920	Dental electrosurgical	78N-2947	II
	SUBPART F—THERAPETIC DEVICES		
872.5410	Orthodontic appliance and accessories	78N-2951	I
	Preformed orthodontic band	78N-2951	
	Orthodontic elastic band	78N-2950	
	Orthodontic band material	78N-2953	
	Orthodontic metal bracket	78N-2956	
	Orthodontic wire clamp	78N-2959	
	Preformed orthodontic space maintainer	78N-2961	
	Orthodontic expansion screw retainer	78N-2963	
	Orthodontic spring	78N-2964	
	Orthodontic tube	78N-2966	
	Orthodontic wire	78N-2968	
872.5470	Orthodontic plastic bracket	78N-2957	II
872.5500	Extraoral orthodontic headgear	78N-2960	II
872.5525	Preformed tooth positioner (proposed as § 872.5575)	78N-3025	I
872.5550	Teething ring	78N-2965	I, II
	SUBPART G—MISCELLANEOUS DEVICES		
872.6010	Abrasive device and accessories	78N-2969	I
	Abrasive disk	78N-2969	
	Guard for an abrasive disk	78N-2993	
	Abrasive point	78N-2970	
	Polishing agent strip	78N-2972	
	Polishing wheel	78N-2973	
872.6030	Oral cavity abrasive polishing agent	78N-2971	I
872.6050	Saliva absorber	78N-2974	I
	Paper saliva absorber	78N-2974	
	Cotton roll	78N-2982	
872.6070	Ultraviolet activator for polymerization	78N-2975	II
872.6080	Airbrush	78N-2976	III
872.6100	Anesthetic warmer	78N-2977	I
872.6140	Articulation paper	78N-2978	I
872.6200	Base plate shellac	78N-2979	I
(872.6250)	Dental chair with or without operative unit [2]	78N-2980	
	Dental chair with operative unit	78N-2980	
	Dental chair without operative unit	78N-2981	
872.6290	Prophylaxis cup	78N-2983	I
872.6300	Rubber dam and accessories	78N-2984	I
	Rubber dam	78N-2984	
	Rubber dam clamp	78N-2985	
	Rubber dam frame	78N-2986	
	Forceps for a rubber dam clamp	78N-2992	
872.6350	Ultraviolet detector	78N-2987	II
872.6390	Dental floss	78N-2989	I
(872.6475)	Heat source for bleaching teeth [2]	78N-2994	
(872.6510)	Oral irrigation unit [2]	78N-2996	
872.6570	Impression tube	78N-2999	I
(872.6640)	Dental operative unit and accessories [2]	78N-3002	
	Dental operative unit	78N-3002	
	Saliva ejector mouthpiece	78N-3001	
	Oral cavity evacuator	78N-2998	
	Suction operative unit	78N-3003	
	Air or water syringe unit	78N-3012	
872.6650	Massaging pick or tip for oral hygiene	78N-3004	I
	Massaging pick	78N-3004	
	Rubber tip for oral hygiene	78N-3018	
872.6660	Porcelain powder for clinical use	78N-3005	II
872.6670	Silicate Protector	78N-3006	I
(872.6710)	Boiling water sterilizer [2]	78N-3009	
872.6730	Endodontic dry heat sterilizer	78N-3011	III
872.6770	Cartridge syringe	78N-3014	II
872.6855	Manual toothbrush	78N-3019	I
(872.6865)	Powered toothbrush [2]	78N-3020	
872.6870	Disposable fluoride tray	78N-3021	I
872.6880	Preformed impression tray	78N-3022	I
872.6890	Intraoral dental wax	78N-3023	I

[1] Not proposed; classification results from FDA's decision on a reclassification petition.
[2] Classification postponed.
[3] Not proposed; statutory classification.

G. Changes in Classifications

Based on the comments received and on additional consideration of all information before the agency, FDA has placed several devices in different classes from those originally proposed. FDA's reasons for adopting classifications for these devices that differ from the proposals are provided in this preamble in the section that follows. FDA believes that it is not necessary to issue a new proposal concerning these decisions. The purpose of publishing a proposal and soliciting comments is to enable the agency to determine whether its proposed classification of a device was correct. After reviewing the comments submitted on a proposal, the agency may be persuaded that its proposed classification is incorrect. Persons interested in the classification process should therefore anticipate that in a final regulation a device may be placed in a class different from the one originally proposed. This possibility was specifically identified in the proposed general regulation on dental devices (see 45 FR 85964). In addition, many of the final classifications that differ from FDA's proposed classifications are consistent with the recommendations of the Panel. These recommendations were published in the preambles to the proposed rules and thus foreshadowed the changes now being made. Persons who disagree with the final classification of a device may petition for reclassification of the device under Subpart C of Part 860 (21 CFR Part 860).

H. Summary of Comments on Classifications and FDA's Responses

To clarify the final rule and save printing costs, FDA is responding once to comments that apply to more than one dental device. In such cases, FDA's response identifies the devices to which the comment and response apply.

1. Many comments on the proposed regulations requested that FDA classify each dental device into the class recommended by the Panel.

FDA's final classification rule accomplishes many, but not all, of the changes desired by these general comments. Of the 185 devices that were the subjects of the proposed regulations, FDA proposed to classify 106 devices (58 percent) into the class recommended by the Panel. Taking into account the Panel's later changes in its recommendations on two devices (see paragraphs 11 and 13 of this preamble) and omitting the 10 final classifications which are being postponed, in this final rule FDA is classifying about 89 percent of the devices into the class recommended by the Panel. FDA is making available (Ref. 12) in its Docket Management Branch (address below) a detailed matrix that shows for each device how the Panel's recommendations compare to FDA's proposed and final classifications.

2. Many comments requested that FDA classify into class I most of the 124 dental devices that FDA proposed to classify into class II.

FDA agrees in part and disagrees in part with the comments. For many of the 77 devices that the Panel recommended be placed in class I but which FDA proposed to classify into class II, FDA now agrees that the correct class is class I. Accordingly, in the final rule the agency is classifying many of these devices into class I. However, the Panel recommended and FDA proposed that 47 dental devices be classified into class II. For many of these 47 devices, FDA disagrees with the comments requesting that these devices be placed into class I. In the paragraphs below, FDA is providing its reasons for agreeing or disagreeing with these comments with respect to specific devices.

3. In addition to the comments discussed above in paragraphs 1 and 2, specific comments on the proposed regulations on the devices discussed below argued that the agency did not identify any substantive risks to health associated with the devices that would justify classifying them into class II, as was proposed by FDA. The section had recommended that these devices be classified into class I, with the exception of the dental diamond instrument (§ 872.4535) and hand instrument for calculus removal (Docket No. 78N–2927), which the section had recommended be classified into class II.

Comments stated that the agency cited no adverse experience data or complaint data to support the proposed classifications. The comments reasoned that the devices should be classified into class I because manufacturers have distributed these devices for many years without FDA controls and because they are safe and effective. FDA has considered these comments in the classification decisions described below.

3a. Dental x-ray exposure alignment device (§ 872.1820).

FDA now believes that the dental x-ray exposure alignment device, an accessory to a dental x-ray system, should be classified into class I. FDA proposed to classify the device into class II because of concern about improper x-ray beam alignment that, in some instances, may cause the operator of the dental x-ray system to repeat x-rays of patients. If x-rays have to be repeated, the patient would receive unnecessary radiation. However, FDA now believes that the accuracy of dental x-ray beam alignment depends almost entirely on the skills of the operator of the dental x-ray system, and only a limited portion of the risk of improper x-ray beam alignment results from the design and function of the dental x-ray exposure alignment device. FDA believes that it is unnecessary to establish performance standards for the dental x-ray exposure alignment device, because the essential portion of the risk to health of improper alignment of the x-ray beam would not be significantly reduced through establishment of a standard for the accessory device. FDA believes that the general controls of class I alone would provide reasonable assurance of the safety and effectiveness of the device. Accordingly, FDA is classifying the dental x-ray exposure alignment device into class I.

3b. Dental retractor (Docket No. 78N–3007); dental retractor accessories (Docket No. 78N–3008); and dental x-ray film holder (§ 872.1905).

FDA now believes that the three devices above should be classified into class I. FDA proposed to classify these devices into class II because of concerns about microbial contamination of the reusable devices that may cause infections in patients. FDA now believes that the essential risk to health from microbial contamination of these reusable devices is controlled by the skill and conscientiousness of the users of these devices in maintaining the cleanliness of the devices and sterilizing them between uses. FDA believes that it is unnecessary to establish performance standards for the devices above, because the essential risk to health (microbial contamination) would not be reduced through establishment of standards. FDA believes that the general controls of class I alone would provide reasonable assurance of the safety and effectiveness of these devices, particularly the controls of the current good manufacturing practice (CGMP) regulations in Part 820. Accordingly, FDA is classifying the dental retractor, dental retractor accessories, and the dental x-ray film holder into class I.

3c. Mercury and alloy dispenser (§ 872.3080) and dental amalgam capsule (§ 872.3110).

FDA now believes that the mercury and alloy dispenser and the dental amalgam capsule should be classified into class I. FDA proposed to classify the devices above into class II because of concern about the accuracy of measurements of materials by the

mercury and alloy dispenser, and concern that both devices might leak mercury that may cause toxic reactions. FDA now believes that the risk to health of patients presented by inaccurate measurements of materials by the mercury and alloy dispenser is minimal and this risk would be controlled by manufacturers' adherence to the CGMP regulations. FDA also believes that manufacturers' adherence to the CGMP regulations for these devices would control the potential for leakage of mercury from the devices that could pose a risk to health of dental practitioners. (See also paragraph 5 for a discussion of classification of dental mercury.) Thus, FDA now believes that it is unnecessary to establish performance standards for the two devices, because the devices present a low risk to health of patients, and these risks would not be significantly reduced through establishment of such standards. FDA believes that the general controls of class I alone would provide reasonable assurance of the safety and effectiveness of the two devices, particularly the controls of the CGMP regulations in Part 820. Accordingly, FDA is classifying the mercury and alloy dispenser and the amalgam capsule into class I.

3d. Intraoral dental drill (§ 872.4130) and dental diamond instrument (§ 872.4535).

FDA now believes that the intraoral dental drill and the dental diamond instrument should be classified into class I. FDA proposed to classify the devices into class II because of concerns about the strength and hardness of the intraoral dental drill and the possibility of inadequate abrasive properties of the dental diamond instrument. Both devices are intended to cut human teeth. FDA now believes that minimal risk to the health of patients would result, if the intraoral dental drill were to lack strength and hardness or if the dental diamond instrument were to lack certain abrasive properties. FDA also believes that these risks to health would be controlled through the general controls of class I, particularly manufacturers' adherence to the CGMP regulations in Part 820. FDA now believes that is is unnecessary to establish performance standards for the devices. FDA believes that the general controls of class I alone would provide reasonable assurance of the safety and effectiveness of the devices. Accordingly, FDA is classifying the intraoral dental drill and the dental diamond instrument into class I.

3e. Hand instrument for calculus removal (Docket No. 78N–2927).

FDA now believes that the hand instrument for calculus removal should be classified into class I. FDA proposed to classify the device into class II because of concern that improper design of the device might cause unnecessary trauma to gum tissue and concern that lack of biocompatibility of the device might cause adverse tissue reactions. (FDA is discussing the latter concern in paragraph 3f., below.) FDA now believes that minimal risk to health would result, if this hand held device were to have an improper design. The device is intended for use by dental health professionals experienced in its use. Trauma to a patient's gums from use of the device is essentially controlled by the skills of the professional using it, and the device itself would rarely, if ever, be responsible for unnecessary gum trauma. Thus, FDA believes that it is unnecessary to establish performance standards to control the design of the device, because the essential portion of the risk to health of unnecessary gum trauma would not be reduced through establishment of standards for the device. FDA believes that the general controls of class I alone would provide reasonable assurance of the safety and effectiveness of the hand instrument for calculus removal. Accordingly, FDA is classifying the device into class I.

3f. FDA now believes that the devices listed below should be classified into class I. FDA proposed to classify the devices into class II because of concerns about possible bioincompatibility of the devices, resulting in adverse tissue reactions. However, FDA now believes that in 1980, when it proposed to classify these devices, the agency assigned to the devices a higher level of risk of bioincompatibility than was justified by the years of experience of dentists and patients with these devices.

Thus, FDA now believes that it is unnecessary to establish performance standards for the devices listed below to control the risk of bioincompatibility, because FDA believes that these devices present only minimal risks of bioincompatibility and that these minimal risks would not be significantly reduced through establishing performance standards for these devices due to the idiosyncratic nature of individual sensitivities. FDA believes that the general controls of class I would provide reasonable assurance of the safety and effectiveness of the devices. The labeling of a device that causes sensitivity reactions in some individuals should be so labeled, to be in compliance with the misbranding provisions (21 U.S.C. 352) of the general controls of the act. Accordingly, FDA is classifying the devices listed below in class I.

Section	Device/Docket No.
872.1730	Electrode gel for pulp tester.
872.3410	Ethylene oxide homopolymer and/or carboxymethylcellulose sodium denture adhesive.
	Carboxymethylcellulose sodium (40 to 100%) denture adhesive (Docket No. 78N–2867).
	Carboxymethylcellulose sodium (32%) and ethylene oxide homopolymer (13%) denture adhesive (Docket No. 78N–2869).
	Carboxymethylcellulose sodium (49%) and ethylene oxide homopolymer (21%) denture adhesive (Docket No. 78N–2870).
872.3450	Ethylene oxide homopolymer and/or karaya denture adhesive.
	Karaya denture adhesive (Docket No. 78N–2871).
	Karaya and ethylene oxide homopolymer denture adhesive (Docket No. 78N–2872).
872.3490	Carboxymethylcellulose sodium and/or polyvinylmethylether maleic acid calcium-sodium double salt denture adhesive.
	Polyvinylmethylether maleic acid calcium-sodium double salt denture adhesive (Docket No. 78N–2875).
	Polyvinylmethylether maleic acid calcium-sodium double salt carboxymethylcellulose sodium denture adhesive (Docket No. 78N–2877).
872.3520	OTC denture cleanser.
872.3630	Endodontic paper point.
872.3840	Endodontic silver point.
872.3850	Gutta percha.
872.4565	Dental hand instrument.
	Endodontic broach (Docket No. 78N–3027).
	Endodontic pulp canal file (Docket No. 78N–3026).
	Surgical tissue scissors (Docket No. 78N–2951).
872.5410	Orthodontic appliances accessories.
	Preformed orthodontic band (Docket No. 78N–2951).
	Orthodontic elastic band (Docket No. 78N–2950).
	Orthodontic band material (Docket No. 78N–2953).
	Orthodontic metal bracket (Docket No. 78N–2956).
	Orthodontic wire clamp (Docket No. 78N–2959).
	Preformed orthodontic space maintainer (Docket No. 78N–2961).
	Orthodontic expansion screw retainer (Docket No. 78N–2963).
	Orthodontic spring (Docket No. 78N–2964).
	Orthodontic tube (Docket No. 78N–2966).
	Orthodontic wire (Docket No. 78N–2968).
872.5525	Preformed tooth positioner.

Section	Device/Docket No.
872.6010	Abrasive device and accessories.
	Abrasive disk (Docket No. 78N-2969).
	Abrasive point (Docket No. 78N-2970).
	Polishing agent strip (Docket No. 78N-2972).
872.6030	Oral cavity abrasive polishing agent.
872.6200	Base plate shellac.

FDA advises that the devices listed above that are identified by a common docket number have been grouped. See the information under the heading "D. Grouping of Similar Devices—Withdrawal of 67 Dental Proposed Regulations Because of Different Grouping." earlier in this preamble.

4. Zinc oxide eugenol; Docket No. 78N-2913; proposed class II; § 872.3275; dental cement; proposed class II. Many comments recommended that zinc oxide eugenol be classified into class I because it has been used for a long time without any problems.

4a. Zinc oxide eugenol. FDA now believes that zinc oxide eugenol should be classified into class I. FDA proposed to classify the device into class II because of concerns about possible bioincompatibility of the device resulting in adverse tissue reactions. However, FDA now believes that in 1980, when it proposed to classify the device, the agency assigned to the device a higher level of risk of bioincompatibility than was justified by the years of experience of dentists and patients with the device. Thus, FDA now believes that it is unnecessary to establish a performance standard for zinc oxide eugenol to control the risk of bioincompatibility, because the device presents only minimal risks of bioincompatibility and that these minimal risks would not be significantly reduced through establishing a performance standard for the device due to the idiosyncratic nature of individual sensitivities. The labeling of a device that causes sensitivity reactions in some individuals should be so labeled to be in compliance with the misbranding provisions (21 U.S.C. 352) of the general controls of the act. FDA now believes that the general controls of class I alone would provide reasonable assurance of the safety and effectiveness of the device. Accordingly, FDA is classifying zinc oxide eugenol into class I.

4b. Dental cement. FDA proposed that dental cement, including zinc oxide eugenol dental cement, be classified into class II because materials used in the device should meet a generally accepted and satisfactory level of biocompatibility. FDA believes that a performance standard is necessary for dental cement other than zinc oxide eugenol, because general controls alone are insufficient to control the risks to health presented by this device. The agency believes that a performance standard would provide reasonable assurance of the safety and effectiveness of dental cement other than zinc oxide eugenol, and that sufficient information is available to establish a performance standard for dental cement other than zinc oxide eugenol.

Zinc oxide eugenol was identified in two proposed regulations (§ 872.3980, Docket No. 78N-2913 and § 872.3275, Docket No. 78N-2858). In the final rule, FDA is treating zinc oxide eugenol as a subtype of the generic type of device dental cement (§ 872.3275). Accordingly, FDA is classifying zinc oxide eugenol (including zinc oxide eugenol dental cement) into class I and classifying dental cement other than zinc oxide eugenol into class II.

5. Section 872.3700; Dental mercury; proposed class II. Comments recommended that dental mercury be classified into class I instead of class II as proposed. The comments acknowledged that elemental mercury is a poison, but stated that the risks to health presented to dentists and other dental workers are inherent in the device and would not be reduced through establishment of performance standards for the device. The comments also stated that manufacturers have voluntarily accomplished several actions to protect dentists and other dental workers from the inherent risks presented by the device, such as packaging the device in leak-proof containers and placing cautionary statements in the labeling of the device.

FDA agrees with comments urging that this device be classified into class I. As stated in the proposed regulation, FDA believes that presently there is no valid scientific evidence of systemic poisoning to patients exposed to amalgam containing mercury. FDA acknowledges that the device presents a risk to those few patients who experience allergic reactions to this material, as evidenced by rare reports of such reactions (Refs. 9, 10, and 11), and to individuals such as dentists who regularly handle dental mercury. Upon further consideration, FDA now believes that labeling for the device bearing adequate directions for use and warnings under the misbranding provisions (21 U.S.C. 352) of the general controls of the act would warn dentists about the rare risk of allergic reactions among patients and the risk of toxicity to dental health professionals. Establishing a performance standard for dental mercury would do nothing to reduce these risks. Thus, FDA believes that the general controls of class I alone are sufficient to provide reasonable assurance of the safety and effectiveness of the device and that it is unnecessary to establish performance standards for the device. Accordingly, FDA is classifying the device into class I.

6. Section 872.5550; Teething ring; proposed class I or class II depending upon the construction of the device. FDA received comments stating that (a) teething rings should not be considered a medical device, (b) problems with the use of teething rings do not exist, and (c) teething rings pose no hazards to health and, therefore, should be in class I.

FDA agrees in part and disagrees in part with these comments. With regard to the first comment, FDA has determined that it will regulate as medical devices only those teething rings (fluid-filled or solid) for which medical claims are made. Teething rings without medical claims are under the regulatory authority of the Consumer Product Safety Commission (CPSC). Most teething rings are not marketed with medical claims. Thus, the vast majority of teething rings are subject to the CPSC's jurisdiction rather than FDA's jurisdiction.

With regard to the second and third comments, FDA disagrees with the comments as applied to the fluid-filled version of this device. FDA proposed that the fluid-filled teething rings (such as one containing water) for which medical claims are made be classified into class II because FDA has received reports of microbial contamination of fluid-filled teething rings (Ref. 5). An infant who bites and ruptures a fluid-filled teething ring with contaminated contents could develop an infection. FDA continues to believe, therefore, that a performance standard is necessary to control risks to infant health if the fluid in the device is contaminated with microbes. Accordingly, FDA is classifying into class II fluid-filled teething rings for which medical claims are made.

FDA is classifying solid teething rings for which medical claims are made into class I, as proposed.

7. Section 872.4240; Rotary bone cutting handpiece; proposed class II: A comment noted that the rotary bone cutting handpiece is intended to operate at slower speeds than the regular "high speed" handpiece that FDA also

proposed to classify into class II. The comment suggested, therefore, that the rotary bone cutting handpiece should be classified into class I because it presents less risk to health than the "high speed" (air-powered) handpiece (78N–2918) and because the risk to health identified by the Panel, i.e., unnecessary trauma, cannot be controlled by a performance standard.

FDA disagrees with the comment. FDA believes that a performance standard is necessary for this device to assure that its design will not cause bone damage or tissue trauma and that the risk to health can be controlled by a performance standard. Accordingly, FDA is classifying the device into class II.

8. Section 872.4820; AC-powered bone saw; proposed class II: A comment stated that the AC-powered bone saw should be classified into class I because the risks to health identified by the Panel, i.e., the possibility of bone and tissue trauma and electrical shock, are not sufficient to warrant classification of the device into class II.

FDA disagrees with the comment. FDA believes that a performance standard is necessary for this device to assure that its design will not cause bone damage or tissue trauma. Accordingly, FDA believes that the proposed classification was correct and, therefore, is classifying the device into class II.

9. Comments on the proposed regulations classifying the devices listed below argued that the devices should be placed into class I because the agency identified no substantive risks to health associated with the devices that would justify classifying them into class II. The comments argued further that the biocompatibility concerns of the agency are unfounded and, therefore, that the statutory criteria for class II have not been met.

Section No.	Device	Class recommended by section	Class proposed by FDA
872.3310	Coating material for resin fillings	II	II
872.3550	Preformed plastic denture tooth	II	II
872.3690	Tooth shade resin material	II	II
872.3750	Bracket adhesive resin and tooth conditioner	II	II
872.3760	Denture relining, repairing, or rebasing resin	II	II
872.3765	Pit and fissure sealant and conditioner	II	II
872.3770	Temporary crown and bridge resin		II
872.3920	Root canal filling resin		II
872.5470	Orthodontic plastic bracket		II

FDA disagrees with these comments. FDA believes that the biocompatibility and performance concerns discussed in the proposed regulations warrant classifying these devices into class II. There are numerous materials that may be used in these devices that could have an adverse effect on patients. For example, there are studies that describe the carcinogenic potential of certain materials that may be used to fabricate dental resins (Refs. 1 and 2). Because of the potentially serious risks that may be presented by exposure to various materials used in these devices, the agency believes that, except for a root canal filling resin containing chloroform, performance standards are necessary to provide reasonable assurance of the safety and effectiveness of these devices.

The agency has been informed that certain root canal filling resins in commercial distribution may contain chloroform as an ingredient. FDA believes that the safety and effectiveness of a root canal filling resin containing chloroform has not been established because chloroform may be a carcinogen. In the Federal Register of June 29, 1976 (41 FR 26842), FDA published a final rule declaring that any human drug or cosmetic product containing chloroform that is introduced or delivered for introduction in interstate commerce will be subject to regulatory action.

The agency believes that root canal filling resin containing chloroform presents a potential unreasonable risk of illness or injury because of possible carcinogenicity. Consequently, FDA now believes that premarket approval is necessary for root canal filling resin containing chloroform. FDA believes that general controls and performance standards are insufficient to provide reasonable assurance of the safety and effectiveness of this device when it contains chloroform and that insufficient information exists to establish a standard to provide such assurance.

Accordingly, except for root canal filling resin containing chloroform, FDA believes that the proposed classifications of the devices above are correct and is classifying the devices into class II. FDA is classifying root canal filling resin into class II when chloroform is not used as an ingredient and is classifying this device into class III when it contains chloroform.

10. The only specific comments received on the proposed classifications of the devices listed below agreed with FDA's proposals to classify the devices into class II. The comments stated that implantation of these devices may have undesirable effects on patients if improper materials are used in the devices' composition.

Docket No.	Device
78N–2888	Titanium subperiosteal implant material.
78N–2889	Cobalt chrome molybdenum implant material.

FDA agrees with the comments. For the reasons provided in the proposed regulations, FDA is classifying these devices into class II (§ 872.3645).

11. Comments on the proposed classifications of the devices listed below argued that the devices should be classified into class I rather than class II as proposed. The comments suggested that if the identifications of these devices were limited to devices of the same composition as those are being marketed with demonstrated acceptable levels of safety and effectiveness, the general controls provided by class I would be sufficient to assure their safety and effectiveness. In that case, the comments reasoned, a manufacturer intending to market a new device of this type or a device of a different composition would be required to submit to FDA a premarket notification, and FDA could place that device into a

class other than class I if it determined that class I was not sufficient to assure its safety or effectiveness.

Docket No.	Device	Class recommended by section	Class proposed by FDA
78N-2844	Gold based alloy for clinical use	II	II
78N-2845	Precious metal alloy for clinical use	II	II
78N-2851	Precision attachment	I	II
78N-2852	Preformed bar	I	II
78N-2859	Preformed clasp	I	II
78N-2860	Preformed wire clasp	II	II
78N-2849	Preformed anchor	I	II
78N-2863	Preformed crown	I	II
78N-2864	Gold and stainless steel cusp	I	II
78N-2865	Preformed cusp	I	II
78N-2864	Preformed gold denture tooth	I	II
78N-2896	Retentive and splinting pin	I	II
78N-2904	Root canal post	I	II
78N-2910	Posterior artificial teeth with metal insert	I	II

The Panel had recommended that gold based alloy for clinical use and precious metal alloy for clinical use be placed in class II in order to prevent an adverse tissue reaction if the materials used in the devices are not biocompatible. FDA still agrees with the Panel's recommendations on these two devices and, therefore, is classifying them into class II as proposed.

With respect to the classification of the other devices listed above, FDA agrees with the comments recommending that the devices be classified into class I rather than class II. The agency believes that each of these devices has maintained an acceptable level of performance based on the compositional range of the materials now being used in the devices; i.e., austenitic alloys or alloys of 75 percent or greater content of gold and metals of the platinum group. Devices of such composition have been shown to be biocompatible, inert, sufficiently strong, and otherwise safe and effective when used in the mouth. Consequently, considering that FDA will learn of new compositions of material, through premarket notification under section 510(k) of the act (21 U.S.C. 360(k)), FDA agrees that the general controls of class I are sufficient to provide reasonable assurance of the safety and effectiveness of these devices and that establishment of a performance standard for these devices is unnecessary. As suggested by the comments, FDA is changing the identification of each of these devices to state that the device is composed of austenitic alloys or alloys containing 75 percent or greater gold and metals of the platinum group.

12. Comments on the proposed regulations on the devices listed below argued that, because a performance standard administered by FDA under the Radiation Control for Health and Safety Act (42 U.S.C. 263f) already exists for each of these devices, establishing any additional performance standards under the amendments would be overregulation. The comments argued that the existing standards to which these devices are required to conform should be the sole standards for these devices.

Section	Device	Class recommended by section	Class proposed by FDA
872.1800	Extraoral source X-ray system	II	II
872.1810	Intraoral source X-ray system	II	II
872.1830	Cephalometer	II	II
872.1840	Dental X-ray position indicating device	II	II
872.1850	Lead-lined position indicator	II	II

When the only risk to health presented by a radiation-emitting device is adequately controlled by a standard under the Radiation Control and Safety Act, no other standard is needed to assure the safety and effectiveness of a medical device, and FDA will classify the device into class I. However, the devices listed above present risks to health other than those controlled by an existing standard. For example, unintended exposure to x-rays resulting from lack of effectiveness due to faulty design of the device may not be covered by an existing standard but may need to be controlled by a performance standard under section 514 of the act (21 U.S.C. 360d) to assure a device's safety and effectiveness. Accordingly, FDA is classifying each of the devices listed above into class II as proposed.

13. Comments on the proposed regulations classifying the devices listed below argued that these devices are raw materials used in the fabrication of custom devices and, therefore, should be exempt from sections 514 and 515 of the act (21 U.S.C. 360d and 360e) under the custom device exemption in section 520(b) of the act (21 U.S.C. 360j(b)). The comments further stated that none of these devices is intended for use by a patient until it is tailored by a trained professional to meet the individual needs of the patient.

Section	Device
872.1730	Electrode gel for pulp tester.
872.3050	Amalgam alloy.
872.3060	Gold based alloy for clinical use.
872.3250	Calcium hydroxide cavity liner
872.3260	Cavity varnish.
872.3275	Dental cement.

Section	Device
872.3300	Hydrophilic resin coating for dentures.
872.3310	Coating material for resin fillings.
872.3590	Preformed plastic denture tooth.
872.3660	Impression material.
872.3700	Dental mercury.
872.3710	Base metal alloy.
872.3750	Bracket adhesive resin and tooth conditioner.
872.3760	Denture relining, repairing, or rebasing resin.
872.3765	Pit and fissure sealant and conditioner.
872.3850	Splint perche.
872.3920	Porcelain tooth.
872.5410	Orthodontic performed band.
872.6660	Porcelain powder for clinical use.
872.6880	Intraoral dental wax.

FDA disagrees with the comments. The devices listed above do not meet the requirements of the partial exemption for custom devices because (a) the devices need not necessarily deviate from an otherwise applicable performance standard or requirement prescribed by or under section 515 of the act, (b) the devices are generally available in finished form for purchase or for dispensing upon prescription, (c) the devices are offered for commercial distribution, and (d) the devices are generally available to or generally used by dentists. Thus, although these devices may be formed according to the needs of individual patients, the devices do not meet the requirements of section 520(b) of the act for an exemption from section 514 or 515.

14. Comments on the proposed regulations listed below argued that, in classifying these devices, both the Panel and FDA incorrectly used the criteria that were used by FDA's OTC Drug Review Panel in its review of these products when they were regarded as drugs. The comments argued that the criteria used for classifying devices should be different from those applied by the OTC Drug Review Panel. The comments also suggested that the devices be classified into class I, rather than class III as proposed, because of insufficient documentation that they present an actual risk to users.

Section	Device	Class recommended by section	Class proposed by FDA
872.3540	OTC denture cushion	III	III
872.3550	OTC denture pad	III	III
872.3560	OTC denture reliner	III	III
872.3570	OTC denture repair kit	III	III

FDA agrees in part and disagrees in part with the comments. FDA disagrees that the agency employed incorrect criteria when proposing to classify these devices. As stated in the proposals, the devices present a risk of illness or injury. Use of these devices may cause an improper vertical dimension of a denture which may result in increased biting forces and lead to bone loss through resorption (degeneration of the bone through gradual dissolution). The long-term irritation of oral tissue caused by an incorrect vertical dimension also could cause formation of carcinomas. FDA also disagees with the comments' assertion that FDA did not provide in the proposed regulations sufficient documentation of the health risks presented by these devices. FDA cited in the proposed regulations a summary report by the OTC Panel on Dentifrices and Dental Care Agents, May 22, 1978, showing the hazards presented by these devices (Ref. 6).

Section 872.3540; OTC denture cushion: During an open meeting of the Panel on March 12 and 13, 1979, a manufacturer presented the results of a study that showed that disposable OTC denture cushions made of wax-impregnated cotton cloth that the patient applies to the entire base of a denture before the patient inserts the denture into the mouth are safe and effective for short-term use (Ref. 7). The Panel believed that the data showed that this version of the OTC denture cushion is safe and effective; because a single layer of material is used to make the cushion, the disposable cushion is discarded after 1 day's use, and the device is intended for short-term use. Therefore, during that meeting, the Panel recommended that this version of the OTC denture cushion be classified into class I. Inadvertently, FDA did not reflect this portion of the Panel's recommendation in its proposed classifications of the OTC denture cushion and OTC denture pad. A summary of the Panel's recommendation is, however, in the administrative record for this rulemaking. FDA agrees with the recommendations of the Panel that the OTC denture cushion be classified into class I, provided that the device is made of wax-impregnated cotton cloth and is for the intended uses described above.

In the final rule, FDA has grouped the OTC denture cushion and the OTC denture pad into one generic type of device, the OTC denture cushion and pad (§ 872.3540).

Accordingly, in the final rule FDA is classifying into class I the OTC denture cushion and pad, if the device is made of wax-impregnated cotton cloth, if it is intended to be discarded after 1 day's use, and if it is intended for short-term use. FDA is classifying all other OTC denture cushions and pads, the OTC denture reliner, and the OTC denture repair kit into class III as proposed. FDA is classifying these devices into class III because these devices present potential unreasonable risks of illness or injury as described above and in the proposals, and because general controls or performance standards are insufficient to provide reasonable assurance of their safety and effectiveness.

15. Comments on the proposed regulations classifying the denture adhesives listed below said that these devices should not be identified by the names of the ingredients in them. The comments said that, by listing the specific ingredients or precentages of ingredients in the names of these devices and in their identifications, FDA is inhibiting formula improvements by subjecting denture adhesives containing different ingredients or different percentages of ingredients to extensive compliance requirements, such as submission of premarket notification and petitions for reclassification.

Docket No.	Device
78N-2866	Acacia and Karaya with sodium borate denture adhesive.
78N-2867	Carboxymethylcellulose sodium (40 to 100 percent) denture adhesive.
78N-2868	Carboxymethylcellulose sodium and cationic polyacrylamide polymer denture adhesive.
78N-2869	Carboxymethylcellulose sodium (32 percent) and ethylene oxide homopolymer (13 percent) denture adhesive.
78N-2870	Carboxymethylcellulose sodium (49 percent) and ethylene oxide homopolymer (21 percent) denture adhesive.
78N-2871	Karaya denture adhesive.
78N-2872	Karaya and ehylene oxide homopolymer denture adhesive.

Docket No.	Device
78N-2873	Karaya with sodium borate denture adhesive.
78N-2874	Polyacrylamide polymer (modified cationic) denture adhesive.
78N-2875	Polyvinylmethylether maleic acid calcium-sodium double salt denture adhesive.
78N-2876	Polyvinylmethylether maleic anhydride (PVM-MA), acid copolymer and carboxymethyl-cellulose sodium (NACMC) denture adhesive.
78N-2877	Polyvinylmethylether maleic acid calcium-sodium double salt and carboxymethyl-cellulose sodium denture adhesive.

FDA agrees in part and disagrees in part with the comments. FDA agrees that, for certain of the denture adhesives, it is unnecessary to identify the percentages of ingredients. Accordingly, in the final rule, the percentages of ingredients have been removed where possible. However, FDA believes that for certain denture adhesives, it is necessary to identify in the names of the devices and their identifications the ingredients and, for some, the percentages of the ingredients, for accurate identification of denture adhesives in commercial distibution when the device amendments were enacted. Manufacturers who intend to significantly change the formula of a commercially distributed denture adhesive are subject to a requirement of premarket notification (see § 872.3(b) of this rule).

16. Docket No. 78N–2866; Acacia and karaya with sodium borate denture adhesive; proposed class III—Docket No. 78N–2873; Karaya with sodium borate denture adhesive; proposed class III: One comment on the proposed regulations classifying these two devices argued that they have been used for a number of years with no evidence of adverse effects and recommended that the devices be classified into class I rather than class III as proposed.

FDA agrees that the devices have been used for years without reports of adverse effects. The Panel based its original recommendations, and FDA based its original proposed classifications of the two devices, on a report of an advisory committee of FDA's Bureau of Drugs (now the Center for Drugs and Biologics), the OTC Panel on Dentifrices and Dental Care Agents (Ref. 6). The report showed a lack of data concerning the safety and effectiveness of denture adhesives composed of acacia and karaya with sodium borate when the sodium borate concentration in the product ranged from 12 to 20 percent by weight. During a meeting of the Panel on March 12 and 13, 1979, another study was presented showing that a denture adhesive containing less than 12 percent by weight sodium borate is safe and effective when the device is used correctly (Ref. 3)., Following review of that presentation, the Panel recommended that the two devices be classified into class II instead of class III, because it believed that premarket approval of the devices was unnecessary. The Panel also believed that establishment of performance standards was necessary to control the level of sodium borate in the devices to ensure that this level does not exceed 12 percent by weight. Inadvertently, FDA did not incude the more recent recommendations of the Panel in the proposed classifications of the two devices. A summary of the Panel's recommendations is, however, in the administrative record for this rulemaking.

Following review of all of the information on the two devices now available, FDA is classifying into class I both the acacia and karaya with sodium borate denture adhesive and the karaya with sodium borate denture adhesive, when the level of sodium borate by weight is less than 12 percent. FDA now believes that the general controls of class I will provide reasonable assurance of the safety and effectiveness of the two devices when the level of sodium borate is less than 12 percent and that performance standards and premarket approval are unnecessary.

Because no data are available to establish the highest level of sodium borate in a denture adhesive that is safe, the agency believes that acacia and/or karaya denture adhesives with sodium borate content by weight of 12 percent or more should be classified into class III. These devices are purported or represented to be for a use (restoring dental function by affixing dentures to the gums) which is of substantial importance in preventing impairment of human health. Because long-term use of the devices may cause toxicity in the patient, the agency believes that the devices present a potential unreasonable risk of illness or injury. Premarket approval is necessary for the devices because general controls and performance standards are insufficient to provide reasonable assurance of their safety and effectiveness. Moreover, insufficient information exists to establish standards to provide such assurance. Accordingly, FDA is classifying the devices into class I when they contain less than 12 percent by weight sodium borate and into class III when they contain 12 percent or more by weight sodium borate.

17. Section 872.3640; Endosseous implant; proposed class III: One comment on the endosseous implant supported FDA's proposed classification of the device into class III, noting that the state-of-the-art is not sufficiently advanced to allow standards to be written that would provide reasonable assurance of the safety and effectiveness of the materials used in this implant.

FDA agrees that premarket approval is necessary to assure the safety and effectiveness of this device. FDA is classifying the device into class III as proposed.

18. Section 872.3660; Endodontic stabilizing splint; proposed class II: One comment on the proposed classfication of endodontic stabilizing splints argued that the device should be classified into class I because it has been used for many years with no reported problems and because the agency cited no adverse experience reports or complaint data to support classifying it into class II.

FDA disagrees with the comment. FDA believes that the risks to health identified in the proposed regulation for this device support classifying it into class II. The device is intended to be implanted into the root canal of a tooth and to extend beyond the apex of the tooth into the alveolar bone. Thus, the device comes into direct contact with a tooth, the periodontal membrane, and the bone and, therefore, may cause an adverse tissue reaction if it is not biocompatible. In addition, device breakage due to the use of faulty materials in the construction of the device could cause unnecessary trauma or loss of a tooth. Accordingly, FDA is classifying the endodontic stabilizing splint into class II as proposed.

19. Section 872.3920; Porcelain tooth; proposed class II—§ 872.6660; Porcelain powder for clinical use; proposed class II:

19a. Some comments on the proposed classifications of porcelain teeth and porcelain powder for clinical use (used to make procelain teeth) agreed that these devices should be classified into class II as proposed, because the amount of depleted uranium that is used in these devices to provide fluorescing characteristics should be controlled by a standard.

FDA agrees with the comments. During 1976, FDA collected samples and

tested porcelain teeth and porcelain powder for clinical use for levels of depleted uranium in the devices and levels of ionizing radiation emitting from them (Ref. 8). The agency found that U.S. manufacturers of these devices limit levels of depleted uranium in the devices to 300 parts per million, tye voluntary standard limit set by domestic manufacturers. Some foreign manufacturers of these devices, however, use levels of depleted uranium as high as 1,000 parts per million. Although there is no evidence that levels of depleted uranium of 300 parts per million, or less, are unsafe, FDA has suggested that manufacturers develop suitable substitute materials to provide fluorescing characteristics to replace depletion uranium. FDA believes that when these devices contain levels of depleted uranium greater than 300 parts per million, the devices present increased risks from ionizing radiation. Accordingly, FDA believes that performance standards are necessary to control the levels of depleted uranium in the devices and the levels of ionizing radiation emitted from them in order to provide reasonable assurance of their safety and effectiveness. FDA believes that the general controls of class I alone are insufficient to provide reasonable assurance of the safety and effectiveness of these devices.

19b. Some comments on the proposed classification of porcelain teeth stated that the device should be placed in class I instead of class II as proposed, because no legitimate risks to health justifying classification of the device into class II were identified in the proposed regulation. Other comments stated that there are no known risks to health from the device that can be regulated by a standard.

FDA disagrees with the comments. In the proposed regulations, FDA identified the risks to health presented by ionizing radiation emitted from radioactive material that may be present in the device. As stated above, FDA believes that these risks, can be regulated by a performance standard.

19c. Some comments on the proposed regulation classifying porcelain teeth also said that manufacturers have voluntarily limited the uranium content of the device to 300 parts per million and that, therefore, no mandatory standard is necessary.

FDA believes that a mandatory performance standard is needed to control the levels of ionizing radiation emitted by the devices. Accordingly, FDA is classifying porcelain teeth and porcelain powder for clinical use into class II as proposed

20. Section 872.4600; Intraoral ligature and wire lock; proposed class II: A comment on the proposed classification of the intraoral ligature and wire lock stated that the device should be placed in class I rather than class II as proposed, because the risk to health presented by the device, i.e., reopening of the bone fracture if the lock breaks, could be controlled adequately by the general controls applicable to class I devices.

FDA disagrees with the comment. In the proposed regulation, FDA identified the risks to health presented by the device as infection if the device cannot be sterilized properly, reopening of the fracture if the lock breaks, and adverse tissue reaction if the materials used in the device are not biocompatible. FDA believes that the general controls of class I are insufficient to control the design of the device to assure that it can be sterilized properly, to assure that it has sufficient strength, and to assure that the materials used in it are biocompatible. Because the device is an implant that is intended to be placed in the body for an indefinite period, it is critical that these aspects of the device be adequately controlled. Accordingly, FDA is classifying the device into class II as proposed.

21. Section 872.4730; Dental injecting needle; proposed class II: A comment on the proposed classification of this device stated that it should be placed in class I rather than class II as proposed because the risk to health presented by the device, i.e., the possibility of tissue damage if needles are not sharp or straight, is not sufficient to warrant classifying the device into class II.

FDA now believes that the dental injecting needle should be classified into class I. FDA proposed to classify the device into class II because of concerns about tissue trauma if the device is constructed of inferior materials or if the device has a defective point, and possible adverse tissue reactions if the materials used in the device are not biocompatible. FDA now believes that the risk to health of patients presented by dental injecting needles that may be made of inferior materials or have defective points are minimal, and that these risks would be controlled by manufacturers' adherence to the CGMP regulations. FDA believes it is unnecessary to establish performance standards for the device to control the risk of tissue trauma. FDA now believes that in 1980, when it proposed to classify the device, the agency assigned to the device a higher level of risk of bioincompatibility than was justified by the years of experience of dentist and patients with the device. Thus, FDA now believes that it is unnecessary to establish a performance standard for the dental injecting needle to control the risk of bioincompatibility, because FDA believes that the device presents only minimal risks and that these minimal risks would not be significantly reduced through establishing performance standards for the device due to the idiosyncratic nature of individual sensitivities. The labeling of a device that cause sensitivity reactions in some individual should be so labeled to be in compliance with the misbranding provisions (21 U.S.C. 352) of the general controls of the act. FDA now believes that the general controls of class I, particularly the controls of the CGMP regulation in Part 820, would provide reasonable assurance of the safety and effectiveness of the dental injecting needle. Accordingly, FDA is classifying the device into class I.

22. Section 872.4760; Bone plate; proposed class II: A comment on the proposed classification of this device suggested that the bone plate be classified into class I instead of class II as proposed because the risk to health presented by the device, i.e., reopening of a bone fracture due to faulty construction, cannot be controlled by a performance standard.

FDA disagrees with the comment. In the proposed regulation, FDA identified the risks to health presented by the device as infection if the device cannot be sterilized properly, bone damage if the device is constructed improperly, and adverse tissue reaction if the materials used in the device are not biocompatible. The agency also noted that the device is an implant because it is intended to be placed into the body for an indefinite period. FDA believes that the general controls of class I are insufficient to control the design of the device to assure that it can be sterilized properly, to assure that it has sufficient strength, to assure that it is constructed so as to avoid bone damage, and to assure that it is constructed of materials that are biocompatible. Accordingly, FDA is classifying the device into class II as proposed.

23. Section 872. 4840; Rotary scaler; proposed class II: A comment on the proposed regulation stated that the device should be placed in class I rather than class II as proposed because the risk to health presented by the device, i.e., the possibility of damage to tooth enamel or dental pulp caused by scouring action and heat, is insufficient to warrant classifying the device into class II. The comment added that no

standard can ensure the user's skill and judgment in using the device.

FDA disagrees with the comment. The device is intended to remove calculus deposits from teeth, using a combination of mechanical vibration, abrasive, action, and pressure, without causing damage to tooth enamel or dental pulp. Although the dentist or dental hygienist controls the pressure applied, the vibration and scouring action results from the design of the device. Therefore, FDA believes that a performance standard is necessary to control the design of the surfaces of the device that are intended to remove the calculus deposits from the teeth in order to ensure that the teeth are not damaged and that the device is effective. Accordingly, FDA is classifying the device into class II as proposed.

24. Section 872.4920; Dental electrosurgical unit and accessories; proposed class II: Two comments agreed with FDA's proposed classification of this device into class II. One of the comments suggested that the American National Standards Institute/American Dental Association Specification Number 44 be reviewed to determine its propriety for adoption as a performance standard for the device.

FDA agrees with the comments regarding classification of the electrosurgical unit and accessories. Accordinly, FDA is classifying the device into class II as proposed. The existence of a voluntary standard for a device is one of the factors FDA considers in setting its priorities for establishing a performance standard for a device classified into class II. See "B. FDA's Priorities for Establishing Performance Standards." When FDA initiates proceedings to establish a performance standard for the electrosurgical unit and accessories under section 514(c)(1) of the act, FDA will publish in the **Federal Register** a notice inviting any person to submit an existing standard or an offer to develop a standard for the device. If a person submits the voluntary standard above in response to such a notice accompanied by the information specified in section 514(c)(3) of the act, FDA would consider acceptance of such an existing standard as the performance standard, as provided in section 514(d)(1)(A) of the act.

25. Section 872.5500; Extraoral orthodontic headgear; proposed class II: A comment on the proposed regulation stated that extraoral orthodontic headgear should be classified into class I rather than class II as proposed, because the agency cited no adverse experience reports involving this device. The comments said the device has been used satisfactorily for many years.

FDA disagrees with the comment. The agency has received adverse experience reports showing that use of the extraoral orthodontic headgear can cause serious injuries in young children. The facebow, when pulled out of the molar tubes, can spring back into the mouth or face of the wearer. One patient suffered irreparable injury to both eyes when the patient's sister pulled the facebow and let go of it (Ref. 4). The agency believes that the risk of this type of injury would be reduced by a performance standard that includes the requirement that a disengaging mechanism for the headgear be incorporated in the design of the device. For this reason, and for the other reasons given in the proposed regulation, FDA is classifying the device into class II as proposed.

26. Section 872.6060; Airbrush; proposed class III: A comment on the proposed regulation stated that the airbrush is not intended for dental purposes and, therefore, should not be included in the group of dental devices being classified.

As stated in the preamble to the proposed general provisions (45 FR 85965) under the heading "Products That Have Both Medical and Nonmedical Uses," FDA will regulate a product as a medical device if it is intended for a medical purpose. FDA believes that the airbrush, which is intended for use in roughening the surfaces of dental restorations in order to detect uneven areas, is intended for a medical purpose. Accordingly, FDA is classifying the device into class III as proposed.

27. Section 872.6730; Endodontic dry heat sterilizer; proposed class III: A comment on the proposed regulation suggested that the device be classified into class II instead of class III as proposed, arguing that a performance standard would ensure that the device sterilizes instruments satisfactorily, i.e., that the heat generated is adequate and evenly distributed throughout the sterilizing chamber of the device.

FDA disagrees with the comment. The studies cited in the proposed regulation raise questions concerning the effectiveness of the endodontic dry heat sterilizer. The studies indicate that the device may not sterilize instruments satisfactorily, even when the device reaches and maintains the temperature it is intended to reach. Thus, FDA believes that insufficient information exists to determine that general controls or performance standards would provide reasonable assurance of the safety and effectiveness of the device. Accordingly, FDA is classifying the device into class III as proposed.

28. Section 872.6770; Cartridge syringe; proposed class II: One comment on the proposed regulation stated that the cartridge syringe should be classified into class I rather than class II as proposed because the agency identified no risks to health presented by the device that could not be controlled by the general controls applicable to class I devices.

FDA disagrees with the comment. The agency believes that a performance standard is necessary to ensure that cartridge syringes aspirate properly to prevent injection of drugs directly into the blood vessels of patients. Accordingly, FDA is classifying the device into class II as proposed

I. Exemptions for Class I Devices

29. FDA received many general comments on the proposed classification regulations requesting the agency to grant all exemptions recommended by the Panel. Other comments requested exemptions for specific class I devices only.

29a. Exemptions from CGMP regulations. In response to comments recommending that all class I devices be exempted from the CGMP regulations, FDA is granting certain exemptions for some class I dental devices.

FDA is exempting manufacturers of 19 of the 57 class I dental devices from the CGMP regulations with respect to their manufacture of these devices, with the exception of the requirements specified in 21 CFR 820.180 and 820.198 relating to records and complaint files. As stated in the proposed regulations, the agency has determined that exemption of manufacturers of any device from §§ 820.180 and 820.198 of the CGMP regulations would not be in the public interest. Moreover, compliance with these sections is not unduly burdensome for device manufacturers. The complaint file requirements of § 820.198 ensure that device manufacturers have adequate systems for complaint investigation and followup. The general requirements concerning records in § 820.180 ensure that FDA has access to complaint files, can investigate device-related injury reports and complaints about product defects, can determine whether the manufacturer's corrective actions are adequate, and can determine whether an exemption from other sections of the CGMP regulations, if one has been granted, is still appropriate. Also, for the reasons given in the proposed regulations, these exemptions do not apply to devices that are labeled or otherwise represented as sterile.

FDA has prepared guidelines on the procedures that should be followed by persons who wish to submit petitions for exemption or variance from the device CGMP regulations. The agency announced the availability of these guidelines in a notice published in the Federal Register of January 18, 1980 (45 FR 3671). The guidelines assist petitioners in complying with the provisions of section 520(f)(2) of the act (21 U.S.C. 360j(f)(2)). Section 513(d)(2)(A) of the act allows FDA to approve an exemption for a device from a requirement if the agency determines that compliance with such requirement is not required to assure that the device will be safe and effective and otherwise in compliance with the act.

29b. Exemptions from requirement of premarket notification. Many comments requested that exemptions from premarket notification procedures in section 510(k) of the act and Subpart E of 21 CFR Part 807 be granted for all class I dental devices.

In this final rule, FDA is granting an exemption from the requirement of premarket notification only for the pantograph (§ 872.3730), one of 12 dental devices for which such exemptions were proposed. The remaining 11 devices have been grouped with various other dental devices for which FDA did not propose such exemptions. Elsewhere in this issue of the Federal Register, FDA is proposing to grant exemptions from premarket notification for 23 class I dental devices, including the 11 devices for which FDA proposed an exemption for premarket notification.

J. Classification Regulations Published to Date

The following table shows the current structure of the advisory committees involved with the classification of medical devices and a list of all proposed and final classification regulations published to date:

Panel name	Publication date in Federal Register
Circulatory System Devices Panel.	March 8, 1979, 44 FR 13284–13434 (proposals); February 5, 1980, 45 FR 7904–7971 (final regulations).
Clinical Chemistry and Clinical Toxicology Devices Panel.	February 2, 1982, 47 FR 4902–4929 (proposals).
Hematology and Pathology Devices Panel.	September 11, 1979, 44 FR 52956–53063 (proposals); September 12, 1980, 45 FR 60576–60651 (final regulations).
General Hospital and Personal Use Devices Panel.	August 24, 1979, 44 FR 49944–49954 (proposals); October 21, 1980, 45 FR 69678–69737 (final regulations).
Gastroenterology-Urology Devices Panel.	January 23, 1981, 46 FR 7562–7641 (proposals); November 23, 1983, 48 FR 53012–53029 (final regulations).
Immunology Devices Panel.	April 22, 1980, 45 FR 27204–27350 (proposals); November 9, 1982, 47 FR 50814–50840 (final regulations).
Microbiology Devices Panel.	Do.
Obstetrics-Gynecology Devices Panel.	April 3, 1978, 44 FR 19904–19971 (proposals); February 26, 1980, 45 FR 12692–12710 (final regulations).
Radiologic Devices Panel.	January 29, 1982, 47 FR 4406–4451 (proposals).
Ophthalmic Devices Panel.	January 26, 1972, 47 FR 3684–3749 (proposals).
Ear, Nose, and Throat Devices Panel.	January 22, 1982, 47 FR 3286–3325 (proposals); November 6, 1986, 51 FR 40378 (final regulations).
Dental Devices Panel.	December 30, 1980, 45 FR 85962–86168 (proposals); August 12, 1987 (final regulations).
Anesthesiology and Respiratory Therapy Devices Panel.	November 2, 1979, 44 FR 63252–63426 (proposals); July 16, 1982, 47 FR 31130–31150 (final regulations).
Neurological Devices Panel.	November 23, 1978, 43 FR 54640–55732 (proposals); September 4, 1979, 44 FR 51726–51778 (final regulations).
Orthopedic and Rehabilitation Devices Panel (Physical Medicine Devices).	August 28, 1979, 44 FR 50459–50537 (proposals); November 23, 1983, 48 FR 53032–53054 (final regulations).
Orthopedic and Rehabilitation Devices Panel (Orthopedic Devices).	July 2, 1982, 47 FR 29052–29140 (proposals).
General and Plastic Surgery Devices Panel.	January 19, 1982, 47 FR 2610–2663 (proposals).

K. Codification of Two Devices not Subjects of Dental Proposed Regulations

Statutory Classification of Tricalcium Phosphate Granules for Dental Bone Repair. The amendments include transitional provisions applicable to devices intended for human use that were considered to be new drugs before enactment of the amendments (see section 520(l)(1)(E) of the act (21 U.S.C. 360j(l)(1)(E)). The transitional provisions assure that devices formerly considered as new drugs continue to be subject to appropriate regulatory controls as the amendments are being implemented. Thus, a device previously considered a new drug is classified into class III unless the agency in response to a petition has reclassified it into class I or class II. FDA is including in this final rule (§ 872.3930) a section codifying and statutory classification into class III of a commercially distributed, transitional dental device, tricalcium phosphate granules for dental bone repair. A previous Federal Register notice published on December 16, 1977 (42 FR 63474) described the regulatory status of this product.

Reclassification of the Caries Detection Device. A postamendments device that is not substantially equivalent to devices marketed before the amendments is classified by statute into class III by section 513(f)(1) of the act (21 U.S.C. 360c(f)(1)). In response to a petition under section 513(f)(2) of the act and 21 CFR Part 860 of the regulations, FDA may reclassify such a new device into class I or class II.

On September 27, 1979, FDA received a petition (Docket No. 80P-0084) requesting the agency to reclassify the caries detection device from class III to class II. In the Federal Register of May 2, 1980 (45 FR 29411), FDA published the recommendation of the Panel that the device be reclassified from class III to class II. The agency provided a period of 30 days for interested persons to submit written comments on the recommendation. No comments were received. FDA agreed with the Panel's recommendation that the device be reclassified. In accordance with section 513(f)(2)(C)(i) of the act and 21 CFR 860.134(b)(6) of the regulations, FDA approved the petition and, by order in the form of a letter to the petitioner dated November 16, 1982, reclassified the device from class III to class II.

FDA is codifying the reclassification of the caries detection device reclassified into class II in § 872.1740. The order and the regulation apply to any detection device which is substantially equivalent to the reclassified device. FDA determines substantial equivalence of new devices by reviewing premarket notification submissions under section 510(k) of the act and Subpart E of 21 CFR Part 807.

L. Minor Changes or Clarifications

Occasionally the agency has made minor changes in the name of a generic type of device or its identification to clarify the final regulation. The agency also is adding paragraphs in § 872.1 *Scope* to explain (1) that references in Part 872 to other regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21, unless otherwise noted; and (2) that a device that has two or more types of uses (e.g., used both as a diagnostic device and as a therapeutic device) is listed in one subpart only. The agency also is adding new § 872.3 *Effective dates of requirements for premarket approval* to explain the various effective dates for premarket approval requirements for devices classified into class III and explain why FDA also is adding new paragraph (c) in the classification regulation for each device classified into class III to declare, where applicable, the effective date for premarket approval requirements for the device.

M. References

The following information has been placed in the Dockets Management

Branch (HFA-306), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. Athas, W. F., et. al., "In Vitro Studies on the Carcinogenic Potential of Orthodontic Bonding Material," *Ecotoxicology and Environmental Safety*, 3:401–410, 1979.

2. Hine, C. H., et. al., "An Investigation of the Oncogenic Activity of Two Representative Epoxy Resins," *Cancer Research*, 18:20–26, 1958.

3. Cohen, Albert, "The Determinations of Plasma and Urinary Excretion Levels of Boron in Volunteers Using Rigident® Denture Retainer on a Twice Daily Basis for Sixty (60) Days," July 18, 1979 (unpublished). Presentation made to the Dental Devices Advisory Panel during a meeting of March 12 and 13, 1979.

4. Summary of adverse experiences with extraoral orthodontic headgear reported to FDA.

5. Summary of adverse experiences with liquid-filled teething rings and other data reported to FDA.

6. Summary Report on Denture Aids and Plaque Disclosants Transferred to the Bureau of Medical Devices," by the OTC Panel on Dentifrices and Dental Care Agents, 1978.

Presentation to the FDA Dental Devices Advisory Panel by the WJK Corporation on EZO Denture Cushions, March 12, 1979.

8. Thompson, D. L., "Uranium in Dental Porcelain," U.S. Dept HEW, FDA, Bureau of Radiological Health, Rockville, MD 20852, HEW Publication (FDA) 76-8061, September 1976.

9. Thompson, J., and J. A. Russell, "Dermatitis Due to Mercury Following Amalgam Dental Restorations," *British Journal of Dermatology*, 82:292, 1970.

10. Shovelton, D. S., "Silver Amalgam and Mercury Allergy," *Oral Surgery, Oral Medicine, and Oral Pathology*, January 1968.

11. Juhlin, L., and S. Ohman, "Allergic Reactions to Mercury in Red Tattoos and in Mucosa Adjacent to Amalgam Fillings," *Acta Dermato Venereologica*, 48:103–105, 1968.

12. Matrix prepared by FDA showing its decisions on the 185 dental device classification proposed regulations.

N. Environmental Impact

The agency has determined under 21 CFR 25.24(e)(2) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

O. Economic Impact

FDA has carefully analyzed the economic effects of this final rule and has determined that the rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act. In accordance with section 3(g)(1) of the Executive Order 12291, the impact of this final rule has been carefully analyzed, and it has been determined that the final rule does not constitute a major rule as defined in section 1(b) of the Executive Order. Rules classifying devices into class I generally maintain the status quo: These devices are now subject only to the general controls provisions of the act (21 U.S.C. 351, 352, 360, 360f, 360h, 360i, and 360j) and, under the final rule, remain subject only to such controls either in their entirety or with certain exemptions. Devices classified into class II also remain subject only to the general controls provisions of the act unless and until an applicable performance standard is established. Similarly, devices classified into class III remain subject only to the general controls provisions of the act until an additional regulation is promulgated pursuant to section 515(b) of the act (21 U.S.C. 360e(b)) requiring that such devices have in effect approved applications for premarket approval. In accordance with section 501(f)(2)(B) of the act (21 U.S.C. 351(f)(2)(B)), devices classified by regulation into class III may remain in commercial distribution without an approved premarket approval application for 30 months following the effective date of classification of the device into class III, or for 90 days following the promulgation of a regulation under section 515(b) of the act (21 U.S.C. 360e(b)), whichever occurs later. In sum, device classification rules do not have a significant impact and are not major rules.

The requirement for a regulatory flexibility analysis under the Regulatory Flexibility Act does not apply to this final rule because the proposed rule was issued before January 1, 1981, and, therefore, is exempt. In any event, the rule would not have a significant economic effect on a substantial number of small entities.

List of Subjects in 21 CFR Part 872

Dental devices, medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Chapter I of Title 21 of the Code of Federal Regulations is amended by adding new Part 872, to read as follows:

PART 872—DENTAL DEVICES

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872.3360 Preformed cusp.
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872.3420 Carboxymethylcellulose sodium and cationic polyacrylamide polymer denture adhesive.
872.3450 Ethylene oxide homopolymer and/or karaya denture adhesive.
872.3460 Polyacrylamide polymer (modified cationic) denture adhesive.
872.3490 Carboxymethylcellulose sodium and/or polyvinylmethylether maleic acid calcium-sodium double salt denture adhesive.
872.3500 Polyvinylmethylether maleic anhydride (PVM–MA), acid copolymer, and carboxymethylcellulose sodium (NACMC) denture adhesive.
872.3520 OTC denture cleanser.
872.3540 OTC denture cushion or pad.
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872.3590 Preformed plastic denture tooth.
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872.3660 Impression material.
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Sec.
872.3730 Pantograph.
872.3740 Retentive and splinting pin.
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872.3760 Denture relining, repairing, or rebasing resin.
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872.3770 Temporary crown and bridge resin.
872.3810 Root canal post.
872.3820 Root canal filling resin.
872.3830 Endodontic paper point.
872.3840 Endodontic silver point.
872.3850 Gutta percha.
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872.3900 Posterior artificial tooth with a metal insert.
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Subpart E—Surgical Devices

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872.6100 Anesthetic warmer.
872.6140 Articulation paper.
872.6200 Base plate shellac.
872.6290 Prophylaxis cup.
872.6300 Rubber dam and accessories.
872.6350 Ultraviolet detector.
872.6390 Dental floss.
872.6570 Impression tube.
872.6650 Massaging pick or tip for oral hygiene.
872.6660 Porcelain powder for clinical use.
872.6670 Silicate protector.
872.6730 Endodontic dry heat sterilizer.
872.6770 Cartridge syringe.
872.6855 Manual toothbrush.
872.6870 Disposable fluoride tray.
872.6880 Preformed impression tray.
872.6890 Intraoral dental wax.

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794–795 as amended, 90 Stat. 540–546, 552–559, 565–574, 576–577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

Subpart A—General Provisions

§ 872.1 Scope.

(a) This part sets forth the classification of dental devices intended for human use that are in commercial distribution.

(b) The identification of a device in a regulation in this part is not a precise description of every device that is, or will be, subject to the regulation. A manufacturer who submits a premarket notification submission for a device under Part 807 cannot show merely that the device is accurately described by the section title and identification provisions of a regulation in this part, but shall state why the device is substantially equivalent to other devices, as required by § 807.87.

(c) To avoid duplicative listings, a dental device that has two or more types of uses (e.g., used both as a diagnostic device and as a therapeutic device) is listed in one subpart only.

(d) References in this part to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21 unless otherwise noted.

§ 872.3 Effective dates of requirement for premarket approval.

A device included in this part that is classified into class III (premarket approval) shall not be commercially distributed after the date shown in the regulation classifying the device unless the manufacturer has an approval under section 515 of the act (unless an exemption has been granted under section 520(g)(2) of the act). An approval under section 515 of the act consists of FDA's issuance of an order approving an application for premarket approval (PMA) for the device or declaring completed a product development protocol (PDP) for the device.

(a) Before FDA requires that a device commercially distributed before the enactment date of the amendments, or a device that has been found substantially equivalent to such a device, has an approval under section 515 of the act, FDA must promulgate a regulation under section 515(b) of the act requiring such approval, except as provided in paragraphs (b) and (c) of this section. Such a regulation under section 515(b) of the act shall not be effective during the grace period ending on the 90th day after its promulgation or on the last day of the 30th full calendar month after the regulation that classifies the device into class III is effective, whichever is later. See section 501(f)(2)(B) of the act. Accordingly, unless an effective date of the requirement for premarket approval is shown in the regulation for a device classified into class III in this part, the device may be commercially distributed without FDA's issuance of an order approving a PMA or declaring completed a PDP for the device. If FDA promulgates a regulation under section 515(b) of the act requiring premarket approval for a device, section 501(f)(1)(A) of the act applies to the device.

(b) Any new, not substantially equivalent, device introduced into commercial distribution on or after May 28, 1976, including a device formerly marketed that has been substantially altered, is classified by statute (section 513(f) of the act) into class III without any grace period and FDA must have issued an order approving a PMA or declaring completed a PDP for the device before the device is commercially distributed unless it is reclassified. If FDA knows that a device being commercially distributed may be a "new" device as defined in this section because of any new intended use or other reasons, FDA may codify the statutory classification of the device into class III for such new use. Accordingly, the regulation for such a class III device states that as of the enactment date of the amendments, May 28, 1976, the device must have an approval under section 515 of the act before commercial distribution.

(c) A device identified in a regulation in this part that is classified into class III and that is subject to the transitional provisions of section 520(l) of the act is automatically classified by statute into class III and must have an approval under section 515 of the act before being commercially distributed. Accordingly, the regulation for such a class III transitional device states that as of the enactment date of the amendments, May 28, 1976, the device must have an approval under section 515 of the act before commercial distribution.

Subpart B—Diagnostic Devices

§ 872.1500 Gingival fluid measurer.

(a) *Identification.* A gingival fluid measurer is a gauge device intended to measure the amount of fluid in the gingival sulcus (depression between the tooth and gums) to determine if there is a gingivitis condition.

(b) *Classification.* Class I.

§ 872.1720 Pulp tester.

(a) *Identification.* A pulp tester is an AC or battery powered device intended

to evaluate the pulpal vitality of teeth by employing high frequency current transmitted by an electrode to stimulate the nerve tissue in the dental pulp.

(b) *Classification.* Class II.

§ 872.1730 Electrode gel for pulp testers.

(a) *Identification.* An electrode gel for pulp testers is a device intended to be applied to the surface of a tooth before use of a pulp tester to aid conduction of electrical current

(b) *Classification.* Class I.

§ 872.1740 Caries detection device.

(a) *Identification.* The caries detection device is a device intended to show the existence of decay in a patient's tooth by use of electrical current.

(b) *Classification.* Class II.

§ 872.1800 Extraoral source X-ray system.

(a) *Identification.* An extraoral source X-ray system is an AC-powered device that produces X-rays and is intended for dental radiographic examination and diagnosis of diseases of the teeth, jaw, and oral structures. The X-ray source (a tube) is located outside the mouth. This generic type of device may include patient and equipment supports and component parts.

(b) *Classification.* Class II.

§ 872.1810 Intraoral source X-ray system.

(a) *Identification.* An intraoral source X-ray system is an electrically powered device that produces X-rays and is intended for dental radiographic examination and diagnosis of diseases of the teeth, jaw, and oral structures. The X-ray source (a tube) is located inside the mouth. This generic type of device may include patient and equipment supports and component parts.

(b) *Classification.* Class II.

§ 872.1820 Dental X-ray exposure alignment device.

(a) *Identification.* A dental X-ray exposure alignment device is a device intended to position X-ray film and to align the examination site with the X-ray beam.

(b) *Classification.* Class I.

§ 872.1830 Cephalometer.

(a) *Identification.* A cephalometer is a device used in dentistry during X-ray procedures. The device is intended to place and to hold a patient's head in a standard position during dental X-rays.

(b) *Classification.* Class II.

§ 872.1840 Dental X-ray position indicating device.

(a) *Identification.* A dental X-ray position indicating device is a device, such as a collimator, cone, or aperture, that is used in dental radiographic examination. The device is intended to align the examination site with the X-ray beam and to restrict the dimensions of the dental X-ray field by limiting the size of the primary X-ray beam.

(b) *Classification.* Class II.

§ 872.1850 Lead-lined position indicator.

(a) *Identification.* A lead-lined position indicator is a cone-shaped device lined with lead that is attached to a dental X-ray tube and intended to aid in positioning the tube, to prevent the misfocusing of the X-rays by absorbing divergent radiation, and to prevent leakage of radiation.

(b) *Classification.* Class II.

§ 872.1905 Dental X-ray film holder.

(a) *Identification.* A dental X-ray film holder is a device intended to position and to hold X-ray film inside the mouth.

(b) *Classification.* Class I. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198 with respect to complaint files.

Subpart C—[Reserved]

Subpart D—Prosthetic Devices

§ 872.3050 Amalgam alloy.

(a) *Identification.* An amalgam alloy is a device that consists of a metallic substance intended to be mixed with mercury to form filling material for treatment of dental caries.

(b) *Classification.* Class II.

§ 872.3060 Gold-based alloys and precious metal alloys for clinical use.

(a) *Identification.* Gold-based alloys and precious metal alloys for clinical use are mixtures of metals, the major components of which are gold, silver, or palladium. They also may contain a small quantity of copper or platinum. The device is intended to fabricate dental appliances, such as crowns and bridges, for patients.

(b) *Classification.* Class II.

§ 872.3080 Mercury and alloy dispenser.

(a) *Identification.* A mercury and alloy dispenser is a device with a spring-activated valve intended to measure and dispense into a mixing capsule a predetermined amount of dental mercury in droplet form and a premeasured amount of alloy pellets.

(b) *Classification.* Class I.

§ 872.3110 Dental Amalgam capsule.

(a) *Identification.* A dental amalgam capsule is a container device in which silver alloy is intended to be mixed with mercury to form dental amalgam.

(b) *Classification.* Class I.

§ 872.3130 Preformed anchor.

(a) *Identification.* A preformed anchor is a device made of austenitic alloys or alloys containing 75 percent or greater gold or metals of the platinum group intended to be incorporated into a dental appliance, such as a denture, to help stabilize the appliance in the patient's mouth.

(b) *Classification.* Class I.

§ 872.3140 Resin applicator.

(a) *Identification.* A resin applicator is a brushlike device intended for use in spreading dental resin on a tooth during application of tooth shade material.

(b) *Classification.* Class I. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 872.3150 Articulator.

(a) *Identification.* An articulator is a mechanical device intended to simulate movements of a patient's upper and lower jaws. Plaster casts of the patient's teeth and gums are placed in the device to reproduce the occlusion (bite) and articulation of the patient's jaws. An articulator is intended to fit dentures or provide orthodontic treatment.

(b) *Classification.* Class I. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 872.3165 Precision attachment.

(a) *Identification.* A precision attachment or preformed bar is a device made of austenitic alloys or alloys containing 75 percent or greater gold and metals of the platinum group intended for use in prosthetic dentistry in conjunction with removable partial dentures. Various forms of the device are intended to connect a lower partial denture with another lower partial denture, to connect an upper partial denture with another upper partial denture, to connect either an upper or lower partial denture to a tooth or a

crown, or to connect a fixed bridge to a partial denture.

(b) *Classification.* Class I.

§ 872.3200 Resin tooth bonding agent.

(a) *Identification.* A resin tooth bonding agent is a device material, such as methylmethacrylate, intended to be painted on the interior of a prepared cavity of a tooth to improve retention of a restoration, such as a filling.

(b) *Classification.* Class II.

§ 872.3220 Facebow.

(a) *Identification.* A facebow is a device intended for use in denture fabrication to determine the spatial relationship between the upper and lower jaws. This determination is intended for use in placing denture casts accurately into an articulator (§ 872.3150) and thereby aiding correct placement of artificial teeth into a denture base.

(b) *Classification.* Class I. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 872.3240 Dental bur.

(a) *Identification.* A dental bur is a rotary-cutting device made from carbon steel or tungsten carbide intended to cut hard structures in the mouth, such as teeth or bone. It is also intended to cut hard metals, plastics, porcelains, and similar materials intended for use in the fabrication of dental devices.

(b) *Classification.* Class I.

§ 872.3250 Calcium hydroxide cavity liner.

(a) *Identification.* A calcium hydroxide cavity liner is a device material intended to be applied to the interior of a prepared cavity before insertion of restorative material, such as amalgam, to protect the pulp of a tooth.

(b) *Classification.* Class II.

§ 872.3260 Cavity varnish.

(a) *Identification.* Cavity varnish is a device that consists of a compound intended to coat a prepared cavity of a tooth before insertion of restorative materials. The device is intended to prevent penetration of restorative materials, such as amalgam, into the dentinal tissue.

(b) *Classification.* Class II.

§ 872.3275 Dental cement.

(a) *Zinc oxide-eugenol*—(1) *Identification.* Zinc oxide-eugenol is a device composed of zinc oxide-eugenol intended to serve as a temporary tooth filling or as a base cement to affix a temporary tooth filling, to affix dental devices such as crowns or bridges, or to be applied to a tooth to protect the tooth pulp.

(2) *Classification.* Class I.

(b) *Dental cement other than zinc oxide-eugenol*—(1) *Identification.* Dental cement other than zinc oxide-eugenol is a device composed of various materials other than zinc oxide-eugenol intended to serve as a temporary tooth filling or as a base cement to affix a temporary tooth filling, to affix dental devices such as crowns or bridges, or to be applied to a tooth to protect the tooth pulp.

(2) *Classification.* Class II.

§ 872.3285 Preformed clasp.

(a) *Identification.* A preformed clasp or a preformed wire clasp is a prefabricated device made of austenitic alloys or alloys containing 75 percent or greater gold and metals of the platinum group intended to be incorporated into a dental appliance, such as a partial denture, to help stabilize the appliance in the patient's mouth by fastening the appliance to an adjacent tooth.

(b) *Classification.* Class I.

§ 872.3300 Hydrophilic resin coating for dentures.

(a) *Identification.* A hydrophilic resin coating for dentures is a device that consists of a water-retaining polymer that is intended to be applied to the base of a denture before the denture is inserted into the patient's mouth to improve denture retention and comfort.

(b) *Classification.* Class II.

§ 872.3310 Coating material for resin fillings.

(a) *Identification.* A coating material for resin fillings is a device intended to be applied to the surface of a restorative resin dental filling to attain a smooth, glaze-like finish on the surface of the filling.

(b) *Classification.* Class II.

§ 872.3330 Preformed crown.

(a) *Identification.* A preformed crown is a prefabricated device made of plastic or austenitic alloys or alloys containing 75 percent or greater gold and metals of the platinum group intended to be affixed temporarily to a tooth after removal of, or breakage of, the natural crown (that portion of the tooth that normally protrudes above the gums). It is intended for use as a functional restoration until a permanent crown is constructed. The device also may be intended for use as a functional restoration for a badly decayed deciduous (baby) tooth until the adult tooth erupts.

(b) *Classification.* Class I.

§ 872.3350 Gold or stainless steel cusp.

(a) *Identification.* A gold or stainless steel cusp is a prefabricated device made of austenitic alloys or alloys containing 75 percent or greater gold and metals of the platinum group or stainless steel intended to provide a permanent cusp (a projection on the chewing surface of a tooth) to achieve occlusal harmony (a proper bite) between the teeth and a removable denture.

(b) *Classification.* Class I.

§ 872.3360 Preformed cusp.

(a) *Identification.* A performed cusp is a prefabricated device made of plastic or austenitic alloys or alloys containing 75 percent or greater gold and metals of the platinum group intended to be used as a temporary cusp (a projection on the chewing surface of a tooth) to achieve occlusal harmony (a proper bite) before permanent restoration of a tooth.

(b) *Classification.* Class I.

§ 872.3400 Karaya and sodium borate with or without acacia denture adhesive.

(a) *Identification.* A karaya and sodium borate with or without acacia denture adhesive is a device composed of karaya and sodium borate with or without acacia intended to be applied to the base of a denture before the denture is inserted into patient's mouth to improve denture retention and comfort.

(b) *Classification.* (1) Class I if the device contains less than 12 percent by weight of sodium borate.

(2) Class III if the device contains 12 percent or more by weight of sodium borate.

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval of the device described in paragraph (b)(2). See § 872.3.

§ 872.3410 Ethylene oxide homopolymer and/or carboxymethylcellulose sodium denture adhesive.

(a) *Identification.* An ethylene oxide homopolymer and/or carboxymethylcellulose sodium denture adhesive is a device containing ethylene oxide homopolymer and/or carboxymethylcellulose sodium intended to be applied to the base of a denture before the denture is inserted in a patient's mouth to improve denture retention and comfort.

(b) *Classification.* Class I.

§ 872.3420 Carboxymethylcellulose sodium and cationic polyacrylamide polymer denture adhesive.

(a) *Identification.* A carboxymethylcellulose sodium and cationic polyacrylamide polymer denture adhesive is a device composed of carboxymethylcellulose sodium and cationic polyacrylamide polymer intended to be applied to the base of a denture before the denture is inserted in a patient's mouth to improve denture retention and comfort.

(b) *Classification.* Class III.

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 872.3.

§ 872.3450 Ethylene oxide homopolymer and/or karaya denture adhesive.

(a) *Identification.* Ethylene oxide homopolymer and/or karaya denture adhesive is a device composed of ethylene oxide homopolymer and/or karaya intended to be applied to the base of a denture before the denture is inserted in a patient's mouth to improve denture retention and comfort.

(b) *Classification.* Class I.

§ 872.3460 Polyacrylamide polymer (modified cationic) denture adhesive.

(a) *Identification.* A polyacrylamide polymer (modified cationic) denture adhesive is a device composed of polyacrylamide polymer (modified cationic) intended to be applied to the base of a denture before the denture is inserted in a patient's mouth to improve denture retention and comfort.

(b) *Classification.* Class III.

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 872.3.

§ 872.3480 Carboxymethylcellulose sodium and/or polyvinylmethylether maleic acid calcium-sodium double salt denture adhesive.

(a) *Identification.* A carboxymethylcellulose sodium and/or polyvinylmethylether maleic acid calcium-sodium double salt denture adhesive is a device composed of carboxymethylcellulose sodium and/or polyvinylmethylether maleic acid calcium-sodium double salt intended to be applied to the base of a denture before the denture is inserted in a patient's mouth to improve denture retention and comfort.

(b) *Classification.* Class I.

§ 872.3500 Polyvinylmethylether maleic anhydride (PVM–MA), acid copolymer, and carboxymethylcellulose sodium (NACMC) denture adhesive.

(a) *Identification.* Polyvinylmethylether maleic anhydride (PVM–MA), acid copolymer, and carboxymethylcellulose sodium (NACMC) denture adhesive is a device composed of polyvinylmethylether maleic anhydride, acid copolymer, and carboxymethylcellulose sodium intended to be applied to the base of a denture before the denture is inserted in a patient's mouth to improve denture retention and comfort.

(b) *Classification.* Class III.

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 872.3.

§ 872.3520 OTC denture cleanser.

(a) *Identification.* An OTC denture cleanser is a device that consists of material in the form of a powder, tablet, or paste that is intended to remove debris from removable prosthetic dental appliances, such as bridges or dentures. The dental appliance is removed from the patient's mouth when the appliance is cleaned.

(b) *Classification.* Class I.

§ 872.3540 OTC denture cushion or pad.

(a) *Identification.* An OTC denture cushion or pad is a prefabricated or noncustom made disposable device that is intended to improve the fit of a loose or uncomfortable denture, and may be available for purchase over-the-counter.

(b) *Classification.* (1) Class I if the OTC denture cushion or pad is made of wax-impregnated cotton cloth that the patient applies to the base or inner surface of a denture before inserting the denture into the mouth. The device is intended to be discarded following 1 day's use.

(2) Class III if the OTC denture cushion or pad is made of a material other than wax-impregnated cotton cloth or if the intended use of the device differs from that described in paragraph (b) of this section.

(c) *Data PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval of the device described in paragraph (b)(2). See § 872.3.

§ 872.3560 OTC denture reliner.

(a) *Identification.* An OTC denture reliner is a device consisting of a material such as plastic resin that is intended to be applied as a permanent coating or lining on the base or tissue-contacting surface of a denture. The device is intended to replace a worn denture lining and may be available for purchase over the counter.

(b) *Classification.* Class III.

(c) *Data PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 872.3.

§ 872.3570 OTC denture repair kit.

(a) *Identification.* An OTC denture repair kit is a device consisting of a material, such as a resin monomer system of powder and liquid glues, that is intended to be applied permanently to a denture to mend cracks or breaks. The device may be available for purchase over-the counter.

(b) *Classification.* Class III.

(c) *Data PMA or notice of completion of PDP is required.* No effective date has been established of the requirement for premarket approval. See § 872.3.

§ 872.3580 Preformed gold denture tooth.

(a) *Identification.* A preformed gold denture tooth is a device composed of austenitic alloys or alloys containing 75 percent or greater gold and metals of the platinum group intended for use as a tooth or a portion of a tooth in a fixed or removable partial denture.

(b) *Classification.* Class I.

§ 872.3590 Preformed plastic denture tooth.

(a) *Identification.* A preformed plastic denture tooth is a prefabricated device composed of materials such as methyl methacrylate, that is intended for use as a tooth in a denture.

(b) *Classification.* Class II.

§ 872.3600 Partially fabricated denture kit.

(a) *Identification.* A partially fabricated denture kit is a device composed of connected preformed teeth that is intended for use in construction of a denture. A denture base is constructed using the patient's mouth as a mold, by partially polymerizing the resin denture base materials while the materials are in contact with the oral tissues. After the denture base is constructed, the connected preformed teeth are chemically bonded to the base.

(b) *Classification.* Class III.

(c) *Data PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 872.3.

§ 872.3640 Endosseous implant.

(a) *Identification.* An endosseous implant is a device made of a material such as titanium intended to be surgically placed in the bone of the upper or lower jaw arches to provide support for prosthetic devices, such as

artificial teeth, and to restore the patient's chewing function.

(b) *Classification.* Class III.

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 872.3.

§ 872.3645 Subperiosteal implant material.

(a) *Identification.* Subperiosteal implant material is a device composed of titanium or cobalt chrome molybdenum intended to construct custom prosthetic devices which are surgically implanted into the lower or upper jaw between the periosteum (connective tissue covering the bone) and supporting bony structures. The device is intended to provide support for prostheses, such as dentures.

(b) *Classification.* Class II.

§ 872.3660 Impression material.

(a) *Identification.* Impression material is a device composed of materials such as alginate or polysulfide intended to be placed on a preformed impression tray and used to reproduce the structure of a patient's teeth and gums. The device is intended to provide models for study and for production of restorative prosthetic devices, such as gold inlays and dentures.

(b) *Classification.* Class II.

§ 872.3670 Resin impression tray material.

(a) *Identification.* Resin impression tray material is a device intended for use in a two-step dental mold fabricating process. The device consists of a resin material, such as methyl methacrylate, and is used to form a custom impression tray for use in cases in which a preformed impression tray is not suitable, such as the fabrication of crowns, bridges, or full dentures. A preliminary plaster or stone model of the patient's teeth and gums is made. The resin impression tray material is applied to this preliminary study model to form a custom tray. This tray is then filled with impression material and inserted into the patient's mouth to make an impression, from which a final, more precise, model of the patient's mouth is cast.

(b) *Classification.* Class I. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 872.3680 Polytetrafluoroethylene (PTFE) vitreous carbon materials.

(a) *Identification.* Polytetrafluoroethylene (PTFE) vitreous carbon material is a device composed of polytetrafluoroethylene (PTFE) vitreous carbon intended for use in maxillofacial alveolar ridge augmentation (building up the upper or lower jaw area that contains the sockets in which teeth are rooted) or intended to cost metal surgical implants to be placed in the alveoli (sockets in which the teeth are rooted) or the temporomandibular joints (the joint between the upper and lower jaws).

(b) *Classification.* Class II.

§ 872.3690 Tooth shade resin material.

(a) *Identification.* Tooth shade resin material is a device composed of materials such as bisphenol-A glycidyl methacrylate [Bis-GMA) intended to restore carious lesions or structural defects in teeth.

(b) *Classification.* Class II.

§ 872.3700 Dental mercury.

(a) *Identification.* Dental mercury is a device composed of mercury intended for use as a component of amalgam alloy in the restoration of a dental cavity or a broken tooth.

(b) *Classification.* Class I.

§ 872.3710 Base metal alloy.

(a) *Identification.* A base metal alloy is a device composed of a material, such as a mixture of nickel and chromium, intended for use in fabrication of a custom-made dental device, such as porcelain veneer for a tooth.

(b) *Classification.* Class II.

§ 872.3730 Pantograph.

(a) *Identification.* A pantograph is a device intended to be attached to a patient's head to duplicate lower jaw movements to aid in construction of restorative and prosthetic dental devices. A marking pen is attached to the lower jaw component of the device and, as the patient's mouth opens, the pen records on graph paper the angle between the upper and the lower jaw.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 872.3740 Retentive and splinting pin.

(a) *Identification.* A retentive and splinting pin is a device made of austenitic alloys or alloys containing 75 percent or greater gold and metals of the platinum group intended to be placed permanently in a tooth to provide retention and stabilization for a restoration, such as a crown, or to join two or more teeth together.

(b) *Classification.* Class I.

§ 872.3750 Bracket adhesive resin and tooth conditioner.

(a) *Identification.* A bracket adhesive resin and tooth conditioner is a device composed of an adhesive compound, such as polymethylmethacrylate, intended to cement an orthodontic bracket to a tooth surface.

(b) *Classification.* Class II.

§ 872.3760 Denture relining, repairing, or rebasing resin.

(a) *Identification.* A denture relining, repairing, or rebasing resin is a device composed of materials such as methylmethacrylate, intended to reline a denture surface that contacts tissue, to repair a fractured denture, or to form a new denture base. This device is not available for over-the-counter (OTC) use.

(b) *Classification.* Class II.

§ 872.3765 Pit and fissure sealant and conditioner.

(a) *Identification.* A pit and fissure sealant and conditioner is a device composed of resin, such as polymethylmethacrylate, intended for use primarily in young children to seal pit and fissure depressions (faults in the enamel) in the biting surfaces of teeth to prevent cavities.

(b) *Classification.* Class II.

§ 872.3770 Temporary crown and bridge resin.

(a) *Identification.* A temporary crown and bridge resin is a device composed of a material, such as polymethylmethacrylate, intended to make a temporary prosthesis, such as a crown or bridge, for use until a permanent restoration is fabricated.

(b) *Classification.* Class II.

§ 872.3810 Root canal post.

(a) *Identification.* A root canal post is a device made of austenitic alloys or alloys containing 75 percent or greater gold and metals of the platinum group intended to be cemented into the root canal of a tooth to stabilize and support a restoration.

(b) *Classification.* Class I.

§ 872.3820 Root canal filling resin.

(a) *Identification.* A root canal filling resin is a device composed of material, such as methylmethacrylate, intended for use during endodontic therapy to fill the root canal of a tooth.

(b) *Classification.* (1) Class II if chloroform is not used as an ingredient in the device.

(2) Class III if chloroform is used as an ingredient in the device.

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval of the device described in paragraph (b)(2). See § 872.3.

§ 872.3630 Endodontic paper point.

(a) *Identification.* An endodontic paper point is a device made of paper intended for use during endodontic therapy to dry, or apply medication to, the root canal of a tooth.

(b) *Classification.* Class I.

§ 872.3640 Endodontic silver point.

(a) *Identification.* An endodontic silver point is a device made of silver intended for use during endodontic therapy to fill permanently the root canal of a tooth.

(b) *Classification.* Class I.

§ 872.3650 Gutta percha.

(a) *Identification.* Gutta percha is a device made from coagulated sap of certain tropical trees intended to fill the root canal of a tooth. The gutta percha is softened by heat and inserted into the root canal, where it hardens as it cools.

(b) *Classification.* Class I.

§ 872.3660 Endodontic stabilizing splint.

(a) *Identification.* An endodontic stabilizing splint is a device made of a material, such as titanium, intended to be inserted through the root canal into the upper or lower jaw bone to stabilize a tooth.

(b) *Classification.* Class II.

§ 872.3800 Posterior artificial tooth with a metal insert.

(a) *Identification.* A posterior artificial tooth with a metal insert is a porcelain device with an insert made of austenitic alloys or alloys containing 75 percent or greater gold and metals of the platinum group intended to replace a natural tooth. The device is attached to surrounding teeth by a bridge and is intended to provide both an improvement in appearance and functional occlusion (bite).

(b) *Classification.* Class I.

§ 872.3910 Backing and facing for an artificial tooth.

(a) *Identification.* A backing and facing for an artificial tooth is a device intended for use in fabrication of a fixed or removable dental appliance, such as a crown or bridge. The backing, which is made of gold, is attached to the dental appliance and supports the tooth-colored facing, which is made of porcelain or plastic.

(b) *Classification.* Class I.

§ 872.3920 Porcelain tooth.

(a) *Identification.* A porcelain tooth is a prefabricated device made of porcelain powder for clinical use (§ 872.6660) intended for use in construction of fixed or removable prostheses, such as crowns and partial dentures.

(b) *Classification.* Class II.

§ 872.3930 Tricalcium phosphate granules for dental bone repair.

(a) *Identification.* Tricalcium phosphate granules for dental bone repair is a device intended to be implanted into the upper or lower jaw to provide support for prosthetic devices.

(b) *Classification.* Class III.

(c) *Date PMA or notice of completion of a PDP is required.* As of May 28, 1976, an approval under section 515 of the act is required before this device may be commercially distributed. See § 872.3.

Subpart E—Surgical Devices

§ 872.4120 Bone cutting instrument and accessories.

(a) *Identification.* A bone cutting instrument and accessories is a metal device intended for use in reconstructive oral surgery to drill or cut into the upper or lower jaw and may be used to prepare bone to insert a wire, pin, or screw. The device includes the manual bone drill and wire driver, powered bone drill, rotary bone cutting handpiece, and AC-powered bone saw.

(b) *Classification.* Class II.

§ 872.4170 Intraoral dental drill.

(a) *Identification.* An intraoral dental drill is a rotary device intended to be attached to a dental handpiece to drill holes in teeth to secure cast or preformed pins to retain operative dental appliances.

(b) *Classification.* Class I.

§ 872.4465 Gas-powered jet injector.

(a) *Identification.* A gas-powered jet injector is a syringe device intended to administer a local anesthetic. The syringe is powered by a cartridge containing pressurized carbon dioxide which provides the pressure to force the anesthetic out of the syringe.

(b) *Classification.* Class II.

§ 872.4475 Spring-powered jet injector.

(a) *Identification.* A spring-powered jet injector is a syringe device intended to administer a local anesthetic. The syringe is powered by a spring mechanism which provides the pressure to force the anesthetic out of the syringe.

(b) *Classification.* Class II.

§ 872.4525 Dental diamond instrument.

(a) *Identification.* A dental diamond instrument is an abrasive device intended to smooth tooth surfaces during the fitting of crowns or bridges. The device consists of a shaft which is inserted into a handpiece and a head which has diamond chips imbedded into it. Rotation of the diamond instrument provides an abrasive action when it contacts a tooth.

(b) *Classification.* Class I.

§ 872.4565 Dental hand instrument.

(a) *Identification.* A dental hand instrument is a hand-held device intended to perform various tasks in general dentistry and oral surgery procedures. The device includes the operative burnisher, operative amalgam carrier, operative dental amalgam carver, surgical bone chisel, operative amalgam and foil condenser, endodontic curette, operative curette, periodontic curette, surgical curette, dental surgical elevator, operative dental excavator, operative explorer surgical bone file, operative margin finishing file, periodontic file, periodontic probe, surgical rongeur forceps, surgical tooth extractor forceps, surgical hemostat, periodontic hoe, operative matrix contouring instrument, operative cutting instrument, operative margin finishing periodontic knife, periodontic marker, operative pliers, endodontic root canal plugger, endodontic root canal preparer, surgical biopsy punch, endodontic pulp canal reamer, crown remover, periodontic scaler, collar and crown scissors, endodontic pulp canal filling material spreader, surgical osteotome chisel, endodontic broach, dental wax carver, endodontic pulp canal file, hand instrument for calculus removal, dental depth gauge instrument, plastic dental filling instrument, dental instrument handle, surgical tissue scissors, mouth mirror, orthodontic band driver, orthodontic band pusher, orthodontic band setter, orthodontic bracket aligner, orthodontic pliers, orthodontic ligature tucking instrument, forceps, for articulation paper, forceps for dental dressing, dental matrix band, matrix retainer, dental retractor, dental retractor accessories, periodontic or endodontic irrigating syringe, and restorative or impression material syringe.

(b) *Classification.* Class I.

§ 872.4600 Intraoral ligature and wire lock.

(a) *Identification.* An intraoral ligature and wire lock is a metal device intended to constrict fractured bone segments in

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the oral cavity. The bone segments are stabilized by wrapping the ligature (wire) around the fractured bone segments and locking the ends together.

(b) *Classification.* Class II.

§ 872.4630 Dental operating light.

(a) *Identification.* A dental operating light, including the surgical headlight, is an AC-powered device intended to illuminate oral structures and operating areas.

(b) *Classification.* Class II.

§ 872.4720 Dental injecting needle.

(a) *Identification.* A dental injecting needle is a slender, hollow metal device with a sharp point intended to be attached to a syringe to inject local anesthetics and other drugs.

(b) *Classification.* Class I.

§ 872.4760 Bone plate.

(a) *Identification.* A bone plate is a metal device intended to stabilize fractured bone structures in the oral cavity. The bone segments are attached to the plate with screws to prevent movement of the segments.

(b) *Classification.* Class II.

§ 872.4840 Rotary scaler.

(a) *Identification.* A rotary scaler is an abrasive device intended to be attached to a powered handpiece to remove calculus deposits from teeth during dental cleaning and periodontal (gum) therapy.

(b) *Classification.* Class II.

§ 872.4850 Ultrasonic scaler.

(a) *Identification.* An ultrasonic scaler is a device intended for use during dental cleaning and periodontal (gum) therapy to remove calculus deposits from teeth by application of an ultrasonic vibrating scaler tip to the teeth.

(b) *Classification.* Class II.

§ 872.4880 Intraosseous fixation screw or wire.

(a) *Identification.* An intraosseous fixation screw or wire is a metal device intended to be inserted into fractured jaw bone segments to prevent their movement.

(b) *Classification.* Class II.

§ 872.4920 Dental electrosurgical unit and accessories.

(a) *Identification.* A dental electrosurgical unit and accessories is an AC-powered device consisting of a controlled power source and a set of cutting and coagulating electrodes. This device is intended to cut or remove soft tissue or to control bleeding during surgical procedures in the oral cavity. An electrical current passes through the tip of the electrode into the tissue and, depending upon the operating mode selected, cuts through soft tissue or coagulates the tissue.

(b) *Classification.* Class II.

§ 872.5410 Orthodontic appliance and accessories.

(a) *Identification.* An orthodontic appliance and accessories is a device intended for use in orthodontic treatment. The device is affixed to a tooth so that pressure can be exerted on the teeth. This device includes the preformed orthodontic band, orthodontic band material, orthodontic elastic band, orthodontic metal bracket, orthodontic wire clasp, preformed orthodontic space maintainer, orthodontic expansion screw retainer, orthoelastic spring, orthodontic tube, and orthodontic wire.

(b) *Classification.* Class I.

§ 872.5470 Orthodontic plastic bracket.

(a) *Identification.* An orthodontic plastic bracket is a plastic device intended to be bonded to a tooth to apply pressure to a tooth from a flexible orthodontic wire to alter its position.

(b) *Classification.* Class II.

§ 872.5500 Extraoral orthodontic headgear.

(a) *Identification.* An extraoral orthodontic headgear is a device intended for use with an orthodontic appliance to exert pressure on the teeth from outside the mouth. The headgear has a strap intended to wrap around the patient's neck or head and an inner bow portion intended to be fastened to the orthodontic appliance in the patient's mouth.

(b) *Classification.* Class II.

§ 872.5525 Preformed tooth positioner.

(a) *Identification.* A preformed tooth positioner is a plastic device that is an impression of a perfected bite intended to prevent a patient's teeth from shifting position or to move teeth to a final position after orthodontic appliances (braces) have been removed. The patient bites down on the device for several hours a day to force the teeth into a final position or to maintain the teeth in their corrected position.

(b) *Classification.* Class I.

§ 872.5550 Teething ring.

(a) *Identification.* A teething ring is a divice intended for use by infants for medical purposes to soothe gums during the teething process.

(b) *Classification.* (1) Class I if the teething ring does not contain a fluid, such as water.

(2) Class II if the teething ring contains a fluid, such as water.

Subpart G—Miscellaneous Devices

§ 872.6010 Abrasive device and accessories.

(a) *Identification.* An abrasive device and accessories is a device constructed of various abrasives, such as diamond chips, that are glued to shellac-based paper. The device is intended to remove excessive restorative materials, such as gold, and to smooth rough surfaces from oral restorations, such as crowns. The device is attached to a shank that is held by a handpiece. The device includes the abrasive disk, guard for an abrasive disk, abrasive point, polishing agent strip, and polishing wheel.

(b) *Classification.* Class I. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 872.6030 Oral cavity abrasive polishing agent.

(a) *Identification.* An oral cavity abrasive polishing agent is a device in paste or powder form that contains an abrasive material, such as silica pumice, intended to remove debris from the teeth. The abrasive polish is applied to the teeth by a handpiece attachment (prophylaxis cup).

(b) *Classification.* Class I.

§ 872.6050 Saliva absorber.

(a) *Identification.* A saliva absorber is a device made of paper or cotton intended to absorb moisture from the oral cavity during dental procedures.

(b) *Classification.* Class I. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 872.6070 Ultraviolet activator for polymerization.

(a) *Identification.* An ultraviolet activator for polymerization is a device that produces ultraviolet radiation intended to polymerize (set) resinous dental pit and fissure sealants or restorative materials by transmission of light through a rod.

(b) *Classification.* Class II.

§ 872.6080 Airbrush.

(a) *Identification.* An airbrush is an AC-powered device intended for use in conjunction with articulation paper. The

device uses air-driven particles to roughen the surfaces of dential restorations. Uneven areas of the restorations are then identified by use of articulation paper. I11(b) *Classification.* Class III. I11(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 872.3.

§ 872.6100 Anesthetic warmer.

(a) *Identification.* An anesthetic warmer is an AC-powered device into which tubes containing anesthetic solution are intended to be placed to warm them prior to administration of the anesthetic.

(b) *Classification.* Class I.

§ 872.6140 Articulation paper.

(a) *Identification.* Articulation paper is a device composed of paper coated with an ink dye intended to be placed between the patient's upper and lower teeth when the teeth are in the bite position to locate uneven or high areas.

(b) *Classification.* Class I. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 872.6200 Base plate shellac.

(a) *Identification.* Base plant shellac is a device composed of shellac intended to rebuild the occlusal rim of full or partial dentures.

(b) *Classification.* Class I. The device is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 872.6290 Prophylaxis cup.

(a) *Identification.* A prophylaxis cup is a device made of rubber intended to be held by a dental handpiece and used to apply polishing agents during prophylaxis (cleaning). The dental handpiece spins the rubber cup holding the polishing agent and the user applies it to the teeth to remove debris.

(b) *Classification.* Class I. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 872.6360 Rubber dam and accessories.

(a) *Identification.* A rubber dam and accessories is a device composed of a thin sheet of latex with a hole in the center intended to isolate a tooth from fluids in the mouth during dental procedures, such as filling a cavity preparation. The device is stretched around a tooth by inserting the tooth through the hole in the center. The device includes the rubber dam, rubber dam clamp, rubber dam frame, and forceps for a rubber dam clamp.

(b) *Classification.* Class I. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 872.6350 Ultraviolet detector.

(a) *Identification.* An ultraviolet detector is a device intended to provide a source of ultraviolet light which is used to identify otherwise invisible material, such as dental plaque, present in or on teeth.

(b) *Classification.* Class II.

§ 872.6390 Dental floss.

(a) *Identification.* Dental floss is a string-like device made of cotton or other fibers intended to remove plaque and food particles from between the teeth to reduce tooth decay. The fibers of the device may be coated with wax for easier use.

(b) *Classification.* Class I.

§ 872.6570 Impression tube.

(a) *Identification.* An impression tube is a device consisting of a hollow copper tube intended to take an impression of a single tooth. The hollow tube is filled with impression material. One end of the tube is sealed with a softened material, such as wax, the remaining end is slipped over the tooth to make the impression.

(b) *Classification.* Class I. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 872.6650 Massaging pick or tip for oral hygiene.

(a) *Identification.* A massaging pick or tip for oral hygiene is a rigid, pointed device intended to be used manually to stimulate and massage the gums to promote good periodontal (gum) condition.

(b) *Classification.* Class I. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 872.6660 Porcelain powder for clinical use.

(a) *Identification.* Porcelain powder for clinical use is a device consisting of a mixture of kaolin, felspar, quartz, or other substances intended for use in the production of artificial teeth in fixed or removable dentures, of jacket crowns, facings, and veneers. The device is used in prosthetic dentistry by heating the powder mixture to a high temperature in an oven to produce a hard prosthesis with a glass-like finish.

(b) *Classification.* Class II.

§ 872.6670 Silicate protector.

(a) *Identification.* A silicate protector is a device made of silicone intended to be applied with an absorbent tipped applicator to the surface of a new restoration to exclude temporarily fluids from its surface.

(b) *Classification.* Class I. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 872.6370 Endodontic dry heat sterilizer.

(a) *Identification.* An endodontic dry heat sterilizer is a device intended to sterilize endodontic and other dental instruments by the application of dry heat. The heat is supplied through glass beads which have been heated by electricity.

(b) *Classification.* Class III.

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 872.3.

§ 872.6770 Cartridge syringe.

(a) *Identification.* A cartridge syringe is a device intended to inject anesthetic agents subcutaneously or intramuscularly. The device consists of a metal syringe body into which a disposable, previously filled, glass carpule (a cylindrical cartridge) containing anesthetic is placed. After attaching a needle to the syringe body and activating the carpule by partially

inserting the plunger on the syringe, the device is used to administer an injection to the patient.

(b) *Classification.* Class II.

§ 872.6850 Manual toothbrush.

(a) *Identification.* A manual toothbrush is a device composed of a shaft with either natural or synthetic bristles at one end intended to remove adherent plaque and food debris from the teeth to reduce tooth decay.

(b) *Classification.* Class I. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 872.6870 Disposable fluoride tray.

(a) *Identification.* A disposable fluoride tray is a device made of styrofoam intended to apply fluoride topically to the teeth. To use the tray, the patient bites down on the tray which has been filled with a fluoride solution.

(b) *Classification.* Class I. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 872.6880 Preformed impression tray.

(a) *Identification.* A preformed impression tray is a metal or plastic device intended to hold impression material, such as alginate, to make an impression of a patient's teeth or alveolar process (bony tooth sockets) to reproduce the structure of a patient's teeth and gums.

(b) *Classification.* Class I. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

§ 872.6890 Intraoral dental wax.

(a) *Identification.* Intraoral dental wax is a device made of wax intended to construct patterns from which custom made metal dental prostheses, such as crowns and bridges, are cast. In orthodontic dentistry, the device is intended to make a pattern of a patient's bite to make study models of the teeth.

(b) *Classification.* Class I. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Dated: June 15, 1987.

Frank E. Young,

Commissioner of Food and Drugs.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 872

[Docket No. 78N-2630 et al.]

Medical Devices; Withdrawal of 67 Proposed Rules Classifying Dental Devices

AGENCY: Food and Drug Administration.

ACTION: Withdrawal of proposed rules.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing 67 proposed rules in the classification of dental devices to avoid unnecessary regulations. Elsewhere in this issue of the Federal Register, FDA is publishing a final rule classifying 110 dental devices.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

SUPPLEMENTARY INFORMATION: In the Federal Register of December 30, 1980 (45 FR 85962-86168), FDA proposed to classify 185 dental devices. This action was taken as part of the agency's overall implementation of the Medical Device Amendments of 1976 (the amendments) that established a system for the regulation of medical devices for human use. One provision of the amendments, section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c), establishes three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness: Class I (general controls), class II (performance standards), and class III (premarket approval). The amendments also established a procedure for the agency to promulgate regulations classifying each generic type of device into one of these three classes. Persons who disagree with a final classification of a device may petition for reclassification of the device under Subpart C of 21 CFR Part 860. Because the same generic type of device may be used in different medical specialty areas (cardiovascular, general and plastic surgery, anesthesiology, etc.) under different names, and because FDA is attempting to eliminate unnecessary regulations, the agency continues to consolidate its list of generic types of devices.

FDA is withdrawing 67 of the 185 dental proposed regulations that were published on December 30, 1980. Elsewhere in this issue of the Federal Register, FDA is publishing a final rule classifying dental devices. In that final rule, FDA is grouping 89 proposed dental devices into 22 generic types of dental devices. The term "generic type of device" is defined in 21 CFR 860.3(i). Therefore, in that final rule each of the 67 proposed devices listed below in the left column is being grouped into the generic type of device opposite in the right column. FDA is withdrawing each of the proposed regulations listed in the left column. FDA advises that summaries of any comments submitted on the 67 proposed regulations being withdrawn and FDA's responses to these comments are discussed in the final rule classifying dental devices that is being published elsewhere in this issue of the Federal Register. Further, as explained in that final rule, FDA is not publishing at this time classifications of certain dental devices, including 10 devices listed below, i.e., those numbered 58 through 67, for which proposals are being withdrawn. Classifications of the devices in the right column opposite the proposals numbered 58 through 67 are not being classified by FDA now.

Proposed regulations being withdrawn		Elsewhere in this issue of the Federal Register, FDA is publishing final regulations classifying these devices
1. 78N-2845	Precious metal alloy for clinical use	78N-2844 Gold based alloys and precious metal alloys for clinical use.
2. 78N-2852	Preformed bar	78N-2851 Precision attachment.
3. 78N-2913	Zinc oxide eugenol	78N-2958 Dental cement.
4. 78N-2855	Preformed wire clasp	78N-2856 Preformed clasp.
5. 78N-2873	Karaya with sodium borate denture adhesive	78N-2866 Karaya and/or acacia with 12 percent or less sodium borate denture adhesive.
6. 78N-2866	Carboxymethylcellulose sodium (32%) and ethylene oxide homopolymer (13%) denture adhesive	78N-2867 Ethylene oxide homopolymer and/or carboxymethyl-cellulose sodium denture adhesive.
7. 78N-2870	Carboxymethylcellulose sodium (48%) and ethylene oxide homopolymer (21%) denture adhesive	Do.
8. 78N-2872	Karaya and ethylene oxide homopolymer denture adhesive	78N-2871 Ethylene oxide homopolymer and/or karaya denture adhesive.
9. 78N-2877	Polyvinylmethylether maleic acid calcium-sodium double salt and carboxymethyl-cellulose sodium denture adhesive	78N-2875 Carboxymethylcellose sodium and/or polyvinylmethylether maleic acid calcium-sodium double salt denture adhesive.
10. 78N-2881	OTC denture pad	78N-2880 OTC denture cushion or pad.
11. 78N-2886	Cobalt chrome molybdenum subperiosteal implant material	78N-2868 Subperiosteal implant material.
12. 78N-2917	Powered bone drill	78N-2915 Bone cutting instruments and accessories.
13. 78N-2920	Rotary bone cutting handpiece	Do.
14. 78N-2941	AC-powered bone saw	Do.
15. 78N-2927	Endodontic broach	78N-2931 Dental hand instrument.
16. 78N-2914	Dental wax carver	Do.
17. 78N-2926	Endodontic pulp canal file	Do.
18. 78N-2927	Hand instruments for calculus removal	Do.
19. 78N-2928	Dental depth gauge instrument	Do.
20. 78N-2930	Plastic dental filling instrument	Do.
21. 78N-2932	Dental instrument handle	Do.
22. 78N-2945	Surgical tissue scissors	Do.
23. 78N-2951	Orthodontic band driver	Do.
24. 78N-2954	Orthodontic band pusher	Do.
25. 78N-2955	Orthodontic band setter	Do.
26. 78N-2956	Orthodontic bracket aligner	Do.
27. 78N-2962	Orthodontic pliers	Do.
28. 78N-2967	Orthodontic ligature tucking instrument	Do.
29. 78N-2990	Forceps for articulation paper	Do.
30. 78N-2991	Forceps for dental dressing	Do.
31. 78N-2997	Dental matrix band	Do.
32. 78N-2998	Matrix retainer	Do.
33. 78N-3000	Mouth mirror	Do.
34. 78N-3007	Dental retractor	Do.
35. 78N-3008	Dental retractor accessories	Do.
36. 78N-3016	Periodontic or endodontic irrigating syringe	Do.
37. 78N-3017	Restorative or impression material syringe	Do.
38. 78N-2936	Surgical highlight	78N-2935 Dental operating light.
39. 78N-2948	Intraosseous fixation wire	78N-2946 Intraosseous fixation screw or wire.
40. 78N-2950	Orthodontic elastic band	78N-2951 Orthodontic appliance and accessories.
41. 78N-2953	Orthodontic band material	Do.

Proposed regulations being withdrawn		Elsewhere in this issue of the Federal Register, FDA is publishing final regulations classifying these devices
42. 78N-2958	Orthodontic metal bracket	Do.
43. 78N-2959	Orthodontic wire clamp	Do.
44. 78N-2961	Preformed orthodontic space maintainer	Do.
45. 78N-2963	Orthodontic expension screw retainer	Do.
46. 78N-2964	Orthodontic spring	Do.
47. 78N-2966	Orthodontic tube	Do.
48. 78N-2968	Orthodontic wire	Do.
49. 78N-2970	Abrasive point	78N-2969 Abrasive device and accessories.
50. 78N-2971	Polishing agent strip	Do.
51. 78N-2981	Guard for an abrasive disk	Do.
52. 78N-2972	Polishing wheel	Do.
53. 78N-2982	Cotton roll	78N-2974 Saliva absorber.
54. 78N-2985	Rubber dam clamp	78N-2984 Rubber dam and accessories.
55. 78N-2986	Rubber dam frame	Do.
56. 78N-2987	Forceps for a rubber dam clamp	Do.
57. 78N-3010	Rubber tip for oral hygiene	78N-3004 Massaging pick or tip for oral hygiene.
		At this time, FDA is not publishing in the Federal Register final regulations on these devices
58. 78N-2919	Belt-driven dental handpiece	78N-2918 Dental handpiece and accessories.
59. 78N-2921	Contra angle handpiece attachment	Do.
60. 78N-2922	Direct drive handpiece	Do.
61. 78N-2923	Foot controller for handpiece	Do.
62. 78N-2924	Water-powered handpiece	Do.
63. 78N-2981	Dental chair without operative unit	78N-2980 Dental chair with or without operative unit.
64. 78N-3001	Saliva ejector mouthpiece	78N-3002 Dental operative unit and accessories.
65. 78N-2988	Oral cavity evacuator	Do.
66. 78N-3002	Suction operative unit	Do.
67. 78N-3012	Air or water syringe	Do.

Accordingly, to avoid unnecessary device classification regulations, the agency is withdrawing its December 30, 1980 proposals to classify the 67 dental devices in the left column above. The administrative record for each of these proposals of December 30, 1980, shall be included in the administrative record for the docket above that is opposite in the right column.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)) and under 21 CFR 5.10, the proposals that were published in the Federal Register of December 30, 1980, to classify 67 dental devices under the following docket numbers are withdrawn:

Docket No.	Docket No.	Docket No.
78N-2845	78N-2927	78N-2950
78N-2852	78N-2928	78N-2953
78N-2913	78N-2930	78N-2958
78N-2860	78N-2932	78N-2959
78N-2873	78N-2945	78N-2961
78N-2869	78N-2952	78N-2963
78N-2870	78N-2954	78N-2964
78N-2872	78N-2955	78N-2966
78N-2877	78N-2958	78N-2968
78N-2881	78N-2962	78N-2970
78N-2889	78N-2967	78N-2972
78N-2917	78N-2990	78N-2993
78N-2920	78N-2991	78N-2973
78N-2941	78N-2997	78N-2982

Docket No.	Docket No.	Docket No.
78N-2919	78N-2998	78N-2981
78N-2921	78N-3000	78N-2985
78N-2922	78N-3007	78N-2986
78N-2923	78N-3008	78N-2992
78N-2924	78N-3010	78N-3001
78N-3027	78N-3017	78N-2988
78N-2914	78N-2936	78N-3003
78N-3026	78N-2946	78N-3012
		78N-3015

Dated: June 14, 1987.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 87-18200 Filed 8-11-87; 8:45 am]

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August 12, 1987

Part VII

Department of Education

Patricia Roberts Harris Fellowships Program; Final Stipend Levels in Fiscal Year 1987; Notice

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DEPARTMENT OF EDUCATION

Patricia Roberts Harris Fellowships Program

AGENCY: Department of Education.

ACTION: Notice of Final Stipend Levels for the Patricia Roberts Harris Fellowships Program in Fiscal Year 1987.

SUMMARY: The Secretary establishes a maximum twelve-month stipend level of $6,900 for fellowship recipients under the Patricia Roberts Harris Fellowships Program, Title IX, Part B of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1986, 20 U.S.C. 1134d to 1134f.

EFFECTIVE DATE: These final stipend levels for the Patricia Roberts Harris Fellowships Program take effect either 45 days after publication in the Federal Register or later if the Congress take certain adjournments. If you want to know the effective date of these stipend levels, call or write the U.S. Department of Education contact persons.

FOR FURTHER INFORMATION CONTACT: Dr. Charles H. Miller or Barbara J. Harvey, Patricia Roberts Harris Fellowships Program, Office of Postsecondary Education, U.S. Department of Education, Division of Higher Education Incentive Programs, 400 Maryland Avenue, SW., Room 3022, ROB–3, Washington, DC 20202. Telephone: (202) 732–4395 or (202) 732–4363.

SUPPLEMENTARY INFORMATION: The Secretary establishes a maximum stipend level for the Patricia Roberts Harris Fellowships Program of $6,900 for the 1987–88 academic year. This change increases the stipend level by $2,400 from the previous level of $4,500 for academic year 1986–87.

Regulations for the program, to be superseded in part by this notice of final stipend levels, were published on June 10, 1987, 52 FR 22284, and will be codified in 34 CFR Part 649. (The institutional allowance for each recipient awarded a fellowship for a 12-month period was set under the regulations at the same level as for fellowship programs administered by the National Science Foundation, resulting in an increase from $3,900 to $6,000.)

A Notice of Proposed Stipend Levels in fiscal year 1987 was also published in the June 10 issue of the Federal Register, 52 FR 22286. Interested parties were provided 30 days to submit their comments on the notice to the Secretary. A summary of the comments received and the Secretary's responses to those comments are included below.

Summary of Comments and Responses

Comments. One commenter indicated that the program needed an even higher stipend than that proposed, and believed that funds would be available for it if the total appropriation were used to finance continuing students; in addition, the commenter believed that a competition held now to award new fellowships would be far too late to be effective.

A second commenter noted that the proposed stipend level would be significantly lower than those for other federal fellowship programs, and would make it difficult to attract highly qualified individuals to pursue graduate study. The commenter proposed funding only continuation fellowships at the maximum level possible within the statute and appropriation. The commenter also stated that the current stipend level of $4,500 is grossly inadequate and requires supplementation by the institution to bring it up to the level of other fellowship recipients.

Another commenter supported the proposed $6,900 stipend indicating that it represents a good compromise between the needs of the fellows and the limits of the resources available.

A fourth commenter stated that the stipend of $6,900 per year is very low compared to comparable programs administered by the National Science Foundation and a reduction in the number of competing fellowships was disturbing.

A fifth commenter objected to the proposed stipend levels as being too low and inconsistent with the Congressional intent in the reauthorized statute to raise stipends to those of other federal programs, specifically those of the National Science Foundation.

A sixth commenter stated that to continue to fund the fellowship program at a lower level is to treat it as a second class program and to imply that the fellows are less qualified or worthy than those of other Federal programs. The program would, therefore, be better served at this point by increasing the stipends of continuing fellows to the full $10,000 rather than having a competition for new awards.

Response: The Secretary has carefully considered these comments and decided that it is best to make no changes to the amendment and to conserve funds to allow a competition for new fellowships in order to maintain a continuous flow of graduate fellows into the program from those underrepresented students traditionally served by this program. A higher stipend level would severely reduce or eliminate new fellowships. Fellows who demonstrate financial need exceeding the amount of the stipend continue to be eligible for other forms of Federal financial assistance.

The Secretary has given due consideration to the intent of Congress as set forth in the statute and feels that an increase from a stipend level of $4,500 in 1986 to the proposed level of $6,900 in 1987 is consistent with the provisions of the statute and allows for additional fellowships to be awarded in 1987 to deserving students from traditionally underrepresented groups. An increase in 1987 to the maximum stipend level of $10,000 would provide no opportunities for new fellowships and would require a ratable reduction for all continuing fellows to below this maximum allowable level, given the amount of current appropriations for the program.

(20 U.S.C. 1134d–1134f)

(Catalog of Federal Domestic Assistance Number 84.084B—Graduate and Professional Study Fellowships; 84.084C—Public Service Education Fellowships)

Dated: July 28, 1987.

William J. Bennett,

Secretary of Education.

[FR Doc. 87–18353 Filed 8–11–87; 8:45 am]

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Part VIII

Department of Education

34 CFR Part 668

Student Assistance, Postsecondary Education; Appeal Procedures for Audit Determinations and Program Review Determinations; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 668

Student Assistance, Postsecondary Education; Appeal Procedures for Audit Determinations and Program Review Determinations

AGENCY: Department of Education.

ACTION: Final Regulations with invitation to comment.

SUMMARY: The Secretary of Education (Secretary) issues final regulations to specify the procedures by which institutions participating in any of the student financial assistance programs authorized under Title IV of the Higher Eucation Act of 1965, as amended (HEA), may appeal from a final audit determination or a program review determination.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register, or later, if Congress takes certain adjournments. The Secretary does not consider the December 1, 1986 publication deadline imposed by HEA section 482(c) as applying to these regulations since he does not view these regulations as affecting the general administration of the HEA Title IV student financial assistance programs. If you want to know the effective date of these regulations, call or write to the contact person listed below.

Comments must be received on or before September 11, 1987.

ADDRESSES: Comments should be addressed to Fred Sellers, Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue, SW., Regional Office Building 3, Room 4318, Washington, DC 20202. Telephone number (202) 732-4888.

FOR FURTHER INFORMATION CONTACT: Joyce R. Coates, U.S. Department of Education, Office of Student Financial Assistance, 400 Maryland Avenue, SW., Regional Office Building 3, Room 4318, Washington, DC 20202. Telephone number (202) 732-4888.

SUPPLEMENTARY INFORMATION: The Secretary issues final regulations to implement section 487(b) of the HEA as amended by the Higher Education Amendments of 1986, Pub.L. 99-498. Section 487(b) provides that an institution that has received written notice of a final audit determination or a program review determination may seek a review of the determination by the Secretary. Under § 668.95(d) of the regulations, an institution appealing a final audit determination or final program review determination will have the burden of proving that it complied with program requirements and, in the event that the institution is appealing a questioning or disallowance of expenditures, that the expenditures were proper.

Under these regulations, the institution seeking review notifies the Department of Education official who issued the final audit determination or program review determination (designated ED official) or its desire for such review. The request must be made within 45 days of the institution's receipt of the determination. The designated ED official arranges for the review of the determination by an administrative law judge (ALJ) appointed by the Secretary for this purpose. The hearing process consists of the submission of written briefs unless the ALJ considers it necessary to conduct an oral hearing as well. Each party shall provide a copy of its brief and any accompanying materials to the opposing party simultaneously with the filing of its brief and materials with the ALJ. The ALJ appointed to the case shall conduct a hearing on the record, consisting of an orderly presentation of arguments and evidence by the parties. In the event that the decision of the ALJ is appealed by either party, the Secretary will provide final administrative review.

Under § 668.95(e)(1) (ii) and (iv) of the regulations, an institution is afforded up to an additional 45 days (i.e., the period during which it may request review) beyond the date of its receipt of the final audit determination or final program review determination in which to submit evidence. In the interest of encouraging the parties to resolve their differences before or shortly after a hearing is requested, the regulations preclude the submission of evidence by the institution which is not provided to ED by the time the hearing is requested. There is established a 30-day period following the institution's filing of its request for review during which ED may introduce new evidence, primarily so that ED may respond to any new evidence submitted by the institution.

The Secretary intends for the ALJ to apply the same rule of deference to agency interpretations of its statutes and regulations that is observed by the Federal courts. *See, e.g., Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984); *Udall v. Tallman*, 380 U.S. 1 (1965); *Bowles v. Seminole Rock Co.*, 325 U.S. 410 (1945). Under this rule, an interpretation of an agency's statute or regulations by an authorized official is generally treated as controlling unless clearly erroneous or contrary to the plain meaning of the statute or regulation at issue. An ALJ's primary function is to perform the initial fact-finding for the Department on issues raised in applicable audit appeals. *Cf.* 16 CFR 0.14 (Federal Trade Commission ALJ is fact-finder, and must exercise this function in conformity with decisions and policy directives issued by the Commission).

Rulemaking Procedures

These final regulations establish procedures by which institutions participating in any of the HEA Title IV student financial assistance programs may request a review of final audit determinations and final program review determinations. Under 5 U.S.C. 553(b)(A), agency rules of procedure are exempt from the general rulemaking requirements in that section. However, in order to permit interested parties to offer suggestions regarding these procedural rules, the Secretary is offering an opportunity for comment.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these final regulations governing appeals from final audit determinations and final program review determinations.

All comments submitted in response to these final regulations will be available for public inspection, during and after the comment period, in Room 4318, 7th and D Streets SW., Washington, DC 20202, between the hours of 8:30 AM and 4:00 PM, Monday through Friday of each week, except Federal holidays.

Based on the comments received, the Secretary may publish future amendments to these regulations. However, unless or until future amendments are issued, these final regulations will govern appeals from final audit determinations and final program review determinations.

To assist the Department in complying with the specific requirements of Executive Order 12291 and its overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these regulations.

Executive Order 12291

These final regulations have been reviewed in accordance with Executive Order 12291. They are classified as nonmajor because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. These regulations will not have a significant impact on the small entities that are affected because these regulations do not impose excessive regulatory burden. These regulations are being issued to implement the changes required by the Higher Education Amendments of 1986.

Assessment of Educational Impact

The Secretary has determined that the regulations in this document will not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs—education, Loan programs—education, Student aid.

Dated: July 31, 1987.

William J. Bennett,

Secretary of Education.

(Catalog of Federal Domestic Assistance Numbers: Supplemental Educational Opportunity Grant Program, 84.007; Guaranteed Student Loan Program, 84.032; PLUS Program, 84.032; College Work-Study Program, 84.033; Perkins Loan Program, 84.038; Pell Grant Program, 84.063; State Student Incentive Grant Program, 84.069)

The Secretary amends Part 668 of Title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for Part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1094, and 1141, unless otherwise noted.

2. The Table of Contents of Part 668 is amended by adding a new Subpart H to read as follows:

Subpart H—Appeal Procedures for Audit Determinations and Program Review Determinations

Sec

668.90 Scope and purpose.
668.91 Definitions.
668.92 Request for review.
668.93 Notification of hearing.
668.94 Prehearing conference.
668.95 Hearing on the record.
668.96 Authority and responsibilities of the administrative law judge.
668.97 Decision of the administrative law judge.
668.98 Appeal to the Secretary.
668.99 Decision of the Secretary.
668.100 Final decision of the Department.
668.101 Determination of filing, receipt, and submission dates.
668.102 Collection.

3. Part 668 is amended by adding a new Subpart H to read as follows:

Subpart H—Appeal Procedures for Audit Determinations and Program Review Determinations

§ 668.90 Scope and purpose.

(a) This subpart establishes rules governing the appeal of an institution from a final audit determination or a final program review determination arising from an audit or program review of the institution's participation in any student financial assistance program authorized by Title IV of the Higher Education Act of 1965, as amended (HEA). (The Title IV, HEA programs are listed in § 668.1(c)).

(b) This subpart applies to any institution (as defined in § 668.1(b)) that appeals a final audit determination or final program review determination.

(c) This subpart does not apply to proceedings governed by Subpart G of this part or to a determination that—

(1) An institution fails to meet the applicable statutory definition set forth in sections 435, 481, or 1201 of the HEA, except to the extent that such a determination forms the basis of a final audit determination or a final program review determination; or

(2) An institution fails to qualify for certification to participate in the Title IV, HEA programs because it does not meet the fiscal and administrative standards set forth in Subpart B of this part, except to the extent that such a determination forms the basis of a final audit determination or a program review determination.

(Authority: 20 U.S.C. 1094)

§ 668.91 Definitions.

As used in this subpart:

"Designated ED official" means an official of the Education Department to whom the Secretary has delegated the responsibilities referred to in this subpart.

"Final audit determination" means the written notice of a determination issued by a designated ED official based on an audit of an institution's participation in any or all of the Title IV, HEA programs covered under this subpart.

"Final program review determination" means the written notice of a determination issued by a designated ED official and resulting from a program compliance review of an institution's participation in any or all of the Title IV, HEA programs covered under this subpart.

(Authority: 20 U.S.C. 1094)

§ 668.92 Request for review.

(a) An institution seeking the Secretary's review of a final audit determination or a final program review determination shall file a written request for review with the designated ED official issuing the final audit determination or final program review determination.

(b) The institution shall file its request for review and any records or materials admissible under the terms of §§ 668.95 (e) and (f) of this subpart, no later than 45 days from the date it receives the final audit determination or final program review determination.

(c) The institution shall attach to the request for review a copy of the final audit determination or final program review determination, and shall—

(1) Identify the issues and facts in dispute; and

(2) State the institution's position together with the pertinent facts and reasons supporting that position.

(Authority: 20 U.S.C. 1094)

(Approved by OMB under Control Number 1840-0592)

§ 668.93 Notification of hearing.

(a) Upon receipt of an institution's request for review, the designated ED ficial arranges for a hearing on the record before an administrative law judge.

(b) Within 30 days of the designated ED official's receipt of an institution's request for review, the administrative law judge establishes a schedule for the submission of briefs by both the institution and the designated ED official.

(c) The submission of briefs and of accompanying evidence admissible under the terms of §§ 668.95 (e) and (f) shall be scheduled to occur no later than 120 days from the date upon which the administrative law judge notifies the institution under paragraph (b) of this section.

(Authority: 20 U.S.C. 1094)

§ 668.94 Prehearing conference.

(a) In the event that the administrative law judge considers a prehearing conference necessary, he may convene a prehearing conference.

(b) The purpose of a prehearing conference is to allow the parties to settle or narrow the dispute. A prehearing conference consists of—

(1) A telephone conference call;

(2) An informal meeting of the parties with the administrative law judge; or

(3) The submission and exchange of written materials by the parties.

(c) All prehearing conferences requiring appearances by the parties shall take place in the Washington, D.C. metropolitan area.

(Authority: 20 U.S.C. 1094)

§ 668.85 Hearing on the record.

(a) A hearing on the record is a process conducted by the administrative law judge whereby an orderly presentation of arguments and evidence is made by the parties.

(b) The hearing process consists of the submission of written briefs to the administrative law judge by the institution and by the designated ED official, unless the administrative law judge determines, under paragraph (g) of this section, that an oral hearing is also necessary.

(c) Each party shall provide a copy of its brief and any accompanying materials to the opposing party simultaneously with the filing of its brief and materials with the administrative law judge.

(d) An institution requesting review of the final audit determination or final program review determination issued by the designated ED official shall have the burden of proving the following matters, as applicable—

(1) That expenditures questioned or disallowed were proper;

(2) That the institution complied with program requirements.

(e)(1) A party may submit as evidence to the administrative law judge only materials within one or more of the following categories:

(i) ED audit reports and audit work papers for audits performed by the United States Education Department Office of Inspector General.

(ii) Institutional audit work papers, records, and other materials, if the institution provide those work papers, records, or materials to ED no later than the date by which it was required to file its request for review in accordance with §668.92

(iii) ED program review reports and work papers for program reviews.

(iv) Institutional records and other materials provided to ED in response to a program review, if the records or materials were provided to ED by the institution no later than the date by which it was required to file its request for review in accordance with §668.92.

(v) Other ED records and materials if the records and materials were provided to the administrative law judge no later than 3 days after the institution's filing of its request for review.

(2) A party desiring to submit as evidence any materials described in paragraph (e)(1) of this section shall submit that evidence with its initial brief.

(f) The administrative law judge shall accept only evidence that is both admissible and timely under the terms of paragraph (e) of this section, and relevant and material to the appeal. Examples of evidence which shall be deemed irrelevant and immaterial except upon a clear showing of probative value respecting the matters described in paragraph (d) include—

(1) Evidence relating to a period of time other than the period of time-covered by the audit or program review;

(2) Evidence relating to an audit or program review of an institution other than the institution bringing the appeal, or the resolution thereof; and

(3) Evidence relating to the current practice of the institution bringing the appeal in the program areas at issue in the appeal.

(g)(1) The administrative law judge may schedule an oral argument if he determines that an oral argument is necessary to clarify the issues and the positions of the parties as presented in the parties' written submissions.

(2) In the event that an oral argument is conducted, the designated ED official shall make a transcribed record of the proceedings and shall make that record available to the institution upon its request and upon its payment of a fee consistent with that prescribed under the Department of Education Freedom of Information Act regulations (34 CFR Part 5).

(h) Any oral argument shall take place in the Washington, D.C. metropolitan area.

(i) Either party may be represented by counsel.

(Authority: 20 U.S.C. 1094)

§668.86 Authority and responsibilities of the administrative law judge.

(a) The administrative law judge regulates the course of the proceedings and the conduct of the parties following a request for review and takes all steps necessary to conduct fair and impartial proceedings.

(b) The administrative law judge is not authorized to issue subpoenas or compel discovery as provided for in the Federal Rules of Civil Procedure.

(c) The administrative law judge shall take whatever measures are appropriate to expedite the proceedings. These measures may include, but are not limited to, one or more of the following:

(1) Scheduling of conferences.

(2) Setting time limits for oral arguments and the submission of briefs.

(3) Terminating the hearing process and issuing a decision against a party if that party does not meet time limits established by the administrative law judge.

(d) The administrative law judge is bound by all applicable statutes and regulations. The administrative law judge may not—

(1) Waive applicable statutes and regulations; or

(2) Rule them invalid.

(Authority: 20 U.S.C. 1094)

§668.87 Decision of the administrative law judge.

(a) Upon review of the parties' written submissions and termination of the oral argument if one is held, the administrative law judge issues a written decision.

(b) The administrative law judge's decision states and explains whether the final audit determination or final program review determination issued by the designated ED official was supportable, in whole or in part.

(c) The administrative law judge bases any findings of fact only on evidence properly presented before him, on matters given official notice, or on facts stipulated to by the parties.

(Authority: 20 U.S.C. 1094)

§ 668.88 Appeal to the Secretary.

(a) Within 15 days of its receipt of the initial decision of the administrative law judge, a party wishing to appeal the decision shall submit a brief or other written material to the Secretary explaining why the decision of the administrative law judge should be overturned or modified.

(b) The party appealing the initial decision shall, simultaneously with its filing of the appeal, provide the opposing party with a copy of its brief or other written material.

(c) In its brief to the Secretary, the party appealing the initial decision may submit proposed findings of fact or conclusions of law. However, the proposed findings of fact must be supported by—

(1) The admissible evidence already in the record;

(2) Matters that may be given official notice; or

(3) Stipulations of the parties

(d) The opposing party shall file its response to the appeal, if any, with the Secretary within 15 days of that party's receipt of the appeal to the Secretary.

(e) The opposing party shall, simultaneously with the filing of any response, provide a copy of its response to the appeal to the party appealing the initial decision.

(f) Neither party may introduce new evidence on appeal.

(Authority: 20 U.S.C. 1094)

§ 668.99 Decision of the Secretary.

(a) Following an appeal from the administrative law judge's initial decision, the Secretary issues a decision that affirms or, for good cause shown, modifies, remands, or overturns the initial decision of the administrative law judge.

(b) If the Secretary modifies, remands, or overturns the initial decision of the administrative law judge, the Secretary issues a decision that—

(1) Includes a statement of the reasons for this action;

(2) Is provided to both parties; and

(3) Unless the decision is remanded to the administrative law judge for further review or determination of fact, becomes final upon its issuance.

(Authority: 20 U.S.C. 1094)

§ 668.100 Final decision of the Department.

(a) In the event that the initial decision of the administrative law judge is appealed, the decision of the Secretary is the final decision of the Department, unless the administrative law judge's decision is remanded by the Secretary.

(b) In the event that the initial decision of the administrative law judge is not appealed within the time limit specified in § 668.98(a), the initial decision automatically becomes the final decision of the Department.

(Authority: 20 U.S.C. 1094)

§ 668.101 Determination of filing, receipt, and submission dates.

(a) The request for review, appeals, and other written submissions referred to in this subpart may be either hand-delivered or mailed.

(b) All mailed written submissions referred to in this subpart shall be mailed by certified mail, return receipt requested.

(c) Determination of filing, receipt, or submission dates shall be based on either the date of hand-delivery or the date of receipt indicated on the original U.S. Postal Service return receipt.

(Authority: 20 U.S.C. 1094)

§ 668.102 Collection.

To the extent that the decision of the Secretary sustains the final audit determination or final program review determination, ED will take steps to collect the debt at issue or otherwise effect the determination that was the subject of the request for review.

(Authority: 20 U.S.C. 1094)

[FR Doc. 87-18352 Filed 8-11-87; 8:45 am]

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Part IX

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 872
Dental Devices; Proposed Exemptions From Premarket Notification; Proposed Rule

VOL 52 ISS 155 AG 12 1987 UMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

21 CFR Part 872

[Docket No. 86M-0007]

Dental Devices; Proposed Exemptions From Premarket Notification

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to exempt from the requirement of premarket notification, with limitations, 23 class I dental devices. Elsewhere in this issue of the **Federal Register**, FDA is issuing a final rule classifying these and other dental devices. These actions are being taken under the Medical Device Amendments of 1976 and are a step in implementing one of the goals in FDA's plan for action.

DATES: Comments by October 13, 1987. FDA is proposing that the final rule based on this proposed rule become effective 30 days after its date of publication in the **Federal Register**.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: The Medical Device Amendments of 1976 (Pub. L. 94–295, hereinafter called the amendments) establish a comprehensive system for the regulation for medical devices intended for human use. One provision of the amendments, section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c), establishes three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness; Class I, general controls; class II, performance standards; and class III, premarket approval.

Section 513(d)(2)(A) of the act (21 U.S.C. 360c(d)(2)(A)) authorizes FDA to exempt, by regulation, a generic type of class I device from the requirement of, among other things, premarket notification in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR Part 807, Subpart E. Such an exemption allows manufacturers to introduce into commercial distribution devices of the generic type exempt without first submitting to FDA a premarket notification. When FDA was publishing its proposed classification regulations for preamendment devices, the agency did not routinely evaluate whether it should grant to manufacturers of such devices placed in class I an exemption from the requirement of premarket notification in section 510(k) of the act and 21 CFR Part 807, Subpart E. Generally, FDA considered such exemptions only when the advisory panels recommended the exemptions.

Recently, FDA developed criteria for exempting certain class I devices from the requirement of premarket notification, to reduce the number of premarket notifications on relatively innocuous devices while freeing agency resources for the review of more complex notifications.

The development of these criteria and the issuance of proposed and final rules exempting appropriate devices from the requirement of premarket notification in section 510(k) of the act will help implement a goal in FDA's July 1985 "A Plan for Action" (Ref. 1).

Criteria For 510(K) Exemptions

FDA is proposing to exempt a generic type of class I device from the requirement of premarket notification with the limitations described below, if FDA determines that premarket notification is not necessary for the protection of the public health. FDA may proposed to grant an exemption if both of the following criteria are met:

1. FDA has determined that the device does not have a significant history of false or misleading claims or of risks associated with inherent characteristics of the device such as device design or materials. When making these determinations, FDA may consider the frequency, persistence, cause, or seriousness of such claims or risks, or other factors.

2. FDA has determined that: (a) Characteristics of the device necessary for its safe and effective performance are well established; (b) anticipated changes in the device that are of the type that could affect safety and effectiveness will (1) be readily detectable by users by visual examination or other means, such as routine testing, e.g., testing of a clinical laboratory reagent with positive and negative controls, before causing harm; or (2) not materially increase the risk of injury, incorrect diagnosis, or ineffective treatment, and (c) that any changes in the device will not be likely to result in a change in the device's classification.

FDA will make the determinations above based on its knowledge of the device, including past experience with premarket notification and publicly available reports or studies on device performance. Based on the criteria above, FDA will place the exempted device into the same class as the class I device to which it would be substantially equivalent.

FDA may, if it has concerns only about certain types of changes in a class I device, grant a limited exemption from premarket notification for the generic type of device. A limited exemption will specify what types of changes manufacturers must continue to report to FDA. For example, FDA may exempt a device except when a manufacturer intends to use a different material.

FDA's decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type. Because FDA cannot anticipate every change in intended use or characteristic of a device that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of a preamendments device to which it has been determined to be substantially equivalent; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(b) The modified device operates using a different fundamental scientific technology than that in use in the device before May 28, 1976; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology.

Application of the Criteria to Class I Dental Devices

In the proposed regulations of December 30, 1980 (45 FR 85962–86168), FDA proposed to classify preamendments dental devices in accordance with the amendments.

When FDA proposed to classify the dental devices below, the agency did not propose exemptions from the requirement of premarket notification for many of these devices. The Panel did not recommend exemptions from the requirement of premarket notification for certain of these devices. FDA agrees that full exemption from premarket notification is unjustified for these devices; however, for the efficient enforcement of the act and consistent with its policy regarding exemptions from premarket notification; FDA now is proposing to exempt from the requirement of premarket notification, with limitations, the 23 dental devices below.

Section	Device	Docket No.
872.1730	Electrode gel for pulp tester	78N-2035
872.1905	Dental X-ray film holder	78N-2042
872.3080	Mercury and alloy dispenser	78N-2046
872.3110	Dental amalgam capsule	78N-2048
872.3140	Resin applicator	78N-3024
872.3150	Articulator	78N-2050
872.3220	Facebow	78N-2054
872.3630	Endodontic paper point	78N-2906
872.3640	Endodontic silver point	78N-2907
872.3650	Gutta percha	78N-2908
872.4565	Dental hand instrument	78N-2031
872.6010	Abrasive device and accessories	78N-2969
872.6050	Saliva absorber	78N-2974
872.6200	Base plate shellac	78N-2979
872.6290	Prophylaxis cup	78N-2983
872.6300	Rubber dam and accessories	78N-2984
872.6390	Dental floss	78N-2990
872.6570	Impression tube	78N-2999
872.6650	Massaging pick or tip for oral hygiene	78N-3004
872.6670	Silicate protector	78N-3005
872.6856	Manual toothbrush	78N-3019
872.6870	Disposable fluoride tray	78N-3021
872.6960	Preformed impression tray	78N-3022

Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule classifying the devices above in class I. FDA is proposing in this document to grant an exemption from the requirement of premarket notification for each of the devices above. However, the proposed exemptions for the dental hand instrument (§ 872.4565) and dental floss (§ 872.6390) are limited and would apply only to those devices made of the same materials that were used in the devices before May 28, 1976.

Reference

The following information has been placed in the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857, and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. "Food and Drug Administration—A Plan for Action," Public Health Service, Department of Health and Human Services, July 1985, p. 18.

Environmental Impact

The agency has determined under 21 CFR 25.24(e)(2) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Economic Impact

FDA has carefully analyzed the economic effects of this proposed rule and has determined that the proposed rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act. In accordance with section 3(g)(1) of Executive Order 12291, the impact of this proposed rule has been carefully analyzed, and it has been determined that the proposed rule does not constitute a major rule as defined in section 1(b) of the Executive Order. The devices subject to this proposed rule are now subject only to the general controls provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 360, 360f, 360h, 360i, and 360j), with certain exemptions. Under any final rule based on this proposal, the devices would remain subject to such controls, other than premarket notification.

Interested persons may, on or before October 13, 1987, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 872

Dental devices, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that Part 872 be amended as follows:

PART 872—DENTAL DEVICES

1. The authority citation for 21 CFR Part 872 continues to read as follows:

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794–795 as amended, 90 Stat. 540–546, 552–559, 565–574, 576–577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

2. Part 872 is amended by adding new § 872.9, to read as follows:

§ 872.9 Limitations of exemptions from section 510(k) of the act.

FDA's decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of a preamendments device to which it has been determined to be substantially equivalent; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(b) The modified device operates using a different fundamental scientific technology than that in use in the device before May 28, 1976; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology.

3. In § 872.1730 by revising paragraph (b), to read as follows:

§ 872.1730 Electrode gel for pulp tester.

* * * * *

(b) *Classification.—Class I.* The device is exempt from the premarket notification procedures of Subpart E of Part 807.

4. In § 872.1905 by revising paragraph (b), to read as follows:

§ 872.1905 Dental X-ray film holder.

* * * * *

(b) *Classification.—Class I.* The device is exempt from the premarket notification procedures in Subpart E of Part 807. If the device is not labeled or otherwise represented as sterile, it also is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

5. In § 872.3080 by revising paragraph (b), to read as follows:

§ 872.3080 Mercury and alloy dispenser.

* * * * *

(b) *Classification.—Class I.* The

device is exempt from the premarket notification procedures in Subpart E of Part 807.

6. In § 872.3110 by revising paragraph (b), to read as follows:

§ 872.3110 Dental amalgam capsule.

* * * * *

(b) *Classification.—Class I.* The device is exempt from the premarket notification procedures in Subpart E of Part 807.

7. In § 872.3140 by revising paragraph (b), to read as follows:

§ 872.3140 Resin applicator.

* * * * *

(b) *Classification.—Class I.* The device is exempt from the premarket notification procedures in Subpart E of Part 807. If the device is not labeled or otherwise represented as sterile, it also is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

8. In § 872.3150 by revising paragraph (b), to read as follows:

§ 872.3150 Articulator.

* * * * *

(b) *Classification.—Class I.* The device is exempt from the premarket notification procedures in Subpart E of Part 807.

9. In § 872.3220 by revising paragraph (b), to read as follows:

§ 872.3220 Facebow.

* * * * *

(b) *Classification.—Class I.* The device is exempt from the premarket notification procedures in Subpart E of Part 807. If the device is not labeled or otherwise represented as sterile, it also is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

10. In § 872.3830 by revising paragraph (b), to read as follows:

§ 872.3830 Endodontic paper point.

* * * * *

(b) *Classification.—Class I.* The device is exempt from the premarket notification procedures in Subpart E of Part 807.

11. In § 872.3840 by revising paragraph (b), to read as follows:

§ 872.3840 Endodontic silver point.

* * * * *

(b) *Classification.—Class I.* The device is exempt from the premarket notification procedures in Subpart E of Part 807.

12. In § 872.3850 by revising paragraph (b), to read as follows:

§ 872.3850 Gutta percha.

* * * * *

(b) *Classification.—Class I.* The device is exempt from the premarket notification procedures in Subpart E of Part 807.

13. In § 872.4565 by revising paragraph (b), to read as follows:

§ 872.4565 Dental hand instrument.

* * * * *

(b) *Classification.—Class I.* If the device is made of the same materials that were used in the device before May 28, 1976, it is exempt from the premarket notification procedures in Subpart E of Part 807.

14. In § 872.6010 by revising paragraph (b), to read as follows:

§ 872.6010 Abrasive device and accessories.

* * * * *

(b) *Classification.—Class I.* The device is exempt from the premarket notification procedures in Subpart E of Part 807. If the device is not labeled or otherwise represented as sterile, it also is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

15. In § 872.6050 by revising paragraph (b), to read as follows:

§ 872.6050 Saliva absorber.

* * * * *

(b) *Classification.—Class I.* The device is exempt from the premarket notification procedures in Subpart E of Part 807. If the device is not labeled or otherwise represented as sterile, it also is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

16. In § 872.6200 by revising paragraph (b), to read as follows:

§ 872.6200 Base plate shellac.

* * * * *

(b) *Classification.—Class I.* The device is exempt from the premarket notification procedures in Subpart E of Part 807. If the device is not labeled or otherwise represented as sterile, it also is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

17. In § 872.6290 by revising paragraph (b), to read as follows:

§ 872.6290 Prophylaxis cup.

* * * * *

(b) *Classification.—Class I.* The device is exempt from the premarket notification procedures in Subpart E of Part 807. If the device is not labeled or otherwise represented as sterile, it also is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

18. In § 872.6300 by revising paragraph (b), to read as follows:

§ 872.6300 Rubber dam and accessories.

* * * * *

(b) *Classification—Class I.* The device is exempt from the premarket notification procedures in Subpart E of Part 807. If the device is not labeled or otherwise represented as sterile, it also is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

19. In § 872.6390 by revising paragraph (b), to read as follows:

§ 872.6390 Dental floss.

* * * * *

(b) *Classification—Class I.* If the device is made of the same materials that were used in the device before May 28, 1976, it is exempt from the premarket notification procedures in Subpart E of Part 807.

20. In § 872.6570 by revising paragraph (b), to read as follows:

§ 872.6570 Impression tube.

* * * * *

(b) *Classification—Class I.* The device is exempt from the premarket notification procedures in Subpart E of Part 807. If the device is not labeled or otherwise represented as sterile, it also is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

21. In § 872.6650 by revising paragraph (b), to read as follows:

§ 872.6650 Massaging pick or tip for oral hygiene.

* * * * *

(b) *Classification—Class I.* The device is exempt from the premarket notification procedures in Subpart E of Part 807. If the device is not labeled or

otherwise represented as sterile, it also is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

22. In § 872.6670 by revising paragraph (b), to read as follows:

§ 872.6670 Silicate protector.

* * * * *

(b) *Classification—Class I.* The device is exempt from the premarket notification procedures in Subpart E of Part 807. If the device is not labeled or otherwise represented as sterile, it also is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

23. In § 872.6855 by revising paragraph (b), to read as follows:

§ 872.6855 Manual toothbrush.

* * * * *

(b) *Classification—Class I.* The device is exempt from the premarket notification procedures in Subpart E of Part 807. If the device is not labeled or otherwise represented as sterile, it also is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

24. In § 872.6870 by revising paragraph (b), to read as follows:

§ 872.6870 Disposable fluoride tray.

* * * * *

(b) *Classification—Class I.* The device is exempt from the premarket notification procedures in Subpart E of Part 807. If the device is not labeled or otherwise represented as sterile, it also is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

25. In § 872.6880 by revising paragraph (b), to read as follows:

§ 872.6880 Preformed impression tray.

* * * * *

(b) *Classification—Class I.* The device is exempt from the premarket notification procedures in Subpart E of Part 807. If the device is not labeled or otherwise represented as sterile, it also is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Dated: June 14, 1987.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 87-18288 Filed 8-11-87; 8:45 am]

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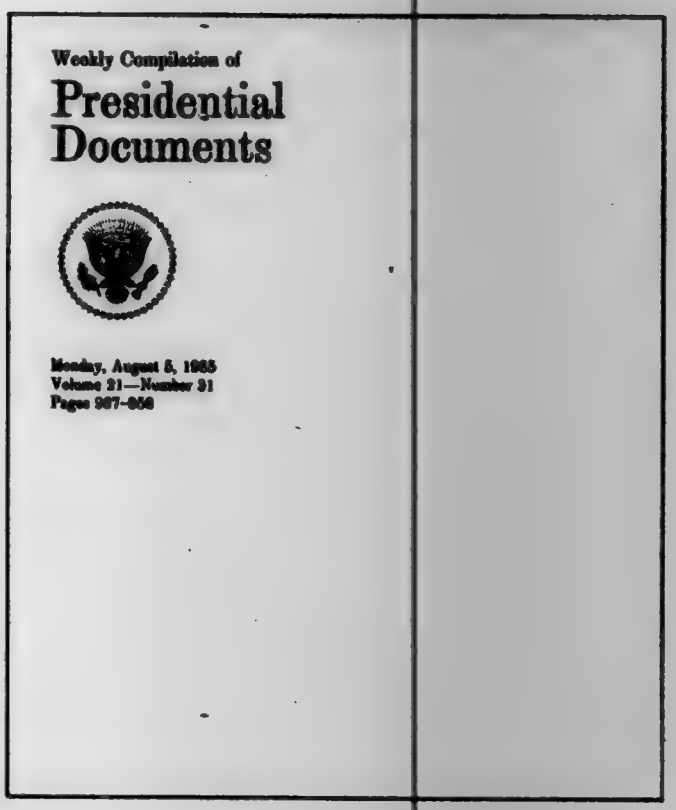

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Briefings on How To Use the Federal Register—
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WASHINGTON, DC

WHEN: September 29, at 9 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: Janice Booker, 202-523-5239

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The President

Proclamation 5882 of August 10, 1987

National Neighborhood Crime Watch Day, 1987

By the President of the United States of America

A Proclamation

Crime prevention is at the top of our Nation's public policy agenda for the simple reason that crime is still all too commonplace. Each year in America millions of our citizens face the stark reality of crime, suffering losses of property and injuries to personal health that exact from them and from all of us a terrible cost. Although new laws, more aggressive prosecution, swifter and more certain punishment, and programs to aid innocent victims are doing much to deter crime and to redress the harm it causes, our citizens continue to find new ways to work with law enforcement officials to prevent crime before it happens.

Passivity in the fight against crime is now passe. Across the Nation law-abiding citizens are banding together and, in close cooperation with the appropriate agencies of government, they are taking the initiative to protect themselves, their loved ones, and their neighborhoods. The effectiveness of this form of deterrence against crime has been proven in community after community, and it all boils down to one guiding principle—neighbors looking out for neighbors.

Twenty-two million American households were touched by crime last year—a staggering figure, but still the lowest in a decade. The decline that has taken place is certainly due in part to greater public awareness of crime and increased citizen participation in crime prevention activities. The statistics represent improved safeguarding of homes and property, but their real significance is the improved security and well-being of our people—the core values any society is constituted to protect.

We must do all we can to make more citizens aware of the importance of community crime watch programs and the impact they as individuals can have on the detection, reporting, discouragement, and solution of crimes. On August 11, 1987, a "National Night Out" campaign will be conducted to call attention to the importance of these programs. All Americans are urged to participate that evening by spending the hour between 8:00 p.m. and 9:00 p.m. on the lawns, porches, or steps in front of their homes, thereby emphasizing that looking out for one's neighbors is still the most effective form of crime prevention.

Participation in this nationwide event will also demonstrate the value and effectiveness of police and community cooperation in crime prevention. It will generate support for the worthwhile campaign the National Crime Prevention Council is conducting through its Crime Prevention Coalition. This Coalition, composed of organizations representing law enforcement, business, labor, minorities, the elderly, and various public interest groups, seeks to promote citizen involvement in crime watch activities and, through public service advertising and publications, provides information on how citizens can better protect themselves.

The Coalition's campaign features the trench-coated, floppy-eared dog, McGruff, popularized on radio and television and in newspapers and magazines. His message is basic and direct: We can all "Take a Bite Out of Crime" by playing a role in neighborhood block watches, citizen patrols, escort services for the elderly and the vulnerable, and similar activities and by taking a few simple precautions.

The Congress, by Senate Joint Resolution 121, has designated August 11, 1987, as "National Neighborhood Crime Watch Day" and has authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim August 11, 1987, as National Neighborhood Crime Watch Day. I call upon the people of the United States to spend the period from 8:00 p.m. to 9:00 p.m. on that date with their neighbors in front of their homes to demonstrate support for community crime watch programs and to signal to criminals that neighborhoods are joining together to fight crime.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of August, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 87-18642
Filed 8-11-87; 4:36 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 52, No. 156
Thursday, August 13, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210, 215, and 220

Elimination of the Private School Tuition Limitation

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rule eliminates the tuition limitation that previously prohibited private schools charging over $2,000 in annual tuition from participation in the school nutrition programs authorized under the National School Lunch Act and the Child Nutrition Act of 1966. The programs affected are the National School Lunch Program, Part 210; the Special Milk Program, Part 215; and the School Breakfast Program, Part 220. This amendment is required by Pub. L. 100–71, which was enacted on July 11, 1987.

EFFECTIVE DATE: July 1, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Lou Pastura, Chief, Policy and Program Development Branch, Child Nutrition Division, FNS, USDA, Alexandria, Virginia 22302; (703) 756–3620.

SUPPLEMENTARY INFORMATION:

Classification

This rule eliminates the private school tuition limitation as specifically prescribed by statute and therefore is nondiscretionary. For this reason, the Administrator of the Food and Nutrition Service has determined, in accordance with 5 U.S.C. 553(b) and 553(d), that prior notice and comment are unnecessary and contrary to the public interest and that good cause exists for making the rule effective upon publication. Further, the rule relieves a restriction and pursuant to 5 U.S.C. 553(d) may be made effective upon publication.

This final rule has been reviewed under Executive Order 12291 and has been classified as not major because it does not meet any of the three criteria identified under the Executive Order. This action will not have an annual effect on the economy of $100 million or more, nor will it result in major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Furthermore, it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The Administrator of the Food and Nutrition Service has certified that this rule will not have a significant economic impact on a substantial number of small entities.

This action imposes no new reporting or recordkeeping requirements that are subject to Office of Management and Budget (OMB) review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). The programs being amended are approved by OMB under the following control numbers: National School Lunch Program, 0584–0006; Special Milk Program, 0584–0005; and School Breakfast Program, 0584–0012.

The National School Lunch, Special Milk, and School Breakfast Programs are listed in the Catalog of Federal Domestic Assistance under No. 10.555, 10.556 and 10.553, respectively; and are subject to the provision of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR Part 3015, Subpart V and 48 FR 29112, June 24, 1983.)

Background

The Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, excluded private schools with an average yearly tuition exceeding $1,500 per child from participating in the National School Lunch Program, Special Milk Program, and School Breakfast Program. Subsequently, Pub. L. 99–661 increased the private school tuition limit to $2,000 effective October 1, 1986 and provided for future indexing for inflation. The program regulations were amended to reflect the $2,000 limit on March 12, 1987 (52 FR 7559).

Current Legislation

Public Law 100–71 amended section 12(d)(5) of the National School Lunch Act (42 U.S.C. 1760(d)(5)) and section 15(c) of the Child Nutrition Act of 1966 (42 U.S.C. 1784(c)) to remove the tuition limitation previously imposed on private schools as a condition of eligibility for participation in the school nutrition programs. Public Law 100–71 specifies an effective date of July 1, 1987. Therefore, all private schools are now eligible to apply for participation in any of the school nutrition programs authorized under the Nation School Lunch Act and Child Nutrition Act.

List of Subjects

7 CFR Part 210

Food assistance programs, Nation School Lunch Program, Commodity School Program, Grant programs—social programs, Nutrition, Children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 215

Food assistance programs, Special Milk Program, Grant program—social programs, Nutrition, Children, Milk, Reporting and recordkeeping requirements.

7 CFR Part 220

Food assistance programs, School Breakfast Program, Grant programs—social programs, Nutrition, Children, Reporting and recordkeeping requirements.

Accordingly, Parts 210, 215, and 220 are amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for Part 210 continue to read as follows:

Authority: Sec. 2–12, 60 Stat. 230, as amended; Sec. 10, 80 Stat. 889, as amended; 84 Stat. 270; 42 U.S.C. 1751–1760, 1779.

§ 210.2 [Amended]

2. Section 210.2 is amended as follows:

a. The definition, "High tuition private school" is removed;

b. In the definition of "School", the first sentence in paragraph (a) is amended by removing the semicolon after the word "buildings" and adding a period in its place and removing the remainder of the sentence; and

c. The definition "Tuition" is removed.

PART 215—SPECIAL MILK PROGRAM

1. The authority citation for Part 215 continues to read as follows:

Authority: Sec. 3, 10; 80 Stat. 885, 889, as amended (42 U.S.C. 1772, 1779).

§ 215.2 [Amended]

2. Section 215.2 is amended as follows:

a. Paragraph (k–1) "High tuition private school" is removed;

b. The first sentence in paragraph (v)(1) is amended by removing the semicolon after the word "buildings" and adding a period in its place and removing the remainder of the sentence; and

c. Paragraph (bb) "Tuition" including subparagraphs (1) and (2), and paragraph (cc) "Special needs children" are removed.

PART 220—SCHOOL BREAKFAST PROGRAM

1. The authority citation for Part 220 continues to read as follows:

Authority: Secs. 4 and 10, 80 Stat. 886, 889 (42 U.S.C. 1773, 1779).

§ 220.2 [Amended]

2. Section 220.2 is amended as follows:

a. Paragraph (j–1) "High tuition private school" is removed;

b. The first sentence in paragraph (u)(1) is amended by removing the semicolon after the word "buildings" and adding a period in its place and removing the remainder of the sentence; and

c. Paragraph (bb) "Tuition", including subparagraphs (1) and (2), and paragraph (cc) "Special needs children" are removed.

Date: August 5, 1987.

Anna Kondratas,

Administrator.

[FR Doc. 87–18522 Filed 8–12–87; 8:45 am]

BILLING CODE 3410-30-M

Animal and Plant Health Inspection Service

9 CFR Parts 101, 102, 103, 104, 107, and 114

[Docket No. 87–029]

Viruses, Serums, Toxins, and Analogous Products; Experimental Products and Exempted Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Security Act of 1985 amended the Virus-Serum-Toxin Act of 1913 (VST Act) to give the Secretary of Agriculture jurisdiction over intrastate as well as interstate shipments of animal biologics, subject to certain exemptions. Products which are exported are now also subject to the Act. Under the VST Act, it is unlawful to import or to ship in or from the United States animal biologics that are worthless, contaminated, dangerous, or harmful. It is also unlawful to ship animal biologics which are manufactured within the United States and intended for use in the treatment of animals unless they are prepared in compliance with regulations prescribed by the Secretary in a properly licensed establishment.

This final rule amends the regulations in several respects so that they conform to the 1985 amendments of the Act. It prescribes exemptions relevant to products prepared by a person for administration to that person's own animals, and products prepared by a veterinarian solely for administration to animals under that veterinarian's client-patient relationship. It also prescribes exemptions relevant to those products which are prepared solely for distribution within the State of production pursuant to an approved State licensing program, and makes other conforming changes.

In order to assure that public concern for the environment, and the health and safety of both humans and animals are properly addressed, this amendment also addresses environmental aspects of the use of biological products, especially those containing live organisms.

EFFECTIVE DATE: September 14, 1987.

FOR FURTHER INFORMATION CONTACT: Dr. Peter L. Joseph, Senior Staff Veterinarian, Veterinary Biologics Staff, VS, APHIS, USDA, Room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–6332.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This rule contains no new or amended recordkeeping, reporting, or application requirements or any type of information collection requirement subject to the Paperwork Reduction Act of 1980.

Executive Order 12291

This rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1, and has been classified as a "Non-major Rule."

This action will not have a significant effect on the economy and will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will also not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises, in domestic markets.

Certification Under the Regulatory Flexibility Act

The Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities. Its purpose is to prescribe procedures and criteria with respect to exemptions and other provisions mandated by the Virus-Serum-Toxin Act, as amended.

Background

In amending the Virus-Serum-Toxin Act of 1913 (VST Act), the Food Security Act of 1985 expanded the Department's authority over veterinary biologics in several respects. Under the amended statute, it is unlawful to ship or deliver for shipment any worthless, contaminated, dangerous, or harmful veterinary biologic intended for use in the treatment of animals anywhere in or from the United States. The preparation of such products in the District of Columbia, the Territories, or in any place under the jurisdiction of the United States is also prohibited. Previously, intrastate shipments and exports were not subject to the VST Act. It is also unlawful (subject to certain exemptions) to ship veterinary biologics, manufactured within the United States and intended for use in the treatment of animals, in or from the United States, unless they were prepared in compliance with regulations prescribed by the Secretary of Agriculture in an establishment licensed by the Secretary. Products prepared in the District of Columbia, in the Territories, or in any

place under the jurisdiction of the United States must be prepared pursuant to a license. The amendment expands the Secretary's rulemaking authority by authorizing the promulgation of any rules and regulations deemed necessary to carry out the purposes of the Act (the main purpose being to prevent the distribution of worthless, contaminated, dangerous or harmful veterinary biologics for use in the treatment of animals, *i.e.*, diagnosis, prevention, and cure of disease). The Secretary is also authorized to inspect any establishment preparing animal biologics at any hour, day or night. Previously, only licensed establishments were subject to such inspection. Additionally, the amended statute contains provisions for detention, seizure, and condemnation of products. It also provides for injunctive relief and penalties for assaulting or resisting Department officials during their performance of official duties under the Act.

The current regulations in 9 CFR 103.3 contain widely used provisions for the interstate shipment of unlicensed biological products for experimental use in domestic animals for the purpose of evaluating such products. These products have been shipped for a variety of reasons, but mainly for field safety studies prior to licensing and release of the products for use in the general treatment of animals. Because of the expanded jurisdiction under the 1985 amendment to the VST Act, this revision amends § 103.3 of the regulations by deleting the reference to interstate shipments and by adding a provision for exports. This will have the effect of making the provisions of the section applicable to all shipments subject to the Act. The shipment of unlicensed biological products for experimental treatment of animals anywhere in or from the United States is prohibited without prior authorization by the Deputy Administrator. Requests for authorization must be accompanied by information specified in the regulations, including information relevant to the product's effect on the environment. Additional safeguards and tests may be required in the case of products which contain live organisms and which are prepared either through conventional means or through the use of biotechnology. For the purposes of the VST Act, the term "ship" shall be used in its broadest sense. It shall mean transportation by any means from one place to another and shall be synonymous with delivering for shipment.

Part 104 is amended by revising § 104.4 pertaining to biological products imported for research and evaluation. Section 104.4(a) is revised by stating that a permittee may be required to provide any information needed to properly assess an imported product's impact on the environment. Section 104.4(b) is amended by prohibiting any permittee or research investigator from shipping a product, imported under § 104.4, in or from the United States unless authorization to do so is obtained pursuant to the provisions of § 103.3 of the regulations.

The 1985 amendment of the VST Act provides that the Secretary shall exempt by regulation from the requirement of preparation pursuant to a license any animal biologics prepared by a person, firm, or corporation: (1) Solely for administration to animals of such person, firm, or corporation; (2) solely for administration to animals under a veterinarian-client-patient relationship in the course of such person's, firm's, or corporation's practice of veterinary medicine; and (3) solely for distribution within the State of production pursuant to a license granted by such State under a program determined by the Secretary to meet certain specified criteria. Certain provisions of the Act are still applicable to such animal biologics, regardless of whether or not they are exempted from the licensing provisions. Anyone shipping products which are worthless, contaminated, dangerous, or harmful is subject to the sanctions under the Act, including detention, seizure, and condemnation. A new Part 107 provides for the exemptions specified in the amendment to the Act. The regulations include conditions to be met in order to establish a valid veterinarian-client-patient relationship. Such conditions have been established under the Federal Food, Drug, and Cosmetic Act for the purpose of applying the prescription drug restraints and have been accepted by the American Veterinary Medical Association. Veterinarians preparing products subject to the exemption under the Act will be required to maintain and make available for inspection such records as are necessary to establish that a valid veterinarian-client-patient relationship exists. Prior to the shipment of products which contain live organisms and which are prepared either through conventional means or through the use of biotechnology, or at any other time deemed necessary, persons exempt from licensure will be required to provide any information necessary to determine the products' safety and effect on the environment. This final rule has been clarified to properly reflect these requirements.

Section 107.2 of the regulations addresses the criteria to be met by State licensing programs in order that State licensed products may be eligible for the statutory exemption. This provision of the regulations specifies that appropriate State officials are responsible for providing the Agency with information to assure compliance with the provisions of the Act. The State officials will be required to identify each manufacturer and each product to be considered for exemption. Provisions for review of procedures used by State regulatory officials and on-site evaluation of facilities and products to be exempted are also included in the regulations.

The current regulations in 9 CFR 114.2(c) provide that, except for experimental products prepared in compliance with Part 103, no biological products may be prepared in a licensed establishment unless the person holding the establishment license also holds an unexpired, unsuspended, and unrevoked product license for each product. Section 114.2(b) provides that when an establishment license is issued for an interim period not to exceed 4 years, the establishment may continue preparing certain specified unlicensed products provided, that: (a) Such products were prepared in the establishment within the 12-month period prior to issuance of the establishment license; (b) the unlicensed products are not distributed interstate; (c) no new unlicensed products are prepared after issuance of the establishment license; and (d) other specified requirements are satisfied. By the end of the interim licensure period, all products in the establishment must be licensed. The purpose of § 114.2(b) is to give intrastate producers an opportunity to become licensed without being required to immediately remove all intrastate products from their premises.

The VST Act, as amended, requires that all veterinary biologics (with the exception of certain exempt products) shipped in or from the United States must be produced pursuant to a license. However, the Act provides that products prepared for intrastate distribution or exportation during the 12-month period prior to the enactment of the Act (December 23, 1985) may continue to be produced and sold until January 1, 1990, *Provided*, that, an exemption from preparation pursuant to a license was claimed by January 1, 1987. That exemption may then be extended by the Deputy Administrator for up to 12 months. In light of this provision,

establishment licenses issued for an interim period under § 114.2(b) will only be effective until January 1, 1990 (or where an exemption is extended, until the exemption expires). All unlicensed products produced for intrastate distribution or for export are subject to the exemption provision of the Act.

Therefore, § § 114.2(b) and 102.4(h) are amended to provide for interim licensure until January 1, 1990, unless the exemption granted for the unlicensed products produced in the establishment under § 114.2(b) is extended by the Deputy Administrator. In such case, the interim license shall continue until the exemption expires. Other conforming amendments are also made.

The definition of research investigator or research sponsor in § 101.2 of the regulations is amended to conform to the new authority under the Act by deleting reference to "interstate" movement.

Comments Received

On November 20, 1986, a notice of proposed rulemaking was published in the **Federal Register** at 51 FR 41975 discussing these revisions and soliciting comments.

Comments were received from a State Veterinarian, a national trade association which includes among its members the major manufacturers of veterinary biological products, three licensed manufacturers of veterinary biological products, and two consultants to biologics manufacturers.

One commenter expressed concerns regarding the provisions in the Act that veterinary biologics prepared solely for administration to one's own animals would be exempted from preparation pursuant to a license. The commenter was concerned that this exemption would lead to serious abuses of the Act, especially with respect to biological products used in poultry operations, since the question of ownership may be subject to interpretation.

It is common practice in the poultry industry for integrated poultry producers to contract with growers to raise poultry. In these situations, the integrater provides chicks, technical expertise, medications (including vaccines), and other services. The growers provide housing, labor, equipment, water, heat and electricity. The growers are paid through various contractual agreements to raise the birds. The integrater assumes financial responsibility for losses due to expected morbidity and mortality occurring in the flocks. In such contractual agreements, the integrater has "Title of Ownership" and does not transfer ownership of the birds to the farmer. The integrater is said to own the poultry. Therefore, the exemption for veterinary biological products prepared solely for use in one's own animals would apply. These products are exempted from preparation pursuant to a license. However, they are subject to all the Act's prohibitions against shipping products which are worthless, contaminated, dangerous, or harmful. The Act gives to the Agency the authority to seize, detain, and condemn products that are in violation of these requirements.

Three comments were received regarding Part 107, Exemption From Preparation Pursuant to An Unsuspended and Unrevoked License. Section 107.1(a) addresses products prepared by a veterinary practitioner solely for administration to animals in a state-licensed professional practice of veterinary medicine under a veterinarian-client-patient relationship. The conditions to be met in order to establish a valid veterinarian-client-patient relationship are specified in § 107.1(a) of the regulations. These conditions are analogous to those established under the Food, Drug and Cosmetic Act and have been accepted by the American Veterinary Medical Association.

Section 107.2 of the regulation addresses the statutory exemptions relevant to veterinary biological products prepared under a state licensing program. Commenters recommended that this section should make reference to the prohibitions in the Act regarding worthless, contaminated, dangerous or harmful products, and that periodic inspections or on-site evaluations should be provided for. Section 107.2 states that the exemption regarding state licensed products shall be consistent with the intent of the Act to prohibit the sale, barter, exchange, or shipment of worthless, contaminated, dangerous, or harmful products. Also, § 107.2(d) does not limit the number of site evaluations or inspections. Policy and procedures are being developed to assure that state licensing programs subject to section 107 are consistent with requirements of the Act and regulations. The Agency is also developing policies and procedures for monitoring the distribution of exempted products.

Three commenters thought that the special restriction provision and the requirement that applicants submit environmental information in § 103.3 are overly broad. The section as proposed gives the Deputy Administrator the authority to impose special restrictions or tests when deemed necessary. The preamble to the proposed rules states that additional safeguards and tests may be required in the case of products which contain live organisms prepared either through conventional means or through the use of new biotechnology methods. The commenters suggested that § 103.3 be narrowed to a reasonable extent to be consistent with the preamble. It is anticipated that in the majority of cases special restrictions and additional tests would be imposed in the case of products containing live organisms which have been genetically modified. Therefore, this final rule, as modified, contains the statement that such special restrictions and tests may be imposed, especially in the case of products which contain live organisms. However, the Deputy Administrator retains the option of requiring them in other cases when necessary or advisable.

Section 103.3 also requires the submission of any information the Deputy Administrator may need in order to assess the product's impact on the environment. When such assessment is performed, each product is assessed individually on a case by case basis. As scientific knowledge advances, such advancements should be reflected in regulating affected products by requiring more data when necessary and relaxing requirements when possible. Most, if not all, necessary environmental information is routinely submitted by applicants for permits to do field studies under § 103.3 as part of the data which is reviewed for the purposes of the permit. The review process for live viral vaccines has always included considerations such as the purity of ingredients, primary cells, cell lines, and master seed virus. Information regarding genetic stability of cell lines and genetic stability of the vaccine by demonstrating nonpathogenicity and nonreversion to virulence through a significant number of backpassages in host animal has also been included in the review of live viral vaccines. When considered necessary in a particular case, the Agency has requested data for live products to include studies to determine the fate of the organism when injected into the host and its ability to shed, transmit, and maintain itself in a livestock population. Most, if not all, of this information is required to be submitted by applicants for permit under § 103.3. The specific intent of § 103.3(h) is to assure that any additional information not already made available during the application process is submitted for purposes of an environmental assessment.

There was also a question and comments with respect to products that

would be exempted from being prepared pursuant to a license. The commenters expressed uncertainty regarding whether license refers to a product or to an establishment license, and one commenter stated that it would be unnecessary to require an establishment license of a person making only exempted products. It is the Agency's view that the exemption from preparation pursuant to a license encompasses both the establishment and product licenses. Therefore, language is added to § 107.1 and 107.2 to clarify this concept.

List of Subjects in 9 CFR Parts 101, 102, 103, 104, 107, and 114

Animal biologics.

After consideration of all relevant matters, including the comments on the proposed rulemaking, and under the authority of the Virus-Serum-Toxin Act of March 4, 1913, as amended by the Food Security Act of 1985 (21 U.S.C. 151–159), the amendments of Parts 101, 102, 103, 104, 114, and the addition of new Part 107, Subchapter E, Chapter I, Title 9 of the Code of Federal Regulations are adopted as follows:

PART 101—DEFINITIONS

1. The authority citation for Part 101 is revised to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 101.2 is amended by revising paragraph (o) to read as follows:

§ 101.2 Administrative terminology.

* * * * *

(o) *Research investigator or research sponsor.* A person who has requested authorization to ship an experimental biological product for the purpose of evaluating such product, or has been granted such authorization.

* * * * *

PART 102—LICENSES FOR BIOLOGICAL PRODUCTS

1. The authority citation for Part 102 is revised to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 102.4 is amended by revising paragraphs (h)(1) and (h)(2) to read as follows:

§ 102.4 U.S. Veterinary Biologics Establishment License.

* * * * *

(h) * * *

(1) The U.S. Veterinary Biologics Establishment License issued for an interim period shall expire January 1, 1990, unless an extension for exemption from licensing under the Act of products prepared solely for intrastate shipment or export is granted by the Deputy Administrator pursuant to § 114.2(d)(3) of this subchapter. In such case, the licensee may retain the interim license until the exemption period ends.

(2) Prior to the expiration of the interim license, the licensee may request issuance of a license for an indefinite period by application as provided in § 102.3 of this part.

* * * * *

PART 103—EXPERIMENTAL PRODUCTION, DISTRIBUTION, AND EVALUATION OF BIOLOGICAL PRODUCTS PRIOR TO LICENSING

1. The authority citation for Part 103 is revised to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

2. The section heading, introductory text, and paragraph (a) of § 103.3 are revised and a new paragraph (h) is added as follows:

§ 103.3 Shipment of experimental biological products.

Except as provided in this section, no person shall ship or deliver for shipment in or from the United States, the District of Columbia, or any Territory of the United States any unlicensed biological product for experimental use in animals. For the benefit of license applicants and to permit and encourage research, a person may be authorized by the Deputy Administrator to ship unlicensed biological products for the purpose of evaluating such experimental products by treating limited numbers of animals, *Provided*, that, the Deputy Administrator determines that the conditions under which the experiment is to be conducted are adequate to prevent the spread of disease and approves the procedures set forth in the request for such authorization. Special restrictions or tests may be imposed, especially in the case of products containing live organisms, when they are deemed necessary or advisable by the Deputy Administrator. A request for authorization to ship an unlicensed biological product for experimental study and evaluation shall be accompanied by the following:

(a) One copy of a permit or letter of permission from the proper State or foreign animal health authorities of each State or foreign country involved.

* * * * *

(h) Any information the Deputy Administrator may require in order to assess the product's impact on the environment.

PART 104—PERMITS FOR BIOLOGICAL PRODUCTS

1. The authority citation for Part 104 is revised to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).)

2. Section 104.4 is amended by revising paragraphs (a) and (b) to read as follows:

§ 104.4 Products for research and evaluation.

(a) An application for a U.S. Veterinary Biological Product Permit to import a biological product for research and evaluation shall be accompanied by a brief description of such product, methods of propagating antigens including composition of medium, species of animals or cell cultures involved, degree of inactivation or attenuation, recommendations for use, and the proposed plan of evaluation. The applicant shall also provide any information the Deputy Administrator may require in order to assess the product's impact on the environment.

(b)(1) A permit to import a biological product for research and evaluation shall not be issued unless the scientific capabilities of the investigator are determined to be adequate to safeguard domestic animals and protect public health, interest, or safety from any deleterious effects which might result from use of such product. Special restrictions or tests may be specified as part of the permit when they are deemed necessary or advisable by the Deputy Administrator.

(2) No person shall ship a product imported under this section for research and evaluation anywhere in or from the United States unless authorized by the Deputy Administrator in accordance with the provisions of § 103.3 of this subchapter.

* * * * *

1. A new Part 107 is added to Subchapter E to read as follows:

PART 107—EXEMPTIONS FROM PREPARATION PURSUANT TO AN UNSUSPENDED AND UNREVOKED LICENSE

Sec.

107.1 Veterinary practioners and animal owners.
107.2 Products under State license.

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

§ 107.1 Veterinary practitioners and animal owners.

Products prepared as provided in paragraphs (a) and (b) of this section and establishments in which such

products are prepared, shall be exempt from preparation pursuant to unsuspended and unrevoked establishment and product licenses. Persons exempt from licensure under this part shipping products which contain live organisms shall provide any information the Deputy Administrator may require prior to shipment, or at any other time deemed necessary, in order to assess the products' safety and effect on the environment. The shipment or delivery for shipment anywhere in or from the United States of any exempted product which is worthless, contaminated, dangerous, or harmful is prohibited, and any person shipping such product, or delivering such product for shipment, shall be subject to sanctions under the Act.

(a)(1) Products prepared by a veterinary practitioner (veterinarian) solely for administration to animals in the course of a State licensed professional practice of veterinary medicine by such veterinarian under a veterinarian-client-patient relationship and establishments in which such products are prepared shall be exempt from licensing under the Act and regulations. Such a relationship is considered to exist when:

(i) The veterinarian has assumed the responsibility for making medical judgments regarding the health of the animal(s) and the need for medical treatment, and the client (owner or other caretaker) has agreed to follow the instructions of the veterinarian; and when

(ii) There is sufficient knowledge of the animal(s) by the veterinarian to initiate at least a general or preliminary diagnosis of the medical condition of the animal(s). This means that the veterinarian has recently seen and is personally acquainted with the keeping and care of the animal(s), and/or by medically appropriate and timely visits to the premises where the animal(s) are kept; and when

(iii) The practicing veterinarian is readily available for followup in case of adverse reactions or failure of the regimen.

(2) Veterinarians preparing products subject to the exemption for products under this section shall maintain and make available for inspection by Veterinary Services representatives or other Federal employees designated by the Secretary such records as are necessary to establish that a valid veterinarian-client-patient relationship exists and that there is a valid basis for the exemption under this section.

(b) Products prepared by a person solely for administration to animals owned by that person shall be exempt from the requirement that preparation be pursuant to an unsuspended and unrevoked license.

§ 107.2 Products under State license.

(a) The Deputy Administrator shall exempt from the requirement of preparation pursuant to an unsuspended and unrevoked USDA establishment and product license, any biological product prepared solely for distribution within the State of production pursuant to a license granted by such State under a program determined by the Deputy Administrator to be consistent with the intent of the Act to prohibit the preparation, sale, barter, exchange, or shipment of worthless, contaminated, dangerous, or harmful biological products.

(b) A request for exemption under this section must be made by the appropriate State authority and shall include information demonstrating that:

(1) The State has the authority to license viruses, serums, toxins, and analogous products and establishments that produce such products; and

(2) The State has the authority to review the purity, safety, potency, and efficacy of such products prior to relase to the market; and

(3) The State has the authority to review product test results to assure compliance with applicable standards of purity, safety, and potency prior to release to the market; and

(4) The State has the authority to deal effectively with violations of State law regulating viruses, serums, toxins, and analogous products; and

(5) The State effectively exercises the authority specified in paragraphs (b) (1) through (4) of this section consistent with the intent of the Act prohibiting the preparation, sale, barter, exchange, or shipment of worthless, contaminated, dangerous, or harmful viruses, serums, toxins, or analogous products.

(c) Each product to be exempted and each establishment preparing such product shall be identified by the State and the State shall give written notification to the Deputy Administrator of each such product and establishment. The State shall also give written notice ot the Deputy Administrator of each new license issued and of each license terminated.

(d) In order to determine whether a State exercises its authority with respect to biological products and establishments and whether its laws and regulations are being achieved, the Deputy Administrator, in cooperation with proper State authorities, may conduct an on-site evaluation of the State's program which may include inspection of establishments and/or products to be included under the exemptions in this section.

PART 114—PRODUCTION REQUIREMENTS FOR BIOLOGICAL PRODUCTS

1. The authority citation for Part 114 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 114.2, paragraphs (b) introductory text, (b)(1), (b)(9) and (c) are revised to read as follows:

§ 114.2 Products not prepared under license.

* * * * *

(b) An establishment license may be issued for an interim period not to extend beyond January 1, 1990. The establishment holding an interim license may continue preparing certain specified unlicensed biological products with the permission of the Deputy Administrator; *Provided*, that:

(1) Such unlicensed products had been prepared in the establishment within the 12 months prior to December 23, 1985.

* * * * *

(9) An exemption has been claimed for the unlicensed products produced in the establishment pursuant to § 114.2(d) of this subchapter.

(c) Except as provided in Part 103 and paragraph (b) of this section, a biological product shall not be prepared in a licensed establishment unless the person to whom the establishment license is issued holds an unexpired, unsuspended, and unrevoked product license issued by the Deputy Administrator to prepare such biological product, or unless the products prepared are subject to the provisions of § 107.2 of this subchapter.

Done at Washington, DC, this 6th day of August 1987.

J.K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 87-18408 Filed 8-12-87; 8:45 a.m.]

BILLING CODE 3410-34-M

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9 CFR Parts 115 and 116

[Docket No. 87-028]

Viruses, Serums, Toxins, and Analogous Products; Inspections; Detention, Seizure, and Condemnation

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Virus-Serum-Toxin Act of 1913 (VST Act), as amended by the Food Security Act of 1985, authorizes

any officer, agent, or employee of the Department of Agriculture to enter and inspect any establishment preparing animal biologics at any hour, day or night. Previously, only licensed establishments were subject to this provision. The amendment also provides for detention, seizure, and condemnation of products. This amendment of the regulations adds the expanded inspection authority to Part 115, and establishes a new Part 118 entitled, "Detention, Seizure, and Condemnation."

EFFECTIVE DATE: September 14, 1987.

FOR FURTHER INFORMATION CONTACT: Dr. Peter L. Joseph, Senior Staff Veterinarian, Veterinary Biologics Staff, VS, APHIS, USDA, Room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8332.

SUPPLEMENTARY INFORMATION:

This rule contains no new or amended recordkeeping, reporting, or application requirements or any type of information collection requirement subject to the Paperwork Reduction Act of 1980.

Executive Order 12291

This final action has been reviewed under USDA procedures established in Departmental Regulation 1512–1 to implement Executive Order 12291 and has been classified as a "Nonmajor Rule."

The action will not have a significant effect on the economy and will not result in a major increase in costs or prices to consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises, in domestic markets.

Certification Under the Regulatory Flexibility Act

The Administrator of the Animal and Plant Health Inspection Service has determined that this action will not result in adverse economic impact on a substantial number of small entities. Its purpose is to implement new enforcement provisions contained in the 1985 amendments to the VST Act.

Background

Part 115 of the regulations is amended to provide for the expanded inspection authority under the VST Act. It is revised to state that any establishment (rather than only a licensed establishment) which prepares biological products is subject to inspection at any time, day or night.

New enforcement authority was also provided by the 1985 amendment to the Act which incorporated the procedures of sections 402, 403, and 404 of the Federal Meat Inspection Act. These procedures, which relate to detentions, seizures, condemnations, and injunctions are applicable to the enforcement of the VST Act with respect to any animal biological prepared, sold, bartered, exchanged, or shipped in violation of the Act or regulations.

This rule establishes a new Part 118 entitled Detention; Seizure; and Condemnation. It is modeled after the regulations under the Federal Meat Inspection Act (9 CFR 329.1 et seq.) The period of detention will not exceed 20 days. The owner of the veterinary biologic or the owner's agent, or other person having custody of the product, will be given written notice of the detention. Movement of the detained product may be allowed in accordance with the regulations. The procedures to be followed in seizing and condemning biological products are those which are specified in section 403 of the Federal Meat Inspection Act.

Comments Received

On November 4, 1986, a notice of proposed rulemaking was published in the **Federal Register** at 51 FR 40030, discussing these revisions and soliciting comments.

Comments were received from a State Veterinarian who vigorously supported the proposed rulemaking. Other comments were from a trade association which includes among its members major manufacturers of veterinary biologicals, a trade association representing intrastate biological laboratories, two licensed manufacturers, and a consultant to biologics manufacturers. These generally supported the proposed rulemaking and raised the following issues.

One licensed manufacturer agreed with the proposal and suggested that the word "licensed" be removed from the title of § 115.1 to agree with the intent of the revisions. The Agency agrees with this comment and the title is modified as suggested.

In commenting on proposed § 115.1(a), three commenters suggested that the authority to inspect any establishment where biological products are prepared at any hour during the day or night is undesirable and too broad. It was suggested this authority be deleted or amended in order to be more reasonable. In order to carry out the

intent of the Act, the Agency is required to conduct initial, routine, and special inspections of establishments and products. Usually initial inspections are scheduled with the establishment in advance. Routine inspections, and in most cases, special inspections are unannounced and conducted during normal duty hours. The Agency has no plans to change this policy in conducting the majority of its inspections. However, there have been instances when it has been necessary to carry out inspections either at night and on week-ends. The language in § 115.1(a) regarding inspections authority is based on the language of the Act and will remain as proposed.

There were two comments with regard to § 115.2-Inspection of Biological Products. They both questioned why the language "Any biological product, the container of which bears a United States Veterinary License Number of a United States Permit Number or other mark required by the regulations, may be inspected at any time or place" was no changed to state that any product may be inspected at any time or place. The Virus-Serum-Toxin Act does not grant authorty to inspect any product at any time or place. The amendment of § 115.2 removes unnecessary language and revises the language referring to shipments at the end of the section to properly reflect the new authority under the Act.

One commenter pointed out that Parts 105, 115, and new Part 118, are in many instances similar in their practical effect, and asked that there be some cross-referencing. It is true that the specified regulations are similar insofar as they are intended to prevent the preparation, sale, or shipment of biological products in violation of the Act or regulations. Part 105 deals specifically with license suspensions and revocations; Part 115 deals with inspections; and the new Part 118 deals with detention, seizure, and condemnation. The parts are related but independent of each other. However, there can be some interplay between them. Therefore, § 115.2 is further revised by the addition of a reference to new Part 118.

List of Subjects in 9 CFR Parts 115 and 118

Animal biologics.

After consideration of all relevant matters, including the comments on the proposed rulemaking, and under the authority of the Virus-Serum-Toxin Act of March 4, 1913, as amended by the Food Security Act of 1985 (21 U.S.C. 151–159) the amendment of Part 115 and the addition of new Part 118, Subchapter E, Chapter I, Title 9, Code of Federal Regulations, are adopted as follows:

PART 115—INSPECTIONS

1. The authority citation for Part 115 continues to read as follows:

Authority: 21 U.S.C. 151–159; 37 Stat. 832–833.

2. Part 115 is amended by revising §§ 115.1 and 115.2 to read as follows:

§ 115.1 Inspections of establishments.

(a) Any inspector shall be permitted to enter any establishment where any biological product is prepared, at any hour during the day or night, and shall be permitted to inspect, without previous notification, the entire premises of the establishment, including all buildings, compartments, and other places, all biological products, and organisms and vectors in the establishment, and all materials and equipment, such as chemicals, instruments, apparatus, and the like, and the methods used in the manufacture of, and all records maintained relative to, biological products produced at such establishment.

(b) Each inspector will have in his or her possession a numbered USDA badge or identification card. Either shall be sufficient identification to entitle him/her to admittance at all regular entrances and to all parts of such establishment and premises and to any place at any time for the purpose of making an inspection pursuant to paragraph (a) of this section.

§ 115.2 Inspections of biological products.

Any biological product, the container of which bears a United States veterinary license number or a United States veterinary permit number or other mark required by these regulations may be inspected at any time or place. If, as a result of such inspection, it appears that any such product is worthless, contaminated, dangerous or harmful, the Secretary shall give notice thereof to the manufacturer or importer and to any jobbers, wholesalers, dealers or other persons known to have any of such product in their possession, and may proceed against such product pursuant to the provisions of Part 118 of this subchapter. Unless and until the Secretary shall otherwise direct, no persons so notified shall thereafter sell, barter, or exchange any such product in any place under the jurisdiction of the United States or ship or deliver for shipment any such product in or from any State, Territory, or the District of Columbia. However, failure to receive such notice shall not excuse any person

from compliance with the Virus-Serum-Toxin Act.

3. A new Part 118 is added to Subchapter E to read as follows:

PART 118—DETENTION; SEIZURE AND CONDEMNATION

Sec.

118.1 Administrative detention.
118.2 Method of detention; Notifications.
118.3 Movement of detained biological products; Termination of detention.
118.4 Seizure and condemnation.

Authority: 21 U.S.C. 151–159; 99 Stat 1654–1656.

§ 118.1 Administrative detention.

Whenever any biological product which is prepared, sold, bartered, exchanged, or shipped in violation of the Act or regulations is found by any authorized representative of the Deputy Administrator upon any premises, it may be detained by such representative for a period not to exceed 20 days, pending action under § 118.4, and shall not be moved by any person from the place at which it is located when so detained, until released by such representative.

§ 118.2 Method of detention; Notifications.

An authorized representative of the Deputy Administrator shall detain any biological product subject to detention under this part by:

(a) Giving oral notification to the owner of the biological product if such owner can be ascertained, and, if not, to the agent representing the owner or to the immediate custodian of the biological product; and

(b) Promptly furnishing the person so notified with a preliminary notice of detention which shall include identity and quantity of the product detained, the location where detained, the reason for the detention, and the name of the authorized representative of the Deputy Administrator.

(c) Within 48 hours after the detention of any biological product, an authorized representative of the Deputy Administrator shall, if the detention is to continue, give written notification to the owner of the biological product detained by furnishing a written statement which shall include the identity and quantity of the product detained, the location where detained, specific description of the alleged noncompliance including reference to the provisions in the Act or the regulations which have resulted in the detention, and the identity of the authorized representative of the Deputy Administrator; or, if such owner cannot be ascertained and notified within such period of time, furnish such notice to the agent representing such owner, or the carrier or other person having custody of the biological product detained. The notification, with a copy of the preliminary notice of detention shall be served by either delivering the notification to the owner or to the agent or to such other person, or by certifying and mailing the notification, addressed to such owner, agent, or other person, at the last known residence or principal office or place of business.

§ 118.3 Movement of detained biological products; Termination of detention.

Except as provided in paragraphs (a) and (b) of this section, no biological product detained in accordance with the provisions in this part shall be moved by any person from the place at which such product is located when it is detained.

(a) A detained biological product may be moved from the place at which it is located when so detained for the purpose of providing proper storage conditions if such movement has been approved by an authorized representative of the Deputy Administrator; *Provided,* that, the biological product so moved shall be detained by an authorized representative of the Deputy Administrator after such movement.

(b) A detained biological product may be moved from the place at which it is detained on written notification by an authorized representative of the Deputy Administrator that the detention is terminated; *Provided,* that, the conditions under which the detained biological product may be moved will be specified in the written notification of the termination. The notification of termination shall be served by either personally delivering the notification, or by certifying and mailing the notification addressed to such person at the last known residence or principal office or place of business of the owner, agent, or other person having custody of the biological product.

§ 118.4 Seizure and condemnation.

Any biological product which is prepared, sold, bartered, exchanged, or shipped in violation of the Act or regulations shall be liable to be proceeded against and seized and condemned, at any time, on a libel of information in any United States district court or other proper court within the jurisdiction of which the product is found. If the product is condemned, it shall, after entry of the decree, be disposed of by destruction or sale as the court may direct, and the proceeds, if sold, less the court costs and fees, and storage and other proper expenses, shall be paid into the Treasury of the United

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States, but the product shall not be sold contrary to the provisions of the Act or the laws of the jurisdiction in which it is sold; *Provided*, that, upon the execution and delivery of a good and sufficient bond conditioned that the product shall not be sold or otherwise disposed of contrary to the provisions of the Act or the laws or jurisdiction in which disposal is made, the court may direct that such product be delivered to the owner thereof subject to such supervision by authorized representatives of the Deputy Administrator as is necessary to ensure compliance with the applicable laws. When a decree of condemnation is entered against the product and it is released under bond, or destroyed, court costs and fees, and storage and other proper expenses shall be awarded against the person, if any, intervening as claimant of the product. The proceedings in such libel cases shall conform, as nearly as may be practicable, to the proceedings in admiralty, except that either party may demand trial by jury of any issue of fact joined in any case, and all such proceedings shall be at the suit of and in the name of the United States.

Done at Washington, DC, this 6th day of August, 1987.

J. K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 87-18405 Filed 8-12-87; 8:45 am]

BILLING CODE 3410-34-M

Food Safety and Inspection Service

9 CFR Part 318

[Docket No. 85-031F]

BHA and BHT in Pizza Toppings and Meatballs

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) has been petitioned to amend the Federal meat inspection regulations to permit the use of Butylated Hydroxyanisole and Butylated Hydroxytoluene as antioxidants in cooked or raw pizza toppings and cooked or raw meatballs. The Food and Drug Administration (FDA) has listed these substances as generally recognized as safe (GRAS) for use in foods under certain conditions. The petitioners have supplied FSIS with sufficient information to satisfy the requirements of the Federal meat inspection regulations to permit the requested use (9 CFR 318.7(a)(2)). The Administrator has determined that it is appropriate to add pizza toppings and meatballs to the list of products permitted to contain BHA and BHT as added antioxidants.

EFFECTIVE DATE: September 14, 1987.

ADDRESS: Written comments to United States Department of Agriculture, Food Safety and Inspection Service, Attn: FSIS Hearing Clerk, Room 3168, South Agriculture Building, Washington, DC 20250. (See also "Comments" under "Supplementary Information.")

FOR FURTHER INFORMATION CONTACT: Ms. Margaret O'K Glavin, Director, Standards and Labeling Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, United States Department of Agriculture, Washington, DC 20250, (202) 447-6042.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Administrator has determined in accordance with Executive Order 12291 that this rule is not a "major rule." It will not result in an annual increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. It will not have a significant effect on competition, employment, investment, productivity, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This rule provides for the use of Butylated Hydroxyanisole (BHA) and Butylated Hydroxytoluene (BHT) as antioxidants in cooked or raw pizza toppings and meatballs. The Federal meat inspection regulations currently provide for their use in beef patties which are similar in composition to pizza toppings and meatballs. The regulated industry will benefit from this action through ability to use these antioxidants in a wider variety of products to increase their shelf life.

Effect on Small Entities

The Administrator has determined that his action will not have a significant economic impact upon a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601). This rule will impose no new requirements on industry; it allows meat processors to use BHA and BHT in pizza toppings and meatballs to increase their shelf life.

Comments

This is a final rule consistent with the provisions of § 318.7(a) (2) and (3) of the Federal meat inspection regulations. As such, no prior request for public

comments is required (See "Background" for rationale). However, interested persons may inform the Department of any available data which raise questions about this action within the 30 day period between publication and the effective date of this rule.

Background

FSIS has been petitioned by Tony's Pizza Service, Salina, KS, and Rotanelli Foods, Inc., New Rochelle, NY, to permit the use of BHA (Butylated Hydroxyanisole) and BHT (Butylated Hydroxytoluene) as antioxidants in cooked or raw pizza toppings and cooked or raw meatballs in an amount not to exceed 0.02% in combination based on the fat content.

The petitioners maintain that since BHA and BHT have been approved as GRAS and as permissible food additives by the FDA and are currently allowed in various types of fresh, cooked and dried meats by FSIS, it is reasonable to permit their use in pizza toppings and meatballs.

Issuance of Final Rule

On July 19, 1983, FSIS published in the **Federal Register** (48 FR 32749) a final rule on new procedures to be used for the approval of added substances in meat and poultry products. Under that rule, applicants are required to show (1) that a proposed added substance has been previously approved by FDA as GRAS or as a food additive or color additive in meat or poultry food products and (2) that the substance is listed in Title 21 of the Code of Federal Regulations, Parts 73, 74, 81, 172, 173, 182, or 184. BHA and BHT are listed in 21 CFR 182.3169 and 182.3173, respectively, for use in food when the total content of antioxidants is not over .02 percent of the fat or oil content.

The Administrator of FSIS concurs with FDA's conclusions regarding the safety of BHA and BHT. He further finds in accordance with the procedure in 9 CFR 318.7(a) (2) and (3) that information provided by the petitioner in addition to other available data indicate that (a) the use of these substances will have an appropriate technical effect on the product; (b) the substances will be used at the lowest level necessary to accomplish their intended technical effect and their uses are functional and suitable; and (c) their use will not render the product in which they are used adulterated or misbranded.

Therefore, the Agency is amending § 318.7 of the Federal meat inspection regulations (9 CFR 318.7), under BHA and BHT in the table of approved substances, to add cooked or raw pizza topping and cooked or raw meatballs as products in which BHA and BHT may be added.

List of Subjects in 9 CFR Part 318

Food additives, Meat inspection.

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

1. The authority citation for Part 318 is revised to read as follows:

Authority: 34 Stat. 1260 as amended, 81 Stat. 584, as amended (21 U.S.C. 601 *et seq.*), 72 Stat. 862, 92 Stat. 1069, as amended (7 U.S.C. 1901 *et seq.*), 76 Stat. 663 (7 U.S.C. 450 *et seq.*)

2. Section 318.7(c)(4) (9 CFR 318.7(c)(4)) is amended by adding the products "Cooked or Raw Pizza Topping and Cooked or Raw Meatballs" to the Chart of products to be placed after "Fresh Sausage Made From Beef or Beef and Pork" under the class of substances entitled "Antioxidants and Oxygen Interceptors," as follows:

§ 318.7 Approval of substances for use in the preparation of products.

(c) * * *

(4) * * *

Class of substance	Substance	Purpose	Products	Amounts
*	*	*	*	*
Antioxidants and oxygen terceptors.	BHA (butylated hydroxyanisole.	.....do.....	Fresh pork, sausage, brown and serve sausages, fresh Italian sausage products, pregrilled beef patties, fresh sausages made from beef or beef and pork, cooked or raw pizza topping and cooked or raw meatballs.	0.01 percent based on fat content—0.02 percent in combination based on fat content.
	BHT (butylated hydroxytoluene).	.....do.....	.....do.....	.....do
*	*	*	*	*

Done at Washington, DC, on August 6, 1987.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 87-18523 Filed 8-12-87; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF ENERGY

10 CFR Part 725

Permits for Access to Restricted Data

AGENCY: Office of Uranium Enrichment, DOE.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is announcing its decision to amend the regulation concerning permits for access to uranium isotope separation Restricted Data. The regulation establishes procedures and standards for the issuance of access permits to those private sector persons or groups who require access to Restricted Data for use in their business. Access permits are divided into separate technology categories. Category C-24 pertains to access to the gaseous diffusion and gas centrifuge processes for the separation of uranium isotopes for participating in the construction and operation of additional production facilities utilizing those technologies. The purpose of this rulemaking is to update Category C-24 to take into account events that have occurred since the last amendment in 1979.

Specifically, this rulemaking authorizes access to Category C-24 Restricted Data by persons interested in acquiring centrifuge machines and related equipment and materials for commercial purposes involving uranium enrichment and for purposes other than uranium enrichment. Such machines and equipment have been made surplus to DOE's needs as a result of DOE's cancellation of its Gas Centrifuge Enrichment Plant and advanced Gas Centrifuge Development Program in June 1985.

In addition, this rulemaking recognizes a new category of information known as "government confidential commercial information."

EFFECTIVE DATE: September 14, 1987.

FOR FURTHER INFORMATION CONTACT: Philip Sewell, Director, Office of Technology Deployment and Strategic Planning (NE-34), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20545, (301) 353-4610 or Lawrence Leiken, Attorney, Office of General Counsel (GC-31), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6975.

SUPPLEMENTARY INFORMATION:

I. Introduction

Category C-24 defines the terms and conditions which must be satisfied to obtain uranium isotope separation information. Applicants may apply for two subcategories of permits, A or B. Subcategory A includes technical information in summary form concerning the status and potential of Government funded processes for separation of uranium isotopes. Subcategory B provides for up to full technical disclosure on any technical aspect of the uranium isotope separation process, including equipment and facility design, construction, and operation. To qualify for an access permit under existing regulations, an applicant is required to (1) demonstrate adequate technical, managerial, and financial qualifications, and (2) agree to determine its interest in (subcategory A) or propose to participate in (subcategory B) an effort leading to the construction of additional or operating existing gas centrifuge or gaseous diffusion production facilities.

Regulations pertinent to this category were last amended in 1979. See 44 FR 37938 (June 29, 1979).

The primary purpose of this Rulemaking is to revise Category C-24, subcategory B, to permit access by persons interested in acquiring surplus centrifuge machines for commercial use involving uranium enrichment and for purposes other than uranium enrichment. Section 725.15, Requirements for Approval of Applications, is expanded to include such potential use.

In addition, a further purpose of this Rulemaking is to recognize the need for protection of a category of information, which is not Restricted Data, known as "government confidential commercial information." This information as described by the United States Supreme Court in *Federal Open Market Committee* v. *Merrill*, 443 U.S. 360 (1979) and in subsequent cases is sensitive commercial information generated by the government, the release of which could put the government at a competitive disadvantage. See also *United States* v. *Weber Aircraft Corp.*, 465 U.S. at 799-800 (1984) and *FTC* v. *Grolier, Inc.* 462 U.S. at 26-27 (1983). DOE believes that it may be necessary to provide limited access to this category of sensitive information as a part of its continuing efforts to ensure a sound and competitive industrial base exists to support or operate uranium enrichment facilities. DOE will provide this information to permittees in support of the Administration's privatization objectives. However, this action will not constitute a waiver of the confidentiality of the information or give to permittees the right to release this information to any third party without the prior consent of DOE. For this purpose, revisions are announced in §§ 725.3, 725.22 and 725.23, which include a definition of the term "government confidential commercial information" and provide a basis for limited access by the permittee only.

II. Background

On April 28, 1987, DOE proposed several revisions in the existing access permit program regulations (52 FR 15324). DOE requested written comments on the proposal by June 2, 1987 and provided for a public hearing which was held on May 21, 1987.

In response to the Notice of Proposed Rulemaking, DOE received written comments from one party and testimony from a second party at the public hearing. The scope of these comments has provided DOE with a complete rulemaking record, containing the views of interested parties. DOE has considered these comments carefully in its deliberations and has modified the proposed regulations where appropriate.

In the following sections, DOE describes the revisions to the existing access permit program regulations. In addition, DOE discusses those comments which relate to particular revisions and responds to those comments where appropriate.

III. Revised Access Permit Program Regulations

A. Section 725.3—Definitions

Section 725.3 of the revised regulations defines "Government Confidential Commercial Information." Under the proposed definition, the term would mean "sensitive commercial information generated by the government, the release of which could put the government at a disadvantage in providing enrichment services."

One commenter has expressed the concern that too broad a definition would permit the Government to deny access to information (considered by DOE to be "government confidential commercial") which may be deemed by the permittee to be indispensable to its participation in uranium enrichment privatization. The same commenter also suggested that the proposed definition of "government confidential commercial information" be modified to expressly

exclude information defined as "Restricted Data" under the Atomic Energy Act of 1954, as amended.

DOE believes that the concern that it may withhold any information necessary to induce private participation in uranium enrichment is misplaced. In the introductory comments to the proposed regulations, DOE expressly recognized that it may be necessary to provide access to (government confidential commercial) information "as a part of its continuing efforts to ensure a sound and competitive industrial base exists to support or operate uranium enrichment facilities." In both the preamble and the regulations, DOE indicated that it would provide the necessary information to the permittees in support of the Administation's privatization efforts subject only to the limitation that the information may not be further disseminated by the permittee without DOE's permission. (52 FR 15324)

It was never DOE's intention to treat "Restricted Data" as "government confidential commercial information" since the dissemination of "Restricted Data" is already controlled under the Atomic Energy Act, as amended. DOE agrees with the commenter that the definition of "government commercial confidential information" should be modified in the final rule to expressly exclude Restricted Data. Accordingly, DOE has made the appropriate revision in the final rule.

B. Section 725.15 Requirements for approval of applications

Section 725.15 sets forth the requirements for obtaining an access permit and would permit access by persons interested in acquiring surplus centrifuge machines for commercial use involving uranium enrichment and for purposes other than uranium enrichment. The comments did not address this section. DOE has decided to adopt this section as proposed.

C. Section 725.22 Scope of permit

Section 725.22 of the proposal would permit access on a conditional basis to "government confidential commercial information." One comment suggests that the regulation be modified to permit access to such government confidential commercial information as "is necessary to ensure the existence of a sound and competitive industrial base to support or operate uranium enrichment facilities." DOE believes that the insertion of this language would be redundant because it already appears in the preamble to the regulations (52 FR 15324). Accordingly, DOE has decided to adopt this section as proposed.

D. Section 725.23 Terms and conditions of access

Section 725.23 sets forth the condition that the permittee agrees not to disseminate Restricted Data or government confidential commercial information except as may be otherwise authorized by DOE. The comments did not address this section. DOE has decided to adopt this section as proposed.

IV. Procedural Matters

A. Review Executive Order 12291

Executive Order 12291 (46 FR 13193, February 19, 1981), requires an agency to prepare a regulatory impact analysis for any major rule. DOE has determined that this rule does not constitute a "major rule," as defined in the Executive order, because: (1) The revisions in the access program will not directly result in the level of impact necessary to meet the definition of a "major rule" and (2) in keeping with the purpose and intent of the Executive Order, the revisions will not increase the regulatory burdens on American society. The Director of the Office of Management and Budget has reviewed this rule pursuant to section 3 of Executive Order 12291.

B. Review Under the Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, DOE certifies that the rule will not have a significant economic impact on a substantial number of small entities because: (1) The rule will not directly result in the level of impact required to meet the standard set forth in the Regulatory Flexibility Act, (2) to the extent the rule may have any direct impact, such impact will not be adverse to small entities, and (3) the number of small entities that may be affected by the rule is not large enough to meet the standard set forth in the Regulatory Flexibility Act.

C. Paperwork Reduction Act

The change in the regulation does not directly provide for the collection of new information. DOE will submit the collection of any new information requests concerning the rulemaking amendments to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501.1 *et seq.*, and the procedures implementing that Act, 5 CFR 1320.1 *et seq.*

D. National Environmental Policy Act

The Department of Energy has determined that this rule does not involve alteration of existing facilities, and clearly will not significantly affect the quality of the human environment. Further, this rulemaking is within a category of actions specifically excluded from preparation of either an Environmental Assessment or an Environmental Impact Statement by DOE's Guidelines for Compliance with the National Environmental Policy Act. Since the rulemaking is not a major Federal action significantly affecting the quality of the human environment and is within a categorical exclusion provided by DOE's NEPA Guidelines, neither an Environmental Assessment nor an Environmental Impact Statement is required.

List of Subjects in 10 CFR Part 725

Uranium.

For reasons set forth in the preamble, Part 725 of Chapter III of Title 10 of the Code of Federal Regulations is amended as set forth below.

Issued in Washington, DC on August 7, 1987.

James W. Vaughan, Jr.,

Acting Assistant Secretary for Nuclear Energy.

PART 725—PERMITS FOR ACCESS TO RESTRICTED DATA

1. The authority citation for Part 725 is revised to read as follows:

Authority: Sec. 161 of the Atomic Energy Act, as amended, 68 Stat. 943, 42 U.S.C. 2201.

2. Section 725.3 is amended by adding a new paragraph (i) to read as follows:

§ 725.3 Definitions.

* * * * *

(i) "Government Confidential Commercial Information" means sensitive commercial information not including Restricted Data, generated by the government, the release of which could put the government at a competitive disadvantage in providing enrichment services.

§ 725.15 Requirements for approval of applications.

3. Section 725.15 is amended by revising paragraph (b)(3) to read as follows:

* * * * *

(b) * * *

(3) An application for an access permit authorizing access to Restricted Data in category C–24, isotope separation—subcategory A or B—will be approved only if the application demonstrates also that the applicant:

(i) Possesses technical, managerial and financial qualifications demonstrating that the applicant is

potentially capable of undertaking or participating significantly in the construction and/or operation of production or manufacturing facilities and offers reasonable assurance of adequacy of resources to carry on, alone or with others, uranium enrichment on a production basis or the large-scale manufacture or assembly of precision equipment systems, or is potentially capable of utilizing centrifuge machines in its business for uranium enrichment or for purposes other than uranium enrichment; and is not subject to foreign ownership, control, or influence; and

(A) For subcategory A, desires to determine its interest in participating significantly in a substantial effort to develop, design, build, and operate a uranium enrichment facility or a facility for the manufacture of uranium enrichment equipment.

(B) For subcategory B, proposes to *(1)* participate significantly in, or is directly participating significantly in, a substantial effort to evaluate alternative processes, develop, design, build, and operate a uranium enrichment facility or a facility for the manufacture of uranium enrichment equipment, or *(2)* utilize centrifuge machines and related equipment in its business for uranium enrichment or for purposes other than uranium enrichment, or

(ii) Is furnishing to a permittee having access to Category C–24 under the paragraph (b)(3)(i) of this section substantial scientific, engineering, or other professional services to be used by said permittee in carrying out the activities for which said permittee received access to Category C–24.

* * * * *

4. Section 725.22 is amended by adding a new paragraph (c) to read as follows:

§ 725.22 Scope of permit.

* * * * *

(c) In addition, access permits may authorize access, subject to the terms and conditions of the access permit, to such government confidential commercial information as is included within the particular category or categories specified in the permit.

5. Section 725.23 is amended by revising paragraph (d)(9) as follows:

§ 725.23 Terms and conditions of access.

* * * * *

(d) * * *

(9) Except as may be otherwise authorized by DOE, the permittee agrees not to disseminate to persons not granted access by DOE, restricted data or government confidential commercial information made available to the permittee by DOE or restricted data developed by the permittee, its employees, or others engaged by the permittee in the course of the permittee's work under the access permit or as a result of data or information made available by DOE.

* * * * *

[FR Doc. 87–18479 Filed 8–12–87; 8:45 am]

BILLING CODE 6450–01–M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 523

[No. 87–650]

Membership in Federal Home Loan Banks

Date: August 6, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") is adopting final amendments to its Federal Home Loan Bank System Regulations to provide a method for determining appropriate Federal Home Loan Bank ("Bank") district membership for all institutions eligible to become Bank members. Under the amendments an institution can be a member only in the Bank district in which it maintains its principal office, normally as shown in its charter, unless the Principal Supervisory Agent determines that membership is inconsistent with the actual location of control over the institution's records or operations. The amendments eliminate an option that allows an institution to become a member of a Bank outside the district in which its home office is located by naming a state in which it does substantial business as its principal place of business in accordance with the provisions of 28 U.S.C. 1332(c). Institutions that have taken advantage of the current option could choose to be grandfathered, but would not be immune from future application of a procedure for mandatory transfer of membership established in the amendments.

EFFECTIVE DATE: October 13, 1987.

FOR FURTHER INFORMATION CONTACT: Jonathan Curtis, Program Analysis Development Division, Office of the District Banks, at (202) 377–6709; or Richard L. Little, Associate General Counsel, Corporate and Securities Division, Office of General Counsel, at (202) 377–6447, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

A. Description of the Proposal

On January 29, 1987, the Board proposed these amendments primarily for the purpose of fostering more effective supervision of thrift organizations with deposit-taking facilities in more than one Bank district. Board Res. No. 87–111, 52 FR 3450 (February 4, 1987). Despite certain concerns raised in the public comments, the Board, with two noted exceptions, has decided to adopt the amendments substantially in the form proposed for the reasons previously expressed.

Under these amendments, an institution's "principal place of business" for determination of the Bank in which membership would be appropriate pursuant to section 4(b) of the Federal Home Loan Bank Act ("Act") (12 U.S.C. 1424(b)) will, as a general rule, be the state in which the institution's "principal office," as defined in 12 CFR 561.7, is located. The general rule would prevail unless the Principal Supervisory Agent ("PSA") makes a contrary designation based on the existence of any one of four factors indicating that control over the institution's records or operations is lodged elsewhere. Where a principal place of business so designated is a state in another Bank district, the PSA can send the institution a written notification of intent to order transfer of membership. If the institution fails within 90 days of the date of the notice to correct the conditions supporting the designation or to explain why the designation is unjustified, the PSA can order transfer of membership to the appropriate Bank district upon reaching agreement with the PSA of the receiving Bank on a method of orderly transfer. If the PSAs involved are unable to agree, the Board would set the terms of transfer.

In the proposal, an institution that had received Board approval under section 4(b) of the Act to be a member in a Bank district adjoining the district in which its principal place of business was located would have been completely exempt from the mandatory transfer procedures. The Board has decided to eliminate this exemption and to extend only the limited grandfather privileges, available to all holders of non-conforming memberships, to such institutions. Also, the Board has determined to add a new paragraph (g) to the final version of § 523.3–2 of the Regulations in order to make it clear that institutions involved in supervisory cases would not be subject to the transfer procedures to the extent that any approvals granted in connection with these supervisory cases

are inconsistent with the procedures. Aside from these revisions the text of proposed § 523.3–2 has not been changed.

B. Discussion of the Comments

The Board received five public comments in response to the proposal. Two were from the Banks; the remainder came from an industry trade association, an insured institution and a private law firm. The insured institution supported the amendments and the Board's rationale without further comment. Although they were generally supportive of the supervisory objectives of the proposal, the remaining commenters had reservations about various aspects of the amendments.

Both commenting Banks drew a distinction between the financial and supervisory sides of their operations. From the financial standpoint neither Bank felt that the proposal gave sufficient consideration to the impact that the loss of a member might cause. Both the equity position and earnings of a Bank might be significantly eroded through redemption of capital stock and retirement of advances if a sizeable member institution were forced to transfer districts. To reduce these risks, one of the Banks suggested dividing the supervisory and financial responsibilities between different Banks in accordance with the location of control or records and fiscal requirements of a given member.

In the Board's view, splitting the banking and regulatory functions for an institution between Banks would be administratively unfeasible and would tend to undermine the goal of having the site "where control of an institution is exercised and its records maintained coincide with its principal place of business for Bank membership purposes." 52 FR 3451. The Board believes that, given the supervisory objectives of the amendments and the relatively small number of institutions that would be affected by the transfer procedure, the economic impact on a Bank should not determine whether a transfer is ultimately justified.

Under the proposal, institutions that had received Board approval pursuant to section 4(b) of the Act to be members in Bank districts adjoining the districts in which their principal offices were located would have been entirely exempt from the mandatory transfer procedures, but other institutions maintaining memberships not in conformity with the new rules would have been entitled only to a limited form of grandfathering. The latter group would have been able to keep non-conforming memberships so long as the PSA, in reliance upon the factors relating to maintenance of records and control of operations, did not make a designation requiring transfer to another district. With respect to the former group, the second commenting Bank suggested elimination of the proposed exemption from the transfer procedures on grounds that acquisition of such institutions by out-of-state entities could lead to the same types of supervisory problems presented by other multi-state organizations covered by the proposal. Although Board-approved, adjoining district membership is specifically authorized by statute, upon consideration the Board concurs with the observation of the second commenting Bank. No useful supervisory purpose would be served by granting a blanket exemption to institutions that have acquired membership in adjoining districts by virtue of the statutory authorization. Under the final amendments, therefore, all institutions with memberships not conforming to the new rules will be subject to mandatory transfer of districts upon the appropriate findings.

With respect to the limited grandfathering for non-conforming memberships, the industry trade association felt that the proposal was defective because "once an institution is grandfathered, it should remain grandfathered." While the value of certainty of membership in a particular Bank district can be appreciated, the Board believes that unrestricted grandfathering of non-conforming memberships is contrary to the policies underlying the amendments. Operations that are deemed deficient from a supervisory standpoint should not be shielded by a grandfathering device intended primarily to serve as a convenience. Therefore, the Board has decided to retain only limited grandfathering for all non-conforming memberships.

Both the industry trade association and the private law firm felt that the proposed amendments might disrupt the process of disposing of failing institutions. The trade association was especailly concerned that the rules "could prohibit membership in a [B]ank district in which a thrift conducts the bulk of its business activity—conceivably the site of several newly acquired unhealthy thrifts. . . ." Thus, according to this view, the amendments "would tend to discourage healthy thrifts from purchasing unhealthy thrifts outside their . . . Bank districts."

For its part, the private law firm contended that adoption of the amendments could upset agreements undertaken in connection with supervisory acquisitions made pursuant to temporary section 408(m) of the National Housing Act (12 U.S.C. 1730a(m)). On this point the chief concern was that the amendments "would permit a PSA to override a provision of such an acquisition agreement pertaining to the location of the Bank in which the resulting institution would be a member." In the view of this commenter, "so long as the books, records, account documentation and bank officers necessary for efficient examination and supervision are available at a single location . . ." designations of Bank districts made in the context of executed transactions under section 408(m) should be exempt from application of the amendments.

While the likelihood that the amendments might have the effect of discouraging supervisory acquisitions or undoing previously approved arrangements made in the context of such transactions appears to be extremely remote, the Board is particularly sensitive to any regulatory changes that could be perceived as impeding the disposition of failing institutions under circumstances otherwise acceptable to the Board. Therefore, the final amendments incorporate a new paragraph (g) that would exempt from the transfer procedures any institution involved in a "supervisory case", as defined in 12 CFR 563.43(d), if any approvals granted in connection with the supervisory case would be inconsistent with the procedures.

Finally, the comment from the private law firm urged adoption of a notice and transfer procedure somewhat different from the one proposed in paragraph (d) of § 523.3–2. Under the recommended approach, the PSA would first notify an institution that its Bank district designation was subject to review. The institution would then have 90 days to "submit written reasons why redesignation would not be appropriate." At the close of the period, the PSA would render a decision "based upon a weighing of the factors contained in the Proposed Rule and those submitted by the institution." Following an adverse decision by the PSA, the institution would have the opportunity to appeal to the Board. According to the writer, these procedures were designed to give "greater weight . . . [to] the preferences and reasons that a grandfathered institution may have in making its case that it should not be transferred to a different District Bank."

The chief differences between the recommended procedures and the Board's proposed structure are the

opportunities for the target institution to introduce considerations other than the four factors specified in the proposal into the decisional process and to appeal a redesignation to the Board. In the Board's view, neither departure is warranted.

Although the Board can understand that an institution might prefer membership in a given Bank for a number of reasons not set forth in the proposal, the rationale for the recommended procedures loses sight of the supervisory objectives of the amendments and the relative ease by which mandatory transfer can be avoided. In the Board's view, a policy holding that a principal place of business serve as the location which control of an institution is exercised and its records are maintained is not particularly onerous. On the other hand, for the Board to carry out its supervisory responsibilities effectively, an institution that is held out as a discrete corporate entity should be regulatorily accountable for the conduct of its affairs at a single, readily ascertainable location. Since most of the Board's supervisory actions are initiated under delegated authority at the Bank level, the Board believes that for the sake of administrative convenience and supervisory effectiveness the location of choice for examining and supervising institutions on an individual basis should be their principal places of business as designated for Bank membership purposes. Considerations for maintaining membership in a given Bank beyond the four factors listed in the proposal and retained in the final amendments would not comport with the Board's objectives. Since the administrative action contemplated by these amendments involves transfer of membership for supervisory purposes, but not loss of membership, and since the factors determining the propriety of a transfer are to a great extent objectively verifiable, the Board is also of the opinion that an opportunity for an institution to appeal a redesignation to the Board is not necessary. Therefore, the procedures for notice and transfer of membership contained in the proposal have been retained without revision in the final amendments.

Final Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 604, the Board is providing the following regulatory flexibility analysis:

1. *Need for and objectives of the rule.* These elements are discussed above in SUPPLEMENTARY INFORMATION.

2. *Issues raised by comments and agency assessment and response.* These elements are discussed above in SUPPLEMENTARY INFORMATION.

3. *Significant alternatives minimizing small-entity impact and agency response.* The Small Business Administration defines a small financial institution as "a commercial bank or savings and loan association, the assets of which, for the preceding fiscal year, do not exceed $100 million." 13 CFR 121.13(a). Therefore, the small entities to which the final rule applies are the 1,651 insured institutions which had assets totaling $100 million or less as of December 31, 1986, that are affiliated with organizations maintaining depository offices in more than one Bank district. There are no alternatives, other than commencement of individual enforcement actions, that would achieve the Board's objectives.

List of Subjects in 12 CFR Part 523

Federal home loan banks, Flood insurance, Mortgages, Reporting and recordkeeping requirements.

Accordingly, the Federal Home loan Bank Board hereby amends Part 523, Subchapter B, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

PART 523—MEMBERS OF BANKS

1. The authority citation for Part 523 continues to read as follows:

Authority: Sec. 5, 47 Stat. 727, as amended (12 U.S.C. 1425); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–403, 405–407, 48 Stat. 1255–1257, 1259–1260, as amended (12 U.S.C. 1724–1726, 1728–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); sec. 503, 88 Stat. 1521, as amended (15 U.S.C. 1691, 1691a); sec. 202(b), 87 Stat. 982, as amended (12 U.S.C. 4106(b)); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1947 Supp., 1943–48 Comp., p.1071.

2. Section § 523.3–2 is amended by revising the heading of the section; by revising paragraph (b); and by adding new paragraphs (c) through (g) to read as follows:

§ 523.3–2 Membership at principal place of business, designation, transfer of membership.

* * * * *

(b) *Principal place of business.* Except as designated in accordance with paragraph (c) of this section, the principal place of business of an institution is the state in which the institution maintains its "principal office," as defined in § 561.7 of this chapter.

(c) *Designation by Principal Supervisory Agent.* The rule contained in paragraph (b) of this section notwithstanding, the "Principal Supervisory Agent," as defined in § 541.18 of this chapter, at a Bank in which an institution is a member, has discretion to designate a different principal place of business if—

(1) Any books or records deemed necessary by the Principal Supervisory Agent for proper examination and supervision;

(2) Regular places of employment of a substantial number of officers with policy-making functions of their equivalents;

(3) Principal residences (other than those located in Metropolitan Statistical Areas) of a substantial number of officers with policy-making functions or their equivalents; or

(4) A substantial number of meetings of the board of directors, constituent committees, or their equivalents are maintained, held, or located in a state other than the state in which the institution maintains its principal office.

(d) *Transfer of membership by Principal Supervisory Agent.* If, as a result of a designation made pursuant to paragraph (c) of this section, an institution's principal place of business is deemed to be a state outside the Bank district in which the institution is a member, the Principal Supervisory Agent responsible for the designation shall transmit to the institution a written notice of intent to order transfer of membership. The notice shall include the designated principal place of business, the basis for the designation, and the Bank district to which membership will be transferred. If, in the judgment of the Principal Supervisory Agent, within 90 days of the date of the notice the institution has not acted in good faith to eliminate the basis for the designation or adequately explained why the designation was unjustified, the Principal Supervisory Agent has the discretion to order transfer of the institution's membership as set forth in the notice. No order shall take effect until the Principal Supervisory Agents of the Bank districts involved reach agreement on a method of an orderly transfer. In the event that Principal Supervisory Agents fail to agree, the Board shall determine the conditions under which the transfer shall take place.

(e) *Non-conforming memberships.* An institution that is not a member in a Bank district in which its principal office

is located on October 13, 1987, may choose to remain a member in its district but, in the event of a designation made pursuant to paragraph (c) of this section, could be subject to transfer to another district in the manner prescribed by paragraph (d) of this section.

(f) *Effect of transfer.* A transfer of membership authorized by this section shall be effective for all purposes including directoral representation under section 7(c) of the Act and § 522.23 of this subchapter, but shall not be treated as a withdrawal or removal from membership within the scope of seciton 6 of the Act or § 523.30 and § 523.31 of this subchapter.

(g) *Supervisory Case Exception.* The procedures established in paragraphs (c) and (d) of this section shall not apply to any institution involved in a supervisory case to the extent any approvals granted in connection therewith would be inconsistent with such procedures. For purposes of this paragraph, the term "supervisory case" shall have the same meaning as assigned in paragraph (d) of § 563.43 of this Chapter.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87-18474 Filed 8-12-87; 8:45 am]

BILLING CODE 6725-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-NM-222-AD; Amdt. 39-5705]

Airworthiness Directives; British Aerospace Model BAe-146 Series Airplanes.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to British Aerospace Model BAe-146 series airplanes, which requires periodic inspection and replacement, if necessary, of the flap system torque limiters. This proposal is prompted by reports of loss of primary drive of the flap system torque limiters due to excessive sprocket wear. Failure of the flap drive system could result in reduced controllability of the airplane.

EFFECTIVE DATE: September 14, 1987.

ADDRESSES: The applicable service information may be obtained from British Aerospace, Service Bulletin Librarian, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy M. Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, which requires repetitive inspections of the torque limiter drive sprocket splines on certain BAe Model 146 series airplanes, and replacement, if necessary, was published in the **Federal Register** on April 22, 1987 (52 FR 13249).

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

The first commenter indicated concurrence with the NPRM.

The other commenter, the manufacturer, noted that the NPRM proposed to require inspections in "accordance with BAe Alert Service Bulletin 27-A54, Revision 1," which describes certain repetitive inspections at intervals of 300 landings; however, the actual wording in paragraph B.2. of the NPRM proposed those repetitive inspections at intervals of 200 landings. The commenter questioned FAA's basis for reducing the interval and suggested that the proposal be revised so that the repetitive inspection interval would be the same as that recommended in the service bulletin. The FAA agrees that the intent of the proposal was for repetitive inspection requirements to be in accordance with the recommendations of the service bulletin. Accordingly, the final rule has been revised to reflect a repetitive inspection interval of 300 landings. The FAA has determined that this change will have no significant effect on the safety of flight, and will impose no additional economic burden on affected operators.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the change noted above.

It is estimated that 30 airplanes of U.S. registry will be affected by this AD, that it will take approximately 12 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $14,400.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because of the minimal cost of compliance per airplane ($480). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

British Aerospace: Applies to Model BAe-146 series airplanes listed in British Aerospace BAe-146 Service Bulletin 27-54-70193A, Revision 1, dated June 3, 1986, certificated in any category. Compliance required within 60 days after the effective date of this AD, unless previously accomplished:

To prevent the loss of primary or secondary drive of the flap system torque limiter output, accomplish the following:

A. Inspect torque limiter drive sprocket splines for excessive backlash and replace, if necessary, in accordance with BAe Alert Service Bulletin 27-A54, Revision 1, dated April 22, 1986.

B. Repeat the following inspections described in BAe Service Bulletin 27-A54, Revision 1, dated April 22, 1986:

1. Paragraph 2A: At intervals not exceeding 600 landings.

2. Paragraph 2B: At intervals not exceeding 300 landings.

C. Modification of the flap drive system in accordance with BAe Modification Service Bulletin 27-54-70193A, Revision 1, dated June 3, 1986, constitutes terminating action for the repetitive inspection requirements of paragraph B., above.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, Service Bulletin Librarian, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective September 14, 1987.

Issued in Seattle, Washington, on July 31, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-18424 Filed 8-12-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 25342; Amdt. No. 1354]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS-230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC on August 7, 1987.

Robert L. Goodrich,

Director of Flight Standards.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instruction Approach Procedures, effective at 0901 G.M.T. on the dates specified, as follows:

PART 97—[AMENDED]

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective October 22, 1987

Benson, MN—Benson Muni, NDB RWY 14, Amdt. 5
Eveleth, MN—Eveleth-Virginia Muni, RNAV RWY 27, Orig.
Martinsburg, WV—Eastern WV Regional/Airport Shepherd Field, VOR-A Amdt. 7
Martinsburg, WV—Eastern WV Regional/Airport Shepherd Field, ILS RWY 26, Amdt. 5

. . . Effective September 24, 1987

Chico, CA—Chico Muni, VOR RWY 13L, Amdt. 7
Pueblo, CO—Pueblo Memorial, NDB RWY 26R, Amdt. 16
Pueblo, CO—Pueblo Memorial, ILS RWY 26R, Amdt. 12
Macon, GA—Herbert Smart Downtown, VOR-A, Amdt. 3
Macon, GA—Herbert Smart Downtown, LOC RWY 9, Amdt. 3
New Orleans, LA—New Orleans Intl/Moisant Fld, LOC BC RWY 19, Amdt. 10
New Orleans, LA—New Orleans Intl/Moisant Fld, ILS RWY 28, Admt. 2, CANCELLED
New Orleans, LA—New Orleans Intl/Moisant Fld, ILS RWY 28, Orig.
Caldwell, NJ—Essex County, LOC RWY 22, Orig.
London OH—Madison County, NDB RWY 8, Amdt. 4
Annville, PA—Millard, VOR/DME-A, Amdt. 2
Carlisle, PA—Carlisle, VOR/DME-A, Orig.
Chambersburg, PA—Chambersburg Muni, VOR/DME-A, Amdt. 2
Chambersburg, PA—Chambersburg Muni, VOR-B, Amdt. 1
Harrisburg, PA—Capital City, ILS RWY 8, Amdt. 6
Lancaster, PA—Lancaster, VOR/DME RWY 26, Amdt. 8
Lancaster, PA—Lancaster, VOR RWY 31, Amdt. 12
Lancaster, PA—Lancaster, VOR/DME RWY 31, Amdt. 1
Lancaster, PA—Lancaster, ILS RWY 8, Amdt. 11
Middletown, PA—Harrisburg Intl Arpt-Olmsted Fld, ILS RWY 13, Amdt. 9
Middletown, PA—Harrisburg Intl Arpt-Olmsted Fld, ILS RWY 31, Amdt. 3
Mount Joy/Marietta, PA—Donegal Springs Airpark, VOR RWY 27, Amdt. 1
Reading PA—Reading Muni, Gen Carl A. Spaatz Field, RNAV RWY 13, Amdt. 7
York, PA—York, NDB RWY 16, Orig.
York, PA—York, NDB-A, Amdt. 8, CANCELLED
MOAB, UT—Canyonlands Field, VOR-A, Amdt. 9

. . . Effective August 5, 1987

Ontario, CA—Ontario Intl, ILS RWY 26L, Amdt. 5

. . . Effective July 30, 1987

Burlington, IA—Burlington Muni, ILS RWY 36, Amdt. 8
Hyannis, MA—Barnstable Muni-Boardman/Polando Field, VOR RWY 6, Amdt. 2
Minneapolis, MN—Minneapolis-St. Paul Intl/Wold-Chamberlain/LOC BC RWY 11L, Amdt. 8

[FR Doc. 87-18425 Filed 8-12-87; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229, 230, 239 and 240

[Release Nos. 33-6714A; 1C-15752A]

Elimination of Certain Pricing Amendments and Revision of Prospectus Filing Procedures; Correction

AGENCY: Securities and Exchange Commission.

ACTION: Final rules; correction.

SUMMARY: This document corrects a new rule and related amendments published June 5, 1987 (52 FR 21252) that simplify the filing requirements applicable to a registration statement at the time of effectiveness. The document is needed to correct typographical errors and for clarification.

FOR FURTHER INFORMATION CONTACT: Abigail Arms, (202) 272-2573, Office of Chief Counsel, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The following corrections are made in FR Doc. 87-12707, Elimination of Certain Pricing Amendments and Revision of Prospectus Filing Procedures, published in the **Federal Register** on June 5, 1987 (52 FR 21252).

1. Footnote 29 on page 21254 is revised by adding "certain" immediately prior to "bank of savings and loan holding company formations."

2. The second sentence in footnote 34 on page 21254 which reads in part ". . . and increase in amount would require a new registration statement . . ." is revised to read as follows: ". . . any increase in amount would require a new registration statement. . . ."

3. The first full sentence of the third column on page 21254 which reads in part ". . . use of the Rule does not eliminate the need to file a post-effective amendment if the financial statements are required to be updated at the time of effectiveness . . ." is revised to read as follows: ". . . use of the Rule does not eliminate the need to file a pre-effective amendment if the financial statements are required to be updated at the time of effectiveness. . . ."

4. The illustration ending the second sentence in footnote 48 on page 21255 which reads ". . . as part of a cost-effective amendment of Form 8-K" is revised to read as follows: ". . . as part of a post-effective amendment of Form 8-K."

§ 229.501 [Corrected]

5. In § 229.501 paragraph (c)(8) (page 21260), the end of the fourth sentence in the required statement which reads in part ". . . prior to registration or qualification under the securities laws of any State" is revised to read as follows: ". . . prior to registration or qualification under the securities laws of any such State."

§ 229.502 [Corrected]

6. In § 229.502 paragraph (d)(2) (page 21260), the second sentence which reads in part ". . . the prospectus is filed pursuant to Rule 424(b) . . ." is revised to read as follows: ". . . the prospectus filed pursuant to Rule 424(b) . . ."

§ 229.512 [Corrected]

7. In § 229.512 paragraph (j) (page 21260), the main clause of undertaking (1) which reads in part ". . . the information omitted from the form of prospectus filed as part of a registration statement in reliance upon Rule 430A and contained in the form of prospectus filed by the registrant . . . shall be deemed to be part of the registration statement . . ." is revised to read as

follows: ". . . the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant . . . shall be deemed to be part of this registration statement. . . ."

§ 230.481 [Corrected]

8. In § 230.481 paragraph (b)(2) (page 21282), the end of the fourth sentence in the required statement which reads in part ". . . prior registration or qualification under the securities laws of any State" is revised to read as follows: ". . . prior to registration or qualification under the securities laws of any such State."

§ 239.13 [Corrected]

9. In § 239.13, Form S-3, paragraph (b) of Item 11 (page 21282), the exception language, which reads in part ". . . where no prospectus is required to be filed pursuant to Rule 424(b) . . ." is revised to read as follows: ". . . where no prospectus was required to be filed pursuant to Rule 424(b). . . ."

§ 239.25 [Corrected]

10. In § 239.25, Form S-4, paragraph (b) of Item 10 (page 21282), the exception language, which reads in part ". . . where no prospectus is required to be filed pursuant to Rule 424(b) . . ." is revised to read as follows: ". . . where no prospectus was required to be filed pursuant to Rule 424(b). . . ."

§ 239.33 [Corrected]

11. In § 239.33, Form F-3, paragraph (b)(1) of Item 11 (page 21283), the exception language, which reads in part ". . . where no prospectus is required to be filed pursuant to Rule 424(b) . . ." is revised to read as follows: ". . . where no prospectus was required to be filed pursuant to Rule 424(b). . . ."

§ 239.34 [Corrected]

12. In § 239.34, Form F-4, paragraph (c) of Item 10 (page 21283), the exception language, which reads in part ". . . where no prospectus is required to be filed pursuant to Rule 424(b) . . ." is revised to read as follows: ". . . where no prospectus was required to be filed pursuant to Rule 424(b). . . ."

§ 240.14a-101 [Corrected]

13. In § 240.14a-101, Item 14(b)(1)(ii) (page 21283), the exception language, which reads in part ". . . where no prospectus is required to be filed pursuant to Rule 424(b) . . ." is revised to read as follows: ". . . where no prospectus was required to be filed pursuant to Rule 424(b). . . ."

Jonathan G. Katz,
Secretary.
August 7, 1987.

[FR Doc. 87-18520 Filed 8-12-87; 8:45 am]
BILLING CODE 6715-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2, 154, 157, 201, 270 and 271

[Docket Nos. RM83-72-010 and RM82-19-010; Order No. 391-B]

First Sales of Pipeline Production Under Section 2(21) of the Natural Gas Policy Act of 1978, First Sales by Affiliates

Issued August 10, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; order on remand.

SUMMARY: The Federal Energy Regulatory Commission interprets the Natural Gas Policy Act of 1978 (NGPA) to provide that pipeline-produced gas formerly priced at cost-of-service rates qualifies for the same rates under NGPA section 104 as gas produced by independent or affiliate producers. This reaffirms the Commission's price determinations in Order No. 391, 49 FR 33849 (Aug. 27, 1984), and Order No. 391-A, 50 FR 14378 (Apr. 10, 1985). In Order No. 391-A the Commission based its decision in part on the belief that *Public Service Commission of the State of New York v. Mid-Louisiana Gas Co. et al.*, 463 U.S. 319 (1982), required parity of pricing. In *Phillips Petroleum Co. v. FERC*, 792 F.2d 1165 (D.C. Cir. 1986), the United States Court of Appeals for the Tenth Circuit remanded Order Nos. 391 and 391-A, holding that the Commission's interpretation of the statute was permissible, but was not mandated by the *Mid-Louisiana decision.*

EFFECTIVE DATE: August 10, 1987.

FOR FURTHER INFORMATION CONTACT: Richard A. White, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8596.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

Order on Remand

I. Introduction

On remand from the United States Court of Appeals for the District of Columbia Circuit, the Commission must reconsider the proper interpretation of section 104 of the Natural Gas Policy Act of 1978 (NGPA) as it applies to the pricing of production of natural gas from certain wells owned by interstate pipelines.[1] This order reaffirms the Commission's conclusion that pipeline production previously priced on a cost-of-service basis is now subject to the same ceiling price as gas sold by independent producers.

II. Background

On August 22, 1984, the Commission issued Order No. 391,[2] a final rule implementing *Public Service Commission of the State of New York v. Mid-Louisiana Gas Co. et al.*, 463 U.S. 319 (1983) (*Mid-Louisiana*), in which the Supreme Court held 5 to 4 that a pipeline's production of its own gas was entitled to be treated as a first sale pursuant to section 2(21) of the NGPA and that the pricing provisions of Title I of the NGPA were therefore applicable to that production.[3] In Order No. 391 the Commission amended its regulations to include within the definition of first sale the intracompany transfer of gas from a pipeline's production division to its transmission division and defined the transfer as taking place at the wellhead. The Commission also determined that pipeline production that was previously (prior to enactment of the NGPA) priced on a cost-of-service basis was entitled to be priced at the applicable NGPA rate for comparable categories of gas produced and sold by independent producers.[4] This ruling was based on

[1] *Phillips Petroleum Co. v. FERC*, 792 F.2d 1165 (D.C. Cir. 1986) (*Phillips*).

[2] 49 FR 33849 (Aug. 27, 1984); FERC Stats. & Regs. [Regulations Preambles 1982-1985] ¶ 30,568.

[3] In *Mid-Louisiana* the Supreme Court affirmed the decision of the Fifth Circuit (Mid-Louisiana Gas Company v. FERC, 664 F.2d 530 (5th Cir. 1981)) that a pipeline's production of its own gas is a first sale under the NGPA and affirmed that court in vacating Commission Order Nos. 58 and 98, which were based on the theory that an intracorporate transfer of certain pipeline production did not constitute a first sale and was therefore exclusively subject to the Commission's Natural Gas Act (NGA) jurisdiction. *Mid-Louisiana* vacated and remanded the Fifth Circuit's decision that the first sale of pipeline production occurs at the wellhead, stating that Congress intended to give the Commission discretion in deciding whether the first sale should be considered as taking place at the wellhead or at a downstream transfer point. 463 U.S. at 343.

[4] The Commission's policy prior to *Mid-Louisiana* (under Order Nos. 58 and 98) had been to permit most pipeline production to be priced at applicable NGPA producer rates, subject to the affiliated

Continued

Mid-Louisiana, which the Commission interpreted as requiring parity of pricing for gas produced by pipelines and independent producers.

This determination was challenged on rehearing by Phillips Petroleum Company and Phillips Oil Company (jointly Phillips). Phillips argued that pipeline production priced on a cost-of-service basis has a different maximum lawful price under NGPA section 104 than gas of the same type and vintage produced and sold by independent producers. Section 104(b)(1) provides that the maximum lawful price is the higher of the just and reasonable rate in effect on April 20, 1977, as adjusted for inflation pursuant to section 101(a) of the NGPA, or any just and reasonable rate established by the Commission after April 20, 1977, and before the date of enactment of the NGPA on November 9, 1978:

(1) General Rule.—The maximum lawful price under this section for any month shall be the higher of—

(A)(i) The just and reasonable rate, per million Btu's, established by the Commission which was (or would have been) applicable to the first sale of such natural gas on April 20, 1977, in the case of April 1977; and

(ii) In the case of any month thereafter, the maximum lawful price, per million Btu's, prescribed under this subparagraph for the preceding month multiplied by the monthly equivalent of the annual inflation adjustment factor applicable for such month, or

(B) Any just and reasonable rate which was established by the Commission after April 20, 1977, and before the date of the enactment of this Act and which is applicable to such natural gas.

For producers and pipeline production based on producer ceiling prices (all pipeline production except old wells on old leases) the rate in effect on April 20, 1977, was an applicable area or national rate previously established by the Commission's predecessor, the Federal Power Commission (FPC). However, Phillips argued that as to pipeline production priced on a cost-of-service basis as of April 20, 1977, a separate and different just and reasonable rate was established, namely the cost-of-service rate converted to a Btu basis. Phillips argued that the applicable rate for such production under section 104 is the April 20, 1977 cost-of-service rate per MMBtu adjusted for inflation rather than the applicable producer rate. The Commission denied rehearing in Order No. 391–A,[4] rejecting Phillips' arguments and adhering to its conclusion that *Mid-Louisiana* required parity of pricing for gas produced by pipelines and independent producers.

The Commission's orders were appealed to the United States Court of Appeals for the District of Columbia Circuit, which held that the Commission's conclusion that *Mid-Louisiana* required parity of pricing was erroneous and remanded the case for reconsideration of the proper interpretation of section 104.[5] *Phillips Petroleum Co. v. FERC*, 792 F.2d 1165 (D.C. Cir. 1986) (*Phillips*). The court held that *Mid-Louisiana* did not mandate the interpretation sought by Phillips, but that it also did not mandate the Commission's interpretation. According to the court in *Phillips*, section 104 of the NGPA could be interpreted to permit parity of pricing for independent producer and pipeline production, but the Commission would have to offer a rationale for that interpretation and not base such a conclusion on its erroneous belief that *Mid-Louisiana* mandated such a result.

On October 28, 1986, Midwest Energy, Inc. (Midwest), which had successfully intervened as a party in the *Phillips* appeal, filed a motion requesting the Commission to issue an order on remand consistent with the position taken by Phillips that the ceiling price under NGPA section 104 for pipeline cost-of-service production is the cost-of-service price as of April 20, 1977, as adjusted for inflation, and that the section 104 producer price ceilings are inapplicable to pipeline cost-of-service production. KN Energy, Inc. answered in opposition, urging the Commission to reaffirm its prior determination that all pipeline production is entitled to applicable NGPA producer ceiling prices.

III. Discussion

The Commission must determine on remand of the *Phillips* case whether section 104(b)(1) of the NGPA incorporated the cost-of-service rate for each particular pipeline's production from its old wells on old leases or applied to such pipeline production the just and reasonable rates established by the Commission for gas produced by independent producers.[6] To reach its decision, the Commission has considered the language of the statute, the statutory and judicial pronouncements on the issue of parity, other Commission regulations and policies, and the possible difficulties of accurately determining the applicable cost-of-service rate for old pipeline production.

As previously noted, section 104 provides that the applicable ceiling price shall be the just and reasonable rate established by the Commission which was (or would have been) in effect on April 20, 1977, adjusted for inflation (or any other higher rate approved by the FPC prior to enactment of the NGPA). As recognized by the court in *Phillips*, this deceptively simple statutory provision admits of a troublesome ambiguity: there were two different sources of gas with separate rate structures.[7] A preliminary question arises as to whether the pre-NGPA cost-of-service pricing of pipeline production resulted in the establishment by the FPC of just and reasonable rates for such production.[8] If so, then there were, in effect, two just and reasonable rates. If not, the inquiry is at an end, and the section 104 producer rates would apply by default.

The Commission has considered the argument that cost-of-service pricing of pipeline production by the FPC established just and reasonable rates within the meaning of section 104. Even though a pipeline's production costs were normally measured in relation to total pipeline sales, and no unit rate per Mcf or per MMBtu of gas at the wellhead was actually calculated in a rate proceeding to establish the lawful rates for gas sold to the pipeline's customers, a just and reasonable wellhead rate was nevertheless implicit in the determination of the pipeline's overall rates, and the practical result of this process was effective price regulation of the pipeline's production at the wellhead.

The Commission, however, has concluded that the just and reasonable rates applicable on April 20, 1977, and

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entities test prescribed in section 601(b)(1)(E) of the NGPA. However, with respect to gas produced from "old wells" (drilled on or before January 1, 1973) on "old leases" (acquired on or before October 7, 1969), the Commission proposed to continue its pre-NGPA policy of pricing such gas on a cost-of-service basis.

[4] 50 FR 14374 (April 12, 1985); 31 FERC ¶ 61,036.

[5] The issue in this case involves establishing the ceiling price for pipeline cost-of-service production only under section 104. It is clear that a pipeline producer is entitled to the benefit of NGPA ceiling prices under other sections of Title I in the event the pipeline's wells qualify under those sections as, for example, stripper wells under section 108. *Mid-Louisiana*, 463 U.S. at 342.

[6] In Order No. 451 the Commission established a uniform alternative ceiling price for old gas under the authority of NGPA section 104(b)(2). That price is equal to the section 104 ceiling price for post-1974 old gas. The Commission determined that all old gas (including pre-NGPA pipeline production priced on a cost-of-service basis) would be eligible for the alternative ceiling price regardless of what the otherwise applicable ceiling price might be under section 104(b)(1). Therefore the resolution of the issue remanded by *Phillips* will apply only to pipeline gas produced subsequent to enactment of the NGPA until such gas has been repriced under Order No. 451 after July 18, 1986, the effective date of that order.

[7] *Phillips*, at 1168.

[8] *Id.* at 1171.

incorporated by reference in section 104(b)(1), were the national rates set for independent-producer gas. Section 104 of the Act sets the maximum lawful price at "the just and reasonable rate . . . established by the Commission" on April 20, 1977. The FPC, however, only "established" the national and regional rates for producer gas; the Commission set only the downstream rates charged to distributors for pipeline gas—not the wellhead rates—and in so doing, merely evaluated the "prudence" of pipelines' gas-production costs at the wellhead. From the inception of regulation under the Natural Gas Act in 1938, the costs incurred by pipelines in producing their own gas had been included in the cost-of-service upon which their rates to their customers were based. *Canadian River Gas Co. et al.*, 3 F.P.C. 32 (1942), *aff'd. sub. nom., Colorado Interstate Gas Co. v. FPC*, 324 U.S. 581 (1945). The cost-of-service "price" allowed for the pipeline's own gas production was only one cost factor among other cost factors underlying the pipeline's rates. All of the pipeline's prudent production costs were either capitalized or expensed regardless of the success or failure of their efforts. A pipeline's production costs were normally measured in relation to total pipeline sales, and no unit rate per Mcf or per MMBtu of production at the wellhead was ever calculated. When making a determination on the matter in a pipeline rate case under section 4 of the NGA, the Commission simply decided whether the pipeline's exploration, development, production, and related costs were prudently incurred.

This form of ratemaking did not take the form of determining a "just and reasonable" price for each unit of gas produced. Thus the Commission never established a just and reasonable rate for pipeline-produced old gas. The statutory language upon which Phillips relies in section 104, referring to rates in effect on April 20, 1977, cannot be read to refer to wellhead rates implicit in a pipeline's city-gate rates established in a cost-of-service basis, since such wellhead rates were never established. Because there was no "just and reasonable" rate "established by the Commission" that was "applicable" to pipeline production from old wells on old leases on April 20, 1977, the words "or would have been . . . applicable" in section 104 were intended to apply the rates established for independent producers to all pipeline-produced gas.

Allowing pipeline-produced gas to receive the same prices that would apply if it were produced by an independent producer fully comports with the language and intent of the NGPA. Section 104 establishes the maximum lawful prices for natural gas committed or dedicated to interstate commerce on the day before enactment of the NGPA. Since *Mid-Louisiana*, there is no longer any dispute that pipeline-produced old gas qualifies for pricing under this section. In drafting the NGPA, Congress did not explain how section 104 would be applicable to pipeline-produced gas. This issue was not considered until after the *Mid-Louisiana* decision that the NGPA applies to pipeline production, some 7 years later. Since Congress did not address the issue, the Commission must determine the issue in light of the plausible interpretations of section 104(b)(1). A common sense reading of the statute gives no hint that Congress envisioned more than one meaning for "just and reasonable rate." The most widely accepted meaning of that term is the wellhead rate applicable to gas sold by independent producers. To find that "just and reasonable rate" means a rate that could be derived from a pipeline's city-gate rate established on a cost-of-service basis would strain the plain meaning of the statute, ignores the fact that the Commission had not set such wellhead rates, and is inconsistent with the overall goal of the NGPA to achieve greater parity between rates of different producers.

Under the NGA, the Commission set rates of general applicability to gas produced and sold in interstate commerce. Absent special treatment, such as was accorded pipelines' production, one of these general rates would apply to all such sales in the interstate market. Before the NGPA, the Commission did not view pipeline production as it did independent production, and so created special pricing rules for this gas. As the *Mid-Louisiana* decision held, however, the NGPA ended this specialized treatment and put pipeline production on the same footing as all other production. The NGPA categories are defined on the basis of the type of well and past uses of its gas, not on the basis of who owns the well. 463 U.S. at 333. Congress, in enacting the NGPA, intended "to continue a policy that had been in effect since 1938: a policy of drawing no distinction between wells owned by a pipeline itself and those owned by an affiliate." 463 U.S. at 337. Congress undoubtedly intended pipeline producers to be treated in the same manner as pipeline affiliate producers. 463 U.S. at 340. Pipeline affiliates are permitted to charge NGPA producer rates subject only to the affiliated entities test.[9]

The Supreme Court held that the Commission's initial position under *Order Nos. 58 and 98* (under which all pipeline production would be entitled to NGPA prices except that previously priced on a cost-of-service basis) was "contrary to the history, structure, and basic philosophy of the NGPA." 463 U.S. at 342. Given the premise that pipelines and producers should be afforded the same treatment, which the Supreme Court found inherent in the NGPA, 463 U.S. at 337, the section 104 rates for gas produced by them should be the same. So interpreting section 104 conforms to the generally accepted principle of statutory construction in favor of reading a statute in a way that gives effect to all of its clauses and provisions. *See McDonald v. Thompson*, 305 U.S. 263 (1938).

Essential to the NGPA is the principle that the producer may charge and collect the highest rate for which its gas qualifies. Section 101(b)(5), 15 U.S.C. 3311(b)(5), provides that "if any natural gas qualifies under more than one provision of this title providing for any maximum lawful price or for any exemption from such a price with respect to any first sale of such natural gas, the provision which could result in the highest price shall be applicable." The NGPA contemplated raising the prices of interstate gas, which had been historically below those in the intrastate market, and were generally responsible for the shortage of gas in the interstate market in the 1970's. 463 U.S. at 330–331. The Supreme Court relied on section 104(b)(5) to establish that Congress meant to extend incentives to gas production, without requiring cost-justification. 463 U.S. at 335–6. In our view, the usefulness of natural gas does not depend on who produces it, and there is no reason to believe that any one group of producers is less likely to respond to incentives than any other. Therefore, it follows that pipelines should receive incentive prices for the gas they produce, whatever its category, and it is not reasonable to consider a wellhead rate implicit in a determination of a pipeline's overall cost of service as an incentive price. Given the premise that the NGPA was designed to give the producer an opportunity to qualify for the highest price for which its gas could qualify, the Commission will allow pipeline/producers to take advantage of the existing price structure for producers under the NGA.

[9] *See* 18 CFR 154.42 (1987).

The Commission notes that if the applicable just and reasonable rate for old pipeline production were found to be a wellhead rate implicit in a determination of a pipeline's overall cost of service, such a rate would be difficult to establish. As stated above, a pipeline's production costs were normally measured in relation to total pipeline sales and no unit rate per Mcf or MMBtu of production was actually calculated. The task then would be to derive or constuct a rate at which the expenses of producing gas at the wellhead were passed on to the ultimate consumer. It would be necessary to attempt to derive the actual April 20, 1977, starting-point rate from pipeline cost-of-service data which predate the NGPA. Individual parties may dispute which costs should be allocated to the wellhead price. In the case of pre-NGPA cost-of-service rates determined through settlement, it may be impossible to calculate precisely a unit rate for cost-of-service production.

In summary, either the wellhead rate implicit in a pipeline's overall cost of service *is not* a "just and reasonable" rate under section 104(b)(1), or such an implicit rate *is* a "just and reasonable" rate, so that there are two "just and reasonable" rates which could be applied to old pipeline production under section 104(b)(1)(A). In the former case, the use of an implicit or derived wellhead rate as the applicable rate would not comply with the intent of statute. In the latter case, it is unclear which of the two rates should apply to old pipeline production. We have explained our reasons for rejecting the position that the statute refers to a "just and reasonable rate" implicit in the cost of service rate. However, even assuming *arguendo* that there are two rates applicable under section 104, the Commission resolves the ambiguity consistent with the preceding analysis by allowing pipelines to charge the applicable just and reasonable rate for gas sold by independent producers for all of their company-owned production.[10] As the *Phillips* court pointed out, the Commission has discretion to choose, under these circumstances, which interpretation is more consistent with Congressional intent and the spirit and overall purposes of the NGPA.[11] In our judgment, the interpretation presented herein represents a reasonable accommodation of the several policies committed to our care by the NGA and NGPA.

IV. Conclusion

The NGPA radically departed from the traditional Natural Gas Act methods of valuing gas production and allows parity of pricing between pipeline producers and other producers, both independent and affiliate. The Commission's rule implements both of these precepts. Thus, it is entirely in keeping with the NGPA (and the Supreme Court's holding in *Mid-Louisiana*) to price pipeline-produced gas for NGPA purposes at the prices it would have received under the NGA had it been produced by an independent producer.

Two of the overriding purposes of the NGPA were to eliminate the dual interstate and intrastate market for natural gas, and to provide higher prices to encourage production. See H.R. Doc. No. 95–126, 95th Cong., 1st Sess. 5 (1977). Neither of these purposes is served by creating a distinction between pipeline and independent producers. In achieving the goal of increasing natural gas production, pipeline producers will respond to the price encouragement of NGPA just as independent producers. The NGPA contemplated raising the prices for interstate gas, which had fallen behind the level of prices for intrastate sales. The purpose was to encourage additional production. This purpose applies to all gas which comes under NGPA, whether produced by pipelines or producers.

In keeping with the aforementioned objectives, and in light of the difficulty involved in attempting to ascertain rates under section 104 based on original FPC cost-of-service determinations, the Commission has adopted the general rule that pipeline production would receive section 104 producer ceiling prices. We hold that pipeline production previously priced on a cost-of-service basis will be subject to the same ceiling price as any and all other gas sold in price-regulated first sales under section 104 (or any other section of Title I) of the NGPA.

V. Administrative Finding

In its answer to Midwest, KN argues that the Commission is obligated under the provisions of the Administrative Procedure Act (APA) to provide notice and an opportunity to comment on the remanded issue which is the subject of this order. This request is denied. Section 553(b) of the APA [12] requires that a notice of proposed rulemaking be published in the Federal Register and that an opportunity for comment be provided when an agency promulgates regulations. The APA sets forth exemptions to the notice and comment procedures are impractical, unnecessary or contrary to the public interest.

Since this order interprets terms and provisions of the NGPA, it constitutes an interpretative rule within the meaning of the APA, and notice and public comment procedures are therefore unnecessary. Generally, a rule becomes effective not less than 30 days after publication in the Federal Register. A rule may become effective sooner if it is an interpretative rule, a statement of policy, or if the agency finds good cause to make it effective sooner. Since this rule is an interpretative rule, the 30-day restriction does not apply. The Commission finds that good cause exists to make this order effective immediately upon issuance.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–18518 Filed 8–12–87; 8:45 am]

BILLING CODE 6717–01–M

[10] The independent producer rates are generally greater than a rate derived from the cost-of-service treatment. In the rare instances where the continuation of cost-of-service treatment would result in a rate higher than the otherwise applicable NGPA ceiling price, the Commission will undertake case-specific review for continued availability of cost-of-service pricing. *See* 18 CFR 154.42(c) (1987).

[11] The court held that on remand "FERC may construe section 104 so as to justify parity in rates, or it may otherwise interpret section 104 . . . " *Phillips* at 1172.

[12] 5 U.S.C. 553(f)(1982).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 86F–0173]

Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of thiodiethylene bis(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate) as an antioxidant for polymers intended to contact food. This action responds to a petition filed by Ciba-Geigy Corp.

DATES: Effective August 13, 1987; objections by September 14, 1987.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of May 28, 1986 (51 FR 19272), FDA announced that a petition (FAP 6B3928) had been filed by Ciba-Geigy Corp., Three Skyline Dr., Hawthorne, NY 10532, proposing that § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for the safe use of thiodiethylene bis(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate) as an antioxidant for polymers intended to contact food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use of thiodiethylene bis(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate) is safe, and that 21 CFR 178.2010(b) should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for insepction at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before September 14, 1987 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularly the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Food Safety and Applied Nutrition, Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 178.2010 is amended in paragraph (b) by alphabetically inserting a new item in the list of substances to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
* * * * *	
Thiodiethylene bis(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate) (CAS Reg. No. 41484-35-9).	For use only: 1. In adhesives complying with § 175.105 of this chapter.
* * * * *	
	2. At levels not to exceed 0.5 percent by weight of pressure-sensitive adhesives complying with § 175.125 of this chapter, petroleum alicyclic hydrocarbon resins complying with § 176.170 of this chapter, resins and polymers complying with § 176.180 of this chapter, closures with sealing gaskets complying with § 177.1210 of this chapter, and finished rubber products complying with § 177.2600 of this chapter.
* * * * *	

Dated: August 3, 1987

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87–18439 Filed 8–12–87; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Monensin Blocks

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Cooperative Research Farms, Inc., providing for use of a medicated block containing monensin in pasture cattle. The supplement expands the class of pasture cattle to include dairy and beef replacement heifers.

EFFECTIVE DATE: August 13, 1987.

FOR FURTHER INFORMATION CONTACT: Jack Taylor, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5247.

SUPPLEMENTARY INFORMATION: Cooperative Research Farms, Box 69, Charlotteville, NY 12036, has submitted a supplement to NADA 119–253 for a medicated block containing monensin. The NADA was previously approved for increased rate of weight gain in slaughter, stocker, and feeder cattle weighing more than 400 pounds on pasture. The supplement adds dairy and beef replacement heifers to the class of pasture cattle for which the drug is labeled for use. The supplement is approved and 21 CFR 520.1448a(d)(4)(iii) is amended to reflect the approval

Elanco Products Co. has authorized use of data in NADA 95-735 to support approval of NADA 119-253.

This is a Category II Suplement (42 FR 64367; December 23, 1977), which does not require a reevaluation of the underlying safety and effectiveness data in the original approval. This determination is based on the fact that the use of the product is being extended to immature cattle intended for breeding purposes so that tissue residues would not be expected and the product's effectiveness has been previously established in other pasture cattle of the same weight.

Approval of this supplement is an administrative action that did not require generation of new effectiveness or safety data. Therefore, a freedom of information summary (pursuant to 21 CFR 514.11(e)(2)(ii)) is not required.

The agency has determined under 21 CFR 25.24(d)(1)(iii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 520 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

§ 520.1448a [AMENDED]

2. In § 520.1448a *Monensin blocks* by removing the first sentence of paragraph (d)(4)(iii) and inserting in its place "Blocks to be fed free choice to pasture cattle (slaughter, stocker, feeder, and dairy and beef replacement heifers) weighing more than 400 pounds."

Dated: August 6, 1987.

Richard A. Carnevale,

Acting Associate Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 87-18438 Filed 8-12-87; 8:45 am]

BILLING CODE 4160-01-M

PEACE CORPS

22 CFR Part 307

Standards of Conduct

AGENCY: Peace Corps.

ACTION: Final rule.

SUMMARY: The Peace Corps Standards of Conduct have been amended to reflect recommendations for improvement made by the Office of Government Ethics and the Peace Corps.

EFFECTIVE DATE: August 13, 1987.

FOR FURTHER INFORMATION CONTACT: Randi J. Greenwald, Designated Agency Ethics Official, Peace Corps, 806 Connecticut Avenue, NW., Room M-1207, Washington, DC 20526. Telephone 202-254-3114.

SUPPLEMENTARY INFORMATION: The following regulations amend the Peace Corps Standards of Conduct. Therefore, a notice of proposed rulemaking was not published for these final regulations. These regulations are not subject to the review requirements of Executive Order 12291 because they relate to agency personnel.

List of Subjects in 22 CFR Part 307

Political activities, (Government employees), Conduct standards, Ethical conduct, Financial disclosure, Government employees, Conflicts of interest.

Title 22, Chapter III, is amended by revising Part 307 to read as follows:

PART 307—PEACE CORPS STANDARDS OF CONDUCT

Subpart A—General

Sec.
307.735-101 Introduction.
307.735-102 Definitions.

Subpart B—General Conduct and Responsibilities of Employees

307.735-201 Proscribed actions—Executive Order 11222.
307.735-202 General conduct prejudicial to the Government.
307.735-203 Criminal statutory prohibitions—conflict of interest.

Subpart C—Outside Employment, Activities, and Associations

307.735-301 In general.
307.735-302 Association with potential contractor prior to employment.
307.735-303 Association with Peace Corps contractor or potential contractor while an employee.
307.735-304 Employment after leaving Peace Corps.
307.735-305 Employment with Peace Corps contractor.
307.735-306 Association with non-Peace Corps contractor while a Peace Corps employee.
307.735-307 Gifts, entertainment, and favors.
307.735-308 Economic and financial activities of employees abroad.
307.735-309 Information.
307.735-310 Speeches and participation in conferences.
307.735-311 Partisan political activity.
307.735-312 Use of Government property.
307.735-313 Indebtedness.
307.735-314 Gambling, betting, and lotteries.
307.735-315 Discrimination.
307.735-316 Related statutes and regulations.

Subpart D—Procedures for Submission by Employees and Review of Statements of Employment and Financial Interests

307.735-401 Submission of statements.
307.735-402 Review of statements.

Authority: E.O. 11222 of May 8, 1965, 30 FR 6469, 3 CFR 1964-1965, Supp. 306; 5 CFR Part 735.

Subpart A—General

§ 307.735-101 Introduction.

(a) Section 735.101 of title 5 of the Code of Federal Regulations requires each agency head to issue his or her agency regulations regarding the ethical conduct and other responsibilities of all of its employees. All employees are responsible for complying with these regulations. One of the main purposes of the regulations in this part is to encourage individuals faced with questions involving subjective judgment to seek counsel and guidance. The Designated Agency Ethics Official (DAEO) and Deputy and Alternate DAEO in the Office of General Counsel are designated to be the counselors for Peace Corps with respect to these matters. They will provide authoritative advice and guidance to any Peace Corps employee, former employee, or potential employee who seeks it.

(b) The Peace Corps Committee on Conflict of Interest will review and monitor the Agency's policies and procedures on conflict of interest. The committee shall consist of the General Counsel, the Associate Director for Management, the Director for Compliance, the Director of Contracts, the Associate Director for International Operations, and the Director's designee, who shall be a nonvoting member. Committee membership is not delegable. The Designated and Deputy Agency Ethics Officials shall act as advisors to the Committee and shall record the Committee's decisions. The Committee, by majority vote, shall have the authority to:

(1) Adopt the procedures necessary to insure the implementation of and compliance with the conflict of interest regulations found at §§ 307.735-301 through 307.735-305.

(2) Issue interpretive opinions or clarifying statements on actual or hypothetical situations involving the provisions of §§ 307.735–301 through 307.735–305.

(3) Accept and review reports filed under § 307.735–302(b).

(4) Grant specific relief from the provisions of §§ 307.735–303 through 307.735–305 by a majority vote of the committee, if after due consideration the committee finds that:

(i) No actual conflict of interest exists, and

(ii) The purpose of the rule would not be served by its strict application, and

(iii) A substantial inequity would otherwise occur. In each such case the committee shall issue a written decision setting forth its findings as required above. The committee may make any exception subject to such conditions and restrictions as it deems appropriate.

(c) Any violation of the regulations in this part may be cause for remedial or disciplinary action. Remedial action may include changes in assigned duties, disqualification for a particular assignment, divestment of a conflicting interest, and other action as appropriate. Violation of those provisions of the regulations in this part which reflect legal prohibitions may also entail penalties provided by law.

(d) This part applies to all employees of Peace Corps. "Employee" as used in this part includes regular employees, Presidential appointees, "special Government employees," experts and consultants whether employed on a full-time, part-time, or intermittent basis, and Foreign Service National employees [FSNs].

§ 307.735–102 Definitions.

(a) "Special Government employee" as used herein means a person appointed or employed to perform temporary duties for Peace Corps with or without compensation, on a full-time, part-time, or intermittent basis, for not to exceed 130 days during any period of 365 days.

(b) "Regular Government employee" as used herein means any officer or employee other than a Special Government employee.

(c) "Organization" as used herein includes profit and non-profit corporations, associations, partnerships, trusts, sole proprietorships, foundations, individuals and foreign, State and local government units.

(d) "Potential Contractor" means any organization or individual that has submitted a proposal, application, or otherwise indicated in writing its intent to apply for or seek a specific contract or other agreement.

(e) "Associated with" means:

(1) That the person is a director of the organization or is a member of a board or committee which exercises a recommending or supervisory function in connection with a Peace Corps project;

(2) That the person serves as an employee, officer, owner, trustee, partner, consultant, or paid advisor (general membership in an organization is not included within the definition of "associated with"; however, because general membership in an organization doing business with the Peace Corps can result in problems of the appearance of conflicts of interest, each such general membership should be evaluated by the DAEO);

(3) That the person, his or her spouse, minor child, or other member of his or her immediate household, owns, individually or collectively, any voting shares of an organization;

(4) That the person, his or her spouse, minor child, or other member of his or her immediate household, owns, individually or collectively, either beneficially or as trustee, a financial interest in an organization through stock, stock options, bonds, or other securities, or obligations; or

(5) That a person has a continuing financial interest in an organization, such as a bona fide pension plan, valued at $10,000 or more, through an arrangement resulting from prior employment or business or professional association; or

(6) That the person's spouse or other member of his or her immediate household has a personal or nonpersonal services contract or is employed by a Peace Corps contractor and assigned to a Peace Corps contract.

In accordance with the provisions of 18 U.S.C. 208(b) (1) and (2), the DAEO may determine that a financial interest under (e)(3) or (4) of this section is not so substantial as to affect the integrity of the employee's services, or make a blanket determination by a general rule published in the **Federal Register** that certain classes of holdings are too remote or inconsequential to affect the integrity of the employee's services.

The term "associated with" does not include an indirect interest, such as ownership of shares in a diversified mutual fund, bank or insurance company, which in turn owns an interest in an organization which has, or is seeking or is under consideration for a contract or other agreement. Such an "indirect" interest is hereby determined pursuant to 18 U.S.C. 208(b)(2) to be too remote to affect the integrity of the employee's services.

Subpart B—General Conduct and Responsibilities of Employees

§ 307.735–201 Proscribed actions—Executive Order 11222.

As provided by the President in Executive Order No. 11222, whether specifically prohibited by law or in the regulations in this part, no U.S. regular or special Government employees shall take any action which might result in, or create the appearance of:

(a) Using public office or employment for private gain, whether for themselves or for another person, particularly one with whom they have family, business, or financial ties.

(b) Giving preferential treatment to any person.

(c) Impeding Government efficiency or economy.

(d) Losing complete independence or impartiality.

(e) Making a Government decision outside official channels.

(f) Affecting adversely the confidence of the public in the integrity of the Government.

(g) Using Government office or employment to coerce a person to provide financial benefit to themselves or to other persons, particularly anyone with whom they have family, business or financial ties.

§ 307.735–202 General conduct prejudicial to the Government.

An employee may not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct prejudicial to the Government (5 CFR 735.209).

§ 307.735–203 Criminal statutory prohibitions: Conflict of interest.

(a) *Regular Government employees.* Regular employees of the Government are subject to the following major criminal prohibitions:

(1) They may not, except in the discharge of their official duties, represent anyone else before a court or Government agency in a matter in which the United States is a party or has an interest. This prohibition applies to both paid and unpaid representation of another (18 U.S.C. 203 and 205).

(2) They may not participate in their governmental capacity in any matter in which they, their spouse, minor child, outside business associate, or persons with whom they are negotiating for employment have a financial interest (18 U.S.C. 208). This restriction shall not apply if an employee advises the official responsible for appointment to his or her position of the nature and circumstances of the matter, fully discloses the financial interest, and receives in

advance from the appointing official a written determination that the interest is not so substantial as to affect the integrity of the Peace Corps.

(3) They may not, after Government employment has ended, represent anyone other than the United States in connection with a particular matter in which the United States is a party or has an interest and in which they participated personally and substantially for the Government (18 U.S.C. 207).

(4) They may not for 2 years after their Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and which was within the boundaries of their official responsibility during their last year of Government service. This temporary restraint gives way to the permanent restraint described in paragraph (a)(3) of this section if the matter is one in which the employee participated personally and substantially (18 U.S.C. 207).

(5) They may not receive any salary, or supplementation of their Government salary, from a private source as compensation for services to the Government (18 U.S.C. 209).

(b) *Special Government employees.* Special Government employees are subject to the following major criminal prohibitions:

(1) They may not, except in the discharge of official duties, represent anyone else before a court or Government agency in a matter in which the United States is a party or has an interest and in which they have at any time participated personally and substantially for the Government (18 U.S.C. 203 and 205).

(2) They may not, except in the discharge of official duties, represent anyone else in a matter pending before the agency they serve unless they have served there no more than 60 days during the past 365. They are bound by this restraint despite the fact that the matter is not one in which they have ever participated personally and substantially (18 U.S.C. 205). (See § 307.735–303(b) for additional nonstatutory Agency restrictions on a special employee representing any other person or organization in a matter pending before the Agency.) The restrictions described in paragraphs (b)(1) and (2) of this section apply to both paid and unpaid representation of another.

(3) They may not participate in their governmental capacity in any matter in which they, their spouse, minor child, outside business associate, or persons with whom they are negotiating for employment have a financial interest (18 U.S.C. 208).

(4) They may not, after their Government employment has ended, represent anyone other than the United States in connection with a particular matter in which the United States is a party or has an interest and in which they participated personally and substantially for the Government (18 U.S.C. 207).

(5) They may not, for 2 years after their Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and which was within the boundaries of their official responsibility during their last year of Government service. This temporary restraint gives way to the permanent restriction described in paragraph (b)(4) of this section if the matter is one in which they participated personally and substantially (18 U.S.C. 207).

(c) *Senior Employees.* Employees in positions for which the basic rate of pay is specified in subchapter II of chapter 53 of title 5, United States Code (Executive Schedule Pay Rates), or a comparable or greater rate of pay under other authority; and employees in positions which involve significant decision-making or supervisory responsibility for which the basic rate of pay is equal to or greater than the basic rate of pay for GS–17 (FE–2), are Senior Employees.

(1) Senior Employees are subject to the criminal conflict-of-interest statutes at 18 U.S.C. 203, 205, 207 (a), (b), and (c), 208 and 209. Within 2 years after his or her employment has ceased, no Senior Employee may knowingly represent or aid, counsel, advise, consult, or assist in representing any other person (except the United States) by personal presence at any formal or informal appearance before:

(i) Any department, agency, or court, or any officer or employee thereof,

(ii) In connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, or other particular matter involving a specific party or parties in which the United States or the District of Columbia is a party or has a direct and substantial interest, and

(iii) In which he or she participated personally and substantially as an officer or employee.

(2) Any Senior Employee, other than a special Government employee who serves for less than 60 days in a calendar year, who, within one year after his or her employment has ceased, knowingly acts as an agent or attorney for, or otherwise represents, anyone other than the United States in any formal or informal appearance before, or, with the intent to influence, makes any oral or written communication on behalf of anyone other than the United States, to

(i) The Peace Corps, or any of its officers or employees,

(ii) In connection with any judicial, rulemaking, or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, or other particular matter, and

(iii) Which is pending before the Peace Corps or in which the Peace Corps has a direct and substantial interest shall be fined not more than $10,000, or imprisoned for not more than 2 years, or both.

Subpart C—Outside Employment, Activities, and Associations

§ 307.735–301 In general.

(a) There is no general prohibition against Peace Corps employees holding outside employment, including teaching, lecturing, or writing, but no employee may engage in outside employment or associations if they might result in a conflict or an appearance of conflict between the private interests of the employee and his or her official responsibility. As provided in 5 CFR 735.203(a), incompatible activities include, but are not limited to, acceptance of a fee or anything of monetary value when acceptance may result in an actual or apparent conflict of interest, and outside employment which tends to impair the employee's mental or physical capacity to perform Government duties and responsibilities in an acceptable manner. Any employee planning to engage in outside employment shall so notify his or her supervisor and the DAEO of the name of the proposed employer and the nature of the proposed duties. The DAEO will acknowledge receipt of this information to the employee and supervisor. If the DAEO believes that the information raises a question of conflict of interest, the DAEO shall submit the information for review and resolution to the Committee on Conflict of Interest in accordance with § 307.735–101.

(b) An employee shall not receive any salary or anything of monetary value from a private source as compensation for his or her services to the Government (18 U.S.C. 209).

(c) An employee shall not have a direct or indirect financial interest that

conflicts substantially or appears to conflict substantially with his or her Government duties and responsibilities. Nor may an employee engage in, directly or indirectly, a financial transaction as a result of or primarily relying on information obtained through his or her Government employment.

§ 307.735-302 Association with potential contractor prior to employment.

(a) No employee, or any person subject to his or her supervision, may participate in the decision to award a contract to an organization with which that employee has been associated in the past 2 years. When an employee becomes aware that such an organization is under consideration for or has applied for a contract with the Agency, the employee shall notify his or her immediate supervisor in writing. The supervisor shall take whatever steps are necessary to exclude the employee from all aspects of the decision processes regarding the contract or agreement.

(b) When the Director, Deputy Director, or an Associate Director becomes aware that an organization with which he or she has been associated in the past 2 years is under consideration for or has applied for a contract with the Agency, he or she shall refrain from participating in the decision process and immediately notify the Director of the Office of Compliance, who shall select an independent third party, not in any way connected or associated with the concerned official. The third party shall participate in and review the decision process to the extent he or she deems necessary to insure objectivity and the absence of favoritism. Said third party shall preferably be a person experienced in the area of government contracts. The third party shall file a report in writing with the Committee on Conflict of Interest stating his or her conclusions, observations, or objections, if any, to the decision process concerning the contract or agreement, which document shall be attached to and become a part of the official file.

§ 307.735-303 Association with Peace Corps contractor or potential contractor while an employee.

(a) No regular employee may be associated with any Peace Corps contractor or potential contractor. Any organization that is associated with a regular employee shall be suspended from consideration as a contractor.

(b) No regular or special employee, except in his or her official capacity as a Peace Corps employee, shall either participate in any way on behalf of any organization in the preparation or development of a contract proposal involving Peace Corps or represent any other organization in a matter pending before Peace Corps. In the event that a regular or special employee participates while an employee of Peace Corps in any aspect of the development of a contract or agreement proposal on behalf of an organization, or represents another organization in a matter pending before Peace Corps, that organization shall be suspended from consideration for the contract or other agreement. If the employee's prohibited participation is discovered after award of the contract, appropriate disciplinary action shall be taken, including, but not limited to, the placement of a letter describing the violation in the employee's official personnel file.

(c) No regular or special employee who, prior to his or her employment at Peace Corps, participated in the development of a contract or other agreement proposal on behalf of another organization, shall participate as a Peace Corps employee in any aspect of the decision process regarding that contract or other agreement, or, if the contract or other agreement is awarded, in any oversight or management capacity in relation to that contract or other agreement. In addition, any such contract or other agreement shall only be awarded through a competitive process. In the event a regular or special employee who participated in the development of the contract or other agreement proposal prior to being employed at Peace Corps does participate as a Peace Corps employee in the decision process for such contract or other agreement, the organization shall be suspended from consideration.

(d) If a special employee participates as an employee of Peace Corps in any aspect of the development of a proposal, whether or not such participation is minimal or substantial, any organization with which he or she is associated shall be suspended from consideration for the contract or other agreement.

(e) If an organization with which a special employee is associated submits a proposal for a contract or other agreement, and the special employee did not participate either as an employee of Peace Corps or an associate of the organization in any aspect of the proposal or the application therefor, the matter shall be referred to the Committee on Conflict of Interest for determination. The Committee shall consider the following factors and any others it deems relevant:

(1) The nature, length, and origin of the special employee's relationship with the Agency, the nature and scope of the employee's duties and responsibilities, the division or office to which the employee is assigned, and whether the employee's duties are in any way related to the proposed contract or other agreement.

(2) The nature, length, and type of the employee's relationship with the organization, whether the employee's position involves policy making or supervision of other employees and the relationship of the position with the organization to the work to be performed under the proposed contract or other agreement.

(3) Whether awarding the contract or other agreement to the organization would result in the appearance of or the potential for a conflict of interest.

(4) The process to be used in awarding the contract or other agreement.

(f) If a special employee wishes to become or remain associated with a Peace Corps contractor while he or she is an employee of Peace Corps, subject to the restrictions (b) through (e) of § 307.735-303, the matter shall be referred to the Committee on Conflict of Interest for determination. The Committee shall consider the following factors and any others it deems relevant:

(1) The nature, length, and origin of the special employee's relationship with the Agency, the nature and scope of the employee's duties and responsibilities, the division or office to which the employee is assigned, and whether the employee's duties are in any way related to the contract or other agreement.

(2) The nature, length, and type of the employee's relationship with the organization, whether the employee's position involves policymaking or supervision of other employees and the relationship of the position with the organization to the work to be performed under the proposed contract or other agreement.

(3) Whether such a relationship would result in the appearance of or the potential for a conflict of interest.

(g) Any suspension involving proposed contracts under this rule shall be in accordance with procedures set forth in the applicable Federal Acquisition Regulation, FAR 9.4.

§ 307.735-304 Employment after leaving Peace Corps.

(a) Employees may negotiate for prospective employment with non-Federal Government organizations only when they have no duties as Peace Corps employees which could affect that organization's interest, or after they have disqualified themselves, on the

written permission of their supervisor, from such duties.

(b) For 1 year after leaving Peace Corps, no regular or special employee may serve pursuant to a personal or nonpersonal services contract or other agreement or accept employment with a Peace Corps contractor for a position in which he or she would be working in any activity supported in whole or in part by Peace Corps funds received under a Peace Corps program which was within the boundaries of the employee's official responsibility or in which he or she participated personally while employed at Peace Corps. This 1-year ban shall not apply to those overseas employees whose positions are converted to personal services contracts at the convenience of the Peace Corps as determined jointly by the Associate Directors for International Operations and Management.

(c) If, within 1 year after leaving Peace Corps, an individual accepts employment in violation of this rule, Peace Corps will disallow the costs allocated under the contract or other agreement for that position. In addition, a letter describing the violation will be placed in the personnel files of the former employee and the requiring office current or former staff member(s) responsible for issuing an individual personal or non-personal services contract.

§ 307.735–305 Employment with Peace Corps contractor.

An employee of a Peace Corps contractor who is compensated directly or indirectly from Peace Corps funds will be ineligible to be compensated under any personal or nonpersonal services contract with this Agency which will result in the employee being paid twice for the same time or product.

§ 307.735–306 Association with non-Peace Corps contractor while a Peace Corps employee.

(a) *Teaching, lecturing, and writing—*(1) *Use of information.* An employee shall not, either for or without compensation, engage in teaching, lecturing, or writing that is dependent on information obtained as a result of his or her Government employment, except when that information has been or on request will be made available to the general public or when the agency head gives advance written authorization for the use of nonpublic information on the basis that the proposed use is in the public interest.

(2) *Compensation.* No employee may accept compensation or anything of value for any lecture, discussion, writing, or appearance, the subject matter of which is devoted substantially to the Peace Corps programs or which draws substantially on official data or ideas which have not become part of the body of public information.

(3) *Clearance of publications.* No employee may submit for publication any writing, other than recruiting information, the contents of which are devoted to the Peace Corps programs or to any other matter which might be of official concern to the U.S. Government without in advance clearing the writing with the Director of Public Affairs. Before clearing any such writing, the Director of Public Affairs will consult with the appropriate Peace Corps office.

(b) *State and local government employment.* Regular employees may not hold office or engage in outside employment under a State or local government except with prior approval of the General Counsel, Peace Corps.

(c) All employees not required by § 307.735–401 to report their outside employment and financial interests shall inform their supervisors of all outside paid and unpaid employment they hold or accept.

(d) Employees in positions classified at the FP–1 or above levels who intend to engage in outside employment shall notify the DAEO in writing of the nature of their duties and the name and address of the organization for which or the individual for whom they will work. The notification will be made annually by June 30, with additions or deletions submitted as they occur.

§ 307.735–307 Gifts, entertainment, and favors.

(a) *From donors dealing with Peace Corps.* (1) No regular or special employees may solicit or accept, directly or indirectly, for themselves, for any member of their family, or for any person with whom they have business or financial ties, any gift, gratuity, favor, entertainment, or loan or any other thing of value, from any individual or organization which:

(i) Has, or is seeking to obtain, contractual or other business or financial relations with Peace Corps;

(ii) Has interests that may be substantially affected by the performance or nonperformance of the employee's official responsibility;

(iii) It is any way attempting to affect the employee's exercise of his or her official responsibility; or

(iv) Conducts operations or activities that are regulated by Peace Corps.

(2) Paragraph (a)(1) of this section does not prohibit, even if the donor has dealings with Peace Corps:

(i) Acceptance of things of value from parents, children, or spouse if those relationships rather than the business of the donor is the motivating factor for the gift;

(ii) Acceptance of food and refreshments of nominal value on infrequent occasions in the ordinary course of breakfast, luncheon, or dinner meetings or other meetings;

(iii) Solicitation and acceptance of loans from banks or other financial institutions to finance proper and usual activities of employees, such as home mortgage loans, solicited and accepted on customary terms;

(iv) Acceptance on behalf of minor dependents of fellowships, scholarships, or educational loans awarded on the basis of merit and/or need;

(v) Acceptance of awards for meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, nonprofit educational and recreational, public service, or civic organization.

(3) Regular or special employees need not return unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, and other things of nominal intrinsic value.

(b) *From other Peace Corps employees.* No employees in superior official positions may accept any gifts presented as contributions from employees in lower grades. No employees shall solicit contributions from other employees for a gift to an employee in a superior official position, nor shall any employees make a donation as a gift to an employee in a superior official position. However, this paragraph does not prohibit a voluntary gift of nominal value or donation in a nominal amount made on a special occasion such as marriage, illness, or retirement.

(c) *From foreign governments.* No regular employee may solicit or, without the consent of the Congress, receive any present, decoration, emolument, pecuniary favor, office, title, or any other gift from any foreign government. See 5 U.S.C. 7342; Executive Order 11320; and 22 CFR Part 3.

(d) *Gifts to Peace Corps.* Gifts to the United States or to Peace Corps may be accepted in accordance with section 10(a)(4) of the Peace Corps Act and Peace Corps Manual section 721.

(e) *Reimbursement for expenses.* Neither this section nor § 307.735–310(a) precludes an employee from receipt of bona fide reimbursement, unless prohibited by law, for expenses of travel and such other necessary subsistence as is compatible with this part and for which no Government payment or reimbursement is made. An employee may personally accept reimbursement

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from organizations that qualify for tax-deductible contributions under section 501(c)(3) of the Internal Revenue Code. However, this paragraph does not allow an employee to be reimbursed, or payment to be made on his or her behalf, for excessive personal living expenses, gifts, entertainment, or other personal benefits. Nor does it allow an employee to receive non-Government reimbursement of travel expenses for travel on official business under Peace Corps orders; but rather, such reimbursement, if any, should be made to Peace Corps and amounts received should be credited to its appropriation. If an employee receives accommodations, goods, or services in kind from a non-Government source, this item or items will be treated as a donation to Peace Corps and an appropriate reduction will be made in per diem or other travel expenses payable.

§ 307.735-308 Economic and financial activities of employees abroad.

(a) *Prohibitions in any foreign country.* A U.S. citizen employee abroad is specifically prohibited from engaging in the activities listed below in any foreign country:

(1) Speculation in currency exchange;

(2) Transactions at exchange rates differing from local legally available rates, unless such transactions are duly authorized in advance by the agency;

(3) Sales to unauthorized persons whether at cost or for a profit of currency acquired at preferential rates through diplomatic or other restricted arrangements;

(4) Transactions which entail the use, without official sanction, of the diplomatic pouch;

(5) Transfers of funds on behalf of blocked nationals, or otherwise in violation of U.S. foreign funds and assets control;

(6) Independent and unsanctioned private transactions which involve an employee as an individual in violation of applicable control regulations of foreign governments;

(7) Acting as an intermediary in the transfer of private funds for persons in one country to persons in another country, including the United States;

(8) Permitting use of one's official title in any private business transactions or in advertisements for business purposes.

(b) *Prohibitions in country of assignment.* (1) A U.S. citizen employee shall not transact or be interested in any business or engage for profit in any profession or undertake other gainful employment in any country or countries to which he or she is assigned or detailed in his or her own name or through the agency of any other person.

(2) A U.S. citizen employee shall not invest in real estate or mortgages on properties located in his or her country of assignment. The purchase of a house and land for personal occupancy is not considered a violation of this subparagraph.

(3) A U.S. citizen employee shall not invest money in bonds, shares, or stocks of commercial concerns headquartered in his or her country of assignment or conducting a substantial portion of business in such country. Such investments, if made prior to knowledge of assignment or detail to such country or countries, may be retained during such assignment or detail.

(4) A U.S. citizen employee shall not sell or dispose of personal property, including automobiles, at prices producing profits which result primarily from import privileges derived from his or her official status as an employee for the U.S. Government.

§ 307.735-309 Information.

(a) *Release of information to the press.* (1) Regular or special employees shall not withhold information from the press or public unless that information is classified or administratively controlled (limited official use). All responses to requests for information from the press should be referred to the Director of Public Affairs who will be responsible for all releases. Regular and special employees should be certain that information given to the press and public is accurate and complete.

(2) Any questions as to the classification or administrative control of information should be referred to the DAEO.

(3) No regular or special employee may record by electronic or other divice any telephone or other conversation, or listen in on any telephone conversation without the consent of all parties thereto.

(b) *Disclosure and misuse of inside information.* No employee may, directly or indirectly, disclose or use for his or her own benefit, or for the private benefit of another, inside information as described in paragraph (c) of this section. The use of such information by an employee is restricted to the proper performance of his or her official duties. The disclosure of such information is restricted to official Peace Corps channels unless disclosure is authorized by the Director, the Deputy Director, the General Counsel, or an Associate Director of Peace Corps. In particular, no employee may:

(1) Engage in, directly or indirectly, a financial transaction as a result of or primarily relying on such information; or

(2) Publish any book or article, or deliver any speech or lecture, based on or using such information.

(c) *Definition.* The term "inside information" as used in this section means, generally, information obtained under Government authority which has not been made available to the general public and which could affect the rights or interests of the Government or of a non-Government organization or person. Such information includes information about Peace Corps operations or administration, and personnel which could influence someone's dealing with Peace Corps.

(d) This section is not intended to discourage the disclosure through proper channels of information which has been or should be made public, or which is by law to be made available to the public. Also, employees are encouraged to teach, lecture, and write, provided they do so in accordance with the provisions of this section and §§ 307.735-301 and 307.735-306.

§ 307.735-310 Speeches and participation in conferences.

(a) *Fees and expenses.* (1) Although an employee may not accept a fee for his or her own use or benefit for making a speech, delivering a lecture, or participating in a discussion if the subject is Peace Corps or Peace Corps programs or if such services are part of the employee's official Peace Corps duties, the employee may suggest that the amount otherwise payable as a fee or honorarium be contributed to Peace Corps under the authority of section 10(a)(4) of the Peace Corps Act.

(2) When a meeting, discussion, etc., to which paragraph (a)(1) of this section refers takes place at a substantial distance from the employee's home, he or she may accept reimbursement for the actual cost of transportation and necessary subsistence, or expenses, but in no case shall he or she receive any amount for personal benefit. Such reimbursements shall be reported by the employee to his or her immediate supervisors.

(3) An employee may accept fees for speeches, etc. dealing with subjects other than Peace Corps or Peace Corps programs when no official funds have been used in connection with his or her appearance and such activities do not interfere with the efficient performance of his or her duties.

(4) In order to avoid even the appearance of a conflict of interest, whether or not a fee is offered should

not be determinative of whether an employee makes a speech or participates in a discussion if the subject is Peace Corps or its programs, or if such services are part of the employee's official duties.

(b) *Racial segregation.* No employee may participate for Peace Corps in conferences or speak for Peace Corps before audiences where any racial group has been segregated or excluded from the meeting, from any of the facilities or conferences, or from membership in the organization sponsoring the conference or meeting.

(1) When a request for Peace Corps speakers or participation is received under circumstances where segregation may be practiced, the Director of Public Affairs shall make specific inquiry as to the practices of the organization before the request is filled.

(2) If the inviting organization shows a willingness to modify its practices, Peace Corps will cooperate in such efforts.

(3) Exceptions to this paragraph may be made only by the Director, Peace Corps and in his or her discretion.

§ 307.735-311 Partisan political activity.

(a) *Prohibited activities.* No employee may:

(1) Use his or her official authority or influence for the purpose of interfering with an election or affecting the result thereof; or

(2) Take any active part in partisan political management or in political campaigns, except as may be provided by or pursuant to statute, 5 U.S.C. 7324.

(b) *Intermittent employees.* Persons employed on an irregular or occasional basis are subject to paragraph (a) of this section only while in active duty status and for the 24 hours of any day of actual employment.

(c) *Excepted activities.* Paragraph (a) of this section does not apply to:

(1) Nonpartisan campaigns and elections in which none of the candidates is to be nominated by or elected as representing a national or State political party, such as most school board elections; or

(2) Political activities connected with questions of public interest which are not specifically identified with national or State political parties, such as constitutional amendments, referenda, and the like (5 U.S.C. 7326).

(d) *Excepted communities.* Paragraph (a) of this section does not apply to employees who are residents of certain communities. These communities, which have been designated by the Office of Personnel Policy and Operations (5 CFR 733.301), consist of a number of communities in suburban Washington, DC, and a few communities elsewhere in which a majority of the voters are Government employees. Employees who are residents of the designated communities may be candidates for, or campaign for others who are candidates for, local office if they or the candidates for whom they are campaigning are running as independent candidates. An employee may hold local office only in accordance with §§ 307.735-301 through 307.735-306 relating to outside employment and associations.

(e) Special Government employees are subject to the statute for the 24 hours of each day or which they do any work for the Government.

(f) While regular employees may explain and support governmental programs that have been enacted into law, in exercising their official responsibilities they should not publicly support or oppose pending legislation, except in testimony required by the Congress.

§ 307.735-312 Use of Government property.

A regular or special employee shall not directly or indirectly use, or allow the use of, Government property of any kind, including property leased to the Government for other than officially approved activities. All employees have a positive duty to protect and conserve Government property, including equipment, supplies, and other property entrusted or issued to them. By law, penalty envelopes may be used only for official U.S. Government mail.

§ 307.735-313 Indebtedness.

Peace Corps considers the indebtedness of its employees to be a matter of their own concern and will not function as a collection agency. Nevertheless, a regular or special employee shall pay each just financial obligation in a proper and timely manner, especially one imposed by law such as Federal, State, or local taxes. For the purpose of this section, a "just financial obligation" means one acknowledged by the employee or reduced to judgment by a court, or one imposed by law such as Federal, State or local taxes, and "in a proper and timely manner" means in a manner which the agency determines does not, under the circumstances, reflect adversely on the Government as his or her employer. In the event of a dispute between an employee and an alleged creditor, this section does not require Peace Corps to determine the validity or amount of the disputed debt.

§ 307.735-314 Gambling, betting, and lotteries.

A regular or special employee shall not participate, while on Government owned or leased property or while on duty for the Government in any gambling activity, including the operation of a gambling device, in conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip or ticket.

§ 307.735-315 Discrimination.

No regular or special employee may make inquiry concerning the race, political affiliation, or religious beliefs of any employee or applicant in connection with any personnel action and may not practice, threaten, or promise any action against or in favor of an employee or applicant for employment because of race, color, religion, sex, age, or national origin and in the competitive service on the basis of politics, marital status, or physical handicap.

§ 307.735-316 Related statutes and regulations.

Each employee should be aware of the following related statutes and regulations:

(a) House Concurrent Resolution 175, 85th Congress, 2nd Session, 72A Stat. B12, the "Code of Ethics for Government Service."

(b) The prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

(c) The prohibitions against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918).

(d) The prohibition against accepting honoraria of more than $2,000 per speech, appearance, or article (2 U.S.C. 441i).

(e) The prohibitions against: (1) The disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783), and (2) the disclosure of confidential information (18 U.S.C. 1905).

(f) The provisions relating to the habitual use of intoxicants to excess (5 U.S.C. 7352).

(g) The prohibition against the misuse of a Government vehicle (31 U.S.C. 638a(c)).

(h) The prohibition against the misuse of the franking privilege (18 U.S.C. 1719).

(i) The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

(j) The prohibitions against fraud or false statements in a Government matter and filing false claims (18 U.S.C. 1001 and 287).

(k) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

(l) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(m) The prohibitions against: (1) Embezzlement of Government money or property (18 U.S.C. 641); (2) failing to account for public money (18 U.S.C. 643); and (3) embezzlement of the money or property of another person in the possession of an employee by reason of his or her employment (18 U.S.C. 654).

(n) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(o) The prohibitions against political activities in subchapter III of chapter 73 of title 5, United States Code, and 18 U.S.C. 602, 603, and 607.

(p) The prohibition against gifts to employees' superiors and the acceptance thereof (5 U.S.C. 7351).

(q) Chapter 11 of title 18, United States Code, relating to bribery, graft, and conflicts of interest, which is specifically applicable to special Government employees as well as to regular employees.

(r) The prohibition against accepting gifts from foreign governments (5 U.S.C. 7342).

(s) The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

(t) The prohibition against appointing or advocating the appointment of a relative to a position within the Agency (5 U.S.C. 3110).

(u) The prohibition against postemployment conflicts of interest (18 U.S.C. 207).

Subpart D—Procedures for Submission by Employees and Review of Statements of Employment and Financial Interests

§ 307.735–401 Submission of statements.

(a) Officials and employees occupying positions classified at the FE–3 level and above are required by Title II of the Ethics in Government Act of 1978, as amended, Title II of Pub. L. 95–521, to file annual Executive Personnel Financial Disclosure Reports. They need not also file the statement of employment and financial interests required by the following provisions.

(b)(1) Regulations of the Office of Personnel Policy and Operations (5 CFR Part 735) require Peace Corps to adopt regulations providing for the submission of statements of employment and financial interests from certain regular employees and all special employees.

(2) All special employees and those regular employees occupying positions described in paragraph (c) of this section shall complete statements of employment and financial interests and submit them to the DAEO not later than 5 days prior to entrance on duty. The Director of Personnel Policy and Operations shall be responsible for supplying all new employees with the necessary forms prior to their initial employment, extensions, or reappointments.

(3) The initial statement of employment and financial interests shall include information on organizations with which the employee was associated during the 2 years prior to his or her employment by Peace Corps, as well as information about current associations. Special employees shall also indicate to the best of their knowledge which organizations listed currently on their forms have contracts with or are applying for contracts with the Peace Corps. If any information required to be included on the statement, including holdings placed in trust, is not known to an employee but is known to another person, he or she is required to request that other person to submit information on his or her behalf.

(4) Current employees shall file a statement on or before June 30 each year. The Director of Personnel Policy and Operations shall be responsible for insuring that statements are distributed to all affected employees. Notwithstanding the filing of the annual report required by this paragraph each employee shall at all times avoid acquiring a financial interest that could result, or taking an action that would result, in a conflict of interest and a violation of the conflict-of-interest provisions of section 208 of title 18, United States Code, or the conflict-of-interest provisions of this part.

(5) In the case of temporary summer employees hired at FP–7 or equivalent and below to perform duties other than those of an expert or consultant, the reporting requirement will be waived. It may also be waived by the Director of Personnel Policy and Operations with respect to other appointments, except as experts or consultants, upon a finding that the duties of the position held by the special Government employee are of a nature and at such a level of responsibility that the reporting of employment and financial interests is not necessary to protect the integrity of the Government.

(6) Regular or special employees are not required to submit in a statement of employment and financial interests any information about their connection with or interest in a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization not conducted as a business enterprise. For this purpose, any organizations doing work involving or potentially involving contracts with the Government are considered business enterprises and are required to be included in a regular or special employee's statement of employment and financial interests.

(7) The statements of employment and financial interests required are in addition, and not in substitution for or in derogation of, any similar requirement imposed by law, order, or regulation. The submission of a statement by an employee does not permit him or her or any other person to participate in a matter in which his or her or other persons' participation is prohibited by law, order, or regulations.

(8) A regular employee who believes that his or her position has been improperly included under Peace Corps regulations as one requiring the submission of a statement of employment and financial interests shall be given an opportunity for review through Peace Corps' grievance procedures to determine whether the position has been improperly included.

(c) Statements shall be submitted by employees who are engaged in any aspect of Government contracting or procurement activities including, but not limited to, the planning, design, award, monitoring, and evaluation of Peace Corps procurement of goods and services; and by all special employees (expert and consultants).

§ 307.735–402 Review of statements.

(a) The DAEO shall review all statements and forward the names of all listed organizations to the Director of Contracts. In addition, if the information provided in the statement indicates on its face a real, apparent, or potential conflict of interest under §§ 307.735–301 through 307.735–305 of these standards, the DAEO will review the situation with the particular employee. If the DAEO and the employee are unable to resolve the conflict to the DAEO's satisfaction, or if the employee wishes to request an exception to any of the above enumerated rules, the case will be referred to the Committee on Conflict of Interest. The Committee is authorized to recommend appropriate remedial action to the Director, who is authorized to take such action as may include, but is not limited to, changing assigned duties, requiring the employee or special employee to divest himself of a conflicting interest, taking disciplinary

action, or disqualifying or accepting the self-disqualification of the employee or special employee for a particular assignment.

(b) The Contracts Division shall maintain a list of all the organizations with which employees are or have been associated, as well as a list of all current contractors with the Agency. The list of organizations shall include the names of all employees associated with the identified organizations. When names of organizations with which new employees are or have been associated are submitted to the Contracts Office, they shall be checked against the list of current contractors. Similarly, before any new contracts are awarded, the names of the potential contractors will be checked against the master list of organizations with which employees are or have been associated. Any real, apparent, or potential conflicts which come to light as a result of these cross checks will be referred to the DAEO for review. The DAEO will proceed as in paragraph (a) of this section, referring the matter to the Committee on Conflict of Interest if necessary.

(c) Whenever an organization submits a proposal or application or otherwise indicates in writing its intent to apply for or seek a specific contract, the Peace Corps Contracts Division shall immediately forward a copy of the relevant sections of the Agency standards of conduct to that organization.

(d) Whenever a regular or special employee begins or terminates his or her employment with Peace Corps, the Office of Personnel Policy and Operations shall provide that employee with a copy of the rules found in § 307.735–304 restricting a person's employment after leaving Peace Corps. Personnel shall also notify the DAEO when an employee terminates. One year after the date of termination the DAEO will instruct the Contracts Office to remove from the master list any organizations with which the terminated employee was associated unless other current employees are associated with those organizations. Six years after the date of termination the DAEO will destroy the statement of employment and financial interests.

Signed at Washington, DC, on July 2, 1987.

Loret Miller Ruppe,

Director, Peace Corps.

[FR Doc. 87–18107 Filed 8–12–87; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 62

Enrollment Appeals

July 16, 1987.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs (BIA) is revising the regulations contained in Part 62 which provide enrollment appeal procedures. The stated purpose of this rule has been to provide procedures for the filing of appeals in conjunction with the rejection of any name from a roll of an Indian tribe when final approval rests within the purview of the Secretary of the Interior. The stated purpose no longer adequately covers the various enrollment actions subject to Secretarial appeal which should properly be processed under this rule. Because of the narrow stated purpose, the procedures contained in this Part 62 apply to appeals from some adverse enrollment actions while the procedures contained in 25 CFR Part 2, which provide procedures for appeals from administrative actions by BIA officials, apply to appeals from other adverse enrollment actions. This has resulted not only in confusion over which rule governs an appeal from a particular enrollment action, but also in different procedures being applicable to individuals who may be appealing from essentially the same enrollment action. The intent of the revision, therefore, is to provide uniform appeal procedures from adverse enrollment actions where individuals have a right to appeal the action to the Secretary. In addition the regulations have been revised to provide for final Departmental action on certain enrollment appeals by Area Directors of the BIA and to make general changes of an administrative nature, including the elimination of sex-based and gender specific terminology. This Part has been previously redesignated from 25 CFR Part 42 at 47 FR 13327, March 30, 1982.

EFFECTIVE DATE: September 14, 1987.

FOR FURTHER INFORMATION CONTACT: Mitchell L. Bush, Jr., Chief, Branch of Tribal Enrollment Services, Division of Tribal Government Services, Bureau of Indian Affairs, Room 1352 Main Interior, 1951 Constitution Avenue, NW., Washington DC 20245, telephone number: (202) 343–3592, (FTS 343–3592).

SUPPLEMENTARY INFORMATION: The authority to issue these rules and regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and 25 U.S.C. 2 and 9. This final rule is published in exercise of rulemaking authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs in the Departmental Manual at 209 DM 8.

The rule contained in this Part 62 was promulgated and amended in the mid-60's and there have been no amendments since that time. The stated purpose of Part 62, to provide procedures for the filing of appeals in conjunction with the rejection of any name from a roll of an Indian tribe when final approval thereof rests within the purview of the Secretary of Interior, no longer adequately covers the various enrollment actions or disputes subject to Secretarial appeal which should properly be processed under the same procedures. Currently, both the regulations contained in this Part 62 and in 25 CFR Part 2 can apply depending upon the immediate effect of the enrollment action on the individual. The rule in 25 CFR Part 2 provides procedures for filing appeals from administrative actions by BIA officials. Consequently, any adverse enrollment action subject to a Secretarial appeal which does not result in the removal of a name from a roll must technically be appealed under the procedures contained in 25 CFR Part 2. This can and has resulted in members of the same family being subject to different appeal procedures in conjunction with essentially the same enrollment action. An example is the change in the degree of Indian blood attributed to an individual. For that individual the change may only constitute an administrative action subject to a Part 2 appeal. However, the change can result in the removal of the names of that individual's children or grandchildren from a roll which must be appealed under Part 62.

The service provisions as well as other requirements contained in 25 CFR Part 2 are more burdensome on individuals who are appealing than the Part 62 provisions. Furthermore, the impact of enrollment actions is usually limited to individuals or their immediate family and the substance of the actions or decisions involve information of a personal nature which is subject to the provisions of the Privacy Act. Consequently, the service provisions to other interested parties under 25 CFR Part 2 are unnecessary if not inappropriate. One possible exception is tribal entities in the case of membership actions. However, the regulations in Part 62 provide for tribal participation in the

appeal proceedings when appropriate. The rule in this Part 62 has, therefore, been revised to provide uniform procedures to apply to all Secretarial appeals concerning enrollment matters or disputes.

The revision to this rule is not intended to expand or to create any new rights to a Secretarial appeal. It only provides uniform procedures where there already exists the right to a Secretarial appeal. Adverse enrollment actions from which an individual may file an appeal are enumerated in revised § 62.4. The procedures contained in this revision to Part 62 also apply to a tribal committee filing an appeal as provided for in § 61.11 of Part 61 of this chapter. Under Part 61 when the recommendations and determinations of the tribal committee are applicable, the BIA official will accept the determination of the tribal committee as to an individual's eligibility for tribal membership unless the determination is clearly erroneous. If the BIA official does not accept the recommendations or determinations of the tribal committee, the tribal committee shall be so notified and may file an appeal from the action under the procedures contained in this Part 62.

The organization and wording of Part 62 have been extensively revised in an attempt to eliminate any vagueness or uncertainty as to the actual procedures to be followed. However, the procedures individuals must follow to file an appeal from an adverse enrollment action subject to Secretarial appeal have not been changed. An individual's appeal must be in writing and must be filed within a specified length of time and the burden of proof is on the individual.

A significant procedural change has been included in the revision with regard to procedures BIA personnel will follow. On certain appeals filed from adverse actions taken by a tribal committee or BIA Superintendent, the decision of the BIA Director on the appeal will constitute final Departmental action. The BIA Director will not make a final decision for the Department, however, when the appealed adverse enrollment action is either the change in degree of Indian blood by a tribal committee which affects a tribal member and the tribal governing document provides for an appeal of the action to the Secretary, or the change in degree of Indian blood by a BIA official which affects an individual. Historical records and information relevant to appeals involving blood degree changes may not be readily available to BIA Directors. Consequently, final Departmental action on blood degree changes subject to Secretarial approval will be taken by the Assistant Secretary—Indian Affairs. It should be noted that when the change in degree of Indian blood for a tribal member is by a tribal committee and the tribal governing document does not provide for an appeal of the action to the Secretary, the regulations in this Part 62 would not be applicable. The tribal procedures contained in the tribal governing document would govern.

The primary author of this document is Kathleen L. Slover, Branch of Tribal Enrollment Services, Division of Tribal Government Services, Bureau of Indian Affairs, Room 1852 Main Interior, 1951 Constitution Avenue NW., Washington, DC 20245, telephone number: (202) 343–3592 (FTS–343–3592).

The Department of the Interior has determined that the rule contained in this Part 62 is a rule of agency procedure or practice. The regulations contained in Part 62 govern agency procedures for the filing and processing of enrollment appeals which do not themselves alter the rights or interests of parties although they may alter the manner in which the parties present their viewpoints to the agency. Therefore, this rulemaking action revising Part 62 is exempted under 5 U.S.C. 553(b)(A) from advance notice and public procedure requirements.

In accordance with Office of Management and Budget regulations contained in 5 CFR 1320.3(c), approval of the information collections contained in this rule is not required.

The regulations in this Part 62 provide administrative procedures for the filing of enrollment appeals and are limited in applicability to Departmental personnel, individuals who are appealing enrollment actions where there is a Secretarial appeal and in some instances tribal entities. The number of tribal entities that might be involved is, however, minimal and this rule will not have a significant economic effect on those few tribal entities. Therefore, the Department of the Interior has determined that this is not a major rule under E. O. 12291 and does not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.

The Department of the Interior has determined that this rule does not significantly affect the quality of the human environment and, therefore, does not require the preparation of an Environmental Impact Statement under Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4334(2)(C).

List of Subjects in 25 CFR Part 62

Administrative practice and procedure, Indians—enrollment.

Accordingly, Part 62 of Subchapter F of Chapter I of Title 25 of the Code of Federal Regulations is revised to read as follows:

PART 62—ENROLLMENT APPEALS

Sec.

62.1 Definitions.
62.2 Purpose.
62.3 Information collection.
62.4 Who may appeal.
62.5 An appeal.
62.6 Filing of an appeal.
62.7 Burden of proof.
62.8 Advising the tribal committee.
62.9 Action by the Superintendent.
62.10 Action by the Director.
62.11 Action by the Assistant Secretary.
62.12 Special instructions

Authority: 5 U.S.C. 301, 25 U.S.C. 2 and 9.

§ 62.1 Definitions.

As used in these regulations:

"*Assistant Secretary*" means the Assistant Secretary of the Interior for Indian Affairs or an authorized representative acting under delegated authority.

"*Bureau*" means the Bureau of Indian Affairs of the Department of the Interior.

"*Commissioner*" means the Commissioner of Indian Affairs or an authorized representative acting under delegated authority.

"*Department*" means the Department of the Interior.

"*Director*" means the Area Director of the Bureau of Indian Affairs area office which has administrative jurisdiction over the local field office responsible for administering the affairs of a tribe, band, or group of Indians or an authorized representative acting under delegated authority.

"*Secretary*" means the Secretary of the Interior or an authorized representative acting under delegate authority.

"*Sponsor*" means any authorized person, including an attorney, who files an appeal on behalf of another person.

"*Superintendent*" means the official or other designated representative of the Bureau of Indian Affairs in charge of the field office which has immediate administrative responsibility with respect to the affairs of a tribe, band, or group of Indians or an authorized representative acting under delegated authority.

"*Tribal Committee*" means the body of a federally recognized tribal entity vested with final authority to act on enrollment matters.

"*Tribal Governing Document*" means the written organizational statement governing a tribe, band or group of Indians and/or any valid document, enrollment ordinance or resolution enacted thereunder.

"*Tribal Member*" means a person who meets the requirements for enrollment in a tribal entity and has been duly enrolled.

§ 62.2 Purpose.

(a) The regulations in this Part are to provide procedures for the filing and processing of appeals from adverse enrollment actions by Bureau officials.

(b) The regulations in this Part are not applicable and do not provide procedures for the filing of appeals from adverse enrollment actions by tribal committees, unless:

(1) The adverse enrollment action is incident to the preparation of a tribal roll subject to Secretarial approval; or

(2) An appeal to the Secretary is provided for in the tribal governing document.

§ 62.3 Information collection.

In accordance with the Office of Management and Budget regulations contained in 5 CFR 1320.3, approval of the information collection requirements contained in this Part is not required.

§ 62.4 Who may appeal.

(a) A person who is the subject of an adverse enrollment action may file or have filed on his/her behalf an appeal. An adverse enrollment action is:

(1) The rejection of an application for enrollment by a Bureau official incident to the preparation of a roll for Secretarial approval;

(2) The removal of a name from a tribal roll by a Bureau official incident to review of the roll for Secretarial approval;

(3) The rejection of an application for enrollment or the disenrollment of a tribal member by a tribal committee when the tribal governing document provides for an appeal of the action to the Secretary;

(4) The change in degree of Indian blood by a tribal committee which affects a tribal member when the tribal governing document provides for an appeal of the action to the Secretary;

(5) The change in degree of Indian blood by a Bureau official which affects an individual; and

(6) The certification of degree of Indian blood by a Bureau official which affects an individual.

(b) A tribal committee may file an appeal as provided for in § 61.11 of Part 61 of this chapter.

(c) A sponsor may file an appeal on behalf of another person who is subject to an adverse enrollment action.

§ 62.5 An appeal.

(a) An appeal must be in writing and must be filed with the Bureau official designated in the notification of an adverse enrollment action, or in the absence of a designated official, with the Bureau official who issued the notification of an adverse enrollment action; or when the notification of an adverse action is made by a tribal committee with the Superintendent.

(b) An appeal may be on behalf of more than one person. However, the name of each appellant must be listed in the appeal.

(c) An appeal filed by mail or filed by personal delivery must be received in the office of the designated Bureau official or of the Bureau official who issued the notification of an adverse enrollment action by close of business within 30 days of the notification of an adverse enrollment action, except when the appeal is mailed from outside the United States, in which case the appeal must be received by the close of business within 60 days of the notification of an adverse enrollment action.

(d) The appellant or sponsor shall furnish the appellant's mailing address in the appeal. Thereafter, the appellant or sponsor shall promptly notify the Bureau official with whom the appeal was filed of any change of address, otherwise the address furnished in the appeal shall be the address of record.

(e) An appellant or sponsor may request additional time to submit supporting evidence. A period considered reasonable for such submissions may be granted by the Bureau official with whom the appeal is filed. However, no additional time will be granted for the filing of the appeal.

(f) In all cases where an appellant is represented by a sponsor, the sponsor shall be recognized as fully controlling the appeal on behalf of the appellant. Service of any document relating to the appeal shall be on the sponsor and shall be considered to be service on the appellant. Where an appellant is represented by more than one sponsor, service upon one of the sponsors shall be sufficient.

§ 62.6 Filing of an appeal.

(a) Except as provided in paragraph (b) of this section, a notification of an adverse enrollment action will be mailed to the address of record or the last available address and will be considered to have been made and computation of the appeal period shall begin on:

(1) The date of delivery indicated on the return receipt when notice of the adverse enrollment action has been sent by certified mail, return receipt requested; or

(2) Ten (10) days after the date of the decision letter to the individual when notice of the adverse enrollment action has not been sent by certified mail return receipt requested and the letter has not been returned by the post office; or

(3) The date the letter is returned by the post office as undelivered whether the notice of the adverse enrollment action has been sent by certified mail return receipt requested or by regular mail.

(b) When notification of an adverse enrollment action is under the regulations contained in Part 61 of this chapter, computation of the appeal period shall be in accordance with § 61.11.

(c) In computing the 30 or 60 day appeal period, the count begins with the day following the notification of an adverse enrollment action and continues for 30 or 60 calendar days. If the 30th or 60th day falls on a Saturday, Sunday, legal holiday, or other nonbusiness day, the appeal period will end on the first working day thereafter.

§ 62.7 Burden of proof.

(a) The burden of proof is on the appellant or sponsor. The appeal should include any supporting evidence not previously furnished and may include a copy or reference to any Bureau or tribal records having a direct bearing on the action.

(b) Criminal penalties are provided by statute for knowingly filing false or fraudulent information to an agency of the United States government (18 U.S.C. 1001).

§ 62.8 Advising the tribal committee.

Whenever applicable, the Superintendent or Director shall notify the tribal committee of the receipt of the appeal and shall give the tribal committee the opportunity to examine the appeal and to present such evidence as it may consider pertinent to the action being appealed. The tribal committee shall have not to exceed 30 days from receipt of notification of the appeal in which to present in writing such statements as if may deem pertinent, supported by any tribal records which have a bearing on the case. The Director or Superintendent may grant the tribal committee

additional time, upon request, for its review.

§ 62.9 Action by the Superintendent.

When an appeal is from an adverse enrollment action taken by a Superintendent or tribal committee, the Superintendent shall acknowledge in writing receipt of the appeal and shall forward the appeal to the Director together with any relevant information or records; the recommendations of the tribal committee, when applicable; and his/her recommendations on the appeal.

§ 62.10 Action by the Director.

(a) Except as provided in paragraph (c) of this section, when an appeal is from an adverse enrollment action taken by a Superintendent or tribal committee, the Director will consider the record as presented together with such additional information as may be considered pertinent. Any additional information relied upon shall be specifically identified in the decision. The Director shall make a decision on the appeal which shall be final for the Department and which shall so state in the decision. The appellant or sponsor will be notified in writing of the decision. Provided that, the Director may waive his/her authority to make a final decision and forward the appeal to the Assistant Secretary for final action.

(b) When an appeal is from an adverse enrollment action taken by a Director, the Director shall acknowledge in writing receipt of the appeal and shall forward the appeal to the Assistant Secretary for final action together with any relevant information or records; the recommendations of the tribal committee, when applicable; and his/her recommendations.

(c) The Director shall forward the appeal to the Assistant Secretary for final action together with any relevant information or records; the recommendations of the tribal committee, when applicable; and his/her recommendations when the adverse enrollment action which is being appealed is either:

(1) The change in degree of Indian blood by a tribal committee which affects a tribal member and the tribal governing document provides for an appeal of the action to the Secretary; or

(2) The change in degree of Indian blood by a Bureau official which affects an individual.

§ 62.11 Action by the Assistant Secretary.

The Assistant Secretary will consider the record as presented, together with such additional information as may be considered pertinent. Any additional information relied upon shall be specifically identified in the decision. The Assistant Secretary shall make a decision on the appeal which shall be final for the Department and which shall so state in the decision. The appellant or sponsor will be notified in writing of the decision.

§ 62.12 Special instructions.

To facilitate the work of the Director, the Assistant Secretary may issue special instructions not inconsistent with the regulations in this Part 62.

Ross O. Swimmer,

Assistant Secretary, Indian Affairs.

[FR Doc. 87-18454 Filed 8-12-87; 8:45 am]

BILLING CODE 4310-02-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 301 and 602

[T.D. 8150]

Abatement of Interests; Definition of Ministerial Act

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the definition of ministerial act for the purposes of abatement of interest. Changes to the applicable law were made by the Tax Reform Act of 1986. The temporary regulations affect both taxpayers requesting abatement of certain interest and Internal Revenue Service personnel responsible for administering the abatement provision and provide these persons with guidance needed to comply with the changes to the law. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations for the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the Federal Register.

EFFECTIVE DATE: The regulations are effective for interest accruing with respect to deficiencies or payments for taxable years beginning after December 31, 1978.

FOR FURTHER INFORMATION CONTACT: Sharon L. Hall of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, Attention: CC:LR:T: (202-566-3288, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document amends the Procedure and Administration Regulations (26 CFR Part 301) to provide temporary rules relating to the definition of ministerial act for the purposes of abatement of interest under section 6404(e)(1) of the Internal Revenue Code of 1986. The temporary regulations reflect the addition of section 6404(e)(1) to the Code by section 1563(a) of the Tax Reform Act of 1986 (100 Stat. 2762).

Section 6404(e)(1) provides that the Commissioner may abate interest attributable to an error or delay by an officer or employee of the Internal Revenue Service (acting in an official capacity) in performing a ministerial act. The legislative history to section 6404(e)(1) provides that Congress "does not intend that this provision be used routinely to avoid payment of interest." S. Rep. No. 313, 99th Cong., 2d Sess. 208 (1986) (Senate Report). Rather, Congress intended the section to be used in instances in which an error or delay in performing a ministerial act results in the imposition of interest, and the failure to abate the interest "would be widely perceived as grossly unfair." Senate Report at 208.

The temporary regulations define the term "ministerial act" as a procedural or mechanical act that does not involve the exercise of judgment or discretion. A decision concerning the proper application of federal tax law (or other law) is not a ministerial act. A ministerial act is a procedural or mechanical act that is nondiscretionary and that occurs during the processing of a taxpayer's case after all the prerequisites to the act, such as conferences and review by supervisors, have taken place.

Special Analyses

The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, the temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Paperwork Reduction Act

The collection of information requirements contained in these regulations have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. These

requirements have been approved by OMB.

Drafting Information

The principal author of these regulations is Sharon L. Hall of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing the regulations on matter of both substance and style.

List of Subjects

26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Statistics, Taxes, Disclosure of information, Filing requirements.

26 CFR Part 602

OMB control numbers under the Paperwork Reduction Act.

Adoption of Amendment to the Regulations

For the reasons set out in the preamble, Title 26, Chapter 1, Subchapter F, Part 301 and Subchapter H, Part 602 of the Code of Federal Regulations is amended as set forth below:

PART 301—[AMENDED]

Paragraph 1. The authority for Part 301 continues to read as follows:

Authority: 26 U.S.C. 7805. * * *

Par. 2. The following new § 301.6404–2T shall be added in the appropriate place.

§ 301.6404–2T Definition of ministerial act (temporary).

(a) *In general.* Section 6404(e)(1) provides that the Commissioner may (in his or her discretion) abate the assessment of all or any part of interest on—

(1) Any deficiency (as defined in section 6211(a), relating to income, estate, gift, generation-skipping, and certain excise taxes) attributable in whole or in part to any error or delay by an officer or employee of the Internal Revenue Service (acting in an official capacity) in performing a ministerial act, or

(2) Any payment of any tax described in section 6212(a) (relating to income, estate, gift, generation-skipping, and certain excise taxes) to the extent that any delay in such payment is attributable to such an officer or employee being dilatory in performing a ministerial act. An error or delay in performing a ministerial act shall be taken into account only if no significant aspect of such error or delay can be attributed to the taxpayer involved or to a person related to the taxpayer within the meaning of section 267(b) or section 707(b)(1). Moreover, an error or delay in performing a ministerial act shall be taken into account only if it occurs after the Service has contacted the taxpayer in writing with respect to the deficiency or payment.

(b) *Ministerial act*—(1) *Definition.* The term "ministerial act" means a procedural or mechanical act that does not involve the exercise of judgment or discretion, and that occurs during the processing of a taxpayer's case after all prerequisites to the act, such as conferences and review by supervisors, have taken place. A decision concerning the proper application of federal tax law (or other federal or state law) is not a ministerial act.

(2) *Examples.* The definition of ministerial act may be illustrated by the following examples.

Example (1). A taxpayer moves from one state to another before the Internal Revenue Service selects the taxpayer's income tax return for examination. A letter explaining that the return has been selected for examination is sent to the taxpayer's old address and then forwarded to the new address. The taxpayer timely responds, asking that the audit be transferred to the Service's district office that is nearest the new address. The group manager approves the request. After the request for transfer has been approved, the transfer of the case is a ministerial act. The Commissioner may (in his or her discretion) abate interest attributable to a delay in transferring the case.

Example (2). An examination of a taxpayer's income tax return reveals a deficiency with respect to which a notice of deficiency will be issued. After the taxpayer and the Internal Revenue Service have identified all agreed and unagreed issues, the notice has been prepared and reviewed (including review by District Counsel, if necessary) and any other relevant prerequisites have been completed, the issuance of the notice of deficiency is a ministerial act. The Commissioner may (in his or her discretion) abate interest attributable to a delay in issuing the notice.

Example (3). A taxpayer invested in a tax shelter and reported a loss from the tax shelter on the taxpayer's income tax return. Internal Revenue Service personnel conducted an extensive examination of the tax shelter, and the processing of the taxpayer's case was delayed during such examination. Because the period of limitations on assessment was about to expire, the taxpayer executed a consent to extend the period of limitations. The time required to process the taxpayer's case was not a result of a delay in performing a ministerial act; consequently, interest attributable to this period cannot be abated under paragraph (a) of this section.

Example (4). A revenue agent is sent to a training course, and the agent's supervisor decides not to reassign the agent's cases. During the training course, no work is done on the cases assigned to the agent. Neither the decision to send the agent to the training course nor the decision not to reassign the agent's cases is, under the circumstances, a ministerial act. Thus, interest attributable to the delay cannot be abated.

Example (5). A taxpayer who claimed a loss from a tax shelter on the taxpayer's income tax return is notified that the Internal Revenue Service intends to examine the return. However, because of other work priorities and resource limitations, a decision is made not to commence the examination for an extended period thereafter. The decision not to commence the examination involves the exercise of judgment and discretion and is not a ministerial act; consequently, interest attributable to the period of delay cannot be abated.

(c) *Effective date.* The provisions of this section apply to interest accruing with respect to deficiencies or payments of tax described in section 6212(a) for taxable years beginning after December 31, 1978. If a refund or credit of interest attributable to the application of paragraph (a) of this section to a tax liability arising with respect to any such taxable year is prevented at any time on or before October 22, 1987, by the operation of any law or rule of law (including res judicata), refund or credit of such interest (to the extent attributable to the application of paragraph (a) of this section) may, nevertheless, be made or allowed if a claim for such interest is filed on or before October 22, 1987.

PART 602—[AMENDED]

Par. 3. The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 4. Section 602.101(c) is amended by inserting in the appropriate places in the table § 301.6404–2T . . . 1545–0024."

There is need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impractical to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective

date limitation of subsection (d) of that section.

Lawrence B. Gibbs,
Commissioner of Internal Revenue.

Approved: July 30, 1987.

J. Roger Mentz,
Assistant Secretary of the Treasury.

[FR Doc. 87-18233 Filed 8-10-87; 1:57 pm]
BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD1 87-69]

Regatta; Gateway Power Boat Regatta, Long Island Sound off Greenwich, CT

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special Local Regulations are being adopted for the annual Gateway Power Boat Regatta. This event, sponsored by the Gateway Power Boat Association, involves high speed power boats racing within a rectangular area on Long Island Sound, off Greenwich, Connecticut. This year the race is scheduled for Saturday, August 8, 1987. This regulation is needed to provide for the safety of participants, spectators and passers-by on navigable waters during this power boat event.

EFFECTIVE DATE: This regulation is effective on Saturday, August 8, 1987.

FOR FURTHER INFORMATION CONTACT: Lieutenant Luke Brown, (617) 223-8310.

SUPPLEMENTARY INFORMATION: On June 8, 1987, the Coast Guard published a Notice of Proposed Rulemaking in the Federal Register for this regulation (52 FR 21603). Interested persons were requested to submit comments and one comment was received. This regulation is being made effective in less than thirty days from the date of publication. There was not sufficient time remaining in advance of the event to provide for a delayed effective date.

Drafting Information

The drafters of this notice are Mr. Lucas A. Dlhopolsky, Project Officer, Third Coast Guard District Boating Safety Division, and Commander R.A. Brunell, Project Attorney, First Coast Guard District Legal Office.

Discussion of Comments

One comment was received by telephone in response to the Notice of Proposed Rulemaking. Since the usual comment period was shortened, verbal comments submitted by phone were accepted in lieu of the normal requirement for the comments to be in writing. The commenter expressed concern about spectator recreational vessels which on occasion try to imitate the race boats while on their way to and from the race area. The permit for this marine event points out that the sponsor is responsible for the control of spectator craft in the area of the event. However, there is little the sponsor or anyone else can do to control every power boat travelling to the event from various locations. The existing Navigation Rules—International and Inland apply to these vessels and their operators are bound to adhere to them or be subject to citation and applicable penalties. Nevertheless, it will be suggested to the sponsor that safe operation of recreational vessels be promoted through any means available to them.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. Early coordination with local marine interests has provided ample time for mariners to adjust plans and schedules so other activities would not be adversely affected by this event. The 1986 race drew an estimated 500 spectator craft to the area. A similar number this year should have a favorable impact on commercial facilities providing services to the spectators. The waters around the race course are used primarily by recreational boaters; any impact on commercial traffic in the area will be negligible. The race course coordinates have been selected so that marine traffic would still be able to access Greenwich Cove, Captains Harbor and all other shore points adjacent to the race course. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 of Title 33 of the Code of Federal Regulations is amended by adding a temporary § 100.35-109 to read as follows:

§ 100.35-109 Gateway Power Boat Regatta, Long Island Sound off Greenwich, Connecticut.

(a) *Regulated area.* Long Island Sound, off Greenwich, Connecticut in the rectangular area described by the following points:

Latitude, 40 degrees, 57 minutes, 23 seconds North;
Longitude, 73 degrees, 38 minutes, 42 seconds West.
Latitude, 40 degrees, 56 minutes, 06 seconds North;
Longitude, 73 degrees, 38 minutes, 28 seconds West.
Latitude, 40 degrees, 57 minutes, 50 seconds North;
Longitude, 73 degrees, 33 minutes, 01.5 seconds West.
Latitude, 40 degrees, 58 minutes, 04 seconds North;
Longitude, 73 degrees, 35 minutes, 11 seconds West.

(b) *Effective period.* This regulation is effective from 9:30 a.m. to 3:30 p.m. on Saturday, August 8, 1987. In the event of postponement due to weather this regulation will be in effect during the same times on Sunday, August 9, 1987.

(c) *Special local regulations.* (1) All persons or vessels not registered with the sponsor as participants or not part of the regatta patrol are considered spectators.

(2) The regulated area will be closed to all spectator and general vessel traffic during the effective period. No person or vessel shall enter or remain in the regulated area when it is closed unless authorized by the sponsor or the Coast Guard Patrol Commander.

(3) Race participants shall not exceed 10 mph when transiting between race headquarters and the regulated area.

(4) All spectator vessels shall remain at least 50 yards from the participants when they are transiting to or from the regulated area and race headquarters. The location designated for spectator vessels during the power boat race is an area north of a line parallel to and approximately 1000 yards south of a line connecting buoys N "2" (SW of Great Captain Island) and Bell "1" (SE of "Hen and Chickens"). This area will be adjusted at the discretion of the Coast Guard Patrol Commander.

(5) All persons and vessels shall comply with the instructions of U.S. Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(6) For any violation of this regulation, the following maximum penalties are authorized by law:

(i) $500 for any person in charge of the navigation of a vessel.

(ii) $500 for any owner of a vessel actually on board.

(iii) $250 for any other person.

(iv) Suspension or revocation of a license for a licensed officer.

Dated: July 29, 1987.

R.L. Johanson,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 87-18493 Filed 8-12-87; 8:45 am]

BILLING CODE 4910-14-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1011, 1132, 1161, and 1162

[Ex Parte No. 459]

Commission Organization; Delegation of Authority

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission adopts technical revisions to the regulations at 49 CFR Part 1011, *Commission Organization: Delegation of Authority*, that describe the organization of the Commission and the assignment of jurisdiction and responsibilities. The changes are ministerial in nature. Because they involve only the internal organization and procedures of the Commission, they are being issued in final form. Public comment is not requested or required. The two divisions described under § 1011.3 are eliminated, and all matters previously assigned to these divisions are now reserved to the Commission. The Commission retains the option of reestablishing the divisional structure at a future time. Also, because of these revisions, technical modifications or changes are made to several other sections of the Commission's regulations. Finally, changes are made to § 1132.2 to correct minor typographical errors and omissions and conforming amendments are made to Parts 1161 and 1162.

EFFECTIVE DATE: September 12, 1987.

FOR FURTHER INFORMATION CONTACT: Andrew L. Lyon, (202) 275-7691

or

Mark Shaffer, (202) 275-7292, (TDD for hearing impaired: (202) 275-1721).

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T. S. Info-Systems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357 (assistance for the hearing impaired is available through TDD services (202) 275-1721) or pickup from TSI in Room 2229 at Commission headquarters.

Environmental and Energy Considerations

This rule will not significantly affect either the quality of the human environment or the conservation of energy resources

Regulatory Flexibility Analysis

The Commission certifies that this action will not have a significant economic impact on a substantial number of small business entities because the changes are ministerial only and do not impose additional requirements on any entity.

List of Subjects in 49 CFR Parts 1011, 1132, 1161, and 1162

Administrative practice and procedure, Authority delegations (government agencies).

Decided: August 3, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

Title 49 of the Code of Federal Regulations is amended as follows:

PART 1011—COMMISSION ORGANIZATION: DELEGATIONS OF AUTHORITY

1. The authority citation for Part 1011 continues to read as follows:

Authority: 49 U.S.C. 10301, 10302, 10304, 10305, 10321; 31 U.S.C. 9701; 5 U.S.C. 553.

2. Paragraphs (a)(4) and (b) of § 1011.2 are revised to read as follows:

§ 1011.2 The Commission.

(a) * * *

(4) All other matters submitted for decision except those assigned to a single Commissioner, an employee, or an employee board.

(b) The Commission may bring before it any matter assigned to a single Commissioner or any employee board. It may establish divisions and assign any matter reserved to it to a division for administrative handling or decision, or both.

3. Section 1011.3 is revised to read as follows:

§ 1011.3 Divisions of the Commission.

The Commission may establish such divisions as it considers necessary to handle any matter before it.

4. The heading of § 1011.6 is revised as follows:

§ 1011.6 Employee Boards.

5. The first sentence of the introductory text of § 1011.6 is revised to read as follows:

This section sets forth matters assigned to boards of employees of the Commission. * * *

* * * * *

6. Paragraphs (e) and (h) of § 1011.6 are removed and paragraphs (f), (g), (i), (j), and (k) are redesignated as paragraphs (e), (f), (g), (h), and (i).

PART 1132—PROTESTS AGAINST TARIFFS; PROCEDURES IN CERTAIN SUSPENSION AND LONG AND SHORT HAUL RESTRICTION MATTERS

7. The authority citation for Part 1132 continues to read as follows:

Authority: 49 U.S.C. 10321, 10707, 10709, and 10726; 5 U.S.C. 553 and 559.

8. Paragraph (b) of § 1132.2 is amended by adding introductory text and by revising the introductory text to paragraph (b)(1) to read as follows:

§ 1132.2 Procedures in certain suspension and long and short haul restriction matters.

* * * * *

(b) Petitions for reconsideration of the following may be filed by any interested person within 20 days after the date of service:

(1) Decisions by the Suspension Board which result in orders for:

* * * * *

§ 1132.2 [Amended]

9. Paragraphs (c) and (d) of § 1132.2 are amended by removing the words "by the designated appellate division" from paragraph (c), and by substituting the word "Commission" for "designated appellate division" in paragraph (d).

PART 1161—PROCEDURES FOR ISSUANCE OF CERTIFICATES OF REGISTRATION TO SINGLE-STATE MOTOR CARRIERS UNDER 49 U.S.C. 10931.

10. The authority citation for Part 1161 continues to read as follows:

Authority: 49 U.S.C. 10321, 10931; 5 U.S.C. 559.

§ 1161.5 [Amended]

11. The last two sentences of § 1161.5 are revised to read as follows:

* * * Applications for Certificates of Registration and related appeals will be handled in a single proceeding by the Commission. A decision issued by the Commission is final.

PART 1162—TEMPORARY AUTHORITY (TA) AND EMERGENCY TEMPORARY AUTHORITY (ETA) PROCEDURES UNDER 49 U.S.C. 10928

12. The authority citation for Part 1162 continues to read as follows:

Authority: 49 U.S.C. 10321, 10928; 5 U.S.C. 559.)

§ 1162.6 [Amended]

13. Section 1162.6(g)(2) is amended by removing the last sentence.

[FR Doc. 87-18450 Filed 8-12-87; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 655

[Docket No. 70102-7002]

Atlantic Mackerel, Squid, and Butterfish Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of squid specification increase.

SUMMARY: NOAA issues this notice to increase the Initial Optimum Yield (IOY) specification for *Illex* squid as required by regulations governing the squid fisheries. This increase is assigned to the domestic annual harvest (DAH) and makes an additional 500 metric tons (mt) available for joint venture processing (JVP). Regulations governing the squid fisheries require publication of any specification adjustments, with reasons for such adjustments. This action is intended to foster the goal of the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP) by creating benefits for the U.S. fishing industry.

DATES: This notice is effective August 10, 1987. Comments are invited until August 25, 1987.

FOR FURTHER INFORMATION CONTACT: Salvatore A. Testaverde, 617-281-3600 ext. 273.

SUPPLEMENTARY INFORMATION: Under § 655.22, final initial annual specifications for squid for 1987 were published on January 7, 1987 (52 FR 537) for the fishery year of January 1 through December 31, 1987. The regulations at § 655.21(b)(1)(v) provide that these final initial annual specifications may be adjusted by the Director, NMFS Northeast Region, after consultation with the Mid-Atlantic Fishery Management Council.

The Council voted to recommend an additional 500 mt be allocated to JVP, because there is a lack of shoreside markets and there is currently a high concentration of *Illex* squid available to the U.S. harvesting sector. This increase in JVP provides an outlet for the U.S. harvesting sector not otherwise available.

Five joint ventures with companies from Japan (two), Italy, Spain and the Faroe Islands have approved permits. Each joint venture was initially granted 500 mt totaling 2,500 mt of the 3,000 mt total of *Illex* joint venture processing amount (JVP). The joint venture operations have been monitored and additional amounts of squid above the initial 2,500 mt JVP have been released as joint ventures have continued to perform. To date, the joint venture processing amount of 3,000 mt has been allocated.

One joint venture involving the Japanese company, Nippon Suisan and U.S. company, Lund Fisheries, was approved by both the New England and Mid-Atlantic Fishery Management Councils, to purchase "over the side" up to 1,500 mt of *Illex*. A permit was approved; however, the entire *Illex* amount of 1,500 mt was not released for the joint venture operation. This allows the Regional Director flexibility in reallocating squid, should the joint venture fail due to low abundance of squid.

The U.S.-Japanese joint venture operation has been monitored and discrete amounts of *Illex* have been released as *Illex* were harvested and processed above the initial 500 mt allocation. The joint venture is expected to continue to process U.S.-harvest squid, given the good abundance of *Illex* squid. Recent consultations with the Councils confirmed their original recommendation in support of the *Illex* 1,500 mt joint venture amount for this particular joint venture operation. Industry supports the increase, especially in view of *Illex* abundance and the need to process product.

In accordance with § 655.22(f) notice is hereby given that the IOY for *Illex* squid of 15,038 mt is increased by 500 mt to total 15,538 mt and DAH and JVP for *Illex* squid is increased by 500 mt from 3,000 to 3,500 mt.

Other Matters

This action is taken under 50 CFR Part 655 and is in compliance with Executive Order 12291.

In view of the need to avoid disruption of domestic and foreign fisheries, NOAA has determined that delaying the effective date of this notice is impractical, unnecessary, and contrary to the public interest.

List of Subjects in 50 CFR Part 655

Fisheries, Reporting and recordkeeping requirements.

(16 U.S.C. 1801 *et seq.*)

Dated: August 10, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

[FR Doc. 87-18526 Filed 8-10-87; 4:58 pm]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 52, No. 156
Thursday, August 13, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspector Service

7 CFR Parts 800, 801 and 802

Grain Standards; Review of Regulations

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Request for Public Comment.

SUMMARY: According to the requirements for the periodic review of existing regulations, the Federal Grain Inspection Service (Service) invites comments and suggested changes to its regulations under the United States Grain Standards Act.

DATE: Comments must be submitted on or before October 13, 1987.

ADDRESS: Written comments must be submitted to Lewis Lebakken Jr., Information Resources Staff, RM, USDA, FGIS, Room 1661 South Building, 1400 Independence Avenue, SW., Washington, DC, 20250.

Telemail users may respond to [IRSTAFF/FGIS/USDA] telemail.

Telex users may respond as follows: to Lewis Lebakken Jr., TLX: 7607351, ANS: FGIS UC.

All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken Jr., address as above, telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION: The periodic review of regulations in 7 CFR Part 800, General Regulations; 7 CFR Part 801, Official Performance Requirements for Grain Inspection Equipment; and 7 CFR Part 802, Official Performance and Procedural Requirements for Grain Weighing Equipment and Related Grain Handling Systems is being conducted in accordance with Executive Order 12291 and Departmental Regulation 1512–1.

During this review scheduled to be completed by October, 1988, the Service will be assessing such issues as the continued need for various sections of the regulations, potential for improvements, language clarity, and public burden. Comments are solicited from interested persons.

Dated: August 6, 1987.

W. Kirk Miller,

Administrator.

[FR Doc. 87–18469 Filed 8–12–87; 8:45 am]

BILLING CODE 3410-01-M

Agricultural Marketing Service

7 CFR Parts 907 and 908

Navel Oranges and Valencia Oranges Grown in Arizona and Designated Part of California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites written comments on a proposal to amend the procedures for imposing interest and late payment charges on handlers' overdue assessments, which are contained in the administrative rules and regulations of the California-Arizona navel and Valencia orange marketing orders. The proposed action was recommended by the Navel and Valencia Orange Administrative Committees in order to provide a more efficient and timely method of assessment collection.

DATE: Comments due September 14, 1987.

ADDRESS: Interested persons are invited to submit written comments concerning this notice. Comments must be sent in triplicate to the Docket Clerk, F&V, AMS, USDA, Room 2085, South Building, Washington, DC 20250–0200. Comments should reference the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular working hours.

FOR FURTHER INFORMATION CONTACT: James M. Scanlon, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250–0200, telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposal on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act (the "Act", 7 U.S.C. 601–674), as amended, and rules issues thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

The Navel and Valencia Orange Administrative Committees (NOAC/VOAC), which are responsible for the local administration of the marketing orders, report that there are an estimated 4,065 growers and 123 handlers of navel oranges, and 3,500 growers and 115 handlers of Valencia oranges. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.1 (1985)) as those having average annual gross revenues for the last three fiscal years of less than $100,000. Handlers are considered small entities if gross annual revenues are less than $3.5 million. The majority of California-Arizona navel and Valencia orange growers and handlers may be classified as small entities.

Interest and late payment charges have been authorized under the marketing orders since January 1985. The NOAC and VOAC have recommended amendments to the respective rules and regulations issued under the marketing orders which would change the date when interest accrues and late payment charges apply to outstanding handler assessment accounts. The change for both programs is designed to encourage handlers to pay assessments more promptly, and to simplify the committees' recordkeeping and handler assessment billing procedures. There is no change in the current rate of interest charged to overdue assessments or to the one-time late payment charge.

Based on available information, the Administrator of the AMS has determined that issuance of this proposed rule would not have a significant economic impact on a substantial number of small entities.

The proposed changes in the administrative rules and regulations concerning interest and late payment charges are issued under Marketing Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California and Marketing Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The orders are effective under the Act. The proposal is based upon the recommendation and information submitted by the NOAC and VOAC and upon other available information.

Sections 907.41 and 908.41 of the respective orders authorize the collection of interest and late payment charges from handlers on overdue assessments. Sections 907.106 and 908.106, which contain provisions for an interest charge and a late payment charge on late assessments, were added to the administrative rules and regulations of the respective orders on May 5, 1986 (51 FR 11421).

The rules currently provide that an interest charge of 1½ percent per month be levied on any assessment not received within 30 days of the date such assessment was invoiced to the handler. Also provided for is a one-time late payment charge of 5 percent which may be charged on any unpaid assessments, plus accrued interest, not received at the committee's office within 60 days of the date such assessment was first invoiced to the handler.

The proposed amendments to §§ 907.106 and 908.106 would change the date when interest accrues and late payment charges apply to outstanding handler assessment accounts. The amendments would apply interest charges at the end of the month the assessment is due and a late payment charge at the end of the following month, if an assessment is first invoiced prior to or on the 15th of the month. If the handler is first invoiced after the 15th of the month, interest would be charged if the assessment is not paid at the committees' office before the end of the following month and the late payment charge would apply the month after that. The proposed changes are designed to encourage handlers to pay their assessments more promptly and to simplify the committees' recordkeeping and handler assessment billing procedures.

List of Subjects in 7 CFR Parts 907 and 908

Marketing agreements and orders, California, Arizona, Oranges, Navel, Valencia.

For the reasons set forth in the preamble, 7 CFR Parts 907 and 908 are proposed to be amended as follows:

1. The authority citation for 7 CFR Parts 907 and 908 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Subpart—Rules and Regulations

2. Section 907.106 is amended by revising paragraphs (a) and (b) to read as follows:

§ 907.106 Interest and late payment charges.

(a) There shall be an interest charge of 1½ percent per month on any assessment not received at the committee's office before the end of the month in which such assessment was first invoiced to the handler; *Provided,* That if an assessment is first invoiced later than the 15th of the month, no interest shall be charged if such assessment is paid at the committee's office before the end of the month following the month in which the assessment was first invoiced to the handler.

(b) In addition to the interest charge specified in paragraph (a) of this section there shall be a late payment charge of 5 percent on any assessment plus accrued interest not received at the committee's office by the end of the month following the month in which the assessment was first invoiced to the handler: *Provided,* That if an assessment is first invoiced later than the 15th of the month, there will be no late payment charge if the assessment and accrued interest are paid at the committee's office before the end of the second month following the month in which the assessment was first invoiced to the handler.

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Subpart—Rules and Regulations

3. Section 908.106 is proposed to be amended by revising paragraphs (a) and (b) to read as follows:

§ 908.106 Interest and late payment charges.

(a) There shall be an interest charge of 1½ percent per month on any assessment not received at the committee's office before the end of the month in which such assessment was first invoiced to the handler: *Provided,* That if an assessment is first invoiced later than the 15th of the month, no interest shall be charged if such assessment is paid at the committee's office before the end of the month following the month in which the assessment was first invoiced to the handler.

(b) In addition to the interest charge specified in paragraph (a) of this section there shall be a late payment charge of 5 percent on any assessment plus accrued interest not received at the committee's office by the end of the month following the month in which the assessment was first invoiced to the handler. *Provided,* That if an assessment is first invoiced later than the 15th of the month, there will be no late payment charge if the assessment and accrued interest are paid at the committee's office before the end of the second month following the month in which the assessment was first invoiced to the handler.

Dated: August 6, 1987.

Ronald L. Gioffi,

Director, Fruit and Vegetable Division.

[FR Doc. 87–18528 Filed 8–12–87; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87–ASO–8]

Proposed Alteration of VOR Federal Airways; Miami, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the descriptions of Federal Airways V–1, V–521 and V–579 in the Miami, FL, area. These changes are proposed in conjunction with the commissioning of the new Lee County very high frequency omni-directional radio range and tactical air navigational aid (VORTAC). These changes would improve traffic flow between Miami and the Orlando, FL, terminal areas. This action would improve flight planning, save fuel, and reduce controller workload.

DATES: Comments must be received on or before September 28, 1987.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Southern Region, Attention: Manager, Air Traffic Division, Docket No. 87–ASO–8, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factural basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87–ASO–8." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate a low altitude airway between Orlando, FL, and the new Lee County, FL, VORTAC located at coordinates lat. 26°31'46" N., long. 81°46'34" W. VOR Federal Airway V–1 would be extended from Jacksonville, FL, to Orlando, to Lee County. The proposal would designate controlled airspace in an area where aircraft are normally vectored. In conjunction with the commissioning of the Lee County VORTAC, the descriptions of V–521 and V–579 would be changed to complement the flow in that area. This action would permit more flexibility for maneuvering traffic between Miami, FL, and Orlando and reduce controller workload. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. § 71.123 is amended as follows:

V–521 [Amended]

By removing the words "From Miami, FL, via INT Miami 337° and Fort Myers, FL, 101° radials; Fort Myers; INT Fort Myers 022° and Lakeland, FL, 154° radials; Lakeland;" and substituting the words "From Lakeland, FL;"

V–579 [Amended]

By removing the works "From Ft. Myers, Fl, via INT Ft. Myers 311° and Sarasota, Fl, 156° radials;" and substituting the words "From Miami, FL, INT Miami 337°T(337°M) and Lee County, FL 099°T(101°M) radials; Lee County; Fort Myers, FL; INT Fort Myers 311°T(310°M) and Sarasota, Fl, 156°T(156°M) radials;"

V–1 [Amended]

By removing the words "From Jacksonville, FL, via" and substituting the words "From Lee County, FL, INT Lee County 009°T(011°M) and Orlando, FL, 194°T(194°M) radials; Orlando; Jacksonville, FL;"

Issued in Washington, DC, on August 5, 1987.

Shelomo Wugultar,

Acting Manger, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87–18428 Filed 8–12–87; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Reg. No. 16]

Supplemental Security Income for the Aged, Blind, and Disabled; Optional State Supplementation Provisions; Agreements; Payments

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rules.

SUMMARY: We are proposing rules to provide nationwide implementation of the court's decision in *Livermore* v. *Heckler*, 743 F.2d 1396 (9th Cir. 1984). The issue in this case involves the method of calculating optional State supplementary payments in the Supplemental Security Income (SSI) program where spousal deeming is involved. The proposed rules set out a new method of calculating such payments which conforms to the decision of the court.

DATE: Comments must be received on or before October 13, 1987.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203 or delivered to 3–A–3 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Dave Smith, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, Telephone 301–594–7460.

SUPPLEMENTARY INFORMATION: Section 1614(f)(1) of the Social Security Act (the Act) provides that, for purposes of determining eligibility for and the amount of Federal SSI benefits for an individual whose spouse is living with him or her in the same household but is not eligible for SSI benefits, the individual's income and resources shall be deemed to include the income and resources of the spouse. This is referred to as "spousal deeming". Current regulations (20 CFR 416.1163) provide that when calculating the Federal SSI benefit of an eligible individual living with an ineligible spouse, the eligible individual's income will be combined with that of the ineligible spouse (if the ineligible spouse's income is above a certain amount after allocations for any ineligible children) and substracted from the Federal benefit rate for a couple. When calculating the State supplementary payment, however, under current regulations (20 CFR 416.2025(b)) we subtract countable income in excess of the Federal benefit rate from one of the existing variations in optional State supplementary payment rates for an eligible individual. Our policy was the subject of litigation in *Livermore* v. *Heckler*, 743 F.2d 1396 (9th Cir. 1984) and *Bouchard* v. *Secretary*, C.A. No. 78–0632–F (D. Mass. 1984). In these cases, it was held that our method of calculating optional State supplementary payments involving spousal deeming was inconsistent with the Act. The courts held that the Secretary should calculate those payments by subtracting the excess countable income of these couples from an optional State supplementary payment rate for an eligible couple. We believe that the *Livermore* and *Bouchard* courts' interpretation of the Act, as requiring the application of the same type of rate (couple or individual) in Federal SSI determinations and federally administered optional State supplement determinations, is a reasonable one. Moreover, considering that 74 percent of the cases affected by the proposed regulation (State-supplement-only cases) are California and Massachusetts cases already subject to the *Livermore* and *Bouchard* decisions, we believe it is reasonable to extend the courts' interpretation to all those affected. Therefore, we propose to apply this policy nationally.

However, unlike Federal SSI benefits, most States have more than one supplementary payment rate for couples. State payment rates may vary by geographic area, living arrangement, and category, i.e., aged, blind, or disabled (20 CFR 416.2020 through 416.2030). Only four States, Massachusetts, California, Nevada, and Iowa, vary their supplementary payment rates by category. In Massachusetts, under the *Bouchard* ruling, the ineligible spouse is considered to be in the category that yields the lowest couple rate. In California, under the *Livermore* ruling, the ineligible spouse is considered to be in the same category as the eligible individual; i.e., if the eligible individual is disabled, the ineligible spouse will be considered disabled, and the rate for a disabled couple will be used. It is this policy that is being reflected in the proposed regulations. Although the Ninth Circuit's decision only required that the policy be effectuated in California, California cases comprise 88 percent of the State-supplement-only cases in the four States that vary their supplement by category, that is, 88 percent of those affected by a choice of which couple rate to apply. In order to assure a uniform policy, we are effectuating the *Livermore* policy nationwide.

If a State has, or in the future elects, a special individual rate for an eligible individual living with an ineligible spouse, for purposes of this regulation we will treat that rate as the couple rate provided that it is greater than the eligible couple rate otherwise applicable under these regulations.

Regulatory Procedures

Executive Order No. 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because no Federal SSI program costs are involved and administrative costs would be negligible and resulting State costs are also negligible. In addition, Medicaid costs would be negligible. Therefore a regulatory impact analysis is not required.

Paperwork Reduction Act of 1980

These proposed regulations impose no new reporting or recordkeeping requirements necessitating Office of Management and Budget clearance.

Regulatory Flexibility Act

We certify that these proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities since they affect primarily individuals receiving or applying for SSI benefits. Therefore, a regulatory flexibility analysis is not required.

(Catalog of Federal Domestic Assistance Program No. 13.807, Supplemental Security Income Program).

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income.

Dated: April 13, 1987.

Dorcas R. Hardy,

Commissioner of Social Security.

Approved: June 18, 1987.

Otis R. Bowen,

Secretary of Health and Human Services.

PART 416—[AMENDED]

Part 416 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows.

Subpart K—[Amended]

1. The authority citation for Subpart K of Part 416 is revised to read as follows and all other authority citations which appear throughout Subpart K are removed:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614, 1621, and 1631 of the Social Security Acts as amended; sec. 211 of Pub. L. 93–66; 42 U.S.C. 1302, 1382, 1382a, 1382b, 1382c, 1382j, and 1383.

2. Paragraph (d)(2)(iii) of § 416.1163 is revised to read as follows:

§ 416.1163 How we deem income to you from your ineligible spouse.

* * * * *

(d) *Determining your eligibility for SSI.*

(2) * * *

(iii) Subtracting the couple's countable income from the Federal benefit rate for an eligible couple. (See § 416.2025(b) for determination of the State supplementary payment amount.)

* * * *

Subpart T—[Amended]

3. The authority citation of Subpart T of Part 416 is revised to read as follows and all other authority citations which appear throughout Subpart T are removed:

Authority: Secs. 1102, 1612, 1614, 1616, 1618, 1631, and 1634 of the Social Security Act as amended; sec. 401 of Pub. L. 92–603, sec. 212 of Pub. L. 93–66, sec. 8 of Pub. L. 93–233, secs. 1 and 2 of Pub. L. 93–335, sec. 102 of Pub. L. 94–274; 42 U.S.C. 1302, 1382a, 1382c, 1382e, 1382g, 1383, 1383c, 1382 nt (7 U.S.C. 2012 nts).

4. Paragraphs (b)(1) and (3) of § 416.2025 are revised to read as follows:

§ 416.2025 Optional supplementation; Countable income.

* * * * *

(b) * * *

(1) As provided in § 416.420, countable income will first be deducted from the Federal benefit rate applicable to an eligible individual or eligible couple. In the case of an eligible individual living with an ineligible spouse with income (the deeming provisions of § 416.1163 apply), the Federal benefit rate from which countable income will be deducted is the Federal benefit rate applicable to an eligible couple, except that an eligible individual's payment amount may not exceed the amount he or she would have received if he or she were not subject to the deeming provisions (§ 416.1163(e)(2)).

* * * * *

(3) If countable income exceeds the amount of the Federal benefit rate, the State supplementary benefit will be reduced by the amount of such excess. In the case of an eligible individual living wih an ineligible spouse with income (the deeming methodology of § 416.1163 applies), the State supplementary payment rate from which the excess income will be deducted is the State supplementary rate for an eligible couple, except that an eligible individual's payment amount may not exceed the amount he or she would have received if he or she were not subject to the deeming provisions (see § 416.1163(e)(2)). For purposes of determining the State supplementary couple rate, the ineligible spouse is considered to be in the same category as the eligible individual. This rate will be used unless the State designates a special individual rate for an eligible individual living with an ineligible spouse. For purposes of this regulation, we will treat that special rate as the couple rate provided that it is greater than the eligible couple rate otherwise applicable under these regulations.

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[FR Doc. 87–18311 Filed 8–12–87; 8:45 am]
BILLING CODE 4190–11–M

Food and Drug Administration

21 CFR Part 7

[Docket No. 87N–0062]

Infant Formula Recall Requirements

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing, in accordance with the 1986 Infant Formula amendments to the Federal Food, Drug, and Cosmetic Act, to amend its recall regulations for infant formulas. These proposed amendments would: (1) Specify mandatory recall procedures to be used by manufacturers in removing from the marketplace an infant formula that is adulterated and/or misbranded and that the agency has determined may present a risk to human health; (2) require a manufacturer recalling an infant formula that presents a risk to human health to request each retail establishment at which such infant formula is sold or available for sale to post a notice of such recall; and (3) establish infant formula distribution records retention requirements.

DATES: Written comments by October 13, 1987. The agency proposes that any final rule based on this proposal become effective 60 days after its date of publication.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Curtis E. Coker, Jr., Center for Food Safety and Applied Nutrition (HFF–314), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0024.

SUPPLEMENTARY INFORMATION: In 1978, a major manufacturer of infant formulas reformulated two of its soy products by discontinuing the addition of salt. This reformulation resulted in the manufacture of products containing an inadequate amount of chloride, an essential nutrient. By mid-1979, hypochloremic metabolic alkalosis, a syndrome associated with chloride deficiency, had been diagnosed in a substantial number of infants. Most of the cases resulted from prolonged and exclusive use of these brands of the soy infant formulas. A recall was instituted for those defective infant formulas. However, the recall did not result in the prompt removal of all the chloride deficient formula from many retailers and some wholesalers.

After reviewing the matter, Congress determined that, to improve protection of infants using infant formula products, modifications of industry's and FDA's recall procedures were needed, as well as greater regulatory control over the formulation and production of infant formulas. Accordingly, Congress passed, and the President signed into law on September 26, 1980, the Infant Formula Act of 1980 (Pub. L. 96–359). The Infant Formula Act of 1980 (the 1980 act) is codified in section 412 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 350a). In 1982, FDA implemented the infant formula recall procedures, as prescribed for in section 412(d) of the act, by establishing Subpart D in 21 CFR Part 7 (see 47 FR 16832; April 30, 1982).

More recently, Congress amended section 412 of the 1980 act as a provision of the "Drug Enforcement, Education, and Control Act of 1986" (Pub. L. 99–570). The President signed these amendments into law on October 27, 1986. The Drug Enforcement, Education, and Control Act of 1986 (the 1986 amendments) makes certain changes affecting infant formula recalls that require amendments to FDA's existing recall regulations. The agency is proposing to amend its recall regulations to reflect the statutory changes. A brief discussion of the proposed amendments follows.

Infant Formula Recall Requirements, Scope and Effect of Infant Formula Recalls, and Notification Requirements

Section 412(c)(1) of the 1980 act required only that an infant formula manufacturer notify the Secretary promptly of noncompliance or risk to health where the manufacturer had knowledge that one of its products had been distributed which failed to contain the required nutrients or levels of nutrients, or which was otherwise adulterated or misbranded and , presented a human health risk. The 1986 amendments revised section 412(c)(1) (recodified as section 412(e)(1)) to

require manufacturers not only to notify the Secretary under such circumstances but also, when the agency has determined that the infant formula presents a risk to human health, to immediately take all actions necessary to recall shipments of such infant formula from all wholesale and retail establishments.

FDA is therefore proposing to amend 21 CFR Part 7 by revising § 7.70 (scope and effect of infant formula recalls) and § 7.72 (reports about an infant formula recall; proposed in this document under the section heading "notification requirements"). The agency is also proposing to add new § 7.68 concerning food and Drug Administration-required recalls. This section would incorporate the new statutory requirements concerning such mandatory recalls. FDA is also proposing to add new § 7.69 to define a "firm-initiated recall," thereby distinguishing such a recall from one based on the agency's determination that an infant formula presents a risk to health (new § 7.68). As revised, new § 7.69 would apply to an infant formula that has been distributed, that does not present a human health risk, but that is otherwise in violation of the laws and regulations administered by FDA and against which the agency could initiate legal or regulatory action.

Posting Notice of an Infant Formula Recall

Section 412(f)(3) of the 1986 amendments imposes the requirement that a manufacturer recalling an infant formula that presents a human health risk must request each retail establishment at which such infant formula is sold or available for sale to post a notice of such recall. FDA has incorporated this new requirement into the proposed regulations in § 7.71 (elements of an infant formula recall) and § 7.72 (notification requirements).

Records Retention

Section 412(g)(1) of the 1986 amendments revises the language of section 412(e)(1) of the 1980 act by requiring manufacturers to keep all distribution records for at least 1 year after expiration of the shelf life of the infant formula. FDA is proposing to add new § 7.76 (records retention) to incorporate this new requirement.

Proposed Minor Changes

FDA is proposing a number of minor editorial changes, including redesignating the "Bureau of Foods" as the "Center for Food Safety and Applied Nutrition" to reflect an FDA reorganization.

Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Economic Impact

In accordance with the Regulatory Flexibility Act (Pub. L. 96-354) and Executive Order 12291, the economic effects of this proposed rule have been analyzed. This proposed rule merely implements nondiscretionary requirements of the 1986 amendments. For that reason, this proposed rule will not generate any costs beyond those generated by the 1986 amendments.

Therefore, FDA certifies in accordance with section 605(b) of the Regulatory Flexibility Act that no significant economic impact on a substantial number of small entities will derive from this action. Further, in accordance with Executive Order 12291, FDA certifies that this proposed rule will not result in a major rule as defined by that order.

Paperwork Reduction Act of 1980

Section 7.76 of this proposed rule contains collection of information requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, FDA has submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of these collection of information requirements. Other organizations and individuals desiring to submit comments on the collection of information requirements should direct them to FDA's Dockets Management Branch (address above) and to the Office of Information and Regulatory Affairs, OMB, Rm. 3002, New Executive Office Bldg., Washington, DC 20503, Attn: Shannah Koss.

Comments

Interested persons may, on or before October 13, 1987, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 7

Administrative practice and procedure, Consumer protection, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR Part 7 be amended by revising Subpart D to read as follows:

PART 7—ENFORCEMENT POLICIES

Subpart D—Infant Formula Recalls

Sec.

7.68 Food and Drug Administration-required recall.
7.69 Firm-initiated recall.
7.70 Scope and effect of infant formula recalls.
7.71 Elements of an infant formula recall.
7.72 Notification requirements.
7.73 Termination of an infant formula recall.
7.74 Revision of an infant formula recall.
7.75 Compliance with this subpart.
7.76 Records retention.

Authority: Secs. 412, 701(a), 52 Stat. 1055, 94 Stat. 1190-1192 (21 U.S.C. 350a, 371(a)); 21 CFR 5.10.

Subpart D—Infant Formula Recalls

§ 7.68 Food and Drug Administration-required recall.

The Food and Drug Administration shall require a manufacturer to immediately take all actions necessary to recall a violative infant formula that presents a risk to human health, extending to and including the retail level, consistent with the requirements of this section and all other applicable provisions of Part 7, as well as any guidelines issued by the Food and Drug Administration applicable to food recalls.

§ 7.69 Firm-initiated recall.

If a manufacturer has determined to voluntarily remove from the market an infant formula that is not subject to § 7.68 but which otherwise violates the laws and regulations administered by the Food and Drug Administration, the manufacturer, upon prompt notification to the Food and Drug Administration, shall administer such voluntary recall consistent with the requirements of this section and all other applicable provisions of Part 7, as well as any guidelines issued by the Food and Drug Administration applicable to food recalls.

§ 7.70 Scope and effect of infant formula recalls.

(a) The criteria in this subpart apply to a recall of an infant formula required by the Food and Drug Administration or

initiated by a manufacturer under section 412 (e) or (f) of the act, respectively. The requirements of this subpart apply:

(1) When the Food and Drug Administration has determined that it is necessary to remove from the market a distributed infant formula which poses a risk to human health; or

(2) When a manufacturer has determined that it is necessary to remove from the market a distributed infant formula that:

(i) Is no longer subject to the manufacturer's control;

(ii) Is in violation of the laws and regulations administered by the Food and Drug Administration and against which the agency could initiate legal or regulatory action; and

(iii) Does not present a human health risk.

(b) The Food and Drug Administration will monitor continually the recall action and will take appropriate actions to ensure that the violative infant formula is removed from the market.

(c) The failure of a recalling firm to comply with the regulations of this subpart is a prohibited act under section 301(s) of the act.

§ 7.71 Elements of an infant formula recall.

A recalling firm shall conduct an infant formula recall with the following elements:

(a) The recalling firm shall evaluate in writing the hazard to human health associated with the use of the infant formula. This health hazard evaluation shall include consideration of any disease, injury, or other adverse physiological effect that has been or that could be caused by the infant formula and of the seriousness, likelihood, and consequences of the disease, injury, or other adverse physiological effect. The Food and Drug Administration will conduct its own health hazard evaluation and promptly notify the recalling firm of the results of that evaluation if the criteria for an agency-required recall have been met.

(b) The recalling firm shall devise a written recall strategy suited to the individual circumstances of the particular recall. The recall strategy shall take into account the health hazard evaluation and specify the following: The extent of the recall; if necessary, the public warning to be given about any hazard presented by the infant formula; the disposition of the recalled infant formula; and the effectiveness checks that will be made to determine that the recall is carried out.

(c) The recalling firm shall promptly notify each of its affected direct accounts about the recall. The format of a recall communication shall be distinctive and the content and extent of a recall communication shall be commensurate with the hazard of the infant formula being recalled and the strategy developed for the recall. The recall communication shall instruct consignees to report back quickly to the recalling firm about whether they are in possession of the recalled infant formula and shall include a means of doing so. The recall communication shall also advise consignees of how to return the recalled infant formula to the manufacturer or otherwise dispose of it. The recalling firm shall send a followup recall communication to any consignee that does not respond to the initial recall communication.

(d) If the infant formula presents a risk to human health, the Food and Drug Administration will require that the recalling firm request each retail establishment, at which such infant formula is sold or available for sale, post at the point of purchase of such formula a notice of such recall at such establishment provided by the recalling firm after approval by the Food and Drug Administration. The Food and Drug Administration will also require that the recalling firm request each retail establishment to maintain such notice on display until such time as the agency notifies the recalling firm that it considers the recall completed.

(e) The recalling firm shall furnish promptly to the appropriate Food and Drug Administration district office listed in § 5.115 of this chapter, as they are available, copies of the health hazard evaluation, the recall strategy, and all recall communications (including, for a Food and Drug Administration-required recall, the notice to be displayed at retail) directed to consignees, distributors, retailers, and members of the public.

§ 7.72 Notification requirements.

(a) *Notification of a violative infant formula.* The manufacturer shall promptly notify the Food and Drug Administration when the manufacturer has knowledge (as defined in section 412(e)(2) of the act) that reasonably supports the conclusion that an infant formula that has been processed by the manufacturer and that has left an establishment subject to the control of the manufacturer may not provide the nutrients required by section 412(i) of the act and by regulations promulgated under section 412(i)(2) of the act, or when there is an infant formula that is otherwise adulterated or misbranded. This notification shall be made, by telephone, to the Director of the appropriate Food and Drug Administration district office specified in § 5.115 of this chapter. After normal business hours (8 a.m. to 4:30 p.m.), FDA's emergency number, 202–857–8400, shall be used. The manufacturer shall send a followup written confirmation to the Division of Regulatory Guidance (HFF–310), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, and to the appropriate Food and Drug Administration district office specified in § 5.115 of this chapter.

(b) *Reports about an infant formula recall*—(1) *Telephone report.* When a determination is made that an infant formula is to be recalled, the recalling firm shall telephone within 24 hours the appropriate Food and Drug Administration district office listed in § 5.115 of this chapter and shall provide relevant information about the infant formula that is to be recalled.

(2) *Initial written report.* Within 14 days after the recall has begun, the recalling firm shall provide a written report to the appropriate Food and Drug Administration district office. The report shall contain relevant information, including the following cumulative information concerning the infant formula that is being recalled:

(i) Number of consignees notified of the recall, and date and method of notification, including, for a Food and Drug Administration-required recall, information about the display notice provided for retail display and the request for its being displayed.

(ii) Number of consignees responding to the recall communication and quantity of recalled infant formula on hand at the time it was received.

(iii) Quantity of recalled infant formula returned or corrected by each consignee contacted and the quantity of recalled infant formula accounted for.

(iv) Number of results of effectiveness checks that were made.

(v) Estimated time frames for completion of the recall.

(3) *Status reports.* The recalling firm shall submit to the appropriate Food and Drug Administration district office a written status report on the recall at least every 14 days until the recall is terminated. The status report shall describe the steps taken by the recalling firm to carry out the recall since the last report and the results of these steps.

§ 7.73 Termination of an infant formula recall.

The recalling firm may submit a recommendation for termination of the recall to the appropriate Food and Drug Administration district office listed in

§ 5.115 of this chapter for transmittal to the Division of Regulatory Guidance, Center for Food Safety and Applied Nutrition, for action. Any such recommendation shall contain information supporting a conclusion that the recall strategy has been effective. The agency will respond within 15 days of receipt by the Division of Regulatory Guidance, Center for Food Safety and Applied Nutrition, of the request for termination. The recalling firm shall continue to implement the recall strategy until it receives final written notification from the agency that the recall has been terminated. The agency will send such a notification unless it has information, from FDA's own audits or from other sources, demonstrating that the recall has not been effective. The agency may conclude that a recall has not been effective if:

(a) The recalling firm's distributors have failed to retrieve the recalled infant formula.

(b) Stocks of the recalled infant formula remain in distribution channels that are not in direct control of the recalling firm.

§ 7.74 Revision of an infant formula recall.

If after a review of the recalling firm's recall strategy or periodic reports or other monitoring of the recall, the Food and Drug Administration concludes that the actions of the recalling firm are deficient, the agency shall notify the recalling firm of any serious deficiency. The agency may require the firm to:

(a) Change the extent of the recall, if the agency concludes on the basis of available data that the depth of the recall is not adequate in light of the risk to human health presented by the infant formula.

(b) Carry out additional effectiveness checks, if the agency's audits, or other information, demonstrate that the recall has not been effective.

(c) Issue additional notifications to the firm's direct accounts, if the agency's audits, or other information, demonstrate that the original notifications were not received, or were disregarded, in a significant number of cases.

§ 7.75 Compliance with this subpart.

A recalling firm may satisfy the requirements of this subpart by any means reasonably calculated to meet the obligations set forth in this Subpart D. The recall guidelines in Subpart C of Part 7 specify procedures that may be useful to a recalling firm in determining how to comply with these regulations.

§ 7.76 Records retention.

Each manufacturer of an infant formula shall make and retain such records respecting the distribution of the infant formula through any establishment owned or operated by such manufacturer as may be necessary to effect and monitor recalls of the formula. Such records shall be retained for at least 1 year after the expiration of the shelf life of the infant formula.

Dated: June 12, 1987.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 87-18441 Filed 8-12-87; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Temporary Placement of 2-Amino-4-methyl-5-phenyl-2-oxazoline (4-methylaminorex) into Schedule I

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of intent.

SUMMARY: This notice of intent is issued by the Administrator of the Drug Enforcement Administration (DEA) in order to temporarily place 2-amino-4-methyl-5-phenyl-2-oxazoline (4-methylaminorex) into Schedule I of the Controlled Substances Act (CSA) pursuant to the emergency scheduling provisions of the CSA. This action is based on a finding that the scheduling of 4-methylaminorex is necessary to avoid an imminent hazard to the public safety. When this action is finalized, the regulatory controls and criminal sanctions of a Schedule I substance under the CSA will be applicable to the manufacture, distribution and possession of 4-methylaminorex.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 633-1366.

SUPPLEMENTARY INFORMATION: The Comprehensive Crime Control Act of 1984 (Pub. L. 98-473) which was signed into law on October 12, 1984, amended section 201 of the CSA (21 U.S.C. 811) to give the Attorney General the authority to temporarily place a substance into Schedule I of the CSA if he finds that such action is necessary to avoid an imminent hazard to the public safety. A substance may be scheduled under the emergency provisions of the CSA if that substance is not listed in any other schedule under section 202 of the CSA (21 U.S.C. 812) or if there is no approval or exemption in effect under 21 U.S.C. 355 for the substance. The Attorney General has delegated his authority under 21 U.S.C. 811 to the Administrator of the Drug Enforcement Administration (28 CFR 0.100).

House Report 98-835 which accompanied Pub. L. 98-473 states that "This new procedure [emergency scheduling] is intended by the Committee to apply to what has been called 'designer drugs,' new chemical analogs or variations of existing controlled substances, or other new substances, which have a psychedelic, stimulant or depressant effect and have a high potential for abuse." 2-Amino-4-methyl-5-phenyl-2-oxazoline (4-methylaminorex) is a new substance that is clandestinely produced, that is distributed in the illicit traffic, and that produces stimulant effects. This drug, 4-methylaminorex, is certainly the type of drug which Congress intended to be considered for emergency scheduling.

The pharmacological profile of 4-methylaminorex closely resembles that of amphetamine. 4-methylaminorex has been described as "a potent central nervous system stimulant." Its spectrum of pharmacological actions is similar in several respects to that produced by amphetamine. In particular, it has been determined that 4-methylaminorex (5mg/kg i.v. in dogs) produces substantial increases in mean blood pressure by way of sympathomimetic actions. Following doses of 1-2 mg/kg to dogs, 4-methylaminorex produces signs of restlessness, alertness, dilated pupils, and increases in coordinated motor activity. Higher doses elicit stereotyped behavior (repetitive motor movements), followed by seizures, loss of consciousness, respiratory depression and death. Amphetamine produces a similar pattern of behavioral changes in the dog. In other experimental studies, it has been reported that cross tolerance develops between 4-methylaminorex and amphetamine with respect to pressor actions. Furthermore the researchers noted that, like amphetamine, 4-methylaminorex produces these pressor actions indirectly by way of released catecholamines.

Experimental studies of the anorectic actions of 4-methylaminorex have shown that it potently suppresses appetite in rats in a manner similar to amphetamine. It was noted that "Of the 10 drugs tested 4 were very potent: d-amphetamine, methamphetamine, and two oxazolines, . . . McN-742 . . . and

[4-methylaminorex]. . . ." Moreover, ". . . at effective dose levels, all of the anorexigens display a similar degree of central nervous system stimulation."

Based on the data presently available, 4-methylaminorex appears to have a toxicity associated with its actions in producing central nervous system stimulation. With increasing dosage, 4-methylaminorex produces an overstimulation of the central nervous system that leads to stereotyped motor activity, seizure activity in the brain and associated convulsions, depression, respiratory failure, and death. It should be noted that a recent death has been attributed to the abuse of 4-methylaminorex. Analyses indicated the presence of high levels of 4-methylaminorex in the blood (21.3 mg/L) and urine (12.3 mg/L) of the victim. Commentary from researchers studying 4-methylaminorex has previously stressed that it has a narrow margin of safety in the dog and thus should be tested very cautiously in humans. Review of these pharmacological studies, then, indicates that 4-methylaminorex is a potent amphetamine-like stimulant with a low margin of safety.

DEA has received two reports of clandestine laboratories being seized following synthesis of considerable quantities of 4-methylaminorex. A number of samples of clandestinely manufactured 4-methylaminorex obtained from Florida and California have been positively identified by DEA chemists. DEA is not aware of any commercial manufacturers or suppliers of this compound, nor any approved therapeutic use.

In making a finding of an imminent hazard to the public safety, the Administrator, as delegated by Attorney General, is required to consider only those factors set forth in paragraphs (4), (5) and (6) of section 201(c) of the CSA (21 U.S.C. 811(c)). These factors are as follows:

(4) The history and current pattern of abuse,

(5) The scope, duration and significance of abuse, and

(6) What, if any, risk there is to the public health.

Based on a consideration of these three factors along with the potent stimulant and toxic actions of the substance, and the lack of accepted medical use or established safety for the use of 4-methylaminorex, the Administrator, pursuant to section 201(h) of the CSA (21 U.S.C. 811(h)) and 28 CFR 0.100, finds that scheduling 4-methylaminorex in Schedule I of the CSA, at least on a temporary basis, is necessary to avoid an imminent hazard to the public safety.

The Administrator has transmitted notice of his intention to temporarily place 4-methylaminorex into Schedule I of the CSA to the Assistant Secretary for Health of the Department of Health and Human Services. Comments submitted by the Assistant Secretary for Health in response to the notification, including whether there is an exemption or approval in effect for 4-methylaminorex under the Federal Food, Drug, and Cosmetic Act, shall be taken into consideration by the Administrator before a final order is published. Because the Administrator has found that it is necessary to temporarily place 4-methylaminorex into Schedule I to avoid an imminent hazard to the public safety, the final order, if issued, will be effective on the date of publication in the **Federal Register**. Further it is the intention of the Administrator to issue such a final order as soon as possible after the expiration of thirty days from the date of publication of this proposal and the date that a notification has been transmitted to the Assistant Secretary for Health.

Pursuant to Title 5, United States Code, section 605(b), the Administrator certifies that the temporary placement of 4-methylaminorex into Schedule I of the CSA, as ordered herein, will not have a significant impact upon small businesses or other entities whose interests must be considered under the Regulatory Flexibility Act (Pub. L. 96-354). This action involves the temporary control of a substance with no currently approved medical use or manufacture in the United States.

It has been determined that the temporary placement of 4-methylaminorex in Schedule I of the CSA under the emergency scheduling provision is a statutory exception to the requirements of Executive Order 12291 (46 FR 13193).

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by section 201(h) of the CSA (21 U.S.C. 811 (h)), and delegated to the Administrator of DEA by Department of Justice regulations (28 CFR 0.100), the Administrator hereby proposes that 21 CFR Part 1308 be amended as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for 21 CFR Part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b)

2. Paragraph (g)(6) is added to § 1308.11 to read as follows:

§ 1308.11 Schedule I

* * * * *

(g) * * *

(6) 2-amino-4-methyl-5-phenyl-2-oxazoline (4-methylaminorex) . . . 1590

Dated: August 6, 1987.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 87-18344 Filed 8-12-87; 8:45 am]

BILLING CODE 4410-09-M

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21 CFR Part 1308

Schedules of Controlled Substances Temporary Placement of N-ethyl MDA and N-hydroxy MDA into Schedule I of the Controlled Substances Act

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of Intent.

SUMMARY: The Administrator of the Drug Enforcement Administration (DEA) is issuing this notice of intent to temporarily place N-hydroxy MDA and N-ethyl MDA into Schedule I of the Controlled Substances Act (CSA) pursuant to the emergency scheduling provision of the CSA (21 U.S.C. 801 et seq.). This action is based on a finding by the DEA Administrator that the scheduling of N-hydroxy MDA and N-ethyl MDA in Schedule I is necessary to avoid an imminent hazard to the public safety. Finalization of this action will impose the criminal sanctions and regulatory controls of Schedule I on the manufacturing, distribution and possession of N-hydroxy MDA and N-ethyl MDA.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 633-1366.

SUPPLEMENTARY INFORMATION: The Comprehensive Crime Control Act of 1984 (Pub. L. 98-473), which was signed into law on October 12, 1984, amended section 201 of the Controlled Substances Act (CSA) (21 U.S.C. 811) to give the Attorney General the authority to temporarily place a substance into Schedule I of the CSA if he finds that such action is necessary to avoid an imminent hazard to the public safety. A substance may be scheduled under the emergency provision of the CSA if that substance is not listed in any other schedule under section 202 of the CSA (21 U.S.C. 812) or if there is no approval

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or exemption in effect under 21 U.S.C. 355 for the substance. The Attorney General has delegated his authority under 21 U.S.C. 811 to the Administrator of the Drug Enforcement Administration (28 CFR 0.100). In making a finding of an imminent hazard to the public safety, the Administrator is required to consider only those factors set forth in paragraphs (4), (5) and (6) of section 201(c) of the CSA (21 U.S.C. 811(c)). These factors are as follows:

(4) Their history and current pattern of abuse

(5) The scope, duration and significance of abuse, and

(6) What, if any, risk there is to the public health.

House Report 98–835 which accompanied Pub. L. 98–473 states that "This new procedure [emergency scheduling] is intended by the Committee to apply to what has been called 'designer drugs', new chemical analogs or variations of existing controlled substances, or other new substances, which have a psychedelic, stimulant or depressant effect and have a high potential for abuse." N-hydroxy MDA and N-ethyl MDA are analogs of MDA and MDMA, Schedule I hallucinogens/stimulants, and as such are the type of substances which Congress intended to be considered for emergency scheduling.

N-ethyl MDA and N-hydroxy MDA are the most recent in a series of methylenedioxyamphetamines produced in clandestine laboratories for distribution and abuse in the United States. The parent compound in this class, 3,4-methylenedioxyamphetamine (MDA) has been controlled in Schedule I of the CSA since its passage in 1970. More recently 3,4-methylenedioxy-methamphetamine (MDMA), because of widespread abuse and studies showing that it is a neurotoxin in rodents, was placed into Schedule I pursuant to the emergency scheduling provision of the CSA effective July 1, 1985 (50 FR 23118). MDMA has since been placed into Schedule I of the CSA pursuant to the scheduling provisions of 21 U.S.C. 811 (a) and (b) effective November 13, 1986 (51 FR 36552). Since the control of MDMA, N-ethyl MDA and N-hydroxy MDA have been identified in the illicit drug traffic in several areas of the United States.

N-ethyl MDA, also known as MDE or MDEA, is *N*-ethyl-alpha-methyl-3,4-(methylenedioxy)phenethylamine. It is usually found as the hydrochloride salt in powder, tablet or capsule forms. N-ethyl MDA is sold on the street as "Eve." N-hydroxy MDA, also known as N-OHMDA, is *N*-hydroxy-alpha-methyl-3,4-(methylenedioxy)phenethylamine. It is also usually found as the hydrochloride salt in powder, tablet or capsule forms. Both N-ethyl MDA and N-hydroxy MDA are structural analogs of MDA and MDMA.

N-ethyl MDA and N-hydroxy MDA behave as central nervous system stimulants in animals and as psychotomimetic substances in man. Available scientific data show that these substances produce pharmacological effects in common with MDA and MDMA. All four substances produce centrally mediated analgesic effects in the mouse as measured in several different tests. Both N-ethyl MDA (20 mg/kg) and N-hydroxy MDA (100 mg/kg) produce an increase in spontaneous locomotor activity in the mouse which is indicative of central nervous system stimulation. During the first three hours after administration, N-ethyl MDA increases spontaneous locomotor activity three times as much as MDA. Preliminary data from drug discrimination tests in rats show that although N-hydroxy MDA is not recognized as either amphetamine or DOM by appropriately trained animals it is recognized as MDMA in rats trained to discriminate MDMA from saline. Preliminary data also indicate that baboons trained to self-administer cocaine also self-administer N-ethyl MDA when it is substituted for cocaine. Similar reinforcing properties are observed for MDA, MDMA and other abusable central nervous system stimulants.

In man, N-ethyl MDA at oral doses of 140–200 mg, and N-hydroxy MDA at oral doses of 80–120 mg, produce psychotomimetic effects. The scientific literature indicates that MDA, MDMA, N-ethyl MDA and N-hydroxy MDA produce a very similar spectrum of psychopharmacological effects in humans. They produce a change in consciousness, an increase in acoustic, visual and tactile sensory perceptions, mood changes and a drive-increasing effect. Effects appear about 30 minutes after ingestion and last for several hours.

N-ethyl MDA and N-hydroxy MDA have been identified by forensic laboratories in drug evidence submissions from many sections of the country. N-ethyl MDA was found infrequently in drug evidence from 1978 to 1982. With the control of MDMA in Schedule I of the CSA, N-ethyl MDA has been identified with increasing frequency by forensic laboratories. At the same time, N-hydroxy MDA began to show up in forensic drug evidence. Much of the activity with these substances has occurred in the Southwest and Midwestern states. MDA analogs have been openly promoted as safe and legal through flyers. N-ethyl MDA has been sold as "Eve" in bars and shops in Texas. DEA has identified several clandestine laboratories which have produced or are capable of producing N-ethyl MDA and N-hydroxy MDA.

The use of MDA and its analogs has been associated with adverse effects on the public health and safety. N-ethyl MDA has been found in the blood of several individuals who were stopped by police for speeding, driving while intoxicated or involvement in accidents. Emergency room personnel have reported the admission of several individuals who had used N-ethyl MDA as determined by toxicological analyses. Reasons for admission range from bizarre behavior to loss of consciousness. Two deaths in Texas have also been associated with the use of N-ethyl MDA. Although as yet there have been no specific reports of injuries or deaths associated with the use of N-hydroxy MDA, its similar pharmacology makes it very likely that similar adverse effects will be reported. Another concern arising from the use of N-ethyl MDA and N-hydroxy MDA is their possible neurotoxicity. It has been well documented that both MDA and MDMA destroy serotonergic nerve terminals and, in some cases, nerve cells in the brains of laboratory animals. Neither N-ethyl MDA nor N-hydroxy MDA have undergone toxicity testing. Their similar chemical structures and pharmacological profiles to those of MDA and MDMA and their possible metabolism by N-dealkylation or decomposition of MDA, however, suggest a cause for serious concern regarding their possible neurotoxicity.

The above data show that the clandestine production, distribution and use of analogs of MDA, currently in the form of N-ethyl MDA and N-hydroxy MDA, pose a serious hazard to the public safety. DEA is unaware of any commercial manufacturer or supplier of N-ethyl MDA or N-hydroxy MDA or of any recognized therapeutic use of either of these substances.

In accordance with the provisions of section 201(h) of the CSA (21 U.S.C. 811(h)) and 28 CFR 0.100, the Administrator of DEA has considered the following factors relative to making a determination of whether N-ethyl MDA and N-hydroxy MDA pose an imminent hazard to the public safety:

(1) Their history and current pattern of abuse,

(2) The scope, duration and significance of abuse, and

(3) What, if any, risk there is to the public health.

Based on a consideration of these factors and other relevant information, the Administrator, pursuant to section 201(h) of the CSA (21 U.S.C. 811(h)) and 28 CFR 0.100, finds that scheduling N-ethyl MDA and N-hydroxy MDA in Schedule I of the CSA is necessary to avoid an imminent hazard to the public safety.

As required by section 201(h)(4) of the CSA (21 U.S.C. 811(h)(4)), the Administrator has notified the Assistant Secretary for Health, delegate of the Secretary of the Department of Health and Human Services of his intention to temporarily place N-ethyl MDA and N-hydroxy MDA into Schedule I of the CSA. Comments submitted by the Assistant Secretary in response to this notification, including whether there is an exemption or approval in effect for N-ethyl MDA or N-hydroxy MDA under the Federal Food, Drug and Cosmetic Act, shall be taken into consideration by the Administrator before a final order is published. Because the Administrator has found that it is necessary to temporarily place N-ethyl MDA and N-hydroxy MDA into Schedule I to avoid an imminent hazard to the public safety, the final order, if issued, will be effective on the date of publication in the **Federal Register**. Further, it is the intention of the Administrator to issue such a final order as soon as possible after the expiration of thirty days from the date of publication of this proposal and the date that a notification has been transmitted to the Assistant Secretary for Health.

Pursuant to 5 U.S.C. 605(b), the Administrator certifies that the temporary placement of N-ethyl MDA and N-hydroxy MDA into Schedule I of the Controlled Substances Act will have no impact upon small businesses or other entities whose interests must be considered under the Regulatory Flexibility Act (Pub. L. 96-354). This action involves the temporary control of substances with no legitimate medical use or manufacture in the United States.

It has been determined that the temporary placement of N-ethyl MDA and N-hydroxy MDA in Schedule I of the CSA under the emergency scheduling provision is a statutory exception to the requirements of Executive Order 12291 (46 FR 13193).

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by section 201(h) of the CSA (21 U.S.C. 811(h)), and delegated to the Administrator of DEA by Department of Justice regulations (28 CFR 0.100), the Administrator hereby proposes that 21 CFR Part 1308 be amended as follows:

PART 1308—[AMENDED]

1. The authority citation for 21 CFR Part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b).

2. Paragraphs (g)(4) and (g)(5) are added to § 1308.11 to read as follows:

§ 1308.11 Schedule I.

* * * * *

(g) * * *

(4) *N*-ethyl-alpha-methyl-3,4-(methylenedioxy)phenethylamine (N-ethyl MDA, 3,4-methylenedioxyethylamphetamine, MDE, MDEA)—7404

(5) *N*-hydroxy-alpha-methyl-3,4,-(methylenedioxy)phenethylamine (N-hydroxy MDA)—7402

Dated: August 6, 1987.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 87-18345 Filed 8-12-87; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF TREASURY

Internal Revenue Service

26 CFR Part 301

[LR-34-87]

Abatement of Interest; Definition of Ministerial Act

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary amendments to the procedure and administration regulations relating to the definition of ministerial act for purposes of abatement of interest. Changes to the law were made by the Tax Reform Act of 1986. The text of those temporary regulations also serves as the comment document for this proposed rulemaking.

DATES: The regulations contained in this document are proposed to be effective for interest accruing with respect to deficiencies and payments for taxable years beginning after December 31, 1978. Written comments and requests for a public hearing must be delivered or mailed by October 13, 1987.

ADDRESS: Send comments and requests for public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-34-87), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Sharon L. Hall of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T) (202-566-3286, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations (designated by a T following the section citation) in the Rules and Regulations portion of this issue of the **Federal Register** amend Part 301 of Title 26 of the Code of Federal Regulations. These amendments reflect the provisions of section 6404(e)(1) of the Internal Revenue Code of 1986 as added by section 1563(a) of the Tax Reform Act of 1986 (Pub. L. 99-514, 100 Stat. 2762). For the text of the temporary regulations, see FR Doc. (T.D. 8150) published in the Rules and Regulations portion of this issue of the **Federal Register**. A general discussion of the temporary regulations is contained in the preamble to the regulations. The final regulations, which this document proposes to base on the temporary regulations, would amend Part 301 of Title 26 of the Code of Federal Regulations.

Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required. Although this document is a notice of proposed rulemaking that solicits public comments, the Internal Revenue Service has concluded that the proposed regulations are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act (5 U.S.C. chapter 6).

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on the requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer

for Internal Revenue Service, New Executive Office Building, Washington, DC 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies of those comments to the Service.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who submitted comments. If a public hearing is held, notice of the time and place will be published in the Federal Register.

Drafting Information

The principal author of these proposed regulations is Sharon L. Hall of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury participated in developing the regulations on matters of both substance and style.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Statistics, Taxes, Disclosure of information, Filing requirements.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 87-18234 Filed 8-10-87; 1:58 pm]

BILLING CODE 4830-01-M

VETERANS ADMINISTRATION

38 CFR Part 21

Temporary Program of Vocational Training for Certain New Pension Recipients

AGENCY: Veterans Administration.

ACTION: Proposed rule.

SUMMARY: The Veterans Administration (VA) is publishing for public comment proposed regulations to implement the provisions of the Veterans' Benefits Improvement Act of 1984, Pub. L. 98-543. Title III, section 301 of the Act establishes a temporary program under 38 U.S.C. chapter 15, section 524, to provide vocational training and other services to veterans in receipt of VA pension for nonservice-connected disability. The purpose of the program is to test whether veterans eligible for VA pension can, through vocational training and other services, achieve an income from work sufficient to provide a level of economic independence which would not require the receipt of the VA pension. This temporary program will be in effect from February 1, 1985, through January 31, 1989. A report on the program must be prepared and submitted to Congress by Arpil 15, 1988.

DATES: Comments must be received on or before September 10, 1987. Comments will be on public inspection until September 24, 1987. It is proposed to make these regulations retroactively effective February 1, 1985, the date on which the provision of law on which these regulations are based became effective.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding the proposal to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420. All written comments will be available for public inspection at the above address only between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays) until September 24, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Morris Triestman, (202) 233-2886.

SUPPLEMENTARY INFORMATION: This temporary program is limited to a maximum of 2,500 of the veterans who are awarded pension in any 12 month period beginning on and after February 1, 1985, through January 31, 1989. A determination of the feasibility of training and employment for the veteran is required for veterans under age 50 and may be requested by veterans age 50 and older. If training and employment are found reasonably feasible for the veteran he or she will be offered an opportunity to pursue a vocational training program similar in nature to the program provided the service-disabled veteran under chapter 31. The VA will pay for the training and other services in a manner similar to the manner in which they are provided under 38 U.S.C. chapter 31, with certain exceptions, but the veteran is not eligible for a loan, automobile adaptive equipment or a monthly subsistence allowance. The duration of training provided is 24 months with an extension of up to 24 months in certain circumstances. The recipient of these benefits under this temporary program for nonservice-disabled veterans is not, however, to be considered as being a participant in the vocational rehabilitation program for service-disabled veterans under 38 U.S.C. chapter 31.

The regulations contained herein will better acquaint eligible veterans, vocational training and rehabilitation facilities, and the public at large with the way these provisions will be implemented.

The VA proposes to make these regulations retroactively effective to February 1, 1985; these are interpretive rules which implement and construe the meaning of 38 U.S.C. 524 as added by Pub. L. 98-543. Moreover, the VA finds that good cause exists for making these regulations, like the section of law they implement, retroactively effective to February 1, 1985. To achieve the maximum benefit of this legislation for the affected individuals it is necessary to implement these provisions of law as soon as possible. A delayed effective date would be contrary to statutory design; would complicate administration of these provisions of law; and might result in denial of a benefit to a veteran who is entitled by law to it.

These proposed regulations do not meet the criteria for major rules as contained in Executive Order 12291. The proposal will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not have any other significant adverse effect on the economy.

The Administrator hereby certifies that these proposed rules will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), these proposed rules are therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reasons for this certification are that the proposed regulations simply implement and interpret statutory provisions. They concern the eligibility and participation of individual veterans under this program. By law, not more than 2,500 veterans per year can be provided evaluations under this program. No new regulatory burdens are imposed on small entities by these changes.

(The Catalog of Federal Domestic Assistance Number is 64.116)

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs, Loan Programs, Reporting requirements, Schools, Veterans,

Vocational education, Vocational rehabilitation.

Approved: August 4, 1987.

Thomas K. Turnage,

Administrator.

Subpart I (§§ 21.6501 through 21.6525) is redesignated as Subpart J and a new Subpart I, Temporary Vocational Training Program, is added to 38 CFR, Part 21, Vocational Rehabilitation and Education, to read as set forth below:

Note: The Table of Contents includes regulations governing the determination of eligibility, and the services which may be provided to veterans under this program. The numbering of the regulations follows the numbering of regualtions under 38 U.S.C. chapter 31 to the extent possible. Additional regulations affecting this program are found in Part 3 and Part 17, Title 38 Code of Federal Regulations.

Subpart I—Temporary Vocational Training Program General

Sec.
21.6001 Temporary vocational training program for certain new pension recipients.
21.6005 Definitions.
21.6010 Applicability of rules and administrative procedures under 38 U.S.C., chapter 31.
21.6015 Claims and elections.
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Basic Eligibility Requirements

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21.6080 Requirement for an individualized written rehabilitation or employment assistance plan.
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Sec.
21.6120 Educational and vocational training services.

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Medical and Related Services

21.6240 Medical treatment, care and services.
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21.6282 Effective date of induction into and termination of vocational training.
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Leaves of Absence

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21.6362 Satisfactory conduct and cooperation.

Transportation Services

21.6370 Authorization of transportation services.

Additional Applicable Regulations

21.6380 Additional applicable chapter 31 regulations.

Delegation of Authority

21.6410 Delegation of authority.

Coordination With the Adjudication Division

21.6420 Coordination with the Adjudication Division

Authority: Public Law 98–543, 38 U.S.C. 210 and chapter 15, sections specifically cited.

Subpart I—Temporary Vocational Training Program

General

§ 21.6001 Temporary vocational training program for certain new pension recipients.

This program, with certain limitations, provides veterans awarded pension during the period beginning February 1, 1985, and ending January 31, 1989, with an evaluation and, if feasible, with vocational training, employment assistance and other services to enable them to achieve a vocational goal. (38 U.S.C. 524)

§ 21.6005 Definitions.

(a) *Temporary program.* The term "temporary program" means the program of vocational training for certain new pension recipients, authorized by section 524, chapter 15, title 38, United States Code, as added by Pub. L. 98–543. (38 U.S.C. 524)

(b) *Program period.* The term "program period" means the period beginning on February 1, 1985, and ending on January 31, 1989. (38 U.S.C. 524(a)(4))

(c) *Program participant.* The term "program participant" means any veteran who is awarded disability pension as provided by chapter 15, title 38, United States Code, during the program period and who, following an evaluation in which the VA finds achievement of a vocational goal is reasonably feasible for the veteran, elects to particpate in a vocational training program. (38 U.S.C. 524(a))

(d) *Vocational training program.* The term "vocational training program" means vocationally oriented services and assistance of the kind provided under chapter 31 of title 38 United States Code and such other services and assistance of the kind provided under that chapter as are necesary to enable the veteran to prepare for, and participate in, vocational training or employment. (38 U.S.C. 524(b))

(e) *Employment assistance.* The term "employment assistance" means employment counseling and placement and post placement services, and personal and work adjustment training. (38 U.S.C. 524(d)(3))

(f) *Program of employment services.* The term "program of employment services" is used when the veteran's entire program is limited to employment assistance as that term is defined in paragraph (e) of this section. (38 U.S.C. 524(b)(4))

(g) *Job development.* The term "job development" means comprehensive professional services to assist the individual veteran to actually obtain a suitable job, and not simply the solicitation of jobs on behalf of the veteran. Continuing and mutually beneficial relationships with employers should be established by VA staff through the referral of suitable employees and the provision of supportive services, e.g., adjustment counseling and job modification. Job development activities by VA staff are intended to provide disabled veterans with a chance for suitable employment

with cooperating employers. (38 U.S.C. 524(b)(3))

(h) *Institution of higher learning.* The term "institution of higher learning" shall have the same definition as is provided in § 21.4200(a). (38 U.S.C. 524 (b)(2))

(i) *Other terms.* The following terms shall have the same meaning or explanation provided in § 21.35.

(1) Vocational goal

(2) Program of education.

(3) Rehabilitation to the point of employability.

(4) Counseling psychologist.

(5) Vocational rehabilitation specialist.

(6) School, educational institution or institution.

(7) Training establishment.

(8) Rehabilitation facility.

(9) Workshop.

(38 U.S.C. 524)

§ 21.6010 Applicability of rules and administrative procedures under 38 U.S.C. Chapter 31.

(a) *General.* Title 38, U.S.C., section 524(b)(2)(A) provides, in part, that a vocational training program shall consist of vocationally oriented services and assistance of the kind provided service-disabled veterans under chapter 31, title 38, U.S.C. and other services and assistance of the kind provided under that chapter as are necessary to enable the veteran to prepare for and participate in vocational training or employment. (38 U.S.C. 524(b)(2)(A))

(b) *Applicable chapter 31 rules—general.* The rules and procedures in force for administration of the chapter 31 program (§ 21.1–§ 21.430) are deemed to be applicable to administration of this program in so far as their use shall not conflict with 38 U.S.C. 524 or the rules under this subpart. Where a particular grouping of chapter 31 rules are generally applicable, without modification, the rules under this subpart will be deemed to incorporate the chapter 31 rules. The chapter 31 rules may be read as written, but terms such as "chapter 31" and "service-connected disability" shall be understood to read "chapter 15" and "disabilities" whenever used. References in the chapter 31 rules to benefits (subsistence allowances, loans) or eligibility (dependents, service-connection, serious employment handicap) are to be considered inapplicable to this program and do not confer benefits or rights not provided by 38 U.S.C. 524. (38 U.S.C. 524)

§ 21.6015 Claims and elections.

(a) *Claims by veterans under age 50.* A veteran under age 50 who is awarded pension during the program period will be scheduled for an evaluation to determine whether achievement of a vocational goal is reasonably feasible, unless it is determined that the veteran in unable to participate in a evaluation for reasons beyond his or her control. If the VA, as a result of the evaluation, determines that achievement of a vocational goal is reasonably feasible, the veteran may elect to pursue a vocational training program. To make this election, the veteran must file a claim, in a form prescribed by the VA, for services under this temporary program. (38 U.S.C. 524(b))

(b) *Claims by veterans age 50 or older.* A veteran age 50 or older who is awarded pension during the program period must file a claim in the form prescribed by the VA in order to be considered for an evaluation of his or her ability to achieve a vocational goal and participate in this temporary program. The veteran's claim is considered a request for both the evaluation and, if found reasonably feasible for training, participation in a vocational training program. (38 U.S.C. 524(b))

(c) *Claims following failure to timely pursue a vocational training program.* (1) If a veteran for whom achievement of a vocational goal is found reasonably feasible does not undertake a vocational training program within the time limits specified in § 21.32, he or she must file an original or reopened claim, as appropriate, in a form prescribed by the VA in order to be considered for such services to determine if achievement of the previous vocational goal or a new vocational goal is reasonably feasible;

(2) If a veteran has been placed in discontinued case status by the VA, he or she must file a new claim in a form prescribed by the VA to reopen the case. (38 U.S.C. 524(b))

(d) *Informal claims.* Informal claims shall be governed by § 21.31. (38 U.S.C. 524(a))

(e) *Time limit.* The time limit for making a claim to pursue a vocational training program shall be governed by § 21.32. (38 U.S.C. 524(a))

§ 21.6021 Nonduplication—38 U.S.C. chapters 30, 31, 32, 34 and 35.

(a) *Election between this temporary program and chapter 31 required.* A service-disabled veteran awarded VA pension during the program period who is offered a vocational training program under 38 U.S.C. ch. 15, and is also eligible for such assistance under chapter 31, must elect which benefit he or she will receive. The veteran may reelect at any time if he or she is still eligible for the benefit desired. (38 U.S.C. 524(b)(2))

(b) *VA educational assistance programs.* A veteran who is eligible under this program may receive an educational assistance allowance under chapter 30, 32, 34 or 35 if he or she is otherwise eligible under one of these programs. (38 U.S.C. 524(b)(2))

(c) *Prior training under VA programs.* If a veteran has pursued an educational or training program under chapter 30, 32, 34 or 35, or a vocational rehabilitation program under chapter 31, the training received in the earlier program shall be considered, to the extent feasible, in determining the character and duration of the services to be furnished under this program. (38 U.S.C. 524(b)(1))

(d) *Other prior training.* If a veteran has pursued other significant training under non-VA programs or on his or her own, such training will be considered in determining the character and duration of services to be furnished. (38 U.S.C. 524(b)(1))

(e) *Not limited by use of other entitlement.* The number of months of services provided under this program are not subject to the provisions of § 21.4020 which limit the aggregate months of VA benefits to be provided. (38 U.S.C. 524(b)(2))

Basic Eligibility Requirements

§ 21.6040 Eligibility for vocational training and employment assistance.

(a) *Basic eligibility requirements.* A veteran may be provided vocational training, employment assistance and related services to achieve a vocational goal under this program, if the following basic requirements are met:

(1) The veteran is awarded pension under chapter 15, title 38, U.S.C., on or after February 1, 1985, and before February 1, 1989;

(2) The veteran participates in a VA evaluation of his or her rehabilitation potential to determine whether achievement of a vocational goal is reasonably feasible;

(3) Achievement of a vocational goal is found reasonably feasible, following evaluation by the VA;

(4) The veteran elects to pursue a vocational training program;

(5) The veteran and the VA develop and agree to an Individualized Written Rehabilitation Plan (IWRP) identifying the vocational goal and the means through which this goal will be achieved. (38 U.S.C. 524(a)(1))

(b) *Eligibility for employment assistance.* (1) As provided in this paragraph, a veteran who is a participant in this program shall be eligible to receive counseling,

placement, post placement, work and personal adjustment services furnished under § 21.6060(a)(2) for a period not to exceed 18 months. These services are further described in §§ 21.104(d)(2), 21.250(a), (b)(2), (c)(3) and (4), and 21.252, 21.254, 21.256, 21.257, and 21.258.

(2) The participants who qualify for the services described in paragraph (a) of this section include a veteran who:

(i) Has completed a vocational rehabilitation training program; (38 U.S.C. 524(b)(3))

(ii) Undertakes a vocational training program, but voluntarily terminates training. If the VA determines the veteran to be employable at the time participation in training ends, the veteran shall be deemed to have completed the vocational training program and may be provided the employment services described in paragraph (b)(1) of this section if he or she requests such assistance; (38 U.S.C. 524(b)(3))

(iii) Does not require a vocational training program because the VA determines as a result of an evaluation that he or she already possesses the training necessary for suitable employment and is able to achieve a vocational goal without further training; and (38 U.S.C. 524(b)(2))

(iv) Has been a prior participant in a vocational training program is currently employable, but needs employment assistance to obtain employment in a suitable occupation. (38 U.S.C. 524(b)(2))

(3) The 18-month period of employment services allowed under this section shall begin upon the date that a veteran under paragraph (b)(2)(i) of this section completes the vocational training program or in the case of a veteran under paragraphs (b)(2)(ii), (iii) and (iv) of this section is found to be employable. If a veteran has been provided such services and obtains suitable employment, but is later found to require additional services of this kind, the veteran may be provided such additional services during any portion of the original 18-month period remaining. (38 U.S.C. 524(b))

(c) *Eligibility if pension is terminated.* A veteran awarded pension during the program period shall remain eligible for the temporary program, subject to the rules of this subpart and section 524 of 38 U.S.C. ch. 15, even if his or her pension award is subsequently terminated, except when the veteran's award of VA pension was the result of fraud or administrative error. (38 U.S.C. 524(a))

§ 21.6042 *Entry, reentry and completion.*

(a) *Dates of entry.* A veteran found eligible under the provisions of § 21.6040 may not begin pursuit of a vocational training program before February 1, 1985, or later than January 31, 1989, except under the following circumstances which make timely entry impracticable:

(1) The veteran receives a pension award less than 120 days before January 31, 1989;

(2) Illness or other circumstance beyond the veteran's control prevent earlier entry. (38 U.S.C. 524(b)(4))

(b) *Entry precluded.* In no event may a veteran begin a vocational training program after August 1, 1989. (38 U.S.C. 524(b)(4))

(c) *Reentry.* The provisions of paragraphs (a) and (b) of this section are also applicable to veterans reentering a vocational training program following a redetermination of eligibility. (38 U.S.C. 524(b)(4))

(d) *Final termination of services.* No veteran may receive assistance under this temporary program after January 31, 1994. (38 U.S.C. 524(b)(4))

Evaluation

§ 21.6050 Participation of eligible veterans in an evaluation.

(a) *Veterans under age 50.* A veteran under age 50 awarded pension during the program period shall be provided an evaluation of his or her rehabilitation potential to determine whether achievement of a vocational goal is reasonably feasible. The veteran must report for and participate in the evaluation unless the failure to do so is for reasons beyond the veteran's control. Failure to report for and participate in the evaluation, for reasons other than those beyond the veteran's control, will result in suspension of the veteran's pension under § 3.342. See § 21.6056. (38 U.S.C. 524(a)(1))

(b) *Veterans age 50 or older.* An evaluation shall be accorded each veteran age 50 or older, who seeks to become a program participant, provided the VA first determines the veteran has good potential for achieving employment. Failure to choose to participate in an evaluation shall have no adverse effect upon the veteran's continued receipt of pension under § 3.342. (38 U.S.C. 524(a)(2))

(c) *Notice to eligible veteran.* (1) A qualified veteran under age 50 for whom participation in an evaluation is not clearly precluded by reasons beyond the veteran's control shall be sent a notice at the time he or she is awarded pension. The notice will inform the veteran of the provisions of this temporary program, the conditions under which participation in an evaluation is required, and the consequences on non-participation;

(2) A qualified veteran age 50 or older will be informed of the provisions of this temporary program and the procedure for requesting an evaluation. (38 U.S.C. 524(a))

(d) *Scheduling the evaluation.* (1) An evaluation will be arranged as promptly as practicable for each qualified veteran:

(i) Under age 50 who is sent the notice required under paragraph (c)(1) of this section; and

(ii) Age 50 and over who has filed a claim and is found to have good employment potential under § 21.6054;

(2) The veteran shall be provided reasonable notice of the date and time for which the evaluation is initially scheduled. (38 U.S.C. 524(a))

(e) *Followup of qualified veterans who do not complete an evaluation.* The case of each qualified veteran under age 50 for whom an evaluation was not scheduled or who does not complete an evaluation shall be reviewed for followup action by Vocational Rehabilitation & Counseling (VR&C) staff as provided in § 21.197(c) (4) and § 21.198(d). (38 U.S.C. 524(a)(1))

(f) *Limitation on the number of evaluations.* Notwithstanding the provisions of paragraphs (a) through (e) of this section, the number of evaluations which may be provided under this temporary program is subject to the limitations contained in § 21.6059. (38 U.S.C. 524(a)(3))

§ 21.6052 [illegible]

(a) *Scope and nature of evaluation.* The scope and nature of the evaluation under this program shall be the same as for an evaluation of the reasonable feasibility of achieving a vocational goal under the procedures described for chapter 31 benefits. *See § 21.50(b)(5) and § 21.53(d) and (f).* (38 U.S.C. 524(a)(1)(2))

(b) *Specific services which may be provided in the course of evaluation in determining the reasonable feasibility of achieving a vocational goal.* The following specific services may be provided as a part of the evaluation of reasonable feasibility of achieving a vocational goal, as appropriate:

(1) Assessment of feasibility by a counseling psychologist;

(2) Review of feasibility assessment and of need for special services by the Vocational Rehabilitation Panel;

(3) Provision of medical and other diagnostic services;

(4) Evaluation of employability, for a period not to exceed 30 days, by professional staff of an educational or rehabilitation facility. (38 U.S.C. 524(b)

(c) *Responsibility for evaluation.* All determinations as to the reasonable feasibility of vocational training and entitlement to assistance under 38 U.S.C. 524 shall be made by a counseling psychologist in the Vocational Rehabilitation and Counseling Division. (38 U.S.C. 524(b)

§ 21.6054 Criteria for determining good employment potential for veterans age 50 and older.

(a) *Determining good employment potential of veterans age 50 or older.* Before scheduling an evaluation of feasibility to pursue a vocational goal for a veteran age 50 or older, the VA will first determine whether the veteran age 50 or older has good potential for achieving employment if provided a vocational training or employment program. This determination shall be made on the basis of the information of record, including information submitted by the veteran at the time of the veteran's request to participate in this temporary program. (38 U.S.C. 524(a)(2))

(b) *Criteria.* The criteria contained in paragraphs (c) and (d) of this section are to be applied by Vocational Rehabilitation and Counseling professional staff members to determine whether information of record supports a determination that a veteran age 50 and older has good potential for employment. Any reasonable doubt shall be resolved in the veteran's favor. (38 U.S.C. 524(a)(2))

(c) *Indicators of good potential for employment.* Indicators of good potential for employment include one or more of the following:

(1) A period of stable employment prior to the onset of disability.

(2) Strong motivation of return to the work force.

(3) Successful pursuit of education or training.

(4) Cooperation in treatment of disabling conditions.

(5) Stabilization of medical conditions or substance abuse problems.

(6) Participation in therapeutic work programs.

(7) Evidence of recent sustained job-seeking. (38 U.S.C. 524(a)(1))

(d) *Contraindications of good potential for empolyment.* Contraindications of good potential for employment include one or more of the following:

(1) A lifelong history of unstable employment with long periods of unemployment before the onset of disability.

(2) Being out of the labor market for five years or more preceding the evaluation.

(3) Unsuccessful pursuit of education or training.

(4) Noncooperation in the treatment of disability.

(5) Need for an additional period of medical care or treatment before training would be feasible.

(6) Nonparticipation in prescribed or recommended therapeutic work programs.

(7) Failure of previous vacational rehabilitation programs to achieve employability. (38 U.S.C. 524(a)(2))

(e) *Negative determinations.* If the VA does not find good employment potential, the VA will notify the veteran that he or she in not eligible to receive an evaluation. Since this finding will preclude program participation, the veteran will be informed of his or her appellate rights as described in § 21.59.

(1) If the determination cannot be made on the evidence of record, the VA shall advise the veteran and may provide him or her with an opportunity to submit additional information within a reasonable time.

(2) A veteran's disagreement with a negative finding shall be considered evidence of motivation for employment, and may, when considered in relation to other information, provide a basis for finding that good employment potential exists;

(3) If the final VA determination, following a review of a contested negative finding, is that good potential for achieving employment does not exist, a personal interview will be scheduled, and the reasons for the VA's determination shall be discussed with the veteran. (38 U.S.C. 524(a)(2))

§ 21.6056 Cooperation of the veteran in an evaluation.

(a) *Cooperation of the veteran.* The cooperation of the veteran is essential to a successful evaluation. The purpose of the evaluation and the steps in the process shall be explained to the veteran, and the importance of his or her cooperation shall be stressed. If the veteran does not cooperate in the initiation or completion of the evaluation, the counseling psychologist shall make a reasonable effort through counseling to secure the veteran's cooperation. (38 U.S.C. 524(a)(3))

(b) *Consequences of noncooperation when evaluation is required.* If the veteran fails to report for or cooperate in a required evaluation and the counseling psychologist has made a reasonable effort to secure his or her participation, the VA shall take appropriate action, including discontinuance of the evaluation under the provisions of § 21.364. If the veteran's case is discontinued under § 21.364, the Adjudication Division will be notified. The Adjudication Division also will be informed if the reason for discontinuance is subsequently removed and the evaluation process is resumed. (38 U.S.C. 524(a)(1))

(c) *Consequences of noncooperation when evaluation is not required.* If the veteran fails to report for or cooperate in an optional evaluation and the counseling psychologist has made a reasonable effort to secure the veteran's participation, the VA shall take appropriate action, including discontinuance of the evaluation under the provisions of § 21.364. The evaluation may be resumed if the reason for the discontinuance is removed and the veteran is otherwise eligible. (38 U.S.C. 524(a)(2))

§ 21.6058 Consequences of evaluation.

(a) *Eligible veteran may choose to participate.* If the VA finds, based on the evaluation, that achievement of a vocational goal by the veteran is reasonably feasible, the veteran shall be offered and may elect to pursue a vocational training program. If the veteran elects to pursue such a program, the program shall be designed in consultation with the veteran in order to meet the veteran's individual needs, and shall be set forth in an Individualized Written Rehabilitation Plan (IWRP) under the provisions of § 21.84 or an Individualized Employment Assistance Plan (IEAP) under § 21.88. (38 U.S.C. 524(b)(1))

(b) *Veteran ineligible to participate.* A veteran for whom achievement of a vocational goal is not found reasonably feasible shall be notified of this finding and be informed of his or her appellate rights as described in § 21.59. The veteran shall be provided the assistance described in § 21.50(b)(9). (38 U.S.C. 524(b)(1))

§ 21.6059 Limitations on the number of evaluations.

(a) *Number of evaluations.* No more than 2,500 evaluations of the reasonable feasibility of achieving a vocational goal may be given during any 12-month period, beginning on February 1, 1985 and each subsequent February 1 during the program period. (38 U.S.C. 524(a)(3))

(b) *Cases counted as evaluation.* An evaluation is deemed to be countable against the 2,500 limit permitted during each 12-month period when the following conditions are met:

(1) The veteran reports for the scheduled evaluation;

(2) The veteran is provided one or more personal interviews by a counseling psychologist; and

(3) A determination of the reasonable feasibility of achieving a vocational goal is made by the counseling psychologist.

(c) *Cases not counted as evaluations.* Computation of the number of evaluations which may be provided in a 12-month period shall exclude cases in which:

(1) The veteran under age 30 is unable to participate for reasons beyond his or her control;

(2) Review of available information does not indicate good potential for employment for a veteran age 50 or older;

(3) The veteran either fails to keep a scheduled appointment to complete the evaluation or withdraws the claim for an evaluation, or

(4) The veteran who has completed an evaluation requires or requests a reevaluation. (38 U.S.C. 524(a)(3))

(d) *Priority.* If a veteran below age 30 for whom an evaluation is required cannot be provided an evaluation during a particular 12-month period because of the limitation on the number of evaluations, the veteran will be given first priority for evaluation during the following 12-month period, or first available subsequent 12-month period, if otherwise eligible. (38 U.S.C. 524(a)(3))

Services and Assistance to Program Participants

§ 21.6060 Services and assistance.

(a) *General.* The VA may provide to program participants:

(1) Vocationally oriented services and assistance of the kind provided veterans under chapter 31, title 38, United States Code;

(2) Employment assistance during the 18 month period following completion of a vocational training program, including:

(i) Educational, vocational, psychological, employment and personal adjustment counseling;

(ii) Placement services to effect suitable placement in employment, and post-placement services to attempt to insure satisfactory adjustment in employment; and

(iii) Personal adjustment and work adjustment training. (38 U.S.C. 524(b))

(3) Such other services and assistance of the kind provided veterans under chapter 31, except as provided in paragraph (b) of this section, as are necessary to enable the veteran to prepare for, and participate in, vocational training or employment.

(b) *Services and assistance not provided.* The VA will not provide to a participant under this program any:

(1) Loan;

(2) Subsistence allowance;

(3) Automobile adaptive equipment of the kind provided eligible veterans under 38 U.S.C., chapter 39 or chapter 31;

(4) Training at an institution of higher learning in a program of education that is not predominantly vocational in content;

(5) Employment adjustment allowance;

(6) Room and board in a special rehabilitation facility for a period in excess of 30 days;

(7) Independent living services, except those which are indispensable to the pursuit of the vocational training program during the period of rehabilitation to the point of employability under § 21.6160; or

(8) Period of extended evaluation under 38 U.S.C. 1506(e). (38 U.S.C. 524(b))

Duration of Training

§ 21.6070 Basic duration of a vocational training program.

(a) *Basic duration of a vocational training program.* The duration of a vocational training program may not exceed 24 calendar months of full-time training except as provided in § 21.6072. (38 U.S.C. 524(b)(2))

(b) *Responsibility for estimating the duration of a vocational training program.* The counseling psychologist is responsible for estimating the time needed by the veteran to complete a vocational training program. The estimate is made in consultation with the veteran and the vocational rehabilitation specialist during the preparation of the IWRP. (38 U.S.C. 524(b)(1))

(c) *Duration of training prescribed must meet general requirements for entry into the occupation selected.* The veteran will be provided training for a period sufficient for the veteran to reach the level generally recognized as necessary for entry into employment in a suitable occupational objective. Where a particular degree, diploma or certificate is generally necessary for entry into employment, the veteran may be trained to that level. (38 U.S.C. 524(b))

(d) *When duration of the training period may be expanded beyond the entry level.* If the amount of training the particular veteran needs in order to qualify for employment in a particular occupation will exceed the amount generally needed for employment in that occupation, the VA may provide the necessary additional training under one or more of the following conditions:

(1) Training requirements for employment in the area in which the veteran lives or will seek employment exceed those generally needed for employment;

(2) The veteran is preparing for a type of work in which he or she will be at a definite disadvantage in competing with nondisabled persons for a job or business, and the additional training will offset the competitive disadvantage;

(3) The choice of a feasible occupation is limited and additional training will enhance the veteran's employability in one of the feasible occupations or;

(4) The number of employment opportunities within a feasible occupation is restricted. (38 U.S.C. 524(b)(2))

(e) *Estimating the duration of the training period needed.* The counseling psychologist, in estimating duration of the training period needed, must determine that:

(1) The proposed vocational training program must be one which, when pursued full-time by a nondisabled person, would not normally require more than 24 calendar months of pursuit for successful completion;

(2) The program of traning and other services needed by the veteran, based upon the VA's evaluation, will not exceed 24 calendar months, if training is pursued on a full-time basis, or 36 calendar months if pursued on a less than full-time basis. In making this determination the following criteria will be applied:

(i) The number of actual months and days of the period during which the veteran will pursue the training program will be counted.

(ii) Days of authorized leave and other periods during which the veteran will not be pursuing traning, such as periods between terms will also will be counted;

(iii) The period of evaluation prior to determination of reasonable feasibility will be excluded but the actual number of months and days needed to evaluate and improve rehabilitation potential during the training program will be included;

(iv) The time required, as determined in months and days under paragraph (a)(2)(i) through (iii) of this section, will be the total period that would be required for the veteran to accomplish the vocational program under consideration;

(v) If the total period the veteran requires exceeds 24 calendar months, when pursued on a full-time basis, and an extension of the basic training period may not be approved under § 21.6072, another suitable vocational goal must be selected for which training can be completed within that period.

(3) If the veteran's vocational training program would require more than 36 calendar months when pursued on a less than full-time basis, the program must

be reevaluated to select a vocational goal for which a suitable vocational training program can be completed within that period. (38 U.S.C. 524(b)(2))

(f) *Effect of change in the vocational goal on duration of training period.* The veteran's vocational goal may be changed during the program in accordance with § 21.94 (a) through (d). The extend to which such changes may be made is limited by the following considerations:

(1) A change of the vocational goal from one field or occupational family to another field or occupational family may only be approved before the end of the first 24 months of training, whether training is pursued on a full-time or a less than full-time basis; and

(2) A change from one occupational objective to another within the same field or occupational family shall not be considered a change in the vocational goal identified in the veteran's IWRP. (38 U.S.C. 524(b)(2))

§ 21.6072 Extending the duration of a vocational training program.

(a) *Extension of the duration of a vocational training program.* An extension of a vocational training program as formulated in the IWRP may only be approved to enable the veteran to achieve a vocational goal identified before the end of the first 24 calendar months of the program. (38 U.S.C. 524(b)(2))

(b) *Maximum number of months for which a program for new participants may be approved.* If a veteran had never participated in this temporary program of vocational training, the originally planned period of training may be extended to a total period consisting of the number of months necessary to attain the vocational goal, but in no case will a program be extended for:

(1) More than 24 calendar months beyond the originally planned period; or

(2) A period which, when added to the originally planned period, totals more than 48 months, as provided in § 21.6074(c). (38 U.S.C. 524(b))

(c) *Maximum number of months by which a program may be extended for prior participants in the temporary program.* (1) A veteran who has previously participated in this program, but who was not "rehabilitated to the point of employability," may be provided additional training under this program to complete the prior vocational goal or a different vocational goal, subject to the same provisions as apply to new participants;

(2) If a finding of prior "rehabilitation to the point of employability" is set aside to enable a veteran to pursue a program of on-job training or work experience, including the provision of employer incentives under § 21.256, the number of months for which assistance may be authorized under this program shall be established as provided in § 21.256 to the extent consistent with the rules of this section;

(3) If the determination of "rehabilitation to the point of employability" has been set aside under § 21.6284(a) or (b), additional training may be provided subject to the same provisions as apply to new participants. (38 U.S.C. 524(b))

(d) *Who may authorize an extension to a vocational training program.*

(1) The Vocational Rehabilitation Specialist (VRS) may authorize an extension of up to 3 calendar months of full-time or up to 6 calendar months of less than full-time training to the period of an existing vocational training program, if the VRS determines that the additional time is needed to successfully complete training and the following conditions are met:

(i) The veteran is in "rehabilitation to the point of employability" status under § 21.190;

(ii) The veteran has completed more than half of the prescribed training;

(iii) The veteran is making satisfactory progress;

(iv) The extension is necessary to complete training;

(v) Training can be completed with 3 months of full-time training or not more than 6 calendar months of less than full-time training; and

(vi) The extension plus the original program period will not result in a program of vocational training greater than 36 total calendar months;

(2) The counseling psychologist may approve any other extensions of the vocational training program, except as provided in paragraph (d) (3) of this section, if it is determined that the additional time is needed and the conditions for extension under paragraphs (a) and (b) of this section are met;

(3) The VR&C Officer must also concur in an extension of the vocational training program beyond 24 months when paragraphs (a) through (c) of this section are met. (38 U.S.C. 524(b)(2))

§ 21.6074 Computing the period of vocational training program participation.

(a) *Computing the participation period.* The number of months and days used in a vocational training program shall be computed on the basis of calendar months and days during which the program participant is receiving services under the plan developed in accordance with § 21.6080, whether training is pursued on a full-time or less than full-time basis. Leaves of absence during a period of instruction and periods in which the veteran does not pursue actual training, such as breaks between periods of instruction, are included. (38 U.S.C. 524(b))

(b) *Period of employment services separate.* The period during which employment services may be provided pursuant to § 21.6040(b) is not included in computing the period used for vocational training under this program. (38 U.S.C. 524(b))

(c) *Limitations.* (1) A program participant may receive the services necessary to carry out the vocational training program during a maximum period of 48 months. The 48-month period begins to run on the day the veteran begins to receive the services needed to carry out the vocational training program as specified in the IWRP, and ends 48 months from that date.

(2) Employment services which begin before the end of the 48-month period may be continued for the period specified in the IEAP, or may be provided after the end of the 48 month period if so specified in the IWRP or IEAP, subject to the provisions of § 21.6040(b). (38 U.S.C. 524(b) (2), (3))

Individualized Written Rehabilitation Plan

§ 21.6080 Requirement for an individualized written rehabilitation or employment assistance plan.

(a) *General.* An Individualized Written Rehabilitation Plan (IWRP) and/or Individualized Employment Assistance Plan (IEAP) will be developed for each program participant for services under 38 U.S.C. 524. These plans shall be developed in the same manner as for chapter 31 purposes. *See §§ 21.80, 21.84, 21.88, 21.90, 21.92, 21.94 (a) through (d), 21.96 and 21.98.* (38 U.S.C. 524(b)(2))

(b) *Selecting the type of training to include in the plan.* The use of on-job training, including non-pay training, a combination of on-job and institutional training, or institutional training to accomplish the goals of the program should be explored in each case. On-job training, or a combination of on-job and institutional training, should generally be used:

(1) When these options are available;

(2) When these options are as suitable as institutional training for accomplishing the goals of the program; and

(3) The veteran agrees that such training will meet his or her needs. (38 U.S.C. 524(b))

(c) *Changes in the plan.* Any change amending the duration of a veteran's plan is subject to provisions governing duration of a vocational training program described in §21.6070 and § 21.6072. (38 U.S.C. 524(b)(1))

(d) *Change in the vocational goal after 24 months of training.* If a veteran seeks to change the vocational goal after receipt of 24 months of training and the change is not permitted under § 21.6070(f), the counseling psychologist shall inform the veteran that:

(1) No change of goal may be authorized but training for the vocational goal previously established may be continued, if it is still reasonably feasible for the veteran to pursue the training under appropriate extensions of the program pursuant to § 21.6072;

(2) If the veteran elects to terminate the planned vocational training program, he or she shall be provided assistance, to the extent provided under § 21.80(d), in identifying other resources through which the training desired may be secured;

(3) If the veteran disagrees with the decision, the veteran's case shall be considered under the provisions of § 21.98. (38 U.S.C. 524(b)(2)).

§ 21.6082 Completing the plan.

(a) *Completing the plan.* If the VA determines that the veteran is unable to complete the program within the time limits of the plan after training has begun and the conditions for extension are not met, the long-range vocational goal of the veteran must be reevaluated, and another vocational goal selected which can be completed within the limits prescribed in § 21.6054 and § 21.6072. (38 U.S.C. 524(b)(1))

(b) *Employment assistance when training is not completed under 38 U.S.C. chapter 15.* A plan for employment assistance may be implemented under § 21.6040(b) even though the veteran's vocational training program has not been, or will not be, completed under this temporary program, provided the other requirements for participation in the program are met. (38 U.S.C. 524(b)(3))

Counseling

§ 21.6160 Counseling.

General. A veteran requesting or being furnished assistance under the temporary program shall be provided professional counseling services by the Vocational Rehabilitation and Counseling (VR&C) Division and other qualified staff as necessary, and in the same manner as such services are provided veterans participating in a Chapter 31 program. *See §§ 21.100, 21.380.* (38 U.S.C. 524(a) (1), (2) and (b)(2))

Educational and Vocational Training Services

§ 21.6120 Educational and vocational training services.

(a) *Purposes.* Educational and vocational training services are to be provided to a veteran eligible for services and assistance under this temporary program to enable the veteran to:

(1) Become employable in the occupational objective established in an IWRP; and

(2) Receive incidental training necessary to achieve the employment objective established in an IEAP. (38 U.S.C. 524(b)(1))

(b) *Selection of courses.* The VA and the veteran will select vocationally oriented courses of study and training, completion of which usually results in a diploma, certificate, degree, qualification for licensure, or employment. The educational and training services to be provided include:

(1) Remedial, deficiency and refresher training; and

(2) Training which leads to a vocational objective. All of the forms of program pursuit presented in § 21.122 through § 21.132 may be authorized. Education and training programs in institutions of higher learning are authorized provided the courses are part of a program which is predominantly vocational in content. The program of education and training shall be considered to be predominantly vocational in content if the majority of the instruction offered provides the technical skills and knowledge generally regarded as specific to, and required for, entry into the vocational goal approved for the veteran. Such education and training may generally be authorized at an undergraduate or advanced degree level. However the following are excluded;

(i) An associate degree program in which the content of the majority of the instruction provided is not vocationally oriented;

(ii) The first two years of a 4-year baccalaureate degree program;

(iii) The last two or more years of a 4-year baccalaureate degree program except in degree programs with majors in engineering, teaching, or other similar degree programs with vocational content which ordinarily lead directly to employment in an occupation that is usually available to persons holding such a degree; or

(iv) An advanced degree program, except for a degree program required for entry into the veteran's employment objective, such as a master's degree in social work. (38 U.S.C. 524(b))

(c) *Charges for education and training services.* The cost of education and training services will be considered in selecting a facility when:

(1) There is more than one facility in the area in which the veteran resides which:

(i) Meets the requirements for approval under § 21.290 through § 21.299;

(ii) Can provide the education and training services and other supportive services specified in the veteran's plan; and

(iii) Is within reasonable commuting distance; or

(2) The veteran wishes to train at a suitable facility in another area, even though training can be approved at a suitable facility in the area in which the veteran resides. See §§ 21.120, 21.370, 21.372. (38 U.S.C. 524(b)(2))

(d) *Courses not available.* If suitable educational and training courses are not available in the area in which the veteran resides, or if they are available but not accessible to the veteran, other arrangements may be made. Such arrangements may include, but are not limited to:

(1) Relocation of the veteran to another area in which necessary services are available, or

(2) Use of an individual instructor to provide necessary training as provided under § 21.146. (38 U.S.C. 524(b))

Evaluation and Improvement of Rehabilitation Potential

§ 21.6140 Evaluation and improvement of rehabilitation potential.

(a) *General.* The services described in paragraph (d) of this section may be used to:

(1) Evaluate rehabilitation potential;

(2) Provide a basis for planning;

(i) A program of services and assistance to improve the veteran's potential for vocational rehabilitation; or

(ii) A vocational training; and

(3) Reevaluate the vocational training potential of a veteran participating in a rehabilitation program. (38 U.S.C. 524(a))

(b) *Periods during which evaluation and improvement services may be provided.* Services described in paragraph (d) of this section may be provided during:

(1) An evaluation or reevaluation;

(2) Rehabilitation to the point of employability;

(3) Employment services. (38 U.S.C. 524(b)(2))

(c) *Duration of services.* The duration of services needed to improve rehabilitation potential, furnished on a full-time basis either as a preliminary part of the period of rehabilitation to the point of employability or as the total program, may not exceed 9 months. If these services are furnished on a less than full-time basis the duration will be for the period necessary, but may not exceed the equivalent of 9 months of full-time training. See § 21.6310. (38 U.S.C. 524(b)(2))

(d) *Scope of services.* Evaluation and improvement services include:

(1) Diagnostic services;

(2) Personal and work adjustment training;

(3) Medical care and treatment;

(4) Independent living services indispensable to pursuing a vocational training program;

(5) Language training, speech and voice correction, training in ambulation, and one-hand typewriting;

(6) Orientation, adjustment, mobility and related services; and

(7) Other appropriate services. (38 U.S.C. 524(b)(2))

(e) *Applicability of chapter 31 rules.* The provisions of § 21.140 are not applicable to this temporary program. The provisions of § 21.142 through § 21.156 are applicable, subject to provisions of this section. (38 U.S.C. 524(b)(2))

Independent Living Services

§ 21.6160 Independent living services.

(a) *Services must be part of a vocational training program.* Independent living services may be provided as a part of a veteran's IWRP when such services are indispensable to the achievement of the vocational goal, but may not be provided as the sole program of rehabilitation for the veteran, since a vocational training program for the veteran must be found reasonably feasible before the IWRP is prepared. (38 U.S.C. 524(b)(2))

(b) *Independent living services which may be furnished under this program.* The independent living services which may be furnished include:

(1) Training in independent living skills;

(2) Health management programs;

(3) Identification of appropriate housing accommodations; and

(4) Personal care service for a transitional period not exceed two months. (38 U.S.C. 524(b))

(c) *Coordination with other VA elements and other Federal, State, and local programs.* Provision of independent living services and assistance will generally require extensive coordination with other VA and non-VA programs. The resources of VA medical centers shall be utilized as prescribed in § 21.6242. If appropriate arrangements cannot be made to provide these services through VA medical centers, other governmental and private nonprofit programs may be used to secure necessary services if the facility or individual providing services meets the requirements of § 21.294. (38 U.S.C. 524(b))

(d) *Applicability of chapter 31 rules.* Neither § 21.160 nor § 21.162 are applicable to provision of independent living services under this program (38 U.S.C. 524(b))

Case Status System

§ 21.6180 Case status system.

(a) *General.* The case status system used in administering benefits under the chapter 31 program, as provided in § 21.180 through § 21.198, will be utilized in a similar manner in this program subject to the provisions of paragraph (b) of this section. (38 U.S.C. 524(b)(2))

(b) *Limitations on applicability of chapter 31 rules.* (1) The provisions of § 21.180 (e)(2) and (3), § 21.188, and § 21.192 are not applicable to this temporary program;

(2) Other incidental references to service-connected disability, chapter 31, "extended evaluation" status, or independent living status or other services precluded under § 21.6060(b), found in § 21.180 to § 21.198, are not for application to this temporary program. (38 U.S.C. 524(b)(2))

Supplies

§ 21.6210 Supplies.

(a) *Purpose of furnishing supplies.* Supplies are furnished to enable a veteran to pursue training, obtain and maintain employment and achieve the goals of his or her program. (38 U.S.C. 524(b)(2))

(b) *Definition.* The term "supplies" includes books, tools and other supplies and equipment which the VA determines are necessary for the veteran's vocational training program. (38 U.S.C. 1504(a))

(c) *Periods during which supplies may be furnished.* Supplies may be furnished to a veteran receiving:

(1) An evaluation of reevaluation;

(2) Rehabilitation to the point of employability; or

(3) Employment services. (38 U.S.C. 524(b)(2))

(d) *Applicability of 38 U.S.C. chapter 31 regulations.* The provisions of § 21.210 are not applicable to veterans in this temporary program. The provisions of § 21.212 through § 21.224 are applicable to veterans pursuing vocational training and employment under this program in a similar manner as under chapter 31, except the portions thereof noted as follows:

(1) Section 21.216(a)(3) pertaining to special modifications, including automobile adaptive equipment;

(2) Section 21.220(a)(1) pertaining to advancements from the revolving fund loan;

(3) Section 21.222(b)(x) pertaining to a veteran discontinued from an independent living services program. (38 U.S.C. 524(b)(2))

Medical and Related Services

§ 21.6240 Medical treatment, care and services.

(a) *General.* A participant in a vocational training program or receiving employment assistance shall be furnished medical treatment, care and services which the VA determines are necessary to develop, carry out and complete the veteran's plan. (38 U.S.C. 524(b)(2))

(b) *Scope of services.* The services which may be furnished include the medical treatment, care and dental services described in part 17 of this title. In addition, the following services may be authorized even if not included or described in part 17:

(1) Prosthetic appliances, eyeglasses, and other corrective or assistive devices;

(2) Services to a veteran's family as necessary for the effective rehabilitation of the veteran;

(3) Special services (including services related to blindness and deafness) including:

(i) Language training, speech and voice correction, training in ambulation, and one-hand typewriting;

(ii) Orientation, adjustment, mobility and related services; and

(iii) Telecommunications, sensory and other technical aids and devices. (38 U.S.C. 524(b)(2))

(c) *Periods of eligibility.* A veteran is eligible for the services described in paragraph (b) of this section during:

(1) Evaulation;

(2) Rehabilitation to the point of employability;

(3) Employment services; and

(4) Other periods, to the extent that services are needed to begin or continue in any of the periods described in paragraphs (1) through (3) of this section. Such periods include, but are not limited to, those when services are needed to facilitate reentry into training following:

(i) Interruption; or

(ii) Discontinuance because of illness or injury. (38 U.S.C. 524(b)(2))

§ 21.6242 Resources for provision of medical treatment, care and services.

(a) *General.* VA medical centers are the primary resources for the provision of medical treatment, care and services for program participants which may be authorized under the provisions of § 21.6240. The availability of necessary services in VA facilities shall be ascertained in each case. (38 U.S.C. 524(b)(2))

(b) *Hospital care and medical services.* Hospital care and medical services provided to program participants shall only be furnished in facilities over which the VA has direct jurisdiction, except as authorized on a contract or fee basis under the provisions of Part 17 of this title. (38 U.S.C. 524(b)(2))

Cross-References: See § 17.30 (1). Hospital care. § 17.30 (m) Medical services.

(c) *Provisions of § 21.240 and § 21.242.* The provisions of §§ 21.240 and 12.242 are not applicable to this temporary program. (38 U.S.C. 524(b))

Financial Assistance

§ 21.6260 Financial assistance.

(a) *Direct financial assistance prohibited.* The provisions of § 21.260 and § 21.264 through § 21.276 are not applicable to veterans pursuing training and employment under this temporary program, except as indicated in paragraph (b) of this section. (38 U.S.C. 524(b)(2)(B)(ii))

(b) *Training costs.* The provisions of § 21.262 pertaining to reimbursement for training costs will be followed to reimburse vendors for services provided under this temporary program. (38 U.S.C. 524(d))

Entering Vocational Training

§ 21.6282 Effective date of induction into and termination of vocational training.

(a) *Induction.* Subject to the limitations set forth in § 21.6042, the date a veteran is inducted into vocational training shall be the earlier of:

(1) The date the facility requires the veteran to report for prescribed activities; or

(2) The date the program begins at the facility providing services. (38 U.S.C. 524(b)(2))

(b) *Termination.* A veteran's training program shall be terminated under the provisions of § 21.6180. (38 U.S.C. 524(b)(2))

§ 21.6284 Reentrance into a training program.

(a) *Reentrance into rehabilitation to the point of employability following a determination of rehabilitation.* A veteran in a vocational training program under this temporary program who has been found "rehabilitated" under provisions of § 21.196 may be provided an additional period of training or services only if the following conditions are met and the veteran is otherwise eligible:

(1) Current facts, including any relevant medical findings, establish that the veteran's disability has worsened to the extent that he or she is precluded from performing the duties of the occupation for which the veteran previously was found rehabilitated; or

(2) The occupation for which the veteran previously was found rehabilitated under this temporary program is found to be unsuitable. (38 U.S.C. 524(b)(1))

(b) *Reentrance into rehabilitation to the point of employability during a period of employment services.* A finding of rehabilitation to the point of employability by the VA may be set aside during a period of employment services and an additional period of training and related services provided if any of the conditions in paragraph (a) of this section or of the following conditions are met and the veteran is otherwise eligible:

(1) The services originally given to the veteran are now inadequate to make the veteran employable in the occupation for which he or she pursued training;

(2) Experience during the period of employment services has demonstrated that employment in the objective or field for which the veteran was rehabilitated to the point of employability should not reasonably have been expected at the time the program was originally developed; or

(3) The veteran, because of technological change which occurred subsequent to the declaration of rehabilitation to the point of employability, is no longer able:

(i) To perform the duties of the occupation for which he or she trained, or in a related occupation; or

(ii) To secure employment in the occupation for which he or she trained, or in a related occupation. (38 U.S.C. 524(b)(3))

§ 21.6290 Training resources.

(a) *Applicable 38 U.S.C. chapter 31 provisions.* The provisions of § 21.290 through § 21.299 are applicable to veterans pursuing vocational training and employment under this program in the same manner as under 38 U.S.C. chapter 31, except as specified in paragraph (b) of this section. (38 U.S.C. 524(b)(2))

(b) *Limitations.* The provisions of § 21.294(b)(i) and (ii) pertaining to independent living services are not applicable to this temporary program. The provisions of § 21.294(b)(iii) pertaining to authorization of independent living services as a part of an Individualized Written Rehabilitation Plan (IWRP) are applicable to this temporary program to the extent provided under § 21.6160. (38 U.S.C. 524(b)(2))

Rate of Pursuit

§ 21.6310 Rate of pursuit.

(a) *General requirements.* A veteran should pursue a vocational training program at a rate which is consistent with his or her ability to successfully pursue training, considering:

(1) Effects of his or her disability;

(2) Family responsibilities;

(3) Travel;

(4) Reasonable adjustment to training; and

(5) Other circumstances which affect the veteran's ability to pursue training. (38 U.S.C. 524(b)(1))

(b) *Continuous pursuit.* A veteran should pursue a program of vocational training with as little interruption as necessary, considering the factors described in paragraph (a) of this section. (38 U.S.C. 524(b)(1))

(c) *Responsibility for determining the rate of pursuit.* VR&C staff, in consultation with the veteran, will determine the rate and continuity of pursuit of training. Consultation with the medical consultant and the Vocational Rehabilitation Panel should be utilized as necessary. This determination will be made in the course of developing the plan, but may be changed later, as necessary to enable the veteran to complete his or her training. (38 U.S.C. 524(a)(1))

(d) *Measurement of training time used.* The rate of pursuit shall be measured on the basis of the provisions of § 21.310. A veteran may not pursue training on a less than half-time basis as measured under § 21.310, except for brief periods, after which training must be resumed on a half-time or greater basis. Brief periods are limited to all or part of a semester, term or quarter, or up to 90 days in a course not conducted on a semester, term, or quarter basis. (38 U.S.C. 524(h)(1))

(e) *Reduced work tolerance.* The provisions of § 21.312 are not applicable to this temporary program. (38 U.S.C. 524(b))

(f) *Pursuit of training under special circumstances.* The provisions of § 21.314 are not applicable to this temporary program. (38 U.S.C. 524(b)(2))

Authorization of Services

§ 21.6320 Authorization of services under chapter 31 rules.

(a) *General.* Sections 21.320 through 21.334 are not applicable to a veteran pursuing a vocational training program except as specified in paragraph (b) of this section. (38 U.S.C. 524(b)(2))

(b) *Applicable rule.* Section 21.328 pertaining to the beginning and ending dates of a period of employment services is applicable to veterans under this temporary program. (38 U.S.C. 524(b)(2))

Leaves of Absence

§ 21.6340 Leaves of absence.

(a) *General.* The VA may approve leaves of absence under certain conditions. During approved leaves of absence, a veteran shall be considered to be pursuing training for purposes of computing the duration of a vocational training program under §§ 21.6070 through 21.6074. Leave may only be authorized for a veteran during a period of rehabilitation to the point of employability. (38 U.S.C. 524(b))

(b) *Purpose.* The purpose of the leave system is to enable the veteran to maintain his or her status as an active participant and avoid interruption or discontinuance of training. (38 U.S.C. 524(b))

(c) *Applicability of chapter 31 rules.* The provisions of § 21.340 are not applicable to this temporary program. The provisions of § 21.342 through § 21.350 are applicable except for § 21.346. (38 U.S.C. 524(b))

Satisfactory Conduct and Cooperation

§ 21.6362 Satisfactory conduct and cooperation.

The provisions of § 21.362 and § 21.364 are applicable to veterans pursuing vocational training under this program in the same manner as under 38 U.S.C. chapter 31. (38 U.S.C. 524)

Transportation Services

§ 21.6370 Authorization of transportation services.

(a) *General.* The VA shall authorize transportation services necessary for a veteran to pursue a vocational training program under this temporary program. Transportation services include:

(1) Transportation for evaluation, reevaluation or counseling authorized under § 21.376;

(2) Inter- and intraregional travel which may be authorized under § 21.370 (except for (b)(2)(iii)(B)) and § 21.372;

(3) Special transportation allowance authorized under § 21.154;

(4) Commuting to and from training and seeking employment as authorized under paragraphs (c) and (d) of this section. (38 U.S.C. 524(b))

(b) *Reimbursement.* Payment of transportation services authorized by the VA shall normally be made in arrears and in the same manner as tuition, fees and other services authorized under this program. (38 U.S.C. 524(b))

(c) *Transportation payment.* A veteran may be reimbursed for the costs of commuting to and from training and seeking employment if he or she requests such assistance and the VA determines after careful examination of the veteran's situation, and subject to the limitation contained in paragraph (d) of this section, that the veteran would be unable to pursue training without such assistance. The VA may:

(1) Reimburse the facility at which the veteran is training if the facility provides transportation or related services;

(2) Reimburse the veteran for his or her actual commuting expense. (38 U.S.C. 524(b))

(d) *Limitations.* Payment of commuting expenses may not be made for any period:

(1) Except during the period of training and the first three months of employment services;

(2) When a program participant is employed;

(3) In which a program participant is eligible for, and entitled to, payment of commuting costs through other VA and non-VA programs;

(4) In which it becomes feasible for the veteran to commute to school with family, friends or fellow students. (38 U.S.C. 524(b))

(e) *Amount which may be paid.* The VA will reimburse the veteran for his or her actual cost, not to exceed $70 per month. Necessary supportive documentation must be submitted with each request for reimbursement. Payment will be made monthly or at longer intervals as may be agreed to in the IWRP. (38 U.S.C. 524(b))

(f) *Nonduplication.* A veteran eligible for reimbursement of transportation services under this section and § 21.156 may only receive the benefit provided under § 21.154. (38 U.S.C. 524(b))

Additional Applicable Regulations.

§ 21.6380 Additional applicable chapter 31 regulations.

The following regulations are applicable to veterans pursuing the vocational training under this program in the same manner as they apply to 38 U.S.C. chapter 31: § 21.380, § 21.390, § 21.400, § 21.402, § 21.412, § 21.414, (except (d) and (e)), § 21.420 and § 21.430 (except (a)). (38 U.S.C. 524)

Delegation of Authority

§ 21.6410 Delegation of authority.

(a) *General.* Authority is delegated to the Chief Benefits Director and to supervisory or non-supervisory personnel within the jurisdiction of the Vocational Rehabilitation and Counseling Service, to make findings and decisions under 38 U.S.C. 524 and the applicable regulations, precedents and instructions pertaining to this program. See § 2.6(b). (38 U.S.C. 212(a))

(b) *Applicability of §§ 21.412 and 21.414.* The provisions of §§ 21.412 and 21.414 (except for (d) and (e)) are applicable to this temporary program. (38 U.S.C. 212(a))

Coordination With the Adjudication Division

§ 21.6420 Coordination with the Adjudication Division.

It is the responsibility of the VR&C Division to inform the Adjudication Division in writing of the following changes in the veteran's circumstances contained in the following paragraphs. (38 U.S.C. 524)

(a) *Evaluation.* (1) The date an evaluation being provided a veteran under age 50 is suspended because of unsatisfactory conduct or noncooperation; and

(2) The date the evaluation is resumed;

(b) *Income information.* Any information relating to income from work or training which may affect the veteran's continued entitlement to pension, including participation in:

(1) A work adjustment program, incentive or therapeutic work program, vocational training in a rehabilitation facility, or employment in a rehabilitation facility or sheltered workshop;

(2) On-job training;

(3) The work portion of a cooperative or combination program;

(4) Internships; and

(5) Full or part-time employment. (38 U.S.C. 524)

(c) *Dependency changes.* Information regarding dependency changes if the case manager learns of such changes in

the normal course of performing his or her duties. (38 U.S.C. 524)

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3247-1]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; VOC Bubble Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; Extension of public comment period.

SUMMARY: On June 1, 1987 (52 FR 20422) EPA proposed approval of revisions to the Comonwealth of Massachusetts' State Implementation Plan. On July 6, 1987 (52 25256) EPA granted an extension of the public comment period to August 1, 1987. The Conservation Law Foundation (CLF) has requested a further extension of time for public comment. EPA has evaluated this request and is hereby granting a ten (10) day extension of the public comment period.

DATES: Comments should be received on or before August 10, 1987.

FOR FURTHER INFORMATION CONTACT: Cynthia L. Greene at (617), 565-3244; FTS 835-3244.

Authority: 42 U.S.C. 7401-7642.

Date: August 5, 1987.

Stephen F. Ells

Acting Regional Administrator, Region I.

[FR Doc. 87-18487 Filed 8-12-87; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 228

[OW-4-FRL-3246-5]

Ocean Dumping; Proposed Site Designation

AGENCY: Environmental Protection Agency (EPA)

ACTION: Proposed rule.

SUMMARY: EPA today proposes to designate the existing dredged material disposal site in the Atlantic Ocean offshore Georgetown, South Carolina, as an EPA approved ocean dumping site for the dumping of dredged material. This action is necessary to provide an acceptable ocean dumping site for the current and future disposal of dredged material.

DATE: Comments must be received on or before September 14, 1987.

ADDRESSES: Send comments to: Sally S. Turner, Chief, Marine Protection Section, Water Management Division, U.S. Environmental Protection Agency, 345 Courtland Street NE., Atlanta, GA 30365.

The file supporting this proposed site designation is available for public inspection at the following locations:

EPA Public Information Reference Unit (PIRU), Room 2904 (rear), 401 M Street SW., Washington, DC 20460

EPA Region IV, 345 Courtland Street, NE., Atlanta, GA 30365.

FOR FURTHER INFORMATION CONTACT: Chris Provost, 404/347-2126.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et seq.* ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On December 23, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the sites are located. This proposed site is in Region IV and the designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, § 228.4) state that ocean dumping sites will be designated by promulgation in this Part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 *et seq.*), and was extended on August 19, 1985, (50 FR 33338). The list established the Georgetown site as an interim site.

B. EIS Development

Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq., ("NEPA") requires that Federal agencies prepare an Environmental Impact Statement (EIS) on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EIS's in connection with ocean dumping site designations such as this. See 39 FR 16186 (May 7, 1984).

EPA has prepared a draft and final EIS entitled, "Environmental Impact Statement for Savannah, Georgia, Charleston, South Carolina, Wilmington, North Carolina, Ocean Dredged Material Sites Designation." A final supplement to that EIS (SEIS) has been prepared for the Georgetown site designation.

On January 24, 1986, a notice of availability of the Georgetown final SEIS for public review and comment was published in the Federal Register (51 FR 3250 (January 24, 1986)). The public comment period on the final SEIS closed February 24, 1986. Anyone desiring a copy of the SEIS may obtain one from the address above. No comments were received on the final SEIS.

The action discussed in the supplemental EIS is the final designation for continuing use of the ocean dredged material disposal site near Georgetown, South Carolina. The purpose of the proposed action is to provide an environmentally acceptable location for the ocean disposal of materials dredged from the Georgetown Harbor channel system when ocean disposal is found to be necessary for some dredged materials. The need for ocean disposal is determined on a case-by-case basis as part of the process of issuing permits for ocean disposal.

The SEIS discusses the need for the action and examines ocean disposal site alternatives to the proposed action. The SEIS presents the information needed to evaluate the suitability of ocean disposal areas for final designation for continuing use and is based on one of a series of disposal site environmental studies. The environmental studies and final designation process are being conducted in accordance with the requirements of the Act, the Ocean Dumping Regulations, and other applicable Federal environmental legislation.

C. Coastal Zone Management and Endangered Species Coordination

The South Carolina Coastal Council has concurred with EPA's coastal consistency determination. Also, the National Marine Fisheries Service has concurred with EPA's determination that the designation of this disposal site will not affect the endangered species under their jurisdiction. The U.S. Fish and Wildlife Service (FWS) has also concurred with the determination that the species under FWS jurisdiction will not be affected by the site designation.

D. Proposed Site Designation

The proposed action is the permanent designation of the existing Georgetown ocean dredged material disposal site.

Boundary coordinates for the existing Georgetown site are as follows:

33° 11' 18" N.; 79° 07' 20" W.;
33° 11' 18" N.; 79° 05' 23" W.;
33° 10' 36" N.; 79° 05' 24" W.;

33° 10' 36" N.; 79° 07' 21" W.;

E. Regulatory Requirements

Five general criteria are used in the selection and approval for continuing use of ocean disposal sites. Sites are selected so as to minimize interference with other marine activities, to keep any temporary perturbations from the dumping from causing impacts outside the disposal site, and to permit effective monitoring to detect any perturbations from the dumping and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf and other sites that have been historically used are to be chosen. If at any time disposal operations at a site cause unacceptable adverse impacts, further use of the site will be restricted or terminated. The proposed site conforms to the five general criteria except for the preference for sites located off the Continental Shelf. EPA has determined, based on the information presented in the EIS, that no environmental benefit would be obtained by selecting a site off the Continental Shelf instead of that proposed in this action.

The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations, and § 228.6 lists 11 specific criteria used in evaluating a proposed disposal site to assure that the general criteria are met. EPA established these 11 criteria to constitute an environmental assessment of the impact of the site for disposal. The characteristics of the proposed site are reviewed below in terms of these 11 criteria.

1. Geographical Position, Depth of Water, Bottom Topography, and Distance From Coast (40 CFR § 228.6(a)(1))

The boundary coordinates of the site are given above. The existing Georgetown site is approximately three nautical miles (nmi) from shore and encompasses an area of approximately one square nmi. Water depths at the site range from six to eleven meters.

Within the site and adjacent areas the bottom slopes gently down in a seaward direction and is featureless, showing no evidence of mounding from past disposal.

2. Location in Relation to Breeding, Spawning, Nursery, Feeding, or Passage Areas of Living Resources in Adult or Juvenile Phases (40 CFR 228.6(a)(2))

The proposed site is three miles from the inlet of Winyah Bay. Winyah Bay is an area through which shrimp and finfish seasonally migrate. The nearshore coastal area off Georgetown Harbor is used for breeding, spawning, and nursery of a variety of marine organisms. In the area of Winyah Bay the loggerhead sea turtle is known to nest on beaches adjacent to the inlet, and the Atlantic short-nosed sturgeon congregate at the inlet jetties prior to moving into the estuary.

The impact of past dredged material disposal at the site has most likely been limited to a short-term interruption of migration of species through the area due to increases in water column suspended solids concentrations during immediate dumping operations at the site. Since the migratory routes of these species are not geographically limited to the disposal site area, continued disposal at the site is not expected to alter the migration pattern of these species.

The current velocities in the disposal site area are minimal and influenced by highly variable weather events and the freshwater discharges from Winyah Bay. Net transport is southerly, away from turtle nesting areas. In addition, since the disposal site is three miles offshore, it is unlikely that suspended sediments from the disposal operations will be transported shoreward and accumulated in sufficient quantities to impact these turtle nesting areas.

3. Location in Relation to Beaches and Other Amenity Areas (40 CFR 228.6(a)(3))

Based on the location of the disposal site and the current patterns, continued disposal will not significantly affect recreational uses of the surrounding amenity areas. Major bathing beaches are approximately fifteen miles north and away from the direction of net transport at the proposed site. Although some sport fishing occurs in the area of the site, waters further offshore are more typically fished. There are also two artificial reefs in the area, five miles to the northeast and nine miles to the southeast. The dredged materials from the Georgetown area are predominantly fine-grained sands that would be expected to sink rapidly to the bottom within the site. These amenities are located far enough away so that impacts due to disposal operations have not occurred in the past, and it is unlikely that there will be any impact to these areas in the future.

4. Types and Quantities of Wastes Proposed to be Disposed of, and Proposed Methods of Release, Including Methods of Packing the Waste, if Any (40 CFR 228.6(a)(4))

The material to be dumped at the disposal site will result from dredging the entrance channel to Winyah Bay and adjacent areas. An annual average (based on the years 1973 through 1984) of 286,666 cubic yards of dredged material has been dumped at the proposed site with no significant long-term impacts to the affected environment detected. Dredged material may not be approved for ocean dumping unless it meets the criteria in 40 CFR Part 227. Sediments dredged from the entrance channel are predominantly sand, which are considered suitable for ocean disposal. Initial bioassays indicate that the dredged material is not toxic to marine organisms. Hopper dredge is the type of vehicle used for dredging, transport, and disposal of the dredged material. This method will continue to be used in the future.

5. Feasibility of Surveillance and Monitoring (40 CFR 228.6(a)(5))

The U.S. Coast Guard is not currently conducting surveillance for disposal operations at the proposed site; however, due to the proximity of the site to shore, surveillance would not be difficult. Either shore-based observers or day-use boats could be used for surveillance.

Periodic environmental monitoring will commence upon site designation and will continue as long as the site is used. A specific monitoring plan for the site has not been developed. General monitoring objectives for the site would include bathymetric measurements to identify shoaling or mounding areas. If movement of the material appears likely to impact a known resource, analysis of the benthic community or the specific resource would then be undertaken. Specific monitoring objectives will be determined based on the use of the site. Periodic bioassays and bioaccumulation studies of the dredged material will also ensure that the material will not adversely affect the marine biota at the site.

6. Dispersal, Horizontal Transport and Vertical Mixing Characteristics of the Area, Including Prevailing Current Direction and Velocity, if Any (40 CFR 228.6(a)(6))

The surface and bottom current velocity and direction is variable at the site, depending on the strengths of the tidal current, wind and wave current, and river discharge components. A longshore current flows southerly across the disposal site. Therefore, the disposal plume will typically be transported southerly, away from the mouth of the channel entrance.

High-resolution profiling has been conducted at the site before and after

disposal operations and significant long-term mounding or accumulation of dredged materials has not been detected at or beyond the site. Storms producing wave action affecting the entire water column are believed to cause dispersion on the sandy sediments dumped at the site. The dispersion of these sediments from past disposal has not impacted major bathing beaches (15 miles north) or other amenities in the area. It is unlikely that dispersion of future disposed sediments will significantly impact these areas due to their distances from the site and the fact that the dredged material is expected to settle rapidly.

7. Existence and Effects of Current and Previous Discharges and Dumping in the Area (Including Cumulative Effects) (40 CFR 228.6(a)(7))

Dredged material disposal at the site has occurred for the past 30 years and has produced only minor reversible effects as evidenced by: Temporary increases above ambient suspended sediment concentrations, temporary localized mounding, smothering of some benthic organisms, and possible releases of other trace constituents into the overlying waters.

The disposal site area receives large amounts of freshwater runoff via Winyah Bay, heavily laden with suspended sediments. The changes in suspended sediment concentrations due to dredged material disposal are insignificant in comparison to the natural sediment input from Winyah Bay. Thus inputs of suspended solids from the disposal of dredged material are not expected to have significant impacts. The localized mounding is only a short-term effect as currents and wave action quickly disperse the sediments throughout the site. In addition, no long-term mounding has been detected at or beyond the site from previous disposal operations.

Smothering of benthic organisms will most likely be restricted to sediment dwellers such as tube dwelling polychaete worms and various species of amphipod crustaceans. The physical similarity between dredged material and disposal of natural sediments will avoid adverse impacts on the benthos resulting from the overlaying of dissimilar sediments. In addition, the ability of these organisms to recolonize in similar sediments further reduces the likelihood of any long-term impact.

Results of bioassay and bioaccumulation tests using Georgetown sediments indicate that releases of trace constituents during dumping are neither directly toxic to marine organisms nor accumulated in tissues.

8. Interference With Shipping, Fishing, Recreation, Mineral Extraction, Desalination, Fish and Shellfish Culture Areas of Special Scientific Importance and Other Legitimate Uses of the Ocean (40 CFR 228.6(a)(8))

Extensive commercial shipping, sports fishing, and recreational boating occur in the Winyah Bay area. However, most of these activities occur either shoreward or seaward of the proposed site.

Commercial shrimping occurs primarily within three miles from shore; however, around the entrance to Winyah Bay shrimpers often work further offshore. Shrimp around the disposal site may be temporarily impacted during disposal operations due to high turbidity. However, the naturally high turbidity levels far outweigh impacts of increased turbidity resulting from dredged material disposal operations; and the temporary impacts associated with disposal would not be significant. Moreover, the 30 years of past disposal in the area have not presented any significant problems to this fishery.

Disposal operations at the proposed site will most likely have no impact on the inshore shellfish grounds since they are far removed from the site (more than 5 miles), and net sediment transport is away from these areas. For the same reasons it is also unlikely that the blue crab fishery in the Winyah Bay and Santee River estuaries will be influenced by offshore disposal.

Most of the commercial finfish landings in the area have consisted of black sea bass, grouper, snapper, sturgeon, and other reef fishes. Since these fishes are associated with hard bottom areas, which have not been found in or near the proposed site, no impact from previous disposal operations has been observed. No impact on these fisheries is expected from future disposal activities.

In summary, previous dredged material disposal operations are not known to have interfered with any of the above activities primarily because the proposed site is not located in an area where these fisheries are concentrated.

No resource development such as mineral extraction or desalination, occurs in the vicinity of the proposed site. No aquaculture or scientific activities occur in the proposed disposal site or surrounding areas.

The proposed site is adjacent to the major shipping channel into Georgetown Harbor. However, it is far enough away so that its intermittent use should not impede commercial shipping or aggravate congestion within the shipping channel.

9. The Existing Water Quality and Ecology of the Site as Determined by Available Data or by Trend Assessment or Baseline Surveys (40 CFR 228.6(a)(9))

Investigations of the dredged material disposal site by the South Carolina Marine Resources Center (SCMRC) used in developing the final EIS have indicated that previous disposal has had no significant adverse effects on water quality (e.g., dissolved nutrients, trace metals, dissolved oxygen, or pH). High fresh water runoff via Winyah Bay results in varied salinity and high turbidity at and near the site. Trace contaminants in the water were shown to be within or below ranges noted elsewhere along the Atlantic coast. Many metals were below detection limits as were PCBs and all pesticides tested.

Fish and shrimp dominate the nekton community in the general area, and species are typical of those reported from the coastal waters all along the South Atlantic Bight. Several of these species are commercially and recreationally important. These species include the brown and white shrimp, black sea bass, red snapper, mackeral, Atlantic sturgeon, and many others. As discussed previously, impacts on these species are not expected.

Bottom sediments at the site are medium to coarse grain sands, according to the SCMRC study. Comparison of pollutant content of these sediments with other data near the site and elsewhere along the coast indicate that the sediments at the proposed site are not polluted. The benthic infaunal community is characteristic of coastal medium to coarse sands in the vicinity of the proposed site. Benthic species diversity is variable from season-to-season, with summer diversity high.

Short-term smothering of the benthic organisms at the site has occurred during past disposal operations and is expected to continue in the future. However, due to natural recolonization of the benthos in similar sediments and the dispersive characteristics of the site, this short-term impact is not expected to significantly alter the ecology beyond the boundary of the site. Moreover, this site has been used for dredged material disposal for the last 30 years; and the SCMRC studies indicate that there are no significant differences in the biological characteristics of the site and adjacent control sites that could be attributed to dredged material disposal. This includes impacts to the fish and shrimp species mentioned above.

10. Potentiality for the Development or Recruitment of Nuisance Species in the Disposal Site (40 CFR 228.6(a)(10))

The similarity of the physical and chemical nature of the dredged material to the existing sediments at the proposed site indicates that the development or recruitment of nuisance species is unlikely. No evidence of nuisance species has been detected at the site after 30 years of use.

11. Existence at or in Close Proximity to the Site of any Significant Natural or Cultural Features of Historical Importance (40 CFR 228.6(a)(11))

There are no known historical cultural or natural features within the area of the site. In fact the only feature of historical importance in the area is the "Sir Robert Peel" wreck which is inshore of the site. Past disposal operations have not disturbed this wreck, and it is unlikely that future disposal will have any impact on this feature.

F. Proposed Action

Dredged material disposal has occurred at the proposed site for the past 30 years. Recent surveys have detected no persistent or cumulative changes in the water quality or ecology at the site. Impacts from dumping have been found to be temporary and restricted to within the site boundary. The near shore location of the proposed site facilitates surveillance and monitoring and decreases the likelihood of sediment texture/chemistry changes resulting from disposal due to the similarity between the dredged materials and the sediments already at the disposal sites.

The EIS evaluated mid-shelf and shelf-break alternative sites using the general criteria and specific factors contained in the Ocean Dumping Regulations. Dredged material disposal has not occurred previously at the mid-shelf or shelf-break alternative site locations. There are significant dissimilarities between the physical and chemical characteristics of the dredged material sediments and sediments covering the mid-shelf or shelf-break regions. Altering the sediment texture and composition through the addition of finer coastal sediments may have a potential long-term adverse impact on the benthic infauna at the mid-shelf and shelf-break sites. Fishery resources are localized over the mid-shelf and shelf-break regions, especially in the vicinity of hard bottom areas and shelf-break areas. These hard bottom areas are unique habitats, support several species of commercially and recreationally impact finfish, and are sensitive to the effects of dredged material disposal. Thus, use of mid-shelf or shelf-break sites could result in a greater potential for interference with fishing activities. Moreover, use of offshore sites would be restricted to periods of calm weather and sea conditions because the hopper dredges cannot operate in rough seas.

The designation of the proposed dredged material disposal site as an EPA Approved Ocean Dumping Site is being published as proposed rulemaking. Interested persons may participate in this proposed rule-making by submitting written comments within 30 days of the date of this publication to the address given above.

It should be emphasized that if an ocean dumping site is designated, such a site designation does not constitute or imply EPA's approval of actual disposal of materials at the site. Before ocean dumping of dredged material at the site may commence, the Corps must also evaluate the proposed dumping in accordance with the criteria in section 227 of the Ocean Dumping Regulations. In any case, EPA has the right to disapprove the actual dumping, if it determines that environmental concerns under the Act have not been met.

G. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this proposed action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this proposal does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this proposed rule does not necessitate preparation of a Regulatory Impact Analysis.

This proposed rule does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: August 3, 1987.

Lee A. DeHihns III,

Acting Regional Administrator, Region IV.

In consideration of the foregoing, Subchapter H of Chapter I of title 409 is proposed to be amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.12 is amended by removing from paragraph (a)(3) the words and coordinates:

Georgetown Harbor—33°11'18" N., 79°07'20" W.; 33°11'18" N., 79°05'23" W.; 33°10'38" N., 79°07'21" W.; 33°10'38" N., 79°07'21" W.

and by adding paragraph (b)(40) as follows:

§ 228.12 Delegation of management authority for interim ocean dumping sites.

* * * * *

(b) * * *

(40) Georgetown Harbor, South Carolina, Dredged Material Disposal Site—Region IV.

Location—33°11'18" N., 79°07'20" W.; 33°11'18" N., 79°05'23" W.; 33°10'38" N., 79°07'24" W.; 33°10'38" N., 79°07'21" W.

Size: 1 square nautical mile.
Depth: Average from 6 to 11 meters.
Primary Use: Dredged material.
Period of Use: Continuing use.
Restriction: Disposal shall be limited to dredged material from the Georgetown Harbor, SC area.

[FR Doc. 87-18317 Filed 8-12-87; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 271

[FRL-3247-3]

Maine; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of tentative determination on application of Maine for final authorization, public hearing, and public comment period.

SUMMARY: The State of Maine has applied for final authorization under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed Maine's application and has made the tentative determination that Maine's hazardous waste program satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to

grant final authorization to the State of Maine to operate its program, subject to the limitations on its authority imposed by the Hazardous and Solid Waste Amendments of 1984 (HSWA). Maine's application for final authorization is available for public review and comment, and a public hearing will be held to solicit comments on the tentative determination if sufficient public interest is expressed.

DATES: If sufficient public interest is expressed in holding a hearing, a public hearing is scheduled for September 16, 1987.

EPA reserves the right to cancel the public hearing if sufficient public interest in holding a hearing is not communicated to EPA by telephone or in writing, by September 14, 1987. EPA will determine by September 14, 1987, whether there is sufficient interest to hold the public hearing. Maine will participate in the public hearing held by EPA on this subject if a hearing is held. All written comments on Maine's final authorization application must be received by September 14, 1987, unless a hearing is held in which case written comments must be received by September 14, 1987.

ADDRESSES: Copies of the Maine's final authorization application are available during normal business hours at the following addresses for inspection and copying by the public:

Maine Department of Environmental Protection Licensing and Enforcement Division, Ray Building, Station #17, Augusta, Maine 04333 (207) 289–2651.

U.S. EPA Headquarters, Library RM 211A, 401 M Street SW., Washington, DC 20460 (202) 382–5926.

U.S. EPA Region I, Library JFK Federal Building, Room 1500, Boston, Massachusetts 02203 (617) 565–3300.

Written comments on the application and written or verbal requests of interest in EPA's holding a public hearing on the Maine application must be communicated to Ken Chin, CT and ME Waste Management Branch, U.S. EPA, Room 1903, JFK Federal Building, Boston, Massachusetts 02203, telephone: (617) 223–5904.

For information on whether or not EPA will hold a public hearing on the Maine's application, based upon EPA's decision that sufficient public interest was conveyed, write or telephone the contact person listed below after September 14, 1987.

If sufficient public interest is expressed, EPA will hold a public hearing on Maine's application for final authorization on September 16, 1987 at the Board of Environmental Protection Hearing Room, Hospital Street, Ray Building, 1st floor, Augusta, Maine.

FOR FURTHER INFORMATION CONTACT: Ken Chin, Connecticut and Maine Waste Management Branch, U.S. EPA, Room 1903, JFK Federal Building, Boston, Massachusetts 02203, telephone: (617) 223–5904.

SUPPLEMENTARY INFORMATION:

I. Background

Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows EPA to authorize State hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program subject to the authority retained by EPA in accordance with the Hazardous and Solid Waste Amendments of 1984 (HSWA). Two types of authorization may be granted. The first type, known as "interim authorization", is a temporary authorization which is granted if EPA determines that the State program is "substantially equivalent" to the Federal program (section 3006(c), 42 U.S.C., 6926 (c)). EPA's implementing regulations at 40 CFR 271.121–271.137 established a phased approach to interim authorization:

Phase I, covering the EPA regulations in 40 CFR Parts 260 through 263 and 265 (universe of hazardous wastes, generator standards, transporter standards and standards for interim status facilities) and Phase II, covering the EPA regulations in 40 CFR Parts 124, 264, and 270 (procedures and standards for permitting hazardous waste management facilities).

Phase II, in turn, has three components. Phase IIA covers general permitting procedures and technical standards for containers, tanks, surface impoundments, and waste piles. Phase IIB covers incinerator facilities, and Phase IIC addresses landfills and land treatment facilities. By statute, all interim authorizations expired on January 31, 1986. Responsibility for the hazardous waste program returned (reverted) to EPA on that date if the State had not received final authorization.

The second type of authorization is a "final authorization" that is granted by EPA if the Agency finds that the State program: (1) Is "equivalent" to the Federal program, (2) is consistent with the Federal program and other State programs, and (3) provides for adequate enforcement (section 3006(b), 42 U.S.C. 6926(b)). States need not obtain interim authorization in order to qualify for final authorization. EPA regulations for final authorization appear at 40 CFR 271.1–271.23.

II. Maine

The State of Maine received Phase I interim authorization on March 18, 1981 and Phase II interim authorization, Components A, B and C on September 26, 1983. On March 1984, the State submitted to EPA a draft application for final authorization. EPA's comments on the draft application for final authorization were sent to the State in June 1984. EPA raised a number of issues concerning program's equivalency to the Federal program.

The State of Maine announced on January 9, 1985 that it intended to apply for final authorization and solicitied public comments on its draft application and provided opportunity for a public hearing. There were no public comments received nor was there a request for a public hearing, so a hearing was not held. On February 8, 1985 Maine submitted to EPA its official application for final authorization. On April 8 and May 23, 1985, EPA transmitted comments on the application to the State. EPA and the State worked to resolve certain programative requirements for authorization but were unable to settle all of these issues prior to a statutory deadline. The most significant issue was the State's ability to carry out timely and appropriate enforcement against violators. Therefore, because the State had not been granted Final Authorization by the deadline of January 31, 1986, responsibility for the Hazardous Waste program reverted to EPA as required by law.

During the program reversion period, from January 1986 to the present, EPA has continued to assess the capability of the State's program.

EPA has closely evaluated improvements in the capability of the Maine Department of Environmental Protection (DEP) to adminster a quality hazardous waste management program and believes the State will be capable of administering a quality RCRA program.

In particular, Maine has made great progress in its enforcement program through staff reorganization, development of a multi-year Compliance/Enforcement Strategy, better communications with Region I and general improvements in the timeliness and quality of its enforcement actions.

However, EPA has determined a need to continue improving the timeliness of State enforcement actions. Therefore, Region I and Maine DEP have negotiated a Letter of Intent that describes the specific measures the

State will take to improve its enforcement program.

EPA has reviewed Maine's official application and has tentatively determined that the State's program meets all of the requirements necessary to qualify for final authorization. Thus, EPA intends to grant final authorization to Maine to operate its program subject to the limitations on its authority imposed by HSWA. Copies of Maine's application are available for inspection and copying at the location indicated in the "ADDRESSES" section of this notice.

EPA will consider all public comments on the tentative determination. Issues raised by those comments may be the basis for a decision to deny final authorization to Maine. EPA expects to make a final decision on whether or not to approve Maine's program by November 12, 1987, and will give notice of it in the **Federal Register**.

The notice will respond to all major comments received during the public comment period.

It is possible that the schedule for EPA's final decision could be changed if significant amendments are made to Maine's application in response to public comments. This is because 40 CFR 271.5(c) provides that if the State's application materially changes during EPA's review period, the statutory review period begins again upon receipt of the revised submission. The State and EPA may also extend the review period by agreement (see 40 CFR 271.5(d)).

III. Effect of HSWA on Maine's Authorization

Prior to the Hazardous and Solid Waste Amendments amending RCRA, a State with Final Authorization would have administered its hazardous waste program entirely in lieu of EPA. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under the amended section 3006 (g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by HSWA take effect in nonauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of full or partial permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA applies in authorized States.

As a result of the HSWA, there will be a dual State/Federal regulatory program in Maine if final RCRA authorization is granted. To the extent the authorized State program is unaffected by the HSWA, the State program would operate in lieu of the Federal program. To the extent HSWA-related requirements are in effect, EPA will administer and enforce those portions of HSWA in Maine until the State receives authorization to do so. Among other things this will entail the issuance of Federal RCRA permits for those areas in which the State is not yet authorized.

Once the State is authorized to implement a HSWA requirement or prohibition, the State program in that area will operate in lieu of the Federal provision. Until that time the State may assist EPA's implementation of HSWA under a Cooperative Agreement.

Today's tentative determination does not include authorization of Maine's program for any requirement implementing HSWA. Any State requirement that is more stringent than a Federal HSWA provision will also remain in effect; thus, regulated handlers must comply with any more stringent State requirements.

EPA has published in a **Federal Register** notice that explains in detail the HSWA and its effect on authorized States. That notice was published at 50 FR 28702–28755, July 15, 1985.

Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. The authorization suspends the applicability of certain Federal regulations in favor of the State program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Executive Order 12291

The Office of Management and Budget (OMB) has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 271

Administrative practice and procedures, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Date: July 13, 1987.

Paul G. Keough,

Acting Regional Administrator.

[FR Doc. 87–18484 Filed 8–12–87; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

45 CFR Parts 16 and 402

State Legalization Impact Assistance Grants (SLIAG)

AGENCY: Family Support Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This rule proposes to implement section 204 of Pub. L. 99–603, the Immigration Reform and Control Act (IRCA) of 1986. Section 204 of the Act establishes State Legalization Impact Assistance Grants (SLIAG) which are available to States. These grants may be used for reimbursement of or payments for the costs incurred by State and local governments in providing public assistance, public health assistance, and educational services to eligible legalized aliens as defined in the Act and this regulation.

DATES: Comments must be submitted on or before September 14, 1987.

ADDRESS: Please address comments to: IRCA Implementation Task Force, Family Support Administration, 330 Independence Avenue, SW., Room 5627, Washington, DC 20201, Telephone: 202–245–0562

Two weeks after the close of the comment period, comments and letters will be available for public inspection in Room 1229, 330 C Street, SW., Washington, DC 20201, Monday through Friday 9:00 a.m. to 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Norman L. Thompson, Chairperson, IRCA Implementation Task Force, Family Support Administration, 330 Independence Avenue, SW., Room 5627, Washington, DC 20201, Telephone: 202–245–0562.

SUPPLEMENTARY INFORMATION:

Section 204 of the Immigration Reform and Control Act of 1986 (Pub. L. 99–603), enacted on November 6, 1986, establishes State Legalization Impact

Assistance Grants (SLIAG) for States for fiscal year 1988 and for each of the three succeeding fiscal years. The purpose of SLIAG is to alleviate the financial impact on State and local governments that may result from the adjustment of immigration status under the Act of certain groups of aliens residing in the States, the District of Columbia, Puerto Rico, the Virgin Islands and Guam.

The legislative history of the Act indicates that Congress intended SLIAG funds to be used only for those additional State costs resulting from the passage of the Act, not for every cost related to meeting the needs of this eligible alien population. The legislative history also indicates that Congress did not expect the SLIAG appropriation to reimburse 100 percent of these additional costs.

SLIAG is not a new program in the usual sense. Rather, it is primarily a mechanism for providing funds for on-going State and local activities. SLIAG funds may be applied by States with approved applications to certain costs resulting from the legalization program that are associated with providing public assistance, public health assistance, and educational services to eligible legalized aliens. (These terms, which are defined by the Act and this regulation, are discussed below.)

In proposing this regulation, we have attempted to avoid as much as possible the need for State and local governments to establish new administrative mechanisms for this four-year funding source. We desire to implement SLIAG in a simple, straightforward manner providing for State flexibility while at the same time fulfilling the statutory requirements. We have consulted with representatives from State and local governments and the Comptroller General in developing this proposed regulation and will continue such consultations in developing the final regulation and in implementing the program.

Subpart A—Introduction

Section 201 of the Act, which adds new section 245A to the Immigration and Nationality Act (INA), creates a program of legalization under which the status of certain aliens who have resided unlawfully in the United States since prior to January 1, 1982, may be adjusted to that of lawful temporary resident, and eventually to that of lawful permanent resident. New INA section 245A(h) provides that for five years from the date of adjustment to lawful temporary resident status, an alien is barred from participation in: (1) Need-based Federal programs of financial assistance to be identified by the Attorney General by regulation, including Aid to Families with Dependent Children (AFDC); (2) Medicaid (with exceptions noted below); and, (3) Food Stamps. Aged, blind or disabled individuals and certain Cuban-Haitian entrants are excepted from the bar to eligibility (although these individuals must still meet the eligibility requirements of the various programs to which they might apply). Also, the law affords limited Medicaid benefits to otherwise eligible aliens needing emergency services or services for pregnant women and full Medicaid benefits to children under 18. Finally, section 201 of the Act sepcifies certain programs, including Supplemental Security Income (SSI), which the Attorney General may not designate as "programs of financial assistance," i.e., programs from which aliens legalized under this section cannot be barred by virtue of their immigration status.

Section 302 of the Act adds new section 210 to the INA to provide for granting lawful temporary resident status and eventually lawful permanent resident status, to certain aliens who performed seasonal agricultural work in the United States during a specified period of time ("Special Agricultural Workers," or "SAWS"). Aliens lawfully admitted for temporary residence under this section are to be regarded as aliens lawfully admitted for permanent residence for purposes of laws other than immigration, and therefore will be eligible to participate in many Federal programs. The are, however, barred from receiving AFDC for five years from the date they are granted temporary resident status. Those barred from AFDC by this section, but who would otherwise be eligible, will be provided access to the Medicaid program within the same limits as apply to lawful temporary residents under section 245A of the INA.

Section 303 of the Act adds new section 210A to the INA to provide for the admission as lawful temporary residents of additional aliens to the United States to meet a shortage of agricultural workers, beginning in fiscal year 1990 ("Replenishment Agricultural Workers," or "RAWS"). Aliens granted lawful temporary resident status under this section generally will be barred from participation in need-based Federal assistance programs, other than Food Stamps, for five years from the date they obtain temporary resident status, except that the bar does not apply to aliens who are aged, blind, or disabled, and the same exceptions which permit access to Medicaid under section 245A(h) of the INA are applicable to this group of aliens. Notwithstanding the aforementioned bar to program participation, aliens lawfully admitted for temporary residence under this section are to be regarded as aliens lawfully admitted for permanent residence for purposes of laws other than immigration.

The Department will issue separate guidelines explaining these eligibility provisions as they affect individual programs within its jurisdiction.

Section 204 of the Act appropriates funds for each of the fiscal years 1988 through 1991 for State Legalization Impact Assistance Grants to reimburse State and local governments for part of the costs of programs of public assistance, programs of public health assistance, and educational services provided to "eligible legalized aliens." The term "eligible legalized alien," as defined in sections 204(j) and 303(c) of the Act, means an alien who has been granted lawful temporary resident status under section 245A, 210, or 210A of the INA, but only until the end of the five year period beginning on the effective date of such adjustment. States may use SLIAG funds in providing specified types of assistance and services to such aliens under section 204(c)(1) of the Act (see "Use of Funds", below).

The amount of SLIAG funds available to the States in each year is, generally stated, $1 billion minus an amount termed the "offset". The offset is defined in section 204(a) of the Act as the total of estimated Federal expenditures for programs of financial assistance, for Food Stamps, and for Medicaid for which aliens legalized under new section 245A of the INA are eligible because of an exception to the general provisions of 245A(h) making them ineligible for such benefits. Federal expenditures under the SSI program and under the other programs listed at section 245A(h)(4) are not included in the offset. In addition, the Department interprets section 210A(d) of the INA to provide that Federal expenditures for programs of financial assistance and Medicaid to eligible aliens legalized under section 210A of the INA, pertaining to RAWs, are also to be included in the offset. However, expenditures for Federal programs providing assistance and services to SAWs are not included in the offset amount.

For fiscal year 1988, the amount of the offset is set at $70 million by the Act. Federal costs in excess of this amount for fiscal year 1988 must be recovered by adding them to the estimated offset

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amount applicable to fiscal year 1989. Before allotment to the States, the appropriation is further reduced by amounts reserved for the Federal administrative costs of carrying out section 204. The Department estimates that approximately $928 million will be available for grants to States in FY 1988 and $843 million in FY 1989.

Subpart B—Use of Funds

Allowable Use of Funds

General

The expenditure of SLIAG funds must be associated with providing specific types of assistance and services to eligible legalized aliens. The Act allows States to use SLIAG funds to reimburse the costs of providing public assistance and public health assistance and to make payments to State educational agencies for certain supplemental educational services provided to assist eligible legalized aliens granted temporary resident status under sections 245A, 210, or 210A of the INA ("legalization program.")

In addition, section 204(c) of the Act allows States to use SLIAG funds to reimburse the costs of public health assistance provided to aliens who are *applying* in a timely manner for adjustment of status under section 245A, as well as costs associated with aliens granted status adjustment under section 245A. For this purpose, an alien is considered to be applying for adjustment to lawful temporary resident status if he/she has obtained the medical examination required by INS as a precondition to application for status adjustment or has completed an application for adjustment at an INS facility or that of a qualified designated entity authorized by INS to receive applications. We believe that SLIAG funds may *not* be used to provide public health assistance to those applying for adjustment under section 210 (SAWs) or 210A (RAWs).

The Act specifies the types of assistance for which SLIAG funds may be used: Public assistance, public health assistance, or educational services. Section 204(j) of the Act requires that public assistance and public health assistance be generally available to needy individuals residing in the State and receive funding from units of State or local government. However, unlike public assistance and public health assistance, educational services for which SLIAG funds are used do not have to be generally available to individuals residing in the State.

In consulting with State and local officials on this proposed regulation, several individuals asked if using SLIAG funds to assist aliens to apply for status adjustment (e.g., pay their application fees) or to provide assistance to entites which assist aliens in applying for status adjustment under the Act (qualified designated entities) would be allowed. We see no basis in the Act which would permit such a use. The Act restricts the use of SLIAG funds to providing public assistance, public health assistance, and educational services, as defined by the Act and this regulation, to eligible legalized aliens. Providing "assistance" to an alien applying for status adjustment or to qualified designated entities would not generally fall under any of these three permissible uses of SLIAG funds. Further, with the exception of educational services, SLIAG funds may be used only for programs or activities which are generally available to the citizens of a State. The use of funds to assist aliens applying under the Act would be inconsistent with this condition. Finally, with the exception of public health assistance, SLIAG funds are available only with respect to the costs of aliens who *have received* adjusted status under the Act. By definition, assistance provided to aliens applying for status adjustment (except for public health assistance) is not an allowable use of SLIAG funds.

Public Assistance

Section 204(j) of the Act provides that the term "programs of public assistance" means programs within a State which: Provide cash, medical, or other assistance (as defined by the Secretary) designed to meet the basic subsistence or health needs of individuals; are generally available to needy individuals; and receive funding from units of State or local government. We propose to define "other assistance" to include two basic categories of assistance. First, it includes assistance, other than cash or medical, that meets the criteria of public assistance described above, and is otherwise designed to meet basic subsistence needs. Such assistance might include payment of a household's energy bill, housing assistance, etc. However, "other assistance" may not include assistance under Federal programs of financial assistance as such programs are identified by the Attorney General under section 245A(h)(1) of the INA. Second, it includes assistance and services that are provided as a condition to an individual's participation in a program providing cash, medical, or other assistance. Such assistance might include mandatory employment services or work programs required as part of a general assistance program.

Public Health Assistance

Section 204(j) of the Act provides that the term "programs of public health assistance" means programs which receive funding from units of State or local government, are generally available to needy individuals residing within the State, and provide public health services. An illustrative list of what may be included in public health services is included in section 204(j)(3) of the Act (e.g., treatment for tuberculosis) and in the proposed definition of public health assistance in this Subpart.

We realize that some aliens (e.g., those aliens having positive tests for communicable diseases even through they have been treated in the past) will be referred by INS-designated Civil Surgeons to public health departments for health follow-up and medical clearance reasons in addition to those who may need treatment. In such instances, the health department may have to verify that treatment has been adequate. Therefore, we believe the SLIAG funds are not limited to "treatment" per se, but may be used for public health services which meet the statutory requirements of the Act and are provided as a result of the required medical examination conducted by an INS-designated Civil Surgeon as part of the application requirements for status adjustment. (See 8 CFR Part 234 and § 245a.2(i), 52 FR 16194 and 16212, May 1, 1987, pertaining to medical examination of aliens.)

Educational Services

Section 204(c) of the Act provides that States may use SLIAG funds to make payments to State educational agencies for the purpose of assisting local educational agencies in providing educational services for eligible legalized aliens. The Act itself does not specifically define educational services. However, the Act incorporates the definitions and provisions of the Emergency Immigrant Education Act of 1984 (EIEA) (20 U.S.C. 4101) by reference. We believe the Act, and the provisions of EIEA made applicable to it, authorize the States to use SLIAG funds to assist local educational agencies in providing a broad, but not unlimited, variety of educational services to eligible legalized aliens.

First, we are proposing to allow States to use SLIAG funds to assist local education agencies in providing certain eligible legalized aliens in elementary and secondary schools with supplementary educational services, including: English language instruction,

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bilingual services, and special materials and supplies necessary to enable eligible legalized aliens to achieve a satisfactory level of performance in school; additional basic instructional services and attendant costs directly attributable to the presence of eligible legalized aliens in the school; and, essential in-service training for personnel who will be providing supplementary educational services or additional basic instructional services. In addition, SLIAG funds may be used to provide such educational services to adult eligible legalized aliens through local educational agencies and other public and private nonprofit organizations. Our proposed regulatory language very closely tracks the language of the EIEA and the Act.

Second, we are proposing to allow States to use SLIAG funds to provide English language and other programs designed to enable eligible legalized aliens to attain the citizenship skills described in section 245A(b)(1)(D)(i) of the INA. That section requires that for adjustment to permanent status under section 245A of the INA, an alien, unless exempted, must demonstrate that he/she has a (1) minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States or (2) is satisfactorily pursuing a course of study, recognized by the Attorney General, to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States.

Consistent with this requirement and section 204(c)(3)(D) of the Act, we have provided that SLIAG funds may also be used to assist States in providing services designed to enable eligible legalized aliens, regardless of age, to meet this requirement. We are not limiting the use of SLIAG funds to courses of study recognized by the Attorney General. However, we caution States that if an alien intends to meet the requirements of section 245A(b)(1)(D)(i) of the INA through enrollment in a course of study, rather than demonstrating that he/she already has a minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States), such course must be approved by the Attorney General. (See INS rules at 8 CFR 245a.3(b)(4) and (5), 52 FR 16215, May 1, 1987.)

State Matching Funds

We have provided that States may use SLIAG funds for the non-Federal share in Federal matching programs requiring a State match.

Limitations on Use of SLIAG Funds

SLIAG funds used for educational services are subject to a $500 annual cap per eligible legalized alien. Section 606(b)(1) of the EIEA, as incorporated in the Act, limits the amount of funding provided by each State to $500 per eligible legalized alien participating in educational services receiving funds. The House Committee on Education and Labor specifically stated its intention that the effect of incorporating the EIEA was to place a $500 cap on the Federal contribution for each child and adult.

Sections 602 and 607 of the EIEA, as incorporated in the Act, limit the use of SLIAG funds to eligible legalized aliens, regardless of age, who are enrolled in primary or secondary schools, who were born outside the United States, and who have attended school in this country for fewer than three full academic years. Section 204(c)(3) of the Act further allows for the provision of supplemental educational services to adults. We interpret this to allow States to provide supplementary educational services designed to ensure that an adult eligible legalized alien who is enrolled in a formal course of instruction, not restricted to elementary or secondary education, may attain a satisfactory level of performance. Such services may be provided through local educational agencies and other public and private nonprofit organizations. We do not interpret this section as imposing three-year enrollment limitation on adult supplementary educational services.

Section 204(f) of the Act provides that payment under SLIAG shall not be made for costs to the extent those costs are otherwise reimbursed or paid for under other Federal programs. In other words, States may not use SLIAG funds for costs associated with public assistance, public health assistance, or educational services to the extent such costs are already being reimbursed or paid with Federal funds. Thus, the amount of SLIAG fund a State educational agency may use to provide educational services to eligible legalized aliens is reduced by the amount of Federal funding otherwise available to provide such services to those aliens. We are working with the Department of Education to develop a list of programs for which Federal funds must be included in calculating the $500 cap.

We propose to prohibit the use of SLIAG funds for reimbursing costs associated with the medical examinations required of aliens who apply for adjustment to lawful temporary resident status. Section 245(d)(2)(C) of the INA states that an applicant must undergo a medical examination ". . . at the alien's expense."

Legislative history indicates clear Congressional intent that the fee for the medical examination be paid by the applicant: "This medical exam offers an ideal opportunity, at no cost to the Federal government, to achieve some basic health objectives." H.Rep.No. 682, Part 4, 99th Cong., 2d Sess. 10 (1986). In this regard, we are interpreting this provision consistent with INS regulations published at 8 CFR 245a.2(i) (52 FR 16212, May 1, 1987), which state that the medical exam must be "*. . .* at no expense to the government."

Use of SLIAG Funds for Costs Incurred Prior to October 1, 1987

Section 204(a)(1) of the Act appropriates funds for SLIAG for fiscal year 1988 and for each of the three succeeding fiscal years. We interpret the Act as providing funds to meet costs incurred by State and local governments beginning in fiscal year 1988, notwithstanding the fact that the INS began taking applications for legalization in FY 1987. However, we believe that two exceptions to the general rule that SLIAG funds may be used only for costs incurred in FY 1988 and succeeding fiscal years are warranted.

First, we propose to allow States to use SLIAG funds to reimburse fiscal year 1987 costs closely associated with the implementation of the SLIAG program, i.e., administrative start-up costs. We believe that it was Congress' intent that State procedures and fund accounting mechanisms be in place early in FY 1988 to receive SLIAG funds. Clearly, to implement this, States will incur planning and administrative costs in FY 1987.

Second, we propose to allow States to use SLIAG funds to reimburse otherwise allowable costs incurred in fiscal year 1987 for providing public health assistance (1) to individuals whose status has been adjusted under section 245A or 210 of the INA and (2) to individuals applying to become eligible legalized aliens under section 245A, but not under section 210, of the INA. Section 204(c) of the Act extends reimbursement of public health costs to aliens applying for status adjustment under section 245A of the INA. Recognizing that aliens would be applying for status adjustment beginning on May 5, 1987, we believe the Act contemplates the reimbursement of State and local costs associated with providing public health assistance to those applying, and to those whose status is subsequently adjusted, under

section 245A. Since the Act limits the extension of public health assistance to those who are adjusting under section 245A, we do not believe costs associated with those applying under section 210 are permissible uses of SLIAG funds.

Subpart C—Administration of Grants

General Provisions

HHS regulations governing the administration of grants apply to all grant awards issued by the Department, with the specific exception of those statutorily designated as block grants. We are proposing, therefore, to apply the provisions of 45 CFR Part 74 (Administration of Grants) to the funds made available under SLIAG. We believe that use of Part 74 for SLIAG is warranted and will not significantly affect the procedures of State and local governments in implementing SLIAG.

Fiscal Control

States must have fund accounting systems in place which allow SLIAG funds to be traced from drawdown to allowable expenditures under this Part. We are not requiring that a State or recipient be able to trace SLIAG funds from drawdown to an expenditure to or on behalf of individual, identifiable eligible legalized aliens. Rather, we are proposing to allow States simply to track SLIAG funds from drawdown to disbursement to a program or activity in which allowable SLIAG-related costs in a fiscal year exceed or equal the amount of SLIAG funds provided to the program or activity in that fiscal year.

For costs associated with public assistance, States would be permitted to demonstrate the amount of their SLIAG-related costs: By determining the amount of funds actually provided to specifically identifiable eligible legalized aliens (as is currently done for refugees under the cash and medical assistance portion of the Refugee Resettlement Program); or by determining the amount associated with eligible legalized alien participation through the use of a statistically valid sample of public assistance recipients.

For costs associated with public health assistance, States would be permitted to demonstrate the amount of their allowable SLIAG-related costs by either of the above two methods or by multiplying the ratio of the number of eligible legalized aliens in the State to the State's total population by the public health activities that are reimbursable under SLIAG. For example, if 5 percent of the State's population were eligible legalized aliens, we would accept that 5 percent of the costs of public helath assistance were associated with eligible legalized aliens and therefore claimable under SLIAG. States may also demonstrate SLIAG-related costs by use of other reliable methods of estimation, subject to subsequent Federal review. We recommend that States consult with the Department before implementing an alternative method.

For costs associated with education, the State must be able to demonstrate that services provided are predominantly associated with eligible legalized aliens.

Eligible legalized aliens receiving public assistance benefits may be characterized as public charges by INS which may affect their eligibility for status adjustment. Believing eligible legalized aliens will be hesitant to apply for public assistance benefits, we have not proposed the use of the State's percent of eligible legalized aliens as a method of demonstarting allowable SLIAG costs.

SLIAG and Program Administrative Costs

The Act clearly anticipates that States may use SLIAG funds for general and program administrative costs. SLIAG administrative costs include: Planning (including consulting with local public officials); preparing the application; auditing SLIAG funds; and allocating, tracking, monitoring and reporting funds among programs and jurisdictions. Neither the Act nor our proposed regulation imposes a limit on this use. However, we expect that State and local governments will not need to establish substantial new bureaucratic mechanisms to administer this temporary funding source. We intend to assess carefully State and local SLIAG administrative expenditures as part of our program reviews.

In addition to SLIAG administrative costs, State and local governments may use SLIAG funds for administrative costs associated with those programs and activities which receive SLIAG funds under the State's approved application. In calculating the amount of administrative costs for a particular program or activity, we will accept the use of the percentage of participation by eligible legalized aliens in the program (or the percentage of program costs incurred on behalf of eligible legalized aliens) multiplied by the program's total administrative costs (less any amount related to general SLIAG administrative costs, above). For example, if 10 percent of a program's benefits were associated with eligible legalized aliens, the State may claim 10 percent of the program's administrative costs (less general SLIAG administrative costs) under SLIAG.

Desiring to maximize State flexibility, we have provided that States may use alternative methods of determining program administrative costs chargeable to SLIAG. However, we will carefully assess part of our program reviews any administrative costs determined by an alternative method.

Repayment

Section 204(e)(2)(B) of the Act requires that each State repay to the United States any amounts found not to have been expended in accordance with the provisons of section 204. Expenditures not subject to SLIAG reimbursement include such things as: Expenditures on behalf of individuals who do not meet the criteria for an eligible legalized alien or whose status has been terminated by the INS: administrative costs which do not meet the applicable requirements governing the State or local program; and any expenditure which is not in accordance with the provisions of section 204 of the Act, this regulation or the State's approved application.

The allowability of SLIAG expenditures would be subject to the determination of the ultimate allowability of expenditures under the program in question. For example, suppose that a State calculated that it had $10,000 in allowable SLIAG-related costs in its State-funded general assistance (GA) program and reimbursed those costs with $10,000 in SLIAG funds. Subsequently, an audit of its GA program reveals that $2,000 of the $10,000 costs were unallowable. Thus, $2,000 of SLIAG funds are associated with unallowable costs and are subject to repayment to the Federal government.

Appeals

All appeals will be handled by the Department's Grant Appeals Board and will be governed by the rules set forth at 45 CFR Part 16.

Time Period for Obligation and Expenditures of Grant Funds

Funds allotted to a State for a particular fiscal year and remaining unobligated by the State at the close of the fiscal year shall remain available to the State in subsequent years subject to two conditions. First, if a State carries unobligated funds forward, it must inform the Secretary as part of the report required under Subpart F. Second, the Act provides that SLIAG funds may not be used after September 30, 1994. We interpret this to mean SLIAG funds must be obligated by this date.

We are proposing that recipients must liquidate obligations within 12 months of the end of the fiscal year in which the

obligation is made. However, we recognize that situtions may exist where this is not possible (e.g., obligated funds are the subject of litigation and may not be expended). In such a case, the State should notify the Department of the circumstances involved and request that the time period for liquidation be extended.

Subpart D—State Allocations

Determination of Allocations

General Requirements

Section 204(b) of the Act requires the Secretary to allot SLIAG funds among States with approved applications according to a formula prescribed by the Secretary in regulation which takes into account factors listed below.

(A) The number of eligible legalized aliens residing in the State in that fiscal year;

(B) The ratio of the number of eligible legalized aliens in the State (1) to the total number of such aliens in all the States in that fiscal year and (2) to the total number of residents of that State;

(C) The amount of expenditures the State is likely to incur in that fiscal year in providing assistance to eligible legalized aliens for which reimbursement or payment may be made under SLIAG (referred to as SLIAG-related cost estimates);

(D) The ratio of the amount of such expenditures in the State to the total of all such expenditures by all States;

(E) An adjustment for the difference in previous years between the State's actual expenditures (described in subparagraph (C)) incurred and the allotment provided the State under SLIAG for those years; and,

(F) Such other factors as the Secretary deems appropriate to provide for an equitable distribution of SLIAG funds.

The ratio contained in (B)(1), by necessity, includes the absolute number of eligible legalized aliens contained in (A), and the ratio contained in (D), by necessity, includes the absolute State expenditures, factor (C). The Department is proposing no additional factors under factor (F) at this time. Concluding that factor (B)(1) incorporates (A) and factor (D) incorporates (C), we have constructed the allocation formula using the ratio factors in (B)(1) and (D). We believe that using these ratio factors satisfies the statutory requirements that the formula take into account the absolute number of eligible legalized aliens in each State and the absolute level of estimated State expenditures as well as the indicated ratios. In addition to these two factors, the proposed allocation formula will take into account the ratio of eligible legalized aliens in a State to the State's population, and for fiscal years 1990 and 1991, the difference between a State's actual SLIAG-related costs in previous years and its allotments in those years. Descriptions of these factors and data sources follow.

Data Sources

Eligible Legalized Aliens

The Act permits the Secretary to estimate the number of eligible legalized aliens on the basis of such data as he deems appropriate. When calculating SLIAG allocations, we propose to use the best data available from INS in determining the ratio of the number of eligible legalized aliens in a State to the total number of such aliens in all States. In general, we will use data based on the actual number of aliens participating in the legalization program if such data are available. We will update this information each time we calculate State allocations.

Estimates of SLIAG-Related Costs

The allocation formula must take into account estimates of the SLIAG-related costs that State and local governments are likely to incur. For the initial FY 1988 allocation, we propose to use estimates prepared by the Department of the relative costs each State is likely to incur in providing public assistance, public health assistance, and educational services to eligible legalized aliens. We propose to make such estimates based on data published by the Bureau of the Census in "Governmental Finances, 1984–85" (Publication GF85 No. 5) or more recent data when it becomes available. This document provides data on State and local government expenditures for education, welfare and health-related activities. Estimates for public assistance and public health assistance costs or territories eligible for SLIAG funds are based on the 1986 Statistical Abstract for the United States and data supplied by the Public Health Foundation. (We regard the territorial cost estimates in particular to be preliminary, and intend to continue to refine these estimates. We welcome suggestions for improving these estimates.) By converting these expenditures into per capita amounts and weighting these amounts by the number of eligible legalized aliens in each State, we propose to estimate the amounts States can be expected to expend in providing SLIAG-allowable public assistance and public health services and benefits to eligible legalized aliens.

In order to estimate SLIAG-related costs for public assistance and public health assistance, we propose to convert these expenditures into per capita amounts and to weight those per capita amounts by the number of eligible legalized aliens in each State. For purposes of providing the illustrative allocations shown in Appendix A to this proposed rule, we have estimated total SLIAG-related costs by adding to the public assistance and public health estimates described in the previous paragraph an amount equal to $500 per eligible legalized alien to account for SLIAG-related education costs—the maximum amount that may be paid for education costs under SLIAG.

We have not yet been able to devise a satisfactory method of estimating the amount of SLIAG-related education costs State and local governments will incur as a result of the passage of the Act. We expect that actual SLIAG-related education costs will be substantially less than $500 times the number of eligible legalized aliens in a State—the amount we have included in the calculation of tentative initial FY 1988 allocations shown in Appendix A. Costs incurred by State and local governments for the supplementary educational services allowed by the Act will be largely discretionary and will be influenced by the amount of SLIAG funds allocated to a State. In order to be eligible for legalization, aliens (except those applying for special agricultural worker status) must have been in the United States in excess of five years. Many aliens will speak English when they enter the country or will have acquired English when they enter the country or will have acquired English language skills during the time they were here. Special agricultural workers are exempt from the English proficiency requirements for adjustment to permanent resident status, reducing the need for expenditures for that purpose. In addition, the Act imposes several limitations on the use of SLIAG funds for education, including a requirement that elementary and secondary school students for whom SLIAG funds are used must have been born outside the United States and must have been enrolled in school in any State for fewer than three full academic years. Thus, most children of eligible legalized aliens will not be countable in terms of educational services provided under SLIAG. Further, SLIAG funds are available only for supplementary educational services designed to ensure that an eligible legalized alien may obtain a satisfactory level of performance in school or other formal

course of instruction. Other than for costs associated with teaching the English-language and citizenship skills required for adjustment to permanent resident status, SLIAG funds are not available for the costs of basic instruction.

We intend to develop better estimates of SLIAG-related education costs and to incorporate those estimates in the actual allocation of SLIAG funds. We encourage commenters to suggest appropriate methodologies for estimating SLIAG-related education costs.

We propose to use Federal data for computing initial FY 1988 allocations because we expect that little data will be available for States to estimate SLIAG-related costs that State and local governments will incur as a result of the passage of the Act. At the time a State will have to submit its application containing such esimates for FY 1988, it will not know the number of eligible legalized aliens residing in the State, their socio-economic characteristics, or their potential use of public assistance programs. (Eligible legalized aliens who participate in public cash assistance programs may adversely affect their eligibility for status adjustment under the Act and INS regulations.) Therefore, we have proposed to use cost estimates based on Federal data, as described above, which employ a consistent estimation methodology across States. While we propose to use Federal estimates of SLIAG-related costs for purposes of determining initial FY 1988 allocations, States will nonetheless have to submit estimates of the SLIAG-related costs which the State and each locality is likely to incur in FY 1988 as part of their FY 1988 applications. This is a statutory requirement. [See section 204(d)(2)(B) of the Act.]

We will provide States an opportunity to submit voluntary updated estimates of SLIAG-related costs for use in calculating final FY 1988 allocations. These voluntary submissions would be due by June 1, 1988, and would contain documented, revised estimates of SLIAG-related costs which the State incurred in FY 1987 and expects to incur in FY 1988. By the time these voluntary reports would be due, we expect that States will have some actual experience from which to project participation rates, the types of services and benefits that may be received by ELAs, and the unit costs of providing those benefits and services. Thus, States will have a considerably better basis for estimating SLIAG-related costs. The information contained in these reports would be used by the Department in calculating final FY 1988 allocations if it met the criteria specified in § 402.52 regarding the content and review of these voluntary submissions. In addition to asking for formal comment through this proposed rulemaking, we intend to consult with States and other entities on an on-going basis concerning the development of reliable and consistent cost data, as discussed below.

Beginning in FY 1989, we propose to base SLIAG-related costs on estimates of such costs provided by all States as part of their annual applications. We have not burdened States with definitions, methodologies, or procedures for estimating such costs. However, we are aware of some of the difficulty surrounding the development of State estimates of SLIAG-related costs, e.g., developing consistency of definitions and methodology among States.

We believe that it is in the interest of States as well as of the Department that we continue to consult with States to address and resolve problems associated with the development of this data and to promote accurate, comparable estimates of SLIAG-related costs. Section 204(i) of the Act requires that the Secretary consult with representatives of State and local government in developing regulations and guidelines for implementing SLIAG. We have held extensive consultations with State and local officials and their representatives. We intend to continue to do this throughout the implementation of the program. These on-going consultations will focus on resolving policy issues and developing such common assumptions and methodologies for estimating SLIAG-related costs as are possible without imposing additional reporting requirements on States.

Ratio of Eligible Legalized Aliens to State Population

The Act requires that the allocation formula take into account the ratio of the number of eligible legalized aliens in a State to the State's population. Estimates on the number of eligible legalized aliens by State will be based on data from INS as described above. Estimates of State population will be based on current estimates from the Department of Commerce.

In applying this factor, we would consider only States that have higher than average concentrations of eligible legalized aliens, as measured by the ratio of eligible legalized aliens to State population. (Based on the preliminary data shown in Appendix A, 13 States have higher than average concentrations of eligible legalized aliens.) We would distribute funds under this factor in proportion to a State's share of "excess" eligible legalized aliens. We would compute "excess" eligible legalized aliens by comparing the number of eligible legalized aliens in the State to the number that would have been in the State if the Concentration of eligible legalized aliens in that State were equal to the average for all States.

Difference Between Actual SLIAG-related Costs and Allotments

The formula for FY 1990 and FY 1991 also would consider the difference between States' actual SLIAG-related costs, as reported pursuant to § 402.51 of this regulation, and their allotments for fiscal years 1988 and 1989, respectively.

Allocation Formula

In devising an allocation formula, we sought a formula that provided a fair distribution of grant funds among States and that considered all the factors required by the Act. We also sought a formula that relied as much as possible on objective and verifiable data and that recognized that decisions made by one State would affect funding levels in other States.

The primary purpose of SLIAG is to offset certain costs State and local governments incur as a result of the Act. However, States can affect cost in setting program benefit levels and eligibility criteria, by electing to exclude eligible legalized aliens from certain programs (pursuant to section 245A of the INA), and by decisions on the amount of SLIAG funds to expend on education (pursuant to section 204(c) of the Act). Individual State decisions on these issues would influence the amount of funds the State received, as well as the amount of funds received by other States.

In addition, the Act lists the number of eligible legalized aliens and the ratio of such aliens to the State's population as factors to be taken into account separately from SLIAG-related costs. By including the ratio of the number of eligible legalized aliens to the State's population as a factor in the Act, we assume that Congress believed that States with higher ratio would have relatively higher SLIAG-related costs. However, we have been unable to find any empirical evidence to support giving additional funds to States based on this ratio. In addition, to the extent that States with higher ratios had relatively higher costs, those costs would be reflected in the SLIAG-related costs included in the proposed formula. However, the Act requires that the formula take this factor into account.

Because the factor appears to us to be redundant, we have given it minimal weight—1 percent.

We recognize that the number of eligible legalized aliens, based on data provided by INS, would be the most objective and reliable data available of all the factors listed in the Act. However, Allocations, determined under a formula that gave predominant weight to this factor would result in an essentially per capita distribution of funds and would not reflect differences in cost level among States.

Consequently, we are proposing a formula that gives relatively equal weight to costs and to the eligible legalized alien population with only minimal weight to the ratio of eligible legalized aliens to State population. We believe the proposed formula is responsive to differences in costs likely to be incurred by States, yet provides a base level of funding to each State independent of cost-related decisions made by other States.

In addition, our proposed formula recognizes that the distribution of eligible legalized aliens may change over time as the legalization program progresses. (Applications for legalization under section 245A will be taken through May 4, 1988, and those under section 210 through November 30, 1988. Final determinations of the number of aliens who qualify for status adjustment will take some time after the close of the application period. In addition, we expect the number of eligible legalized aliens who remain in legal status to change as some lawful temporary residents fail to qualify for adjustment to permanent resident status.) We believe that the distribution of eligible legalized aliens among States would be subject to the largest variation during FY 1988. Therefore, we have proposed a two-step allocation process in that year, as described below.

The allocation formula we are proposing has four slightly different variations, reflecting changes in the availability of reliable data, as discussed below. Each variation considers all the factors required by the Act. The proposed allocation formula takes the following form:

—50 percent based on factors related to a State's eligible legalized alien population, with 49 percent based upon the number of eligible legalized aliens in a State relative to the number of such aliens in all States, and 1 percent to States which have higher than average ratios of eligible legalized aliens to total population, based on the proportional number of such aliens relative to the average for all States.

—50 percent based on the ratio of the SLIAG-related costs a State is likely to incure to the total of such costs for all States. In FYs 1990 and 1991, up to 5 percent of the funds will be distributed based on the difference between actual SLIAG-related costs in previous fiscal years and States allotments in those fiscal years.

Described below, by fiscal year, are the four variations of the allocation formula: Initial FY 1988; Final FY 1988; FY 1989; and, FY 1990 and FY 1991.

FY 1988 Initial Allocations

In FY 1988, we propose to make initial allotments at the beginning of the fiscal year using 50 percent of the funds available for grants to States—approximately $464 million. Initial FY 1988 allocations will be based in part on Federal estimates of the relative SLIAG-related costs States are likely to incur, as discussed above in the section on data sources. We will allot to States the full amount of their initial allocation during the first three quarters of FY 1988. We expect that initial allotments will be made available in equal quarterly installments.

Illustrative initial allocations for FY 1988 are shown in Appendix A. These illustrative allocations are calculated using estimates of the number of eligible legalized aliens provided to the Department by INS. We plan to use actual counts of aliens participating in the legalization program when we calculate preliminary FY 1988 allocations this fall if such data are available. Also, the number of eligible legalized aliens is a factor in the Federal estimates of SLIAG-related costs. These estimates will also be updated when we compute actual initial FY 1988 allocations. Thus, initial FY 1988 allocation amounts will likely differ from those shown in Appendix A. The illustrative allocations in Appendix A are based on the total amount of SLIAG funds that we will make available for grants to States for the initial FY 1988 allocations, i.e., $464 million. This is one-half of the total amount we estimate will be available for grants to States in FY 1988.

Final FY 1988 Allocations

Final allocations for FY 1988 would be determined at the beginning of the fourth quarter in the same manner described above, with two exceptions. These final allocations would be determined using updated figures available from INS on the number of aliens participating in the legalization program in each State. They will also be based on updated estimates of SLIAG-related costs, as provided to the Department in voluntary reports to be submitted by States by June 1, 1988 (pursuant to § 402.52 of this proposed regulation). In the event that a State does not submit the voluntary report on SLIAG-related costs, we will use Federal estimates of such costs. These estimates will be derived in the same manner as the Federal estimates used to determine initial FY 1988 allocations. However, we will update these Federal estimates to reflect more current data on the number of eligible legalized aliens in each State.

We propose to calculate States' final FY 1988 allocations based on 100 percent of the funds available for grants to States—approximately $928 million. The Secretary would make a final allotment to a State if the State's initial allotment (i.e., its allotment for the first three quarters of FY 1988) were less than its final allocation. To do this, we propose to compute the difference between a State's initial allotment (for the first three quarters of the fiscal year) and its final allocation determined by the formula described above. We would sum these differences for those States whose final allocations exceeded their initial allotments. Each such State would receive funds from the remaining 50 percent (the amount reserved for allotment in the fourth quarter) on the basis of the State's proportional share of the total difference between initial allotments and final allocations. However, no State's total allotment for FY 1988 would be reduced from its initial allotment.

The adjustment described above would bring each State closer to its final allocation, but would not be intended necessarily to bring all States up to the full level of their final allocation. In the event that some portion of the final allocation amount of 50 percent remained after the adjustment calculation had been performed (i.e., all States had been brought to their full allocation level), the surplus funds would be distributed on the basis of the final allocation formula. If a State's allotment for the first three quarters exceeded its final allocation, it would receive no additional allotment in the fourth quarter.

FY 1989 Allocations

The allocation formula for FY 1989 is the same as the one used to determine final FY 1988 allocations, except that we will use the estimates of SLIAG-related costs included in States' applications, rather than Federal estimates.

FY 1990 and 1991 Allocations

The proposed formula for distributing funds to States for FY 1990 and FY 1991 differs only slightly from the one used for final FY 1988 and FY 1989 allocations. Beginning in FY 1990, the actual costs which States incurred in providing public assistance, public health assistance, and educational services to eligible legalized aliens will be available from States' reports, as required under § 402.51 of this regulation. In FY 1990 and FY 1991, the proposed formula adjusts for differences between States' actual SLIAG-related costs in previous years and their allotments in those years. (In FY 1990, we will adjust for differences between States' actual SLIAG-related costs incurred in FY 1988 and their allotments for that year. Similarly, in FY 1991, we will adjust for differences between FY 1989 actual costs and FY 1988 allotments.) In the event that a State failed to submit the report required by § 402.51, we would consider the State to have incurred no SLIAG-related costs for the fiscal year in question. That State would not share in the funds allocated based on the difference between actual costs and its allotment.

We propose to sum the differences between States' actual SLIAG-related costs and their allotments for all States where such costs exceeded their allotments. We would divide the difference for each such State by the total of such differences for all such States. This factor would account for up to 5 percent of the funds available for grants to States. In the event that the sum of the differences between actual SLIAG-related costs and State allotments, for States where costs exceeded allotments, was less than five percent of the funds available for grants to States, distribution of the balance would be determined by States' share of estimated SLIAG-related costs for the year for which application is being made.

Alternative Allocation Method Considered

We considered an alternative approach to allocating SLIAG funds. Under this alternative, we would have treated the four years during which SLIAG funds will be made available as a single period and would have made a "rolling adjustment" of State allocations based on the most recent cost and eligible legalized alien data.

State allocations under the alternative method would have been based on the cumulative total amount of funds made available to date, the cumulative total amount of SLIAG-related costs incurred by States to date, and the most recent data from INS on the number of eligible legalized aliens in each State. For example, the allocation made at the beginning of FY 1990 would have been based on the cumulative amount of SLIAG funds allotted in FY 1988 and FY 1989, plus the amount being made available in FY 1990. The formula would have included the cumulative total amount of SLIAG-related costs incurred by States in FY 1988 and FY 1989, plus the amount estimated to be incurred in FY 1990. (The alternative we considered would have used the same allocation formula described above, i.e., 50 percent based on population-related factors and 50 percent based on cost-related factors.)

Under the alternative method, we would have substituted more up-to-date cost data, as such data became available, for earlier estimates when we calculated cumulative SLIAG-related costs. For example, we would have used actual cost data supplied by a State pursuant to the end-of-year report required by § 402.51 of this regulation, once that report was submitted, to replace estimated cost data for prior years. Similarly, updated estimates reported to us voluntarily by States (in the same manner as the updated estimates proposed for FY 1988 in § 402.52 of this regulation) would have been substituted for the earlier estimates included in States' applications.

Under the alternative approach, we would have calculated State allocations on a more frequent basis, e.g., every six months, rather than annually. Grant awards would have been based on the difference between a State's allocation and the amount previously awarded to the State.

We did not propose the alternative because it has three drawbacks. First, computing State allocations more frequently than once a year would have reduced certainty for States because they would not have known at the beginning of the fiscal year their annual allotment. This would have made State and local governments' planning more difficult. Second, this approach would have resulted in greater reporting burden on those States that chose to provide additional data. Third, the alternative would have involved more Federal administrative effort and oversight than we believe necessary or supportable.

For these reasons, we proposed the approach described in these regulations rather than the alternative discussed above. However, we request that State and local governments and other interested parties comment specifically on this alternative method of computing SLIAG allocations.

Allotment of Excess Funds

The Act provides for the allotment of excess funds in certain circumstances. To the extent that all the funds appropriated under SLIAG for a fiscal year are not otherwise allotted to States either because all the States have not qualified for SLIAG funding or because some States have indicated that they do not intend to use, in that fiscal year or the succeeding fiscal year, the full amount of their allocations, such excess shall be allocated among the remaining States in proportion to the amount otherwise allotted to such States for the fiscal year. If a State does not intend to use the full amount of its allocation in the current or succeeding fiscal year, it should indicate in its application the amount of its allocation which it intends to use in the current or succeeding fiscal year. As indicated above, any funds which a State indicates that it does not intend to use in the current or succeeding fiscal year will be allotted among the remaining States.

Subpart E—State Applications

Application Content

The Act requires that a State submit an annual application, which must be approved by the Secretary in order for the State to be awarded SLIAG funds. A State's application consists of the information required by the Act and this regulation. The following sections describe the proposed requirements for the content of State applications.

Statement of Assurances

Section 204(d) of the Act requires that States submit, as part of their applications for SLIAG funds, a certification to three assurances. A State must certify that: (1) Funds allotted to the State under SLIAG will only be used to carry out the purposes described in subsection 204(c)(1) of the Act; (2) the State will provide a fair method (as determined by the State) for the allocation of funds among State and local agencies taking into account the number of eligible legalized aliens and the costs which the State and each locality (which we interpret to mean local government) is likely to incur in providing public assistance, public health assistance, and educational services to eligible legalized aliens; and (3) fiscal control and fund accounting procedures will be established that are adequate to meet the requirements of

subsections (e) and (f) of section 204 of the Act, relating to reports and audits, and to limitations on payments, respectively.

In addition to the three statutory assurances, we have proposed an additional assurance. We are proposing an assurance to carry out Congressional intent that SLIAG funds be used consistent with the anti-discrimination provisions set forth in section 204(h).

We encourage the State's chief executive officer or other appropriate State officials (as determined by the State) to consult with appropriate local public officials or their representatives concerning the data which the Act requires the State to submit as part of its application, namely the estimated number of eligible legalized aliens and estimated SLIAG-related costs for State and local governments. The Act provides that the method of allocating funds among State and local agencies must be "fair" in accordance with these data and other factors. Although we are not requiring such consultation as a condition of our approval of a State's application, we believe local government input into the development of these data is essential.

Certification by the Chief Executive Officer

Because the assurances required by the Act will normally involve a number of State agencies and jurisdictions, we are proposing that the certification required by the Act must be made by a State's chief executive officer or an individual authorized to do so by the chief executive officer. Such authorization must specifically include power to make all the required assurances; a delegation of authority simply to administer the program is not sufficient to enable the designee to certify to the assurances. In this regard, we have followed the procedures adopted for the HHS-administered block grant program.

Estimated Number of Eligible Legalized Aliens

As required by section 204(d)(2)(A) of the Act, States must submit, as part of their annual applications for SLIAG funds, "the number of eligible legalized aliens residing in the State." Recognizing that such data is not readily available to States, we have proposed in § 402.41(b) that States may adopt the estimate provided by the Department of the number of eligible legalized aliens in the State. The Department will make such estimates available prior to the beginning of each fiscal year. They will be based on data from the Immigration and Naturalization Service. These estimates will be included in the formula used to determine State allocations. While we have proposed to leave open the option for a State to develop and submit its own estimates of the number of eligible legalized aliens, along with supporting documentation, we expect that most States will elect to use the estimates we provide. We suggest that any questions concerning the data developed by the INS be directed to them and that States work with us and the INS to correct any problems States may see with these estimates.

SLIAG-Related Costs

Closely tracking section 204(d)(2)(B) of the Act, we have proposed at § 402.41(c) that the State's application contain detailed information on the costs which State and local governments are likely to incur in providing public assistance, public health assistance, and educational services to eligible legalized aliens. *Such costs include all costs associated with providing such assistance to eligible legalized aliens resulting from the legalization of such aliens regardless of whether those costs are actually reimbursed or paid for with funds allotted to the state under section 204 of the Act.* However, such estimates should not include costs for which Federal funds (other than SLIAG funds) are or will be available to the State or local government.

In reporting SLIAG-related costs, applications must disaggregate such costs by public assistance, public health assistance, and educational services. We are not requiring any specific breaddown by agency, program or local government. (States estimates of SLIAG-related costs for FY 1988 should include SLIAG-related costs incurred in FY 1987 pursuant to § 402.12 of this proposed regulation.)

Criteria for and Administrative Methods of Disbursing Funds

Section 204 of the Act requires that applications for SLIAG funds contain criteria for and administrative methods of disbursing funds. We have included the statutory requirement in the proposed regulation without further interpretation.

Single Point of Contact

For administrative efficiency, we have proposed that a State designate a single point of contact (SPOC) between the State and Federal Government. This SPOC may, but need not be, the administering agency. The SPOC is responsible for securing and submitting information required by the Act (e.g., the application including any necessary amendments, and the State's annual report).

Application Format

Desiring to provide States with flexibility, the Secretary is not prescribing any particular format for the application. Each State should insure that its submission satisfies the requirements of the Act and these regulations.

Application Deadline

Section 204(d) of the Act requires the Secretary to allot SLIAG funds to States with approved applications. Consequently, a State's allotment is affected by the number of States with approved applications. We have proposed the deadlines for SLIAG applications as set forth below. If a State fails to submit a timely application, it will not receive an allotment for that fiscal year.

Fiscal year	Deadline
FY 1988	Dec. 31, 1987.
FY 1989	Sept. 1, 1988.
FY 1990	Sept. 1, 1989.
FY 1991	Sept. 1, 1990.

For FY 1988, we are proposing a deadline of December 31, 1987. This allows States a reasonable amount of time after the Department's publication of final regulations to submit an application for funding. It also enables the Department to determine the number of States with approved applications early in the second quarter of the fiscal year. While States have until December 31, 1987, to submit applications for FY 1988 SLIAG funds, we plan to allocate funds and to begin issuing grant awards to States with approved applications beginning October 1, 1987.

We believe that the deadlines established for FY 1989 through FY 1991, allow States a reasonable amount of time to develop applications for funds and permit the Secretary to allocate funds at the beginning of the fiscal year to those States with approved applications.

Basis for Approval

The Department will review each State's application to ensure that it contains all of the assurances and information required by the Act and this Part. The Department's approval of State applications will be predicated on that review. Subsequent to its review, the Department will notify the State that the State's application is either approved or disapproved, together with the reasons for disapproval.

Approval of a State's application prior to the State's obligation of its own funds for allowable costs, to be subsequently reimbursed or paid for under SLIAG, is not mandated. A State may use SLIAG funds to reimburse itself for obligations incurred in that fiscal year but prior to approval of its application, as long as such obligations are consistent with the State's subsequently approved application, the Act, this regulation, and terms and conditions of the grant.

Recognizing that some States may submit unapprovable applications near the deadline for application submittal, we have provided that a State may submit changes to its application until 15 calendar days after the date of notification of disapproval or until the application deadline, whichever is later. This allows the State flexibility to submit changes to an unapprovable application even after the application deadline, while at the same time allowing the Secretary to determine the number of States with approved applications in a timely manner.

Public Availability

The Act contains no public participation or public hearing requirement related to public availability of a State's application or the manner in which it intends to expend SLIAG funds. We are not proposing to include such a requirement by regulation. However, believing public disclosure is appropriate, we encourage States to make their applications for SLIAG funds available for public inspection.

Subpart F—Recordkeeping, Reporting and Voluntary Cost Estimates

Recordkeeping

We have proposed minimal recordkeeping requirements by regulation. States must provide for the maintenance of records that are necessary to demonstrate that their expenditures meet the requirements of the Act and applicable departmental regulations, to permit the State to submit the annual report on its activities required by the Act and this Part, and to permit the State to comply with fund accounting requirements by tracing funds to allowable expenditures.

Reporting

Section 204(e)(A) of the Act requires States to submit to the Secretary annual reports containing such information as will allow the Secretary: (1) To secure an accurate description of activities funded under SLIAG, (2) to secure a complete record of the purposes for which SLIAG funds were spent, including the recipients of such funds; and (3) to determine the extent to which funds were expended consistent with the Act and this Part. In addition, section 204(e)(1)(B) of the Act requires the Secretary to report annually to Congress on activities funded under SLIAG.

We propose to require annual reports to reflect fiscal information on a particular grant or fiscal year. This requirement would include: (1) Identification of the amount obligated and the amount expended, by recipient and type of program (public assistance, public health assistance, or educational services); (2) the amount remaining unobligated which the State intends to carry forward to the succeeding fiscal year; and (3) any amount unobligated which the State does not desire to carry forward.

States must also provide a brief description of the programs or activities undertaken by each recipient which receives or expends SLIAG funds in the fiscal year. We are not seeking exhaustive descriptions of programs or activities. Rather, we are seeking descriptions for each provider of benefits or services (e.g., local government agency, State agency, local school district, private non-profit organization) that state the basic purposes of the program(s) or activity(ies), that identify the actual provider (if the recipient contracts with agents to deliver services), and the amount given to the provider, and that indicate the specific purposes for which SLIAG reimbursement or payment is being made. These descriptions must be identified by program category, i.e., public assistance, public health assistance, or educational service.

Voluntary Cost Estimate Submissions

We are also proposing to allow States to submit voluntarily updated SLIAG-related cost estimates for FYs 1987 and 1988. We will include in the calculation of final FY 1988 State allocations updated SLIAG-related cost estimates supplied by States, provided that they are submitted in accordance with this regulation.

Because SLIAG-related costs are a major determination of States SLIAG allocations, we wish to use the best available data in calculating State allocations. States' ability to estimate SLIAG-related costs accurately will increase substantially during the first year of the program. States will have a significantly better idea of the actual number of eligible legalized aliens and States will have obtained better information on the extent to which eligible legalized aliens participate in public programs and the costs associated with their participation.

These estimates are purely voluntary but must be submitted to the Department by June 1, 1988 if the data are to be included in calculating States' final FY 1988 allocations. (The actual cost reports discussed previously are mandatory.) In the absence of these voluntary updates, we will use the Federal estimates of SLIAG-related costs as used in the initial allocation for that year, updated using the best available INS data on each State's ELA population.

The proposed regulations specify that the estimates must be supported by descriptions of the programs and activities for which costs have been or will be incurred and descriptions of the methodologies assumptions employed to derive the cost estimates, e.g., number of eligible legalized aliens, participation rates, and unit costs or other measure of costs (along with a description of the method used to derive cost factors). We also propose to require that the estimates be provided in sufficient level of detail to permit us to evaluate whether the costs are consistent with statutory and regulatory provisions. Finally, any actual costs data used in the derivation of these estimates should be submitted to us, along with a description of the method(s) used to collect the actual cost data.

We are proposing at this time only general criteria for the submission of voluntary cost estimates and general specification for the criteria to be used by the Department to determine their acceptability for use in the allocation formula. We intend to continue consulting with States on the implementation of the SLIAG program, including consultation on issues related to methods that might be employed in estimating costs, appropriate submission content, and review criteria. In addition to these items, we also request that States provide in their comments any suggestions for or limitations on the kinds of information that they would be able to provide in support of this effort to ensure the reliability and comparability of the data used in the allocation formula. At the present time, we anticipate accepting States estimates that meet common-sense standards, including:

—Do current estimates appear to be consistent with past estimates, known actual costs, and changes in assumptions and data bases?

—Are revised estimates a result (all or in part) of changes in program activities?
—Do the activities included in the estimates comply with applicable program rules (e.g., are public assistance and public health programs generally available to the citizens of the State; are funds for educational services used consistent with the Act and these regulations; do the estimates include only costs associated with ELA's)?
—Are the participation rates of ELA's in public programs and other information and data used in developing the cost estimates based upon empirical data or other justifiable information?
—To what extent are the estimates based on actual costs incurred?

Executive Order

E.O. 12291 requires that a regulatory impact analysis be prepared for major rules—defined in the Order as any rule that has an annual effect on the national economy of $100 million or more, or certain other specified effects. The Department concludes that the regulation implementing this grant program does not constitute a major rule within the meaning of the Executive Order because it does not have an effect on the economy of $100 million or more or otherwise meet the threshold criteria.

It is argued that the rules should be subjected to an impact analysis because the grant will involve spending large sums, in excess of the $100 million economic effect threshold established in the Executive Order. However, the Executive Order was not intended, and has not been interpreted, to classify as "major" rules that merely set forth the terms and conditions for spending appropriated funds. The essential requirement for a rule to be classified as "major" is that it "result in"—create or cause—economic effects that otherwise would not exist. In this case, the effect of the proposed rule is not to determine whether or not the money will be spent, but the procedures by which it will be spent, and it is that effect—which is negligible—against which the threshold criterion is applied. Accordingly, a regulatory impact analysis is not required.

Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act (5 U.S.C. Ch. 6) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a "significant economic impact on a substantial number of small entities" an analysis must be prepared describing the rule's impact on small entities. Small entities are defined by the Act to include small businesses, small non-profit organizations, and small governmental entities.

The primary impact of these regulations is on the States, which are not "small entities" within the meaning of the Act. Actual delivery of services will be performed primarily by State and local government agencies. Because this regulation provides States with great authority to prescribe management, organization, funding, and eligibility practices for service delivery, they do not directly impact small entities, either favorably or adversely. Instead, their impacts will depend on future State decisions.

We are not required to perform a regulatory impact analysis where the effect of the proposed regulation is speculative, and will be caused by decisions made independently of the Federal government. Therefore, the Secretary hereby certifies that a regulatory flexibility analysis is not required.

Paperwork Reduction Act

Sections 402.21, 402.41, 402.51, and 402.52 of this proposed rule contains information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department has submitted these requirements to the Office of Management and Budget for its review. Other organizations and individuals desiring to submit comments on the information collection requirements are requested to send them to us and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building—Room 3208, Washington, DC 20503, Attention: Desk Officer for Health and Human Services.

List of Subjects

45 CFR Part 16

Administrative practice and procedure, Grant programs—health, Grant programs—social programs.

45 CFR Part 402

Administrative cost, Allocation formula, Aliens, Allotment, Education, Grant programs, Immigration, Immigration Reform and Control Act, Public assistance, Public health assistance, Reporting and recordkeeping requirements, State legalization impact assistance grants.

Authority: Section 204, Pub. L. 99-603.

Dated: July 28, 1987.
Phillip N. Hawkes,
Acting Administrator, Family Support Administration.

Approved: July 30, 1987.
Otis R. Bowen,
Secretary.

Title 45 of the Code of Federal Regulations, Subtitle A and Chapter IV are amended as follows:

Part 402 is added to 45 CFR Chapter IV to read—

PART 402—STATE LEGALIZATION IMPACT ASSISTANCE GRANTS

Subpart A—Introduction

402.1 General.
402.2 Definitions.

Subpart B—Use of Funds.

402.10 Allowable use of funds.
402.11 Limitations on use of SLIAG funds.
402.12 Use of SLIAG funds for costs incurred prior to October 1, 1987.

Subpart C—Administration of Grants

402.20 General provisions.
402.21 Fiscal control.
402.22 SLIAG and program administrative costs.
402.23 Repayment.
402.24 Withholding.
402.25 Appeals.
402.26 Time period for obligation and expenditure of grant funds.

Subpart D—State Allocations

402.30 Basis of awards.
402.31 Determination of allocations.
402.32 Allotment of excess funds.

Subpart E—State Applications

402.40 General.
402.41 Application content.
402.42 Application format.
402.43 Application deadline.
402.44 Basis for approval.

Subpart F—Recordkeeping, Reporting and Voluntary Cost Estimate Submissions

402.50 Recordkeeping.
402.51 Reporting.
402.52 FY 1988 voluntary SLIAG-related cost estimate submissions.

Subpart A—Introduction

§ 402.1 General.

These regulations implement section 204 of Pub. L. 99-603, the Immigration Reform and Control Act of 1986 (IRCA), which establishes State Legalization Impact Assistance Grants (SLIAG) for States for fiscal year 1988 and for each of the three succeeding fiscal years. The purpose of SLIAG is to lessen the financial impact on State and local governments resulting from the adjustment of immigration status under the Act of certain groups of aliens residing in the States, the District of

Columbia, Puerto Rico, the Virgin Islands and Guam. Funds appropriated by this ssection may be applied by States with approved applications to certain State and local government costs incurred in providing public assistance and public health assistance to eligible legalized aliens and for making payments to State educational agencies for the purpose of assisting local educational agencies in providing certain educational services to eligible legalized aliens.

§ 402.2 Definitions.

As used in this part—

"Allocation" means an amount designated for a State, as determined by the formula used in this Part.

"Allotment" means the total amount awarded to a State for a fiscal year.

"Department" means the U.S. Department of Health and Human Services.

"Educational Services" means (1) supplementary services to eligible legalized aliens who are students enrolled in elementary and secondary schols or in educational programs available to adults, deemed necessary for the achievement of satisfactory performance by those students, including English language instruction, other bilingual educational service, and special materials and supplies; (2) any additional basic instructional services directly attributable to the presence of eligible legalized aliens in the school district, including costs of providing additional classroom supplies, overhead costs, costs of construction, acquisition or rental space, and costs of transportation; (3) essential inservice training for personnel who will be providing instruction described in either paragraph (1) or (2) of this definition; and may include (4) English language and other programs designed to enable eligible legalized aliens to attain the citizenship skills described in section 245A(b)(1)(D)(i) of the INA. The State educational agency may provide educational services to adult eligible legalized aliens through local educational agencies and other public and private nonprofit organizations, including community-based organizations of demonstrated effectiveness.

"Eligible legalized alien" means an alien whos status has been adjusted to lawful temporary resident under section 245A, 210, or 210a of the Immigration and Nationality Act, beginning on the effective date of such adjustment as established by the Immigration and Naturalization Services, and continuing until the end of the five-year period beginning on the effective date of such adjustment, provided that during that time the alien remains in lawful temporary or permanent resident status granted under the Act.

"INA" means the Immigration and Nationality Act, 8 U.S.C. 1101, et seq.

"Local government" has the same meaning as defined in 45 CFR Part 74.

"Other assistance" means assistance and services other than cash or medical assistance that are directed at meeting basic subsistence needs, and that meet all of the criteria in the definition of public assistance, above. "Other assistance" also means assistance and services in which participation is required as a condition of receipt of public assistance. (See "public assistance".)

"Public assistance" means cash, medical, or other assistance, defined below, provided to meet the basic subsistence needs or health needs of individuals (1) that is generally available to needy individuals residing in a State, (2) that is provided with funds from units of State or local government, and (3) for which applicants must meet specified income and resource requirements to be eligible.

"Public health assistance" means health services (1) that are generally available to needy individuals residing in a State: (2) that receive funding from units of State or local government; and (3) that are provided for the primary purpose of protecting the health of the general public, including, but not limited to, immunizations for immunizable diseases, testing and treatment for tuberculosis and sexually-transmitted diseases, and family planning services.

"Recipient" has the same meaning as defined in 45 CFR Part 74.

"Secretary" means the Secretary of the Department of Health and Human Services.

"SLIAG-related costs" means the costs a State and local governments in that State incur in providing public assistance, public health assistance, or educational services, as defined in this section, to eligible legalized aliens, as defined in this section, regardless of whether those costs are actually reimbursed or paid for with funds allotted to the State under section 204 of the Act. Such costs shall not include any costs otherwise reimbursed or paid for under other Federal programs.

"State" means the 50 States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands of the United States.

"The Act" means the Immigration Reform and Control Act of 1986, Pub. L. 99-603.

Subpart B—Use of Funds

§ 402.10 Allowable use of funds.

(a) Funds provided under this Part may be used only with respect to costs incurred in providing assistance and services to eligible legalized aliens. States may use funds for:

(1) Public assistance, public health assistance, and educational services provided to eligible legalized aliens;

(2) Public health assistance provided to an alien applying on a timely basis to become an eligible legalized alien under section 245A of the INA, but not to those applying under section 210 or 210A of the INA.

(b) Unless specifically prohibited by a statute enacted subsequent to November 6, 1986, a State may use SLIAG funds to pay the non-Federal share of costs allowable under paragraph (a) of this section, incurred in providing assistance or services to eligible legalized aliens under Federal programs that have a matching or cost-sharing requirement, subject to the provisions of § 402.11(f) of this Part.

(c) To the extent consistent with 45 CFR Part 74 and § 402.22 of this Part, funds provided under this Part may be used for State and local costs associated with meeting the administrative requirements established by the Act and this Part, and the administrative costs associated with providing assistance or services to eligible legalized aliens under a program or activity that receives funds under this Part.

(d) Funds under this Part may be used to reimburse or pay costs or providing assistance or services to eligible legalized aliens that are incurred prior to the approval of the State's application, pursuant to Subpart E of this Part, but only to the extent that such costs are consistent with the Act, regulations in this and other cited Parts, the State's subsequently approved application, and the terms and conditions of its grant.

§ 402.11 Limitations on use of SLIAG funds.

(a) Funds provided under this Part that are used for public assistance and public health assistance may be used only with respect to programs in a State or local jurisdiction that (1) meet the definitons of § 402.2 of this Part, and (2) that are otherwise consistent with the rules and procedures governing such programs.

(b) Funds provided under this Part may not be used for costs to the extent that those costs are otherwise reimbursed or paid for under other Federal programs.

(c) Funds provided under this Part may not be used to provide reimbursement for more than 100 percent of the costs of providing public assistance and public health assistance to eligible legalized aliens.

(d) A State must use a minimum of 10 percent of its allotment under this Part in any fiscal year for costs associated with each of the following program categories: Public assistance, public health assistance, educational services. In the event that a State does not require use of a full 10 percent in one of the above categories, it must allocate the unused portion equally among the remaining categories.

(e) Funds provided under this Part may be used for educational services only to the extent that the total amount of funds from all Federal sources, provided for the same purposes, does not in any fiscal year exceed $500 per eligible legalized alien participating in educational services that receive such funds and only to the extent that the use of such funds is allowable under the Act and this Part.

(f) Funds provided under this Part may not be used to provide assistance under the programs of financial assistance from which eligible legalized aliens are barred by subsection 245A(h)(1), 210(f), or 210A(d)(6) of the INA. However, such funds may be used for the State and local share of the costs of providing such assistance to eligible legalized aliens who are excepted from the bar by subsection 245A(h) (2) or (3), 210(f), or 210A(d)(6) of the INA, provided that such individuals are otherwise eligible for benefits under such programs, and that the costs of providing those benefits are otherwise allowable under the Act, this regulation and the State's approved application.

(g) Funds provided under this Part shall not be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term.

(h) Funds provided under this Part shall not be used to reimburse or pay costs incurred by any public or private entity or any individual, in the conduct of a medical exam as required for application for adjustment to lawful temporary resident status under 8 CFR 245a.2(i), 52 FR 16212, May 1, 1987.

§ 402.12 Use of SLIAG funds for costs incurred prior to October 1, 1987.

(a) Except as indicated in paragraphs (b) and (c) of this section, States may not use funds provided under this Part for costs incurred prior to October 1, 1987.

(b) A State may use funds provided under this Part for administrative costs incurred prior to October 1, 1987, but after November 6, 1986, that are directly associated with implementation of this Part. Such costs may include planning, preparing the application, establishing fund accounting and reporting systems, data development associated with the application, and other costs directly resulting from implementation of this Part.

(c) A State may use funds provided under this Part for costs incurred prior to October 1, 1987, but after November 6, 1986, in providing public health services to eligible legalized aliens and applicants for lawful temporary residence under section 245A of the INA, in conformity with the provisions of § 402.10(a) of this Part.

Subpart C—Administration of Grants

§ 402.20 General provisions.

Except where otherwise required by Federal law, the Department's rules located at 45 CFR Part 74, relating to the administration of grants, apply to funds provided under this Part.

§ 402.21 Fiscal control.

(a) Fiscal control and accounting procedures must be sufficient to permit preparation of reports required by the Act, this regulation, and other applicable statutes and regulations.

(b) States must have accounting systems in place which allow funds provided under this Part to be traced from drawdown to allowable SLIAG-related costs. Allowability of the amount and purpose of expenditures must be established for each recipient of SLIAG funds. States must demonstrate that allowable costs incurred in providing assistance or services to eligible legalized aliens equal or exceed the amount of SLIAG funds provided for those particular assistance and service activities. Documentation of the method of accounting and appropriate supporting information must be available for audit purposes and for Federal program reviews. To establish allowability of expenditures, States may use methods prescribed in paragraph (c) of this section. Alternatively, the State may use any other reliable method of cost calculation, subject to Federal review.

(c)(1) For public assistance, States may establish allowability by accounting for actual expenditures made to or on behalf of identifiable eligible legalized aliens who qualify for and receive assistance and/or services from the recipient, or by use of a statistically valid sampling of a recipient's public assistance caseload.

(2) For public health assistance, States may establish allowability by accounting for actual expenditures made to or on behalf of identifiable eligible legalized aliens who qualify for and receive such assistance and/or services, by use of a statistically valid sampling of clients in the public health system of the State or local government, or by using the ratio of eligible legalized aliens to all residents of the State.

§ 402.22 SLIAG and program administrative costs.

(a) SLIAG administrative costs allowable under this Part include the direct and indirect costs related to administration of this Part, including: Planning and consultation with local officials, preparing the application, audits, allocation of funds, tracking and recordkeeping, monitoring use of funds, and reporting.

(b) Program administrative costs are those costs incurred by a recipient directly associated with providing assistance or services to eligible legalized aliens. Such costs may be based: on the proportion of eligible legalized aliens provided assistance and/or services allowable under this Part by a recipient, relative to all persons provided assistance and/or services allowable under this Part by that recipient; on the proportion of program or service costs actually incurred in providing assistance and/or services allowable under this Part by a recipient, relative to all costs of providing the same assistance and/or services allowable under this Part by the recipient; or on such other basis as will document that administrative costs incurred in providing such assistance and/or services are allowable, allocable, and reasonable.

§ 402.23 Repayment.

The Department will order a State to repay amounts found not to have been expended in accordance with Federal law, regulations, the State's approved application, or terms of the State's grant. If a State refuses to repay such amounts, the Department may offset the amount against any other amount to which the State is or may become entitled under this Part.

§ 402.24 Withholding.

After notice and opportunity for a hearing, the Secretary may withhold payment of funds to any State which is not using its allotment in accordance with the Act, these regulations, 45 CFR Part 74, and terms of the grant award.

§ 402.25 Appeals.

Appeals under this Subpart will be subject to 45 CFR Part 16, Procedures of the Departmental Grant Appeals Board.

§ 402.26 Time period for obligation and expenditure of grant funds.

(a) Any amount awarded to a State for a fiscal year and remaining unobligated at the end of such year shall remain available to the State in subsequent fiscal years, but not after September 30, 1994.

(b) Obligations by a recipient must be liquidated within 12 months of the end of the Federal fiscal year in which the obligation was made. However, where a State can demonstrate extenuating circumstances that prohibit compliance with this requirement, the Secretary may extend such date upon request by the State.

Subpart D—State Allocations

§ 402.30 Basis of awards.

The Secretary will award funds in a fiscal year to States with approved applications for that fiscal year in accordance with the apportionment of funds from the Office of Management and Budget. The grant award constitutes the authority to draw and expend funds for the purposes set forth in the Act and this regulation.

§ 402.31 Determination of allocations.

(a) *Initial FY 1988 allocations.* In FY 1988, initial State allocations will be calculated based on 50 percent of the SLIAG funds available for grants to States. Preliminary allocations for FY 1988 will be determined as follows:

(1) 50 percent based on the State's eligible legalized alien population, with 49 percent based upon the number of eligible legalized aliens in a State relative to the number of such aliens in all States, and 1 percent to States which have higher than average ratios of eligible legalized aliens to total population, based on the proportional number of such aliens relative to the average for all States.

(2) 50 percent based on Federal estimates of relative SLIAG-related costs.

(b) *FY 1988 final allocations.* Final allocations for FY 1988 will be calculated based upon 100 percent of the SLIAG funds available for grants to States. Final allocations for FY 1988 will be determined as follows:

(1) 50 percent based on the State's eligible legalized alien population, with 49 percent based upon the number of eligible legalized aliens in a State relative to the number of such aliens in all States, and 1 percent to States which have higher than average ratios of eligible legalized aliens to total population, based on the proportional number of such aliens relative to the average for all States.

(2) 50 percent based on the ratio of SLIAG-related costs which each State is likely to incur to the total of all such costs for all States. SLIAG-related costs will be obtained from the report specified in § 402.51, if submitted by a State in accordance with the section. Otherwise, the Department will use Federal estimates of SLIAG-related costs.

A State's final FY 1988 allotment will be determined by adding the State's initial allotment determined under paragraph (a) of this section to an amount proportionate to the difference between the amount of the State's SLIAG allocation determined under this paragraph and its initial FY 1988 allotment. The amount to be added to a State's initial allotments will be determined by the ratio of the difference between the allocation determined under this paragraph and the State's initial allotment to the sum of all such differences for all States whose allocations determined under this paragraph exceed their initial allotments determined by paragraph (a) of this section. In the event a State's allocation determined under this paragraph is less than the amount allotted to that State pursuant to paragraph (a) of this section, that State will be allotted no additional funds for FY 1988. However, its allotment will not be reduced below the amount allotted under paragraph (a) of this section.

(c) *FY 1989 allocations.* Allocations for FY 1989 will be determined as follows:

(1) 50 percent based on the State's eligible legalized alien population, with 49 percent based upon the number of eligible legalized aliens in a State relative to the number of such aliens in all States, and 1 percent to States which have higher than average ratios of eligible legalized aliens to total population, based on the proportional number of such aliens relative to the average for all States.

(2) 50 percent based on the ratio of SLIAG-related costs which each State is likely to incur, as reported in the States' applications submitted pursuant to § 402.41(c) of this Part, to the total of all such costs for all States.

(d) *FY 1990 and 1991 allocations.* Allocations for FY 1990 and FY 1991 will be determined as follows:

(1) 50 percent based on the State's eligibile legalized alien population, with 49 percent based upon the number of eligible legalized aliens in a State relative to the number of such aliens in all States, and 1 percent to States which have higher than average ratios of eligible legalized aliens to total population, based on the proportional number of such aliens relative to the average for all States.

(2) 50 percent based on a State's SLIAG-related costs, with 45 percent based on the State's estimated SLIAG-related costs relative to the estimated SLIAG-related costs of all States, as reported in State SLIAG applications pursuant to § 402.41(c) of this Part, and 5 percent proportionately to those States whose actual costs, as reported in the annual report required by § 402.51, exceeded their allotments for that year, based on the amount of the disparity. (FY 1990 allocations will take into account the difference between actual costs in FY 1988 and the FY 1988 allotments. Similarly, FY 1991 allocations will consider FY 1989, rather than FY 1988, costs and allotments.) In the event that these adjustments total to less than 5 percent of the available amount, the remaining amount will be distributed in according to each State's estimated SLIAG-related costs relative to the estimated SLIAG-related costs of all States, as reported in their applications. If a State fails to submit the report required under § 402.51 of this Part, the Department will consider, for purposes of calculating allocations under this section, that the State had no actual SLIAG-related costs for the applicable fiscal years.

§ 402.32 Allotment of excess funds.

If a state fails to qualify for an allotment in a particular fiscal year because it did not submit an approvable application by the deadline established in § 402.43 of this Part, or is not alloted its designated allocation amount because it indicated in its description of activities that it does not intend to use, in the fiscal year for which the application is made or in the succeeding fiscal year, the full amount of its allocation, funds which would otherwise have been allotted to that State in that fiscal year shall be allotted among the remaining States submitting timely approved applications in proportion to the amount that otherwise would have been allotted to such States in that fiscal year.

Subpart E—State Applications

§ 402.40 General.

In order to be eligible for funds

available under this Part in a fiscal year, a State must submit an annual application. A State's application must be approved by the Secretary prior to the award of funds to that State.

§ 402.41 Application content.

A State application must:

(a) Contain certifications by the chief executive officer or an individual specifically designated to make such certifications on behalf of the chief executive officer that, notwithstanding other contents of the application, the State assures that:

(1) Funds allotted to the State will be used only to carry out the purposes described in the Act and this Part.

(2) The State will provide a fair method for the allocation of funds among State and local agencies (as determined by the State) in accordance with the information in the application as required under paragraph (b) of this section, and in accordance with the provisions of § 402.11(d) of this Part, which sets forth minimum funding levels for program categories.

(3) Fiscal control and accounting procedures used in the administration of SLIAG funds will be established that are adequate to meet the requirements established by the Act and this regulation.

(4) The State will comply with the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975, on the basis of handicap under section 504 of the Rehabilitation Act of 1973, on the basis of sex under title IX of the Education Amendments of 1972, on the basis of race, color, or national origin under title VI of the Civil Rights Act of 1964, and on the basis of sex or religion under section 204(h)(1)(B) of the Immigration Reform and Control Act of 1986.

(b) Contain information on the number of eligible legalized aliens residing in the State. A State may either (1) adopt as its official State-level estimate the estimate of the State's number of eligible legalized aliens provided by the Department, or (2) provide its own estimate, including detailed information on the method and data used in deriving the estimate.

(c) Contain an estimate of likely SLIAG-related costs for the fiscal year for each of the purposes described in § 402.10(a), that is, public assistance, public health assistance, and educational services. Such estimates for FY 1988 should include costs incurred in FY 1987, pursuant to § 402.12 of this Part.

(d) Contain information on the criteria for and administrative methods of disbursing funds received under this Part.

(e) Designate a single point of contact (SPOC) in the State responsible for securing and submitting information required by the Act and this regulation and provide the name, title, mailing address and telephone number of such official. If the grantee agency is different from the SPOC, also provide the name, title, mailing address, telephone number of the official in that agency responsible for State administration of funds available under this Part. In either case, provide the employer identification number of the grantee agency.

§ 402.42 Application format.

A State may determine the format of its application as long as it contains all the information required by § 402.41 of this Part.

§ 402.43 Application deadline.

A State that is applying for SLIAG funds for Federal fiscal year 1988 must submit an application postmarked no later than December 31, 1987. Applications for Federal fiscal years 1989, 1990, and 1991 must be postmarked no later than September 1, 1988, September 1, 1989, and September 1, 1990, respectively. If a State fails to submit an application by this date, funds which it may otherwise have been eligible to receive shall be distributed among States submitting timely approved applications in accordance with § 402.32 of this Part.

§ 402.44 Basis for approval.

(a) The Department will review each State's application to ensure that it contains all of the assurances and information required by the Act and this Subpart.

(b) The Department will notify the State that (1) its application has been approved or (2) its application has been disapproved together with the reasons for disapproval.

(c) A State may submit changes to a disapproved application until the due date for applications, or until 15 calendar days after the date of notification in paragraph (b) of this section, whichever is later, in order to ensure that the application is approvable prior to the final determination of allotment amounts for that fiscal year. States failing to submit, by the date established in this section, all information necessary in order for the Department to approve its application, shall be ineligible to receive funds for that fiscal year.

Subpart F—Recordkeeping, Reporting and Voluntary Cost Estimate Submissions

§ 402.50 Recordkeeping.

A State must provide for the maintenance of such records as are necessary:

(a) To meet the requirements of the Act and Department regulations relating to retention of and access to records:

(b) To allow the State to provide to the Department (1) an accurate description of its activities undertaken with SLIAG funds, and (2) a complete record of the purposes for which SLIAG funds were spent, and of the recipients of such funds; and

(c) To allow the Department and auditors of the State to determine the extent to which SLIAG funds were expended consistent with the Act and this regulation.

§ 402.51 Reporting.

(a) A State must submit no later than 90 days after the end of a Federal fiscal year for which it received or during which it obligated or expended SLIAG funds, an annual report containing information identified in paragraphs (c), (d) and (e) of this section.

(b) Failure to submit the annual report required in paragraph (a) of this petition, by the deadline, without prior written permission from the Secretary, constitutes a basis for withholding of SLIAG funds.

(c) A State's annual report must provide status of funds information, as of September 30, for the fiscal year, including:

(1) Identification of the amount obligated and the amount expended by each recipient to which SLIAG funds were obligated or by which SLIAG funds were expended during the fiscal year;

(2) Identification of any amount remaining unobligated at the end of the fiscal year which the State intends to carry over to the succeeding fiscal year; and,

(3) Identification of any amount remaining unobligated at the end of the fiscal year which the State does not desire to carry over to the succeeding fiscal year.

Funds made available under each annual grant must be reported separately. Obligations and expenditures made prior to October 1, 1987, must be reported as a discrete subset of FY 1988 fiscal activity. All amounts under paragraph (c)(1) of this section must be attributed to a program category (public assistance, public

health assistance, or educational service).

(d) A State's annual report must provide, for each recipient to which SLIAG funds were obligated or by which SLIAG funds were expended during the fiscal year (including funds carried over from the preceding fiscal year), a brief description of the activities on behalf of eligible legalized aliens for which the funds were awarded by the State. In cases where a recipient uses contractors or other entities to provide assistance or services directly to eligible legalized aliens, the descriptions must include the name of provider, specific type of activity, and amount of award and must identify the program category (public assistance, public health assistance, or educational service) of each.

(e) A State's annual report must also provide the actual SLIAG-related costs incurred during the fiscal year. The report must provide for each unit of government (State and local), the amount of the actual SLIAG-related costs which that unit of government incurred, categorized by public assistance, public health assistance, and educational services.

(f) A State must use SF–269 in its reporting under paragraph (c) of this section but it may determine the format of its annual report content under paragraphs (d) and (e) of this section.

§ 402.52 FY 1988 Voluntary SLIAG-related cost estimate submissions.

(a) A State may submit, on a voluntary basis, a report providing updated SLIAG-related cost estimates for FY 1987 and FY 1988. Provided that the report meets the criteria in paragraph (b) of this section, the Department will include such updated SLIAG-related cost estimates in its calculation of final FY 1988 allocations, as described in § 402.31(b) of this Part.

(b) In order to be taken into account, voluntary cost estimate submissions—

(1) Must be received by the Department no later than June 1, 1988. Reports must contain estimates of the SLIAG-related costs the State and each locality in the State have incurred or will incur in FY 1988, including SLIAG-related costs incurred in FY 1987 pursuant to § 402.12 of this Part.

(2) Must provide estimates of SLIAG-related costs and descriptions of the programs and activities for which SLIAG-related costs have been or will be incurred in sufficient detail to permit evaluation by the Department of the reasonableness of such estimates and the allowability of such costs under applicable statutory and regulatory provisions.

(3) Must provide a description of the methodology used in determining the population base (e.g., the proportion of eligible legalized aliens who are eligible for and likely to participate in or benefit from the program or service), and in calculating the amount of cost (e.g., description of how a unit or other measure of the cost of providing services or benefits was calculated, or, if the estimate is based on actual cost data, description of how the data were obtained).

PART 16—PROCEDURES OF THE DEPARTMENTAL GRANT APPEALS BOARD

1. The authority citation for Part 16 continues to read as follows:

Authority: 5. U.S.C. 301 and secs. 1, 5, 6, and 7 of Reorganization Plan No. 1 of 1953, 18 FR 2053, 67 Stat. 631 and authorities cited in the Appendix.

2. Appendix A to Part 16 is amended by adding paragraph B(a)(6) to read as follows:

Appendix A—What Disputes the Board Reviews

B. * * *

(a) * * *

(6) Decisions relating to repayment and withholding under State Legalization Impact Assistance Grants as provided in 45 CFR 402.24 and 402.25.

* * * * *

Editorial note: This appendix will not appear in the Code of Federal Regulations.

BILLING CODE 4150-04-M

APPENDIX A

	STATE POPULATION (thousands)	NUMBER OF ELA'S (thousands)	PERCENT OF ELA'S	RATIO ELA's TO STATE POPULATION	PERCENT OF ESTIMATED SLIAG-RELATED COSTS	ILLUSTRATIVE ALLOCATION ($ millions)	ILLUSTRATIVE ALLOCATION (PERCENT)
ALABAMA	4,021	17	0.51%	0.42%	0.42%	$2.13	0.46%
ALASKA	521	1	0.03%	0.19%	0.04%	$0.16	0.03%
ARIZONA	3,187	41	1.23%	1.29%	1.14%	$5.46	1.18%
ARKANSAS	2,359	8	0.24%	0.34%	0.20%	$1.00	0.22%
CALIFORNIA	26,365	1,619	48.55%	6.14%	51.57%	$233.59	50.34%
COLORADO	3,231	31	0.93%	0.96%	0.85%	$4.09	0.88%
CONNECTICUT	3,174	4	0.12%	0.13%	0.11%	$0.53	0.11%
DELAWARE	622	1	0.03%	0.16%	0.03%	$0.13	0.03%
DISTRICT OF COL	626	21	0.63%	3.35%	0.86%	$3.47	0.75%
FLORIDA	11,366	170	5.10%	1.50%	4.41%	$21.95	4.73%
GEORGIA	5,976	36	1.08%	0.60%	0.88%	$4.51	0.97%
HAWAII	1,054	6	0.18%	0.57%	0.17%	$0.81	0.18%
IDAHO	1,005	14	0.42%	1.39%	0.35%	$1.78	0.38%
ILLINOIS	11,535	196	5.88%	1.70%	5.65%	$26.67	5.75%
INDIANA	5,499	12	0.36%	0.22%	0.31%	$1.54	0.33%
IOWA	2,884	8	0.24%	0.28%	0.23%	$1.07	0.23%
KANSAS	2,450	15	0.45%	0.61%	0.39%	$1.93	0.42%
KENTUCKY	3,726	9	0.27%	0.24%	0.23%	$1.16	0.25%
LOUISIANA	4,481	14	0.42%	0.31%	0.38%	$1.83	0.39%
MAINE	1,164	2	0.06%	0.17%	0.06%	$0.27	0.06%
MARYLAND	4,392	46	1.38%	1.05%	1.28%	$6.11	1.32%
MASSACHUSETTS	5,822	22	0.66%	0.38%	0.71%	$3.14	0.68%
MICHIGAN	9,088	23	0.69%	0.25%	0.77%	$3.35	0.72%
MINNESOTA	4,193	21	0.63%	0.50%	0.67%	$2.98	0.64%
MISSISSIPPI	2,613	8	0.24%	0.31%	0.20%	$1.02	0.22%
MISSOURI	5,029	12	0.36%	0.24%	0.31%	$1.54	0.33%
MONTANA	826	4	0.12%	0.48%	0.11%	$0.54	0.12%
NEBRASKA	1,606	8	0.24%	0.50%	0.20%	$1.02	0.22%
NEVADA	936	9	0.27%	0.96%	0.23%	$1.16	0.25%
NEW HAMPSHIRE	998	1	0.03%	0.10%	0.03%	$0.13	0.03%
NEW JERSEY	7,562	33	0.99%	0.44%	0.94%	$4.43	0.96%
NEW MEXICO	1,450	23	0.69%	1.59%	0.60%	$2.97	0.64%
NEW YORK	17,783	258	7.74%	1.45%	9.06%	$38.79	8.36%
NORTH CAROLINA	6,255	18	0.54%	0.29%	0.45%	$2.27	0.49%
NORTH DAKOTA	685	3	0.09%	0.44%	0.08%	$0.40	0.09%
OHIO	10,744	15	0.45%	0.14%	0.45%	$2.06	0.44%
OKLAHOMA	3,301	25	0.75%	0.76%	0.63%	$3.16	0.68%
OREGON	2,687	39	1.17%	1.45%	1.03%	$5.07	1.09%
PENNSYLVANIA	11,853	13	0.39%	0.11%	0.38%	$1.77	0.38%
RHODE ISLAND	968	2	0.06%	0.21%	0.06%	$0.29	0.06%
SOUTH CAROLINA	3,347	14	0.42%	0.42%	0.35%	$1.77	0.38%
SOUTH DAKOTA	708	2	0.06%	0.28%	0.05%	$0.25	0.05%
TENNESSEE	4,762	14	0.42%	0.29%	0.36%	$1.79	0.39%
TEXAS	16,370	307	9.21%	1.88%	7.46%	$38.60	8.32%
UTAH	1,645	14	0.42%	0.85%	0.38%	$1.84	0.40%
VERMONT	535	1	0.03%	0.19%	0.03%	$0.13	0.03%
VIRGINIA	5,706	56	1.68%	0.98%	1.56%	$7.44	1.60%
WASHINGTON	4,409	63	1.89%	1.43%	1.83%	$8.58	1.85%
WEST VIRGINIA	1,936	2	0.06%	0.10%	0.05%	$0.26	0.06%
WISCONSIN	4,775	17	0.51%	0.36%	0.57%	$2.49	0.54%
WYOMING	509	2	0.06%	0.39%	0.06%	$0.27	0.06%
PUERTO RICO	3,282	15	0.45%	0.46%	0.35%	$1.84	0.40%
VIRGIN ISLANDS	111	13	0.39%	11.71%	0.30%	$1.62	0.35%
GUAM	124	7	0.21%	5.65%	0.16%	$0.85	0.18%
TOTAL	242,256	3,335	100.00%		100.00%	$464.00	100.00%
AVERAGE				1.06%			

[FR Doc. 87-18410 Filed 8-12-87; 8:45 am]
BILLING CODE 4150-04-C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 675

Foreign Fishing; Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan and request for comments.

SUMMARY: NOAA issues this notice that the North Pacific Fishery Management Council (Council) has submitted Amendment 11 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands for Secretarial review and is requesting comments from the public. Copies of the amendment may be obtained from the address below.

DATE: Comments on the plan amendment will be accepted on or before October 7, 1987.

ADDRESS: All comments should be sent to Robert McVey, Director, Alaska Region, NMFS, P.O. Box 1668, Juneau, Alaska 99802.

Copies of the amendment and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) are available upon request from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510.

FOR FURTHER INFORMATION CONTACT: Jay Ginter (Fishery Management Biologist), National Marine Fisheries Service, Alaska Region, 907–586–7230.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) requires that each regional fishery management council submit any fishery management plan or plan amendment it prepares to the Secretary of Commerce (Secretary) for review and approval or disapproval.

The act also requires that the Secretary, upon reviewing the plan or amendment, must immediately publish a notice that the plan or amendment is available for public review and comment. The Secretary will consider the public comments in determining whether to approve the plan or amendment.

Amendment 11 proposes the following measures: (1) Establish a split season apportionment of pollock for U.S. vessels working in joint ventures with foreign processing vessels (JVP), and (2) change the definition of prohibited species. These measures are intended to respond to biological, economic and administrative problems identified by the Council. In addiiton, NOAA is proposing to make a regulatory amendment to change the definition of directed fishing. Regulations proposed by the Council and based on this amendment are scheduled to be published within 15 days.

(16 U.S.C. 1801 *et seq.*).

Dated: August 10, 1987.

Richard H. Schaefer,

Acting Director for Fisheries Conservation and Management.

[FR Doc. 87–18527 Filed 8–10–87; 4:59 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 52, No. 156
Thursday, August 13, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

Finding of No Significant Impact; Laurel Hill Creek Watershed, Pennsylvania

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Laurel Hill Creek Watershed, Somerset County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Olson, State Conservationist, Soil Conservation Service, Federal Building, 228 Walnut Street, Harrisburg, Pennsylvania 17108, telephone (717) 782–4453.

SUPPLEMENTARY INFORMATION: The environmental evaluation of this federally assisted action indicates that the measure will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. James H. Olson, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for watershed protection. The planned works of improvement include the installation of conservation and management practices for erosion and sediment control on 4,000 acres of cropland and agricultural waste management systems to reduce pollution to the streams, water supply reservoir, and a recreation lake.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, State and local agencies, and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental evaluation are on file and may be reviewed by contacting James H. Olson.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the Federal Register.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10-904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires inter-governmental consultation with state and local officials.)

Dated: August 6, 1987.

James H. Olson,
State Conservationist.

[FR Doc. 87–18457 Filed 8–12–87; 8:45 am]
BILLING CODE 3410-16-M

Finding of No Significant Impact; Shelbyville Elks Lodge #457, Shelbyville Elks Club CAT RC&D Measure, Indiana

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Robert L. Eddleman, State Conservationist, Indianapolis, Indiana, 46224, telephone 317–248–4350.

Notice: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Shelbyville Elks Club RC&D measure, Shelby, Indiana.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Robert L. Eddleman, State Conservationist, has determined that the preparation of and review of an environmental impact statement are not needed for this project.

The project concerns a plan for Critical Area Treatment. The planned works of improvement include the clearing of approximately 30 small trees and reshaping of 300 lineal feet of streambank. The lower portion of the streambank will be rip-rapped with stone and the upper portion seeded to grasses.

The Notice of Finding of No Significant Impact (FNSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental evaluation is on file and may be reviewed by contacting Robert L. Eddleman, State Conservationist. The FNSI has been sent to various Federal, State and local agencies and interested parties. A limited number of copies of the FNSI are available to fill single requests at the above address.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the Federal Register.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: August 4, 1987.

Robert L. Eddleman,
State Conservationist.

[FR Doc. 87–18458 Filed 8–12–87; 8:45 am]
BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Bureau of Standards
Title: Quarterly Performance/Technical Report
Form Number: Agency—N/A; OMB—N/A

Type of Request: Existing Collection in Use Without an OMB Control Number
Burden: 150 respondents; 900 reporting hours
Needs and Uses: NBS provides financial assistance for the purpose of scientific research. The information obtained from receipients is used by NBS to monitor the performance of grantee activities and to track results achieved.
Affected Public: Businesses or other for-profit orgranizations; non-profit institutions
Frequency: Quarterly
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Sheri Fox, 395–3785

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Sheri Fox, OMB Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: August 10, 1987.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87–18502 Filed 8–12–87; 8:45 am]

BILLING CODE 3510-CW-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration
Title: Regulations Governing Small Takes of Marine Mammals Incidental to Specified Activities
Form Number: Agency—N/A; OMB—0648–0151
Type of Request: Revision to a currently approved collection
Burden: 21 respondents; 200 burden hours
Needs and Uses: The Marine Mammal Protection Act of 1972 imposed, with certain exceptions, a moratorium on the taking of marine mammals. The Secretary was given authority, however, to allow the taking of a small number of marine mammals incidental to specified activities (other than commercial fishing). The information is used to determine whether to allow an incidental take and to monitor any authorized taking. The affected public is any U.S. citizen that applies for this authorization.
Affected Public: Individuals; state or local governments; businesses or other for-profit institutions; federal agencies
Frequency: On occasion, annually
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: John Griffen, 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3228, New Executive Office Building, Washington, DC 20503.

Dated: August 10, 1987.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87–18503 Filed 8–12–87; 8:45 am]

BILLING CODE 3510-CW-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Patent and Trademark Office
Title: Admittance to Practice Before the Patent and Trademark Office
Form Number: Agency-PTO-158, 107A and 297; OMB–0651–0012
Type of Request: Revision of a currently approved collection
Burden: 4,400 respondents; 1,180 burden hours
Needs and Uses: PTO collects information from persons seeking to be registered to practice before the PTO. The purpose of the registration is to ensure that the candidates have sufficient basic training in scientific and technical matters to represent patent applicants. The roster of attorneys and agents registered to practice before PTO is revised periodically. Information is collected from agents and attorneys for the update of the register.
Affected Public: Individuals
Frequency: On occasion, once every 5 years
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Sheri Fox, 395–3785

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6228, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Sheri Fox, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: August 10, 1987.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87–18504 Filed 8–12–87; 8:45 am]

BILLING CODE 3510-CW-M

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Office of the Secretary
Title: Personal History Statement for Possible Nomination to an Advisory Committee.
Form Number: Agency—CD–555; OMB–0605–0035
Type of Request: Revision of a currently approved collection
Burden: 800 respondents; 400 reporting hours
Needs and Uses: The collected information is used by the Confidential Assistant to the Secretary in the Departmental administrative clearance process. This clearance is required before any non-Federal person can be appointed to an advisory committee.
Affected Public: Individuals or households
Frequency: On occasion
Respondent's Obligation: Voluntary
OMB Desk Officer: Donald Arbuckle 395–7340

Agency: Office of the Inspector General
Title: Applicant for Funding Assistance
Form Number: Agency—CD–346; OMB—0605–0001
Type of Request: Extension of a currently approved collection
Burden: 3,348 respondent; 837 reporting hours
Needs and Uses: The collected information is used to establish the

good character of principal officers and employees of organizations, firms, or recipients or beneficiaries of grants, loans, or loan guarantee programs that may receive grants, loans or guarantees from the Commerce Department.

Affected Public: Individuals or households, businesses or other for-profit institutions, small businesses or organizations

Frequency: On occasion

Respondent's Obligation: Required to obtain or retain a benefit

OMB Desk Officer: Donald Arbuckle 395–7340

Agency: Economic Development Administration (EDA)

Title: Current and Projected Employee Data

Form Number: Agency—ED–612; OMB—0610–0003

Type of Request: Revision of a currently approved collection

Burden: 800 respondents; 600 reporting hours

Needs and Uses: This information is needed to determine the compliance with Title VI of the Civil Rights Act of 1964, and Departmental and Agency regulations. Those entities creating or saving less than 15 jobs as a result of EDA assistance are not required to complete this report.

Affected Public: State or local governments, businesses or other for-profit institutions, non-profit institutions

Frequency: On occasion, annually

Respondent's Obligation: Required to obtain or retain a benefit

OMB Desk Officer: Francine Picoult 395–7340

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to the executive OMB Desk Officer, Room 3228 New Executive Office Building, Washington, DC 20503.

Dated: August 10, 1987.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87–18505 Filed 8–12–87; 8:45am]

BILLING CODE 3510-CW-M

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Export Trade Certificate of Review, Application # 87–00008.

SUMMARY: The Department of Commerce has issued an export trade certificate of review to Roger E. Holtman d/b/a Rocky Mountain Export Trading Company. This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: George Muller, Deputy Director, Office of Export Trading Company Affairs, International Trade Administration, 202–377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("The Act") (Pub. L. No. 97–290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a certificate in the **Federal Register.** Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

Products

All products.

Services

Architectural and engineering services; product research; market research; marketing; consulting; and arranging for financing.

Export Trade Facilitation Services (as They Relate to the Export of Products)

Overseas freight transportation; inland freight transportation to U.S. export terminals, ports, or gateways; packing and crating; warehousing; freight forwarding including consolidation of shipments; and other services directly related to the movement of goods being exported or in the course of being exported; consulting; international market research; advertising; marketing; insurance; product research and design; trade documentation; communication and processing of foreign orders to and for exporters and foreign purchasers; foreign exchange; financing; and taking title to goods.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

Rocky Mountain may—

(1) Enter into exclusive and nonexclusive contracts with

(a) Individual Suppliers of Products and Services to act as an Export Intermediary;

(b) Individual Export Intermediaries for the sale of Products and/or Services in the Export Markets;

(c) Foreign customers of Products and Services, including governmental entities; and

(2) Negotiate charges and other terms and enter into contracts with individual ocean common carriers and individual conferences for the transportation of Products.

Definitions

"Export Intermediary" means a person who acts as a broker, distributor, sales representative, or sales or marketing agent, or who performs similar functions, including providing or arranging for the provision of export Trade Facilitation Services for sales in the Export Markets.

"Exclusive" means that the supplier (Export Intermediary customer) agrees not to deal in Export Trade in Export Markets with anyone other than Rocky Mountain; and/or Rocky Mountain agrees not to deal in Export Trade in Export Markets with anyone other than that supplier (Export Intermediary, customer).

"Supplier" means a person who produces, provides, or sells Products or Services for sale in the Export Markets.

A copy of the certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

BEST COPY AVAILABLE

Date: August 7, 1987.
George Muller,
Deputy Director, Office of Export Trading Company Affairs.
[FR Doc. 87-18508 Filed 8-12-87; 8:45 am]
BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Armed Forces Epidemiological Board; Open Meeting

1. In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) announcement is made of the following committee meeting:

Name of Committee: Armed Forces Epidemiological Board, DOD.
Date of Meeting: 17 September 1987
Time: 0830-1700
Place: Parson's Island, Chester, Maryland
Proposed Agenda: Preventive Medicine Officer Reports, Korean Hemorrhagic Fever, Dysgonic Fermenter Type 2 Infections, Japanese B. Encephalitis, Human Immunodeficiency Virus Infections and Disease Data Development at the Armed Forces Medical Intelligence Center.

2. This meeting will be open to the public but limited by space accommodations. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. Interested persons wishing to participate should advise the Executive Secretary, DASG-AFEB, Room 2D455, Pentagon, Washington, DC 20310-2300, (202) 695-9115.

Dated: August 6, 1987.
Robert A. Wells,
Col, USA, MSC, Executive Secretary.
[FR Doc. 87-18509 Filed 8-12-87; 8:45 am]
BILLING CODE 3810-01-M

Armed Forces Epidemiological Board; Open Meeting

1. In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) announcement is made of the following committee meeting:

Name of Committee: Armed Forces Epidemiological Board, DOD.
Date of Meeting: 18 September 1987.
Time: 0800-1100.
Place: Parson's Island, Chester, Maryland.
Proposed Agenda: Project Ranch Hand Program Update and Serum Dioxin Studies; Air Force Survey on Cancer in the Work Place; Review of Board Recommendations and Summary of the Meeting.

2. This meeting will be open to the public but limited by space accommodations. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. Interested persons wishing to participate should advise the Executive Secretary, DASG-AFEB, Room 2D455, Pentagon, Washington, DC 20310-2300, (202) 695-9115.

Dated: August 6, 1987.
Robert A. Wells,
Col, USA, MSC, Executive Secretary.
[FR Doc. 87-18510 Filed 8-12-87; 8:45 am]
BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

[CFDA No: 84.017]

Invitation of Applications for New Awards Under the International Research and Studies Program for Fiscal Year 1988

Purpose: Provides grants to public and private agencies, organizations, institutions, and individuals to conduct research and studies to improve and strengthen instruction in modern foreign languages, area studies, and related fields.

Priorities: The regulations governing the International Research and Studies Program (34 CFR 660.34) provide for the establishment of funding priorities by the Secretary. For FY 1988, the Secretary has established funding priorities for new awards for research. The priorities will be applied in accordance with the provisions of 34 CFR 75.105(c)(2)(ii) and are in the following areas: (1) Foreign language proficiency testing; (2) foreign language acquisition processes; (3) improved teaching methodologies for modern foreign languages. In addition, in accordance with 34 CFR 75.105(c)(1), the Secretary urges the proposal of projects involving the development of instructional materials for uncommonly taught modern foreign languages.

Deadline for transmittal of applications: November 20, 1987.

Applications Available: September 21, 1987.

Available Funds: The Administration's budget request for fiscal year 1988 does not include funds for this program. However, applications are being invited to allow sufficient time to evaluate applications and complete the grant process before the end of the fiscal year, should the Congress appropriate funds for this program. The following estimates are based on the FY 1987 appropriation.

Estimated Range of Awards: $20,000 to $120,000.

Estimated Average Size of Awards: $65,000.

Estimated Number of Awards: 15

Project Period: 12 to 36 months.

Applicable Regulations: (a) International Research and Studies Program, 34 CFR Parts 655 and 660, and (b) The Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, and 78.

For Applications or Information Contact:

Robert R. Dennis or Jose L. Martinez, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3053, ROB-3, Washington, DC 20202. Telephone: (202) 732-3296; 732-3296.

Program Authority: 20 U.S.C. 1125.

Dated: August 6, 1987.
C. Ronald Kimberling,
Assistant Secretary for Postsecondary Education.
[FR Doc. 87-18468 Filed 8-12-87; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Financial Assistance; Restriction of Eligibility for Grant Award; Stanford University, Energy Modeling Forum

AGENCY: Department of Energy.

ACTION: Notice of solicitation for a grant application.

SUMMARY: DOE announces that, pursuant to 10 CFR 600.7(b), eligibility for a grant has been restricted to the Stanford University, Energy Modeling Forum (EMF). In recent years there has been a proliferation of energy models. Models have been developed within universities, research institutions, consulting companies, industrial and commercial concerns as well as numerous Federal and state agencies. The ability to utilize these models effectively in energy policymaking has not kept pace. A gap exists between the model builders and the model users. The proposed research project will make a significant contribution to U.S. energy research by satisfying the following objectives:

(1) It will systematically bring together major model builders and model users in a forum which elicits dialog between the two groups.

(2) It will investigate methodological issues germane to the underlying design and construction of specific models.

(3) It will evaluate energy issues and energy policy responses, with particular emphasis on the applicability of models to specified energy events and policies.

(4) It will identify areas where improvements in data and modeling techniques are needed,

(5) Through the objectives stated above, it will improve the understanding on the part of all energy researchers, public and private, on the use of models for the analysis of energy issues and energy policy alternatives.

Eligibility: The EMF is a prestigious and independent source of important critical review of energy models and issues. It provides a forum, otherwise unavailable, of systematically bringing together the major model builders and model users from a broad spectrum covering academic, industrial and government communities. The participation of these groups in the study of critical energy issues and models yields a unique combination of intellectual capabilities that will enhance its ability to assure the relevancy of model building and application to real world issues. The EMF has demonstrated a unique capability of drawing together a large and diverse group of energy experts from academic, government, and business communities. The membership of the EMF brings to these issues a combination of talent and expertise embodied in both model builders and model users. Therefore DOE has determined that it is appropriate to restrict eligibility in its solicitation.

Term: The term (project period) of the grant is expected to be three years.

FOR FURTHER INFORMATION CONTACT: Mr. Edmond J. Golden Jr., U.S. Department of Energy, Office of Procurement Operations, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9512.

Stephen J. Michelsen,

Director, Contract Operations Division 'B', Office of Procurement Operations.

[FR Doc. 87–18430 Filed 8–12–87; 8:45 am]

BILLING CODE 6450–01–M

Bonneville Power Administration

Final Response to a Challenge Under the Near Term Intertie Access Policy; Pacific Northwest/Pacific Southwest Intertie Transmission Lines

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: BPA's final response to a challenge under its Near Term Intertie Access Policy (NTIAP).

SUMMARY: By letter of April 17, 1986, the National Marine Fisheries Service (NMFS) notified BPA that, in accordance with the NTIAP, it was challenging the access of power from two Pacific Northwest hydroelectric projects to the BPA-owned portion of the Pacific Northwest/Pacific Southwest Intertie (Intertie) transmission lines. BPA prepared a proposed response to this challenge and published that response in the **Federal Register** on February 18, 1987, for public review and comment.

After careful consideration of public comments, BPA's response to NMFS' challenge is that power generated from the challenged projects was not transmitted to the BPA-owned portion of the Intertie during the period challenged, June 1985 to April 1986. Because BPA's Intertie was not used to transmit power generated by the projects, provisions in the NTIAP are not applicable. Other concerns raised by some of the comments are issues being considered in the development of the Long Term Intertie Access Policy (LTIAP).

FOR FURTHER INFORMATION CONTACT: Mr. Roy B. Fox, Environmental Coordinator, at 503–230–4261. Or call BPA's Public Involvement office. Telephone numbers, voice/TTY, for the Public Involvement office are: 230–3478 in Portland; Oregon callers may call toll-free 800–452–8429; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may use 800–547–6048. Information may also be obtained from:

Mr. George Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97232, 503–230–4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503–687–0952.

Mr. Wayne Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509–662–4377, extension 379.

Mr. Terry Esvelt, Puget Sound Area Manager, 201 Queen Anne Avenue North, Seattle, Washington 98109, 206–442–4130.

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington, 99362, 509–522–6226.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208–523–2706.

Mr. Frederic D. Rettenmund, Boise District Manager, Room 376, 550 West Fort Street, Boise, Idaho 83724, 208–334–0137.

SUPPLEMENTARY INFORMATION:

I. Background

BPA's NTIAP, Section C.3, provides conditions for Intertie access to ensure that providing Assured Delivery or allocating Intertie capacity: (1) Will not interfere with the Administrator's Power Marketing Program or operating limits of the Federal system; (2) will not conflict with existing contractual or other legal obligations; and (3) does " . . . not result in scheduling of energy from resources whose operation will adversely impact fish and wildlife in a manner that results in a substantial decrease in the effectiveness of, or a substantial increase in the need for expenditures or other actions by the Administrator to protect, mitigate, or enhance fish and wildlife." Section C.6 goes on to state that to verify consistency with policy, utilities shall provide BPA with a list of resources that are to be operated or that were operated at such hours as access to the Pacific Intertie will be or was provided. Section C.2 of the NTIAP also prohibits access to the Intertie for non-Federal resources that were not operational on September 7, 1984.

In addition, Section D of the NTIAP set forth conditions for Assured Delivery and formula allocation methods. Under Section D.1.c.1., for Assured Delivery, and Section D.2 for formula or hourly allocation, Intertie access is provided if the scheduling utility meets the conditions of Section C (as outlined above). For Assured Delivery, utilities must specify the resource for which they seek Intertie access. This provides BPA with an opportunity to review the resource for potential fish and wildlife concerns. The formula allocation provisions of Section D.2, however, do not require utilities to declare each day which resource will be used on the Intertie, only the amount of surplus energy they wish to transmit. BPA, then, does not have an opportunity to review declared resources prospectively on a day-to-day basis. This makes it difficult to link specific resources to specific sales, except after the fact, if BPA elects to request from the utility information on which resources it was running at any particular time.

Finally, Subsection C.7. provides the opportunity to challenge (1) the presumption that Pacific Northwest resources scheduled for transmission over the BPA-owned portion of the Intertie are being operated consistent with applicable licenses, permits, and other State and Federal laws, or (2) the presumption that operation of these resources is not adversely affecting the

administrator's obligation under the Pacific Northwest Electric Power Planning and Conservation Act to protect, mitigate, and enhance fish and wildlife. The NTIAP further provides that BPA will accept public comment before making a final determination as to whether fish and wildlife, for which the Administrator has responsibilities, are being adversely affected by the operation of the challenged resource.

Pursuant to provisions in the NTIAP, NMFS notified BPA of its challenge of Portland General Electric's (PGE) Sullivan Plant at Oregon City, Oregon. NMFS stated, "In our view, the injury rates at the Sullivan Plant are unacceptably high and maximum feasible fish protection is not being provided." They went on to say, "Therefore, given the magnitude and importance of existing and potential fish production which encounters the project, we believe scheduling of energy on the Intertie from this resource is damaging to fish as well as to BPA actions to protect, mitigate, and enhance fish and should be curtailed."

NMFS also challenged the Sheep Creek hydroelectic projects near Joseph, Oregon, stating, ". . . according to our information, projects on Big and Little Sheep Creeks (FERC Nos. 5572, 4473, 6821) commenced selling power to Pacific Power and Light after September 7, 1984. Therefore, power from Sheep Creek resources should not have access to the Interties for out-of-region sales. Please determine if power from these resources is being transmitted on the Interties, resulting in these resources being inconsistent with the Policy."

BPA published a proposed response to this challenge in the Federal Register on February 18, 1987 (52 FR 4928) for public review and comment. BPA received seven comment letters on its proposed response. Three basic concerns were predominent. One, commenters were concerned that BPA and the NTIAP lacked workable enforcement procedures. Two, commenters believed the NTIAP did not prevent "displacement" of one resource by another which caused adverse fish and wildlife impacts. And three, commenters said BPA's proposed response was incomplete.

II. Comments on BPA's Proposed Response

A. Enforcement

Comment: BPA received several comments concerning the adequacy of efforts to monitor and enforce NTIAP provisions. One commented that BPA needs "more workable enforcement procedures" and an "internal procedure for policing compliance," and that BPA should not place the burden of proof on those who challenge a resource under the NTIAP. Another commented that BPA relies too heavily on others to raise challenges under the policy. Two commenters stated that delays in BPA's response to the NMFS challenge indicate that BPA lacks adequate procedures for handling compliance problems under the NTIAP.

Response: BPA acknowledges that its draft response was considerably delayed. The delays, however, are not the result of deficiencies in the enforcement provisions of the policy. Rather, the delays reflect staffing limitations.

The NTIAP is not intended to establish specific procedures for BPA or others to monitor the fish and wildlife effects due to the operation of a particular hydro resource. But neither does BPA rely solely on others to monitor and enforce the NTIAP provisions. Although primary responsibility for evaluating the fish and wildlife effects of a non-Federal resource is with the Federal Energy Regulatory Commission during licensing proceedings, BPA is not precluded from choosing to evaluate resources on a case-by-case basis. Continued evaluation of fish and wildlife effects is also the responsibility of those Federal and state agencies which have fish and wildlife protection mandates. In the NTIAP, BPA provides an additional forum to evaluate fish and wildlife impacts to ensure that BPA can meet its fish and wildlife obligations.

B. Displacement

Comment: BPA received several coments that the NTIAP allows utilities to structure their operations such that power generated by resources with adverse fish and wildlife effects would not be subject to Intertie policies. Resources with fish and wildlife adverse effects could serve regional loads, allowing acceptable resources to be used on the Intertie. Commenters concluded the NTIAP does not prevent or discourage the development of resources harmful to fish and wildlife.

Response: BPA agrees that, if desired, utilities could undertake a series of operational actions to avoid scheduling power from a particular resource to the Interties. That is, the NTIAP does not prevent utilities from structuring their operations to schedule power from acceptable resources over the Intertie while serving Northwest loans with injurious resources.

The displacement issue is defined differently for Assured Delivery and formula allocation. Under Assured Delivery (Section D.1) utilities must declare the resource from which power will be exported on the Intertie. This provides BPA with an opportunity to review the potential impacts of the resource. A question here, though, is whether export of the power from the specified resource is made possible only through displacement by a resource that has adverse fish and wildlife impacts. The NTIAP does not deal with this kind of displacement. Under formula allocation (Section D.2), when allocations are made daily for the scheduling of energy the next day, utilities are not required each day to declare which resource will be used on the Intertie, only the amount of surplus energy they wish to transmit. Accordingly, BPA does not have an opportunity to review declared resources prospectively on a day-to-day basis. This makes it difficult to link specific resources to specific sales, except after the fact, if BPA elects to request from the utility information on which resources it was running at any particular time.

Although the NTIAP prohibits Interties access to new hydro resources, displacement is not addressed. In the future, as new resources may be added, the potential for displacement may become more prevalent. Since the NTIAP does not address displacement, displacement cannot be dealt with relative to the challenge made by NMFS. These issues have surfaced in the content of the LTIAP and will be addressed in BPA's decision on a final LTIAP.

C. Incomplete Response

Comment: Several commenters referred to BPA's draft response as incomplete. One commenter suggested that even if it were proper to dismiss portions of the challenge, BPA should have addressed the entire challenge and response for the public review process.

Response: NMFS' letter of April 17, 1986, challenged the Sheep Creek projects and the Sullivan Plant, and raised three questions which were not challenges under the NTIAP. These questions asked how BPA would apply the NTIAP to certain situations: future hydroelectric projects, mainstem Federal projects, and the Bureau of Reclamation's Roza project. BPA notified NMFS by letter on June 4, 1986, that BPA was pursuing NMFS' challenges on the Sullivan Plant and the Sheep Creek project. In that letter, BPA also responded to the three questions. Copies of both the NMFS challenge letter and BPA's June 4, 1986, response were made available to the public.

These letters can be obtained by calling BPA's Public Involvement office.

B. Other Comments

Comment: Many of the commenters offered additional comments. Two commenters supported BPA's response to the NMFS challenge. Two commenters asked that their comments on the NTIAP challenge be incorporated into the comment process, which closed January 16, 1987, on the Intertie Development and Use Draft Environmental Impact Statement (IDU DEIS) and the proposed LTIAP. Another commenter contended that a challenge of the Sheep Creek Projects should not be allowed since the NTIAP does not provide for challenges as to whether or not a resource is an existing resource or a new resource. It was pointed out that Sheep Creek is licensed and has met all applicable State and Federal requirements.

Response: Comment letters requesting incorporation into the IDU EIS and LTIAP process will be considered.

The NTIAP does not contain a section that specifically provides for challenges as to whether or not a project is an "Existing Pacific Northwest Resource." However, NMFS' challenge requested BPA to determine whether power from these resources was being transmitted on the Intertie. This was a legitimate request.

III. Final Response to the NMFS Challenge Under the NTIAP

BPA began its analyses of the NMFS challenge by first examining whether access to the BPA portion of the Intertie had been scheduled for PGE and PP&L from the time the NTIAP was implemented, June 1985, to the time of the NMFS challenge, April 1986. Both utilities were using the BPA-owned Intertie: PGE scheduled an average of 66 megawatts (MW) monthly, while PP&L had scheduled an average of 386 MW monthly. The next step was to determine if the resources in question did or could provide power for transmission over the Intertie.

A. Sullivan Plant (PGE)

Power from the Sullivan Plant enters the regional electrical grid and can be sold to the Pacific Southwest. However, economic and regulatory criteria estabished by the Oregon Public Utility Commissioner dictate that power from the plant should not serve load in the Southwest.

PGE operates the Sullivan Plant as a baseload power source because its varible costs (operation and maintenance costs) are essentially 0 mills/kilowatthour. The fixed costs of the plant also are very low given its age (the plant was built in the early 1900's). The Oregon Public Utility Commissioner requires that such economically efficient resources serve local loads for the benefit of regional ratepayers. Thus, PGE's surplus sales to the Southwest are derived from other, higher cost resources, such as the Centralia, Colstrip, and Boardman coal plants, and power purchases from British Columbia Hydro and Power Authority, BPA, and other Northwest utilities. Additionally, the first 700 MW of PGE's sales to the Southwest flow over its own portion of the Intertie. Use of BPA's Intertie occurs only when PGE's sales exceed its 700 MW line capacity.

Given that the economics of the Sullivan Plant operation dictate regional consumption of its power and consequent operation of the resource regardless of any access to BPA's portion of the Intertie, BPA determines that the output of the plant is not being transmitted over the BPA-owned Intertie. BPA recognizes, however, that PGE is not prevented from structuring its operations to "displace" the power of other resources by using the output of Sullivan Plant. Since the NTIAP does not address displacement, BPA finds that the provisions of the NTIAP relevant to fish and wildlife protection are not applicable to the NMFS challenge. (BPA will consider the issue of displacement in the development of the LTIAP.)

B. Sheep Creek Projects (PP&L)

The Sheep Creek projects began generating power in November 1984, afte the cut-off date for existing Northwest resources under the NTIAP. Section C.2. of the NTIAP prohibits access to non-federal resources that were not operational on the effective date of the NTIAP. The projects, therefore, do not meet the specified definition of "Existing Pacific Northwest Resources." The Sheep Creek projects are located in a remote area of the Wallowa Mountains near Joseph in northeastern Oregon. Under Public Utilities Regulatory Policies Act regulations, PP&L purchases the projects' electrical output at one point of interconnection, and utilizes PP&L's distribution lines to serve its local loads.

The Sheep Creek projects are connected to PP&L's 20.8-kilovolt (kV) local feeder line which, with other 20.8-kV feeder lines, serves PP&L's local customers. Since the maximum generation of the Sheep Creek projects is only about one-half of PP&L's average load in the local area, it is unlikely that any power from these projects could be surplus to the local area. Output from the projects under normal conditions is absorbed by the 20.8-kV feeder in and around the Enterprise and Joseph area. During periods of peak generation from the projects and low loads in the local area, some power may flow into the 69-kV transmission line which serves other isolated areas near Enterprise. This 69-kV transmission line also connects with PP&L's 230-kV transmission line between Enterprise, Oregon, and Walla Walla, Washington. Remaining power, if any, would flow to Walla Walla where PP&L serves loads totaling approximately 140,000 killowatts. PP&L's Walla Walla area system is remotely interconnected with the teminus of the Intertie. The projects' power therefore serves PP&L's local customers.

Given the use of the Sheep Creek projects power to serve PP&L's local load in the vicinity of the plant, BPA determines that Sheep Creek power does not flow over the BPA-owned portion of the Intertie in violation of the NTIAP's restriction to resources existing on the effective date of the policy.

Again, since the NTIAP does not address displacement, the NTIAP does not prevent PP&L from structuring their operations to "displace" the power of other resources by using power from the Sheep Creek projects.

Issued in Portland, Oregon, on August 3, 1987.

Steven G. Hickok,

Acting Administrator, Bonneville Power Administration.

[FR Doc. 87-18480 Filed 8-12-87; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. EL85-19-117 Project Nos. 1388, 1389, 1390, 3253, and 3272]

Request for Comments on the Cumulative Environmental Impacts of Proposed Hydropower Development in the Mono Lake Basin, California/Nevada

August 6, 1987.

The Federal Energy Regulatory Commission (Commission) requests comments regarding cumulative environmental impacts [1] that may occur

[1] Cumulative impacts are the impacts on the environment which result from the incremental impact of an action when added to other past, present, and reasonably foreseeable future actions, regardless of what agency (federal or nonfederal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time (40 CFR 1508.7).

as a result of multiple hydropower developments proposed for the Mono Lake Basin, located in Mono County, California, and in Mineral County, Nevada.

Information Requested

Interested persons and agencies are invited to identify target resources, which are important resources that could be adversely affected by two or more proposed hydropower projects, to describe the distribution of these resources, and to include substantive evidence documenting the interaction between the target resources and the proposed hydropower projects described in this notice. The staff requests this information to update the Commission's records on cumulative impacts in the basin which were collected since 1983. Substantive evidence should include, but should not be limited to, the results of studies, natural resource management policies, and reports from state and local resource agencies.

The staff will evaluate those target resources included in this notice, and any additional target resources identified by interested persons and agencies.

Pending License Applications

As of June 29, 1987, the folowing license applications for hydropower projects were pending before the Commission.

Project number	Project name	Type of application
1388-001.	Poole Project †	Major license.
1389-001.	Rush Creek †	Major license.
1390-001.	Lundy Project †	Major license.
3258-002.	Paoha Project	Minor license.
3272-002.	Leggett Project	Major license.

† Existing licensed projects that are applying for new licenses.

Descriptions of Projects

Poole Project: The project would consist of the following existing facilities: (1) The 45-foot-high, 600-foot-long rockfilled Saddlebag dam, impounding a 317-acre reservoir; (2) the 27-foot-high, 270-foot-long rockfilled Tioga dam, impounding a 73-acre reservoir; (3) the 19-foot-high, 50-foot-long concrete Tioga Auxilliary dam; (4) the 17-foot-high, 437-foot-long rockfilled Rhinedollar dam, impounding a 66-acre reservoir; (5) the concrete intake structure at the Rhinedollar dam; (6) the 2,452-foot-long, 48-inch-diameter pipeline; (7) the 3,680-foot-long, 42-inch to 28-inch-diameter penstock; (8) the Poole powerhouse containing one generating unit with a rated capacity of 10.0 megawatts; (9) the 21.7-mile-long, 115-kilovolts (kV) transmission line from the Poole powerhouse to the Rush Creek powerhouse; and (10) appurtenant facilities. The average annual energy generation is estimated to be 29 million kilowatthours.

Rush Creek Project: The project would consist of the following existing facilities: (1) Rush Meadows reservoir with a surface area of 185 acres and a usable storage capacity of 5,277 acre-feet at maximum reservoir elevation 9,416 feet; (2) A 463-foot-long, 50-foot-high, concrete arch dam on Rush Creek having an overflow side channel spillway; (3) Gem Lake reservoir with a surface area of 282 acres and a usable storage capacity of 17,228 acre-feet at maximum reservoir elevation 9,052 feet; (4) a 666-foot-long, 80-foot-high, multiple arch, concrete dam at Rush Creek having an overflow spillway; (5) Agnew lake reservoir with a surface area of 40 acres and a usable storage capacity of 810 acre-feet at maximum reservoir elevation 8,496 feet; (6) a 278-foot-long, 30-foot-high multiple arch, concrete dam on Rush Creek having an overflow spillway; (7) a 48-inch-diameter, 4,584-foot-long steel pipe from Gem dam to a valve house below Agnew dam; (8) a 30-inch-diameter, 575-foot-long steel pipe from Agnew dam to the valve house; (9) two 4,280-foot-long steel penstocks, varying in diameter from 30 inches to 28 inches; from the valve house to Rush Creek powerhouse; (10) the Rush Creek powerhouse, located at elevation 7,249 feet, containing two generating units with a total capacity of 8,400 kilowatts (kW); (11) a switch-yard adjacent to the powerhouse; and (12) a 49.6 mile-long, 115-kV transmission line supported on woodpole, H-frame structures, extending to the control substation.

Lundy Project: The project would consist of the following existing facilities: (1) The existing 33-foot-high and 690-foot-long earth and rockfilled Lundy dam, impounding a 132-acre reservoir; (2) a 270-foot-long concrete intake structure; (3) a 12,000-foot-long, 48-inch-diameter pipeline; (4) a 3,000-foot riveted penstock, varying diameter; (5) a powerhouse containing two generating units, each rated at 1,500 kW; and (6) a 7.1-mile-long transmission line; and (7) appurtenant facilities. The average annual energy generation is estimated to be 9.3 million kWh.

Paoha Project: The proiposed project would consist of the following facilities: (1) An intake structure on an existing canal of Southern California Edison Company's Lundy Project No. 1390; (2) a 920-foot-long, 42-inch-diameter steel penstock; (3) a powerhouse containing one generating unit rated at 370 kW; and (4) a 700-foot-long transmission line. The average annual energy generation is estimated to be 750,000 kWh.

Leggett Project: The proposed project would consist of the following facilities: (1) A 2-foot-high, 45-foot-long rockfill diversion and intake structure to be located in the existing tailrace pool of Southern California Edison Company's Project No. 1388; (2) a 2-foot-high, 10-foot-long stoplog diversion structure on Lee Vining Creek; (3) an 8,700-foot-long, 40-inch-diameter steel penstock; (4) a powerhouse containing one 1,100-kW generating unit and one mobile 1,100-kW generating unit; and (5) a 300-foot-long transmission line. The average annual energy generation is estimated to be 6.6 million kWh.

Preliminary Review of Target Resources

The staff has examined the five pending applications for license for hydropower development and has studied comments from federal and state natural resource agencies and the public concerning the potential for cumulative impacts from the proposed projects. The staff's preliminary analysis has identified resident trout, riparian-associated wildlife, local economy, riparian vegetation, aesthetics, and recreation as the target resources in the Mono Lake Basin.

The staff has concluded that the target resources of the Mono Lake Basin would be the same as those that were addressed in the Owens River Basin, October 1986, Final Environmental Impact Statement.

Assessment of Cumulative Impacts

In addition to the information available on the five pending applications for license in the Mono Lake Basin, the staff will review any data provided by interested persons and agencies addressing how the five pending projects may have cumulative impacts on the six identified resources, or other target resources of the region not yet identified by the staff.

Comments should be filed by the close of business September 21, 1987, and should be addressed to Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Please affix Docket No. EL85-19-117 on all comments.

For further specific information, please contact Lynn R. Miles, Sr. River Basin Coordinator, at (202) 376–9414.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–18366 Filed 8–12–87; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 346–018 et al.]

Hydroelectric Applications; Filed With the Commission; Minnesota Power & Light Co. et al.

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. Type of Application: New Capacity License Amendment.

b. Project No.: 346–018.

c. Date Filed: November 17, 1986.

d. Applicant: Minnesota Power & Light Company.

e. Name of Project: Blanchard.

f. Location: Mississippi River, Morrison County, Minnesota.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Douglas W. Peterson, Attorney, Minnesota Power & Light Company, 30 West Superior Street, Duluth, MN 55802, (218) 723–3961.

i. FERC Contact: Peter K. Lyse, (202) 376–9479.

j. Comment Date: September 18, 1987.

k. Description of Project: The current license for the Blanchard Project was issued May 20, 1980, for a term expiring August 24, 2003. The existing project facilities consist of: (1) A reservoir with a surface area of approximately 1,150 acres and a gross storage capacity of approximately 16,100 acre-feet; (2) a concrete gravity dam, approximately 750 feet long and 45 feet high, flanked by earth dikes on each side; (3) a powerhouse containing two generating units, each rated at 6,000 kW; and (4) appurtenant facilities.

The license proposes to install a third generating unit of 6,000 kW capacity in the existing powerhouse. The layout and structural configuration of the existing powerhouse provides for the later installation of a third generating unit. The estimated additional average generation of 18.4 MWh would be used in the licensee's interconnected system.

l. This notice also consists of the following standard paragraphs: B and C.

2 a. Type of Application: Transfer of License.

b. Project No.: 2548–014.

c. Date Filed: July 10, 1987.

d. Applicant: Lyons Falls Hydroelectric, Inc. (Transferee), and North Country Hydro Associates (Transferor).

e. Name of Project: Lyons Falls Project.

f. Location: On the Moose River and the Black River in Lewis County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact:

Mr. John T. Ferguson, II, Senior Counsel, Pulp and Paper, Georgia-Pacific Corporation, 320 Post Road, Darien, CT 06820, (203) 656–6271

Lyons Falls Hydroelectric, Inc., c/o Mr. James G. Wheeler, Jr., Downs, Rachlin & Martin, 9 Prospect Street, St. Johnsbury, VT 05819, (802) 748–8324

Pascal Brun, North Country Hydro Associates, 125 Wolf Road, Albany, NY 12205, (514) 282–9551

i. FERC Contact: Thomas O. Murphy, (202) 376–9829.

j. Comment Date: September 10, 1987.

k. Description of Project: On May 6, 1986, a license was issued to the Georgia-Pacific Corporation to operate and maintain the Lyons Falls Project No. 2548. On February 10, 1987, a joint request for a transfer of the license from Georgia-Pacific Corporation to Lyons Falls Hydroelectric, Inc. was filed. On June 10, 1987, the Commission issued an order approving the transfer subject to certain conditions.

On July 10, 1987, a joint request for a transfer of the license from Lyons Falls Hydroelectric, Inc. and the North Country Hydro Associates was filed. As of July 10, 1987, all of the conditions of the June 10, 1987, order approving transfer of license have not been satisfied. Approval of the July 10, 1987, transfer request will be granted only after all conditions of the June 10, 1987, order are satisfied.

The joint applicants have filed the July 10, 1987, transfer request in order to obtain the financing necessary to construct, operate, and maintain the Lyons Falls Project.

l. This notice also consists of the following standard paragraphs: B and C.

3 a. Type of Application: Preliminary Permit.

b. Project No.: 10425–000.

c. Date Filed: June 2, 1987.

d. Applicant: Steven J. Wight.

e. Name of Project: Anderson Creek Project.

f. Location: In Snoqualmie-Mt. Baker National Forest, on Anderson Creek, in Whatcom County, Washington. Township 39N and Range 8E.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Steven J. Wight, 104 E. Maple, Bellingham, WA 98225, (206) 733–8987.

i. FERC Contact: Thomas A. Dean, (202) 376–9275.

j. Comment Date: September 10, 1987.

k. Competing Application:

Project No. 10424–000
Date Filed: June 2, 1987.

l. Description of Project: The proposed project would consist of: (1) A 8-foot-high diversion structure with an inlet elevation of 3,200 feet msl; (2) a penstock 4,900 feet long and 20 inches in diameter leading to; (3) a powerhouse at elevation 2,000 feet msl containing two generating units with a total installed capacity of 2,000 kW operating at 1,200 feet of hydraulic head; (4) a tailrace; and (5) a 600-foot-long, 55-kV transmission line. The applicant estimates the average annual energy production to be 9.1 MWh. The approximate cost of the studies under the permit would be $40,000.

m. Purpose of Project: Applicant intends to sell the power generated at the proposed facility to Puget Power of Bellevue, Washington.

n. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

a. Type of Application: Preliminary Permit.

b. Project No: 10424–000.

c. Date Filed: June 2, 1987.

d. Applicant: Energy Alternatives.

e. Name of Project: Anderson Creek Project.

f. Location: In Snoqualmie-Mt. Baker National Forest, on Anderson Creek, in Whatcom County, Washington. Township 39N and Range 8E.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r)

h. Applicant Contact: Alan K. VanHook, 6286 North Fork Road, Deming, WA 98244, (206) 592–5148.

i. FERC Contact: Thomas A. Dean, (202) 376–9275.

j. Comment Date: September 14, 1987.

k. Competing Application:

Project No. 10425–000.
Date Filed: June 2, 1987.

l. Description of Project: The proposed project would consist of: (1) A 10-foot-high diversion weir with an inlet elevation of 3,100 feet msl; (2) a penstock 4,800 feet long and 24 inches in diameter leading to; (3) a powerhouse at elevation 2,000 feet msl containing a single generating unit with a capacity of 3,500 kW operating at 1,100 feet of hydraulic head; (4) a tailrace; and (5) a 6-mile-long, 110-kw transmission line. The applicant estimates the average annual energy production to be 12 GWh. The approximate cost of the studies under the permit would be $50,000.

m. Purpose of Project: Applicant intends to sell the power generated at the proposed facility to Puget Sound Power and Light of Washington.

n. This notice also consists of the following standard paragraphs: A8, A10, B, C, and D2.

a. Type of Application: Amendment of License.

b. Project No: 2370-014.

c. Date Filed: July 7, 1987.

d. Applicant: Pennsylvania Electric Company.

e. Name of Project: Deep Creek Project.

f. Location: On Deep Creek near the Village of Oakland, Garrett County, Maryland.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r)

h. Applicant Contact: Mr. William J. Madden, Jr., Bishop, Liberman, Cook, Purcell, Reynolds, 1200 17th Street, NW, Washington, DC 20036, (202) 857-9800.

i. FERC Contact: Michael Dees, (202) 376-2830.

j. Comment Date: September 18, 1987.

k. Description of Project: The proposed amendment to Pennsylvania Electric Company's existing licensed Project No. 2370 would consist of authorization to issue boat docking permits in excess of the number for which the licensee is authorized by article 36 of its license for the Deep Creek Project. Authority to issue the following boat dock permits at the Villages of Wisp has been requested: two common dock facilities each containing 30 slips, ten shared dock facilities each containing two slips for use by single families, and two storage racks each containing space for 15 small boats.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

Standard Paragraphs

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application, or notice of intent to file a competing preliminary permit or development application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203-RB, at the above address. A copy of any notice of intent, competing applicaton or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: August 10, 1987.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18500 Filed 8-12-87; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8826-002]

Surrender of Preliminary Permit; Mega Renewables

August 7, 1987.

Take notice that Mega Renewables,

permittee for the Young Falls Project No. 8826, located on the Pit River, Lassen County, California, has requested that its preliminary permit be terminated. The preliminary permit was issued on June 20, 1985, and would have expired on May 31, 1988. The permittee states that analysis of the Young Falls Project indicated that it was not economically feasible for development.

The permitee filed the request on July 27, 1987, and the preliminary permit for Project No. 8826 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18366 Filed 8-12-87; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8829-002]

Surrender of Preliminary Permit; Mega Renewables

August 7, 1987.

Take notice that Mega Renewables, permittee for the Pit Falls Project No. 8829, located on the Pit River, Shasta County, California, has requested that its preliminary permit be terminated. The preliminary permit was issued on June 7, 1985, and would have expired on May 31, 1988. The permittee states that analysis of the Pit Falls Project indicated that it was not economically feasible for development.

The permittee filed the request on July 27, 1987, and the preliminary permit for Project No. 8829 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR § 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18367 Filed 8-12-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-718-003]

Application for Commission Recertification of Qualifying Status of a Small Power Production Facility; Koppers Co.

August 7, 1987.

On June 22, 1987, Koppers Company (Applicant), of 436 Seventh Avenue, Pittsburgh, Pennsylvania 15219, submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Montgomery, Pennsylvania. The facility as originally proposed was to consist of a steam generator and an extraction steam turbine generator set. The net electric power production capacity as originally proposed was to be 6600 KW. The primary energy source is wood waste in the form of wood chips and used railroad crossties.

By order issued November 20, 1985, the Director of Office of Electric Power Regulation granted certification of the facility as a small power production facility under Docket No. QF85-718-000.

The recertification is requested due to a change in the net electric power production capacity of the facility from 6600 KW to 8850 KW. The operation of the facility will begin December 1, 1987. All other characteristics remain unchanged.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18368 Filed 8-12-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL87-54-000]

Filing; Alamito Co. and Tucson Electric Power Co. v. San Diego Gas & Electric Co.

August 7, 1987.

Take notice that on July 31, 1987, Alamito Company (Alamito) and Tucson Electric Power Company (TEP) tendered for filing pursuant to Rules 207, 212, and 217 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.207, 385.212, and 385.217, a petition for declaratory order and motion for summary judgment requesting the Commission to confirm and rule summarily that San Diego Gas & Electric Company (San Diego) is obligated to pay Alamito under Phase Five of a Ten-Year Power Sale and Interconnection Agreement demand charges based on a contract demand of 400 mw.

Alamito and TEP state that San Diego unilaterally and without prior notice has withheld, and continues to refuse to pay, the demand charge of 300 of the 400 mw of power sold under Phase Five. Alamito and TEP also state that San Diego, as of this date, has withheld approximately $6.3 million in demand charges due under Phase Five.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 24, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18370 Filed 8-12-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA87-13-20-000 and TA87-13-20-001]

Proposed Changes in FERC Gas Tariff; Algonquin Gas Transmission Co.

August 6, 1987.

Take notice that Algonquin Gas Transmission Company (Algonquin) on August 4, 1987 tendered for filing the

following sheets to Second Revised Volume No. 1 of its FERC Gas Tariff:

To Be Effective September 1, 1987

Twentieth Revised Sheet No. 201
Ninth Revised Sheet No. 231

To Be Effective August 1, 1987

Substitute Thirteenth Revised Sheet No. 206

Algonquin states that such tariff sheets are being filed pursuant to Algonquin's Purchased Gas Adjustment Provision as set forth in section 17 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1 and pursuant to section 7 of its Rate Schedule F–4 to reflect (i) an adjustment to amortize the June 30, 1987 balance in its Unrecovered Purchased Gas Cost Account and (ii) an adjustment to reflect a change in purchased gas cost to be charged by its supplier, Texas Eastern Transmission Corporation. Algonquin further states that a copy of this filing is being served upon each affected party and state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 13, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–18371 Filed 8–12–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER87–559–000]

Filing; Appalachian Power Co.

August 7, 1987.

Take notice that on August 3, 1987, American Electric Power Service Corporation (AEP) tendered for filing on behalf of its affiliated Appalachian Power Company (Appalachian), which is an AEP affiliated operating subsidiary, a Notice of Cancellation or Termination of the Concurrent Exchange Service Agreement, dated October 13, 1953, between Appalachian Electric Power Company and Bristol, Virginia Utilities Board, Agent of City of Bristol, Virginia (Bristol Agreement), and a Notice of Cancellation or Termination of the letter agreement dated October 6, 1953, between Appalachian Electric Power Company and Tennessee Valley Authority, designated TV15617A.

Under the Bristol Agreement and TV15617A, Appalachian concurrently delivers energy received from TVA to City of Bristol (City) at City's water filter plant. City wishes to terminate this arrangement effective July 1, 1987.

An effective date of July 1, 1987 and a waiver of the Commission's 60-day filing requirement has been requested. Copies of the filing were served upon the Public Service Commission of West Virginia and the Virginia State Corporation Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 24, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–18372 Filed 8–12–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER87–561–000]

Filing; Arizona Public Service Co.

August 7, 1987.

Take notice that on August 3, 1987, Arizona Public Service Company (APS) tendered for filing a new Wholesale Power Agreement (New Agreement) with Citizens Utilities Company (Citizens), along with two other Agreements that supplement the New Agreement, which are entitled "Indemnity Regarding the Non-Application of the Tax Charge" (Indemnity Agreement) and "Supplement No. 1, Supplemental Peaking Energy Schedule to the Wholesale Power Agreement" (Supplemental Energy Agreement).

The New Agreement is intended to supersede the existing Wholesale Power Supply Agreement (Original Agreement), FERC Rate Schedule No. 50, and merely organizes into one concise easily referenced document all the changes, and amendments and current revisions to the Original Agreement that have taken place over time made the same way as a conformed agreement.

The Indemnity Agreement serves to indemnify APS against any potential "sales" tax liability that may be assessed against APS in regard to certain revenues collected under the New Agreement and Original Agreement.

The Supplemental Energy Agreement provides that APS supply supplemental peaking energy to Citizens, in excess of its requirements under the New Agreement, in order to reduce the otherwise operational time of combustion turbine units that Citizens is in the process of installing at its Nogales, Arizona service area.

Copies of this filing have been sent to Citizens and the Arizona Corporation Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 24, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–18373 Filed 8–12–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP87–464–000]

Request Under Blanket Authorization; Arkla Energy Resources, a Division of Arkla, Inc.

August 7, 1987.

Take notice that on July 27, 1987, Arkla Energy Resources (AER), a division of Arkla, Inc., P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP87–464–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to relocate and upgrade three existing town border stations and to abandon facilities that largely would be used by Arkansas Louisiana Gas

Company (ALG), a division of Arkla, Inc., in the distribution of natural gas in the towns of Thomas, Fay and Drummond, Oklahoma, and environs, under the certificate issued in Docket Nos. CP82-384-000 and CP82-384-001 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application that is on file with the Commission and open to public inspection.

It is stated that AER proposes to: (1) Relocate and upgrade a skid-mounted town border station from the terminus of AER's Line 2-D to the existing interconnection of Line 2-D and Line 2 and to abandon and transfer Line 2-D to ALG for continued use in the retail delivery of gas to consumers in the Thomas, Oklahoma area; (2) construct and operate a new tap and town border station, to abandon an existing town border station at the terminus of AER's Line 2-E, and to abandon and transfer Line 2-E to ALG for the retail distribution of gas in the Fay, Oklahoma area; and (3) relocate and upgrade a skid-mounted town border station from the terminus of AER's Line 2-J to the existing interconnection of Line 2-J and Line 2 and to abandon and transfer Line 2-J to ALG for continued use in the retail delivery of gas to consumers in the Drummond, Oklahoma area. AER states that the projected cost of the proposed rearrangements and construction is $57,671.

AER states that the proposed abandonments would have no impact on service to existing consumers, all of whom are currently, and would continue to be, served by ALG. AER further states that relocating and upgrading these three town border stations would aid in the efficient, safe and reliable transportation and distribution of gas in the affected service areas.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,
Secretary.

[FR Doc. 87-18374 Filed 8-12-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP87-473-000]

Application; Carnegie Natural Gas Co.

August 6, 1987.

Take notice that on July 31, 1987, Carnegie Natural Gas Company (Applicant), 800 Regis Avenue, Pittsburgh, Pennsylvania 15236, filed in Docket No. CP87-473-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing (1) the sale of natural gas to Columbia Gas of Ohio (COH) and to Columbia Gas of Pennsylvania (CPA), (2) approval of a new Rate Schedule CDS and tariff sheets proposed to be included as part of Applicant's FERC Gas Tariff first revised volume No. 1 for the aforesaid sales, and (3) the construction of a new delivery point, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it seeks authorization to sell to COH a maximum annual sales quantity of 7,300,000 dt equivalent of gas with a maximum daily entitlement quantity of 20,000 dt equivalent of gas, and to sell to CPA a maximum annual sales quantity of 5,475,000 dt equivalent of gas with a maximum daily entitlement quantity of 15,000 dt equivalent of gas. Applicant indicates that each sale is for a primary term of ten years and year to year thereafter until terminated by either party. Applicant proposes to make such sales on a firm basis pursuant to rates contained in its proposed new Rate Schedule CDS, attached as Exhibit P to the application, which would offer year-round contract demand service to any distributor or pipeline company.

To make the sale to CPA, Applicant proposes to construct and operate a new meter and regulator station on its Pennsylvania pipeline system in Jefferson Borough, Allegheny County, Pennsylvania. Applicant estimates the cost of the new delivery point to be $200,000.

Applicant states that the sale to COH would be made at an existing delivery point of Texas Eastern Transmission Corporation in Fairfield County, Ohio (Hooker). Applicant indicates that the Hooker delivery point is an existing delivery point for Columbia Gas Transmission Corporation (Columbia). It is further indicated, that gas sold by applicant to COH would be received by Columbia for delivery to COH at or near Columbus, Ohio. Applicant states that Texas Eastern would file an application to amend the existing service agreement between applicant and Texas Eastern to add the Hooker delivery point. Applicant indicates that gas to be sold to COH and CPA would be provided from Applicant's system supply.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 20, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[FR Doc. 87-18375 Filed 8-12-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ST87-2739-000 et al.]

Self-Implementing Transactions; Colorado Interstate Gas Corp. et al.

August 7, 1987.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's Regulations, and sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA).[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction. A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's Regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's Regulations and section 311(a)(2) of the NGPA. In those cases where Commission approval of a transportation rate is sought pursuant to § 284.123(b)(2), the table lists the proposed rate and the expiration date of the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a petition to intervene with the Secretary of the Commission.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to § 284.163 of the Commission's Regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G-S" indicates transportation by an interstate pipeline company on behalf of any shipper pursuant to a § 284.223 and a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G(LT)" or "G(LS)" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

A "G(HT)" or "G(HS)" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

Any person desiring to be heard or to make any protest with reference to a transaction reflected in this notice should on or before August 27, 1987, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR § 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,
Secretary.

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's Regulations.

Docket No.	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMBTU)
ST87-2739	Colorado Interstate Gas Co	Colony Pipeline Corp	06-01-87	B		
ST87-2740	Delhi Gas Pipeline Corp	Texas Eastern Transmission Corp.	06-01-87	C		
ST87-2741	Delhi Gas Pipeline Corp	Arkansas Oklahoma Gas Corp	06-01-87	C	10-29-87	21.00
ST87-2742	Northern Natural Gas Co	NGC Intrastate Pipeline Co	06-01-87	B		
ST87-2743	Northern Natural Gas Co	Brooklyn Union Gas Co	06-01-87	B		
ST87-2744	Northern Natural Gas Co	Houston Pipe Line Co	06-01-87	B		
ST87-2745	Northern Natural Gas Co	Houston Pipe Line Co	06-01-87	B		
ST87-2746	Columbia Gulf Transmission Co	Columbia Gas of Ohio, Inc	06-01-87	B		
ST87-2747	Columbia Gulf Transmission Co	Columbia Gas of Ohio, Inc	06-01-87	B		
ST87-2748	Columbia Gulf Transmission Co	Natural Gas Pipeline Co. of America	06-01-87	G		
ST87-2749	Columbia Gulf Transmission Co	Northern Indiana Pub. Serv. Co., et al.	06-01-87	B		
ST87-2750	Columbia Gulf Transmission Co	South Georgia Natural Gas Co	06-01-87	B		
ST87-2751	Columbia Gulf Transmission Co	Philadelphia Gas Works, et al	06-01-87	B		
ST87-2752	Columbia Gulf Transmission Co	Louisiana Intrastate Gas Corp	06-01-87	B		
ST87-2753	Transwestern Pipeline Co	Southern California Gas Co	06-01-87	B		
ST87-2754	Louisiana Resources Co	Louisiana Gas Marketing Co	06-01-87	C	10-29-87	26.43
ST87-2755	Natural Gas Pipeline Co. of America	Wisconsin Southern Gas Co., Inc	06-01-87	B		
ST87-2756	United Gas Pipe Line Co	Wisconsin Public Serv. Corp., et al.	06-01-87	B		
ST87-2757	United Gas Pipe Line Co	Baltimore Gas & Elect. Co., et al	06-01-87	B		
ST87-2758	Louisiana Resources Co	Florida Gas Transmission Co	06-01-87	C	10-29-87	26.43
ST87-2759	Williams Natural Gas Co	Union Gas System, Inc	06-01-87	B		
ST87-2760	Trunkline Gas Co	Consumers Power Co	06-01-87	B		

Docket No.	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMBTU)
ST87-2761	Trunkline Gas Co	Consumers Power Co	06-01-87	B		
ST87-2762	Trunkline Gas Co	Consumers Power Co	06-01-87	B		
ST87-2763	Trunkline Gas Co	Consumers Power Co	06-01-87	B		
ST87-2764	Trunkline Gas Co	Consumers Power Co	06-01-87	B		
ST87-2765	Trunkline Gas Co	Consumers Power Co	06-01-87	B		
ST87-2766	Transcontinental Gas Pipe Line Corp	Baltimore Gas and Electric Co	06-01-87	B		
ST87-2767	Transcontinental Gas Pipe Line Corp	Atlanta Gas Light Co., et al	06-01-87	B		
ST87-2768	Transcontinental Gas Pipe Line Corp	Atlanta Gas Light Co	06-01-87	B		
ST87-2769	Transcontinental Gas Pipe Line Corp	Piedmont Natural Gas Co	06-01-87	B		
ST87-2770	Transcontinental Gas Pipe Line Corp	Mississippi Fuel Co	06-01-87	B		
ST87-2771	Transcontinental Gas Pipe Line Corp	Long Island Lighting Co	06-01-87	B		
ST87-2772	Texas Eastern Transmission Corp	Columbia Gas of Ky, Inc., et al	06-01-87	B		
ST87-2773	Texas Eastern Transmission Corp	North Alabama Gas District	06-01-87	B		
ST87-2774	Texas Eastern Transmission Corp	Oxford Natural Gas Co	06-01-87	B		
ST87-2775	Texas Eastern Transmission Corp	Bayou Industrial Gas Corp	06-01-87	B		
ST87-2776	Texas Eastern Transmission Corp	Public Service Electric and Gas Co.	06-01-87	B		
ST87-2777	Tennessee Gas Pipeline Co	Consolidated Edison Co. of NY, Inc.	06-01-87	B		
ST87-2778	Tennessee Gas Pipeline Co	Dayton Power & Light Co., et al	06-01-87	B		
ST87-2779	Tennessee Gas Pipeline Co	Clinton Newberry Nat. Gas Authority.	06-01-87	B		
ST87-2780	Tennessee Gas Pipeline Co	Cincinnati Gas & Elect. Co., et al	06-01-87	B		
ST87-2781	Tennessee Gas Pipeline Co	Baltimore Gas & Elect. Co., et al	06-01-87	B		
ST87-2782	Northern Natural Gas Co	Apache Transmission Co	06-01-87	B		
ST87-2783	Northern Natural Gas Co	West Texas Gas, Inc	06-01-87	B		
ST87-2784	Northern Natural Gas Co	West Texas Gas, Inc	06-01-87	B		
ST87-2785	Northern Natural Gas Co	West Texas Gas, Inc	06-01-87	B		
ST87-2786	Panhandle Eastern Pipe Line Co	Ohio Gas Co	06-01-87	B		
ST87-2787	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	06-01-87	B		
ST87-2788	Panhandle Eastern Pipe Line Co	Ohio Gas Co	06-01-87	B		
ST87-2789	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	06-01-87	B		
ST87-2790	Panhandle Eastern Pipe Line Co	Indiana Gas Co., Inc	06-01-87	B		
ST87-2791	Panhandle Eastern Pipe Line Co	Ohio Valley Gas Corp	06-01-87	B		
ST87-2792	Panhandle Eastern Pipe Line Co	Battle Creek Gas Co	06-01-87	B		
ST87-2793	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	06-01-87	B		
ST87-2794	Gas Gathering Corp	Northcott Exploration Co., Inc	06-01-87	G-EU		
ST87-2795	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	06-02-87	B		
ST87-2796	Panhandle Eastern Pipe Line Co	Northern Indiana Public Service Co.	06-02-87	B		
ST87-2797	Panhandle Eastern Pipe Line Co	Northern Indiana Public Service Co.	06-02-87	B		
ST87-2798	Panhandle Eastern Pipe Line Co	Peoples Natural Gas Co	06-02-87	B		
ST87-2799	Panhandle Eastern Pipe Line Co	Consumers Power Co	06-02-87	B		
ST87-2800	Panhandle Eastern Pipe Line Co	Consumers Power Co	06-02-87	B		
ST87-2801	Panhandle Eastern Pipe Line Co	Consumers Power Co	06-02-87	B		
ST87-2802	Panhandle Eastern Pipe Line Co	Consumers Power Co	06-02-87	B		
ST87-2803	Panhandle Eastern Pipe Line Co	Consumers Power Co	06-02-87	B		
ST87-2804	Texas Gas Transmission Corp	Union Gas Co. of KY	06-02-87	B		
ST87-2805	Texas Gas Transmission Corp	Union Gas Co. of AR	06-02-87	B		
ST87-2806	Texas Gas Transmission Corp	Enron Industrial Natural Gas Co	06-02-87	B		
ST87-2807	Texas Gas Transmission Corp	Pennsylvania Gas and Water Co	06-02-87	B		
ST87-2808	Valero Transmission Co	Transwestern Pipeline Co	06-02-87	C		
ST87-2809	Valero Transmission Co	Florida Gas Transmission Co	06-03-87	C		
ST87-2810	Mountain Fuel Resources, Inc	Moutain Fuel Supply Co	06-03-87	B		
ST87-2811	Houston Pipe Line Co	Natural Gas Pipeline Co. of America.	06-03-87	C		
ST87-2812	Houston Pipe Line Co	Granite State Gas Transmission, Inc.	06-03-87	C		
ST87-2813	Louisiana Resources Co	Philadelphia Gas Works, et al	06-03-87	C	10-31-87	7.5
ST87-2814	Louisiana Resources Co	Transcontinental Gas Pipe Line Corp.	06-03-87	C	10-31-87	26.43
ST87-2815	Louisiana Resources Co	Transcontinental Gas Pipe Line Cor.	06-03-87	C	10-31-87	26.43
ST87-2816	Natural Gas Pipeline Co. of America	Southern California Gas Co	06-03-87	B		
ST87-2817	Oasis Pipe Line Co	Natural Gas Pipeline Co. of America.	06-03-87	C		
ST87-2818	Panhandle Gas Co	Granite State Gas Transmission, Inc.	06-03-87	D		
ST87-2819	Sea Robin Pipeline Co	Wellhead Ventures Corp	06-03-87	B		

Docket No.	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [3]	Transportation rate (¢/MMBTU)
ST87-2820	Sea Robin Pipeline Co	Quivira Gas Co	06-03-87	B		
ST87-2821	Sea Robin Pipeline Co	Memphis Light, Gas and Water Division.	06-03-87	B		
ST87-2822	Sea Robin Pipeline Co	Washington Gas Light Co., et al	06-03-87	B		
ST87-2823	Tennessee Gas Pipeline Co	Boston Gas Co	06-03-87	B		
ST87-2824	Tennessee Gas Pipeline Co	T.W. Phillips Gas & Oil Co	06-03-87	B		
ST87-2825	Tennessee Gas Pipeline Co	Essex County Gas Co	06-03-87	B		
ST87-2826	Tennessee Gas Pipeline Co	Channel Industries Gas Co	06-03-87	B		
ST87-2827	Tennessee Gas Pipeline Co	Connecticut Natural Gas Corp	06-03-87	B		
ST87-2828	Williams Natural Gas Co	KPL Gas Service Co	06-03-87	B		
ST87-2829	Blue Dolphine Pipe Line Co	DOW Chemical Co	06-03-87	G-EU		
ST87-2830	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	06-04-87	B		
ST87-2831	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	06-04-87	B		
ST87-2832	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	06-04-87	B		
ST87-2833	Consolidated Gas Transmission Corp	Baltimore Gas and Electric Co	06-04-87	B		
ST87-2834	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	06-04-87	B		
ST87-2835	Consolidated Gas Transmission Corp	East Ohio Gas Co	06-04-87	B		
ST87-2836	Consolidated Gas Transmission Corp	Rochester Gas & Electric Corp	06-04-87	B		
ST87-2837	Consolidated Gas Transmission Corp	East Ohio Gas Co	06-04-87	B		
ST87-2838	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	06-04-87	B		
ST87-2839	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	06-04-87	B		
ST87-2840	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	06-04-87	B		
ST87-2841	Consolidated Gas Transmission Corp	Niagara Mohawk Power Crop	06-04-87	B		
ST87-2842	Consolidated Gas Transmission Corp	East Ohio Gas Co	06-04-87	B		
ST87-2843	Consolidated Gas Transmission Corp	East Ohio Gas Co	06-04-87	B		
ST87-2844	Consolidated Gas Transmission Corp	Rochester Gas & Electric Corp	06-04-87	B		
ST87-2845	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	06-04-87	B		
ST87-2846	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	06-04-87	B		
ST87-2847	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	06-04-87	B		
ST87-2848	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	06-04-87	B		
ST87-2849	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	06-04-87	B		
ST87-2850	Consolidated Gas Transmission Corp	Hope Gas, Inc	06-04-87	B		
ST87-2851	Consolidated Gas Transmission Corp	Peoples Natural Gas Co	06-04-87	B		
ST87-2852	Consolidated Gas Transmission Corp	Peoples Natural Gas Co	06-04-87	B		
ST87-2853	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	06-04-87	B		
ST87-2854	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	06-04-87	B		
ST87-2855	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	06-04-87	B		
ST87-2856	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	06-04-87	B		
ST87-2857	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	06-04-87	B		
ST87-2858	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	06-04-87	B		
ST87-2859	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	06-04-87	B		
ST87-2860	Consolidated Gas Transmission Corp	New York State Electric and Gas Co.	06-04-87	B		
ST87-2861	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	06-04-87	B		
ST87-2862	Consolidated Gas Transmission Corp	East Ohio Gas Co	06-04-87	B		
ST87-2863	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	06-04-87	B		
ST87-2864	El Paso Natural Gas Co	El Paso Hydrocarbons Co	06-04-87	B		
ST87-2865	Northern Natural Gas Co	San Diego Gas & Electric Co	06-03-87	B		
ST87-2866	Northern Natural Gas Co	Michigan Consolidated Gas Co	06-03-87	B		
ST87-2867	Tennessee Gas Pipeline Co	Bridgeline Gas Distribution Co	06-04-87	B		
ST87-2868	Tennessee Gas Pipeline Co	Connecticut Natural Gas Corp	06-04-87	B		
ST87-2869	Tennessee Gas Pipeline Co	Long Island Lighting Co	06-04-87	B		
ST87-2870	Tennessee Gas Pipeline Co	Philadelphia Elect. Co., Et al	06-04-87	B		
ST87-2871	Tennessee Gas Pipeline Co	Excel Intrastate Pipeline Co	06-04-87	B		
ST87-2872	Tennessee Gas Pipeline Co	Excel Intrastate Pipeline Co	06-04-87	B		
ST87-2873	Tennessee Gas Pipeline Co	Quivira Gas Co	06-04-87	B		
ST87-2874	Channel Industries Gas Co	Southern California Gas Co	06-04-87	C		
ST87-2875	Natural Gas Pipeline Co. of America	People Gas Light & Coke Co	06-04-87	B		
ST87-2876	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co	06-04-87	B		
ST87-2877	Natural Gas Pipeline Co. of America	Illinois Power Co	06-04-87	B		
ST87-2878	Cranberry Pipeline Corp	Tennessee Gas Pipeline Co	06-05-87	C	1-02-87	65.00
ST87-2879	Cranberry Pipeline Corp	Cabot Corp	06-05-87	C	11-02-87	65.00
ST87-2880	Tennessee Gas Pipeline Co	New Jersey Natural Gas Co	06-05-87	B		
ST87-2881	Mountain Fuel Resources, Inc	Mountain Fuel Supply Co	06-05-87	B		
ST87-2882	Iowa-Illinois Gas & Electric Co	Natural Gas Pipeline Co. of America.	06-05-87	G(HT)		
ST87-2883	Taft Pipeline Co	Northern Gas Co	06-05-87	C	11-02-87	9.8
ST87-2884	Northern Natural Gas Co	Southern California Gas Co	06-05-87	B		
ST87-2885	Northern Natural Gas Co	NGP Pipeline Co	06-05-87	B		
ST87-2886	Northern Natural Gas Co	Sunshine Energy Co	06-05-87	B		

Docket No.	Transporter/seller	Recipient	Date filed	Subpart	Expiration date	Transportation rate (¢/MMBTU)
ST87-2887	Panhandle Eastern Pipe Line Co	Consumers Power Co	06-06-87	B		
ST87-2888	Panhandle Eastern Pipe Line Co	Iowa-Illinois Gas & Elect. Co., et al.	06-06-87	B		
ST87-2889	Trunkline Gas Co	Northern Indiana Public Service Co.	06-06-87	B		
ST87-2890	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	06-06-87	B		
ST87-2891	Panhandle Eastern Pipe Line Co	Northern Illinois Gas Co	06-06-87	B		
ST87-2892	Equitable Gas Co	Equitable Gas Co. (LDC)	06-08-87	B		
ST87-2893	Equitable Gas Co	Equitable Gas Co. (LDC)	06-08-87	B		
ST87-2894	Tennessee Gas Pipeline Co	Pennsylvania Gas and Water Co	06-08-87	B		
ST87-2895	Texas Eastern Transmission Corp	City of Kennett	06-08-87	B		
ST87-2896	Texas Eastern Transmission Corp	Elizabethtown Gas Co	06-08-87	B		
ST87-2897	Texas Eastern Transmission Corp	Humble Gas System, Inc	06-08-87	B		
ST87-2898	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co	06-10-87	B		
ST87-2899	Natural Gas Pipeline Co. of America	Iowa Electric Light & Power Co	06-10-87	B		
ST87-2900	Natural Gas Pipeline Co. of America	Illinois Power Co	06-10-87	B		
ST87-2901	Natural Gas Pipeline Co. of America	Peoples Gas Light & Coke Co	06-10-87	B		
ST87-2902	Natural Gas Pipeline Co. of America	Central Illinois Light Co	06-10-87	B		
ST87-2903	ANR Pipeline Co	Wisconsin Public Service Co	06-10-87	B		
ST87-2904	ANR Pipeline Co	Wisconsin Natural Gas Co	06-10-87	B		
ST87-2905	ANR Pipeline Co	Michigan Consolidated Gas Co	06-10-87	B		
ST87-2906	Tennessee Gas Pipeline Co	East Ohio Gas Co., et al	06-10-87	B		
ST87-2907	Colorado Interstate Gas Co	GGSI Gas Co	06-11-87	B		
ST87-2908	Louisiana Intrastate Gas Corp	Texas Gas Transmission Corp	06-11-87	C	11-08-87	22.40
ST87-2909	Texas Gas Transmission Corp	Louisiana Gas System, Inc	06-11-87	B		
ST87-2910	Texas Gas Transmission Corp	Indiana Gas Co., Inc	06-11-87	B		
ST87-2911	ANR Pipeline Co	Michigan Consolidated Gas Co	06-12-87	B		
ST87-2912	ANR Pipeline Co	Michigan Consolidated Gas Co	06-12-87	B		
ST87-2913	Natural Gas Pipeline Co. of America	Southern California Gas Co	06-12-87	B		
ST87-2914	Natural Gas Pipeline Co. of America	Northern Indiana Public Service Co.	06-12-87	B		
ST87-2915	Northern Natural Gas Co	North Shore Gas Co	06-12-87	B		
ST87-2916	Panhandle Eastern Pipe Line Co	Consumers Power Co	06-12-87	B		
ST87-2917	Panhandle Eastern Pipe Line Co	Indiana Gas Co., Inc	06-12-87	B		
ST87-2918	Transcontinental Gas Pipe Line Corp	Public Service Electric and Gas Co.	06-12-87	B		
ST87-2919	Western Gas Supply Co	Northwest Pipeline Corp	06-12-87	C		
ST87-2920	El Paso Natural Gas Co	Libra Energies, Inc	06-15-87	B		
ST87-2921	El Paso Natural Gas Co	Southern Union Gas Co	06-15-87	B		
ST87-2922	El Paso Natural Gas Co	Southern California Gas Co	06-15-87	B		
ST87-2923	Houston Pipe Line Co	Enron Industrial Natural Gas Co	06-15-87	C		
ST87-2924	Houston Pipe Line Co	Philadelphia Electric Co	06-15-87	C		
ST87-2925	Houston Pipe Line Co	Brooklyn Union Gas Co	06-15-87	C		
ST87-2926	Houston Pipe Line Co	Public Service Electric and Gas Co.	06-15-87	C		
ST87-2927	Houston Pipe Line Co	Pacific Gas and Electric Co	06-15-87	C		
ST87-2928	Houston Pipe Line Co	Transwestern Pipeline Co	06-15-87	C		
ST87-2929	Oasis Pipe Line Co	Transwestern Pipeline Co	06-15-87	C		
ST87-2930	Oasis Pipe Line Co	Pacific Gas and Electric Co	06-15-87	C		
ST87-2931	Lear Gas Transmission Co	Williams Natural Gas Co	06-15-87	C	11-12-87	28.80
ST87-2932	Lear Gas Transmission Co	Panhandle Eastern Pipe Line Co	06-15-87	C	11-12-87	28.80
ST87-2933	Lear Gas Transmission Co	Natural Gas Pipeline Co. of America	06-15-87	C	11-12-87	29.00
ST87-2934	Lear Gas Transmission Co	Natural Gas Pipeline Co. of America	06-15-87	C	11-12-87	29.00
ST87-2935	Lear Gas Transmission Co	Panhandle Eastern Pipe Line Co	06-15-87	C	11-12-87	29.00
ST87-2936	Lear Gas Transmission Co	Panhandle Eastern Pipe Line Co	06-15-87	C	11-12-87	28.80
ST87-2937	Lear Gas Transmission Co	Williams Natural Gas Co	06-15-87	C	11-12-87	28.80
ST87-2938	Tennessee Gas Pipeline Co	Cincinnati Gas & Elect. Co., et al	06-15-87	B		
ST87-2939	Tennessee Gas Pipeline Co	Commonwealth Gas Co	06-15-87	B		
ST87-2940	El Paso Natural Gas Co	V.H.C. Pipeline Co	06-16-87	B		
ST87-2941	Natural Gas Pipeline Co. of America	Endevco Pipeline Co	06-16-87	B		
ST87-2942	Northern Natural Gas Co	Houston Pipe Line Co	06-16-87	B		
ST87-2943	Trunkline Gas Co	Humble Gas System, Inc	06-17-87	B		
ST87-2944	Panhandle Eastern Pipe Line Co	Consumers Power Co	06-15-87	B		
ST87-2945	Panhandle Eastern Pipe Line Co	Union Electric Co	06-15-87	B		
ST87-2946	Panhandle Eastern Pipe Line Co	East Ohio Gas Co	06-15-87	B		
ST87-2947	Panhandle Eastern Pipe Line Co	Union Electric Co	06-15-87	B		
ST87-2948	Panhandle Eastern Pipe Line Co	Ohio Gas Co	06-15-87	B		
ST87-2949	Panhandle Eastern Pipe Line Co	Citizens Gas Fuel Co	06-15-87	B		

Docket No.	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMBTU)
ST87-2950	Panhandle Eastern Pipe Line Co	Union Electric Co	06-15-87	B		
ST87-2951	Panhandle Eastern Pipe Line Co	Lear Gas Transmission Co	06-15-87	B		
ST87-2952	Blue Dolphin Pipe Line Co	Walter Oil & Gas Corp	06-15-87	G-EU		
ST87-2953	Truckline Gas Co	Coastal Gas Gathering Co	06-16-87	B		
ST87-2954	Truckline Gas Co	Northern Indiana Public Service Co.	06-16-87	B		
ST87-2955	Panhandle Eastern Pipe Line Co	Consumers Power Co	06-16-87	B		
ST87-2956	Northern Natural Gas Co	Metropolitan Utils. Dist. of Omaha	06-17-87	B		
ST87-2957	Williams Natural Gas Co	Union Gas System, Inc	06-17-87	B		
ST87-2958	Williams Natural Gas Co	KPL Gas Service Co	06-17-87	B		
ST87-2959	Gas Gathering Corp	Hadson Gulf, Inc	06-16-87	G-EU		
ST87-2960	Tennessee Gas Pipeline Co	Bridgeline Gas Distribution Co	06-16-87	B		
ST87-2961	Tennessee Gas Pipeline Co	Coronado Transmission Co	06-16-87	B		
ST87-2962	Williams Natural Gas Co	Yankee Pipeline Co	06-16-87	B		
ST87-2963	El Paso Natural Gas Co	Lear Gas Transmission Co	06-19-87	B		
ST87-2964	El Paso Natural Gas Co	Intratex Gas Co	06-19-87	B		
ST87-2965	Mountain Fuel Resources, Inc	Mountain Fuel Supply co	06-19-87	B		
ST87-2966	Mountain Fuel Resources, Inc	Mountain Fuel Supply Co	06-19-87	B		
ST87-2967	Mountain Fuel Resources, Inc	MESA Pipeline Co	06-19-87	B		
ST87-2968	Tennessee Gas Pipeline Co	Humphreys County Utility District	06-19-87	B		
ST87-2969	Tennessee Gas Pipeline Co	Pennsylvania Gas and Water Co	06-19-87	B		
ST87-2970	Tennessee Gas Pipeline Co	Delhi Natural Gas Co	06-19-87	B		
ST87-2971	United Texas Transmission Co	United Gas Pipe Line Co	06-19-87	C		
ST87-2972	William Natural Gas Co	Kansas Power and Light Co	06-19-87	B		
ST87-2973	Consolidated Gas Transmission Corp	Rochester Gas & Electric Corp	06-22-87	B		
ST87-2974	Consolidated Gas Transmission Corp	River Gas Co	06-22-87	B		
ST87-2975	Consolidated Gas Transmission Corp	Peoples Natural Gas Co	06-22-87	B		
ST87-2976	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	06-22-87	B		
ST87-2977	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	06-22-87	B		
ST87-2978	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	06-22-87	B		
ST87-2979	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	06-22-87	B		
ST87-2980	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	06-22-87	B		
ST87-2981	Consolidated Gas Transmission Corp	Peoples Natural Gas Co	06-22-87	B		
ST87-2982	Consolidated Gas Transmission Corp	East Ohio Gas Co	06-22-87	B		
ST87-2983	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	06-22-87	B		
ST87-2984	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	06-22-87	B		
ST87-2985	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	06-22-87	B		
ST87-2986	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	06-22-87	B		
ST87-2987	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	06-22-87	B		
ST87-2988	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	06-22-87	B		
ST87-2989	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	06-22-87	B		
ST87-2990	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	06-22-87	B		
ST87-2991	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	06-22-87	B		
ST87-2992	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	06-22-87	B		
ST87-2993	Consolidated Gas Transmission Corp	New York State Electric and Gas Co.	06-22-87	B		
ST87-2994	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	06-22-87	B		
ST87-2995	Consolidated Gas Transmission Corp	Peoples Natural Gas Co	06-22-87	B		
ST87-2996	Consolidated Gas Transmission Corp	Hope Gas, Inc	06-22-87	B		
ST87-2997	Consolidated Gas Transmission Corp	Hope Gas, Inc	06-22-87	B		
ST87-2998	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	06-22-87	B		
ST87-2999	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	06-22-87	B		
ST87-3000	El Paso Natural Gas Co	Richardson Fuels, Inc	06-22-87	B		
ST87-3001	Tennessee Gas Pipeline Co	Southern Connecticut Gas Co	06-22-87	B		
ST87-3002	Delhi Gas Pipeline Corp	Texas Eastern Transmission Corp	06-22-87	C		
ST87-3003	Nueces Co	Mountain Fuel Resources, Inc	06-22-87	C	11-19-87	38.61
ST87-3004	William Natural Gas Co	Golden Gas Energies, Inc	06-22-87	B		
ST87-3005	Colorado Interstate Gas Co	Associated Intrastate Pipeline Co	06-23-87	B		
ST87-3006	Colorado Interstate Gas co	Northern Illinois Gas Co	06-23-87	B		
ST87-3007	Colorado Interstate Gas Co	MGTC Inc	06-23-87	B		
ST87-3008	Colorado Interstate Gas Co	Llano, Inc	06-23-87	B		
ST87-3009	Colorado Interstate Gas Co	Southern California Gas Co	06-23-87	B		
ST87-3010	ONG Transmission Co	Williams Natural Gas Co	06-23-87	C	11-20-87	10.00
ST87-3011	ONG Transmission Co	Williams Natural Gas Co	06-23-87	C	11-20-87	10.00
ST87-3012	Texas Eastern Transmission Corp	Public Service Electric and Gas Co.	06-23-87	B		
ST87-3013	Texas Eastern Transmission Corp	Public Service Electric and Gas Co.	06-23-87	B		
ST87-3014	Texas Eastern Transmission Corp	Equitable Gas Co (LDC)	06-23-87	B		

Docket No.	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [1]	Transportation rate (¢/MMBTU)
ST87-3015	Texas Eastern Transmission Corp	Public Service Electric and Gas Co.	06-23-87	B		
ST87-3016	Transcontinental Gas Pipe Line Corp	Consumers Power Co., et al	06-23-87	B		
ST87-3017	Transcontinental Gas Pipe Line Corp	Elizabethtown Gas Co	06-23-87	B		
ST87-3018	Transcontinental Gas Pipe Line Corp	Baltimore Gas and Electric Co	06-23-87	B		
ST87-3019	Transcontinental Gas Pipe Line Corp	South Carolina Pipeline Corp	06-23-87	B		
ST87-3020	Transcontinental Gas Pipe Line Corp	Public Service Co. of N. Carolina	06-23-87	B		
ST87-3021	Transcontinental Gas Pipe Line Corp	Atlanta Gas Light Co	06-23-87	B		
ST87-3022	Transcontinental Gas Pipe Line Corp	Baltimore Gas and Electric Co	06-23-87	B		
ST87-3023	Transcontinental Gas Pipe Line Corp	Atlanta Gas Light Co	06-23-87	B		
ST87-3024	ANR Pipeline Co	Llano Inc	06-24-87	B		
ST87-3025	ANR Pipeline Co	Northern Indiana Fuel & Light Co	06-24-87	B		
ST87-3026	ANR Pipeline Co	Michigan Gas Utilities	06-24-87	B		
ST87-3027	NAR Pipeline Co	Coastal States Gas Transmission Co.	06-24-87	B		
ST87-3028	ANR Pipeline Co	Llano, Inc	06-24-87	B		
ST87-3029	Northern Natural Gas Co	Wisconsin Gas Co	06-24-87	B		
ST87-3030	Tennessee Gas Pipeline Co	Taft Pipeline Co	06-24-87	B		
ST87-3031	Tennessee Gas Pipeline Co	Pennsylvania Gas and Water Co	06-24-87	B		
ST87-3032	Tennessee Gas Pipeline Co	Southern Connecticut Gas Co	06-24-87	B		
ST87-3033	Valero Interstate Transmission Co	Peoples Gas Light & Coke Co., et al.	06-24-87	B		
ST87-3034	ANR Pipeline Co	Philadelphia Electric Co	06-25-87	B		
ST87-3035	ANR Pipeline Co	Wisconsin Public Service Co	06-25-87	B		
ST87-3036	ANR Pipeline Co	Wisconsin Public Service Co	06-25-87	B		
ST87-3037	ANR Pipeline Co	Wisconsin Natural Gas Co	06-25-87	B		
ST87-3038	ANR Pipeline Co	Michigan Consolidated Gas Co	06-25-87	B		
ST87-3039	ANR Pipeline Co	Consumers Power Co	06-25-87	B		
ST87-3040	ANR Pipeline Co	Wisconsin Southern Gas Co., Inc	06-25-87	B		
ST87-3041	ANR Pipeline Co	Michigan Consolidated Gas Co	06-25-87	B		
ST87-3042	ANR Pipeline Co	Wisconsin Public Service Co	06-25-87	B		
ST87-3043	ANR Pipeline Co	Consumers Power Co	06-25-87	B		
ST87-3044	ANR Pipeline Co	Wisconsin Public Service Co	06-25-87	B		
ST87-3045	ANR Pipeline Co	Wisconsin Public Service Co	06-25-87	B		
ST87-3046	ANR Pipeline Co	Wisconsin Power and Light Co	06-25-87	B		
ST87-3047	ANR Pipeline Co	Lamoni Municipal Utilities	06-25-87	B		
ST87-3048	ANR Pipeline Co	Wisconsin Natural Gas Co	06-25-87	B		
ST87-3049	Arkla Energy Resources	Arkansas Louisiana Gas Co	06-25-87	B		
ST87-3050	El Paso Natural Gas Co	Southern California Gas Co	06-25-87	B		
ST87-3051	ONG Transmission Co	Northern Natural Gas Co	06-25-87	C	11-22-87	10.00
ST87-3052	Tennessee Gas Pipeline Co	Cranberry Pipeline Corp	06-25-87	B		
ST87-3053	Tennessee Gas Pipeline Co	Niagara Mohawk Power Corp	06-25-87	B		
ST87-3054	Tennessee Gas Pipeline Co	PPG Pipeline Co	06-25-87	B		
ST87-3055	Tennessee Gas Pipeline Co	Amoco Gas Co	06-25-87	B		
ST87-3056	United Gas Pipe line Co	Pontchartrain Natural Gas System.	06-25-87	B		
ST87-3057	Valero Transmission Co	El Paso Natural Gas Co	06-25-87	C		
ST87-3058	Valero Transmission L.P	Richardson Fuels, Inc	06-25-87	C		
ST87-3059	Williams Natural Gas Co	KPL Gas Service Co	06-25-87	B		
ST87-3060	Williams Natural Gas Co	KPL Gas Service Co	06-25-87	B		
ST87-3061	El Paso Natural Gas Co	Pacific Gas and Electric Co	06-26-87	B		
ST87-3062	El Paso Natural Gas Co	Pacific Gas and Electric Co	06-26-87	B		
ST87-3063	ANR Pipeline Co	Coastal States Gas Transmission Co.	06-26-87	B		
ST87-3064	ANR Pipeline Co	Wisconsin Natural Gas Co	06-26-87	B		
ST87-3065	ANR Pipeline Co	Central Illinois Light Co	06-26-87	B		
ST87-3066	ANR Pipeline Co	Llano, Inc	06-26-87	B		
ST87-3067	ANR Pipeline Co	Michigan Power Co	06-26-87	B		
ST87-3068	ANR Pipeline Co	Wisconsin Public Service Co	06-26-87	B		
ST87-3069	ANR Pipeline Co	Wisconsin Gas Co	06-26-87	B		
ST87-3070	ANR Pipeline Co	Wisconsin Public Service Co	06-26-87	B		
ST87-3071	ANR Pipeline Co	Michigan Consolidated Gas Co	06-26-87	B		
ST87-3072	ANR Pipeline Co	Wisconsin Power and Light Co	06-26-87	B		
ST87-3073	ANR Pipeline Co	Wisconsin Public Service Co	06-26-87	B		
ST87-3074	ANR Pipeline Co	Wisconsin Power and Light Co	06-26-87	B		
ST87-3075	ANR Pipeline Co	Wisconsin Natural Gas Co	06-26-87	B		
ST87-3076	Northern Natural Gas Co	Public Service Electric and Gas Co.	06-26-87	B		
ST87-3077	Tennessee Gas Pipeline Co	Southern Connecticut Gas Co	06-26-87	B		
ST87-3078	Tennessee Gas Pipeline Co	Excel Intrastate Pipeline Co	06-26-87	B		

Docket No.	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [3]	Transportation rate (¢/MMBTU)
ST87-3079	Tennessee Gas Pipeline Co	City of Pontotoc	06-26-87	B		
ST87-3080	Tennessee Gas Pipeline Co	City of Ripley	06-26-87	B		
ST87-3081	Tennessee Gas Pipeline Co	Colonial Gas Company	06-26-87	B		
ST87-3082	Transcontinental Gas Pipe Line Corp	Brooklyn Union Gas Co	06-26-87	B		
ST87-2083	Transcontinental Gas Pipe Line Corp	Louisiana Natural Gas Pipeline, Inc.	06-26-87	B		
ST87-3084	Transcontinental Gas Pipe Line Corp	Louisiana Natural Gas Pipeline, Inc.	06-26-87	B		
ST87-3085	Transcontinental Gas Pipe Line Corp	Atlanta Gas Light Co	06-26-87	B		
ST87-3086	Transcontinental Gas Pipe Line Corp	Commission of Public Works, Lauren.	06-26-87	B		
ST87-3087	Transcontinental Gas Pipe Line Corp	Virginia Natural Gas Co	06-26-87	B		
ST87-3088	Transcontinental Gas Pipe Line Corp	Tri-County Natural Gas Co	06-26-87	B		
ST87-3089	Transcontinental Gas Pipe Line Corp	Mississippi Fuel Co	06-26-87	B		
ST87-3090	United Gas Pipe Line Co	Neches Pipeline System	06-26-87	B		
ST87-3091	United Gas Pipe Line Co	Long Island Lighting Co., et al	06-26-87	B		
ST87-3092	United Texas Transmission Co	Texas Eastern Transmission Corp	06-26-87	C		
ST87-3093	United Texas Transmission Co	United Gas Pipe Line Co	06-26-87	C		
ST87-3094	Williams Natural Gas Co	Llano, Inc	06-26-87	B		
ST87-3095	Williams Natural Gas Co	Union Gas System, Inc	06-26-87	B		
ST87-3096	Channel Industries Gas Co	Mid Louisiana Gas Co	06-29-87	C		
ST87-3097	Colorado Interstate Gas Co	Peoples Natural Gas Co	06-29-87	B		
ST87-3098	Colorado Interstate Gas Co	Southern California Gas Co	06-29-87	B		
ST87-3099	Columbia Gulf Transmission Co	New York Power Authority, et al	06-29-87	B		
ST87-3100	Columbia Gulf Transmission Co	Louisiana Natural Gas Pipeline, Inc.	06-29-87	B		
ST87-3101	Gas Gathering Corp	Amoco Production Co	06-29-87	G-EU		
ST87-3102	Kentucky West Virginia Gas Co	Union Gas Co	06-29-87	B		
ST87-3103	Texas Gas Transmission Corp	Northern Intrastate Pipeline Co	06-29-87	B		
ST87-3104	Texas Transmission Corp	Mississippi Valley Gas Co	06-29-87	B		
ST87-3105	Tennessee Gas Pipeline Co	Lake Shore Pipeline Co	06-29-87	B		
ST87-3106	Williams Natural Gas Co	Louisiana Gas Marketing Co	06-29-87	B		
ST87-3107	Williams Natural Gas Co	KPL Gas Service Co	06-29-87	B		
ST87-3108	Arkla Energy Resources	Arkansas Louisiana Gas Co	06-30-87	B		
ST87-3109	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	06-30-87	B		
ST87-3110	Consolidated Gas Transmission Corp	Peoples Natural Gas Co	06-30-87	B		
ST87-3111	Consolidated Gas Transmission Corp	East Ohio Gas Co	06-30-87	B		
ST87-3112	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	06-30-87	B		
ST87-3113	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	06-30-87	B		
ST87-3114	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	06-30-87	B		
ST87-3115	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	06-30-87	B		
ST87-3116	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	06-30-87	B		
ST87-3117	Consolidated Gas Transmission Corp	Rochester Gas & Electric Corp	06-30-87	B		
ST87-3118	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	06-30-87	B		
ST87-3119	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	06-30-87	B		
ST87-3120	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	06-30-87	B		
ST87-3121	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	06-30-87	B		
ST87-3122	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	06-30-87	B		
ST87-3123	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	06-30-87	B		
ST87-3124	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	06-30-87	B		
ST87-3125	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	06-30-87	B		
ST87-3126	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	06-30-87	B		
ST87-3127	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	06-30-87	B		
ST87-3128	Consolidated Gas Transmission Corp	Hope Gas, Inc	06-30-87	B		
ST87-3129	Consolidated Gas Transmission Corp	New York State Electric and Gas Co.	06-30-87	B		
ST87-3130	Consolidated Gas Transmission Corp	New York State Electric and Gas Co.	06-30-87	B		
ST87-3131	Consolidated Gas Transmission Corp	Niagara Mohawk Power Co	06-30-87	B		
ST87-3132	Louisiana Intrastate Gas Corp	Trunkline Gas Co	06-30-87	C	11-27-87	22.40
ST87-3133	Louisiana Intrastate Gas Corp	Tennessee Gas Pipeline Co	06-30-87	C	11-17-87	22.40
ST87-3134	Perry Pipeline Co	Southern California Gas Co	06-30-87	D		
ST87-3135	Tennessee Gas Pipeline Co	City of Lexington, et al	06-30-87	B		
ST87-3136	Transcontinental Gas Pipe Line Corp	Pennsylvania Gas and Water Co	06-30-87	B		
ST87-3137	Transcontinental Gas Pipe Line Corp	Corpus Christi Industrial Pipeline Co.	06-30-87	B		
ST87-3138	Transcontintental Gas Pipe Line Corp	Public Service Electric and Gas Co.	06-30-87	B		
ST87-3139	Transcontinental Gas Pipe Line Corp	Yankee Taft Co	06-30-87	B		
ST87-3140	Transcontinental Gas Pipe Line Corp	Yankee Taft Co	06-30-87	B		

Docket No.	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMBTU)
ST87-3141	Trunkline Gas Co	Consumers Power Co	06-30-87	B		
ST87-3142	Trunkline Gas Co	Consumers Power Co	06-30-87	B		
ST87-3143	Trunkline Gas Co	Consumers Power Co	06-30-87	B		
ST87-3144	Trunkline Gas Co	Consumers Power Co	06-30-87	B		
ST87-3145	Trunkline Gas Co	Consumers Power Co	06-30-87	B		
ST87-3146	Trunkline Gas Co	Michigan Power Co	06-30-87	B		
ST87-3147	United Gas Pipe Line Co	Bishop Pipeline Corp	06-30-87	B		
ST87-3148	United Gas Pipe Line Co	Louisiana State Gas Corp	06-30-87	B		
ST87-3149	Valero Transmission, L.P	Transcontinental Gas Pipe Line Corp.	06-30-87	C		
ST87-3150	Valero Transmission, L.P	Valero Interstate Transmission Co	06-30-87	C		
ST87-3151	Valero Transmission, L.P	El Paso Natural Gas Co	06-30-87	C		
ST87-3152	Williams Natural Gas Co	City of Neodesha	06-30-87	B		
ST87-3153	Williams Natural Gas Co	Union Gas System, Inc	06-30-87	B		

[1] Notice of transactions Does not constitute a determination that filings comply with commission regulations in accordance with order No. 436 (Final Rule and Notice Requesting Supplemental Comments, 50 FR 42,372, 10/18/85).

[2] The Intrastate Pipeline has sought Commission approval of its transportation rate pursuant to Section 284.123(B)(2) of the Commission's Regulations (18 CFR 284.123(B)(2)). Such rates are deemed fair and equitable if the Commission does not take action by the date indicated.

[FR Doc. 87-18369 Filed 8-12-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER87-556-000]

Filing; Delmarva Power & Light Co.

August 7, 1987.

Take notice that on July 31, 1987, Delmarva Power & Light Company (Delmarva) tendered for filing proposed changes to certain FERC rate schedules to provide a net increase in charges for firm power service and transmission service to its wholesale customers; and, in addition, by surcharge to certain wholesale customer rate schedules, to recover federal and state income tax expenses resulting from the final determination of the actual taxes on the proceeds of the Company's sale of contract rights related to the termination of its plans to build a nuclear generating facility.

The proposed net changes in rates would increase revenues from jurisdictional sales and transmission service by a total of $3,378,772 annually. In addition, the Company has proposed a rate surcharge totaling $5,029,704 to be recovered over a two year period, reflecting the income taxes paid on the proceeds on the sale of certain contract rights arising out of the termination of a proposed nuclear generating facility.

The Company states that the increases are necessary in order to fully recover the Company's cost of service to its resale customers and to provide funds to permit the Company to conduct its operations and construction program in an efficient and economic manner.

The Company has proposed an effective date for the rate schedule changes of October 1, 1987.

Copies of the filing have been served upon the Company's jurisdictional customers and upon the Public Service Commissions of Delaware and Maryland, and the Virginia State Corporation Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure [18 CFR 385.211, 385.214]. All such motions or protests should be filed on or before August 24, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 87-18376 Filed 8-12-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA87-1-26-000]

Proposed Change in Rates; Equitable Gas Co., a Division of Equitable Resources, Inc.

August 7, 1987.

Take notice that Equitable Gas Company (Equitable), a Division of Equitable Resources, Inc., on July 31, 1987, tendered for filing with the Commission Eleventh Revised Sheet No. 6f to its FERC Gas Tariff, First Revised Volume No. 1, to become effective September 1, 1987. Equitable Gas Company states that the change in rates results from the application of the Purchased Gas Cost Rate Adjustment provision in section 6 of Rate Schedule GS-1 of FERC Gas Tariff, First Revised Volume No. 1, approved by the Commission in Docket Nos. CP79-290, RP79-69, and RP79-49.

Equitable states that a copy of its filing has been served upon the purchaser and interested state commissions (and upon each party on the service list of Docket Nos. CP79-290, RP79-69, and RP79-49).

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 14, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection

Kenneth F. Plumb,
Secretary.

[FR Doc. 87-18377 Filed 8-12-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. CP72-50-000 and CP72-274-000]

Petition To Amend; Georgia-Pacific Corp.

August 7, 1987

Take notice that on July 28, 1987, Georgia-Pacific Corporation (Applicant), P.O. Box 105605, Atlanta, Georgia 30348, filed in Docket Nos. CP72-50-000 and CP72-274-000 a petition to amend the orders issued November 15, 1987, and February 6, 1974, respectively, pursuant to section 7(c) of the Natural Gas Act to delete the end-use restriction imposed on it for the use of gas and to authorize the utilization of its 19.5 miles of pipeline to deliver natural gas for its use at its facilities located at Crossett, Arkansas purchased from other available sources, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Applicant states that by order issued November 15, 1971, it was authorized to construct and operate approximately 19.5 miles of 8-inch pipeline between its company-owned production in Monroe Field, Morehouse Parish, Louisiana and pulp and paper plant located at Crossett, Arkansas. Applicant further states that by order issued February 6, 1974, it was authorized to construction and operate approximately 2.6 miles of pipeline to connect and transport gas purchased from Navarro Gas Production Company. The Commission's order restricted both the sources and volumes of gas the Applicant could transport in its own line and restricted the uses to which the gas could be put.

Applicant requests that the Commission delete the end-use restrictions imposed on it for natural gas transported through its certificated facilities and amend the previously-issued certification to provide it with authority to transport in its own facilities, gas for its own use, purchased from any gas supplier.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before August 28, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211) and the protest filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the Protestants parties to the proceeding. Any person wishing to become a party to a proceeding to participate in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18378 Filed 8-12-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP87-467-000]

Petition to Amend; Great Lakes Gas Transmission Co.

August 7, 1987.

Take notice that on July 28, 1987, Great Lakes Gas Transmission Company (Great Lakes), 2100 Buhl Building, Detroit, Michigan 48226, filed in Docket No. CP87-467-000, a petition to amend the orders issued in Docket Nos. CP86-474-001, CP79-462, *et al.*, CP71-222, *et al.*, and CP66-110, *et al.*, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Great Lakes states that it requests authorization to continue to provide firm transportation service to both Texas Eastern Transmission Corporation (Texas Eastern) and Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee) of volumes of natural gas to be purchased by Texas Eastern and Tennessee from ProGas Limited, in the quantity of 75,000 Mcf of gas per day (Mcfd), through the contract year ending November 1, 2000.

Great Lakes states that pursuant to an order dated June 10, 1981 (15 FERC 61,254), which granted it a certificate of public convenience and necessity in Docket No. CP79-462, *et al.*, as amended by orders dated July 18, 1985 (32 FERC 62,191), February 10, 1986 (34 FERC 61,185) and November 28, 1986 (37 FERC 61,195), Great Lakes is currently certificated to transport up to 75,000 Mcfd for each of Texas Eastern and Tennessee. It is further stated that in the July 18, 1985, order, the Commission authorized an extension of the term of transportation services for Texas Eastern and Tennessee through October 31, 1987, so as to conform to the authorization for the import of these volumes from Canada granted to Texas Eastern and Tennessee by the Economic Regulatory Administration (ERA). Subsequently, it is indicated, Tennessee received authorization from the ERA, in Docket No. 86-06-NG, for the import of the subject gas volumes, until November 1, 2000. It is further indicated that the volumes that would be transported for Texas Eastern would be imported by Texas Eastern pursuant to import authorization for an identical term being sought by Texas Eastern from the ERA in Docket No. 87-37-NG. It is stated that Tennessee and Texas Eastern have executed amendatory agreements, each dated July 1, 1987, with Great Lakes which extend the term of the service until November 1, 2000.

Great Lakes states that no additional facilities would be required to provide the subject service since TransCanada Pipe Lines Limited (TransCanada) has entered into an amending agreement with Great Lakes, dated July 1, 1987, in which it agrees to continue to back-off equivalent volumes under its gas transportation contract, as amended, with Great Lakes, dated September 12, 1967, as amended. Great Lakes further states that these charges would be reflected in Rate Schedule T-4 to Great Lake FERC Gas Tariff, Original Volume No. 2 (T-4 Tariff) under which Great Lakes provides this transportation service to TransCanada. it is stated that Tennessee and Texas Eastern would continue to be charged by Great Lakes, for this service, a rate equal to that applicable for deliveries in Great Lakes's Eastern Zone under the T-4 Tariff.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before August 28, 1987 file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18379 Filed 8-12-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP87-455-000]

Application; K N Energy, Inc.

August 7, 1987.

Take notice that on July 22, 1987, K N Energy, Inc. (Applicant), P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP87-455-000 an application pursuant to section 7(b) of the Natural

Gas Act for authorization permitting and approving abandonment of its transportation service provided to Mid Louisiana Gas Company (Mid-La) pursuant to an agreement entered into between the parties, which is on file with the Commission as Rate Schedule T–2 of Applicant's FERC Gas Tariff, Second Revised Volume No. 2, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states the Mid-La requested termination of the transportation agreement dated January 12, 1977, by letter dated March 31, 1987.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 28, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–18380 Filed 8–12–87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87–3–25–000]

Rate Change Filing; Mississippi River Transmission Corp.

August 7, 1987

Take notice that on July 31, 1987, Mississippi River Transmission Corporation ("Mississippi") tendered for filing Twenty-First Revised Sheet No. 4 to its FERC Gas Tariff, Second Revised Volume No. 1. Mississippi requests and effective date of September 1, 1987.

Twenty-First Revised Sheet No. 4 is being submitted pursuant to Mississippi's gas tariff to track pipeline and producer rate changes, and to recover gas costs which have accumulated in Mississippi's Unrecovered Purchased Gas Cost Account. The filing also contains base rate reductions under Rate Schedules CD–1, SGS–1 and PI–1 to reflect the July 1, 1987 change in the Federal corporate income tax rate from 46% to 34%. Mississippi states that the filing reflects a decrease under Rate Schedule CD–1 of $.144 per Mcf in Demand Charge D–1, a decrease of $.031 per Mcf in the Demand Charge D–2 and commodity rate increase of $.2125 per Mcf. The single part rate under Rate Schedule SGS–1 reflects an overall increase of $.1675 per Mcf. The overall cost impact of such rate changes when applied to annual jurisdictional billing determinants is a $21.0 million increase. Mississippi states that the primary reason for the increase is a change in the commodity Surcharge Adjustment from a credit $.5093 to a credit $.0866.

Mississippi states that copies of its filing have been served on all jurisdictional customers and interested state commissions. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 14, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–18381 Filed 8–12–87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER80–574–001]

Filing; Nantahala Power and Light Co.

August 7, 1987.

Take notice that on July 28, 1987, Nantahala Power and Light Company (Nantahala) tendered for filing in compliance with the June 29 order its 1986 "PL" (COSAC) rate tariff. Nantahala states that this revised filing excludes wartime depreciation. In addition, his filing incorporates the change in the federal income tax rate as agreed upon by Nantahala and each of its wholesale customers in a settlement agreement.

Copies of this filing have been served upon each of the parties affected by this filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 28, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–18382 Filed 8–12–87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP87–456–000]

Application; National Fuel Gas Supply Corp.

August 7, 1987.

Take notice that on July 22, 1987, National Fuel Gas Supply Corporation (National), Ten CP87–456–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity with pregranted abandonment authorizing the transportation of up to 50,000 Mcf of natural gas per day on behalf of the

Connecticut Light and Power Company (CL&P) for a term of two years. National would transport the gas for CL&P on an interruptible basis from the interconnection of National's facilities with Tennessee Gas Pipeline Company (Tennessee) at East Aurora and Clarence, New York to its interconnections with the facilities of Tennessee and Penn-York Energy Corporation at Ellisburg, Pennsylvania, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

National states that CL&P has entered into five gas purchase agreements with the following companies: Poco Petroleum, Inc.; Northridge Petroleum Marketing U.S., Inc.; Atcor Resources, Inc.; Western Gas Marketing USA Ltd. and Canadian Hunter. Each of the above mentioned agreements provides for the sale of up to 50,000 Mcf of natural gas per day from Canadian gas sources.

National states that it knows of no other application that must be filed with any other Federal, State or other regulatory body to effect this application.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 28, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiciton conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notices before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 78383 Filed 8-12-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP86-264-005]

Petition To Amend; Natural Gas Pipeline Co. of America

August 7, 1987.

Take notice that on July 23, 1987, Natural Gas Pipeline Company of America (NGPL), 701 East 22nd Street, Lombard, Illinois 60148, filed a petition to amend the order issued September 18, 1986, in Docket No. CP86-264-000, as further amended on January 27, 1987, pursuant to section 7(c) of the Natural Gas Act so as to authorize the extension of its transportation term for Caterpillar Inc. (Caterpillar) until September 18, 1988, and to add five additional receipt points in Oklahoma and Texas.

In Docket No. CP86-264-000, 36 FERC ¶61,328, NGPL was granted authorization to transport up to a maximum of 15,000 MMBtu of natural gas per day for Caterpillar until the earlier of September 17, 1988, or the date NGPL accepts a blanket certificate under Order No. 436 in Docket No. CP86-582-000.

Pursuant to the January 6, 1986, transportation agreement between NGPL and Caterpillar as amended April 8, 1987, NGPL requests authorization to extend its transportation service for Caterpillar until September 18, 1988, and month to month thereafter unless cancelled by either party.

Pursuant to a second April 8, 1987, amendment to the January 6, 1986, transportation agreement, NGPL requests authorization to add five additional receipt points in Beckham, Custer, and Washita Counties, Oklahoma, and Wise County, Texas.

It is stated that Caterpillar would make natural gas volumes available to NGPL at the following receipt points: (1) The existing interconnection between NGPL and El Paso Natural Gas Company (El Paso) located in Washita County, Oklahoma (El Paso/Washita #1); (2) the existing interconnection between NGPL and Producer's Gas Company, Beckham County, Oklahoma (Producer's/Beckham); (3) the existing interconnection between NGPL and Delhi Gas Pipeline Company (Delhi) located in Custer County, Oklahoma (Delhi-Custer); (4) the tailgate of the Liquid Energy Corporation's Bridgeport Plant, Wise County, Texas (Bridgeport Plant/Wise); and (5) the outlet of Cities Service Gas Company's Chico Gas Plant, Wise County, Texas (Chico/Wise).

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before August 28, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18384 Filed 8-12-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP87-452-000]

Request Under Blanket Authorization; Northern Natural Gas Co.; Division of Enron Corp.

August 7, 1987.

Take notice that on July 20, 1987, Northern Natural Gas Company, Division of Enron Corporation (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP87-452-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct one delivery point and appurtenant facilities under the authorization issued to Northern in Docket No. CP82-401-000 to accommodate natural gas deliveries to Pines Inc., all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to construct one small-volume delivery point to accommodate natural gas deliveries to Pines Inc. to be served by Wisconsin Gas Company (Wisconsin Gas). Northern states that the total estimated cost to construct the proposed facilities is $4,300. Northern states further that

Wisconsin Gas is required to contribute $571 in aid of construction. Northern states that estimated peak day and annual volumes to be delivered to Wisconsin Gas at this delivery point in Jackson County, Wisconsin are 117 Mcf and 10,000 Mcf, respectively. Also, Northern indicates that the volumes to be delivered at this proposed delivery point will be within Wisconsin Gas' currently authorized firm entitlement authorized by Commission order issued on April 29, 1985 in Docket No. CP85–277–000, it is stated.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–18385 Filed 8–12–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP87–466–000]

Request Under Blanket Authorization; Northern Natural Gas Co., Division of Enron Corp.

August 7, 1987.

Take notice that on July 24, 1987, Northern Natural Gas Company, Division of Enron Corp. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP87–466–000 a request pursuant to § 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a delivery point and appurtenant facilities for service to Wisconsin Power and Light Company (WPLC) and to redistribute WPLC's firm entitlement, under the certificate issued in Docket No. CP82–402–000 pursuant to section 7 of the Natual Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to construct and operate a delivery point and appurtenant facilities to permit the delivery of up to 500 Mcf of natural gas on a peak day (by the fifth year of operation) and 50,530 Mcf annually (by the fifth year of operation) to WPLC for residential and commercial service to the community of Plain, Wisconsin. In order to accommodate the deliveries, Northern proposes to redistribute WPLC's currently authorized daily firm entitlement, pursuant to existing rate schedules as follows:

Community	Existing authority (Mcf)			Proposed authority (Mcf)		
	CD–1	SS–1	FS–1	CD–1	SS–1	FS–1
Plain	0	0	0	226	25	25
Arlington	320	115	72	170	90	47
Pattsville	1,930	175	600	1,854	175	600
Total	2,250	290	672	2,250	290	672

It is stated that the deliveries for the new delivery point would be within WPLC's daily firm entitlement for Northern and would have no impact on Northern's peak day or annual deliveries. It is asserted that Northern would file a revised service agreement to reflect the changes in deliveries to WPLC.

It is explained that the estimated construction cost would be $45,000 and that WPLC would be required to contribute $13,574 in aid of contruction.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–18386 Filed 8–12–87; 8:45 am]

BILLING CODE 6717–M

[Docket No. CP87–466–000]

Request Under Blanket Authorization; Northern Natural Gas Co., a Division of Enron Corp.

August 7, 1987.

Take notice that on July 28, 1987, Northern Natural Gas Company, a Division of Enron Corp. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP87–466–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authority to modify one delivery point and appurtenant facilities to accommodate natural gas deliveries to Northern States Power (NSP) under Northern's blanket certificate issued in Docket No. CP82–401–000 on September 1, 1982, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Northern requests authority to modify White Bear Lake No. 1, a town border station located in Washington County, Minnesota in order to serve the increased requirements of additional residential, commercial, and industrial customers of NSP served by the town border station. Northern states that such modification will consist of the installation of an additional Rockwell T80 meter which will be designed to serve volumes of up to 914.7 Mcf per hour. Northern states that the meter capacity of the existing facilities is 600.8 Mcf per hour. Northern states that the costs of the proposed modification are estimated at $19,400.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–18387 Filed 8–12–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP79–129–025]

Petition To Amend; Northwest Alaskan Pipeline Co.

August 7, 1987.

Take notice that on July 17, 1987, Northwest Alaskan Pipeline Company (Northwest Alaskan), 295 Chipeta Way, Salt Lake City, Utah 84108–0900, filed in

Docket No. CP78–123–025, an amendment to the certificate of public convenience and necessity issued by the Commission in Docket No. CP78–123–000 pursuant to section 7 of the Natural Gas Act and section 9 of the Alaska Natural Gas Transportation Act of 1976, to sell for resale natural gas imported from Canada, in order to: (1) Extend the authorization of the sale for resale to Pacific Interstate Transmission Company (PIT) of an average daily volume of 240,000 Mcf on a firm basis from November 1, 1998 through October 31, 2012, and (2) authorize during the period from November 1, 1988 through October 31, 2012, the sale for resale to PIT in accordance with the purchase agreement of such additional volumes of up to 60,000 Mcf daily on a best efforts basis as are authorized from time to time by the National Energy Board of Canada for exportation by Pan-Alberta and are sold to Northwest Alaskan in accordance with the sale agreement, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before August 28, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–18388 Filed 8–12–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EL87–53–000]

Filing; Orange & Rockland Utilities, Inc., Rockland Electric Co. and Pike County Light & Power Co.

August 7, 1987.

Take notice that on July 31, 1987, Orange & Rockland Utilities, Inc., Rockland Electric Company and Pike County Light & Power Co. tendered for filing pursuant to Rule 207(a) (2) of the Commission's Rules of Practice and Procedure, 18 CFR 385.207, a petition to the Federal Energy Regulatory Commission for an expedited declaratory order and for emergency and permanent relief necessary to avoid severe financial harm with which Petitioners and their customers are presently threatened.

Orange & Rockland Utilities, Inc., et al. states that there is an immediate and serious threat to the financial well-being of the System's companies and their customers, created by New York's attempt to force purchases of electricity from qualifying facilities at prices substantially in excess of System avoided costs.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 24, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–18389 Filed 8–12–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA87–3–28–000]

Proposed Change in Tariff; Panhandle Eastern Pipe Line Co.

August 7, 1987.

Take notice that on July 31, 1987 Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Fifty-Ninth Revised Sheet No. 3–A
Thirty-Sixth Revised Sheet No. 3–B
Seventeenth Revised Sheet No. 3–C.1
Seventeenth Revised Sheet No. 3–C.2
Seventeenth Revised Sheet No. 3–C.3

The proposed effective date of these revised tariff sheets is September 1, 1987.

Panhandle states that these revised tariff sheets reflect a commodity rate decrease of (1.58 cents) per Dt. This decrease includes:

(1) An 8.88 cents per Dt increase in the projected purchased gas cost component;

(2) A (10.43 cents) per Dt decrease in the surcharge to recover the Current Deferred Account Balance at June 30, 1987 and related carrying charges; and

(3) A (0.03 cents) per Dt decrease pursuant to section 22 of the General Terms and Conditions of Panhandle's tariff (ANGTS tracking mechanism).

Panhandle further states that these revised tariff sheets reflect the following changes to Panhandle's D1 and D2 demand rates:

(1) A decrease of ($0.10) and D1 and a decrease of (0.42 cents) for D2, pursuant to section 22 of the General Terms and Conditions of Panhandle's tariff (ANGTS tracking mechanism); and

(2) No change for D1 and an increase of 0.31 cents for D2, to reflect changes in the section 18.4 pipeline supplier demand costs.

Panhandle states that the revised tariff sheets also reflect Projected Incremental Pricing Surcharges in accordance with section 21 of the General Terms and Conditions of Panhandle's Tariff. Additionally, Panhandle states that it has included in this filing costs under Order No. 94–A, for gas to be purchased by Panhandle during the six-month period commencing September 1, 1987.

To the extend required, if any, Panhandle requests that the Commission grant such waivers as may be necessary for the acceptance of these tariff sheets, to become effective September 1, 1987.

Copies of this letter and enclosures are being served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before August 14, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18390 Filed 8-12-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-799-000]

Application for Permanent Abandonment; Preussag Energy Venture et al.

August 7, 1987.

Take notice that on July 29, 1987, Preussag Energy Venture (Preussag or Applicant) on behalf of itself and its two co-working interest owners, NICOR Exploration Company (NICOR) and Apache Corporation and A.P.C. Operating Partnership, L.P. (Apache) filed an application pursuant to section 7 of the Natural Gas Act for authorization to abandon permanently service under their existing contracts with Natural Gas Pipeline Company of America (Natural) that cover gas produced from Main Pass Blocks 148 and 151, Offshore Louisiana. Preussag and NICOR operate under small producer certificate authorization in Docket Nos. CS85-5-000 and CS78-574, respectively. Apache succeeded to Texoma Production Company's July 30, 1982, contract with Natural, which is on file as Texoma FERC Gas Rate Schedule No. 9. Applicant states that it is subject to substantially reduced takes without payment.[1] Applicant states that the contracts were terminated pursuant to settlement of disputes between the parties including take-or-pay and minimum take. Applicant proposes to make sales of abandoned gas on the spot market under the blanket limited-term certificate and pregranted abandonment authorizations granted NICOR and its co-interest owners by order dated December 22, 1986, in Docket No. CI86-706-000 and granted Natural's producer suppliers by order dated Janaury 21, 1987, in Docket No. CI86-637-000, *et al.* The estimated deliverability for Block 151 is 38,878 Mcf/d. No deliverability estimate is available for Block 148 because gas produced is casinghead gas. The wells produce NGPA section 102(d) gas.

Since Applicants indicate they are experiencing substantially reduced takes without payment and have requested that the application be considered on an expedited basis, all as more fully described in the application which is on file with the Commission and open to public inspection, any person desiring to be heard or to make any protest with reference to said application should on or before 15 days after the date of publication of this notice in the Federal Register, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18391 Filed 8-12-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-680-000]

Application for Permanent Abandonment; Shell Oil Co., Shell Offshore Inc. and Shell Western E&P Inc.

August 6, 1987.

Take notice that on June 5, 1987, as supplemented on July 17, 1987, Shell Oil Company, Shell Offshore Inc. and Shell Western E&P Inc. (Applicants) filed an application in Docket No. CI87-680-000 requesting permanent abandonment of sales of gas to United Gas Pipe Line Company (United) under sixteen different contracts.

In support of their application, Applicants state that on January 30, 1987, Applicants and United reached a settlement agreement dated January 30, 1987, with respect to both past and future take-or-pay obligations of United to Applicants' companies. Such agreement included a payment by United for amending the take-or-pay provisions of the contracts as contemplated by 18 CFR 2.76. The settlement of past and future take-or-pay obligations of United to Applicants' companies is contingent upon the granting of total and permanent abandonment of all sales to United by Applicants' companies, together with United's agreement to transport gas so released and abandoned. Applicants plan to sell the gas in interstate commerce and plan to file for the required certificate authority as needed. Applicants request that their application be considered on an expedited basis under procedures established by Order No. 436, Docket No. RM85-1-000, at 18 CFR 2.77.[1] Deliverability is approximately 52,316 Mcf/d. The gas is NGPA section 102 (54.9%), section 104 flowing (0.6%), section 104 replacement or recompletion (1.6%), section 104 1973-1974 biennium (0.5%), section 104 Post-1974 (28.5%), section 106(11.3%) and section 109 (4.6%).

Since Applicants have requested that their application be considered on an expedited basis, all as more fully described in the attached tabulation and in the application which are on file with the Commission and open to public inspection, any person desiring to be heard or to make any protest with reference to said application should on or before 15 days after the date of publication of this notice in the Federal Register file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding hearin must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

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[1] The United States Court of Appeals for the District of Columbia vacated the Commission's Order No. 436 on June 23, 1987. In vacating Order No. 436, the Court rejected challenges to the Commission's statement of policy in § 2.77 of its Regulations. Section 2.77 states that the Commission will consider on an expedited basis applications for certificate and abandonment authority where the producers assert they are subject to substantially reduced takes without payment.

[1] The United States Court of Appeals of the District of Columbia vacated the Commission's Order No. 436 on June 23, 1987. In vacating Order No. 436, the Court rejected challenges to the Commission's statement of policy in § 2.77 of its Regulations. Section 2.77 states that the Commission will consider on an expedited basis applications for certificate and abandonment authority where the producers assert they are subject to substantially reduced takes without payment.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
CI87-680-000 (G-5037) [1].	Shell Oil Company, P.O. Box 2463, Houston, TX 77001.	United Gas Pipe Line Company, Gibson Field, Terrebonne Parish, Louisiana.[2]		
(CG-5046)	do	United Gas Pipe Line Company, West Lake Verret Field, St. Martin Parish, Lousiana.[2]		
(CI68-1146)	Shell Offshore Inc., c/o Shell Oil Company, P.O. Box 2463, Houston, TX 77001.	United Gas Pipe Line Company, South Timbalier Block 26, Offshore Louisiana.[2]		
(CI70-102)	do	(2)		
(CI76-137)	do	(2)		
(CI78-1167)	do	United Gas Pipe Line Company, South Marsh Island Block 149, Offshore Louisiana.[2]		
(CI79-488)	do	United Gas Pipe Line Company, High Island Block 179, *et al.*, Offshore Louisiana.[2]		
(CI80-138)	do	United Gas Pipe Line Company, High Island Block A-490, Offshore Texas.[2]		
(G-5043)	Shell Western E&P Inc., c/o Shell Oil Company, P.O. Box 2463, Houston, TX 77001.	United Gas Pipe Line Company, Turtle Bayou Field, Terrebonne Parish, Louisiana.[2]		
(G-5045)	do	United Gas Pipe Line Company, Weeks Island Field, Iberia and St. Mary Parishes, Louisiana.[2]		
(G-19215)	do	United Gas Pipe Line Company, Belle River Field, St. Martin Parish, Louisiana.[2]		
(CI72-177)	Shell Western E&P Inc., c/o Shell Oil Company, P.O. Box 2463, Houston, TX 77001.	United Gas Pipe Line Company, Van Field, Van Zandt County, Texas.[2]		
(CI72-438)	do	United Gas Pipe Line Company, East Texas Field, Gregg County, Texas.[2]		
(CI72-696)	do	(2)		
(CI84-152-000)	do	United Gas Pipe Line Company, Gibson Field, Terrebonne Parish, Louisiana.[2]		
(CI84-153-000)	do	United Gas Pipe Line Company, West Lake Verret Field, St. Martin Parish, Louisiana.[2]		

[1] Additional material received July 17, 1987.

[2] Applicants request permanent abandonment authorization of their sales of gas to United. Applicants state that this application is pursuant to a settlement agreement dated January 30, 1987, reached between the parties with respect to past and future take-or-pay obligations of United to Applicants, and such agreement included a payment by United for amending the take-or-pay provisions of the contracts. Applicants plan to sell this gas in interstate commerce and plan to file for the required certification as needed.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 87-18392 Filed 8-12-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP87-13-004 and CP87-88-001]

Proposed Changes in FERC Gas Tariff; South Georgia Natural Gas Co.

August 6, 1987.

Take notice that on July 31, 1987, South Georgia Natural Gas Company (South Georgia) tendered for filing the following original and revised tariff sheets designated as Rate Schedules X-6 through X-13:

Original Sheet Nos. 253-464
First Revised Sheet No. 262
First Revised Sheet No. 288
First Revised Sheet No. 315
First Revised Sheet No. 341
First Revised Sheet No. 367

The subject rate schedules consist of the Transportation Agreements between South Georgia and the various shippers identified below which were recently certificated by the Commission.

Rate schedule	Shipper	Date of agreement	Date of certificate
X-6	Proctor & Gamble Paper Products Co	10/15/86	02/20/87, CP87-99.
X-7	City of Moultrie, Georgia	10/22/86	02/20/87, CP87-100.
X-8	City of Thomasville, Georgia	11/10/86	02/20/87, CP87-101.
X-9	Great Southern Paper Co	01/20/87	03/09/87, CP87-208.
X-10	Americus Utility Commission	01/05/87	03/09/87, CP87-209.

Rate schedule	Shipper	Date of agreement	Date of certificate
X-11	Oil-Dri Corp	03/11A/87	06/26/87, CP87-282.
X-12	City of Meigs, Georgia	10/1B/86	06/26/87, CP87-282.
X-13	City of Tifton, Georgia	03/02/87	06/26/87, CP87-269.

South Georgia requests that the original sheets be accepted effective as of the date of issuance of the certificate authorizing the particular service. In addition, South Georgia requests that the revised sheets, reflecting the transportation rate changes proposed in Docket No. RP87-13-000, be accepted effective May 1, 1987, the effective date of South Georgia's rate filing in that proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedures (18 CFR 385.211 or 385.214). All such motions or protests should be filed on our before August 13, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18393 Filed 8-12-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP87-466-000]

Application; Southern California Gas Co.

August 7, 1987.

Take notice that on July 14, 1987, as supplemented July 28, 1987, Southern California Gas Company (SoCalGas), 810 S. Flower Street, Los Angeles, California 90017, filed in Docket No. CP87-446-000 an application pursuant to § 284.224 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing the transportation of natural gas, all as more fully set forth in the application on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 28, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by section 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for SoCal Gas to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18394 Filed 8-12-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA87-56-000]

Petition for Adjustment; Wenert Trich

August 7, 1987.

On July 13, 1987, Wenert Trich filed with the Federal Energy Regulatory Commission a petition for waiver pursuant to Commission Order No. 399-A,[1] Section 502(c) of the Natural Gas Policy Act of 1978,[2] and Subpart K of the Commission's Rules of Practice and Procedure.[3] Petitioner seeks waiver of that portion of its Btu refund obligation attributable to royalties paid by the petitioner to various individual royalty owners. Petitioner states that he has requested repayment of these overpayments, but none have been received. Petitioner further states that the wells in question here are uneconomical or are no longer producting. Petitioner states that under these circumstances the refund amounts cannot be recovered by witholding future payments. Petitioner therefore seeks a waiver of its Btu refund obligations.

The procedures applicable to the conduct of the adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provision of such Subpart K. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register**.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18395 Filed 8-12-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER87-560-000]

Filing; Union Electric Co.

August 7, 1987.

Take notice that on August 3, 1987, Union Electric Company (UE) tendered for filing Supplement No. 9, dated May 28, 1987, to the Twin Cities-Iowa-St. Louis 345 kV Interconnection Coordinating Agreement dated January 7, 1965 between Interstate Power Company, Iowa Electric Light & Power, Iowa-Illinois Gas and Electric Company, Iowa Public Service Company, Iowa Southern Utilities Company, Northern States Power and Union Electric Company.

The Supplement provides for the inclusion in the Coordinating Agreement of Term Energy and the rate therefore.

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[1] Refunds Resulting From Btu Measurement Adjustments, 49 FR 46353 (Nov. 26, 1984); FERC Stats. & Regs. [Regulations Preambles 1982-1985] ¶ 30,612.

[2] 15 U.S.C. 3412(c) (1982).

[3] 18 CFR 395.1101-395.1117 (1986).

UE requests that the filing be permitted to become effective May 1, 1987.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 24, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18396 Filed 8-12-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP87-469-000]

Request Under Blanket Authorization; United Gas Pipe Line Co.

August 7, 1987.

Take notice that on July 31, 1987, United Gas Pipe Line Company (Applicant), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP87-469-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authority to construct and operate a 2-inch sales tap to replace an existing 1-inch sales tap located on Applicant's 18-inch Sterlington-Jackson mainline near Jackson, Hinds County, Mississippi under the certificate issued in Docket No. CP82-430-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Applicant proposes to construct and operate the new sales tap to supply Mississippi Valley Gas Company (M.V.G. Co.), a local distribution company, with an estimated 180 Mcf of natural gas per day for resale to residential and commercial customers, including two schools, near Jackson, Mississippi. Applicant states that it is authorized, in Docket No. G-232, to provide all of M.V.G. Co.'s natural gas requirements for resale and distribution. Applicant indicates that the sales are made pursuant to an effective service agreement dated February 7, 1980, under Applicant's DG-N Rate Schedule. Applicant avers that the total Maximum Daily Quantity for the M.V.G. Co. Jackson Billing Area is 118,542 Mcf and that the proposed sale would be within the limitation set for this particular billing location.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18397 Filed 8-12-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP87-470-000]

Request Under Blanket Authorization; United Gas Pipe Line Co.

August 7, 1987.

Take notice that on July 31, 1987, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP87-470-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to replace an existing 1-inch sales tap by constructing and operating a 2-inch sales tap under the certificate issued in Docket No. CP82-430-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application that is on file with the Commission and open to public inspection.

It is stated that United proposes to construct and operate a 2-inch tap on its Offshore-Kosciusko Main Line near Flowood, in Rankin County, Mississippi, to supply Mississippi Valley Gas Company (M.V.G.) with an estimated average of 326 Mcf per day of natural gas for resale to residential and commercial customers. United States that the proposed 2-inch tap would replace an existing 1-inch tap and that M.V.G would reimburse United for all costs resulting from the tap installation.

United States that the new sales tap for M.V.G. would not result in an increase in M.V.G.'s aggregate base requirements or contractual MDQ. United explains that it is authorized to provide all of M.V.G.'s natural gas requirements for resale and distribution through M.V.G.'s distribution system serving the Jackson, Mississippi, Service Area and its adjoining environs in accordance with a February 7, 1980, service agreement and United's rate schedule DG-N. United further states that the total MDQ for the M.V.Q. Jackson billing area is 118,542 Mcf and that the proposed sale is within the limitation set for this particular billing location, United advises that it has sufficient capacity to render the proposed service without detriment or disadvantage to its other existing customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the natural Gas Act 18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18398 Filed 8-12-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP87-433-000]

Complaint and Motion for Order To Cease Construction and Operation and Order To Show Cause; Williams Natural Gas Co., and Quivira Gas Co.

August 4, 1987.

Take notice that on July 6, 1987, Oklahoma Natural Gas Company, a Division of ONEOK, Inc. (ONG), 100 West Fifth Street, Tulsa, Oklahoma 74103, filed in Docket No. CP87-433-000 a complaint, motion to cease construction and operation and an order to show cause pursuant to § 385.206 of the Commission's Rules of Practice and Procedure (18 CFR 385.206) to prohibit Williams Natural Gas Company (Williams) and Quivira Gas Company (Quivira) from constructing facilities and transporting natural gas to Koch Hydrocarbons, Inc. (Koch), all as more fully set forth in the complaint and motion which is on file with the

Commission and open to public inspection.

ONG, a local distribution company (LDC), states that Koch is an industrial user of gas whose requirements at its Medford Plant historically have been delivered by ONG. ONG further states that it was notified by letter dated July 2, 1987, that Williams and Quivira commenced transportation of natural gas to Koch's plant on or about July 2, 1987. ONG states that Quivira has constructed six miles of pipeline from a tap on Williams' pipeline to Koch's plant solely for the purpose of supplying the Koch plant, and in order to by-pass ONG's system.

ONG believes that Williams is providing this transportation "on behalf of" Quivira under section 311(a)(1) of the Natural Gas Policy Act of 1978 (section 311) and that Quivira claims to be an intrastate pipeline. ONG submits that such transportation cannot be performed on a self-implementing basis under section 311 and requires certification under section 7 of the Natural Gas.

ONG states that the construction of facilities by Williams and/or Quivira, to the extent already undertaken is in violation of the NGA. ONG requests the Commission issue an order to show cause why these parties should not cease and desist from any further construction or operation of facilities without first obtaining certificates, and why they should not be held to have violated the NGA.

Any person desiring to be heard or to make any protest with reference to said complaint should on or before September 3, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18399 Filed 8-12-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP87-462-000]

Request Under Blanket Authorization; Williston Basin Interstate Pipeline Co.

August 7, 1987.

Take notice that on July 27, 1987, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, filed in Docket No. CP87-462-000 a request pursuant to § 157.205 and § 157.216(b) of the Regulations under the Natural Gas Act (18 CFR 157.205) for permission to abandon seven sales taps and appurtenant facilities under its blanket certificate authorization issued in Docket Nos. CP82-487-000, *et al.*, all as more fully set forth in its request which is on file with the Commission and open to public inspection.

Williston Basin proposes to abandon seven taps in the following locations; Three in Park County, Wyoming; one in Big Horn County, Wyoming; one in Yellowstone County, Montana; one in Carbon County, Montana, and one in Pennington County, South Dakota. Such sales taps and appurtenant facilities are located on applicant's natural gas transmission system. It is stated that the customer, Montana-Dakota Utilities Co. (Montana-Dakota), a division of MDU Resources Group, Inc., no longer requires service through these taps because its retail customers would be served through extensions of Montana-Dakota's own distribution facilities. It is further stated that Montana-Dakota has consented to such abandonment. In addition, Williston Basin states that since such sales taps would be abandoned on its existing transmission right-of-way, there would be no significant adverse impact on the environment.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to the intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18400 Filed 8-12-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP87-463-000]

Request Under Blanket Authorization; Williston Basin Interstate Pipeline Co.

August 7, 1987.

Take notice that on July 27, 1987 Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, filed in Docket No. CP87-463-000 a request pursuant to §§ 157.205 and 157.216(b) of the Commission's Regulations under the Natural Gas Act for authorization to abandon 951 feet of transmission lateral pipeline under its blanket certificate authorization issued in Docket Nos. CP82-487-000 *et al.* pursuant to section 7 of the Natural Gas Act, all as more fully set forth in its request which is on file with the Commission and open to public inspection.

Williston Basin proposes to abandon 951 feet of transmission lateral pipeline located on its natural gas transmission system in Crook County, Wyoming. Williston Basin states that the portion of the transmission lateral pipeline to be abandoned is used to provide gas service to an end-use customer of Montana-Dakota Utilities Co. (Montana-Dakota) for use in a bentonite plant. Furthermore Williston Basin states that a sales meter station has been moved 951 feet upstream so as to remove it from within the end-use customer's plant yard. Williston Basin indicates that the 951 feet of transmission lateral pipeline being abandoned by Williston Basin is located between the meter station and the end-use customer's plant yard and will be sold to Montana-Dakota to serve as a distribution line. Thus, Williston Basin states that there will be no impact on the natural gas service provided by Williston Basin to Montana-Dakota.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor the proposed activity shall be deemed to be

authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18401 Filed 8-12-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP87-465-000]

Request Under Blanket Authorization; Williston Basin Interstate Pipeline Co.

Take notice that on July 28, 1987, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 290, 304 East Rosser Avenue, Bismarck, North Dakota 58501, filed in Docket No. CP87-465-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to add metering and appurtenant facilities under the certificate issued in Docket No. CP82-487-000, *et al.*, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Williston Basin seeks authorization to construct and operate the proposed metering and appurtenant facilities so as to utilize existing natural gas supply receipt facilities to deliver transportation gas to various producers, the principal of which is Koch Hydrocarbon Company, for their use in the field in McKenzie County, North Dakota.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18403 Filed 8-12-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA87-53-000]

Petition for Adjustment; Winnie Pipeline Co.

Issued: August 7, 1987.

On June 30, 1987, Winnie Pipeline Company (Winnie) filed with the Federal Energy Regulatory Commission a petition for an adjustment pursuant to section 502(c) of the Natural Gas Policy Act of 1978 (NGPA). Winnie seeks relief from the Commission's regulations governing transportation rates charged by intrastate pipelines as set forth in 18 CFR 284.123(b)(1)(ii), which allows such charges to equal the effective intrastate transportaion rate if the services are comparable. Comparable service has been interpreted to refer to city-gate service. Winnie requests adjustment from the regulation because it does not render city-gate service. Winnie states that it will file for a section 311(a) determination from the jurisdictional agency upon issuance of the requested adjustment.

The procedures applicable to the conduct of this adjustment proceeding are found in subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of such Subpart K. All motions to intervene must be filed within 15 days after publication of this notice in the Federal Register.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18402 Filed 8-12-87; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Objection to Proposed Remedial Order Filed; Period of June 29 Through July 17, 1987

During the period of June 29 through July 17, 1987, the notice of objection to proposed remedial order listed in the Appendix to this Notice was filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial order described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in this proceeding should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

August 7, 1987.

George B. Breznay,

Director, Office of Hearings and Appeals.

Tesoro Petroleum Corp., Kenco Refining, San Antonio, Texas, Denver, Colorado; KRO-0540 Reporting Requirements

On July 14, 1987, Tesoro Petroleum Corporation, 8700 Tesoro Drive, San Antonio, TX 78217, and Kenco Refining, Inc., 1580 Lincoln Street, Suite 850, Denver, CO 80203, filed a Notice of Objection to a Proposed Remedial Order which the DOE Economic Regulatory Administration issued to the firms on June 29, 1987. According to the PRO, during the period March 1977 through July 1977 Kenco and Tesoro filed erroneous Refiner's Monthly Reports (Form P-102-M-L). The PRO states that Kenco as a result improperly received small refiner bias (SRB) entitlements valued at $1,285,402 for crude oil refined by Tesoro during the March through May 1977 period. The PRO also states that during the period May 1977 through July 1977, volumes of residual fuel oil which was refined from this crude oil and sold into the East Coast Market by Kenco were not properly reported to the DOE by Kenco and not reported by Tesoro.

According to the PRO the misreporting and practices by Kenco and Tesoro circumvented the Entitlements Program, resulting in $1,412,428 of losses to the Entitlements Programs.

[FR Doc. 87-18401 Filed 8-12-87; 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Final Environmental Impact Statement Availability; Proposed Conrad-Shelby 230-KV Transmission Line, Montana

AGENCY: Department of Energy, Western Area Power Administration.

ACTION: Notice of availability, final environmental impact statement.

SUMMARY: Notice is hereby given that the Department of Energy (DOE), Western Area Power Administration (Western), has issued for review and comment a final environmental impact statement (EIS) for the proposed Conrad-Shelby 230 kilovolt (kV) Transmission Line Project in Montana, DOE/EIS-0124-F. The final EIS was

prepared pursuant to the National Environmental Policy Act of 1969 (NEPA); Council on Environmental Quality Regulations, 40 CFR Parts 1500 through 1508; and DOE guidelines for compliance with NEPA, 45 FR 20694, and as amended.

DATE: Written responses to the final EIS are due no later than September 14, 1987.

FOR FURTHER INFORMATION CONTACT:

Mr. James D. Davies, Area Manager, Billings Area Office, Western Area Power Administration, P.O. Box EGY, Billings, MT 59101, (406) 657–6538

Mr. Gary W. Frey, Director of Environmental Affairs, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401, (303) 231–1527.

SUPPLEMENTARY INFORMATION: On November 5, 1986, Western filed the draft EIS for the Conrad-Shelby 230–kV Transmission Line Project with the Environmental Protection Agency (EPA). EPA published a Notice of Availability in the **Federal Register** on November 14, 1986. The comment period on the draft ended January 5, 1987. The final EIS contains a comprehensive summary of the draft EIS; copies of comments received on the draft EIS and Western's responses; a summary of cultural resources consultation; Errata and Changes to the draft EIS; and other information. The draft and final EIS's are intended to be reviewed together.

Western proposes to construct, operate, and maintain approximately 29.8 miles of 230–kV transmission line between Conrad and Shelby, Montana. The project also includes relocation of approximately 4.9 miles of the existing Harve-Shelby 115–kV Transmission Line, construction of a new 230/115–kV substation (Shelby No. 2), and construction of approximately 2.6 miles of new 115–kV transmission line to interconnect the proposed Shelby No. 2 and existing Shelby No. 1 Substations. The project involves a total of approximately 36 miles of new transmission line. The area is presently served by a single transmission loop consisting of 115–kV and 161–kV facilities.

This system is in urgent need of improvements to correct low voltages, overloaded facilities, and loss of service that has been experienced and which will worsen as loads grow in the area. The proposed action would provide improved service to area loads and system reliability, contribute to energy conservation, and provided additional flexibility for future expansion when and if it becames necessary. Alternatives considered include no action, energy conservation, other generation sources, other transmission systems and technologies, and the proposed action with routing and design alternatives. Unavoidable adverse effects of the proposed action would be construction related impacts on land use, visual, and biological resources.

The final EIS was prepared in compliance with all applicable regulations. Copies have been distributed to appropriate Federal, State, and local agencies; Boards of County Commissioners in Pondera and Teton Counties; public libraries in Conrad and Shelby, Montana; and other interested groups and individuals. Copies are also available for public inspection at Western offices in Fort Peck and Billings, Montana; Golden, Colorado; and the DOE Reading Room, Forrestal Building, Washington, DC. Copies of the draft and final EIS's are available to the public upon request.

Interested agencies, organizations, and individuals and encouraged to review the final EIS and comment on its adequacy, completeness, and accuracy. Any comments should be sent to Mr. James Davies, Area Manager, at the address given above. Comments received after the comment period may not be considered in Western's decision making process.

Issued at Golden, Colorado, August 3, 1987.

William H. Clagett,

Administrator.

[FR Doc. 87–18431 Filed 8–12–87; 8:45 am]

BILLING CODE 6450–01–M

Salt Lake City Area Integrated Projects; Rate Order; Utah

AGENCY: Department of Energy, Western Area Power Administration.

ACTION: Notice of a rate order—Salt Lake City Area integrated projects.

SUMMARY: Notice is given of Rate Order No. WAPA–33 of the Under Secretary of the Department of Energy (DOE) for placing a power rate into effect on an interim basis beginning on the first day of the October 1987 billing period for power marketed by the Western Area Power Administration (Western) from the Salt Lake City Area Integrated Projects (SLCA/IP). The SLCA/IP is comprised of the Colorado River Storage Project (CRSP), the Rio Grande Project, and the Collbran Project.

The wholesale composite power rate for all project firm capacity and energy is 9.92 mills/kWh. This is a decrease of 27.00 mills/kWh to current Rio Grande Project customers and a decrease of 11.88 mills/kWh to the current Collbran Project customer. The rate to CRSP customers will not change.

Because the power investment in the Collbran and Rio Grande Projects is only 2.4 percent of the total SLCA/IP investment, it has a very small effect on the rate. Also, CRSP experienced very high sales due to above-average water conditions in FY 1986, and the additional revenue made it possible for the SLCA/IP rate to be the same as the current CRSP rate.

The rate order further explains the rate adjustment, discusses the principal factors leading to the decisions on the rate increase, and responds to the comments offered during the rate adjustment process.

EFFECTIVE DATE: The rates will become effective on the first day of the October 1987 billing period.

FOR FURTHER INFORMATION CONTACT:

Ms. Marlene Moody, Deputy Area Manager, Salt Lake City Office, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147, (801) 524–5493

Mr. Conrad K. Miller, Chief, Rates and Statistics Branch, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401, (303) 231–1535

Mr. Ron Greenhalgh, Assistant Administrator for Washington Liaison, Western Area Power Administration, Room 8G061, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–5581.

SUPPLEMENTARY INFORMATION: By Delegation Order No. 0204–108, effective December 14, 1983 (48 FR 55664), as amended May 30, 1986 (51 FR 19744), the Secretary of Energy delegated to the Administrator of Western the authority to develop long-term power and transmission rates; to the Under Secretary of the Department of Energy the authority to confirm, approve, and place such rates in effect on an interim basis; and to the Federal Energy Regulatory Commission the authority to confirm, approve, and place in effect on a final basis, to remand, or to disapprove such rates.

The rate adjustment process on the proposed power rate and the consultation and comment period was initiated on November 5, 1986, with an announcement of the proposed rate published in the **Federal Register** at 51 FR 40250. The public information forum on November 20, 1986, and the public comment forum on December 18, 1986, were announced in the same **Federal Register**. Because bad weather prevented many interested parties from attending the December 18, 1986,

meeting, a **Federal Register** notice, dated February 3, 1987 (52 FR 3312), announced the combined public information/comment forum for February 17, 1987, and extended the consultation and comment period until March 4, 1987.

A SLCA/IP power repayment study (PRS) incorporating the CRSP, Rio Grande Project, Collbran Project, and independent audit adjustments was completed, and the rate of 9.92 mills/kWh was developed.

Comments received have been considered in the preparation of the rate order. However, no changes were made in the composite rate as a result of these comments.

Rate Order No. WAPA–33 confirming and approving a new power rate on an interim basis is hereby issued, and the rate will be promptly submitted to the Federal Energy Regulatory Commission for confirmation and approval on a final basis.

Issued at Washington, DC, August 3, 1987.

Joseph F. Salgado,
Under Secretary.

[Rate Order No. WAPA 33]

Order Confirming, Approving, and Placing a Power Rate in Effect on an Interim Basis

August 3, 1987.

Pursuant to section 302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. 7101–7352, *et seq.*, the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation (Reclamation) under the Reclamation Act of 1902, 43 U.S.C. 372 (1902), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Act of 1939, 43 U.S.C. 485h(c), and acts specifically applicable to the Colorado River Storage Project (CRSP), the Rio Grande Project, and the Collbran Project, were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204–108, effective December 14, 1983 (48 FR 55664, December 14, 1983), and as amended on May 30, 1986 (51 FR 19744), the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates to the Administrator of the Western Area Power Administration (Western); (2) the authority to confirm, approve, and place in effect such rates on an interim basis to the Under Secretary of the Department of Energy; and (3) the authority to confirm, approve, and place in effect on a final basis, to remand, or to disapprove those rates to the Federal Energy Regulatory Commission (FERC). This rate order is issued pursuant to the delegations to the Administrator and the Under Secretary and the rate adjustment procedures at 10 CFR Part 903, published in the **Federal Register** at 50 FR 37837 on September 18, 1985.

Background

Project History

This is the initial rate for the Salt Lake City Area Office Integrated Projects (SLCA/IP). The SLCA/IP include the Collbran Project, CRSP, and Rio Grande Project. Since this is the initial rate, there are no historical rates to discuss. The rate history of the three projects can be found in the Proposed Rate Adjustment brochures dated October 1982 for CRSP, October 1985 for the Collbran Project, and May 1986 for Rio Grande Project, and in the power repayment studies (PRS) described below.

Power Repayment Studies

PRSs are used to determine if power revenues will be sufficient to pay, within the prescribed time periods, all costs assigned to the power function. Repayment criteria are based on law and policies, and are established in DOE Order RA 6120.2. According to DOE Order RA 6120.2, power revenues are required to (1) repay power investment costs including interest within 50 years, (2) repay power replacement costs including interest within the service lives of the equipment not to exceed 50 years, (3) repay irrigation investment costs assigned to power within the time allowed for repayment by irrigation water users, and (4) all of the required annual expenses.

Separate PRSs were prepared for each of the projects to establish their individual revenue requirements and are described below.

The Official FY 1985 Collbran PRS showed that a rate of 21.80 mills/kWh was needed to meet the revenue requirements. This rate became effective with the July 1986 billing period.

The FY 1986 Final Revised Rio Grande Project PRS dated February 1987 showed a need for a rate increase to 36.92 mills/kWh. This rate became effective with the April 1987 billing period.

The FY 1985 Revised CRSP PRS dated March 1986 showed that the current rate of 9.92 mills/kWh was adequate to meet repayment obligations. This study differs from the official FY 1985 CRSP PRS which showed that an increase to 10.30 mills/kWh was necessary to meet repayment obligations. However, examination of this study showed that the rate was driven by costs of the Amimas-La Plata Project, which was being reformulated by Reclamation. The costs of various blocks of the Animas-La Plata Project were initially scheduled to be repaid from 2048 to 2053. Since Reclamation planned to move the date of initial construction of these blocks before the next study would be prepared, and because the changes they would make would negate the need for a rate increase, Western moved them to the 2053 to 2060 period, and found the current rate was adequate. Animas-La Plata costs are currently being revised by Reclamation.

The 1985 Salt Lake City Integrated Projects PRS is the revised 1985 CRSP PRS with the total revenue requirements, annual generation, and capacity of the Collbran and Rio Grande Projects incorporated in the appropriate columns. The current and revised PRSs as required by DOE Order RA 6120.2 do not apply because this is a new study.

All of these studies were revised to include adjustments identified by independent auditors through 1985 and actual 1986 data. Projections for 1987 and beyond were not changed. To establish a SLCA/IP PRS, the CRSP PRS was used, the resources from the Collbran and Rio Grande Projects were added to the CRSP resources, and power from the Rio Grande and Collbran Projects will be purchased by CRSP for an amount equal to the revenue needs established by the separate PRSs. Total power investment in the Collbran and Rio Grande Projects is only 2.4 percent of the total SLCA/IP investment. Because of their sizes, they have a very small effect on the rate when integrated with CRSP. The SLCA/IP PRS sets the rate needed to recover the amount purchased plus the repayment obligation of CRSP.

Initial SLCA/IP Rate

Originally a rate of 10.25 mills/kWh was determined to be necessary. Subsequently, Western made some modifications to the PRS computer program for CRSP. The original program did not allow repayment of participating projects until the project investment and the aid to irrigation had been repaid. Modifying the program to allow concurrent repayment of these project investments provided more flexibility in repaying CRSP obligations and resulted in a reduced proposed rate of 10.04 mills/kWh.

The study has been updated to include FY 1986 data. FY 1986 was an above-average water year which provided additional CRSP revenues. Independent audits of the projects

resulted in adjustments that have also been incorporated in this study. Because of these changes, the current CRSP rate, with a demand charge of $2.50/kW-year and an energy charge of 5.0 mills/kWh, is adequate to meet the obligations of the SLCA/IP. This is a composite rate of 9.92 mills/kWh at the system load factor of 58.2 percent.

Power Factor Adjustment

From at least as far back as 1974, Western and Reclamation have included in their rate schedules a provision stating that customers are expected to maintain the power factor of their systems between 95 percent lagging and 95 percent leading. However, no enforcement provisions are included in the current rate schedules. In addition, there are provisions in certain wheeling contracts of Western's that allow the wheeling agents to make power factor corrections on their systems for power factor problems caused by systems of Western's customers and to bill Western for the work.

The original proposal called for 1 percent to be added to a customer's total monthly bill for each percent that its power factor was below 95 percent lagging or 95 percent leading. A second provision provided for the passthrough to the customer of power factor correction expenses imposed on Western by its wheeling agents. In a subsequent proposal, the 1 percent adjustment was left in the rate schedule, and the passthrough provision was moved into the post-1989 contracts. Later, language was added to give the contracting officer more flexibility to deal with specific situations, such as emergencies, that would warrant waiver of the adjustment. The language included in rate schedule SLIP-F1 is the same as it has been in the past and establishes the acceptable power factor range. Language included in the post-1989 power sales contracts allows Western to make corrections to its own or a customer's system to correct power factor conditions and to bill the customer for the work. This should act as an incentive for customers to perform their own work. In addition, a provision allows Western to pass through to the customer any expenses incurred because of power factor correction on a wheeling agent's system that are the result of conditions on a customer's system.

Public Notice and Comments

The "Procedures for Public Participation in Power and Transmission Rate Adjustments," 10 CFR Part 903, for power marketed by Western and other power marketing administrations have been followed in the development of this rate. The following summarizes the steps Western took to assure involvement of interested parties in the rate process:

—Letter dated August 28, 1986, announcing intent to implement an integrated rate and announcing the September 11, 1986, informal customer meeting.
—Informal customer meeting held on September 11, 1986.
—Federal Register notice dated November 3, 1986, announcing the November 20, 1986, public information forum; the December 18, 1986, public comment forum; and the beginning of the consultation and comment period.
—Public information forum held on November 20, 1986.
—Letter changing proposed power factor adjustment language date December 5, 1986.
—Public comment forum held on December 18, 1986.
—Customer power factor committee meeting held on January 28, 1987.
—Federal Register notice dated February 3, 1987, announcing an additional public information/comment forum to be held on February 17, 1987, and extending the consultation and comment period.
—Public information/comment forum held on February 17, 1987.
—Consultation and comment period ended March 4, 1987.

Certification of Rate

The Administrator has certified that the SLCA/IP rate is the lowest possible rate consistent with sound business principles. The rate has been developed in accordance with administrative policies and applicable laws.

Discussion

The discussion below relates to the issues of early integration, repayment policy, procedural matters, and power factor adjustment that were raised during the consultation and comment period.

Early Integration

The comment was made by a few commentors that the projects should not be integrated until the post-1989 power sales contracts become effective. Western sees the benefits attributable to project integration as (1) an increase in marketable resources, (2) simplified contract development and administration, (3) only one rate adjustment process would be required, and (4) the timely repayment of the Collbran and Rio Grande Projects would be ensured. Integrating the projects before the new contracts become effective on October 1, 1989, would make these benefits available sooner.

Under the post-1989 marketing plan, customers of the Collbran and Rio Grande Projects are to receive power allocations that reduce their financial benefits from integration by 50 percent. As originally proposed, an integrated rate would be established with no adjustment to the Collbran and Rio Grande Projects customers' contract commitments prior to October 1989. Several of the CRSP customers objected, claiming that this would give the small project customers a windfall gain. In responding to these concerns, Western and the customers of the Collbran and Rio Grande Projects are negotiating contract changes that reduce firm contract commitments so that their benefits from integration are reduced by 25 percent. This will make additional short-term excess capacity available to customers during the interim period.

One commentor requested that the energy that is made available as the result of integration be marketed as excess energy to customers of the integrated projects during the interim period before the post-1989 contracts are effective. Western will take into account an increase in capacity available because of integration when it determines what seasonal excess capacity will be offered to customers. No energy will be made available because of integration except surplus energy from the Rio Grande Project that is currently offered to Rio Grande Project customers and that will be offered to all customers.

Repayment Policy

One commentor commented on the policies and procedures Western uses to establish rates. The commentor stated that (1) investment is understated because of the way interest during construction was computed, (2) a 50-year repayment period is excessive and not in accord with sound business practices, (3) the policy of repaying highest interest rate investments first and not using a straight-line amortization method is inappropriate, and (4) not making annual payments on the irrigation investment is also inappropriate. Western rates are set in accordance with applicable laws and DOE order RA 6120.2, which establishes (1) the method of computation of interest during construction, (2) a 50-year repayment period unless otherwise specified in the project legislation, (3) the policy of repaying highest interest rate investments first, and (4) the repayment of irrigation investment (zero

interest) after the interest-bearing investment is repaid.

Procedure

During the consultation and comment period, Western received a request to hold a second public comment forum because weather conditions prevented many interested parties from attending the public comment forum scheduled for December 18, 1986. A second forum was held on February 17, 1987.

Western was asked to form a customer committee to discuss the issues involved in establishing a power factor adjustment clause and to make recommendations to Western about power factor adjustment. A committee of interested customers was formed and met on January 29, 1987. Suggestions of the committee were considered in the development of language for the power factor adjustment.

One commentor suggested that an environmental impact statement concerning the effects of integration should be completed. Western conducted an analysis of the environmental impacts of project integration, which was included in the environmental assessment completed for the post-1989 marketing plan. Since the proposed rate is lower than the rate used in the environmental assessment, a supplemental analysis was done. The results of this analysis, and those of the environmental assessment, demonstrate that the effects of integration are clearly insignificant. A memorandum to Western's files showing these findings was prepared and concludes the environmental process for this rate action.

Power Factor

Many of the comments received concerned the proposed power factor adjustment. Some commentors argued that the 1 percent adjustment was not attributable to any benefit that Western would receive from implementation of the clause. Western's intent in selecting the 1 percent level for the power factor adjustment was not to receive compensation for costs incurred or revenues forgone. The adjustment was intended as an incentive for customers to make improvements to their systems that would correct existing problems. A higher adjustment was not chosen because it was felt that it would be punitive. A lower adjustment would not be an effective incentive because it might be less expensive to pay the adjustment than to make improvements. This adjustment has since been removed from the rate schedule. However, the rate schedule still contains language that maintains the power factor standard. Western believes that provisions included in the post-1989 power sales contracts will be sufficient to encourage customers to comply with this standard.

Commentors suggested that a 90 percent power factor standard, such as the Utah Power and Light Company (UP&L) currently prescribes, be instituted with the standard increasing gradually over a period of years to the 95 percent level proposed by Western. They also suggested that the adjustment be applied only after a customer fails to take corrective measures. Western and Reclamation have included the 95 percent standard in rate schedules since 1974. Western's two main wheeling agents responded to requests to explain their current power factor policies. UP&L supports Western's effort to establish a power factor adjustment. Currently its contracts with Western require power factors of 90 percent or higher at all times. Its desired power factor is 95 percent for peak periods. UP&L wheeling contracts executed in 1986 and 1987 with several of its customers have specified a power factor of 95 percent lag or lead during the monthly peak hour. UP&L stated that all future contracts are expected to contain similar provisions. Public Service Company of New Mexico requires unity power factor with each party supplying its own reactive power. In such a situation, Western has adopted the policy that the power factor standard which is the most restrictive will apply. This means that customers served over the Public Service of New Mexico system will be required to comply with the unity power factor standard, and those served over the UP&L system will be required to comply with the 95 percent level unless or until UP&L or Western adopts a more stringent standard.

Commentors asked Western to withdraw the power factor adjustment from this rate proceeding. As noted earlier, Western's rate schedules have contained language that established a 95 percent leading and lagging power factor for a long time. There has been no enforcement provision included in the schedules. As a result, some customers have ignored the requirement and allowed their systems to operate outside of the established parameters. The proposed establishment of this adjustment was intended to provide the needed mechanism for Western to get compliance with its established standards of operation and improve the efficiency of its transmission system. However, the recent effort made by customers to improve their power factors and the inclusion of provisions in the post-1989 power sales contracts permitting Western to make necessary power factor corrections at the customer's expense should be adequate to achieve compliance with the power factor standard. Consequently, the power factor adjustment has been removed from the rate schedule for the present time.

One group of comments concerned allowing some flexibility in the enforcement of the power factor adjustment. Commentors wanted to be assured that the adjustment would be waived in emergency situations, that procedures would be developed to deal with customers with their own generation, and that the adjustment would not be applied to very small customers. These comments are no longer relevant because the adjustment will not be incorporated in the rate schedule.

It was suggested that Western apply the power factor adjustment only to lagging power factors. The effect of a leading power factor on system losses is the same as for lagging power factor. With the goal of operating the system in an efficient manner, lagging and leading power factors must be kept within an acceptable range. A related suggestion was that the adjustment be applied only to the capacity component of the rate. Figure 3, on page 4 of the Power Factor Discussion Paper included in the supporting documents for this rate, shows that a 10 percent increase (from .85 to .95) in power factor yields a 13 percent increase in system capacity. In addition, there are savings in energy losses as shown in Figure 7 on page 10 of the same report. This figure shows that this same increase in power factor results in a 20 percent reduction in losses. Because power factor correction results in both capacity and energy savings, Western proposed to apply a power factor adjustment to both. The language in the rate schedule specifies an acceptable power factor range of between 95 percent lagging and 95 percent leading and does not include the proposed adjustments on the assumption that adequate incentives to maintain the required power factor will be provided in the power sales contract provisions.

During the public involvement process, Western was asked to explain how it arrived at the 95 percent level for the power factor adjustment. The Power Factor Discussion Paper states:

> Western has used the .95 power factor criteria in the design and planning for new lines since its inception. An acceptable system variance of 5 percent has been the standard in many system designs. System

voltage fluctation is acceptable within the 5 percent margin, transformer taps are also normally standardized on a plus or minus 5 percent range. To obtain optimum release of system transmission capability, technically it is desirable that power factor be improved to 100 percent (unity power factor) because the electrical capacity released is worth several times the cost associated with the addition of power factor correction equipment. However, the system configuration and loading patterns dictate that some value less than unity would be acceptable.

A 95 percent power factor is economically attainable with current correction devices. Therefore, Western has adopted the 95 percent power factor. Western was asked to exclude, from the power factor adjustment, customers served at points of interconnection where power is delivered to several customers. If adopted, the power factor adjustment would not have been applied to customers served through points of interconnection where power flows freely in either direction. The adjustment has been eliminated from the rate schedule as previously noted.

During the public process, Western was also asked to apply the power factor adjustment at points of measurement rather than points of delivery, as had been proposed, and to define the point of measurement. Western concluded that the points at which customer loads are measured, or the points of measurement, would have been the appropriate place to apply the provisions. Under the circumstances, however, this is no longer germane.

One commentor stated that power factor adjustment should be treated in the power sales contracts and not in the rate schedule. Adjustments such as for power factor are normally part of rate schedules along with language that specifies an acceptable range for power factor. However, the adjustment has been eliminated from the rate schedule because Western is willing to try first to correct power factor problems with contract language included in the post-1989 power sales contracts.

Environmental Evaluation

In compliance with the National Environmental Policy Act (NEPA) of 1969 and DOE guidelines published in the **Federal Register** on February 23, 1982, 47 FR 7976, Western follows the process described below in conducting environmental evaluations of proposed rate adjustments.

Section D of the DOE guidelines states that for rate increases for power marketing administrations, the level of documentation under NEPA depends upon the size of the rate increase as it relates to the rate of inflation since the last rate increase. If the rate increse exceeds the rate of inflation since the last rate increase, an environmental assessment is normally required. An environmental assessment considers the impacts of the proposed rate increase and alternatives on the environment.

The SLCA/IP rate is identical to the current CRSP rate. The customer base remains the same, the vast majority of which are CRSP customers. Therefore, Western concluded that it was appropriate to make the environmental determination based on the existing CRSP rate. Under integration, the customers of the Collbran and Rio Grande Projects will receive, from the SLCA/IP resources through 1989, fixed commitments such that their financial benefits from integration are reduced by 25 percent. This will result in decreased Federal costs to these customers. Western analyzed the effect this would have on consumption as a part of its post-1989 Marketing Criteria Environmental Assessment (DOE EA–0265) and found that it did not significantly affect consumption. The analysis was repeated using the proposed rate and the conclusions reached in the post-1989 environmental assessment are still valid. For the post-1989 period, the customers of the Collbran and Rio Grande Projects will receive further reductions in their allocations from the SLCA/IP. Western has conducted an analysis of potential impacts to selected SLCA/IP customers and determined that the SLCA/IP rate would be expected to create adverse environmental effects.

Because there is no rate increase to CRSP customers, and the increase in consumption due to lower prices to customers of the Collbran and Rio Grande Projects would clearly not be significant, an environmental assessment is not necessary.

Executive Order 12291

The DOE has determined that this is not a major rule within the meaning of the criteria of section 1(b) of Executive Order 12291. In addition, Western has received an exemption from sections 3, 4, and 7 of that order, and therefore will not prepare a regulatory impact statement.

Availability of Information

Information regarding this rate adjustment including studies, comments, and other supporting material is available for public review in that Salt Lake City Area Office, Western Area Power Administration, 438 East 200 South, Suite 2, Salt Lake City, Utah 84111; in the office of the Director of Marketing and Rates, Western Area Power Administration, 1627 Cole Boulevard, Golden, Colorado 80401; and in the Office of the Assistant Administrator for Washington Liaison, Room 8G061, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

Submission to the FERC

The rate herein confirmed, approved, and placed in effect on an interim basis, together with supporting documents, will be submitted to the Federal Energy Regulatory Commission for confirmation and approval on a final basis.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve and place in effect Rate Schedule SLIP-F1 on an interim basis, effective on the first day of the October 1987 billing period. The rate shall remain in effect on an interim basis pending FERC confirmation and approval of this or a substitute rate on a final basis, or until superseded.

Issued in Washington, DC August 3, 1987.

Joseph F. Salgado,

Under Secretary.

[Rate Schedule SLIP–F1 (Supercedes Schedules: SP–F2, SP–FP2, RGP–F3, CP–F/NF–2) (Terminates Schedule RGP–EE1)]

Salt Lake City Area Integrated Projects, Utah, Colorado, New Mexico, Arizona, Wyoming, Nevada—Schedule of Rate for Wholesale Firm Power Service

Effective

Beginning on the first day of the October 1987 billing period, and ending on the last day of the September 1992 billing period.

Available

In the area served by the Salt Lake City Area Integrated Projects.

Applicable

To wholesale power customers for general power service supplied through one meter at one point of delivery.

Character and Conditions of Service

Alternating current, 60 hertz, three-phase, delivered and metered at the voltages and points established by contract.

Monthly Rate

Demand Charge: $2.09 per kilowatt of billing demand.

Energy Charge: 5.0 mills per kilowatthour of use.

Billing Demand: The billing demand will be the greater of (1) the highest 30-minute integrated demand measured during the month up to, but not in excess of, the delivery obligation under the power sales contract, or (2) the contract rate of delivery.

Billing for Unauthorized Overruns:

For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual firm power and/or energy obligations, which overrun shall be billed at ten (10) times the above rate.

Adjustments

For Transformer Losses: If delivery is made at transmission voltage but metered on the low-voltage side of the substation, the meter readings will be increased to compensate for transformer losses as provided for in the contract.

For Power Factor: The customer will be required to maintain a power factor at all points of measurement of between 95 percent lagging and 95 percent leading.

[FR Doc. 87-18432 Filed 8-12-87; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[Docket No.: FEMA-REP-5-IL-6]

Certification of FEMA Finding and Determination; the Illinois Plan for Radiological Accidents Site-Specific to the Clinton Power Station

In accordance with the Federal Emergency Management Agency (FEMA) rule, 44 CFR Part 350, the State of Illinois formally submitted its plan relating to the Clinton Power Station to the Director of FEMA Region V on November 25, 1986, for FEMA review and approval. On May 15, 1987, the Regional Director forwarded his evaluation to the Associate Director for State and Local Programs and Support in accordance with § 350.11 of the FEMA rule. Included in this evaluation is a review of the State and local plans around the Clinton Power Station, evaluations of joint exercises conducted on January 13, 1987, and December 4, 1985, in accordance with § 350.9 of the FEMA rule, and a public meeting held on February 25, 1987, to discuss the site-specific aspects of the State and local plans around the Clinton Power Station in accordance with § 350.10 of the FEMA rule.

Based on the evaluation by the Regional Director and the review by the FEMA Headquarters staff, I find and determine that the State and local plans and preparedness for the Clinton Power Station are adequate to protect the health and safety of the public living in the vicinity of the plant. These offsite plans and preparedness are assessed as adequate in that they provide reasonable assurance that appropriate protective actions can be taken offsite in the event of a radiological emergency and are capable of being implemented. On September 15, 1986, the adequacy of the public alert and notification system was verified as meeting the standards set forth in Appendix 3 of the Nuclear Regulatory Commission/FEMA criteria of NUREG-0654/FEMA-REP-1, Rev. 1, and FEMA-43 "Standard Guide for the Evaluation of Alert and Notification Systems for Nuclear Power Plants" (now published as FEMA-REP-10).

FEMA will continue to review the status of offsite plans and preparedness associated with the Clinton Power Station in accordance with the FEMA rule.

For further details with respect to this action, refer to Docket File FEMA-REP-IL-6.

Dated: August 3, 1987.

For the Federal Emergency Management Agency.

Dave McLoughlin,

State and Local Programs and Support.

[FR Doc. 87-18451 Filed 8-12-87; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL HOME LOAN BANK BOARD

Appointment of Receiver; Acadia Savings and Loan Association, Crowley, LA

Notice is hereby given that pursuant to the authority contained in section 406(c)(2) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(2) (1982), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Acadia Savings and Loan Association, Crowley, Louisiana, on August 6, 1987.

Dated: August 7, 1987.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87-18472 Filed 8-12-87; 8:45 am]

BILLING CODE 6720-01-M

Appointment of Receiver; Acadia Savings and Loan Association, Crowley, LA

Notice is hereby given that the Circuit Court of the State of Louisiana for the Parish of Acadia has confirmed the appointment by the Commissioner of the State of Louisiana ("Louisiana") of a receiver for Acadia Savings and Loan Association, Crowley, Louisiana ("Acadia") and that pursuant to the authority contained in section 406(c)(1) of the National Housing Act, as amended (12 U.S.C. section 1729(c)(1) (1982), the Federal Savings and Loan Insurance Corporation accepted the tender of the Commissioner of the appointment as receiver for Acadia, for the purpose of liquidation, effective August 6, 1987.

Dated: August 7, 1987.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87-18473 Filed 8-12-87; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Philadelphia Port Corp., et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200014-001.

Title: Philadelphia Port Corporation Terminal Lease Agreement.

Parties:

Philadelphia Port Corporation
Delaware Operating Company

Synopsis: The provisions of the basic agreement as relates to Parcel "B" of the Packer Avenue Marine Terminals are terminated effective August 4, 1987.

Agreement No.: 224-200014-002.

Title: Philadelphia Port Corporation Terminal Lease Agreement.

Parties:

Philadelphia Port Corporation
Delaware Operating Company

Synopsis: The provisions of the basic agreement as relates to Parcel "C" of the Packer Avenue Marine Terminals are terminated effective August 4, 1987.

Agreement No.: 224–200017.
Title: Philadelphia Terminal Agreement.
Parties:

Philadelphia Port Corporation
Delaware Operating Company (DOC)

Synopsis: The proposed agreement would permit DOC to exclusively manage and operate that portion of the Packer Avenue Marine Terminal described in the Operating Agreement as the Packer Avenue Container Terminal.

Agreement No.: 224–200018.
Title: Philadelphia Terminal Agreement.
Parties:

Philadelphia Port Corporation
Delaware Operating Company (DOC)

Synopsis: The proposed agreement would lease to DOC Packer Avenue Marine Terminal Building G and Berth Number 6 and permit use by DOC of Berth Number 5 and the crane located thereon.

Agreement No.: 224–200016
Title: Jacksonville Terminal Agreement.
Parties:

Jacksonville Port Authority (JPA) and
Trailer Marine Transport Corporation (TMT)

Synopsis: The proposed agreement would grant TMT the exclusive use of 17.14 acres of JPA's Talleyrand Dock and Terminal (TDT) in Jacksonville, Florida and preferential use of the facilities at TDT.

By Order of the Federal Maritime Commission.

Dated: August 10, 1987.

Joseph C. Polking,
Secretary.

[FR Doc. 87–18455 Filed 8–12–87; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Acquisition of Company Engaged in Permissible Nonbanking Activities; Lincolnland Bancshares, Inc.

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 4, 1987.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Lincolnland Bancshares, Inc.*, Casey, Illinois; to acquire Max L. Sweet, d/b/a Sweet Insurance Agency, Martinsville, Illinois and thereby engage in general insurance activities in a population of less than 5,000 pursuant to § 225.25(b)(8)(iii) under the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 7, 1987.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 87–18446 Filed 8–12–87; 8:45 am]
BILLING CODE 6210-01-M

Formations of; Acquisitions by; and Mergers of Bank Holding Companies; New England Merchant Bancshares, Inc., et al.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented by a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 3, 1987.

A. Federal Reserve Bank of Boston (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *New England Merchants Bancshares, Inc.*, Burlington, Vermont; to become a bank holding company by acquiring 100 percent of the voting shares of Merchants Bank, Burlington, Vermont, Proctor Bank Rutland, Vermont, First Twin-State Bank, White River Junction, Vermont, and Green Mountain Bank, Bondville, Vermont.

2. *Great Bay Bankshares, Inc.*, Dover, New Hampshire; to become a bank holding company by acquiring 100 percent of the voting shares of Southeast Bank for Savings, Dover, New Hampshire.

3. *General Educational Fund, Inc.*, Burlington, Vermont; to acquire 17.8 percent of the voting shares of New England Merchants Bancshares, Inc., Burlington, Vermont; and thereby indirectly acquire Merchants Bank, Burlington, Vermont, Proctor Bank Rutland, Vermont, First Twin-State Bank, White River Junction, Vermont, and Green Mountain Bank, Bondville, Vermont.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Eastern Michigan Financial Corporation*, Croswell, Michigan; to acquire 100 percent of the voting share of Sanilac County Bank, Deckerville, Michigan.

2. *Merchants National Corporation*, Indianapolis, Indiana, to merge with Elston Corporation, Crawfordsville, Indiana; thereby indirectly acquire Elston Bank and Trust Company, Crawfordsville, Indiana.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Investors Financial Corporation*, Chillicothe, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Community Bank of Pettis County, Sedalia, Missouri.

Board of Governors of the Federal Reserve System, August 7, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-18447 Filed 8-12-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 87D-0308]

Medical Devices; Diagnostic Ultrasound Guidance Update; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled "Diagnostic Ultrasound Guidance Update—January 30, 1987," prepared by FDA's Center for Devices and Radiological Health (CDRH). The document is intended to update CDRH's guidance to manufacturers, importers, and distributors of diagnostic ultrasound devices regarding: (1) Premarket notification submissions to the agency for the devices to determine whether a new or modified device is substantially equivalent to preamendments devices in commercial distribution; and (2) guidance on prescription labeling for the devices.

DATES: FDA will apply the guidance on prescription labeling on November 1, 1987, for devices manufactured on or after that date.

ADDRESS: Written comments or requests for single copies of the guidance document to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Written comments and requests for single copies should include the docket number that appears in the heading of this notice. (Send two self-addressed adhesive labels to assist the Branch in processing your requests.)

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: FDA, primarily through CDRH, regulates medical devices under the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94-295) to the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 et seq.). One provision of the amendments, section 513 of the act (21 U.S.C. 360c), establishes three categories (classes) of devices, depending upon the regulatory controls needed to provide reasonable assurance of their safety and effectiveness: class I (general controls), class II (performance standards), and class III (premarket approval). Following procedures in the statute, FDA has classified a number of diagnostic ultrasound devices in commercial distribution into class II, e.g., the cardiovascular ultrasonic transducer (21 CFR 870.2660), the fetal ultrasonic monitor and accessories (21 CFR 884.2660), and the obstetric ultrasonic transducer and accessories (21 CFR 884.2960).

Section 510(k) of the act (21 U.S.C. 360(k)) and Subpart E of 21 CFR Part 807, FDA's regulations governing establishment registration, and device listing for manufacturers of devices, require that under certain circumstances (see § 807.81(a) (1) and (2)), a person who must register under section 510 of the act submit a notification to FDA 90 days before that person begins commercial distribution of a device. Premarket notification is also required when such a person proposes a significant change in design, components, method of manufacture, or intended use of a device in commercial distribution (see § 807.81(a)(3)).

The term "intended use" is defined in 21 CFR 801.4 and the term "adequate directions for use" is defined in 21 CFR 801.5. A prescription device may be exempt from the requirements of adequate directions for use as specified in Subpart D of Part 801. FDA considers a diagnostic ultrasound device a prescription device and therefore exempt from "adequate directions for use" provided that the device is labeled according to the requirements of 21 CFR 801.109.

For several years, CDRH has consulted and corresponded with the medical community and with a trade association representing many of the manufacturers of diagnostic ultrasound devices (the National Electrical Manufacturers Association (NEMA)) (Refs. 20 through 34). This consultation intensified during 1985 and 1986. A meeting was held between CDRH and NEMA on April 29, 1985 (Ref. 23), followed by another meeting and an ultrasonic transducer measurement workshop conducted by CDRH for manufacturers on January 20 and 21, 1986 (Ref. 28). Another meeting between CDRH and NEMA was held on August 6, 1986, with attendees including members of the American College of Cardiology, American College of Obstetricians and Gynecologists, American College of Radiology, and the American Institute of Ultrasound in Medicine (AIUM) (Ref. 31). Letters to CDRH from NEMA of October 6 and 7, 1986, show tentative agreement between NEMA and FDA regarding certain acoustic power levels and other issues relating to premarket notifications (Ref. 33). CDRH also held a meeting with NEMA on October 24, 1986, to discuss the remaining issues (Ref. 34).

During the period of consultation described above, CDRH developed a position regarding technical parameters and labeling of diagnostic ultrasound devices. To inform the regulated industry of CDRH's position, on January 30, 1987, CDRH sent a letter to certain trade associations and to all known manufacturers and distributors of diagnostic ultrasound devices (Ref. 1). The January 30, 1987, letter updated CDRH's earlier guidance (Refs. 2 through 4), rejecting and affirming CDRH's earlier views as set forth in its text.

CDRH's January 30, 1987, letter updated the earlier guidance concerning submission to FDA of premarket notifications for diagnostic ultrasound devices. In the letter, CDRH provided new acoustic output criteria to determine substantial equivalence of diagnostic ultrasound devices. The letter identified those modifications of diagnostic ultrasound device systems and transducers that no longer gave rise to filing 510(k) notifications prior to marketing. Additionally, the January 30, 1987, letter also set forth labeling guidance for ultrasound devices (both systems and transducers) manufactured on or after August 1, 1987.

CDRH believes that the guidance in the January 30, 1987, letter satisfactorily addresses premarket notification issues related to acoustic output concerns, and is acceptable to manufacturers of these devices.

Since the issuance of its letter of January 30, 1987, CDRH has received comments from NEMA, AIUM, manufacturers of diagnostic ultrasound devices, and from other persons (Refs. 5 through 19). The greatest concerns expressed in these comments pertain to CDRH's labeling guidance. The comments described difficulties in implementing the labeling changes CDRH requested within the 6-month period indicated in the letter of January 30, 1987. These comments also requested that the agency delay for 6 months (until February 1, 1988), the effective date of CDRH's labeling guidance.

Accordingly, to immediately initiate a portion of the policy in the January 30, 1987, letter and to receive comments on the entire letter, under the docket number for this notice, FDA is making available to all interested persons its letter of January 30, 1987. This letter provides manufacturers of diagnostic ultrasound devices CDRH's guidance on premarket notification submissions and on labeling for these devices.

The agency is using the criteria in this guidance document to evaluate premarket notification submissions from manufacturers, importers, and distributors of diagnostic ultrasound devices, and to make substantial equivalency determinations regarding such devices. The effective date for the guidance document is August 1, 1987, except that the date of FDA's application of the labeling policy set forth in the January 30, 1987, letter is being delayed 3 months, i.e., until November 1, 1987. FDA believes, responding to concerns raised by industry, that the November 1, 1987, date will provide sufficient time for manufacturers to make any necessary labeling changes related to the labeling guidance in CDRH's letter of January 30, 1987.

FDA is inviting interested persons to submit written comments on its guidance letter of January 30, 1987, to aid the agency in determining whether future amendments to the guidance are warranted. The agency advises that comments submitted earlier to CDRH regarding the letter of January 30, 1987, need not be resubmitted. These comments have already been included in the administrative record under Docket No. 87D-0208 (Refs. 5 through 19).

References

The following references have been placed on display in the Dockets Management Branch (address above) and can be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Letter from J.C. Villforth to all diagnostic ultrasound manufacturers and distributors—trade associations, January 30, 1987: "Diagnostic Ultrasound Guidance Update."
2. Letter from K. Mohan to all diagnostic ultrasound manufacturers and importers, March 7, 1986: "510(k) Submissions."
3. Letter from K. Mohan to all diagnostic ultrasound manufacturers and importers, March 7, 1986: "Doppler Ultrasound for Fetal Evaluation."
4. Letter from J.C. Villforth to all diagnostic ultrasound manufacturers and importers, February 24, 1986: "Exemption from Reporting under 21 CFR Part 1002."
5. Letter from C.R.B. Merritt, President, American Institute of Ultrasound in Medicine (AIUM), to CDRH, May 18, 1987
6. Letter from W.S. Murray, National Electrical Manufacturers Association (NEMA), to CDRH, April 28, 1987.
7. Letter from W.S. Murray, National Electrical Manufacturers Association (NEMA), to CDRH, May 19, 1987
8. Letter from D. Perozek, Chairman, Ultrasound Section, National Electrical Manufacturers Association (NEMA), to CDRH, May 19, 1987.
9. Letter from N.T. Sanghvi, Vice President, Labsonics, Inc., to CDRH, June 4, 1987.
10. Letter from A. Dmitrieff, Thompson Ultrasonic (CGR Ultrasonic), to CDRH, April 21, 1987.
11. Letter from T.J. Sweeney, Regulatory Affairs Manager, Quantum Medical Systems, Division of Toshiba America, Inc., to CDRH, March 19, 1987.
12. Letter from Machiyama, Engineering Manager, Ultrasound, Toshiba Medical Systems, to CDRH, February 26, 1987.
13. Letter from A. Machiyama, Manager, Ultrasound Engineering, Toshiba Medical Systems, to CDRH, April 6, 1987.
14. Letter from M. Uehara, Vice President, Hitachi Medical Systems, to CDRH, February 17, 1987.
15. Letter from C. Myers, Medsys, Inc., to CDRH, March 31, 1987
16. Letter from W.D. Sterling, Production Manager, Biophysic Medical, Inc., to CDRH, April 15, 1987.
17. Letter from W.L. Nyborg, Professor, University of Vermont, to CDRH, February 16, 1987.
18. Letter from C.R. Burr, Regulatory Affairs Manager, Andover Division, Hewlett-Packard Co., to CDRH, March 3, 1987 (comments on CDRH letter of January 30, 1987).
19. Letter from C.R. Burr, Regulatory Affairs Manager, Andover Division, Hewlett-Packard Co., to CDRH, March 3, 1987 (fetal use transducer labeling).
20. Letter from R. G. McCune, Division Manager, National Electrical Manufacturers Association (NEMA), to CDRH, May 17, 1984.
21. Letter from R. G. Britain, Director, Office of Device Evaluation, CDRH, to R. A. Meyer, President, American Institute of Ultrasound, April 16, 1985, and related correspondence.
22. Letter from R. G. Britain, Director, Office of Device Evaluation, CDRH, to J. Kisslo, Chairman, Legislative and Regulatory Committee, American Society of Echocardiography, April 16, 1985, and related correspondence.
23. List of attendees at an FDA/Industry meeting held on April 28, 1986. At that meeting, the working agenda was a document entitled "Center Response to February 4, 1986, NEMA Critique of 510(k) Guide for Measuring and Reporting Acoustic Output of Diagnostic Ultrasound Medical Devices."
24. Letter from W. S. Murray, Section Staff Executive, National Electrical Manufacturers Association (NEMA), to CDRH, May 21, 1985, and attached technical data.
25. Letter from W. S. Murray, Section Staff Executive, National Electrical Manufacturers Association (NEMA), to CDRH, June 11, 1985, and CDRH's reply of July 1, 1985.
26. Letter from W. S. Murray, Section Staff Executive, National Electrical Manufacturers Association (NEMA), to CDRH, July 10, 1985.
27. Letter from G. R. Harris, CDRH, to W. Murray, National Electrical Manufacturers Association (NEMA), January 3, 1986, including CDRH's response to "Summary of NEMA Member Questions and Comments on SPTP Measurements" (undated), with technical references.
28. Letter of December 24, 1985, from CDRH to all ultrasound manufacturers and other interested persons announcing a seminar and workshop to exchange information regarding diagnostic ultrasound. Also attached are the agendas for the seminar held on January 21, 1986, and the measurement workshop held on January 22, 1986.
29. Letter from R. G. McCune, Vice President, Division Operations, National Electrical Manufacturers Association (NEMA), to CDRH, April 22, 1986 (17 pages).
30. Document entitled "Office Copy—Draft Response to April 22, 1986, NEMA Inquiry—August 5, 1986" (see Ref. 29), with attached note of August 5, 1986. Document was intended as working paper for CDRH meeting with NEMA scheduled for August 6, 1986 (see Ref. 31).
31. Document entitled "Memorandum of Meeting between NEMA and Center for Devices and Radiological Health Staff," August 6, 1986.
32. Letter from Lillina Yin, CDRH, to W. S. Murray, Section Staff Executive, National Electrical Manufacturers Association (NEMA), August 25, 1986, with attached technical data, followup to meeting of August 6, 1986 (Ref. 31).
33. Letter from D. M. Perozek, Chairman, Ultrasound Section, National Electrical Manufacturers Association (NEMA), to J. S. Benson, CDRH, October 6, 1986. Letter from W. S. Murray, Section Staff Executive, National Electrical Manufacturers Association (NEMA), to K. Mohan, CDRH, October 7, 1986.
34. Document entitled "Memorandum of Meeting between NEMA and CDRH," October 24, 1986.

Interested persons may, at any time, submit written comments regarding the guidance to the Dockets Management Branch (address above). Such comments will be considered in determining whether further amendments to or revisions in the guidance are warranted. Two copies of any comments are to be submitted, except that individuals may

submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 7, 1987.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-18531 Filed 8-11-87; 9:45 am]

BILLING CODE 4160-01-M

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings

The following advisory committee meetings are announced:

Gastrointestinal Drugs Advisory Committee

Date, time, and place. September 10 and 11, 1987, 9 a.m., Parklawn Bldg., Conference Rms. D & E, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, September 10, 1987, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m., September 11, 1987, 9 a.m. to 5 p.m.; Joan C. Standaert, Center for Drugs and Biologics (HFN-180), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-442-0479 or 419-259-6211.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in the treatment of gastrointestinal disorders and diseases.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should notify the contact person.

Open committee discussion. The committee will discuss (NDA 19-506) Eli Lilly & Co., Axid (nizatidine) for treatment of duodenal ulcer and for maintenance therapy of healed duodenal ulcer; (NDA 19-651) Norwich Eaton Pharmaceuticals, Inc., and Tillotts Laboratories, Asacol (mesalamine tablets) for induction of remission in ulcerative colitis and for maintenance of remission in ulcerative colitis.

Endocrinologic and Metabolic Drugs Advisory Committee

Date, time, and place. September 28 and 29, 1987, 9 a.m., Conference Rms. G & H Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, September 28, 1987, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, September 28, 1987, 10 a.m. to 5 p.m., September 29, 1987, 9 a.m. to 12 m.; John R. Short, Center for Drugs and Biologics (HFN-810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3510.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in endocrine and metabolic disorders.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should notify the contact person.

Open committee discussion. The committee will discuss (1) the necessity to use a control group and to follow patients until ultimate height in the investigation of growth hormone for the treatment of nongrowth-hormone-deficient children with short stature, (2) use of an integrated test method to determine growth-hormone deficiency, and (3) the approvability of Sandostatin (octreotide) for treating tumors.

FDA public advisory committee meetings may have as many as four separarble portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long, it is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI-35), Food and Drug Administration, Rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: August 7, 1987.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 87–18442 Filed 8–12–87; 8:45 am]

BILLING CODE 4160–01–M

Health Resources and Services Administration

Acquired Immunodeficiency Syndrome Drug Reimbursement Program

The Fiscal Year 1987 Supplemental Appropriation (Pub. L. 100–71) included $30,000,000 to cover the cost of azidothymidine (AZT), and any other drug which has been determined by the Food and Drug Administration to prolong the life of a person with acquired immunodeficiency syndrome (AIDS).

These funds will be awarded to States by a formula based on the number of living AIDS patients residing in each State as reported by the Centers for Disease Control on July 6, 1987. The money is to be made available by the States for low-income individuals not covered by the State Medicaid program or another third-party payer, or whose State Medicaid program does not provide this drug coverage.

This is a one-time-only drug reimbursement program to cover drug expenses for eligible individuals through September 30, 1988. These funds are to be used only for drug procurement and not for Federal or State administrative expenses associated with the program.

States participating in the AIDS drug reimbursement program have agreed in writing to comply with the following provisions:

(1) Agree to use the funds only to pay for AIDS drugs for low-income persons not covered under the State Medicaid program or by another third-party payor or for individuals covered by Medicaid if the State Medicaid program does not provide this drug coverage. If the State Medicaid program covered AZT and other AIDS drugs as of April 1, 1987, the State may not change its Medicaid policy subsequent to that date with respect to AIDS drug eligibility or the Federal Government may find the State ineligible for the AIDS drug reimbursement program and withdraw the funds allocated to that State.

(2) Define low-income for the purposes of this program, which may include provisions for copayments by patients.

(3) Give priority to qualified individuals who meet the low income definition and who received AZT under the treatment investigational new drug program.

(4) Maintain the confidentiality of patients who apply for eligibility under this program.

(5) Comply with the nondiscrimination requirements of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973 dealing with handicapped individuals, and pertinent HHS regulations governing discrimination based on age or sex.

Individuals interested in the AIDS drug reimbursement program should contact the appropriate office in their State and may obtain information on their State contact by calling a special hotline number, 1 800 843–9388, operated as a public service by Burroughs Wellcome Company. The hotline is staffed Monday-Friday 9:00 a.m.–8:00 p.m. and Saturday 10:00 a.m.–6:00 p.m., EDT.

A Catalog of Federal Domestic Assistance number has been requested.

Dated: July 16, 1987.

David N. Sundwall,

Administrator, Assistant Surgeon General.

[FR Doc. 87–18433 Filed 8–12–87; 8:45 am]

BILLING CODE 4160–15–M

Public Health Service

Privacy Act of 1974; Establishment of a New System of Records

AGENCY: Public Health Service, HHS.

ACTION: Notification of establishment of a new Privacy Act system of records.

SUMMARY: In accordance with the requirements of the Privacy Act, the Public Health Service (PHS) is publishing a notice of a proposal to establish a new Privacy Act system of records: 09–25–0158, "Administration: Records of Applicants and Awardees of the NIH Intramural Research Training Awards Program, HHS/NIH/OD." This system will be used to administer the Intramural Research Training Awards (IRTA) Program at the National Institutes of Health (NIH).

DATES: PHS invites interested persons to submit comments on the proposed new system on or before September 14, 1987. PHS has sent a report of new system to the Congress and to the Office of Management and Budget (OMB) on August 5, 1987. The system of records will be effective 60 days from the date submitted to OMB, unless PHS receives comments on the new system which would result in a contrary determination.

ADDRESS: Comments should be addressed to the NIH Privacy Act Coordinator at the address listed below. Comments received will be available for inspection from 9 a.m. to 3 p.m., Monday through Friday, in Room 3B08, Building 31, at that address.

FOR FURTHER INFORMATION CONTACT: Barbara Fullman, J.D., NIH Privacy Act Coordinator, Building 31, Room 2B03D, 9000 Rockville Pike, Bethesda, MD 20892, Telephone (301) 496–2832. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: NIH proposes to establish a new system of records: 09–25–0158, "Administration: Records of Applicants and Awardees of the NIH Intramural Research Training Awards Program HHS/NIH/OD." This proposed system of records will be comprised of records related to the administration of the NIH Intramural Research Training Awards (IRTA) Program. In addition, the records will consist of information to determine an individual's eligibility, to evaluate an individual's qualifications, to document management's actions, and to evaluate the IRTA Program.

The NIH IRTA Program is designed to provide advanced training and practical research experience to candidates with Ph.D., M.D., D.D.S., D.M.M., D.V.M., or equivalent degrees and 3 years or fewer of professional level, relevant, post-doctoral research experience. Candidates must either have been awarded their doctoral degrees in biomedical, behavioral, or related sciences, or have been certified by a university as meeting all the requirements leading to such a doctorate. Candidates must be either U.S. citizens or permanent residents (resident aliens).

The IRTA Fellows are not Government employees. The Fellowship awards are subject to the availability of space, funds, and preceptor time, and limited by the number of high-quality training assignments available. The IRTA Fellowships are supported by intramural program funds.

IRTA Fellowships are not awarded to physicians whose primary function is the furnishing of medical care to patients, to scientists who have already demonstrated significant research achievements or who have proven records as independent investigators, or to individuals for other than scientific research.

Fellowship awards are made for either one or two years, and are subject to the approval of the Associate Director

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for Intramural Affairs, NIH, or the Deputy Director for Intramural Research, NIH. Awards may be renewed in one-year increments up to a maximum duration of three years in the Program. Renewals may be approved by the appropriate institute Scientific Director, NIH.

Participants in the Program are limited to the research institutes of the NIH. The Program does not apply to the Office of the Director, NIH; the National Library of Medicine; the Division of Computer Research and Technology; the Division of Research Grants; the Division of Research Resources; the Division of Research Services; the Fogarty International Center; the Warren Grant Magnuson Clinical Center; the National Center for Nursing Research; or to any other component of the PHS.

Records collected under this system will be maintained in a centralized IRTA Fellowship applicant supply file for referral of candidates to the institutes and for their internal use. Therefore, in addition, the records will be maintained in the offices where the fellows are assigned, intramural personnel offices and administrative offices.

The records in this system will be maintained in a secure manner compatible with their content and use. The records will be available only to NIH scientists, administrative office staff, personnel staff and financial management staff who are directly involved in the administration of the IRTA Program.

The routine uses proposed for this system are compatible with the stated purposes of the system in the planning for, conducting, managing, and evaluation of this Program.

A routine use permitting disclosure to the Office of Personnel Management (OPM) is proposed to permit disclosure of fellowship records to OPM staff during the course of OPM evaluations of NIH personnel programs.

A routine use permitting disclosure to a congressional office is proposed to allow subject individuals to obtain assistance from their representative in Congress, should they desire. Such disclousre would be made only pursuant to a request of the individual.

A routine use is proposed to permit disclosure to appropriate Federal, State or local agencies information that indicates a violation or potential violation of law, so that the violation can be investigated by the agency authorized to do so and proper enforcement action can be taken when violations are confirmed.

A routine use is proposed to permit disclosure to Federal, State or local agencies, to the extent necessary, to verify information supplied by prospective fellows, such as licenses to practice medicine, and to assure that prospective fellows do not have a criminal record that would be inconsistent with their participation in the IRTA Program.

The possibility of lawsuits in which individuals may claim to have been harmed as a result of the activities supported by this system motivates the proposal of a routine use which would allow the Department of Justice to defend the Federal Government, the Department or employees of the Department in case of such lawsuits. This proposed litigation routine use would allow the Agency to disclose information to initiate legal proceedings against a subject individual for prosecution purposes where the system manager and legal advisors have determined the need.

The proposed system of records will not become effective until 60 days after the date it was reported to OMB, as discussed above. However, the following notice is written in the present rather than future tense, in order to avoid unnecessary expenditure of public funds to republish the notice after the system becomes effective.

Dated: August 6, 1987.

Wilford J. Porbush,

Deputy Assistant Secretary for Health Operations and Director, Office of Management.

09-25-0158

SYSTEM NAME:

Administration: Records of Applicants and Awardees of the NIH Intramural Research Training Awards Program, HHS/NIH/OD.

SECURITY CLASSIFICATION:

None

SYSTEM LOCATION:

Office of the Associate Director for Intramural Affairs, National Institutes of Health, Building 1, Room 103, 9000 Rockville Pike, Bethesda, MD 20892. And at locations in each of the intramural offices and laboratories where the Intramural Research Training Awards (IRTA) Fellow is located and assigned, including the respective Scientific Director's office, the administrative and personnel offices, and in Division of Personnel Management branches responsible for administering the IRTA Program.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for IRTA Fellowships, current IRTA Fellows, and former IRTA Fellows.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information relating to education and training, employment history, scientific publications; research goals; letters of reference; and personal information such as name, date of birth, Social Security number, home address and citizenship; and information related to fellowship awards such as stipend levels, training assignments, training expenses and travel allowances.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 USC 284(b)(1)(C) authorizes PHS to make awards for biomedical research and research training.

PURPOSE OF THE SYSTEM:

Records in this system are used to determine individual's eligibility and evaluate their qualifications for IRTA Fellowships; to document the basis for management actions relating to Fellowships that are awarded; and to provide data for program evaluation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USES AND THE PURPOSE OF SUCH USES:

Disclosure may be made to:

(1) The Office of Personnel Management for evaluation of NIH Personnel programs;

(2) A congressional office from the record of an individual in response to an inquiry from the congressional office made at the written request of that individual;

(3) The Department of Justice or to a court or other tribunal from this system of records, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case HHS determines that such disclosure is

compatible with the purpose for which the records were collected;

(4) A Federal, State or local agency maintaining civil, criminal or other pertinent records, such as current licenses, if necessary to obtain a record relevant to an agency decision concerning the selection or retention of a fellow; and

(5) A Federal agency, in response to its request, in connection with hiring or retention of an employee, the issuance of a security clearance, an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the record is relevant and necessary to the requesting agency's decision on the matter.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders, and on magnetic tapes and disks.

RETRIEVABILITY:

Records are retrieved by name, Social Security number, or institute list number.

SAFEGUARDS:

(1) Authorized Users: Access is granted only to NIH scientists, administrative office staff, personnel staff and financial management staff directly involved in the administration of the IRTA Program.

(2) Physical Safeguards: File folders are kept in locked drawers or locked rooms when system personnel are not present.

(3) Procedural Safeguards: Access to file folders is controlled by system personnel. Records may be removed from the files only with the approval of the system manager or other authorized employees. Data stored in the automated system is accessed through the use of keywords known only to authorized personnel.

These practices are in compliance with the standards of chapter 45–13 of the HHS General Administration Manual, Supplementing chapter PHS. hf: 45–13, and Part 6, "ADP Systems Security" of the HHS Information Resources Management Manual.

RETENTION AND DISPOSAL:

Manual records of individuals who receive IRTA Fellowships are retained while the fellowship is active and for 3 years after the fellowship terminates. Manual records of the individuals who do not receive fellowships may be retained for up to four months from the date of receipt. Manual records are disposed of by burning or shredding.

Computer records may be kept indefinitely for program evaluation purposes.

SYSTEM MANAGER AND ADDRESS:

Associate Director for Intramural Affairs, NIH, Building 1, Room 103, 9000 Rockville Pike, Bethesda, Maryland 20892.

NOTIFICATION PROCEDURE:

Write to the System Manager to determine if a record exists. The requestor must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. A list of accountable disclosures that have been made of your record may be disclosed.

CONTESTING RECORD PROCEDURES:

Write to the official specified under the notification procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is untimely, incomplete, irrelevant or inaccurate.

RECORD SOURCE CATEGORIES:

Applicants, persons and institutions supplying references.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 87–18498 Filed 8–12–87; 8:45 am]
BILLING CODE 4110-08-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Blackfeet Irrigation Project; Proposed Increase to the Blackfeet Irrigation Operation and Maintenance Charges; Montana

AGENCY: Blackfeet Agency, Bureau of Indian Affairs, Interior.

ACTION: Public notice.

SUMMARY: This notice sets forth that the Blackfeet Irrigation Project proposes an operation and maintenance increase. The proposed increase would change the current rate of six dollars per assessable acre to seven dollars and fifty cents per assessable acre.

This notice is the result of the meeting held at the Blackfeet agency on April 29, 1987. Those in attendance at the meeting were:

Bureau of Indian Affairs
Representatives
Norris M. Cole, Billings Area Office
Bill Gipp, Superintendent, Blackfeet Agency
Ed LeMieux, Irrigation Project Manager
Seville Water Users Association
Steve Anderson Calvin Augare
Jerry Johnson
Rod Perry
Badger-Fisher & Birch Creek Association
Bill Smith
Larry Stoltz
George Stoltz
Doug Hennman

Synopsis of the Meeting: The Water User Representatives discussed the proposed operation and maintenance increase of $1.50 per assessable acre for the irrigation season 1988. In addition, the Bureau of Indian Affairs would maintain individual collection and expenditure records for the Seville and Badger-Fisher & Birch Creek units beginning on October 1, 1987.

Outside Water Contracts will be required to pay the operation and maintenance charges.

Excess water charges will be $3.75 per acre.

The due date for all operation and maintenance charges will be May 1 of each fiscal year.

Interest and/or penalty fees will be assessed on all (Indian, Non-Indian, and individual corporations) delinquent operation and maintenance charges as prescribed in the Code of Federal Regulations, Chapter 4, Part 102. The exception to this rule are the government agencies, such as Federal, State and Tribal Governments.

This notice will be published, posted and announced at the following locations:

U.S. Post Offices
Browning, Mt. 59417
Cut Bank, Mt. 59427
Valier, Mt. 59486
Radio Stations
KCTB Radio, 4 Central, Cut Bank, Mt. 59427
KSEN Radio, 830 Oilfield Ave., Shelby, Mt. 59474
Water Users Associations

Badger-Fisher & Birch Creek, c/o Larry Stoltz, Vail, Mt. 59486
Irrigation Camps
Two Medicine
Two Medicine
Badger-Fisher
Newspapers
Glacier Reporter, Browning, Mt. 59417
Cut Bank Pioneer Press, Cut Bank, Mt. 59427
Water Users Associations
Seville Water Users Associations, Cut Bank, Mt. 59427

Comments: All comments are to be written and mailed to the Bureau of Indian Affairs, Blackfeet Agency, Browning, Montana 59417. Comments must be received by the end of the business day on September 11, 1987.

SUPPLEMENTARY INFORMATION: This notice issued pursuant to Code of Federal Regulations, Chapter 25, Part 171 under the authority delegated to the Area Director, Assistant Secretary for Indian Affairs and the Deputy Assistant Secretary of the Interior.

Richard Whitesell,
Billings Area Director.
[FR Doc. 87-18434 Filed 8-12-87; 8:45 am]
BILLING CODE 4310-02-M

Bureau of Land Management

[Alaska AA-48685-I; AK-960-GF7-0074]

Proposed Reinstatement of a Terminated Oil and Gas Lease; Alaska

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease AA-48685-I has been received covering the following lands:

Fairbanks Meridian, Alaska
T. 22 S., R. 2 E.,
Sec. 22, NW¼NW¼.
(40 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from December 1, 1986, the date of termination, have been paid.

Having met all the rquirements for reinstantement of lease AA-48685-I as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective December 1, 1986, subject to the terms and conditions cited above.

Dated: August 7, 1987.
Paula M. Benson,
Acting Chief, Branch of Mineral Adjudication.
[FR Doc. 87-18460 Filed 8-12-87; 8:45 am]
BILLING CODE 4310-JA-M

[CA-060-07-4212-13; CA-20278]

California Desert District Notice of Realty Action; Exchange of Public and Private Lands in San Bernardino County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action CA-20278, Exchange of Public and Private Lands.

SUMMARY: The following described lands in San Bernardino County have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

San Bernardino Meridian, California
T. 3N., R. 5W.,
Sec. 17: NW¼,
Comprising 160 acres of public land.

In exchange for these lands, the United States will acquire the following described lands in San Bernardino County from Rex Monroe:

San Bernardino Meridian, California
T. 7N., R. 3W.,
Sec. 1: NE¼W½ Lot 1 of NE¼, NW¼W½ Lot 1 of NE¼, SW¼W½ Lot 1 of NE¼, E½ Lot 2 of NE¼, NW¼W½ Lot 2 of NE¼;
T. 8N., R. 3W.,
Sec. 36: N½ NE¼, NE¼ SW¼, SE¼ SE¼;
Comprising 230.775 acres of private lands.

The purpose of this exchange is to acquire non-federal inholdings within the Stoddard Valley Off-Highway Vehicle Recreation Area to increase management efficiency and reduce recreation-private property conflicts. Portions of a main access road to the area would be acquired. Completion of the exchange would be an incremental step in consolidation of public lands in Stoddard Valley. The exchange is consistent with the Bureau's planning for the land involved. The public interest will be served by making the exchange.

The values of the lands to be exchanged are approximately equal. Full equalization of values will be achieved by acreage adjustment or a payment to the United States by Rex Monroe of funds in an amount not to exceed 25 percent of the total value of the lands to be transferred out of Federal ownership.

Lands to be transferred from the United States will be subject to the following reservations, terms and conditions:

A. The following will be excepted from the land patents and reserved to the United States:

1. A right-of-way for ditches or canals constructed by the authority of the United States under the Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

2. All of the oil and gas, together with the right to prospect for, mine and remove the minerals. A more detailed description of this reservation, which will be incorporated into the patent documents, is available for review at the locations identified below.

3. An existing oil and gas lease granted to Buttes Resources Company, its successors or assigns, by serial number CA-6206, under the Act of February 25, 1920 (41 Stat. 437; 30 U.S.C. 181)

4. A right-of-way for fuel breaks and access roads and purtenances constructed by the United States in accordance with grant number R-06809, issued to the Forest Service, U.S. Department of Agriculture, pursuant to Departmental Instructions of January 13, 1916 (44 L.D. 513).

B. Certain parcels of the public lands to be transferred from the United States will be patented subject to the following:

1. An easement for public roads and utilities along each parcel boundary. The easement will be 40 feet wide along section and quarter section lines, and 33 feet wide along all other parcel boundaries which are not along a section or quarter section line.

2. Those rights for the operation, use and maintenance of a 500kV electric transmission line, granted to the Southern California Edison Company, its successors or assigns, by serial number LA-053099, under the Act of December 21, 1928 (45 Stat. 1057; 43 U.S.C. 617d).

3. Those rights for the operation, use and maintenance of an underground fiber-optic communications, cable, granted to Williams Telecommunications Company, its successors or assigns, by serial number CA-19143, under the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

Lands to be transferred from Rex Monroe will be subject to the following reservations, terms and conditions:

1. Mineral rights for oil and gas were previously reserved by a third party on T. 7N., R. 3W., SBM, Section 1, NW¼W½ Lot 2 of NE¼.

2. All mineral rights were previously reserved by the State of California on:

T. 8N., R. 3W., SBM
Sec. 36: N½NE¼, NE¼SW¼, SE¼SE¼;

3. Mineral rights for iron ore would be reserved by Mr. Monroe on:

T. 7N., R. 3W., SBM
Sec. 1: N½W½ Lot 1 of NE¼, SW¼W½ Lot 1 of NE¼;

4. A right-of-way granted to the County of San Bernardino for the Stoddard Mountain Road (#81261) across:

T. 7N., R. 3W., SBM
Sec. 1: E½ Lot 2 of NE¼;
T. 8N., R. 3W., SBM,
Sec. 36: N½NE¼, SE¼SE¼;

Publication of this notice in the **Federal Register** segregates the public lands from the operation of the public land laws, including the mining laws but not the mineral leasing laws. The segregative effect will terminate upon issuance of patent or two years from the date of publication, whichever occurs first.

Further information concerning the exchange, including the Environmental Assessment/Land Report, is available for review at the California Desert District Office, 1695 Spruce Street, Riverside, CA 92507 and the Barstow Resource Area Office, 150 Coolwater Lane, Barstow, CA 92311.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, California Desert at the above address. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: August 7, 1987.

Wes Chambers,

Acting District Manager.

[FR Doc. 87-18499 Filed 8-12-87; 8:45 am]

BILLING CODE 4310-40-M

[ID-030-07-4212-14; Public Land Sales I-20355 and I-23363]

Realty Action; Idaho Falls District; Bingham County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, rescheduled date of public land sales, Bingham County, Idaho.

SUMMARY: In order to allow time to analyze protests, public land sales I-20355 and I-23363, originally scheduled for Tuesday, June 30, 1987 have been rescheduled for Tuesday, September 22, 1987. Unsold parcels will be reoffered each Tuesday through October 27, 1987, on which date the sale offerings will be suspended. All other information concerning these parcels, as published in the April 30, 1987 **Federal Register** (Vol. 52, No. 83), remains unchanged with the exception that the appraised fair market value of parcel I-23363 is $6,000 and not $3,000 as originally published. Detailed information concerning these sales may be obtained from Barbara Klingenberg at (208) 529-1020 (Bureau of Land Management, 940 Lincoln Rd., Idaho Falls, ID 83401).

Sincerely,

Gary Bliss,

Acting District Manager.

[FR Doc. 87-18435 Filed 8-12-87; 8:45 am]

BILLING CODE 4310-84-M

[OR-39468; OR-943-07-4220-11; GP-07-247]

Realty Actions; Conveyance of Public Land; Order Providing for Opening of Land; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 40 acres of public land out of Federal ownership. This action will also open approximately 14.20 acres of reconveyed land to surface entry.

EFFECTIVE DATE: September 23, 1987.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, (Telephone 503-231-6905).

SUPPLEMENTARY INFORMATION: 1. Notice is hereby given that in an exchange of lands made pursuant to section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, a patent has been issued transferring 40 acres of land in Coos County, Oregon, from Federal to private ownership.

2. In the exchange, the following described land has been reconveyed to the United States:

Willamette Meridian

T. 30 S., R. 15 W.,
sec. 2, that portion of the NW¼ described as follows: Beginning at a point on the North line of Section 2, said point being 904.55 feet Westerly of the North ¼ corner of said Section 2; thence South 11°52'11" West, 213.74 feet; thence South 33°17'37" West, 255.02 feet; thence South 28°05'29" West, 204.30 feet; thence South 02°21'58" East 210.46 feet; thence South 13°53'04" East 110 feet, more or less, to the North bank of Lower Four Mile Creek; thence running Westerly along the North bank of said Four Mile Creek to a point on the West line of said Section 2, said point being located 250 feet, more or less, South of the Northwest corner of said Section 2; thence North along the said West line of Section 2, 250 feet, more or less, to the Northwest corner of said Section 2; thence Easterly along the North line of said Section 2, 1736 feet, more or less to the point of beginning.

Save and Except Therefrom the Following: A parcel of land beginning at the ¼ corner (North) of said Section 2; thence North 89°40'46" West along the North line of said Section 2, 904.55 feet to the true point of beginning; thence North 89°40'46" West, 62.82 feet; thence South 9°29'14" West, 192.11 feet; thence South 30°54'40" West, 270.94 feet; thence North 83°13' West, 594.73 feet; thence South 20°19'14" West, 190.00 feet; thence South 00°19'14" West, 425.86 feet to the North edge of Fourmile Creek; thence Easterly along the North edge of Fourmile Creek 744± feet to the East boundary of the property conveyed to OREGON SHORES ASSOCIATED and recorded on Microfilm Number 73-6-86449-51, County Courthouse Deed Records; thence Northerly along said Easterly boundary to the point of beginning.

The area described contains approximately 14.20 acres in Coos County.

3. At 8:30 a.m., on September 23, 1987, the land described in paragraph 2 will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on September 23, 1987, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

Dated: August 7, 1987.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87-18459 Filed 8-12-87; 8:45 am]

BILLING CODE 4310-33-M

[ID-010-07-4410-08]

Availability of Proposed Resource Management Plan and Final Environmental Impact Statement; Proposed Area of Critical Environmental Concern; Cascade Resource Areas, ID

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of availability of proposed Resource Management Plan and Final Environmental Impact Statement (RMP/EIS); and proposed Area of Critical Environmental Concern (ACEC) designations.

SUMMARY: Pursuant to section102 (2)(C) of the National Environmental Policy Act of 1969 and 43 CFR Part 1600, the Bureau of Land Management (BLM) has

prepared a Proposed Resource Management Plan (RMP) and associated Final Environmental Impact Statement (EIS) for the Cascade Resource Area. The Cascade RMP/EIS addresses alternative management actions on 487,486 acres of BLM administered public lands in west-central Idaho. Included in the proposed plan are three tracts for Area of Critical Environmental Concern (ACEC) designation. This notice therefore is also issued pursuant to § 1610.7–2(b) of the BLM Planning Regulations.

The proposed plan will undergo a 30 day protest period. Following resolution of any protests that may be received, a decision document will be published and distributed to the public.

ADDRESS: Written protests should be sent to the Director, Bureau of Land Management, 18th and C Streets, Washington, DC 20240. The 30 day protest period will end on September 21, 1987.

FOR FURTHER INFORMATION CONTACT: Richard A. Geier, Cascade Area Manager or Fred Minckler, Team Leader at the Bureau of Land Management, Boise District Office, 3948 Development Avenue, Boise, Idaho 83705. Telephone (208) 334–1582. Copies of the document are available at this Boise Office.

SUPPLEMENTARY INFORMATION: The Cascade RMP/EIS describes and analyzes five alternative plans for managing natural resources in the Cascade Resource Area over the next 15 to 20 years. One alternative, the proposed plan, is identified as BLM's preferred alternative

The alternative plans presented in the Cascade RMP/EIS were developed to resolve the planning issues identified through public involvement early in the planning process and have been refined in response to public comments received on the draft document. The key planning issues addressed in the RMP/EIS are land tenure and adjustment, rangeland resource management, and future management of the Payette River Corridor. Special management concerns also addressed in the document include off-road vehicle use, timber management, and special designations. The alternative plans include different resource use levels and constraints to address the planning issues. One alternative is a "No Action" alternative designed to represent the continuation of present resource use levels and systems.

The Cascade RMP/EIS addresses three tracts for designation as Areas of Critical Environmental Concern (ACEC). The alternatives range from all three tracts designated as ACECs to no designation on these tracts. The proposed plan includes all three tracts to be designated as ACECs and approval of the RMP will constitute formal designation of these tracts as ACECs. The three tracts are the Boise Front, Columbian sharp-tailed grouse habitat area, and Long-billed curlew habitat area.

The Bosie Front containing 12,000 acres of public land would be designated an ACEC under the Proposed Plan. Once designated an ACEC, BLM would restrict vehicle use to protect the watershed values in the area. Additional managment actions would be initiated to protect watershed, recreation, and visual quality values.

The Columbian sharp-tailed grouse habitat area containing 4,200 acres of public land north of Weiser, Idaho would be designated an ACEC under the Proposed Plan. Once designated an ACEC, BLM would restrict vehicle use, seasonally limit mineral leasing activities and rights-of-way construction activities, and manage livestock grazing to benefit the Columbian sharp-tailed grouse.

The Long-billed curlew habitat area containing 61,000 acres of public land between Emmett, Idaho and Parma, Idaho would be designated an ACEC under the Proposed Plan. Once designated an ACEC, BLM would restrict vehicle use and seasonally limit mineral leasing activities and rights-of-way construction activities.

The document also addresses Research Natural Area (RNA) designation on five tracts. The alternatives range from none of these tracts designated as RNAs to all five tracts designated as RNAs. In the proposed plan, these five tracts would be designated as RNAs and managed to protect important plant species. These tracts are summarized below.

Lost Basin Grassland is a 65 acre site east of Brownlee Dam which contains a sensitive plant species. Use restrictions would apply to livestock grazing, leasable minerals, rights-of-way, and off-road vehicles.

Rebecca Sandhill is a 410 acre site east of Weiser which contains a candidate (for threatened or endangered listing) plant species. Use restrictions would apply to livestock grazing, leasable minerals, rights-of-way, and off-road vehicles.

Summer Creek encompasses 240 acres east of Oxbow Reservoir which contains sensitive plant species. Use restrictions would apply to leasable minerals, rights-of-way, and off-road vehicles.

Buckwheat Flats is a 200 acre site near Midvale which contains sensitive and uncommon plant species. Use restrictions would apply to leasable minerals, rights-of-way, and off-road vehicles.

Goodrich Creek is a 440 acre site southwest of Council containing a good riparian zone and shrub community. Use restrictions would apply to livestock grazing, leasable minerals, rights-of-way, and off-road vehicles.

J. David Brunner,
District Manager.

[FR Doc. 87–18461 Filed 8–12–87; 8:45 am]
BILLING CODE 4310–GG–M

[CO–942–06–4520–12]

Filing of Plats of Survey; Colorado

August 3, 1987.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 A.M., August 3, 1987.

The plat, in 5 sheets, representing the dependent resurvey of portions of the north boundary, the subdivisional lines, and certain mineral surveys, and the survey of the subdivision of section 3, T. 15 S., R. 70 W., Sixth Principal Meridian, Colorado, Group No. 733, was accepted July 23, 1987.

The plat representing the dependent resurvey of a portions of the west boundary of the Sangre de Cristo Grant and the subdivisional lines, and the survey of the subdivision of section 22, T. 33 S., R. 11 E., New Mexico Principal Meridian, Colorado, Group No. 818, was accepted July 22, 1987.

These surveys were executed to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215.

Jack A. Eaves,
Chief, Cadastral Surveyor for Colorado.

[FR Doc. 87–18436 Filed 8–12–87; 8:45 am]
BILLING CODE 4310–JB–M

[MT–060–4410–08–2181]

Lewistown District Advisory Council Meeting; Montana

AGENCY: Bureau of Land Management, Lewistown District Advisory Council, Interior.

ACTION: Notice of meeting.

SUMMARY: The Lewistown District Advisory Council will meet September 9, 1987. The meeting will convene at 10

a.m. at the James Kipp State Recreation Area, where the Fred Robinson Bridge crosses the Missouri River.

The meeting will begin with the presentation about cultural resources in the vicinity of the James Kipp Park. The council will then travel to Zortman for lunch and briefings on the status of the West HiLine Resource Management Plan and the District Manager's highlights. After these briefings the council will tour the Zortman/Landusky Mine. The meeting will adjourn following the tour.

Because of limited capacity, members of the public who wish to participate must furnish their own transportation.

DATE: September 9, 1987, 10 a.m. to 4 p.m.

ADDRESS: Zortman Mine, Zortman, Montana.

FOR FURTHER INFORMATION CONTACT: Wayne Zinne, District Manager, Bureau of Land Management, Lewistown, Montana 59457. Telephone Number: (406) 538–7461.

SUPPLEMENTAL INFORMATION: The Lewistown District Advisory Council is authorized under section 309 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1739). The Council advises the District Manager concerning the planning for the management of the public lands administered within the Lewistown District.

Date: August 6, 1987.

Wayne Zinne,

District Manager.

[FR Doc. 87–18402 Filed 8–12–87; 8:45 am]

BILLING CODE 4310-DN-M

Minerals Management Service

Development Operations Coordination Document; Tenneco Oil Exploration and Production

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Tenneco Oil Exploration and Production has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 4784, Block 28, Vermilion Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on August 6, 1987. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Lousiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: August 6, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87–18463 Filed 8–12–87; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; TXP Operating Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that TXP Operating Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 5205, Block 211, Ship Shoal Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Fourchon, Louisiana.

DATE: The subject DOCD was deemed submitted on August 6, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: August 6, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87–18512 Filed 8–12–87; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31084]

NRUC Corp.; Merger Exemption for St. Lawrence Railroad Division

NRUC Corporation (NRUC) and its wholly-owned subsidiary, Peninsula Terminal Company (PENT), have filed a notice of exemption to transfer PENT's St. Lawrence Railroad division (STL) to NRUC. STL will become a division of NRUC. The transfer will be effected on or after July 22, 1987. The proposed transaction is intended to simplify NRUC's corporate structure, and results in various efficiencies and economies.

STL operates a Class III shortline railroad between Ogdensburg, Norwood, and Waddington, NY. PENT operates a Class III shortline railroad at Portland, OR. NRUC controls Pickens Railroad, in addition to being the parent of PENT, and, in turn, of STL.

The transfer of STL to NRUC is a transaction within a corporate family of the type specifically exempted from prior approval under 49 CFR 1180.2(d)(3). This transaction will not result in any adverse changes in the level of service to shippers, or significant operational changes. The STL will continue to operate as at present, but will simply be a division of NRUC rather than of PENT.[1] The transfer will not have any impact on the competitive balance with carriers outside the corporate family.

To ensure that all employees who may be affected by the transaction are given the minimum protection afforded under section 10505(g)(2) and 11347, the labor conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979), will be imposed.[2]

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: Andrew P. Goldstein, 703 Ring Building, 1200 Eighteenth Street, NW., Washington, DC 20036.

Decided: August 7, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-18638 Filed 8-12-87; 8:45 am]

BILLING CODE 7035-01-M

[1] STL was originally a division of NRUC, but was transferred to PENT. A notice of exemption regarding that transfer was filed in Finance Docket No. 30744 on November 5, 1985.

[2] The Railway Labor Executives' Association (RLEA) filed a request for labor protection. The United Transportation Union has asked to become a party to this protest. Since this transaction involves an exemption from 49 U.S.C 11343, imposition of the labor protective condition is mandatory and has been imposed above.

[Docket Nos. AB-33 (Sub-No. 45) and AB-37 (Sub-No. 24)]

Union Pacific Railroad Co. and Oregon-Washington Railroad & Navigation Co.; Railroad Services Discontinuance and Abandonment in Walla Walla and Columbia Counties, WA

The Commission has issued a certificate authorizing the Union Pacific Railroad Company to discontinue service over, and the Oregon-Washington Railroad & Navigation Company to abandon, a 7.47-mile rail line extending from milepost 71.36 near Bolles to the end of the line at milepost 78.83 near McKay in Walla Walla and Columbia Counties, WA. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroads.

Any financial assistance offer must be filed with the Commission and the applicants no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

Noreta R. McGee,

Secretary.

[FR Doc. 87-18449 Filed 8-12-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Cooperative Agreement; Program Announcement; Availability of Funding; Shelter Care and Other Related Child Welfare Services to Alien Minors

AGENCY: Community Service Service (CRS), Justice.

ACTION: Notice of availability of funding for a Cooperative Agreement to support a program which provides shelter care and other related child welfare services to alien minors detained in the custody of the United States Department of Justice, Immigration and Naturalization Service (INS).

SUMMARY: This announcement governs the award of a Cooperative Agreement to public or private non-profit organizations or agencies and, under certain conditions, to for-profit organizations or agencies, to provide shelter care and other related child welfare services to alien minors detained in the custody of the United States Department of Justice, Immigration and Naturalization Service.

An award will be made to one (1) organization. This award is for the purpose of funding a licensed child welfare program which provides shelter care and other related child welfare services to male and fmale alien minors under 18 years of age who are referred to the Commuity Relations Service by the Immigration and Naturalization Service.

These child welfare services will afford alien minors a structured, safe and productive environment which meets or exceeds respective state guidelines and standards for similar services designed to serve minors in their care and custody. Applications submitted pursuant to this announcement must plan for the delivery of services to a minimum population of 10–15 alien minors.

The adminsitration of the Cooperative Agreement awarded under this announcement will require the substantial involvement of the Federal Government. The level and scope of Federal involvement is delineated in the Community Relations Service document entitled *Alien Minors Shelter Care Program—Description and Requirements.* This document is included in the Proposal Application Package available from the Community Relations Service.

DATE: *Closing Date:* 5:00 p.m., Eastern Daylight Time, Friday, September 25, 1987.

Proposals will be competitively reviewed, evaluated, rated and numverically ranked by an independent panel of experts on the basis of weighted critieria listed in this Notice. All final funding decisions are at the discretion of the Director, Community Relations Service. This award is subject to the availability of funds and the concurrence of the Assistant Commissioner, Detention and Deportation, Immigration and Naturalization Service.

Authorization

Authorities for the provision of certain child welfare services to alien minors detained in the custody of the Immigration and Naturalization Service (INS) are contained in a Memorandum of Agreement and an Inter-Agency Cost Reimbursable Agreement dated October 1, 1986, and signed by the Acting Director, Community Relations Service; the Assistant Commissioner, Detention and Deportation, Immigration and Naturalization Service and the Director, Refugee Health Affairs, United States Public Health Service.

Legislative authority for the Community Relations Service, Cuban/Haitian Entrant Minors Program is contained in Title V, section 501(c) of Pub. L. 96-422 (The Refugee Education Assistance of 1980.)

Available Funds

Approximately $400,000 will be available for this Cooperative Agreement on a fiscal year basis. This estimate does not bind the Community Relations Service or the Immigration and Naturalization Service to any specific level of funding. This figure is only intended to serve as an estimate of the total amount of funding which could potentially be available during any specific fiscal year.

Future fiscal year funding for this Cooperative Agreement is contingent upon need and the availabilty of Federal appropriations. If adequate funds are available, the Action Director, Community Relations Service, and the Assistant Commissioner, Immigration and Naturalization Service anticipate continuation of this program.

CRS Cooperative Agreements normally do not exceed a 36 month program performance period. Funding is for 12-month budget periods.

Eligible Applicants

Non-profit organizations incorporated under state law which have demonstrated child welfare, social service or related experience and are appropriately licensed or can expeditiously meet applicable state licensing requirements for the provision of shelter care, foster care, group care and other related child welfare services are eligible to apply.

For-profit organiations, incorporated under State law, which have demonstrated child welfare, social service or related experience and are appropriately licensed or can expeditiously meet applicable state licensing requirements for the provision of shelter care, foster care, group care and other related child welfare services; and, which can clearly demonstrate that only actual costs, and not profits, fees, or other elements above cost have been budgeted, are also eligible to apply.

Eligible Client Population

Under the terms of this announcement, the eligible client population consists of alien minors.

Definition of Alien Minor

For the purposes of this Notice, an alien minors is defined as a male or female foreing national, under 18 years of age, who is detained in the custody of the Immigration and Naturalization Service and is the subject of exclusion or deportation proceedings under the Immigration and Nationality Act; or, has an application for asylum pending with the Immigration and Naturalization Service.

Designated Program Area; Denver, CO

The Shelter Care Program should be located with a twenty-five (25) mile radius of the INS Alien Processing Center, located at: 3568 Peoria Street, Aurora, Colorado 800010.

Technical Assistance Conference

The CRS will hold a public meeting regarding this solictation. Further information regarding the time, date and location will be included in the Proposal Application Package.

SUPPLEMENTARY INFORMATION:

Purpose and Scope

The Community Relations Service Cooperative Agreement Recipient (hereafter referred to as Recipient) shall facilitate the provision of temporary shelter care and other child welfare related services to alien minors, who have been approved for transfer to a Community Relations Service supported Shelter Care Program.

These minors, although released to the physical custody of the Recipient, shall remain in the legal custody of the Immigration and Naturalization Service.

The population level of minors is expected to fluctuate as arrivals and case dispositions occur. Program content shall, therefore, reflect differential planning of services to minors at various stages of adjustment and administrative processing. The population of minors is projected to consist primarily of Mexican nationals, 13–17 years of age. Recipients are expected to be able to serve some minors twelve (12) years of age or younger.

Recipients are expected to facilitate the provision of assistance and services for each minor including, but not limited to: Physical care and maintenance, access to routine and emergency medical care, initial screening, education, recreation, individual and group counseling, access to religious service and other social services.

Other services that are necessary and appropriate for these minors may be provided if the Community Relations Service determines in advance that the service is reasonable and necessary for a particular minor.

The Recipient will develop an appropriate individualized service plan for the care and maintenance of each minor in accordance with his/her needs as determined in the initial screening. In addition, agencies or organizations are required to implement and administer a case management system which tracks and monitors client progress on a regular basis to ensure that each child receives the full range of program services in an integrated and comprehensive manner. Shelter care services shall be provided in accordance with applicable state child welfare statutes and generally accepted child welfare standards, practices, principles and procedures.

Service delivery is expected to be accomplished in a manner which is sensitive to the cultural and complex needs of these minors.

A. Program Design

The applicant must set forth in detail information concerning the following:

1. Organization/Agency Capability

A comprehensive overview of the applicant agency, agency qualifications and agency history, including philosophy, goals and history of experience with respect to the provision of child welfare or related services to minors under 18 years of age.

2. Target Population

A description of the proposed client population including a discussion of program acceptance criteria and estimates of the total number of minors to be served at any one time (capacity) and during any program year.

3. Management Plan

a. A plan for overall fiscal and program management and accountability.

b. A description of the organizational structure and lines of the authority.

c. A comprehensive program staffing plan and information regarding staff qualifications.

d. A comprehensive plan for coordination of activities between the various program components and coordination with other community and governmental agencies.

e. Staff supervisory model.
f. Provisions for staff training.
g. Proposed staff schedule(s).
h. A description of the role(s) and responsibility(ies) of the proposed consultants and the rationale for their use.

4. Individual Client Service Plans

Applicants are expected to describe in detail:
a. The methodology regarding the development of individual client service plans, and
b. The process to ensure that service plans will be periodically reviewed and updated. Identify staff who will have responsibility for the development and updating of the plans.

5. Case Management

Describe in detail the case management system for tracking and monitoring client progress on a regular basis to ensure that each minor receives the full range of program services in an integrated and comprehensive manner. Identify the staff positions responsible for coordinating the implementation and maintenance of the case management system.

6. Structure and Accountability

Applicants must fully describe:
a. The plan for developing and maintaining internal structure, control and accountability through programmatic means.
b. Utilization of daily logs, statistical reports, etc.
c. Other security measures.

B. Client Services

Applicants are required to describe, in a detailed and comprehensive manner, the following services and the methodology for service delivery:
1. Physical Care and Maintenance;
2. Routine and Emergency Medical/Dental Care;
3. Orientation;
4. Individual Counseling;
5. Group Counseling;
6. Acculturation/Adaptation;
7. Education;
8. Recreational, Social and Work Activities;
9. Visitation Procedures;
10. Legal Services;, and
11. Family Reunification Services.

C. Client Records

Applicants must provide descriptive information regarding the development, maintenance and content of individual client case records, including a description of all material/information which will be maintained in these records.

D. Program Records

Applicants are required to set forth comprehensive information regarding the types of program records to be maintained by the program (daily activity logs, records of staff meetings, cash disbursement systems, daily and weekly status of population reports, etc.).

E. Facility

As applicable, applicants are required to set forth in detail the following:
1. A description of the physical structure and the allocation of space for residential and office use;
2. A description of the location of the facility and discussion of the basis for selection;
3. Proof, in the form of a written certification, that the program and facility meet all applicable zoning and child welfare licensing requirements, and;
4. A description of proposed alterations who are needed to meet applicable licensing and security requirements.

F. Program Evaluation

Applicants must set forth a plan for program evaluation including identification of evaluative criteria.

G. Community Support

Applicants must identify those measures the agency will take or has taken, to assure and maintain community receptivity and support and/or reduce community opposition to the program.

H. Budget

Applicants are required to submit a comprehensive line item budget. A narrative explanation for each line item, included in each object class, must accompany the proposed budget.

I. Supportive Addenda Material

Applicants are required to submit the following supporting material as an addendum to the program proposal:

1. Administrative Requirements

A. Agency Administration and Organization

1. Agency organizational *chart* describing the agency as a whole and the organizational relationship of the proposed program to other agency programs;
2. Comprehensive organizational *chart* of the proposed program;
3. Copies of Articles of Incorporation;
4. Proof of IRS status as a non-profit organization, if applicable;
5. List of Officers and Board Members, if applicable;
6. List of professional affiliations and certifications, and;
7. Copy(ies) of applicable State child welfare license(s).

B. Organizational Standards/Policies and Policies Regarding Clients

1. Personnel Handbook and Standards of Conduct;
2. Statement regarding professional and agency liability;
3. Copy of Disciplinary Procedures;
4. Copy of Agency policy regarding the confidentiality
5. Discussion of the method to be used to inform clients of program rules, regulations and policies, including the confidentiality of client information;
6. Copy of Grievance Policy and Procedures, and;
7. Fire and earthquake evacuation procedures, as applicable.

C. Staff

1. Job/Position Descriptions and resumes (if individuals have been identified for certain positions) for all personnel to be hired for the program including documented evidence of the availability of bi-lingual and culturally sensitive personnel, and;
2. Resumes and qualifications of program consultants.

D. Community Support of the Program

1. Letters of program support from local political representatives, social service agencies, etc. Letters should reflect writers' awareness of program's intent, potential Federal funding source and location of the program. Letters should also contain a recommendation or comment regarding the proposed program;
2. A listing of service providers to whom clients will be referred, including name, address and description of service(s) to be provided, and;
3. A listing of voluntary and/or donated resources, including letters of intent from the agency or entity providing the resources, if applicable.

E. Implementation Plan

A plan for program implementation including time-lines regarding significant milestones.

2. Finance

(a) A copy of the most recent agency/organization audit;
(b) A description of the agency/organization Financial Management System.
(c) A listing of other Federal, State, local or foundation grants, cooperative agreements or contracts, etc., being administered by the applicant. This

material should include information regarding the funding source(s); grant, cooperative agreements or contract number; level of financial support; purpose of award; grant, cooperative agreement or contract performance period; and name, address and telephone number of grant, cooperative agreement and/or contract officer (Federal, State or local).

(d) Subrecipients and/or Subcontractors

1. Identify all proposed services which are to be awarded to subrecipients/subcontractors;

2. Provide relevant background material regarding the proposed subrecipient(s)/subcontractor(s), and;

3. Provide letters from the proposed subrecipient(s)/subcontractor(s) indicating their commitment and the specific services to be provided.

J. Screening Criteria

CRS will screen all applications submitted pursuant to this Notice. Screening shall be done to determine whether an application is sufficiently complete to warrant consideration and review by the CRS Review Panel. An application may be rejected if:

1. The application is from an ineligible applicant;

2. The application is received after the closing date;

3. The application omits:

a. Documented written evidence of community support for the program;

b. A comprehensive line-item budget with appropriate descriptive narrative, and;

c. A copy of the latest financial audit of the applicant.

K. Criteria For Evaluating Applications

Applications will be competitively reviewed, evaluated, rated and numerically ranked according to the following weighted criteria:

1. The degree to which the entire proposed plan for developing, implementing and administering a shelter care program is clear, succinct, integrated, efficient, cost effective and likely to achieve program objectives. (15 points)

2. The quality of the applicant's program management and staffing plans as demonstrated by:

- The adequacy of the plan for program management and the plan for coordination between the components of the program.
- The adequacy of the plan for coordination with community and governmental agencies.
- The adequacy of the qualifications of the applicant organization and the extent to which this organization has a demonstrated record as a provider of child welfare of other social services.
- The extent to which the applicant has a demonstrated capacity for effective fiscal management and accountability.
- The extent to which subrecipient(s)/subcontractor(s) have a demonstrated capacity for effective fiscal and program management and accountability.
- The adequacy of the plans for staff supervision and intra-program communication.
- The adequacy of the staffing plans in terms of the relationships between the proposed functions and responsibilities of the staff in the program, and the education and relevant experience required for the position.
- Clear organizational charts delineating organizational relationships and levels of authority, including the identification of the staff position accountable for the overall management, direction and progress of the program. (20 points)

3. *Program Services.*—The applicant's response to the required program services, including a description of program resources which demonstrates:

- The capacity of the program to offer comprehensive, integrated and differential services which meet the needs of the clients.
- Utilization of resources in a manner which enhances program control, structure and accountability.
- Provision of services in a manner which promotes and fosters cultural identification and mutual support.
- Sensitivity to the issues of culture, race, ethnicity and native language. (20 points)

4. The degree to which the applicant provides effective strategies of programmatic control, predictability and accountability as evidenced by the structure and continuity inherent in the program design. (15 points)

5. The adequacy of the plans for:

(a) Developing and updating individual client service plans, and;

(b) The proposed system of case management. (10 points)

6. The reasonableness of the proposed budget and budget narrative, in relation to proposed program activities. (10 points)

7. The plan for program evaluation, including the methodology and criteria for evaluating the program. (5 points)

8. The degree to which the application has provided written documented evidence of community support and acceptance of the program. (5 points)

L. Application Request and Submission

1. Eligible applicants may request a Proposal Application Package from the United States Department of Justice, Community Relations Service, Suite 330, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815; Attention: Cynthia Bowie, Senior Grants Management Specialist.

Proposal Application Packages may also be obtained by contacting the Community Relations Service at (301) 492-5810 or 1-800-424-9304.

2. Applicants must submit a signed original and two (2) copies of the proposal and supporting documentation to the United States Department of Justice, Community Relations, Suite 330, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815; Attention: Cynthia Bowie, Senior Grants Management Specialist.

Applications postmarked on or before the closing date shall be considered as timely applications.

An application that is hand-delivered must be received by 5:00 p.m. Eastern Daylight Time on the closing date. An application that is hand-delivered must be taken to the United States Department of Justice, Communmity Relations Service, Suite 330, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

The Grants Management Office will accept hand-delivered applications between 9:00 a.m. and 5:00 p.m., Eastern Daylight Time daily, except Saturdays, Sundays and Federal holidays.

Dated: August 10, 1987.

Wallace P. Warfield,

Acting Director, Community Relations Service

Catalog of Federal Domestic Assistance Number: 16.201

Intergovernmental Review

Application Requirements

Pursuant to Executive Order 12372, *Intergovernmental Review of Federal Programs*, all States have the option of designing procedures for review on Federally assisted programs.

Each applicant is required to notify each State in which it is proposing activities under this announcement and to comply with the State's established review procedures. This may be done by contacting the applicable State Single Point of Contact (SPOC).

State Requirements

Comments and recommendations relative to applications submitted under this solicitation should be mailed no later than 30 days after the date of

publication, addressed to: Richard Gutierrez, Coordinator, Immigration and Refugee Affairs, Community Relations Service, Suite 330, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

[FR Doc. 87-18456 Filed 8-12-87; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Registration; Sigma Chemical Co.

By Notice dated April 21, 1987, and published in the Federal Register on April 27, 1987; (52 FR 13883), Sigma Chemical Company, 3500 Dekalb Street, St. Louis, Missouri 63118, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Methaqualone (2565)	II
Ibogaine (7260)	I
Lysergic acid diethylamide (7315)	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
Bufotenine (7433)	I
Diethyltryptamine (7434)	I
Dimethyltryptamine (7435)	I
Psilocyn (7438)	I
Amphetamine, its salts, optical isomers, and salts of its optical isomers (1100)	II
Methamphetamine, its salts, isomers and salts of its isomers (1105)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
Anileridine (9020)	II
Cocaine (9041)	II
Codeine (9050)	II
Benzoylecgonine (9180)	II
Morphine-3-Succuronide (9129)	II

Applied Science Laboratories, Division of Alltech Associates, Inc., 2701 Carolean Industrial Drive, P.O. Box 440, State College, Pennsylvania 16801, filed an objection, dated May 4, 1987, with the Deputy Assistant Administrator, Office of Diversion Control, in response to the application of Sigma Chemical Company. Applied Science Laboratories took exception to the registration of Sigma Chemical Company as an importer of lysergic acid diethylamide, mescaline, phencyclidine and benzoylecgonine. Applied Science Laboratories indicated that it is a licensed importer of these compounds as well as other materials indentified in the applicant's petition and that it is willing to negotiate with said applicant for the purpose of providing these materials in the quantities requested. Applied Science Laboratories did not request a hearing.

Sigma Chemical Comany produces a maximum of 25 grams of controlled substances to be used in research and analytical studies as standards. It has been previously registered as an importer of lysergic acid diethylamide, mescaline, phencyclidine and benzoylecgonine. There has been no substantial increase in the quota because of this registration.

The Deputy Assistant Administrator therefore finds that the registration of Sigma Chemical Company as an importer of lysergic acid diethylamide, mescaline, phencyclidine and benzoylecgonine is consistent with the public interest because Sigma Chemical Company imports these controlled substances for research and analytical purposes in small quantities and this activity does not affect the commercial market of these controlled substances.

The Deputy Assistant Administrator hereby orders that the application submitted by Sigma Chemical Company for registration as an importer of the basic classes of controlled substances listed above is granted.

Dated August 7, 1987.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 87-18494 Filed 8-12-87; 8:45 am]

BILLING CODE 4410-09-M

Importation of Controlled Substances; Withdrawal; Sigma Chemical Co.

On April 27, 1987, the Drug Enforcement Administration (DEA) published a Notice of Application in the Federal Register (Vol. 52, No. 80, pg. 13883) stating that Sigma Chemical Company, 3500 Dekalb Street, St. Louis, Missouri 63118, had submitted an application for registration as an importer of the basic classes of controlled substances listed:

Drug	Schedule
3, 4-methylenedioxymethamphetamine (MDMA) (7405)	I
Heroin (9200)	I

On June 11, 1987, the DEA was advised that Sigma Chemical Company, 3500 Dekalb Street, St. Louis, Missouri 63118, wishes to withdraw its application for registration as an importer of 3, 4-methylenedioxymethamphetamine (MDMA) (7405) and Heroin (9200).

The application having been withdrawn, any proceedings relating to the application have been terminated and the publication withdrawn.

Dated: August 7, 1987.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 87-18495 Filed 8-12-87; 8:45 am]

BILLING CODE 4410-09-M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrence Report; Periodic Report Submitted to the Congress

Notice is hereby given that pursuant to the requirements of section 208 of the Energy Reorganization Act of 1974, as amended, the Nuclear Regulatory Commission (NRC) has published and issued another periodic report to Congress on abnormal occurrences (NUREG-0090, Vol. 9, No. 4).

Under the Energy Reorganization Act of 1974, which created the NRC, an abnormal occurence is defined as "an unscheduled incident or event which the Commission (NRC) determines is significant from the standpoint of public health or safety." The NRC has made a determination, based on criteria published in the Federal Register (42 FR 10950) on Feburary 24, 1977, that events involving an actual loss or significant reduction in the degree of protection against radioactive properties, special nuclear, and byproduct materials are abnormal occurrences.

The report to Congress is for the fourth calendar quarter of 1986. The report identifies the occurrences or events that the Commission determined to be significant and reportable; the remedial actions that were undertaken are also described. During the report period, there were three abnormal occurrences at the nuclear power plants licensed to operate. The events were (1) the loss of low pressure service water systems at Oconee, (2) degraded safety systems due to incorrect torque switch settings on Rotork motor operators at Catawba and McGuire Nuclear Stations, and (3) a secondary system pipe bread resulting in the death of four persons at Surry Unit 2. There were six abnormal occurrences at the other NRC lincensees. One involved release of americium-241 inside a waste storage building at Wright-Patterson Air Force Base; three involved medical misadministrations, one therapeutic and two diagnostic; one involved a suspension of license because unauthorized and unqualified people were used to service teletheltherapy and radiography units; and one involved an immediately effective order modifying a

license and an order to show cause to an industrial radiography company because of false statements made to, and information withheld from, the NRC. There were no abnormal occurrences reported by the Agreement States.

The report also contains information updating some previously reported abnormal occurrences.

Interested persons may review the report at the NRC's Public Document Room, 1717 H Street, NW., Washington, DC or at any of the nuclear power plant Local Public Document Rooms throughout the country.

Copies or microfiche of NUREG-0090, Vol. No. 4 (or any of the previous reports in this series), may be pruchased by calling (202) 275–2060 or (202) 275–2171, or by writing to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 200012–7982. A year's subscription to the NUREG-0090 series publication, which consists of four issues, is also available. Documents may be purchased by check, money order, Visa, Mastercard, or charged to a GPO Deposit Account.

Copies of the report may also be purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161–0004

Dated at Washington, DC this 6th day of August 1987.

For the Nuclear Regulatory Commission.

Samuel Q. Chilk,

Secretary of the Commission.

[FR Doc. 87–18524 Filed 8–12–87; 8:45 am]

BILLING CODE 7590-01-M

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: New.

2. The title of the information collection: Survey of State and Tribal Emergency Response Capabilities to Respond to Radiological Transportation Incidents.

3. The form number if applicable: Not applicable.

4. How often the collection is required: One time.

5. Who will be required or asked to report: State governments and selected Indian Tribes.

6. An estimate of the number of responses: 66.

7. An estimate of the total number of hours needed to complete the requirement or request: 71 hours.

8. An indication of whether section 3504(h), Pub. L. 96–511 apples: Not applicable.

9. *Abstract:* The NRC will sponsor a survey of State and Tribal emergency response capabilities, training programs and response plans for transportation incidents involving radioactive materials, in order to determine what assistance the Federal government may be called upon to provide in such incidents.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer, Vartkes L. Broussalian, (202) 395–3084.

The NRC Clearance Officer is Brenda Jo Shelton, (301) 492–8132.

Dated: at Bethesda, Maryland, this 6th day of August 1987.

For the Nuclear Regulatory Commission.

William G. McDonald,

Director, Office of Administration and Resources Management.

[FR Doc. 87–18501 Filed 8–12–87; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Regional and I&E Programs; Meeting

The ACRS Subcommittee on Regional and I&E Programs will hold a meeting on August 28, 1987, Region V, 1450 Maria Lane, Suite 210, Walnut Creek, CA.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Friday, August 28, 1987—8:30 a.m. Until the Conclusion of Business

The Subcommittee will review the activities under the control of the Region V Office.

Oral statements may be presented by members of the public with concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its conultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Paul Boehnert (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: August 7, 1987.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 87–18525 Filed 8–12–87; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–24777; File No. SR–MSE–87–10]

Self-Regulatory Organizations; Midwest Stock Exchange, Inc.; Waiver of All Trades Executed in NASDAQ/NMS Stocks on the MSE Through December 31, 1987

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 3, 1987, the Midwest Stock Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Midwest Stock Exchange, Incorporated (MSE) has determined to extend the waiver of the application of its transaction fees in respect to trading in the 25 NASDAQ/NMS issues traded on the MSE pursuant to the granting of unlisted trading privileges. Such waiver of fees, which became effective upon the start-up of trading of the issues will continue until December 31, 1987.

II. Self-Regulatory Organizaton's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The MSE's transaction fees will be waived for all trades executed in NASDAQ/NMS stocks on the MSE through December 31, 1987. The waiver of such fees has facilitated the start-up of the pilot program in the trading of these issues and its continuation will allow MSE to be more competitive with the over-the-counter market.

The proposed rule change is consistent with section 6 of the Securities Exchange Act of 1934 in that it provides for the equitable allocation of reasonable dues, fees and other charges. The suspension of the transaction fees is temporary and will allow the MSE to examine the pilot program and review its pricing schedule as it relates to transactions in NASDAQ/NMS securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Stock Exchange, Incorporated does not believe that the proposed rule change will impose any burdens on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be sutmitted by September 3, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: August 6, 1987.

[FR Doc. 87-18475 Filed 8-12-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24781; File No. SR-OCC-86-14]

Self-Regulatory Organizations; Options Clearing Corp.; Order Approving Proposed Rule Change

On July 14, 1986, the Options Clearing Corporation ("OCC") filed a proposed rule change with the Commission under section 19(b) of the Securities Exchange Act of 1934 ("Act"). The proposal would enable a clearing member of OCC that is also a clearing member of the Intermarket Clearing Corporation ("ICC") [1] ("Joint Clearing Member") to combine, *i.e.*, "cross-net," its OCC exercise and assignment settlement obligations in foreign currency options ("OCC obligations") with its settlement obligations in futures contracts on the same foreign currency cleared by ICC ("ICC obligations").[2] Notice of the proposal appeared in the **Federal Register** on July 28, 1986.[3] No comments were received. On May 11, 1987, and June 15, 1987, OCC filed amendments to the proposal. This order approves the amended proposal.

I. Description of the Proposal

The proposal amends OCC's By-Laws and Rules to provide for cross-netting with ICC of Joint Clearing Member's foreign currency options exercise and assignment and futures settlement obligations.[4] The proposal also sets forth an agreement ("Mutual Agency Agreement" or "Agreement") between OCC and ICC that describes the rights and obligations of each clearing organization.

Under the proposal, a Joint Clearing Member and designate either ICC or OCC as its "Designated Clearing Organization" and would settle cross-netted obligations with that clearing organization. As discussed in detail below, the Designated Clearing Organization would perform its ordinary clearance and settlement activities, and also would act as agent for the other clearing organization in settling cross-netted obligations.

The proposal also amends OCC Rules [5] dealing with foreign currency

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[1] The Commission approved the establishment of ICC in Securities Exchange Act Release No. 21706 (February 4, 1985), 50 FR 5431. ICC was formed by the OCC as a wholly owned subsidiary to clear transactions in contracts for the sale of commodity futures and options. ICC maintains it clearing fund contributions, member margin deposits, and its books and records separate from those of OCC. OCC, however, acts as facilities manager for ICC, providing services and facilities needed for ICC's clearing operation.

[2] ICC has filed with the Commission for registration as a clearing agency under sections 17A and 19 of the Act. ICC currently is subject to Commodity Futures Trading Commission ("CFTC") jurisdiction and has filed a corresponding rule change with the CFTC.

[3] Securities Exchange Act Release No. 23452 (July 22, 1986), 51 FR 26966.

[4] OCC states that cross-netting currently would be available for foreign currency futures traded on the Philadelphia Board of Trade and foreign currency options traded on the Chicago Board Options Exchange and the Philadelphia Stock Exchange. Any expansion of the proposal to provide cross-netting for products other than foreign currency products would be filed by OCC with the Commission under section 19 (b) of the Act.

[5] *See* OCC Rule 1605. 1606.

options exercises and assignments generally. The proposal provides that for OCC obligations settling on a date that is also a delievery date for ICC obligations, [6] a Joint Clearing Member could elect to have its OCC obligations in a particular foreign currency combined with its ICC obligations in the same foreign currency to arrive at a net deliver/receive or collect/pay obligation in that foreign currency against U.S. dollars.

Currently, on the business day after a foreign currency option exercise notice is tendered to OCC, OCC determines for each clearing member account the number of exercised and assigned option contracts for which OCC has received exercise notices. OCC then nets the settlement obligations of each member to the extent that member is both a deliverer and a receiver for foreign currency option contracts of the same type, covering the same unit of trading of the same foreign currency, and having the same exercise price.[7] The settlement obligations of each member are further netted to the extent that member would be both a deliverer and receiver of that foreign currency regardless of type of option, unit of trading, and exercise price.[8] The proposal would like this netting process one step further, netting OCC obligations against a Joint Clearing Member's ICC settlement obligations in the same foreign currency.

Under the proposal, a Joint Clearing Member can choose to participate in the cross-netting program by submitting to OCC and ICC a written notice of election designating either OCC or ICC to act as its Designated Clearing Organization for settlement purposes.[9] In making this election, the Joint Clearing Member agrees to comply with the Designated Clearing Organization's margin rules applicable to settlement obligations, *i.e.*, it must deposit appropriate margin for settlements subject to cross-netting.[10] The proposal also clarifies that cross-netted settlement obligations are subject to all applicable rules of the Designated Clearing Organization.[11]

The proposal also outlines OCC's rights and obligations with its members in the case of ICC's default. The proposal generally provides that if ICC, as Designated Clearing Organization, fails to settle with a Joint Clearing Member, OCC would remain obligated to settle with that member only the OCC obligation component of the failed cross-netted settlement. OCC would not be obligated to settle the ICC obligation component of the settlement.

The proposal includes a Mutual Agency Agreement between OCC and ICC. The Agreement provides, among other things, that ICC and OCC each will act as agent for the other to effect cross-netting and settlement under the proposed rule change. For settlement purposes, each clearing organization will agree to deliver to, or pay, the other clearing organization the net amount of each foreign currency, or the net U.S. dollar settlement amount, that would have been delivered to, or paid to, the Joint Clearing Member by the clearing organization as if no cross-netting had occurred.[12] Thus, OCC and ICC settle cross-netted obligations between themselves and are placed in the same position as if no cross-netting had occurred.

The Agreement further provides, in effect, that if a Joint Clearing Member defaults on its obligations to either clearing organization before that clearing organization has released the margin it holds to secure any of the Joint Clearing Member's settlement obligations, any cross-netting would be revoked, *i.e.*, unwound. If default occurs after cross-netting has been performed and margin has been released, the Agreement provides that any loss suffered by the Designated Clearing Organization relating to foreign currency settlements effected as agent for the other would be for the account of the other clearing organization and would be paid by the other clearing organization upon demand by the Designated Clearing Organization. If a Joint Clearing Member is suspended by the Designated Clearing Organization, the Designated Clearing Organization first must apply the suspended member's margin assets to the member's outstanding obligations to reduce the other clearing organization's liability. Only the appropriate portion of the excess of the loss over the applied margin assets would be charged to the other clearing organization.[13] Under those circumstances, the other clearing organization would retain its claim against the Joint Clearing Member and could use the suspended member's clearing fund contribution to satisfy that claim as if no cross-netting had occurred.

Under the Agreement, OCC and ICC agree to indemnify each other against losses from any claim or action against either in its capacity as Designated Clearing Organization performing clearing activities on behalf of the other. Finally, OCC and ICC agree that the Agreement will remain in force for one year and will be automatically renewable thereafter. The Agreement, however, also provides that each party can terminate the Agreement by: (1) Giving written notice 90 days prior to the expiration of a one-year period; (2) notifying the other in writing 30 days after an uncured default where the aggrieved party has given notice of the default to the defaulting party; or (3) notifying the other in writing where the other has been abjudicated insolvent or bankrupt, has had a receiver appointed or has executed an assignment for the benefit of creditors.

A. Amendments to the Proposal

On May 11, 1987, and June 15, 1987, OCC amended the proposal. Those amendments primarily relate to OCC proposals that became effective after the filing of the instant proposal and conform this proposal to those intervening developments.[14] OCC also

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[6] The term "delivery date," as used for a foreign currency futures contract, means the date on which final settlement is made. OCC represents in its filings that delievery dates for foreign currency futures contracts ordinarily coincide with exercise settlement dates for foreign currency options exercised either on expiration date or on the Thursday proceding expiration date. OCC also represents that settlement dates coincide once each month and that cross-netting could be performed only one day each month.

[7] OCC performs the netting in the following sequences: (1) Within each account, (2) customers' account against Market-Maker's account, (3) customers' account against firm account, and (4) Marker-Maker's account against firm account. *See* OCC Rule 1606(a). Certain OCC member settlements representing customer activity may be settled separately on a gross basis under OCC Rule 1608A to enable those OCC members' customers directly to coordinate settlement with OCC clearing banks. *See*, Securities Exchange Act Release No. 24332 (April 13, 1987), 52 FR 12385.

[8] Again, OCC nets in the same sequence, but at this point, puts are netted against calls.

[9] OCC and ICC will specify the form of written election required. Such election can be revoked by the Joint Clearing Member with 10 days written notice to both OCC and ICC.

[10] OCC represents that margin levels for cross-netted settlements would be identical at OCC and ICC. Thus, the Joint Clearing Member's choice of ICC or OCC as its Designated Clearing Organization would not effect its margin obligations for cross-netting settlements.

[11] Thus, if a Joint Clearing Member experiences operational or financial difficulty or defaults in its obligations to its Designated Clearing Organization, that Organization will be able to take steps under its rules to protect itself and its members from financial risk, *e.g.*, increase surveillance, require additional margin, take disciplinary action, or suspend the member and liquidate positions.

[12] Both OCC and ICC maintain settlement accounts at the same clearing bank. Net settlement would occur between the two by book-entry movements in these accounts. OCC and ICC would not charge each other for these movements.

[13] OCC explains that any such loss would be allocated between OCC and ICC based on the percentage that the loss on securities options settlements and futures settlements respectively bear to the total loss.

[14] *See* Securities Exchange Act Release Nos. 23888 (December 12, 1986), 51 FR 45628; 24332 (April

Continued

has amended the proposal to require Joint Clearing Members to submit subordination agreements for non-public customers whose positions are carried in proprietary accounts. As discussed below, OCC believes that those changes should eliminate a potential conflict between Commodity Futures Trading Commission regulations and other federal laws.

The subordination agreements are designed to ensure that non-public customers [15] of Joint Clearing Members would be excluded from the definitions of customer under the Securities Investor Protection Act [16] and the U.S. Bankruptcy Code.[17] By clarifying that such securities positions do not constitute "customer property," the amendments are designed to eliminate any potential uncertainty as to how securities positions would be handled during bankruptcy proceedings involving the Joint Clearing Member.

II. OCC's Rationale for the Proposal

OCC believes that the proposal is consistent with section 17A of the Act because cross-netting options exercise and assignment and futures settlement obligations would reduce foreign currency settlements, thereby facilitating the prompt and accurate clearance and settlement of securities transactions. Moreover, OCC believes that the proposal is consistent with its obligation to safeguard securities and funds because the rights and obligations of OCC and ICC, with respect to the contracts that they clear, generally remain unaffected by the cross-netting procedures.

III. Discussion

The Commission believes that the proposed rule change is consistent with the Act and, in particular, section 17A, and therefore is approving it. As discussed below, the Commission agrees with OCC that the proposal should promote the prompt and accurate clearance and settlement of options transactions and, at the same time, should ensure the safeguarding of securities and funds in OCC's control or for which it is responsible.

The Commission believes that the key to efficient settlement among brokers and dealers is the netting process performed by clearing organizations. Congress recognized the significance of netting by defining "clearing agency," in pertinent part, as "any person who acts as an intermediary in making payments or deliveries or both in connection with transactions in securities or who provides facilities for comparison of data respecting the terms of settlement of securities transactions, to reduce the number of settlements of securities transactions, or for the allocation of securities settlement responsibilities." [18] Congress clearly anticipated clearance and settlement systems that consolidate trade processing, and, in section 17A(a), directed the Commission to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions.

The Commission recognizes the efficiencies that can result from clearance and settlement systems that consolidate trade processing. For corporate debt and equity securities, Continuous Net Settlement ("CNS") systems have long been employed by clearing corporations to centralize and reduce the number of securities transaction settlements and the actual exchange of securities certificates. CNS summarizes and nets together each participant's transactions in each security with any previous open positions to create a single long or a short position. CNS then provides for automatic book-entry delivery or receipt of the securities at a securities depository and net money settlement at the clearing corporation.

The Commission notes that OCC's proposal is unique in that it represents the first securities-futures netting system. Under the proposal, a Joint Clearing Member's foreign currency option exercise and assignment settlement obligations could be net against its futures settlement obligations in the same foreign currency. In the Commission's view, inter-market netting of settlement obligations and the proposal's system to implement it are consistent with the Act.

The Commission believes that the proposed netting process would result in significantly fewer actual foreign currency and U.S. dollar settlements and thereby facilitate the prompt and accurate clearance and settlement of securities transactions. For example, assume that a Joint Clearance Member has a settlement obligation to deliver to ICC 10,000,000 deutsche marks at a cost of $5,000,000 U.S., and an obligation to receive from OCC, as a result of an exercised option contract, 10,000,000 deutsche marks against payment of $6,000,000 U.S. Cross-netting the ICC obligations and OCC obligations would negate any actual delivery of deutsche marks through the system because the number would be obligated to both receive and deliver the same amount of foreign currency. Under the proposal, the Joint Clearing Member would have a net obligation to pay its Designated Clearing Organization $1,000,000 U.S., representing the difference between the obligation to pay for the receipt from OCC and the payment from ICC.

Moreover, reducing the number and volume of currency transfers should significantly reduce transaction costs to firms engaged in both the securities options and commodities futures businesses. In the example above, absent netting of OCC and ICC settlement obligations, the delivery costs for a Joint Clearing Member would include $135 on the ICC settlement, consisting of a $100 settlement bank charge for a delivery into ICC and a $35 ICC transaction cost. For the OCC settlement, the Joint Clearing Member also would be charged $135 bank and transaction fees, and, in addition, the member would be required to make its U.S. dollar payment available two days prior to receipt of its foreign currency, losing partial interest on those funds. Thus, the total cost of settling separately the OCC and ICC obligations would be $270 plus an interest cost. Under the proposal, no charges would be incurred, nor would the number lose interest on its money, because the Designated Clearing Organization would draft the member's settlement account at settlement time.[19] Incidental operating costs, *e.g.*, personnel, likely would be reduced as well.

The Commission also believes that the proposal is consistent with OCC's obligation under the Act to safeguard securities and funds in its possession or for which it is responsible. The Commission believes that the proposal is designed to guard against any risks posed to OCC by cross-netting. For example, under the terms of OCC's

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13, 1987), 52 FR 12966; 24308 (April 28, 1987), 52 FR 10673.

[15] Under CFTC regulations applicable to bankruptcy proceedings, certain non-public customers of a Joint Clearing Member could be treated as customers under bankruptcy laws. *See* 17 CFR 190.06; and 11 U.S.C. 741 *et seq.* Those non-public customers could include partners, officers, and owners of a Joint Clearing Member whose positions are carried in the member's proprietary account.

[16] *See* 15 U.S.C. 78 aaa *et seq.* ("SIPA").

[17] *See* 11 U.S.C. 741 *et seq.*

[18] *See* section 2(a)(23) of the Act.

[19] The cost savings would be even more substantial if a Joint Clearing Member with these same commitments uses OCC's "delivery versus payment" system. Under that system, in addition to the $135 bank and transaction fees, Bank of America imposes a charge of $50 per million U.S. dollar equivalent, or $243.50 (at .487 deutsche marks to U.S. dollar) on the delivery side. Additionally, on the receiving side, the member would be charged $135 bank and transactions fees plus $300 representing the $50 per million on the $6,000,000 cost of the deutsche marks, for a total of $813.50.

proposal and the Mutual Agency Agreement, if a Joint Clearing Member defaults on its obligations to either clearing organization prior to the time that such clearing organization has recalculated margin for settlement purposes, any cross-netting of the Joint Clearing Member's obligations would be unwound, and each clearing organization would have access to the margin it holds for that member plus the full range of remedies set forth in its rules. Under those circumstances, each clearing organization would be placed in the same position it would be in without cross-netting.[20]

If a Joint Clearing Member defaults after the cross-netting has occurred and margin has been calculated and collected by the Designed Clearing Organization, any loss suffered by the Designated Clearing Organization on foreign currency settlements effected as agent for the other clearing organization would be for the account of the other clearing organization and would be paid by the other clearing organization upon demand by the Designated Clearing Organization. In calculating the amount of such loss, the Designated Organization must first apply to the loss the margin held by it for the Joint Clearing Member's obligations, and only the appropriate portion of the excess of such loss over the margin so applied would be charged to the other clearing organization. The other clearing organization would retain a claim against the Joint Clearing Member for any losses, and the clearing fund of the other clearing organization would be available as if no cross-netting had occurred.

In the case of member default after cross-netting has been performed, the Designated Clearing Organization is in much the same position it would be in without cross-netting. The Designated Clearing Organization would control the defaulting member's margin and clearing fund deposit. It would marshal and apply those assets to the default under its rules. The other clearing organization would control only the defaulting member's clearing fund deposit, but the Designated Clearing Organization would be acting as agent for it in applying margin to the default.[21] Thus, although the other clearing organization is not in the same position it would be in without cross-netting because it would not hold margin for cross-netted settlements, the Designated Clearing Organization would calculate and apply margin to the default as agent for the other organization.

Moreover, the Commission notes that in some respects OCC's risk may be reduced under the proposed rule change. By reducing the number of settlements, OCC reduces the risk associated with numerous transfers of foreign currencies and U.S. dollars. Each transfer of currency to OCC carries the risk that a particular payment may not be made, or that a payment made to an OCC clearing bank may be unavailable because of bank insolvency. The Commission believes that a reduction in the number of currency transfers should reduce those risks.

The Commission notes the amendments to the proposal to require Joint Clearing Members to obtain subordination agreements from certain non-public customers. The Commission believes those amendments appropriately are designed to eliminate potential uncertainties that could result in bankruptcy proceedings involving a Joint Clearing Member. The Commission believes that the execution of a subordination agreement by a non-public customer whose positions are cleared through a proprietary account of the Joint Clearing Member should help to clarify that the non-public customers' positions do not constitute customer property under SIPA and applicable provisions of the bankruptcy laws.

Finally, the Commission notes that ICC's rules regarding the clearance and settlement of foreign currency transactions and handling of funds in its possession or control are substantially identical to the corresponding rules of OCC. The Commission on several occasions has recognized that OCC's systems of financial safeguards and foreign currency options settlements are consistent with the Act.[22]

IV. Conclusion

Based on the foregoing, the Commission finds that the amended proposal (File No. SR–OCC–86–14) is consistent with the Act, and, in particular, with Section 17A.

It is therefore ordered, pursuant to section 19(b) of the Act, that OCC's proposed rule change (as amended) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 6, 1987

Jonathan G. Katz,

Secretary.

[FR Doc. 87–18478 Filed 8–12–87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC–15906; (812–6864)]

Application; Bando McGlocklin Capital Corp.

August 3, 1987

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

Applicant: Bando McGlocklin Capital Corporation ("Applicant").

Relevant 1940 Act Sections: Exemption requested under sections 6(c), 17(d) and 23(c)(3) of the Act and Rule 17d–1 from the provisions of sections 17(d), 18(d), and 23(a), (b) and (c).

Summary of Application: Applicant, a licensed small business investment company, seeks an exemptive order to permit it to offer its employees deferred equity compensation in the form of stock options.

Filing Date: The appliation was filed on March 27, 1987 and amended on May 21, 1987.

Hearing or Notification of Hearing: If no hearing ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on August 27, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant: 13555 Bishops Court, Brookfield, Wisconsin 53005.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Staff Attorney, (202) 272–3046, or H.R. Hallock, Jr., Special

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[20] Under OCC's margin rules, margin is calculated and collected on members' open positions. The proposal would not change OCC or ICC margin on open positions prior to settlement. After open positions are exercised and assigned, OCC calculates and collects margin based on members' settlement obligations. Under the proposal, settlement margin would be based on a Joint Clearing Member's cross-netting settlement obligation and would be calculated and collected by the Designated Clearing Organization. As indicated above, settlement margins at OCC and ICC would be identical.

[21] Each clearing organization also would be authorized to apply margin on open positions and liquidate securities or futures positions, respectively, held by the defaulting member and apply proceeds to the default under its rules.

[22] *See* Securities Exchange Act Release Nos. 19274 (November 24, 1982), 47 FR 54383; 20404 (November 21, 1983), 48 FR 53621.

Counsel, (202) 272-3030 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representation

1. Applicant is a registered closed-end, diversified management investment company, licensed as a small business investment company under the Small Business Investment Act of 1958.

2. Applicant has outstanding 2,044,253 shares of Common Stock. Prior to May 13, 1987, there was no public market for Applicant's Common Stock. On May 13, 1987, Applicant sold 750,000 shares of Common Stock in an initial public offering. Since May 13, 1987, Applicant's Common Stock has been quoted on NASDAQ.

3. To induce key employees of Applicant to remain in the employ of Applicant and to increase their incentive and personal interest in Applicant's welfare, Applicant's Board of Directors and shareholders on February 17, 1987 approved Applicant's 1987 Incentive Stock Option Plan ("Plan"). The adoption of the Plan was made in anticipation of the initial public offering.

4. The Plan will be administered by the Compensation Committee of Applicant's Board of Directors, none of whose members are "interested persons" of Applicant as defined in section 2(a)(19) of the Act. Members of the Compensation Committe are not eligible to receive options under the Plan.

5. All of the options to be granted pursuant to the Plan are intended to be incentive stock options within the meaning of section 422A of the Internal Revenue Code ("Code"). As incentive stock options, the following restrictions are applicable to the Plan:

A. The Plan must state the aggregate number of shares which may be issued pursuant to the exercise of options and the class of employees eligible to receive options and must further be approved by the shareholders. The Plan provides for the grant of options to purchase 150,000 shares of Applicant's Common Stock. Only key employees of Applicant are eligible to receive options. Applicant currently has three key employees (its three executive officers) and it is anticipated that each of these employees will be granted options to purchase 50,000 shares of Applicant's Common Stock. The Plan provides that if an option granted under the Plan expires or is terminated unexercised, the shares of Common Stock covered will again be available for the grant of additional options under the Plan. Notwithstanding the foregoing, not more than 50,000 shares may be issued to one participant pursuant to the exercise of options granted under the Plan.

B. All options must be granted within 10 years of the date the Plan was adopted. It is anticipated that all of the options will be granted upon receipt of the requested order.

C. Options may not be exercised after the expiration of 10 years from the date the option is granted.

D. The exercise price of the options may not be less than the fair market value of the underlying stock on the date of grant. In accordance therewith, the last quoted sale price on the date of grant will be considered the fair market value or if there is no such date, the mean between the closing bid and asked quotations will be considered to be the fair market value.

E. Options may not be transferable by the optionee (otherwise than by will or the laws of descent and distribution) and may be exercised during the lifetime of the optionee, only by the optionee.

F. Options may not be granted to persons owing more than 10% of the voting power of the outstanding shares of Applicant's Common Stock at the time the option is granted.

G. The aggregate fair market value (determined at the time the option is granted) of the stock with respect to which options are exercisable for the first time by an individual in any calendar year may not exceed $100,000. Moreover, the Plan provides for a four year vesting schedule permitting only 25% of the options to be exercised before one year has elapsed since the date of granting and providing for proportional increases in subsequent years.

H. The Plan does not provide for the grant of stock appreciation rights. However, the Plan does permit the exercise price of an option to be paid in cash or by tendering previously acquired shares of stock, valued at the fair market value. In placing a fair market value on previously acquired shares of Applicant's Common Stock, Applicant will utilize the same standards as are used in determining the fair market value at the time of the grant of the option.

6. Applicant is unable to rely on the existing Commission order permitting SBICs to issue stock options to their employees (Investment Company Act Release 6523, May 14, 1971) or on Rule 17d-1(d) under the Act because both specifically provide that the options granted must be qualified stock options under section 422 of the Code and must conform to the requirements of 13 CFR 805(b) adopted by the Small Business Administration. Qualified stock options were eliminated in 1976 and 13 CFR 805(b) was significantly amended (as well as renumbered 13 CFR 705(b)) in 1982. As a result of these developments, incentive stock options to be issued under the Plan (which were authorized by the Tax Reform Act of 1986) and qualified stock options will have some minor differences which are fully described in the application. However, the incentive stock options to be issued under the Plan will be substantially the same as the earlier qualified stock options. The conditions limiting issuance of incentive stock options under the Plan are in many respects stricter than those contained in the Act for business development companies ("BDCs") desiring to issue stock options to their employees.

7. Applicant competes primarily with banks and other entities which are not investment companies registered under the Act. These organizations are able to offer stock options to employees and have an advantage over Applicant in attracting and retaining highly qualified personnel. In order for Applicant to compete on a more equal basis with such organizations, it has to have personnel as competent as such organizations, and in order to attract and retain such personnel Applicant must be able to offer comparable compensation packages.

8. Applicant's three executive officers not only have the responsibility for making Applicant's investments but are also responsible for making all executive and operational decisions. As the executive officers of Applicant, their performance directly affects Applicant's performance and the value of Applicant's Common Stock. The performance of Applicant's other employees, a secretary-receiptionist and two assistant loan officers, does not directly affect Applicant's performance. If would be inconsistent with the purposes of the Plan to grant such employees stock options since no matter how competently they performed their duties, their performance would probably not affect the value of Applicant's Common Stock.

Applicant's Legal Conclusions

1. The limitations on the issuance of stock options under the Plan to be made conditions in the requested exemptive order will provide protections to investors against dilution of their pro

rate interests in Applicant that are similar to those the Commission previously found consistent with the purposes and policies of the Act, and even greater than those that Congress imposed on stock options to be issued by business development companies. While a degree of dilution of the interests of existing shareholders may be possible in connection with the issuance or exercise of stock options under the Plan, the impact on shareholders of Applicant will be extremely limited by several factors. First, the Plan was not only approved by Applicant's shareholders, but any options granted under the Plan must be approved by a majority of Applicant's directors who are not "interested persons" of Applicant and who cannot participate in the Plan. Second, because the percentage of shares that can be issued under the Plan will be less than 7½% of the outstanding shares of Applicant's Common Stock, far less dilution could occur under the Plan than from stock options issued by BDCs. In addition, Applicant will conduct a review similar to that required by the order in Investment Company Act Rel. No. 14594 June 2, 1985, as amended on December 23, 1986, in Investment Company Act Rel. No. 15496, if it subsequently grants options, which become available through the expiration or termination of previously granted options prior to their exercise.

2. The limited stock options which will be granted under the Plan will offer no opportunity for a change in control of Applicant or quick sale at a profit. Additionally, the options themselves will not be transferable. Stock options are extensively employed as an element of management compensation as has been recognized by the Commission since 1971. The existence and nature of stock options granted by Applicant will be fully disclosed in accordance with the standards or guidelines adopted by the Financial Accounting Standards Board for operating companies and the requirements of the Commission, and will be neither so extensive nor so complex as to make the financial statements of Applicant or management remuneration more difficult to understand.

3. As an SBIC, all of Applicant's investments (other than investments in idle funds) must be made in small businesses, the securities of which will not be publicly traded. Moreover, substantially all of Applicant's investments in small businesses consist of non-convertible secured loans. Under these circumstances it is difficult to conceive a scenario in which Applicant's portfolio investments could create a short-term artificial increase in Applicant's stock.

4. Applicant's participation with respect to the stock options which are the subject of the application will not be "less advantageous" than that of the grantees. Indeed, insofar as Applicant is concerned, the stock options will not be radically different from the other commonly used forms of employee compensation, such as bonuses, that raise no issue at all under section 17(d) and Rule 17d–1 of the Act.

5. for the foregoing reasons, any adverse impact on investor interests protected by the Act resulting from granting the application will be minimal, and further will be more than outwighed by the benefits to investors that will result from permitting Applicant to compete for top quality personnel on a more equal footing with its competitors. Also, any advantage to the holders of stock options as a result of the ability to choose the time of exercise (within certain limits) or any tax or other benefits the employee may receive from deferred receipt of compensation or from having the amount of compensation depend upon improved performance of Applicant's Common Stock will be more than outweighed by Applicant's enhanced ability to attract and retain highly qualified personnel.

6. Applicant has a profit sharing plan qualified under section 401(a) of the Code that is intended to provide a source of retirement income for employees. In accordance with the requirements of the Employee Retirement Income Security Act of 1974, as amended, ("ERISA") Applicant's profit sharing plan does not discriminate in favor of shareholders, officers and highly compensated employees as to coverage, benefits, contributions or otherwise. Applicant to date has not contributed the maximum amount in any year. The Plan is not a substitute for a profit-sharing plan qualified under section 401(a) as the Plan is intended to provide incentive compensation and does not establish a source of income for an employee's retirement years.

Applicant's Conditions

Applicant agrees that all of the representations made by it in the application may be made conditions of the requested order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–18521 Filed 8–12–87; 8:45 am]

BILLING CODE 8010-01-M

Issuer Delisting; Application to Withdraw From Listing and Registration; Hodgson Houses, Inc.

August 6, 1987.

The above name issuer has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw Common Stock, $.01 per share of Hodgson Houses, Inc. from listing and registration on the Boston Stock Exchange, Inc. ("BSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The issuer's common stock is presently traded on the BSE and the NASDAQ National Market System. The issuer has determined to consolidate all trading of its common stock on the NASDAQ System in order to create a larger and more active trading market for its common stock and therefore has requested to be withdrawn from listing and registration on the BSE.

Any interested person may, on or before August 27, 1987, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan Katz,

Secretary.

[FR Doc. 87–18477 Filed 8–12–87; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[CM–8/1069]

Study Groups 10 and 11 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Groups 10 and 11 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on September 3, 1987 in the Board Room of the National Association of Broadcasters, 1771 N Street, NW.,

Washington, DC. The meeting of Study Group 10 will begin at 10:00 a.m.; the meeting of Study Group 11 at 1:30 p.m.

Study Group 10 deals with questions relating to sound broadcasting; Study Group 11 deals with questions relating to television broadcasting. The purpose of the meeting is to discuss preparations for the Interim Meetings of international Study Groups 10 and 11 in the Fall of 1987.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Requests for further information should be directed to Mr. Richard E. Shrum, State Department, Washington, DC 20520; telephone 202 647–2592.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

Date: July 30, 1987.

[FR Doc. 87–18404 Filed 8–12–87; 8:45 am]

BILLING CODE 4710–07–M

[CM–8/1088]

National Committee of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that the National Committee of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on September 9, 1987 in Room 1107, Department of State, 2201 C Street, NW., Washington, DC. The meeting will begin at 10:00 a.m. and is scheduled for the entire day.

The National Committee assists in the resolution of administrative/procedural problems pertaining to U.S. CCITT activities; provides advice on matters of policy and positions in the preparation for CCITT Plenary Assemblies and meetings of the International CCITT Study Groups; provides advice and recommendations in regard to the work of the U.S. CCITT Study Groups; and recommends the disposition of proposed U.S. contributions to the international CCITT which are submitted to the Committee for consideration.

The purpose of this meeting is to:

1. Provide a briefing of current CCITT Study Group activities, and plan for upcoming final sessions of their Working Parties and Study Groups. (Request all U.S. chairpersons be in attendance).

2. Initiate preparatory activities for CCITT Plenary Assembly.

3. Initiate preparatory activities for World Administrative Telegraph and Telephone Conference, Melbourne, November 28–December 9, 1988.

4. Initiate preparatory activities for the ITU Plenipotentiary Conference, 23 May–29 June, 1989, Nice, France.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl Barbely, State Department, Washington, DC telephone (202) 653–6102. All attendees must use the C Street entrance to the building.

Date: July 30, 1987.

Earl S. Barbely,

Director, Office of Technical Standards and Development.

[FR Doc. 87–18405 Filed 8–12–87; 8:45 am]

BILLING CODE 4710–07–M

[CM–8/1200]

Study Group A of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Group A of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on September 10, 1987 at 9:30 a.m. in Room 1107, Department of State, 2201 C Street, NW., Washington, DC.

Study Group A deals with international telecommunications policy and services.

The purpose of the meeting will be

(a) Discussion and approval of Contributions for the meeting of Study Group I.

(b) Discussion and approval of Contributions for the meeting of Study Group III.

(c) Debriefing of the results of the June meeting of Study Group VIII.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl Barbely, State Department, Washington, DC; telephone (202) 653–6102. All attendees must use the C Street entrance to the building.

Date: August 3, 1987.

Earl S. Barbely,

Director, Office of Technical Standards and Development, Chairman, U.S. CCITT National Committee.

[FR Doc. 87–18406 Filed 8–12–87; 8:45 am]

BILLING CODE 4710–07–M

Bureau of Consular Affairs

[Public Notice 1022]

Certain Foreign Passports Validity

Hong Kong has entered into an agreement with the Government of the United States whereby Hong Kong Certificates of Identity are recognized as valid for the return of the bearer to Hong Kong for a period of at least six months beyond the expiration date specified in the Certificate of Identity. The entry for Hong Kong appearing in Public Notice 954 of February 26, 1986 regarding extended passport validity is hereby amended to read "Hong Kong (Certificates of Identity and passports)."

This Notice amends Public Notice 954 of February 26, 1986 (51 FR 6853).

Date: August 5, 1987.

Joan M. Clark,

Assistant Secretary for Consular Affairs.

[FR Doc. 87–18437 Filed 8–12–87; 8:45 am]

BILLING CODE 4710–06–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 87–054]

Renewal of the Lower Mississippi River Waterway Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of Renewal.

SUMMARY: The Secretary of Transportation has approved the renewal of the Lower Mississippi River Waterway Safety Advisory Committee. The purpose of the Committee is to provide local expertise on such matters as communications, surveillance, traffic control, anchorages, and other related topics dealing with waterway safety in the Lower Mississippi River area as required by the Coast Guard.

FOR FURTHER INFORMATION CONTACT: Commander D.F. Withee, Executive Secretary, Lower Mississippi River Waterway Safety Advisory Committee, c/o Commander Eighth Coast Guard District (mps), Room 1341, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130–3396, Telephone number (504) 589–6901.

This notice is issued under authority of the Federal Advisory Committee Act, Pub. L. 92–463, 5 U.S.C. App. 1.

Dated: August 10, 1987.

W.P. Hewel,

Captain, U.S. Coast Guard, Acting Chief, Office of Boating, Public, and Consumer Affairs.

[FR Doc. 87–18492 Filed 8–12–87; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA) Special Committee 150, Minimum System Performance Standards for Vertical Separation Above Flight Level 290; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 150 on Minimum System Performance Standards for Vertical Separation above Flight Level 290 to be held on September 21–23, 1987, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Remarks; (2) Approval of the Minutes of the Fifteenth Meeting; (3) Resolution of MSPS Issues; (4) Implementation Issues; (5) Update on Related Activities; (6) Further Development of MSPS; (7) Task Assignments; (8) Other Business; and (9) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 6, 1987.

Wendie F. Chapman,

Designated Officer.

[FR Doc. 87–18427 Filed 8–12–87; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA) Special Committee 156, Potential Interference to Aircraft Electronic Equipment from Devices Carried Aboard; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given of a meeting of RTCA Special Committee 156 on Potential Interference to Aircraft Electronic Equipment from Devices Carried Aboard to be held on September 28–30, 1987, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Remarks; (2) Approval of the Minutes of the Fifteenth Meeting; (3) Review Task Assignments; (4) Review Draft of the Committee's Report; (5) Other Business; (6) Task Assignments; and (7) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 6, 1987.

Wendie F. Chapman,

Designated Officer.

[FR Doc. 87–18428 Filed 8–12–87; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA); Special Committee 135, Environmental Conditions and Test, Procedures for Airborne Equipment; Meeting

Pursuant to section 10(a)((2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 135 on Environmental Conditions and Test Procedures for Airborne Equipment to be held on September 15–17, 1987, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Remarks; (2) Approve Minutes of the Eighth Meeting; (3) Review RF Susceptability Problem and Section 20; (4) Review Draft Section 22; (5) Review Current Status of Section 2; (6) Review of Changes Proposed for DO–160C; (7) Review Proposed Section on Icing Procedures; (8) Update Change Coordinator List; (9) Other Business; and (10) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 6, 1987.

Wendie F. Chapman,

Designated Officer.

[FR Doc. 87–18429 Filed 8–12–87; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

Availability of Funds for Research Studies To Evaluate the Impact of Injuries on American Society

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of grant availability.

SUMMARY: The National Highway Traffic Safety Administration in cooperation with the Centers for Disease Control (CDC) announces that competitive applications for grants are being accepted to conduct research to evaluate the impact that injuries with their associated disabilities, have on American society.

DATE: Applications must be submitted on or before September 1, 1987.

ADDRESS: Applications must be submitted to the attention of Mr. Thomas Stafford, Director, Office of Contracts and Procurement, National Highway Traffic Safety Administration, 400 7th Street, SW., Room 5301, Washington, DC 20590.

BEST COPY AVAILABLE

FOR FURTHER INFORMATION CONTACT: Mr. James Auten, Office of Contracts and Procurement, National Highway Traffic Safety Administration, 400 7th Street, SW., Washington, DC 20590, telephone (202) 366–9559.

SUPPLEMENTARY INFORMATION: This research is authorized under section 106(b) of the National Traffic and Motor Vehicle Safety Act of 1966 (Pub. L. 89–563) and Chapter 11 of the Supplemental Appropriations Act of 1987 (Pub. L. 100–71).

Program Background and Objectives

The research sought under this program is intended to provide the basis for a report which will evaluate the impact that injuries and their associated disabilities have on American society. The research should identify the effect on injuries on state and local governments, local communities, families and indviduals. The report on this research shall include an estimate of the Nation's long-term costs of treatment and rehabilitation of injuries, including motor vehicle injuries, and describe the extent to which existing government and nongovernment programs cover these costs. The report shall further provide an estimate of the potential savings to all levels of government that could result from the prevention of injuries, including motor vehicle injuries, and their consequences.

The report must be completed by January 1989 and the research, which provides the basis for this report, shall be supported by grants covering a one-year period commencing no later than October 15, 1987.

This research will be supported by one-year grants to three grantees, not to exceed a total of $400,000. One grantee will be assigned the responsibility to coordinate the research and preparation of the final report. No one grant under this project will exceed $200,000.

Eligible Applicants

Eligible applicants are States, interstate agencies and non-profit institutions.

Applicants must be submitted on Standard Form 424 (an original and five copies must be submitted) and include:

1. A description of the research to be pursued, including:

(i) The method or methods that will be used,

(ii) The sources of data that will be examined,

(iii) And how the specific research contributes to the required report,

2. A list of those individuals responsible for the conduct of the research, their qualifications, and the role each will play, and

3. A complete budget for the period of this research, to include the grantee's shared cost.

Review Process

All proposals will be reviewed and evaluated by NHTSA and CDC staff to determine the applicant's understanding of the problem, the applicant's qualifications, the suitability of the proposed research plan, and evidence of the applicant's capability to effectively carry out the project on schedule.

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Project Management

An agreement will be reached with each grantee following the award of the grant to assure that, to the maximum degree possible, there is not undue duplication of research. It is anticipated that one of the grantees will be assigned the responsibility for coordination of the research and development of the final report.

Issued on: August 10, 1987.

Michael M. Finkelstein,

Associate Administrator for Research and Development.

[FR Doc. 87–18471 Filed 8–12–87; 8:45am]

BILLING CODE 4910-59-M

[Docket No. IP 87-09; Notice 1]

Receipt of Petition for Determination of Inconsequential Noncompliance; Hose America, Inc.

Hose America, Inc. of Iola, Kansas, has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.106, Federal Motor Vehicle Safety Standard No. 106, "Brake Hoses", on the basis that it is inconsequential as it relates to motor vehicle safety.

This Notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

The subject air brake hose has a ⅜ inch nominal internal diameter and was designed for use between the frame and axle or between a towed and a towing vehicle. Paragraph S7.3.10 "Tensile Strength", of Standard No. 106 requires that such hose shall withstand a pull of 325 pounds without separation of the hose from its end fittings.

Hose America reported receiving 106,500 feet of hose produced by Thermoid, Inc. in March 1987 and identified by the symbol KX 93–87 and the following batch codes:

A 571 A
B 571 A
C 571 A
D 571 A
E 571 A
F 571 A

As of May 27, 1987, of the 106,500 feet delivered to Hose America, 88,452 feet have been isolated for recovery. Of the remaining 18,048 feet, 3000 feet have been completed as brake hose assemblies and installed on vehicles, but are documented as passing the pull test requirement. As of May 16, 1987, there were 15,044 feet of hose installed as hose assemblies on vehicles produced by four trailer manufacturers and two hoses (4') (delivered by a distributor to Hose America) which may not comply with the pull test requirements.

When tested a few hours after assembly the samples of the above mentioned lot of bulk hose showed the following results at pull test:

Lbs. of pull	No. of samples
283	4
289	3
295	1
300	1
306	2
318	4
324	2
330	1
336	1
348	1
365	2
	22

Average pounds of pull: 313.6
Lowest pound of pull: 283
Highest pound of pull: 365

In addition, pull tests on freshly made hose assemblies produce elongation over 150% before failure and no leak at 300 psi.

A second pull test was conducted one week after assembly. This test showed values of pounds of pull between 377 and 436. The improvements, according to Hose America, are attributed to the hose having time to set around the barb and the shell of the end fitting assembly. Hose America believes that, even in the condition of "freshly made hose assemblies", "the possibility of noncompliance . . . is inconsequential as it relates to Motor Vehicle Safety."

Interested persons are invited to submit written data, views and arguments on the petition of Hose America, Inc. described above. Comments should refer to the docket

Number and be submitted to: Docket section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, DC, 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in the Federal Register pursuant to the authority indicated below.

Comment Closing Date: September 14, 1987.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: August 10, 1987.

Ralph J. Hitchcock,

Acting Associate Administrator for Rulemaking.

[FR Doc. 87-1847 Filed 8-12-87; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: August 7, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0244
Form Number: 6199
Type of Review: Extension
Title: Certification of Youth Participating in a Qualified Cooperative Education Program
Description: Internal Revenue Code section 51(d)(8) requires that qualified school cooperative programs must certify their qualified students as youths participating in a qualified cooperative program in order that wages paid to the students by an employer be qualified for the jobs credit. Form 6199 provides for this certification.
Respondents: Farms, Businesses or other for-profit, Small businesses or organizations
Estimated Burden: 47,424 hours
Clearance Officer: Garrick Shear (202) 566-6150, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 87-18452 Filed 8-12-87; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: August 7, 1987.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 2224, Main Treasury Building, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0231
Form Number: 6478
Type of Review: Resubmission
Title: Credit for Alcohol Used as Fuel
Description: Internal Revenue Code section 38(b)(3) allows a credit against income tax for businesses that sell or use alcohol mixed with other fuels or sold straight. Form 6478 is used to compute this alcohol fuel credit.
Respondents: Farms, Businesses or other for-profit, Small businesses or organizations
Estimated Burden: 6,280 hours
OMB Number: 1545-0904
Form Number: 8586
Type of Review: Resubmission
Title: Low Income Housing Credit
Description: The Tax Reform Act of 1986 (Pub. L. 99-514) permits owners of residential rental projects providing low-income housing to claim a credit against income tax for part of the cost of constructing or rehabilitating such low-income housing. Form 8586 is used by taxpayers to compute the credit and by IRS to verify that the correct credit has been claimed.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations
Estimated Burden: 30,129 hours
Clearance Officer: Garrick Shear (202) 566-6150, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 87-18453 Filed 8-12-87; 8:45 am]

BILLING CODE 4810-25-M

Customs Service

User Fee Advisory Committee Meeting

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice or meeting.

SUMMARY: In accordance with the Consolidated Omnibus Budget Reconcilation Act of 1985, and the Federal Advisory Committee Act, a User fee Advisory Committee for the Customs Service has been established. This document lists the members of the Committee, its purpose, and announces a forthcoming meeting and the agenda for the meeting.

DATE AND TIME: August, 27, 1987, 1:30 p.m.

ADDRESS: Customs Service Headquarters, 1301 Constitution Avenue NW., Room 3428, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Chuck Davies, Director, Customs User Fee Task Force, 202-566-9425.

SUPPLEMENTARY INFORMATION: The Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272), established a schedule of fees chargeable to users of various services provided by Customs in connection with the processing of persons, aircraft, vehicles, vessels and dutiable mail arriving in the U.S., as well as for the payment of an annual fee by Customs brokers. Subsequently, section 8101 of the Omnibus Budget Reconcilation Act of 1986 (Pub. L. 99-509), established an ad valorem user fee to be collected by Customs on formal entries of imported merchandise. These user fees, which have been codified in 19 U.S.C. 58C, were modified by the Tax Reform Act of 1986 (Pub. L. 99-514).

Section 13033 of Pub. L. 99-272 provided that in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 99-463), the

Secretary of the Treasury shall establish an advisory committee, whose membership shall consist of representatives from the airline, shipping, and other transportation industries, the general public, and others who may be subject to any fee or charge (1) authorized by law, or (2) proposed by the U.S. Customs Service for the purpose of covering expenses incurred by the Customs Service. Further, the advisory committee shall meet on a periodic basis and shall advise the Secretary on issues related to the performance of the Customs services. This advice shall include, but not be limited to, such issues as the time periods during which such services should be performed, the proper number and deployment of inspection officers, the level of fees, and the appropriations of any proposed fee. The Secretary shall give substantial consideration to the views of the advisory committee in the exercise of his duties.

In accordance with the Federal Advisory Committee Act the Secretary has established a charter for User Fee Advisory Committee for the Customs Service and approved the following members to serve on the Committee.

Committee Members

Air Tranport Association of America, 1709 New York Avenue NW., Washington, DC 20006—James Landry, Senior V.P. and General Counsel

American President Lines, 1800 Harrison Street, Oakland California 94612—Gary S. Taylor, Corporate Director, Customer Service & Documentation Services

American Association of Exporters and Importers, 11 West 42nd Street, New York, New York 10036—Eugene Milosh, President

American Trucking Association, 2200 Mill Road, Alexandria, Virginia 22314—Lana R. Batts, V.P. Policy

Association of American Railroads, 50 F Street NW. Washington, DC 20001—J. Thomas Tidd, Vice President and General Counsel

Board of Harbour Commissioners (Long Beach) P.O. Box 570, Long Beach, California 90801—Paul Brown, Director of Finance

Board of Commissioners, Port of New Orleans, P.O. Box 60046, New Orleans, Louisiana 70160—J. Ron Brinson, Executive Director (Past President)

UPS, 3901 Atkinson Square, Louisville, Kentucky 40218—Edwin Reitman, Vice President

3M Corporation, 3M Center, Building 220–6E–02–Tax Division, St. Paul, Minnesota 55144–1000—Kenneth A. Kumm, Manager, Customs & Trade Affairs (Chairman, Joint Industry Group)

Rudolph Miles & Sons, Customs House Brokers, 4950 Gateway East, P.O. Box 144, El Paso, Texas 79942—Michael M. Miles, Vice President

National Business Aircraft Association, 1200 18th Street, NW., 2nd floor, Washington, DC 20036—William Stine, Manager Plans & International Aviation

National Customs Brokers & Forwarders Association of America, 5 World Trade Center, New York, New York 10048—Arthur J. Fritz

New York/New Jersey Port Authority, 1 World Trade Center, New York, New York 10048—Robert J. Aaronson, Director, Aviation Department

Price Waterhouse, 1801 K. Street NW., Washington, DC 20006—Robert P. Schaffer, Senior Manager

Lehigh-Northampton Airport Authority, A–B–E International Airport, Allentown, Pennsylvania 18101—Jack Yohe, Airport Director

Pan American Airlines, 1660 L. Street NW., Washington, DC 20036—Richard D. Mathias, Senior Vice President

Meeting Agenda

At the first meeting of the Committee held on May 19, 1987, the members were introduced to each other and a format for the conduct of future meetings was established. There also was a general discussion of the various user fees Customs is now collecting and other issues relating to the performance of Customs services for which the fees are being charged. At this meeting there will be a discussion of the current status of user fees, collection, centralized examination stations, user fee airport/courier service reimbursement, fee levels, legislative proposals, as well as service levels. The Committee will be chaired by Michael H. Lane, Deputy Commissioner of Customs.

Public Participation

The meeting is open to the interested public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days before the meeting. The Committee chairman may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the Committee before, during, or after the meeting. Minutes of the meeting will be available on request.

Dated: August 11, 1987.

Michael H. Lane,

Deputy Commissioner of Customs.

[FR Doc. 87–18654 Filed 8–12–87; 9:33 am]

BILLING CODE 4820–02–M

DEPARTMENT OF TREASURY

Internal Revenue Service

[Delegate Order No. 193 (Rev. 1)]

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of Authority.

SUMMARY: Treasury Secretary Baker recently approved a reorganizaton of the Commissioner's Office in the Internal Revenue Service in which three Deputy Commissioner positions were established, A Senior Deputy Commissioner, and Deptuty Commissioners (Operations) and (Planning and Resources). The attached delegation order, whose text appears below, provides for this reorganization and delegates appropriate authorities to each of the Deputy Commissioners.

EFFECTIVE DATE: August 30, 1987.

FOR FURTHER INFORMATION CONTACT: Melva Scruggs, IM:PFR:P:I, Room 3526, 1111 Constitution Avenue NW., Washington, DC 20224, (202) 566–4273.

Martha M. Seeman,

Chief, Information and Productivity Improvement Branch.

[Order No. 193 (Rev. 1)]

Effective Date: August 30, 1987.

Delegation to Deputy Commissioners of Internal Revenue

Pursuant to the authority vested in me as Commissioner of Internal Revnue by Treasury Department Order No. 150–10, the Senior Deputy Commissioner is authorized to perform any function the Commissioner is authorized to perform.

The Deputy Commissioners (Operations) and (Planning and Resources) are authorized to perform only those functions the Commissioner is authorized to perform which arise out of, relate to, or concern the activities or functions each administers.

Each of these officials shall perform functions under this authority in his or her own capacity and under his or her own title and shall be responsible for referring to the Commissioner any matter on which action would appropriately be taken by the Commissioner.

This authority may not be redelegated.

Delegation Order No. 193, effective March 1, 1982, is superseded.

Dated: August 3, 1987.

Lawrence B. Gibbs,

Commissioner.

[FR Doc. 87–18507 Filed 8–12–87; 8:45 am]

BILLING CODE 4830–01–M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 156
Thursday, August 13, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board). The regular meeting of the Board originally scheduled for August 4, 1987 is rescheduled to Tuesday, August 18, 1987.

DATE AND TIME: The meeting is scheduled to be held at the offices of the Farm Credit Administration in McLean, Virginia, on August 18, 1987, from 10:00 a.m. until such time as the Board may conclude its business.

FOR FURTHER INFORMATION CONTACT: William A. Sanders, Jr., Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703-883-4010).

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of the meeting will be closed to the public. The matters to be considered at the meeting are:

1. Summary Prior Approval Items
2. Policy Directives:
   —Consideration of the FCA Policy Related to Loan Documentation Requirements of Farm Credit System Institutions.
   —Consideration of Policy Related to Examination of Federal Land Bank Associations
[1] 3. Review of Financial Condition of Farm Credit System Institutions and Consideration of Certifying to Treasury that the System is in Need of Financial Assistance
[1] 4. Examination, Supervision and Enforcement Matters
[1] 5. Discussion of Legislative Matters

[1] Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c) (4), (8) and (9).

William A. Sanders, Jr.,
Secretary, Farm Credit Administration.

[FR Doc. 87-18511 Filed 8-10-87; 5:05 pm]
BILLING CODE 6705-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:03 p.m. on Monday, August 10, 1987, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider a recommendation regarding the Corporation's assistance agreement with an insured bank.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Mr. Robert J. Herrmann, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matter on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting by authority of subsections (c)(4) and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4) and (c)(9)(B)).

Dated: August 11, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,
Executive Secretary.

[FR Doc. 87-18594 Filed 8-11-87; 3:18 pm]
BILLING CODE 6714-01-M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, August 18, 1987, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, August 20, 1987, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC. (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Eligibility Report for Candidates to Receive Presidential Primary Matching Funds.
Draft Advisory Opinion 1987-22: Mike Willard on behalf of Willard & Arnold Communications, Inc.
Eligibility Determinations and Certifications to U.S. Treasury in the Year Preceding the Election.
Final Repayment Determination—Lyndon LaRouche.
FY 1989 Budget Request.
Routine Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Marjorie W. Emmons,
Secretary of the Commission.

[FR Doc. 87-18603 Filed 8-11-87; 3:38 pm]
BILLING CODE 6715-01-M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Previously Held Emergency Meeting

TIME AND DATE: 3:32 p.m., Monday, August 10, 1987.

PLACE: 1776 G Street, NW., Washington, DC, 6th Floor.

STATUS: Closed.

MATTER CONSIDERED:

1. Conservatorship

The Board unanimously voted that Agency business required that a meeting be held with less than the usual seven days advance notice.

The Board unanimously voted to close the meeting under exemptions (8), (9)(A)(ii), and (9)(B). The General Counsel certified that the meeting could be closed under those exemptions.

FOR MORE INFORMATION CONTACT: Teresa A. Hernandez, Acting Secretary of the Board, Telephone (202) 357-1100.

Teresa A. Hernandez,
Acting Secretary of the Board.

[FR Doc. 87-18569 Filed 8-11-87; 12:17 p.m.]
BILLING CODE 7535-01-M

Corrections

Federal Register
Vol. 52, No. 156
Thursday, August 13, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

Tobacco Inspection; Grade Standards

Correction

In rule document 87-17563 beginning on page 28533 in the issue of Friday, July 31, 1987, make the following correction:

On page 28533, in the third column, in the fifth line, after "rule", insert "are minor and technical in nature. It is not anticipated that this final rule".

BILLING CODE 1505-01-D

DEPARTMENT OF EDUCATION

34 CFR Part 636

Cooperative Education Program

Correction

In rule document 87-17764 beginning on page 29140 in the issue of Wednesday, August 5, 1987, make the following correction:

PART 636—CORRECTED]

On page 29147, in the third column, in the Authority paragraph under amendatory instruction 2., in the last line, "951" should read "591".

BILLING CODE 1505-01-D

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Guaranteed Student Loan Program, SLS Program, PLUS Program, and Consolidation Loan Program

Correction

In notice document 87-17561 beginning on page 28746 in the issue of Monday, August 3, 1987, make the following correction:

On page 28746, in the third column, in item II., in the second line, "November 15, 1986;" should read "November 16, 1986,".

BILLING CODE 1505-01-D

GENERAL SERVICES ADMINISTRATION

41 CFR Part 201-8

[FIRMR Amdt. 10]

Implementation of Federal Information Processing Standards (FIPS) and a Federal Telecommunications Standard (FED-STD) in the Federal Information Resources Management Regulation (FIRMR)

Correction

In rule document 87-17393 beginning on page 28556 in the issue of Friday, July 31, 1987, make the following correction:

§ 201-8.107-6 [Corrected]

On page 28558, in the second column, in § 201-8.107-6(a), in the third line, "Xll" should read "X11".

BILLING CODE 1505-01-D

federal register

Thursday
August 13, 1987

Part II

Department of the Interior

Bureau of Land Management

43 CFR Part 3160

Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases Onshore Oil and Gas Order No. 3-Site Security; Proposed Rulemaking

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

[AA-630-87-4111-02]

Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases, Onshore Oil and Gas Order No. 3, Site Security

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking would provide for the issuance of Onshore Oil and Gas Order No. 3 under the provisions of 43 CFR Subpart 3164. This Order implements and supplements the requirements found in 43 CFR Part 3160 as they apply to site security. The Order would address the seal requirements when sales are based on measurement by tank gauging, lease automatic custody transfer units, or combinations thereof. The Order would also cover site security plans, facility diagrams, transporters' documentation, unauthorized removal or mishandling of production, and the recordkeeping and reporting requirements attendant thereto. In addition, the Order would detail enforcement actions and would allow for variances from specific standards. This Order would supersede Notice to Lessees and Operators No. 7.

DATE: Comments should be submitted by October 13, 1987. Comments received or postmarked after the above date may not be considered in the decisionmaking process on issuance of a final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, Room 5555, Main Interior Bldg., 1800 C Street, NW., Washington, DC 20240.

Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: John Duletsky, (202) 653–2286, or Stephen Spector, (202) 653–2147, or Robert C. Bruce, (202) 343–8735.

SUPPLEMENTARY INFORMATION: In the existing regulations in 43 CFR Part 3160—Onshore Oil and Gas Operations, § 3164.1 provides for the issuance of Onshore Oil and Gas Orders when necessary to implement and supplement the regulations in Part 3160. All Orders will be promulgated through the rulemaking process and, when issued in final form, will apply on a nationwide basis. A table is included in § 3164.1 of the existing regulations which shows the existing, and if applicable, former Orders and former Notices to Lessees and Operators. This proposed rulemaking would result in another such Order.

During 1985 and 1986, the Department of the Interior conducted a thorough review of the inspection and enforcement regulations for onshore oil and gas operations, including provisions covering site security and seal requirements. This review resulted in the promulgation of new regulations on inspection and enforcement on February 20, 1987 (52 FR 5384). The public comments received on the proposed rulemaking issued during the review resulted in refinement of the provisions of the final rulemaking concerning site security and seal requirements, as well as many of the provisions of this proposed order.

This Order would implement and supplement the seal requirements contained in § 3162.7–4 of the final rulemaking discussed above that are applicable to storage and sales facilities and their related piping systems. This Order also would address documentation of sales, the requirements related to the transportation of crude oil by truck, and the application of the seal requirements to certain sales conditions relating to single and multiple truck loads of crude oil. The sea requirements for facilities having single and multiple storage tanks would be addressed.

The Order would cover the piping configuration in lease automatic custody transfer (LACT) unit and gas metering systems, but the coverage would be limited to production accountability. Specific guidance would be provided for the contents of a site security plan, the site facility diagram, and the requirements for facility diagrams when separate lease facilities are colocated. Finally, the Order also would classify all violations as major or minor.

The principal authors of this proposed rulemaking are John Duletsky, Washington Office, James Weber, Washington Office, Raymond Thompson, New Mexico State Office, and Allen Schweighart, Worland District Office, Wyoming, assisted by the Orders Task Group, the staff of the Division of Legislation and Regulatory Management, all of the Bureau of Land Management, and the staff of the Office of the Solicitor, Department of the Interior.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

Onshore Order No. 3 will have no adverse economic effects since its requirements reflect the operating practices currently followed by prudent operators when conducting production and sales operations on leases under the jurisdiction of the Bureau of Land Management. It may provide a beneficial economic effect because industry is less likely to be subjected to assessments or penalties resulting from violations and/or the requirement to undertake costly remedial actions due to a better understanding of the Bureau's requirements which relate to site security. The major requirements contained in this Order essentially are those which have been required in the past by the Department of the Interior and would impose the same burden on all lessees and operators, regardless of size, on lands where site security is under the jurisdiction of this Bureau.

The proposed Order will not affect current information collection and recordkeeping requirements which have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1004–0134.

List of Subjects in 43 CFR Part 3160

Government contracts, Mineral royalties, Oil and gas exploration, Oil and gas production, Public lands—mineral resources, Indian lands—mineral resources, Reporting and recordkeeping requirements.

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Act of May 30, 1930 (30 U.S.C. 301–306), the Act of March 3, 1909, as amended (25 U.S.C. 396), the Act of May 11, 1938, as amended (25 U.S.C. 396a–396q), the Act of February 28,1891, as amended (25 U.S.C. 397), the Act of May 29, 1924 (25 U.S.C. 398), the Act of March 3, 1927 (25 U.S.C. 398a–398e), the Act of June 30, 1919, as amended (25 U.S.C. 399), the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.) and the Indian Mineral Development Act of 1982 (25 U.S.C. 2101 et seq.), it is proposed to amend Part

3160, Group 3100, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations as set forth below:

PART 3160—[AMENDED]

1. The authority citation for Part 3160 continues to read:

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Act of May 31, 1930 (30 U.S.C. 301–306), the Act of March 3, 1909, as amended (25 U.S.C. 396), the Act of May 11, 1938, as amended (25 U.S.C. 396a–396q), the Act of February 28, 1891, as amended (25 U.S.C. 397), the Act of May 29, 1924 (25 U.S.C. 398), the Act of March 3, 1927 (25 U.S.C. 398a–398e), the Act of June 30, 1919, as amended (25 U.S.C. 399), R.S. 441 (43 U.S.C. 1457), See also Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41), the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 et seq.), the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), the Act of December 12, 1980 (42 U.S.C. 6508), the Combined Hydrocarbon Leasing Act of 1981 (Pub. L. 97–78), the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.) and the Indian Mineral Development Act of 1982 (25 U.S.C. 2102 et seq.).

2. Section 3164.1 is amended by revising the table which is part of paragraph (b):

§ 3164.1 Onshore oil and gas orders.

* * * * *

(b) * * *

Order No. and subject	Effective date	Federal Register reference	Supersedes
1 Approval of operations	November 12, 1983.	48 FR 48916 and 48 FR 56225.	NTL–6
2 Drilling operations			None
3 Site security			NTL–7

Note: Numbers will be assigned by the Washington Office, Bureau of Land Management, to additional Orders as they are prepared for publication and added to this table.

James E. Cason,

Acting Assistant Secretary of the Interior.

June 29, 1987.

Appendix—Text of Oil and Gas Order No. 3

Note: This appendix is published for information only and will not appear in the Code of Federal Regulations.

Onshore Oil and Gas Order No. 3

Site Security

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Onshore Oil and Gas Order No. 3

Site Security

I. Introduction

A. Authority

This Order is established pursuant to the authority granted to the Secretary of the Interior pursuant to various Federal and Indian mineral leasing statutes and the Federal Oil and Gas Royalty Management Act of 1982. This authority has been delegated to the Bureau of Land Management and is implemented by the onshore oil and gas operating regulations contained in 43 CFR Part 3160. Section 3164.1 thereof specifically authorizes the Director, Bureau of Land Management, to issue Onshore Oil and Gas Orders when necessary to implement and supplement the operating regulations and provides that all such Orders shall be binding on the lessees and operators of Federal and restricted Indian oil and gas leases which have been, or may hereafter be, issued.

Specific authority for the provisions contained in this Order is found at: § 3162.4–1, *Well records and reports;* § 3162.7–1, *Disposition of Production;* § 3162.7–4, *Site Security on Federal and Indian (except Osage) Oil and Gas Leases;* and Subpart 3163 Noncompliance and Assessments.

B. Purpose

The purpose of this Order is to implement and supplement the regulations in 43 CFR 3162.7–1 and 3162.7–4. This Order establishes the minimum standards for site security by providing a system for production accountability and covers the use of seals, by-passes around meters, self-inspection, transporters' documentation, reporting of incidents of unauthorized removal or mishandling of oil, facility diagrams, recordkeeping, and site security plans.

The Order identifies certain specific acts of noncompliance, rates them as to severity, establishes abatement periods for corrective action for such acts of noncompliance, and provides for variances. This Order establishes the procedures to be used by a cited party for requesting an extension of the abatement period and identifies the procedures to be used in requesting administrative review of enforcement decisions.

C. Scope

This Order is applicable to all Federal and Indian (except Osage) oil and gas leases. In addition, this Order is applicable to nonjurisdictional lands (State or privately held) when Federal and/or Indian leases are entitled to share in the revenues generated by wells on such lands under the terms of an approved agreement.

II. Definitions

It should be noted that the existing regulations implementing the enforcement provisions of the Federal Oil and Gas Royalty Management Act and mineral leasing Acts at § 3162.7–4 no longer include the defined terms "closed system" and "open system." As a result of this change, the provisions of the existing regulations covering access to any piping system subject to seal requirements no longer includes such fittings as blanking caps, bullplugs, and/or flat plugs; and the term "access" shall have the meaning contained in this section.

A. Access means the ability to enter into any tankage or piping system through a valve, valves or combination of valves and/or tankage which would permit the removal of oil without documentation as provided by this Order.

B. Appropriate Values mean those values in a particular piping system, i.e.,

fill lines, equlizer or overflow lines, sales lines, circulating lines, and drain lines, that shall be sealed during a given operation (See 43 CFR 3162.7–4(a)).

C. Authorized Representative means any entity or individual authorized by the Secretary to perform duties by cooperative agreement, delegation, or contract (See 43 CFR 3160.0–5).

D. By-Pass means any piping arrangement connected upstream and downstream of a meter which allows oil or gas to continue on the sales line without passing through the meter. Equipment which permits the changing of the orifice plate without bleeding the pressure off the gas meter run shall not be considered a by-pass.

E. Effectively Sealed means the placement of a seal in such a manner that the position of the sealed value may not be altered without the seal being destroyed (See 43 CFR 3162.7–4(a)).

F. Gas means any fluid, either combustible or noncombustible, which is produced in a natural state from the earth and which maintains a gaseous or rarefied state at ordinary temperatures and pressure conditions (See 43 CFR 3000.0–5(a).

G. Lease means any contract, profit-share arrangement, joint venture, or other agreement issued or approved by the United States under a mineral leasing law that authorizes exploration for, extraction of, or removal of oil or gas (See 43 CFR 3160.0–5).

H. Lessee means that party authorized by or through a lease or an approved assignment thereof, to explore for, develop and produce oil and gas on the lease site in accordance with the lease terms, regulations, and law. For convenience of reference throughout this Order, the term lessee also refers to and includes the owners of approved operating rights and designated operators (See 43 CFR 3160.0–5).

I. Major Violation means noncompliance which causes or threatens immediate, substantial, and adverse impacts on public health and safety, the environment, production accountability, or royalty income (See 43 CFR 3160.0–5).

J. Minor Violation means noncompliance which does not rise to the level of a "major violation" (see 43 CFR 3160.0–5).

K. Oil means all nongaseous hydrocarbon substances, other than those substances leasable as coal, oil shale or "gilsonite" (including all vein-type solid hydrocarbons) (See 43 CFR 3000.0–5).

L. Clean Oil/Pipeline Oil means crude oil or condensate that is of such quality that it is acceptable to normal purchasers.

M. Bad Oil means crude oil that is not marketable to normal purchasers but that can be treated economically by use of heat, chemicals, or other methods or combination of methods with existing or modified lease facilities or portable equipment.

N. Slop Oil means crude oil that is of such quality that it is not acceptable to normal purchasers and which requires special treatment other than that which can economically be provided with existing or modified facilities or portable equipment and is usually sold to oil reclaimers.

O. Waste Oil means lease crude oil that has been determined by the authorized officer to be of such quality that it cannot be treated economically and put in a marketable condition with existing or modified lease facilities or portable equipment and cannot be sold to reclaimers and also has been determined by the authorized officer to have no economic value.

P. Operator means the party that has control or management of operations on the lease lands or any portion thereof. The operator may be a lessee, holder of rights under an approved operating agreement, or designated operator (See 43 CFR 3160.0–5).

Q. Piping means all tubular goods made of any material (e.g., metallic, plastic, fiberglass, and/or rubber).

R. Production Phase means that period of time or mode of operation during which crude oil is delivered directly to or through production vessels to the storage facilities and includes all operations at the facility other than those defined by the sales phase (See 43 CFR 3162.7–4(a)).

S. Sales Phase means that period of time or mode of operation during which crude oil is removed from the storage facilities for sale, transportation, or other purposes (See 43 CFR 3162.7–4(a)).

T. Seal means a device, uniquely numbered, which completely secures a valve (See 43 CFR 3162.7–4(a)).

III. Requirements

A. Storage and Sales Facilities—Seals

1. Minimum Standards (See 43 CFR 3162.7–4(b)).

a. The primary purpose for use of seals is to provide a means of documenting the removal of production for royalty purposes. Additionally, seals provide a means of detecting unauthorized entry to, and removal of, production. The seal requirements are based on American Petroleum Institute [API] recommended practice No. 12 R1, 3rd Edition, dated May 31, 1986, entitled "API Recommended Practice for Setting, Connecting, Maintenance and Operation of Lease Tanks."

b. All lines entering or leaving all oil storage tanks shall have valves capable of being effectively sealed during the production and sales operations unless otherwise provided under the provisions of this Order, and any equipment needed for effective sealing, excluding the seals, shall be located at the site (See Attachment I). Each ineffectively sealed valve or appropriate valve not sealed shall be considered a separate violation.

c. Additionally, valves or combinations of valves and tankage that provide access to the production prior to measurement for sales or lease use purposes are considered appropriate valves and are subject to the seal requirements of this Order (See Attachment I).

d. Valves on any tank which contains oil or is connected to the production equipment are considered appropriate valves and are subject to the seal requirements contained in this Order, except those valves on tanks which contain oil that has been determined by the authorized officer to be waste oil or valves on tanks used for the primary treatment of lease production (See Attachment I).

e. Exclusions to seal requirements contained in this Order shall be limited to the following:

i. Valves on tanks which are used as production vessels, i.e., gunbarrels/wash tanks;

ii. Valves on water tanks, provided the possibility of access does not exist;

iii. Sample cock valves utilizing piping of 1 inch or less in diameters;

iv. When a single tank is used for collecting small volumes of condensate produced from a gas well, the requirement is waived for requiring the fill line valve to be sealed during shipment; but all other seal requirements of this Order shall apply;

v. Gas line valves of 1 inch or less used as tank bottom "roll" lines need not be sealed; provided there is no access to the contents of the storage tank and said lines cannot be used as equalizer lines;

vi. Tank heating systems which use a source of fluid other than the contents of the storage tank, i.e., steam, water, glycol; and

vii. Valves, connected directly to the pump body, used on pump bleed off lines of 1 inch or less in diameter.

f. For systems where production may only be removed through the lease automatic custody transfer (LACT) system, no sales or equalizer lines need to be sealed. However, any valves

which allow access for the removal of oil prior to its measurement through the LACT shall be effectively sealed (See Attachment I).

g. For oil measured and sold by tank gauging, all appropriate valves shall be sealed during the production or sales phase, as applicable. Circulating lines having valves which may allow access for the removal from storage and sales facilities to any other source except through the treating equipment back to storage facilities shall be effectively sealed as near the storage facility as possible (See Attachment I).

2. Enforcement Provisions.

a. The following appropriate valves shall be effectively sealed in the proper position:

—Sales valves
—Circulating valves
—Drain valves
—Fill valve
—Equalizer valve (except the violation shall be minor when the valve is not effectively sealed when used in connection with adjacent tanks, each of whose individual available capacity is more than 1 days average production).

Violation: Major (except as provided).
Corrective Action: Seal as required.
Normal Abatement period: 1 working day from notice for sales, drain, and circulating valves and prior to sale or removal for fill and equalizer valves.

b. Devices used in conjunction with seals for effectively sealing appropriate valves shall be maintained on the site. The absence of each required sealing device shall be considered a separate violation. The requirement for each sealing device is as follows:

—Sales valves
—Circulating valves
—Drain valves
—Fill valve
—Equalizer valve (except the violation shall be minor when the valve is not effectively sealed when used in connection with adjacent tanks, each of whose individual available capacity is more than 1 days average production).
—Any other appropriate valve.

Violation: Major (except as provided).
Corrective Action: Provide required device.
Normal Abatement Period: 1 working day from notice for sales, drain, and circulating valves and prior to sale or removal for fill and equalizer valves.

B. Lease Automatic Custody Transfer (LACT) Systems—Seals

This portion of the Order is predicated on the minimum requirements for the components to be used in a LACT system contained in Onshore Oil and Gas Order No. 4 (to be published), LACT Components and General Operating Requirements; API Manual of Petroleum Measurement Standards, Chapter 6.1, 1st Edition, 1981, or the latest revised standard; and API Spec 11N, 2nd Edition, March 1979, entitled "Lease Automatic Custody Transfer (LACT) equipment."

1. Minimum Standards.

Each LACT unit shall employ meters that have non-resettable totalizers and there shall be no by-pass around the LACT unit. The seal requirements apply to the components used for volume or quality determination of the oil being shipped. Each missing or ineffective seal shall be considered a separate violation. During normal operations the following components shall be effectively sealed:

—Sample probe
—Sampler volume control
—All valves on lines entering or leaving the sample container excluding the safety pop-off valve (if so equipped). Each valve shall be sealed in the open or closed position, as appropriate
—Meter assembly, including the counter head, meter head and, if so equipped, automatic temperature compensator (ATC)automatic temperature and gravity selection device (ATG)
—Temperature recorder (if so equipped)
—Back pressure valve downstream of the meter
—Any drain valves in the system
—Manual sampling valves (if so equipped).

Violation: Major.
Corrective Action: Seal as required.
Normal Abatement Period: 1 working day after notice.
—Absence of non-resettable totalizer.
Violation: Major.
Corrective Action: Install a meter head that utilizes a non-resettable totalizer.
Normal Abatement Period: Install prior to sales or removal of production through the meter.

C. Removal of Crude Oil From Storage Facilities by Means Other Than Through a LACT Unit

The determination of the volume and quality of crude oil removed and sold from a storage facility shall be made by the lessee/operator in accordance with the accepted procedures for the measurement of oil (See Onshore Oil and Gas Order No. 4, Part III. A., Oil Measurement by Tank Gauging).

1. Minimum Standards.

a. The lessee/operator shall require the transporter/purchaser to record on a run ticket prior to sales or removal of any crude oil from the lease, as a minimum, the following:

—Name of the seller
—Federal or Indian lease number(s), or as appropriate, the communitization agreement number or the unit agreement name and number and participating area identification*
—The location of the tank by quarter, quarter section, section, township and range (public land surveys) or by the legal land description
—A unique number, the date and time, and the tank number and capacity
—Opening gauge*
—Observed gravity, temperature, and sediment and water (S & W) content*
—Name of gauger and lessee/operator representative, if present at time of sale
—Number of the seal removed*.

Violation: Minor (all items unless marked by asterisk).
Corrective Action: Complete missing information.
Normal Abatement Period: Upon request or within 48 hours of notice.
*Violation: Major.
Corrective Action: Submit completed run ticket.
Normal Abatement Period: Within 48 hours of notice.

b. The lessee/operator shall require that the run ticket be completed upon the completion of the sales or removal of oil from the lease to show the following:

—Closing gauge (second gauge)*
—Temperature*
—Date and time
—Number of the seal installed*
—Signature of the gauger
—Signature of the lessee/operator representative (within 2 working days after the sales or removal).

Violation: Minor (all items unless marked by asterisk).
Corrective Action: Complete missing information.
Normal Abatement Period: Upon request or within 48 hours of notice.
*Violation: Major.
Corrective Action: Submit completed run ticket.
Normal Abatement Period: Within 48 hours of notice.

c. When a single truck load constitutes a completed sale, the driver shall have in his/her possession as documentation a completed run ticket during the period of shipment. When multiple truckloads are involved in a sale and the purchase is predicated on the difference between the opening and closing gauges (implying that the purchaser has purchased the entire tank), only the driver of the last truck is required to have documentation in the form of a completed run ticket and all of the other drivers shall have in their possession appropriate documentation in the form of a trip log or manifest. The

sales tank and the sales line valve need not be sealed between truck loads, but shall be sealed at the time the sale is completed. Once the seals have been broken, the purchaser shall be responsible for the entire contents of the tank until resealed.

Violation: Major.
Corrective Action: Provide documentation or unload the truck(s) into the tank(s) from which the product was obtained.
Normal Abatement Period: Prior to leaving the facility.

D. By-Pass Around Meters

1. Minimum Standard.

There shall be no by-pass around gas meters or LACT unit meters.

Violation: Major.
Corrective Action: Remove by-pass.
Normal Abatement Action: Immediate correction required.

E. Theft or Mishandling of Oil

1. Minimum Standard.

a. The operator shall, not later than the next business day after discovery of an incident of apparent theft or mishandling of crude oil, report such incident to the authorized officer. If the operator fails to timely file the required report, a notice of such violation shall be sent. A notice of late filing of an incident of mishandling or apparent theft of oil may be considered to establish knowing or willfull conduct. The incident report shall supply the following:

—Company name and name of individual reporting the incident(s)
—Lease number, communitization agreement number, or unit agreement name and number and participating area, as appropriate
—Location of facility where the incident occurred by quarter, quarter section, section, township, and range or legal land description
—The volume of oil or condensate removed
—The way access was obtained to the production or how the mishandling occurred
—The individual who discovered the incident
—Date and time of the discovery of the incident
—Whether the incident was or was not reported to local law enforcement agencies and company security.

Violation: Minor (failure to file a complete report).
Corrective Action: Submit complete report of incident.
Normal Abatement Period: Within 48 hours of notice of failure to file a complete report.
*Violation: Major (failure to report incident).
Corrective Action: Submit report of incident.
Normal Abatement Period: Within 24 hours of notice of failure to report incident.

F. Self Inspection

1. Minimum Standard.

Operators/Lessees shall establish an inspection program for all leases for the purpose of periodically measuring production volumes and to assure that there is compliance with the minimum site security requirement. The program shall include a record of such inspections showing the findings of the inspection and a record of the volume measurements.

Violation: Minor.
Corrective Action: Institute an inspection program that includes a record of such inspections and establishes a measurement schedule.
Normal Abatement Period: 20 days of notice.

G. Recordkeeping

1. Minimum Standard.

The operator/lessee shall establish and maintain for a minimum of 6 years a recordkeeping system which shall be readily available to the authorized officer or authorized representative upon request and which includes all of the following as a minimum:

—Documentation of the number of each seal and the valve on which that seal is used, the date and time of installation or removal of the seal(s) for each storage tank, including the reason for the removal or installation of each such seal*
—Documentation of each seal used on the LACT unit showing the component sealed and the date and time the seal was installed and removed, including the reason(s) for such removal*
—Self inspection program records required by section F. hereof.

Violation: Minor (all items unless marked by asterisk).
Corrective Action: Maintain and provide requested records.
Normal Abatement Period: Establish within 20 days after notice or provide upon request.
*Violation: Major (unless specific sealing requirement is minor).
Corrective Action: Establish a system, maintain and provide requested records.
Normal Abatement Period: 1 working day after notice.

H. Site Security Plan

1. Minimum Standard.

The operator/lessee shall establish a plan for complying with the minimum site security standards set forth herein. The plan need not be submitted to the authorized officer, but the authorized officer shall be notified of the location where the plan is maintained and the normal working hours of said location. The plan shall be available to the authorized officer upon request. The plan shall include, but is not limited to, the following:

—A self inspection program that monitors production volumes and ensures compliance with all seal requirements at each storage and sales facility and each LACT unit, if applicable (See Section III F hereof)
—A system to ensure the maintenance of accurate seal records and the completion of accurate run tickets (See Section III A, B and C hereof)
—A system to ensure the reporting of incidents of apparent theft or mishandling of oil (See Section III E hereof)
—A system to ensure that there are no by-pass of meters (See Section III D hereof)
—A listing of the leases, communitization agreements, unit agreements, and specific facilities that are subject to each plan
—Notification of the authorized officer of the completion of a plan and site facility diagram(s) and the leases, communitization agreements, unit agreements, and specific facilities that are subject to each plan and diagram(s)
—Notification of the authorized officer within 60 days of completion of construction of a new facility or of commencement of first production or of inclusion of the production from a committed non-Federal well into a federally supervised unit or communitization agreement, whichever occurs first, whether that facility is covered by a specific existing plan or a new plan has been prepared.

Violation: Minor.
Corrective Action: Comply with requirements.
Normal Abatement Period: 20 days after notice.

I. Site Facility Diagram

1. Minimum Standard.

A facility diagram is required for all facilities used in storing oil/condensate produced from or allocated to Federal and Indian Lands, including those facilities not located on Federal or Indian lands but which are subject to Federal supervision through commitment to a federally approved unit agreement or communitization agreement. No format is prescribed for

facility diagrams. However, the facility diagram should be prepared on 8½ x 11 paper, if possible, and should be legible and comprehensible to an individual with an ordinary working knowledge of oil field operations (See Attachment I). The facility diagram shall:

—Accurately reflect the actual position of the production equipment, piping, and metering systems in relationship to each other, but need not be to scale
—Commencing with the header, identify the vessels, piping, and metering systems located on the site and shall include the appropriate valves and any other equipment used in the handling, conditioning, and disposal of oil, gas, and water produced, including any water disposal pits or emergency pits. In those instances where pits are co-located, such pits may be shown in parentheses on the facility diagram
—Indicate which valve(s) shall be sealed and in what position during the production and sales phases and during the conduct of other production activities, i.e., circulating tanks, drawing off water, which may be shown by an attachment, if necessary
—Require as an addition, when describing co-located facilities operated by 2 different operators/lessees, a skeleton diagram of the co-located facility, showing only equipment. For co-located common storage facilities operated by 1 operator, one facility diagram shall be sufficient
—Be filed within 60 days of completion of a new facility or when existing facilities are modified or when a non-Federal facility is included in a Federally supervised unit agreement or communitization agreement
—Clearly identify the lease to which it applies and the location of the facility covered by quarter quarter section, section, township, and range or by a legal land description, with co-located facilities being identified by each lease and its facilities
—Clearly identify the site security plan covering the facility.
—Violations: Minor.
—Corrective Action: Prepare and/or furnish a complete and accurate facility diagram.
—Normal Abatement Period: 10 working days after notice.

IV. Variances from Minimum Standards

An operator may request the authorized officer to approve a variance from any of the minimum standards prescribed in section III hereof. All such requests shall be submitted in writing to the appropriate authorized officer and provide information as to the circumstances which warrant approval of the variance(s) requested and the proposed alternative methods by which the related minimum standard(s) are to be satisfied. The authorized officer, after considering all relevant factors, if appropriate, may approve the requested variance(s) if it is determined that the proposed alternative(s) meet or exceed the objectives of the applicable minimum standard(s).

ATTACHMENTS

I. Diagrams

II. Sections from 43 CFR Subparts 3163 and 3165 (Not included with Federal Register publication)

Site Facility Diagrams and Sealing of Valves

Introduction—1 & 2
Equipment and Valve Symbols—3
Line Symbols and Valve Identification—4

Diagrams	Identification	Sales Mode	
I–A	Lease Number NM—1234	Tank Gauge	5 & 6
I–B	Lease Number NM—1234	LACT	7 & 8
I–C	Able Shallow Unit	Tank Gauge	9 & 10
I–D	Able Shallow Unit	LACT	11 & 12
I–E	Lease Numbers W–2345 & W–6789	Tank Gauge	13–15
I–F	Lease Number C–1357	LACT & Tank Gauge	16 & 17
I–G	Lease Number M–2468	LACT	18 & 19
I–H	Able Sand Unit	Tank Gauge & Gauge Transfer.	20 & 21
I–I	Able Sand Unit	LACT & LACT Transfer	22 & 23

Site Facility Diagrams and Sealing of Valves

Introduction

Attachment I is provided to both aid lessees/operators in determining what valves are considered to be "appropriate valves" subject to the seal requirements and aid in the preparation of facility diagrams. In making the determination of what is an "appropriate valve," the entire facility must be considered as a whole, including the size of the facility, the type of equipment, and the on-going activities at the facility. It is impossible to cover every type of situation that exists or could exist in conducting production activities and the following diagrams are representative of the sealing requirements contained in this Order and 43 CFR Part 3160.

BILLING CODE 4310-84-M

Equipment and Valve Symbols

Item	
Header - HD	
Free water knockout - FWKO	
Line heater - LH; Steam generation facility - SGF	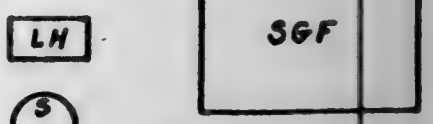
Separator - S	
Heater treater - HT	
Gun barrel or wash tank - GB	
Storage tank - S/T	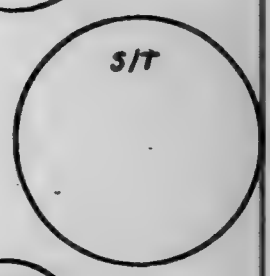
Tank: Water - W/T; Slop oil - SO/T; Surge - ST/T	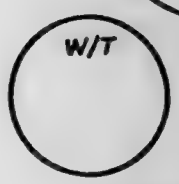
Tanks: Fuel oil - FO/T; power oil - PO/T	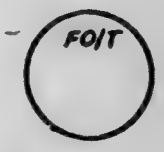
Pit: Number of pits - ()	
Valve	
Automatic custody transfer unit - LACT	
Gas meter run - GM	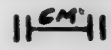
Connection: Pipeline - PL; Truck loading - TL	
Pump: Circulating - CP: Transfer - TP	
Check valve - CK	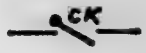

Line Symbols and Valve Identification

Item	Line Symbol	Valve ID
Direction of flow		
Fill line		F
Test line		T
Equalizer/overflow line	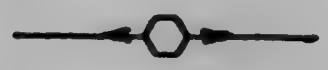	E
Sales line	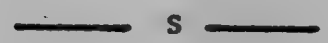	S
Circulating lines: tank - C; pit - PC		C
Drain line: tank - D; production vessel - PD		D,PD
Tank vent line		V
Gas line	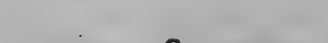	G
Water line		W
Bad oil line (LACT)		B
Safety valve vent line		SV
Miscellaneous access line: royalty oil; lease use		M
Heating lines: contents - O; other media - H		O,H
Fuel line - U; power oil line - PO	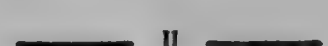	U,P
Water disposal line		WD
Lines: not connected connected		
Portable well tester outlets		PT
Gas roll line		R

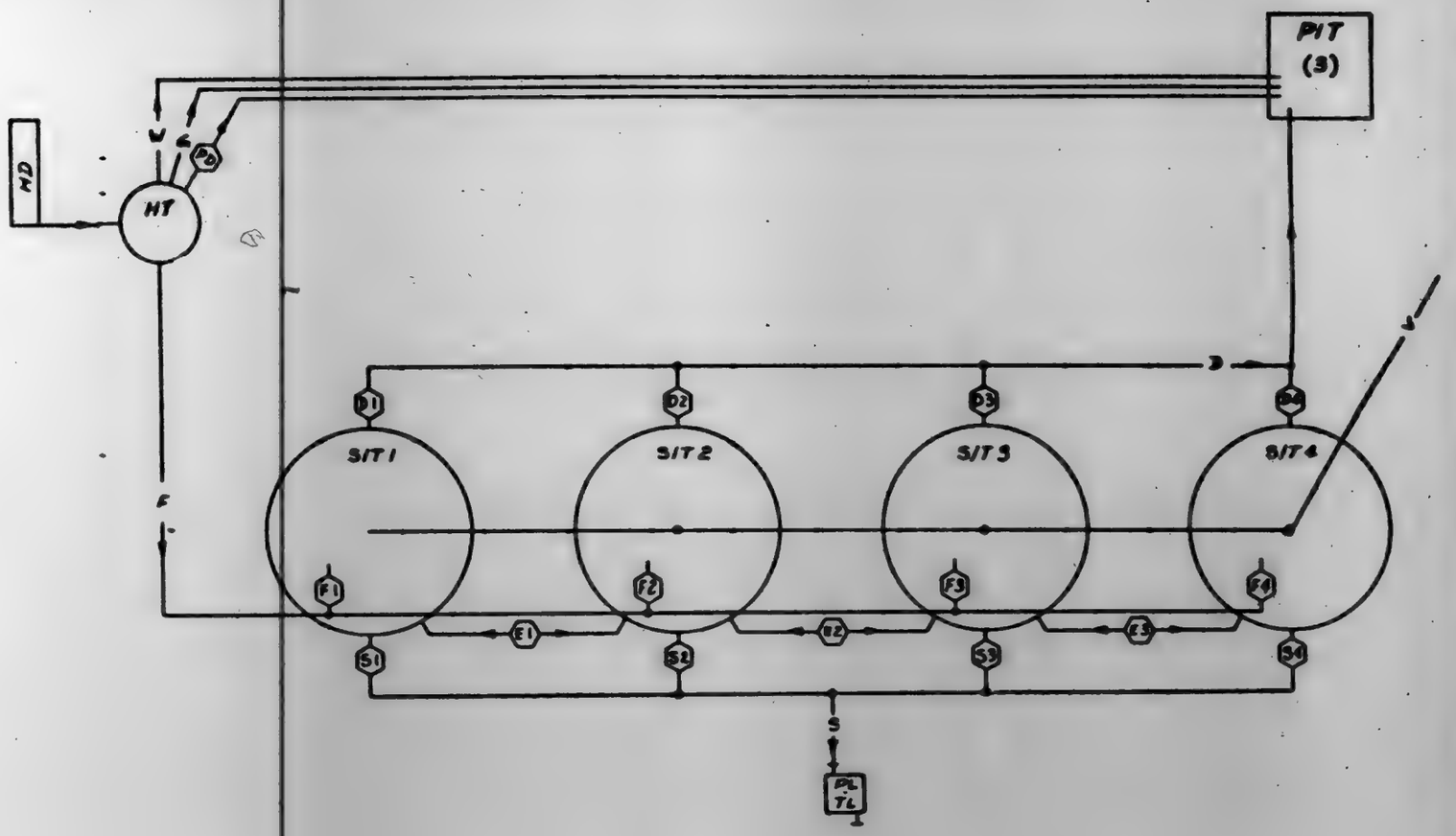

Able Oil Company
Lease: Federal - NM1234
Location: NE¼ NW¼ Sec. 4, T. 28 N., R. 13 W.

This lease is subject to the site security plan for NORTHWEST NEW MEXICO OPERATIONS. The plan is located at: Able Oil Company
212 Federal Blvd.
Farmington, NM

Diagram I-A

BILLING CODE 4310-84-C

Attachment to the site facility diagram—Lease NM 1234

General sealing of valves, sales by tank gauging.

Production phase—All drain valves, D1 thru D4, and all sales valves, S1 thru S4, sealed closed.

Sales phase—The tank from which sales are being made will be isolated by sealing closed the drain valve, fill valve, and the equalizer valve(s) during sales.

Draining phase—The tank being drained will be isolated by sealing closed the sales valve, fill valve, equalizer valve(s), and the drain valves on the other tanks.

Example:

On going activity—Production going into tank S/T1, tank bottoms are being drained from tank S/T3, and sales are being made from tank S/T4.

Sealing of valves:

Tank S/T1—Valves S1 and D1 sealed closed.

Tank S/T2—Valves S2 and D2 sealed closed.

Tank S/T3—Valves S3, E2, and F3 sealed closed.

Tank S/T4—Valves E3, F4, and D4 sealed closed.

BILLING CODE 4310-84-M

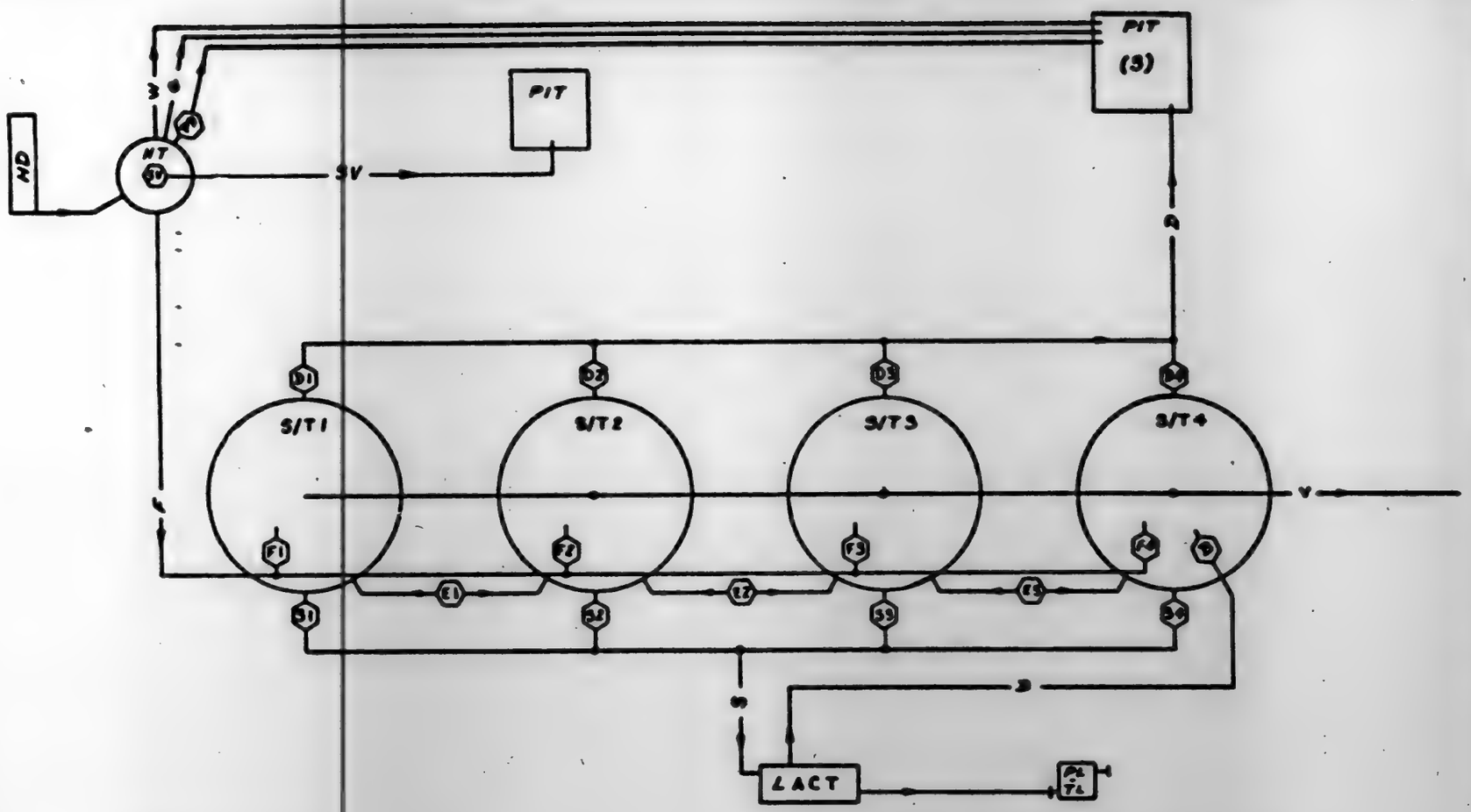

Able Oil Company
Lease: Federal - NM 1234
Location: NE/4 NW/4 Sec. 4,
T. 28 N., R. 13 W.

This lease is subject to the site security plan for NORTHWEST NEW MEXICO OPERATIONS. The plan is located at: Able Oil Company
212 Federal Bld.
Farmington, NM

Diagram I-B

BILLING CODE 4310-84-M

Attachment to the site facility diagram—Lease NM 1234

General sealing of valves, sales by LACT.

Production phase—All drain valves D1 thru D4 sealed closed.

Sales phase—All drain valves D1 thru D4 sealed closed.

Draining activity—The tank being drained will be isolated by sealing closed the sales, fill and equalizer line valves, and the drain valves on the other three tanks.

Examples:

On going activity—Production going into tank S/T1, tank bottoms are being drained from tank S/T3, and sales are being made from tank S/T4.

Sealing of valves:

Tank S/T1—Valve D1 sealed closed.
Tank S/T2—Valve D2 sealed closed.
Tank S/T3—Valves E2, E3, S3, and F3 sealed closed.
Tank S/T4—Valves D4 sealed closed.

BILLING CODE 4310-84-M

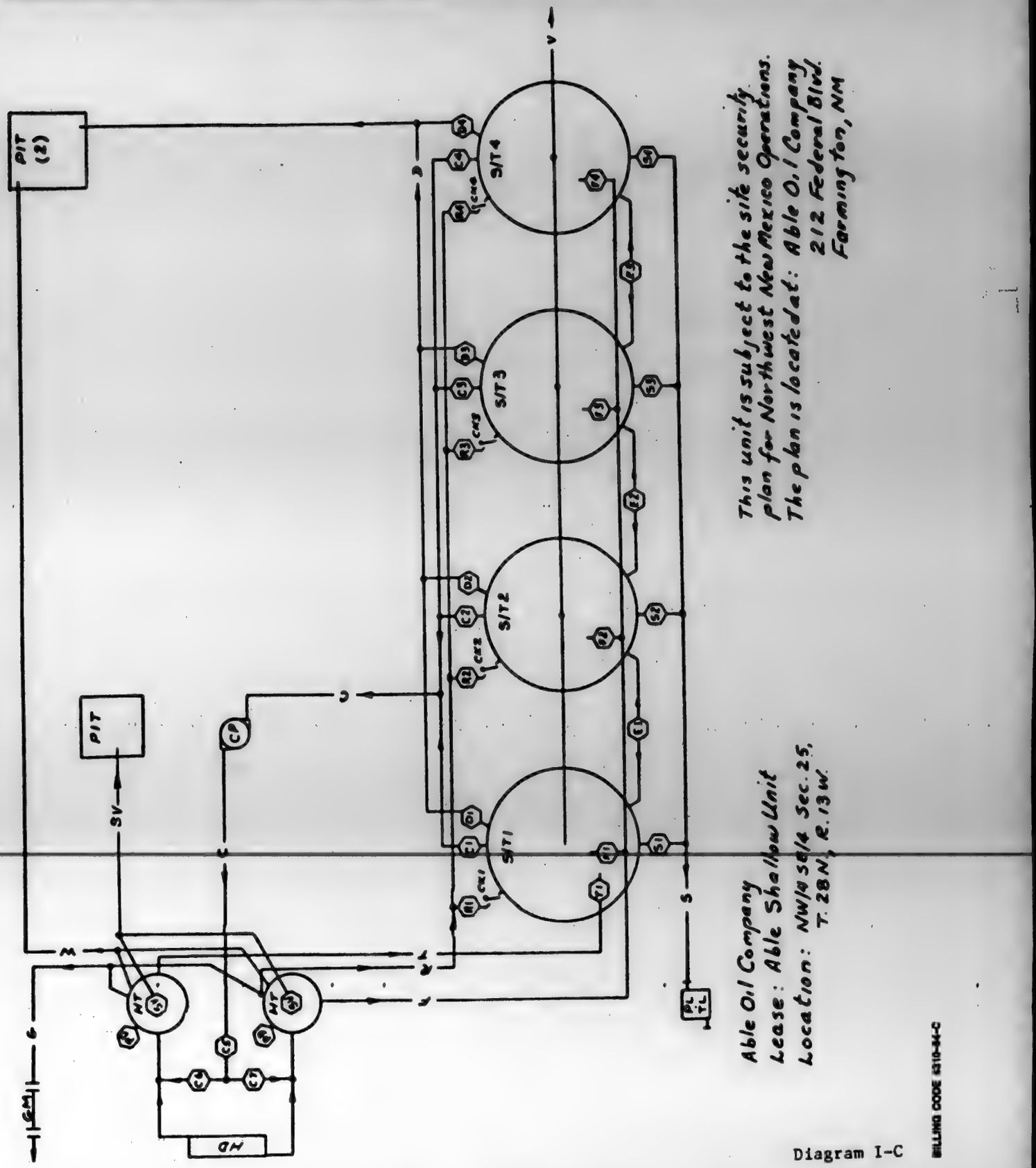

Diagram I-C

BILLING CODE 4310-84-C

Attachment to the site facility diagram—Able Shallow Unit

General sealing of valves, sales by tank gauging.

Production phase—All drain valves, D1 thru D4, and all sales valves, S1 thru S4, sealed closed.

Sales phase—The tank from which sales are being made will be isolated by sealing closed the drain valve, circulating valve, fill valve(s), and equalizer valve(s) during sales.

Draining activity—The tank being drained will be isolated by sealing closed the sales valve, fill valve(s), circulating valve, equalizer valve(s), and the drain valves on the other three tanks.

Circulating activity—All drain and sales valves sealed closed.

Tank bottom roll-over activity—No seals required on the R1 thru R4 valves since check valves were used appropriately.

Example:

On going activity—One well on routine test and all other production is going into tank S/T2. Tank S/T3 bottoms are being circulated to the production heater-treater and sales are being made from tank S/T4.

Sealing of valves:

Tank S/T1—Valves D1 and S1 sealed closed.
Tank S/T2—Valves D1 and S2 sealed closed.
Tank S/T3—Valves D3 and S3 sealed closed.
Tank S/T4—Valves E3, F4, D4, and C4 sealed closed.
No seals required on valves R1 thru R4.

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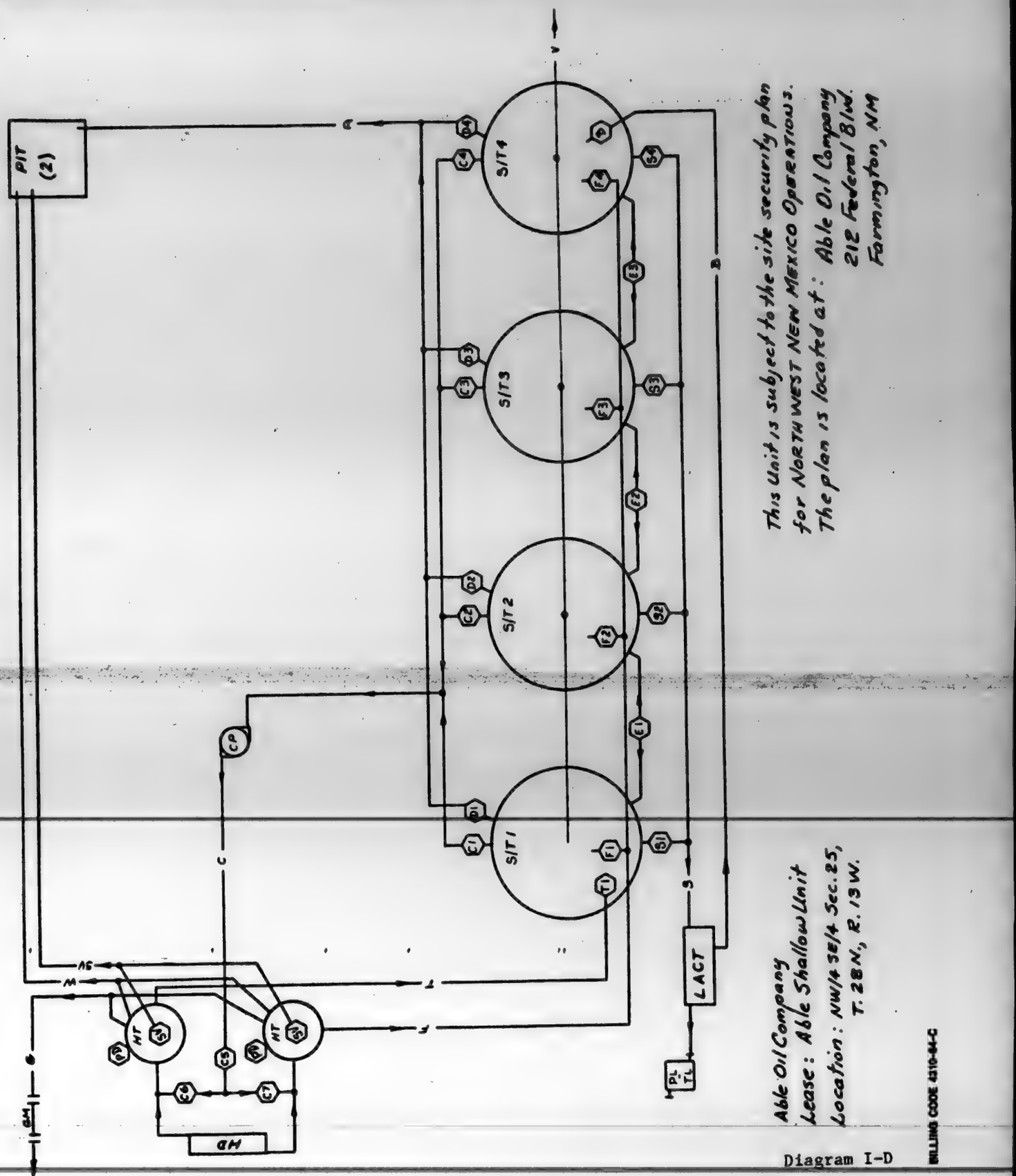

Diagram I-D

BILLING CODE 4310-84-C

Attachment to the site facility diagram—Able Shallow Unit

General sealing of valves, sales by LACT.

Production phase—All drain valves D1 thru D4 sealed closed.

Sales phase—All drain valves D1 thru D4 sealed closed.

Draining activity—The tank being drained will be isolated by sealing closed the sales valve, fill valve(s), circulating valve, equalizer valve(s), and the drain valves on the other three tanks.

Circulating activity—All drain valves sealed closed.

Example:

On going activity—One well routine test and all other production is going into tank S/T2. Tank S/T3 is being circulated to the production treater and sales are being made from tank S/T4.

Sealing of valves:

Tank S/T1—Valve D1 sealed closed.
Tank S/T2—Valve D2 sealed closed.
Tank S/T3—Valve D3 sealed closed.
Tank S/T4—Valve D4 sealed closed.

BILLING CODE 4310-84-M

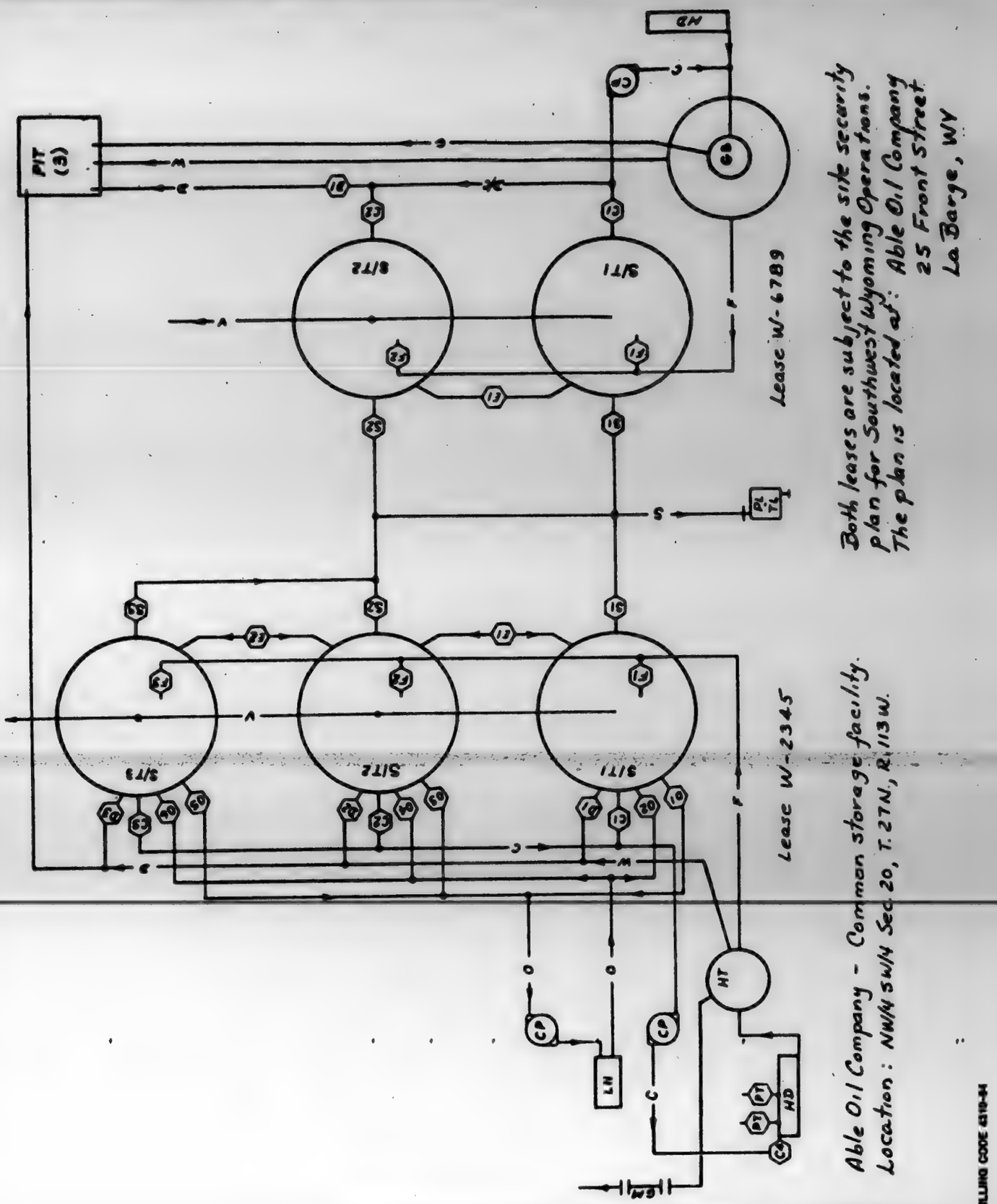

Diagram I-E

BILLING CODE 4310-84

Common Storage Facility

Attachment to the site facility diagram—Lease W 2345

General sealing of valves, sales by tank gauging.

Production phase—All valves D1 thru D3 and S1 thru S3 sealed closed.

Sales phase—The tank from which sales are being made will be isolated by sealing closed all lines entering or leaving the tank, i.e., fill valve, equalizer valve(s), circulating valve, drain valve, and the inlet and outlet valves on the heating lines.

Draining activity—The tank being drained will be isolated by sealing closed its fill valves, sales valve, circulating valve, equalizer valve(s), and the inlet and outlet valves on the heating lines. The drain valves on the other two tanks will be sealed closed.

Circulating activity—Valves D1 thru D3 and S1 thru S3 sealed closed. Both PT valves sealed closed, as well as any other valves on the header which would provide access to the production being circulated.

Example:

On going activity (1)—Sales are being made from tank S/T1, production is going into tank S/T3, and bottoms are being drained from tank S/T2.

Sealing of valves:

Tank S/T1—Valves F1, O1, O2, C1, E1, and D1 sealed closed.

Tank S/T2—Valves F2, O3, O4, C2, E2, and S2 sealed closed.

Tank S/T3—Valves S3, and D3 sealed closed.

On going activity (2)—Sales have been completed at tank S/T1 and draining activities have been completed at tank S/T2. Valves S1 and D2 have been sealed closed. Production is diverted to tank S/T1, tank S/T2 is in a sales mode, and tank S/T3 is being circulated.

Sealing of valves:

Tank S/T1—Valves D1 and S1, sealed closed.

Tank S/T2—Valves F2, O3, O4, C2, D2, E1, and E2 sealed closed.

Tank S/T3—Valves D3, and S3 sealed closed. Both PT valve sealed closed.

Attachment to the site facility diagram—Lease W 6789

General sealing of valves, sales by tank gauging.

Production phase—Valves S1, S2, C1 and C2 sealed closed.

Sales phase—The tank from which sales are being made will be isolated by sealing closed the fill, equalizer, circulating/drain valve.

Draining activity—The tank being drained will be isolated by sealing closed its fill valve, equalizer valve, and sales valve. Additionally, the circulating/drain valve on the other tank will be sealed closed.

Circulating activity—Valves S1, S2, D1, and the C valve on the other tank sealed closed.

Example:

On going activity (1)—Production is going into tank S/T1 and tank S/T2 is being circulated to the gunbarrel.

Sealing of valves:

Tank S/T1—Valves S1 and C1 sealed closed.

Tank S/T2—Valves S2, and D1 must be sealed closed.

On going activity (2)—Production is going into tank S/T2 and sales are on going from tank S/T1.

Sealing of valves:

Tank S/T1—Valves F1, E1, and C1 sealed closed.

Tank S/T2—Valves S2 and C2 sealed closed.

On going activity (3)—Production is going into tank S/T1 and bottoms are being drained from tank S/T2.

Sealing of valves:

Tank S/T1—Valves S1 and C1 sealed closed.

Tank S/T2—Valves S2, E1, and F2 sealed closed.

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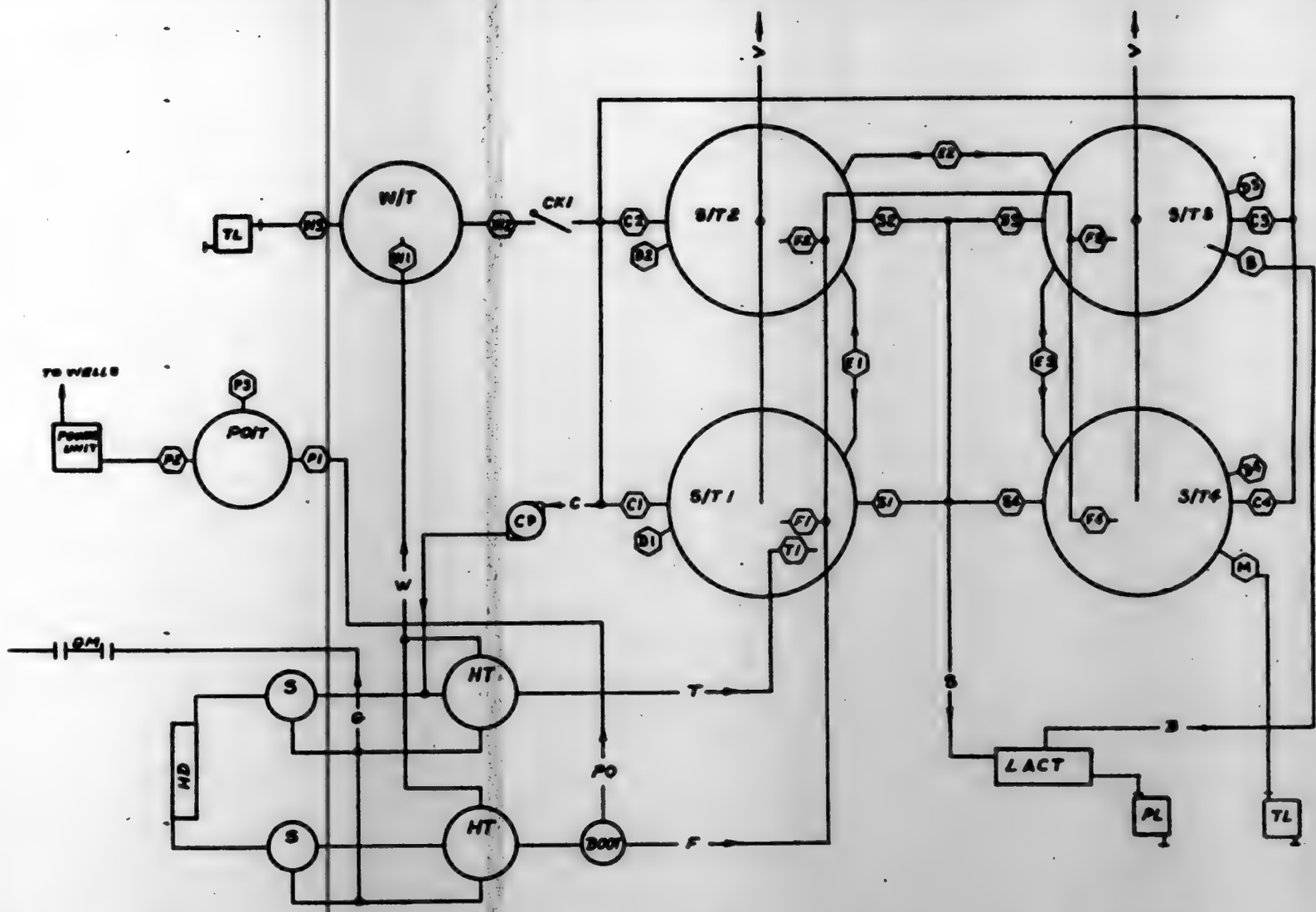

Diagram I-F

Able Oil Company
Lease: Federal C-1357
Location: Center NE/4 Sec. 17,
T. 32 N., R. 13 W.

This plan is subject to the site security plan for the Coal Oil field. The plan is located at:
Able Oil Company
100 First Street
Durango, CO

BILLING CODE 4310-84-C

Attachment to the site facility diagram—Lease C 1357

General sealing of valves, sales by LACT and tank gauging.

Production phase—Valves D1 thru D4 and M sealed closed.

Sales phase (LACT)—Valves D1 thru D4 and M sealed closed.

Withdrawal thru Valve M—Valves S4, F4, E3, D4 and C4 sealed closed.

Circulating activity:

Valves D1 thru D4 and M sealed closed.

For all of the above activities valve P3 on tank PO/T will be sealed closed.

Example:

On going activity (1)—Production is going into tank S/T3, oil is being removed from tank S/T4 thru valve M, sales are being made from tank S/T1, tank S/T2 is being circulated, and bottoms are being drawn off from tank PO/T.

Sealing of valves:

Tank S/T1—Valve D1 sealed closed.
Tank S/T2—Valve D2 sealed closed.
Tank S/T3—Valve D3 saled closed.
Tank S/T4—Valves S4, F4, D4, C4, and E3 sealed closed.
Tank PO/T—Valve P1 sealed closed.

On going activity (2)—Production is going into tank S/T2, tank S/T3 is being circulated, and sales are being made from tank S/T4. Hydraulic lift operations have been resumed.

Sealing of valves:

Tank S/T1—Valve D1 sealed closed.
Tank S/T2—Valve D2 sealed closed.
Tank S/T3—Valve D3 sealed closed.
Tank S/T4—Valves D4 and M sealed closed.
Tank PO/T—Valve P3 sealed closed.

BILLING CODE 4310-84-M

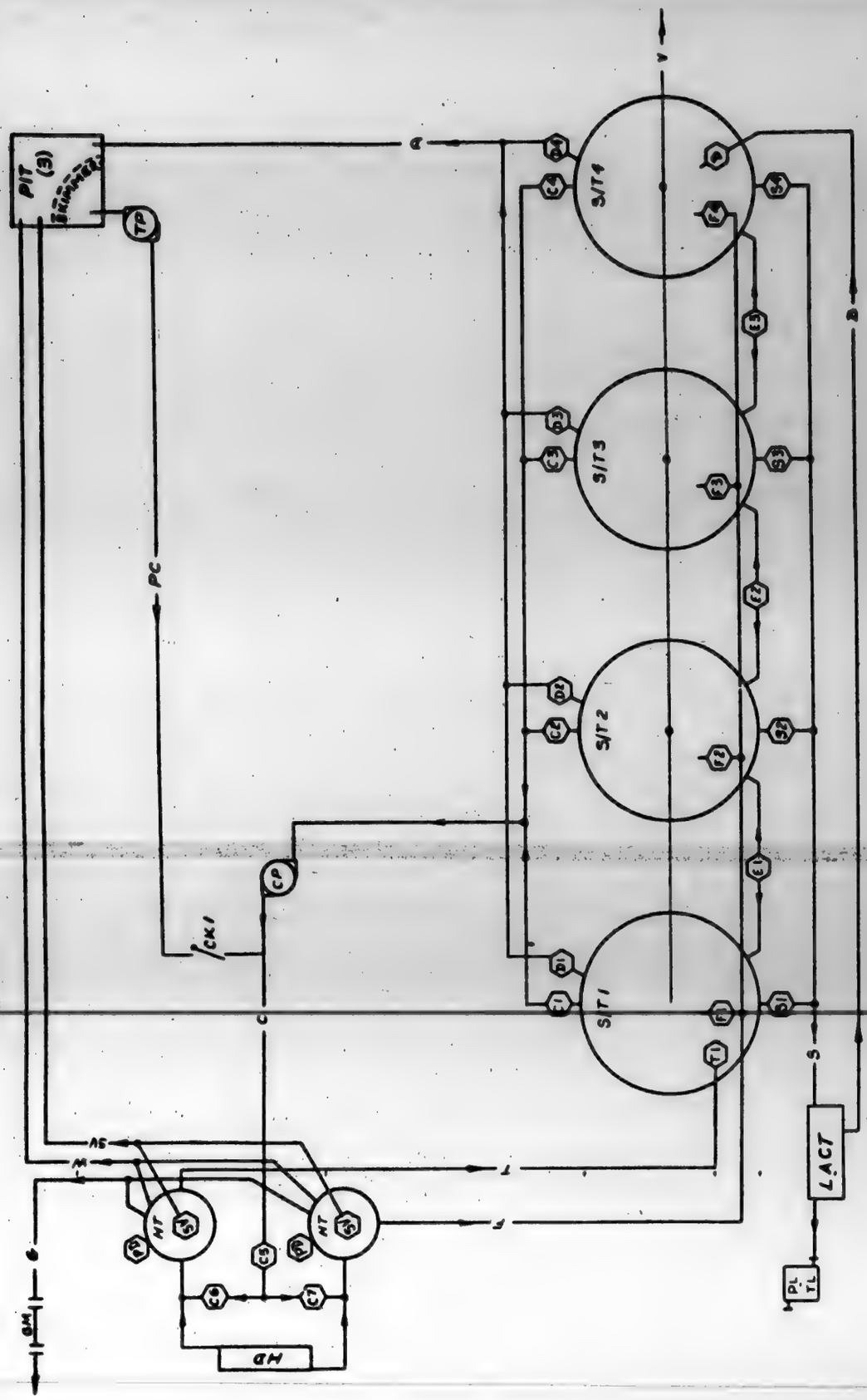

Diagram I-G

BILLING CODE 4310-84-C

Attachment to the site facility diagram—Lease M 2468

General sealing of valves, sales by LACT.

Production phase—Valves D1 thru D4 sealed closed.

Sales phase—Valves D1 thru D4 sealed closed.

Draining Activity—The tank being drained will be isolated by sealing closed the sales valve, fill valve(s), circulating valve, equalizer valve(s), and the drain valves on the other three tanks.

Circulating activity—All drain valves sealed closed.

Example:

On going activity—Production is going into tank S/T1, tank S/T2 is being drained, sales are being made from tank S/T3, and tank S/T4 is being circulated to the test treater. Pit skimming activity being conducted.

Sealing of valves:

Tank S/T1—Valve D1 sealed closed.
Tank S/T2—Valves E1, E2, S2, F2, and C2 sealed closed.
Tank S/T3—Valve D3 sealed closed.
Tank S/T4—Valve D4 sealed closed.

BILLING CODE 4310-84-M

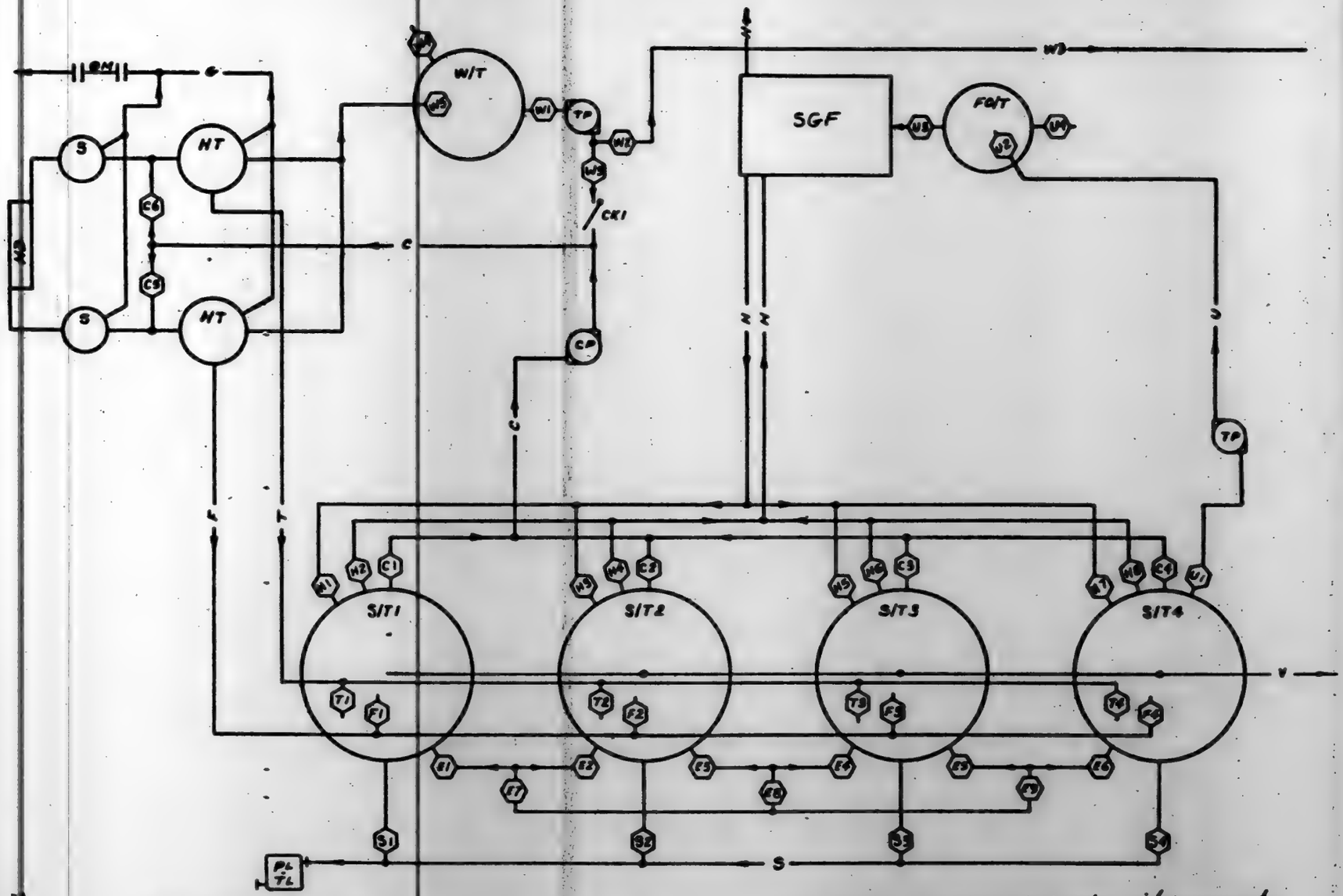

Able Oil Company
Lease: Able Sand Unit
Location: NW/4 NE/4 Sec. 12,
T. 16 S., R. 20 E.

This unit is subject to the site security plan for the Able Sand Unit. The plan is located at: Able Oil Company
1700 12th Ave.
Bakersfield, CA

Diagram 1-H

BILLING CODE 4310-84-C

Attachment to the site facility diagram—Able Sand Unit

General sealing of valves, sales and transfer by tank gauging.

Production phase.—Valves S1 thru S4 and U1 and U4 sealed closed.

Sales phase—The tank from which sales would be made would be completely isolated by sealing the fill, test, equalizer(s), and circulating valves, and if appropriate, valve U1. All other sales valves sealed closed.

Circulating activity—Valves S1 thru S4 and U1 and U4 sealed closed.

Fuel oil delivery—Valves U4, C4, T4, F4, E6 and S1 thru S4 sealed closed.

Example:

On going activity—Production is going into tank S/T1, a well is being tested into tank S/T2, sales are being made from tank S/T3, and fuel oil is being delivered from tank S/T4.

Sealing of valves:

Tank S/T1—Valve S1 sealed closed.
Tank S/T2—Valve S2 sealed closed.
Tank S/T3—Valves E4, E5, T3, F3, and C3 sealed closed.
Tank S/T4—Valves E6, S4, T4, F4, and C4 sealed closed.
Tank FO/T—Valve U4 sealed closed.

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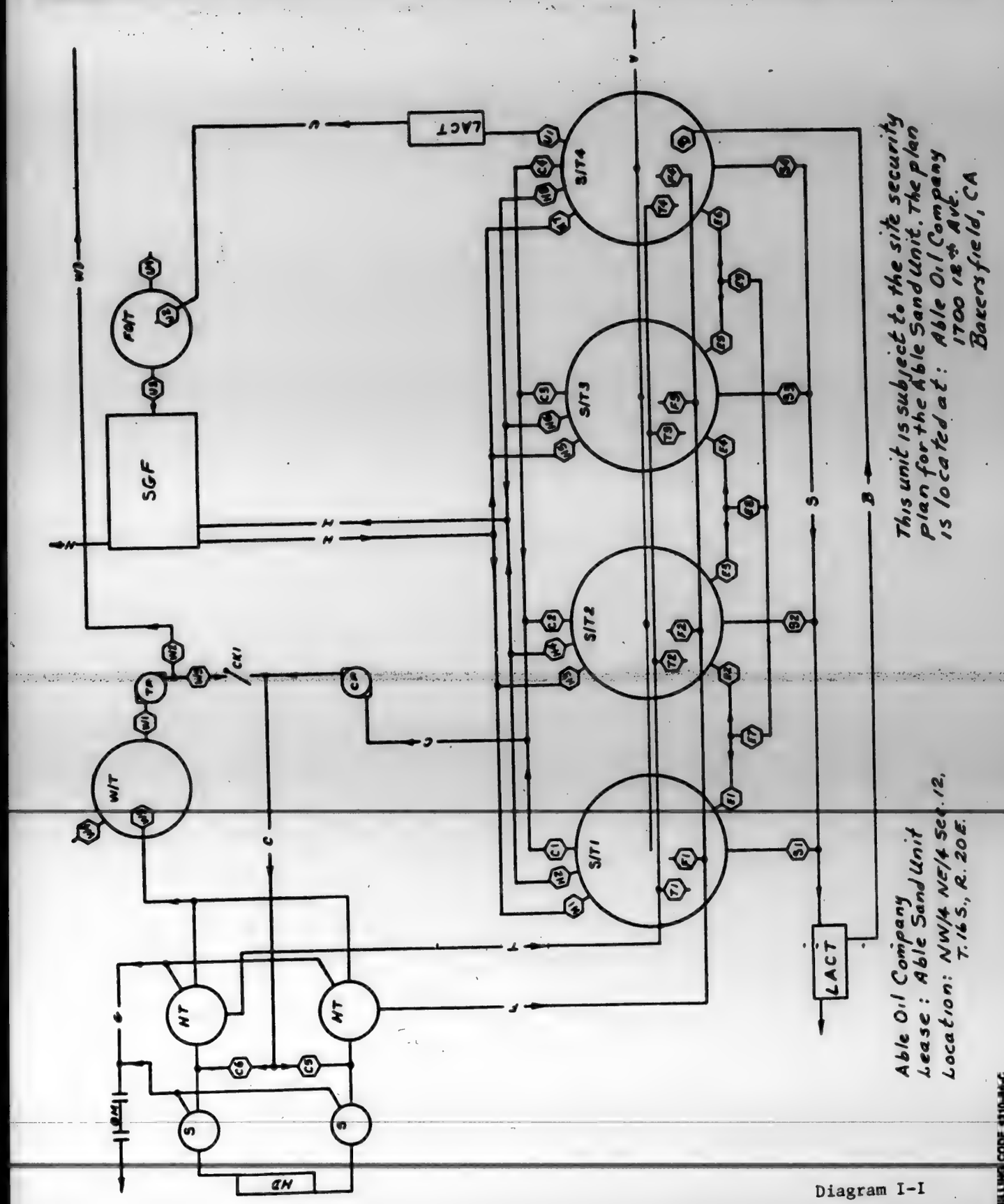

Diagram I-I

BILLING CODE 4310-84-C

Attachment to the site facility diagram—Able Sand Unit

General sealing of valves, sales and transfer by LACT.

Production phase—Valve U4 sealed closed.

Sales phase—Valve U4 sealed closed.

Circulating activity—Valve U4 sealed closed.

Fuel delivery to FO/T—Valve U4 sealed closed.

Circulate tank W/T—Valve U4 sealed closed.

Since the fuel oil contained in tank FO/T is used on the lease and such use is royalty free, the tank must be sealed to prevent removal of crude oil for the use other than it was intended.

No other valves require sealing for any phase or activity.

[FR Doc. 87-18407 Filed 8-12-87; 8:45 am]
BILLING CODE 4310-84-M

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Part III

Department of the Interior

Bureau of Land Management

43 CFR Part 3160

Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order No. 2 Drilling Operations; Proposed Rulemaking

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

[AA-630-87-4111-02]

Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order No. 2, Drilling Operations

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking would provide for the issuance of Onshore Oil and Gas Order No. 2 under the provisions of 43 CFR Subpart 3164. This order implements and supplements the requirements found in 43 CFR Part 3160 as they apply to drilling operations. Specifically, those requirements found at § 3162.3–1; 3162.3–4; 3162.4–1; 3162.4–2; 3162.5–1; 3162.5–2; and 3162.5–3 and at Subpart 3163. This Order would address the Bureau of Land Management's uniform national standards for the minimum levels of performance expected from lessees and operators when conducting drilling operations on Federal and Indian lands (except Osage Tribe). The Order also would detail enforcement actions and would prescribe the manner in which variances may be obtained from specific standards. The Bureau's specific existing internal guidelines on the subject of drilling operations have never been formalized in a Notice to Lessees and Operators, thus this Order has no direct predecessor.

DATE: Comments should be submitted by October 13, 1987. Comments received or postmarked after the above date may not be considered in the decisionmaking process on the issuance of a final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, Room 5555, Main Interior Bldg., 1800 C Street, NW., Washington, DC 20240.

Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Howard A. Lemm, (801) 524–3029, or Stephen Spector, (202) 653–2147, or Robert C. Bruce, (202) 343–8735.

SUPPLEMENTARY INFORMATION: Section 3164.1 of 43 CFR Part 3160 provides for the issuance of necessary Onshore Oil and Gas Orders when needed to implement and supplement the regulations in Part 3160 of this Title. All Orders will be promulgated through the rulemaking process and, when issued in final form, will apply on a nationwide basis. A table is included in § 3164.1 of the existing regulations which shows the existing, and if applicable, former Orders. This proposed rulemaking would result in another such Order.

This Order would establish specific and detailed requirements along with minimum standards covering well control during drilling, casing and cementing, drilling mud and the circulating system, drill stem testing, special drilling operations, related surface use, and the abandonment of drilling operations. These proposed operation standards would be used in conjunction with the broad requirements of Part 3160 and Onshore Oil and Gas Order No. 1. The proposed Order also would classify all violations as minor or major. In addition, the Order would establish the process for initially classifying a violation as minor and reissuing the violation as major if not corrected and continued drilling has changed the adverse impact.

This Order sets standards which have been developed to be minimums for drilling operations at specific pressures under differing conditions and in different parts of the country. It is recognized that under some conditions, additional requirements will be imposed routinely or general variances to specific requirements will be granted in approval documents or on a field basis. In developing these standards, the committee responsible for the preparation of this drilling order has relied on existing standards, such as those prepared by the American Petroleum Institute, the Texas Railroad Commission, the California Department of Oil and Gas, the Wyoming Oil and Gas Commission, and representative standards routinely used by industry in its drilling operations.

The principal authors of this proposed rulemaking are Howard Lemm, Utah State Office, Carl Budd, Rock Springs District Office, Wyoming, Hal Stoops, Bakersfield District Office, California, Bob Kent, Washington Office, assisted by the Onshore Orders Task Group, the staff of the Division of Legislation and Regulatory Management, all of the Bureau of Land Management, and the staff of the Office of the Solicitor, Department of the Interior.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The proposed rulemaking will have no adverse economic effects since its requirements reflect the operating practices currently followed by prudent operators when conducting drilling operations on leases under the jurisdiction of the Bureau of Land Management. It may provide a beneficial economic effect in that industry is less likely to be subject to assessments or penalties resulting from violations and/or the requirement to undertake costly remedial actions if it has a better understanding of this Bureau's requirements relating to drilling operations. The major requirements of the Order contained in this proposed rulemaking are essentially those which have been required by the Department of the Interior over the years and the burden imposed would be the same for all lessees and operators who are drilling on lands under the jurisdiction of this Bureau, regardless of size.

The proposed Order will not affect current information collection and recordkeeping requirements which have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance numbers 1004–0134 and 1004–0136.

List of Subjects 43 CFR Part 3160

Government contracts, Mineral royalties, Oil and gas exploration, Oil and gas production, Public lands—mineral resources, Indian lands—mineral resources, Reporting and recordkeeping requirements.

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Act of May 21, 1930 (30 U.S.C. 301–306), the Act of March 3, 1909, as amended (25 U.S.C. 396), the Act of May 11, 1938, as amended (25 U.S.C. 396a–396q), the Act of February 28, 1891, as amended (25 U.S.C. 397), the Act of May 29, 1924 (25 U.S.C. 398), the Act of March 3, 1927 (25 U.S.C. 398a–398e), the Act of June 30, 1919, as amended (25 U.S.C. 399), the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.) and the Indian Mineral Development Act of 1982 (25 U.S.C. 2102 et seq.), it is proposed to amend Part 3160, Group 3100, Subchapter C, Chapter

II of Title 43 of the Code of Federal Regulations as set forth below:

PART 3160—[AMENDED]

1. The authority citation for Part 3160 continues to read:

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Act of May 21, 1930 (30 U.S.C. 301–306), the Act of March 3, 1909, as amended (25 U.S.C. 396), the Act of May 11, 1938, as amended (25 U.S.C. 396a–396g), the Act of February 28, 1891, as amended (25 U.S.C. 397), the Act of May 29, 1924 (25 U.S.C. 398), the Act of March 3, 1927 (25 U.S.C. 398a–398e), the Act of June 30, 1919, as amended (25 U.S.C. 399), R.S. 441 (43 U.S.C. 1457), See also Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41), the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 et seq.), the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), the Act of December 12, 1980 (42 U.S.C. 6508), the Combined Hydrocarbon Leasing Act of 1981 (Pub. L. 97–78), the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.) and the Indian Mineral Development Act of 1982 (25 U.S.C. 2102 et seq.).

2. Section 3164.1(b) is amended by adding the following entry to the table which is part of § 3164.1(b):

§ 3164.1 Onshore oil and gas orders.

* * * * *

(b) * * *

Order No.	Subject	Effective date	Federal Register reference	Supersedes
1	Approval of operations	November 12, 1983	48 FR 48916 and 48 FR 56228	NTL-6
2	Drilling operations			None

Note.—Numbers will be assigned by the Washington Office, Bureau of Land Management, to additional Orders as they are prepared for publication and added to this table.

James E. Cason,

Acting Assistant Secretary of the Interior.

June 29, 1987.

Note.—This appendix is published for information only and will not appear in the Code of Federal Regulations.

Appendix.—Text of Oil and Gas Order No. 2.

Onshore Oil and Gas Order No. 2

Drilling Operations on Federal and Indian Oil and Gas Leases

I. Introduction.
- A. Authority.
- B. Purpose.
- C. Scope.
- D. General.

II. Definitions.
III. Requirements.
- A. Well Control Requirements.
- B. Casing and Cementing Requirements.
- C. Mud Program Requirements.
- D. Drill Stem Testing Requirements.
- E. Special Drilling Operations.
- F. Surface Use.
- G. Drilling Abandonment.

IV. Variances from Minimum Standards.
Attachments.
I. Diagrams of Choke Manifold Requirements.
II. Sections from 43 CFR Subparts 3163 and 3165.

Onshore Oil and Gas Order No. 2

Drilling Operations on Federal and Indian Oil and Gas Leases

I. Introduction

A. Authority

This order is established pursuant to the authority granted to the Secretary of the Interior pursuant to various Federal and Indian mineral leasing statutes and the Federal Oil and Gas Royalty Management Act of 1982. This authority has been delegated to the Bureau of Land Management and is implemented by the onshore oil and gas operating regulations contained in 43 CFR Part 3160. Section 3164.1 thereof specifically authorizes the Director, Bureau of Land Management, to issue Onshore Oil and Gas Orders when necessary to implement and supplement the operating regulations and provides that all such Orders shall be binding on the lessees and operators of Federal and restricted Indian oil and leases which have been, or may hereafter be, issued.

Specific authority for the provisions contained in this Order is found at: § 3162.3–1 *Drilling Applications and Plans;* § 3162.3–4 *Well Abandonment;* § 3162.4–1 *Well Records and Reports;* § 3162.4–3 *Samples, Tests, and Surveys;* § 3162.5–1 *Environmental Obligations;* § 3162.5–2 *Control of Wells;* § 3162.5–2(a) *Drilling Wells;* § 3162.5–3 *Safety Precautions;* and Supart 3163 Noncompliance and Assessment.

B. Purpose

This onshore Order details the Bureau's uniform national standards for the minimum levels of performance expected from lessees and operators when conducting drilling operations on Federal and Indian lands (except Osage Tribe) and for abandonment immediately following drilling. The purpose also is to identify the enforcement actions that will result when violations of the minimum standards are found, and when those violations are not abated in a timely manner.

C. Scope

This Order is applicable to all onshore Federal and Indian (except Osage Tribe) oil and gas leases.

D. General

1. If an operator chooses to use higher rated equipment than that authorized in the Application for Permit to Drill (APD), testing procedures shall apply to the approved working pressures, not the upgraded higher working pressures.

2. Some situations may exist either on a well-by-well or field-wide basis whereby it is commonly accepted practice to vary a particular minimum standard(s) established in this Order. This situation may be resolved by requesting a variance (See section IV of this Order), by the inclusion of a stipulation to the APD, or by the issuance of a Notice to Lessees and Operators (NTL) by the appropriate BLM office.

3. When a violation is discovered, and if it does not cause or threaten immediate substantial and adverse impact on public health and safety, the environment, production accountability or royalty income, it will be classified as minor. The violation may be reissued as a major violation if not corrected during the abatement period and continued drilling has changed the adverse impact of the violation so that it meets the specific definition of a major violation.

4. This Onshore Order is not intended to circumvent the reporting requirements or compliance aspects that may be stated elsewhere in Existing NTL's, Onshore Orders, etc. A lessee's compliance with the requirements of the regulations in this Part shall not relieve the lessee of the obligation to comply with other applicable laws and regulations in accordance with 43 CFR 3162.5–1(c). Lessee's should give special attention to the automatic assessment provisions in 43 CFR 3163.1(b).

5. This Order is based upon the assumption that operations have been approved in accordance with 43 CFR Part 3160 and Onshore Oil and Gas Order No. 1. Failure to obtain approval prior to commencement of drilling or related operations shall subject the

operator to immediate assessment under 43 CFR 3163.1(b)(2).

II. Definitions.

A. Authorized Representative means any person or entity authorized to perform the duties prescribed (See 43 CFR 3160.0–5).

B. Drilling Spool means a connection component with both ends either flanged or hubbed. It shall have an internal diameter at least equal to the bore of the casing and have smaller side outlets for connecting auxiliary lines.

C. Freeboard means the height as measured from the top of fluid level to the top of the berm of the pit.

D. Function Test means activating equipment without subjecting it to pressure.

E. H_2S Trim means any material appropriate to withstand the corrosive effects of an H_2S environment.

F. Blooie Line means a discharge line used in conjunction with a rotating head.

G. High Pressure Zone means a zone which has either pressures above the normal gradient for an area or which exceeds the designed specifications for a particular type of equipment.

H. Isolating Fresh Water and Mineral Resources means the use of cement or other approved medium to protect, separate, and segregate such resources.

I. Lease means any contract, profit-share agreement, joint venture, or other agreement issued or approved by the United States under a mineral leasing law that authorizes exploration for, extraction of, or removal of oil or gas (See 43 CFR 3160.0–5).

J. Lessee means that party authorized by or through a lease or an approved assignment thereof, to explore for, develop and produce oil and gas on the lease site in accordance with the lease terms, regulations, and law. For convience of reference throughout this Order, the term lessee also refers to and includes the owners of approved operating rights and designated operators (See 43 CFR 3160.0–5).

K. Manual Locking Device means any manually activated device, such as hand wheels, etc., that is used for the purpose of locking the preventer in the closed position.

L. Mud for Plugging Purposes means a slurry of bentonite, water, and additives needed to achieve the desired weight.

M. Neat Cement means an appropriate American Petroleum Institute (API) oil well cement without volume extenders and mixed in accordance with API standards so that free water does not exceed 1.4 percent (of volume).

N. Prompt Correction means the authorized officer has the discretion to decide in each particular situation whether or not drilling can proceed while the prescribed corrective action is performed or whether drilling shall be suspended until the corrective action is completed.

O. Precharge Pressure means the nitrogen pressure remaining in the accumulator after all of the hydraulic fluid has been expelled from beneath the movable barrier.

P. Tagging the Plug means running in the hole with tubing or drill pipe and placing the weight, not to exceed 15,000 pounds, of that string on the plug. Other methods of tagging the plug may be approved by the authorized officer.

Q. Fresh Water means water containing not more than 1,000 parts per million (ppm) of total dissolved solids, provided that such water does not contain objectionable levels of any constituent that is toxic to animal, plant, or acquatic life, unless otherwise specified in applicable notices or orders (See 43 CFR 3160.0–5).

R. Make-up Water means water used in mixing slurry for cement jobs and plugging operations, and shall be compatible with the cement constituents being used.

S. Usable Water means generally those waters containing up to 10,000 ppm of total dissolved solids (See 40 CFR 144.3).

T. 2M, 3M, 5M, 10M and 15M means the pressure rating used for equipment with a working pressure rating of the equivalent thousand pounds per square inch (psi)(2M = 2,000 psi, 3M = 3,000 psi, etc.).

U. Targeted Tee or Turn means a fitting used in pressure piping in which a bull plug or blind flange is installed at the end of a tee or cross, opposite the fluid entry arm, to change the direction of flow and to prevent erosion.

V. Test Plug (Boll Weevil Plug) means a tool designed to seal the well bore immediately beneath the blowout preventer (BOP) stack, which allows high-pressure testing of the stack and auxiliary equipment without the risk of pressure damage to the casing or to exposed formations.

W. Weep Hole means a small hole that allows pressure to bleed off through the metal plate used in covering well bores after abandonment operations.

X. Exploratory Well means any well drilled either outside a radius of 2 miles from established production or which penetrates to previously undrilled formations (commonly referred to as "wildcat well").

III. Requirements

A. Well Control Requirements

1. Blowout preventer (BOP) and related equipment (BOPE) shall be installed, used, maintained, and tested in a manner necessary to assure well control and shall be in place and operational prior to drilling the surface casing shoe unless otherwise approved by the APD. Commencement of drilling without a BOP installed, unless otherwise approved, shall subject the operator to immediate assessment under 43 CFR 3163.1(b)(1). The BOP and related control equipment shall be suitable for operations in those areas which are subject to sub-freezing conditions. The BOPE shall be based on known or anticipated sub-surface pressures, geologic conditions, accepted engineering practice, and surface environment. Item number 7 of the 8 point plan in the APD specifically addresses expected pressures. The working pressure of all BOPE shall exceed the anticipated surface pressure to which it may be subjected, assuming no fluid (except gas) in the hole.

2. The gravity of the violation for many of the well control minimum standards listed below are shown as minor. However, very short abatement periods in this Order are often specified in recognition that by continuing to drill, the violation which was originally determined to be of a minor nature may cause or threaten immediate, substantial and adverse impact on public health and safety, the environment, production accountability, or royalty income, which would require its reclassification as a major violation.

a. *Minimum standards and enforcement provisions for well control equipment.* i. A device shall be installed at the surface that is capable of complete closure of the well bore. The device shall be closed whenever the well is unattended.

Violation: Major.

Corrective Action: Install the equipment as specified.

Normal Abatement Period: Prompt correction required.

ii. 2M system:

—Annular preventer or double ram with blind and pipe rams*

—Kill line (2 inch minimum)

—1 kill line valve (2 inch minimum)

—1 choke line valve

—2 chokes (refer to diagram in Attachment 1)

—Upper kelly cock valve with handle available

—Safety valve and subs to fit all drill strings in use

—Pressure gauge on choke manifold

—2 inch minimum choke line
—Fill-up line above the uppermost preventer.
Violation: Minor (all items unless marked by asterisk).
Corrective Action: Install the equipment as specified.
Normal Abatement Period: 24 hours.
*Violation: Major.
Corrective Action: Install the equipment as specified.
Normal Abatement Period: Prompt correction required.

iii. 3M system:
—Annular preventers*
—Double ram with blind rams and pipe rams*
—Drilling spool with side outlet connection 2 inch by 3 inch minimum*
—Kill line (2 inch minimum)
—A minimum of 2 choke line valves (3 inch minimum)*
—3 inch diameter choke line
—2 kill line valves and a check valve (2 inch minimum)*
—2 chokes (refer to diagram in Attachment 1)
—Pressure gauge on choke manifold
—Upper kelly cock valve with handle available
—Safety valve and subs to fit all drill strings in use
—All connections subjected to well pressure shall be flanged, welded, or clamped*
—Fill-up line above the uppermost preventer.
Violation: Minor (all items unless marked by asterisk).
Corrective Action: Install the equipment as specified.
Normal Abatement Period: 24 hours.
*Violation: Major.
Corrective Action: Install the equipment as specified.
Normal Abatement Period: Prompt correction required.

iv. 5M system:
—Annular preventer*
—Pipe ram, blind ram, and as conditions warrant, such as pressures reaching or exceeding working pressures of the system, another pipe ram shall also be required* (a variable ram also may be substituted for use with a tapered drill string)
—Drilling spool with side outlet connection (2 by 3 inch minimum)*
—3 inch diameter choke line
—2 choke line valves (3 inch minimum)*
—Kill line (2 inch minimum)
—2 chokes with 1 remotely controlled from rig floor (refer to diagram in Attachment 1)
—2 kill line values and a check valve (2 inch minimum)*
—Upper kelly cock valve with handle available
—When the expected pressures approach working pressure of the system, 1 remote kill line tested to stack pressure (which shall run to the outer edge of the substructure and be unobstructed)
—Lower kelly cock valve with handle available
—Safety valve(s) and subs to fit all strings of drill pipe in use
—Inside BOP or float sub available
—Pressure gauge on choke manifold
—All connections subjected to well pressure shall be flanged, welded, or clamped*
—Fill-up line above the uppermost preventer.
Violation: Minor (all items unless marked by asterisk).
Corrective Action: Install the equipment as specified.
Normal Abatement Period: 24 hours.
*Violation: Major.
Corrective Action: Install the equipment as specified.
Normal Abatement Period: Prompt correction required.

v. 10M & 15M system:
—Rotating head shall be required if conditions warrant*
—Annular preventer*
—2 pipe rams*
—Blind rams*
—Drilling spool with side outlet connection (2 by 3 inch minimum)*
—3 inch choke line*
—2 kill line valves (2 inch minimum) and check valve*
—Remote kill line (2 inch minimum) shall run to the outer edge of the substructure and be unobstructed
—Manual and hydraulic choke line valves (3 inch minimum)*
—3 chokes, 1 being remotely controlled (refer to diagram in Attachment 1)
—Pressure gauge on choke manifold
—Upper kelly cock valve with handle available
—Lower kelly cock valve with handle available
—safety valves and subs to fit all strings of drill pipe
—Inside BOP or float sub available
—Wear ring in casing head
—All connections subjected to well pressure shall be flanged, welded, or clamped*
—Fill-up line installed above the uppermost preventer.
Violation: Minor (all items unless marked by asterisk).
Corrective Action: Install the equipment as specified.
Normal Abatement Period: 24 hours.
*Violation: Major.
Corrective Action: Install the equipment as specified.
Normal Abatement Period: Prompt correction required.

vi. If repair or replacement of the BOPE is required after testing, this work shall be performed prior to drilling out the casing shoe.
Violation: Major.
Corrective Action: Install the equipment as specified.
Normal Abatement Period: Prompt correction required.

vii. When the BOPE cannot function to secure the hole, the hole shall be secured using cement, retrievable packer or a bridge plug to assure safe well conditions.
Violation: Major.
Corrective Action: Install the equipment as specified.
Normal Abatement Period: Prompt correction required.

b. Minimum standards and enforcement provisions for choke manifold equipment. i. All choke lines shall be straight lines unless turns use tee blocks or are targeted with running tees.
Violation: Minor
Corrective Action: Install the equipment as specified.
Normal Abatement Period: 24 hours.

ii. Choke manifold equipment configuration shall be in accordance with the appropriate diagram shown in Attachment 1 of this Order.
Violation: Minor
Corrective Action: Install the equipment as specified.
Normal Abatement Period: Prompt correction required.

c. Minimum standards and enforcement provisions for pressure accumulator system. i. 2M system—accumulator shall have sufficient capacity to close all BOP's and retain 200 psi above precharge. Nitrogen bottles that meet manufacturer's specifications may be used as the backup to the required independent power source.
Violation: Minor
Corrective Action: Install the equipment as specified.
Normal Abatement Period: 24 hours.

ii. 3M system—accumulator shall have sufficient capacity to open the hydraulically-controlled choke line valve (if so equipped), close all rams plus the annual preventer, and retain a minimum of 200 psi above precharge on the closing manifold without the use of the closing unit pumps. This is a minimum requirement. The fluid reservoir capacity shall be double the accumulator capacity and fluid level maintained at manufacturer's recommendations. The 3M system shall

have 2 independent power sources to close the preventers. Nitrogen bottles (3 minimum) may be 1 of the independent power sources and, if so, shall maintain a charge equal to the manufacturer's specifications.

Violation: Minor

Corrective Action: Install the equipment as specified.

Normal Abatement Period: 24 hours.

iii. 5M and higher system—accumulator shall have sufficient capacity to both open and close the hydraulically-controlled gate valve and all rams plus the annular preventer (for 3 ram systems add a 50 percent safety factor to compensate for any fluid loss in the control system or preventers) and retain a minimum pressure of 200 psi above precharge on the closing manifold without use of the closing unit pumps. The reservoir capacity shall be double the accumulator capacity, and the fluid level shall be maintained at manufacturer's recommendations. Two independent sources of power shall be available for powering the closing unit pumps. Nitrogen bottles are suitable as a backup power source only, and shall be recharged when the pressure falls below manufacturer's specifications.

Violation: Minor.

Corrective Action: Install the equipment as specified.

Normal Abatement Period: 24 hours.

d. Minimum standards and enforcement provisions for accumulator precharge pressure test. This test shall be conducted prior to connecting the closing unit to the BOP stack and at least once every 6 months. The accumulator pressure shall be corrected if the measured precharge pressure is found to be above or below the maximum or minimum limit specified below (only nitrogen gas may be used to precharge):

Accumulator working pressure rating	Minimum acceptable operating pressure	Desired precharge pressure	Maximum acceptable precharge pressure	Minimum acceptable precharge pressure
1,500 psi	1,500 psi	750 psi	800 psi	700 psi
2,000 psi	2,000 psi	1,000 psi	1,100 psi	900 psi
3,000 psi	3,000 psi	1,000 psi	1,100 psi	900 psi

Violation: Minor.

Corrective Action: Perform test.

Normal Abatement Period: 24 hours.

e. Minimum standards and enforcement provisions for power availability. Power for the closing unit pumps shall be available to the unit at all times so that the pumps shall automatically start when the closing unit manifold pressure has decreased to a pre-set level.

Violation: Major.

Corrective Action: Install the equipment as specified.

Normal Abatement Period: Prompt correction required.

f. Minimum standards and enforcement provisions for pump capacity. Each BOP closing unit shall be equipped with sufficient number and sizes of pumps so that, with the accumulator system removed from service, the pumps shall be capable of opening the hydraulically-operated gate valve, plus closing the annular preventer on the smallest size drill pipe to be used within 2 minutes, and obtain a minimum of 1200 psi pressure on the closing unit manifold.

Violation: Minor.

Corrective Action: Install the equipment as specified.

Normal Abatement Period: 24 hours.

g. Minimum standards and enforcement provisions for locking devices. A manual locking device (i.e., hand wheels) or automatic locking devices shall be installed on all systems of 2M or greater. A valve shall be installed in the closing line as close as possible to the annular preventer to act as a locking device.

Violation: Minor.

Corrective Action: Install the equipment as specified.

Normal Abatement Period: 24 hours.

h. *Minimum standards and enforcement provisions for remote controls.* Remote controls shall be readily accessible to the driller. Remote controls for all 3M or greater systems shall be capable of closing all preventers. Remote controls for 5M or greater systems shall be capable of both opening and closing all preventers. Master controls shall be at the accumulator and shall be capable of opening and closing all preventers and the choke line valve used on 3M or greater systems.

Violation: Minor.

Corrective Action: Install the equipment as specified.

Normal Abatement Period: 24 hours.

i. *Minimum standards and enforcement provisions for well control equipment testing.* i. Perform all tests described below using clear water or an appropriate fluid for subfreezing temperatures with a viscosity similar to water.

ii. Ram type preventers and associated equipment shall be tested to rated stack working pressure if isolated by test plug or to 70 percent of internal yield pressure of casing if BOP stack is not isolated from casing. Pressure shall be maintained for at least 15 minutes. Valve on casing head below test plug shall be open during test of BOP stack.

iii. Annular type preventers shall be tested to 50 percent of rated working pressure. Pressure shall be maintained at least 15 minutes.

iv. As a minimum, the above test shall be performed:

A. when initially installed;

B. whenever seal is broken;

C. following related repairs; and

D. at 30-day intervals.

v. Valves shall be tested from working pressure side during BOPE tests with all down stream valves open.

vi. When testing the kill line valve(s), the check valve shall be held open or the ball removed.

vii. Annular preventers shall be activated at least weekly.

viii. Pipe and blind rams shall be activated each trip, however, this function need not be performed more than once a day.

ix. A BOPE drill shall be conducted weekly for each drilling crew.

x. Pressure tests shall apply to all related well control equipment.

xi. All of the above described tests shall be recorded in the drilling log.

Violation: Minor.

Corrective action: Perform the necessary test or provide documentation.

Normal Abatement Period: 24 hours or next trip, as most appropriate.

B. Casing and Cementing Requirements

The proposed casing and cementing programs shall be conducted as approved to protect and/or isolate all fresh water zones, potentially productive zones, lost circulation zones, abnormally pressured zones, and any other leasable mineral deposits. Any isolating medium other than cement shall receive approval prior to use. The casing setting depth shall be calculated to position the casing seat opposite a competent formation which contains the maximum pressure to which it will be exposed, assuming no fluids (except gas) in the hole. Determination of casing

setting depth shall be based on all relevant factors, including: presence/absence of hydrocarbons; fracture gradients; fresh water zones; formation pressures; lost circulation zones; other minerals; or other unusual characteristics. All indications of possible fresh water zones shall be reported. Minimum design factors for the casing and cement program shall include the following:

—Tension: 1.8 buoyant or 1.6 dry.

—Collapse: 1.125.

—Burst: 1.0.

—Casing design shall assume formation pressure gradients of 0.44 to 0.50 psi per foot for exploratory wells (lacking better data).

—Casing design shall assume fracture gradients from 0.70 to 1.00 psi per foot for exploratory wells (lacking better data).

—Casing collars shall have a minimum clearance of ½ inch on all sides in the hole/casing annulus.

—All waiting on cement times shall be adequate to achieve a minimum of 500 psi compressive strength.

1. Minimum Standards and Enforcement Provisions for Casing and Cementing.

a. All casing, except the conductor casing, shall be new or reconditioned used pipe which meets or exceeds API standards for the intended use.

Violation: Major

Corrective Action: Perform remedial action as specified by the authorized officer.

Normal Abatement Period: Prompt correction required.

b. For liners, a minimum of 100 feet of overlap between a string of casing and the next larger casing is required. The interval of overlap shall be sealed and tested. The liner shall be tested by a fluid entry or pressure test to determine whether a seal between the liner top and the next larger string has been achieved.

Violation: Minor.

Corrective Action: Perform remedial action as specified by the authorized officer.

Normal Abatement Period: Upon determination of corrective action.

c. The surface casing shall be cemented back to surface either during the primary cement job or by remedial cementing.

Violation: Major.

Corrective Action: Perform remedial cementing.

Normal Abatement Period: Prompt correction required.

d. All of the above described tests shall be recorded in the drilling log.

Violation: Minor.

Corrective Action: Perform the necessary test or provide documentation.

Normal Abatement Period: 24 hours.

e. All indications of fresh water shall be reported to the authorized officer.

Violation: Major.

Corrective Action: Report information as required.

Normal Abatement Period: Prompt correction required.

f. Surface casing shall have API approved centralizers on the bottom 3 joints as a minimum.

Violation: Major.

Corrective Action: Logging/testing may be required to assure the quality of the job. Recementing may then be specified.

Normal Abatement Period: Prompt correction upon determination of corrective action.

g. Top plugs shall be used to reduce contamination of cement by displacement fluid. A bottom plug or other acceptable technique, such as inner string cement method, shall be utilized to help isolate the cement from contamination by the mud fluid being displaced ahead of the cement slurry.

Violation: Major

Correction Action: Logging and/or recementing may be required to assure the quality of the cement job.

Normal Abatement Period: Upon determination of corrective action.

h. All casing strings below the conductor shall be pressure tested to 70 percent of internal yield pressure or 1 psi per foot of casing depth, whichever is less. If pressure declines more than 10 percent in 30 minutes, corrective action shall be taken.

Violation: Minor.

Corrective Action: Perform the test and/or remedial action as specified by the authorized officer.

Normal Abatement Period: 24 hours.

i. On all exploratory wells and any well requiring 5M BOPE system or greater, a pressure integrity test of each casing shoe shall be performed. Formation at the shoe shall be tested to a minimum of the mud weight equivalent anticipated to control the formation pressure to the next casing depth or at total depth of the well. This test shall be performed before drilling more than 20 feet of new hole.

Violation: Minor.

Corrective Action: Perform the specified test.

Normal Abatement Period: 24 hours.

C. Mud Program Requirements

The characteristics, use, and testing of drilling mud and the implementation of related drilling procedures shall be designed to prevent the loss of well control. Sufficient quantities of mud materials shall be maintained and readily accessible for the purpose of assuring well control.

Minimum Standards and Enforcement Provisions for Mud Program and Equipment

1. Record slow pump speed on daily drilling report after mudding up.

Violation: Minor.

Corrective Action: Record required information.

Normal Abatement Period: 24 hours.

2. Visual mud monitoring shall be in place to detect volume changes indicating loss or gain of circulating fluid volume.

Violation: Minor.

Corrective Action: Install necessary equipment.

Normal Abatement Period: 24 hours.

3. For all systems of 5M or greater, electronic/mechanical mud monitoring equiment shall be required, which shall include as a minimum: pit volume totalizer (PVT); stroke counter; and flow sensor.

Violation: Minor.

Corrective Action: Install necessary instrumentation.

Normal Abatement Period: 24 hours.

4. A mud test shall be performed every 24 hours to determine density, viscosity, gel strength, filtration, and pH.

Violation: Minor.

Corrective Action: Perform necessary tests.

Normal Abatement Period: 24 hours.

5. A trip tank shall be used on 10M and 15M systems and on those upgraded 5M systems as described in section III 2 a iv hereof.

Violation: Minor.

Corrective Action: Install necessary equipment.

Normal Abatement Period: 24 hours.

6. For all 5M or greater systems or those systems expected to contain H_2S concentrations greater than 100 ppm, there shall be gas detecting equipment to monitor the drilling mud return.

Violation: Minor.

Corrective Action: Install necessary equipment.

Normal Abatement Period: 24 hours.

7. All flare systems shall be designed to gather and burn all gas. The flare line(s) discharge shall be located not less than 150 feet from the well head, having straight lines unless turns are targeted with running tees, and shall be positioned in accordance with the prevailing wind direction. The flare system shall have an effective method for ignition. Where noncombustible gas

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is vented, the system shall be provided supplemental fuel for ignition and to maintain a continuous flare.

Violation: Major.

Corrective Action: Install equipment as specified.

Normal Abatement Period: 24 hours.

8. A mud-gas separator (gas buster) shall be installed and operable for all systems of 5M or greater, beginning at a point at least 1000 feet above the anticipated hydrocarbon zone of interest.

Violation: Major.

Corrective Action: Install required equipment.

Normal Abatement Period: Prompt correction required.

D. Drill Stem Testing Requirements

All Drill Stem Tests (DST) shall be accomplished during daylight hours. However, DSTs may be allowed to continue at night if the test was initiated during daylight hours and the rate of flow is stabilized and if adequate lighting is available (i.e., lighting which is adequate for visibility and vapor-proof for safe operations). Packers can be released, but tripping should not begin before daylight.

Minimum Standards for Drill Stem Testing

1. A flowing DST shall be either reversed out of the testing string under controlled surface conditions, or displaced into the formation prior to pulling the test tool. This would involve using a circulating sub.

Violation: Major.

Corrective Action: Contingent on circumstances and as specified by the authorized officer.

Normal Abatement Period: Prompt correction required.

2. Separation equipment shall be properly installed before a test starts.

Violation: Major.

Corrective Action: Install required equipment.

Normal Abatement Period: Prompt correction required.

3. All engines within 150 feet of the wellbore that are required to "run" during the test shall have spark arresters or water cooled exhausts.

Violation: Major.

Corrective Action: Install required equipment.

Normal Abatement Period: Prompt correction required.

E. Special Drilling Operations

1. In addition to the equipment already specified elsewhere in this onshore order, the following equipment shall be in place during air/gas drilling:

—Properly lubricated and maintained rotating head *

—Spark arresters on engines or water cooled exhaust *

—Blooie line discharge 150 feet from well bore and securely anchored

—Straight run on blooie line

—Deduster equipment *

—Containment of all cuttings and the circulating medium *

—Float valve above bit *

—Automatic igniter and continuous pilot light on the blooie line *

—Compressors located in the opposite direction from the blooie line a minimum of 125 feet from the well bore

—Mud circulating equipment, water, and enough mud (does not have to be premixed) to maintain hole capacity and circulate through the pits.

Violation: Minor (unless marked by an asterisk).

Corrective Action: Install the equipment as specified.

Normal Abatement Period: 24 hours.

* Violation: Major.

Corrective Action: Install the equipment as specified.

Normal Abatement Period: Prompt correction required.

2. Hydrogen sulphide operation is specifically addressed under Onshore Oil and Gas Order No. 6.

F. Surface Use

Onshore Oil and Gas Order No. 1 specifically addresses surface use. That Order provides for safe operations, adequate protection of surface resources and uses, and other environmental components. The operator/lessee is responsible for, and liable for, all building, construction, and operating activities and subcontracting activities conducted in association with the APD. Requirements and special stipulations for surface use are contained in or attached to the approved APD. These requirements and stipulations of approval shall be strictly adhered to by the operator/lessee and any contractors.

Minimum Standards and Enforcement Provisions for Surface Use

1. A 3-foot freeboard shall be maintained on all earthen pits.

2. Trenches shall be dug around substructures and steel pits to channel mud and water into the reserve pit or another acceptable location as prescribed in the APD.

3. Trash shall be confined.

4. If pit lining is required, it shall be in accordance with the specifications outlined by the surface management authority *.

5. Burning shall be approved prior to any such action.

6. Roads, pad, and pit construction shall be performed in accordance with the approved APD. Variances to the APD shall be approved prior to any changes in the construction of the above items.

7. Pad construction shall assure surface runoff drains away from drill pad and reserve pit(s).

8. Fencing shall be done in accordance with the approved APD.

9. Dust control shall be accomplished in accordance with the approved APD.

10. Construction materials and the water supply shall be from the approved sources and routes as outlined in the approved APD. Variances to the APD shall be approved prior to any changes in the construction material and/or water supply used.

11. Any additional surface disturbance to that approved in the APD shall be approved prior to that disturbance taking place.*

12. Sanitary facilities shall be approved by the proper regulatory authorities.

Violation: Minor (unless as indicated by an asterisk).

Corrective Action: Perform required work to gain compliance.

Normal Abatement Period: 24 hours or as specified by the authorized officer.

*Violation: Major.

Corrective Action: Installed the equipment/perform work to gain compliance.

Normal Abatement Period: Prompt correction required.

G. Drilling Abandonment Requirements

The following standards apply to the abandonment of newly drilled dry or non-productive wells in accordance with 43 CFR 3162.3–4 and section V of Onshore Oil and Gas Order No. 1. Approval shall be obtained prior to the commencement of abandonment. All formations bearing usable-quality water, oil, gas, or geothermal resources, and other minerals shall be protected. Approval may be given orally by the authorized officer before abandonment operations are initiated. This oral request and approval shall be followed by a written notice of intent to abandon filed not later than the fifth business day following oral approval. Failure to obtain approval prior to commencement of abandonment operations shall result in immediate assessment of under 43 CFR 3163.1(b)(3). The hole shall be in static condition at the time any plugs are placed (this does not pertain to plugging lost circulation zones). Within 30 days of completion of abandonment, a subsequent report of abandonment shall be filed. Plugging design for an

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abandoned hole shall include the following:

1. Open Hole.

i. A cement plug shall be placed to extend at least 50 feet below the bottom (except as limited by total depth (TD) or plugged back total depth (PBTD)), to 50 feet above the top of:

a. Any zone encountered during drilling which contains fluid with a potential to migrate;

b. Lost circulation zones; or

c. Any potentially valuable mineral, including noncommercial hydrocarbons, coal, and oil shale.

ii. All cement plugs, except the surface plug, shall have sufficient slurry volume to fill 100 feet of hole, plus an additional 10 percent of slurry for each 1,000 feet of depth.

iii. No plug, except the surface plug, shall be less than 25 sacks without receiving specific approval from the authorized officer.

iv. Extremely thick sections of the open hole may be secured by placing 100-foot plugs across the top and bottom of the formation, and in accordance with item ii hereof.

v. In the absence of productive zones or minerals which otherwise require placement of cement plugs, long sections of open hole shall be plugged at least every 3,000 feet. Such plugs shall be placed across in-gauge sections of the hole.

2. Cased Hole. A cement plug shall be placed opposite all open perforations and extend to a minimum of 50 feet below (except as limited by TD or PBTD) to 50 feet above the perforated interval. All cement plugs, except the surface plug, shall have sufficient slurry volume to fill 100 feet of hole, plus an additional 10 percent of slurry for each 1,000 feet of depth. In lieu of the cement plug, a bridge plug is acceptable, provided:

i. The bridge plug is set within 50 feet to 100 feet above the open perforations;

ii. The perforations are isolated from any open hole below; and

iii. The bridge plug is capped with 50 feet of cement. If a bailer is used to cap this plug, 35 feet of cement shall be sufficient.

3. Casing Removed from Hole. If any casing is cut and recovered, a cement plug shall be placed to extend at least 50 feet above and below the stub. The exposed hole resulting from the casing removal shall be secured as required in items 1i and 1ii hereof.

4. An additional cement plug placed to extend a minimum of 50 feet above and below the shoe of the surface casing (or intermediate string, as appropriate).

5. Annular Space. No annular space that extends to the surface shall be left open to the drilled hole below. If this condition exists, a minimum of the top 100 feet of annulus shall be plugged with cement.

6. Isolating Medium. Any cement plug which is the only isolating medium for a fresh water interval or a zone containing a valuable mineral deposit shall be tested by tagging with the drill string. Any plugs placed where the fluid level will not remain static also shall be tested by either tagging the plug with the working pipe string, not to exceed 15,000 pounds, or pressuring to a minimum pump (surface) pressure of 1,000 psi, with no more than a 10 percent drop during a 15-minute period (cased hole only). If the integrity of any other plug is questionable, or if the authorized officer has specific concerns for which he/she orders a plug to be tested, it shall be tested in the same manner.

7. Silica Sand or Silica Flour. Silica sand or silica flour shall be added to cement exposed to bottom hole static temperatures above 230°F to prevent heat degradation of the cement.

8. Surface Plug. A cement plug of at least 50 feet shall be placed in the smallest casing which extends to the surface. The top of this plug shall be placed as near the eventual casing cut-off point as possible.

9. Mud. Each of the intervals between plugs shall be filled with mud of sufficient density to exert hydrostatic pressure exceeding the greatest formation pressure encountered while drilling such interval. In the absence of other information at the time plugging is approved, a minimum mud weight of 9 pounds per gallon shall be specified.

10. Surface Cap. All casing shall be cut-off at the base of the cellar or 3 feet below final restored ground level (whichever is deeper), and the cellar filled from the cement plug to the surface with suitable material. The well bore shall then be covered with a metal plate at least ¼ inch thick and welded in place, or a 4-inch pipe, 10-feet in length, 4 feet above ground and embedded in cement. The well location and identity shall be permanently inscribed. A weep hole shall be left if a metal plate is welded in place.

Minimum Standard

All plugging orders shall be strictly adhered to.

Violation: Major.

Corrective Action: Contingent upon circumstances.

Normal Abatement Period: Prompt correction required.

IV. Variances from Minimum Standard

An operator may request the authorized officer to approve a variance from any of the minimum standards prescribed in section III hereof. All such requests shall be submitted in writing to the appropriate authorized officer and provide information as to the circumstances which warrant approval of the variance(s) requested and the proposed alternative methods by which the related minimum standard(s) are to be satisfied. The authorized officer, after considering all relevant factors, if appropriate, may approve the requested variance(s) if it is determined that the proposed alternative(s) meet or exceed the objectives of the applicable minimum standard(s).

ATTACHMENTS

I. Diagrams of Choke Manifold Equipment

II. Sections from 43 CFR Subparts 3163 and 3165 (Not included with Federal Register publication)

BILLING CODE 4310-84-M

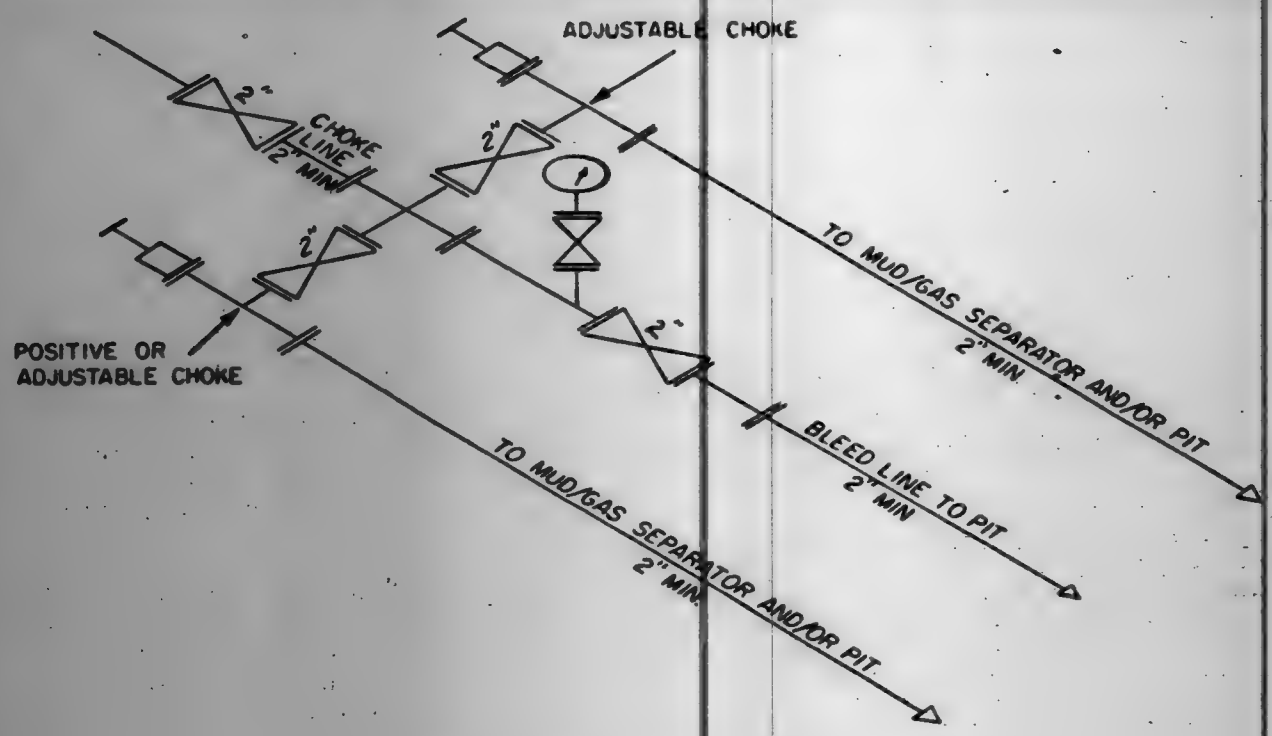

2M CHOKE MANIFOLD EQUIPMENT

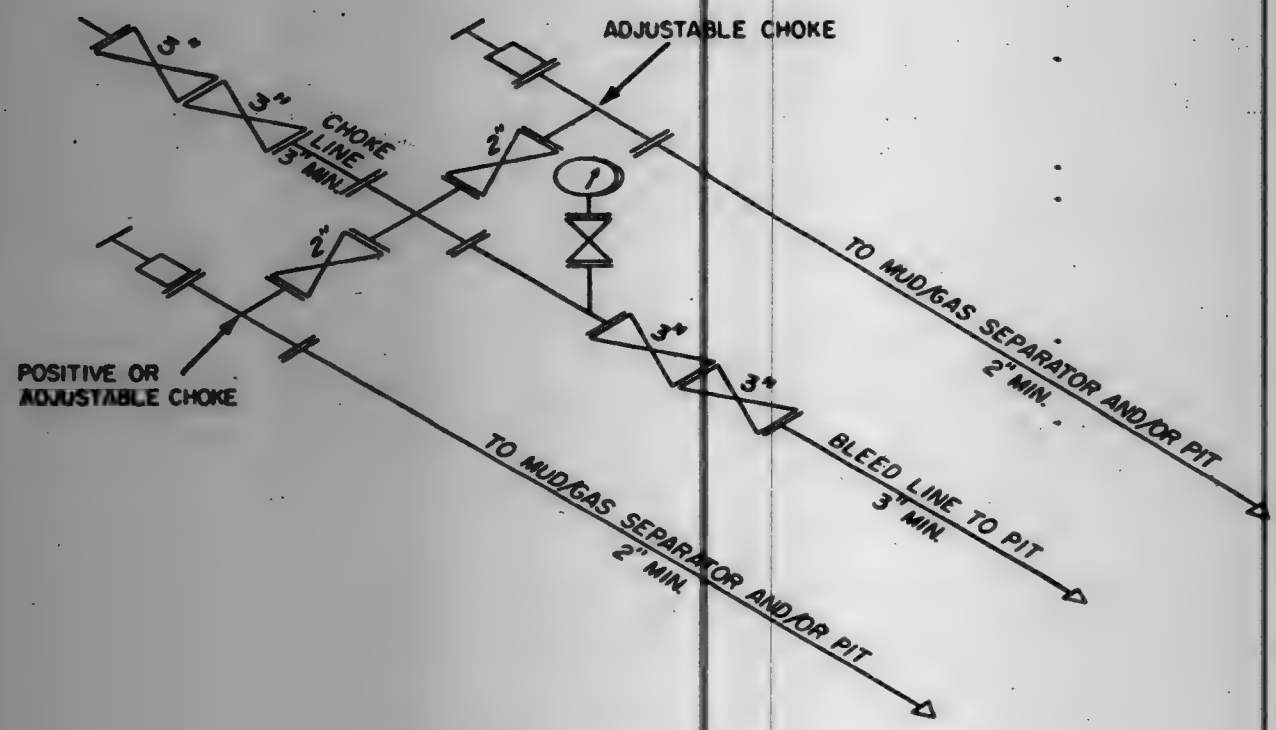

3M CHOKE MANIFOLD EQUIPMENT

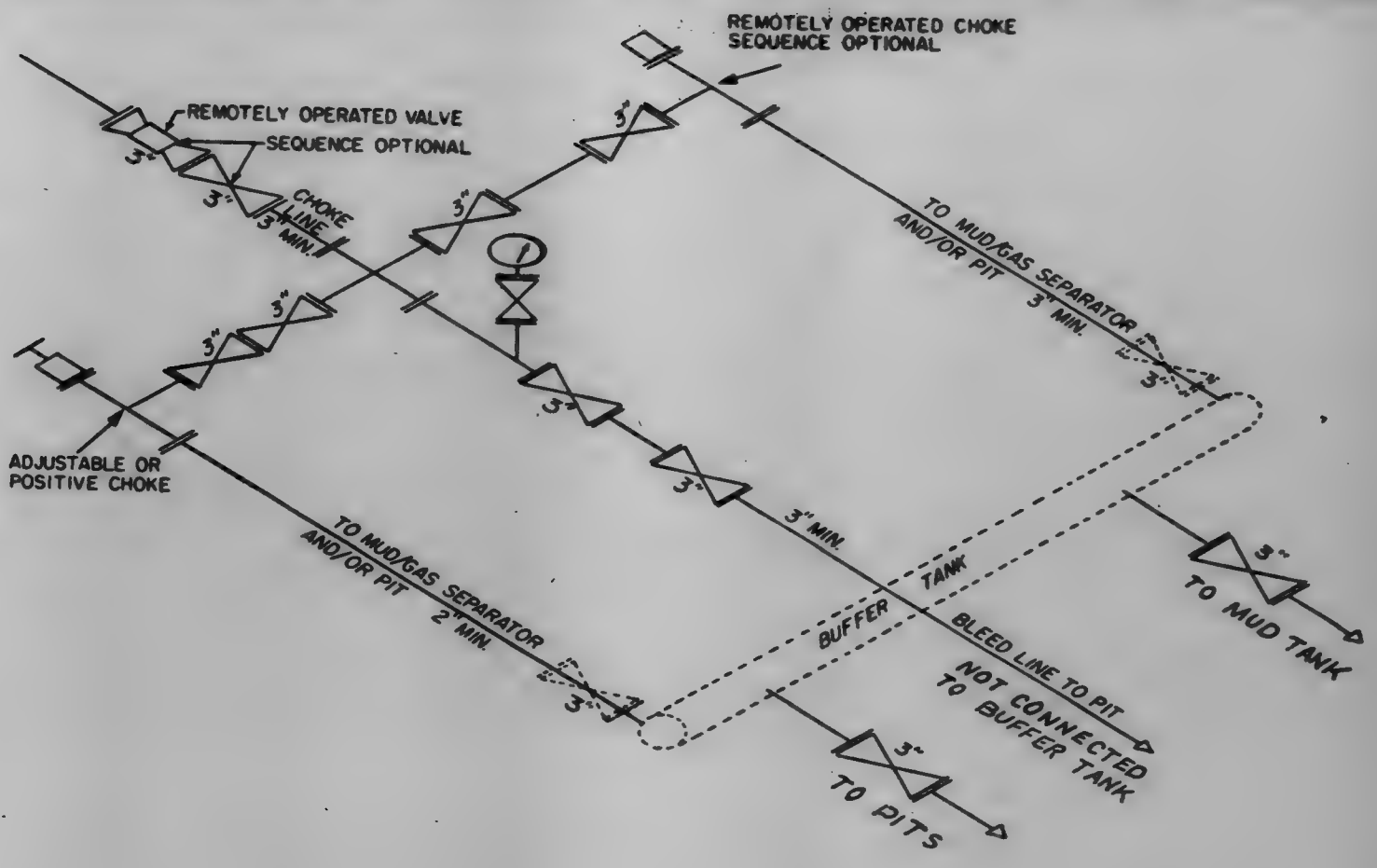

5M CHOKE MANIFOLD EQUIPMENT

Although not required for any of the choke manifold systems, buffer tanks are sometimes installed downstream of the choke assemblies for the purpose of manifolding the bleed lines together. When buffer tanks are employed, valves shall be installed upstream to isolate a failure or malfunction without interrupting flow control. Though not shown on 2M, 3M, 10M, or 15M drawings, it would also be applicable to those situations.

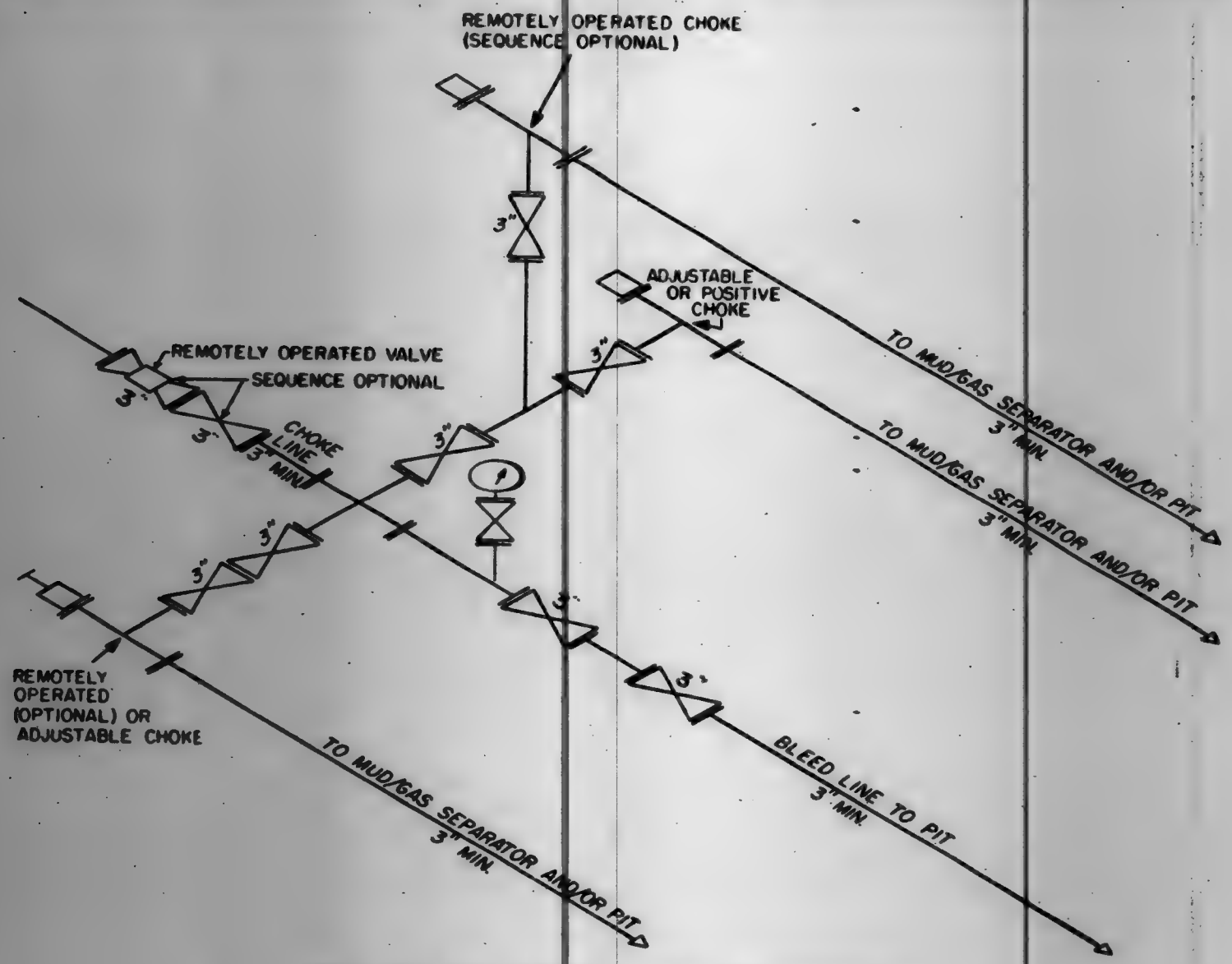

IOM AND I5M CHOKE MANIFOLD EQUIPMENT

[FR Doc. 87-18498 Filed 8-12-87; 8:45 am]
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federal register

Thursday
August 13, 1987

Part IV

Department of Education

34 CFR Parts 502, 504, and 524
Bilingual Education; Academic Excellence Program; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Parts 502, 504, and 524

Bilingual Education; Academic Excellence Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary of Education issues final regulations for the Bilingual Education: Academic Excellence Program. The Academic Excellence Program provides financial assistance for projects designed to serve as models of exemplary programs of transitional bilingual education, developmental bilingual education, and special alternative instruction, and facilitates the dissemination of these effective bilingual educational practices.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Dr. Mary T. Mahony, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW., (Room 421, Reporters Building), Washington, DC 20202. Telephone (202) 447-0228.

SUPPLEMENTARY INFORMATION: The authority for the Academic Excellence Program is section 721(a)(4) of Part A of the Bilingual Education Act, Title VII of the Elementary and Secondary Education Act of 1965, as amended. (20 U.S.C. 3221-3262).

On March 10, 1987, the Secretary published a Notice of Proposed Rulemaking (NPRM) for the Academic Excellence Program in the Federal Register (52 FR 7360).

The provisions of these final regulations are substantially the same as those of the NPRM. In response to public comments on the proposed regulations, the Secretary has made some changes. These include increasing the number of programs that each SEA may nominate.

Summary of significant comments and responses

The following is a summary of the significant comments received and the Secretary's responses:

Section 524.21 How does an SEA nominate an applicant under this program?

Comment. Several commenters suggested that limiting to six the number of nominations assigned each State is inequitable, given the demographic distribution of limited English proficient (LEP) children and the diversity of capacity building efforts in each state.

Response. A change has been made. The Secretary will consider up to eight nominations from each State. To avoid delaying awards in Fiscal Year 1987, this change will first be effective in Fiscal Year 1988.

Section 524.31 What selection criteria does the Secretary use?

Comment. Several commenters stated that the language used in § 524.31(a)(2) and the term "identified areas" used in paragraph (b)(2) was ambiguous.

Response. A change has been made. The language in § 524.31(a)(2) and (b)(2) has been revised to clarify any possible ambiguity and to emphasize the awarding of points to projects suitable for adoption, not necessarily projects that address areas of need.

Section 524.32 What additional factors does the Secretary consider?

Comment. Several commenters recommended deleting the additional factors considered by the Secretary in awarding grants. They expressed concern that applicants could not address these factors since the focus of the Academic Excellence Program is dissemination of effective programs to new sites but the additional factors are more related to programs of instructional services.

Response. A change has been made in § 524.32. Section 721(h) of the statute requires that the Secretary consider these additional factors when making grants to LEAs under Part A of the Act. Language has been revised to make these statutory requirements more appropriate for academic excellence projects.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of Executive Order 12372 is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Parts 502, 504, and 524.

Bilingual education, Colleges and universities, Dissemination, Education, Elementary and secondary education, Grant programs—education, Reporting and recordkeeping requirements, Teachers.

Dated: July 28, 1987.

William J. Bennett,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.003, Bilingual Education: Academic Excellence Program)

The Secretary amends Title 34 of the Code of Federal Regulations as follows:

1. By removing Part 502.

2. By removing Part 504.

3. By adding a new Part 524 to read as follows:

PART 524—BILINGUAL EDUCATION: ACADEMIC EXCELLENCE PROGRAM

Subpart A—General

Sec.

524.1 Academic Excellence Program.
524.2 Who is eligible to apply for assistance?
524.3 What regulations apply?
524.4 What definitions apply?

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

524.10 What are the project activities?

Subpart C—How Does One Apply for an Award

Sec.
524.20 How does an applicant apply for a grant under this program?
524.21 How does an SEA nominate an applicant under this program?

Subpart D—Does the Secretary Make an Award?

524.30 How does the Secretary evaluate an application?
524.31 What selection criteria does the Secretary use?
524.32 What additional factors does the Secretary consider?
524.33 What is the length of the project period?

Subpart E—What Conditions Must Be Met by a Recipient?

524.40 What requirements must a grantee meet concerning a model site?

Authority: 20 U.S.C. 3221–3236, unless otherwise noted.

Subpart A—General

§ 524.1 Academic Excellence Program.

The Academic Excellence Program identifies and disseminates information about programs of transitional bilingual education, development bilingual education, or special alternative instruction that—

(a) Have an established record of providing effective, academically excellence instruction; and

(b) Are designed to—

(1) Serve as models of exemplary bilingual education programs; and

(2) Facilitate the dissemination of effective bilingual education practices.

(Authority: 20 U.S.C. 3223(a)(8))

§ 524.2 Who is eligible to apply for assistance?

(a) Subject to the limitations in paragraph (b) of this section, the following parties are eligible for assistance under this part:

(1) Local education agencies (LEAs).

(2) Institutions of higher education (IHEs), including junior or community colleges, that apply jointly with one or more LEAs.

(b) In the case of an application submitted by an IHE jointly with one or more LEAs, an LEA must be designated as the applicant in the group agreement required under 34 CFR 75.128.

(c) In order to be considered for assistance under this part, an applicant must administer a program of transitional bilingual education, developmental bilingual education, or special alternative instruction that is either—

(1) Nominated by its State educational agency (SEA) in accordance with § 524.20; or

(2) Approved by the Joint Dissemination Review Panel (JDRP), in accordance with 34 CFR 796.3 and 796.13.

(Authority: 20 U.S.C. 3231(b)(1)(A), 3223(a)(8))

§ 524.3 What regulations apply?

The following regulations apply to the Academic Excellence Program:

(a) The regulations identified in 34 CFR 500.3.

(b) The regulations in this Part 524.

(Authority: 20 U.S.C. 3231(a)(4))

§ 524.4 What definitions apply?

The following definitions apply to the Academic Excellence Program:

(a) The definitions identified in 34 CFR 500.4.

(b) The definition of "Joint Dissemination Review Panel" and "JDRP Approval" set forth in 34 CFR 796.3.

(c) "Adoption" means implementation of the applicant's program of transitional bilingual education, developmental bilingual education, or special alternative instruction in a new setting.

(Authority: 20 U.S.C. 3231(a)(4))

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 524.10 What are the project activities?

(a) A project must—

(1) Develop material—

(i) To inform LEAs and other service providers such as private schools or institutions of higher education conducting an elementary or secondary education program about the grantee's program; and

(ii) To use for training in conjunction with adoption of the program;

(2) Conduct outreach activities to inform potential users about the grantee's program and the availability of assistance from the grantee in its adoption;

(3) Make necessary arrangements to inform interested LEAs and other educational service providers about the exemplary program;

(4) Assist in adoption by providing training and technical assistance to educational personnel in the preparation, implementation, and evaluation stages of an adoption; and

(5) Evaluate the quality and effectiveness of the activities listed in paragraphs (a) (1), (2), (3), and (4) of this section.

(b) Assistance under this part may not be used to pay for direct instructional services to children.

(Authority: 20 U.S.C. 3231(a)(4))

Subpart C—How Does One Apply for an Award?

§ 524.20 How does an applicant apply for a grant under this program?

(a) Prior to submitting its application, an applicant must obtain—

(1) JDRP approval of its program of transitional bilingual education, developmental bilingual education, or special alternative instruction; or

(2) The nomination of its program of transitional bilingual education, developmental bilingual education, or special alternative instruction by the SEA of the State in which the program is located.

(b) An application must document compliance with paragraph (a) of this section and include—

(1) The information required under Section 721(c)(4) of the Act; and

(2) Assurances that the exemplary program is currently operating at a local site.

(Authority: 20 U.S.C. 3231(a)(4))
(Approved by the Office of Management and Budget under control number 1885–0003)

§ 524.21 How does an SEA nominate an applicant under this program?

(a) Beginning in fiscal year 1988, the SEA of the State in which the program is located may nominate up to eight programs under this part. For fiscal year 1987, the SEA may nominate up to six programs.

(b) In nominating programs, the SEA shall consider—

(1) Documented evidence of the established record of effectiveness of the program in teaching English to LEP students;

(2) Exemplary features of the program; and

(3) Other relevant information provided by the applicant.

(c) The SEA shall provide assurances to the Secretary that—

(1) The program has been reviewed with respect to each of the factors referred to in section 721(c)(4)(A)–(D) of the Act and the criterion in § 524.31(a); and

(2) The program is exemplary.

(Authority: 20 U.S.C. 3231(a)(4))

Subpart D—How Does the Secretary Make an Award?

§ 524.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a new grant on the basis of the criteria listed in § 524.31. The Secretary awards a maximum of 100 points for all the criteria. The maximum possible score for each criterion is

indicated in parentheses after the criterion heading.

(b) The Secretary then applies the additional factors listed in § 524.32.

(Authority: 20 U.S.C. 3231(a)(4))

(Approved by the Office of Management and Budget under control number 1885–0003)

§ 524.31 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria in evaluating each application:

(a) *Educational significance.* (30 points) The Secretary reviews each application to determine the significance of the program in—

(1) Teaching English to LEP children:

(2) Using techniques that are suitable for adoption by other providers of educational services to LEP children.

(b) *Project design and objectives.* (25 points)

(1) The Secretary considers the extent to which the project has specific and quantifiable objectives including—

(i) An effective plan of management that ensures the proper and efficient administration of the project; and

(ii) Effective strategies for—

(A) Developing and disseminating information about the exemplary program;

(B) Training and assisting potential users in adoption of the program;

(C) Monitoring and evaluating adoption of the program; and

(D) Using resources and personnel to achieve each objective.

(2) The Secretary considers the extent to which the project will help address identified needs.

(3) The Secretary reviews each application to determine the ability of the applicant to maintain the exemplary program.

(c) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use on the project including—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (c)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications under paragraph (c)(1) of this section, the Secretary considers—

(i) Experience and training, in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(d) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) Produce objective and quantifiable data including the evaluation of the performance of students who have received instruction at the adoption sites. The evaluation should, if possible, include per- and post-adoption testing of English language proficiency.

(2) The Secretary reviews the relationship of the evaluation plan to the goals of the project and the activities conducted to attain those goals.

Cross-Reference. See 34 CFR 75.590 Evaluation by the grantee.

(e) *Coordination.* (5 points) The Secretary reviews each application to determine the extent to which the applicant will coordinate activities with SEAs, Multifunctional Resource Centers, the National Clearinghouse on Bilingual Education, and other providers of technical assistance serving programs for limited English proficient persons.

(f) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) the budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(g) *Commitment and capacity.* (5 points) The Secretary reviews each application to determine the applicant's commitment to the dissemination and adoption of the exemplary program in the past, and the likelihood of the applicant's continued efforts to disseminate and achieve the adoption of the exemplary program when Federal assistance under this part ends.

(Authority: 20 U.S.C. 3231(a)(4))

(Approved by the Office of Management and Budget under control number 1885–0003).

§ 524.32 What additional factors does the Secretary consider?

(a) The Secretary consider the following additional factors in awarding grants:

(1) How dissemination and adoption of the model program would relate to—

(i) The need to assist LEP children who have been historically underserved by programs for limited English proficient persons; and

(ii) The need to provide funding according to the distribution of LEP children throughout the Nation, and within each of the States.

(2) The relative numbers of children from low-income families likely to be benefited by the project.

(b) The Secretary distributes an additional 15 points among the factors listed in paragraph (a) of this section. The Secretary indicates how these 15 points are distributed in the application notice published in the Federal Register.

(Authority: 20 U.S.C. 3231)

§ 524.33 What is the length of the project period?

The Secretary approves a project period of three years for an award under the Academic Excellence Program.

(Authority: 20 U.S.C. 3231(d)(2))

Subpart E—What Conditions Must Be Met by a Recipient?

§ 524.40 What requirements must a grantee meet concerning a model site?

A grantee funded under the Academic Excellence Program shall maintain a model site where—

(a) Visitors can observe the exemplary program; and

(b) There are educational staff who are experienced and knowledgeable about the program.

(Authority: 20 U.S.C. 3231(a)(4))

[FR Doc. 87–18407 Filed 8–12–87; 8:45 am]

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H.R. 3190/Pub. L. 100-84

To provide for a temporary increase in the public debt limit (Aug. 10, 1987; 101 Stat. 550; 1 page) Price: $1.00

S. 858/Pub. L. 100-85

To dedicate the North Cascades National Park to Senator Henry M. Jackson (Aug. 10, 1987; 101 Stat. 551; 1 page) Price: $1.00

H.R. 27/Pub. L. 100-86

Competitive Equality Banking Act of 1987 (Aug. 10, 1987; 101 Stat. 552; 112 pages) Price: $3.25

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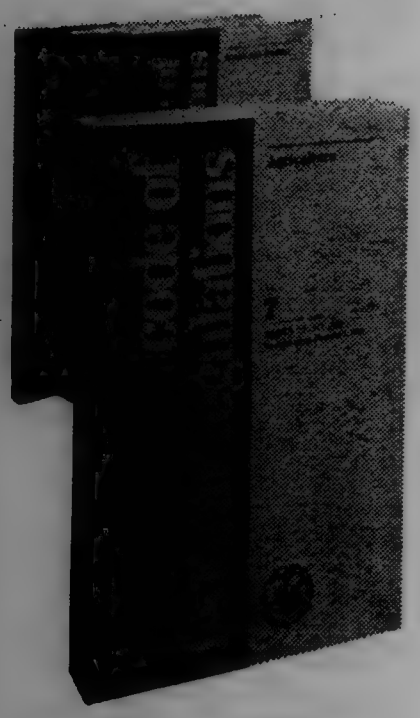

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The President

Executive Order 12605 of August 12, 1987

Navy and Marine Corps Reserve Officer Promotions

By the authority vested in me as President by the Constitution and the laws of the United States of America, including Section 301 of Title 3 of the United States Code, and in order to delegate certain functions concerning the promotion of commissioned officers of the Naval Reserve and the Marine Corps Reserve, it is hereby ordered as follows:

Section 1. The function vested in the President by Section 5898(b) of Title 10 of the United States Code to approve, modify, or disapprove the report of a Naval Reserve or Marine Corps Reserve selection board is delegated to the Secretary of Defense. Nothing in this Section shall be deemed to delegate the authority vested in the President by Section 5898(c) of Title 10 of the United States Code to remove a name from a selection board report.

Sec. 2. The function delegated to the Secretary of Defense by this Order may be redelegated to the Deputy Secretary of Defense, any of the Assistant Secretaries of Defense, and the Secretary of the Navy who may further subdelegate such authority to subordinates who are appointed to their office by the President, by and with the advice and consent of the Senate.

Sec. 3. With respect to the functions delegated by this Order, all prior actions taken for or on behalf of the President that would have been valid if taken pursuant to this Order are ratified.

Ronald Reagan

THE WHITE HOUSE,
August 12, 1987.

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Rules and Regulations

Federal Register
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Friday, August 14, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 46

Increase in Licensee Fees; Perishable Agricultural Commodities Act

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USA) is revising the Regulations (other than Rules of Practice) under the Perishable Agricultural Commodities Act (PACA) to increase the license fee. The purpose of the revision is to cover increased operating costs associated with administration of the program.

EFFECTIVE DATE: September 1, 1987.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Finn, Assistant to the Chief, PACA Branch, Room 2095 S., Fruit and Vegetable Division, AMS, USDA, Washington, DC 20250, Phone (202) 475–3244.

SUPPLEMENTARY INFORMATION: This action has been reviewed under the USDA procedures established in the Secretary's Memorandum 1512–1 and supplemental memorandum dated March 5, 1980, to implement Executive Order 12291 and has been classified as "non-major" because it does not meet any of the criteria identified under the Executive Order.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Although there are numerous small entities doing business subject to the Perishable Agricultural Commodities Act, the regulation revision merely assures that the program, intended to prevent unfair trade practices in the industry, is sufficiently funded to perform its responsibilities.

The proposed action will not have an annual effect on the economy of $100 million or more, nor will it result in a major increase in costs or prices. The Administrator of the Agricultural Marketing Service has determined that the proposal is in response to an emergency funding situation and as such is considered to be an agency management decision. OMB Control No. 0581–0031 is assigned pursuant to the Paperwork Reduction Act.

Background

The PACA was enacted by Congress in 1930 so as to establish a code of fair trading practices covering the marketing of fresh and frozen fruits and vegetables in interstate or foreign commerce. It protects growers, shippers, and distributors dealing in those commodities by prohibiting unfair and fraudulent practices.

The law provides for the enforcement of contracts by providing for the collection of damages from anyone who fails to meet contractual obligations. On May 7, 1984, an amendment to the PACA, Pub. L. 98–273, impressed a statutory trust on licensees for perishable agricultural commodities received, products derived from, and any receivables or proceeds due from the sale of the commodities for the benefit of suppliers, sellers, or agents who have not been paid.

The PACA is enforced through a licensing system. All commission merchants, dealers, and brokers engaged in business subject to the Act must be licensed. The cost of administering the Act is financed entirely through the license fees paid by those engaging in business subject to the law. The Secretary is charged with setting the license fee at a level necessary to meet the expenses of administration within the maximum provided in the law by Congress. Amendments to the Act in 1981 permitted the Secretary to assess a base annual fee of up to $300, plus an assessment of up to $150 for each branch operation exceeding nine. The maximum aggregate annual license fee for any firm cannot exceed $3,000.

The administration of the trust statute has increased the workload under the program along with related travel expenses far above original expectations. As a by-product of the trust amendment, there has also been a dramatic increase in the filings of reparation actions by injured parties to recover damages under their contract, as well as increases in trade inquiries, disciplinary complaint filings, and investigations that require personal audits. It is anticipated that the workload and travel requirements will continue to increase as more growers, shippers, and distributors seek to utilize the benefits and protection of the new statute. Under the current fee assessment, the program has been operating with a deficit and drawing down its trust fund reserve. Unless fees are increased, the program will deplete its trust fund reserve during Fiscal Year 1988, at which time enforcement activities will have to be curtailed.

In order to ensure continued and effective administration of the program, the license fees for firms dealing in commodities subject to the PACA must be amended to reflect the increased costs associated with the program in the coming fiscal years. The current license fee is $216 plus $108 for each branch or additional business facility operated by the applicant exceeding nine. The Secretary has determined that an increase in such fees to $300 and $150, respectively, will cover the costs of the program through the beginning of Fiscal Year 1990.

Comments: On June 25, 1987, AMS published in the Federal Register (52 FR 23942) a proposed revision of regulations to increase license fees to cover operating costs associated with the program. The public was invited to submit written comments for 30 days ending July 27, 1987. During the 30-day period, the Agency received eight comments on the proposed rule. Six commentors support the fee increase. Two of the commentors that support the fee increase suggested that fees be assessed for each trust notice and/or reparation complaint filing. One of these commentors, however, recommended that the agency collect a filing fee on reparation and trust complaints from only non-licensed parties. The

commentor stated this fee assessment would help support costs of administration of the Act and lessen the need to further raise the license fee.

One of the commentors, an association representing the fruit and vegetable industry, expressed recommendations of certain members. One suggestion was that filing fees be assessed for each trust notice in order to offset administrative expenses and cut down on "frivolous" trust notice filings. Some members suggested that a fee be assessed against non-licensees filing reparation complaints. The commentor also expressed concerns of its members that the PACA Branch should take aggressive steps to license all firms subject to the Act. There is an ongoing effort to identify and license potential licensees. With the new fee structure in place, however, the branch will be in a better position to direct additional resources to the license prospect area.

One commentor suggested that a fee be charged for each trust notice filing instead of a large increase in license fees. This commentor stated it would be more equitable for the firms who use the PACA trust to pay for it.

These comments all relate to one issue—a fee assessment for filing PACA actions. Under the trust provisions, sellers have the right to file a trust notice anytime after payment is past due. This amendment was intended to provide protection for produce traders by returning funds that might otherwise be uncollectable and to date, it has proven to be a very successful marketing tool.

If a fee were to be assessed for filing notices, it might reduce the number of filings. However, implementing a fee assessment would take an amendment to the Act. It would also require substantial input from all segments of the produce industry to determine if a fee assessment would benefit the administration of the law.

In the area of reparation complaints where parties have nine months to file claims, as opposed to 30 days under the trust, it is less likely that an invalid claim would be filed. Because there is a longer statute of limitations for reparation cases, the complaining parties almost always have sufficient time to determine the merits of the claim and whether there is a proper cause of action.

To require a filing fee for non-licensees only (primarily growers) either in reparation complaints or trust notice filings, would not have a significant impact on the PACA Branch budget.

One commentor, an association representing food brokers, is concerned that another increase in license fees will occur in another six months. This commentor also states that the PACA Branch is not consistent in applying increases. As an example, it compares the past increases of the exemption levels for frozen food brokers representing vendors and retailers with the license fee increases. Frozen food brokers representing vendors and retailers currently are exempted from licensing unless their purchases of fresh and frozen fruits and vegetables exceeds $230,000 in a calendar year. It is the commentor's opinion that the invoice values of sales have increased and the exemption amount should be increased as well.

With the new fee structure in place, the license fees will be at their statutory maximum and by law, cannot be raised unless the Act is amended to increase the ceilings. With the new fees in place, the branch will be in a position to concentrate more efforts in the license enforcement area which should substantially increase revenue. Although projections show the PACA reserve fund will again begin depleting by FY 1990, it is anticipated an increase in license numbers may counteract the need for additional revenue.

The retailer/broker exemption has been raised throughout the years to keep pace with the increased cost of perishable agricultural commodities. The exemption was raised from $100,000 to $200,000 in November 1978, and to the current $230,000 in December 1981. The license fees have been raised from $100 to $150 in October 1979, to $180 in October 1982, and to $216 in 1986. Raising the retailer/broker exemption would require an amendment to the law whereas this rule proposes an amendment to the regulations. If the industry supports an increase in the exemption to offset inflation, this action would require Congressional approval.

The commentor also questioned the need for food brokers to be licensed at all because these companies have no control over pricing, packaging, or handling of product. Because most PACA time is spent on credit problems, sales terms, and fulfillment of contract, the commentor believes the license fee is more of a penalty for food brokers because they are not involved in this segment of the industry.

Food brokers are an integral part of the fruit and vegetable industry. They are estimated to be a part of 75 percent of all fruit and vegetable transactions. Because of this integral role, brokers are required to be licensed by the Act and the issue of whether or not they should be licensed is a matter not subject to this rulemaking. However, it is appropriate to document the importance of the broker's function in the sales process. Generally, buyers and sellers do not communicate with each other directly, but rely on the broker to consummate their contracts. If a broker is negligent in performing its duties, it can have an adverse effect on contracts between buyers and sellers. The broker's function to negotiate contracts is a vital link in the chain of distribution. Brokers are closely involved in purchase and sale contracts especially considering that the PACA Branch relies on brokers as unbiased parties to a contract to aid in determining the merits of a dispute.

When all segments of the industry abide by fair trading practices, protection of the marketplace is maximized. Therefore, it is essential that food brokers come within the realm of PACA jurisdiction.

In a final statement, the commentor questioned why frozen fruits and vegetables come within PACA jurisdiction while canned products are exempt.

The fresh and frozen fruit and vegetable industry is unique in many respects. Product availability can be limited by growing conditions as well as other factors. The products are highly perishable, as opposed to canned products that can be stored over extended periods of time in non-refrigerated common storage. The fruit and vegetable industry is particularly vulnerable to unfair trading practices such as misrepresentation of products or contractual defaults because of price changes. The purpose of the PACA and its administration is to suppress unfair and fraudulent practices.

Because the PACA fund will be fully depleted sometime in FY 1988, an emergency condition exists. Without immediate implementation of the license fee change, funding may be inadequate to continue administering the Perishable Agricultural Commodities Act at current levels early in the fiscal year. In view of this situation, the Administrator of the Agricultural Marketing Service has determined that this regulation is in response to an emergency funding situation, and that the fee increase must be effectuated as soon as possible. He has determined for reasons of administrative feasibility that September 1, 1987, is the earliest date on which this regulation may take effect. This will provide continuity of the program and avoid further depletion of the trust fund.

List of Subjects in 7 CFR Part 46

Agriculture commodities.

Accordingly, 7 CFR Part 46 is amended as set forth below:

PART 46—[AMENDED]

1. The authority citation for Part 46 continues to read as follows:

Authority: Section 15, 46 Stat. 537; 7 USC 499o.

2. Section 46.6 is revised to read as follows:

§ 46.6 License Fee.

The annual license fee is three hundred (300) dollars plus one hundred fifty (150) dollars for each branch or additional business facility operated by the applicant exceeding nine. In no case shall the aggregate annual fees paid by any applicant exceed three thousand (3,000) dollars. The Director may require that the fee be submitted in the form of a money order, bank draft, cashier's check or certified check made payable to Agricultural Marketing Service. Authorized representatives of the Department may accept fees and issue receipts therefore.

Done at Washington, DC, on August 11, 1987.

William T. Manley,

Acting Administrator.

[FR Doc. 87-18610 Filed 8-13-87; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS Number: 1043-87]

Nonimmigrant Classes

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Clarification.

SUMMARY: This notice clarifies certain questions raised concerning the amendment to 8 CFR 214.2, issued by the Immigration and Naturalization Service December 3, 1986 and published in the **Federal Register** on December 9, 1986, at 51 FR 44266. This notice also explains the basis for the foregoing amendment.

EFFECTIVE DATE: August 14, 1987.

FOR FURTHER INFORMATION CONTACT: Michael L. Shaul, Senior Immigration Examiner, Immigration and Naturalization Service, 425 Eye Street NW. Washington, DC 20536 Telephone: (202) 633-3946.

SUPPLEMENTARY INFORMATION: In the December 9, 1986 **Federal Register**, 51 FR 44266, the Immigration and Naturalization Service (the Service) published an amendment to 8 CFR 214.2. This amendment added paragraph (b)(3), barring classification and admission as business visitors of aliens seeking to enter the United States to perform certain building and construction work. The background and provisions of this amendment are described in the above-noted **Federal Register**.

1. On April 14, 1987, the Department of State published in the **Federal Register**, 52 FR 12001, a notice of proposed rulemaking, which would amend its regulations regarding visa issuance to temporary business visitors to conform to the Service's regulations. In that proposal, the Department of State stated that concern had been raised as to whether certain language in the preamble of the Service's amendment would suggest an exception to the denial of B-1 nonimmigrant status for building or construction workers entering the United States for the purpose of performing after-sale installation and service, or warranty work after installation. The Department of State further stated that it had received from the Service confirmation that no such exception was intended.

In view of a further comment received by the Department of State in response to its proposed rule, we wish to confirm the Service's intent that the December 9, 1986 amendment to 8 CFR 214.2(b) precludes B-1 nonimmigrant status to any alien seeking to enter the United States to perform building or construction work, whether on-site or in-plant, subject only to an exception for supervision and training as described in the amendment. The December 9, 1986 amendment does not allow an additional exception for building or construction work incident to after-sale installation and service or other warranty work after installation.

2. The December 9, 1986 amendment was a modification of Operations Instruction 214.2(b)(5), which was issued under section 101(a)(15) of the Immigration and Nationality Act (Act), 66 Stat.166. Operations Instruction 214.2(b)(5) interpreted Section 101(a)(15) of the Act as applied to the installation, servicing or repair of industrial or commercial equipment or machinery purchased from a foreign supplier. Where the conditions of the Operating Instruction are met—in particular, where the alien performing the installation, servicing or repair makes the trip within the first year after the sale; where the alien possesses specialized knowledge relating to the machinery; and where the alien is paid abroad by the foreign seller and his services are supplied as part of the sale—there is assurance that the alien is basically performing a foreign job for a foreign employer as part of that employer's international business, rather than displacing U.S. workers from a U.S. job. And since the alien in this situation is performing a foreign job rather than a domestic job, his admission is not subject to the provisions of section 101(a)(15)(H) of the Act, which was designed to protect American jobs.

However, these considerations are not applicable to building and construction work. In the special conditions of this industry it is more reasonable to regard all building and construction work as representing domestic employment, even where the worker is employed by a foreign company and paid abroad. Building and construction work has traditionally been viewed as a local activity, and because of its unique status has received special treatment under federal labor law. *Woelke & Romero Framing Inc.* v. *NLRB*, 456 U.S. 645 (1982); *NLRB* v. *Iron Workers, Local 103*, 434 U.S. 335 (1978). Each construction project tends to be "a distinct entity." The Impact of the Taft-Hartley Act on the Building and Construction Industry, 60 Yale L.J. 673, 676, 677 n.24 (1951). Congress has recognized that "the employees of various subcontractors [at a single construction project] have a close community of interest, and that the wages and working conditions of one set of employees [at the project] may affect others." *Woelke & Romero, supra*, 456 U.S. at 661-2. In light of these factors, we believe it is reasonable to regard building and construction workers as being employed at the construction site, even though their employer be located abroad and they may otherwise meet the conditions of the Operations Instruction. For these reasons, we believe these workers are performing jobs that are subject to the provisions of section 101(a)(15)(H) of the Act, designed to give American workers protection regarding American jobs, and cannot avoid these protective provisions by utilizing the temporary business for visitor classification.

Dated: August 11, 1987.

Delia B. Combs,

Acting Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 87-18561 Filed 8-13-87; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-82-AD; Amdt. 39-5706]

Airworthiness Directive; British Aerospace Model BAe-146 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe-146 series airplanes, which requires an inspection and/or functional test of certain electro/pneumatic solenoid valves in the stall identification system, and replacement, if necessary. This amendment is prompted by several reports of internal corrosion within the solenoid assembly, which may cause the valve to become defective. This condition, if not corrected, could result in an unannunciated failure of the stall identification system.

EFFECTIVE DATE: August 31, 1987.

ADDRESSES: The applicable service information may be obtained from British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168.

SUPPLEMENTARY INFORMATION: The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition, which may exist or develop on certain British Aerospace Model BAe 146 airplanes. There have been several reports of internal corrosion within electro/pneumatic stall identification system solenoid valves. This condition, if not corrected, could result in a defective valve, leading to an unannunciated failure of the stall identification/prevention system.

British Aerospace has issued Service Bulletin BAe-146, 27-58, Revision 1, dated November 14, 1986, which describes procedures for inspection and test of the electro/pneumatic valves, and replacement, if necessary. The CAA has classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certified in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD requires inspection and test of electro/pneumatic solenoid valves, and replacement, if necessary, in accordance with the British Aerospace service bulletin previously mentioned.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedures hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Regulations (14 CFR 39.13) are amended as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g), Revised Pub. L. 97-449, January 12, 1983; and 14 CFR 11.89.

§ 39.15 [Amended]

2. By adding the following new airworthiness directive:

British Aerospace: Applies to Model BAe-146 airplanes, as listed in British Aerospace BAe-146 Service Bulletin 27-58, Revision 1, dated November 14, 1986, certified in any category. Compliance is required as indicated, unless previously accomplished.

To prevent an unannunciated failure of the stall identification system, accomplish the following:

A. Within 14 days or prior to the accumulation of 125 landings, whichever occurs first after the effective date of this AD, inspect the electro/pneumatic solenoid valve to identify the serial number and modification state in accordance with BAe-146 Service Bulletin 27-58, Revision 1, November 14, 1986. If the valve is identified as suspect, accomplish either of the following:

1. Prior to further flight, replace the affected valve with a modified valve identified in accordance with the service bulletin; or

2. Prior to further flight, and thereafter at intervals not to exceed 14 days or 125 landings, whichever occurs first, functionally test the suspect valve in accordance with the Accomplishment Instructions of the service bulletin.

a. Valves found defective must be removed prior to further flight and replaced with modified valves or a serviceable suspect valve.

b. The serviceability of suspect replacement valves must be determined by performing the above mentioned functional test upon installation.

B. Replacement of suspect valves with modified valves identified in accordance with BAe-146 Service Bulletin 27-58, Revision 1, dated November 14, 1986, constitutes terminating action for the requirements of this AD.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer, may obtain copies upon request to British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective August 31, 1987.

Issued in Seattle, Washington, on August 5, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87-18534 Filed 8-13-87; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-24778; File No. S7-21-86]

Customer Protection Rule

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is adopting amendments to its customer protection rule under the Securities Exchange Act ("Act") in connection with repurchase agreements where the broker-dealer agrees to retain custody of the securities that are subject to those agreements ("hold in custody repurchase agreements"). The amendments to the rule will require registered broker-dealers to obtain repurchase agreements in writing, to make specific disclosures regarding certain risks associated with hold in custody repurchase transactions and to disclose that the Securities Investor Protection Corporation ("SIPC") has taken the position that coverage under the Securities Investor Protection Act of 1970 is not available to repurchase agreement participants. The amendments further require registered broker-dealers to maintain possession or control of securities subject to hold in custody repurchase agreements, except that possession or control during the trading day is not required if certain conditions are met.

EFFECTIVE DATE: January 31, 1988.

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, (202) 272-2904, Julio A. Mojica, (202) 272-2372, or Michael P. Jamroz, (202) 272-2398, Division of Market Regulation, 450 5th Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: In September of 1986, the Commission proposed amendments to its financial responsibility rules relating to repurchase and reverse repurchase agreements. Those proposed amendments were in response to the failures of several government securities dealers which caused substantial harm to public investors through fraudulent practices.[1] The proposal included amendments to the Commission's net capital rule, securities count and recordkeeping rules and customer protection rule, Securities Exchange Act Rule 15c-3. Subsequently, Congress enacted the Government Securities Act of 1986 ("GSA"), which authorized the Department of the Treasury ("Treasury") to adopt financial responsibility and customer protection rules for all brokers and dealers of U.S. government securities, including those firms currently registered with the Commission. The Treasury has since adopted rules that, in large part, incorporate existing Commission financial responsibility rules. The Treasury's customer protection rule requires compliance with Rule 15c3-3, but modified the provisions that were proposed in the September Release. In Securities Exchange Act Release No. 24554 ("the June Release"), the Commission proposed for comment amendments to Rule 15c3-3 that would substantially conform to the Treasury's temporary customer protection rule. Today, the Commission adopts those amendments with certain modifications to conform to the Treasury's customer protection rule as adopted in final form on July 24, 1987.[2]

Unrelated to these changes, the Commission is deleting the word "last" from the wording of Item 9 of the Formula for Determination of Reserve Requirements in Rule 15c3-3a to correct an error in the Code of Federal Regulations.

I. Discussion

The proposed amendments to Rule 15c3-3 announced in September were made in response to, among other things, fraudulent practices of both unregistered and registered government securities broker-dealers involving repurchase agreements where the broker-dealers retained possession of the securities underlying the repurchase agreements ("hold in custody repo"). In a repurchase agreement ("repo"), the broker-dealer sells securities and agrees to repurchase the same or similar securities at a later date. In a hold in custody repo, the broker-dealer receives the funds from the sale of the securities but retains control of the securities. Some of the failed broker-dealers allegedly used those securities in their business although they had been sold to the repo counterparties. Those counterparties will be exposed to loss if coverage under the Securities Investor Protection Act of 1970 ("SIPA") is not available.[3] The position of the Securities Investor Protection Corporation is that persons engaging in repurchase and reverse repurchase agreements are not customers of the broker-dealer within the meaning of SIPA and are therefore not covered under SIPA.[4]

The amendments to Rule 15c3-3 proposed in September would have required broker-dealers that enter into hold in custody repos to: (i) Disclose the rights and liabilities of the parties to hold in custody repos including a statement that SIPC has taken the position that SIPA coverage is not available to repo counterparties; (ii) disclose to the counterparty which securities are being held on his behalf under the hold in custody repo; and (iii) maintain possession and control of those securities free of lien, except for clearing liens imposed during the trading day for hold in custody repos exceeding $1 million.

Subsequent to the Commission's original proposal, the Treasury, pursuant to authority recently granted to it under the GSA, adopted temporary financial responsibility rules for all brokers and dealers in U.S. government securities in May of 1987. The Treasury's temporary customer protection rule altered the requirements proposed by the Commission. In essence, the Treasury's temporary regulation included the Commission's amendments to Rule 15c3-3 except that: (i) The Treasury rule required broker-dealers to obtain written hold in custody repurchase agreements and to make specific disclosures in those agreements regarding the broker-dealer's use of securities obtained pursuant to hold in custody repos during the trading day; and (ii) the Treasury rule did not require intra-day possession or control of securities that were subject to hold in custody repos of under $1 million on any day on which the broker-dealer obtained the specific prior consent of

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[1] *See* Securities Exchange Act Release No. 23802 (September 4, 1986), 51 FR 32858 (September 15, 1986) ("September Release").

[2] 52 FR 27910 (July 24, 1987).

[3] Under section 9(a) of SIPA, advances for customer claims are limited to $100,000 for cash claims and $500,000 for claims for securities. To the extent the claims of repo counterparties exceed those limits, those counterparties will be exposed to loss even if SIPC coverage is extended.

[4] The United States District Court for the District of New Jersey decided in *Cohen* v. *Army Moral Support Fund (in re Bevill, Bresler and Schulman)*, Adv. Proc. No. 85-21-3 (slip op.) (D.N.J. Oct 23, 1986), that repo transactions were purchases and sales rather than secured loans. The practical effect of this decision was to extend coverage under the Securities Investor Protection Act to repo participants within that jurisdiction. A final order in that case, however, has not yet been entered and, therefore, no appeal has been possible from the Court's determination.

the counterparty to substitution. The Commission's original proposal would have required registered broker-dealers to maintain continuous possession or control of securities subject to hold in custody repos under $1 million.

In the June Release, the Commission proposed for comment alternative amendments to Rule 15c3–3 relating to the treatment of hold in custody repos. One version was the same as the Treasury's temporary rule. The other version differed from the Treasury's rule only with respect to hold in custody repos under $1 million. The second alternative contained a continuous possession or control requirement for securities obtained under those agreements.

The Commission received one comment letter in response to its proposal.[5] In its letter, the Public Securities Association ("PSA") objected to the required confirmation of specific securities subject to hold in custody repos and the disclosure of the market value of those securities. The PSA also opposed special restrictions on hold in custody repurchase transactions under $1 million.

In designing its proposed amendments to the customer protection rule, the Commission intended to ameliorate, among other things, two weaknesses observed in the hold in custody repo market. One concern was the duplicative use of securities obtained by broker-dealers under hold in custody repos. The use of securities that were already subject to hold in custody repos was facilitated by the broker-dealers' failure to designate specific securitries to specific repos. In confirming specific securities, this allocation will have to be performed and the double use of securities will be inhibited.

The other concern was the apparent lack of understanding of hold in custody repo counterparties of their rights and liabilities. To some extent, this misunderstanding was exacerbated by the unsettled legal status of repos. As noted above, SIPC has taken the position that repos are secured loans and not purchases and sales of securities protected under SIPA. If hold in custody repos are secured lending transactions, whether and when a perfected security interest attaches are questions of local law, the answers to which are not always clear. To the extent an interest in securities subject to a hold in custody repo exists, counterparties may be frustrated in submitting claims against those securities because they are not told which securities they purchased under the repo. In many instances, broker-dealers confirm those transactions by submitting a confirmation to the counterparty that states that they have purchased "various" government securities. Because the counterparty never receives the securities, it may never become aware of which securities are subject to the agreement. In some cases, even the broker-dealer is not aware of which securities are subject to the agreement. As mentined above, this may occur when the broker-dealer fails to make the designation necessary to confirm specific securities.

The amendments to Rule 15c3–3 require broker-dealers to make basic disclosures to hold in custody repo counterparties regarding their rights and liabilities under the agreement. The amendments require that the broker-dealer inform the counterparty of SIPC's position and state to the counterparty that its securities may be subject to clearing liens during the trading day.

The amendments also require the broker-dealer to disclose the identity of the specific securities that are the subject of the agreement so the counterparty will be able to pursue any legal interest it may have in those securities in the event that the broker-dealer defaults. The broker-dealer will also be required to include the market value of those securities on the confirmation so the conterparty can more easily determine if sufficient securities have been allocated to it under the agreement. The disclosure of market value is particularly important because it is evident that in some sectors of the repo market, counterparties are measuring credit exposure by comparing the amount of funds invested in the repurchase transaction to the face value of government securities involved. The disclosure of market value of the securities subject to the repo emphasizes to those counterparties that market value, not face value, is the appropriate measure for determining credit exposure.

With respect to hold in custody repo transactions under $1 million, the Commission believes that special treatment for those transactions is not appropriate at this time. When the amendments to Rule 15c3–3 were proposed for comment in September 1986, the Commission sought to achieve its regulatory objectives with a minimum burden on the repo marketplace. The Commission learned that, in order to maximize the efficiency of the settlement process for U.S. government securities, broker-dealers needed to be able to substitute securities subject to hold in custody repos. In order for those substitutions to be performed, broker-dealers had to combine securities subject to hold in custody repos with other government securities in their clearance accounts and submit all of those securities to clearing liens during the day. However, the Commission was also aware of instances where securities subject to hold in custody repos were misappropriated. The Commission therefore proposed that broker-dealers obtain possession and control of securities that were the subject of hold in custody repo agreements exceeding $1 million at the end of each trading day. Because the Commission was concerned that smaller investors might not fully appreciate the risks involved with hold in custody repo transactions, the Commission propsed that small hold in custody repo transactions be subject to a continuous possession or control requirement.

When the Commission reproposed its amendments in the alternative in June 1987, the amendments included significant modifications to the Commission's original proposal that were included in the recently adopted Treasury's temporary rule. Both alternatives required that hold in custody repo agreements be written and include specific disclosures regarding SIPC coverage and the effects of consent to substitution by the counterparty. The alternatives differed in that one would have required continuous possession or control of securities subject to hold in custody repos under $1 million while the other proposed, in a manner identical to that required under the Treasury's temporary rule, that those securities could be used by the broker-dealer provided that prior written or oral consent of the counterparty had been received on the day of use.

The release requested comment on the enforceability of an oral consent provision but, at the same time, the Commission was uncertain of whether the benefit obtained by a continuous possession or control requirement was worth the cost to the industry of treating smaller hold in custody repos differently. The Commission was aware that broker-dealers may incur a significant recordkeeping cost in identifying those transactions. Furthermore, a continuous possession or control requirement may hinder the settlement process if the broker-dealer is unable to effect substitutions. The

[5] The Department of Treasury received 21 comment letters which the Commission considered in evaluating this proposal. The Treasury comment letters have been placed in the Commission's public files.

Commission also understands that many small hold in custody repos are entered into by large, sophisticated investors. Since hold in custody repos often represent temporary investments of available cash balances, the size of the repo is often more a function of available funds than the net worth of the investor. Finally, the Commission was concerned that the stricter segregation requirements might result in many firms refusing to effect small hold in custody repo transactions.

Some of the Commission's concerns have been addressed by modifications to its original proposal. The amendments, as adopted, require explicit disclosures regarding the risks of entering into hold in custody repos to be made in a written agreement. The counterparty will be informed of the ramifications of his consent to substitution and the exposure of his securities to clearing liens. Moreover, the Commission believes that the requirement that firms segregate hold in custody securities every night and confirm the specific securities employed in hold in custody repos should serve to protect against the double use of those securities. In light of all of the considerations, the Commission has determined that a separate standard for hold in custody repos under $1 million is not appropriate.

The Commission remains concerned about the use of free credit balances by means of hold in custody repurchase agreements. In some instances, broker-dealers have characterized free credit balances as repurchase agreements in an apparent attempt to avoid depositing those free credit balances in the Special Reserve Bank Account for the Exclusive Benefit of Customers ("Reserve Account") under Rule 15c3–3(e).[6] The Commission believes that the written agreement requirement will inhibit this practice and make smaller repo participants more conscious of the risks involved in the transaction. However, the Commission's view is that if the broker or dealer enters into a hold in custody repurchase agreement with a retail customer who has a preexisting free credit balance with the broker or dealer, the liability of the broker or dealer will ordinarily be considered to be a free credit balance for purposes of Rule 15c3–3. Customers that conduct their business with the broker-dealer on a delivery versus payment basis would not be considered retail customers for purposes of this interpretation. The Commission will continue to monitor this area and may consider imposing separate restrictions on smaller hold in custody repos in the future. The Commission has selected an effective date of January 31, 1988, to coincide with the effective date of the Treasury rule adopted in final form July 24, 1987. Between July 25, 1987 and January 31, 1988 registered broker-dealers must comply with applicable provisions of the Treasury rule.

[6] Rule 15c3–3(e) requires broker-dealers to deposit in the Reserve Account an amount as computed on a periodic basis under the Rule 15c3–3a Formula for Determination of Reserve Requirement ("Reserve Formula"). Under the Reserve Formula, the amount of the required deposit is determined by comparing the free credit balances and other funds obtained from customers to the amount by which the broker-dealer finances customer activities through the use of its own funds. Because the Commission has not taken the position that repo participants are "customers" for purposes of Rule 15c3–3, funds obtained in a repo would not be included in the Reserve Formula unless customer securities were used in the repo.

II. Summary of Final Regulatory Flexibility Analysis

The Commission has prepared a Final Regulatory Flexibility Analysis in accordance with 5 U.S.C. section 604 regarding the amendments to Rule 15c3–3. The Analysis notes that the objective of the amendments is to further the purposes of the various financial responsibility rules, which are designed to provide safeguards with respect to the financial responsibility and related practices of brokers and dealers and to require broker-dealers to maintain such records as necessary or appropriate in the public interest or for the protection of investors. The Analysis states that the amendments would subject small broker-dealers to additional recordkeeping and disclosure requirements. The Analysis states that the Commission did not receive any comments concerning the Initial Regulatory Flexibility Analysis. A copy of the Final Regulatory Flexibility Analysis may be obtained by contacting Michael P. Jamroz, Division of Market Regulation, Securities and Exchange Commission, Washington, DC 20549, (202) 272–2398.

III. Statutory Authority

Pursuant to the Securities Exchange Act of 1934 and, particularly, sections 15(c)(3), 17 and 23 thereof, 15 U.S.C. 78*o*(c)(3), 78q, and 78w, the Commission is adopting amendments to 240.15c3–3 of Title 17 of the Code of Federal Regulations in the manner set forth below.

List of Subjects in 17 CFR Part 240

Securities.

Text of Amendments

In accordance with the foregoing, 17 CFR Part 240 is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read as follows:

Authority: Sec. 23, 48 Stat. 901, as amended; 15 U.S.C. 78w * * *. Section 240.15c3–3 is also issued under secs. 15(c) (3) and 17(a), 15 U.S.C. 78*o*(c) (3) and 78q(a).

2. By adding paragraph (b)(4) to § 240.15c3–3 as follows:

§ 240.15c3–3 Customer protection reserves and custody of securities.

* * * * *

(b) * * *

(4)(i) Notwithstanding paragraph (k)(2)(i) of this section, a broker or dealer that retains custody of securities that are the subject of a repurchase agreement between the broker or dealer and a counterparty shall:

(A) Obtain the repurchase agreement in writing;

(B) Confirm in writing the specific securities that are the subject of a repurchase transaction pursuant to such agreement at the end of the trading day on which the transaction is intitiated and at the end of any other day during which other securities are substituted if the substitution results in a change to issuer, maturity date, par amount or coupon rate as specified in the previous confirmation;

(C) Advise the counterparty in the repurchase agreement that the Securities Investor Protection Corporation has taken the position that the provisions of the Securities Investor Protection Act of 1970 do not protect the counterparty with respect to the repurchase agreement;

(D) Maintain possession or control of securities that are the subject of the agreement.

(ii) For purpose of this paragraph (b)(4), securities are in the broker's or dealer's control only if they are in the control of the broker or dealer within the meaning of § 240.15c3–3 (c)(1), (c)(3), (c)(5) or (c)(6) of this title.

(iii) A broker or dealer shall not be in violation of the requirement to maintain possession or control pursuant to paragraph (b)(4)(i)(D) during the trading day if:

(A) In the written repurchase agreement, the counterparty grants the broker or dealer the right to substitute other securities for those subject to the agreement; and

(B) The provision in the written repurchase agreement governing the right, if any, to substitute is immediately preceded by the following disclosure

statement, which must be prominently displayed:

Required Disclosure

The [seller] is not permitted to substitute other securities for those subject to this agreement and therefore must keep the [buyer's] securities segregated at all times, unless in this agreement the [buyer] grants the [seller] the right to substitute other securities. If the [buyer] grants the right to substitute, this means that the [buyer's] securities will likely be commingled with the [seller's] own securities during the trading day. The [buyer] is advised that, during any trading day that the [buyer's] securities are commingled with the [seller's] securities, they will be subject to liens granted by the [seller] to its clearing bank and may be used by the [seller] for deliveries on other securities transactions. Whenever the securities are commingled, the [seller's] ability to resegregate substitute securities for the [buyer] will be subject to the [seller's] ability to satisfy the clearing lien or to obtain substitute securities.

(iv) A confirmation issued in accordance with paragraph (b)(4)(i)(B) of this section shall specify the issuer, maturity date, coupon rate, par amount and market value of the security and shall further identify a CUSIP or mortgage-backed security pool number, as appropriate, except that a CUSIP or a pool number is not required on the confirmation if it is identified in internal records of the broker or dealer that designate the specific security of the counterparty. For purposes of this paragraph (b)(4)(iv), the market value of any security that is the subject of the repurchase transaction shall be the most recently available bid price plus accrued interest, obtained by any reasonable and consistent methodology.

(v) This paragraph (b)(4) shall not apply to a repurchase agreement between the broker or dealer and another broker or dealer (including a government securities broker or dealer), a registered municipal securities dealer, or a general partner or director or principal officer of the broker or dealer or any person to the extent that his claim is explicitly subordinated to the claims of creditors of the broker or dealer.

3. By amending § 240.15c3–3a by revising item 9 as follows:

§ 240.15c3–3a Exhibit A—formula for determination of reserve requirement of brokers and dealers under § 240.15c3–3.

* * * * *

	Debits	Credits
* * * * *		
9. Market value of securities which are in transfer in excess of 40 calendar days and have not been confirmed to be in transfer by the transfer agent or the issuer during the 40 days	XXX	
* * * * *		

By the Commission.
August 6, 1987.

Jonathan G. Katz,
Secretary.

[FR Doc. 87–18428 Filed 8–13–87; 8:45 am]
BILLING CODE 8010-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2 and 284

[Docket No. RM87–34–000; Order No. 500]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol

Issued: August 7, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Interim rule and statement of policy.

SUMMARY: On June 23, 1987, the United States Court of Appeals for the District of Columbia Circuit issued its opinion in *Associated Gas Distributors* v. FERC (AGD),[1] generally upholding the substance of Order No. 436.[2] However, the Court "found problems in a few of the Order's components" [3] and, due to the interrelationship of the rule's provisions, vacated Order No. 436 and remanded the matter for further proceedings.

This order responds to the Court's concerns about Order No. 436 on an interim basis while the Commission undertakes a thorough examination of the aspects of that order about which the Court expressed concern. As part of this examination, the Commission will seek data from industry participants in order to make an accurate and reliable assessment of current market conditions. This interim rule, however, should avoid any uncertainty that would otherwise exist as to the applicable transportation regulations so as to avoid any interruption in transportation services while the Commission is developing and considering permanent rules responsive to the Court's concerns.

The Commission believes that this interim rule is responsive to the Court's concerns in *AGD* regarding pipeline take-or-pay problems, and meets the standards for an interim rule without notice and comment as set out in the Court's recent opinion in *Mid-Tex Electric Cooperative, Inc.* v. *FERC*, No. 86–1414 (D.C. Cir. June 1987) (Mid-Tex).[4]

Guided by the standards in *Mid-Tex*, the Commission has structured this interim rule to take the initial steps to correct the problems identified by the Courts in *AGD* while the Commission conducts a more thorough examination of the issues before developing a final rule. Accordingly, in this interim rule, the Commission readopts the regulations originally promulgated by Order No. 436 (including the grandfathering provisions), with the following modifications: (1) In order to permit pipelines to minimize the incurrence of take-or-pay liability because of open-access transportation under these regulations, a producer must offer to credit gas transported by a pipeline against that pipeline's take-or-pay liability to the producer accruing under certain pre-June 23, 1987, gas purchase contracts; (2) in order to provide for equitable sharing, between pipelines and their customers, of the costs of settling already accrued take-or-pay obligations and reforming existing contracts, the Commission adopts a policy as to the acceptable mechanisms for the passthrough of take-or-pay buyout and buydown costs; (3) in order to avoid the future recurrence of the kind of take-or-pay problems that exist today, the Commission adopts principles on which pipelines may base future gas supply charges; and (4) while the Commission compiles a record to justify contract demand reductions the Commission eliminates the contract demand reduction option in former § 284.10(c) of its regulations but in order to maintain some meaningful access to transportation for sales customers, the Commission retains the contract conversion option in former § 284.10(d) of its regulations.

DATES: The Commission will request the Court's permission to make this interim rule effective immediately upon issuance of the Court's mandate or the

[1] No. 85–18111, *et al.*

[2] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Order No. 436), 50 FR 42408 (October 18, 1985), (Reg. Preambles 1982–1985) FERC Stats. & Regs. ¶ 30,665 (October 9, 1985), *modified*, Order No. 436–A, 50 FR 52217 (December 23, 1985), *modified further*, Order No. 436–B, 51 FR 6396 (February 24, 1986), III FERC Stats. & Regs. ¶ 30,688 (February 14, 1986), *reh'g denied*, Order No. 436–D, 34 FERC ¶ 61,405 (March 28, 1986), *reconsideration denied*, Order No. 436–E, 34 FERC ¶ 61,403 (March 28, 1986).

[3] Slip op. at 124.

[4] In *Mid-Tex*, the Court reviewed the Commission's interim rule repromulgating the construction work in progress (CWIP) rule for electric utilities that had previously been vacated and remanded by the Court. *See Mid-Tex Electric Cooperative Inc.* v. *FERC*, 773 F.2d 327 (D.C. Cir. 1985).

leave of the Court. The Commission will publish a notice of the effective date of this interim rule as soon as leave is obtained from the Court or the mandate of the Court issues. Additionally, the suspension of § 284.10 of the Commission's regulations is removed effective the first day of the second month after the effective date of this rule. Written comments on this interim rule must be filed with the Commission by October 13, 1987.

ADDRESS: Comments should be filed with: Federal Energy Regulatory Commission, Office of the Secretary, Room 3110, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Richard Howe, Jr., Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357–8308.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C. M. Neave.

I. Introduction

On June 23, 1987, the United States Court of Appeals for the District of Columbia Circuit issued its opinion in *Associated Gas Distributors* v. *FERC* (AGD),[1] generally upholding the substance of Order No. 436.[2] However, the Court "found problems in a few of the Order's components" [3] and, due to the interrelationship of the rule's provisions, vacated Order No. 436 and remanded the matter for further proceedings.

The purpose of this order is to respond to the Court's concerns about Order No. 436 on an interim basis while the Commission undertakes a thorough examination of the aspects of that order about which the Court expressed concern. As part of this examination, the Commission will seek data from industry participants in order to make an accurate and reliable assessment of current market conditions. This interim rule, however, should avoid any uncertainty that would otherwise exist as to the applicable transportation regulations so as to avoid any interruption in transportation services while the Commission is developing and considering permanent rules responsive to the Court's concerns.

The Commission believes that this interim rule is responsive to the Court's concerns in *AGD* regarding pipeline take-or-pay problems, and meets the standards for an interim rule without notice and comment as set out in the Court's recent opinion in *Mid-Tex Electric Cooperative, Inc.* v. *FERC*, No. 86–1414 (D.C. Cir. June 30, 1987) (*Mid-Tex*). In *Mid-Tex*, the Court reviewed the Commission's interim rule repromulgating the construction work in progress (CWIP) rule for electric utilities that had previously been vacated and ramanded by the Court.[4] Despite objections that the repromulgation of the CWIP rule in an interim rule violated the Court's prior mandate, the Court upheld the interim rule because of three factors. First, although the prior CWIP rule had been vacated the Court had recognized that the Commission could repromulgate the rule if certain problems were addressed. Second, because the Commission took steps in the interim rule to guard against the potential harm identified by the Court while the Commission developed a permanent solution, the Court found that the Commission had been faithful to the letter and spirit of the Court's prior decision. Third, there was a need for an interim rule to provide regulatory guidance to avoid confusion and irreparable financial consequences to the regulated companies.

Guided by the standards in *Mid-Tex*, the Commission has structured this interim rule to take the initial steps to correct the problems identified by the Court in *AGD* while the Commission conducts a more thorough examination of the issues before developing a final rule. In this process the Commission has attempted to be faithful to both the letter and the spirit of the Court's opinion in *AGD*.

Accordingly, in this interim rule, the Commission readopts the regulations originally promulgated by Order No. 436 (including the grandfathering provisions), with the following modifications: (1) In order to permit pipelines to minimize the incurrence of take-or-pay liability because of open-access transportation under these regulations, a producer must offer to credit gas transported by a pipeline against that pipeline's take-or-pay liability to the producer accruing under certain pre-June 23, 1987 gas purchase contracts; (2) in order to provide for equitable sharing, between pipelines and their customers, of the costs of settling already accrued take-or-pay obligations and reforming existing contracts, the Commission adopts a policy as to the acceptable mechanisms for the passthrough of take-or-pay buyout and buydown costs; (3) in order to avoid the future recurrence of the kind of take-or-pay problems that exist today, the Commission adopts principles on which pipelines may base future gas supply charges; and (4) while the Commission compiles a record to justify contract demand reductions the Commission eliminates the contract demand reduction option in former § 284.10(c) of its regulations but in order to maintain some meaningful access to transportation for sales customers, the Commission retains the contract conversion option in former § 284.10(d) of its regulations.

The Commission will request the Court's permission to make this interim rule effective immediately upon issuance of the Court's mandate or leave of the Court. The Commission will publish a notice of the effective date as soon as leave is obtained from the Court or the mandate of the Court issues. The Commission is also requesting comments on this interim rule and intends to issue a final rule based on those comments. Numerous persons have already filed comments with the Commission. While those comments have not served as a basis for this interim rule, they will be made a part of the record and will be considered in the final rule.

II. Background

A. Order No. 436

In Order No. 436, the Commission fundamentally altered the way in which it regulates natural gas pipelines in light of regulatory and economic developments in the natural gas industry that began with Congress' enactment of the Natural Gas Policy Act of 1978 (NGPA). The Commission found that, despite the increasingly competitive nature of the wellhead natural gas market under the NGPA, interstate pipelines retained market power over the transportation of natural gas.[5] Although many purchasers were seeking to purchase gas directly in the field at prices lower than pipelines' weighted average cost of gas, the Commission found that pipelines generally declined

[1] No. 85–1811, *et al.*

[2] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Order No. 436), 50 FR 42408 (October 18, 1985), (Reg. Preambles 1982–1985) FERC Stats. & Regs. ¶ 30,665 (October 9, 1985), *modified*, Order No. 436–A, 50 Fed. Reg. 52217 (December 23, 1985), (Reg. Preambles 1982–1985) FERC Stats. & Regs. ¶ 30,675 (Dec. 12, 1985), *modified further*, Order No. 436–B, 51 FR 6366 (February 24, 1986), III FERC Stats. & Regs. ¶ 30,666 (February 14, 1986), *reh'g denied*, Order No. 436–C, 34 FERC ¶ 61,404 (February 14, 1986), *reh'g denied*, Order No. 436–D, 34 FERC ¶ 61,405 (March 28, 1986), *reconsideration denied*, Order No. 436–E, 34 FERC ¶ 61,403 (March 28, 1986).

[3] Slip op. at 124.

[4] *See Mid-Tex Electric Cooperative Inc.* v. *FERC*, 773 F.2d 327 (D.C. Cir. 1985).

[5] Order No. 436, 50 FR at 42419.

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to transport gas in competition with their own sales (except where the customer desiring the transportation could switch to alternative fuels at little or no cost.) Otherwise, the transportation could displace their own sales. This displacement, the pipelines reasoned, could cause them to incur increased liability under take-or-pay contracts which the pipelines had entered into previously during the gas shortages of the late 1970's and early 1980's. Those contracts frequently required the pipelines to pay relatively high prices for a minimum amount of gas each year, generally based on the deliverability of the producers' wells, even if the pipelines did not take the gas. The Commission further found that the pipelines' refusal to transport gas was discriminatory and caused increased costs to consumers by denying them access to gas at the lowest reasonable prices. The refusal to transport therefore was adversely affecting the economy and the nation. It also frustrated the goal of the NGPA of moving toward a competitive wellhead market.[6]

In light of these findings, the Commission in Order No. 436 exercised the broad jurisdiction over transportation, which it retained under the NGA and the NGPA, to revise its regulations governing the interstate transportation of natural gas. First, the Commission required that all pipelines performing self-implementing transportation, either pursuant to blanket NGA section 7(c) certificates or pursuant to NGPA section 311 (other than certain transportation under grandfathered authorizations), provide that transportation on a nondiscriminatory basis, and thereby become open access pipelines. This nondiscriminatory access condition generally applies the prohibition of NGA sections 4 and 5 against the granting of any undue preference. Furthermore, the Commission held that a pipeline's refusal to transport gas because it would displace its own sales or because it had not obtained relief from its take-or-pay contracts with producers would be unduly discriminatory.

Second, the Commission required that open-access pipelines determine their rates based on certain principles designed to eliminate built-in rate incentives which favored the pipelines' merchant function over their transportation function by allocating more costs to be recovered from the transportation services. Third, the Commission required that open-access pipelines agree to allow their firm sales customers to adjust their "contract demand" (CD) (the maximum amount of gas the customer is contractually entitled to purchase), either to reduce the level or convert it from firm sales to firm transportation. These options were intended to allow full requirements and other customers of a pipeline to take advantage of transportation by purchasing gas from another supplier and either having it transported over the pipeline or over another pipeline. The CD reduction option also was intended to free up the pipeline's presently contracted firm capacity so that the transmission capacity could be available to willing shippers. Fourth, the Commission adopted optional procedures for granting certificates for new facilities, services and operations. These procedures were intended to ease a pipeline's entry into new markets to compete with existing suppliers and thereby give local distribution companies who are now limited to one pipeline access to other pipelines. Fifth, the Commission provided for expedited abandonment of gas subject to reduced takes.

Finally, despite the urging of a number of commenters, the Commission did not take specific, new action in Order No. 436 to relieve pipelines from the burden of their high-priced take-or-pay contracts. The Commission did, however, reaffirm its April 1985 policy statement and interpretative rule on payments to buy ot the take-or-pay liabilities under those contracts. In that policy statement and interpretative rule the Commission held, among other things, that buyout payments do not violate NGPA Title I ceiling prices and that the Commission would evaluate the pipeline's recovery of buyout and buydown costs in individual rate filings. The Commission, also stated that it would consider any requests for abandonment necessary to carry out a settlement of a take-or-pay obligations on an expedited basis.

B. The Court's Decision

Numerous parties appealed Order No. 436, leading to the Court decision which has prompted the action the Commission is taking here. In that decision, the United States Court of Appeals for the District of Columbia Circuit generally upheld the substance of Order No. 436. Specifically, it upheld the Commission's authority under the NGA and the NGPA to require that all pipelines performing self-implementing transportation must do so on a nondiscriminatory basis. The Court also upheld the rate provisions of Order No. 436 and the optional certificate procedures. Thus, the Court affirmed the heart of Order No. 436.

Although largely upholding the Commission's actions, the Court did find three problems with Order No. 436. First, the Court held that the Commission's decision not to take direct action with respect to the take-or-pay problems of pipelines, other than reaffirming the 1985 policy statement and interpretative rule, failed to meet the requirements of "reasoned decisionmaking." [7] The Court found that the Commission had not convincingly answered the contention of many parties that Order No. 436 would exacerbate pipelines' take-or-pay problems and thereby harm many consumers. First, the Court stated that the Commission had not shown that its finding, that a pipeline's refusal to transport new gas without relief from take-or-pay liabilities under old contracts constitutes undue discrimination, would not reduce pipeline leverage over producers by depriving them of one of their primary bargaining chips in settling take-or-pay liability. Secondly, the Commission had not shown that the CD reduction and conversion option by permitting many customers of the pipeline to reduce or cease purchases, would not affect the pipeline's ability to market gas and increase its take-or-pay liability. Furthermore, the Court expressed concern that, as each firm sales customer exercised the option, the costs borne by the others could increase, thereby increasing the incentive for them to stop purchasing from the pipeline. The remaining sales customers of the pipeline unable to purchase alternative supplies, such as small local distribution companies, and the consumers who purchase from them would be left with the high priced gas. This would defeat the purpose of Order No. 436 and the consumer protection purposes of the NGA.

The Court also stated that the Commission had given insufficient reasons for rejecting two proposals advanced by participants in the rulemaking for mitigating the problems presented by the take-or-pay contracts. These were (1) that the Commission use its power under NGA section 5 to modify take-or-pay provisions in jurisdictional contracts or (2) that the Commission allow pipelines to condition producer access to transportation on allowing some measure of take-or-pay relief. The Commission had rejected action under NGA section 5 on the ground that it would be ineffective and inequitable since it would only affect a

[6] *Id.* at 42420-1.

[7] Slip op. 95.

portion of the problem contacts—those that remained subject to the Commission's Natural Gas Act jurisdiction. However, the Court found this reasoning unconvincing because the Commission had failed to determine what proportion of take-or-pay problems arise under jurisdictional contracts.

The Commission had rejected the conditioning option on the ground that it would be unduly discriminatory for a pipeline to refuse transportation service under Order No. 436 merely because the producer and pipeline could not agree on take-or-pay relief in another contract. Such discrimination would harm not only the producer but also the would-be purchaser. However, given the fact that the producer-pipeline contracts are a significant part of the problem that precipitated Order No. 436, the Court found the Commission's argument concerning undue discrimination unpersuasive. Furthermore, the Court observed that any fear that such a condition would give pipelines a veto power over transportation of each producer's gas "underestimates the Commission's power to impose both procedural and substantive limits on pipeline use of any conditioning power." [8]

Finally, while the Court held that the Commission had given inadequate reasons for failing to take stronger action on take-or-pay, the Court found "powerful" the Commission's concern about impairing the ability of parties to rely on private contracts, particularly when Congress decided in the NGPA to move toward a deregulated wellhead market.[9] However, the Court also observed that given the fact that producers' access to transportation under Order No. 436 is dependent on government intervention, conditioning that access on take-or-pay relief is "hardly identical to raw governmental abrogation of contracts." [10] Furthermore, the Court noted, pipelines entered into the take-or-pay contracts in part in reliance on the then existing regulatory environment.

The Court found additional problems with the Commission's adoption of the CD conversion and reduction option beyond the adverse effect of that option on take-or-pay. The Court held that to the extent the Commission required the CD conversion and reduction options to transportation as an exercise of its authority to condition NGA section 7(c) certificates, the Commission had failed to ground the option on adequate authority under the NGA. The Commission's reliance on its NGA section 7(e) conditioning authority, the Court held, improperly circumvented the requirement of NGA section 5 that, when modifying a pipeline contract, the Commission must first find that the existing contract is unjust and unreasonable. The Court also found that reliance on NGA section 7(b) was inappropriate in that this section only relates to a pipeline's obligation to serve and does not support a finding which relieves customers of their contract obligations. The Court did find, however, that the Commission had properly relied on its conditioning authority under NGPA section 311(c) as legal authority to attach the CD adjustment requirements to transportation authorized under NGPA section 311.

In addition to its consideration of the Commission's legal authority to adopt the CD adjustment options, the Court considered the adequacy of the Commission's reasoning in support of exercising that authority. The Court found that the Commission's reasoning in support of the CD conversion option was adequate. The Court agreed with the Commission that existing contracts binding local distribution companies to purchase gas from pipelines are a product of pipeline market power and that sales customers must be given the opportunity to convert from purchasing gas from the pipeline to obtaining transportation over the pipeline, if the goal of nondiscriminatory access to transportation is to be achieved. While such conversions may result in some shifting of costs to customers least able to purchase from a supplier other than the pipeline, circumstances limit the pipline's ability to shift costs since a customer's cost of purchasing gas elsewhere provides a celing on what the pipeline can charge its customers.

However, the Court found that the Commission's reasoning in support of the CD reduction option was inadequate since the Commission had not provided evidence showing that access to transportation over pipelines other than that from which they now purchase is necessary to permit local distribution companies to purchase competitively priced gas. The Court also stated that the Commission had not adequately justified the broad remedy of giving all firm sales customers of all pipelines the CD reduction option in order to free up committed pipeline capacity. Furthermore, the Court found that the Commission had not confronted the possibility that cost-shifting which resulted from CD reductions may be a problem for certain captive customers.

Finally, the Court held that the Commission had failed to explain adequately some of its decisions concerning the grandfathering of certain preexisting blanket certificates and authorizations under NGA section 7 and NGPA section 311. In particular, the Court stated that the Commission should explain more fully why some NGA section 7 certificates can be grandfathered for periods of as long as ten years without violating Congress' direction to prevent undue discrimination.

III. Pipeline Take-or-Pay Problems

A. Overview of the Commission's Actions

The causes of the pipelines' take-or-pay problems are many and complex. It is undoubtedly true that some pipelines imprudently entered into contracts incorporating both high prices and high take-or-pay levels. At the same time, pipelines entered into contracts, which were based on the anticipated demands of their customers, and whose terms reflected those which producers were able to obtain under the then prevailing market conditions. In many instances, pipeline take-or-pay obligations mounted because of reduced purchases by their customers due to purchases from alternative suppliers, fuel switching by industrial users due to lower fuel oil prices, reduced levels of economic activity, and conservation. The Commission recognizes that it is difficult to assign blame for the pipeline industry's take-or-pay problems. In brief, no one segment of the natural gas industry or particular circumstance appears wholly responsible for the pipelines' excess inventories of gas. As a result, all segments should shoulder some of the burden of resolving the problem.

The Commission in this interim rule is taking a series of interrelated actions designed to substantially mitigate the effects of the instant rule on pipeline take-or-pay problems and to provide some relief from take-or-pay problems not related to or aggravated by the transportation regulations. In addition the Commission will require that pipelines submit to the Commission certain information relating to their take-or-pay problems, and hereby requests information from producers in order to assist the Commission in developing a final rule.

In order to permit pipelines to reduce the incurrence of take-or-pay liability under their existing take-or-pay

[8] Slip op. at 92.
[9] *Id.* at 86.
[10] *Id.* at 89.

contracts because of transportation under their regulations, a producer seeking to have gas transported must offer credits against the pipeline's take-or-pay liability. The credit would operate by treating volumes of gas transported as though they were volumes of that producer's gas purchased by the pipeline under pre-June 23, 1987, take-or-pay contracts, with certain exceptions. The pipeline may apply the credit as though the volumes were purchased in the contract year in which the gas is transported or in any previous calendar year, commencing on or after January 1, 1988, in which the pipeline transported gas under their regulations. Requiring producers to offer these credits will enable pipelines to minimize aggravation of, and in many cases to reduce previously accrued take-or-pay liabilities under uneconomic gas purchase contracts because of transportation under Part 284 of the Commission's regulations. Where the pipeline's sales are displaced by the transportation, the take-or-pay liability incurred due to the loss of the sale will generally be offset by the credit.

The Commission recognizes that the credits that producers must offer for their gas to be eligible for transportation will not eliminate all previously accrued take-or-pay liability, nor will it completely eliminate the potential for the incurrence of future liability. Accordingly, the Commission expects that pipelines and producers will continue to negotiate settlements to extinguish take-or-pay obligations incurred before the pipeline commence transportation under this rule and to reform or terminate contracts. The Commission is therefore adopting in this rule a policy concerning acceptable mechanisms for interstate pipelines to pass through such costs.

In order to give pipelines greater flexibility, the Commission adopts as a matter of policy two acceptable passthrough mechanisms that pipelines may use for prudently incurred costs. The basic mechanism, permitted for all pipelines, is that a pipeline will be permitted commodity rate treatment for all take-or-pay costs. An alternative mechanism will be permitted only for pipelines that transport on a nondiscriminatory basis under Part 284 of the Commission's regulations. Under this mechanism, if a pipeline is willing to absorb some of its take-or-pay buyout and buydown costs (anywhere from 25 percent to 50 percent), then it will be permitted to recover an equal amount from its customers through a fixed take-or-pay charge. Additional amounts, up to 50 percent of the pipeline's total buydown or buyout costs, may be billed through a commodity surcharge, or a volumetric surcharge on pipeline throughput.

Finally, in order to prevent future take-or-pay problems the Commission is adopting as a matter of policy certain principles on which pipelines may base future gas supply service charges to be included in their rates. These principles are intended to establish the parameters under which pipelines may file to recover the costs of maintaining supply for their customers. The charges that flow from the principles are not required in this rule, but are a permissive option with a view toward possible mandatory implementation at a later time.

B. Transportation Credits

In Order No. 436, the Commission held that it would be unduly discriminatory for a pipeline to refuse transportation service under Order No. 436 merely because the producer and the pipeline cannot agree on take-or-pay relief in another contract. The Court in *AGD* expressed concern that this holding deprived pipelines of one of their prime bargaining chips in mitigating take-or-pay liability—the ability to trade transportation access for take-or-pay relief. However, the Court also recognized that, because of pipelines' market power, granting pipelines an unrestricted ability to refuse transportation in the absence of take-or-pay relief could give pipelines a veto power over the transportation of each producer's gas. The Court suggested that this problem could be avoided by imposing both procedural and substantive limits on pipeline use of any conditioning power.

In order to respond to the Court's concern about the pipelines' loss of bargaining power *vis-a-vis* producers, without giving pipelines veto power over transportation, and in order to mitigate pipeline take-or-pay liabilities under pre-June 23, 1987 contracts because of transportation under this rule, the Commission is amending §§ 284.8 and 284.9 of the regulations to limit producer eligibility for transportation. Pipelines need not transport a particular producer's gas unless that producer signs an affidavit offering to credit the transported gas against the pipeline's take-or-pay liability to that producer as provided in this rule. In general, this rule provides that, for each unit of gas transported, the pipelines may obtain a credit for the volumes transported as though they were volumes purchased under pre-June 23, 1987 take-or-pay contracts. The pipelines must treat the volumes as though purchased in the contract year the gas is transported or any previous calendar year, beginning on or after January 1, 1988, in which the pipeline was an open access transporter. Two categories of gas will be eligible for transportation without credits. These are: (1) Gas presently not committed to the pipeline by contract but which the pipeline previously purchased under a contract which has been terminated, or (2) gas released from a contract containing a market-out clause that allows the pipeline to terminate the contract at its discretion.

1. *Reasons for Adopting Crediting Mechanism.* The Commission believes that the credits provided by this rule will enable pipelines to reduce any aggravation of their take-or-pay liability under uneconomic pre-June 23, 1987,[11] gas purchase contracts because of transportation under this rule. Generally, when a sale is displaced, because of transportation of the gas of a producer to whom the pipeline owes take-or-pay liability, the lost sales volumes will be offset by a credit of the gas transported against take-or-pay liability. Indeed, the credit could enable the pipeline to avoid more take-or-pay obligations than the lost sale would have. This is because the quantities credited could be applied against high-cost contracts. However, if the pipelines made the sale, the volumes actually sold would be spread over all the pipeline's gas purchase contracts, both high and low cost.

It should also be observed that the pipeline need not demonstrate a displacement of sales to obtain the credit. Thus, to the extent the pipeline receives credits with respect to transportation which does not displace sales, the credit will reduce the pipeline's liability below what it would have been in the absence of transportation under Part 284, rather than simply minimizing the adverse effects. Furthermore, a pipeline's right to apply the credits as though the volumes were purchased in any previous contract year, commencing after January 1, 1988, in which the pipeline performed open access transportation should enable it to reduce past as well as present liability incurred because of this rule. Take-or-pay liability incurred during a year

[11] The Commission does not provide for credits with respect to take-or-pay obligations arising under gas purchase contracts entered into after June 23, 1987, the date of the *AGD* decision. The Commission believes that, by that date certainly, pipelines should no longer have been entering into new contracts with uneconomic take-or-pay clauses. Accordingly, there is no justification for granting credits with respect to take-or-pay obligations arising under such contracts.

when the pipeline performed no transportation under this rule could not have been caused by such transportation and thus the pipeline will not be authorized credit in that situation.[12]

It is possible that, in certain circumstances, sales displacements could occur without credits. For example, if the transported gas is owned by a producer who has no pre-June 23, 1987 take-or-pay contracts with the pipeline, then the pipeline would receive no credit for the transportation. In addition, as noted above, the pipeline must, without obtaining credits under this rule, transport (1) gas presently not committed to the pipeline by contract which it previously purchased under a terminated take-or-pay contract and (2) gas it released from a contract containing a market-out clause that allows the pipeline to terminate the contract at its discretion. These exceptions should encourage producers to agree to the buyout of existing uneconomic take-or-pay contracts and to the inclusion of market-out clauses in existing contracts, since such actions would assure producers that they can obtain transportation of gas formerly subject to or released from such contracts without providing credits against take-or-pay liability. In addition, these exceptions would afford similar treatment to producers who have already released pipelines from take-or-pay or onerous pricing provisions.

2. *The Mechanics of Crediting.* No gas shall be eligible for transportation under Part 284 of the Commission's regulations unless the pipeline and shipper or producer agree, or an affidavit is submitted to the pipeline offering the pipeline take-or-pay credits as provided by this rule. If an interstate pipeline purchases natural gas owned by a producer [13] on June 23, 1987, under a pre-June 23, 1987 take-or-pay contract (hereinafter "qualifying contract") and the gas to be transported was owned by the same producer on that date, the pipeline is entitled to credits under this rule as follows. For each unit of gas transported, the pipeline may receive credit for volumes transported as though they were volumes of gas owned by that producer, or its assignee, that the pipeline purchased under a qualifying contract. If the pipeline has more than one qualifying contract with the producer, the pipeline may select the qualifying contract to be credited. The pipeline may apply the credits as though the volumes were purchased in the contract year in which the gas was transported or in any previous contract year commencing on or after January 1, 1986 in which the pipeline was an open-access transporter. However, transportation prior to the effective date of this rule would not generate any credits. If the pipeline has no take-or-pay contracts under which it purchases gas which on June 23, 1987, was owned by the same producer who owned the gas to be transported, crediting would not be required. In addition, as described above, the pipeline must transport gas which is presently uncommitted to the pipeline but which it formerly purchased under a terminated take-or-pay contract without any credits. The pipeline also must transport gas released from a contract containing a market-out clause that allows the pipeline, at its discretion, to terminate the contract.

Unless the parties agree otherwise, the affidavit described above must be submitted in order to render gas eligible for transportation. The affidavit must identify the gas made eligible for transportation through its filing. The producer whose gas is being transported, and any other producer required to offer take-or-pay credits in connection with the transportation of that gas, must sign the affidavit.[14] The affidavit need not specify the crediting arrangements offered. It need only state that the producers in question offer credits as provided in this rule. The affidavit must also state that the offer is irrevocable and will, upon acceptance by the pipeline, result in a contract binding on the producers signing it and their assignees. Finally, the affidavit must state that the producers in question agree to abide by any Commission determination concerning how the provisions of this rule on crediting should be interpreted. Even when no crediting is required under this rule, the affidavit nonetheless must be submitted to the pipeline in order to render the gas eligible for transportation, unless the parties agree otherwise. Since the affidavit only offers crediting as provided in this rule, and no crediting would be required by the rule in such a situation, the purpose of this requirement is to remove uncertainty that the gas is eligible for transportation.

It should be noted that general affidavits may be submitted covering, for example, all gas owned by a particular producer. Separate affidavits are not required for each individual transportation transaction. This should make compliance with this rule less burdensome. The Commission requests comments on whether it should require that the affidavits contain any other information or statements not described above.

Once the necessary affidavit is submitted to the pipeline, the pipeline must transport the gas on a non-discriminatory basis, regardless of any disputes that might develop among the parties concerning how the crediting should be performed under this rule. Otherwise, achievement of the Commission's goal of non-discriminatory transportation would be seriously jeopardized. The parties should address disputes concerning the interpretation of this rule which they are unable to resolve to the Commission. As stated above, the producers must agree to abide by the Commission's determination. Disputes not involving the interpretation of this rule should be resolved in court like any other contract dispute.

The Commission has structured the eligibility condition in terms of gas owned by a particular producer on June 23, 1987, the date of the Court's decision in *AGD*, in order to avoid the possibility that producers could circumvent the credit requirement by transferring leases to others. Once the *AGD* decision was issued, the possibility the Commission might adopt some form of conditioning was readily apparent, since the Court spoke favorably of such an action. If transfers after that date could affect the pipeline's ability to obtain credits, a producer with pre-June 23, 1987 take-or-pay provisions in gas purchase contracts with the pipeline might, in order to avoid the crediting, transfer a lease where the gas was not under contract to the pipeline to another producer. When that producer sold the gas to its customer, the pipeline would not be able to obtain a credit from the first producer when it

[12] The Commission does not provide for credits against any take-or-pay liability incurred before January 1, 1986. Few pipelines performed transportation under these regulations before January 1, 1986, and that transportation was for only a short period.

[13] For purposes of this rule, the producer is a working interest owner of a lease, not a royalty owner. In addition, affiliates will be considered different producers so long as they have separate corporate identities. The divisions of one corporation will be considered a single producer.

[14] An example of a situation in which a producer other than the one who owns the transported gas could be required to offer credits is the following. On June 23, 1987, Producer A owned some gas committed to a take-or-pay contract with the pipeline. It also owned some uncommitted gas. After June 23, Producer A transfered the gas committed to the pipeline to Producer B, but Producer A retained the uncommitted gas. The credits provided by this rule in connection with the transportation of A's uncommitted gas would be with respect to the pipeline's take-or-pay obligations under the contract covering Producer B's gas. Of course, in the case of committed gas transferred after June 23, 1987, the credit is available against the producer which owned the gas as of June 23, 1987.

transported the gas. Similarly, circumvention could occur where the first producer, instead of transferring the gas not under contract to the pipeline, transferred to another person the gas sold under the pre-June 23, 1987 gas purchase contract. Structuring the eligibility condition in terms of gas owned on the date of the Court decision makes it difficult for any such circumvention to occur. It is unlikely that transfers occurring before June 23 would have been for purposes of circumvention, since that was when the Court directed the Commission to reassess various actions to address the take-or-pay problem.

It should also be observed that the eligibility requirement is structured in terms of gas owned by a particular producer regardless of whether that producer is a signatory party to the contracts under which the gas is sold. If the pipeline could only receive credits for gas sold under a contract signed by the same producer who signed the pre-June 23, 1987 gas purchase contract with the pipeline, then a producer desiring transportation of its gas to a purchaser other than the pipeline could circumvent the eligibility provision of the rule by arranging to have someone else, such as a co-owner of the lease or the operator, sign the contract under which that gas is sold. The producer could also sell the gas through a broker or marketer.

The fact that the eligibility requirement is structured in terms of gas owned by a particular producer means that where the piepline is requested to transport gas owned by several producers sold under a single contract and the pipeline has a pre-June 23, 1987 take-or-pay contract with only one of those producers, the pipeline may obtain a credit only for transporting that producer's gas. This result avoids denying one producer transportation of its gas because of a pipeline's unrelated take-or-pay problems with another producer's gas. Similarly, where the pipeline is requested to transport gas owned by only one producer and has a pre-June 23, 1987 gas purchase contract covering both that producer's gas and a second producer's gas, the pipeline may obtain credits only with respect to its take-or-pay obligations to the first producer for transportation of that producer's gas. The rule does not require the second producer to credit the transported gas against the pipeline's take-or-pay obligations, since the second producer receives no benefit from the transportation.

If a pipeline is requested to transport gas not owned by any producer on June 23, 1987, because not under lease on that date, the pipeline may seek take-or-pay credits from the producer selling the gas to be transported. However, the Commission requests comment on whether pipelines should receive any credits with respect to the transportation of this gas. Specifically, the Commission requests comment on the effects of such credits on exploration and development of new reserves.

The credits provided under this rule may be applied at the pipeline's discretion, as though the volumes were purchased in the contract year in which the gas was transported or in any previous contract year, commencing on or after January 1, 1986, in which the pipeline transported gas under this rule.[15] Moreover, the pipeline may have several pre-June 23, 1987 gas purchase contracts under which it purchases gas owned by the producer whose gas is to be transported by the pipeline. These contracts may contain different pricing and take-or-pay provisions. The pipeline may, in its discretion, determine to which contract any credits shall be applied.

The Commission recognizes that, as part of an agreement to release gas, the parties may have negotiated some method of crediting transported released gas toward the pipeline's take-or-pay liability. Nevertheless, in order for the released gas (other than that released from contracts containing market-out clauses allowing the pipeline to terminate the contract) to be eligible for transportation, the producer must offer the pipeline credits pursuant to the provisions of this rule unless the pipeline expressly waives its rights under this rule. However, if the pipeline chooses to receive credits under this rule rather than under the release agreement, it must discharge the producer from other crediting arrangements agreed to as part of the release or otherwise provided in the contract. In addition, for purposes of determining the pipeline's take-or-pay liability under the released contract, the pipeline may not claim that the annual deliverability of gas under the released contract is reduced by the volumes credited against another contract. This is necessary in order to avoid the pipeline's receiving double credits. Furthermore, to the extent the pipeline allocates the credits to a contract other than that which included the released gas, and as a result of the release the pipeline cannot exercise its contract make-up rights for gas for which it has made prepayments, the producer must, at its option, either repay the prepayments associated with volumes which now cannot be made up because of the release, or deliver a like quantity of gas from either the contract which was credited or some other source. This is necessary because, as a result of the release, there may be insufficient gas under the release contract to permit make-up.

There may be situations in which several pipelines are needed to transport the gas to market. When the gas is transported by more than one pipeline and the gas was released from a contract between the producer and one of the transporting pipelines, only the pipeline which is a party to the contract from which the gas is released may receive credit under this section. No other pipelines providing the transportation may receive a credit. In all other cases of multi-pipeline transportation, the credit is to be applied to the take-or-pay obligations of all the pipelines engaged in the transaction and is not required to exceed the amount of the gas transported. The pipelines may agree among themselves how to allocate the credit among their various take-or-pay liabilities. However, any failure by the pipelines to agree to a particular allocation will not render the gas ineligible for transportation under this rule. The pipelines cannot receive any credit until they agree on an allocation formula, but once they agree on a formula they may receive credits for all gas transported since the commencement of the transportation. The Commission requires the pipelines to agree on an allocation of the credits and does not itself provide an allocation formula. However, the Commission requests comments on whether it should adopt a formula and if so what formula it should adopt. The Commission specifically requests comments on the allocation of credits.

For existing transportation, producers must provide credits in the same circumstances as credits are required for new transportation. Accordingly, if on the effective date of this rule, a pipeline is transporting gas owned by a producer on June 23, 1987, that gas will cease to be eligible for transportation on the first day of the second month after the effective date of this rule, unless the pipeline and producer agree or an affidavit has been submitted to the pipeline offering the pipeline credits as

[15] The pipeline need only have performed the transportation at some point during the relevant contract year, not during the whole year. This rule is necessary since it is not practicable to provide for credits during only part of a contract year. This is because the pipeline's minimum take requirement generally is stated in terms of gas to be taken during the whole contract year, rather than during any lesser period of time.

provided in this rule. If the transportation is continued and credits are required, the credits shall commence from the date the affidavit is submitted.

The eligibility requirements for transportation established by this rule are transitional measures and should not continue indefinitely. Therefore, the Commission specifically requests comments as to when the eligibility requirement should expire.

Finally, the Commission again emphasizes that this rule is only an interim rule. The Commission invites comment on the crediting mechanism adopted here, as well as on additional or alternative approaches. More particularly, the Commission believes that factual data reflecting industry-wide conditions would be helpful to review further the approach taken here and perhaps other possible approaches, and specifically requests such data from commenters. The Commission also may implement reporting requirements to assess the effectiveness of the crediting, and requests comments on what information should be obtained for this purpose.

3. *Commission Action under NGA section 5.* The Court directed that the Commission reassess its decision not to invoke its power under NGA section 5 to modify or set aside jurisdictional contracts with troublesome take-or-pay provisions. The Commission is undertaking such an inquiry.

In order to make this reassessment, the Commission needs more information to analyze fully how effective and appropriate action under section 5 would be in mitigating pipeline take-or-pay problems. To this end, the Commission intends to exercise its authority under NGA sections 10 and 14 and NGPA sections 501 and 508 to send to each interstate natural gas pipeline company a data request to determine the extent and nature of the pipelines' take-or-pay obligations with respect to the various NGPA pricing categories. Pipelines will be required, with respect to each of their contracts, to specify, for example, (1) how any minimum take requirements are calculated, (2) the nature of any make-up rights, (3) what the pricing provisions are, (4) whether there are market-out clauses and what they provide. All this information must be broken out by NGPA pricing category. Pipelines also will be required to provide a complete history of their experience under each take-or-pay contract, including the quantity of gas they were actually required to take, the quantity they actually took, and the quantity they released with take-or-pay credits. Pipelines also will be asked to summarize their total take-or-pay liabilities under each contract, the amount settled, and the nature of the settlement, and they will be asked to provide information as to contract reformations.

Pipelines will be required to respond to the data request, in a format to be set forth in the request, within thirty days of the date the request is mailed. Pipelines failing to respond will be subject to civil penalties under NGPA section 504(b). After receiving the data responses the Commission may make random audits in order to assure the accuracy of the information submitted. Pipelines may request confidential treatment of their responses. *See* 18 CFR § 388.110 (1987). Producers are hereby requested to provide data in a similar format.

The Commission will aggregate the data submitted and analyze it promptly. If the information demonstrates that action under NGA section 5, or any other action (such as rescinding the incentive ceiling price for tight formation gas established under NGPA section 107(c)(5)), would contribute to solving pipeline take-or-pay problems, the Commission will then consider such action.

C. Mechanism for Passthrough

As part of this interim rule, the Commission is adopting acceptable passthrough mechanisms that pipelines may use to recover take-or-pay buyout and buydown costs under existing contracts. These procedures are being adopted in light of comments received in response to the proposed take-or-pay policy statement issued by the Commission on March 5, 1987, in Docket No. PL87-3-00.[16]

The principal features of the acceptable passthrough mechanisms are as follows. Pipelines may recover all prudently incurred costs in their sales commodity charges. However, pipelines that transport under this rule and volunteer to assume an equitable share of their take-or-pay costs may request alternative rate treatment for the remaining costs. Under this provision, pipelines may elect to absorb from 25 to 50 percent of their take-or-pay costs and may apply to recover an equal share of costs through a fixed charge. The remaining amounts, not to exceed 50 percent of the total buyout and buydown costs, may be billed through a commodity surcharge or a volumetric surcharge on total pipeline throughput.

The March 5 proposed policy was based on an underlying premise of equitable apportionment of buyout and buydown costs. The Commission provided that in cases where a pipeline agreed to assume an equitable share of cost, that pipeline would be permitted to recover the remaining share from its firm sales customers through a demand surcharge. In the proposed policy statement, the Commission considered a 50–50 cost sharing between the pipeline and its customers to be equitable based on the nature, extent and causes of the take-or-pay problem. The Commission further determined that each customer's demand surcharge should be based on its cumulative deficiency of purchases in recent years measured in relation to that customer's purchases during a representative base period prior to the accrual of take-or-pay liabilities.

In formulating the proposed policy, the Commission consciously sought to avoid, to the extent possible, lengthy and potentially complex hearings involving an attempt to quantify and ascribe blame for the accumulation of pipeline take-or-pay liabilities. In the Commission's judgment, the principal objective should be to design and implement procedures to deal quickly, effectively, and positively with the take-or-pay problem. To this end, the Commission proposed a rebuttable presumption that a pipeline's agreement to assume an equitable share of take-or-pay costs would be sufficient to take account of any imprudence on the part of that pipeline in incurring take-or-pay liability. Intervening parties were not precluded from raising the prudence issue, but the Commission stated that a showing of imprudence sufficient to negate recovery of customer allocated buyout and buydown costs would be difficult.

The proposed policy statement provided for the allocation of an equitable share of take-or-pay buyout and buydown cost to firm sales customers of pipelines through a demand surcharge; it did not attempt to prescribe the manner in which those costs would, in turn, be allocated by the pipeline's customers to end users. Most pipeline firm sales customers are local distribution companies (LDCs) whose rates are regulated exclusively by state regulatory authorities. The proposed policy statement provided that the method and extent of flowthrough by LDCs would be determined by the responsible state regulatory authorities.

Notice of the proposed policy statement was issued in the Federal Register on March 11, 1987, providing for comments to be filed by interested parties on or before April 10, 1987. Approximately 160 comments were received from all segments of the natural gas industry including

[16] 52 FR 7478 (March 11, 1987); 38 FERC ¶ 61,230 (March 5, 1987).

producers, pipelines, distributors, state regulatory agencies, consumer representatives, marketers and end users. These comments strongly support the Commission's efforts to address the current take-or-pay problem, but most comments suggest, in varying degrees, that the proposed policy was inequitable, impractical, or even unlawful and should be modified or clarified, or both, prior to final issuance.

Principal among those objections are that the proposed policy statement (1) effectively precluded pipelines from recovering all of their prudently incurred take-or-pay costs by requiring them to absorb an equitable share of such cost in order to qualify for demand rate treatment; (2) was unsuitable due to its failure to provide for a flexible take-or-pay recovery mechanism which may be necessary depending on the facts and circumstances of particular cases; (3) impermissibly shifted to objecting parties the burden of proving pipeline imprudence, whereas under the requirements of the NGA pipelines are required to prove the prudence of their claimed costs; (4) improperly failed to assess take-or-pay costs against interruptible, transportation and small volume customers of pipelines; and (5) would result in the charging of a disproportionate share of pipeline take-or-pay costs to high priority "captive" customers. A number of commenters also argued that only pipelines which have agreed to the open access requirements of Order No. 436 should be eligible for the cost recovery procedures incorporated in the proposed policy statement.

Based on a careful review of the objections and suggestions set forth in the comments, the Commission has determined that the basic features and underlying principles of the proposed policy statement are sound and should be adopted. The Commission also agrees, however, that the comments demonstrate the need to modify the policy statement to set forth appropriate mechanisms for passthrough that meet valid policy objectives as well as the legitimate expectations and practical needs of the industry as a whole. We discuss the previously-outlined issues in turn.

1. *Opportunity to Recover Prudent Costs.* Numerous pipelines alleged that the proposed policy would deprive them of the opportunity to recover their prudently-incurred costs, since in order to be eligible for the demand surcharge, pipelines would be required to absorb 50 percent of their take-or-pay costs. These allegations are unfounded. It is true that the Commission's current policy, and one of the flowthrough mechanisms found acceptable in this rule, is that take-or-pay buyout and buydown costs are expenses related to the acquisition of gas supplies and should therefore be classified as production related and recovered through the pipeline's commodity rates. It is also true that such classification exposes costs to the risk of under-collection due to the effect of market forces (and thereby provides an incentive for the pipeline to minimize its costs). The Commission, however, is not required to guarantee cost recovery; rather it must provide a reasonable opportunity for pipelines to recover their prudently incurred costs. In the Commission's judgment, commodity rate treatment fulfills that obligation. *See Transwestern Pipeline Co. v. FERC,* Nos. 85-4597, *et al.*, slip op. at 4917-4918 (5th Cir. July 7, 1987); *Tennessee Gas Pipeline Co. v. FERC,* No. 85-1644, slip op. at 4-5 (D.C. Cir. July 24, 1987).

For pipelines that transport under Part 284 of the Commission's regulations, another recovery mechanism is warranted. These pipelines, who are making the transition from merchants to transporters, will find it more difficult to recover their take-or-pay costs in their sales commodity rates because they will be making fewer sales as they transport more. For these pipelines, the Commission is providing another alternative, described in greater detail below.

2. *Apportionment and Recoupment of Take-or-pay Costs.* Virtually all commenters addressed the core provisions of the proposed policy, which provided for a 50 percent sharing of costs by pipelines in return for demand surcharge recovery of the remaining 50 percent. Interstate Natural Gas Association of America as well as a number of individual pipelines oppose the cost sharing requirement and propose instead that pipelines be permitted to recover 50 percent of all prudently incurred costs through a demand charge, with the remaining 50 percent to be billed in a volumetric surcharge on all throughput volumes. Other commenters recommend that all prudent costs be recovered through a volumetric surcharge. The majority of commenters, however, oppose recovery of pipeline take-or-pay costs exclusively through either 100 percent demand or 100 percent volume surcharges and emphasized the need for flexibility to permit a combination of both methods. A number of parties commented that the proposal to base customer demand surcharges on historical gas purchase levels constitutes unlawful retroactive ratemaking [17] and would penalize those parties who relied on Commission orders in pursuing a least-cost gas purchasing strategy. A number of commenters argue that the Commission should automatically disallow recovery by pipelines of any buyout or buydown cost paid to an affiliated producer.

The Commission reaffirms the underlying premise of its proposed policy: That there should be an equitable sharing of take-or-pay costs among all segments of the industry, including producers, pipelines, distributors and consumers. The sharing of costs can be accomplished in two ways, namely through voluntary agreement of the pipeline or through the use of market sensitive rates designed to permit but not guarantee recovery of costs. The proposed policy statement provided a general standard for cost apportionment and recovery. Pipelines were expected to assume 50 percent of their buyout and buydown costs in return for guaranteed recovery of the remaining 50 percent through a demand surcharge.

The Commission remains of the view that 50-50 sharing combined with fixed rate recovery is reasonable. However, the Commission recognizes that this approach may lack sufficient flexibility in some circumstances to assure that it will contribute sufficiently toward resolving the take-or-pay problem. The Commission believes it is necessary to expand the proposed mechanism to provide for sharing of take-or-pay cost through market forces as well as through voluntary agreement. The purpose in doing so is to give pipelines (and their customers) more flexibility to develop take-or-pay cost recovery proposals which meet the objective of fair and reasonable cost apportionment under different and widely varying circumstances such as exist between one pipeline and another.

Accordingly, the cost apportionment and recovery procedures set forth in the proposed policy statement are modified as follows. The requirement that pipelines agree to assume 50 percent of their take-or-pay settlement cost is not adopted. Instead, pipelines may in their discretion agree to assume anywhere from 25 to 50 percent of their costs; provided, however, that a pipeline may not claim recoupment through a fixed charge of any amount in excess of that

[17] The NGA bars pipelines from "collecting a rate other than the one filed with the Commission and prevents the Commission itself from imposing a rate increase for gas already sold." Arkansas-Louisiana Gas Co. v. Hall, 453 U.S. 571, 578 (1981).

which it is willing to absorb.[18] The pipeline may seek to recover the remaining amounts, not to exceed 50 percent of total take-or-pay costs, at its option, through a commodity rate surcharge or a volumetric surcharge on total pipeline throughput. Thus a pipeline agreeing to absorb 50 percent of its take-or-pay cost would be entitled to claim the remaining 50 percent through a fixed charge as provided for under the proposed policy statement. Another pipeline might agree to absorb only 25 percent of its take-or-pay costs, in which case it would be entitled to claim 25 percent from its customers through a fixed charge; the remaining 50 percent would be recoverable through a commodity or a volumetric surcharge. The Commission believes the 25 percent minimum requirement for pipeline assumption of take-or-pay costs is reasonable to ensure that a pipeline cannot claim more than 50 percent of take-or-pay costs under either a fixed or volumetrically-based surcharge. This will serve to ameliorate the adverse impact a 100 percent volumetric allocation method could have on particular customers or classes of customers.

The Commission rejects assertions that the cumulative deficiency method of allocation based on historical sales data constitutes retroactive ratemaking. There is nothing in the Commission's proposal which would retroactively change the rates pipelines have charged their customers in the past or which would involve imposing a rate increase for gas already sold. Rather, the proposed allocation method would enable pipelines to recover in their future rates costs which they have actually incurred but have not recouped. Nor does the Commission believe the proposal unfairly prejudices parties who followed a least-cost gas purchasing strategy. Commission actions that enabled pipeline customers to purchase gas from alternative sources at lower prices may have resulted in an increase in pipeline take-or-pay obligations. The Commission therefore believes it is reasonable that the beneficiaries of Commission initiatives to increase competition in the natural gas industry should share in the transition costs which accompany the industry's restructuring.

The Commission declines to rule at this time concerning whether a pipeline may recover take-or-pay costs paid to producer affiliates. Pipelines and their affiliates should have resolved such matters long ago. The Commission also has serious reservations about whether any such costs should be borne by pipeline customers. Therefore, the Commission will address the issue if it arises in a future case and will address whether take-or-pay buyout and buydown payments to affiliated producers should be automatically or summarily denied.

3. *Prudence and Burden of Proof.* Numerous commenters allege that the proposed policy statement unlawfully shifts the burden of proof as to the prudence of claimed take-or-pay costs from the pipeline to its customers or other opposing parties. This shift is alleged to occur as the result of the rebuttable presumption that if a pipeline agrees to absorb 50 percent of its take-or-pay costs, the remaining 50 percent will be deemed prudently incurred.

These comments appear to represent for the most part a misinterpretation or mischaracterization of the proposed policy statements. Section 4(e) of the NGA provides that "[a]t any hearing involving a rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the natural gas company * * *." Therefore under the NGA the pipeline has the burden of proof; the Commission has not proposed to shift that burden. A presumption of prudence is reasonable under the circumstances [19] and does not constitute a departure from normal practice. As with any other expense or investment sought to be charged by a pipeline, if that cost is challenged, it is up to the pipeline to demonstrate its reasonableness. In the absence of any challenge, however, the cost properly may be approved since it is assumed that utility managements operate in a reasonable and prudent manner absent information or evidence to the contrary. *West Ohio Gas Co.* v. *P.U.C. of Ohio*, 294 U.S. 63 (1935); *Violet* v. *FERC*, 800 F.2d 280 (1st Cir. 1986.)

In formulating the proposed policy the Commission sought to discourage prudence hearings and to encourage settlement of take-or-pay claims based on the policy statement guidelines. Notwithstanding the Commission's intent, the comments make clear that many parties desire or feel compelled to litigate the prudence issue. In view of this fact, the Commission believes it will be helpful to state the policy it intends to follow in the event prudence hearings are required. The Commission continues to believe, for reasons stated in the proposed policy statement and restated here, that the solution to recovery of take-or-pay costs can be best achieved through settlement rather than through the process of costly and protracted litigation. To that end, the Commission intends to exercise its authority to the full extent permitted by the NGA in approving take-or-pay settlements presented to it. The Commission intends to approve uncontested take-or-pay settlements which are consistent with this policy and found to be in the public interest. The Commission will also, if it appears reasonable and permissible to do so, approve contested settlements as to all consenting parties and initiate separate hearings as to opposing parties. *See, United Municipal Distributors Group* v. *FERC*, 732 F.2d 202 (D.C. Cir. 1984). Alternatively, the Commission will approve contested settlements on the merits if supported by substantial evidence in the record. *Mobil Oil Corp.* v. *FPC*, 417 U.S. 283 (1974). Furthermore, in any cases where hearings are held, the Commission will permit a pipeline the opportunity to recover from litigating parties its proportionate share of all of the pipeline's take-or-pay costs found to be prudent even if the amount allowed is greater than the amounts initially claimed by the pipeline. This is reasonable in view of the fact that any claimed costs found to be imprudent would be disallowed. The Commission requests comments concerning how upward and downward rate adjustments resulting from prudence hearings should be made.

4. *Interruptible, Transportation and Small Volume Customers.* Numerous commenters challenge the proposed policy statement for its failure to levy take-or-pay costs against interruptible sales, transportation and small volume "SGS" customers. They argue that the Commission's assumption that pipelines did not acquire long-term gas supplies for the purpose of serving interruptible customers is erroneous and unsupported. Commenters supporting assessment of take-or-pay costs against transportation and small volume sales customers argue variously that both sales and transportation customers have contributed to pipeline take-or-pay problems, that recovery of all take-or-pay costs should be made subject to the "market test," that all customers being served by a pipeline should pay a share

[18] In its proposed policy statement the Commission used the term "demand surcharge" to describe the recovery mechanism for customer-allocated take-or-pay costs. It was the Commission's intent that this charge would be a fixed dollar charge which would be separately stated in each customer's monthly bill. Based on a review of the comments, the Commission believes that it would be more accurate and less confusing to refer to this charge as a fixed take-or-pay charge rather than a demand surcharge.

[19] *See* Panhandle Producers and Royalty Owners Assoc. v. Economic Regulatory Admin., No. 86-1058 (D.C. Cir. June 30, 1987).

of its take-or-pay costs, and that volumetric billing would insulate residential and commercial consumers from shouldering the full burden of the take-or-pay problem.

The Commission believes there is some merit in these comments, as evidenced by the previously-discussed changes in the proposed policy related to the issues of cost apportionment and recovery mechanisms. In the Commissio's judgment, the more costs a pipeline is willing to absorb, the greater its entitlement to assured recovery of remaining costs. This principle supports billing through a fixed charge of amounts equal to the costs absorbed. At the same time, there is a reasonable basis for charging all customers served by a pipeline, whether firm, interruptible, sales or transportation, a share of take-or-pay costs. This is so for various reasons, depending on the customers involved and the type of service each receives, and also because volumetric billing serves to spread the costs on a broad basis.

The Commission expects transportation service to increase as more pipelines convert to service under the new program in light of the significant modifications adopted in this rule in response to *AGD.* It is likely that most transportation service will be performed by pipelines for their LDC sales customers in light of the right of those customers under the terms of this rule to convert (but not reduce) the CD obligations to firm transportation service. It is these customers who will be responsible for both fixed charges and volumetric surcharges. It appears that while there obviously will be some shifting of cost responsibility among LDCs depending on the recovery mechanism (or combination of mechanisms) employed, the change in the cost-apportionment and recovery mechanism adopted in this order will affect not so much the level of costs allocated to LDCs but rather the ability of pipelines fully to recover those costs under competitive market conditions.

The Commission also concludes that transportation customers which were not previously firm sales customers of the pipeline may reasonably be held responsible for volumetric transportation surcharges. Such customers could not realize the benefits of transportation in the absence of this rule. Therefore, it is appropriate for these customers, who benefit from the pipelines' functioning as transporters, to contribute toward easing the pipelines' transition from their role as primarily merchants to transporters. These transportation customers should accept a reasonable share of pipeline take-or-pay costs to the extent permitted by market forces.

The same conclusion obtains with respect to a pipeline's sales to interruptible customers. Pipelines have historically made only about five percent or less of their sales to jurisdictional customers under interruptible rate schedules. Most of the remaining interruptible sales have been made by LDCs with gas purchased from pipelines under firm rate schedules. Pipelines are currently making virtually no interruptible sales. The application of a volumetric surcharge to interruptible sales will therefore have little overall effect. Upon further consideration of this matter in light of the comments filed, the Commission concludes that it is reasonable to permit pipelines, if they so choose, to apply a volumetric surcharge to interruptible sales. While pipelines may not have actually purchased long-term gas supplies to serve interruptible customers, such customers were in fact served with gas available under long-term contracts and not required to meet firm sales obligations. Additional justification exists in the general policy that all classes of customers should share in the cost of solving the take-or-pay problem. The same arguments support eliminating the proposed exemption for small volume "SGS" customers. In doing so, however, the Commission notes that there may be valid reasons of practicality and rate administration which would suggest these very small customers be made exempt from the described rate surcharges for take-or-pay costs. The Commission will permit such exemptions in particular cases where it is agreeable to the parties.

In summary, the Commission concludes that while fixed charges and volumetric surcharges represent inherently different cost recovery mechanisms, there are conceptual, equitable, legal and policy justifications for both methods. The Commission therefore accepts the proposition that pipeline take-or-pay costs should be permitted to be recovered either through fixed charges or volume-based surcharges, or through a combination of both, in the manner provided for by this rule. It is the Commission's intention that all firm sales customers (including those with one-part rates) will be liable for both fixed and volume-based surcharges depending on their historical and current levels of service. Interruptible sales and transportation customers will be responsible only for volumetric charges depending on the volumes of gas sold or transported to them.

5. *Captive Customers.* A number of State commissions and consumer representatives express the concern that the proposed policy would discriminate against captive residential and other high priority consumers by disproportionately saddling them with take-or-pay costs permitted to be recovered through a demand surcharge. This is alleged to occur because apparently most LDC rates are designed to recover pipeline demand costs from residential and commercial customers, whereas the rates of lower-priority LDC customers are based on the pipeline commodity rate plus an increment to recoup a share of the LDC's fixed costs. Several state commissions also express concern over the Commission's reference to *Nantahala Power Light Co.* v. *Thornburg,* 106 S. Ct. 2349 (1986).

As previously noted, the proposed policy statement does not attempt to prescribe the methods by which approved pipeline take-or-pay costs are to be allocated at the state level. However, it is the Commission's view that there should be an equitable sharing of take-or-pay costs among all segments of the industry. The issue therefore is whether there exists any basis to expect that state agencies will be able to effect a sharing of pipeline take-or-pay costs as between LDCs and their customers.

The Commission does not believe that *Nantahala* precludes state regulators from designing LDC rates, or, in appropriate circumstances, from reviewing the prudence of LDCs' purchasing decisions insofar as they affect take-or-pay costs. It must be recognized that a fixed charge for take-or-pay costs is based on the need for assured recovery in light of a pipeline's agreement to absorb a comparable share of its take-or-pay costs. It is not based on the fact that the costs included in the charge are fixed costs. As the Commission has noted, take-or-pay settlement costs are actually related to the acquisition of gas supply and are considered as production-related. Therefore the Commission believes state regulators could consider reclassifying take-or-pay costs billed as a fixed charge as commodity costs and incorporating such costs into LDC sales or transportation rates, or both, thereby spreading such costs to the maximum possible extent as well as subjecting them to market forces. Alternatively, state agencies may wish to consider the option of not reclassifying fixed take-or-pay charges and instead allocating such charges to the LDC's customers based

on their cumulative purchase deficiencies.

The Commission can exercise its jurisdiction only within its legitimate sphere, which in this instance involves establishing cost allocation procedures and rates for recovery by pipelines of take-or-pay costs from their jurisdictional customers. The development of cost allocation procedures and rates for the LDCs are matters to be determined by state regulatory authorities.

6. *Eligibility Condition.* Several commenters recommend that recovery of take-or-pay costs outside of the general commodity rate treatment for prudent costs should be granted only on condition the pipeline agrees to become an open-access transporter.

The Commission adopts this suggestion. Unlike pipelines that remain merchants, pipelines that change their role from merchant to transporter under this rule may need a mechanism such as outlined here to make that transition. A pipeline that remains a merchant is in a better position to recover its take-or-pay costs through its sales commodity rates than a pipeline that becomes a transporter under Part 284 and faces more competition from other gas suppliers in its market areas. In addition, it is for the pipelines that transport under Part 284 that the Court in *AGD* directed the Commission to find a means to ease the take-or-pay squeeze that results from the Commission's transportation regulations. The changes in Order No. 436 adopted in this rule pursuant to *AGD*, as well as the take-or-pay cost recovery mechanisms here adopted, provide substantial relief to these pipelines for both past and future take-or-pay obligations. Finally, many pipelines have claimed that inadequate take-or-pay relief has been the major deterrent to adoption of the terms and conditions of Order No. 436. The Commission believes the time has come to proceed with the orderly, expeditious implementation of open access transportation so that the ultimate objective of increased access to competitively-priced gas can be realized. Limiting the eligibility of pipelines for recovery of take-or-pay costs through the rate mechanisms outlined in this order on acceptance of open access transportation is a reasonable means of accomplishing that goal.

7. *Other issues.* A number of comments were received concerning various technical and procedural aspects of the proposed policy. The Commission will address several of these issues for the purpose of clarifying, and in some cases modifying, the proposed policy.

Several commenters request clarification as to whether a pipeline filing under NGA section 4(e) to recover take-or-pay costs may limit its filing to the costs claimed, or whether it must file a "complete" general rate application concerning all of its costs, services and rates. A pipeline will be permitted to file a rate increase application limited to its take-or-pay buyout and buydown costs. The Commission will review each such filing to determine whether good cause exists to waive the normal rate filing requirements of section 154.63 of the regulations. Waiver will be granted in cases where the pipeline demonstrates that its existing rates, adjusted for take-or-pay costs, would be just and reasonable. However, in cases where it appears that a pipeline's existing rates are not reasonably representative of that pipeline's actual costs, volumes or other underlying rate determinants, the pipeline will be required to refile its claimed take-or-pay costs as part of a general rate filing.

In its proposed policy statement the Commission provided that downstream pipelines would have the right to flow through approved take-or-pay charges on an "as-billed" basis. Many if not most commenters support the as-billed principle. Upon further consideration of this issue, the Commission believes it is necessary to clarify the as-billed principle as it applies to take-or-pay costs billed through a fixed charge. The term as-billed means that a charge or cost should be flowed through on the same basis as that upon which it was incurred. This could lead to the interpretation that take-or-pay fixed charge should be flowed through in the same manner and extent as ordinary demand charges, especially since in the proposed policy statement the take-or-pay charge was described as a demand surcharge.

However, the Commission believes this would be improper and would lead to unreasonable and inequitable results. Flowthrough based on system demand rates could result in the allocation of take-or-pay costs among the downstream pipeline's customers in a manner which fails to reflect the causation of the downstream pipeline's share of the upstream pipeline's take-or-pay costs. Therefore, the Commission believes that downstream pipelines should be required to allocate the fixed take-or-pay charges of upstream pipelines on the same basis as that upon which they are incurred, namely cumulative purchase deficiencies. This allocation method assures that all of the downstream pipeline's customers' (including possibly other pipelines) are charged for take-or-pay costs in proportion to the degree to which they contributed to the incurrence of such costs. The Commission seeks comments concerning whether the cost-sharing requirement outlined in this order should be applied with respect to fixed take-or-pay charges billed to each downbtream pipeline.

Certain commenters oppose the feature of the proposed policy statement which would permit pipelines to submit a single take-or-pay rate filing based on an estimate of the total cost of buying out and reforming their existing contracts with producers. They argue that pipelines should be permitted to file only for take-or-pay costs actually incurred and that the Commission should not approve recovery of any amounts based solely on estimates. While the single filing approach was necessarily predicated on an estimate of a pipeline's total take-or-pay cost, pipelines would not have been authorized to collect amounts reflecting anything other than actual payments to producers. Nevertheless, the Commission believes there is merit to the opposing comments on this issue. The single-filing approach admittedly poses certain questions as to both substance and procedure. It is somewhat novel and would undoubtedly require further development and clarification in the context of individual proceedings. There will be less uncertainty and confusion if pipeline filings are limited to the recovery of actually-incurred and known costs, and we will therefore not adopt the single filing proposal.

In the proposed policy statement the Commission stated that pipelines filing rate applications to recover take-or-pay buyout and buydown costs would be permitted to select a reasonable period over which to amortize the costs being recovered. The Commission requests comments concerning whether a uniform or "standard" amortization period, such as four or five years, should be adopted.

Several commenters suggest that any cost recovery mechanisms ultimately adopted should be available only for a limited period. They argue that adoption of such a "sunset" provision would provide an impetus for parties to resolve their take-or-pay problems without unnecessary or undue delay. The Commission believes this a reasonable and sound suggestion which can be expected to have a beneficial effect in resolving the take-or-pay problem. As stated in the proposed policy statement, "take-or-pay represents possibly the last

and most significant deterrent to the realization of the Commission's goal of removing, as far as possible, obstacles to the establishment of orderly competitive markets for natural gas sales and services." [20] It goes almost without saying that it is desirable that the take-or-pay deterrent to competitive natural gas markets and services be eliminated as quickly as possible. Accordingly, the Commission will adopt the sunset recommendation. As a matter of judgment, the Commission believes that a period of approximately one and one-half years from the effective date of this order should provide all parties with a reasonable period within which to resolve their take-or-pay problems and to file for recovery of the resulting costs. The Commission will therefore provide that the alternative passthrough mechanisms established by this order shall be available to pipelines for filings made on or before December 31, 1988.

The proposed policy statement established a "one time only" provision under which a pipeline would be entitled to alternative treatment for buyout or buydown costs only one time per contract. A number of commenters suggest that while this requirement is well-intentioned, it is likely to prove counterproductive since as a practical matter it will frequently require more than one settlement per contract to resolve take-or-pay problems. Upon review of this matter, the Commission agrees that the one time only provision may unnecessarily restrict the latitude of parties in settling their take-or-pay problems. This is especially true in light of our decision to incorporate a sunset provision. This provision will therefore not be adopted.

D. Future Gas Supply Charges

To enable pipelines to avoid the future recurrence of take-or-pay problems, the Commission is adopting, as a matter of policy, certain principles for the design of pipeline rates. These principles are intended to establish the parameters in which pipelines may file to recover the costs of maintaining supply for their customers. As set forth in new § 2.105 of the Commission's regulations, the principles are as follows:

(1) An interstate natural gas pipeline that transports under Part 284 of the Commission's regulations may include in its tariff a charge, not related to facilities, for standing ready to supply gas to sales customers.

(2) The pipeline may not recover take-or-pay or similar charges from suppliers by any other means.

(3) The pipeline must allow its sales customers to nominate levels of service freely within their firm sales entitlements or otherwise employ a mechanism for the renegotiation of levels of service at regular intervals.

(4) The pipeline must announce prior to nominations by the customers a firm price or pricing formula for the service, and hold that price or pricing formula firm during the interval arranged in number (3) above.

(5) By nominating new levels of service lower than its current level, a customer would be consenting to any abandonment sought by the pipeline commensurate with the difference between the current level of service and the nominated level.

The Commission is adopting these principles as a matter of policy to give pipelines and their customers and suppliers insight into its direction on new rate design. As such, the principles do not establish any requirements, but only the basis for permissive filings.[21] However, as described in greater detail below, the Commission is seeking comments on the principles in order to determine whether they should serve as minimum requirements for future rate filings.

In its recent proposed policy statement on pipeline recovery of take-or-pay buyout and buydown costs, the Commission stated its intent to design rates that would help pipelines restructure their service obligations to customers and their purchase obligations to producers so as to reflect the realities of anticipated future operations and prevent future take-or-pay problems. The need for such rate design, as well as the basis for the Commission's adopting certain principles in this rule, is apparent from a general examination of current rate design.

With existing one-part purchase gas rates, a pipeline must contract for supplies and stand ready to satisfy its sales customers' contract requirements, but its customers are not required to pay for this service on a current basis. In current sales rates, the demand component consists only of costs for transportation facilities. The gas sales reservation component is paid, perhaps years later, in the form of passed-through take-or-pay charges.[22]

The billing of retrospective take-or-pay settlement costs in current sales rates is not good regulatory policy for the future, since costs may be charged to customers who did nothing to cause the problem. The principles for designing new gas supply charges adopted here are intended to avoid that by making a pipeline's system supply customers more careful in nominating their demand, because they will pay on a current basis for excessive nominations. Conversely, the pipeline will have reason to be more careful in contracting for long-term supplies for which no one is willing to pay on a current basis.

The Commission believes that gas sales rates should be prospective, in the sense that charges are known to the customers in advance, and which customers can take into account when they nominate levels of service, which may be substantially below current sales entitlements. Such charges for gas are not the same as capacity or demand charges for transportation. Although they are similar in concept and theory, the actual costs and service are for the most part separable and distinct. A gas inventory charge also is separate from the gas commodity charge and would be based on the amount of service requested. The inventory charge would be paid when the pipeline holds in "inventory" gas or rights to gas that the customer can call on for delivery at a specific time. Because such gas is available for potential use by the customer, the charge for this service is properly characterized as a fixed charge (like a demand charge) for standing ready to serve. It is not based on an actual commodity purchase. The customer pays the commodity charge only if it actually buys the gas.

Traditionally, pipelines have billed their customers for take-or-pay costs, *i.e.*, the costs of maintaining inventories, well *after* the customer had to make the decisions as to whether it was more economical to purchase from the pipeline or from alternative suppliers. Because take-or-pay charges are not known until after the purchase decision, the customer may have unknowingly chosen the more expensive alternative. By contrast, any new charges following the principles adopted here are intended to compensate a pipeline currently for contracting for a gas supply to meet its

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[20] 38 FERC ¶ 61,230 at 61,728.

[21] Appendix A to this rule is a description of two examples of charges which would follow the principles and hence be suitable for such filings.

[22] The minimum commodity bill was an attempt to deal with this problem, but its design did not work well as competition increased. One central problem was that the minimum bill was not the result of a voluntary selection from a menu of services that enabled the customer to obtain exactly the level of supply security it desired at a charge known in advance. The principles underlying future gas supply charges, as adopted here, are intended to remedy this problem.

customers' requirements. A necessary adjunct of this is that such charges should be the only means of collecting the future take-or-pay or similar costs. Otherwise, the purpose of allowing the customer to make an informed choice and select the least-cost mix of supply would not be achieved. That is, the pipeline, in return for new gas supply charges waives the right to recover *future* take-or-pay costs [23] by any mechanism other than those charges.

Under these principles, the new rate design option will be available to any interstate pipeline transporting under Part 284 of the Commission's regulations, and may be implemented as part of the pipeline's rate case. The Commission is aware of a need for transition between the operation of the take-or-pay buyout or buydown passthrough policies (which deal with *past* take-or-pay costs and uneconomic contracts) as discussed above, and the principles embodied in the new rate design which is intended to be forward-looking, and deal with *future* take-or-pay costs. The new rate design is intended as a future-looking mechanism to recover the costs of contractually committing gas service that has been tailored to meet the customer's nominations whenever fewer than nominated volumes (or a reasonable percentage of nominated volumes) are taken by a customer, who is fully aware that such charges would be *currently* assessed on a monthly basis, based on its own service nomination. In brief, the Commission is seeking to establish a rational, efficient pricing structure for the pipeline merchant function with emphasis on reciprocity and consideration of service obligations under the increased options available to a pipeline's sales customers.

As stated earlier, the Commission seeks comments on the principles adopted here with a view toward establishment of a mandatory rate design mechanism in the future. For the interim period of this rule, however, their implementation will be voluntary and permissive for any pipeline transporting under Part 284 of the Commission's regulations. Specifically, the Commission seeks comments on (1) whether eligible (Part 284) pipelines should be required to offer full CD reduction and/or conversion in order to put the future gas supply charges into effect; (2) whether eligible pipelines should be allowed to profit from these services; (3) whether the PGA process should be phased out for eligible open-access pipelines transporting under Part 284 of the Commission's regulations; and (4) what the future role of system supply and the obligation to serve on an open-access pipeline may be.

[23] "Future" take-or-pay costs are future accruals of take-or-pay costs under existing or new contracts, commencing from the effective date of this rule.

IV. Contract Demand Adjustments

The CD reduction and conversion provisions of former § 284.10 of the Commission's regulations were designed as transitional measures to enable pipelines and their customers to make the transition over a five year period to the new environment created by the Commission's regulations without waiting for their existing sales contracts to expire.[24] Through the exercise of the CD conversion option, firm sales customers, primarily LDCs, could convert from sales to firm transportation and thereby obtain access to competitively-priced gas supplies on a year-round basis. Through the exercise of the CD reduction option, sales customers could readjust their required service levels, thus facilitating their use of other pipelines and generall providing them a greater choice of services. The reduction option was also intended to allow customers with unrealistically high CDs to adjust them so as to make capacity available for others. In addition, with the implementation of peak pricing, both of these options were important to enable customers who did not want to pay peak prices to give up capacity to those who value it more highly.

The exercise of both of these options by a pipeline's customers, however, can potentially aggravate the pipeline's take-or-pay liability. Even so, the Court in *AGD* found that the conversion option was a necessary transitional measure to provide pipeline firm sales customers with immediate access to competitively-priced gas. However, the Court found that the reduction option had not been adequately justified.

A. CD Reductions

The Commission has decided not to repromulgate the cd reduction option in the interim rule. For the reasons stated above, the Commission continues to believe that the original objectives of the CD reduction option remain valid. But the Commission finds it difficult in this interim rule to satisfy the Court's finding that the current record does not justify that option on a generic basis. Specifically, the record developed in the Order No. 436 docket does not contain enough information concerning the amount of cost-shifting to captive customers that might result from the CD reduction provision to enable the Commission to balance that potential impact against the potential gains to be achieved from the option.[25] Nor can the Commission rely on the record created thus far to demonstrate that implementation of the CD reduction option will ultimately result in lower rates.[26] The Commission requests comments as to how the Court's concerns may be met, including what additional information may be necessary to support CD reduction.

Even though the Commission is not retaining the CD reduction option in this interim rule, the Commission believes that in the short term the goals it hoped to accomplish with that option, in large part, may be achieved through other means. Thus, the industry may obtain some of the benefits of CD reductions while the Commission is considering whether it is possible to repromulgate that option in some form on a permanent basis. The CD conversion option, which the Commission is retaining in this interim rule, should, in most cases, enable firm sales customers of the, pipeline to obtain alternative firm supplies, and the nondiscriminatory access provision should allow access to alternative interruptible supplies. Thus, many customers will have access to competitively priced gas for the short term even if immediate CD reduction is not an option.

In addition, CD reductions can still occur during the period this interim rule is in effect. Pipelines and their customers may still voluntarily renegotiate their contracts that have unrealistic CDs. The Commission encourages them to do so, in pending and new rate cases. This will allow other customers, including customers not currently on the system, to obtain more firm capacity, and will facilitate the transition to open access transportation. With the expiration date of many of the firm service agreements approaching, the Commission expects that such voluntary renegotiations increasingly will take place. (See Appendix B.) The Commission has already received filings by pipelines (*e.g.*, Texas Eastern Transmission Corporation and Tennessee Gas Pipeline Company) to reallocate excess firm capacity held by existing customers to

[24] On July 2, 1987, the Commission stayed § 284.10 until the effective date of dispositive Commission action in light of the Court's decision, subject to leave of Court. On July 17, 1987, the Court granted that leave. *AGD*, No. 85-1811 (D.C. Cir. July 17, 1987) (mem.). This interim rule is dispositive Commission action for the purpose of terminating the stay order

[25] *See* slip op. at 73.

[26] *See* slip op. at 71-72.

new customers as part of settlements. In addition, if circumstances warrant, either upon complaint or as a result of a Commission initiated investigation, the Commission could direct the reduction of CDs on a particular pipeline and the Commission will consider such a remedy in an appropriate case.

B. CD Conversions

The Commission has decided to retain the CD conversation option. If a pipeline is going to provide non-discriminatory transportation then it must allow its sales customers the option to make use of that transportation through the CD conversion option. This is necessary because sales contracts negotiated before the pipeline became a transporter (*i.e.*, when the pipeline was primarily a merchant) restrain the sales customers' ability to make use of firm transportation in a meaningful way. Because the pipeline's capacity is fully booked under the sales contracts, customers can only obtain interruptible transportation and not firm transportation. Yet all but perhaps the largest LDCs need firm transportation in order both to obtain access to the competitive gas commodity market and to fulfill their basic service obligations.

The CD conversion option is the only effective means by which a pipeline's firm sales customers may have a realistic opportunity for immediate access to competitively-priced gas supplies available from alternative suppliers. Both the nondiscriminatory access provision and the CD conversion provision prevent the pipeline from utilizing its market power to require its sales customers to take the pipeline's system gas instead of alternative competitively-priced supplies. In providing for the CD conversion option the Commission is making certain that firm sales customers have the same meaningful access to transportation as other customers, consistent with the Court's decision in *Maryland People's Counsel v. FERC*.[37]

The Commission recognizes that, in general, CD conversions also can exacerbate a pipeline's take-or-pay liability. Customers that convert buy less pipeline system supply than they would otherwise. However, with the crediting mechanism of this rule the adverse impact on pipelines is lessened because transportation using converted CD capacity can result in a credit to the transporting pipeline's take-or-pay liability.

In addition, § 284.10 of the Commission's regulations provides that the pipeline may file for abandonment of its sales service to the extent that a customer has converted its CD to transportation. A presumption that the abandonment is in the public convenience and necessity exists under § 284.10 in that case. Such abandonments will make it easier for pipelines to manage their gas supplies and avoid take-or-pay liability where conversion rights have been exercised. These sales abandonments will enable pipelines to renegotiate their supply contracts to reflect market realities at the distribution end of their systems. Additionally, the Commission seeks comment on whether it should adopt abandonment procedures for conversions similar to those proposed in the rulemaking in Docket No. RM87-16-000.[38]

The Court in *AGD* stated that if the Commission modifies its disposition of producer-pipeline contracts, the Commission may wish to reconsider the phase-in of the conversion option.[39] In the context of the Court's discussion of Maryland People's Counsel's request that the Commission provide 100 percent immediate CD conversions, the Court appeared to be suggesting that if the Commission provides the proper take-or-pay relief at the wellhead, 100 percent immediate conversions may be appropriate. However, the Commission declines to disturb the balance between the rights of pipelines and their wholesale customers by altering the phase-in schedule for CD conversions. The Commission will consider accelerating or slowing down the phase-in schedule in the future if circumstances warrant.

The Court also noted that in Order No. 436, the Commission never explicitly addressed proposals, such as that offered by the Department of Public Service of the State of New York, that LDC customers should be required to give notice of their future gas purchase plans, with some sort of sanction for deviation from projections.[40] The Commission is considering such proposals and has adopted them to some extent already. The D-2 annual volume nomination process used in setting rates for some pipelines (*e.g.*, Natural Gas Pipeline Company and Texas Eastern Transmission Corporation) and the purchase commitments underlying the future gas sales service charges described above involve customers' estimating future requirements. The Commission requests comments on the extent to which these and any other procedures address the concerns of the Court.

C. Legal Authority and Basis for Findings

As the Commission found in Order No. 436, and the Court in *AGD* affirmed, the natural gas transportation network is highly monopolistic in some markets and fairly competitive in others.[41] The combination of the existing sales contracts and the pipelines' exercise of monopoly power over transportation (by refusing to transport in displacement of their sales) has denied LDCs the ability to purchase competitively-priced gas from other sources.[42] The Commission finds these practices unduly discriminatory and preferential under section 5 of the NGA. To remedy this problem the Commission requires that pipelines which offer transportation under a blanket certificate must allow their firm wholesale customers the right to convert their CDs to firm transportation in accord with the phase-in schedule contained in § 284.10 of the Commission's regulations repromulgated by this order. As discussed above, this will enable pipeline customers to obtain the access to firm alternative supplies they need to meet their service obligations.

The Commission recognizes that the CD conversion option partially denies pipelines the benefits of their sales contracts. But it does so only because those contracts "are vestiges of their monopoly power."[43] The Commission requires the CD conversion option only in order to correct the consequences of that power. As the Commission has found previously, and as recognized by the Court, failure to provide for a CD conversion option would be to condone the undue discrimination which the NGA intended to prohibit.[44]

The Commission also repromulgates § 284.10 of its regulations, as amended, pursuant to the Commission's authority under section 312 of the NGPA, which gives the Commission broad authority to prescribe "terms and conditions" for transportation permitted under that section. As the Court in *AGD* found, provision for the CD conversion option properly implements traditional regulatory principles applicable to NGPA section 311 transportation to protect the public from market dominance by natural gas companies.[45]

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[37] 761 F.2d 780, 789 (D.C. Cir. 1985).

[38] Abandonment of Sales and Purchases of Natural Gas Under Expired, Terminated or Modified Contracts, IV FERC Stats. and Regs. ¶ 32,441 (1987).

[39] Slip op. at 78.

[40] Slip op. at 74–75 n. 23.

[41] Order No. 436, at 31,474; *AGD*, slip op. at 69.

[42] Order No. 436, at 31,469; 31,488–31,502.

[43] Slip op. at 66.

[44] *Id.*

[45] Slip op. at 69.

V. Grandfather Provisions

The Court in *AGD* expressed concern that the Commission had failed to explain adequately some of its grandfathering decisions in Order No. 436. The Court remanded the issue to the Commission for further consideration. Upon examination of the rationale for the grandfathering provisions, the Commission will repromulgate the grandfathering provisions in §§ 284.105 and 284.223 of its regulations. As will be discussed below, the transportation being provided under these provisions is short-term, involves relatively few transactions, moves small amounts of gas, and involves, in many cases, transportation of self-help gas. Since continuing this transportation has not and will not discourage pipelines from commencing nondiscriminatory transportation, the Commission believes the public interest will be best served by allowing the parties' expectations of continued transportation to continue.

Order No. 436 grandfathered various existing transportation transactions in order to ensure a smooth transition from on-going transportation programs to the Order No. 436 program. Specifically, Order No. 436 grandfathered NGPA section 311 transactions [36] and transportation for high-priority end users under blanket certificates that were in effect on October 9, 1985. Existing NGPA section 311 transportation arrangements were permitted to continue until the earlier of the expiration of the term of the underlying transportation agreements or October 9, 1987. Blanket transportation for high-priority end users pursuant to Order No. 319 certificates [37] was allowed to continue for the full term of the transportation agreements.[38] Under the Commission's regulations these blanket certificates were authorized for up to five years for purchased gas [39] and for up to ten years if the gas to be transported was produced and developed by the high-priority end user.[40]

[36] The grandfathered NGPA 311 transactions include the 311-type transactions that were actually established through NGA section 7 blanket certificates available to interstate pipelines under form § 284.221 (Order No. 60) and to Hinshaw pipelines and distribution companies under former § 284.222 (Order No. 63) of the Commission's regulations.

[37] Sales and Transportation by Interstate Pipelines and Distributors; Expansion of Categories of Activities Authorized Under Blanket Certificates, Order No. 319, 48 FR 34875 (Aug. 1, 1983), [Reg. Preambles 1982–1985] FERC Stats. & Regs. ¶ 30,477.

[38] 18 CFR 284.233(g)(1) (1985).

[39] 18 CFR 157.209(a)(1) (1985).

[40] 18 CFR 157.209(a)(c)(11) (1985).

The Court noted that the issue of grandfathering NGPA section 311 transportation was nearly moot since the grandfathering provisions expire on October 9, 1987.[41] The Court was concerned, however, that the term of the grandfathered transactions for high-priority users created an incentive for pipelines to resist nondiscriminatory transportation. The Court concluded that the Commission's explanation as to why it was allowing NGA section 7 transportation for high-priority end users to continue for five-and ten-year terms was inadequate. As a result, a discussion of the basis for the grandfathering provisions and an explanation as to why the previously authorized NGA section 7 blanket certificates for high-priority users should continue for the full term of the certificate follows.

The Commission authorized the grandfathering of previously authorized transportation to balance the goal of upholding the parties' expectations of continued transportation against the goal of promptly providing transportation under Order No. 436. Accordingly, the decision whether to allow blanket transportation authority for high-priority end users to continue for the full term of the respective certificates involves such considerations as: (1) The equities to the parties; (2) the term of the transportation at issue; (3) the volume of gas being transported under grandfathered transactions; (4) the number of transactions involved; and (5) the effect that grandfathering transportation would have on open access transportation under Part 284 of the Commission's regulations.[42] The Commission has also examined its record (as discussed below) to determine the scope of the grandfathered transactions. Based on this analysis, the Commission concludes that the public interest is best served by allowing the grandfathered high-priority transactions to continue for the full term.[43]

The Court expressed concern that the transactions at issue would extend into the mid-1990s. Alhtough § 157.209(a) of the Commission's regulations, as it was effective when Order No. 436 was issued, provided for ten-year certificates, reports filed with the Commission indicate that all transactions authorized under this section were for terms of five years or less. As such, all transportation under this authority will end by 1990. Moreover, a review of the Commission's records indicates that the impact of these grandfathered transactions is declining:

Period	Number of expiring transactions	Estimated daily volumes (Mcf)
8/87–8/88	17	44,000
8/88–8/89	17	18,000
8/89–8/90	18	43,500
8/90–10/90	28	52,000

The Court also expressed concern that grandfathering creates an incentive for pipelines to resist nondiscriminator transportation under Order No. 436. However, the amount of transportation performed under blanket certificates for high-priority end users is realtively small. Only 81 transactions, representing approximately 155,000 Mcf of natural gas transported daily, remain in effect under their grandfathered NGA section 7 certificates. By comparison, approximately 3,000 self-implementing transactions are ongoing and approximately 30,000,000 Mcf of gas is transported daily on a self-implementing basis. Also, 14 of the 17 pipelines engaged in grandfathered high-priority transportation have also participated in the Order No. 436 program.[44] The remaining three pipelines engaged in grandfathered NGA section 7 transportation are small entities moving small volumes of gas.[45]

[41] Slip op. at 118.

[42] The Commission notes that in Maryland People's Counsel v. FERC (MPC II), the U.S. Court of Appeals for the D.C. Circuit "applauded" Order No. 319 as it applied to LDCs and high-priority end users. 761 F.2d 780, 783 (D.C. Cir. 1985). The court's discussion of Order No. 319 in MPC II further supports the decision to allow this limited transportation program to continue.

[43] A high-priority end use consists of any use of gas an essential agricultural use, in a hospital or school, for plant protection, or for process and feed stock needs.

[44] The following pipelines that transport under Order No. 319 are participating in transportation under the Order No. 436 regulations: Arkla Energy Resources, Columbia Gas Transmission Corporation, Consolidated Gas Transmission Corporation, Lawrenceburg Gas Transmission Corporation, Michigan Gas Storage Company, Mountain Fuel Resources, Inc., Natural Gas Pipeline Company of America, Northern Natural Gas Company, Panhandle Eastern Pipe Line Company, Tennessee Gas Pipeline Company, Texas Gas Transmission Corporation, United Gas Pipe Line Company, and Williams Natural Gas Company. Transcontinental Gas Pipe Line Corporation has also transported under the Order No. 436 regulations, although the company discontinued that transportation on June 19, 1987.

[45] The following pipelines transporting under Order No. 319 have not transported under the Order No. 436 regulations: Midwestern Gas Transmission Company, National Fuel Gas Supply Corporation, and Williston Basin Interstate Pipeline Company.

As noted by the Court, the Commission has the power to grandfather existing transportation arrangements. Since the parties have relied on the NGA section 7 grandfathering provisions for nearly two years, the Commission believes it may create hardship to discontinue this authorization. This is especially true because this high-priority transportation involves, in many cases, implementation of self-help measures encouraged by the Commission to counteract the interstate gas supply shortages of the late 1970's and early 1980's. Upon balancing the benefits created by allowing the expectations of the parties to continue against the slight incentives that ending the grandfathering provision would create for a pipeline to commence nondiscriminatory transportation under Order No. 436, the Commission concludes that the NGA section 7 grandfathering provisions should remain in effect for the full term of the certificates, as provided in the instant rule.

VI. Administrative Findings and Effective Date

The Commission is adopting a rule prior to providing notice and obtaining written comment, as generally required by the Administrative Procedure Act (APA), 5 U.S.C. 553 (b) and (c) (1982), for any rulemaking proceeding.[46] The Commission is invoking exceptions to this requirement for the particular reasons related to the immediate necessity for this interim rulemaking. This proceeding is designed to establish an interim rule that (1) repromulgates regulations vacated by the Court because of flaws in a few aspects, (2) promulgates immediately effective measures to ameliorate pipelines' accrued take-or-pay liabilities, and (3) eliminates the CD reduction provisions of Part 284 of the Commission's regulations, which the Court found supported by an inapposite statutory basis and lacked a rationale. Thus, the interim rule repromulgates the Order No. 436 regulations, as amended, so that near-term transportation through the approaching winter heating season is not disrupted to the detriment of consumers and other industry participants now dependent on the open-access transportation established by those regulations.

The rule adopted here is intended to be in effect for an interim period while the Commission studies the issue related to contract demand adjustments and the build-up of take-or-pay liability under producer-pipeline contracts, which formed the basis for the Court's remand in the *AGD* decision. The Commission is requesting comments from the public on the interim rule so it may evaluate the effectiveness of the interim measures established here, consider their adequacy in addressing the issues highlighted by the Court and presented in this preamble, and determine what further action may be necessary.

The Court in *AGD* upheld in large part the substance of Order No. 436 and recognized the legitimacy of the Commission's policy objectives, but remanded the matter to permit the Commission to correct problems in a few of the Order's components. These components, in large measure, involve the issue of the treatment of the take-or-pay liabilities of interstate pipelines, which issue has already generated an extensive comment record in response to the Commission's proposed take-or-pay policy statement in *Recovery of Take-or-Pay Buy-Out and Buy-Down Costs by Interstate Natural Gas Pipelines* in Docket No. Pub. L. 87-3-000,[47] as well as in the comment record of Order No. 436 itself. To a considerable degree, then, the need for implementation of an interim rule to act on these issues is already supported by a substantial comment record as well as the Court's directive.[48]

Most importantly, the Commission is making a special effort to implement this interim rule promptly in order to minimize and lessen the growth of take-or-pay liabilities of pipelines due to the operation of Part 284 of its regulations—one of the central concerns of the Court in the *AGD* decision—while at the same time ensuring that the transportation arrangements needed to serve consumers in the coming winter season remain intact. The Commission believes that this interim rule is required to ensure rational administration of transportation arrangements through the winter heating season. At the same time, it immediately provides means for pipelines to alleviate the difficult transition in which the Court found them. The rule's purpose then is to remove Order No. 436-related take-or-pay pressures on pipelines which the Court pointed out, while at the same time not blocking the operation of the orders' pro-competitive transportation reforms (which the Court affirmed) in the winter season when they are most vitally needed. The period of interim implementation will permit consideration of other alternatives for addressing other relevant take-or-pay issues which will require more study to formulate, as well as comments on the interim procedures themselves. The Commission seeks comments therefore not only on the interim, immediately necessary measures promulgated here, but also on how it might develop further rules that would narrowly and specifically identify the particular "price and take-or-pay provisions that unduly thwart the Commission's purpose in Order No. 436 and its duty under the NGA to protect consumers." [49] The Commission does not seek comment on those provisions of Order No. 436 which were upheld by the Court and are being repromulgated here without change.

For the above reasons, the Commission finds good cause to issue this rule without additional prior notice and comment. The public interest is best served in this instance by the immediate promulgation of an interim rule consistent with the Court's concerns about lessening the take-or-pay pressure on pipelines which may be exacerbated by the operation of Order No. 436, while at the same time preventing the termination of nondiscriminatory transportation arrangements during the period of peak winter demand when the stability of the nascent transportation infrastructure will be critical. It therefore would be impracticable, and contrary to the public interest, to delay repromulgation of the regulations promulgated by Order No. 436, as amended, until after completion of all notice and comment procedures.[50]

In addition, the Commission finds good cause to make this rule effective immediately upon issuance of the Court's mandate or upon leave of the Court, without a thirty day delay following publication in the **Federal Register** generally required by the

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[46] With the exception of the revisions made to Parts 2 and 284, the interim rule represents the same general approach, and will have the same general effects, as the rule adopted by Order No. 436. The Commission is therefore adopting its Order No. 436 certification under the Regulatory Flexibility Act, 5 U.S.C. 601 through 612 (1982), that the rule will not have a significant economic impact on a substantial number of small entities. *See* 50 FR 42476–42477 (October 18, 1985). This determination was not reversed by the Court in Associated Gas Distributors v. FERC and, moreover, the changes effected by this interim rule are required by the Court's decision.

[47] *Supra* note 10.

[48] The future supply service charge principles may also be considered integral to interim amelioration of the pressing take-or-pay problems of pipelines, which action is also supported by the existing broad comment record on take-or-pay. In addition, those principles are being adopted as a matter of policy, and as such are exempted from the APA notice and comment requirements by 5 U.S.C. 553(b)(A), as well as by the "good cause" exemptions of the APA (5 U.S.C. 553(b)(3)(B) and 553(d)(3) (1982)).

[49] Slip op. at 18, 93.

[50] 5 U.S.C. 553(b) (1982).

Administrative Procedure Act.[51] The Court, while finding the Commission's policy rationales were sound, found the take-or-pay pressures, to which pipelines are subject, to be so pressing as to warrant vacating the regulations and remanding the Order so that the Commission might address them. Inasmuch as there is at least a sufficiency of record comment on these issues in this docket as well as others, and in view of the Court's focus on take-or-pay burdens as a central impediment to implementation of the valuable policy goals of the Order, the Commission believes the public interest is further served by the crediting mechanism established here in addition to the acceptable passthrough mechanisms specified here, and adopting principles for future gas supply charges at the customer end, so that the beneficial policies supported by the decision may be reestablished as soon as possible, and not suffer any disruption to the detriment of the consuming public. The Commission will publish a notice of the effective date as soon as leave is obtained from the Court or the mandate of the Court issues.

VII. Paperwork Reduction Act

Any information collection requirements herein are subject to review and approval under the Paperwork Reduction Act [52] and will be submitted to the Office of Management and Budget (OMB) for its approval under that Act and OMB's regulations.[53] Once the OMB approves the information collection provisions it will assign to them one or more control numbers. The Commission will in turn publish notice that it has received OMB approval. Interested persons can obtain information on the information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (Attention: Peg Covello (202) 357–5407). Comments on the information collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

VIII. Public Comment Procedures

Interested parties are invited to submit written comments on the interim rule to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Comments should refer to Docket No. RM87–34–000 on the outside of the envelope and on all documents submitted to the Commission. Fourteen copies should be submitted with the original.

To facilitate the Commission's analysis, the Commission urges commenters to provide a 3–5 page executive summary of their positions on the issues raised. Additionally, commenters should double space their comments, and provide a concise description identifying themselves. When persons submitting comments urge an approach different from the interim rule, a specific alternative provision with appropriate legal or empirical support should be submitted.

All comments received by the Commission by October 13, 1987 will be considered prior to the promulgation of a final rule. Copies of the written comments may be obtained from the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. Comments are available for public inspection during business hours at the same location. Copies of comments will be available for purchase.

List of Subjects

18 CFR Part 2

Administrative practice and procedure, Electric power, Environmental impact statements, Natural gas, Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 284

Continental shelf, Natural gas, Reporting and recordkeeping requirements.

In consideration of the foregoing the Commission amends Parts 2 and 284, Chapter I, Title 18, *Code of Federal Regulations* as set forth below.

By the Commission. Commissioners Sousa and Stalon concurred with separate statements attached.

Kenneth F. Plumb,

Secretary.

PART 2—GENERAL POLICY AND INTERPRETATIONS

1. The authority citation for Part 2 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp. p. 142; Federal Power Act, 16 U.S.C. 792–825r (1982); Natural Gas Act, 15 U.S.C. 717–717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Public Utility Regulatory Policies Act of 1978, 16 U.S.C 2601–2645 (1982); and the National Environmental Policy Act, 42 U.S.C. 4321–4361 (1978); unless otherwise indicated.

2. New §§ 2.104 and 2.105 are added to read as follows:

§ 2.104 Mechanisms for passthrough of pipeline take-or-pay buyout and buydown costs.

(a) *General Policy.* The Commission as a matter of policy will provide two distinct mechanisms for passthrough of take-or-pay buyout and buydown costs of interstate natural gas pipelines. The first is pursuant to existing Commission policy and practice. Under this method, pipelines may pass through prudently incurred take-or-pay buyout and buydown costs in their sales commodity rates. The second method is available to pipelines which agree to an equitable sharing of take-or-pay costs and which transport under Part 284 of this chapter (other than under the grandfather provisions of § 284.105 or § 284.223). Qualifying pipelines may utilize the alternative passthrough mechanisms described in this section. Where a pipeline agrees to absorb from 25 to 50 percent of take-or-pay buyout and buydown costs, the Commission will permit the pipeline to recover through a fixed charge an amount equal to (but not greater than) the amount absorbed. Any remaining costs up to 50 percent of total buyout and buydown costs may be recovered either through a commodity rate surcharge or a volumetric surcharge on total throughput.

(b) *Cost allocation procedures.* A pipeline's volume-based surcharges must be based on the volumes which underlie its most recent Commission-approved rates. Fixed charges must be based on each customer's cumulative deficiency in purchases in recent years (during which the current take-or-pay liabilities of the pipelines were incurred) measured in relation to that customer's purchases during a representative period during which take-or-pay liabilities were not incurred. The allocation formula employed must incorporate the following guidelines:

(1) A representative base period must be selected. The base period must reflect a representative level of purchases by the pipeline's firm customers during a period preceding the onset of changed conditions which resulted in reduced purchases and growth of the take-or-pay problem.

(2) Firm purchases by each customer during the base year under firm rate schedules or contracts for firm service must be determined.

(3) Firm sales purchase deficiency volumes for each subsequent year must be determined.

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[51] *Id.*

[52] 44 U.S.C. 3501 through 3520 (1982).

[53] 5 CFR 1320.14 (1987).

(4) A fixed charge based on each customer's cumulative deficiencies as compared to total cumulative deficiencies must be derived. The filing pipeline will be free to select for rate calculation and filing purposes a reasonable amortization period for buyout and buydown costs being recovered through fixed charges or volumetric surcharges. The pipeline will be entitled to interest at the rate set forth in Part 154 of this chapter on unamortized amounts.

(c) *Implementing procedures.* (1) Pipelines acting pursuant to this section may submit on or before December 31, 1988, a non-PGA rate filing under section 4(e) of the Natural Gas Act. Pipelines may include in their filings a fixed charge and a volumetric surcharge to recover buyout and buydown costs actually paid as of the date of filing plus similar costs which are known and measurable within the following nine months. Detailed support for the amounts claimed and for the calculation of customer surcharges must be provided. In addition, the pipeline must disclose and describe all consideration, both cash and noncash, given to producers in exchange for take-or-pay relief.

(2) In any filings made under this section, pipelines must include proposals for periodic (preferably annual) adjustments to customer surcharges, together with any necessary accounting procedures, designed to assure that revenues recovered by the pipeline remain in balance with buyout and buydown costs covered by the filing and actually incurred by the pipeline.

(d) *Prudence.* (1) The Commission will examine the issue of prudence if it is raised by a party in an individual proceeding. If it is raised, the pipeline will be required to demonstrate the prudence of take-or-pay buyout and buydown costs which it seeks to recover from its customers through both fixed and volume-based charges.

(2) The Commission intends to exercise its authority to the full extent permitted by the Natural Gas Act to approve take-or-pay settlements. The Commission intends to approve uncontested take-or-pay settlements which are consistent with this section and found to be in the public interest. The Commission will also, if it appears reasonable and permissible to do so, approve contested settlements as to all consenting parties and initiate separate hearings to establish the rates for opposing parties. Alternatively, the Commission will approve contested settlements on the merits if supported by substantial evidence in the record. In any case where hearings are held as to the prudence of take-or-pay buyout and buydown costs, the Commission will permit the pipeline the opportunity to recover all take-or-pay costs found to be prudent from the contesting parties on a proportional basis, even if the amount allowed is greater than the amounts initially sought to be recovered by the pipeline.

(e) *Flowthrough by downstream pipelines.* Downstream pipelines must flow through approved take-or-pay fixed charges based on the cumulative purchase deficiencies of their customers. Volumetrically-based surcharges must be flowed through on a volumetric basis. Customers of downstream pipelines have the right in connection with either PGA or general rate filings to challenge the purchasing practices of such pipelines. Remedies for purchasing practices found by the Commission to be imprudent will be determined on a case-by-case basis.

(f) *Ongoing proceedings.* Pipeline rate proceedings pending on the effective date of this order [The Commission will publish a notice of the effective date as soon as leave is obtained from the Court or the mandate of the Court issues] may be utilized as a forum for implementing the approved cost recovery mechanisms set forth in this section. Permission will be granted in cases where implementation of this policy in pending proceedings appears feasible, will not result in inordinate delay, or can be expected to result in unnecessary or cumulative rate filings with the Commission. In the event permission is granted, the presiding judge(s) will allow pipelines to supplement their filings to the extent necessary to assure compliance with the filing and data requirements set forth herein. The presiding judges shall also establish any procedures necessary to protect the rights of all parties. Any rates established pursuant to this section will be permitted to become effective only prospectively upon Commission approval.

(g) *Scope.* This section does not go beyond the Commission's determination in the April 10, 1985, policy statement (Docket No. PL85-1-000) that take-or-pay buyout and buydown costs do not violate the pricing provision of the Natural Gas Policy Act of 1978 (NGPA). It is not intended to affect take-or-pay prepayments made by pipelines and included in account 165 and in their rate bases. Nor does it address the issue of whether take-or-pay prepayments to a producer for gas not taken and which cannot be made up violate the Title I pricing provisions of the NGPA. This policy statement applies only to buyout and buydown costs paid by pipelines that are transporting under Part 284 of this chapter, under existing contracts, and is not intended to disturb in any way take-or-pay settlements previously entered into between pipelines and their producer suppliers.

§ 2.105 Gas supply charges.

An interstate natural gas pipeline that transports under Part 284 of this chapter may include in its tariff a charge, not related to facilities, for standing ready to supply gas to sales customers in accordance with the following principles:

(a) The pipeline may not recover take-or-pay or similar charges from suppliers by any other means.

(b) The pipeline must allow its sales customers to nominate levels of service freely within their firm sales entitlements or otherwise employ a mechanism for the renegotiation of levels of service at regular intervals.

(c) The pipeline must announce prior to nominations by the customers a firm price or pricing formula for the service, and hold that price or pricing formula firm during the interval arranged in paragraph (b) of this section.

(d) By nominating a new level of service lower than its current level, a customer has consented to any abandonment sought by the pipeline commensurate with the difference between the current level of service and the nominated level.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

3. The authority citation for Part 284 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982), as amended; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp. p. 142.

4. In § 284.8, a new paragraph (f) is added to read as follows:

§ 284.8 Firm transportation service.

* * * * *

(f)(1) *Transportation credits.* Natural gas is eligible for transportation by interstate pipelines under this part only if:

(i) The pipeline and the shipper or producer agree, or

(ii) An affidavit has been submitted to the pipeline satisfying the requirements of paragraph (f)(2) of this section.

(2) An affidavit to satisfy this section must:

(i) Identify the gas made eligible for transportation through the filing of the affidavit,

(ii) Be signed by the producers and all other persons who own the gas required to offer take-or-pay or take-and-pay credits under this section in connection with the transportation of the subject gas, and

(iii) Constitute an irrevocable offer, which upon acceptance by the pipeline will result in a contract binding on the producers and their assignees, to grant the pipeline any credits under this section in connection with the transportation of the subject gas and to agree to abide by any Commission determination concerning the interpretation of this section. The requirements of this section may be satisfied by a general affidavit applicable to all transportation transactions involving the subject gas.

(3) Once the affidavit required by this section is submitted to the pipeline, the pipeline must transport the gas, subject to the conditions of this part, notwithstanding any dispute concerning how the crediting is to be performed.

(4) If a pipeline is requested to transport gas which on June 23, 1987, was owned by a producer who on that date owned gas sold to the pipeline under a contract or contracts executed before June 23, 1987, which contain take-or-pay or take-or-pay provisions, and receives the affidavit required by paragraph (f)(2) of this section, the pipeline may receive credits as follows:

(i) For each unit of gas transported that is owned by that producer on June 23, 1987, the pipeline will receive credit for the volumes transported as though they were volumes of that producer's gas purchased by the pipeline under any contract existing on or before June 23, 1987, which contains a take-or-pay or take-and-pay provision.

(ii) The selection of the contracts against which the credits will apply will be at the discretion of the pipeline.

(iii) The pipeline may, at its discretion, apply the credit as though the volumes were purchased in the contract year in which the gas was transported or in any previous calendar year, commencing on or after January 1, 1986, in which the pipeline transported natural gas pursuant to the non-discriminatory access provisions of §§ 284.8(b) and 284.9(b) of this part.

(iv) When a pipeline has released gas from a gas purchase contract and, as part of the release agreement, the parties have agreed to a crediting of the released gas against the pipeline's take-or-pay or take-and-pay liability under that contract, the releasing pipeline nonetheless may, at its discretion, receive credits pursuant to this section for transporting the released gas. However, the pipeline may not receive more than a volume for volume credit. Therefore, if a pipeline chooses to receive credits under this section, it must discharge the producer from all other crediting arrangements agreed to in the release agreement or otherwise provided in the gas purchase contract. In addition, for purposes of determining the pipeline's take-or-pay liability under the released contract, the pipeline may not claim that the annual deliverability of gas under the released contract is reduced by the volumes credited against another contract.

(v) If, as a result of the release, there are insufficient gas reserves subject to the release contract to allow the pipeline to receive delivery of gas for which it has made prepayments pursuant to the released contract, the producer must, at its option, either repay the prepayments to the extent of any insufficiency caused by the release or satisfy any make up rights of the pipeline under the contract through delivery of a like quantity of gas from either gas committed to the contract which was credited or some other source.

(vi) If the transported gas was not owned by any producer on June 23, 1987, the pipeline may receive credits, as provided in this section.

(5) When the gas is transported by more than one pipeline and the gas was released from a contract between the producer and one of the transporting pipelines, only the pipeline which is a party to the contract from which the gas is released may receive credit under this section. No other pipeline providing transportation may receive a credit. In all other cases, when more than one pipeline is requested to transport the same gas, the credit is to be applied to the take-or-pay or take-and-pay obligations of all the pipelines engaged in the transaction but is not required to exceed the amount of the gas transported. The pipelines may agree among themselves how the credits should be allocated among their prepayment obligations. Failure by the pipelines to agree as to such an allocation of the credits will not render the gas ineligible for transportation. If transportation begins before the pipelines agree on an allocation formula, the allocation formula subsequently agreed upon will apply from the date transportation commenced.

(6) If on the effective date of this rule [The Commission will publish a notice of the effective date as soon as leave is obtained from the Court or the mandate of the Court issues], a pipeline is transporting gas owned by a producer on June 23, 1987, that gas will cease to be eligible for transportation under this part on the first day of the second month after the effective date of this rule unless the pipeline and the shipper or producer agree, or unless an affidavit has been submitted to the pipeline, as provided under paragraph (f)(2) of this section, offering the pipeline credits. Such credits shall commence from the date the affidavit is submitted.

(7) Notwithstanding the above provisions, a producer is not required under this section to provide credits with respect to take-or-pay or take-and-pay obligations in order to obtain transportation of:

(i) Gas which:

(A) The producer formerly sold to the transporting pipeline under a contract which contained a take-or-pay or take-and-pay provision and which has been terminated and

(B) Is not currently subject to a gas purchase contract between the pipeline and the producer, or

(ii) Gas which has been released from a gas purchase contract which contains or is subject to a market-out clause giving the purchaser the right to terminate the contract at the purchaser's discretion.

5. In § 284.9, a new paragraph (f) is added to read as follows:

§ 284.9 Interruptible transportation service

* * * * *

(f)(1) *Transportation credits.* Natural gas is eligible for transportation by interstate pipelines under this part only if:

(i) The pipeline and the shipper or producer agree, or

(ii) An affidavit has been submitted to the pipeline satisfying the requirements of paragraph (f)(2) of this section.

(2) An affidavit to satisfy this section must:

(i) Identify the gas made eligible for transportation through the filing of the affidavit,

(ii) Be signed by the producers and all other persons who own the gas required to offer take-or-pay or take-and-pay credits under this section in connection with the transportation of the subject gas, and

(iii) Constitute an irrevocable offer, which upon acceptance by the pipeline will result in a contract binding on the producers and their assignees, to grant the pipeline any credits under this section in connection with the transportation of the subject gas and to agree to abide by any Commission

determination concerning the interpretation of this section. The requirements of this section may be satisfied by a general affidavit applicable to all transportation transactions involving the subject gas.

(3) Once the affidavit required by this section is submitted to the pipeline, the pipeline must transport the gas, subject to the conditions of this part, notwithstanding any dispute concerning how the crediting is to be performed.

(4) If a pipeline is requested to transport gas which on June 23, 1987, was owned by a producer who on that date owned gas sold to the pipeline under a contract or contracts executed before June 23, 1987, which contain take-or-pay or take-and-pay provisions, and receives the affidavit required by paragraph (f)(2) of this section, the pipeline may receive credits as follows:

(i) For each unit of gas transported that is owned by that producer on June 23, 1987, the pipeline will receive credit for the volumes transported as though they were volumes of that producer's gas purchased by the pipeline under any contract existing on or before June 23, 1987, which contains a take-or-pay or take-and-pay provision.

(ii) The selection of the contracts against which the credits will apply will be at the discretion of the pipeline.

(iii) The pipeline may, at its discretion, apply the credit as though the volumes were purchased in the contract year in which the gas was transported or in any previous calendar year, commencing on or after January 1, 1986, in which the pipeline transported natural gas pursuant to the non-discriminatory access provisions of §§ 284.8(b) and 284.9(b) of this part.

(iv) When a pipeline has released gas from a gas purchase contract and, as part of the release agreement, the parties have agreed to a crediting of the released gas against the pipeline's take-or-pay or take-and-pay liability under that contract, the releasing pipeline nonetheless may, at its discretion, receive credits pursuant to this section for transporting the released gas. However, the pipeline may not receive more than a volume for volume credit. Therefore, if a pipeline chooses to receive credits under this section, it must discharge the producer from all other crediting arrangements agreed to in the release agreement or otherwise provided in the gas purchase contract. In addition, for purposes of determining the pipeline's take-or-pay liability under the released contract, the pipeline may not claim that the annual deliverability of gas under the released contract is reduced by the volumes credited against another contract.

(v) If, as a result of the release, there are insufficient gas reserves subject to the release contract to allow the pipeline to receive delivery of gas for which it has made prepayments pursuant to the released contract, the producer must, at its option, either repay the prepayments to the extent of any insufficiency caused by the release or satisfy any make up rights of the pipeline under the contract through delivery of a like quantity of gas from either gas committed to the contract which was credited or some other source.

(vi) If the transported gas was not owned by any producer on June 23, 1987, the pipeline may receive credits as provided in this section.

(5) When the gas is transported by more than one pipeline and the gas was released from a contract between the producer and one of the transporting pipelines, only the pipline which is a party to the contract from which the gas is released may receive credit under this section. No other pipeline providing transportation may receive a credit. In all other cases, when more than one pipeline is requested to transport the same gas, the credit is to be applied to the take-or-pay or take-and-pay obligations of all the pipelines engaged in the transaction but is not required to exceed the amount of the gas transported. The pipelines may agree among themselves how the credits should be allocated among their prepayment obligations. Failure by the pipelines to agree as to such an allocation of the credits will not render the gas ineligible for transportation. If transportation begins before the pipelines agree on an allocation formula, the allocation formula subsequently agreed upon will apply from the date transportation commenced.

(6) If on the effective date of this rule [The Commission will publish a notice of the effective date as soon as leave is obtained from the Court or the mandate of the Court issues.], a pipeline is transporting gas owned by a producer on June 23, 1987, that gas will cease to be eligible for transportation under this part on the first day of the second month after the effective date of this rule unless the pipeline and the shipper or producer agree, or an affidavit has been submitted to the pipeline, as provided under paragraph (f)(2) of this section, offering the pipeline credits. Such credits shall commence from the date the affidavit is submitted.

(7) Notwithstanding the above provisions, a producer is not required under this section to provide credits with respect to take-or-pay or take-and-pay obligations in order to obtain transportation of:

(i) Gas which:

(A) The producer formerly sold to the transporting pipeline under a contract which contained a take-or-pay or take-and-pay provision and which has been terminated and

(B) Is not currently subject to a gas purchase contract between the pipeline and the producer, or

(ii) Gas which has been released from a gas purchase contract which contains or is subject to a market-out clause giving the purchaser the right to terminate the contract at the purchaser's discretion.

6. The suspension of § 284.10 is removed effective the first day of the second month after the effective date of this rule [The Commission will publish a notice of the effective date as soon as leave is obtained from the Court or the mandate of the Court issues.] and the following amendments are made: The title is revised, paragraph (a) is revised, paragraphs (c) and (e) are removed, paragraphs (d) and (f) are redesignated as paragraphs (c) and (d), respectively, the title of newly redesignated paragraph (c) is revised, and newly designated paragraphs (c)(2), (c)(3)(ii), (d)(1), and (d)(2) are revised to read as follows:

§ 284.10 Conversion to firm transportation.

(a) *General rule.* An interstate pipeline must offer its firm sales customers the option set out in paragraph (c) of this section, if it:

* * * * *

(c) *Procedures.* * * *

(2) *Notice.* Unless the pipeline agrees otherwise, a customer that wishes to exercise its option under this paragraph must provide the pipeline written notice not later than 60 days before the proposed conversion.

(3) *Level of Conversion.*

(i) * * *

(ii) A pipeline subject to this section may, at any time, permit a firm sales customer to convert to firm transportation by more than the amount provided in the schedule in paragraph (c)(3)(i) of this section.

* * * * *

(d) *Abandonment.* (1) If a firm sales customer gives notice of an intent to exercise a conversion option under paragraph (c) of this section, the pipeline may file under § 157.18 of this chapter to abandon sales service to the extent of the conversion.

(2) Notice of an intent by a customer to exercise an option under paragraph

(c) of this section constitutes consent by that customer to the proposed abandonment under this paragraph.

* * * * *

Note: These appendices will not be published in the Code of Federal Regulations.

Appendix A—Examples of Future Gas Supply Charges under § 2.105 of the Commission's Regulations

Under the principles adopted in § 2.105, a pipeline may design charges similar to those already widely used in other commodity markets, as described below. What follows are only examples and a pipeline could design other charges consistent with these principles.

1. Forward Supply Service Charge

A pipeline providing a forward supply service charge must commit itself to sell, and the customer must commit itself to purchase, the quantities of natural gas nominated by the customer at a specified posted price on some future date certain. Customers could nominate to take quantities up to (but not exceeding) their firm sales entitlements under any firm sales agreement with the pipeline. Pipelines could offer additional services of varying contract duration, but the posted rates would be guaranteed by the pipeline during the future period for which they are posted.

2. Options Service Charge

The pipeline providing an options service charge would charge a two-part rate. The first part, a gas inventory (or reservation) charge, would be similar to an option to reserve natural gas inventory for purchase at a particular price during a certain period of time. The second part, a gas commodity charge, would be incurred if the customer exercises the gas inventory option at the agreed price and time. Thus, the customer must pay the gas inventory charge on *all* quantities of natural gas reserved under that service, but the customer need pay the gas commodity charge only for gas it actually purchases from the inventory reserved.[1]

[1] In deregulated commodity markets, the commodity price under the options approach converges to the near-month futures price and to the spot price as the actual transaction nears. At the time the customer must decide whether to take the gas or not, if the commodity price under the option contract is higher than the spot price, then the buyer switches to the spot market, choosing not to exercise the option. However, the customer would still pay the options charge. The benefit of the options price rate design is that it separates the two charges more cleanly and resembles transactions that are well established in deregulated commodity markets.

3. Operation of Forward Supply Service and Two-Part Option Service in Combination

In planning for future purchases, customers would have a menu of at least two basic commodity services—one the forward supply service for quantities a customer is almost certain it will require, the other the option service that reserves quantities of gas the customer may need during the period. Additional services of varying time duration could also be made available.

The sales process for these new services and charges could proceed as follows:

(a) By a particular time (for example, between July and September), the pipeline would present a gas sales tariff to its customers. The tariff would contain monthly maximum gas commodity rates for the future supply service and for the exercise of the option service over next 6 months or year. It would also contain a per-unit inventory (or option) charge for the amount of gas reserved under the option service. The rates could vary from month to month.

(b) Next, the pipeline's resale customers would nominate the maximum peak day and average day quantities for each month of the next period (for example, October through September). The nominated amounts could vary from month to month. Nominations for the forward supply service and the options service could not exceed the customers firm sales entitlements under any firm sales agreements with the pipeline. The levels nominated by a customer would be the pipeline's service obligation for that service to that customer over the specified period.[2]

(c) In each billing cycle, the customer would receive two gas commodity charge bills and an inventory charge bill.

Steps 1 and 2 may need to be repeated several times to allow the pipeline to bring the commitments from supplies and nominations from customers into balance.

In sum, a pipeline would post a price and customers would sign up for gas sales service at a customer nominated level. By this process, customers could evaluate their future purchase needs and determine the benefits and risks of purchasing from the pipeline as opposed to obtaining gas from other suppliers through nondiscriminatory transportation.

[2] To the extent these obligations are less than current firm sales obligations, the pipeline would file to abandon obligations in excess of its customers combined nominations. Such abandonment would permit the pipeline to then shed gas supplies not needed to meet its obligations.

If the pipeline chooses, it can include a make-up service as part of the forward supply service. The make-up service would be subordinate to current forward supply service and option service for deliveries. This service would allow a make-up period (or balancing period) for the customer to take gas that it has previously paid for under the forward supply service. No additional charges would be assessed for this service, because the customer would have already paid for this gas. Throughout all of this process, it is important that the rate design allows customers to make informed voluntary choices concerning the level of services they wish to reserve. Pipelines may offer additional services with varying contract duration, but the posted rates must be maintained by the pipeline. The customer, for its part, must pay for its nominations at the posted rates.

The relationship between and level of these charges depends on many factors, but some general relationships can be hypothesized. In general a risk-neutral producer would make the following evaluation in choosing the service it will tender to the pipeline:

$c_b = v_o + pc_o + (1-p)dc_f$

where:

c_b = per unit commodity price of baseload
c_o = per unit commodity price of option gas
v_o = per unit inventory price of option gas
p = probability that option gas would be bought
c_f = per unit expected future commodity price of gas
d = discount factor

A producer that is not risk-neutral would make the following evaluation:

$c_b < c_o + v_o$—when the producer values highly a guaranteed cashflow, gas is subject to drainage, or the producer expects lower future prices.

$c_b > c_o + v_o$—when the producer expects higher future prices and/or is a gambler or risk seeker.

Under the assumption of constant real future prices and moderate risk aversion, the relationship would probably be:

$v_o < c_b < c_o + v_o$

4. Impact on Current Contractual Arrangements

The current pipeline contractual arrangements, both at the supplier end and at the customer end, may require some readjustment before the proposed future gas supply rate design may be fully integrated into a pipeline's menu of services. Most current producer contracts with pipelines could probably

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be adjusted to fit into this process. For example, casinghead gas contracts would seem to match the forward supply contract. Since pipelines may still serve a beneficial role as middlemen, some contracts may have to be renegotiated to some degree to allow the producer contracts to better reflect the services offered by the pipeline. Some contract reformation may therefore be desirable via private negotiations to conform. The decision of a producer to sell gas into the forward supply pool or the option pool would be based on expected opportunity costs and the amount of risk a producer is willing to assume. The forward supply pool offers an assured cash flow and an assured take. This should prevent drainage, loss of other rights, or reservoir damage. The option pool may result in temporarily shut-in gas that could be resold on the spot market or may be shut-in and sold later at the producer's discretion.

The pipeline's customer would also have choices to make in subscribing to the new services. The forward supply contract would offer an overall cheaper service than the options service. This cheaper service must be balanced with the obligation to pay for the entire nominated level. This service may be appropriate for levels of service that have a high probability of realization. To plan for more uncertain demand, for example, service for a colder than normal period, the potentially more expensive but less risky option service may be appropriate.

5. Difference Between Minimum Commodity Bills and Future Gas Supply Charges

These new gas supply charges can be readily distinguished from minimum commodity bills. Minimum commodity bills bundled transportation and sales costs. They were tied to CD levels and to long-term city-gate sales. In addition, the minimum commodity bills tied the take levels and non-take levels together. In contrast, these new services would not be bundled or tied to CD levels and would allow more frequent adjustments of sales levels separate from transportation levels.

Minimum commodity bills were imposed only on partial requirement customers, were not optional, and generally had no make-up provisions. These new services would be for all customers, would be optional, and could have make-up provisions. In addition, the minimum commodity bills collected costs not incurred whereas the new services would keep accounts current with refunds if costs were not incurred. Finally, minimum commodity bills inhibited competition. In contrast, these new services would stimulate competition with the advance notice of prices that are held firm and the alternative services available because the pipeline would be an open-access transporter.

APPENDIX B—FIRM JURISDICTIONAL VOLUME BY EXPIRATION DATE OF CONTACT

Expiration date	Annual CD [a]		Annual sales [b]	
	Bcf	Cumulative percent	Bcf	Cumulative percent
Pre 1987	1,883	11	664	12
1987	775	15	358	18
1988	1,409	23	471	26
1989	3,649	43	993	44
1990	4,175	67	1,256	66
1991	2,771	83	891	82
1992	923	88	360	88
1993	257	89	115	90
1994	299	91	72	92
1995	215	92	71	93
1996	15	92	3	93
1997	0	92	0	93
1998	0	92	0	93
1999	79	93	32	93
2000	1,303	100	374	100
Total	17,762	100	5,960	100

[a] Composite of 20 major interstate pipeline companies.
[b] Composite of 23 major interstate pipeline companies.
SOURCES: 1986 Forms 2, relevant Index of Purchasers, relevant Statements G and selected Service Agreements.

[Docket No. RM87-34-000]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol

Issued August 7, 1987.

Sousa, Anthony G., Commissioner, *concurring:* I concur with and support this Interim Rule which is part of the Commission's ongoing program to provide open-access transportation services by jurisdictional pipeline companies. Continuation of this program is essential so that the many benefits of competitive gas pricing accorded by open-access transportation to all sectors of the nation's natural gas industry and consumers are not denied.

Nevertheless, I am concerned that the Interim Rule may not provide sufficient incentives for producers and pipelines to renegotiate their problem natural gas contracts. In my concurring statement in Order No. 380, issued June 4, 1984,[1] I recognized the need for direct Commission action to address problem gas contracts, and urged rulemaking proceedings. No direct action has been taken to date.

[1] Docket No. RM83-71-[illegible], Elimination of Variable Costs from Certain Natural Gas Pipeline Minimum Commodity Bill Provisions, 27 FERC ¶ 61,318 (1984).

I look forward to reviewing data to be submitted by pipelines and producers under the Interim Rule which are intended to provide a basis to proceed promptly under Section 5 of the Natural Gas Act to deal with problem take-or-pay contracts.

An additional concern relates to the Commission's failure to address the issue of the underlying negotiation by producers and pipelines in determining pass-through of these costs. The pipeline sharing concept is meaningless unless the Commission finds that the underlying transaction or bargain is itself reasonable.[2]

My final concern relates to the concept of a gas inventory charge for dealing with future take-or-pay problems. Although this concept as described in the Interim Rule is both new and experimental, it appears to permit direct pass-through to downstream consumers of take-or-pay liability under existing contracts on a current basis. If this observation is correct, it could serve as a disincentive to renegotiation.

Anthony G. Sousa,

Commissioner.

[Docket No. RM87-34-000

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol

Issued August 7, 1987.

Stalon, Commissioner, *concurring:* I concur on the issuance of this Order because it is necessary that the Commission have rules in place to replace those that were promulgated in Order No. 436 and will be vacated upon the issuance of the Court's mandate. I would have preferred more emphasis in the Order on encouraging the producers and pipelines to renegotiate existing contracts by limiting direct billing to 25 percent of buy-out and buy-down costs and less emphasis on strengthening the passthrough mechanism so that such costs could be passed downstream. However, the efficacy of this Order as a tool in pursuing Order No. 436 objectives will be determined principally by what the Commission does as a result of the data requests included in many places in this Order. Therefore, as a step, this Order is a necessary one and I must vote for it.

Charles G. Stalon,

Commissioner.

[FR Doc. 87-18510 Filed 8-13-87; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8151]

Income Tax; Taxable Years Beginning After December 31, 1953; Information Reporting of Allowances, Reimbursements, or Charges For Travel and Other Expenses of Public Employees and Certain Other Persons

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations governing information returns required to be filed by public sector employers and by payors with respect to persons in the service of certain international organizations regarding allowances or reimbursements provided for traveling or other bona fide ordinary and necessary expenses, including an allowance for meals and lodging or a per diem allowance in lieu of subsistence. This action is necessary to clarify existing regulations with respect to information reporting.

These regulations affect employers, employees, certain third-party paying agents, and payors with respect to persons in the service of an international organization.

DATE: These regulations are effective January 1, 1986, and shall apply to information returns required to be filed for calendar years after 1985 without regard to extensions.

FOR FURTHER INFORMATION CONTACT: Renay France of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T) (202-566-3829, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On January 9, 1986, the **Federal Register** published proposed amendments (51 FR 985) to the Income Tax Regulations (26 CFR Part 1) under section 6041 of the Internal Revenue Code of 1954. These proposed amendments would clarify the position of the Internal Revenue Service on the reporting of amounts provided to employees and certain other persons as allowances or reimbursements for traveling or certain other business expenses. No public hearing was requested or held. The Internal Revenue Service received a number of comments including several from international organizations indicating that the proposed amendments conflict with certain immunities granted to international organizations.

After consideration of all the comments, the Internal Revenue Service has revised the proposed amendments to avoid this conflict, as discussed below.

In addition, in these final regulations the Internal Revenue Service has made a revision to § 1.6041-3(i) to specify the necessary accounting requirements under existing regulations.

Public Comments

Several international organizations commented that the proposed deletion of § 1.6041-3(n), by which certain international organizations would be subject to reporting under § 1.6041-3(i), would not be consistent with the obligations of the United States Government with respect to international organizations designated by the President of the United States in Executive Orders issued pursuant to 22 U.S.C. 288. Under 22 U.S.C. 288(a), certain organizations have immunities from information reporting because their archives are inviolable. The proposed amendment deleting § 1.6041-3(n) is therefore revised to preserve the existing exemption for such organizations.

Under the proposed amendment, the exemption is not dependent upon whether the recipient is required to account for the amounts received. In the preamble of the notice of proposed rulemaking on these regulations, the Internal Revenue Service stated that the exemption available to public sector employers under § 1.6041-3(j) is subject to an implicit accounting requirement. Paragraphs (j) and (n) of § 1.6041 appear to be comparable provisions. As a result, some international organizations might misconstrue the proposed amendment of § 1.6041-3(n) (redesignated as § 1.6041-3(m)) as containing an implicit accounting requirement. Therefore, the proposed amendment makes clear that the exemption is not subject to an accounting requirement.

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[2] The United States Court of Appeals for the District of Columbia Circuit, in *Associated Gas Distributors* stated that:

"It [the Commission] found that pipelines had been able to buy-out substantial portions of their liabilities for about 20¢ on the dollar. J.A. 540. It concluded that these prices were reasonable and that buy-outs were sufficiently widespread to represent a reasonable solution to the problem" (mimeo p. 61).

Non-Applicability of Executive Order 12291

The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis, therefore, is not required.

Regulatory Flexibility Analysis

It is hereby certified that this rule will not have a significant impact on a substantial number of small entities because the economic and any other secondary or incidental impact flows directly from the underlying statute. A regulatory flexibility analysis, therefore, is not required under the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Drafting Information

The principal author of these regulations is Renay France of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service.

However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR 1.6001–1–1.6109–2

Income taxes, Administration and procedure, Filing requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

Paragraph 1. The authority for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Section 1.6041–3 also issued under 26 U.S.C. 6041(a).

Par. 2. Section 1.6041–3 is amended as follows:

1. Paragraph (i) is amended by removing the words "paragraph (b)(4) of § 1.162–17" and by adding in their place the words "§§ 1.162–17(b)(4), 1.274–5(e)(4), or 1.274–5T(f)(4), whichever is applicable".
2. Paragraph (j) is removed.
3. Paragraph (k) is redesignated as paragraph (j).
4. Paragraph (l) is redesignated as paragraph (k).
5. Paragraph (m) is redesignated as paragraph (l).
6. Paragraph (n) is redesignated as paragraph (m).
7. Paragraph (o) is redesignated as paragraph (n).
8. Paragraph (p) is redesignated as paragraph (o).
9. Paragraph (q) is redesignated as paragraph (p).
10. Paragraph (m) as redesignated is revised to read as set forth below:

§ 1.6041–3 Payments for which no return of information is required under section 6041.

* * * * *

(m) Amounts paid as an allowance or reimbursement for traveling or other bona fide ordinary and necessary expenses, including an allowance for meals and lodging or a per diem allowance in lieu of subsistence, to persons in the service of an international organization (without regard to whether there is a requirement to account for such amounts) if—

(1) The organization is designated as an international organization by the President of the United States in Executive Orders issued pursuant to 22 U.S.C. 288, and

(2) The organization has immunity with respect to the inviolability of its archives pursuant to an international agreement having full force and effect in the United States;

* * * * *

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: July 29, 1987.

J. Roger Mentz,

Assistant Secretary of the Treasury.

[FR Doc. 87–18908 Filed 8–13–87; 8:45 am]

BILLING CODE 4830-01-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2676

Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal, Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR Part 2676). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of September 1987.

EFFECTIVE DATE: September 1, 1987.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Corporate Policy and Regulations Department (35400), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006; 202–778–8850 (202–778–8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the beginning of the period to which they apply. (*See* 5 U.S.C. 533 (b) and (d).) Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 29 CFR Part 2676

Employee benefit plans and Pensions.

In consideration of the foregoing, Part 2676 of Subchapter H of Chapter XXVI of Title 29, Code of Federal Regulations, is amended as follows:

PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

1. The authority citation for Part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the

table of interest rates therein the following new entry:

§ 2676.15 Interest.

* * * * *

(c) *Interest rates.*

For valuation dates occurring in the month—	The values of i_t are—															
	i_1	i_2	i_3	i_4	i_5	i_6	i_7	i_8	i_9	i_{10}	i_{11}	i_{12}	i_{13}	i_{14}	i_{15}	i_n
*		*			*		*			*			*		*	
September 1987...	.09625	.0925	.0875	.0825	.0775	.07125	.07125	.07125	.07125	.07125	.065	.065	.065	.065	.065	.06

Issued at Washington, DC, on this 4th day of August 1987.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 87-18582 Filed 8-13-87; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 222

Management of Wild Free-Roaming Horses and Burros

AGENCY: Forest Service, USDA.

ACTION: Completion of review of existing regulation.

SUMMARY: In compliance with Executive Order 12291 and Departmental regulations, the Forest Service has reviewed its rules at 36 CFR Part 222, Subpart B and has concluded that the rules require no revision.

FOR FURTHER INFORMATION CONTACT: Questions about this review should be addressed to Don Nelson, Range Management Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090, (202) 235-8142.

SUPPLEMENTARY INFORMATION: In accordance with Executive Order 12291 and Department Regulation 1512-1, the Forest Service has reviewed its mpc rules at 36 CFR Part 222, Subpart B, which set forth how the Forest Service protects, manages, and controls wild free-roaming horses and burros on National Forest System lands. The rules also instruct the Chief of the Forest Service to maintain vigilance in ensuring the welfare of wild free-roaming horses and burros that wander or migrate from National Forest System lands. If these animals use lands administered by the Bureau of Land Management, the Chief is instructed to cooperate with the Department of Interior through the Bureau of Land Management in administering the animals.

Notice of intent to review the rules was published in the **Federal Register** on April 19, 1984, at 49 FR 15737 as part of the Department of Agriculture's Semiannual Regulatory Agenda. Review of these existing rules was conducted by contacting Regional and Forest-level personnel, who were asked to identify any needed changes in the regulations as a result of dealing with persons interested in wild free-roaming horses and burros and implementing the existing regulations. Additionally, the Washington Office Range Management Staff made an indepth review of the regulations. Based on this internal review, the Forest Service has determined that the regulation does not impose economic or regulatory burdens on the public, sufficiently guides the protection, management, and control of these animals on National Forest System lands, and should be retained in its present form.

Allan J. West,

Acting Chief, FS.

August 10, 1987.

[FR Doc. 87-18615 Filed 8-13-87; 8:45 am]

BILLING CODE 3410-11-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 1

[OA-FRL-3244-9]

Revisions to Statement of Organization and General Information

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This document updates the statement of organization and general information under Subpart B—Headquarters for §§ 1.37(a,e), 1.45(b), 1.47(d), and 1.49(g) to reflect the current organization of the U.S. Environmental Protection Agency. This is intended to advise the public of recent changes.

EFFECTIVE DATE: August 14, 1987.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Petruccelli, Director, Management and Organization Division, Office of Administration 202-382-5000.

List of Subjects in 40 CFR Part 1

Organization and functions (Government agencies).

Dated: July 29, 1987.

C. Morgan Kinghorn,

Acting Assistant Administrator for Administration and Resources Management.

Part 1 of Title 40 of the Code of Federal Regulations is revised as follows:

PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

1. The authority citation for Part 1 continues to read as follows:

Authority: 5 U.S.C. 552.

2. Section 1.37 is amended by revising paragraphs (a) introductory text, and (e) to read as follows:

§ 1.37 Office of External Affairs.

(a) *Office of Federal Activities.* The Office of Federal Activities is headed by a Director who reports to the Assistant Administrator for External Affairs and supervises all the functions of the Office. The Director acts as national program manager for five major programs that include: (1) The review of other agency environmental impact statements and other major actions under the authority of Section 309 of the Clean Air Act, (2) EPA compliance with the National Environmental Policy Act (NEPA) and related laws, directives, and Executive policies concerning special environmental areas and cultural resources, (3) compliance with Executive policy on American Indian affairs and the development of programs for environmental protection on Indian lands, and (4) the development and oversight of national programs and internal policies, strategies, and procedures for implementing Executive Order 12088 and other administrative or statutory provisions concerning compliance with environmental requirements by Federal facilities. The Director chairs the Standing Committee on Implementation of Executive Order 12088. The Office serves as the Environmental Protection Agency's (EPA) principal point of contact and liaison with other Federal agencies and provides consultation and technical assistance to those agencies relating to EPA's areas of expertise and

responsibility. The Office administers the filing and information system for all Federal Environmental Impact Statements under agreement with the Council on Environmental Quality (CEQ) and provides liaison with CEQ on this function and related matters of NEPA program administration. The Office provides a central point of information for EPA and the public on environmental impact assessment techniques and methodologies.

* * * * *

(e) *Office of Community and Intergovernmental Relations.* The Office of Community and Intergovernmental Relations is under the supervision of a Director who serves as the principal point of contact with public interest groups representing general purpose State and local governments, and is the principal source of advice and information for the Administrator and the Assistant Administrator for External Affairs on intergovernmental relations. The Office maintains liaison on intergovernmental issues with the White House and Office of Management and Budget (OMB); identifies and seeks solutions to emerging intergovernmental issues; recommends and coordinates personal involvement by the Administrator and Deputy Administrator in relations with State, county, and local government officials; coordinates and assists Headquarters components in their handling of broad-gauged and issue-oriented intergovernmental problems. It works with the Regional Administrators and the Office of Regional Operations to encourage the adoption of improved methods for dealing effectively with State and local governments on specific EPA program initiatives; works with the Immediate Office of the Administrator, Office of Congressional Liaison, Office of Public Affairs, and the Regional Offices to develop and carry out a comprehensive liaison program; and tracks legislative initiatives which affect the Agency's intergovernmental relations. It advises and supports the Office Director in implementing the President's Environmental Youth Awards program.

3. Section 1.45 is amended by revising paragraph (b) to read as follows:

§ 1.45 Office of Research and Development.

* * * * *

(b) *Office of Environmental Engineering and Technology Demonstration.* The Office of Environmental Engineering and Technology Demonstration (OEETD) under the supervision of a Director, is responsible for planning, managing, and evaluating a comprehensive program of research, development, and demonstration of cost effective methods and technologies to: (1) Control Environmental impacts associated with the extraction, processing, conversion, and transportation of energy, minerals, and other resources, and with industrial processing and manufacturing facilities; (2) control environmental impacts of public sector activities including publicly-owned waste water and solid waste facilities; (3) control and manage hazardous waste generation, storage, treatment, and disposal; (4) provide innovative technologies for response actions under Superfund and technologies for control of emergency spills of oils and hazardous waste; (5) improve drinking water supply and system operations, including improved understanding of water supply technology and water supply criteria; (6) characterize, reduce, and mitigate indoor air pollutants including radon; and (7) characterize, reduce, and mitigate acid rain precursors from stationary sources. Development of engineering data needed by the Agency in reviewing premanufacturing notices relative to assessing potential release and exposure to chemicals, treatability by waste treatment systems, containment and control of genetically engineered organisms, and development of alternatives to mitigate the likelihood of release and exposure to existing chemicals. In carrying out these responsibilities, the Office develops program plans and manages the resources assigned to it; implements the approved programs and activities; assigns objectives and resources to the OEETD laboratories; conducts appropriate reviews to assure the quality, timeliness, and responsiveness of outputs; and conducts analyses of the relative environmental and socioeconomic impacts of engineering methods and control technologies and strategies. The Office of Environmental Engineering and Technology Demonstration is the focal point within the Office of Research and Development for providing liaison with the rest of the Agency and with the Department of Energy on issues associated with energy development. The Office is also the focal point within the Office of Research and Development for liaison with the rest of the Agency on issues related to engineering research and development and the control of pollution discharges.

* * * * *

4. Section 1.47 is amended by adding paragraph (d) to read as follows:

§ 1.47 Office of Solid Waste and Emergency Response.

* * * * *

(d) *Office of Underground Storage Tanks.* The Office of Underground Storage Tanks, under the supervision of a Director, is responsible for defining, planning, and implementing regulation of underground storage tanks containing petroleum, petroleum products, and chemical products. In particular, this Office is responsible for overseeing implementation of Subtitle I of the Resource Conservation and Recovery Act (RCRA), as amended. The Office develops and promulgates regulations and policies including notification, tank design and installation, corrective action, and State program approvals. It also plans for an oversees utilization of the Underground Storage Tank Trust Fund established by the Superfund Amendments and Reauthorization Act of 1986 (SARA).

5. Section 1.49 is amended by adding paragraph (g) to read as follows:

§ 1.49 The Office of Water.

* * * * *

(g) *Office of Wetlands Protection.* The Office of Wetlands Protection, under the supervision of a Director, administers the 404/Wetlands Program and develops policies, procedures, regulations, and strategies addressing the maintenance, enhancement, and protection of the Nations Wetlands. The Office coordinates Agency issues related to wetlands.

[FR Doc. 87-18092 Filed 8-13-87; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 228

[OW-4-FRL-3246-4]

Ocean Dumping; Site Designation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today designates the alternative dredged material disposal site in the Atlantic Ocean offshore Morehead City, North Carolina ("the site") as an EPA approved ocean dumping site for the dumping of dredged material. The Morehead City site includes that part of the existing site that is greater than 3 nautical miles (nmi) from shore and an adjacent area seaward. This site is chosen so as to decrease the possibility of interference with fisheries and recreational use of the ocean. This action is necessary to provide an acceptable ocean dumping

site for the current and future disposal of dredged material.

DATE: This designation shall become effective on September 14, 1987.

ADDRESSES: The file supporting this site designation is available for public inspection at the following locations:

EPA Public Information Reference Unit (PIRU), Room 2904 (rear), 401 M Street, SW., Washington, DC 20460
EPA Region IV, 345 Courtland Street NE., Atlanta, GA 30365

FOR FURTHER INFORMATION CONTACT: Christopher Provost, 404/347–2126.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et seq.* ("the Act") gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On December 23, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. This site designation is within Region IV and is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, § 228.4) state that ocean dumping sites will be designated by promulgation in this Part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977, (42 FR 2461 *et seq.*), and was extended on August 19, 1985 (50 FR 33338). The list established the Morehead City site as an interim site.

B. EIS Development

Section 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, ("NEPA") requires that Federal agencies prepare an EIS on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EIS's in connection with ocean dumping site designations such as this [39 FR 16186 (May 7, 1984)].

EPA has prepared a draft and final EIS entitled, "Environmental Impact Statement—Morehead City Ocean Dredged Material Site Designation."

On Friday, February 8, 1985, a notice of availability of the Final Morehead City EIS for public review and comment was published in the **Federal Register** [48 FR 5423 (February 8, 1985)]. The public comment period on the final EIS closed March 11, 1985. Anyone desiring a copy of the EIS may obtain one from the address above.

The final EIS consists of supplemental information to the draft EIS and must be attached to the draft EIS to povide a full document.

C. Coastal Zone Management and Endangered Species Coordination

By letter of October 18, 1984, the State of North Carolina concurred with EPA's conclusion that this site designation is consistent with the State Coastal Zone Management Plan. The National Marine Fisheries Service and the U.S. Fish and Wildlife Service have concurred with EPA's conclusion that the designation of this disposal site will not affect the endangererd species under their jurisdiction.

D. Site Designation

Morehead City is one of only two deep water ports in North Carolina. Morehead City supported shipping commerce of 3 million tons in 1980. Consequently, maintenance of this port for navigation is vital to the state and local economies.

Boundary coordinates for the Morehead City site are as follows:

34°36'30" N, 76°45'0" W;
34°36'30" N, 76°41'42" W;
34°36'09" N, 76°41'0" W;
34°36'0" N, 76°41'0" W;
34°36'0" N, 70°45'0" W.

On June 4, 1987, EPA proposed this final site designation in the **Federal Register** [52 FR 21082 (June 4, 1987)]. The preamble to this proposed rule change presented the characteristics of the site in terms of the eleven specific factors identified in Section 228.5 of the Ocean Dumping Regulations which, taken together, constitute an assessment of the site's suitability as a repository for dredged material.

That assessment concludes that this site is appropriate for final designation. One letter of comment was received on the proposed rule. That comment, from the North Carolina State Ports Authority, supported the designation of the Morehead City site as proposed.

E. Action

The designation of the Morehead City dredged material disposal site as an EPA Approved Ocean Dumping Site is being published as final rulemaking. Management authority of these sites will be the responsibility of the Regional Administrator of EPA Region IV.

It should be emphasized that, if an ocean dumping site is designated, such a site designation does not constitute or imply EPA's approval of actual disposal of materials at sea. Before ocean dumping of dredged material at the site may commence, the Corps of Engineers must evaluate a permit application according to EPA's ocean dumping criteria. If a Federal project is involved, the Corps must also evaluate the proposed dumping in accordance with those criteria. In either case, EPA has the right to disapprove the actual dumping if it determines that environmental concerns under the Act have not been met.

F. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this action does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore, subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this final rule does not necessitate preparation of a Regulatory Impact Analysis.

This final rule does not contain any information collection requirements subject to Office of Management and Budget Review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

This final rulemaking notice represents the Record of Decision required under regulations promulgated by the Council on Environmental Quality for Agencies subject to NEPA.

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: August 3, 1987.

Lee A. DeHihns III,

Acting Regional Administrator, Region IV.

In consideration of the foregoing, Subchapter H of Chapter I of Title 40 is amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. secs. 1412 and 1418.

2. Section 228.12 is amended by removing from paragraph (a)(3) the words and coordinates "Morehead City

Harbor-Maintenance Dredging Hopper Dredge Disposal Area" 3 miles x 3 miles; approximate latitude and longitude, bounded north 34°40'00", south 34°38'30", east 76°41'00", west 76°43'00", and by adding paragraph (b)(31) to read as follows:

§ 228.12 Delegation of management authority for ocean dumping sites.

* * * * *

(b) * * *

(31) Morehead City, North Carolina, Dredged Material Disposal Site-Region IV.

Location: 34°38'30" N., 76°45'0" W.; 34°38'30" N., 76°41'42" W.; 34°38'09" N., 76°41'8" W; 34°36'0" N., 76°41'0" W., 34°36'0" N., 76°45'0" W.

Size: 8 square nautical miles.

Depth: Average 12.0 meters.

Primary Use: Dredged material.

Period of Use: Continuing use.

Restriction: Disposal shall be limited to dredged material from the Morehead City Harbor, North Carolina area. All material disposed must satisfy the requirements of the ocean dumping regulations.

[FR Doc. 87-18316 Filed 8-13-87; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 400 and 412

[BERC-329-FC]

Medicare Program; Payment Adjustments for Sole Community Hospitals

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period.

SUMMARY: This rule changes Medicare prospective payment regulations for inpatient hospital services in order to allow an adjustment to the payment amounts (if warranted) under the prospective payment system for sole community hospitals that experience a significant increase in inpatient operating costs attributable to the addition of new inpatient services or facilities. In addition, in accordance with section 9302(e)(4) of the Omnibus Budget Reconciliation Act of 1986, we are extending certain payment provisions for sole community hospitals.

DATES: *Effective Date:* These final regulations are effective on September 14, 1987.

Comment Period: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on October 13, 1987.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-329-FC, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses: Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC, or Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC-329-FC. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Ed Rees, (301) 597-8403.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1886(d) of the Social Security Act (the Act), enacted by the Social Security Amendments of 1983 (Pub. L. 98-21) on April 20, 1983, established a prospective payment system for Medicare payment of inpatient hospital services, effective with hospital cost reporting periods beginning on or after October 1, 1983. Under this system, Medicare payment is made at a predetermined, specific rate for each hospital discharge. All discharges are classified according to a list of diagnosis-related groups (DRGs), and the payment rate is adjusted by a weighting factor for the DRG to which each discharge is assigned.

Section 1886(d)(5)(C)(ii) of the Act requires that the special needs of sole community hospitals (SCHs) be taken into account under the prospective payment system. The statute specifies a special payment formula for hospitals so classified and further provides for additional payments to SCHs experiencing a significant volume decrease (more than a five percent decrease in total discharges of inpatients) because of extraordinary circumstances beyond their control. (These additional payments were time-limited in that they were available for cost reporting periods beginning on or after October 1, 1983 and before October 1, 1986. However, as discussed below, the period was extended by legislative action.) Section 1886(d)(5)(C)(ii) of the Act defines SCHs as those hospitals that, by reason of factors such as isolated location, weather conditions, travel conditions, or absence of other hospitals (as determined by the Secretary), are the sole source of inpatient hospital services reasonably available to Medicare beneficiaries in a geographic area. Regulations governing the special treatment of SCHs under the prospective payment system are set forth in section 42 CFR 412.92.

As noted above, section 1886(d)(5)(C)(ii) of the Act provides that unlike other short-term acute-care hospitals that are paid under the prospective payment system, SCHs are to be paid under a unique payment formula. Generally, under section 1886(d)(1)(A) of the Act, hosptials paid under the prospective payment system progress through a four-year transition period during which a declining portion of their prospective payment rate is based on their historical Medicare costs, and an increasing portion is based on a Federal rate. However, rather than progressing through the transition period to fully national payment rates, SCHs continue to receive payment rates equal to 75 percent of the hospital-specific rate and 25 percent of the Federal regional rate adjusted by an update factor. Therefore, the hospital-specific portion of the prospective payment rate has a unique significance for SCHs in that it is a permanent feature of their payment formula. Generally, for other hospitals under the prospective payment system, the hospital-specific portion of the rate is a transitional mechanism to provide an opportunity for such hosptials to adjust their operations during the phase-in to fully national rates.

II. Summary of Proposed Rule and of Pub. L. 99-272 and Pub. L. 99-509 Changes

On March 10, 1986, we published a notice of proposed rulemaking (NPRM or proposed rule) (51 FR 8211) to allow for an adjustment (if warranted) to the hospital specific portion of the prospective payment rate for SCHs. Utilizing the Secretary's general exceptions and adjustments authority under section 1886(d)(5)(C)(iii) of the Act, we proposed to provide an additional adjustment for SCHs under certain circumstances. Because such a large portion of the payment to SCHs is based on their individual historical cost experience, we stated that SCHs should be afforded the opportunity to request an adjustment of the hospital-specific portion of the payment rate. Consequently, we proposed to amend § 412.92 to allow SCHs experiencing certain significant cost distortions to

request an adjustment of the hospital-specific portion of their prospective payment rates. Under the proposed rule, SCHs would be required to submit documentation to their fiscal intermediaries detailing the circumstances that gave rise to the cost distortion, the community need for the additional health care services or change in circumstances that had occurred, and its resulting cost impact. We stated that adjustments would not be granted under the proposed rule if the cause of the cost distortion was not related to community medical needs.

To implement the policy, we proposed that the intermediary would forward to HCFA's central office for processing, within 90 days of receipt of the necessary information, all submitted documentation, its analysis of the SCH's claims, a copy of the overall cost data for the base year and the year in which the distortion occurred, and its recommendation for acceptance or rejection of the request. We further proposed that HCFA would determine if an adjustment to the hospital-specific portion was justified based on the overall costs in the year of the cost distortion as compared to the overall base-year costs and, if so, the amount of the adjustment granted. HCFA would then notify the intermediary of the decision within 90 days of receiving all the necessary information. Adjustments granted under this proposed provision would be made on a prospective basis beginning with the first day of the first cost reporting period after a favorable determination.

Subsequent to publication of the NPRM, the Congress passed and the President signed on April 7, 1986 the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272). Section 9111 of Pub. L. 99–272 amends section 1886(d)(5)(C)(ii) of the Act to provide that an SCH that experiences a "significant increase in operating costs attributable to the addition of new inpatient facilities or services at such hospital (including the opening of a special care unit)" subsequent to the base year shall receive an adjustment to the payment system as may be necessary to reasonably compensate for such increased costs.

The following are changes being made as a result of the enactment of section 9111 of Pub. L. 99–272 that were not part of the proposed rule. The statutory amendment—

- Is time-limited, that is, payments are applicable for cost reporting periods beginning on or after October 1, 1983 and before October 1, 1989.
- Applies only to the addition of new services or new facilities.
- Applies to the granting of an adjustment to the payment amounts to compensate an SCH reasonably for the increased cost of adding new services or new facilities.

We are incorporating these changes in this final rule, as discussed in our responses to comments below.

In addition, Congress passed and the President signed on October 21, 1986 the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509). As noted above, section 9302(e)(4) of Pub. L. 99–509 amends section 1886(d)(5)(C)(ii) of the Act to provide for a two-year extension of the special payment provision for an SCH that experiences a significant volume decrease (more than a five percent decrease in its total discharges of inpatients) because of extraordinary circumstances beyond its control. The special payment is extended for hospitals so classified for cost reporting periods beginning on or after October 1, 1983 and before October 1, 1988 (rather than October 1, 1986). We are amending § 412.92(e)(1) to implement this change.

III. Comments and Responses

A total of three items of correspondence were received timely during the comment period. A summary of the public comments and our responses to the comments are presented below:

Comment: One commenter suggested that we defined too narrowly the events for which an SCH would be granted an adjustment. The commenter cited an example (a management contract for certain patient care or administrative services entered into after the hospital's base period) for which HCFA would not provide an adjustment, according to the NPRM.

Response: We believe it would be inappropriate to grant an adjustment to the payment amounts under section 1886(d)(5)(C)(iii) of the Act, based on a change in the arrangement for providing services, because to do so would weaken the incentives under the prospective payment system to furnish services in the most efficient manner. If we were to provide an adjustment to the payment amounts for changes in an arrangement under which services are provided, we would be reducing the incentive to lower operating costs by subsidizing those changes that result in increased costs. Such payments would be unnecessary and unreasonable under the prospective payment system.

The addition of new inpatient services, whether provided directly or under an arrangement, may be considered in granting an adjustment to the payment amounts (that is, the total prospective payment amounts for a given cost reporting period for an SCH). Thus, in this context, it is the nature of the new services, not the mechanism for providing those services, that would determine whether an adjustment is warranted.

We further believe that the legislative history of the amended section 1886(d)(5)(C)(ii) of the Act supports our position. Given that this statutory amendment was enacted subsequent to our publication of the proposed rule, we believe that Congress deliberately narrowed the range of cost-distorting events occurring after the base period (to the addition of new services or facilities) that should be considered for purposes of a payment adjustment to SCHs.

Accordingly, we are amending § 412.92 by adding a new paragraph (f) to provide for an adjustment to an SCH's prospective payments as may be necessary to reasonably compensate SCHs to take into account the addition (subsequent to the base year) of new inpatient facilities or new services (including, for example, the opening of a special care unit) that result in a significant increase in operating costs.

Comment: One commenter suggested that, using the authority under section 1886(b)(4)(A) of the Act, we should provide an adjustment to SCHs for extraordinary circumstances or events beyond a hospital's control, such as the need to pay premium wages to recruit and retain highly skilled hospital personnel.

Response: For cost reporting periods beginning on or after October 1, 1983, the provisions for granting an exception from the ceiling on the rate of hospital cost increases, under section 1886(b)(4)(A) of the Act and implementing regulations at § 413.40(g)(2), apply only to hospitals not subject to the prospective payment system. In defining the hospital-specific portion of the prospective payment rates, section 1886(d)(1)(A) of the Act refers only to section 1886(b)(3) of the Act. Exceptions and adjustments authorized under section 1886(b)(4) were not explicitly incorporated into the prospective payment system.

However, the operating costs of a new inpatient facility or service would include the salary costs of personnel hired to staff the new facility or furnish the added service. To the extent that it is necessary for an SCH to pay premium wages to recruit highly skilled personnel necessary to provide services not previously available, it is possible that

an SCH could qualify for an adjustment under § 412.92(f) of these final regulations. SCHs encountering such situations should submit the necessary documentation in accordance with the new § 412.92(f).

Comment: One commenter requested that an adjustment be made to the hospital-specific rate of SCHs for the costs associated with new or advanced technologies that enhance patient care.

Response: The prospective payment system is designed to account for changes that enhance patient care. Through the establishment of the applicable percentage change to the prospective payment rates, which incorporates a policy target adjustment factor (productivity, cost-effective technologies, and improved practice patterns), much of the cost associated with new technology is already recognized in the prospective payment rates. In addition, section 9302(e)(1) of Pub. L. 99–509 requires annual reclassification and recalibration of DRGs, beginning with discharges occurring in fiscal year 1988, which we believe will further take into consideration the DRG-specific effects of new or advanced technolgoies. However, to the extent that SCHs add new patient care services or facilities that involve the adoption of new technology, the operating costs of such new services or facilities would be considered in an adjustment to the SCH's payments. Of course, since the capital-related costs of new technologies and services continue to be paid on a reasonable cost basis, capital-related costs may not be considered in determining the amount of adjustments to their payments. Hospitals requesting an adjustment to the payment amounts for new patient care services that involve new technologies must make sure that the documentation in their requests clearly delineates capital-related costs from operating costs.

Comment: One commenter requested that adjustments be granted to SCHs for new services for which a certificate of need has been granted.

Response: In applying for a certificate of need that relates only to capital expenditures, a hospital initiates the application process long before the service is actually provided. In some circumstances, because of changing population patterns or changing community medical needs, the service is no longer necessary by the time the certificate is granted. Further, it is possible that in anticipation of future needs (which may or may not materialize), a certificate of need could be granted for hospital expansion for services that are already clearly well beyond current needs.

In addition, since an SCH adjustment under these final regulations applies only to inpatient operating costs, a certificate of need for a capital-related expansion for which a certificate of need is required may not generate additional inpatient operating costs as the new capital may be a substitution for labor or for old capital and as such would not be considered in making an adjustment to an SCH's prospective payment amounts. In those situation, it would be inappropriate and unwarranted for us to provide a special adjustment to the payment amounts to an SCH.

Comment: One commenter agreed with our proposal to use reasonable cost and utilization standards in calculating adjustment amounts. However, the commenter cautioned that the special needs of an SCH may dictate lower utilization levels than is common. Therefore, the commenter urged that utilization standards not be "unreasonably high."

Response: As we pointed out in the NPRM, it is generally recognized that a hospital's initial period costs and utilization for new services may not reasonably reflect ongoing costs per case in future periods. In stating that adjustment amounts would be calculated using reasonable cost and utilization levels, it was not our intention to penalize SCHs. Rather, it is an attempt to protect the program from excessive expenditures in future periods when an SCH's cost would be expected to more nearly approximate efficient levels.

We recognize that many SCHs, by virtue of the fact that they are often located in areas that are sparsely populated, may never achieve utilization levels that are similar to those of hospitals in densely populated urban areas. In approximating reasonable utilization levels, we would generally consider past utilization in a particular hospital and other similarly situated hospitals. SCHs are encouraged to submit detailed information justifying the reasonable cost and utilization levels that they believe are appropriate to be used in determining an adjustment amount. We will evaluate each hospital's submittal in light of the available information. Moreover, since any adjustment to the payment amounts under this provision will be determined and paid on a year-to-year basis, costs associated with a start-up, such as training of staff and the typically lower than average initial utilization, and subsequent changes in inpatient operating costs as the new inpatient service or facility matures should automatically be reflected in the cost per case effects of the added service or facility.

Comment: Two commenters requested that during the application process, if base-year costs have been understated because of an intermediary error or misapplication of the regulations, a retroactive modification be made effective with the cost reporting period during which the error became part of the basis for payment.

Response: The provisions of this final rule apply only in those situations in which new services or facilities are added in an SCH subsequent to its base period. While we will provide for an adjustment (if warranted) to the total prospective payments for SCHs, the base period costs of SCHs are *not* modified if an adjustment is granted under this rule. Separate regulations (§§ 412.71 through 412.73) apply to the determination of base-year costs and the establishment of the hospital-specific rate, and modifications thereto.

Comment: One commenter objected to our proposal to grant adjustments for cost distortions on a prospective basis only. Noting the language of section 9111(b) of Pub. L. 99–272, the commenter suggested that our proposed rule contravenes the clear intent of Congress.

Response: We note the publication of the proposed rule pre-dated the enactment of Pub. L. 99–272. Although we believe that there was support for implementing adjustments to SCHs for cost distorting events on a prospective basis only, we agree that the legislative language of section 1886(d)(5)(C)(ii) of the Act requires revision of our original proposal. That section of the Act provides that "* * * the Secretary shall provide for such adjustment to the payment amounts under this subsection for such cost reporting period and subsequent cost reporting periods as may be necessary to reasonably compensate such hospital for such increased costs."

An adjustment to the payment amounts implies making an—

- Adjustment to the Federal and hospital-specific rates;
- Over-adjustment of the hospital-specific portion only, since the 75 percent blend of the hospital-specific rate would have to provide 100 percent of the reasonable compensation for newly added services or facilities; or
- Adjustment to the final payments under the prospective payment system for a given cost reporting period (that is an end-of-line payment adjustment)

without adjusting the Federal or hospital-specific rates.

Since there is no statutory basis for modifying the Federal (regional) rates, nor do we believe that Congress intended that an over-adjustment be made to the hospital-specific portion, an end-of-line payment adjustment is the easiest and most appropriate method of payment to administer.

We believe that it is appropriate to compare a hospital's total DRG revenue based on DRG-adjusted prospective payment rates (including outlier payments determined under Subpart F of this part, and additional payments made for hospitals that serve a disproportionate share of low-income patients as determined under § 412.106 and for indirect medical education costs as determined under § 412.118) to its total Medicare inpatient operating costs as defined under § 412.2(c), since the prospective payments represent payments for inpatient operating costs of all items and services used to furnish inpatient hospital care to Medicare beneficiaries. The inpatient operating costs of new services or facilities would be included in the hospital's total Medicare inpatient operating costs, and any incremental effect of the added services or facilities or revenues (if, for example, the newly added services or facilities result in a change in the hospital's case mix) would be reflected in the hospital's total Medicare prospective payments. Therefore, if the hospital's Medicare prospective payments exceed its Medicare inpatient operating costs, we believe that the hospital would already be reasonably compensated for all items and services furnished to Medicare beneficiaries including the newly added services or facilities.

For the case in which Medicare inpatient operating costs exceed Medicare prospective payments, that portion of the Medicare inpatient operating loss that the hospital can satisfactorily demonstrate to HCFA is attributable to the added service or facility constitutes the amount of the adjustment, not to exceed the inpatient operating loss, that may be paid under § 412.92(f).

We believe that this approach is fair and reasonable in the context of a payment system in which hospitals are paid a predetermined price per discharge regardless of the items and services associated with each discharge. Not only does this approach place all SCHs on an equal basis in that adjustments are available only to the extent necessary to afford hospitals relief from operating losses attributable to the addition of new inpatient services or facilities, but also it is simpler to administer because a determination of whether an SCH is experiencing a Medicare inpatient operating profit or loss is both an unambiguous and objective measure of the reasonableness of Medicare compensation.

Furthermore, we believe that this new provision was not intended by Congress to provide guaranteed profits under the prospective payment system in cases in which new inpatient services or facilities are added. Also, we believe that the only appropriate way to determine whether a hospital is being reasonably compensated after it has added a new service or facility is to compare its total Medicare inpatient operating costs to its total Medicare inpatient operating payments since the payments are for a total package of services needed to provide quality patient care and are not constructed of prices for individual items and services furnished to Medicare beneficiaries. The prospective payment system already provides incentives to hospitals to earn profits with no restrictions on the hospitals as to how the profits may be used. We recognize that in some cases the additional costs incurred for new inpatient services or facilities may be incidental to the total amounts received under the prospective payment system. Therefore, SCHs that continue to profit under the prospective payment system (that is, an SCH's Medicare prospective payment amounts exceed its Medicare inpatient operating costs) when new inpatient services or facilities are added will not be eligible to receive additional payments under this final rule. These SCHs would already be reasonably compensated for all the services they provide to Medicare beneficiaries, including the added services or facilities. Likewise, SCHs that initially experience net operating losses attributable to the addition of new services or facilities, and thus qualify for a payment adjustment, would not continue to be eligible for such an adjustment once that SCHs begin showing a profit.

In further support of this approach, we note that, while the addition of a new service or facility may result in incremental inpatient operating costs to the hospital relative to its inpatient operating costs immediately preceding such addition, those inpatient operating costs prior to the addition of new services or facilities may bear no relationship to the hospital's Medicare payments. That is, the inpatient hospital prospective payment system was established precisely to provide incentives encouraging hospitals to reduce their costs below their payments. To the extent that a hospital has done so, its payments have not been reduced to reflect the operating cost reductions it has effected. It is possible that, in effecting such cost reductions, the hospital has simply become more efficient than it was when its hospital-specific rate was established. It is also possible that the hospital has reduced the services it typically furnishes to inpatients. However, as noted previously, the hospital does not experience a Medicare payment reduction regardless of its actions in reducing inpatient operating costs.

The mere fact that a sole community hospital adds a new inpatient service or facility would not seem to warrant an automatic payment adjustment. The ability of such a hospital to add a new inpatient service or facility and remain profitable under the prospective payment system suggests that the hospital has implemented other offsetting cost reductions or used some or all of its profits to add a new inpatient service or facility. If a hospital is still making profits under the prospective payment system after adding new inpatient services or facilities, it is our position that the hospital is being reasonably compensated for such services or facilities.

Consequently, we have revised our proposal. This final rule (§ 412.92(f)) provides that if an SCH meets the criteria for an adjustment to its prospective payments, the adjustment will be made for the period in which the cost distortion resulting from the addition of new facilities or services was first experienced and for subsequent cost reporting periods beginning before October 1, 1989, for which the adjustment continues to be warranted.

Comment: One commenter requested that we issue, subject to public comment, more specific guidance for use by the fiscal intermediaries and our regional offices on the documentation requirements of § 412.92(f) and the review process.

Response: We believe that § 412.92(f), as issued in this final rule, provides an adequate explanation of the documentation requirements and review process. However, because of the changes resulting from implementation of section 9111 of Pub. L. 99-272, refinements to the documentation requirements an SCH is required to submit and to the HCFA review process, that we had discussed in the NPRM, are necessary.

SCHs that apply for an adjustment to their payments under the prospective

payment system will be required to submit to their fiscal intermediary for review and processing written documentation within 180 days of receiving a final notice of program reimbursement (hospitals may request an interim adjustment prior to receiving a final notice of program reimbursement) to—

- Identify the new inpatient service or facility responsible for the cost increase and the dates the new inpatient service or facility became operational;
- Specify the direct costs of the new inpatient service or facility and the impact of the added service on Medicare payments; and
- Specify the indirect costs attributable to the added new inpatient service or facility. The overall prospective payment rates include indirect overhead costs associated with all services. Therefore, in recognizing any adjustment to payments for indirect overhead costs, we would recognize only actual increases in overhead costs incurred as a result of the addition of the new inpatient service or facility, not merely the reallocation of indirect costs resulting from the cost finding process of the Medicare cost report.

Under the review process, the fiscal intermediary is responsible for verifying that the inpatient services or facilities are actually new and not simply a reconfiguration of previously existing services or facilities. The fiscal intermediary must also verify the incremental direct and indirect costs that occur as a result of adding the new inpatient service or facility. The fiscal intermediary must submit within 60 days of receipt of the SCH's request the following documentation to HCFA for a final determination:

- The SCH's submittal of documentation.
- An analysis and recommendation concerning the SCH's request.
- The Medicare cost report for the cost reporting period in which the distortion first occurs and the prior period's Medicare cost report.

Within 120 days of receiving all the necessary information from the fiscal intermediary, HCFA will make its determination. For the reasons stated above, subsequent cost reporting periods will be evaluated independently using the same process. In making a determination for reasonable compensation to SCHs, HCFA's review process includes but is not limited to—

- Complete analysis of documentation submitted;
- Comparison of costs and utilization of the new inpatient service or facility to the costs and utilization in similar hospitals to determine the reasonableness of the SCH's costs, particularly, the costs of the added service or facility;
- Evaluation of the change in the SCH's financial position from the period immediately prior to the addition of the new inpatient service or facility to the cost reporting period when the new service or facility first became operational, including whether any deterioration in the hospital's Medicare inpatient operating margin is attributable to the addition of the new inpatient service or facility; and
- Determination of an adjustment, if warranted, based on the inpatient operating loss specifically attributable to the newly added service or facility not to exceed the total Medicare inpatient operating loss from the SCH's prospective payments.

We note that each SCH's circumstances must be evaluated on an individual basis; therefore, at this time, it is difficult to establish more specific guidelines. As we gain experience with the payment adjustment, we will consider the necessity of publishing additional guidelines through our instructional issuances system.

Comment: One commenter requested that, because the maximum review period for an adjustment would be 180 days, the adjustment be granted retroactive to the cost reporting period in which the hospital incurs the cost.

Response: As stated in response to a previous comment, we are revising the provisions we had proposed in the NPRM in accordance with section 9111 of Pub. L. 99–272. Adjustments that are granted will be made effective for the cost reporting period in which the additional cost for the new inpatient facility or service initially occurred and for subsequent cost reporting periods (for which the adjustment continues to be warranted) beginning before October 1, 1989. Since an adjustment will be granted effective with the cost reporting period in which the additional cost initially occurred, the maximum 180-day time period for processing requests does not preclude, other than for a temporary period of time, an SCH from receiving reasonable compensation. In addition, we believe that, because of the intermediaries' heavy workloads, up to 60 days is an appropriate period of time to provide for a thorough review of each SCH's request. Similarly, since our workload in central office is also demanding, we believe that a maximum 120-day period is necessary, although we will, of course, review each request as expeditiously as possible.

IV. Regulatory Impact Analysis

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any regulations that are likely to meet criteria for a "major rule". A major rule is one that would result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or any geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we prepare and publish a regulatory flexibility analysis in a manner consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that the regulations will not have a significant economic impact on a substantial number of small entities. For purposes of the Regulatory Flexibility Act, we treat all hospitals as small entities.

In the proposed rule published March 10, 1986, we gave reasons why we had not prepared an economic impact analysis under E.O. 12291, or a regulatory flexibility analysis under the RFA. No comments were received on that statement.

As of September 15, 1986, 363 hospitals were classified as sole community hospitals. We expect that a small number of these will meet the criteria for an adjustment based on the addition of new services or facilities resulting in significant increases in operating costs. Additionally, we expect that in most cases the amounts of adjustments will be small relative to total payment for all hospitals. Therefore—

- We do not expect an annual effect on the economy to approach the $100 million threshold.
- The effects on costs or prices for consumers, hospitals and the Medicare program will be small.
- While it is possible that there may be a small effect on employment for those hospitals that qualify for an adjustment, the effect would not be adverse.

In summary, the provisions of this rule are not likely to bring about effects that would qualify it as a major rule. Further, since we expect that a relatively small number of hospitals will apply and qualify for an adjustment under this regulation, the Secretary certifies that

this rule will not result in a significant impact on a substantial number of small entities. Therefore, we have not prepared either an impact analysis under E.O. 12291, or a regulatory flexibility analysis.

V. Other Required Information

A. Waiver of Proposed Rulemaking

We published an NPRM on March 10, 1986 that would allow an adjustment (if warranted) to the payment rates for SCHs that experience certain significant cost distortions subsequent to their base year. After publication of the NPRM, Pub. L. 99-272 was enacted (April 7, 1986). Section 9111 of Pub. L. 99-272 amended section 1886(d)(5)(C)(ii) of the Act to provide that, if an SCH that experiences a significant increase in operating costs attributable to the addition of new inpatient facilities or services subsequent to the base year, the Secretary shall provide such a payment adjustment as is necessary to ensure reasonable compensation for the added service or facility, applicable with cost reporting periods beginning on or after October 1, 1983 and before October 1, 1989.

A number of the changes in this final rule (such as provisions concerning the addition of new inpatient facilities or services, and the time period for which the adjustments may be made) are mandated by section 9111 of Pub. L. 99-272 and require no interpretation. However, because the legislation differs somewhat from the NPRM, and the Secretary is allowed some discretion in implementing section 9111 of Pub. L. 99-272, we ordinarily would publish another NPRM to afford a period for public comment. Nevertheless, we believe that another NPRM is unnecessary, and we find good cause to waive the procedure.

We believe waiving the proposed rulemaking procedure is appropriate in order to allow SCHs that have already experienced cost increases attributable to the addition of new inpatient facilities or services subsequent to the base period to request and, if qualified, to receive reasonable compensation as quickly as possible. Since we believe that some SCHs have already experienced cost increases based on the addition of new inpatient facilities or services, and since we cannot grant them statutorily mandated relief without publication of a final rule, we believe it is appropriate to waive the proposed rulemaking procedure. To require that affected SCHs await publication of a new proposed rule, evaluation of public comments on that proposed rule, and development and publication of a final rule would unnecessarily delay receipt of reasonable compensation and could adversely affect their ability to continue to furnish inpatient care to Medicare beneficiaries. In addition, these final rules will benefit some SCHs and will not disadvantage other SCHs in terms of decreasing their payment amounts. Moreover, we are providing a 60-day comment period for public comment, and we will consider comments concerning the definition of reasonable compensation and the use of an end-of-line payment adjustment (instead of an adjustment to the hospital-specific rate as we had proposed) that we receive by the end of the comment period in determining whether changes to the policy are necessary.

Because of the large number of items of correspondence we normally receive concerning regulations, we cannot acknowledge or respond to the comments individually. However, as indicated above, if we decide that changes concerning the SCH provisions are necessary as a result of our consideration of timely comments, we will issue a final rule and respond to the comments in the preamble of that rule. Should we make further changes in another final rule, we would recompute any adjustments previously granted to accommodate those changes.

B. Paperwork Reduction Act

Section 412.92(f) of this final rule contains information collection requirements. As required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), we are required to obtain OMB approval of "collection of information" requirements that are contained in any regulations published by Federal agencies. OMB regulations (5 CFR Part 1320) require Federal agencies to notify the public that a collection of information requirement has been approved by OMB by issuing a notice in the **Federal Register**, and to display the control number assigned by OMB in the agency's regulations after approval of the requirement. We are updating 42 CFR 400.310 to display the valid OMB control number (0938-0477) assigned for the requirements described in § 412.92(f).

List of Subjects

42 CFR Part 400

Grant programs—Health, Health facilities, Health maintenance organizations (HMOs), Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 412

Health facilities, Medicare.

42 CFR Chapter IV is amended as set forth below:

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

I. Part 400 is amended as follows:

PART 400—INTRODUCTION; DEFINITIONS

1. The authority citation for Part 400 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) and 44 U.S.C. Chapter 35.

2. Section 400.310 is amended by adding, in numerical order by CFR section, the following entry of a section that provides for collections of information and the assigned OMB control number.

§ 400.310 Display of currently valid OMB control numbers.

Sections in 42 CFR that contain collections of information	Current OMB control No.
• • • • •	
412.92(f)	0938-0477
• • • • •	

II. Part 412 is amended as follows:

PART 412—PROSPECTIVE PAYMENT SYSTEM FOR INPATIENT HOSPITAL SERVICES

1. The authority citation for Part 412 continues to read as follows:

Authority: Secs. 1102, 1122, 1871, and 1886 of the Social Security Act, as amended (42 U.S.C. 1302, 1320a-1, 1395hh, and 1395ww).

2. Section 412.92 is amended by revising paragraphs (d) and (e)(1), and adding a new paragraph (f) to read as follows:

§ 412.92 Special treatment: Sole community hospitals.

• • • • • •

(d) *Determining prospective payment rates for sole community hospitals*—(1) *General rule.* For all cost reporting periods beginning on or after October 1, 1983, the prospective payment rates for sole community hospitals equal 75 percent of the hospital-specific base payment rate (as determined under § 412.73) plus 25 percent of the appropriate regional prospective payment rate (as determined under Subpart D of this part).

(2) *Adjustments to payments.* A sole community hospital may receive an adjustment to its payments to take into

account a significant decrease in number of discharges or a significant increase in inpatient operating costs, as described in paragraphs (e) and (f) of this section respectively.

(e) *Additional payments to sole community hospitals experiencing a significant volume decrease during the transition period.*

(1) For cost reporting periods beginning on or after October 1, 1983 and before October 1, 1988, HCFA provides for a payment adjustment for a sole community hospital in any cost reporting period during which the hosptial experiences, due to circumstances as described in paragraph (e)(2) of this section, more than a five percent decrease in its total discharges of inpatients as compared to its immediately preceding cost reporting period.

* * * * *

(f) *Payment adjustment for new inpatient facilities or services*—(1) *General rule.* If a sole community hospital experiences a significant increase in inpatient operating costs resulting from new inpatient services or facilities that were not available in the hospital during its base period and that are necessary for patient care, HCFA may adjust payments made to the hospital to ensure that it is receiving reasonable compensation, as defined in paragraph (f)(2) of this section, for the operating costs of the new inpatient facilities or services (including special care units).

(2) *Definitions.* For purposes of this paragraph—"Reasonable compensation" means that a sole community hospital's total DRG revenue based on DRG-adjusted prospective payment rates (including outlier payments determined under Subpart F of this part, and additional payments made for hospitals that serve a disproportionate share of low-income patients as determined under § 412.106 and for indirect medical education costs as determined under § 412.118) are equal to or greater than its Medicare inpatient operating costs as defined under § 412.2(c).

(3) *Documentation.* To qualify for an adjustment to its payment, a sole community hospital must submit documentation, including any additional cost information requested by HCFA within 180 days after a final notice of program reimbursement, to its intermediary to—

(i) Identify the new inpatient facilities or services responsbile for the increase in inpatient operating costs, and the dates that the facilities or services became operational;

(ii) Specify the direct costs of the new inpatient facilities or services and their impact on Medicare payments; and

(iii) Specify the indirect costs attributable to the new inpatient facilities or services that are not already reflected in the Medicare payments received by the hospital.

(4) *Intermediary recommendation.* The intermediary forwards the following material to HCFA within 60 days of receipt from the hospital:

(i) The hospital's documentation and the intermediary's verification thereof;

(ii) Its analysis and recommendation; and

(iii) The hospital's Medicare cost reports for the years in which the increase in costs occurred and the prior year.

(5) *Determination by HCFA.* HCFA determines, within 120 days of receiving all the necessary information from the intermediary, whether an adjustment to the payment amounts is warranted based on, but not limited to—

(i) A complete analysis of the documentation submitted;

(ii) A comparison of the costs and utilization of the new inpatient facility or service to the costs and utilization of a similar facility or service in a similar hospital or hospitals;

(iii) An evaluation of the change in the hospital's financial position from the cost reporting period immediately prior to the addition of the new inpatient service or facility to the cost reporting period when the new service or facility initially became operational;

(iv) A determination that the hospital's Medicare inpatient operating costs exceed its Medicare inpatient operating payments; and

(v) A determination of reasonable compensation equal to the lesser of the hospital's—

(A) Medicare inpatient operating loss attributable to the added services or facilities; or

(B) Total Medicare inpatient operating loss.

(6) *Affected cost reporting periods.* Adjustments that are authorized by HCFA under this paragraph or that are based on an administrative decision (§§ 405.1871 and 405.1875 of this chapter) or a judicial review decision (§ 405.1877 of this chapter) that is no longer subject to review by a higher reviewing authority, are effective for the cost reporting period in which the new services or facilities were added, and for later cost reporting periods, as necessary, beginning before October 1, 1989.

(Catalog of Federal Domestic Assistance Programs No. 13.773, Medicare—Hospital Insurance Program)

Dated: May 1, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: June 30, 1987.

Otis R. Bowen,

Secretary.

[FR Doc. 87-18607 Filed 8-13-87; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 232 and 252

Department of Defense Federal Acquisition Regulation Supplement; Progress Payments on Construction and Architect-Engineer Contracts

AGENCY: Department of Defense (DoD).

ACTION: Interim rule.

SUMMARY: This is an interim rule for lowering progress payment rates, as required by section 9105 of the DoD Appropriations Act of 1987 (Pub. L. 99-591).

DATE: August 1, 1987.

ADDRESS: Interested parties should submit written comments to: Lieutenant Colonel Richard J. Wall, USAF, ODASD(P)/CPF, Room 3C800, Pentagon, Washington, DC 20301-3062.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Richard J. Wall, USAF, (202) 695-9764.

SUPPLEMENTARY INFORMATION:

A. Background

Section 9105 of the DoD Appropriations Act of 1987 required the Secretary of Defense to lower progress payment rates not less than five percentage points. The Act, however, authorized an exemption for military construction, architect-engineer, and shipbuilding contracts, if the Secretary certified to Congress that a progress payment rate reduction would not be justified in these cases. It has been determined that an exemption would not be justified for military construction and architect-engineer contracts. A decision on shipbuilding contracts has been deferred pending completion of a Navy study in this area.

This rule revises an interim rule which was published in the **Federal Register** on December 1, 1986 (51 FR 43210), which included DoD FAR Supplement provisions for payments under fixed-price construction and architect-engineer contracts.

B. Determination to Issue A Temporary Regulation

A determination has been made under the authority of the Secretary of Defense that the regulations promulgated by the Military Departments must be issued as temporary regulations in compliance with section 22 of the Office of Federal Procurement Policy Act, as amended.

C. Regulatory Flexibility Act Information

This rule implements legislative direction contained in the Department of Defense Appropriations Act of 1987. It will impact small business entities, because progress payment rates will be lowered. A Regulatory Flexibility Analysis has been prepared and is available from the Chief Counsel for Advocacy, Small Business Administration, Washington, DC.

D. Paperwork Reduction Act Information

This rule changes rates of progress payments only and not existing procedures; therefore, additional paperwork burden is not involved.

List of Subjects in 48 CFR Parts 232 and 252

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, 48 CFR Parts 232 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 231 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 232—CONTRACT FINANCING

2. Section 232.103 is added to read as follows:

232.103 Progress Payments Construction Contracts.

For DoD the amount of retainage shall not exceed 15 percent.

3. Section 232.111 is amended by adding paragraphs (S–71) and (S–72) to read as follows:

232.111 Contract clauses.

* * * * *

(S–71) The contracting officer shall insert the clause at 252.232–7005, Payments Under Fixed Price Construction Contracts, in lieu of FAR clause 52.232–5, in solicitations and contracts for construction when a fixed-price contract is contemplated.

(S–72 The contracting officer shall insert the clause at 252.232–7006, Payments Under Fixed-Price Architect-Engineer Contracts, in lieu of FAR clause 52–232–10, appropriately modified with respect to payment due dates, in fixed-price architect-engineer contracts.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Sections 252.232.7005 and 252.232.7006 are added to read as follows:

252.232 7005 Payments Under Fixed-Price Construction Contracts.

As prescribed in 232.111(S–71), insert the following clause:

Payments Under Fixed-Price Construction Contracts (Aug. 1987) (Dev.)

(a) The Government shall pay the Contractor the contract price as provided in this contract.

(b) The Government shall make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates of work accomplished which meets standards of quality established under the contract, as approved by the Contracting Officer. If requested by the Contracting Officer, the Contractor shall furnish a breakdown of the total contract price showing the amount included therein for each principal category of work, in such detail as requested, to provide a basis for determining progress payments. In the preparation of estimates, the Contracting Officer may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Contractor at locations other than the site may also be taken into consideration if—

(1) Consideration is specifically authorized by this contract; and

(2) The Contractor furnishes satisfactory evidence that it has acquired title to such material and that the material will be used to perform this contract.

(c) If the Contracting Officer finds that satisfactory progress was achieved during any period for which a progress payment is to be made, the Contracting Officer shall authorize payment to be made in full. However, if satisfactory progress has not been made, the Contracting Officer may retain a maximum of fifteen percent (15%) of the amount of the payment until satisfactory progress is achieved. When the work is substantially complete, the Contracting Officer may retain from previously withheld funds and future progress payments that amount the Contracting Officer considers adequate for protection of the Government and shall release to the Contractor all remaining withheld funds. Also, on completion and acceptance of each separate building, public work or other division of the contract, for which the price is stated separately in the contract, payment shall be made for the completed work without retention of a percentage.

(d) All material and work covered by progress payments made shall, at the time of payment, become the sole property of the Government, but this shall not be construed as—

(1) Relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or

(2) Waiving the right of the Government to require the fulfillment of all of the terms of the contract.

(e) In making these progress payments, the Government shall, upon request, reimburse the Contractor for the amount of premiums paid for performance and payment bonds (including coinsurance and reinsurance agreements, when applicable) after the Contractor has furnished evidence of full payment to the surety. The retainage provisions in paragraph (c) above shall not apply to that portion of progress payments attributable to bond premiums.

(f) The Government shall pay the amount due the Contractor under this contract after—

(1) Completion and acceptance of all work;

(2) Presentation of a properly executed voucher; and

(3) Presentation of release of all claims against the Government arising by virtue of this contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. A release may also be required of the assignee if the Contractor's claim to amounts payable under this contract has been assigned under the Assignment of Claims Act of 1940 (31 U.S.C. 203 and 41 U.S.C. 15).

(g) Notwithstanding any other provision of this contract, progress payments shall not exceed eighty percent (80%) on work accomplished on undefinitized contract actions. A "contract action" is any action resulting in a contract, as defined in FAR Subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

(End of clause)

252.232–7006 Payments Under Fixed-Price Architect-Engineer Contracts.

As prescribed in 232.111(S–72), insert the following clause:

Payments Under Fixed-Price Architect-Engineer Contracts (Aug. 1987) (Dev.)

(a) Estimates shall be made monthly of the amount and value of the work accomplished and services performed by the Contractor under this contract which meet standards of quality established under this contract. The estimates shall be prepared by the Contractor and accompanied by any supporting data required by the Contracting Officer.

(b) Upon approval of the estimate by the Contracting Officer, payment upon properly executed vouchers shall be made to the

Contractor, as soon as practicable, of eighty-five percent (85%) of the approved amount, less all previous payments; provided, that payment may be made in full during any months in which the Contracting Officer determines that performance has been satisfactory. Also, whenever the Contracting Officer determines that the work is substantially complete and that the amount retained is in excess of the amount adequate for the protection of the Government, the Contracting Officer may release the excess amount to the Contractor.

(c) Upon satisfactory completion by the Contractor and acceptance by the Contracting Officer of the work done by the Contractor under the "Statement of Architect-Engineer Services", the Contractor will be paid the unpaid balance of any money due for work under the statement, including retained percentages relating to this portion of the work. If the Government exercises the option under the Option for Supervision and Inspection Services clause, progress payments as provided in (a) and (b) above will be made for this portion of the contract work. Upon satisfactory completion and final acceptance of the construction work, the Contractor shall be paid any unpaid balance of money due under this contract.

(d) Before final payment under the contract, or before settlement upon termination of the contract, and as a condition precedent thereto, the Contractor shall execute and deliver to the Contracting Officer a release of all claims against the Government arising under or by virtue of this contract, other than any claims that are specifically excepted by the Contractor from the operation of the release in amounts stated in the release.

(e) Notwithstanding any other provision in this contract, and specifically paragraph (b) of this clause, progress payments shall not exceed eighty percent (80%) on work accomplished on undefinitized contract actions. A "contract action" is any action resulting in a contract, as defined in FAR Subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

(End of clause)

[FR Doc. 87-18573 Filed 8-13-87; 8:45am]

BILLING CODE 3810-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Part 830

Notification and Reporting of Aircraft Accidents or Incidents and Overdue Aircraft, and Preservation of Aircraft Wreckage, Mail, Cargo, and Records

AGENCY: National Transportation Safety Board.

ACTION: Final rule.

SUMMARY: By this amendment, the National Transportation Safety Board (Board) adds five incidents for which the operator would be required to notify the Board of the occurrence. These five additional incidents are damages of more than $25,000 to property other than the aircraft, and, for large multiengine aircraft, certain failures of the electrical systems or the hydraulic systems, the sustained loss of the power or thrust produced by two or more engines, and an emergency evacuation of the aircraft in which an emergency egress system was utilized. The Board believes that implementing these requirements will result in the Board becoming aware of incidents which can be worthy of investigation.

EFFECTIVE DATE: September 14, 1987.

FOR FURTHER INFORMATION CONTACT: John M. Stuhldreher, General Counsel, National Transportation Safety Board, 800 Independence Avenue, SW., Washington, DC 20594 (202-382-6540).

SUPPLEMENTARY INFORMATION: This amendment stems from a notice of proposed rulemaking published in the Federal Register on March 20, 1985 (50 FR 11214). Three comments were received, and they generally supported the proposed amendment of § 830.5.

The proposed amendment would have required notification of the following four occurrences: Damages, based on a preliminary estimate, of $25,000 to property other than the aircraft; and for large multi-engine aircraft (more than 12,500 pounds maximum certificated takeoff weight); (1) complete failure of aircraft electrical or hydraulic systems; (2) sustained loss of the power or thrust produced by two or more engines; and (3) an emergency evacuation of the aircraft.

The first proposal would have required notification of occurrences involving damages, based on a preliminary estimate, of more than $25,000 to property other than the aircraft. The Board recognizes the difficulty of estimating the cost of damages on an expedited basis, and the Board is aware that such an estimation will not always accurately reflect the actual cost of damages. Despite these inherent limitations, the Board believes that the good faith implementation of this requirement will result in the Board becoming aware of incidents which can be worthy of investigation. The nature of the incident and the benefit to aviation safety stemming from an investigation of the incident are factors that are utilized in determining if the operator, who will be required to notify the Board of the incident, will also be asked to file a report of the occurrence and if and to what extent the Board will investigate the incident.

One commentor asked if the cost of repairs includes labor. The estimate of damage for repairs covers the cost of both labor and materials, and this has been spelled out in the final rule. The Board has also added the fair market value of property as a means of calculating damage. In some cases, property will be a total loss in which event the fair market value of such property will represent the valuation of the damage.

One commentor asserted that $25,000 was too low but did not suggest any other figure. The Board believes that $25,000 is a reasonable figure, at least until the Board develops actual experience using a monetary sum as a criteria for requiring notification of aircraft incidents.

All of the following incidents would apply to large multiengine aircraft (more than 12,500 pounds maximum certificated takeoff weight). One commentor believed that aircraft weighting less than 12,500 pounds should not be excluded from these notification requirements. The Board is focusing its interest on large aircraft because the number of small aircraft in commuter operations is declining and probably will continue to decline. In addition, the Board's limited budget and small number of personnel prevent the Board from investigating all of the occurrences if such constraints did not exist. However, the Board will promulgate rules to cover smaller aircraft if warranted. The proposed new incident which elicited the most comment concerned the complete failure of aircraft electrical or hydraulic systems. Although the need for notification of some failures of the hydraulic or electrical systems was acknowledged, the questions in the comments as well as the valid points made by the commentors demonstrated that the description of this incident should be refined. One commentor noted that a complete loss of the electrical or hydraulic systems in the new generation air carrier aircraft probably would result in a catastrophic accident because these aircraft are being designed without provision for independent back-up systems. This commentor suggested that this proposed incident should be separated into two incidents and changed to occurrences where an aircraft experiences either successive electrical failures resulting in the aircraft electrical power being supplied by the last primary system or the loss of all but one of the primary hydraulic systems.

The Board agrees that on many of the new developmental and production airplanes, the loss of all hydraulic systems would probably result in an accident and thus the language of this incident as initially proposed should be modified. However, the changes sought in the above comment would result in the notification of some incidents which would not be meaningful. For example, if the Board adopted the commentor's language for this incident, each time an engine is shut down on many two-engine airplanes, an operator would be required to notify the Board and preserve evidence because of the loss of all but the last primary electrical and/or hydraulic system. Similarly, the effect of adopting the commentor's suggestion would be to require operators to notify the Board when a hydraulic line breaks or there is a failure/malfunction of one engine-driven generator on some airplanes.

The Board's main interest is those instances in which the flightcrew must use the only remaining electrical or hydraulic system to retain flight control or to safely land the airplane. Many two-engine airplanes, for example, are designed with a third back-up hydraulic system which operates from a ram air turbine or electric pump to provide an emergency source of hydraulics to the primary flight control systems in the unlikely event that both primary hydraulic systems are lost. This proposed incident, therefore, has been bifurcated into separate final rules on electrical and hydraulic failures and rewritten to apply to in-flight failure of electrical systems which requires the sustained use of an emergency bus powered by a back-up source such as a battery, auxiliary power unit, or air-driven generator to retain flight control or essential instruments and in-flight failure of hydraulic systems that results in sustained reliance on the sole remaining hydraulic or mechanical system for movement of flight control surfaces.

With respect to the proposed incident for the sustained loss of the power or thrust produced by two or more engines, one commentor stated that this proposal was reasonable and another commentor criticized it for not covering the loss of power or thrust to one engine on a two-engine aircraft. Operators are required to report to the FAA specified failures, malfunctions, defects, and mechanical interruptions including in some circumstances an engine failure or shutdown. *See* 14 CFR 121.565, 121.703, 121.705, 125.409, 135.415, and 135.417. This incident is designed to alert the Board to those occurrences which would be of greater investigative interest to the Board, and no change is being made to this incident in the final rule.

An emergency evacuation of large, multiengine aircraft was the last proposed incident. Emergency evacuations can provide important insight into the performance of the crew and equipment and conduct of the passengers, and the lessons learned from the investigations of emergency evacuations have led to improvements in airline operating procedures and aircraft equipment.

One commentor took the position that only those evacuations in which an emergency was declared and an emergency egress system was utilized should be subject to manadatory notification. The Board agrees that this incident should be confined to those instances where the emergency egress system is used. However, the declaration of an emergency is not being made a prerequisite for notification. Passengers have initiated an emergency evacuation when no emergency has been declared or before such an evacuation has been ordered by a crewmember, and these evacuations can provide useful information on the adequacy of the briefing or preparation of the passengers as well as the performance of the crewmembers and the emergency exit features of the aircraft. As is the case of all other incidents for which notification is required by § 830.5(a), a report of the incident need be filed only if requested by a representative of the Board.

Under the criteria of the Regulatory Flexibility Act, the Board has determined that this rule will not have a significant economic impact on a substantial number of small entities because the rule will not result in a marked increase in the number of incidents for which notification must be made, the rule has been tailored to lessen its impact on small entities, and the costs of complying with the rule will not be substantial.

Accordingly, 49 CFR 830.5 is hereby amended by adding paragraphs (a) (6) and (7) as set forth below.

PART 830—[AMENDED]

1. The authority citation for Part 830 continues to read as follows:

Authority: Title VII, Federal Aviation Act of 1958, as amended, 72 Stat. 781, as amended by 78 Stat. 921 (49 U.S.C. 1441 *et seq.*), and the Independent Safety Board Act of 1974, Pub. L. 93–633, 88 Stat. 2166 (49 U.S.C. 1901 *et seq.*).

2. Amend § 830.5 by adding paragraphs (a) (6) and (7) as follows:

§ 830.5 Immediate notification.

* * * * *

(a) * * *

(6) Damage to property, other than the aircraft, estimated to exceed $25,000 for repair (including materials and labor) or fair market value in the event of total loss, whichever is less.

(7) For large multiengine aircraft (more than 12,500 pounds maximum certificated takeoff weight):

(i) In-flight failure of electrical systems which requires the sustained use of an emergency bus powered by a back-up source such as a battery, auxiliary power unit, or air-driven generator to retain flight control or essential instruments;

(ii) In-flight failure of hydraulic systems that results in sustained reliance on the sole remaining hydraulic or mechanical system for movement of flight control surfaces;

(iii) Sustained loss of the power or thrust produced by two or more engines; and

(iv) An evacuation of an aircraft in which an emergency egress system is utilized.

* * * * *

Signed at Washington, DC, on this 4th day of August 1987.

Jim Burnett,

Chairman.

[FR Doc. 87–18443 Filed 8–13–87; 8:45 am]

BILLING CODE 7533-01-M

Proposed Rules

Federal Register
Vol. 52, No. 157
Friday, August 14, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 86-088]

Reservation of Space for Quarantine of Animals and Birds

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We propose to amend the regulations for reserving space in quarantine facilities maintained by Veterinary Services (VS) by requiring advance payment for all estimated quarantine-related costs for birds, pigeons, and poultry. Importers have frequently defaulted on payments owed to VS for quarantined birds, poultry, or pigeons, regularly disclaiming responsibility for birds seized by the Fish and Wildlife Service of the U.S. Department of the Interior or some other Federal agency upon their release from quarantine. When importers default on payments, the Federal Government must absorb their quarantine costs. To prevent further losses, we propose that reservation fees for birds, pigeons, and poultry amount to payment in full for the 30-day quarantine period.

DATE: Consideration will be given only to comments postmarked or received on or before October 13, 1987.

ADDRESSES: Send written comments to Steven B. Farbman, Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 86-088. Comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Harvey A. Kryder, Senior Staff Veterinarian, Import-Export and Emergency Planning Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 806, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; 301-436-8695.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 92 (referred to below as the regulations) prescribe, among other things, conditions under which birds, pigeons, and poultry may enter the United States. Upon arrival at a U.S. port of entry, any birds, pigeons, or poultry subject to quarantine requirements must remain for at least 30 days in a quarantine facility, where they are observed and tested by representatives of Veterinary Services (VS). This ensures that only birds, pigeons, and poultry meeting the requirements of the Animal and Plant Health Inspection Service (APHIS) of the United States, posing no threat of introducing communicable animal disease into the United States, are admitted into this country.

Section 92.4(a)(4) requires that every importer planning to use a VS quarantine facility pay, or ensure payment of, a reservation fee equal to 25 percent of the estimated quarantine cost, except that the reservation fee cannot exceed $2,500 for any lot of birds or poultry, nor can it fall below $80.

It has become apparent, however, that quarantined birds, pigeons, and poultry create special financial problems for the Federal Government. Importers have tended to resist paying bills for birds seized by a Federal agency because their importation in some way violated Federal law. Other importers have additionally burdened VS when, confronted with a bill for some reason higher than they had expected, they have forfeited their claim to the imported birds, pigeons, or poultry, leaving VS with the live lot as well as the unpaid account.

Problems continually arise when, in accordance with a Memorandum of Understanding signed with APHIS in 1982, the Fish and Wildlife Service seizes birds illegally brought into the United States. Importers denied right of possession because of these seizures often refuse to accept accountability for quarantine charges. The costs of keeping seized birds in quarantine accrue in the same way as for other birds, pigeons, and poultry. Revising collection procedures as proposed would obviate the need for the Federal Government to absorb these and other losses created by bird, pigeon, and poultry importers who default on quarantine payments.

In sum, prepayment of estimated quarantine costs would preclude the possibility of importers failing to reimburse APHIS for the costs of quarantining birds, pigeons, and poultry not subsequently released into their custody. This suggests the advisability of our implementing a more effective system for collecting accounts receivable.

By equating the amount of the deposit required to reserve space in a quarantine facility with the total quarantine cost estimated by the quarantine facility's veterinarian in charge, APHIS would ensure recovery of these costs. It would prevent repetitions of the 1986 situation, with the Federal Government writing off about $12,000 in accounts receivable for birds seized by the Fish and Wildlife Service.

Miscellaneous

Current § 92.2(e) provides that the provisions in 9 CFR Part 92 which apply to poultry shall apply to pigeons. In order to simplify the regulations, we propose to include pigeons in the definition of the word "poultry," eliminate current § 92.2(e) and the definition of the word "pigeons" in current § 92.1. The definition of the word "birds" in current § 92.1 would be amended to delete the reference to pigeons.

Current § 92.2(b) provides, among other things, that the importation of birds into the United States is prohibited, except as provided in § 92.2 (a), (c), (d), (f), or (j). This list is incomplete and serves no purpose in that current § 92.2(a) provides that no bird shall be brought into the United States except in accordance with 9 CFR Parts 92 and 94. Therefore, we propose to amend § 92.2(b) to eliminate this incomplete and unnecessary portion of § 92.2(b).

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule would have an

effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed billing procedure would require that bird, pigeon, and poultry importers prepay the estimated VS quarantine charges. Total bird quarantine charges would not increase; only the time of payment would change.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V).

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, 9 CFR Part 92 would be amended as follows:

1. The authority citation for Part 92 would be amended to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.1 [Amended]

2. In § 92.1, the definition of the word "birds" would be revised to read:

Birds. All members of the class aves (including eggs for hatching), other than poultry.

3. In § 92.1, the definition of the word "pigeons" would be removed.

4. In § 92.1, the definition of the word "poultry" would be revised to read:

Poultry. Chickens, doves, ducks, geese, grouse, guinea fowl, partridges, pea fowl, pheasants, pigeons, quail, swans, and turkeys (including eggs for hatching).

5. Section 92.2(b) would be revised to read:

§ 92.2 General Prohibitions; exceptions.

(b) Birds from Canada may be imported in accordance with this section or in accordance with the provisions applicable to importation of poultry from Canada as specified in §§ 92.5(b), 92.19 and 92.20 of this part.

* * * * *

6. Section 92.2(e) would be removed.

7. Section 92.4 would be amended by revising paragraph (a)(4)(i) to read as follows:

§ 92.4 [Amended]

(a) * * *

(4)(i) The importer or importer's agent shall pay or ensure payment of a reservation fee for each lot of animals or birds to be quarantined in a facility maintained by Veterinary Services. For animals other than poultry, the reservation fee shall be 25 percent of the cost of providing care, feed, and handling during quarantine, as estimated by the quarantine facility's veterinarian in charge. This advance payment shall be at least $130 for each horse and $240 for each lot of any other kind of animal except poultry, but shall not exceed $2,500. For birds and poultry, the reservation fee shall be 100 percent of the cost of providing care, feed, and handling during quarantine, as estimated by the quarantine facility's veterinarian in charge.

* * * * *

Done in Washington, DC, this 11th day of August, 1987.

B.G. Johnson,

Acting Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 87–18612 Filed 8–13–87; 8:45 am]

BILLING CODE 3410-34-M

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9 CFR Part 94

[Docket No. 86–124]

Importation of Eviscerated Wild Pheasant and Grouse Carcasses

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to revise the regulations on importing the carcasses of wild pheasants and grouse. While specimens of both are hunted as game, they are not migratory birds and for that reason fall into the category we define as "poultry." Treated as "poultry," they cannot be imported under the same conditions as "game birds." Instead, they must be thoroughly cooked before being permitted into the United States. Because the eviscerated carcasses of these hunted birds without heads and feet present a negligible risk of spreading viscerotropic velogenic Newcastle disease (VVND), we propose to relieve import restrictions. To also reflect the general understanding of game, we propose to expand the definition of "game birds" to include wild pheasants and grouse, and to make a corresponding change in the definition of "poultry." We are also proposing to clarify the requirements for importing carcasses of "game birds."

DATE: Consideration will be given only to comments postmarked on or before October 13, 1987.

ADDRESS: Send written comments to Steven B. Farbman, Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 86–124. Comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Mark P. Dulin, Senior Staff Veterinarian, Import-Export and Emergency Planning Staff, Room 805, Federal Building, Hyattsville, MD 20782, 301–436–8499.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 94 (referred to below as the regulations) restrict the importation of carcasses of all birds, including poultry and game birds, into the United States. These regulations are intended to prevent viscerotropic velogenic Newcastle disease (VVND) and other diseases from spreading into this country.

The current regulations, issued after a serious outbreak of VVND in California in 1972, excluded non-migratory birds from the definition of "game birds." While wild pheasants and grouse, like free-flying quail, are hunted as game, they are not migratory birds and, for that reason, fall into the caregory we

define as "poultry." Treated as "poultry," they cannot be imported under the same conditions as "game birds." Even when hunted as game, carcasses of wild pheasants and grouse must be thoroughly cooked before allowed into the United States. "Game birds," on the other hand, may be imported so long as the heads, feet, and viscera have been removed.

Our definition of "game birds" has, until now, comprehended only migratory birds hunted as game. While we did not change the definition of "game birds" when we revised the regulations in 1980, we did provide for one non-migratory species, free-flying quail, to be imported in the same manner as "game birds." Thus, subject to a border inspector's approval, free-flying quail without heads, feet, and viscera, have been entering the United States. We have received no reports of VVND attributed to those carcasses.

We would expect the case to be the same if the carcasses of wild pheasant and grouse were also imported under the provisions for "game birds." Therefore, we are proposing to revise the definition of "game birds" to include these three species of non-migratory birds. These birds in the wild rarely come into contact with birds likely to carry VVND. Therefore, carcasses of wild pheasants and grouse are unlikely to have VVND, and would not pose a significant risk to poultry in the United States.

In the 15 years since the 1972 outbreak, we have not received any reports of VVND in wild pheasants or wild grouse. The more stringent controls originally imposed on wild specimens no longer seem necessary. We therefore consider it appropriate to redefine "game birds" in the regulations. Because there is no evidence that the carcasses of wild grouse, wild pheasants, and free-flying quail, the non-migratory birds hunted as game birds, pose a greater danger of spreading VVND to U.S. poultry than migratory game birds, there is no longer any reason to exclude these birds, which are hunted as game, from the definition of "game birds." The proposed change in the definition of "game birds" in § 94.6(b)(4) of the regulations accords with the common understanding of "game," that is, wild birds and animals hunted for food or sport. The proposed change would require a corresponding change in the definition of "poultry" in § 94.6(b)(2).

In addition, to clarify the requirements for importing carcasses of "game birds," we are revising the wording of § 94.6(d)(1). There has been some confusion about the eligibility for entry of heads, feet, and viscera after their removal from the carcasses. The proposed revision provides that no heads, no feet, and no viscera of "game birds" may be imported into the United States.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

About 300 to 400 U.S. hunters annually import non-migratory games birds into the United States. The proposed amendment would benefit those who hunt wild pheasants or wild grouse by making it unnecessary to cook those carcasses before bringing them into the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act.

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V).

List of Subjects in 9 CFR Part 94

African swine fever, Animal diseases, Exotic Newcastle disease, Foot-and-mouth disease, Fowl pest, Garbage, Hog cholera, Imports, Livestock and livestock products, Meat and meat products, Milk, Poultry and poultry products, Rinderpest, Swine vesicular disease.

Accordingly, 9 CFR Part 94 would be amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), NEWCASTLE DISEASE (AVIAN PNEUMOENCEPHALITIS), AFRICAN SWINE FEVER, AND HOG CHOLERA; PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for Part 94 would continue to read:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, and 134f; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 94.6, paragraphs (b)(2) and (b)(4) would be revised to read as follows:

§ 94.6 [Amended]

* * * * *

(b) * * *

(2) *Poultry.* Chickens, turkeys, swans, partridges, guinea fowl, pea fowl; non-migratory ducks, geese, pigeons, and doves; commercial, domestic or pen-raised grouse, pheasants, and quail.

* * * * *

(4) *Game Birds.* Migratory birds including certain ducks, geese, pigeons, and doves ("migratory" refers to seasonal flight to and from the United States); free-flying quail, wild grouse, wild pheasants (as opposed to those that are commercial, domestic, or pen-raised).

3. In § 94.6, paragraph (d)(1) would be revised to read as follows:

* * * * *

(d) * * *

(1) Carcasses of game birds may be imported if eviscerated, with heads and feet removed. Viscera, heads, and feet removed from game birds are ineligible for entry into the United States.

* * * * *

Done in Washington, DC, this 11th day of August, 1987.

J.K. Atwell,

Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 87-18611 Filed 8-13-87; 8:45 am]

BILLING CODE 3410-34-M

FARM CREDIT ADMINISTRATION

12 CFR Parts 620 and 621

Disclosure to Shareholders; Accounting and Reporting Requirements

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA) publishes for comment proposed amendments to Part

620 relating to disclosure of problem loans to senior officers and directors and their immediate families and affiliated organizations and proposed amendments to Part 621 to delete references to the FCA examining classification "vulnerable" in the definition of "other high risk loans." In addition, certain other minor substantive and technical amendments are proposed. The FCA also invites comment on any other technical problems that may have been encountered in applying the regulations.

DATES: Written comments must be received on or before October 13, 1987.

ADDRESSES: Submit any comments (in triplicate) in writing to Frederick R. Medero, General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090. Copies of all communications received will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT: Dorothy J. Acosta, Office of the General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090, (703) 883-4020.

SUPPLEMENTARY INFORMATION: The FCA adopted Part 620 as a final regulation on March 13, 1986, 51 FR 8944, and amended it on June 12, 1986, 51 FR 21336, and November 21, 1986, 51 FR 42084, and corrected it on December 12, 1986, 51 FR 44783. Farm Credit institutions continued to express a high level of concern over provisions of the regulation relating to disclosure of problem loans to senior officers and directors and their immediate families as institutions prepared their annual reports to shareholders for 1986. Widespread distress in the agricultural community appears to have resulted in a larger number of loans meeting the disclosure criteria than would ordinarily be the case. Consequently, the Farm Credit Administration Board (Board) held a public hearing on April 7, 1987, at which Farm Credit System (System) representatives expressed their continuing concern with these provisions. In addition, representatives of the Securities and Exchange Commission (SEC), the Federal Deposit Insurance Corporation (FDIC) and the comptroller of the Currency (OCC) testified about shareholder disclosure requirements of their respective agencies.

Representing System institutions were 6 association directors, 2 bank officers, 2 district directors, and a representative of the Farm Credit Corporation of America.

Only one presenter opposed disclosure of directors' problem loans altogether, giving as reasons for his opposition the difficulty in getting qualified directors from small rural communities, perceived differences in disclosure requirements for commercial banks, and the existence of controls designed to prevent conflicts of interest. The concerns of the rest of the presenters centered around two provisions of the regulation. First, the regulation requires disclosure of loans to senior officers and directors, their immediate family members and affiliated organizations if they involved more than a normal risk of collectibility at any time during the reporting period (fiscal year for which the report is filed to the date of the report) even though the director resigns during the year and does not seek reelection. The presenters recommended that senior officers and directors be allowed a period of time during which to resign or correct the deficiency in the loan and thereby avoid disclosure. The presenters believed such a modification appropriate, even though it would establish a less stringent disclosure standard than other Federal regulators, because Farm Credit institution directors must be borrowers from the institution in order to serve as directors. Therefore, they do not have the option of avoiding disclosure by not borrowing from the institution they serve, as commercial bank directors do. Several presenters believed that the FCA should rely more on its examining and enforcement powers to eliminate conflicts of interest and to get directors and officers to correct problem loans and less on disclosure. In addition, one presenter believed that raising the de minimis exemption from $5,000 to $60,000 would eliminate much required disclosure and hence most of the controversy.

The second major concern expressed at the hearing relates to the requirement to disclose problem loans to members of a senior officer or director's immediate family even if the officer or director has no financial stake in the loan or the operation financed by the loan and no business relationship with the family member. The regulation defines "immediate family" to include spouse, parents, siblings, children, mothers- and fathers-in-law, sons- and daughters-in-law, and brothers- and sisters-in-law. The presenters considered the status of loans of a senior officer or director's immediate family members to be irrelevant to an evaluation of the director or officer's performance when he or she has no financial interest therein and believed that adequate controls are in place to assure that directors do not participate in deliberations on these loans. Furthermore, one presenter believed it unfair to imply through disclosure that the director is accountable for a relative's loan. Another presenter pointed out that the FCA's conflict on interest regulations prohibit a director or officer from participating in deliberations that affect a relative's loan and suggested that the FCA use its examining and enforcement powers to enforce the regulation in lieu of requiring disclosure. This presenter argued that disclosure could damage the individual's business relationships and result in lawsuits against the institution. Another presenter argued that innocent persons could be damaged through mistaken identity as a result of: (1) The lack of a requirement that the immediate family members be identified; and (2) the wide distribution of the annual report to shareholders. Consequently, the presenter argued that disclosure of immediate family member loans should be required to be filed with the Farm Credit Adminstration rather than disseminated to shareholders. Another presenter believed it would be preferable to make disclosures available for shareholders to review in the institution or at the FCA rather than routinely disclose them in the annual report disseminated to shareholders.

In addition to these major concerns, several presenters were concerned that because the regulation defines "greater than normal risk of collectibility" to include all non-performing loans, as defined in Part 621, some loans that are current as to principal and interests would meet the disclosure criteria merely because of a drop in collateral values or lack of documentation in the loan file. The presenters believe that these loans should not be required to be disclosed since they are being repaid according to their terms.

The concerns expressed at the hearing were echoed in several letters from district banks and association directors.

A. Part 620—Disclosure to Shareholders

1. Insider Loan Transactions With Reporting Institution

After carefully considering the comments, the Board continues to believe that disclosure of loans that involve a greater than normal risk of collectibility to senior officers and directors, their immediate family members and affiliated organizations is relevant and material to an evaluation of directors' and officers' performance of their fiduciary duties and should be available to shareholders. The Board

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believes that shareholders have a right to know of circumstances that may impair the objectivity and impartiality of individuals who are responsible for making or executing policy for the institution, in order to evaluate whether that has in fact occurred. The Board believes this information is relevant to the evaluation of past conduct, which may be legally actionable, as well as to future evaluations and election decisions. The Board believes that some presenters may have incorrectly perceived the purpose of the regulation to be encourage directors to correct their loan deficiencies or to discourage directors from self-interested conduct. While the regulation may incidentally achieve such a result, this is not the primary purpose of the regulation. Rather, the primary purpose of the requirement is to provide shareholders with relevant and material information so that they can exercise their shareholder rights in a meaningful way.

Nevertheless, the Board recognizes that the fact that directors must be borrowers in order to serve as directors means that they do not have the option of avoiding the potential for conflict and the need for disclosure by borrowing from another institution. As a result, this shrinks the pool of qualified directors by eliminating those individuals who are not willing to undertake the risk that serving as director may expose family members to disclosure of their financial difficulties. The Board has weighed its concern for providing relevant information to shareholders against the need to obtain qualified directors and proposes an amendment to § 620.3(j)(3) of the regulation that attempts to accommodate both concerns.

The proposed amendment would obviate the need for disclosure of a loan involving a greater than normal risk of collectibility to a senior officer or director, his relatives and affiliated organizations if the greater than normal risk of collectibility is removed or the director or officer resigns within 60 days of the determination that the loan involves such a risk, but in no event later than the date of the annual report to shareholders. The proposed exception would apply only to loans required to be disclosed because they involve more than a normal risk of collectibility. The regulation would continue to require loans not made in the ordinary course of business or made on different terms than those available to other borrowers for comparable transactions to be disclosed, even if the director resigned or the terms were changed. The proposed amendment would require any person resigning to avoid disclosure to make the disclosure that would have been required but for the resignation if such person is appointed director, is a candidate for director, or is reemployed within 2 years of the resignation. This proposed provision is designed to prevent circumvention of the regulation by resigning, waiting a year and running for office again and is necessary because the regulation requires disclosure only for the preceding fiscal year to the date of the report. Furthermore, to guard against the potential for a conflict of interest during the period given for correction or resignation, the FCA will closely monitor the actions of any senior officer or director involved in such situations.

The Board disagrees with the argument that the potential for impairment of the objectivity and impartiality of the director or officer is only present when the person has: (1) A financial stake in the operation to which the family member's loan relates; or (2) a business relationship with the family member. Rather, the Board believes that an officer's or director's knowledge of the financial difficulties of close relatives may make it difficult for the individual to adopt policy or take action that would exacerbate those difficulties and therefore that such information is relevant and material to a shareholder's evaluation of the officers' and directors' performance of their fiduciary duties. The FCA's definition of "immediate family" is limited to close relatives—spouse, children, parents and siblings; children, parents and siblings of the spouse; and the spouses of the foregoing. It does not include uncles, aunts, nephews, nieces, grandparents or cousins. This definition is identical to that employed by the SEC, the OCC, and the Federal Home Loan Bank Board (FHLBB) in connection with similar disclosure requirements. However, the Board agrees that the potential for conflict is greater when the director or officer has a financial stake in the loan or the operation being financed or a business relationship with the relative in question. Furthermore, the Board believes that the potential for conflict may be greater when the loan involved is to a distant relative with whom the officer or director has a business relationship than when the loan involved is to a closer relative with whom there is no business relationship.

The Board therefore proposes to amend § 620.3(j)(3) of the regulation to require: (1) Disclosure of loans that do not meet the criteria of § 620.3(j)(3)(i) to *any* relative with which the officer or director has a business relationship in the annual report disseminated to shareholders; and (2) disclosure of such loans to immediate family members *not* having a business relationship with the director or officer to be included as a supplemental schedule to the annual report filed with the FCA. The supplemental schedule would be available to shareholders upon request from the reporting institution or the FCA and the annual report to shareholders would inform them of its availability. Under the proposal, the definition of "immediate family" would be unchanged. The Board believes, based on the testimony of the presenters, that this modification strikes an appropriate balance between the rights of shareholders and the need to obtain qualified directors.

The Board further proposes an amendment to § 620.3(j)(3)(i) to clarify that Federal Land Bank Associations (FLBAs) must disclose loans from the Federal land bank (FLB) to the FLBA's senior officers and directors that do not meet the conditions of the section. This change will reflect more precisely the fact that the FLBA arranges loans with its FLB, which the contractual or "primary" creditor. The Board believes System institutions have understood this to be the intent of the regulation.

2. Transactions Other Than Loans With Reporting Institution

The Board proposes to amend § 620.3(j)(2) to require disclosure of transactions of the reporting institutions other than loans with any relative having a business relationship with a senior officer or director, unless they meet the criteria for nondisclosure contained in that section. This requirement would be in addition to the current requirement to disclose non-loan transactions with immediate family members. The proposed amendment reflects the Board's agreement with System representatives that these transactions may be even more likely to involve conflicts of interest than transactions with family members with whom the senior officer of director has no business relationship.

Further, the Board proposes to amend § 620.3(j)(2) to require disclosure of any such transaction that has occurred since the date of the last annual report to shareholders. The regulation currently requires disclosure of any such transactions occurring since the last annual meeting of shareholders. The amendment is proposed to assure that all such transactions occurring during the year, including those between the date of the annual report to shareholders and the annual meeting, are required to be disclosed.

3. Business Relationship

The Board proposes to add to § 620.1 a definition of "business relationship" that would encompass continuing relationships, not necessarily related directly to the loan, as well as a single transaction, series of transactions or joint venture to which the loan relates, that are entered into in anticipation of financial gain or avoidance of loss by either or both of the parties. The definition would include, but not be limited to, transactions that involve the purchase, sale, lease, ownership or management of real or personal property; services as a real estate agent or broker; the sale or placement of insurance; sales barn activities; the borrowing or lending of money or other things of value (including credit); providing or receiving financial professional or other services; and other similar transactions.

4. Transactions with Other Farm Credit Institutions

As the Board reconsidered the rationale for the insider loan disclosure in the context of the public hearing testimony, it determined to propose for comment an amendment to § 620.3(j) (2) and (3) of the regulation to require disclosure of transactions of senior officers and directors and their associates with other Farm Credit institutions having a supervisory relationship, inasmuch as a potential for conflict is present when an officer or director of a supervising institution has a loan with a supervised institution or vice versa. The proposed amendment would require disclosure of any loan or other transaction meeting the regulation's disclosure criteria with an institution supervised by or under the supervision of the reporting institution to such person, his or her affiliated organization, immediate family member or relative with which such person has a business relationship in the same manner as loans from the reporting institution.

5. Other Changes

The Board proposes to amend the definition of "affiliated organization" in § 620.1(a) by substituting "partner" for the third "director." The proposed change would eliminate from the definition organizations in which the person's only role is to serve as director and would include within the definition organizations in which the person has a partnership interest. This change is proposed because the FCA believe that a person who is a partner has a significant financial stake in an organization, whereas a person may serve as director of many organizations in which he or she has no significant financial interest. However, the Board invites comment on whether the definition should also retain "director" in the definition in order to reach situations in which the potential for conflict may be significant, such as directors of cooperatives serving on the board of the banks for cooperatives that lend to the cooperative.

The Board proposes to make a number of other minor substantive and technical changes and corrections to Part 620. The Board proposes to insert "preceded or" before "accompanied" in § 620.20(c) to clarify that the most recent quarterly report need not be acutally sent with the annual information statement if it has already been sent to shareholders. However, persons who have become shareholders since the most recent quarterly report was disseminated should be provided with a copy of it, either at the time they become shareholders or with the annual information statement.

The Board proposes to amend § 620.3(c) to delete the words "or agency" to clarify that the FCA did not intend this regulation to require routine disclosure of pending enforcement proceedings before the FCA.

The Board proposes to make the following technical amendments and corrections:

Section 620.2(k) would be revised by deleting the "s" in "reports" in the first sentence and inserting "also" before "include" in the third sentence.

Section 620.10(a) would be revised by changing "reporting requirements" to "report" in the last sentence.

Section 620.11(b)(2) would be revised by changing "that" to "than" in the first sentence.

Section 620.11(b)(4) would be revised by changing the second "that" in sentence 2 to "and," and inserting "that" between "accounts" and "have" in sentence 3.

Section 620.20(b) would be revised to correct the citation contained therein from 621.21 to 620.21.

B. Part 621—Accounting and Reporting Requirements

The Board proposes to amend Part 621 to eliminate loans classified "vulnerable" as a result of a periodic credit evaluation from the definition of "other high risk loans." At the time the regulation was promulgated, FCA's examination classification "vulnerable" was defined as "high risk loans still considered collectible but involving probability of loss in the event repayment from available sources does not materialize." Since the regulation was promulgated examination classifications have been revised. As the FCA considered the effect of the revision on the regulation, it began to question the wisdom of substituting a new examination classification for the "vulnerable" classification in definition of "other high risk loans." The FCA believes that most of the loans so classified would meet one or more of the more objective criteria. This change may also address some of the concerns of the presenters at the hearing who believed that including all non-performing loans, as defined in Part 621, in the definition of "greater than normal risk of collectibility," would result in disclosure of loans that are current as to principal and interest but are classified because of circumstances beyond the borrower's control, such as a drop in collateral values, or because of minor problems in documentation not material to the determination of collectibilty. However, the Board notes that a loan that is contractually current may involve more than normal risk of collectibility (especially annual payment loans) inasmuch as the determination is one of ultimate collectibility over the life of the loan. The regulation would continue to require disclosure of such loans, even if the factors causing the problem are outside the borrower's control. The Board reemphasizes that the purposes of the regulation is to make shareholders aware of circumstances that constitute a potential conflict of interest in directing the affairs of the association, not to punish or pressure directors to correct problem loans. The requirement to disclose the reason the loan involves more than a normal risk of collectibility will make it obvious to the shareholder when circumstances beyond the borrower's control have triggered the requirement to disclose. The reporting institution is free to disclose that the loan is current as to principal and interest and the FCA encourages such disclosure.

Therefore, § 621.2(a)(18)(i), which includes "vulnerable" loans in the definition of "other high risk loans," would be deleted and paragraphs 621.2(a)(18) (ii), (iii), (iv), and (v) would be renumbered accordingly. Section 621.2(24), which defines "vulnerable," would be deleted.

The heading of § 621.4 would be revised to correct the spelling of "accrual."

List of Subjects in 12 CFR Parts 620 and 621

Disclosure to shareholders, Annual reports, Quarterly reports, Association annual meeting information statements,

Accounting and reporting requirements, Report of condition and performance.

As stated in the preamble, Parts 620 and 621 of Chapter VI, Title 12 of the Code of Federal Regulations, is proposed to be amended as follows:

PART 620—DISCLOSURE TO SHAREHOLDERS

1. The authority citation for Part 620 continues to read as follows:

Authority: Secs. 5.17(a) and (10), Pub. L. 99-205, 99 Stat. 1678, 12 U.S.C. 2252 (9) and (10).

Subpart A—Annual Reports to Shareholders

2. Section 620.1 is revised to read as follows:

§ 620.1 Definitions.

(a) "Affiliated organization" means any organization, other than a Farm Credit organization, of which a director, senior officer, or nominee for director of the reporting institution is a partner, officer, or majority shareholder.

(b) "Business relationship" means a continuing relationship, a transaction or series of transactions, or a joint venture between or among persons (or such persons' affiliated organizations(s)) entered into in anticipation of financial gain or avoidance of loss by either or both of the parties.

(c) " Immediate family" means spouse, parents, siblings, children, mothers- and fathers-in-law, brothers- and sisters-in-law, and sons- and daughters-in-laws.

(d) "Institution" means any bank or association chartered by the Act.

(e) "Loan" shall have the same meaning as in Part 621 of this chapter.

(f) "Material." The term "material," when used to qualify a requirement to furnish information as to any subject, limits the information required to those matters to which there is a substantial likelihood that a reasonable person would attach importance in making shareholder decisions or determining the financial condition of the institution.

(g) "Normal risk of collectibility" means the ordinary risk inherent in the lending operation. Any loans properly identifiable as "nonperforming" as defined in § 621.2(a)(17) of this chapter shall be deemed to have more than a normal risk of collectibility.

(h) "Related organization" means any Farm Credit Institution that is a shareholder of the reporting institution or in which the reporting institution has an ownership interest.

(i) "Risk funds" means the allowance for loan losses and all capital accounts exclusive of capital stock, participation certificates, and allocated equities.

(j) "Senior officer" means any person designated by the board of directors as responsible for a major management function.

(k) "Shareholder" means a holder of any equity interest in an institution.

3. Section 620.2 is amended by revising paragraph (k) to read as follows:

§ 620.2 Preparing, distributing, and filing the report.

* * * * *

(k) For purposes of this part, each annual and quarterly report of a Federal land bank shall present the financial statements of the Federal land bank and its Distict Federal land bank associations on a combined basis. The annual and quarterly reports of a Federal intermediate credit bank shall present the financial statements of the Federal intermediate credit bank and its district production credit associations on a combined basis. The respective reports shall also include, at a minimum, the statement of condition and statement of income for the bank only. These statements may be in a summary form and shall disclose the basis of presentation if different than the accounting policies of the combined bank and associations statements.

4. Section 620.3 is amended by revising paragraphs (c), (j)(2), and (j)(3)(i) and (ii) introductory text; by adding new paragraphs (iii) and (iv) to paragraph (j)(3); and by adding a new paragraph (j)(4) to read as follows:

§ 620.3 Contents of the annual report to shareholders.

* * * * *

(c) *Legal proceedings.* Describe briefly any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the institution is a party, of which any of its property is the subject, or which involves claims that the institution may be required, by contract or operation of law, to satisfy. Include the name of the court in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceeding, and the relief sought.

* * * * *

(j) *Transactions with senior officers and directors.* * * *

(2) Transactions other than loans. For each person who served as a senior officer or director on January 1 of the year following the fiscal year of which the report is filed, or at any time during the fiscal year just ended, describe briefly any transaction or series of transactions other than loans that occurred at any time since the date of the last annual report between the reporting institution or any institution having a supervisory relationship with the reporting institution and such person, any immediate family member of such person, any relative with which such person has a business relationship or any organization with which such person is affiliated. State the name of the officer or director who entered into the transaction or whose relative or affiliated organization entered into the transaction, the nature of the person's interest in the transaction, and the terms of the transaction. No information need be given where the purchase price, fees, or charges involved were determined by competitive bidding or where the amount involved in the transaction (including the total of all periodic payments) does not exceed $5,000, or the interest of the person arises solely as a result of his or her status as a stockholder of the institution and the benefit received is not a special or extra benefit not available to all stockholders.

(3) Loans to senior officers and directors.

(i) To the extent applicable, state that the institution has had loans outstanding during the last full fiscal year to date to its senior officers and directors, their immediate family members, other relatives having a business relationship with such persons, and any organizations with which such senior officers or directors are affiliated that:

* * * * *

(ii) If the conditions stated in paragraph (j)(3)(i) of this section do not apply to the loan(s) of any person who has served as a senior officer or director since the start of the previous fiscal year, or any relative with which such person has a business relationship, or any organization with which such person is or has been affiliated since the start of the previous fiscal year, state:

* * * * *

(iii) If any loan from the reporting institution to any member of any director's or senior officers' immediate family members is made out of the ordinary course of business, is made on different terms than those available at the time for comparable transactions with other persons or involves more than a normal risk of collectibility, the information required by paragraph (j)(3)(ii) shall be filed as a supplemental schedule to the annual report filed with the Farm Credit Administration ("FCA"). The annual report disseminated to shareholders shall state, in a separate paragraph and in a conspicuous place, that the institution or any institution supervised by the

reporting institution had loans outstanding to immediate family members of the director or senior officer (who shall be named) that were made out of the ordinary course of business, or were made on different terms than those available at the time for comparable transactions with other persons or involved more than a normal risk of collectibility, as appropriate. The annual report shall further state that information concerning such loans is available upon request from the reporting institution.

(iv) If any institution having a supervisory relationship with the reporting institution has had loans outstanding during the last full fiscal year to date to the reporting institution's senior officers and directors, any relative with which such persons have a business relationship or any organization affiliated with such persons, so state. If any such loans were not made in the ordinary course of business, were made on different terms than those available at the time for comparable transactions with other persons, the information required by paragraphs (j)(3)(ii) shall be disclosed for each such loan. If any institution having a supervisory relationship with the reporting institution has had loans outstanding during the last full fiscal year to date to any member of a senior officer's or director's immediate family not having a business relationship with such person that was not made in the ordinary course of business or was made on different terms than those available at the time for comparable transactions with other persons, the information required by paragraphs (j)(3)(ii) shall be included as a supplemental report in the annual report filed with the FCA and shall be available upon request from the reporting institution. Notice of its availability shall be included in the annual report to shareholders in the same manner as for loans from the reporting institution.

(4) Notwithstanding the foregoing requirements of paragraph (j)(3), no disclosure need be made of a loan that would be required to be disclosed because it involves more than a normal risk of collectibility, if the greater than normal risk of collectibility is removed, or the director or officer with respect to which such disclosure is required resigns, within 60 days of the determination by the institution that the loan involves more than the normal risk of collectibility (but in no case later than the date of the annual report to shareholders); *provided,* that if any person who avoids disclosure under this paragraph by resigning is reemployed or is a candidate for director or is appointed director during the period ending two years from the end of the fiscal year for which disclosure would have been required but for the resignation, such disclosure shall be made in the annual report to shareholders, provided that in the case of a person who is a candidate for director, such disclosure shall be made prior to election.

* * * * *

Subpart B—Quarterly Report to Shareholders

5. Section 620.10 is amended by revising paragraph (a) to read as follows:

§ 620.10 Preparing, distributing, and filing the report.

(a) Each institution of the Farm Credit System except Federal land bank associations shall prepare a quarterly report for each fiscal quarter beginning with the quarter ending June 30, 1988, except that no report need be prepared for the fiscal quarter that coincides with the end of the fiscal year of the institution. The report shall conform to the requirements set forth in § 620.11.

* * * * *

6. Section 620.11 is amended by revising paragraphs (b)(2) and (b)(4) to read as follows:

§ 620.11 Content of quarterly report to shareholders.

* * * * *

(b)* * *

(2) Interim statements of income. When any major income statement caption is less than 15 percent of average net income for the 3 most recent fiscal years and the amount in the caption has not increased or decreased by more than 20 percent since the corresponding interim period of the preceeding fiscal year, the caption may be combined with others. In calculating average net income, loss years should be excluded. If losses were incurred in each of the 3 most recent fiscal years, the average loss shall be used for purposes of this test.

* * * * *

(4) The interim financial information shall include disclosure either on the face of the financial statements or in accompanying footnotes sufficient to make the interim information presented not misleading. Institutions may presume that users of the interim financial information have read or have access to the audited financial statements for the preceding fiscal year and the adequacy of additional disclosure needed for a fair presentation may be determined in that context. Accordingly, footnote disclosure that would substantially duplicate the disclosure contained in the most recent audited financial statements (such as a statement of significant accounting policies and practices), and details of accounts that have not changed significantly in amount or composition since the end of the most recent completed fiscal year may be omitted. However, disclosure shall be provided of events occurring subsequent to the end of the most recent fiscal year that have a material impact on the institution. Disclosures should encompass, for example, significant changes since the end of the most recently completed fiscal year in such items as accounting principles and practices; estimates inherent in the preparation of financial statements; status of long-term contracts; capitalization, including significant new indebtedness or modification of existing financing agreements; and the reporting entity resulting from business combinations or dispostions.

* * * * *

Subpart C—Association Annual Meeting Information Statement

7. Section 620.20 is amended by revising paragraphs (b) and (c) to read as follows:

§ 620.20 Preparing, distributing, and filing the information statement.

* * * * *

(b) The statement shall contain, at a minimum, the information specified in § 620.21 and, in addition, such other material information as is necessary to make the required statement, in light of the circumstances under which they are made, not misleading.

(c) The statement shall incorporate by reference the annual report to shareholders required by Subpart A of this part. In addition, if any institution holds its annual meeting of shareholders more than 134 days after the end of its fiscal year, the statement shall be preceded or accompanied by the most recent quarterly statements required by Subpart B of this part.

* * * * *

PART 621—ACCOUNTING AND REPORTING REQUIREMENTS

8. The authority citation for Part 621 continues to read as follows:

Authority: Sec. 5.17 (9) and (10), Pub. L. 99–205, 99 Stat. 1678, 12 U.S.C. 2252(a)(9)(10).

Subpart A—Accounting Requirements

9. Section 621.2 is amended by removing paragraph (a)(18)(i) and redesignating paragraphs (a)(18) (ii), (iii), (iv) and (v) as paragraphs (a)(18) (i), (ii), (iii), and (iv); and by removing paragraph (a)(24).

10. Section 621.4 is amended by revising the heading to read as follows:

§ 621.4 Accrual basis of accounting.

William A. Sanders, Jr.,

Secretary, Farm Credit Administration.

[FR Doc. 87-18510 Filed 8-13-87; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-61-AD]

Airworthiness Directives; British Aerospace Model BAC 1-11 200 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive (AD), applicable to British Aerospace Model BAC 1-11 200 series airplanes, that would require inspections of the main landing gear (MLG) support structure. This proposal is prompted by reports of cracks in the MLG support structure. This condition, if not corrected, could lead to collapse of the MLG.

DATES: Comments must be received no later than September 30, 1987.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-61-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The Applicable service information may be obtained from British Aerospace, Inc., P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FFA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-61-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition affecting British Aerospace Model BAC 1-11 200 series airplanes. There have been two reports of cracks discovered in the main landing -gear (MLG) rear pintle support beam. The cracks emanate from the bottom forward edge of the lug containing the hole for the bearing cap lower attach bolt. This condition, if not corrected, could lead to the collapse of the main landing gear.

British Aerospace has issued Service Bulletin 57-A-PM5896, Revision 2, dated August 19, 1986, which describes procedures for periodic inspections of the MLG support structure on the Model BAC 1-11 200 series airplanes. The CAA has declared this service bulletin as mandatory. In addition, this service bulletin provides similar inspection and repair procedures for the Model BAC 1-11-400 series airplanes; however, those procedures have been previously addressed in AD 86-04-07, Amendment 39-5235 (51 FR 4588; February 6, 1986).

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require periodic inspections for cracks in the MLG rear pintle support beam, and repair or replacement, if necessary, in accordance with Service Bulletin 57-A-PM5896, Revision 2, dated August 19, 1986.

It is estimated that 31 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $2,480.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($80). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation Safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority. 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

British Aerospace: Applies to Model BAC 1–11 200 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent the collapse of the main landing gear due to cracks in the rear pintle support beam, accomplish the following:

A. Prior to the accumulation of 50,000 landings or within the next 1,500 landings after the effective date of this AD, whichever occurs later, perform an eddy current or dye penetrant inspection for cracks in the rear pintle support beam in accordance with paragraph 2.1.1. of the accomplishment instructions of British Aerospace BAC 1–11 Alert Service Bulletin 57–A–PM5896, Issue Number 2, dated August 19, 1986. Thereafter, repeat the inspection at intervals not to exceed 3,200 landings.

If cracks are discovered, before further flight, repair or replace in accordance with paragraph 2.2 of the accomplishment instructions of the service bulletin.

B. An alternate means of compliance or adjustment of the compliance time which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace Inc., P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Cerification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on July 31, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87–18535 Filed 8–13–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Parts 71 and 75

[Airspace Docket No. 87–AWA–32]

Proposed Alteration of VOR Federal Airways and Jet Routes; Massena, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the descriptions of Federal Airways V–203, V–81 and Jet Routes J–567 and J–228 located in the vicinity of Massena, NY. The Canadian Government has requested segments of these airways/routes that cross the United States/Canada boundary be amended to coincide with reorganized terminal airspace in the Montreal/Mirabel, Canada, areas. This action supports that request.

DATES: Comments must be received on or before September 14, 1987.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Eastern Region, Attention: Manager, Air Traffic Division, Docket No. 87–AWA–32, Federal Aviation Administration, JFK International Airport, The Fitzgerald Federal Building, Jamaica, NY 11430.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:00 a.m. and 5: p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in devloping reasoned regulatory decisions on the proposals. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposals. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87–AWA–32." The postcard will be date/time stamped and returned to the commenter. All communications recieved before the specified closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposals

The FAA is considering amendments to Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) to alter the descriptions of VOR Federal Airways V–203, V–01 and Jet Routes J–567 and J–228 located in the vicinity of Massena, NY. The Montreal, Quebec, Canada Regional Office of Transport Canada is reorganizing the terminal airspace associated with the Montreal/Dorval and Montreal/Mirabel Airports. The result to trans-border airspace is the relocation of two air route intersections which will require the realignment of low and high level route segments formed by radials from the Massena, NY, and Plattsburgh, NY, VORTAC's. This action supports Transport Canada's request. Sections 71.123 and 75.100 of Parts 71 and 75 of the Federal Aviation Regulations were republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant

economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 75

Aviation Safety, VOR Federal airways, Jet routes.

The Proposed Amendments

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [AMENDED]

2. Section 71.123 is amended as follows:

V-81 [Amended]

By removing the words "Plattsburgh, NY;" and substituting the words "Plattsburgh, NY; INT Plattsburgh 348°T(003°M) and Montreal, Canada, 154°T(170°M) radials;"

V-283 [Amended]

By removing the words "INT Massena 045° and Montreal, Canada, 188° radials;" and substituting the words "INT Massena 048°T(061°M) and Montreal, Canada, 188°T(204°M) radials;"

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

3. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [AMENDED]

4. Section 75.100 is amended as follows:

J-87 [Revised]

From Plattsburgh, NY, INT Plattsburgh 348°T(003°M) and Montreal, Canada 154°T(170°M) radials; Montreal. The portion within Canada is excluded.

J-[illegible] [Amended]

By removing the words "From Montreal, Canada;" and substituting the words "From" and by removing the words "The airspace within Canada is excluded."

Issued in Washington, DC, on August 10, 1987.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87-18577 Filed 8-13-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 75

[Airspace Docket No. 87-AWA-3]

Proposed Alteration of Jet Routes, Expanded East Coast Plan, Phase II; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This action corrects Airspace Docket No. 87-AWA-3 by adding Jet Route J-52 to the nine routes that are currently described in this proposal. J-52 was inadvertently omitted from this docket when the alignment of J-52 was determined to be satisfactory. However, we have discovered that removing a dogleg was omitted from the description, and this action corrects that mistake.

DATES: Comments must be received on or before September 14, 1987.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Eastern Region, Attention: Manager, Air Traffic Division, Docket No. 87-AWA-3, Federal Aviation Administration, JFK International Airport, The Fitzgerald Federal Building, Jamaica, NY 11430.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington DC 20591; telephone (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-AWA-3." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Correction to Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC. 20591, or by calling (202) 367-3484. Communications must identify the docket number of this correction. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular N. 11-2 which describes the application procedure.

Correction to the Proposal

Airspace Docket No. 87-AWA-3 was published in the **Federal Register** on July 6, 1987, (52 FR 25243) that described nine jet routes for a proposed realignment. Jet Route J-52 was inadvertently omitted due to a minor change to its current description. This action adds that change to this docket to maintain continuity and tracking.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a

"significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

Correction to the Proposed Amendment

Accordingly, pursuant to the authority delegated to me, Federal Register Document 87-15136, as published in the Federal Register on July 6, 1987 (52 FR 25243), is corrected by adding the following:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 75.100 is amended as follows:

§ 75.100 [Amended]

J-52 [Amended]

By removing the words "INT Columbia 040° and Raleigh-Durham, NC, 288° radials; Raleigh-Durham;" and substituting the words "Raleigh-Durham, NC;"

Issued in Washington, DC., on August 7, 1987.

Sheloma Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87-18578 Filed 8-13-87; 8:45 am]

BILLING CODE 4910-13-M

RAILROAD RETIREMENT BOARD

20 CFR Parts 320 and 340

Initial Determinations Under the Railroad Unemployment Insurance Act and Reviews of and Appeals for Such Determinations

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) proposes to amend Parts 320 and 340 of its regulations, to clarify the handling of claims and reviews and appeals from denials of such claims under the Railroad Unemployment Insurance Act and to provide certain procedures to be followed by the agency in handling erroneous payment decisions under that Act. In addition, the proposed amendment to Part 340 explains when and under what circumstances waiver of recovery of erroneous payments may occur.

DATE: Comments must be submitted on or before October 13, 1987.

ADDRESS: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Steven A Bartholow, Deputy General Counsel, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4935 (FTS 386-4935).

SUPPLEMENTARY INFORMATION: Pursuant to the Railroad Unemployment Insurance Act (Act) the Board pays unemployment and sickness benefits to railroad employees who are out of work due to unemployment or sickness. The processing of initial claims for unemployment benefits under the Act is decentralized and the proposed amendments clarify the authority of the different offices of the Board to render decisions. The proposed amendments also clarify the procedures to be followed by claimants in contesting adverse decisions. Finally, the proposed regulations provide for certain procedures to be followed by the Board in handling erroneous payment decision where waiver of recovery might be appropriate under section 2(d) of the Act.

The Board has determined that this is not a major rule for purpose of Executive Order 12291. Therefore, no Regulatory Impact Analysis is required. In addition, this rule does not impose any information collections within the meaning of the Paperwork Reduction Act.

List of Subjects in 20 CFR Parts 320 and 340

Railroad employees, Railroad unemployment insurance.

For the reasons set out in the preamble, Title 20 CFR, Chapter II, is proposed to be amended as follows:

PART 320—INITIAL DETERMINATIONS UNDER THE RAILROAD UNEMPLOYMENT INSURANCE ACT AND REVIEWS OF AND APPEALS FROM SUCH DETERMINATIONS

1. The authority citation for Part 320 continues to read as follows:

Authority: Sec. 12, 52 Stat. 1107, as amended; 45 U.S.C. 362, unless otherwise noted.

2. Section 320.5 is revised to read as follows:

§ 320.5 Initial determinations.

An initial determination shall be made with respect to each claim for unemployment or sickness benefits by the appropriate adjudicating office as provided by § 320.6 of this part. The adjudicating office shall make its determination on the basis of the claimant's application and claim and any other relevant information or evidence. A determination allowing payment of an initial claim shall not establish a presumption that benefits for subsequent claims in the same period of unemployment or sickness are also payable. The Associate Executive Director for Unemployment and Sickness Insurance shall issue instructions with respect to the adjudication of claims and initial determinations on such claims. If it is found that only part of the benefits claimed may initially be paid, a partial payment shall be made prior to an final decision on the whole claim.

3. A new § 320.6 is added to read as follows:

§ 320.6 Adjudicating office.

(a) The term "adjudicating office" means any subordinate office of the Board which is authorized to make initial determinations and reconsideration decisions with respect to claims for benefits. The following paragraphs state which offices of the Board are adjudicating offices and define their authority to make determinations or decisions.

(b) *District offices.* Board district offices are authorized to make initial determinations on the following issues of eligibility for unemployment benefits:

(1) Availability for work;

(2) Voluntary leaving of work, with or without good cause;

(3) Failure to accept work or apply for work or failure to report to an employment office;

(4) Timely registration for benefits;

(5) Receipt of remuneration for claimed days of unemployment;

(6) Mileage of work restrictions and stand-by or lay-over rules;

(7) Whether the claimant's unemployment is due to a strike.

(c) *Regional offices.* Board regional offices are authorized to make determinations on any of the issues listed in paragraph (b) of this section. In addition, regional offices are authorized to make initial determinations on the following issues:

(1) Erroneous payment of benefits, including fraud;

(2) Applicability of the disqualification in section 4(a-2)(iii) of the Railroad Unemployment Insurance

Act if the claimant's unemployment results from a strike against a non railroad employer by which he is employed;

(3) Determination of the amount of the Board's claim for reimbursement from pay for time lost payments under section 2(f) of the Railroad Unemployment Insurance Act or damages for personal injury under section 12(o) of the Railroad Unemployment Insurance Act.

(d) *Division of Program Operations.* The Division of Program Operations, Bureau of Unemployment and Sickness Insurance, is authorized to make initial determinations on all issues of eligibility for unemployment and sickness benefits, and recovery of benefits, as set forth above, not reserved to the Associate Executive Director by paragraph (e) of this section.

(e) *Bureau of Unemployment and Sickness Insurance.* The Associate Executive Director for Unemployment and Sickness Insurance, or his designee, shall adjudicate:

(1) All requests for waiver of recovery of an erroneous payment;

(2) Applicability of the disqualification in section 4(a–2)(iii) of the Railroad Unemployment Insurance Act if the claimant's unemployment results from a strike against a railroad employer by which he is employed; and

(3) Offers of compromise of debts arising out of the benefit provisions of the Railroad Unemployment Insurance Act. The decision to waive recovery or to accept a compromise shall be made only by the Associate Executive Director. The Associate Executive Director shall also decide whether a plan submitted by an employer or other person or company qualifies as a nongovernmental plan for unemployment, sickness or maternity insurance, within the meaning of section 1(j) of the Railroad Unemployment Insurance Act.

4. Section 320.8 is revised to read as follows:

§ 320.8 Notice of initial determination.

(a) *Benefits payable.* If benefits are payable for a claim, no special notice of the award will be issued. The amount of benefits due will be certified to the United States Treasury Department for payment.

(b) *Benefits not payable.* If an initial determination results in denial of a claim, either in whole or in part, the adjudicating office shall issue a notice of the denial within 15 days of the date that it makes its determination. The notice shall explain the basis for the denial of benefits and shall set forth what steps the claimant can take to contest the denial.

(c) *Communication of notice of denial.* When the adjudicating office mails the denial notice to the claimant's address of record, it shall be considered that notice of the denial has been communicated to the claimant on the date of mailing such notice. If the adjudicating office has been notified that a claimant has an attorney or other representative helping him or her with the claim, a copy of the denial notice shall be sent to the attorney or such other representative.

5. A new § 320.9 is added to read as follows:

§ 320.9 Notice of erroneous benefit payment.

(a) *Content of Notice.* When an adjudicating office determines that benefits were paid erroneously, that office shall issue to the claimant a notice of the amount of the erroneous payment and the basis for the determination. The notice shall include a statement telling the claimant of his or her right to request reconsideration of the determination, of the provisions for waiver and of his or her right to request waiver.

(b) *Communication of notice of erroneous payment.* When the adjudicating office mails the erroneous payment notice to the claimant's address of record, it shall be considered that notice of the erroneous payment has been communicated to the claimant on the date of mailing such notice. If the adjudicating office has been notified that a claimant has an attorney or other representative helping him or her with the claim, a copy of the erroneous payment notice shall be sent to the attorney or such other representative.

6. Section 320.10 is revised to read as follows:

§ 320.10 Reconsideration of initial determination.

(a) *Request.* A claimant shall have the right to request reconsideration of an initial determination under § 320.5 which denies in whole or in part his or her claim for benefits. Such request shall be made in writing and addressed to the adjudicating office that issued the initial determination and must be received by the adjudicating office no later than 60 days from the date of the notice of the initial decision.

(b) *Review of evidence.* Upon request, the claimant shall have an opportunity to review all evidence and documents that pertain to the initial determination.

(c) *Notice of decision.* The adjudicating office shall, as soon as possible, render a decision on the request for reconsideration. If a decision rendered by a district office, as the adjudicating office, sustains the initial determination, either in whole or in part, the decision shall be referred to the appropriate regional office for review prior to issuance.

The claimant shall be notified, in writing, of the decision on reconsideration no later than 15 days from the date of the decision or, where the regional office has conducted a review of the decision, within 7 days following the completion of the review. If the decision sustains the initial determination, either in whole or in part, the claimant shall be notified of his or her right to appeal as provided in §§ 320.12 and 320.15.

(d) *Right to further review of initial determination.* The right to further review of a determination made under § 320.5 or § 320.6 shall be forfeited unless a written request for reconsideration is filed within the time period prescribed in this section or good cause is shown by the claimant for failing to file a timely request for reconsideration.

(e) *Timely request for reconsideration.* In determining whether the claimant has good cause for failure to file a timely request for reconsideration the adjudicating office shall consider the circumstances which kept the claimant from filing the request on time and whether any action by the Board misled the claimant. Examples of circumstances where good cause may exist include, but are not limited to:

(1) A serious illness which prevented the claimant from contacting the Board in person, in writing, or through a friend, relative or other person;

(2) A death or serious illness in the claimant's immediate family which prevented him or her from filing;

(3) The destruction of important and relevant records;

(4) A failure to be notified of a decision; or

(5) The existence of an unusual or unavoidable circumstance which demonstrates that the claimant would not have known of the need to file timely or which prevented the claimant from filing in a timely manner.

7. A new § 320.11 is added to read as follows:

§ 320.11 Request for waiver of recovery.

(a) *Time limitation.* If a claimant requests waiver of recovery of an erroneous payment, he or she shall be given an opportunity for a hearing on his or her request. The claimant shall have 30 days from the date of the notification of the erroneous payment determination in which to file a request for waiver and if he or she so desires, a request for a hearing. Such requests shall be made in writing and be filed by mail or in person at any Board office. If the claimant does not elect to have an oral hearing with respect to his or her request for waiver

of recovery he or she may, along with the request, submit any evidence and argument which he or she would like to present in support of his or her case.

(b) *Recovery action.* Where a claimant has made a timely request for waiver of recovery and for a hearing, no action will be taken to recover the erroneous payment by setoff against current benefits prior to the hearing; *Provided However,* that the Board may, prior to the hearing, withhold the amount of the erroneous payment from benefit payments under any of the following circumstances:

(1) The amount of the erroneous payment does not exceed ten times the current maximum daily benefit rate;

(2) The claimant admits he or she was at fault in causing the overpayment;

(3) The claimant is found to have committed fraud;

(4) The claimant authorized recovery by setoff or agrees to repayment; or

(5) The claimant requests that a scheduled hearing be rescheduled to a date more than five business days after the original hearing date.

(c) *Appointment of hearing officer.* If the claimant makes a timely request for waiver and for a hearing, the Associate Executive Director for Unemployment and Sickness Insurance shall promptly arrange for the selection of a Board employee to schedule and conduct the hearing. The Board employee so selected shall not have participated in making the erroneous payment determination and shall conduct the hearing in a fair and impartial manner.

(d) *Scheduling the hearing.* The Board employee selected to conduct the hearing shall schedule such hearing at the earliest practicable time at a Board office or base point. The Board employee may reschedule the hearing upon his or her own motion or upon the request of the claimant, but if the hearing is rescheduled at the request of the claimant to a date more than five business days after the original hearing date the Board may, prior to the hearing, withhold the amount of the erroneous payment from the benefit payments.

(e) *Review of evidence.* Upon request, the claimant shall have an opportunity to review all evidence and documents that pertain to the erroneous payment determination.

(f) *Oral hearing.* The claimant shall also be afforded these rights:

(1) To present his or her case orally and to submit evidence, either through witnesses or documents;

(2) To cross-examine any adverse witnesses who testify;

(3) To be represented by counsel or other person.

(g) *Action after hearing.* When the hearing is completed, the Board employee who conducted it shall prepare a recommended decision and shall submit it, along with any evidence or documents produced as a result of the hearing, to the Associate Executive Director for Unemployment and Sickness Insurance.

(h) *Decision.* The Associate Executive Director for Unemployment and Sickness Insurance shall make a decision on the claimant's request for waiver of recovery and shall notify the claimant accordingly. If the Associate Executive Director decides that waiver of recovery is not appropriate, the adjudicating office shall wait 15 days from the date of the notification of the waiver decision before taking any action to recover the erroneous payment. If the Associate Executive Director decides that recovery should be waived, any amount of the erroneous payment so waived but previously recovered by setoff shall be refunded to the claimant.

(i) *Appeal.* If the Associate Executive Director for Unemployment and Sickness Insurance decides that waiver of recovery is not appropriate, the claimant shall have the right to appeal such decision as provided under § 320.12.

(j) *Requests made after 30 days.* Nothing in this section shall be taken to mean that waiver of recovery will not be considered in those cases where the request for waiver is not filed within 30 days. But action to recover the erroneous payment will not be deferred if such a request is not timely filed, and no prerecoupment hearing hearing shall be granted. Further, it shall not be considered that a claimant prejudices his or her request for waiver by tendering all or a portion of the erroneous payment or by selecting a particular method for repaying the debt. However, no waiver consideration will be given to any debt which is settled by compromise.

(k) *Sunset provision.* Those portions of this section which provide opportunity for a hearing on a claimant's request for waiver of recovery shall cease to be effective as of the close of business August 14, 1989, except that this section will continue in full effect through the final administrative adjudication of any case involving such hearing requested prior to that date.

8. Section 320.12 is revised to read as follows:

§ 320.12 Appeal to the Bureau of Hearings and Appeals.

A claimant whose claim has been denied in whole or in part upon reconsideration under § 320.10 or a claimant whose request for waiver of recovery under § 320.11 has been denied in whole or in part may appeal such decision to the Bureau of Hearings and Appeals. Such an appeal shall be made by filing the form prescribed by the Board. The appeal must be filed with the Bureau of Hearings and Appeals within 60 days from the date upon which the notice of the decision on reconsideration or waiver of recovery was mailed to the claimant. If no appeal is filed within the time limits specified in this section, the decision of the adjudicating office under § 320.10 or § 320.11 shall be considered final and no further review of such decision shall be available unless the referee finds that there was good cause for the failure to file a timely appeal as described in § 320.10 of this chapter.

§ 320.15 [Removed]

9. Section 320.15 is removed.

§ 320.18 [Amended]

10. Section 320.18 is amended by revising the last sentence thereof to read as follows:

* * * In all other cases, the referee shall consider and decide the appeal; in each such case where the referee determines that an issue of fact exists, the claimant shall have the right to a hearing.

11. Section 320.22 is revised to read as follows:

§ 320.22 Notice of hearing.

(a) *Notification of parties.* In any case in which an oral hearing is to be held, the referee shall schedule a time and place for the conduct of the hearing. The referee shall promptly notify the party or parties to the proceeding by mail as to said time and place for the hearing. The notice shall include a statement of the specific issues involved in the case. The referee shall make every effort to hold the hearing within 150 days after the date the appeal is filed.

(b) *Notice of objection.* A party to the proceeding may object to the time and place of the hearing, or as to the stated issues to be resolved, by filing a written notice of objection with the referee. The notice of objection shall clearly set forth the matter objected to and the reasons for such objection, and, if the matter objected to is the time and place of the hearing, said notice shall further state that party's choice as to the time and place for the hearing. Said notice of objection shall be filed at the earliest practicable time, but in no event shall said notice be filed later than five business days prior to the scheduled date of the hearing.

(c) *Ruling on objection.* The referee shall rule on any objection timely filed by a party under this section and shall notify the party of his or her ruling thereon. The referee may for good cause shown, or upon his or her own motion, reschedule the time and/or place of the hearing. The referee also may limit or expand the issues to be resolved at the hearing.

(d) *Failure to appear or to file objection.* If neither a party nor his or her representative appears at the time and place scheduled for the hearing, that party shall be deemded to have waived his or her right to an oral hearing unless said party either filed with the referee a notice of objection showing good cause why the hearing should have been rescheduled, which notice was timely filed but not ruled upon, or, within 10 days following the date on which the hearing was scheduled, said party files with the referee a motion to reschedule the hearing showing good cause why neither the party nor his or her representative appeared at the hearing and further showing good cause as to why said party failed to file at the prescribed time any notice of objection to the time and place of the hearing.

(e) *Rescheduling the hearing.* If the referee finds either that a notice of objection was timely filed showing good cause to reschedule the hearing, or that the party has within 10 days following the date of the hearing filed a motion showing good cause for failure to appear and to file a notice of objection, the referee shall reschedule the hearing. If the referee finds that the hearing shall not be rescheduled, he or she shall so notify the party in writing.

§ 320.25 [Amended]

12. Section 302.25 is amended by adding a new paragraph (c) to read as follows:

* * * * *

(c) *Where no oral hearing required.* Where the referee finds that no factual issues are presented by an appeal, and the only issues raised by the appellant are issues concerning the application or interpretation of law, the appellant or his or her representative shall be afforded full opportunity to submit written argument in support of the claim but no oral hearing shall be held.

* * * * *

§ 320.50 [Amended]

13. Section 330.50 is removed.

PART 340—RECOVERY OF BENEFITS

14. The authority citation for Part 340 continues to read as follows:

Authority: 45 U.S.C. 362–1.

* * * * *

15. Section 340.6 is revised to read as follows:

§ 340.6 Recovery by setoff.

An amount recoverable may be recovered by setoff against any subsequent payments to which the individual from whom the amount is recoverable is entitled under the Railroad Unemployment Insurance Act, the Railroad Unemployment Insurance Act, the Railroad Retirement Act or any other Act administered by the Board, or, in the case of that individual's death, from any payments due under those Acts to his or her estate, designee, next of kin, legal representative, or surviving spouse. In any case in which full recovery is not effected by setoff, the balance due may be recovered by one or more of the other methods described in this part. If the individual dies before recovery is completed, such recovery shall be made from his estate or heirs.

16. Section 340.10 is revised to read as follows:

§ 340.10 Waiver of recovery of erroneous payments.

(a) *When waiver or recovery may be applied.* Section 2(d) of the Act provides that there shall be no recovery in any case where more than the correct amount of benefits has been paid to an individual or where payment has been made to an individual not entitled to benefits if, in the judgement of the Board:

(1) The individual is without fault; and

(2) Recovery would be contrary to the purpose of the Act or would be against equity or good conscience.

(b) *Fault.* (1) Fault means a defect of judgement or conduct arising from inattention or bad faith. Judgment or conduct is defective when it deviates from a prudent standard of care taken to comply with the entitlement provisions of the Act. Conduct includes both action and inaction. Unlike fraud, fault does not require a deliberate intent to deceive.

(2) Whether an individual is at fault in causing erroneous payments generally depends on all circumstances surrounding the erroneous payments. Among the factors the Board will consider are: the ability of the overpaid individual to understand the reporting requirements of the Act or to realize that he or she is being overpaid (*e.g.*, age, comprehension, memory, physical and mental conditions); the particular cause of benefit non-entitlement; and the number of claims on which the individual made erroneous statements.

(3) Circumstances in which the Board will find an individual at fault include but are not limited to:

(i) Failure to furnish information which the individual knew or should have known was material;

(ii) An incorrect statement made by the individual which he or she knew or should have known was incorrect (including furnishing an opinion or conclusion when asked for facts);

(iii) Failure to return a payment which the individual knew or should have known was incorrect.

(c) *When recovery defeats the purpose of the Railroad Unemployment Insurance Act.* (1) The purpose of the Railroad Unemployment Insurance Act is to furnish some replacement for an individual's railroad earnings lost because of days of sickness or unemployment. The purpose of the Act is defeated when an erroneous payment is recovered from income and resources which the individual requires to meet ordinary and necessary living expenses. If either income or resources are sufficient to meet expenses, the purpose of the Act is not defeated by recovery of an erroneous payment.

(2) For purpose of this section, income includes any funds which may reasonably be considered available for the individual's use, regardless of source. Income to the individual's spouse or dependents is available if the spouse or dependent lived with the individual at the time waiver is considered. Types of income include but are not limited to:

(i) Government benefits such as Black Lung, Social Security, Workers' Compensation, and Unemployment Compensation benefits;

(ii) Wages and self-employment income;

(iii) Regular payments such as rent or pensions; and

(iv) Investment income.

(3) For purposes of this section, resources include, but are not limited to, liquid assets such as cash on hand, the value of stocks, bonds, savings accounts, mutual funds and the like. The Board may also consider certain non-liquid assets as resources.

(4) Whether an individual has sufficient income and resources to meet ordinary and necessary living expenses depends not only on the amount of his or her income and resources, but also on whether the expenses are "ordinary and necessary." While the level of expenses which is "ordinary and necessary" may vary between individuals, it must be held at a level reasonable for an individual who is temporarily unemployed or incapacitated due to

sickness. The Board will consider the discretionary nature of an expense in determining whether it is reasonable. Ordinary and necessary living expenses include:

(i) Fixed living expenses, such as food and clothing, rent, mortgage payments, utilities, maintenance, insurance (*e.g.*, life, accident, and health insurance), taxes, installment payments, etc.;

(ii) Medical, hospitalization, and other similar expenses;

(iii) Expenses for the support of others for whom the individual is legally responsible; and

(iv) Miscellaneous expenses (*e.g.*, newspapers, haircuts).

(5) Where recovery of the full amount of an erroneous payment would be made from income and resources required to meet ordinary and necessary living expenses, but recovery of a lesser amount would leave income or resources sufficient to meet expenses, recovery of the lesser amount does not defeat the purpose of the Act.

(d) *When recovery is against equity and good conscience.* Recovery is considered to be against equity and good conscience when a person, in reliance on such payments or on notice that such payment would be made, relinquished a valuable right or changed his or her position for the worse.

(e) *Recoveries not subject to waiver.* Where an amount is recoverable pursuant to section 2(f) of the Act from remuneration payable to an employee by a person or company, or where a lien for reimbursement of sickness benefits has arisen pursuant to section 12(o) of the Act, and in either case recovery is sought from a person other than the employee, no right to waiver of recovery exists.

Dated: August 6, 1987.

By Authority of the Board.
For The Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 87-18545 Filed 8-13-87; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 102 and 161

[Docket No. 84P-0249]

Canned Tuna; Proposal To Amend the Standard of Identity

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the U.S. standard of identity for canned tuna to provide for (1) the optional use of vegetable oil or partially hydrogenated vegetable oil as seasoning or flavoring ingredients in canned tuna in water and (2) the use of safe and suitable emulsifying and suspending agents to aid in dispersion of the oil. The maximum level of use of the oil will be 5 percent of the volume capacity of the can. This action responds to a petition filed by Ralston Purina Co. FDA believes that the amendment would promote honesty and fair dealing in the interest of consumers. The agency is also proposing to update the scientific nomenclature for species' names in the common or usual name regulation for bonito and the standard for canned tuna.

DATES: Comments by October 13, 1987. The agency proposes that any final rule that may issue based upon this proposal shall become effective 60 days after its date of publication in the **Federal Register**.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Karen L. Carson, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C Street, SW., Washington, DC 20204, 202-485-0110.

SUPPLEMENTARY INFORMATION: The Ralston Purina Co. has petitioned FDA to amend the U.S. standard of identity for canned tuna (21 CFR 161.190(a)(6)) to permit the use of vegetable oil or partially hydrogenated vegetable oil, with or without safe and suitable emulsifying and suspending agents, as optional seasoning or flavoring ingredients in canned tuna in water. The amount of oil to be used is not to exceed 5 percent of the volume capacity of the can. Ralston Purina Co. also requested FDA to amend the nomenclature provisions in 21 CFR 161.190(a)(6) to provide for use of the phrase "seasoned with oil" when vegetable oil or partially hydrogenated vegetable oil is used for seasoning or flavoring in canned tuna in water and to provide for label declaration of any operational emulsifying and suspending agents used in the food.

Van Camp Seafood Co., Inc., formerly the seafood division of Ralston Purina Co. and now a wholly-owned subsidiary of the company, holds a temporary marketing permit, granted under 21 CFR 130.17, to market test canned tuna in water seasoned with vegetable oil and containing xantham gum as an emulsifier and suspending agent.

The use of small amounts of oil (not more than 5 percent of the volume capacity of the can) results in a product with a calorie and nutrient content comparable to canned tuna packed in water, but with the organoleptic quality of canned tuna packed in oil. Moreover, actual experience under the petitioner's temporary marketing permit indicates that the proposed use of small amounts of vegetable oil or partially hydrogenated vegetable oil results in a product that will be well received by consumers.

The agency believes the petitioner has demonstrated that this amendment is reasonable and beneficial to consumers. Therefore, the agency is proposing that § 161.190(a)(6) be amended to permit the use of vegetable oil or partially hydrogenated vegetable oil, with or without safe and suitable emulsifying and suspending agents, as optional seasoning or flavoring ingredients in canned tuna in water. The agency is also proposing to amend § 161.190(a)(6) to provide for use of the phrase "seasoned with oil" when vegetable oil is used as seasoning or flavoring in tuna in water and to provide for label declaration of any optional emulsifying and suspending agents used in the food.

Scientific Nomenclature

The agency is taking this opportunity to propose that the lists of species in 21 CFR 102.47 and 161.190(a)(2) be updated to use current scientific nomenclature and corresponding trivial names. The references cited in the standard will be removed because they are out of date. The agency is also requesting information about whether other species should be added to either of the lists. A chart comparing the tuna species' names in the current standard with the proposed list of updated names is provided for the convenience of the reader.

Current FDA list	Proposed revised list
Thunnus thynnus—Bluefin tuna.	*Thunnus thynnus*—Northern bluefin tuna
Thunnus maccoyii—Southern bluefin tuna.	*Thunnus maccoyii*—Southern bluefin tuna
Thunnus orientalis—Oriental tuna.	(*Name deleted—Same as Thunnus thynnus*)
Thunnus germo—Albacore	*Thunnus alalunga*—Albacore
Thunnus atlanticus—Blackfin tuna.	*Thunnus atlanticus*—Blackfin tuna
Parathunnus mebachi—Big-eyed tuna.	*Thunnus obesus*—Bigeye tuna
Neothunnus macropterus—Yellowfin tuna.	*Thunnus albacares*—Yellowfin tuna
Neothunnus ranus—Northern bluefin tuna.	*Thunnus tonggol*—Longtail tuna
Katsuwonus pelamis—Skipjack.	*Katsuwonus pelamis*—Skipjack tuna
Euthynnus alletteratus—Little tunny.	*Euthynnus alletteratus*—Little tunny

Current FDA list	Proposed revised list
Euthynnus lineatus—Little tunny.	*Euthynnus lineatus*—Black skipjack.
Euthynnus yaito—Kawakawa	*Euthynnus affinis*—Kawakawa

Economic Impact

In accordance with the Regulatory Flexibility Act (Pub. L. 96–354; 5 U.S.C. 601), FDA has reviewed this proposal to determine its impact on small businesses. The proposal permits the use of vegetable oil or partially hydrogenated vegetable oil, with or without safe and suitable emulsifying and suspending agents, in canned tuna in water. The agency believes that this proposal provides increased flexibility to manufacturers of canned tuna in water and will not impose an additional burden on the industry. Therefore, FDA certifies that this proposed actin will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

The agency has determined under 21 CFR 25.24(b)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Request for Comments

Interested persons may, on or before October 13, 1987, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 102

Beverages, Food standards, Food labeling, Frozen foods, Fruit juices, Oils and fats, Onions, Potatoes, Seafood.

21 CFR Part 161

Food standards, Frozen foods, Seafood.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, it is proposed that Parts 102 and 161 be amended as follows.

PART 102—COMMON OR USUAL NAME FOR NONSTANDARDIZED FOODS

1. The authority citation for 21 CFR Part 102 is revised to read as follows:

Authority: 21 U.S.C. 321(n), 343, 371(a).

2. By revising § 102.47 to read as follows:

§ 102.47 Bonito.

"Bonito" or "bonito fish" is the common or usual name of the food fish *Sarda chiliensis* and *Sarda velox.*

PART 161—FISH AND SHELLFISH

3. The authority citation for 21 CFR Part 161 is revised to read as follows:

Authority: 21 U.S.C. 341, 371(e).)

4. In § 161.190 by revising paragraphs (a)(2) and (4)(i), by adding new paragraph (a)(6)(ix), and by revising paragraph (a)(8)(vi) to read as follows:

§ 161.190 Canned tuna.

(a) * * *

(2) The fish included in the class known as tuna fish are:

Thunnus thynnus—
Northern bluefin tuna
Thunnus maccoyii—
Southern bluefin tuna
Thunnus alalunga—
Albacore
Thunnus atlanticus—
Blackfin tuna
Thunnus obesus—
Bigeye tuna
Thunnus albacares—
Yellowfin tuna
Thunnus tonggol—
Longtail tuna
Katsuwonus pelamis—
Skipjack tuna
Euthynnus alletteratus—
Little tunny
Euthynnus lineatus—
Black skipjack
Euthynnus affinis—
Kawakawa

* * * * *

(4) * * *

(i) *White.* This color designation is limited to the species *Thunnus alalunga* (albacore), and is not darker than Munsell value 5.3.

* * * * *

(6) * * *

(ix) Edible vegetable oil or partially hydrogenated vegetable oil, excluding olive oil, used alone or in combination, in an amount not to exceed 5 percent of the volume capacity of the container, with or without safe and suitable emulsifying and suspending ingredients, as seasoning in canned tuna packed in water.

* * * * *

(8) * * *

(vi) Where the canned tuna contains one or more of the ingredients provided for in paragraph (a)(6) of this section, the label shall bear the statement "Seasoned with _____", the blank being filled in with the name or names of the ingredient or ingredients used, except that if the ingredient designated in paragraph (a)(6)(vi) of this section is used, the blank shall be filled in with the term "vegetable broth", and if the ingredients designated in paragraph (a)(6)(ix) of this section are used, the blank may be filled in with the term "oil", and if the ingredient designated in paragraph (a)(6)(v) of this section is used alone, the label may alternatively bear either the statement "spiced" or the statement "with added spice"; and if salt is the only seasoning ingredient used, the label may alternatively bear any of the statements "salted", "with added salt", or "salt added". If the flavoring ingredients designated in paragraph (a)(6)(viii) of this section are used, the words "lemon flavored" or "with lemon flavoring" shall appear as part of the name on the label; for example, "lemon flavored chunk light tuna". Citric acid and any optional solubilizing and dispersing agent used as specified in paragraph (a)(6)(viii) of this section in connection with lemon flavoring ingredients or emulsifying and suspending ingredients used as specified in paragraph (a)(6)(ix) of this section shall be designated on the label by their common or usual name.

* * * * *

Dated: June 4, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87–18554 Filed 8–13–87; 8:45 am]
BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 511, 791, 812, 813, 882, and 887

[Docket No. R–87–1332; FR 2170]

Section 8 Housing Vouchers

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: The Department is proposing regulations implementing the Housing Voucher program, based on the Notice of Funding Availability for fiscal year 1987 (published in the **Federal Register** on February 19, 1987, at 52 FR 5250), as modified by this proposed rule. This rulemaking will establish permanent regulations for the Housing Voucher program, which has been administered as a demonstration program by publication of program requirements in Notices of Funding Availability.

DATE: *Comment Due Date*: September 14, 1987.

ADDRESS: HUD invites interested persons to submit comments to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Comments should refer to the docket number and title. A copy of each comment submitted will be available for public inspection and copying during regular business hours at this address.

FOR FURTHER INFORMATION CONTACT: Gerald Benoit, Director, Housing Voucher Division, Room 6122, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755–6477. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: The Department, by this proposed rule and in order to develop final rules for the Housing Voucher program, seeks public comment on the Notice of Funding Availability (NOFA) for the program, published on February 19, 1987, at 52 FR 5250 (the 1987 NOFA). It is customary for the Department to publish proposed regulatory text when it develops implementing regulations for its programs. Because of the history of the Department's implementation of the Housing Voucher program, described below, the Department is not publishing proposed text, but rather is seeking comment on the policies in the NOFA that implements the program in fiscal year 1987, as modified by the description below of the relationship between the Housing Voucher and Rental Rehabilitation programs.

The Housing Voucher program is authorized under section 8(o) of the United States Housing Act of 1937 (42 U.S.C. 1347f(o)), which was added by section 207 of the Housing and Urban-Rural Recovery Act of 1983. The Department has implemented the Housing Voucher program, which the authorizing legislation characterizes as a demonstration program, by publishing Notices of Funding Availability. (See the **Federal Register** issues of July 12, 1984, 49 FR 28458; February 28, 1985, 50 FR 8196; March 31, 1986, 51 FR 10932; December 30, 1986, 51 FR 47064; and February 19, 1987, 52 FR 5250.)

The Department published an advance notice of proposed rulemaking (49 FR 28413, July 12, 1984) with the first NOFA. This document advised the public that: If the demonstration became permanent, the Department might use the NOFA as the basis for rulemaking; the period for public comment, accordingly, might be abbreviated; and commenters should take the potential for rulemaking into account in commenting on the NOFA. In addition to the July 12, 1984, NOFA, the NOFAs published on May 8, 1985, and March 31, 1986, (the principal NOFAs for fiscal years 1985 and 1986, respectively) also sought public comment and indicated that they might be the basis for rulemaking. The NOFA for fiscal year 1987, published on February 19, 1987, advised the public (52 FR at 5251) that the Department would be publishing a proposed rule that would be based on that NOFA, and would provide a 30-day public comment period.

The Department, accordingly, proposes to publish a new 24 CFR Part 887, Housing Voucher Program, based on the requirements and policies (as modified below in this proposed rule) that are contained in the 1987 NOFA, as set out in Part II.B.2. (Anticipated Changes in the Housing Voucher Program) and Part III (Housing Voucher Program Requirements for FY 1987) (52 FR at 5254 and 5257, respectively). Part II.B.2. identifies policies that the Department proposes to implement in the final rule, but that were not implemented in Part III of the 1987 NOFA.

The Department has further considered the relationship between the Housing Voucher program and the Rental Rehabilitation program, and has decided to continue to allocate housing vouchers to be used in connection with the Rental Rehabilitation program. Part II.B.2.(a) of the 1987 NOFA (52 FR at 5254) stated the Department's intent completely to "decouple" the Housing Voucher and the Rental Rehabilitation programs in fiscal year 1988. In place of a separate allocation for use with the Rental Rehabilitation program, Part II.B.2.(a) indicated that PHAs would be required to (1) give a "preference" in making housing vouchers available to rental rehabilitation displacees, and (2) refer certificate- and housing voucher-holders to rental rehabilitation projects.

The 1987 NOFA also implements, in fiscal year 1987, several new policies that are identified as a partial implementation of the "decoupling" of rental rehabilitation grant funds from housing voucher funds. These policies, which are described in Part II.B.1. (52 FR at 5253), are: (1) Allocating housing vouchers in connection with rental rehabilitation projects at a ratio of up to one housing voucher per $7,500 of rental rehabilitation grant funds (instead of up to one per $5,000 as in the past); (2) permitting the use of these housing vouchers for general program purposes before they are used for rental rehabilitation purposes; (3) eliminating the authority for a PHA to target housing vouchers allocated in fiscal year 1987 to applicants on its waiting list who agree to move initially into a rental rehabilitation project; and (4) requiring the PHA to include information about local rental rehabilitation projects in its briefing packet for housing voucher and certificate applicants.

Although these policies are part of the "decoupling" of the two programs, elements of these policies are desirable, even though the Department proposes to continue to allocate additional housing vouchers to PHAs for use in connection with the Rental Rehabilitation program. Therefore, the following paragraphs, rather than Part II.B.2. of the 1987 NOFA, describe how the Department proposes to implement the rental rehabilitation component of the Housing Voucher program in the final rule:

(1) In addition to formula allocation funds, housing voucher funds will continue to be allocated, on the basis of a ratio of housing vouchers to the amount of Rental Rehabilitation grant funds allocated, to PHAs participating with units of general local government in the Rental Rehabilitation program.

(2) To the extent of the additional allocation it receives, a PHA must provide housing vouchers (or certificates) to lower income families that are displaced from a rental rehabilitation project by physical rehabilitation activities. A PHA may immediately use these additional housing vouchers for general program purposes, if it can ensure that housing vouchers will be available to displaced, lower income families as they are needed. Any additional housing vouchers not needed for displaced, lower income families must be used in the same manner as formula allocation housing vouchers.

(3) A PHA may not require that a family use a housing voucher to move into a rental rehabilitation project.

(4) A PHA must include information about local rental rehabilitation projects as a possible source of housing in the PHA's briefing packet for housing voucher and certificate applicants.

The proposed rule does not address the question of "economic displacement"—*i.e.*, where assisted rehabilitation causes an increase in rents for persons who were residents of the project before rehabilitation. This situation will be addressed in the final rule (currently under development) to implement the statutory tenant selection preferences for those who, at the time they are seeking assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

The policies described above give notice of how the Department proposes to implement the Housing Voucher program through the final rule. This proposed rule does not affect the requirements contained in Part III of the 1987 NOFA (52 FR at 5257), which currently control the administration of the Housing Voucher program. If the Department decides to revise any of those requirements before publication of a final, effective rule, it will make those revisions by publishing a separate **Federal Register** notice.

The final rule will address, in addition to the public comments received in response to this proposed rule, the public comments received in response to the earlier NOFAs. The final rule will also make conforming changes in related rules contained in Parts 511, 791, 812, 813, and 882.

Findings and Other Matters

An environmental finding under the National Environmental Policy Act (42 U.S.C. 4321 through 4347) is unnecessary since the Certificate program and the Housing Voucher program are part of the Section 8 Existing Housing program, which is categorically excluded under HUD regulations at 24 CFR 50.20(d).

This rule constitutes a major rule as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not: (1) Cause a major increase in costs or prices for consumers, invidual industries, Federal, State or local government agencies, or geographic regions; or (2) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Analysis of the rule, however, indicates that it does have an annual effect on the economy of $100 million or more. The Director of the Office of Management and Budget, in accordance with section 6(a)(4) of Executive Order 12291, has waived the requirements of sections 3 and 4 of the Executive Order.

Under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601), HUD certifies that this rule does not have a significant economic impact on a substantial number of small entities, because the rule would continue an ongoing program and does not significantly alter current policies and requirements.

This rule was listed as Sequence Number 973 in the Department's Semiannual Agenda of Regulations published on April 27, 1987 (52 FR 14362), under Executive Order 12291 and the Regulatory Flexibility Act.

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 through 3520. Currently approved requirements have been assigned the following OMB Control Numbers: 2502–0123; 2502–0153; 2502–0161; 2502–0185; 2502–0348; 2502–0350; 2577–0067 and 2577–0083.

The Catalog of Federal Domestic Assistance program number for this rule is program numbers 14.156.

List of Subjects in 24 CFR Part 887

Grant programs: Housing and community development, Housing, Rent subsidies, Low and moderate income housing.

Authority: Sec. 8(o) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Date: July 23, 1987.

Samuel R. Pierce, Jr.,

Secretary.

[FR Doc. 87–18537 Filed 8–13–87; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 4 and 5

[Notice No. 636; Ref. Notice No. 633]

Standards of Fill for Wine and Distilled Spirits

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Extension of comment period.

SUMMARY: This notice extends the comment period for Notice No. 633, an advance notice of proposed rulemaking, published in the **Federal Register** on June 24, 1987 (52 FR 23685). AFT has received several requests, representing both domestic and foreign interests, for an extension of the comment period in order to provide sufficient time for all interested parties to respond to the complex issues addressed in the advance notice.

DATE: Written comments must be received on or before October 23, 1987.

ADDRESS: Send written comments to: Chief, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. 385, Washington, DC 20044–0385 ATTN: Notice No. 633.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226 (202–566–7626).

SUPPLEMENTARY INFORMATION:

Background

On June 24, 1987, AFT published Notice No. 633, an advance notice of proposed rulemaking, inviting comments from the public and industry as to whether the existing authorized standard fill sizes for wine and distilled spirits should be retained, revised, or eliminated.

The Bureau also solicited comments on a petition it received from the Washington State Liquor Board (WSLCB), requesting an amendment of the standard of fill requirements for imported distilled spirits.

Subsequent to publication of the Notice, AFT received several requests, representing both domestic and foreign interests, to extend the close of the comment period from August 24, 1987, to October 23, 1987. One commenter noted that contact with European Common Market countries is difficult during July and August, because of their traditional holiday periods.

Another commenter, a national trade association of manufacturers and importers representing over 85 percent of the distilled spirits sold in the United States, requested the extension in order to afford its members sufficient time to develop their respective positions, in view of the complexity and importance of the standard fill issue.

AFT finds the reasons mentioned above to be valid and is, therefore, extending the comment period until October 23, 1987.

Drafting Information

The author of this document is Coordinator James P. Ficaretta, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, and Wine.

27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, and containers.

Authority and Issuance

This notice is issued under the authority in 27 U.S.C. 205.

August 7, 1987.

W.T. Drake,

Acting Director.

[FR Doc. 87-18606 Filed 8-13-87; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 48 and 75

Self-Contained Self-Rescue Devices

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice to extend period for public comment on proposed rule.

SUMMARY: Due to requests from the public, the Mine Safety and Health Administration (MSHA) is extending the period for public comment on its proposed rule for self-contained self-rescue devices in 30 CFR Parts 48 and 75.

DATES: Written comments on proposed rule must be received on or before August 21, 1987.

ADDRESSES: All comments should be sent to the Mine Safety and Health Administration, Office of Standards, Regulations and Variances, Room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Acting Associate Assistant Secretary for Mine Safety and Health, (703) 235-1910.

SUPPLEMENTARY INFORMATION: On June 30, 1987, MSHA published a proposed rule (52 FR 24378) which would require persons using self-contained self-rescue (SCSR) devices to receive training in the opening and activation of the device; inserting the mouthpiece or simulating this task while explaining proper insertion of the mouthpiece; and the wearing of the noseclip. This training, commonly referred to as "hands-on" training, would be required for all persons entering underground coal mines. "Hands-on" training in the use of SCSR units is necessary to avoid danger to underground miners from suffocation or poisoning from toxic products of combustion in the event of a mine fire or explosion. The comment period was scheduled to close on August 14, 1987. Due to requests from the public, MSHA is extending the comment period to August 21, 1987. All interested parties are encouraged to submit comments, and comments must be received on or prior to that date.

Date: August 12, 1987.

Alan C. McMillan,

Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-18723 Filed 8-13-87; 8:45 am]

BILLING CODE 4510-43-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8-R]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); CHAMPUS Coverage for Biofeedback

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed amendment of rule.

SUMMARY: This amendment will provide coverage for biofeedback therapy when used as a treatment modality for those medical conditions, as determined by the Director, OCHAMPUS, or a designee, for which biofeedback therapy is generally accepted to be an appropriate mode of treatment. This amendment will offer coverage for services now specifically excluded from CHAMPUS cost-sharing.

DATE: Written public comments must be received on or before September 14, 1987.

ADDRESS: Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Policy Branch, Aurora, CO 80045.

FOR FURTHER INFORMATION CONTACT: Judith A. Carroll, Policy Branch, OCHAMPUS, telephone (303) 361-3521.

SUPPLEMENTARY INFORMATION: In FR Doc. 77-7834, appearing in the Federal Register on April 4, 1977 (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8-R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as Part 199 of this title. 32 CFR Part 199 (DoD 6010.8-R) was reissued in the Federal Register on July 1, 1986 (51 FR 24008).

Section 199.4, paragraph (g)(59) of Part 199 specifically excludes biofeedback therapy from the CHAMPUS Basic Program. The basis for this exclusion was that this treatment modality was primarily experimental and not generally accepted by the professional medical community.

In the Senate Appropriations Committee Report on the Department of Defense Appropriations Act for 1979, OCHAMPUS was requested to "conduct a study and work with the Biofeedback Society of America (or other approporiate representatives of this clinical technique) to delineate the conditions under which biofeedback might be acceptable as a health care service that can be reimbursed by CHAMPUS."

Following this directive, OCHAMPUS had numerous meetings with DoD officials, OCHAMPUS personnel, and members of the Biofeedback Society of America. The information obtained at these meetings and the input received from other professional sources, lead OCHAMPUS to propose an amendment to the Regulation in 1980 which allowed limited coverage for biofeedback therapy. However, the proposed amendment was disapproved because of insufficient evidence establishing clinical efficacy for biofeedback services.

Each year, since that time, the Senate Appropriations Committee has expressed interest on OCHAMPUS' progress towards the establishment of limited biofeedback benefits. In 1983, OCHAMPUS was directed by Congress to report on when OCHAMPUS would establish biofeedback therapy as a benefit. Our response to this Congressional directive indicated that before OCHAMPUS could establish benefits for limited biofeedback therapy further examination of cost-savings was required. Additionally, we reported that we could only support the establishment of biofeedback services when there was clear evidence that it would not increase program costs. Our report further offered a solution of initiating a demonstration project to determine both clinical and cost effectiveness of biofeedback services. Following this report, The Senate Appropriations Committee Report No. 98-636 of the DoD Appropriations Act of 1985, expressed an interest in being apprised of the results of the OCHAMPUS biofeedback demonstration project.

Acting on the expressed interest of The Senate Appropriations Committee Report, OCHAMPUS determined that an evaluation study of biofeedback by an independent contractor was needed as the first step in designing and implementing a demonstration project. In 1985, a competitive contract was awarded to evaluate the clinical and cost effectiveness of biofeedback therapy and provide recommendations for policy options.

The results of the evaluation study indicated that biofeedback literature now supports the cost effectiveness and efficacy of biofeedback therapy for treatment of fecal incontinence, Raynaud's syndrome, hypertension, chronic migraine, and tension headaches and neuromuscular rehabilitation under certain conditions.

The recommendations for CHAMPUS demonstration benefit policy options were: to provide coverage as a primary modality for fecal incontinence; to provide coverage as an adjunct modality for Raynaud's syndrome, hypertension, chronic migraine and tension headaches with coverage limitations on the number of visits and costs per visit and treatment for specific diagnosis. Additionally, coverage should be only for treatment administered by or under the supervision of a physician or prescribed by one. The study recommended that the demonstration test location and control location match as closely as possible with respect to medical care available from an MTF, CHAMPUS-eligible population demographics, and medical doctor-to-certified therapist ratio.

The study further reported that the demand for biofeedback services could not be determined because no biofeedback patient demographic, utilization and cost data were available. As a result, no reliable analysis of coverage options was possible.

Following a review of the evaluation study and all available research material, OCHAMPUS has decided not to initiate a demonstration project, since there is sufficient information which supports biofeedback as an effective treatment modality recognized by the medical community as the standard of care for certain medical conditions. Additionally, we feel the cost involved in the implementation and evaluation of a biofeedback demonstration project can better be applied to establishing biofeedback therapy as a benefit.

Our proposal incorporates many of the recommendations contained in the evaluation study on benefit options, and also follows Medicare's lead on the exclusion of biofeedback treatment for psychosomatic disorders. Coverage will be limited to the treatment of specific medical conditions for which biofeedback has been proven to be safe and effective when rendered by or supervised by a physician. This follows with current regulatory requirements which require that treatment of conditions of an organic nature must be ordered by or rendered by a physician.

This proposed amendment will offer coverage for services now specifically excluded from CHAMPUS cost-sharing. It will be seen as an enhancement of military benefits. It will provide greater parallel between CHAMPUS benefits and the services now offered at many military treatment facilities.

This amendment is being published for proposed rulemaking at the same time as it is being coordinated within the Department of Defense, the Department of Health and Human Services, the Department of Transportation and with other interested agencies, in order that consideration of both internal and external comments and publication of the final rulemaking document can be expedited.

Section 605(b) of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires that each federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues regulations which would have a significant impact on a substantial number of small entities. The Secretary certifies, pursuant to section 605(b) of Title 5, United States Code, enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this regulation amendment will not have a significant economic impact on a substantial number of small businesses, organizations, or government jurisdictions.

We have determined that this Regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It is not therefore, a "major rule" under Executive Order 12291.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, Military personnel.

Accordingly, 32 CFR Part 199 is amended as follows:

Part 199—[Amended]

1. The authority citation for Part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, 5 U.S.C. 301.

2. Section 199.4 is amended by adding a new paragraph (e)(16) and by removing and reserving paragraph (g)(59) as follows:

§ 199.4 Basic program benefits.

* * * * *

(e) * * *

(16) *Biofeedback Therapy.* Biofeedback therapy is a technique by which a person is taught to exercise control over a physiologic process occurring within the body. By using modern biomedical instruments the patient learns how a specific physiologic system within his body operates and how to modify the performance of this particular system.

(i) *Benefits Provided:* CHAMPUS benefits are payable for services and supplies in connection with electrothermal, electromyograph and electrodermal biofeedback therapy when there is documentation that the patient has undergone an appropriate medical evaluation, that other forms of conventional treatment have been unsuccessful, the treatment is administered, supervised, or prescribed by a physician prior to the initiation of biofeedback therapy and, only when provided as treatment for the following conditions:

(A) Adjunctive treatment for Raynaud's Syndrome.

(B) Adjunctive treatment for mild to moderate hypertension.

(C) Adjunctive treatment for neuromuscular rehabilitation for:

(*1*) Stroke, to include foot drop, and

(*2*) Paretic and spastic muscles, and

(*3*) Torticollis.

(D) Vascular and tension headaches.

(E) Fecal incontinence.

(ii) *Limitations.* Payable benefits include initial intake evaluation. Treatment is limited to a maximum of 20 inpatient or outpatient biofeedback treatments per calendar year.

(iii) *Exclusions.* Benefits are excluded for biofeedback therapy for the treatment of ordinary muscle tension states or for psychosomatic conditions. Benefits are also excluded for the rental or purchase of biofeedback equipment.

(iv) *Provider Requirements.* A provider of biofeedback therapy must be a CHAMPUS-authorized provider. (Refer to § 199.6, "Authorized Providers.") If biofeedback treatment is provided by other than a physician, the patient must be referred by a physician and a physician must provide general supervision of the treatment.

(v) *Implementation Guidelines.* The Director of OCHAMPUS shall issue guidelines as are necessary to implement the provision of this paragraph.

* * * * *

(g) * * *
(59) [Reserved]
* * * * *

Linda M. Lawson,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
August 10, 1987.
[FR Doc. 87-18575 Filed 8-13-87; 8:45 am]
BILLING CODE 3810-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Ch. X

[Ex Parte No. 290 (Sub-No. 2)]

Railroad Cost Recovery Procedures

AGENCY: Interstate Commerce Commission.
ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing to release all non-proprietary data used in the calculation of the all inclusive index of railroad input prices to the public. The index is used to calculate the quarterly rail cost adjustment factor. Release of non-proprietary data will enable the public to verify the calculation of major portions of the index. Annual data will be released annually and quarterly data will be released each quarter. Routine items such as data collection forms will be released once. Subsequent releases of such items will be made only when they are revised. Final rules concerning disclosure of non-proprietary index data will be issued after review of comments and replies.

DATES: Comments are due by September 14, 1987, and must be served on all parties on the existing service list.[1] Replies are due 15 days after the receipt of comments.
FOR FURTHER INFORMATION CONTACT: William T. Bono, (202) 275-7354, or Robert C. Hasek, (202) 275-0938.
SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to Office of Secretary, Room 2215, Interstate Commerce Commission Building, Washington, DC 20423, or telephone (202) 275-7428 (assistance for the hearing impaired is available through TDD services (202) 275-1721.)

This action will not significantly affect either the quality of the human environment or energy conservation. This proceeding will not have a significant impact on a significant number of small entities.

Decided: August 7, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,
Secretary.
[FR Doc. 87-18589 Filed 8-13-87; 8:45 am]
BILLING CODE 7035-01-M

[1] A Commission action is underway to sever into a separate sub-docket the decisions which publish the Rail Cost Adjustment Factor (RCAF) from those dealing with the rules governing the RCAF. As part of that action, the Commission will update and publish new service lists for each docket.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 85-15; Notice 4]

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices and Associated Equipment; Request for Comment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.
ACTION: Notice of Request for Comments.

SUMMARY: NHTSA is developing new photometric specifications for motor vehicle headlighting. These specifications will be based on three factors: Geometry of roadways, accidents that are occurring and their relationship to intensity and other characteristics of light, and the ability of a driver to see and avoid obstacles and maintain the vehicle within a traffic lane.

The purpose of this notice is to solicit comments on elements of this development.

Related to this Notice is an afternoon session which has been added to the Meeting to be held in Ann Arbor on September 2, 1987. At 2:00 PM NHTSA will discuss the development of new photometric specifications for motor vehicles.

DATES: Comments due date: December 2, 1987. Meeting date: September 2, 1987 at 2:00 PM.
FOR FURTHER INFORMATION CONTACT: Richard Van Iderstine, Office of Rulemaking, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590, 202-366-5280.
ADDRESS: Comments should refer to the Docket and Notice numbers above and be submitted (preferably 10 copies) to Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Meeting address: Conference Room, Environmental Protection Agency Laboratory Facility, 2565 Plymouth Road, Ann Arbor, Michigan.
SUPPLEMENTARY INFORMATION: On October 22, 1985 a Notice of Request for Comments was published in the **Federal Register** (50 FR 42735) as part of a comprehensive review of Federal Motor Vehicle Safety Standard No. 108, "Lamps, Reflective Devices and Associated Equipment." The purpose of the NHTSA review was to identify regulatory requirements that could be simplified or eliminated, while being consistent with motor vehicle safety. Five principal areas were defined, the first being the feasibility of a standard directed toward on-board original equipment headlighting performance rather than toward performance of individual aftermarket headlamps in a laboratory environment. The second was the desirability of specifications for headlamp life. The third concerned the necessity of dimensional specifications for headlamp equipment. The fourth was the issue of headlamp aim. The fifth was the elimination of obsolete photometric requirements.

Over 40 comments were received on this Notice, with points of view and recommendations varying widely on the five areas of interest. Based on review of the comments, NHTSA has decided to take a two-phase approach consisting of a near-term rulemaking action and a longer term rulemaking action. It is anticipated that a near-term Notice of Proposed Rulemaking (NPRM) will be issued during 1987 which will address the elimination of obsolete photometric requirements, aimability, dimensions, and life. The longer term rulemaking action is addressing a vehicle based "roadway illumination performance requirement." This is the first principal area of concern listed in the previous Notice.

Comments to the Notice concerning this area were divided; some favored a vehicle-based requirement, while others favored an equipment based requirement. There was an almost universal view among vehicle manufacturers that equipment, rather than vehicles, should be tested even if the specification was for vehicle performance. One commenter, Ford Motor Company, had done extensive work toward a vehicle-based photometric performance requirement. A report on this effort by Ford is contained in a paper titled "Development of a Vehicle Headlighting Performance Standard" (VHPS) (Docket 85-15; No. 1, Submission #029). Dealing only with the photometric performance aspects, the

Ford paper helped establish a direction for the development of a vehicle-based photometric requirement. To further that objective, NHTSA has been engaged in an in-house effort to develop a "Roadway Illumination Performance Requirement" (RIPR) for motor vehicles which is based on the safety needs for driving at night. The goal is to achieve a vehicle-based roadway illumination performance requirement that may then be implemented by vehicle manufacturers as they see fit in the design of their vehicles. In an attempt to respond to the vehicle industry's desire to test only equipment and not vehicles for roadway illumination performance compliance, the development of a computer program to translate vehicle performance into equipment performance is also a goal.

NHTSA efforts toward development of the RIPR have included review, study, correction and improvement of various existing mathematical algorithms dealing with target visibility, discomfort glare, and disabling glare. This process has led to the study of target, roadway, and accident characteristics. These efforts are outlined as an attachment to a memorandum placed in Docket 85–15, No. 1 (Submission # 048). This memorandum was a record of a meeting with representatives of Ford Motor Company to discuss their efforts on developing models for evaluating headlamp photometric performance, and their thoughts on how they might develop their VHPS. An attachment to this memorandum, NHTSA's "Outline of Program for Development of a Roadway Illumination Performance Requirement", discussed the three major ingredients necessary for this development: a set of safety needs, a set of qualitative statements of the criteria used for evaluation of the performance necessary to meet each safety need, and a technical program to connect these qualitative statements to quantitative specifications for a regulation.

Approach

Based on analyses of the variety of roadways that exist today and the accidents that are occurring on these roadways, several driving situations are being identified. The lighting requirements for each of these situations will be estimated from the relationships between necessary light and visibility. The determination of necessary light includes the presence of light from oncoming vehicles. These relationships have been reduced to mathematical expressions which can be solved by computers.

The elements which are the focus of this notice are all related to the calculation part of the process. For that reason, the following description of the calculation program is provided. As will be seen in this description, consideration is given to both the discomfort that may be caused by light from oncoming vehicles (discomfort glare) and the reduction in the distance at which objects can be seen (disability glare). The computer program for determining the amount of light which is necessary for each driving situation consists of equations and decision criteria for balancing the brightness of three features. These are the brightness of the object which needs to be seen (target brightness), the brightness of the background behind the object (background brightness), and the brightness of the light from an oncoming vehicle (veiling brightness). The calculation process consists of two main steps: determination of veiling brightness that corresponds to an acceptable level of discomfort glare, and determination of the necessary target brightness to be able to see the object with the amount of veiling brightness that is determined by the first step. The veiling brightness establishes a maximum amount of light that a vehicle can produce for the specific driving situation and the target brightness establishes a minimum amount of light that the vehicle must produce for the same situation. An example of the results of the calculation process is shown in the following table. This situation corresponds to that which exists when a driver traveling at 40 mph sees a pedestrian on the shoulder of a straight and level two-lane road in time to be able to stop.

EXAMPLE ILLUMINANCE VALUES FOR PEDESTRIAN VISIBILITY

Glare Car				Observer Car			
Maximum Illuminance Allowed f-c	Distance Between Cars ft.	H Angle degree	V Angle degree	Minimum Illuminance Required f-c	Distance to Pedestrian ft.	H Angle degree	V Angle degree
0.0109	585.03	1.56	0.52	1.060	190.36	2.41	0.87
0.0112	314.13	1.92	0.64	0.976	154.94	2.96	1.07
0.0123	192.43	3.13	1.04	0.891	94.16	4.87	1.76
0.0134	141.64	4.25	1.42	0.905	68.84	6.67	2.41
0.0186	50.43	10.01	3.31	1.260	28.65	16.22	5.78

Conditions Used

Age=45 years
Deboer Index=5
Deceleration=16.1 ft/sec/sec
Velocity=40 mph
Reaction time=1.43 sec
Windshield transmittance=70%
Straight road and light necessary to stop before reaching the pedestrian

Definition of Terms

Illuminance-Glare Car—maximum illuminance that can be produced by a glare car at the given angles and distance that does not exceed an acceptable level of discomfort glare, when measured at the observer

Observer Car—minimum illuminance that the observer car must produce at the given angles and distance in order to see a stationary pedestrian on the shoulder and have enough time to come to a complete stop, when measured at the pedestrian

Distance between cars—distance between front of glare car at center line and driver of observer car

Distance to pedestrian—distance between front of observer car at center line and pedestrian

H angle-glare car—angle between center line of glare car and vector connecting front center of glare car and driver's eye

Observer Car—angle between center line of observer car and vector connecting center front of observer car and pedestrian on shoulder

V angle-glare car—measured from ground to vector connecting the

ground at the front center line of glare car and driver's eye

Observer Car—measured from ground to vector connecting the ground at the front center of observer car and pedestrian's center point

Elements for Comment

1. One of the three elements for which comments are solicited is related to the visibility of pedestrians. As part of an evaluation of benefits, it would be desirable to be able to estimate the incremental number and locations of pedestrians that could be seen, and thus avoided. A computer program to provide this estimate would be based on a set of typical locations for pedestrians relative to a vehicle. The program would be able to estimate those pedestrians that would be visible with an existing road illumination system and also those pedestrians that would be visible with a headlighting system that meets new specifications. The agency is seeking such programs, along with supporting documentation of the basis for the program and for use of the program.

2. Another element is a program which can be used to determine visibility of lane markings. A model exists which uses a "vanishing point" method. This model converts a 50-foot segment of marking in the plane of the road to a representative shape in a plane perpendicular to the driver's line of sight. This representation is then treated as any other target; it is converted to a circle with an identical perimeter (circumference). The diameter of this circle is used to define target size.

This representation of lane markings may be adequate, but additional verification and documentation is needed. One problem with this method is the algorithm which is used for the estimates of target size. The estimates of target size for delineation, especially when delineation is viewed from a large distance, appear to be in error.

The agency is seeking comments on other methods for modeling delineation.

3. The third element is conversion from vehicle specifications to specifications for lamps. The intent of the agency is to develop a roadway illumination performance requirement for any vehicle, except motorcycles. The vehicle industry appears in favor of this, however, in comments to Docket 85–15, Notice 1, there was the general opinion that the vehicle manufacturers should not be required to test a vehicle for photometric compliance, but that only headlamps should be tested for photometric compliance. In order to achieve this goal, a computer program must be developed that provides the vehicle manufacturer with the necessary guidance to determine how to design and build a headlighting system that will conform. Conversely, this program will provide a compliance tool with which to determine a vehicle's compliance with the roadway illumination performance requirement.

This computer program must be capable of translating the vehicle-based requirement into a requirement similar to that presently used for laboratory testing of individual headlamps, and it must be accommodating enough to accept any configuration of headlighting system that may be developed in the future. For example, it must take into account headlamp height above the roadway, headlamp distance from the vehicle centerline, the number of headlamps intended to be used for each beam (lower or upper), and the minimum illumination level necessary in the event of a partial system failure. For a simple system today, this may simply describe a 2-headlamp system where each lamp performance is to be identical and mounting height is 24 inches and separation is 48 inches. The computer program would need to be designed to help the lamp designer establish lamp photometry and whether compliance could be met.

The program therefore must take the anticipated vehicle requirements in a format of illumination level, distance, horizontal angle and vertical angle, all referenced to the vehicle centerline at the road surface, and translate them into an equipment requirement where the measurement axis is the centerline of the headlamp. It must accommodate a potentially large number of illumination requirements, and translate each into a potentially large number of individual headlamp unit requirements. The program must be user friendly, in that it asks the user for specific information relative to the user's design layout and philosophy for the headlighting system, and assures that the information has been correctly recorded and is compatible with the program. The output of the program should be a set of photometric specifications so that headlamps may be tested in a laboratory using the standardized headlamp photometry test procedures. The information presented in this format could be used by headlamp designers to design and manufacture complying headlamps and by NHTSA to verify compliance of those production headlamps.

An extra session of the previously announced NHTSA-Industry public meeting in Ann Arbor, Michigan, on September 2, 1987 (52 FR 27282) will be convened at 2:00 p.m. for the purpose of discussing this notice.

(Secs. 103, 119, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1932, 1407); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: August 11, 1987.

Ralph J. Hitchcock,

Acting Associate Administrator for Rulemaking.

[FR Doc. 87–18609 Filed 8–13–87; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Proposed Frameworks for Late Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Supplemental proposed rule.

SUMMARY: This document supplements proposed rulemakings published in the Federal Register on March 13 and June 3, 1987, (52 FR 7900 and 52 FR 20757) and sets forth proposed frameworks, [i.e., the outer limits for dates and times when shooting may occur, hunting areas, and the number of birds which may be taken and possessed) for late-season migratory bird hunting regulations for 1987–88. These seasons generally will commence on or about October 1, 1987, and include most of those for waterfowl.

The Service annually prescribes migratory bird hunting regulations frameworks to the States. The effect of this proposed rule is to facilitate the selection of hunting seasons by the States and to further the establishment of the late-season migratory bird hunting regulations for 1987–88.

DATES: The comment period for these proposed late-season frameworks will end on August 25, 1987.

ADDRESS: Address comments to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building, Room 536, Washington, DC 20240. Comments received on these proposed late-season frameworks will be available for public inspection during normal business hours in Room 536, Matomic Building, 1717 H Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240 (202–254–3207).

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 et seq.), as

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amended, authorizes and directs the Secretary of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds to determine when, to what extent and by what means such birds or any part, nest or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported or transported.

On March 13, 1987, the U.S. Fish and Wildlife Service (hereinafter the Service) published for public comment in the **Federal Register** (52 FR 7900) a proposal to amend 50 CFR Part 20, with comment periods ending June 18, July 14 and August 25, 1987, respectively, for the 1987–88 hunting season frameworks proposed for Alaska, Hawaii, Puerto Rico and the Virgin Islands; other early seasons; and the late seasons. That document dealt with the establishment of hunting seasons, hours, areas and limits for migratory game birds under §§ 20.101 through 20.107, 20.109 and 20.110 of Subpart K. On June 3, 1987, the Service published in the **Federal Register** (52 FR 20757) a second document consisting of a supplemental proposed rulemaking dealing with both the early- and late-season frameworks. On July 2, 1987, the Service published for public comment in the **Federal Register** (52 FR 25170) a third document consisting of a proposed rulemaking dealing specifically with frameworks for early-season migratory bird hunting regulations. On August 3, 1987, the Service published in the **Federal Register** (52 FR 28717) a fourth document containing final frameworks for Alaska, Puerto Rico and the Virgin Islands. On August 6, 1987, The Service published a fifth document (52 FR 29187) containing final frameworks for other early migratory bird hunting seasons from which State wildlife conservation agency officials selected early-season hunting dates, hours, areas and limits for 1987–88. This document is the sixth in the series and deals specifically with proposed frameworks for the 1987–88 late-season migratory bird hunting regulations. Before September 1, 1987, the Service intends to publish in the **Federal Register** a seventh document consisting of a final rule amending Subpart K of 50 CFR Part 20 to set hunting seasons, hours, areas and limits for mourning doves, white-winged and white-tipped doves, band-tailed pigeons, rails, woodcock, snipe, and common moorhens and purple gallinules; teal seasons in September; sea duck seasons in certain defined areas of the Atlantic Flyway; September duck seasons in four States; September Canada goose seasons in three States; sandhill crane seasons in the Central and Pacific Flyways; a sandhill crane and Canada goose season in southwestern Wyoming; migratory game birds in Alaska, Hawaii, Puerto Rico, and the Virgin Islands; and extended falconry seasons.

At the July 25, 1987, annual Waterfowl Status Meeting, the Service noted that overall conditions on the breeding grounds do not appear to have changed substantially from those of the last few years. Data were presented that little change this year compared to last year in duck breeding populations and breeding habitat that was highly variable in quality and availability. The Service forecasted a 1987 fall flight of ducks similar to that of 1986.

Based on Federal surveys, the conservative duck harvest strategies of the 1986–87 season resulted in essentially no change in the reduced mallard and total duck harvests of 1985, which was the Service's objective. The Service advocates a duck harvest strategy for 1987–88 that continues the conservative harvest posture of the last two years. This year, 1987–88, will be an interim management year while the results from the Stabilized Regulations Study are addressed in the Supplemental Environmental Impact Statement on Issuance of Annual Regulations for Sport Hunting of Migratory Birds.

Review of Comments Received at Public Hearing

Fifteen statements were offered at the August 4, 1987, public hearing. Portions of some of these statements were related to matters outside the purpose of the hearing. Each statement is summarized below and relevant portions are addressed in the responses.

Mr. John M. Anderson, representing the National Audubon Society, with regards to the Pacific Flyway: (1) Believes that a flyway-wide closure on white-fronted geese is prudent; (2) recommended continuation of regulations that would redirect harvests from dusky Canada geese towards more plentiful races; (3) favored continuation of the closed season on cackling Canada geese; and (4) favored a limited season on brant following the recommendations of the Pacific Flyway Council. He observed that populations of snow geese and mid-continent and eastern populations of Canada geese were at satisfactory levels and believed that changes were unnecessary unless Councils deemed changes were necessary for subpopulations. He said that the coordination between the Service and the Flyway Councils is important in Canada goose management and that some populations of resident geese warranted additional harvests. He expressed concern about the status of pintails and blue-winged teal and urged the Service examine the possibility that these species are being adversely impacted in wintering areas south of the U.S. He recommended that regulations governing duck hunting, including that in the Central Flyway, be essentially the same as those of last year. He supported seasons on the Eastern Population of tundra swans but said that information on the population and development of a hunt plan was essential before the season in North Carolina was operational or expanded to other areas.

Response: The Service and the Pacific Flyway Council support the Yukon-Kuskokwim Delta Cooperative Goose Management Plan and the Flyway's plan which provide for ceasing all sport and subsistence harvest of this population should the 3-year average fall index be below 95,000 geese. While the average index has been close to this value, an increase in the fall flight this year has been forecast. As Mr. Pamplin has remarked (see his comments following), the affected States will seek emergency closures should it become necessary. The Service acknowledges the Society's support for various goose and duck regulations which are herein proposed and concurs that a hunt plan for the Eastern Population of tundra swans is essential before hunts in the Atlantic Flyway become operational or expanded.

Mr. T. Miller, representing the Illinois Department of Conservation, supported the position (see below) of Hugh Bateman, Chairman of the Mississippi Flyway Council, regarding daily bag limits for mallards. He requested that the Service approve a slight increase in Canada goose harvest objectives for the principal States that harvest Mississippi Valley Population (MVP) Canada geese in order to maintain the population level near the management plan objective, and gave a number of reasons why the larger objectives are appropriate.

Response: The Service notes Mr. Miller's support of Mr. Bateman's position. The frameworks proposed herein include a modest increase in the MVP harvest objectives.

Mr. Hugh Bateman, representing the Mississippi Flyway Council, commented on the proposed duck hunting regulations. He stated that the proposal to increase the mallard bag limit in the Central Flyway was inconsistent with the Service's guideline to continue with conservative duck harvest strategies, this year that was presented at the

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recent waterfowl status meeting in Denver, Colorado, and urged that the Service either reconsider the proposal or offer the same liberalization to all flyways.

Response: The Service has considered Mr. Bateman's statement and those made by other parties and the frameworks proposed herein reflect the same bag limits as last year in the Central Flyway.

Mr. Peter Duncan, representing the Atlantic Flyway Council, expressed support for the comments made by Hugh Bateman, Chairman of the Mississippi Flyway Council, regarding daily bag limits for mallards.

Response: The Service notes Mr. Duncan's support for a conservative duck harvest strategy and refers to the Service action outlined in the previous response to Mr. Bateman.

Mr. Ken Babcock, representing the Missouri Department of Conservation, supported the comments of Hugh Bateman, Chairman of the Mississippi Flyway Council, regarding daily bag limits for mallards. He commended the Province of Manitoba for its regulatory actions in the cooperative effort to reduce the harvest of Eastern Prairie Population Canada geese.

Response: The Service notes Mr. Babcock's support of Mr. Bateman's comments and refers to the Service action outlined earlier in the response to Mr. Bateman.

Mr. Gary Myers, representing The Wildlife Society, supported continued conservative regulations to maintain a reduced duck harvest, urged continued caution in management of black ducks and a closed season on canvasbacks. He further supported efforts to maintain low harvests of both Atlantic and Pacific brant and commended Alaska for continued protection of Aleutian and cackling Canada geese and emperor geese. He then expressed the deep concerns of the Southeastern Section of The Wildlife Society over the fate of Canada geese that winter in the Southeast, stating that sub-populations have been virtually eliminated from Florida and South Carolina and are sharply reduced in North Carolina even though the Atlantic Flyway Population has increased. He urged the Service to consider the size, productivity, and hunting mortality of sub-flocks when establishing frameworks for goose hunting in the Atlantic Flyway. Again on behalf of The Wildlife Society, he strongly supported the cooperative effort of Pennsylvania and other northern States in their attempts to address the Atlantic Flyway Canada goose issues. He also encouraged the Service to work with the States to assure that agreed upon Mississippi Valley Canada goose harvest objectives are met. He stated that The Wildlife Society continues to support programs designed to monitor impacts of management strategies, the elimination of lead shot for waterfowl hunting, the swift implementation of the North American Waterfowl Management Plan, and carefully designed harvest strategies for tundra swans.

Response: The Service appreciates The Wildlife Society's support of the proposed regulations designed to maintain reduced harvests of ducks and to protect eastern population canvasbacks and specific populations of geese. The Service continues to work with Atlantic Flyway States in efforts to resolve the concerns regarding Atlantic Flyway Canada geese and with Mississippi Flyway States to assure that harvest quotas for geese are met. The Service also appreciates the Society's support of efforts to better understand the impacts of harvest regulations, to eliminate toxic shot, and to implement the North American Waterfowl Management Plan. The Service will participate, along with representatives of the four flyways and Canadian interests, in the development of comprehensive guidelines for management of tundra swans.

Mr. Douglas Inkley, representing the National Wildlife Federation, commented that it was unfortunate the stabilized regulations report remains uncompleted and is of little utility for determining migratory bird regulations. He expressed concern for the continued population decline of the black duck and recommended the Service complete the 1983–87 harvest reduction program and evaluate the results. He recognized factors other than hunting which contribute to the decline of black duck populations, but recommended the Service consider additional experiments to determine impacts of hunting mortality on survival of black ducks. He advocated a research strategy recently published in the *Wildlife Society Bulletin*, 1987, which could lead to more effective management of black ducks and other waterfowl populations in decline.

Response: Data and results of the Stabilized Regulations Study have been widely distributed in draft, followed by comprehensive presentations at the North American Wildlife and Natural Resources Conference, in Quebec, in March of 1987. Proceedings of that conference will soon be available in print. Application of these results to harvest management and regulations will not occur through a single report or action, but will take years of interpretation and further work. Further, results from the Stabilized Regulations Study will be considered in the Supplemental Environmental Impact Statement (SEIS) on Issuance of Annual Regulations for Migratory Game Bird Hunting.

A full and complete evaluation of the 1983–87 black duck harvest reduction program is planned for 1988. As part of the evaluation, various harvest management strategies, including the above mentioned experimental harvest plan, will be examined. Future harvest strategies for black ducks will involve a complete analysis of existing information and will require information from Flyway Councils, and Canadian, Provincial and Federal governments.

Mr. Dale Strickland, representing the Central Flyway Council, concurred with the proposed 1987–88 duck regulations noting that the average of 1985 and 1986 mallard harvests, compared to the average of 1979–84 harvests, decreased more in the Central Flyway than in any other Flyway and that the proposed increase in drake mallard bag limits would make regulations more equitable among Flyways. He also supported the proposed frameworks for seasons on geese and tundra swans.

Response: The Service, in response to opposition expressed in the comments of others, about the inadvisability of relaxing restrictions on mallards this year, subsequently reconsidered and denied the proposed increase in bag limits for drake mallards in the Central Flyway. The Service acknowledges some differences in effects of restrictive regulations on harvest reduction in 1985 and 1986. There continues to be disagreement between the Central Flyway and the Service about the effects of some aspects of regulations, the level of precision with which harvest differences can be predicted, and more basic concepts such as the extent to which sex-specific regulations are applicable, especially with duck populations at low levels. These topics and the supporting scientific interpretations are complex and will be addressed during technical meetings prior to the next regulations cycle. The Service appreciates the Council support for proposed frameworks for goose and tundra swans seasons in the Central Flyway.

Mr. Lew Pamplin, representing the Pacific Flyway Council, expressed continued support for the process by which Flyway Councils work with the Service to develop migratory bird hunting regulations. Except for frameworks pertaining to limits of ducks in the Pacific Flyway, be supported the

recommended frameworks. He reiterated the Council's request for increasing bag limits on mallards and pintails from four to five ducks while retaining the restrictive limits of one hen mallard and one hen pintail. He described management on the Copper River Delta to increase production of dusky Canada geese. He said that the affected States would seek emergency closures should the 3-year average fall population of white-fronted geese be below the minimum threshold for hunting. He said that the brant hunting season was designed to maintain a reduced harvest with an allocation of approximately 1,100 to Alaska, 900 to Washington (including not more than 500 "dark bellied" brant), 200 to Oregon and 400 to California, with each State committed to carefully monitoring the size of the harvest. He supported the need for development of the harvest plan for the Eastern Population of tundra swans, with all four flyways and Canada participating.

Mr. Pamplin then spoke on behalf of Alaska Department of Fish and Game. He stressed the importance of the Yukon-Kuskokwim Delta Cooperative Goose Management Plan and urged the objectives and tasks identified in the plan be given high priority by the Service. He also urged the Service to improve coordination to assure completion of tasks deemed necessary to achieve the objectives of the plan, improved education about and compliance with the plan throughout the Pacific Flyway, and to do more and not less to assure an early recovery of those populations of geese that have undergone serious declines.

Response: While there have been improvements in habitat conditions in portions of the principal breeding grounds of ducks, mallards and pintails have not responded similarly and a continuation of restrictive regulations is warranted. The Service concurs with the Council's strategies for limiting harvests of dusky Canada geese and emergency closures on white-fronted goose seasons should the population index warrant it. The Service changed its recommended length of the brant season in California (52 FR 25714) from 16- to 30-consecutive days as requested by the Council and supports the approximate allocation of harvest and monitoring requirements identified by the Council. With respect to Mr. Pamplin's comments on behalf of the Alaska Department of Fish and Game, the Service is committed to working with all agencies and groups in Alaska and throughout the Pacific Flyway to restore populations of Alaskan nesting geese.

Mr. Michael Berger, representing Ducks Unlimited, Inc., noted that organizations' contribution to the protection, restoration and development of wetlands habitats. He complimented the Service for providing information on habitat and duck populations in the U.S. and eastern Canada outside of surveyed areas and voiced the hope that they can be included in fall flight forecasts of the future. He voiced disappointment that weather and resulting poor habitat quality have prevented significant increases in waterfowl populations in surveyed areas. He called for an accelaration of effort to provide adequate habitat and identified the North American Waterfowl Management Plan as the vehicle to implement habitat recovery. He noted the size of the task and identified initial actions by Ducks Unlimited and the States to provide funds while awaiting the anticipated participation by the Federal government.

Response: The Service shares Ducks Unlimited's view that survey efforts need to be expanded into selected areas not presently covered. The Service is now acting in conjunction with the Canadian Wildlife Service to develop surveys in eastern Canada. Further, the feasibility of devloping better measures of duck populations in other unsurveyed breeding areas is under review.

The Service supports Mr. Berger's comments on the importance of the North American Waterfowl Management Plan in restoring waterfowl populations. The Service is actively involved in realigning its habitat acquisition efforts to fit the goals in the North American Plan. This unilateral effort and cooperative efforts with the Canadian government will hopefully result in the accelerated effort Mr. Berger calls for.

Mr. Frank Anderson, representing the Concerned Coastal Sportsmen's Association, Inc., of Massachusetts, requested compensation days for States with a ban on Sunday hunting, and indicated that in exchange for the compensatory days a reduced bag limit would be acceptable. He asked for a continuation of bonus teal and special scaup seasons, requested a 50-day season for ducks based on their improved status, endorsed a longer duck season with reduced bag limits to increase recreational days, requested a 90-day Canada goose season in Massachusetts as a means of alleviating nuisance problems, asked that the brant season continue, and that bag limits on mergansers, excluding hooded, be increased due to their adverse impacts on fish and spawning grounds.

Response: The Service has addressed the issue of make-up for the ban on Sunday hunting most recently in the September 12, 1986, and August 15, 1986 **Federal Register** (51 FR 32464 and 29728, respectively). It is also noted that, since current season length and bag limit are evaluated in relation to harvest that results, any change in that structure would require reviews of the possible season length or bag limit adjustments to avoid increasing harvest. The Service continues to feel the Sunday hunting issue is a matter for local resolution. At this time the Service proposes to continue bonus teal, special scaup, brant and merganser seasons and bag limits. However, on the issue of increased days for waterfowl hunting in exchange for reduced bag limits, the Service reaffirms its conservative harvest strategy for 1987–88 and does not propose to increase hunting days. The proposed frameworks presented herein provide for a special resident Canada goose season for coastal Massachusetts as a means to control numbers of resident geese.

Mr. Richard Elden, representing the Michigan Department of Natural Resources, requested that the Service approve a slight increase in Canada goose harvest objectives for the principal States that harvest Mississippi Valley Population (MVP) Canada geese in order to maintain the population level near the management plan objective. He further requested that the Service endorse the specific regulations for Canada geese proposed by Michigan, and offered a number of reasons why the requested changes in harvest objectives and regulations are needed.

Response: The frameworks proposed herein include the requested increase in MVP harvest objectives and regulations which the Service feels are appropriate for the proposed objective.

Mr. Jim Phillips, who stressed that he was neither a biologist nor an affiliate of any conservation organization, spoke at length of his concerns over the status of some waterfowl and the management programs and suggested a simplified 3-duck bag limit for a 5-year period and elimination of special seasons and bonus limits on scaup and teal.

Response: The Service shares Mr. Phillips' concern over the status of ducks. The decreased numbers of mallards, pintails and other waterfowl were the major consideration in the development of the North American Waterfowl Management Plan that identifies actions necessary to improve the status of all waterfowl. Bag limits and other regulations are being addressed in a supplemental

environmental impact statement expected to be released to the public soon.

Mr. Steve Miller, representing the Wisconsin Department of Natural Resources, expressed appreciation for the October 1 framework opening date for waterfowl proposed for Wisconsin and supported the comments made by Hugh Bateman, Chairman of the Mississippi Flyway Council, regarding daily bag limits for mallards. He requested that the Service approve a slight increase in Canada goose harvest objectives for the principal States that harvest Mississippi Valley Population (MVP) Canada geese in order to maintain the population level near the objective, and gave a number of reasons why the larger objectives are appropriate.

Response: The Service notes Mr. Miller's comments about the framework opening date and support of Mr. Bateman's comments and refers to the Service action outlined earlier in response to Mr. Bateman. The frameworks proposed herein include a modest increase in the MVP harvest objectives.

Mr. Laurence R. Jahn delivered written comments to the hearing on behalf of the Wildlife Management Institute. Citing various evidence, he contended that conservative duck hunting regulations should be continued. He specifically recommended that: (1) Regulations be made more restrictive as they affect pintail and blue-winged teal harvests and that the data bases on these two species be improved; (2) the ban on hunting canvasbacks in the eastern three flyways be continued; (3) additional restrictions on harvests of black ducks be implemented; (4) the ban on cackling Canada geese be continued and harvests of dusky Canada geese, Pacific Flyway white-fronted geese, Pacific brant and emperor geese be further reduced; and (5) regulations be employed to rebuild populations of Ross' geese, Atlantic brant, and both Tall-grass Prairie and Eastern Prairie Canada geese. He recommended that regulations be formulated on the basis of manageable population units. He further recommended that: (1) Research and management of waterfowl populations and their habitats be improved and strengthened in keeping with the North American Waterfowl Management Plan; and (2) experimental closed seasons be considered if the evaluation of stabilized regulations did not provide answers to certain critical management questions.

Response: The Service generally supports Mr. Jahn's recommendations for conservative regulations but believes that further restrictions on pintails and blue-winged teal are not warranted this year. We will continue to monitor the status of these and other duck species, and will consider additional restrictions in 1988 if needed. The Service believes the proposed frameworks on geese and brant seasons and those being implemented in Canada are in keeping with management guidelines and appropriate to rebuilding those populations that have declined. The Service is committed to furthering the goals of the North American Waterfowl Management Plan and efforts to that end will be of high priority. Significant new research, survey development, and management efforts have begun, which will help. The Service is aware of the proposed experimental opening and closing of seasons on black duck to evaluate the effects of hunting on that species, and refers to the response to Mr. Inkley.

Written Comments Received

In the **Federal Register** dated June 3, 1987 (52 FR 20757), the Service reviewed comments on proposed season frameworks received from 10 correspondents as of May 1, 1986. Since then, additional comments have been received. They are discussed here by regulatory topics arranged in the same order as in the March 13, 1987, **Federal Register** (52 FR 7900).

2. *Frameworks for ducks in the conterminous United States—outside dates, season length and bag limits.*

In the June 3, 1987, **Federal Register** (52 FR 20758) the Service noted and addressed the Atlantic Flyway Council's recommendation that the point value for ring-necked ducks be reduced from 35 to 25 points, but deferred a decision on the issue until the late-season frameworks are developed.

Response: The Service continues to have the same concerns regarding the point value change that were expressed in the June 3 document and therefore proposes the point value for ringnecks be 35 points.

3. *American black ducks.* At the June 18, 1987, public hearing on early-season regulations, Mr. Donald S. Heintzelman, representing the Wildlife Information Center, Inc., expressed concern for the status of the black duck and recommended there be no sport hunting of the species.

Response: See the Service's response given earlier to the comments regarding black ducks presented at the public hearing by Dr. Douglas Inkley.

13. *Duck Zones.* Iowa's request to change the boundary between its two duck hunting zones was noted by the Service in the June 3, 1987, **Federal Register** (52 FR 20759), but action was deferred until the late-season frameworks are developed.

Response: The frameworks proposed herein reflect the Service's concurrence with the requested boundary change.

14. *Frameworks for geese and brant in the conterminous United States-outside dates, season length and bag limits.*

Atlantic Flyway

(a) Massachusetts has requested that it be permitted 16 additional days of hunting for Canada geese between January 21 and February 5 and that the bag limits during those additional days be increased to 5 Canada geese daily and 10 in possession. The Atlantic Flyway Council endorsed the request.

Response: The Service notes that the special season will direct harvest at resident Canada geese and thereby help control the size of resident goose flocks causing nuisance and depredation complaints. The Service believes an experimental special resident Canada goose season is warranted but that the season should be limited to the State's Coastal duck zone. The frameworks proposed herein provide for an experimental late-January early-February Canada goose season in Massachusetts not to exceed 16 days, provided a Memorandum of Agreement governing the experimental season is concluded by the Service and the State.

(b) Delaware requested that it be permitted a special 10-day snow goose season in the vicinity of Bombay Hook National Wildlife Refuge in October to minimize marsh destruction by the geese. The Atlantic Flyway Council endorsed the request.

Response: The Service is not proposing the special season because the proposed regulatory frameworks for hunting snow geese provide the State an opportunity to test its dispersal plan without the necessity for an experimental special season with additional days.

Mississippi Flyway

(a) A recommendation that Indiana be permitted to extend the framework closing date for Canada goose hunting in Posey County to January 31 was noted in the June 3, 1987, **Federal Register** (52 FR 20760), but action was deferred until the late-season frameworks are developed. Indiana submitted additional data supporting the recommendation.

Response: The Service concurs with the recommendation and has incorporated the framework extension in the frameworks proposed herein.

(b) In the June 3, 1987, **Federal Register** (52 FR 20760), the Service

deferred action on the recommendation that Minnesota be permitted to adjust the boundaries of its Southeast Goose Zone and conduct a late-December special resident Canada goose season in a portion of the State, until the late-season frameworks are developed.

Response: The Service concurs with the recommendations and has included them in these frameworks. The special giant Canada goose season is proposed herein, provided a Memorandum of Agreement governing the experimental season is concluded by the Service and the State.

(c) A recommendation that Arkansas be granted the option to be included in the 1987–88 harvest allocation for Mississippi Valley Population Canada geese and that the Canada goose season regulatory frameworks for Arkansas provide a January 31 closing date was deferred in the June 3, 1986, **Federal Register** (52 FR 20761).

Response: The frameworks proposed herein reflect the Service's concurrence with the recommendation.

(d) In the June 3, 1987, **Federal Register** (52 FR 20760), the Service concurred with a request from Ohio to relax Canada goose harvest restrictions which had been imposed in all or parts of 4 counties several years ago to protect small flocks of giant Canada geese. However, concern has been recently expressed about the status of that portion of the Tennessee Valley Population (TVP) of Canada geese which migrates through portions of the Mississippi Flyway to wintering areas in South Carolina, and the Atlantic Flyway Council has recommended additional harvest restrictions on Canada geese in the Pymatuning Reservior area of western Pennsylvania. The extent to which TVP Canada geese use the Ohio counties where the regulations changes are proposed is presently unknown, thus the Service feels that the proposed changes should be deferred until potential impact of the changes on TVP Canada geese can be assessed. A joint meeting of the Atlantic and Mississippi Flyway Councils Technical Sections is scheduled for February 1988 to address this and other mutual interests.

Central Flyway

The Service deferred action in the June 3, 1987, **Federal Register** (52 FR 20761), on a recommendation that limits for geese in the Central Flyway portion of Montana be 3 dark and 3 light geese daily with 6 dark geese and 6 light geese in possession, except in Sheridan County where 2 dark and 3 light geese daily and 4 dark geese and 6 light geese in possession will be allowed.

Response: This recommendation has been reviewed and is included in the frameworks proposed herein.

15. *Tundra swan.*

(a) New Jersey submitted a proposal for an experimental swan hunting season in Salem, Cumberland and Burlington Counties. The State would issue 200 permits and the seasonal bag would be 1 swan per permittee. The Atlantic Flyway Council endorsed the proposal.

Response: The Service is not proposing the experimental season in New Jersey because the "hunt plan" to coordinate the sport harvest of Eastern Population tundra swans among the four waterfowl flyways has not been completed.

(b) Comments have been received from 184 individuals expressing their support of and 9 individuals expressing their objection to a tundra swan hunting season in New Jersey.

Response: See the Service's response given to item 15a.

(c) At the June 18, 1987, public hearing on early-season frameworks, Mr. Donald S. Heintzelman, representing the Wildlife Information Center, Inc., recommended that no sport hunting of tundra swans be permitted in North America.

Response: Fall and winter population surveys and limited breeding ground data provide annual information on the status of tundra swans, and the sport harvest of swans is closely monitored by a permit system in all States where the species is hunted. The Service has no reason to believe that the current level of harvest has any adverse impact on the resource, and therefore, proposes to continue the experimental tundra swan in North Carolina and operational permit seasons eleswhere.

Public Comments

Based on the results of recently-completed migratory game bird studies and having due consideration for any data or views submitted by interested parties, the amendments resulting from these supplemental proposals will specify open seasons, shooting hours, areas, and bag and possession limits for waterfowl and coots.

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process.

The Director intends that finally-adopted rules be as responsive as possible to all concerned interests. He therefore desires to obtain the comments and suggestions of the public, other concerned governmental agencies, and private interests on these proposals and will take into consideration the comments received. Such comments, and any additional information received, may lead the Director to adopt final regulations differing from these proposals.

Special circumstances are involved in the establishment of these regulations which limit the amount of time which the Service can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: the need, on the one hand, to establish final rules at a point early enough in the summer to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms, and, on the other hand, the unavailability before late July of specific, reliable data on this year's status of waterfowl. Therefore, the Service believes that to allow a comment period past August 25, 1987, is contrary to the public interest.

Comment Procedure

Interested persons may participate by submitting written comments to the Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building, Room 536, Washington, DC 20240. Comments received will be available for public inspection during normal business hours at the Service's office in Room 536 in the Matomic Building, 1717 H Street, NW., Washington, DC.

All relevant comments received on the late season proposals no later than August 25, 1987, will be considered. The Service will attempt to acknowledge received comments, but substantive response to individual comments may not be provided.

Nontoxic Shot Regulations

In the July 21, 1987, **Federal Register** (52 FR 27352), the Service published a final rule describing zones in which lead shot is prohibited for hunting waterfowl, coots and certain other species in the 1987–88 season. Waterfowl hunters are advised to become familiar with State and local regulations regarding the use of nontoxic shot for waterfowl hunting. Attention is also directed to the January 15 and July 21, 1987, **Federal Register** (52 FR 1638 and 27383) which gave notice if States do not approve nontoxic shot zones when current Service guidelines and criteria indicate such zones are necessary to protect migratory birds, the Secretary of Interior, acting through the Service, will not open those areas to waterfowl and coot hunting.

NEPA Consideration

The "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES 75–54)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975 (40 FR 24241). In addition, several environmental assessments have been prepared on specific matters which serve to supplement the material in the Final Environmental Statement. Copies of the environmental assessments are available from the Service at the address indicated under the caption **ADDRESS**.

As noted in the March 13, 1987, **Federal Register** (52 FR 7905), the Service is preparing a Supplemental Environmental Impact Statement (SEIS) on the FES. The Service indicated a mid-July 1987 publication date for a Draft SEIS to be followed by public meetings prior to preparation of the final SEIS was anticipated; however, it is now unlikely that the draft SEIS will be available before early September.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" "[and shall] by taking such action necessary to insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of such endangered or threatened species or result in the destruction or modification of [critical] habitat * * *"

Consequently, the Service initiated section 7 consultation under the Endangered Species Act for the proposed hunting season frameworks.

On June 15, 1987, the Chief, Office of Endangered Species, gave a biological opinion that the proposed action was not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats.

The Service's biological opinion resulting from its consultation under section 7 of the Endangered Species Act is available for public inspection in or available from the Office of Endangered Species and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC. 20240.

Regulatory Flexibility Act, Executive Order 12291, and the Paperwork Reduction Act

In the **Federal Register** dated March 13, 1987 (52 FR 7900), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publication of a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. This determination is detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240. These proposed regulations contain no information collections subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980.

Memorandum of Law

The Service published its Memorandum of Law, required by section 4 of Executive Order 12291, in the **Federal Register** dated August 3, 1987 (52 FR 28717).

Authorship

The primary author of this proposed rule is Morton M. Smith, Office of Migratory Bird Management, working under the direction of Rollin D. Sparrowe, Chief.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1986–87 hunting season are authorized under the Migratory Bird Treaty Act of July 3, 1961 (40 Stat. 755; 16 U.S.C. 701–708h); the Fish and Wildlife Improvement Act of 1978 (92 Stat. 3112; 16 U.S.C. 712); and the Alaska Game Act of 1925 (43 Stat. 739; as amended, 54 Stat. 1103–04).

Proposed Regulations Frameworks for 1987–88 Late Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act, the Secretary of the Interior has approved proposed frameworks for season lengths, shooting hours, bag and possession limits and outside dates within which States may select seasons for hunting waterfowl and coots. Frameworks are summarized below.

General

Split Season: States in all Flyways may split their season for ducks, geese, or brant into two segments. States in the Atlantic and Central Flyways may, in lieu of zoning, split their season for ducks or geese into three segments. Exceptions are noted in appropriate sections.

Shooting Hours: From one-half hour before sunrise to sunset daily, for all species and seasons, including falconry seasons.

Extra Teal: States in the Mississippi and Central Flyways selecting neither a teal or early duck season in September nor the point system may select an extra daily bag and possession limit of 2 and 4 blue-winged teal, respectively, for 9 consecutive days designated during the regular duck season. States in the Atlantic Flyway (except Florida) not selecting the point system may select an extra teal limit of no more than 2 blue-winged teal or 2 green-winged teal or 1 of each daily and no more than 4 singly or in the aggregate in possession for 9 consecutive days during the regular duck season. These extra limits are in addition to the regular duck bag and possession limits.

Special Scaup-only Season: States in the Atlantic, Mississippi and Central Flyways may select a special scaup-only hunting season not to exceed 16 consecutive days, with daily bag and possession limits of 5 and 10 scaup, respectively, subject to the following conditions:

1. The season must fall between October 1, 1987, and January 31, 1988, in the Atlantic Flyway and October 3, 1987, and January 31, 1988, in the Mississippi and Central Flyways, all dates are inclusive.

2. The season must fall outside the open season for any other ducks except sea ducks.

3. The season must be limited to areas mutually agreed upon by the State and the Service prior to August 31, 1987.

4. These areas must be described and delineated in State hunting regulations.

Or

Extra Scaup: As an alternative, States in the Atlantic, Mississippi and Central Flyways, except those selecting the point system, may select an extra daily bag and possession limit of 2 and 4 scaup, respectively, during the regular duck hunting season, subject to conditions 3 and 4 listed above. These extra limits are in addition to the regular duck limits and apply during the entire regular duck season.

Point System: Selection of the point system for any State entirely within a flyway must be on a statewide basis, *except* if New York selects the point system, conventional regulations may be retained for the Long Island Area. New York may not select the point system within the Upstate zoning option, and Massachusetts, Pennsylvania and Vermont may not select the point system pending completion of zoning studies.

Deferred Season Selections: States that did not select rail, woodcock, snipe, sandhill cranes, common moorhens and purple gallinules and sea duck seasons in July should do so at the time they make their waterfowl selections.

Frameworks for open seasons and season lengths, bag and possession limit options, and other special provisions are listed below by Flyway.

Atlantic Flyway

The Atlantic Flyway includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia and West Virginia.

Ducks, Coots, and Mergansers

Hunting Seasons and Duck Limits:

Outside Dates: Between October 1, 1987, and January 18, 1988.

Hunting Season: Not more than 40 days.

Duck Limits: The daily bag limit of ducks is 4 and may include no more than 3 mallards (only 1 may be a hen), 1 pintail, 2 wood ducks, 1 black duck and 1 fulvous tree duck. The possession limit is 8, including no more than 6 mallards, (no more than 2 of which may be a female), 2 black ducks, 2 pintails, 4 wood ducks, and 2 fulvous tree ducks (except as noted below). The limit of redheads is 2 daily and 4 in possession. The season is closed to the taking of canvasbacks.

Point System Options: As an alternative to coventional bag limits for ducks, a 40-day season with a point-system bag limit may be selected by Atlantic Flyway States during the framework dates prescribed. Point values for species and sexes taken are as follow: in Florida only, the fulvous tree duck counts 100 points each; the female mallard, black duck, mottled duck (except South Carolina) and pintail count 100 points each. Wood duck (except in Virginia, North Carolina, South Carolina and Georgia during the early wood duck season option), redhead and hooded merganser count 70 points each; scaup, blue-winged teal, green-winged teal, sea ducks, wigeon, shoveler, gadwall, and mergansers (except hooded) count 20 points each; the wood duck during the early wood duck season option in Virginia, North Carolina, South Carolina and Georgia counts 25 points each; the male mallard, ring-necked duck, goldeneye, bufflehead and all other ducks count 35 points each. The daily bag limit is reached when the point value of the last bird taken, added to the sum of the point values of the other birds already taken during that day, reaches or exceeds 100 points. The possession limit is the maximum number of birds which legally could have been taken in two days.

Canvasbacks: All areas of the Flyway are closed to canvasback hunting.

Merganser Limits: Throughout the Flyway the daily bag limit of mergansers is 5, only 1 of which may be a hooded merganser. The possession limit is 10, only 2 of which may be hooded mergansers.

Coot Limits: Throughout the Flyway daily bag and possession limits of coots are 15 and 30, respectively.

Early Wood Duck Season Option: Virginia, North Carolina, South Carolina and Georgia may split their regular hunting season so that a hunting season not to exceed 9 consecutive days occurs between October 1 and October 15. During this period under conventional regulations, no special restrictions within the regular daily bag and possession limits established for the Flyway shall apply to wood ducks. Under the point system, wood ducks shall be 25 points. For other ducks, daily bag and possession limits shall be the same as established for the Flyway under conventional or point system regulations. For those States using conventional regulations, the extra teal option may be selected concurrent with the early wood duck season option. This exception to the daily bag and possession limits of wood ducks shall not apply to that portion of the duck hunting season that occurs after October 15.

Restrictions on Wood Ducks: Under conventional and point system options, the daily bag and possession limits may not include more than 2 and 4 wood ducks, respectively.

Restrictions on Mottled Ducks: The season is closed to the taking of mottled ducks in South Carolina.

Special Scaup and Goldeneye Season: In lieu of a special scaup season, Vermont may, for the Lake Champlain Zone, select a special scaup and goldeneye season not to exceed 16 consecutive days, with a daily bag limit of 3 scaup or 3 goldeneye or 3 in the aggregate, and a possession limit of 6 scaup or 6 goldeneyes or 6 in the aggregate, subject to the same provisions that apply to the special scaup season elsewhere.

Zoning:

New York: New York may, for *Long Island Zone,* select season dates and daily bag and possession limits which differ from those in the remainder of the State.

Upstate New York (excluding the Lake Champlain zone) may be divided into three zones (West, North, South) for the purpose of setting separate duck, coot and merganser seasons. Only conventional regulations may be selected. A 2-segment split season may be selected in each zone. Teal and scaup bonus options shall be applicable, but the 16-day special scaup season will not be allowed.

The *West Zone* is that portion of Upstate New York lying west of a line commencing at the north shore of the Salmon River and its junction with Lake Ontario and extending easterly along the north shore of the Salmon River to its intersection with Interstate Highway 81, then southerly along Interstate Highway 81 to the Pennsylvania border.

The *North* and *South Zones* are bordered on the west by the boundary described above and are separated from each other as follows: starting at the intersection of Interstate Highway 81 and State Route 49 and extending easterly along State Route 49 to its junction with State Route 365 at Rome, then easterly along State Route 365 to its junction with State Route 28 at Trenton, then easterly along State Route 28 to its junction with State Route 29 at Middleville, then easterly along State Route 29 to its intersection with Interstate Highway 87 at Saratoga Springs, then northerly along Interstate Highway 87 to its junction with State Route 9, then northerly along State Route 9 to its junction with State Route 149, then easterly along State Route 149 to its junction with State Route 4 at Fort Ann, then northerly along State Route 4 to its intersection with the New York/Vermont boundary.

Connecticut may be divided into two zones as follows:

a. *North Zone*—That portion of the State north of Interstate 95.

b. *South Zone*—That portion of the State south of Interstate 95.

Maine may be divided into two zones as follows:

a. *North Zone*—Game Management Zones 1 through 5.

b. *South Zone*—Game Management Zones 6 through 8.

New Hampshire:

Coastal Zone—That portion of the State east of a boundary formed by

State Highway 4 beginning at the Maine-New Hampshire line in Rollinsford west to the city of Dover, south to the intersection of State Highway 108, south along State Highway 108 through Madbury, Durham and Newmarket to the junction of State Highway 85 in Newfields, south to State Highway 101 in Exeter, east to State Highway 51 (Exeter-Hampton Expressway), east to Interstate 95 (New Hampshire Turnpike) in Hampton, and south along Interstate 95 to the Massachusetts line.

Inland Zone—That portion of the State north and west of the above boundary.

West Virginia may be divided into two zones as follows:

a. *Allegheny Mountain Upland Zone*—The eastern boundary extends south along U.S. Route 220 through Keyser, West Virginia, to the intersection of U.S. Route 50; follows U.S. Route 50 to the intersection with State Route 93; follows State Route 93 south to the intersection with State Route 42 and continues south on State Route 42 to Petersburg; follows State Route 28 south to Minnehaha Springs; then follows State Route 39 west to U.S. Route 219; and follows U.S. Route 219 south to the intersection of Interstate 64. The southern boundary follows I–64 west to the intersection with U.S. Route 60, and follows Route 60 west to the intersection of U.S. Route 19. The western boundary follows: Route 19 north to the intersection of I–79, and follows I–79 north to the intersection of U.S. Route 48. The northern boundary follows U.S. Route 48 east to the Maryland State line and the State line to the point of beginning.

b. Remainder of the State—That portion outside the above boundaries.

Zoning Experiments:

Vermont will continue a Lake Champlain Zone in 1987. The Lake Champlain Zone of New York must follow the waterfowl season, daily bag and possession limits, and shooting hours selected by Vermont. *Massachusetts, New Jersey,* and *Pennsylvania,* may continue zoning experiments now in progress as shown in the sections that follow. *Massachusetts* and *New Jersey* may be divided into three zones, *Pennsylvania* into four zones and *Vermont* into two zones all on an experimental basis for the purpose of setting separate duck, coot and merganser seasons. Only conventional regulations may be selected in Massachusetts, Pennsylvania and Vermont. A two-segment split season without penalty may be selected. The basic daily bag limit of ducks in each zone and the restrictions applicable to the regular season for the Flyway also apply. Teal and scaup bonus bird options, and the 16-day special scaup season shall be allowed.

Zone Definitions:

Massachusetts:

Western Zone—That portion of the State west of a line extending from the Vermont line at Interstate 91, south to Route 9, west on Route 9 to Route 10, south on Route 10 to Route 202, south on Route 202 to the Connecticut line.

Central Zone—That portion of the State east of the Western Zone and west of a line extending from the New Hampshire line at Interstate 95 south to Route 1, south on Route 1 to I–93, south on I–93 to Route 3, south on Route 3 to Route 6, west on Route 6 to Route 28, west on Route 28 to I–195, west to the Rhode Island line. *Except* the waters, and the lands 150 yards along the high-water mark, of the Assonit River to the Route 24 bridge, and the Taunton River to the Center St.-Elm St. bridge shall be in the Coastal Zone.

Coastal Zone—That portion of the State east and south of the Central Zone.

New Jersey:

Coastal Zone—That portion of New Jersey seaward of a continuous line beginning at the New York State boundary line in Raritan Bay; then west along the New York boundary line to its intersection with Route 440 at Perth Amboy; then west on Route 440 to its intersection with the Garden State Parkway; then south on the Garden State Parkway to the shoreline at Cape May and continuing to the Delaware boundary in Delaware Bay.

North Zone—That portion of New Jersey west of the Coastal Zone and north of a boundary formed by Route 70 beginning at the Garden State Parkway west to the New Jersey Turnpike, north on the turnpike to Route 206, north on Route 206 to Route 1, Trenton, west on Route 1 to the Pennsylvania State boundary in the Delaware River.

South Zone—That portion of New Jersey not within the North Zone or the Coastal Zone.

Pennsylvania:

Lake Erie Zone—The Lake Erie waters of Pennsylvania and a shoreline margin along Lake Erie from New York on the east to Ohio on the west extending 150 yards inland, but including all of Presque Isle Peninsula.

North Zone—That portion of the State north of I–80 from the New Jersey State line west to the junction of State Route 147; then north on State Route 147 to the junction of Route 220, then west and/or south on Route 220 to the junction of I–80, then west on I–80 to its junctions with the Allegheny River, and then north along but not including the Allegheny River to the New York border.

Northwest Zone—That portion of the State bounded on the north by the Lake Erie Zone and the New York line, on the east by and including the Allegheny River, on the south by Interstate Highway I–80, and on the west by the Ohio line.

South Zone—The remaining portion of the State.

Vermont:

Lake Champlain Zone—Includes the United States portion of Lake Champlain and those portions of New York and Vermont which includes that part of New York lying east and north of boundary running south from the Canadian border along New York Route 9B to New York Route 9 south of Champlain, New York; New York Route 9 to New York Route 22 south of Keeseville; along New York Route 22 to South Bay, along and around the shoreline of South Bay to New York Route 22; along New York Route 22 to U.S. Highway 4 at Whitehall; and along U.S. Highway 4 to the Vermont border. From the New York border at U.S. Highway 4, along U.S. Highway 4 to Bermont Route 22A at Fair Haven; Route 22A to U.S. Highway 7 at Vergennes; U.S. Highway 7 to the Canadian border.

Interior Vermont Zone—The remaining portion of the State.

Sea Ducks: The daily bag and possession limit for sea ducks in special sea duck areas is in addition to the limits applying to other ducks during the regular duck season. In all areas outside of special sea duck areas, sea ducks are included in the regular duck season conventional or point system daily bag and possession limits.

Canada Geese

Outside Dates, Season Lengths, and Limits: Between October 1, 1987, and January 20, 1988, Maine, New Hampshire, Vermont, Massachusetts, Pennsylvania, West Virginia, Maryland and Virginia (excluding those portions of the cities of Virginia Beach and Chesapeake lying east of Interstate 64 and U.S. Highway 17) may select 70-day seasons for Canada geese. The daily bag and possession limits are 3 and 6 geese, respectively, except in Pennsylvania Counties of Erie, Mercer, Butler, and Crawford where the daily bag and possession limits are 1 and 2, respectively. In New York (including Long Island), Rhode Island, Connecticut, (North Zone only) New Jersey, Delaware, the Delmarva Peninsula portions of Maryland and Virginia, and that portion of Pennsylvania lying east

and south of a boundary beginning at Interstate Highway 83 at the Maryland border and extending north to Harrisburg, then east on I–81 to Route 443, east on 443 to Leighton, then east via 209 to Stroudsburg, then east on I–80 to the New Jersey line, the Canada goose season length may be 90 days with the closing framework date extended to January 31, 1988. In addition, that portion of the Susquehanna River from Harrisburg north to the confluence of the west and north branches at Northumberland, including a 25-yard zone of land adjacent to the waters of the river, is included in the 90-day zone. The daily bag limit within this area (except New York, Rhode Island, and Connecticut) will be 4 birds with the possession limit of 8 birds. The daily bag and possession limits in New York, Rhode Island, and Connecticut (North Zone) will be 3 and 6, respectively. In the South Zone of Connecticut (that portion south of Interstate 95) the Canada goose season length may be 90 days with the closing framework date extended to February 5, 1988. The daily bag limit and possession limit will be 3 and 6, respectively, before January 15 and 5 and 10, respectively from January 15 to February 5, 1988. This season in the South Zone of Connecticut is experimental. Those portions of the cities of Virginia Beach and Chesapeake lying east of Interstate 64 and U.S. Highway 17 in Virginia may select a 50-day season for Canada geese within the October 1, 1987, to January 20, 1988, framework; the daily bag and possession limits are 2 and 4 Canada geese, respectively. North Carolina and South Carolina may select a 43-day season for Canada geese within a December 20, 1987, to January 31, 1988, framework; the daily bag and possession limits are 1 and 2 Canada geese, respectively. In the Coastal Zone of Massachusetts, a special resident Canada goose season may be held within January 21, 1987, to February 5, 1988; the daily bag and possession limits are 5 and 10, respectively.

Closures on Canada geese: The season for Canada geese is closed in Florida and Georgia.

Snow Geese

Outside Dates, Season Lengths, and Limits: Between October 1, 1987, and January 31, 1988, States in the Atlantic Flyway may select a 90-day season for snow geese (including blue geese); the daily bag and possession limits are 4 and 8, respectively.

Atlantic Brant

Outside Dates, Season Lengths, and Limits: Between October 1, 1987, and January 20, 1988, States in the Atlantic Flyway may select a 30-day season for Atlantic brant; the daily bag and possession limits are 2 and 4 brant, respectively.

Tundra Swans

In North Carolina an experimental season for tundra swans may be selected subject to the following conditions: (a) the season may be 90 days and must run concurrently with the snow goose season: (b) the State agency must issue and obtain harvest and hunting participation data; and (c) no more than 6,000 permits may be issued, authorizing each permittee to take 1 tundra swan.

Mississippi Flyway

The Mississippi Flyway includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee and Wisconsin.

Ducks, Coots, and Mergansers

Outside Dates: Between October 3, 1987 (October 1 in Wisconsin), and January 17, 1988, in all States.

Hunting Season: Not more than 40 days.

Limits: The daily bag limit of ducks is 4, and may include no more than 2 mallards (no more than 1 of which may be a female), 1 black duck, 2 wood ducks (except as noted below), 2 pintails, and 1 redhead. The possession limit is 8, including no more than 4 mallards (no more than 2 of which may be females), 2 black ducks, 4 wood ducks (except as noted below), 4 pintails, and 2 redheads.

Merganser Limits: The daily bag limit of mergansers is 5, only 1 of which may be a hooded merganser. The possession limit is 10, only 2 of which may be hooded mergansers.

Coot Limits: The daily bag and possession limits of coots are 15 and 30, respectively.

Point-System Option: As an alternative to conventional bag limits for ducks, a 40-day season with point-system bag and possession limits may be selected within the framework dates prescribed. Point values for species and sexes taken are as follows: the female mallard and black duck count 100 points each; the redhead, wood duck (except as noted below) and hooded merganser count 70 points each; the blue-winged teal, cinnamon teal, wigeon, gadwall, shoveler, scaup, green-winged teal and mergansers (except hooded merganser) count 20 points each; the male mallard, pintail, and all other species of ducks count 35 points each. The daily bag limit is reached when the point value of the last bird taken, added to the sum of the point values of the other birds already taken during that day, reaches or exceeds 100 points. The possession limit is the maximum number of birds that legally could have been taken in 2 days.

Coot Limits-Point System: Coots have a point value of zero, but the daily bag and possession limits are 15 and 30, respectively, as under the conventional limits.

Early Wood Duck Season Option: Arkansas, Louisiana, Mississippi and Alabama may split their regular duck hunting seasons in such a way that a hunting season not to exceed 9 consecutive days may occur between October 3 and October 15. During this period, under conventional regulations, no special restrictions within the regular daily bag and possession limits established for the Flyway shall apply to wood ducks, and under the point system the point value of wood ducks shall be 25 points. For other species of ducks, daily bag and possession limits shall be the same as established for the Flyway under conventional or point-system regulations. In addition, the extra blue-winged teal option available to States in this Flyway that select conventional regulations and do not have a September teal season may be selected during this period. This exception to the daily bag and possession limits for wood ducks shall not apply to that portion of the duck hunting season that occurs after October 15.

Western Louisiana: In that portion of Louisiana west of a boundary beginning at the Arkansas-Louisiana border on Louisiana Highway 3; then south along Louisiana Highway 3 to Bossier City; then east along Interstate 20 to Minden; then south along Louisiana Highway 7 to Ringgold; then east along Louisiana Highway 4 to Jonesboro; then south along U.S. Highway 167 to Lafayette; then southeast along U.S. Highway 90 to Houma; then south along the Houma Navigation Channel to the Gulf of Mexico through Cat Island Pass—the season for ducks, coots and mergansers may extend 5 additional days. If the 5-day extension is selected, and if point-system regulations are selected for the State, point values will be the same as for the rest of the State.

Pymatuning Reservoir Area, Ohio: The waterfowl seasons, limits and shooting hours in the Pymatuning Reservoir area of Ohio will be the same as those selected by Pennsylvania. The area includes Pymatuning Reservoir and that part of Ohio bounded on the north by County Road 306 known as Woodward Road, on the west by

Pymatuning Lake Road, and on the south by U.S. Highway 322.

Zoning: Alabama, Illinois, Indiana, Iowa, Michigan, Missour, Ohio, Tennessee, and *Wisconsin* may select hunting seasons for ducks, coots and mergansers by zones described as follows:

Alabama: South Zone—Mobile and Baldwin Counties. North Zone—The remainder of Alabama. The season in the South Zone may be split.

Illinois: North Zone—That portion of the State north of a line running east from the Iowa border along Illinois Highway 92 to I–280, east along I–280 to I–80, then east along I–80 to the Indiana border. South Zone—That portion of the State between the North and South Zone boudaries. South Zone—that portion of the State south of a line running east from the Missouri border along the Modoc Ferry route to Randolph County Highway 12, north along Highway 12 to Illinois Highway 3, north along Illinois Highway 3 to Illinois Highway 159, north along Illinois HIghway 159 to Illinois Highway 161, east along Illinois Highway 161 to Illinois Highway 4, north along Illinois Highway 4 to I–70, then east along I–70 to the Indiana border.

Indiana: North Zone—That portion of the State north of a line extending east from the Illinois border along State Highway 18 to U.S. Highway 31, then north along U.S. 31 to U.S. Highway 24, then east along U.S. 24 to Huntington, then southeast along U.S. Highway 224 to the Ohio border. Ohio River Zone: That portion of Indiana south of a line extending east from the Illinois border along Interstate Highway 64 to New Albany, then east along State Highway 62 to State Highway 56, then east along State Highway 56 to Vevay, then on State Highway 156 along the Ohio Rvier to North Landing, then north along State Highway 56 to U.S. Highway 50, then northeast along U.S. 50 to the Ohio border. South Zone—That portion of the State between the North and Ohio River Zone boundaries. The season in each zone may be split into two segments.

Iowa: North Zone—That portion of Iowa north of a line running west from the Illinois border along I-80 to U.S. 59, north along U.S. 59 to State Highway 37, northwest along State Highway 37 to State Highway 175, then west along State Highway 175 to the Nebraska border. South Zone—the remainder of the State.

Michigan: North Zone—The Upper Peninsula. South Zone—That portion of the State south of a line beginning at the Wisconsin border in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and east and south along the south shore of, Stony Creek to Webster Road, east and south on Webster Road to Stony Lake Road, east on Stony Lake and Garfield Roads to M–20, east on M–20 to U.S.–10B.R. in the city of Midland, east on U.S.–10B.R. to U.S.–10, east on U.S.–10 and M–25 to the Saginaw River, downstream along the thread of the Saginaw River to Saginaw Bay, then on a northeasterly line, passing one-half mile north of the Corps of Engineers confined disposal island offshore of the Carn powerplant, to a point one mile north of the Charity islands, then continuing northeasterly to the Ontario border in Lake Huron. Middle Zone—The remainder of the State. Michigan may split its season in each zone into two segments.

Missouri: North Zone—That portion of Missouri north of a line running east from the Kansas border along U.S. Highway 54 to U.S. Highway 65, south along U.S. 65 to State Highway 32, east along State Highway 32 to State Highway 72, east along State Highway 72 to State Highway 21, south along State Highway 21 to U.S. Highway 60, east along U.S. 60 to State Highway 51, south along State Highway 51 to State Highway 53, south along State Highway 53 to U.S. Highway 62, east along U.S. 62 to I–55, north along I–55 to State Highway 34, then east along State Highway 34 to the Illinois border. South Zone—The remainder of Missouri. Missouri may split its season in each zone into two segments.

Ohio: The counties of Darke, Miami, Clark, Champaign, Union, Delaware, Licking, Muskingam, Guernsey, Harrison and Jefferson and all counties north thereof. In addition, the North Zone also includes that portion of the Buckeye Lake area in Fairfield and Perry Counties bounded on the west by State Highway 37, on the south by State Highway 204, and on the east by State Highway 13. Ohio River Zone—The counties of Hamilton, Clermont, Brown, Adams, Scioto, Lawrence, Gallia and Meigs. South Zone—That portion of the State between the North and Ohio River Zone boundaries. Ohio may split its season in each zone into two segments.

Tennessee: Reelfoot Zone—Lake and Obion Counties, or a designated portion of that area. State Zone—The remainder of Tennessee. Seasons may be split into two segments in each zone.

Wisconsin: North Zone—That portion of the State north of a line extending northerly from the Minnesota border along the center line of the Chippewa River to State Highway 35, east along State Highway 35 to State Highway 25, north along State Highway 25 to U.S. Highway 10, east along U.S. Highway 10 to its junction with the Manitowoc Harbor in the city of Manitowoc, then easterly to the eastern State boundary in Lake Michigan. South Zone—The remainder of Wisconsin. The season in the South Zone may be split into two segments.

Within each State: (1) the same bag limit option must be selected for all zones; and (2) if a special scaup season is selected for a zone, it shall be held outside the regular season in that zone.

Geese

Definition: For the purpose of hunting regulations listed below, the term "geese" also includes brant.

Outside Dates, Season Lengths and Limits: Between October 3, 1987 (October 1 in Wisconsin) and January 17, 1988, States may select 70-day seasons for geese, with a daily bag limit of 5 geese, to include no more than 2 white-fronted geese. The possession limit is 10 geese, to include no more than 4 white-fronted geese. Regulations for Canada geese and exceptions to the above general provisions are shown below by State.

Outside Dates and Limits on Snow and White-fronted Geese in Arkansas and Louisiana: Between October 3, 1987, and January 31, 1988, Arkansas may hold a 70-day season on snow (including blue) geese. Between October 3, 1987, and February 14, 1988, Louisiana may hold 70-day seasons on snow (including blue) and white-fronted geese by zones established for duck hunting seasons. Daily bag and possession limits are as described above.

Minnesota. In the:

(a) Lac Qui Parle Goose Management Block (Big Stone, Swift, Chippewa, Lac Qui Parle, and Yellow Medicine Counties)—the season for Canada geese may extend for 30 days. In the Lac Qui Parle Quota Zone (described in State Regulations)—the season will close after 30 days or when 4,000 birds have been harvested, whichever occurs first. Throughout the 5-county area the daily bag limit is 1 Canada goose and the possession limit is 2.

(b) Southeastern Zone (the Counties of Washington, Anoka, Hennepin, Carver, Scott, Rice, Steele, and Freeborn, and all Counties south and east thereof)—the season for Canada geese may extend for 70 consecutive days. The daily bag limit is 2 Canada geese and the possession limit is 4. In selected areas of the Metro Goose Management Block (described in State regulations) and in Olmsted County, experimental late seasons may be held during December 18–27 to harvest Giant Canada geese. During these seasons, the

daily bag limit is 2 Canada geese and the possession limit is 4.

(c) Remainder of the State—the season for Canada geese may extend for 40 days. The daily bag limit is 1 Canada goose and the possession limit is 2.

Iowa: The season may extend for 45 consecutive days. The daily bag limit is 2 Canada geese and the possession limit is 4. The season for geese in the Southwest Goose Zone (that portion of the State bounded by U.S. Highways 92 and 71) may be held at a different time than the season in the remainder of the State.

Missouri. In the:

(a) Swan Lake Zone (described in State regulations)—the season for Canada geese closes after 40 days or when 10,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese and the possession limit is 4.

(b) Southeast Zone (east of U.S. Highway 67 and south of Crystal City)—A 40-day season on Canada geese may be selected between December 1, 1987, and January 17, 1988, with a daily bag limit of 1 Canada goose and a possession limit of 2.

(c) Remainder of the State—the season for Canada geese may extend for 40 days in the respective duck hunting zones. The daily bag limit is 1 Canada goose, and the possession limit is 2.

Wisconsin: The total harvest of Canada geese in the State will be limited to 49,500 birds. In the:

(a) Horicon—Central Zone (Columbia, Dodge, Fond Du Lac, Green Lake, Marquette and Winnebago Counties, and the northwest portion of Washington County north of State Highway 33 and west of U.S. Highway 45)—the harvest of Canada geese is limited to 30,000 birds, with 2,000 birds allocated to the Theresa Subzone. The season may not exceed 50 days. In the Theresa Subzone (described in State regulations), the daily bag limit is 1 Canada goose per permittee through October 5 and 1 Canada goose per permittee per day thereafter, up to a season limit of 4. In the remainder of the Horicon-Central Zone, the season limit may not exceed 2 Canada geese per permittee, and the issuance of permits and tags may not exceed 37,000 permits with 1 tag each and 3,000 permits with 2 tags each.

(b) Mississippi River Zone (that portion of the State west of the Burlington-Northern Railroad in Grant, Crawford, Vernon, LaCrosse, Trempealeau, Buffalo, Pepin and Pierce Counties)—the season for Canada geese may extend for 70 days. Limits are 1 Canada goose daily and 2 in possession through November 24, and 2 daily and 4 in possession thereafter.

(c) Northeast Goose Zone (that portion of the North Duck Zone which includes the Counties of Vilas, Oneida, Lincoln, Marathon, a portion of Wood County, and all counties or portions of counties eastward). The season for Canada geese may not exceed 12 days. The daily bag limit is 1 Canada goose and the possession limit is 2. In Brown County, a special late season to control local populations of giant Canada geese may be held during December 1–31. The daily bag and possession limits during this special season are 2 and 4 birds, respectively.

(d) Southeast Goose Zone (that portion of the South Duck Zone which includes part of Wood County, Juneau, Sauk, Dane and Green Counties and all counties or portions of counties eastward)—in that portion of the Southeast Zone outside the Horicon-Central tag zone, the season may not exceed 12 days. The daily bag limit is 1 Canada goose and the possession limit is 2. In the Rock Prairie Zone (described in State regulations), a special late season to harvest giant Canada geese may be held between November 7 and December 6. During the late season, the daily bag limit is 1 Canada goose and the possession limit is 2.

(e) Northwest Goose Zone (that portion of the North Duck Zone west of the Northeast Goose Zone)—the season for Canada geese may not exceed 20 days. The daily bag limit is 1 Canada goose and the possession limit is 2.

(f) Southwest Goose Zone (that portion of the South Duck Zone west of the Southeast Goose Zone)—the season for Canada geese may not exceed 20 days. The daily bag limit is 1 Canada goose and the possession limit is 2.

In that portion of Wisconsin outside the Horicon-Central Zone, the progress of the Canada goose harvest must be monitored, and the season closed if necessary, to insure that the harvest does not exceed 15,000 birds.

Illinois: The total harvest of Canada geese in the State will be limited to 52,500 birds. In the:

(a) Southern Illinois Quota Zone (described in State regulations)—The season for Canada geese will close after 50 days or when 16,200 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese and the possession limit is 4.

(b) Rend Lake Quota Zone (Franklin and Jefferson Counties)—The season for Canada geese will close after 50 days or when 7,900 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose and the possession limit is 4.

(c) Tri-County Area (all of Knox County; the townships of Buckhart, Canton, Cass, Deerfield, Fairview, Farmington, Joshua, Orion, Putnam and that portion of Banner Township bounded on the north by Illinois Route 9 and on the east by U.S. 24 in Fulton County; the township of Alba, Annawan, Atkinson and Cornwall in Henry County)—The season for Canada geese may not exceed 30 days. The daily bag limit is 1 Canada goose and the possession limit is 4.

(d) Remainder of State—Seasons for Canada geese up to 40 days may be selected by zones established for duck hunting seasons. The daily bag limit is 2 Canada geese and the possession limit is 4.

Michigan: The total harvest of Canada geese in the State will be limited to 58,000 birds. In the:

(a) North Zone—In the counties of Baraga, Dickinson, Delta, Gogebic, Houghton, Iron, Keweenaw, Marquette, Menominee, and Ontonagon, the framework opening date for geese is September 26. In the remainder of the North Zone, the framework opening date is October 3. Throughout the North Zone, the season for Canada geese may extend for 20 days, except at Seney Goose Management Area, where the season will close after 50 days or when 500 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose and the possession limit is 2, except at Seney Goose Management Area, where the daily bag and possession limits are 2 and 4, respectively.

(b) Middle Zone—The season for Canada geese may extend for 30 days. The daily bag limit is 1 Canada goose and the possession limit is 2.

(c) South Zone:

(1) Allegan County Zone (that portion of Allegan County west of U.S. Highway 131)—the season for Canada geese will close after 50 days or when 3,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese and the possession limit is 4.

(2) Muskegon Wastewater Zone (described in State regulations)—the season for Canada geese will close after 50 days or when 500 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese and the possession limit is 4.

(3) Saginaw County Goose Management Area—the season for Canada geese will close after 50 days or when 5,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese and the possession limit is 4.

(4) Remainder of South Zone:

(i) East of U.S. Highways 27 and 127—the season for Canada geese may extend for 40 days. The daily bag limit is 2 Canada geese and the possession limit is 4.

(ii) West of U.S Highways 27 and 127—the season for Canada geese may extend for 30 days. The daily bag limit is 1 Canada goose and the possession limit is 2.

(d) Southern Michigan Goose Management Area (described in State regulations)—A late Canada goose season of up to 46 days may be held between January 1 and February 15, 1988. The daily bag limit is 2 Canada geese and the possession limit is 4.

Ohio: The daily bag limit is 2 Canada geese and the possession limit is 4, except that in the counties of Ashtabula, Trumbull, Marion, Wyandot, Lucas, Ottawa, Erie, Sandusky, Mercer and Auglaize, the daily bag limit is 1 Canada goose and the possession limit is 2.

Indiana: The total harvest of Canada geese in the State will be limited to 16,000 birds. In:

(a) Posey County—The season for Canada geese will close after 50 days or when 4,700 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese and the possession limit is 4. The season may extend to January 31, 1988.

(b) Remainder of the State—The season for Canada geese may extend for 70 days. The daily bag limit is 2 Canada geese and the possession limit is 4.

Kentucky: In the:

(a) West Kentucky Zone (the portion of the State west of a line beginning at the Kentucky-Tennessee border at Fulton, Kentucky, extending northerly along the Purchase Parkway to I–24, east on I–24 to U.S. 641; northerly on U.S. 641 to U.S. 60; northeasterly on U.S. 60 to U.S. 41; and then northerly on U.S. 41 to the Kentucky-Indiana border)—The season for Canada geese may extend for 50 days, and the harvest will be limited to 16,500 birds. Of the 16,500-bird quota, 10,400 birds will be allocated to the Ballard Subzone and 3,300 birds will be allocated to the Henderson-Union Subzone (both subzones described in State regulations). If the quota in either subzone is reached prior to completion of the 50-day season, the season in that subzone will be closed. If this occurs, the season in those counties and portions of counties outside of, but associated with, the respective subzone (listed in State regulations) may continue for an additional 7 days, not to exceed a total of 50 days. The daily bag limit is 2 Canada geese and the possession limit is 4. The season may extend to January 31, 1988.

(b) Remainder of the State—The season may extend for 70 days. The daily bag limit is 2 Canada geese and the possession limit is 4.

Tennessee: In the:

(a) Northwest Zone (Lake, Obion, and Weakley Counties, and those portions of Gibson and Dyer Counties not included in the Southwest Zone)—The season may extend for 50 days, and the harvest of Canada geese will be limited to 7,200 birds. Of the 7,200-bird quota, 5,000 birds will be allocated to the Reelfoot Subzone (described in State regulations). If the quota in the Reelfoot Subzone is reached prior to completion of the 50-day season, the season in the subzone will be closed. If this occurs, the season in the remainder of the Northwest Zone may continue for an additional 7 days, not to exceed a total of 50 days. The daily bag limit is 2 Canada geese and the possession limit is 4. The season may extend to January 31, 1988.

(b) Southwest Zone (that portion of the State bounded on the north by State Highways 20 and 104, and on the east by U.S. Highways 45W and 45)—The season for Canada geese may extend for 15 days, with a framework closing date of January 31, 1988. The daily bag limit is 1 Canada goose and the possession limit is 2.

(c) Remainder of the State—The season for Canada geese may extend for 70 days. The daily bag limit is 1 Canada goose and the possession limit is 2, except in that portion west of State Highway 13, where the daily bag and possession limits are 2 and 4, respectively.

Arkansas: The total harvest of Canada geese in the State will be limited to 2,400 birds. The season for Canada geese may extend for 15 days, with a framework closing date of January 31, 1988. The daily bag limit is 1 Canada goose and the possession limit is 2.

Louisiana: The season for Canada geese is closed.

Mississippi: In the:

(a) Sardis Zone (described in State regulations)—The season for Canada geese may extend for 30 days, 10 days of which must occur before December 15, 1987. The daily bag limit is 1 Canada goose and possession limit is 2.

(b) Remainder of the State—The season for Canada geese may not exceed 15 days. The daily bag limit is 1 Canada goose and the possession limit is 2.

In both areas, the framework closing date is January 31, 1988.

Alabama: In Alabama, the daily bag limit is 2 Canada geese and the possession limit is 4.

Missouri, Illinois, Indiana, Kentucky and Tennessee Quota Zone Closures: When it has been determined that the quota of Canada geese allotted to the Southern Illinois Quota Zone, the Rend Lake Quota Zone in Illinois, the Swan Lake Zone in Missouri, Posey County in Indiana, the Ballard and Henderson-Union Subzones in Kentucky and the Reelfoot Subzone in Tennessee will have been filled, the season for taking Canada geese in the respective area will be closed by the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing, or by the State through State regulations with such notice and time (not in excess of 48 hours) as they deem necessary.

Shipping Restriction: In Illinois and Missouri and in the Kentucky counties of Ballard, Hickman, Fulton and Carlisle, geese may not be transported, shipped or delivered for transportation or shipment by common carrier, the Postal Service, or by any person except as the personal baggage of licensed waterfowl hunters, provided that no hunter shall possess or transport more than the legally-prescribed possession limit of geese. Geese possessed or transported by persons other than the taker must be labeled with the name and address of the taker and the date taken.

Central Flyway

The Central Flyway includes Colorado (east of the Continental Divide), Kansas, Montana (Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except that the entire Jicarilla Apache Indian Reservation is in the Pacific Flyway), North Dakota, Oklahoma, South Dakota, Texas and Wyoming (east of the Continental Divide).

Ducks (including mergansers) and Coots

Outside Dates: October 3, 1987, through January 17, 1988.

Canvasbacks: There will be no open season on canvasbacks in the Central Flyway.

Hunting Season: Seasons in the Low Plains Unit may include no more than 51 days. Seasons in the High Plains Mallard Management Unit may include no more than 67 days, provided that the last 16 days may start no earlier than December 12, 1987. The High Plains Unit, roughly defined as that portion of the Central Flyway which lies west of the 100th meridian, shall be described in State regulations.

States may split their seasons into 2 or, in lieu of zoning, 3 segments.

Daily Bag and Possession Limits: Conventional limits are 4 ducks daily which may include no more than 3 mallards no more than 1 of which may be a female, 3 pintails, 1 redhead, 1 hooded merganser, and 2 wood ducks; and 8 in possession which may include no more than 6 mallards no more than 1 of which may be a female, 6 pintails, 2 redheads, 2 hooded mergansers, and 4 wood ducks.

As an alternative, States may select point system bag and possession limits. Under this system, the daily limit is reached when the point value of the last duck taken and other ducks already taken during that day total 100 or more points. The value of each female mallard, black duck, and mottled duck is 100 points; each wood duck, redhead and hooded merganser, and in Texas only, each black bellied whistling duck and fulvous whistling duck is 70 points; each blue-winged teal, green-winged teal, cinnamon teal, scaup, gadwall, wigeon, shoveler, and merganser (except the hooded merganser) is 20 points; and each drake mallard, pintail and each duck of other species and sexes is 35 points. The possession limit is the equivalent of two daily limits.

Daily bag and possession limits for coots are 15 and 30, respectively.

Zoning: Duck and coot hunting seasons may be selected independently in existing zones as described in the following States:

Montana (Central Flyway portion):

Experimental Zone 1. The counties of Bighorn, Blaine, Carbon, Daniels, Fergus, Garfield, Golden Valley, Judith Basin, McCone, Musselshell, Petroleum, Phillips, Richland, Roosevelt, Sheridan, Stillwater, Sweetgrass, Valley, Wheatland and Yellowstone.

Experimental Zone 2. The counties of Carter, Custer, Dawson, Fallon, Powder River, Prairie, Rosebud, Treasure and Wibaux.

Nebraska (Low Plains portion):

Zone 1. Keya Paha County east of U.S. Highway 183 and all of Boyd County including the adjacent waters of the Niobrara River.

Zone 2. The area bounded by designated highways and political boundaries starting on U.S. 73 at the State Line near Falls City; north to N–67; north through Nemaha to U.S. 73–75; north to U.S. 34; west to the Alvo Road; north to U.S. 6; northeast to N–63; north and west to U.S. 77; north to N–92; west to U.S. 81; south to N–66; west to N–14; south to I–80; west to U.S. 34; west to N–10; south to the State Line; west to U.S. 283; north to N–23; west to N–47; north to U.S. 30; east to N–14; north to N–52; northwesterly to N–91; west to U.S. 281; north to Wheeler County and including all of Wheeler and Garfield Counties and Loup County east of U.S. 183; east on N–70 from Wheeler County to N–14; south to N–39; southeast to N–22; east to U.S. 81; southeast to U.S. 30; east to U.S. 73; north to N–51; east to the State Line; and south and west along the State Line to the point of beginning.

Zone 3. The area, excluding Zone 1, north of Zone 2.

Zone 4. The area south of Zone 2.

New Mexico:

Experimental Zone 1. The Central Flyway portion of New Mexico north of Interstate Highway 40 and U.S. Highway 54.

Experimental Zone 2. The remainder of the Central Flyway portion of New Mexico.

Oklahoma:

Zone 1. That portion of northwestern Oklahoma, except the Panhandle, bounded by the following highways: starting at the Texas-Oklahoma border, OK 33 to OK 47, OK 47 to U.S. 183, U.S. 183 to I-40, I-40 to U.S. 177, U.S. 177 to OK 33, OK 33 to I-35, I-35 to U.S. 60, U.S. 60 to U.S. 64, U.S. 64 to OK 132, and OK 132 to the Oklahoma-Kansas state line.

Zone 2. The remainder of the Low Plains.

South Dakota (Low Plains portion):

South Zone. Bon Homme County south of S.D. Highway 50; Charles Mix County south and west of a line formed by S.D. Highway 50 from Douglas County to Geddes, Highways CFAS 6198 and FAS 3307 to Lake Andes, and S.D. Highway 50 to Bon Homme County; Gregory County; and Yankton County west of U.S. Highway 81.

North Zone. The remainder of the Low Plains.

Wyoming (Central Flyway portion):

Zone 1. Sheridan, Johnson, Natrona, Campbell, Crook, Weston, Converse and Niobrara Counties.

Zone 2. Platte, Goshen and Laramie Counties.

Zone 3. Carbon and Albany Counties.

Zone 4. Park, Big Horn, Hot Springs, Washakie and Fremont Counties.

Geese

Definitions: In the Central Flyway, "geese" includes all species of geese and brant, "dark geese" includes Canada and white-fronted geese and black brant, and "light geese" includes all others.

Outside Dates: October 3, 1987, through January 17, 1988, for dark geese and October 3, 1987, through February 14, 1988 (February 28, 1988, in New Mexico), for light geese.

Possession Limits: Goose possession limits are twice the daily bag limits (see exception for light geese in the Rio Grande Valley Unit of New Mexico).

Hunting Seasons: Seasons in States, and independently in described goose management units within States, may be as follows:

Colorado: No more than 93 days with a daily limit of 5 geese that may include no more than 2 dark geese.

Kansas: For dark geese, no more than 72 days with daily limits of 2 Canada geese or 1 Canada goose and 1 white-fronted goose through November 29 and no more than 1 Canada goose and 1 white-fronted goose during the remainder of the season.

For Light Goose Unit 1 (that area east of U.S. 75 and north of I-70), no more than 86 days with a daily limit of 5.

For Light Goose Unit 2 (the remainder of Kansas), no more than 86 days with a daily limit of 5.

Montana: No more than 93 days with daily limits of 2 dark geese and 3 light geese in Sheridan County and 3 dark geese and 3 light geese in the remainder of the Central Flyway.

Nebraska: For Dark Goose Unit 1 (Boyd, Cedar west of U.S. 81, Keya Paha east of U.S. 183, and Knox Counties), no more than 79 days with daily limits of 1 Canada goose and 1 white-fronted goose through November 13 and no more than 2 Canada geese or 1 Canada goose and 1 white-fronted goose for the remainder of the season.

For Dark Goose Unit 2 (the remainder of the State east of the following highways starting at the South Dakota line; U.S. 183 to NE 2, NE 2 to U.S. 281, and U.S. 281 to Kansas), no more than 72 days with daily limits of 2 Canada geese or 1 Canada goose and 1 white-fronted goose through November 22 and no more than 1 Canada goose and 1 white-fronted goose for the remainder of the season.

For Dark Goose Unit 3 (that part of the State west of Units 1 and 2), no more than 72 days with daily limits of 2 Canada geese or 1 Canada goose and 1 white-fronted goose through November 22 and no more than 1 Canada goose and 1 white-fronted goose for the remainder of the season.

For light geese, no more than 86 days with a daily limit of 5.

New Mexico: For dark geese, no more than 93 days with a daily limit of 2.

For light geese in the Rio Grande Valley Unit (the Central Flyway portion of New Mexico west of highways starting at the Texas line north of El Paso: U.S. 54 to U.S. 60, U.S. 60 to U.S. 285, and U.S. 285 to the Colorado line), no more than 107 days with a daily limit of 5 and a possession limit of 20.

For light geese in the remainder of the Central Flyway portion of New Mexico, no more than 93 days with a daily limit of 5.

North Dakota: For dark geese, no more than 72 days with daily limits of 1 Canada goose and 1 white-fronted goose or 2 white-fronted geese through November 1 and no more than 2 dark geese during the remainder of the season.

For light geese, no more than 86 days with a daily limit of 5.

Oklahoma: For dark geese, no more than 72 days with a daily limit of 2 Canada geese or 1 Canada goose and 1 white-fronted goose.

For light geese, no more than 86 days with a daily limit of 5.

South Dakota: For dark geese in the Missouri River Unit (the Counties of Bon Homme, Brule, Buffalo, Campbell, Charles Mix, Corson east of SD Highway 65, Dewey, Gregory, Haakon north of Kirley Road and east of Plum Creek, Hughes, Hyde, Lyman north of Interstate 90 and east of U.S. Highway 83, Potter, Stanley, Sully, Tripp east of U.S. Highway 183, Walworth, and Yankton west of U.S. Highway 81), no more than 79 days with daily limits of 1 Canada goose and 1 white-fronted goose through November 13 and no more than 2 Canada geese or 1 Canada goose and 1 white-fronted goose for the remainder of the season.

For dark geese in the remainder of the State, no more than 72 days with a daily limit of 1 Canada goose and 1 white-fronted goose.

For light geese, no more tha 86 days with a daily limit of 5.

Texas: West of U.S. 81, no more than 93 days with a daily limit of 5 geese which may include no more than 2 dark geese.

For dark geese east of U.S. 81, no more than 72 days with a daily limit of 1 Canada goose and 1 white-fronted goose.

For light geese east of U.S. 81, no more than 86 days with a daily limit of 5.

Wyoming: For geese in each of 4 Units that coincide with management zones for ducks, no more than 93 days with daily limits of 2.

Tundra Swans

The following States may issue permits authorizing each permittee to take no more than one tundra swan, subject to guidelines in a current, approved management plan and general conditions that each State determine hunter participation and harvest, and specified conditions as follows:

Montana (Central Flyway portion): no more than 500 permits with the season dates concurrent with the season for taking geese.

North Dakota: no more than 1,000 permits with the season dates concurrent with the season for taking ducks.

South Dakota: no more than 500 permits with the season dates concurrent with the season for taking ducks:

Pacific Flyway

The Pacific Flyway includes Arizona, California, Colorado (west of the Continental Divide), Idaho, Montana (including and to the west of Hill, Chouteau, Cascade, Meagher and Park Counties), Nevada, New Mexico (the Jicarilla Apache Indian Reservation and west of the Continental Divide), Oregon, Utah, Washington and Wyoming (west of the Continental Divide including the Great Divide Basin).

Note.—The Service's final nontoxic shot zones for 1987–88 hunting seasons in Washington have not been approved by the State; therefore, the proposed frameworks document for late seasons will include wording that in effect says that waterfowl and coot hunting will not be authorized in those zones.

Ducks, Coots, Common Moorhens, and Common Snipe

Outside Dates: Between October 3, 1987, and January 10, 1988.

Hunting Seasons:

Seasons may be split into two segments. Concurrent 79-day seasons on ducks (including mergansers), coots, common moorhens (gallinules) and common snipe may be selected except as subsequently noted. In the Oregon counties of Morrow and Umatilla and in Washington all areas lying east of the summit of the Cascade Mountains and east of the Big White Salmon River in Klickitat County, the seasons may be an additional 7 days.

Duck Limits: The basic daily bag limit is 5 ducks, including no more than 4 mallards but only 1 female mallard, 4 pintails but only 1 female pintail, and either 2 canvasbacks or 2 redheads or 1 of each. The possession limit is twice the daily bag limit.

Coot and Common Moorhen (Gallinule) Limits: The daily bag and possession limit of coots and common moorhens is 25 singly or in the aggregate.

Common Snipe Limits: The daily bag and possession limit of common snipe is 8 and 16, respectively.

California—Waterfowl Zones: Season dates for the Colorado River Zone of California must coincide with season dates selected by Arizona. Season dates for the Northeastern and Southern Zones of California may differ from those in the remainder of the State.

Idaho—Duck Zones: Duck season dates for Zone 1 and Zone 2 may differ. Zone 1 includes all lands and waters within the Fort Hall Indian Reservation and Bannock County; Bingham County except that portion within the Blackfoot Reservoir drainage; and Power County east of State Highway 37 and State Highway 39. Zone 2 includes the remainder of the State.

Nevada—Clark County Waterfowl Zone: Season dates for Clark County may differ from those in the remainder of Nevada.

Colorado, Montana, New Mexico and Wyoming—Common Snipe: For States partically within the Flyway a 93-day season for common snipe may be selected to occur between September 1, 1987, and February 28, 1988, and need not be concurrent with the duck season.

Geese (including Brant)

Outside dates, season lengths and limits on geese (including brant): Seasons may be split into two segments. Between October 3, 1987, and January 17, 1988, a 93-day season on geese (except brant in Washington, Oregon and California) may be selected, except as subsequently noted. The basic daily bag and possession limit is 6, provided that the daily bag limit includes no more than 3 white geese (snow, including blue, and Ross' geese) and 3 dark geese (all other species of geese). In Washington and Idaho, the daily bag and possession limits are 3 and 6 geese, respectively. Between October 3, 1987, and January 10, 1988, Washington, Oregon and California may select an open season for brant with daily bag and possession limits of 2 and 4 brant, respectively. Brant seasons may not exceed 16-consecutive days in Washington and Oregon and 30-consecutive days in California and must run concurrent with the duck season.

Aleutian Canada goose closure: There will be no open season on Aleutian Canada geese. Emergency closures may be invoked for all Canada geese should Aleutian Canada goose distribution patterns or other circumstances justify such actions.

California, Oregon, Washington—Cackling Canada goose closure: There will be no open season on the cackling Canada geese in California, Oregon and Washington.

California—Canada goose and dark goose closures: Three areas in California, described as follows, are restricted in the hunting of certain geese:

(1) In the counties of Del Norte and Humboldt there will be no open season for Canada geese.

(2) In the Sacramento Valley in that area bounded by a line beginning at Willows in Glenn County proceeding south on Interstate Highway 5 to the junction with Hahn Road north of Arbuckle in Colusa County; then easterly on Hahn Road and the Grimes-Arbuckle Road to Grimes on the Sacremento River; then southerly on the Sacramento River to the Tisdale By-pass; then easterly on the Tisdale By-pass to where it meets O'Banion Road, then easterly on O'Banion Road to State Highway 99; then northerly on State Highway 99 to its junction with the Gridley-Colusa Highway in Gridley in Butte County; then westerly on the Gridley-Colusa Highway to its junction with the River Road; then northerly on the River Road to the Princeton Ferry; then westerly across the Sacramento River to State Highway 45; then northerly on State Highway 45 to its junction with State Highway 162; then continuing northerly on State Highway 45–162 to Glenn; then westerly on State Highway 162 to the point of beginning in Willows, there will be no open season for Canada geese. In this area, the season on dark geese must end on or before November 30, 1987.

(3) In the San Joaquin Valley in that area bounded by a line beginning at Modesto in Stanislaus County proceeding west on State Highway 132 to the junction of Interstate Highway 5; then southerly on Interstate Highway 5 to the junction of State Highway 152 in Merced County; then easterly on State Highway 152 to the junction of State Highway 59; then northerly on State Highway 59 to the junction of State Highway 99 at Merced; then northerly and westerly on State Highway 99 to the point of beginning; the hunting season for Canada geese will close no later than November 23, 1987.

California (Northeastern Zone)—geese: In the Northeastern Zone of California the season may be from October 10, 1987, to January 10, 1988, except that white-fronted geese may be taken only during October 10 to November 1, 1987. Limits will be 3 geese per day and 6 in possession, of which not more than 1 white-fronted goose or 2 Canada geese shall be in the daily limit and not more than 2 white-fronted geese and 3 Canada geese shall be in possession.

California (Balance of the State Zone)—geese: In the Balance of the State Zone the season may be from October 31, 1987, through January 17, 1988, except that whitefronted geese may be taken only during October 31, 1987, to January 3, 1988. Limits shall be 3 geese per day and in possession, of which not more than 1 may be a dark goose. The dark goose limits may be expanded to 2 provided that they are Canada geese (except Aleutian and cackling Canada geese for which the season is closed).

Western Oregon: In those portions of Coos and Curry Counties lying west of U.S. Highway 101 and that portion of Western Oregon north and west of a line formed by State Highway 126 and Interstate Highway 5, except for designated areas, there shall be no open season on Canada geese. In the remainder of Western Oregon, the season and limits shall be the same as those for the Pacific Flyway, except the seasons in the designated area must end upon attainment of their individual quotas which collectively equal 210 dusky Canada geese. Hunting of Canada geese in those designated areas shall only be by hunters possessing a state-issued permit authorizing them to do so.

Oregon (Lake and Klamath Counties)—geese: In the Oregon counties of Lake and Klamath the season on white-fronted geese will not open until two weeks after the opening date of the general goose season.

Washington and Oregon (Columbia Basin Portions)—geese: In the Washington counties of Adams, Benton, Douglas, Franklin, Grant, Kittias, Klickitat, Lincoln, Walla Walla and Yakima, and in the Oregon counties of Gilliam, Morrow, Sherman, Umatilla, Union, Wallowa and Wasco, the goose season may be an additional 7 days.

Western Washington: In the Washington counties of Island, Skagit, Snohomish, and Whatcom, the season for snow geese may not extend beyond January 1, 1988. In Clark, Cowlitz, Wahkiakum, and Pacific Counties, except for areas to be designated by the State, there shall be no open season on Canada geese. For designated areas the seasons must end upon attainment of individual quotas which collectively will equal 90 dusky Canada geese. Hunting of Canada geese in those designated areas shall only be by hunters possessing a state-issued permit authorizing them to do so.

Idaho, Oregon and Montana—Pacific Population of Canada geese: In that portion of Idaho lying west of the line formed by U.S. Highway 93 north from the Nevada border to Shoshone, thence northerly on Idaho State Highway 75 (formerly U.S. Highway 93) to Challis, thence northerly on U.S. Highway 93 to the Montana border (except Boundary, Bonner, Kootenai, Benewah, Shoshone, Latah, Nez Perce, Lewis, Clearwater and Idaho Counties); in the Oregon counties of Baker and Malheur; and in Montana (Pacific Flyway portion west of the Continental Divide), the daily bag and possession limits are 2 and 4 Canada geese, respectively; and the season for Canada geese may not extend beyond January 3, 1988.

Montana and Wyoming—Rocky Mountain Population of Canada Geese: In Montana (Pacific Flyway portion east of the Continental Divide) and Wyoming the season may not extend beyond January 3, 1988. In Lincoln, Sweetwater and Sublette Counties, Wyoming, the combined special sandhill crane-Canada goose seasons and the regular goose season shall not exceed 93 days.

Idaho, Colorado and Utah: In that portion of Idaho lying east of the line formed by U.S. Highway 93 north from the Nevada border to Shoshone, thence northerly on Idaho State Highway 75 (formerly U.S. Highway 93) to Challis, thence northerly on U.S. Highway 93 to the Montana border; in Colorado; and in Utah, except Washington County, the daily bag and possession limits are 2 and 4 Canada geese, respectively, and the season for Canada geese may be no more than 86 days and may not extend beyond January 3, 1988.

Nevada: Nevada may designate season dates on geese in Clark County and in Elko County and that portion of White Pine County within Ruby Lake National Wildlife Refuge differing from those in the remainder of the State. In Clark County the season on Canada geese may be no more than 86 days. Except for Clark County the daily bag and possession limits are 2 and 4 Canada geese, respectively. In Clark County the daily bag and possession limits are 2 Canada geese.

Arizona, California, Utah and New Mexico: In California, the Colorado River Zone where the season must be the same as that selected by Arizona and the Southern Zone; in Arizona; in New Mexico; and in Washington County, Utah; the season for Canada geese may be no more than 86 days. The daily bag and possession limit is 2 Canada geese except in that portion of California Department of Fish and Game District 22 within the Southern Zone (i.e. Imperial Valley) where the daily bag and possession limits for Canada geese are 1 and 2, respectively.

Tundra Swans

In Utah, Nevada and Montana, an open season for tundra swans may be selected to the following conditions: (a) the season must run concurrently with the duck season; (b) appropriate State agency must issue permits and obtain harvest and hunter participation data;

(c) in Utah, no more than 2,500 permits may be issued, authorizing each permittee to take 1 tundra swan; (d) in Nevada, no more than 650 permits may be issued, authorizing each permittee to take 1 tundra swan in either Churchill, Lyon, or Pershing Counties; (e) in Montana, no more than 500 permits may be issued authorizing each permittee to take 1 tundra swan in either Teton or Cascade Counties.

Special Falconry Frameworks

Extended Seasons: Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29(k). These States may select an extended season for taking migratory game birds in accordance with the following:

Framework Dates: Seasons must fall within the regular and any special season framework dates.

Daily Bag and Possession Limits: Daily bag and possession limits for all permitted migratory game birds shall not exceed 3 and 6 birds, respectively, singly or in the aggregate, during both regular hunting season and extended falconry seasons.

Regulations Publication: Each State selecting the special season must inform the Service of the season dates and publish said regulations.

Regular Seasons: General hunting regulations, including seasons, hours, and limits, apply to falconry in each State listed in 50 CFR 21.29(k) which does not select an extended falconry season.

Note.—In no instance shall the total number of days in any combination of duck seasons (regular duck season, sea duck season, September teal season, special scaup season, special scaup and goldeneye season or falconry season) exceed 107 days for a species in one geographical area.

Date: August 12, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87-18701 Filed 8-13-87; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 52, No. 157
Friday, August 14, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

Change of Mailing Address for the Federal Grain Inspection Service

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice serves to advise all interested parties of a change in the official mailing address for the Washington, DC, offices of the Federal Grain Inspection Service.

EFFECTIVE DATE: August 17, 1987.

FOR FURTHER INFORMATION CONTACT: Gerald Mainer, USDA/APHIS/Administrative Services Division/Information Management Branch, Room No. 0094–S, P.O. Box 96464, Washington, DC, 20090–6464. Telephone (202) 447–5306.

SUPPLEMENTARY INFORMATION: The Federal Grain Inspection Service (FGIS) has established a new official mailing address for the Washington, DC, offices. A post office box was established to provide more economical and efficient mail services. The post office box conversion will preserve and protect the security of all mail from unauthorized opening, inspection, or reading of contents or covers, tampering, delay, or other unauthorized acts.

Any interested party, intending to mail to FGIS offices located in Washington, DC, should use the new post office box address.

New official mailing address:

USDA/FGIS/(Name of Division and Office) (Room Number), P.O. Box 96454, Washington, DC 20090–6454

Old mailing address:

USDA/FGIS/(Name of Division and Office) (Room Number), 1400 Independence Avenue, SW., Washington, DC 20250

Dated: August 11, 1986.

W. Kirk Miller,

Administrator.

[FR Doc. 87–18613 Filed 8–13–87; 8:45 am]

BILLING CODE 3410–EN–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–704]

Initiation of Antidumping Duty Investigation; Brass Sheet and Strip From Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are intitating an antidumping duty investigation to determine whether imports of brass sheet and strip from Japan are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before September 3, 1987. If that determination is affirmative, we will make a preliminary determination on or before December 28, 1987.

EFFECTIVE DATE: August 14, 1987.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377–1769.

SUPPLEMENTARY INFORMATION:

The Petition

On July 20, 1987, we received a petition filed in proper form by American Brass, Bridgeport Brass Company, Chase Brass and Copper Company, Hussey Copper, Ltd., The Miller Company, Olin Corporation, Revere Copper Products, Inc., The International Association of Machinists and Aerospace Workers International Union, Allied Industrial Workers of America (AFL–CIO), Machanics Educational Society of America (Local 56), and United Steel Workers of America (AFL–CIO/CLC) on behalf of U.S. producers of brass sheet and strip. In compliance with the filing requirements of 19 CFR 353.36, petitioners allege that imports of brass sheet and strip from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

Petitioners based United States price on actual sales and offers made by Japanese manufacturers and on monthly average unit values of Japanese imports derived from the Census Bureau's import statistics. Petitioners made deductions for Japanese inland freight and insurance, credit expenses, ocean freight and marine insurance, U.S. Customs duties and U.S. inland freight.

Petitioners based foreign market value on actual transaction prices in Japan. Petitioners deducted Japanese inland freight and made adjustments for physical differences in merchandise. Packing costs incurred on sales to the U.S. were added to foreign market value.

Based on this method of comparison, petitioners allege dumping margins ranging from 14.04 to 57.95 percent.

Inititation of Investigation

Under seciton 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioners supporting the allegations.

We examined the petition on brass sheet and strip from Japan and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of brass sheet and strip from Japan are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by December 28, 1987.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. The U.S. Congress is considering legislation to convert the United States to this Harmonized System (HS) by January 1, 1988. In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated (TSUSA)* item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending congressional approval. As with the *TSUSA*, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the *TSUSA* item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consulation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs officers have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are brass sheet and strip, other than leaded brass and tin brass sheet and strip, currently provided for under *TSUSA* item numbers 612.3960, 612.3982 and 612.3986 and currently classifiable under HS item numbers 74092100-50, 74092100-75, 74092900-50, and 74092900-75.

The chemical composition of the products under investigation are currently defined in the Copper Development Association (C.D.A.) 200 series or the Unified Numbering System (U.N.S.) C20000 series. Products whose chemical composition are defined by other C.D.A. or U.N.S. series are not covered by this investigation.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by September 3, 1987, whether there is a reasonable indication that imports of brass sheet and strip from Japan materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

August 10, 1987.

[FR Doc. 87-18616 Filed 8-13-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-021]

Final Results of Antidumping Duty Administrative Review; Cell-Site Transceivers and Related Subassemblies From Japan

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On June 16, 1987 the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on cell-site transceivers and related subassemblies from Japan. The review covers one manufacturer/exporter of this merchandise to the U.S. and the period June 12, 1984 through December 31, 1985.

We gave interested parties an opportunity to comment on our preliminary results. We received a comment from Mitsubishi Electric Company ("MELCO"). We also have revised our calculations to include certain shipments by the one manufacturer/exporter.

EFFECTIVE DATE: August 14, 1987.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or John Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5505/3601.

SUPPLEMENTARY INFORMATION:

Background

On June 16, 1987, the Department of Commerce published in the **Federal Register** (52 FR 22832) the preliminary results of its administrative review of the antidumping duty order on cell-site transceivers and related subassemblies from Japan. The Department has now completed the administrative review in accordance with section 751 of the Tariff Act of 1930 ("The Tariff Act").

Scope of the Review

Imports covered by the review are cell-site transceivers and related subassemblies as provided for in items 685.2810 and 685.2820 of the Tariff Schedules of the United States Annotated. Cell-site transceivers and related subassemblies are part of the radio frequency (RF) equipment in the base station of a cellular radio communications system. This single-package RF equipment functions as a locating receiver and provides simultaneous two-way voice and data communications between the base station and the subscriber's mobile telephone by using different frequencies to transmit and receive. Subassemblies are an assemblage of parts dedicated for use in cell-site transceivers as defined above. The review covers one known manufacturer/exporter, Kokusai Electric Co., Ltd. ("Kokusai"), and the period June 12, 1984 through December 31, 1985.

Analysis of Comment Received

We gave interested parties an opportunity to comment on the preliminary results. We received a comment from MELCO.

MELCO argues that the Department incorrectly assigned a cash deposit rate of 59.94 percent in its shipments, since MELCO was not covered in any prior review or in the fair value investigation. MELCO further notes that, since the Department has already determined that the channel units it exported to the United States during the review period are outside the scope of the order, it is inappropriate to assign a cash deposit rate for MELCO.

Department's Position

We agree. The Department has determined not to cover MELCO in this review because it did not export merchandise covered by the order to the United States. Should Melco begin exporting the covered merchandise to the United States, we shall treat MELCO as a new exporter.

Final Results of Review

We revised our original calculations to include certain shipments by Kokusai, sold prior to the review period but entered after the date of suspension of liquidation by Customs.

As a result of our review of the comment received and our original

calculations, we determine that a weighted-average margin of 0.08 percent exists for Kokusai for the period June 12, 1984 through December 31, 1985.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States prices and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Since the margin for Kokusai is less than 0.5 percent and, therefore, *de minimis* for cash deposit purposes, the Department shall not require a cash deposit for this firm.

For any entries from a new exporter not covered by this review, whose first shipments occurred after December 31, 1985 and who is unrelated to the reviewed firm, no cash deposit shall be required. This deposit requirement is effective for all shipments of Japanese cell-site transceivers and related subassemblies entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Date: August 6, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 87-18619 Filed 8-13-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-007]

Final Results of Antidumping Duty Administrative Review, High-Capacity Pagers From Japan

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On December 5, 1986, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on high-capacity pagers from Japan. The review covers two manufacturers and/or exporters of this merchandise exported to the United States and the period September 1, 1983 through July 31, 1985. There were no known shipments of this merchandise to the United States by the two firms during the period and there are no known unliquidated entires.

We gave interested parties an opportunity to comment on the preliminary results. We received comments from NEC Corporation ("NEC"), Matsushita Communications Industrial Co., Ltd. ("MCI"), and Motorola, Inc. We will postpone addressing these comments in detail or issuing any clarification of the scope of the antidumping duty order on high-capacity pagers from Japan until the perliminary determination for the fourth administrative review.

EFFECTIVE DATE: August 14, 1987.

FOR FURTHER INFORMATION CONTACT: Dionne C. Clloway or David P. Mueller, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-1130/0647.

SUPPLEMENTARY INFORMATION:

Background

On December 5, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 43942) the preliminary result of its administrative review of the antidumping duty order on high-capacity pagers from Japan (48 FR 37058, August 16, 1983). Motorola, Inc., the petitioner, requested this administrative review in accordance with § 353.53a(a) of the Commerce Regulations. The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Act").

Scope of the Review

Imports covered by the review are shipments of certain Japanese high-capacity pagers ("pagers") from Japan. For the purpose of this review, the term "high-capacity pagers" covers tone-only paging signal receivers, 3,000 or more of which can be operated in a paging system on a single radio frequency channel.

This encompasses all tone-only high-capacity pagers regardless of tariff classification. The Department intends to fully clarify the scope of the order and to subsequently issue a scope ruling in our next review. Will make a second attempt to obtain specific information from the respondents concerning their overseas and domestic pager operations and concerning the characteristics of the pager exports subject to the antidumping dumping duty order. Pending a determination as to whether incomplete pagers are included in this order, we are directing the United States Customs Service to continue to suspend liquidation of all entries of high-capacity pagers whether in the form of subassemblies or component parts (incomplete pagers), that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We shall direct the Customs Service not to require a cash deposit on incomplete pagers. This suspension of liquidation will remain in effect until further notice.

The review covers two manufacturers and/or exporters of Japanese high-capacity pagers exported to the United States and the period September 1, 1983 through July 31, 1985.

Analysis of Comments Received

We gave interested parties the opportunity to comment on the preliminary results in accordance with § 353.53a(c) of the Commerce Regulations. The petitioner (Motorola, Inc.) and both respondents, NEC Corporation ("NEC") and Matsushita Communications Industrial Co. ("MCI"), submitted comments. All of these comments were directed to the issue of whether pager components and subassemblies are properly subject to this order. The Department has determined that it currently lacks sufficient information on which to make such a determination. Accordingly, we intend to make another attempt to obtain the necessary information from the respondents and to issue a scope ruling in the next review. At that time, we will analyze and address all of the positions of the parties as presented in their briefs.

Final Results of Review

As a result of the comments received, we determine that the following margins exist for the period September 1, 1983 through July 31, 1985 for tone-only pagers:

Manufacturer/Exporter	Margin (percent)
Matsushita Communications Industrial Co., Ltd.	[1] 109.00
NEC Corporation	[1] 70.35

[1] No shipments during the period.

As provided in section 751(a)(1) of the Act, a cash deposit of estimated antidumping duties based on the above margins shall be required for these firms.

For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after July 31, 1985 and who is unrelated to any reviewed firm, a cash deposit of

89.97 percent shall be required. These deposit requirements are effective for all shipments of certain Japanese high-capacity pagers entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

August 7, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 87-18620 Filed 8-13-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-401]

Preliminary Results of Antidumping Duty Administrative Review; Calcium Hypochlorite From Japan

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by the petitioner and two manufacturers/exporters, the Department of Commerce has conducted an administrative review of the antidumping duty order on calcium hypochlorite from Japan. The review covers three manufacturers and/or exporters of this merchandise to the United States and the period October 9, 1984 through March 31, 1986. The review indicates the existence of dumping margins during the period.

As a result of the review, the Department has preliminarily determined to assess antidumping duties equal to the calculated differences between United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 14, 1987.

FOR FURTHER INFORMATION CONTACT: Edward Haley or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5289/5255.

SUPPLEMENTARY INFORMATION:

Background

On April 18, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 15470) the antidumping duty order on calcium hypochlorite from Japan.

The petitioner and two manufacturers/exporters requested in accordance with § 353.53(a) of the Commerce Regulations that we conduct an administrative review. We published a notice of initiation of antidumping duty administrative review on May 20, 1986 (51 FR 18475). As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS") by January 1, 1988. In view of this, we will be providing both the appropriate HS and *Tariff Schedules of the United States Annotated* ("TSUSA") item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact Import Specialists at their local Customs offices to consult the schedule.

Imports covered by the review are shipments of calcium hypochlorite, currently classifiable under TSUSA item 418.2200. This product is currently classifiable under HS item number 2828.10.00.00.

The review covers three manufacturers and/or exporters of Japanese calcium hypochlorite to the United States and the period October 9, 1984 through March 31, 1986.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act. Purchase price was based on the packed ex-go-down, FOB Japanese port, or U.S. duty-paid delivered price to either the first unrelated purchaser in the United States or an unrelated Japanese trading company for export to the United States. We made adjustments, where applicable, for foreign inland freight, brokerage, handling and inland insurance, ocean freight, marine insurance, U.S. duties, brokerage, and inland freight and insurance. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Home market price was based on the packed delivered-to-warehouse, C & F, FOB, or FOB plant price to unrelated purchasers in the home market. Where applicable, we made adjustments for inland freight and insurance, credit, packing, advertising and sales promotion, commissions to unrelated parties, and indirect selling expenses to offset commissions paid in one market and not in the other.

We made an adjustment for differences in physical characteristics when comparing 65 percent granular calcium hypochlorite sold in the U.S. to the 70 percent granular product sold in Japan and when we compared granular calcium hypochlorite to the product in tablet form; however, we disallowed one claim for a difference in physical characteristics because the claim was based on an allocation of total production costs rather than the cost of materials, labor and direct factory overhead. No other adjustments were claimed or allowed.

Preliminary Results of Review

As a result of our comparison of United States price to foreign market value, we preliminarily determined that the following weighted-average margins exist during the period October 9, 1984 through March 31, 1986:

Manufacturer/Exporter	Margin (percent)
Nissin Denka Co., Ltd.	0.27
Nippon Soda Co., Ltd.	0
Nankai Chemical Industry Co., Ltd.	0

Interested parties may request disclosure and/or an administrative protective order within 5 days after the date of publication of this notice. Any requests for a hearing must be made within 8 days after the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday thereafter. Interested parties may also submit written comments on these preliminary results within 30 days after the date of publication. The Department will publish the final results of the administrative review including the

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results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, since the only margin is less than 0.50 percent and therefore *de minimis* for cash deposit purposes, no cash deposit shall be required for the firms. For any future shipment from the remaining manufacturers and/or exporters not covered in this review, a cash deposit shall be required at the rate published in the antidumping duty order for all other firms. For any future entries of this merchandise from a new exporter, whose first shipments occurred after March 31, 1986 and who is unrelated to any reviewed firm, no cash deposit shall be required. These deposit requirements are effective for all shipments of Japanese calcium hypochlorite entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Date: August 6, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 87-18618 Filed 8-13-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-421-701]

Initiation of Antidumping Duty Investigation; Brass Sheet and Strip From The Netherlands

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of brass sheet and strip from The Netherlands are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before September 3, 1987. If that determination is affirmative, we will make a preliminary determination on or before December 28, 1987.

EFFECTIVE DATE: August 14, 1987.

FOR FURTHER INFORMATION CONTACT: John Brinkmann, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-3965.

SUPPLEMENTARY INFORMATION:

The Petition

On July 20, 1987, we received a petition in proper form by American Brass, Bridgeport Brass Company, Chase Brass and Copper Company, Hussey Copper, Ltd., The Miller Company, Olin Corporation, Revere Copper Products, Inc., The International Association of Machinists and Aerospace Workers, International Union, Allied Industrial Workers of America (AFL-CIO), Mechanics Educational Society of America (Local 56), and United Steelworkers of America (AFL-CIO/CLC), on behalf of U.S. producers of brass sheet and strip. In compliance with the filing requirements of 19 CFR 353.36, petitioners allege that imports of brass sheet and strip from The Netherlands are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

United States Price and Foreign Market Value

United States purchase price was based on actual sales and offers made by Granges, and on monthly average unit values of Dutch imports, derived from the Census Bureau's import statistics. Petitioners deducted, where appropriate, Dutch inland freight, ocean freight and marine insurance, discounts, sales commissions, U.S. Customs duties and U.S. inland freight.

Petitioners based foreign market value on their best estimate of the constructed value of Dutch brass sheet and strip which was based upon the U.S. brass sheet and strip industry's cost experience. To the sum of materials and fabrication costs, petitioners added the statutory minima of ten and eight percent for general expenses and profit, respectively. Petitioners also added the costs of U.S. packing.

Based upon a comparison of United States price and foreign market value, petitioners allege dumping margins of between 1.97 and 32.48 percent.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioners supporting the allegations.

We examined the petition on brass sheet and strip from The Netherlands and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of brass sheet and strip from The Netherlands are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by December 28, 1987.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. The U.S. Congress is considering legislation to convert the United States to this Harmonized System (HS) by January 1, 1988. In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated (TSUSA)* item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the *TSUSA*, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the *TSUSA* item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all Customs officers have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are brass sheet and strip, other than leaded brass and tin brass

and strip, currently provided for under the *TSUSA* item numbers 612.3960, 612.3982, and 612.3986, and currently classifiable under HS item numbers 74092100–50, 74092100–75, 74092900–50, and 74092900–75.

The chemical compositions of the products under investigation are currently defined in the Copper Development Association (C.D.A.) 200 series or the Unified Numbering System (U.N.S.) C20000 series. Products whose chemical compositions are defined by other C.D.A. or U.N.S. series not covered by this investigation.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, privided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by September 3, 1987, whether there is a reasonable indication that imports of brass sheet and strip from The Netherlands materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

August 10, 1987.

[FR Doc. 87–18617 Filed 8–13–87; 8:45 am]

BILLING CODE 3510–DS–M

[A–475–603; A–479–601]

Antidumping Duty Orders; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From Italy and Yugoslavia

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: In separate investigations concerning tapered roller bearings and parts thereof, finished or unfinished (tapered roller bearings), from Italy and Yugoslavia, the United States Department of Commerce (the Department) and the United States International Trade Commission (the ITC) have determined that tapered roller bearings from Italy and Yugoslavia are being sold at less than fair value and that sales of tapered roller bearings from Italy and Yugoslavia are materially injuring a United States industry. The ITC ruled that critical circumstances do not exist with regard to tapered roller bearings from Italy.

Therefore, based on these findings, we will discontinue suspension of liquidation of all entries 90 days prior to our preliminary determination with respect to imports from Italy. Suspension of liquidation will begin for all unliquidated entries, or warehouse withdrawals, for consumption of tapered roller bearings from Italy made on or after February 6, 1987, the date on which the Department published its preliminary determination notices in the **Federal Register**. These entries will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption on or after the date of publication of this antidumping duty order in the **Federal Register**.

EFFECTIVE DATE: August 14, 1987.

FOR FURTHER INFORMATION CONTACT: Charles Wilson (202) 377–5288 or Karen DiBenedetto (202) 377–1776 (Italy), Mary S. Clapp (202) 377–1769 or Judith Nehring (202) 377–0160 (Yugoslavia), Office of Investigations, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, 20230.

SUPPLEMENTARY INFORMATION: The products covered by this investigation are tapered roller bearings currently classified under *Tariff Schedules of the United States* (TSUS) item numbers 680.30 and 680.39; flange, take-up cartridge, and hanger units incorporating tapered roller bearings currently classified under TSUS item number 681.10; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use, and currently classified under TSUS item number 692.32 or elsewhere in the TSUS.

In accordance with section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b), on February 2, 1987, the Department made its preliminary determinations that there was reason to believe or suspect that tapered roller bearings from Italy and Yugoslavia were being sold at less than fair value (52 FR 3835, 3840, February 6, 1987). On June 22, 1987, the Department made its final determinations that these imports were being sold at less than fair value (52 FR 24196, 24200, June 29, 1987) and that critical circumstances did exist with respect to imports from Italy.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department directs United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of tapered roller bearings from Italy and Yugoslavia. These antidumping duties will be assessed on all unliquidated entries of tapered roller bearings entered, or withdrawn from warehouse, for consumption on or after February 6, 1987, the date on which the Department published its preliminary determinations.

On and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margin of 124.75 percent for Italy and 33.61 percent for Yugoslavia.

This determination constitutes an antidumping duty order with respect to tapered roller bearings from Italy and Yugoslavia, pursuant to section 736 of the Act (19 U.S.C. 1673e) and 19 CFR 353.48. We have deleted from the Commerce Regulations, Annex I of 19 CFR Part 353, which listed antidumping duty findings and orders currently in effect. Instead, interested parties may contact the Central Records Unit, Room B–099, Import Administration, for copies of the updated list of orders currently in effect.

This notice is published in accordance with section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48).

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

August 10, 1987.

[FR Doc. 87–18621 Filed 8–13–87; 8:45 am]

BILLING CODE 3510–DS–M

[Case No. OEE-3-86]

Order Renewing Temporary Denial of Export Privileges; Bollinger, GmbH, et al.

In the matter of: Bollinger GmbH Roseggergasse 34, 1160 Vienna, Austria; Dietmar Ulrichshofer with addresses at Kirchenstrasse 1, 3061 Ollersbach, Austria; and c/o Bollinger GmbH Roseggergasse 34, 1160 Vienna, Austria; and Vrablicz and Company, Steinergasse 11, 1170 Vienna, Austria; Respondents.

The Office of Export Enforcement, International Trade Administration, United States Department of Commerce (Department), pursuant to the provisions of section 388.19 of the Export Administration Regulations, 15 CFR Parts 368 through 399 (1986) (the Regulations), issued pursuant to the Export Administration Act of 1979, 50 U.S.C. app. sections 2401 through 2420 (1982), as amended by the Export Administration Amendments Act of 1985, Pub. L. 99-64, 99 Stat. 120 (July 12, 1985) (the Act), has asked the Deputy Assistant Secretary for Export Enforcement to renew an order temporarily denying all United States export privileges to Dietmar Ulrichshofer; Bollinger GmbH, which is owned by Dietmar Ulrichschofer; Leopold Hrobsky; and, Vrablicz and Company (hereinafter collectively referred to as respondents). Ulrichshofer, who is subject to an outstanding indictment in the U.S. District Court for the Central District of California for conspiracy to violate U.S. export controls and is a fugitive from U.S. justice, resides in Ollersbach, Austria; all of the other respondents reside in Vienna, Austria.[1] The initial order was issued on August 12, 1986 (51 FR 29509, August 18, 1986) and renewed on October 11, 1986 (51 FR 37210, October 20, 1986), December 10, 1986 (51 FR 44655, December 11, 1986) February 8, 1987 (52 FR 4632, February 13, 1987) and April 9, 1987 (52 FR 12576, April 17, 1987) and June 8, 1987 (52 FR 22665, June 15, 1987).

In its renewal request dated July 19, 1987 and appended on July 30, 1987, the Department states that, as a result of an ongoing investigation, it has reason to believe that respondents have conspired and acted in concert to violate the Act and the Regulations. The Department has reason to believe that the purpose of the conspiracy is to obtain U.S.-origin goods from third countries for ultimate destination in proscribed countries, without obtaining the required authorization from the Department for such shipments. The Department has reason to believe that respondents have participated in the unauthorized reexport of U.S.-origin commodities, including computer equipment and peripherals, from Austria to proscribed destinations, without authorization from the Department.

While the U.S. Customs Service has not offered any new evidence since the last renewal request, Customs has informed the Department that the investigation is still ongoing. Based on the information contained in the initial request and the subsequent renewal requests, the Department believes that the general circumstances surrounding the past activities of Bollinger and its owner, Ulrichshofer, Vrablicz, and Hrobsky establish that the violations under investigation are significant, deliberate, covert, and likely to occur again, unless appropriate action is taken to reduce the likelihood that they can continue to acquire U.S.-origin goods from the United States and abroad.

In the case of Vrablicz, the Department provides evidence that the investigation is on-going and that the U.S. Customs Attache has offered to meet with the respondent to discuss matters under investigation. It further provides a letter from Vrablicz allegedly refusing to cooperate further in this investigation. Given that the past activities of Vrablicz under investigation have not been fully explained, and in light of Vrablicz's acknowledgement of trade with the Soviet bloc, the Department believes the general circumstances of this case establish that it is appropriate to take action to reduce the likelihood that Vrablicz can continue to acquire U.S.-origin goods from the United States and abroad.

The Department submits that renewal of the temporary denial order naming all respondents is necessary for the purpose of giving notice to companies in the United States and abroad to cease dealing with respondents in goods and technical data subject to the Act and the Regulations in order to reduce the likelihood that respondents will continue to engage in activities which are in violation of the Act and the Regulations.

With regards to respondent Hrobsky, an opposition to renewal dated July 29, 1987 was submitted in a timely fashion.[2] The most recent renewal of the temporary denial order, signed June 8, 1987, offered the Department the opportunity to judge the degree of responsiveness shown by the respondent's earlier submission of May 18, 1987. In that submission, the respondent provided answers to questions posed by the Customs Attache on April 2, 1987. While I could not independently judge the adequacy of these responses, I indicated in the June 8 renewal order that if the Customs Attache were to indicate satisfaction with the responses, I would entertain a request to terminate the renewal with respect to Hrobsky. If the responses were inadequate, I requested that the Customs Attache so state, if non-cooperation were to be relied on as a basis for further renewal of the order.

The Department's request for renewal contained no mention of the issue of cooperation by this respondent nor did it attempt to assess the adequacy of the responses to its earlier questionnaire, despite my specific request in this regard. Furthermore, neither the Department nor Customs has made any substantive showing of a continuing investigation subsequent to the issuance of the most recent renewal of the order, despite the fact that the Department claims this respondent continues to pose a threat of imminent violation.

A respondent's non-cooperation alone does not suffice as a justification for renewal of a temporary denial order, and the government does not specifically claim this as a basis for renewal in this case. However, a respondent's attempt to cooperate is relevant when there is a question of whether the "state of mind" of the respondent is such that it indicates the cooperating party, despite possible previous involvement in an alleged violation, shows no propensity to engage in future illegal export or reexport activities.

The most recent submission by Hrobsky reiterates its responses to the U.S. Customs Attache's questions. While I still cannot judge the adequacy of these responses, the record before me does contain *indicia* of cooperation, which is not disputed by the Department.

Independent of the question of cooperation and the respondent's "state of mind," the record does not show that an investigation is on-going with respect to this respondent. Given my request

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[1] Werner Bruchhausen, a co-defendant named in the indictment along with Ulrichshofer, was recently convicted and sentenced in May 1987 to a substantial term of imprisonment, by the U.S. District Court, Los Angeles, California in connection with some of the export control violation activities underlying the Ulrichshofer indictment.

[2] That submission also contained a request that a hearing relating to this matter be held pursuant to § 388.19(d)(2) of the Regulations. A hearing date was offered to the respondent, who subsequently withdrew the request, although leaving open the possibility of requesting such a hearing at a later date, if, in fact, the order was renewed with respect to Hrobsky.

that the Department assess the degree of responsiveness of the respondent, and the respondent's showing of responsiveness (including an offer to sign an affidavit to attest to the truthfulness of his statements),[3] it is unclear why no new comments or arguments have been offered by the Department concerning the allegations involving Hrobsky. Notwithstanding the affidavit offered by the Department making a general conclusory statement that the investigation is on-going, no specific investigative action relating to this respondent is evident on the record beyond what was undertaken prior to the issuance of the June 8 renewal order. I can only conclude that if Hrobsky does indeed pose an imminent threat, despite his arguments to the contrary, and that if the Customs investigation as to him is in fact continuing actively, the Department would have made a specific showing to this effect.

Therefore, given that the record does not support a continuing belief that Hrobsky poses a threat of imminent violation of the Act or the Regulations, his name is not included in this renewal.

In the case of respondent Vrablicz, an opposition to renewal dated July 21, 1987 was filed with the Deputy Assistant Secretary in a timely fashion. In the most recent renewal of the temporary denial order, I indicated that ownership of or "responsibility" for the goods under investigation appears to be central to the Department's case. I suggested that if the respondent made a direct showing that it was not the owner of the goods nor was it responsible for their disposition, the question of imminent threat would have to be reassessed.

Vrablicz makes no such showing in its most recent submission nor is such showing contained in its letter to the U.S. Customs Attache of May 26, 1987 which was submitted for the records as Exhibit Three of the Department's request for renewal. In the record, the only showing Vrablicz has made is that Austrian law regarding freight forwarders neither obliges the freight forwarder to examine the goods for any hindrances to the shipments (including import or export restrictions) nor make the freight forwarder liable for the consequences of incorrect or incomplete information with regard to the shipment.[4] While Vrablicz may have satisfied Austrian legal requirements, this does not mean it has not violated U.S. export law or regulations nor does it in any way show that Vrablicz did not in fact own or have responsibility for the goods under investigation. Therefore, the factual question of ownership and control for disposition remains unanswered.

Moreover, which the Department has questioned the adequacy of previous cooperation offered by Vrablicz, it now goes on to show Vrablicz's refusal to meet with U.S. government officials. The Department also asserts that Vrablicz has, in fact, refused to cooperate further in the investigation.

The record shows that the respondents has made noticeable effort to cooperate, although that cooperation has not been deemed sufficient by the Department. The Department's arguments not withstanding, it does not appear to be the case that Vrablicz has completely refused future cooperation, but rather that it would no longer deal with a particular government official, while leaving open the possibility of "new trust agreement contracts." [5] This, and previous statements by Vrablicz, appears to indicate that cooperation has previously been given and leaves open the possibility of renewing cooperation under the appropriate circumstances.

I wish to make it clear that a conflict of personalities is no justification for non-cooperation; on the other hand, as stated previously, non-cooperation alone is not a sufficient basis to justify renewal of a temporary denial order. However, as stated above, the showing of cooperation could be relevant to the need for a temporary denial order where this provides a showing that the "state of mind" of the respondent indicates there is no propensity for an imminent violation.

In this case, further cooperation may be forthcoming. The offer by the U.S. Customs Attache to include another U.S. government official should adequately accommodate the concerns raised by Vrablicz regarding its previous dealings in this matter, if in fact Vrablicz has a good faith desire to cooperate. Also, until a clear statement from the respondent indicates whether Vrablicz owned or was responsible for the shipment under investigation, the question of responsibility remains unanswered. From the record it appears that the respondent has been purposefully avoiding directly responding to the question of ownership and responsibility. Therefore, I agree with the Department that the circumstances as reflected by the record as a whole relating to Vrablicz make it appropriate to renew the temporary denial order with respect to this respondent.

No opposition was received from any other respondent. Therefore, based on the showing by the Department, I find that renewal of the order temporarily denying export privileges to respondents Ulrichshofer, Bollinger and Vrablicz is necessary in the public interest to prevent an imminent violation of the Act and the Regulations and to give notice to companies in the United States and abroad to cease dealing with respondents in goods and technical data subject to the Act and the Regulations in order to reduce the substantial likelihood that respondents will continue to engage in activities which are in violation of the Act and the Regulations.

Accordingly, it is hereby ordered,

I

All outstanding validated export licenses in which any respondent appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation.

II

The respondents, their successors or assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported or to be exported from the United States in whole or in part, or that are otherwise subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participating, directly or indirectly, in any manner or capacity: (a) As a party or as a representative of a party to any export license application submitted to the Department, (b) in preparing or filing with the Department any export license application or reexport authorization, or any document to be submitted therewith, (c) in obtaining or using any validated or general export license or other export control document, (d) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported, and (e) in financing, forwarding, transporting, or

[3] Per his May 18, 1987 submission in opposition to renewal of the temporary denial order.

[4] Per the submission of Dr. Ronald Rast, attorney on behalf of Vrablicz, to DAS Theodore W. Wu dated August 28, 1987.

[5] From an informal translation of Vrablicz's May 26, 1987 letter to Customs Attache Urbanski, submitted as exhibit 3 of the Department's request for renewal.

other services of such commodities or technical data. Such denial of export privileges shall extent only to those commodities and technical data which are subject to the Act and the Regulations.

III

After notice and opportunity for comment, such denial may be made applicable to any person, firm, corporation, or business organization with which any respondent is now or hereafter may be related to affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

IV

No person, firm, corporation, partnership or other business organization, whether in the United States of elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any respondent or any related party, or whereby any respondent or any related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any respondent or any related party denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States.

V

In accordance with the provisions of Section 388.19(e) of the Regulations, any respondent may, at any time, appeal this order by filing with the Office of the Administrative Law Judges, U.S. Department of Commerce, Room H–6716, 14th Street and Constitution Avenue, NW., Washington, DC 20230, a full written statement in support of the appeal.

VI

This order is effective August 7, 1987, and shall remain in effect for 60 days.

VII

In accordance with the provisions of § 388.19(d) of the Regulations, the Department may seek renewal of this temporary denial order by filing a written request not later than 20 days before the expiration date. Any respondent may oppose any request to renew this temporary denial order by filing a written submission with the Deputy Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date of this order.

A copy of this order shall be served upon each respondent and published in the Federal Register.

Date: August 7, 1987.

Theodore W. Wu,

Deputy Assistant Secretary for Export Enforcement.

[FR Doc. 87–18585 Filed 8–13–87; 8:45 am]

BILLING CODE 3510-DT-M

[C–614–501]

Low-Fuming Brazing Copper Rod and Wire From New Zealand; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department has conducted an administrative review of the countervailing duty order on low-fuming brazing copper rod and wire from New Zealand. We preliminarily determine the total bounty or grant to be 13.55 percent *ad valorem* for the period May 23, 1985 through July 31, 1985 and 9.06 percent *ad valorem* for the period August 1, 1985 through July 31, 1986. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: August 14, 1987.

FOR FURTHER INFORMATION CONTACT: Lorenza Olivas or Bernard Careau, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202 377–2786).

SUPPLEMENTARY INFORMATION:

Background

On August 5, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 31638) the final affirmative countervailing duty determination and countervailing duty order on low-fuming brazing copper rod and wire from New Zealand. On August 28, 1986, the respondent, McKechnie Bros. (N.Z.) Ltd., requested in accordance with 19 CFR 355.10 an administrative review of the order. We published the initiation on September 16, 1986 (51 FR 32817). The Department has now conducted that administrative review in accordance with section 751(a) of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to the Harmonized System ("HS") by January 1, 1988. In view of this, we will be providing both the appropriate Tariff Schedules of the United States Annotated ("TSUSA") item numbers and the appropriate HS item numbers with out product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are shipments of New Zealand low-fuming brazing copper rod and wire, principally of copper and zinc alloy ("brass"), of varied dimension in terms of diameter, whether cut-to-length or coiled, whether bare or flux-coated. The chemical composition of the products under investigation is defined by Copper Development Association standards 680 and 681. Such merchandise is currently classifiable under items 612.6205, 612.7220 and 653.1500 of the TSUSA. These products are currently classifiable under HS item numbers 7407.2150, 7408.2100, 8311.1000, and 8311.3060. We invite comments from all interested parties on these HS classifications.

The review covers the period May 23, 1985 through July 31, 1986 and 16 programs. McKechnie Metal Products Limited ("MMP") was the only known exporter of low-fuming brazing copper

wire and rod ("LFB") to the United States during the period of review.

Analysis of Programs

(1) EMDTI

Under the Export Market Development Taxation Incentive ("EMDTI"), established in the 1979 Amendment to the Income Tax Act of 1976, exporters may receive tax credits for a certain percentage of their export market development expenditures. Qualifying expenditures include those incurred principally for seeking and developing new markets, retaining existing markets, and obtaining market information. During the period of review, the tax credit was 67.5 percent of the total qualifying expenditures. An exporter who takes advantage of this tax credit may not deduct the qualifying expenditures as ordinary business expenses in calculating taxable income. Because the program is limited to exporters, we preliminarily determine that it confers a bounty or grant. MMP claimed EMDTI tax credits on LFB exports to the United States on its tax returns filed in the years covered by the review period.

To calculate the benefit, we compared the value of claiming 67.5 percent of the expenditures as a tax credit to deducting those expenditures as ordinary business expenses. The normal corporate tax rate in New Zealand during the period of review was 45 percent. Since exporters may claim a tax credit of 67.5 percent but may not deduct the expenditures in calculating taxable income, the net benefit to the exporters is 22.5 percent of the qualifying expenditures. Therefore, we took 22.5 percent of MMP's qualifying expenditures relating to LFB exports to the United States and allocated that amount over the f.o.b. value of exports of this merchandise to the United States during the period of review. On this basis, we preliminarily determine the benefit from this program to be 0.24 percent *ad valorem* for the period May 23, 1985 through July 31, 1985 and 0.39 percent *ad valorem* for the period August 1, 1985 through July 31, 1986.

(2) EPTI

Under the Export Performance Taxation Incentive ("EPTI"), exporters are entitled to receive a tax credit based on the f.o.b. value of qualifying goods exported under Section 156A of the Income Tax Act of 1976. Credits are available as a deduction agaisnt income tax payable. If the tax credit exceeds the income tax payable, the taxpayer receives the difference in cash.

The rate of the tax credit depends on the predetermined value-added category into which the product falls. LFB falls under category C, for which the corresponding rate was 9.1 percent in the period of review. The amount of the tax credit is calculated by multiplying that rate by the f.o.b. value of exports. Because this program is limited to exporters, we preliminarily determine that it confers a bounty or grant. MMP claimed EPTI tax credits on LFB exports to the United States on its tax returns filed in the years covered by the review period.

We calculated the benefit from this program by dividing the amount of EPTI tax credits relating to exports of LFB to the United States by the total value of exports of this merchandise to the United States during the review period. We preliminarily determine the benefit from this program to be 13.31 percent *ad valorem* for the period May 23, 1985 through July 31, 1985 and 8.67 percent *ad valorem* for the period August 1, 1985 through July 31, 1986.

The New Zealand government reduced the EPTI tax credit rate to 4.55 percent in the tax year ending March 31, 1986. MMP claimed an EPTI tax credit at this rate on its 1986 tax return, which was filed in November 1986. Since the credit rate was reduced by 50 percent, we preliminarily determine, for purposes of cash deposit of estimated countervailing duties, the benefit from this program to be 4.34 percent *ad valorem*.

(3) Other Programs

We also examined the following programs and preliminarily determine that MMP did not use them:

(A) Increased Exports Taxation Incentive;
(B) Regional Investment Allowance;
(C) Export Investment Allocance;
(D) Industrial Development Plan Investment Allowance;
(E) Export Programme Grant Scheme;
(F) Export Programme Suspensory Loan Scheme;
(G) Export Suspensory Loans;
(H) Export Credits from the Development Finance Corporation;
(I) Regional Development Investment Incentives;
(J) Research and Development Assistance;
(K) Exemption from Import Duties and Sales Taxes;
(L) Export Production Assistance Scheme;
(M) Export Promotion from the Export-Import Corporation; and
(N) Flexible Incentives Under the Investment Unit of the Department of Trade and Industry.

Preliminary Results of Review

As a result of our review, we preliminarily determine the total bounty or grant to be 13.55 percent *ad valorem* for the period May 23, 1985 through July 31, 1985 and 9.06 percent *ad valorem* for the period August 1, 1985 through July 31, 1986.

The Department intends to instruct the Customs Service to assess countervailing duties of 13.55 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after May 23, 1985 and exported on or before July 31, 1985, and 9.06 percent of the f.o.b. invoice price on all shipments of this merchandise exported on or after August 1, 1985 and on or before July 31, 1986.

The reduction of the EPTI tax credit reduces the total estimated bounty or grant to 4.73 percent *ad valorem*. Therefore, the Department intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties of 4.73 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. This deposit requirement will remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice, and may request disclosure and/or a hearing within 7 days of the date of publication. Any hearing, if requested, will be held 30 days of publication. Any hearing, if requested, will be held 30 days from the date of publication or the next workday following. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.10 of the Commerce Regulations (19 CFR 355.10).

Date: August 6, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary Import Administration.

[FR Doc. 87-18622 Filed 8-13-87; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Business Development Center Program Applications; New York

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: Effective August 14, 1987 the Minority Business Development Agency (MBDA) is cancelling the announcement of solicit competitive applications under its Minority Business Development Center Program to operate a MBDC for a three (3) year period, starting December 1, 1987, to November 30, 1988 in the Buffalo Standard Metropolitan Statistical area (SMSA). Refer to the **Federal Register** dated July 21, 1987 Vol. 52, No 139, Pages 27447–9.

William K. Fuller,

Deputy Regional Director, New York Regional Office.

Date: August 10, 1987.

[FR Doc. 87–18551 Filed 8–13–87; 8:45 am]

BILLING CODE 3510-21-M

Business Department Center Program Applications; New York

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: Effective August 14, 1987 the Minority Business Development Agency (MBDA) is cancelling the announcement to solicit competitive applications under its Minority Business Development Center Program to operate a MBDC for a three (3) year period, starting December 1, 1987 to November 30, 1988 in the Rochester Standard Metropolitan Statistical Area (SMSA). Refer to the **Federal Register** dated July 17, 1987 Vol. 52, No 137, Pages 27041–2.

William K. Fuller,

Deputy Regional Director, New York Regional Office.

Date: August 10, 1987.

[FR Doc. 87–18552 Filed 8–13–87; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council has scheduled two public industry work group meetings and a Council teleconference at the Sheraton Hotel, Anchorage, AK, as follows:

Policy and Planning Committee

Will convene at 10 a.m., September 1, 1987, in the Kuskokwim East Room at the hotel and continue through noon, September 2, to consider groundfish apportionments, joint venture policy, halibut allocation policy, future groundfish management options, the Council's domestic observer program, and crab management.

In conjunction with the Policy and Planning Committee meeting there will be a teleconference of the full Council on September 1 at 1 p.m., Alaska Daylight Savings Time. During the teleconference Council members will receive the results of the most recent survey of domestic processors and review their performance in utilizing the allocations of Pacific cod and pollock set aside for them. The Council will then determine whether any surplus exists for reapportionment to joint ventures.

The public may listen in on the teleconference at: (1) The Sheraton Hotel, Kuskokwim East Room, Anchorage, AK; (2) the Federal Building, Room 453, Juneau, AK; (3) the Kodiak Island Borough Building, 710 Mill Bay Road, Kodiak, AK, and (4) the National Marine Fisheries Service, Northwest and Alaska Fisheries Center, 7600 Sand Point Way, Room 2143, Building 4, Seattle, WA.

Bycatch Committee

Will convene September 2 at 1 p.m., in Josephine's Gallery at the hotel and continue through September 2 to continue their review from their August meeting of various management approaches for bycatch species in the Gulf of Alaska and Bering Sea/Aleutian Islands.

FOR FURTHER INFORMATION CONTACT: Clarence Pautzke, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 274–4563.

Date: August 10, 1987.

Henry R. Beasley,

Director, Office of International Affairs, National Marine Fisheries Service.

[FR Doc. 87–18579 Filed 8–13–87; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Application for Permit; Sea World, Inc. (P2T)

Notice is hereby given that an Applicant has applied in due form for a Permit to import marine mammals as authorized by the Marine Mannal Protection Act of 1972 (16 U.S.C. 1361 through 1407) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. *Name:* Sea World, Inc., 1720 South Shores Road, Mission Bay, San Diego, California 92109.

2. *Type of Permit Requested:* Public Display.

3. *Name and Number of Marine Mammals:* Killer whale (*Orcinus orca*), 1.

4. *Type of Take Requested:* The applicant requests authorization to import one killer whale that has been maintained at Zeedierenpark Harderwijk, Holland since its collection from the waters of the North Atlantic in 1976.

5. *Period of Activity:* The applicant requests the import authority be valid for a period of three (3) years.

The arrangements and facilities for transporting and maintaining the marine mammal requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate for the well-being of the marine mammal involved.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Office of Protected Resoures and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Room 805, Washington, DC 20009;

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger

Boulevard, St. Petersburg, Florida 33702; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Date: August 6, 1987.

Henry R. Beasley,

Director, Office of International Fisheries, National Marine Fisheries Service.

[FR Doc. 87-18580 Filed 8-13-87; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in the Union of Soviet Socialist Republics

August 11, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on August 17, 1987. For further information contact Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377-3715. For information on categories on which consultations have been requested call (202) 377-3740.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of cotton textile products in Category 313/320pt., produced or manufactured in the Union of Soviet Socialist Republics, in excess of 4,360,661 square yards.

Background

On July 22, 1987, the United States Government, under section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), requested the Government of the Union of Soviet Socialist Republics to enter into consultations concerning exports to the United States of cotton sheeting in Category 313/320pt., produced or manufactured in the Soviet Union.

The United States has decided, inasmuch as a mutually satisfactory solution concerning this category has not been reached, to control imports of cotton sheeting in Category 313/320pt., produced or manufactured in the Soviet Union and exported during the twelve-month period which began on July 22, 1987 and extends through July 21, 1988, at a level of 4,360,661 square yards.

A summary market statement for this category follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 313/320pt. is invited to submit such comments or information in ten copies to Mr. Ronald I. Levin, Acting Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC, and may be obtained upon request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of the Soviet Union, further notice will be published in the **Federal Register.**

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the *Tariff Schedules of the United States Annotated (1987).*

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register.**

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Market Statement, Category 313/320 Pt.; Cotton Sheeting Fabric; Union of Soviet Socialist Republics July 1987

Summary and Conclusions

United States imports of cotton sheeting fabric—Category 313/320 pt.—from the Union of Soviet Socialist Republics (U.S.S.R.) were 4,361,000 square yards for the year ending in April 1987, a substantial increase from 17,000 square yards imported a year earlier. During the first four months of 1987, the U.S.S.R. shipped 4,135,000 square yards. In addition, we have learned that the U.S.S.R. has the intention of exporting quantities well above the current levels. The U.S.S.R. had not exported cotton sheeting fabric to the United States (U.S.) since 1977.

Further, cotton sheeting fabric imports from the U.S.S.R. enter the U.S. market at one-third the price of domestically produced cotton sheeting fabric and two-thirds the price of most foreign produced cotton sheeting fabric in the United States market.

The U.S. market for cotton sheeting fabric is a price sensitive market where price differences result in major shifts in producer's market shares. A substantial increase above current U.S. imports from the U.S.S.R. at one-third the domestic price poses an imminent threat of market disruption in the U.S.

Production and Market Share

U.S. production of cotton sheeting fabric experienced a 50 percent decline between 1979 and 1985, falling from 535 million square yards to 264 million square yards. During this same period the market for cotton sheeting fabrics declined six percent. The U.S. producers' share of the market nearly halved, dropping from 70 percent in 1979 to 37 percent in 1985.

Production of U.S. cotton sheeting fabrics increased in 1986. The magnitude of the increase is not known because 1986 production data as collected is not comparable with prior year' data. However, first quarter 1986 and 1987 data are comparable and reflect a 32

percent increase. Nevertheless, the U.S. producers' share of the market remained at the diminished level of 47 percent through the first quarter of 1987.

Imports and Import Penetration

U.S. imports of cotton sheeting fabric—Category 313/320 pt.—from all sources more than doubled between 1979 and 1986, increasing from 228 million square yards in 1979 to 544 million square yards in 1986. The ratio of imports to domestic production increased more than two and a half times, rising from 43 percent in 1979 to 109 percent in 1986. The import to production ratio was 115 percent during the first quarter of 1987.

Duty Paid Values and U.S. Producers' Price

Approximately 73 percent of the U.S.S.R.'s cotton sheeting fabric for the year ending April 1987 entered under TSUSA 320.1934, a cotton sheeting fabric of 10 yarn counts. These fabrics entered the U.S. at duty-paid landed values at one-third the U.S. producers' price for comparable fabrics.

Committee for the Implementation of Textile Agreements

August 11, 1987.

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on August 17, 1987, entry into the United States for consumption, and withdrawal from warehouse for consumption, of certain cotton textile products in Category 313/320pt. [1], produced or manufactured in the Union of Soviet Socialist Republics and exported during the twelve-month period which began on July 22, 1987 and extends through July 21, 1988, in excess of 4,360,661 square yards.[2]

Textile products in Category 313/320pt. which have been exported to the United States prior to July 22, 1987 shall not be subject to this directive.

Textile products in Category 313/320pt. which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

[1] In Category 313 and, in Category 320, sheeting in TSUSA items 320.—through 331. —, with statistical suffixes 30, 80 and 82.

[2] The limit has not been adjusted to account for any imports exported after July 21, 1987.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-18583 Filed 8-13-87; 8:45 am]

BILLING CODE 3510-DR-M

Officials Authorized To Issue Export Visas for Certain Textile and Apparel Products From India

August 11, 1987.

FOR FURTHER INFORMATION CONTACT: Eve Anderson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, DC, (202) 377-4212.

The Government of India has notified the United States Government under the terms of the Bilateral Cotton, Wool, Silk Blend and Other Vegetable Fiber Textile Agreement of February 6, 1987 that the following officials of the Cotton Textiles Export Promotion Council have replaced Messrs. S. Nagaratnam, K.R. Menon, A.B. Singhal and K.R. Kapadia as officials authorized to issue export visas for certain cotton, wool, silk blend and other vegetable fiber fabrics and made-up products from India:

M.S. Bhagavan
R. Vasudevan
H.B. Dalal
N.G. Chavan

In addition, the following officials of the Apparel Export Promotion Council are now authorized to issue visas for cotton, wool, man-made fiber and other vegetable fiber apparel from India:

K. Umesh
M.A.K. Jeelani
C.K. Muraleedharan
M. Suresh

The purpose of this notice is to advise the public of these changes.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-18584 Filed 8-13-87; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Performance Review Board; Membership Appointments

AGENCY: Defense Mobilization Systems Planning Activity, DOD.

ACTION: Announce membership of Performance Review Board.

SUMMARY: This notice adds Mr. Thomas Stanners of the Office of Management and Budget to the previously published Performance Review Board (PRB) of the Defense Mobilization System Planning Agency (DMSPA). The publication is required by 5 U.S.C. 4314(c)(4).

The Peformance Review Board provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding peformance and performance awards to the Director.

DATE: August 14, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Robert H. Oppenheimer, Resource Management and Support Services, Defense Mobilization Systems Planning Activity, c/o OASD(FM&P), Correspondence & Control Division. The Pentagon, Room 3E-759, Washington, DC 20301, (703) 756-2249.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C 4314(c)(4), the following name is added to the previously published members of the Defense Mobilization System Planning Activity PRB. All members will serve for one-year renewable terms.

Mr. Thomas Stanners

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

August 10, 1987.

[FR Doc. 87-18574 Filed 8-13-87; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Information Technology Services, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before September 14, 1987.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW.,

Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732–3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Technology Services, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of collection; (5) The affected public, (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: August 11, 1987.

Carlos U. Rice,

Director for Information Technology Services.

Office of Postsecondary Education

Type of Review: Extension
Title: Application for the Endowment Grant Program
Agency Form Number: ED 2460
Frequency: Annually
Affected Public: Non-profit institutions
Reporting Burden:
Responses: 1000
Burden Hours: 4000
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: This application will be used by institutions of higher education to apply for grants under the Endowment Challenge Grant Program, Title III of the Higher Education Act, as amended. Data collected from the institutions will be used by the Department to make grant awards for the purpose of establishing or increasing endowment funds.

Type of Review: Reinstatement
Title: Financial Report for the Endowment Challenge Grant Program
Agency Form Number: E40–10P
Frequency: Annually
Affected Public: Non-profit institutions
Reporting Burden:
Response: 175
Burden Hours: 175
Recordkeeping Burden:
Recordkeepers: 175
Burden Hours: 350

Abstract: The Endowment grant program consists of matching grants to institutions of higher education which they, in turn, invest in low-risk securities for 20 years. This form will be used by grantees to report to the Department what has happened to their investment and what they have done on their return on the investment. The Department would use the information collected to monitor grantees' compliance with regulations.

Type of Review: Revision
Title: Evaluation of Training Activities on Title IV Student Financial Assistance Programs
Agency Form Number: ED 786
Frequency: On occasion
Affected Public: Individuals or households
Reporting Burden:
Responses: 42,420
Burden Hours: 6,363
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: This form will be used by participants in various training activities sponsored by the Office of Student Financial Aid. The training activities are targeted at high school counselors and financial aid administrative officials at postsecondary educational institutions. The Department uses the information collected to determine if training has been targeted at the most appropriate groups in the most effective manner.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement
Title: Three-Year State Plan for Independent Living (IL) Rehabilitation Services Under Title VII (Part A) of the Rehabilitation Act of 1973
Agency Form Number: ED (RSA) SPIL
Frequency: Every three years
Affected Public: State or local governments
Reporting Burden:
Responses: 84
Burden Hours: 1680
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: This State plan is submitted by designated State agencies who provide independent living rehabilitation services. The State plan is the basis upon which the Department monitors and evaluates the States' performance with respect to the requirements of Part A under Title VII of the Rehibilitation Act of 1973, as amended.

Type of Review: New
Title: Annual Report on State Agency Independent Living Rehabilitation Services, Title VII Part A
Agency Form Number: ED RSA–7A
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
Responses: 79
Burden Hours: 632
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: This report will be submitted to the Department by State agencies that provide independent living services to severely disabled individuals. The Department will use this information to monitor the States' progress in providing these services.

Office of Educational Research and Improvement

Type of Review: Revision
Title: Common Core of Data
Agency Form Number: ED 2442, 2443, 2443–1, 2446, 2447
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
Responses: 57
Burden Hours: 3363
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: These surveys provide information about student enrollment, graduates, teachers, and related finances and are used in the allocation of Federal funds under Chapter 1, Education Consolidation and Improvement Act, as amended. Data are also provided to the general public as requested.

[FR Doc. 87–18646 Filed 8–13–87; 8:45 am]
BILLING CODE [illegible]

[CFDA No: 84.021]

Notice Inviting Applications for New Awards Under the Fulbright-Hays Group Projects Abroad Program for Fiscal Year 1988

Purpose: Provides grants to conduct overseas group projects in research, training and curriculum development to higher education institutions, private nonprofit educational organizations, state departments of education and a consortia of the three.

Priorities: The regulations governing the Fulbright-Hays Group Projects Abroad Program (34 CFR 664.32) provide for the establishment of funding priorities by the Secretary. For Fiscal Year 1988, the Secretary has established funding priorities for this program. These priorities will be applied in accordance with the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.105(c)(3). All available funds for this program will be reserved solely for applications which propose projects focusing upon one or more of the following world areas: (1) Africa; (2) Latin America and the Caribbean; (3) East Asia; (4) Southeast Asia and the Pacific; (5) Eastern Europe and the U.S.S.R.; (6) the Near East; or (7) South Asia. Applications focusing on Western Europe will not be funded.

Deadline for Transmittal of Applications: October 26, 1987.

Applications Available: August 28, 1987.

Available Funds: The Administration's budget request for fiscal year 1988 does not include funds for this program. However, applications are being invited to allow sufficient time to evaluate applications and complete the grant process before the end of the fiscal year, should the Congress appropriate funds for this program. The following estimates are based on the FY 1987 appropriation.

Estimated Range of Awards: $20,000 to $204,000.

Estimated Average Size of Awards: $55,000.

Estimated Number of Awards: 38.

Project Period: 6 weeks to 12 months.

Applicable Regulations: (a) Higher Education Programs in Modern Foreign Language Training and Area Studies—Fulbright-Hays Group Projects Abroad Program, 34 CFR Parts 74, 75, 77, and 78.

For Applications or Information Contact: Dr. Stephney J. Keyser, U.S. Department of Education, Mail Stop 3308, 400 Maryland Avenue, SW., ROB-3, Washington, DC 20202. Telephone: (202) 732-3294.

Program Authority: 22 U.S.C. 2454(b)(6).

Dated: August 11, 1987.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 87-18626 Filed 8-13-87; 8:45am]

BILLING CODE 4000-01-M

[CFDA No.: 84.016]

Notice Inviting Applications for New Awards Under the Undergraduate International Studies and Foreign Language Program for Fiscal Year 1988

Purpose: Provides grants to institutions of higher education, combinations of those institutions, and public and private nonprofit agencies and organizations, including professional and scholarly associations, to strengthen and improve undergraduate instruction in international studies and foreign languages in the United States.

Deadline for Transmittal of Applications: November 2, 1987.

Applications Available: September 4, 1987.

Available Funds: The Administration's budget request for fiscal year 1988 does not include funds for this program. However, applications are being invited to allow for sufficient time to evaluate applications and complete the grant process before the end of the fiscal year, should the Congress appropriate funds for this program. The following estimates are based on the FY 1987 appropriations.

No money will be used in fiscal year 1988 to fund model foreign language projects under section 604(b) of the Higher Education Act of 1965, as amended.

Estimated Range of Awards: $20,000 to $70,000.

Estimated Average Size of Awards: $46,000.

Estimated Number of Awards: 32 to 35.

Project Period: 24 months for single institutions of higher education; up to 36 months for all other applicants.

Applicable Regulations: (a) Undergraduate International Studies and Foreign Language Program, 34 CFR Parts 655 and 658, and (b) Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, and 78. To conform to the recent revisions to the statute, the word "comprehensive" has been deleted in Part 658, and in § 658.11(g), the phrase "pre-service and in-service" has been inserted before the word "teacher".

For Applications or Information Contact: Ralph Hines, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3053, ROB 3, Washington, DC 20202. Telephone: (202) 732-3290.

Program Authority: 20 U.S.C. 1124.

Dated: August 11, 1987.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 87-18627 Filed 8-13-87; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement; International Atomic Energy Agreements; Civil Uses; Japan and Sweden

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Civil Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Sweden concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer:

RTD/(JA)-4, for the retransfer of 8 spent boiling water reactor fuel segments containing 2,097 grams of uranium enriched to approximately 2.43 percent in the isotope uranium-235 and 13 grams of plutonium from Japan to Studsvik Energiteknik, AB, Sweden for power ramp tests in the R-2 reactor. Upon completion of the tests, it is planned to return the segments to Japan.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: August 10, 1987.

George J. Bradley Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 87-18553 Filed 8-13-87; 8:45 am]

BILLING CODE 6405-01-M

Federal Energy Regulatory Commission

[Docket No. EL87-51-000]

Notice of Filing; Cajun Electric Power Coop., Inc. v. Gulf States Utilities Co.

August 11, 1987.

Take notice that on July 17, 1987, Cajun Electric Power Cooperative, Inc. (CAJUN) tendered for filing pursuant to sections 205, 206 and 306 of the Federal Power Act, 16 U.S.C. 824d, 824e and 825e and Rule 206 of the Commission's Rules of Practice and Procedure, a complaint, motion for expedited consideration, and request for relief. CAJUN states that this complaint is based upon an interpretation of the Gulf States Utility Company's (Gulf States) Service Schedule CTOC, a transmission equalization agreement between CAJUN and Gulf States.

CAJUN states that it is filing this complaint for overcharges based on the past and continuing misinterpretation of a filed tariff and on the past and continuing imposition of charges in excess of contract rates. CAJUN asserts that Gulf States has continuously misinterpreted and misapplied Service Schedule CTOC to the CAJUN/Gulf States Power Interconnection Agreement, with the resulting amount in controversy, as of December 31, 1986, estimated as being approximately $37,000,000 (subject to modification and recalculation after discovery). CAJUN also asserts that Gulf States continues to charge CAJUN rates in excess of the lawful amounts under Service Schedule CTOC and the Power Interconnection Agreement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 10, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to the complaint shall also be due on or before September 10, 1987.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18631 Filed 8-13-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-805-000]

Application; Shell Gas Trading Co.

August 11, 1987.

Take notice that on August 5, 1987, Shell Gas Trading Company, a Delaware corporation (SGT), c/o Shell Oil Company, P.O. Box 2463, Houston, Texas 77252-2463, filed an Application pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA), (15 U.S.C. 717f(b) and 717f(c)) and §§ 157.5 and 157.23 of the Federal Energy Regulatory Commission's Regulations (18 CFR 152.5 and 157.23), for a blanket certificate of public convenience and necessity authorizing the sale of natural gas for resale in interstate commerce on the spot market or short-term market with pregranted abandonment authority. SGT further requests that the sales and abandonment authority requested herein be made applicable to all Natural Gas Policy Act of 1978 (NGPA) categories of gas, including gas abandoned in connection with take-or-pay settlements under §§ 2.76 and 2.77 of the Commission's Rules. SGT further requests that the requested authority also apply to gas supplies which have qualified for automatic abandonment authority pursuant to Order Nos. 451 and 451-A. SGT requests such authority as to gas owned by it, and not to sales on behalf of others or as agent for others, and agrees that such authority may be limited to a term expiring on March 31, 1988 (unless extended). SGT requests that the requirements for filing of a blanket affidavit to cover such sales in accordance with § 154.94(h) of the Commission's Regulations be waived and to the extent that SGT qualifies for any allowance for production-related costs under section 110 of the NGPA, SGT requests that the requirement that it comply with § 154.94(k) and Part 271 of the Commission's Regulations be waived. SGT requests that the certificate state that SGT will be subject to the Commission's jurisdiction only to the extent necessary to effectuate the requested authority and only with respect to its participation in the transaction authorized.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 26, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18632 Filed 8-13-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-802-000, et al.]

Applications for Certificates, Abandonments of Service and Petitions To Amend Certificates; [1] Phillips 66 Natural Gas Co., et al.

August 10, 1987.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before August 25, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession]

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
CI87-802-000 (G-3244), B, 8/3/87.	Phillips 66 Natural Gas Co., 990-G Plaza Office Bldg., Bartlesville, OK 74004.	El Paso Natural Gas Co., Winkler Gas Plant, Winkler County, TX.	(1)	
CI87-803-000 (CI72-666), B, 8/3/87.	....do	....do	(1)	
CI87-798-000 (G-20255), B, 7/29/87.	Phillips Petroleum Co., 990-G Plaza Office Bldg., Bartlesville, OK 74004.	Texas Eastern Transmission Corp., West George Field, Live Oak County, TX.	(2)	
G-4579-043, D, 7/30/87	Cities Service Oil and Gas Corp., P.O. Box 300, Tulsa, OK 74102.	Northern Natural Gas Co., Division of Enron Corp., Lease Nos. 6-1530584 (SE Sec. 9-34S-40W); 6-1534161 (NE Sec. 2-34S-41W); 6-1535326 (SE Sec. 13-34S-41W); 6-1530612 (NW Sec. 25-34S-41W); 6-1534183 (NE Sec. 13-34S-40W); 6-1534797 (SW Sec. 1-34S-41W); and 6-1531943 (S/2 NE Sec. 16-34S-40W), Morton County, KS.	(3)	
CI87-804-000 (CI72-433), B, 8/3/87.	....do	Northern Natural Gas Co., Division of Enron Corp., E/2 NW/4 Sec. 23-32S-33W, Seward County, KS.	(4)	
CI87-731-000, F, 6/29/87	Elf Aquitaine, Inc., 1000 Louisiana—Suite 3600, Houston, TX 77002.	Northern Natural Gas Co., Division of Enron Corp., West Cameron Block 480 Field, Offshore, LA.	(5)	
CI76-151-001, CI87-760-000, CI87-761-000, F, 7/10/87.	Fina Oil and Chemical Co., P.O. Box 2159, Dallas, TX 75221.	Northern Natural Gas Co., Division of Enron Corp., and El Paso Natural Gas Co., University "O", Andrews County, TX, Owens "C", Crockett County, TX and Sealy Smith "B", Winkler County, TX.	(6)	
CI87-717-001, D, 7/30/87	Tenneco Oil Co., P.O. Box 2511, Houston, TX 77001.	Northern Natural Gas Co., Division of Enron Corp., Mocane Laverne Field, Harper County, OK.	(7)	
CI80-129-000, D, 7/29/87	ARCO Oil and Gas Co., Division of Atlantic Richfield Co., P.O. Box 2819, Dallas, TX 75221.	Natural Gas Pipeline Co. of America, Knox Field, Grady and Stephens Counties, OK.	(8)	
CI87-801-000, B, 7/30/87	Amoco Production Co., P.O. Box 50879, New Orleans, LA 70150.	Florida Gas Transmission Co., Palacious Field, Matagorda County, TX.	(9)	
CI81-752-005, D, 7/29/87	ARCO Oil and Gas Co., Division of Atlantic Richfield Co.	ANR Pipeline Co., Woodward Area, Dewey, Woodward and Major Countries, OK.	(9)	
CI78-565-001, D, 7/30/87	Sohio Petroleum Co. P.O. Box 4587, Houston, TX 77210.	ANR Pipeline Co. Putnam Field, Dewey County, OK.	(10)	
CI87-695-000, B, 6/9/87	Questa Energy Corp., P.O. Box 19297, Amarillo, TX.	Transwestern Pipeline Co., South Follett (Morrow) Field, Lipscomb County, TX.	(11)	

[1] Phillips 66 NGC has sold all of its interest in the Winkler Gas Gathering System to Cabot Corporation. This change in ownership occurred by agreement for sale effective 5-1-87 and executed 5-11-87.

[2] The contract expired of its own terms on 12-6-80. On 4-25-78, the Pawlike "A" Well was plugged.

[3] The subject leases reverted to the U.S. Government effective 11-25-86, 11-27-86, 12-3-86, 12-16-86, 12-22-86 and 3-24-87, after which Cities Service no longer has a working interest in such leases.

[4] Cities has had no oil well gas sales since 1981. The unit is comprised of one well, the Baughman #1-23, which produces approximately 70 Mcf/month and the entire volume is used as lease fuel.

[5] Elf Aquitaine, Inc. acquired certain interest from Union Texas Petroleum Corp., effective 10-1-86.

[6] By Assignments dated 11-14-86, effective 10-1-86, Cities Service Oil and Gas Corporation assigned to FINA all Cities' right, title and interest in certain oil and gas leaseholds and leasehold acreage.

[7] Assignments of dedicated acreage to PNG Operating Company and Foran Oil Company effective December 1, 1986.

[8] Effective 1-1-87, ARCO assigned its interest in certain acreage to Hondo Oil and Gas Company.

[9] Production dedicated under Gas Sales Contract dated 1-22-59, ceased in the year 1980. The only producing well was plugged and abandoned in March, 1985. Gas Sales Contract has been mutually terminated by Seller and Purchaser effective 5-1-87.

[10] The Farris Unit No. 1, Sec. 21-T17N-R17W, was plugged and abandoned 5-5-87.

[11] Due to marketing and operational problems with current gas purchaser, gas sales have been limited and intermittent with little chance for improvement according to the present purchaser. Applicant proposes to connect well into the Northern Natural Gas Company, Division of Enron Corp's., system for additional marketing opportunities. Applicant will maintain the existing connection to Transwestern Pipeline and in effect have two separate connections. Sales of gas to either purchaser will be maintained on an as-needed basis.

[FR Doc. 87-18629 Filed 8-13-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. RI74-188-003, et al.

Pending Proceedings; Independent Oil & Gas Association of West Virginia and Columbia Gas Transmission Corp.

August 10, 1987.

Take notice that proceedings are pending concerning the applicability of the Natural Gas Policy Act of 1978 to the rate clauses agreed to in the settlements reached in *Independent Oil & Gas Association of West Virginia,* Docket Nos. RI74-188[1] and RI75-21.[2] These settlements approved special relief, cost-based rates for certain small producers selling natural gas produced in West Virginia to Columbia Gas Transmission Corporation, Consolidated Gas Supply Corporation, Carnegie Natural Gas Company, and Equitable Gas Company.

In order that a final resolution to these on-going proceedings may be reached, the period during which an interested party may become a party to these proceedings has been opened and extended. Any West Virginia producer of natural gas, not currently a party, who has an interest in these proceedings and who desires to become a party, may file a motion to intervene in accordance with Rule 214 of the Commission's rules

[1] 55 FPC 1238 (1976).
[2] 55 FPC 1298 (1976).

of practice and procedure, 18 CFR 385.214 (1987). All motions to intervene must be filed within 60 days of publication of this notice in the Federal Register.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18630 Filed 8-13-87; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3247-9]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075, EPA.

Availability of Environmental Impact Statements Filed August 3, 1987 Through August 7, 1987 Pursuant to 40 CFR 1506.9.

EIS No. 870269, DSuppl, COE, CA, Sacramento River Bank Protection, Erosion Control, Collinsville to Chico Landing, River Miles 0 to 194, Updated Information, Due: September 28, 1987, Contact: Mike Welsh (916) 551-1861.

EIS No. 870270, DSuppl, EPA, FL, Jacksonville Harbor Ocean Dredged Material Disposal Site, Canaveral Harbor, Designation, Due: September 28, 1987, Contact: Sally Turner (404) 347-2126.

EIS No. 870271, Final, COE, TX, Cypress Creek Flood Control Plan, San Jacinto River and Tributaries, Harris and Waller Counties, Due: September 14, 1987, Contact: Charles Harbaugh (713) 766-3044.

EIS No. 870272, Draft, AFS, AK, Cleveland Peninsula Resources Management Plan, Value Comparison Units 717, 718, 719, 720 and 723, Tongass National Forest, Ketchikan Area, Due: September 30, 1987, Contact: Carl Leland (907) 225-2148.

EIS No. 870273, Final, AFS, AZ, Prescott National Forest, Land and Resource Management Plan, Yavapai and Coconino Counties, Due: September 14, 1987, Contact: H. Bruce Lamb (602) 445-1762.

EIS No. 870274, Draft, BLM, CA, Western Mojave Land Tenure Adjustments Project, Due: November 13, 1987, Contact: Sue Richardson (619) 259-3591.

EIS No. 870275, Adoption, Final, FHA, ME, Jonesport Harbor Navigation Improvement Project, Due: September 14, 1987, Contact: Warren Clayman (202) 382-9616.

EIS No. 870276, Draft, BIA, CA, Colmac 45MW Biomass-Fueled Power Plant, Construction and Operation, Lease Approval, Cabazon Indian Reservation, Riverside County, Due: October 12, 1987, Contact: Donald Knapp (916) 978-4703.

EIS No. 870277, Draft, FHW, NY, Southwest Lockport Bypass Construction, Robinson Road to NY-31, Niagara County, Due: September 28, 1987, Contact: Victor Taylor (518) 472-3616.

EIS No. 870278, Draft, AF, OR, Malheur National Forest, Land and Resource Management Plan, Due: November 12, 1987, Contact: Kenneth Evans (503) 575-1731.

EIS No. 870279, DSuppl, COE, LA, New Orleans to Venice Hurricane Protection Plan, Barrier Features Construction, Plaquemines Parish, Due: September 30, 1987, Contact: E. Scott Clark (504) 862-2521.

Amended Notices

EIS No. 870253, Draft, NOA, NH, New Hampshire Coastal Program, Ocean, Harbor, and Great Bay Areas, Approval, Contact: Kathryn Cousins (202) 673-5152, Published FR 07-31-87—Incorrect phone number.

EIS No. 870223, DSuppl, NRC, IL, Rare Earths Permanent Waste Disposal Facility Decommissioning, Alternative Site Analysis, License, Dupage County, Due: October 1, 1987, Published FR 7-2-87—Review period extension.

Dated: August 11, 1987.

Anne Norton Miller,

Director, Special Programs and Analysis Division, Office of Federal Activities.

[FR Doc. 87-18643 Filed 8-13-87; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3248-1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared July 27, 1987 through July 31, 1987 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act (CAA) and section 102(2)(c) of the National Environemntal Policy Act (NEPA) as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076/73. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 24, 1987 (52 FR 13749).

Draft EISs

ERP No. D-FHW-F40291-IL, Rating EC2, Elgin-O'Hare Highway/FAP Route 426 Improvement, US 20/Lake Street and Lovell Road Intersection IL-19/ Irving Park Road and US 12/45/ Manheim Road Intersection, Construction, 404 Permit, IL. SUMMARY: EPA's review resulted in concerns regarding loss of wetlands. EPA requested that wetland mitigation plans be developed prior to the final EIS.

Final EISs

ERP No. F-BLM-K61059-CA, Western Counties Wilderness Study Area Project, Indio Resource Area, Wilderness Recommendations, Designation, California Desert, CA. SUMMARY: EPA supported the BLM's recommendations of certain areas as wilderness areas, and requested that BLM's final recommendation document state that water and air quality will be best protected in areas recommended for wilderness designation.

ERP No. F-BLM-K61079-00, Eagle Lake-Surprise (Formerly Cedarville) Resource Areas, Wilderness Study Areas Designation, CA and NV. SUMMARY: EPA requested that the wilderness recommendation document that BLM prepares disclose that air and water quality would be best protected in lands that are designated wilderness. The final EIS had indicated that air and water quality impacts would be the same whether or not the lands were designated as wilderness.

ERP No. F-FRC-L05194-WA, Snohomish River Basin, Seven Hydroelectric Projects, Construction, Operation, and Maintenance, Licenses, WA. SUMMARY: DPA reviewed the final EIS which analyed the individual and cumulative impacts of seven hydroelectric projects considered under three scenarios. Scenario C considered all seven projects and was found to be environmentally unsatisfactory since it would lead to unrestricted cumulative impacts to target resources. Scenario B involved three projects and EPA had environmental concerns stemming from lack of adequate mitigation to reduce potentially significant adverse effects upon target resources. Scenario A considered only one project and EPA considered it to be environmentally acceptable if licensed with the staff-proposed mitigation measures adopted as articles to the license. Overal EPA had environmental concerns because there is no assurance that the Commission will find in favor of the final EIS's preferred action (Scenario A), and because the information about the mitigation measures is not adequately detailed.

ERP No. F-IBR-J31018-UT, Uinta Basin Unit Construction and Operation,

Colorado River Water Quality Improvement Program UT. SUMMARY: EPA's previous comments were addressed in the final EIS. EPA requested the commitments in attachment D of the final EIS be included in the Record of Decision.

ERP No. F–NRC–K22003–CA, Humboldt Bay Power Plant, Unit 3, Decommissioning, Approval, Ca. SUMMARY: EPA's review indicated that the final EIS adequately addressed the concerns EPA raised on the draft EIS. However, EPA recommended that a water quality monitoring program be implemented during the decommissioning period because of the long term storage proposed and the potential for seismic activity in the area. EPA requested that the amended NRC license for the Humboldt Bay plant incorporate these monitoring concerns.

ERP No. F–USA–K11031–CA, Presidio Army Barracks Numbers 098, 119, and 124, Facility Development Construction, CA. SUMMARY: The final EIS adequately addressed the concerns EPA had raised on the draft EIS.

ERP No. F–USN–K11030–CA, San Francisco Bay Battleship Battlegroup and Cruiser Destroyer Group Homeporting, Construction, and Operation, Naval Station Treasure Island, Hunters Point Annex, Naval Air Station Alameda, CA. SUMMARY: EPA reviewed the final EIS and made the following recommendations to the US Navy: (1) That only shallower sediments be dredged at the Hunters Point berthing site, and that deeper sediments not be dredged due to toxicity; (2) that future planning of onshore facilities fully consider the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (Superfund) due to waste sites in the project area; (3) that Navy homeporting activities not conflict with the requirements of Superfund; and (4) that State and local regulatory agencies and the public be allowed to review and comment on the Superfund review process.

ERP No. F–USN–K80015–AZ, Joint Guayule Rubber Program Processing Operation, Prototype Rubber Extraction Facility, Construction and Operation, Gila River Indian Reservation, AZ. SUMMARY: EPA requested that the Navy's Record of Decision provide more information on spent solvent wastes, their treatment, State of Arizona hazardous waste permit requirements, and pond impacts on migratory birds and other wildlife.

Regulations

ERP No. R–FRC–A86225–00, 18 CFR Parts 2 and 380, Regulations Implementing the Nat'l Environmental Policy Act (NEPA) of 1969 (52 FR 20314). SUMMARY: EPA has environmental objections to the draft regulations proposed by the Federal Energy Regulatory Commission for implementation of the NEPA based on four major areas of concern. They are: (1) Rejection of the CEQ referral process for resolving interagency disputes, (2) definition of purpose and need with alternatives, (3) discretionary inclusion of monitoring and enforcement in the Record of Decision, and (4) delegation of agency consultation to applicants.

Amended Notice

The following review should have appeared in the FR Notice published on July 31, 1987.

ERP No. F–FRC–G05045–00, Lee Creek Hydroelectric and Water Supply Project, Construction and Operation, License, 404 Permit, AR and OK. SUMMARY: EPA has developed and transmitted necessary mitigating conditions to address our environmental concerns with the Lee Creek Water Power Project and final EIS. The conditions were developed to ensure the project would not result in significant degradation of Lee Creek or remove the existing beneficial uses from the stream in either Arkansas or Oklahoma. If these conditions are not incorporated into the license in a legally enforceable manner, EPA will continue to object to issuing the license for the project. EPA has requested a response from FERC prior to the licensing decision. EPA has the Administrator's approval to refer this project to the Council on Environmental Quality if our concerns are not resolved.

Dated: August 11, 1987.

Anne Norton Miller,

Director, Special Programs and Analysis Division, Office of Federal Activities.

[FR Doc. 87–18644 Filed 8–13–87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS–83002D; FRL–3247–8]

Receipt of Request for Waiver of Testing of Supelco, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of receipt of request for waiver of testing requirements.

SUMMARY: EPA requires testing of specified chemical substances to see if they are contaminated with halogenated dibenzo-p-dioxins (HDDs) or halogenated dibenzofurans (HDFs) and reporting of the results. However, provisions are made for exclusion from, or waiver of, these requirements if an appropriate application is made to the Agency and is approved. EPA has received such a request for a waiver of these requirements from Supelco, Inc., and this document gives notice of its receipt. Comments may be made on this request.

DATE: Comments should be received by August 31, 1987.

ADDRESS: Submit comments in triplicate to: TSCA Public Information Office (TS–793), Office of Toxic Substances, Environmental Protection Agency, Rm. NE–G004, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543, 401 M St., SW., Washington, DC 20460, (202)–554 1404).

SUPPLEMENTARY INFORMATION: EPA under 40 CFR Part 766 (52 FR 21412, June 5, 1987) requires testing of certain chemical substances to determine whether they may be contaminated with HDDs and HDFs.

Under 40 CFR 766.32(a)(1)(i) and (ii), a person may be granted an exclusion from the testing requirements of Part 766 if appropriate testing of the chemical substance has already been done or the process and reaction conditions are such that HDDs/HDFs would not be produced.

A waiver of the testing requirements of Part 766 may be granted under 40 CFR 766.32(a)(2)(i) through (ii) if: (1) 100 kilograms or less of the product are produced annually exclusively for research and development, or (2) the cost of testing would be so high as to prohibit its production and the chemical substance will be produced in such a manner that there will be no unreasonable risk during its manufacture, import, processing, distribution, use, or disposal. Under 40 CFR 766.32(a)(2)(iii), waivers may be appropriately conditioned with respect to such factors as time and conditions of manufacture and use.

Under the regulation, a request for either an exclusion or waiver must be made before September 4, 1987 for persons manufacturing, importing, or processing a chemical substance as of June 5, 1987, or 60 days prior to resumption of manufacture or import of a chemical substance not being manufactured or processed as of June 5, 1987.

The request from Supelco, Inc. asks that the requirements of the rule be waived with respect to certain chemicals it manufactures. Supelco

states in its request that it produces chemicals which are subject to the rule at levels of 100 kilograms per year or less, and that these chemicals are used only for research and development purposes. The request asks that the waiver apply to all compounds subject to the rule which it manufactures.

Dated: August 6, 1987.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 87-18602 Filed 8-13-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51686; FRL-3247-4]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a permanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premaunfacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of thirty-nine such PMNs and provides a summary of each.

DATES: Close of Review Period:

P 87-1511 and 87-1512—October 28, 1987.

P 87-1513, 87-1514, 87-1515, 87-1516, 87-1517, 87-1518, 87,1519, and 87-1520—October 31, 1987.

P 87-1521, 87-1522, 87-1523, 87-1524, 87-1525, and 87-1526—November 1, 1987.

P 87-1527, 87-1528, 87-1529, 87-1530, 87-1531, 87-1532, 87-1533, 87-1534, 87-1535, 87-1536, 87-1537, 87-1538, 87-1539, 87-1540, 87-1541, and 87-1542—November 2, 1987.

P 87-1543, 87-1544, 87-1545, 87-1546, 87-1547, 87-1548, and 87-1549—November 3, 1987.

Written comments by:

P 87-1511 and 87-1512—September 28, 1987.

P 87-1513, 87-1514, 87-1515, 87-1516, 87-1517, 87-1518, 87-1519, and 87-1520—October 1, 1987.

P 87-1521, 87-1522, 87-1523, 87-1524, 87-1525, and 87-1526—October 2, 1987.

P 87-1527, 87-1528, 87,1529, 87-1530, 87-1531, 87-1532, 87-1533, 87-1534, 87-1535, 87-1536, 87-1537, 87-1538, 87-1539, 87-1540, 87-1541, and 87-1542—October 3, 1987.

P 87-1543, 87-1544, 87-1545, 87-1546, 87-1547, 87-1548, and 87-1549—October 4, 1987.

ADDRESS: Written comments, identified by the document control number "[OPTS-51686]" and the specific PMN number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. L-100, 401 M Street SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the PMNs received by EPA. The complete non-confidential PMNs are available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 87-1511

Manufacturer. Confidential.

Substance. (g) Asporogenic strain of *Bacillus* species self-cloned by rDNA techniques to contain multiple gene copies for a hydrolase, using a vector from *Staphylococcus aureus.*

Use/Production. (G) The microorganism will be used for the biosynthesis of a hydrolase. Prod. range: Confidential.

Test Data. Pathogenicity study by various routes in mice revealed no pathogenic potential for the microorganism in 21-day test. Tests of survival and gene transfer in soil showed a rapid decline in population numbers and no transfer of genes to another *Bacillus* species. Test of reversion to sporogenicity showed no reversion.

Exposure. Workers in laboratory and production areas.

Environmental release/Disposal. Production and processing: Live cells used for biosynthesis are contained in sealed fermentation vessel systems. At the end of biosynthesis, the cells are killed using a validated procedure. The enzyme is recovered from the dead cells. Disposal of cell waste: Landfill and waste-water treatment facility on company property.

P 87-1512

Importer. Confidential.

Chemical. (G) Fluorinated acrylic copolymer.

Use/Import. (g) Oil and water proofing agent. Import range: Confidential.

Toxicity Data. Acute oral: 5,250 mg/kg; Acute dermal: 0.5 ml; Irritation: Eye—Slight-irritation.

P 87-1513

Manufacturer. Product Research and Chemical Corporation.

Chemical. (s) 2-Ethanol, 1,1'-thiobis, 2-propanol, 1-hydroxyethyl-thio, 1,3-propanediol, 2-ethyl-2-[hydroxy methyl]ethanol, 2-(5-hexenylthio)-.

Use/Production. (S) Site-limited prepolymer for manufacture of thiol terminated polymer and industrial reactive plasticizer for vulcanized rubbers, sealants, adhesives and coatings. Prod. range: 100,000 to 450,000 kg/yr.

P 87-1514

Manufacturer. Confidential.

Chemical. (G) Disubstituted benzene sulfonyl chloride.

Use/Production. (S) Isolated intermediate. Prod. range: Confidential.

P 87-1515

Importer. Confidential

Chemical. (G) Fluorinated copolymers.

Use/Import. (G) Water repellent for building and wooden materials. Import range: Confidential.

Toxicity Data. Acute oral: 5,000 mg/kg; Irritation; Eye—Non-irritant, Skin—Irritant.

P 87-1516

Importer. Confidential.

Chemical. (G) Alkenamide polymer with acrylic acid derivatives.

Use/Import. (S) Industrial retention/drainage aid. Import range: Confidential.

Toxicity Data. Ames test: Non-mutagenic.

P 87-1514

Importer. Confidential.

Chemical. (G) Alkenylbenzene polymer with acrylic acid derivatives.

Use/Import. (S) Industrial synthetic sizing agent. Import range: Confidential.

P 87-1518

Importer. Confidential.

Chemical. (G) Isocyanate polymer with polyalkyloxy compound, substituted diol, and substituted siloxane.

Use/Import. (S) Industrial leather finishing agent. Import range: Confidential.

P 87-1519

Importer. Confidential.

Chemical. (G) Isocyanate polymer with polyalkyloxy compound, substituted propionic acid, and a diamine.

Use/Import. (S) Industrial color fixing agent for leather. Import range: Confidential.

P 87-1525

Importer. Confidential.

Chemical. (G) Alkyl modified polydimethylsiloxane.

Use/Import. (S) Synthetic lubricant. Import range: Confidential.

P 87-1527

Manufacturer. Confidential.

Chemical. (G) Polyurethane elastomer.

Use/Production. (G) Non-dispersive formulation adhesive. prod. range: Confidential.

P 87-1528

Importer. Dynamit Nobel Chemicals.

Chemical. (G) Polyester resin of aryl and alkyl acids and anhydride with alkane diols.

Use/Import. (G) Coatings additive. Import range: Confidential.

P 87-1523

Manufacturer. Confidential.

Chemical. (G) Styrenated hydroxy functional acrylate methacrylate polymer.

Use/Production. (G) Dispersively used coating. Prod. range: 95,000 to 270,000 kg/yr.

P 87-1524

Manufacturer. Confidential.

Chemical. (G) Styrenated hydroxy functional methacrylate polymer.

Use/Production. (G) Industrial coating composition having a dispersive use. Prod. range: 95,000 to 270,000 kg/yr.

P 87-1525

Importer. Confidential.

Chemical. (G) Fluorinated acrylic copolymer.

Use/Import. (G) Oil and water-proofing agent. Import range: Confidential.

Toxicity Date. Acute oral: > 5,250 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant.

P 87-1526

Manufacturer. Products Research and Chemical Corporation.

Chemical. (S) Polymer of 2-ethanol; 1, 1'-thiobis; 2-propanol, 1-hydroxyethylthio; 1, 3-propanediol, 2-ethyl-2-(hydroxymethyl); and ethanol, 2-(5-hexenythio).

Use/Production. (S) Industrial polymer for manufacture of sealants, adhesives and coatings. Prod. range: 100,000 to 450,000 kg/yr.

P 87-1527

Manufacturer. Confidential.

Chemical. (G) Cyanoacrylate ester.

Use/Production. (S) Industrial cyanoacrylate adhesive. Prod. range: Confidential.

P 87-1528

Importer. Roure Bertrand Dupont, Incorporated.

Chemical. (S) Acetyl-1-dimethyl-3,3 cyclohexene-1

Use/Import. (S) Industrial, commercial and consumer fragrance ingredient. Import range: 50 to 250 kg/yr.

Toxicity Data. Acute oral: > 8,000 mg/kg; Irritation: Skin—Non-irritating, eye—Minimally irritating.

P 87-1529

Manufacturer. Confidential.

Chemical. (G) Copper complex salt of dialkyl, dialkylamino, carboalkoxy-substituted xanthene dye.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 87-1530

Importer. Confidential.

Chemical. (S) Mixture of pyridinium, 1,1'-[1,4-phenylenebis[imino[6-[[7-[(1,5-disulfo-2-naphthalenyl)azo]-8-hydroxy-3,6-disuflo-1-naphthalenyl]amino]-1,3,5-triazine-4,2-diyl]]]bis[3-carboxy, dihydroxide, bis(inner salt), octasodium salt and pyridinium, 3-carboxy-1-[4-[[4-[[4-chloro-6-[[7-[(1,5-disuflo-2-naphthanlenyl)azo]-8-hydroxy-3,6-disulfo-1-naphthalenyl]amino]-1,3,5-triazin-2-yl]amino]phenyl]amino]-6-[[7-[(1,5-disulfo-2-naphthalenyl)azo)-8-hydroxy-3,6-disulfo-1-naphthalenyl]amino]-1,3,5-triazine-2-y1]-, hydroxide, inner salt, octasodium.

Use/Import. (S) Commercial dye for cellulosic fibers. Import range: 10,000 kg/yr.

Toxicity Data: Acute oral: > 4,000 mg/kg; Ames test: Negative.

P 87-1531

Importer. Marubeni America Corporation.

Chemical. (S) 1,3-Benzenedicarbonitrile, 2-[[4-(diethylamino)-2-methylphenyl]azo]-5-nitro.

Use/import. (S) Commercial dye for polyester fibres. Import range: 10,000 kg/yr.

Toxicity Data. Acute oral: 5,000 mg/kg; TLm 48 hr (Cyprinodont): 200 parts per million (ppm).

P 87-1532

Manufacturer. Fineten, Incorporated.

Chemical. (S) Benzoate ester of alkoxylated C_{16} alcohol.

Use/Production. (S) Industrial dye carrier for synthetic textile with low toxicity, ceramic powder dispersant with high thermal stability, co-emulsifier for difficult to emulsify high melting point synthetic and natural waxes, solufilizer and coupling agent for difficult to dissolve silicones, anti-oxidants and synthetic oils. Prod. range: 23,000 to 35,000 kg/yr.

Toxicity Data. Acute oral: >5.0 g/kg; Irritation: Skin—Mild, Eye—Non-irritant.

P 87-1533

Manufacturer. Confidential.

Chemical. (G) Potassium salt of an aqueous acrylic emulsion.

Use/Production. (S) Commercial and consumer in situ thickener salt. Prod. range: Confidential.

P 87-1534

Manufacturer. Confidential.

Chemical. Sodium salt of an aqueous acrylic emulsion.

Use/Production. (G) Commercial and consumer flow modifier. Prod. range: Confidential.

P 87-1535

Manufacturer. Confidential.

Chemical. (G) Sodium salt of an aqueous carboxylated styrene butadiene copolymer.

Use/Production. (G) Commercial and consumer flow modifier. Prod. range: Confidential

P 87-1536

Manufacturer. Confidential.

Chemical. (G) Potassium salt of an aqueous carboxylated styrene butadiene compolymer.

Use/Production. (G) Flow modifier. Prod. range: Confidential.

P 87-1537

Manufacturer. Confidential.

Chemical. (G) Sodium salt of an aqueous acrylic emulsion.

Use/Production. (G) Commercial and consumer flow modifier. Prod. range: Confidential.

P 87-1538

Manufacturer. Confidential.

Chemical. (G) Fatty acid esters.

Use/Production. (G) Site-limited and industrial lubricant base. Prod. range: Confidential.

P 87-1539

Manufacturer. Confidential.

Chemical. (G) Potassium salt of an aqueous acrylic emulsion.

Use/Production. (G) Commercial and consumer flow modifier. Prod. range: Confidential.

P 87–1540

Importer. Marubeni America Corporation.
Chemical. (S) Benzoic acid, 4,4'-[(1-amino-8-hydroxy-3,6-disulfo-2,7-naphthalenediyl)bis[azo(4-sulfo-3,1-phenylene)imino(6-chloro-1,3,5-triazine-4,2-dyl)imino]]bis-,m tetrasodium salt.
Use/Import. (S) Commercial dye for cellulosic fibres. Import range: 10,000 kg/yr.

P 87–1541

Importer. Marubeni America Corporation.
Chemical. (S) 3-Pyridinecarbonitrile, 1-butyl-5-[(3,4-dichloro-phenyl)azo]-1,2-dihydro-6-hydroxy-4-methyl-oxo-.
Use/Import. (S) Commercial dye for polyester. Import range: 10,000 kg/yr.
Toxicity Data. Acute oral: 5,000 mg/kg; Ames test: Non-mutagenic; TLm 48 hr (Cyprinodont): 100 ppm.

P 87–1542

Importer. Confidential.
Chemical. (G) Sulfoalkyl, methacrylate-ester K-salt.
Use/Import. (S) Functional monomer, chemical intermediate for polymerization. Import range: Confidential.

P 87–1543

Manufacturer. Confidential.
Chemical. (G) Polymer of polysubstituted cycloalkane and disubstituted alkane.
Use/Production. (G) Specialty polymeric material. Prod. range: 1,600 to 3,100 kg/yr.

P 87–1544

Manufacturer. The Dow Chemical Company.
Chemical. (G) Substituted pyridine.
Use/Production. (S) Site-limited chemical intermediate. Prod. range: Confidential.

P 87–1545

Importer. Confidential.
Chemical. (G) Substituted benzyl amine.
Use/Import. (S) Industrial epoxy curing agent. Prod. range: Confidential.

P 87–1546

Manufacturer. Confidential.
Chemical. (G) Dialkyleneglycoliminopolycarboxylic acid, disodium salt.
Use/Production. (G) Component of consumer products. Prod. range: Confidential.

P 87–1547

Manufacturer. Confidential.
Chemical. (G) Dialkyleneglycoliminopolycarboxylic acid, dipotassium salt.
Use/Production. (G) Component of consumer products. Prod. range: Confidential.

P 87–1548

Manufacturer. Confidential.
Chemical. (G) Dialkyleneglycoliminopolycarboxylic acid, monosodium salt.
Use/Production. (G) Component of consumer products. Prod. range: Confidential.

P 87–1549

Manufacturer. Confidential.
Chemical. (G) Dialkyleneglycoliminopolycarboxylic acid, monopotassium salt.
Use/Production. (G) Component of consumer products. Prod. range: Confidential.

Date: August 7, 1987.

Denise Devoe,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 87–18480 Filed 8–13–87; 8:45 am]

BILLING CODE [illegible]

[OPTS–59827; FRL–3247–5]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066)(40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of eight such PMNs and provides the summary.

DATES: Close of Review Period:
Y 87–206, 87–207, 87–208, 87–209, and 87–210—August 24, 1987.
Y 87–211, 87–212, and 87–213—August 28, 1987.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street SW., Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the exemption received by EPA. The complete non-confidential documents are available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 87–206

Manufacturer. Confidential.
Chemical. (G) Polyester.
Use/Production. (G) Resin for coatings. Prod. range: Confidential.

Y 87–207

Importer. Dynamit Nobel Chemicals.
Chemical. (G) Polyester resin of aryl and alkyl acids and anhydride with alkene diols.
Use/Import. (G) Coatings additive. Import range: Confidential.

Y 87–208

Manufacturer. Confidential.
Chemical. (G) Alkyd copolymer.
Use/Production. (G) Resin for coatings. Prod. range: Confidential.

Y 87–209

Manufacturer. Emery Chemicals.
Chemical. (S) Adipic acid, phthalic anhydride, ethylene glycol, neopentyl glycol 2-ethylhexanol.
Use/Production. (S) Industrial plasticizers for polyvinyl chloride resin. Prod. range: 680,000 to 750,000 kg/yr.

Y 87–210

Manufacturer. Emery Chemicals.
Chemical. (S) Dimethyl glutarate-adipate, dimethyl terephthalate, neopentyl glycol, ethylene glycol iso decyl alcohol, tetra propyl titanate.
Use/Production. (S) Industrial plasticizer for use in polyvinyl chloride resin-based molding compounds. Prod. range: 200,000 to 500,000 kg/yr.

Y 87–211

Manufacturer. Confidential.
Chemical. (G) Modified acrylic copolymer.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

Y 87-212

Manufacturer. Confidential.
Chemical. (G) Modified acrylic copolymer.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

Y 87-213

Manufacturer. Confidential.
Chemical. (G) Modified acrylic copolymer.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

Date: August 7, 1987.

Denise Devoe,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 87-18491 Filed 8-13-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-797-DR]

Major Disaster and Related Determinations; Minnesota

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Minnesota, (FEMA-797-DR), dated August 6, 1987, and related determinations.

DATED: August 6, 1987.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3616.

Notice: Notice is hereby given that, in a letter of August 6, 1987, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288), as follows:

I have determined that the damage in certain areas of the State of Minnesota resulting from severe storms, tornadoes, and flooding beginning on or about July 20, 1987, is of sufficient severity and magnitude to warrant a major-disaster declaration under Public Law 93-288. I, therefore, declare that such a major disaster exists in the State of Minnesota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, Federal funds provided under PL 93-288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

Pursuant to section 408(b) of PL 93-288, you are authorized to advance to the State its 25 percent share of the Individual and Family Grant program, to be repaid to the United States by the State when it is able to do so.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Robert J. Adamcik of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Minnesota to have been affected adversely by this declared major disaster:

Dakota and Hennepin Counties for Individual Assistance.

Carver, Ramsey, Scott, and Washington Counties as adjacent areas for Individual Assistance.

Carver, Hennepin, and Ramsey Counties for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Julius W. Becton, Jr.,

Director.

[FR Doc. 87-18548 Filed 8-13-87; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Crowley Caribbean Transport, Inc.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203-011063-002

Title: United States/Jamaica Discussion Agreement

Parties:

Crowley Caribbean Transport, Inc.
R.B. Kirkconnell & Bro. Ltd.
Sea-Land Service, Inc.

Synopsis: The proposed amendment would add Zim Israel Navigation Co. as a member of the agreement. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: August 11, 1987.

Joseph C. Polking,

Secretary.

[FR Doc. 87-18593 Filed 8-13-87; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Formations of; Acquisitions by; and Mergers of Bank Holding Companies; Fidelcor, Inc., et al.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in sections 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 8, 1987.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Fidelcor, Inc.*, Philadelphia, Pennsylvania; to acquire 100 percent of the voting shares of Fidelity Bank Delaware, in a yet-to-be-named city in Delaware.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Provident Bankshares Corporation,* Baltimore, Maryland; to become a bank holding company by acquiring 100 percent of the voting shares of Provident Bank of Maryland, Baltimore, Maryland, a *de novo* bank.

C. Federal Reserve Bank of Chicago (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Badger Bank Services, Inc.,* Cassville, Wisconsin; to become a bank holding company by acquiring 80 percent of the voting shares of Badger State Bank, Cassville, Wisconsin.

2. *NBD Bancorp, Inc.* and NBD Northern Corporation, both in Detroit, Michigan; to acquire 100 percent of the voting shares of State National Corporation, Evanston, Illinois, and thereby indirectly acquire State National Bank, Evanston, Illinois, and The Bank & Trust Company of Arlington Heights, Arlington Heights, Illinois.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Centerre Bancorporation,* St. Louis, Missouri; to acquire 100 percent of the voting shares of Centerre Bank of Delaware, New Castle, Delaware, a *de novo* bank.

Board of Governors of the Federal Reserve System, August 10, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-18536 Filed 8-13-87; 8:45 am]

BILLING CODE 6210-01-M

Acquisition of Company Engaged in Permissible Nonbanking Activities; First Commercial Corp;

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 8, 1987.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Commercial Corporation,* Little Rock, Arkansas; to particpate in a joint venture through the acquisition of 11.11 percent of the voting shares of GulfNet, Inc., New Orleans, Louisiana, which is the manager and operator of an automatic teller machine and electronic fund transfer network pursuant to § 225.25(b)(7) of the Board's Regulation Y. These activities will be conducted in the Southern United States.

Board of Governors of the Federal Reserve System, August 10, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-18537 Filed 8-13-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Privacy Act of 1974; Report of New System

AGENCY: Health Care Financing Administration (HCFA), Department of Health and Human Services (HHS).

ACTION: Notice of New System of Records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system of records, the "Beneficiary Inquiry Tracking System (BITS)," HHS/HCFA/OPHC 09-70-4002. We have provided background information about the system in the "SUPPLEMENTARY INFORMATION" section below. HCFA invites public comments by September 14, 1987, with respect to the routine uses of the system.

DATES: HCFA filed a new system report with the Speaker of the House, the President of the Senate, and the Administrator, Office of Information and Regulatory Affairs, Executive Office of Management and Budget (EOMB), on August 11, 1987, pursuant to paragraph 4b(3) of Appendix I to EOMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985. In accordance with paragraph 4b(4) of this same Circular, we are requesting a waiver from EOMB of the 60-day advance notice requirement. Therefore, in the absence of a denial of the waiver request by EOMB, the new system of records including routine uses will become effective September 10, 1987, unless HCFA receives comments which would convince us to make a contrary determination.

ADDRESS: The public should address comments to Mr. Richard A. DeMeo, Privacy Act Officer, Office of Management and Budget, Health Care Financing Administration, Room G-A-1, East Low Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207. Comments received will be available for inspection at this location.

FOR FURTHER INFORMATION CONTACT:

Ms. Sharley Chen, Office of Compliance, Office of Prepaid Health Care, Health Care Financing Administration, Room 4360 HHS North Building, 330 Independence Avenue, SW., Washington, DC 20201, telephone: (202) 245-0835,

or

Ms. Dorothea Musgrave, Office of Compliance, Office of Prepaid Health Care, Health Care Financing Administration, Room 4360 HHS North Building, 330 Independence Avenue, SW., Washington, DC 20201, telephone: (202) 245-0824.

SUPPLEMENTARY INFORMATION:

Pursuant to the provisons of the Privacy Act of 1974, notice is hereby given that the Health Care Financing Administration (HCFA) proposes to initiate the Beneficiary Inquiry Tracking System (BITS) to track and monitor the resolution of the inquiries made by or on behalf of Medicare beneficiareis who are or have been enrolled in a Group Health Plan. A Group Health Plan is a Health Maintenance Organization (HMO), Competitive Medical Plan

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(CMP), or a Health Care Prepayment Plan (HCPP) which has executed a contract with HCFA to provide services to Medicare beneficiaries on a prepaid or cost basis.

BITS is one of several approaches HCFA will utilize to promote the effective administration and operation, and to maintain the integrity of the Medicare HMO/CMP program. The primary function of BITS will be to track and monitor the status of inquiries received by HCFA and HCFA's ten regional offices (RO) regarding Medicare Group Health Plans. In addition, BITS will serve a valuable program monitoring and evaluation function. The data accumualted in BITS will be aggregated and used to generate reports documenting on a national, regional, or plan level the volume and specific types of inquiries received from or on behalf of Medicare beneficiaries. The Office of Prepaid Health Care (OPHC) will use these reports to conduct various analyses and to develop program indicators for operational (e.g., contract renewal) and programmatic issues. If a particular analysis reveals a significant volume of inquiries or complaints which appear to be valid, HCFA will pursue further investigation and/or corrective actions that may be appropriate. In this manner, BITS will be integrated into and will complement other monitoring and oversight activities of the Department, HCFA, and OPHC; thereby ensuring that Medicare beneficiaries continue to receive quality care.

The BITS is established under the authority of Section 1106(a) of the Social Security Act (42 U.S.C. 1306(a)), and Sections 1874 and 1876 of Title XVIII of the Social Security Act (42 U.S.C. 1395kk and 1395mm). The system is subject to the regulations at 42 CFR Part 401 Subpart B and 45 CFR Part 5b setting forth the conditions under which Medicare information shall be made available to the public and the Freedom of Information Act rules that apply to such disclosures of information. The Privacy Act permits us to disclose information without the consent of the individual for "routine uses"—that is, for purposes that are compatible with the purpose for which we collect the information. The proposed routine uses in the system meet the compatibility requirement of the Act since they are consistent with the purpose of the system to promote the effective administration and operation of the Medicare HMO program and to maintain its integrity. Release of beneficiary-specific information will require authorization and will be determined on an individual case-by-case basis.

We anticipate that disclosure under the routine uses will not result in any unwarranted adverse effects on personal privacy.

Please note: We are re-numbering System No. 09-70-0506, "Group Health Plan System," last published at 52 CFR 13525, April 23, 1987. The new number will be 90-70-4001. This change is made for administrative purposes only in order to uniquely identify the Office of Prepaid Health Care (OPHC) systems.

Dated: August 7, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

09-70-4002

SYSTEM NAME:

Beneficiary Inquiry Tracking System (BITS).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Health Care Financing Administration, Bureau of Data Management and Strategy, Office of Health Program Systems, Division of Capitation Systems, Room A-1, 1705 Equitable Building, 6325 Security Boulevard, Baltimore, Maryland 21207

Health Care Financing Administration, Office of Prepaid Health Care, Room 4360 HHS North Building, 330 Independence Avenue, SW., Washington, DC 20201

Health Care Financing Administration, Regional Offices, See Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any Medicare beneficiary who is or who has been enrolled in a Group Health Plan, or any persons who act on behalf of beneficiaries.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information in the record includes the following:

1. Beneficiary Name
2. Health Insurance Claim (HIC) Number
3. Health Maintenance Organization (HMO) Number
4. Date Received
5. Source of Inquiry; Beneficiary, Congressional Office HMO, HCFA Central Office, Social Security Administration, Provider, Medicare Intermediary or Carrier, Office of the Inspector General, Professional Review Organization/Quality Review Organization, State Insurance Commissioner/State Regulator, Disenrollment Survey, All Others
6. Type of Inquiry: *Quality of Care Issues:* Inappropriate Care Received; Failure to Provide Services; Access to Care; Other Quality of Care; *Enrollment Issues:* Inappropriate Enrollment; Failure to Enroll (Selective Enrollment); Inappropriate Disenrollment; Failure to Disenroll; *HMO Bill Payment Issues:* Beneficiary Billed for Authorized Services; Beneficiary Billed for Nonauthorized Services; Provider Not Paid by HMO; *Correction Actions:* Medicare Non-payment Because of HMO Status; Systems Corrections; *Reconsiderations: Reconsideration Requests; Routine Items:* Beneficiary Requests Disenrollment; Verification of HMO Status; *Miscellaneous:* All Items Not Covered Above
7. Analyst Assigned
8. Referral Dates
9. Referral Entities
10. Response Dates
11. Date Closed
12. Process Days
13. Interim Response Date
14. Retroactive Deletion Months
15. Retroactive Accretion Months
16. Record Number
17. Congressional ID Number
18. HCFA Regional Locator

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system is established under the authority of section 1106(a) of the Social Security Act (42 U.S.C. 1306(a)) and sections 1874 and 1876 of Title XVIII of the Social Security Act (42 U.S.C. 1395kk and 1395mm).

PURPOSE OF THE SYSTEM:

The Beneficiary Inquiry Tracking System (BITS) will be used to track and monitor the resolution of the inquiries made by or on behalf of Medicare beneficiaries who are or who have been enrolled in a Group Health Plan. A Group Health Plan is a Health Maintenance Organization (HMO), Competitive Medical Plan (CMP), or a Health Care Prepayment Plan (HCPP) which has executed a contract with HCFA to provide services to Medicare beneficiaries on a prepaid or cost basis.

BITS is one of several approaches HCFA will utilize to promote the effective administration and operation, and to maintain the integrity of the Medicare HMO/CMP program. The primary function of BITS will be to track and monitor the status of inquiries received by HCFA and HCFA's ten regional offices (RO) regarding Medicare Group Health Plans. This will assist the ROs in managing their inquiry caseloads and will facilitate timely resolution of the inquiries. In addition, BITS will serve a valuable program monitoring

and evaluation function. The data accumulated in BITS will be aggregated and used to generate reports documenting on a national, regional, or plan level the volume and specific types of inquiries received for or on behalf of Medicare beneficiaries. The Office of Prepaid Health Care (OPHC) will use these reports to conduct various analyses and to develop program indicators for operational (e.g., contract renewal) and programmatic issues. Based upon analysis of these reports, OPHC will be able to identify potential problems or conflicts that exist within the Medicare HMO program. If a particular analysis reveals a significant volume of inquiries or compliants which appear to be valid, HCFA will pursue further investigation and/or corrective actions that may be appropriate. In this manner, BITS will be integrated into and will complement other monitoring and oversight activities of the Department, HCFA, and OPHC.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Disclosures may be made:

1. To a congressional office in response to an inquiry from that office at the request of the subject individual.

2. To the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when
(a) HHS or any component thereof; or
(b) Any HHS employee in his or her official capacity; or
(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS where it is authorized to do so) has agreed to represent the employee; or
(d) The United States or any agency there of where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records were collected.

3. To a contractor for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system or for developing, modifying and/or manipulating ADP software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance for ADP or telecommunications systems containing or supporting records in the system.

4. To a third party where:
(a) HCFA needs information from the third party to verify information presented by the inquiring individual relating to program integrity, quality of care, evaluation and measurement of system activities, entitlement to benefits, or amount of reimbursement;
(b) The individual is unable to provide the information sought by HCHA, i.e., there is a reasonable basis to conclude that the individual is of questional mental capability, cannot read or write, cannot communicate due to a language barrier, or lacks access to the information, or that some similar circumstances exists;
(c) The party to whom disclosure is to be made has, or is reasonably expected to have such information, and disclosure is needed in order to obtain the information; and
(d) HCFA determines that the purpose of disclosure is compatible with the purposes for which the records were collected.

5. To a State Insurance Commissioner or other state regulator with similar authority, Professional Review Organization, Quality Review Organization, or an entity under contract to HCFA or the Department acting in a manner consistent with maintaining the integrity of the Medicare program if HCFA determines that disclosure of beneficiary-specific information is necessary or relevant to an official investigation or litigation regarding a specific case, and if HCFA determines:
(a) That the use or disclosure of information does not violate legal limitations under which the record was provided, collected, or obtained; and
(b) That the purpose for which disclosure is to be made:
(1) Is compatible with the purposes for which the records were collected;
(2) Cannot be reasonably accomplished unless the record is provided in individual identifiable form; and
(3) Is of sufficient importance to warrant any effect on the privacy of the individual that disclosure of the record might bring; and
(c) That adequate safeguards have been instituted so as to protect the confidentiality of the data and prevent unauthorized access to it; and
(d) That the appropriate procedures, format, and media will be used for the data disclosure process.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM

STORAGE:

The records are maintained at each of the system location sites in magnetic media (e.g., magnetic tape and computer discs) and in paper form.

RETRIEVABILITY:

The data in this system are retrieved by beneficiary name, social security number or record number.

SAFEGUARDS:

Safeguards for automated records have been established in accordance with the Department of HHS' Information Resources Management Manual, "Part 6, Automated Information Systems Security." This includes maintaining the records in a secure enclosure.

Access to specific records is limited to those who have a need for them in the performance of their official duties.

Paper records are maintained in locked files in buildings which are secured after normal business hours.

RETENTION AND DISPOSAL:

Records are maintained on-line in the system from the date of inquiry until two years after the final response is released.

SYSTEM MANAGER AND ADDRESS:

Director, Office of Prepaid Health Care, Health Care Financing Administration, Room 4360 HHS North Building, 330 Independence Avenue, SW., Washington, DC 20201

NOTIFICATION PROCEDURES:

To determine if a record exists, write to the system manager at the address indicated above or to the HMO Coordinator at the appropriate regional office (see Appendix A), and specify beneficiary name or Social Security Number.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requestors should reasonably specify the information in the records being sought. You may also request an accounting of disclosures that have been made of your records, if any. (These procedures are in accordance with Departmental Regulations (45 CFR 5b.5(a)(2).)

CONTESTING RECORD PROCEDURES:

Contact the system manager named above and reasonably identify the record and specify the information to be contested, and state the corrective action sought and your reasons for

requesting the correction, along with information to show how the record is inaccurate, incomplete, untimely, irrelevant, or otherwise in need of correction. (These procedures are in accordance with Departmental Regulations (45 CFR 5b.7).

RECORD SOURCE CATEGORIES:

The identifying information contained in these records is obtained from the inquiries of or those made on behalf of Medicare beneficiaries and the following sources: Congressional office; Health Maintenance Organization (HMO) or a Group Plan; HCFA Central Office; Social Security Administration; providers; Medicare Intermediary/ Carrier; Office of the Inspector General; Professional Review Organization; State Insurance Commissioner/State Regulator; Disenrollment Survey; and all others. The paper record includes the original incoming inquiry, any supporting documentation obtained during the investigation process, and the final inquiry response. The magnetic tape record will only include information to be compiled in the data base (e.g., name, dates associated with inquiry resolution, type of inquiry) and not any descriptive data items.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix—Health Care Financing Administration, Regional Offices

I. Boston

HMO Coordinator, Room 1309, JFK Federal Building, Boston, Massachusetts 02203

II. New York

HMO Coordinator, Room 3811, 26 Federal Plaza, New York, New York 10278

III. Philadelphia

HMO Coordinator, 3535 Market Street, P.O. Box 7760, Philadelphia, Pennsylvania 19101

IV. Atlanta

HMO Coordinator, Suite 701, 101 Marietta Tower, Atlanta, Georgia 30323

V. Chicago

HMO Coordinator, Suite A–835, 175 W. Jackson Boulevard, Chicago, Illinois 60604

VI. Dallas

HMO Coordinator, Room 2000, 1200 Main Tower Building, Dallas, Texas 75202

VII. Kansas City

HMO Coordinator, New Federal Office Building, Room 235, 601 East 12th Street, Kansas City, Missouri 64106

VII. Denver

HMO Coordinator,
Federal Building,
Room 574,
1961 Stout Street,
Denver, Colorado 80294

IX. San Francisco

HMO Coordinator,
14th Floor,
100 Van Ness Avenue,
San Francisco, California 94102

X. Seattle

HMO Coordinator, Mail Stop 502, 2901 Third Avenue, Seattle, Washington 98121

[FR Doc. 87–18549 Filed 8–13–87; 8:45 am]

BILLING CODE 4120-03-M

National Institutes of Health

Reestablishment

Pursuant to the Federal Advisory Committee Act of October 6, 1972 [Pub. L. 92–463, 86 Stat. 770–776], and the Health Research Extension Act of 1985, November 20, 1985 [Pub. L. 99–158, section 402(b)(6)], the Director, NIH, announces the reestablishment, effective September 1, 1987, of the following committees:

Diagnostic Radiology Study Section
Molecular Biology Study section
Neurology B Study Section
Nutrition Study Section
Pathology A Study Section
Pathology B Study Section
Physiology Study Section
Reproductive Biology Study Section
Tropical Medicine and Parasitology Study Section

Duration of these committees is continuing unless formally determined by the Director, NIH, that termination would be in the best public interest.

Dated: August 10, 1987.

James B. Wyngaarden,
Director, NIH.

[FR Doc. 87–18623 Filed 8–13–87; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Meetings; Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given of the meetings of the Board of Scientific Counselors, Division of Cancer Prevention and Control, and its Subcommittees.

These meetings will be open to the public to discuss administrative details or other issues relating to committee activities as indicated in the notice. Attendance by the public will be limited to space available.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892–3100 [301–496–5708] will provide summaries of the meeting and rosters of members upon request.

Other information pertaining to the meetings can be obtained from the Executive Secretary, Linda M. Bremerman, National Cancer Institute, Blair Building, Room 1A07, National Institutes of Health, Bethesda, Maryland 20892–4200 (301–427–8630).

Name of committee: Centers and Community Oncology Subcommittee
Date of meeting: September 3, 1987, 8:30 a.m–4 p.m.
Place of meeting: Building 31, Conference Room 9, C Wing 9000 Rockville Pike, Bethesda, Maryland 20892–3100
Agenda: Discuss current and future programs of the Centers and Community Oncology Program.

Name of committee: Cancer Control Science Subcommittee
Date of meeting: September 10, 1987, 11 a.m.–4 p.m.
Place of meeting: Building 31, Room 2A52, 9000 Rockville Pike, Bethesda, Maryland 20892–3100
Agenda: Discuss current and future programs of the Cancer Control Science Program

Name of committee: Prevention Subcommittee
Date of meeting: September 15, 1987, 9 a.m.–4 p.m.
Place of meeting: Federal Building, Room B1–19, 7550 Wisconsin Avenue, Bethesda, Maryland 20892–4300
Agenda: Discuss current and future programs of the Prevention Program.

Name of committee: Board of Scientific Counselors, Division of Cancer Prevention and Control
Dates of meeting: September 21–22, 1987, 8:30 a.m.–adjournment
Place of meeting: Holiday Inn, Rooms: Versailles III and IV, 8120 Wisconsin Avenue, Bethesda, Maryland 20814
Agenda: Review progress of programs within the Division and review of concepts being considered for funding.

Dated: August 7, 1987.

Betty J. Beveridge,
Committee Management Officer, NIH.

[FR Doc. 87–18562 Filed 8–13–87; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Dental Research; Meeting of Special Grants Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Special Grants Review Committee, National Institute of Dental Research, September 29–30, 1987, in the Holiday Inn-Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815. The Committee will meet in the Palladian East Room. The meeting will

be open to the public from 9 a.m. to 9:30 p.m. on September 29 for general discussions. Attendance by the public is limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on September 29 from 9:30 a.m. to recess and on September 30 from 9 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Rose Marie Petrucelli, Executive Secretary, NIDR Special Grants Review Committee, NIH, Westwood Building, Room 519, Bethesda, MD 20892, (telephone 301/496–7658) will provide a summary of the meeting, roster of committee members and substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 13.121–Diseases of the Teeth and Supporting Tissues: Caries and Restorative Materials; Periodontal and Soft Tissue Diseases; 13–122-Disorders of Structure, Function, and Behavior: Craniofacial Anomalies, Pain Control, and Behavioral Studies; 13–845–Dental Research Institutes; National Institutes of Health)

Dated: August 6, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–18563 Filed 8–13–87; 8:45 am]

BILLING CODE 4140-01-M

National Eye Institute; National Advisory Eye Council; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Eye Council, National Eye Institute, September 17–18, 1987, Building 31, Conference Room 8, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public from 9 a.m. until approximately 12 noon on Thursday, September 17. Following opening remarks by the Director, National Eye Institute, there will be presentations by the staff of the Institute concerning Institute programs and various research assistance mechanisms. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public from approximately 12 noon until recess on Thursday, September 17, and from 9 a.m. until adjournment on Friday, September 18, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Lois DeNinno, Acting Committee Management Officer, National Eye Institute, Building 31, Room 6A51, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–5863, will provide summaries of meetings, rosters of committee members, and substantive program information upon request.

(Catalog of Federal Domestic Assistance Programs, Nos. 13.867, Retinal and Choroidal Diseases Research; 13.868, Corneal Diseases Research; 13.869, Cataract Research; 13.870, Glaucoma Research; and 13.871, Sensory and Motor Disorders of Visual Research; National Institutes of Health)

Dated: August 6, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–18564 Filed 8–13–87; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Allergy and Infectious Diseases; Meetings of National Advisory Allergy and Infectious Diseases Council; Allergy and Immunology Subcommittee; Microbiology and Infectious Diseases Subcommittee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Allergy and Infectious Diseases Council, National Institute of Allergy and Infectious Diseases, and its subcommittees on September 17–18, 1987, at the National Institutes of Health, Building 31C, Conference Room 6, Bethesda, Maryland 20892.

The meeting will be open to the public on September 17 from approximately 9 a.m. to 9:15 a.m. for opening remarks of the Institute Director and again from 2:15 p.m. to approximately 4 p.m. for discussion of procedural matters, Council business, and a report from the Institute Director which will include a discussion of budgetary matters. The primary program discussion will include a report by the Director, Intramural Research Program, and a report by the Deputy Director, NIH, on the use of animals in biomedical research.

In accordance with the provisions set forth in sections. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting of the NAAIDC Allergy and Immunology Subcommittee and of the NAAIDC Microbiology and Infectious Diseases Subcommittee will be closed to the public for approximately four hours for review, evaluation, and discussion of individual grant applications. It is anticipated that this will occur from 9:15 a.m. until approximately 12 p.m., and from 1 p.m. until approximately 2:15 p.m. on September 17. The meeting of the full Council will be closed from approximately 8:30 a.m. until adjournment on September 18 for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301–496–5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. John W. Diggs, Director, Extramural Activities Program, NIAID, NIH, Westwood Building, Room 703, telephone (301–496–7291), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855, Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health).

Dated: August 6, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–18558 Filed 8–13–87; 8:45 am]

BILLING CODE 4140-01-M

National Institute on Aging; Meeting of the National Advisory Council on Aging

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Council on Aging, National Institute on Aging (NIA), on September 15–16, 1987, in Building 31, Conference Room 10, National Institutes of Health, Bethesda, Maryland. This meeting will be open to the public on Tuesday, September 15, from 10:30 a.m. until 1:00 p.m. for a status report by the Director, National Institute on Aging, the

Biomedical Research and Clinical Medicine Program Review, and a report on the meeting of the Advisory Committee to the Director, NIH. It will again be open to the public Wednesday, September 16, from 9:00 a.m. until adjournment for a report on the Behavorial and Social Research Program, a report of the Office of Technology Assessment of "Life Sustaining Technologies and the Elderly," and a report on the ad hoc Committee on Program. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting of the Council will be closed to the public on September 15 from 2:00 p.m. to recess for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Because this meeting is scheduled so far in advance, it is suggested that you contact Mrs. June McCann, Council Secretary for the National Institute on Aging, National Institutes of Health, Building 31, Room 5C05, Bethesda, Maryland 20892, (301/496–9322), for specific information.

(Catalog of Federal Domestic Assistance Program No. 13.866, Aging Research, National Institutes of Health)

Dated: August 6, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–18559 Filed 8–13–87; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Child Health and Human Development; Meeting of the National Advisory Child Health and Human Development Council

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Child Health and Human Development Council, September 21–22, 1987, which is being held in conjunction with the NICHD 25th Anniversary Celebration and the NIH Centennial Observation.

The NICHD 25th Anniversary Celebration on September 21 in Wilson Hall, Shannon Building, will be open to the public from 9:00 a.m. until 1:00 p.m. The agenda includes an NIH Centennial slide presentation, comments on scientific progress by former NICHD Directors, research accomplishments by longest term grantees and intramural scientists, and a look to the future. The meeting will be open to the public on September 22 convening in Conference Room 6, Building 31 from 8:30 a.m. to 9:30 a.m. for the report of the Director, NICHD. The Subcommittee on Planning meeting, open to the public, will meet in Room 2A03, Building 31 on September 22 from 1:00 p.m. to adjournment to discuss the Biennial Report and the agenda for the next Council meeting. Attendance by the public will be limited to space available.

In accordance with the provision set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on September 22 from 9:30 a.m. to completion of the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Majorie Neff, Council Secretary, NICHD, Landow Building, Room 6C08, National Institutes of Health, Bethesda, Maryland 20892, Area Code 301, 469–1485, will provide a summary of the meeting and a roster of Council members as well as substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.864, Population Research, and 13.865, Research for Mothers and Children, National Institutes of Health)

Dated: August 6, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–18560 Filed 8–13–87 8:45 am]

BILLING CODE 4140–01–M

National Institute of Dental Research; Meeting of National Advisory Dental Research Council

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the National Advisory Dental Research Council, National Institute of Dental Research, to be held September 21–22, 1987, Conference Room 10, Building 31, National Institutes of Health, Bethesda, Maryland. This meeting will be open to the public from 9:00 a.m. to adjournment on September 22 for general discussion and program presentations. Attendance by the public will be limited to space available. The 1987 Seymour J. Kreshover lecture will follow at 3:30 pm., in the ACRF Amphitheater in the Warren G. Magnuson Clinical Center, NIH.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting of the Council will be closed to the public on September 21 from 10:30 a.m. to recess for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Preston A. Littleton, Executive Secretary, National Advisory Dental Research Council, and Deputy Director, National Institute of Dental Research, National Institutes of Health, Building 31, Room 2C39, Bethesda, Maryland 20892, (telephone 301–496–9469), will furnish a roster of committee members, a summary of the meeting, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program Nos. 13.121-Diseases of the Teeth and Support Tissues; Caries and Restorative Materials; Periodontal and Soft Tissue Diseases; 13.122-Disorders of Structure, Function, and Behavior: Craniofacial Anomalies, Pain Control, and Behavioral Studies; 13.845-Dental Research Institutes; National Institutes of Health)

Dated: August 6, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–18561 Filed 8–13–87; 8:45 am]

BILLING CODE 4140–01–M

National Institute of General Medical Sciences; Meeting of the National Advisory General Medical Sciences Council

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory General Medical Sciences Council, National Institute of General Medical Science, National Institutes of Health, on October 8 and 9, 1987, Building 31, Conference Room 6, Bethesda, Maryland.

This meeting will be open to the public on October 8, 1987, from 8:30 a.m. to 11:30 a.m. for opening remarks; report of the Director, NIGMS; and other business of the Council. Attendance by the public will be limited to space available.

In accordance with provisons set forth in section 552b(c)(4) and 552b(c)(6), Title

5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on October 8 from 11:30 a.m. to 6:00 p.m., and on October 9, 1987, from 8:30 a.m. until adjournment, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Ann Dieffenback, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Building 31, Room 4A52, Bethesda, Maryland 20892, Telephone: 301, 496–7301 will provide a summary of the meeting, roster of council members. Dr. Elke Jordan, Executive Secretary, NAGMS Council, National Institutes of Health, Westwood Building, Room 953, Bethesda, Maryland 20892, Telephone: 301, 496–7061 will provide substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 13–821, Biophysics and Physiological Sciences; 13–859, Pharmacological Sciences; 13–862, Genetics Research; 13–863, Cellular and Molecular Basis of Disease Research; and 13–880, Minority Access to Research Careers [MARC])

Dated: August 6, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–18565 Filed 8–13–87; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Neurological and Communicative Disorders and Stroke Notice of Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the meetings of the committees of the National Institute of Neurological and Communicative Disorders and Stroke.

These meetings will be open to the public to discuss administrative details or other issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of meetings, rosters of committee members, and other information pertaining to the meetings can be obtained from the Executive Secretary indicated.

Name of Committee: National Advisory Neurological and Communicative Disorders and Stroke Council and Its Planning Subcommittee
Date: September 30, 1987 (Planning Subcommittee)
Place: National Institutes of Health, Building 31, Conference Room 8A49, 9000 Rockville Pike, Bethesda, Maryland 20892
Open: 1 p.m.–3 p.m.
Agenda: To discuss program planning, program accomplishments and special reports.
Closed: 3 p.m.–5 p.m.
Closure Reason: For review of grant applications.

Dates: October 1–2, 1987 (Council)
Place: National Institutes of Health, Building 31C, Conference Room 6, 9000 Rockville Pike, Bethesda, Maryland 20892
Open: October 1, 9 a.m.–1 p.m.
Agenda: To discuss program planning, program accomplishments and special reports.
Closed: October 1, 1 p.m.–recess; October 2, 8:30 a.m.–adjournment
Closure Reason: For review of grant applications.
Executive Secretary: John C. Dalton, Ph.D., Director, NINCDS–EAP, National Institutes of Health, Bethesda, Maryland 20892, Telephone: 301/496–9248

Name of Committee: Neurological Disorders Program Project Review A Committee
Dates: October 4–6, 1987
Place: Guest Quarters, 7335 Wisconsin Avenue, Bethesda, Maryland 20814
Open: October 4, 8 p.m.–8:30 p.m.
Agenda: To discuss program planning, program accomplishments and special reports.
Closed: October 4, 8:30 p.m.—recess; October 5, 8:30 a.m.—recess; October 6, 8 a.m.—adjournment
Closure Reason: To review grant applications.
Executive Secretary: Dr. Herbert Yellin, Federal Building, Room 9C–14, National Institutes of Health, Bethesda, Maryland 20892, Telephone: 301/496–9223

Name of Committee: Communicative Disorders Review Committee
Dates: October 22–23, 1987
Place: Guest Quarters, 7335 Wisconsin Avenue, Bethesda, Maryland 20814
Open: October 22, 8:30 a.m.–9 a.m.
Agenda: To discuss program planning, program accomplishments and special reports.
Closed: October 22, 9 a.m.—recess; October 23, 8 a.m.—adjournment
Closure Reason: To review grant applications.
Executive Secretary: Dr. Marilyn Semmes, Federal Building, Room 9C–14, National Institutes of Health Bethesda, Maryland 20892, Telephone: 301/496–9223

Name of Committee: Neurological Disorders Program Project Review B Committee
Dates: November 13–15, 1987
Place: Holiday Inn, Chateau LeMoyne, 301 Rue Dauphine, New Orleans, Louisiana 70112
Open: November 13, 8 p.m.–8:30 p.m.
Agenda: To discuss program planning, program accomplishments and special reports.
Closed: November 13, 8:30 p.m.—recess; November 14, 8 a.m.—recess; November 15, 8 a.m.—adjournment
Closure Reason: To review grant applications.
Exective Secretary: Dr. A Beau White, Federal Building, Room 9C–14, National Institutes of Health, Bethesda, Maryland 20892, Telephone: 301/496–9223

(Catalog of Federal Domestic Assistance Program No. 13.853, Clinical Basis Research; No. 13.854, Biological Basis Research)

Dated: August 6, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–18566 Filed 8–13–87; 8:45 am]

BILLING CODE 4140–01–M

Meeting; National Biomaterial Resource Committee

Notice is hereby given that a group of expert consultants, augmented by NIH staff, will meet to conduct a review of the need for and appropriate management of the procurement and distribution of human tissues and organs for biomedical research purposes.

This review has been instituted by the National Biomaterial Resource Committee of the Office of the Director, NIH. The Committee is charged with coordinating the management and funding of national biomaterial resources, including human tissue procurement functions.

In order to better understand the current and potential usage of such resources, and to define the most efficient methods for obtaining and

distributing human tissue for research purposes, a meeting of outside experts will be held in Bethesda, Maryland on November 9–10, 1987.

The meeting participants will be asked to address the following major questions concerning this concept:

- What is the need for centralized human tissue procurement and distribution networks? Are the needs of the existing user community being adequately met by resources such as:

Existing general human tissue procurement and distribution networks (e.g., the National Diseases Research Interchange);

Specialized tissue procurement organizations funded by NIH Institutes (e.g., the National Institute of Diabetes and Digestive and Kidney Diseases Liver Tissue Procurement and Distribution System, and the National Cancer Institute Cooperative Human Tissue Network);

Private arrangements between investigators and nearby medical institutions?

- Is there a potentially larger user community for human tissues, for instance:

Molecular biologists who cannot easily obtain such tissues due to lack of proximity to appropriate medical centers,

Researchers concerned with rare or orphan diseases for which it is difficult to obtain samples,

Basic cell biologists and tissue culture researchers?

- Is there a need for geographically distributed procurement centers?
- To what extent should such resources be supported by user fees?

As part of these deliberations, the afternoon of November 9, will be devoted to a public hearing in which the review group will receive testimony from interested parties. On November 10, the review group will meet in closed executive session for deliberations. The meeting will be held at the National Institutes of Health, Building 31, Conference Room 6. Attendance and number of presentations will be limited to time and space available.

All individuals wishing to attend or to present statements at this public hearing should notify, in writing, Ms. Barbara Harrison (301–496–1454), National Institutes of Health, Shannon Building, Room 228, 9000 Rockville Pike, Bethesda, Maryland 20892, by September 15.

Those planning to present testimony must file a one-page summary of the presentation with Ms. Harrison by September 22. The proceedings will not be transcribed. Each speaker will be limited to a maximum of 10 minutes.

Those wishing to provide a statement to the review group without public testimony may submit a one-page statement for inclusion in the proceedings by September 22.

Dated: August 4, 1987.

James B. Wyngaarden,

Director, NIH.

[FR Doc. 87–18567 Filed 8–13–87; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-040-07-5620-10-ZGKF; OK NM 63452]

Realty Action; Issuance of Disclaimer of Interest to Lands in Oklahoma

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to issue disclaimer of interest.

SUMMARY: Notice is hereby given that the United States of America, pursuant to the provisions of the Federal Land Policy and Management Act (FLPMA) of 1976, section 315, 43 U.S.C. 1745 (1976) does hereby disclaim and release to the Independent School District No. I–06 all interest in both the surface and mineral estate in the land described below.

DATE: Comments should be received by November 12, 1987.

ADDRESS: Comments should be sent to: Bureau of Land Management, 9522-H East 47th Place, Tulsa, OK 74145.

FOR FURTHER INFORMATION CONTACT: Hans Sallani, Oklahoma Resource Area, Headquarters, 405–231–5491.

Beginning at the Southeast corner of the S½NE¼, Section 2, T. 14 N., R. 26 W., Indian Meridian, Roger Mills County, Oklahoma; Thence West 25 rods; Thence North 32 rods; Thence East 25 rods; Thence South 32 rods to the place of beginning, containing 5.00 acres, more or less.

After review of the official records, and other title evidence it has been determined by the Bureau of Land Management that by Warranty Deed dated September 3, 1921, Rufus N. and Rebecca E. Cox, his wife, conveyed the above land to the Board of Directors Consolidated School District No. 8, Roger Mills County, Oklahoma. This instrument was filed for record on July 8, 1922, and is duly recorded in Book 32, page 71, Roger Mills Courthouse records, Cheyenne, Oklahoma.

The Bureau has determined that the above land was not included in the land conveyed to the United States by Warranty Deed dated March 1, 1941, from Carl Kemp, also known as, Carl A. Kemp and Hermine B. Kemp, his wife, to the United States of America. This instrument was filed for record on March 5, 1941, and is duly recorded in Book 52, page 208, Roger Mills County Courthouse records, Cheyenne, Oklahoma.

The Bureau of Land Management has determined that the United States has no interest in the above land.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments on the above disclaimer may present their views in writing to the District Manager at the address indicated above. If no protest are received the disclaimer will be become effective on or about September 15, 1987.

Dated: August 3, 1987.

Larry L. Woodard,

State Director.

[FR Doc. 87–18568 Filed 8–13–87; 8:45 am]

BILLING CODE 4310-FB-M

[NV-930-07-4212-22]

Filing of Plats of Survey; Nevada

July 31, 1987.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the latest filing of Plats of Survey in Nevada.

DATES: Filings were effective on dates shown.

FOR FURTHER INFORMATION CONTACT: Lacel Bland, Chief, Branch of Cadastral Survey, Nevada State Office, Bureau of Land Management, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520, (702) 784–5484.

SUPPLEMENTARY INFORMATION: 1. The Plats of Survey of lands described below will be officially filed at the Nevada State Office, Reno, Nevada, effective at 10:00 a.m., on September 14, 1987:

Mount Diablo Meridian, Nevada

T. 43 N., R. 19 E.
T. 44 N., R. 19 E.
T. 43 N., R. 20 E.

2. The land within Township 43 North, Range 19 E., located in Long Valley, ranges from approximately 5,500 to 7,000 ft. above sea level, encompassing the southern end of Alkali Lake, rising to a north-south mountain range along the western tier of sections. The soil is sandy clay loam mixed with varying amounts of alkali at the lower

elevations, becoming rocky in the mountains. The vegetation consists of scattered sagebrush, rabbitbrush and native grass, with pockets of juniper, aspen and mountain mahogany at the upper elevations.

Access is gained to this area via Nevada State Highway No. 34 (graded gravel road) which enters in section 33 and leaves in section 1. Another major access road enters in section 32, joins with Nevada State Highway No. 34, and continues northerly along the fourth meridional line. There are a couple of other trail roads in the area. Improvements in the area are limited to a few ranch houses and several old buildings. There is also a major high voltage transmission line that traverses the eastern part of the township.

Principal users are ranchers and hunters.

3. The land within Township 44 North, Range 19 E., located in Long Valley, ranges from approximately 5,500 to 6,700 ft. above sea level, encompassing the northern end of Alkali Lake, rising to a north-south mountain range along the western tier of sections. The soil is sandy clay loam mixed with varying amounts of alkali at the lower elevations. The vegetation consists of scattered sagebrush, rabbitbrush, buckbrush and native grass, with pockets of juniper, aspen and mountain mahogany at the upper elevations.

Access is gained to this area via an improved gravel road which runs along the fourth meridional for 4¾ miles, south to north, jogs approximately ½ mile to the east, then turns easterly along the north boundary of the township, leaving in section 3. A trail road commences at this point, extending easterly to eventually join with Nevada State Highway No. 34 a few miles to the east of this township. There are several trail roads in the area.

Improvements in the area include two main ranches and a couple of mobile homes. There is also a major high voltage transmission line that traverses the eastern part of the township.

Principal users are ranchers and hunters.

4. The land within the confines of this survey in Township 43 North, Range 20 East, located on the eastern side of Long Valley, ranges from approximately 5,500 to 6,000 ft. above sea level and is generally level on the west boundary, rising gently to a distinct bluff toward the east, with tableland and gently rolling land on top. The soil in sandy in the valley becoming very rocky on the bluff and on top. The vegetation consists of scattered juniper in areas on top and scattered sagebrush and native grass throughout.

Access is gained to this area via County Road 8A, an east-west road located about a mile south of the township. There is a main trail road in the township running generally northwest and southeast in addition to a couple of other minor trail roads. There is a reservoir located in section 34 and numerous windmills. The western part of West Lake extends into sections 25 and 36.

Principal users are ranchers and hunters.

5. Subject to valid existing rights, the provisions of existing withdrawals and classifications, and the requirements of applicable land laws, the lands described above are hereby open to application, petition, and disposal as appropriate. All such valid applications received at or prior to 10:00 a.m., on September 14, 1987, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in order of filing. The lands described above have been open and continue to be open to the mining and mineral leasing laws.

6. The following Plats of Survey which do not require an opening, were officially filed at the Nevada State Office, Reno, Nevada, effective at 10:00 a.m., on the dates shown:

Mount Diablo Meridian, Nevada

T. 20 S., R. 59 E., Dependent Resurvey and Section Subdivision, July 21, 1987
T. 21 S., R. 19 E., Dependent Resurvey and Section Subdivision, July 21, 1987
T. 47 N., R. 39 E., Dependent Resurvey and Section Subdivision, July 28, 1987
T. 13 S., R. 70 E., Supplemental Plat, July 28, 1987

The survey of T. 47 N., R. 39 E., was executed to meet certain administrative needs of the Bureau of Indian Affairs. The remaining surveys were executed to meet the administrative needs of the Bureau of Land Management.

All of the above listed plats are now the basic record of describing the lands for all authorized purposes. The plats will be placed in the open files in the BLM Nevada State Office and will be available to the public as a matter of information. Copies of the plats and related field notes may be furnished to the public upon payment of the appropriate fee.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 87-18541 Filed 8-13-87; 8:45 am]

BILLING CODE 4310-HC-M

[NV-940-07-4220-11; Nev-045108, Nev-045160, Nev-045905, Nev-051785, Nev-059256, N-5092]

Proposed Continuation and Modification of Withdrawals; Nevada

July 30, 1987.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) proposes that 618.074 acres of land withdrawn for six air navigation sites continue for an additional 20 years. The lands will remain closed to location and entry under the mining laws. One withdrawal containing .304 acres has been and will remain open to leasing under the mineral leasing laws. The remaining withdrawals will be modified to open the land to application under the mineral leasing laws.

DATE: Comments should be received by November 12, 1987.

ADDRESS: Comments should be sent to: State Director, Nevada State Office, Bureau of Land Management, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, BLM Nevada State Office, P.O. Box 12000, Reno, NV 89520, (702) 784-5481.

SUPPLEMENTARY INFORMATION: The FAA proposes that the existing land withdrawals made by BLM Orders dated January 18, 1952, September 18, 1957, and November 14, 1957, and Public Land Orders Nos. 1905 dated July 15, 1959, 3447 dated September 23, 1964, and 5305 dated November 28, 1972, be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The lands are described as follows:

Mount Diablo Meridian

T. 8 N., R. 35 E.,
Sec. 12, SE¼.
T. 2 N., R. 38 E.,
Sec. 29, Beginning at Section corner common to Sections 13, 18, 19, and 24, proceed on a bearing S. 51°14'02" E. 11,880.43 feet to a point which is the center of the VOR site; thence proceed on a bearing of N. 40°44'30" E. 2,033.49 feet to the true point of beginning; thence S. 2,640 feet to a point; thence W. 1,556.68 feet to a point on the East boundary of State Highway No. 47 right-of-way; thence along the East boundary of State Highway No. 47 road right-of-way on a bearing of N. 11°30' W. 2,694.1 feet to a point; thence E. 2,081.1 feet back to the true point of beginning; and described as Parcel "A"; and beginning at SW. corner

of parcel "A" described above; thence proceeding W. 406 feet to the true point of beginning of Parcel "B"; thence by metes and bounds proceed W. 675.32 feet to a point; thence N. 2,640 feet to a point; thence E. 150.99 feet to a point located on the West boundary of State Highway No. 47 road right-of-way; thence along the West boundary of State Highway No. 47 right-of-way on a bearing of S. 11°30' E. 2,694.1 feet to the true point of beginning; and described as Parcel "B".

T. 13 S., R. 47 E.,
Sec. 17, SE¼NW¼SW¼, S½NE¼SW¼, SW¼NW¼SE¼, W½SW¼SE¼, SE¼SW¼, E½SW¼SW¼;
Sec. 20, NE¼NW¼NW¼, N½NE¼NW¼, NW¼NW¼NE¼.
T. 19 S., R. 57 E.,
Sec. 10, From the quarter corner common to secs. 3 and 10, T. 19 S., R. 57 E., thence S. 9°20' E., 1,141 feet to a U.S. Air Force survey marker which is a cross in the top of a 2-inch bolt set in the foot of an abandoned radar height-finder tower and immediately adjacent to and above a USGS brass top reference marker, said point of departure located at latitude 36°19'07.886" North, longitude 115°34'27.748" W., thence S. 64°22'25" W., 177.36 feet, to a 2½" x 2½" angle iron driven flush with the surface, which is the point of beginning of the plot; thence S. 23°29'55" E., 79.35 feet, to a point, which is a tack in pavement, thence S. 79°13'45" E., 104.76 feet, to a point which is a tack in pavement; thence S. 10°46'15" W., 15 feet, to a point which is a tack in pavement; thence N. 79°13'45" W., 149.05 feet, to a point which is a 2-foot section of reinforcing bar driven flush with the surface; thence N. 67°28'05" W., 72.0 feet, to a point which is a 2-foot section of reinforcing bar driven flush with the surface; thence N. 44°01'05" W., 23 feet, to a point which is a 2-foot section of reinforcing bar driven flush with the surface; thence N. 06°57'20" E., 49 feet, to a point which is a 2-foot section of reinforcing bar driven flush with the surface; thence N. 41°06'50" E., 73.21 feet, to a point which is a 2-foot section of reinforcing bar driven flush with the surface; thence S. 32°00'50" E., 81 feet, to the point of beginning; and described as Parcel 1; and

From the point of beginning described above, thence N. 64°22'25" E., 3 feet, to a point which is the beginning of Parcel 2; thence N. 25°37'35" W., 4.30 feet, to a point; thence N. 64°22'25" E., 3 feet, to a point, thence S. 25°37'35" E., 4.30 feet, to a point; thence S. 64°22'25" W., 3 feet, to the beginning; and described as Parcel 2.

T. 26 S., R. 63 E.,
Sec. 12, SW¼NW¼NE¼NE¼, W½SW¼NE¼NE¼, W½W½SE¼NE¼, S½N½NW¼NE¼, S½NW¼NE¼, SW¼NE¼, S½NE¼NE¼NW¼, SE¼NE¼NW¼, E½SE¼NW¼, SE¼NW¼.
T. 13 S., R. 69 E.,
Sec. 28, SE¼SE¼.

The areas described aggregate 618.074 acres in Esmeralda, Mineral, Nye, and Clark Counties.

The function of the sites is to maintain air to ground communication to provide navigational assistance for civil aviation, commercial airlines, and military aircraft. The purpose of the withdrawals is to provide the minimum essential acreage required to protect the construction, operation, and maintenance of these air navigation sites from electronic or physical interference for flight safety purposes.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the continuation of the proposed withdrawals may present their views in writing to the Nevada State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued, and if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 87-18642 Filed 8-13-87; 8:45 am]

BILLING CODE 4310-HC-M

Supplemental Environmental Impact Statement, Northwest Area Noxious Weed Control Program; Corrections

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of availability of the final supplement to the final environmental impact statement for Noxious Weed Control in Five Northwestern States. Corrections.

FOR FURTHER INFORMATION CONTACT: Philip Hamilton, Oregon State Office, Bureau of Land Management, 825 NE Multnomah, Portland, Oregon 97232.

SUMMARY: Some mistakes have been noted in the numerical displays in some of the tables in the Supplemental Environmental Impact Statement (SEIS) on the Northwest Area Noxious Weed Control Program. When measured against the SEIS's text and how it displays the chemicals' toxicity for specific effects, the mistakes are not substantive. Since the numerical mistakes do not affect the SEIS's textual analysis, in the BLM's judgment no reason exists to reconsider or alter the agency's decision to use chemicals as part of a program to suppress and eradicate noxious weeds.

Despite the inconsequential nature of the numerical errors in the tables as originally displayed, to act consistently with the notion of full disclosure, the BLM has determined that the agency will publish an erratum herein which notes the mistakes in the tables, displays the corrected tables, and states as above that the Agency's position, based on professional opinion, is that the displayed changes do not affect the SEIS's analysis of the decision to use chemicals for noxious weed control. The corrected tables are as follows:

Date: July 31, 1987.

Charles W. Luechar,

State Director, Oregon.

BILLING CODE 4310-33-M

Table 3-3. Summary of Acute and Chronic Toxicity Thresholds Based on Results From the Most Sensitive Species.

Herbicide	Acute Oral[1] LD50 in mg/kg	Systemic Toxicity[2] NOEL in mg/kg/day	Reproductive[3] Toxicity NOEL in mg/kg/day	Provisional[4] Allowable Daily Intake Set by EPA in mg/kg/day
2,4-D	100	1	5	0.01
Picloram	2,000	7	50	0.007
Glyphosate	4,320	30	10	0.1
Dicamba	757	25	3	0.0125

[1]Based on review by Sassman and others 1984 and EPA tox-oneliners.
[2]Lowest NOEL found in the literature (see Appendix K) for general system effects such as changes in kidneys, liver, or decreased food consumption.
[3]Lowest NOEL found in the literature (see Appendix K) for reproductive effects such as birth defects, fertility, fetotoxicity, or maternal toxicity.
[4]EPA used the lowest NOEL and reduced it by a safety factor (100, 1,000, 100 and 2,000 for 2,4-D, picloram, glyphosate, and dicamba respectively).

Table 3-5. Lowest Margins of Safety for Occupational and Public Exposures

	2,4-D (NOEL = 1)	Picloram (NOEL = 7)	Glyphosate (NOEL = 10)	Dicamba (NOEL = 3)
Lowest Margins of Safety for Major Mixing Errors				
Workers				
Aerial				
Pilot	9	180	---	77
Mixer-loader	2	41	---	18
Supervisor	23	500	---	214
Observer	6	135	---	58
Ground Vehicle				
Driver	10	212	102	15
Mixer-loader	2	41	20	3
Driver-mixer-loader	2	35	17	2
Ground Hand				
Mixer-loader-applicator	4	90	43	6
Public				
Dermal (drift)				
500 feet	>5,000	>10,000	>10,000	>10,000
1/4 mile	>10,000	>10,000	>10,000	>10,000
1/2 mile	>10,000	>10,000	>10,000	>10,000
Oral Ingestion				
Water	299	>5,000	>2,000	400
Meat	833	>10,000	>5,000	>1,000
Berries	>2,000	>10,000	>10,000	>4,000

Table 3-5. Lowest Margins of Safety for Occupational and Public Exposures (Cont.)

	2,4-D (NOEL = 1)	Picloram (NOEL = 7)	Glyphosate (NOEL = 10)	Dicamba (NOEL = 3)
Lowest margins of Safety for Extrordinary Exposures				
Dermal and Oral Exposure (public)	118	>2,000	>1,000	150
Dermal Exposure Aerial Spray (public)	10	>10,000	83	100
Ground Hand Applicator with Oral Exposure (Occupational)	4	87	41	6
Lowest Margins of Safety for Doses Due to Spills				
Spills onto skin (0.5 liter)				
Concentrate	-94	1.5	-7.2	-31
Spray Mix (Aerial)	-14	15	---	-9
Spray Mix (Ground)	-1.4	175	7.1	1
Spills into Water (1 liter consumed)				
Pond, Helo	13	280	---	120
Reservior, Helo	1,000	>1,000	---	8,823
Pond, Truck	9	194	91	14
Reservoir, Truck	667	>1,000	>1,000	1,000

Table N-5 Summary of Dosages for occupational Exposure (in mg/kg/day)

	2,4-D		Picloram		2,4-D in Mix		Picloram in Mix		Glyphosate		Dicamba	
	Minor Mix Errors	Major Mix Errors	Minor Mix Errors	Major Mix Errors	Minor Mix Errors	Major Mix Errors	Minor Mix Errors	Major Mix Errors	Minor Mix Errors	Major Mix Errors	Minor Mix Errors	Major Mix Errors
Aerial[1]												
Pilot	0.108	0.117	0.036	0.039	---	---	---	---	---	---	0.036	0.039
Mixer-loader	0.468	0.507	0.156	0.169	---	---	---	---	---	---	0.156	0.169
Supervisor	0.040	0.043	0.013	0.014	---	---	---	---	---	---	0.013	0.014
Observer	0.144	0.156	0.048	0.052	---	---	---	---	---	---	0.048	0.052
Ground Vehicle[1]												
Driver	0.090	0.098	0.030	0.033	0.030	0.033	0.015	0.017	0.090	0.098	0.18	.196
Mixer-loader	0.468	0.507	0.156	0.169	0.156	0.169	0.078	0.085	0.468	0.507	0.936	1.014
Driver-mixer-loader	0.558	0.605	0.186	0.202	0.186	0.202	0.093	0.101	0.558	0.605	1.116	1.209
Ground hand[1]												
Mixer-loader-applicator	0.216	0.234	0.072	0.078	0.072	0.078	0.036	0.039	0.216	0.234	0.432	.468

[1]Computed using the formula. (Application Rate x Base Case Dose). Tables N-3 and N-4 respectively.

Table N-8A Margins of Safety[1] for Systemic Effects Based on Doses to Workers on Aerial and Ground Application Projects

	2,4-D		Picloram		2,4-D & Picloram		Glyphosate		Dicamba	
	Minor Mix Errors	Major Mix Errors	Minor Mix Errors	Major Mix Errors	Minor Mix Errors	Major Mix Errors	Minor Mix Errors	Major Mix Errors	Minor Mix Errors	Major Mix Errors
Aerial[1]										
Pilot	9	9	194	180	---	---	---	---	694	641
Mixer-loader	2	2	45	41	---	---	---	---	160	148
Supervisor	25	23	539	500	---	---	---	---	1,923	1,786
Observer	7	6	146	135	---	---	---	---	521	481
Ground Vehicle[1]										
Driver	11	10	233	212	89	80	333	306	139	128
Mixer-loader	2	2	45	41	17	15	64	59	27	25
Driver-Mixer-loader	2	2	38	35	14	13	54	50	22	21
Ground hand[1]										
Mixer-loader-applicator	5	4	97	90	37	33	139	128	58	53

[1]MOS = NOEL from Table N-7 divided by exposure dose from Table N-5

Table N-8B Estimated Margins of Safety[1] for Reproductive Effects Based on Doses to Workers on Aerial and Ground Application Projects

	2,4-D		Picloram		2,4-D in Mix		Picloram in Mix		Glyphosate		Dicamba	
	Minor Mix Errors	Major Mix Errors	Minor Mix Errors	Major Mix Errors	Minor Mix Errors	Major Mix Errors	Minor Mix Errors	Major Mix Errors	Minor Mix Errors	Major Mix Errors	Minor Mix Errors	Major Mix Errors
Aerial[1]												
Pilot	45	45	1,386	1,286	---	---	---	---	---	---	83	77
Mixer-loader	10	10	321	293	---	---	---	---	---	---	19	18
Supervisor	125	115	3,850	3,571	---	---	---	---	---	---	231	214
Observer	35	30	1,043	964	---	---	---	---	---	---	63	58
Ground Vehicle[1]												
Driver	55	50	1,664	1,514	165	150	3,334	3,030	111	102	17	15
Mixer-loader	10	10	321	293	30	30	642	592	21	20	3	3
Driver-Mixer-loader	10	10	271	250	30	30	538	496	18	17	3	2
Ground hand[1]												
Mixer-loader-applicator	25	20	693	643	75	60	1,388	1,282	46	43	7	6

[1]MOS = NOEL from Table N-7 divided by exposure dose from Table N-5

TABLE N-9A MARGINS OF SAFETY FOR CHRONIC EFFECTS BASED ON DOSES TO THE PUBLIC IN THE VICINITY OF AERIAL AND GROUND APPLICATION PROJECTS[1]

	ADULT (70 Kg)		ADOLESCENT (40 Kg)		CHILD (10 Kg)	
	MINOR MIXING ERROR	MAJOR MIXING ERROR	MINOR MIXING ERROR	MAJOR MIXING ERROR	MINOR MIXING ERROR	MAJOR MIXING ERROR
2,4-D						
500 FEET	8,600	7,900	6,500	6,000	3,000	2,800
1/4 MILE	27,400	25,300	20,900	19,300	9,800	9,000
1/2 MILE	66,700	61,600	50,800	46,900	23,800	22,000
WATER	300	200	300	300	93	86
MEAT	800	700	800	700	600	500
BERRIES	3,100	2,800	3,400	3,100	2,200	2,000
PICLORAM						
500 FEET	1,816,800	1,677,000	1,384,200	1,277,700	648,800	598,900
1/4 MILE	5,771,000	5,327,100	4,397,000	4,058,700	2,061,000	1,902,500
1/2 MILE	14,401,540	12,937,300	10,678,400	9,857,000	5,005,000	4,620,400
WATER	6,800	6,200	7,700	7,100	1,900	1,700
MEAT	18,100	16,700	17,300	15,900	12,900	11,900
BERRIES	65,300	60,300	71,800	66,300	46,700	43,100
2,4-D IN MIX						
500 FEET	25,900	23,900	19,700	18,200	9,200	8,500
1/4 MILE	82,400	76,100	62,800	57,900	29,400	27,100
1/2 MILE	200,200	184,800	152,500	140,800	71,500	66,000
WATER	900	800	1,100	1,000	200	200
MEAT	2,500	2,300	2,400	2,200	1,800	1,700
BERRIES	9,300	8,600	10,200	9,400	6,600	6,100
PICLORAM IN MIX						
500 FEET	3,633,600	3,354,100	2,768,400	2,555,500	1,297,700	1,197,900
1/4 MILE	11,542,100	10,654,200	8,794,000	8,117,500	4,122,100	3,805,100
1/2 MILE	28,030,900	25,874,600	21,356,800	19,714,000	10,011,000	9,240,900
WATER	13,600	12,500	15,500	14,300	3,800	3,500
MEAT	36,300	33,500	34,600	31,900	25,900	23,900
BERRIES	130,700	120,700	143,700	132,600	93,400	86,200
GLYPHOSATE						
500 FEET	259,500	239,500	197,700	182,500	92,600	85,500
1/4 MILE	824,400	761,000	628,100	579,800	294,400	271,700
1/2 MILE	2,002,200	1,848,100	1,525,400	1,408,100	715,000	660,000
WATER	9,700	8,900	11,100	10,200	2,700	2,500
MEAT	25,900	23,900	24,700	22,800	18,500	17,100
BERRIES	93,400	86,200	102,600	94,700	66,700	61,500
DICAMBA						
500 FEET	108,100	99,800	82,300	76,000	38,600	35,600
1/4 MILE	343,500	317,000	261,700	241,500	122,600	113,200
1/2 MILE	834,200	770,000	635,600	586,700	297,900	275,000
WATER	4,000	3,700	4,600	4,200	1,100	1,000
MEAT	10,800	9,900	10,200	9,500	7,700	7,100
BERRIES	38,900	35,900	42,700	39,400	27,800	25,600

1. These values have been trunkated at the lowest hundred.

TABLE N-98 ESTIMATED MARGINS OF SAFETY FOR REPRODUCTIVE EFFECTS BASED ON DOSES TO THE PUBLIC IN THE VICINITY OF AERIAL AND GROUND APPLICATIONS

MARGINS OF SAFETY

	ADULT (70 Kg)		ADOLESCENT (40 Kg)		CHILD (10 Kg)	
	MINOR MIXING ERROR	MAJOR MIXING ERROR	MINOR MIXING ERROR	MAJOR MIXING ERROR	MINOR MIXING ERROR	MAJOR MIXING ERROR
2,4-D						
500 FEET	43,200	39,900	32,900	30,400	15,400	14,200
1/4 MILE	137,400	126,800	104,600	96,600	49,000	45,200
1/2 MILE	333,700	308,000	254,200	234,600	119,100	110,000
WATER	1,600	1,400	1,800	1,700	400	400
MEAT	4,300	3,900	4,100	3,800	3,000	2,800
BERRIES	15,500	14,300	17,100	15,700	11,100	10,200
PICLORAM						
500 FEET	12,977,200	11,979,000	9,887,400	9,126,800	4,634,700	4,278,200
1/4 MILE	41,221,900	38,051,000	31,407,100	28,991,200	14,722,100	13,589,600
1/2 MILE	100,110,400	92,409,600	76,274,500	70,407,300	35,753,700	33,033,400
WATER	48,100	44,900	55,600	51,300	13,900	12,800
MEAT	129,700	119,700	123,500	114,000	92,600	85,500
BERRIES	467,100	431,100	513,300	473,800	333,600	307,900
2,4-D IN MIX						
500 FEET	129,700	119,700	98,800	91,200	46,300	42,700
1/4 MILE	412,200	380,500	314,000	289,900	147,200	135,800
1/2 MILE	1,001,100	924,000	762,700	704,000	357,500	330,000
WATER	4,800	4,400	5,500	5,100	1,300	1,200
MEAT	12,900	11,900	12,300	11,400	9,200	8,500
BERRIES	46,700	43,100	51,300	47,300	33,300	30,700
PICLORAM IN MIX						
500 FEET	25,954,500	23,958,000	19,774,800	18,253,700	9,269,400	8,556,400
1/4 MILE	82,443,800	76,102,000	62,814,300	57,982,400	29,444,200	27,179,300
1/2 MILE	200,220,800	184,819,200	152,549,100	140,814,600	71,507,400	66,006,800
WATER	97,300	89,800	111,200	102,600	27,800	25,600
MEAT	259,500	239,500	247,100	228,100	185,300	171,100
BERRIES	934,200	862,300	1,026,600	947,600	667,300	615,900
GLYPHOSATE						
500 FEET	86,500	79,800	65,900	60,800	30,800	28,500
1/4 MILE	274,800	253,600	209,300	193,200	98,100	90,500
1/2 MILE	667,400	616,000	508,400	469,300	238,300	220,000
WATER	3,200	2,900	3,700	3,400	900	800
MEAT	8,600	7,900	8,200	7,600	6,100	5,700
BERRIES	31,100	28,700	34,200	31,500	22,200	20,500
DICAMBA						
500 FEET	12,900	11,900	9,800	9,100	4,600	4,200
1/4 MILE	41,200	38,000	31,400	28,900	14,700	13,500
1/2 MILE	100,100	92,400	76,200	70,400	35,700	33,000
WATER	400	400	500	500	100	100
MEAT	1,200	1,100	1,200	1,100	900	800
BERRIES	4,600	4,300	5,100	4,700	3,300	3,000

1. These values have been trunkated at the lowest hundred.

Table N-10 Extraordinary Dose Margins of Safety[1] from Selected Exposures

	Dermal & Oral Exposure[2] (Public)	Dermal Exposure Aerial Spray[3] (Public)	Ground Hand Applicator With Oral Exposure[4] (Occupational)
2,4-D			
Adult	118	10	4
Picloram			
Adult	2,741	10,000	87
2,4-D in Mix			
Adult	354	30	12
Picloram in Mix			
Adult	5,482	20,000	174
Glyphosate			
Adult	1,176	83	41
Dicamba			
Adult	150	100	6

[1]MOS = lowest NOEL exposure dose.
[2]Dermal exposures at 500 feet from application Oral exposure in ingestion of berries, water, and meat.
[3]Assumes person receives full per-acre application rate.
[4]Assumes major mixing errors.

Table N-19 Margins of Safety for Doses Due to Spills of 2,4-D

	Exposure (mg/kg/day	Margin of Safety Relative to Acute LD50 (375)	Systemic NOEL (1)	Reproductive NOEL (5)
Spill onto Skin (0.5 liter)				
Concentrate	94	1	-94	-19
Spray Mix (Aerial)	14	7	-14	2.8
Spray Mix (Ground)	1.4	71	-1.4	3.6
Spills into water (1 liter consumed)				
Pond, Helo	0.076	1,315	13	65.8
Reservoir, Helo	0.001	10,000	1,000	5,000+
Pond, Truck	0.11	909	9	45.45
Reservior, Truck	0.0015	6,666	667	3,333+

Table N-20 Margins of Safety for Doses Due to Spills of Picloram

	Exposure (mg/kg/day	Margin of Safety Relative to Acute LD50 (8200)	Systemic NOEL (7)	Reproductive NOEL (50)
Spill onto Skin (0.5 liter)				
Concentrate	4.8	416	1.5	10
Spray Mix (Aerial)	0.48	4,166	15	104
Spray Mix (Ground)	0.04	10,000+	175	1,250
Spills into water (1 liter consumed)				
Pond, Helo	0.025	8,000	280	2,000
Reservoir, Helo	0.00034	10,000+	10,000+	10,000+
Pond, Truck	0.036	10,000+	194	1,389
Reservior, Truck	0.00048	10,000+	10,000+	10,000+

Table N-22 Margins of Safety for Doses Due to Spills of Dicamba

	Exposure (mg/kg/day	Margin of Safety Relative to Acute LD50 (757)	Systemic NOEL (25)	Reproductive NOEL (3)
Spill onto Skin (o.5 liter)				
Concentrate	94	8	-4	-31
Spray Mix (Aerial)	28	27	-1	-9
Spray Mix (Ground)	2.8	270	9	1
Spills into water (1 liter consumed)				
Pond, Helo	0.025	10,000	1,000	120
Reservoir, Helo	0.00034	100,000	73,529	8823
Pond, Truck	0.22	3,441	114	14
Reservior, Truck	0.0030	10,000	8,333	1,000

[FR Doc. 87-18582 Filed 8-13-87; 8:45 am]
BILLING CODE 6560-50-C

BEST COPY AVAILABLE

Fish and Wildlife Service

Endangered Species Convention; Foreign Law Notification, Honduras

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Information No. 17.

Subject: Honduras—CITES Appendix III wildlife.

This is a Schedule III Notice.

Source of Foreign Law Information: Cites Secretariat.

In a CITES Notification dated January 13, 1987, the CITES Secretariat notified the Parties that the Republic of Honduras has included the following list of species of wildlife on CITES Appendix III:

Mammals:

Agouti paca: *Paca*
Coendou mexicanus: *Coendou*
Dasyprocta punctata: *Agouti*
Eira barbara: *Tayra*
Nasua nasua: *Coati*
Potos flavus: *Kinkajou*

Birds:

Cairina moschata: *Muscovy duck*
Crax rubra: *Great curassow*
Dendrocygna autumnalis: *Black-bellied tree duck*
Dendrocygna bicolor: *Fulvous whistling duck*
Ortalis vetula: *Plain chachalaca*
Penelope purpurascens: *Crested guan*
Sarcoramphsu papa: *King vulture*

Reptiles:

Agkistrodon bilineatus: *Tropical moccasin*
Bothrops asper: *Lance-head snake*
Bothrops nasuta: *Nose-horned viper*
Bothrops nummifera: *Jumping viper, Tamagasse*
Bothrops ophryomegas: *Western hog-nosed viper*
Bothrops schlegeli: *Schlegel's pit-viper, Eyelash viper*
Crotalus durissus: *South American rattlesake*
Micrurus diastema: *Coral snake*
Micrurus nigrocinctus: *Coral snake*

Action by the Fish and Wildlife Service: The Service will detain wildlife included in the above list until it is satisfied that the shipment complies with the provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora. Wildlife included in the above list that was exported from Honduras after April 13, 1987 must be accompanied by a Convention export permit issued by the Honduran management authority. Shipments from other countries must be accompanied by a Convention certificate of origin or a re-export certificate, as appropriate. Shipments failing to comply with the terms of the Convention will be refused clearance and may be subject to seizure and forfeiture.

EFFECTIVE DATE: Date of publication.

Expiration Date: None until further notice.

FOR FURTHER INFORMATION CONTACT: Nancy J. Roeper, Division of Law Enforcement, U.S. Fish and Wildlife Service, P.O. Box 28006, Washington, DC 20005, Telephone: 202–343–9242.

Dated: August 6, 1987.

Frank Dunkle,

Director.

[FR Doc. 87–18608 Filed 8–13–87; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Development Operations Coordination Document; Raintree Resources Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Raintree Resources, Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 4907, Block 57, Main Pass Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on August 3, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: August 5, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87–18543 Filed 8–13–87; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Yellowstone National Park; Commercial Traffic Regulations; Meeting; Correction

AGENCY: National Park Service; Interior.

ACTION: Notice of meeting; date correction.

SUMMARY: This notice corrects the date previously published in the **Federal Register** on August 5, 1987, (52 FR 29074) for a public meeting to be held in West Yellowstone, Montana, for the purpose of obtaining public response concerning the regulation of commercial traffic on that portion of U.S. Highway 191 that passes through Yellowstone National Park. The correct date for this public meeting is September 29, 1987. The dates for the public meetings scheduled for Big Sky and Bozeman, Montana were listed correctly in the original notice and remain the same: September 4 and September 30, respectively.

Date August 10, 1987

L. Lorraine Mintzmyer,

Regional Director, Rocky Mountain Region.

[FR Doc. 87–18641 Filed 8–13–87; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Intent To Engage in Compensated Intercorporate Hauling Operations; Avesta Stainless, Inc., et al.

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A.1. Parent corporation and address of principal office: Avesta Stainless Inc., 6220 Dixie Road, Mississauga, Ontario, Canada L5T 1AG.

2. Wholly-owned subsidiary which will participate in the operations, and jurisdiction of incorporation: Avesta Welding Products, Inc.—New Jersey

B.1. Parent corporation and address of principal office: Enamel Products & Plating Company, 3500 Walnut Street, McKeesport, PA 15132.

2. Wholly-owned subsidiaries and divisions which participated in the operations, and states of incorporation:

Name and State

E.P.&P. Trucking Co.—PA
Solar Hardware Division—MS
Southern-Gemini Division—MS
Anderson Metal Products—MS

C.1. Parent corporation and address of principal office: Home Curtain Corp., 295 Fifth Avenue, New York, NY 10016.

2. Wholly-owned subsidiaries which will participate in the operations, and their states of incorporation:

(A) Superba Print Works, Mooresville, NC—N.Y.
(B) Glenn Manufacturing, Morven, NC—N.C.
(C) Rex Fashions, Mooresville NC—N.Y.
(D) Home Curtain Corp., Mooresville, NC—N.Y.
(E) Draymore Manufacturing, Mooresville, NC—N.C.

D.1. Parent corporation and address of principal office: Occidental Petroleum Corporation, 10889 Wilshire Boulevard, Los Angeles, California 90024 (Incorporated in the State of Delaware)

2. Wholly-owned subsidiaries which will participate in the operations:

i. Cities Service Oil and Gas Corporation, 110 West Seventh Street, P.O. Box 300, Tulsa, Oklahoma 74119 (Incorporation in the State of Delaware)
ii. MidCon Corp., 701 East 22nd Street, P.O. Box 1207, Lombard, Illinois 60148, (Incorporated in the State of Delaware)
iii. Occidental Chemical Corporation, Occidental Tower, 5005 LBJ Freeway, Dallas, Texas 75244 (Incorporated in the State of New York)
iv. IBP, Inc., Highway 35, Box 515, Dakota City, Nebraska 68731 (Incorporated in the State of Delaware)
v. Island Creek Corporation, 2355 Harrodsburg Road, Lexington, Kentucky 40504 (Incorporated in the State of California)

E.1. Parent corporation and address of principal office: Roanoke Electric Steel Corporation, P.O. Box 13948, Roanoke, Virginia 24038–3948.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

(i) John W. Hancock, Jr., Inc.—Virginia
(ii) Shredded Products Corporation—Virginia
(iii) Socar, Inc.—South Carolina
(iv) Socar of Ohio, Inc.—Ohio
(v) Bucyrus Steel Company—Ohio
(vi) RESCO Steel Products Corporation—Virginia

Noreta R. McGee,

Secretary.

[FR Doc. 87–18588 Filed 8–13–87; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB–57 (Sub-No. 250)]

Notice of Findings; Soo Line Railroad Co.; Abandonment in McIntosh County, ND, and McPherson and Campbell Counties, SD

The Commission has issued a certificate authorizing the Soo Line Railroad Company to abandon its 49.27-mile line of railroad extending from milepost 361.00 near Ashley, ND to the end of the line at milepost 410.27 near Pollack, SD, in McIntosh County, ND and McPherson and Campbell Counties, SD. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

Noreta R. McGee,

Secretary.

[FR Doc. 87–18633 Filed 8–13–87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Consent Decree in Action To Enjoin Discharge of Water Pollutants; Automatic Electro-Plating Corp.

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a consent decree in *United States v. Automatic Electro-Plating Corporation,* Civil Action No. 86–0920 (MTB), was lodged with the United States District Court for the District of New Jersey on *July 20,* 1987. The consent decree establishes a compliance program for the New Jersey plant owned and operated by Automatic to bring the plant into compliance with the Clean Water Act, 33 U.S.C. 1251 *et seq.,* and the applicable pretreatment regulations relating to the discharge of pollutants and requires payment of a civil penalty of $100,000.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530 and should refer to *United States v. Automatic Electro-Plating Corporation,* D.J. Ref. No. 90–5–1–1–2531.

The consent decree may be examined at the office of the United States Attorney, District of New Jersey, U.S. Courthouse, 502 Federal Bldg., 970 Broad St. Newark, NJ 07102; at the Region II office of the Environmental Protection Agency, 27 Federal Plaza, New York, New York 10278; and the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Washington, DC 20530. In requesting a copy, please enclose a check in the amount of $1.80 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87–18544 Filed 8–13–87; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to Clean Water Act; City of Berryville, AR

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on July 22, 1987 a proposed consent decree in *United States v. City of Berryville, Arkansas, The State of Arkansas, and Tyson Foods, Inc.,* Civil Action No. 87–3010, was lodged with the United States District Court for the Western District of Arkansas. The proposed consent decree concerns a complaint filed by the United States that alleged violations of section 301 of the Clean Water Act, 33 U.S.C. 1311 at the City's wastewater treatment plant. The complaint alleged that the City discharged pollutants into navigable

waters in excess of the limitations in the City's National Pollutant Discharge Elimination System ("NPDES") permit, violated Administrative Orders issued by EPA, violated its permit monitoring and reporting requirements, and failed to meet the pretreatment requirements in its NPDES permit. The State of Arkansas was named as party pursuant to section 309(e) of the Act, 33 U.S.C. 1319(e). Tyson Foods, Inc. is alleged to have violated section 307 of the Act, 33 U.S.C. 1317, by introducing pollutants into the City's wastewater treatment plant in violation of the general pretreatment regulations, 40 CFR 403.5 The complaint sought injunctive relief to require the City to comply with its NPDES permit and the Administrative Orders and civil penalties for past violations. The consent decree provides for a compliance schedule to bring the City into compliance with its permit by December 31, 1988. The City is also required to pay a civil penalty of $10,000 in settlement of the government's civil penalty claims. The consent decree only resolves the liability of the City of Berryville and the State of Arkansas, and does not address the portions of the complaint against Tyson Foods, Inc. The United States is seeking civil penalties for past violations and injunctive relief to require Tyson Foods, Inc. to comply with the pretreatment regulations.

The Department of Justice will receive for a period of thirty (30) days from the date of the publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. City of Berryville, Arkansas et al.*, D.J. Ref. 90-5-1-1-2777.

The proposed consent decree may be examined at the office of the United States Attorney for the Western District of Arkansas, U.S. Post Office and Courthouse Building, 6th and Rogers, Fort Smith, Arkansas 72901 and at the Region VI Office of the United States Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. Copies of the consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.30 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87-18556 Filed 8-13-87; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Air Act; Weslock Corp.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on August 4, 1987, a proposed Consent Decree in *United States v. Weslock Company*, Civil No. CV 86 4286WDK (JRX) was lodged with the United States District Court for the Central District of California. The proposed Consent Decree concerns the prevention of the discharge of volatile organic compounds in violation of the Clean Air Act and the limits set forth in the California State Implementation Plan ("SIP"), adopted under the Clean Air Act. The proposed Consent Decree requires Weslock to maintain compliance with the Act and the SIP and to pay a civil penalty of $27,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to Weslock Company, D.J. Ref. 90-5-2-1-862.

The proposed Consent Decree may be examined at the office of the United States Attorney, Central District of California, 312 North Spring Street, Los Angeles, California 90012, and at the Region 9 Office of the Environmental Protection Agency, 215 Fremont Street, San Francisco, California 94105. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $1.70 (10 cents per page reproduction cost) make payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87-18557 Filed 8-13-87; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Revocation of Registration; Denial of Application; Eugene H. Tapia, M.D.

On April 23, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), directed an Order to Show Cause to Eugene H. Tapia, M.D. Apartment #140, 1050 Minnewawa Avenue, Clovis, California 93612. The Order to Show Cause sought to revoke DEA Certificate of Registration AT3700134, previously issued to Dr. Tapia, and to deny the application for DEA registration executed by Dr. Tapia on November 10, 1986. The statutory predicate for the Order to Show Cause was that Dr. Tapia's continued registration would be inconsistent with the public interest as defined in 21 U.S.C. 823(f) as evidenced by, but not limited to: (1) Dr. Tapia's unlawfully prescribing controlled substances, specifically codeine cough preparations and Doriden (a Schedule III controlled substance) as part of a scheme to defraud Medicaid and distribute controlled substances; (2) Dr. Tapia's conviction in the United States District Court for the Northern District of Illinois of two counts of mail fraud on April 11, 1986; (3) the summary suspension of Dr. Tapia's license to practice medicine and controlled substance registration by the Illinois Department of Registration and Education on May 23, 1985, and, on June 12, 1985, the revocation of Dr. Tapia's controlled substance license in Illinois.

Dr. Tapia, proceeding pro se, replied to the Order to Show Cause in a letter dated May 25, 1987. Dr. Tapia did not request a hearing. The Administrator finds that Dr. Tapia has waived his opportunity for a hearing under 21 CFR 1301.54(a), and that the doctor's letter constitutes a written statement regarding his position on the matters of fact and law involved. 21 CFR 1301.54(c). The Administrator has considered the entire record in this matter, including Dr. Tapia's written statement, and hereby issues this final order based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrator finds that beginning in 1980, Dr. Tapia was involved in a large racketeering enterprise, Drug Industry Consultants, Inc. (DIC), formed for the purpose of generating cash through the sale of controlled substances and by defrauding the Illinois Department of Public Aid (IDPA) and Medicaid Program. DIC owned and controlled numerous pharmacies and sham medical clinics throughout the Chicago metropolitan area which served as fronts for the sale of controlled substances such as cough syrup and Doriden (glutethimide). When a codeine type cough syrup (e.g., Tussionex) and a sedative such as Doriden are ingested in combination, the effect on the user is a heightened euphoria. This combination is referred to in street terms as "loads" or "juice and beans." Not only did physicians at the DIC clinics sign prescription forms for these abused controlled substances, they were also expected to sign orders for unnecessary blood and other tests. Patients who did not possess a legitimate medicaid card were required to pay $5.00 in cash to clinic personnel in order to see the doctor and obtain the desired drugs. Patients were informed that they would have to submit to the unnecessary lab tests so that medicaid could be billed. Minimal or no medical examinations were performed by the DIC physicians before providing the medically unnecessary prescriptions to the patients; however, the doctors were instructed to maintain patient records in a fashion such that it would appear that the individual receiving cough syrup and Doriden had a legitimate medical need for the substances. After receiving the prescriptions, patients usually received only the Doriden and cough syrup (in exchange for $25—$30 in cash) although the prescription listed numerous other drugs. The pharmacists and the pharmacy involved would then submit invoices to IDPA seeking reimbursement for the unnecessary and frequently non-dispensed items. Examination of these invoices submitted to IDPA reveals that numerous patients supposedly received anywhere from 8 to 57 prescription and non-prescription items per visit. DIC controlled pharmacies received over $10.1 million in reimbursement for their supposed dispensing of services and drugs, etc. Physicians employed by DIC received approximately $4.2 million in IDPA reimbursement.

On November 6, 1982, Dr. Tapia participated in distributing, via prescription, Tussionex and Doriden to an undercover state investigator. During this visit, Dr. Tapia and others dispensed numerous other medically unnecessary items to undercover agents which were reimbursable to IDPA. On January 21, 1983 and on February 10, 1983, the IDPA and the Comptroller's office mailed partial reimbursement for these unnecessary items. This served as the basis for Dr. Tapia's indictment by the special April, 1984 grand jury, in the U.S. District Court, Northern District of Illinois for violation of 21 U.S.C. 841 (Illegal Distribution of Controlled Substances), 18 U.S.C. 1341 (Mail Fraud), and 18 U.S.C. 1962 (RICO). Dr. Tapia pled guilty to two counts of mail fraud (18 U.S.C. 1341) under the terms of a plea agreement. On April 11, 1986, Dr. Tapia was sentenced to six months imprisonment, five years probation, and was required to secure counseling. The doctor admitted his participation in the medicaid and drug distribution fraud in the plea agreement.

On May 23, 1985, the Illinois Department of Registration and Education summarily suspended both Dr. Tapia's license to practice medicine and his controlled substance registration. On June 12, 1985, Dr. Tapia's controlled substance license in Illinois was ordered revoked for a period of no less than five years. The grounds for the suspension were that Respondent's conduct constituted "unprofessional incompetence as manifested by poor standards of care * * *" as well as "* * * dishonorable, unethical [and] unprofessional conduct of a character likely to deceive, defraud or harm the public."

On June 10, 1986, the California Board of Medical Quality Assurance ordered the revocation of Dr. Tapia's Physicians and Surgeons License. However, the Board stayed the execution of the order of revocation and placed Dr. Tapia on probation for five years. As part of his probation, the doctor was suspended from the practice of medicine for six months; ordered to maintain a record of all controlled substances prescribed, dispensed, or administered; directed to perform community service; required to participate in an educational program; and required to pass an oral clinical examination in family practice and obstetrics.

On February 6, 1987, Dr. Tapia passed his oral clinical examination and completed his six-month suspension from the practice of medicine. According to the terms set by the California Board of Medical Quality Assurance, Dr. Tapia has been permitted to resume the practice of medicine in the State of California. Dr. Tapia now wishes to renew his registration with the Drug Enforcement Administration and therefore submitted the application for renewal that is the subject of this final order.

Since the Order to Show Cause seeks the revocation of Dr. Tapia's registration and denial of his application for renewal based on its inconsistency with the public interest, the Administrator must consider the factors enumerated in 21 U.S.C. 823(f) in determining whether to revoke this registration. The factors relevant in this matter are: The recommendation of the appropriate state licensing board or professional disciplinary authority; Respondent's experience in dispensing with respect to controlled substances; compliance with applicable state, Federal, or local law relating to controlled substances; and, such other conduct which may threaten the public health and safety.

Both the State of Illinois Department of Registration and Education and the the California Board of Medical Quality Assurance found Dr. Tapia's admitted acts in the April 25, 1985, plea agreement to be "* * * unprofessional conduct * * * in violation of Federal statutes which offenses were substantially related to the qualifications, functions, and duties of physician and surgeon." Dr. Tapia's registration to handle controlled substances in the State of Illinois was revoked for a period of no less than five years in 1985. Although Dr. Tapia is currently authorized to practice medicine in the State of California, he is on probation for five years.

Dr. Tapia's experience in dispensing controlled substances was negligent and irresponsible. This negligence and irresponsibility is amply demonstrated by Dr. Tapia's active involvement in a "medical practice" which caused the distribution of abused controlled substances without complete physical examinations and for no legitimate medical need. His past experience with controlled substances displays an aptitude for seeking monetary gain rather than providing legitimate medical services.

Dr. Tapia's lack of compliance with applicable laws relating to controlled substances also indicates that he should not be registered with DEA. Dr. Tapia has been convicted of mail fraud in connection with a scheme to illegally distribute controlled substances. Dr. Tapia has admitted his participation in the medicaid and drug distribution

fraud. His fraudulent practices were an abuse of his authority to prescribe controlled substances. Such conduct displayed a clear disregard for the law, wholly inconsistent with the public interest.

In his written statement, Dr. Tapia expressed regret for his past conduct but requested forgiveness inasmuch as his conduct was a "revenge gesture" against a form chief. The Administrator is charged with protecting the public health and safety from the illicit diversion of controlled substances. The facts of this case, as set forth, indicate that Dr. Tapia either lacks the necessary awarness of the responsibilities imposed by DEA registration or has chosen to flagrantly disregard them during a quest for "revenge." Further, his participation in DIC was not an isolated occurrence but part of a pattern of behavior over a number of years. The Administrator concludes that Dr. Tapia has not presented adequate evidence to overcome the inescapable conclusion that he should not be entrusted with a DEA Registration.

The statute provides at 21 U.S.C. 824(a)(4), that a registration may be revoked upon a finding that the registrant has committed such acts as would render his registration inconsistent with the public interest, as determined under 21 U.S.C. 823(f). Accordingly, there is a lawful basis for revoking Dr. Tapia's registration and denying his application for renewal.

Having examined the record as it appears, including the letter submitted by the doctor, the Administrator concludes that there is a lawful basis for the revocation of Dr. Tapia's DEA Certificate of Registration and the denial of any pending applications for renewal of that registration.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AT3700134, previously issued to Eugene H. Tapia, M.D., be, and it hereby is, revoked. The Administrator further orders that any outstanding applications for registration be, and they hereby are, denied. This order is effective September 14, 1987.

Dated: August 11, 1987.

John C. Lawn,

Administrator.

[FR Doc. 87-18588 Filed 8-13-87; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-19,757]

Affirmed Determination Regarding Application for Reconsideration; De Novo Oil and Gas, Inc., Houston, TX

By an application dated July 9, 1987, one of the petitioners requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance on behalf of workers and former workers of De Novo Oil and Gas, Inc., Houston, Texas. The determination was published in the **Federal Register** on July 21, 1987 (52 FR 27479).

The petitioner claims that De Novo Oil and Gas, Inc., produced and marketed crude oil for the spot market and to other companies some of whom import crude oil.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 31st day of July, 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 87-18640 Filed 8-13-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-19,548 and TA-W-19,549]

Negative Determination Regarding Application for Reconsideration; International Resistive Co., Inc.; Philadelphia and Downingtown, PA

By an application dated July 17, 1987, the International Union of Electronic, Electrical, Technical, Salaried and Machine Workers requested administrative reconsideration of the Department's negative determination on the subject petition for trade adjustment assistance for workers at the International Resistive Company, Inc., (IRC) Philadelphia and Downingtown, Pennsylvania. The denial notice was signed on June 15, 1987 and published in the **Federal Register** on June 26, 1987 (52 FR 24068).

Pursuant to CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union claims that the "contributed importantly" test of the increased import criterion of the Trade Act was, in fact, met since one of the subject firm's major customers imported metal film, metal oxide and carbon film resistors in place of domestically produced wirewound resistors.

Investigation findings showed that the "contributed importantly" test of the increased import criterion of Section 222 of the Trade Act was not met. The "contributed importantly" test is generally demonstrated through a survey of the subject firm's customers. The Department's survey showed that major customers accounting for the majority of the subject firm's sales decline in 1986 did not purchase imported wirewound resistors. Customers which increased imports accounted for a small proportion of sales by IRC.

With respect to the union's claim, the Department's survey included a response from the major customer cited by the union. That customer's response indicated that during the period applicable to the petition, it shifted purchase of resistors from the subject firm to another domestic supplier who does not import. The shift to another domestic supplier occurred as the result of a non-trade related reason. Investigation findings also show that an IRC plant in North Carolina has begun production of a newer metal oxide resistor which will replace a major portion of the production of wirewound resistors at the subject facilities.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 3rd day of August, 1987.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 87-18636 Filed 8-13-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-19,497 et al.]

Negative Determination Regarding Application for Reconsideration; Primary Fuels, Inc., Houston, TX and Frontier Fuels, Inc., a Subsidiary of Primary Fuels, Midland, TX and Denver, CO

By an application dated June 26, 1987, one of the petitioners requested administrative reconsideration of the Department's negative determination on the subject petitions for trade adjustment assistance for workers of Primary Fuels, Inc., Houston, Texas and Frontier Fuels, Inc., Midland, Texas and Denver, Colorado. The denial notice was signed on May 15, 1987 and published in the **Federal Register** on June 16, 1987 (52 FR 22880).

Pursuant to CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based of a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petitioner claims that PFI purchased the Fluor Oil and Gas Corporation in November, 1985 and that if Fluor's sales of crude oil were disaggregated from PFI's, the sales and production criterion would have been met.

Investigation findings show that the decreased sales and/or production criterion of section 222 of the Trade Act was not met. The volume of crude oil and natural gas produced and sold by Primary Fuels and its subsidiaries increased in 1986 compared with 1985.

The findings show that PFI set up a holding company (Frontier Fuels, Inc.) in 1985 in order to merge Fluor's production assets into PFI and operate them in the interim. Frontier Fuels which did not exist for most of 1985, consequently, had increased production and sales in 1986. All of Fluor's employees were retained by PFI as Frontier Fuels employees. However, Frontier Fuels ceased to exist as an operating entity after December 1986 when its objective of merging Fluor's assets into PFI was accomplished. All of Frontier Fuels employees (formerly Fluor's) not transferred to PFI by the end of December, 1986 were laid off. The accomplishment of Frontier Fuels' mission was so dominant a cause that worker separations would have occurred irrespective of imports.

In the case of PFI, it is only proper to include Frontier Fuels' sales as PFI's sales since PFI reported such sales as theirs anyway. To break them out would be artificial and capricious. Further, to disaggregate sales by company would serve no purpose since the "contributed importantly" test could not be demonstrated. Company records are not kept which would trace PFI's or the former Fluor's oil sales to specific customers or markets.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 4th day of August 1987.

Barbara Ann Farmer,

Acting Director, Office of Program Management, UIS.

[FR Doc. 87-18637 Filed 8-13-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-18,459]

Revised Determination on Remand; L.E. Jones Co., Menominee, MI

Pursuant to the U.S. Court of International Trade remand, dated July 15, 1987, in *United Auto Workers Local 588, et.al.* v. *Secretary of Labor* (USCIT 87-04-00624), it is recommended that you issue the following revised determination on remand.

The workers at the L.E. Jones Company, Menominee, Michigan plant produce steel valve inserts that are used primarily in the production of diesel engines for original equipment manufacturers and for distributors.

The United Auto Workers state that the firm was granted adjustment assistance by the Department of Commerce while the Department of Labor denied adjustment assistance to workers of the Menominee plant for the same time period.

The Department of Commerce certified the L.E. Jones Company for firm adjustment assistance on June 3, 1986 (FMI 3282-01).

The investigation on remand obtained additional customer evidence from Commerce. The additional evidence shows that customers decreased their purchases from the company and increased purchases from foreign sources. Investigation findings show that sales and production of valve seat inserts declined in the fourth quarter of 1985 compared to the same quarter in 1984 and declined in 1986 compared to 1985. Average employment of production workers decreased in the fourth quarter of 1985 compared to the same quarter of 1984 and decreased in 1986 compared to 1985. U.S. imports of valve seat inserts increased absolutely in the first nine months of 1985 compared to 1984.

Conclusion

After careful review of the additional evidence obtained on remand, it is concluded that increased imports of valve inserts like or directly competitive with the valve inserts produced at Menominee, Michigan contributed importantly to worker separations and to declines in production and employment at L.E. Jones Company, Menominee, Michigan. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers of L.E. Jones Company, Menominee, Michigan who were engaged in employment related to the production of valve seat inserts and who were separated from employment on or after September 29, 1985 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 5th day of August 1987.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 87-18638 Filed 8-13-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-19,645]

Negative Determination Regarding Application for Reconsideration; U.S. Steel Mining Co., Inc., Cumberland Mine, Kirby, PA

By an application dated July 13, 1987, the United Mine Workers of America (UMW) requested administrative reconsideration of the Department's negative determination on the subject petition for trade adjustment assistance for workers of the U.S. Steel Mining Company, Inc., Cumberland mine, Kirby, Pennsylvania. The denial notice was

signed on June 19, 1987 and published in the Federal Register on July 9, 1987 (52 FR 25930).

Pursuant to CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union claims that not all of the coal produced at the Cumberland mine was exported. Some of Cumberland coal shipments in 1986 went to domestic utilities which increased their imports of electrical power from Canada.

Investigation findings show that the "contributed importantly" test of the increased import criterion of section 222 of the Trade Act of 1974 was not met. The entire 1986 sales decline for the Cumberland mine occurred in the export market. Coal exports would not provide a basis for a certification. Also, U.S. coal imports during the past four years ending in 1986 have been negligible.

Investigation findings show that the Cumberland mine works under an arrangement with Ontario-Hydro Electric Power to supply all its coal requirements. Any coal surplus not sold to Ontario-Hydro Electric in 1986 was brokered on the spot market to domestic utilities. The three domestic utilities alleged to be importing electrical power from Canada increased their purchases of coal from the Cumberland mine in 1986 compared to 1985. None of the three mentioned utility companies are owned by U.S. Steel Mining or USX Corporation.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 6th day of August, 1987.

[redacted],

Acting Director, Office of Program Management, UIS.

[FR Doc. 87-18838 Filed 8-13-87; 8:45 am]

[redacted]

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

Withdrawn General Wage Determination Decision

This is to advise all interested parties that the Department of Labor has withdrawn, MN87-8 dated August 7, 1987, Modification No. 5, Big Stone, Douglas, Grant, Otter Tail, Pope, Traverse and Wilkin Counties from General Wage Determination No. MN87-8 dated January 2, 1987, and that the Department of Labor is withdrawing, from the date of this notice, Athens, Champaign, Gallia, Hardin, Lawrence, Logan, Shelby and Union Counties from General Wage Determination No. OH87-29 dated January 2, 1987.

Agencies with construction projects pending to which these wage decisions would have been applicable should utilize the project determination procedure by submitting a SF-308. See Regulations Part 1 (29 CFR), § 1.5. Contracts for which bids have been opened shall not be affected by this notice. Also consistent with 29 CFR 1.6(c)(2)(i)(A), the incorporation of the withdrawal decision in contract specifications, the opening of bids is within ten (10) days of this notice, need not be affected.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office

document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I:

Alabama:
AL87-3 (January 2, 1987)..... p. 6.
Connecticut:
CT87-1 (January 2, 1987)..... pp.70-71, pp. 73-74, 77.
District of Columbia:
DC87-1 (January 2, 1987)..... pp. 88, 92.
Virginia:
VA87-5 (January 2, 1987)..... p. 1134.

Volume II:

Iowa:
IA87-4 (January 2, 1987)..... pp 38-39.
Michigan:
MI87-1 (January 2, 1987)..... pp. 410-424b.
Ohio:
OH87-29 (January 2, 1987)... pp. 817-857.
Ohio:
OH87-33 (January 2, 1987)... p. 862d.
Texas:
TX87-18 (January 2, 1987).... pp. 966-987.
Listing By Location (index)..... pp. xliv-xlv.

Volume III:

Arizona:
AZ87-2 (January 2, 1987)..... p. 19.
Idaho:
ID87-4 (January 2, 1987)..... p. 102.
Montana:
MT87-1 (January 2, 1987)..... pp. 167-168, p.181.
Nevada:
NV 87-1 (January 2, 1987).... p. 238.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the Country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, This 7th Day of August 1987.

Alan L. Moss,

Director, Divisions of Wage Determinations.

[FR Doc. 87-18358 Filed 8-13-87; 8:45 am]

BILLING CODE 4510-27-M

Occupational Safety and Health Administration

[V-84-4]

Interstate Lead Co., Inc.

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of application for interim order and extension of temporary variance; of denial of interim order; and of hearing.

SUMMARY: This notice announces the application of the Interstate Lead Company, Inc. ("ILCO") for an interim order and for an extension of a temporary variance, which expired on September 1, 1985, from the final medical removal trigger under the standard for Occupational Exposure to Lead (29 CFR 1910.1025(k)(1)(i)(D)). This notice also announces OSHA's denial of the request for an interim order and provides reasons for this action. This notice further announces a hearing on the application and sets forth issues for the hearing.

DATES: Interested persons wishing to submit written comments or to participate in the hearing may file a request for party status no later than September 14, 1987, at the Office of the Administrative Law Judge listed below.

ADDRESSES: Requests to participate in the hearing must be filed in duplicate with both:

James J. Concannon, Director, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3653, 200 Constitution Avenue, NW., Washington, DC 20210; and

Nahum Litt, Chief Administrative Law Judge, U.S. Department of Labor, Vanguard Building, Suite 700, 1111 20th Street, NW., Washington DC 20036

The hearing will begin at 9:30 a.m. on November 17, 1987. The specific location of the hearing will be announced in the Federal Register at a later date. Written comments received and hearing participation requests will be available for inspection and copying in the Office of Variance Determination, Room N-3653 at the above Constitution Avenue address.

I. Background

Interstate Lead Company, Inc. ("ILCO"), a secondary lead smelter and refiner, requested an interim order and an extension of its temporary variance from the final trigger level for medical removal protection (MRP) under the standard for Occupational Exposure to Lead (29 CFR 1910.1025(k)(1)(i)(D)).

Under the medical removal protection (MRP) provision of the Lead Standard (29 CFR 1910.1025(k)), employers are required to remove an employee from work having an exposure to lead at or above a specified level of micrograms of lead per cubic meter of air (ug/m^3) if the employee's blood lead level is at or above a specified MRP removal trigger. Once removed, the employee must be kept on temporary medical removal until the employee's blood lead level has declined to or below the MRP return trigger. Employees are guaranteed full wages and benefits throughout the duration of the removal period, generally up to a maximum of 18 months.

The purposes of the MRP provisions are to encourage voluntary employee participation in medical surveillance and to provide temporary medical removal protection to workers who appear to be at higher risk of sustaining material impairment to health from continued exposure to lead.

The standard specifies four removal and three return trigger levels, which have been phased in over a five-year period. Phase one, which began on March 1, 1979, required removal of an employee having a blood lead level at or above 80 micrograms of lead per 100 grams of whole blood (80 ug/100g) and allowed return when the employee's blood lead level declined to 60 ug/100g. Phase two, which began on March 1, 1980, required removal at 70 ug/100g and permitted return at 50 ug/100g. Phase three, which began on March 1, 1981, requires removal at 60 ug/100g and authorizes return at 40 ug/100g. The fourth and final phase, which began on March 1, 1983, requires removal at 50 ug/100g and allows return at 40 ug/100g.

The first three MRP removal triggers—80, 70, and 60 ug/100g triggers—require removal of an employee after periodic and follow-up blood sample tests indicate that the employee's blood lead level is at or above the specified trigger. The 50 ug/100g removal trigger, however, requires removal of an employee whenever the average of the last three blood tests or the average of all blood tests taken over the previous

six months, whichever is longer, is at or above 50 ug/100g. Nevertheless, an employee need not be removed under the 50 ug/100g trigger whenever the employee's most recent blood test indicates a blood lead level of 40 ug/100g or below.

At present and for the indefinite future, the 60 and 50 ug/100g removal triggers are concurrently in effect. Thus, an employee must be removed when the employee's blood lead test results either average 50 ug/100g or are confirmed by a follow-up sample to be 60 ug/100g or over.

In March 1981, the 60/40 MRP triggers went into effect. Prior to that date, the primary and secondary lead smelters and lead battery manufacturers petitioned the Agency for industry-wide stays of the triggers. The petitions were based upon assertions that the companies would be unable to comply with these MRP provisions because the anticiapted removal would result in the unavailability of so many key employees. The petitions were denied because the data submitted by these industries did not demonstrate an industry-wide infeasibility of complying with the MRP triggers or justify the need for an industry-wide stay of these triggers (46 FR 24558, May 15, 1981; and 46 FR 37891, July 23, 1981). However, OSHA did find that there were feasibility problems, on a plant-by-plant basis, owing to the inability of many lead industry employers to reduce employee blood lead levels quickly enough to comply with the scheduled effective date for the 60/40 triggers. Therefore, on July 23 and 24, 1981 (46 FR 37891 and 46 FR 38074, respectively), OSHA announced that the temporary-variance-and-interim-order mechanism, set forth in section 6(b)(6)(A) of the OSHAct and covered by the regulations in 29 CFR Part 1905, would be used to afford relief to lead smelting and battery companies on a plant-by-plant basis.

The July 23 and 24, 1981 Federal Register notices (46 FR 37891 and 46 FR 38074) gave the affected plants until August 31, 1981 to demonstrate that 10 percent or more of their total lead-exposed supervisory, maintenance and skilled employees would be subjected to temporary removal because of blood lead levels between 60–70 ug/100g, or, for any plant below the 10 percent figure, to show by compelling evidence that the temporary relief was needed. The 10 percent figure was utilized by OSHA as a rule of thumb for processing large numbers of applications under the statutory criteria set by section 6(b)(6)(A) of the OSHAct. Eligible employers were required to submit to OSHA An application for a temporary variance and an interim order, written acceptance of the terms of the interim order set out in the Federal Register notice, certification of notice to the affected employees and certain data to support their application.

Seventy applications for an interim order and a temporary variance from the 60/40 ug/100g triggers were received. Of the 70 plants requesting this relief, 45 plants, including 27 secondary smelters, were granted interim orders (46 FR 48854, October 2, 1981; 47 FR 8431, February 26, 1982; and 47 FR 16434, April 16, 1982), which remained in effect until OSHA, on January 28, 1983, rendered a decision on the application for temporary variance. ILCO was among the plants that requested and received this relief.

The variance record demonstrated that because of the inability of many employers to quickly reduce employee blood lead levels, immediate compliance with the 60/40 ug/100g MRP removal and return triggers presented feasibility problems for the 45 plants, in that:

(1) The plants would have to remove form 10 percent to 66 percent of their total skilled, supervisory and maintenance work force from lead exposure at or above the action level;

(2) Experienced employees who would have to be removed could not easily be replaced by other employees since the companies were unable to recruit other employees with the level of skills necessary to perform these highly skilled positions or to quickly train replacements;

(3) Removal of highly skilled and experienced employees would diminish the health and safety of the remaining employees at the affected plants; and,

(4) Sufficient transfer opportunities did not exist for removed employees to be transferred to other jobs in the affected plants, which meant that extensive medical removal layoffs would result in greatly increased MRP costs.

Based on the above, OSHA concluded that the 45 plants had demonstrated that immediate compliance with the 60/40 ug/100g MRP removal and return triggers was infeasible. Each plant, therefore, was granted a temporary variance on January 28, 1983 (48 FR 4062), which was effective until February 28, 1983.

The order temporarily relieved affected employers of the requirement to comply with the 60 ug/100g removal and 40 ug/100 return triggers. As conditions of the relief, employers were obligated to comply with the 70/50 ug/100g triggers; the other conditions and requirements of the order, which required increased medical surveillance and additional safeguards to protect the health of affected employees; and, with all other provisions of the Lead Standard.

On March 1, 1983, the 50 ug/100g MRP removal trigger level went into effect. Based on data that had been submitted in support of earlier requests for a temporary variance from the 60/40 ug/100g MRP triggers (46 FR 37891, July 23, 1981; and 48 FR 4062, January 28, 1983), the lead rulemaking record (OSHA Docket No. H–004), the judicial history of the Lead Standard and surveys of the lead industries, OSHA recognized that this trigger also was likely to pose feasibility problems for many plants. In fact, 125 employers, including 31 secondary smelters, sought relief from the 50 ug/100g removal trigger, ILCO among them. Of the 125 employers, 28 failed to submit sufficient data to establish need, 13 were referred for State action to the appropriate States with approved occupational safety and health plans, and 12 were not granted relief at that time. Four of the remaining five employers submitted applications in error, and one was withdrawn.

Thus, of the 125 employers only 67, including ILCO and 24 other secondary lead smelters, were considered appropriate for relief at that time. The employers submitted applications for a temporary variance and an interim order, with supporting data to indicate that 10 percent or more of their total skilled, lead-exposed employees would require removal under the 50 ug/100g trigger. Based on those data and additional data generated during discussions with employers and during variance investigations conducted at 12 of the affected plants, OSHA decided to grant an interim order to 65 of the 67 employers (two employers no longer needed relief). The interim order became effective by letter for 48 employers on September 2, 1983; for one employer on September 20, 1983; for nine employers on October 17, 1983; and, for seven employers on August 24, 1984 (49 FR 33757, August 24, 1984).

Of the 65 plants, 34 thereafter ceased to need relief, two closed, and one plant required further evaluation. The remaining 28 plants including 11 secondary smelters, were granted temporary variances from the 50 ug/100g MRP trigger on March 7, 1985, to be effective until September 1, 1985 (50 FR 10550; March 15, 1985). As a condition of the granted relief, the employers continued to comply with the 60/40 ug/100g removal and return triggers and with all other provisions of the Lead

Standard and the conditions and requirements of the variance order.

The variances were granted because the variance record demonstrated that immediate compliance with the 50 ug/100g removal trigger continued to present severe feasibility problems for the 28 employers in that:

(1) The applicants would have had to remove between 10 percent to 100 percent of their total skilled work force from lead exposure at or above the action level;

(2) Experienced employees who would have had to be removed could not easily be replaced by employees with sufficient skills and experience to adequately perform their jobs;

(3) Removal of highly skilled and experienced employees, therefore, would have diminished the health and safety of the remaining employees at the affected plants; and,

(4) Sufficient transfer opportunities did not exist, so extensive removal from the workplace would have resulted in greatly increased MRP costs.

Based on the above, OSHA concluded that the 28 employers had demonstrated that immediate compliance with the 50 ug/100g trigger was infeasible under section 6(b)(6)(A) of the OSHAct.

Of those 28 companies, 17, including 8 secondary smelters, thereafter requested an extension of the temporary variance from the 50 μg/100g MRP trigger level. Eleven of the 17 companies requested the relief prior to the September 1, 1985 expiration date of the variance. These companies were granted interim orders until November 1, 1985, to allow OSHA sufficient time to consider the request and to determine the compliance status of the facilities. Six other companies, including ILCO (October 7, 1985), requested an extension of the temporary variance after the expiration date of the temporary variance and, in accordance with section 6(b)(6)(A) of the OSHAct, were not granted the interim relief. Compliance inspections were conducted at all 17 facilities.

On December 5, 1985, OSHA informed all 17 companies by letter that the Agency did not intend to grant further relief to lead industry employers from the 50 μg/100g trigger. The Agency's decision was based on deficiencies noted during the OSHA compliance inspections at the facilities and the fact that more than 85 percent of the employers who had requested relief from the 50 μg/100g MRP trigger when it first came into effect on March 1, 1983, no longer needed relief. ILCO's failure to achieve comparable results raised serious questions about the company's program for coming into compliance with the standard as quickly as practicable and about whether the company had taken all available steps to safeguard its employees against the hazards covered by the Lead Standard.

On December 19, 1985, ILCO submitted a request by letter for reconsideration of its October 7, 1985 request for an extension of the temporary variance. OSHA further advised ILCO, by letter dated February 21, 1986, that its request for reconsideration was denied, in part because ILCO's initial request for renewal of its temporary variance had not been filed within 90 days prior to the expiration date of its temporary variance, as required by section 6(b)(6)(A) of the OSHAct. On March 25, 1986, OSHA also informed ILCO that, in any event, its request for a variance continued to be defective under 29 CFR 1905.10(b)(4), (5), (6) and (7) and 1905.14. Only thereafter, in April 1986, did ILCO actually file a variance application.

At the time of ILCO's application for a variance, ILCO was contesting OSHA citations issued on February 12, 1986, for the company's allegedly willful, and other violations of various provisions of the Lead Standard. Compliance with these provisions would have contributed substantially to reducing employee blood lead levels. Consequently, OSHA, in its discretion, decided under 29 CFR 1905.5 that it would not entertain ILCO's request for a temporary variance concerning the subjects or issues in the enforcement proceeding until that proceeding was completed. OSHA communicated this decision to ILCO by letter dated September 23, 1986.

In response to these communications, ILCO has maintained that its failure to apply on time should not bar the company from relief; that OSHA has no authority to deny the request on the merits without a hearing, which ILCO first requested in a letter dated February 7, 1986; and, that ILCO would supply the information needed to complete the application. Throughout these communications, OSHA has repeatedly (on five occasions) advised ILCO that the company was not entitled to interim relief and, as a consequence was under an obligation from September 1, 1985 to comply with all the MRP provisions of the Lead Standard. ILCO has maintained, to the contrary, that, because OSHA cannot finally deny its application without a hearing, the company is entitled to interim relief or some assurance it will not be cited for violations of the 50 μg/100g trigger until after the hearing. ILCO, in OSHA's view, continues to be in violation of the 50 μg/100g MRP removal trigger, for which it recently has been cited for an egregious willful violation.

At a meeting on March 25, 1986, sought by ILCO representatives, ILCO again requested reconsideration of its application for an extension of the temporary variance. During that meeting, ILCO claimed that it had been unable to achieve compliance with the 50 μg/100g trigger because of the actions or regulations of other governmental agencies. OSHA advised ILCO at that time that the Assistant Secretary might be willing to reconsider its application if ILCO could prove that its noncompliance had been caused by a kind of legal impossibility, due to the actions or regulations of other government agencies.

However, based on court and other documents and blood lead data, OSHA has determined that the evidence does not show that ILCO's failure to come into compliance with the 50 μg/100g trigger was caused by the actions or regulations of other government agencies. Rather, the evidence and data strongly suggest that the company's efforts to come into compliance with the 50 μg/100g trigger and to protect its employees have been grossly inadequate.

Thus, for all the above reasons, OSHA continued to find ILCO's application inappropriate for reconsideration and informed ILCO, by letter dated September 23, 1986, that unless and until the status of its application changed, ILCO had no right under section 6(b)(6)(A) to a hearing on the merits of the application.

On February 13, 1987, ILCO and OSHA entered into a settlement agreement concluding the enforcement proceeding on the alleged willful violations in the citations issued in February 1986. Pursuant to this settlement, ILCO withdrew its notice of contest to these citations, which were recharacterized as serious rather than willful violations. OSHA is now granting ILCO's request for a hearing on its application. In doing so, OSHA does not intend to waive any of its objections to the adequacy of ILCO's application that may be preserved.

II. Notice of Application

Notice is hereby given that Interstate Lead Company, Inc., has made application pursuant to section 6(b)(6)(A) of the Occupational Safety and Health Act of 1970 (84 Stat. 1596; 29 U.S.C. 655), 29 CFR 1905.13 and the Secretary of Labor's Order No. 9–83 (48 FR 35736) for an extension of its relief from the medical removal protection (MRP) provision prescribed in 29 CFR 1910.1025(k)(1)(i)(D) of the standard for Occupational Exposure to Lead.

The address of the place of employment that will be affected by the application is: Interstate Lead Company, Inc., Bordon Avenue, Leeds, Alabama 35094.

Regarding the merits of the application, ILCO contends that the implementation of the 50 ug/100g removal trigger is currently impossible for the company because of the anticipated removal and consequent unavailability of a significant number of skilled and supervisory employees. To support these arguments, ILCO submitted pre-March 1986 blood lead data. Essentially, ILCO argues that the immediate imposition of the 50 ug/100g MRP trigger would require ILCO to remove many supervisory and highly skilled employees whose blood lead levels are between 50 and 59 ug/100g. Such removal, it claims, would have a profound and deleterious effect upon the continued operation of the ILCO facility. The removal, for example, of four of 16 battery wrecker personnel, 13 of 33 furnace personnel, five of eight refinery personnel and seven of 14 maintenance personnel allegedly would result in the shutdown of these operations at ILCO's facility. The impact of the loss of these employees would be so severe, ILCO asserts, as to preclude operations even on a curtailed basis.

ILCO further alleges that it has implemented and anticipates implementing the engineering controls necessary to minimize employee exposure to airborne contaminants. In September 1985, the company states, it installed additional dust collection equipment to increase face velocities on hooping at the refining kettles, reverbatory furnace slag tap and metal tap. On March 17, 1986, ILCO contends, it implemented a water treatment system (a wet wash program) for the entire smelting, refining and materials handling section of the facility. According to ILCO, its ongoing compliance effort has markedly reduced the blood lead concentration at the facility since the Lead Standard came into effect. The average blood lead level, ILCO contends, has decreased plant-wide by 35 percent since 1979. The company also states that it will install a flue dust handling system, which will automatically convey all metallurgical and sanitary flue dust directly to the furnace operation through a totally enclosed system.

During the time period of any extension of the temporary variance, ILCO states it will continue to comply with the same conditions required by OSHA in the prior variance order granting relief from the 50 ug/100g trigger. At the time of the application ILCO also contended that it would comply with the 50 MRP trigger no later than June 1, 1987.

The applicant certifies that employees who would be affected by the variance have been notified of the application by the company posting a copy at all places where notices to employees and their authorized employees' representative are normally posted.

Copies of the application for extension of the temporary variance will be made available for inspection and copying upon request at the Office of Variance Determination, Room N3653, 200 Constitution Avenue, NW., Washington, DC 20210. All interested persons, including employers and employees who believe they would be affected by the grant of denial of the application for variance, are invited to submit written data, views, and arguments relating to the application no later than September 14, 1987. Submission of written comments should be in quadruplicate and must be addressed to the Office of Variance Determination at the above address.

III. Notice of Denial of the Request for Interim Relief

The applicant has requested an interim order to be effective until a decision is rendered on the application for an extension of its temporary variance from the final MRP removal trigger.

If granted, the variance order would relieve ILCO of the requirement to comply with the 50 ug/100g removal trigger. As a condition of the relief, ILCO agrees to continue to comply with the 60/40 removal and return triggers and all other provisions of the Lead Standard and to satisfy the conditions and requirements of the variance order.

OSHA, by letter dated December 5, 1985, denied ILCO's request for an interim order from the 50 ug/100g MRP trigger and gave notice of its intention to deny ILCO's application for extension of the relief.

OSHA's decision was based on the following:

1. The intent of section 6(b)(6)(A) of the Act is to provide an employer, where necessary, a reasonable period of additional time to come into compliance with a standard. It is not intended to provide long-term relief to companies that fail to come into compliance with the standard. The Agency has allowed ILCO a liberal amount of time to come into compliance with the MRP requirements of the standard.

2. In 1983, the Agency decided that relief from section 1910.1025(k)(1)(i)(D) should be granted to a large number of employers in the lead industry who were unable to bring the blood lead levels of employees down quickly enought to be able to comply with the applicable MRP triggers without disrupting their operations and increasing the hazards to non-removed employees. Now that over 85 percent of the employers who originally requested relief from the 50 ug/100g trigger no longer need relief, and ignoring those employers who came into compliance without seeking relief at the time the 50 ug/100g trigger went into effect on March 1, 1983, the vast majority of employers in the lead industry no longer find compliance with the 50 ug/100g removal trigger infeasible. Thus, no further relief appears to be justified to companies that have failed to take adequate steps to reduce their employees' blood lead levels and to come into compliance with the standard as quickly as practicable.

3. During the period of temporary variance relief (1983–1985), ILCO was found on several occasions to be violation of relevant provisions of the Lead Standard, which contributed to maintaining elevated employee blood lead levels. For instance, in 1984 ILCO was cited for improper selection of respiratory protection for six employees, failure to perform quarterly monitoring where employees were exposed above the 50 ug/m^3 permissible exposure level (PEL), and failure to place nine employees whose blood levels were above 60 ug/100g on MRP. Similarly, in a 1985 inspection, ILCO was found to have violated the Lead Standard in many ways: It failed to conduct quarterly monitoring where air lead levels exceeded the PEL and failed to monitor when there was a suspected change in a production process that may have resulted in new or additional exposures; it failed to implement adequate engineering and work practice controls; it exposed more than 22 employees to an 8-hour TWA above the 50 ug/m^3 PEL without providing appropriate respiratory protection; it failed to develop a compliance plan for implementing engineering controls; its respirator program, respirator fit testing, and selection of respirators were inadequate; it failed to clean contaminated surfaces; it failed to provide a temperature-controlled, positive-pressure, filtered air supply in a lunchroom; its cleaning of employees' personnel protective clothing prior to their entering the lunchroom was inadequate; its exposure monitoring and medical surveillance records were inadequate; it failed to remove 10 employees on MRP to areas below the

30 ug/m³ action level; and it failed to provide MRP benefite

Also, during the 1984 and 1985 inspections, OSHA noted that ILCO had documented 23 cases of employees with lead intoxication on the OSHA Form 200 (Log and Summary of Occupational Injuries and Illnesses).

During the 1987 inspection, further violations of the medical removal, respiratory, engineering, and other pertinent requirements of the Lead Standard were found. For example, OSHA found that 10 employees whose blood lead levels exceeded the 50 ug/100g MRP trigger level had not been placed on MRP; nine employees with blood lead levels over 40 ug/100g had not been given blood tests at least every two months; and, seven employees on MRP had not been given blood lead tests at least monthly.

Such poor compliance with the Lead Standard does not appear to be typical in the secondary lead smelter industry.

4. ILCO, beginning on April 3, 1982, has been granted relief from the MRP triggers. Thus, the company had four and one-half years of relief under the temporary variance mechanism, during which time it was legally required to develop health programs and methods to protect its employees and meet the requirements of the Lead Standard.

5. Nevertheless, based on the company's December 1986 blood lead data, ILCO still would have had to remove approximately 35 percent of its total skilled work force if it complied with the 50 ug/100g trigger. ILCO's failure to achieve compliance with the 50 ug/100g trigger and its many citations for violations of the Lead Standard suggest that ILCO has not, as required by section 6(b)(6)(A) of the OSHAct, taken all available steps to safeguard its employees against the hazards covered by the lead standard or developed effective programs for coming into compliance as quickly as practicable with 29 CFR 1910.1025(k)(1)(i)(C) and (D) of the Lead Standard.

Based on the above, OSHA concluded that additional relief through the temporary variance mechanism is not warranted and, if granted, does not appear likely to result in Interstate Lead Company, Inc., coming into full compliance with the 50 ug/100g trigger of the Lead Standard. Since OSHA believes ILCO failed to establish a prima facie case for receiving a temporary variance, the company is not entitled to an interim order.

Therefore, pursuant to the authority in 29 CFR 1905.13 and the Secretary of Labor's Order No. 9–83 (48 FR 35736), OSHA announces its denial of the request of the Interstate Lead Company, Inc. for an interim order from the 50 ug/100g medical removal trigger of the Lead Standard.

IV. Notice of Hearing

On February 7, 1986, ILCO, requested by letter a hearing on the application. Notice is hereby given, pursuant to section 6(b)(6)(A) of the Occupational Safety and Health Act of 1970 (84 Stat. 1596; 29 U.S.C. 655), Secretary of Labor's Order No. 9–83 (48 FR 35736), and 29 CFR 1905.20, that a hearing will be held on ILCO's application for an extension of its temporary variance, which expired on September 1, 1985, from the standard prescribed in 29 CFR 1910.1025(k)(1((i)(D).

V. Hearing Issues

1. Did OSHA properly decline to extend the variance relief afforded ILCO, Inc. from the 50 ug/100g medical removal protection requirement of the OSHA Lead Standard beyond September 1, 1985?

2. Has ILCO shown that it has taken all available steps to safeguard its employees against the hazards covered by the Lead Standard?

3. Has ILCO shown that it has had, and continues to have, an effective program for coming into compliance with the Lead Standard as quickly as practicable?

4. Upon expiration of the temporary variance granted to employers in the lead industry from the 50 ug/100g medical removal protection requirement of the OSHA Lead Standard, 29 CFR 1910.1025(k)(1((i)(D), could OSHA properly decline to afford further relief by notifying employers individually that they would not be granted additional relief because the majority of employers previously granted a temporary variance had come into compliance with the 50 ug/100g medical removal protection requirement of the OSHA Lead Standard?

VI. Participation in the Hearing

All interested persons, including employees, who believe they might be affected by the grant or denial of the application for a variance may file a request for party status no later than September 14, 1987, to present views and evidence at the hearing. Such request shall contain a statement of the position to be taken and a concise summary of the evidence to be adduced in support of the position.

Requests to participate in the hearing must be filed by September 14, 1987, with both:

James J. Concannon, Director, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3653, 200 Constitution Avenue, NW., Washington, DC 20210

and

Nahum Litt, Chief Administrative Law Judge, U.S. Department of Labor, Vanguard Building, Suite 700, 1111 29th Street, NW., Washington, DC 20036

These submissions will be available for inspection and copying in the Office of Variance Determination, Room N–3653 at the above Constitution Avenue address.

The applicant; the authorized employee representative, the International Molders and Allied Workers Union (IMAWU); and OSHA, represented by the Office of the Solicitor, are hereby granted party status and need not submit additional requests to participate in the hearing.

The grant of party status to additional interested persons will be made, if at all, by the to-be-appointed Administrative Law Judge under the terms of 29 CFR 10.10.

The hearing will convened on November 17, 1987 at 9:30 a.m. The specific location of the hearing will be announced in the **Federal Register** at a later date. During the hearing proceedings, ILCO, IMAWU, OSHA and any person who has been granted party status in accordance with the above requirements may submit written or oral data, views or arguments and call and cross examine witnesses. Conduct of the hearing is subject to regulations on hearings contained in 29 CFR 1905.20 et seq., and in 29 CFR Part 18, to the pertinent provisions of the Occupational Safety and Health Act, the Administrative Procedure Act, the Federal Rules of Civil Procedure and the rulings of the Administrative Law Judge.

Under section 6(b)(6)(A) of the OSHAct, the applicant is required to demonstrate by a preponderance of the evidence that: (1) It is unable to comply with the standard by its effective date because of the unavailability of professional or technical personnel or materials or equipment; (2) it is taking all available steps to safeguard its employees against the hazards covered by the Lead Standard; and (3) it has an effective program for coming into compliance with the standard as quickly as practicable.

I hereby designate as hearing examiner to conduct this hearing an Administrative Law Judge to be appointed by the Chief Administrative Law Judge of the United States Department of Labor.

Notice is hereby given pursuant to section 6(b)(6)(A) of the Occupational

Safety and Health Act of 1970, Secretary of Labor's Order No. 9–83 (48 FR 35736) and 29 CFR 1905.20, that a hearing will be held on the application of Interstate Lead Company of Leeds, Alabama for an extension of a temporary variance from 29 CFR 1910.1025(k)(1)(i)(D) concerning the 50 ug/100g medical removal protection trigger.

Signed at Washington, DC, this 7th day of August, 1987.

John A. Pendergrass,

Assistant Secretary.

[FR Doc. 87–18635 Filed 8–13–87; 8:45 am]

BILLING CODE 4510-26-M

[V-64-4]

Extension of Temporary Variance; Sanders Lead Co., Inc.

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of application for interim order and extension of temporary variance; of denial of interim order; and of hearing.

SUMMARY: This notice announces the application of the Sanders Lead Company, Inc. for an interim order and for an extension of a temporary variance, which expired on September 1, 1985, from the final medical removal trigger under the standard for Occupational Exposure to Lead (29 CFR 1910.1025(k)(1)(i)(D)). This notice also announces OSHA's denial of the request for an interim order and provides reasons for this action. This notice further announces a hearing on the application and sets forth the issues for the hearing.

DATES: Interested persons wishing to submit written comments or to participate in the hearing may file a request for party status no later than September 14, 1987, at the Office of the Administrative Law Judge listed below.

ADDRESSES: Requests to participate in the hearing must be filed in duplicate with both:

James J. Concannon, Director, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3653, 200 Constitution Avenue, NW., Washington, DC 20210; and

Nahum Litt, Chief Administrative Law Judge, U.S. Department of Labor, Vanguard Building, Suite 700, 1111 20th Street, NW., Washington, DC 20036

The hearing will begin at 9:30 a.m. on January 12, 1988. The specific location of the hearing will be announced in the Federal Register at a later date. Written comments received and hearing participation requests will be available for inspection and copying in the Office of Variance Determination, Room N-3653 at the above Constitution Avenue address.

I. Background

Sanders Lead Company, Inc. ("Sanders"), a secondary lead smelter and refinery, requested an interim order and an extension of its temporary variance from the final trigger level for medical removal protection (MRP) under the standard for Occupational Exposure to Lead (29 CFR 1910.1025(k)(1)(i)(D)).

Under the medical removal protection (MRP) provision of the Lead Standard (29 CFR 1910.1025(k)), employers are required to remove an employee from work having an exposure to lead at or above a specified level of micrograms of lead per cubic meter of air (ug/m^3) if the employee's blood lead level is at or above a specified MRP removal trigger.

Once removed, the employee must be kept on temporary medical removal until the employee's blood lead level has declined to or below the MRP return trigger. Employees are guaranteed full wages and benefits throughout the duration of the removal period, generally up to a maximum of 18 months.

The purposes of the MRP provisions are to encourage voluntary employee participation in medical surveillance and to provide temporary medical removal protection to workers who appear to be at higher risk of sustaining material impairment to health from continued exposure to lead.

The standard specifies four removal and three return trigger levels, which have been phased in over a five-year period. Phase one, which began on March 1, 1979, required removal of an employee having a blood lead level at or above 80 micrograms of lead per 100 grams of whole blood (80 ug/100g) and allowed return when the employee's blood lead level declined to 60 ug/100g. Phase two, which began on March 1, 1980, required removal at 70 ug/100g and permitted return at 50 ug/100g. Phase three, which began on March 1, 1981, requires removal at 60 ug/100g and authorizes return at 40 ug/100g. The fourth and final phase, which began on March 1, 1983, requires removal at 50 ug/100g and allows return at 40 ug/100g.

The first three MRP removal triggers—80, 70, and 60 ug/100g triggers— require removal of an employee after periodic and follow-up blood sample tests indicate that the employee's blood lead level is at or above the specified trigger. The 50 ug/100g removal trigger, however, requires removal of an employee whenever the average of the last three blood tests or the average of all blood tests taken over the previous six months, whichever is longer, is at or 50 ug/100g. Nevertheless, an employee need not be removed under the 50 ug/100g trigger whenever the employee's most recent blood test indicates a blood lead level of 40 ug/100g or below.

At present and for the indefinite future, the 60 and 50 ug/100g removal triggers are concurrently in effect. Thus, an employee must be removed when the employee's blood lead test results either average 50 ug/100g or are confirmed by a follow-up sample to be 60 ug/100g or over.

In March 1981, the 60/40 MRP triggers went into effect. Prior to that date, the primary and secondary lead smelters and lead battery manufacturers petitioned the Agency for industry-wide stays of the triggers. The petitions were based upon assertions that the companies would be unable to comply with these MRP provisions because the anticipated removal would result in the unavailability of so many key employees. The petitions were denied because the data submitted by these industries did not demonstrate an industry-wide infeasibility of complying with the MRP triggers or justify the need for an industry-wide stay of these triggers (46 FR 24550, May 15, 1981; and 46 FR 37891, July 23, 1981). However, OSHA did find that there were feasibility problems, on a plant-by-plant basis, owing to the inability of many lead industry employers to reduce employee blood lead levels quickly enough to comply with the scheduled effective date for the 60/40 triggers. Therefore, on July 23 and 24, 1981 (46 FR 37891 and 46 FR 38074, respectively), OSHA announced that the temporary-variance-and-interim-order mechanism, set forth in section 6(b)(6)(A) of the OSHAct and covered by the regulations in 29 CFR Part 1905, would be used to afford relief to lead smelting and battery companies on a plant-by-plant basis.

The July 23 and 24, 1981 Federal Register notices (46 FR 37891 and 46 FR 38074) gave the affected plants until August 31, 1981 to demonstrate that 10 percent or more of their total lead-exposed supervisory, maintenance and skilled employees would be subjected to temporary removal because of blood lead levels between 60–70 ug/100g, or, for any plant below the 10 percent figure, to show by compelling evidence that the temporary relief was needed. The 10 percent figure was utilized by OSHA as a rule of thumb for processing large numbers of applications under the

statutory criteria set by section 6(b)(6)(A) of the OSHAct. Eligible employers were required to submit to OSHA an application for a temporary variance and an interim order, written acceptance of the terms of the interim order set out in the **Federal Register** notice, certification of notice to the affected employees and certain data to support their application.

Seventy applications for an interim order and a temporary variance from the 60/40 ug/100g triggers were received. Of the 70 plants requesting this relief, 45 plants, including 27 secondary smelters, were granted interim orders (46 FR 48854, October 2, 1981; 47 FR 8431, February 26, 1982; and 47 FR 16434, April 16, 1982), which remained in effect until OSHA, on January 28, 1983, rendered a decision on the application for temporary variance. Sanders was among the plants that requested and received this relief.

The variance record demonstrated that because of the inability of many employers to quickly reduce employee blood lead levels, immediate compliance with the 60/40 ug/100g MRP removal and return triggers presented feasibility problems for the 45 plants, in that:

(1) The plants would have to remove from 10 percent to 66 percent of their total skilled, supervisory and maintenance work force from lead exposure at or above the action level;

(2) Experienced employees who would have to be removed could not easily be replaced by other employees since the companies were unable to recruit other employees with the level of skills necessary to perform these highly skilled positions or to quickly train replacements;

(3) Removal of highly skilled and experienced employees would diminish the health and safety of the remaining employees at the affected plants; and,

(4) Sufficient transfer opportunities did not exist for removed employees to be transferred to other jobs in the affected plants, which meant that extensive medical removal layoffs would result in greatly increased MRP costs.

Based on the above, OSHA concluded that the 45 plants had demonstrated that immediate compliance with the 60/40 ug/100g MRP removal and return triggers was infeasible. Each plant, therefore, was granted a temporary variance on January 28, 1983 (48 FR 4062), which was effective until February 28, 1983.

The order temporarily relieved affected employers of the requirement to comply with the 60 ug/100g removal and 40 ug/100 return triggers. As conditions of the relief, employers were obligated to comply with the 70/50 ug/100g triggers; the other conditions and requirements of the order, which required increased medical surveillance and additional safeguards to protect the health of affected employees; and, with all other provisions of the Lead Standard.

On March 1, 1983, the 50 ug/100g MRP removal trigger level went into effect. Based on data that had been submitted in support of earlier requests for a temporary variance from the 60/40 ug/100g MRP triggers (46 FR 37891, July 23, 1981; and 48 FR 4062, January 28, 1983), the lead rulemaking record (OSHA Docket No. H–004), the judicial history of the Lead Standard and surveys of the lead industries, OSHA recognized that this trigger also was likely to pose feasibility problems for many plants. In fact, 125 employers, including 31 secondary smelters, sought relief from the 50 ug/100 removal trigger, Sanders among them. Of the 125 employers, 28 failed to submit sufficient data to establish need, 13 were referred for State action to the appropriate States with approved occupational safety and health plans, and 12 were not granted relief at that time. Four of the remaining five employers submitted applications in error, and one was withdrawn.

Thus, of the 125 employers only 67, including Sanders and 24 other secondary smelters, were considered appropriate for relief at that time. The employers submitted applications for a temporary variance and an interim order, with supporting data to indicate that 10 percent or more of their total skilled, lead-exposed employees would require removal under the 50 ug/100g trigger. Based on those data and additional data generated during discussions with employers and during variance investigations conducted at 12 of the affected plants, OSHA decided to grant an interim order to 65 of the 67 employers (two employers no longer needed relief). The interim order became effective by letter for 48 employers on September 2, 1983; for one employer on September 20, 1983; for nine employers on October 17, 1983; and, for seven employers on August 24, 1984 (49 FR 33757, August 24, 1984).

Of the 65 plants, 34 thereafter ceased to need relief, two closed, and one plant required further evaluation. The remaining 28 plants, including 11 secondary smelters, were granted temporary variances from the 50 ug/100g MRP trigger on March 7, 1985 (50 FR 10550, March 15, 1985), to be effective until September 1, 1985. As a condition of the granted relief, the employers continued to comply with the 60/40 ug/100g removal and return triggers and with all other provisions of the Lead Standard and the conditions and requirements of the variance order.

The variances were granted because the variance record demonstrated that immediate compliance with the 50 ug/100g removal trigger continued to present severe feasibility problems for the 28 employers in that:

(1) The applicants would have had to remove between 10 percent to 100 percent of their total skilled work force from lead exposure at or above the action level;

(2) Experienced employees who would have had to be removed could not easily be replaced by employees with sufficient skills and experience to adequately perform their jobs;

(3) Removal of highly skilled and experienced employees, therefore, would have diminished the health and safety of the remaining employees at the affected plants; and

(4) Sufficient transfer opportunities did not exist, so extensive removal from the workplace would have resulted in greatly increased MRP costs.

Based on the above, OSHA concluded that the 28 employers had demonstrated that immediate compliance with the 50 ug/100g trigger was infeasible under section (6)(b)(6)(A) of the OSHAct.

Of those 28 companies, 17, including 8 secondary smelters, thereafter requested an extension of the temporary variance from the 50 ug/100g MRP trigger level. Eleven of the 17 companies requested the relief prior to the September 1, 1985 expiration date of the variance. These companies were granted interim orders until November 1, 1985, to allow OSHA sufficient time to consider the request and to determine the compliance status of the facilities. Six other companies, including Sanders (October 8, 1985), requested an extension of the temporary variance after the expiration date of the temporary variance and, in accordance with section 6(b)(6)(A) of the OSHAct, were not granted the interim relief. Compliance inspections were conducted at all 17 facilities.

On December 5, 1985, OSHA informed all 17 companies by letter that the Agency did not intend to grant further relief to lead industry employers from the 50 ug/100g trigger. The Agency's decision was based on deficiencies noted during the OSHA compliance inspections at the facilities and the fact that more than 85 percent of the employers who had requested relief from the 50 ug/100g MRP trigger when it first came into effect on March 1, 1983, no longer needed relief. Sanders failure to achieve comparable results raised serious questions about the company's

program for coming into compliance with the standard as quickly as practicable and about whether the company had taken all available steps to safeguard its employees against the hazards covered by the Lead Standard.

On December 11, 1985, Sanders submitted a request by letter for reconsideration of its October 8, 1985 request for an extension of the temporary variance. OSHA further advised Sanders, by letter dated February 21, 1986, that its request for reconsideration was denied, in part because Sanders initial request for renewal of its temporary variance had not been filed within 90 days prior to the expiration date of its temporary variance, as required by section 6(b)(6)(A) of the OSHAct. On March 24, 1986, OSHA informed Sanders that, in any event, its request for a variance continued to be defective under 29 CFR 1905.10(b) (4), (5), (6) and (7) and 1905.14. Only thereafter, in April 1986, did Sanders actually file a variance application.

In response to these communications, Sanders has maintained that its failure to apply for an extension of its temporary variance on time should not bar the company from relief; that OSHA has no authority to deny the request on the merits without a hearing, which Sanders first requested in a letter dated December 11, 1985; and, that Sanders would supply the necessary information. On five occasions throughout the communications, OSHA advised Sanders that the company was not entitled to interim relief and, as a consequence was under an obligation from September 1, 1985 to comply with all the MRP provisions of the Lead Standard. Sanders has maintained, to the contrary, that because OSHA cannot finally deny its application without a hearing, the company is entitled to interim relief or some assurance it will not be cited for violations of the 50 ug/100g trigger until after the hearing.

At a meeting on March 25, 1986, sought by Sanders representatives, Sanders again requested reconsideration of its application for an extension of the temporary variance. During that meeting, Sanders claimed that it had been unable to achieve compliance with the 50 ug/100g trigger because of the actions or regulations of other government agencies. OSHA advised Sanders that the Assistant Secretary might be willing to reconsider its application if Sanders could prove that non-compliance was caused by a kind of legal impossibility, due to actions, laws or regulations of other Federal, State or local agencies of government. Sanders, however, did not submit the court and other documents requested by OSHA. Instead, Sanders submitted an unsubstantiated explanation of its negotiations with the Alabama Department of Environmental Management. Thus, after numerous attempts by OSHA to obtain the necessary information from Sanders, OSHA decided that the evidence Sanders had submitted failed to prove that its noncompliance with the 50 MRP trigger was caused by the actions or regulations of other government agencies.

II. Notice of Application

Notice is hereby given that Sanders Lead Company, Inc., has made application pursuant to section 6(b)(6)(A) of the Occupational Safety and Health Act of 1970 (84 Stat. 1596; 29 U.S.C. 655), 29 CFR 1905.13 and the Secretary of Labor's Order No. 9–83 (48 FR 35736) for an extension of its relief from the medical removal protection (MRP) provision prescribed in 29 CFR 1910.1025(k)(1)(i)(D) of the standard for Occupational Exposure to Lead.

The address of the place of employment that will be affected by the application is: Sanders Lead Company, Inc., Sanders Road, Troy, Alabama 36081.

Regarding the merits of the application, Sanders contends that the implementation of the 50 ug/100g removal trigger is currently impossible for the company because of the anticipated removal and consequent unavailability of a signficiant number of skilled and supervisory employees. To support these arguments Sanders submitted data containing pre-April 1986 blood lead data. Essentially, Sanders argues that the immediate imposition of the 50 ug/100g MRP trigger would require the company to remove 21 of 166 highly skilled and essential employees, whose blood lead levels are between 50 and 59 ug/d100g. Such removal, it claims, would have a profound deleterious effect upon the continued operation of the Sanders' facility. These employees are virtually irreplaceable. Other employees in similar job classifications would have to provide excessive overtime to fill in for them or would have to severely curtail plant operations. Since these employees are highly paid, crucially-positioned and extremely difficult to replace, Sanders asserts that putting them on MRP not only would be costly but also would result in reduced production. Sanders estimates that ". . . the cost of paying the new hires plus those on medical removal would add approximately $450,000 per year to the company's operating cost, not counting additional costs for losses in productivity." Thus, Sanders states that immediate compliance with the 50 ug/100g removal trigger is clearly infeasible.

During the time period of any extension, Sanders states it will continue to comply with the same conditions required by OSHA in the prior variance order granting relief from the 50 ug/100g trigger. At the time of its application, Sanders also contended that it would comply with the 50 MRP trigger no later than June 1, 1987.

Sanders argues that OSHA, in its preamble to the standard recognized that immediate compliance with the final MRP trigger levels would be infeasible for the lead industry and provided a five-year phase-in period. By this temporary variance request, Sanders asserts it is only requesting an extension of the phase-in period that OSHA recognized as necessary when it promulgated the Lead Standard.

Sanders states that it has already reduced the average employee blood lead level by a significant amount, that the proposed stringent programs will reduce these levels even further, and that since the promulgation of OSHA's Lead Standard, it has made substantial progress toward meeting the 50 MRP trigger level. According to Sanders, employees on its "Special Status" list (which contains all employees whose blood lead levels are over 50 ug/100g) wear full-face respirators and receive special training, bi-monthly medical consultations and semi-annual physical examinations. The company alleges that the average number of employees on the special status list has been reduced by 50 percent. For example, for the period April 1984 to March 1985 there were 51 employees whose blood leads were over 50 ug/100g. The average number on the list for the period April 1985 to April 1986 was 25 employees.

Additionally, Sanders contends that it has a detailed and rigorously-enforced respirator program which has been instrumental in reducing the blood-lead levels of its employees. The program will be carefully monitored, improved and enforced.

The applicant certifies that employees who would be affected by the variance have been notified of the application by the company posting a copy at all places where notices to employees are normally posted.

Copies of the application for extension of the temporary variance will be made available for inspection and copying upon request at the Office of Variance Determination, Room N–3653, 200 Constitution Avenue, NW.,

Washington, DC 20210. All interested persons, including employers and employees who believe they would be affected by the grant or denial of the application for variance, are invited to submit written data, views, and arguments relating to the application no later than September 14, 1987. Submission of written comments should be quadruplicate and must be addressed to the Office of Variance Determination at the above address.

III. Notice of Denial of the Request for Interim Relief

The applicant has requested an interim order to be effective until a decision is rendered on the application for an extension of its temporary variance from the final MRP removal trigger.

If granted, the variance order would relieve Sanders of the requirement to comply with the 50 ug/100g removal trigger. As a condition of the relief, Sanders agrees to continue to comply with the 60/40 removal and return triggers and all other provisions of the Lead Standard and to satisfy the conditions and requirements of the variance order.

OSHA, by letter dated December 5, 1985, denied Sanders the request for an interim order from the 50 ug/100g MRP trigger and gave notice of its intention to deny Sanders' application for extension of the relief.

OSHA's decision was based on the following:

1. The intent of section 6(b)(6)(A) of the Act is to provide an employer, where necessary, a reasonable period of additional time to come into compliance with a standard. It is not intended to provide long-term relief to companies that fail to come into compliance with the standard. The Agency has allowed Sanders a liberal amount of time to come into compliance with the MRP requirements of the standard.

2. In 1983, the Agency decided that relief from § 1910.1025(k)(l)(i)(D) should be granted to a large number of employees in the lead industry who were unable to bring blood lead levels of employees down quickly enough to be able to comply with the applicable MRP triggers without disrupting their operations and increasing the hazard to non-removed employees. Now that over 85 percent of the employers who originally requested relief from the 50 ug/100g trigger no longer need relief, and ignoring those employers who came into compliance without seeking relief at the time the 50 ug/100g removal trigger went into effect on March 1, 1983, the vast majority of employers in the lead industry no longer find compliance with the 50 ug/100g removal trigger infeasible. Thus, no further relief appears to be justified to companies that have failed to take adequate steps to reduce their employees' blood lead levels and to come into compliance with the standard as quickly as practicable.

3. During the period of temporary relief (1983–1985), Sanders on several occasions was found to be in violation of relevant provisions of the Lead Standard, which contributed to maintaining elevated employee blood lead levels. For instance, in 1983, Sanders was cited for failure to implement feasible engineering and work practice controls for eight employees, failure to conduct quarterly monitoring, improper selection of respirators, inadequate housekeeping and methods of removing lead accumulations from work surfaces, and failure to provide a vacuum for removing lead dust from employees clothing prior to entering the lunchroom. Similarly in the 1985 inspection, it was found that Sanders failed to implement adequate engineering controls for eight employees and to place on MRP 20 employees whose blood lead levels were over 50 ug/100g (after the September 1, 1985 expiration date of the temporary variance).

During the August 7, 1986, inspection further violations were found. OSHA field staff noted 33 instances of willful violations, 12 instances of serious violations and one repeated violation from 13 separate requirements of the Lead Standard. In 12 of the alleged violations there was a substantial probability that death or serious physical harm could result. The violations affected the respiratory protection program, engineering controls, and other pertinent requirements of the Lead Standard, and probably contributed significantly to elevated blood lead levels in a large number of employees. For instance, 15 skilled employees were not removed from lead exposure when their blood lead levels exceeded the 50 MRP trigger even though OSHA had previously notified Sanders in writing on five occasions that these employees had to be removed. In addition, Sanders did not provide adequate fit testing and selection of respirators, and air monitoring was not conducted every three months as required by § 1910.1025(e)(5)(i).

Such poor compliance with the Lead Standard does not appear to be typical in the secondary smelter and battery industries.

4. Sanders was granted relief, beginning October 2, 1981, from the MRP triggers. Thus, the company had nearly five years of relief under the temporary variance mechanisms, during which time it was legally required to develop health programs and methods to protect its employees and meet the requirements of the Lead Standard.

5. Nevertheless, based on the company's August 1986 blood lead data, Sanders still would have to remove approximately 15 percent of its total skilled work force if it complied with the 50 ug/100g trigger. Sanders' failure to achieve compliance with the 50 ug/100g trigger and its many citations for violation of the Lead Standard suggest that Sanders has not, as required by section 6(b)(6)(A) of the OSHAct, taken all available steps to safeguard its employees against the hazards covered by the Lead Standard or developed effective programs for coming into compliance as quickly as practicable with 29 CFR 1910.1025(k)(l)(i) (C) and (D) of the Lead Standard.

Based on the above, OSHA concluded that additional relief through the temporary variance mechanism is not warranted and, if granted, does not appear likely to result in Sanders Lead Company, Inc., coming into full compliance with the 50 ug/100g trigger of the Lead Standard. Since OSHA believes Sanders failed to established a prima facie case for receiving a temporary variance, the company is not entitled to an interim order.

Therefore, pursuant to the authority in 29 CFR 1905.13 and the Secretary of Labor's Order No. 9–83 (48 FR 35736), OSHA announces its denial of the request of Sanders Lead Company, Inc. for an interim order from the 50 ug/100g medical removal trigger of the Lead Standard.

IV. Notice of Hearing

On December 11, 1985, Sanders requested by letter a hearing on the application. Notice is hereby given, pursuant to section 6(b)(6)(A) of the Occupational Safety and Health Act of 1970 (84 Stat. 1596; 29 U.S.C. 655), Secretary of Labor's Order No. 9–83 (48 FR 35736), and 29 CFR 1905.20, that a hearing will be held on Sanders' application for an extension of its temporary variance, which expired on September 1, 1985, from the standard prescribed in 29 CFR 1910.1025(k)(l)(i)(D).

V. Hearing Issues

1. Did OSHA properly decline to extend the variance relief afforded Sanders Lead Company, Inc. from the 50 ug/100g medical removal protection requirement of the OSHA Lead Standard beyond September 1, 1985?

2. Has Sanders shown that it has taken all available steps to safeguard its employees against the hazards covered by the Lead Standard?

3. Has Sanders shown that it has had, and continues to have, an effective program for coming into compliance with the Lead Standard as quickly as practicable?

4. Upon expiration of the temporary variance granted to employers in the lead industry from the 50 ug/100g medical removal protection requirement of the OSHA Lead Standard , 29 CFR 1910.1025(k)(l)(i)(D), could OSHA properly decline to afford further relief by notifying employers individually that they would not be granted additional relief because the majority of employers previously granted a temporary variance had come into compliance with the 50 ug/100g medical removal protection requirement of the OSHA Lead Standard?

VI. Participation in the Hearing

All interested persons, including employees who believe they would be affected by the grant or denial of the application for a variance may file a request for party status no later than September 14, 1987, to present views and evidence at the hearing. Such request shall contain a statement of the position to be taken and a concise summary of the evidence to be adduced in support of the position.

Requests to participate in the hearing must be filed by September 14, 1987, with both:

James J. Concannon, Director, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3653, 200 Constitution Avenue, NW., Washington, DC 20210

and

Nahum LITT, Chief Administrative Law Judge, U.S. Department of Labor, Vanguard Building, Suite 700, 1111 20th Street, NW., Washington, DC 20036

These submissions will be available for inspection and copying in the Office of Variance Determination, Room N–3653 at the above Constitution Avenue address.

The applicant and OSHA, represented by the Office of the Solicitor, are hereby granted party status and need not submit additional requests to participate in the hearing.

The grant of party status to additional interested persons will be made, if at all, by the to-be-appointed Administrative Law Judge under the terms of 29 CFR 10.10.

The hearing will be convened on January 12, 1988 at 9:30 a.m. The specific location of the hearing will be announced in the Federal Register at a later date. During the hearing proceedings OSHA and any person who has been granted party status in accordance with the above requirements, may submit written or oral data, views or arguments and call and cross examine witnesses. Conduct of the hearing is subject to regulations on hearings contained in 29 CFR 1905.20 et seq., and in 29 CFR Part 18, to the pertinent provisions of the Occupational Safety and Health Act, the Administrative Procedure Act, the Federal Rules of Civil Procedure and the rulings of the Administrative Law Judge.

Under section 6(b)(6)(A) of the OSHAct, the applicant is required to demonstrate by a preponderance of the evidence that: (1) It is unable to comply with the standard by its effective date because of the unavailability of professional or technical personnel or materials or equipment; (2) it is taking all available steps to safeguard its employees against the hazards covered by the Lead Standard; and, (3) it has an effective program for coming into compliance with the standard as quickly as practicable.

I hereby designate as hearing examiner to conduct this hearing an Administative Law Judge to be appointed by the Chief Administrative Law Judge of the United States Department of Labor.

Notice is hereby given pursuant to section 6(b)(6)(A) of the Occupational Safety and Health Act of 1970, Secretary of Labor's Order No. 9–83 (48 FR 35736) and 29 CFR 1905.20, that a hearing will be held on the application of Sanders Lead Company of Troy, Alabama for an extension of the temporary variance from 29 CFR 1910.1025(k)(l)(i)(D) concerning the 50 ug/100g medical removal protection trigger.

Signed at Washington, DC, this 7th day of August, 1987.

John A. Pendergrass,
Assistant Secretary.

[FR Doc. 87–18534 Filed 8–13–87; 8:45 am]
BILLING CODE 4510-26-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[87–65]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Agency Report Forms Under OMB Review Change.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 52 FR 29319, Notice Number 87–62, August 6, 1987.

DATES: Previously announced comment date has been changed from August 7, 1987 to September 4, 1987.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer, Code NPN–1, NASA Headquarters, Washington, DC 20546, (202) 453–1090.

Rayburn A. Metcalfe,
Acting Director, General Management Division.

August 10, 1987.

[FR Doc. 87–18532 Filed 8–13–87; 8:45 am]
BILLING CODE 7510-01-M

[87–66]

NASA Advisory Council (NAC), Space Systems and Technology Advisory Committee (SSTAC); meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee, Ad Hoc Task Team on Spacecraft Power for Future Missions.

DATE AND TIME: September 10, 1987, 8:15 a.m. to 4:30 p.m.

ADDRESS: Room 467, Federal Office Building 10B, National Aeronautics and Space Administration Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Wasel, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453–2855.

SUPPLEMENTARY INFORMATION: The NAC Space Systems and Technology Advisory Committee (SSTAC) was established to provide overall guidance and direction to the Office of Aeronautics and Space Technology (OAST). Special ad hoc teams were formed to address special topics. The ad hoc team on Spacecraft Power and Future Missions, chaired by Dr. Beno Sternlicht, is comprised of seven members. The meeting will be open to the public up to the seating capacity of the room (approximately 20 persons including the team members and other participants).

Type of Meeting: Open.

Agenda

September 10, 1987
8:15 a.m.—Status Review by Chairperson.
8:30 a.m.—Review of NASA Power Program.
12:30 p.m.—Discuss NASA Power Program and Draft Final Team Report.
4:30 p.m.—Adjourn.

Richard L. Daniels,
Advisory Committee Management Officer, National Aeronatics and Space Administration.
August 7, 1987.

[FR Doc. 87-18533 Filed 8-13-87; 8:45 am]
BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Future LWR Designs; Meeting

The ACRS Subcommittee on Future LWR Designs will hold a meeting on September 8, 1987, Room 1046, 1717 H Street NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, September 8, 1987—1:00 P.M. until the conclusion of business

The Subcommittee will discuss a proposed ACRS reply to the 4/22/87 Staff Requirements Memorandum regarding the feasibility, benefit, and cost effectiveness of selected and combined systems as recommended in the ACRS letter of 1/15/87 on Improve LWRs.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Richard Major (telephone 202/634-1414) between 8:15 A.M. and 5:00 P.M. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: August 11, 1987.

Morton W. Libarkin,
Assistant Executive Director for Project Review.

[FR Doc. 87-18625 Filed 8-13-87; 8:45 am]
BILLING CODE 7590-01-M

Meeting of the Auxiliary Systems Subcommittee of the Advisory Committee on Reactor Safeguards; Postponement and Addition of Topics

The ACRS Subcommittee meeting on Auxiliary Systems scheduled to be held on August 18, 1987, Room 1167, notice of which was published in the **Federal Register** on July 31, 1987 (52 FR 28627), has been *postponed to September 30, 1987*, 8:30 A.M., Room 1046, 1717 H Street, NW., Washington, DC.

In addition to the topics previously announced, the Subcommittee will also discuss: criteria used by the utilities to design Chilled Water Systems, associated regulatory requirements, and the criteria being used by the NRC staff to review the Chilled Water Systems design.

Dated: August 11, 1987.

Morton W. Libarkin,
Assistant Executive, Director for Project Review.

[FR Doc. 87-18624 Filed 8-13-87; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-410]

Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing; Niagara Mohawk Power Corp.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-69 issued to Niagara Mohawk Power Corporation, Rochester Gas and Electric Corporation, Central Hudson Gas and Electric Corporation, New York Electric and Gas Corporation, and Long Island Lighting Company (the licensee),* for operation of the Nine Mile Point Nuclear Station Unit 2 plant, located in Oswego County, New York.

The proposed amendment would revise the service water supply header discharge temperature limit in Technical Specification 3/4.7.1 to 81 °F. The proposed amendment is in accordance with the licensee's application of August 3, 1987 as amended August 6, 1987.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; of (3) involve a significant reduction in a margin of safety.

The Commission has provided guidance for the application of these criteria by providing examples of amendments that are considered not likely to involve significant hazards considerations (48 FR 14870).

The proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaulated for the following reasons.

The proposed amendment involves increasing the plant service water system operating temperature limit in the Technical Specifications from 71 °F to 81 °F. The licensee has stated that all components cooled by the plant service water system have been evaluated and been found to be able to perform their intended function under normal operation, shutdown, abnormal and accident conditions with a service water temperature of up to 82 °F. Further, the licensee has stated that the proposed change does not adversely affect the environmental qualification of any plant

*Niagara Mohawk Power Corporation is authorized to act as agent for the other listed owners and has exclusive responsibility and control over the physical construction, operation and maintenance of the facility.

equipment, nor does it impact post-accident containment response. By the determination that the suppression pool is not affected in the post-accident containment response, assurance is provided that the LOCA analysis also remains valid. Finally, the integrity of the service water operating temperature limit to 81 °F will not involve a signficant increase in the probability or consequences of an accident previously evaluated.

The proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated for the following reasons.

The containment post-accident response to previously evaluated accidents remains within previously assessed limits of temperature and pressure. This also applies to the LOCA analysis. Further, all safety-related systems and components remain within their applicable design limits. Thus, system and component performance is not adversely affected by this change, thereby assuring that the design capabilities of those systems and components are not challenged in a manner not previously assessed so as to create the possibility or a new or different kind of accident.

In addition, the environmental qualification of plant equipment is not adversely affected by the proposed changes, further assuring that components are not challenged in a manner not previously assessed. In summary, the proposed changes does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes will not involve a significant reduction in a margin of safety for the following reasons. A number of conservatisms were used in establishing the design basis for the service water system. The margins of safety resulting from these conservatisms are not significantly affected by the proposed change to the Technical Specifications. The change in the margin of safety is insignificant compared to the remaining margin of safety from conservatisms applied in the analyses.

Therefore, based on these considerations and the three criteria given above, the Commission has made a proposed determination that the amendment request involves no significant hazards consideration.

The Commission has determined that failure to act in a timely way would result in a shutdown of the plant.

Therefore, the Commission has insufficient time to issue its usual 30-day notice of the proposed action for public comment.

If during the comment period, the lake temperature should exceed 77 degrees Fahrenheit for sustained periods, the Commission may issue the license amendment before August 31, 1987, provided that its final determination involves no significant hazards considerations and that the application satisfies the provisions of 10 CFR 50.92(a)(5).

If the proposed determination becomes final, an opportunity for a hearing will be published in the **Federal Register** at a later date and any hearing request will not delay the effective date of the amendment.

If the Commission decides in its final determination that the amendment does involve a significant hazards consideration, a notice of opportunity for a prior hearing will be published in the **Federal Register** and, if a hearing is granted, it will be held before any amendment is issued.

The Commission is seeking public comments on this proposed determination of no significant hazards consideration. Comments on the proposed determination may be telephoned to Robert A. Capra, Acting Director, Project Directorate I–1, by collect call to 301–492–4556 or submitted in writing to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Docketing and Service Branch. All comments received by August 31, 1987 will be considered in reaching a final determination. A copy of the application may be examined at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the Local Public Document Room, Penfield Library, State University College, Oswego, New York 13126.

Dated at Bethesda, Maryland, this 10th day of August 1987.

For the Nuclear Regulatory Commission.

Joseph D. Neighbors,

Senior Project Manager, Project Directorate I–1, Division of Reactor Projects, I/II.

[FR Doc. 87–18596 Filed 8–13–87; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50–327, 50–328]

Withdrawal of Application for Amendments to Facility Operating Licenses; Tennessee Valley Authority

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of the Tennessee Valley Authority (TVA) to withdraw its October 2, 1984 application for proposed amendments to Facility Operating Licenses Nos. DPR–77 and DPR–79 for the Sequoyah Nuclear Plant, Units 1 and 2, located in Hamilton County, Tennessee.

By submittal dated May 18, 1987, TVA requested to withdraw its proposed amendments supporting a plant staff reorganization, which would have affected section 6, "Administrative Controls," of the Sequoyah Nuclear Plant, Units 1 and 2 Technical Specifications (TS). This plant staff reorganization related TS change has been re-submitted by the same May 18, 1987 submittal, at the request of the Commission, so as to incorporate all desired changes to section 6 of the TS into one change request. This change request will be the subject of a separate licensing action.

The Commission has issued Notice of Consideration of Issuance of Amendments to Licenses published in the **Federal Register** on December 31, 1984 (49 FR 50826) for the October 2, 1984 application. Pursuant to 10 CFR 2.107, the Commission has granted TVA's request to withdraw its application.

For further details with respect to this action, see (1) the application for amendments dated October 2, 1984 and (2) TVA's submittal dated May 18, 1987, withdrawing the application for amendments. The above documents are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Local Public Document Room in the Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Dated at Bethesda, Maryland this 6th day of July 1987.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Assistant Director for Projects, TVA Projects Division, Office of Special Projects.

[FR Doc. 87–18597 Filed 8–13–87; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–24763; File No. SR–NYSE–87–20]

Self Regulatory Organizations; Filing of Proposed Rule Change by New York Stock Exchange, Inc., Relating to Amendments to Rule 124 To Modify Pricing Procedures for Standard Odd-Lot Market Orders

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 13, 1987, the New York Stock Exchange, Inc. filed with the

Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

The proposed rule change consists of amendments to Rule 124 to modify pricing procedures for standard odd-lot market orders and to adopt a policy that no commission shall be charged on standard systematized odd-lot market orders. Additionally, the proposed amendments will delete sections of the rule which are obsolete or no longer applicable to the handling of odd-lot orders in light of the proposed modifications. An amendment is also proposed to Rule 123A.47 extending the "½ point error guarantee" to systematized odd-lot orders.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B) and (C) below.

(A) Self Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Purpose

The purpose of the proposed rule change is to provide a simplified, efficient system for the execution, processing and reporting of odd-lot orders.

Odd lot orders are orders to purchase or sell a security in an amount less than the unit of trading. Standard odd-lot market orders are odd-lot orders to purchase, sell or sell short exempt "at the market," which contain no qualifying notations.

Execution of Standard Odd-Lot Market Orders

Currently, standard odd-lot market orders are executed at a price based on the next NYSE round-lot sale after the order has been received in the Exchange system designated to process odd-lot orders, and a differential may be charged on such orders. The provisions for executing and processing odd-lot orders are set forth in Exchange Rule 124.

The Exchange proposes to amend Rule 124 to allow standard odd-lot market orders to be executed at a price based on the prevailing NYSE quotation in the stock at the time the order reaches the system, i.e. buy orders will be executed on the NYSE offer and sell orders will be executed on the NYSE bid. No odd-lot differential will be charged on these orders.

The system presently used for the pricing and reporting of all odd-lot orders executed on the Exchange is APARS (Automated Pricing and Reporting System). The Exchange has determined that it is no longer feasible to maintain APARS and will eliminate that system. Instead, odd-lot orders will be re-directed into the Exchange's Limit System. In instances in which NYSE quotation information is not available, e.g., the quotation spread fails validation, standard regular way odd-lot market orders will be executed by means of the "odd-lot system" at the price of the *last* NYSE round lot sale or will be executed by the odd-lot dealer at a price deemed appropriate under prevailing market conditions. This situation is most likely to arise where preferred stocks are processed for execution and the last sale is not reflective of the current market.

It should be noted that the proposed "new" pricing procedures discussed herein have already been tested by the Exchange in the pilot program implemented in 1983 for handling standard odd-lot orders of the American Telephone and Telegraph (AT&T) divestiture issues. That pilot is currently in place and has provided an efficient system for the execution and reporting of these AT&T divestiture odd-lot trades. (See SR–NYSE–83–44)

The proposed amendments to Rule 124 which will effect the modified pricing procedures are set forth in Exhibit A attached hereto. Further, this rule will be simplified and reduced in length as several provisions are proposed for deletion because they refer to obsolete terms, to orders which are not eligible for automatic pricing but will receive manual handling, and, of course, to odd-lot market orders which will be subject to the proposed modifications.

In effect, the Exchange proposes to adopt the pricing procedures used in the AT&T pilot for all standard odd-lot market orders, i.e. the price will be based on the prevailing NYSE bid or offer (rather than on the next round-lot sale) and no differential will be charged.

Upon receipt of Commission approval of the proposed amendments to Rule 124, the Exchange will notify the Commission in a separate filing of the termination of the pilot program for the odd-lot orders of the AT&T divestiture issues. Those orders will be processed through the Limit system in accordance with the pricing procedures discussed herein.

No Commission Policy

The Exchange proposes to adopt the policy that the specialist may not charge a commission or differential for systematized executions of *all* standard odd-lot market orders. The "no commission" policy promotes the Exchange's objective of assuring cost-effective executions of systematized orders for members and member firms, and promotes the purposes of Section 11A(a)(1)(c)(i), which calls for "economically efficient execution of securities transactions". However, as noted elsewhere in this filing, odd-lot limit orders and orders requiring special handling may be charged a differential.

Execution of Odd-Lot Limit Orders

As currently provided in Rule 124, odd-lot limit orders will continue to be executed at the penetrated sale price, plus or minus any differential that may be charged. "Marketable" limit orders in the odd-lot system may be charged a differential and will be processed in the same manner as limit orders, just as they are currently handled.

Openings

All standard odd-lot market orders entered prior to the opening of trading will automatically receive the opening price, as will all odd-lot limit orders eligible to receive the opening price. All limit orders and "marketable" limit orders received prior to the opening and executed at the opening price may be charged a differential.

Comparison and Clearance

After execution all standard odd-lot market and limit orders will be included in specialist inventory accumulations. The new odd-lot system (APARS II) will provide comparison reports, facilities for handling claims and adjustments and will send a direct input of compared trades to the appropriate clearing systems. Specialists will continue to act as registered odd-lot dealers in all odd-lot orders processed through the system.

Comparison reports on executed trades will not be submitted on a locked-in basis, since the DOT/TOD contra designations will not be available to systematized odd-lot orders; rather,

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the name of the appropriate specialist organization will appear as the contra party on all comparison reports.

PRL Orders and Orders Requiring Special Handling

PRL (part of round-lot) orders will be handled in the same manner as at present, i.e., the odd-lot portion receives the same price as the round-lot portion, and the entire order receives one execution report and is handled through the round-lot system.

Orders not eligible for automated reporting in the new odd-lot mechanism will be manually handled by the Odd-Lot Services Area, and given to the specialist for execution, as they are today. Orders requiring such special handling will print for manual handling at the Odd-Lot Services Desk. Because of the small and infrequent number of trades which would require such special handling, it is not cost-effective to program the necessary enhancements to process orders with qualifying conditions through the APARS II. These orders will be reported through the Odd-Lot Services area only after an employee in that unit has consulted with the specialist to record the appropriate price designated by the specialist for the order. Because orders which print as just described require special handling, specialists may charge a differential on such orders.

Half-Point Error Guarantee

The existing specialist ½ point error guarantee now afforded to system-delivered round lots will apply to all systematized odd-lot order executions. The Exchange proposes to amend Rule 123A.47 to reflect the applicability of the ½ point guarantee to odd-lot systematized order executions. The proposed revisions to Rule 123A.47 are set forth in Exhibit B of the filing.

Statutory Basis

The proposed rule change is designed to provide more simplified, efficient executions of standard odd-lot orders, as well as providing for efficient clearance and settlement of these transactions. Implementation of the proposed pricing procedures and systems enhancements will be consistent with those provisions of the Securities and Exchange Act of 1934 ("the Act") which encourage the use of new data processing and communications techniques which create the opportunity for more efficient and effective market operations, as well as providing for economically efficient execution of securities transactions. It will also advance the prompt and accurate clearance and settlement of securities transactions. See Sections 11A(a)(1) and 17A(a)(1) of the Act.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe the proposed rule change will impose any burden on competition that is not in furtherance with the purposes of the Act. Moreover, the proposed pricing procedures will make the odd-lot system similar to the round-lot system and comparable to the way off-Board market-makers execute odd-lot market orders. The proposed rule change will benefit both the public and member firm community as well.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited or received written comments on these rule changes.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communication relating to the proposed rule change between the commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 4, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 7, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-18614 Filed 8-13-87; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Action Subject to Intergovernmental Review

AGENCY: Small Business Administration.

ACTION: Notice of action subject to Intergovernmental Review under Executive Order 12372.

SUMMARY: This notice provides for public awareness of SBA's intention to refund two presently existent Small Business Development Centers (SBDCs) on September 15, 1987. Currently, there are 49 SBDCs operating in the SBDC program. The SBDCs intended to be refunded are the Texas SBDC at Lubbock and the Texas SBDC at Dallas. This notice also provides a description of the SBDC program by setting forth a condensed version of the program announcement which has been furnished to each of the SBDCs to be refunded. This publication is being made to provide the State single points of contact, designated pursuant to Executive Order 12372, and other interested State and local entities, the opportunity to comment on the proposed refunding in accord with the Executive Order and SBA's regulations found at 13 CFR Part 135.

DATE: Comments will be accepted through September 14, 1987.

ADDRESS: Comments should be addressed to Mrs. Johnnie L. Albertson, Deputy Associate Administrator for SBDC Programs, U.S. Small Business Administration, 1441 L Street, NW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Same as above.

SBA is bound by the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs." SBA has promulgated regulations spelling out its obligations under that Executive Order. See 13 CFR Part 135, effective September 30, 1983.

In accord with these regulations, specifically § 135.4, SBA is publishing this notice to provide public awareness

of the pending application of two presently existent Small Business Development Centers (SBDCs) for refunding. Also, published herewith is an annotated program announcement describing the SBDC Program in detail.

This notice is being published one month in advance of the expected date of refunding of these SBDCs instead of the usual 60 days due to inadvertent administrative delays. Relevant information identifying these SBDCs and providing their mailing address is provided below. In addition to this publication, a copy of this notice is being simultaneously furnished to each affected State single point of contact which has been established under the Executive Order.

The State single points of contact and other interested State and local entities are expected to advise the relevant SBDC of their comments regarding the proposed refunding in writing as soon as possible. The SBDC proposal cannot be inconsistent with any area-wide plan providing assistance to small business, if there is one, which has been adopted by an agency recognized by the State government as authorized to do so. Copies of such written comments should also be furnished to Mrs. Johnnie L. Albertson, Deputy Associate Administrator for SBDC Programs, U.S. Small Business Administration, 1441 L Street, NW., Washington, DC 20416. Comments will be accepted by the relevant SBDC and SBA for a period of 30 days from the date of publication of this notice. The relevant SBDC will make every effort to accommodate these comments during the 30-day period. If the comments cannot be accommodated by the relevant SBDC, SBA will, prior to refunding the SBDC, either attain accommodation of any comments or furnish an explanation of why accommodation cannot be attained to the commentor prior to refunding the SBDC.

Description of the SBDC Program

The Small Business Development Center Program is a major management assistance delivery program of the U.S. Small Business Administration. SBDCs are authorized under section 21 of the Small Business Act (15 U.S.C. 648). SBDCs operate pursuant to the provisions of section 21, a Notice of Award (Cooperative Agreement) issued by SBA, and a Program Announcement. The Program represents a partnership between SBA and the State-endorsed organization receiving Federal assistance for its operation. SBDCs operate on the basis of a State plan which provides small business assistance throughout the State. As a condition to any financial award made to an applicant, an additional amount equal to the amount of assistance provided by SBA must be provided to the SBDC from sources other than the Federal Government.

Purpose and Scope

The SBDC Program has been designed to meet the specialized and complex management and technical assistance needs of the small business community. SBDCs focus on providing indepth quality assistance to small businesses in all areas which promote growth, expansion, innovation, increased productivity and management improvement. SBDCs act in an advocacy role to promote local small business interests. SBDCs concentrate on developing the unique resources of the university system, the private sector, and State and local governments to provide services to the small business community which are not available elsewhere. SBDCs coodinate with other SBA programs of management assistance and utilize the expertise of these affiliated resources to expand services and avoid duplication of effort.

Program Objectives

The overall objective of the SBDC Program is to leverage Federal dollars and resources with those of the State academic community and private sector to:

(a) Strengthen the small business community;

(b) Contribute to the economic growth of the communities served;

(c) Make assistance available to more small businesses than is now possible with present Federal resources; and

(d) Create a broader based delivery system to the small business community.

SBDC Program Organization

SBDCs are organized to provide maximum services to the local small business community. The lead SBDC receives financial assistance from the SBA to operate a statewide SBDC Program. In states where more than one organization receives SBA financial assistance to operate an SBDC, each lead SBDC is responsible for Program operations throughout a specific regional area to be served by the SBDC. The lead SBDC is responsible for establishing a network of SBDC subcenters to offer services coverage to the small business community. The SBDC network is managed and directed by a single full-time Director. SBDCs must ensure that at least 80 percent of Federal funds provided are used to provide services to small businesses. To the extent possible, SBDCs provide services by enlisting volunteer and other low cost resources on a statewide basis.

SBDC Services

The specific types of services to be offered are developed in coordination with the SBA district office which has jurisdiction over a given SBDC. SBDCs emphasize the provision of indepth, high-quality assistance to small business owners or prospective small business owners in complex areas that require specialized expertise. These areas may include, but are not limited to: management, marketing, financing, accounting, strategic planning, regulation and taxation, capital formation, procurement assistance, human resource management, production, operations, economic and business data analysis, engineering, technology transfer, innovation and research, new product development, product analysis, plant layout and design, agri-business, computer application, business law information, and referral (any legal services beyond basic legal information and referral require the endorsement of the State Bar Association,) exporting, office automation, site selection, or any other areas of assistance required to promote small business growth, expansion, and productivity within the State.

The degree to which SBDC resources are directed towards specific areas of assistance is determined by local community needs, SBA priorities and SBDC Program objectives and agreed upon by the SBA district office and the SBDC.

The SBDC must offer quality training to improve the skills and knowledge of existing and prospective small business owners. As a general guideline, SBDCs should emphasize the provision of training in specialized areas other than basic small business management subjects. SBDCs should also emphasize training designed to reach particular audiences such as members of SBA priority and special emphasis groups.

SBDC Program Requirements

The SBDC is responsible to the SBA for ensuring that all programmatic and financial requirements imposed upon them by statute or agreement are met. The SBDC must assure that quality assistance and training in management and technical areas are provided to the State small business community through the State SBDC network. As a condition of this agreement, the SBDC must perform, but not be limited to, the following activities.

(a) The SBDC ensures that services are provided as close as possible to

small business population centers. This is accomplished through the establishment of SBDC subcenters.

(b) The SBDC ensures that lists of local and regional private consultants are maintained at the lead SBDC and each SBDC subcenter. The SBDC utilizes and provides compensation to qualified small business vendors such as private management consultants, private consulting engineers, and private testing laboratories.

(c) The SBDC is responsible for the development and expansion of resources within the State, particularly the development of new resources to assist small business that are not presently associated with the SBA district office.

(d) The SBDC ensures that working relationships and open communications exist within the financial and investment communities, and with legal associations, private consultants, as well as small business groups and associations to help address the needs of the small business community.

(e) The SBDC ensures that assistance is provided to SBA special emphasis groups throughout the SBDC network. This assistance shall be provided to veterans, women, exporters, the handicapped, and minorities as well as any other groups designated a priority by SBA. Services provided to special emphasis groups shall be performed as part of the Cooperative Agreement.

Advance Understandings

(a) Lead SBDCs shall operate on a 40-hour week basis, or during normal State business hours of the host institution, with National holidays or State holidays as applicable excluded.

(b) SBDC subcenters shall be operated on a full-time basis. The lead SBDC shall ensure that staffing is adequate to meet the needs of the small business community.

Dated: August 11, 1987.

James Abdnor,

Administrator.

Addresses of Relevant SBDC Directors

Mr. J.E. Cadou, Lubbock Region SBDC Director, Texas Tech University, 2005 Broadway, Lubbock, Texas 79401, (806) 744–5343

Mr. Norbert R. Dettmann, Dallas Region SBDC Director, Dallas County Community College, Business & Professional Institute, 302 N. Market, 3rd Floor, Dallas, Texas 75202–3299, (214) 746–2222.

[FR Doc. 87–18648 Filed 8–13–87; 8:45 am]

BILLING CODE 8025-01-M

[License No. 09/12-0063]

Surrender of License; H & R Investment Capital Co.

Notice is hereby given that, pursuant to § 107.105 of the Small Business Administration (SBA) Rules and Regulations governing Small Business Investment Companies (13 CFR 107.105 (1987)), H & R Investment Capital Company, 801 American Street, San Carlos, California 94070–4101, incorporated under the laws of the State of California has surrendered its license, No. 09/12–0063, issued by the SBA on December 14, 1962.

H & R Investment Capital Company has complied with all conditions set forth by SBA for surrender of its license. Therefore, under the authority vested by the Small Business Investment Act of 1958, as amended, and pursuant to the above-cited Regulation, the license of H & R Investment Capital Company is hereby accepted and it is no longer licensed to operate as a Small Business Investment Company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 7, 1987.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 87–18578 Filed 8–13–87; 8:45am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

University Transportation Centers Program; Solicitation of Pre-applications

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: DOT is soliciting pre-applications from universities for its University Transportation Centers Program. The purpose of the pre-application process is to determine which universities are eligible to participate in the program based on four criteria, including minimum levels of transportation research already ongoing. Once the Department has made this determination, eligible universities will be given detailed guidance which will be the basis for grant applications for the four-year program. The selection of centers and award of grants is expected to be finalized in FY 1988.

DATES: The determination of institutions which qualify to receive the program guidance will be made by the Department of Transportation from those pre-application submissions received by 4:00 p.m. on September 14, 1987. The pre-applications will undergo review, and institutions will be notified of their eligibility within two months.

ADDRESS: Institutions which believe they qualify for the program should send a brief letter-type pre-application containing a description of how they meet each of the four criteria listed in the **SUPPLEMENTARY INFORMATION** below. The letter should be mailed to University Transportation Centers Program, Office of the Secretary, Procurement Division (M–66, Room 9134), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION, CONTACT: Gracie C. Carter, (202) 366–5442.

SUPPLEMENTARY INFORMATION: A University Transportation Centers grant program was authorized by 49 U.S.C. 1607c. Grants will be made to one or more nonprofit institutions of higher learning to establish and operate one regional transportation center in each of the ten Federal regions. The responsibilities of each center shall include, but not be limited to, the conduct of infrastructure research concerning transportation and research and training concerning transportation of passengers and property and the interpretation, publication, and dissemination of the results of such research. The research will be directed toward intermediate and long-range problems and issues. The research is intended to complement, rather than replace existing programs at the centers host institutions.

Institutions qualifying to receive the program guidance shall be screened on the basis of the following criteria. To be eligible an institution must:

1. Be a nonprofit institution of higher learning which offers baccalaureate and/or graduate degrees in fields related to transportation.

2. Be accredited by one of the six regional accrediting associations in the United States.

3. Present documentation which indicates that the university has an established transportation program or programs encompassing two or more modes of transportation.

4. Present documentation that demonstrates that the university has a commitment to supporting ongoing transportation research programs with regularly budgeted institutional funds of at least $200,000 per year for the past two years.

The University Transportation Centers Program is located in the Office

of the Assistant Secretary for Policy and International Affairs. Determination of institutions to receive the program guidance, which will be the basis for grant application, does not imply that grants will be awarded. Only institutions determined to be eligible as a result of the pre-application process may submit an additional and more detailed application at a later time. The final application will be the sole basis for grant award and will be evaluated by persons with appropriate technical and scientific backgrounds. The written evaluations will be sent to the University Transportation Centers Review Board which is the source selection board for the program. The Deputy Secretary of Transportation is the source selection authority for the program and will select the applications to receive grant awards under the program. This pre-application announcement which is being concurrently published in the *Commerce Business Daily* will be the only announcement of the program.

Issued in Washington, DC, on August 7, 1987.

Elizabeth Dole,

Secretary of U.S. Department Transportation.

[FR Doc. 87-18763 Filed 8-12-87; 1:04 pm]

BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department of the Treasury Order No. 101-18]

Delegation of Authority to the Treasurer of the United States to Designate Financial Institutions as Depositaries of Public Money for United States Mint Coin Consignment Programs

Dated: August 5, 1987.

By virtue of the authority vested in me as Secretary of the Treasury, including the authority vested in me by 31 U.S.C. 301 and 321(b), and by 12 U.S.C. 90, 265, 266, 391, 1452(c), 1464(k), 1725(d), 1767, 2012, 2072, and 2122, it is ordered that the Treasurer of the United States is authorized and directed to take all necessary and proper measures, including direction of other officials of the Department and utilization of the services of other government agencies, to establish depositary accounts with financial institutions, and to designate financial agents, only as are necessary to support United States Mint coin consignment programs.

James A. Baker III,

Secretary of the Treasury.

[FR Doc. 87-18694 Filed 8-13-87; 8:45 am]

BILLING CODE 4810-25-M

Internal Revenue Service

Tax Forms Coordinating Committee Release of Tax Forms

The Internal Revenue Service is publishing advance proof copies of a number of major 1987 Federal tax forms. This release includes proofs of forms not previously released this year and proofs of forms that were released earlier this year but were subsequently revised due to public comments, IRS forms testing efforts, or internal review. The new items, developed to reflect provisions of the Tax Reform Act of 1986, are: Form 8582 (relating to passive activity loss limitations); Form 8598 (relating to the home mortgage interest deduction); the IRA deduction instructions and worksheets for Form 1040A; and Form 8606 (relating to nondeductible contributions to IRA's). The rereleased items are: Forms 1040EZ; 1040A; 1040; Schedules A, B, and E of Form 1040; and Form 2106. (Please note that Form 2106 has been completely revised. The revised portions of the other forms are circled.)

Persons needing proof copies of any of these items may write to: IRS-CADC, 2402 East Empire, Bloomington, IL 61799.

Please note that these proofs are subject to change and OMB approval before being released for printing in earlier October.

Suggestions for improving these forms should be sent by September 14, 1987, to: Tax Forms Committee, Attn: Early Release, Internal Revenue Service, Room 5577, 1111 Constitution Avenue NW., Washington, DC 20224.

Although IRS is not required to publish copies of the tax forms under section 1505 of the Federal Register Act or section 552 of the Administrative Procedures Act, we are doing so at this time due to wide public interest in changes to the forms caused by the Tax Reform Act of 1986 and to give the forms broad public exposure. We may be unable to give detailed replies to the comments we receive. However, each suggestion will be carefully considered before the final versions of the forms are issued.

Dated: August 7, 1987.

Approved:

Edmund I. Goldwag,

Director, Tax Forms and Publications Division.

BILLING CODE 4830-01-M

Form **8582**

Department of the Treasury
Internal Revenue Service

Passive Activity Loss Limitations

▶ See separate instructions.

▶ Attach to Forms 1040, 1041, 1041S, or 1120 (Personal service corporation).

OMB No. 1545-

1987

Attachment Sequence No. **88**

Name(s) as shown on return | Identifying number

Part I Computation of 1987 Passive Activity Loss

Caution: See the worksheets on page 4 of the instructions before completing Part I.

Rental Real Estate Activities With Active Participation (See the definition of active participation under **Rental Activities** on page 1 of the instructions.)

Activities acquired before 10-23-86:

1a	Activities with net income	1a	
1b	Activities with net loss	1b	
1c	Combine lines 1a and 1b	1c	
	Activities acquired after 10-22-86:		
1d	Activities with net income	1d	
1e	Activities with net loss	1e	
1f	Combine lines 1d and 1e	1f	
1g	Net income or (loss). Combine lines 1c and 1f		1g

All Other Passive Activities (See **All Other Passive Activities** on page 3 of the instructions.)

Activities acquired before 10-23-86:

2a	Activities with net income	2a	
2b	Activities with net loss	2b	
2c	Combine lines 2a and 2b	2c	
	Activities acquired after 10-22-86:		
2d	Activities with net income	2d	
2e	Activities with net loss	2e	
2f	Combine lines 2d and 2e	2f	
2g	Net income or (loss). Combine lines 2c and 2f		2g
3	Combine lines 1g and 2g. If the result is net income, see the instructions for line 3. If this line and line 1g are both losses, go to line 4; otherwise, enter -0- on line 9 and go to line 10		3

Part II Computation of the Special Allowance for Rental Real Estate With Active Participation

Note: *See page 4 of the instructions for how to treat numbers as if they were all positive in Parts II and III.*

4	Enter the smaller of the loss on line 1g or the loss on line 3		4
5	Enter $150,000 ($75,000 if married filing separately and you lived apart for the entire year)	5	
6	Enter modified adjusted gross income, but not less than -0-, (see instructions). If line 6 is equal to or greater than line 5, skip lines 7 and 8, enter -0- on line 9, and then go to line 10. Otherwise, go to line 7	6	
7	Subtract line 6 from line 5	7	
8	Multiply line 7 by 50% (.5). Do not enter more than $25,000 ($12,500 if married filing separately and you lived apart for the entire year)		8
9	Enter the smaller of line 4 or line 8		9

Part III Computation of Passive Activity Loss Allowed

10	Combine lines 1c and 2c and enter the result. If the result is -0- or net income, skip to line 16	10
11a	If line 9 is -0-, enter -0- and go to line 12.	
11b	If line 1c shows income, has no entry, or shows -0-, enter -0- and go to line 12; otherwise, enter the smaller of line 1c or line 8	11
12	Subtract line 11 from line 10. (See instructions.)	12
13	Subtract line 9 from line 3. (See instructions.)	13
14	Enter the smaller of line 12 or line 13	14
15	Multiply line 14 by 65% (.65) and enter the result	15
16	Enter the amount from line 9	16
17	**Passive Activity Loss Allowed for 1987.** Add lines 15 and 16	17
18	Add the income, if any, on lines 1a, 1d, 2a, and 2d and enter the result	18
19	**Total losses allowed from all passive activities for 1987.** Add lines 17 and 18. See page 4 of the instructions to see how to report the losses on your tax return	19

Proof August 13, 1987

1987

Department of the Treasury
Internal Revenue Service

Instructions for Form 8582

Passive Activity Loss Limitations

(Section references are to the Internal Revenue Code unless otherwise noted.)

General Instructions

Paperwork Reduction Act Notice

We ask for this information to carry out the Internal Revenue laws of the United States. We need it to ensure that taxpayers are complying with these laws and to allow us to figure and collect the right amount of tax. You are required to give this information.

Purpose of Form

Form 8582 is used to figure the amount of passive activity loss allowed for the current tax year and the loss to be reported on your tax return.

Who Must File

Form 8582 is filed by individual taxpayers, estates, trusts, and personal service corporations (as described in section 469(j)(2)), who have one or more passive activities with net losses.

Passive Activities

A passive activity is any activity involving the conduct of any trade or business (including a research and experimentation activity) in which you did not materially participate. See the **Trade or Business Activities** section below.

Any rental activity (real property or personal property) is a passive activity regardless of whether you materially participated. See the **Rental Activities** section below.

Under regulations a passive activity may also include an activity conducted for profit (within the meaning of section 212), including an activity that is not a trade or business.

Activities That Are Not Passive Activities

Working Interest in Oil and Gas Property.—A working interest in oil and gas property that you hold directly or through an entity that does not limit your liability is not a passive activity even if you do not materially participate. An interest owned by a limited partnership interest is not treated as a working interest with regard to any limited partner, and an interest owned by an S corporation is not treated as a working interest with regard to any shareholder. For example, a general partner in a partnership that owns a limited partnership interest in a partnership that owns a working interest is not treated as owning a working interest.

Interest on Taxpayer's Residence.—Interest on debt secured by the taxpayer's residence or a second residence is not subject to the limitation under the passive loss rules as long as the interest meets the definition of qualified residence interest under section 163(h). For example, if a taxpayer rents out a vacation home and a portion of the mortgage interest is allocable to rental use of the home that would otherwise be treated as a passive activity, such interest expense is not subject to the passive loss rules if the vacation home was selected as the taxpayer's second residence and the mortgage interest meets the definition of qualified residence interest.

Low-Income Housing.—Transitional relief is provided in the case of low-income housing activities. Losses from certain investments after 1983 in low-income housing are not treated as from a passive activity for a period of up to 7 years from the taxpayer's original investment. See **Publication 925**, Passive Activity and At-Risk Rules, for more details.

Passive Activity Losses

Deductions from a passive activity are allowed against income from that activity and against income from other passive activities. If the deductions exceed the income from all of the passive activities, they become passive activity losses and cannot be used to offset income from non-passive activities. The special allowance for rental real estate activities with active participation and the phase-in rule for activities acquired before October 23, 1986, allow additional losses even if the losses exceed passive income. These rules are discussed in more detail below. Passive activity losses that are not allowed in the current year are carried forward until they are allowed either against passive activity income, against the special allowance, if applicable, or when you sell or exchange your entire interest in the activity in a fully taxable transaction to an unrelated party.

Income That Is Not Passive Activity Income.—The following are not considered income from a passive activity:

- Personal service income, including salaries, wages, commissions, self-employment income from a trade or business in which you materially participated, taxable social security and other retirement benefits, and payments from a partnership to a partner for the performance of services.
- Portfolio income, including interest, dividends (including dividends from a REIT, RIC, or REMIC), annuities, and royalties not derived in the ordinary course of a trade or business, and gain or loss from a disposition of property that produces portfolio income or is held for investment. **Note:** *portfolio income is reduced by expenses (other than interest) which are clearly and directly allocable to such gross income, and interest expense properly allocable to such gross income under section 1.163-8T of the regulations. These interest and other expenses are not treated as deductions from a passive activity.*
- Any income, gain, or loss which is attributable to an investment of working capital.
- Income from a working interest in oil and gas property if any loss for any taxable year from the working interest was treated as a loss not from a passive activity (see **"Working Interest in Oil and Gas Property"** earlier).
- Income from any low-income housing activity if losses from the activity would not be treated as losses from a passive activity for the taxable year (see **"Low-Income Housing"** earlier).
- Income from the rental of a home that you also used as a residence during the taxable year (see **"Interest on Taxpayer's Residence"** earlier).

Trade or Business Activities

The material participation standard applies to activities involving the conduct of any trade or business (including a research or experimentation activity).

Individuals.—You will be treated as materially participating in an activity only if you are involved in the operations of the activity on a regular, continuous, and substantial basis.

Except as otherwise provided in regulations, you do not materially participate if you own an interest in a limited partnership. This applies even if you own the limited partnership interest through a tiered entity arrangement. For example, if you own a general partnership interest, or stock in an S corporation, and that partnership or corporation owns a limited partnership interest in another entity, except as otherwise provided in regulations, you will not be considered a material participant.

Certain retired or disabled taxpayers are treated as materially participating in a farming activity if they materially participated for an aggregate of 5 years out of the 8 years preceding retirement or disability. Similarly, a surviving spouse is treated as materially participating in a farming activity if the real property used in the activity meets the estate tax rules for special valuation of farm property passed from a qualifying decedent and the surviving spouse actively manages the farm.

Personal Service Corporations.—A personal service corporation is treated as materially participating if 1 or more shareholders holding stock representing more than 50% (by value) of the outstanding stock of the corporation materially participate in the activity.

Trusts.—When considering the material participation of a nongrantor trust, the fiduciary's degree of participation is taken into consideration. The grantor's degree of participation is considered for a grantor trust.

Estates.—An estate is treated as materially participating if the executor of the estate is participating.

Rental Activities

All rental activities are treated as passive activities without regard to whether you materially participated in the activity. Rental activities include the rental of real estate and tangible property such as equipment.

Active Participation.—You are treated as having actively participated in a rental real

Proof Only

estate activity if you and your spouse, own at least 10% (by value) of all interests in such activity at any time during the year.

The active participation requirement can be met without regular, continuous, and substantial involvement in operations, as long as you participated in making management decisions or arranging for others to provide services (such as repairs), in a significant and bona fide sense. Management decisions that are relevant in this context include approving new tenants, deciding on rental terms, approving capital or repair expenditures, and other similar decisions.

For example, if you own and rent out an apartment that formerly was your primary residence, or that you used as a part-time vacation home, you may be treated as actively participating even if you hire a rental agent and others provide services such as repairs if you participate in management decisions such as those described above.

Except as provided in regulations, a limited partnership interest does not qualify as one in which the partner actively participates.

Special Allowance for Rental Real Estate With Active Participation

Individual taxpayers may offset excess losses from rental real estate activities in which they actively participate against up to $25,000 of nonpassive income. The estate of a deceased taxpayer can also qualify for the special allowance for the two first taxable years following the death of the taxpayer if the decedent was actively participating in the activity at the time of death. Trusts and corporations do not qualify for the special allowance.

However, married individuals who file separate tax returns but did not live apart at all times during the taxable year do not qualify for any of the special allowance.

Married individuals who lived apart at all times during the tax year may each qualify for up to $12,500 of the allowance.

An estate and the surviving spouse each get up to $12,500 of the allowance if they file separate tax returns and both qualify as active participants in a rental real estate activity.

Limited partners, except as provided for by regulations, cannot offset passive losses with the special allowance.

The special allowance is applied after first netting income and loss from all of your rental real estate activities in which you actively participate and then against net passive income, if any, from all other passive activities. If there is still a net loss, the special allowance can be used. If the amount of the passive activity loss from a rental real estate activity exceeds the amount allowed under the special allowance, the loss may be allowable under the rule in a future year if you continue to actively participate in the activity. If the amount of the passive activity loss from such an activity exceeds the amount of nonpassive income against which the loss may be deducted, the excess is treated as a net operating loss.

The allowance is reduced by 50% of the amount that your modified adjusted gross income exceeds $100,000 ($50,000 if married filing separately and you lived apart for the entire year). If modified adjusted gross income exceeds $150,000 ($75,000 if married filing separately and you lived apart for the entire year), none of the special allowance is available. See the specific instructions for line 6 for the definition of modified adjusted gross income.

Transitional Phase-In Rule

Interests in passive activities that you acquired before October 23, 1986, are eligible for a gradual phase-in of the passive activity loss limitations. For the tax years 1987 through 1991, a certain percentage of the current year passive activity loss from these activities (net of any amount of the loss allowed for active participation rental real estate activities) is allowed to offset nonpassive income. The percentage of loss allowed in 1987 is 65%.

The phase-in applies to interests in passive activities acquired before October 23, 1986, and also to activities acquired after that date if there was a written binding contract in effect on that date and at all times thereafter.

To qualify for the phase-in rule, the activity must have commenced before October 23, 1986, unless the property used in the activity was acquired pursuant to a written binding contract in effect on August 16, 1986, and at all times thereafter, or the construction of property used in the activity began on or before August 16, 1986.

Disposition of a Passive Activity

Disposition of an entire interest.—When you dispose of your entire interest in a passive activity in a fully taxable disposition to an unrelated party, any loss allocable to the activity (including any loss disallowed in a previous year, current year loss, and loss on the disposition) is recognized and allowed against income (whether active or passive income). A loss allowed on the disposition of an entire interest in an activity is allowed in full but is treated as passive to the extent of net income from all passive activities and nonpassive to the extent that the losses exceed net income from all passive activities. Under regulations, income or gain from preceding taxable years may be taken into account to the extent necessary to prevent the avoidance of the passive loss limitations. Since 1987 is the first tax year the passive activity loss limitations are in effect, there are no unallowed losses from previous years to take into consideration this year.

Entire interest in an activity.—Your entire interest in an activity includes any interest you hold in any property used or created in the activity. This applies whether you hold the interest directly or through an entity in which you hold any interest directly or through one or more other entities. An entity includes any partnership, corporation, estate, or trust. For example, a disposition of your entire interest in a partnership is not a disposition of your entire interest in any activity the partnership conducts if you continue to hold (directly or indirectly) any interest in property used or created in the activity. See the regulations under section 469 for examples of property used or created in an activity.

Fully taxable disposition.—A disposition is a fully taxable disposition if, and only if, all gain or loss realized on the disposition is recognized. See the regulations under section 469 for more information on qualifying dispositions.

Gains on the disposition of an entire interest and income from the current year operations of that activity can be used to offset other passive activity losses.

Disposition of less than an entire interest.—Gains and losses on the disposition of less than an entire interest are gains and losses from a passive activity and are subject to the passive activity loss rules.

Special rule for formerly nonpassive activities.—Under regulations, if you realize gain on the sale, exchange, or other disposition of any part of an interest in an activity which is a passive activity this year but the activity for a substantial part of the period that you held any interest in the activity would not have been a passive activity if the passive activity loss limitation rules had been in effect for the entire period that you owned the interest, the gain is treated as passive activity gross income for the taxable year only to the extent that it exceeds the unallowed loss from that activity for the taxable year.

Specific Instructions

Only One Activity Reported on Form 8582

If only one activity is reported on Form 8582, line 19 is the loss allowed for the current year and the unallowed loss is your actual loss (line 1b, 1e, 2b, or 2e) minus line 19.

More Than One Activity Reported on Form 8582

If you are reporting more than one activity on Form 8582, complete the worksheet(s) shown in the instructions for lines 1 and 2. If part of the losses are disallowed, the worksheet(s) in the instructions for line 19 will also have to be completed in order to allocate the losses allowed back to the proper activity.

Estates, Trusts, and Personal Service Corporations

Only individuals and certain estates can use the special allowance rule to offset passive losses from rental real estate activities with active participation. Trusts, personal service corporations and certain estates (who do not qualify for the special allowance rule) should complete lines 2a through 2g, enter -0- on line 9 and then skip to line 10.

Beneficiaries of Trusts and Estates

Instructions To Follow

Forms and Schedules Which May Be Affected by the Passive Loss Provisions

Schedule A (Form 1040), Itemized Deductions.—Interest expense from a passive activity is limited under the passive loss rules instead of under the investment interest limitation rules. After figuring the amount of interest expense allowed on Form 8582, see the instructions for Schedule A (Form 1040) on how to report it on that schedule.

Schedule C (Form 1040), Profit or (Loss) From Business or Profession.—If you have a passive activity loss on Schedule C, file Form 8582 to see how much of the loss is allowed. If all of the loss is not allowed, enter the amount allowed on line 31 of Schedule C and to the left of the entry space, write "From Passive Activity."

If you have net profit from a passive activity reported on Schedule C and you also have other passive activities with losses, file Form 8582 so that the net profit from Schedule C can offset the other passive activity losses. Leave the net profit amount on line 31 of Schedule C (and enter it on Form 1040, line 13) but also enter it in the applicable income column of worksheet 2 on page 4 of the instructions for Form 8582.

Schedule D (Form 1040), Capital Gains and Losses and Reconciliation of Forms 1099-B.—A capital gain on the sale or exchange of your entire interest in a passive activity in a fully taxable disposition to an unrelated party is reported on Schedule D (Form 1040). The gain is also included on Form 8582 if you have other passive activity losses.

Capital losses from a fully taxable disposition of an entire interest in a passive activity to an unrelated party are allowed in full under the passive activity loss limitations but may be subject to the capital loss limitations. The loss is treated as a loss from a passive activity to the extent that the loss exceeds net income from all passive activities. Enter the total loss on the appropriate line of Schedule D and enter the amount of the loss that is treated as a passive loss on line 19 of Form 8582.

Capital gains and losses from a disposition of less than an entire interest are treated like any other passive activity gain or loss. The gain is entered on Schedule D and also on Form 8582 as passive activity income. The loss is not entered on Schedule D until the passive activity loss allowed is figured on Form 8582. The amount allowed on Form 8582 is the amount to be entered on Schedule D.

Schedule F (Form 1040), Farm Income and Expenses.—If you have a passive activity loss on Schedule F, file Form 8582 to see how much of the loss is allowed. If all of the loss is not allowed, enter the amount allowed on line 37 of Schedule F and to the left of the entry space write, "From Passive Activity."

If you have a net profit from a passive activity reported on Schedule F and you also have other passive activities with losses, file Form 8582, so that the net farm profit can offset the other passive activity losses. Leave the net profit amount on line 37 of Schedule F (and also enter it on Form 1040, line 18) but also enter it in the applicable income column of worksheet 2 on page 4 of the instructions for Form 8582.

Schedule E (Form 1040), Supplemental Income Schedule.—If you have income or loss from a passive activity reported on Schedule E, see the Form 1040 instructions for Schedule E to see if you must file Form 8582. If you file Form 8582, figure the amount of your loss allowed on Form 8582 and then follow the instructions for Schedule E (Form 1040) to see how to report it on that schedule.

Form 4797, Gains and Losses From Sales or Exchanges of Assets Used in a Trade or Business and Involuntary Conversions.—Any gain on the sale or exchange of your entire interest in a passive activity in a fully taxable disposition to an unrelated party which was used in your trade or business, is reported on Form 4797. The gain is also included on Form 8582 if you have other passive activity losses. This includes section 1231 gains and any ordinary income, including ordinary income from recapture, reported on Form 4797.

Losses from a fully taxable disposition of an entire interest in a passive activity to an unrelated party are allowed in full. The loss is treated as a loss from a passive activity to the extent of net income from all other passive activities and as a nonpassive loss to the extent that the loss exceeds net income from all passive activities. Enter the total loss on the appropriate line of Form 4797 and enter the amount of the loss that is treated as a passive loss on line 19 of Form 8582. If there is no net income on line 3 of Form 8582, the loss is not a passive loss and is not entered on Form 8582.

Losses and gains from a disposition of less than an entire interest are treated like any other passive activity loss or gain. The gain is entered on Form 4797 and also on Form 8582 as passive activity income. The loss is not entered on Form 4797 until the passive activity loss allowed is figured on Form 8582. The amount allowed on Form 8582 is the amount entered on Form 4797.

Form 4835, Farm Rental Income and Expenses.—Figure your passive activity loss allowed on Form 8582 before transferring line 33 of Form 4835 to Schedule E. If part of the loss is disallowed on Form 8582, enter the amount allowed on line 33 of Form 4835 and to the left of the entry space write, "From Passive Activity". Then enter that amount on Schedule E, line 28.

If Form 4835 has a net farm rental profit and you have other passive activity losses, file Form 8582 so that the net profit can offset the other passive activity losses. Leave the net profit on Form 4835 (and report it on Schedule E, line 28) and also enter it in the applicable income column of worksheet 2 on page 4 of the Form 8582 instructions.

Form 4952, Investment Interest Expense Deduction.—Income and loss from passive activities generally are not treated as investment income or loss when calculating the amount of the investment interest limitation. However, any passive losses allowed by reason of the phase-in of the passive loss provision (other than losses from rental real estate activities in which you actively participate) reduce your net investment income for purposes of the investment interest limitation. Also see the Form 4952 instructions.

Form 6198, Computation of Deductible Loss From an Activity Described in Section 465(c).—Losses from passive activities may also be subject to the at-risk rules. If so, the at-risk rules apply first. When the loss becomes deductible under the at-risk rules, the passive activity rules apply. Figure your deductible loss for the activity on Form 6198 and then bring that amount over to Form 8582 to see how much of the loss is allowed under the passive activity loss rules. Report the amount allowed on Form 8582 on the applicable form or schedule.

Form 6251, Alternative Minimum Tax Computation—Individuals.—Your passive activity losses are an adjustment for alternative minimum tax purposes. See the instructions for Form 6251.

Form 6252, Computation of Installment Sale Income.—Gain from an installment sale of a disposition either of an entire interest in a passive activity or of less than an entire interest in a passive activity is treated as income from a passive activity to the extent of the gain reported this year. If you have other passive activity losses or a loss from the disposition of an entire interest in a passive activity, include the gain on Form 8582 and also include it on Form 4797 or Schedule D, whichever is appropriate.

Part I

Rental Real Estate Activities With Active Participation.—Do not enter amounts on lines 1a through 1g if you do not actively participate in the rental real estate activity. Use lines 2a through 2g when there is no active participation. Personal service corporations, trusts, certain estates, and limited partners are not treated as actively participating in the activity. Taxpayers (including a general partner) whose interest in the activity, at any time during the taxable year, is less than 10 percent of the value of all interests in the activity are not treated as actively participating in the activity.

An estate is treated as actively participating for the 2 years following the death of the taxpayer if the taxpayer actively participated in the rental real estate activity in the taxable year in which he died.

See **Rental Activities** for the definition of active participation.

If you have more than one passive activity, use worksheet 1 to figure the amounts to enter on lines 1a, 1b, 1d, and 1e.

All Other Passive Activities.—Lines 2a through 2g are used for trade or business activities in which you do not materially participate, certain activities with respect to which expenses are deductible under section 212 as investment expenses for the production of income if specified by

regulations as a passive activity, and rental activities including the rental of personal property, and rental real estate activities when you do not actively participate.

If you have more than one passive activity, use worksheet 2 to figure the amounts to enter on lines 2a, 2b, 2d, and 2e.

Lines 1 and 2.—When entering income and loss in the appropriate columns, use the overall net income or net loss from each activity. For example, if you have a passive activity loss reported on Schedule E, the amount to be entered in either columns (b) or (d) would be the net loss reported on line 23 of Schedule E. If you had net income from a passive activity reported on Schedule E, the amount to be entered in either columns (a) or (c) would be the net income reported on line 23 of Schedule E.

Part II

When a line instruction asks for the "smaller of," treat the line entries as if they were positive numbers when taking into consideration which is the smaller number. For example, the instruction on line 9 says to "enter the smaller of line 4 or line 8." If line 4 had a loss of ($32,000) and the line 8 entry was the $25,000 allowance, the smaller amount would be $25,000.

Lines 1a, 1b, 1d, and 1e.—Use the worksheet below to figure the amounts to be entered on lines 1a, 1b, 1d, and 1e. Lines 1a and 1b are used for rental real estate activities with active participation which were acquired before 10-23-86. Lines 1d and 1e are used for rental real estate activities with active participation acquired after 10-22-86.

After you complete the worksheet below, enter the totals of columns (a) through (d) on the corresponding lines of Form 8582 and then complete lines 1c, 1f, and 1g.

Worksheet 1 for lines 1a, 1b, 1d, and 1e (Keep for your records)

Name of Activity	Form or Schedule To be Reported on	Activities acquired before 10-23-86		Activities acquired after 10-22-86	
		(a) Income line 1a	(b) (Loss) line 1b	(c) Income line 1d	(d) (Loss) line 1e
Totals. Enter on lines 1a, 1b, 1d and 1e of Form 8582 . . ▶					

Lines 2a, 2b, 2d, and 2e.—These lines are used for rental real estate activities without active participation, other rental activities, and all other passive activities such as a trade or business in which you do not materially participate. Lines 2a and 2b are used for activities acquired before 10-23-86 and lines 2d and 2e are used for activities acquired after 10-22-86.

Enter the total in columns (a) through (d) on the corresponding lines of Form 8582 and then complete lines 2c, 2f, and 2g.

Worksheet 2 for lines 2a, 2b, 2d, and 2e (Keep for your records)

Name of Activity	Form or Schedule To be Reported on	Activities acquired before 10-23-86		Activities acquired after 10-22-86	
		(a) Income line 2a	(b) (Loss) line 2b	(c) Income line 2d	(d) (Loss) line 2e
Totals. Enter on lines 2a, 2b, 2d and 2e of Form 8582 . . ▶					

Line 3.—If line 3 shows net income, add any losses shown on lines 1b, 1e, 2b, and 2e and enter them on line 19. All of your passive losses are allowed. Take the amount of each individual loss entered on worksheets 1 and 2 in columns 1b, 1d, 2b, and 2d and report the losses on the form or schedule you usually report them on.

Line 6.—Modified adjusted gross income means your adjusted gross income computed by including:

(a) Net income or loss for the taxable year other than losses from passive activities. For this purpose, net income or loss is determined without regard to:

Taxable social security and railroad retirement payments;

Deductible contributions to individual retirement accounts and simplified employee pension plans;

Any amount not allowable as a deduction in computing adjusted gross income; or

any amount treated as a disposition of an entire interest under section 469(g)(1)(A) and regulation section 1.469-3 as a loss for the taxable year that is not from a passive activity.

Lines 12 and 13.—Reserved

Line 19.—If only one activity with a loss is shown on Form 8582, the amount on line 19 is the actual loss allowed for the year. This amount should be entered on the form or schedule that it is normally reported on, such as, Schedule C or Schedule E. Your unallowed amount would be the loss shown on lines 1b, 1e, 2b, or 2e minus the amount on line 19. You must keep a record of this unallowed amount and the activity to which it belongs in order to take the loss when it becomes deductible in a subsequent year.

More Than One Passive Activity Loss Shown on Form 8582.

If you have more than one passive activity loss shown on Form 8582 and part of your losses were not allowed, you will have to allocate the amount on line 19 among the activities. The following worksheets have been provided to help you allocate the losses allowed and the unallowed losses per activity.

Worksheets to allocate allowable losses are still being developed.

Proof of August 13, 1987

Version C

Form **8598**

Department of the Treasury
Internal Revenue Service

Computation of Deductible Home Mortgage Interest

▶ Attach to Form 1040.
▶ See Separate Instructions.

OMB No. 1545-XXXX

1987

Attachment Sequence No. 85

Name(s) as shown on Form 1040

Your social security number

Note: *Complete a separate Form 8598 if you have two qualified homes. See the separate instructions.*

Am I Required To Complete and File This Form?— Complete this form to figure your deductible home mortgage interest if:

- You took out a mortgage on your home (or other debt secured by your home) after August 16, 1986, and
- You took out the mortgage for a purpose other than to buy the home.

You **do not** have to complete this form if:

- You took out only one mortgage on your home and that mortgage was to buy your home, or
- You took out all mortgages on your home before August 17, 1986, and you did not refinance any of these mortgages or borrow additional amounts on any of these mortgages after August 16, 1986. However, if the mortgages were above the fair market value of the home at the time you took them out, then you must file this form.

If you have to complete this form, attach it to Form 1040.

How Much of My Home Mortgage Interest May I Deduct?—In general, you may still deduct all interest you paid on any mortgage you took out to buy your home. However, you may not be able to deduct all of your home mortgage interest if the cost of the home (including the cost of improvements you made) is less than the "average balance" of your mortgage(s). "Average balance" means the average principal amount you owed for 1987 on your mortgage, or the total of the average principal amount you owed for 1987 on each mortgage if you had more than one.

Any part of the interest you cannot deduct as home mortgage interest will usually be treated as personal interest. For 1987, only 65% of personal interest is deductible.

Which Parts of the Form Do I Complete?— You must complete Part I to see if you can deduct all interest paid on the home mortgages. If you find that you may deduct all of the mortgage interest, then stop after completing Part I. However, if after you complete Part I you find that not all of your interest on the mortgages is deductible, then read on to see if you should complete Part II or Part III to figure the amount of home mortgage interest you may deduct.

You should read the additional separate instructions carefully before you begin to complete Part I. These instructions explain what is meant by cost plus improvements to your home and when you can use an amount higher than cost plus improvements if you had a mortgage on your home before August 17, 1986. These instructions also explain in detail how to determine the average balance of each mortgage.

We have provided several methods you may be able to choose from to figure the average balance of each mortgage. You may be able to use more than one method for each mortgage or different methods for different mortgages.

Note: *In some instances you must use Part III. Or, in other situations, using Part III instead of Part II may result in a larger deduction.*

You must use the special method in Part III instead of Part II if you used any of the proceeds of any mortgage or other debt secured by your home in your trade or business.

You may use the special method in Part III if you used any part of the proceeds of any debt secured by the home to pay for:

a. any qualified medical or educational expenses, or
b. any investment property or expenses, or
c. any passive activity property or expenses.

In Part III, you figure the amount of deductible home mortgage interest separately for each mortgage. By using Part III, you may increase your cost plus improvements to the home by the amount of certain medical or educational expenses and thereby qualify more interest as deductible home mortgage interest. In addition, if you use Part III, the part that is not deductible home mortgage interest may be deducted as investment interest or passive activity interest if applicable.

Part I Complete To Decide If You Can Deduct All Home Mortgage Interest

1	Figure the average balance for 1987 of each mortgage on your home, and enter the sum of the average balances. See the separate instructions	1	
2	Enter the cost of the home plus the cost of any improvements. See the separate instructions	2	
3	If you had any mortgage on your home that you incurred before August 17, 1986, add the amount of the pre-August 17 debt as determined by the separate instructions for line 3 and enter the total **Note:** If the home was personal property, such as a boat, see the separate instructions.	3	
4	Enter the **larger of:** a) the amount on line 2 or b) the amount on line 3 • If line 4 is **equal to or more than** line 1, **STOP HERE** and enter on Schedule A (Form 1040), line 9a or 9b, as applicable, ALL interest paid on the mortgages included on line 1. If you have deductible points, or the mortgage was used other than for personal purposes, see the separate instructions for Part III, lines 15 and 16. • If line 4 is **less than** line 1, you cannot deduct all interest paid on the mortgages included on line 1. To figure deductible home mortgage interest, you should complete Part II. However, see the **Note** above to determine if you should use Part III.	4	

Part II Regular Method To Figure Deductible Home Mortgage Interest

5	Enter the total interest paid for 1987 on the mortgages included on line 1. See the separate instructions	5	
6	Divide the amount on line 4 by the amount on line 1 and enter the percentage	6	x .
7	Multiply the amount on line 5 by the percentage on line 6 and enter the result. Also, enter this amount on Schedule A (Form 1040), line 9a or 9b, as applicable, as **home mortgage interest.** If you have deductible points, see the separate instructions	7	
8	Subtract the amount on line 7 from the amount on line 5, and enter the result. Also, enter this amount on Schedule A (Form 1040), line 12a, as **personal interest**	8	

For Paperwork Reduction Act Notice, see separate instructions

Form **8598** (1987)

Proof of Auditing

Version C

Part III Special Method To Figure Deductible Home Mortgage Interest

Note: *Complete one full column at a time starting with the earliest debt in Column A. If you have more than three debts complete a separate Column C, Form 8598 for each additional debt. See separate instructions.*

		Complete Column A first. Enter the earliest debt first. A	B	C
		(mo., yr.)	(mo., yr.)	(mo., yr.)
1	Enter the date on which you secured the debt with your home. See the separate instructions	/	/	/
2	Enter the **average balance** of the debt. See the separate instructions			
3	Enter the amount from Part I, line 4. See the separate instructions			
4a	Enter the amount, if any, from the worksheet in the separate instructions for medical or educational expenses			
4b	Enter the amount, if any, from line 4a of the **previous** column	-0-		
4c	Add amounts on lines 4a and 4b			
5	Add amounts on lines 3 and 4c			
6	Enter the **smaller of:** a. the amount on line 5, or b. the fair market value of the home at the time the debt was secured by the home. See the separate instructions			
7	Enter the amount from line 9 of the **previous** column	-0-	-0-	
8	Enter the **smaller of:** a. line 2 of the **previous** column, or b. line 10 of the **previous** column	-0-		
9	Add amounts on lines 7 and 8, and enter the total	-0-		
10	Subtract the amount on line 9 from the amount on line 6 and enter the result			
11	Enter the **total interest** for 1987 that applies to the debt. See the instructions • If line 10 is **equal to or more than** line 2, skip line 12. Then enter the amount from line 11 on line 13. • If line 10 is **less than** line 2, go to line 12. • If line 10 is **zero**, skip lines 12 and 13. Then enter the amount from line 11 on line 14.			
12	Divide the amount on line 10 by the amount on line 2. Enter the percentage	× .	× .	× .
13	Multiply the amount on line 11 by the percentage on line 12. Enter the result			
14	Subtract the amount on line 13 from the amount on line 11. Enter the result			
15	Add the amounts in the columns on line 13 and enter the total. Also enter this amount on Schedule A (Form 1040), line 9a or line 9b, as applicable. If this total includes deductible points, see the separate instructions. This is the amount you can deduct as **home mortgage interest**			15
16	Add the amounts in the columns on line 14 and enter the total. See the separate instructions to figure how much, if any, of the total amount of interest on this line may be deducted elsewhere on your tax return			16

Proof of August 13 1987

1987

Department of the Treasury
Internal Revenue Service

Instructions for Form 8598

Computation of Deductible Home Mortgage Interest

(Section references are to the Internal Revenue Code, unless otherwise noted.)

General Instructions

Paperwork Reduction Act Notice.—We ask for this information to carry out the Internal Revenue laws of the United States. We need it to ensure that taxpayers are complying with these laws and to allow us to figure and collect the right amount of tax. You are required to give us this information.

How Much of My Mortgage Interest May I Deduct?—The Tax Reform Act of 1986 changed the law on deducting home mortgage interest. Usually you may still deduct all the interest you paid on a mortgage you took out to buy your home. However, if you paid interest on more than one mortgage on your home for 1987, you may not be able to deduct all interest on all mortgages if the total of the average balance of each mortgage for 1987 was more than your cost of the home plus improvements made to it.

Am I Required To Complete and File This Form?—You **do not** have to file this form if:

- Your only mortgage on the home was the mortgage you took out to buy the home, or
- You took out all mortgages on the home before August 17, 1986, and you did not refinance any of these mortgages or borrow any additional amounts on these mortgages (such as additional borrowing on a line-of-credit debt) after August 16, 1986. However, if the mortgages were above the fair market value of the home at the time you took out the mortgages you must file this form.

You **must file** Form 8598 if you took out a mortgage on your home (or other loan secured by your home) after August 16, 1986, for purposes other than to buy the home. Also, you must file this form if you took out a mortgage on your home before August 17, 1986, but refinanced the mortgage or borrowed any additional amounts on the mortgage after August 16, 1986.

If you must file this form, you must attach it to Form 1040 even if you determine that all of your mortgage interest is deductible.

What Is a Qualified Home?—A qualified home is your principal home. It also applies to one other home, your "second home." If you rented out a home in 1987 other than your principal home, this home qualifies as a second home if you used it more the greater of **a.** 14 days, or **b.** 10 percent of the number of days during 1987 that the property was rented at a fair rental.

If you have more than one home that you used as a second home, you may choose only one of them to treat as the second home for 1987. Next year you can choose a different home as the "second home" if you want. Generally, you may not choose a different second home during part of 1987. You may, however, choose a different home as your second home for part of 1987 if:

a. you got a new home in 1987; or

b. your principal home no longer qualified as your principal home in 1987; or

c. your second home no longer qualified as your second home or became your principal home in 1987.

If anyone of the three situations above applies to you and you want to treat a new, second qualified home, see **Publication 545**, Interest Expense, for more details on how to do this.

In general, a home includes a house, condominium or cooperative, mobile home, boat or similar property that includes basic living accommodations, including sleeping space, toilet and cooking facilities.

Property that is not used for residential purposes, such as a part of the property that is used in your trade or business, does not qualify as a home.

What Kind of Debt Qualifies for the Mortgage Interest Deduction?—Only a secured debt qualifies. In general, a debt is considered a secured debt only if the papers that you sign for that debt (for example, a mortgage, deed of trust, or land contract, make your interest in that home specific security for the debt. See Publication 545 for more information on what is considered a secured debt and a partially secured debt.

Additional Information and Special Situations.—Publication 545 contains more information about the deduction for home mortgage interest. You will need to get the publication if any of the following applies to you. Special rules apply in these situations that are not covered in these instructions.

- You are married and filing separate income tax returns and paid interest on mortgages on one or more homes.
- Your mortgage or other secured debt was on a home under construction in 1987
- You owned your home under a time-sharing arrangement.
- You were a tenant-shareholder in a cooperative housing corporation.
- You rented out part of your home in 1987
- You elect to treat the debt as not secured by your home.
- You elect to treat the debt as two separate debts because the debt is secured by two qualified homes.

Line-by-line Instructions

We have provided explanations for many lines of the form.

Part I — Computation To Decide If You Can Deduct All Home Mortgage Interest

Purpose of Part I.—You must complete lines 1 through 4 of Part I to determine if all, or only part, of your mortgage interest is deductible in full. When you complete Part I, if it shows that all of your interest is deductible as home mortgage interest, do not complete any more of the form. You should still file it with your Form 1040. If it shows that only some of your interest is deductible home mortgage interest, you will need to complete Part II or Part III to figure how much is deducted as home mortgage interest and how much is deducted as personal interest on Schedule A (Form 1040), or elsewhere on your return.

Before You Complete Part I You Will Need To Know:

- How much you paid for the home if you bought it, or records to show your basis in the home if you got it other than by purchase, such as by gift.
- The cost of any improvements made to the home from the date you got it through the end of 1987.
- The amount of interest you paid on each debt for 1987. Usually this will be the amount shown on **Form 1098**, Mortgage Interest Statement, sent you by the financial institution, or on a financial statement given you during settlement of the mortgage. **Note:** You can only include interest paid during the period in which the home was qualified and in which the debt was secured by your home.
- The highest balance or average balance of each debt for 1987.

In general, if line 1 is less than or equal to line 4, all of the interest on the debt is deductible home mortgage interest. If all of your interest is deductible and all of the debt was used for personal purposes, enter the amount of the interest on Schedule A (Form 1040), line 9a or line 9b, as applicable. If any part of this interest includes deductible points, see the instructions for Part II, line 7, for more details on where to deduct the points on Schedule A.

If any part of any debt was used in connection with your trade or business, investment property or passive activity, you may be able to deduct the interest on Schedules C, E, or F, as applicable, instead of on Schedule A. For more information if this situation applies to you, see Publication 545.

If line 1 is more than line 4, part of the interest will not be deductible home mortgage interest. In this case, read on to see if you should complete Part II or Part III to figure deductible interest on the mortgage.

Line 1.—Add the average balance of each debt and enter the total. We have provided five acceptable methods that you may choose from to figure the average balance of a debt. You may use any one of these permitted methods as long as you meet the conditions that apply for using that method. Although they are intended to give approximately the same result, they may differ in some cases.

You may use the highest principal balance of a debt but it generally will be to your benefit to use the average balance. You do not need to use the same method to figure the average balance of each debt during 1987 or of any single debt from year to year.

We have provided worksheets for some of the methods. If you use the same method for more than one debt, prepare a separate worksheet for each debt following the same rules.

Method 1—Average balance reported by lender.—You may not use this method if the debt was outstanding at any time that the home was not a qualified home. You may use the average balance reported to you by the lender in 1987 if the debt was outstanding during the entire time that the property was a qualified home. If the debt was not owed for all of the time that the home was qualified, multiply the average balance reported by the lender by the number of days the debt was owed during 1987. Divide that result by the number of days during 1987 that the property was a qualified home.

Method 2—Average daily balance.—To figure the average daily balance:

1. Add the principal balance of the debt on each day in 1987 that the home was qualified and enter the total. . . . . _____
2. Divide the amount on line 1 by the number of days the home was qualified. Enter the result. This is the average balance of the debt . _____

The debt is treated as having a zero balance on any day during that period in which the debt was not yet incurred or was no longer owed.

Method 3—Interest paid divided by interest rate.—You may use this method if the following conditions are met:

- All accrued interest was paid at least monthly; and
- At all times in 1987 that the debt was owed, the debt was secured by your home.

To use this method, complete the following worksheet:

1. Enter the interest paid or accrued during 1987 . . . . . _____
2. Enter the interest rate on the debt stated on an annual basis. (If the interest rate varied during 1987, use the lowest rate for the year.) . . . . . _____
3. Divide the amount on line 1 by the amount on line 2. If the home was qualified all of 1987, stop here; this is the average balance of the debt. However, if the home was not qualified all of 1987, go to line 4 . _____
4. Enter the percentage of the year that the home was qualified . . _____
5. Divide the amount on line 3 by the percentage on line 4. Enter the result. This is the average balance of the debt . . . . . _____

Example. Mr. Blue had a line-of-credit loan secured by his principal home all of 1987. The interest rate on the line-of-credit loan was 9 percent throughout the year. The principal balance of the line-of-credit changed throughout 1987. He paid accrued interest of $2 500. His average balance using this method is $27,777 ($2,500/.09).

Method 4—Average of first and last balance.—You may use this method if all three of the following conditions apply:

a. The debt was owed all of 1987, or if the home was qualified for less than the whole year, for the part of 1987 that the home was qualified; and

b. The principal balance of the debt did not increase in 1987; and

c. The debt required level payments in 1987 and the payments were made neither more frequently nor less frequently than required. The payments will be treated as being level-payment even if they may be adjusted from time to time because of changes in the interest rate.

To figure the average balance by this method, if the home was qualified ALL of 1987, complete the following worksheet.

1. Enter the balance of the debt as of January 1, 1987 . . . . . _____
2. Enter the balance of the debt as of December 31, 1987 . . . . . _____
3. Add amount on lines 1 and 2 . . _____
4. Divide the amount on line 3 by 2. Enter the result. This is the average balance of the debt . . . _____

If the home was not qualified all year, use the principal balance as of the first day of the year that the home was qualified and the principal balance as of the last day of the year that the home was qualified.

Example. Mr. Brown is required to make level monthly payments of principal and interest to pay off, over 20 years, a loan of $10 000 secured by a second mortgage on his principal home. The balance of his second mortgage on January 1, 1987, was $9,650. And on December 31 of the same year it was $9,450. His average balance using this method is: $9,551 (the sum of $9,650 plus $9,450 divided by 2).

Method 5—Average of monthly balance method.— To figure the average balance using this method, either: a. add the average monthly balance of the debt and divide that total by 12, or b. add the principal balance of the debt as of the end of each calendar month, and divide that total by 12.

If the home was not qualified all of 1987, use either the average monthly balance or the principal balance as of the end of each calendar month that the home was qualified and divide by the number of months that the home was qualified. For this purpose, the home is presumed to be qualified for the entire month if it was qualified for more than 15 days during the month.

Line 2.—Enter the purchase price of the home, plus the cost of any improvements made from the date you got it through the end of 1987. If you got the home other than by purchase, see Publication 545 to determine the amount to enter on line 2.

Do not include the cost of any personal property (such as furniture) in the purchase price.

Do not include property that was not used for residential purposes, such as an office in your home used in your trade or business.

Home improvements include capital expenses, such as additions to the home, installation of central air conditioning, or replacement of a roof.

Line 3.—You may complete this line if you took out any mortgage on your home before August 17, 1986, other than to buy your home. If you had a mortgage on your home before August 17, 1986, and refinanced the mortgage or took out other mortgages on your home before August 17, 1986, the total balance of the mortgage(s) may be greater than your cost plus improvements to the home. If this is the case, to figure deductible home mortgage interest, you can use the total balance of all mortgages incurred and secured before August 17, 1986, instead of cost plus improvements if the total balance is more than your cost plus improvements.

For each pre-August 17, 1986, debt, determine the balance of that debt (called the pre-August 17 balance). However, if your only debt before August 17 was the mortgage taken out to buy your home, do not complete this line. Add the pre-August 17 balance of each of the debts and enter the total on line 3. However, the pre-August 17 balance of the debt cannot exceed the fair market value of the home at the time the debt was incurred. The following rules are provided to figure the pre-August 17 balance of each debt.

Computation of pre-August 17 Balance.—*General rule.*—Use the average balance of the old debt for 1987 if:

- You did not refinance the debt after August 16,1986; or
- You did not borrow any additional amounts on the debt after August 16, 1986.

Refinancing of a Debt in 1986 or 1987 for the Same Amount As the Old Debt.—A refinanced debt is considered to be refinanced for the same amount as the old debt if:

- All of the proceeds of the new debt were used to refinance one or more old debts; and
- Also, as of the of time of refinancing, you had not borrowed any additional amounts on the old debt after August 16,1986. If you had, see Publication 545.

For purposes of determining whether all of the proceeds were used to refinance the old debt(s), disregard costs of refinancing the debt, including points.

If you completely refinanced the debt in 1986, the pre-August 17 balance of the debt is the average balance of the new debt for 1987. If you completely refinanced the debt in 1987, the pre-August 17 balance of the debt is the sum of the average balance of the old debt and the average balance of the new debt (or debts).

Example. You had a mortgage with a principal balance as of August 16, 1986, of $75,647. On July 1, 1987, the principal balance on the mortgage was $74,749. On that day you refinanced the mortgage with a new mortgage, also secured by your home, with an initial principal balance of $74,749. The average balance of the old mortgage was $37,824 for 1987 and the average balance of the new mortgage was $37,149. Since there were two pre-August 17 debts for 1987, the amount entered on line 2 is the sum of the two average balances.

Proof Only

Refinancing of a Debt in 1987 for More Than the Amount of the Old Debt.—If you refinanced at least 50% of the debt in 1987 and borrowed more than you needed to pay off the old debt, use the following worksheet to figure the pre-August 17 balance of the debt

1. Add the average balance of the old debt and the average balance of the new debt (or debts) and enter the total . . . . . _____
2. Enter the principal balance of the old debt as of August 16, 1986. . _____
3. Enter the total amount of principal payments on the old debt that were made after August 16, 1986, through December 31, 1986 . . . _____
4. Subtract the amount on line 3 from the amount on line 2 . . . . _____
5. Enter the **smaller** of the amount on line 1, or the amount on line 4 . _____

If you refinanced less than 50% of the debt, use the general rule described on page 2.

Example. You had a debt secured by your principal home, which you incurred before August 17, 1986, that had a principal balance on August 16, 1986, of $50,000 You repaid $2,000 of the debt after August 16, 1986, and before January 1, 1987. On July 1, 1987, when the principal balance of the debt was $40,000, you incurred a new debt secured by your home, which had a principal balance of $80,000 You used the proceeds of that debt to pay off the entire remaining principal balance of the old debt. The average balance of the first debt in 1987 is $22,000 and the average balance of the second debt in 1987 is $37,500 The pre-August 17 balance for both debts for 1987 is the lesser of the combined average balances of the debts ($59,500 = $22,000 + $37,500) or the principal amount of the old debt on August 16, 1986, reduced by principal repayments made throught the end of 1986 ($48,000 = $50,000 – $2,000). Therefore, the combined pre-August 17 balance for both debts is $48,000.

Refinancing of a Debt in 1986 for More Than the Amount of the Old Debt.—If you refinanced the debt in 1986 and borrowed more than you needed to pay off the old debt, use the following worksheet to figure the pre-August 17 balance of the new debt.

1. Enter the average balance of the new debt for 1987 . . . . . _____
2. Enter the principal balance of the original debt as of August 16, 1986 _____
3. Enter the total principal payments made on the old debt and new debt(s) after August 16, 1986, through the end of 1986. Do not include in this total the amount paid off in the refinancing . . . . _____
4. Subtract the amount on line 3 from the amount on line 2 . . . . _____
5. Enter the **smaller** of the amount on line 1, or the amount on line 4 . _____

If you did not pay off the entire amount of the old debt, see Publication 545 for the computation of the pre-August 17 balance.

Special Rule for pre-August 17 Line-of-Credit Debt.—If you borrowed any additional amounts after August 16, 1986, on a pre-August 17 line-of-credit debt the following applies. The pre-August 17 balance for that debt is the **smaller** of:

a. the average balance of the debt for 1987; or

b. the principal balance of the debt on August 16, 1986, reduced by all payments of principal made on the debt after August 16 through the end of 1986.

Example. On May 1, 1986, you obtained a line-of-credit secured by your principal home, which had a credit limit of $10,000 and you borrowed $5,000. On November 1, 1986, you borrowed an additional $5,000. As of that time, you incurred a total debt of $10,000 ($5,000 of which was incurred before August 17, 1986). From August 16, 1986, to December 31, 1986, you paid $500 of the debt. The average balance of the debt for 1987 was $9,000. The pre-August 17 balance of the debt for 1987 is the lesser of the average balance of the debt ($9,000) or the principal balance on August 16, 1986, reduced by payments made after August 16 through December 31, 1986 ($4,500 = $5,000 – $500). Therefore, the pre-August 17 balance of the debt is $4,500

Line 4.—Enter the larger of the amount on line 2 or the amount on line 3 However, if your home was personal property, such as a recreational vehicle or boat, the amount on this line cannot be more than the lowest fair market value of the home at the time any debt was secured by the property.

Part II — Regular Method To Figure Deductible Home Mortgage Interest

Purpose of Part II.—If Part I shows that you cannot deduct as home mortgage interest all the interest you paid on all the mortgages or other secured debt, you generally should complete Part II to figure your deductible home mortgage interest.

You must use Part III if any part of any debt proceeds was used to pay for trade or business expenses. In this case, you may be able to deduct part of the interest as a trade or business expense.

It may be to your benefit to use Part III instead of Part II if you used any part of the proceeds of any of the debt to pay for:

a. certain medical or educational expenses, or

b. any investment property or expenses, or

c. any passive activity property or expenses.

If you meet anyone of these conditions, you may get a larger interest deduction if you use Part III.

When you use Part II, part of the total amount of interest will be treated as deductible home mortgage interest and part will be treated as personal interest.

Line 5.—Enter the total amount of interest you paid in 1987 on all debt secured by the home. If you paid the interest to a financial institution, the amount of interest should be shown on Form 1098 furnished you by the lender.

If you paid points to buy or improve your personal home, you may be able to include the points as interest. See Publication 545 for more details on deducting points as interest.

Line 7.—If all interest included on line 5 was paid to a financial institution, enter on Schedule A (Form 1040), line 9a, the amount from line 7. If all interest was paid to an individual, enter on Schedule A, line 9b, the amount from line 7.

If the amount on line 5 includes points, divide the total points included on line 5 by the total amount of interest shown on line 5. Then multiply that result by the amount on line 7. This is the amount you should enter on Schedule A, line 10 as deductible points. Subtract this amount from the total amount on line 7 and enter the difference on Schedule A, line 9a or line 9b, as applicable. If you paid interest to an individual and to a financial institution, use the same method to determine how much of the total amount shown on line 7 to enter on Schedule A, lines 9a and 9b.

Line 8.—Enter the amount shown on this line on Schedule A (Form 1040), line 12a. This will be treated as personal interest on Schedule A.

Part III — Optional Method To Figure Deductible Home Mortgage Interest

It will usually be to your advantage to use Part III instead of Part II to figure your deductible home mortgage interest if you used the money from the debt to pay certain medical or educational expenses, investment expenses, or passive activity expenses.

If you took out a second mortgage or other secured debt to pay for certain medical or educational expenses, you may be able to increase the amount of your deductible home mortgage interest by adding these amounts to your cost plus improvements to the home.

If you paid for any investment property or expenses or passive activity property or expenses out of the proceeds of any of the secured debt, then part of the interest, if any, that is not deductible home mortgage interest may be treated as investment or passive activity interest, as applicable. See line 16 instructions for more details.

You must use Part III if any part of any debt proceeds was used to pay for trade or business expenses.

Each debt is separately accounted for in Part III using Columns A through C. The earliest debt is shown in Column A. This is the first mortgage on the home (ususlly the one to buy the home). Complete Column A in full before going to Column B. Show the next earliest debt in Column B, again completing the column in full. Show any later debt in Column C. If you had more than three debts, you will need to complete a separate Form 8598 for each additional debt. On each separate Form 8598, use only Column C; otherwise, you will arrive at the wrong interest amount for that debt.

Line 2.—Enter the average balance of the debt. See the instructions for Part I, line 1, to determine the method to use to figure the average balance of the debt.

Line 3.—Enter the adjusted cost of the home as determined in Part I, line 4. Enter the same amount in each of the columns you complete on line 3.

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Line 4.—Complete this line if you paid for educational expenses after August 16, 1986, with proceeds from a mortgage or other secured debt.

In general, medical expenses that qualify are amounts incurred for medical care for yourself, your spouse, or a dependent that are not reimbursed for by insurance or otherwise. See the Schedule A (Form 1040) instructions for the types of expenses that qualify as medical expenses.

Educational expenses that qualify include expenses for yourself, your spouse, or a dependent for tuition, fees, books, supplies and equipment required for enrollment, attendance, or courses of instruction at a qualified educational organization, and for any reasonable living expenses while away from home while attending the institution.

In general, you have used proceeds of a debt to pay for medical or educational expenses if you paid for them 90 days before or 90 days after you incurred the debt.

See Publication 545 for more information on when the debt is considered to have been used to pay for medical and educational expenses, as well as more details on the kinds of medical and educational expenses that qualify.

Use the following worksheet to figure the amount to enter in the applicable column on line 4a.

Worksheet To Figure Amount To Enter on Line 4a for Medical and Educational Expenses

1. Enter the average balance of the debt from applicable column in Part III, line 2. If at least 95% of the proceeds of this debt was used to pay for the medical or educational expenses, stop here, and enter this amount on line 4a of the applicable column. Otherwise, go to line 2. . . . . _____
2. Enter the amount of the debt used to pay for these expenses as of the end of 1987 . . . . . _____
3. Enter the total amount paid on the principal amount of the debt through the end of 1986. However, do not include repayments if they exceeded the amount of the debt used to pay for these expenses at the time the repayment was made. _____
4. Subtract the amount on line 3 from the amount on line 2 Enter the result . . . . . _____
5. Enter the **smaller of:** a. the amount on line 1, or b. the amount on line 4. Also, enter this amount in Part III, line 4a, in the appropriate column . . . . . _____

If you had more than one debt used to pay for medical or educational expenses, prepare and complete a separate worksheet for each debt.

See Publication 545 if the debt used to pay for qualified medical or educational expenses was refinanced in 1986 or 1987.

Line 6.—Enter the smaller of: a. the amount on line 5, or b. the fair market value of the home at the time the debt was secured by the home.

If the home was real property (such as a house), you may enter the greater of the fair market value at the time the debt was secured, or the home's cost plus improvement as of the end of 1987. (If you got the home other than by purchase, see Publication 545 for more information.)

If the home was personal property (such as a boat) under state law, and was security for a line of credit, the fair market value of the home is the **smaller** of: a. the fair market value at the time the debt was secured by the home, or b. the fair market value at any time you borrow additional amounts by using the line of credit for that debt.

If the property included property other than the home, count only that part of the fair market value that applies to the home.

Line 11.—For each debt, enter in the applicable column the amount of interest you paid in 1987 that applied to the debt while it was secured by your home. In general, if your home qualified all of 1987 and the debt was secured by the home all of 1987, enter the total amount of interest you paid on the debt for 1987. If the home qualified for only part of 1987, enter only the interest paid during the part of the year the home qualified and the debt was secured by your home. If you paid the interest to a financial institution, the amount of interest should be shown on Form 1098 furnished you by the lender.

If you paid points on a mortgage, see Publication 545 for more details on deducting points.

Line 15.—Add the amounts entered in the columns for line 14 and enter the total. Also enter this amount on Schedule A (Form 1040) lines 9a, 9b, or 10, as applicable.

If line 15 includes any trade or business interest, you will need to see Publication 545 to determine how much of the interest, if any, you should deduct on Schedule C, E, or F instead of on Schedule A.

Line 16.—Add the amounts in the columns on line 14 and enter the total. This is the amount of interest that is not deductible home mortgage interest. Include as personal interest on Schedule A, line 12a, the total amount shown on line 16 of this form if none of the interest shown on line 16 was:

a. interest in connection with a trade or business or certain low income housing expenses, or

b. interest in connection with a former or current passive activity, or

c. investment interest expense

If line 16 includes trade or business interest, passive activity interest, or investment interest, you will need to see Publication 545 to determine how much of the interest, if any, you may deduct elsewhere on your tax return. In addition, you may also need to get the following publications for more information:

Publication 527, Rental Property
Publication 535, Business Expenses
Publication 925, Passive Activity and At-Risk Rules

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—IRA Deduction Instructions—

Step 5
Figuring your adjusted gross income—Lines 11a, 11b, and 12

Note: *These instructions and worksheets for the IRA deduction will appear in the instruction booklet for the 1987 Form 1040A. Similar instructions and worksheets will also be contained in the instruction booklet for the 1987 Form 1040.*

Lines 11a and 11b. Deduction for contributions to an Individual Retirement Arrangement (IRA)

Tax Tip: Earnings on both deductible and nondeductible contributions to your IRA are not subject to tax until they are distributed to you.

You can deduct contributions to your IRA on Form 1040A, line 11a, and contributions to your spouse's IRA (if you file a joint return) on line 11b. Generally, the IRA deduction limits under prior rules still apply. However, beginning in 1987, your IRA deduction may be further reduced or eliminated if you are covered by your employer's retirement plan. You may also now make nondeductible contributions to your IRA (see the Tax Tip to the left and page 18).

Not covered by your employer's retirement plan. If you (and your spouse if you file a joint return) were not covered by a retirement plan at work in 1987, you can continue to take a full IRA deduction. Use Worksheet 1 to figure your deduction. If you are married filing a separate return and you were not covered by a retirement plan at work but your spouse was, you are not considered to be covered by a retirement plan.

Covered by your employer's retirement plan. If you (or your spouse if you file a joint return) were covered by a retirement plan at work in 1987, the Form W-2 you get from that employer should have the "Pension Plan" box in Box 5 checked. Get **Publication 590**, Individual Retirement Arrangements (IRAs), if you need more details on who is considered covered by an employer's retirement plan. If you were covered by an employer's retirement plan, use the chart below to see if you can take an IRA deduction for 1987 and, if you can, which worksheet you should use to figure the amount you may deduct.

If your filing status is:	And Form 1040A, line 10, is:	You:
Single or head of household	$25,000 or less	Can take a full IRA deduction (use Worksheet 1)
	Over $25,000 but less than $35,000	Can take a partial IRA deduction (use Worksheet 2)
	$35,000 or more	Cannot take an IRA deduction
Married filing joint	$40,000 or less	Can take a full IRA deduction (use Worksheet 1)
	Over $40,000 but less than $50,000	Can take a partial IRA deduction (use Worksheet 2)
	$50,000 or more	Cannot take an IRA deduction
Married filing separate	Over -0- but less than $10,000	Can take a partial IRA deduction (use Worksheet 2)
	$10,000 or more	Cannot take an IRA deduction

You should receive a statement by May 31, 1988, showing all contributions made to your IRA for 1987. Before completing the worksheet that applies to you, note that:

- If you made contributions to your IRA in 1987 that you deducted for 1986, DO NOT include those contributions in the worksheet you use.
- If you make contributions to your IRA (or, if applicable, your spouse's IRA) in 1988 by April 15 that you want to treat as contributions for 1987, include these when completing the applicable worksheet.

Note: *If you deduct contributions you have not made and do not make them by April 15, 1988, you must amend your return by filing* ***Form 1040X*** *to show the actual deductible contributions made for 1987.*

- On a joint return, if both spouses worked and both have IRAs, figure each spouse's deduction separately using columns (a) and (b) of the applicable worksheet. Then enter the separate deductions on lines 11a and 11b of Form 1040A.
- If you were married, you must file a joint return to deduct contributions to a nonworking spouse's IRA for 1987. A "nonworking" spouse is one who had no wages or other earned income in 1987, or a working spouse who chooses to be treated as having no earned income for purposes of the deduction.

Proof of August 1987

—IRA Deduction Instructions—

Lines 11a and 11b. Deduction for contributions to an IRA (continued)

If any of the following applies, you must use Form 1040 instead of Form 1040A:

- You received any taxable distributions from your IRA.
- You received amounts from one IRA and transferred them to another IRA, or you received amounts from one qualified pension or profit-sharing plan and transferred them to an IRA. The amounts you received and transferred are called "rollover" contributions.
- You owe tax on any early distributions from your IRA, any excess contributions made to your IRA, or any excess accumulations in your IRA account.

For more information, see **How To Use Tele-Tax** (*topic no. 252*) on page 39 or get Publication 590.

Tax Tip: If you use Worksheet 1 to figure your deductible IRA, you may choose to treat all or part of the amount shown on line 3 of the worksheet (or line 8 if you made contributions to your nonworking spouse's IRA) as a nondeductible contribution instead of taking a deduction for that amount.

Nondeductible contributions. You may choose to make nondeductible contributions to your IRA regardless of whether you are allowed to deduct all, part, or none of your IRA contributions for 1987. Your nondeductible contribution is the difference between your total IRA contributions (up to the maximum amount) and the amount you are allowed to and actually deduct on your 1987 return.

Example. You file as single. You made a $2,000 IRA contribution for 1987. You cannot take an IRA deduction because you were covered by your employer's retirement plan, and the amount on Form 1040A, line 10, is over $35,000 (all wages). You can, however, treat up to $2,000 as a nondeductible contribution.

If you use Worksheet 2 to figure your deductible IRA, figure any nondeductible IRA contributions on line 8 of the worksheet (also on line 17 if you make nondeductible contributions for your nonworking spouse).

If you make nondeductible contributions, you must complete and attach **Form 8606,** Nondeductible IRA Contributions, IRA Basis, and Nontaxable IRA Distributions. Use that form to figure the basis (nontaxable part) of your IRA. If you have a basis in your IRA, that form is also used to determine how much of any distribution from your IRA is taxed and how much is not taxed. If you and your spouse each make a nondeductible IRA contribution, each of you must complete and attach a separate Form 8606.

IRA Worksheet (Keep for your records). **Caution:** Use this worksheet ONLY if:
(1) you (and your spouse if you file a joint return) were not covered by a retirement plan at work; OR
(2) you (or your spouse if you file a joint return) were covered by a retirement plan at work and the amount on Form 1040A, line 10, is:

- $25,000 or less and your filing status is single or head of household; or
- $40,000 or less and your filing status is married filing a joint return.

		(a) Your IRA	(b) Your working spouse's IRA
1.	Enter IRA contributions you made for 1987, but do not enter more than $2,000.	1.	1.
2.	Enter your wages, salaries, and tips.	2.	2.
3.	Enter your IRA deduction. Compare the amounts on lines 1 and 2, and enter the **smaller** of the two amounts on line 3. Enter on Form 1040A, line 11a, the amount from line 3, column (a); and, if applicable, enter on Form 1040A, line 11b, the amount from line 3, column (b). If you are married and made contributions to an IRA for your nonworking spouse, go on to line 4.	3.	3.
	Complete lines 4 through 8 only if contributions were made to an IRA for your nonworking spouse (as defined on page 17) and you file a joint return.		
4.	Enter the **smaller** of $2,250 or the amount from line 2.	4.	
5.	Enter the amount from line 3.	5.	
6.	Subtract amount on line 5 from amount on line 4.	6.	
7.	Enter IRA contributions made for 1987 for your nonworking spouse, but **not more than** $2,000.	7.	
8.	Enter nonworking spouse's IRA deduction. Compare the amounts on lines 2, 6, and 7, and enter the **smallest** of the three amounts on line 8. Also enter this amount on Form 1040A, line 11b.	8.	

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—IRA Deduction Instructions—

Lines 11a and 11b. Deduction for contributions to an IRA (continued)

IRA Worksheet 2 (keep for your records)

Caution: Use this worksheet ONLY if you (or your working spouse if you file a joint return) were covered by a retirement plan at work and the amount on Form 1040A, line 10, is:

Over—	But not over—	And your filing status is—
$25,000	$35,000	Single or head of household
$40,000	$50,000	Married filing a joint return
$-0-	$10,000	Married filing a separate return

			(a) Your IRA		(b) Your working spouse's IRA	
1.	Enter: $35,000 if your filing status is single or head of household; $50,000 if your filing status is married filing a joint return; $10,000 if your filing status is married filing a separate return	1.				
2.	Enter the amount from Form 1040A, line 10. (If this amount is equal to or larger than the amount on line 1, none of your IRA contributions are deductible. Stop here; see Form 8606.)	2.				
3.	Subtract the amount on line 2 from the amount on line 1. Enter the result. If the result is $10,000 or more, stop here; complete Worksheet 1.	3.				
4.	Multiply the amount on line 3 by 20% (.20). Enter the result. If it is not a multiple of $10, round it up to the next multiple of $10 (for example, round $490.30 to $500). However, if the result is less than $200, enter $200 on line 4. Go to line 5.	4.				
	Deductible IRA contributions					
5.	Enter your wages, salaries, and tips.	5.			5.	
6.	Enter IRA contributions you made for 1987, but do not enter more than $2,000.	6.			6.	
7.	Enter your IRA deduction. Compare the amounts on lines 4, 5, and 6, and enter the **smallest** of the three amounts on line 7. Enter on Form 1040A, line 11a, the amount from line 7, column (a); and, if applicable, enter on Form 1040A, line 11b, the amount from line 7, column (b). (If the amount on line 6 is more than the amount on line 7 and you want to make a nondeductible IRA contribution, go on to line 8.)	7.			7.	
	Nondeductible IRA contributions					
8.	Subtract the amount on line 7 from the amount on line 5 or line 6, whichever is **smaller**, and enter the result. Enter the amount from line 8, column (a), on your Form 8606, line 3; and, if applicable, enter the amount from line 8, column (b), on your spouse's Form 8606. (This amount cannot be more than $2,000 for each.)	8.			8.	

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Document A

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—IRA Deduction Instructions—

IRA Worksheet 2 (continued)

If contributions were made to an IRA for your nonworking spouse (as defined on page 17) and you file a joint return, complete lines 9 through 17.

Deductible IRA contributions for nonworking spouse

9.	Enter the **smaller** of $2,250 or the amount from line 5.	9.	
10.	Add the amounts on lines 7 and 8, column (a), and enter the result.	10.	
11.	Subtract the amount on line 10 from the amount on line 9. Enter the result. If zero or less, stop here; you cannot make deductible or nondeductible IRA contributions for your nonworking spouse.	11.	
12.	Enter the **smallest** of: (a) IRA contributions you made for 1987 that are for your nonworking spouse; (b) $2,000; or (c) the amount on line 11.	12.	
13.	Multiply the amount on line 8 by 22.5% (.225). Enter the result. If it is not a multiple of $10, round it up to the next multiple of $10. However, if the result is less than $200, enter $200 on line 13.	13.	
14.	Enter the amount from line 7, column (a).	14.	
15.	Subtract the amount on line 14 from the amount on line 13. Enter the result, but **not more** than the amount on line 8.	15.	
16.	Nonworking spouse's IRA deduction. Compare the amounts on lines 12 and 15, and enter the **smallest** of the two amounts on line 16. Also enter this amount on Form 1040A, line 11b. (If you want to make a nondeductible IRA contribution for your nonworking spouse, go on to line 17.)	16.	

Nondeductible IRA contributions for nonworking spouse

17.	Subtract the amount on line 16 from the amount on line 12 and enter the result. Enter the amount from line 17 on line 3 of the Form 8606 for your nonworking spouse.	17.	

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Form **8606**

Department of the Treasury
Internal Revenue Service

Nondeductible IRA Contributions, IRA Basis, and Nontaxable IRA Distributions

▶ Attach to Form 1040, Form 1040A, or Form 1040NR.

OMB No. 1545-XXXX

1987

Attachment Sequence No. 86

Name | Your social security number

Present home address (number and street) (or P.O. Box number if mail is not delivered to street address)

City, town or post office, state, and ZIP code

			Value on 12/31/87
1	Enter name of trustee and value of all your IRAs— Name of trustee		
a	_____	1a	
b	_____	1b	
c	_____	1c	
2	Total value of all IRAs. Add lines 1a through 1c	2	
3	Enter your designated nondeductible contributions for 1987 (see instructions)	3	
4	Enter designated nondeductible contributions for 1987 made in 1988 by April 15, 1988	4	
5	Subtract the amount on line 4 from the amount on line 3. Enter the result (but not less than zero)	5	
6	Adjustments (see instructions)	6	
7	Combine lines 5 and 6 and enter the result. If you did not receive any IRA distributions in 1987, skip lines 8 through 12 and enter the amount from line 7 on line 13.	7	
8	Enter the value of all your IRAs as of 12/31/87 (from line 2). Include any outstanding rollovers	8	
9	Enter total IRA distributions received during 1987. Do not include amounts rolled over before 1/1/88	9	
10	Add amounts on lines 8 and 9 and enter the total	10	
11	Divide the amount on line 7 by the amount on line 10 and enter the result	11	× .
12	Multiply the amount on line 9 by the percentage on line 11. Enter the result. This is the amount of your nontaxable distributions for 1987. ▶	12	
13	Subtract the amount on line 12 from the amount on line 7. Enter the result. This is your basis in your IRA(s) as of 1/1/88 ▶	13	

Please Sign Here

Under penalties of perjury, I declare that I have examined this form, and to the best of my knowledge and belief, it is true, correct, and complete.

▶ _____ Your signature ▶ _____ Date

For Paperwork Reduction Act Notice, see instructions. Form **8606** (1987)

Proof of August 13, 1987

BEST COPY AVAILABLE

General Instructions

Paperwork Reduction Act Notice.—We ask for this information to carry out the Internal Revenue laws of the United States. We need it to ensure that taxpayers are complying with these laws and to allow us to figure and collect the right amount of tax. You are required to give us this information.

Purpose of Form.—Form 8606 is used to report your nondeductible IRA contributions and to figure the basis (nontaxable part) of your IRA. If you have a basis in your IRA, this form is also used to determine how much of any distributions from your IRA is taxed and how much is not taxed because it is a return of your basis.

Who Must File.—You must file Form 8606 for 1987 if you make nondeductible contributions to your IRA(s). If you and your spouse each choose to make nondeductible IRA contributions, you each must file a Form 8606.

Report your deductible contributions on Form 1040, Form 1040A, or Form 1040NR and not on Form 8606.

When and Where To File.—Attach Form 8606 to your 1987 Form 1040, Form 1040A, or Form 1040NR.

If you do not have to file an income tax return because you do not meet the requirements for filing a return, you still have to file a Form 8606 with the Internal Revenue Service at the time and place you would normally be required to file Form 1040, Form 1040A, or Form 1040NR.

Name and Social Security Number.—Enter your name and social security number on Form 8606. Your address and signature are required only if you are not filing Form 8606 with your income tax return (Form 1040, Form 1040A, or Form1040NR).

Note: *If you file a joint return on Form 1040 or Form 1040A and attach Form(s) 8606, show the name and social security number of the spouse whose IRA information is shown.*

Recordkeeping Requirements.—To be able to verify the nontaxable part of distributions from your IRA, keep a copy of this form together with copies of the following forms and records until all distributions are made from your IRA(s):

- Forms 1040 (or Forms 1040A or Form 1040NR) filed for each year you make a nondeductible contribution;
- Forms 5498 received each year showing contributions you made;
- Forms 5498 or similar statements you received showing the value of your IRA(s) for each year you received a distribution; and
- Forms 1099R and W-2P received for each year you received a distribution.

Additional Information.—For more information on nondeductible contributions, get **Publication 590**, Individual Retirement Arrangements (IRAs).

Specific Instructions

We have provided instructions for many of the lines on the form except those that are self-explanatory.

Line 1

Separately list all of your IRAs and their values at the end of the year, regardless of whether you make deductible or nondeductible contributions to them. For married couples, each spouse must list his or her own IRA(s) on a separate Form 8606.

You should receive a statement by February 1, 1988, for each IRA account showing the value on December 31, 1987.

Line 3

Covered by a Retirement Plan at Work.—If you were covered by a retirement plan at work and used Worksheet 2 in the Instructions for Form 1040, Form 1040A, or Form 1040NR, you should enter on line 3 of Form 8606 any nondeductible contributions shown on line 8 of Worksheet 2. If you made any nondeductible contributions to an IRA for your nonworking spouse, you should complete a separate Form 8606 for your spouse and enter on line 3 of your spouse's Form 8606 the amount from line [illegible] of Worksheet 2.

If you were covered by a retirement plan at work but you used Worksheet 1 because your income was $25,000 or less ($40,000 or less if you are married filing a joint return), follow the instructions below under "Not Covered by a Retirement Plan at Work."

You may also choose to designate any part of deductible contributions as nondeductible. To do this, enter on line 3 of Form 8606 the total of the contributions shown on line 8 of Worksheet 2 (or line 17 if applicable) plus the amount of any deductible contributions shown on line 7 (or line 16 if applicable) of Worksheet 2 that you are designating as nondeductible.

Note: *You cannot take a deduction for any part of the deductible contributions you are designating as nondeductible.*

If none of your contributions are deductible, you may still designate as a nondeductible contribution up to a maximum of $2,000 of your contributions (but not more than your earned income). Enter the amount of your contributions that you are designating as nondeductible on line 3 of Form 8606.

If contributions were also made to an IRA for your nonworking spouse and none of the contributions are deductible, you may still designate as nondeductible contributions up to a maximum of $2,250 (but not more than your earned income). Enter on line 3 of your Form 8606 the total that you are designating to your IRA. Enter the balance on line 3 of your nonworking spouse's Form 8606. You cannot designate more than $2,000 to either your or your spouse's IRA. Also, the total of the two amounts cannot be more than $2,250 and not more than your earned income.

Not Covered by a Retirement Plan at Work.—If you were not covered by a retirement plan at work or were covered, but had income of $25,000 or less ($40,000 or less if married filing a joint return), complete Worksheet 1 in the Instructions for Form 1040, Form 1040A, or Form 1040NR. The amount shown on line 3 of the worksheet is the amount of your contributions that you may deduct. However, you may designate all or part of that amount as nondeductible. Enter on line 3 of your Form 8606 the difference between the amount you are deducting and the amount shown on line 3 of Worksheet 1.

If contributions were made to an IRA for your nonworking spouse, the amount shown on line 8 of Worksheet 1 is the amount of the allowable deduction for your nonworking spouse's IRA. However, you can designate all or part of that amount as nondeductible. Enter on line 3 of your nonworking spouse's Form 8606 the difference between the amount that is deducted for your nonworking spouse and the amount on line 8 of Worksheet 1.

Line 4

Enter your nondeductible contributions for 1987 shown on line 3 that were made in 1988 by April 15, 1988. (This amount will be figured in your basis for 1988.)

Line 6

Use this line if you wish to change a nondeductible contribution made on a prior-year's return to a deductible contribution, or vice versa. For example, if you were eligible to deduct your IRA contributions for 1987 but you chose to designate them as nondeductible when you filed your 1987 tax return, you can at a later date change the designation to a deductible contribution by filing an amended tax return on **Form 1040X**, Amended U.S. Individual Income Tax Return, and show the change in designation on line 6 of Form 8606.

Note: *Since contributions must be made by April 15 of the year following the year for which the contributions are made, no additional contributions may be made after that date.*

Line 8

Enter on line 8 the total value of all your IRAs as of December 31, 1987, from line 2. Include on line 8 any outstanding rollovers. A **rollover** is a tax-free distribution from one IRA which is then contributed to another IRA. The rollover contribution must be made within 60 days of receiving the distribution from the first IRA. An outstanding rollover is any amount distributed to you from one IRA within 60 days of the end of 1987 (between November 2 and December 31) that you did not roll over to another IRA by December 31, 1987, but that you roll over to another IRA in 1988 within the normal 60-day rollover period.

Line 9

Do not include on line 9 any distributions received in 1987 that you rolled over to another IRA by December 31, 1987.

Proof Sheet

Version C

Department of the Treasury - Internal Revenue Service

Form 1040EZ **Income Tax Return for Single filers with no dependents** **1987**

OMB No. 1545-0675

Name & address Use the IRS mailing label. If you don't have one, please print.

Print your name above (first, initial, last)

PLACE LABEL HERE

Present home address (number and street). (If you have a P.O. box, see instructions.)

City, town, or post office, state, and ZIP code

Please print your numbers like this: 1 2 3 4 5 6 7 8 9 0

Your social security number

Please read the instructions for this form on the reverse side.

Presidential Election Campaign Fund Yes No

Do you want $1 to go to this fund? Note: Checking "Yes" will not change your tax or reduce your refund.

		Dollars	Cents
Report your income	1 Total wages, salaries, and tips. This should be shown in Box 10 of your W-2 form(s). (Attach your W-2 form(s).) 1		
	2 Taxable interest income of $400 or less. If the total is more than $400, you cannot use Form 1040EZ. 2		
Attach Copy B of Form(s) W-2 here	3 Add line 1 and line 2. This is your adjusted gross income. 3		
	4 Can you be claimed as a dependent on another person's return? ☐ Yes. Do worksheet on back; enter amount from line E here. ☐ No. Enter 2,540 as your standard deduction. 4		
	5 Subtract line 4 from line 3. 5		
	6 If you checked the "Yes" box on line 4, enter 0. If you checked the "No" box on line 4, enter 1,900. This is your personal exemption. 6		
	7 Subtract line 6 from line 5. If line 6 is larger than line 5, enter 0 on line 7. This is your taxable income. 7		
Figure your tax	8 Enter your Federal income tax withheld. This should be shown in Box 9 of your W-2 form(s). 8		
	9 Use the **single** column in the tax table on pages 31-36 of the Form 1040A instruction booklet to find the **tax** on the amount shown on line 7 above. Enter the amount of tax. 9		
Refund or amount you owe	10 If line 8 is larger than line 9, subtract line 9 from line 8. Enter the amount of your refund. 10		
Attach tax payment here	11 If line 9 is larger than line 8, subtract line 8 from line 9. Enter the amount you owe. Attach check or money order for the full amount, payable to "Internal Revenue Service." 11		

Sign your return I have read this return. Under penalties of perjury, I declare that to the best of my knowledge and belief, the return is true, correct, and complete.

Your signature Date

For IRS Use Only—Please do not write in boxes below.

Proof of August 13, 1987

Version C

1987 Instructions for Form 1040EZ

Use this form if:
- Your filing status is single.
- You do not claim any dependents.
- You are not 65 or over, OR blind.
- Your taxable income is less than $50,000.
- You had only wages, salaries, and tips, and your taxable interest income was $400 or less. **Caution:** If you received tips (including allocated tips) that are not included in Box 14 of your W-2 form, you may not be able to use Form 1040EZ. See page 15 in the **Instructions for preparing 1040EZ and 1040A.** If you can't use this form, you must use Form 1040A or Form 1040. See pages 4 through 6 in the instruction booklet. If you are uncertain about your filing status, see page 7 of the booklet.

Completing your return

It will make it easier for us to process your return if you print your numbers (do not type) and keep them inside the boxes. Do not use dollar signs. You may find calculations easier if you round off cents to whole dollars. See page 13 of the instruction booklet for details.

Name & address

Use the mailing label we sent you. After you complete your return, carefully place the label in the name and address area. Mark through any errors on the label and print the correct information on the label. Use of the label saves processing time. If you don't have a label, print the information on the name and address lines. If your post office does not deliver mail to your street address and you have a P.O. box, enter your P.O. box number on the line for your present home address instead of your street address.

Presidential campaign fund

Congress set up this fund to help pay for Presidential election campaigns. You may have one of your tax dollars go to this fund by checking the "Yes" box. Checking the "Yes" box does not change the tax or refund shown on your return.

Report your income

Line 1. Enter on line 1 the total amount you received in wages, salaries, and tips. This should be shown in Box 10 of your 1987 wage statement(s), Form(s) W-2. If you don't receive your W-2 form by February 15, contact your local IRS office. You must still report your earnings even if you don't get a Form W-2 from your employer. Attach the first copy or Copy B of your W-2 form(s) to your return.

Line 2. Enter on line 2 the total taxable interest income you received from all sources, such as banks, savings and loans, and credit unions. You should receive a **Form 1099-INT** from each institution that paid you interest. You cannot use Form 1040EZ if your total taxable interest income is over $400. If you received tax-exempt interest, in the space to the left of line 2, write "TEI" and show the amount of your tax-exempt interest. DO NOT include tax-exempt interest in the total entered in the boxes on line 2.

Line 4. If you checked the "Yes" box because you can be claimed as a dependent on another person's return (such as your parents'), complete the following worksheet to figure the amount to enter on line 4. For information on dependents, see page 11 of the instruction booklet.

Standard deduction worksheet

A.	Enter the amount from line 1 on front.	A. _____
B.	Minimum amount.	B. 500.00
C.	Compare the amounts on lines A and B above. Enter the LARGER of the two amounts here.	C. _____
D.	Maximum amount.	D. 2,540.00
E.	Compare the amounts on lines C and D above. Enter the SMALLER of the two amounts here and on line 4 on front.	E.

Line 6. Generally, you should enter 1,900 on line 6 as your personal exemption. However, if you can be claimed as a dependent on another person's return (such as your parents'), you cannot claim a personal exemption for yourself; enter 0 on line 6. If you are entitled to additional exemptions for your spouse, for your dependent children, or for other dependents, you cannot use Form 1040EZ.

Figure your tax

Line 8. Enter the amount of Federal income tax withheld. This should be shown in Box 9 of your 1987 W-2 form(s). If you had two or more employers and had total wages of over $43,800, see page 25 of the instruction booklet. If you want IRS to figure your tax for you, complete lines 1 through 8, sign and date your return. If you want to figure your own tax, continue with these instructions.

Line 9. Use the amount on line 7 to find your tax in the tax table on pages 31–36 of the instruction booklet. Be sure to use the column in the tax table for **single** taxpayers. Enter the amount of tax on line 9. If your tax from the tax table is zero, enter 0.

Refund or amount you owe

Line 10. If line 8 is larger than line 9, you are entitled to a refund. Subtract line 9 from line 8, and enter the result on line 10.

Line 11. If line 9 is larger than line 8, you owe more tax. Subtract line 8 from line 9, and enter the result on line 11. Attach your check or money order for the full amount. Write your social security number, daytime phone number, and "1987 Form 1040EZ" on your payment.

Sign your return

You must sign and date your return. If you pay someone to prepare your return, that person must also sign it below the space for your signature and supply the other information required by IRS. See page 28.

Mailing your return

File your return by **April 15, 1988.** Mail it to us in the addressed envelope that came with the instruction booklet. If you don't have an addressed envelope, see page 30 for the address.

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Form **1040A**

Department of the Treasury—Internal Revenue Service

U.S. Individual Income Tax Return **1987**

OMB No. 1545-0085

Step 1 Label

Use IRS label. Otherwise, please print or type.

Your first name and initial (if joint return, also give spouse's name and initial) | Last name | Your social security no.

Present home address (number and street). (If you have a P.O. Box, see page 9 of the instructions.) PLACE LABEL HERE | Spouse's social security no.

City, town or post office, state, and ZIP code | For Privacy Act and Paperwork Reduction Act Notice, see page 31.

Presidential Election Campaign Fund

Do you want $1 to go to this fund? ☐ Yes ☐ No

If joint return, does your spouse want $1 to go to this fund? ☐ Yes ☐ No

Note: Checking "Yes" will not change your tax or reduce your refund.

Step 2 Check your filing status (Check only one)

1 ☐ Single (See if you can use Form 1040EZ)

2 ☐ Married filing joint return (even if only one had income)

3 ☐ Married filing separate return. Enter spouse's social security number above and spouse's full name here. _____

4 ☐ Head of household (with qualifying person). If the qualifying person is your child but not your dependent, enter this child's name here. _____

Step 3 Figure your exemptions (See page 12 of instructions.)

5a ☐ Yourself b ☐ Spouse

Caution: If you can be claimed as a dependent on another person's tax return (such as your parents'), do not check box 5a. But be sure to check the box on line 14b.

c Dependents: 1. Name (first, initial, and last name)	2. Check if under age 5	3. If age 5 or over, dependent's social security number	4. Relationship	5. No. of months lived in your home

If more than 7 dependents, attach statement.

No. of boxes checked on 5a and 5b _____

No. of children on 5c who lived with you _____

No. of children on 5c who didn't live with you due to divorce or separation _____

No. of parents listed on 5c _____

No. of other dependents listed on 5c _____

Attach Copy B of Form(s) W-2 here.

d If your child didn't live with you but is claimed as your dependent under a pre-1985 agreement, check here ▶ ☐

e Total number of exemptions claimed. (Also complete line 16.) Add numbers entered on lines above ☐

Step 4 Figure your total income

6 Wages, salaries, tips, etc. This should be shown in Box 10 of your W-2 form(s). (Attach Form(s) W-2.) 6

7a **Taxable** interest income (see page 17). (If over $400, also complete and attach Schedule 1, Part II.) 7a

Attach check or money order here.

b **Tax-exempt** interest income (see page 17). (DO NOT include on line 7a.) 7b

8 Dividends. (If over $400, also complete and attach Schedule 1, Part III.) 8

9 Unemployment compensation (insurance) from Form(s) 1099-G. 9

10 Add lines 6, 7a, 8, and 9. Enter the total. This is your **total income**. ▶ 10

Step 5 Figure your adjusted gross income

11a Your IRA deduction, from Worksheet 1 or 2 (whichever applies) on page 20. 11a

b Spouse's IRA deduction, from Worksheet 1 or 2 (whichever applies) on page 20. 11b

c Add lines 11a and 11b. Enter the total. These are your **total adjustments**. 11c

12 Subtract line 11c from line 10. Enter the result. This is your **adjusted gross income**. (If this line is less than $15,432 and a child lived with you, see "Earned Income Credit" (line 21b) on page 27 of instructions.) ▶ 12

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1987 Form 1040A Page 2

Step 6 Figure your taxable income

13 Enter the amount from line 12. 13

14a Check if: ☐ You were 65 or over ☐ Blind; ☐ Spouse was 65 or over ☐ Blind. Enter number of boxes checked ▶ 14a

b If you can be claimed as a dependent on another person's return, check here ▶ 14b ☐

c If you are married filing separately and your spouse files Form 1040 and itemizes deductions, check here ▶ 14c ☐

d **Standard deduction.** Enter the amount shown below for your filing status. **Caution:** If you completed line 14a, b, or c, see page 22 of the instructions for the amount to enter on line 14d.

Filing status from page 1:
- Single or Head of household, enter $2,540
- Married filing joint return, enter $3,760
- Married filing separate return, enter $1,880

14d

15 Subtract line 14d from line 13. Enter the result. 15

16 Multiply $1,900 by the total number of exemptions claimed on line 5e or see the chart on page 22 of the instructions. 16

17 Subtract line 16 from line 15. Enter the result. This is your taxable income. ▶ 17

If You Want IRS To Figure Your Tax, See Page 22 of the Instructions.

Step 7 Figure your tax, credits, and payments (including advance EIC payments)

Caution: If you are under age 14 and have more than $1,000 of investment income, see page 23 of the instructions and check here ▶ ☐

18 Find the tax on the amount on line 17. Check if from: ☐ Tax Table (pages 32–37); or ☐ Form 8615, Computation of Tax for Children Under Age 14 Who Have Investment Income of More Than $1,000. 18

19 Credit for child and dependent care expenses. Complete and attach Schedule 1, Part I. 19

20 Subtract line 19 from line 18. Enter the result. (If line 19 is more than line 18, enter -0- on line 20.) This is your total tax. ▶ 20

21a Total Federal income tax withheld. This should be shown in Box 9 of your W-2 form(s). (If line 6 is more than $43,800, see page 26.) 21a

b Earned income credit. From the worksheet on page 28 of the instructions. Also see page 27. 21b

22 Add lines 21a and 21b. Enter the total. These are your **total payments.** ▶ 22

Step 8 Figure your refund or amount you owe

23 If line 22 is larger than line 20, subtract line 20 from line 22. Enter the result. This is the amount of your refund. 23

24 If line 20 is larger than line 22, subtract line 22 from line 20. Enter the result. This is the amount you owe. Attach check or money order for full amount payable to "Internal Revenue Service." Write your social security number, daytime phone number, and "1987 Form 1040A" on it. 24

Step 9 Sign your return

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than the taxpayer) is based on all information of which the preparer has any knowledge.

Your signature — Date — Your occupation

X

Spouse's signature (if joint return, both must sign) — Date — Spouse's occupation

X

Paid preparer's use only

Preparer's signature — Date — Preparer's social security no.

X

Firm's name (or yours if self-employed) — Employer identification no.

Address and ZIP code — Check if self-employed ☐

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1987 Schedule 1 (Form 1040A) OMB No. 1545-0085

Name(s) as shown on Form 1040A | Your social security number

You MUST complete and attach Schedule 1 to Form 1040A only if you:

- Claim the credit for child and dependent care expenses (complete **Part I**)
- Have over $400 of taxable interest income (complete **Part II**)
- Have over $400 of dividend income (complete **Part III**)

Part I **Credit for child and dependent care expenses** (see page 24 of the instructions)

Complete this part to figure the amount of credit you can take on Form 1040A, line 19. Attach Schedule 1 to Form 1040A.

Note: *If you paid cash wages of $50 or more in a calendar quarter to an individual for services performed in your home, you must file an employment tax return. Get* ***Form 942*** *for details.*

1 Enter the number of qualifying persons who were cared for in 1987. (See the instructions for the definition of a qualifying person.) 1

2 Enter the amount of **qualified** expenses you incurred and actually paid in 1987 for the care of the qualifying person. (See the instructions for which expenses qualify for the credit.) **DO NOT** enter more than $2,400 ($4,800 if you paid for the care of two or more qualifying persons). 2

3 a You must enter your earned income on line 3a. 3a

b If you are married, filing a joint return for 1987, you must enter your spouse's earned income on line 3b. (If spouse is a full-time student or is disabled, see the instructions for amount to enter on this line.) 3b

c If you are married, compare the amounts on lines 3a and 3b, and enter the **smaller** of the two amounts on line 3c. 3c

4 • If you were unmarried at the end of 1987, compare the amounts on lines 2 and 3a, and enter the **smaller** of the two amounts on line 4.
• If you are married, filing a joint return for 1987, compare the amounts on lines 2 and 3c, and enter the **smaller** of the two amounts on line 4. 4

5 Enter the percentage from the table below that applies to the amount on Form 1040A, line 13.

If line 13 is: Over—	But not over—	Percentage is:	If line 13 is: Over—	But not over—	Percentage is:
$0	10,000	30% (.30)	$20,000	22,000	24% (.24)
10,000	12,000	29% (.29)	22,000	24,000	23% (.23)
12,000	14,000	28% (.28)	24,000	26,000	22% (.22)
14,000	16,000	27% (.27)	26,000	28,000	21% (.21)
16,000	18,000	26% (.26)	28,000		20% (.20)
18,000	20,000	25% (.25)			

5 × .

6 Multiply the amount on line 4 by the percentage on line 5. Enter the result here and on Form 1040A, line 19. 6 =

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1987 **Schedule 1 (Form 1040A)** OMB No. 1545-0085

Name(s) as shown on Form 1040A. (Do not complete if shown on other side.) Your social security number

Part II **Interest Income** (see page 17 of the instructions)

Complete this part and attach Schedule 1 to Form 1040A if you received over $400 in taxable interest income.

Note: If you received a Form 1099-INT or Form 1099-OID from a brokerage firm, enter the firm's name and the total interest shown on that form.

1 List name of payer	Amount
	$
	$
	$
	$
	$
	$
	$
	$
	$
	$
	$
	$
	$
	$
	$
	$

2 Add amounts on line 1. Enter the total here and on Form 1040A, line 7a. 2

Part III **Dividend Income** (see page 18 of the instructions)

Complete this part and attach Schedule 1 to Form 1040A if you received over $400 in dividends.

Note: If you received a Form 1099-DIV from a brokerage firm, enter the firm's name and the total dividends shown on that form.

1 List name of payer	Amount
	$
	$
	$
	$
	$
	$
	$
	$
	$
	$
	$
	$
	$
	$
	$
	$

2 Add amounts on line 1. Enter the total here and on Form 1040A, line 8. 2

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Form **1040** Department of the Treasury—Internal Revenue Service **U.S. Individual Income Tax Return** **1987**

For the year Jan.–Dec. 31, 1987, or other tax year beginning , 1987, ending 19 OMB No. 1545-0074

Label Use IRS label. Otherwise, please print or type.

Your first name and initial (if joint return, also give spouse's name and initial) Last name

Your social security number

Present home address (number and street or rural route). (If you have a P.O. Box, see page 5 of instructions.)

PLACE LABEL HERE

Spouse's social security number

City, town or post office, state, and ZIP code

For Privacy Act and Paperwork Reduction Act Notice, see instructions.

Presidential Election Campaign Do you want $1 to go to this fund? Yes No

If joint return, does your spouse want $1 to go to this fund? Yes No

Note: Checking "Yes" will not change your tax or reduce your refund.

Filing Status Check only one box.

1 ☐ Single

2 ☐ Married filing joint return (even if only one had income)

3 ☐ Married filing separate return. Enter spouse's social security no. above and full name here.

4 ☐ Head of household (with qualifying person). (See page 6 of instructions.) If the qualifying person is your child but not your dependent, enter child's name here.

5 ☐ Qualifying widow(er) with dependent child (year spouse died ▶ 19). (See page 7 of instructions.)

Exemptions (See instructions on page 7.)

6a ☐ Yourself b ☐ Spouse

Caution: If you can be claimed as a dependent on another person's tax return (such as your parents' return), do not check box 6a. But be sure to check the box on line 32b.

c Dependents

(1) Name (first, initial, and last name)	(2) Check if under age 5	(3) If age 5 or over, dependent's social security number	(4) Relationship	(5) No. of months lived in your home

If more than 7 dependents, attach statement.

d If your child didn't live with you but is claimed as your dependent under a pre-1985 agreement, check here ▶ ☐

e Total number of exemptions claimed (also complete line 35)

No. of boxes checked on 6a and 6b ▶

No. of children on 6c who lived with you ▶

No. of children on 6c who didn't live with you due to divorce or separation ▶

No. of parents listed on 6c ▶

No. of other dependents listed on 6c ▶

Add numbers entered in boxes above ▶

Income Please attach Copy B of your Forms W-2, W-2G, and W-2P here.

If you do not have a W-2, see page 5 of Instructions.

7	Wages, salaries, tips, etc. *(attach Form(s) W-2)*		7
8	Taxable interest income *(also attach Schedule B if over $400)*		8
9	Tax-exempt interest income (see page 9). DO NOT include on line 8	9	
10	Dividend income *(also attach Schedule B if over $400)*		10
11	Taxable refunds of state and local income taxes, if any, from worksheet on page 10 of instructions		11
12	Alimony received		12
13	Business income or (loss) *(attach Schedule C)*		13
14	Capital gain or (loss) *(attach Schedule D)*		14
15	Other gains or (losses) *(attach Form 4797)*		15
16a	Pensions, IRA distributions, annuities, and rollovers. Total received	16a	
b	Taxable amount, if any (see page 10)		16b
17	Rents, royalties, partnerships, estates, trusts, etc. *(attach Schedule E)*		17
18	Farm income or (loss) *(attach Schedule F)*		18
19	Unemployment compensation (insurance) (see page 11)		19
20a	Social security benefits (see page 11)	20a	
b	Taxable amount, if any, from the worksheet on page 12		20b
21	Other income (list type and amount—see page 11)		21
22	Add the amounts shown in the far right column for lines 7, 8, and 10–21. This is your **total income** ▶		22

Please attach check or money order here.

Adjustments to Income (See instructions on page 12.)

23	Reimbursed employee business expenses from Form 2106	23		
24a	Your IRA deduction, from applicable worksheet on page 13	24a		
b	Spouse's IRA deduction, from applicable worksheet on page 13	24b		
25	Self-employed health insurance deduction, from worksheet on page 14	25		
26	Keogh retirement plan and self-employed SEP deduction	26		
27	Penalty on early withdrawal of savings	27		
28	Alimony paid (recipient's last name and social security no.)	28		
29	Add lines 23 through 28. These are your **total adjustments** ▶			29

Adjusted Gross Income

30 Subtract line 29 from line 22. This is your **adjusted gross income.** *If this line is less than $15,432 and a child lived with you, see "Earned Income Credit" (line 56) on page 18 of Instructions. If you want IRS to figure your tax, see page 14 of Instructions* ▶ 30

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Form 1040 (1987) Page 2

	31	Amount from line 30 (adjusted gross income)		31
Tax Computation	32a	Check if: ☐ You were 65 or over ☐ Blind; ☐ Spouse was 65 or over ☐ Blind. Add the number of boxes checked and enter the total here ▶	32a	
	b	If you can be claimed as a dependent on another person's return, check here ▶	32b	☐
	c	If you are married filing a separate return and your spouse itemizes deductions, or you are a dual-status alien, see page 15 and check here ▶	32c	☐
	33a	**Itemized deductions.** See page 15 to see if you should itemize. If you itemize, attach Schedule A, enter the amount from Schedule A, line 26, and skip line 33b		33a
Caution: If you completed line 32a, b, or c and you don't itemize, see page 15 for the amount to enter on line 33b.	b	**Standard deduction.** Enter amount shown below for your filing status, unless **Caution** to left applies. Filing status from page 1: Single or Head of household, enter $2,540 — Married filing jointly or Qualifying widow(er), enter $3,760 — Married filing separately, enter $1,880		33b
	34	Subtract line 33a or 33b, whichever applies, from line 31. Enter the result here		34
	35	Multiply $1,900 by the total number of exemptions claimed on line 6e. See chart on page 16		35
	36	**Taxable income.** Subtract line 35 from line 34. Enter the result (but not less than zero)		36
		Caution: If under age 14 and you have more than $1,000 of investment income, check here ▶ ☐ and see page 16 to see if you have to use Form 8615 to figure your tax.		
	37	Enter tax. Check if from ☐ Tax Table, ☐ Tax Rate Schedules, ☐ Schedule D, or ☐ Form 8615		37
	38	Additional taxes (see page 16). Check if from ☐ Form 4970 or ☐ Form 4972		38
	39	Add lines 37 and 38. Enter the total ▶		39
Credits (See instructions on page 16.)	40	Credit for child and dependent care expenses (attach Form 2441)	40	
	41	Credit for the elderly or for the permanently and totally disabled (attach Schedule R)	41	
	42	Add lines 40 and 41. Enter the total		42
	43	Subtract line 42 from line 39. Enter the result (but not less than zero)		43
	44	Foreign tax credit (attach Form 1116)	44	
	45	General business credit. Check if from ☐ Form 3800, ☐ Form 3468, ☐ Form 5884, ☐ Form 6478, ☐ Form 6765, or ☐ Form 8586	45	
	46	Add lines 44 and 45. Enter the total		46
	47	Subtract line 46 from line 43. Enter the result (but not less than zero) ▶		47
Other Taxes (Including Advance EIC Payments)	48	Self-employment tax (attach Schedule SE)		48
	49	Alternative minimum tax (attach Form 6251)		49
	50	Tax from recapture of investment credit (attach Form 4255)		50
	51	Social security tax on tip income not reported to employer (attach Form 4137)		51
	52	Tax on an IRA or a qualified retirement plan (attach Form 5329)		52
	53	Add lines 47 through 52. This is your total tax ▶		53
Payments Attach Forms W-2, W-2G, and W-2P to front.	54	Federal income tax withheld	54	
	55	1987 estimated tax payments and amount applied from 1986 return	55	
	56	Earned income credit (see page 18)	56	
	57	Amount paid with Form 4868 (extension request)	57	
	58	Excess social security tax and RRTA tax withheld (see page 18)	58	
	59	Credit for Federal tax on gasoline and special fuels (attach Form 4136)	59	
	60	Regulated investment company credit (attach Form 2439)	60	
	61	Add lines 54 through 60. These are your total payments ▶		61
Refund or Amount You Owe	62	If line 61 is larger than line 53, enter amount OVERPAID ▶		62
	63	Amount of line 62 to be REFUNDED TO YOU ▶		63
	64	Amount of line 62 to be applied to your 1988 estimated tax ▶	64	
	65	If line 53 is larger than line 61, enter AMOUNT YOU OWE. Attach check or money order for full amount payable to "Internal Revenue Service." Write your social security number, daytime phone number, and "1987 Form 1040" on it		65
		Check ▶ ☐ if Form 2210 (2210F) is attached. See page 19. Penalty: $		

Please Sign Here

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Your signature	Date	Your occupation
Spouse's signature (if joint return, BOTH must sign)	Date	Spouse's occupation

Paid Preparer's Use Only

Preparer's signature	Date	Check if self-employed ☐	Preparer's social security no.
Firm's name (or yours if self-employed) and address		E.I. No.	
		ZIP code	

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SCHEDULES A&B (Form 1040)
Department of the Treasury
Internal Revenue Service

Schedule A—Itemized Deductions

(Schedule B is on back)

▶ Attach to Form 1040. ▶ See Instructions for Schedules A and B (Form 1040).

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1987
Attachment Sequence No. 07

Name(s) as shown on Form 1040 | Your social security number

Medical and Dental Expenses (Do not include expenses reimbursed or paid by others.) (See Instructions on page 21.)	1a	Prescription medicines and drugs, insulin, doctors, dentists, nurses, hospitals, insurance premiums you paid for medical and dental care, etc.	1a		
	b	Transportation and lodging	1b		
	c	Other (list—include hearing aids, dentures, eyeglasses, etc.) ▶	1c		
	2	Add lines 1a through 1c, and enter the total here	2		
	3	Multiply the amount on Form 1040, line 31, by 7.5% (.075)	3		
	4	Subtract line 3 from line 2. If zero or less, enter -0- Total medical and dental ▶			4
Taxes You Paid (See Instructions on page 21.)		**Note:** Sales taxes are no longer deductible.			
	5	State and local income taxes	5		
	6	Real estate taxes	6		
	7	Other taxes (list—include personal property taxes) ▶	7		
	8	Add the amounts on lines 5 through 7. Enter the total here. Total taxes ▶			8
Interest You Paid (See Instructions on page 22.)		**Caution:** If your home mortgage interest includes interest on a loan taken out after August 16, 1986, and if the loan proceeds were not used to buy your home, attach Form 8598 and check here ▶ ☐			
	9a	Deductible home mortgage interest you paid to financial institutions (report deductible points on line 10)	9a		
	b	Deductible home mortgage interest you paid to individuals (show that person's name and address) ▶	9b		
	10	Deductible points	10		
	11	Deductible investment interest	11		
	12a	Personal interest you paid (see page 22)	12a		
	b	Multiply the amount on line 12a by 65% (.65). Enter the result	12b		
	13	Add the amounts on lines 9a through 11, and 12b. Enter the total here. Total interest ▶			13
Contributions You Made (See Instructions on page 22.)	14a	Cash contributions. (If you gave $3,000 or more to any one organization, report those contributions on line 14b.)	14a		
	b	Cash contributions totalling $3,000 or more to any one organization. (Show to whom you gave and how much you gave.) ▶	14b		
	15	Other than cash. (You must attach Form 8283 if over $500.)	15		
	16	Carryover from prior year	16		
	17	Add the amounts on lines 14a through 16. Enter the total here. Total contributions ▶			17
Casualty and Theft Losses	18	Casualty or theft loss(es) (attach Form 4684). (See page 23 of the Instructions.) ▶			18
Moving Expenses	19	Moving expenses (attach Form 3903 or 3903F). (See page 23 of the Instructions.) ▶			19
Miscellaneous Deductions Subject to 2% AGI Limit (See Instructions on page 23.)	20	Unreimbursed employee business expenses (attach Form 2106)	20		
	21	Other expenses (list type and amount) ▶	21		
	22	Add the amounts on lines 20 and 21. Enter the total	22		
	23	Multiply the amount on Form 1040, line 31, by 2% (.02). Enter the result here	23		
	24	Subtract line 23 from line 22. Enter the result (but not less than zero) ▶			24
Other Miscellaneous Deductions	25	Miscellaneous deductions not subject to 2% AGI limit (see page 23). (List type and amount.) ▶ ▶			25
Total Itemized Deductions	26	Add the amounts on lines 4, 8, 13, 17, 18, 19, 24, and 25. Enter the total here and on Form 1040, line 33a ▶			26

For Paperwork Reduction Act Notice, see Form 1040 Instructions.

Schedule A (Form 1040) 1987

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Schedules A&B (Form 1040) 1987 OMB No. 1545-0074 Page 2

Name(s) as shown on Form 1040. (Do not enter name and social security number if shown on other side.) | Your social security number

Schedule B—Interest and Dividend Income

Attachment Sequence No. 08

Part I Interest Income

(See Instructions on pages 9 and 24.)

Also complete Part III.

Note: If you received a Form 1099–INT or Form 1099–OID from a brokerage firm, enter the firm's name and the total interest shown on that form.

If you received more than $400 in taxable interest income, you must complete Part I and list ALL interest received. If you received, as a nominee, interest that actually belongs to another person, or you received or paid accrued interest on securities transferred between interest payment dates, see page 24.

Interest Income		Amount
1 Interest income from seller-financed mortgages. (See Instructions and list name of payer.) ▶	1	
2 Other interest income (list name of payer) ▶	2	
3 Add the amounts on lines 1 and 2. Enter the total here and on Form 1040, line 8. ▶	3	

Part II Dividend Income

(See Instructions on pages 9 and 24.)

Also complete Part III.

Note: If you received a Form 1099-DIV from a brokerage firm, enter the firm's name and the total dividends shown on that form.

If you received more than $400 in gross dividends and/or other distributions on stock, complete Part II. If you received, as a nominee, dividends that actually belong to another person, see page 24.

Dividend Income		Amount
4 Dividend income (list name of payer. Include on this line capital gain distributions, nontaxable distributions, etc.) ▶	4	
5 Add the amounts on line 4. Enter the total here	5	
6 Capital gain distributions. Enter here and on line 13, Schedule D.*	6	
7 Nontaxable distributions. (See Schedule D Instructions for adjustment to basis.)	7	
8 Add the amounts on lines 6 and 7. Enter the total here	8	
9 Subtract line 8 from line 5. Enter the result here and on Form 1040, line 10 ▶	9	

*If you received capital gain distributions but do not need Schedule D to report any other gains or losses or to figure your tax (see the Tax Tip under Capital gain distributions on page 10), enter your capital gain distributions on Form 1040, line 14. Write "CGD" on the dotted line to the left of line 14.

Part III Foreign Accounts and Foreign Trusts

(See Instructions on page 24.)

If you received more than $400 of interest or dividends, OR if you had a foreign account or were a grantor of, or a transferor to, a foreign trust, you must answer both questions in Part III.

	Yes	No
10 At any time during the tax year, did you have an interest in or a signature or other authority over a financial account in a foreign country (such as a bank account, securities account, or other financial account)? (See page 24 of the Instructions for exceptions and filing requirements for Form TD F 90-22.1.)		
If "Yes," enter the name of the foreign country ▶		
11 Were you the grantor of, or transferor to, a foreign trust which existed during the current tax year, whether or not you have any beneficial interest in it? If "Yes," you may have to file Forms 3520, 3520-A, or 926		

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SCHEDULE E (Form 1040)

Department of the Treasury
Internal Revenue Service

Supplemental Income Schedule

(From rents, royalties, partnerships, estates, trusts, REMICs, etc.)

▶ Attach to Form 1040, Form 1041, or Form 1041S.
▶ See Instructions for Schedule E (Form 1040).

OMB No. 1545-0074

1987

Attachment Sequence No. 13

Name(s) as shown on Form 1040 | Your social security number

Part I Rental and Royalty Income or (Loss) **Caution:** Your rental loss may be limited. See Instructions.

1 In the space provided below, show the kind and location of each rental property.	2 For each property listed, did you or a member of your family use for personal purposes any of the properties for more than the greater of 14 days or 10% of the total days rented at fair rental value during the tax year?	Yes	No	3 For each rental real estate property listed, did you actively participate in the operation of the activity during the tax year? (See Instructions.)	Yes	No
Property A ▶				▶		
Property B ▶				▶		
Property C ▶				▶		

Rental and Royalty Income		Properties A	Properties B	Properties C	Totals (Add columns A, B, and C)
4 Rents received	4				
5 Royalties received	5				
Rental and Royalty Expenses					
6 Advertising	6				
7 Auto and travel	7				
8 Cleaning and maintenance	8				
9 Commissions	9				
10 Insurance	10				
11 Legal and other professional fees	11				
12 Mortgage interest paid to financial institutions (see Instructions)	12				
13 Other interest	13				
14 Repairs	14				
15 Supplies	15				
16 Taxes (Do not include windfall profit tax here. See Part V, line 40.)	16				
17 Utilities	17				
18 Wages and salaries	18				
19 Other (list) ▶					
20 Total expenses other than depreciation and depletion. Add lines 6 through 19	20				20
21 Depreciation expense (see Instructions), or depletion (see Publication 535)	21				21
22 Total. Add lines 20 and 21	22				
23 Income or (loss) from rental or royalty properties. Subtract line 22 from line 4 (rents) or 5 (royalties)					
24 Deductible rental loss. **Caution:** Your rental loss on line 23 may be limited. See Instructions to determine if you must file **Form 8582**, Passive Activity Loss Limitations	24				
25 **Profits.** Add rental and royalty profits from line 23, and enter the total profits here					25
26 **Losses.** Add royalty losses from line 23 and rental losses from line 24, and enter the total (losses) here					26 ( )
27 Combine amounts on lines 25 and 26, and enter the net profit or (loss) here					27
28 Net farm rental profit or (loss) from Form 4835, line 34. (Also complete Part VI, line 43.)					28
29 Total rental or royalty income or (loss). Combine amounts on lines 27 and 28, and enter the total here. If Parts II, III, IV, and V on page 2 do not apply to you, enter the amount from line 29 on Form 1040, line 17. Otherwise, include the amount from line 29 in line 42 on page 2 of Schedule E					29

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Schedule E (Form 1040) 1987 Attachment Sequence No. 13 Page 2

Name(s) as shown on Form 1040. (Do not enter name and social security number if shown on other side.) Your social security number

Part I Income or (Loss) from Partnerships and S Corporations

If you report a loss from an at-risk activity for which any amounts were not at risk, you MUST check "Yes" in column (e) and attach Form 6198. Otherwise, you must check "No." See instructions.

	(a) Name	(b) Enter P for partnership; S for S Corporation	(c) Check if foreign partnership	(d) Employer identification number	(e) At-Risk: Yes	(e) At-Risk: No
A						
B						
C						
D						
E						

	Passive Activities		Nonpassive Activities		
	(f) Passive loss allowed from Form 8582	(g) Passive income from Schedule K-1	(h) Nonpassive loss from Schedule K-1	(i) Section 179 deduction	(j) Nonpassive income from Schedule K-1
A					
B					
C					
D					
E					
30a Totals					
b Totals					

31	Add amounts in columns (g) and (j), line 30a. Enter total income here	31	
32	Add amounts in columns (f), (h), and (i), line 30b. Enter total here	32	( )
33	Total partnership and S corporation income or (loss). Combine amounts on lines 31 and 32. Enter the total here and include in line 42 below	33	

Part II Income or (Loss) from Estates and Trusts

	(a) Name	(b) Employer identification number
A		
B		
C		

	Passive Activities		Nonpassive Activities	
	(c) Passive loss allowed from Form 8582	(d) Passive income from Schedule K-1	(e) Other portfolio loss from Schedule K-1	(f) Other portfolio income from Schedule K-1
A				
B				
C				
34a Totals				
b Totals				

35	Add amounts in columns (d) and (f), line 34a. Enter total income here	35	
36	Add amounts in columns (c) and (e), line 34b. Enter total (loss) here	36	( )
37	Total estate and trust income or (loss). Combine amounts on lines 35 and 36. Enter the total here and include in line 42 below	37	

Part III Income or (Loss) from Real Estate Mortgage Investment Conduits (REMICs)—Residual Holder

(a) Name	(b) Employer identification number	(c) Excess inclusion from Schedules Q, line 2c (see instructions)	(d) Taxable income (net loss) from Schedules Q, line 1b	(e) Income from Schedules Q, line 3b

38	Combine columns (d) and (e) only. Enter the total here and include in line 42 below	38	

Part V Windfall Profit Tax Summary

39	Windfall profit tax credit or refund received in 1987 (see Instructions)	39	
40	Windfall profit tax withheld in 1987 (see Instructions)	40	( )
41	Combine amounts on lines 39 and 40. Enter the total here and include in line 42 below	41	

Part VI Summary

42	TOTAL income or (loss). Combine lines 29, 33, 37, 38, and 41. Enter total here and on Form 1040, line 17 ▶	42	
43	Farmers and fishermen: Enter your share of GROSS FARMING AND FISHING INCOME applicable to Parts I, II, and III (see Instructions). 43		

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Form **2106**

Department of the Treasury
Internal Revenue Service

Employee Business Expenses

▶ See separate instructions.

▶ Attach to Form 1040.

OMB No. 1545-0139

1987

Attachment Sequence No. 54

Your name	Social security number	Occupation in which expenses were incurred
	: :	

Part I Employee Business Expenses

STEP 1 Enter Your Expenses

		Column A Other than Meals and Entertainment	Column B Meals and Entertainment
1 Vehicle expense from Part II, line 15 or line 22	1		
2 Parking fees, tolls, and local transportation, including train, bus, etc.	2		
3 Travel expense while away from home, including lodging, airplane, car rental, etc. Do not include meals and entertainment	3		
4 Business expenses not included in lines 1 through 3. Do not include meals and entertainment	4		
5 Meals and entertainment expenses. See Instructions	5		
6 Add lines 1 through 5 and enter the total expenses here	6		

Note: If you were not reimbursed for any expenses in step 1, skip lines 7 through 13 and enter the amount from line 6 on line 14.

STEP 2 Figure Any Excess Reimbursements to Report as Income

7 Reimbursements for the expenses listed in step 1 that your employer did not report to you on Form W-2 or Form 1099	7		
Note: If, in both columns, line 6 is more than line 7, skip lines 8 and 9 and go to line 10. You do not have excess reimbursements.			
8 Subtract line 6 from line 7. If zero or less, enter zero	8		
9 Add the amounts on line 8 of both columns and enter the total here. Also add this amount to any shown on Form 1040, line 7. This is an **excess reimbursement** reportable as income ▶	9		

STEP 3 Figure Fully Deductible Reimbursed Expenses

10 Subtract line 7 from line 6. If zero or less, enter zero	10		
11 Reimbursements for the expenses listed in step 1 that your employer separately identified to you as a reimbursement on Form W-2 or Form 1099	11		
Note: The amount entered on line 11 should also have been reported as income on Form 1040, line 7.			
12 Enter the smaller of line 10 or line 11	12		
13 Add the amounts on line 12 of both columns. Enter here and on Form 1040, line 23. This is your **fully deductible reimbursed expenses** ▶	13		

STEP 4 Figure Expenses to Deduct as an Itemized Deduction on Schedule A (Form 1040)

14 Subtract line 12 from line 10. If zero or less, enter zero	14		
Note: If both columns of line 14 contain a zero, do not complete the rest of Part I.			
15 Enter 20% of line 14, Column B	15		
16 Subtract line 15 from line 14	16		
17 Add the amounts on line 16 of both columns and enter the total here. Also enter the total on Schedule A (Form 1040), line 20. This is the amount to deduct as a **miscellaneous itemized deduction**, subject to a 2% limitation ▶	17		

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Form 2106 (1987) Page 2

Part II Vehicle Expenses (Use either your actual expenses or the standard mileage rate.)

Section A.—General Information

		Vehicle 1	Vehicle 2
1 Enter the date vehicle was placed in service	1	/ /	/ /
2 Total mileage vehicle was used during 1987	2	miles	miles
3 Miles included on line 2 that vehicle was used for business	3	miles	miles
4 Percent of business use (divide line 3 by line 2)	4	%	%
5 Average daily round trip commuting distance	5	miles	miles
6 Miles included on line 2 that vehicle was used for commuting	6	miles	miles
7 Other personal mileage (subtract line 6 plus line 3 from line 2)	7	miles	miles

8 Do you (or your spouse) have another vehicle available for personal purposes? ☐ Yes ☐ No

9 If your employer provided you with a vehicle, is personal use during off duty hours permitted? ☐ Yes ☐ No ☐ Not applicable

10 Do you have evidence to support your deduction? ☐ Yes ☐ No. If yes, is the evidence written? ☐ Yes ☐ No

Section B.—Standard Mileage Rate (Do not use this section unless you own the vehicle.)

11 Enter the smaller of Part II, line 3 or 15,000 miles	11		miles
12 Subtract line 11 from Part II, line 3	12		miles
13 Multiply line 11 by 21¢ (.21) (see instructions for a fully depreciated vehicle)	13		
14 Multiply line 12 by 11¢ (.11)	14		
15 Add lines 13 and 14. Enter total here and on Part I, line 1	15		

Section C.—Actual Expenses

		Vehicle 1	Vehicle 2
16 Gasoline, oil, repairs, vehicle insurance, etc	16		
17 Vehicle rentals	17		
18 Value of employer-provided vehicle (applies only if included on Form W-2 at 100% fair rental value, see instructions)	18		
19 Add lines 16 through 18	19		
20 Multiply line 19 by the percentage on Part II, line 4	20		
21 Depreciation from Section D, column (f) (see instructions)	21		
22 Add lines 20 and 21. Enter total here and on Part I, line 1	22		

Section D.—Depreciation of Vehicles (Depreciation can only be claimed for a vehicle you own. If a vehicle is used 50 percent or less in a trade or business, the Section 179 deduction is not allowed and depreciation must be taken using the straight line method over 5 years. For other limitations, see instructions.)

	Cost or other basis (a)	Basis for depreciation (Business use only—see instructions) (b)	Method of figuring depreciation (c)	Depreciation deduction (d)	Section 179 expense (e)	Total column (d) + column (e) (enter in Section C, line 21) (f)
Vehicle 1						
Vehicle 2						

[FR Doc. 87-18508 Filed 8-13-87; 8:45 am]
BILLING CODE 4830-01-C

Proof of August 13, 1987

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains an extension and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Elaina Norden, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: August 10, 1987.

By direction of the Administrator.

David A. Cox,

Associate Deputy Administrator for Management.

Extension

1. Department of Veterans Benefits
2. Agreement for Paying Delinquent Loan Payments
3. VA Form 26-6392
4. This information is used in serving VA portfolio loans which are in arrears. It is an effective servicing method since it requires the obligor to express his or her plans for bringing the mortgage loan current and to sign a copy of the statement which if approved by VA, is then returned to the obligor.
5. On occasion
6. Individuals or households
7. 960 responses
8. 80 hours
9. Not applicable

Extension

1. Department of Veterans Benefits
2. Request for Determination of Eligibility and Available Loan Guaranty Entitlement
3. VA Form 26-1880
4. This information is used to determine veteran's eligibility for entitlement to loan guaranty benefits.
5. On occasion
6. Individuals or households
7. 630,000 responses
8. 157,500 hours
9. Not applicable

Reinstatement

1. Department of Veterans Benefits
2. Certification of School Attendance—REPS
3. VA Form 21-8926
4. This information is used to verify a student beneficiary's school attendance and continued eligibility for REPS benefit payments.
5. On occasion
6. Individual or households
7. 900 responses
8. 225 hours
9. Not applicable

Extension

1. Office of the General Counsel
2. Form and Place of Filing Claims
3. VA Form N/A
4. This information is needed from individuals in foreign countries to file claims against the VA for deaths, injuries and losses caused by negligence of VA employees.
5. As the occasion arises
6. Individuals or households; State or local governments; Farms; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; and Small businesses or organizations.
7. 1 responses
8. 1 hours
9. Not applicable

Extension

1. Department of Veterans Benefits
2. Computation of Loan Amount for Manufactured Home Unit
3. VA Form 26-8641a
4. This information is use to determine the maximum loan amount and propriety of fees and charges.
5. On occasion
6. Businesses or other for-profit
7. 7,000 responses
8. 1,167 hours
9. Not applicable

[FR Doc. 87-18555 Filed 8-13-87; 8:45am]

BILLING CODE 8320-01-M

VOL 52 ISS 157 AG 14 1987 UMI

Sunshine Act Meetings

Federal Register
Vol. 52, No. 157
Friday, August 14, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 52 FR 28637.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., August 18, 1987.

CHANGE IN THE MEETING: Delete from the agenda—New York Futures Exchange's Preannounced Trading Rules Submission.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, Secretary of the Commission.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 87-18667 Filed 8-12-87; 10:16 am]
BILLING CODE 6351-01-M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, August 20, 1987.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Md.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED:

Compliance Status Report

The staff will brief the Commission on various compliance matters.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301-492-6800

Sheldon D. Butts,
Deputy Secretary.

[FR Doc. 87-18702 Filed 8-12-87; 12:45 pm]
BILLING CODE 6355-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Change in Date of Agency Meetings

Pursuant to the provisions of the Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the previously announced meetings of the Board of Directors of the Federal Deposit Insurance Corporation scheduled to be held on Thursday, August 13, 1987, have been rescheduled for Wednesday, August 12, 1987, at 2:00 p.m. (open session) and 2:30 p.m. (closed session).

No earlier notice of the change in the date of the meetings was practicable.

Dated: August 10, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,
Executive Secretary.

[FR Doc. 87-18729 Filed 8-12-87; 3:49 pm]
BILLING CODE 6714-01-M

Corrections

Federal Register
Vol. 52, No. 157
Friday, August 14, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 9

Revision of Freedom of Information Act Regulations; Conforming Amendments

Correction

In proposed rule document 87-17564 beginning on page 29196 in the issue of Thursday, August 6, 1987, make the following corrections:

§ 9.3 [Corrected]

1. On page 29198, in the second column, in § 9.3, in the definition for "Commission", in the second line, "of a quorum" should read "or a quorum".

2. On the same page, in the third column, in the table of contents for Subpart A, remove the entry for § 9.23.

§ 9.13 [Corrected]

3. On page 29199, in the second column, in § 9.13, in the definition for "Educational institution", in the seventh line, "or" should read "of".

4. On the same page, in the third column, in the same section, in the definition for "Search", in the sixth line, "or" should read "of".

5. In the same section and column, in the definition for "Unusual circumstances", paragraph 3, in the fourth line, "interested" should read "interest".

§ 9.17 [Corrected]

6. On page 29200, in § 9.17(a)(7)(ii), in the first column, in the second line, "trial" was misspelled.

7. On the same page, in § 9.17(b), in the same column, in the second line, "of limiting" should read "or limiting" and in the fifth line, "it" should read "is".

§ 9.25 [Corrected]

8. On page 29201, in the third column, in § 9.25(c), in the seventh line, "§ 917(a)" should read "§ 9.17(a)".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87-AGL-14]

Proposed Alteration of Transition Area; Austin, MN

Correction

In proposed rule document 87-17464 beginning on page 28726 in the issue of Monday, August 3, 1987, make the following correction:

On page 28727, in the second column, under amendatory instruction 1., in the **Authority**, in the first line, "1248(a)" should read "1348(a)".

BILLING CODE 1505-01-D

federal register

Friday
August 14, 1987

Part II

Department of Education

34 CFR Part 607

Postsecondary Education; Strengthening Institutions Program; Final Regulations

BEST COPY AVAILABLE

DEPARTMENT OF EDUCATION

34 CFR Part 607

Strengthening Institutions Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues final regulations to govern the new Strengthening Institutions Program authorized by Part A of Title III of the Higher Education Act of 1965 (HEA). These regulations are needed to implement changes made to Title III of the HEA by the Higher Education Amendments of 1986, Pub. L. 99–498, and the Higher Education Technical Amendments Act of 1987, Pub. L. 100–50.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Dr. Caroline J. Gillin, Director, Institutional Aid Programs, U.S. Department of Education, L'Enfant Plaza, Post Office Box 23868, Washington, DC 20026. Telephone: (202) 732–3308.

SUPPLEMENTARY INFORMATION: In the preamble to the Notice of Proposed Rulemaking for the Strengthening Institutions Program that was published in the Federal Register of June 10, 1987, 52 FR 22264–22271, the Secretary included a description of the program and the major issues that the regulations addressed. That discussion will not be repeated in this preamble.

Subsequent to the publication of the NPRM, the Higher Education Technical Amendments Act of 1987, Pub. L. 100–50, revised section 312 of the HEA to provide that an institution of higher education that serves a minimum percentage of certain types of ethnic or minority students must now establish itself as being State-authorized and either accredited or preaccredited, and as offering a bachelor's degree program or being a junior college, to qualify as an eligible institution. Such an institution, however, does not have to satisfy these particular requirements for five academic years. The five-year requirement may also be waived by the Secretary for an institution located near Indian reservations or which serves a substantial population of Indians. In addition, the middle-income portion of the waiver provision in section 352(a)(2) of the HEA was eliminated by the Higher Education Technical Amendments Act of 1987.

To clarify these final regulations, the term "comparable institutions that offer similar instruction" has been included as a definition in § 607.7 and the term is used wherever necessary in the regulations.

The Secretary has noted that proposed § 607.40 merely repeated the criminal provision contained in section 358 of the HEA. Institutions and individuals are, of course, subject to the statutory provision. Accordingly, the Secretary does not see the need to repeat this provision in the regulation and has deleted it.

The Secretary plans to reconsider whether the use of 2.5 times the number of graduate students is the appropriate factor to use to discount the effect of the graduate student enrollment in calculating the educational and general (E&G) expenditures per FTE undergraduate student at institutions that do not differentiate between graduate and undergraduate E&G expenditures.

Waiver of Notice of Proposed Rulemaking

In addition to the changes made to Part 607 based on public comment to the notice of proposed rulemaking, the Secretary has amended §§ 607.2 and 607.3 to implement amendments made to the Strengthening Institutions Program statute by the Higher Education Technical Amendments Act of 1987, Pub. L. 100–50. In accordance with section 431(b)(2)(A) of the General Education Provisions Act and the Administrative Procedure Act, 5. U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, these changes do not implement substantive policy, but merely implement statutory changes contained in Pub. L. 100–50. Therefore, pursuant to 5 U.S.C. 553(b)(B), the Secretary finds that publication of proposed regulations is unnecessary and contrary to public interest.

The Secretary published a Notice of Proposed Rulemaking (NPRM) for the Strengthening Institutions Program in the Federal Register on June 10, 1987, 52 FR 22264. Interested parties were provided 30 days to submit their comments to the Secretary. A summary of the significant comments received and the Secretary's response to those comments follow.

General Comments

Comment: One commenter asked about the maximum grant award which could be requested each year for a development grant and whether matching funds were a requirement.

Response: No change was made. Each year the Secretary announces the maximum grant awards through a notice in the Federal Register. Matching funds are not required.

Comment: Three commenters stated that the regulations deviated from the law because the regulations omitted the factor of giving the needy student eligibility criterion twice the weight of the educational and general expenditure requirement which is stated in the statute.

Response: No change was made. The statute requires that each applicant meet both the needy student and average educational and general expenditure requirements separately. Therefore, the Secretary believes that the statutory provision that gives the needy student requirement twice the weight of the educational and general expenditure requirement has no practical effect.

Comment: One commenter stated that the statutory funding set-aside for two-year community colleges, and a justification for the set-aside, were omitted from the regulations.

Response: No change was made. The funding set-aside for junior or community colleges is statutory, needs no justification and is not subject to regulation. Section 360(c)(1) of the HEA states that the Secretary must provide not less than $51,400,000 to these institutions each fiscal year that the appropriation for the Strengthening Institution Program exceeds $60,530,000.

Section 607.3 What Is An Enrollment of Needy Students?

Comment: Many commenters noted that section 352(a) of the HEA states that the Secretary shall waive the requirements set forth in section 312(b)(1)(A) of the HEA.

Response: A change has been made and § 607.3(b) has been revised to reflect this statutory provision.

Comment: One commenter requested a clarification on whether all six conditions in § 607.3(b) must be met in order for an institution to receive a waiver.

Response: No change was made. An institution receives a waiver if it satisfies any one of the requirements in § 607.3(b).

Comment: The same commenter stated that § 607.3(b)(1) discriminates against public community colleges because these institutions receive support from both State and local governments. The commenter suggested the paragraph be changed to refer to

support from both State and local government.

Response: No change was made. The requirement is statutory and cannot be changed through regulations.

Comment: Several commenters stated that the collection of information for students who are from low- or middle-income families was an additional burden on institutions because that information is not routinely obtained on admission, application or course enrollment forms.

One commenter noticed an inconsistency between the notice inviting institutions to apply for designation as an eligible institution under the Strengthening Institutions Program that was published in the **Federal Register** on June 22, 1987, and the proposed regulation regarding the waiver requirement for low- and middle-income students. The commenter observed that the notice required that at least 30 percent of the students served should be students from low-income families, while the proposed regulations required at least 90 percent of the students served should be from low- and middle-income families.

Response: A change has been made. The Higher Education Technical Amendments Act of 1987 deleted the waiver provisions for institutions serving middle-income students. The institution is not required to collect data for students form low-income families unless it seeks a waiver under this statutory provision. The 30 percent low-income threshold is consistent with the Secretary's decision to determine the substantial percentage of Pell recipients under the needy student requirement as exceeding the median percent of undergraduate degree students who were enrolled on at least a half-time basis and received Pell Grants at comparable institutions that offer similar instruction. Since the median Pell Grant percentage for the base year is close to 30 percent overall, the Secretary has established 30 percent as this threshold for low-income students for the purpose of the needy student waiver option. The Secretary will reconsider this threshold when more data becomes available.

Comment: Many commenters suggested that $99 was too low a figure to use for the tuition and fee waiver provision. Another commenter indicated that the use of this figure would only benefit institutions located in California and thus discriminate against institutions located in the other states.

Response: No change was made. The intent of the tuition and fee waiver provision in the law is to extend eligibility to institutions that serve students from low-income families in cases where the low-income students enrolled at that institution do not receive Pell Grants or other Federal student financial aid. However, because the purpose of the Pell Grant Program is to provide grants to students from low-income families, few schools serving low-income students are likely to be in need of the waiver.

With regard to an institution's eligibility for fiscal year 1987 funds, the base year for determining institutional eligibility is the 1984–85 school year. In that year, if a student attended an institution that charged *no* tuition and fees, that student would be eligible to receive a Pell Grant if the student's adjusted gross family income did not exceed $19,850 and the student's family consisted of three members. If the student's family consisted of four members that student would be eligible to receive a Pell Grant if the student's adjusted gross family income did not exceed $23,950.

In the 1984–85 school year, the low-income level for a family of three was $13,680 and $16,500 for a family of four. Thus all low-income students attending institutions with *no* tuition and fees were eligible to receive Pell Grants. Accordingly, all low-income students attending institutions with tuition and fees of $99 also were eligible to receive Pell Grants. Moreover, those students were eligible to receive Pell Grants regardless of the state in which the institution was located.

Comment: One commenter asked whether the $99 was applicable to an academic year, a semester, or a quarter.

Response: A change has been made. The $99 covers tuition and fees for the academic year.

Comment: One commenter asked what the phrase "substantially increase higher education opportunities" means in the context of §§ 607.3 (b)(3) through (b)(6). In addition, the commenter asked whether an institution could merely state that it is substantially increasing or will substantially increase the educational opportunity of a specified target population.

Response: No change was made. The Secretary has not defined further the phrase "substantially increase higher education opportunities." Each applicant, therefore, in using any one of these waiver provisions set forth in §§ 607.3(b)(3) through 607.3(b)(6) must provide sufficient documentation to justify that it is "substantially increasing higher educational opportunities." An institution can not merely state that it is substantially increasing or will substantially increase the educational opportunity of a specified target population and comply with these provisions.

Comment: One commenter requested a clarification of the manner in which the Secretary counts degree students for the purpose of determining whether the institution qualified as serving needy students under § 607.3(a).

Response: A change has been made. With regard to determining whether at least 50 percent of an institution's enrollment of degree students received aid under one or more of the following four programs, Pell Grant, Supplemental Educational Opportunity Grant, College Work-Study, and Perkins Loan Program, the Secretary uses a head count of the institution's total enrollment of degree students. With regard to whether a substantial percentage of an institution's degree students received Pell Grants, the Secretary looks at the percentage of an institution's degree students who were enrolled as undergraduate students on at least a half-time basis. The Secretary uses these different procedures because only undergraduate students enrolled at least one a half-time basis are eligible for Pell Grants, while under certain of the other three programs, graduate students and less than half-time students are eligible to receive assistance.

Section 607.4 What are Low Educational and General Expenditures?

Comment: One commenter disagreed with establishing the threshold for the educational and general expenditures below the average for similar types of institutions.

Response: No change was made. This is a statutory requirement. The statute states that the average educational and general expenditures per full-time equivalent undergraduate student must be low in comparison with the average general expenditures per full-time equivalent undergraduate student of institutions that offer similar instruction.

Comment: One commenter asked whether the list of factors in § 607.4(d) is exhaustive or illustrative and questioned why the operation of high cost technology programs and high cost health programs was not included in the list.

Response: No change was made. The five factors listed in § 607.4(d) are exhaustive not illustrative. The waiver option found under § 607.4(d)(5), however, is illustrative, not exhaustive. Therefore, an applicant, using appropriate justification, may apply for a waiver claiming that high cost technology programs and high cost health programs distort its average educational and general expenditures.

Section 607.8 What Is a Comprehensive Development Plan and What Must It Contain?

Comment: One commenter asked whether an institution which is currently implementing a ten-year long-range plan can submit this plan as the comprehensive development plan required under the Strengthening Institutions Program, if the institution cross-references each objective.

Response: No change was made. Section 607.8 addresses the contents of the comprehensive development plan. Any eligible institution applying for a development grant must describe its strategy for achieving self-sufficiency. Each applicant must also provide information describing the problems of the institution and the activities to be funded and carried out with the Strengthening Institutions Program funds. The applicant must also include the strategy to be used to remedy each problem. Therefore, the institution may use its current plan if it satisfies all these requirements.

Section 607.9 What Are the Type, Duration and Limitations in the Awarding of Grants Under This Part?

Comment: One commenter asked whether a recipient of a non-competing continuation award received under the Strengthening or Special Needs Program and authorized to be funded under section 355 of the HEA could receive a grant under the Strengthening Institutions Program.

Response: No change was made. A recipient of a non-competing continuation award may not receive funds under the Strengthening Institutions Program grant to carry out activities funded under a non-competing continuation grant.

Comment: One commenter asked whether an institution that received a one to three year grant could receive another one to three year grant before its first grant expired. Another asked whether an institution could simultaneously receive more than one Strengthening Institutions Program grant.

Response: No change was made. An institution may not receive a one to three year development grant until its first one to three year grant has expired.

Under the Strengthening Institutions Program, an institution may not simultaneously receive in one fiscal year more than one individual development grant awarded under the Strengthening Institutions Program but may simultaneously receive one individual grant and one cooperative arrangement grant.

Section 607.10 What Activities May and May Not Be Carried Out Under a Grant?

Comment: One commenter asked if an activity funded under a previous grant may be funded again under a new grant.

Response: No change was made. Any developmental activity which is incorporated into an implementation plan designed to meet an objective is allowable as long as it does not duplicate any previously funded activity.

Section 607.22 What Are the Selection Criteria for Development Grants?

Comment: Many commenters objected to assigning points to the evaluation of an institution's comprehensive development plan and requested that such an evaluation be eliminated. Several commenters were concerned that since the institution's plan is reviewed and evaluated by a nationally recognized accrediting agency, it would be redundant for the Department to also review those plans. One commenter stated that the review of an institution's plan exceeds the intent of the law.

Response: No change was made. The Secretary believes that the Strengthening Institution Program statute authorizes the Secretary to evaluate the quality of an applicant's comprehensive development plan under the grant application process. The Secretary further believes that the best plans will produce the best results and that the quality of an applicant's plan should be a significant factor in awarding a grant under this part. Finally, the requirements of the comprehensive development plan for the purpose of receiving a grant under this part are not the same as the requirements for institutional accreditation. Therefore, the Secretary's review is not redundant.

Section 607.23 What Special Funding Consideration Does the Secretary Provide?

Comment: One commenter asked the following questions: How will the Secretary give priority to cooperative arrangements that are geographically and economically sound or will benefit the applicant and should not the Secretary's priority be expressed in a differential point system?

Response: No change was made. The Secretary gives priority to those cooperative arrangement applications that are determined to be geographically and economically sound or will benefit the applicant over those cooperative arrangement applications that do not meet those criteria. The Secretary does not give priority to cooperative arrangements over applications for individual development grants. The Secretary does not believe that a separate priority point system is desirable for this priority.

Comment: One commenter noted that the Secretary may award up to one point if an institution proposed to carry out activities in one or more the areas listed in § 607.23(b)(3). The commenter stated that these are the same activities that are allowable under § 607.10 and questioned whether there was a more discriminating way to give additional points.

Response: No change was made. The special consideration is intended to be used only in tie-breaking situations, and together with the additional points to be awarded to applicants with less than average endowment funds and library expenditures, will help determine the funding of one or more additional development grants if each of the next fundable applications has received the same number of points under § 607.22. The Secretary does not believe that there is a more discriminatory way to give additional points.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 607

Colleges and universities, Education, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.031—Strengthening Institutions Program)

Dated: July 31, 1987.

William J. Bennett,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations by adding a new Part 607 to read as follows:

PART 607—STRENGTHENING INSTITUTIONS PROGRAMS

Subpart A—General

Sec.

607.1 What is the Strengthening Institutions Program?
607.2 What institutions are eligible to receive a grant under the Strengthening Institutions Program?
607.3 What is an enrollment of needy students?
607.4 What are low educational and general expenditures?
607.5 How does an institution apply to be designated an eligible institution?
607.6 What regulations apply?
607.7 What definitions apply?
607.8 What is a comprehensive development plan and what must it contain?
607.9 What are the type, duration and limitations in the awarding of grants under this part?
607.10 What activities may and may not be carried out under a grant?

Subpart B—How Does an Institution Apply for a Grant?

607.11 What must be included in individual development grant applications?
607.12 What must be included in cooperative arrangement grant applications?
607.13 How many applications for a development grant may an institution submit?

Subpart C—How Does the Secretary Make an Award?

607.20 How does the Secretary evaluate an application?
607.21 What are the selection criteria for planning grants?
607.22 What are the selection criteria for development grants?
607.23 What special funding consideration does the Secretary provide?

Subpart D—What Conditions Must a Grantee Meet?

607.30 What are allowable costs and what are the limitations on allowable costs?
607.31 How does a grantee maintain its eligibility?

Authority: 20 U.S.C. 1057–1059, 1066–1069f, unless otherwise noted.

Subpart A—General

§ 607.1 What is the Strengthening Institutions Program?

The purpose of the Strengthening Institutions Program is to provide grants to eligible institutions of higher education to enable them to improve their academic quality, institutional management, and fiscal stability in order to increase their self-sufficiency, and strengthen their capacity to make a substantial contribution to the higher education resources of the Nation.

(Authority: 20 U.S.C. 1057)

§ 607.2 What institutions are eligible to receive a grant under the Strengthening Institutions Program?

(a) Except as provided in paragraphs (b), (c) and (d) of this section, an institution of higher education is eligible to receive a grant under the Strengthening Institutions Program if—

(1) It has an enrollment of needy students as described in § 607.3(a), unless the Secretary waives this requirement under § 607.3(b);

(2) It has low average educational and general expenditures per full-time equivalent undergraduate student as described in § 607.4(a), unless the Secretary waives this requirement under § 607.4(c);

(3) It is legally authorized by the State in which it is located to be a junior college or to provide an educational program for which it awards a bachelor's degree;

(4) It is accredited or preaccredited by a nationally recognized accrediting agency or association that the Secretary has determined to be a reliable authority as to the quality of education or training offered; and

(5) It has satisfied the requirements contained in paragraphs (a)(3) and (a)(4) of this section for the five academic years preceding the academic year for which it initially seeks a grant under this part.

(b) An institution of higher education is eligible to receive a grant under the Strengthening Institutions Program even if it does not satisfy the requirements of paragraph (a)(5) of this section if its student enrollment consists of at least—

(1) Twenty percent Mexican American, Puerto Rican, Cuban, or other Hispanic students, or any combination thereof;

(2) Five percent Native Hawaiian, Asian American, American Samoan, Micronesian, Guamian (Chamorro), or Northern Marianian or any combination thereof; or

(3) Sixty percent American Indian, or in the case of Alaska natives, an enrollment of at least 5 percent Alaska natives.

(c) The Secretary may waive the requirements of paragraph (a)(5) of this section in the case of an institution located on or near an Indian reservation or a substantial population of Indians, if the Secretary determines that the waiver will substantially increase higher education opportunities appropriate to the needs of American Indians.

(d) A branch campus of an institution of higher education, if the institution as a whole meets the requirements of paragraphs (a)(1) through (5) of this section, is eligible to receive a grant under the Strengthening Institutions Program even if, by itself, it does not satisfy the requirements of paragraphs (a)(3), (a)(4) and (a)(5) of this section, although the branch must meet the requirements of paragraphs (a)(1) and (a)(2) of this section.

(e) For the purpose of paragraphs (b) and (c) of this section, an institution's enrollment consists of a head count of its entire student body.

(Authority: 20 U.S.C. 1058)

§ 607.3 What is an enrollment of needy students?

(a) Except as provided in paragraph (b) of this section, for the purpose of § 607.2(a)(1), an applicant institution has an enrollment of needy students if in the base year—

(1) At least 50 percent of its degree students received student financial assistance under one or more of the following programs: Pell Grant, Supplemental Educational Opportunity Grant, College Work-Study, and Perkins Loan; or

(2) The percentage of its undergraduate degree students who were enrolled on at least a half-time basis and received Pell Grants exceeded the median percentage of undergraduate degree students who were enrolled on at least a half-time basis and received Pell Grants at comparable institutions that offer similar instruction.

(b) The Secretary waives the requirement contained in paragraph (a) of this section if the institution demonstrates that—

(1) The State provides more than 30 percent of the institution's budget and the institution charges not more than $99.00 for tuition and fees for an academic year;

(2) At least 30 percent of the students served by the institution in the base year were students from low-income families;

(3) The institution substantially increases the higher education opportunities for low-income students who are also educationally disadvantaged, underrepresented in postsecondary education, or minority students;

(4) The institution substantially increases the higher education opportunities for individuals who reside in an area that is not included in a "metropolitan statistical area" as

defined by the Office of Management and Budget and who are unserved by other postsecondary institutions;

(5) The institution is located on or within 50 miles of an Indian reservation, or a substantial population of Indians and the institution will, if granted the waiver, substantially increase higher education opportunities for American Indians; or

(6) The institution will, if granted the waiver, substantially increase the higher education opportunities for Black Americans, Hispanic Americans, Native Americans, Asian Americans or Pacific Islanders, including Native Hawaiians.

(c) For the purpose of paragraph (b) of this section, the Secretary considers "low-income" to be an amount which does not exceed 150 percent of the amount equal to the poverty level as established by the United States Bureau of the Census.

(d) Each year, the Secretary notifies prospective applicants through a notice in the Federal Register of the low-income figures.

(Authority: 20 U.S.C. 1058 and 1067)

§ 607.4 What are low educational and general expenditures?

(a)(1) Except as provided in paragraph (b) of this section, for the purpose of § 607.2(a)(2), an applicant institution's average educational and general expenditures per full-time equivalent undergraduate student in the base year must be less than the average educational and general expenditures per full-time equivalent undergraduate student of comparable institutions that offer similar instruction in that year.

(2) For the purpose of paragraph (a)(1) of this section, the Secretary determines the average E&G per FTE undergraduate student for institutions with graduate students that do not differentiate between graduate and undergraduate E&G expenditures by discounting the graduate enrollment using a factor of 2.5 times the number of graduate students.

(b) Each year, the Secretary notifies prospective applicants through a notice in the Federal Register of the average educational and general expenditures per full-time equivalent undergraduate student at comparable institutions that offer similar instruction.

(c) The Secretary may waive the requirement contained in paragraph (a) of this section, if the Secretary determines, based upon persuasive evidence provided by the institution, that—

(1) The institution's failure to satisfy the criteria in paragraph (a) of this section was due to factors which, if used in determining compliance with those criteria, distorted that determination; and

(2) The institution's designation as an eligible institution under this part is otherwise consistent with the purposes of this part.

(d) For the purpose of paragraph (c)(1) of this section, the Secretary considers that the following factors may distort an institution's educational and general expenditures per full-time equivalent undergraduate student—

(1) Low student enrollment;

(2) Location of the institution in an unusually high cost-of-living area;

(3) High energy costs;

(4) An increase in State funding that was part of a desegregation plan for higher education; or

(5) Operation of high cost professional schools such as medical or dental schools.

(Authority: 20 U.S.C. 1058 and 1067)

§ 607.5 How does an institution apply to be designated an eligible institution?

An institution shall apply to the Secretary to be designated an eligible institution under the Strengthening Institutions Program by submitting an application to the Secretary in the form, manner and time established by the Secretary. The application must contain—

(a) The information necessary for the Secretary to determine whether the institution satisfies the requirements of § 607.2, § 607.3(a) and § 607.4(a);

(b) Any waiver request under § 607.3(b) and § 607.4(c); and

(c) Information or explanations justifying any requested waiver.

(Authority: 20 U.S.C. 1058 and 1067)

§ 607.6 What regulations apply?

The following regulations apply to the Strengthening Institutions Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants); Part 75 (Direct Grant Programs), except 34 CFR 75.128(a)(2) and 75.129(a) in the case of applications under cooperative arrangements; Part 77 (Definitions That Apply to Department Regulations; and Part 78 (Education Appeal Board).

(b) The regulation in this part.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1057, 1060, 1064)

§ 607.7 What definitions apply?

(a) *Definitions in EDGAR.* The following terms that apply to the Institutional Aid Programs are defined in 34 CFR 77.1:

EDGAR
Fiscal year
Grant
Grantee
Grant period
Nonprofit
Private
Project
Project period
Public
Secretary
State

(b) The following definitions also apply to this part:

"Accredited" means the status of public recognition which a nationally recognized accrediting agency or association grants to an institution which meets certain established qualifications and educational standards.

"Activity" means an action or actions which are incorporated into an implementation plan designed to meet an objective. An activity is a subpart of a project.

"Base year" means the second fiscal year preceding the fiscal year for which an institution seeks a grant under this part.

"Branch campus" means a unit of a college or university that is geographically apart from the main campus of the college or university and independent of that main campus. The Secretary considers a unit of a college or university to be independent of the main campus if the unit—

(1) Is permanent in nature;

(2) Offers courses for credit and programs leading to an associate or bachelor's degree; and

(3) Is autonomous to the extent that it has—

(i) Its own faculty and administrative or supervisory organization; and

(ii) Its own budgetary and hiring authority.

"College Work-Study Program" means the part-time employment program authorized under Title IV–C of the HEA.

"Comparable institutions that offer similar instruction" means institutions that are being compared with an applicant institution and that fall within one of the following four categories—

(1) Public junior or community colleges;

(2) Private nonprofit junior or community colleges;

(3) Public institutions that offer an educational program for which they offer a bachelor's degree; or

(4) Private nonprofit institutions that offer an educational program for which they offer a bachelor's degree.

"Cooperative arrangement" means an arrangement to carry out allowable grant activities between an institution eligible to receive a grant under this part

and another eligible or ineligible institution of higher education, under which the resources of the cooperating institutions are combined and shared to better achieve the purposes of this part and avoid costly duplication of effort.

"Degree student" means a student who enrolls at an institution for the purpose of obtaining the degree, certificate, or other recognized educational credential offered by that institution.

"Developmental program and services" means new or improved programs and services, beyond those regularly budgeted, specifically designed to improve the self sufficiency of the school.

"Educational and general expenditures" means the total amount expended by an institution of higher education for instruction, research, public service, academic support (including library expenditures), student services, institutional support, scholarships and fellowships, operation and maintenance expenditures for the physical plant, and any mandatory transfers which the institution is required to pay by law.

"Full-time equivalent students" means the sum of the number of students enrolled full-time at an institution, plus the full-time equivalent of the number of students enrolled part time (determined on the basis of the quotient of the sum of the credit hours of all part-time students divided by 12) at such institution.

"HEA" means the Higher Education Act of 1965, as amended.

"Institution of higher education" means an educational institution defined in section 1201(a) of the HEA.

"Junior or community college" means an institution of higher education—

(1) That admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located and who have the ability to benefit from the training offered by the institution;

(2) That does not provide an educational program for which it awards a bachelor's degree (or an equivalent degree); and

(3) That—

(i) Provides an educational program of not less than 2 years that is acceptable for full credit toward such a degree, or

(ii) Offers a 2-year program in engineering, mathematics, or the physical or biological sciences, designed to prepare a student to work as a technician or at the semiprofessional level in engineering, scientific, or other technological fields requiring the understanding and application of basic engineering, scientific, or mathematical principles of knowledge.

"Nationally recognized accrediting agency or association" means an accrediting agency or association that the Secretary has recognized to accredit or preaccredit a particular category of institution in accordance with the provisions contained in 34 CFR Part 603. The Secretary periodically publishes a list of those nationally recognized accrediting agencies and associations in the Federal Register.

"Operational programs and services" means the regular, ongoing budgeted programs and services at an institution.

"Pell Grant Program" means the grant program authorized by Title IV–A–1 of the HEA.

"Perkins Loan Program", formerly called the National Direct Student Loan Program, means the loan program authorized by Title IV–E of the HEA.

"Preaccredited" means a status that a nationally recognized accrediting agency or association, recognized by the Secretary to grant that status, has accorded an unaccredited institution that is progressing toward accreditation within a reasonable period of time.

"Project" means all the funded activities under a grant.

"Self-sufficiency" means the point at which an institution is able to survive without continued funding under the Strengthening Institutions Program.

"Special Needs Program" means the program authorized by Part B of Title III of the HEA before Part B was amended by the Higher Education Amendments of 1980.

"Strengthening Program" means the program authorized by Part A of Title III of the HEA before Part A was amended by the Higher Education Amendments of 1986.

"Supplemental Education Opportunity Grant" means the grant program authorized by Title IV A–2 of the HEA.

(Authority: 20 U.S.C. 1051, 1057–1059 and 1066–1066f)

§ 607.8 What is a comprehensive development plan and what must it contain?

(a) A comprehensive development plan describes an institution's strategy for achieving growth and self-sufficiency by strengthening its—

(1) Academic quality;

(2) Institutional management; and

(3) Fiscal stability.

(b) The comprehensive development plan must include the following—

(1) The institutional mission statement, i.e. a broad statement of purpose, which identifies certain of its distinguishing characteristics, including the characteristics of the students it proposes to serve and the programs of study it proposes to offer.

(2) Assumptions concerning the institutional environment, enrollment trends and economic factors which affect the institution;

(3) Major problems or deficiencies that inhibit the institution from becoming self-sufficient;

(4) Long-range and short-range goals that will chart the growth and development of the institution and address the problems identified under paragraph (b)(3) of this section;

(5) Measurable objectives related to reaching each goal;

(6) Priorities for implementing improvements or corrective actions and for allocating resources to achieve these goals and objectives;

(7) Timeframes for achieving the goals and objectives described in paragraphs (b)(5) and (b)(6) of this section;

(8) Major resource requirements necessary to achieve the goals and objectives of the plan, including personnel, financial, equipment and facilities; and

(9) Strategies and resources for objectively evaluating the institution's progress towards, and success in, achieving its goals and objectives.

(Authority: 20 U.S.C. 1066)

§ 607.9 What are the type, duration and limitations in the awarding of grants under this part?

(a)(1) Under this part, the Secretary may award planning grants and two types of development grants, individual development grants and cooperative arrangement development grants.

(2) Planning grants may be awarded for a period not to exceed one year.

(3) Either type of development grant may be awarded for a period of one through five years.

(b)(1) An institution that receives a planning grant may not subsequently receive another planning grant but may subsequently receive a development grant after its planning grant expires.

(2) An institution that receives a development grant of up to three years may subsequently receive another development grant after its development grant expires.

(3) An institution that receives a development grant of four years may not subsequently receive another development grant for a period of eight years from the date it received the four year grant.

(4) An institution that receives a development grant of five years may not subsequently receive another development grant for a period of ten years from the date it received the five year grant.

(Authority: 20 U.S.C. 1066)

§ 607.10 What activities may and may not be carried out under a grant?

(a) *Planning grants.* Under a planning grant, a grantee shall formulate—

(1) A comprehensive development plan described in § 607.8; and

(2) An application for a development grant.

(b) *Development grants—allowable activities.* Under a development grant, except as provided in paragraph (c) of this section, a grantee shall carry out activities that implement its comprehensive development plan and hold promise for strengthening the institution. Activities that may be carried out include, but are not limited to—

(1) Faculty development;

(2) Funds and administrative management;

(3) Development and improvement of academic programs;

(4) Acquisition of equipment for use in strengthening management and academic programs;

(5) Joint use of facilities such as libraries and laboratories; and

(6) Student services.

(c) *Development grants—unallowable activities.* A grantee may not carry out the following activities under a development grant:

(1) Activities that are not included in the grantee's approved application;

(2) Activities that are inconsistent with any State plan of higher education that is applicable to the institution;

(3) Activities that are inconsistent with a State plan for desegregation of higher education that is applicable to the institution;

(4) Activities or services that relate to sectarian instruction or religious worship;

(5) Activities provided by a school or department of divinity. For the purpose of this provision, a "school or department of divinity" means an institution, or a department of an institution, whose program is specifically for the education of students to prepare them to become ministers of religion or to enter upon some other religious vocation, or to prepare them to teach theological subjects;

(6) Development or improvement of nondegree or noncredit courses other than basic skills development courses;

(7) Development or improvement of community-based or community services programs, unless the program provides academic-related experiences or academic credit toward a degree for degree students;

(8) Replacement or upgrading of standard office equipment such as furniture, file cabinets, bookcases, typewriters or word processors;

(9) Services to high school students;

(10) Instruction in the institution's standard courses as indicated in the institution's catalog;

(11) Student activities such as entertainment, cultural, or social enrichment programs, publications or social clubs or associations; and

(12) Activities which are operational in nature rather than developmental.

(Authority: 20 U.S.C. 1057 and 1069c)

Subpart B—How Does an Institution Apply for a Grant?

§ 607.11 What must be included in individual development grant applications?

In addition to the information needed by the Secretary to determine whether the institution should be awarded a grant under the funding criteria contained in Subpart C, an application for a development grant must include—

(a) The institution's comprehensive development plan;

(b) A description of the relationship of each activity for which grant funds are requested to the relevant goals and objectives of its plan; and

(c) A description of any activities that were funded under previous Strengthening or Special Needs Program grants and the institution's justification for not completing the activities under the previous grant, if grant funds are requested to continue or complete the activities;

(d) The provisions required by section 351 of the HEA which are not specified in other sections of this part. These provisions require that an institution applying for more than one activity shall—

(1) Identify those activities that would be a sound investment of Federal funds if funded separately;

(2) Identify those activities that would be a sound investment of Federal funds only if funded with the other activities; and

(3) Rank the activities in preferred funding order.

(Authority: 20 U.S.C. 1066)

(Approved by the Office of Management and Budget under control number 1840-0114)

§ 607.12 What must be included in cooperative arrangement grant applications?

(a)(1) Institutions applying for a cooperative arrangement grant shall submit only one application for that grant regardless of the number of institutions participating in the cooperative arrangement.

(2) The application must include the names of each participating institution, the role of each institution, and the rationale for each eligible participating institution's decision to request grant funds as part of a cooperative arrangement rather than as an individual grantee.

(b) If the application is for a development grant, the application must contain—

(1) Each participating institution's comprehensive development plan;

(2) The information required under § 607.11; and

(3) An explanation from each eligible participating institution of why participation in a cooperative arrangement grant rather than performance under an individual grant will better enable it to meet the goals and objectives of its comprehensive development plan at a lower cost.

(Authority: 20 U.S.C. 1066 and 1069)

(Approved by the Office of Management and Budget under control number 1840-0114)

§ 607.13 How many applications for a development grant may an institution submit?

An institution of higher education may—

(a) Submit only one application for an individual development grant; and

(b) Be part of only one cooperative arrangement application.

(Authority: 20 U.S.C. 1057-1059, 1066-1069f)

Subpart C—How Does the Secretary Make an Award?

§ 607.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the selection criteria in—

(1) Section 607.21 for a planning grant;

(2) Section 607.22 for a development grant, and;

(3) Section 607.23 with regard to special funding considerations.

(b)(1) The Secretary awards up to 100 points for the criteria in § 607.21, up to 100 points for the criteria in §607.22, up to two additional points for the criteria in § 607.23(a) and up to three additional points for the criteria in § 607.23(b).

(2) The maximum possible score for each complete criterion is in parentheses following the title of that criterion.

(c)(1) The Secretary does not fund an application for a planning grant that scores less than 50 points under § 607.21; and

(2) The Secretary does not fund an application for a development grant that—

(i) Scores less than 50 points under § 607.22;

(ii) Is submitted without a comprehensive development plan;

(iii) Is submitted with a comprehensive development plan that does not satisfy all the elements required of such a plan under § 607.8; or

(iv) In the case of an application for a cooperative arrangement grant, does not demonstrate that funding the cooperative arrangement grant will enable each eligible participant to meet the goals and objectives of its comprehensive development plan better and at a lower cost than if each eligible participant were funded individually.

(Authority: 20 U.S.C. 1057–1059, 1066–1069f)

§ 607.21 What are the selection criteria for planning grants?

The Secretary uses the following criteria to evaluate an application to determine whether the applicant will produce a good comprehensive development plan and a fundable Strengthening Institutions Program application:

(a) *Design of the planning process.* (Total: 60 points) The Secretary reviews each application to determine the quality of the planning process that the applicant will use to develop a comprehensive development plan and an application for a development grant based on the extent to which—

(1) The planning process is clearly and comprehensively described and based on sound planning practice (15 points);

(2) The president or chief executive officer, administrators and other institutional personnel, students, and governing board members systematically and consistently will be involved in the planning process (15 points);

(3) The applicant will use its own resources to help implement the project (10 points); and

(4) The planning process is likely to achieve its intended results (20 points).

(b) *Key personnel.* (Total: 20 points) The Secretary reviews each application to determine the quality of key personnel to be involved in the project based on the extent to which—

(1) The past experience and training of key personnel such as the project coordinator and persons who have key roles in the planning process are suitable to the tasks to be performed (10 points); and

(2) The time commitments of key personnel are adequate (10 points).

(c) *Project Management.* (Total: 15 points) The Secretary reviews each application to determine the quality of the plan to manage the project effectively based on the extent to which—

(1) The procedures for managing the project are likely to ensure effective and efficient project implementation (10 points); and

(2) The project coordinator has sufficient authority, including access to the president or chief executive officer, to conduct the project effectively (5 points).

(d) *Budget.* (Total: 5 points) The Secretary reviews each application to determine the extent to which the proposed project costs are necessary and reasonable.

(Authority: 20 U.S.C. 1057–1059, 1066–1069)

(Approved by the Office of Management and Budget under control number 1840–0114)

§ 607.22 What are the selection criteria for development grants?

The Secretary uses the following criteria to evaluate applications for development grants:

(a) *Quality of the applicant's comprehensive development plan (CDP)* (Total: 25 points) The extent to which the implementation of the applicant's comprehensive development plan will strengthen the applicant's academic quality, institutional management, fiscal stability and otherwise provide for institutional growth and self-sufficiency.

(b) *Quality of project objectives.* (Total: 10 points) The extent to which the objectives for each activity are—

(1) Realistic and defined in terms of measurable results (5 points); and

(2) Directly related to the problems to be solved and to the goals of the CDP (5 points).

(c) *Quality of implementation strategy.* (Total: 30 points) The extent to which an applicant's—

(1) Implementation strategy for each activity is comprehensive, based on a sound rationale, and likely to be effective (25 points); and

(2) Timetable for each activity is realistic (5 points).

(d) *Quality of key personnel.* (Total: 10 points) The extent to which—

(1) The past experience and training of key professional personnel are directly related to the stated activity purposes and objectives (7 points); and

(2) The time commitment of key personnel is realistic (3 points).

(e) *Quality of project management plan.* (Total: 10 points) The extent to which—

(1) Procedures for managing the project are likely to ensure efficient and effective project implementation (5 points); and

(2) The project coordinator and activity directors have sufficient authority to conduct the project effectively including access to the president or chief executive officer. (5 points).

(f) *Quality of evaluation plan.* (Total: 5 points) The extent to which the evaluation plan—

(1) Includes the information in § 607.8(b)(9); and

(2) Is likely to produce a valid assessment of the implementation strategy and quantifiable evidence of the attainment of objectives for each activity.

(g) *Budget.* (Total: 10 points) The extent to which the proposed costs are necessary and reasonable in relation to the project objectives and scope.

(Authority: 20 U.S.C. 1057–1059, 1066–1069f)

(Approved by the Office of Management and Budget under control number 1840–0114)

§ 607.23 What special funding consideration does the Secretary provide?

(a) If funds are available to fund only one additional planning grant and each of the next fundable applications has received the same number of points under § 607.21, the Secretary awards additional points, up to a maximum of two points, to any of those applicants that—

(1) Has an endowment fund of which the current market value, per full-time equivalent enrolled student, is less than the average current market value of the endowment funds, per full-time equivalent enrolled student, at similar type institutions; (one point) or

(2) Has expenditures for library materials per full-time equivalent enrolled student which is less than the average expenditure for library materials per full-time equivalent enrolled student at similar type institutions. (one point)

(b) If funds are available to fund only one additional development grant and each of the next fundable applications has received the same number of points under § 607.22, the Secretary will award additional points, up to a maximum of three points, to any of those applicants that—

(1) Has an endowment fund of which the current market value, per full-time equivalent enrolled student, is less than the average current market value of the endowment funds, per full-time equivalent enrolled student, at comparable institutions that offer similar instruction; (one point)

(2) Has expenditures for library materials per full-time equivalent enrolled student which is less than the average expenditure for library materials per full-time equivalent enrolled student at comparable institutions that offer similar instruction (one point); or

(3) Propose to carry out one or more of the following activities—

(i) Faculty development;
(ii) Funds and administrative management;
(iii) Development and improvement of academic programs;
(iv) Acquisition of equipment for use in strengthening management and academic programs;
(v) Joint use of facilities; and
(vi) Student services. (one point)

(c) Among applications submitted to carry out cooperative arrangement grants, the Secretary gives priority to those applications where the cooperative arrangement is geographically and economically sound or will benefit the applicant.

(d) As used in this section, an endowment fund does not include any fund established or supported under 34 CFR Part 628.

(e) Each year, the Secretary provides prospective applicants with the average expenditure of endowment funds and library materials per full-time equivalent student.

(Authority: 20 U.S.C. 1057 and 1069)

Subpart D—What Conditions Must a Grantee Meet?

§ 607.30 What are allowable costs and what are the limitations on allowable costs?

(a) *Allowable costs.* Except as provided in paragraphs (b) and (c) of this section, a grantee may expend grant funds for activities that are related to carrying out the allowable activities included in its approved application.

(b) *Supplement and not supplant.* Grant funds shall be used so that they supplement and, to the extent practical, increase the funds that would otherwise be available for the activities to be carried out under the grant and in no case supplant those funds.

(c) *Limitations on allowable costs.* A grantee may not use an indirect cost rate to determine allowable costs under its grant.

(Authority: 20 U.S.C. 1057–1059 and 1066)

§ 607.31 How does a grantee maintain its eligibility?

(a) A grantee must maintain its eligibility under the requirements contained in § 607.2, other than § 607.2(a)(1) and § 607.2(a)(2), for the duration of the grant period.

(b) An institution that receives a grant for more than one year shall annually submit to the Secretary an assurance that it continues to meet the eligibility requirements described in paragraph (a) of this section.

(Authority: 20 U.S.C. 1057–1059, 1066–1069f)

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Part III

Department of Education

34 CFR Parts 608 and 609

Strengthening Historically Black Colleges and Universities Program and Strengthening Historically Black Graduate Institutions Program; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Parts 608 and 609

Strengthening Historically Black Colleges and Universities Program and Strengthening Historically Black Graduate Institutions Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues final regulations to govern the Strengthening Historically Black Colleges and Universities (HBCU) Program and the Strengthening Historically Black Graduate Institutions Program. The regulations are needed to implement these two new programs, each of which is authorized under Part B of Title III of the Higher Education Act of 1965 (HEA), as amended by the Higher Education Amendments of 1986, Pub. L. 99–498, by the Omnibus Budget Reconciliation Act of 1986, Pub. L. 99–509, and by the Higher Education Technical Amendments Act of 1987, Pub. L. 100–50.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Dr. Caroline J. Gillin, Director, Institutional Aid Programs, U.S. Department of Education, L'Enfant Plaza, Post Office Box 23668, Washington, DC 23668. Telephone: (202) 732–3308.

SUPPLEMENTARY INFORMATION:

Strengthening Historically Black Colleges and Universities (HBCUs) Program

Under this program, the Secretary awards grants to historically Black colleges and universities to assist these institutions in establishing and strengthening their physical plants, academic resources and student services so that they may continue to participate in fulfilling the goals of quality of educational opportunity. Grants are awarded based on a statutory formula which is set forth in § 608.31.

In order to receive a grant under section 322 of the HEA, under the HBCU Program, an institution must be accredited or preaccredited and it must be either a junior or community college or an institution which provides an educational program for which it awards a bachelor's degree. In addition, the institution must qualify as a historically Black college or university that was established before 1964 and has a principal mission that was, and is, the education of Black Americans. In interpreting section 322(2) of the HEA to determine whether an institution qualifies as a historically Black college or university, the Secretary relied heavily on the intent of the Congress as expressed in the legislative history. A detailed discussion, with information from congressional reports, was published in the notice of proposed rulemaking in the Federal Register of June 10, 1987, 52 FR 22274–22275.

As part of the grant award process, the Secretary will accept applications for grants under the HBCU Program from institutions that satisfy all the eligibility requirements except the requirement dealing with accreditation or pre-accreditation status. The Secretary will notify these institutions of the date by which the appropriate accrediting association must formally accord the accredited or pre-accredited status in order for the institutions to receive a grants under the HBCU Program. If accredited or pre-accredited status is formally given an institution by that date, the institution will receive a grant. If that status is not formally given to the institution by that date, the institution will not receive a grant.

Strengthening Historically Black Graduate Institutions Program

Under the Strengthening Historically Black Graduate Institutions Program, the Secretary may award grants to Morehouse School of Medicine, Meharry Medical School, Charles R. Drew Postgraduate Medical School, Atlanta University, and Tuskegee Institute School of Veterinary Medicine to assist these institutions in establishing and strengthening their physical plants, development offices, endowment funds, academic resources and student services so that they may continue to participate in fulfilling the goal of equality of educational opportunity in graduate education.

Provisions Common to Both Programs

Under each program, and in contrast to the Strengthening Institutions Program authorized under Part A of Title III of the HEA as well as the Strengthening Institutions and Special Needs Programs previously authorized under Title III of the HEA, a grantee may use grant funds to carry out operational as well as developmental activities. However, a grantee may only use grant funds to supplement and in no case supplant funds that would otherwise be made available by the institution for grant activities.

The Secretary published a Notice of Proposed Rulemaking (NPRM) for the Strengthening Historically Black Colleges and Universities Program and the Strengthening Historically Black Graduate Institutions Program in the Federal Register on June 10, 1987, 52 FR 22274. Interested parties were provided 30 days to submit their comments to the Secretary. A summary of the significant comments received and the Secretary's response to those comments as well as changes made under the Higher Education Technical Amendments Act of 1987, Pub. L. 100–50, are included below.

Waiver of Notice of Proposed Rulemaking

In addition to the changes made to Part 608 and Part 609 based on public comment to the notice of proposed rulemaking, the Secretary has amended § 609.30 to implement a new statutory provision added by the Higher Education Technical Amendments Act of 1987, Pub. L. 100–50. In accordance with section 431(b)(2)(A) of the General Education Provisions Act and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, this change does not implement substantive policy, but merely implements a statutory change contained in Pub. L. 100–50. Therefore, the Secretary has determined that publication of proposed regulations is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B).

Revisions to the Notice of Proposed Rulemaking

Changes made as a result of the Higher Education Technical Amendments Act of 1987, Pub. L. 100–50

The Higher Education Technical Amendments Act of 1987, Pub. L. 100–50, amended section 326(a)(2) of the HEA by directing the Secretary to award Morehouse School of Medicine a grant of at least $3,000,000 provided that it satisfies the cost-sharing requirement also set forth in section 326(a)(2). Accordingly, the Secretary has revised § 609.30(a) and § 609.30(c) and added § 609.30(d) to reflect this statutory change.

Changes made to the list of institutions qualifying as a "historically Black college or university"

After the proposed regulations were published, many institutions submitted documents to the Secretary seeking to have the Secretary designate them as "historically Black colleges or

universities" under the statutory definition of that term. After evaluating the documentation submitted by these institutions, the Secretary has determined that several of the institutions qualify as a "historically Black college or university" and has added those institutions to the list of qualifying institutions set out in § 608.2(b). These institutions include: Carver State Technical College, Fredd Technical College, J. F. Drake Technical College, Trenholm State Technical College, Alabama; Lewis College of Business, Michigan; Harris-Stowe State College, Missouri; Denmark Technical College, South Carolina; and Saint Philip's College, Texas.

Comments and Responses

The following is a summary of the public comments received on the proposed regulations and the Secretary's response to those comments:

General Comments

Comment: One commenter questioned whether the comprehensive development plan should be evaluated under the Historically Black Colleges and Universities Program.

Response: No change was made. Under the statute governing the HBCU Program, section 325 of the HEA, such a review is not required and the Secretary does not believe that such a review is necessary.

Comment: The same commenter asked for a clarification of whether historically Black colleges and universities can apply for simultaneous grants under the Strengthening Institutions Program and the Historically Black Colleges and Universities Program.

Response: No change was made. The statute does not prohibit an historically Black college or university from applying under the Strengthening Institutions Program if the institution meets the applicable eligibility requirements.

Comment: One commenter stated that section 358 of the statute was explicit regarding penalties for embezzlement, willful misapplication, theft and fraud. The commenter noted that this section was included in the regulations for the Strengthening Institutions Program and asked whether it should be included in the HBCU Program regulations.

Response: No change was made. Since the provision is contained in the statute, the Secretary does not believe it is useful to merely repeat it in this regulation or in Part 609. In addition, the Secretary is removing it from the Strengthening Institutions Program regulation, 34 CFR Part 607.

Section 608.2 What institutions are eligible to receive a grant under the HBCU Program?

Comment: One commenter requested a waiver of the accreditation requirement in order to be considered an eligible institution.

Response: No change was made. The definition of an eligible institution is statutory and requires all institutions to be accredited or preaccredited.

Section 608.4 What definitions apply?

Comment: One commenter asked whether the term "fiscal year" was its fiscal year (July 1 through June 30) or the government fiscal year (October 1 through September 30).

Response: No change was made. Under 34 CFR 77.1(c), the fiscal year is the government fiscal year.

Comment: Several commenters suggested changes in the definitions of the terms "graduate student," "junior or community college" and "school year."

Response: No change was made. These definitions are statutory and cannot be changed by regulation.

Comment: Two commenters asked for a clarification of the accreditation and pre-accreditation eligibility requirement. The commenters stated that the requirement as stated in the regulations in unduly narrow.

Response: No change was made. The statutory definition of a Part B institution requires that the institution be accredited by a nationally recognized accrediting agency or association (accredited) or be determined by a nationally recognized accrediting agency or association to be making reasonable progress toward accreditation (preaccredited) to receive funds under this part.

Section 608.10 What activities may be carried out under a grant?

Comment: Many commenters requested a clarification of allowable activities. Most questioned whether improving funds management or institutional management, assisting in the establishment or maintenance of an institution's endowment, fundraising capabilities, and improvement of a development office to strengthen and increase contributions from alumni are allowable.

Response: No change was made. The statute does not authorize funds to be used on these activities under this part.

Comment: Three commenters wanted a clarification on whether improving academic programs was allowable under this part.

Response: No change has been made. The regulations allow grant funds to be used for the improvement of academic instruction and programs.

Comment: Another commenter requested that grant funds be used for construction, renovation, and improvement of non-academic facilities.

Response: No change is made. The statute does not authorize the use of grant funds for those purposes.

Comment: One commenter asked whether a grantee may use funds it received under Part 608 to carry out allowable activities in its graduate program.

Response: No change was made. A grantee may use funds it received under Part 608 to carry out allowable activities in its graduate program.

Section 608.10 What activities may be carried out under a grant?

Comment: One commenter asked how the Secretary judges the effectiveness of the proposed activities under § 608.10.

Response: No change was made. The Secretary does not evaluate the effectiveness of an applicant's proposed activities in a formula grant program such as the HBCU Program.

Section 608.30 What is the procedure for approving and disapproving grant applications?

Comment: One commenter recommended that since the amount of a grant award is based on the number of students entering graduate school, a separate formula should be established for junior or community colleges because the formula as stated discriminates against these institutions.

Response: No change is made. The formula is statutory and cannot be changed by regulations.

Section 608.31 How does the Secretary determine the amount of a grant?

Comment: Several commenters noted that a part of the formula was not printed.

Response: A change was made. The printing error has been corrected.

Comment: One commenter requested a clarification regarding the formula for calculating grant funds and the $350,000 minimum award provision.

Response: No change was made. Under § 608.31, grant awards are calculated as follows: The Secretary first applies the statutory formula. If an institution under the formula would receive less than $350,000, its grant is increased to $350,000. Funds for that increase are made available by ratably reducing grant awards exceeding the $350,000 minimum under the formula.

Section 608.40 What are allowable costs and what are the limitations on allowable costs?

Comment: Several commenters questioned the statutory basis in section 351(b)(2) of the HEA for applying the supplement and no supplant provision to the HBCU Program.

Response: No change is made. Section 351(b)(2) of the HEA by its very terms makes it applicable to the HBCU Program. That section provides in pertinent part that "Federal funds made available under this title for any fiscal year will be used to supplement and, to the extent practical, increase the funds that would otherwise be made available for the purposes of section 322, and in no case supplant those funds." Section 323 of the HEA lists the activities that may be carried out under this part.

Section 608.41 What are the audit and repayment requirements?

Comment: One commenter asked that since a project must be audited every two years, could the expense of such an audit be paid from grant funds.

Response: No change is necessary. The audit requirements are an administrative responsibility of the institution. Grant funds may not be used to pay for the cost of an audit.

Executive Order 12291

These final regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Assessment of Educational Impact

In the Notice of Proposed Rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Secretary has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Parts 608 and 609

College and universities, Education, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.031B—Strengthening Historically Black Colleges and Universities Program)

Dated: July 29, 1987.

William J. Bennett,

Secretary of Education.

The Secretary of Education amends Title 34 of the Code of Federal Regulations by adding new Parts 608 and 609 to read as follows:

PART 608—STRENGTHENING HISTORICALLY BLACK COLLEGES AND UNIVERSITIES PROGRAM

Subpart A—General

Sec.

608.1 What is the Strengthening Historically Black Colleges and Universities (HBCU) Program?
608.2 What institutions are eligible to receive a grant under the HBCU Program?
608.3 What regulations apply?
608.4 What definitions apply?

Subpart B—What Kind of Projects Does the Secretary Fund?

608.10 What activities may be carried out under a grant?
608.11 What is the duration of a grant?

Subpart C—How Does an Eligible Institution Apply for a Grant?

608.20 What are the application requirements for a grant under this part?

Subpart D—How Does the Secretary Make a Grant?

608.30 What is the procedure for approving and disapproving grant applications?
608.31 How does the Secretary determine the amount of a grant?

Subpart E—What Conditions Must a Grantee Meet?

608.40 What are allowable costs and what are the limitations on allowable costs?
608.41 What are the audit and repayment requirements?
608.42 Under what conditions does the Secretary terminate a grant?

Authority: 20 U.S.C. 1060 through 1063a, 1063c and 1066c, unless otherwise noted.

Subpart A—General

§ 608.1 What is the Strengthening Historically Black Colleges and Universities (HBCU) Program?

The Strengthening Historically Black Colleges and Universities Program, hereafter called the HBCU Program, provides grants to Historically Black Colleges and Universities (HBCUs) to assist these institutions in establishing and strengthening their physical plants, academic resources and student services so that they may continue to participate in fulfilling the goal of equality of educational opportunity.

(Authority: 20 U.S.C. 1060)

§ 608.2 What institutions are Eligible To Receive a Grant Under the HBCU Program?

(a) To be eligible to receive a grant under this part, an institution of higher education must—

(1) Be a historically black college or university;

(2) Have been established before 1964;

(3) Have a principal mission that was, and is, the education of Black Americans; and

(4) Be, and have been for five academic years preceding the academic year for which it seeks a grant under this part—

(i) Legally authorized by the State in which it is located to be a junior or community college or to provide an educational program for which it awards a bachelor's degree; and

(ii) Accredited or preaccredited by a nationally recognized accrediting agency or association that the Secretary has determined to be a reliable authority as to the quality of education or training offered.

(b) The Secretary has determined that the following institutions satisfy the requirements contained in paragraphs (a)(1) through (a)(3) of this section.

Name	
Alabama	
Alabama A & M University	Huntsville.
Alabama State University	Montgomery.
Carver State Technical College	Mobile.
Concordia College	Selma.
Fredd State Technical College	Tuscaloosa.
J.F. Drake State Technical College	Huntsville.
S.D. Bishop State Junior College	Mobile.
Lawson State College	Birmingham.
Miles College	Birmingham.
Oakwood College	Huntsville.
Selma University	Selma.
Stillman College	Tuscaloosa.
Talladega University	Talladega.
Trenholm State Technical College	Montgomery.
Tuskegee University	Tuskegee.
Arkansas	
Arkansas Baptist College	Little Rock.
Philander Smith College	Little Rock.
Shorter College	Little Rock.
University of Arkansas at Pine Bluff	Pine Bluff.
Delaware	
Delaware State College	Dover.
District of Columbia	
Howard University	
University of the District of Columbia	
Florida	
Bethune Cookman College	Daytona Beach.
Edward Waters College	Jacksonville.
Florida A & M University	Tallahassee.
Florida Memorial College	Miami.
Georgia	
Albany State College	Albany.
Atlanta University	Atlanta.
Clark College	Atlanta.
Fort Valley State College	Fort Valley.
Interdenominational Theological Center.	Atlanta.
Morehouse College	Atlanta.
Morris Brown College	Atlanta.
Paine College	Augusta.

Savannah State College	Savannah.
Spelman College	Atlanta.

Kentucky

Kentucky State University	Frankfort.

Louisiana

Dillard University	New Orleans.
Grambling State University	Grambling.
Southern University A & M College	Baton Rouge.
Southern University at New Orleans	New Orleans.
Xavier University of Louisiana	New Orleans.

Maryland

Bowie State College	Bowie.
Coppin State College	Baltimore.
Morgan State University	Baltimore.
University of Maryland-Eastern Shore	Princess Anne.

Michigan

Lewis College of Business	Detroit.

Mississippi

Alcorn State University	Lorman.
Coahoma Junior College	Clarksdale.
Jackson State University	Jackson.
Mary Holmes College	West Point.
Mississippi Valley State University	Itta Bena.
Prentiss Normal and Industrial Institute.	Prentiss.
Rust College	Holly Springs.
Tougaloo College	Tougaloo.
Hinds Junior College (Utica Jr Coll)	Raymond.

Missouri

Lincoln University	Jefferson City.
Harris-Stowe State College	St. Louis.

North Carolina

Barber-Scotia College	Concord.
Bennett College	Greensboro.
Elizabeth City State University	Elizabeth City.
Fayetteville State University	Fayetteville.
Johnson C. Smith University	Charlotte.
Livingstone College	Salisbury.
North Carolina A & T State University.	Greensboro.
North Carolina Central University	Durham.
Saint Augustine's College	Raleigh.
Shaw University	Raleigh.
Winston-Salem State University	Winston Salem.

Ohio

Central State University	Wilberforce.
Wilberforce University	Wilberforce.

Oklahoma

Langston University	Langston.

Pennsylvania

Cheyney State University	Cheyney.
Lincoln University	Lincoln.

South Carolina

Allen University	Columbia.
Benedict College	Columbia.
Claflin College	Orangeburg.
Clinton Junior College	Rock Hill.
Denmark Technical College	Denmark.
Morris College	Sumter.
South Carolina State College	Orangeburg.
Voorhees College	Denmark.

Tennessee

Fisk University	Nashville.
Knoxville College	Knoxville.
Lane College	Jackson.
LeMoyne-Owen College	Memphis.
Meharry Medical College	Nashville.
Morristown College	Morristown.
Tennessee State University	Nashville.

Texas

Bishop College	Dallas.
Huston-Tillotson College	Austin.
Jarvis Christian College	Hawkins.
Paul Quinn College	Waco.
Prairie View A & M University	Prairie View.
Saint Philip's College	San Antonio.
Southwestern Christian College	Terrell.
Texas College	Tyler.
Texas Southern University	Houston.
Wiley College	Marshall.

U.S. Virgin Islands

College of the Virgin Islands	St. Thomas.

Virginia

Hampton University	Hampton.
Norfolk State University	Norfolk.
Saint Paul's College	Lawrenceville.
Virginia State University	Petersburg.
Virginia Union University	Richmond.

West Virginia

Bluefield State College	Bluefield.
West Virginia State College	Institute.

(c) If an institution has merged with another institution, and, as a result of the merger, would not otherwise qualify to receive a grant under this part, that institution may nevertheless qualify to receive a grant under this part if—

(1) The institution would have qualified to receive a grant before the merger; and

(2) The institution was eligible to receive a grant under the Special Needs Program in any fiscal year prior to fiscal year 1986.

(d) For the purpose of paragraph (a)(4)(ii) of this section, the Secretary publishes a list in the **Federal Register** of the nationally recognized accrediting agencies and associations that he has determined to be a reliable authority as to the quality of education or training offered.

(e) Notwithstanding any other provision of this section, for each fiscal year—

(1) The University of the District of Columbia is eligible to receive a grant under this part only if the amount of the grant it is scheduled to receive under § 608.31 exceeds the amount it is scheduled to receive in the same fiscal year under the District of Columbia Self-Government and Governmental Reorganization Act; and

(2) Howard University is eligible to receive a grant under this part only if the amount of the grant it is scheduled to receive under § 608.31 exceeds the amount it is scheduled to receive in the same fiscal year under the Act of March 2, 1867, 20 U.S.C. 123.

(Authority: 20 U.S.C. 1061 and 1063(f); House Report 99–861, 99th Cong., 2d Sess. p. 367, September 22, 1986; Senate Report 99–296, 99th Cong., 2d Sess. p. 23, May 12, 1986; Cong. Rec. of June 3, 1986, pp. 6588–6589)

§ 608.3 What regulations apply?

The following regulations apply to this part:

(a) The Department of Education General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants); the following sections in 34 CFR Part 75 (Direct Grant Programs): §§ 75.1–75.104, 75.125–75.129, 75.190–75.192, 75.500, 75.524–75.534, 75.580–75.903; 34 CFR Part 77 (Definitions That Apply to Department Regulations); and 34 CFR Part 78 (Education Appeal Board).

(b) The regulations in this part.

(Authority: 20 U.S.C. 1060–1063a, 1063c)

§ 608.4 What definitions apply?

The following definitions apply to this part:

(a) *Definitions in EDGAR.* The folowing terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget
EDGAR
Equipment
Fiscal year
Grant period
Private
Project
Project period
Public
Secretary

(b) The following definitions also apply to this part:

"Accredited" means the status of public recognition which a nationally recognized accrediting agency or association grants to an institution which meets certain established qualifications and educational standards.

"Graduate" means a student who has attended an institution for at least three semesters and fulfilled academic requirements for undergraduate studies in not more than five consecutive school years.

"Junior or community college" means an institution of higher education—

(1) That admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located and who have the ability to benefit from the training offered by the institution;

(2) That does not provide an educational program for which it awards a bachelor's degree or an equivalent degree; and

(3) That provides an educational program of not less than 2 years that is acceptable for full credit toward such a degree; or offers a 2-year program in

engineering, mathematics, or the physical or biological sciences, designed to prepare a student to work as a technician or at the semiprofessional level in engineering, scientific, or other technological fields requiring the understanding and application of basic engineering, scientific, or mathematical principles of knowledge.

"Pell Grant" means the grant program authorized by Title IV–A–1 of the Higher Education Act of 1965, as amended.

"Preaccredited" means a status, also called candidacy status, that a nationally recognized accrediting agency or association, recognized by the Secretary to grant that status, has accorded an unaccredited institution that is making reasonable progress toward accreditation.

"School year" means the period of time from July 1 of one calendar year through June 30 of the subsequent calendar year. (A "school year" is equivalent to an "award year" under the Pell Grant Program.)

(Authority: 20 U.S.C. 1060–1063)

Subpart B—What Kind of Projects Does the Secretary Fund?

§ 608.10 What activities may be carried out under a grant?

(a) *Allowable activities.* Except as provided in paragraph (b) of this section, a grantee may carry out the following activities under this part—

(1) Purchase, rental, or lease of scientific or laboratory equipment for educational purposes, including instructional or research purposes;

(2) Construction, maintenance, renovation, and improvement in classroom, library, laboratory, and other instructional facilities;

(3) Support of faculty exchanges and faculty fellowships to assist these faculty members in attaining advanced degrees in their fields of instruction;

(4) Academic instruction in disciplines in which Black Americans are underrepresented;

(5) Purchase of library books, periodicals, microfilm, and other educational materials; and

(6) Tutoring, counseling, and student service programs designed to improve academic success.

(b) *Unallowable activities.* A grantee may not carry out the following activities under this part—

(1) Activities that are not included in the grantee's approved application;

(2) Activities that are inconsistent with any State plan of higher education that is applicable to the institution;

(3) Activities that are inconsistent with a State plan for desegregation of higher education that is applicable to the institution;

(4) Activities or services that relate to sectarian instruction or religious worship; and

(5) Activities provided by a school or department of divinity. For the purpose of this section, a "school or department of divinity" means an institution, or a department of an institution, whose program is specifically for the education of students to prepare them to become ministers of religion or to enter upon some other religious vocation, or to prepare them to teach theological subjects.

(Authority: 20 U.S.C. 1062, 1063a and 1066c)

§ 608.11 What is the duration of a grant?

The Secretary may award a grant under this part for a period of up to five academic years.

(Authority: 20 U.S.C. 1063b(b))

Subpart C—How Does an Eligible Institution Apply for a Grant?

§ 608.20 What are the application requirements for a grant under this part?

In order to receive a grant under this part, an institution must submit an application to the Secretary at such time and in such manner as the Secretary may prescribe. The application must contain—

(a) A description of the activities to be carried out with grant funds;

(b) A description of how the grant funds will be used so that they will supplement and, to the extent practical, increase the funds that would otherwise be made available for the activities to be carried out under the grant and in no case supplant those funds;

(c) An assurance that the institution will provide the Secretary with an annual report on the activities carried out under the grant;

(d) An assurance that the institution will provide for, and submit to the Secretary, the compliance and financial audit described in § 608.41;

(e) An assurance that the proposed activities in the application are in accordance with any State plan that is applicable to the institution;

(f) The number of graduates of the applicant institution during the school year immediately preceding the fiscal year for which grant funds are requested; and

(g) The percentage of graduates of the applicant institution who are in attendance at a graduate or professional school in a degree program in a discipline in which Blacks are underrepresented.

(Authority: 20 U.S.C. 1063, 1063a and 1066(b)(2))

(Approved by the Office of Management and Budget under control number 1840–0112)

Subpart D—How Does the Secretary Make a Grant?

§ 608.30 What is the procedure for approving and disapproving grant applications?

The Secretary approves any application which satisfies the requirements of § 608.20 and does not disapprove any application, or any modification of an application, without affording the applicant reasonable notice and opportunity for a hearing.

(Authority: 20 U.S.C. 1063a)

§ 608.31 How does the Secretary determine the amount of a grant?

(a) Except as provided in paragraph (b) of this section, for each fiscal year, the Secretary determines the amount of a grant under this part by—

(1) Multiplying fifty percent of the amount appropriated for the HBCU Program by the following fraction—

$$\frac{\text{Number of Pell Grant recipients at the applicant institution during the school year immediately preceding that fiscal year;}}{\text{Number of Pell Grant recipients at all applicant institutions during the school year immediately preceding that fiscal year;}}$$

(2) Multiplying twenty-five percent of the amount appropriated for the HBCU Program by the following fraction—

$$\frac{\text{Number of graduates of the applicant institution during the school year immediately preceding that fiscal year;}}{\text{Number of graduates of the applicant institution during the school year immediately preceding that fiscal year.}}$$

(3) Multiplying twenty-five percent of the amount appropriated for the HBCU Program by the following fraction

$$\frac{\text{The percentage of graduates of the applicant institution who are in attendance at a graduate or professional school in a degree program in a discipline in which Blacks are underrepresented.}}{\text{The sum of the percentages of those graduates of all applicant institutions; and;}}$$

(4) Adding the amounts obtained in paragraphs (a)(1), (a)(2), and (a)(3) of this section.

(b) For the purpose of paragraph (a)(3) (of this section—

(1) The percentage of graduates of an applicant institution who are in attendance at a graduate or professional school in disciplines in which Blacks are underrepresented is measured by the following fraction:

$$\frac{\text{The number of graduates of an applicant institution who are in attendance at a graduate or professional school in disciplines in which Blacks are underrepresented}}{\text{The number of graduates in the graduating classes of the graduates included in the numerator;}}$$

(2) The Secretary considers that Blacks are underrepresented in a professional or academic discipline if the percentage of Blacks in that discipline is less than the percentage of Blacks in the general population of the United States; and

(3) The Secretary, after consultation with the Commissioner of the Bureau of Labor Statistics, through a notice in the **Federal Register**, notifies prospective applicants of the disciplines in which Blacks are underrepresented.

(c) Notwithstanding the formula in paragraph (a) of this section—

(1) For each fiscal year, each eligible institution with an approved application must receive at least $350,000; and

(2) If the amount appropriated for a fiscal year for the HBCU Program is insufficient to provide $350,000 to each eligible institution with an approved application, each grant is ratably reduced. If additional funds become available for the HBCU Program during a fiscal year, each grant is increased on the same basis as it was decreased until the grant amount reaches $350,000.

(d) The amount of any grant that the Secretary determines will not be required by a grantee for the period for which the grant was made is available for reallotment by the Secretary during that period to other eligible institutions under the formula set forth in paragraph (a) of this section.

(Authority: 20 U.S.C. 1063)

Subpart E—What Conditions Must a Grantee Meet?

§ 608.40 What are allowable costs and what are the limitations on allowable costs?

(a) *Allowable costs.* Except as provided in paragraph (b) of this section, a grantee may expend grant funds for activities that are related to carrying out the allowable activities included in its approved application.

(b) *Supplement and not supplant.* Grant funds shall be used so that they supplement, and to the extent practical, increase the funds that would otherwise be available for the activities to be carried out under the grant, and in no case supplant those funds.

(c) *Limitations on allowable costs.* A grantee may not—

(1) Spend more than fifty percent of its grant award in each fiscal year for costs relating to constructing or maintaining a classroom, library, laboratory, or other instructional facility; or

(2) Use an indirect cost rate to determine allowable costs under its grant.

(Authority: 20 U.S.C. 1062)

§ 608.41 What are the audit and repayment requirements?

(a)(1) A grantee shall provide for the conduct of a compliance and financial audit of any funds it receives under this part of a qualified, independent organization or person in accordance with the *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions*, 1981 revision, established by the Comptroller General of the United States.

(2) The grantee shall have an audit conducted at least once every two years, covering the period since the previous audit, and the grantee shall submit the audit to the Secretary.

(3) If a grantee is audited under Chapter 75 of Title 31 of the United States Code, the Secretary considers that audit to satisfy the requirements of paragraph (a)(1) of this section.

(b) An institution awarded a grant under this part must submit to the Education Department Inspector General three copies of the audit required in paragraph (a) of this section within 6 months after completion of the audit.

(c) Any individual or firm conducting an audit described in § 626.42(a) shall give the Department of Education's Inspector General access to records or other documents necessary to review the results of the audit.

(d) A grantee shall repay to the Treasury of the United States any grant funds it received that it did not expend or use to carry out the allowable activities included in its approved application within ten years following the date of the initial grant it received under this part.

(Authority: 20 U.S.C. 1063a and 1063c).

§ 608.42 Under what conditions does the Secretary terminate a grant?

If an institution loses its accreditation status, or its State authority, the Secretary terminates any existing grant that was made under this part.

(Authority: 20 U.S.C. 1063a)

PART 609—STRENGTHENING HISTORICALLY BLACK GRADUATE INSTITUTIONS PROGRAM

Subpart A—General

Sec.

609.1 What is the Strengthening Historically Black Graduate Institutions Program?
609.2 What institutions are eligible to receive a grant under this Part?
609.3 What regulations apply?
609.4 What definitions apply?

Subpart B—What Kind of Project Does the Secretary Fund?

609.10 What activities may be carried out under a grant?
609.11 What is the duration of a grant?

Subpart C—How Does an Eligible Institution Apply for a Grant?

609.20 What are the application requirements for a grant under this part?

Subpart D—How Does the Secretary Make a Grant?

609.30 How does the Secretary determine the amount of a grant?

Subpart E—What Conditions Must a Grantee Meet?

609.40 What are the matching requirements?
609.41 What are allowable costs and what are the limitations on allowable costs?
609.42 What are the audit and repayment requirements?

Authority: 20 U.S.C. 1063b and 1069c, unless otherwise noted.

Subpart A—General

§ 609.1 What is the Strengthening Historically Black Graduate Institutions Program?

The Strengthening Historically Black Graduate Institutions Program provides grants to the institutions listed in § 609.2 to assist these institutions in establishing and strengthening their physical plants, development offices, endowment funds, academic resources and student services so that they may continue to participate in fulfilling the goal of equality of educational opportunity in graduate education.

(Authority: 20 U.S.C. 1060 and 1063b)

§ 609.2 What institutions are eligible to receive a grant under this Part?

(a) An institution listed in paragraph (b) of this section is eligible to receive a grant under this part if the Secretary determines that the institution is making a substantial contribution to the legal, medical, dental, veterinary or other graduate education opportunities for Black Americans.

(b) The institutions referred to in paragraph (a) of this section are—

(1) Morehouse School of Medicine;
(2) Meharry Medical School;
(3) Charles R. Drew Postgraduate Medical School;
(4) Atlanta University; and
(5) Tuskegee Institute School of Veterinary Medicine.

(Authority: 20 U.S.C. 1063b(e))

§ 609.3 What regulations apply?

The following regulations apply to this part:

(a) The Department of Education General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants); the following sections in 34 CFR Part 75 (Direct Grant Programs) §§ 75.1–75.104, 75.125–75.129, 75.190–75.192, 75.500, 75.524–75.534, 75.580–75.903; 34 CFR Part 77 (Definitions That Apply to Department Regulations); and 34 CFR Part 78 (Education Appeal Board).

(b) The regulations in this part.

(Authority: 20 U.S.C. 1063b)

§ 609.4 What definitions apply?

The following definitions apply to this part: *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget
EDGAR
Equipment
Fiscal year
Grant period
Private
Project
Project period
Public
Secretary

Subpart B—What kind of Projects Does the Secretary Fund?

§ 609.10 What activities may be carried out under a grant?

(a) *Allowable activities.* Except as provided in paragraph (b) of this section, a grantee may carry out the following activities under this part—

(1) Purchase, rental, or lease of scientific or laboratory equipment for educational purposes, including instructional or research purposes;

(2) Construction, maintenance, renovation, and improvement in classroom, library, laboratory, and other instructional facilities;

(3) Support of faculty exchanges and faculty fellowships to assist the faculty members in attaining advanced degrees in their fields of instruction;

(4) Academic instruction in disciplines in which Black Americans are underrepresented;

(5) Purchase of library books, periodicals, microfilm, and other educational materials;

(6) Tutoring, counseling, and student service programs designed to improve academic success.

(7) Establishing or improving a development office to strengthen and increase contributions from alumni and the private sector; and

(8) Establishing and maintaining an institutional endowment under 34 CFR Part 628 to facilitate financial independence.

(b) *Unallowable activities.* A grantee may not carry out the following activities under this part—

(1) Activities that are not included in the grantee's approved application;

(2) Activities that are inconsistent with any State plan of higher education that is applicable to the institution;

(3) Activities that are inconsistent with a State plan for desegregation of higher education that is applicable to the institution;

(4) Activities or services that relate to sectarian instruction or religious worship; and

(5) Activities provided by a school or department of divinity. For the purpose of this provision, a "school or department of divinity" means an institution, or a department of an institution, whose program is specifically for the education of students to prepare them to become ministers of religion or to enter upon some other religious vocation, or to prepare them to teach theological subjects.

(Authority: 20 U.S.C. 1062, 1063a and 1069c)

§ 609.11 What is the duration of a grant?

The Secretary may award a grant under this part for a period of up to five academic years.

(Authority: 20 U.S.C. 1063b)(b))

Subpart C—How Does an Eligible Institution Apply for a Grant?

§ 609.20 What are the application requirements for a grant under this part?

In order to receive a grant under this part, an institution must submit an application to the Secretary at such time and in such manner as the Secretary may prescribe. The application must contain—

(a) A description of the activities to be carried out with grant funds and how those activities will improve graduate educational opportunities for Black and low-income students and lead to greater financial independence for the applicant;

(b) A description of how the applicant is making a substantial contribution to the legal, medical, dental, veterinary or other graduate education opportunities for Black Americans;

(c) An assurance from each applicant requesting in excess of $500,000 that 50 percent of the costs of all the activities to be carried out under the grant will come from non-Federal sources; and

(d) A description of how the grant funds will be used so that they will supplement, and to the extent practical, increase the funds that would otherwise be made available for the activities to be carried out under the grant and in no case supplant those funds, for the activities described in § 609.10(a)(1) through (a)(8).

(e) An assurance that the proposed activities in the application are in accordance with any State plan that is applicable to the institution.

(Authority: 20 U.S.C. 1063d and 1068(b)(2))

(Approved by the Office of Management and Budget under control number 1840-0113)

Subpart D—How Does the Secretary Make a Grant?

§ 609.30 How does the Secretary determine the amount of a grant?

(a) For each year for which funds are appropriated for this program, the Secretary awards a grant of $3,000,000 to the Morehouse School of Medicine if it submits an approved application, and with the remaining funds, a grant to each other eligible institution that submits an approved application.

(b) If the sum of the approved applications does not exceed the amount appropriated, the Secretary awards a grant in the amount requested and approved.

(c) If the sum of the approved requests exceeds the sum appropriated, and Morehouse School of Medicine submits an approved request for $3,000,000, and the amount appropriated exceeds $3,000,000, each grant to Meharry Medical School, Charles F. Drew Medical School, Atlanta University and Tuskegee Institute School of Veterinary Medicine is reduced as the Secretary considers appropriate, so that the sum of the approved grants equals the amount appropriated.

(d) If Morehouse School of Medicine submits an approved request for $3,000,000 and the amount appropriated does not exceed $3,000,000, Morehouse School of Medicine receives all the appropriated funds.

(Authority: 20 U.S.C. 1063b)

Subpart E—What Conditions Must a Grantee Meet?

§ 609.40 What are the matching requirements?

If an institution receives a grant in excess of $500,000, it must spend non-Federal funds to meet the cost of at least 50 percent of the activities approved in its application.

(Authority: 20 U.S.C. 1063b)

§ 609.41 What are allowable costs and what are the limitations on allowable costs?

(a) *Allowable costs.* Except as provided in paragraph (b) of this section, a grantee may expand grant funds for activities that are reasonably related to carrying out the allowable activities included in its approved application.

(b) *Supplement and not supplant.* Grant funds shall be used so that they supplement, and to the extent practical, increase the funds that would otherwise be available for the activities to be carried out under the grant, and in no case supplant those funds.

(c) *Limitations on allowable costs.* A grantee may not—

(1) Spend more than fifty percent of its grant award in each fiscal year for costs relating to constructing or maintaining a classroom, library, laboratory, or other instructional facility.

(2) Use an indirect cost rate to determine allowable costs under its grant.

(Authority: 20 U.S.C. 1062 and 1063b)

§ 609.42 What are the audit and repayment requirements?

(a)(1) A grantee shall provide for the conduct of a compliance and financial audit of any funds it receives under this part by a qualified, independent organization or person in accordance with the *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions*, 1981 revision, established by the Comptroller General of the United States.

(2) The grantee shall have an audit conducted at least once every two years, covering the period since the previous audit, and the grantee shall submit the audit to the Secretary.

(3) If a grantee is audited under Chapter 75 of Title 31 of the United States Code, the Secretary considers that audit to satisfy the requirements of paragraph (a)(1) of this section.

(b) An institution awarded a grant under this part must submit to the Education Department Inspector General three copies of the audit required in paragraph (a) of this section within 6 months after completion of the audit.

(c) Any individual or firm conducting an audit described in § 626.42(a) shall give the Department of Education's Inspector General access to records or other documents necessary to review the results of the audit.

(d) A grantee shall repay to the Treasury of the United States any grant funds it received that it did not expend or use to carry out the allowable activities included in its approved application within ten years following the date of the initial grant it received under this part.

(Authority: 20 U.S.C. 1063a and 1063c)

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Part IV

Department of Education

Office of Special Education and Rehabilitative Services

34 CFR Part 363

The State Supported Employment Services Program; Final Regulations

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DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

34 CFR Part 363

The State Supported Employment Services Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary adds a new part to provide for the new formula grant program for State supported employment services. The regulations in this new part would implement amendments to the Rehabilitation Act of 1973 made by Pub. L. 99-506, the Rehabilitation Act Amendments of 1986.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective data of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Delores Watkins, Rehabilitation Services Administration, Department of Education, Switzer Building, Room 3322, Washington, DC 20202, (202) 732-1349.

SUPPLEMENTARY INFORMATION:

Supported Employment Formula Grant Program

The Rehabilitation Act Amendments of 1986 authorize a new formula grant State Supported Employment Services Program. This program provides grants to assist States in developing and implementing collaborative programs with appropriate public agencies and private nonprofit organizations for training and traditionally time-limited post-employment services leading to supported employment for individuals with severe handicaps. The Supported Employment Services Program is intended to provide services to individuals who, because of the severity of their handicaps, would not traditionally be eligible for vocational rehabilitation services. Individuals who are eligible for services under the program must not be able to function independently in employment without intensive on-going support services and must require these on-going support services for the duration of their employment.

The statute defines "supported employment" to mean competitive work in an integrated work setting for individuals who, because of their handicaps, need on-going support services to perform that work. Supported employment is limited to individuals with severe handicaps for whom competitive employment has not traditionally occurred, or individuals for whom competitive employment has been interrupted or intermittent as the result of a severe disability. It includes transitional employment for individuals with chronic mental illness. Although the term "supported employment" is defined in the statute, the Secretary considers it essential to define and clarify certain undefined terms used within the statutory definition, as well as the concept of traditionally time-limited post-employment services, in order to ensure a consistent programmatic interpretation. The regulations in § 363.7, therefore, define the following terms: (1) Competitive work; (2) integrated work setting; (3) on-going support services; (4) transitional employment for individuals with chronic mental illness; and (5) traditionally time-limited post-employment services. The regulations also establish requirements for planning grants and for collaborative agreements to provide extended services.

On May 27, 1987, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the Federal Register (52 FR 19816). A summary of the major provisions was included in the NPRM. The explanatory statements in the preamble to the NPRM are fully applicable to these final regulations, with one significant exception: States that have planning grants are required, rather than authorized, to seek public participation in developing a State plan for supported employment services. For the sake of brevity, these explanatory statements are not repeated here. Readers are referred to 52 FR 19816, 19817.

Other major differences between the NPRM and these final regulations are:

1. The final regulations clarify the population of individuals with severe handicaps who are eligible for supported employment services by adding language to § 363.3(a) that provides that States may serve individuals with severe handicaps who have not traditionally been employed competitively or for whom competitive employment has been interrupted or intermittent.

2. The proposed eligibility standard in § 363.3(c) that individuals served under this program be eligible for or be receiving on-going support services from other State, Federal, or private programs has been removed. The Secretary's concern that the funding sources for extended services be identified early in the rehabilitation process is now reflected in language added to § 363.11(e)(2) that requires each individualized written rehabilitation program to specify the State, Federal, or private programs that will provide extended services and the State's basis for determining that continuing support is available.

3. The final regulations clarify in § 363.4(a) congressional intent that Title VI, C supported employment funds be spent only for individual evaluations that are supplementary to those provided under the Title I basic vocational rehabilitation program. This change is reflected also in amendatory language in § 363.11(e)(1).

4. The securing of a supported employment job placement for each individual served under this program has been added to the list of authorized program activities in § 363.4.

5. The definition of "transitional employment for individuals with chronic mental illness" has been revised to clarify that individuals with chronic mental illness served under this program are not required to receive job skill training at least twice monthly if they do not need these services and may receive other needed services at or away from the job site.

6. A new State plan assurance has been added to § 363.11(e)(7) that requires States that are providing services to comply with the provisions of section 101(a)(23) of the Act, which requires public participation in the development of the State plan.

7. Language has been added to the definition of "competitive work" in § 363.7 to clarify that the average 20-hours-per-week work requirement is averaged over the course of each individual's normal pay period. For example, individuals who are paid monthly need only work an average of 20 hours per week during the month rather than 20 hours each week of the month.

8. To track the statute more accurately, specific reference to the information collection and reporting requirements of section 13 of the Act has been added to § 363.52(a).

9. For purposes of consistency, the final regulations use only the term "extended services" in referring to services provided by State, Federal, or private programs after the 18-month period of State vocational rehabilitation agency support has elapsed. Clarifying changes have been made to §§ 363.11(c), 363.11(e)(2), and 363.50(b)(2).

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed rulemaking, 377 parties submitted letters

of comments on the proposed regulations. The letters include comments from the Congress, public and private agencies and organizations, universities, and parents of individuals with handicaps. An analysis of the comments and of the changes in the regulations since publication of the notice of proposed rulemaking follows.

Eligibility, Section 363.3

Comments: The Secretary received many letters of comment about § 363.3(a) that requested that the regulations more specifically identify the population of individuals with severe handicaps who are eligible for services under this program. The commenters suggested that the eligibility provision be modified to include specific language from the statutory definition of "supported employment" that relates eligibility for services under this program to a history of non-competitive employment or interrupted or intermittent competitive employment. The commenters believed that the inclusion of this statutory language would ensure that the eligibility provision conforms more closely to congressional intent.

Some commenters asked that § 363.3(b)(3) be revised to permit individuals to be eligible for supported employment services if they have the potential to work in a supported employment setting.

Other commenters expressed concern about the § 363.3(c) provision that requires individuals to be eligible for or receiving on-going support services from other State, Federal, or private programs in order to be eligible for services under this program. The commenters suggested that this provision would establish an overly restrictive and unnecessary standard that has no statutory basis. Because the commenters believed that § 363.3(c) has the potential to exclude many otherwise qualified individuals from supported employment, they suggested that the provision be eliminated.

Another commenter suggested that the term "social services" in § 363.3(c) be revised because it is confusing. The commenter suggested that the term "social services" has a different meaning in each State. The commenter recommended that the words "public assistance" be substituted for the words "social services."

Discussion: The Secretary agrees that § 363.3(a) does not adequately clarify the population of individuals with severe handicaps for whom the program is intended. The Secretary believes that the eligibility provision would be strengthened by including specific language from the statutory definition of "supported employment" that relates to a history of non-competitive employment or interrupted or intermittent competitive employment. The Secretary further believes that each State must be responsible for ascertaining this history by relying on available employment data and other information.

The Secretary does not believe that there is legal support to add specific language to § 363.3(b)(3) referencing potential to work in a supported employment setting. The proposed regulatory language, which tracks the statute in section 632, would require that an individual have the ability to work in a supported employment setting.

The Secretary recognizes that § 363.3(c) may establish a barrier which could result in the exclusion of some individuals with severe handicaps from participation in this program. However, because State agencies can only use funds to provide time-limited services to individuals under this program, the Secretary believes that it is essential for State vocational rehabilitation agencies to assure that extended on-going support services are available for each individual it determines to be eligible. The Secretary further believes that the funding sources for extended on-going support services must be identified early in the rehabilitation process. Although this identification need not be done as part of the eligibility determination process, the Secretary considers it necessary to require, at minimum, that each individualized written rehabilitation program specify the State, Federal, or private programs that will provide needed extended services and the State's basis for determining that continuing support is available.

The Secretary agrees that the use of the term "social services" in § 363.3(c) is not clear and could potentially result in confusion.

Changes: The Secretary has modified § 363.3(a) by adding specific language from the statutory definition of "supported employment" that provides that States may serve individuals with severe handicaps under this program who have traditionally not been employed in competitive employment or for whom competitive employment has been interrupted or intermittent.

This section has been further modified by removing the proposed eligibility standard in § 363.3(c) that requires that individuals be eligible for or be receiving on-going support services. The Secretary has added language in the State plan supplement assurances section, § 363.11(e), however, that requires each individualized written rehabilitation program to specify the State, Federal, or private programs that will provide extended services and the State's basis for determining that continuing support is available.

The removal of § 363.3(c) obviates the need to clarify the confusing reference to "social services."

Permissible Activities under a Services Grant, Section 363.4

Comments: Some commenters noted that § 363.4(a) does not make it clear that the individual evaluation of rehabilitation potential funded under the Title VI State Supported Employment Services program must be supplementary to the individual evaluation of rehabilitation potential funded under the Title I State Vocational Rehabiliation Services Program.The commenters suggested that §§ 363.4(4) and 363.11(e)(1) should be revised to comply with statutory language in section 635(a)(2) that requires that any evaluation funded under this program be supplementary to the evaluation that must be performed under the Title I program.

Some commenters suggested that the job placement should be specifically identified in § 363.4 as an authorized program activity. The commenters noted that supported employment is not based on a continuum moving from training to employment. Rather the training occurs at the work site based on a functional approach to skills development. The commenters suggested that placement should be specifically designated as an authorized service in accordance with the "place-train" supported employment approach.

Discussion: The Secretary agrees with the comments.

Changes: The Secretary has clarified in §363.4(a) statutory intent that Title VI, C supported employment funds be spent only for individual evaluations that are supplementary to those provided under the Title I basic ' vocational rehabilitation services program. This change is also reflected in amendatory language in § 363.4(b).

Required Planning Grant Activities, Section 363.5

Comments: Some commenters noted that the statute permits States, at their option, to request fiscal year 1987 Supported Employment Program funds for planning activities rather than to provide direct services. These commenters suggested that the regulations clarify when and how the States that elect to receive planning grants of up to 18 months in fiscal year 1987 can qualify for the receipt of

services grant funds in fiscal year 1988 since these States may still be in the process of planning.

Some commenters noted that section 101(a)(23) of the Rehabilitation Act requires State vocational rehabilitation agencies to conduct public meetings throughout the State to allow the public an opportunity to comment on the State vocational rehabilitation plan and to include a summary of comments and responses as an attachment to the State plan. Since the supported employment State plan is a supplement to the Title I State plan, the commenters further noted that the regulations do not require public participation under §§ 363.5 and 363.11 but instead only identify public participation as an authorized activity under a planning grant.

Discussion: The Secretary agrees that Section 101(a)(23) of the statute requires that the State agency conduct public meetings to allow the public an opportunity to comment on the State vocational rehabilitation plan, including the supported employment plan supplement. The Secretary further agrees that public participation in the development of a plan should be a required rather than an authorized activity under a planning grant.

The Secretary does not believe the issue of how or whether fiscal year 1987 planning States can qualify for a services allotment in fiscal year 1988 is a regulatory issue. The Department intends that all planning States will receive a services allotment in 1988, even if they are still using some of their 1987 planning funds. Of course, planning funds can only be used for planning activities and services funds only for providing supported employment services. This issue will be clarified as a program information matter in the fiscal year 1988 grant award process.

Changes: The regulations have been revised to add a new § 363.5(b)(4) that requires States that have a planning grant to seek public participation in the development of a supported employment plan supplement.

Definitions, Section 363.7

"Competitive Work"

Comments: Many diverse comments were received concerning the proposed definition of "competitive work." Some commenters considered the proposed standard requiring an average of at least 20 hours of work per week to be reasonable and recommended the retention of this standard.

Other commenters stated that the average 20-hours-per-week work requirement is overly restrictive and not statutorily based. These commenters suggested that the standard be eliminated and that no specific minimum number of hours be required. The precise hours worked would be based in each case on the needs and abilities of the individual.

Some commenters suggested that "competitive work" be defined in a manner that does not require that individuals with chronic mental illness work any minimum number of hours per week.

Other commenters suggested that if a minimum work requirement is retained, the standard should be reduced. Specific standards recommended included 10 and 15 hours per week.

Some commenters recommended that if a numerical standard is retained, whether it be 20 hours or some lower figure, that a waiver be permitted to enable States to be responsive to individual circumstances.

Other commenters requested clarification concerning the time period on which the average 20-hours-per-week requirement is based.

Discussion: The Secretary continues to believe that the 20-hours-per-week standard is reasonable and consistent with congressional intent. In its bill report, the House Committee on Education and Labor encouraged the use of an average of 20-hours-per-week work standard.

The Secretary agrees that there is a need to clarify the time period on which the 20-hours-per-week average is based.

Changes: The Secretary has added language to the definition of "competitive work" to clarify that the average 20-hours-per-week work requirement is averaged over the course of each individual's normal pay period.

"Integrated Work Setting"

Comments: The proposed regulations specifically invited comments on the proposed restriction of an all-handicapped work group to no more than eight individuals. Many diverse comments were received on this issue.

Some commenters supported this particular numerical limitation. Other commenters suggested that a small work group of eight was to large to achieve meaningful integration in a work setting and proposed that the size be "not more than three" or "not more than six."

Some commenters believed the proposed standard would restrict the ability of States to be creative in the development of supported employment opportunities for individuals with severe handicaps in business and industry.

Other commenters recommended that the third type of "integrated work setting" that allows an individual to work alone or as a part of a small work grou of not more than eight individuals, all of whom are handicapped, be eliminated. The commenters suggested that under these circumstances there is no meaningful integration of individuals with handicaps with non-handicapped individuals.

One commenter suggested that an integrated work setting be defined in terms of a percentage limitation of an employer's total work force rather than by a particular numerical limitation. This commenter suggested that a percentage approach would have the potential to provide greater program flexibility and increase integration opportunities.

Some commenters recommended that the regulations permit a waiver at the State level to allow for work groups of more than eight individuals with handicaps and for the lack of contact with non-handicapped individuals.

Some commenters stated that the proposed definition of "integrated work setting" precludes the use of the mobile work crew approach in supported employment services delivery because this approach does not conform to the requirement for "regular contact with non-handicapped individuals, other than personnel providing support services, in the immediate work setting."

Other commenters suggested that the term "regular contact" be defined and that it include social interaction and integration activities that take place away from the immediate work setting, such as recreational and leisure activities.

Discussion: The Secretary believes strongly that a limit must be placed on the grouping of individuals with handicaps in a work setting in order to assure that the "integrated work setting" requirement in the statute is meaningful. While it is recognized that an ideal situation would be one in which all immediate co-workers are non-handicapped, the Secretary considers some flexibility to be necessary as supported employment models are developed. The Secretary, therefore, agrees with the comments that flexibility is important to allow States creativity in the development of supported employment opportunities. The standard of "not more than eight" is reasonable to achieve this objective.

Although the Secretary believes some flexibility in the number of individuals with handicaps placed together at a work site is necessary, the Secretary recognizes that some models, such as work crews in janitorial night work, have a potential for eliminating meaningful integration. The Secretary believes that the proposed requirement

for regular contact in the immediate work setting with non-handicapped individuals imposes a reasonable standard to assure some degree of meaningful integration. Work crews that do not have this regular contact would not meet this definition. It is imperative that job site developers assure the availability of regular contact. The Secretary believes there are work crew models available that demonstrate this regular contact.

The Secretary further believes that regular contact in outside social settings does not provide appropriate reinforcement of the on-the-job skills necessary for an individual with severe handicaps to succeed in supported employment. This reinforcement of job skill training is essential to the success of any supported employment placement.

Changes: None.

"Traditionally Time-Limited Post-Employment Services"

Comments: Many comments were received about the proposed definition of "traditionally time-limited post-employment services."

Some commenters recommended that the regulations permit a waiver of the 18-month limitation on State vocational rehabilitation agency responsibility to provide post-employment services to allow for special circumstances reflected in a client's individualized written rehabilitation program.

Other commenters suggested that there should not be any time limitation on post-employment services delivery by the State vocational rehabilitation agency and recommended that the 18-month limitation be eliminated.

Some commenters suggested that there is a need for clarification of post-employment services under this program in terms of their similarity or dissimilarity to post-employment services provided under Title I.

Other commenters asked when the 18-month period begins.

Some commenters asked whether the 18-month limitation precluded an individual from receiving services under this program when that period had elapsed.

Discussion: The Secretary believes that the intent of Congress in limiting State vocational rehabilitation agency responsibility to training and traditionally time-limited post-employment services was to preclude the indefinite continuation of Federally-funded vocational rehabilitation support under this program. The Secretary supports this intent and believes it is necessary to establish in the regulations a specific time limitation for that support. Data from current supported employment demonstration projects indicate that most individuals have made the transition from State agency support to extended services funded from other sources within six to twelve months—well within the 18-month time limit. The Secretary believes, therefore, that this limitation is a reasonable one.

The Secretary has defined in § 363.7 "traditionally time-limited post-employment services" under this program. It includes any services needed to maintain an individual in supported employment. The intent is to encompass all post-employment services that normally are available under the Title I program. Section 363.4(c) gives examples of certain authorized time-limited post-employment services. This is not an exclusive list of all authorized services. The Secretary considers the 18-month period to begin at the time of placement when on-the-job training is first provided. By the end of the 18-month period an individual must transition to extended services financed by funds other than Title VI, C monies.

Changes: None.

"On-going Support Services"

Comments: A significant number of comments was received on the proposed definition of "on-going support services." Some commenters indicated that the proposed establishment of a requirement that job skill training services be provided at least twice monthly does not have a statutory basis. These commenters suggested that the frequency and type of "on-going support services" should be related only to the specific needs and abilities of each individual with severe handicaps.

Other commenters suggested that the proposed requirement for the provision of job-skill training be eliminated because many individuals may not specifically need job skill training and would, therefore, be ineligible for the receipt of services under this program.

Some commenters agreed with the twice-monthly standard for the provision of job skill training services and recommended its retention.

Other commenters suggested that the definition of "on-going support services" should be expanded to list specifically other types of services that may be provided.

Some commenters requested that the definition of "ongoing support services" be revised to permit "on-going support services" for individuals with chronic mental illness to be provided either at or away from the work site, whichever is appropriate for the individual. These commenters suggested that the proposed definition would result in many individuals with chronic mental illness being ineligible because the services they might need could consist only of off-site services.

Other commenters also requested that the definition of "on-going support services" be revised to recognize that individuals with severe physical handicaps may also not need job skill training provided at least twice monthly at the work site.

Discussion: The intent of supported employment is to provide assistance to individuals with severe handicaps who are not able to function in competitive employment without on-going reinforcement of job skills. The need for job skills reinforcement under this program distinguishes supported employment from other rehabilitation programs where job accommodations or independent living services such as readers, transportation or housing may be the only needed post-employment services. The regulations, therefore, authorize support services that are not related specifically to job skill training as long as job skill training services, including both cognitive and physical skill training, are needed and provided at least twice monthly. The regulation does not restrict in any way where off-site services can be provided, including any appropriate rehabilitation facility. The proposed regulation provides only examples of permissible off-site services.

The Secretary believes that individuals with severe handicaps, with the exception of the chronically mentally ill, would be inappropriate candidates for supported employment if they did not need job skill training at least twice monthly.

The definition of "transitional employment for individuals with chronic mental illness" specifically considers the fact that some individuals with chronic mental illness may not need job skill training. The proposed definition does not require the provision of job skill training at least twice monthly at the job site for individuals with chronic mental illness as distinguished from individuals served under this program who have other types of disabilities. The statutory definition of "supported employment" draws this distinction between the chronically mentally ill and individuals with other kinds of severe disabilities who are appropriate candidates for supported employment.

Changes: None.

State Plan Assurances, Section 363.11

Comments: Some commenters noted that the statute requires State vocational

rehabilitation agencies to conduct public meetings throughout the State to allow the public an opportunity to comment on the Title I State vocational rehabilitation plan. Commenters noted that the supported employment State plan is a supplement to the Title I State plan and that, therefore, the regulations should require public participation in the development of the supported employment plan supplement.

Discussion: The Secretary agrees that the public participation requirements of section 101(a)(23) of the Act apply also to the supported employment supplement to the Title I plan.

Changes: The Secretary has modified § 363.11 to add a new § 363.11(e)(7) State plan assurance that requires the State vocational rehabilitation agency to comply with the provisions of section 101(a)(23) of the Act in developing its supported employment plan.

Collection and Reporting Requirements, Section 363.52

Comments: Some commenters indicated that § 363.52(a) does not comply with section 636 of the Act because it does not specifically cite the information collection and reporting requirements contained in section 13 of the Act.

Discussion: The Secretary agrees that § 363.52(a) should track more closely the statute by referencing the requirements of section 13.

Changes: The Secretary has revised the language in § 363.52(a) to remove the reference to 34 CFR 361.23 (general reporting requirements) and substitute a more specific reference to the collection and reporting requirements of section 13.

Note: Because this is a new kind of rehabilitation program with which neither the Department nor States have much experience, the Department will consider in the next two years whether to solicit additional public comment on the need for further regulatory revision.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

List of Subjects in 34 CFR Part 363

Education, Grant Programs—education, Grant Programs—social programs, Reporting and recordkeeping requirements, Supported employment, Vocational rehabilitation.

(Catalog of Federal Domestic Assistance Number: 84.187 State Supported Employment Services Program)

Dated: July 23, 1987.

William J. Bennett,

Secretary of Education.

The Secretary amends Chapter III of Title 34 of the Code of Federal Regulations by adding a new Part 363 to read as follows:

PART 363—THE STATE SUPPORTED EMPLOYMENT SERVICES PROGRAM

Subpart A—General

Sec.

363.1 What is the State Supported Employment Services Program?
363.2 Who is eligible for an award?
363.3 Who is eligible for services?
363.4 What are the authorized activities under a State Supported Employment Services grant?
363.5 What kinds of activities may the Secretary fund under a planning grant?
363.6 What regulations apply?
363.7 What definitions apply to the State Supported Employment Services Program?

Subpart B—How Does a State Apply for a Grant?

363.10 What documents must a State submit to receive a grant?
363.11 What information and assurances must be included in the State plan supplement?

Subpart C—How Does the Secretary Make a Grant?

363.20 How does the Secretary allocate funds?
363.21 How does the Secretary reallocate funds?

Subparts D–E [Reserved]

Subpart F—What Post-Award Conditions Must Be Met by a State?

363.50 What collaborative agreements must the State develop?
363.51 What are the allowable administrative costs?
363.52 What are the information collection and reporting requirements?
363.53 What special conditions apply to services and activities under this program?

Authority: 29 U.S.C. 795j–q, unless otherwise noted.

Subpart A—General

§ 363.1 What is the State Supported Employment Services Program?

(a) Under the State Supported Employment Services Program, the Secretary provides grants to assist States in developing and implementing programs of supported employment for individuals with severe handicaps.

(b) Grants under this program are intended to provide training and traditionally time-limited post-employment services to individuals with severe handicaps.

(Authority: 29 U.S.C. 795j)

§ 363.2 Who is eligible for an award?

Any State is eligible for an award under this program.

(Authority: 29 U.S.C. 795m(a))

§ 363.3 Who is eligible for services?

A State may provide services under this program to any individual who—

(a) Has severe handicaps, and for whom competitive employment has not traditionally occurred or has been interrupted or intermittent as a result of those handicaps; and

(b) Has been determined by an evaluation of rehabilitation potential, as defined in section 7[5] of the Act, to have—

(1) The ability or potential to engage in a training program leading to supported employment;

(2) A need for on-going support services in order to perform competitive work; and

(3) The ability to work in a supported employment setting.

(Authority: 29 U.S.C. 795k)

§ 363.4 What are the authorized activities under a State Supported Employment Service grant?

Under this program, the following activities are authorized:

(a) Evaluation of the rehabilitation potential for supported employment of individuals with severe handicaps. Any evaluation must be supplementary to an evaluation of rehabilitation potential done under 34 CFR Part 361.

(b) Development of and placement in jobs for individuals with severe handicaps.

(c) Provisions of traditionally time-limited post-employment services that are needed to support the trainees in employment, such as—

(1) Intensive on-the-job training and other training provided by skilled job trainers for workers with severe handicaps;

(2) Provision of follow-up services, including regular contact with employers, trainees with severe handicaps, parents, guardians or other representatives of trainees, and other suitable professional and informed advisors in order to reinforce and stabilize the job placement; and

(3) Regular observations or supervision of individuals with severe handicaps at the work site.

(Authority: 29 U.S.C. 795n)

§ 363.5 What kinds of activities may the Secretary support under a planning grant?

(a) For fiscal year 1987 only a State may request a planning grant in place of its allotment under this program.

(b) The State shall conduct activities under a planning grant that include the following, unless those activities have already been completed:

(1) Developing the Statewide needs assessment for supported employment services, as specified in § 363.11.

(2) Developing and evaluating collaborative agreements with State agencies and private nonprofit organizations.

(3) Developing goals, priorities, policies, and procedures for the provision of supported employment services to individuals with severe handicaps.

(4) Seeking participation in the development of a State plan supplement for supported employment services by individuals with severe handicaps, their parents or guardians, and providers of supported employment services.

(c) The State may also conduct the following activities under a planning grant:

(1) Developing sites to test and evaluate the provision of supported employment services.

(2) Other activities necessary to prepare for the implementation of a system of supported employment services.

(d) The requirements of §§ 363.11, 363.20, 363.21, and 363.50–363.53 do not apply to planning grants.

(e) The Secretary awards a planning grant of no more than $250,000 for up to 18 months.

(Authority: 29 U.S.C. 795i(c))

§ 363.6 What regulations apply?

The following regulations apply to the State Supported Employment Services Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 76 (State Administered Programs), Part 77 (Definitions that Apply to Department Regulations), Part 78 (Education Appeals Board) except for hearings under Subpart G of Part 361, and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(b) The regulations in this Part 363.

(c) The following regulations in 34 CFR Part 361 (The State Vocational Rehabilitation Services Program):

§ 361.32; § 361.33; § 361.34; § 361.40; § 361.41; § 361.48; and § 361.49.

(Authority: 29 U.S.C. 795j and 711(c))

§ 363.7 What definitions apply to the State Supported Employment Services Program?

(a) As used in this part—

(1) "Supported employment" means—

(i) Competitive work in an integrated work setting with on-going support services for individuals with severe handicaps for whom competitive employment—

(A) Has not traditionally occurred; or

(B) Has been interrupted or intermittent as a result of severe handicaps; or

(ii) Transitional employment for individuals with chronic mental illness; and

(2) As used in the definition of "supported employment"—

(i) "Competitive work" means work that is performed on a full-time basis or on a part-time basis, averaging at least 20 hours per week for each pay period, and for which an individual is compensated in accordance with the Fair Labor Standards Act;

(ii) "Integrated work setting" means job sites where—

(A)(*1*) Most co-workers are not handicapped; and

(*2*) Individuals with handicaps are not part of a work group of other individuals with handicaps; or

(B)(*1*) Most co-workers are not handicapped; and

(*2*) If a job site described in paragraph (A)(*2*) of this definition is not possible, individuals with handicaps are part of a small work group of not more than eight individuals with handicaps; or

(C) If there are no co-workers or the only co-workers are members of a small work group of not more than eight individuals, all of whom have handicaps, individuals with handicaps have regular contact with non-handicapped individuals, other than personnel providing support services, in the immediate work setting;

(iii) "On-going support services" means continuous or periodic job skill training services provided at least twice monthly at the work site throughout the term of employment to enable the individual to perform the work. The term also includes other support services provided at or away from the work site, such as transportation, personal care services, and counseling to family members, if skill training services are also needed by, and provided to, that individual at the work site;

(iv) "Transitional employment for individuals with chronic mental illness" means competitive work in an integrated work setting for individuals with chronic mental illness who may need support services (but not necessarily job skill training services) provided either at the work site or away from the work site to perform the work. The job placement may not necessarily be a permanent employment outcome for the individual; and

(v) "Traditionally time-limited post-employment services" means services that are—

(A) Needed to support and maintain an individual with severe handicaps in employment;

(B) Based on an assessment by the State of the individual's needs as specified in an individualized written rehabilitation program; and

(C) Provided for a period not to exceed 18 months before transition is made to extended services provided under a cooperative agreement pursuant to § 363.50.

(b) The following terms used in this part are defined in 34 CFR 77.1:

Fiscal Year; Nonprofit; Private; Secretary; and State.

(c) The following terms used in this part are defined in 34 CFR Part 361:

Act; Designated state unit; Individual with handicaps; Individual with severe handicaps; and State plan.

(Authority: 29 U.S.C. 706(18), 711(c), and 795j)

Subpart B—How Does a State Apply for a Grant?

§ 363.10 What documents must a State submit to receive a grant?

To receive a grant under this part, a State must—

(a) Submit to the Secretary, as part of the State plan under 34 CFR Part 361, a State plan supplement that meets the requirements of § 363.11; or

(b) For fiscal year 1987 only, submit an application for a planning grant in place of its allotment under this program.

(Authority: 29 U.S.C. 795i(c) and 795m(a))

(Approved by the Office of Management and Budget under control number 1820-0551)

§ 363.11 What information and assurances must be included in the State plan supplement?

Each State plan supplement must—

(a) *Designated State agency.* Designate the State unit or units for vocational rehabilitation services identified in the State plan submitted under 34 CFR Part 361 as the State agency or agencies to administer this program;

(b) *Results of needs assessment.* Summarize the results of the needs assessment of individuals with severe handicaps conducted under Title I of the Act when that assessment identifies the need for supported employment services. The results of the needs assessment must address the coordination and use of information within the State relating to section

618(b)(3) of the Education of the Handicapped Act;

(c) *Quality, scope, and extent of services.* Describe the quality, scope, and extent of supported employment services to be provided to individuals with severe handicaps under this program. The description must address the timing of the transition to extended services referred to in § 363.50(b)(2);

(d) *Distribution of funds.* Describe the State's goals and plans with respect to the distribution of funds received under § 363.20;

(e) *Assurances.* Provide assurances that—

(1) An evaluation of rehabilitation potential, as defined in section 7(5) of the Act, is provided under 34 CFR Part 361, and if necessary a supplementary evaluation under this part, for each individual with severe handicaps who receives services under this program;

(2) An individualized written rehabilitation program as specified in 34 CFR 361.40 and 361.41 will be developed—either under this part or under 34 CFR Part 361—outlining the services to be provided to each individual served under this program, including a description of the extended services needed, the identification of the State, Federal, or private programs that will provide the continuing support, and a description of the basis for determining that continuing support is available;

(3) Services provided to individuals under this program will be coordinated with the individualized written rehabilitation program or education plan as required under section 102 of the Act, section 123 of the Developmental Disabilities Act of 1984, and sections 612(4) and 614(5) of the Education of the Handicapped Act;

(4) The State will conduct periodic reviews of the progress of individuals assisted under this program to determine whether services provided to those individuals should be continued, modified, or discontinued;

(5) The designated State agency or agencies will expend no more than five percent of the State's allotment for administrative costs of carrying out this program;

(6) The State will make maximum use of services from public agencies, private nonprofit organizations, and other appropriate resources in the community to carry out this program;

(7) The public participation requirements of section 101(a)(23) of the Act are met;

(f) *Collaboration.* Demonstrate evidence of collaboration by and funding from relevant State agencies and private nonprofit organizations to assist in the provision of on-going supported employment services following the termination of time-limited services under this part; and

(g) *Other information.* Contain such other information and be submitted in the form and in accordance with the procedures that the Secretary may require.

(Authority: 29 U.S.C. 795m)

(Approved by the Office of Management and Budget under control number 1820–0551)

Subpart C—How Does the Secretary Make a Grant?

§ 363.20 How does the Secretary allocate funds?

The Secretary allocates funds under this program in accordance with section 633(a) of the Act.

(Authority: 29 U.S.C. 7951(c))

§ 363.21 How does the Secretary reallocate funds?

The Secretary reallocates funds in accordance with section 633(b) of the Act.

(Authority: 29 U.S.C. 7951(b))

Subpart D–E [Reserved]

Subpart F—What Post-Award Conditions Must Be Met by a State?

§ 363.50 What collaborative agreements must the State develop?

(a) A designated State unit must enter into one or more written cooperative agreements or memoranda of understanding with other appropriate State agencies and private nonprofit organizations to ensure collaboration in a plan to provide supported employment services to individuals with severe handicaps.

(b) A cooperative agreement or memorandum of understanding must, at a minimum, specify the following:

(1) The training and traditionally time-limited post-employment services to be provided by the designated State unit with funds received under this part.

(2) The extended services to be provided by the other State agencies and private nonprofit organizations, following the termination of time-limited services under this part.

(3) The estimated funds to be expended by the participating party or parties in implementing the agreement or memorandum.

(4) The projected number of individuals with severe handicaps who will receive supported employment services under the agreement or memorandum:

(Authority: 29 U.S.C. 795m(b)(4) and 795n(b))

§ 363.51 What are the allowable administrative costs?

(a) *Administrative costs-general.* Expenditures are allowable for the following administrative costs:

(1) Administration of the State plan supplement for this program.

(2) Planning, program development, and personnel development to implement a system of supported employment services.

(3) Monitoring, supervision, and evaluation of this program.

(4) Technical assistance to other State agencies, private nonprofit organizations, and businesses and industries.

(b) *Limitation on administrative costs.* Except for planning grants which the Secretary may award in fiscal year 1987, not more than five percent of a State's allotment may be expended for administrative costs for carrying out this program.

(Authority: 29 U.S.C. 7951(c) and 795m(b)(5))

§ 363.52 What are the information collection and reporting requirements?

(a) A State shall collect and report information as required under section 13 of the Act for each individual with severe handicaps served under this program.

(b) The State shall collect and report separately information for—

(1) Supported employment clients served under this program; and

(2) Supported employment clients served under 34 CFR Part 361.

(Authority: 29 U.S.C. 712 and 795o)

(Approved by the Office of Management and Budget under control number 1820–0551)

§ 363.53 What special conditions apply to services and activities under this program?

Each grantee shall coordinate the services provided to an individual under this part and under 34 CFR Part 361 to ensure that the services are complementary and not duplicative.

(Authority: 29 U.S.C. 795 n and q)

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Friday
August 14, 1987

Part V

Department of Education

Office of Special Education and Rehabilitative Services

34 CFR Parts 371 and 386

Handicapped American Indian Vocational Rehabilitation Service Projects; Rehabilitation Training: Rehabilitation Long-Term Training; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Parts 371 and 386

Handicapped American Indian Vocational Rehabilitation Service Projects; Rehabilitation Training: Rehabilitation Long-Term Training

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing grants to provide services to American Indians with handicaps and grants for long-term training to implement amendments to the Rehabilitation Act of 1973 made by Pub. L. 99–506, the Rehabilitation Act Amendments of 1986.

The regulations implement the new statutory provisions for these two programs. One new provision permits a consortium of governing bodies of Indian tribes to apply for a grant as a single applicant under the American Indians with handicaps program. Another new provision requires the recipient of a scholarship under the long-term training program to work for a State rehabilitation agency or a nonprofit rehabilitation or related agency for two years for each year of assistance received or repay the scholarship plus interest.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Toby Lawrence, Rehabilitation Services Administration, Department of Education, Switzer Building, Room 3328, Washington, DC 20202, (202) 732–1351.

SUPPLEMENTARY INFORMATION: On May 27, 1987 the Secretary published a notice of proposed rulemaking for these programs in the Federal Register (52 FR 19822). A summary of the major provisions was included in the notice of proposed rulemaking. The explanatory statements in the preamble to the proposed regulations are fully applicable to these regulations. For the sake of brevity, those statements are not being repeated here. Readers are referred to the notice of proposed rulemaking. There were no major substantive changes made in the final regulations.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed rulemaking, 39 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the proposed regulations follows.

American Indians with Handicaps program: There were three comments received regarding these proposed regulations. No changes have been made in the final regulations. Issues and concerns raised were:

If the project is small, consisting only of a project director and several counselors, how can the project provide an impartial hearing officer in the case of an appeal as provided in § 371.21? The commenter suggested the possibility of obtaining the services of an individual from the State agency. This is one solution. Other possibilities can be explored. The Rehabilitation Services Administration Regional Offices and the State rehabilitation agencies can provide technical assistance to the Indian projects to assist in establishing procedures that will ensure due process to Indians with handicaps.

Grants for 36 months; priority for continuations; and consultation with State agencies. Commenters requested specific regulations in these areas. As stated in the preamble to the proposed regulations, no changes are considered necessary to implement the statutory requirements because these areas are covered by the existing regulations.

Long-term training program. Issues and concerns were:

Nonprofit or related agency. A number of commenters, notably from the allied health professions, expressed concern regarding how the work requirement could be satisfied if a scholar becomes trained in an area for which State or nonprofit rehabilitation agencies generally do not need full-time employees.

Several commenters asked whether employment with a Federal agency, a State or local agency other than the State rehabilitation agency, or a State or local education agency administering a program for or providing services to individuals with handicaps, would satisfy the work requirement.

A change has been made in the final regulations in § 386.4 to address these concerns. The term "related agency" has been defined to make it clear that employment by most organizations and agencies referred to by the commenters will satisfy the requirement that a scholar work for an organization providing services to individuals with handicaps in the area of specialty for which training is provided. The definition also makes it clear that a for-profit sole practitioner, providing services to individuals with handicaps through an agreement with a State agency, is considered a related agency. Employment in a related agency will meet the requirements of § 386.44(c)(1).

Uncertainty was also expressed about whether employment in a project funded through the governing body of an Indian tribe to provide services to American Indians with handicaps would satisfy the requirement. A change has been made in the long-term training regulations to make it clear that an Indian project is a "related agency" and employment in such agency will satisfy the work requirement.

Why must a nonprofit rehabilitation or related agency have an agreement with a State agency in order for a scholar to satisfy the employment obligations under the Act? A number of commenters objected that the requirement that the organization providing services to individuals with handicaps have an agreement with a State or nonprofit rehabilitation agency is not in the Act. The Secretary understands the intent of Congress in requiring that scholars maintain employment in a nonprofit rehabilitation or related agency or in a State rehabilitation agency was to ensure that training funds are used to increase the numbers of qualified professionals providing services to eligible individuals with handicaps served under the Rehabilitation Act. Section 386.44(c)(1) of the regulations is considered a reasonable method to verify that the intent is met.

Lack of provision for appeal. Concern was expressed by students, that, in contrast to appeals provided to students from decisions by universities, there is no appeal from determinations by the Secretary of noncompliance under § 386.44 of the regulations.

The Department can provide for appeals of determinations of noncompliance under § 386.44 of the regulations through administrative action without the necessity of regulations. An agreement to be used by grantees in this program is presently being developed within the Department and may contain a provision permitting the scholar to request an informal review by the Department of a finding of noncompliance with the terms of the agreement.

The ten-year follow-up of students following graduation is burdensome and unrealistic. It was stated by a number of commenters that universities have no mechanism in place to determine compliance of the scholar with the terms of the agreement in accordance with § 386.44(f), and are not likely to establish the required policies and

procedures in view of Federal and State "Right to Privacy" acts. In addition, project directors may not be available to perform these functions after the expiration of the grant. One commenter stated that the 8 percent permitted for indirect costs was already insufficient to cover expenses. Funds would therefore not be available to pay for the costs of tracking graduates.

In view of the comments, the Department wishes to clarify what it means to establish policies and procedures to determine compliance of the scholar with the terms of the agreement. An example of an appropriate policy and procedure that would comply with this provision would be for grantees to conduct a mailing once a year with a follow-up mailing to nonrespondents. The Department does not consider this type of effort to be burdensome or unrealistic.

"Right to Privacy" acts would not prevent schools from collecting this information since students would have accepted the requirement to provide information as a condition of assistance. In addition, the responsibility for tracking is accepted by the grantee institution, not individual employees of the institution, and would not cease upon completion of the project period. The Department does not find it unreasonable to expect a university to absorb the administrative cost of tracking in return for the ability to offer federally funded scholarships.

Repayment and deferral. A number of commenters expressed the need for additional flexibility to permit deferral or repayment exceptions. Many of the situations described in the comments, such as an individual with a severe handicap who can only work as a volunteer or part-time, are covered by the regulations in § 386.45. All others, such as inability to work because of age, are unlikely to occur. If unforeseen problems come to the Department's attention, they will be addressed by interpretations of the regulations or changes in the regulations.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 371

Education, Grant programs—education, Grant programs—social programs, Vocational rehabilitation.

34 CFR Part 386

Education, Grant programs—education, Grant programs—social programs, Reporting and recordkeeping requirements, Vocational rehabilitation.

(Catalog of Federal Domestic Assistance 84.129, Rehabilitation Training; 84.132, American Indians with handicaps)

Dated: July 28, 1987.

William J. Bennett,

Secretary of Education.

The Secretary amends Parts 371 and 386 of Title 34 of the Code of Federal Regulations as follows:

PART 371—[AMENDED]

1. The authority citation for Part 371 is revised to read as follows:

Authority: 29 U.S.C. 711(c) and 750, unless otherwise noted.

2. The title of Part 371 is revised to read as follows:

PART 371—VOCATIONAL REHABILITATION SERVICE PROJECTS FOR AMERICAN INDIANS WITH HANDICAPS

§ 371.41 [Amended]

3. In § 371.41(a)(2), remove the words "the handicapped individual" and add, in their place, the words "an individual with handicaps".

§§ 371.21 and 371.41 [Amended]

4. In Part 371, remove the words "handicapped individuals" and add, in their place, the words "individuals with handicaps" in the following places:

(a) § 371.21 (d) and (g); and

(b) § 371.41(b).

§§ 371.10, 371.21, 371.30, 371.42, 371.43 [Amended]

5. In Part 371, remove the words "handicapped American Indians" and add, in their place, the words "American Indians with handicaps" in the following places:

(a) § 371.10;

(b) § 371.21 (c), (d), (f), and (h);

(c) § 371.30(f)(2) (i) and (ii);

(d) § 371.42; and

(e) § 371.43(b).

§§ 371.21 and 371.43 [Amended]

6. In Part 371, remove the words "handicapped American Indian" and add, in their place, the words "American Indian with handicaps" in the following places:

(a) § 371.21(e); and

(b) § 371.43(a).

7. Section 371.1 is revised to read as follows:

§ 371.1 What is the Vocational Rehabilitation Service Program for American Indians with Handicaps?

This program is designed to provide vocational rehabilitation services to American Indians with handicaps who reside on Federal or State reservations in order to prepare them for suitable employment.

(Authority: Sec. 130(a) of the Act; 29 U.S.C. 750(a))

§ 371.2 [Amended]

8. In § 371.2, add the words "and consortia of those governing bodies" after "Indian tribes".

9. Section 371.4 is amended by removing the paragraph designations under (b), and adding the following definition in alphabetical order to read as follows:

§ 371.4 What definitions apply to this program?

* * * * *

(b) * * *

"Consortium" means two or more eligible governing bodies of Indian tribes that make application as a single applicant under an agreement whereby each governing body is legally responsible for carrying out all of the activities in the application.

(Authority: Secs. 12(c) and 130 of the Act; 29 U.S.C. 711(c) and 750)

§ 371.20 [Amended]

10. In § 371.20, add after "governing body" the words "or consortium".

11. In § 371.21, paragraph (i) is revised to read as follows:

§ 371.21 What are the special application requirements related to the State plan program?

* * * * *

(i) Any American Indian with handicaps who is an applicant or recipient of services, and who is dissatisfied with a determination made by a counselor or coordinator under this program and files a request for a review, will be afforded a review under procedures developed by the grantee

comparable to those under the provisions of section 102(d) (1)–(3) of the Act.

(Authority: Secs. 12(c) and 102(d) of the Act; 29 U.S.C. 711(c) and 722(d))

* * * * *

12. Section 371.40 is revised to read as follows:

§ 371.40 What are the matching requirements?

(a) *Federal share.* Except as provided in paragraph (c) of this section, the Federal share may not be more than 90 percent of the total cost of the project.

(b) *Non-Federal share.* The non-Federal share of the cost of the project may be in cash or in kind, fairly valued.

(c) *Waiver of non-Federal share.* In order to carry out the purposes of the program, the Secretary may waive the non-Federal share requirement, in part or in whole, only if the applicant demonstrates that it does not have sufficient resources to contribute the non-Federal share of the cost of the project.

(Authority: Secs. 12(c) and 130(a) of the Act; 29 U.S.C. 711(c) and 750(c))

13. Section 371.42 is revised to read as follows:

§ 371.42 How are services to be administered under this program?

(a) *Directly or by contract.* A grantee under this Part may provide the vocational rehabilitation services directly or it may contract or otherwise enter into an agreement with a designated State unit, a rehabilitation facility, or another agency to assist in the implementation of the vocational rehabilitation service program for American Indians with handicaps.

(b) *Inter-tribal agreement.* A grantee under this Part may enter into an inter-tribal arrangement with governing bodies of other Indian tribes for carrying out a project that serves more than one Indian tribe.

(c) *Comparable service program.* To the maximum extent feasible, services provided by a grantee under this Part must be comparable to rehabilitation service provided under this title to other individuals with handicaps residing in the State.

(Authority: Secs. 12(c) and 130 of the Act; 29 U.S.C. 711(c) and 750)

PART 386—REHABILITATION TRAINING: REHABILITATION LONG-TERM TRAINING

14. The authority citation for Part 386 is revised to read as follows:

Authority: 29 U.S.C. 711(c) and 774, unless otherwise noted.

15. Section 386.1 is revised to read as follows:

§ 386.1 What is the Rehabilitation Long-Term Training Program?

This program is designed to provide academic and non-academic training in areas of personnel shortages identified by the Secretary and published as a notice in the Federal Register. These areas may include—

(a) Rehabilitation engineering;
(b) Rehabilitation medicine;
(c) Rehabilitation nursing;
(d) Rehabilitation counseling;
(e) Rehabilitation social work;
(f) Rehabilitation psychiatry;
(g) Rehabilitation psychology;
(h) Rehabilitation dentistry;
(i) Physical therapy;
(j) Occupational therapy;
(k) Speech-language pathology and audiology;
(l) Physical education;
(m) Therapeutic recreation;
(n) Rehabilitation facility administration;
(o) Vocational evaluation and work adjustment;
(p) Rehabilitation workshop and facility personnel;
(q) Prosthetics and orthotics;
(r) Rehabilitation of the blind;
(s) Rehabilitation of the deaf;
(t) Rehabilitation of the mentally ill;
(u) Rehabilitation job development and job placement;
(v) Specialized personnel for supported employment;
(w) Undergraduate education in the rehabilitation services;
(x) Rehabilitation administration;
(y) Independent living;
(z) Client assistance; and
(aa) Other fields contributing to the rehabilitation of individuals with handicaps, especially individuals with severe handicaps, including homebound or institutionalized individuals.

(Authority: Secs. 304 (a) and (b) of the Act; 29 U.S.C. 774 (a) and (b))

16. Section 386.4 is revised to read as follows:

§ 386.4 What definitions apply to this program?

The following definitions apply to this program:

(a) The definitions in 34 CFR Part 385.

(b) The following definitions:

"Academic year" means a full-time course of study—

(1) Taken for a period totaling at least 9 months; or

(2) Taken for the equivalent of at least 2 semesters, 2 trimesters, or 3 quarters.

"Certificate" means a recognized educational credential awarded by a grantee under this Part which attests to the completion of a specified series of courses or program of study.

"Related agency" means—

(1) An American Indian rehabilitation program; or

(2) Any of the following agencies that provide services to individuals with handicaps under an agreement with a State agency in the area of specialty for which training is provided:

(i) A Federal, State or substate agency.

(ii) A nonprofit organization.

(iii) A for-profit sole professional practice.

"Scholar" means an individual who is enrolled in a certificate or degree granting course of study in one of the areas listed in § 386.1 and who receives assistance under this part.

"Scholarship" means a training award to a scholar.

"Training award" means an award of financial assistance to an individual for training in one or more of the areas designated in § 386.1.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

§ 386.30 [Amended]

17. In § 386.30(c), "baisis" is corrected to read "basis."

18. In § 386.30(b)(2)(iii), remove the words "physically and mentally handicapped persons, especially those who are severely handicapped" and add, in their place, the words "persons with handicaps, especially persons with severe handicaps".

19. Section 386.42 is revised to read as follows:

§ 386.42 What are the requirements affecting applicants for and recipients of training awards?

(a) An individual applying for a training award—

(1)(i) Shall produce documentation that the individual is—

(A) A U.S. citizen or national; or

(B) A permanent resident of the Republic of the Marshall Islands, Federated States of Micronesia, Republic of Palau, or the Commonwealth of the Northern Mariana Islands; or

(ii) Shall produce documentation from the U.S. Immigration and Naturalization Service that he or she—

(A) Is a lawful permanent resident of the United States; or

(B) Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; and

(2) Must not be an employee of the Federal government;

(3) Shall express interest in a career in clinical practice, administration, supervision, teaching, or research in the vocational rehabilitation or independent living rehabilitation of persons with handicaps, especially persons with severe handicaps; and

(4) Shall provide assurances that the individual expects to maintain or seek employment in a State vocational rehabilitation agency or in a nonprofit rehabilitation or related agency providing services to individuals with handicaps or individuals with severe handicaps under an agreement with a State agency.

(b) An individual who receives a training award—

(1) Shall receive the training at the educational institution or agency designated in the training award; and

(2) Must not accept payment of educational allowances from any other Federal, State, or local public or private nonprofit agency if that allowance is conditioned on an employment obligation that conflicts with the individual's obligation under § 386.42(a)(4) or § 386.44(c)(1).

(Authority: Secs. 12(c) and 304(b) of the Act; 29 U.S.C. 711(c) and 774(b))

(Approved by the Office of Management and Budget under control number 1820-0028)

20. A new § 386.43 is added to read as follows:

§ 386.43 What are the additional requirements affecting scholars?

(a) *Requirements for a scholar.* A scholar shall—

(1) Enter into a written agreement with grantee that meets the terms and conditions required in § 386.44;

(2) Be enrolled in a course of study leading to a certificate or degree in one of the fields designated in § 386.1; and

(3) Maintain satisfactory progress toward the certificate or degree as determined by the grantee.

(b) *Limits on scholarships.* (1) Assistance is limited to the individual's cost of attendance at the institution for no more than four academic years except that the grantee may allow one additional academic year if the grantee determines that an individual has a handicap that seriously affects the completion of the course of study.

(2) If a scholarship, when added to the amount the scholar is to receive for the same academic year under Title IV of the Higher Education Act, would otherwise exceed the scholar's cost of attendance, the grantee shall reduce the scholarship by the amount in which the combined awards would be in excess of the cost of attendance.

(Authority: Secs. 12(c) and 304(b) of the Act; 29 U.S.C. 711(c) and 774(b))

21. A new § 386.44 is added to read as follows:

§ 386.44 What assurances must be provided by a grantee that intends to provide scholarships?

A grantee under this Part that intends to grant scholarships shall provide the following assurances:

(a) *Requirement for agreement.* No individual will be provided a scholarship without entering into a written agreement containing the terms and conditions required by this section.

(b) *Disclosure to applicants.* The terms and conditions of the agreement that the grantee will enter into with a scholar will be fully disclosed in the application for scholarship.

(c) *Form and terms of agreement.* Each scholarship agreement with a grantee will be in such form and contain such terms as the Secretary requires, including at a minimum the following provisions:

(1) Within the ten-year period after cessation of enrollment in the course of study for which the scholarship is awarded, the scholar will obtain and maintain employment—in a State rehabilitation agency or in a nonprofit rehabilitation or related agency providing services to individuals with handicaps under an agreement with a State agency—on a full-time basis for a period of not less than two years for each academic year for which a scholarship is received. The work requirement for portions of an academic year are prorated.

(2) The employment obligation in paragraph (c)(1) of this section as applied to a part-time scholar is based on the accumulated academic years of training for which scholarship is received.

(3) Until the scholar has satisfied the employment obligation described in paragraph (c)(1) of this section, the scholar will inform the grantee of any change of name, address or employment status and will document employment satisfying the terms of the agreement.

(4) Subject to the provisions in § 386.45 regarding a waiver or deferral, when the scholar enters repayment status under § 386.47(e), the amount of the scholarship that has not been retired through eligible employment will constitute a debt owed the United States that—

(i) Will be repaid by the scholar, including interest and costs of collection as provided in § 386.47; and

(ii) May be collected by the Secretary in accordance with 34 CFR Part 30, in the case of the scholar's failure to meet the obligation of § 386.47.

(d) *Executed agreement.* The grantee will provide an original executed agreement to the Secretary.

(e) *Standards for satisfactory progress.* The grantee establishes, publishes, and applies reasonable standards for measuring whether a scholar is maintaining satisfactory progress in the scholar's course of study. The Secretary considers an institution's standards to be reasonable if the standards—

(1) Conform with the standards of satisfactory progress of the nationally recognized accrediting agency that accredits the institution, if the institution is accredited by such an agency, and if the agency has such standards;

(2) For a scholar enrolled in an eligible program who is to receive assistance under the Rehabilitation Act, are the same as or stricter than the institution's standards for a student enrolled in the same academic program who is not receiving assistance under the Rehabilitation Act; and

(3) Include the following elements:

(i) Grades, work projects completed, or comparable factors which are measurable against a norm;

(ii) A maximum time frame in which the scholar must complete the scholar's educational objective, degree, or certificate. The time frame shall be—

(A) Determined by the institution;

(B) Based on the scholar's enrollment status; and

(C) Divided into increments, not to exceed one academic year. At the end of each increment, the institution shall determine whether the scholar has successfully completed a minimum percentage of work toward the scholar's educational objective, degree, or certificate for all increments completed. The minimum percentage of work shall be the percentage represented by the number of increments completed by the scholar compared to the maximum time frame set by the institution;

(iii) Consistent application of standards to all scholars within categories of students e.g., full-time, part-time, undergraduates, graduate students and programs established by the institution;

(iv) Specific policies defining the effect of course incompletes, withdrawals, repetitions, and noncredit remedial courses on satisfactory progress; and

(v) Specific procedures for appeal of a determination that a scholar is not making satisfactory progress and for reinstatement of aid.

(f) *Tracking system.* The grantee has established policies and procedures to

determine compliance of the scholar with the terms of the agreement.

(g) *Reports.* The grantee makes reports to the Secretary that are necessary to carry out the Secretary's functions under this Part.

(Authority: Secs. 12(c) and 304(b) of the Act; 29 U.S.C. 711(c) and 774(b))

(Approved by the Office of Management and Budget under control number 1820–0028)

22. A new § 386.45 is added to read as follows:

§ 386.45 Under what circumstances does the Secretary grant a deferral or exception to performance or repayment under a scholarship agreement?

A deferral or repayment exception to the requirements of § 386.44(c)(1) may be granted, in whole or part, by the Secretary as follows:

(a) Repayment is not required if the scholar—

(1) Is unable to continue the course of study or perform the work obligation because of an impairment that is expected to continue indefinitely or result in death; or

(2) Has died.

(b) Repayment of a scholarship may be deferred during the time the scholar is—

(1) Engaging in a full-time course of study at an institution of higher education;

(2) Serving, not in excess of three years, on active duty as a member of the armed services of the United States;

(3) Serving as a volunteer under the Peace Corps Act;

(4) Serving as a full-time volunteer under Title I of the Domestic Volunteer Service Act of 1973;

(5) Temporarily totally disabled, for a period not to exceed three years; or

(6) Unable to secure employment as required by the agreement by reason of the care provided to a disabled spouse for a period not to exceed twelve months.

(Authority: Secs. 12(c) and 304(b) of the Act; 29 U.S.C. 711(c) and 744(b))

23. A new § 386.46 is added to read as follows:

§ 386.46 What must a scholar do to obtain a deferral or exception to performance or repayment under a scholarship agreement?

(a) *Written application.* A written application must be made to the Secretary to request a deferral or an exception to performance or repayment of a scholarship.

(b) *Documentation.* (1) Documentation must be provided to substantiate the grounds for a deferral or exception.

(2) Documentation necessary to substantiate an exception under § 386.45(a)(1) or a deferral under § 386.45(b)(5) must include a sworn affidavit from a qualified physician.

(3) Documentation to substantiate an exception under § 386.45(a)(2) must include a death certificate or other evidence conclusive under State law.

(Authority: Secs. 12(c) and 304(b) of the Act; 29 U.S.C. 711(c) and 744(b))

(Approved by the Office of Management and Budget under control number 1820–0028)

24. A new § 386.47 is added to read as follows:

§ 386.47 What are the consequences of a scholar's failure to meet the terms and conditions of a scholarship agreement?

In the event of a failure to meet the terms and conditions of a scholarship agreement or to obtain a deferral or an exception as provided in § 386.45, the scholar shall repay all or part of the scholarship.

(a) *Amount.* The amount of scholarship to be repaid is proportional to the employment obligation not completed.

(b) *Interest rate.* The Secretary charges the scholar interest on the unpaid balance owed in accordance with 31 U.S.C. 3717.

(c) *Interest accrual.*

(1) Interest on the unpaid balance accrues from the date the scholar is determined to have entered repayment status under paragraph (e) of this section.

(2) Any accrued interest is capitalized at the time the scholar's repayment schedule is established.

(3) No interest is charged for the period of time during which repayment has been deferred under § 386.45.

(d) *Collection costs.* Under the authority of 31 U.S.C. 3717, the Secretary may impose reasonable collection costs.

(e) *Repayment status.* A scholar enters repayment status on the first day of the first calendar month after the earliest of the following dates, as applicable:

(1) The date the scholar informs the Secretary he or she does not plan to fulfill the employment obligation under the agreement.

(2) Any date when the scholar's failure to begin or maintain employment makes it impossible for that individual to complete the employment obligation within the ten years after cessation of enrollment in the course of study.

(f) *Amounts and frequency of payment.* The scholar shall make payments to the Secretary that cover principal, interest, and collection costs according to a schedule established by the Secretary.

(Authority: Secs. 12(c) and 304(b) of the Act; 29 U.S.C. 711(c) and 744(b))

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Friday
August 14, 1987

Part VI

Department of Education

34 CFR Part 614

College Facilities Loan Program; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 614

College Facilities Loan Program

AGENCY: Department of Education.
ACTION: Final regulations.

SUMMARY: The Secretary issues final regulations to implement the College Facilities Loan program, authorized under Title VII, Part F of the Higher Education Act of 1965, as amended. These regulations establish eligibility conditions, selection criteria, and other terms and conditions for applicants and loan recipients under this program.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Summer M. Bravman, Program Manager, College Facilities Loan Program, Division of Higher Education Incentive Programs, Office of Postsecondary Education, U.S. Department of Education, (Room 3022, ROB–3), 400 Maryland Avenue, SW., Washington, DC 20202–3327. Telephone (202) 732–4304.

SUPPLEMENTARY INFORMATION: Title VII, Part F of the Higher Education Act authorizes a program of low interest loans to assist undergraduate postsecondary educational institutions in the construction, reconstruction, or renovation of housing facilities, undergraduate academic facilities, and other educational facilities.

On May 12, 1987, the Secretary published a notice of proposed rulemaking for the College Facilities loan program. Interested parties were provided 30 days to submit their comments to the Secretary. A summary of the comments received and the Secretary's responses to those coments are included in this preamble.

Summary of Comments and Responses

General Comment

Comment: One commenter suggested that the Secretary include a provision in the regulations to reallocate loan funds to the next institution in rank order if an institution that receives a fund reservation is subsequently found to be ineligible.

Response: No change has been made. If such a situation occurred before the close of the fiscal year, the loan funds previously committed would be reallocated to the next insitution in rank order. However, since Congress directs the amount of new loan commitments that may be made in each fiscal year in the Department's appropriation act, the Department does not have the authority to make any additional commitments after the close of the fiscal year.

Section 614.5 What definitions apply?

Comment: One commenter suggested that the definition of "Undergraduate academic facilities" be revised to include facilities the primary purpose of which is the instruction of students pursuing at least a two-year program acceptable for full credit toward a baccalaureate degree.

Response: A change has been made. The Higher Education Technical Amendments Act of 1987 requires a revised definition identical to that proposed by the commenter.

Section 614.11 What conditions of eligibility apply?

Comment: One commenter believed that the provision in the regulations that the Secretary does not approve a loan to an institution that is in default under any Federal program applies to institutions with a high National Direct Student Loan (now called Perkins Loan) default rates. The commenter proposed suggestions based on this belief.

Response: No change has been made. An institution is not in default of an obligation under the Perkins Loan Program, if default rates for loan recipients at the institution exceed the levels established for an award of a Federal Capital Contribution to the institution. The commenter was mistaken in his belief that Perkins Loan Program recipient default rates would disqualify an institution from receiving a loan under the College Facilities Loan Program.

Section 614.20 How does the Secretary evaluate applications?

Comment: One commenter objected to the use of an increase in enrollment as a selection criterion, especially for housing, because of the expected decline in what the commenter categorized as traditional age students.

Response: No change has been made. An increase in enrollment is not used as selection criterion for housing facilities. It is only used as a selection criterion for new construction of undergraduate academic facilities and for other eductional facilities. Because section 763(b) of the Act mandates that the Secretary give priority to loans for the renovation and reconstruction of older undergraduate academic facilities, consideration of applications for new construction of undergraduate academic facilities and for other educational facilities should be given only under very limited circumstances, such as when significant increases in enrollment have occurred.

Comment: One commenter suggested that differences in regional costs be considered in evaluating cost-effectiveness and financial need.

Response: No change has been made. At the present time, the Secretary does not have data available to assess accurately the regional cost differences for college facilities construction. The Secretary believes a valid and useful assessment of cost effectiveness can still be made by comparing project costs in absolute terms. The Secretary will consider making future changes to the selection critria as reliable information on regional cost differences becomes available.

Other Changes

In § 614.11, "What conditions of eligibility apply?", the Secretary has deleted paragraph (a)(3) since it is redundant. A similar requirement regarding elaborate or extravagant construction or materials is contained in § 75.607 of the Education Department General Administrative Regulations (EDGAR).

Section 614.11(b) has been modified to clarify the provision that the Secretary does not approve a loan for any facility on the campus of an undergraduate educational institution until ten years after the date on which a previous loan for another facility on that campus was made under Title VII, Part F of the Higher Education Act of 1965, as added by the Higher Education Amendments of 1986. The change makes clear that the Secretary interprets the statutory limitation in section 762(i) of the Higher Education Act as applying only to institutions that receive loan commitments after the October, 1986 effective date of the Higher Education Amendments of 1986.

The final regulations include a Subpart E, which was omitted from the text of the proposed regulations that appeared in the notice of proposed rulemaking, for discounted prepayment of loans. The omission was unintentional, particularly in light of the fact that the Secretary recently revised, and currently administers, the provisions governing discounted prepayments of loans. Subpart E is necessary for inclusion in the final regulations because of statutory changes on discounting authority enacted by Congress in the Higher Education Amendments of 1986; the changes were

incorporated by the Secretary in revisions to the then existing program regulations on December 23, 1986.

Printing errors have been corrected throughout the regulations.

Executive Order 12291

The regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on the processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department 's specific plans and actions for this program.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require the transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 614

Colleges and universities, Education, Grant programs–housing and community development, Housing, Loan programs—housing and community development, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.142)

Dated: August 10, 1987.

William J. Bennett,

Secretary of Education.

The Secretary revises Part 614 of Title 34 of the Code of Federal Regulations to read as follows:

PART 614—COLLEGE FACILITIES LOAN PROGRAM

Subpart A—General

Sec.

614.1 What is the College Facilities Loan Program?
614.2 Who is eligible to receive a loan?
614.3 What types of projects may the Secretary fund?
614.4 What regulations apply?
614.5 What definitions apply?

Subpart B—How Does One Apply for a Loan?

614.10 How does one submit an application?
614.11 What conditions of eligibility apply?
614.12 What evidence, assurances, and opinions of counsel are required of the applicant institution?
614.13 What application procedures apply to non-profit student housing cooperatives?
614.14 What application procedures apply to non-profit corporations?

Subpart C—How Does the Secretary Make a Loan?

614.20 How does the Secretary evaluate applications?
614.21 What selection criteria are used to evaluate applications for loans for housing facilities?
614.22 What selection criteria are used to evaluate applications for loans for undergraduate academic facilities?
614.23 What selection criteria are used to evaluate applications for loans for other educational facilities?
614.24 What apportionment requirements and other limitations apply?
614.25 What determination must be made by the Secretary regarding non-availability of equally favorable terms and conditions?
614.26 What is required in a loan agreement?
614.27 What kinds of security for the loan are required?
614.28 What evidence of an approved debt instrument is required?
614.29 When does loan closing take place?
614.30 What are the conditions for interim financing?

Subpart D—What Conditions Must be Met After an Award?

614.40 What are the general rules for determining eligible development costs?
614.41 What are ineligible development costs?
614.42 What are the requirements with respect to a construction account?
614.43 What are the procedures for loan disbursement?
614.44 How shall the balance remaining in the construction fund be disposed of?
614.45 How is the determination of final approved development costs made?
614.46 How must pledged revenues be applied?
614.47 What are the length and maturity of loans?
614.48 What are borrowers' non-financial obligations?

Subpart E—What Conditions Must be Met for a Discounted Prepayment of a Loan?

614.50 How does the Secretary provide for a discounted prepayment of a loan?

Authority: 20 U.S.C. 1132g–1132g–3, unless otherwise noted.

Subpart A—General

§ 614.1 What is the College Facilities Loan Program?

The College Facilities Loan Program provides low interest loans to assist undergraduate postsecondary educational institutions in the construction, reconstruction, or renovation of housing, undergraduate academic facilities, and other educational facilities for students and faculties.

(Authority: 20 U.S.C. 1132g)

§ 614.2 Who is eligible to receive a loan?

Any of the following are eligible to receive a loan:

(a) Any public or private non-profit undergraduate postsecondary educational institution which offers, or provides satisfactory assurance to the Secretary that it will offer within a reasonable time after completion of the facility for which assistance is requested under this part, at least a two-year program acceptable for full credit toward a baccalaureate degree.

(b) Any public educational institution that—

(1) Is administered by a college or university which is accredited by a nationally recognized accrediting agency or association;

(2) Offers technical or vocational instruction; and

(3) Provides residential facilities for some or all of the students receiving that instruction.

(c) Any public or non-profit private hospital that—

(1) Operates a school of nursing beyond the level of high school and is approved by an appropriate State authority; or

(2) Is approved for internships by an accrediting agency or association recognized by the Secretary.

(d) Any non-profit corporation established for the sole purpose of providing housing or other educational facilities for students or for students and faculty of one or more institutions referred to in paragraph (a) or (b) of this section if—

(1) The housing or facilities are not restricted to students or faculty on the basis of their membership in or affiliation with any social, fraternal, or honorary society or organization; and

(2) Upon dissolution of the non-profit corporation, all title to any property built or purchased with proceeds of the loan will go to the institutions or be used for some other non-profit educational purpose.

(e) Any agency, public authority, or other instrumentality of any State, established for the purpose of providing or financing housing or other educational facilities for students or for students and faculty of one or more institutions referred to in paragraph (a) or (b) of this section.

(f) Any non-profit student housing cooperative corporation established for the purpose of providing housing for students or for students and faculty of one or more institutions referred to in paragraph (a) or (b) of this section.

(Authority: 20 U.S.C. 1132g–3)

§ 614.3 What types of projects may the Secretary fund?

(a) The Secretary approves loans for projects that enable undergraduate postsecondary educational institutions to construct, reconstruct, or renovate—

(1) Housing facilities for students and faculties;

(2) Undergraduate academic facilities; or

(3) Other educational facilities.

(b) The Secretary may announce from among those categories listed in paragraph (a) of this section funding priorities under this program in any given fiscal year through a Notice published in the **Federal Register** in accordance with the procedures in 34 CFR 75.105.

(c) In addition to the priorities that may be established under paragraph (b) of this section, the Secretary gives priority to loans for renovation or reconstruction of—

(1) Older undergraduate academic facilities; and

(2) Undergraduate academic facilities that have gone without major renovation or reconstruction for an extended period.

(Authority: 20 U.S.C. 1132g–2)

§ 614.4 What regulations apply?

The following regulations apply to the College Facilities Loan Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Subparts D and P, Part 75 (Direct Grant Programs) §§ 75.105, 75.600–75.616, Part 77, and Part 79.

(b) The regulations in this Part 614.

(Authority: 20 U.S.C. 1132g–1)

§ 614.5 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in EDGAR 34 Part 77.1:

Applicant	Nonprofit
Application	Private
Award	Public
Budget	Recipient
Department	Secretary
EDGAR	State
Facilities	Supplies
Fiscal year	

(b) *Revised EDGAR definitions.* The following terms defined in EDGAR, 34 CFR 77.1, are redefined for this part as follows:

"Acquisition" means taking ownership of property through purchase at fair market value.

"Equipment" means non-expendable personal property having a useful life of more than ten years, including machinery, fixtures, and other items necessary for maintenance and operation of a facility, except books, computer software, instructional materials, and other items involving current operating expenses such as fuel, supplies, and serviceable parts. Equipment may consist of—

(1) "Built-in equipment," which is a permanent part of a facility; and

(2) "Initial equipment," which includes furniture and other necessary and appropriate items for the functioning of a facility taking into account the specific purposes of the facility.

"Project" means the construction activity that is proposed for funding by an applicant under this program.

(c) *Other definitions.* The following definitions also apply to this part:

"Act" means the Higher Education Act of 1965, as amended. Unless otherwise indicated, references to titles in this part are to titles of the Act.

"Assignable area" means the square footage of floor space in facilities which is designated and available for assignment to specific functional purposes, but does not include—

(1) Areas used for general circulation within a building;

(2) Areas for public washrooms;

(3) Areas for building maintenance or custodial services; or

(4) Areas in central maintenance and utility facilities that exist only to support the operation and use of other structures available for assignment to specific functional purposes.

"Construction" means—

(1) The erection of new or the expansion of existing structures, including acquisition of the land thereunder, and the acquisition and installation of initial equipment therefor; or

(2) The acquisition of existing structures, including the land thereunder, not owned by the institution involved.

"Design capacity", with respect to housing, means the number of occupants a building was originally designed to house, or if fewer, the maximum number of occupants permitted by State or local building codes.

"Development cost" means costs of the construction, reconstruction, or renovation of the housing, undergraduate academic facilities, or other educational facilities, including necessary site improvements to permit its use for housing, undergraduate academic facilities, or other educational facilities.

(20 U.S.C. 1132g–3(d))

"Faculties" means members of the faculty and their families.

"Full-time enrollment" means the number of full-time undergraduate resident and non-resident students, as reported by the educational institution—for the fall semester of the academic year prior to that in which the application is filed—to the Center for Education Statistics of the Department of Education for its annual Integrated Postsecondary Education Data Systems (IPEDS) survey.

"Gross area" means the total square footage of floor space within the outside faces of exterior walls in the facilities including common areas such as halls and stairways, public washrooms, and areas for building maintenance and utilities.

"Housing" means—

(1) New or existing structures suitable for dwelling use by students or students and faculty and their families, including—(i) Dormitories; and (ii) Apartments; and

(2) Dwelling facilities for students or faculty provided by rehabilitation, alteration, conversion, or improvement of existing structures that are otherwise inadequate for the proposed dwelling use.

(20 U.S.C. 1132g–3(a))

"Housing shortage" means an existing need for decent, safe, and sanitary housing for currently enrolled full-time undergraduate students and faculty.

"Other educational facilities" means—

(1) New or existing structures suitable for use as cafeterias or dining halls, student centers or student unions, infirmaries or other inpatient or outpatient health facilities, or for use as other essential service facilities; and

(2) Structures suitable for those uses provided by rehabilitation, alteration,

conversion, or improvement of existing structures which are otherwise inadequate for those uses.

(20 U.S.C. 1132g–3(f))

"Part-time enrollment" means the number of part-time undergraduate resident and non-resident students, as reported by the educational institution—for the fall semester of the academic year prior to that in which the application is filed—to the Center for Education Statistics of the Department of Education for its annual Integrated Postsecondary Education Data Systems (IPEDS) survey.

"Reconstruction or renovation" means rehabilitation, alteration, conversion or improvement (including the acquisition and installation of initial equipment, or modernization or replacement of that equipment) of existing structures. ("Major renovation" means reconstruction or renovation with a total development cost in excess of $100,000.)

(20 U.S.C. 1132i–1(1)(B))

"Substandard housing" means student housing, either on campus or off campus that—

(1) Is owned or leased by an institution eligible under § 614.2; and

(2) Fails to meet current applicable State or local building code requirements.

"Undergraduate academic facilities" means structures suitable for use as classrooms, laboratories, libraries, and related facilities, the primary purpose of which is the instruction of students pursuing at least a two-year program acceptable for full credit toward a baccalaureate degree, or for administration of the educational programs serving those students, and maintenance, storage, or utility facilities essential to operation of these facilities, as well as infirmaries or other facilities designed to provide primarily outpatient care for students and instructional personnel. The term does not include facilities such as—

(1) Dormitories, residence halls, or similar facilities designed for residence or habitation;

(2) Facilities primarily intended for events for which admission is to be charged the general public;

(3) Gymnasiums, stadiums, swimming pools, student centers, or other similar facilities specially designed for athletic or recreational activities; or

(4) Facilities used for religious worship or sectarian activities, or used in connection with a program conducted by a school or department of divinity.

(Authority: 20 U.S.C. 1132g–1(c), 1132g–3(c))

Subpart B—How Does One Apply for a Loan?

§ 614.10 How does one submit an application?

(a) An applicant for a reservation of funds for a loan shall submit an application to the Secretary at the time, in the manner, and containing the information required by the Secretary.

(b)(1) An applicant may submit only one application for a reservation of funds in any fiscal year for each category of project described in § 614.3.

(2) For purposes of paragraph (b)(1) of this section, the Secretary considers as a separate applicant a branch campus of a multi-campus institution if that branch campus has its own Federal Interagency Committee on Education (FICE) identification number.

(Authority: 20 U.S.C. 1132g–1(c))

§ 614.11 What conditions of eligibility apply?

(a) The Secretary considers a project eligible to receive assistance only if—

(1) The applicant has not contracted for construction before filing its application; and

(2) The facility will not be used—

(i) For religious worship;

(ii) In connection with a school or department of divinity; or

(iii) For a school providing either training for religious purposes or principally sectarian instruction.

(b) The Secretary does not approve another college facilities loan authorized under Part F, Title VII, of the Higher Eduction Act for any facility on the campus of an undergraduate educational institution until ten years after the date on which a previous loan for a facility on that campus was made under Part F, Title VII, of the Higher Education Act.

(c) Except in cases where construction assistance is necessary to remove a threat to life or limb or to repair a facility affected by a natural disaster, the Secretary does not approve a loan for a project in a facility on which there is an outstanding loan made under this part or under Title IV of the Housing Act of 1950.

(d) The Secretary does not approve a loan to an institution that is—

(1) Delinquent on a loan previously made under the Act, or under Title IV of the Housing Act of 1950, whether or not the Secretary has agreed to any deferment; or

(2) In default of any other obligation made under any other Federal program.

(e) The Secretary does not approve a loan to an institution that is financially insolvent.

(Authority: 20 U.S.C. 1132g–(b), 1132g–1(c))

§ 614.12 What evidence, assurances, and opinions of counsel are required of the applicant institution?

An applicant shall submit to the Secretary, as part of its application, the following evidence, assurances, and opinions of counsel:

(a) Satisfactory evidence that the applicant has or will have—based on title or lease—an interest in the project site, including the right of access, that is sufficient to ensure the applicant's undisturbed use and possession of the facilities for not less than the useful life of the facilities or 50 years, whichever is longer.

(b) Satisfactory evidence that the applicant has the necessary legal authority to—

(1) Finance, construct, reconstruct or renovate or maintain the proposed facilities;

(2) Apply for and receive the proposed loan; and

(3) Pledge or mortgage any assets or revenues to be given as security for the proposed loan.

(c) Satisfactory assurance that if the Secretary offers and the applicant accepts the loan, the applicant will comply with the terms and conditions for repayment of the loan.

(d) Satisfactory assurance that the applicant will secure the loan in a manner the Secretary finds will reasonably assure repayment. The security may be one or a combination of procedures listed in § 614.27.

(e) Satisfactory assurance that the applicant will not, without consent of the Secretary, sell, mortgage, encumber, or lease to others during the life of the loan, the facility constructed, reconstructed, or renovated with the aid of the loan.

(f) Legal opinions by bond counsel or legal counsel with respect to—

(1) The legal sufficiency of the note or the bond issue that the applicant proposes to offer to secure the loan;

(2) The legal authority of the applicant to offer the note or bond issue and secure it by the proposed collateral; and

(3) The legal sufficiency of the debt instrument and collateral on delivery.

(g) As used in this paragraph, "bond counsel" means a law firm or individual lawyer—

(1) Who is thoroughly experienced in the financing of construction, reconstruction, or renovation projects through the issuance of bonds;

(2) Whose approving opinions have been previously accepted by purchasers of bonds offered at public sales; and

(3) Who, if the borrower is a public institution or agency, is a recognized bond counsel in the municipal field.

(h) As used in this paragraph, "legal counsel" means a law firm or individual lawyer—

(1) Having experience in the financing of construction, reconstruction, or renovation projects; and

(2) Whose opinions with regard to that type of financing have been accepted previously by responsible lenders or lending institutions.

(Authority: 20 U.S.C. 1132g–1(c))

(Approved by the Office of Management and Budget under control number 1840–0580)

§ 614.13 What application procedures apply to non-profit student housing cooperatives?

A nonprofit student housing cooperative, as described in § 614.2(f), that applies for a reservation of funds for a loan must assure the Secretary at the time of its application that—

(a) The institution the proposed project is intended to serve has agreed to cosign the loan as a borrower; or

(b) If State law in effect on September 7, 1964 prevents the institution from cosigning the loan, the institution has approved the cooperative and the proposed project.

(Authority: 20 U.S.C. 1132g–3(b))

§ 614.14 What application procedures apply to non-profit corporations?

If a non-profit corporation described in § 614.2(d) that has not been established by the institution or institutions the proposed project is intended to serve applies for a reservation of funds for a loan, it shall assure the Secretary at the time of its application that—

(a) The educational institution or institutions the proposed project is intended to serve have agreed to cosign the loan as a borrower; or

(b) If State law in effect on September 7, 1964 prevents the institution or institutions from cosigning the loan, the institution or institutions have approved the corporation and the proposed project.

(Authority: 20 U.S.C. 1132g–3(b))

Subpart C—How Does the Secretary Make a Loan?

§ 614.20 How does the Secretary evaluate applications?

The Secretary evaluates applications for loans to construct, reconstruct or renovate—

(a) Housing facilities according to the criteria in § 614.21;

(b) Undergraduate academic facilities according to the criteria in § 614.22; and

(c) Other educational facilities according to the criteria in § 614.23.

(Authority: 20 U.S.C. 1132g–1(c))

(Approved by the Office of Management and Budget under control number 1840–0580)

§ 614.21 What selection criteria are used to evaluate applications for loans for housing facilities?

The Secretary evaluates each application for a loan for housing facilities on the basis of the following criteria:

(a) *Use of existing housing.* (10 points)

(1) The Secretary considers the extent to which the institution makes effective use of the undergraduate student housing space that it owns or leases as measured by the number of assignable square feet per undergraduate student occupant.

(2) The Secretary assigns the highest scores to institutions with the smallest amount of assignable square feet per undergraduate student occupant.

(b) *Housing deficiency.* (20 points)

(1) The Secretary considers the extent to which the institution has a housing deficiency as measured by the number of accommodations required to—

(i) Eliminate overcrowding of undergraduate students, that is, occupancy in excess of design capacity;

(ii) Provide accommodations for undergraduate students living in substandard housing; and

(iii) Provide accommodations for undergraduate students denied housing but registered for classes for the opening fall semester preceding the date of application.

(2) The Secretary assigns the highest scores to institutions with the greatest housing deficiency.

(c) *Relative housing deficiency.* (20 points)

(1) The Secretary considers the extent to which the institution has a relative housing deficiency as measured in terms of a percentage obtained by dividing the total housing deficiency in § 614.21(b) by the institution's full-time enrollment.

(2) The Secretary assigns the highest scores to institutions with the highest relative housing deficiency.

(d) *Cost effectiveness of project.* (30 points)

(1) The Secretary considers the cost effectiveness of the project as measured by the total development cost per gross square foot of the project, and the total development cost per undergraduate student accommodation.

(2) The Secretary assigns up to 15 points to institutions with the lowest cost per gross square foot, and up to 15 points to institutions with the lowest cost per undergraduate student accommodation.

(e) *Financial need.* (20 points)

(1) The Secretary considers the basic education and general annual expenditures per undergraduate student, as calculated by dividing the amount of expenditures by the sum of the full-time enrollment and one-third of the part-time enrollment. These expenditures must be based on data reported in the annual Center for Education Statistics Integrated Postsecondary Education Data Systems survey for the most recent year for which data are available.

(2) The Secretary assigns the highest scores to institutions with the lowest expenditure per student.

(Authority: 20 U.S.C. 1132g–1(c))

(Approved by the Office of Management and Budget under control number 1840–0580)

§ 614.22 What selection criteria are used to evaluate applications for loans for undergraduate academic facilities?

(a) The Secretary evaluates each application for a loan for the construction of new undergraduate academic facilities according to the following criteria:

(1) *Increase in enrollment.* (25 points)

(i) The Secretary considers the numerical increase in undergraduate student enrollment at the institution or branch campus where the construction would occur, as calculated by the increase in the sum of the full-time enrollment and one-third of the part-time enrollment, over a three-year period beginning with the fall semester that began three years preceding the most recent fall semester.

(ii) The Secretary assigns the highest scores to institutions with the largest increases in enrollment.

(2) *Relative increase in enrollment.* (25 points)

(i) The Secretary considers the percentage increase in undergraduate student enrollment at the institution or branch campus where the construction would occur, as calculated by the percentage increase in the sum of the full-time enrollment and one-third of the part-time enrollment, over a three-year period beginning with the fall semester that began three years preceding the most recent fall semester.

(ii) The Secretary assigns the highest scores to institutions with the largest relative increases in enrollment.

(3) *Use of existing undergraduate academic facilities.* (30 points)

(i) The Secretary assesses the extent to which the institution makes use of its existing undergraduate academic facilities by considering the amount of assignable square feet in those facilities per undergraduate student, as calculated by dividing the assignable square feet

by the sum of the full-time enrollment and one-third of the part-time enrollment.

(ii) The Secretary assigns the highest scores to institutions with the smallest amount of square feet per undergraduate student.

(4) *Financial need.* (20 points)

(i) The Secretary considers the basic education and general annual expenditures per undergraduate student as calculated by dividing the amount of expenditures by the sum of the full-time enrollment and one-third of the part-time enrollment. These expenditures must be based on data reported in the annual Center for Education Statistics Integrated Postsecondary Education Data Systems survey for the most recent year for which the data are available.

(ii) The Secretary assigns the highest scores to institutions with the lowest expenditure per undergraduate student.

(Authority: 20 U.S.C. 1132g–1(c))

(b) The Secretary evaluates each application for a loan for the reconstruction or renovation of undergraduate academic facilities according to the following criteria:

(1) *Age of undergraduate academic facilities to be renovated or reconstructed.* (25 points)

(i) The Secretary considers the date of construction completion of the undergraduate academic facilities to be renovated or reconstructed.

(ii) The Secretary assigns the highest scores to the oldest facilities.

(2) *Deferred maintenance.* (25 points)

(i) The Secretary considers the extent to which the facilities have gone without major renovation or reconstruction.

(ii) The Secretary assigns the highest scores to the facilities that have gone the longest time without major renovation or reconstruction.

(3) *Use of existing undergraduate academic facilities.* (30 points)

(i) The Secretary assesses the extent to which the institution makes use of its existing undergraduate academic facilities by considering the amount of assignable square feet in those facilities per undergraduate student, as calculated by dividing the total assignable square feet by the sum of the full-time enrollment and one-third of the part-time enrollment.

(ii) The Secretary assigns the highest scores to institutions with the smallest amount of square feet per student.

(4) *Financial need.* (20 points)

(i) The Secretary considers the basic education and general annual expenditures per undergraduate student as calculated by dividing the amount of expenditures by the sum of the full-time enrollment and one-third of the part-time enrollment. The expenditures must be based on data reported in the annual Center for Education Statistics Integrated Postsecondary Education Data Systems survey for the most recent year for which the data are available.

(ii) The Secretary assign the highest scores to institutions with the lowest expenditure per undergraduate student.

(Authority: 20 U.S.C. 1132g–1(c))

(Approved by the Office of Management and Budget under control number 1840–0580)

§ 614.23 What selection criteria are used to evaluate applications for loans for other educational facilities?

The Secretary evaluates each application for a loan for other educational facilities according to the following criteria:

(a) *Increase in enrollment.* (25 points)

(1) The Secretary considers the numerical increase in undergraduate student enrollment at the institution or branch campus where the construction would occur, as calculated by the increase in the sum of the full-time enrollment and one-third of the part-time enrollment, over a three-year period beginning with the fall semester that began three years preceding the most recent fall semester.

(2) The Secretary assigns the highest scores to institutions with the largest increases in enrollment.

(b) *Relative increase in enrollment.* (25 points)

(1) The Secretary considers the percentage increase in undergraduate student enrollment at the institution or branch campus where the construction would occur, as calculated by the percentage increase in the sum of the full-time enrollment and one-third of the part-time enrollment, over a three-year period beginning with the fall semester that began three years preceding the most recent fall semester.

(2) The Secretary assigns the highest scores to institutions with the largest relative increases in enrollment.

(c) *Use of existing other educational facilities.* (30 points)

(1) The Secretary assesses the extent to which the institution makes use of its existing other educational facilities by considering the amount of assignable square feet in those facilities per undergraduate student, as calculated by dividing the total assignable square feet by the sum of the full-time enrollment and one-third of the part-time enrollment.

(2) The Secretary assigns the highest scores to institutions with the smallest amount of square feet per undergraduate student.

(d) *Financial need.* (20 points)

(1) The Secretary considers the basic education and general annual expenditures per undergraduate student as calculated by dividing the amount of expenditures by the sum of the full-time enrollment and one-third of the part-time enrollment. These expenditures must be based on data reported in the annual Center for Education Statistics Integrated Postsecondary Education Data Systems survey for the most recent year for which the data are available.

(2) The Secretary assigns the highest scores to institutions with the lowest expenditure per undergraduate student.

(Authority: 20 U.S.C. 1132g–1(c))

(Approved by the Office of Management and Budget under control number 1840–0580)

§ 614.24 What apportionment requirements and other limitations apply?

(a) The Secretary awards not more than 12.5 percent of the amount of the funds provided under this part to educational institutions within any one State.

(b) Subject to paragraph (a) of this section, the Secretary may, as necessary, deviate from the rank order of applications in each category of loans to ensure that not less than ten percent of the number of loans made or not less than ten percent of the amount of total funds available are reserved for applications from historically black colleges and universities.

(c) The maximum loan that the Secretary makes to an eligible applicant is $3,000,000.

(d) The minimum loan that the Secretary makes to an eligible applicant is $250,000.

(Authority: 20 U.S.C. 1132g–1(c), 1132g–2)

§ 614.25 What determination must be made by the Secretary regarding non-availability of equally favorable terms and conditions?

(a) The Secretary makes a loan only if the Secretary finds that the applicant is unable to secure from other sources a loan with terms and conditions equally as favorable as the terms and conditions applicable to loans under this part.

(b) In order to assist the Secretary in making this determination, the applicant shall comply with any procedures the Secretary may require, including—if bonds are to be issued—public advertising for bids.

(Authority: 20 U.S.C. 1132g)

§ 614.26 What is required in a loan agreement?

(a) The Secretary prepares and sends a loan offer to an applicant if—

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(1) The application meets all requirements of the Act and the regulations in this part; and

(2) The Secretary approves the project and reserves funds for it.

(b) The loan offer—

(1) Contains the terms and conditions for the loan including financial reporting requirements; and

(2) Is conditioned on the acceptance of these terms and conditions.

(c) The accepted loan offer constitutes the agreement between the Secretary and the applicant for the loan.

(Authority: 20 U.S.C. 1132–1(c))

§ 614.27 What kinds of security are required for the loan?

(a) A borrower shall evidence its loan by either notes or bonds issued by the borrower, secured by a mortgage, a trust indenture, project revenues, other revenue sources, or any combination thereof.

(b) If the Secretary determines that additional security is needed to assure loan repayment, the Secretary may require one or more of the following:

(1) A pledge of income from endowment funds.

(2) A pledge of securities.

(3) A mortgage on other facilities or real property.

(4) A guarantee of the payment of principal and interest by a third party.

(Authority: 20 U.S.C. 1132g–1(c))

(Approved by the Office of Management and Budget under control number 1840–0580)

§ 614.28 What evidence of an approved debt instrument is required?

After signifying to the Secretary its acceptance of a loan offer, a borrower shall furnish to the Secretary evidence of indebtedness in the form the Secretary prescribes in the loan agreement and in accordance with the terms and conditions of the loan agreement.

(Authority: 20 U.S.C. 1132g–1(c))

(Approved by the Office of Management and Budget under control number 1840–0580)

§ 614.29 When does loan closing take place?

Loan closing occurs at a time determined by the Secretary.

(Authority: 20 U.S.C. 1132–1g(c))

§ 614.30 What are the conditions for interim financing?

(a) A borrower may arrange for interim financing, subject to approval of the Secretary, to cover the cost of construction pending the loan closing.

(b) After the award of all prime construction contracts, if the Secretary finds that the borrower is unable to secure necessary interim financing on reasonable terms, the Secretary may provide for advances against the approved loan.

(Authority: 20 U.S.C. 1132g–1(c))

Subpart D—What Conditions Must Be Met After an Award?

§ 614.40 What are the general rules for determining eligible development costs?

The Secretary determines eligible development costs by assessing the reasonableness and appropriateness of costs that would be incurred by the project taking into account—

(a) The timing of when certain costs would be incurred by the applicant; and

(b) The applicant's compliance with the regulations in this part.

(Authority: 20 U.S.C. 1132g–1(c))

§ 614.41 What are ineligible development costs?

(a) The Secretary excludes from eligible development costs any costs for construction, reconstruction, or renovation or for otherwise eligible equipment, if the construction, reconstruction, or renovation contract was entered into before the Secretary executed the loan agreement and before the Secretary concurred in the award of the contract, except in cases where there is a threat to life or limb or there is a natural disaster which is related to the construction project.

(b) In cases of threat to life or limb or a natural disaster, the Secretary, in determining the eligibility of costs incurred prior to execution of a loan agreement and the approval of a construction contract, requires that the applicant provide a certification from a licensed professional architect or engineer that construction is necessary and appropriate.

(c) The Secretary excludes from eligible development costs any costs for—

(1) Land incurred before the applicant files the application;

(2) The acquisition of a structure incurred before the applicant files the application;

(3) Equipment incurred before the date the applicant files the application; and

(4) Ineligible facilities included in the total development costs.

(Authority: 20 U.S.C. 1132g–3(d))

§ 614.42 What are the requirements with respect to a construction account?

(a) A borrower shall deposit in a separate account known as the Construction Account—

(1) The proceeds of the sale of the bonds or notes;

(2) Any interim advances against the approved loan; and

(3) All other money that the borrower will use in paying for the construction of the approved project.

(b) The borrower shall make all expenditures for construction, rehabilitation or acquisition from this account.

(c) Accounting for this account must be in accordance with generally accepted accounting principles.

(d) If the borrower chooses to invest the funds in this account, the borrower—unless otherwise prohibited by State or local law—shall invest those funds in—

(1) Direct obligations of the U.S. Government; or

(2) Obligations whose principal and interest are guaranteed by the U.S. Government.

(e) An investment made in accordance with paragraph (d) of this section must be in obligations that will mature not later than 18 months from the date of the investment.

(f) Any interest earned on the investment of idle funds in the Construction Account during the construction period must be deposited in the Construction Account. The interest must be credited against the interest expense accruing during the construction period. In the event that interest earned exceeds interest expense, the excess must be used to reduce the outstanding principal amount of the loan.

(Authority: 20 U.S.C. 1132g–1(c))

§ 614.43 What are the procedures for loan disbursement?

(a) The borrower shall submit requests for loan disbursement on forms prescribed by the Secretary and shall furnish to the Secretary any additional information the Secretary may request.

(b) The Secretary charges interest on the advances at the same rate the Secretary charges interest on the loan.

(Authority: 20 U.S.C. 1132g–1(c))

§ 614.44 How shall the balance remaining in the construction fund be disposed of?

Upon full settlement with all contractors, suppliers, and the other parties to whom it has incurred obligations under the project, a borrower shall dispose of any money remaining in the Construction Account in accordance with the provisions of the loan agreement.

(Authority: 20 U.S.C. 1132g–1(c))

§ 614.45 How is the determination of final approved development costs made?

(a) For the purpose of determining the final approved development costs, the Secretary may permit a borrower to

use—in place of an audit by the Government—a certificate of project development costs prepared on forms prescribed by the Secretary and executed by the borrower.

(b)(1) In conjunction with the Secretary's determination of final approved development costs, the borrower shall submit to the Secretary whatever documentation the Secretary requires.

(2) This documentation may include, but is not limited to, a certificate of actual cost—in a form prescribed by the Secretary—showing the actual cost to the borrower for construction, architectural, legal, and other items of expense approved by the Secretary.

(Authority: 20 U.S.C. 1132g–1)

(Approved by the Office of Management and Budget under control number 1840–0580)

§ 614.46 How must pledged revenues be applied?

(a) A borrower that has pledged project revenues—either net or gross—as security for its loan must deposit all pledged revenues in a separate fund in accordance with the terms of the loan agreement.

(b) This fund is known as the Revenue Fund.

(c) The borrower shall make repayments on the loan from this fund in accordance with the terms of the loan agreement.

(Authority: 20 U.S.C. 1132g–1(c))

§ 614.47 What are the length and maturity of loans?

(a)(1) The maximum repayment period for a loan under this program is 30 years, unless the Secretary finds that a longer repayment period is necessary.

(2) In no case may a loan repayment period exceed the lesser of 50 years or the estimated useful life of the facilities to be constructed, reconstructed, renovated, or purchased with the proceeds.

(b) Loans must bear interest at a rate not to exceed 5.5 percent per annum.

(c) Unless the Secretary authorizes otherwise—

(1) The borrower must repay the loan semi-annually in substantially level total annual installments of principal and interest.

(2) The Secretary may approve a loan that does not mature serially if that type of loan is necessary to be compatible with a borrower's total financial planning.

(3) For a reasonable period of time—normally not exceeding two years following the closing of the loan—the Secretary may permit a borrower to make payments of interest only.

(Authority: 20 U.S.C. 1132g–1(c))

§ 614.48 What are borrowers' non-financial obligations?

In addition to its financial obligations under the loan agreement, a borrower under this program must—as required in the loan agreement—agree to—

(a) Maintain its status as an eligible educational institution, including its accreditation;

(b) Use the project for the purpose or purposes for which the loan was made, unless the Secretary approves a change of purpose;

(c) Maintain insurance on the project facilities;

(d) Repair and maintain the project facilities; and

(e) Never use the project facilities for religious worship or a sectarian activity or for a school or department of divinity.

(Authority: 20 U.S.C. 1132g–1(c))

Subpart E—What Conditions Must be met for a Discounted Prepayment of a Loan?

§ 614.50 How does the Secretary provide for a discounted prepayment of a loan?

(a)(1) The Secretary may provide a discount for prepayment in full of a college housing loan in an amount determined to be in the best financial interests of the Government for institutions that meet the conditions established in paragraph (b) of this section.

(2) The discount is applicable both to loans in current payment status and to loans in default as long as an institution does not become delinquent or in default on its loans after October 1, 1986. The Secretary reviews proposals from institutions with defaulted loans separately from those in current payment status in order to provide institutions in default all possible guidance in accomplishing the prepayment of their college housing loans.

(b) The Secretary may approve a proposal from an institution for a discounted prepayment of a college housing loan if—

(1) The prepayment is made from non-Federal sources;

(2) The prepayment is made on a loan both issued before October 1, 1986 and outstanding for at least five years;

(3) The prepayment is not derived from proceeds of obligations, the income of which is exempt from taxation under the Internal Revenue Code of 1954; and

(4) The prepayment is in an amount determined in accordance with paragraph (c) of this section;

(c) The Secretary determines the amount of a prepayment for a college housing loan based on—

(1) Current market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to that of the loan to be prepaid;

(2) Current fair market value of outstanding marketable obligations that are of comparable quality to that of the loan to be prepaid;

(3) Current and anticipated administrative costs incurred by the Secretary in servicing the loan to be prepaid; or

(4) Current net proceeds that the Secretary would receive from nongovernmental investors, if the loan to be prepaid were purchased by such investors on the open market.

Authority: Section 762 (c), (d), (e) of the Higher Education Act of 1965, as added by the Higher Education Amendments of 1986, Pub. L. No. 99–498.

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Part VII

Environmental Protection Agency

40 CFR Parts 265, 270, and 271
Changes to Interim Status and Permitted Facilities for Hazardous Waste Management; Procedures for Post-Closure Permitting; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 265, 270, 271

[FRL-3143-1]

Changes to Interim Status and Permitted Facilities for Hazardous Waste Management; Procedures for Post-Closure Permitting

AGENCY: Environmental Protection Agency (EPA).
ACTION: Proposed rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) today proposes to amend its hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) governing changes at interim status and permitted hazardous waste management facilities. This proposed rule is intended to simplify changes that are necessary to comply with new regulatory requirements. EPA also proposes to amend its permitting regulations to clarify the Agency's authority to deny permits for the active life of a facility while a permit decision with respect to the post-closure period remains pending.

DATES: Comments must be received on or before October 13, 1987.

ADDRESSES: The public must submit an original and two copies of its comments to: EPA RCRA Docket (S-212) (WH-562), 401 M Street SW., Washington, DC 20400.

Place "Docket number F-87-RIPP-FFFFF" on your comments. The OSW docket for this proposed rulemaking is located in the sub-basement at the above address, and is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. The public must make an appointment by calling (202) 475-9327 to review docket materials. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost; additional copies cost $0.20 per page.

FOR FURTHER INFORMATION CONTACT: RCRA hotline at (800) 424-9346 (in Washington, DC, call 382-3000) or Barbara Foster, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, Washington, DC 20460, telephone (202) 382-7729.

SUPPLEMENTARY INFORMATION:

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I. Authority

These regulations are proposed under the authority of sections 2002(a), 3004, 3005, and 3006 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912(a), 6924, 6925, and 6926.

II. Purpose of Rulemaking

Subtitle C of the Resource Conservation and Recovery Act (RCRA) creates a "cradle-to-grave" management system intended to ensure that hazardous waste is identified and properly transported, stored, treated, and disposed of. Subtitle C requires EPA to identify hazardous waste and to promulgate standards for generators and transporters of such wastes. Under section 3004 of RCRA, owners and operators of treatment, storage, and disposal facilities are required to comply with standards "necessary to protect human health and the environment." These standards are generally implemented initially through interim status standards and later through permits that are issued under authorized State programs or by EPA.

Under section 3005(a) of RCRA, all treatment, storage, and disposal of hazardous waste are prohibited, except in accordance with a permit that implements the section 3004 standards. However, recognizing that the issuance of permits can be time-consuming, Congress created "interim status" for facilities in existence on the effective date of EPA's permitting regulations (November 19, 1980). Under section 3005(e), owners and operators of hazardous waste treatment, storage, and disposal facilities in existence on that date who submitted a Part A permit application and a section 3010 notification are treated as having been issued permits until an authorized State or EPA takes final administrative action on their permit applications.

A facility with a permit or interim status may change its waste management operations only under certain conditions, specified in EPA's regulations on permit modifications (40 CFR 270.41 and 270.42) and changes in interim status (40 CFR 270.72). On occasion, however, new regulations issued under RCRA may necessitate changes at permitted or interim status facilities that cannot readily be made under the regulations, resulting in unnecessary delay and in some cases increased risk to human health and the environment. For example, section 3015 of the 1984 Hazardous and Solid Waste Amendments (HSWA) to RCRA imposed minimum technological requirements on certain interim status landfills, surface impoundments, and waste piles. On July 15, 1985, the Agency codified section 3015 (50 FR 28702). To comply with these new requirements and continue handling hazardous waste, many interim status facilities may have to make changes that are not allowed during interim status by the current regulations. The combined effect of these provisions may be to leave some facilities with no means of complying with the RCRA regulations, except to cease their operations while they apply for a RCRA permit.

To avoid this undesirable result, the Agency is today proposing regulatory changes to increase permitted and interim status facilities' flexibility to make changes necessary to comply with new requirements. Specifically, the proposal would allow a permitted facility to add a newly listed or identified waste to its permit as a "minor" permit modification, pending the review of a major modification request, provided that the facility was handling the waste prior to the time EPA defined it as hazardous. In addition, the proposed rule would allow owners and operators of interim status facilities to increase design capacity if necessary to comply with Federal, State, or local requirements. The rule would also amend § 270.72 to specify that owners and operators of interim status facilities may make changes in accordance with corrective action orders. It would also remove the "reconstruction" limit of the current § 270.72(e) for certain changes at interim status facilities necessary to comply with Federal, State, or local requirements, for changes made during closure of a facility or of a unit within a facility, and for changes necessary to continue handling newly listed or identified hazardous wastes. The proposed rule would further amend the current regulations to specify that the reconstruction limit does not apply to corrective action orders. However, the proposal conditions changes to an interim status facility that involve the addition of a land disposal unit on the

submission of certifications of compliance with all applicable groundwater monitoring and financial responsibility requirements within 12 months.

EPA is also proposing to amend its permitting regulations to clarify the Agency's authority to deny permits for the active life (including the closure period) of a facility while a permit decision with respect to the post-closure period remains pending. This practice allows EPA to close interim status facilities promptly through the permit denial process if they are unable to meet permitting standards, rather than to delay denial (and closure) until all post-closure conditions have been reviewed and approved.

The following sections of this preamble discuss the current regulations and proposed amendments in more detail.

III. Changes in Permitted Facilities—Newly Listed or Identified Wastes

Sections 270.41 and 270.42 of the RCRA regulations specify procedures for "major" and "minor" permit modifications. EPA or an authorized State may make minor permit modifications, which are enumerated in § 270.42, with the consent of the permit holder. Major modifications, which include any changes not specifically listed as minor, however, can be made only in accordance with the permit modification requirements of 40 CFR Part 124. The major modification procedures are essentially the same as those that apply to initial issuance of a permit. The only significant difference is that for a major modification, only those conditions of the permit to be modified are reopened. The major permit modification procedures include submission of an updated application, if requrested by the permitting agency; preparation and public notice of a draft permit; and opportunity for a public hearing. As a result, major modifications may involve a lengthy administrative process requiring the expenditure of substantial time and resources.

Under the current regulations, the handling of hazardous wastes not listed in a facility permit constitutes a major permit modification. This requirement applies not only to the handling of wastes currently defined as hazardous, but also to newly listed or identified wastes. Therefore, if a permitted facility is handling a solid waste that EPA lists as hazardous under section 3001(b) of RCRA or that possesses characteristics that EPA identifies as hazardous under sections 3001 (g) and (h), the facility's permit must undergo a major modification to allow it to continue to handle the waste.

As EPA identifies new hazardous wastes, either through new listings or by defining new hazardous characteristics, the burdens associated with the major permit modification procedures will increase substantially. For example, EPA's proposed organic toxicity characteristic, which is based on a Toxicity Characteristic Leaching Procedure (TCLP) (51 FR 21648, June 13, 1986), when final, may significantly expand the universe of hazardous wastes and may designate as hazardous many solid wastes now handled at permitted facilities—either in permitted storage, treatment, or disposal units or in units elsewhere on the facility that are unrelated to the permitted unit. These facilities will have to obtain approved permit modifications by the effective date of that rule in order to continue to store, treat, or dispose of the waste.

The Agency expects that as more permits are issued, the number of permit modifications will increase (e.g., many routine changes in the facility's operation require permit modifications). At the same time, the Agency will also be giving priority to the initial issuance of permits to new and interim status facilities. The Agency must establish priorities within the permit program, since its permitting resources are limited. These priorities should be set based on protection of human health and the environment. Without the amendment being proposed today, the Agency would be forced to process permit modifications for newly designated waste as a very high priority. Otherwise, after the effective date for the newly listed or identified waste, facilities would be forced to cease handling the wastes entirely, pending final action on a major permit modification request. In many cases, this could lead to serious disruption of the facility's operations with few, if any, benefits to the public or the environment.

EPA does not believe that Congress intended such a result, particularly in view of the language in the Hazardous and Solid Waste Amendments (HSWA) addressing interim status. In these amendments, Congress recognized that facilities without RCRA permits required some flexibility when new EPA regulations rendered them subject to permit requirements. Section 3005(e) of RCRA previously restricted interim status to owners or operators of "existing hazardous waste management facilities," defined by regulation as facilities in operation or for which construction commenced on or before November 19, 1980 (40 CFR 260.10). In HSWA, Congress added section 3005(e)(1)(A)(ii), providing that facilities in existence on the effective date of statutory or regulatory changes that rendered them subject to permitting requirements could obtain interim status if their owners or operators applied for a permit and complied with the section 3010 notification requirements. In the legislative history accompanying this provision, Congress indicated that the amendment to section 3005(e) would apply to facilities in existence that treat, store, or dispose of newly listed wastes.

Although section 3005(e)(1)(A)(ii) is oriented to facilities not already in the RCRA Subtitle C universe—that is, facilities without permits or interim status—EPA believes that permitted and interim status facilities should have comparable ability to handle newly listed wastes. There is no indication that Congress intended for regulatory changes such as new hazardous waste listings to fall more harshly on permitted facilities than unpermitted facilities, or that permitted facilities should be required to cease handling newly listed or identified hazardous wastes until they had been through a procedure essentially equivalent to permit issuance. Such a requirement, in fact, would create the anomalous situation of punishing facilities that had successfully undergone the RCRA permitting process, while unpermitted facilities and facilities still in interim status would generally be able to make changes to handle newly designated wastes. In fact, the end result could be to force facilities that had received permits—and therefore presumably facilities that operated under higher standards—to ship hazardous wastes off-site to interim status or unpermitted facilities, leading in many cases to a decrease in health and environmental protection.

EPA believes that it is sound policy and consistent with Congressional intent, as expressed in section 3005(e), to provide a mechanism for permitted facilities to continue to handle newly listed or identified wastes, while at the same time imposing certain operating standards. The Agency is therefore proposing to amend § 270.42 to allow newly listed or identified wastes, and units handling such wastes, to be added to permits as minor modifications, on the condition that the units comply with the applicable standards of Part 265. The facility owner or operator, however, would be required to request a major permit modification to handle the newly listed or identified wastes within 180 days of the effective date of the new

designation. Authorization to continue in operation under the minor modification would end upon final disposition of the permit modification request or termination of the facility's operating permit.

Section 3005(e) provides for termination of a land disposal facility's authorization to operate pending full permitting upon failure to certify compliance with groundwater monitoring and financial responsibility requirements by a date certain. (*See* section 3005(e)(2) and (e)(3)). EPA, therefore, is similarly conditioning the proposed minor modification on a submission of such certifications for land disposal units within 12 months of the effective date of the waste listing or identification triggering RCRA requirements for the unit. Failure to submit such certifications would terminate authorization to manage hazardous wastes in the affected unit pending final disposition of the major modification, and the owner or operator would then be required to initiate closure activities for the unit.

A minor modification would not be available under this proposal unless the facility had been managing a newly listed or identified waste prior to the date of the **Federal Register** notice announcing the new listing or identification. This limitation would prevent permitted facilities from treating, storing, or disposing of previously unregulated wastes for the first time upon receiving notification of the listing or identification. In developing today's proposal, the Agency was primarily concerned that owners and operators who have already been managing wastes that subsequently become subject to RCRA regulation be allowed to continue to do so pending EPA and public review.

In proposing this amendment to § 270.42, EPA recognizes that the Part 124 public participation requirements will be deferred until a permittee's major modification request is processed. However, the Agency believes that this approach represents a reasonable balance between its policy in favor of public participation and the need to accord fair treatment to facility owners and operators who have been managing wastes newly subject to RCRA regulation and to impose controls on those wastes as quickly and efficiently as possible.

EPA recently addressed the general question of permit modifications in a regulatory negotiation with representatives of industry, public interest groups, and States. The result of this negotiation will be a separate proposed rulemaking in the near future that will seek to make significant changes in the current permit modification system of §§ 270.41 and 270.42. However, the Agency believes that it should proceed with the amendments to § 270.42 in today's proposal because of the immediate need to provide permitted facilities an alternative to ceasing to handle newly listed waste. Therefore, it is not delaying this proposal in anticipation of the permit modification rule. Furthermore, today's proposed approach to new listing modifications is consistent with the negotiated agreement, which supports a regulation that would allow permitted facilities to continue to handle these new wastes.

IV. Changes in Interim Status Facilities

A. Background and Summary of EPA Proposal

Section 270.72 of the current RCRA regulations specifies three types of changes that owners and operators may make at interim status facilities without triggering permit requirements: (a) The handling of new hazardous wastes not previously identified in Part A of the permit application, (b) increases in the design capacity of processes, and (c) changes in or addition of storage, treatment, or disposal processes. The regulations also specify the procedures and criteria for each of these changes.

To handle hazardous wastes not listed in their Part A applications, owners or operators of interim status facilities must, under the current § 270.72(a), submit a revised Part A permit application to either EPA or an authorized State. Prior EPA or State approval is not required. Owners or operators seeking to increase the design capacity of processes at interim status facilities are subject to more stringent requirements. Under § 270.72(b) of the current regulations, owners or operators must submit a justification explaining the need for the change as well as a revised Part A permit application. Moreover, prior approval of the change must be obtained from the Regional Administrator (or the director of the State agency of an authorized State). Approval may only be given when there is a lack of available treatment, storage, or disposal capacity at other hazardous waste management facilities.

Under the current § 270.72(c), owners or operators wishing to make any changes in or additions to the processes of treatment, storage, or disposal at an interim status facility are also required to submit a revised Part A and a justification for the change of the regulating agency for approval. EPA or an authorized State may approve these changes only when they are necessary to prevent a threat to human health and the environment due to an emergency situation, or when they were necessary to comply with Federal regulations (including the interim status standards of 40 CFR Part 265) or State or local laws.

The current § 270.72(e), however, limits the scope of any changes that take place at interim status facilities by prohibiting changes that require a capital expenditure equaling or exceeding 50% of the cost of constructing a new hazardous waste management facility. This provision, which is known as the "reconstruction" limit, applies equally to addition of new wastes, expansions in capacity, and process changes.

EPA generally believes that these regulations provide reasonable flexibility to interim status facilities without creating a loophole in the requirement that permits be obtained for new facilities. (*See* 45 FR 33324 (May 19, 1980)). In particular, these regulations provide important flexibility in allowing changes in or additions to processes necessary to comply with Federal or other requirements, such as the ban on liquids in landfills under section 3004(c) of RCRA, the imposition of minimum technological requirements under sections 3004(o) and 3005(j), and land disposal restrictions under section 3004(d)–(g).

Under some circumstances, however, an owner or operator of an interim status facility responding to new requirements may be unable to satisfy the substantive criteria of § 270.72 for making changes, or a specific change might exceed the reconstruction limit. If the owner or operator could not meet these standards but still wished to continue managing hazardous waste, he or she would have to discontinue at least some operations until the changes could be approved in connection with the issuance of a final Subtitle C permit. EPA believes that, in light of the growing nationwide shortage of hazardous waste management facilities, the time-consuming process necessary for final permitting, and the clear evidence of Congressional intent to require interim status facilities to make the specific changes necessary to achieve compliance with new requirements, this result would be unacceptable.

To address this problem, EPA is proposing to amend § 270.72 to allow owners or operators more flexibility to make certain changes to interim status facilities that are necessitated by new regulations. EPA proposes to allow owners and operators to increase design

capacity whenever necessary to comply with Federal, State, or local requirements. The proposed rule would also amend § 270.72 to specify that owners and operators of interim status facilities may make changes in accordance with corrective action orders. Further, the Agency is proposing to eliminate the reconstruction limit for changes in interim status that are determined to be necessary: (i) To comply with Federal, State, or local requirements, if the changes take place solely in existing units; in tanks or containers; or in replacement units that meet the minimum technology requirements of section 3004(o) or (ii) to allow the owner or operator to continue to handle newly listed or identified hazardous wastes. The proposal would also amend the reconstruction limit to specify that it does not apply to corrective actions required by EPA under RCRA or by States under similar laws. In addition, EPA is proposing to amend the reconstruction limit so that it would not apply during closure of a facility or of a unit within a facility. Finally, EPA is proposing a new condition on changes at interim status facilities involving the addition of land disposal units. EPA Is proposing to require owners or operators of such units to demonstrate compliance with groundwater monitoring and financial responsibility requirements within 12 months. Without such a demonstration, the change would not be allowed.

The Agency is proposing to restructure § 270.72 in order to incorporate today's proposed amendments. For the convenience of the reader, the revised section in its entirety is set forth in this proposed rule. The following chart cross-references the current paragraphs of § 270.72 and their counterparts under the proposed format. Note that today's proposal would have no substantive effect on current requirements in § 270.72(a) and(d): only the section numbers are changed.

Relationship of today's proposal to the current section 270.72

Current	Proposed
(a)	(a)(1)
(b)	(a)(2)
(c)	(a)(3)
(d)	(a)(4)
(e)	(b)
	(c)

B. Facility Changes

1. Federal, State, or Local Requirements

As described above, the current § 270.72(c) allows an interim status facility to make changes in or add processes if EPA or an authorized State approves the change as necessary to comply with Federal regulations or State, or local laws. Today's proposal would amend that provision to clarify that it encompasses all Federal, State, and local requirements including regulations, orders, and statutes. Today's proposal would also expand the current § 270.72(b) to allow for increases in design capacity when necessary to comply with Federal, State, or local requirements. EPA believes that this proposal will allow interim status facilities to comply more promptly with new requirements, including those imposed by HSWA, and, therefore, will provide increased public and environmental protection. The following examples illustrate this point.

First, EPA has codified the HSWA amendment to section 3004 of RCRA, which imposed an absolute ban on the placement of bulk or noncontainerized liquid hazardous wastes or hazardous wastes containing free liquids in any interim status landfill after May 8, 1985. (*See* 50 FR 28750 (July 15, 1985)). EPA is aware that owners or operators of landfills who previously disposed of liquid hazardous wastes may now be required to modify their facilities so that they may continue to receive such wastes. In some cases, these changes may involve increases in the design capacity at the facility, as well as changes in or additions to processes. Under the current § 270.72(b), such increases could be made only if other facilities were unavailable. Therefore, the current requirements would force such facilities to send their wastes off-site or discontinue their operation until they could receive RCRA permits. Such a result would be counterproductive because it would limit available disposal capacity, and would make the liquids in landfills restriction significantly more difficult to implement.

Second, section 3008(h) of RCRA authorizes EPA to issue administrative orders or bring civil suits to compel owners and operators of interim status facilities to take corrective action where EPA determines that there is, or has been, a release of hazardous waste into the environment from the facility. Correcting the release may require the owner or operator to treat, store, or dispose of wastes or contaminated soils and water. These activities could require the owner or operator to expand capacity at existing storage or treatment units. The current interim status regulations were not intended to prohibit increases in design capacity for corrective action. If owners and operators were required to obtain approval for these modifications under interim status, they might encounter delays or might have to obtain permits before corrective action could proceed. Such a requirement conflicts directly with the legislative history of section 3008(h) which explains that Congress created this new authority to "overcome the slowness of the permit process." (*See* the Conference Report to HSWA, H. Rep. No. 98–1133, 98th Cong., 2d Sess. at 111 (1984)).

Finally, interim status facilities may at times have to increase the design capacity specified in their Part A applications when EPA lists or identifies a new hazardous waste. For example, the design capacity in a facility's Part A may reflect only the capacity of units handling hazardous waste at the time interim status was granted. If a newly designated waste were handled in treatment, storage, or disposal units not previously accounted for in the Part A submission, the facility's hazardous waste design capacity would increase by virtue of the new waste designation.

The above examples illustrate how the current limitation to interim status facility capacity increases is not consistent with other substantive program requirements. The rationale for this limitation, to prevent existing facilities from evading permit requirements through capacity expansion during interim status, is less compelling when modifications to an interim status facility are necessitated by new statutory or regulatory requirements. Thus, EPA proposes to amend § 270.72 to allow increases in design capacity necessary to comply with new statutory or regulatory requirements, even if other facilities are available. (*See* proposed § 270.72(a)(2)).

2. Corrective Action Orders

Proposed § 270.72(a)(5) would specifically provide that interim status facilities may make changes in accordance with a RCRA section 3008(h) corrective action order or similar State order. An owner or operator making changes under the proposed § 270.72(a)(5) would not have to modify the Part A permit application. These changes would have to be specifically identified in the order, and the changes would have to be implemented in accordance with the order. If the changes were not specifically contemplated by the order, they could still be made under the provisions of § 270.72(a)(2)(ii) and (a)(3)(ii) for changes necessary to comply with a Federal requirement, and would be limited by the restrictions of those provisions. In those cases, the owner or operator would have to submit a

modified Part A permit application and obtain prior Director approval of the change as necessary to comply with the order.

The Agency believes that the proposed clarification for corrective action orders is necessary to respond to contamination at interim status facilities in a timely fashion. EPA emphasizes that all activities taken under the corrective action authority will comply with the substantive requirements of RCRA Subtitle C, including public participation requirements. EPA believes that public participation is important throughout the corrective action program, whether it affects interim status or permitted facilities. Therefore, the Agency intends to involve the public in decisions on remedies under section 3008(h) corrective action orders. Generally, this is expected to include soliciting public comment on the RCRA Facility Investigation (RFI) (which identifies the nature and extent of contamination at a facility), the corrective measures study (which specifies possible remedies), and the remedy that EPA proposes to require. As a result, any remedies introduced as part of a corrective action order will be developed with public participation comparable to that of permit issuance.

Under the proposed § 270.72(a)(5), facility changes introduced in accordance with corrective action orders would be restricted to activities involving wastes associated with the facility. This limitation would not prevent treatment, storage, or disposal of wastes released from within the facility that migrated beyond the facility's boundaries. Rather, the limitation would prevent the owner or operator from making changes under this authority to manage wastes and materials that have no relationship to the facility. The limitation for unrelated materials is necessary to prevent the owner and operator from evading the permit requirement for new facilities and change-in-interim status requirements for facility modifications.

C. Reconstruction Limit

The current § 270.72(e) limits changes sought by an owner or operator during the interim status period. Even if a facility were allowed to add new processes under the current § 270.72(c) or increase capacity in accordance with today's proposed amendments, there may be instances in which the capital expenditures involved in making these changes might come into conflict with the reconstruction limit. In such cases, the facility would be unable to make the changes until it had received a RCRA permit.

EPA believes that the rationale for the reconstruction limit is less compelling where modifications are made at interim status facilities for the purpose of responding to new program requirements. Such modifications are not a means of evading the permit requirement, but rather are made to bring the facility's newly regulated units into compliance with RCRA. Therefore, the Agency is proposing to amend § 270.72 to eliminate the reconstruction limit for certain changes necessary to comply with Federal, State, or local requirements, including new hazardous waste designations and closure plans. In addition, the Agency is proposing to amend current regulations to specify that the reconstruction limit does not apply to changes made in accordance with corrective action orders. These situations are described in more detail below.

1. Federal, State, or Local Requirements

The Agency recognized the need for exceptions to the reconstruction limit in the recently promulgated tank rule, which requires secondary containment for interim status tank facilities. (*See* 51 FR 25422 *et seq.* (July 14, 1986)). Many interim status facilities will need to retrofit their tank systems to enable owners or operators to comply with these new requirements. Recognizing that this retrofit during interim status might exceed the reconstruction limit, the Agency amended the current § 270.72(e) so that changes made solely for the purpose of complying with the secondary containment requirements of the tank rule are specifically excluded from the reconstruction ban prohibition. (*See* 51 FR 25486 (July 14, 1986)). This special provision for tank facilities remains unchanged in today's proposed § 270.72(b)(1).

The same arguments for removing the reconstruction limit for tank facilities apply to other new requirements affecting interim status facilities. For example, the costs of complying with the HSWA minimum technology requirements for land-based units may, in some instances, exceed the reconstruction limit, particularly when changes at small hazardous waste management facilities are involved, or where a facility has already made other changes in interim status. Similar concerns apply to facility changes made to comply with the liquids in landfills prohibition and the land disposal restrictions.

The Agency anticipates that in order to meet the minimum technology requirements of section 3004(o), it will be preferable for many interim status facilities to replace certain surface impoundments instead of retrofitting existing units. EPA will strive to review any such replacement surface impoundments through the RCRA permitting process. However, there will likely be situations where a permit cannot be issued prior to the statutory deadline for existing facilities to comply with the section 3004(o) standards. In such cases, EPA believes that the reconstruction limit should not prevent these facilities from establishing replacement surface impoundments that meet the more protective minimum technology standards.

To resolve these problems, EPA proposes to amend § 270.72 to eliminate the reconstruction limit in those cases where the changes in or additions to the processes employed at an interim status facility are made for the purpose of complying with a Federal, State, or local requirement. However, EPA is proposing to restrict this provision to changes in existing units; changes solely involving tanks or containers or addition of minimum technology replacement surface impoundments. EPA believes that the introduction of new processes other than these—such as the introduction of incinerators—that exceed the reconstruction limit is likely to raise significant issues best addressed through the permitting process.

Under today's proposal, the owner or operator wishing to make a change still has a duty to comply with proposed § 270.72(a) and, where required by that section, must file an amended Part A permit application along with a justification for making the change. Section 270.72(a) may also require approval of the change from EPA or the authorized State before facility modification. Furthermore, EPA emphasizes that any process proposed to be added or changed must conform with the Part 265 interim status requirements.

Note that on December 11, 1986, the Agency proposed to lift the reconstruction limit for treatment or storage of restricted wastes in tanks or containers. (*See* 51 FR 44714). Today's proposed § 270.72(b)(2) is somewhat broader than the December proposal in that a facility change involving tanks or containers could occur without being subject to the reconstruction limit whether or not it involved a restricted waste. The Agency will proceed with the final rulemaking on the special interim status provision for restricted wastes along with the associated provisions of that rule since it is an integral part of the restricted wastes program. However, if today's proposal is

adopted, it will replace the restricted waste amendement to the extent that the two provisions would be redundant.

2. Newly Listed or Identified Wastes

The proposed § 270.72(b)(3) would eliminate the reconstruction limit for changes necessary to allow an owner or operator to continue handling newly listed or identified wastes. The Agency believes that interim status facilities should have the same opportunity to continue handling newly listed or identified wastes as newly regulated facilities now have, and as the Agency is proposing for permitted facilities.

3. Corrective Action Orders

Today's proposal would amend the current § 270.72(e) to specify that interim status facilities may make changes in accordance with interim status corrective action orders, even if they would otherwise constitute a reconstruction under the regulation. In general, EPA believes that corrective actions will occur within the reconstruction limit. However, in the case of smaller facilities or extensive corrective action, the limit might be exceeded. This is particularly likely to be the case where on-site treatment is introduced as part of the remedy. As explained in section IV.B of this preamble, EPA does not believe that such corrective actions should be delayed until a full permit to the facility can be issued.

Proposed § 270.72(b)(5) would not limit the kinds of changes that could be introduced without limit at a facility as a part of a corrective action order. In this respect, it differs from proposed § 270.72(b)(2), which restricts changes in compliance with other Federal, State, or local requirements to changes in existing units, changes solely involving tanks or containers, or addition of minimum technology replacement surface impoundments. EPA does not believe that this restriction is necessary for actions required by interim status corrective action orders because of the extensive Agency involvement in developing these orders and in specifying the appropriate process and design necessary to manage the waste releases at the facility. Since these corrective actions will be consistent with the Part 264 facility standards, we do not believe that it is necessary or desirable to restrict the types of corrective action remedies at interim status facilities.

4. Closure at Interim Status Facilities

Because a facility can remain in interim status during its closure period, changes made at such a facility to enhance closure would constitute changes in interim status. For example, if an owner or operator is required as part of an approved closure plan to treat wastes on-site, that treatment could be approved as a change in interim status under the current § 270.72(c). However, under current regulations, any changes introduced during closure that constituted a reconstruction might be prohibited by the current § 270.72(e). As a result, closure in this case might be delayed until a permit had been issued to the facility. EPA believes that permit issuance in this case could lead to delays that increase risks to public health and the environment and might discourage the use of treatment in connection with closure. At the same time, the closure plan review process, detailed in § 265.112, is comparable to the permitting process, including a specific requirement for public notice and opportunity for a hearing. For these reasons, the Agency is proposing to amend § 270.72 to specify that the reconstruction limit does not apply to changes made during the closure period of an interim status facility or of a unit within a facility. This change to the regulations should significantly expedite closure at interim status facilities and encourage treatment as an alternative to disposal, without jeopardizing public health or the environment or reducing the role of the public.

It should be emphasized that any treatment or other processes introduced at a closing facility will generally be of relatively short duration and only used to handle wastes associated with the closure, as specified in an approved closure plan. It should also be emphasized that when a treatment unit or other process is introduced during closure, the owner or operator of the facility must submit a revised Part A permit application to reflect that change. If the interim status facility is seeking a permit, the closure activities during the interim status do not have to be added to Part B of the permit application if completion of closure will be certified by the time the permit is issued.

D. Conditional Changes

As is discussed above, the current regulations on changes during interim status limit the extent of changes allowed pending full permitting of the facility. With certain refinements, those limitations are retained in today's proposal. In addition, EPA is also proposing to limit the duration of the authorization to make certain changes at interim status facilities where the owner or operator cannot demonstrate compliance with goundwater monitoring and financial responsibility requirements.

Today's proposal would add § 270.72(c), which has no counterpart in the existing regulations on changes during interim status. The proposed § 270.72(c) would provide that a change during interim status that involved the addition of a land disposal unit would only be allowed subject to the condition that the owner or operator certify compliance with all applicable goundwater monitoring and financial responsibility requirements within 12 months. Addition of any land disposal unit for which the certifications were not made would not be allowed as a change during interim status. The owner or operator of such a unit would have to discontinue receipt of hazardous waste in that unit until the facility was permitted. Pending final permitting, the owner or operator would have to begin closure activities.

The purpose of this provision is to place the burden on facility owners and operators to demonstrate compliance with groundwater monitoring and financial responsibility requirements within a specified period of time. This is analogous to the certification required of newly regulated land disposal facilities under section 3005(e)(3) of RCRA and of land disposal facilities operating under interim status on November 8, 1984 under section 3005(e)(2). EPA believes that the newly regulated land disposal units at interim status facilities should be subject to the same certification requirements as are newly regulated land disposal facilities under section 3005(e)(3). Although EPA does not have the authority to terminate interim status for failure to submit certifications, EPA may deny authorization to expand an interim status facility for failure to demonstrate compliance. As is discussed in section III of today's preamble, EPA is proposing an analogous condition for newly regulated land disposal units at permitted facilities under the proposed § 270.42(q).

V. Post-Closure Permits

Today the Agency is also proposing to amend its Part 270 permit regulations to clarify its authority to deny permits for the active life of a facility while a decision on post-closure permitting is pending.

The current permitting regulations specify that RCRA permits cover both the active life (including the closure period) of a facility and, where applicable, the post-closure care period. A permit applicant required to obtain a permit covering the post-closure care period must include all necessary post-

closure information in its Part B application for the application to be "complete" and thus initiate the review process. When the application is complete, the decision to issue or deny a RCRA permit applies to the whole permit for which an applicant is required to apply, including the portion of the permit concerning post-closure care.

The existing regulations do not specifically provide for a separation of the permit decision for the active life of the facility from the post-closure permit decision. However, the Agency does not believe that it must always make both the active life and post-closure determinations as one permit decision, and further, it believes that in some cases it makes good sense to separate these determinations. EPA needs to have this flexibility to deal expeditiously with facilities clearly unable to meet standards for continued operation. It is important for such facilities to cease operation and begin closure as soon as possible. The Agency can often accomplish this objective best through permit denial and initiation of the closure process. At the same time, such permit denial does not relieve the facility of its post-closure care responsibilities under the Part 264 standards.

The Agency believes that it currently has the authority to separate these two permit decisions, although the permitting regulations do not specifically outline this approach. If the Agency were limited to only one permit decision, then the Agency would have to issue the permit for the post-closure care period at the same time that it denied the portion of the permit concerning operational life. Development of the post-closure information necessary for a complete application and for issuance of the post-closure portion of the permit can be very time-consuming. Thus, the Agency's permitting decision to close a facility could be greatly delayed due to the need to develop post-closure information, even if it is clear that the facility will not be permitted for continued operation.

For instance, under § 124.3(d), failure to submit sufficient information for permitting is a basis for permit denial. However, if the Agency could not deny a permit without simultaneously issuing the post-closure portion of the permit, the permit decision for the facility would be delayed, allowing the facility to continue operation while the Agency gathers information necessary to develop a post-closure permit. In fact, the permit denial may be delayed longer for facilities that have greater deficiencies in their applications, thus rewarding facilities that are in greater noncompliance.

The Agency is therefore proposing to amend its permitting regulations to specifically provide for a bifurcation of the permit process allowing separation of operating permit denial and post-closure permit issuance. By this amendment, the Agency is clarifying its ability under the permitting regulations to deny a facility's operational permit, requiring its closure under Part 265, while also continuing to develop a separate post-closure permit. Today's proposal amends the Agency's hazardous waste permitting regulations at 40 CFR Part 270 to add a new § 270.29, which specifies that the permitting authority may deny a permit under 40 CFR Part 124 either in its entirety or as to the operating portion only. Amended § 270.1(c) clarifies that any such partial denial does not affect a facility's responsibility to obtain the post-closure permit. In addition, § 270.10 is amended to specify that the permitting authority may deny the operating portion of a permit without awaiting an application that is complete as to post-closure responsibilities. The Agency cannot under these amendments bifurcate the *issuance* of an operating permit and a post-closure permit. No permit may be issued without conditions covering the post-closure period applicable to the facility.

It should be noted that the Agency proposed amendments to § 270.1(c) on March 28, 1986 (51 FR 10706) in a rule that would codify certain HSWA provisions. The Agency is proposing to further amend that section in this rule. The full text of § 270.1(c), including all proposed amendments, is set forth in this proposed § 270.1(c) for the convenience of the reader.

VI. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (*See* 40 CFR Part 271 for the standards and requirements for authorization). Following authorization, EPA retains enforcement authority under sections 3008, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments (HSWA) of 1984, a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA applies in authorized States in the interim.

However, it should be noted that section 3009 of RCRA and § 271.1(i) provide that States can impose requirements that are more stringent than the Federal requirements. Federal program changes that are less stringent or reduce the scope of the Federal program do not have to be adopted by authorized States. Furthermore, any State requirement that is more stringent than a new Federal provision remains in effect under State law. This is equally true for such Federal requirements that are imposed by HSWA or pre-HSWA authority.

For less stringent Federal program changes (or changes that reduce the scope of the program), the combined effect of RCRA sections 3006 and 3009 will result in one of the two following situations. In the first case, if the new Federal requirements are promulgated pursuant to pre-HSWA authority, such requirements will not take effect in an authorized State unless and until the State has adopted them as part of the State program. In contrast, less stringent Federal requirements that are imposed by HSWA authority become part of the Federal program that is in effect in all States, including authorized States; however, as discussed above, any more stringent State requirement remains in effect under State law. In this case, the more stringent provisions in both the State program and the Federal HSWA program define the applicable requirements in each State. Therefore, as a practical matter, the regulated community may not be able to benefit from the less stringent Federal HSWA

provisions until the State amends its more stringent regulations or enabling authority.

B. Effect on State Authorizations

The amendments proposed in today's rule are considered to be less stringent than, or reduce the scope of, the existing Federal requirements. Therefore, authorized States would not be required to modify their programs to adopt requirements equivalent or substantially equivalent to these provisions.

Certain portions of today's proposal would be imposed pursuant to pre-HSWA authority, while other portions would be promulgated pursuant to HSWA. Specifically, the proposed § 270.72(a)(2)(ii), (a)(3)(ii), and (b)(2) would be added to EPA's regulations to allow changes during interim status that are necessary to comply with new HSWA requirements (e.g., minimum technology standards of section 3004(o)). In addition, the amendments in § 270.72(a)(5) and (b)(5) that address corrective action orders stem from section 3008(h) authority. Therefore, the Agency is proposing to add these requirements to Table 1 in § 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA. As discussed in the section above, any State requirement that is more stringent than these HSWA provisions remains in effect. States may apply for either interim or final authorization for the HSWA provisions identified in Table 1.

The remaining amendments in today's proposal would not be imposed pursuant to HSWA. Therefore, those standards would not be effective in authorized States, but would be applicable in those States that do not have interim or final authorization. In authorized States, the requirements will not be applicable unless the State revises its program to adopt equivalent requirements under State law.

VII. Effective Date

This rule, if promulgated, would be effective immediately. Section 3010(b) of RCRA provides that regulations respecting permits for the treatment, storage, or disposal of hazardous waste shall take effect six months after the date of promulgation. However, section 3010(b)(1) provides for an immediate effective date if the Agency finds that the regulated community does not need six months to come into compliance with the new regulation.

This proposed rule would establish requirements that are less stringent than requirements currently in place. Since the rule would relax regulations with which the regulated community is already required to comply, the Agency has found that the regulated community does not need six months to come into compliance. These reasons also provide an adequate basis for making this rule immediately effective under section 553(d) of the Administrative Procedure Act.

VIII. Regulatory Analysis

A. Regulatory Impact Analysis

Under Executive Order 12291, EPA must determine whether a regulation is "major" and thus whether EPA must compare and consider a Regulatory Impact Analysis in connection with the rule. Today's proposal is not major because it will not result in an annual effect on the economy of $100 million or more, nor will it result in an increase in costs or prices to industry. There will be no adverse impact on the ability of the U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, the Agency does not believe a Regulatory Impact Analysis is required for today's rule.The proposed rule has been reviewed by the Office of Management and Budget (OMB) in accordance with Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., at the time an Agency publishes any proposed or final rule, it must prepare a Regulatory Flexibility Analysis that describes the impact of the rule on small entities, unless the Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities. The amendments proposed today provide additional flexibility for hazardous waste treatment, storage, and disposal facilities to respond to new requirements and do not affect the compliance burdens of the regulated community. Therefore, pursuant to 5 U.S.C. 601b, I certify that this regulation will not have a significant economic impact on a substantial number of small entities.

List of Subjects

40 CFR Part 265

Hazardous waste, Corrective action, Reporting and recordkeeping requirements, Waste treatment and disposal.

40 CFR Part 270

Administrative practice and procedure, Hazardous waste, Reporting and recordkeeping requirements, Permit application requirements, Waste treatment and disposal.

40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous waste, Intergovernmental relations, Reporting and recordkeeping requirements.

Lee M. Thomas,

Administrator.

Date: August 3, 1987.

Therefore, it is proposed that Subchapter I of Title 40 be amended as follows:

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES

1. The authority citation for Part 265 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3004, 3005, and 3015, Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended [42 U.S.C. 6905, 6912(a), 6924, and 6935].

2. In § 265.1, paragraph (b) is revised to read as follows. (The comment following paragraph (b) remains unchanged.)

§ 265.1 Purpose, scope, and applicability.

* * * * *

(b) The standards of this part apply to owners and operators of facilities that treat, store, or dispose of hazardous waste who have fully complied with the requirements for interim status under section 3005(e) of RCRA and § 270.10 of this chapter until either a permit is issued under section 3005 of RCRA or until applicable Part 265 closure and post-closure responsibilities are fulfilled, and to those owners and operators of facilities in existence on November 19, 1980 who have failed to provide timely notification as required by section 3010(a) of RCRA and/or failed to file Part A of the permit application as required by 40 CFR 270.10 (e) and (g), and to owners and operators of RCRA permitted facilities for those units for which they have obtained a minor permit modification under § 270.42(q) until the permittee's major modification request under § 270.41 is granted or until Part 265 closure and post-closure responsibilities are fulfilled. These standards apply to all treatment, storage, and disposal of hazardous waste at these facilities after the effective date of these regulations, except as specifically provided otherwise in this part or Part 261 of this chapter.

* * * * *

PART 270—EPA-ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

3. The authority citation for Part 270 continues to read as follows:

Authority: Secs. 1006, 2002, 3004, 3005, 3007, 3019, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974).

4. In § 270.1, the introductory text of paragraph (c) is revised to read as follows:

§ 270.1 Purpose and scope of these regulations.

* * * * *

(c) Scope of the RCRA Permit Requirement. RCRA requires a permit for the "treatment," "storage," or "disposal" of any "hazardous waste" as defined in § 270.2. Owners and operators of hazardous waste management units must have permits during the active life (including the closure period) of the unit. Owners and operators of surface impoundments, landfills, land treatment units, and waste pile units that close after January 26, 1983 or that received wastes after July 26, 1982, must have post-closure permits, as necessary to implement applicable Part 264—Groundwater Monitoring, Unsaturated Zone Monitoring, Corrective Action, and Post-closure Care Requirements of this chapter. The denial of a permit for the active life of a hazardous waste management unit does not affect the requirement to obtain a post-closure permit under this section.

* * * * *

5. In § 270.10, paragraph (c) is amended by adding a sentence to the end to read as follows:

§ 270.10 General application requirements.

* * * * *

(c) * * * The Director may deny a permit for the active life of a hazardous waste management unit before receiving a complete application for a permit.

* * * * *

6. In Part 270, a new § 270.29 is added to read as follows:

§ 270.29 Permit denial.

The Director may deny the permit application under § 124.6(a) in its entirety or as to the active life of the facility only.

7. In § 270.42, a new paragraph (q) is added to read as follows:

§ 270.42 Minor modifications of permits.

* * * * *

(q) Allow units at a permitted facility that handle newly listed or identified hazardous wastes, to continue managing such wastes provided that (1) the permittee requests a major permit modification pursuant to §§ 124.5 and 270.41 within one hundred and eighty (180) days of the effective date of such new listing or identification, (2) the major permit modification request contains a demonstration that the newly listed or identified waste was treated, stored, or disposed of in such unit prior to the date of the **Federal Register** notice announcing the new listing or identification, (3) each affected unit complies with the applicable standards at 40 CFR Part 265 until the major permit modification request is granted or until Part 265 closure and post-closure responsibilities are fulfilled, and (4) where the permit modification involves the addition of a land disposal unit, the permittee certifies compliance with all applicable groundwater monitoring and financial responsibility requirements within 12 months of the effective date of the new listing or identification. The authorization to continue in operation conferred under this paragraph shall terminate upon final administrative disposition of the permittee's major modification request under § 270.41, termination of the permit under § 270.43, or upon failure of the owner or operator to certify compliance with groundwater or financial responsibility requirements.

8. Section § 270.72 is revised to read as follows:

§ 270.72 Changes during interim status.

(a) Except as provided in paragraphs (b) and (c), the owner or operator of an interim status facility may make the following changes at that facility:

(1) Treatment, storage, or disposal of new hazardous wastes not previously identified in Part A of the permit application if the owner or operator submits a revised part A permit application prior to such treatment, storage, or disposal;

(2) Increases in the design capacity of processes used at the facility if the owner or operator submits a revised Part A permit application prior to such a change (along with a justification explaining the need for the change) and the Director approves the changes because:

(i) There is a lack of available treatment, storage, or disposal capacity at other hazardous waste management facilities, or,

(ii) The change is necessary to comply with a Federal, State, or local requirement.

(3) Changes in the processes for the treatment, storage, or disposal of hazardous waste or addition of processes if the owner or operator submits a revised Part A permit application prior to such change (along with a justification explaining the need for the change) and the Director approves the change because:

(i) The change is necessary to prevent a threat to human health or the environment because of an emergency situation, or

(ii) The change is necessary to comply with a Federal, State, or local requirement.

(4) Changes in the ownership or operational control of a facility if the new owner or operator submits a revised Part A permit application no longer than 90 days prior the scheduled change. When a transfer of ownership or operational control of a facility occurs, the old owner or operator shall comply with the requirements of 40 CFR Part 265, Subpart H (Financial Requirements), until the new owner or operator has demonstrated to the Director that he is complying with the requirements of that subpart. The new owner of operator must demonstrate compliance with Subpart H requirements within six months of the date of the change in the ownership or operational control of the facility. Upon demonstration to the Director by the new owner or operator of compliance with Subpart H, the Director shall notify the old owner or operator in writing that he no longer needs to comply with Subpart H as of the date of demonstration. All other interim status duties are transferred effective immediately upon the date of the change of ownership or operational control of the facility.

(5) Changes made in accordance with an interim status corrective action order issued by EPA under section 3008(h), or other Federal authority, or by an authorized State under a comparable State authority. Changes under this paragraph are limited to the treatment, storage, or disposal of solid waste from releases that originate at the facility.

(b) Changes to an interim status HWM facility that amount to reconstruction of the facility may only be made as provided in this paragraph. Reconstruction occurs when the capital investment in the changes to the facility exceeds fifty percent of the capital cost of a comparable entirely new HWM facility. The following changes may be made even if they amount to a reconstruction:

(1) Changes made solely for the purpose of complying with the

requirements of 40 CFR 265.193 for tanks and ancillary equipment,

(2) Changes to an existing unit, changes solely involving tanks or containers, or addition of replacement surface impoundments that satisfy the standards of section 3004(o), to the extent necessary to comply with Federal, State, or local requirements,

(3) Changes that are necessary to allow owners or operators to continue handling newly listed or identified wastes that had been treated, stored, or disposed of at the facility prior to the date of the **Federal Register** notice announcing the new listing or identification,

(4) Changes made during closure of a facility or of a unit within a facility, in accordance with an approved closure plan, or

(5) Changes necessary to comply with an interim status corrective action order issued by EPA under section 3008(h), or other Federal authority, or by an authorized State under a comparable State authority provided that such changes are limited to the treatment, storage, or disposal of solid waste from releases that originate within the boundary of the facility.

(c) Any land disposal unit that becomes subject to RCRA requirements due to a statutory or regulatory change shall, on the date 12 months after the effective date of such statutory or regulatory change, lose any authority to operate that is conferred under this section unless the owner or operator certifies that such unit is in compliance with all applicable groundwater monitoring and financial responsibility requirements.

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

9. The authority citation for Part 271 continues to read as follows:

Authority: Secs. 1006, 2002(a), and 3006 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), and 6926).

§ 271.1 [Amended]

10. Section 271.1(j) is amended by adding the following entry to Table 1 in chronological order by date of publication:

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Date	Title of regulation	FR reference	Effective date
•	•	•	•
[Insert date of publication in FEDERAL REGISTER].	Interim Status and Permitted Facilities § 270.72(a)(2)(ii), (a)(3)(ii), (a)(5), (b)(2) and (b)(5) only.	[insert FR reference].	[insert date of publication of final rule in FEDERAL REGISTER].
•	•	•	•

[FR Doc. 87-18094 Filed 8-13-87; 8:45 am]

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Part VIII

Commission on the Bicentennial of the United States Constitution

45 CFR Part 2010

Constitution Bicentennial Educational Grant Program and Grant Program Announcement and Application Instructions; Final Rule and Notice

COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

45 CFR Part 2010

Constitution Bicentennial Educational Grant Program

AGENCY: Commission on the Bicentennial of the United States Constitution.

ACTION: Final rule.

SUMMARY: These regulations establish the basic policies and procedures that the Commission on the Bicentennial of the United States Constitution (Commission) will use to announce, solicit, award and manage the Constitution Bicentennial Educational Grant Program authorized by Title V of the Arts, Humanities, Museums Amendments of 1985 (Pub. L. 99–194). This final revised regulation reflects consideration of only one public comment. All other changes are technical in nature to comply with existing laws or other regulations. Additional public comments are not being requested.

EFFECTIVE DATE: August 14, 1987.

ADDRESS: 736 Jackson Place, NW., Washington, DC, 20503.

FOR FURTHER INFORMATION CONTACT: Anne A. Fickling, Assistant Director of Education, (202) 653–5110.

SUPPLEMENTARY INFORMATION:

Background

The Commission published an interim final rule for its newly authorized Bicentennial Educational Grant Program in the **Federal Register** on December 30, 1986 [51 FR 47164]. One public comment was received. The single commenter suggested that adult education programs should be eligible applicants because many such programs combat illiteracy by offering the equivalent of an elementary or secondary education. The revised final rule has been changed to allow adult education programs to apply for funding from the Commission.

The Commission on the Bicentennial of the United States Constitution was established by Pub. L. 98–101, 97 Stat. 719 and signed into law by the President on September 29, 1983. The Commission is comprised of 23 members; the Honorable Warren Burger, Chief Justice of the United States, Retired, serves as Chairman of the Commission. Additional information on the Commission functions can be found in Title 45 of the Code of Federal Regulations Part 2000. The organization and functions rule covering Commission operations was published in the Federal Register as a final rule on February 28, 1986 (see 51 FR 7220).

Title V of the Arts, Humanities, and Museums Amendments of 1985 (Pub. L. 99–194) authorizes the Commission to make grants for the development of instructional materials and programs on the Constitution of the United States and the Bill of Rights which are designed for use by elementary or secondary students. In fiscal 1987, the Commission awarded close to $1 million in discretionary grant funding. In addition, the Commission is authorized under Title V of the Act to implement an annual National Bicentennial Competition on the Constitution and the Bill of Rights for use in elementary and secondary schools. A total of 2.7 million was awarded for this program. To implement the Commission's statutory authority, the Commission established its grant-making authority within the Commission's Division of Educational Programs. The Director and professional staff of the Division of Educational Programs, with the assistance of the Department of Justice, will administer the Constitution Bicentennial Educational Grant Program under the guidance of the seven-member Commission Advisory Committee on Educational Projects.

Classification

This is not a major rule under E.O. 12291 since it has no significant impact upon the economy, nor does it affect prices or economic competition. This final rule has no significant impact on the environment and preparation of an environmental impact statement is not necessary.

Compliance With Executive Order 12372

The Commission has determined that the Bicentennial Educational Grant Program of this part is not subject to Executive Order 12372 on Intergovernmental Review of Federal Programs.

Statutory Authority

This regulation is issued under the general powers granted to the Commission by Pub. L. 98–101, as amended, and Title V of Pub. L. 99–194.

List of Subjects in 45 CFR Part 2010

U.S. Constitution Bicentennial, Educational Grant Program, Grants.

Issued in Washington, DC, on August 14, 1987.

Mark W. Cannon,

Staff Director.

For the reasons set out in the preamble and under the authorities cited above, Title 45 of the Code of Federal Regulations is amended by revising Part 2010 to read as follows:

PART 2010—CONSTITUTION BICENTENNIAL EDUCATIONAL GRANT PROGRAM

Subpart A—General

Sec.

2010.1 Program purpose.
2010.2 Eligible parties.
2010.3 Types of awards.
2010.4 Applicable laws and regulations.

Subpart B—Projects Assisted by the Commission

2010.10 What may be funded.
2010.11 What may not be funded.
2010.12 Funding priority.

Subpart C—How To Apply for a Grant

2010.20 Annual program announcement.
2010.21 Grant application kit.
2010.22 Administrative rejection of applications.

Subpart D—How Awards Are Made

2010.30 How applications are evaluated.

Subpart E—Grantee Responsibilities

2010.40 The grant agreement.
2010.41 Post-Award disputes and appeals.

Authority: Pub. L. 98–101 as amended; Title V of Pub. L. 99–194.

Subpart A—General

§ 2010.1 Program purpose.

The purpose of the Commission's Constitution Bicentennial Educational Grant Program is to fund the development of instructional materials and programs on the Constitution of the United States and the Bill of Rights. Instructional materials and programs developed with Commission funding must be designed for use by elementary and secondary school teachers and students.

§ 2010.2 Eligible parties.

Local educational agencies, private elementary and secondary schools, private organizations, individuals, and State and local agencies in the United States are eligible to apply for grant funding from the Commission. Colleges, universities and adult education programs are also eligible to apply provided the proposed project or program is designed for use in elementary and secondary schools. Grants will not be made to profit making organizations.

§ 2010.3 Types of awards.

(a) The Commission expects to make two types of awards with its authorized grant funding. The expected awards for fiscal year 1988 are as follows:

(1) $2,850,000 of the grant funding is expected to be available from Congress to support the National Bicentennial Competition on the Constitution and the Bill of Rights.

(2) Approximately $2,150,000 of the grant funding is expected to be available to fund the development of instructional materials and programs on the Constitution and Bill of Rights. Awards in this category of funding will be competitive and discretionary to eligible applicants as specified in § 2010.2.

(b) A portion of the above amounts may be used for necessary Commission administrative expenses, including staff, required to operate this grant program.

§ 2010.4 Applicable laws and regulations.

The following laws, regulations, and procedures apply to applicants for and recipients of grants under this part:

(a) The Bicentennial Commission on the U.S. Constitution Act (Pub. L. 98–101), as amended.

(b) Title V of the Arts, Humanities, and Museums Amendments of 1985 (Pub. L. 99–194), as amended.

(c) The regulations in this Part 2010.

(d) The applicable Office of Management and Budget Circulars (OMB) (A–87, A–21, A–122, A–102, A–110, A–128).

(e) Office of Justice Programs (OJP) Manual M 7100.1C Fiscal and Administrative Guide for Grants. (U.S. Department of Justice.)

Copies of the OMB circulars and the OJP manual may be obtained by writing to: The Commission on the Bicentennial of the United States Constitution, 736 Jackson Place, NW., Washington, DC 20503, Attn: Educational Grant Program.

(f) The Grant Agreement accompanying every assistance award.

Subpart B—Projects Assisted by the Commission

§ 2010.10 What may be funded.

(a) The Commission is authorized to fund the development of instructional materials and programs on the Constitution of the United States and the Bill of Rights for use in elementary and secondary schools. The Commission will accept grant proposals from any eligible party as specified in § 2010.2.

(b) The Commission is also authorized to implement the National Bicentennial Competition on the Constitution and Bill of Rights. This is an on-going educational program developed by the Center for Civic Education with prior federal assistance. Congress has directed the Commission to award a grant for program implementation to the Center. Consequently, no other grant proposals from any other party can be accepted for this program.

§ 2010.11 What may not be funded.

The following activities may not be assisted with Commission funding:

(a) Real property acquisition.

(b) Construction.

(c) Study and research in pursuit of an academic degree.

(d) Activities which espouse or attack partisan or religious beliefs.

(e) Activities that would involve the Commission in the policymaking processes of any government or government agency.

§ 2010.12 Funding priority.

(a) The Commission will give priority to proposals that focus on strengthening the ability of elementary and secondary teachers to teach successfully the principles of the Constitution and the Bill of Rights to students. This may be through the development of instructional materials, conferences, institutes, or other formats. Important ideas and texts about the Constitution and Bill of Rights should be emphasized. Projects must demonstrate how students will benefit.

(b) All proposed projects should focus on one or more of the following:

(1) The Constitution's provisions, antecedents, history, and the structure of the government it establishes.

(2) The relationship of the Constitution to American politics, society, and thought.

(3) The connection between self-government as outlined by the Constitution and the purposes of political life that are defined in the Declaration of Independence.

Subpart C—How To Apply for a Grant

§ 2010.20 Annual program announcement.

Once each year, the Commission makes available to the public a comprehensive grant program announcement explaining how to apply to the Commission for project assistance. Copies are available from the Commission upon written request. Although these regulations are controlling in any conflict with the grant program announcement, applicants are urged to study the program announcement carefully as proposals are developed.

§ 2010.21 Grant application kit.

Each year, the Commission develops a grant application kit which contains instructions and forms necessary to apply to the Commission for a grant. All applicants must use the forms and instructions provided by the Commission. Copies are available from the Commission upon written request.

§ 2010.22 Administrative rejection of applications.

An application may be administratively rejected without further consideration if any of the following are noted:

(a) The applicant is not an "eligible party" under 2010.2 of this Part.

(b) The applicant is a suspended or debarred grantee with any other federal agency pursuant to Executive Order 12549.

(c) The application does not have an original signature.

(d) The application does not contain a budget and budget narrative.

(e) The application does not contain the required one-page proposal abstract.

(f) The application lacks any other element required by these regulations.

Subpart D—How Awards Are Made

§ 2010.30 How applications are evaluated.

(a) On the basis of the selection criteria contained in the Grant Program Announcement, the Commission undertakes an administrative review and merit review of every application submitted for funding consideration.

(b) An administrative review is a review of an application for completeness and submission in conformity with the application requirements in the Grant Program Announcement.

(c) A merit review is a substantive review of the applicant's proposed activities in terms of appropriateness, feasibility, conformity with the Commission's priorities and the selection criteria, and the quality of the project staffing.

Subpart E—Grantee Responsibilities

§ 2010.40 The grant agreement.

(a) When the Commission awards a grant, the Commission's funding commitment to the recipient is formalized through a written bilateral grant agreement between the Commission and the grantee. The grant agreement will state the following:

(1) The names of the parties entering into the grant agreement.

(2) The amount of funding being provided by the Commission.

(3) The scope of activities authorized to be conducted by the grantee with Commission funding.

(4) The method of funding, the schedule of payments, and the dates interim financial and performance reports are due during the term of the grant agreement.

(5) Any special conditions that must be followed by the grantee during the term of the grant agreement.

(b) Grant agreements may incorporate by reference the grant proposal, the grant budget, and the provisions of the Office of Justice Programs Handbook M 7100.1C, which are applicable to all grant awards made by the Commission. Grant funds will be administered by the U.S. Department of Justice.

§ 2010.41 Post-award disputes and appeals.

(a) Should any post-award dispute arise between the Commission and a grantee, every attempt will be made to resolve the dispute informally between the Commission program officer, the grantee, and the Director of Educational Programs. The Commission will communicate its decision in writing to the grantee.

(b) If a dispute between the Commission and the grantee cannot be resolved informally, the grantee may appeal any adverse decision in writing to the General Counsel of the Commission. A written appeal must contain a discussion of the dispute, attempts to informally resolve any disagreements, and the practical and legal relief sought.

(c) The General Counsel may either hold a fact-finding conference with the disputing parties, or decide the dispute on the written appeal record provided by the grantee and the Commission staff. The General Counsel shall issue a written decision of findings and conclusions within 30 days after receiving an appeal.

(d) If the decision of the General Counsel is adverse, the grantee may make a final written appeal to the Chairman of the Commission within five days after receiving the decision of the General Counsel. The Staff Director of the Commission shall function as the Chairman's designee for receipt and processing of final administrative appeals to the Chairman. The decision of the Chairman is final.

[FR Doc. 87-18218 Filed 8-13-87; 8:45 am]
BILLING CODE 6340-01-M

COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

Grant Program Announcement and Application Instructions

AGENCY: Commission on the Bicentennial of the United States Constitution.

ACTION: Grant program announcement and application instructions.

SUMMARY: The Commission on the Bicentennial of the United States Constitution announces its instructions and application deadlines for FY–1988 funding from its Constitution Bicentennial Educational Grant Program. The Commission is soliciting grant applications for the development of instructional materials and programs on the Constitution and Bill of Rights which are designed for use by elementary or secondary school students. This grant program announcement and application instructions informs all interested individuals and organizations about the closing dates for the receipt of applications for funding and how applications must be prepared for funding consideration by the Commission. The application instructions are based on the law and regulation which contain the key requirements for all applicants to follow in seeking funding from the Commission.

DATES: Applications will be accepted from August 14, 1987 until October 15, 1987 at 5:30 pm.

ADDRESS: For further information contact: Anne A. Fickling, Assistant Director of Education, Commission on the Bicentennial of the U.S. Constitution, 736 Jackson Place, NW., Washington, DC 20503, (202) 653–5110.

Authority Citation

Title V of Pub. L. 99–194; 45 CFR Part 2010.

Herbert M. Atherton,

Director, Educational Programs.

(Catalog of Federal Domestic Assistance Number 90.001.)

Program Announcement for the Bicentennial of the U.S. Constitution Educational Grant Program

I. Introduction

The 200th Anniversaries of the signing and ratification of the United States Constitution present important opportunities to encourage renewed reflection about, and public interest in, the principles and foundations of constitutional government. In 1976, we celebrated the Bicentennial of the Declaration of Independence which sets forth the principles of representative government. Beginning in 1987, we commemorate a Constitution which was designed to put these principles into practice and which has provided a stable and workable plan of government for 200 years.

It is important to encourage renewed vigor in the teaching of the origins and fundamentals of the Constitution and American government in our elementary and secondary schools. The Commission's Educational Grant Program is designed to improve knowledge and understanding of the Constitution through funding the development of instructional materials and other programs for use by teachers in elementary and secondary schools. During its first year of funding authority (1987) the Commission received 222 applications requesting a total of $9.4 million in project funding. Congress authorized the Commission to award up to $1,000,000 in discretionary project assistance.

Last year, the Commission issued 30 grant awards for conferences, institutes, curricula development and other projects. The Commission has requested a Congressional appropriation of $2,150,000 to make discretionary grants for fiscal year 1988. This year, the Commission anticipates issuing 40–60 grant awards for special projects and 100–200 in-service training grants to elementary and high schools across the country. The 1987 grant competition was highly competitive even though less than 250 applications were received. With more preparation time this year, we anticipate that the 1988 grant program will generate many more project applications and much stiffer competition for awards.

Applicants are urged to read our program announcement carefully before submitting a proposal to the Commission. Only a small percentage of all applicants will actually receive a grant.

Applicants are reminded that funding approval is contingent upon the amount of funding actually provided by Congress. Since Congress has not yet approved funding for this program, there is a chance that no applications will be funded. Preparation of an application is at your own expense and risk; the Commission cannot pay for any proposal preparation expenses.

Duties of the Commission

The Commission on the Bicentennial of the United States Constitution (the Commission) was established by Pub. L. 98–101, 97 Stat. 719, and signed by the President on September 29, 1983. Commission activities are governed by a 23 member Commission assisted by a staff director and a staff of up to 130 persons. The Honorable Warren E. Burger, Chief Justice of the United States, retired, is Chairman.

The Commission was created to promote and coordinate activities commemorating the 200th Anniversary of the United States Constitution. Section 6 of Pub. L. 98–101 charges the Commission with the following duties:

1. To plan and develop activities appropriate to commemorate the bicentennial of the Constitution, including a limited number of projects to be undertaken by the Federal Government seeking to harmonize and balance the important goals of ceremony and celebration with the equally important goals of scholarship and education.

2. To encourage private organizations, and State and local governments to organize and participate in bicentennial activities commemorating or examining the drafting, ratification and history of the Constitution and the specific features of the document.

3. To coordinate, generally, activities throughout all the States.

4. To serve as a clearinghouse for the collection and dissemination of information about bicentennial events and plans.

II. The Program Mandate

Title V of the Arts, Humanities, and Museums Amendments of 1985 (Pub. L. 99–194) as amended and subsequent appropriations acts authorize the Commission to make grants (1) "to local educational agencies, private elementary and secondary schools, private organizations, individuals, and State and local public agencies in the United States for the development of instructional materials and programs on the Constitution of the United States and the Bill of Rights which are designed for use by elementary or secondary school students."

To implement this authority, the Commission established its Constitution Bicentennial Educational Grants Program within the Commission's Division of Educational Programs. The Director and professional staff of the Division of Educational Programs administers the Constitution Bicentennial Educational Grants Program with guidance from the seven-member Commission Advisory Committee on Educational Projects. The Department of Justice is responsible for post-award management of grants awarded by the Commission.

BEST COPY AVAILABLE

In keeping with its Congressional mandate, the Commission invites proposals for programs designed to provide elementary and secondary school teachers with a strengthened understanding of the Constitution, its antecedents, provisions, structure and history. In the words of the Senate Judiciary Committee Report accompanying Pub. L. 98–101:

> [F]ocus should be the men and events of 1787, not controversial interpretations of 1987; the Federalist Papers and the ratification debates in the States, not the textbooks of modern law schools; the substantive provisions of our Nation's foundational document, not the proposed legislative agenda of any single party or group.
>
> Proposed programs should demonstrate how students will benefit and should result in instructional ideas, materials, and methods which teachers can share with others.

III. Who May Apply and What May be Funded

The Commission is authorized to accept applications from and award grants to:

1. Local Educational Agencies;
2. Private Elementary and Secondary Schools;
3. Private Organizations;
4. Individuals; and
5. State and Local Public Agencies in the United States.

Colleges, Universities, and Adult Education Programs within the above categories are eligible to apply provided the proposed project or program is designed for use in elementary and secondary schools. Grants will not be made to profit-making organizations.

What Activities May Be Funded

The Commission is authorized to fund the development of instructional materials and programs on the Constitution of the United States and the Bill of Rights for use in elementary and secondary schools.

The Commission is also authorized by Congress to implement the National Bicentennial Competition on the Constitution and Bill of Rights. This is an on-going educational program that has been developed by the Center for Civic Education with prior federal assistance. No discretionary grants will be awarded for this program.

IV. Priority Subject Areas For Grants

Programs may examine the ratification and history of the Constitution and specific features of the document. The document itself, rather than any particular economic or social theories, should be the focal point. The program materials should be balanced in that all sides of Constitutional issues are presented in an unbiased manner. Emphasis should be placed on basic constitutional principles and perennial constitutional issues rather than on contemporary and controversial issues of public policy.

In its 1987 program announcement, the Commission emphasized the development of curricular materials and other programs providing a broad-based understanding of the Constitution, its history, and its Founding principles. For 1988, the Commission encourages proposals which focus on more specific constitutional themes paralleling those of the Commission's five-year plan and the development of the three branches of the federal government. Proposals may also address the role of Federalism in the development and history of the Constitution.

The Commission also strongly encourages proposals that direct teachers to existing resources and more effective ways of using them.

A significant objective of any proposal must be to strengthen the ability of elementary and secondary school teachers to teach effectively how the concepts of Constitutionalism and applied experience have affected the creation and evolution of American governmental institutions.

Research by the Commission and information gathered from constitutional experts and educators suggests a strong need to reacquaint teachers and students with the historical context and practical considerations in the evolution of constitutional government. This Constitution Bicentennial era provides a unique opportunity to recapture the lessons learned through Constitutional experiences which are as important today as they were 200 years ago. The Commission believes that it is through an understanding of the principles and historical development of the Constitution that present constitutional conflicts can be better understood.

Constitutional Themes: A Study Agenda

The Commission encourages proposals which correspond to themes highlighted by the Commission during its five-year commemorative program. One effective approach to these themes is to compare their operation in recent times with what was contemplated by those who drafted and ratified the Constitution and its amendments.

The Commission has outlined a program for the Constitution's Bicentennial, identifying a specific anniversary and providing a specific focus for each year. In 1987, the emphasis was on the writing and signing of the Constitution. The focus for the ensuing four years is as follows:

1. *1988:* The bicentennial of the first Congressional elections is an appropriate opportunity to focus on activities which emphasize the creation and development of the Legislative Branch.

Since it is also the bicentennial year of the ratification struggle, special focus should be given to the debates and the writings from both the Federalist and Anti-Federalist forces which were critical to the ratification campaign.

2. *1989:* The study of Congress will continue since 1989 marks the 200th anniversary of the first Congressional sessions. However, the emphasis will shift to the first Presidential inauguration and the first administration as we focus on the development of the Executive Branch.

3. *1990:* The Bicentennial of the first session of the Supreme Court marks an appropriate year to focus on the Judicial Branch and its historical development.

4. *1991:* This final year of the bicentennial commemoration is designated for a study of the Bill of Rights, adopted in 1791, and subsequent amendments adopted throughout our history.

During the 1987–88 school year, the Commission especially invites proposals that emphasize the ratification of the Constitution and the Legislative and Executive Branches of the Federal Government. The doctrine of separation of powers should be included in any proposal dealing with the branches of government. Although all three branches may be involved in the treatment of a conflict, the major focus should be consistent with the celebratory themes outlined above.

Exemplary Projects

A number of exemplary Constitution education programs are currently conducted in elementary and secondary schools across the country. Leaders of these programs include educators, representatives of key community groups, bar associations, law enforcement agencies, and public service agencies. Education on the Constitution in our nation's schools would be significantly enhanced through effective use of such existing programs.

The Commission encourages school districts that have established highly successful educational programs on the Constitution to apply for limited funding to expand or replicate them. Providing assistance to outstanding projects will enhance the network of available teaching materials and methods on the Constitution.

In order to be eligible for funding as an exemplary project, applicants must

provide written evidence of past program accomplishments, evidence of project recognition by others, and documentation of continued commitment to the project. Applicants for exemplary project funding will be required to disseminate their teaching program to other school districts, educational associations, and the Commission.

Resource Inventory Effective Use of Available Resources

The revitalized interest in studying the Constitution encouraged by the bicentennial celebration, other agencies, and this grant program has led to the development and dissemination of new curricula for all learning levels. Educational materials on the Constitution are not catalogued in any single listing, volume, or repository. As a result, many educators are unaware of the variety of materials available.

In response to this need, the Commission encourages a limited number of proposals to connect teachers with existing instructional materials, resources, lesson plans, and methods, including those made available through Commission sponsorship and the 1987 Educational Grants Program. Since the Commission anticipates funding only a few proposals for resource guide development, applicants should not seek support for such projects unless they are highly qualified by specific expertise and experience.

A listing of Commission sponsored activities and grant recipients under the 1987 Educational Grants Program are found elsewhere in this application package. If more complete information is desired, please write to the contact listed.

In-Service Instruction Mini-Grant Program

To help ensure a minimum level of basic teacher instruction on how to teach the Constitution to a maximum number of teachers, the Commission invites proposals from consortia of school districts within a particular region which will develop and implement concentrated in-service training to all schools within the member districts. The Commission believes that through a cooperative effort, regional school districts can develop a network whereby resources can be combined to greater effectiveness. Scholars, materials, and opportunities can be shared so that small and large districts alike will have the optimum training available. Through single-day training or through ongoing supplemental training during the school year, teachers can be provided with information and tools for teaching the concepts inherent in the Constitution.

Proposals from individual school districts are also encouraged provided the applicant demonstrates that the proposed project will be cost-effective and reach a large segment of the teachers within its school district.

Because grant support for in-service training is relatively modest, applicants who provide documented in-kind or cash match resources will be given priority consideration over applicants who do not contribute resources. Applicants seeking funding for in-service training are urged to pay particular attention to the five-page limit for proposals.

Diverse Activities Many Formats Possible

We are often asked to provide examples of fundable projects as guidance. The Commission encourages a wide range of project activities employing a variety of formats using the funding emphasis and themes mentioned above. We look to the applicant to use its own imagination in designing a project.

The examples listed below are illustrations of in-service training, conferences, institutes, resource guides, and instructional materials which might be developed. These examples are designed to serve as points of departure in proposal development.

1. A school district will develop and conduct an in-service day for elementary school teachers, opening with a lecture by a constitutional scholar providing a basic understanding of constitutional principles and their development. Following this lecture, a series of workshops run by master teachers will provide teachers with the resources and methods for translating this understanding into the classroom. Teachers will be made aware of the variety of materials available at the appropriate level, and of resource people to assist with this process. A series of follow-up, enrichment activities, including primary source study, will be provided for participating teachers throughout the semester.

2. A four-week institute for secondary school teachers which focuses on the legislative branch of the government, and its function in a system of separated powers. The principles of the Founding era, in addition to the arguments supporting the separation of powers, will be studied in order to better understand the constitutional basis of current conflicts over which branch of government maintains control over foreign affairs. The original debates and other founding documents, with study of historic Supreme Court cases, will provide the basis for better understanding the natures of the legislative and executive powers.

3. An institute for elementary school teachers where biographies are used as the starting point for adapting the concepts implicit in the Constitution, the Bill of Rights, and our constitutional democracy into terms that can be understood by young children. Teachers will be required to read a specified number of books from a reading list provided prior to the beginning of the institute; they will then work with constitutional scholars and master teachers to strengthen their basic understanding of the Constitution, its antecedents, and its implications so that they can better interpret concepts for young students. Additionally, the lectures and workshops include an exploration of ways to use music, art, or role-playing to bring the Founding period to life.

4. A resource guide will be developed to provide a single source of existing instructional materials on the Constitution and related topics. Organized by topic and by grade level, this guide will provide a comprehensive listing of curricula and related instructional materials currently available, including lesson plans and examples of proven methods for incorporating these resources into successful classroom activities.

5. Teachers and students from througout the state will participate in a semester-long series of research activities, including the study of the records of the debate over ratification of the Constitution, which will culminate in a reenactment of the state's ratification convention and the publication of a reenactment guide, a tabloid newspaper, and a research booklet. Students will adopt the role of an actual delegate-participant. With the guidance of teachers, students will use local history research techniques to uncover the ideas and positions actually held by their delegate through primary sources such as sermons, newspaper articles, speeches, and records of the original debate.

6. A two-week summer institute on national and state constitutional history will provide 30 social science and history teachers from grades 5–12 with academic training in American constitutional history. Project faculty will include the state archivist, scholars in history and political science, and master teachers. Discussion groups and assigned readings will address the origins of the Constitution, the convention and ratification debates, the

Federalist and Anti-Federalist writings, and the creation of the Bill of Rights as well as a study of the development of the state constitution. Participants will do research work and develop instructional materials and methods appropriate for their grade level and will receive training in the use of primary sources for classroom instruction. As a result of the institute, a teacher's resource book will be published and distributed statewide.

7. A year-long program on teaching the Constitution and constitutionalism will be held for 20 elementary and secondary school teachers in a collaborative effort with five local university faculty. The project will begin with a two-week summer institute followed by monthly seminars throughout the year. The summer institute will be devoted to reading, discussion, and briefing of important court cases as participants study the evolution of constitutionalism from the early ideals of Magna Carta to the present. Teachers will become familiar with historical documents and other primary materials as well as current scholarship on the Constitution as they develop detailed teaching strategies.

8. A weekly program throughout the semester for junior and senior high school teachers provides a mix of lectures and hands-on experience for ways to bring the Constitution to 14–18 year olds. Alternate-week lectures will focus on the philosophical origins of the Constitution, each branch of the government, the Bill of Rights, and the rights and responsibilities of citizenship; appropriate reading lists will be provided at each lecture. Non-lecture week workshops led by master teachers, will demonstrate proven methods of converting this knowledge into a comprehensive learning experience as classroom teachers become familiar with existing curricula and resources.

Regardless of the specific project proposed, important outcomes of any proposal are enhancing the skill of teachers to teach the principles and the history of the Constitution and Bill of Rights to young students and providing the resources and methods to implement those skills.

V. What Activities May Not Be Funded

Real property acquisition, construction, and research undertaken in the pursuit of an academic degree may not be assisted with Commission funding. The Commission will not fund proposals which espouse or attack others, legislative proposals or proposals to intervene in ongoing disputes, or proposals that would bring the Commission into the policy-making processes of any government or government agency. Grant money may not be used as honoraria for individuals who simply speak at the conferences or institutes. [This restriction does not prohibit funds from being used to support individuals whose broader participation in a conference or institute includes a speech.]

VI. Budget information

All costs must be reasonable, necessary to accomplish project objectives, allowable in terms of the applicable federal cost principles, auditable, and incurred during the grant period. Charges to the project of items such as salaries, fringe benefits, travel, and contractual services must conform to the written policies and established practices of the applicant organization.

The Commission encourages applications that include in-kind services or other sources of funding. Preference may be given to applicants who propose in-kind services in the project budget.

Allowable Costs

Allowable project costs include:

1. Salaries and wages for key personnel, administrative assistants and secretaries;
2. Fringe benefits;
3. Consultant fees;
4. Necessary and reasonable travel expenses (including subsistence costs when traveling) for key personnel and participants;
5. Stipends for participants;
6. Supplies and materials used in the project;
7. Project-related services such as cost of duplication and printing, long-distance telephone, equipment rental or purchase, postage, and other services not included in the other categories or in the indirect cost pool and related to the project objectives.

Anticipated Grant Range:

Instructional Materials	$5,000–50,000
Institutes	$25,000–75,000
Conferences	$5,000–25,000
Exemplary Projects	$5,000–25,000
In-Service Programs	$1,000–10,000
Other Projects	$5,000–50,000

VII. Review Process: Introduction

Although applicants must follow the format prescribed under "PROPOSAL CONTENT," the proposal should not simply mirror the content of this announcement. It is also particularly important that proposals be free of *jargon and technical language.* We anticipate that the discussion in this section will help the applicant to prepare a stronger proposal if the judging process is understood.

Applicants will submit a narrative of their proposal which is strictly limited to fifteen double-spaced pages *excluding* the project budget narrative and appendix items. Proposals for inservice training must be limited to no more than five (5) doublespaced pages *excluding* the project budget narrative and appendix items. Applicants may submit more than one proposal; each will be assessed independently.

Administrative and Merit Reviews of Applications

The examination of grant applications begins with an "Administrative Review" for completeness and conformity with application requirements. The application then will be given a "Merit Review," first by external reviewers and then by members of the Commission staff. The readers of the application may be faculty, educational administrators, government administrators or journalists chosen for their ability to assess the significance of a broad range of important issues on the Constitution and Bill of Rights. The external reviewers may include both generalists and specialists. They often have practical experience in educational programs. But they almost certainly will know little about a particular need, approach, or loction. The application must therefore address a general audience and avoid jargon and technical language. Readers are asked to review a large number of applications so that they can gain perspective on relative significance. It is, therefore, imperative that the application be limited to fifteen double-spaced pages.

The "Merit Review" will focus on the relative significance and importance of proposals. Applicants should be sure to discuss—(1) The constitutional issue or educational need being addressed; (2) the proposed activities in some detail; and (3) the desired results or outcomes of the project. The final stage of review by the Commission will include consideration of the feasibility of proposals as well as full range of issues raised in this section. Proposals may also be reviewed by other specialists later in the process when technical questions arise.

After thorough review of the applications, Commission staff may telephone applicants in order to verify or clarify information. The Commission may also contact others who are in a position to know the applicant's work and plans, or who would be affected by the project.

Commissioners, Commission staff, and external reviewers will remove themselves from consideration of any

application for a grant which might reasonably present the appearance of a conflict of interest. Individuals who believe they may have a potential conflict of interest arising from present or prior association with the applicant or for any other reason, shall bring the situation to the attention of the Commission's General Counsel for guidance.

Throughout the review process, external reviewers and Commission staff will make judgments about the extent to which a project will contribute to providing elementary and secondary teachers and students with a strengthened understanding of the Constitution and Bill of Rights.

VIII. Selection Criteria

The Commission has developed the following criteria as general guidelines for judging all project proposals:

1. The project is designed to strengthen teachers' capacity to understand and teach the Constitution, its antecedents, provisions, structure, and history while benefitting students in an academically sound way appropriate for the age group toward which it is directed. (20 points)

2. Potential of the project to achieve stronger and wider impact through utilizing existing materials, including those made available through Commission sponsorship and the 1987 Educational Grants Program. (5 points)

3. The project is cost-effective in that expenditures are reasonable and appropriate to the scope of the project. (5 points)

4. The project must demonstrate the potential for affecting a much wider audience than the immediate project participants. (5 points)

5. The project represents an improvement upon existing teaching methods. (5 points)

6. Applicants have the capacity to carry out the project as evidenced by:

a. Academic and administrative qualifications of the project personnel;

b. Quality of project design;

c. Soundness of project management plan. (10 points)

The decision to award grant funding is solely within the discretion of the Commission based upon its judgment of how best to fulfill the statutory purposes of the grant program.

Funding decisions cannot be appealed.

IX. Submission Procedures and Closing Dates for Receipt of Proposals

Every application for a grant from the Commission must be made on application forms prescribed by the Commission. A complete application package consists of the following items:

1. Standard Form 424 with attachments;

2. Proposal abstract (one page);

3. Proposal narrative (5–15 *double-spaced* typed pages); In-service narrative (5 *double-spaced* typed pages);

4. Proposal budget and a budget explanation.

The closing date for receipt of grant applications is October 15, 1987.

The announced closing date and procedures for guaranteeing timely submission will be strictly observed. However, the Commission reserves the option to invite additional applications if program funding is available. If new applicants are invited, notification will be placed in the **Federal Register**.

Applicants should also note that the closing date applies to both the date the application is mailed and the hand delivery date. A mailed application meets the requirement if it is mailed on or before the pertinent closing date and the required proof of mailing is provided. Proof of mailing may consist of one of the following: (a) A legibly dated U.S. Postal Service postmark; (b) a legible receipt with the date of mailing stamped by the U.S. Postal Service; (c) a dated shipping label, invoice or receipt from commercial carrier; or, (d) any other tangible proof of mailing acceptable to the Commission.

If an application is sent through the U.S. Postal Service, the Commission will not accept either of the following as proof of mailing: (1) A private metered postmark; or, (2) a mail receipt that is not dated by the U.S. Postal Service. Please use first class mail. All applicants will receive acknowledgment notices upon receipt of proposals.

Mailing Address

Commission on the Bicentennial of the United States Constitution, 736 Jackson Place, NW, Washington, DC 20503, Attn: Anne A. Fickling, Assistant Director, Educational Grants Program, Telephone (202) 653–5110.

Final Proposals Sent by Mail

October 15, 1987.

Hand Delivered Final Proposals

Hand delivered final proposals will be accepted daily between the hours of 8:00 a.m. and 5:30 p.m., Eastern Standard Time except Saturdays, Sundays and Federal Holidays. Proposals will not be accepted after 5:30 p.m. on any closing date.

Number of Copies of Final Proposal

All applicants must submit one (1) application with an original signature and four (4) copies. Each copy must be covered with Standard Form 424.

Proposal Content

All applicants are urged to develop proposals that are concise and clearly written. The proposal must contain the components listed below:

Title Page: Use Standard Form 424 (SF 424). Additional instructions are printed on the reverse side of SF 424.

Abstract: Attach a one-page, double-spaced abstract following SF 424. This is a key element in all applications, and should include: (1) A brief description of the project; (2) the proposed activities; and, (3) the project's intended outcome.

Budget: Applicants will prepare a complete budget including details of expenditures for salary, travel, etc. Indirect costs may be assessed at a rate previously approved by another agency of the federal government. Applicants who need to establish an indirect cost rate should contact the Commission.

Budget Explanation: Applicants will include a budget statement explaining (1) the basis used to estimate major costs (professional personnel, consultants, travel and indirect costs and any other costs that may appear unusual; and (2) how the major costs relate to the proposed budget activities.

Project Narrative: Applicants must provide a narrative statement limited to fifteen double-spaced typed pages for project proposals and five double-spaced typed pages for in-service projects. Include the following information:

(I) Project Description: A description of the project activities and how they relate to the selection criteria;

(II) Outcome and Plans for Wider Impact: A description of the project's outcome and prospects that the project will have a continuing impact and will benefit others beyond the program participants (provide an estimate of number of teachers/students who will benefit);

(III) Other Aspects of the Project: A description of any other especially significant aspects of the proposed project;

(IV) Personnel and Institutional Information: For key project staff, please attach descriptions of relevant education and experience. (Applicants may submit as an appendix to the proposal up to ten additional pages of background information on their staff, institutions or agencies which is relevant to a full understanding of the

significance and feasibility of the proposed project.)

Equal Opportunity

The Commission on the Bicentennial of the United States Constitution is responsible for ensuring compliance with and enforcement of public laws prohibiting discrimination because of race, color, national origin, sex, handicap, and age in programs and activities receiving federal assistance under this grant program. Any person who believes he or she has been discriminated against in any program, activity, or facility receiving a Commission grant should write immediately to Director of Educational Programs, Commission on the Bicentennial of the United States Constitution, 736 Jackson Place, NW., Washington, DC 20503

BILLING CODE 8340-01-M

VOL 52 ISS 157 AG 14 1987 UMI

OMB Approval No. 0348-0006

FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION (Mark appropriate box) ☐ NOTICE OF INTENT (OPTIONAL) ☐ PREAPPLICATION ☐ APPLICATION

2. APPLICANT'S APPLICATION IDENTIFIER — a. NUMBER; b. DATE (Year month day) 19

3. STATE APPLICATION IDENTIFIER (NOTE TO BE ASSIGNED BY STATE) — a. NUMBER; b. DATE ASSIGNED (Year month day) 19

Leave Blank

SECTION I—APPLICANT/RECIPIENT DATA

4. LEGAL APPLICANT/RECIPIENT
a. Applicant Name
b. Organization Unit
c. Street/P.O. Box
d. City
e. County
f. State
g. ZIP Code
h. Contact Person (Name & Telephone No.)

5. EMPLOYER IDENTIFICATION NUMBER (EIN)

6. PROGRAM (From CFDA) — a. NUMBER ☐☐.☐☐☐ MULTIPLE ☐; b. TITLE

7. TITLE OF APPLICANT'S PROJECT (Use section IV of this form to provide a summary description of the project.)

8. TYPE OF APPLICANT/RECIPIENT
A—State; B—Interstate; C—Substate Organization; D—County; E—City; F—School District; G—Special Purpose District; H—Community Action Agency; I—Higher Education Institution; J—Indian Tribe; K—Other (Specify):
Enter appropriate letter ☐

9. AREA OF PROJECT IMPACT (Names of cities, counties, states, etc.)

10. ESTIMATED NUMBER OF PERSONS BENEFITING

11. TYPE OF ASSISTANCE
A—Basic Grant; B—Supplemental Grant; C—Loan; D—Insurance; E—Other
Enter appropriate letter(s) ☐☐

12. PROPOSED FUNDING

a. FEDERAL	$	.00
b. APPLICANT		.00
c. STATE		.00
d. LOCAL		.00
e. OTHER		.00
f. Total	$	.00

13. CONGRESSIONAL DISTRICTS OF: a. APPLICANT; b. PROJECT

14. TYPE OF APPLICATION
A—New; B—Renewal; C—Revision; D—Continuation; E—Augmentation
Enter appropriate letter ☐

15. PROJECT START DATE (Year month day) 19

16. PROJECT DURATION (Months)

17. TYPE OF CHANGE (For Item 14)
A—Increase Dollars; B—Decrease Dollars; C—Increase Duration; D—Decrease Duration; E—Cancellation; F—Other (Specify):
Enter appropriate letter(s) ☐☐

18. DATE DUE TO FEDERAL AGENCY ► (Year month day) 19

19. FEDERAL AGENCY TO RECEIVE REQUEST
a. ORGANIZATIONAL UNIT (IF APPROPRIATE)
b. ADMINISTRATIVE CONTACT (IF KNOWN)
c. ADDRESS

20. EXISTING FEDERAL GRANT IDENTIFICATION NUMBER

21. REMARKS ADDED ☐ Yes ☐ No

SECTION II—CERTIFICATION

22. THE APPLICANT CERTIFIES THAT► To the best of my knowledge and belief, data in this preapplication/application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is approved.

a. YES, THIS NOTICE OF INTENT/PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____

b. NO, PROGRAM IS NOT COVERED BY E.O. 12372 ☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW ☐

23. CERTIFYING REPRESENTATIVE — a. TYPED NAME AND TITLE; b. SIGNATURE

24. APPLICATION RECEIVED (Year month day) 19

25. FEDERAL APPLICATION IDENTIFICATION NUMBER

26. FEDERAL GRANT IDENTIFICATION

SECTION III—FEDERAL AGENCY ACTION

27. ACTION TAKEN
☐ a. AWARDED
☐ b. REJECTED
☐ c. RETURNED FOR AMENDMENT
☐ d. RETURNED FOR E.O. 12372 SUBMISSION BY APPLICANT TO STATE
☐ e. DEFERRED
☐ f. WITHDRAWN

28. FUNDING

a. FEDERAL	$	.00
b. APPLICANT		.00
c. STATE		.00
d. LOCAL		.00
e. OTHER		.00
f. TOTAL	$	.00

29. ACTION DATE► (Year month day) 19

30. STARTING DATE (Year month day) 19

31. CONTACT FOR ADDITIONAL INFORMATION (Name and telephone number)

32. ENDING DATE (Year month day) 19

33. REMARKS ADDED ☐ Yes ☐ No

NSN 7540-01-036-6162
PREVIOUS EDITION IS NOT USABLE

424-103

STANDARD FORM 424 PAGE 1 (Rev. 4-84)
Prescribed by OMB Circular A-102

GENERAL INSTRUCTIONS FOR THE SF-424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted in accordance with OMB Circular A-102. It will be used by Federal agencies to obtain applicant certification that states which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process have been given an opportunity to review the applicant's submission.

APPLICANT PROCEDURES FOR SECTION I

Applicant will complete all items in Section I with the exception of Box 3, "State Application Identifier." If an item is not applicable, write "NA." If additional space is needed, insert an asterisk "*," and use Section IV. An explanation follows for each item:

Item

1. Mark appropriate box. Preapplication and application are described in OMB Circular A-102 and Federal agency program instructions. Use of this form as a Notice of Intent is at State option. Federal agencies do not require Notices of Intent.

2a. Applicant's own control number, if desired.

2b. Date Section I is prepared (at applicant's option).

3a. Number assigned by State.

3b. Date assigned by State.

4a-4h. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of applicant, and name and telephone number of the person who can provide further information about this request.

5. Employer Identification Number (EIN) of applicant as assigned by the Internal Revenue Service.

6a. Use Catalog of Federal Domestic Assistance (CFDA) number assigned to program under which assistance is requested. If more than one program (e.g., joint funding), check "multiple" and explain in Section IV. If unknown, cite Public Law or U.S. Code.

6b. Program title from CFDA. Abbreviate if necessary.

7. Use Section IV to provide a summary description of the project. If appropriate, i.e., if project affects particular sites as, for example, construction or real property projects, attach a map showing the project location.

8. "City" includes town, township or other municipality.

9. List only largest unit or units affected, such as State, county, or city.

10. Estimated number of persons directly benefiting from project.

11. Check the type(s) of assistance requested.

A. Basic Grant—an original request for Federal funds.

B. Supplemental Grant—a request to increase a basic grant in certain cases where the eligible applicant cannot supply the required matching share of the basic Federal program (e.g., grants awarded by the Appalachian Regional Commission to provide the applicant a matching share).

E. Other. Explain in Section IV.

12. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included. If the action is a change in dollar amount of an existing grant (a revision or augmentation under item 14), indicate only the amount of the change. For decreases, enclose the amount in parentheses. If both basic and supplemental amounts are included, breakout in Section IV. For multiple program funding, use totals and show program breakouts in Section IV. 12a—amount requested from Federal Government. 12b—amount applicant will contribute. 12c—amount from State, if applicant is not a State. 12d—amount from local government, if applicant is not a local government. 12e—amount from any other sources, explain in Section IV.

13b. The district(s) where most of action work will be accomplished. If city-wide or State-wide, covering several districts, write "city-wide" or "State-wide."

14. A. New. A submittal for project not previously funded.

B. Renewal. An extension for an additional funding/budget period for a project having no projected completion date, but for which Federal support must be renewed each year.

C. Revision. A modification to project nature or scope which may result in funding change (increase or decrease).

D. Continuation. An extension for an additional funding/budget period for a project with a projected completion date.

E. Augmentation. A requirement for additional funds for a project previously awarded funds in the same funding/budget period. Project nature and scope unchanged.

15. Approximate date project expected to begin (usually associated with estimated date of availability of funding).

16. Estimated number of months to complete project after Federal funds are available.

17. Complete only for revisions (item 14c), or augmentations (item 14e).

18. Date preapplication/application must be submitted to Federal agency in order to be eligible for funding consideration.

19. Name and address of the Federal agency to which this request is addressed. Indicate as clearly as possible the name of the office to which the application will be delivered.

20. Existing Federal grant identification number if this is not a new request and directly relates to a previous Federal action. Otherwise, write "NA."

21. Check appropriate box as to whether Section IV of form contains remarks and/or additional remarks are attached.

APPLICANT PROCEDURES FOR SECTION II

Applicants will always complete either item 22a or 22b *and* items 23a and 23b.

22a. Complete if application is subject to Executive Order 12372 (State review and comment).

22b. Check if application is not subject to E.O. 12372.

23a. Name and title of authorized representative of legal applicant.

FEDERAL AGENCY PROCEDURES FOR SECTION III

Applicant completes only Sections I and II. Section III is completed by Federal agencies.

26. Use to identify award actions.

27. Use Section IV to amplify where appropriate.

28. Amount to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions will be included. If the action is a change in dollar amount of an existing grant (a revision or augmentation under item 14), indicate only the amount of change. For decreases, enclose the amount in parentheses. If both basic and supplemental amounts are included, breakout in Section IV. For multiple program funding, use totals and show program breakouts in Section IV. 28a—amount awarded by Federal Government. 28b—amount applicant will contribute. 28c—amount from State, if applicant is not a State. 28d—amount from local government, if applicant is not a local government. 28e—amount from any other sources, explain in Section IV.

29. Date action was taken on this request.

30. Date funds will become available.

31. Name and telephone number of agency person who can provide more information regarding this assistance.

32. Date after which funds will no longer be available for obligation.

33. Check appropriate box as to whether Section IV of form contains Federal remarks and/or attachment of additional remarks.

☆ GPO : 1984 O - 421-526 (140)

DETACH AND, AS NECESSARY, STAPLE TO ABOVE SHEET.

SECTION IV—REMARKS *(Please reference the proper item number from Sections I, II or III, if applicable)*

CATEGORY OF FUNDING (*Check only one*)

This application is being filed for:

___ 1. Conference/Institute

___ 2. Exemplary Project Funding

___ 3. Resource Guide Development

___ 4. In-Service Training

___ 5. Instructional Materials

___ 6. Other Project

Each project will be judged independently on its merits.

OMB APPROVAL NO. 3312-0015
EXPIRES 12/89

APPLICATION FOR FEDERAL ASSISTANCE (Short Form)

PART I — Budget Data

Object Class Categories	Current Approved Budget (a)	Change Requested (b)	New or Revised Budget (c)	
1. Personnel				
2. Fringe Benefits				
3. Travel				
4. Equipment				
5. Supplies				
6. Contractual				
7. Stipend Expenses				
8. Other				
9. Total Direct Charges				
10. Indirect Charges				
11. TOTAL				
12. Federal Share				
13. Non-Federal Share				
14. Project Income				

15. Detail on Indirect Costs:

Type of Rate (Mark one box) ☐ Provisional ☐ Predetermined ☐ Final ☐ Fixed

Rate_____% Base $ _____ Total Amount $_____

16. ATTACH BUDGET EXPLANATION ON MAJOR COST ITEMS FOLLOWING THIS PAGE.

PART II — Program Narrative Statement

Project Narrative: APPLICANTS MUST PROVIDE A NARRATIVE STATEMENT LIMITED TO FIFTEEN DOUBLE-SPACED TYPED PAGES. Include the following information:

I) ***Project Description***: A description of the project activities and how they relate to the selection criteria;

II) ***Outcome and Plans for Wider Impact***: A description of the project's outcome and prospects that the project will have a continuing impact and will benefit others beyond the project participants;

III) ***Other Aspects of the Project***: A description of any other especially significant aspects of the proposed project; and

IV) ***Personnel and Institutional Information***: For key project staff, please attach descriptions of relevant education and experience. (Applicants may submit as an appendix to the proposal up to ten additional pages of background information on their institutions or agencies which is relevant to a full understanding of the significance and feasibility of the proposed project.)

INSTRUCTIONS

PART I

Items 1-11 – Enter on Lines 1-11 in Column (c) the total amounts needed for the project. If this is an application for *new grants*, leave Columns (a) and (b) blank. If this is an application for amendments, changes or supplements, show the current approved budget in Column (a); enter in Column (b) on the appropriate line(s) the amount of the change, amendment or supplement; add each line entry in Column (a) to the line entries in Column (b) and enter the total for each line in Column (c). The amounts shown in Column (c) represent the amount of the new or revised grant budget.

Item 12 — Enter the Federal share of the amount on Line 11.

Item 13 — Enter the non-Federal share of the amount on Line 11.

Item 14 — Enter the amount of estimated income, if any, to be generated by the project. Do not add or subtract this amount from the total project amount. The estimated amount of project income may be considered by the Federal grantor agency in determining the total amount of the grant award.

Item 15 — Enter the type of indirect cost rate (provisional, predetermined, final or fixed), the rate that will be in effect during the funding period, and the amount of the base to which the rate is applied.

PART II

The Project Narrative statement should show the need, objectives, approach, the geographical location of the project and the benefits expected to be obtained from the assistance. Attach any data that may be needed to establish the applicant's eligibility for receiving assistance under the Federal program. Refer to the Annual Program Announcement for more details.

PART III — ASSURANCES

The applicant hereby assures and certifies that it will comply with the regulations, policies, guidelines, and requirements including the applicable OMB Circulars Nos. (A-21. A-110, A-122, A-87, A-102, and A-128) as they relate to the application, acceptance and use of Federal funds for this Federally assisted project. The Applicant also assures and certifies with respect to the grant that:

1. It possesses legal authority to apply for the grant; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.
2. It will comply with Title VI of the Civil Rights Act of 1964(P.L. 88-352) and in accordance with Title VI of that Act, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any project or activity for which the applicant receives Federal financial assistance and will immediately take any measures necessary to effectuate this agreement.
3. It will comply with Title VI of the Civil Rights Act of 1964 (42 USC 2000d) prohibiting employment discrimination where (1) the primary purpose of a grant is to provide employment or (2) discriminatory employment practices will result in unequal treatment of persons who are or should be benefiting from the grant-aided activity.
4. It will comply with the provisions of the Hatch Act which limit the political activity of employees.
5. It will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act, as they apply to educational institution employees of State and local governments.
6. It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.
7. It will give the grantor agency or the Comptroller General through any authorized representative the access to and the right to examine all records, books, papers, or documents related to the grant.
8. It will comply with all requirements imposed by the Federal grantor agency concerning special requirements of law, program requirements, and other administrative requirements approved in accordance with applicable Office of Management and Budget Circulars.
9. It will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the Federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.
10. It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 42 USC 4012a. Section 102(a) requires the purchase of flood insurance as a condition for the receipt of any Federal financial assistance for machinery, equipment, fixtures, and furnishings to be used in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards.
11. It will assist the Federal grantor agency in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470), Executive Order 11593, and the Archeological and Historic Preservation Act of 1966 (16 U.S.C. 469a-1 et seq.) by (a) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR Part 800.0) by the activity, and notifying the Federal grantor agency of the existence of any such properties, and by (b) complying with all requirements established by the Federal grantor agency to avoid or mitigate adverse effects upon such properties.

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Part IX

Environmental Protection Agency

40 CFR Part 12

Enforcement of Nondiscrimination on the Basis of Handicap in the Environmental Protection Agency's Programs; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 12

[FRL-3057-3]

Enforcement of Nondiscrimination on the Basis of Handicap in the Environmental Protection Agency's Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation provides for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap, as it applies to programs or activities conducted by the Environmental Protection Agency (EPA).

EFFECTIVE DATE: September 14, 1987.

FOR FURTHER INFORMATION CONTACT: Ms. Nereid Maxey, Office of Civil Rights (A–105), Environmental Protection Agency, Room 211 West Tower, 401 M Street, SW., Washington, DC 20460, (202) 382–4567, TDD (202) 382–4565.

Copies of this regulation are available on tape for those with impaired vision. The tape may be listened to at or ordered from the Office of Civil Rights, EPA, at the above address. For information, please call 202/382–4575 or TDD # 202/382–4565.

SUPPLEMENTARY INFORMATION: On May 6, 1985, EPA published a Notice of Proposed Rulemaking (NPRM) for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap as it applies to programs and activities conducted by EPA. 50 FR 19136.

By the close of the comment period, July 5, 1985, EPA had received five written comments and several telephone calls requesting information about the regulation. Three of the written comments were submitted by organizations representing the interests of individuals with handicaps, one comment from a union representing EPA employees, and one comment from an EPA Laboratory Office Director. The telephone comments and questions were received from EPA employees.

The Agency read and analyzed each comment. Most comments addressed more than one issue and expressed similar opinions.

The decisions the Agency made in response to these comments, however, were not made on the basis of the number of commenters addressing the issue, but on a thorough consideration of the merits of the points of view expressed in the comments. Copies of the written comments will be made available for public inspection in Room 206 West Tower of the EPA Headquarters Office, 401 M Street, SW., Washington, DC from 9:00 am to 4:00 pm, Monday through Friday, except for legal holidays, until October 13, 1987.

Section 504 requires that regulations that apply to the programs and activities of Federal Executive agencies shall be submitted to the appropriate authorizing committees of Congress and that such regulations may take effect no earlier than the thirtieth day after they have been so submitted. The Agency has today submitted this regulation to the Senate Committee on Labor and Human Resources and its Subcommittee on the Handicapped and the House Committee on Education and Labor and its Subcommittee on Select Education pursuant to the terms of section 504. The regulation will become effective on September 14, 1987.

This rule applies to all programs and activities conducted by EPA.

Background

The purpose of this rule is to provide for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), as it applies to programs and activities conducted by the Environmental Protection Agency. As amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Sec. 119, Pub. L. 95–602, 92 Stat. 2982) and the Rehabilitation Act Amendments of 1986 (Pub. L. 99–506, 100 Stat 1810), section 504 of the Rehabilitation Act of 1973 states that

> No otherwise qualified individual with handicaps in the United States, . . . shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance *or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.*
>
> (29 U.S.C. 794 (1978 amendment italicized).)

The substantive nondiscrimination obligations of the agency, as set forth in this rule, are identical, for the most part, to those established by Federal regulations for programs or activities receiving Federal financial assistance. (*See* 28 CFR Part 41 (section 504 coordination regulation for federally assisted programs).) This general parallelism is in accord with the intent expressed by supporters of the 1978 amendment in floor debate, including its sponsor, Rep. James M. Jeffords, that the Federal Government should have the same section 504 obligations as recipients of Federal financial assistance. 124 Cong. Rec. 13,901 (1978) (remarks of Rep. Jeffords); 124 Cong. Rec. E2668, E2670 (daily ed. May 17, 1978) *id.*; 124 Cong. Rec. 13,897 (remarks or Rep. Brademas); *id.* at 38, 552 (remarks of Rep. Sarasin).

There are, however, some language differences between this final rule and the Federal Government's section 504 regulations for federally assisted programs. These changes are based on the Supreme Court's decisions in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979), and the subsequent circuit court decisions interpreting *Davis* and section 504. *See Dopico* v. *Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association* v. *Lewis*, 655 F.2d 1272 (D.C. Cir. 1981) (*APTA*); *see also Rhode Island Handicapped Action Committee* v. *Rhode Island Public Transit Authority*, 718 F.2d 490 (1st Cir. 1983).

These language differences are also supported by the decision of the Supreme Court in *Alexander* v. *Choate*, 469 U.S. 287 712 (1985), where the Court held that the regulations to federally assisted programs did not require a recipient to modify its durational limitation on Medicaid coverage of inpatient hospital care for individuals with handicaps. Clarifying its *Davis* decision, the Court explained that section 504 requires only "reasonable" modifications, *id.* at 300, and explicitly noted that "[t]he regulations implementing section 504 [for federally assisted programs] are consistent with the view that *reasonable* adjustments in the nature of the benefit offered must at times be made to assure meaningful access" (*id.* at n.21) (emphasis added).

Incorporation of these changes, therefore, makes this regulation implementing section 504 for federally conducted programs consistent with the Federal Government's regulations implementing section 504 for federally assisted programs, as they have been as interpreted by the Supreme Court. Many of these federally assisted regulations were issued prior to the interpretations of section 504 by the Supreme Court in *Davis*, lower court cases interpreting *Davis*, and by the Supreme Court in

Alexander; therefore their language does not reflect the interpretation of section 504 provided by the Supreme Court and by the various circuit courts. Of course, these federally assisted regulations must be interpreted to reflect the holdings of the Federal judiciary. Hence, EPA relying on advice from the Civil Rights Division, U.S. Department of Justice, believes that there are no significant differences between this final rule for federally conducted programs and the Federal Government's interpretation of section 504 regulations for federally assisted programs.

This regulation has been reviewed by the Department of Justice. It is an adaptation of a prototype prepared by the Department of Justice under Executive Order 12250 (45 FR 72995, 3 CFR, 1980 Comp., p. 298) and distributed to Executive Agencies.

This regulation has also been reviewed by the Equal Employment Opportunity Commission under Executive Order 12067 (43 FR 28967, 3 CFR, 1978 Comp., p. 206).

It is not a major rule within the meaning of Executive Order 12291 (46 FR 13193, 3 CFR, 1981 Comp., p. 127) and, therefore, a regulatory impact analysis has not been prepared.

This regulation does not have an impact on small entities. It is not, therefore, subject to the Regulatory Flexibility Act (5 U.S.C. 601–612).

One commenter believed that small entities should comply with this rule because there is a substantial number of such entities which affect a considerable number of people. The Agency believes that the commenter is confusing federally assisted regulation governs only the activities and programs conducted by EPA. For example, the regulation applies to EPA's offices and laboratories, public meetings held by EPA, and accommodations for its employees and members of the public who are handicapped entering its properties. It applies to all EPA components regardless of their size.

Section-by-Section Analysis and Response to Comments

Section 12.101 Purpose.

Section 12.101 states the purpose of the rule, which is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

We received one written comment and several telephone inquiries regarding this section. Some commenters were concerned that this regulation did not also apply to EPA's grantees and contractors. EPA grantees are covered by its federally assisted nondiscrimination regulation. Employment activities of certain EPA contractors are covered by section 503 of the Rehabilitation Act of 1973, which is administered by the U.S. Department of Labor. In order to avoid future confusion, we have added a reference to the Agency's federally assisted non-discrimination regulations found at 40 CFR Part 7 (1986).

Section 12.102 Application.

The regulation applies to all programs or activities conducted by the agency. It should be noted that EPA's programs are designed to promote a cleaner and healthier environment. Thus, at this time we anticipate, in a nonemployment context, that this regulation will have its greatest impact on ensuring that the various meetings, symposia, and hearings conducted by EPA are accessible. This regulation does, not, however, apply to programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

Section 12.103 Definitions.

"Agency." For purposes of this regulation "agency" means Environmental Protection Agency.

"Assistant Attorney General." "Assistant Attorney General" refers to the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids." "Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in and enjoy the benefits of the agency's programs or activities. The definition provides examples of commonly used auxiliary aids. Although auxiliary aids are required explicitly only by § 12.160(a)(1), they may also be necessary to meet other requirements of the regulation.

Two commenters suggested that this definition be expanded to include a "laundry list" of aids such as attendant services. The Agency believes, however, that such a list could be interpreted too literally thereby limiting the use of certain aids not mentioned. We believe it is necessary for the Agency to have flexibility to expand the use of auxiliary aids as individual needs, techniques and technology change. The decision to provide attendant services, as well as all other auxiliary aids, will be made on an individual basis.

One commenter believed "that a specific statement that auxiliary aids are required in all aspects of EPA's federally conducted programs should be included in the regulation itself." The Agency believes that program accessibility does not necessarily require the use of auxiliary aids in every instance. For example, holding a public hearing in a place which is accessible to a person who uses a wheelchair and who plans to attend would make the program available to that person. However, providing a sign language interpreter at the hearing when no hearing-impaired person plans to attend would be a needless expense.

"Complete complaint." "Complete complaint" is defined to include all the information necessary to enable the agency to investigate the complaint. The definition is necessary, because the 180-day period for the agency's investigation (*see* § 12.170(g)) begins when the agency receives a complete complaint.

"Facility." The definition of "facility" is similar to that in the section 504 coordination regulation for federally assisted programs (28 CFR 41.3(f)) except that the term "rolling stock or other conveyances" has been added and the phrase "or interest in such property" has been deleted because the term "facility," as used in the regulation, refers to structures and not to intangible property rights. It should, however, be noted that the regulation applies to all programs and activities conducted by the agency regardless of whether the facility in which they are conducted is owned, leased, or used on some other basis by the agency. The term "facility" is used in § 12.149, § 12.150 and § 12.170(f).

One commenter objected to the deletion of the phrase "or interest in such property" as contained in the section 504 coordination regulation for federally assisted programs. As explained in the preamble to the NPRM, the term "facility" as used in this regulation refers to structures, and does not include intangible property rights. The definition, therefore, has no effect on the scope of coverage of programs, including those conducted in facilities not included in the definition. The phrase has been omitted because the requirement that facilities be accessible would be a logical absurdity if applied to a lease, life estate, mortgage, or other intangible property interest. The regulation applies to all programs and activities conducted by the agency regardless of whether the facility in which they are conducted is owned,

leased, or used on some other basis by the agency.

"Individual with handicaps." The definition of "individual with handicaps" is identical to the definition of "handicapped person" appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.31). Although section 103(d) of the Rehabilitation Act Amendments of 1986 changed the statutory term "handicapped individual" to "individual with handicaps," the legislative history of this amendment indicates that no substantive change was intended. Thus, although the term has been changed in this regulation to be consistent with the statute as amended, the definition is unchanged. In particular, although the term as revised refers to "handicaps" in the plural, it does not exclude persons who have only one handicap.

"Qualified individual with handicaps." The definition of "qualified individual with handicaps" is a revised version of the definition "qualified handicapped person" appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.32).

Paragraph (1) deviates from most existing regulations for federally assisted programs because of intervening court decisions. It defines "qualified individual with handicaps" with regard to any program under which a person is required to perform services or to achieve a level of accomplishment. In such programs a qualified individual with handicaps is one who can achieve the purpose of the program without modifications in the program that the agency can demonstrate would result in a fundamental alteration in its nature. This definition reflects the decision of the Supreme Court in *Southeastern Community College* v. *Davis*, 422 U.S. 397 (1979). In that case, the Court ruled that a hearing-impaired applicant to a nursing school was not a "qualified handicapped person" because her hearing impairment would prevent her from participating in the clinical training portion of the program. The Court found that, if the program were modified to enable to respondent to participate (by exempting her from the clinical training requirements), "she would not receive even a rough equivalent of the training a nursing program normally gives." *Id.* at 410. It also found that "the purpose of [the] program was to train persons who could serve the nursing profession in all customary ways," *id.* at 413, and that the respondent would be unable, because of her hearing impairment, to perform some functions expected of a registered nurse. It therefore concluded that the school was not required by section 504 to make such modifications that would result in "a fundamental alteration in the nature of the program." *Id.* at 410.

We have incorporated the Court's language in the definition of "qualified individual with handicaps" in order to make clear that such a person must be able to participate in the program offered by the agency. The agency is required to make modifications in order to enable an applicant with handicaps to participate, but is not required to offer a program of a fundamentally different nature. The test is whether, with appropriate modifications, the applicant can achieve the purpose of the program offered—not whether the applicant could benefit or obtain results from some other program that the agency does not offer. Although the revised definition allows exclusion of some individuals with handicaps from some programs, it requires that an individual with handicaps who is capable of achieving the purpose of the program must be accommodated, provided that the modifications do not fundamentally alter the nature of the program.

Several commenters objected to this revised definition for a variety of reasons. Several commenters stated that the Agency incorrectly used *Davis* as the justification for explaining the differences between the federally assisted and the federally-conducted regulations because the Supreme Court upheld the validity of the existing regulations in *Consolidated Rail Corp.* v. *Darrone*, 465 U.S. 624 (1984). This view misunderstands the Court's actions in *Darrone*. In that case the Court ruled on a series of issues, the most important of which was under what circumstances section 504 applies to employment discrimination by recipients. The Court did not concern itself either directly or indirectly with the definition of "qualified individual with handicaps" or whether section 504 included limitations based on "undue financial and administrative burdens".

These commenters stated that the proposal would change the definition of "qualified individual with handicaps" for employment. "Qualified individual with handicaps" is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 12.140. Nothing in this part changes existing regulations applicable to employment.

Some commenters assumed that the definition would have the effect of placing on the individual with handicaps the burden of proving that he or she is qualified. The definition has been revised to make it clear that the agency has the burden of demonstrating that a proposed modification would constitute a fundamental alteration in the nature of its program or activity. Further, in demonstrating that a modification would result in such an alteration, the agency must follow the procedures established in § 12.150(a)(2) and § 12.100(d), which are discussed below, for demonstrating that an action would result in undue financial and administrative burdens. That is, the decision must be made by the agency head or his or her designee in writing after consideration of all resources available for the program or activity and must be accompanied by an explanation of the reasons for the decision. If the agency head determines that an action would result in a fundamental alteration, the agency must consider options that would enable the individual with handicaps to achieve the purpose of the program but would not result in such an alteration.

Some commenters said that the definition of "qualified individual with handicaps" places individuals with handicaps in a "Catch-22" situation: because only qualified individuals with handicaps are protected by the statute, a determination that a person is not qualified would make enforcement remedies unavailable to that person. This concern is misplaced. If the Agency determined that a individual with handicaps was not "qualified", the person could use the procedures established by § 12.170 to challenge that determination, just as he or she could challenge any other decision that he or she believed to be discriminatory.

Some commenters argued that the definition of "qualified individual with handicaps" confused what should be two separate inquiries: Whether a person meets essential eligibility requirements and, if so, whether accommodation is required. They argued that the reference to "fundamental alteration" in the definition focuses attention on accomodations rather than on an individual with handicaps's abilities. As another commenter noted, however, the Supreme court in *Davis* developed the "fundamental alteration" language in a decision that was determining the nature and scope of what constitutes a qualified individual with handicaps. The Agency continues to believe that the concept of "qualified individual with handicaps" properly encompasses both the notion of "essential eligibility requirements" and the notion of program modifications that might fundamentally alter a program.

Some commenters argued that our analysis of *Davis* was inappropriate

because *Davis* was decided on the basis of individual facts unique to that case or because *Davis* involved federally assisted and not federally conducted programs. While cases are decided on the basis of specific factual situations, courts, especially the Supreme Court, develop general principles of law for use in analyzing facts. The *Davis* decision was the Supreme Court's first comprehensive view of section 504, a major new civil rights statute. The *Davis* holding, that a person who cannot achieve the purpose of a program without fundamental changes in its nature is not a "qualified individual with handicaps," is a general principle, a statement by the Court on how it views section 504. It is therefore necessary to reflect this principle in the Agency's regulation.

For programs or activities that do not fall under the first paragraph, paragraph (2) adopts the existing definition of "qualified individual with handicaps" with respect to services (28 CFR 41.32(b)) in the coordination regulation for programs receiving Federal financial assistance. Under this part of the definition, a "qualified individual with handicaps" is an individual with handicaps who meets the essential eligibility requirements for participation in the program of activity.

Paragraph (3) explains that "qualified individual with handicaps" is defined for purposes of employment in the Equal Employment Opportunity Commission's regulation at 29 CFR 1613.702(f), which is made applicable to this part by § 12.140. Nothing in this part changes existing regulations applicable to employment.

"Section 504." This definition makes clear that, as used in this regulation, "section 504" applies only to programs or activities conducted by the agency and not to programs or activities to which it provides Federal financial assistance.

Section 12.110 Self-evaluation.

The agency shall conduct a self-evaluation of its compliance with section 504 within one year of the effective date of this regulation. The agency shall provide an opportunity for interested persons, including individuals with handicaps or organizations representing individuals with handicaps, and unions representing employees to participate in the self-evaluation process by submitting comments (both oral and written).

The self-evaluation requirement is present in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.5(b)(2)). Experience has demonstrated the self-evaluation process to be a valuable means of establishing a working relationship with individuals with handicaps that promotes both effective and efficient implementation of section 504.

The self-evaluation will be concluded with a report to the Administrator of findings and recommendations. Within 60 days of the receipt of the report, the Administrator will direct that certain actions be taken as he/she deems appropriate.

We received one comment with respect to the self-evaluation section, while generally approving the section, the commenter suggested the section contain (1) an assurance that the effects of discrimination will be eliminated; (2) a transition plan for compliance; and, (3) a laundry list of specific modification requirements.

A requirement for a transition plan to ensure compliance with § 12.150 is contained in § 12.150 (d) and further reference would be redundant. When this final regulation becomes effective, the agency plans to appoint transition and self-evaluation teams to work in tandem toward achieving their respective goals. Under § 12.110(c), the Administrator will direct appropriate actions based on the findings of the self-evaluation. Including a laundry list of requirements in the rule would negate the purpose of the self-evaluation process. The purpose of self-evaluation is to formulate recommendations in light of particular circumstances being evaluated. Including specific modification requirements in the regulation would preclude the self-evaluation from taking into account specific circumstances which might make the regulatory requirements inappropriate.

Section 12.111 Notice.

Section 12.111 requires the agency to disseminate sufficient information to employees, unions representing employees, applicants, participants, beneficiaries, and other interested persons to apprise them of rights and protections afforded by section 504 and this regulation. Methods of providing this information include, for example, the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe the agency's programs and activities; the display of informative posters in service centers and other public places; or the broadcast of information by television or radio.

Two comments were received about this section. One argued that notice of agency policy should be distributed in recruitment materials. Inasmuch as this comment basically involves employment, it would be addressed not by this rule but by section 501 requirements. The other commenter argued that the agency should "effectively" apprise persons of their rights and protection against discrimination and suggested that we use the section promulgated by the Federal Election Commission (FEC) (11 CFR 6.111). We feel that § 12.111 adequately addresses this point by requiring the provision of "necessary" information.

Section 12.130 General prohibitions against discrimination.

Section 12.130 is an adaptation of the corresponding section of the section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.51).

Paragraph (a) restates the nondiscrimination mandate of section 504. The remaining paragraphs in § 12.130 establish the general principles for analyzing whether any particular action of the agency violates this mandate. These principles serve as the analytical foundation for the remaining sections of the regulation. If the agency violates a provision in any of the subsequent sections, it will also violate one of the general prohibitions found in § 12.130. When there is no applicable subsequent provision, the general prohibitions stated in this section apply.

Paragraph (b) prohibits overt denials of equal treatment of individuals with handicaps. The agency may not refuse to provide an individual with handicaps with an equal opportunity to participate in or benefit from its program simply because the individual is handicapped. Such blatantly exclusionary practices often result from the use of irrebuttable presumptions that absolutely exclude certain classes of disabled persons (*e.g.*, epileptics, hearing-impaired persons, persons with heart ailments) from participation in programs or activities without regard to an individual's actual ability to participate. Use of an irrebuttable presumption is permissible only when in all cases a physical condition by its very nature would prevent an individual from meeting the essential eligibility requirements for participation in the activity in question. It would be permissible, therefore, to exclude without an individual evaluation all persons who are blind in both eyes from eligibility for a license to operate a commercial vehicle in interstate commerce; but it may not be permissible to automatically disqualify all those who are blind in just one eye.

One commenter argued that the use of an "irrebuttable presumption" is never justified, asked what expertise people had to make these decisions, and asked who would make such decisions. We agree to a point, referring the readers to the earlier discussion of the blind commercial vehicle operator. Agency officials making a decision based on irrebuttable presumptions would be required to research the presumption prior to making the decision.

In addition, section 504 prohibits more than just the most obvious denials of equal treatment. It is not enough to admit persons in wheelchairs to a program if the facilities in which the program is conducted are inaccessible. Paragraph (b)(1)(iii), therefore, requires that the opportunity to participate or benefit afforded to an individual with handicaps be as effective as that afforded to others. The later sections on program accessibility (§§ 12.149–151) and communications (§ 12.160) are specific applications of this principle.

Despite the mandate of paragraph (d) that the agency administer its programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps, paragraph (b)(1)(iv), in conjunction with paragraph (d), permits the agency to develop separate or different aids, benefits, or services when necessary to provide individuals with handicaps with an equal opportunity to participate in or benefit from the agency's programs or activities. Paragraph (b)(1)(iv) requires that different or separate aids, benefits, or services be provided only when necessary to ensure that the aids, benefits, or services are as effective as those provided to others. Even when separate or different aids, benefits, or services would be more effective, paragraph (b)(2) provides that a qualified individual with handicaps still has the right to choose to participate in the program that is not designed to accommodate individuals with handicaps.

Paragraph (b)(1)(v) prohibits the agency from denying a qualified individual with handicaps the opportunity to participate as a member of a planning or advisory board.

Paragraph (b)(1)(vi) prohibits the agency from limiting a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, or service.

Paragraph (b)(3) prohibits the agency from utilizing criteria or methods of administration that deny individuals with handicaps access to the agency's programs or activities. The phrase "criteria or methods of administration" refers to official written agency policies and the actual practices of the agency. This paragraph prohibits both blatantly exclusionary policies or practices and nonessential policies and practices that are neutral on their face, but deny individuals with handicaps an effective opportunity to participate.

Paragraph (b)(4) specifically applies the prohibition enunciated in § 12.130(b)(3) to the process of selecting sites for construction of new facilities or selecting existing facilities to be used by the agency. Paragraph (b)(4) does not apply to construction of additional buildings at an existing site.

One commenter suggested that the prohibition concerning selection of sites should also apply to construction of additional buildings at an existing site. The suggested prohibition could possibly prevent EPA from fully utilizing existing sites. It could be extremely disruptive of EPA site utilization to retroactively apply this section, so we have not. However, new construction on those existing sites must be accessible.

Paragraph (b)(5) prohibits the agency, in the selection of procurement contractors, from using criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

Paragraph (b)(6) prohibits the agency from discriminating against qualified individuals with handicaps on the basis of handicap in the granting of licenses or certification. A person is a "qualified individual with handicaps" with respect to licensing or certification, if he or she can meet the essential eligibility requirements for receiving the license or certification (see § 12.103).

In addition, the agency may not establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. For example, the agency must comply with this requirement when establishing safety standards for the operations of licensees. In that case the agency must ensure that standards that it promulgates do not discriminate against the employment of qualified individuals with handicaps in an impermissible manner.

Paragraph (b)(6) does not extend section 504 directly to the programs or activities of licensees or certified entities themselves. The programs or activities of Federal licensees or certified entities are not themselves federally conducted programs or activities nor are they programs or activities receiving Federal financial assistance merely by virtue of the Federal license or certificate. However, as noted above, section 504 may affect the content of the rules established by the agency for the operation of the program of activity of the licensee or certified entity, and thereby indirectly affect limited aspects of their operations.

One commenter objected to the omission of a paragraph from the regulations for federally assisted programs that prohibits a recipient from providing significant assistance to an organization that discriminates. To the extent that assistance from the agency would provide significant support to an organization, the organization, as a recipient, would be covered by the agency's section 504 regulation for federally assisted programs. The regulatory "significant assistance" provision, however, would be inappropriate in a regulation applying only to federally conducted programs or activities.

Paragraph (c) provides that programs conducted pursuant to Federal statute or Executive order that are designed to benefit only individuals with handicaps or a given class of individuals with handicaps may be limited to those individuals with handicaps.

Paragraph (d) provides that the agency must administer programs or activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps, *i.e.*, in a setting that enables individuals with handicaps to interact with nonhandicapped persons to the fullest extent possible.

Section 12.140 Employment

Section 12.140 prohibits discrimination on the basis of handicap in employment by the Agency. Courts have held that section 504, as amended in 1978, covers the employment practices of Executive agencies. *Gardner* v. *Morris*, 752 F.2d 1271, 1277 (8th Cir. 1985); *Smith* v. *United States Postal Service*, 742 F.2d 257, 259–260 (6th Cir. 1984); *Prewitt* v. *United States Postal Service*, 662 F.2d 292, 302–04 (5th Cir. 1981). *Contra McGuiness* v. *United States Postal Service*, 744 F.2d 1318, 1320–21 (7th Cir. 1984); *Boyd* v. *United States Postal Service*, 752 F.2d 410, 413–14 (9th Cir. 1985).

Courts uniformly have held that in order to give effect to section 501 of the Rehabilitation Act, which covers Federal employment, the administrative procedures of section 501 must be followed in processing complaints of employment discrimination under section 504. *Smith*, 742 F.2d at 262; *Prewitt*, 662 F.2d at 304. Accordingly,

§ 12.140 (Employment) of this rule adopts the definitions, requirements and procedures of section 501 as established in regulations of the Equal Employment Opportunity Commission (EEOC) at 29 CFR Part 1613. Responsibility for coordinating enforcement of Federal laws prohibiting discrimination in employment is assigned to the EEOC by Executive Order 12067 (3 CFR 1978 Comp., p. 206). Under this authority, the EEOC establishes government-wide standards on nondiscrimination in employment on the basis of handicap. In addition to this section, § 12.170(b) specifies that the agency will use the existing EEOC procedures to resolve allegations of employment discrimination.

We received one comment which argued that the "whole section is too brief and weak, and does not give enough attention . . . to employment of disabled persons." The Agency disagrees. Section 501 and its implementing regulations are solely devoted to employment discrimination against individuals with handicaps. No purpose is served by duplicating them in this regulation once the public is put on notice that the employment standards under section 501 and section 504 are identical. However, to ensure that there is no misunderstanding, we have added to the definiton of "qualified individual with handicaps" (§ 12.103), subparagraph (3), which incorporates the definition in 29 CFR 1613 (EEOC's section 501 regulation), for employment purposes.

Section 12.149 Program accessibility: Discrimination prohibited

Section 12.149 states the general nondiscrimination principle underlying the program accessibility requirements of §§ 12.150 and 12.151. The Environmental Protection Agency (EPA) is committed to making its programs accessible to individuals with handicaps; however, as noted earlier, its programs are designed to promote a cleaner and healthier environment. Thus, as previously mentioned, we anticipate, in a nonemployment context, that this regulation will have its greatest impact on insuring that the various meetings, symposia, and hearings conducted by EPA are accessible. Please note that, as discussed above with respect to § 12.101, EPA-assisted programs and activities are not covered by this regulation but are covered by the regulation found at 40 CFR Part 7. It is that regulation which applies to EPA assistance such as building wastewater treatment plants.

Section 12.150 Program accessibility: Existing facilities

This regulation adopts the program accessibility concept found in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.57), with certain modifications. Thus, § 12.150 requires that each agency program or activity, when viewed in its entirety, be readily accessible to and usable by individuals with handicaps. The regulation also makes clear that the agency is not required to make each of its existing facilities accessible (§ 12.150(a)(1)). However, § 12.150, unlike 28 CFR 41.57, places explicit limits on the agency's obligation to ensure program accessibility (§ 12.150(a)(2)).

Paragraph (a)(2) generally codifies recent case law that defines the scope of the agency's obligation to ensure program accessibility.

The "undue financial and administrative burdens" language found at § 12.150(a)(2) (and paragraph (d) of § 12.160, discussed below) is based on the Supreme Court's *Davis* holding that section 504 does not require program modifications that result in a fundamental alteration in the nature of a program, and on the Court's statement that section 504 does not require modifications that would result in "undue financial and administrative burdens." 442 U.S. at 412. Since *Davis*, circuit courts have applied this limitation on a showing that only one of the two "undue burdens" would be created as a result of the modification sought to be imposed under section 504. *See also, e.g., Dopico* v. *Goldschmidt, supra; American Public Transit Association* v. *Lewis* (*APTA*), *supra.*

Paragraphs (a)(2) and 12.160(d) are also supported by the Supreme Court's decision in *Alexander* v. *Choate*, 469 U.S. 287 (1985). *Alexander* involved a challenge to the State of Tennessee's reduction of inpatient hospital care coverage under Medicaid from 20 to 14 days per year. Plaintiffs argued that this reduction violated section 504 because it had an adverse impact on individuals with handicaps. The Court assumed without deciding that section 504 reaches at least some conduct that has a unjustifiable disparate impact on individuals with handicaps but held that the reduction was not "the sort of disparate impact" discrimination that might be prohibited by section 504 or its implementing regulation. *Id.* at 299.

Relying on *Davis*, the Court said that section 504 guarantees qualified individuals with handicaps "meaningful access to the benefits that the grantee offers," *id.* at 301, and that "*reasonable adjustments* in the nature of the benefit being offered must at times be made to assure meaningful access." *Id.* at n.21 (emphasis added). However, section 504 does not require " 'changes,' 'adjustments,' or 'modifications' to existing programs that would be 'substantial' . . . or that would constitute 'fundamental alteration[s] in the nature of a program.' " *Id.* at n.20 (citations omitted).

Alexander supports the position, based on *Davis* and the earlier, lower court decisions, that in some situations, certain accommodations for an individual with handicaps may so alter an agency's program or activity, or entail such extensive costs and administrative burdens that the refusal to undertake the accommodations is not discriminatory. Thus failure to include such an "undue burdens" provision could lead to judicial invalidation of the regulation or reversal of a particular enforcement action taken pursuant to the regulation.

Some commenters asserted that the holding in *Davis* was that the plaintiff was not a qualified individual with handicaps and that the subsequent reference to "undue financial and administrative burdens" was mere *dicta*. This view overlooks the interpretations of *Davis* provided by the Federal circuit court cases mentioned above. The *APTA* and *Dopico* decisions make it clear that financial burdens can limit the obligation to comply with section 504. *See also New Mexico Association for Retarded Citizens* v. *New Mexico*, 678 F.2d 847 (10th Cir. 1982). In addition, the Court in *Alexander* held that the "administrative costs" of subjecting any action affecting Medicaid recipients to a detailed analysis of its effects on individuals with handicaps "would be well beyond the accommodations that are required under *Davis*." 469 U.S. at 308.

One comment included a lengthy analysis opposing the undue burdens defense. This comment was premised on the assumption that the proposed regulation was substantively inconsistent with the regulations for federally assisted programs. This assumption is incorrect. Judicial interpretations have established that neither section 504 nor the regulations for federally assisted programs establish an unlimited obligation to modify programs or activities to accommodate individuals with handicaps. In fact, this comment acknowledged that the Department of Health, Education, and Welfare's regulation for its own federally assisted programs "took

'factors of burden and cost . . . into account.' "

This comment also argued that *APTA* is no longer good law, in view of the Supreme Court's decision in *Consolidated Rail Corp.* v. *Darrone*, 465 U.S. 624 (1984) (*Conrail*), in which it said that Congress intended, through the 1978 amendments to the statute, to codify the HEW regulation. Other commenters also argued that *Conrail* prohibits departures from the language of the federally assisted regulation. As previously noted, however, *Conrail* addressed only the question of employment coverage under the statute and cannot be read to mean that Congress "codified" other parts of the regulation. Furthermore, the undue burdens defense is not inconsistent with the HEW regulation; in fact, the employment provisions of the HEW regulation—those addressed in *Conrail*—do include an "undue hardship" defense. That view is confirmed by the Supreme Court's decision in *Alexander*. There the Court referred to its previous recognition in *Conrail* of the regulation as "an important source of guidance on the meaning of Section 504," *Alexander*, at n.24, and at the same time, as discussed above, emphasized that section 504 does not mandate extensive costs and administrative burdens.

The agency is adopting the proposed rule's procedural requirements for application of the "fundamental alterations" and "undue financial and administrative burdens" language. The agency believes that, in most cases, making an agency program accessible will not result in undue burdens. In determining whether financial and administrative burdens are undue, all agency resources available for use in the funding and operation of the conducted program or activity should be considered. The burden of proving that compliance with § 21.150(a) would fundamentally alter the nature of a program or activity or would result in undue financial and administrative burdens rests with the agency. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee and must be accompanied by a written statement of the reasons for reaching that conclusion. Any person who believes that he or she or any specific class of persons has been injured by the agency head's decision or failure to make a decision may file a complaint under the compliance procedure established in § 12.170.

Paragraph (a)(2) does not establish an absolute defense; it does not relieve the agency of all obligations to individuals with handicaps. Although the agency is not required to take actions that would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens, it nevertheless must take any other steps necessary to ensure that individuals with handicaps receive the benefits and services of the federally conducted program or activity.

Three of the four commenters sought the deletion of "undue financial and administrative burdens" and asked that "undue hardship" be reinstated in its place. "Undue hardship" is a term of art used in the employment context. In order to be consistent with regulations issued by other executive agencies, we have retained the term "undue financial and administrative burdens" in this rule.

Two of the commenters argued that compliance decisions should be made after considering "all agency resources". As noted above and in the NPRM we agree. It should be pointed out, however, that certain of the funds which are appropriated to EPA are legislatively restricted to certain programs for which they can be used. Reprogramming of those funds may not be available to the Agency.

Paragraph (b) sets forth a number of means by which program accessibility may be achieved, including redesign of equipment, reassignment of services to accessible buildings, and provision of aides. In choosing among methods, the agency shall give priority consideration to those that will be consistent with provision of services in the most integrated setting appropriate to the needs of individuals with handicaps. Structural changes in existing facilities are required only when there is no other feasible way to make the agency's program accessible. The agency may comply with the program accessibility requirement by delivering services at alternate accessible sites or making home visits as appropriate.

Paragraphs (c) and (d) establish time periods for complying with the program accessibility requirement. As currently required for federally assisted programs by 28 CFR 41.57(b), the agency must make any necessary structural changes in facilities as soon as practicable, but in no event later than three years after the effective date of this regulation. Where structural modifications are required, a transition plan shall be developed within six months of the effective date of this regulation. Aside from structural changes, all other necessary steps to achieve compliance shall be taken within sixty days.

Section 12.151 Program accessibility: New construction and alterations

Overlapping coverage exists with respect to new construction under section 504 and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). Section 12.151 provides that those buildings that are constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered to be readily accessible to and usable by individuals with handicaps in accordance with 41 CFR 101–19.600 to 101–19.607. This standard was promulgated pursuant to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). We believe that it is appropriate to adopt the existing Architectural Barriers Act standard for section 504 compliance because new and altered buildings subject to this regulation are also subject to the Architectural Barriers Act and because adoption of the standard will avoid duplicative and possibly inconsistent standards.

Existing buildings leased by the agency after the effective date of this regulation are not required to meet accessibility standards merely by virtue of being leased. They are subject, however, to the program accessibility standards of § 12.150. To the extent the buildings are newly constructed or altered, they must also meet the new construction and alteration requirements of § 12.151.

A commenter has recommended that the regulation should require that buildings leased after the effective date of the regulation should meet the new construction standards of § 12.151, rather than the program accessibility standard for existing facilities in § 12.150. Federal practice under section 504 has always treated newly leased buildings as subject to the existing facility program accessibility standard. Unlike the construction of new buildings where architectural barriers can be avoided at little or no cost, the application of new construction standards to an existing building being leased raises the same prospect of retrofitting buildings as the use of an existing Federal facility, and the agency believes the same program accessibility standard should apply to both owned and leased existing buildings.

In *Rose* v. *United States Postal Service*, 774 F.2d 1355 (9th Cir. 1985), the Ninth Circuit held that the Architectural Barriers Act requires accessibility at the time of lease. The *Rose* court did not address the issue of whether section 504 likewise requires accessibility as a

condition of lease, and the case was remanded to the District Court for, among other things, consideration of that issue. The agency may provide more specific guidance on section 504 requirements for leased buildings after the litigation is completed.

Section 12.160 Communications.

Section 12.160 requires the agency to take appropriate steps to ensure effective communication with personnel of other Federal entities, applicants, participants, and members of the public. These steps shall include procedures for determining when auxiliary aids are necessary under § 12.160(a)(1) to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, the agency's program or activity. They shall also include an opportunity for individuals with handicaps to request the auxiliary aids of their choice. This expressed choice shall be given primary consideration by the agency (§ 12.160(a)(1)(i)). The agency shall honor the choice unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under § 12.160(d). That paragraph limits the obligation of the agency to ensure effective communication in accordance with *Davis* and the circuit court opinions interpreting it (*see supra* preamble discussion of § 12.150(a)(2)). Unless not required by § 12.160(d), the agency shall provide auxiliary aids at no cost to the individual with handicaps.

It is our view that compliance with § 12.160 would in most cases not result in undue financial and administrative burdens on the agency. In determining whether financial and administrative burdens are undue, all agency resources available for use in the funding and operation of the conducted program or activity should be considered. The burden of proving that compliance with § 12.160 would fundamentally alter the nature of a program or activity or would result in undue financial and administrative burdens rests with the agency as set forth in § 12.160(d). The decision that compliance would result in such alteration or burdens must be made by the agency head or designee and must be accompanied by a written statement of the reasons for reaching that conclusion. Any person who believes that he or she or any specific class of persons has been injured by the agency head's decision or failure to make a decision may file a complaint under the compliance procedures established in § 12.170.

In some circumstances, a notepad and written materials may be sufficient to permit effective communication with a hearing-impaired person. In many circumstances, however, they may not be, particularly when the information being communicated is complex or exchanged for a lengthy period of time (e.g., a meeting) or where the hearing-impaired applicant or participant is not skilled in spoken or written language. In these cases a sign language interpreter may be appropriate. For vision-impaired persons, effective communication might be achieved by several means, including readers and audio recordings. In general, the agency intends to make clear to the public (1) the communications services it offers to afford individuals with handicaps an equal opportunity to participate in or benefit from its programs or activities, (2) the opportunity to request a particular mode of communication, and (3) the agency's preferences regarding auxiliary aids if it can demonstrate that several different modes are effective.

The agency shall ensure effective communication with vision-impaired and hearing-impaired persons involved in hearings conducted by the agency. Auxiliary aids must be afforded where necessary to ensure effective communication at the proceedings. If sign language interpreters are necessary, the agency may require that it be given reasonable notice prior to the proceeding of the need for an interpreter. Moreover, the agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature (§ 12.160(a)(1)(ii)). For example, the agency need not provide eye glasses or hearing aids to applicants or participants in its programs. Similarly, the regulation does not require the agency to provide wheelchairs to persons with mobility impairments.

Three comments provided suggestions to include a "laundry list" of the types of auxiliary aids which could be used by individuals with handicaps. The agency believes the examples provided in the preamble and body of the regulation although not all-inclusive, are sufficient. We believe that other types of auxiliary aids described by the commenters can best be considered by the transition and self-evaluation teams.

Paragraph (b) requires the agency to provide information to individuals with handicaps concerning accessible services, activities, and facilities. Paragraph (c) requires the agency to provide signage at inaccessible facilities that directs users to locations with information about accessible facilities.

Section 12.170 Compliance procedures.

Paragraph (a) specifies that paragraphs (c) through (l) of this section establish the procedures for processing complaints other than employment complaints. Paragraph (b) provides that the agency will process employment complaints according to procedures established in existing regulations of the EEOC (29 CFR Part 1613) pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

The agency is required to accept and investigate all complete complaints (§ 12.170(d)). If it determines that it does not have jurisdiction over a complaint, it shall promptly notify the complainant and make reasonable efforts to refer the complaint to the appropriate entity of the Federal Government (§ 12.170(e)).

Paragraph (f) requires the agency to notify the Architectural and Transportation Barriers Compliance Board upon receipt of a complaint alleging that a building or facility subject to the Architectural Barriers Act was designed, constructed, or altered in a manner that does not provide ready access and use by individuals with handicaps.

Paragraph (g) requires the agency to provide to the complainant, in writing, findings of fact and conclusions of law, the relief granted if noncompliance is found, and notice of the right to appeal (§ 12.170(g)).

Paragraph (h) requires appeals to be filed within 90 days of the receipt of the written notification required at the end of the investigation. The agency may extend this time for good cause. This time limit was increased from 30 days in the proposed rule.

Paragraph (i) provides for the Administrator or a designee to hear any appeal. In the proposed rule, the Judicial Officer was to decide appeals of agency determinations after investigation. In the interim, it was decided to preserve the Administrator's flexibility. Thus, in the final rule, all appeals are filed with the Administrator or designee.

Paragraph (j) requires that the Administrator or a designee notify the complainant of the results of the appeal within 60 days of the appeal request. If additional information is needed from the complainant, the Administrator has 60 days from receipt of this information to make an appeal determination.

Paragraph (k) allows the time limit for complaint investigation and appeal decisions to be extended with the permission of the Assistant Attorney General.

Paragraph (l) permits the agency to delegate its authority for investigating

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complaints to other Federal agencies. However, the statutory obligation of the agency to make a final determination of compliance or noncompliance may not be delegated.

Two commenters provided several recommendations concerning this section. It was suggested that the addresses of all EPA offices and laboratories be included in the final regulation. Such an address list would be impractical for the reader as well as the agency. The agency expects these regulations to remain in effect for some time. Regional offices and laboratories are moved from time to time and we found that once an address list is published it is usually out-of-date due to moves taking place while the list was awaiting publication. To publish such an address list would mean a continuous revision of the regulation.

The commenter also asked that the regulation provide an opportunity for a complainant to provide additional information and/or amend a complaint in the event a complete complaint is not submitted. The section allows for additional time if good cause exists which permits the Office of Civil Rights to provide additional time for a complainant to make the complaint complete.

The commenter further suggested that EPA has an absolute responsibility to refer complaints over which it has no jurisdiction to other agencies. However, complaints may be received over which no agency has jurisdiction. In other instances EPA may have no way of knowing that a particular agency has jurisdiction. In these situations, EPA cannot be held responsible for failure to refer a complaint. EPA will continue its practice of referring complaints to agencies with probable jurisdiction to the extent it can do so.

Finally, the commenter requested that EPA state that its rules and procedures do not curtail the right of a complainant to obtain direct judicial relief. Our regulation pertains to administrative processing. It in no way, in and of itself, affects a complainant's access to judicial relief.

The commenter further suggested that provisions be added addressing attorneys' fees in administrative proceedings and the availability of compensation to the prevailing party. Nothing contained in Title V of the Rehabilitation Act provides for attorneys' fees in administrative proceedings other than those involving Federal employment. We have, therefore, not included an attorneys' fee provision in the current regulation.

List of Subjects in 40 CFR Part 12

Blind, Buildings, Civil rights, Employment, Equal employment opportunity, Federal buildings and facilities, Government employees, Handicapped.

For the reasons set forth in the preamble, 40 CFR Part 12 of the Code of Federal Regulations is amended as follows:

July 24, 1987.

Lee M. Thomas,

Administrator.

Part 12 is added to read as follows:

PART 12—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE ENVIRONMENTAL PROTECTION AGENCY

Sec.

12.101 Purpose.
12.102 Application.
12.103 Definitions.
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12.110 Self-evaluation.
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12.149 Program accessibility: Discrimination prohibited.
12.150 Program accessibility: Existing facilities.
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12.152–159 [Reserved]
12.160 Communications.
12.161–169 [Reserved]
12.170 Compliance procedures.

Authority: 29 U.S.C. 794.

§ 12.101 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service. Section 504 regulations applicable to recipients of financial assistance from the Environmental Protection Agency (EPA) may be found at 40 CFR Part 7 (1986).

§ 12.102 Application.

This part applies to all programs or activities conducted by the agency, except for programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

§ 12.103 Definitions.

For purposes of this part, the term—

"Agency" means Environmental Protection Agency.

"Assistant Attorney General" means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

"Complete complaint" means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

"Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

"Individual with handicaps" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) "Physical or mental impairment" includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive, genitourinary; hemic and lymphatic; skin, and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning

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disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) "Major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in subparagraph (1) of this definition but is treated by the agency as having such an impairment.

"Qualified individual with handicaps" means—

(1) With respect to any agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity, without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature; or

(2) With respect to any other program or activity an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

(3) "Qualified handicapped person" as that term is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 12.140.

"Section 504" means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617); and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955); and the Rehabilitation Act Amendments of 1986 (Pub. L. 99–506, 100 Stat. 1810). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

§ 12.104–109 [Reserved]

§ 12.110 Self-evaluation.

(a) The agency shall, by November 13, 1987, begin a nationwide evaluation, of its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part. The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps to, participate in the self-evaluation process by submitting comments (both oral and written).

(b) The evaluation shall be concluded by September 14, 1988, with a written report submitted to the Administrator that states the findings of the self-evaluation, any remedial action taken, and recommendations, if any, for further remedial action.

(c) The Administrator shall, within 60 days of the receipt of the report of the evaluation and recommendations, direct that certain remedial actions be taken as he/she deems appropriate.

(d) The agency shall, for at least three years following completion of the evaluation required under paragraph (b) of this section, maintain on file and make available for public inspection:

(1) A list of the interested persons consulted;

(2) A description of the areas examined and any problems identified; and

(3) A description of any modifications made.

§ 12.111 Notice.

The agency shall make available to employees, unions representing employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the agency head finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ 12.112–12.129 [Reserved]

§ 12.130 General prohibitions against discrimination.

(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b) (1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified individual with handicaps the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with handicaps an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with handicaps with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps than is provided to others unless such action is necessary to provide qualified individuals with handicaps with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified individual with handicaps the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of individuals with handicaps.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified individuals with handicaps to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. However, the program or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive order to a different class of individuals with handicaps is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

§§ 12.131–12.139 [Reserved]

§ 12.140 Employment.

No qualified individual with handicaps shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR Part 1613, shall apply to employment in federally conducted programs or activities.

§§ 12.141–12.148 [Reserved]

§ 12.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 12.150, no qualified individual with handicaps shall, because the agency's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 12.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by individuals with handicaps; or

(2) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 12.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) *Methods.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section by November 13, 1987, except that where structural changes in facilities are undertaken, such changes shall be made by September 14, 1990, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by March 14, 1988, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

§ 12.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to

and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 101–19.600 to 101–19.607, apply to buildings covered by this section.

§§ 12.152–12.159 [Reserved]

§ 12.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the individuals with handicaps.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 12.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§§ 12.161–12.169 [Reserved]

§ 12.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR Part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) Responsibility for coordinating implementation of this section shall be vested in the Director of the Office of Civil Rights, EPA or his/her designate.

(d) The complainant may file a complete complaint at any EPA office. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause. The agency shall accept and investigate all complete complaints for which it has jurisdiction.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate Government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building of facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), is not readily accessible to and usable by individuals with handicaps.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by § 12.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the Administrator or a designee.

(j) The Administrator or a designee shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the Administrator or designee determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in (g) and (j) of this section above may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

§§ 12.171–12.999 [Reserved]

[FR Doc. 87–18485 Filed 8–13–87; 8:45 am]

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Part X

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34 CFR Parts 785, 786, 787, 789, and 796
National Diffusion Network; Final Regulations

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DEPARTMENT OF EDUCATION

34 CFR Parts 785, 786, 787, 788, 789 and 796

National Diffusion Network

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues final regulations for the National Diffusion Network. These changes implement amendments to the Education Consolidation and Improvement Act (ECIA) contained in the Higher Education Amendments of 1986, and improve the operation of the National Diffusion Network.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Lois N. Weinberg, Recognition Division, OERI, 555 New Jersey Avenue NW., Washington, DC, 20208; (202) 357–6134.

SUPPLEMENTARY INFORMATION: The National Diffusion Network (NDN) supports efforts to recognize and further excellence in education, including the nationwide dissemination of exemplary education programs. These programs have been developed at the local level by classroom teachers and other practitioners with funds provided by a variety of sources including school districts, private businesses and foundations, colleges and universities, State Educational Agencies and Federal programs. After field testing and evaluation, again at the local level, these programs have been validated by the Department's Joint Dissemination Review Panel (JDRP) after review of the evidence of effectiveness presented by the programs' developers. Programs that have JDRP approval may compete for funding by the NDN to operate as Developer Demonstrator projects which disseminate exemplary education programs nationwide. The NDN also supports Dissemination Process projects which provide information, instructional materials and services nationwide that will be of use to education service providers.

The NDN also supports a State Facilitator project in each state. State Facilitators provide information to local school districts and other education service providers about the programs in the NDN, help them select programs that are appropriate to meet local needs, and assist in the process of installing selected programs in new sites.

On June 10, 1987, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the Federal Register (52 FR 22062).

A discussion of the major issues was included in the NPRM on pages 22062–22063. Major proposed changes included the addition of a Program Significance Panel to determine whether the content of program materials is appropriate for dissemination by the Federal Government; changing the name of the Joint Dissemination Review Panel to the Program Effectiveness Panel and adding a scoring system; and combining the reviews of the two panels for Dissemination Review Approval. Other changes included: (1) The addition of two new categories of grant programs—Dissemination Process Projects and a Private School Facilitator Project; (2) additions to the list of funding priorities; (3) a six-year limitation on funding by the NDN for Developer Demonstrator projects; and (4) the inclusion of the Secretary's School Recognition Program as part of the National Diffusion Network.

Several substantive changes have been made since the publication of the NPRM. A change has been made in the Dissemination Review Approval process. Review by the Program Significance Panel will occur after satisfactory review by the Program Effectiveness Panel, and the criteria for review by the Program Significance Panel have been revised. The Program Significance Panel is intended to ensure a meaningful level of review with respect to a program's need, content, and design. This second level of review will be initiated on a pilot basis, and it will be reassessed in the future on the basis of how well it operates. The Secretary's School Recognition Program will not be included in these regulations. The limitation of funding for Developer Demonstrator projects to six years has been removed. Instead, a preference for new applicants over those that have been funded for six or more years has been added, which will be applied according to 34 CFR 75.105, and will be described in the Application Notice for each grant competition. The definitions of the Program Effectiveness Panel and the Program Significance Panel have been revised to more clearly describe the membership. Other technical changes have also been made.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, three hundred parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations is published as an appendix to these final regulations.

Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority are not addressed.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the Notice of Proposed Rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Parts 785, 786, 787, 788, 789, and 796

Dissemination, Education, Educational Research, Grant programs—education, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance number 84.073—National Diffusion Network)

Dated: August 3, 1987.

William J. Bennett,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations (CFR) by redesignating Part 796 as Part 785, revising redesignated Part 785 and

adding new Parts 786, 787, 788 and 789, to read as follows:

PART 785—NATIONAL DIFFUSION NETWORK: GENERAL PROVISIONS

Subpart A—General

Sec.
785.1 What is the National Diffusion Network?
785.2 Who is eligible for an award?
785.3 What types of projects does the Secretary support?
785.4 What regulations apply?
785.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How does the Secretary Make an Award?

785.20 How does the Secretary evaluate an application?

Subpart D—What Conditions Must Be Met After an Award?

785.30 What costs are not allowed?

Authority: 20 U.S.C. 3851, unless otherwise noted.

Subpart A—General

§ 785.1 What is the National Diffusion Network?

Under the National Diffusion Network (NDN), the Secretary supports activities designed to recognize and further excellence in education throughout the Nation.

(Authority: 20 U.S.C. 3851)

§ 785.2 Who is eligible for an award?

A public or nonprofit agency, organization, or institution that meets the appropriate qualifications in § 786.2, 787.2, 788.2 or 789.2 is eligible for an award under the National Network.

(Authority: 20 U.S.C. 3851)

§ 785.3 What types of projects does the Secretary support?

The Secretary supports the following through grants and contracts:

(a) Developer Demonstrator projects, as described in 34 CFR Part 786.

(b) Dissemination Process projects, as described in 34 CFR Part 787.

(c) State Facilitator projects, as described in 34 CFR Part 788.

(d) A Private School Facilitator project, as described in 34 CFR Part 789.

(Authority: 20 U.S.C. 3851)

§ 785.4 What regulations apply?

(a) *Grants.* The following regulations apply to grants under the National Diffusion Network:

(1) The Education Department General Administrative Regulations (EDGAR) In 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs—except § 75.650 (Participation of Students Enrolled in Private Schools)), Part 77 (Definitions that Apply to Department Regulations), Part 78 (Education Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(2) The regulations in Parts 785 through 789.

(b) *Contracts.* The following regulations apply to contracts under the National Diffusion Network:

(1) The Federal Acquisition Regulation and the Education Department Acquisition Regulation in Title 48 of the Code of Federal Regulations.

(2) The regulations in Parts 785 through 789.

(Authority: 20 U.S.C. 3851)

§ 785.5 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in Parts 785, 786, 787, 788 and 789 are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget Period
Department
EDGAR
Equipment
Facilities
Grantee
Local educational agency (LEA)
Nonprofit
Project
Private
Public
State educational agency (SEA)

(Authority: 20 U.S.C. 3851)

(b) *Other definitions.* The following definitions also apply to Parts 785, 786, 787, 788 and 789:

"Adoption" means the use of an exemplary education program by an education service provider in a new setting.

"Adoption agreement" means an understanding among a Developer Demonstrator grantee, a State Facilitator grantee or the Private School Facilitator grantee and the officials of an education service provider concerning the responsibilities of each for the adoption of an exemplary education program.

"Certified demonstration site" means an adoption site that utilizes all key elements of an exemplary education program and is authorized by the exemplary education program sponsor to receive visitors and demonstrate the program.

"Certified trainer" means an individual authorized by an exemplary education program sponsor to perform certain functions such as awareness presentations, training and assistance in the adoption of an exemplary education program.

"Dissemination Review Approval" means that—

(1) A program has been reviewed and assigned a score by the Program Effectiveness Panel according to the criteria in § 786.11 or 787.11 and has received a score of at least 70 points; and

(2) The program has been reviewed and assigned a score by the Program Significance Panel according to the criteria in § 786.12 or 787.12.

"Education service provider" means any public or nonprofit agency or organization responsible for the provision of education services, including State educational agencies (SEAs), local educational agencies (LEAs), nonprofit private educational agencies, public or nonprofit private institutions of higher education and other education-related agencies.

"ERIC" means the Educational Resources Information Center sponsored and supported by the Department of Education to disseminate education research results, practitioner-related materials and other resource information.

"Exemplary education program" means a program, product, practice or Dissemination Process which has Dissemination Review Approval.

"Local facilitator" means a member of the central administrative or supervisory staff of an education service provider or a designee who is committed to installing an NDN program and who will provide needed administrative and logistical support for installing the program.

"Program Effectiveness Panel" or "PEP" means a panel of experts in the evaluation of education programs, and in other areas of education, at least two-thirds of whom are not Federal employees, who are appointed by the Secretary, and who review and assign scores to programs according to the criteria in § 786.11 or 787.11.

"Program Significance Panel" or "PSP" means a panel of people knowledgeable about education, including persons such as parents, teachers, principals, curriculum and subject experts, other education practitioners and members of the general public, who are not employees of the Department, and who are appointed by the Secretary to review and rate the instructional and classroom materials used by programs in accordance with § 786.12 or 787.12.

"Regional Educational Laboratories" means regional laboratories funded by

the Department to carry out applied educational research, development and related activities.

"Research and Development Centers" means centers funded by the Department to conduct educational research and development, and related activities.

(Authority: 20 U.S.C. 3851)

Subpart B—[Reserved]

Subpart C—How does the Secretary Make an Award?

§ 785.20 How does the Secretary evaluate an application?

The Secretary evaluates an application—

(a) For a Developer Demonstrator grant on the basis of the criteria in Part 786;

(b) For a Dissemination Process grant on the basis of the criteria in Part 787;

(c) For a State Facilitator grant on the basis of the criteria in Part 788; and

(d) For a Private School Facilitator grant on the basis of the criteria in Part 789.

(Authority: 20 U.S.C. 3851)

Subpart D—What Conditions Must Be Met After an Award?

§ 785.30 What costs are not allowed?

In addition to costs not allowed under 34 CFR Parts 74 and 75, funds may not be used for stipends for educational personnel to participate in training activities, or for construction, repair, remodeling, or alteration of facilities or sites. See EDGAR Part 74, Subpart 1—Cost Principles.

(Authority: 20 U.S.C. 3851)

PART 786—NATIONAL DIFFUSION NETWORK: DEVELOPER DEMONSTRATOR PROJECTS

Subpart A—General

Sec.

786.1 What is a Developer Demonstrator project?
786.2 Who is eligible for an award?
786.3 What priorities may the Secretary establish?
786.4 What regulations apply?

Subpart B—How Does One Apply for an Award?

786.10 What must an applicant submit for Dissemination Review Approval?
786.11 How does the Program Effectiveness Panel review a program, product, or practice?
786.12 How does the Program Significance Panel review a program, product, or practice?
786.13 How is Dissemination Review Approval granted?
786.14 How long does Dissemination Review Approval last?
786.15 What activities must an applicant propose to carry out if it receives an award?

Subpart C—How Does the Secretary Make an Award?

786.20 How does the Secretary evaluate an application?
786.21 Selection criterion-plan of operation.
786.22 Selection criterion—quality of key personnel.
786.23 Selection criterion—budget and cost-effectiveness.
786.24 Selection criterion—evaluation plan.
786.25 Selection criterion—adequacy of resources.
786.26 Selection criterion—monitoring plan.
786.27 Selection criterion—special dissemination strategies.
786.28 What additional criteria exist for new awards?
786.29 What additional criteria exist for continuation awards?

Subpart D—What Conditions Must Be Met by the Recipient of an Award?

786.30 What disclaimers are required on printed materials?
786.31 What are a recipient's responsibilities for serving students enrolled in nonprofit private schools?

Authority: 20 U.S.C. 3851, unless otherwise noted.

Subpart A—General

§ 786.1 What is a Developer Demonstrator Project?

A Developer Demonstrator project must disseminate a specific exemplary education program nationwide.

(Authority: 10 U.S.C. 3851)

§ 786.2 Who is eligible for an award?

(a) *New awards.* (1) Any public or nonprofit private agency, organization or institution that has developed a program, product or practice that has Dissemination Review Approval and that is available to be visited may apply for a new Developer Demonstrator award.

(2) Exemplary education programs developed with either Federal or non-Federal funds are eligible for NDN funding.

(b) *Continuation awards.* Any Developer Demonstrator grantee, otherwise eligible to apply for a continuation award, may apply for the continuation award even if either the Dissemination Review Approval period or the JDRP approval period has expired.

(Authority: 20 U.S.C. 3851)

§ 786.3 What priorities may the Secretary establish?

(a)(1) Each year the Secretary may announce in a notice published in the Federal Register the program priorities for which applicants may apply for assistance.

(2) The Secretary selects priorities under this section taking into account any unmet national needs.

(b) The Secretary may select priorities from the following subject areas or special needs:

(1) English, including literature.

(2) Science.

(3) History, geography, and civics, including special history programs in conjunction with the bicentennial of the Constitution of the United States.

(4) Mathematics or higher mathematics.

(5) Reading.

(6) Written or oral communications.

(7) Health, including drug abuse prevention programs.

(8) Ethics.

(9) The humanities.

(10) Programs that assist in improving school discipline and foster an atmosphere conducive to learning.

(11) Foreign languages.

(12) Computer science.

(13) Programs that advance students' educational and occupational goals, such as courses in the fine and performing arts, vocational education, and industrial arts.

(14) Programs that improve students' skills in comprehension, analysis, and problem solving, including programs in philosophy.

(15) Programs that improve teaching and the quality of instruction.

(16) Educational leadership.

(17) School-wide and district-wide school improvement efforts.

(18) Drop-out prevention programs and programs for at risk students.

(19) Programs that foster parental involvement in schools.

(20) Physical education.

(c) In addition to the priorities listed in paragraph (b) of this section, the Secretary may establish priorities as specified in one or both of the following paragraphs:

(1) The Secretary may establish priorities at specified instructional levels, such as preschool, elementary, secondary, postsecondary, or adult education.

(2) The Secretary may establish as a priority one or more of the following special populations:

(i) Gifted and talented students.

(ii) Socioeconomically disadvantaged students.

(iii) Limited English proficient students.

(iv) Handicapped students.

(v) Migrant students.

(vi) Functionally illiterate adults or adolescents.

(d) The Secretary may also limit a priority established under paragraph (b) of this section to—

(1) An instructional level;

(2) One or more of the special populations listed in paragraph (c)(2) of this section; or

(3) Both an instructional level and one or more of the special populations listed in paragraph (c)(2) of this section.

(e) Each fiscal year the Secretary establishes, in accordance with 34 CFR 75.105(c)(2), a competitive preference for projects that have had fewer than six years total funding from the NDN.

(Authority: 20 U.S.C. 3851)

§ 786.4 What regulations apply?

The following regulations apply to Developer Demonstrator projects:

(a) The regulations in 34 CFR Part 785.

(b) The regulations in this Part 786.

(Authority: 20 U.S.C. 3851)

Subpart B—How Does One Apply for an Award?

§ 786.10 What must an applicant submit for Dissemination Review Approval?

For Dissemination Review Approval of a program, product or practice—

(a) An applicant shall submit to the Secretary qualitative and quantitative evidence of the effectiveness of the program, product or practice for review by the Program Effectiveness Panel; and

(b) If, in accordance with § 786.13(a), a score of at least 70 points is given by the Program Effectiveness Panel, of which at least 40 points are for the criterion in § 786.11(d)(2) (Results), an applicant shall submit to the Secretary copies of all instructional, classroom and curriculum materials that are part of the program, product, or practice for review by the Program Significance Panel.

(Authority: 20 U.S.C. 3851)

(Approved by the Office of Management and Budget under control number 1850–0086)

§ 786.11 How does the Program Effectiveness Panel review a program, product or practice?

(a) The PEP reviews each program, product or practice for educational effectiveness on the basis of the criteria in paragraph (d) of this section.

(b) The PEP awards up to 100 points for these criteria.

(c) The maximum score for each criterion is indicated in parentheses.

(d) In reviewing each program, product or practice the PEP determines the following:

(1) *Evaluation design.* (40 points) The PEP determines the extent to which the evaluation design—

(i) Is appropriate for the program, product or practice;

(ii) Is based on a correct interpretation of relevant research and literature;

(iii) Demonstrates that a clear and attributable connection exists between the evidence of an educational effect and the program treatment; and

(iv) Addresses rival hypotheses.

(2) *Results.* (50 points) The PEP determines the extent to which the results indicate—

(i) That the program, product or practice's effect is convincing relative to similar programs; and

(ii) The outcome claims of the program, product or practice are valid.

(3) *Replication.* (10 points) The PEP determines the extent to which the program, product or practice can be used at other sites with the likelihood of achieving similar results.

(Authority: 20 U.S.C. 3851)

§ 786.12 How does the Program Significance Panel review a program, product or practice?

(a) For each program, product or practice, the Secretary selects a panel of at least five reviewers from the members of the PSP, of whom a majority must be experts in the subject of the program, product or practice.

(b) The PSP panel determines the extent to which the following criteria are met:

(1) Need. (25 points)

(i) There is an otherwise unmet need for the program, product or practice.

(ii) The need the program, product or practice is designed to meet is important.

(2) *Content.* (50 points)

(i) The content of the program, product or practice is accurate and up-to-date;

(ii) The content of the program, product or practice is appropriate to the grade level or target audience.

(iii) The content of the program, product or practice is educationally sound.

(iv) The information is clearly presented in a manner that will be readily understood by teachers, students and parents.

(v) The intended outcomes of the program, product or practice are desired by education service providers.

(3) *Program design.* (25 points)

(i) The program design is an improvement over the design of other programs with similar intended outcomes.

(ii) The program design incorporates up-to-date standards for the field, subject area and population served.

(Authority: 20 U.S.C. 3851)

§ 786.13 How is Dissemination Review Approval granted?

Dissemination Review Approval is granted if—

(a) The PEP has given the program, product or practice a score of at least 40 points for the criterion in § 786.11(d)(2) (*Results*) and a total score of at least 70 points; and

(b) The PSP finds that the program, product or practice is appropriate for dissemination by the NDN under the criterion in § 786.12.

(Authority: 20 U.S.C. 3851)

§ 786.14 How long does Dissemination Review Approval last?

(a) Dissemination Review Approval remains in effect for six years after the date of approval.

(b) Approval granted by the joint Dissemination Review Panel remains in effect for six years after the date of approval.

(Authority: 20 U.S.C. 3851)

§ 786.15 What activities must an applicant propose to carry out if it receives an award?

A Develop Demonstrator project must—

(a) Develop and provide materials for information about the exemplary education program and for training to install the program;

(b) Negotiate adoption agreements with State Facilitator grantees, the Private School Facilitator grantee and education service providers;

(c) Assist those seeking to adopt the exemplary education program in new settings by providing training and technical assistance if requested by education service providers;

(d) Monitor and evaluate the quality, effectiveness and educational results of the adoptions;

(e) Maintain records during the grant period concerning the use of the exemplary education program, including demographic and evaluation data;

(f) Develop and implement a system to identify and prepare Certified Trainers and Demonstration Sites;

(g) Participate with other NDN grantees in workshops and meetings arranged by the Secretary; and

(h) Cooperate with State Facilitator grantees and the Private School Facilitator grantee to carry out the activities in this section.

(Authority: 20 U.S.C. 3851)

(Approved by the Office of Management and Budget under control number 1850–0086)

Subpart C—How Does the Secretary Make an Award?

§ 786.20 How does the Secretary evaluate an application?

The Secretary evaluation an application according to the criteria in §§ 786.21 through 786.28.

(Authority: 20 U.S.C. 3851)

(Approved by the Office of Management and Budget under control number 1850–0086)

§ 786.21 Selection criterion—plan of operation. (25 points)

The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(a) The quality of the design of the project (See § 786.16 for a description of the activities that a Developer Demonstrator project must propose.);

(b) A description of training required to install the exemplary education program in new settings;

(c) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(d) How well the objectives of the project relate to the purpose of the program;

(e) The quality of the applicant's plans to use its resources and personnel to achieve each objective; and

(f) If the applicant is an LEA or SEA, the quality of the applicant's plan to provide an opportunity for adoption of the exemplary education program by private schools in accordance with § 786.31.

(Authority: 20 U.S.C. 3851)

(Approved by the Office of Management and Budget under control number 1850–0086)

§ 786.22 Selection criterion—quality of key personnel. (25 points)

(a) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(1) The qualification of the project director;

(2) The qualifications of each of the other key personnel to be used on the project;

(3) The time that each person referred to in paragraphs (a) (1) and (2) of this section will commit to the project; and

(4) how the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age or handicapping condition.

(b) To determine the qualifications of personnel referred to in paragraphs (a) (1) and (2) of this section, the Secretary considers—

(1) Experience and training in fields related to the objectives of the project; and

(2) Any other qualifications that pertain to the quality of the project.

(Authority: 20 U.S.C. 3851)

(Approved by the Office of Management and Budget under control number 1850–0086)

§ 786.23 Selection criterion—budget and cost effectiveness. (5 points)

(a) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(b) The Secretary considers the extent to which—

(1) The costs to an adopter for installing the program in a new setting would be reasonable; and

(2) The projected number of educational service providers that would adopt the program each year is appropriate for the budget requested.

(Authority: 20 U.S.C. 3851)

(Approved by the Office of Management and Budget under control number 1850–0086)

§ 786.24 Selection criterion—evaluation plan. (20 points)

(a) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and

(2) To the extent possible, are objectives and produce data that are quantifiable.

(b) The Secretary reviews each applicant's plans for evaluating—

(1) The quality and effectiveness of informational materials, of training and follow-up, and of internal management plans; and

(2) The effectiveness of adoptions of the program, including impact on the students or the changes in teacher or administrator behavior.

Cross-reference. See 34 CFR 75.590 Evaluation by the grantee.

(Authority: 20 U.S.C. 3851)

(Approved by the Office of Management and Budget under control number 1850–0086)

§ 786.25 Selection criterion—adequacy of resources. (5 points)

The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment and supplies.

(Authority: 20 U.S.C. 3851)

(Approved by the Office of Management and Budget under control number 1850–0086)

§ 786.26 Selection criterion—monitoring plan. (15 points)

The Secretary reviews each application to determine the extent to which the applicant clearly details plans for post-adoption monitoring of the implementation of the program and resulting benefits at the adoption sites.

(Authority: 20 U.S.C. 3851)

(Approved by the Office of Management and Budget under control number 1850–0086)

§ 786.27 Selection criterion—special dissemination strategies. (5 points)

The Secretary reviews each application to determine the extent to which the applicant proposes special dissemination strategies to meet specific characteristics of its program.

(Authority: 20 U.S.C. 3851)

§ 786.28 What additional criteria exist for new awards?

(a) In determining the order of selection under EDGAR § 75.217(d) for new Developer Demonstrator awards, the Secretary—

(1) Seeks diversity of projects funded under a particular competition or under this program;

(2) Gives equal weight to—

(i) The total rating under § 786.20;

(ii) The rating of the Program Significance Panel; and

(iii) The rating of the Program Effectiveness Panel; and

(3) For programs approved by the JDRP before the establishment of a scoring system, gives equal weight to—

(i) The total rating under § 786.20; and

(ii) The rating of the Program Significance Panel.

(b) Programs approved by the Joint Dissemination Review Panel whose approval period is still in effect must be reviewed by the Program Significance Panel according to the criteria in § 786.12 by July 1, 1988 in order to receive a new award.

(Authority: 20 U.S.C. 3851)

§ 786.29 What additional criteria exist for continuation awards?

In addition to the criteria for making a continuation award under 34 CFR 75.253, the Secretary may consider the effectiveness of the project during the previous budget period in determining the amount of funding for the next budget period.

(Authority: 20 U.S.C. 3851)

Subpart D—What Conditions Must be Met by the Recipient of an Award?

§ 786.30 What disclaimers are required on printed material?

Developer Demonstrator projects must include disclaimers as follows on all instructional and curriculum materials reproduced or distributed with funds under this part—

(a) "The contents of this (insert type of publication; e.g., book, teacher's guide) were reproduced or are being distributed under a grant from the U.S. Department of Education. However, those contents do not necessarily represent the policy of the Department of Education, and you should not assume endorsement by the Federal Government," and

(b) "If an education service provider uses funds under a program subject to Section 439 of the General Education Provisions Act (GEPA) (20 U.S.C. 1232h) to adopt this project, the education service provider must comply with Part 98 of Title 34 of the Code of Federal Regulations (Student Rights in Research, Experimental Programs and Testing) which contains the regulations implementing that section of GEPA."

(Authority: 20 U.S.C. 3851)

§ 786.31 What are a recipient's responsibilities for serving students enrolled in nonprofit private schools?

(a) *Responsibilities of LEAs and SEAs.* A grant to an LEA or SEA is subject to the requirements in Section 586 of the Education Consolidation and Improvement Act of 1981 concerning—

(1) Consultation with nonprofit private school officials in developing the application; and

(2) The opportunity for participation by nonprofit private school children. The requirements for consultation are governed by paragraph (b) of this section and 34 CFR 76.652.

(b) *Consultation.* (1) An applicant shall comply with paragraph (b)(2) of this section if the following conditions are met:

(i) The applicant is an LEA or SEA.

(ii) The applicant applies for a Developer Demonstrator award.

(iii) The project proposed under the application is designed for adoption at elementary or secondary schools.

(2) The applicant shall consult with officials of nonprofit private elementary and secondary schools to ensure that the project can benefit children in those schools.

(c) *Participation.* An LEA or SEA that receives a Developer Demonstrator award designed for adoption at elementary and secondary schools shall, based on the consultation under paragraph (b)(1) of this section, ensure that nonprofit private elementary and secondary schools have an opportunity to adopt the program.

(d) *Other requirements.* An LEA or SEA grantee shall comply with the rules for subgrantees in EDGAR § 76.658, Funds not to benefit a private school.

(Authority: 20 U.S.C. 3851, 3862)

PART 787—NATIONAL DIFFUSION NETWORK: DISSEMINATION PROCESS PROJECTS

Subpart A—General

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787.31 What are a recipient's responsibilities for serving students enrolled in nonprofit private schools?

Authority: 20 U.S.C. 3851, unless otherwise noted.

Subpart A—General

§ 787.1 What is a Dissemination Process project?

A Dissemination Process project must provide information, instructional materials and services nationwide concerning specific content areas, bodies of research or fields of professional development, that will be of use to education service providers.

(Authority: 20 U.S.C. 3851)

§ 787.2 Who is eligible for an award?

Any public or nonprofit private agency, organization or institution that has in operation a dissemination process that has current Dissemination Review Approval may apply for a new Dissemination Process grant.

(Authority: 20 U.S.C. 3851)

§ 787.3 What priorities may the Secretary establish?

Each year the Secretary may announce in a notice published in the **Federal Register** the program priorities for which applicants may apply for assistance. The Secretary selects priorities in accordance with 34 CFR Part 786.3

(Authority: 20 U.S.C. 3851)

§ 787.4 What regulations apply?

The following regulations apply to Dissemination Process projects:

(a) The regulations in 34 CFR Part 785.

(b) The regulations in 34 CFR 786.3.

(c) The regulations in this Part 787.

(Authority: 20 U.S.C. 3851)

Subpart B—How Does One Apply for an Award?

§ 787.10 What must an applicant submit for Dissemination Review Approval?

(a) For Dissemination Review Approval of a dissemination process, an applicant shall submit to the Secretary—

(1) A description of its dissemination process;

(2) A description of the procedures and criteria for selecting information, materials and services to be disseminated and for judging that they are educationally significant; and

(3) A description of the procedures and criteria for evaluating qualitative and quantitative evidence of the effectiveness of information, instructional materials and services to be disseminated.

(b) If, in accordance with § 787.13(a), a score of at least 70 points is given by the Program Effectiveness Panel, of which at least 20 points are for the criterion in § 787.11(d)(2) (*Results*), the applicant shall also submit—

(1) Samples of the information and instructional materials to be disseminated; and

(2) Descriptions of the services to be provided through the dissemination process and the methods for assuring broad dissemination.

(Authority: 20 U.S.C. 3851)

§ 787.11 How does the Program Effectiveness Panel review a Dissemination Process?

(a) The PEP reviews each dissemination process for educational effectiveness by examining the procedures and criteria for selecting information and instructional materials to be disseminated and for providing services according to the criteria in paragraph (d) of this section.

(b) The PEP awards up to 100 points for these criteria.

(c) The maximum score for each criterion is indicated in parentheses.

(d) In reviewing each dissemination process the PEP determines the following:

(1) *Evaluation design.* (50 points) The PEP determines the extent to which the evaluation design—

(i) Is appropriate for the program;

(ii) Is based on correct interpretation of relevant research and literature;

(iii) Demonstrates that a clear and attributable connection exists between the evidence of an educational effect and the program treatment; and

(iv) Addresses rival hypotheses.

(2) *Results.* (25 points) The PEP determines the extent to which the results indicate that the process is particularly effective relative to similar processes.

(3) *Replication.* (25 points) The PEP determines the extent to which the information, instructional materials and services can be used at other sites with the likelihood of achieving similar results.

(Authority: 20 U.S.C. 3851)

§ 787.12 How does the Program Significance Panel review a Dissemination Process?

(a) For each dissemination process, the Secretary selects a panel of at least five reviewers from the members of the PSP, of whom a majority must be experts in the subject of the dissemination process.

(b) The PSP panel determines the extent to which the dissemination process meets the following criteria:

(1) *Need* (25 points)

(i) There is an otherwise unmet need for the information, instructional materials, and services

(ii) The need, the information instructional materials and services are designed to meet is important.

(2) *Content.* (50 points)

(i) The content of the information, instructional materials and services is accurate and up-to-date.

(ii) The content of the information, instructional materials and services is appropriate to the grade level of target audience.

(iii) The content of the information and instructional materials is educationally sound.

(iv) The information, instructional materials, and services are clearly presented in a manner that will be readily understood by teachers, students and parents.

(v) The intended outcomes of the information, instructional materials and services are desirable.

(3) *Program design.* (25 points)

(i) The program design is an improvement over the design of other programs with similar intended outcomes.

(ii) The program design incorporates up-to-date standards for the field, subject area and population served.

(Authority: 20 U.S.C. 3851)

§ 787.13 How is Dissemination Review Approval granted?

Dissemination Review Approval is granted if—

(a) The PEP has given the procedures and criteria a score of at least 20 points for the criterion in § 787.11(d)(2) (*Results*) and a total score of a least 70 points; and

(b) The PSP finds that the procedures and criteria for selecting information and instructional materials to be disseminated and for providing services will ensure that they are appropriate for dissemination by the NDN under the criteria in § 787.12.

(Authority: 20 U.S.C. 3851)

§ 787.14 How long does Dissemination Review Approval last?

(a) Dissemination Review Approval remains in effect for six years after the date of approval.

(b) Approval granted by the Joint Dissemination Review Panel remains in effect for six years after the date of approval.

(Authority: 20 U.S.C. 3851)

§ 787.15 What activities must an applicant propose to carry out if it receives an award?

A Dissemination Process Project must—

(a) Develop and provide upon request of an education service provider, descriptions of the information, material and services concerning the content areas, fields of professional development or bodies of research that are available through the dissemination process, for education service providers throughout the Nation to use in becoming familiar with the grantee's project;

(b) Provide upon request the information, material and services described in paragraph (a) of this section;

(c) Provide, if appropriate, training in support of the use of the information, materials and services provided;

(d) Evaluate the quality and effectiveness of the dissemination process as specified in the evaluation design for the project;

(e) Maintain records during the grant period concerning the dissemination of information and materials, and the provision of services;

(f) Monitor and evaluate the extent of use by teachers and students and the educational results obtained through use of the information, materials and services selected by education service providers;

(g) Participate with other NDN grantees in workshops and meetings arranged by the Secretary; and

(h) Cooperate with State Facilitator grantees and the Private School Facilitator project to carry out the activities in this section.

(Authority: 20 U.S.C. 3851)

(Approved by Office of Management and Budget under control number 1850-0066)

Subpart C—How Does the Secretary Make an Award?

§ 787.20 How does the Secretary evaluate an application?

The Secretary evaluates an application according to the criteria in § 787.21 through 787.28.

(Authority: 20 U.S.C. 3851)

(Approved by the Office of Management and Budget under control number 1850-0066)

§ 787.21 Selection criterion—plan of operation. (30 points)

The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(a) The quality of the design of the project (See § 787.16 for a description of the activities that a Dissemination Process project must propose.);

(b) A clear description of the information and instructional materials to be disseminated, and the services to be provided;

(c) A description of any training to education service providers the program

might offer, if appropriate, in support of the use of the materials or information described above;

(d) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(e) How well the objectives of the project relate to the purpose of the program;

(f) The quality of the applicant's plans to use its resources and personnel to achieve each objective;

(g) If the applicant is an LEA and SEA, the quality of the applicant's plans to provide an opportunity for private schools to use the information, instructional materials and services.

(Authority: 20 U.S.C. 3851)

(Approved by the Office of Management and Budget under control number 1850–0066)

§ 787.22 Selection criterion—quality of key personnel. (10 points)

(a) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(1) the qualifications of the project director;

(2) The qualifications of each of the other key personnel to be used in the project;

(3) The time that each person referred to in paragraphs (a) (1) and (2) of this section plans to commit to the project; and

(4) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age or handicapping condition.

(b) To determine the qualifications of personnel referred to under paragraphs (a) (1) and (2) of this section, the Secretary considers—

(1) Experience and training in fields related to the objectives of the project; and

(2) Any other qualifications that pertain to the quality of the project.

(Authority: 20 U.S.C. 3851)

(Approved by the Office of Management and Budget under control number 1850–0066)

§ 787.23 Selection criterion—budget and cost effectiveness. (10 points)

The Secretary reviews each application to determine the extent to which—

(a) The budget is adequate to support the project; and

(b) Cost are reasonable in relation to the objectives of the project;

(c) The estimated cost to the adopter for purchasing or using the materials, information or services that are available through the Dissemination Process is reasonable.

(Authority: 20 U.S.C. 3851)

(Approved by the Office of Management and Budget under control number 1850–0066)

§ 787.24 Selection criterion—evaluation plan. (15 points)

The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(a) Are appropriate for the project;

(b) To the extent possible, are objective and produce data that are quantifiable; and

(c) Are appropriate to evaluate—

(1) The quality and effectiveness of informational materials, of any training provided and follow-up, and of internal management plans; and

(2) The use and effectiveness of the materials and information provided to education service providers.

(Authority: 20 U.S.C. 3851)

(Approved by the Office of Management and Budget under control number 1850–0066)

§ 787.25 Selection criterion—adequacy of resources. (10 points)

The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(Authority: 20 U.S.C. 3851)

(Approved by the Office of Management and Budget under control number 1850–0066)

§ 787.26 Selection criterion—monitoring plan. (5 points).

The Secretary reviews each application to detemine the extent to which the applicant clearly details plans that show promise of effective management of the project, including monitoring the use of materials and information provided through the Dissemination Process, and resulting benefits to educational service providers.

(Authority: 20 U.S.C. 3851)

(Approved by the Office of Management and Budget under control number 1850–0066)

§ 787.27 Selection criterion—special dissemination strategies. (20 points)

The Secretary determines the extent to which the applicant proposes special dissemination strategies to meet specific characteristics of its program.

(Authority: 20 U.S.C. 3851)

(Approved by the Office of Management and Budget under control number 1850–0066)

§ 787.28 What additional criteria exist for new awards?

(a) In determining the order of selection under EDGAR § 75.217(d) for new Dissemination Process awards, the Secretary—

(1) Seeks diversity of projects funded under a particular competition or under this program; and

(2) Gives equal weight to—

(i) The total rating under § 787.20;

(ii) The rating of the Program Significance Panel; and

(iii) The rating of the Program Effectiveness Panel.

(b) Programs approved by the Joint Dissemination Review Panel whose approval period is still in effect must be reviewed by the Program Significance Panel according to the criteria in § 787.12 by July 1, 1988 in order to receive a new award.

(Authority: 20 U.S.C. 3851)

§ 787.29 What additional criteria exist for continuation awards?

If the Secretary makes a continuation award under § 75.253, the Secretary may consider the effectiveness of the project during the previous budget period in determining the amount of funding for the next budget period.

(Authority: 20 U.S.C. 3851)

Subpart D—What Conditions Must be Met by the Recipient of an Award?

§ 787.30 What disclaimers are required on printer materials?

Dissemination Process projects must include disclaimers as follows on all instructional and curriculum materials reproduced or distributed with funds under this part:

(a) "The contents of this (insert type of publication; e.g., book, teacher's guide) were reproduced or are being distributed under grant from the U.S. Department of Education. However, those contents do not necessarily represent the policy of the Department of Education, and you should not assume endorsement by the Federal Government;" and

(b) "If an education service provider uses funds under a program subjecte to Section 439 of the General Education Provisions Act (GEPA) (20 U.S.C. 1232h) to pay for information, instructional materials or services provided by this project, the education service provider must comply with Part 98 of Title 34 of the Code of Federal Regulations (Student Rights in Research, Experimental Programs and Testing) which contains the regulations implementing that section of GEPA."

(Authority: 20 U.S.C. 3851)

§ 787.31 What are a recipient's responsibilities for serving students enrolled in nonprofit private schools?

(a) *Responsibilities of LEAs and SEAs.* A grant to an LEA or SEA is subject to the requirements in Section 586 of the Education Consolidation and Improvement Act of 1981 concerning—

(1) Consultation with nonprofit private school officials in developing the application; and

(2) The opportunity for participation by nonprofit private school children. The requirements for consultation are governed by paragraph (b) of this section and 34 CFR 76.652 of EDGAR.

(b) *Consultation.* (1) An applicant shall comply with paragraph (b)(2) of this section if the following conditions are met:

(i) The applicant is an LEA or SEA;

(ii) The applicant applies for a Dissemination Process award;

(iii) The information, materials and services to be provided through the dissemination process would be used in elementary or secondary schools.

(2) The applicant shall consult with officials of nonprofit private elementary and secondary schools to ensure that the project can benefit children in those schools.

(c) *Participation.* An LEA or SEA that receives a Dissemination Process award designed to provide information, materials and services to elementary and secondary schools shall, based on the consultation under paragraph (b)(1) of this section, ensure that nonprofit elementary and secondary schools have an opportunity to use the information, instructional materials and services.

(d) *Other requirements.* An LEA or SEA grantee shall comply with the rules for subgrantees in EDGAR § 76.658, Funds not to benefit a private school.

(Authority: 20 U.S.C. 3851, 3862)

PART 788—NATIONAL DIFFUSION NETWORK: STATE FACILITATOR PROJECTS

Subpart A—General

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788.2 Who is eligible for an award?
788.3 What regulations apply?

Subpart B—How Does One Apply for an Award?

788.10 What activities must an applicant propose to carry out if it receives an award?

Subpart C—How Does the Secretary Make an Award?

788.20 How many awards does the Secretary make in each State?
788.21 How does the Secretary evaluate an application?
788.22 Selection criterion—plan of operation.
788.23 Selection criterion—quality of key personnel.
788.24 Selection criterion—budget and cost effectiveness.
788.25 Selection criterion—evaluation plan.
788.26 Selection criterion—adequacy of resources.
788.27 Selection criterion—monitoring plan.
788.28 Selection criterion—consultation during application.
788.29 Selection criterion—consultation and participation during project.
788.30 Selection criterion—innovative dissemination strategies.
788.31 Selection criterion—provision of information about other programs.
788.32 What additional criteria exist for continuation awards?

Subpart D—What Conditions Must Be Met by the Recipient of an Award?

788.40 What are a recipient's responsibilities to students enrolled in nonprofit private schools?

Authority: 20 U.S.C. 3851, unless otherwise noted.

Subpart A—General

§ 788.1 What is a State Facilitator Project?

A State Facilitator Project must disseminate a wide variety of exemplary education programs within the particular State served by each project.

(Authority: 20 U.S.C. 3851)

§ 788.2 Who is eligible for an award?

Any public or nonprofit private agency, organization, or institution located in the State to be served may apply for a State Facilitator award.

(Authority: 20 U.S.C. 3851)

§ 788.3 What regulations apply?

The following regulations apply to State Facilitator projects:

(a) The regulations in 34 CFR Part 785.

(b) The regulations in this Part 788.

(Authority: 20 U.S.C. 3851)

Subpart B—How Does One Apply for an Award?

§ 788.10 What activities must an applicant propose to carry out if it receives an award?

A State Facilitator project must—

(a) Inform public and private education service providers about the availability of all exemplary education programs in the National Diffusion Network;

(b) Assist education service providers to select exemplary education programs to meet their needs;

(c) Negotiate adoption agreements with Developer Demonstrator and Dissemination Process grantees and education service providers;

(d) Arrange for Developer Demonstrator and Dissemination Process grantees to provide training and follow-up services when requested by education service providers;

(e) Arrange for the selection and training of Local Facilitators;

(f) Assist in the identification and preparation of Certified Trainers and Demonstration Sites;

(g) Maintain records during the grant period concerning the exemplary education programs adopted in the State, including demographic data and program retention rates;

(h) Monitor and evaluate the activities of the State Facilitator project;

(i) Participate with other NDN grantees in workshops and meetings arranged by the Secretary;

(j) Cooperate with Developer Demonstrator grantees, Dissemination Process grantees and the Private School Facilitator grantee to carry out the activities in this section; and

(k) Disseminate information about ERIC, Research and Development Centers and Regional Educational Laboratories, and educational excellence recognition efforts, (such as federally and privately funded programs that identify outstanding educators, students, and schools).

(Authority: 20 U.S.C. 3851)

(Approved by the Office of Management and Budget under control number 1850–0086)

Subpart C—How Does the Secretary Make an Award?

§ 788.20 How many awards does the Secretary make in each State?

The Secretary makes one award in each State.

(Authority: 20 U.S.C. 3851)

§ 788.21 How does the Secretary evaluate an application?

The Secretary evaluates an application according to the criteria in §§ 788.22 through 788.32.

(Authority: 20 U.S.C. 3851)
(Approved by the Office of Management and Budget under control number 1850–0086)

§ 788.22 Selection criterion—plan of operation. (15 points)

The Secretary reviews each application to determine the quality of the plan of operation for the project, including,—

(a) The quality of the design of the project (See § 788.10 for a description of the activities that a State Facilitator must propose.);

(b) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(c) How well the objectives of the project relate to the purpose of the program;

(d) The quality of the applicant's plans to use its resources and personnel to achieve each objective;

(e) If the applicant is an LEA or SEA, the quality of the applicant's plans to provide an opportunity for participation of private schools in accordance with § 788.40.

(Authority: 20 U.S.C. 3851)
(Approved by the Office of Management and Budget under control number 1850–0086)

§ 788.23 Selection criterion—quality of key personnel. (20 points)

(a) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(1) The qualifications of the project director;

(2) The qualifications of each of the other key personnel to be used in the project:

(3) The time that each person referred to in paragraph (a) of this section will commit to the project; and

(4) The extent to which the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age or handicapping condition.

(b) To determine the qualifications of personnel referred to in paragraphs (a) (1) and (2) of this section, the Secretary considers—

(1) Experience and training in fields related to the objectives of the project; and

(2) Any other qualifications that pertain to the quality of the project.

(Authority: 20 U.S.C. 3851)
(Approved by the Office of Management and Budget under control number 1850–0086)

§ 788.24 Selection criterion—budget and cost effectiveness. (5 points)

The Secretary reviews each application to determine the extent to which—

(a) The budget is adequate to support the project; and

(b) Costs are reasonable in relation to the objectives of the project.

(Authority: 20 U.S.C. 3851)
(Approved by the Office of Management and Budget under control number 1850–0086)

§ 788.25 Selection criterion—evaluation plan. (10 points)

The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(a) Are appropriate to the project; and

(b) To the extent possible, are objective and produce data that are quantifiable.

Cross-reference. See 34 CFR 75.590 Evaluation by the grantee.

(Authority: 20 U.S.C. 3851)
(Approved by the Office of Management and Budget under control number 1850–0086)

§ 788.26 Selection criterion—adequacy of resources. (5 points)

The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment and supplies.

(Authority: 20 U.S.C. 3851)
(Approved by the Office of Management and Budget under control number 1850–0086)

§ 788.27 Selection criterion—monitoring plan. (15 points)

The Secretary reviews each application to determine the extent to which the applicant clearly details plans to monitor and assist sites that adopt the programs, and provide follow-up services after training.

(Authority: 20 U.S.C. 3851)
(Approved by the Office of Management and Budget under control number 1850–0086)

§ 788.28 Selection criterion—consultation during application. (5 points)

The Secretary reviews each application to determine the extent to which the applicant, in developing its application, has consulted with the SEA, LEAs, Institutions of Higher Education, private schools and other educational service providers in the State to be served.

(Authority: 20 U.S.C. 3851)
(Approved by the Office of Management and Budget under control number 1850–0086)

§ 788.29 Selection criterion—consultation and participation during project. (5 points)

The Secretary reviews each application to determine the extent to which the applicant, in carrying out the project activities, provides for consultation with, and participation of the SEA, LEAs, Institutions of Higher Education, private schools and other education service providers in the State.

(Authority: 20 U.S.C. 3851)
(Approved by the Office of Management and Budget under control number 1850–0086)

§ 788.30 Selection criterion—innovative dissemination strategies. (10 points)

The Secretary reviews each application to determine the extent to which the applicant proposes innovative dissemination strategies.

(Authority: 20 U.S.C. 3851)
(Approved by the Office of Management and Budget under control number 1850–0086)

§ 788.31 Selection criterion—provision of information about other programs. (10 points)

The Secretary reviews each application to determine the extent to which the applicant has the capacity to provide information about ERIC, Research and Development Centers and Regional Educational Laboratories, and educational excellence recognition efforts (such as federally and privately funded programs that identify outstanding educators, students, and schools), to educational personnel throughout the State.

(Authority: 20 U.S.C. 3851)
(Approved by the Office of Management and Budget under control number 1850–0086)

§ 788.32 What additional criteria exist for continuation awards?

If the Secretary makes a continuation award under § 75.253, the Secretary may consider the effectiveness of the project during the previous budget period in determining the amount of funding for the next budget period.

(Authority: 20 U.S.C. 3851)

Subpart D—What Conditions Must be Met by the Recipient of an Award?

§ 788.40 What are a recipient's responsibilities to students enrolled in nonprofit private schools?

(a) *Responsibilities of LEAs and SEAs.* A grant to an LEA or SEA is subject to the requirements in § 586 of the Education Consolidation and Improvement Act of 1981 concerning—

(1) Consultation with nonprofit private school officials in developing the application; and

(2) The opportunity for participation by nonprofit private school children. The requirements for consultation are governed by paragraph (b) of this section and § 76.652 of EDGAR.

(b) *Consultation.* (1) An applicant shall comply with paragraph (b)(2) of this section if the following conditions are met:

(i) The applicant is an LEA or SEA.

(ii) The applicant applies for a State Facilitator award.

(2) The applicant shall consult with officials of nonprofit private elementary and secondary schools in the State served by the project to determine appropriate strategies to ensure that children in those schools can benefit from the project.

(c) *Participation.* An LEA or SEA that receives a State Facilitator grant shall use the strategies developed under paragraph (b)(1) of this section to ensure

that teachers and administrators from nonprofit private elementary and secondary schools have an opportunity to participate.

(d) *Other requirements.* An LEA or SEA grantee shall comply with the rules for subgrantees in EDGAR § 76.658, Funds not to benefit a private school.

(Authority: 20 U.S.C. 3851, 3862)

PART 789—NATIONAL DIFFUSION NETWORK: PRIVATE SCHOOL FACILITATOR PROJECT

Subpart A—General

Sec.

789.1 What is a Private School Facilitator project?
789.2 Who is eligible for an award?
789.3 What regulations apply?

Subpart B—How Does One Apply for an Award?

789.10 What activities must an applicant propose to carry out if it receives an award?

Subpart C—How Does the Secretary Make an Award?

789.20 How does the Secretary evaluate an application?
789.21 Selection criterion—plan of operation.
789.22 Selection criterion—quality of key personnel.
789.23 Selection criterion—budget and cost effectiveness.
789.24 Selection criterion—evaluation plan.
789.25 Selection criterion—adequacy of resources.
789.26 Selection criterion—consultation during application.
789.27 Selection criterion—consultation and participation during project.
789.28 Selection criterion—innovative dissemination strategies.
789.29 Selection criterion—previous experience.
789.30 Selection criterion—provision of information about other programs.
789.31 What additional criteria exist for continuation awards?

Authority: 20 U.S.C. 3851, unless otherwise noted.

Subpart A—General

§ 789.1 What is a Private School Facilitator Project?

A Private School Facilitator project must disseminate exemplary education programs to private schools nationwide.

(Authority: 20 U.S.C. 3851)

§ 789.2 Who is eligible for an award?

Any public or nonprofit private agency, organization, or institution may apply for a Private School Facilitator grant to serve private schools nationwide.

(Authority: 20 U.S.C. 3851)

§ 789.3 What regulations apply?

The following regulations apply to the Private School Facilitator project:

(a) The regulations in 34 CFR Part 785.

(b) The regulations in this Part 789.

(Authority: 20 U.S.C. 3851)

Subpart B—How Does One Apply for an Award?

§ 789.10 What activities must an applicant propose to carry out if it receives an award?

The Private School Facilitator project must—

(a) Inform private schools throughout the National about the availability of exemplary education programs in the National Diffusion Network;

(b) Assist private education service providers to select exemplary education programs to meet their needs;

(c) Negotiate adoption agreements with Developer Demonstrator and Dissemination Process grantees and private education service providers;

(d) Arrange for Developer Demonstrator and Dissemination Process grantees to provide information, training and follow-up services to staff members of private schools if requested;

(e) Arrange for the selection and training of local facilitators;

(f) Assist in the identification and training of Certified Trainers;

(g) Maintain records during the grant period concerning the exemplary education programs adopted by private schools, including demographic data and program retention rates;

(h) Monitor and evaluate the activities of the Private School Facilitator project;

(i) Participate with other NDN grantees in workshops and meetings arranged by the Secretary;

(j) Cooperate with Developer Demonstrator grantees, Dissemination Process grantees and State facilitator grantees in establishing linkages to private schools throughout the Nation; and

(k) Disseminate information about ERIC, Research and Development Centers and Regional Educational Laboratories, and educational excellence recognition efforts (such as federally and privately funded programs that identify outstanding educators, students, and schools).

(Authority: 20 U.S.C. 3851)

(Approved by the Office of Management and Budget under control number 1850-0086)

Subpart C—How Does the Secretary Make an Award?

§ 789.20 How does the Secretary evaluate an application?

The Secretary evaluates an application for a Private School Facilitator award according to the criteria in §§ 789.21 through 789.30.

(Authority: 20 U.S.C. 3851)

(Approved by the Office of Management and Budget under control number 1850-0086)

§ 789.21 Selection criterion—plan of operation. (15 points)

The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(a) The quality of the design of the project (See § 789.10 for a description of each of the activities that the Private School Facilitator must propose.);

(b) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(c) How well the objectives of the project relate to the purpose of the program;

(d) The quality of the applicant's plans to use its resources and personnel to achieve each objective; and

(e) The extent to which the applicant clearly details plans to monitor and assist sites that adopt programs, and provide follow-up services after training.

(Authority: 20 U.S.C. 3851)

(Approved by the Office of Management and Budget under control number 1850-0086)

§ 789.22 Selection criterion—quality of key personnel. (10 points)

(a) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(1) The qualifications of the project director;

(2) The qualifications of each of the other key personnel to be used in the project;

(3) The time that each person referred to in paragraphs (a) (1) and (2) of this section will commit to the project; and

(4) The extent to which the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age or handicapping condition.

(b) To determine qualifications of personnel referred to under paragraphs (a)(1) and (2) of this section, the Secretary considers—

(1) Experience and training in fields related to the objectives of the project; and

(2) Any other qualifications that pertain to the quality of the project.

(Authority: 20 U.S.C. 3851)

(Approved by the Office of Management and Budget under control number 1850–0086)

§ 789.23 Selection criterion—budget and cost effectiveness. (10 points)

The Secretary reviews each application to determine the extent to which—

(a) The budget is adequate to support the project and is cost effective; and

(b) Costs are reasonable in relation to the objectives of the project.

(Authority: 20 U.S.C. 3851)

(Approved by the Office of Management and Budget under control number 1850–0086)

§ 789.24 Selection criterion—evaluation plan. (10 points)

The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which—

(a) The applicant's methods of evaluation—

(1) Are appropriate for the project; and

(2) To the extent possible, are objective and produce data that are quantifiable, including evaluation of the impact of the adoptions in private schools; and

(b) The applicant will seek the assistance of national experts and professional associations concerned with private schools in designing and carrying out evaluation activities.

Cross-reference. See 34 CFR 75.590 Evaluation by the grantee.

(Authority: 20 U.S.C. 3851)

(Approved by the Office of Management and Budget under control number 1850–0086)

§ 789.25 Selection criterion—adequacy of resources. (5 points)

The Secretary reviews each application to detemine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment and supplies.

(Authority: 20 U.S.C. 3851)

(Approved by the Office of Management and Budget under control number 1850–0086)

§ 789.26 Selection criterion—consultation during application. (5 points)

The Secretary reviews each application to determine the extent to which the applicant, in developing its application, has consulted with diverse private school educators.

(Authority: 20 U.S.C. 3851)

(Approved by the Office of Management and Budget under control number 1850–0086)

§ 789.27 Selection criterion—consultation and participation during project. (5 points)

The Secretary reviews each application to determine the extent to which the applicant, in carrying out project activities, provides for consultation with, and participation of diverse private school educators.

(Authority: 20 U.S.C. 3851)

(Approved by the Office of Management and Budget under control number 1850–0086)

§ 789.28 Selection criterion—innovative dissemination strategies. (10 points)

The Secretary reviews each application to detemine the extent to which the applicant proposes innovative dissemination strategies.

(Authority: 20 U.S.C. 3851)

(Approved by the Office of Management and Budget under control number 1850–0086)

§ 789.29 Selection criterion—previous experience. (20 points)

The Secretary reviews each application to determine the extent to which the applicant has had previous experience in successfully working with and providing services to many different types of private schools nationwide.

(Authority: 20 U.S.C. 3851)

§ 789.30 Selection criterion—provision of information about other programs. (10 points)

The Secretary reviews each application to determine the extent to which the applicant has the capacity to provide information about ERIC, Research and Development Centers and Regional Educational Laboratories, and schools, educators, and students recognized through federally and privately funded educational excellence recognition efforts, to educational personnel in private schools nationwide.

(Authority: 20 U.S.C. 3851)

(Approved by the Office of Management and Budget under control number 1850–0086)

§ 789.31 What additional criteria exist for continuation awards?

If the Secretary makes a continuation award under § 75.253, the Secretary may consider the effectiveness of the project during the previous budget period in determining the amount of funding for the next budget period.

(Authority: 20 U.S.C. 3851)

(Approved by the Office of Management and Budget under control number 1850–0086)

Appendix—Analysis of Comments and Changes

Editorial Note—The following appendix will not appear in the Code of Federal Regulations.

Section 785.3 What types of projects does the Secretary support?

Comments: The Secretary received ninety-eight comments recommending that the Secretary's School Recognition Program should not be included in these regulations. Comments on this section were not critical of the School Recognition Program, but expressed the belief that it should not be funded through the National Diffusion Network.

Discussion: Although the Secretary sees a strong relationship between the NDN and the Secretary's School Recognition Program and believes that they will contribute more to school improvement efforts if coordinated, the Secretary has decided that regulations are not necessary to effect that coordination. Although the Secretary's School Recognition Program has been funded through the National Diffusion Network in the past, the Secretary does not plan to use NDN funds for this program in the future.

Changes: References to the Secretary's School Recognition Program have been deleted. However, the State Facilitators and the Private School Facilitator will be expected to disseminate information about the Secretary's School Recognition Program.

Section 785.5 What definitions apply?

Program Effectiveness Panel

Comments: Sixteen commenters expressed support for changing the name of the Joint Dissemination Review Panel to the Program Effectiveness Panel. Several commenters requested that the membership be more clearly described, and asked in what areas the members would be experts.

Discussion: The PEP membership was more clearly described in the preamble than in the definition in the regulations. It is the Secretary's intention that PEP members shall be primarily evaluation experts, and experts in other areas related to education programs.

Changes: The definition of the Program Effectiveness Panel has been revised to state that the members will be experts in evaluation and education.

Program Significance Panel

Comments: Seventy-one commenters expressed support for the inclusion of parents and other members of the general public in the review process.

Discussion: Possible Program Significance Panel members, including parents and members of the general

public, were listed in the preamble to the NPRM, but not in the definition of the PSP. It is the Secretary's intention that all of those groups listed be included in the Panel.

Changes: The definition of the Program Significance Panel has been revised to include examples of the membership, and to specify that persons such as parents and other members of the general public will be included.

Section 786.2 Who is eligible for an award?

Comments: The Secretary received one hundred and fifty-three comments against the limitation of funding for Developer Demonstrator projects to six years. Many commenters felt that the effectiveness of the program, and continued demand by education service providers, should be the determining factors concerning continued funding. Several others asked if any other program in the Department had this limit to eligibility. Others asked for some criteria for the circumstances that would allow exceptions.

Discussion: The Secretary believes that newer projects should receive preference over projects which have been funded for six or more years, so that the pool of projects available through the NDN will continually reflect changing national needs. The Secretary has decided that the procedures in the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(2) for establishing priorities will provide adequate flexibility to accomplish this objective. The announcement of each grant competition in the Federal Register will include specific information concerning how a preference for new projects will be applied for that competition.

Changes: The eligibility criterion concerning previous funding has been removed, and a preference for applicants that have been funded for fewer than six years has been added under § 786.3.

Section 786.3 What priorities may the Secretary establish?

Comment: A commenter requested that "physical education" be added to the list of priorities the Secretary may establish each year.

Discussion: The Secretary agrees that physical education is an important aspect of young people's development and should be included among the priorities the Secretary may select for funding each year.

Changes: The change has been made.

Section 786.11 How does the Program Significance Panel review a program, product or practice? and § 787.11 How does the Program Significance Panel review a Dissemination Process?

Comments: The Secretary received one hundred and forty-six comments recommending that the proposed Program Significance Panel not be added to the program review system. Some felt that it would interfere with the authority of local school districts to select curricular materials. Others felt it could become a means of censorship by the Federal Government, and others were concerned that it was the beginning of the establishment of a "national curriculum."

Several commenters asked about the logistics of the PSP review. They expressed concern about the cost to the applicant of submitting materials, and asked whether materials would be returned.

Discussion: The Secretary has carefully considered the concerns of those who submitted comments and is taking the following actions to address those concerns. First, the order of submission of materials to the Program Significance Panel and the Program Effectiveness Panel will be reversed. Only those programs that receive a score of at least 70 points from the Program Effectiveness Panel, including at least 40 points for the criterion *"Results,"* will be asked to submit student and teacher materials for review by the PSP. This will simplify the process and will eliminate the needless submission of materials to the PSP by program developers who have insufficient evaluation data to prove their effectiveness to the PEP. Second, the PSP will not act as a censor or otherwise interfere with the authority of local school districts to select curricular materials. The Secretary has amended the final regulations to require the PSP only to consider criteria related to need, content, and program design in determining whether or not a project is appropriate for dissemination through the NDN. The Secretary believes that these criteria will serve as adequate factors in ensuring that only appropriate materials receive Dissemination Review Approval.

The PSP will be made up of individuals knowledgeable about education, including parents, teachers, principals, curriculum and subject experts, other educational practitioners and members of the general public. The PSP will not make its determinations as to whether a program is appropriate for dissemination through the NDN on the basis of pedagogy, ideology, or politics. Rather, the PSP will make its determinations solely on the basis of the criteria stated in the final regulations.

Changes: A change has been made in the order in which the two panels will conduct their reviews. The Program Effectiveness Panel will first review the quantitative and qualitative evidence of effectiveness of programs, products, and practices according to the criteria in § 786.11. Programs that receive a score of at least 70 points, with at least 40 points for the criterion *"Results,"* will then submit instructional and classroom materials for review by the Program Significance Panel according to the criteria in § 786.12.

For Dissemination Process projects, the Program Effectiveness Panel will first examine the procedures and criteria for selecting information and materials to be disseminated according to the criteria in § 787.11. If a score of at least 70 points is given, with at least 20 points for the criterion *"Results,"* the materials will then be reviewed by the Program Significance Panel according to the criteria in § 787.12.

In addition, the criteria in § 786.12 and § 787.12 have been revised. In determining whether the programs are appropriate for dissemination, the PSP will consider only the criteria related to need, content and program design. Each project will be reviewed by at least five panel members, and a majority of these reviewers will be experts in the subject of the project.

Sections 786.29, 787.29, 788.32 and 789.31 What additional criteria exist for continuation awards?

Comments: Two parties recommended that items concerning program implementation and implementation assistance be added to the criteria for evaluating program effectiveness for continuation awards.

Discussion: Program effectiveness is determined by a review of a variety of measures of program accomplishments, including several items related to program implementation.

Changes: None.

Part 787 Dissemination Process Projects

Comments: The Secretary received one hundred and thirteen comments recommending the Dissemination Process projects not be established as a separate category of program. Some commenters were concerned that there would not be adequate assurance of the quality and effectiveness of the information and materials to be disseminated. Others were concerned about the size of the proposed grants to

organizations that are presumed to have an already high funding level.

Discussion: This is a pilot activity that the Secretary believes will enhance the NDN by providing additional programs and materials to assist schools in their school improvement efforts. Dissemination Processes must undergo the same scrutiny as Developer Demonstrators by both the PEP and the PSP to assure that they are effective and of high quality If Dissemination Processes prove to be effective, the Department will expand the activity. If Dissemination Processes are not effective, they will be dropped from the NDN.

Changes: None.

Section 788.10 What activities must an applicant propose to carry out if it receives an award?

Comments: The Secretary received ten comments concerning the requirement that State Facilitators provide information about certain other programs sponsored by the Department, including ERIC, Research and Development Centers and Regional Educational Laboratories and schools recognized through the Secretary's School Recognition Program. Some commenters felt that the products, materials and other activities included in these programs had not been validated nor proven to be transportable, and were therefore not appropriate for dissemination by the NDN. Others were concerned that State Facilitators would not have the resources to take on those additional responsibilities.

Discussion: The Secretary believes that the National Diffusion Network is an appropriate vehicle for the dissemination of information about other Department programs related to school improvement. However, State Facilitators and the Private School Facilitator will not be expected to make the dissemination of that information a major part of their activities, but will be expected to be able to refer interested persons in their States, or private school personnel, to sources of information.

Changes: No change has been made in the basic requirements of this section. However, a technical change has been made to replace "the Secretary's School Recognition Program" with broader language.

Part 789 Private School Facilitator

Comments: The Secretary received ninety-nine comments opposed to the establishment of a Private School Facilitator and ten comments in support of this new program. Many commenters expressed concern about the overlap of responsibilities with State Facilitators, and felt that the relationships between the two kinds of projects were unclear. Others felt that it would be logistically unfeasible for one grantee to provide the kinds of services State Facilitators provide on a nationwide scope. Those who supported the addition of the Private School Facilitator felt that it would greatly improve the access of private schools to participation in the National Diffusion Network. Some comments were based upon philosophical concerns about setting up separate facilitators: State Facilitators for public schools and a Private School Facilitator for private schools. Other comments were based on the belief that support for State Facilitators would be cut to provide funds for the Private School Facilitator.

Comments: The Secretary believes that a Private School Facilitator working with the State Facilitators will help to improve the services to both public and private schools as they generate more exemplary projects. The Secretary hopes that the details of the day-to-day working relationships among the various kinds of projects will be developed with input from project personnel.

Changes: None.

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Part XI

Department of Housing and Urban Development

Office of the Secretary

Comprehensive Homeless Assistance Plan; Requirements and Delegation of Authority; Notices

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N-87-1716; FR-2398]

Comprehensive Homeless Assistance Plan

AGENCY: Office of the Secretary, HUD.

ACTION: Notice.

SUMMARY: This Notice establishes requirements for the Comprehensive Homeless Assistance Plan contained in Subtitle A of Title IV of the Stewart B. McKinney Homeless Assistance Act. (Pub. L. 100–77, approved July 22, 1987.) The Notice states that HUD may not make assistance available under any of Title IV's provisions to, or within the jurisdiction of, States, or certain larger metropolitan cities and urban counties, unless the jurisdiction has a HUD-approved Comprehensive Plan. The Notice specifies the jurisdictions that are subject to this provision, and describes the provision's effects on the applicants and recipients under each of Title IV's programs.

The Notice indicates that the Secretary of Education is required to distribute funds under the Statewide Literacy Initiatives contained in section 702 of the Act, on the basis of assessments of the homeless population made in State Plans. States must also describe in the Plan how they will coordinate projects conducted under the Department of Labor's Job Training for the Homeless authority contained in Subtitle C of Title VII of the Act, with other services for homeless individuals assisted under the Act.

The Notice also specifies the required Plan content, and procedures and timing for the submission of proposed Plans to HUD, HUD's review and approval of Plans, and State or local reviews and reports on their progress in carrying out the Plans. Finally, the Notice requires that applications for Title IV assistance include a certification that the activities proposed for assistance are consistent with the Plan.

EFFECTIVE DATE: August 14, 1987. Comprehensive Homeless Assistance Plans must be submitted to HUD no later than September 28, 1987.

FOR FURTHER INFORMATION CONTACT: For HUD provisions under Title IV of the Act: James R. Broughman, Director, Entitlement Cities Division, Room 7282, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755–5977. For matters relating to Emergency Shelter Grants to States: James N. Forsberg, Director, State and Small Cities Division, Room 7184, telephone (202) 755–6322; for Department of Education provisions under section 702 of the Act: Dr. Thomas L. Johns, Acting Director, Policy Analysis Staff, Office of Vocational and Adult Education, U.S. Department of Education, Room 620, Reporter's Building, 400 Maryland Avenue, SW., Washington, DC 20202–5609 (202) 732–2237; for the Department of Labor provisions under Subtitle C of Title VII of the Act: Patricia W. McNeil, Administrator, Office of Strategic Planning and Policy Development, Employment and Training Administration, Room N–5637, Frances Perkins Building, 200 Constitution Avenue, Washington, DC 20210 (202) 535–0659. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Background

On July 22, 1987, the President signed into law the Stewart B. McKinney Homeless Assistance Act ("the Act"). (Pub. L. 100–77) Title IV of the Act contains a number of housing assistance provisions to be administered by HUD. Subtitle A establishes requirements for the Comprehensive Homeless Assistance Plan (Plan). Assistance under the other provisions of Title IV may not be made available to, or within the jurisdiction of, States and certain cities and counties that do not have a HUD-approved Plan. Individual applications for Title IV assistance must include a certification that the activities proposed for assistance are consistent with the approved Plan.

The Plan is also required in connection with programs administered by the Departments of Education and Labor under Title VII of the Act. Section 702 requires the Secretary of Education to distribute funds to States under the Statewide Literacy Initiatives program for adult homeless individuals, on the basis of assessments of the homeless population made in State Plans. Under section 732, States must describe in their Plans how they will coordinate job training demonstration projects for homeless individuals under Subtitle C of Title VII with other services for homeless individuals assisted under the Act.

Subtitle B reauthorizes with amendment the Emergency Shelter Grants program that was initially authorized in HUD's regular appropriation for fiscal year 1987.[1] The program authorizes HUD to make grants for the rehabilitation or conversion of buildings for use as emergency shelter for the homeless, for the payment of certain operating expenses, and for social service expenses in connection with emergency shelter for the homeless. HUD may make formula grants to States, and to metropolitan cities and urban counties that meet a minimum funding allocation threshold. The amount of these grants is based upon the jurisdiction's share of formula funding for the previous fiscal year under the Community Development Block Grant (CDBG) program authorized by title I of the Housing and Community Development Act of 1974 (the "1974 Act"). The Act also provides for a separate formula allocation for territories and possessions. HUD is authorized to reallocate funds that become available for obligation after initial allocation under the program, to States, units of general local government, and private nonprofit organizations.

The initial allocation to States on the basis of their CDBG formula participation must be distributed to units of general local government within the State. Any unit of general local government—those receiving formula or reallocated amounts from HUD or a distribution from the State—may distribute all or part of the amounts it receives to nonprofit organizations.

Subtitle C authorizes the Supportive Housing Demonstration program. This program has two components—a reauthorization (with amendment) of the Transitional Housing Demonstration program (also originally authorized in HUD's regular fiscal year 1987 appropriation),[2] and a new program of Permanent Housing for the Handicapped Homeless.

The Transitional Housing element is designed to provide housing and supportive services to facilitate the movement of homeless individuals to independent living within a reasonable period of time. The Permanent Housing component is designed to provide community-based, long-term housing

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[1] Section 101(g), Pub. L. 99–500 (approved October 18, 1986) and Pub. L. 99–591 (approved October 30, 1986), making appropriations as provided for in Part B of Title V of H.R. 5313, 99th Cong., 2d Sess. (1986) (as passed by the House of Representatives and by the Senate), to the extent and in the manner provided for in H. Rep. No. 977, 99th Cong., 2d Sess. (1986).

[2] Section 101(g), Pub. L. 99–500 (approved October 18, 1986) and Pub. L. 99–591 (approved October 30, 1986), making appropriations as provided for in Part C of Title V of H.R. 5313, 99th Cong., 2d Sess. (1986) (as passed by the House of Representatives and by the Senate), to the extent and in the manner provided for in H. Rep. No. 977, 99th Cong., 2d Sess. (1986).

and supportive services for handicapped homeless persons.

HUD is authorized to make advances for the acquisition or substantial rehabilitation of existing structures, and grants for the moderate rehabilitation of existing structures, for use as Transitional and Permanent Housing. HUD is also authorized to provide assistance to help defray the costs of certain operating expenses (Transitional Housing only). Grantees for the Transitional Housing component are States, metropolitan cities, urban counties, Indian tribes, and private non-profits. Only States may apply for Permanent Housing assistance, but they must pass the assistance on to private nonprofits to carry out the assisted activities.

Subtitle D creates a new program of Supplemental Assistance for Facilities to Assist the Homeless. The program authorizes HUD to provide assistance to States, metropolitan cities, urban counties, Indian tribes, and private nonprofit organizations:

(1) To cover the costs in excess of assistance provided under the Emergency Shelter Grants or the Supportive Housing Demonstration program that are required (A) to meet the special needs of homeless families with children, elderly homeless individuals, or the handicapped; or (B) to facilitate the transfer and use of public buildings to assist homeless individuals and families; or

(2) To provide comprehensive assistance for particularly innovative programs for, or alternative methods of, meeting the immediate and long-term needs of homeless individuals by assisting the purchase, lease, renovation, or conversion of facilities or the provision of supportive services for homeless individuals.

Subtitle E provides new funding authority for the Section 8 Moderate Rehabilitation program. The authority will be made available to public housing agencies (PHAs), and must be used in connection with the moderate rehabilitation of Single Room Occupancy (SRO) housing. Homeless individuals must be given a first priority for occupancy in assisted units.

A summary of Subtitles B–E of Title IV is included at the end of this Notice, as Appendix A. Specific requirements and procedures for these programs will be set forth in documents published in the **Federal Register** to implement each of them.

Subtitle A requires HUD to publish a notice in the **Federal Register** establishing such requirements as may be necessary to implement the Comprehensive Homeless Assistance Plan. This notice establishes these requirements. The administration of these requirements by HUD will be conducted by the Assistant Secretary for Community Planning and Development in consultation with the Assistant Secretary for Policy Development and Research and the Assistant Secretary for Housing-Federal Housing Commissioner.

Requirement for Plan

1. *Prohibition of Assistance.* The Act prohibits HUD from making assistance available under any of Title IV's provisions "to, or within the jurisdiction of," (1) a State or (2) a metropolitan city or urban county that is eligible for a formula grant under the Emergency Shelter Grants program contained in Subtitle B,[3] unless the jurisdiction has a HUD-approved Comprehensive Homeless Assistance Plan. (State officials should note that units of general local government that do not qualify for a Shelter Grant formula allocation and private non-profits within such jurisdictions cannot receive funds under title IV unless the State has an approved Plan.)

2. *Who must have a Plan.* Each of Title IV's grant programs defines "State" to mean the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

The Shelter Grants program uses the definition of "metropolitan city" and "urban county" contained in sections 102(a) (4) and (6), respectively, of title I of the Housing and Community Development Act of 1974 Act (HCD Act). Section 413(b) of the Act generally limits the eligibility of metropolitan cities and urban counties for a formula grant under the Shelter Grants authority to those whose allocations, based on their prior year's CDBG allocations, exceed .05 percent of the current year's Shelter Grants appropriation.

Each "State" and ESG formula city or county must have an approved Comprehensive Plan if it wishes to apply for funding under Subtitles B–D of the Act. This is ture whether the jurisdiction is receiving funds for its own use, or is required or permitted to pass the assistance through to other recipients.

As noted above, Title IV contains several instances in which the applicant and the ultimate recipient may be different. Thus, in the Emergency Shelter Grants program, States apply for assistance, but must distribute all amounts to units of general local government, and units of general local government—those that receive funding directly from the HUD or from the State—may distribute amounts to private nonprofit organizations. In the Permanent Housing element of the Supportive Housing Demonstration, States apply for assistance, even though nonprofits carry out the assisted activities. The Comprehensive Plan requirements apply to the *applicant* and *not* the ultimate *recipient* in these cases, since only the applicant has the right to seek funding under the statute and to enter into a grant relationship with HUD.

In addition, if the applicant must have an approved Plan to receive Title IV assistance, but it does not, it is not relevant that the actual assisted activities are carried out in a jurisdiction with a Plan. For example, a State seeking funding under the Permanent Housing component of the Supportive Housing Demonstration may not make up for its failure to have an approved Plan by applying for funding for a nonprofit that wishes to carry out an assisted project within the jurisdiction of an ESG formula grantee with an approved Plan.

The Department has included at the end of this Notice a list of the jurisdictions sdbject to the Plan (Appendix B). These are the jurisdictions that must have an approved Plan, if Title IV assistance is to be made available to them or within their jurisdiction.

3. *Other assistance recipients.* As noted above, Subtitle A also prohibits the award of Title IV funds "within the jurisdiction" of entities that are subject to the Plan's requirements, but that do not have an approved Plan. This could affect funding for the following entities that are eligible to apply for and receive Title IV funding directly from HUD:

—Private non-profit organizations, and units of general local government that do not qualify for a Shelter Grants formula amount, in the Shelter Grants program, the Transitional Housing element of Supportive Housing Demonstration program, and the program of Supplemental Assistance for Facilities to Assist the Homeless; and

—Public Housing Agencies (PHAs) seeking Section 8 Moderate Rehabilitation for SROs.

If PHAs and nonprofits apply for funding *outside* the jurisdiction of an ESG formula grantee, their eligibility for Title IV assistance turns on whether the

[3] For ease of reference, the cities and counties described in clause (2) will be referred to as "ESG formula grantees."

State in which they are seeking funding has an approved Plan. Similarly, units of general local government that do not qualify for a Shelter Grants formula allocation may receive funding—both from the State and from HUD—only if the State has an approved Plan.

For nonprofits (who may apply for reallocated funds under the Shelter Grants program), and for PHAs applying under the Section 8 SRO Moderate Rehabilitation authority, that are applying for funding to be used *within* the jurisdiction of an ESG formula grantee, eligibility for assistance turns on whether the city or county has an approved Plan. If the Plan has not been approved, these entities may not receive this assistance, even if the State in which the city or county is located has an approved Plan.

A nonprofit organization, applying for funding under the Transitional Housing element of the Supportive Housing Demonstration or the Supplemental Assistance for Facilities to Assist the Homeless programs, will be required to meet the Act's certification requirements in the following manner:

—A nonprofit seeking funding for a project within an ESG formula grantee's jurisdiction must submit a certification from the ESG formula grantee, stating that the proposed project is consistent with the ESG formula grantee's Plan.

—Where the ESG formula grantee in whose jurisdiction the nonprofit is seeking funding does not have an approved Plan, or where the nonprofit is seeking funding outside the jurisdiction of an ESG formula grantee, the required certification must be obtained from the State, provided the State has an approved Plan.

The funding eligibility of entities that receive amounts from other entities depends on whether the original applicant has an approved Plan. Thus, units of general local government that receive Shelter Grants amounts from States, and nonprofits that receive Permanent Housing assistance from States, may receive funding only if the State has an approved Plan. Nonprofits that receive Shelter Grants amounts from units of general local government may receive funding only if the original applicant—the State or an ESG formula grantee—has an approved Plan.

4. *Indian tribes.* Tribes are eligible applicants under the Transitional Housing component of the Supportive Housing Demonstration program and the program of Supplemental Assistance for Facilities to Assist the Homeless. For purposes of assistance under these programs, HUD will use the definition of Indian tribes for the CDBG program contained in section 102(a)(17) of the HCD Act: any Indian tribe, band, group, and nation, including Alaska Indians, Aleuts, and Eskimos, and any Alaskan Native Village, of the United States, which is considered an eligible recipient under the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638) or under chapter 67 of title 31, United States Code.

As noted above, the Plan's funding prohibition applies only to assistance provided to, or within the jurisdiction of, States or ESG formula grantees. Because of the unique, sovereign status of these tribes, the Department believes that for purposes of this Notice, they are properly considered outside the jurisdiction of these governments. Thus, Indian tribes may apply for and receive assistance within their jurisdictions without the submission and approval of a Comprehensive Plan, or the submission of a certification of consistency of proposed activities with the Plan.

Plan Content

The Comprehensive Homeless Assistance Plan must contain the following elements:

(1) A statement describing the need, or lack thereof, for assistance provided under each of the programs included in Subtitles B–E of Title IV of the Act: *i.e.*, the need for assistance provided by the Emergency Shelter Grants program, both the Transitional and Permanent Housing components of the Supportive Housing Demonstration programs, the Supplemental Assistance program, and the Single Room Occupancy Section 8 Moderate Rehabilitation authority;

(2) A brief inventory of facilities and services that assist the homeless population in the jurisdiction;

(3) A strategy (A) to match the needs of the homeless population with available services in the jurisdiction and (B) to recognize the special needs of the various types of homeless individuals, particularly families with children, the elderly, the mentally ill, and veterans;

(4) An explanation of how assistance under each of the authorities referred to above in Subtitles B–E of Title IV of the Act will complement and enhance the available services;

(5) In the case of the States,[4] an assessment of the need for literacy training and basic skills remediation for adult homeless individuals within the jurisdiction, conducted under Subtitle A of title VIII of the Act; and

(6) In the case of States,[5] a description of how the jurisdiction will coordinate job training demonstration projects for the homeless conducted under Subtitle C of Title VII of the Act with other services for homeless individuals assisted under the Act.

In preparing the required information, jurisdiction should be aware that failure to address each of elements (1)–(4) of the Plan (including the need for and effect of assistance under elements (1) and (4), above, for each of Title IV's programs) will result in Plan disapproval. In addition, failure to indicate a need for assistance under any of Subtitles B–E will result in disapproval of a subsequent application for assistance under any such Subtitle on grounds that the application is inconsistent with the Plan.

Elements (5) and (6) pertain to the authorities administered by the Departments of Education and Labor, respectively, under Title VII of the Act. These elements must be included in the Plan, but failure to include them will not be grounds for HUD disapproval of a Plan that is otherwise approvable. States should note, however, that failure to include these elements—while not affecting their eligibility for Title IV assistance—could affect their participation under the Title VII programs. Questions regarding elements (5) and (6) should be addressed to the individuals listed above as contact points for the Departments of Education and Labor, as appropriate.

In developing comprehensive plans, it should be noted that section 103 of the Act defines "homeless" or "homeless individual" to include:

(1) An individual who lacks a fixed, regular, and adequate nighttime residence; and

(2) An individual who has a primary nighttime residence that is—

(A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(B) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(C) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

The term does not include a prison inmate.

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[4] States are defined for purposes of the Department of Education's authority under section 702 of the Act as the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

[5] States are defined for purposes of the Department of Labor's authority under Subtitle C of Title VII of the Act as the 50 States and the District of Columbia.

For the Permanent Housing part of the Supportive Housing Demonstration, the following definition of "handicapped homeless person" is used:

A handicapped individual who is a homeless individual within the meaning of section 103, is at risk of becoming a homeless individual, or is a handicapped individual who has been a resident of transitional housing carried out pursuant to provisions made effective by section 101(g) of Pub. L. 99–500 or 99–591 [the initial Transitional Housing Demonstration].

Section 401 of the Act requires Comprehensive Plans to cover the "jurisdiction" of States and ESG formula cities and counties, and requires the Plan to contain information for "that jurisdiction." Since the Act does not limit the term "jurisdiction", and cities and counties are located within the "jurisdiction" of the States, the Department believes that the Act requires the State Plan to address the Plan elements for all its jurisdictions, including ESG formula cities and counties.

This conclusion is necessary to prevent potential gaps in Comprehensive Plan coverage. Section 401 of the Act permits nonprofits seeking funding under Subtitles C and D of the Act to use the State Plan as their funding vehicle, if they wish to apply for assistance within an ESG formula city or county that does not have an approved Plan. If the State Plan did not address the Plan elements within the city or county, there would be no Plan covering the jurisdiction, and no way of assessing the effect of funding on the homeless needs and services of the jurisdiction. The Department believes that this circumstance is antithetical to the Act's clear intent of ensuring that activities assisted under Title IV are consistent with the information provided in approved Plans. Thus, State Plans must address the required Plan Content for all areas within the State, including ESG formula cities and counties.

Plan Submission

Comprehensive Homeless Assistance Plans must be forwarded to the responsible HUD Field Office, and be received or post-marked no later than [insert date 45 days after publication]. The Department believes that this 45-day Plan preparation period is responsive both to the need to allow jurisdictions adequate time to prepare their Plans, and to the congressional concern evidenced throughout Title IV that amounts appropriated be made available to assist the homeless at the earliest possible time.

Plan Review and Approval

HUD will process and review each Comprehensive Homeless Assistance Plan as expeditiously as possible, and will approve the Plan, unless HUD determines that it plainly does not satisfy the required Plan content, described above. HUD will provide written notification to each jurisdiction that submits a Plan of the Plan's approval, within 30 days after its receipt by HUD.

If HUD disapproves a Plan, HUD will notify the jurisdiction of the Plan's disapproval, within 15 days of the determination to disapprove. The notification will inform the jurisdiction of the reasons for disapproval, as well as the steps that need to be taken to make the Plan acceptable. If HUD fails to notify the jurisdiction that its Plan has been disapproved within the 15-day period, the Plan will be deemed approved. (Since the 15-day period for HUD to notify a jurisdiction of disapproval of its plan is triggered by HUD's decision to disapprove—an event that may occur early or late in the 30-day review period—a jurisdiction receiving no notice may assume that its plan has been approved 45 days after HUD's receipt of the jurisdiction's plan.)

HUD will permit amendments to, or the resubmission of, any Plan, including a Plan that is disapproved. The procedures and time periods set forth in this section for the review and approval or disapproval of the initial submission of Plans also will govern subsequent amendments to a Plan, or its resubmission.

It should be noted, however, that individual programs authorized by the Act may impose time limits for Plan approval that may affect jurisdictions' ability to amend or resubmit their Plans. Additional information on these requirements may be found in the **Federal Register** documents implementing each of the Act 's programs. The Department wishes, however, to call one such time period to the attention of States and ESG formula cities and counties receiving a funding allocation under the ESG program. Subsection 413(d) of the Act provides that if a city or a county eligible for a formula grant fails to obtain approval of its Comprehensive Homeless Assistance Plan under Subtitle A of Title IV within 90 days after amounts first become available for the program, the grant amount will be reallocated to the State in which the city or county is located. HUD must reallocate the following amounts to other States, cities, and counties that demonstrate extraordinary need or large numbers of homeless individuals (as determined by HUD):

(1) Any city or county formula amounts that cannot be reallocated to the State under the preceding sentence; and

(2) Any State formula amount, if the State fails to secure approval of its Comprehensive Plan within the 90-day period referred to above.

The 90-day clock would likely expire before the Department could complete its review and approval of a Comprehensive Plan. As explained in greater detail in the Notice to be published establishing the requirements for the use of ESG funds appropriated by the Supplemental Act, the Department will provide States and formula cities and counties 105 days from publication of this Notice to secure Plan approval. Failure to secure approval within this period will result in the reallocation of the amounts involved.

Finally, the Department believes that the following language in the Conference Report accompanying the Act is instructive:

> The conferees want to stress that the purpose of these plans is not to provide a source of delay or administrative burden; but to ensure that assistance under this emergency legislation is provided in a coherent and expeditious manner. (H. Rep. No. 174, 100th Cong., 1st Sess. 73(1987))

The Department intends to carry out its responsibilities with respect to the review and approval of Comprehensive Plans in a manner that is consistent with the Conferees' views.

Performance Reviews and Reports

Each jurisdiction that has an approved Comprehensive Plan must review annually the progress it has made in carrying out its Plan, and must report annually the results of its review to HUD. The first report is due not later than January 31, 1989, covering the period ending on December 31, 1988. HUD will review these reports, and make such recommendations as may be appropriate.

Further assistance under Title IV of the Act may not be made available to, or within the jurisdiction of, any State or any ESG formula grantee that fails to review and report its progress to HUD, as described above.

Assistance Applications

Any application for assistance under Title IV of the Act must contain, or be accompanied by, a certification by the public official responsible for submitting the Plan for the jurisdiction to be served

by the proposed activities, that the activities are consistent with the Plan.

Waivers

The Secretary of HUD may waive any requirement of this Notice that is not required by law, whenever it is determined that undue hardship will result from applying the requirement, or where application of the requirement would adversely affect the purposes of Subtitle A of Title IV of the Act.

Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

The information collection requirements contained in this notice have been submitted to the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). When OMB has approved these requirements, HUD will announce control numbers in a Federal Register Notice.

The Catalog of Federal Domestic Assistance program numbers are 14.178 and 14.231.

Authority: Section 401(e) of the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100–77, approved July 22, 1987; and sec. 7(d) of the Department of Housing and Urban Development Act, (42 U.S.C. 3535(d))).

Dated: August 11, 1987.

Jack R. Stokvis,

General Deputy Assistant Secretary for Community Planning and Development.

Appendix A—Summary of HUD Assistance Provisions in Title IV of the Stewart B. McKinney Homeless Assistance Act

Title IV of the Act reauthorizes (with amendment) the Department's two existing homeless assistance programs—the Emergency Shelter Grants and Transitional Housing Demonstration programs. It also creates two new authorities to be administered by HUD—a program of Permanent Housing for the Handicapped Homeless (included with the Transitional Housing authority in a new Supportive Housing Demonstration), and a program of Supplemental Assistance for Facilities to Assist the Homeless. The law also authorizes new funding for the Section 8 Moderate Rehabilitation program for single room occupancy (SRO) units. A brief summary of these features follows.

Subtitle B of title IV reauthorizes the existing Emergency Shelter Grants program. This program, originally enacted as Part C of the Homeless Housing Act of 1986, in HUD's fiscal year 1987 appropriation,[1] authorizes HUD to make grants to States, units of general local government, and private nonprofit organizations for the rehabilitation or conversion of buildings for use as emergency shelter for the homeless,[2] and for the payment of certain operating and social service expenses in connection with emergency shelter for the homeless. The new law makes the following substantive changes to the program.

—Changes the minimum formula grant for metropolitan cities and urban counties from a flat $30,000 to .05 percent of the amounts appropriated for the program for any fiscal year. This threshold does not apply to any city that: (1) Is located in a State that does not have counties as local governments, (2) has a population greater than 40,000 but less than 50,000 and (3) was allocated in excess of $1 million in community development block grant funds in fiscal year 1987.

—Provides that if a city or a county eligible for a formula grant fails to obtain approval of its Comprehensive Homeless Assistance Plan under subtitle A of Title IV within 90 days after amounts first become available for the grant amount will be reallocated to the State in which the city or county is located. HUD must reallocate the following amounts to other States, cities, and counties that demonstrate extraordinary need or large numbers of homeless individuals (as determined by HUD):

1. Any city or county formula amounts that cannot be reallocated to the State under the preceding sentence; and

2. Any State formula amount, if the State fails to secure approval of its Comprehensive Plan within the 90-day period referred to above.

—Requires the Secretary to establish a separate allocation formula for assistance to the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

—Waives the 15 percent limitation on the use of assistance for essential services," if the local government receiving the assistance demonstrates that the other eligible activities under the program are already being carried out in the locality with other resources.

—Deletes the requirement that program grantees submit a Homeless Assistance Plan as part of their application, and replaces it by a certification that the proposed activities are consistent with the Comprehensive Homeless Assistance Plan.

The law authorizes appropriations for the program of $100 million for fiscal year 1987 and $120 million for fiscal year 1988. The Supplemental Appropriations Act, 1987 (Pub. L. 100–71, approved July 11, 1987) appropriated $50 million for the program for FY 1987.

Subtitle C of title IV authorizes a new Supportive Housing Demonstration program. The program has two components: transitional housing and permanent housing for handicapped homeless persons. The transitional housing element is based upon the Transitional Housing Demonstration program that was enacted as Part B of the 1986 Act in HUD's regular fiscal year 1987 appropriation.[1] The 1986 Demonstration is designed to develop innovative approaches to providing housing and supportive services to help facilitate the transition to independent living for homeless persons who are capable of making the transition within a reasonable period of time. It authorizes HUD to make assistance available to eligible governmental and private nonprofit entities in the forms of: (1) Interest-free advances to cover up to $200,000 of the costs of acquiring or rehabilitating (or both) existing structures for use in the provision of housing and supportive services for homeless persons; (2) funding of up to 75

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[1] Section 101(g), Pub. L. 99–500 (approved October 18, 1986) and Pub. L. 99–591 (approved October 30, 1986), making appropriations as provided for in H.R. 5313, 99th Cong., 2d Sess. (1986) (as passed by the House of Representatives and by the Senate), to the extent and in the manner provided for in H. Rep. No. 977, 99th Cong., 2d Sess. (1986).

[2] Section 103 of the Act defines "homeless" or homeless individual" to include (1) an individual who lacks a fixed, regular, and adequate nighttime residence; and (2) an individual who has a primary nighttime residence that is (A) a supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill); (B) an institution that provides a temporary residence for individuals intended to be institutionalized; or (C) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

The term does not include a prison inmate.

percent of the operating costs of the housing; and (3) technical assistance to recipients in carrying out activities under the Demonstration.

The major features of the Supportive Housing Demonstration program, as well as the major differences between the transitional housing element and the 1986 Act's Transitional Housing Demonstration program, follow:

—Consistent with the 1986 Act's Demonstration program, the new law defines "transitional housing" as a project that is intended to facilitate the movement of homeless individuals to independent living within a reasonable amount of time, as determined by the Secretary. "Permanent housing for handicapped homeless persons" is defined to mean a project that provides community-based, long-term housing and supportive services for not more than eight handicapped homeless persons.

—Applicants for transitional housing include States, metropolitan cities, urban counties, tribes, or private nonprofit organizations. (This is narrower than the 1986 Transitional Housing Demonstration applicants, which may be any "governmental entity.") For permanent housing for handicapped homeless persons, the applicant is the State in which the project is located, with the assisted activity carried out by nonprofit organizations selected by the State.

—Program participants include "homeless individuals" (as defined in footnote 2), and, in the program for permanent housing for handicapped homeless persons, those "at risk of becoming homeless," and handicapped homeless residents of transitional housing under the 1986 Demonstration program.

—The types of assistance under the program are (1) advances up to $200,000 of the aggregate cost of acquisition, substantial rehabilitation, or acquisition and rehabilitation of an assisted structure for use in the program; (2) grants for the moderate rehabilitation of existing structures; (3) annual payments of up to 75 percent of the operating costs of transitional housing only; and (4) technical assistance. (The 1986 Act's Transitional Housing Demonstration program specifies that advances are "non-interest bearing," and does not have a separate moderate rehabilitation category; all rehabilitation work is funded through an advance, and is subject to the $200,000 limit and the repayment provisions described below.)

—Any acquisition/rehabilitation advance must be repaid when the project is no longer used as supportive housing under the program. Recipients must repay the entire amount of the advance if the project is used as supportive housing for fewer than 10 years, with a 10 percent reduction for each year that the project is used under the program beyond 10 years. Repayment is not required if HUD determines that the project is no longer needed for use as supportive housing and approves the use of the project for the direct benefit of lower income persons. (Under the 1986 Act's Transitional Housing Demonstration, repayment of advances is required if the structure is not used as transitional housing or for an approved alternate charitable use before the end of the 10-year period, but there is no repayment liability after 10 years.)

—Upon the disposition of a project acquired or rehabilitated with assistance before the end of 20 years, the Secretary must take steps to prevent the recipient from unduly benefiting from the disposition. An exception is made for a disposition resulting in the use of the project for the direct benefit of lower income persons or where all of the proceeds are used to provide supportive housing. (No provision in the 1986 Demonstration program.)

—In the case of transitional housing, recipients are required to supplement the amount of any acquisition/rehabilitation advance or moderate rehabilitation grant with an equal amount of funds from other sources. Recipients may include the value of any donated material or building, and the value of any lease on a building. (The 1986) Demonstration program contains no specific matching provision, but HUD's guidelines for the program impose a similar dollar-for-dollar match on both acquisition/rehabilitation advances and operating assistance; HUD's guidelines only permit "in-kind" contributions of structures to count toward the matching requirement.) The permanent housing for handicapped homeless persons component requires a State applying for assistance to certify that it will supplement assistance under the program with at least an equal amount of State or local government funds. For both components of the program, no assistance (or any State or local government matching funds) may be used to replace other public funds for handicapped persons, homeless individuals, or handicapped homeless individuals.

—Recipients may use up to five percent of an advance or a grant for administrative purposes. (No provision in the 1986 Transitional Housing Demonstration program.)

—The law authorizes the appropriation of $80 million for fiscal year 1987 and $100 million for fiscal year 1988, of which at least $20 million each year must be allocated to transitional housing projects that serve homeless families with children and at least $15 million must be allocated to projects to provide permanent housing for handicapped homeless persons. The law also requires that priority be given to supportive housing for deinstitutionalized homeless individuals, homeless families with children, and homeless individuals with mental disabilities and other handcapped persons. The law provides a special funding priority for supportive housing for the deinstitutionalized homeless individuals and other homeless individuals with mental disabilities.

The Supplemental Appropriations Act, 1987, appropriated $80 million for the Supportive Housing Demonstration Program for FY 1987. The conference Report accompanying the law indicate that $15 million are for permanent housing, $20 million for transitional housing for families with children, and $30 million for transitional housing for deinstitutionalized homeless individuals and other individuals with mental disabilities. (H. Rep. No. 195, 100th Cong., 1st Sess. 107 (1987))

Subtitle D of title IV establishes a new program of Supplemental Assistance for Facilities to assist the Homeless. The program authorizes the Secretary to provide assistance to States, metropolitan cities, urban counties, tribes, or private nonprofit organizations:

(1) To cover the costs in excess of assistance provided under the Emergency Shelter Grants program or the Supportive Housing Demonstration program that are required to meet the special needs of homeless families with children, elderly homeless individuals, or the handicapped; or to facilitate the transfer and use of public buildings to assist homeless individuals and families; or

(2) To provide comprehensive assistance for particularly innovative programs for, or alternative methods of, meeting the immediate and long-term needs of homeless individuals by assisting the purchase, lease, renovation, or conversion of facilities or the provision of supportive services for homeless individuals.

Assistance under the Supplemental Assistance for Facilities to Assist the Homeless program consists of non-interest bearing advances for the acquisition, lease, renovation, substantial rehabilitation, or conversion of facilities to assist the homeless, and grants for moderate rehabilitation and for other purposes. Assistance may only be made available if the applicant has made reasonable efforts to use all available local resources (including resources under Title IV of the Act), and these resources are insufficient or unavailable to carry out the purpose for which assistance is sought. No assistance may be used to supplant non-Federal resources provided for any project. Advances under the program are subject to repayment, and the program contains "undue enrichment" provisions comparable to those described above for the Supportive Housing Demonstration program.

Up to $10,000 of assistance for any project may be used for outpatient health services. HUD and HHS must establish guidelines for determining the appropriateness of the proposed services. HUD must consult with HHS regarding any application that includes such services. If HHS determines that the services do not meet the guidelines, that portion of the application may not be approved.

The law authorizes the appropriation of $25 million for each of fiscal years 1987 and 1988 to carry out the program. HUD would be required, to the maximum extent practicable, to reserve not less than one-half of all funds for the support of facilities designed primarily for homeless elderly individuals and homeless families with children. A portion of this set-aside must be used for child care facilities. HUD is also required, to the extent practicable, to distribute funds available to carry out the program equitably across geographic areas. The Supplemental Appropriations Act, 1987, provided $15 million for the program for FY 1987.

Subtitle E of title IV authorizes an additional $35 million in budget authority for each of fiscal years 1987 and 1988 for housing assistance payments for SRO units under the Section 8 Moderate Rehabilitation program. These amounts must be allocated on the basis of national competition to applicants that best demonstrate a need for the assistance and the ability to undertake and carry out an assisted program. The total cost of rehabilitation that could be compensated for in a HAP contract could not exceed $14,000 per unit, plus the cost of specified fire and safety improvements. The Secretary could increase the $14,000 limit in areas of high construction costs or stringent fire or building codes. Annual contributions contracts with public housing authorities must run for 10 years, with an additional 10 years at the option of HUD. The first priority for occupancy of housing rehabilitated under this authority must be given to homeless individuals. The Supplemental Appropriations Act, 1987, provided the amount authorized for FY 1987.

Appendix B—Jurisdictions Subject to the Plan

1. All States and the Commonwealth of Puerto Rico

II. Territories:
- Virgin Islands
- Guam
- American Samoa
- Northern Mariana Islands
- Trust Territory of the Pacific Islands (Palau)

III. ESG Formula Metropolitan Cities and Urban Counties:

State and Community

Alabama: Birmingham, Huntsville, Mobile, Montgomery, and Jefferson County.
Alaska: Anchorage.
Arizona: Mesa, Phoenix, Tucson, Maricopa County, Pina County.
Arkansas: Little Rock.
California: Anaheim, Berkeley, Compton, El Monte, Fresno, Glendale, Inglewood, Long Beach, Los Angeles, Oakland, Oxnard, Pasadena, Pomona, Riverside, Sacramento, San Bernardino, San Diego, San Francisco, San Jose, Santa Ana, Stockton, Alameda County, Contra Costa County, Fresno County, Kern County, Los Angeles County, Marin County, Orange County, Riverside County, Sacramento County, San Bernardino County, San Diego County, San Joaquin County, San Mateo County, Santa Clara County, Sonoma County, and Ventura County.
Colorado: Colorado Springs, Denver, and Adams County.
Connecticut: Bridgeport, Hartford, New Britain, New Haven, and Waterbury.
Delaware: Wilmington, and New Castle County.
District of Columbia: Washington.
Florida: Ft Lauderdale, Hialeah, Jacksonville, Miami, Miami Beach, Orlando, St. Petersburg, Tallahassee, Tampa, Brevard County, Broward County, Dade County, Hillsborough County, Orange County, Palm Beach County, Pasco County, Pinellas County, Polk County, Seminole County, and Volusia County.
Georgia: Albany, Atlanta, Augusta, Columbus, Macon, Savannah, Cobb County, De Kalb County, and Fulton County.
Hawaii: Honolulu.
Illinois: Chicago, Cicero, East St. Louis, Evanston, Oak Park, Peoria, Rockford, Cook County, DuPage County, Lake County, Madison County, St. Clair County, and Will County.
Indiana: East Chicago, Evansville, Fort Wayne, Gary, Hammond, Indianapolis, South Bend, Terre Haute, and Lake County.
Iowa: Des Moines, and Sioux City.
Kansas: Kansas City, Topeka, and Wichita.
Kentucky: Covington, Lexington-Fayette, Louisville, and Jefferson County.
Louisiana: Baton Rouge, New Orleans, Shreveport, and Jefferson Parish.
Maine: Portland.
Maryland: Baltimore, Anne Arundel County, Baltimore County, Montgomery County, and Prince Georges County.
Massachusetts: Boston, Cambridge, Fall River, Lawrence, Lowell, Lynn, Medford, New Bedford, Newton, Quincy, Somerville, Springfield, and Worcester.
Michigan: Dearborn, Detroit, Flint, Grand Rapids, Kalamazoo, Lansing, Pontiac, Saginaw, Genesee County, Oakland County, and Wayne County.
Minnesota: Duluth, Minneapolis, St. Paul, and Hennepin County.
Mississippi: Jackson.
Missouri: Kansas City, St. Joseph, St. Louis, and St. Louis County.
Nebraska: Omaha.
Nevada: Las Vegas and Clark County.
New Hampshire: Manchester.
New Jersey: Atlantic City, Bayonne, Camden, East Orange, Elizabeth, Jersey City, Newark, Paterson, Trenton, Bergen County, Burlington County, Camden County, Essex County, Gloucester County, Hudson County, Middlesex County, Monmouth County, Morris County, Ocean County, and Union County.
New Mexico: Albuquerque.
New York: Albany, Babylon Town, Binghamton, Buffalo, Islip Town, Mount Vernon, New York, Niagara Falls, Rochester, Schenectady, Syracuse, Tonawanda Town, Troy, Utica, Yonkers, Erie County, Monroe County, Nassau County, Onondaga County, Orange County, Rockland County, Suffolk County, and Westchester County.
North Carolina: Charlotte, Greensboro, Raleigh, and Winston Salem.
Ohio: Akron, Canton, Cincinnati, Cleveland, Columbus, Dayton, Lakewood, Springfield, Toledo, Youngstown, Cuyahoga County, Franklin County, Hamilton County, and Montgomery County.
Oklahoma: Oklahoma City and Tulsa.
Oregon: Portland, Clackamas County, Multnomah County, and Washington County.
Pennsylvania: Allentown, Altoona, Chester, Erie, Harrisburg, Johnstown, Lancaster, Philadelphia, Pittsburgh, Reading, Scranton, Upper Darby Township, Wilkes-Barre, York, Allegheny County, Beaver County, Berks County, Bucks County, Chester County, Delaware County, Lancaster County, Luzerne County, Montgomery County, Washington County, Westmoreland County, and York County.

Rhode Island: Pawtucket, Providence, and Woonsocket.

South Carolina: Greenville County.

Tennessee: Chattanooga, Knoxville, Memphis, and Nashville-Davidson.

Texas: Amarillo, Austin, Beaumont, Brownsville, Corpus Christi, Dallas, El Paso, Fort Worth, Houston, Laredo, Lubbock, McAllen, San Antonio, Waco, Bexar County, Harris County, and Tarrant County.

Utah: Provo, Salt Lake City, and Salt Lake County.

Virginia: Newport News, Norfolk, Portsmouth, Richmond, Roanoke, Virginia Beach, Arlington County, and Fairfax County.

Washington: Seattle, Spokane, Tacoma, Clark County, King County, Pierce County, and Snohomish County.

West Virginia: Charleston, and Huntington.

Wisconsin: Madison, Milwaukee, and Racine.

Puerto Rico: Toa Baja Municipio, Aguadilla, Arecibo, Bayamaon Municipio, Caguas Municipio, Carolina Municipio, Guaynado Municipio, Humacao Municipio, Mayaguez Municipio, Ponce Municipio, San Juan Municipio, and Trujillo Alto Mun.

[FR Doc. 87-18590 Filed 8-13-87; 8:45 am]

BILLING CODE 4210-32-M

[Docket No. D-87-856; FR-2396]

Delegation of Authority for the Comprehensive Homeless Assistance Plan

AGENCY: Office of the Secretary, HUD.

ACTION. Notice of Delegation of Authority.

SUMMARY: The Comprehensive Homeless Assistance Plan was established by Subtitle A of Title IV of the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100-77, approved July 22, 1987). This Notice delegates to the Assistant Secretary for Community Planning and Development and the General Deputy Assistant Secretary for Community Planning and Development, the power and authority of the Secretary of Housing and Urban Development with respect to the Plan, subject to specified exceptions.

EFFECTIVE DATE: August 14, 1987.

FOR FURTHER INFORMATION CONTACT: Don Patch, Director, Office of Block Grant Assistance, Room 7280, 451 7th Street, SW., Washington, DC 20410, (202) 755-6587 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: This Notice states the scope of authority given to the Assistant Secretary for Community Planning and Development and the General Deputy Assistant Secretary for Community Planning and Development to administer the Comprehensive Homeless Assistance Plan contained in section 401 of Title IV of the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100-77, approved July 22, 1987) ("the Act"). This provision prohibits the Secretary of Housing and Urban Development ("the Secretary") from making assistance available under any of Title IV's authorities to, or within the jurisdiction of, (1) a State or (2) a metropolitan city or urban county that is eligible for a formula grant under the Emergency Shelter Grants program contained in Subtitle B of Title IV, unless the jurisdiction has a Secretary-approved Comprehensive Homeless Assistance Plan.

The Plan is also used by the Secretary of Education to distribute funds under the Statewide Literacy Initiative contained in section 702 of the Act, and must contain a description of how States will coordinate projects under the Department of Labor's Job Training for the Homeless authority contained in Subsection C of Title VII of the Act, with other services for homeless individuals assisted under the Act. This Notice only covers the Secretary of Housing and Urban Development's responsibilities under the Plan, and does not affect the responsibilies of the Secretary of Education or Labor under Title VII of the Act.

All of the Secretary's authority with respect to the Plan is delegated, except the power to sue and be sued. The authority delegated includes the authority to redelegate to employees of the Department, except for the authority to issue rules, regulations, notices, and other **Federal Register** documents, or to waive rules, with respect to the Plan.

A Notice establishing HUD's requirements for the Plan are published elsewhere in today's issue of the **Federal Register.**

Accordingly, the Secretary delegates as follows:

Section A. Authority Delegated

The Assistant Secretary for Community Planning and Development and the General Deputy Assistant Secretary for Community Planning and Development are authorized individually to exercise the power and authority of the Secretary of Housing and Urban Development with respect to the Comprehensive Homeless Assistance Plan, as authorized by Subtitle A of Title IV of the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100-77, approved July 22, 1987), except as indicated in Section B, below. This includes the authority to issue rules, regulations, notices, and other **Federal Register** documents, and the authority to waive rules, with respect to the Plan.

Section B. Authority Excepted

There is excepted from the authority delegated under Section A the power to sue or be sued.

Section C. Authority to Redelegate

The Assistant Secretary for Community Planning and Development and the General Deputy Assistant Secretary for Community Planning and Development are authorized, individually, to redelegate to employees of the Department of Housing and Urban Development any of the power and authority delegated under Section A, and not excepted under Section B of this delegation, except that they are not authorized to redelegate the authority to issue rules, regulations, notices, and other **Federal Register** documents, or to waive rules, with respect to the Plan.

(Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d))

Date: August 11, 1987.

Samuel R. Pierce, Jr.,

Secretary of Housing and Urban Development.

[FR Doc. 87-18591 Filed 8-13-87; 8:45 am]

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Part XII

Department of Health and Human Services

Alcohol, Drug Abuse, and Mental Health Administration

Scientific and Technical Guidelines for Federal Drug Testing Programs; Standards for Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies; Notice of Proposed Guidelines

VOL 52 ISS 157 AG 14 1987 UMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Scientific and Technical Guidelines for Federal Drug Testing Programs; Standards for Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration, HHS.

ACTION: Notice of proposed guidelines.

SUMMARY: The Department of Health and Human Services invites comments on proposed Scientific and Technical Guidelines for Federal Drug Testing Programs and Standards for Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies.

DATES: Interested persons are invited to submit comments on or before October 13, 1987.

ADDRESSES: Written comments should be addressed to the Office of Workplace Initiatives, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10A–53, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: Nancy Rittman (301) 443–6780.

SUPPLEMENTARY INFORMATION: This document sets forth the Department of Health and Human Services (DHHS) proposed "Scientific and Technical Guidelines for Drug Testing Programs" and "Standards for Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies" as directed in the President's Executive Order No. 12564 dated September 15, 1986, and section 503 of Pub. L. 100–71, the "Supplemental Appropriations Act for 1987," dated July 11, 1987.

Public Law 100–71 requires DHHS to publish these proposed guidelines and standards in the **Federal Register** and allow interested persons not less than 60 days to submit written comments on them. Following review and consideration of written comments DHHS will publish the final guidelines and standards in the **Federal Register** and they shall become effective upon publication.

Public Law 100–71 requires that DHHS publish guidance in the **Federal Register** to accomplish the following: (1) Establish comprehensive standards for all aspects of laboratory drug testing and laboratory procedures to be applied in carrying out Executive Order 12564, including standards which require the use of the best available technology for ensuring the full reliability and accuracy of drug tests and strict procedures governing the chain of custody of specimens collected for drug testing; (2) specify the drugs for which Federal employees may be tested; and (3) establish appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform drug testing in carrying out Executive Order 12564.

The scientific and technical guidelines which follow satisfy the first two of these requirements of Pub. L. 100–71 by establishing comprehensive standards for all aspects of laboratory drug testing and specifying the drugs for which Federal employees may be tested. The third requirement of Pub. L. 100–71 is met by the Secretary's proposed "Standards for Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies" which immediately follow the guidelines.

These guidelines are essentially the same as the guidelines dated February 13, 1987 and issued by the Secretary on February 19, 1987, under Executive Order 12564, with minor changes to be consistent with the certification standards which follow and to prepare the guidelines for publication in the **Federal Register**. Part II of the February 13, 1987 guidelines which sets forth model language for agency contracts to obtain laboratory urinalysis services has been deleted in its entirety. Since this part of the guidelines did not reflect mandatory standards to be imposed on agencies, DHHS decided to delete it as it is redundant and possibly confusing.

Once the guidelines and certification standards are finalized and published in the **Federal Register**, following consideration of public comment made in response to this notice, the Secretary may make additional changes to the guidelines and standards to reflect improvement in the available science and technology without further opportunity for notice and comment. These changes will be published as a notice in the **Federal Register**.

While the certification system proposed by this notice is in development, Federal agencies may use agency or contract laboratories that have been certified for urinalysis testing by the Department of Defense (DOD). The DOD certification process is extremely strict and sophisticated and, during the interim period while the DHHS certification process becomes operational, DHHS believes that DOD certification will be more than adequate to ensure the full reliability and accuracy of drug tests and the reporting of test results. This is consistent with the provisions in the Scientific and Technical Guidelines for Drug Testing Programs dated February 13, 1987, and given statutory recognition by Pub. L. 100–71, that allows use of the DOD laboratories "prior to the existence of ADAMHA/NIDA-recognized accreditation and proficiency testing programs."

Information Collection and Recordkeeping Requirements

The proposed certification standards include a number of information collection and recordkeeping requirements which would be imposed on laboratories wishing to become certified to perform drug testing on Federal employees. These include the documentation requirements of section V and the information required to be submitted by the laboratory during its inspection under Appendix B. As required by section 3504(h) of the Paperwork Reduction Act of 1980, we have submitted a copy of this notice to the Office of Management and Budget (OMB) for its review of these information collection and recordkeeping requirements. Other organizations and individuals desiring to submit comments on these requirements should submit them to the DHHS office designated for this purpose whose name appears in the preamble and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, Room 3208, Washingotn, DC 20503, Attention: Desk Officer for HHS.

Dated: August 4, 1987.

Robert E. Windom,

Assistant Secretary for Health.

Approved: August 10, 1987.

Otis R. Bowen,

Secretory.

Scientific and Technical Guidelines for Drug Testing Programs

August 3, 1987.

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The Drugs

The President's Executive Order defines "illegal drugs" as those included in Schedule I or II of the Controlled Substances Act (CSA), unless the use is authorized by a legal prescription or other exemption as permitted under appropriate laws. These schedules cover hundreds of drugs, but it is obviously not practical to test for all of them.

Agency preemployment and random drug testing programs shall at a minimum test for *marijuana* and *cocaine*, and in addition agencies may test for opiates, amphetamines, and phencyclidine (PCP). When conducting reasonable suspicion testing, an agency may test for any drug identified in Schedule I or II of the Controlled Substances Act. The above provisions are not intended to limit agencies specifically authorized by law to include additional categories of drugs in the drug testing of their own employees or employees in their regulated industries.

This document presents specific information on the drugs most likely to be included in agency drug testing programs (i.e., marijuana, cocaine, opiates, amphetamines, and PCP). Agencies shall petition the Secretary of Health and Human Services or his designee (hereinafter referred to as "the Secretary") for approval to include any additional drugs (or classes of drugs) in its testing protocols.

Specimen Collection Procedures

Collection Site

A designated collection site is a place where individuals present themselves for the purpose of providing urine specimens to be analyzed for drugs of abuse. The site shall possess all necessary personnel, materials, equipment, facilities, and supervision to provide for the collection, security, temporary storage, and transportation (shipping) of urine specimens to a drug testing laboratory.

Collection Procedures

Procedures shall provide for the collection site to be secure. A collection site facility dedicated solely to urine collection shall be secure at all times. In cases where a facility cannot be dedicated solely for the purpose of drug testing, the portion of the facility being used for testing shall be secured during drug testing operations. Chain of custody forms shall be properly executed by authorized collection site personnel upon receipt of specimens. The handling and transportation of urine specimens from one authorized individual or place to another shall always be accomplished through the use of chain of custody procedures. No unauthorized personnel shall be permitted in any part of the collection site when urine specimens are collected or stored.

Procedures for providing urine specimens shall comply with the provisions of these guidelines which allow individual privacy unless there is reason to believe that a particular individual may alter or substitute the specimen to be provided. Agencies shall take precautions to ensure that a urine specimen has not been authorized or diluted during the collection procedure and that all information on the urine bottle and in the record book can be identified as belonging to a given individual

To ensure that unadulterated specimens are obtained, the following procedures specify the minimum precautions that shall be taken during the collection of urine specimens:

1. To deter the dilution of specimens at the collection site, toilet bluing agents shall be placed in the toilet tanks, wherever possible, so the reservoir of water in the toilet bowl always remains blue. There shall not be any other source of water (e.g., shower, sink, etc.) in the enclosure where urination occurs.

2. Upon arrival at the collection site, the collection site person shall request the individual to present some type of photo identification. If the individual does not have proper identification, this shall be noted on the chain of custody form. If the individual fails to appear at the assigned time, collection site personnel shall contact appropriate authority to obtain guidance on action to be taken.

3. The collection site person shall ask the individual to remove any unnecessary outer garments (e.g., coat, jacket) that might conceal items or substances that could be used to tamper with or adulterate his/her urine specimen. Also, all personal belongings (e.g. purse, briefcase) shall remain with the outer garments; the individual may, however, retain his/her wallet. The collection site person shall note any unusual behavior or appearance.

4. The individual shall be instructed to wash and dry his/her hands prior to urination.

5. After washing hands, the individual shall remain in the presence of the collection site person and not have access to water fountains, faucets, soap dispensers, or cleaning agents or any other materials which could be used to adulterate the specimen.

6. The individuual may provide his/her specimen in the privacy of a stall, or otherwise partitioned area that allows for individual privacy. The collection site person shall note any unusual behavior by the individual.

7. In the exceptional event where an agency designated collection site is not accessible and there is a requirement for immediate specimen collection (e.g., accident investigation), a public restroom may be used according to the following procedures:

A same-sex collection site person shall accompany the individual into the public restroom which shall be made secure during the collection procedure. Toilet bluing shall be placed into the bowl. The collection site person shall remain in the restroom, but outside the stall, until the specimen is collected. In order to deter specimen dilution, the individual shall be asked not to flush the toilet until the specimen has been handed over to the collection site person. The individual shall be allowed to flush the toilet and shall then participate with the collection site person in completing the chain of custody procedures.

8. Upon receiving the specimen from the individual, the collection site person will determine that it contains at least 60 milliliters of urine. If there is not sufficient urine in the container, additional urine shall be collected. The individual may be given reasonable amounts of liquid (e.g., a glass of water). If an individual fails, for any reason, to provide the necessary specimen, collection site personnel shall contact appropriate authority to obtain guidance on action to be taken.

9. After the specimen has been provided and submitted to the collection site person, the individual shall be allowed to wash his/her hands.

10 *Immediately* after collection, collection site personnel shall measure the temperature of the specimen and conduct an inspection to determine the specimen's color, and signs of contaminants. Any unusual findings resulting from the inspection shall be included on the chain of custody form. The time from urination to delivery of the sample for temperature measurement is critical and in no case shall exceed four (4) minutes. If the temperature of the specimen is outside the range of 32.5–37.7°C/90.5–99.8°F this

gives rise to reasonable suspicion of adulteration/substitution, and another specimen shall be collected under direct observation and both specimens forwarded to the laboratory. Any specimen suspected to be adulterated shall always be forwarded for testing. When reasonable suspicion is established, the second specimen shall be obtained under direct observation.

11. Both the individual being tested and the collection site person shall keep the specimen in view at all times prior to its being sealed and labeled. If the specimen is transferred to a second container, the collection site person shall request the individual to observe the transfer of the specimen and the placement of the tamperproof seal over the bottle cap and down the sides of the bottle. The collection site person will place the identification label securely on the bottle.

12. The identification label shall contain the date, individual's specimen number, and any other identifying information provided/required by the Agency. The individual shall initial the label on the specimen bottle.

13. The collection site person will enter the identifying information in a ledger. Both the collection site person and the individual shall sign the ledger next to the identifying information.

14. The individual shall be asked to read and sign a certification statement regarding his/her urine specimen.

15. The collection site person shall complete the appropriate chain of custody form.

16. The urine specimen and chain of custody form are now ready for shipment. If the specimen is not immediately prepared for shipment, it shall be appropriately secured during temporary storage.

Note: While any part of the chain of custody procedures is being performed, it is essential that the urine specimen and custody documents be under the control of the involved collection site person. If the involved collection site person shall leave his/her work station momentarily, the specimen and custody form shall be taken with him/her or shall be secured. After the collection site person returns to the work station the custody process will continue. If the site person is leaving for an extended period of time, the specimen shall be packaged for mailing before he/she leaves the site.

Collection Control

Collection site personnel shall always attempt to have the container or specimen bottle within sight before and after the individual has urinated. The containers shall be tightly capped, properly sealed, and labeled. A chain of custody form approved by the agency shall be utilized for maintaining control and accountability from point of collection to final disposition of specimens. With each transfer of possession, the chain of custody form shall be dated, signed by the individual releasing the specimen, signed by the individual accepting the specimen, and the purpose for transferring possession noted. Every effort shall be made to minimize the number of persons handling specimens.

Transportation To Laboratory

After collection of urine specimens, collection site personnel shall arrange to ship the specimens to the drug testing laboratory. The specimens shall be placed in appropriate containers (specimen boxes or padded mailers) that are securely sealed to eliminate the possibility of tampering. Collection site personnel shall sign and date across the tape sealing the container and ensure that the chain of custody documentation is attached to each sealed container. An outer mailing wrapper is placed around each sealed container. Specimens may be delivered to the drug testing laboratory using either the United States Postal Service, commercial air freight, air express, or may be hand carried. It is not necessary to send specimens by registered mail.

Laboratory Analysis Procedures

Definitions

Intralaboratory Chain of Custody

Procedures used by the laboratory to maintain control and accountability from the receipt of urine specimens until testing is completed, results are reported, and while specimens are in storage.

Initial Test

A sensitive, rapid, and inexpensive immunoassay screen to eliminate "true negative" specimens from further consideration.

Confirmatory Test

A second analytical procedure used to identify the presence of a specific drug or metabolite in a urine specimen. The confirmatory test shall be different in technique and chemical principle from that of the initial test procedure to ensure reliability and accuracy. (At this time gas chromatography/mass spectrometry (GC/MS) is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine (PCP)).

Aliquot

A portion of a specimen used for testing. An appropriate amount is transferred into a labeled test tube.

Receiving/Preparation

The laboratory shall be secure at all times; no unauthorized personnel shall be permitted. Upon receipt of specimens, accession personnel shall inspect packages for evidence of possible tampering and compare information on specimen bottles with that on chain of custody forms. Any discrepancies shall be properly noted and described. Any direct evidence of tampering shall be reported immediately to the agency, and shall also be noted on the chain of custody form which shall accompany all specimens during laboratory possession.

Specimen bottles and original chain of custody forms will normally be retained within the accession area until all analyses have been completed. Aliquots and intralaboratory chain of custody forms shall be used by laboratory personnel for conducting the initial and confirmatory tests.

Short-Term Refrigerated Storage

Specimens that do not receive an initial testing within two (2) days of arrival at the laboratory shall be placed in secure, temporary refrigeration units. Temperatures shall not exceed six (6) degrees centigrade. Emergency power equipment shall be available in case of prolonged power failure.

Specimen Processing

Drug testing laboratories will normally process specimens by grouping them into batches. The number of specimens in each batch may vary significantly depending on the size of the laboratory and its workload. When conducting either initial or confirmatory testing, every batch shall contain an appropriate number of standards for calibrating the instrumentation and a minimum of 10 percent controls. Both internal and external blind proficiency test samples shall appear as ordinary samples to laboratory personnel.

Initial Test

The initial testing shall use an immunoassay which meets the requirements of the Food and Drug Administration for commercial distribution. The following initial cutoff levels shall be used when screening specimens to determine whether they are negative or positive for these five drugs or classes of drugs:

	Initial test level (ng/ml)
Marijuana metabolites	100
Cocaine metabolites	300
Opiates	300
Phencyclidine	25
Amphetamines	1000

These test levels are subject to change by HHS as advances in technology or other considerations warrant identification of these substances at other concentrations. *Alternate initial test methods and testing levels shall be submitted for written approval to the Secretary.*

Confirmatory Test

All specimens identified as positive on the initial test shall be confirmed using gas chromatography/mass spectrometry (GC/MS) techniques. Quantitative GC/MC confirmation procedures at the following cutoff values shall be used for the following drugs:

	Confirmatory test level (ng/ml)
Marijuana metabolites [1]	20
Cocaine metabolites [2]	150
Opiates	300
Phencyclidine	25
Amphetamines	300

[1] Delta-9-tetrahydrocannabinol-9-carboxylic acid.
[2] Benzoylecgonine.

These test levels are subject to change by HHS as advances in technology or other considerations warrant identification of these substances at other concentrations.

Confirmation methods and levels for other drugs tested shall be submitted by the agency to the Secretary.

Chain of Custody

Proper chain of custody controls shall always be enforced during all testing and specimen handling. Only authorized personnel may handle specimens to be tested and they shall sign chain of custody forms to document when specimens are in their possession. Authorized technicians shall sign the chain of custody forms and be responsible for each urine specimen to be tested. The laboratory shall include sufficient safeguards to ensure that unauthorized personnel are prevented from gaining access to the laboratory.

Reporting Results

Test results shall be reported to the agency's designated Medical Review Officer within an average of five (5) working days of receipt of the specimen. The report shall contain the specimen number assigned by the submitting agency, the drug testing laboratory specimen identification number, and results of the drug tests. All specimens negative on the initial test or negative on the confirmatory test *shall be reported as negative.* Only specimens confirmed positive shall be reported positive for a specific drug. Results may be transmitted to the Medical Review Officer (see pg. xx) by various electronic means (e.g., teleprinters, facsimile, or computer) in a manner consistent with the Privacy Act. It is not permitted to provide results verbally by telephone. A certified copy of the original chain of custody form, signed by the laboratory director of laboratory certifying official, shall only be sent to the Medical Review Officer. Copies of all analytical results shall be available from the laboratory when requested by appropriate authority.

In addition, the laboratory shall provide the Medical Review Officer with a monthly statistical summary of urinalysis testing of Federal employees without any personal identifying information. Screening and confirmation data shall be included from results reported within that period. This summary normally shall be forwarded by registered mail within two (2) weeks (14 calendar days) after the end of the month, covered by the summary and shall contain the following information:

Initial Testing

(a) Number of specimens received.
(b) Number reported out.
(c) Number of specimens screened positive for:

Marijuana metabolites
Opiates (morphine/codeine)
Amphetamines
Any other drugs requested
Cocaine metabolites
Phencyclidine

Confirmation Testing

(a) Number of specimens received.
(b) Number of specimens confirmed positive for:

Marijuana metabolite
Morphine and/or codeine
Amphetamine
Any other drugs requested
Cocaine metabolites
Phencyclidine
Methamphetamine

All records pertaining to a given urine specimen shall be retained by the drug testing laboratory for a minimum of two (2) years.

Long-Term Storage

Specimens confirmed positive shall be retained and placed in properly secured long-term frozen storage for at least 365 days. Within this 365-day period an agency may request the laboratory to retain the specimen for an additional period of time. This ensures that the urine specimen will be available for a possible retest during any administrative or disciplinary proceeding. If the laboratory does not received a request to retain the specimen during the initial 365-day period, the specimen may be discarded.

Retesting Specimens

Should specimen reanalysis be required, the quantitation of a drug or metabolite in a specimen is not required to be subject to the same testing level criteria that were used during the original analysis. Some analytes deteriorate or are lost during freezing and/or storage.

Security

The laboratory facilities shall use appropriate security measures to ensure limited and/or controlled access.

Subcontracting

The drug testing laboratory shall perform all work with its own personnel and equipment, unless otherwise authorized by the agency.

Laboratory Facilities

Laboratories shall comply with applicable provisions of any State licensure requirements. Certified laboratories shall have the facility and capability, at the same laboratory, of performing screening and confirmation tests for each drug or metabolite for which service is offered.

Laboratory Personnel

The scientific director of the drug testing laboratory shall be qualified to assume professional, organizational, educational, and administrative responsibility for the laboratory and shall be involved in the day-to-day management of the laboratory. The scientific director shall meet three criteria. He or she shall: (1) Be (a) certified as a Laboratory Director by the State in forensic or clinical laboratory toxicology, or (b) hold a Ph.D. in one of the natural sciences, or (c) have training and experience equivalent to the Ph.D., such as a scientific degree followed by extensive research experience in biology, chemistry and pharmacology or toxicology; (2) have extensive experience in analytical toxicology (the analysis of biological materials for drugs

of abuse)—at least two years postdoctoral experience or at least six years experience beyond any other degree and (3) appropriate training and/or experience in forensic applications of analytical toxicology (court testimony, research and publications in analytic toxicology of drugs of abuse, etc.). The director is responsible for ensuring that there are sufficient personnel with adequate training and experience to supervise and conduct the work of the urine drug testing laboratory.

A key individual in the laboratory is the certifying scientist; (who may be the laboratory scientific director); this individual reviews the standards, control specimens, and quality control data together with the screening and confirmation test results. After having assured that all results are acceptable, this individual certifies the test result. The certifying scientist shall have training in the sciences, specific training in the theory and practice of the procedures used, including the recognition of aberrant results and quality control procedures.

Supervisors of analysts shall possess a B.S. degree in chemistry or at least the education and experience comparable to a Medical Technologist certified by the American Society of Clinical Pathologists, MT(ASCP), or its equivalent. These individuals also shall have training in the theory and practice of the procedures used, and understanding of quality control concepts. Periodic verification of their skills shall be documented. Other technicians or nontechnical staff shall possess the necessary training and skills for the task assigned. Inservice continuing education programs to meet the needs of all laboratory personnel is required. Personnel files shall include: Résumé of training and experience; certification or license, if any; references; job descriptions; health records; records of performance evaluation and advancement; incident reports; and results of tests for color blindness.

Quality Assurance and Quality Control

Urine drug testing laboratories shall have a quality assurance program which encompasses all aspects of the testing process:

Specimen acquisition, chain of custody, security, and reporting of results, in addition to the screening and confirmation of analytical procedures. Quality control procedures shall be designed, implemented, and reviewed to monitor the conduct of each step of the process.

a. Requirement of Internal Laboratory Quality Control

Each analytical run of specimens to be screened shall include: control urine specimens containing no drug; specimens fortified with known standards; and positive controls with the drug or metabolite at or near the threshold (cutoff). Implementation of procedures shall be documented to ensure that carryover does not contaminate the testing of a subject's specimen. A minimum of 10 percent of all test samples shall be quality control (QC) specimens. The known standards shall be the first specimens processed in each run. After acceptable values are obtained for the known standards, those values will be used to calculate sample data. Internal proficiency test samples, prepared from spiked urine samples of determined concentration shall be included in the run and should appear as normal samples to laboratory personnel. Each run shall include at least two (2) blind control samples (one positive and one negative) per 200 specimens. Equivalent standards, positive and negative controls shall be analyzed in parallel with confirmation tests.

b. Agency External Laboratory Quality Control Procedures

Participation in other proficiency testing surveys, by which the laboratory's performance is compared with peers and reference laboratories, is encouraged. *Participation in a ADAMHA/National Institute on Drug Abuse (NIDA)-recognized certification program for laboratories engaged in urine drug testing is mandatory.*

During the initial 90-day period of any new drug testing program a minimum of 1000 samples of which at least 800 are blank (i.e., certified to contain no drug) shall be submitted to the contract laboratory as external blind proficiency test specimens. Subsequent to the initial 90-day period, a minimum of 250 specimens per quarter shall be submitted to the contract laboratory as external blind proficiency test specimens. Any unsatisfactory proficiency testing result shall be investigated by the agency and corrective actions shall be taken. A report of the investigative findings, together with subsequent corrective actions, should be recorded, dated, signed by the responsible supervisor and laboratory director, and sent to the agency contracting officer. Should a false-positive error occur on a blind proficiency test specimen and the error is determined to be:

(1) An administrative error (clerical, sample mix-up, etc.), the reviewing official has the option of recommending corrective action to minimize the occurrence of the particular error in the future and reviewing a reanalysis of previously run specimens if there is reason to believe that the error could have been systematic.

(2) A technical or methodological error, the laboratory shall submit all QC data from the batch of specimens which included the test specimen with the erroneous analysis. In addition, the laboratory shall retest all specimens analyzed positive by the laboratory from the time of final resolution of the error back to the time of the preceding cycle of (correctly run) Proficiency Test samples (this retesting to be documented by a signed statement by the Laboratory Director). The reviewing official has the option to recommend (1) no further action other than the above (in case of less serious error with associated corrective action which reasonably assures the unlikelihood of reoccurrence) or (2) suspension of the contract.

c. Interim External Laboratory Quality Control Procedures

Prior to the existence of the ADAMHA/NIDA-recognized certification program, agencies shall ensure laboratory proficiency by one of the following methods:

1. Agencies may use agency or contract laboratories that have been certified for urinalysis testing by the Department of Defense.

2. Agencies may develop interim self-certification procedures by establishing preaward inspections and proficiency testing plans approved by HHS.

Documentation

Documentation of all aspects of the testing process shall be available. This documentation will be maintained for at least two (2) years and will include: personnel files on analysts, supervisors, directors, and all individuals authorized to have access to specimens; chain of custody documents; quality assurance/quality control records; all test data; reports; performance records on proficiency testing; performance on certification inspections; and hard copies of computer-generated data.

Reports

All test results, including screening, confirmation, and quality control data, shall be reviewed by the certifying scientist or laboratory director before a test result is certified as accurate. The report shall identify the drugs/

metabolites tested for, whether positive or negative, and the threshold concentration for each.

Inspections

The agency shall reserve the right to inspect the laboratory at any time. Contracts with laboratories, as well as for collection site services, shall permit unannounced inspections. Preaward inspections and evaluation of the procedural aspects of the program shall be accomplished prior to the award of any contract.

Judicial Proceedings

The laboratory shall have qualified personnel available to testify in an administrative or disciplinary proceeding against a Federal employee that is based on positive urinalysis result reported by its laboratory.

Reporting and Review of Results

As essential part of the drug testing program is the final review of results. A positive test result does not automatically identify an employee/applicant as an illegal drug user. An individual with a detailed knowledge of possible alternate medical explanations *shall* be involved in the review process. This review will be performed by the Medical Review Officer (MRO) prior to the transmission of results to agency administrative officials.

The MRO may be an agency or contract employee who is a licensed physician with knowledge of substance abuse disorders. The role of the MRO is to review and interpret positive test results obtained through the agency's testing program. In the conduct of this responsibility, the MRO should undertake the examination of alternate medical explanations for a positive test result. This action could include conducting employee medical interviews, review of employee medical history, or the review of any other relevant biomedical factors. The MRO is required to review all medical records made available by the tested employee when a confirmed positive test could have resulted from legally prescribed medication. After the MRO has reviewed the pertinent information and the laboratory assessment is verified, the case will be referred to the agency Employee Assistance Program Administrator and to the management official empowered to recommend or take administrative action. Should any question arise as to the veracity of a positive test result, the MRO is authorized to order a reanalysis of the original sample. If the MRO determines there is a legitimate medical explanation for the positive test result, the MRO may deem that the result is consistent with legal drug use, and take no further action. Additionally, the MRO, based on review of inspection reports, QC data, multiple samples, and other pertinent results, may deem the result scientifically insufficient for further action and declare the individual as negative. The contract laboratory shall be able to provide information to assist in this review process by employing or having available a forensic toxicologist or someone with equivalent forensic experience in urine drug testing who can be called on when specific consultation is required by the agency.

[Note.—Before the MRO certifies a confirmed positive result for *opiates*, he/she shall verify that there is clinical evidence (in addition to the urine test) of illegal use of any opium, opiate, or opium derivative listed in Schedule I or II. This requirement does not apply if the agency's GC/MS confirmation testing for opiates verifies the presence of 6-O-monoacetylmorphine.]

Protection of Employee Records

Any laboratory contract shall provide that the contractor's records are subject to the Privacy Act, 5 U.S.C. 552a and the patient access and confidentiality provisions of section 503 of Pub. L. 100–71. The agency shall establish a Privacy Act System of Records (or modify an existing system), or use any applicable Government-wide system of records, to cover both the agency's and the contractor's records of employee urinalysis results. The contract and the Privacy Act System shall have specific provisions requiring that employee records are maintained and used with the highest regard for employee privacy.

Future Revisions

In order to ensure the full reliability and accuracy of drug tests and the accurate reporting of test results, the Secretary may make changes to these guidelines to reflect improvements in the available science and technology. These changes will be published in final as a notice in the **Federal Register.**

Standards for Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies

Introduction

Urine drug testing is a critical component of efforts to combat drug abuse in our society. Many laboratories are familiar with good laboratory practices but may be unfamiliar with the varied forums in which their results can be used. Accordingly, these standards establish minimum standards to certify laboratories engaged in urine drug testing for legal, regulatory, safety, employment and other, non-medical purposes. Certification, even at the highest level, does not guarantee unequivocal accuracy of each result reported by a certified laboratory. Therefore, results from certified laboratories must be interpreted with a complete understanding of the total collection, analysis and reporting process before a final conclusion is made.

I. Goals and Objectives of Certification

Urine drug testing is an important tool to identify drug users in a variety of settings. In the proper context, urine drug testing can be used to deter drug abuse in general. To be a useful tool, the testing procedure must be capable of detecting drugs or their metabolites at concentrations sufficiently low to include occasional, recent users as well as addicts using drugs on a chronic basis.

Urine is the body fluid most often tested because it can be readily obtained by relatively non-invasive means. However, the presence of a drug in a urine specimen is normally used to simply indicate the subject's prior use of the drug, and provides little insight as to whether the subject was under the influence of the drug at a specific time. Even so, the consequence of a positive urine test for an illegal drug can carry severe penalties. Even when punitive actions do not take place, the suggestion that drug abuse has occurred can be devastating to the life of the subject. For these reasons, urine drug test results must be as error-free as possible and defensible in the event that they are challenged during a civil or criminal proceeding.

Reliable discrimination between the presence, or absence, of specific drugs or their metabolites is critical, not only to achieve the goals of the testing program but to protect the rights of the subjects being tested. Thus, it is in the public interest to set standards which urine drug testing laboratories must meet in order to achieve maximum acceptability of test results. Evaluation of these laboratories will be done by an organization recognized by the National Institute on Drug Abuse. In part, this evaluation will include periodic, on-site inspections. The possible impact of a positive test result on an individual's livelihood, freedom or rights, together with the possibility of a legal challenge of the result, sets this type of test apart from most clinical laboratory testing. In fact, urine drug testing should be considered a special application of analytical forensic toxicology. That is, in addition to the application of appropriate analytical methodology, the

specimen must be treated as evidence and all aspects of the testing procedure must be documented and preserved for possible court testimony. Laboratories engaged in urine drug testing should acquire the services or advice of a qualified forensic toxicologist, or individual with equivalent qualifications (of experience, training, etc.) to address the specific needs of the laboratory including the demands of chain of custody of specimens, security, proper documentation of all records, storage of positive specimens for later or independent testing, presentation of evidence in court and expert witness testimony.

II. Laboratory Facilities

In general, laboratories shall conform to the requirements concerning evironment, space, utilities, safety, and storage outlined in Appendix B.

Certified laboratories must have the capability, at the same laboratory site, of performing screening and confirmation tests for each drug or metabolite for which service is offered. Screening tests are presumptive tests of acceptable sensitivity, designed to eliminate negative specimens from further consideration. Confirmatory tests are procedures conducted independently of the screening test that utilize appropriate methodology based on different chemical and physical principles from those used in screening procedures. It is essential to confirm all positive screening test results prior to reporting them.

The laboratory must be secure not only in the traditional sense of resisting breaking and entering, but also in the sense of limiting access to areas where specimens are being processed and records are stored. Access to these secure areas in limited to specifically authorized individuals whose authorization is documented. Visitors, maintenance and service personnel must be escorted at all times. Documentation of individuals accessing these areas, dates and time of entry and purpose of entry, must be maintained.

Receipts are given when specimens are delivered by courier. This is the beginning of internal chain of custody document(s) which permit the time, date and purpose to be documented each time the specimen is handled or transferred and identify every individual in the chain. Finally, all positive specimens are retained in original containers in secure storage at freezing temperatures (−20°C or less) for at least twelve months. The laboratory must be prepared to maintain storage on any specimen under legal challenge for an indefinite period.

III. Personnel

The scientific director of the drug testing laboratory will be qualified to assume professional, organizational, educational and administrative responsibility for the laboratory and is involved in the day to day management of the laboratory.

This director is an individual with documented scientific qualifications in analytical forensic toxicology. Acceptable qualifications include certification as a Laboratory Director by the State in forensic or clinical laboratory toxicology or a Ph.D. in one of the natural sciences with an adequate undergraduate and graduate education in biology, chemistry, and pharmacology or toxicology. This certification or academic training must be followed by extensive experience in analytical forensic toxicology (the analysis of biological material for drugs of abuse) and appropriate training and/or experience in forensic applications of analytical toxicology (court testimony, research and publications in analytical toxicology of drugs of abuse, etc.).[1]

The doctoral degree requirement may be waived provided that the individual holds the position of laboratory scientific director at the time of publication of these standards and possesses a graduate degree in the natural sciences or other closely related discipline followed by extensive experience (6 yrs. postgraduate) in analytical forensic toxicology.

The director is responsible for ensuring that there are sufficient personnel with adequate training and experience to supervise and conduct the work of the urine drug testing laboratory.

A key individual in the laboratory is the certifying scientist (who may be the Laboratory Scientific Director). This individual reviews the standards, blanks and quality control data together with the screening and confirmation test results. After having assured that all results are acceptable, this individual certifies the test result. This individual must have sound training in the sciences, specific training in the theory and practice of the procedures used including the recognition of aberrant results, and familiarity with quality control procedures.

Supervisors of analysts must possess at least a B.S. degree in chemistry or education and experience comparable to a medical technologist certified by the American Society of Clinical Pathologists, MT(ASCP), or its equivalent. These, too, must have training in the theory and practice of the procedures used, and understanding of quality control concepts. Periodic verification of their skills must be documented. Other technicians or non-technical staff must possess the necessary training and skills for the task assigned. In-service continuing education programs to meet the needs of all laboratory personnel are desirable. Personnel files must include: resume of training and experience, certification or license if any, references, job descriptions, health records, records of performance evaluation and incident reports, as well as results of tests for color blindness where appropriate.

IV. Quality Assurance and Quality Control

Urine drug testing laboratories shall have a quality assurance program which encompasses all aspects of the testing process: specimen acquisition, chain of custody, security, and reporting of results, in addition to validation of analytical procedures. Quality control procedures must be designed, implemented and reviewed to monitor the conduct of each step of the process. Application and documentation of the process shall be conducted as described in Appendix B.

Each analytical run of specimens to be screened must include: control urine specimens containing no drug; specimens fortified with known standards; and positive controls with the drug or metabolite at or near the threshold (cutoff). In addition, internal proficiency test specimens, blind to the analyst, shall be tested periodically. Similar controls must be analyzed in parallel with confirmation tests. Implementation of procedures to ensure that carry-over does not contaminate the testing of a subject's specimen must be documented.

Participation in proficiency testing surveys by which the laboratory performance is compared with peers and reference laboratories is encouraged. Participation in a NIDA-operated or recognized proficiency testing program is one of the requirements of continued certification (See Appendix A). Acceptable performance in two cycles of this proficiency test program is one of the criteria which must be met before a laboratory becomes eligible for certification.

If any proficiency test results are unsatisfactory according to pre-established criteria, the cause of the unsatisfactory result must be

[1] This training and experience is comparable to that of a person certified by the American Board of Forensic Toxicology or the American Board of Clinical Chemistry in Toxicological Chemistry.

investigated and corrected. A report of the investigation fingings, together with subsequent corrective actions, will be recorded, dated and signed by the responsible supervisor and laboratory director. Unsatisfactory performance on NIDA recognized proficiency test samples may be sufficient cause to lead to loss of certification by the laboratory.

Many laboratories have applied computer control to various aspects of laboratory operations. In addition, robotics and automation are leading to less human intervention into testing processes. These applications present new variables to monitor in order to detect errors, loss of data and maintenance of documentation. All laboratory systems including data processing and automation systems must be validated and tested periodically to provide documented evidence of proper function. Specific requirements will be developed to deal with these issues as they arise.

V. Documentation

Documentation of all aspects of the testing must be available. This documentation will be maintained for at least two years, and will include: personnel files on analysts, supervisors, directors and all individuals authorized to have access to specimens; chain of custody documents; quality assurance/quality control records; all test data (including calibration curves and any calculations used in determining test results); reports; performance records on proficiency testing; performance on certification inspections and hard copies of computer-generated data. The laboratory must be prepared to maintain documents for any specimen under legal challenge for an indefinite period.

VI. Reports

All test results, including screening, confirmation and quality control data must be reviewed by a qualified, responsible scientist before being certified as accurate. The report shall identify the drugs/metabolites tested for, whether positive or negative, and the threshold (or cut-off) concentration for each.

VII. Certification

The Secretary or his or her designee (hereinafter referred to as "the Secretary") may certify any laboratory that meets these standards to conduct urinalysis for drugs of abuse. In addition, the Secretary may consider any laboratory that is certified by a DHHS-recognized certification program which is established in compliance with these standards to be certified to conduct urinalysis for drugs of abuse. In determining whether to certify a laboratory or to accept the certification of a DHHS-recognized certification program, the Secretary shall consider the following criteria:

(1) The adequacy of the laboratory facilities;

(2) The expertise and experience of the laboratory personnel;

(3) The excellence of the laboratory's quality control program;

(4) The performance of the laboratory on any proficiency tests;

(5) The performance of the laboratory on any laboratory inspections; and

(6) Any other factor affecting the reliability and accuracy of drug tests and reporting done by the laboratory.

VIII. Revocation

The Secretary shall revoke certification of any laboratory certified under these provisions or accept the revocation of a recognized certification program, if the Secretary determines that revocation is necessary to ensure the full reliability and accuracy of drug tests and the accurate reporting of test results. The Secretary shall consider the following factors in determining whether revocation is necessary:

(1) Unsatisfactory performance in analyzing and reporting the results of drug tests (for example, a single false positive error in reporting the results of an employee's drug test);

(2) Unsatisfactory participation in proficiency evaluations or laboratory inspections;

(3) A material violation of a certification standard or contract term or other condition imposed on the laboratory by a Federal agency using the laboratory's services;

(4) Conviction for any criminal offense committed as an incident to operation of the laboratory; or

(5) Any other cause which materially affects the ability of the laboratory to ensure the full reliability and accuracy of drug tests and the accurate reporting of results.

The period and terms of revocation shall be determined by the Secretary, and shall depend upon the facts and circumstances of the revocation and the need to ensure accurate and reliable drug testing of Federal employees.

IX. Suspension

Whenever the Secretary has reason to believe that revocation may be required and that in order to protect the interests of the United States and its employees immediate action is necessary, the Secretary may suspend a laboratory's certification to conduct urinalysis for drugs of abuse for Federal agencies. The suspension of certification by a DHHS-recognized certification program may also be accepted by the Secretary. The period and terms of suspension shall be determined by the Secretary and shall depend upon the facts and circumstances of the suspension and the need to ensure accurate and reliable drug testing of Federal employees.

X. Notice; Opportunity for Review

(a) *Written Notice.* When a laboratory is suspended or the Secretary seeks to revoke certification, the Secretary shall immediately serve the laboratory with written notice of the suspension or proposed revocation by personal service or registered or certified mail, return receipt requested. This notice shall state the following:

(1) The reasons for the suspension or proposed revocation;

(2) The terms of the suspension or proposed revocation; and,

(3) The period of suspension or proposed revocation.

(b) *Opportunity for Review.* The written notice shall also state that the laboratory will be afforded an opportunity for an informal review of the suspension or proposed revocation if it so requests in writing within 30 days of the date of mailing or service of the notice. The review shall be by a person or persons designated by the Secretary and shall be based on written submissions by the laboratory and DHHS and, at the Secretary's discretion, may include an opportunity for an oral presentation. Formal rules of evidence and procedures applicable to proceedings in a court of law will not be applied. The decision of the reviewing official shall be final.

(c) *Effective Date.* A suspension shall be effective immediately. A proposed revocation shall be effective 30 days after written notice is given or, if review is requested, upon the reviewing official's decision to uphold the proposed revocation. If the reviewing official decides not to uphold the suspension or proposed revocation, the suspension shall terminate immediately and any proposed revocation shall not take effect.

XI. Recertification

Following the termination or expiration of any suspension or revocation, a laboratory may apply for recertification. Upon the submission of evidence satisfactory to the Secretary that the laboratory is in compliance with these standards or any DHHS-recognized certification program and any other conditions imposed as part of the suspension or revocation, the Secretary may re-certify the laboratory

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or accept the recertification of the laboratory by the recognized certification program.

XII. Future Revisions

In order to ensure the full reliability and accuracy of drug tests and the accurate reporting of test results, the Secretary may make changes in these standards to reflect improvements in the available science and technology. These changes will be published in final as a notice in the Federal Register.

Appendix A—Proficiency Test Program

The proficiency testing (PT) program is a part (in conjunction with laboratory inspection) of the initial evaluation of a laboratory seeking certification and of the continuing assessment of laboratory performance necessary to maintain this certification.

Initial participation in 3 cycles of testing will be required as part of certification process. These initial 3 cycles (and those required for recertification) can be compressed into a 3-month period (one per month).

After certification, laboratories will be challenged bimonthly with one set of 10 specimens—a total of 6 cycles per year.

All procedures associated with the handling and testing of the proficiency test specimens after receipt by the laboratory must be carried out in a manner identical to that applied to normal laboratory specimens. Laboratory personnel should not be aware that these specimens are part of a performance test to the extent possible.

Any certified laboratory may also be subjected to blind proficiency testing. Performance on blind testing specimens at the same level as for the open (non-blind) PT will be required.

Laboratories will be required to report as follows:

(Drug or metabolite) None detected at a concentration of ____ng/mL.
Or:
(Drug or metabolite) greater than ____ng/mL-Positive.
Confirmed by (method) at ____ng/mL.

Test Specimen Composition

The following are examples of drugs and metabolites and threshold concentration levels (lowest possible level of spiked specimen) which would be appropriate for PT specimens. These concentration ranges have been chosen to allow detection of the analyte by commonly used immunoassay screening techniques. These levels are generally in the range of concentrations which might be expected in the urine of casual drug users. For some drug analytes, the specimen composition will consist of the parent drug as well as major metabolites as noted in the second column below. In some cases, more than one drug class may be included in one specimen container but generally no more than two drugs will be present in any one specimen to more reasonably represent the type of specimen which a laboratory normally encounters. Within a particular PT cycle, the actual composition of kits going to different laboratories will vary but within any annual period, all labs participating will have analyzed the same total set of specimens.

It is presumed that these concentrations and drug types will be changed periodically due to factors such as changes in detection technology and patterns of drug abuse.

Drug class and specimen composition	Concentration (ng/mL)
Marijuana: THC metabolite (delta-9-THC-9-carboxylic acid).	125–150.
Cocaine:	
Cocaine	400–450.
Benzoylecgonine	400–450.
Ecgonine methyl ester	180–200.
Opiates:	
Morphine	100–120.
Morphine-3-glucuronide	380–420.
Codeine	500–550.
Amphetamines:	
Amphetamine	1250–1400.
Methamphetamine	1500–1700.
Phencyclidine: Phencyclidine	100–125.
Blank	Less than 2 ng/ml of any of the target drugs.

Evaluation-pt

1. For all drugs for which the laboratory offers service, no false drug identifications are acceptable. A false positive result under some circumstances may result in suspension or revocation of certification.

The most serious false positives are those by drug class such as THC in a blank or cocaine in a specimen known to contain only opiates. While clearly false positives also, misidentifications within a class are less serious errors but still ones which are unacceptable in a appropriately controlled laboratory.

Procedure for dealing with a false positive report from a laboratory:

A. Immediate notice to laboratory and to NIDA.

B. Allow the laboratory 5 working days to respond to the error. This response should include the submission of all QC data from the batch of specimens in which the error occurred, unless the error is to be explained as an administrative error. In this case the QC data need not be provided.

C. Allow 5 working days for review of the response. The response will be reviewed by a Reviewing Official which will have the authority to decide whether the laboratory explanation can be accepted as an error which was beyond its control (such as a clerical error on the part of the inspection organization where the laboratory can document that the analysis which it submitted was not the one attributed to it). If the error is determined to be attributable to the laboratory and that it is:

(1) An administrative error (clerical, sample mix-up, etc.), the Reviewing Official will have the option of recommending corrective action to minimize the occurrence of the particular error in the future and if necessary to review and reanalyze previously run specimens if there is reason to believe that the error could have been systematic.

(2) A technical or methodological error, the laboratory must submit all QC data from the batch of specimens which included the test specimen with the erroneous analysis. In addition, the laboratory will be required to retest specimens analyzed positive by the laboratory from the time of final resolution of the error back to the time of the last satisfactory Proficiency Test cycle (this retest to be documented by a signed statement by the Laboratory Director). Depending on the type of error which caused the false positive, this retesting may be limited to one analyte or may include all drugs for which service is offered.

If any result on a retest sample must be corrected because the criteria for a positive is not satisfied, immediate notification of the client who sent the specimen for testing is required. The Reviewing Official will have the option to recommend (1) no further action other than the above (in the case of less serious error with associated corrective action which reasonably assures the unlikelihood of reoccurrence) or (2) suspension or revocation and recertification for all drugs or for only the drug or drug class in which the error occurred.

D. During the time required to resolve the error, the laboratory would remain on the NIDA registry but with a designation that a false positive result is pending resolution. If the Reviewing Official recommends that the laboratory's certification be suspended or revoked, this will then become the official status of the laboratory until the suspension or recertification process is complete.

2. At least 90% of all drugs for which service is claimed must be detected.

3. Participant performance will be evaluated for all samples for which drugs were spiked at concentrations above the level for reporting unless the overall participant response indicates

that less than 80% of the participants were able to detect a drug.

4. A laboratory must participate satisfactorily in 3 monthly cycles of open surveys before they can be considered for certification.

5. Failure to participate in a survey (except in instances where testing of client specimens was suspended) or to participate satisfactorily may result in suspension or revocation of certification.

6. Failure to participate satisfactorily during a blind proficiency testing survey may result in suspension or revocation of certification.

7. Quantitative results reported on confirmation tests must fall within two standard deviations or 20% of the calculated group mean (whichever is larger) resulting from all participating laboratories testing a given kit.

8. Inadequate performance, as determined by the Secretary, on the criteria in items 2, 6, and 7 and the laboratory inspection may result in the failure of the laboratory to achieve certification, or lead to the suspension or revocation of a certification which has already been granted.

Appendix B—Laboratory Inspection

The following list includes certain items of inspection preceded by an asterisk(*). These are considered critical and compliance with these items must generally be documented prior to the physical inspection. Inspection teams will consist of three qualified individuals, at least two of whom have participated in a NIDA recognized training course for laboratory inspectors. Inspections will document the overall quality of the laboratory setting for the purposes of certification. In addition, the inspection reports will provide recommendations to the laboratory to correct deficiencies noted during the inspection.

1.0 *Extent of Service*

*1.1 Does laboratory perform screening and confirmatory testing on all samples reported positive?.						N/A	YES NO
*1.2 Does laboratory perform screening and confirmation tests that are based on different scientific principles?.						N/A	YES NO
1.3 Does the laboratory test for the following drugs and what methods are used? (circle drugs and screening and confirmation methods)							
Amphetamines	Immunoassay	TLC	GC	LC	GC/MS	Other.*	
Barbiturates	Immunoassay	TLC	GC	LC	GC/MS	Other.*	
Cocaine	Immunoassay	TLC	GC	LC	GC/MS	Other.*	
Opiates	Immunoassay	TLC	GC	LC	GC/MS	Other.*	
Phencyclidine	Immunoassay	TLC	GC	LC	GC/MS	Other.*	
THC	Immunoassay	TLC	GC	LC	GC/MS	Other.*	
1.4 Does the laboratory confirm all drugs by an appropriate mass spectrometric method?						N/A	Yes No
1.5 If not, does the laboratory test for the appropriate parent drug or metabolite?						N/A	Yes No
Amphetamine						N/A	Yes No
Barbiturate						N/A	Yes No
Cocaine						N/A	Yes No
Opiates						N/A	Yes No
PCP						N/A	Yes No
THC						N/A	Yes No
1.6 Does the laboratory use quantitative cutoff values on the confirmation test for each drug tested?						N/A	Yes No

2.0 *Proficiency Testing*

The laboratory must participate in a NIDA recognized proficiency testing (PT) and interlaboratory comparison program. The size of the laboratory operation does not effect the need to participate in such a program.

*2.1 Is the laboratory enrolled in a NIDA recognized PT survey (interlaboratory comparison) program?	N/A	Yes No

Note.—It is strongly recommended that the current Survey Manual be readily available to the bench technologists in the section.

2.2 Is there evidence of active review by the Scientific Director of the survey (interlaboratory comparison) results?	N/A	Yes No
2.3 Is there evidence of evaluation and, if indicated, corrective action in response to "unacceptable" results on the survey?	N/A	Yes No

3.0 *Quality Control*

Supervision of Quality Control: The Quality Control Program must be under the direct surveillance of the Quality Control Supervisor or their designated assistants and reviewed weekly by the Scientific Director.

3.1 Is there evidence of active review of records of controls, instrument function and maintenance of each routine procedure on all shifts?	N/A	Yes No
* 3.2 Is there documentation of corrective action taken when controls, etc. exceed defined tolerance limits?	N/A	Yes No
3.3 Is there a written system documented and operating to routinely detect clerical errors and analytical errors prior to results being reported?	N/A	Yes No
* 3.4 Are all results of samples reviewed by a Certifying Scientist prior to release of the results?	N/A	Yes No

4.0 *Procedure Manual*			
*4.1 Is there a procedure manual?	N/A	YES	NO
Note.—The use of manufacturer's package inserts or instrument manuals as procedures is discouraged. Such inserts or manuals provide valuable information and may be used as reference material for procedures, but should not be used to replace the formal procedures in the manual.			
*4.2 Is it complete (i.e., includes all tests offered by the section)?	N/A	YES	NO
4.3 Is it available at the bench or in the work area?	N/A	YES	NO
Note.—Working card files are acceptable for quick reference at the work bench, provided that a. A complete manual is available for reference. b. The working cards correspond to the manual.			
4.4 Is each procedure reviewed annually, dated, signed, or initialed by the Scientific Director or a qualified person designated by the Director?	N/A	YES	NO
4.5 Are all changes dated and initialed by the Scientific Director or other appropriate person?	N/A	YES	NO
4.4 Are copies of all procedures and the dates on which they were in effect maintained for reference?	N/A	YES	NO
4.5 Does each procedure include (where appropriate):	N/A	YES	NO
4.51 Principles of each test?	N/A	YES	NO
4.52 Preparation of reagents, standards, and controls?	N/A	YES	NO
4.53 Directions for calibration?	N/A	YES	NO
4.54 Derivation of results (i.e., direct readout, calibration curve, calculation from a standard, definitions for semi-quantitative readout?)	N/A	YES	NO
4.55 Linearity of method, and course of action when results exceed method linearity?	N/A	YES	NO
4.56 Sensitivity of method?	N/A	YES	NO
4.57 Cutoff value and how to report results when results are below cut-off value?	N/A	YES	NO
4.58 Controls and criteria for unacceptable results?	N/A	YES	NO
4.59 Notes, special requirements, safety precautions, etc?	N/A	YES	NO
4.60 References?	N/A	YES	NO
4.61 Index?	N/A	YES	NO
5.0 *Sample Receiving, Preparation, and Storage*			
Review the method(s) used to identify and process the samples through the receiving, preparation, and storage processes.			
5.1 Are procedures adequate to verify sample identity, integrity and maintain chain-of-custody requirements?	N/A	YES	NO
5.2 Is the condition of package and/or individual bottle seals documented?	N/A	YES	NO
5.3 Are there written criteria for identifying unacceptable, diluted or edulterated urine samples?	N/A	YES	NO
*5.4 Is the integrity of the original samples maintained (i.e., is any portion of unused urine from an aliquot ever returned to the original bottle)?	N/A	YES	NO
5.5 Does the chain-or-custody procedure account for all individuals who handle the sample?	N/A	YES	NO
*5.6 Are samples maintained in a limited access, security area at all times?	N/A	YES	NO
5.7 Is access to this area restricted to only personnel assigned to specimen preparation and other appropriate supervisory and quality control personnel?	N/A	YES	NO
5.8 Where necessary, is aliquoting of the samples done quantitatively?	N/A	YES	NO
5.9 Does aliquoting procedure prevent any possible cross contamination of the samples?	N/A	YES	NO
*5.10 Are positive samples retained in a frozen state in their original containers for a minimum of six months?	N/A	YES	NO
5.11 Are positive samples available for retesting for at least six months after testing?	N/A	YES	NO
6.0 *Records*			
6.1 Review all technical, legal, and administrative records for both legal and scientific validity.			
6.2 Does the laboratory properly complete appropriate sections of external chain-of-custody documents?	N/A	YES	No
6.3 Does the laboratory generate and properly complete internal chain-of custody documents to legally account for the samples and aliquots (as appropriate)?	N/A	YES	NO
(Note.—External chain-of-custody document may be used as the internal chain-of-custody.)			
6.4 Do the hard copies of all initial and confirmatory tests contain the following?			
6.5 Results of standards of calibrators?	N/A	YES	NO
6.6 Results of controls?	N/A	YES	NO
6.7 Laboratory identification of samples tested?	N/A	YES	NO
6.8 Identity of individuals performing test results?	N/A	YES	NO
6.9 Identity of individuals reviewing the test results?	N/A	YES	NO
6.10 Evidence of review of the Certifying Scientist?	N/A	YES	NO

6.11 Evidence of comparison of initial and confirmatory testing to ensure consistent results?	N/A.	YES	NO
6.12 Are technical records sufficiently complete to permit valid scientific review of the data?	N/A	YES	NO
6.12 Are records of all proficiency testing complete?	N/A	YES	NO
6.13 Is there evidence of review by the Scientific Director and evidence of appropriate corrective action taken if required?	N/A	YES	NO
6.14 Are records of the internal quality control program complete?	N/A	YES	NO
6.15 Is there evidence of active daily review of the quality control records by the quality control supervisor?	N/A	YES	NO
6.16 Is there evidence of active weekly review of the quality control records by the Scientific Director	N/A	YES	NO
6.17 Are records of the qualification and certification of laboratory personnel properly maintained?	N/A	YES	NO
6.18 Are all necessary records available for use in legal proceedings?	N/A	YES	NO
7.0 *Personnel:*			
The laboratory must be staffed by appropriately qualified and trained personnel under the direction of the Scientific Director. Records of the qualifications and training should be kept and be available for review.			
*7.1 Qualifications of the Laboratory Director:			
7.11 Is the Director (or Scientific Director) certified by the American Board of Forensic Toxicology or the American Board of Clinical Chemistry in Toxicological Chemistry or have comparable scientific qualifications?	N/A	YES	NO
7.11a. Scientific Training:			
PhD in Pharmacology?	N/A	YES	NO
PhD in Toxicology?	N/A	YES	NO
PhD in Analytical Chemistry?	N/A	YES	NO
Other?	N/A	YES	NO
Masters Degree in one of the above with extensive experience beyond the MS?	N/A	YES	NO
7.11b. Experience in forensic applications of analytical toxicology (court testimony, research and publications in analytical toxicology of drugs of abuse, etc.)?	N/A	YES	NO
7.12 Are these degrees and experience documented??	N/A	YES	NO
7.13 Experience in analytical toxicology:			
Two years?	N/A	YES	NO
Five or more years experience?	N/A	YES	NO
7.14 Does the director hold State certification in forensic toxicology?	N/A	YES	NO
7.2 Is the director (or Scientific Director) a full time employee of the laboratory?	N/A	YES	NO
7.3 If part-time, does he/she spend appropriate time at the laboratory?	N/A	YES	NO
7.4 Are there sufficient supervisory staff for the number of samples analyzed by the laboratory?	N/A	YES	NO
7.5 Are their qualifications and experience appropriate?	N/A	YES	NO
7.51 Are these documented?	N/A	YES	NO
7.6 Is there sufficient technical staff to complete the analysis accurately?	N/A	YES	NO
7.61 Is their training and experience documented?	N/A	YES	NO
7.7 Are there a sufficient number of certifying officials?	N/A	YES	NO
7.71 Is their training and experience documented?	N/A	YES	NO
8.0 *Reporting:*			
*8.1 Are there written protocols for the reporting of results?	N/A	YES	NO
*8.2 Do the results indicate:			
(a) Date of receipt?	N/A	YES	NO
(b) Drugs analyzed?	N/A	YES	NO
(c) Threshold concentration?	N/A	YES	NO
(d) Positive and negative results?	N/A	YES	NO
(e) Identitying of certifying official?	N/A	YES	NO
8.3 Are unconfirmed positives reported as negative?	N/A	YES	NO
8.4 Are there written protocols or the reporting of results by telephone?	N/A	YES	NO
8.5 Are there written protocols for the electronic reporting of results?	N/A	YES	NO
8.6 Are results reported in a timely manner?	N/A	YES	NO
9.0 *Reagents, Controls, and Standards:*			
Reagents—The verification of reagents is required and must be documented. Several methods are acceptable such as direct analysis with reference materials, parallel testing of the old vs. new reagents, and checking against routine controls. The intent of the questions are for new reagents to be checked by an appropriate method and results recorded.			
9.1 Are reagents verified and history documented?	N/A	YES	NO
9.2 Are results of reagent checks recorded?	N/A	YES	NO

9.3 Are reagents properly labeled and dated on receipt, preparation and/or when placed in service?	N/A	YES	NO
9.4 When appropriate, are expiration dates indicated on reagent containers?	N/A	YES	NO
9.5 Inspect reagents in use and on the shelves. Are outdated reagents discarded and replaced routinely?	N/A	YES	NO

Note: Certain expensive reagents may warrant use after the labeled expiration date. In such cases, the laboratory must have clearly defined written policy specifying such reagents, circumstances under which extended use may exist, special control procedures to be implemented and specific persons authorizing such.

9.5 Are new reagents checked against old reagents or other reference material prior to being placed in service?.	N/A	YES	NO

10.0 Controls and Standards:

10.1 Are pure drug standards used?	N/A	YES	NO
10.2 Is a record of purity of drug standards maintained?	N/A	YES	NO
10.3 If the laboratory uses drugs covered by the Controlled Substances Act, does it maintain an appropriate DEA license?	N/A	YES	NO
10.4 Are all standards properly labeled as to content and concentration?	N/A	YES	NO
10.5 Do labels on standards including dates received, prepared or opened, when placed in service, and expiration date (when appropriate)?	N/A	YES	NO
10.6 Are controls used for all tests?	N/A	YES	NO
10.7 Are tolerance limits defined for control procedures?	N/A	YES	NO
10.8 Are open quality control samples used during each analysis?	N/A	YES	NO
10.9 Are blind quality control samples used in all analyses?	N/A	YES	NO
10.10 Is there a written policy to indicate corrective action if an analysis is out of control?	N/A	YES	NO
10.11 Are results of controls recorded in a convenient manner and analyzed routinely to detect instrument or process failure?	N/A	YES	NO

11.0 *Instruments and Equipment:*

Glassware—Answer the following questions only if reusable glassware is used.

11.1 Is the glassware rinsed with purified water before drying?	N/A	YES	NO
11.2 Is washed glassware checked for contamination?	N/A	YES	NO

Volumetric Glassware:

11.3 Are damaged pipets (broken tips, blurred or lost markings) discarded?	N/A	YES	NO
11.4 Are volumetric pipets and measuring devices of certified accuracy (Class A) or are they checked by gravimetric, colormetric, or some other verification procedures?	N/A	YES	NO

Automatic Pipets—Fixed volume adjustable and/or micropipets. Automatic pipets and diluting devices of all types must be checked for accuracy and reproducibility before being placed in service and periodically thereafter.

11.5 Are pipets checked for accuracy of calibration before being placed in service (gravimetric, colormetric, or other verification procedure)?	N/A	YES	NO
11.6 Are pipets checked for accuracy and reproducibility at specified intervals (gravimetric, colormetric, or other verification procedure)?	N/A	YES	NO

Instrument Maintenance:

11.7 Are there written standard procedures for set-up and normal operation of instruments?	N/A	YES	NO
11.8 Is there a schedule or system for the regular checking of the critical operating characteristics for all instruments in use?	N/A	YES	NO
11.9 Are instructions for instrument check systems written?	N/A	YES	NO
11.10 Are function checks documented in a convent manner to detect trends of malfunctions?	N/A	YES	NO
11.11 Are tolerance limits for acceptable function written for specific instruments whenever appropriate?	N/A	YES	NO
11.12 Are instructions provided for major troubleshooting and repair of instruments?	N/A	YES	NO
11.13 Are instrument maintenance, service, and repair records (or copies) immediately available to and usable by the technical staff operating the equipment?	N/A	YES	NO

Temperature Dependent Equipment:

11.14 Are temperatures checked and recorded daily (or when used) for the following items of equipment?	N/A	YES	NO

If "No" check the item corresponding to the deficient area—

Water baths ____
Dry baths (heating blocks) ____
Incubators and ovens (where control is necessary for a procedure) ____
Refrigerators and freezers ____

Centrifuges:			
11.15 Are all centrifuges clean and properly maintained?	N/A	YES	NO
11.16 Is there a written protocol for maintenance of all centrifuges?	N/A	YES	NO
11.17 Are the operating speeds of all centrifuges checked periodically as required for intended service?	N/A	YES	NO
Analytical Balances:			
11.18 Are balances mounted on a vibration free stand?	N/A	YES	NO
11.19 Are balances clean, serviced, and checked periodically by qualified service personnel?	N/A	YES	NO
11.20 Are standard weights (NBS Class S or equivalent) available for checking accuracy?	N/A	YES	NO
11.21 Are weights well maintained (clean, in a covered container, not corroded)?	N/A	YES	NO
Immunoassay Equipment:			
11.22 Are gamma counters and/or scintillation counters calibrated periodically (at least once a year)?	N/A	YES	NO
11.23 Are records of this calibration recorded?	N/A	YES	NO
11.24 Are personnel trained in the use of radioisotopes?	N/A	YES	NO
11.25 Are spectrophotometers calibrated appropriately (if necessary)?	N/A	YES	NO
Thin Layer Chromatography:			
11.26 Are standards included on each TLC plate?	N/A	YES	NO
11.27 Are controls and blanks extracted and run through the entire procedure for each run?	N/A	YES	NO
11.28 Are solvents prepared fresh each day?	N/A	YES	NO
11.29 Are the results of TLC recorded appropriately for later reference?	N/A	YES	NO
11.30 Are written procedures available to designate a positive and to determine the threshold concentration?	N/A	YES	NO
High Performance Liquid Chromatography:			
11.31 Are procedures written for calibration, operation, and maintenance?	N/A	YES	NO
11.32 Are unextracted standards run with each batch of samples?	N/A	YES	NO
11.33 Are controls and blanks extracted with batch of samples?	N/A	YES	NO
11.34 Are internal standards used where appropriate?	N/A	YES	NO
11.35 Is there evidence that linearity of the method has been checked?	N/A	YES	NO
11.36 Is there evidence that the limit of detection and the limit of quantitation have been determined for each procedure?	N/A	YES	NO
11.37 Are new columns verified for performance before being used?	N/A	YES	NO
11.38 Are written procedures available to designate a positive and to determine threshold concentration?	N/A	YES	NO
Gas Chromatography:			
11.39 Are procedures written for calibration, operation, and maintenance	N/A	YES	NO
11.40 Are unextracted standards run with each batch of samples?	N/A	YES	NO
11.41 Are controls and blanks extracted and analyzed with each batch of samples?	N/A	YES	NO
11.42 Are internal standards used when appropriate?	N/A	YES	NO
11.43 Is there evidence that linearity of the method has been checked?	N/A	YES	NO
11.44 Is there evidence that the limit of detection and limit of quantitation have been determined for each procedure?	N/A	YES	NO
11.45 Are new columns verified for performance before being used?	N/A	YES	NO
11.46 Is routine maintenance performed on each day of use or more frequently if required (for example septum changes, column changes, etc.)?	N/A	YES	NO
11.47 Is column maintenance performance as required (cutting off capillary columns, repacking glass wool, etc.)?	N/A	YES	NO
11.48 Are there written procedures for determining sensitivity and signal/noise ratio of nitrogen/phosphorous and election capture detectors?	N/A	YES	NO
11.49 Are there written procedures available to designate a positive and to determine threshold concentration?	N/A	YES	NO
Gas Chromatography Mass Spectrometry:			
11.50 Are the mass spectrometers tuned daily?	N/A	YES	NO
11.51 If an Autotune program is used, are records maintained?	N/A	YES	NO

11.52	Are corrective actions posted in the case of a failure to tune?	N/A	YES	NO
11.53	Are the mass spectrometers maintained at regular intervals?	N/A	YES	NO
11.54	Are procedures available for checking for air leaks?	N/A	YES	NO
11.55	If so, are these appropriate?	N/A	YES	NO
11.56	Are records of ion ratios maintained?	N/A	YES	NO
11.57	Is corrective action taken if the ion ratios change from a pre-determined instrument range?	N/A	YES	NO
11.58	Are ion ratio ranges determined for each instrument and for each assy?	N/A	YES	NO
11.59	If ion ranges are used, are procedures available for designating a positive?	N/A	YES	NO
11.60	Are procedures written for operation, calibration, and maintenance?	N/A	YES	NO

* Specify.

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S.J. Res. 121/Pub. L. 100–87

Designating August 11, 1987, as "National Neighborhood Crime Watch day." (Aug. 11, 1987; 101 Stat. 664; 1 page) Price: $1.00

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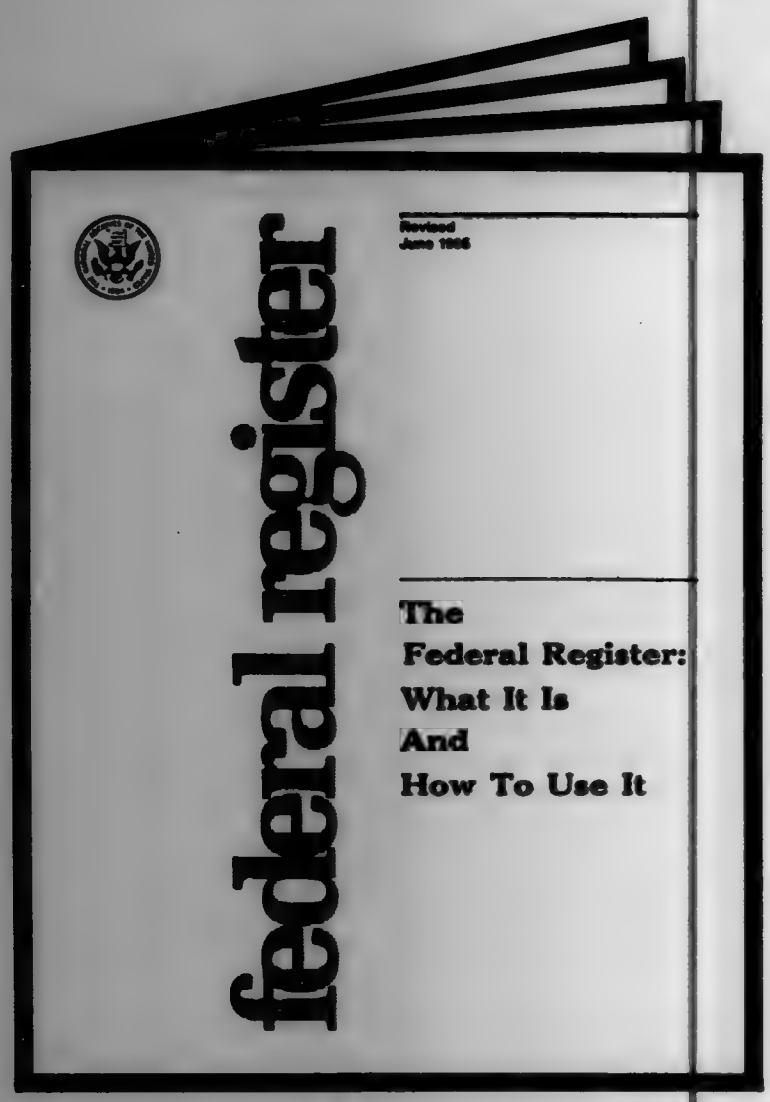

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WASHINGTON, DC

WHEN: September 29, at 9 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: Janice Booker, 202-523-5239

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Presidential Documents

Title 3–

The President

Proclamation 5803 of August 13, 1987

National Child Support Enforcement Month, 1987

By the President of the United States of America

A Proclamation

Over 15 million children in the United States live in households with only one parent present. Only about one-third receive child support payments, and many do not receive the full amount that is owed them. American children are being deprived of billions of dollars in support each year, leading to a reduced standard of living and, with tragic frequency, debilitating poverty.

Although the Congress and the Executive branch have designed programs to help nurture children and protect them from poverty, the ultimate responsibility for the care of children belongs with their parents. Ensuring that parents provide for their children is an important goal for our Nation. As I have said, the family is the most basic support system there is, and the most fundamental duty of a parent is to provide financial support to his or her children.

In 1984, the Congress strengthened the Federal-State child support system and improved incentives for State governments to implement effective practices to alleviate the financial distress of children. Dedicated cooperation among family support enforcement personnel, the judiciary, and the legal community has led to greater success in locating absent parents, establishing paternity, and, ultimately, collecting child support. Nonetheless, much remains to be done to foster a nationwide conviction that child support represents not only a legal responsibility but a profound ethical obligation of parents and an urgent moral right of children.

The Congress, by House Joint Resolution 313, has designated the month of August 1987 as "National Child Support Enforcement Month" and has authorized and requested the President to issue a proclamation in its observance.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the month of August 1987 as National Child Support Enforcement Month, and I call upon all government agencies and the people of the United States to observe this month with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of August, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 87-18806

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Presidential Documents

Proclamation 5804 of August 13, 1987

Citizenship Day and Constitution Week, 1987

By the President of the United States of America

A Proclamation

Every year for more than three decades, we Americans have celebrated our constitutional rights and responsibilities as citizens of the United States through the observance of Citizenship Day and Constitution Week. In 1987 this traditional celebration takes on special significance, as September 17 marks the 200th anniversary of the signing of our Constitution.

In anticipation of this occasion, the Commission on the Bicentennial of the United States Constitution will conduct a special observance on September 16, 1987, entitled "A Celebration of Citizenship." On this date, millions of students will reflect upon the blessings of liberty bestowed by our Constitution. Parents and adults can join them in paying tribute to the Framers of the Constitution and in gratefully recalling the privileges and duties secured by our Constitution. At 1:00 p.m., E.D.T., a national and international radio and television broadcast will unite all Americans in a recitation of the Pledge of Allegiance. The broadcast will include a reading of the Preamble to our Constitution. It is my hope that all Americans will take advantage of this opportunity to gain new insight into the precious principles of our governing document.

Those principles have stood the tests of time and turmoil. In 1787, we were a Nation of some four million people, living in 13 sovereign States, aligned along the eastern seaboard. The States were "united" in name only, barely held together by the Articles of Confederation, an agreement of mutual interest among the 13 original colonies drafted during the Revolutionary War. Once the common enemy was defeated, the general confederation began to unravel. Many of the States had their own army, printed their own currency, and charged tariffs to other States for using their ports and roads.

A convention was called in Philadelphia in May 1787 for the sole purpose of making the Articles of Confederation "adequate to the exigencies of Government and preservation of the Union." Many of the Nation's leaders feared that unless a stronger national government was created, the country would flounder, leading to the formation of independent republics or the reaccession of foreign powers. Despite the long odds against success, the Framers were able, through numerous compromises, to fashion a blueprint for a new Nation. In this peaceful revolution, the States transformed their loose political alliance into a Federal union under the first written national Constitution in history. Today, 200 years later, that Constitution is the oldest written instrument of democratic rule in the world still in use, and it continues to proclaim and to shape a peaceful revolution toward freedom and prosperity for all mankind.

The Congress, by joint resolution of February 29, 1952 (36 U.S.C. 153), designated September 17 as "Citizenship Day" in commemoration of the signing of the Constitution and in recognition of all who, by coming of age or by naturalization, have attained the status of citizenship, and authorized the President to issue annually a proclamation calling upon officials of the government to display the flag on all government buildings on that day. Also, by joint resolution of August 2, 1956 (36 U.S.C. 159), the Congress designated the week beginning September 17 and ending September 23 of each year as

"Constitution Week" in recognition of the historic importance of the Constitution and the significant role it plays in our lives today.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim September 17, 1987, as Citizenship Day and call upon appropriate government officials to display the flag of the United States on all government buildings. I urge Federal, State, and local officials, as well as leaders of civic, educational, and religious organizations, to conduct ceremonies and programs that day to commemorate the occasion.

Furthermore, I proclaim the week beginning September 17 and ending September 23, 1987, as Constitution Week, and I urge all Americans to observe that week with appropriate ceremonies and activities in their schools, churches, and other suitable places.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of August, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 87-18807
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Rules and Regulations

Federal Register
Vol. 52, No. 158
Monday, August 17, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 574]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 574 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 366,000 cartons during the period August 16 through August 22, 1987. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 574 (§ 910.874) is effective for the period August 16 through August 22, 1987.

FOR FURTHER INFORMATION CONTACT: James M. Scanlon, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250–0200, telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1987–88. The committee met publicly on August 11, 1987, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended by a 9 to 3 vote (with one abstention) a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the market is good.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the Act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.874 is added to read as follows:

§ 910.874 Lemon regulation 574.

The quantity of lemons grown in California and Arizona which may be handled during the period August 16 through August 22, 1987, is established at 366,000 cartons.

Dated: August 12, 1987.

Ronald L. Cioffi,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 87–18740 Filed 8–14–87; 8:45 am]
BILLING CODE 3410–02–M

Commodity Credit Corporation

7 CFR Part 1421

Grain Reserve Program for 1986 and Subsequent Crops

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations at 7 CFR Part 1421 which govern the Farmer-Owned Grain Reserve (FOR) Program for 1986 and subsequent crops. Specifically, this final rule amends: (1) The length of reserve agreements, (2) the maximum quantity that may be stored in the FOR, and (3) the trigger release levels as mandated by the Agricultural Act of 1949, as amended by the Food Security Act of 1985. In addition, this final rule will make certain technical changes.

EFFECTIVE DATE: This final rule shall become effective on August 14, 1987.

FOR FURTHER INFORMATION CONTACT: Lynda Flament, Program Specialist, Cotton, Grain and Rice Price Support Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013; Phone (202) 447–4229.

SUPPLEMENTARY INFORMATION: Information collection requirements contained in this regulation (7 CFR Part 1421) have been approved by the Office of Management and Budget in accordance with the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Number 0560-0087.

This final rule has been reviewed under USDA procedures established in accordance with provisions of Departmental Regulation 1512-1 and Executive Order 12291 and has been classified "not major". It has been determined that the provisions of this final rule will not result in (1) an annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this final rule.

The title and number of the Federal Assistance Program to which this final rule applies are: Title-Commodity Loans and Purchases Number 10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

The Food Security Act of 1985 amended section 110 of the Agricultural Act of 1949, as amended, (the "1949 Act"). Since the purpose of this final rule is merely to correct and update the Grain Reserve Program regulations due to these amendments, it has been determined that no public participation with respect to comments on this action is necessary. Accordingly, this final rule will amend 7 CFR Part 1421 with respect to: (1) The length of FOR agreements, (2) the maximum quantity that may be stored in the FOR, and (3) the trigger release levels that are established for the FOR. In addition, this final rule will make certain technical changes.

List of Subjects in 7 CFR Part 1421

Grain loan programs/Agricultural price support programs, Warehouses.

Final Rule

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

1. The authority citation for Part 1421 continues to read as follows:

Authority. Secs. 4 and 5 of the Commodity Credit Corporation Charter Act, as amended, 62 Stat. 1070, as amended, 1072 (15 U.S.C. 714(b) and 714(c)), sec. 110 of the Agricultural Act of 1949, as amended, 91 Stat. 951, as amended (7 U.S.C. 1445(e)).

2. 7 CFR 1421.741 is revised to read as follows:

§ 1421.741 Length of reserve agreements.

Reserve agreements shall be for a period as determined and announced by CCC.

3. 7 CFR 1421.742 is revised to read as follows:

§ 1421.742 Limit on reserve quantity.

The maximum quantity of wheat and feed grains stored under this program shall be such quantity as determined and announced by the Secretary. The upper limit on the total quantities of wheat that may be stored under this program shall not exceed 30 percent of the estimated total domestic and export usage of wheat during the marketing year, and 15 percent for feed grains. Notwithstanding the maximum percent established, the Secretary may establish upper limits at higher levels, but not in excess of 110 percent of the levels stated. In no event, however, shall such levels be less than 17 percent of the total domestic and export usage for the current marketing years for wheat, and 7 percent for feed grains.

4. The heading of § 1421.752 is changed to read as follows:

§ 1421.752 Commingling and replacement of wheat and feed grains.

* * * * *

§ 1421.753 [Amended]

5. 7 CFR 1421.753(a) is amended by removing the second, third, fourth, and fifth sentences and inserting in lieu of thereof the following:

"Trigger release levels will be the higher of 140 percent of the nonrecourse loan rate for the commodity or the established targeted price for such commodity"

6. 7 CFR 1421.754 is amended by revising the first sentence to read as follows:

§ 1421.754 Maturity.

Grain reserve loans mature and are due and payable on the last day of the 36th calendar month after the maturity date of the regular loan agreement or the expiration date of the purchase agreement.* * *

Signed at Washington, DC, on August 4, 1987.

Vern Neppl,

Acting Administrator, Agricultural Stabilization and Conservation Service; and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 87-18570 Filed 8-14-87; 8:45 am]

BILLING CODE 3410-05-M

Farmers Home Administration

7 CFR Part 1924

Planning and Performing Construction and Other Development

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice of compliance date.

SUMMARY: The Farmers Home Administration (FmHA) announces that when FmHA regulations contained in 7 CFR Part 1924, Subpart A were revised by a final rule published in the Federal Register, 52 FR 7996, on Friday, March 13, 1987, the allowance for a transition period was inadvertently not included. Subsequently, this notice establishes a transition period until December 31, 1987, to phase in certification requirements of that revision. During that period of time in those States where certification of single family housing building plans and specifications cannot be readily obtained, uncertified plans and specifications will be accepted. Uncertified plans and specifications will be reviewed by the FmHA County Supervisor in accordance with the former FmHA Minimum Property Standards (MPS). These standards were adopted from the Department of Housing and Urban Development (HUD) as of September 1, 1982, and were utilized until the May 13, 1987, revision.

DATE: The transition period will be through December 31, 1987.

ADDRESS: Submission of plans and specifications will be to FmHA field offices; interested persons may contact their State FmHA Office for information.

FOR FURTHER INFORMATION CONTACT: James A. Weibel, Senior Loan Officer, Single Family Housing Processing

Division, FmHA, USDA, Room 5347, South Agriculture Building, Washington, DC 20250, telephone 202–382–1485.

SUPPLEMENTARY INFORMATION: The revision to FmHA Instruction 1924–A, "Planning and Performing Construction and Other Development," on March 13, 1987, replaced the existing MPS with other development standards.

Paragraph 1924.5 of the revised regulation requires certification by qualified persons that single family housing building plans and specifications meet the applicable development standard selected by the applicant. Upon implementation of this requirement by FmHA field offices, it became evident that in some areas certification was not possible for various reasons. Therefore, in order to continue to have a viable housing program and to allow time to phase in the certification requirement, a transition period is necessary.

The FmHA programs which are listed in the Catalog of Federal Domestic Assistance under numbers 10.405–Farm Labor Housing Loans and Grants; 10.411—Rural Housing Site Loans; 10.420 Rural Self-Help Housing Technical Assistance are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials (7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983).

Numbers 10.404—Emergency Loans; 10.407—Farm Ownership Loans; 10.410—Very Low- and Low-Income Housing Loans are excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with state and local officials.

Dated: August 10, 1987.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 87–18768 Filed 8–14–87; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket Nos. RM86–6–004, RM86–6–005, and RM86–6–006]

Construction Work in Progress

Issued: August 12, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order granting rehearing for the purpose of further consideration.

SUMMARY: On June 18, 1987, the Federal Energy Regulatory Commission issued a final rule (Order No. 474) to revise regulations concerning filings to include costs associated with construction work in progress (CWIP) in the rate base of public utilities under Part II of the Federal Power Act. Order No. 474 was issued pursuant to a remand of the Commission's prior CWIP rule (Order No. 298) by the United States Court of Appeals for the District of Columbia Circuit, which affirmed in part but vacated in part Order No. 298, while expressing concerns about the anticompetitive implications of CWIP in rate base. *Mid-Tex Electric Cooperative, Inc., et al.* v. *FERC*, 773 F.2d 327 (1985).

In this order, the Commission grants rehearing of its decision solely for the purpose of further consideration.

EFFECTIVE DATE: August 12, 1987.

FOR FURTHER INFORMATION CONTACT: Andre Goodson, Federal Energy Regulatory Commission, Office of the General Counsel, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357–8467.

SUPPLEMENTARY INFORMATION:

Order Granting Rehearing for Purpose of Further Consideration

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

On June 18, 1987, the Commission, pursuant to a remand of the Commission's Order No. 298 from the United States Court of Appeals for the District of Columbia Circuit,[1] issued a final rule adopting revised regulations concerning filings to include costs associated with construction work in progress in rate base.[2]

Pursuant to 18 CFR 385.713 (1987), several parties filed requests for rehearing of the above-captioned proceeding.[3] In order to review more fully the arguments raised, the Commission grants rehearing of the order solely for the purpose of further consideration. This action does not constitute a grant or denial of the requests on their merits in whole or in part.

The Commission Orders:

Rehearing of the Commission's order in the above-captioned proceeding is hereby granted solely for the purpose of further consideration. Pursuant to Rule 713(d) of the Commission's Rules of Practice and Procedure (18 CFR 713(d) (1987)), no answers to the requests for rehearing will be entertained by the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–18741 Filed 8–14–87; 8:45 am]

BILLING CODE 6717–01–M

[1] Mid-Tex Electric Cooperative Inc., *et al.* v. FERC, 773 F.2d 327 (1985).

[2] Order No. 474, 52 FR 23948 (June 26, 1987), III FERC Statutes and Regulations (Regulations Preambles) ¶ 30,751 (1987).

[3] The following parties filed requests for rehearing: New England Power Company, Public Systems, and National Rural Electric Cooperative Association, *et al.*

18 CFR Parts 35 and 385

[Docket No. RM87–4–001]

Rate Changes Relating to Federal Corporate Income Tax Rates for Public Utilities

Issued: August 12, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order Granting Rehearing Solely for the Purpose of Further Consideration.

SUMMARY: On June 26, 1987, the Federal Energy Regulatory Commission (Commission) issued a final rule (Order No. 475) to establish an abbreviated filing procedure that electric public utilities could use to reflect the reduction in the corporate income tax under the Tax Reform Act of 1986.

In this order, the Commission grants rehearing of its decision solely for the purpose of further consideration.

EFFECTIVE DATE: August 12, 1987.

FOR FURTHER INFORMATION CONTACT: Thomas J. Lane, Federal Energy Regulatory Commission, Office of the General Counsel, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357–8530.

SUPPLEMENTARY INFORMATION:

Order Granting Rehearing Solely for the Purpose of Further Consideration

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

On June 26, 1987, the Commission issued a final rule establishing an abbreviated filing procedure that public utilities could use to reduce their rates to reflect the reduction in the Federal corporate income tax rate under the Tax Reform Act of 1986.

Pursuant to 18 CFR 385.713 (1987), Coast Electric Power Association, *et al.*[1] filed a request for rehearing of the above-mentioned proceeding. In order to review more fully the arguments raised, the Commission grants rehearing of the order solely for the purpose of further consideration. This order is effective on the date of issuance. This action does not constitute a grant or denial of the request on its merits in whole or in part.

Pursuant to Rule 713(d) of the Commission's Rules of Practice and Procedure (18 CFR 713(d) (1987)), no answers to the requests for rehearing will be entertained by the Commission.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18742 Filed 8-14-87; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Parts 353 and 355

[Docket No. 60958-7145]

Antidumping and Countervailing Duties; De Minimis Dumping Margins and De Minimis Subsidies

AGENCY: International Trade Administration; Department of Commerce.

ACTION: Final rule.

SUMMARY: The International Trade Administration is amending the regulations on antidumping duties (19 CFR Part 353) and countervailing duties (19 CFR Part 355) to disregard any weighted-average dumping margin and any net subsidy that is *de minimis*. For this purpose, the rule defines *de minimis* as less than 0.5% *ad valorem* or the equivalent specific rate.

EFFECTIVE DATE: September 16, 1987.

FOR FURTHER INFORMATION CONTACT: William D. Hunter, Acting Deputy Chief Counsel for Import Administration 202/377-1411.

SUPPLEMENTARY INFORMATION: In 1980, the International Trade Administration (ITA) promulgated final rules concerning antidumping and countervailing duties (19 CFR Parts 353 and 355, respectively). At that time, ITA did not include a provision for disregarding *de minimis* net subsidies or dumping margins. In practice, however, ITA considered weighted-average dumping margins and aggregate net subsidies of less than 0.5% *ad valorem* as *de minimis* and disregarded them.

In *Carlisle Tire and Rubber Co.* v. *United States*, —— CIT ——, Slip Op. 86-45 (April 29, 1986), the Court of International Trade held that ITA must either promulgate a rule in accordance with the notice and comment procedures of the Administrative Procedure Act establishing 0.5% as the *de minimis* standard for its determinations, or it must explain the basis for each determination in which it decided that a weighted-average net subsidy or dumping margin below 0.5% was *de minimis*.

Accordingly, on October 6, 1986 (51 FR 35529), the Department published a proposed *de minimis* rule, pursuant to which net aggregate subsidies and *ad valorem* dumping margins of less than 0.5% would be disregarded for purposes of publishing or revoking orders, setting deposit rates, or assessing countervailing duties.

Description

This final rule, which is the same as the proposed rule with one clarifying change, adds new § 353.24 to the antidumping regulations (19 CFR Part 353) and new § 355.8 to the countervailing duty regulations (19 CFR Part 355). These additions are described below.

1. *Section 353.24.* The rule adds new § 353.24 consisting of three paragraphs.

Paragraph (a) states that the Secretary will disregard any weighted-average dumping margin that is less than 0.5% *ad valorem* or the equivalent specific rate. This is the *de minimis* standard which ITA has consistently applied since 1980.

Paragraph (b)(1) defines "dumping margin" as the amount by which the fair value or foreign market value exceeds the United States price of the merchandise, as these amounts are determined by the Secretary under the Tariff Act of 1930, as amended (the "Act") 19 U.S.C. 1673. This margin is the amount of dumping duty that the Secretary instructs the Customs Service to assess on the merchandise under section 751 of the Act, 19 U.S.C. 1675.

Paragraph (b)(2) defines "weighted-average dumping margin" (also called the "*ad valorem* dumping margin") as the percentage which the sum of all dumping margins comprises of the total U.S. price for all entries of the merchandise into the United States during the period investigated or reviewed. In fair value investigations, ITA calculates a weighted-average dumping margin for each company investigated and an additional weighted-average margin for all companies not specifically investigated. In administrative reviews, ITA calculates a weighted-average dumping margin for each company reviewed, which ITA uses solely to set the cash deposit rate for each company. For any new shipper not previously investigated or reviewed, ITA generally sets the deposit rate at the highest weighted-average dumping margin for a reviewed firm which made a shipment of the subject merchandise during the review period.

Paragraph (c) states that the Secretary will not disregard *de minimis* margins for the purpose of actually assessing dumping duties. Therefore, paragraph (a) does not apply to references to the assessment of duties that are found in 19 CFR 353.48, 353.50, and 353.53. Paragraph (c) is intended to clarify that paragraph (a) applies to the following determinations: preliminary determinations and applications of provisional measures described in 19 CFR 353.39; final determinations and deposit requirements described in 19 CFR 353.44; exclusions under 19 CFR 353.45; deposit requirements under 19 CFR 353.48; administrative determinations (other than assessment determinations) and deposit requirements under § 353.53; and revocation determinations under 19 CFR 353.54.

2. *Section 355.8.* The rule adds new § 355.8 to 19 CFR Part 355, stating that the Secretary will disregard any aggregate net subsidy, as defined in section 771(6) of the Act (19 U.S.C. 1677(6)), which is less than 0.5% *ad valorem* or the equivalent specific rate. This is the *de minimis* standard which ITA has consistently applied since 1980.

Section 355.8 applies to the assessment of countervailing duties as well as to all determinations of aggregate net subsidies under 19 CFR 355.20, 355.31, 355.33, 355.38, 355.41, and 355.42.

Executive Order 12291

ITA has determined that these revisions of the antidumping and countervailing duty regulations are not major rules as defined in section 1(b) of Executive Order 12291 (46 FR 13193, February 19, 1981) because they will not: (1) Have a major monetary effect on the economy; (2) Result in a major increase in costs or prices; or (3) Have a

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[1] Coast Electric Power Association, Connecticut Municipal Electric and Gas Association, East Mississippi Electric Power Association, Kansas Electric Power Cooperative, Inc., MAP-PAL, Inc., Municipal Electric Systems of Oklahoma, National Rural Electric Cooperative Association, North Carolina Electric Membership Corporation, Northeast Texas Electric Cooperative, Inc., Oglethorpe Power Corporation, Sam Rayburn G&T, Inc., Seminole Electric Cooperative, Inc., Singing River Electric Power Association, South Mississippi Electric Power Association.

significant adverse effect on competition (domestic or foreign), employment, investment, productivity, or innovation.

Regulatory Flexibility Act

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small business entities because it does not change existing practices. As a result, an initial Regulatory Flexibility Analysis was not prepared.

Paperwork Reduction Act

This rule does not contain a provision for collection of information that is subject to the requirements of the Paperwork Reduction Act.

Eight firms submitted comments on the proposed regulation. These comments, and the Department's reactions to them, are summarized below.

1. Adoption of a De Minimis Test

Several parties suggested that the Department not adopt 0.5%, or any other number, as an automatic *de minimis* threshold. They argued that any such designation would be arbitrary, unnecessary, and inconsistent with the past practice of both the Departments of the Treasury and Commerce, which on occasion treated *ad valorem* margins smaller than 0.5% as significant for comparable purposes. One comment endorsed an absolute, bright-line standard on the basis that it would promote certainty and avoid needless litigation.

The doctrine of *de minimis non curat lex*, that the law does not concern itself with trifles, is a basic tenet of Anglo-American jurisprudence, inherent in all U.S. laws. With respect to the antidumping and countervailing duty laws, the Department has concluded that the potential benefits to domestic petitioners from orders on dumping margins or net subsidies below 0.5% are outweighed by the gains in productivity and efficiency provided by a *de minimis* rule. Even in price-sensitive markets, the effect of requiring a deposit or assessment of duty based on a rate of 0.5% *ad valorem* would be negligible. No party submitting comments has provided any information to support a different conclusion. Accordingly, it would be unreasonable for the Department and the U.S. Customs Service to squander their scarce resources administering orders for which the dumping margins and net subsidies are below 0.5%. The fact that the Departments of the Treasury and Commerce may not always have applied a uniform *de minimis* standard in the past is an additional reason supporting the adoption of a fixed standard which can be applied consistently in the future.

2. Bright-Line Test

Two parties suggested that, rather than automatically disregarding margins below 0.5%, a *de minimis* rule should only provide respondents with the opportunity to make an affirmative showing that dumping margins or net subsidies below 0.5% are *de minimis* in particular circumstances. Conversely, two parties suggested that margins below 0.5% should be disregarded automatically, and that respondents also should be given an opportunity to demonstrate that margins greater than 0.5% are *de minimis* in particular cases. Three specific circumstances in which it was suggested that margins greater than 0.5% could be treated as *de minimis* were: (1) Where a margin is caused by sales (such as accommodation sales) not made in the ordinary course of trade; (2) where a margin would not be found taking the price of all sales, including those priced above foreign market value ("FMV"), into account; and (3) where a margin is caused by currency fluctuation.

The efficacy of a bright-line *de minimis* threshold in reducing the administrative burden on the Department depends precisely on its elimination of the need to exercise administrative discretion in certain cases. By incorporating the very discretionary judgments which a *de minimis* rule is designed to avoid, a flexible standard would be self-defeating. Rather than defining a class of cases which the Department could disregard as insignificant, a flexible standard would force the Department to make additional determinations in those very cases.

Since the *de minimis* threshold is a weighted average, at least one of the factors listed by the comments is accounted for in the proposed rule. A small number of promotional or employee discount sales would not themselves necessarily produce a weighted average margin above 0.5%.

Finally, whether "negative margins" (on sales above foreign market value) or currency fluctuations should be taken into account in calculating dumping margins are separate issues, beyond the scope of this rulemaking. Although the Department recognizes that the treatment accorded these two variables may determine whether a weighted-average margin or subsidy rate in a particular case is *de minimis*, that is also true of *every* adjustment provided for by the Act. The Department could not entertain such suggestions without permitting this rulemaking to become a forum for commenting on other aspects of the Department's practice which, in particular cases, could result in weighted-average margins above or below *de minimis*. The instant rule has therefore been limited to setting a *de minimis* threshold where the dumping margin or net subsidy is assumed to have been calculated correctly. See the answers to Comments 6 and 7.

3. Threshold Level

Several parties suggested that the *de minimis* threshold be set at 1%, on the basis that 1% represents a level of benefit not worth the expense of an investigation or annual reviews.

After many years of applying a 0.5% *de minimis* threshold, the Department has developed no basis to conclude that 1% represents a level of benefit not worth the expense of investigations or annual reviews. No party offered specific information to support the suggestion. Accordingly, the Department does not think it appropriate to adopt 1% as the *de minimis* threshold.

4. Sale Quantities

One party commented that quantities of dumped sales constituting less than 0.5% of all sales should also be disregarded as *de minimis*, at least where the dumped sales were not made in the ordinary course of trade.

The Department believes that a parallel threshold for small quantities is not appropriate. Based on the total value of each entry, the duties on small numbers of dumped sales can be very large, as, for example, where expensive items such as transformers or other heavy equipment are involved. The antidumping duties on such sales should be collected. If the number of dumped sales is small, there is unlikely to be a weighted-average margin above *de minimis*, unless the dumped sales are of above-average value. Therefore, the rule addresses the issue raised by this comment to some extent.

5. "Or the Equivalent"

One party commented that the words "... or the equivalent" in paragraph (a) of the proposed § 353.24 be dropped, on the basis that they were undefined, vague, and suggested that margins above 0.5% would be treated as *de minimis* in some circumstances.

We agree that the words "... or the equivalent" in paragraph (a) of the proposed regulation were ambiguous, and we have changed the final text to read "or the equivalent specific rate."

This language means simply that a dumping margin expressed in dollars, rather than as a percentage, is *de minimis* where the dollar amount is less than 0.5% of the U.S. price. For example, a dumping margin of $1.00 is *de minimis* where the U.S. price of the product in question is $200.01 or more. Similarly, a subsidy expressed as $5.00 per pound is *de minimis* where the U.S. price of the product in question is $1000.01 per pound or more.

6. Weighted-Average Margins

One party suggested that the term "weighted-average margin" in § 353.24(b)(2) be defined to include so-called "negative margins" on sales priced above FMV. As the Department currently calculates weighted-average margins, sales above FMV are treated as sales at FMV, effectively eliminating the negative margins. The comment argued that including negative margins in the calculation of weighted-average margins would more accurately and fairly reflect respondent's pricing practices.

This proposal, that ITA fundamentally alter its method of calculating dumping margins, is beyond the scope of the *de minimis* rule, which is concerned only with how certain quantities are treated once they have been calculated under ITA's current methodology. See the response to Comment 2.

7. Deposit Rates

One party suggested that the Department add language to the rule stating that it would not use weighted-average dumping margins, as defined in § 353.24(b)(2), for the purpose of setting deposit rates, but that it would set deposit rates at the percentage which the sum of the dumping margins constituted of the total entered value of all entries investigated or reviewed. The comment argues that calculating deposit rates as a percentage of the total U.S. price, but then applying that percentage to the total entered value, understates the estimated duty, because the total U.S. price is invariably higher than the total entered value.

In suggesting that the Department revise the manner in which it sets deposit rates and append that new procedure to its *de minimis* rule, this comment also goes beyond the scope of this rulemaking, as explained in the response to Comment 2.

8. Duty Assessment

Two parties suggested that, where administrative reviews determine *de minimis* margins or net subsidy amounts, Customs should not assess antidumping or countervailing duties against the entries covered by that review. The comments assert that: (1) No purpose is served by assessing duties which have been administratively determined to be legally and commercially insignificant; and (2) ITA's practice is contrary to the antidumping and countervailing duty laws, which are not revenue raising in nature.

Since antidumping duties are assessed on an entry-by-entry basis, the margin on any particular entry is not known until it is actually calculated. In instances where the calculation yields a large dumping margin, even though the rate for the entry is less than *de minimis*, we see no reason why that duty should not be assessed. Where the amount of duty on a particular entry is very small, the determination whether that duty is not worth the cost of collection is properly within the province of the Customs Service.

Unlike antidumping duties, countervailing duties are assessed on all entries at the same weighted-average country-wide or company-specific rate. In no instance would the *ad valorem* countervailing duty on a particular entry differ from the country-wide or company-specific rate. Therefore, where the country-wide or company-specific rate is *de minimis*, Customs liquidates all entries without respect to countervailing duties.

Dated: June 23, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

List of Subjects in 19 CFR Parts 353 and 355

Business and industry, Foreign trade, Imports, Trade practices.

For the reasons stated in the preamble, we amend 19 CFR Parts 353 and 355 as follows:

PART 353—[AMENDED]

1. The authority citation for 19 CFR Part 353 continues to read as follows:

Authority: 5 U.S.C. 301, and subtitle IV, parts II, III, and IV of the Tariff Act of 1930, 19 U.S.C. 1301, *et seq.*, as amended by Title I of the Trade Agreements Act of 1979, Pub. L. 96–39, 93 Stat. 150, and section 221 and Title VI of the Trade and Tariff Act of 1984, Pub. L. 98–573, 98 Stat. 2948.

2. A new § 353.24 is added to 19 CFR Part 353, Subpart A, to read as follows:

§ 353.24 De minimis weighted-average dumping margins.

(a) Disregarding *de minimis* weighted-average dumping margin. For purposes of this part, the Secretary will disregard any weighted-average dumping margin, as defined in paragraph (b) of this section, that is less than 0.5% *ad valorem*, or the equivalent specific rate.

(b) Dumping margin and weighted-average dumping margin defined. (1) The term "dumping margin" means the amount by which the fair value or foreign market value, as applicable, exceeds the United States price, as determined by the Secretary under this part.

(2) The "weighted-average dumping margin" is the result of dividing the sum of the dumping margins determined in an investigation or an administrative review under this part by the sum of the United States prices calculated in the same investigation or review.

(c) Assessment of *de minimis* margins. For purposes of assessment of a dumping duty, the Secretary will not disregard any *de minimis* dumping margin.

PART 355—[AMENDED]

3. The authority citation for 19 CFR Part 355 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1303; 19 U.S.C. 2501 note; subtitle IV, parts I, III, and IV of the Tariff Act of 1930, 19 U.S.C. 1301, *et seq.*, as amended by Title I of the Trade Agreements Act of 1979, Pub. L. 96–39, 93 Stat. 150, and section 221 and Title VI of the Trade and Tariff Act of 1984, Pub. L. 98–573, 98 Stat. 2948.

4. A new § 355.8 is added to 19 CFR Part 355 to read as follows:

§ 355.8 De minimis net subsidies disregarded.

For purposes of this part, the Secretary will disregard any aggregate net subsidy that the Secretary determines is less than 0.5% *ad valorem*, or the equivalent specific rate.

[FR Doc. 87–18733 Filed 8–14–87; 8:45am]

BILLING CODE 3510-DS-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2603

Freedom of Information; Examination and Copying of Pension Benefit Guaranty Corporation Records

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This rule amends the Pension Benefit Guaranty Corporation's regulation implementing the Freedom of Information Act to conform to the law enforcement provisions and the fee and fee waiver provisions of the Freedom of Information Reform Act of 1986 and the

Uniform Freedom of Information Act Fee Schedule and Guidelines promulgated by the Office of Management and Budget. This action is necessary to comply with the statutory requirements and those guidelines. The effect of this amendment is to conform the law enforcement and fee waiver provisions to the law, to establish fee schedules in accordance with the standards established by the OMB guidelines, and to notify the public of those provisions.

EFFECTIVE DATE: September 16, 1987.

FOR FURTHER INFORMATION CONTACT: Renae R. Hubbard, Special Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202–778–8850 (202–778–8859 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The Freedom of Information Act (FOIA), 5 U.S.C. 552, provides, *inter alia*, for public access to information from records of Government corporations such as the Pension Benefit Guaranty Corporation (PBGC). On June 3, 1975, the PBGC promulgated its regulation entitled Examination and Copying of Pension Benefit Guaranty Corporation Records, 29 CFR Part 2603, establishing the basic policies and procedures that it uses to process requests for information under the FOIA. The Freedom of Information Reform Act of 1986 (Reform Act), Pub. L. 99–570, modified the FOIA's fee and fee waiver provisions and also expanded its law enforcement protections. The Reform Act directed that each agency subject to the FOIA "promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests under [FOIA] and establishing procedures and guidelines for determining when such fees should be waived or reduced." The Reform Act also directed the Office of Management and Budget (OMB) to promulgate guidelines providing for a uniform schedule of the FOIA fees for all such agencies.

On January 16, 1987, the OMB published a notice and request for public comment on its Proposed Fee Schedule and Administrative Guidelines (52 FR 1992). On March 27, 1987, the OMB published its Uniform Freedom of Information Act Fee Schedule and Guidelines in final form, incorporating changes considered appropriate as a result of comments received from the public (52 FR 10012). On April 23, 1987, the PBGC published a proposed amendment to its FOIA regulation to incorporate therein the Reform Act's law enforcement and fee waiver provisions, and to conform its fee schedule to that promulgated by the OMB. Two written comments were received on the proposed amendment, one relating to both the fee schedule and the waiver provisions and the other relating solely to the fee waiver provisions.

The written comment relating to the fee schedule contended that the guidelines issued by the OMB are not binding on agencies to the extent that they are inconsistent with the legislative intent of Congress in enacting the Reform Act. Specifically, the writer contended that the guidelines' definitions of "commercial use request", "educational institution", and "representative of the news media" do not properly reflect Congressional intent and suggested numerous changes. The writer also contended that the OMB's equating of the term "search time" to "manual search time" in the event of computer searches is unwarranted.

Favorable consideration of these comments and suggestions would be inconsistent with the OMB guidelines which the PBGC is required to follow. Furthermore, the OMB guidelines were promulgated in final form after the receipt and consideration of 80 comments. Each of the suggestions submitted by this commenter were fully considered by the OMB, and its reasons for rejecting them are fully explained in the Supplementary Information accompanying the OMB's final guidelines. For these reasons, the PBGC declines to incorporate the suggested changes. The PBGC, however, has clarified the rule with respect to searches in § 2603.51(b)(4) and made other changes for clarification purposes.

In § 2603.55(a) of its proposed amendment, the PBGC followed the statutory provisions relating to fee waivers, almost verbatim, primarily because of the statutory deadline for issuing regulations under the Reform Act. Although the two comments directed to this fee waiver provision both suggested that the PBGC's regulation include specific procedures and standards to be used in making fee waiver determinations, they suggested diametrically oppposite provisions. At issue is the fee waiver policy guidance issued by the Department of Justice in a memorandum from Assistant Attorney General Stephen J. Markman on April 2, 1987. The PBGC is studying the Department of Justice guidance, which was issued in furtherance of its statutory responsibility to encourage compliance with the FOIA, and will issue its procedures and standards for fee waivers in proposed form for public comment at a later date.

E.O. 12291 and The Regulatory Flexibility Act

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291 of February 17, 1981 (46 FR 13193) because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers, individual industries or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Any increase in fees due to inclusion of review time for commercial use requesters is likely to be offset by the decrease in fees due to the limits on search and duplication time that may be charged to other requesters. Accordingly, the PBGC certifies pursuant to section 605 of the Regulatory Flexibility Act that this regulation will not have a significant economic impact on a substantial number of small entities. In light of this certification, compliance with sections 603 and 604 is waived.

List of Subjects in 29 CFR Part 2603

Freedom of information.

In consideration of the foregoing, the Pension Benefit Guaranty Corporation hereby amends Part 2603 of Subchapter A of Chapter XXVI, Title 29, Code of Federal Regulations, as follows:

PART 2603—EXAMINATION AND COPYING OF PENSION BENEFIT GUARANTY CORPORATION RECORDS

1. The authority for Part 2603 continues to read as follows:

Authority: 5 U.S.C. 552, as amended by secs. 1801–1804, Pub. L. 99–570, 100 Stat. 3207–3248; 29 U.S.C. 1302 (b)(3).

§ 2603.2 [Amended]

2. Section 2603.2 is amended by removing from paragraph (c) the phrase "Office of the Executive Director of the" and inserting, in its place, "Communications and Public Affairs Department".

§ 2603.8 [Amended]

3. Section 2603.8 is amended by removing from paragraph (a) the reference to "2604.23" and inserting, in its place, "2603.23".

4. Section 2603.21 is amended by removing from the heading of paragraph (d) the word "Records" and inserting, in

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its place, "Records or information"; by changing all references to "investigatory records" or "investigative records" throughout paragraph (d) to read "records and information"; and by revising the section heading and paragraphs (a) and (c) to read as follows:

§ 2603.21 Records or information compiled for law enforcement purposes.

(a) *Restrictions on public access authorized.* Pursuant to the provisions of exemption (7) set forth in 5 U.S.C. 552(b), as amended by Pub. L. 99–570, 100 Stat. 3207–3248, effective October 27, 1986, the disclosure from Corporation records of matters that are "records or information compiled for law enforcement purposes" and to which access by the public would be detrimental to such purposes or to rights of privacy as specified in the statute, may be refused. Access to such records may be refused for any one or more of several specific reasons. Thus, exemption (7) protects from the public access requirements of the Freedom of Information Act records or information compiled for law enforcement purposes whenever their disclosure to any person requesting them—

(1) Could reasonably be expected to interfere with enforcement proceedings; and/or

(2) Would deprive a person of a right to a fair trial or an impartial adjudication; and/or

(3) Could reasonably be expected to constitute an unwarranted invasion of personal privacy; and/or

(4) Could reasonably be expected to disclose (i) the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and (ii) in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source; and/or

(5) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; and/or

(6) Could reasonably be expected to endanger the life or physical safety of any individual. Whenever a request is made which involves access to records described in paragraph (a)(1) of this section, and the investigation or proceeding involves a possible violation of criminal law and there is reason to believe that the subject of the investigation or proceeding is not aware of its pendancy and disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the Corporation may treat the records as not subject to the requirements of 5 U.S.C. 552 and this part during only such time as that circumstance continues. Moreover, where one or more of the consequences in paragraphs (a)(1) through (a)(6) of this section would ensue from the disclosure of particular records to any person requesting access to records or information compiled for law enforcement purposes, no determination to grant access to such records may be made by the disclosure officer under the disclosure policy set forth in §§ 2603.8 and 2603.16 in the ordinary case because in such circumstances it would not ordinarily be possible to determine that disclosure would serve the public interest and would not impede any of the functions of the Corporation.

* * * * *

(c) *"Records or information" compiled for law enforcement purposes.* The protection afforded records or information compiled for law enforcement purposes under the exemption set forth in paragraph (a) of this section extends, according to the legislative history of Pub. L. 99–570, to any Federal law enforcement information relating to pending investigations or confidential sources if disclosure of such information could reasonably be expected to cause the harms indentified in paragraph (a) of this section.

* * * * *

5. Section 2603.32 is amended by revising paragraph (c) to read as follows:

§ 2603.32 Submittal of requests for access to records.

* * * * *

(c) To avoid delay in receipt of a sufficiently complete request at the Corporation, each such request should identify the category of the requester, as defined in § 2603.51(b); reasonably describe the records sought, as provided in § 2603.33; and state specifically that whatever costs will be involved pursuant to §§ 2603.51 through 2603.53 will be acceptable, or will be acceptable up to an amount not exceeding a named figure.

6. Section 2603.36 is revised to read as follows:

§ 2603.36 Receipt by agency of request.

(a) The disclosure officer shall, upon receipt of a request for access to records, have the date and time of such receipt immediately inscribed thereon. Except as provided in paragraphs (b) through (d) of this section, the request shall be deemed received and the period within which action on such request shall be taken, as set forth in § 2603.45, shall begin on the next business day following such date.

(b) A request for access to records shall be deemed received only if such request is sufficiently complete, as set forth in §§ 2603.33 through 2603.35.

(c) To protect requesters from an unexpected accrual of liability greater than they may wish to assume for access to requested records, when the Corporation anticipates that search, review, and/or duplication charges under Subpart B of this part may be substantial, the requester will be given prompt notification of the Corporation's estimate of the costs and no receipt of a complete request will be deemed to have occurred unless or until the requester has perfected the request by assurance of payment. Such assurance may be in the form of a statement that whatever costs will be involved pursuant to §§ 2603.51 through 2603.53 will be acceptable or will be acceptable up to an amount not exceeding a named figure. To avoid delay in receipt of a sufficiently complete request, the requester may include such statement in the request.

(d) Where it is known or estimated that a request for access to records will require charges for search, review, and/or duplication services in excess of $250, or where the requester has previously failed to pay a fee charged in a timely fashion, such request shall not be deemed received until the Corporation has received fee payments or assurance of payment, as required under the provisions of § 2603.54(b).

7. Section 2603.51 is revised to read as follows:

§ 2603.51 Charges for services.

(a) *Generally.* Pursuant to the provisions of the Freedom of Information Act, as amended, charges will be assessed to cover the direct costs of searching for, reviewing, and/or duplicating records requested under the Act from the Corporation, except where the charges are limited or waived under paragraph (b) or (d) of this section, according to the fee schedule in § 2603.52. No charge will be assessed if the costs of routine collection and processing of the fee would be equal to or greater than the fee itself.

(1) "Direct costs" means those expenditures which the Corporation actually incurs in searching for and

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duplicating (and in the case of commercial requesters, reviewing) documents to respond to a request under the Act and these regulations. Direct costs include, for example, the salary of the employee performing work (*i.e.*, the basic rate of pay plus benefits) or an established average pay for a homogeneous class of personnel (*e.g.*, all administrative/clerical or all professional/executive), and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(2) "Search" means all time spent looking for material that is responsive to a request under the Act and these regulations, including page-by-page or line-by-line identification of materials within a document, if required, and may be done manually or by computer using existing programming. "Search" should be distinguished from "review" which is defined in paragraph (a)(3) of this section.

(3) "Review" means the process of examining documents located in response to a request under the Act and these regulations to determine whether any portion of any document located is permitted or required to be withheld. It also includes processing any documents for disclosure, *e.g.*, doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(4) "Duplication" means the process of making a copy of a document necessary to respond to a request under the Act and these regulations, in a form that is reasonably usable by the requester. Copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (*e.g.*, magnetic tape or disk), among others.

(b) *Categories of requesters.* Requesters who seek access to records under the Act and these regulations are divided into four categories: commercial use requesters, educational and noncommercial scientific institutions, representatives of the news media, and all other requesters. The Corporation will determine the category of a requester and charge fees according to the following rules.

(1) *Commercial use requesters.* When records are requested for commercial use, the Corporation will assess charges, as provided in this subpart, for the full direct costs of searching for, reviewing for release, and duplicating the records sought. Fees for search and review may be charged even if the record searched for is not found or if, after it is found, it is determined that the request to inspect it may be denied under the provisions of 5 U.S.C. 552(b) and these regulations.

(i) "Commercial use" request means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(ii) In determining whether a request properly belongs in this category, the Corporation will look to the use to which a requester will put the documents requested. Moreover, where the Corporation has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the Corporation will require the requester to provide clarification before assigning the request to this category.

(2) *Educational and noncommercial scientific institution requesters.* When records are requested by an educational or noncommercial scientific institution, the Corporation will assess charges, as provided in this subpart, for the full direct cost of duplication only, excluding charges for the first 100 pages.

(i) "Educational institution" means a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(ii) "Noncommercial scientific institution" means an institution that is not operated on a "commercial" basis as that term is defined in paragraph (b)(1)(i) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(iii) To be eligible for inclusion in this category, requesters must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a noncommercial scientific institution) research.

(3) *Requesters who are representatives of the news media.* When records are requested by representatives of the news media, the Corporation will assess charges, as provided in this subpart, for the full direct cost of duplication only, excluding charges for the first 100 pages.

(i) "Representative of the news media" means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. "Freelance" journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it.

(ii) To be eligible for inclusion in this category, the request must not be made for a commercial use. A request for records supporting the news dissemination function of the requester who is a representative of the news media shall not be considered to be a request that is for a commercial use.

(4) *All other requesters.* When records are requested by requesters who do not fit into any of the categories in paragraphs (b)(1) through (b)(3) of this section, the Corporation will assess charges, as provided in this subpart, for the full direct cost of searching for and duplicating the records sought, with the exceptions that there will be no charge for the first 100 pages of duplication and the first two hours of manual search time (or its cost equivalent in computer search time). Notwithstanding the preceding sentence, there will be no charge for search time in the event of requests under the Privacy Act of 1974 from subjects of records filed in the Corporation's systems of records for the disclosure of records about themselves. Search fees, where applicable, may be charged even if the record searched for is not found.

(c) *Aggregation of requests.* If the Corporation reasonably believes that a requester or group of requesters is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Corporation will aggregate any such requests and charge accordingly. In no case will the Corporation aggregate multiple requests on unrelated subjects from one requester.

(d) *Waiver or reduction of charges.* Circumstances under which searching, review, and duplication facilities or services may be made available to the

requester without charge or at a reduced charge are set forth in § 2603.55.

8. Section 2603.52, is amended by revising (a) introductory text, (a)(1), (b) introductory text and (c) to read as follows:

§ 2603.52 Fee schedule.

(a) *Charges for searching and review of records.* Charges applicable under this subpart to the search for and review of records will be made according to the following fee schedule:

(1) *Search and review time.* (i) Ordinary search and review by custodial or clerical personnel, $1.75 for each one-quarter hour or fraction thereof of employee worktime required to locate or obtain the records to be searched and to make the necessary review; and (ii) search or review requiring services of professional or supervisory personnel to locate or review requested records, $4.00 for each one-quarter hour or fraction thereof of professional or supervisory personnel worktime.

* * * * *

(b) *Charges for duplication of records.* Charges applicable under this subpart for obtaining requested copies of records made available for inspection will be made according to the following fee schedule and subject to the following conditions.

* * * * *

(c) *Other charges.* The scheduled fees, set forth in paragraphs (a) and (b) of this section, for furnishing records made available for inspection and duplication represent the direct costs of furnishing the copies at the place of duplication. Upon request, single copies of the records will be mailed, postage prepaid, free of charge. Actual costs of transmitting records by special methods such as registered, certified, or special delivery mail or messenger, and of special handling or packaging, if required, will be charged in addition to the scheduled fees.

9. Section 2603.53 is amended by revising paragraph (a) to read as follows:

§ 2603.53 Computerized records.

(a) Charges for information that is available in whole or in part in computerized form will be made available at the actual direct cost to the Corporation, including the cost of operating the central processing unit (CPU) for that portion of operating time that is directly attributable to searching for records responsive to the request, personnel salaries apportionable to the search, and tape or printout production or an established agency-wide average rate for CPU operating costs and operator/programmer salaries involved in FOIA searches. Charges will be computed at the rates prescribed in § 2603.52 (a) and (b).

* * * * *

10. Section 2603.54 is amended by removing from paragraph (a) the phrase "as set forth in §§ 2603.51–2603.53" and inserting, in its place, "as provided in this subsection"; and by revising paragraphs (b) and (c) to read as follows:

§ 2603.54 Payment of fees.

* * * * *

(b) *Advance payment or assurance of payment.* Payment or assurance of payment before work is begun or continued on a request may be required under the following rules.

(1) Where the Corporation estimates or determines that charges allowable under the rules in this subpart are likely to exceed $250, the Corporation may require advance payment of the entire fee or assurance of payment, as follows:

(i) Where the requester has a history of prompt payment of fees under this regulation, the Corporation will notify the requester of the likely cost and obtain satisfactory assurance of full payment; or

(ii) Where the requester has no history of payment for requests made pursuant to the Act and this regulation, the Corporation may require the requester to make an advance payment of an amount up to the full estimated charges.

(2) Where the requester has previously failed to pay a fee charged in a timely fashion (*i.e.*, within 30 days of the date of the billing), the Corporation may require the requester to pay the full amount owed plus any applicable interest as provided in paragraph (c) of this section (or demonstrate that he has, in fact, paid the fee) and to make an advance payment of the full amount of the estimated fee.

When advance payment, assurance of payment, or payment of past due amounts is required by the Corporation under this paragraph, the request shall not be deemed received and the period within which action on such request shall be taken, as set forth in § 2603.45, shall not begin until the Corporation has received the required fee payment (including any applicable interest on past due amounts) or assurance of payment, whichever is required.

(c) *Late payment interest charges.* The Corporation may assess late payment interest charges on any amounts unpaid by the 31st day after the date a bill is mailed to a requester. Interest will be assessed at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date the bill is mailed.

11. Section 2603.55 is revised to read as follows:

§ 2603.55 Waiver or reduction of charges.

(a) The disclosure officer may waive or reduce fees otherwise applicable under this subpart when disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. A fee waiver request shall set forth full and complete information upon which the request for waiver is based.

(b) The disclosure officer may reduce or waive fees applicable under this subpart when the requester has demonstrated his inability to pay such fees.

Issued in Washington, DC, this 5th day of August, 1987.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 87-18483 Filed 8-14-87; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Approval of an Amendment to the Ohio Abandoned Mine Land Reclamation Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is announcing approval of a program amendment to the Ohio Abandoned Mine Land Reclamation (AMLR) Plan received by OSMRE pursuant to the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

This amendment clarifies the role of Ohio's Rural Abandoned Mine Program (RAMP), allows use of "Opinions of Increase in Property Values" for property value increases of $2,000 or less, updates and streamlines Ohio's AMLR Plan appendices and program administration, and improves the format of selected informational tables in the Plan along with other minor technical changes.

The Federal Rules at 30 CFR Part 935 codifying decisions concerning the Ohio program are being amended to implement this action.

This amendment primarily clarifies how the Ohio AMLR program will comply with the Federal standards and will allow Ohio to better administer and update their AMLR Plan.

EFFECTIVE DATE: The rule is effective September 16, 1987.

FOR FURTHER INFORMATION CONTACT: Nina Rose Hatfield, Columbus Field Office Director, Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton Road, Columbus, Ohio 43232, Telephone (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background

On August 10, 1982, the Secretary of Interior approved the Ohio Program. Information pertinent to the general background and revisions to the proposed permanent program submission, as well as the Secretary's findings, can be found in the August 10, 1982, **Federal Register** (47 FR 35688–35721). Other actions on approval of the AMLR Plan Amendments are identified at 30 CFR 935.25.

II. Submission of the Current Amendment

On August 20, 1986, the State of Ohio submitted to OSMRE a proposed amendment to its AMLR Plan (Administrative Record No. OH–907). The revisions incorporated into this amendment are as follows:

1. Involvement of Other Governmental Agencies

This revision clarifies the role of the RAMP Committee as the primary forum for the involvement of other governmental agencies in the AMLR program. Use of the State RAMP Committee is to take the place of outdated mechanisms of cooperation which are not in use. The section of the Ohio AMLR plan affected by this change is 3.9.1.

2. Realty Appraisal Methods

This authorizes the use of "Opinions of Increase in Property Value" in lieu of conventional appraisals of property to be affected by AML project construction. These opinions would be prepared by qualified appraisers for properties likely to undergo insignificant increases in value as a result of reclamation work. This revision would only pertain to properties value increases up to $2,000. The section of the Ohio AMLR Plan affected by this revision is 3.7.4.

3. AMLR Plan Appendices

This includes deleting 13 appendices which contain outdated information or programs no longer used in the Ohio AMLR Program. The remaining appendices will be updated and retained in the AMLR Plan.

4. Program Administration

This revision allows Ohio to update tables of organization and descriptions of AMLR program staff member responsibilities.

5. Table Format Changes and Minor Corrections

This improves the format of various informational tables in the AMLR Plan and incorporates numerous minor changes to technical and numerical material throughout the AMLR Plan.

III. Public Comment

The Deputy Director solicited public comment and provided opportunity for public hearing on the proposed amendment in the March 9, 1987, **Federal Register** (52 FR 7176). The comment period closed on April 18, 1987, without receipt of any comments. Since no one requested an opportunity to testify at a public hearing, no hearing was held.

IV. Deputy Director's Findings

In accordance with section 405 of SMCRA, the Deputy Director finds that Ohio has submitted an amendment to its Abandoned Mine Land Reclamation Plan and has determined, pursuant to 30 CFR 884.15, that:

1. The State provided adequate notice and opportunity for public comment in the development of the plan and that the record does not reflect major unresolved controversies.
2. Views of other Federal agencies having an interest in the plan have been solicited and considered.
3. The State has the legal authority, policies, and administrative structure necessary to implement the amendment.
4. The proposed plan amendment meets all requirements of the OSMRE, AMLR Program provisions.
5. The State has an approved Surface Mining Regulatory Program.
6. The proposed plan amendment is in compliance with all applicable State and Federal laws and regulations.

V. Deputy Director's Decision

The Deputy Director, based on the above findings, is approving the proposed amendment submitted by Ohio on August 20, 1986.

VI. Procedural Requirements

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory program. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules will be met by the States.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

Author: The principal authors of this rule are Dave Buchanan, Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton Road, Columbus, Ohio 43232, Telephone (614) 866–0578 and (FTS) 943–2315 and Dan Pollack, Office of Surface Mining Reclamation and Enforcement, Eastern Field Operations, Ten Parkway Center, Pittsburgh, Pennsylvania 15220, Telephone (412) 937–2905 and (FTS) 726–2903.

List of Subjects in 30 CFR Part 935

Coal mining, Intergovernmental regulations, Surface mining, Underground mining.

James W. Workman,

Deputy Director, Operations and Technical Services.

Date: August 10, 1987.

30 CFR Part 935 is amended as follows:

PART 935—OHIO

1. The authority citation for Part 935 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. Section 935.20 is revised to read as follows:

§ 935.20 Approval of Ohio Abandoned Mine Land Reclamation Plan.

The Ohio Abandoned Mine Land Reclamation Plan, as submitted on October 20, 1980, and as revised November 21, 1980, November 2, 1981, and January 22, 1982, is approved effective August 10, 1982. Copies of the approved plan are available at:

Ohio Department of Natural Resources, Division of Reclamation, Building H–2, 1855 Fountain Square Court, Columbus, Ohio 43224

Office of Surface Mining Reclamation and Enforcement, 2242 South Hamilton Road, Columbus, Ohio 43232

Office of Surface Mining Reclamation and Enforcement, Administrative Records Office, 1100 L Street, NW., Room 5205, Washington, DC 20240.

3. Section 935.25 is revised to read as follows:

§ 935.25 Approval of Abandoned Mine Land Reclamation (AMLR) Plan amendments.

(a) The AMLR Plan Amendment as submitted on January 6, 1983, is approved effective May 24, 1983.

(b) The AMLR Plan Amendment as originally submitted on April 2, 1984, and subsequently revised October 10, 1984, is approved effective November 19, 1984.

(c) The AMLR Plan Amendment as originally submitted August 20, 1986, is approved.

[FR Doc. 87–18675 Filed 8–14–87; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 946

Approval in Part and Deferral in Part of Amendments to the Virginia Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval of several proposed amendments to the Virginia permanent regulatory program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments consist of (1) regulatory revisions to limit the information required of self-bond applicants to that information authorized by State statute, and (2) revisions to the pool bond regulations to allow consideration of partial bond release after a minimum of one rather than two growing seasons after reclamation. Pending resolution of concerns expressed by the Environmental Protection Agency, OSMRE is deferring action on other regulatory revisions proposed by Virginia to allow the establishment of alternative effluent limitations for the remining of previously mined areas.

EFFECTIVE DATE: August 17, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. William R. Thomas, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, P.O. Box 626, Room 214, Powell Valley Square Shopping Center, Route 23, Big Stone Gap, Virginia 24219; Telephone: (703) 523–4303.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior approved the Virginia program on December 15, 1981. Information pertinent to the general background and revisions to the proposed permanent program submission, as well as the Secretary's findings, and disposition of comments and a detailed explanation of the conditions of approval, can be found in the December 15, 1981 Federal Register (46 FR 61085–61115). Subsequent actions concerning the conditions of approval and proposed amendments are identified at 30 CFR 946.12, 946.13, 946.15 and 946.16.

II. Submission of Amendments

By letter dated January 16, 1987 (Administrative Record No. VA–591), Virginia submitted several proposed amendments to its Coal Surface Mining Reclamation Regulations. These amendments consisted of:

(1) Revisions to section 480–03–19.700.5 and the addition of sections 480–03–19.785.19 and 480–03–19.825 to allow alternate National Pollutant Discharge Elimination System (NPDES) effluent limitations to be set for operations proposing to remine previously mined areas with existing pollutional discharges. These provisions would also authorize release of bond if the remined area is reclaimed and water quality is improved, or if total pollutional loading is not increased and other environmental benefits are realized.

(2) Revisions to section 480–03–19.801.13 to limit the information required of applicants proposing self-bonds under the Coal Surface Mining Reclamation Fund to only that information authorized by section 45.1–270.3(e) of the Code of Virginia, as set out in an opinion of the Virginia Attorney General dated October 18, 1984.

(3) Revisions to section 480–03–19.801.17(a) to allow requests for partial bond releases for operations participating in the Coal Surface Mining Reclamation Fund (Virginia's alternative pool bonding system) to be considered after a minimum of one growing season following reclamation instead of the two growing seasons now required.

OSMRE announced receipt of the proposed amendments in the March 27, 1987 Federal Register (52 FR 9892–9894), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on their substantive adequacy. No comments were received before or after April 27, 1987, the close of public comment period, and since no one requested an opportunity to testify at a public hearing, the scheduled hearing was cancelled.

III. Director's Findings

After a thorough review pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, the Director is making the indicated findings for each proposed amendment:

1. Alternate Effluent Limitations for the Remining of Previously Mined Areas with Pollutional Discharges

Virginia proposes to add two new sections (480–03–19.785.19 and 480–03–19.825) to its regulations and to revise 480–03–19.700.5 by adding a number of new definitions. The new provisions would allow alternate NPDES effluent limitations to be set for operations proposing to remine previously mined areas with existing pollutional discharges. These provisions would also authorize release of the bond if the remined area is reclaimed and water quality is improved, or if total pollutional loading is not increased and other environmental benefits are realized.

Section 503(b)(2) of SMCRA and 30 CFR 732.17(h)(10)(i) require that the Administrator of the Environmental Protection Agency (EPA) concur with all State program provisions relating to air or water quality standards promulgated under the authority of the Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*) and the Clean Air Act as amended (42 U.S.C. 7401 *et seq.*). Since the proposed amendment would alter effluent limitations established under the NPDES program pursuant to the Clean Water Act and its implementing regulations, EPA concurrence is required before the Director may approve this amendment. By letter dated March 31, 1987, EPA conditioned its concurrence on the revision of several of the proposed regulatory changes. Therefore, the Director is deferring action on these

proposed provisions until EPA's concerns can be addressed and unconditional concurrence obtained.

2. Self-Bonding Requirements for Participants in Pool Bond Fund

Virginia proposes to revise its rules at 480–03–19.801.13(a)(2) to limit the information required of applicants proposing self-bonds under the Coal Surface Mining Reclamation Fund (pool bonding system) to only that information authorized by 45.1–270.3(e) of the Code of Virginia, in accordance with an opinion of the Virginia Attorney General dated October 18, 1984.

As approved on September 21, 1982 (47 FR 41556 *et seq.*) and modified on January 18, 1983 (48 FR 2123 *et seq.*), February 28, 1983 (48 FR 8271 *et seq.*) and December 27, 1983 (48 FR 56949 *et seq.*), the Virginia pool bonding rules required that applicants proposing self-bonds include a net worth certification of the applicant's parent organization if the applicant is a subsidiary corporation. The revised rules require certification of the parent organization's net worth only if the applicant uses or includes any assets or liabilities of the parent organization in computing or arriving at the applicant's net worth. Since the minimum net worth required for participation in the pool bonding system remains unchanged, the Director finds that this revision will not affect the findings upon which the alternative bonding system was originally approved, and that it is in compliance with and no less effective than the Federal regulations at 30 CFR 800.11(e) governing approval of alternative bonding systems.

In accordance with the Attorney General's opinion, the revised rule also deletes the requirement that the certification and financial statement prepared by the independent certified public accountant include a final determination regarding the applicant's ability to satisfactorily meet all obligations and costs under the proposed reclamation plan for the life of the mine. The Attorney General's opinion noted that such a determination would require the accountant to evaluate the validity of engineering calculations, an evaluation which would lie outside his/her area of expertise. The Director concurs with this opinion and finds that the deletion of this requirement would not render the pool bonding system less effective than the Federal requirements for alternative bonding programs at 30 CFR 800.11(e), because, as listed below, other program provisions provide adequate protection. Section 480–03–19.801.12(f) requires that bond be adjusted as the acreage in the permit area is revised; 480–03–19.801.13(c) requires that the financial statement and certification be updated to reflect prior reclamation obligations and self-bonding liabilities still in effect whenever a pool bond participant applies for an additional permit or permits; and 480–03–19.801.13(a)(2) continues to provide that, where the Division has a valid reason to believe that the permittee's net worth is less than required, it may require that the permittee submit a new financial statement and certification.

Virginia has also made several nonsubstantive editorial changes to section 480–03–19.801.13(a)(2), which the Director finds to be consistent with the Federal rules.

3. Bond Release Requirements for Participants in Pool Bond Fund

Virginia proposes to revise its rules at section 480–03.19.801.17(a) to allow partial bond releases for regraded and planted areas of operations participating in the Coal Surface Mining Reclamation Fund after a minimum of one full growing season or twelve months, whichever is longer, rather than the two full growing seasons previously required.

The Director finds that this change is consistent with the Federal regulations at 30 CFR 800.40(c)(2), which allow a partial bond release after vegetation has been established in accordance with the approved reclamation plan. Virginia's proposed minimum of one full growing season or one year, whichever is longer, should provide sufficient time to evaluate mortality after the first winter following initial seeding or planting. Since most vegetative failures occur within the first year after planting, use of this time period should be adequate to determine if vegetation is indeed established. However, the Director notes that section 480–03–19.801.18(c), which requires that a minimum of two full growing seasons have elapsed before the Division will consider any bond release for the permit area, appears to contradict and nullify the provisions of this amendment. The Director also notes that, in approving the pool bonding system on September 21, 1982 (47 FR 41557), he stipulated that the bond amounts to be held for the period of liability must be subject to the requirements of V807.11 and V807.12 (now codified as section 480–3–19.800.40), even though not expressly stated as such within section 480–03–19.801.17. Hence bond could be released only to the extent provided in section 480–03–19.800.40(c)(2).

IV. Public Comment

As discussed in the section of this notice entitled "Submission of Amendment," the Director solicited public comment and provided opportunity for a public hearing on the proposed amendments. No comments were received from the public during or after the comment period, which closed on April 27, 1987. Since no one requested an opportunity to testify, the public hearing scheduled for April 21, 1987 was cancelled.

Pursuant to 30 CFR 732.17(h)(10)(i) and section 503(b) of SMCRA, comments were also solicited from various Federal agencies with an actual or potential interest in the Virginia program. A summary of the comments received and their disposition appears below:

1. The Supervisor of the Jefferson National Forest sought reassurance that, for operations on Federal lands, coordination between OSMRE, the Commonwealth of Virginia and the Federal land management agency (FMLA) would not be affected by the amendment, and that the consent of the FMLA would still be required prior to any partial bond release. In response, the Director notes that nothing in the amendment alters interagency coordination requirements, nor does it change the provisions of the April 7, 1987 State-Federal cooperative agreement (52 FR 1104 *et seq.*) which governs the regulation of mining on Federal lands in Virginia. Part B of Article IX of this agreement specifies that the State shall obtain the concurrence of the FMLA prior to releasing the operator from any obligation under a bond.

2. The Environmental Protection Agency stated that early bond release, as provided under section 480–03–19.801.17(a), should never be allowed. The Director cannot agree with this statement since both section 519(c)(2) of SMCRA and the Federal regulations at 30 CFR 800.40(c)(2) contain provisions allowing partial bond release following the reestablishment of vegetation.

All other agency comments pertained to the remining amendment on which action is being deferred. These comments will be addressed in the final rule announcing the Director's decision on that amendment.

V. Director's Decision

Based on Finding 1 above, the Director is deferring action on the proposed amendment concerning alternate effluent limitations for the remining of previously mined areas with pollutional discharges until the concerns

of the U.S. Environmental Protection Agency can be addressed.

Based on Findings 2 and 3 above, the Director is approving the proposed amendments to sections 480–03–19.801.13(a)(2) and 480–03–19.801.17(a).

The Federal rules at 30 CFR Part 946 codifying decisions concerning the Virginia program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs to the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. Compliance with the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 946

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: August 10, 1987.

James W. Workman,

Deputy Director, Operations and Technical Services.

PART 946—VIRGINIA

30 CFR Part 946 is amended as follows:

1. The authority citation for Part 946 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. In § 946.15, a new paragraph (t) is added to read as follows:

§ 946.15 Approval of regulatory program amendments.

* * * * *

(t) The following amendments to the Virginia permanent regulatory program, as submitted by letter dated January 16, 1987, are approved effective August 17, 1987: Revisions to the Virginia Coal Surface Mining Reclamation Regulations at 480–03–19.801.13(a)(2), which concerns self-bonding requirements for participants in the Coal Surface Mining Reclamation Fund, and at 480–03–19.801.17(a), which concerns bond release requirements for participants in this fund.

[FR Doc. 87–18676 Filed 8–14–87; 8:45 a.m.]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7 86–32]

Drawbridge Operation Regulations; Gulf Intracoastal Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of Manatee County, the Coast Guard is changing the regulations governing the Anna Maria drawbridge between Anna Maria Island and the Bradenton Metropolitan area, Florida. This change is being made because vehicular traffic has increased. This action will accommodate the current needs of vehicular traffic and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on September 16, 1987.

FOR FURTHER INFORMATION CONTACT: Mrs. Zonia Reyes, Bridge Section, Seventh Coast Guard District, telephone (305) 536–4103.

SUPPLEMENTARY INFORMATION: On October 6, 1986, the Coast Guard published a proposed rule change concerning this amendment. The Commander, Seventh Coast Guard District, also published the proposal as a Public Notice dated October 20, 1986. In each notice, interested persons were given until November 20, 1986, to submit their comments.

Drafting Information

The drafters of these regulations are Mrs. Zonia C. Reyes, Bridge Administration Specialist, project officer, and Lieutenant Commander S.T. Fuger, Jr., project attorney.

Discussion of Comments

Five comments were received about the proposed change. One commenter supported the regulations as proposed; one stated that the proposal, though an inconvenience, could be tolerated. One commenter asked us to reconsider our proposal and recommended a statewide regulation limiting bridge openings to 30 minutes intervals. Two commenters objected to the proposal and asked that the bridge openings be limited to 30 minute intervals.

The Coast Guard has carefully considered the comments. Available highway traffic data and bridge opening statistics do not support the need to limit the frequency of bridge openings to 30 minute intervals. The final rule is unchanged from the proposed rule published on October 6, 1986, except for minor editorial revisions needed to ensure a consistent format for drawbridge regulations.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the regulation allows for tugs with tows to pass at any time. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g), 33 CFR 117.43.

2. Section 117.287(d)(2) is revised to read as follows:

§ 117.287 Gulf Intracoastal Waterway, Calooshatchee River to Perdido River.

* * * * *

(d) * * *

(2) The draw of the Anna Maria (S.R. 64) bridge, mile 89.2, shall open on signal except that from 9 a.m. to 6 p.m. on Saturdays, Sundays, and federal holidays the draw need open only on the hour, quarter-hour, half-hour, and three-quarter hour. From December 1 to May 31, Monday through Friday, from 9 a.m. to 6 p.m. the draw need open only on the hour, quarter-hour, half-hour, and three-quarter hour.

* * * * *

Dated: August 4, 1987.

H.B. Thorsen,

Read Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard.

[FR Doc. 87-18720 Filed 8-14-87; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[COTP Valdez, AK 87 01]

Safety Zone; Ammunition Island, Port Valdez, AL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: A Safety Zone is being established for the purpose of adding safety and security during the transporting and off loading of Military Class "A" explosives. This operation will not impede or add any hazards to normal port operations. The safety zone encompass both Ammunition Island and the Vessel moored thereto and while the vessel is in and outbound.

DATES: This regulation becomes effective on August 25, 1987. Comments on this regulation must be received on or before December 1, 1987.

ADDRESS: Comments should be mailed to Commander (m) Seventeenth, Coast Guard District, P.O. Box 3-5000, Juneau, AK 99802-1217.

The comments will be available for inspection and copying at the U.S. Coast Guard, Marine Safety Office, 1 Fidalgo Drive, Valdez, Alaska. Normal office hours are between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: CDR S.A. McCall (COTP) or LT B.S. Painter (CMSD) 907-835-4791.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rule making was not published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rule making procedures would have been impracticable.

The request for this regulation was not received until July 13, 1987, and there was not sufficient time remaining to publish a proposal in advance of the event for which the regulations is needed. Likewise, there was not sufficient time to provide for a delayed effective date.

Although this regulation is published as a final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure that the regulation is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under "ADDRESS" in the preamble. Commenters should include their names and addresses, identify the docket number for the regulations, and reasons for their comments. Based upon comments received, the regulation may be changed.

Drafting Information

The drafters of this regulation are Commander, Steve A. McCall, project officer, Marine Safety Office, Valdez AK, and LT Dave Shippert, project attorney, Seventeenth, Coast Guard District Legal Office.

Discussion of Regulation

Pearsey Marine will be transporting containerized Military Class "A" explosives into the port of Valdez, starting on August 25, 1987. This operation will occur once a month for the next 15 to 18 months. The 1330 yard safety zone around Ammunition Island, is to insure a safe blast effect area, recommended by the Department of Defense, Ammunition and Explosives Safety Standards Manual. The 200 yard safety zone around the vessel, is to insure safe passage of the vessel.

These regulations will be in effect only when explosives are being handled at Ammunition Island, and for the vessel transporting the explosives, while the vessel is transiting the Vessel Traffic System, both inbound and out bound from Ammunition Island. Notification of the vessels arrival into the Port of Valdez, will be published in the Notice to Mariners, Local Notice to Mariners and in the Local Valdez newspaper in advance of the vessels arrival.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of Part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Final Regulation

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.50-1(g), 6.04-1, 6.04-6 and 160.5.

2. Section 165.1703 is added to read as follows:

§ 165.1703 Ammunition Island, Port Valdez, Alaska.

(a) The waters within the following boundaries is a safety zone—the area within 1330 yards of Ammunition Island, latitude 61.07-5N, longitude 146.18W, and the vessel moored or anchored at Ammunition Island.

(b) The area 200 yards off the vessel navigating the Vessel Traffic system from abeam of Naked Island, maneuvering to approach, moor, unmoor at Ammunition Island, or the departure of the vessel from Ammunition Island.

(c) *Special regulation.* (1) Section 165.23 does not apply to paragraph (a) of this section, except when the vessel is moored to Ammunition Island.

(d) Effective August 25, 1987 Notice of vessels arrival will be made in the Notice to Mariners, Local Notice to Mariners and in the Local Valdez newspaper, prior to the vessel arrival.

Dated: July 22, 1987.

Steve A. McCall,

CDR U.S.C.G., Captain of the Port.

[FR Doc. 87-18724 Filed 8-14-87; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 22

[FRL-3210-8(a)]

Rules of Practice Governing the Administrative Assessment of Class II Civil Penalties Under the Clean Water Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: EPA is today promulgating an interim final rule establishing

procedures for its administrative assessment of "Class II" civil penalties under the Clean Water Act (CWA). The rule provides that EPA's administrative assessment of Class II penalties will be governed by EPA's Consolidated Rules of Practice for assessing administrative penalties, and by a supplemental rule relating specifically to Class II penalty assessments. EPA is taking this action in response to amendments to the CWA, made by the Water Quality Act of 1987, which authorizes the Administrator to assess administrative penalties for specified violations of the CWA. The authority granted to the Administrator to assess administrative penalties was made immediately effective upon the date of enactment of the Water Quality Act, which was February 4, 1987.

DATES: Comments on the interim final rule must be submitted on or before October 16, 1987. The interim final rule is effective September 16, 1987, and governs all proceedings for the assessment of a Class II administrative penalty under section 309(g) of the CWA for which an administrative complaint is filed after September 16, 1987. EPA will use this rule as guidance for conducting these proceedings prior to the date it becomes effective on an interim final basis.

ADDRESS: Persons may mail comments on the interim final rule to Gary C. Hess, Office of Enforcement and Compliance Monitoring (LE–134W), U.S. Environmental Protection Agency, Room 3211, 401 M Street, SW., Washington, DC 20460. Persons may inspect all comments and the complete record of this rule-making at that address during normal Agency working hours.

FOR FURTHER INFORMATION CONTACT: Gary C. Hess, Office of Enforcement and Compliance Monitoring (LE–134W), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, 202–475–8183.

SUPPLEMENTARY INFORMATION: On February 4, 1987, section 309 of the CWA, 33 U.S.C. 1319, was amended by section 314 of the Water Quality Act, Pub. L. 100–4, to authorize the Administrator of EPA to assess administrative penalties for violations of the CWA. The amendments to section 309 created a new subsection 309(g) establishing two "classes" of administrative penalties, which differ with respect to procedure and potential maximum assessment. Class I administrative penalty proceedings are not subject to the Administrative Procedure Act, 5 U.S.C. 554, 556, and permit a maximum penalty of up to $25,000. Class I proceedings are not subject to the interim final procedures promulgated today. Class II administrative proceedings authorize a maximum penalty of $125,000 and are subject to the requirements of the Administrative Procedure Act, 5 U.S.C. 554, 556. Class II proceedings thus are similar to administrative proceedings which are employed by the Agency under other environmental statutes. Today's interim final rule applies solely to Class II administrative civil penalty proceedings.

EPA has promulgated Consolidated Rules of Practice, 40 CFR Part 22, governing the administrative assessment of penalties under other statutes administered by EPA subject to the requirements of the Administrative Procedure Act. The Consolidated Rules are designed to provide a common set of procedural rules for certain of EPA's administrative penalty programs, in order to reduce paperwork, inconsistency and the burden on persons regulated. See 45 FR 24360 (Apr. 9, 1980).

EPA has concluded that the Consolidated Rules of Practice should be used, on an interim final basis, as the procedural framework for Class II administrative penalty enforcement under the CWA. Accordingly, EPA is today promulgating a rule providing that the Consolidated Rules shall govern adjudicatory proceedings for the assessment of Class II administrative penalties under section 309(g) of the CWA.

In addition, section 309(g) of the CWA establishes requirements specifically related to public notice, comment, and petitions to set aside orders assessing penalties under section 309(g). Consequently EPA is today also promulgating, on an interim final basis, a rule that supplements the Consolidated Rules of Practice and that is applicable only to Class II civil penalty proceedings.

EPA is seeking comment on the interim final rule, particularly on the interim final supplemental rules of practice.

Statutory Requirements

Under section 309(g) of the CWA, a Class II penalty is assessed by the Administrator by an order made on the record after opportunity for a hearing. Under section 309(g)(1), the Administrator must also consult with the State in which the violation occurs prior to assessing the penalty. Accordingly, § 22.38(b) would codify this requirement in the Class II administrative penalty procedures.

Under section 309(g), the Administrator must provide public notice and reasonable opportunity to comment upon the proposed assessment. The section provides that, if a hearing on the proposed assessment is conducted, the Administrator shall give any citizen who commented on the proposed assessment a reasonable opportunity to be heard and to present evidence at the hearing. The section further provides that the Administrator shall give any person who comments on a proposed assessment notice of the order assessing a penalty. Under section 309(g), if no hearing is held, any person who commented on the proposed assessment may petition the Administrator to set aside the order and to provide a hearing on the penalty. In addition, section 309(g) provides that the Administrator must set aside the order and provide a hearing if the Administrator determines that the evidence presented by the petitioner is material and was not considered in the issuance of the order. Under section 309(g), if the Administrator denies a hearing, the Administrator shall provide to the petitioner, and publish in the **Federal Register**, notice of the reasons for the denial. Accordingly, § 22.38 (c), (d), and (f) would codify requirements related to public notice, comment and petitions, in the Class II administrative penalty procedures.

Subsection 309(g) did not change the procedures for issuing and enforcing administrative orders under other subsections of section 309. See section 309(g)(11). Accordingly, the rule promulgated today does not apply to or change the procedures for issuing or enforcing compliance orders issued by EPA under, for example, section 309(a) of the CWA.

Consolidated Rules of Practice

EPA has concluded that the Consolidated Rules of Practice, 40 CFR Part 22, are consistent with the statutory requirements regarding Class II penalties under section 309 of the CWA. Use of the Consolidated Rules on an interim basis will allow EPA to begin prompt implementation of the administrative penalty authority, using uniform procedures while satisfying the procedural and substantive requirements established by the CWA.

Under the Consolidated Rules, EPA will assess Class II penalties by an order made on the record after opportunity for a hearing. Before issuing such an order, EPA will give written notice to the person to be assessed the civil penalty by filing and service of a complaint under the Consolidated Rules. Under 40 CFR 22.15, the complaint will include a notice of the respondent's right

to request, within 20 days, a hearing on the complaint.

EPA will provide public notice, and reasonable opportunity to comment on the proposed assessment under the Consolidated Rules. If EPA conducts a hearing on the proposed assessment, EPA shall provide to any person who commented on the proposal a copy of the notice of hearing required by 40 CFR 22.21(b), and a copy of any final order assessing a penalty. Persons wishing to participate at a hearing may be heard and present evidence without right of cross examination or may move formally to intervene under 40 CFR 22.11. If no hearing is held, persons who commented on the proposed assessment may petition to set aside the order and to provide a hearing on the penalty.

Supplemental Rule

The interim final rule includes provisions which supplement the Consolidated Rules as they related to Class II penalties under the CWA. The rule provides that actions of the Administrator with respect to which judicial review could have been obtained under section 509(b)(1) of the CWA (for example, issuance of a waste water discharge permit) will not be subject to review in a Class II penalty assessment proceeding. The interim final supplemental rule makes clear that a person who is not a party to a penalty assessment proceeding may nevertheless comment on a proposed assessment. The supplemental rule requires that such persons file written comments with the regional hearing clerk and serve a copy of the comments upon each party. The supplemental rule confirms that a person wishing to intervene as a full party in a Class II penalty proceeding may move for leave to intervene under the Consolidated Rules. The supplemental rule also codifies requirements in section 309(g) of the CWA related to consultation with States, public notice, comment and petitions to set aside orders assessing penalties.

Interim Final Rule

EPA is issuing these rules on an interim final basis pursuant to 5 U.S.C. 553(b)(B), which permits the issuance of rules on an interim final basis for good cause which is published with the rule.

The good cause for interim final rule issuance is as follows: The statutory provision relating to Class II administrative proceedings became effective upon enactment. The type of Class II proceeding authorized by the Water Quality Act is similar to proceedings governed by the existing Consolidated Rules of Practice, which were subject to notice and comment. In the absence of an interim final rule, there could be uncertainty as to what procedural rules apply to Class II proceedings during the coming months. Accordingly, it is in the best interests of regulated entities, citizens and EPA to issue the rules applying the Part 22 procedures on an interim final basis with an opportunity for subsequent comment.

As explained above, the supplemental rules codify statutory requirements, establish procedural or practice rules, and establish that actions of the Administrator which are not subject to judicial review in a civil or criminal proceeding for enforcement are similarly binding in a Class II penalty assessment proceeding. Prompt promulgation of the supplemental rules will lessen confusion regarding practices and procedures in Class II penalty proceedings, and avoid the anomalous situation in which CWA obligations would be binding in a criminal prosecution or civil enforcement suit but not in a Class II penalty proceeding. Consequently, EPA finds that there is good cause to issue the supplemental rules on an interim final basis. Notice and comment procedures prior to issuance of the supplemental rule on an interim final basis are unnecessary and contrary to the public interest.

The interim final rule is effective thirty days after publication in the **Federal Register**. The Consolidated Rules of Practice will govern proceedings for the assessment of Class II administrative penalties under the CWA for which a complaint is filed after that date and will be used by EPA as guidance prior to that date.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 through 612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment, a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities. This regulation will impose no significant costs on any small entities. The overall economic impact, therefore, on small entities is small. Accordingly, I hereby certify that this proposed regulation will not have a significant impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

E.O. 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirements of a Regulatory Impact Analysis. This action does not constitute a "major" regulatory action because it will not have a major financial or adverse impact on the country. This regulation has been reviewed and cleared by the Office of Management and Budget as required by Executive Order 12291.

Dated: August 10, 1987.

Lee M. Thomas,

Administrator.

For the reasons set out in the preamble, and under authority of 33 U.S.C. 1361, 40 CFR is amended on an interim basis effective September 16, 1987, as follows:

PART 22—[AMENDED]

1. The authority citation for Part 22 is revised to read as follows:

Authority: Sec. 16 of the Toxic Substances Control Act; secs. 211 and 301 of the Clean Air Act; secs. 14 and 25 of the Federal Insecticide, Fungicide, and Rodenticide Act; secs. 105 and 106 of the Marine Protection, Research, and Sanctuaries Act; secs. 3002 and 3008 of the Solid Waste Disposal Act; and sec. 501 of the Clean Water Act.

2. Section 22.01 is amended by revising paragraph (a)(5) and by adding paragraph (a)(6) to read as follows:

§ 22.01 Scope of these rules.

(a) * * *

(5) The assessment of any civil penalty conducted under section 16(a) of the Toxic Substances Control Act (15 U.S.C. 2615(a));

(6) The assessment of any Class II penalty under section 309(g) of the Clean Water Act (33 U.S.C. 1319(g)).

* * * * *

3. Add a new § 22.38 to read as follows:

§ 22.38 Supplemental rules of practice governing the administrative assessment of Class II penalties under the Clean Water Act.

(a) *Scope of these Supplemental rules.* These Supplemental rules of practice shall govern, in conjunction with the preceding Consolidated Rules of Practice (40 CFR Part 22), administrative proceedings for the assessment of any Class II civil penalty under section 309(g) of the Clean Water Act (33 U.S.C. 1319(g)).

(b) *Consultation with States.* The Administrator will consult with the State in which the alleged violation occurs before assessing a Class II civil penalty.

(c) *Public notice.* Before issuing an order assessing a Class II civil penalty, the Administrator will provide public notice of the proposed issuance of such order.

(d) *Comment by a person who is not a party.* A person not a party to the Class II proceeding who wishes to comment upon a proposed assessment must file written comment with the Regional Hearing Clerk within thirty days after public notice of the proposed order and serve a copy of the comment upon each party. For good cause shown the Administrator, the Regional Administrator or the Presiding Officer, as appropriate, may accept late comments. The Administrator will give any person who comments on a proposed assessment notice of any hearing and notice of the order assessing a penalty. Although commenters may be heard and present evidence at any hearing held pursuant to section 309(g) of the Act, commenters shall not be accorded party status with right of cross examination unless they formally move to intervene and are granted party status under § 22.11.

(e) *Administrative procedure and judicial review.* Action of the Administrator with respect to which review could have been obtained under section 509(b)(1) of the Act shall not be subject to review in an administrative proceeding for the assessment of a Class II civil penalty under section 309(g).

(f) *Petitions to set aside an order and to provide a hearing.* If no hearing is held before issuance of an order assessing a Class II civil penalty, any person who commented on the proposed assessment may petition, within 30 days after issuance of the order, the Administrator to set aside the order and to provide a hearing on the penalty. If the evidence presented by the petitioner in support of the petition is material and was not considered in the issuance of the order, the Administrator will immediately set aside such order and provide a hearing in accordance with the Consolidated Rules of Practice and these Supplemental rules of practice. If the Administrator denies a hearing under section 309(g)(4)(C) of the Act, the Administrator will provide to the petitioner, and publish in the Federal Register, notice of and the reasons for such denial.

[FR Doc. 87-18599 Filed 8-14-87; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 60

[AD-FRL 3215-1]

Standards of Performance for New Stationary Sources; Determination of Carbon Monoxide Emissions in Certifying Continuous Emission Monitoring Systems at Petroleum Refineries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Method 10A, "Determination of Carbon Monoxide Emissions in Certifying Continuous Emission Monitoring Systems at Petroleum Refineries," was proposed in the Federal Register on July 2, 1986 (51 FR 24164). This action promulgates Method 10A, which is to be added to Appendix A of 40 CFR Part 60. The intended effect is to prescribe Method 10A for use in the relative accuracy (RA) testing of nondispersive infrared (NDIR) continuous emission monitoring systems (CEMS's) at petroleum refineries.

Under section 301(b)(1) of the Clean Air Act, judicial review of the actions taken by this notice is available *only* by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit on or before October 16, 1987. Under section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

EFFECTIVE DATE: August 17, 1987.

ADDRESSES: *Docket.* Docket No. A-86-04, containing materials relevant to this rulemaking, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, South Conference Center, Room 4, Waterside Mall, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Foston Curtis or Roger Shigehara, Emission Measurement Branch, Emission Standards and Engineering Division (MD-19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-2237.

SUPPLEMENTARY INFORMATION:

I. The Rulemaking

Method 10A prescribes the collection of an integrated bag sample that is analyzed spectrophotometrically after carbon monoxide (CO) in the sample is reacted with p-sulfaminobenzoic acid. This rulemaking does not impose emission measurement requirements beyond those specified in the current regulations, nor does it change any emission standard. Rather, the rulemaking would simply add a test method associated with emission measurement requirements that would apply irrespective of this rulemaking.

II. Significant Comments and Changes to the Proposed Test Method

One comment letter was received from the proposal of Method 10A. The letter addressed two areas of concern. The comments and the Agency's responses are summarized here along with subsequent method changes.

The commenter did not think it inappropriate to use Method 10 as the reference method (RM) for RA tests on CEMS's which operate by the NDIR principle. It was recommended that Method 10 be allowed as an alternative to Method 10A for the following reasons:

(a) Redundancy is not a sound technical reason for disallowing the use of Method 10, especially if Methods 10 and 10A give equivalent results.

(b) Method 10 is a proven method that is easy to perform, reasonable in cost, and within the capability of many consultants. Method 10A is more complicated and cumbersome, costs more to perform, and fewer consultants will have the capability to perform it than Method 10.

We basically agree with the commenter's reasoning. Our original reservations were based upon the potential for biasing effects from gas stream interferences that may not be detected when comparing methods operating on the same principle. A recent study has shown that this is resolved when Method 10 is equipped with the Method 10A scrubber system. The EPA intends to propose to allow Method 10 as an acceptable RM for the the RA testing of NDIR CEMS's when the Method 10A scrubber system is used in place of the current scrubber system.

The commenter was also concerned about the stability of samples held in Tedlar bags for up to a month before analysis. It was felt that the 1-month maximum holding time specified in Method 10A was contrary to the 4- to 8-hour maximum holding time specified in Method 3. It was also pointed out that, although not specified in Method 10, many EPA regions are imposing a 24-hour holding time limit for bag samples. It was felt the 1-month maximum was too long and recommended that EPA reevaluate the holding time criteria and establish a reasonable limit.

The 4- to 8-hour holding limits for determining dry molecular weight and emission rate correction factors by Method 3 were chosen in light of analyzing multiple gas components with a portable instrument in the field. In this situation, the expedient analysis of the bag sample is desired and practicable. For the analysis of a single component gas where difficulty would be experienced in setting up the analytical equipment on site, a relatively longer holding time is needed. It has been shown in an EPA study that bag samples analyzed on site and again 6 weeks later experienced no CO losses. A typical field test which normally requires a shorter sample holding interval should experience the same stability. Since a 1-week period is a reasonable time to transport field samples to the laboratory, Method 10A will recommend that sample analysis be performed within 1 week of collection.

III. Administrative

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to identify readily and locate documents so that they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated test method and EPA responses to significant comments, the contents of the docket, except for interagency review materials, will serve as the record in case of judicial review [section 307(d)(7)(A)].

Under Executive Order 12291, EPA is required to judge whether a regulation is a "major rule" and, therefore, subject to the requirements of a regulatory impact analysis. The Agency has determined that this regulation would result in none of the adverse economic effects set forth in Section 1 of the Order as grounds for finding a regulation to be a "major rule." The Agency has, therefore, concluded that this regulation is not a "major rule" under Executive Order 12291.

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. Because this test method imposes no adverse economic impacts, a Regulatory Flexibility Analysis has not been conducted.

This rule does not contain any information collection requirements subject to the Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* This rulemaking does not impose any additional emission measurement requirements on facilities affected by this rulemaking. Rather, this rulemaking adds an alternative test method associated with emission measurement requirements that would apply irrespective of this rulemaking.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the promulgated rule will not have any impact on small entities.

List of Subjects in 40 CFR Part 60

Air pollution control, Intergovernmental relations, Petroleum refineries, Reporting and recordkeeping requirements, Incorporation by reference.

Date: August 7, 1987.

Lee M. Thomas,
Administrator.

40 CFR Part 60 is amended as follows:

PART 60—[AMENDED]

1. The authority for 40 CFR Part 60 continues to read as follows:

Authority: Secs. 101, 111, 114, 116, and 301 of the Clean Air Act as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601).

Appendix B [Amended]

2. In Appendix B, Performance Specification 4 is amended by revising Section 3.2 to read as follows:

3.2 Reference Methods. Unless otherwise specified in an applicable subpart of the regulation, Method 10A, or its approved alternative, is the RM for CEMS's using nondispersive infrared (NDIR) analyzers, and Method 10 is the RM for those CEMS's not using an NDIR.

Appendix A—Reference Methods

3. By adding Method 10A to Appendix A as follows:

Method 10A—Determination of Carbon Monoxide Emissions in Certifying Continuous Emission Monitoring Systems at Petroleum Refineries

1. Applicability and Principle

1.1 Applicability. This method applies to the measurement of carbon monoxide (CO) at petroleum refineries. This method serves as the reference method in the relative accuracy test for nondispersive infrared (NDIR) CO continuous emission monitoring systems (CEMS's) that are required to be installed in petroleum refineries on fluid catalytic cracking unit catalyst regenerators [40 CFR Part 60.105(a)(2)].

1.2 Principle. An integrated gas sample is extracted from the stack, passed through an alkaline permanganate solution to remove sulfur and nitrogen oxides, and collected in a Tedlar bag. The CO concentration in the sample is measured spectrophotometrically using the reaction of CO with p-sulfaminobenzoic acid.

1.3. Range and Sensitivity.

1.3.1 Range. Approximately 3 to 1800 ppm CO. Samples having concentrations below 400 ppm are analyzed at 425 nm, and samples having concentrations above 400 ppm are analyzed at 600 nm.

1.3.2 Sensitivity. The detection limit is 3 ppm based on three times the standard deviation of the mean reagent blank values.

1.4 Interferences. Sulfur oxides, nitric oxide, and other acid gases interfere with the colorimetric reaction. They are removed by passing the sampled gas through an alkaline potassium permanganate scrubbing solution. Carbon dioxide (CO_2) does not interfere, but, because it is removed by the scrubbing solution, its concentration must be measured independently and an appropriate volume correction made to the sampled gas.

1.5 Precision, Accuracy, and Stability.

1.5.1 Precision. The estimated intralaboratory standard deviation of the method is 3 percent of the mean for gas samples analyzed in duplicate in the concentration range of 39 to 412 ppm. The interlaboratory precision has not been established.

1.5.2 Accuracy. The method contains no significant biases when compared to an NDIR analyzer calibrated with National Bureau of Standards (NBS) standards.

1.5.3 Stability. The individual components of the colorimetric reagent are stable for at least 1 month. The colorimetric reagent must be used within 2 days after preparation to avoid excessive blank correction. The samples in the Tedlar [1] bag should be stable for at least 1 month if the bags are leak-free.

2. Apparatus

2.1 Sampling. The sampling train is shown in Figure 10A–1, and component parts are discussed below:

[1] Mention of trade names or commercial products in this publication does not constitute the endorsement or recommendation for use by the Environmental Protection Agency.

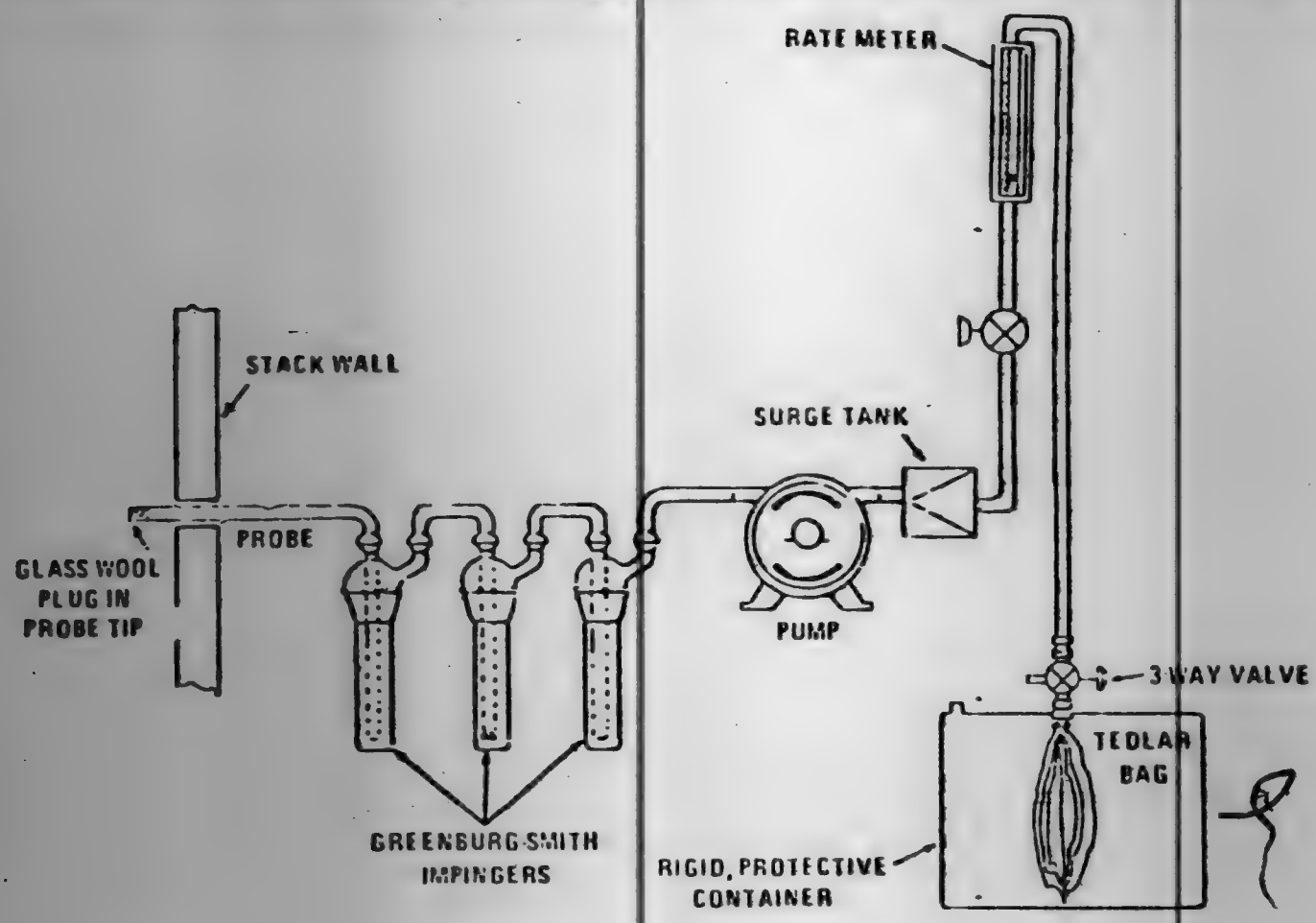

Figure 10A-1. Sampling train.

2.1.1 Probe. Stainless steel, sheathed Pyrex glass, or equivalent, equipped with a glass wool plug to remove particulate matter.

2.1.2 Sample Conditioning System. Three Greenburg-Smith impingers connected in series with leak-free connections.

2.1.3 Pump. Leak-free pump with stainless steel and Teflon parts to transport sample at a flow rate of 300 ml/min to the flexible bag.

2.1.4 Surge Tank. Installed between the pump and the rate meter to eliminate the pulsation effect of the pump on the rate meter.

2.1.5 Rate Meter. Rotameter, or equivalent, to measure flow rate at 300 ml/min. Calibrate according to Section 5.2.

2.1.6 Flexible Bag. Tedlar, or equivalent, with a capacity of 10 liters and equipped with a sealing quick-connect plug. The bag must be leak-free according to Section 4.1. For protection, it is recommened that the bag be enclosed with a rigid container.

2.1.7 Valves. Stainless-steel needle valve to adjust flow rate, and stainless-steel three-way valve, or equivalent.

2.1.8 CO_2 Analyzer. Method 3 or its approved alternative to measure CO_2 concentration to within 0.5 percent.

2.1.9 Volume Meter. Dry gas meter, calibrated and capable of measuring the sample volume under rotameter calibration conditions of 300 ml/min for 10 minutes.

2.1.10 Pressure Gauge. A water filled U-tube manometer, or equivalent, of about 28 cm (12 in.) to leak-check the flexible bag.

2.2 Analysis.

2.2.1 Spectrophotometer. Single- or double-beam to measure absorbance at 425 and 600 nm. Slit width should not exceed 20 nm.

2.2.2 Spectrophotometer Cells. 1-cm pathlength.

2.2.3 Vacuum Gauge. U-tube mercury manometer, 1 meter (36 in.), with 1-mm divisions, or other gauge capable of measuring pressure to within 1 mm Hg.

2.2.4 Pump. Capable of evacuating the gas reaction bulb to a pressure equal to or less than 40 mm Hg absolute, equipped with coarse and fine flow control valves.

2.2.5 Barometer. Mercury, aneroid, or other barometer capable of measuring atmospheric pressure to within 1 mm Hg.

2.2.6 Reaction Bulbs. Pyrex glass, 100 ml with Teflon stopcock (Figure 10A–2), leak-free at 40 mm Hg, designed so that 10 ml of the colorimetric reagent can be added and removed easily and accurately. Commercially available gas sample bulbs such as Supelco Catalog No. 2–2161 may also be used.

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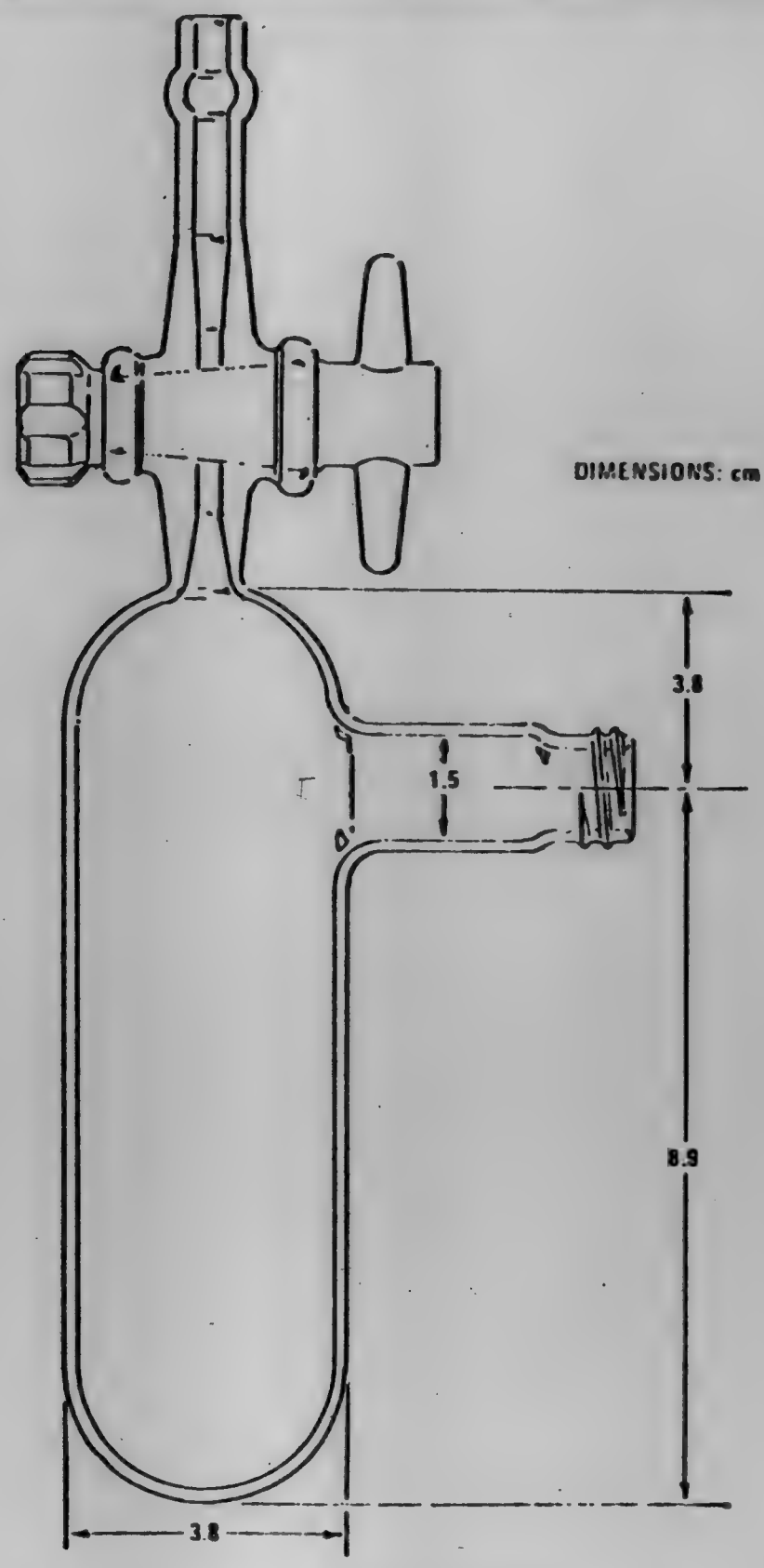

Figure 10A-2. Sample reaction bulbs.

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2.2.7 Manifold. Stainless steel, with connections for three reaction bulbs and the appropriate connections for the manometer and sampling bag as shown in Figure 10A-3.

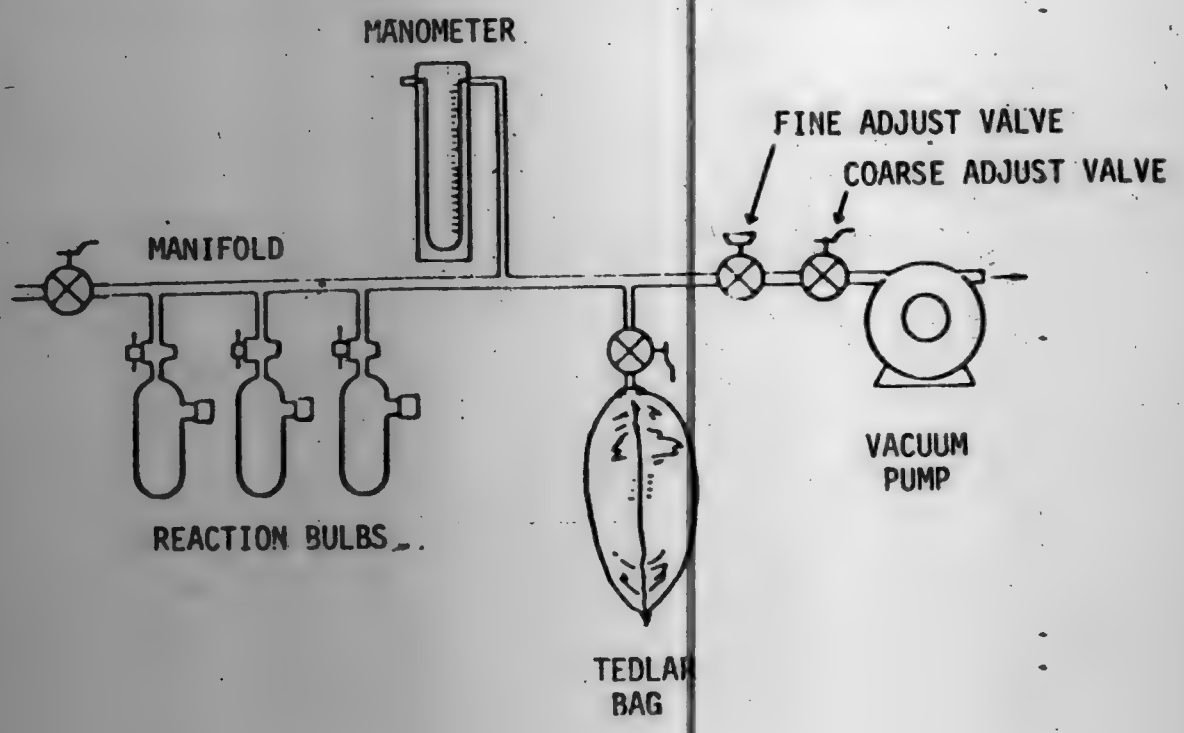

Figure 10A-3. Sample bulb filling system.

2.2.8 Pipets. Class A, 10-ml size.

2.2.9 Shaker Table. Reciprocating-stroke type such as Eberbach Corporation, Model 6015. A rocking arm or rotary-motion type shaker may also be used. The shaker must be large enough to accommodate at least six gas sample bulbs simultaneously. It may be necessary to construct a table top extension for most commercial shakers to provide sufficient space for the needed bulbs (Figure 10A–4).

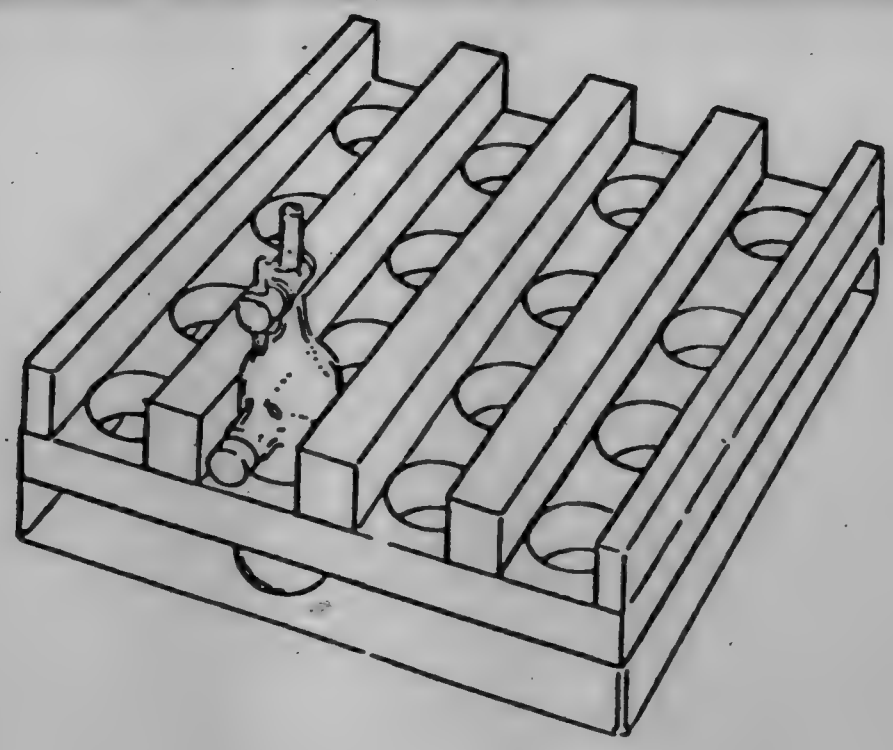

Figure 10A-4. Shaker table adapter.

2.2.10 Valve. Stainless steel shut-off valve.

2.2.11 Analytical Balance. Capable of accurately weighing to 0.1 mg.

3. Reagents

Unless otherwise indicated, all reagents shall conform to the specifications established by the Committee on Analytical Reagents of the American Chemical Society, where such specifications are available, otherwise, the best available grade shall be used.

3.1 Sampling.

3.1.1 Water. Deionized distilled, as described in Method 6, Section 3.1.1.

3.1.2 Alkaline Permanganate Solution, 0.25 M $KMnO_4$/1.5 M NaOH. Dissolve 40 g $KMnO_4$ and 60 g NaOH in water, and dilute to 1 liter.

3.2 Analysis.

3.2.1 Water. Same as in Section 3.1.1.

3.2.2 1 M Sodium Hydroxide (NaOH) Solution. Dissolve 40 g NaOH in approximately 900 ml of water, cool, and dilute to 1 liter.

3.2.3 0.1 M Silver Nitrate ($AgNO_3$) Solution. Dissolve 8.5 g $AgNO_3$ in water, and dilute to 500 ml.

3.2.4 0.1 M Para-Sulfaminobenzoic Acid (p-SABA) Solution. Dissolve 10.0 g p-SABA in 0.1 M NaOH (prepared by diluting 50 ml of 1 M NaOH to 500 ml), and dilute to 500 ml with 0.1 M NaOH.

3.2.5 Colorimetric Solution. To a flask, add 100 ml of p-SABA solution and 100 ml of $AgNO_3$ solution. Mix, and add 50 ml of 1 M NaOH with shaking. The resultant solution should be clear and colorless. This solution is acceptable for use for a period of 2 days.

3.2.6 Standard Gas Mixtures. Traceable to NBS standards and containing between 50 and 1000 ppm CO in nitrogen. At least two concentrations are needed to span each calibration range used (Section 5.3).

The calibration gases shall be certified by the manufacturer to be within 2 percent of the specified concentrations.

4. Procedure

4.1 Sample Bag Leak-checks. While a bag leak-check is required after bag use, it should also be done before the bag is used for sample collection. The bag should be leak-checked in the inflated and deflated condition according to the following procedures.

Connect the bag to a water manometer, and pressurize the bag to 5 to 10 cm H_2O (2 to 4 in. H_2O). Allow the bag to stand for 60 minutes. Any displacement in the water manometer indicates a leak. Now, evacuate the bag with a leakless pump that is connected on the downstream side of a flow-indicating device such as a 0-to 100-ml/min rotameter or an impinger containing water. When the bag is completely evacuated, no flow should be evident if the bag is leak-free.

4.2 Sampling. Evacuate the Tedlar bag completely using a vacuum pump. Assemble the apparatus as shown in Figure 10A-1. Loosely pack glass wool in the tip of the probe. Place 400 ml of alkaline permanganate solution in the first two impingers and 250 ml in the third. Connect the pump to the third impinger, and follow this with the surge tank, rate meter, and three-way valve. Do not connect the Tedlar bag to the system at this time.

Leak-check the sampling system by placing a vacuum gauge at or near the probe inlet, plugging the probe inlet, opening the three-way valve, and pulling a vacuum of approximately 250 mm Hg on the system while observing the rate meter for flow. If flow is indicated on the rate meter, do not proceed further until the leak is found and corrected.

Purge the system with sample gas by inserting the probe into the stack and drawing sample through the system at 300 ml/min + 10 percent for 5 minutes. Connect

the evacuated Tedlar bag to the system, record the starting time, and sample at a rate of 300 ml/min for 30 minutes, or until the Tedlar bag is nearly full. Record the sampling time, the barometric pressure, and the ambient temperature. Purge the system as described above immediately before each sample.

The scrubbing solution is adequate for removing sulfur and nitrogen oxides from 50 liters of stack gas when the concentration of each is less than 1,000 ppm and the CO_2 concentration is less than 15 percent. Replace the scrubber solution after every fifth sample.

4.3 Carbon Dioxide Measurement. Measure the CO_2 content in the stack to the nearest 0.5 percent each time a CO sample is collected. A simultaneous grab sample analyzed by the Fyrite analyzer is acceptable.

4.4 Analysis. Assemble the system shown in Figure 10A–3, and record the information required in Table 10A-1 as it is obtained. Pipet 10.0 ml of the colorimetric reagent into each gas reaction bulb, and attach the bulbs to the system. Open the stopcocks to the reaction bulbs, but leave the valve to the Tedlar bag closed. Turn on the pump, fully open the coarse-adjust flow valve, and slowly open the fine-adjust valve until the pressure is reduced to at least 40 mm Hg. Now close the coarse adjust valve, and observe the manometer to be certain that the system is leak-free. Wait a minimum of 2 minutes. If the pressure has increased less than 1 mm, proceed as described below. If a leak is present, find and correct it before proceeding further.

TABLE 10A-1. DATA RECORDING SHEET FOR SAMPLES ANALYZED IN TRIPLICATE

Sample no./ Type	Room temp., °C	Stack % CO_2	Bulb no.	Bulb vol., liters	Reagent vol. in bulb, liter	Partial pressure of gas in bulb mm Hg	P_{bar}, mm Hg	Shaking time, min	Abs versus water	$A - A_r$	A_s	Avg. A_s
Blank												
Std. 1												
Std. 2												
Sample 1												
Sample 2												
Sample 3												

Record the vacuum pressure (P_v) to the nearest 1 mm Hg, and close the reaction bulb stopcocks. Open the Tedlar bag valve, and allow the system to come to atmospheric pressure. Close the bag valve, open the pump coarse adjust valve, and evacuate the system again. Repeat this fill/evacuation procedure at least twice to flush the manifold completely. Close the pump coarse adjust valve, open the Tedlar bag valve, and let the system fill to atmospheric pressure. Open the stopcocks to the reaction bulbs, and let the entire system come to atmospheric pressure. Close the bulb stopcocks, remove the bulbs, record the room temperature and barametric pressure (P_{bar}, to nearest mm Hg), and place the bulbs on the shaker table with their main axis either parallel to or perpendicular to the plane of the table top. Purge the bulb-filling system with ambient air for several minutes between samples. Shake the samples for exactly 2 hours.

Immediately after shaking, measure the absorbance (A) of each bulb sample at 425 nm if the concentration is less than or equal to 400 ppm CO or at 600 nm if the concentration is above 400 ppm. This may be accomplished with multiple bulb sets by sequentially collecting sets and adding to the shaker at staggered intervals, followed by sequentially removing sets from the shaker for absorbance measurement after the two-hour designated intervals have elapsed.

Use a small portion of the sample to rinse a spectrophotometer cell several times before taking an aliquot for analysis. If one cell is used to analyze multiple samples, rinse the cell several times between samples with water.

Prepare and analyze standards and a reagent blank as described in Section 5.3. Use water as the reference. Reject the analysis if the blank absorbance is greater than 0.1. All conditions should be the same for analysis of samples and standards. Measure the absorbances as soon as possible after shaking is completed. Determine the CO concentration of each bag sample using the calibration curve for the appropriate concentration range as discussed in Section 5.3.

5. Calibration

5.1 *Bulb Calibration.* Weigh the empty bulb to the nearest 0.1 g. Fill the bulb to the stopcock with water, and again weigh to the nearest 0.1 g. Subtract the tare weight, and calculate the volume in liters to three significant figures using the density of water (at the measurement temperature). Record the volume on the bulb; alternatively, mark an identification number on the bulb, and record the volume in a notebook.

5.2 Rate Meter Calibration. Assemble the system as shown in Figure 10A–1 (the impingers may be removed), and attach a volume meter to the probe inlet. Set the rotameter at 300 ml/min, record the volume meter reading, start the pump, and pull gas through the system for 10 minutes. Record the final volume meter reading. Repeat the procedure and average the results to determine the volume of gas that passed through the system.

5.3 Spectrophotometer Calibration Curve. The calibration curve is established by taking at least two sets of three bulbs of known CO collected from Tedlar bags through the analysis procedure. Reject the standard set where any of the individual bulb absorbances differ from the set mean by more than 10 percent. Collect the standards as described in Section 4.2. Prepare standards to span the 0- to 400- to 1000-ppm range. If any samples span both concentration ranges, prepare a calibration curve for each range. A set of three bulbs containing colorimetric reagent but no CO should serve as a reagent blank and be taken through the analysis procedure.

Calculate the average absorbance for each set (3 bulbs) of standards using 10A–1 and Table 10A–1. Construct a graph of average absorbance for each standard against its corresponding concentration in ppm. Draw a smooth curve through the points. The curve should be linear over the two concentration ranges discussed in Section 1.3.1.

6. Calculations

Carry out calculations retaining at least one extra decimal figure beyond that of the acquired data. Round off figures after final calculation.

6.1 Nomenclature.

A=Sample absorbance, uncorrected for the reagent blank.
A_r=Aborbance of the reagent blank.
A_s=Average sample absorbance per liter, units/liter.
B_w=Moisture content in the bag sample.
C=CO concentration in the stack gas, dry basis, ppm.
C_b=CO concentration of the bag sample, dry basis, ppm.
C_s=CO concentration from the calibration curve, ppm.
F=Volume fraction of CO_2 in the stack.
n=Number of reaction bulbs used per bag sample.
P_{bar}=Barometric pressure, mm Hg.
P_r=Residual pressure in the sample bulb after evacuation, mm Hg.
P_w=Vapor pressure of H_2O in the bag (from Table 10A–2), mm Hg.
V_b=Volume of the sample bulb, liters.
V_r=Volume of reagent added to the sample bulb, 0.0100 liter.

6.2 Average Sample Absorbance per Liter.

Average the three absorbance values for each bulb set. Then calculate A_s for each set of gas bulbs using Equation 10A–1. Use A_s to determine the CO concentration from the calibration curve (C_s).

$$A_s = \frac{(A - A_r)(P_{bar})}{(V_b - V_r)(P_{bar} - P_r)} \qquad \text{Eq. 10A–1}$$

Note: A and A_r must be at the same wavelength.

6.3 CO Concentration in the Bag.

Calculate C_b using Equations 10A–2 and 10A–3. If condensate is visible in the Tedlar bag, calculate B_w using Table 10A–2 and the temperature and barometric pressure in the analysis room. If condensate is not visible, calculate B_w using the temperature and barometric pressure recorded at the sampling site.

$$B_w = \frac{P_w}{P_{bar}} \qquad \text{Eq. 10A–2}$$

$$C_b = \frac{C_s}{(1 - B_w)} \qquad \text{Eq. 10A–3}$$

6.4 CO Concentration in the Stack.

$$C = \frac{C_b}{(1 - F)} \qquad \text{Eq. 10A–4}$$

TABLE 10A–2. MOISTURE CORRECTION

Temperature, °C	Vapor pressure of H_2O, mm Hg	Temperature, °C	Vapor pressure of H_2O, mm Hg
4	6.1	18	15.5
6	7.0	20	17.5
8	8.0	22	19.8
10	9.2	24	22.4
12	10.5	26	25.2
14	12.0	28	28.3
16	13.6	30	31.8

7. Bibliography

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[FR Doc. 87–18598 Filed 8–14–87; 8:45 a.m.]
BILLING CODE 6560–50–M

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40 CFR Part 271

[SW–FRL–3248–2]

Schedule of Compliance for Modification of South Carolina's Hazardous Waste Program

AGENCY: Environmental Protection Agency, Region IV.

ACTION: Notice of South Carolina's compliance schedule to adopt program modifications.

SUMMARY: On September 22, 1986, EPA promulgated amendments to the deadlines for State program modifications, and published requirements for States to be placed on a compliance schedule to adopt the necessary program modifications. EPA is today publishing a compliance schedule for South Carolina to modify its program in accordance with § 271.21(g) to adopt the Federal program modifications.

FOR FURTHER INFORMATION CONTACT: Mr. Otis Johnson, Chief, Waste Planning Section, RCRA Branch, Waste Management Division, EPA Region IV, 345 Courtland Street, NE, Atlanta, GA 30365.

SUPPLEMENTARY INFORMATION:

A. Background

Final authorization to implement the Federal hazardous waste program within the State is granted by EPA if the Agency finds that the State program (1) is "equivalent" to the Federal program, (2) is "consistent" with the Federal program and other State programs, and (3) provides for adequate enforcement (section 3006(b), 42 U.S.C. 6226(b)). EPA regulations for final authorization appear at 40 CFR 271.1–271.24. In order to retain authorization, a State must revise its program to adopt new Federal requirements by the cluster deadlines and procedures specified in 40 CFR 271.21. See 51 FR 33712, September 22, 1986, for a complete discussion of these procedures and deadlines.

B. South Carolina

South Carolina received final authorization of its hazardous waste program on November 22, 1985. Federal Register 46437, November 8, 1985, Vol. 50, No. 217.

Today EPA is publishing a compliance schedule for South Carolina to obtain program revisions for the following Federal program requirements:

- Availability of Information, section 3006(*f*)
- Modifications in the Federal Program for Non-HSWA Cluster I including:

A. Uniform National Manifest, 49 FR 10490–10510
B. Interim Status Standards, 49 FR 46095
C. Redefinition of Solid Waste, 50 FR 614–665
D. Interim Status Standards for Landfills, 50 FR 16044–16048
E. Chlorinated Aliphatic Hydrocarbon Listing, 49 FR 5308
F. Permit Rules Settlement Agreement, 49 FR 17716

The State has agreed to seek the needed program modifications according to the following schedule:

Board approved notice of intent to draft regulations, May 20, 1987
Notice of intent to draft regulations published in State Register, May 21, 1987
Completion of preparation and typing of regulation revisions, July 15, 1987
Submission of draft application to EPA, July 15, 1987
Receipt of comments from EPA, August 14, 1987
Present regulation changes to Board for approval to notice regulations for public comment & hearing, September 19, 1987
Notice amended regulations for public comment & public hearing in State Register, September 25, 1987
Hold public hearing, October 26, 1987
Approval of regulations by Board, November 26, 1987
Notice approved regulations in State Register, November 26, 1987
Submission of Final Program Authorization Application for Non-HSWA Cluster I, December 1, 1987

Authority

This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926 and 6974(B).

Date: July 10, 1987.

Lee A. De Hihns III,

Acting Regional Administrator.

[FR Doc. 87–18710 Filed 8–14–87; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 271

[SW-FRL-3245-3]

Schedule of Compliance for Modification of Tennessee's Hazardous Waste Program

AGENCY: Environmental Protection Agency, Region IV.

ACTION: Notice of Tennessee's compliance schedule to apply for program modifications.

SUMMARY: On September 22, 1986 EPA promulgated amendments to the deadlines for State program modifications and published requirements for States to be placed on a compliance schedule to adopt the necessary program modifications. EPA is today publishing a compliance schedule for Tennessee to modify its program in accordance with § 271.21(g) to adopt the Federal program modifications.

FOR FURTHER INFORMATION CONTACT: Otis Johnson, Chief, Waste Planning Section, RCRA Branch, Waste Management Division, U.S. Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365, (404) 347–3016.

SUPPLEMENTARY INFORMATION:

A. Background

Final authorization to implement the Federal hazardous waste program within the State is granted by EPA if the Agency finds that the State program (1) is "equivalent" to the Federal program, (2) is "consistent" with the Federal program and other State programs, and (3) provides for adequate enforcement (Section 3006(b), 42 U.S.C. 6226(b)). EPA regulations for final authorization appear at 40 CFR 271.1 through 271.24. In order to retain authorization, a State must revise its program to adopt new Federal requirements by the cluster deadlines and procedures specified in 40 CFR 271.21. See 51 FR 33712, September 22, 1986 for a complete discussion of these procedures and deadlines.

B. Tennessee

Tennessee received final authorization of its hazardous waste program on February 5, 1985. (50 FR 2820, January 22, 1985). Today EPA is publishing a compliance schedule for Tennessee to submit an application to obtain program revisions for the following Federal program requirements:

Biennial Report
Interim Status Standards—Applicability
Chlorinated Aliphatic Hydrocarbon Listing
Permit Rules—Settlement Agreement
Listing Warfarin & Zinc Phosphide
Lime Stabilized Pickle Liquor Sludge Exclusion of Household Waste
Interim Status Standards—Applicability
Corrections to Test Methods Manual
Satellite Accumulation
Redefinition of Solid Waste
Interim Status Standards for Landfills.

The State has already adopted all the above provisions with the exception of the Listing of Warfarin and Zinc Phosphide. This provision will become effective in November 1987.

Tennessee expects to submit an application to EPA for authorization of the above mentioned program revisions by December 31, 1987.

Authority

This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act,

as amended by the RCRA of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(B).

Date: August 3, 1987.

Lee A. DeHihns III,

Acting Regional Administrator.

[FR Doc. 87-18711 Filed 8-14-87; 8:45 am]

BILLING CODE 6560-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 80, 81, 82 and 83

Crime Insurance Program

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: These revisions to the Federal Crime Insurance Program achieve the following: redefine the definition of "burglary" under the residential policy; revise residential crime insurance rates to permit the purchase of crime insurance in increments of $1,000, up to the maximum limit of $10,000; permit a premium discount on the residential policy for the installation of an alarm system, revise the classification and alarm requirements of several commercial risks; eliminate coverage for loss from a night depository in a bank; and require the payment of an installment service charge on policies where the annual premium is not paid in full at the time of application.

EFFECTIVE DATE: September 16, 1987.

FOR FURTHER INFORMATION CONTACT: Robert J. DeHenzel, Federal Emergency Management Agency, Federal Insurance Administration, Donohoe Building, 500 C Street, SW., Room 433, Washington, DC 20472, Telephone number (202) 646-3440.

SUPPLEMENTARY INFORMATION: On May 8, 1987, FEMA published for comment in the **Federal Register** (Vol. 52, Page 17415) a proposed rule containing revision to the existing regulation as follows:

Section 83.4 Residential Crime Insurance Rates is being revised to permit the purchase of residential crime insurance in increments of $1,000 up to the maximum limit of $10,000, [$1,000, $2,000, $3,000, $4,000, $5,000 $6,000, $7,000, $8,000, $9,000, $10,000). These new limits of coverage will permit applicants to purchase residential crime insurance coverage that is more closely aligned with their exposure to loss. That is, an applicant with a $4,000 maximum exposure will be able to purchase $4,000 coverage and not be required to buy $5,000 of coverage. Changes to the policy limits offered under the residential policy will be applied to all residential policies in force on the date the regulations become effective. While residential rates have not been increased, the program change under this section of the regulations reflects a reduction in premium for current policyholders with coverage limits of $1,000 $3,000, $5,000 and $7,000. Due to the administrative expense associated with the cancellation and rewrite of coverage to effect a lower rate, § 81.7a of the regulations dealing with cancellations is being revised to prohibit a cancellation and renewal of a policy when rates are reduced or increased. Policyholders will not be permitted to cancel and rewrite coverage due to any reduction in premium, however, their coverage will automatically be increased to a higher limit of coverage when these regulations are promulgated by a final rule-making process. Paragraph (b) of § 81.7a of the regulations is being removed since this paragraph deals with commissions paid to an insured's agent during a cancellation to obtain new coverage at lower rates and is no longer applicable.

Further, the commercial classification of risk schedule and alarm requirements is being revised and coverage from a bank night depository eliminated. Coverage from an night depository is being eliminated based on the number of losses sustained by the program over the past several years. One account submitted 24 losses over the past several years and 22 losses were attributed to theft from a night depository. Since 1977, this account paid premiums of $43,882 and had incurred losses of $447,888.

The commercial rating plan promulgated in 1985 permits the Administrator to adjust both the classification of risk and alarm requirement without adjusting the program's base commercial rates. An analysis was completed studying both the frequency of loss and loss experience of businesses now insured under the program and these proposed regulations will in effect raise the risk classification of twenty-four (24) businesses, lower the classification of eleven (11) and change the alarm requirement of thirteen (13) businesses. Fifty-seven (57) classes remain unchanged.

Section 82.31 *Alarm Requirements* and § 83.24 *Classification of Commercial Risk* is being revised to reflect the change in alarm system and risk classification based on the overall experience of the business. Specific changes are as follows:

Alarms

(1) Central Station (with Guard Dispatch)
- Clothing Apparel
- Clothing Manufacturers
- Drugs—Wholesale
- Gift Stores
- Hobby Shops
- Leather Products
- Savings/Loans/Bank
- Shoe Stores

(2) Central Station (without Guard Dispatch)
- Antique Stores
- Beauty & Health Supplies
- Candy/Nut Stores
- Motorbikes/Bicycles
- Pet Stores/Kennels

Classification

- Amusement Enterprises
- Antique Stores
- Art Galleries
- Art Supplies
- Beach Concessions
- Beauty & Health Supplies
- Billiard/Pool Parlors
- Candy/Nuts Stores
- Clothing Apparel
- Clothing Manufacturers
- Clothing Men's
- Clothing Women's
- Clubs (Service Alcoholic Beverages)
- Drugs (Wholesale)
- Electrical Appliances
- Food Stuffs
- Gasoline Service Stations
- Gift Stores
- Hobby Shops
- Jewelry
- Leather Products
- Motorbikes/Bicycles/Mopeds
- Parking Lots
- Pawn Brokers
- Pet Stores
- Precious Metals (Storage)
- Precious Metals (Retail, Wholesale, Manufacturing)
- Radio/T.V. (Service Only)
- Radio/T.V. (Retail, Wholesale, Manufacturing)
- Record Shops
- Savings & Loans/Banks
- Shoe Stores
- Stationery/Books
- Taxi/Limousines
- Tobacco Dealers (Retail)
- Used Clothing/Shoe Repair
- Wig Shops

In order to continue coverage for those risks that have a high propensity for loss and have sustained numerous losses under the program, the Administrator is proposing to amend § 82.5(e) of the regulation and require as a condition of renewal that higher deductibles not to exceed $3,000 for

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each loss occurrence be imposed. Policies with a history of loss frequency and/or severity are reviewed by the Federal Insurance Administration. The purpose of the analysis is to identify policies on which additional protective device measures should be required as a condition of renewal. Ninety (90) days prior to renewal, policies which reflect a history of frequent burglaries are reviewed based on the following criteria: Burglary losses only, same point of entry, two to one loss ratio, and two or more losses per year. Only in those instances where a policy meets the previously mentioned criteria will a higher deductible be imposed as a condition of renewal. Program experience has indicated that while an insured premises meets all of the protective devices required under the program, losses continue to occur.

Almost fifty percent (50%) of all applicants for Federal Crime Insurance elect to pay premiums of the installment plan, that is, applicants submit one half of the annual premium with the initial application or renewal bill and pay the remaining balance after receiving a six month statement. In order to offset the administrative cost of the installment billing procedure, this amendment to the regulation under § 80.4 proposes the implementation of a service fee for installment billings.

In order to permit an ordely transition of Federal Crime Insurance policyholders to the private sector when a state is no longer eligible for participation in the program, policyholders will be permitted to continue coverage until expiration and will not be terminated as currently required by § 81.1(d) upon 30 days written notice to the policyholder on the next six month anniversary date of the policy.

The definition of burglary under the residential policy form (§ 83.5) is being revised to more closely align the Federal program with the definition of burglary insurance used by the private insurance sector and to permit the program to respond to obvious losses that are denied under the current definition of burglary thus reducing need of litigation by policyholders.

These amendments are the result of the experience gained in the 16 years the Federal Crime Insurance progam has been in operation and the Federal Insurance Administration's continued desire to improve service to policyholders by making the program more closely aligned to the underwriting and rating methods used by the private insurance sector. FEMA received no written comments on the proposed revisions.

FEMA has determined that an environmental impact statement is not needed for this final rule. A copy of the finding of no significant impact and an environmental assessment is available at the above address.

FEMA has also determined that this rule will not have a significant economic impact in a substantial number of small entities, and so has not conducted a regulatory flexibility analysis.

This final rule is not a "major rule" as defined in Executive Order 12291, dated February 27, 1981, and hence no regulatory analysis has been prepared.

FEMA has determined that this final rule does not contain a collection of information requirements as described in section 3504(h) of the Paperwork Reduction Act.

List of Subjects in 44 CFR Parts 80, 81, 82, and 83

Federal Crime Insurance Program.

Accordingly, 44 CFR, Parts 80, 81, 82, and 83 are amended as follows:

PART 80—DESCRIPTION OF PROGRAM AND OFFER TO AGENTS

The authority citation for Part 80 continues to read as follows:

Authority: 12 U.S.C. 1749bb–17 et seq.; Reorganization Plan No. 3 of 1978; E.O. 12127.

§ 80.4 [Amended]

(1) In § 80.4, entitled, *Offer to pay commissions to State licensed property insurance agents and brokers for submitting applications on behalf of purchasers for Federal Crime Insurance,* paragraph (f) is revised to read as follows:

* * * * *

(f) Insureds will be billed directly by the insurer for all installments (including any servicing fee) and renewal payments, and insureds should make payment by check or money order payable to the Federal Crime Insurance Program and mail such payment to the insurer and not to the agent or broker. But, nevertheless, in the event that an insured makes a timely installment payment of the current premium (after the initial payment submitted with the application) to any agent or broker, proof submitted by the insured, the agent or the broker of the timely receipt by the agent or broker may be deemed by the Administrator to be proof of timely payment to the insurer so that the insured will not be penalized because of an error or omission on the part of the agent or broker in forwarding the payment to the insurer.

* * * * *

(2) Section 80.6, entitled, *Name and address of invoicing company,* is revised to read as follows:

§ 80.6 Name and address of invoicing company.

The following company has been designated to act as servicing company for the Federal Crime Insurance Program, National Con-Serv, Inc. Written communications with the servicing company should be addressed to: Federal Crime Insurance, P.O. Box 6301, Rockville, MD 20850. The toll free telephone number for the servicing company is 800–638–8780 (policyholder service) and 800–526–2662 (claim inquiries). These numbers serve the continental United States, Puerto Rico and the Virgin Islands, except Maryland and the Washington Metropolitan Area. In the Washington Metropolitan Area call 251–1660. In Maryland, outside the Washington Metropolitan Area, call collect 301–251–1660.

PART 81—PURCHASE OF INSURANCE AND ADJUSTMENT OF CLAIMS

The authority citation for Part 81 continues to read as follows:

Authority: 12 U.S.C. 1749bbb et seq.; Reorganization Plan No. 3 of 1978; E.O. 12127.

§ 81.1 [Amended]

(1) In § 81.1, entitled *States eligible for the sale of crime insurance,* paragraph (d) is revised to read as follows:

* * * * *

(d) Notwithstanding the provisions of § 81.7, Federal Crime Insurance policies in-force at the time a State is determined to be no longer eligible for further participation in the program shall thereupon be terminated upon 30 days written notice to the policyholders effective on the expiration date of the policy and no further coverage for such policyholders with respect to premises located in such State shall thereafter be written unless the State again becomes eligible under the program.

§ 81.7 Cancellations in order to renew.

(2) Section 81.7a entitled *Cancellations in order to renew* is revised to read as follows:

Notwithstanding the provisions of § 81.7(c), an insured shall not be permitted after the effective date of any applicable rate reduction to cancel and rewrite an existing crime insurance policy and receive a pro rata refund of unearned premium. Further, cancellation and rewrite of coverage to avoid an impending rate increase shall not be permitted, unless such cancellation was made to accomplish an increase in the amount of insurance coverage or as a

result of the removal of insured to another premises.

PART 82—PROTECTIVE DEVICE REQUIREMENTS

The authority citation for Part 82 continues to read as follows:

Authority: 12 U.S.C. 1749bbb et seq.; Reorganization Plan No. 3 of 1978; E.O. 12127.

Subpart A—General

(1) In § 82.5 entitled *Inspection of commercial premises*, paragraph (e), is revised to read as follows:

§ 82.5 Inspection of commercial premises.

* * * * *

(e) The Administrator may in his discretion waive one or more protective device requirements with respect to any policy where he determines that compliance would be impractical and would impose a cost not reasonably commensurate with the protection derived. However, in the event of any loss contributed to in whole or in part by any such waiver, the Administrator may withdraw such waiver upon mailing to the insured thirty days written notices of withdrawal. Any loss occurring after thirty days from the day of the mailing of said notice shall not be paid unless the insured's premises shall be in compliance with the previously waived protective device requirement at the time of such loss. The Administrator may also in his or her discretion determine that the frequency and/or severity of occurrences of loss experienced under any policy issued under the provision of paragraphs (b) and (c) of this section, requires that as a condition of continuation of coverage on renewal such policy the premises insured thereunder be protected by one or more of the protective devices described in paragraphs (a), (b), (c), (d), (e), (f)(1), (2), (3), and (4) of this section for applicable points of entry for incurred losses and also may require as a condition of renewal, higher deductibles not to exceed $3,000 for each loss occurrence.

* * * * *

Subpart C—Nonresidential Properties

1. In § 82.31, paragraph (f)(1) is revised to read as follows:

§ 82.31 Minimum standards for industrial and commercial properties.

* * * * *

(f) The following types of establishments whose inventories pose a particularly serious risk shall, as a minimum, in addition to the requirements of paragraphs (a), (b), and (d) of this section be protected by the type of alarm system indicated. If the system specified in paragraphs (f)(1) and (f)(2) of this section is not available in the community in which the premises are located, the type of system specified in paragraph (f)(3) of this section shall be permitted. In addition to, but not in place of, any central station supervised alarm system or silent alarm system required under paragraphs (f)(1), (2), and (3) of this section, an insured may also utilize a local alarm system.

(1) Central Station (with Guard dispatch) supervised service alarm system shall be required for the following businesses:

(i) Beer/Wine—Wholesale
(ii) Boutiques
(iii) Cameras/Photo Supplies/Film Processing—Wholesale/Retail/Mfg.
(iv) Clothing Apparel/Children's (12 and under)—Wholesale/Retail
(v) Clothing Manufacturers/Tailoring
(vi) Clothing/Mens' (age 12 and over)—Wholesale/Retail
(vii) Clothing/Womens' (age 12 and over)—Wholesale/Retail
(viii) Drug Stores and Druggist Sundries
(ix) Drugs—Wholesale
(x) Electrical Appliance/Apparatus/Parts—Wholesale/Retail/Mfg.
(xi) Food Stuffs—Wholesale
(xii) Gasoline Service Station/Fuel Dealers
(xiii) Gift Stores (Costume Jewelry $25.00—Wholesale limit)—Retail/Wholesale/Mfg.
(xiv) Hobby Shops/Toys/Novelty
(xv) Jewelry—Retail/Wholesale/Mfg./Storage
(xvi) Leather Products—Wholesale/Retail/Mfg.
(xvii) Liquor Sales—Retail
(xviii) Pawnbrokers
(xix) Precious Metals/Electroplating—Mfg./Wholesale/Retail
(xx) Radio/TV/Stereo/Electronic Equipment/Computer—Wholesale
(xxi) Record Shops/Video Stores
(xxii) Savings/Loans/Banks and other Financial Institutions (excluding Check Cashing)
(xxiii) Shoe Stores—Wholesale/Retail/Mfg.
(xxiv) Tobacco—Wholesale
(xxv) Used Clothing/Shoe Repair/Thrift Shops
(xxvi) Variety Stores/Department Stores

(2) Central Station (without Guard dispatch) supervised service alarm system shall be required for the following businesses:

(i) Antique Store
(ii) Art Supplies—Retail/Wholesale/Mfg.
(iii) Auto Parts (No Service)—Wholesale/Retail/Mfg.
(iv) Beauty & Health Supplies/Cosmetics—Wholesale/Retail/Mfg.
(v) Candy/Nut Stores—Retail/Wholesale
(vi) Dry Goods/Textiles/Serving Material—Wholesale/Retail/Mfg.
(vii) Furniture/Home Furnishing/Floor Covering/Upholstery—Wholesale/Retail/Mfg.
(viii) Furriers—Wholesale/Retail/Mfg./Storage
(ix) Grocery Stores/Delicatessen/Health Food Stores
(x) Guns/Ammunition—Wholesale/Retail/Mfg.
(xi) Hardware/Houseware—Wholesale/Retail/Mfg.
(xii) Liquor—Wholesale
(xiii) Meat/Poultry/Fish Dealers
(xiv) Music Stores/Instruments/Supplies—Wholesale/Retail/Mfg.
(xv) Motorbikes/Bicycles/Moped
(xvi) Pet Stores/Kennels—Supplies
(xvii) Precious Metals/Electroplating—Wholesale/Retail/Mfg.
(xviii) Sport Goods (General)—Wholesale/Retail/Mfg.
(xix) Tobacco Dealers—Retail
(xx) Wig Shops

(3) Silent alarm system shall be required for the following businesses:

(i) All Risks Not Otherwise Classified
(ii) Amusement Enterprises
(iii) Art Gallery
(iv) Beach Concession Stands/Supplies
(v) Billiard/Pool Parlors
(vi) Building Contractors—Material—Retail/Wholesale
(vii) Coin/Stamp Shop
(viii) Distributors—Variety/Non-Alcoholic Beverages
(ix) Dry Cleaners
(x) Fine Arts (Porcelain, Ivory, Oriental Rugs, Paintings, etc.)
(xi) Florist—Wholesale/Retail
(xii) Garages/Auto Repair/Body Shops
(xiii) Hotel/Motel/Rooming House/Apartments
(xiv) Industrial Material/Iron & Metal Work—Wholesale/Retail/Mfg.
(xv) Laundries
(xvi) Marine/Aircraft Materials—Sales/Service—Retail/Wholesale/Mfg.
(xvii) Medical (Doctors/Dentist, etc.) Supplies—Retail/Wholesale/Mfg.
(xviii) Office Supplies/Business Machines/Equipment—Retail/Wholesale/Mfg.
(xix) Restaurants
(xx) Schools (Profit) Day Care Centers/Studios
(xxi) Specialized Clothing (Sportwear/Lingerie/Accessories/etc.)—Wholesale/Retail/Mfg.
(xxii) Stationery/Books/Printing/Engraving/Paper/Plastic Products—Wholesale/Retail/Mfg.

(xxiii) Tavern/Bar/Lounge

(4) Local alarm system shall be required for the following businesses;

(i) Auto Parts (Sales/Service)—Wholesale/Retail/Mfg.
(ii) Beauty/Barber Shops
(iii) Check Cashing Agency/Money Exchange—Collectors
(iv) Disco/Dance Halls/Pavilions
(v) Donut/Pastry/Coffee/Ice Cream (Seated Service)
(vi) Fast Food/Bakery/Ice Cream (Carry Out)
(vii) Flea Markets/Auction Houses
(viii) Fruit/Vegetable/Newspaper Stands
(ix) Funeral Homes
(x) Golf and Other Sports Professionals
(xi) Health Clubs/Spas/Massage Parlors
(xii) Nursing Homes/Convalescent
(xiii) Parking Lots/Rental Cars/Carwash/Taxi Office
(xiv) Photographers Studio
(xv) Professional/Specialized Service (Lawyers/Accountants/Couriers/Housekeeping, etc.)
(xvi) Radio/TV/Stereo/Electronic Equipment/Computers (Service Only)
(xvii) Realty/Insurance/Travel/Employment (Agencies)
(xviii) Security/Locksmiths/Alarms—Retail/Wholesale/Mfg.
(xix) Vending Machines (Sales)—Retail/Wholesale/Mfg.

* * * * *

PART 83—COVERAGES RATES AND PRESCRIBED POLICY FORMS

The authority citation for Part 83 continues to read as follows:

Authority: 12 U.S.C. 1749bbb et seq.; Reorganization Plan No. 3 of 1978; E.O. 12127.

Subpart A—Residential Crime Insurance Coverage

1. Section 83.4, *Residential crime insurance rates,* is revised to read as follows.

§ 83.4 Residential crime insurance rates.

The specific limits of coverage and applicable annual premiums for residential crime insurance coverage are revised to read as follows:

Policy limits	Annual premium	Policy limits	Annual premium
$1,000	$30.00	$6,000	$80.00
2,000	40.00	7,000	90.00
3,000	50.00	8,000	100.00
4,000	60.00	9,000	110.00
5,000	70.00	10,000	120.00

NOTE.—If the premises are protected by an acceptable residential burglary alarm system multiply the above applicable premiums by .95. Minimum premiums credit $2.00.

§ 83.5 [Amended]

2. Section 83.5 entitled *Required residential policy form,* is amended in the following respects.

a. Under the heading of "Conditions" of the Residential Crime Insurance Policy, section 1, described as "Definitions", the paragraph entitled (c) Burglary, "Burglary" or "Burglary and larceny incident thereto" is redefined to read as follows:

(c) *Burglary.* "Burglary" or "burglary and larceny incident thereto" mean the felonious abstraction of insured property from within the premises by a person making felonious entry.

Subpart B—Commercial Crime Insurance Coverage

§ 83.21 [Amended]

In § 83.21 entitled *Description of commercial coverage,* paragraphs (a) and (b) are revised to read as follows:

(a) The purpose of this § 83.21 is descriptive only, and it shall be subject to the express terms and conditions of the policy form prescribed in 83.26.

(b) The initial policy issued by the insurer for commercial properties shall be known as the Commerical Crime Insurance Policy. Subject to its terms, the policy reimburses an insured for loss from robbery inside the premises, robbery outside the premises (up to a limit of $5,000 unless an armed guard accompanies the insured's messenger), the wrongful taking of insured property by compelling an insured to admit a person into the premises, safe burglary and larceny incident thereto (up to a limit of $5,000 unless the insured property is in a Class E safe anchored to the floor), theft observed by the insured, burglary and larceny incident thereto, robbery of a watchman (not to exceed $50 for any one article of jewelry), and damage to the premises (of which the insured is owner or for which the insured is liable) as a result of any of the foregoing. The policy is subject to the exclusions set forth therein.

* * * * *

§ 83.24 [Amended]

In § 83.24 entitled *Classification of commercial risks,* paragraph (d) is revised to read as follows:

* * * * *

(d) The following business classifications shall be applicable to the Commercial Crime Insurance Policy:

CLASSIFICATION/ALARM LISTING

Premium Code	Premium Class	Description	Alarm type
A1	3	All risks not otherwise classified.	3
02	2	Amusement enterprises	3
B1	3	Antique store	2
C1	3	Art gallery	3
33	4	Art supplies (retail, wholesale, mfg.).	2
D1	2	Auto parts—No service (retail, wholesale, mfg.).	2
03	2	Auto parts—sales/Service (retail, wholesale, mfg.).	4
47	3	Beach concession stands/supplies.	3
22	2	Beauty/barber shops	4
41	3	Beauty & health supplies/cosmetic (retail, wholesale, mfg.).	2
C8	4	Beer/wine food (retail)	2
F1	6	Beer/wine (wholesale)	1
04	3	Billiard/pool parlors	3
70	6	Boutiques	1
05	2	Bowling lanes or centers/skating rinks.	0
34	2	Building contractors/materials (retail, wholesale, mfg.).	3
06	4	Cameras/photo supplies/film processing (retail, wholesale, mfg.).	1
43	3	Candy/nuts stores (retail, wholesale).	2
G1	4	Check cashing agency/money exchange/collectors.	4
01	1	Churches/charities/nonprofit org/public properties.	0
36	5	Clothing, apparel/children 12 & under (retail, wholesale).	1
J1	6	Clothing manufacturer/tailoring	1
22	6	Clothing/men's (age 12 & over) (retail, wholesale).	1
30	6	Clothing/women's (age 12 & over) (retail, wholesale).	1
07	3	Clubs (serving alcoholic beverages).	3
K1	3	Coin/stamp shop	3
08	2	Discos/dance halls/pavilions	4
50	2	Distributors—variety/non-alcoholic beverages.	3
C5	3	Donut/pastry/coffee/ice cream shop (seated service).	4
09	4	Drug stores/druggist's sundries	1
L1	4	Drugs (wholesale)	1
10	4	Dry cleaners	3
39	3	Dry goods—textile/sewing material (retail, wholesale, mfg.).	2
11	4	Electrical appliances/apparatus/parts (retail, wholesale, mfg.).	1
E1	2	Fast food/bakery/donut/ice cream (carryout only).	4
38	2	Fine arts—porcelain/ivory/oriental rugs/paintings/etc.	3
78	2	Flea markets/auction houses	4
40	2	Florist (retail/wholesale)	3
M1	3	Food stuffs (wholesale)	1
N1	2	Fruit/vegetables/newspaper stands.	4
45	2	Funeral homes	4
42	2	Furniture/home furnishings/floor coverings/upholstery new or used (retail, wholesale, mfg.).	2
12	4	Furriers (retail, wholesale, mfg. storage).	2
13	3	Garages/auto repair/body shops.	3
14	4	Gasoline service station/fuel dealers.	1
44	3	Gift store/costume jewelry $25.00 wholesale limit (retail, wholesale, mfg.).	1
15	2	Golf & other professional sports shops.	4
16	4	Grocery stores/delicatessens/health food stores.	2
17	6	Guns/ammunition (retail, wholesale, mfg.).	2
46	3	Hardware/housewares (retail, wholesale, mfg.).	2
C2	2	Health clubs/spas/massage parlors.	4

CLASSIFICATION/ALARM LISTING—Continued

Premium Code	Premium Class	Description	Alarm type
50	3	Hobby shops/toys/novelty (retail, wholesale, mfg.).	1
48	2	Hotel/motel/rooming house/apartments.	3
01	2	Industrial materials/iron & metal work (retail, wholesale, mfg.).	3
18	6	Jewelry (retail, wholesale, mfg. Storage).	1
19	2	Laundries	3
52	3	Leather products (retail, wholesale, mfg.).	1
20	5	Liquor sales (retail)	1
P1	6	Liquor (wholesale)	2
37	3	Marine/aircraft materials—sales/service (retail, wholesale, mfg.).	3
21	2	Meat/poultry/fish dealers	2
54	2	Medical supplies (doctors, dentists, etc.) (retail, wholesale, mfg.).	3
O1	3	Motorbikes/bicycles/mopeds	2
56	3	Music stores/instruments/supplies (retail, wholesale, mfg.).	2
35	2	Nursing/convalescent homes	4
C3	2	Office supplies/business machines/equipment (retail, wholesale, mfg.).	3
58	2	Parking lots/rental cars/car wash/taxi offices.	4
23	5	Pawn brokers	1
76	3	Pet stores/kennels/supplies	2
R1	2	Photographers studios	4
S1	6	Precious metals/electroplating (storage).	2
C8	5	Precious metals/electroplating (retail, wholesale, mfg.).	1
74	2	Professional/specialized services (lawyers, accountants, couriers, housekeeping, etc.).	4
24	6	Radio/TV/stereo/electronic equipment/computers (retail, wholesale, mfg.).	1
C4	2	Radio/TV/stereo/electronic equipment/computers (service only).	4
62	2	Realty/insurance/travel/employment agencies.	4
T1	4	Record shop/video stores	1
25	3	Restaurant/caterer	3
26	5	Savings & loans/banks & other financial institutions (excluding check cashing).	1
66	2	Schools (profit)/day care centers/studios	3
64	2	Security/locksmiths/alarms (retail, wholesale, mfg.).	4
68	6	Shoe stores (retail, wholesale, mfg.).	1
H1	5	Specialized clothing—sportswear/lingerie/accessories/etc. (retail, wholesale, mfg.).	3
U1	5	Sport good/general (retail, wholesale, mfg.).	2
60	3	Stationery/books/printing/engraving/paper or plastic products (retail, wholesale, mfg.).	3
27	4	Tavern/bar/lounge	3
V1	2	Taxi/limousines (robbery only)	0
28	2	Theatres	0
29	4	Tobacco Dealers (retail)	2
C9	3	Tobacco dealers (wholesale)	1
72	4	Used clothing/shoe repair/thrift shops.	1
W1	6	Variety stores/department stores.	1
X1	2	Vending machines (sales/rentals/mfg.).	4
Y1	5	Wig shops	2

§ 83.26 Required commercial policy form

Section 83.26, paragraph (b) entitled *Commercial Crime Insurance Policy form,* is amended in the following respects:

Insuring Agreements

1. In Option 2 (Robbery Only), Insuring Agreement VI the first paragraph is revised.

VI. Robbery, Including Observed Theft, Outside of the Premises

To pay for loss by robbery or observed theft of money, securities and merchandise, including the wallet or bag containing such property while such property is in conveyance by the insured or his messenger outside the named premises, but no payment shall be made for any loss in excess of $5,000 except when the insured or his messenger is accompanied by a guard armed with a firearm. The person carrying the insured property and the armed guard cannot be the same person.

* * * * *

2. In Option 3 (*Robbery and Burglary in Uniform and Varying Amounts*) Insurance Agreement II the first paragraph is revised.

II. Robbery Including Observed Theft Outside of the Premises

To pay for loss by robbery or observed theft of money, securities and merchandise, including the wallet or bag containing such property while such property is in conveyance by the insured or his messenger outside the named premises, but no payment shall be made for any loss in excess of $5,000 except when the insured or his messenger is accompanied by a guard armed with a firearm. The person carrying the insured property and the armed guard cannot be the same person.

* * * * *

Exclusions

3. The paragraph entitled exclusions is amended by adding paragraph (1) to read as follows:

* * * * *

(1) To loss from a night depository.

Conditions

Under the section entitled "Conditions", paragraph (6) entitled "Insured's duties when loss occurs" is revised as follows:

* * * * *

(6) Upon knowledge of loss or of an occurrence which may give rise to a claim for loss, the insured shall (a) give notice thereof as soon as practicable to law enforcement authorities and to the Insurer through its authorized agent and (b) file detailed proof of loss duly sworn to, with the insurer through its authorized agent within sixty (60) days after the discovery of loss unless such time is extended by the Federal Insurance Administrator in writing. The Administrator may, in his or her discretion, waive the requirement that the proof of loss be sworn to. Upon the insurer's request, the insured and every claimant hereunder shall submit to examination by the insurer, subscribe the same under penalty of 18 U.S.C. 1001 pertaining to fraud and false representation, and produce all pertinent records, all at such reasonable times and places as shall be designated, and shall cooperate with the insurer in all matters pertaining to loss or claims with respect thereto. The insured shall as a condition of continued coverage take reasonable action immediately following the discovery of a loss to protect the premises from further loss."

* * * * *

These amendments issued under 12 U.S.C. 1749bbb-17.

Harold T. Duryee,

Federal Insurance Administrator, Federal Insurance Administration.

[FR Doc. 87-18547 Filed 8-14-87; 8:45 am]

BILLING CODE 6718-01-M

DEPARTMENT OF DEFENSE

48 CFR Part 215

Department of Defense Federal Acquisition Regulation Supplement; DoD Profit Policy

AGENCY: Department of Defense (DoD)

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule issuing changes to the DoD Federal Acquisition Regulation Supplement with respect to DoD Profit Policy, published in the **Federal Register** on August 3, 1987 (52 FR 28705). This action is necessary to add coverage which was omitted.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Richard J. Wall, USAF, (202) 695-9764.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Accordingly, the Department of Defense is correcting 48 CFR Part 215 as follows:

PART 215—CONTRACTING BY NEGOTIATION

Section 215.970-1 is corrected to add, on page 28711, in paragraph (b)(2), immediately preceding paragraph (b)(3), paragraph (v), to read as follows:

215.970–1 Procedures for establishing a profit objective.

* * * * *

(b) * * *

(2) * * *

(v) In determining contract type risk, it is appropriate to consider additional risks associated with contracts for foreign military sales (FMS) which are not funded by United States appropriations. For example, a contract containing an offset arrangement with the foreign country may expose the contractor to additional risk. The contracting officer may recognize additional risk if the contractor can demonstrate that there are substantial risks above those normally present in DoD contracts for similar items. If an additional risk factor is recognized, the total profit factor for cost risk shall not exceed the designated range limits established for each contract type. The additional assigned value for contract type shall not apply to FMS sales made by United States Government inventories or stocks nor to acquisitions made under DoD cooperative logistics support arrangements.

* * * * *

[FR Doc. 87–18725 Filed 8–14–87; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt 1–219]

Organization and Delegation of Powers and Duties; University Transportation Centers Grant Program

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Final rule.

SUMMARY: In section 314 of Pub. L. 100–17, Surface Transportation and Uniform Relocation Assistance Act of 1987, signed into law on April 2, 1987, the Congress has directed the Secretary of Transportation to make grants to one or more nonprofit institutions of higher learning to establish and operate one regional transportation center in each of the ten Federal regions which constitute the Standard Federal Regional Boundary System. This document delegates to the Assistant Secretary for Policy and International Affairs with concurrence of the Deputy Secretary the authority vested in the Secretary of Transportation to administer the program, select recipients of the grants, and carry out the provisions of section 314. $10,000,000 has been authorized for each of fiscal years 1988 through 1991 in order to carry out the program.

EFFECTIVE DATE: July 6, 1987.

FOR FURTHER INFORMATION CONTACT: Joanne Petrie, Office of the General Counsel, C–50, (202) 366–9306, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: 49 U.S.C. 1607c (Section 314 of Pub. L. 100–17, April 2, 1987) provides that the Secretary of Transportation shall make grants to one or more nonprofit institutions of higher learning to establish and operate one regional transportation center in each of the ten Federal regions which constitute the Standard Federal Regional Boundary System.

The Secretary of Transportation has determined that the authority vested in her by section 314 of Pub. L. 100–17 to administer the University Transportation Centers Grant Program should be delegated to the Assistant Secretary for Policy and International Affairs with concurrence of the Deputy Secretary. This authority was delegated effective July 6, 1987.

Since this amendment relates to Departmental management, procedures, and practice, notice and comment on it are unnecessary and it may be made effective in fewer than thirty days after publication in the Federal Register.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended to read as follows:

PART 1—[AMENDED]

1. The authority citation for Part 1 continues to read as follows:

Authority: 49 U.S.C. 322.

2. Section 1.56 is amended by adding a new paragraph (k) to read as follows:

§ 1.56 Delegations to Assistant Secretary for Policy and International Affairs.

* * * * *

(k) Carry out the functions vested in the Secretary of Transportation by 49 U.S.C. 1607c (Section 314 of the "Surface Transportation and Uniform Relocation Assistance Act of 1987," Pub. L. 100–17, April 2, 1987), relating to the University Transportation Centers Grant Program, with concurrence of the Deputy Secretary.

Issued on: August 7, 1987.

Elizabeth Dole,

Secretary of Transportation.

[FR Doc. 87–18706 Filed 8–14–87; 8:45 am]

BILLING CODE 4910–62–M

Proposed Rules

Federal Register
Vol. 52, No. 158
Monday, August 17, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1421

Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed

AGENCY: Commodity Credit Corporation USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations at 7 CFR 1421.5551 *et seq.* relating to the Commodity Credit Corporation (CCC) Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed. The proposed rule would change provisions relating to when the President or Executive Vice President, CCC, may temporarily waive one or more of the standards of the subpart.

DATES: Comments must be received on or before September 16, 1987, in order to be assured of consideration.

ADDRESS: Interested persons are invited to send written comments to Paul W. King, Director, Warehouse Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Steven Closson, Chief, Storage Contract Branch, Warehouse Division, USDA, Room 5962-South Building, P.O. Box 2415, Washington, DC 20013, (202) 447–5047.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed in conformity with Executive Order 12291 and Department Regulation 1512–1 and has been classified as "not major" since implementation of the provisions of this proposed rule will not result in: (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, federal, State, or local governments, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, the environment, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 28115 (June 24, 1983).

It has been determined that this proposed rule will not increase the federal paperwork burden for individuals, small business, and other persons. CCC is also not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this proposed rule. Therefore, the Regulations Flexibility Act is not applicable to this proposed rule and a Regulatory Flexibility Analysis was not prepared.

It has been determined by an environmental evaluation that this action will have no significant adverse impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The CCC Charter Act (15 U.S.C. 714 *et seq.*) authorizes CCC to conduct various activities to stabilize, support, and protect farm income and prices. CCC is authorized to carry out such activities as making price support available with respect to various agricultural commodities, removing and disposing of surplus agricultural commodities, exporting or aiding in the exportation of agricultural commodities, and procuring agricultural commodities for sale both in the domestic market and abroad.

Section 4(h) of the CCC Charter Act provides that CCC shall not acquire real property in order to provide storage facilities for agricultural commodities, unless CCC determines that private facilities for the storage of such commodities are inadequate. Further, section 5 of the CCC Charter Act provides that, in carrying out the Corporation's purchasing and selling operations, and in the warehousing, transporting, processing, or handling of agricultural commodities, CCC is directed to use, to the maximum extent practicable, the usual and customary channels, facilities, and arrangements of trade and commerce.

Accordingly, CCC has published Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed which must be met by warehousemen before CCC will enter into storage agreements with such warehousemen for the storage of grain and other commodities which are owned by CCC or which are serving as collateral for CCC price support loans.

Presently, program requirements permit producers to obtain price support loan on their grain only when it is stored in approved space on the farm or in commercial warehouses. In a small number of specific instances, some producers as well as commercial warehousemen may not have sufficient storage space available to meet their needs. Some producers may be required to haul their grain a considerable distance to a CCC approved warehouse with space available in order to obtain a price support loan even though a commercial warehouse may be available within the community that is not CCC approved because it cannot meet all of these standards. The regulations at 7 CFR 1421.5557 now permit the CCC, to exempt, in writing, applicants in such area from one or more of the standards of this subpart and may establish such other standards as are considered necessary to safeguard the interests of CCC.

However, warehousemen who are currently under contract with CCC are required to meet all of the terms and conditions of the regulations. The status of the warehouseman, particularly his ability to meet financial requirements of the standards, may have changed. This places the President or Executive Vice President, CCC, in the position of being unable to waive one or more of the standards even if the warehouse space is needed by CCC. To correct this situation, it is proposed that the regulations at 7 CFR 1421.5557 be amended to permit the President or the Executive Vice President, CCC, to temporarily waive one or more of the standards for warehousemen who are currently under contract with CCC when it is determined that the warehouse services are needed in a local area.

List of Subjects in 7 CFR Part 1421

Grain, Loan programs, Agriculture, Oilseeds, Peanuts, Price support

programs, Soybeans, Surety bonds, Tobacco, Warehouses.

Proposed Rule

Accordingly, it is proposed that 7 CFR Part 1421 be amended as follows:

PART 1421—[AMENDED]

1. The authority citation for 7 CFR Part 1421 continues to read as follows:

Authority: Secs. 4 and 5 of the Commodity Credit Corporation Charter Act, as amended, 62 Stat. 1070, as amended, 1072 (15 U.S.C. 714b and 714c); secs. 101, 201, 301, 401, 403, and 405 of the Agricultural Act of 1949, as amended, 63 Stat. 1051, as amended, 1052, as amended, 1053, as amended 1054, as amended (7 U.S.C. 1441, 1446, 1447, 1421, 1423, and 1425); secs. 101A, 105C, and 107D of Pub. L. 99–198, unless otherwise noted.

2. Section 1421.5557 is revised to read as follows:

§ 1421.5557 Exemption from requirements.

If warehousing services in any area cannot be secured under the provisions of the subpart and no reasonable and economic alternative is available for securing such services for commodities under CCC programs, the President or Executive Vice President, CCC, may temporarily exempt, in writing, applicants for storage agreements and warehousemen who are currently under contract with CCC in such area from one or more of the standards of this subpart and may establish such other standards as are considered necessary to satisfactorily safeguard the interests of CCC.

Signed at Washington, DC, on August 11, 1987.

Vern Neppl,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 87–18766 Filed 8–14–87; 8:45 am]

BILLING CODE 3410-05-M

FEDERAL RESERVE SYSTEM

12 CFR Part 206

[Regulation F, Docket No. R–0609]

Securities of State Member Banks; Regulation F

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board proposes to amend its Regulation F (12 CFR Part 206), pursuant to the Board's responsibility under section 12(i) of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78(i)) ("Act"). The proposed amendment rescinds the various forms included in 12 CFR 206.41 through 206.82 and replaces those forms with a requirement that state member banks filing with the Board pursuant to section 12(i) of the 1934 Act, file information with the Board on the forms required by the Securities and Exchange Commission ("SEC") of entities, such as bank holding companies, which are subject to its regulation. The proposal would also permit a bank with no foreign offices and total assets of less than $100 million to substitute the quarterly financial statements filed on Federal Financial Institutions Examination Council ("FFIEC") Form 034 for the financial statements normally required on SEC Form 10–Q.

DATES: Comments on this proposal must be submitted by September 16, 1987.

ADDRESSES: Comments, which should refer to Docket No. R–0609, should be sent to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551. Comments may also be sent to Mr. Robert Fishman, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Walter R. McEwen, Attorney, Legal Division (202/452–3321), Kenneth M. Kinoshita, Attorney, Legal Division (202/452–3721), or Stanley C. Weidman, Senior Accountant/Analyst, Division of Banking Supervision and Regulation (202/452–3502); and for the hearing impaired *only*: Telecommunication Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452–3544), Board of Governors of the Federal Reserve System, Washington, DC 20551. Federal Reserve Paperwork Clearance Officer: Nancy Steele, Division of Research and Statistics (202/452–3822). Interested parties may also contact the OMB Desk Officer, Robert Fishman (202/395–6880).

SUPPLEMENTARY INFORMATION: State member banks issuing securities that are registered under sections 12(b) or 12(g) of the Act, 15 U.S.C. 78(b), (g), and certain of their principal shareholders, are required to file certain reports with the Board under the Board's Regulation F, 12 CFR Part 206. The purpose of these reports is to provide investors in state member bank securities with information on these banks. Pursuant to its authority under section 12(i) of the Act, 15 U.S.C. 78(i), the Board proposes to amend its Regulation F (12 CFR Part 206) in order to ensure that the disclosure required by Board's securities regulation pursuant to section 12(i) of the Act, remains substantially similar to that required by the Securities and Exchange Commission.

The Board proposes the adoption of a requirement that banks subject to Regulation F file with the Board those forms and reports which would be required of an entity regulated by the SEC. This proposal requires state member banks subject to Regulation F to file that information which the SEC has determined to be warranted.

Proposed 12 CFR 206.2—Disclosure Requirements—provides that the rules, regulations and forms prescribed by the SEC pursuant to sections 12, 13, 14(a), 14(c), 14(d), 14(f) and 16 of the Act be followed by state member banks. Accordingly, The Board would rescind 12 CFR 206.41–206.82, the sections of Regulation F setting forth various forms. Adoption of this proposal would render several other sections of Regulation F superfluous. Accordingly, the Board also proposes to rescind 12 CFR 206.2, 206.3(d), 206.4, 206.5, 206.6, 206.7 and 206.8.

The Board recognizes that this proposal would require state member banks subject to Regulation F to submit audited annual financial statements as required by the SEC's Regulation S–X. The Board notes, however, that 33 of the 36 banks presently subject to Regulation F already submit audited annual financial statements and concludes that the value of the independent audit outweighs the burden imposed on those banks which presently do not furnish audited annual financial statements.

The proposal also includes an amendment to Regulation F to permit state member banks which have no foreign offices and total assets of less than $100 million to elect to file quarterly financial statements on FFIEC Form 034, thus reducing the burden of compliance on those banks without adverse impact on the information gathering responsibilities of the Board. The proposal would permit such banks to elect to file either the balance sheet and income statement required by SEC Form 10–Q or the balance sheet and income statement required by FFIEC Form 034. FFIEC Form 034 is the least burdensome FFIEC call report form; it was designed for small commercial banks with no foreign offices. The basic information disclosed in FFIEC Form 034 is substantially similar to that required by SEC Form 10–Q, although the format of the two forms differs. Therefore, the Board concludes that no substantive purpose would be served by requiring a small state member bank to file two forms detailing similar information in different formats.

The Board proposes to permit Regulation F banks to make this election only if the net income, total assets and total equity capital in financial statements filed on FFIEC Form 034 would not differ materially from corresponding amounts in financial statements required by Form 10–Q. FFIEC Form 034 is subject to certain regulatory reporting standards while Form 10–Q must be prepared in accordance with generally accepted accounting principles ("GAAP"). The Board concludes, however, that material regulatory reporting standards/GAAP differences are unlikely to occur in banks with less than $100 million in assets. The Board expects that the 36 state member banks that are subject to the reporting requirements (and certain of their shareholders) will together take 5,713 hours to complete the forms. Assuming an estimated cost of $20 per hour, the Board estimates the total reporting burden on the public to be approximately $114,000 per annum.

List of Subjects in 12 CFR Part 206

Accounting, Confidential business information, Federal Reserve System, Reporting and recordkeeping requirements, Securities.

For the reasons set out in this notice, and pursuant to the Board's authority under section 12(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78), the Board proposes to amend 12 CFR Part 206 as follows:

PART 206—SECURITIES OF STATE MEMBER BANKS

1. The authority citation for Part 206 is revised to read as follows:

Authority: Sec. 12(i) of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78l(i)).

2. The Board proposes to revise § 206.1 to read as follows:

§ 206.1 Authority, scope and purpose.

This part is issued by the Board of Governors of the Federal Reserve System (the "Board") pursuant to section 12(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78) (the "Act") and applies to all securities subject to registration pursuant to section 12(b) or section 12(g) of the Act by a bank that is organized under State law and is a member of the Federal Reserve System ("bank"). This part vests in the Board, the powers, functions and duties vested in the Securities and Exchange Commission to administer and enforce sections 12, 13, 14(a), 14(c), 14(d), 14(f) and 16 of the Act with respect to State member banks.

3. The Board proposes to revise § 206.2 to read as follows:

§ 206.2 Disclosure requirements.

(a) With respect to any securities issued by a State member bank, the rules, regulations and forms adopted or amended by the Securities and Exchange Commission pursuant to sections 12, 13, 14(a), 14(c), 14(d), 14(f) and 16 of the Securities Exchange Act of 1934, shall apply to the securities issued by State member banks, except as otherwise provided in this part. The term "Commission" as used in those rules and regulations shall with respect to securities issued by State member banks be deemed to refer to the Board unless the context otherwise requires.

(b)(1) Notwithstanding any definition in the rules and regulations promulgated by the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, 15 U.S.C. 78(a) *et seq.*, any State member bank which has no foreign offices and has total assets of less than $100 million as of the end of its most recent fiscal year may elect to include in the Form 10–Q the financial statements required in quarterly reports on either:

(i) The SEC's Form 10–Q; or

(ii)The balance sheet and income statement from the Federal Financial Institutions Examination Council ("FFIEC") Form 034

(2) Such a State member bank may not elect to file quarterly financial statements on FFIEC Form 034 if the information provided on FFIEC Form 034 reflects certain regulatory reporting standards and the reported amounts of net income, total assets or total equity capital would differ materially from financial statements prepared in accordance with generally accepted accounting principles ("GAAP").

(3) A State member bank qualifying for and electing to use FFIEC Form 034 financial statements in Form 10–Q Quarterly Reports shall include earnings per share or net loss per share data required by GAAP and disclosure of material contingencies, in the Management's Discussion and Analysis of Financial Condition and Results of Operations.

4. The Board proposes to amend § 206.3 by revising the section heading and paragraphs (a) and (b) and removing paragraph (d) to read as follows:

§ 206.3 Filing; inspection, confidential information.

(a)(1) All papers required to be filed with the Board pursuant to the Act or regulations thereunder shall be filed with the Board by submitting such filings to the Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Material may be filed by delivery to the Board, through the mails, or otherwise. The date on which papers are actually received by the Board shall be the date of filing thereof if all of the requirements with respect to the filing have been complied with.

(2) No filing fees specified by the Commission's rules shall be paid to the Board.

(b) Copies of the registration statement, definitive proxy solicitation materials, reports and annual reports to shareholders required by § 206.2 (exclusive of exhibits) will be available for inspection at the Board's office in Washington, DC, as well as at the New York, Chicago, and San Francisco Federal Reserve Banks and at the Reserve Bank in the district in which the reporting bank is located.

* * * * *

§§ 206.4 through 206.8 [Removed]

5. Sections 206.4 through 206.8 are removed.

§§ 206.41 through 206.82 [Removed]

6. Sections 206.41 through 206.82 are removed.

Board of Governors of the Federal Reserve System, August 7, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87–18445 Filed 8–14–87; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Supervision of Parolees Testing Positive for Acquired Immune Deficiency Syndrome

AGENCY: Parole Commission, Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Parole Commission proposes to adopt policies at its October, 1987, quarterly meeting concerning the supervision of federal parolees who have tested positive for Acquired Immune Deficiency Syndrome (AIDS) and seeks public comment to assist in the development of such policies.

DATE: Public comment must be received by October 1, 1987.

ADDRESS: Comments should be addressed to: Sharon Gervasoni, Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, Telephone (301) 492–5959.

FOR FURTHER INFORMATION CONTACT: Sharon Gervasoni, Telephone (301) 492–5959.

SUPPLEMENTARY INFORMATION: The U.S. Parole Commission is considering the adoption of policies concerning the supervision of federal parolees who have been tested as positive for exposure to the Acquired Immune Deficiency Syndrome (AIDS) virus. On June 8, 1987 the Attorney General announced that federal prisoners would be tested for AIDS before their release from custody and that positive test results would be communicated to the United States Probation Offices which will supervise their periods of supervision under the jurisdiction of the Commission

The Commission specifically invites public comment on the following issues:

(1) Should the Commission impose a condition of parole prohibiting the transmission of bodily fluids (through unprotected sex, donation of blood, etc.) by a parolee who has had a positive test for AIDS infection?

(2) Should the Commission impose parole conditions requiring infected parolees to disclose their status to prospective sex partners or other persons in danger of being infected by such parolees?

(3) Should U.S. Probation Officers disclose AIDS test results to spouses or fiances of parolees or to other classes of persons who are in danger of being infected by such parolees?

(4) Should U. S. Probation Officers disclose to public health agencies the identities of parolees who have been tested positive for exposure to the AIDS virus?

(5) Should the Commission require parolees who are infected to participate in AIDS counseling programs?

(6) Do any or all of the above proposals inappropriately extend the role of the Commission from the prevention of crime to the prevention of disease?

The Commission also invites public comment on any other concerns which might be related to the supervision of AIDS infected parolees.

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

Date: July 24, 1987.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 87–18718 Filed 8–14–87; 8:45 am]

BILLING CODE 4410-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87–301, RM–5821]

Radio Broadcasting Services; Dunnellon, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Asterisk Communications, Inc., licensee of Station WTRS–FM, Dunnellon, Florida, proposing to substitute Channel 272C2 for Channel 272A and to modify its Class A license to specify the new channel.

DATES: Comments must be filed on or before October 5, 1987, and reply comments on or before October 20, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Dennis F. Begley, Reddy, Begley and Martin, 2033 M Street NW., Washington, DC 20036 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–301, adopted July 24, 1987, and released August 10, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not appy to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73:

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–18686 Filed 8–14–87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87–300, RM–5704]

Radio Broadcasting Services; Coeur d' Alene, ID

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Idaho Broadcasting Company, Inc., licensee of Station KCDA(FM), Coeur d' Alene, Idaho, proposing to substitute Channel 276C2 for Channel 276A and to modify its Class A license to specify the new channel.

DATES: Comments must be filed on or before October 5, 1987, and reply comments on or before October 20, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Barry A. Friedman, Wilner and Scheiner, 1200 New Hampshire Avenue NW., Suite 300, Washington, DC 20036 (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–300, adopted July 23, 1987, and released August 10, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-18687 Filed 8-14-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-298, RM-5789]

Radio Broadcasting Services; Rozel, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Lee E. Scott proposing to allot FM Channel 254A to Rozel, Kansas as that community's first FM channel.

DATES: Comments must be filed on or before October 5, 1987, and reply comments on or before October 20, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Donald E. Martin, Esq., 2000 L Street NW., Suite 200, Washington, DC 20036 (Counsel to Petitioner).

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-299, adopted July 23, 1987, and released August 10, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-18688 Filed 8-14-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-279, RM-5623]

Television Broadcasting Services; Lewisburg, WV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Sid Shumate, proposing the allotment of UHF Television Channel 59 to Lewisburg, West Virginia, as that community's first local commercial TV service. A site restriction of 12.2 kilometers (7.6 miles) northwest of the city is required.

DATES: Comments must be filed on or before September 23, 1987, and reply comments on or before October 13, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Sid Shumate, 119 Carlton Road, Charlottesville, VA 22901 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-279, adopted July 16, 1987, and released August 10, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-18689 Filed 8-14-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-302, RM-5695]

Radio Broadcasting Services; Palm Springs, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by KPSI Radio Corporation, proposing the substitution of FM Channel 263B1 for 265A at Palm Springs, California, and modification of the license of Station KPSI (FM) accordingly, to provide that community with its third wide coverage area FM service.

DATES: Comments must be filed on or before October 5, 1987, and reply comments on or before October 20, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554 In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Joel H. Levy, Esq., Cohn and Marks, 1333 New

Hampshire Avenue, NW, Suite 600, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–302, adopted July 23, 1987, and released August 10, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission,
Mark N. Lipp,
Chief, Allocations Branch, Policy and Rules Division Mass Media Bureau.

[FR Doc. 87–18684 Filed 8–14–87; 8:45 am]
BILLING CODE 6712-1-M

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47 CFR Part 73

[MM Docket No. 87–303, RM–5744]

Radio Broadcasting Services; Santa Rosa, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Visionary Radio Euphonics, Inc., proposing the substitution of FM Channel 269B1 for Channel 269A at Santa Rosa, California, and modification of the license of Station KVRE–FM accordingly, to provide that community with its first wide coverage area FM service. If the proposal should succeed on its merits, finalization thereof must await the grant of a license to cover the construction permit issued to Station KKIQ(FM) (Channel 269A), Livermore, CA.

DATES: Comments must be filed on or before October 5, 1987, and reply comments on or before October 20, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Peter A. Casciato, Esq., Law Offices of Peter A. Casciato, P.C., Media Bldg., 943 Howard Street, San Francisco, CA 94103.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–303 adopted July 24, 1987, and released August 10, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.
Mark N. Lipp,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–18685 Filed 8–14–87; 8:45 am]
BILLING CODE 6712-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 504, 514, 515, 522, 525, 532, 534, 536, 537, 552, and 553

[GSAR Notice No. 5–67]

Acquisition Regulation; Miscellaneous Changes

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice invites written comments on a proposed change to the General Services Administration Acquisition Regulation (GSAR), which would revise section 514.301–70 to clarify the policy on the consideration of telecopier bids, revise section 515.411–70 to clarify the requirements for abstracting proposals or quotations in negotiated procurements and to clarify the rules regarding disclosure of information regarding negotiated procurements, and section 515.412 to incorporate a class deviation to the FAR provision on late submissions, modifications, and withdrawals of proposals for use by contracting officers in the Federal Supply Service for Multiple Award Schedules, revise section 515.1070 to provide for release of information on unsuccessful offerors in certain circumstances without a formal Freedom of Information Act request, revise section 552.210–78 to incorporate the substance of a November 1984 class deviation for use by the Federal Supply Service, delete the provision pertaining to telecopier submissions, modifications, or withdrawal of bids in section 552.214–71 and reserve the section, to delete the provision pertaining to telecopier submissions, modifications, or withdrawal of proposals in section 552.215–71 and reserve the section, and to make other miscellaneous changes in Parts 504, 522, 525, 532, 534, 536, 537, 553, and Appendix C of the GSAR looseleaf which primarily relates to the interval operations of the agency. The intended effect is to improve the regulatory coverage and provide uniform procedures for contracting under the regulatory system.

DATE: Comments are due in writing on or before September 16, 1987.

ADDRESS: Requests for a copy of the proposal and comments should be addressed to Ms. Marjorie Ashby, Office of GSA Acquisition Policy and Regulations, 18th and F Streets NW., Room 4024, Washington, DC 20405, (202) 523–3822.

FOR FURTHER INFORMATION CONTACT: Ms. Ida Ustad, Office of GSA Acquisition Policy and Regulations, 18th and F Streets NW., Room 4029, Washington, DC 20405, (202) 566–1224.

SUPPLEMENTARY INFORMATION: The Director, Office of Management and Budget by memorandum dated December 14, 1984, exempted certain procurement regulations from Executive Order 12291. The exemption applies to this proposed rule. The GSA certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.)* The proposed rule primarily relates to the internal operations of the agency and will not have a significant impact on contractors and offerors. Therefore, no flexibility analysis has been prepared. The rule does not contain information collection requirements which require the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.)*

List of Subjects in 48 CFR Parts 504, 514, 515, 522, 525, 532, 534, 536, 537, 552, and 553

Government procurement.

Dated: August 7, 1987.

Ida M. Ustad,

Director of GSA Acquisition, Policy and Regulations.

[FR Doc. 87–18739 Filed 8–14–87; 8:45 am]
BILLING CODE 6820–61–M

Notices

Federal Register
Vol. 52, No. 158
Monday, August 17, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

National Commission on Dairy Policy; Advisory Committee Meeting

Pursuant to provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), a notice is hereby given of the following committee meeting.

Name: National Commission on Dairy Policy.

Time and Place: Sheraton Crystal City, 1800 Jefferson Davis Hwy. Arlington, Virginia.

Status: Open.

Matters to be Considered: On August 31 and September 1, the Commission will meet to consider issues related to the dairy price support program, new dairy technologies, and the influence of the program and technologies on the family farm. The meeting on August 31 is expected to review Commission staff work concerning the array of new dairy technology that may emerge in the foreseeable future. The meeting on September 1 is expected to include a presentation concerning the economic status and future of the dairy industry. The Commission will also discuss background materials related to the dairy industry with the Executive Director.

Written statements may be filed before or after the meeting with: Contact person named below.

Contact person for more information: Mr. T. Jeffrey Lyon, Assistant Director, National Commission on Dairy Policy, 1401 New York Ave. NW., Suite 1100, Washington, DC 20005, (202) 638–6222.

Signed at Washington, DC, this 11th day of August 1987.

David R. Dyer,

Executive Director, National Commission on Dairy Policy.

[FR Doc. 87–18737 Filed 8–14–87; 8:45 am]

BILLING CODE 3410-05-M

Agricultural Research Service

National Arboretum Advisory Council; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. (770–776), the Agricultural Research Service announces the following meeting:

Name: National Arboretum Advisory Council
Date: October 18–20, 1987
Time: 9:00 a.m.—4:30 p.m., Oct. 19, 9:00 a.m.—4:30 p.m., Oct. 20
Place: U.S. National Arboretum, 3501 New York Avenue, NE., Washington, DC.

Type of Meeting: Opening to the public. Persons may participate in the meeting as time and space permits.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: To review progress of National Arboretum relating to Congressional mandate of research and education concerning trees and plant life. The Council submits its recommendations to the Secretary of Agriculture.

Contact Person: Howard J. Brooks, Executive Secretary, National Arboretum Advisory Council, Room 234 Bg–005, BARC–W, Beltsville, MD 20705. Telephone: AC 301/344–3912.

Done at Beltsville, Maryland, this 10th day of July 1987.

Howard J. Brooks,

Executive Secretary, National Arboretum Advisory Council.

[FR Doc. 87–18697 Filed 8–14–87; 8:45]

BILLING Code 3410-03-M

Animal and Plant Health Inspection Service

[Docket No. 87–404]

Change of Official Mailing Address for the Animal and Plant Health Inspection Service

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice serves to advise all interested parties of a change in the official mailing address for the Washington, DC, offices of the Animal and Plant Health Inspection Service (APHIS).

EFFECTIVE DATE: August 17, 1987.

FOR FURTHER INFORMATION CONTACT: Gerald Mainer, Mail Manager, Mail and Records Management Section, Information Management Branch, Administrative Services Division, Animal and Plant Health Inspection Service, 1400 Independence Avenue, SW., Washington DC, 20250. Telephone (202) 447–5366.

SUPPLEMENTARY INFORMATION: APHIS has established a new official mailing address for the Washington, DC, offices. A Washington DC post office box was established to provide more economical and efficient mail services. The Washington DC post office box conversion will preserve and protect the security of all mail from unauthorized opening, inspection, or reading of contents or covers, tampering, delay, or other unauthorized acts.

Any interested party, intending to mail to APHIS offices located in Washington, DC, should use the new post office box address.

-New official mailing address: USDA/APHIS/(Name of Division and Office), (Room Number), P.O. Box 96464, Washington, DC, 20090–6464.

Old mailing address: USDA/APHIS/(Name of Division and Office), (Room Number), 1400 Independence Avenue SW., Washington, DC, 20250.

Done in Washington, DC, this 12th day of August, 1987.

Larry B. Slagle,

Deputy Administrator for Management and Budget, Animal and Plant Health Inspection Service.

[FR Doc. 87–18765 Filed 8–14–87; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 87–403]

Selection of Members for the National Animal Damage Control Advisory Committee (NADCAC)

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Animal and Plant Health Inspection Service (APHIS) is giving notice that the Secretary of Agriculture intends to select members for NADCAC from among individuals nominated by interested persons and organizations. In order to obtain the broadest

representation on the committee, the Secretary's selection will not be limited to those so nominated. The NADCAC will advise the Secretary of Agriculture on policies, program issues, and research needed to conduct the Animal Damage Control program of APHIS.

FOR FURTHER INFORMATION CONTACT: Gerald J. Fichtner, Deputy Administrator for Animal Damage Control, APHIS, USDA, Room 1624, South Building, 14th and Independence Avenue, SW., Washington, DC, 20250, (202) 447–2054.

SUPPLEMENTARY INFORMATION: On November 6, 1986, and April 17, 1987, APHIS published notices in the **Federal Register** (51 FR 40345, Docket Number 865–411, and 52 FR 12576, Docket Number 87–401), regarding nominations for representation on the NADCAC.

The purpose of this document is to give notice that the Secretary intends to solicit recommendations for membership on NADCAC from interested organizations and individuals. Organizations may recommend individuals for membership who are not associated with their organization. The Secretary's selection of members on NADCAC, however, will not be limited to those nominated. This will enable the Secretary to obtain the broadest possible representation on the committee, in accordance with the Federal Advisory Committee Act and USDA Department Regulation 1043–27. Information about the nomination process may be obtained from Gerald J. Fichtner, Deputy Administrator for Animal Damage Control, APHIS, USDA, Room 1624, South Building, 14th and Independence Avenue, SW., Washington, DC, 20250, 202–447–2054.

Done in Washington, DC, this 13th day of August, 1987.

Bert W. Hawkins,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 87–18773 Filed 8–13–87; 10:13am]

BILLING CODE 3410-34-M

COMMISSION ON CIVIL RIGHTS

Colorado Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Colorado Advisory Committee to the Commission will convene at 12:00 Noon and adjourn at 2:30 p.m. on August 24, 1987, at the Executive Tower Inn, 1402 Curtis Street, Denver, Colorado 80202. The purpose of the meeting is to plan for a series of forums on the impact in Colorado of the implementation of the Immigration Reform Act and continue discussions on the release of the Committee's Hispanic dropout report.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Maxine Kurtz, or Philip Montez, Director of the Western Regional Division (213) 894–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 7, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87–18658 Filed 8–14–87; 8:45 am]

BILLING CODE 6335-01-M

Illinois Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Illinois Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 4:00 p.m. on September 8, 1987, at the Oxford House, 225 North Wabash Avenue, Chicago, Illinois. The purpose of the meeting is to conduct program planning for FY 1988 and to hold a forum on ways by which the Cabrini-Green housing projects in Chicago might be desegregated.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Hugh J. Schwartzberg, or Melvin Jenkins, Director of the Central Regional Division (816) 374–5253, (TDD 816/374–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 10, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87–18659 Filed 8–14–87; 8:45 am]

BILLING CODE 6335-01-M

Minnesota Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Minnesota Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 4:00 p.m., on August 29, 1987, at the Holiday Inn, 1313 Nicollet Mall, Minneapolis, Minnesota. The purpose of the meeting is to develop program plans and to hold a community forum to obtain information on the status of civil rights and bigotry and violence in the State.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Talmadge L. Bartelle, or Melvin Jenkins, Director of the Central Regional Division (816) 374–5253 (TDD 816/374–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 10, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87–18660 Filed 8–14–87; 8:45 am]

BILLING CODE 6335-01-M

Oklahoma Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Oklahoma Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 4:00 p.m., on September 4, 1987, at the Sheraton Century Center, One North Broadway, Oklahoma City, Oklahoma 73102. The purpose of the meeting is to develop program plans and to receive a briefing on the status of the U.S. Commission on Civil Rights and its regional operations.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Charles Fagin or Philip Montez, Director of the Western Regional Division (213) 894–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5)

working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 7, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87-18661 Filed 8-14-87; 8:45 am]

BILLING CODE 6335-01-M

Maryland Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Maryland Advisory Committee to the Commission will convene at 7:00 p.m. and adjourn at 9:30 p.m. on September 1, 1987, at the Omni International Hotel, 101 West Fayette Street, Baltimore, Maryland. The purpose of the meeting is to hear presentations from knowledgeable persons on the topic: Strategies for the Prevention of Bigotry and Violence, to discuss results of the 1987 Regional Conference, and to plan activities for FY '88.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Lorretta Johnson or John I. Binkley, Director of the Eastern Regional Division at (202) 523-5264, (TDD 202/376-8117). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 11, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87-18738 Filed 8-14-87; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 350]

Resolution and Order Approving the Application of the Sacramento-Yolo Port District for a Foreign-Trade Zone in West Sacramento, CA

Proceedings of the Foreign-Trade Zones Board, Washington, D.C.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 USC 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Sacramento-Yolo Port District, a political subdivision of the State of California, filed with the Foreign-Trade Zones Board (the Board) on May 8, 1986, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in West Sacramento, California, within the Sacramento section of the San Francisco-Oakland Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to § 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant to Establish, Operate, and Maintain a Foreign-Trade Zone in the Sacramento, California Area

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Sacramento-Yolo Port District (the Grantee), has made application (filed May 8, 1986, Docket No. 16–86, 51 FR 18639) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone in West Sacramento, California, within the San Francisco-Oakland Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 143 at the location mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also the following express conditions and limitations:

Operation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone site in the performance of their official duties.

The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 6th day of August 1987, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Clarence J. Brown,

Acting Chairman and Executive Officer.

Attest:

John J. DePonte, Jr.,

Executive Secretary.

[FR Doc. 87-18730 Filed 8-14-87; 8:45 am]

BILLING CODE 3510-DS-M

[ORDER NO. 361]

Resolution and Order Approving the Application of the Brunswick Foreign-Trade Zone, Inc. for a Foreign-Trade Zone in Brunswick, GA

Proceedings of the Foreign-Trade Zones Board, Washington, D.C.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 USC 81a-81U), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Brunswick Foreign-Trade Zone, Inc., a Georgia private corporation, filed with the Foreign-Trade Zones Board the Board) on November 7, 1986, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in Brunswick, Georgia, within the Brunswick Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to § 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant to Establish, Operate, and Maintain a Foreign-Trade Zone in Brunswick, Georgia

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Brunswick Foreign-Trade Zone, Inc. (the Grantee), a Georgia private corporation, has made application (filed November 7, 1986, Docket No. 34-86, 51 FR 41993) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone in Brunswick, Georgia, within the Brunswick Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign trade zone, designated on the records of the Board as Zone No. 144 at the location mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also the following express conditions and limitations:

Operation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone site in the performance of their official duties.

The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable threfore.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 6th day of August 1987, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Clarence J. Brown.

Acting Chairman and Executive Officer.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 87-18731 Filed 8-14-87; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. 10-87]

Foreign-Trade Zone 45, Portland, OR; Application for Subzone Status for Automotive Industrial Marketing Corp.

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Portland, grantee of FTZ 45, requesting special-purpose subzone status for the industrial tool distribution facility of Automotive Industrial Marketing Corporation (AIM) and its subsidy AcraDyne Corporation in Portland, Oregon, within the Portland Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on July 20, 1987.

The 2.4 acre facility is located at 1000 S.E. Pine Street, Portland. Employing 30 persons, it is used to modify, relabel, repackage and distribute hand-held pneumatic and electric industrial tools and screw fastening robots, used primarily by auto assembly plants. Most of the tools are purchased from foreign sources. AIM's products are distributed in Canada and Mexico, as well as domestically.

Zone procedures will allow AIM to avoid duty payments on the foreign products that are exported. On its domestic sales, the company would be able to defer duty payments. No manufacturing approvals are being sought at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee

has been appointed to investigate the application and report to the Board. The committee consists of: Joseph Lowry (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Clyde Kellay, District Director, U.S. Customs Service, Pacific Region, 511 NW. Broadway, Fed. Bldg., Portland, OR 97209; and Colonel Gary R. Lord, District Engineer, U.S. Army Engineer District Portland, P.O. Box 2946, Portland, OR 97208.

Comments concerning the proposed subzone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before September 24, 1987.

A copy of the application is available for public inspection at each of the following locations.

U.S. Department of Commerce, District Office, 1220 SW. 3rd Ave., Rm. 661, Portland, OR 97204

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Rm. 1529, 14th and Pennsylvania, NW., Washington, DC 20230.

Dated: August 10, 1987.

John J. De Pasta, Jr.,
Executive Secretary.

[FR Doc. 87-18732 Filed 8-14-87; 8:45 am]
BILLING CODE 3510-DS-M

International Trade Administration

[A-588-804]

Final Determination of Sales at Less Than Fair Value; Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: We have determined that tapered roller bearings and parts thereof, finished and unfinished (tapered roller bearings, also "TRBs"), from Japan are being, or are likely to be, sold in the United States at less than fair value. The U.S. International Trade Commission (ITC) will determine, within 45 days of publication of this notice, whether these imports are materially injuring, or are threatening material injury to, a United States industry.

EFFECTIVE DATE: August 17, 1987.

FOR FURTHER INFORMATION CONTACT: Marie C. Kissel (202/377-3798) or Mary S. Clapp (202/377-1769), Office of Investigations, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that tapered roller bearings from Japan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673(a)). The margins found for the companies investigated are listed in the "Suspension of Liquidation" section of this notice.

Case History

On March 23, 1987, we made an affirmative preliminary determination (52 FR 9905, March 27, 1987).

On March 31, 1987, we received a request from NTN Toyo Bearing Co., Ltd. ("NTN"), a respondent in the case, to postpone the final determination to no later than the 135th day after publication of our "Preliminary Determination" notice in the Federal Register. We granted this request and postponed the final determination until no later than August 10, 1987 (52 FR 11722, April 10, 1987).

On July 6, 1987, the Department held a public hearing. Interested parties submitted comments for the record in their pre-hearing briefs of July 2, 1987, and in their post-hearing briefs of July 14, 1987.

Scope of Investigation

The products covered by this investigation are tapered roller bearings and parts thereof, currently classified under *Tariff Schedules of the United States (TSUS)* item numbers 680.30 and 680.39; flange, take-up cartridge, and hanger units incorporating tapered roller bearings, currently classified under *TSUS* item number 681.10; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use, and currently classified under *TSUS* item 692.32 or elsewhere in the *TSUS*. Products subject to the outstanding antidumping duty order covering certain tapered roller bearings from Japan (T.D. 76-227, 41 FR 34974) are not included within the scope of this investigation. This investigation includes all tapered roller bearings and parts thereof, as described above, that are manufactured by NTN.

If the Department's recission of its revocation of the above cited antidumping duty order with respect to NTN is affirmed by final judicial order, this antidumping determination would not apply to any bearings manufactured by NTN that would be covered by the outstanding antidumping duty order. This issue is being litigated in the Court of International Trade in *The Timken Co. v. United States*, Court No. 82-6-00890.

Fair Value Comparisons

For NTN Toyo Bearing Co., Ltd., we compared the United States price to foreign market value, as described below.

The second company from which we requested a response, Koyo Seiko Co., Ltd. ("Koyo"), limited its reporting of home market sales to those products it considered identical or most similar to the TRBs it sold to the United States. Although requested to do so in the Department's questionnaire, Koyo did nor furnish descriptions of the other bearings it sold in the home market, which would permit us to select the most similar bearings based on the criteria described in the "Such or Similar Merchandise" section of this notice, for calculation of foreign market value based on sales in the home market.

For certain U.S. sales, based on our inability to determine whether Koyo had reported the appropriate similar merchandise home market sales, we based our determination on whether Koyo sold TRBs in the U.S. at less than fair value on the best information otherwise available, in accordance with section 776(b) of the Act. This treatment is in accordance with a ruling by the Court of International Trade in *The Timken Co. v. United States*, 10 C.I.T. _____, 630 F. Supp. 1327, 1338 (1986). The petition alleges price based dumping margins for the period of investigation for Koyo of between 4.5 and 78.4 percent, for an arithmetic average of quarterly rates of 29.7 percent. Since this rate is less than the rate we have calculated for the Koyo bearings for which we used sufficient information, we have adopted the calculated rate as best information available in this context.

We used the data submitted by Koyo on identical merchandise comparisons and the parts that were imported to the U.S. for further manufacturing in calculating foreign market value, because use of this data for these comparisions with U.S. prices did not require a determination of "most similar" bearings. For parts, foreign market value is based on constructed value, because parts are not sold in the home market.

A voluntary response was received from Nissan Motor Co., Ltd., but the Department found the response to be substantially incomplete and, therefore,

unusable for determining whether sales were being made at less than fair value.

The period of investigation is March 1, 1986, through August 31, 1986.

United States Price

For certain sales by NTN and Koyo, we based United States price on exporter's sales price (ESP), in accordance with section 772(c) of the Act, since the first sale to an unrelated party was made after importation. For those sales by NTN to the United States where we determined that the merchandise had been purchased by an unrelated party from the manufacturer or producer prior to importation, we based the United States price on purchase price in accordance with section 772(b) of the Act.

For NTN's sales which were made through a related sales agent in the United States to an unrelated purchaser prior to the date of importation, we used purchase price as the basis for determining United States price. For these sales, the Department determined that purchase price was the more appropriate indicator of United States price based on reasons detailed in the preliminary determination.

For NTN and for certain sales by Koyo, we calculated purchase price and ESP based on the packed, f.o.b. and c.i.f., duty paid, delivered prices to unrelated purchasers in the United States. We made deductions for foreign inland freight, ocean freight, marine insurance, U.S. duty, and U.S. inland freight, as appropriate. For ESP sales, we also deducted other expenses normally incurred in selling the merchandise in the United States. We also adjusted for processing performed in the United States.

Foreign Market Value

In accordance with section 773(a) of the Act, we determined that there were sufficient home market sales by NTN and for Koyo to form the basis for foreign market value.

Petitioner alleged that home market sales were made at less than the cost of production and that constructed value should be used to compute foreign market value.

We compared the home market prices to the cost of production, which included materials, fabrication costs, and selling, general, and administrative expenses (SG&A). We used the selling expenses incurred on sales to the level of trade of the sales being compared. When there were no, or insufficent, sales of such or similar merchandise at prices above the cost of production, as defined in section 773(b) of the Act, we used constructed value as the basis for calculating foreign market value. We disregarded all sales of a particular TRB model whenever below-cost sales for that model represented more than 90 percent of all sales for that model during the period of investigation. If below-cost sales of a particular model were not less than 10 percent and not more than 90 percent of total sales for that model during the period of investigation, only the below-cost sales were disregarded. If less than 10 percent of sales of a particular model were sold below-cost during the period of investigation, no sales were disregarded. For the remaining above-cost sales, we calculated foreign market value in accordance with section 773(a)(1)(A).

Where we used constructed value for our comparisons, we used materials and fabrication costs as reported. NTN's general expenses exceeded the statutory minimum of ten percent of materials and fabrication. Therefore, actual general expenses were used in calculating the constructed value. Koyo's general expenses were below the statutory minimum, therefore, we used the 10 percent statutory minimum in calculating Koyo's constructed value. The statutory eight percent for profit was included in the constructed value for both companies because home market profit was less than eight percent. We added U.S. packing costs.

We made circumstances of sale adjustments to constructed value for differences in credit expenses. In addition, where the U.S. sales prices were calculated based on ESP, we made an offset for indirect selling expenses on the U.S. sales against home market indirect selling expenses, in accordance with § 353.15(c) of Commerce's regulations.

For NTN and Koyo, where we found sufficient sales in the home market to form the basis of comparison, we used delivered home market prices. We made deductions for foreign inland freight and discounts, as appropriate. We also deducted home market packing costs and added U.S. packing costs. For comparison to ESP sales, we offset selling expenses incurred on home market sales up to the amount of the indirect selling expenses incurred for sales to the U.S. market, in accordance with § 353.15(c) of our regulations. We made an adjustment for differences in credit terms in accordance with § 353.15 of our regulations. NTN claimed adjustments for differences in technical service expenses, sales commissions, advertising and warehousing expenses. We denied these claims, since they were not directly related to the sales under consideration. These expenses were included in the selling expenses used for purposes of the ESP offset.

NTN claimed that automobile manufacturers and original equipment manufacturers (OEM) should be treated as separate levels of trade. We rejected this argument since automobiles are a type of original equipment and respondent did not demonstrate significant differences in the expenses incurred in selling to these two classes of customers.

Wherever possible, we selected for comparison to each model of tapered roller bearing exported to the United States the identical model sold in the home market. If sales of that model were made at the same commercial level of trade as that of the U.S. sale, then we used as the basis of foreign market value only sales at that level of trade. If no identical merchandise was sold at the same commercial level of trade, we used sales made at the other commercial level of trade. If there were no home market sales of identical merchandise, we attempted to repeat this process for most similar merchandise.

Where there were no sales of identical merchandise in the home market at the same level of trade, we made our comparisons at the other level of trade and adjusted for differences in level of trade, in accordance with § 353.19 of our regulations. The adjustment was based on the difference in selling expenses incurred in selling to OEMs and distributors in the home market.

Such or Similar Merchandise

The parties in this investigation submitted numerous comments on the factors that should be considered in determining which products sold in the home market should be compared to the TRBs sold in the United States. The factors which were suggested as forming appropriate measures of similarity of TRBs sold in the respective markets include outside diameter, inside diameter, width, type of bearing, dynamic load rating, the Y2 factor (Y factor), and the system life. Each of these factors is discussed below:

1. *Outside Diameter.* The outside diameter (OD) of a bearing is the physical measurement between two points of the outermost portion of bearing which are directly opposite each other.

2. *Inside Diameter.* The inside diameter (ID) of a bearing is the physical measurement between two points of the innermost portion of a bearing which are directly opposite each other

3. *Width.* The width is the physical measurement of the radial portion of the bearing.

4. *Type of Bearing.* The type of bearing is defined in terms of various physical characteristics, including a number of rows of rollers, as well as whether or not the bearing has flanges, seals, various configurations of multiple rows of rollers, and whether the bearing is heat treated.

5. *Dynamic Load Rating.* The dynamic load rating is the constant stationary load which a bearing can endure for one million revolutions of the inner ring. Also, dynamic load rating is an accepted international standard.

6. *Y2 Factor (Y Factor).* The Y2 factor measures the effect of thrust loads on the expected life of a bearing and is calculated from the contact angle. It is an accepted international standard which, when combined with dynamic load rating, forms the major component of bearing life.

7. *System Life.* This is a calculation of the number of revolutions a bearing can be expected to perform in a given system or application (such as a gear of a specific model of truck) under specified operating conditions.

Petitioner states that three factors can be used n selecting similar merchandise with very reliable results. These are ID, OD, and system life. Petitioner contends that use of system life is preferable to the use of dynamic load rating because it incorporates radial load as well as thrust factors in the measurement of the characteristics of a bearing. Petitioner concedes that use of dynamic load rating in combination with the Y factor also would incorporate radial load and thrust factors. Petitioner states that the fact that the system life of a specific bearing varies widely depending on the system, or application, is irrelevant, since system life can be calculated using typical applications.

NTN argues that the use of system life as a basis for selecting similar merchandise is inappropriate because universal system life for an individual bearing does not exist. As the parameters of a system change, the life of that system will change since system life is based on the point at which a component of the system is expected to show signs of fatigue. NTN proposes that ID, OD, width, dynamic load rating, the Y factor and the type of bearing be considered. NTN bases its selection of the dynamic load rating and the Y factor on the fact that these measure the physical properties of the individual bearing.

Koyo opposes use of system life because it is not calculated in accordance with industry standards and is calculated differently by various manufacturers of TRBs. Koyo states that the physical measurements of TRBs (ID, OD, and width) are the best criteria for determining similarity because they relate most directly to the physical properties of the TRBs and their production costs.

Petitioner and NTN (but not Koyo) also addressed the issue of how the Department could measure approximate equality in the commercial value of the merchandise compared, as provided in section 771(16)(B)(iii) of the Act.

Petitioner would have the Department pick the most similar product by first considering the system life of a bearing, ranking each bearing in the home market universe from equal or most similar system life to least similar system life. Second, searching among the top 10 percent of the ranked bearings, petitioner would have the Department sift through that 10 percent for a "commercially interchangeable" and similar bearing under 19 U.S.C. 1766(16)(B). If there is no "commercially interchangeable" match within the top-ranked bearings, then the Department should continue down the list of potentially similar bearings to the first part number that is similar within the meaning of 19 U.S.C. 1766(16)(C).

NTN's reaction to the methodology proposed by petitioner is that there must be some factor to measure the outer limits of similar bearing selections. If no limits are set, as petitioner proposed, it is possible that the Department could be left with a situation in which a bearing with a 100 percent degree of deviation in physical factors, a bearing twice the size of the U.S. bearing, but with the same system life, could conceivably be used as the similar merchandise in the home market. NTN's proposed matching methodology is to determine the percentage of deviation for each proposed criterion (ID, OD, widith, dynamic load rating, and the Y2 factor) and then total those variations. The most similar home market bearings would be those in which the sum total of the degree of deviation of each criterion equals 10 percent or less. NTN believes this method of comparison results in realistic "commercially interchangeable" matches. Petitioner's response is that use of NTN's method severely reduces the universe of bearings available for comparison.

DOC Determination

After considering the comments by all parties, we determined that ID, OD, width, type of bearing, dynamic load rating, and the Y factor were appropriate factors for consideration.

The ID, OD and width were selected because they are specific measurements of the physical characteristics of the bearings under consideration.

In determining that the type of bearing was an appropriate criterion, we detemined that bearings containing the same number of rows of rollers could be reasonably compared with each other, whereas bearings with different numbers of rows of rollers could not, because of extreme differences in all relevant criteria for measuring similarity under section 771(16) of the Act. Where there was a home market bearing which contained the same number of rows and had the same special features, we attempted to find a similar bearing within that category before looking at other special features. If none existed, we compared bearings with different special features (other than double rows of bearings) and made adjustments for physical differences in merchandise.

We determined that dynamic load rating and the Y factor were more appropriate measures of similarity than system life, for the following reasons:

1. The dynamic load rating and Y factor are standards used in the industry to calculate the life expectancy of an individual bearing model. As such, they relate directly to the physical properties of the bearings under consideration.

2. Bearing life is a component of the system life calculation. However, bearing life is more closely related to the physical characteristics of a particular bearing model than other elements of the system life formula.

3. Dynamic load rating and the Y factors are included in bearing catalogues issued by producers and, therefore, available to purchasers of bearings who are making decisions regarding appropriate bearings to be used for intended purposes. A purchaser might use this information as the basis for calculating the system life of a specific application along with similar data on other components of the planned system.

4. System life varies widely according to the system parameters and a change of any component of a system can change the system life.

Given the fact that there is no single application for all TRBs and that many TRBs can be used in some, but not all applications, it is not possible to measure approximate equality in terms of commercial value. One must specify a particular commercial application, using the system life formula, in order to measure the commercial value of specific bearings. Therefore, we determined under section 771(16)(C) which home market products reasonably

could be compared to the TRBs sold to the United States.

In this investigation, the parties have not supported the various proposals for the parameters of deviation which would limit reasonable comparisons. The Department has determined that since we are using numerous criteria to make our comparisons, acceptance of wide deviations in individual factors, as proposed by the petitioner, would result in reasonable selections. The degree of physical similarity is significantly reduced under petitioner's method. As for NTN's proposal, limiting possible selections to models in which the sum total deviation was 10 percent or less would leave the Department with too narrow a listing of similar merchandise.

We therefore chose our selections by taking the U.S. bearing and comparing it to all bearings in the home market in which each individual criterion deviation is 10 percent or less. Out of that group of similar bearings, we then picked as most similar the home market bearing in which the criterion with the greatest degree of deviation was smaller than the criterion with the greatest degree of deviation in any of the other similar bearings. We normally limited individual deviations to 10 percent, although where only one factor deviated, we allowed bearings where that factor was slightly over 10 percent.

This methodology relies on the physical properties of the bearings and would give interested parties a predictable basis for determining possible product matches in annual reviews under section 751 of the Act, if such reviews are conducted in the future.

Where cup and cone components were sold in the United States and only sets composed of those identical or most similar were sold in the home market, we compared the U.S. sales of cups and cones to the home market sales of sets by determining the ratio of the direct manufacturing cost of the cup and cone to that of the complete set. This ratio was applied to the home market price of the set to calculate the price equivalent in the home market. NTN argues that this approach is improper because the set is not "such or similar", i.e., not approximately equal in commercial value to the cup or cone. As long as the component cup or cone is "most similar" to the merchandise exported to the United States, we conclude that it is appropriate to use it in the comparison.

Currency Conversion

For ESP comparisons, we used the official exchange rate in effect on the date of sale, in accordance with section 773(a)(1) of the Act, as amended by section 615 of the Trade and Tariff Act of 1984 (1984 Act). For purchase price comparisons, we used the exchange rate described in § 353.56(a)(1) of our regulations. All currency conversions were made at the rates certified by the Federal Reserve Bank.

Verification

As provided in section 776(a) of the Act, we verified all information relied upon in making this final determination. We used standard verification procedures, including examination of all relevant accounting records and original source documents provided by the respondents on sales and production costs.

Comments

Petitioner's Comments

Petitioner's Comment 1: Petitioner argues that absent a complete listing of U.S. and home market sales, and absent complete and verified cost data, the Department should base the LTFV determination with respect to Koyo on the information set forth in the petition. Koyo, since the beginning of this investigation, acknowledged that it did not submit a complete listing of home market sales, having itself selected those products that it deemed to be similar. Koyo also failed to submit sales information which the Dpeartment needs for determining the foreign market value of the unfinished parts and components used in the production of TRBs under four inches in diameter.

DOC Response: Koyo has reported its U.S. sales of all bearings manufactured in the United States from Japanese parts which are within the scope of this investigation. With regard to the unreported home market sales, we agree and have used the best information otherwise available as described in the "Fair Value Comparisons" section of this notice.

The Department's decision to use the best information for Koyo is consistent with the decision of the Court of International Trade in *The Timken Company v. United States, supra.* Under section 773(a) and section 771(16) of the Act, the Department, not Koyo, must select the "most similar" merchandise sold in the foreign market.

Petitioner's Comment 2: Petitioner argues that "such or similar" merchandise must be identified from the complete listing of home market sales. Koyo, by urging the Department to disregard distributor (aftermarket) sales in the home market, has claimed impermissibly a level of trade adjustment. The Department must decide whether sales should be excluded, since exclusion of any sales from the home market data base destroys the Department's ability to choose "such or similar" merchandise.

DOC Response: We agree. Where we found sales of identical merchandise at the OEM level of trade, we used these sales in our comparisons. We used the best information otherwise available for our comparisons where Koyo suggested comparisons to similar merchandise, and did not report aftermarket sales because we could not identify the most similar products sold in the home market at either level of trade.

Petitioner's Comment 3: Petitioner argues that for NTN, home market prices should be based on weighted-average prices for all sales, rather than limiting the selection of home market sales to those in "usual commercial quantities", as proposed by respondent. This limitation is contrary to the Act, to the regulations, and to Department precedent.

DOC Response: We agree. The definition of "usual commercial quantities" in section 771(17) provides that, if the merchandise is sold "at different prices for different quantities," then the Department must identify the price or prices identified with that quantity that accounts for the greatest aggregate volume sold (emphasis added). In other words, before resorting to the price or prices of a specific aggregate quantity for the purpose of calculating foreign market value, the Department must be satisfied that there is a positive correlation between different quantities and different prices. Absent such a correlation, the Department calculates foreign market value based on the weighted-average of all relevant sales prices, in accordance with section 773(a)(1)(A) of the Act.

The Department's longstanding practice has been to use weighted-average home market prices unless at least 80 percent of home market sales were made at the same price (19 CFR 353.20(b)). NTN has provided no evidence that it charged its home market customers different prices for different set quantities. Information submitted to the Department indicates no specific correlation between price and quantity. Therefore, section 771(17) is inapplicable. The Department has determined that it is appropriate to base foreign market value on the weighted-average of the sales prices of all such or similar merchandise sold in the home market at prices above cost during the period of investigation.

Petitioner's Comment 4: Petitioner argues that for both respondents, credit costs should be based on the discount

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rate when adjusting for foreign market value. For NTN, the credit cost due to discounting of promissory notes should be based on the discount rate for promissory notes rather than NTN's corporate interest rate. Also, Koyo's home market credit costs should not be based on the prime short-term interest rate, but on the discount rate. For both respondents, ITA should use the figure for the average discount rate in Japan in the second and third quarter 1986 of 3.5%, as reported in the IMF, *International Financial Statistics*.

DOC Response: We disagree. Consistent with past Department practice, we based our calculations on the borrowing experience of the respondents and the interest rate actually paid.

Petitioner's Comment 5: Petitioner argues that in the home market, for NTN, interest expenses should not be offset by interest income, absent proof that interest income is related to the expense. Absent any confirmation that deposits NTN maintains with its banks are required by NTN's bank in respect to its outstanding loans, it is impossible from the evidence presented to confirm that NTN's deposit balance is in fact a compensating balance. Therefore, the interest rate used for purposes of calculating NTN's interest rate should not be adjusted to account for alleged "compensating balances".

As for Koyo, in reporting interest expenses of American Koyo Corporation (AKC), Koyo has offset interest earned against interest expenses without any demonstration that this practice is reasonable. Under Department practice the respondent must demonstrate that the interest earned is directly related to production and sales of the products under review. Koyo has made no showing that the interest income claimed as an "offset" to interest expenses is derived from deposits required for short-term loans, or from investment incidental to the ordinary course of business. Accordingly, interest expenses on sales in the U.S. market should not be reduced by the amount of interest allegedly earned by American Koyo.

DOC Response: We disagree. Respondent demonstrated that compensating deposits were made pursuant to the discounting of receivables. Under these circumstances, the adjustment is proper.

Petitioner's Comment 6: Petitioner contends that NTN has not demonstrated that its sales in small quantities and trial sales are at prices that are not representative of the price level for large quantity sales of similar bearings. Therefore, petitioner argues that all home market sales should be considered in the ordinary course of trade in making our comparisons, regardless of quantity.

DOC Response: The sales individually involved extremely small quantities of merchandise at prices substantially higher than the prices of the vast majority of sales reported. Most of these sales were later cancelled before the merchandise was invoiced to the purchaser. In the U.S. market, there were no comparable sales. Under the circumstances, we have determined that these sales were not made in the ordinary course of trade.

Petitioner's Comment 7: Petitioner argues that claimed advertising and technical service expenses should be denied as adjustments to foreign market value under 19 CFR 353.15(a). NTN has not established that the advertising was undertaken on behalf of its customers' customers. As for technical service expenses, NTN has not established that the services provided were called for as part of the purchase agreement or were other than good will or sales efforts; nor has it established that such services are directly related to the sales under consideration.

DOC Response: We agree. NTN did not establish that these expenses were directly related to the sales under consideration. Therefore, we have not made these adjustments in our fair value comparisons.

Petitoner's Comment 8: Warehousing expenses should be denied as an adjustment to foreign market value unless incurred as part of the respondents' sales obligation. Even if the warehousing expenses are incurred after the sale, respondents have not established that the bearings shipped to a particular warehouse are identified to a particular customer's contract while in the warehouse. Therefore, petitioner maintains there is no basis upon which the Department can specifically tie warehousing costs to the sales under consideration.

DOC Response: We agree. We determined that the date of sale is the date of delivery of the merchandise because that was the date on which all of the terms of sale were determined. Since these warehousing expenses were incurred prior to the date of sale, consistent with our long-standing practice, we treated those expenses as indirect selling expenses. Therefore, these expenses were used only in calculating the ESP offset.

Petitioner's Comment 9: Petitioner argues that adjustments to foreign market value for differences in merchandise should be limited to variable manufacturing costs. NTN submitted cost of production data for bearing models in two forms: "with and without factory overhead." In its redetermination on remand, the Department followed its consistent precedent and excluded fixed factory overhead from the adjustment amount, and should do the same for this determination.

DOC Response: We agree. We limited the adjustment to the difference in variable costs in accordance with the Department's longstanding practice. See, e.g., *Certain Electric Motors from Japan*, (49 FR 3267, 32629–30 (1984)).

Petitioner's Comment 10: Petitioner argues that there is no basis to adjust for currency conversions, under 19 CFR 353.56(b), given the steady and highly publicized change in the yen/dollar exchange rate. Koyo and NTN did not react to sustained changes in exchange rates that had been obvious for five months prior to the period of investigation by revising prices.

DOC Response: We agree. Although both respondents did submit evidence of price changes due to the rise of the yen, no evidence was submitted showing price adjustments for all customers, nor were the price changes submitted reflective of the 40 percent drop of the value of the dollar against the yen during the period of investigation. Therefore, we have used the official exchange rate as noted in the "Currency Conversion" section of this notice.

Petitioner's Comment 11: Petitioner asserts that the Department should reject NTN's suggestion that adjustments for certain U.S. selling expenses in ESP transactions be made to foreign market value rather than U.S. price. Section 772(e)(2) of the Act requires the deduction from United States price of "all selling expenses" generally incurred in selling the product to the United States. It does not distinguish between direct and indirect expenses or, as NTN would have the Department do, permit the Department to deduct only indirect selling expenses from the price in the United States.

DOC Response: We agree and have deducted both direct and indirect expenses from United States price.

Petitioner's Comment 12: Petitioner argues that it is the respondent's burden to establish that expenses incurred in the United States are "indirect" expenses that qualify as part of our ESP offset under § 353.15(c) of the regulations. Koyo would have the Department consider as indirect selling expenses all sales commissions not predicated on sales volume. Petitioner views Koyo's characterization as an attempt to inflate the amount of

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expenses subject to the ESP offset by labeling commissions as 'indirect" selling expenses without demonstrating the basis for the claim. In the absence of proof, the Department should assume that all expenses incurred on U.S. sales are directly related to the sales under consideration.

DOC Response: We disagree. The commissions in question are commissions paid to company employees in lieu of salary, and as such were demonstrated to be indirect expenses.

Petitioner's Comment 13: Petitioner argues that certain corrections should be made to the production costs of American NTN Bearing Manufacturing Corporation (ANBMC), NTN's subsidiary in the United States. During verification the Department apparently discovered that depreciation was calculated for purposes of the response by a methodology different than that ordinarily utilized by ANBMC. The Department at verification also discovered that ANBMC used engineers from Japan. To the extent that NTN or another related party paid salaries of those engineers, those costs should be included in the labor costs allocated to the finishing and assembly of TRBs at ANBMC. Finally, verification disclosed that the president's salary was not included in the reported SG&A. This cost must be included in the calculation of finishing and assembly costs in the United States.

DOC Response: We agree. Depreciation and allocated expenses were recalculated on the basis of the allocation shown in ANBMC's internal financial report, since it provides a more accurate reflection of ANBMC's internal accounting system. Total labor costs include the labor costs of engineers from Japan and have been allocated to the TRB production in the United States. The Department has allocated the president's salary and benefits and included such expenses in the G&A expenses.

Petitioner's Comment 14: Petitioner asserts that NTN reported a commission paid on purchase price transactions. However, to the extent that NTN Bearing Corporation of America (NBCA), a related party acting as the selling agent of NTN in the United States, incurred expenses on purchase price sales that exceeded the commission paid by NTN for those services, such expenses must be deducted from purchase price.

DOC Response: We disagree. Consistent with our policy of not deducting commissions to related parties, we have not deducted commissions paid to NTN's related selling agent in the U.S. market. Nor have we deducted any of NBCA's indirect selling expenses. We only adjust foreign market value in purchase price comparison situations for direct selling expenses incurred in the United States.

Petitioner's Comment 15: Petitioner argues that Koyo's questionnaire response states that there are four categories of technical service expenses which are incurred on U.S. sales: applications engineering, bearing failure analysis, bearing certification, and quality control. Absent a convincing showing to the contrary, all of Koyo's U.S. technical services expenses should be considered to be direct expenses and shold be excluded from the ESP offset amount, consistent with the Department's methodology in the remand proceeding concerning NTN.

DOC Response: We disagree. The Department has determined that these expenses are not directly related to the sales under consideration, and therefore has treated them as indirect selling expenses.

Petitioner's Comment 16: Petitioner argues that Koyo's incomplete and untimely cost data should be rejected. For constructed value, the Department should base foreign market value on the best information otherwise available. As a result of deficiencies uncovered at verification, all information in the original cost of production response should be rejected for the purpose of the final determination, as it understates the cost of producing the merchandise.

DOC Response: We disagree. The Department has verified the revised submission during verification and also verified costs paid to and costs incurred by related subcontractors.

Petitioner's Comment 17: Petitioner argues that for computation of cost of production and constructed value, depreciation expense for both respondents should be recomputed based on petitioner's useful life data of 15–20 years. The result of the ten-year useful life utilized by NTN is to understate substantially NTN's costs.

As for Koyo, the company failed to supply a detailed list of equipment along with the depreciated amounts for each item as requested by the Department. The Department should thus utilize the information on the useful life of bearing equipment supplied by petitioner.

DOC Response: We disagree. The Department has no basis to believe that NTN's calculation of the useful life of its equipment used by NTN was inappropriate. During verification at Koyo, the Department verified the depreciation expenses and a detailed list of its equipment.

Petitioner's Comment 18: Petitioner argues that in computing the cost of production and constructed value for both respondents, interest income not directly related to the production of TRBs should not be offset against interest expense. In reporting interest expenses of AKC, Koyo has offset interest earned against overall corporate interest expenses without any demonstration that this practice is reasonable.

DOC Response: We agree. The net interest expense was modified by eliminating any other income or expense not incurred in the ordinary course of business for the production of TRBs.

Petitioner's Comment 19: Petitioner asserts that in the absence of product-specific cost variances for two of NTN's plants, the Department should apply the variances for TRB production at a third plant to the standard costs at those two plants, since variances at that plant are representative of the variance from TRB production.

DOC Response: We disagree. Although the cost variances for these two plants may not be representative of variances for TRBs, no adjustment was made since the cost incurred for subcontracting certain processes was an integral part of the accounting system.

Petitioner's Comment 20: Petitioner argues that for NTN, to the extent that labor and overhead costs at two plants were aggregate figures including a large number of products other than TRBs, production costs should be adjusted to reflect NTN's labor costs associated with the production of TRBs at a third plant.

DOC Response: We disagree. Since the costs incurred for subcontracted work are an integral part of the labor and factory overhead, the Department did not adjust these costs.

Petitioner's Comment 21: Petitioner argues that NTN claimed at verification that R&D projects at one of its laboratories during the period of investigation did not relate directly to TRB production. This claim was not supported by evidence verified. Accordingly, research and development costs should be included in corporate G&A.

DOC Response: We agree. The Department has included such expenses in the G&A.

Petitioner's Comment 22: Petitioner asserts that the Department may not apply an ESP offset to constructed value because such a deduction contravenes the statutory requirement that constructed value include an amount for general expenses. Also, section 772(e)(1)(B) requires that the amount of

general expenses included in constructed value be not less than ten percent of the cost of production. Thus, deduction of indirect homemarket selling expenses under section 773(c)(1)(B) is a nullity.

DOC Response: We disagree. The Department is required, by section 773(3) of the Act and § 353.10(e) of the Commerce regulations, to reduce to ESP by the amount of the selling expenses incurred by, or for the account of the exporter in the United States.

Section 773 of the Act requires us to make adjustments to foreign market value for differences in circumstances of sale, and § 353.15(c) of the Commerce Regulations specifies that, in making comparisons using exporter's sales price, we make a reasonable allowance for actual selling expenses incurred in the home market, up to the amount of the selling expenses incurred in the United States market. This adjustment is not limited to cases in which sales form the basis of foreign market value: § 353.15 applies to "sales, or other criteria applicable, on which a determination of foreign market value is to be based". In *Cellular Mobile Telephones and Subassemblies from Japan* (50 FR 45447, 10/31/85, we noted that:

> Section 773(a)(4)(B) of the Act provides that where it is established that the amount of any difference between the United States price and the foreign market value is due to differences in circumstances of sale, 'due allowance shall be made.' Section 773(a) of the Act does not distinguish constructed value from any other method of determining foreign market value. Thus, circumstances of sale adjustments [sic] are required where constructed value is used as the basis for foreign market value, just as they are required where home market [sic] or third country prices are used.

Similarly, in *Spun Acrylic Yarn from Italy* (50 FR 35849, 9/4/85), we stated that: "Even when constructed value is the basis for foreign market value, such constructed value is subject to circumstance-of-sale adjustments. . . . Adjustments for circumstances of sale are, by definition, limited to consideration of a seller's marketing practices. . . ."

Contrary to petitioner's assertion, the constructed value includes general expenses associated with the home market merchandise, not with the U.S. merchandise or with merchandise sold in all markets; thus, an adjustment to constructed value for U.S. selling expenses is appropriate. Absent such as adjustment, the Department would not be making a reasonable comparison of values in the two markets.

The adjustment for circumstances of sale described above does not nullify section 773(e)(1)(B) because the Department makes the appropriate calculation under that provision *before* making the adjustment under section 773(a)(4)(B).

Petitioner's Comment 23: Petitioner argues that the Department should exercise its discretion to deduct a reasonable resale profit for sales made through NBCA. The International Antidumping Code, implemented as part of U.S. law by the Trade Agreements Act of 1979, requires that the agency deduct a reasonable profit earned by the domestic subsidiary. In accordance with the Congress' intent, the Department should make such an adjustment.

DOC Response: In *The Timken Company v. United States, supra,* the Court of International Trade rejected plaintiff's argument that the word "commissions" in section 204 of the 1921 Act includes profits. The court pointed out that the relevant language of the 1967 International Antidumping Code, which is identical to that of the 1979 Code, "was never perceived as the equivalent of section 204 of the 1921 Act but, to the contrary, was regarded as 'consistent' with that section only because the [1967] Code provision was not viewed as mandatory." (*Id.* at 1347.) Nothing in the legislative history of the 1979 Act suggests that Congress intended to alter the meaning of the term "commissions" when it enacted section 772(e)(1). On the contrary, the legislative history of the Act states that section 772 "reenacts the provisions of the Antidumping Act [of 1921] with respect to ['purchase price' and 'exporter's sales price'] with one substantive change and one clarifying change." S. Rep. No. 96–249 at 93 (1979). Neither of these changes concerns the meaning of the word "commission". The Department interprets the word "commission" in section 772(e)(1) of the Act according to its common meaning and in a manner consistent with the legislative history of that section and its predecessor, section 204 of the 1921 Act, in which the word "commissions" first appeared. There is no other provision in the U.S. law under which the Department could deduct profit. The relevant language of the 1979 Code, like that of the 1967 Code, is not mandatory.

Petitioner's Comment 24: Petitioner argues that the Department should not establish separate duty rates for finished and unfinished products. The class of kind of merchandise that is subject of the investigation includes all tapered roller bearings, including unfinished tapered roller bearings. Thus, a single rate is appropriate.

DOC Response: We agree. See DOC response to Respondents' Comment 2.

Caterpillar's Comment: Caterpillar, Inc., an importer of TRB's from Japan, requests that the Department publish separate cash deposit rates for purchase price and exporter's sales transactions, or, in the alternative, a separate rate for sales to Caterpillar.

DOC Response: Based on our consistent past practice for fair value investigations of publishing only one margin rate for a company where both purchase price and ESP sales are involved in the analysis, we are publishing only one margin rate for NTN.

Nissan's Comment: Nissan argues that for the final determination, the Department must analyze its questionnaire response and issue a final determination that Nissan had no sales at less than fair value. Nissan submits that the reasons offered by the Department in its refusal to analyze further Nissan's questionnaire responses and requested supplemental responses are without merit. It is physically impossible for Nissan to retrieve individual invoices requested by the Department due to the small number of tapered roller bearings sales subject to review and the large volume of total parts sales. Nissan feels information already submitted complies substantially with the Department's original request for information.

DOC Response: We disagree. By letter dated May 4, 1987, and a phone conversation of May 21, 1987, we informed Nissan that its response was incomplete and unusable. The Department cannot accept Nissan's request that we use only a few sales and a "methodological" approach to verify adherence to a home market price list. To adequately verify adherence to a home market price list, the Department would need several complete months worth of individual sales date at a minimum. Furthermore, we would have to be able to verify actual sales from any of the six months within the period of investigation. Nissan indicated that this would not be possible unless Department officials looked through thousands of invoices at verification to find sales of the TRBs involved.

The Department views Nissan's request as tantamount to requiring the Department to compile a response for the company at the verification site. This is totally unacceptable. Therefore, we found Nissan's voluntary response unverifiable and unusable for determining sales at less than fair value.

Respondents' Comments:

Respondents' Comment 1: Respondents urged the Department to apply its special currency conversion provision because of the drastic appreciation of the yen between September 1985 and mid-1986. Specifically, NTN offers two suggestions:

1. Utilize the most recent quarterly exchange rate that existed prior to the governmental revaluation of the yen—the certified rate for the third quarter of 1985, or

2. Utilize the certified quarterly exchange rate for the calendar quarter preceding the date on which the products entered NBCA's inventory.

Koyo asks that the Department use the rate for the third quarter of 1985 or, alternatively, lag the exchange rate by 90 days. Because the yen/dollar exchange rate did not stabilize until July 1986, a reasonable time thereafter should be allowed for price revisions.

DOC Response: We disagree. See DOC response to Petitioner's Comment 10.

Respondents' Comment 2: Koyo argues that the Department should calculate separate margins for unfinished TRB components and finished TRBs. In support of this, Koyo points to an earlier Department determination that unfinished TRB components are not in the same "class or kind of merchandise" as finished TRBs.

DOC Response: We disagree. The petition in the earlier investigation was limited to finished TRBs and, therefore, parts were not considered part of the "class or kind of merchandise" in that investigation. The petition in this investigation covers both finished TRBs and parts. On the basis of the product coverage of the petition, we have determined that the finished TRBs and parts are one "class or kind of merchandise." For purposes of this investigation, we have published one rate for the "class or kind of merchandise" sold be each respondent in accordance with Department practice, except for the separate purchase price rate for NTN.

Respondents' Comment 3: Koyo requests the Department to exclude home market sales to Toyota from its calculation of foreign market value. Pursuant to § 353.22(b) of the Commerce regulations, the Department must exclude sales to related parties if these transactions are not made at arm's length prices. Transactions between Koyo and Toyota are, in fact, transfers between related parties and are not at arm's length.

DOC Response: We agree. We have reviewed the prices between Koyo and Toyota and found that they do not represent arm's length sales transactions because these transactions were made at substantially lower prices than those for sales to unrelated parties. We therefore excluded such sales from our analysis.

Respondents' Comment 4: Koyo argues that, contrary to petitioner's assertions, Koyo's exclusion of aftermarket sales from its U.S. sales listing was not done unilaterally. Koyo pointed out to the Department that it had not reported these sales early in the investigation, and the Department did not request further information. Koyo also argues that the Department should exclude home market sales in the aftermarket in calculating foreign market value.

DOC Response: See DOC response to Petitioner's Comment 2. The Department's questionnaire required respondent to report sales at all levels of trade.

Respondents' Comment 5: Koyo requests that the Department compare U.S. sales of journal roller bearings to third country sales. Because Japan's narrow-gauged railway system uses home sealed-type cylindrical roller bearings and not the tapered roller bearings used in the standard guage railway systems of the U.S., there are no home market sales of tapered journal roller bearings or "similar" merchandise. Pursuant to the criteria of § 353.5(c) of the Commerce regulations, the most appropriate third country market for comparison purposes is Canada. Price data submitted and verified for Koyo's Canadian sales should be used by the Department in calculating foreign market value for tapered journal roller bearings.

DOC Response: This point was not raised by Koyo until its pre-hearing brief filed with the Department on July 2, 1987. To quote from Koyo's January 5, 1987, response p. 15, "App. B–4 lists all sales from Koyo to KCU (Koyo Corporation of the United States of America)." Nothing in the response narrative indicated that third country sales data had been submitted, nor did any information contained on Koyo's computer printouts indicate submission of Canadian sales information. Because the Department was unaware of these sales, the Department did not verify the relevant data. Furthermore, Koyo did not furnish cost data on these bearings. However, since journal roller bearings constitute a very small portion of Koyo's U.S. sales, we did not include them in our analysis.

Respondents' Comment 6: Koyo argues that petitioner's allegation that certain equipment related to the heat treatment process could possibly have been acquired at less than market value, absent any credible evidence, is not only speculative but also untimely, coming as it does after verification. Koyo maintains that its depreciation expenses were satisfactorily verified, and there is no legal basis to use any information other than that submitted by Koyo to the Department.

DOC Response: We agree. The Department verified the method of depreciation and depreciation expenses. THERE WAS NO BASIS FOR THE Department to believe that certain equipment was acquired at less than market value.

Respondents' Comment 7: Koyo, in answering petitioner's assertion that the verification report fails to treat adequately the issue of scrap produced as a by-product of bearing manufacture, maintains that Koyo's scrap revenue is very small, that the amount was verified, and that no discrepancies were noted. In Koyo's view, this issue was covered adequately at verification.

DOC Response: We agree. The Department verified necessary supporting documentation, such as the company's journal of scrap revenue and invoices.

Respondents' Comment 8: Koyo maintains that its response to the Department on inventory and transportation costs related to subcontractor processing is sufficient, despite petitioner's allegation that this is not the case.

DOC Response: We agree. The Department has verified costs related to subcontractor processing.

Respondents' Comment 9: Koyo maintains that there is no reason to use information other than that submitted by Koyo and verified by the Department concerning labor cost. All labor costs were verified.

DOC Response: We agree. The Department has verified all labor costs, both direct and indirect.

Respondents' Comment 10: Koyo maintains that petitioner's assertion that Koyo "may" have obtained goods and/or services from either related or unrelated subcontractors at prices less than cost is completely unsupported. Koyo submits that the prices charged by all its subcontractors are at prices generally reflected in similar arm's length transactions and therefore are at market value. There being no credible evidence of record to the contrary, these prices must and should be accepted.

DOC Response: We agree. The Department has verified subcontracted costs to both the related and unrelated subcontrators. There was no basis for the Department to believe that Koyo may have obtained them at prices which were less than arm's length, or less than the related subcontractor's cost.

Respondents' Comment 11: Koyo maintains that documentation on depreciation expenses was comprehensively analyzed and reviewed at verification, contrary to petitioner's assertion this was not case. Koyo maintains that there is no reason for the Department to use any other source of information for depreciation expenses, since a detailed list of equipment, along with the depreciation expense in the current period of each item was made available at verification and was verified.

DOC Response: See DOC response to petitioner's Comment 17.

Respondents' Comment 12: Koyo finds petitioner's statements regarding the reporting of AKBMC-produced 0–4" TRB sales to be grossly misleading. Koyo asserts that Section E–5 of its response is a listing of all such sales to OEM customers, and believes petitioner's confusion arises from the fact that computer problems prohibited the Department from using these sales in its preliminary determination, a problem that has since been resolved.

DOC Response: Koyo submitted a corrected reporting of these sales in a revised tape dated July 8, 1987.

Respondents' Comment 13: NTN argues that the Department should use only those sales made in the usual commercial quantity when calculating foreign market value. NTN maintains that the law (19 U.S.C. 1677(17)) speaks in terms of identifying the usual "quantity," not the usual price, as has been suggested by petitioner. There is no basis for the Department to reject NTN's position with regard to usual commercial quantities.

DOC Response: See DOC response to "Petitioner's Comment 3."

Respondents' Comment 14: The Department should adjust the foreign market value for differences in circumstances of sale and ESP offset using credit expenses, technical service expenses, sales commissions, advertising, and warehouse expenses, for NTN.

NTN asserts that petitioner's allegation that NTN's claimed adjustments to foreign market value are not factually supported and that verification has raised doubts as to the factual basis on which to make these adjustments is unfounded. NTN answers each of petitioner's points as follows:

(1) NTN challenges petitioner's allegation that there is no evidence that the discounts claimed by NTN are not directly related to the sales in question. NTN maintains that the Department's verification report demonstrates petitioner's allegation to be factually incorrect, and that these same discounts were claimed by NTN in the remand case and granted by ITA. Thus, they should be granted here.

(2) Regarding credit expense, NTN maintains that this expense was fully verified. Moreover, the expense is based on NTN's actual experience and not "market research". NTN asserts that the ITA may not reject a company's actual experience on the basis of some hypothetical experience alleged by petitioner. There is no basis for rejecting NTN's claim since this claimed expense is supported by substantial evidence of record which has been verified.

(3) Regarding the ESP offset, NTN maintains that its claims for indirect selling expenses have been fully substantiated in the verification report. NTN further points out that they have not, as alleged by petitioner, sought to include general corporate expenses unrelated to selling. These same expenses have been previously allowed by the ITA in the remand case.

(4) As with FMV expenses, NTN maintains that petitioner's allegations with regard to ESP expenses are incorrect, and that NTN has fully reported all expenses requested by ITA. NTN asserts that all interest expenses have been fully accounted for as either direct or indirect selling expenses. NTN has reported inventory carrying expenses fully and finds no basis on which to impute any other interest expense in addition to that which has been reported.

(5) On its purchase price transactions, NTN points out that it paid a commission to a related party, and in keeping with longstanding practice, ITA should disregard this related company commission.

DOC Response: We agree and have treated the subject expenses accordingly.

Respondents' Comment 15: NTN contends that the calculation of the "cost of producing" the merchandise for purposes of determining whether sales were made below cost under section 773(b) of the Act was arbitrary and contrary to law because certain costs, in addition to those incurred in producing the merchandise, were included. The language of the Act (19 U.S.C. 1677b(b)) provides that it is the cost of producing the merchandise in question that is to be considered when determining whether sales were made below cost, not the cost of producing and selling the merchandise. The Department has misinterpreted Congressional intent by attempting to include sales and administrative expenses in such costs.

DOC Response: We disagree. Section 773(b)(2) provides that merchandise be sold "at prices which permit recovery of all cost . . . " This can only be determined if the costs and prices are compared on an equal basis. Therefore, in calculating cost of production it is appropriate to include selling, general and administrative expenses since these clearly are part of the cost of the merchandise in question.

Respondents' Comment 16: NTN asserts that the Department's use of an absolute percentage when determining whether to reject sales below cost of production is arbitrary and contrary to law. The 10/90 test as applied by the Department does not measure whether all costs are recovered over a reasonable period of time. The test does not consider profitability or the extent to which sales are made above the cost of production. The only factor used in the test is quantity and that does not provide the Department with data on which to judge whether all costs are recovered. The Department must reject its current 10/90 test and adopt one that is reasonable under the factual circumstances of this case and consistent with law. The Department must explain the basis for rejecting below-cost sales in this case. Only if it promulgated the 10/90 test as a rule in accordance with the Administrative Procedures Act (5 U.S.C. 353) could it apply the percentages without explaining its conclusions.

DOC Response: We disagree. Section 773(b) of the Act requires the Department to reject home market sales made at less than the cost of production if such sales (1) were "made over an extended period of time and in substantial quantities," and (2) do not permit the company to recover all costs "within a reasonable period of time in the normal course of trade."

The Department's 10/90 test is a reasonable guideline or interpretive rule, a statement of current policy, for determining whether sales have been made in substantial quantities. Above 10 percent, the Department reasonably may infer that below-cost sales are systematic and in substantial numbers unless there is evidence to the contrary. Wherever sufficient information to the contrary is presented, the Department does not apply the 10/90 test. *See, e.g., Fall-Harvested Round White Potatoes from Canada.* (48 FR 51690, 1983) affirmed, *Southwest Florida Winter*

Vegetable Growers v. United States, 5 ITRD 2019, 2023 (CIT, 1984) (50 percent test applied). Similarly, unless the respondent demonstrates that we should examine a particular period, the Department considers the period of investigation "an extended period of time." In this investigation, NTN offered no evidence to suggest that 10 percent or more of total sales during the period of investigation constitutes less than "substantial quantities" over "an extended period of time." It provided no evidence based on its particular circumstances or the particular circumstances of the Japanese bearing industry.

NTN submitted no information indicating that costs or prices were changing to an extent that would permit the company to recover all costs within any reasonable period of time. Therefore, the Department concludes that NTN's substantial number of below-cost sales during the period of investigation will not permit the company to recover all costs "within a reasonable period of time in the normal course of trade."

Respondents' Comment 17: Respondents argue that the Department incorrectly considered technical service and advertising expenses in the U.S. as direct expenses.

DOC Response: We agree. The U.S. advertising reviewed at verification was general in nature and directed at purchasers of TRBs as opposed to the customers' customers. The technical service expenses were mainly salaries of technicians and the services performed were not based on contract requirements. Therefore, we determined that these are properly treated as indirect selling expenses.

Repondents' Comment 18: NTN alleges that the Department's deduction of "indirect" selling expenses from the U.S. price was contrary to law because differences in circumstance of sale adjustments are to be made to foreign market value. NTN submits that the Department's practice of deducting direct selling expenses from U.S. price as a means of making such an adjustment results in an upward distortion of the weighted average margin. The Department incorrectly deducted direct selling expenses (which are circumstance of sale adjustments) from the U.S. price instead of adjusting the foreign market value for the difference in the circumstances of sales as required by the Act (19 U.S.C. 1677b(a)(4)(B)).

DOC Response: We disagree. See DOC response to Petitioner's Comment 11.

Respondents' Comment 19: NTN maintains that accounting methods followed by NTN Toyo are in accord with generally accepted accounting principles in Japan, have been acceptable to the Japanese government in NTN Toyo's reporting to the Ministry of Finance, and found by the Department in the remand case to be reliable and accurate, going against petitioner's allegation that the system of accounting used is unacceptable.

For the same reasons, petitioner's allegations on reporting of depreciation, overhead, and R&D must also be rejected. In the case of R&D, NTN asserts that there is no basis on which to increase COP for the products under investigation for theoretical R&D that is totally unrelated to the subject products. There must be some reasonable and factual basis for such an allocation of cost. In the absence of such a basis, respondent asserts there should be no addition for R&D.

DOC Response: We disagree. See DOC response to Petitioner's Comment 21.

Respondents' Comment 20: Counsel for NTN rejects any inference made by petitioner that ANBMC did not disclose adjustments made to all factory costs incurred. NTN maintains that where adjustments were made, the adjustments were fully explained and supporting documentation was provided. ANBMC's costs as reported should be used to calculate ESP for the products involved.

DOC Response: The Department agrees in part. While the Department does not agree with respondents's allegation that the accounting system for two plants was found to be accurate for the products under investigation, no adjustment was made because the costs under consideration were an integral part of the system.

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of tapered roller bearings from Japan that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall continue to require a cash deposit or the posting of a bond on all entries equal to the estimated average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. The suspension of liquidation will remain in effect until further notice. The margins are as follows:

Manufacturers/producers/exporters	Average margin percentage
Koyo Seiko Co., Ltd	70.44
NTN Toyo Bearing Co., Ltd	47.05
All Others	47.57

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation wil be refunded or cancelled. However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on tapered roller bearings from Japan entered, or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the U.S. price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

August 10, 1987.

Lee W. Mercer,

Acting Assistant Secretary for Trade Administration.

[FR Doc. 87-18735 Filed 8-14-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-007]

Portable Electric Typewriters From Japan; Final Results of Administrative Review of Antidumping Duty Order; Correction

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review; correction.

On January 14, 1987, the Department of Commerce published the final results of its administrative review of the antidumping duty order on portable electric typewriters from Japan (52 FR 1511).

The results for one firm were incorrect due to a computer programming error. We have corrected those results and have determined that the following margin exists for Brother Industries, Ltd.:

Time period	Margin (percent)
5/21/81-5/20/82	0.08

Because the weighted-average margin for Brother Industries, Ltd. is less than 0.5 percent, and therefore de minimis for cash deposit purposes, the Department waives the deposit requirement for this firm.

EFFECTIVE DATE: August 17, 1987.

FOR FURTHER INFORMATION CONTACT: David P. Mueller, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2923.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

Date: August 3, 1987.

[FR Doc. 87-18734 Filed 8-14-87; 8:45 am]

BILLING CODE 3510-DS-M

Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments; Case Western Reserve University et al.

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No.: 87-102. Applicant: Case Western Reserve University, Cleveland, OH 44106-1712. Instrument: FTI Spectrophotomer, Model DA3.10. Manufacturer: Bomem Inc., Canada. Intended Use: See 52 FR 7916, March 13, 1987. Reasons For This Decision: The foreign instrument provides an unapodized resolution of 0.21 cm^{-1} and an extended frequency range.

Docket No.: 87-121. Applicant: Yale University, New Haven, CT 06511. Instrument: Mass Spectrometer, Model MAT 251 EM and Accessories. Manufacturer: Finnigan Mat, West Germany. Intended Use: See notice at 52 FR 10385, April 1, 1987. Reasons For This Decision: The foreign instrument provides an internal precision of 0.006°/oo, and external reproducibility of ± 0.02°/oo, on a sample size of less than 0.2μ Mol and is capable of rapid switch between CO_2 and SO_2 measurement (10 measurements within 5 min.).

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intened to be used, is being manufactured in the United States. The capability of each of the foreign instruments described above is pertinent to each applicant's intended purposes.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87-18736 Filed 8-14-87; 8:45 am]

BILLING CODE 3510-DS-M

National Bureau of Standards

Announcement of NBS/OSI Workshop for Implementors of OSI

The Institute for Computer Sciences and Technology at the National Bureau of Standards (NBS) announces four (4) workshop sessions to discuss the continued development of international computer network protocols. The following constitutes the schedule for the workshops through December 1988. The dates are firm:

February 1-5, 1988
May 2-6, 1988
August 22-26, 1988
December 12-16, 1988

(The meetings will be hosted by NBS and will be held at the National Bureau of Standards, Gaithersburg, Maryland.)

The workshops will cover protocols in seven layers of the ISO Reference Model. Attendance at the workshops is limited due to space requirements and the size of the conference facility; therefore, registration is on a first come, first served basis with recommended limitation of two participants per company. A registration fee will be charged for attending the workshops. Participants are expected to make their own travel arrangements and accommodations. NBS reserves the right to cancel any part of the workshops.

To register for the workshops, companies may contact: OSI Workshop Series, Attn.: Lawrence Keys, National Bureau of Standards, Building 225, Room B-217, Gaithersburg, MD 20899, Telephone: (301) 975-3604.

The registration request must name the company representative(s) and specify the business address and telephone number for each participant. An NBS representative will confirm workshop registration reservations by telephone. For additional information, contact Robert Rosenthal (301) 975-3603.

Date: August 11, 1987.

Ernest Ambler,

Director.

[FR Doc. 87-18673 Filed 8-14-87; 8:45 am]

BILLING CODE 3510-CN-M

National Oceanic and Atmospheric Administration

[P77#30]

Endangered Species; Application for Permit: National Marine Fisheries Service, Southeast Fisheries Center

Notice is hereby given that an Applicant has applied in due form for a permit to take endangered species as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217-222).

1. Applicant: National Marine Fisheries Service Southeast Fisheries Center 75 Virginia Beach Drive Miami, Florida 33149-1099.

2. Type of Permit: Scientific Research.

3. Name and Number of Endangered Species: Loggerhead sea turtles (*Caretta caretta*): 48.

4. Summary of Activity: The turtles will be placed at various distances from underwater explosions for assessment of lethal and sublethal values. Pre and post physiological studies will be performed on the animals.

5. Location of Activity: Gulf of Mexico.

6. Period of Activity: 1 year.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Species and habitat Conservation, National Marine Fisheries Services, 1825 Connecticut Avenue NW., Rm. 805, Washington, DC; and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Date: August 11, 1987.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 87-18764 Filed 8-14-87; 8:45 am]

BILLING CODE 3510-22-M

[P18I]

Marine Mammals; Issuance of Permit: Dr. Gerald L. Kooyman

On May 14, 1987, notice was published in the **Federal Register** (52 FR 18263) that an application had been filed by Dr. Gerald L. Kooyman, Physiological Research Laboratory, A-004, Scripps Institution of Oceanography, University of California, La Jolla, California 92093 to take Weddell seals (*Leptonychotes weddelli*) and import muscle biopsies.

Notice is hereby given that on August 11, 1987 as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

The permit is available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 North Connecticut Avenue NW., Rm. 805, Washington, DC;

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415.

Dated: August 11, 1987.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 87-18763 Filed 8-14-87; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amending and Establishing Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Singapore

August 12, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on August 18, 1987. For further information contact Ross Arnold, International Trade Specialist (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 535-6736. For information on embargoes and quota re-openings, please call (202) 377-3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to amend the import restraint limits for cotton and man-made fiber textile products in Categories 336, 359, 636, 637 and 642, produced or manufactured in Singapore and exported during the period January 1, 1987 through December 31, 1987. In addition, the Commissioner is also directed to establish import restraint limits for cotton and man-made fiber textile products in Categories 313, 613 and 625 for the same twelve-month period.

Background

A CITA directive dated December 16, 1986 (51 FR 45797) established import restraint limits for cotton, wool and man-made fiber textile products in Categories 300/301, 310/318, 311-317, 319-330, 332, 336, 333/633, 345, 349, 350, 351/651, 352/652, 353/354/653/654, 359-369, 400-434, 436-444, 445/446, 447, 448, 459-469, 600-603, 605-630, 632, 636, 637, 642-644, 649, 650, 659-S, 659-V, 659-O and 665-670, as a group, and designated individual limits within the group, including Categories 336, 359, 636, 637 and 642, produced or manufactured in Singapore and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 31 and June 5, 1986, as amended, between the Governments of the United States and Singapore, the two governments have agreed to further amend their bilateral agreement to increase the 1987 Designated Consultation Levels for cotton and man-made fiber textile products in Categories 313, 336, 359, 613, 625, 636, 637 and 642. The Committee for the Implementation of Textile Agreements has decided to control imports of cotton and man-made fiber textile products in Categories 313, 613 and 625 at the agreed levels.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 20788) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Adoption by the United States of the Harmonized Commodity (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register**.

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

August 12, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 16, 1986, issued to you by the Chairman of the Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Singapore and exported during the twelve-month period which began on January 1, 1987, and extends through December 31, 1987.

Effective on August 18, 1987, the directive of December 16, 1986, is hereby amended to include amended and new limits for cotton and man-made fiber textile products in the following categories, pursuant to the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 31 and June 5, 1986, as amended [1]:

Category	12-mo limit [1]
313	3,095,000 square yards
336	100,000 dozen
359	639,131 pounds
613	2,600,000 square yards
625	336,410 pounds

[1] The agreement provides, in part, that specific limits may be increased by not more than seven percent during an agreement year, provided that an equal quantity in square yards equivalent is deducted from another specific limit.

Category	12-mo limit [1]
636	180,000 dozen
637	100,000 dozen
642	125,000 dozen

[1] The limits have not been adjusted to account for any imports exported after December 31, 1986.

Import charges for Categories 313, 613 and 625 which have already been made to the group limit are to be retained. Categories 313, 613 and 625 are to remain subject to this group limit.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-18719 Filed 8-14-87; 8:45 am]

BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade Proposed Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The Chicago Board of Trade ("CBT") has applied for designation as a contract market in the CBOE (Chicago Board Options Exchange) 250 Stock Index. The Director of the Division of Economic Analysis of the Commodity Futures Trading Commission ("Commission"), acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before October 16, 1987.

ADDRESSS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Stret, NW., Washington, DC 20581. Reference should be made to the CBT CBOE 250 Stock Index futures contract.

FOR FUTURE INFORMATION CONTACT: Naomi Jaffe, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, (202) 254-7227.

Copies of the terms and conditions of the proposed futures contract will be available for inspection at the Office of the Secretariat, Commodity Future Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the CBT in support of the application for contract market designation may be avilable upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1984)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contract, or with respect to other materials submitted by the CBT in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, by October 16, 1987.

Issued in Washington, DC on August 11, 1987.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 87-18698 Filed 8-14-87; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Acquisition of Commercial Products and Other Nondevelopmental Items; Pilot Contracting Activities Program

AGENCY: Under Secretary of Defense (Acquisition), DOD.

ACTION: Notice.

SUMMARY: The Department of Defense is firmly committed to making changes to Defense acquisition necessary to enable us to buy more commercial products and other nondevelopmental items (NDI). Part of this effort revolves around identifying those facets of our system which impair our ability to acquire commercial products where they meet our needs. Once the areas are identified, actions can be taken to evaluate and, where feasible, eliminate or lessen the impact of these stumbling blocks. The Under Secretary for Acquisition has initiated a Pilot Contracting Activities program to help identify impediments from our point of view. We suspect that there are contractual provisions, regulations, and statutes, that we may not recognize as impediments, but which do, in fact, keep us from getting the best that the commercial market has to offer. Your help in specifically identifying these areas and their impact (cost) along with suggested remedies will be appreciated. The input resulting from this request will be used, along with other data, to develop the Secretary's report to Congress on this issue as required by the Defense Acquisition Improvement Act.

DATE: Comments should be received by October 1, 1987.

ADDRESS: Comments should be forwarded to Assistant for Commercial Acquisition, OASD(P&L) PS/SDM, Room 2A318, Pentagon, Washington, DC 20301-8000.

FOR FURTHER INFORMATION CONTACT: Greg Saunders, Assistant for Commercial Acquisition, OASD(P&L) PS/SDM, Room 2A318, Pentagon, Washington, DC 20301-8000, Telephone 202/695-7915.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

August 12, 1987.

[FR Doc. 87-18728 Filed 8-14-87; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Procedures for Consideration of Identification of Remains by the Armed Forces Identification Review Board

AGENCY: US Army Military Personnel Center (MILPERCEN), Department of the Army.

ACTION: Final Notice.

SUMMARY: Notice is hereby given that the Deputy Chief of Staff for Personnel, U.S. Army, has adopted procedures to be used by a recently established Armed Forces Identification Review Board (AFIRB) which reviews recommended identification of remains made by the U.S. Army Central Identification Laboratory, Hawaii (CILHI), of the United States military personnel whose death occurred during the Vietnam Conflict, or other recommended identifications referred to it by competent authority, and to take action to approve or disapprove the recommended identifications.

DATES: The AFIRB Procedures are effective as of 1 August, 1987.

ADDRESSES: Copies of the AFIRB Procedures are published in the Federal Register for public inspection.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Jim Cole at the address given below; telephone 202/325-7960, (AUTOVON) 221-7960: Commander, MILPERCEN, ATTN: DAPC-PDC-M, Alexandria, VA 22331-0400.

SUPPLEMENTARY INFORMATION: The AFIRB Procedures have been coordinated with each military service and National League of POW-MIA Families.

Procedures for Consideration of Identifications of Remains by the Armed Forces Identification Review Board

July 30, 1987.

1. Purpose

This document prescribes procedures for review and action by the Armed Forces Identification Review Board (AFIRB) upon recommended identifications of remains.

2. References

a. Title 10 United States Code, sections 1481 and 1482.

b. Army Regulation 15-6, Procedure for Investigating Officers and Boards of Officers, Change 1 (15 June 1981).

c. Army Regulation 638-25 (Bureau of Medicine and Surgery (Navy) Instruction 5360.22A, Air Force Regulation 143-5), Armed Services Graves Registration Office (31 July 1974).

d. Board Charter/Terms of Reference for the AFIRB, approved by the Secretary of the Army with concurrence of the Office of the Secretary of Defense on 10 June 1987.

3. Establishment of the AFIRB

The AFIRB is established by the SECDEF (reference 2d) and is located for administrative and logistical purposes within the Armed Services Graves Registration Office (ASGRO).

4. Scope of Procedures

These procedures are promulgated by the Deputy Chief of Staff for Personnel, U.S. Army, for the use and compliance of those personnel performing duties in support of AFIRB. They apply to AFIRB consideration of recommended identifications of remains returned to United States military control. They provide guidance for internal operations of the AFIRB.

5. Mission of the AFIRB

As stated in reference 2d, the mission of the AFIRB is to review recommended identifications of remains made by the U.S. Army Central Identification Laboratory, Hawaii (CILHI) [1] of United States military personnel whose deaths occurred during the Vietnam Conflict and whose remains have been recovered or repatriated from Southeast Asia, or of other recommended identifications referred to it by competent authority (e.g. a Service Secretary), and to take action to approve or disapprove the recommended identifications.

6. Organization

a. AFIRB

The AFIRB consists of one primary voting member each from the Departments of the Army, Navy and Air Force as designated by their respective Departments. Each Service Secretary, or his representative, may designate alternate voting members to serve on the AFIRB in the event that a primary member cannot be present for an AFIRB meeting. Department of the Navy may designate a Marine Corps representative as its voting member; however, Department of the Navy will be limited to one vote for each case file considered by the AFIRB. The voting members shall be of the grade of Colonel, Navy Captain, GM-15 or higher. The Army voting member is designated as the Chairman. Nonvoting members of the AFIRB include a representative of the Defense Intelligence Agency (DIA), and/or a representative of the Joint Casualty Resolution Center (JCRC) designated by each of those agencies. Persons designated as members are administratively appointed to the AFIRB by the Chief, ASGRO.

b. Consultants

"Consultants" to the AFIRB are not members of the AFIRB. They are experts in forensic sciences such as anthropology, pathology, and odontology who are either employees or contractors of the U.S. Government. "Board-certified" experts will be used as consultants unless none in the required area of expertise is available. Consultants review and evaluate recommended identifications and accompanying case files and provide their individual evaluations to the AFIRB in written reports which are included in the case files.

c. Support

The Chief, ASGRO provides the AFIRB and the consultants with all necessary administrative and logistical support.

7. Procedures

a. Recommended Identification

A recommended identification of remains will be made by the CILHI. In order to be considered by the AFIRB, the laboratory findings and recommended identification will be included in a "case file." The case file will also include recovery documentation, postmortem processing documents, photographs, antemortem medical and dental records (including photographs, and radiographs), and other relevant documentation and information from agencies such as the JCRC and the DIA. In all cases, CILHI will record in the case files any information which suggests that characteristics of the remains or other information may correlate to specific individual(s).

b. Consultant Evaluation

When a recommended identification and accompanying case file have been completed by the CILHI, the Commander, CILHI will notify the Chief, ASGRO. The Chief, ASGRO will advise the cognizant Service of the recommended identification and will promptly arrange for CILHI to present the recommended identifications and accompanying case files to the consultants. Recommended identifications will be presented to at least three forensic scientists, normally two forensic anthropologists and one forensic odontologist. Any consultant may examine the remains for which the identification is recommended if he or she deems it necessary to the evaluation. The evaluation of each consultant will be made in a written report and included in the case file. Additionally, a recommended identification and case file may be referred to other advisors, as appropriate, as discussed in paragraph 7d(2) for evaluation. When these advisors review the recommendation and case file they will submit a written report which will be included in the case file. If each consultant concurs in the CILHI recommendation and concludes that the case file is sufficient for presentation to the AFIRB, it will be forwarded to the Chief, ASGRO for referral to the Service to which the

[1] In cases in which a recommended identification has been made by a laboratory equipped and qualified to perform the functions performed by the CILHI, the term "CILHI" as used in this document should be construed to refer to that laboratory, but shall not restrict the AFIRB's authority to remand a recommended identification to the CILHI regardless of origin.

deceased belonged. Should any consultant conclude that the scientific work-up of a case file is insufficient, the Chief, ASGRO will return the case file with the consultant written evaluations to the CILHI for further study. The CILHI will be requested to address any comments or suggestions made in the consultant's written evaluation. Additional matters of the nature of those specified in paragraph 7a generated by the reassessment will be added to the case file. Upon return of the case file from the CILHI, the consultants will be given the case file for further evaluation prior to referral to the Service to which the deceased belonged. This process will include efforts to resolve any differences which may have arisen; however, where differences remain, the Service will clearly explain to the next of kin the significance of these differences of opinion to the identification process.

c. Notification of Primary Next of Kin

(1) Upon receipt of the case file, the deceased's Service will have a Service representative notify the primary next of kin (PNOK) of the recommended identification of the remains by the CILHI, the consultants' evaluations, and the approximate date when the recommended identification is to be considered by the AFIRB. The PNOK will be notified of their opportunity to:

(a) Review the recommended identification and the entire case file, except as limited by paragraph 7c(2).

(b) Have, in the case of recommended individual identification of remains, an independent professional examination of the remains conducted at PNOK expense [2]; and,

(c) Submit, within 30 days of receipt of the notification, additional written matters which will be included in the case file. Depending upon the circumstances of each case, the Service representative may extend for a reasonable time the period in which the PNOK may submit matters.

(2) The PNOK will be provided as much information in the case file as possible; however, classified or privileged information will not be released to the PNOK. The PNOK will be supplied with all unclassified information, reports and evaluations. They will also be provided an unclassified summary or extract of the classified or priviledged information in the case file.

(3) (a) If the PNOK submit no additional written matters or matters which agree with the CILHI recommendation, the Service representative will return the recommended identification and accompanying case file to the Chief, ASGRO, who will submit them to the AFIRB for review and action.

(b) If the PNOK submits additional written matters as outlined in paragraph 7c(1)(c), which disagree with the CILHI recommendation, the Service representative will return the case file to the Chief, ASGRO who will refer the recommended identification and accompanying case file to the consultants for further evaluation and written report prior to submission to the AFIRB.

d. AFIRB Review and Action

(1) Upon notification by the Service concerned that a case file is ready for presentation to the AFIRB, the Chief, ASGRO will notify AFIRB members that a recommended identification is ready for its consideration and contact DIA and JCRC to obtain relevant intelligence or incident data, and arrange for a meeting of the AFIRB. As an administrative matter, AFIRB meetings may be arranged to consider more than one recommended identification per meeting if such an arrangement will not delay for more than seven days the consideration of any recommended identification. The Chief, ASGRO will refer the recommended identification and accompanying case file to the AFIRB for review and action.

(2) Prior to taking action, the AFIRB will review the recommended identification and accompanying case file. The AFIRB may contact the CILHI, DIA, JCRC, the consultants or other advisors, as appropriate. However, prior to taking actions upon a recommended identification, the AFIRB, through the Chief, ASGRO, will have the Service representative notify the PNOK of their opportunity to examine and submit additional written matters to the AFIRB based upon any additional matters and materials added to the case file as a result of the procedures addressed in this subparagraph within 15 days of notification. These additional written matters will be included in the case file.

(3) The AFIRB will meet to take action to approve or disapprove a recommended identification. A primary or alternate voting member from the Army, Navy (Marine Corps), and Air Force must be present at a meeting for a quorum to exist. If more than one voting member from a particular Department is present at a meeting, only one may vote. Action by the AFIRB will be by a majority vote and based upon a preponderance of all relevant facts and circumstances including anthropological evidence, DIA or other intelligence reports, witness statements, JCRC evaluations and any other information relevant to loss of a service member and recovery of remains. The lack of conclusive anthropological evidence will not preclude CILHI from recommending or the AFIRB from approving a recommended identification in a case where the evidence, taken in its entirety, supports an identification. The U.S. Government has an obligation to provide to family members reasonable judgments which may be short of scientific certainty that the case being reviewed may be of a specific individual. The meetings and proceedings of the AFIRB are informal in nature and are not hearings. The Chairman, AFIRB can refer to the provisions of Chapter 4, reference 2b for nonbinding guidance on the conduct of AFIRB meetings.

8. Group Remains

In cases where individual identification of remains is not possible but the evidence is sufficient to identify the remains as belonging to a specific group of United States military personnel, CILHI may recommend to the AFIRB approval of identification of the remains as belonging to members of the group. Except as noted in paragraph 7c(1)(b), such recommended identifications will be processed in accordance with paragraph 7, above. If the AFIRB approves such a recommended identification, it may recommend to the Service Secretaries concerned, that the remains be buried in a common grave. The Service Secretaries concerned will take such actions as they deem appropriate in accordance with their responsibilities as set forth in reference 2a.

9. Forwarding of Decisions

Recommended identifications which are approved by the AFIRB will be forwarded to the Service Secretary concerned, or his representative, for appropriate action. Recommended identifications which are disapproved by the AFIRB will be remanded to CILHI for further study. The Service Secretary concerned, or his representative, will be notified when a case file is remanded to CILHI for further study.

10. Timeliness

Not more than 30 days should normally elapse between the time that

[2] Transportation of remains to an appropriate facility for the independent expert to perform the examination will be at Government expense. The United States government will retain custody and control over the remains during such an examination.

CILHI presents its recommendation for identification to the consultants and the notification of the PNOK of the date that the AFIRB will meet to take action upon the recommended identification.

11. Reconsideration

A request by the PNOK for reconsideration of an action of the AFIRB concerning a recommended identification of remains will be granted only on the basis of newly discovered evidence not previously considered by the AFIRB. Such a request will be forwarded with the case file to the Service Secretary concerned, or his representative, for a determination. If the Service Secretary, or his representative, determines that newly discovered evidence exists and grants the request, the case file will be returned to the Chief, ASGRO whereafter the procedures in paragraphs 7b and 7d will be followed.

12. Changes to Procedures

a. Changes to these procedures will be coordinated with representatives of the Department of the Navy, the Department of the Air Force, and the Assistant Secretary of Defense (International Security Affairs).

b. These procedures will be followed unless the Service Secretary concerned determines that military exigencies preclude their application. They are not intended to, may not be relied upon to, and do not, create any right or benefit, substantive or procedural, enforceable at law or equity against the United States, or any of its officials, employees or instrumentalities.

John O. Roach, II,

Army Liaison Officer With the Federal Register.

BILLING CODE 3710-08-M

AFIRB FLOW CHART

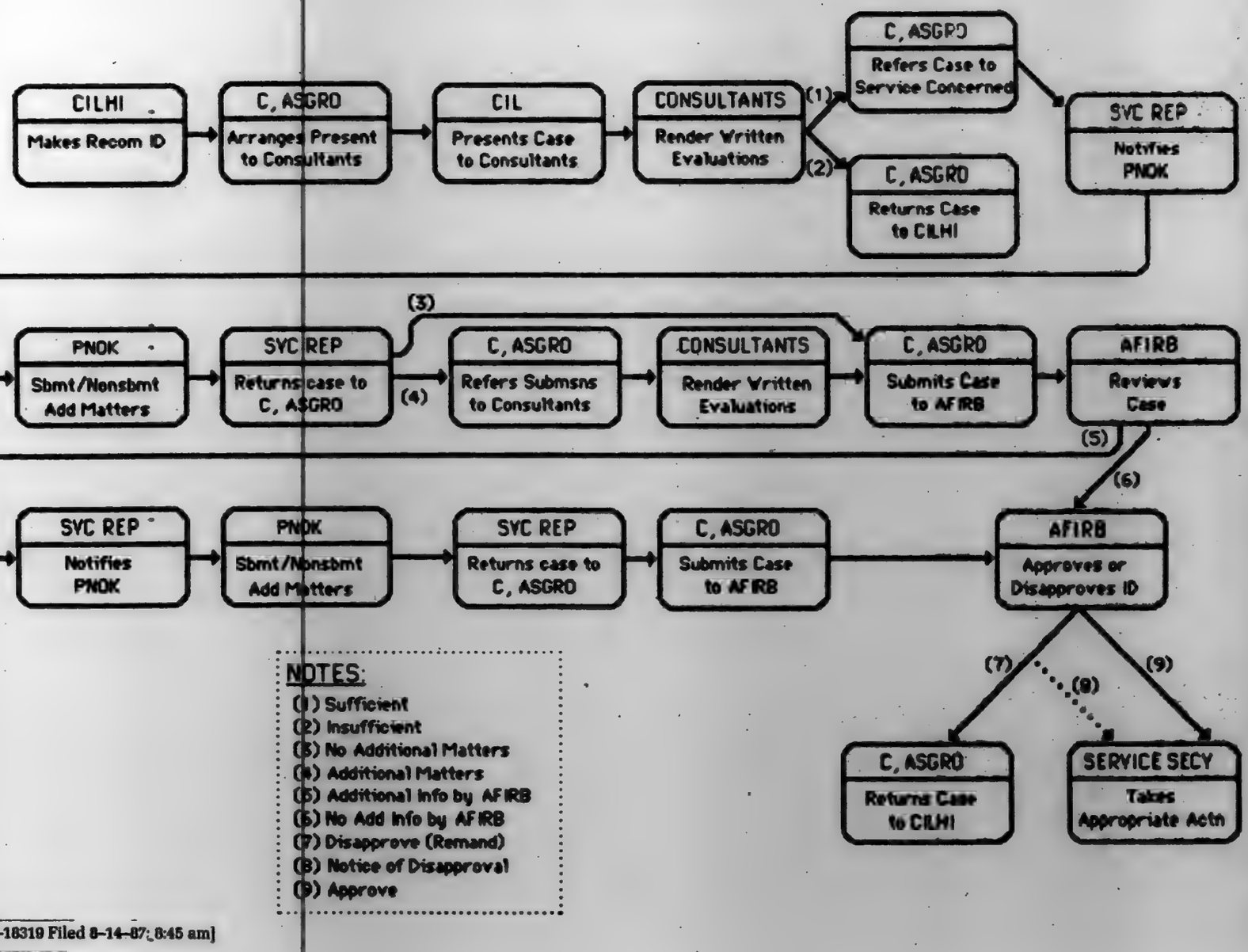

NOTES:

(1) Sufficient
(2) Insufficient
(3) No Additional Matters
(4) Additional Matters
(5) Additional Info by AFIRB
(6) No Add Info by AFIRB
(7) Disapprove (Remand)
(8) Notice of Disapproval
(9) Approve

APPENDIX

[FR Doc. 87-18319 Filed 8-14-87; 8:45 am]
BILLING CODE 3710-08-C

Decision To Build a Bowling Center at the Presidio of San Francisco, CA

Notice is hereby given, pursuant to paragraph 17 of the Stipulation for Dismissal With Prejudice in the case entitled Sierra Club vs. Marsh, filed with the U.S. District Court for the Northern District of California July 16, 1986, of the Army's decision to build a new Bowling Center facility at the Presidio of San Francisco. A Request for Proposal (RFP) for design and subsequent construction is scheduled to be advertised in August 1987. The design selected from the proposals to be submitted in response to the RFP will be presented at a public hearing and comments on the design will be considered prior to finalization of design. Construction is scheduled to begin during 1988.

Location

The proposed Bowling Center will be located south of the Main Parade Ground area of the Presidio, near the intersection of Moraga Avenue and Montgomery Street.

Description

The proposed project consists of the replacement of the existing Bowling Center with a new 12,200 SF, one-story structure. The existing Bowling Center is located in a temporary, wood frame building in poor repair. On the proposed site, Building 92 will be demolished prior to construction. This building is neither considered to be historically significant nor does it contribute to the historical significance of the Presidio as a National Historic Landmark or a National Historic District. The proposed Bowling Center design will be compatible with the historic resources of the Presidio. In addition to the new structure, approximately 36 parking spaces and landscaping will be incorporated on the site.

The proposed project and its environmental effects were discussed in an Environmental Assessment (EA) circulated for public and agency review in December of 1986 and was reviewed at a hearing of the Golden Gate National Recreation Area (GGNRA) Advisory Commission on January 6, 1987. A Finding of No Significant Impact has been completed. A second hearing with the GGNRA Advisory Commission will be held in late 1987 to review the design prepared by the contractor.

John O. Roach II,

Army Liaison Officer, with the Federal Register.

[FR Doc. 87-18677 Filed 8-14-87; 8:45 am]

BILLING CODE 3710-08-M

Decision To Build a Branch Exchange at the Presidio of San Francisco, CA

Notice is hereby given, pursuant to paragraph 17 of the Stipulation for Dismissal With Prejudice in the case entitled Sierra Club vs. Marsh, filed with the U.S. District Court for the Northern District of California July 16, 1986, of the Army's final decision to build a new Branch Exchange facility at the Presidio of San Francisco. The construction contract is expected to be advertised in September 1987 and awarded in October 1987. Construction is expected to begin in November 1987.

Location

The proposed Branch Exchange will be located in the northeast section of the Presidio, east of the intersection of Gorgas Avenue and Marshall Street, adjacent to the Richardson Avenue (Hwy. 101) off-ramp.

Description

The proposed project consists of the replacement of the existing Branch Exchange (3,405 square feet) with a 4,916 square foot (SF), one-story structure. The existing Branch Exchange shares a temporary wood frame building (Building 609) with the Four Seasons Store, near the corner of Old Mason Street and Bank Street. Building 609, with a total of 15,324 square feet, is scheduled to be demolished as part of the new commissary project. Prior to construction, three existing structures (Buildings 1164, 1165 and 1166) totalling 6,169 SF, will be demolished. These buildings are neither considered to be historically significant nor do they contribute to the historical significance of the Presidio as a National Historic Landmark or a National Historic District. The proposed Branch Exchange design is compatible with the historic resources of the Presidio. In addition to the new structure, 38 parking spaces, a truck loading dock, and landscaping will be developed.

The proposed project and its environmental effects were discussed in an Environmental Assessment (EA) circulated for public and agency review in February 1987 and was reviewed at a Hearing of the Golden Gate National Recreation Area (GGNRA) Advisory Commission on March 26, 1987. A Finding of No Significant Impact has been completed.

John O. Roach, II,

Army Liaison Officer with the Federal Register.

[FR Doc. 87-18678 Filed 8-14-87; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Performance Review Board Membership

Pursuant to 5 U.S.C. 4314(c)(4), the Department of the Navy (DON) announces the appointment of members to the DON's numerous Senior Executive Service (SES) Performance Review Boards. The purpose of the Boards is to provide fair and impartial review of the Senior Executive Service performance appraisals prepared by the senior executive's immediate and second level supervisors; to make recommendations to the Secretary of the Navy regarding acceptance or modification of the performance rating, transfer, reassignment, or removal from the SES of any senior executive whose performance is considered to be unsatisfactory; and to make nominations for financial performance awards. Composition of the particular Boards will be determined on an ad hoc basis from among individuals listed below:

Nominees For Performance Review Board Membership

Mr. E. P. Angrist
Mr. O. R. Ashe
Mr. R. J. Barnett
Dr. E. A. Berman
Mr. J. J. Bettino
Mr. I. Blickstein
RADM L. E. Blose
BGEN W. E. Boomer
Mr. A. S. Bradford
Mr. J. H. Brown
Mr. R. C. Burow
Mr. E. G. Cammack
RADM W. H. Cantrell
RADM K. L. Carlsen
Mr. C. H. Clark
CAPT W. G. Clautice, USN
Dr. T. Coffey
The Honorable R. H. Conn
Mr. J. N. Costello
Mr. S. Cropsey
Mr. H. Dauber
RADM G. W. Davis, VI
Mr. A. DePrete
Mr. A. R. DiTrapani
Mr. H. L. Dixson
Mr. R. E. Doak
Mr. E. E. Eastin
RADM T. W. Evans
CAPT A. C. Esau
RADM F. L. Filipiak
RADM W. J. Finneran
RADM H. Fiske
Mr. F. B. Ford
Mr. J. E. Gaines
Mr. R. G. Garant
Mr. C. G. Geiger
Mr. J. Genovese
Mr. R. O. Goodman

Mr. C. V. Gorsey
Mr. A. B. Grimes
Mr. R. L. Haas
Mr. R. A. Hallex
Mr. P. A. Harner
Ms. M. H. Harris
Mr. R. L. Haver
Mr. T. J. Haycock
Mr. P. W. Hayes
Mr. M. L. Higgins
Mr. R. M. Hillyer
Mr. P. M. Hitch
Mr. G. C. Hoffman
RADM L. J. Holloway
RADM R. B. Hume
Mr. A. E. Johnson
Mr. T. A. Kallmeyer
Mr. J. J. Keane
Mr. G. Keightley
RADM F. G. Kelley, CEC, USN
Mr. R. B. Keller
Mr. E. T. Kinney
Mr. R. Kirn
CAPT R. W. Klemmetz
Mr. R. B. Levine
Dr. R. A. Lofaro
Mr. W. H. Lindahl
Mr. R. E. Malatino
Mr. W. H. Manthorpe
Mr. J. W. Marsh
Mr. D. A. Matteo
Ms. E. P. Matthews
Mr. M. K. McElhaney
Mr. C. McManus
Mr. L. H. McRoskey, Jr.
Ms. D. M. Meletzke
Mr. E. L. Messere
CAPT W. Miller
RADM R. D. Milligan
Mr. J. H. Mills
RADM J. B. Mooney, Jr., USN
Mr. R. P. Moore
Dr. M. K. Moss
Mr. P. M. Murphy
Mr. H. J. Nathan
Mr. C. P. Nemfakos
RADM J. W. Nyquist
Mr. J. J. O'Connor
Ms. M. A. Olsen
Mr. P. M. Palermo
Mr. F. A. Phelps
Dr. J. H. Probus
The Honorable E. A. Pyatt
Mr. W. G. Rae
BGEN G. M. Reals
RADM R. L. Rich
Dr. B. B. Robinson
Mr. R. Rumpf
Mr. R. R. Rojas
Dr. F. E. Saalfeld
Mr. P. R. Sacilotto
Mr. W. Sansone
Mr. W. J. Schaefer
Mr. T. W. Schaeffer, Jr.
Mr. G. J. Schmitt
Mr. P. A. Schneider
Dr. P. A. Selwyn
Mr. R. L. Shaffer
Dr. J. J. Shepard
Mr. J. N. Shrader
RADM J. F. Smith, Jr., USN
RADM W. D. Smith
Ms. A. M. Stratton
Mr. F. S. Sterns
Mr. F. W. Swafford
Mr. W. A. Tarbell
Mr. J. K. Taussig, Jr.
Mr. R. O. Thomas
Mr. D. W. Tiedgen
RADM R. L. Topping
Mr. C. J. Turnquist
The Honorable C. G. Untermeyer
CAPT C. F. A. Wagner
Mr. W. L. Wagner
RADM R. M. Walsh
RADM J. C. Weaver
Mr. A. R. Weiss
Mr. H. J. Wilcox
Mr. W. Willoughby

For additional information, contact: Mr. Michael O. Duggins, Special Assistant for Executive Personnel, Office of Civilian Personnel Management, Department of the Navy, Washington, DC 20350, Telephone: (202) 696–5174.

Date: August 12, 1987.

Jane Virga,
Lieutenant, JAGC, U.S. Navy, Federal Register Liaison

[FR Doc. 87–18764 Filed 8–14–87; 8:45 am]
BILLING CODE 3810-AE-M

Chief of Naval Operations, Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Mine Warfare Capabilities Task Force will meet September 17–18, 1987 from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to review current and projected U.S. and Allied Mine Warfare capabilities and potential U.S. vulnerabilities in the broad context of maritime operations and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Paul G. Butler, Executive Secretary of the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Date: August 12, 1987.

Jane M. Virga,
Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 87–18745 Filed 8–14–87; 8:45 am]
BILLING CODE 3810-AE-M

Chief of Naval Operations, Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Weapon Effectiveness Task Force will meet September 18, 1987, from 9 a.m. to 5 p.m. at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to review the Navy's ability to maximize weapon effectiveness through both hardware design and tactical employment, and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Paul G. Butler, Executive Secretary of the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Date: August 12, 1987.

Jane M. Virga,
Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 87–18746 Filed 8–14–87; 8:45 am]
BILLING CODE 3810-AE-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

August 13, 1987.

The USAF Scientific Advisory Board Minuteman III Penetration Aids Study will conduct closed meetings at the Pentagon Washington D.C. on September 1–4, and September 8–9, 1987 from 8:00 a.m. to 5:00 p.m. each day.

The purpose of these meetings is to review, discuss and evaluate the effectiveness of penetration aids being developed for the Minuteman III.

These meetings concern matters listed in Section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202–697–4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 87–18916 Filed 8–14–87; 12:13 pm]

BILLING CODE 3910-01-M

DEPARTMENT OF ENERGY

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangements; European Atomic Energy Community; Germany

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of proposed "subsequent arrangements" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangements to be carried out under the above-mentioned agreement involve approval of the following sales:

Contract Number S–EU–922, for the sale of 3,000 milligrams of uranium–236 to the Institute for Kernphysik, Giessen, the Federal Republic of Germany, for nuclear resonance fluorescence research. Contract Number S–EU–926, for the sale of 5,000 milligrams of uranium–234 to Kraftwerk Union AG, Karlstein, the Federal Republic of Germany, for detection of breeding in power reactors.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that these subsequent arrangements will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: August 11, 1987.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 87–18880 Filed 8–14–87; 8:45 am]

BILLING CODE 6450-01-M

Proposed Subsequent Arrangement; European Atomic Energy Community; Germany

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the following sale:

Contract Number S–EU–919, for the sale of 10 milligrams of plutonium–242, 30 milligrams of uranium–236, and 1 milligram of thorium–230, for use in radiochemical procedures by the Federal Health Office, Nuherberg, the Federal Republic of German.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangment will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: August 11, 1987.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 87–18881 Filed 8–14–87; 8:45 am]

BILLING CODE 6450-01-M

Proposed Subsequent Arrangement; Japan and European Atomic Energy Community

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Civil Uses of Atomic Energy, as amended, and the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/EU (JA)–03, for the retransfer of mixed-oxide fuel rods from Japan to Belgonucleaire, in Belgium, containing 4,300 grams of uranium enriched to 0.77 percent in the isotope uranium-235, and 480 grams of plutonium for irradiation and post-irradiation examination.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: August 11, 1987.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 87–18882 Filed 8–14–87; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 87-35-NG]

Application To Import Natural Gas From Canada; Texarkoma Transportation Co.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of application for blanket authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on July 7, 1987, of an application from Texarkoma Transportation Company (Texarkoma) for blanket authorization to import, for its own account or for the account of others, Canadian natural gas for short-term and spot market sales to customers in the United States. Authorization is requested to import 40 MMcf/d of natural gas and a maximum of 14.6 Bcf annually for a two-year

period beginning on the date of the first delivery. Texarkoma is an Arkansas corporation with its principal place of business in Little Rock, Arkansas. Texarkoma states that it intends to use existing pipeline facilities for the transportation of the proposed imports. Texarkoma has requested that the authorization be granted on an expedited basis.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than September 16, 1987.

FOR FURTHER INFORMATION CONTACT:

Chuck Boehl, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–6050

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

All parties should be aware that if the ERA approves this requested blanket import, it may designate a total amount of authorized volumes for the term rather than a daily or annual limit, in order to provide the applicant with maximum flexibility of operation. ERA will also condition the authorization on the filing of quarterly reports to facilitate ERA monitoring of the operation and effectiveness of the blanket program.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m. e.d.t., September 16, 1987.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comment, an oral presentation, a conference, or trial-type hearing. A request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that is is material and relevant to a decision in the proceeding. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts. If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316. A copy of Texarkoma's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076–A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C. August 10, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87–18663 Filed 8–14–87; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER87–564–000, et al.]

Electric Rate and Corporate Regulation filings; Arizona Public Service Co., et al.

Take notice that the following filings have been made with the Commission:

1. Arizona Public Service Company

[Docket No. ER87–564–000]

August 10, 1987.

Take notice that on August 4, 1987, Arizona Public Service Company (Arizona), tendered for filing the Westwing Switchyard Amended Interconnection Agreement executed August 14, 1986. The Parties to this Agreement are Arizona, the United States of America, the Department of Water & Power of the City of Los Angeles, El Paso Electric Company, Public Service Company of New Mexico, Nevada Power Company, the Salt River Project Agricultural Improvement and Power District, and Tucson Electric Power Company.

This Agreement updates and revises the allocation of costs in the existing Westwing Switchyard Interconnection Agreement to reflect current cost responsibilities among the participants resulting from the addition of a second 500 kV transmission line from the Palo Verde Nuclear Generating Station into the Westwing Switchyard.

Waiver of the Commission's Notice Requirements under 18 CFR § 35.11 is requested so this Agreement can be made effective on August 14, 1986, the date of last execution.

Copies of this filing have been sent to the Arizona Corporation Commission and to all parties executing this Agreement.

Comment date: August 24, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. Pacific Gas and Electric Company

[Docket No. ER87–563–000]

August 10, 1987.

Take notice that on August 4, 1987, Pacific Gas and Electric Company (PGandE) tendered for filing proposed

changes to Rate Schedule FPC No. 53. These changes are to certain rates, terms, and conditions concerning those services rendered by PGandE under the agreement entitled "Agreement Among the Modesto Irrigation District, the Turlock Irrigation District, the City and County of San Francisco, and Pacific Gas and Electric Company" (Agreement) which has been filed as part of Rate Schedule FPC No. 53.

These changes are summarized as follows:

- Refunds to City and County of San Francisco (CCSF) for Settlement of FERC Docket No. ER84-322, 1985 Attrition Reduction in CPUC Advice Letter No. 1115-E, and for the Gas Suppliers Refund in CPUC Advice Letter No. 1061-E.
- Settlement for pre-July 1985 owning and operating costs for Helms and Diablo Canyon Power Plants.
- Temporary Rate Implementation Procedure for Diablo Canyon beginning July 1, 1985.
- Increases in Revenue Requirement as a result of certain California Public Utilities Commission and Federal Energy Regulatory Commission decisions. These increases are proposed in accordance with the provisions of the currently filed agreements.

Using 1987 billing determinants, these rate changes would result in an estimated yearly revenue increase of $3,830,042 or 11.28 percent.

Copies of this filing were served upon CCSF, the Modesto Irrigation District, the Turlock Irrigation District, and the Public Utilities Commission of the State of California.

Comment date: August 24, 1987, in accordance with Standard Paragraph E at the end of this notice.

3. Gulf Power Company

[Docket No. ER87-562-000]

August 10, 1987

Take notice that on August 3, 1987, Gulf Power Company (Gulf) tendered for filing Supplements to its FERC Electric Tariffs providing for changes in loads for service by Gulf to Choctawhatchee Electric Cooperative, Inc. and West Florida Electric Cooperative Association. These tariff supplements are proposed to be effective for service commencing on June 1, 1987, and Gulf therefore request waiver of the Commission's notice requirements to allow such effective dates.

Comment date: August 24, 1987, in accordance with Standard Paragraph E at the end of this notice.

4. U.S. Department of Energy, Bonneville Power Administration

[Docket Nos. EF87-2011-000 and EF87-2021-000]

August 10, 1987.

Take notice that on July 31, 1987, Bonneville Power Administration (BPA), pursuant to section 7(a)(2) of the Northwest Power Act, 16 U.S.C. 839e(a)(2), tendered for filing proposed rate adjustments for its wholesale power and transmission rates. Pursuant to Commission regulation 300.21, 18 CFR 300.21, BPA seeks final confirmation of the proposed rates, effective October 1, 1987. In the alternative, BPA seeks interim approval effective October 1, 1987, pursuant to Commission regulation 300.20, 10 CFR 300.20.

BPA's wholesale power rates are proposed to be increased, while transmission rates are proposed to be described, with the exception of transmission rate schedule IS-87, which has been increased. BPA's proposed wholesale power rates are designed to increase revenues during the rate approval period by approximately $289.8 million, which represents an increase of approximately 5.2 percent. BPA's proposed transmission rates other than schedule IS-87 are designed to decrease revenues by approximately $27.2 million, or 12.9 percent. Transmission service rate schedule IS-87 is designed to increase revenues by approximately $2.7 million, or 17.4 percent. With these increases BPA's total revenues during the rate approval period will be approximately $5.887 billion.

The designations of the rate schedules which are the subject of this proposed rate adjustment are as follows: PF-87 (Priority Firm Power Rate); IP-87 (Industrial Firm Power Rate); VI-87 (Variable Industrial Power Rate); SI-87 (Special Industrial Power Rate); CF-87 (Firm Capacity Rate); CE-87 (Emergency Capacity Rate); NR-87 (New Resource Firm Power Rate); SP-87 (Long-term Surplus Firm Power Rate); NF-87 (Nonfirm Energy Rate); SS-87 (Share-the-Savings-Rate); RP-87 (Reserve Power Rate); EPT-87.1 (Formula Power Transmission); FPT-87.3 (Formula Power Transmission; IR-87 (Intergration of Resources); IS-87 (Southern Intertie Transmission); IN-87 (Northern Intertie Transmission); IE-87 (Eastern Intertie Transmission); ET-87 (Energy Transmission); MT-87 (Market Transmission); and UFT-2 (Use-of-Facilities Transmission).

The proposed rate approval period is two years, from October 1, 1987 through September 30, 1989 for all rate schedules, except for transmission rate schedules UFT-2 and FPT-87.3. BPA requests extension of current rate schedule UFT-2 for the period October 1, 1987 through June 30, 1990. The proposed approval period for schedule FPT-87.3 is for October 1, 1987 through September 30, 1990.

The proposed rate approval period for BPA's Nonfirm Energy Rate Cap, which is contained in BPA's General Rate Schedule Provisions, is twelve years, from October 1, 1987 through September 30, 1999. BPA request waiver of § 300.1(b)(6) of the Commission's regulations, which limits the proposed rate approval period to 5 years.

Comment date: August 25, 1987, in accordance with Standard Paragraph E at the end of this notice.

5. U.S. Department of Energy Bonneville Power Administration

[Docket No. EF87-2011-001]

August 10, 1987.

Take notice that on July 31, 1987, Bonneville Power Administration (BPA), pursuant to section 7(a)(2) of the Northwest Power Act, 16 U.S.C. 839e(a)(2) and Commission regulation § 300.21, 18 CFR 300.21, tendered for filing proposed rate schedule SL-87, Long Term Surplus Firm Power Rate. SL-87 is available for the long-term purchase of surplus firm powre and firm displacement power, and supersedes rate schedule FD-85.

SL-87 is proposed to become effective on October 1, 1987 for a period as long as BPA has surplus firm power available for sale. BPA requests waiver of the Commission's 180-day advance filing requirement contained in 18 CFR 300.10(a)(3)(ii) so that the SL-87 rate erceives final approval by October 1, 1987. In the alternative, BPA requests interim approval by October 1, 1987, pursuant to § 300.20 of the Commission's regulations, 18 CFR 300.20.

Comment date: August 25, 1987, in accordance with Standard Paragraph E at the end of this notice.

6. West Texas Utilities Company

[Docket No. DR87-565-000]

August 11, 1987.

Take notice that on August 4, 1987, West Taxes Utilities Company (WTU) tendered for filing (1) a letter agreement, dated April 28, 1987, between WTU and the Texas Municipal Power Agency (TMPA) and (2) a letter agreement, dated May 18, 1987, between WTU and TU Electric Company (TU). The TMPA Agreement provided for WTU to furnish transmission service to TMPA, during the period July 1, 1986 to December 31, 1986, for 60,000 kilowatts of power and associated energy purchased by Texas-

New Mexico Power Company from the City of Bryan, Texas, a TMPA member. The TU Agreement provided for WTU to furnish transmission service to TU, during the period June 1, 1985 to December 31, 1986, for various amounts of power and associated energy purchased by TU for various periods of time from three cogenerators in the state of Texas. WTU also tendered Notices of Cancellation with respect to both the TMPA Agreement and the TU Agreement.

WTU requests and effective date of July 1, 1986 for the TMPA Agreement and an effective date of June 1, 1985 for the TU Agreement. WTU requests an effective date of December 31, 1986 for each of the two Notices of Cancellation. Accordingly, WTU requests waiver of the Commission's notice requirements.

Copies of this filing have been sent to the Public Utilities Commission of Texas, the Texas Municipal Power Agency and TU Electric Company.

Comment date: August 24, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18750 Filed 8-14-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER87-567-000, et al.]

Electric Rate and Corporate Regulation Filings; Montaup Electric Co., et al.

August 12, 1987.

Take notice that the following filings have been made with the Commission:

1. Montaup Electric Company

[Docket No. ER87-567-000]

Take notice that on August 3, 1987 Montaup Electric Company (Montaup) tendered for filing rate schedule revisions incorporating a revised M-11 rate for all-requirements service to Montaup's affiliates Eastern Edison Company (Eastern Edison) in Massachusetts and Blackstone Valley Electric Company (Blackstone) in Rhode Island and contract demand service to three nonaffiliated customers: The Town of Middleborough in Massachusetts and the Pascoag Fire District and the Newport Electric Corporation in Rhode Island. The rate schedule revisions provide for a decrease in the demand charge from $12.70165/kW-Mo. to $11.7820/kW-Mo., or a 7.2% decrease. Montaup requests that these rates become effective July 1, 1987.

The base rate decrease is requested to provide for the reduction in the cost of service resulting from the change in the federal corporate income tax rate that became effective July 1, 1987.

Montaup's filing was served on the affected customers, the Rhode Island Public Utilities Commission and the Massachusetts Department of Public Utilities.

Comment date: August 27, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. Connecticut Light and Power Company

[Docket No. ER87-569-000]

Take notice that on August 7, 1987, Connecticut Light and Power Company (CL&P) tendered for filing a proposed rate schedule with respect to a Transmission Agreement dated June 1, 1986 between (1) CL&P and Western Massachusetts Electric Company (WMECO and together with CL&P, the NU Companies) and (2) Vermont Public Power Supply Authority (VPPSA).

CL&P states that the Transmission Agreement provides for weekly transmission services on an as needed and as available basis to VPPSA for the wheeling of their purchase from the Connecticut Municipal Electric Energy Cooperative (CMEEC) of electric capacity and associated energy from CMEEC's system or for the wheeling of capacity in exchange units from CMEEC during the period from June 1, 1986 to May 31, 1988.

The transmission charge rate is a weekly rate equal to one-fifty-second of the annual average cost of transmission service on the electric transmission system of the NU Companies determined in accordance with Appendix A and Exhibits I, II and III thereto, of the Transmission Agreement. The weekly transmission charge is determined by the product of (i) the transmission charge rate ($/kW-week), and (ii) the number of kilowatts VPPSA is entitled to receive during such week. The weekly transmission charge is reduced by up to 50% to give due recognition for payments made by VPPSA to other systems also providing transmission service.

CL&P requests that the Commission waive its standard notice period and permit the Transmission Agreement to become effective as of June 1, 1986.

WMECO has filed a certificate of concurrence in this docket.

CL&P states that copies of this rate schedule have been mailed to VPPSA, Williston, Vermont.

CL&P further states that the filing is in accordance with section 35 of the Commission's Regulations.

Comment date: August 27, 1987, in accordance with Standard Paragraph E at the end of this notice.

3. Minnesota Power & Light Company

[Docket No. ER87-475-000]

Take notice that on August 7, 1987, Minnesota Power & Light Company (Minnesota Power) tendered for filing a response to a letter from the FERC Staff requesting information concerning rates for wholesale electric service pursuant to executed contract supplements with the following municipal customers:

a. City of Aitkin, Minnesota
b. City of Grand Rapids, Minnesota
c. City of Keewatin, Minnesota
d. City of Pierz, Minnesota
e. City of Randall, Minnesota
f. City of Two Harbors, Minnesota
g. City of Mountain Iron, Minnesota

Minnesota Power states that under the terms and conditions of the executed contract supplements, the terms and conditions of such contracts are extended beyond their present expirations dates of December 31, 1989 or later, and that there are limitations on rate increases during the remaining time of such contracts, but that the executed contract supplements do not affect the presently effective rates for service under such contracts. Minnesota Power states that it will use procedures adopted in Order No. 475 to modify its wholesale rates for service to all customers, including those with executed contract supplements, to reflect changes in the Federal corporate income tax rate adopted in the Tax Reform Act of 1986. Minnesota Power further states that it will analyze the impact on its wholesale rates of the proposed sale of a portion of its Clay Boswell Unit No. 3, and file with the

FERC any modifications which are shown to be appropriate.

Comment date: August 27, 1987, in accordance with Standard Paragraph E at the end of this notice.

4. Public Service Electric and Gas Company

[Docket No. ER87-555-000]

Take notice that on August 7, 1987, Public Service Electric and Gas Company (PSE&G) tendered for filing the following initial Rate Schedule: Transmission Service and Interconnection Agreement between Public Service Electric and Gas Company and EF Union, Inc. The Rate Schedule provides for a monthly charge of $1.63 per kilowatt plus $.00046 per kilowatthour for the provision by PSE&G of transmission service to deliver the net electric power output of EF Union, Inc.'s qualifying cogeneration facility to be located in the City of Union, New Jersey to Jersey Central Power and Light Company.

PSE&G requests, with the customes's consent, a waiver of the Notice Requirements of § 35.3(a) of the Commission's Regulations so that the Rate Schedule can be submitted for filing at this time and PSE&G further requests that the filing be made effective within sixty (60) days of the date of this filing.

PSE&G states that a copy of this filing has been served by mail upon customer and the New Jersey Board of Public Utilities.

Comment date: August 27, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18751 Filed 8-14-87; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 9904-001]

Surrender of Preliminary Permit; Savage Rapids Hydroelectric Co.

August 11, 1987.

Take notice that Savage Rapids Hydroelectric Company, permittee for the proposed Savage Rapids Project, has requested that its preliminary permit be terminated. The permit was issued on June 18, 1986, and would have expired on May 31, 1989. The project would have been located on the Rogue River near the town of Grants Pass, in Josephine County, Oregon. The permittee cites that the proposed project is not economically feasible as the basis for the surrender request.

The permittee filed the request on July 27, 1987, and the preliminary permit for Project No. 9904 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18756 Filed 8-14-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF87-585-000]

Application for Commission Certification of Qualifying Status of a Cogeneration Facility; E.F. Oxnard, Inc.

August 12, 1987.

On July 31, 1987, E.F. Oxnard, Inc. (Applicant), of 401 B Street, Suite 1000, San Diego, California 92101, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Oxnard, California. The facility will consist of a combustion turbine generator, a dual pressure heat recovery steam generator, and an extraction/condensing steam turbine generator. Thermal energy recovered from the facility will be used via absorption chillers for refrigeration and food blanching. The primary energy source will be natural gas. The net electric power production capacity of the facility will be 48.1 MW. Installation of the facility is expected to begin in June 1989.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18755 Filed 8-14-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-728-000]

Application for Permanent Abandonment and Limited-Term Pregranted Abandonment for Sales Under Small Producer Certificate; Amax Petroleum Corp.

August 10, 1987.

Take notice that on June 29, 1987, as supplemented on August 3, 1987, Amax Petroleum Corporation (Amax) filed an application in Docket No. CI87-728-000, pursuant to section 7 of the Natural Gas Act and § 2.77 of the Commission's rules requesting permanent abandonment of sales of gas to United Gas Pipe Line Company (United) under six contracts [1] covering acreage in High Island Block Nos. 339, 340, 356, 520, 545, 546, 547, and 548, Offshore Louisiana, Oaks Field, Claiborne Parish, Louisiana and Martinville Field, Simpson County, Mississippi. The application also requests that for sales of the released gas to other purchasers, Amax receive pregranted abandonment authorization for a three-year period under its small producer certificate in Docket No. CS72-419.

In support of his application, Amax states that due to reduced market demand during the past several years United substantially decreased its takes of gas attributable to Amax's interest under the contracts. In order to eliminate both United's present and

[1] The contracts are dated: October 20, 1977, May 19, 1980, August 17, 1977, November 17, 1982, October 6, 1980 and July 7, 1982.

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further liability for take-or-pay payments, Amax and United negotiated a settlement agreement executed June 1, 1987. The settlement provides that in exchange for certain cash and other consideration, Amax waive all of its payment claims against United under the contracts and Amax and United terminate all six contracts between the parties. Amax also requests permanent abandonment with respect to certain properties subject to its Oaks Field Contract, dated October 6, 1980, which were transferred in 1985, to Endurance Oil & Gas, Inc., Philwell, Inc. and KWB Oil Property Management, Inc.

Amax requests that its application be considered on an expedited basis under procedures established by Order No. 436, Docket No. RM85-1-000, at 18 CFR 2.77.[2] Deliverability is approximately 6,776 Mcf/d. The gas is NGPA section 104 Post 1974 gas (75%), 102(d) (25%) and de minimus amounts of section 104 flowing gas.

Since Amax has requested that its application be considered on an expedited basis, all as more fully described in the application which is on file with the Commission and open to public inspection, any person desiring to be heard or to make any protest with reference to said application should on or before 15 days after the date of publication of this notice in the Federal Register, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Amex to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18758 Filed 8-14-87; 8:45 am]

BILLING CODE 6717-01-M

[2] The United States Court of Appeals for the District of Columbia vacated the Commission's Order No. 436 on June 23, 1987. In vacating Order No. 436, the Court rejected challenges to the Commission's statement of policy in § 2.77 of its Regulations. Section 2.77 states that the Commission will consider on an expedited basis applications for certificate and abandonment authority where the producers assert they are subject to substantially reduced takes without payment.

Application; Panhandle Eastern Pipe Line Co.

[Docket Nos. CI87-127-001 and CI87-128-001]

August 12, 1987.

Take notice that on August 5, 1987 Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas, 77001, filed on behalf of its producer-suppliers in Docket Nos. CI87-127-001 and CI87-128-001 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act and the regulations thereunder for amendment of the certificate of public convenience and necessity which previously authorized temporary abandonment of sales and issuance of a limited-term certificate, all as more fully set forth in the application which is on file with the Federal Energy Regulatory Commission (Commission) and open for pubic inspection.

Specifically, by this application Panhandle requests Commission authorization to extend the effective date of the authorization previously granted in this docket to December 31, 1988.

Protests and petitions to intervene may be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Rules of Practice and Procedure, 18 CFR 385.211 or 385.214 and the Regulations under the Natural Gas Act, 18 CFR 157.10 on or before August 27, 1987. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules. Take further notice that pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the amended certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission, on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Panhandle to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18757 Filed 8-14-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP87-478-000 et al.]

Natural Gas Certificate Filings; Gas Gathering Corp. et al.

Take notice that the following filings have been made with the Commission:

1. Gas Gathering Corporation

[Docket No. CP87-478-000]

August 10, 1987.

Take notice that on August 4, 1987, Gas Gathering Corporation (Gas Gathering), P.O. Box 519, Hammond, Indiana 70404, filed in Docket No. CP87-478-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to transport under the authorization issued in Docket No. CP86-129-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Gas Gathering states that pursuant to a transportation agreement dated October 15, 1986, it proposes to transport natural gas on behalf of Cities Service Oil and Gas Corporation (Cities) through its system between Iberville and Pointe Coupee Parishes in Louisiana. Gas Gathering estimates that peak day volumes under this agreement would not exceed 600 MMBtu's per day and that total volumes to be transported would be 22,500 MMBtu's. Gas Gathering states that the proposed transportation service commenced October 14, 1986, pursuant to the 120-day self implementing provisions of § 284.223(a)(1) of the Regulations and terminated within the 120 day period. Gas Gathering now proposes to restart the service following receipt of prior notice authorization. Gas Gathering notes that although the underlying transportation agreement has an initial term which expired November 30, 1986, Gas Gathering and Cities have exercised the option to continue the agreement in force on a month to month basis.

Comment date: September 24, 1987, in accordance with Standard Paragraph G at the end of this notice.

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2. Southern Natural Gas Company

[Docket No. CP87-454-000]

August 10, 1987.

Take notice that on July 21, 1987, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP87-454-000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing Southern to transport gas on behalf of the City of Wrens, Georgia (Wrens), the City of Thomson Natural Gas System (Thomson); and Atlanta Gas Light Company (Atlanta), (each of which hereinafter may be referred to as "shipper") all acting as agents in arranging for the transportation of natural gas supplies for J. M. Huber (Huber) for use in its plants in Wrens and Macon, Georgia, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern proposes to transport natural gas for Huber in accordance with the terms and conditions of transportation agreements between Wrens and Southern dated June 3, 1987; between Thomson and Southern dated June 22, 1987, and between Atlanta and Southern dated June 29, 1987. Southern states it has agreed to transport on an interruptible basis up to 5,080 MMBtu equivalent of gas per day on behalf of Wrens, up to 5,080 MMBtu equivalent of gas per day for Thomson, up to 7,600 MMBtu for Atlanta. Southern requests that the Commission issue a limited-term certificate for a term expiring on October 31, 1988.

Southern states that the transportation agreements provide for Wrens, Thomson and Atlanta to cause natural gas to be delivered to Southern for transportation at various existing points on Southern's contiguous pipeline system in the Main Pass and Mississippi Canyon Areas, offshore Louisiana; Terrebonne Parish, Louisiana; Simpson County, Mississippi; and Pickens County, Alabama. Southern states that it would redeliver to Wrens at the City of Wrens Meter Station located in Jefferson County, Georgia; to Thomson at the city of Thomson Meter Station in Jefferson County, Georgia; and to Atlanta at the Macon Area Delivery Point, as set forth in Exhibit A to the Service Agreement between Southern and Atlanta dated September 23, 1969, an equivalent quantity of gas less 3.25 percent of such amount which shall be deemed to be used as compressor fuel and company-use gas (including system unaccounted-for gas losses); less any and all shrinkage, fuel or loss resulting from or consumed in the processing of gas; and less each shippers' pro-rata share of any gas delivered for the shippers' account which is lost or vented for any reason. It is further stated that pursuant to agreements with Atlanta, Thomson and Wrens dated March 5, 1987, March 16, 1987, and March 16, 1987, Huber has arranged for Wrens and Thomson to transport through their facilities the gas purchased by Huber for use in its plant in Wrens, Georgia, and for Atlanta to transport through its facilities gas which Huber would use in its plant in Macon, Georgia. Southern states that it has been advised that Huber has entered into gas sales contracts to purchase the natural gas from Southland Pipeline Company and SNG Trading Inc.

Southern states that Wrens, Thomson, and Atlanta have agreed to pay Southern each month, the following transportation rates:

(a) Where the aggregate of the volumes transported and redelivered by Southern on any day to shipper under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's OCD Rate Schedule on such day to shipper do not exceed the daily contract demand of shipper, the transportation rate shall be 48.2 cents per MMBtu; and

(b) Where the aggregate of the volumes transported and redelivered by Southern on any day to shipper under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's OCD Rate Schedule on such day to shipper exceed the daily contract demand of shipper, the transportation rate for the excess volumes shall be 77.6 cents per MMBtu.

Southern states that the transportation arrangement would enable Humber to diversify its natural gas supply sources and to obtain gas at competitive prices. Additionally, Southern advises that it would obtain take-or-pay relief on the gas Huber may obtain from its suppliers.

Comment date: August 31, 1987, in accordance with Standard Paragraph F at the end of this notice.

3. Ozark Gas Transmission System

[Docket No. CP87-238-000]

August 10, 1987.

Take notice that on March 10, 1987, as supplemented on May 26, 1987, June 8, 1987, July 9, 1987, July 23, 1987 and July 30, 1987, Ozark Gas Transmission System (Ozark), First City Center, 1700 Pacific Avenue Dallas, Texas 75201 filed in Docket No. CP87-238-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Ozark to transport up to 254,000 Mcf of natural gas per day on an interruptible basis for seven shippers (see Appendix), all as more fully set forth in the application on file with the Commission and open to public inspection.

Ozark requests authority to transport gas on behalf of each shipper from existing points on its system and also requests authority to receive gas from new points as may be designated by shippers and agreed to by Ozark. Ozark states that it would redeliver such gas to or for the account of each shipper, except Arkansas Oklahoma Gas Corporation (AOG), to Tennessee Gas Pipeline Company and Natural Gas Pipeline Company of America in White County, Arkansas. For AOG, Ozark would redeliver gas at existing taps in LeFlore County, Oklahoma and at an existing interconnnection on its Stephens/McBride lateral. For Sabine-DeSoto Pipeline Company, Inc., Ozark requests authorization to install taps and redeliver gas at the towns of Clarksville, Ft. Smith, Morrilton, Ozark, Searcy and Russellville, Arkansas. The cost of all facilities installed by Ozark would be reimbursed by the shipper.

Ozark states that it would charge a rate of 17.5 cents per Mcf of gas received which is Ozark's current commodity rate, subject to refund in Docket No. RP84-53.

Ozark states that the proposed term of transportation for each shipper is fifteen years.

Comment date: August 31, 1987, in accordance with Standard Paragraph F at the end of this notice.

Shipper	Transportation quality (Mcf/d)	Downstream transporters	End use
1. Arco Oil & Gas Company	10,000	NGPL [1]	System Supply of LDCs.
2. Arkansas Oklahoma Gas Corporation	4,000	None	System Supply of Shipper.
3. Colony Pipeline Corporation	50,000	NGPL [1]; Tennessee [3]	System Supply of LDCs; End Users.
4. Delhi Gas Pipeline Corporation	50,000	NGPL [1]; Tennessee [3]; Tetco [4]; Columbia 5.	System Supply of LDCs; End Users.
5. Sabine-DeSoto Pipeline Co., Inc	40,000	None	End Use customers of Shipper
6. Tennessee Corporation	50,000	NGPL [1] Tennessee [3]	System Supply of LDCs; End Users.
7. TXO Production Corporation	50,000	NGPL [1]; Tennessee [3]; Col. Gulf [4].	System Supply of LDCs; End Users.

[1] Natural Gas Pipeline Company of America would transport pursuant to NGPA § 311 and/or Order No. 436.
[2] LDC=Local Distribution Company
[3] Tennessee Gas Pipeline Company would transport pursuant to NGPA § 311 and/or Order No. 436.
[4] Texas Eastern Transmission Company would transport pursuant to NGPA § 311.
[5] Columbia Gas Transmission Corporation would transport pursuant to NGPA §311.
[6] Columbia Gulf Transmission Company would transport pursuant to Order No. 436.

4. Arkla Energy Resources, a division of Arkla, Inc.

[Docket No. CP87-459-000]

August 10, 1987.

Take notice that on July 23, 1987, Arkla Energy Resources, a division of Arkla, Inc. (Applicant), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP87-459-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the continued operation and provision of certain existing facilities and services and for determinations of the jurisdictional status of other services, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that increased internal scrutiny of its operations resulting from managerial and structural changes in the units and division of Arkla, Inc. and an increase in Applicant's activities subject to the Commission's jurisdiction, has revealed that at times in the past incomplete attention may have been given to certain regulatory requirements of this Commission. As a result of the increased internal scrutiny, Applicant has determined that certain of its existing facilities and services may lack necessary and appropriate certificate authority. Applicant asserts that these apparent changes in the operation of its system, in the nature of certain transactions, and in its understanding of the Commission's jurisdiction over gathering-related facilities and services and over gathering area exchanges. Applicant specifically requests jurisdictional authority covering two exchanges involving reserved gas, two other exchanges, various facilities and other services in the northwest Arkansas area of its system, and certain other facilities and services at various locations throughout its system.

Applicant seeks whatever additional certificate authority may be required for the continued use and performance of all such facilities and services. Applicant asserts that its current arrangement has instituted stringent procedures to assure that in the future such regulatory oversights do not occur and that appropriate authorizations are obtained in a timely manner. Applicant states that its Regulatory Department is now an integral part of its Operations Group. Applicant further states that its participation, review and clearance is required for all activities undertaken by its Operations Group, e.g., planning, engineering, construction, gas control and dispatching, which could have regulatory ramifications. It is further asserted that activities in other groups within the Applicant's operation which could have regulatory implications, e.g., accounting classification of new facilities, also must receive clearance from Applicant's Regulatory Department prior to their implementation. It is further stated that Applicant's procedures now assure that the installation of any new facilities and the initiation of new services would receive prior approval by Applicant's Regulatory Department and that in the future the Applicant would comply fully and in a timely manner with the requirements of this and other agencies.

Comment date: August 31, 1987, in accordance with Standard Paragraph F at the end of this notice.

5. Shell Gas Pipeline Company

[Docket No. CP87-459-000]

August 10, 1987.

Take notice that on July 24, 1987, as supplemented on August 3, 1987, Shell Gas Pipeline Company (SGPC), P.O. Box 2463, Houston, Texas 77252-2463, filed in Docket No. CP87-459-000 a petition for an order declaring certain pipeline facilities proposed to be constructed and operated in federal waters on the Outer Continental Shelf (OCS) exempt under section 1(b) of the Natural Gas Act (NGA), all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

SGPC states that natural gas has been found by its affiliate, Shell Offshore Inc. (SOI), in federal OCS waters, Green Canyon (GC) Block 19, offshore Louisiana. It is stated that SOI is the operator of GC19 and also owns 100 percent of the working interest in the block. SGPC proposes to construct 27 miles of 16-inch pipeline from SOI's Boxer production platform in GC19 to a subsea tie-in to Tennessee Gas Pipeline Company's (Tennessee) 16-inch diameter pipeline in Eugene Island (EI) Block 367, referred to as the Boxer line.

It is stated that SOI currently plans to sell all gas produced from GC19 to Shell Gas Trading Company, a wholly-owned subsidiary of Shell Oil Company, at the platform. It is also stated that SOI plans to reserve processing rights for the gas, which would be processed after it is transported onshore at the Ysclosky processing plant in St. Bernard Parish, Louisiana.

SGPC states that some of the gas producing wells on the Boxer platform are true gas wells while others are oil wells capable of producing varying quantities of casinghead gas, therefore, SOI plans to install compressors on the Boxer platform for the purpose of raising the pressure of naturally low pressure casinghead gas to the level of the higher pressure gas well gas. It is stated that the combined stream of casinghead gas and gas well gas would then undergo

simple mechanical dehydration before the commingled gas flows into the Boxer line at the natural prevailing wellhead pressure of the gas well gas. It is further stated that the Maximum inlet pressure at GC19 would be 1350 psig which is required in order to deliver gas at Tennessee's interconnection at the pressure of 1200 psig, the prevailing pressure in Tennessee's 16-inch jurisdictional line. It is stated that the pressure rating of the proposed Boxer line is 1440 psig.

SGPC asserts that because SOI plans to reserve processing rights and to retain title to all entrained natural gas liquids and liquefiables the production process would not be complete until the gas is finally processed to pipeline transmission quality at the Yscloskey processing plant onshore in St. Bernard Parish, Louisiana.

SGPC has stated that the estimated cost of the proposed facilities is $12,500,000. It is stated that Shell Energy Resources Inc., a holding company owned by Shell Oil Company, would make a capital contribution to SGPC in order to finance the proposed project.

Comment date: August 31, 1987, in accordance with Standard Paragraph F at the end of this notice.

6. Great Lakes Gas Transmission Company

[Docket No. CP87-474-000]

August 11, 1987.

Take notice that on July 31, 1987, Great Lakes Gas Transmission Company (Great Lakes), 2100 Buhl Building, Detroit, Michigan 48226, filed in Docket No. CP87-474-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for the account of Ford Motor Company (Ford), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Great Lakes states that Ford has requested that Great Lakes transport up to 110,000 Mcf of natural gas per day, on an interruptible basis, which Ford or Ford's wholly-owned subsidiary, Rouge Steel Company (Rouge) would purchase from SEMCO Energy Services, Inc. (SEMCO), a wholly owned subsidiary of Southeastern Michigan Gas Enterprises, Inc., which also owns Southeastern Michigan Gas Company (Southeastern Michigan), a local distribution company in the State of Michigan. It is further stated that Great Lakes would transport the natural gas from a point on the International Border between the United States and Canada, at Emerson, Manitoba, where the facilities of Great Lakes interconnect with the facilities of TransCanada Pipe Lines Limited, to points where Great Lakes' facilities interconnect with those of (1) ANR Pipeline Company (ANR Pipeline) at Muttonville, Michigan; (2) ANR Pipeline at Farwell, Michigan; and (3) Michigan Consolidated Gas Company (MichCon) at Belle River Mills, Michigan. Great Lakes indicates that the term of the proposed arrangements would end three years after the date of all regulatory approvals. It is further indicated that Ford and Great Lakes have entered into a transportation service agreement (Agreement) dated June 10, 1987, which would implement these arrangements.

Great Lakes states that the Agreement provides for a rate for the transportation service which is equal to the 100 percent load factor rate applicable to deliveries in the Eastern Zone under Great Lakes' existing Rate Schedule T-4 of Great Lakes FERC Gas Tariff, Original Volume No. 2. It is further stated that no new facilities would be required to provide the proposed service.

Great Lakes states that Ford has entered into transportation arrangements for the benefit of both itself and Rouge, with ANR Pipeline, MichCon. Southeastern Michigan, Michigan Gas Utilities and Consumers Power Company, for subsequent transportation to various points of interconnection between the facilities of Ford and Rouge with these companies, all located in the State of Michigan.

Great Lakes indicates that the volumes of natural gas to be transported for the account of Ford would be imported by SEMCO pursuant to import authorization being sought by SEMCO from the Economic Regulatory Administration. It is further indicated that the transportation of these volumes by ANR Pipeline would be expected to be performed under authorization of Part 284 of the Commission's Regulations. Great Lakes states that no other authorizations would be required to implement the transportation arrangements.

Comment date: September 1, 1987, in accordance with Standard Paragraph F at the end of this notice.

7. United Gas Pipe Line Company

[Docket No. CP87-471-000]

August 11, 1987.

Take notice that on July 31, 1987, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP87-471-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a direct industrial sale service to Air Products and Chemicals, Inc. (Air Products), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United states that it has notified Air Products by letters dated January 30, 1987, that its present firm service contract would terminate on February 1, 1987. United further states that continuation of this service is not in the public interest and it requests that the Commission permit the termination of direct sale service to the extent required.

United is not requesting abandonment authority of any facilities. United states that the subject delivery facilities would be left in place to accommodate either future transportation service or new sales service if appropriate contractual arrangements can be made. United states that if such new arrangements are not made, it will file to abandon such facilities.

Comment date: September 1, 1987, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commisison's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if

the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,
Secretary.

[FR Doc. 87-18752 Filed 8-14-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. CP87-496-000 et al.]

Natural Gas Certificate Filings; Gas Gathering Corp. et al.

August 12, 1987.

Take notice that the following filings have been made with the Commission:

1. Gas Gathering Corporation

[Docket No. CP87-496-000]

Take notice that on August 7, 1987, Gas Gathering Corporation (Gas Gathering), P.O. Box 519, Hammond, Louisiana 70404, filed in Docket No. CP87-496-000 a request pursuant to §§ 157.205 and 284.223 of the Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to transport natural gas on behalf of Hadson Gulf, Inc. (Hadson), under the certificate issued in Docket No. CP86-129-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Gas Gathering proposes to transport up to 10,000 MMBtu of natural gas per day and up to 2,920,000 MMBtu of natural gas per year on behalf of Hadson. Gas Gathering states it would receive the natural gas at an existing measurement station owned and operated by Gas Gathering in St. Martin Parish, Louisiana. Gas Gathering further states it would redeliver the natural gas to Transcontinental Gas Pipe Line Corporation (Transco) at the inlet of an existing measurement station owned and operated by Transco in Pointe Coupee Parish, Louisiana.

Gas Gathering states that on May 1, 1987, it commenced transporting the natural gas on behalf of Hadson to Transco, on an interruptible basis, pursuant to § 284.223 (18 CFR 284.223). Gas Gathering further states that the transportation would be performed under its FERC Rate Schedule IT-1 at the currently effective rate of 10.1 cents per MMBtu. Gas Gathering indicates that no new facilities would be required in order to initiate the transportation service for Hadson.

Comment date: September 28, 1987, in accordance with Standard Paragraph G at the end of this notice.

2. Panhandle Eastern Pipe Line Company

[Docket No. CP87-482-000]

Take notice that on August 5, 1987, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP87-482-000 a request pursuant to § 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon service to four direct industrial customers and related tap and metering facilities, under the certificate issued in Docket No. CP86-83-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Specifically, Panhandle proposes to abandon service previously provided to: (1) Mantle Mining Company, formerly C-E Refractories and Walsh Refractories (Mantle); (2) Columbia Brick and Tile Company, formerly Edwards Conley Brick and Tile Company (Columbia); (3) Colonial Brick Company, formerly Clay City Pipe Line (Colonial); and (4) Phillips 66 Natural Gas Company (Phillips). Panhandle states that it has received letters from Mantle, Columbia and Phillips consenting to the proposed abandonment of service. It is further stated that Panhandle has not obtained a letter of consent from Colonial. However, Colonial's Brick Plant is no longer in existence and no gas has been delivered to Colonial since its industrial gas contract expired April 30, 1979, it is asserted. Panhandle also proposes to remove associated taps and metering facilities located in Audrain, Boone, Vermilion and Johnson Counties, Missouri.

Comment date: September 28, 1987, in accordance with Standard Paragraph G at the end of this notice.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice of the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,
Secretary.

[FR Doc. 87-18753 Filed 8-14-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP88-15-031]

Proposed Changes in FERC Tariff; Columbia Gas Transmission Corporation

August 12, 1987.

Take notice that Columbia Gas Transmission Corporation (Columbia), on August 7, 1987, tendered for filing proposed changes to its FERC Gas Tariff, Original Volume No. 1, identified on Appendix A to this notice, and moves the Commission to accept such changes subject to and pending the Commission's order concerning the requests for rehearing filed with respect to the Commission's June 18, 1987 order issued in these proceedings. The tariff sheets listed on Appendix A bear an issue date of August 5, 1987 and a proposed effective date of April 1, 1987, and contain the penalty provisions for the firm (FTS-1 and 2) and interruptible (ITS-1 and 2) transportation rate schedules of Columbia revised to conform to the Commission's June 18 order.

Columbia states that the revised tariff sheets listed in Appendix A contain all of the revisions to section 6 of the transportation rate schedules required by the June 18 order. Columbia will file revised tariff sheets to reflect the other changes required by the June 18 order and the order on rehearing, in accordance with Ordering Paragraph (F) of the June 18 order.

Columbia's request, basically, is to make the tariff sheets listed on Appendix A effective for the period April 1, 1987 through the date on which the Commission accepts and makes effective revised tariff sheets filed after the order on rehearing of the June 18 order is issued, without prejudice to the pending requests for rehearing and clarification of the Commission's rulings concerning the penalty provisions. Columbia needs to have the provisions of section 6 of the transportation tariffs in place now so that it may approach some semblance of balance on its system and avoid the operational problems associated with transportation imbalances prior to the onset of winter. The revised tariff sheets should be accepted for filing as an interim solution to Columbia's problems pending the Commission's final decision.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 18, 1987.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

Appendix A

Original Volume No. 1

Second Revised Sheet No. 22D
Second Revised Sheet No. 22E
Original Sheet No. 22E1
Original Sheet No. 22E2
Original Sheet No. 22E3
Second Revised Sheet No. 22F
Second Revised Sheet No. 22O
Second Revised Sheet No. 22P
Original Sheet No. 22P1
Original Sheet No. 22P2
Original Sheet No. 22P3
Second Revised Sheet No. 22Q

[FR Doc. 87-18747 Filed 8-14-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-14-031]

Proposed Changes in FERC Tariff; Columbia Gulf Transmission Company

August 12, 1987.

Take notice that Columbia Gulf Transmission Company (Columbia Gulf), on August 7, 1987, tendered for filing proposed changes to its FERC Gas Tariff, Original Volume No. 1, identified on Appendix A to this notice, and moves the Commission to accept such changes subject to and pending the Commission's order concerning the requests for rehearing filed with respect to the Commission's June 18, 1987 order issued in these proceedings. The tariff sheets listed on Appendix A bear an issue date of August 5, 1987 and a proposed effective date of April 1, 1987, and contain the penalty provisions for the firm (FTS-1 and 2) and interruptible (ITS-1 and 2) transportation rate schedules of Columbia Gulf revised to conform to the Commission's June 18 order.

Columbia Gulf states that the revised tariff sheets listed in Appendix A contain all of the revisions to section 6 of the transportation rate schedules required by the June 18 order. Columbia Gulf will file revised tariff sheets to reflect the other changes required by the June 18 order and the order on rehearing, in accordance with Ordering Paragraph (F) of the June 18 order.

Columbia's Gulf request, basically, is to make the tariff sheets listed on Appendix A effective for the period April 1, 1987 through the date on which the Commission accepts and makes effective revised tariff sheets filed after the order on rehearing of the June 18 order is issued, without prejudice to the pending requests for rehearing and clarifications of the Commission's rulings concerning the penalty provisions. Columbia Gulf needs to have the provisions of section 6 of the transportation tariffs in place now so that it may approach some semblance of balance on its system and avoid the operational problems associated with transportation imbalances prior to the onset of winter. The revised tariff sheets should be accepted for filing as an interim solution to Columbia Gulf's problems pending the Commission's final decision.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 18, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

Appendix A—Columbia Gulf Transmission Company List of Proposed Tariff Sheets to be Effective April 1, 1987

FERC Gas Tariff, Original Volume No. 1

Second Revised Sheet No. 161
Second Revised Sheet No. 162
Original Sheet No. 162A
Original Sheet No. 162B
Original Sheet No. 162C
Original Sheet No. 162D
Original Sheet No. 162E
Second Revised Sheet No. 163
Second Revised Sheet No. 200
Second Revised Sheet No. 201
Original Sheet No. 201A
Original Sheet No. 201B
Original Sheet No. 201C
Original Sheet No. 201D
Second Revised Sheet No. 202
Second Revised Sheet No. 237
Second Revised Sheet No. 238
Original Sheet No. 238A
Original Sheet No. 238B
Original Sheet No. 238C
Original Sheet No. 238D
Original Sheet No. 238E
Second Revised Sheet No. 256
Second Revised Sheet No. 285
Second Revised Sheet No. 286
Original Sheet No. 286A
Original Sheet No. 286B
Original Sheet No. 286C
Original Sheet No. 286D
Original Sheet No. 286E
Second Revised Sheet No. 287

[FR Doc. 87-18748 Filed 8-14-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP78-96-003]

Proposed Changes in FERC Gas Tariff; Trunkline Gas Co.

August 11, 1987.

Take notice that on July 31, 1987, Trunkline Gas Company (Trunkline) tendered for filing Eleventh Revised Sheet No. 21-C.8 to its FERC Gas Tariff, Original Volume No. 1.

Trunkline states that on February 8, 1980, the Commission approved a Stipulation and Agreement (Agreement) in the proceedings entitled *Kaskaskia Gas Company, et al.* v. *Trunkline Gas Company*, in the subject docket. Trunkline further states that under the terms of the Agreement, certain Small Customers as defined in Article II of the Agreement, are permitted to add new Priority 1 requirements up to 10 percent of their original annual base period volumes during the first twelve-month period and up to 8 percent of their original annual base period volumes in each succeeding twelve-month period

that the Agreement is in effect. Further, it states Article V of the agreement requires the Small Customers to report to Trunkline changes in their estimated monthly and annual volumes, which changes are to be reflected as adjustments to the monthly base period volumes for each Small Customer. Trunkline states that Eleventh Revised Sheet No. 21–C.8 reflects these adjustments in the monthly base period for each Customer. Trunkline proposes an effective date of September 1, 1987.

Trunkline states that copies of this filing have been served on all customers subject to the tariff sheet and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214 (1981)). All such motions or protests should be filed on or before August 17, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–18749 Filed 8–14–87; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3210–8(5)]

Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA is making available to the public a document entitled "Guidance of EPA Class I Clean Water Act Administrative Penalty Procedures" which will provide procedural guidance in the assessment of administrative penalties designated as Class I under section 309(g), 33 U.S.C. 1311(g).

EFFECTIVE DATE: This guidance document will be effective on August 17, 1987.

ADDRESS: To obtain a copy of the guidance, write to:

Water Enforcement Division (LE–134W), Attention: Assistant Enforcement Counsel Southern Regions Branch, Office of Enforcement and Compliance Monitoring, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

FOR FURTHER INFORMATION CONTACT: John W. Lyon, Assistant Enforcement Counsel, Environmental Protection Agency, Telephone 202/475–8177, (FTS) 475–8177.

SUPPLEMENTARY INFORMATION: Section 314 of the Water Quality Act of 1987, Pub. L. 100–4, added section 309(g) to the Clean Water Act (the Act) to provide for the assessment of administrative civil penalties. The statute established two classes of administrative civil penalties, Class I and Class II. Class I administrative civil penalty assessments may not exceed $10,000 per violation, or exceed a total amount of $25,000. Class II assessments may not exceed $10,000 per day for each day during which the violation continues, or exceed a total assessment of $125,000. Both classes of administrative civil penalties may be assessed for violations of section 301, 302, 306, 307, 308, 318, or 405 of the Act, or for violations of any permit condition or limitation implementing any of these sections in a permit issued under Section 402 by the Administrator or by a State, or in a permit issued under section 404 by a State.

This notice is to advise the public of the availability of guidance which the Agency will follow in issuing Class I administrative civil penalty orders. The guidance is written in the form of regulatory amendments with the expectation that EPA will later notice them for proposed rulemaking. An interim final rule guiding the assessment of Class II administrative penalties is also being published in the Federal Register.

Lee M. Thomas,

Administrator, Environmental Protection Agency.

Date: August 10, 1987.

[FR Doc. 87–18800 Filed 8–14–87; 8:45 am]

BILLING CODE 6560-50-M

[FRL–3248–4]

EPA List of Facilities Prohibited From Receiving Government Contracts Under 40 CFR Part 15

AGENCY: Environmental Protection Agency.

ACTION: EPA list of facilities prohibited from receiving government contracts under 40 CFR Part 15.

SUMMARY: 40 CFR 15.40 requires the Environmental Protection Agency (EPA) to publish in the Federal Register semi-annually a list of all persons and facilities prohibited under 40 CFR Part 15 from receiving federal government contracts, grants, loans, subcontracts, subgrants, or subloans. The following list contains the names and locations of the prohibited facilities, as well as the dates they were placed on the list and the effective date of each listing.

DATE: This list is current as of August 17, 1987.

FOR FURTHER INFORMATION CONTACT: Alex Varela, Listing Official, Office of Enforcement and Compliance Monitoring, Environmental Protection Agency, Rm. 112 NE Mall (LE–130A), 401 M St., SW., Washington, DC 20460. Telephone (202) 475–8777.

SUPPLEMENTARY INFORMATION: Pursuant to section 306 of the Clean Air Act (42 U.S.C. 1845 et seq., as amended by Pub. L. 91–604), section 508 of the Clean Water Act (33 U.S.C. 1251 et seq., as amended by Pub. L. 92–500). and E.O. 11738, EPA has been authorized to provide certain prohibitions and requirements concerning the administration of the Clean Air Act and the Clean Water Act with respect to federal contracts, grants, loans, subcontracts, subgrants, and subloans. On April 16, 1975, regulations implementing the requirements of the statutes and Executive Order were promulgated in the Federal Register (See 40 CFR Part 15, 40 FR 17124, April 16, 1975, as amended at 44 FR 6911, February 5, 1979). On September 5, 1985, revisions to those regulations were promulgated in the Federal Register (See 50 FR 36188, September 5, 1985). The regulations provide for the establishment of a List of Violating Facilities which reflects those facilities ineligible for use in nonexempt federal contracts, grants, loans, subcontracts, subgrants, or subloans

The list of Violating Facilities is comprised of two sublists. Sublist 1, mandatory listing (40 CFR 15.10), includes those facilities listed on the basis of a conviction under section 113(c)(1) of the Clean Air Act or section 309(c) of the Clean Air Act. Sublist 2, discretionary listing (40 CFR 15.11), includes those facilities listed on the basis of continuing or recurring noncompliance with clean air or clean water standards, and:

1. A conviction by a federal court under section 113(c)(2) of the Clean Air Act, or

2. Any injunction, order, judgment, decree (including consent decrees) or other form of civil ruling by a federal, state or local court issued as a result of

noncompliance with clean air or water standards, or

3. A conviction by a state or local court of a criminal offense on the basis of noncompliance with clean air standards or clean water standards, or

4. Violation of an administrative order issued under sections 113(a), 113(d), 167, or 303 of the Clean Air Act of section 309(a) of the Clean Water Act, or

5. A Notice of Noncompliance issued by EPA under section 120 of the Clean Air Act, or

6. An enforcement action filed by EPA in federal court under sections 113(b), 167, 204, 205, or 211 of the Clean Air Act of section 309(b) of the Clean Water Act due to noncompliance with clean air or water standards.

This Notice reflects:

• The removal of the Pioneer Excavating (d/b/a Rocky Mountain Materials and Excavating) Colorado Springs, Colorado facility from Sublist 1 of the List of Violating Facilities. The Pioneer Excavating Colorado Springs facility was added to the List of Violating Facilities on February 13, 1986, based on a conviction obtained against the company under section 309(c)(1) of the Clean Water Act. Pursuant to 40 CFR 15.20, a facility may be removed from Sublist 1 if the Assistant Administrator certifies that the condition giving rise to the listing has been corrected. The Assistant Administrator for Enforcement and Compliance Monitoring, U.S. Environmental Protection Agency, certifies that the Pioneer Excavating Colorado Springs facilitiy has corrected the condition which give rise to listing, and has removed the facility from the List of Violating Facilities as of March 31, 1987.

• The removal of the B.F. Goodrich Company Louisville, Kentucky facility from Sublist 2 of the List of Violating Facilities. The facility was added to the List of Violating Facilities on February 10, 1986, based on a determination of countinuing or recurring noncompliance with the Clean Air Act, 42 U.S.C. 113(b) and 40 CFR 61.64(a)(2) and 61.84(e)(1)(ii) (See 51 6470, February 24, 1986). Pursuant to 40 CFR 15.21(a)(3), removal from Sublist 2 is automatic after one year, unless a new basis for listing arises under 40 CFR 15.10, or 40 CFR 15.11(a)(1), (a)(2) or (a)(3), before the expiration of the one-year period. The Assistant Administrator for Enforcement and Compliance Monitoring, U.S. Environmental Protection Agency, certifies that since no new basis for listing exists, the B.F. Goodrich Louisville, Kentucky facility has been removed the List of Violating Facilities as of February 10, 1987.

• The removal of the Robert E. Derecktor of Rhode Island, Inc. Middetown, Rhode Island facility (REDRI) from Sublist 1 of the List of Violating Facilities. The REDRI facility was added to the List of Violating Facilities on December 29, 1986, based upon a criminal conviction of 24 counts of violating section 309(c) of the Clean Water Act and one count of violating section 113(c) of the Clean Air Act. Pursuant to 40 CFR 15.20, the Assistant Administrator for Enforcement and Compliance Monitoring, U.S. Environmental Protection Agency, certifies that the FRDRI facility has corrected the condition which give rise to listing, and has removed the facility from the List of Violating Facilities as of April 17, 1987.

• The removal of the Seattle, Washington facility of Janco United, Inc. (Janco) from Sublist 1 of the List of Violating Facilities. Janco was added to the List of Violating Facilities on May 5, 1986, based upon a criminal conviction for violating section 309(c) of the Clean Water Act. Pursuant to 40 CFR 15.20, the Assistant Administrator for Enforcement and Compliance Monitoring, U.S. Environmental Protection Agency, certifies that Janco has corrected the condition which gave rise to listing, and has removed the facility from the list of Violating Facilities as of April 29, 1987.

• The removal of the Old Pin Shop, Oakville, Connecticut facility from Sublist 1 of the List of Violating Facilities. The Old Pin Shop facility was added to the List of Violating Facilities on December 19, 1985, based upon a criminal conviction for violating section 113(c) of the Clean Air Act. Pursuant to 40 CFR 15.20, the Assistant Administrator for Enforcment and Compliance Monitoring, U.S. Environmental Protection Agency, certifies that the Old Pin Shop has corrected the condition which gave rise to the listing, and has removed the facility from the List of Violating Facilities as of July 28, 1987.

• The removal of Marine Power and Equipment Company's Lake Union and Duwamish River (Washington) facilities from Sublist 1 of the List of Violating Facilities. The Lake Union and Duwamish River facilities were added to the List of Violating Facilities on April 27, 1987, based upon a criminal conviction of 20 counts of violating section 309(c) of the Clean Water Act. Pursuant to 40 CFR 15.20, the Assistant Administrator for Enforcement and Compliance Monitoring, U.S. Environmental Protection Agency, certifies that Marine Power and Equipment has corrected the condition which gave rise to listing, and has removed the facility from the List of Violating Facilities as of August 4, 1987.

Other additions to and deletions from the List of Violating Facilities will be published periodically as they occur. Facilities on the List also are included in the General Services Administration's "Consolidated List of Debarred, Suspended, and Ineligible Contractors." Subscriptions to this document may be obtained from the U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

List of Violating Facilities

Name	Location
Effective date	Basis for listing
Sublist 1: Mandatory Listing	
Chemical Formulators.	Mitro, West Virginia Facility.
Jan. 29, 1981	Clean Water Act Sec. 309(c)(1).
Waterbury House Wrecking Company.	Waterbury, Connecticut Facility.
Dec. 19, 1985	Clean Air Act Sec. 309(c)(1).
Fleischman's Yeast, Inc Division of Burns, Philp & Company, Ltd.	Sumner, Washington Facility.
May 14, 1986, effective date of listing.	Clean Water Act Sec. 309(c)(1).
Nov. 14, 1986, effective date of facility's transfer from Nabisco to Burns, Philp.	
Will and Baumer, Inc.	Liverpool, New York Facility.
June 10, 1986	Clean Water Act Sec. 309(c)(1).
Johnson and Towers, Inc.	Mount Laurel, New Jersey Facility.
June 17, 1986	Clean Water Act Sec. 309(c)(1).
Hope Resource Recovery, Inc.	Long Island, New York Facility.
Sept. 18, 1986	Clean Air Act Sec. 113(c)(1).
Sea Glasner Marine, Inc.	Bellevue, Washington Facility.
Oct. 6, 1986	Clean Water Act Sec. 309(c)(1).
Sea Park Bark Supply.	Tacoma, Washington Facility.
Oct. 21, 1986	Clean Water Act Sec. 309(c)(1).
Ocean Reef Club, Inc.	Key Largo, Florida Facility.
Oct. 22, 1986	Clean Water Act Sec. 309(c)(1).
Irvin Pearlman	Pittsburgh, Pennsylvania Facility.
December 30, 1986	Clean Air Act Sec. 113(c)(1).
Salvatore C. Williams	Pittsburgh, Pennsylvania Facility.
December 30, 1986	Clean Air Act Sec. 113(c)(1).
USM Corp.	New Bedford, Massachusetts Facility.
December 31, 1986	Clean Air Act Sec. 309(c)(1).
Sublist 2: Discretionary Listing	
None	

Dated: August 7, 1987.

Thomas L. Adams, Jr.,

Assistant Administrator for Enforcement and Compliance Monitoring.

[FR Doc. 87-18717 Filed 8-14-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

August 6, 1987.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Jerry Cowden, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: None
Title: Sections 1.1404 and 1.1408, Pole Attachment Complaint Procedures
Action: Existing collection in use without an OMB control number
Respondents: Business (including small businesses)
Frequency of Response: On occasion
Estimated Annual Burden: 54 Responses; 162 Hours
Needs and Uses: Congress mandated pursuant to 47 U.S.C. 224 that the FCC ensure that the rates, terms, and conditions under which cable television operators attach their hardware to utility poles are just and reasonable. Section 224 also mandates establishment of an appropriate mechanism to hear and resolve complaints concerning the rates, terms and conditions for pole attachments. Sections 1.1404 and 1.1408 of the Commission's Rules were promulgated to implement section 224. The information will be used by FCC staff to determine the sufficiency of the complaint and calculate the maximum rate under the Commission's formula.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–18690 Filed 8–14–87; 8:45am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Overview Communications Ltd. et al.

1. The Commission has before it the following mutually exclusive applications for a new TV station:

Applicant, City, and State	File No.	MM Docket No.
A. Chuck Hicks d/b/a Overview Communications, Ltd., Janesville, WI.	BPCT–861222KE	87–290
B. Blackhawk Broadcasting, Corp., Janesville, WI.	BPCT–870218KE	87–290
C. Tri-M Communications, Ltd., Janesville, WI.	BPCT–870317KE	87–290
D. Channel 47 Limited Partnership, Janesville, WI.	BPCT–870317KF	87–290
E. Herold Corp., Janesville, WI.	BPCT–870317KG	87–290

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading, Applicant(s)

Satellite, D
Air Hazard, C, D
Comparative, A, B, C, D, E
Ultimate, A, B, C, D, E

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

Stephen F. Sewell,

Assistant Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 87–18692 Filed 8–14–87; 8:45 am]

BILLING CODE 6712-01-M

Applications For Consolidated Hearing; Ronald H. Livengood et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City, and State	File No.	MM Docket No.
A. Ronald H. Livengood, Somerset, KY.	BPH–860711QJ	87–304
B. Cora P. Knight d/b/a Knight Broadcasting Company, Somerset, KY.	BPH–860712NI	
C. Cumberland Communications, Inc., Somerset, KY.	BPH–860712NJ (Dismissed)	

2. Pursuant to 47 U.S.C. 309(e), the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding hearings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading, Applicant(s)

1. Air Hazard, A, B
2. Comparative, A, B
3. Ultimate, A, B

3. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87–18691 Filed 8–14–87; 8:45 am]

BILLING CODE 6712-01-M

RF Emissions; Editorial Changes Made to the FCC Measurement Procedure for Computers

The Office of Engineerig and Technology announces the availability of an improved Measurement Procedure, MP–4, entitled "FCC Methods of Measurement of Radio Noise Emissions From Computing Devices." The revised document provides greater detail on the procedures used to test computers for compliance with its rules.

MP–4 is the measurement procedure used by the Commission to determine compliance of computers and other digital electronic equipment subject to the interference control requirements in Subpart J of Part 15 of the FCC Rules. Over the past year, it has come to our

attention that a number of manufacturers and independent test firms have experienced difficulty duplicating the measurements performed by the FCC Laboratory. Although there are several suspected reasons for this problem, we thought it would be helpful to industry to specify in greater detail the procedure used by the Commission to measure computers. The revised procedure MP–4, dated July 1987, has a number of minor editorial changes along with greater specificity in the procedure to measure personal computers and peripherals subject to approval (certification) by the Commission. It also has a new title: "FCC Procedure for Measuring FR Emissions From Computing Devices." The revised MP–4 is available from the FCC Consumer Assistance Office, 1919 M Street, NW, Washington, DC 20554.

Major changes to MP–4 will be considered by the Commission when the proposal by the Computer and Business Equipment Manufacturers Association (CBEMA) to revise MP–4 is reviewed later this year.

For more information, contact the Chief, Sampling and Measurement Branch, FCC Laboratory, 7435 Oakland Mills Road, Columbia, MD 21046, telephone number 301–725–1585.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–18712 Filed 8–14–87; 8:45 am]

BILLING CODE 6712–01–M

Radio NDISC Emissions from Computing Devices; Proposed Revision to Measurement Procedure (MP–4)

The Office of Engineering and Technology solicits comments on a proposal filed by the Computer Business and Equipment Manufacturers Association (CBEMA) seeking major revisions to Measurement Procedure, MP–4, entitled "FCC Methods of Measurement of Radio Noise Emissions from Computing Devices." Comments are requested to assist the Chief Engineer in making a decision to initiate a proceeding to revise MP–4 as suggested by CBEMA. Comments by interested parties on the CBEMA proposal and other aspects of MP–4 are requested by September 30, 1987. Reply comments are due by November 15, 1987.

MP–4 is the measurement procedure used by the Commission's Laboratory to determine compliance of computers and other digital electronic equipment subject to the interference control requirements in Subpart J of Part 15 of FCC Rules. CBEMA argues that in the last five years since MP–4 was adopted by the Commission, the computer industry has undergone dynamic changes necessitating a fresh new review of the measurement procedure. The proposal, which according to CBEMA absorbed more than one year of study and committee work, requests a substantial revision to the current methods of measurement utilized by the FCC and the computer industry in determining the level of radio frequency emissions from computers.

Before considering the major revisions requested by CBEMA, the Office of Engineering and Technology is accepting any comments from interested parties. The comments may be inclusive of the CBEMA proposal or other aspects of MP–4, but are restricted to the measurement procedure. After appropriate review of the comments and proposal, a proceeding may be initiated to revise MP–4.

A copy of the CBEMA proposal may be obtained by contacting: Ms. Laura Brown, Computer and Business Equipment Manufacturers Association, 311 First Street, NW, Washington, DC 20001.

These individuals interested in filing comments shall submit them no later than September 15, 1987 to: Chief, Sampling and Measurement Branch, FCC Laboratory, 7435 Oakland Mills Road, Columbia, MD 21046.

All comments received by September 30, 1987 will be retained at the Laboratory for inspection. Reply comments are requested by November 15, 1987.

For more information about this public notice, contact Art Wall at 301–725–1585.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–18713 Filed 8–14–87; 8:45 am]

BILLING CODE 6712–01–M

Acknowledgement of National Voluntary Laboratory Accreditation Program

The National Voluntary Laboratory Accreditation Program (NVLAP) of the Department of Commerce's National Bureau of Standards (NBS) is acknowledged on the Commission's list of acceptable independent test facilities.[1] This acknowledgement is in the form of an asterisk beside the name of the facility accredited by NBS on the FCC list of independent test facilities.

As part of the Commission's equipment authorization program to control the interference potential of various electronic devices, such as computers, a list of independent test facilities that meet the requirements of § 15.38 of the Rules is published quarterly as a service to manufacturers who must have equipment tested to show compliance with FCC Rules.[1] The filings required by § 15.38 provide minimum information about each laboratory.

Since September 1986, NBS accredited 16 laboratories for selected test methods under a new electromagnetic Laboratory Accreditation Program (LAP). NBS established this LAP at the request of five commercial testing laboratories seeking international recognition for EMC accreditation. International recognition of U.S. Laboratories and test methods have been a high priority of industry groups and equipment manufacturers to aid them in exporting their products to foreign countries.

With NVLAP accreditation, the laboratories automatically receive international recognition for their testing services through NBS' agreements with the United Kingdom's National Measurement Accreditation Service, Australia's National Association of Testing Authorities, and New Zealand's Testing Laboratory Registration Council. Under these agreements, test data reports issued by an accredited laboratory in one system are recognized by the other national accreditation systems.

Under NVLAP procedures, laboratories can apply for accreditation in one or more of the recognized test methods that make up the electromagnetics LAP. The LAP provides recognition to accredited laboratories that are capable of performing specific test methods for conducted emissions, radiated emissions, and terminal equipment compatibility in accordance with FCC standards. Laboratories accredited by NBS under NVLAP for testing compliance of computing devices subject to Subpart J of Part 15 of the FCC Rules will be acknowledged with an asterisk on the Commission's list of test facilities.

For further information, contact Mr. Frank Rose at 202–653–6288 or Mr. Art Wall at 301–725–1585.

[1] The list of test facilities is available by writing to the Chief, Sampling and Measurement Branch, FCC Laboratory, 7435 Oakland Mills Road, Columbia, MD 21046 or by accessing the Laboratory's Public Access Link with a modem and dialing 301–725–1072.

Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 87-18714 Filed 8-14-87; 8:45 am]
BILLING CODE 6712-01-M

Tutorials Offered on the Measurement of Personal Computers

The Office of Engineering and Technology announces the scheduling of four tutorial sessions in October, 1987 at the FCC Laboratory in Columbia, Maryland on the testing of personal computer systems.

Personal computers and associated peripherals are subject to certification by the Commission to show compliance with the interference control requirements in Subpart J of Part 15 of the FCC Rules. Compliance is determined by measuring personal computers in accordance with Measurement Procedure, MP-4, entitled "FCC Procedure For Measuring RF Emissions From Computing Devices." Over the past year, it has come to our attention that a number of manufacturers and independent test firms have experienced difficulty duplicating the measurements performed at the Laboratory. To assist industry and these test firms in the way the FCC Laboratory tests personal computer systems, four tutorial sessions have been scheduled at the Laboratory. The sessions have been tentatively scheduled for October 13, 14, 15 and 16, 1987. Each session will be limited to 20 individuals to maximize the benefit of the instructions and demonstrations. Additional sessions will be scheduled if demand exceeds the four sessions. Each session will begin at 10:00 a.m., end at 4:00 p.m. and will cover the measurement procedure for personal computers only. Demonstrations of the radiated and AC powerline conducted testing will be given, after an overview of the procedures. Ample time will also be given for a question and answer session. The sessions are intended only for those individuals already familiar with MP-4. A break for lunch will be given from 12:00 to 2:00 p.m., but attendees must provide for their own lunch as well as their own transportation to the Laboratory.

Individuals interested in attending one of these tutorial sessions, may do so on a first-come basis by contacting: Ms. Karen Deming, FCC Laboratory, 7435 Oakland Mills Road, Columbia, MD 21046, Telephone: 301-725-1585.

Attendance limited to no more than two individuals per organization.

For more information about the contents of the tutorial, contact Art Wall at 301-725-1585.

Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 87-18715 Filed 8-14-87; 8:45 am]
BILLING CODE 6712-01-M

[Report No. 1672]

Applications for Review of Actions in Rulemaking Proceedings

August 10, 1987.

Applications for review have been filed in the Commission rule making proceeding listed in this Public notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor, International Transcription Service (202-857-3800). Oppositions to these applications must be filed within 15 days of the date of public notice of the applications in the **Federal Register** See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Greenwood, Seneca, Aiken and Clemson, South Carolina, and Biltmore Forest, North Carolina) (MM Docket No. 86-32, RM's 5006, 5040, 5041, 5217, & 5300) Number of applications received: 2

Notice

The Commission advertently gave Public Notice of two petitions for reconsideration of MM Docket No. 86-294, on two separate dates July 16, 1987 (report no. 1667), and July 28, 1987, (report no. 1670). However, parties wishing to comment on either the first or second reconsideration may do so in accordance with the provisions of the July 28, 1987, Public Notice.

Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 87-18716 Filed 8-14-87; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-794-DR]

Amendment to Notice of a Major Disaster Declaration; Oklahoma

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Oklahoma (FEMA-794-DR), dated July 9, 1987, and related determinations.

DATED: August 7, 1987.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3616.

Notice: The notice of a major disaster for the State of Oklahoma, dated July 9, 1987, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 9, 1987:

Kingfisher County for Public Assistance and Murray County, limited to Category F, for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dave McLoughlin,
Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 87-18674 Filed 8-14-87; 8:45 am]
BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following has been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Pub. L. 89-777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540):
Society Expeditions Cruise, Inc., 3131 Elliott Avenue, Suite 700, Seattle, WA 98121

Date August 11, 1987.

Joseph C. Polking,
Secretary.

[FR Doc. 87-18672 Filed 8-14-87; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Acquisitions of Shares of Banks or Bank Holding Companies; James R. Fraser and Steven Walker

The notificants listed below have applied under the Change in Bank

Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 1, 1987.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *James R. Fraser*, Sandy, Utah, and David E. Worthen, Bountiful, Utah; each to acquire between 18.33 and 22.8 percent of the voting shares of Brighton Bancorp, Salt Lake City, Utah, and thereby indirectly acquire Brighton Bank, Salt Lake City, Utah.

2. *Steven Walker*, Encino, California; to acquire 19.64 percent of the voting shares of Charter National Bancorp, Encino, California, and thereby indirectly acquire Charter National Bank, Encino, California.

Board of Governors of the Federal Reserve System, August 11, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-18663 Filed 8-14-87; 8:45 am]

BILLING CODE 6210-01-M

Acquisition of Company Engaged in Permissible Nonbanking Activities; Plymouth Investment Co.

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 8, 1987.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Plymouth Investment Co.*, Plymouth, Nebraska; to acquire Farmers Insurance Agency, Plymouth, Nebraska and thereby engage in insurance agency activities as permitted for small bank holding companies pursuant to § 225.25(b)(8)(vi) of the Board's Regulation Y. These activities will be conducted in the Nebraska Counties of Jefferson, Saline and Gage.

Board of Governors of the Federal Reserve System, August 11, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-18664 Filed 8-14-87; 8:45 a.m.]

BILLING CODE 6210-01-M

Formations of; Acquisitions by; and Mergers of Bank Holding Companies; SouthTrust Corp., et al.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 8, 1987.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *SouthTrust Corporation*, Birmingham, Alabama; to merge with Vista Banks, Inc., Ormond Beach, Florida, and thereby indirectly acquire Bank of Volusia County, Deleon Springs, Florida, and Vista Bank of Marion County, Belleview, Florida.

2. *Summit Bank Corporation*, Atlanta, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of The Summit National Bank, Atlanta, Georgia.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Hoff Investment Corporation*, Lisco, Nebraska, parent of Dalton State Bank, Dalton, Nebraska; to merge with First Nebraska Banca, Inc., Sidney, Nebraska, and thereby indirectly acquire First National Bank-Sidney, Sidney, Nebraska. Comments on this application must be received by August 28, 1987.

Board of Governors of the Federal Reserve System, August 11, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-18665 Filed 8-14-87; 8:45 am]

BILLING CODE 6210-01-M

Agency Forms under OMB Review

August 11, 1987.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:
Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822)
OMB Desk Officer—Robert Fishman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202–395–7340)

Proposal to Approve Under OMB Delegated Authority the Discontinuance of the Following Report

1. *Report title:* Dealer Monthly Report
Agency form number: FR 2079
OMB Docket number: 7100–0185
Frequency: monthly
Reporters: Non-primary dealers in U.S. government securities.
Annual reporting hours: 1,248 hours
Small businesses are not affected.

General Description of the Report

This report provides basic information on positions, financing and volume of transactions, as well as financial statements, from non-primary dealers in U.S. government securities dealers. The report was implemented to aid the Federal Reserve's understanding of the market and of trading by these dealers, in view of a series of dealer failures in 1982. The need for the report has been reduced substantially by the passage of the Government Securities Act of 1986, which created a formal regulatory and reporting framework for all brokers and dealers in U.S. government securities.

This information collection was authorized by law [12 U.S.C. 248(a)(2) and 353–359(a)], and was given confidential treatment [5 U.S.C. 552(b)(8)].

Proposal to Approve Under OMB Delegated Authority, the Extension, Without Revision, of the Following Report

1. *Report title:* Daily Report of When-issued Commitments Outstanding
Agency form number: FR 2060
OMB Docket number: 7100–0184
Frequency: daily
Reporters: Primary dealers in U.S. government securities.
Annual reporting hours: 4,320 hours
Small businesses are not affected.
General description of the report: This report collects information on significant "when-issued" commitments of the primary dealers that deal in U.S. government securities with the Federal Reserve Bank of New York. "When-issued" trading (forward delivery trading in U.S. Treasury securities between announcement of the sale and settlement) is monitored by the Federal Reserve in view of substantial credit and market risks involved.

This report is authorized by law [12 U.S.C. 248(a)(2) and 353–359(a)]. Individual respondent data are exempt from disclosure [5 U.S.C. 552(b)(4)].

Board of Governors of the Federal Reserve System, August 11, 1987.
William W. Wiles,
Secretary of the Board.
[FR Doc. 87–18862 Filed 8–14–87; 8:45 am]
BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on July 31, 1987.

Social Security Administration

(Call Reports Clearance Officer on 301–594–5706 for copies of package)

1. Supplemental Security Income Referral Notice—0960–0324—The information collected by use of Form SSA–L8050–US identifies SSI applicants/recipients potentially eligible for other benefits so that they may file for and receive such benefits. The affected public is comprised of SSI applicants and recipients, State disability determination services agencies and organizations which pay benefits. Respondents: Individuals or households, State or local governments, non-profit institutions. Number of Respondents: 10,000; Frequency of Response: Occasionally; Estimated Annual Burden: 1,667 hours.

OMB Desk Officer: Elana Norden

Health Care Financing Administration

(Call Reports Clearance Officer on 301–594–8650 for copies of package)

1. Long Term Care Survey Report Forms—0938–0400—The Long Term Care Survey Report Forms are used by State Agency Surveyors to record the results of their surveys of ICF's and SNF's. These forms are designed to focus review on the outcomes of patient care rather than on the structural and procedural requirements emphasized on traditional surveys. Respondents: State or local governments. Number of Respondents: 54; Frequency of Response: Annually; Estimated Annual Burden: 46,175 hours.

2. Medicaid Program Budget Report—0938–0101—The Medicaid Program Budget Report is prepared by the State Medicaid agencies and is used by HCFA for developing national Medicaid budget estimates. Respondents: State or local governments. Number of Respondents: 57: Frequency of Response: Quarterly; Estimated Annual Burden: 5,700 hours.

3. Hospital Provider of Long Term Care Services (Swing-Bed)—0938–0485—This survey form is an instrument used by the State agency to record data collected in order to determine provider compliance with individual conditions of participation and to report it to the Federal government. Respondents: State or local governments. Number of Respondents: 53; Frequency of Response: Occasionally; Estimated Annual Burden: 378 hours.

4. Psychiatric Hospital Medicare Survey Report Form—0938–0378—This survey form is an instrument used by the State agency to record data collected in order to determine compliance with individual conditions of participation and report it to the Federal government. Respondents: State or local government. Number of Respondents: 53; Frequency of Response: Occasionally; Estimated Annual Burden: 251 hours.

5. Medicaid Management Information System—0938–0247—The Medicaid Management Information System (MMIS) is a State-oriented Federally mandated computer system used for Medicaid claims processing and program management. These data elements represent the Federally-imposed recordkeeping requirements of MMIS. Respondents: State or local governments. Number of Respondents: 45; Frequency of Response: Occasionally; Estimated Annual Burden: 2,275,000 hours.

6. Negative Case Action (NCA) Review—0938–0300—HCFA uses the NCA review to identify error rates by States, regions and nations. Respondents: State or local governments. Number of Respondents: 8,600; Frequency of Response: Semiannually; Estimated Annual Burden: 8,041 hours.

OMB Desk Officer: Allison Herron

Family Support Administration

(Call Reports Clearance Officer on 202–245–0852 for copies of package)

1. Statistical Report on Recipients Under Public Assistance Programs—0970–0006—The information collected is

needed to properly administer and monitor the Aid to Families with Dependent Children Program providing information on a quarterly basis on recipients. This data is used by Congress, Federal agencies and others. The affected public is comprised of state welfare recipients. Respondents: State or local governments. Number of Respondents: 54; Frequency of Response: Monthly; Estimated Annual Burden: 6,480 hours.

2. Monthly "Flash" Report of Selected Program Data—0970–0071—The information collected by the use of this form is used to monitor program trends and serves as advance indicators of program activity and costs. The affected public is comprised of State and local agencies administering AFDC programs. The forms are completed by State agencies administering AFDC programs. Respondents: State or local governments. Number of Respondents: 54; Frequency of Response: Monthly; Estimated Annual Burden: 1,296 hours.

3. Quarterly Report of Recoveries of Over Payments (AFDC)—0970–0038—The information is used to assess the effectiveness of the States recovery efforts for Over Payments in Achieving the goals of the Omnibus Budget Reconciliation Act of 1981. Respondents: State or local governments. Number of Respondents: 54; Frequency of Response: Quarterly; Estimated Annual Burden: 10,800 hours.

4. Quarterly Statement of Famis Expenditures (AFDC)—0960–0049—This information is used to monitor development activities in accordance with the States approved advanced Planning Document to determine if States can accomplish the development of the proposed systems. Respondents: State or local governments. Number of Respondents: 31; Frequency of Response: Quarterly; Estimated Annual Burden: 62 hours.

5. WIN Demonstration Program Financial Status Report—0970–0025—The information collected is used to review State expenditures and as a basis for preparing adjustments to the quarterly grant awards to States for the WIN Incentive Demonstration Program. Respondents: State or local governments. Number of Respondents: 28; Frequency of Response: Quarterly; Estimated Annual Burden: 896 hours.

6. Quarterly Application for Child Support Enforcement Program Grant Awards—0970–0014—The information collected on this report constitutes the State agency's request for a grant of Federal funds under the provisions of Title IV–D of the Social Security Act. Respondents: State or local governments. Number of Respondents: 54; Frequency of Response: Quarterly; Estimated Annual Burden: 108 hours.

7. Child Support Enforcement Program Quarterly Report of Collections—0970–0013—This report provides information about the amount of child support payments collected by a State in the quarter. The information is needed to calculate grant awards and to prepare reports to Congress. Respondents: State or local governments. Number of Respondents: 54; Frequency of Response: Quarterly; Estimated Annual Burden: 1,728 hours.

8. Child Support Enforcement Program Quarterly Report of Expenditures and Prior Quarter Expenditures Adjustments—0970–0012—The expenditure information collected is used to prepare quarterly grant awards to States for operating the child support enforcement program. Respondents: State or local governments. Number of Respondents: 54; Frequency of Response: Quarterly; Estimated Annual Burden: 1,080 hours.

9. Child Support Enforcement Program Quarterly Budget Estimates—0970–0011—This report provides information about a State's annual estimate of child support program expenditures. The information is needed to prepare appropriation requests to Congress, to report to Congressional appropriations committees, and to compute State incentive payments. Respondents: State or local governments. Number of Respondents: 54; Frequency of Response: Semi-annually; Estimated Annual Burden: 756 hours.

OMB Desk Officer: Elana Nordèn

Office of Human Development Service

(Call Reports Clearance Officer on 202–472–4415 for copies of package)

1. The Objective Progress Report—0980–0155—The Administration for Native Americans (ANA) has two reporting forms which ANA grantees must utilize during a budget period. This form provides information for reporting of grantee progress during each budget period. Respondents: Businesses or other for-profit, Non-profit institutions. Number of Respondents: 170; Frequency of Response: Occasionally; Estimated Annual Burden: 1,530 hours.

2. Objective Evaluation Report—0980–0144—This Administration for Native Americans has two reporting forms which ANA grantees must utilize during a budget period. This report form provide information for grantee evaluation of progress at the end of each budget period. Respondents: Businesses or other for-profit, Non-profit institutions. Number of Respondents: 170; Frequency of Response: Annually; Estimated Annual Burden: 680 hours.

OMB Desk Officer: Elana Norden

Public Health Service

(Call Reports Clearance Officer on 202–245–2100 for copies of package)

National Institutes of Health

1. Follow-up to Children Exposed to Chloride-Deficient Infant Formula—NEW—This study will determine if children exposed to "chloride-deficient infant formula" suffered any "long-term effects" secondary to this ingestion. The survey instruments will be filled out by parents of children who may be eligible for study. Report will be provided to the Congress. Respondents: Individuals or households, State or local governments. Number of Respondents: 20,650; Frequency of Response: One-time; Estimated Annual Burden: 4,280 hours.

Centers for Disease Control

1. Monitoring System of Adverse Events Following Immunization—0920–0039—This system monitors illnesses following immunization in the public sector. It is designed to detect severe, rare, and previously unrecognized reactions following immunization, and to monitor vaccine lots for unusually high numbers of associated illnesses. Respondents: State or local governments. Number of Respondents: 58; Frequency of Response: Occasionally; Estimated Annual Burden: 2,475 hours.

2. National Hospital Discharge Survey—0937–0004—The National Hospital Discharge Survey provides detailed information on characteristics, diagnoses, surgical and other procedures for patients discharged from short-stay non-Federal hospitals in the United States. The information collected is available in written reports, in unpublished form through standardized in-house tabulations or special tabulations, and on public use tapes. Respondents: State or local governments, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations. Number of Respondents: 688; Frequency of Response: Occasionally; Estimated Annual Burden: 7,872 hours.

Health Resources Services Administration

1. Uncompensated Services Reporting and Recordkeeping—0915–0077—Health Care Facilities which have received funds under Titles VI and XVI of the PHS act are required to provide prescribed amounts of care to persons unable to pay and to submit to the Secretary data and information which reasonably demonstrates compliance

with this requirement. Individuals denied such care have a right to appeal that denial to the Secretary. Respondents: Individuals or households, State or local governments, Non-profit institutions. Number of Respondents: 4,041; Frequency of Response: Occasionally; Estimated Annual Burden: 1,704,142 hours.

2. Common Reporting Requirements for Urban Indian Health Programs—0915–0096—Congress has mandated that standard reporting requirements be established for 35 urban Indian health programs. Data collected are used for contract monitoring purposes, reports to Congress, establishing indicators, etc. Respondents: Non-profit institutions. Number of Respondents: 35; Frequency of Response: Semi-annually; Estimated Annual Burden: 1,120 hours.

3. Health Education Assistance Loan (HEAL) Program—Forms—0915–0034—The status form permits lenders to grant authorized periods of deferment. The Manifest provides information about HEAL loan activity. The transfer identifies reassigned loans. Lenders use the application to apply for a contract of insurance. Respondents: Individuals or households, Businesses or other for-profit, Non-profit institutions. Number of Respondents: 3,349; Frequency of Response: Occasionally; Estimated Annual Burden: 2,674 hours.

OMB Desk Officer: Shanna Koss-McCallum

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

PHS: 202–245–2100
HCFA: 301–594–8650
SSA: 301–594–5706
HDS: 202–472–4415
FSA: 202–245–0852

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address:

OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503, ATTN: (Name of OMB Desk Officer)

Date: August 10, 1987.

James F. Trickett,

Deputy Assistant Secretary, Administrative and Management Services.

[FR Doc. 87–18704 Filed 8–14–87; 8:45 am]

BILLING CODE 4160–04–M

Food and Drug Administration

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meetings are announced:

Blood Products Advisory Committee

Date, time and place. September 17 and 18, 1987, 9 a.m., Rm. 121, Office of Biologics Research and Review, 8800 Rockville Pike, Bethesda, Maryland.

Type of meeting and contact person. Open public hearing, September 17, 1987, 9 a.m. to 10 a.m.; unless public participation does not last that long; open committee discussion, 10 a.m. to 11 a.m.; closed presentation of data, 11 a.m. to 4:30 p.m.; closed committee discussion, September 18, 1987, 8:30 a.m. to 1 p.m., Clay Sisk, Center for Drugs and Biologics (HFN–32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455.

General function of the committee. The committee reviews and evaluates available data on the safety, effectiveness, and appropriate use of blood products intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Open committee discussion. The committee will discuss methods for reevaluation of persons who are currently deferred from donating blood because of reactive hepatitis B surface antigen (HBsAg) tests, but which upon further more specific testing again may be acceptable as donors.

Closed presentation of data. The committee will discuss trade secret and/or confidential commercial information relevant to pending investigational new biological products and a license application for a designated orphan drug, alpha-1-proteinase inhibitor for use in replacement therapy in the alpha-1-proteinase congenital deficient state. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Vaccines and Related Products Advisory Committee

Date, time, and place. September 21, 1987, 8:30 a.m., and September 22, 1987, 9 a.m., Building 29, Rm. 121, 8600 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, September 21, 1987, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; closed committee deliberations, 9:30 a.m. to 5 p.m.; closed committee deliberations, September 22, 1987, 9 a.m. to 2:30 p.m.; Jack Gertzog, Center for Drugs and Biologics (HFN–31), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of vaccines and related biological products intended for use in the diagnosis, prevention, or treatment of human diseases. The committee also reviews and evaluates the quality and relevance of FDA's research program which provides scientific support for the regulation of these products.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Closed committee deliberations. The committee will review trade secret and/or confidential commercial information relevant to pending license applications and status of IND's in the Office of Biologics Research and Review. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Clinical Chemistry and Clinical Toxicology Devices Panel

Date, time and place. September 21 and 22, 1987, 9 a.m., Rm. 337A–339A, Hubert H. Humphrey Bldg., 200 Independence Ave., SW., Washington, DC.

Type of meeting and contact person. Open public hearing, September 21, 1987, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 12 m.; open presentation of data, 1 p.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 4 p.m.; open committee discussion, 4 p.m. to 5 p.m.; open public hearing, September 22, 1987, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. 12 m.; open presentation of data, 1 p.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 4 p.m.; open committee discussion, 4 p.m. to 5 p.m.; Kaiser Aziz, Center for Devices and Radiological Health (HFZ–440), Food and Drug

Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7550.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested person may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make oral presentations should notify the contact person before September 1, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss two premarket approval applications: (1) Histochemical assay designed to detect estrogen binding cancer cells in human breast cancer, and (2) radioreceptor assay designed to measure estrogen receptors in tissue cytosol in the management of breast cancer patients.

Closed committee deliberations. The committee will discuss trade secret and/or confidential commercial information relevant to the premarket approval applications for the above histochemical and radioreceptor assays. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Circulatory System Devices Panel

Date, time, and place. September 25, 1987, 8:30 a.m., Rm. 703A, Hubert H. Humphrey Bldg., 200 Independence Avenue SW., Washington, DC.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9 a.m.; open committee discussion, 9 a.m. to 2 p.m.; closed committee deliberations, 2 p.m. to 4 p.m.; Keith Lusted, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, MD 20910, 301–427–7373.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of medical devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before September 11, 1987, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss premarket approval applications (PMA's) for two percutaneous transluminal coronary angioplasty (PTCA) catheters.

Closed committee deliberations. The committee will discuss trade secret and/or confidential commercial information regarding the PMA's listed above. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, Rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94–409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may

be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: August 10, 1987.

John A. Norris,

Acting Commissioner of Food and Drugs.

[FR Doc. 87–18669 Filed 8–14–87; 8:45am]

BILLING CODE 4160-01-M

[Docket No. 87F–0229]

Filing of Food Additive Petition; Hercules, Inc.

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Hercules, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of polyamide-epichlorohydrin water-soluble thermosetting resins prepared by reacting *N*-methyl-bis(3-aminopropyl)amine with oxalic acid and urea or dimethylglutarate to form a basic polyamide and further reacting the polyamide with epichlorohydrin. The polyamide-epichlorohydrin resins will be used to impart wet strength to paper and paperboard in contact with aqueous and fatty foods.

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (section 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 7B3986) has been filed by Hercules, Inc., Hercules Plaza, Wilmington, DE 19894, proposing that § 176.170 *Components of paper and paperboard in contact with aqueous aNd fatty foods* (21 CFR 176.170) be amended to provide for the safe use of polyamide-epichlorohydrin water-soluble thermosetting resins prepared by reacting *N*-methyl-bis(3-aminopropyl)-amine with oxalic acid and urea or dimethylglutarate to form a basic polyamide and further reacting the polyamide with epichlorohydrin. The polyamide-epichlorohydrin resins will be used to impart wet strength to paper and paperboard in contact with aqueous and fatty foods.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: August 10, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87–18668 Filed 8–14–87; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 87M–0236]

Paco Pharmaceutical Services, Inc.; Premarket Approval of Charter Labs Preserved Saline Solution

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Paco Pharmaceutical Services, Inc., Lakewood, NJ, for premarket approval, under the Medical Device Amendments of 1976, of the Charter Labs Preserved Saline Solution. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by September 16, 1987.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, MD 20910, 301–427–7510.

SUPPLEMENTARY INFORMATION: On April 14, 1987, Paco Pharmaceutical Services, Inc., Lakewood, NJ 08701, submitted to CDRH an application for premarket approval of the Charter Labs Saline Solution for use in the rinsing, heat disinfection, and storage of soft (hydrophilic) contact lenses.

On May 29, 1987, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On June 25, 1987, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ–460), address above.

The labeling of the Charter Labs Preserved Saline Solution states that the solution is indicated for use in the rinsing, heat disinfection, and storage of soft (hydrophilic) contact lenses. Manufacturers of soft (hydrophilic) contact lenses that have been approved for marketing are advised that whenever CDRH publishes a notice in the **Federal Register** of the approval of a new solution for use with an approved soft contact lens, the manufacturer of each lens shall correct its labeling to refer to the new solution at the next printing or

at such other time as CDRH prescribes by letter to the applicant.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before September 16, 1987, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act [secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))] and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: August 7, 1987.

James S. Benson,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 87–18670 Filed 8–14–87; 8:45 am]

BILLING CODE 4160–01–M

Consumer Participation; Open Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following consumer exchange meetings:

Dallas District Office, chaired by Gerald F. Vince, District Director. The topics to be discussed are food safety and imports.

Date: Thursday, August 27, 1987, 10 a.m. to 11:30 a.m.

Address: 727 East Durango Blvd., Rm. B–406, San Antonio, TX.

For Further Information Contact: Juan A. Tijerina, Consumer Affairs Officer, Food and Drug Administration, 727 East Durango Boulevard, Room B–406, San Antonio, TX 78206, 512–229–6737.

Detroit District Office, chaired by Alan L. Hoeting, District Director. The topics to be discussed are health claims on food labels and treatment use of investigational new drugs.

Date: Monday, August 31, 1987, 9 a.m. to 10:15 a.m.

Address: Indiana Convention Center, 100 South Capitol Ave., Rm. 136, Indianapolis, IN 46204.

For Further Information Contact: L. M. Goossens, Consumer Affairs Officer, Food and Drug Administration, 575 North Pennsylvania Street, Room 693, Indianapolis, IN 46204, 317–269–6500.

Detroit District Office, chaired by Alan L. Hoeting, District Director. The topic to be discussed is health claims on food labels.

Date: Tuesday, September 15, 1987, 10 a.m.

Address: George Potter Larrick Bldg., Conference Room, 1560 East Jefferson St., Detroit, MI 48207.

For Further Information Contact: Evelyn DeNike, Consumer Affairs Officer, Food and Drug Administration, 1560 East Jefferson Street, Detroit, MI 48207, 313–226–6260.

SUPPLEMENTARY INFORMATION: The purpose of these meetings is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's District Offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: August 7, 1987.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 87–18671 Filed 8–14–87; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

[HSQ–148–GNC]

Medicare Program; Selected Performance Information on Hospitals Providing Care to Medicare Beneficiaries

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice with comment period.

SUMMARY: This notice announces our intent to release, through a HCFA publication, selected statistical information on the performance of hospitals participating in the Medicare program. We believe that information about hospitals' overall post-admission mortality rates and specific mortality rates for certain medical conditions will be a valuable tool for Peer Review Organizations (PROs) for focusing on potential quality of care problems, for hospitals in focusing their efforts on improving the quality of care they provide, and for consumers in making decisions on obtaining health care. This information release is one part of HCFA's continuing initiative to promote quality of care which encompasses a broad range of regulatory, operational, and research efforts.

This notice describes the areas of concentration and summarizes the analytical methodology that we propose to use to produce this information.

DATE: To be considered, comments on this notice must be mailed or delivered to the appropriate address, as provided below, and must be received by 5:00 p.m. on September 14, 1987.

ADDRESS: Address comments in writing to: Health Care Financing Administration, Department of Health and Human Services, Attention: HSQ–148–GNC, P.O. Box 26676, Baltimore, Maryland 21201.

If you prefer, you may deliver your comments to one of the following locations:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC, or,

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Md.

In commenting, please refer to file code HSQ–148–GNC. Comments will be available for public inspection as they are received, beginning approximately 3 weeks after publication of the notice, in Room 309–G of the Departmental Offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202–245–7890).

FOR FURTHER INFORMATION CONTACT:
Harvey Brook, 301-597-2752.

SUPPLEMENTARY INFORMATION:

Background

The Health Care Financing Administration (HCFA) has undertaken a major quality of care initiative. Some of the critical components of this initiative include improving the measurement of quality; improving the methodologies used to analyze the date HCFA collects on a routine basis; and improving the distribution and application of understandable and useful information.

Bills submitted by hospitals for services furnished to Medicare beneficiaries comprise one of the data bases HCFA maintains. Medicare hospital bills contain information, for example, on a patient principle and secondary diagnoses, age, sex, discharge date, etc. As part of the quality of care initiative, HCFA has conducted a sophisticated statistical analysis of the hospital bill data. We believe that the information produced from the analysis relating to the performance of individual hospitals with respect to post-admission mortality, when properly presented and understood, can be useful to consumers, hospitals, and Peer Review Organizations (PROs). Specifically, we intend that this information be used by consumers in making decisions about their health care and by hospitals in improving performance and internal management. It can also be used by PROs to focus on areas of potential quality problems.

A critical aspect of this effort will be the role of PROs in working with hospitals to validate the information and provide assistance in the identification and resolution of problems. HCFA may direct PROs to focus some review efforts in appropriate areas. Beyond this, PROs will have broad latitude to provide educational support, technical assistance, and additional medical and analytic expertise to hospitals in analyzing and following up on the information.

Initial Release of Information

In March 1986, we released to PROs lists of hospitals that HCFA had identified as outliers when their actual performance was compared with expected performance in terms of overall mortality and readmissions, and of mortality related to certain medical conditions. The lists were based on data from bills submitted by hospitals for services furnished in 1984. These lists were designed as a crude screening device to assist the PROs in focusing their resources on areas of potential problems. These lists were subsequently released to the public because of requests made under the Freedom of Information Act. Because the lists were designed to assist PROs and were not designed for public use, the result of the public disclosure was considerable confusion and misinterpretation. Our intention this year is to release hospital mortality information in a format carefully designed to be understandable. It is based on an analytic model and a statistical methodology that reflects the best technical advice available to the Department. We realize, however, that our model for predicting a particular hospital's expected mortality rate is limited by the kinds of information available to us on Medicare bills and general information on the hospitals involved. The model remains simply one indicator of potential quality distinctions among hospitals. This year's model is an improvement over last year's. We will continue to refine the model as additional information becomes available to us.

Purposes of this Notice

The purposes of this notice are: (1) To announce that we plan to publish, through annual HCFA publication, selected statistics which we believe provide information about the performance of hospitals; and (2) to describe the analytical methodology that we propose to use to develop the information for release in 1987. We propose to issue an information release in December 1987. It will be prepared on the basis of analysis of data from bills submitted for services furnished in 1986. As currently planned, the information released to the public in December 1987 will present, for each short-term, acute care hospital that treated Medicare beneficiaries in 1986, the number of beneficiaries it treated, the percentage of beneficiaries who died within 30 days of admission, and the expected percentage of deaths, calculated on the basis of the overall national experience with patients of similar age, sex, incidence of complicating diseases, and prior hospitalizations in 1986. The expected percentage of deaths will be presented as a range of such rates which includes the values that would be expected for 95 percent of all cases.

For beneficiaries with more than one hospital admission in 1986, the analysis will be performed on the last admission in the year for any given Medicare beneficiary. While other techniques could be used which base the analysis on the first admission or by following the patient by means of survival analysis, expert advisors recommended that the analysis be based on the last admission because this would provide the most accurate and comprehensible results.

Data will be presented on deaths following admissions for any cause and, separately, for admissions within 16 distinct diagnostic categories for Medicare patients. These categories are derived from the diagnostic codes available to physicians to describe the conditions of patients and are reported on each hospital bill submitted for a Medicare patient. These categories were selected to coincide with major medical disciplines in a hospital and to distinguish between conditions with a high and low probability of death. We believe that this arrangement would be most helpful to users. The 16 categories capture about 80 percent of deaths associated with hospitalization and about 70 percent of patients. Although there could be different aggregations of diagnostic categories, expert clinicians advised us that these 16 represent the most appropriate categorization.

We recognize that any release of information that is based on a statistical analytic review of data about care outcomes is subject to questions on the methodology and to criticism. Consequently, we are soliciting public comments on the type of information we plan to release and the methodology we intend to use to analyze the data on hospitals. We have consulted with clinicians, medical services research experts, nationally recognized statistical experts, and the representatives from a wide range of consumer, provider, and academic organizations. More specifically, we consulted with the heads of statistics departments of some of the most prestigious universities in the United States, with health services researchers from the most renowned research organizations, practicing clinicians, and with policymakers from the top consumer and health care industry associations. We also have convened two quality of care symposia. We will continue these consultations on an ongoing basis. In addition, we intend that the methodology to be applied to the 1986 data and future analysis and releases will take into consideration the public comments that we receive in response to this notice and further recommendations of experts.

Prior to the December release of the statistical information, we will contact each hospital, provide the hospital with data on the deaths being attributed to it, and give it 30 days to comment. Information furnished by the hospitals in their responses will be included as part of the information release.

Information To Be Contained in Releases and Methodology To Be Used to Analyze Data

As noted, the information in the release is the product of a statistical analysis of Medicare data which HCFA routinely collects from all hospitals participating in the Medicare program. The statistics are presented in the hope that they will serve the public and the hospitals in their common interest of improving quality of care.

Releasing mortality statistics is a complicated and controversial undertaking since the mortality rate at a given hospital reflects, among other factors, the age, sex, diagnosis, and severity of illness of patients admitted to that hospital. Characteristics affecting health and the probability of death will vary among the patient populations served by individual hospitals. Consequently the mortality rates one might expect to see in different patient populations will vary. In an attempt to make the mortality statistics more readily comparable among hospitals, we will present the predicted mortality rate for a given hospital as a range that includes 95 percent of its probable values, to be compared to the hospital's actual mortality rate.

The usefulness of this approach depends upon the accuracy with which mortality rates can be predicted and the stability of these rates for the specific population of each hospital. First, not all of the factors affecting the probability of death in a particular case, most notably severity of illness, are included in the predictive model because information on them is not readily available. Thus, a difference between a hospital's actual and expected mortality rates cannot be definitely construed as reflecting especially high or low quality of care. This difference may, in fact, result from factors not included in the predictive model. We have started what will be an ongoing effort involving all interested parties in improving the accuracy of mortality predictions by refining the model and the methodology.

A second important consideration in reviewing and applying such statistics is the number of individuals admitted to each hospital. The smaller the number of admissions, the less reliable are the statistics, as the impact of random variation of outcomes in individual cases is greater.

The statistical information to be included in the releases will be developed by means of the proposed analytical methodology summarized in this notice and described in the appendix.

We propose to include the following specific information in the December 1987 release:

1. An alphabetical listing, arranged by State, of hospitals with city and State location. Included in this listing will be a page location, if appropriate, where comments provided by the hospital can be found;

2. For each hospital, the number of Medicare beneficiaries treated;

3. For each hospital, the actual proportion of Medicare beneficiaries treated who died within 30 days of admission. In all instances, the admission used will be the last in 1986 for any given patient;

4. For each hospital, the proportion of Medicare beneficiaries treated who are expected to have died on the basis of the nationally estimated probability of death for patients who are similar in terms of age, sex, and the incidence of complicating conditions. The expected mortality rate will be presented as a range which will include 95 percent of its probable values.

5. The information cited in terms 2, 3, and 4 for each hospital for the following medical conditions:

- High Risk

—Severe acute heart disease
—Severe chronic heart disease
—Pulmonary disease
—Renal Disease
—Severe trauma
—Sepsis
—Metablic and electrolyte disorders
—Stroke
—Cancer
—Gastrointestinal catastrophies

- Low Risk

—Gynecologic disease
—Urologic disease
—Orthopedic conditions
—Low risk heart disease
—Gastrointestinal disease
—Ophthalmologic disease

These categories were developed by grouping the diagnostic codes and were endorsed by expert clinicians. They are useful because they represent distinct categories of hospital services and performance and because they represent the majority of admissions. In sum, the clinicians developed broad categories into which, in their judgment, almost all of the ICD–9 codes can appropriately be grouped. These broad categories provide an understandable breakdown of the major causes of hospitalization for Medicare beneficiaries. As such, they are potentially useful to consumers making decisions relating to obtaining quality health care and to hospitals in evaluating their performance in providing quality health care.

The proposed 30-day interval was selected because it is the accepted post-operative period and was extended, by analogy, to medical admissions. A longer period of observation entails a greater likelihood of attributing deaths due to causes unrelated to the condition that necessitated the hospitalization to that hospital stay.

Deaths occurring in and out of the hospital should serve as the basis for the assessment of hospital performance because counting only those deaths that occur in the hospital would be misleading. This is because in-hospital deaths are closely correlated with the length of stay, which may vary considerably for reasons related, for example, to administrative practice rather than to the condition of the patient.

Differences among hospitals in terms of case-mix will be taken into account by stratifying patients into diagnostic categories. The contributions to the probability of dying associated with demographic factors (age, sex), complicating diseases, and status as a transfer patient will be calculated by means of logistic regression.

We are publishing a more detailed description of the proposed methodology as the apendix to this notice. We will provide a detailed description of the final methodology that is applied to the data to any individual who requests it in writing. Direct all requests for this information to: Thomas G. Morford, Director, Health Standards and Quality Bureau, Health Care Financing Administration, 2–D–2 Meadows East Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

After the December 1987 release, we will continue to refine the analytic methodologies and data validation techniques. We intend to develop other measures of quality, to assist PROs in working with hospitals to improve hospital performance, and to work with major health care and consumer organizations to improve the educational value of the information for both consumers and providers.

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance)

Dated: August 7, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

BEST COPY AVAILABLE

Appendix—Regression-Based Analysis of Medicare Hospital Mortality Data

A. Summary Description of Methodology

The assessment of mortality rates associated with hospitalization will consist of comparisons of the proportions of patients of a hospital who died within 30 days of their last admission in the calendar year with the proportion who would have been expected to die if the mortality patterns in the hospital paralleled those observed nationally for patients with the same characteristics. The predicted mortality rate is computed by assessing the risk of death associated with demographic characteristics (age, gender), causes for admission (patients will be grouped into 16 distinct diagnostic categories and a 17th representing the others), additional diseases, number of prior hospitalizations, and status as a patient transferred from another hospital. Analyses will be performed by means of logistic regression on patients within the diagnostic categories. The stability and validity of the predictive models will be assessed by cross-validation. The probable range of the predicted mortality rates will be estimated analytically and empirically.

B. Technical Description of Methodology

1. Description of the Data

The data base contains the survival experience of about 6,500,000 Medicare beneficiaries who entered one of about 6,000 short-term, acute care hospitals in one calendar year (1986). (The number of hospitals will vary among the diagnostic categories because of specialization and because some very small hospitals will not have had Medicare patients in all of the categories.) The following patient descriptors will be used:

- Age
- Gender
- Principal diagnosis
- Additional diagnoses (up to four)
- Number of prior hospitalizations
- Status as a transfer patient from another hospital
- Date of admission
- Date of death

Patients will be grouped into 16 distinct diagnostic categories by means of the principal diagnosis, with the 17th category contining all others. The 16 diagnostic categories follow medical disciplinary lines, distinguished among high risk and low risk conditions, and account for 80 percent of the deaths and 70 percent of the hospitalized patients.

The outcome measure will be the alive/dead status of each patient at 30 days after the last hospital admission. The 30-day interval is accepted as the post-operative period, applies to medical as well as surgical admissions, and extends beyond the last hospital discharge.

Even though a patient may undergo multiple admissions in a 30-day interval prior to death, the patient's last admission during the relevant calendar year will be evaluated. In order to have 30 days of followup for patients admitted on December 31, discharge data up to January 31 of the following year will be used.

The proposed analysis use logistic regression with "alive/dead" at 30 days post-hospitalization as the outcome. Survival curves will be used to assess whether the patient's full experience is adequately represented by the survival probability at a fixed time point.

2. Modeling

a. *Estimation of logistic model coefficients.* Suppose that—

$$\ln\left(\frac{p}{1-p}\right)=b'x+e$$

is the appropriate model where p is the proportion of patients surviving to 30 days, x is a vector of covariates, and b is a vector of coefficients to be estimated. In particular, the elements of b maximize the log-likelihood

$$\Sigma\{d \log p+(1-d) \log (1-p)\},$$

where the sum is over all persons, p has the relation to b and x given above, and d has a value of 0 or 1 depending on whether the patient has survived 30 days following the index admission or has died in that interval.

To deal with the large data set, note that there are two sorts of elements in x, (age (grouped by intervals), gender, comorbidities, number of prior hospitalizations, transfer status), and all the diagnostic categories. The latter variables are assumed orthogonal (one diagnosis per patient) and so, if age, gender, comorbidities, prior hospitalizations, and transfer status were not in the model, the likelihood could be written as the sum over the diagnostic categories, that is, 17 separate terms. Assume now that there is a different dependence of 30 days mortality on age, gender, comorbidities, prior hospitalizations, and transfer status in each diagnostic category, that is, an (age, gender, comorbidities, prior hospitalizations, transfer status) x diagnostic category interaction. This can be modeled by separately maximizing the logistic regression likelihood within each diagnostic category. Either Newton-Raphson iteration or iteratively reweighted least squares will be used for likelihood maximization.

b. *Estimating 30-day survival and its variance in a hospital.* Suppose that the logistic regression model for the ith diagnostic category is—

$$\ln\frac{p_i}{1-p_i}=b_i'x$$

which contains only terms for age, gender, comorbidities, prior hospitalizations, and transfer status. Suppose, furthermore, that x_{ijk} is the (age, gender, comorbidity) vector for person k in hospital j with diagnosis i; $k=1, \ldots, n_{ij}$. Then the predicted number of deaths in hospital j from all causes is—

$$Dj=\Sigma\Sigma\frac{\exp(b_i'x_{ijk})}{1+\exp(b_i'x_{ijk})}$$

where the first sum is over diagnoses indexed by i, and the second sum is over persons $k=1, \ldots, n_{ij}$. Denoting the observed number of deaths in the jth hospital by d j, we can now form the (unstandardized) residuals $R_j=d_j-D_j$. It may be shown that the variance of R_j is composed of the sum of two terms. The first term is—

$$\text{var}(D_j)=\Sigma\}\ \Sigma\Sigma\ p_{ijk}(1-p_{ijk})\,p_{ijk'}(1-p_{ijk'})\,x'_{ijk}C(b_i)x_{ijk'}\}$$

where the first sum is over diagnoses labeled by i, and the second and third sums are over pairs of persons, k and k', in the jth hospital with diagnosis i. This may be estimated by substituting estimates for p_{ijk} and $p_{ijk'}$ where appropriate $C(b_i)$ is the covariance matrix of the logistic regression coefficients for diagnosis i, and x_{ijk} is the vector of covariates (age, gender, comorbidities, transfer status) of patient k with diagnosis i at hospital j.

The second term is

$$\text{var}(dj)=\Sigma\ n_{ij}\delta_{ij}(1-\delta_{ij})$$

where n_{ij} is the number of patients in hospital j with diagnosis i, δ_{ij} is the estimated probability of death by 30

days among persons with diagnosis i in hospital j and the sum is over diagnoses.

c. *Validating the model.* Cross-validation will be used to infer how the model fares with new data without actually requiring fresh samples [Efron, 1982, 1985]. It provides an organized format in which the data (the patients) are divided into "training" and "test" sets; the model is developed using the former and applied using the latter.

d. *Further estimation of the variability of the residuals.* Although confidence intervals may be constructed for the predicted probability of death associated with admission to a given hospital, and for the difference between the actual and the predicted probabilities (the residuals) based on the covariance matrices of the regression coefficients, such an approach assumes the applicability of a particular distribution of the residuals. Therefore, an empirical approach, Efron's bootstrapping, will also be used to provide tolerance intervals for the difference of predicted and observed, hospital-specific mortality. The bootstrap method generates and saves these differences by hospital within each diagnostic category for multiple iterations involving populations of equal size but randomly assembled from the actual. The result is a distribution of predicteds and residuals for each diagnostic category, and, therefrom, for the aggregate admission for each hospital. For each hospital, the 10 percent and 90 percent or the 5 percent and 95 percent points, for example, of the bootstrap distribution may be used as tolerance intervals.

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[FR Doc. 87–18613 Filed 8–13–87; 1:58 pm]
BILLING CODE 4120-03-M

Public Health Service

Cancellation of the Request for Establishment of Collaborative Agreement for the Preclinical and Clinical Development of 3'-Cyano-2',3'-Dideoxythymidine as an Anti-Retroviral Agent Useful in the Treatment of Acquired Immunodeficiency Syndrome (AIDS)

AGENCY: Department of Health and Human Services, Public Health Service (PHS).

ACTION: Cancellation of Notice.

SUMMARY: The Department of Health and Human Services announces the cancellation of its solicitation to establish a collaborative agreement with an industrial sponsor for the preclinical and clinical development of 3' -Cyano-2' ,3'-dideoxythymidine. This notice appeared in the **Federal Register** of July 10, 1987 (52 FR 26091). Due to a technical difficulty affecting the availability of this compound, the PHS is withdrawing its solicitation for the collaborative development. In the event that this obstacle to the development of 3'-cyano-2' ,3'-dideoxythymidine is overcome the PHS will announce a solicitation in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Dr. Marcia Browne, Special Assistant for Clinical Science, DCT, National Cancer Institute, Building 31, Room 2A49, Bethesda, MD 20892.

Dated: August 10, 1987.

Robert E. Windom,

Assistant Secretary for Health.

[FR Doc. 87–18759 Filed 8–14–87; 8:45 am]
BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit For Marine Mammals

On April 15, 1987, a notice was published in the **Federal Register** (52, FR 12262) that an application had been filed with the Fish and Wildlife Service by Assistant Regional Director, Fish and Wildlife Enhancement (PRT# 717318) for a permit to take Southern sea otters (*Enhydra lutris nereis*) for the purpose of scientific research.

Notice is hereby given that on August 12, 1987, as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 through 1407), and the Endangered Species Act of 1973 (16 U.S.C. 1539), the Fish and Wildlife Service issued a permit subject to certain conditions set forth therein.

The permits are available for public inspection during normal business hours at the Fish and Wildlife Service's Office in Room 611, 1000 North Glebe Road, Arlington, Virginia 22201.

Dated: August 12, 1987.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 87–18708 Filed 8–14–87; 8:45 am]
BILLING CODE 4310-55-M

Issuance of Permit For Marine Mammals

On June 25, 1987, a notice was published in the **Federal Register** (52, FR 23899) that an application had been filed with the Fish and Wildlife Service by Director, California Department of Fish and Game (PRT# 719453) for a permit to take Southern sea otters (*Enhydra lutris nereis*) for the purpose of scientific research.

Notice is hereby given that on August 12, 1987, as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 through 1407), and the Endangered Species Act of 1973 (16 U.S.C. 1539), the Fish and Wildlife Service issued a permit subject to certain conditions set forth therein.

The permits are available for public inspection during normal business hours at the Fish and Wildlife Service's Office in Room 611, 1000 North Glebe Road, Arlington, Virginia 22201.

Dated: August 12, 1987.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 87–18709 Filed 8–14–87; 8:45 am]
BILLING CODE 4310-55-M

Bureau of Land Management

Iditarod National Historic Trail Advisory Council; Public Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: The Iditarod National Historic Trail (INHT) Advisory Council will meet to advise the Secretary of the Interior, through the designated official, with regard to the implementation of a comprehensive management plan for the Iditarod National Historic Trail, Alaska.

Designated Official: John Rumpa, District Manager, Anchorage District Office, Bureau of Land Management.

DATES: September 16 and 17, 1987.

PLACE: Anchorage District Office, 6881 Abbott Loop Road, Anchorage, AK 99507.

Sandra Dunn,

Acting District Manager.

[FR Doc. 87-17970 Filed 8-14-87; 8:45 am]

BILLING CODE 4310-JA-M

[ES-970-07-4121-14-2410; ES 36585]

Request for Public Comment on Fair Market Value, Maximum Economic Recovery and the Environmental Assessment; Emergency Coal Lease Application ES 36585, KY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public comment.

SUMMARY: The Bureau of Land Management requests public comment on the fair market value, maximum economic recovery and the environmental assessment of certain coal resources it proposes to offer for competitive lease sale.

The lands included in Emergency Coal Lease Application ES 36585 are located in Clay County, Kentucky and are described as follows

Chap Branch Tracts

Part of Tracts R-625 and R-744 (Metes and Bounds)

Containing approximately 230.94 acres.

The coal ownership is split with the Federal share being 1/20th. The remaining 19/20th's is in private ownership. The total acreage includes the access entries from the adjacent existing underground mine. The Manchester coalbed of the Breathitt Formation, is ranked as high volatile, "A" bituminous. The coal is low ash and low sulphur.

The area contains approximately 2.29 million tons of mineable coal. The two Forest Service tracts contain approximately 0.97 million tons of mineable coal, of which the Federal share is 0.05 million tons. All coal on the tract is considered mineable. The overburden exceeds 100 feet everywhere on the tract. Mining may show that the coal in the north of the tract, next to Goose Creek, is unmineable due to the competency and thinness of the overburden. This could reduce the estimated total and Federal mineable reserves. The applicant calculates a recovery factor of 0.67, which seems reasonable for a continuous miner operation. The recoverable reserves are 1.54 million tons total and 0.033 million tons Federal. The expected mine life is ten years.

The public is invited to submit written comments on the fair market value and the maximum economic recovery of the tract.

In addition, notice is also given that a public hearing will be held on September 22, 1987, on the environmental assessment, the proposed sale, the fair market value, and the maximum economic recovery of the proposed lease tracts.

DATES: Comments must be received on or before September 22, 1987.

ADDRESSES: For more complete data on this tract, please contact Mr. Henry Beauchamp at (601) 965-4405, or at the Jackson District Office, Bureau of Land Management, 300 Woodrow Wilson Drive, Suite 326, Jackson, Mississippi 39213.

The public hearing will be held in September 22, 1987 at 10:00 a.m., at the Bureau of Land Management, Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304.

FOR FURTHER INFORMATION CONTACT: Ms. Ivy Garcia at (703) 274-0151.

SUPPLEMENTARY INFORMATION: In accordance with the Federal coal management regulations 43 CFR Parts 3422 and 3426, not less than 30 days prior to the publication of a notice of sale, the Secretary shall solicit public comments on fair market value appraisal and maximum economic recovery and on factors that may affect these two determinations. Proprietary data marked as confidential may be submitted to the Bureau of Land Management, Jackson District Office, 300 Woodrow Wilson Drive, Suite 326, Jackson, Mississippi 39213 in response to this solicitation of public comments. Data so marked shall be treated in accordance with the laws and regulations governing the confidentiality of such information. A copy of the comments submitted by the public on fair market value and maximum economic recovery, except those portions identified as proprietary by the author and meeting exemptions stated in the Freedom of Information Act, will be available for public inspection at the Bureau of Land Management, Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304 during regular business hours (7:30 a.m. to 4:00 p.m.) Monday through Friday.

Comments should be sent to the Bureau of Land Management, Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304 and should address, but not necessarily be limited to, the following information:

1. The method of mining to be employed in order to obtain maximum economic recovery of the coal;

2. The impact that mining the coal in the proposed leasehold may have on the area, including, but not limited to, impacts on the environment; and

3. Methods of determining the fair market value of the coal to be offered.

The coal characteristics given above may or may not change as a result of comments received from the public and changes in market conditions that occur between now and the time at which final economic evaluations are completed.

G. Curtis Jones, Jr.,

State Director.

[FR Doc. 87-18550 Filed 8-14-87; 8:45 am]

BILLING CODE 4310-GJ-M

Availability of Draft Environmental Impact Statement and Environmental Impact Report; Land Tenure Adjustment Project; California Desert Plan Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management has released, for a 90-day public review, a Draft Environmental Impact Statement and Environmental Impact Report (EIS/EIR) for amendments to the California Desert Plan and the San Bernardino County General Plan (to include development of a safety overlay) as part of the Land Tenure Adjustment Project proposed jointly by the Bureau of Land Management (BLM), Barstow and Ridgecrest Resource Areas, California Desert District, and the Department of Defense (DoD), Edwards and George Air Force Bases. The Project includes 2.5 million acres of public and private land within Kern, Los Angeles, and San Bernardino Counties in California. The China Lake Naval Weapons Center serves as the northern boundary of the project area with Fort Irwin Road and Highway 15 as the eastern, the Angeles National Forest as the southern, and the Tehachapi Mountains as the western boundaries.

SUPPLEMENTARY INFORMATION: The Land Tenure Adjustment project stems from BLM concerns regarding resource management effectiveness where a checkerboard landownership pattern prevails in the Barstow Resource Area. Valuable resources—from fossils to petroglyphs to tortoise habitat to recreation areas—are essentially unprotectable and unmanageable due to the ownership/authority changing every mile. This checkerboard pattern

promotes "leapfrog" development, a land use incompatible with the San Bernardino County General Plan policies of creating a logical and orderly residential pattern, directing new urban development to areas where requisite urban services are available, and supporting an essentially open, rural character of the desert.

To futher complicate management, the Department of Defense has three airspace corridors overflying portions of the project area. These corridors include: (1) Ingress into George Air Force Base; (2) an expanded Precision Impact Range Area near Edwards Air Force Base; and (3) a supersonic/low flying test area south of the China Lake Naval Weapons Center.

The management issues (problems, concerns, opportunities) addressed in the draft EIS/EIR include: (1) Landownership Pattern—the checkerboard pattern results in inefficient and costly management of the public resources as well as the lack of county services. The Proposed Action delineates areas where public land would be consolidated through voluntary land exchanges of private inholdings (205,000 acres of private land—consolidation zones), areas where the ownership would remain as is (139,000 public and 134,000 private land acres—retention zones), and areas where public land would be disposed of as base lands for the exchanges (158,000 acres of public land—public land disposal zone). (2) Multiple Use Classifications—overflying DoD activities were not considered in the designation of public land under various multiple use classifications. The Proposed Action would classify public lands in the consolidation zones (191,000 acres) as Class L with the classification of retention zones remaining unchanged and disposal zones unclassified; (3) Land Use Categories—overflying DoD activities were not considered in the designation of private land under various land use categories. Private land in consolidation zones would be considered for Rural Conservation designation in the Proposed Action with retention zones considered for Rural Living and lands within the disposal zones remaining unchanged; and (4) Public Health and Safety—no safety overlay has been developed by San Bernardino County to address the impacts to surface uses from overflying DoD activities. A safety-noise overlay would be considered for private lands in both consolidation and retention zones for the Proposed Action.

Five alternatives are considered in addition to the Proposed Action, including the No Action Alternative. The EIS/EIR includes a discussion of the affected environment and the environmental consequences occurring as a result of the Proposed Action and each alternative.

Copies of the Draft EIS/EIR are available for review at the following locations:

California Desert District Office, 1695 Spruce Street, Riverside, California, 92507, (714) 351–6428

Barstow Resource Area Office, 150 Coolwater Lane, Barstow, California, 92311, (619) 256–3595;

Ridgecrest Resource Area Office, 112 East Dolphin Street, Ridgecrest, California, 93555, (619) 375–7125;

Kern County Libraries:
- 1315 Truxtun Ave., Bakersfield, California, 93301, (805) 862–3246;
- 9507 California City Blvd., California City, California, 93505, (619) 373–4757;
- 131 E. Los Flores, Ridgecrest, California, 93555, (619) 375–7666;

Los Angeles County Library, 1150 W. Avenue J, Lancaster, California, 93534, (805) 948–5029;

Los Angeles Public Library, 630 W. 5th St., Los Angeles, California, 90071, (714) 626–7461;

Palmdale Public Library, 700 E. Palmdale Blvd., Palmdale, California, 93550, (805) 273–2820;

Riverside Public Library, 3581 7th St., Riverside, California, 92501, (714) 787–7203;

San Bernardino County Libraries;
- 104 W. Fourth St., San Bernardino, California, 92401, (714) 383–1734;
- 11744 Bartlett, Adelanto, California, 92301, (61) 246–5661;
- 22051 Highway 18, Apple Valley, California, 92307, (619) 247–2022;
- 304 E. Buena Vista, Barstow, California, 92311, (619) 256–8481;
- 16170 Walnut, Hesperia, California, 92345, (619) 244–4896;
- 15011 Circle Dr., Victorville, California, 92392 (619) 245–4222;

San Bernardino Public Library, 401 Arrowhead Ave., San Bernardino, California, 92401, (714) 383–5277.

DATES: Written comments on the Draft EIS/EIR will be accepted through November 13, 1987 and should be sent to Barstow Area Manager, Bureau of Land Management, 150 Coolwater Lane, Barstow, California, 92311. Two public hearings have been scheduled:

September 22, 1987—Victorville, Holiday Inn Convention Center, Room A, 15494 Palmdale Road

September 23, 1987—Lancaster, Antelope Valley Inn, Sierra A Room, 44055 North Sierra Highway

FOR FURTHER INFORMATION CONTACT: Sue Richardson, Barstow Resource Area, 150 Coolwater Lane, Barstow, California 92311, (619) 256–3595.

Date: August 11, 1987.

Gerald E. Hillier,

District Manager.

[FR Doc. 87–18779 Filed 8–14–87; 8:45 am]

BILLING CODE 4310–40–M

INTERSTATE COMMERCE COMMISSION

[No. 40142]

Terminal Railway Alabama State Docks; Petition for Declaratory Order, Assessment and Collection of Demurrage Charges

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission, on its own initiative, exempts petitioner's limited demurrage proposal from the discrimination, rebate and tariff violation provisions of 49 U.S.C. Subtitle IV.

DATES: This exemption is effective on September 16, 1987. Petitions to stay must be filed by August 27, 1987, and petitions for reconsideration must be filed by September 8, 1987.

ADDRESSES: Send pleadings referring to Docket No. 40142 to:.

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: E.G. Browning, Jr., Terminal Railway Alabama State Docks, P.O. Box 15888, Mobile, AL 36633.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245.

SUPPLEMENTARY INFORMATION: The Terminal Railway Alabama State Docks will bill demurrage charges directly to the Wharves and Warehouse Division of the Alabama State Docks Department when the Wharves Division is solely responsible for delays in releasing rail cars.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289–4357, or TDD for hearing impaired: (202) 275–1721.

Decided: July 28, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners

Sterrett, Andre, and Simmons. Vice Chairman Lamboley dissented with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 87-18700 Filed 8-14-87; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30948 (Sub-No. 1)]

CSX Transportation, Inc., and Southern Railway Co., Construction and Operation Exemption; Atlanta, GA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts, *nunc pro tunc*, from the prior approval requirements of 49 U.S.C. 10901 the construction (1) by Southern Railway Company of approximately 800 feet of connecting track, and (2) by CSX Transportation, Inc., of approximately 200 feet of connecting track, both in the Jones Avenue area of Atlanta, GA.

DATES: This exemption will be effective on August 20, 1987. Petitions to reopen must be filed by September 8, 1987.

ADDRESSES: Send pleadings referring to Finance Docket No. 30948 (Sub-No. 1) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioners' representatives:

Angelica D. Lloyd, Norfolk Southern Corporation, 204 South Jefferson Street, Roanoke, VA 24042

R. Lyle Key, Jr., CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245.

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357, or TDD for hearing impaired (202) 275-1721.

Decided: August 4, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Commissioner Simmons concurred in the result.

Noreta R. McGee,

Secretary.

[FR Doc. 87-18698 Filed 8-14-87; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31066]

Maine Central Railroad Co. and Portland Terminal Co. Lease Exemption, Springfield Terminal Railway Co.; Exemption

Maine Central Railroad Company (MEC), Portland Terminal Company (PT), and Springfield Terminal Railway Company (ST) filed a notice of exemption for: (1) MEC to lease to ST the Freight Main Line between milepost 46.26 and milepost 6.5 in Portland, ME, a distance of approximately 40 miles; and (2) PT to lease to ST the Freight Main Line between MEC Milepost 6.5 in Portland and the connection with the Boston and Maine Corporation (B&M) line at B&M milepost 111.2 in South Portland, ME, including Rigby Yard and the Rigby Car Shops (excluding the Engine House at Rigby Yard), a distance of approximately 7 miles. MEC will retain the right to operate through trains over the Freight Main Line.

MEC, PT, and ST are wholly-owned subsidiaries of Guilford Transportation Industries, Inc. (GTI), which also owns B&M and the Delaware and Hudson Railway Company (D&H). As a result of the proposed transaction, it is intended that ST will provide service as good as, or better than, service now provided.

Since MEC, PT, and ST are members of the same corporate family, the lease falls within the class of transactions that are exempt from the prior review requirements of 49 U.S.C. 11343. *See* 49 CFR 1180.2(d)(3). The carriers anticipate that the transaction will not result in adverse changes in service levels, significant operational changes, or a change in competitive balance with carriers operating outside the corporate family.

Any employee affected by the lease transaction would normally be protected by the labor conditions set forth in *Mendocino Coast Ry., Inc.—Lease and Operate*, 354 I.C.C. 732 (1978), and 360 I.C.C. 653 (1980) (*Mendocino*). These conditions satisfy the statutory requirements of 49 U.S.C. 10505(g)(2) for lease transactions. However, in a decision in Finance Docket No. 30965, *Delaware and Hudson Railway Company—Lease and Trackage Rights Exemption—Springfield Terminal Railway Company, et al.* (not printed), served May 18, 1987, the Commission set for modified procedure a series of notices filed by the GTI carriers because labor interests raised issues related to the level of employee protection for the transactions. The Commission asked the parties to that proceeding to address several issues and present additional evidence, including similar existing and future notices and transactions, such as this one, involving the GTI carriers.

Since the May 18, 1987 decision, the Commission has published in the Federal Register two related notices of exemption (Finance Docket Nos. 31015 and 31023) by various GTI carriers and indicated that the underlying transactions will be considered in the Finance Docket No. 30965 proceeding. The Railroad Labor Executives' Association has filed a petition in this proceeding asking that this lease transaction also be consolidated with that proceeding. The Commission will issue a separate decision disposing of that request.

If, prior to the Commission's determination of the appropriate level of labor protection for these GTI transactions, MEC and PT consummate this transaction and provide employees with *Mendocino* protection, they do so at their own risk. Should the Commission subsequently determine that a higher level of protection is required, MEC and PT will be required to provide employees with that greater protection.

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of petitions to revoke will not stay the transaction.

Decided: August 11, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-18699 Filed 8-14-87; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-1 (Sub-No. 195)]

Chicago and North Western Transportation Co.; Issuance of Certificate and Decision Authorizing Abandonment of Rail Lines Between Iowa Falls and Owasa, IA

The Commission has issued a certificate and decision authorizing the Chicago and North Western Transportation Company to abandon its 7.2-mile rail line between Iowa Falls (milepost 19.5) and Owasa, IA (milespost 12.3), in Hardin County, IA. The abandonment certificate will become effective 30 days after this publication unless within 15 days after publication the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 CFR 1152.27.

Decided: August 11, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterett, Andre, and Simmons. Vice Chairman Lamboley dessented with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 87-18799 Filed 8-4-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application, Research Biochemicals Inc.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on June 25, 1987, Research Biochemicals Incorporated, 9 Erie Drive, Natick, Massachusetts 01760, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
3, 4-Methylenedioxy amphetamine (7400)	I
3, 4-Methylenedioxymethamphetamine (MDMA) (7405).	I
Dimethyltryptamine (7435)	I
Amphetamine, its salts, optical isomers, and salts of its optical isomers (1100).	II
Methamphetamine, its salts, isomers, and salts of its isomers (1105).	II
Phenylacetone (8501)	II
Cocaine (9041)	II
Codeine (9050)	II
Benzoylecgonine (9180)	II
Metazocine (9240)	II
Morphine (9300)	II
Thebaine (9333)	II

Researcher Biochemicals Incorporated will produce small quantities of controlled substances to be used in research purposes only. They have never been registered as a bulk manufacturer of these controlled substances.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than (September 16, 1987).

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control Drug Enforcement Administration.

Dated: August 11, 1987.

[FR Doc. 87-18657 Filed 8-14-87; 8:45am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration; Syncates Associates, Inc.

By Notice dated June 12, 1987, and published in the **Federal Register** on July 23, 1987 (52 FR 23613), Syncates Associates, Inc., 9307-M Harwin, Houston, Texas 77036, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of Pentobarbital (2270), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to Section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Gene R. Haislip,

Deputy Assistant Administrtor, Office of Diversion Control, Drug Enforcement Administration.

Dated: August 11, 1987.

[FR Doc. 87-18656 Filed 8-14-87; 8:45 am]

BILLING CODE 4410-09-M

NUCLEAR REGULATORY COMMISSION

Extension of the Public Comment Period for NUREG-1150, "Reactor Risk Reference Document"

The U.S. Nuclear Regulatory Commission is extending the public comment period for NUREG-1150, Reactor Risk Reference Document," an additional 41 days.

Draft NUREG-1150 was issued for public comment on 2 March 1987. The 150 day public comment period was to end on 21 August 1987. The public comment period now ends on Thursday, 1 October 1987.

Public comment should be sent to Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washigton, DC, 20555.

(5 U.S.C. 552(a))

Dated at Bethesda, Maryland this 11th day of August 1987.

For the U.S. Nuclear Regulatory Commission.

R. Wayne Houston,

Acting Director, Division of Reactor Accident Analysis, Office of Nuclear Regulatory Research.

[FR Doc. 87-18595 Filed 8-14-87; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the full Committee, the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or canceled since the last list of proposed meetings published July 20, 1987 (52 FR 27288). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that the sessions of the full Committee meeting designated by an asterisk (*) will be open in whole or in part to the public. CRS full Committee meetings begin at 8:30 A.M. and Subcommittee meetings usually begin at 8:30 A.M. The time when items listed on the agenda will be discussed during full Committee meetings and when Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, canceled, or rescheduled, or whether changes have been made in the agenda for the September 1987 ACRS full Committee meeting can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone: 202/634-3265, ATTN: Barbara Jo White) between 8:15 A.M. and 5:00 P.M., Eastern Time.

ACRS Subcommittee Meetings

Regional and I&E Programs, August 28, 1987, Walnut Creek, CA. The Subcommittee will review the activities under the control of the Region V Office.

Future LWR Designs, September 8, 1987 (1:00 P.M.), Washington, DC. The Subcommittee will discuss its reply to the 4/22/87 Staff Requirements Memorandum regarding the feasibility, benefit, and cost effectiveness of selected and combined systems as recommended in the ACRS letter of 1/15/87 on Improved LWRs.

Generic Items, September 16, 1987, Washington, DC. The Subcommittee will continue the discussion on the effectiveness of the programs that address generic issues and USIs. Also, it will discuss with selected licensees the contribution to plant safety resulting from the implementation of the resolved generic issues and USIs.

Extreme External Phenomena, September 17, 1987, Washington, DC. The Subcommittee will discuss the NRC Staff's Seismic Design Margins Programs and the application of the methodology to Maine Yankee.

Auxiliary Systems, September 30, 1987, Washington, DC. The Subcommittee will discuss the following: (1) Heating, ventilating, and air conditioning (HVAC) system malfunctions and their impact on safety systems, (2) problems associated with instrument air systems, AEOD findings on instrument air system malfunctions and its recommendations to alleviate this problem, and (3) criteria used by the utilities to design chilled water systems, associated regulatory requirements, and the criteria being used by the NRC Staff to review the chilled water systems design.

TVA Organizational Issues, October 1, 1987, Washington, DC. The Subcommittee will review the safety issues associated with TVA management reorganization and the Sequoyah restart.

Systematic Assessment of Operating Experience, October 7, 1987, Washington, DC. The Subcommittee will discuss AEOD's assessment of the implications of selected operating events, the method of operation, and influence of AEOD.

Joint Waste Managment and Quality and Quality Assurance, October 14–16, 1987, Washington, DC. The Subcommittees will review QA Experience in Readiness Reviews as applied to nuclear power plants, NLW geologic repositories, and monitored retrievable storage (MRS) facilities. They will also review various pertinent waste management topics.

Decay Heat Removal Systems, Date to be determined (September), Washington, DC. The Subcommittee will continue its review of the NRR Resolution Position for USI A–45.

Thermal Hydraulic Phenomena, Date to be determined (September/October), Washington, DC. The Subcommittee will review: (1) The final version of revised ECCS Rule, and (2) the status of the NRC–RES thermal hydraulic research Program.

Standardization of Nuclear Facilities, Date to be determined (October), Washington, DC. The Subcommittee will review the Staff SER and Chapter I of the EPRI Requirements Document. Chapter II may also be discussed.

Severe Accidents, Date to be determined (October) (tentative), Washington, DC. The Subcommittee will review the final version of the NRC Staff's proposed generic letter on Individual Plant Examinations (IPEs).

Containment Requirements, Date to be determined (October/November), Washington, DC. The Subcommittee will review the hydrogen control measures for BWRs and Ice Condenser PWRs (USI A–48). May also involve EPGs for BWRs.

Babcock & Wilcox Reactor Plants, Date to be determined (October/November), Washington, DC. The Subcommittee will continue its review of the long-term safety review of B&W reactors. This effort was begun during the summer of 1986; initial Committee comments offered on July 16, 1986 in a letter to V. Stello, EDO.

Metal Components, Date to be determined (October/November), Charlotte, NC. The Subcommittee will review the status of the NDE of cast stainless steel piping.

Containment Requirements, Date to be determined (November/December), Washington, DC. The Subcommittee will review the proposed Containment Performance Improvement Program Plan. The Plan is in three parts: (1) Improved Plant Operations including EOPs, (2) Severe Accident vulnerabilities via IPEs and (3) containment performance in the event of a severe accident.

Diablo Canyon, Date to be determined (late November/early December), Location to be determined. The Subcommittee will review the status of the Diablo Canyon Long-Term Seismic Program.

Structural Engineering, Date to be determined (late November or January 1988), Albuquerque, NM. The Subcommittee will review the results of the model concrete containment test.

Containment Requirements, Date to be determined (April, 1988), Washington, DC. The Subcommittee will review the NRC Staff's document on containment performance and improvements (all containment types).

Joint Seabrook/Occupational & Environmental Protection Systems/Severe Accidents, Date to be determined, Washington, DC. The Subcommittees will review Seabrook Emergency Planning and other related matters.

Seabrook Unit 1, Date to be determined, Washington, DC. The Subcommittee will review the application for a full power operating license for Seabrook Unit 1.

ACRS Full Committee Meeting

September 10–12, 1987: Items are *tentatively* scheduled.

*A. *Storage of Spent Nuclear Power Plant Fuel (Open)*—Review proposed revision of 10 CFR Part 72—Licensing Requirements for the Storage of Spent Fuel in an Independent Spent Fuel Storage Installation (ISFSI) to provide for a Monitored Retrievable Storage facility.

*B. *Emergency Core Cooling Systems (Open)*—Review proposed changes in 10 CFR 50.54 regarding development and use of uncertainty methodology in best-estimate analytical models.

*C. *Resolution of Generic Issues (Open)*—Status reports and discussion of proposed resolution of GI 23, Reactor Coolant Pump Seal Failure, GI 93, Steam Binding of Auxiliary Feedwater Pumps, and GI 124, Auxiliary Feedwater System Reliability.

*D. *Seismic Qualification of Nuclear Power Plant Components (Open)*—Briefing by NRC Staff and the Seismic Qualification Utilities Group (SQUG) regarding results of seismic walk-through of the Zion Nuclear Power Station.

*E. *Improved Safety Features for Future LWRs (Open/Closed)*—Discuss proposed ACRS response to inquiry regarding the cost effectiveness, feasibility, and benefit of systems noted in the ACRS report of January 15, 1987.

*F. *Advanced Reactor Design (Open)*—Briefing regarding status of NRC staff review of DOE advanced reactor designs.

*G. *Zion Nuclear Station (Open)*—Briefing regarding full-field exercise conducted at the Zion Station.

*H. *Meeting with Director, NRR (Open)*—Discuss topics of mutual interest.

*I. *Emergency Planning (Open)*—Discuss proposed ACRS recommendations/comments regarding emergency planning in the vicinity of nuclear power plants.

*J. *Foreign Regulatory Policies and Practices (Open/Closed)*—Briefing and discussion of regulatory policies and practices in Italy.

*K. *Trojan Nuclear Station (Open)*—Briefing and discussion of excessive feedwater pipe thinning which occurred at this nuclear plant.

*L. *Unresolved Safety Issue A–44, Station Blackout (Open)*—Briefing and discussion of proposed NRC staff implementation of recommendations in the ACRS report of June 9, 1987 and status of NUMARC activities regarding this subject.

*M. *Implication of Chernobyl Nuclear Accident (Open)*—Discussion of proposed NRC staff implementation of ACRS recommendations in its report of January 15, 1987.

*N. *Appointment of New ACRS Members (Closed)*—Discuss qualifications of candidates proposed for consideration as nominees for appointment to the ACRS.

*O. *Future Activities (Open)*—Discuss anticipated ACRS subcommittee activity and items proposed for consideration by the full Committee.

*P. *Radioactive Waste Management and Disposal (Open)*—Report and review of matters related to the management and disposal of nuclear radwaste, including HLW, LLW, and related safety research.

*Q. *ACRS Subcommittee Activities (Open/Closed)*—Hear and discuss reports of ACRS Subcommittees regarding the status of assigned activities related to nuclear power plant safety and regulation, nuclear radwaste management, and regulatory practices and procedures.

October 8–10, 1987—Agenda to be announced.

November 5–7, 1987—Agenda to be announced.

Date: August 11, 1987.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 87–18761 Filed 8–14–87; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 030–29510, License No. 34–00811–03, (Superseded by No. 34–00811–04) EA 87–31]

Order Imposing Civil Monetary Penalty; LTV Steel Company, Inc.

I

LTV Steel Company, Inc., P.O. Box 6778 Cleveland, OH 44101, is the holder of License No. 34–00811–04 issued by the Nuclear Regulatory Commission on November 17, 1986. This license superseded License No. 34–00811–03 which terminated on November 17, 1986, and was the license in effect at the time the violations occurred. The old license authorized the licensee to possess and use licensed material in the form of sealed sources in certain density and level gauges in accordance with the conditions specified therein.

II

A special inspection of the licensee's activities was conducted on January 20–22, 1987. The results of this inspection indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the licensee by letter dated April 8, 1987. The Notice states the nature of the violations, the provisions of the NRC requirements that the licensee had violated, and the amount of the civil penalty proposed for the violations. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalty by letter dated May 1, 1987.

III

After consideration of the licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the Deputy Executive Director for Regional Operations has determined, as set forth in the appendix to this Order, that the violations occurred as stated and that the penalty proposed for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed.

IV

In view of the foregoing, and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, It Is Hereby Ordered That:

The licensee pay a civil penalty in the amount of two thousands dollars ($2,000.00) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with a copy to the Regional Administrator, Region III.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty referenced in section II above, and

(b) Whether, on the basis of such violation, this Order should be sustained.

For The Nuclear Regulatory Commission.

Dated at Bethesda, Maryland this 10th day of August 1987.

James M. Taylor,

Deputy Executive Director for Regional Operations.

Appendix—Evaluations and Conclusions

On April 8, 1987, a Notice of Violation and Proposed Imposition of Civil Penalty (NOV) was issued for violations identified during an NRC inspection. LTV Steel Company, Inc. responded to the Notice on May 1, 1987. The licensee protests the Notice on two points. While the licensee does not deny that the sources are lost, it believes the two cobalt sources were stored in restricted areas, which is in conflict with the Notice. The licensee also believes the violations should be cited against the license under which the sources were possessed, not the current license which superseded it. The NRC's evaluation and conclusion regarding the licensee's arguments are as follows:

I. Restatement of Violations

A. 10 CFR 20.207(b) requires that licensed materials in an unrestricted area and not in storage be tended under the constant surveillance and immediate control of the licensee.

Contrary to the above, on November 6, 1986, it was determined that five radioactive sources, which had been in storage in an unrestricted area, were removed and not maintained under constant surveillance or the immediate control of the licensee and thus were lost. The sources included a 13.7 millicurie americium–241 source, two sources containing 4.7 millicuries and cobalt–60, and two sources containing 0.3 microcuries and 12.7 microcuries of thallium–204.

B. License Condition No. 19 of the license dated August 20, 1984, states that the licensee shall conduct a physical inventory every six months to account for all sealed sources received and possessed under the license.

Contrary to the above, from December 19, 1984 (formation of LTV Steel) until November 6, 1986, it was determined that the licensee failed to conduct a physical inventory every six months to account for all sealed sources in storage.

Collectively, these violations have been classified as a Severity Level III problem (Supplements IV and VI).

Cumulative Civil Penalty—$2,000—assessed equally between the violations.

Summary of Licensee's Response

The licensee believes the License Number cited in the Notice is incorrect and should be changed from No. 34–00811–04 to 34–00811–03. License No. 34–00811–03, which terminated on November 17, 1986, prior to the NRC inspection, was the license under which the sources were reported missing. If the NRC changes the license number cited in the Notice, the licensee agrees, in substance, with Violation A since the licensee also believes there was a question concerning unrestricted access to three of the five sources. However, the licensee believes that the two cobalt–60 sources were properly secured in a restricted manner and would not constitute a violation. Although the licensee believes that three of the five sealed sources could have been better protected had access to the safe in which they were stored been more restricted, it does not believe that the loss of the two cobalt–60 sources can be attributed to poor access control.

In response to Violation B, the licensee agrees that physical inventories were not performed of stored, sealed sources at the Research Center at the prescribed six month intervals as required. The licensee states that the violation occurred because practices at the Research Center were not as described in the license and that an amendment change should have been requested to accurately describe the practice instituted by the licensee.

II. The licensee has also addressed the five factors regarding adjustment of the base civil penalty, as follows:

Prompt Identification and Reporting

NRC Region III was immediately notified by LTV Steel by telephone on the same day the sources were first discovered to be missing, November 6, 1986. The licensee also described the lost sources event in a December 5, 1986, report which was sent to the NRC.

Corrective Action to Prevent Recurrence

The licensee describes a new radiation protection program which was developed in response to a NRC request to update the license to reflect current practices at LTV Steel Company. These activities were in progress prior to the discovery of the missing sources. The major corrective actions taken since the discovery of the lost sources are: (1) Sources no longer vital to the steelmaking process will be properly transferred and disposed; (2) sources maintained in secured storage areas will be under strict access control; and (3) sources and source devices will be inventoried every six months.

Past Performance

In addressing this factor, the licensee describes the measures taken by LTV Steel to substantially upgrade the radiation protection program. This included transfer and disposal of excess radioactive sources and a forty hour radiation safety officer training seminar.

Prior Notice of Similar Events

The licensee states that NRC inspections did not identify concerns in the area of physical inventories by the licensee prior to the January 20–22,1987, inspection. The storage areas also were not identified as unrestricted areas by NRC inspectors. If such concerns had been indentified, the licensee states that such concerns would have been promptly corrected.

Multiple Occurrences

The licensee states that it was unaware of the existence of a violation for storing sources in an unrestricted area and was not aware of a condition resulting in a continuing violation for failure to conduct a physical inventory of sealed sources in storage.

NRC Evaluation of Licensee's Arguments For Mitigation

The NRC staff agrees with the licensee's observation that the violations occurred under the conditions of License No. 34–0081–03. The conditions of License No. 34–00811–03 were superseded by License No. 34–00811–04.

The licensee maintains that the loss of the two cobalt–60 sources does not constitute a violation as stated in the Notice since the sources were in a restricted area. The NRC conclusion was based on the licensee interviews contained in its December 5, 1986, report to the NRC. The interview of Mr. J. F. Perko, formerly Chief Project Engineer of the Nucleonics Division of Republic Steel, stated that the cobalt–60 were placed in storage in 1970. He stated that the safe in which the cobalt items were placed had a chain and lock around it. However, he stated that anyone at the Research Center may have had a key to it. The NRC staff does not believe that an area to which such access is possible constitutes a restricted area. This position is consistent with the NRC's position regarding material stored in the safe in the Main Research Center where at least ten people had access to the combination. The licensee agreed that access to the Main Research Center safe was not restricted as required.

The licensee agreed that Violation B occurred as stated in the Notice. The violation involved the licensee's failure to physically inventory radioactive sources in storage every six months.

In requesting mitigation or remission of the proposed civil penalty, the licensee has addressed the factors listed in Section V.B. 10 CFR Part 2, Appendix C (1986). The NRC staff evaluation of the licensee's statements are provided below:

Prompt Identification and Reporting

The licensee contracted for transfer and disposal activities from June 1986 until September 26, 1986. On November 6, 1986, the licensee was informed by the contractor, Texas Nuclear Corporation, that five sources were unaccountable. Once this information was presented to the licensee, the NRC was informed. The NRC staff believes this event to be self-disclosing. Mitigation under this factor is usually given to licensees who have a strong program with good audit capabilities. Although the licensee's audit program (physical inventory) had opportunity to identify the violation, the licensee's failure to physically inventory sources prevented the licensee from identifying the missing sources earlier.

Corrective Action to Prevent Recurrence

The NRC staff acknowledges the licensee's corrective actions and believes that adherence to these practices should prevent recurrence. However, the NRC staff does not believe the corrective actions were unusually prompt or so extensive as to warrant mitigation. NRC expects that sources in storage will be under strict access controls and that physical inventories will be performed as required (six month frequency).

Past Performance

The results of the inspection show that access to safes where radioactive sources were stored was not adequately controlled and physical inventories to identify discrepancies were not conducted. These violations appear to have existed for a considerable period of time. The licensee's performance over this period of time does not warrant mitigation of the penalty.

Prior Notice of Similar Events

The NRC agrees that the licensee did not have prior notice of any similar

events. Had the licensee known of previous events or been informed that violations may have existed and not taken corrective action, escalation for this factor would have been appropriate. Absent this, no adjustment to the base civil penalty occurred due to prior notice.

Multiple Occurrences

The licensee agrees that it was unaware of the continuing violations in this area. Had the licensee been aware of these problems and failed to correct the violations, escalation for prior notice of similar events would have been appropriate. Because of weaknesses in the licensee's program, violations were not identified for a period of at least eighteen months and the violations contineued until the licensee was infomred by its contractor that the sources could not be located.

NRC Conclusion

Neither an adequate basis for a reduction of the severity level nor for mitigation of the civil penalty was provided by the licensee. Consequently, the proposed Civil Penalty in the amount of $2,000.00 should be imposed.

[FR Doc. 87-18727 Filed 8-14-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-443-OL 50-444-OL (ASLBP No. 82-471-02-OL) (Offsite Emergency Planning)]

Atomic Safety and Licensing Board; Hearing; Public Service Co. of New Hampshire et al. (Seabrook Station, Units 1 and 2)

Before Administrative Judges: Helen F. Hoyt, Chairperson Gustave A. Linenberger, Jr., Dr. Jerry Harbour

August 10, 1987.

Seabrook hearings are now scheduled to be held in the New Hampshire Statehouse Hall of Representatives at Concord, New Hampshire on the following dates:

September 28–October 2, 1987–9:00 a.m.–5:00 p.m.
October 5–October 9, 1987–9:00 a.m.–5:00 p.m.
October 19–October 23, 1987–9:00 a.m.–5:00 p.m.
November 2–November 6, 1987–9:00 a.m.–5:00 p.m.
November 16–November 20, 1987–9:00 a.m.–5:00 p.m.

For the Atomic Safety and Licensing Board.

Helen F. Hoyt,

Chairperson, Administrative Judge.

[FR Doc. 87-18780 Filed 8-14-87; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Wednesday, September 2, 1987
Wednesday, September 9, 1987
Wednesday, September 16, 1987
Wednesday, September 23, 1987
Wednesday, September 30, 1987

These meetings will start at 10 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives from five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives from five Federal agencies. Entitlement to membership of the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under Subchapter IV, Chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committtee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 1340, 1900 E Street, NW., Washington, DC 20415 (202) 632-9710.

Thomas E. Anfinson,

Chairman, Federal Prevailing Rate Advisory Committee.

August 11, 1987.

[FR Doc. 87-18707 Filed 8-14-87; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Application for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange

August 11, 1987.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

GCA Corporation (New), Common Stock, $.01 Par Value (File No. 7-0342)
Nortek, Inc. (Delaware), Common Stock, $1 Par Value (File No. 7-0343)
Raychem Corporation (Delaware), Common Stock, $1 Par Value (File No. 7-0344)

These securities are registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 2, 1987, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extension of unlisted trading privileges pursuant to such applications is consistent with the

maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan Katz,

Secretary.

[FR Doc. 87-18696 Filed 8-14-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24791; File No. SR-MBS-87-6]

Self-Regulatory Organizations; Proposed Rule Change by MBS Clearing Corporation Relating to Physical Withdrawal of Securities Eligible ("Eligible Securities") for Deposit in MBSCC's Depository Division; Filing and Immediate Effectiveness

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 5, 1987 the MBS Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Attached as Exhibit A is the MBS Clearing Corporation's (MBSCC) procedures regarding the physical withdrawal of securities eligible ("Eligible Securities") for deposit in MBSCC's Depository Division.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change clarifies and sets forth MBSCC's policy regarding the physical withdrawal of Eligible Securities. The policy covers Eligible Securities subject to the Public Securities Association's ("PSA") Good Delivery Guideline for securities issued by the Government National Mortgage Association ("GNMA"), as adopted on December 29, 1986, as well as those not subject to PSA's guideline. The PSA guideline was announced together with a schedule by GNMA and PSA for the conversion of GNMA securities into book-entry form.

The policy substantially limits, but does not altogether prohibit, the withdrawal of securities subject to PSA's Good Delivery Guideline. Securities not subject to the guideline may be withdrawn by MBSCC Participants and registered in the name of the Participant or the name of a customer of the Participant. Securities subject to the guideline may be withdrawn and registered in a Participant's name only if the Participant is legally required to maintain physical possession of the securities. Participants may otherwise request physical withdrawal of securities on behalf of a customer only if the customer is legally required to maintain physical possession of the securities or the customer, to the best of the Participant's knowledge, does not intend to trade or deliver the withdrawn securities.

At the present time, GNMA securities with the following coupon rates have been converted to book-entry form and are subject to the PSA guideline: 5.50%–7.49%, 16.00%–17.50%, 14.00%–15.99%, and 13.00%–13.99%. On April 27, 1987, PSA and MBSCC modified the conversion schedule of GNMA securities. For additional coupons, notice will be given of coupons to be designated as specified for book-entry settlement 45 days in advance of the issuance date of new pools of coupons.

In response to concerns raised by various commentators, MBSCC has further revised the withdrawal policy to make it clear that a Participant may make a request to withdraw securities subject to the PSA Good Delivery Guideline if it is legally required to maintain, as well as obtain, physical possession of securities. The phrase "legally required to obtain or maintain physical possession" is expanded to include those legal requirements imposed by any rule or regulation of any governmental agency, self-regulatory organization or designated contract market as defined in the Commodity Exchange Act. In addition, the policy has been revised to enable the Participant, or its customer, to obtain securities in time to comply with such legal requirements.

Consistent with PSA's Good Delivery Guideline, the policy essentially ensures that securities subject thereto will be cleared and settled in book-entry form through a registered clearing agency. The policy is designed to reduce physical withdrawal requests for book-entry eligible securities subject to the guideline and encourage the centralized processing of mortgage-backed securities transactions. By placing reasonable restrictions on the physical withdrawal of mortgage-backed securities subject to the PSA guideline, the proposed rule change will both foster PSA's mandate for book-entry settlement of certain transactions and significantly reduce delays, unmatched transaction orders and other human errors often associated with the physical delivery and transfer of certificates. The text of the withdrawal policy is attached as Exhibit A.

The proposed rule change is consistent with section 17A of the Securities Exchange Act of 1934 in that it encourages the processing and facilitation of securities clearance and settlement of mortgage-backed securities, thereby reducing current inefficient procedures and costs to issuers and investors of mortgaged-backed securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MBSCC does not believe that any burden will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

While writen comments have not been generally solicited, MBSCC has submited responses to comments submitted to the Commission. In response to certain concerns raised by the Chicago Board of Trade regarding the obtaining of GNMA certificates for collateral purposes relating to Collateralized Depository Receipts, MBSCC has made revisions to the proposed rule change discussed in Item 3(a) above.

In a separate rule filing to MBSCC's Depository Division rules (SR–MBS–87–7, submitted July 24, 1987), MBSCC has responded to concerns raised by some commentators regarding the submission of claims under a GNMA or other similar guarantee on behalf of Participants. The Depository Division rules have been amended to make clear that MBSCC, in filing claims for payment under any guarantee, will be acting solely as agent for its

Participants, except in certain circumstances, where MBSCC or a third-party leader have made principal and interest advances.

Representatives of PSA and GNMA have had the opportunity to review the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW. Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the propose rule change that ae filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC Copies of such filing will also be available for inspection and copying at the principal office of MBSCC. All submissions should refer to File No. SR–MBS–87–8 and should be submitted by September 8, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegate authority.

Dated: August 11, 1987.

Jonathan G. Katz,

Secretary.

Exhibit A—MBSCC Procedure For Physical Withdrawal of Depository Eligible Securities

The following is MBSCC's Procedure for physical withdrawal of securities from the MBSCC Depository. The Procedure covers securities that are *not* yet subject to PSA's Good Delivery Guideline, as adopted by PSA on December 29, 1986, *as well as those* subject to the Guideline. This Procedure limits almost in its entirety the withdrawal of securities that are subject to PSA's Good Delivery Guideline. This is consistent with PSA's and GNMA's intent to move vigorously to a book-entry settlement environment for GNMA securities.

Securities Not Yet Subject to Good Delivery Guideline

In the case of securities not yet subject to the Good Delivery Guideline, a Participant will be permitted to withdraw Securities held by the Depository upon the Participant's submission of a request on the form prescribed by MBSCC. The Participant must specify whether the securities should be registered in the name of the Participant or the name of a customer of the Participant. Assuming that the request is made within the appropriate cut-off times prescribed by MBSCC, securities will be processed within four-to-twelve hours of such request.

Securities Subject to Good Delivery Guideline

MBSCC will honor requests to withdraw securities subject to the PSA Good Delivery Guideline in a Participant's name only in the unlikely event that the Participant is legally required to obtain or maintain physical possession of securities. Other Participants may submit requests for withdrawal of securities only if they request that the securities be registered in the name of a customer who is legally required to obtain or maintain physical possession of the securities or who, to the best of the Participant's knowledge, does not intend to trade, or deliver for financing purposes, the securities withdrawn. For purposes hereof, a Participant or its customer will be deemed legally required to obtain or maintain physical possession of securities if obligated to do so under any applicable law or any rule or regulation of any governmental agency, any self-regulatory organization as defined in the Securities Exchange Act of 1934, or any designated contract market as defined in the Commodity Exchange Act (including, in the case of a self-regulatory organization or designated contract market which is a Participant in the Depository, the rules or regulations of such self-regulatory organization or designated contract market).

Assuming a request for withdrawal satisfies the foregoing guidelines and is made within the appropriate cut-off times and on forms prescribed by MBSCC, MBSCC will make the securities available (a) seven calendar days from the date of withdrawal request, or (b) on such earlier date as the Participant requesting the withdrawal certifies to MBSCC is necessary to enable the Participant or its customer to comply with any applicable legal requirement. Participants should advise their customers that payment will be required on settlement date, even though the physical security may be received sometime thereafter.

By making a request for the withdrawal of securities, a MBSCC Depository Participant represents to the Depository that the withdrawal will satisfy the foregoing guidelines. Abuse of this policy will subject the offending Participant's continued participation in the Depository to review by the MBS Clearing Corporation Board of Directors.

[FR Doc. 87–18743 Filed 8–14–87; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Action Subject to Intergovernmental Review

AGENCY: Small Business Administration.

ACTION: Notice of action subject to intergovernment review under Executive Order 12372.

SUMMARY: This notice provides for public awareness of SBA's intention to refund ten presently existent Small Business Development Centers (SBDCs) on September 30, 1987. Currently, there are 49 SBDCs operating in the SBDC program. The following SBDCs are intended to be refunded: Delaware; Iowa; Kentucky; Louisiana; Massachusetts; Michigan; Missouri; Texas (at Houston); Vermont; and Wyoming. This notice also provides a description of the SBDC program by setting forth a condensed version of the program announcement which has been furnished to each of the SBDCs to be refunded. This publication is being made to provide the State single points of contact, designated pursuant to Executive Order 12372, and other interested State and local entities, the opportunity to comment on the proposed refunding in accord with the Executive Order and SBA's regulations found at 13 CFR Part 135.

DATE: Comments will be accepted through September 16, 1987.

ADDRESS: Comments should be addressed to Mrs. Johnnie L. Albertson, Deputy Associate Administrator for SBDC Programs, U.S. Small Business

Administration, 1441 L Street, NW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Same as above.

Notice of Action Subject to Intergovernmental Review

SBA is bound by the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs." SBA has promulgated regulations spelling out its obligations under that Executive Order. See 13 CFR Part 135, effective September 30, 1983.

In accord with these regulations, specifically § 135.4, SBA is publishing this notice to provide public awareness of the pending application of two presently existent Small Business Development Centers (SBDCs) for refunding. Also, published herewith is an annotated program announcement describing the SBDC program in detail.

This notice is being published one and one half months in advance of the expected date of refunding of these SBDCs instead of the usual 60 days due to inadvertent administrative delays. Relevant information identifying these SBDCs and providing their mailing address is provided below. In addition to this publication, a copy of this notice is being simultaneously furnished to each affected State single point of contact which has been established under the Executive Order.

The State single points of contact and other interested State and local entities are expected to advise the relevant SBDC of their comments regarding the proposed refunding in writing as soon as possible. The SBDC proposal cannot be inconsistent with any area-wide plan providing assistance to small business, if there is one, which has been adopted by an agency recognized by the State government as authorized to do so. Copies of such written comments should also be furnished to Mrs. Johnnie L. Albertson, Deputy Associate Administrator for SBDC Programs, U.S. Small Business Administration, 1441 L Street, NW., Washington, DC 20416. Comments will be accepted by the relevant SBDC and SBA for a period of 30 days from the date of publication of this notice. The relevant SBDC will make every effort to accommodate these comments during the 30-day period. If the comments cannot be accommodated by the relevant SBDC, SBA will, prior to refunding the SBDC, either attain accommodation of any comments or furnish an explanation of why accommodation cannot be attained to the commentor prior to refunding the SBDC.

Description of the SBDC Program

The Small Business Development Center Program is a major management assistance delivery program of the U.S. Small Business Administration. SBDCs are authorized under section 21 of the Small Business Act (15 U.S.C. 648). SBDCs operate pursuant to the provisions of section 21, a Notice of Award (Cooperative Agreement) issued by SBA, and a Program Announcement. The Program represents a partnership between SBA and the State-endorsed organization receiving Federal assistance for its operation. SBDCs operate on the basis of a State plan which provides small business assistance throughout the State. As a condition to any financial award made to an applicant, an additional amount equal to the amount of assistance provided by SBA must be provided to the SBDC from sources other than the Federal Government.

Purpose and Scope

The SBDC Program has been designed to meet the specialized and complex management and technical assistance needs of the small business community. SBDCs focus on providing indepth quality assistance to small businesses in all areas which promote growth, expansion, innovation, increased productivity and management improvement. SBDCs act in an advocacy role to promote local small business interests. SBDCs concentrate on developing the unique resources of the university system, the private sector, and State and local governments to provide services to the small business community which are not available elsewhere. SBDCs coordinate with other SBA programs of management assistance and utilize the expertise of these affiliated resources to expand services and avoid duplication of effort.

Program Objectives

The overall objective of the SBDC Program is to leverage Federal dollars and resources with those of the State academic community and private sector to:

(a) Strengthen the small business community;

(b) Contribute to the economic growth of the communities served;

(c) Make assistance available to more small businesses than is now possible with present Federal resources; and

(d) Create a broader based delivery system to the small business community.

SBDC Program Organization

SBDCs are organized to provide maximum services to the local small business community. The lead SBDC receives financial assistance from the SBA to operate a statewide SBDC Program. In states where more than one organization receives SBA financial assistance to operate an SBDC, each lead SBDC is responsible for Program operations throughout a specific regional area to be served by the SBDC. The lead SBDC is responsible for establishing a network of SDBC subcenters to offer service coverage to the small business community. The SBDC network is managed and directed by a single full-time Director. SBDCs must ensure that at least 80 percent of Federal funds provided are used to provide services to small businesses. To the extent possible, SBDCs provide services by enlisting volunteer and other low cost resources on a statewide basis.

SBDC Services

The specific types of services to be offered are developed in coordination with the SBA district office which has jurisdiction over a given SBDC. SBDCs emphasize the provision of indepth, high-quality assistance to small business owners or prospective small business owners in complex areas that require specialized expertise. These areas may include, but are not limited to: Management, marketing, financing, accounting, strategic planning, regulation and taxation, capital formation, procurement assistance, human resource management, production, operations, economic and business data analysis, engineering, technology transfer, innovation and research, new product development, product analysis, plant layout and design, agri-business, computer application, business law information, and referral (any legal services beyond basic legal information and referral require the endorsement of the State Bar Association), exporting, office automation, site selection, or any other areas of assistance required to promote small business growth, expansion, and productivity within the State.

The degree to which SBDC resources are directed towards specific areas of assistance is determined by local community needs, SBA priorities and SBDC Program objectives and agreed upon by the SBA district office and the SBDC.

The SBDC must offer quality training to improve the skills and knowledge of existing and prospective small business owners. As a general guideline, SBDCs should emphasize the provision of training in specialized areas other than basic small business management subjects. SBDCs should also emphasize

training designed to reach particular audiences such as members of SBA priority and special emphasis groups.

SBDC Program Requirements

The SBDC is responsible to the SBA for ensuring that all programmatic and financial requirements imposed upon them by statute or agreement are met. The SBDC must assure that quality assistance and training in management and technical areas are provided to the State small business community through the State SBDC network. As a condition of this agreement, the SBDC must perform, but not be limited to, the following activities.

(a) The SBDC ensures that services are provided as close as possible to small business population centers. This is accomplished through the establishment of SBDC subcenters.

(b) The SBDC ensures that lists of local and regional private consultants are maintained at the lead SBDC and each SBDC subcenter. The SBDC utilizes and provides compensation to qualified small business vendors such as private management consultants, private consulting engineers, and private testing laboratories.

(c) The SBDC is responsible for the development and expansion of resources within the State, particularly the development of new resources to assist small business that are not presently associated with the SBA district office.

(d) The SBDC ensures that working relationships and open communications exist within the financial and investment communities, and with legal associations, private consultants, as well as small business groups and associations to help address the needs of the small business community.

(e) The SBDC ensures that assistance is provided to SBA special emphasis groups throughout the SBDC network. This assistance shall be provided to veterans, women, exporters, the handicapped, and minorities as well as any other groups designated a priority by SBA. Services provided to special emphasis groups shall be performed as part of the Cooperative Agreement.

Advance Understandings

(a) Lead SBDCs shall operate on a 40-hour week basis, or during normal State business hours of the host institution, with National holidays or State holidays as applicable excluded.

(b) SBDC subcenters shall be operated on a full-time basis. The lead SBDC shall ensure that staffing is adequate to meet the needs of the small business community.

Date: August 11, 1987.

James Abdnor,
Adminsitrator

Addresses of Relavent SBDC Directors

Mr. David Park, Delaware SBDC State Director, University of Delaware, Suite 005—Purnell Hall, Newark, DE 19711, (302) 451–2747

Mr. Jerry Owen, Kentucky SBDC State Director, University of Kentucky, 18 Porter Building, Lexington, KY 40506–0205, (606) 257–1751

Mr. John Ciccarelli, Massachusetts SBDC State Director, University of Massachusetts, School of Management, Amherst, MA 01003, (413) 549–4930—Ext. 303

Mr. Fred O. Hale, Missouri SBDC State Director, St. Louis University, 3674 Lindell Boulevard, St. Louis, MO 63108, (314) 534–7204

Mr. Norris Elliott, Vermont SBDC State Director, University of Vermont, Extension Service, Morrill Hall, Burlington, VT 05405, (802) 656–4479

Mr. Ronald Manning, Iowa SBDC State Director, Iowa State University, College of Business Administration, 137 Lynn Avenue, Amas, IA 50010, (515) 292–6351

Dr. John Baker, Louisiana SBDC State Director, Northeast Louisiana University, Administrative Bldg.—Room 2–57, University Drive, Monroe, LA 71209, (318) 342–2464

Dr. Norman Schlafmann, Michigan SBDC State Director, Wayne State University, 2727 Second Avenue, Detroit, MI 48201, (313) 577–4848

Dr. Jon Goodman, Houston SBDC State Director, University of Houston, College of Business Administration, 4800 Calhoun, Houston, TX 77004, (713) 749–4236

Mr. Mac Bryant, Wyoming SBDC State Director, Casper Community College, 130 North Ash, Suite A, Casper, WY 82601, (307) 235–4825

[FR Doc. 87–18649 Filed 8–14–87; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2287]

Declaration of Disaster Loan Area; California

Pebble Beach, California, constitutes a disaster loan area because of damage from a fire which occurred on May 31, 1987. Applications for loans for physical damage may be filed until the close of business on October 9, 1987, and for economic injury until the close of business on May 10, 1988, at the address listed below:

Disaster Area 4 Office, Small Business Administration, 77 Cadillac Drive, Suite 158, P.O. Box 13795, Sacramento, California 95853

or other locally announced locations.

The interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable	9.500

The number assigned to this disaster is 228705 for physical damage and for economic injury the number is 654200.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Date: August 10, 1987.

James Abdnor,
Administrator.

[FR Doc. 87–18650 Filed 8–14–87; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2285]

Declaration of Disaster Loan Area; Minnesota

As a result of the President's major disaster declaration on August 6, 1987, I find that Dakota and Hennepin Counties

and the adjacent Counties of Carver, Ramsey, Scott and Washington in the State of Minnesota constitute a disaster loan area because of damage from severe storms, tornadoes and flooding which occurred on or about July 20, 1987. Eligible persons, firms, and organizations may file applications for physical damage until the close of business on October 5, 1987, and for economic injury until the close of buisness on May 6, 1988, at:

Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Floor, Atlanta, Georgia 30308

or other locally announced locations.

The interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	9.500

The number assigned to this disaster is 228606 for physical damage and for economic injury the number is 654100.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008).

Date: August 7, 1987.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance

[FR Doc. 87-18851 Filed 8-14-87; 8:45 am]

BILLING CODE 8025-01-M

[License No. 06/10-0150]

Capital Marketing Corp.; Application for Approval of Conflict of Interest Transaction between Associates

Notice is hereby given that Capital Marketing Corporation (CMC), 100 Nat Gibbs Drive, Keller, Texas 76248, a Federal Licensee under the Small Business Investment Act of 1958, as amended, has filed an application with the Small Business Administration (SBA) pursuant to Section 107.903 of the Regulations governing small business investment companies (13 CFR 107.903 (1987)) for approval of a conflict of interest transaction.

CMC proposes to sell assets which it repossessed from former borrowers, to Mr. Bob Burrus who will assume total indebtedness of $866,533 to CMC.

The conflict of interest arises because Mr. Burrus is a Director of Affiliated Food Stores, Inc., (Affiliated). Affiliated is an associate of CMC. As a result, CMC's financing of Mr. Burrus falls within the purview of § 107.903(b)(1) of the SBA Regulations and requires prior written approval of SBA.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this notice, submit written comments to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC. 20416.

A copy of this notice will be published in a newspaper of general circulation in the Keller, Texas area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 7, 1987.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 87-18852 Filed 8-14-87; 8:45 am]

BILLING CODE 8025-01-M

Action Subject to Intergovernmental Review

AGENCY: Small Business Administration.

ACTION: Notice of Action subject to intergovernmental review under Executive Order 12372.

SUMMARY: This notice provides for public awareness of SBA's intention to refund eleven presently existent Small Business Development Centers (SBDCs) on October 1, 1987. Currently, there are 49 SBDCs operating in the SBDC program. The following SBDCs are intended to be refunded, subject to the availability of funds: Alabama; Alaska; Connecticut; Mississippi; New York (Downstate); New York (Upstate); Ohio; Puerto Rico; Texas (at San Antonio); St Thomas; and West Virginia. This notice also provides a description of the SBDC program by setting forth a condensed version of the program announcement which has been furnished to each of the SBDCs to be refunded. This publication is being made to provide the State single points of contact, designated pursuant to Executive Order 12372, and other interested States and local entities, the opportunity to comment on the proposed refunding in accord with the Executive Order and SBA's regulations found at 13 CFR Part 135.

DATE: Comments will be accepted through September 16, 1987.

ADDRESS: Comments should be addressed to Mrs. Johnnie L. Albertson, Deputy Assistance Administrator for SBDC Programs, U.S. Small Business Administration, 1441 L Street NW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Same as above.

Notice of Action Subject to Intergovernmental Review

SBA is bound by the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs." SBA has promulgated regulations spelling out its obligations under that Executive Order. See 13 CFR Part 135, effective September 30, 1983.

In accord with these regulations, specifically § 135.4, SBA is publishing this notice to provide public awareness of the pending application of two presently existent Small Business Development Centers (SBDCs) for refunding. Also, published herewith is an annotated program announcement describing the SBDC program in detail.

This notice is being published one and one half months in advance of the expected date of refunding of these SBDCs instead of the usual 60 days due to inadvertent administrative delays. Relevant information identifying these SBDCs and providing their mailing address is provided below. In addition to this publication, a copy of this notice is being simultaneously furnished to each affected State single point of

contact which has been established under the Executive Order.

The State single points of contact and other interested State and local entities are expected to advise the relevant SBDC of their comments regarding the proposed refunding in writing as soon as possible. The SBDC proposal cannot be inconsistent with any area-wide plan providing assistance to small business, if there is one, which has been adopted by an agency recognized by the State government as authorized to do so. Copies of such written comments should also be furnished to Mrs. Johnnie L. Albertson, Deputy Associate Administrator for SBDC Programs, U.S. Small Business Administration, 1441 L Street NW., Washington, DC 20416. Comments will be accepted by the relevant SBDC and SBA for a period of 30 days from the date of publication of this notice. The relevant SBDC will make every effort to accommodate these comments during the 30-day period. If the comments cannot be accommodated by the relevant SBDC, SBA will, prior to refunding the SBDC, either attain accommodation of any comments or furnish an explanation of why accommodation cannot be attained to the commentor prior to refunding the SBDC.

Description of the SBDC Program

The Small Business Development Center Program is a major management assistance delivery program of the U.S. Small Business Administration. SBDCs are authorized under section 21 of the Small Business Act (14 U.S.C. 648). SBDCs operate pursuant to the provisions of section 21, a Notice of Award (Cooperative Agreement) issued by SBA, and a Program Announcement. The Program represents a partnership between SBA and the State-endorsed organization receiving Federal assistance for its operation. SBDCs operate on the basis of a State plan which provide small business assistance throughout the State. As a condition to any financial award made to an applicant, an additional amount equal to the amount of assistance provided by SBA must be provided to the SBDC from sources other than the Federal Government.

Purpose and Scope

The SBDC Program has been designed to meet the specialized and complex management and technical assistance needs of the small business community. SBDCs focus on providing indepth quality assistance to small businesses in all areas which promote growth, expansion, innovation, increased productivity and management improvement. SBDCs act in an advocacy role to promote local small business interests. SBDCs concentrate on developing the unique resources of the university system, the private sector, and State and local governments to provide services to the small business community which are not available elsewhere. SBDCs coordinate with other SBA programs of management assistance and utilize the expertise of these affiliated resources to expand services and avoid duplication of effort.

Program Objectives:

The overall objective of the SBDC Program is to leverage Federal dollars and resources with those of the State academic community and private sector to:

(a) Strengthen the small business community;

(b) Contribute to the economic growth of the communities served;

(c) Make assistance available to more small businesses than is now possible with present Federal resources; and

(d) Create a broader based delivery system to the small business community.

SBDC Program Organization

SBDCs are organized to provide maximum services to the local small business community. The lead SBDC receives financial assistance from the SBA to operate a statewide SBDC Program. In states where more than one organization receives SBA financial assistance to operate an SBDC, each lead SBDC is responsible for Program operations throughout a specific regional area to be served by the SBDC. The lead SBDC is responsible for establishing a network of SBDC subcenters to offer service coverage to the small business community. The SBDC network is managed and directed by a single full-time Director. SBDCs must ensure that at least 80 percent of Federal funds provided are used to provide services to small businesses. To the extent possible, SBDCs provide services by enlisting volunteer and other low cost resources on a statewide basis.

SBDC Services

The specific types of services to be offered are developed in coordination with the SBA district office which has jurisdiction over a given SBDC. SBDCs emphasize the provision of indepth, high-quality assistance to small business owners or prospective small business owners in complex areas that require specialized expertise. These areas may include, but are not limited to: management, marketing, financing, accounting, strategic planning, regulation and taxation, capital formation, procurement assistance, human resource management, production, operations, economic and business data analysis, engineering, technology transfer, innovation and research, new product development, product analysis, plant layout and design, agribusiness, computer application, business law information, and referral (any legal services beyond basic legal information and referral require the endorsement of the State Bar Association,) exporting, office automation, site selection, or any other areas of assistance required to promote small business growth, expansion, and productivity within the State.

The degree to which SBDC resources are directed towards specific areas of assistance is determined by local community needs, SBA priorities and SBDC Program objectives and agreed upon by the SBA district office and the SBDC.

The SBDC must offer quality training to improve the skills and knowledge of existing and prospective small business owners. As a general guideline, SBDCs should emphasize the provision of training in specialized areas other than basic small business management subjects. SBDCs should also emphasize training designed to reach particular audiences such as members of SBA priority and special emphasis groups.

SBDC Program Requirements

The SBDC is responsible to the SBA for ensuring that all programmatic and financial requirements imposed upon them by statute or agreement are met. The SBDC must assure that quality assistance and training in management and technical areas are provided to the State small business community through the State SBDC network. As a condition of this agreement, the SBDC must perform, but not be limited to, the following activities.

(a) The SBDC ensures that services are provided as close as possible to small business population centers. This is accomplished through the establishment of SBDC subcenters.

(b) The SBDC ensures that lists of local and regional private consultants are maintained at the lead SBDC and each SBDC subcenter. The SBDC utilizes and provides compensation to qualified small business vendors such as private management consultants, private consulting engineers, and private testing laboratories.

(c) The SBDC is responsible for the development and expansion of resources within the State, particularly the development of new resources to assist small business that are not

presently associated with the SBA district office.

(d) The SBDC ensures that working relationships and open communications exist within the financial and investment communities, and with legal associations, private consultants, as well as small business groups and associations to help address the needs of the small business community.

(e) The SBDC ensures that assistance is provided to SBA special emphasis groups throughout the SBDC network. This assistance shall be provided to veterans, women, exporters, the handicapped, and minorities as well as any other groups designated a priority by SBA. Services provided to special emphasis groups shall be performed as part of the Cooperative Agreement.

Advance Understandings

(a) Lead SBDCs shall operate on a 40-hour week basis, or during normal State business hours of the host institution, with National holidays or State holidays as applicable excluded.

(b) SBDC subcenters shall be operated on a full-time basis. The lead SBDC shall ensure that staffing is adequate to meet the needs of the small business community.

Date: August 11, 1987.

James Abdnor,

Administrator.

Addresses of Relevant SBDC Directors

Dr. Jeff Gibbs, Alabama SBDC State Director, University of Alabama in Birmingham, 1717 11th Avenue South, Suite 419, Birmingham, AL 35294, (205) 934-7260

Dr. John P. O'Connor, Connecticut SBDC State Director, University of Connecticut, Box U-41, 368 Fairfield Road, Storrs, CT 06268, (203) 486-4135

Mr. James King, Downstate New York SBDC Director, State University of New York, SUNY Downstate, Central Administration, State University Plaza, Albany, NY 12246, (518) 443-5398

Mr. Jack Brown, Ohio SBDC State Director, Ohio Department of Development, 30 East Broad Street, P.O. Box 1001, Columbus, OH 43266-1001, (614) 466-4945

Dr. Rodolfo Ramirez, San Antonio Region SBDC Director, University of Texas at San Antonio, Center for Economic Development, Hemisphere Plaza Building, #448, San Antonio, TX 78205, (512) 224-1945

Ms. Eloise Jack, West Virginia SBDC State Director, Governor's Office of Community and Industrial Development, 1115 Virginia Street, East, Charleston, WV 25310, (304) 348-2960

Ms. Janet Nye, Alaska SBDC State Director, Anchorage Community College, 430 West 7th Avenue, Suite 115, Anchorage, AK 99504, (907) 274-7232

Dr. Robert D. Smith, Mississippi SBDC State Director, University of Mississippi, 3825 Ridgewood Road, Jackson, MS 39211, (601) 982-6760

Mr. James King, Upstate New York SBDC Director, State University of New York, SUNY Upstate, SUNY Central, State University Plaza, Albany, NY 12246, (518) 443-5398

Mr. Jose M. Romaguera, Puerto Rico SBDC Director, University of Puerto Rico, P.O. Box 5253, Mayaguez, PR 00708, (809) 834-3590

Dr. Solomon S. Kabuka, Jr., Virgin Islands SBDC Director, College of the Virgin Islands, Box 1087, Charlotte Amalie, St. Thomas, VI 00801, (809) 776-3206

[FR Doc. 87-18647 Filed 8-14-87; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Application for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed During the Week Ending August 7, 1987

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate case a final order without further proceedings.

Docket No. 45065

Date Filed: August 5, 1987.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 2, 1987.

Description: Application of KSR Airlines, Inc. pursuant to section 401(d)(1) of the Act and Subpart Q of the Regulations, requests permanent authority to engage in foreign scheduled air transportation of passengers, property, and mail between point or points in the United States, on the one hand, and point or points outside of the United States, on the other hand.

Docket No. 45066

Date Filed: August 5, 1987.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: September 2, 1987.

Descripion: Application of KSR Airlines, Inc. pursuant to section 401(d)(1) of the Act and Subpart Q of the Regulations, requests permanent authority to engage in interstate and overseas scheduled air transportation of passengers, property, and mail as follows: Between a point in any State in the United States, or the District of Columbia, or any Territory or Possession of the United States and any other point in any State of the United States or the District of Columbia, or any Territory or Possession of the United States.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 87-18705 Filed 8-14-87; 8:45 am]

BILLING CODE 4910-62-M

Coast Guard

[CGD 87-056]

New York Harbor Traffic Management Advisory Committee; Renewal

AGENCY: Coast Guard, DOT.

ACTION: Notice of renewal.

SUMMARY: The Secretary of Transportation has approved the renewal of the New York Harbor Traffic Management Advisory Committee. The purpose of this Committee is to advise the Coast Guard on matters relating to maritime traffic management and safety in the New York Harbor area.

FOR FURTHER INFORMATION CONTACT: Commander W. Young, USCG, Executive Secretary, New York Harbor Traffic Management Advisory Committee, New York Vessel Traffic Service, Governors Island, New York 10004, Phone (212) 668-7954.

This notice is issued under authority of the Federal Advisory Committee Act, Pub. L. 92-463, 5 U.S.C. App.1.

Dated: August 12, 1987.

M.E. Gilbert,

Rear Admiral, U.S. Coast Guard, Chief, Office of Boating, Public, and Consumer Affairs.

[FR Doc. 87-18721 Filed 8-14-87; 8:45 am]

BILLING CODE 491-14-M

Federal Railroad Administration

Petition for Exemption or Waiver of Compliance; Union Pacific Railroad Co.

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA)

has received a request for an exemption from or waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number RST–84–21) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Communications received before October 2, 1987, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

The individual petition seeking an exemption or waiver of compliance is as follows:

Union Pacific Railroad Company

Waiver Petition Docket Number LI–87–7

The Union Pacific Company (UP) request a waiver of compliance with certain provisions of the Railroad Locomotive Safety Standards (49 CFR Part 229). The UP seeks a waiver of compliance with § 229.123 of the regulation for four locomotives (4206, 4207, 4214 and 4215) assigned to hump yard operations at Forth Worth, Texas. The pilots of these locomotives hit the rail near the point where level track joins the inclined hump track, bending the pilot sheets. The railroad is requesting that it be allowed to raise the end pilots to 8/¾ inches above the top of the rail instead of the allowable maximum 6 inches to achieve sufficient clearance and avoid damage to the locomotive pilots.

Issued in Washington, DC on August 11, 1987.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 87–18769 Filed 8–14–87; 8:45 am]

BILLING CODE 4910-06-M

Maritime Administration

[Docket S–812]

Application To Amend Contract MA/MSB–417 To Provide Service Between Hawaii and Foreign Ports; American President Lines, Ltd.

Notice is hereby given that American President Lines, Ltd. (APL), by letter application of July 30, 1987, amended August 3, 1987, has requested amendment of its subsidized service description as set forth in Appendix A of APL's Operating-Differential Subsidy Agreement, Contract MA/MSB–417, so as to permit carryings of cargo in U.S. foreign commerce between Hawaii and foreign ports on Lines A and B, including extension areas, on up to 54 sailings per annum.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such application and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington DC 20590. Comments must be received no later than 5:00 p.m. on August 28; 1987. The Maritime Subsidy Board will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies)).

By Order of the Maritime Subsidy Board.
Date: August 12, 1987.

James E. Saari,

Secretary.

[FR Doc. 87–18728 Filed 8–14–87; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: August 11, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0155
Form Number: 3468
Type of Review: Revision
Title: Computation of Investment Credit
Description: Taxpayers are allowed a credit against their income tax for investment in certain property used in their trade of business. Form 3468 is used to compute this investment tax credit. The information collected is used by the IRS to verify that the credit has been computed correctly.
Respondents: Farms, Businesses or other for-profit, Small businesses or organizations
Estimated Burden: 793,467 hours

OMB Number: 1545–0173
Form Number: 4563
Type of Review: Revision
Title: Exclusion of Income From Sources in American Samoa
Description: Used by a U.S. citizen whose income is from sources within a possession of the United States (limited to American Samoa in 1987) to the extent specified in Internal Revenue Code section 931 to claim the benefit of this section. This information is used by the Service to determine if an individual is eligible to exclude possession source income.
Respondents: Individuals or households
Estimated Burden: 65 hours

OMB Number: 1545–0192
For Number: 4970
Type of Review: Extension
Title: Tax on Accumulation Distribution of Trusts
Description: Form 4970 is used by a beneficiary of a domestic or foreign trust to compute the tax adjustment attributable to an accumulation distribution. The form is used to verify whether the correct tax has been paid on the accumulation distribution.
Respondents: Individuals or households
Estimated Burden: 99,000 hours

OMB Number: 1545–0193
Form Number: 4972
Type of Review: Revision
Title: Tax on Lump-Sum Distributions
Description: Internal Revenue Code section 402(e) allows taxpayers to compute a separate tax on a lump-sum distribution from a qualified retirement plan. Form 4972 is used to

correctly figure that tax. The data is used to verify correctness of the separate tax. Form 4972 is also used to make the special capital gain election attributable to Pre-74 participation from the lump-sum distribution.
Respondents: Individuals or households
Estimated Burden: 490,561 hours

OMB Number: 1545-0634
Form Number: 8279
Type of Review: Extension
Title: Election to be Treated as a FSC or as a Small FSC
Description: A foreign corporation and its shareholders must elect to be a Foreign Sales Corporation (FSC) or small FSC. Form 8279 is used to make the election. Form 8279 provides IRS with the necessary information to determine that the foreign corporation qualifies to be a FSC, number and types of shareholders, and tax year of the FSC and its principle shareholder.
Respondents: Businesses or other for-profit
Estimated Burden: 15,013 hours

OMB Number: 1545-0895
Form Number: 3800
Type of Review: Revision
Title: General Business Credit
Description: Internal Revenue Code section 38 permits taxpayers to reduce their income tax liability by the amount of their general business credit, which is an aggregation of their investment credit, jobs credit, alcohol fuel credit, research credit, low-income housing credit, and employee stock ownership (ESOP) credits. Form 3800 is used to figure the correct credit.
Respondents: Farms, Businesses or other for-profit, Small businesses or organizations
Estimated Burden: 110,711 hours

OMB Number: 1545-0967
Form Number: 8453-F
Type of Review: Revision
Title: U.S. Fiduciary Income Tax Declaration for Magnetic Media/ Electronic Filing
Description: This form will be used to secure taxpayer signatures and declaration in conjunction with the Electronic Filing Pilot for trust and fiduciary income tax returns. This form, together with the electronic transmission, will comprise the taxpayer's income tax return (Form 1041).
Respondents: Individuals or households
Estimated Burden: 495 hours
Clearance Officer: Garrick Shear, (202) 566-6150, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

U.S. Customs Service

OMB Number: 1515-0129
OMB Number: None
Type of Review: Reinstatement
Title: Change in Status of Transaction
Description: The person submitting a request for a ruling in connection with a Customs Transaction should advise Customs in writing when a transaction described as prospective becomes current. This is essential so that the field office concerned is advised of the fact that the ruling is pending.
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Burden: 6 hours
Clearance Officer: B. J. Simpson, (202) 566-7529, U.S. Customs Service, Room 6426, 1301 Constitution Avenue, NW., Washington, DC 20229
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0167
Form Number: ATF F 3072 (5210.14)
Type of Review: Revision
Title: Transportation in Bond and Notice of Release of Puerto Rican Tobacco Products, Cigarette Papers and Tubes
Description: ATF F 3072 (5210.14) is used to document the shipment of taxable tobacco products brought into the U.S. in bond from Puerto Rico. The form documents certification by ATF to account for the tax liability as well as any adjustments assessed to the bonded licensee. The form also describes the shipment and identification of the licensee who receive the products.
Respondents: Businesses and other for-profit
Estimated Burden: 2000 hours
Clearance Officer: Robert Masarsky, (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 87-18979 Filed 8-14-87; 8:45 am]
BILLING CODE 4810-25-M

Customs Service

Automated Survey Interface; Significant New Information Dissemination Product Pursuant to OMB Circular A-130

AGENCY: U.S. Customs Service, Department of the Treasury.

SUMMARY: This document gives the public notice of a proposed new information dissemination product. The Customs Service, through its Automated Commercial System (ACS), is proposing an Automated Surety Interface. Under this program, Customs will furnish certain information to participating surety companies whose bonds cover Customs entries. This information is to be provided irrespective of any claim by Customs against the surety. For some time, disclosure of this information has been made to interested surety companies on a monthly basis. The ultimate goal of the program is a virtually simultaneous exchange of data between the surety company and Customs. As an interim step, Customs is presently conducting a pilot test under which certain data is being provided to a surety company on a weekly basis. It has been represented to Customs that payment by the sureties on claims for liquidated damages or additional duties will be expedited by eliminating the need for Customs to locate the bond and transmit a copy to the surety.

Customs recognizes that some or all of this information may be considered to be confidential business information which is protected from disclosure under exemption (b)(4) of the Freedom of Information Act (FOIA). Accordingly, Customs invites public comment on whether the disclosure of this information will cause competitive harm.

DATES: Comments must be received on or before October 16, 1987.

ADDRESS: Comments (preferably in triplicate) may be addressed to the Chief, Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2324, Washington, DC 20229 (202-566-8237).

FOR FURTHER INFORMATION CONTACT:

Legal Aspects: John E. Elkins, Chief, Disclosure Law Branch, (202) 566-8681.

Operational Aspects: Jim Childress, Commercial Systems Division, (202) 343-0778.

SUPPLEMENTARY INFORMATION:

Background

OMB Circular A-130, dated December 12, 1985, 50 FR 52730, directs Federal agencies to inform the public of

significant new proposed information dissemination products. Such notice is intended to allow agencies to guage the impact of such products upon affected segments of the public. The proposed furnishing of entry, billing and fines, penalties, and forfeitures, information to surety companies in the proposed Automated Surety Interface is such a product.

In the past, the Customs Service utilized several automated systems to process commercial transactions. However, these systems were independent with little interaction between them. It was thus necessary to be familiar with the features of each system in order to know what information was available and be able to obtain needed data. The requirement of such specialized knowledge tended to fragment scarce resources.

In March 1982, a survey of Customs automation needs was completed. Subsequently, work began on an integrated commercial system to handle a variety of data processing needs. The new system is known as the Automated Commercial System (ACS). ACS was concevied as a comprehensive Customs tracking system to include the monitoring and control of the movement of cargo, the making of entries, the assessment of penalties, and the payment of duties. ACS has been operational since February 1, 1984, and has consistently grown in application and scope.

Among the separate automated systems which had been in operation for some time is a system containing information relating to sureties and their bonds. This data has been compiled from Customs bonds as well as the accompanying entry documents and is now a module of the ACS. The Automated Surety Interface is aimed at improving the accuracy of the bond information provided to Customs. It is also hoped that payment by sureties of valid Customs claims will be expedited by virtue of their having received entry and bond information before their interest matures through a breach of the bond.

For some time, Customs has made available to sureties information in a magnetic tape format with respect to the Customs entry transactions in which the surety's bond is obligated. This information consists of the data elements which are attached as Appendix 1 to this notice. As a pilot test of the system, Customs is furnishing much of this information on a weekly basis to a surety company. The data elements to be provided weekly are set forth in Appendix 2. Three separate groups of information are to be provided. The first consists of open and liquidated entry data prior to any breach of the bond or demand for payment. The second consists of fines, penalties, and forfeitures information, and includes data relating to entries on which there has been a bond violation. The third is information with respect to bills issued to the surety.

With the exception of providing information to sureties as described above, Customs has, pursuant to the Freedom of Information Act, consistently declined to provide entry information of persons not a party to the entry transaction. The basis for this position is that entry documents contain confidential commercial information the disclosure of which could cause substantial harm to a business. Such information is exempt from disclosure pursuant to exemption (b)(4) of the FOIA (5 U.S.C. 552(b)(4)). The potential harm that disclosure of such information could present was recognized in *Timken Co.* v. *United States Customs Service*, 491 F. Supp. 557 (D.D.C. 1980). In *Timken*, the court held that value and quantity information relating to the manufacture of roller bearings was confidential commercial information and exempt from disclosure. The same rationale is applicable to other entry information such as the name of the importer, shipper, consignee, carrier, etc.

The disclosure of entry information to surety companies while refusing to provide it to others may have been based on the contractual relationship between the surety and its principal and on the fact that the surety has a contingent liability to Customs with respect to duties and liquidated damages. On the other hand, it is arguable that until a breach of the bond has occurred and the surety's liability becomes actual rather than contingent, the surety should be accorded no greater right to entry information than any other third party requester. There would appear to be no question that after a demand has been made, disclosure of information to the surety to permit it to ascertain the extent of its liability and any defenses thereto, is proper.

The disclosure of the above-discussed information to surety companies is at a pivotal stage. Before instituting the succeeding phases of the program, Customs deems it appropriate to solicit comments with respect to the impact, if any, of the disclosure of this information on brokers, importers, or other affected individuals. It is these parties rather than Customs who can best judge the impact that discluosure of this information will have on their business. In addition, although the proposed disclosure of information is limited to the data elements listed in Appendix 2, Customs invites comment with respect to claims for confidentiality of information provided in the entry process generally. This will enable Customs to more competently judge the releaseability of entry information in response to future requests.

In order to facilitate public response, we have enumerated below a number of issues upon which we invite comment.

1. Would the disclosure of any or all of the enumerated data elements to sureties cause competitive harm to your business? If so, identify the particular data element(s) and state the nature of the expected harm and its relationship to disclosure of the information.

2. Would the disclosure of any or all of the enumerated data elements to sureties cause competitive harm to your customers, suppliers or other parties? If so, identify the particular data element(s), state the nature of the expected harm and its relationship to disclosure of the information.

3. Would the disclosure of this information to a party other than the surety in the transaction cause competitive harm? If so, identify the particular data element(s) and state the nature of the expected harm and its relationship to disclosure of the information.

4. As a matter of law, is a surety entitled to disclosure of any or all of the data elements described in Appendices 1 and 2 with respect to transactions in which its bond is obligated prior to any violation of the bond?

5. As a matter of practice, which of the data elements listed in the appendices are provided to the surety by you in the normal course of your business?

6. What categories of entry data do you furnish to Customs which are not enumerated in the appendices that you regard as business confidential and exempt from disclosures?

Comments

Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2324, U.S. Customs Headquarters, 1301 Constitution Avenue NW., Washington, DC 20229.

BEST COPY AVAILABLE

Dated: August 10, 1987.

Gerald J. McManus,

Assistant Commissioner of Customs, Office of Commerical Operations.

Appendix 1—Data Elements Which Have Been Available To Sureties

A Bill Data

1. Code and Name of Region, District and Port of Entry
2. Surety Code
3. Importer Number
4. Importer Name
5. Importer Address
6. Importer Address 2
7. Importer Address 3
8. Name, Number and Address of Agent
9. Customs Bill Number and Due Date
10. Age of Bill
11. Entry Assignment Date (Date the bill was entered)
12. Interest Date
13. Amount Due
14. Principal Amount
15. Interest Amount
16. Type of Bill
17. Bond Number
18. Bond Type
19. Protest Number
20. Protest Date

B Liquidated Entry Data

1. Entry Number
2. Entry Type
3. Broker Code
4. Liquidation Code
5. Importer
6. Importer Suffix
7. Entry Date
8. Liquidation Date
9. Agent IRS Number
10. Agent Suffix
11. Amount of Duty on Liquidation
12. Amount of Tax on Liquidation
13. Bill or Refund Due
14. Type of Liquidation
15. Amount of Withheld Duty
16. Mail Code (How entry-related mailings are distributed)
17. Bond Code (Type of bond)
18. Owner of Merchandise
19. Bond Number
20. Withheld Duties (Whether withheld duties were assessed)

C Unliquidated Entry Data

1. Owner Number
2. Filer Code
3. ACCFLAG (Whether entry information is complete)
4. Julian Calendar Date
5. Duty Class
6. Estimated Duty Amount
7. Amount of Duty Paid
8. Tax Class
9. Tax Estimated Amount
10. Deferred Tax Billed
11. L-Flay (Document from which data derives)
12. Owner Number (Ultimate consignee)
13. Import Specialist Team Number
14. Ext-Susp-Code (Reason for extention or suspension of liquidation)
15. Deemed (Whether entry is deemed liquidated)
16. Final Withdrawal (Whether final withdrawal from warehouse has occurred)
17. Number of Liquidation Extensions
18. Paid Indicator (Whether estimated duties have been deposited)

Appendix 2—Data Elements Provided To Sureties Weekly Culminating In An Interface:

A Open Entry Data

1. Entry Number
2. Entry Type
3. Region, District, Port of Entry
4. Filer Code
5. Surety Code
6. Bond Type
7. Bond Number
8. Bond Location
9. Entry Date
10. Entry Summary Date
11. Entry Release Date
12. Reason for Late Filing
13. Late Reporting Date
14. Cancel Reason
15. Cancel Date
16. Liquidation Hold Indicator
17. Record Type
18. Extension Suspension Code
19. Extension Suspension Date
20. Number of Extensions
21. Reject Date
22. Protest Status
23. Protest Date
24. Document Filing Location
25. Importer of Record
26. Agent for Delivery on Customs Form 4811
27. Name of the Ultimate Consignee
28. Amount of Estimated Duty
29. Amount of Estimated Taxes
30. Amount of Estimated Antidumping Duties
31. Amount of Estimate Countervailing Duty
32. Payment Status
33. Amount of Duty Paid
34. Amount of Tax Paid
35. Amount of Antidumping Duties Paid
36. Delayed Antidumping Duties Code
37. Amount of Countervailing Duties Paid
38. Delayed Countervailing Duties Code

B Liquidated Entry Data

1. Entry Number
2. Surety Code
3. Number of Liq/Reliq
4. Liquidation Type
5. Liquidation Date
6. Liquidated Duty Amount
7. Liquidated Antidumping Duty Amount
8. Liquidated Countervailing Duty Amount
9. Bill or Refund Code
10. Bill or Refund Date
11. Bill or Refund Amount
12. Reason for the Bill Owed
13. Document Filing Location

C Fines, Penalties and Forfeitures Data

1. Case Number
2. Surety Code
3. Bond Number
4. Violator ID (IRS, Customs assigned or system assigned)
5. Violator Name
6. Violater Code
7. Violation Type
8. Status of Violation
9. Violation Date
10. Entry Number
11. Penalty Amount
12. Mitigated Amount
13. Collection Amount
14. Violation Citation
15. Violation Description

D Bill Data

1. Bill Number
2. Surety Code
3. Bill Type
4. Bill Date
5. Bill Status
6. Bill Age
7. Importer Number
8. Document Number
9. Protest Date
10. Protest Date
11. Protest Decision Date
12. Bill Amount
13. Prinicipal Amount
14. Interest Amount
15. Payment Amount
16. Cancel Code

[FR Doc. 87-18853 Filed 8-14-87; 8:45 am]

BILLING CODE 4820-02-M

VETERANS ADMINISTRATION

Advisory Committee on Health-Related Effects of Herbicides; Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92-463) of October 6, 1972, that the Advisory Committee on Health-Related Effects of Herbicides has been renewed by the Administrator of Veterans Affairs for a two year period beginning July 28, 1987 through July 28, 1989.

Dated: August 4, 1987.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 87-18855 Filed 8-14-87; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 158
Monday, August 17, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

Pursuant to 11 CFR 2.7(d)(1) the Commission has called an open meeting for the following date: Tuesday, August 18, 1987, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Matchability of Certain Contributions Submitted for Matching by the Kemp for President Committee
Draft Revisions to the Delegate Selection Regulations (11 CFR 110.14)

The closed meeting scheduled for Tuesday, August 18, 1987, will immediately follow close of open meeting.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Marjorie W. Emmons,
Secretary of the Commission.
[FR Doc. 87-18834 Filed 8-13-87; 2:29 pm]
BILLING CODE 6715-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Thursday, August 20, 1987.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the disucssion agenda.

1. Proposed amendment to Regulation T (Credit by Brokers and Dealers) to revise the definition of OTC margin bonds to include mortgage related securities. (Proposed earlier for public comment; Docket No. R-0600)

Discussion Agenda

2. Publication for comment of a proposed amendment to Regulation T (Credit by Brokers and Dealers) to permit broker-dealers to aid in the exercise of company stock options owned by employees of the company.
3. Any items carried forward from a previously announced meeting.

Note.— This meeting will be recorded for the benefits of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Date: August 13, 1987.

James McAfee,
Associate Secretary of the Board.
[FR Doc. 87-18816 Filed 8-13-87; 12:53 pm]
BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 10:30 a.m., Thursday, August 20, 1987, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: August 13, 1987.

James McAfee,
Associate Secretary of the Board.
[FR Doc. 87-18817 Filed 8-13-87; 12:53 pm]
BILLING CODE 6210-01-M

Corrections

Federal Register
Vol. 52, No. 158
Monday, August 17, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 674

[Docket No. 70619-7119]

High Seas Salmon Fishery off Alaska

Correction

In rule document 87-17773 beginning on page 29020 in the issue of Wednesday, August 5, 1987, make the following correction:

On page 29021, in the second column, the signature line was inadvertently omitted and should have appeared before the FR Doc line as:

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 174

Ocean Transportation Service; Amendment

Correction

In rule document 87-17826 beginning on page 29181 in the issue of Thursday, August 6, 1987, make the following correction:

§ 174.3 [Corrected]

On page 29182, in § 174.3, in paragraph (f), in the second column, in the 29th line, "Far East" should read "Europe".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-943-07-4220-10; GP-07-253; OR-42920 (WASH)]

Proposed Withdrawal of Lands and Opportunity for Public Meeting; Washington

Correction

In notice document 87-17511 appearing on page 28765 in the issue of Monday, August 3, 1987, make the following corrections:

1. In the first column, the heading should read as set forth above.

2. In the second column, in the fourth line, the land description should read:

"Secs. 5, 6, 7, 8, 13, 16, 17, 21 to 28, inclusive,"

3. In the same column, in the fourth paragraph, in the second line, "for public meetings" should read "for a public meeting".

BILLING CODE 1505-01-D

PANAMA CANAL COMMISSION

Privacy Act of 1974; Systems of Records

Correction

In notice document 87-17297 beginning on page 28498 in the issue of Thursday, July 30, 1987, make the following corrections:

1. On page 28500, in the third column, under the fourth heading, in the first line, "defer" should read "deter".

2. On page 28502, in the first column, under the fourth heading, in paragraph 1, in the first line, "Layers" should read "Lawyers".

3. On the same page, in the second column, under the heading

RECORD ACCESS PROCEDURES, following the second line, the final portion of PCC/FMCL–1 and the first portion of PCC/GCCL–1 were omitted and should be inserted as follows:

"See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Claimants, officials of Panama Canal Commission, other government officials, private individuals and companies.

PCC/GCCL-1

SYSTEM NAME:

Marine Accident/Miscellaneous General Claims, GCCL-1.

SYSTEM LOCATION:

Office of General Counsel, Claims, Administration Building, Balboa Heights, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Shipping companies, crew members, passengers, pilots and other employees of the Panama Canal Commission who are involved in ship accidents which occur in the Panama Canal; third parties; and employees of the Panama Canal Commission who sustain loss of or damage to personal property incident to Government service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information or documents to settle claims for damage to vessels or to the cargo; injury to crew members or passengers of vessels which may arise by reason of their passage through the locks of the Panama Canal under the control of officers or employees of the United States; for injury to, or loss of, property or for personal injury or death,".

BILLING CODE 1505-01-D

federal register

Monday
August 17, 1987

Part II

Department of the Interior

Minerals Management Service

30 CFR Parts 202 and 206

Revision of Gas Product Valuation Regulations and Related Topics; Further Notice of Proposed Rulemaking

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 202 and 206

Revision of Gas Product Valuation Regulations and Related Topics

AGENCY: Minerals Management Service, Interior.

ACTION: Further notice of proposed rulemaking.

SUMMARY: Proposed valuation regulations for gas were published for comment in the **Federal Register** on February 13, 1987 (52 FR 4732). Public hearings were held in Denver, Colorado, on April 7, 1987, and in Houston, Texas, on April 28, 1987. Over 100 written comments were received on this proposed rulemaking.

Because of the extensive and diverse interest raised by this and related rulemakings for valuation of oil and coal, MMS established a procedure whereby it would publish draft final regulations and provide an abbreviated public comment period to obtain further public comment before the rules are issued as final regulations on September 30, 1987. The Congress is aware of and understands this process. See Conference Report on H.R. 1827 in the *Congressional Record* dated June 27, 1987, at pages H5661–H5666.

Accordingly, attached to this notice as an appendix is a draft of the gas valuation regulations in final form, together with a draft of the preamble for the final rule. The draft contains numerous changes from the proposed gas valuation regulations in response to the public hearings and the extensive comments received and reviewed by MMS.

DATE: Comments must be received on or before September 2, 1987.

ADDRESS: Written comments may be mailed to Minerals Management Service, Royalty Management Program, Rules and Procedures Branch, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 628, Denver, Colorado 80225, Attention: Dennis C. Whitcomb.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Chief, Rules and Procedures Branch, (303) 231–3432, (FTS) 326–3432.

SUPPLEMENTARY INFORMATION: The principal authors of this proposed rulemaking are John L. Price, Scott L. Ellis, Thomas J. Blair, Stanley J. Brown, and William H. Feldmiller of the Royalty Valuation and Standards Division of the Royalty Management Program (RMP), Minerals Management Service; and Peter J. Schaumberg of the Office of the Solicitor, Washington, DC.

In view of the short public comment period necessitated by MMS's proposed schedule, as understood by Congress, whereby MMS will attempt to issue final rules by September 30, 1987, MMS requests that commenters not simply resubmit comments already provided on the proposed rules. All comments received since publication of the first proposed rulemaking on February 13, 1987, will be included in this rulemaking record. Additional comments should be directed to the provision of the draft final rule in the appendix. Commenters are requested to identify, by section, the provision of the draft final rule to which a comment is directed. Besides specific comments on the draft final rule, MMS also requests commenters to address whether there are additional requirements or approaches which would improve the royalty payment process. The MMS believes it has developed a set of rules which will lead to the proper payment of royalties, but given the interest and concerns raised by this rulemaking, MMS would like to learn of all approaches which will reduce underpayment of royalties and minimize any abuse in payment and collection of royalties. MMS would specifically like comments on the ability of auditors to determine compliance with these regulations. MMS also would like commenters to address the extent to which these draft rules are responsive to concerns regarding royalty underpayments identified in the Linowes Commission Report and reports of the Congress, the General Accounting Office and the Department's Office of Inspector General.

MMS recognizes that arm's-length contract prices are a principal component of these regulations. Under the draft final rules, the prices under arm's-length contracts would represent value and be the primary values under the benchmarks for non-arm's-length contracts. MMS specifically requests comments on the definition of arm's-length contract and on the use of these contracts to determine value for calculating royalty payments.

The Department of Interior (DOI) has determined that this document is not a major rule and does not require a regulatory impact analysis under Executive Order 12291. This proposed rulemaking is to consolidate Federal and Indian gas royalty valuation regulations; to clarify DOI gas royalty valuation policy and gas transportation and processing allowance policy; and to provide for consistent royalty valuation policy among all leasable minerals. Because the proposed rule principally consolidates and streamlines existing regulations for consistent application, there are no significant additional requirements or burdens placed upon small business entities.

Lessee reporting requirements will be approximately $250,000. All gas sales contracts will be required to be submitted only upon request, or only in support of a lessee's valuation proposal in unique situations rather than routinely, as under the existing regulations.

The public is invited to participate in this proceeding by submitting data, views, or arguments with respect to this notice. All comments should be submitted by 4:30 p.m. of the day specified in the **DATE** section to the appropriate address indicated in the **ADDRESS** section of this preamble and should be identified on the outside envelope and on documents submitted with the designation "Revision of Gas Royalty Valuation Regulations and Related Topics." All comments received by the MMS will be available for public inspection in Room C406, Building 85, Denver Federal Center, Lakewood, Colorado between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday.

Regulatory Flexibility Act

Because this rule primarily consolidates and streamlines existing regulations for consistent application, there are no significant additional requirements or burdens placed upon small business entities as a result of implementation of this rule. Therefore, the DOI has determined that this rulemaking will not have a significant economic effect on a substantial number of small entities and does not require a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*).

Paperwork Reduction Act of 1980

The information collection and recordkeeping requirements located at §§ 206.157 and 206.159 of this rule have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1010–0075.

National Environmental Policy Act of 1969

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 [42 U.S.C. 4332(2)(C)] is not required.

List of Subjects

30 CFR Part 202

Continental shelf, Government contracts, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 206

Continental shelf, Geothermal energy, Government contracts, Mineral royalties, Oil and Gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements.

Date: August 10, 1987.

James E. Cason,

Acting Assistant Secretary, Land and Minerals Management.

Appendix—Draft Final Rule

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 202 and 206

Revision of Gas Royalty Valuation Regulations and Related Topics

Agency: Minerals Management Service (MMS), Interior.
Action: [Draft] Final rule.

Summary: This rulemaking provides for the amendment and clarification of regulations governing valuation of gas for royalty computation purposes. The amended and clarified regulations govern the methods by which value is determined when computing gas royalties and net profit shares under Federal (onshore and Outer Continental Shelf) and Indian (Tribal and allotted) oil and gas leases (except leases on the Osage Indian Reservation, Osage County, Oklahoma).

Effective date: November 1, 1987 [tentative].

For further information contact: Dennis C. Whitcomb, Chief, Rules and Procedures Branch, (303) 231–3432, (FTS) 326–3432.

Supplementary information: The principal authors of this rulemaking are John L. Price, Scott L. Ellis, Thomas J. Blair, Stanley J. Brown, and William H. Feldmiller of the Royalty Valuation and Standards Division of the Royalty Management Program (RMP), Minerals Management Service; and Peter J. Schaumberg of the Office of the Solicitor, Washington, DC.

1. Introduction

On February 13, 1987, 52 FR 4732, MMS issued a notice of proposed rulemaking to amend the regulations governing the valuation of gas from Federal leases onshore and on the OCS, and from Indian Tribal and allotted leases. During the public comment period, MMS received almost 100 written comments. In addition, public hearings were held in Lakewood, Colorado, on April 7, 1987, and in Houston, Texas, on April 28, 1987. Sixteen persons made oral presentations at these hearings.

[Tentative: Because of the complexity of the regulations, and in accordance with MMS's understanding with the Congress, MMS issued a further notice of proposed rulemaking which included as an appendix MMS's draft of the final regulations. The purpose of the further notice of proposed rulemaking was to obtain further public comment during a short comment period and then to make any necessary revisions to the final regulations. See Conference Report on H.R. 1827, in the *Congressional Record* of June 27, 1987, pages H5651–H5666. A total of _____additional comments were received.]

The MMS has considered carefully all of the public comments received during this rulemaking process, which included draft rules and input from the Royalty Management Advisory Committee. A complete account of that process is included in the preamble to the proposed regulations issued in February 1987. Based on its review, MMS hereby adopts final regulations governing the valuation of gas from Federal and Indian leases. These regulations will apply prospectively to gas production on or after the effective date specified in the **DATES** section of this preamble.

II. Purpose and Background

The MMS has revised the current regulations regarding the valuation of gas to accomplish the following:

(1) Clarification and reorganization of the existing regulations at 30 CFR Parts 202 and 206.

(2) Creation of regulations consistent with the present organizational structure of the Department of the Interior (DOI).

(3) Placement of the gas royalty valuation regulations in a format compatible with the valuation regulations for all leasable minerals.

(4) Clarification that royalty is to be paid on all consideration received by lessees, less applicable allowances, for production removed or sold from the lease.

(5) Creation of regulations to guide the lessee in the determination of allowable transportation and processing costs for gas to aid in the calculation of proper royalty due the lessor.

A number of sections have been renumbered and/or moved to a new subpart. Sections 202.150, 202.151, 202.152, 206.150, 206.151, and 206.152 have been revised. In addition, §§ 206.153, 206.154, 206.155, 206.156, 206.157, 206.158, and 206.159 have been added to the appropriate subparts.

Several general provisions which relate to both oil and gas have been added to Part 202. These provisions are included in the final rule to amend the oil valuation regulations published by the Department elsewhere in this issue.

This rule applies prospectively to gas production on or after the effective date of this rule. It supersedes all existing gas royalty valuation directives contained in numerous Secretarial, Minerals Management Service, and U.S. Geological Survey Conservation Division (now Bureau of Land Management, Onshore Operations) orders, directives, regulations, and Notices to Lessees (NTL) issued over past years, particularly NTL–5 (42 FR 22610, May 4, 1977, as amended, 51 FR 26759, July 25, 1986). Specific guidelines governing reporting requirements consistent with these new gas valuation regulations will be incorporated into the MMS Payor Handbook.

For the convenience of oil and gas lessees, payors, and the public, the following chart summarizes the effects of these rules.

Regulation changes	Descriptions
I. REDESIGNATIONS:	
Sections 202.150, 202.151 and 202.152 are redesignated as §§ 202.100, 202.51, and 202.52, respectively.	This administrative action more appropriately locates within 30 CFR the information contained in these sections.
II. REMOVALS:	
Sections 206.106 and 206.107 are removed from Subpart C of Part 206.	These requirements have been incorporated into §§ 202.150 and 202.151.
III. ADDITIONS:	
Sections 202.150, 202.151, and 202.152 are added to Subpart 202. Sections 206.10, 206.153, 206.154, 206.155, 206.156, 206.157, 206.158, and 206.159 are added to Part 206.	These new sections provide gas valuation standards and procedures and identify allowable costs for transportation and processing to be deducted from gas royalty value.

The rules in § 206.150 expressly recognize that where the provisions of any Indian lease, or any statute or treaty affecting Indian leases, are inconsistent with the regulations, then the lease term, statute, or treaty governs to the extent of the inconsistency. The same principle applies to Federal leases.

A separate gas definitions section applicable to the royalty valuation of gas is included in this rulemaking in Part 206. All definitions contained under each subpart of Part 206 will be applicable to the regulations contained in Parts 202, 203, 207, 210, and 241.

III. Response to General Comments Received on the Proposed Gas Valuation Regulations and Related Topics

The notice of proposed rulemaking for the amendment and clarification of regulations governing valuation of gas for royalty computation purposes was published in the Federal Register on February 13, 1987 (52 FR 4732). The public comment period on the proposal closed on May 13, 1987. Seventy-eight commenters submitted almost 100 comments which were considered in preparing this rulemaking.

Of the 78 commenters, 7 were tribal groups, 1 was a tribal council, and 1 was an Indian trade group for a total of 9 Indian commenters; one commenter was a combined State/Indian association. A total of 15 commenters represented various government agencies: 5 State entities, 4 Federal agencies, 2 State associations, 2 State Governors, and 2 local governments. Fifty-three industry commenters responded; 39 commenters from oil and gas companies, 8 individual commenters, and 6 industry trade groups.

Forty-three respondents—24 representing industry and 19 representing States, Indians, and local governments—made comments on the basic issues and principles underlying the proposed rulemaking. The comments did not address specific sections of the proposed regulations, but generally revolved around the basic premise underlying the proposed valuation methodology.

The respondents were generally composed of two groups, with industry on one side and States, Indians, and local governments on the other. Industry generally endorsed the basic principles underlying the proposed regulations. While the industry commenters objected to many of the specific provisions of the proposed rules, they stated generally that a market-oriented approach based on gross proceeds from arm's-length contracts would fulfill MMS's goals of creating royalty certainty, fairness, and long-term revenue maximization. Two industry commenters advocated the adoption, in total, of the Royalty Management Advisory Committee (RMAC) Gas Panel's recommendations as the only proper solution to the valuation issue. States, Indians, and local governments, on the other hand, generally commented that they objected to the basic premise underlying the proposed valuation methodology and disapproved of the proposed regulations for a variety of reasons.

The general comments raised by industry, States, and Indians may be categorized similarly to those raised with respect to the oil valuation regulations: (1) Acceptance of gross proceeds under an arm's-length contract, or the benchmark, as the value for royalty purposes; (2) deduction of transportation costs; (3) legal mandates and responsibilities toward Indians; (4) complexity and obscurity of regulations and definitions; and (5) economic impacts. Because the general issues raised and MMS's responses thereto are so similar, MMS hereby incorporates the discussion in the General Comments portion of Section III of the Preamble to the final oil valuation regulations in a document published elsewhere in this issue as if fully and completely set forth herein.

IV. Section-By-Section Analysis and Response to Comments

Comments were not received on every section of the proposed regulations. Therefore, if those sections were not changed significantly from the proposal, there generally is no further discussion in this preamble. The preamble to the proposed regulation (52 FR 4732, February 13, 1987) may be consulted for a full description of the purpose of those sections. For other sections, this preamble will address primarily the extent to which the final rule was changed from the proposal. Again, a complete discussion of the applicable sections may be found in the preamble to the proposed regulation.

Section 202.150 Royalty on gas.

One Indian commenter recommended that paragraph (a) should provide specifically that Indian lessors, as well as MMS, have the right to require payment in-kind for royalties due on production.

MMS Response: Most Indian lessors have the authority to require payment in-kind for royalties due on production. To the extent the lease terms so provide, the lessor may take its royalty in-kind. However, because requests to take royalty in kind may involve operational difficulties for the lessee, MMS will continue to administer such requests. Therefore, if an Indian lessor wants royalty in kind, he must contact MMS. The MMS then will make arrangements with the lessee for the in-kind payment. The MMS has added a provision clarifying that when royalites are paid in value, the royalties due are equal to the value for royalty purposes multiplied by the royalty rate.

Section 202.150(b)

The MMS received seven industry comments stating that unavoidably flared gas should be exempt from royalty requirements. Two commenters stated that the definition of the term "unavoidably lost" should be incorporated in § 206.151, Definitions. The commenters also recommended that this paragraph address the procedures for obtaining permission to use gas off-lease for the benefit of the lease.

One industry commenter recommended deletion of the phrase "when such off-lease use is permitted by the appropriate agency." The commenter recommended that legal interpretations affecting the inclusion of any on-lease or off-lease use could be more appropriately covered in the MMS Payor Handbook.

One industry commenter stated that on-lease or off-lease royalty-free gas use should also include gas used in post-production operations, including boosting residue gas delivery pressure and other operations incidental to marketing as this gas is used for the benefit of the lease.

One industry commenter recommended the inclusion of such language as follows: "Gas used for the benefit of the lease is royalty free, which includes gas used in lease equipment located on a platform or in a central facility serving multiple leases. Such platform or central facility may be located on a lease other than the one physically providing gas used."

One industry commenter stated that they do not agree that the standard for royalty liability detailed in this paragraph is consistent with section 308 of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. 1756, which limits royalty liability to loss or waste due to negligence or noncompliance with operational requirements.

Two industry commenters proposed that MMS consider expansion of the clause to include all gas used "on or off a lease as long as it is for the benefit of the lease."

One industry commenter endorsed MMS's decision that gas used off-lease for the benefit of the lease is royalty-free when such use is permitted by the appropriate agency.

Some Indian commenters also recommended that any royalty-free use of gas be subject to prior approval to ensure that production from Indian leases is not disproportionately used in royalty-free operations.

MMS Response: The determination of gas avoidably lost and royalty-free use of gas (whether used off-lease or on-lease) is an operational matter covered by the appropriate regulations of the Bureau of Land Management (BLM) and MMS for onshore and offshore operations, respectively. Therefore,

although these comments raised many substantive issues, they are not properly addressed in this rulemaking. MMS does not believe that prior approval for royalty-free use of gas is warranted because most leases allow royalty-free use of gas and it is a matter which will be reviewed during audits to prevent abuse.

Proposed § 202.150(b)(2), which addressed royalty-free use of gas for leases committed to unit or communitization agreements, has been deleted from the final rules. MMS is satisfied that this issue is also an operational matter governed sufficiently by the appropriate operation of the unit agreement or communitization agreement.

One industry commenter was strongly in agreement with § 202.150(b)(3) of the proposed rules, which recognizes the provisions of Indian leases that are inconsistent with the regulations.

One Indian commenter stated that this paragraph may not act to the benefit of Indian lessees unless MMS makes a specific requirement by instruction, manual releases, or notices to lessees with respect to the specific valuation guidelines to be applied.

MMS Response: The provisions of proposed § 202.150(b)(3) were adopted in the final rules as a part of § 202.150(b). In most instances, the valuation regulations will apply equally to both Federal and Indian leases. This section covers any leases which may be inconsistent with the regulations. The final regulations recognize the primacy of statutes, treaties, and oil and gas leases and provide a means for dealing with special valuation requirements for both Indian and Federal leases.

Section 202.150(c)

Section 202.150(c) was proposed as § 206.150(d). It provides that if the BLM (for onshore leases) or MMS (for offshore leases) determines that gas was avoidably lost or wasted, then the value of that gas will be determined in accordance with Part 206. This section also applies to gas drained from onshore leases for which BLM determines compensatory royalty is due.

One industry commenter stated that the term avoidable indicates such losses could have been anticipated and eliminated and that serious charges like these should be documented and proven, not merely assumed after the loss has been reported. Therefore, the commenter takes exception to this regulation.

MMS Response: Avoidably lost determinations are handled by operations, BLM onshore and MMS offshore, and are not a valuation issue. Any operator or lessee that BLM or MMS notifies of an avoidable loss determination has the right to appeal the determination if it believes it is unjust or unfair.

One Indian commenter stated that payment should be due for the entire value, and not just the royalty portion of gas that is determined to have been avoidably lost or wasted from Indian leases.

One industry commenter stated that it should be made clear in this provision that the amount due for avoidably lost gas should be a royalty value and not the total value (100 percent).

MMS Response: BLM and MMS policy is to assess royalty only for that onshore gas determined to have been avoidably lost on and after October 22, 1984. This date is the effective date of BLM's revised regulations at 43 CFR 3162.7–1(d) (49 FR 37356, September 21, 1984), which included the provision for royalty on avoidably lost gas in accordance with section 308 of FOGRMA, 30 U.S.C. 1756. The MMS and BLM believe that collection of royalty provides an effective deterrent to wasting gas.

Section 202.150(d)

Five industry commenters opposed § 202.150(d), which was proposed as § 202.150(c). They questioned the authority to require other non-Federal/Indian lessees to pay royalties on leases on which they are not the lessee. According to the commenters, this could present gas balancing problems where production taken by a lessee falls below that lessee's production entitlement. These commenters suggested that proposed § 202.150(c) fails to recognize the marketing aspects of production.

MMS Response: Section 202.150(d) of the final rules states that all production attributable to a Federal or Indian lease under the terms of the agreement is subject to the royalty payment and reporting requirements of Title 30 of the Code of Federal Regulations even if an agreement participant actually taking the production is not the lessee of the Federal or Indian lease. Most important, however, § 202.150(d) requires that the value, for royalty purposes, of this production be determined in accordance with 30 CFR Part 206 under the circumstances involved in the actual disposition of the production. As an example, if a Federal lessee does not sell or otherwise dispose of its allocable share of unit production, it will be sold or otherwise disposed of by one of the other unit participants. If one of the unit participants other than the Federal lessee transports unprocessed gas to a sales point off the unit area under an arm's-length transportation agreement and then sells the gas under an arm's-length sales contract, the value, for royalty purposes, will be that person's gross proceeds less the costs of transportation incurred under the arm's-length transportation agreement. This provision does not address the issue of what person must report and pay the royalties; it only addresses the issue of valuation.

The MMS does not intend that non-Federal and non-Indian lessees must conform to these regulations, but merely has provided that the lessee may determine its royalty liability in accordance with the other interest owners' contracts or proceeds as long as those royalties comply with these value regulations. Any gas balancing problem that may exist because of interest owners taking more than their entitlement is a matter to be settled by the agreement members.

Two industry commenters also stated that the foreseeable results of this paragraph include: "* * * (1) chronic late payments of royalties; (2) inconsistent AFS and PAAS reporting; (3) difficulty in determining proper royalty values where the overproduced working interest owners dispose of production pursuant to Non-arm's-length transactions; and (4) excessive accounting and administrative costs for MMS and all working interest owners."

MMS Response: The MMS believes that lessees will be able to comply with the requirements of the regulations.

Two industry commenters recommended that paying and reporting royalties be accomplished solely on the basis of sales. According to these comments, because royalties will have been paid on total sales from the leases, there should be no decrease in royalty payments due over the life of the lease through the use of the sales approach.

MMS Response: Paying and reporting royalty solely on the basis of sales would not conform to the requirements of the federally approved agreement or the terms of the lease. Therefore, it is not an acceptable procedure.

Section 202.151 Royalty on processed gas.

Section 202.151(a)

Two industry commenters recommended deleting the word "reasonable" before the words "actual costs" in paragraph (a) because the lessee should be able to deduct actual costs from the processed gas value.

MMS Response: The MMS's policy is to allow "reasonable" actual costs incurred by the lessee for processing lease production. The MMS does not

believe that it should share in unreasonable costs and will not adopt this suggestion.

Section 202.151(b)

Eight industry commenters stated that an allowance for boosting residue gas should be allowed under paragraph (b) for operation of the processing plant. The rationale was that costs associated with this process are incurred as a result of processing and should not be regarded as costs necessary to place the gas in marketable condition.

MMS Response: The regulations generally maintain the MMS's policy that the lessee is required to condition the production for market. The cost for boosting residue gas is considered as a cost necessary to place the gas in marketable condition, and will not be an allowable deduction.

Three industry commenters recommended deleting the word "reasonable" before the words "* * * amount of residue gas * * *" and allow actual amounts of residue gas royalty free.

MMS Response: Historically, MMS's policy has been to allow a reasonable amount of residue gas to be royalty free for the operation of a processing plant. In most instances the actual amounts of residue gas used are considered to be reasonable.

Section 202.151(c)

Two industry commenters strongly endorsed the language set forth in paragraph (c).

One Indian commenter stated that "* * * the Secretary should not retain unilateral authority to authorize the royalty-free reinjection of residue gas or gas plant products from Indian production into unit areas or communitized areas." The recommendation was that the volume of royalty-free residue gas or gas plant products which can be reinjected into a unit area should be limited to the ratio of lease production to total unit production multiplied by the volume of unit production reinjected.

One industry commenter requested clarification that the use of the word "reinjection" includes original injection. In addition, the commenter recommended deletion of the qualification "* * * when the reinjection is included in a plan of development or operations and the plan has received BLM or MMS approval, * * *." because the recovery must be paid for entirely by the lessee.

MMS Response: The BLM or MMS for onshore or offshore operations, respectively, has the authority to approve the plan of development or operations. The issue regarding reinjection of residue gas or gas plant products is a matter which is addressed by the appropriate operational regulations of BLM and MMS.

Section 202.152 Standards for reporting and paying royalties on gas.

Section 202.152(a)

One industry commenter recommended that the phrase "if the Btu value is required pursuant to the lessee's contract" be added to the end of the last sentence of paragraph (a)(2). This commenter stated that Btu measurement is an expensive process and should not be required periodically unless necessary.

One Federal agency commenter stated that the frequency of Btu measurement be required quarterly, if not monthly, if not covered by the lessee's contract. This commenter stated that there are many situations which may require more frequent monitoring of the Btu heating value to assure proper assessment of gas royalties.

MMS Response: The Btu measurement is necessary in determining the proper value of the gas for royalty purposes. In addition, the BLM onshore and MMS OCS operations regulations require periodic Btu measurements.

Section 202.152(b)

One industry and one Federal agency commenter suggested that the words "where applicable" be added at the end of paragraph (b)(2). They stated that when the production is composed of carbon dioxide, nitrogen, or helium there will be no applicable Btu value.

MMS Response: This regulation has been modified in the final rule to read as follows: "Carbon dioxide (CO_2), nitrogen (N), helium (He), residue gas and any other gas marketed as a separate product shall be reported by using the same standards specified in paragraph (a)." The concern expressed regarding Btu values for nonhydrocarbon gases is resolved by the inclusion of the words "where applicable" in the final rule for paragraph (a).

Regarding paragraph (b)(4), one Indian commenter stated that if sulfur is sold in a unit other than a long ton, the lessee should be allowed to report it to MMS and to Indian lessors in that unit.

MMS Response: The unit for reporting sulfur volumes must be standardized for reporting purposes. The most common unit used by industry for reporting sulfur is the long ton. A simple arithmetic formula can be used to convert a unique sales unit to long tons.

Section 206.150 Purpose and scope.

Section 206.150(a)

Two Indian commentors, one Federal agency, and one industry commenter suggested that Indian and Federal lands are dissimilar and deserve separate treatment when valuation and other gas production matters are under consideration. They recommend that separate regulations be promulgated for Indian leases.

One Federal agency commenter concurs with MMS's recommendation that Indian Tribal and allotted leases be treated under the same gas valuation standards applied to Federal leases.

MMS Response: The MMS believes that because these regulations provide for a reasonable and appropriate value for royalty purposes, separate rules for Federal and Indian leases generally are unnecessary. The regulations in § 206.150(b) recognize the primacy of terms of statutes, treaties, and oil and gas leases which provide special valuation requirements for both Federal and Indian leases. In addition, certain additional provisions applicable only to Indian leases have been included in these regulations.

Section 206.150(b)

One industry commenter suggested the addition of the phrase "in the event that any term of an approved existing unit or communitization agreement is inconsistent with the final rule, then such agreement will govern to the extent of the inconsistency."

MMS Response: Section 18 of the standard Federal form of a unit agreement states: "The terms, conditions, and provisions of all leases, subleases, and other contracts relating to exploration, drilling, development or operation for oil or gas on lands committed to this agreement are hereby expresaly modified and amended to the extent necessary to make the same conform to the provisions hereof * * *." Therefore, the offered language is unnecessary owing to this existing unit agreement provision.

One Indian commenter suggested the addition of the phrase "provisions of Title 25 of the Code of Federal Regulations will supersede the provisions of this part, to the extent of any inconsistency."

MMS Response: The regulations currently in Title 25 of the Code of Federal Regulations are identical to the provisions of many Indian leases. Therefore, these final regulations would cover any inconsistencies with lease terms if there were any. Moreover, BIA has proposed to amend the valuation

regulations in 25 CFR simply to refer to the MMS valuation regulations. See 48 FR 31978, July 12, 1983.

One Indian commenter recommended that where provisions of any Indian lease, or any statute or treaty affecting Indian leases, as stated or as interpreted by the courts, are inconsistent with the regulations, then the lease, statute or treaty, or court interpretation would govern to the extent of the inconsistency.

MMS Response: This suggestion was not adopted because it was not considered necessary. If the regulations are inconsistent with the requirements of any court decision, the court decision would take precedence.

Section 206.150(c)

One industry commenter requested that consideration be given to the establishment of a "statute of limitations" for MMS audit and adjustment purposes. This commenter suggested that a 6-year period be adopted which would commence with the filing of the lessee's royalty report. It was also suggested that a provision for the lessee and MMS to mutually agree to waive the limitation for specific incidents and items under appeal or before the courts, but it should never apply in cases of fraud. This would partially relieve both the lessee and MMS of records archival responsibility and the associated costs, which are significant. Also, the limitation goes well beyond the cost-effective period for conducting normal compliance and followup audits. The suggested statute of limitations could be similar in concept and language as that used by the Internal Revenue Service.

MMS Response: The MMS performs all audits in accordance with 30 CFR 217.50. Any limitation such as that suggested would properly be included in a rulemaking to amend that section of the regulations. Therefore, it is beyond the scope of this rulemaking. The MMS has modified the provision in the final rule to make it clear that this provision applies to payments made directly to Indian Tribes or allottees as well as those made to MMS either for Federal or Indian leases.

Proposed § 206.150(e) would have required royalties to be paid on insurance compensation for unavoidably lost gas.

Seven industry commenters stated that to require a lessee to pay royalties on any compensation received "through insurance coverage or other arrangements for gas unavoidably lost is unfair." They stated that insurance proceeds are not received for the sale of production and should not be subject to sharing with the lessor. They believe, however, that if MMS insists on collecting a portion of such proceeds, the cost of such insurance coverage should be allowed as a deduction from royalty.

MMS Response: The MMS has removed this provision from the final rules. Pursuant to § 202.150(b) of the final rules, no royalty is due on production which is unavoidably lost. Therefore, MMS has determined that no royalty is due on any insurance compensation for such production.

Section 206.151 Definitions.

"Allowance"—One industry commenter suggested that the proposed definition be modified as follows: "Processing allowance means an allowance for processing gas; i.e., an authorized or an MMS-accepted or-approved deduction for the costs of processing gas determined pursuant to §§ 206.158 and 206.159." The same commenter stated further that "Transportation allowance means an allowance for moving unprocessed gas, residue gas, or gas plant production to a point of sale or point of delivery remote from the lease, unit area, communitized area, or processing plant; i.e., an authorized or an MMS-accepted or -approved deduction for transportation costs, determined pursuant to §§ 206.156 and 206.157." This commenter recommended deleting the phrase "for the reasonable, actual costs incurred by the lessee. The method of determining the allowance should be addressed in the regulation setting forth the calculation method, not in the definition of allowance. If MMS adopts comparable arm's-length transportation, and processing costs as a benchmark for non-arm's-length contracts, the above cited phrase could be incorrect in certain instances."

Four industry and one Indian commenter stated that certain terms incorporated in the definition are subjective in nature. One industry commenter stated: "The New Rules do not draw a clear, objective line between costs that may be deducted and costs that may not be deducted. What is 'remote'? What is 'field gathering'?" Two industry commenters want the word "reasonable" deleted in the definition of "processing allowance and transportation allowance." They believe that the "Lessee should be entitled to deduct actual cost of processing and transportation. 'Reasonable' implies that the deduction may be something less than actual." One Indian commenter stated: "* * * the use of the terms accepted and approved call into question important issues regarding the relationship of the acceptance or approval with later audit. We assume that acceptance would not preclude later audit review and disallowance or modification when justified." One industry commenter suggested deleting the words "remote from" and replacing them with "off." The commenter "believes what is really intended by the phrase 'remote from' is to cover transportation to sales and delivery points off the lease."

Finally, one Indian commenter, referring to "allowance," pointed out that: "The definition should clearly specify that the transportation allowance applies only to transportation from *the lease boundary* to a point of sale remote from the lease and that such costs be reasonable, actual, *and necessary*."

MMS Response: The final rule includes some modifications to the proposed language. It should be noted that processing and transportation allowances are "accepted" subject to review and/or audit. The MMS also has deleted the phrase "remote from the lease" and replaced it with the phrase "off the lease" for clarification that any transportation off the lease, except gathering (see definition below), is eligible for an allowance.

"Area"—One industry commenter stated that " 'Area' should be more precisely defined so that there are reasonable limits to how large an 'area' is. In addition, for the sake of clarification, the words 'or producing unit' should be inserted after 'oil and/or gas field' * * *."

MMS Response: For royalty computation purposes, the definition of "area" must remain flexible so that it may be applied to diverse situations. The size of an "area" may vary with each specific royalty valuation determination for gas.

"Arm's-length Contract"—The proposed definition of "arm's-length contract" was addressed by 46 commenters—7 Indian, 1 State/Indian association, 3 States, 1 State association, 1 State Governor, 27 oil and gas companies, 4 industry trade groups, and 2 individuals.

Eighteen industry commenters, three industry trade groups, and one State commenter stated that the proposed definition of arm's-length contract is so restrictive that many perfectly valid arm's-length transactions may fail to qualify, thus potentially rendering the key element of the benchmark system meaningless. These commenters suggested that MMS should adopt a definition of "affiliated person" based on control versus mere ownership of

stock. They stated that in order to eliminate this problem, the underlying language should be deleted in favor of language already adopted by BLM in its regulations implementing section 2(a)(2)(A) of the Minerals Lands Leasing Act of 1920 (MLLA). The rule, 43 CFR 3400.0–5(rr)(3), added by 51 FR 43910, 43922 (1986), specifies that:

Controlled by or under common control with, based on the instruments of ownership of the voting securities of an entity, means:

(i) Ownership in excess of 50 percent constitutes control;

(ii) Ownership of 20 through 50 percent creates a presumption of control; and

(iii) Ownership of less than 20 percent creates a presumption of noncontrol.

One industry commenter further recommended that "* * * MMS also adopt a 5% ownership threshold, below which there is an absolute presumption of noncontrol which is not subject to rebuttal. The 5% threshold is taken from the Investment Companies Act [* * *] which establishes that there is no effective affiliation between parties when direct or indirect ownership of voting stock is below 5%."

One industry commenter stated: "* * * Additionally, for those companies in which there is a definite controlling interest, a transaction should still be treated as arm's-length if the controlling company is regulated by a regulatory agency who approves rates or tariffs charged to third parties."

Sixteen industry commenters recommended changing MMS's reference from "persons" to "parties." One of these commenters stated that "Involvement in one or more joint operations with a competitor should not be viewed as materially affecting the arm's-length nature of transactions between the firms. However, the reference to 'joint venture in the definition of 'person,' which is referenced in the proposed definition of arm's-length contract, could be improperly construed as including normal joint oil field operations conducted under the terms of joint operating or similar agreements. Joint operations clearly involve no interlocking ownership of the instruments of voting securities as between the firms. Joint operations are undertaken to accomplish effective reservoir management, to satisfy spacing requirements, or to share the enormous costs involved in certain OCS and frontier areas."

One industry commenter was concerned that: "The proposed language does not clarify at what time affiliation is to be determined. Is it when the contract is originally executed or some subsequent time during the term of the contract? In the current climate of mergers and acquisitions, affiliation may change." Another industry commenter stated that, although the definition of "arm's-length contract" is well written, any additional language elaborating on the state of being affiliated should be deleted because it would allow auditors to reject too many arm's-length contracts.

One State commenter stated that "The definition of 'arm's-length contract' is clearly deficient because it is limited to formal affiliation or common ownership interests between the contracting parties. The assumption behind accepting arm's-length contract prices is that those prices will reflect market value. The definition proposed by MMS ignores the fact that parties may have contractual or other relationships or understandings which would cause them to price gas below its value, especially if the benefit of the reduced royalty burden can be shared by means of the gas sales contract." One Indian commenter questioned "* * * whether there are any truly arm's-length relationships in today's market which would make an arm's-length valuation method valid. We are particularly concerned that the arm's-length label essentially forecloses any scrutiny by MMS of the value reported by the lessee." One State/Indian association stated that nonaffiliation does not guarantee arm's-length: "For example, arrangements between families (via blood, kinship, heir or marriage) offer similar conditions for influencing proceeds subject to royalty."

Two State commenters, one State/industry association, one Indian, and one Indian trade group are of the opinion, as expressed by one commenter, that: "MMS's desire for an almost purely objective' test provides a totally inadequate justification for giving away the power to prevent manipulation of the public's royalties." These commenters agree that: "The definition as proposed is not workable even though it is objective." They suggest that MMS's definition in the draft regulations presented to the RMAC would allow more legally accurate results:

Arm's-length contract means a contract or agreement that has been freely arrived at in the open market place between independent, nonaffiliated parties of adverse economic interest not involving any consideration other than the sale, processing, and/or transportation of lease products, and prudently negotiated under the facts and circumstances existing at that time.

Five Indian, one Indian trade group, one State/Indian association, and two State commenters agreed that, as one commenter phrased it; "The adverse economic interest and open market requirements have long been standard criteria for determining the arm's-length nature of contracts. These criteria have allowed for an accurate line of demarcation between arm's-length and non-arm's-length."

One State commenter supplied the following questions to be asked to test the arm's-length nature of a contract: "(1) Is there an individual who is a board member, officer, partner or employee of one of the contracting parties, and also a board member, officer or employee of the other? (2) What, if any, other commercial relationships exist or are being proposed between the buyer and seller? (3) Is there any family relationship between the buyer and seller? (4) Is there any other special relationship between the parties to the gas sales contract?"

MMS Response: Based on the numerous comments concerning the "restrictive" nature of the definition and the soundness of their arguments, MMS has decided to adopt the "control" language found in the BLM's regulations at 43 CFR 3400.0–5(rr)(3) quoted above.

Furthermore, MMS recognizes that for the purposes of determining whether a contract is arm's-length or non-arm's-length, affiliation must be determined on each individual contract. This means that, for example, two companies may be involved as 60–40 partners in a joint venture to acquire and develop an OCS lease. If the company with the 60 percent interest buys the production from the joint venture company, that contract will be non-arm's-length. However, the two companies who formed the joint venture still may be considered by MMS to have an arm's-length sales contract between them for production from another lease, provided the 20-percent ownership threshold is not exceeded. In the event that one company does own a 20-percent or greater interest in the other, MMS would presume that any transaction between them is non-arm's-length.

The MMS may require a lessee to certify ownership in certain situations. Documents that controllers or financial accounting departments of individual companies file with the Securities and Exchange Commission concerning significant changes in ownership must be made available to MMS upon request.

The final rule also provides that to be considered arm's-length for any specific production month, a contract must meet the definition's requirements for that

production month as well as when the contract was executed.

The very nature of an arm's-length contract implies an adverse economic interest between the contracting parties. The MMS believes that the intent of the final definition (which includes the BLM "control" language) satisfies the concerns of those commenters who thought that the definition should include specific "adverse economic interest" language. Moreover, MMS has included in the final rule a provision which requires that, to be arm's-length, a contract must reflect the total consideration actually transferred from the buyer to the seller either directly or indirectly. For example, if the parties to the contract agree that the price for gas from a Federal or Indian lease will be reduced in exchange for a bonus price to be paid for other production from a fee lease, MMS will not treat that contract as arm's-length. The MMS does recognize, however, that two parties may have a history of dealing so that some may argue that any contract between them could be construed as including some consideration other than the specified price. It is not MMS's intention to exclude such bona fide agreements from the definition of arm's-length contract.

This definition in no way limits the Secretary's authority to question or "look behind" an arm's-length agreement if there is reason to suspect that elements of the agreement are less than arm's-length. The MMS also has added language to the definition which specifically excludes contracts between individuals related by blood or marriage.

"Audit"—One industry commenter expressed concern over MMS's interpretation of what constitutes an audit: "MMS's use of terms such as 'review,' 'examination,' rather than 'audit,' arbitrarily eliminates the right of lessees to offset overpayments and underpayments discovered during the course of an audit." This commenter believes that an account reconciliation by MMS should be termed an audit.

One Indian commenter did not disagree with the definition but thought that the processed information available to MMS is not adequate to perform thorough audits. "Our view of the definition of audit is academic because the MMS will accept payment reports without review in the future as in the past, unless resources and personnel are provided by the Tribe to accomplish the task."

One industry commenter stated that the review and resolution of exceptions processed by MMS's automated systems constitutes auditing by mail. The industry takes exception to this procedure.

MMS Response: The MMS has simplified the definition of "audit" as follows: "Audit means a review, conducted in accordance with generally accepted accounting and auditing standards, of royalty payment compliance activities of lessees or other interest holders who pay royalties, rents, or bonuses on Federal and Indian leases."

"Compression"—One industry commenter suggested deleting the definition because the term does not require an explanation.

MMS Response: The MMS believes that the definition should be retained because it clarifies a term used in the regulations.

"Field"—One industry commenter suggested adding the underlined language to clarify that this definition is for royalty purposes: "Field means, *for purposes of oil and gas royalty,* a geographic region * * *."

MMS Response: The additional language proposed by the commenter is unnecessary because the underlying premise of all the definitions contained in § 206.151 is that they are for royalty purposes.

"Gas"—One industry commenter stated that "The term should refer to unprocessed gas. The chemical definition is inappropriate in this context because it fails to distinguish between manufactured and raw gas."

MMS Response: The MMS believes that the definition adequately and correctly defines the term "gas" in language which is accepted by the oil and gas industry.

"Gas Plant Products"—One industry commenter stated that the phrase "excluding residue gas" should be deleted from this paragraph. According to this commenter, "Residue gas is a manufactured product as that term has been used by Federal courts in the royalty context. See *U.S. v. General Petroleum; California v. Seaton* affirmed *California v. Udall* * * *. If gas is processed, or manufactured there is no rational basis for limiting the deduction of manufacturing costs against the value of only gas plant products other than residue."

One industry commenter suggested, "* * * we think the word 'nitrogen' should be excluded from the definition of 'Gas Plant Products' since some natural gas is high in this component, and there is currently a small or nonexistent market for small amounts of nitrogen. Purchasers have traditionally downgraded the price for high nitrogen gas, and if producers have to bear additional royalty as well, they may elect to shut in or plug wells due to poor economics."

MMS Response: The MMS does not agree that the phrase "excluding residue gas" should be deleted from this paragraph. Historically, no processing allowance has been allowed to be applied against the residue gas, and MMS generally has retained this position in the final rule. MMS has also concluded that the definition should not be modified to exclude nitrogen. MMS has, however, included in § 206.158(d) a provision for an extraordinary processing allowance for unique types of gas production operations.

"Gross Proceeds"—Forty-three commenters responded regarding this definition—36 industry, 3 Indian, 1 State, 1 State/Indian association and 2 individuals. Three Indian, one State, and one State/Indian association commenter generally supported the definition as written. The remaining 38 respondents, who made up the majority of commenters, disagreed with the proposed definition.

Three Indian, one State, and one State/Indian association commenter supported the definition and urged MMS to retain the entitlement concept despite pressures to the contrary. One Indian commenter suggested using the words "accrued or accruing to" in place of "entitled." A State commenter stated that "MMS has correctly resisted lessee efforts to exclude the royalty owner from sharing in some kinds of consideration, such as severance tax reimbursement and take or pay payments." This commenter recommended clarifying the first sentence by amending it as follows: "Gross proceeds (for royalty purposes) means the total monies and *the value of* other consideration paid *or given* to [an oil] and gas lessee, or monies and *the value of* other considerations to which such lessee is entitled, for the disposition of gas." The commenter stated that "These additions are necessary because when 'consideration' is not in the form of 'monies' it is necessary to determine its value."

Twenty industry commenters opposed the definition of "gross proceeds" as proposed because it is too expansive and contrary to the provisions of the Mineral Lands Leasing Act and the OCS Lands Act. Instead, they propose the following: "Gross proceeds (for royalty payment purposes) means the consideration accrued to the lessee for production removed or sold from Federal, Indian Tribal or Indian allotted leases." One commenter stated further that "Such definition is unambiguous, furthering the MMS's desire for certainty

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in its regulations. Reimbursement for production-related costs and take-or-pay payments are currently being litigated. If it is eventually determined that royalty is owed on such payments such definition will not have to be modified. On the other hand, the proposed definition will have to be amended if industry is successful in its claims that royalty is not due on such amounts." One industry commenter proposed adopting the definition of "gross proceeds" endorsed by a majority of the RMAC Gas Panel. It reads: "* * * all consideration due and payable to the lessee for the sale of gas and processed gas products, less any applicable allowances for transportation, processing and other post production expenses."

Seventeen industry commenters disagreed with the entitlement language contained in the definition. Their concerns are represented by the following statement from one of the comments: "Proceeds have long been defined and understood to mean the consideration, money or the monetary equivalent of other non-monetary consideration *actually received by a lessee.* MMS' expansive definition of proceeds, including monies to which a lessee is *entitled,* makes product valuation uncertain and subjective. This uncertainty and subjectivity arises because: (1) The meaning of entitlement is not clearly understood, nor is it a clearly defined legal term; (2) lessees do not know how either they or MMS will, or should, apply this standard; and (3) the required steps which a lessee must take to secure entitlements to consideration are unknown. It will put MMS into the business of second guessing lessee's business transactions. To minimize this second guessing problem of uncertainty we recommend the concept of entitlement be eliminated from further consideration." One industry commenter was concerned that "a lessee would be required to pay royalties on monies to which it is entitled, not on what is received or on what is settled for as a matter of compromise." In order to add more certainty to the concept of "entitlement," one commenter suggested "a simple statement to the effect that MMS expects to be indemnified against the negative consequences of a lessee sleeping on its *clear cut* uncontested contract rights should suffice."

Fourteen industry commenters had the opinion, as one commenter phrased it, that "Federal statutes, regulations, and leases do not require lessees to pay royalty on reimbursements received for post-production services." Several commenters believed that "the claim for royalty on production-related cost reimbursements received by a lessee pursuant to the FERC's Order No. 94 series is particularly inappropriate." One commenter stated that "a demand for royalties on Order No. 94 violates the royalty clause of the MLA, the OCSLA, as well as MMS's own regulations implementing these statutes, for at least two reasons. First these reimbursements do not result from the production of gas but from services performed by the producer subsequent to production. Secondly, such reimbursements are not consideration for production that is sold or removed and are thus outside the scope of the royalty clause. Consequently, the MMS proposal to include production-related cost reimbursements in the definition of gross proceeds is simply wrong." Another industry commenter "strongly asserts the producer's right to deduct all post-production costs involved in marketing gas. Further tax reimbursements should be exempt from royalty." Finally, one industry commenter stated that "all post-production costs should be shared by lessor and lessee because such costs enhance the value of the production for the benefit of both lessor and lessee."

Seventeen industry and two individual commenters responded to the inclusion of take-or-pay payments in the definition of "gross proceeds." The consensus among these commenters is that MMS has no lawful reason or authorization to collect royalties on take-or-pay payments. One commenter stated that "the typical take-or-pay clause in a contract between the lessee and the gas purchaser requires the purchaser to pay for the specified minimum quantity of gas for each contract year. Whenever the gas purchaser takes less than the contract minimum for a particular year, the purchaser is required to make a take-or-pay payment to the lessee. The purpose of take-or-pay payments is to guarantee the lessee a steady cash flow, regardless of the level of actual production, to meet its operation and maintenance costs. The payments are not for production; indeed, they are made in lieu of taking production. Consequently, to the extent the lessee receives take-or-pay payments there is no gas production or sale because the gas remains in the ground."

Several industry commenters recommended the increased use of "in-kind" royalty clauses to resolve good faith royalty disputes. One industry commenter stated "indeed, the 'in-kind standard should be considered as the measure of product 'value,' where a producer and the MMS, or a State auditor under a delegation of authority, disagree over whether a contract is 'arm's-length,' or over contract 'entitlements,' the gas should be taken 'in-kind, by volume at the wellhead. This means that the royalty owner must assume all subsequent costs of marketing the gas."

MMS Response: MMS has adopted a definition which is only slightly different than the proposal for purposes of clarification. MMS has retained the intent of the proposed language because gross proceeds to which a lessee is "entitled" means those prices and/or benefits to which it is legally entitled under the terms of the contract. If a lessee fails to take proper or timely action to receive prices or benefits to which it is entitled under the contract, it must pay royalty at a value based upon that legally obtainable price or benefit, unless the contract is amended or revised. As is discussed more fully below, gross proceeds under arm's-length contracts are a principal determinant of value. MMS cannot adopt that standard and then not require lessees to pay royalties in accordance with the express terms of those contracts. It is MMS's intent that the definition be expansive to include all consideration flowing from the buyer to the seller for the gas, whether that consideration is in the form of money or any other form of value. Lessees cannot avoid their royalty obligations by keeping a part of their agreement outside the four corners of the contract.

Costs of production and post-production costs are lease obligations which the lessee must perform at no cost to the Federal Government or Indian owner. The services listed in the definition are all benefits that a lessee may receive under the terms of the contract and are considered part of the value for royalty purposes for the production removed or sold from the lease.

It is MMS's position that take-or-pay payments are part of the gross proceeds accruing to a lessee upon which royalty is due.

The MMS retains the exclusive right to determine when it will accept "in kind" production in fulfillment of a lessee's royalty obligation.

"Lease"—One Indian commenter stated the following: "Inclusion of any contract profit-sharing arrangement, joint venture or other agreement in the term lease' as opposed to a more standardized BIA form lease may cause confusion. Most joint ventures and profit-sharing arrangements contain

explicit provisions on payment of expenses and division of revenues."

MMS Response: This definition must be broad enough to cover any agreement that may be issued or approved by the United States for either Federal or Indian lands.

"Lease products"—One industry commenter stated: "Lease products definition should be deleted as it eliminates the important and necessary distinction between raw gas and manufactured products. Use of the phrases 'gas' and 'gas plant products' is preferable as it serves to make this distinction."

MMS Response: The MMS believes that this definition is appropriate and correct and does not eliminate any distinction between raw gas and manufactured products. The definition of the terms "gas" and "gas plant products" will be retained in the definitions paragraph.

"Lessee"—Fifteen industry/trade groups commented that the proposed definition of "lessee" is too broad. One commenter stated that "As drafted, it would include any person who pays royalties, notwithstanding the fact that such payors may have no contractual obligation to the lessor to make royalty payments. Thus, under the proposed definition, the voluntary royalty remitter would become subject to all of the royalty valuation obligations imposed on lessees and would consequently, become directly liable for any infractions of the application reporting and payment regulations, a result which is not sanctioned by existing statutory law. To be consistent with that law, industry suggests that MMS substitute for its definition of "lessee" the one which is contained in section 3(7) of the Federal Oil and Gas Royalty Management Act (FOGRMA), 30 U.S.C. 1702(7):

> "Lessee" means any person to whom the United States, an Indian Tribe, or an Indian allottee, issues a lease, or any person who has been assigned an obligation to make royalty or other payments required by the lease."

Most of these commenters favored this definition because "the statutory definition includes persons who have been issued a lease or who have been *assigned* an obligation to make royalty or other payments required by the lease. The gas proposal would wrongfully expand the definition to include any person who has *assumed* an obligation to make such payments."

One industry commenter recommended adding the phrase "for royalty payment purposes" directly after the word "Lessee" for the purpose of clarity. "We do not believe it is the intent of Congress that a lessee be able to divest himself of all lease obligations by someone else merely assuming royalty responsibility."

MMS Response: The MMS agrees with the comments regarding consistency with the definition found in FOGRMA and, therefore, has replaced the word "assumed" with the word "assigned." It should be specifically noted that the term "assigned," as used in this Part, is restricted to the assignment of an obligation to make royalty or other payments required by the lease. It is in no way related to lease "assignments" approved through the MMS, BLM or BIA.

"Marketable Condition"—One industry commenter suggested changing the definition to "Marketable Condition means condition acceptable to the purchaser under its sales contract."

One industry commenter suggested adding the words *"and/or transporter"* after the word "purchaser" in the definition.

One industry commenter stated that phrases such as "sufficiently free from impurities" and "a contract typical for the field or area" are subjective and ambiguous. The commenter stated that "All references to 'marketable condition' should be dropped in the final regulations. Instead, the regulations should reflect the distinction between production and post-production costs and clearly allow the lessee with an arm's-length contract to deduct post-production costs."

One industry commenter stated that "The proposed definition of 'marketable condition' is problematic because it seems to set up a normative standard for the condition of a product, when in fact products may be sold profitably in a variety of conditions. We do not believe the lessee should be required to meet a specific set of processing criteria in all circumstances. The lessee, for its own profit and for that of its lessor, must be able to evaluate potential benefits and costs under each circumstance without being bound by what the lessor may consider 'typical' for the field or area. Furthermore, as regard the term 'typical', what was typical 20 years ago almost certainly is not typical now; yet there is no reference in this definition to the need for contracts to be fairly contemporaneous in order to be comparable. The definition set forth in the report of RMAC's Gas Working Panel is far preferable to the proposed rule."

MMS Response: The MMS believes that the definition is clear, concise, and equitable. The definition is not subject to manipulation, as one commenter stated. Furthermore, the suggestion that a uniform standard be developed for what is "marketable" is unrealistic because the gas marketplace is dynamic. The definition, as written, allows MMS the latitude to apply the concept of "marketable" in a fair and correct manner, now and in future gas markets. Therefore, the MMS has not made any changes to the proposed definition.

"Net-back Method"—One industry commenter recommended deleting the second sentence of the definition because the procedure for performing a net-back calculation cannot be adequately explained in one sentence. Another industry commenter believed that the reference to net-back method needs clarification. A net-back is simply a means for reconstructing the value of gas to the well and has nothing to do with valuing the disposition of the gas at a point remote from the well. Consequently, a net-back procedure can be employed simultaneously with another valuation criterion to arrive at the value at the well."

One industry commenter stated the following about the definition: "It is vague because there is no explanation of what 'working back' means; it is overly broad because the first 'use' of virtually all gas is downstream from the lease. In addition, exclusive reliance on costs, however 'costs' are determined, may well understate the value added to production by downstream value-enhancement activities."

One State commenter stated that "the definition is internally inconsistent because it declares the 'net-back method to be a method for valuing 'unprocessed gas' which is first sold downstream of, among other things, 'processing plants.' One of these references must be deleted to preserve consistency. The concept is vague because no standard is provided for determining what is meant by the phrase 'first alternative point which can be used for value determination.' "

MMS Response: Upon review, MMS determined that the proposed definition of net-back was too broad—it applied to any situation where lease production is sold at a point remote from the lease. MMS's intent is that a net-back method be used for valuation primarily where the form of the lease product has changed, and it is necessary to start with the sales prices of the changed product and deduct transportation and processing costs. An example would be where gas production from a Federal lease is used on lease to generate electricity which is then sold. If the value of the gas cannot be determined through application of the first three benchmarks in the regulations (see

§ 206.152(c)), then a net-back method would involve beginning with the sale price of the electricity and deducting the costs of generation and transportation, thus working back to a value at the lease. MMS has revised the definition so it more clearly applies to this type of situation.

"Net Output"—One industry commenter recommends "substituting the phrase 'actually extracts' for 'produces'. Net output of a plant is that which is *actually extracted*, not theoretically extractable."

MMS Response: The MMS disagrees with the commenter's recommended addition. The phrase "actually extracts" could be interpreted as meaning something different than "is produced."

"Person"—One industry commenter recommended replacing the word "firm" with "company" in the interest of clarity.

Three industry commenters expressed the opinion that if the definition is not altered "then inclusion of joint venture in the definition of person could be extended to oil and gas joint venture operations and further narrow the definition of an arm's-length transaction by clouding the issues of control and affiliation. The sale of hydrocarbons produced through joint venture operations should not be presumed to be other than arm's-length because the individual parties and not the 'joint venture' are responsible for making their own sales of their share of the production." One industry commenter stated that the solution to the problem is to delete the term "joint venture" from the definition. Another industry commenter proposed the following definition: "Person means any individual, firm, corporation, association, partnership, consortium, or joint venture. For purposes of this definition, association, partnership, consortium or joint venture shall not include any relationship or arrangement resulting from persons entering into any joint operating agreement, production sharing agreement, farm-out or farm-in agreement, or any similar agreement or contracts generally found in the oil and gas industry for the cooperative exploration of mineral resources."

MMS Response: MMS's modification to the definition of arm's-length contract to include the "control" language should satisfy the problems identified in the comments. Therefore, MMS will retain the proposed definition of "person" in the final rule.

"Posted Price"—One industry commenter stated that the word "posted" is an outdated term which should be deleted and that the following underlined language should be added to the definition. "Posted price means the price in the field, net of all deductions, as specified in a publicly available * * * price bulletin *or price notices available as part of normal business operations to an operator desiring to do business with specific purchasers*, that a buyer is willing to pay for quantities of unprocessed gas, residue gas, or gas plant products of marketable condition * * *." The commenter also stated that, "if gas price bulletins become generally circulated, it may be that some buyers may not publish a price bulletin as that term is normally used in the industry, but will provide and make available price quotations or notices to any operator (seller) desiring to do business with the buyer."

MMS Response: The MMS has revised the definition in the final rule. For clarification purposes, the word "condition" replaces the word "quality" which follows the word "marketable" in the first sentence. The phrase "net of all deductions" has been modified to read "net of all adjustments." As used in this definition, the term "adjustments" refers to deductions from the price of gas or gas plant products for quality adjustments. Adjustments for location also may be taken into account where appropriate.

"Processing"—Two industry commenters recommended "that a clarifying statement be included to recognize that a plant may be located on the lessee's Federal/Indian lease. If a gas plant is located on a lease, then any of the 'field processes', as set out in the definition may well be an integral part of the plant process and consequently must be considered elements of processing." One industry commenter suggested that the following sentence be inserted between the proposed second and third sentences: "However, these processes will be considered as processing if they are included as an inherent part of the process to separate the produced gas into gas plant products and residue gas." Two industry commenters recommended "The addition of the word 'fractionation' at the end of the first sentence. Fractionation is a plant process and an allowance should be granted as is currently allowed by MMS."

One Federal agency commenter stated that some confusion may arise when comparing proposed § 206.151(bb) to proposed § 206.158(d). "Once the gas reaches the gas plant it would be arguable that any process associated with treating the gas, such as dehydration or mechanical separation, is generating a gas plant product that would be eligible for a processing cost deduction."

One industry commenter suggested changing the definition of "processing" to: "*'Manufacturing:'* The transformation of a raw gas stream into one or more saleable products by processes other than dehydration, standard field conditioning and separation techniques. Manufacturing includes gas processing, sweetening, purification, desulfurization, gas separation, adsorption, absorption, liquefaction and other extraction techniques. Furthermore, gas processing should be defined as: *Gas Processing:* The manufacturing technique whereby wet gas is treated to remove natural gas liquids such that the natural gas liquids and dry residue gas are separately marketable." This commenter thinks that "manufacturing also includes the physical operation attendant to the specific manufacturing process such as the dehydration and compression steps which occur within a gas plant. The MMS has instead attempted to limit its attention to 'gas processing' and thus provides an allowance only to such operations. The position of the MMS is based upon a clear misapplication of the *Udall* case, namely, that all operations for placing gas in marketable condition, *including manufacturing operations*, are not deductible. Compounding its error, the MMS ignores the *General Petroleum* holding, not affected by *Udall*, that residue gas is a manufactured product, and so proposes that no manufacturing cost be deducted against the residue gas."

One State commenter stated that the definition of "processing" is very vague. According to this commenter, the distinction between "field processing" and other "processing" is not clearly drawn. The commenter asserted that "The ambiguity of the definition of 'processing' would not be so troubling except for the fact that it seems to control the meaning of the term 'unprocessed gas,' which is not defined in the proposed regulations despite its critical importance. One would think that regulations aimed at providing certainty would present clear guidelines for identifying the 'processing' costs in which the royalty owner must share."

MMS Response: The MMS has considered the comments carefully but disagrees that the proposed definition is confusing and vague. Therefore, it will be retained unchanged in the final rule.

"Residue Gas"—One industry commenter suggested that "Residue gas may also include ethane." Another industry commenter recommends deleting this definition but states:

"Nevertheless, if this definition is maintained residue gas should be restricted to residue gas resulting from processing sweet gas containing hydrocarbons."

MMS Response: The MMS has not adopted the suggestions made by the commenters and the definition remains unchanged. The definition recognizes that residue gas may include ethane.

"Spot Sales"—One industry commenter suggested deleting all language in the proposed definition that follows the word "duration." According to this commenter, "The additional language is not necessary to define a spot sales agreement as it defines what is *not* required, versus what *is* required."

One industry commenter suggested deleting the clause "* * * which does not require a cancellation notice to terminate * * *" "Many spot sales agreements require ten (10), thirty (30), or sixty (60) days notices of cancellation * * *. The MMS purpose of including only those contracts which do not imply an intent to continue in subsequent periods is adequately served by the balance of the definition."

Three industry/trade group commenters recommended that this paragraph should be retitled as " 'spot/direct sales agreements' and a definition for direct sales be added as follows: A direct sale (which generally does not contain a reserve dedication) is a similar agreement but is usually made with an end user or local distribution company *and can be a short or long term contract.*"

One industry commenter recommended adding the following sentence to the definition: "A spot or direct sale which meets all of the criteria of an arm's-length contract as defined in paragraph 206.151(d) of these regulations shall be treated as an arm's-length contract according to these regulations." The commenter believes that the proposed definition must clearly state that a spot sales agreement will be treated as arm's-length if it meets all the requirements of an arm's-length agreement.

MMS Response: In the final rule, MMS has inserted the word "normally" immediately preceding the phrase "require a cancellation notice to terminate." MMS also agrees that there are spot sales which constitute arm's-length contracts. However, to be considered as a comparable arm's-length contract in the valuation of gas which is not sold pursuant to an arm's-length contract, these contracts also must meet other standards. See, for example, § 206.152(c)(1).

"Take-or-pay payment"—Four industry comments were received on this definition and all recommended its deletion. The comments are reflected by the following statement of one of the commenters: "While the definition proposed is technically correct, it should be deleted from the proposed rule because, as stated in the discussion of § 206.151(m) above, take-or-pay payments are not consideration for the sale of production."

MMS Response: MMS is retaining the definition as proposed, with minor modification. MMS already addressed above the issue of whether take-or-pay payments should be included in gross proceeds.

"Warranty Contract"—One industry commenter stated that "the exclusion of warranty contracts from the valuation of gross proceeds under an arm's-length contract is intended to exclude those low value warranty contracts that were entered into prior to the mid 1970's. However, the proposed definition is so broad that it will encompass future negotiated selling arrangements." To clearly express the MMS's intent, the commenter "proposes that the definition be restricted to those contracts entered into before a specific date."

MMS Response: The MMS has modified the definition to refer only to long-term contracts entered into prior to 1970. This also includes contracts entered into prior to 1970 that may have been amended either before or after 1970.

Proposed New Definitions

Commenters have proposed adding the following definitions to the list of existing definitions: Natural gas liquids; post-production costs; production; production costs; royalty; and unavoidably lost gas.

MMS Response: The MMS has decided not to include any of the suggested additional definitions. The terms either have a recognized meaning (such as "royalty") or are not used in the regulations (such as "post-production costs").

Section 206.152 Valuation standards—unprocessed gas.

Section 206.152(a)

Paragraph (a)(1) provides that the provisions of § 206.152 apply only to gas that is sold or otherwise disposed of by the lessee pursuant to an arm's-length contract prior to processing. The section expressly does not apply to contracts where the lessee reserves the right to process the gas or to percent of proceeds contracts. Four industry commenters stated that the proposal to exclude percent of proceeds contracts from this section is unreasonable and unfair to the lessee. They stated that the percentage of proceeds mechanism is a means of arriving at the wellhead value and is not a sale of processed gas. All commenters recommended classifying percent of proceeds contracts under unprocessed gas.

MMS Response: The MMS still believes that the percentage of proceeds contracts should be treated as processed gas as proposed. However, because the final rule includes provisions for an exception from processing allowance limitations (see § 206.158(c)(3)), many of the commenters concerns should be resolved.

An Indian commenter stated that this section is inconsistent with the ruling in *Jicarilla Apache Tribe v. Supron,* which held that under the terms of the Indian leases in dispute, wet gas had to be valued as the higher of the value at the lease or as the value of all products at the tailgate of the plant, less transportation and processing costs.

MMS Response: The MMS s regulations recognize the primacy of statutes, treaties, and oil and gas leases, thus providing a means for determining special valuation requirements not only for Indian leases, but also for Federal leases. Many Indian leases have provisions that require dual accounting for processed Indian gas production.

Section 206.152(a)(2)

One Indian commenter stated that this proposed rule authorizes alterations in dealings between the Indian lessor and the industry lessee. The commenter further stated that this provision will result in royalties which are adjusted for transportation costs not contemplated by either party to the lease. The commenter recommended that all references to transportation allowances be deleted and that value be defined, for royalty purposes, to be the fair market value of the gas at the lease in marketable condition.

One industry commenter objected to the concept of determining royalty on the value of gas and the associated products after completion of the manufacturing or processing phase. The commenter recommended that royalty be due only on the market value of the product as it is produced at the wellhead.

Three Industry commenters recommended that the phrase "less applicable transportation" should be expanded to include other cost allowances such as production costs.

MMS Response: The MMS has modified the final rule to refer to "applicable allowances" because the final rule includes provisions for limited

extraordinary cost allowances in addition to transportation allowances. In response to the comments, transportation allowances generally are appropriate for most Indian leases. The regulation refers to "applicable" allowances and does not imply that any and all transportation costs can be deducted. If transportation allowances are not appropriate, the word "applicable" restricts application only to those leases where they can be applied.

The MMS is including in the final rule a new paragraph (b)(3) which states that for any Indian leases which provide that the Secretary may consider the highest price paid or offered for a major portion (major portion) in determining value, MMS will, where data are available and where it is practicable, compare the value determined in accordance with the prescribed standards with the major portion. The rule provides that the royalty value for royalty purposes generally will be the higher of those two values. However, if MMS determines that the major portion results in an unreasonably high value, then it will not be used for royalty purposes. This could happen, for example, in a falling market where a seller under an arm's-length contract is marketed out to a lower price. If that price is truly the result of an arm's-length process and is lower than the major portion, MMS could conclude that the arm's-length price is the highest reasonable value for royalty purposes.

The MMS is also including in paragraph (b)(3) a description of how the major portion is computed. It will be determined using like quality gas, which includes legal characteristics (i.e., same NGPA category). The production will be arrayed from highest price to lowest price (at the bottom). The major portion is that price at which 50 percent (by volume) plus one Mcf of the gas (starting from the bottom up) is sold.

The MMS believes that for these Indian leases, by comparing the major portion to values determined using arm's-length contract prices or the benchmarks for non-arm's-length contracts, and generally using the higher of the two, the Indians will be receiving royalties in accordance with their contract with the lessee.

Section 206.152(b)

Seven industry commenters stated that they supported the concept of relying on gross proceeds in an arm's-length transaction as the principal determinant of value. Two industry commenters also endorsed the overall approach to valuation determination procedures and eliminating the requirement that a lessee obtain preapproval.

MMS Response: The MMS believes that gross proceeds under an arm's-length contract generally constitute the market value of a commodity, but this does not preclude MMS from establishing a value where necessary; e.g., if the contract is not an arm's-length contract or if the lease agreement requires a different value.

One Indian commenter recommended that a definition of gas value, for royalty purposes, be based on the highest price paid or offered for similar gas in the same field or area, and requested MMS to adopt the following approach:

Section 206.102 (sic) Valuation Standards.

(a) Remains the same.

(b) The value of gas which is sold pursuant to a contract shall be the gross proceeds accruing, or which could accrue, to the lessee, *Provided that* such proceeds do not fall more than 10 percent below the greater of the highest price paid or posted for similar gas in the same field or area. If such proceeds fall more than 10 percent below such prices, the value of gas in that case shall be 10 percent below the greater of the highest price paid or posted for similar gas in the same field or area.

A State commenter stated that the proposed regulations would allow substantial manipulation and undervaluation of the royalty amount because it is unacceptable to allow lessees to use contract prices as the royalty value without adequate safeguards to assure a fair valuation. They recommended at a minimum, only prices under "genuine" arm's-length contracts should be acceptable for royalty purposes and urged MMS at least to impose a floor value, such as 80 percent of the value of production as determined under the "value" criteria applicable to gas not sold under arm's-length contracts.

MMS Response: The MMS generally does not believe that the establishment of some type of "floor value" (other than gross proceeds) is appropriate because it could result in royalty being based on a value greater than the lessee received under an arm's-length contract. However, under the lease and regulations, MMS has the authority to establish a value, for royalty purposes, and will do so where it is justified for non-arm's-length contracts, even if such value is higher than the gross proceeds received by the lessee. Also, as explained above, for most Indian leases, because of the specific lease terms, MMS will compare values determined using arm's-length contract prices with the highest price paid for a major portion of production, and generally use the higher of the two values.

One Indian commenter recommended the inclusion of provisions specifically reserving to MMS the right to review and audit "arm's-length" contracts and that the proceeds under all contracts should be subject to price checks—market value analysis—before being accepted as value. Another Indian commenter requested that all arm's-length contracts be filed with MMS and that MMS require that agreements for the sale or disposition of gas within different branches of the same company be in writing and on file.

One Indian commenter stated that "if MMS is to properly undertake its responsibilities, a predetermination of value on which royalty is to be based should be made *before* production value is reported." In addition, it was recommended that the Secretary should determine whether each contract is arm's-length or non-arm's-length instead of allowing the lessee to make this determination. Also, it was suggested by that the Secretary should have all benchmarks available to him and MMS should have the flexibility to set benchmark minimum prices established by the highest price paid or offered for a major portion of gas produced from the field or area.

MMS Response: The suggestions to predetermine the value on which royalty is to be based were not adopted because of the increase in administrative burden which would be very costly for MMS and industry. The MMS assumes that operators will make a diligent effort to comply fully with the regulations, and, therefore, will not identify an internal sales agreement as arm's-length. The suggestion that the Secretary should determine whether each contract is arm's-length or non-arm's-length instead of allowing the lessee to make this determination is not considered necessary. However, the MMS has added a provision to the final rule which provides that MMS will determine during audits whether the lessee's contract reflects all the consideration transferred either directly or indirectly from the buyer to the seller for the gas, or whether there may be factors which would cause the contract not to be deemed arm's-length. MMS recognizes that some parties may have multiple contracts with one another. This fact alone would not cause a contract to be considered non-arm's-length. Rather, there must be some indication that the contract in question does not reflect the full agreement between the parties. The final regulations also include a provision whereby MMS may require a lessee to certify that the terms of its arm's-length contract reflect all the consideration

flowing from the buyer to the seller for the gas.

One individual commenter stated that the courts and industry have both acknowledged that a royalty based on value is different from one based on proceeds and that the majority rule in State courts is that gas is to be valued at the time of production or delivery, not at the time of entering into the contract.

MMS Response: The MMS will generally accept the gross proceeds received under an arm's-length contract as the value. The usual lease provisions do not preclude the acceptance of gross proceeds under an arm's-length contract as the proper value. In fact, under most Indian leases gross proceeds may be accepted as conclusive evidence of value. If a particular contract is not an arm's-length contract, production will be valued in accordance with the benchmarks. And, as discussed above, for Indian leases MMS will also consider the major portion in determining the royalty value.

Section 206.152(b)(2) of the proposed rules excepted warranty contracts from the general acceptance of gross proceeds as value for arm's-length contracts. One industry commenter recommended that advance MMS approval not be required for the value of gas sold pursuant to a warranty contract since all activities are subject to audit.

Two industry commenters stated that this section should be deleted and that the gross proceeds received by the producer under a warranty contract should be used for determining royalty just as it is for other arm's-length contracts.

Two industry commenters recommended that MMS consider limiting the warranty contracts exception to those contracts entered into before a specific date, such as prior to the mid-1970 s.

MMS Response: The MMS has adopted the rule that the value of gas sold pursuant to a warranty contract will be determined by MMS. The issue of limiting the definition of warranty contracts to those executed prior to 1970 was discussed above in the definition of warranty contract.

Twenty-three industry commenters strongly disagreed with the language "or which could accrue" contained throughout the regulations. Most companies recommended that the language be deleted. Most commenters stated that the language was too speculative and appears to provide for a second-guess mechanism under which a lessee's sale today can be reviewed in light of knowledge gained at a later date.

MMS Response: The MMS has determined that the phrase "or which could accrue" will be deleted in reference to gross proceeds. Many commenters thought that this phrase would allow MMS to second guess the price which the lessee agreed to in its contract by arguing that other persons selling gas may have received higher prices—thus, more proceeds "could have accrued" to the lessee. This was not MMS's purpose in including the "or which could accrue" language in the proposed rule. Rather, MMS's intent is to ensure that royalties are paid on the full amount to which the lessee is entitled under its contract, not just on the amount of money it may actually receive from its purchaser. However, MMS is satisfied that the phrase "the gross proceeds accruing to the lessee" properly includes all consideration to which the lessee is entitled under its contract, not necessarily just what it actually receives from the buyer. Therefore, the "or which could accrue" phrase was unnecessary. Because it caused confusion as to MMS's intent, it was deleted from the final rule.

One Indian commenter stated that "acceptance of gross proceeds as conclusive evidence of value is an abrogation of the Secretary's fiduciary duties, " and that they do not believe "gross proceeds accruing or which could have accrued in an arm's-length transaction should be determinative of value for gas produced from Indian and Federal leases."

MMS Response: MMS believes that the rules as adopted with the changes discussed earlier will result in reasonable and appropriate values for Indian leases, in accordance with the Secretary's responsibilities.

Section 206.152(c)

Gas which is not sold pursuant to an arm's-length contract is required by the regulations to be valued in accordance with a series of benchmarks. Four State, three Indian, two industry, and one Federal agency commenter disagree with various aspects of the proposed benchmark system because they think that it is overly vague and subjective. Two State commenters stated that because the majority of gas contracts are not arm's-length, the benchmark system proposed by MMS may be too complex. They recommend that "* * * MMS should study the numerous pricing provisions related to gas sales, and on the basis of the study establish Federal floor values which could be used by lessees to compute a minimum royalty and which would be publicly available."

One State commenter believes that the appropriateness of using the benchmark system depends upon whether the benchmarks are fair and reliable. According to this commenter, "The proposed system would not be fair to the royalty owner because it would lead to the potential for abuse and would certainly result in the diminution of royalties. It would be unreliable because the standards are vague, subjective, and subject to abuse. Unlike the proposed benchmarks for oil valuation, we do not believe that the proposed gas valuation benchmarks can be developed into a fair and workable system. Instead, we believe all the factors listed in paragraphs (c)(1) through (c)(4) should be combined into a single valuation standard." One industry commenter stated that although the proposed benchmark system gives producers more confidence in arriving at value, it falls short of providing a method to determine an exact royalty amount when royalty is due.

Fourteen industry and/or trade groups and one Indian trade group, with minor changes, support the benchmarks and giving them priorities because both will add certainty to valuation determinations. They commend MMS for the recognition of market forces as the principal determinant of value. One commenter stated that "The truest representation of the value of a product is what it can be sold for on the open market, at arm's-length. The proposed benchmarks for valuation of gas under arm's-length contract, non-arm's-length contract, and no contract transactions promote accurate valuation according to the marketplace, and provide rational standards for MMS to follow in monitoring establishment of gas value."

MMS Response: The MMS believes that the proposed benchmark system is a valid and usable system for determining the value of gas not sold pursuant to an arm's-length contract. The system allows the lessee certainty in determining its own value without dependence upon MMS to establish the value. The MMS believes that the majority of gas contracts, if not arm's-length, will be valued according to either the first or second benchmarks. The suggestion that MMS develop Federal floor values is not feasible and would be difficult to administer. Therefore, other than some minor modifications, the benchmarks have been adopted as proposed.

Two commenters disagreed with the way in which the benchmarks were ordered in the proposed regulations. One Federal agency commenter suggested that the second valuation criterion be utilized before the first because it appears to provide a more

objective method of valuing gas than does the first. One State commenter stated that the courts have accepted the net-back method as proper for determining value. They believe that since the net-back method is the last criterion in the benchmark system and cannot be used if any of the preceeding criteria have been used, for all practical purposes it has been made unavailable.

MMS Response: The MMS believes that the proposed ordering of the benchmarks is correct and equitable to both the lessee and lessor. The MMS agrees that the net-back method will not be used frequently. The net-back analysis should only be used where less complex procedures are not feasible. For purposes of this section, MMS does not consider a situation where either transportation or processing allowances are deducted from an arm's-length delivered sales price for gas as a net-back. Such procedures will typically be used for royalty valuation. See the discussion of the net-back method above.

Three Indian commenters stated that MMS's failure to recognize its obligation to maximize tribal royalties is evidenced in the proposed benchmark system. One commenter stated that "MMS, however, relies on lessee-generated information for that determination and, moreover, relies upon the truthfulness of that information. For example, under alternative number one, MMS proposes to look at the lessee's comparable contracts in the same field or area, notwithstanding possible underselling during the same period. Plainly, this benchmark is so riddled with potential conflicts of interest that it cannot possibly be urged as consistent with the Federal fiduciary duty to maximize Indian oil and gas resources." Another commenter stated that the proposed benchmark system is based on the premise that gross proceeds represents market value and "Gross proceeds have always been considered as the minimum value of production because it has long been recognized that price does not always indicate value. The proposed benchmarks appear to treat gross proceeds as the maximum value." This commenter "believes that gas production should be valued at the highest price posted or paid in the field regardless of whether the contract is arm's-length or non-arm's-length * * *." Finally, one Indian commenter stated that "The lease provisions should prevail and should require the Secretary to formulate and implement procedures for the majority portion analysis. These provisions of the regulations should include a statement which indicates that it will not be applied to Indian Tribal and allottee leases. If however, these provisions will be applied to Indian tribal and allottee leases, then each benchmark should be considered a reasonable option that the Secretary can utilize to determine value and the Secretary should use the reasonable option which brings the highest revenue to the Indian Tribe or allottee."

MMS Response: The MMS believes that the regulations adopted will permit the Secretary to discharge his responsibilities to the Tribes and allottees because the gross proceeds to which the lessee is entitled for the sale of gas under an arm's-length contract does constitute market value. "Arm's-length" sales will not be accepted without question. The MMS may need to obtain information to ascertain that they are truly arm's-length as defined in the regulations. The requirement that royalty be based on the highest price in the field or area could result in royalty being assessed on a value far higher than the lessee has received under an arm's-length contract. The MMS believes that this additional obligation should not be imposed except in specific cases where the lease terms, oil and gas statutes, or a treaty may specify that value be based on a higher price, or when it is determined that the lessee does not have a valid arm's-length contract.

One industry commenter recommended that "the last benchmark of net-back pricing be eliminated from the list because we believe that it would not be routinely used and would be administratively impractical to implement. The reference to any other reasonable method to determine value should be retained."

MMS Response: The MMS disagrees that the net-back method should be deleted. The net-back method is a viable valuation procedure, even though it will not be routinely used.

One industry commenter stated that " * * * depending upon how one treats 'spot sales', the hierarchy of measures which they establish could result in a substitution of a poorer measure for one that represents the best measure of gas value." This commenter recommended placing spot-sale agreements higher in the hierarchy of benchmarks.

MMS Response: The MMS believes that the position of "spot sales" in the benchmark system is appropriate. The first two benchmarks are a better measure of establishing value for royalty purposes than spot sales. The rule has been modified to reference "arm's-length" spot sales.

One industry commenter suggests that the wording of the criteria should be amended to avoid ambiguity in their application: "As currently written, these provisions are unclear as to how royalty should be valued if the proceeds under the non-arm's-length contract is not 'equivalent' to the proceeds of the lessee's arm's-length contracts (first criterion) or the arm's-length contracts of other lessees in the field (second criterion)." This commenter "* * * understands the intent of the proposed regulations is that the proceeds under the referenced arm's-length contracts would be used to set royalties, but the regulation does not expressly so state. Indeed, as presently worded, the regulation would suggest that if the non-arm's-length contract was not 'equivalent', then the next criterion in the hierarchy would apply. This ambiguity should be removed."

MMS Response: The MMS disagrees that these provisions are unclear. Under the benchmark system, value will be determined through application of criteria in a prescribed order. In other words, the second criterion would not be considered unless the first criterion could not be reasonably applied. Therefore, if the lessee's proceeds under its arm's-length contracts are not "equivalent" to the non-arm's-length contract, then the first benchmark does not apply and the lessee should try to apply the second benchmark. If that one also does not apply, then the lessee should try to apply the third benchmark, and so on.

One industry commenter stated that "for making comparisons to arm's-length contracts, when the producer is selling gas to an affiliate and that affiliate is also purchasing gas in the same field or area under an arm's-length contract, the marketing experiences of the parties to the arm's-length contract should be a primary consideration (not just of the volume of gas sold for example). If the producer under a comparable arm's-length contract is active in the marketplace, it is only reasonable that he would neither accept less nor pay more than the market price for gas. In addition, larger volumes of gas do not always attract a better price than a smaller volume. In some cases, the larger volume is harder to move because it has to be sold in pieces."

MMS Response: The rules, as adopted, require that there be numerous factors considered before an arm's-length contract could be deemed comparable. The purpose for consideration of these factors is to prevent abuses through application of only a few factors such that contracts

containing unusually low or high prices could be used.

One industry commenter suggested "an alteration to the proposed regulations under §§ 206.152 and 206.153 to validate any intracompany or affiliate intercompany 'sale', if that transaction is monitored by a regulatory body to determine the market responsiveness of the transaction. Specifically, the commenter suggests that MMS's proposed regulations recognize the FERC's right to determine the justness and reasonableness of (producer) 'first sale' market rates, where those costs are 'passed on' to interstate pipeline sale-for-resale customers via Purchased Gas Cost Adjustment Clauses filed by interstate pipelines as part of their FERC Gas Tariff."

MMS Response: The MMS and FERC have different statutory responsibilities. It is MMS's responsibility to determine the value of production from Federal and Indian leases. Although FERC's actions may be one criterion to consider in determining value, MMS cannot accept them as conclusive.

One industry commenter stated that under the benchmark system it is difficult for an affiliated producer to prove its determination of value, especially with respect to those properties it does not operate. According to this commenter, "The MMS is in the unique position of having access to data, facts, and information that are not readily available to an individual producer. Indeed, attempts to gather such information might violate antitrust laws. Without access to this information on a continuing basis, application of these benchmarks becomes difficult, if not impossible." This commenter recommended "that the burden of proof be shifted to the MMS such that a rebuttable presumption exists that the gross proceeds accrued to an affiliated producer is reasonable value absent a clear showing to the contrary by the MMS using these benchmarks."

MMS Response: Obviously, a lessee will be able to obtain the necessary data for application of the first benchmark because that paragraph refers to the lessee's own arm's-length contracts. If a lessee is unable to apply the first benchmark, MMS believes that in most fields or areas lessees will be able to obtain data on third-party transactions. If those data are unavailable, the lessee will have to use one of the succeeding benchmarks, but in no event can the lessee use a value which is less than its gross proceeds. Because values determined under the third and fourth benchmarks must be the subject of a notice to MMS (see § 206.152(e)(3) of the final rules), and because a lessee may seek a value determination from MMS (see § 206.152(g) of the final rules), MMS is satisfied that ultimately the lessee will be able to determine the proper royalty value for its gas.

One State commenter noted that it is inappropriate to put the valuation process into a benchmark straight jacket. In addition, this commenter stated that this paragraph permits a lessee to deliberately price its non-arm's-length disposition at the lowest price it can argue to be "comparable" in the field, even where much higher values may be obtained in other dispositions from the field.

MMS Response: A lessee will have many factors to consider in establishing a price under its non-arm's-length contracts, including tax consequences and regulatory concerns. If the price selected is equivalent to the price under comparable arm's-length contracts which must meet the standards in paragraph (c)(1), MMS is satisfied that the price reflects market value and is acceptable for royalty purposes.

One Indian commenter was concerned that the lessee would apparently make the determination as to whether the "arm's-length" contract under which the comparison is made is, in fact, arm's-length. Also, although the data are subject to monitoring, review, and audit by MMS, the commenter believes that in view of the past experience with audits by MMS, the lessees' reporting of gross proceeds under non-arm's-length contracts would remain on the honor system.

MMS Response: Under most valuation procedures MMS considered for these regulations, it would be up to the lessee in the first instance to apply those procedures and report royalties each month. MMS has adopted rules which it hopes are clear and comprehensible. It must be assumed that lessees will apply the rules properly considering the likelihood of audit and the possibility of significant interest and perhaps penalties for intentional underpayment of royalties.

One industry commenter interpreted the regulations to require that gas sold pursuant to spot-sales contracts would be valued under the first benchmark, even though "spot sales" are mentioned in the fourth benchmark. In addition, the best measure of value for gas sold pursuant to arm's-length spot sale contracts are those contracts and not other long-term contracts which are not comparable.

MMS Response: If a spot-sales contract is arm's-length, the value of the gas sold under it would be determined pursuant to paragraph (b), not by application of the benchmarks.

Two industry commenters stated that the net-back method should be stricken from this section because the net-back method is to be used as a benchmark only when the preceding three benchmarks are inapplicable; therefore, to these commenters it seems inappropriate to include it as a presumed priority when any other reasonable method is what is actually intended.

One industry commenter stated that the reference to net-back method needs clarification. Further, the commenter stated that net-back method is simply a means for reconstructing the value of gas to the well and has nothing to do with valuing the disposition of the production at a point remote from the well.

One State commenter noted that there is no logical basis for favoring valuation on the basis of "gross proceeds" less allowable deductions while disfavoring "netback method". Also, the net-back method is essentially the same thing as "gross proceeds" with allowable deductions.

MMS Response: The MMS believes that the benchmark priority system is appropriate. As explained above in regard to the definition of net-back method, MMS does not anticipate that this method will be used frequently. It generally will be used where the nature of the product has changed (i.e., gas to electricity) and it is necessary to work back from the sales price of the electricity to get a value for the gas.

Section 206.152(d)

Two industry commenters supported the premise that "if the maximum lawful price permitted by Federal law is less than the value determined pursuant to the valuation regulations, MMS would accept such maximum price as value."

One industry commenter recommended deleting the last sentence of this paragraph because gas sold under a warranty contract is valued in the same manner as gas sold pursuant to any other arm's-length contract.

MMS Response: The final rulemaking adopts this paragraph as proposed. The last sentence was not deleted because the MMS believes that warranty contracts must be viewed differently than other arm's-length contracts for purposes of value. Unlike arm's-length contracts for gas production which is committed to the contract, the seller under a warranty contract often had the sole authority to determine the origin of the gas production to be delivered. Therefore, the seller had the option not

to sell particular production from a Federal or Indian lease under the warranty contract and to sell it at a higher price. Thus, although in some NGPA categories the warranty contract price is the maximum price permitted by law for gas sold *under that contract*, it is only because of the sole decision of the lessee to have sold its gas under the warranty contract.

Section 206.152(e)

Four industry and one State commenter supported establishing a valuation procedure which does not require the prior approval of MMS because it will expedite and simplify the valuation process. Two industry commenters stated that "the time during which the MMS may direct a lessee to pay royalty at a different value should be limited to a specific period so that the lessee is not required to indefinitely retain the records it relies upon to support the value determination." The State commenter noted that "Also, the lessee should be required to retain 'all data relevant to determination of royalty value', not simply the evidence supporting the lessee's claimed value. A lessee should not be allowed to destroy relevant evidence supporting a different royalty valuation, and to retain only that which is self-serving. Also, the regulation should specify that MMS 'will' order compliance when incorrect payments are discovered."

MMS Response: The MMS has adopted in the final rule a valuation procedure that generally does not require MMS's prior approval. The second sentence has been modified to read as follows: "The lessee shall retain all available data relevant to the determination of value." Lessees are required to retain all records to support value determinations for a period of 6 years, unless an audit is ongoing, as mandated by section 103 of FOGRMA, 30 U.S.C. 1713. The lessee is responsible for complying fully with the regulations by properly valuing lease products, for royalty purposes, in accordance with the appropriate benchmark and to retain all relevant data. The MMS believes that the adopted language clearly states this requirement. The MMS also has adopted in paragraph (e)(2) of the final regulations a requirement that lessees make available to authorized MMS State and Indian representatives, or to the Department's Office of the Inspector General or the General Accounting Office, arm's-length sales and volume data which it has available for like-quality production sold from the same field or area or nearby fields or areas.

Five industry commenters recommended that MMS delete the requirement of proposed paragraph (e)(2) that a lessee must notify MMS if it uses the third or fourth benchmarks because it is not consistent with MMS's self-implementing concept and current MMS auditing and monitoring rights are adequate to allow the MMS to verify royalty compliance.

MMS Response: The MMS believes that what is now paragraph (e)(3) in the final rule is consistent with its self-implementing policy because lessees that determine value pursuant to paragraph (c)(3) or (c)(4) of this section must notify MMS of their determination after the fact and not before the fact. In every case, value for royalty purposes is subject to future audit.

Section 206.152(f)

One State commenter suggested that a "provision should be made for penalties for willful violations and violations made in reckless disregard of royalty obligations."

One Industry representative commented that if the lessee must pay any difference plus interest, MMS should also pay, when applicable, any difference plus any interest statutorily authorized.

MMS Response: If a lessee knowingly or willfully underpays royalty, it may be subject to civil penalties in accordance with FOGRMA, 30 U.S.C. 1719, and MMS regulations at 30 CFR Part 241. With regard to the second comment, MMS does not have the legal authority to pay interest on royalty overpayments.

Section 206.152(g)

This section provides that the lessee may request a value determination from MMS. One State commenter noted that "the lessee should be required to submit 'all data relevant to determination of royalty value'. Again, a lessee should not be able to limit its documentary submittal to evidence which 'supports' its claimed royalty value. Also, because of the impact upon the States and Indians, and in light of the existing cooperative and State audit programs, an opportunity should be given for review and comment on royalty determination requests by the potentially impacted State, Alaska Native Corporation, Indian Tribe or Indian allottee." One Indian commenter suggested that in addition to a lessee, a lessor should at any time be able to request a royalty value determination from MMS. This commenter also stated that "this paragraph should require MMS to notify the tribe or allottee involved of any change in value determinations."

Six industry commenters stated that "the MMS should impose a time limitation on itself to respond to requests for valuations from a lessee, in the absence of which the lessee should not be held liable for interest or penalties for underpayment of royalty."

MMS Response: The proposed language has been modified to require that a lessee submit all available data relevant to its valuation proposal. The MMS does not consider it practical to include in the regulations a requirement for review by the State or Indian lessor when a value determination is made. This does not make the cooperative audit program in accordance with FOGRMA less effective because MMS will make every effort to assist and consult with States and Indian lessors in valuation matters. The MMS also will make every effort to respond timely to requests by lessees, but this is necessarily dependent upon available resources, thus MMS cannot agree to a regulatory time limit.

Section 206.152(h)

This section provides generally that value for royalty purposes cannot be less than the lessee's gross proceeds less applicable allowances. One industry commenter recommended that the last sentence be replaced with "* * * allowance determined pursuant to these *regulations*." Another industry commenter recommended that the phrase "less applicable transportation and processing allowances" be expanded to include "and other cost allowances." Two industrys commenters recommended deleting these paragraphs entirely.

MMS Response: For reasons discussed earlier in this Preamble, MMS has determined that the phrase "or which could accrue" should be deleted from the final rule. MMS also has modified this section to refer to all applicable allowances, not just transportation allowances.

Section 206.152(i)

This section addresses the lessee's obligation to place lease production in marketable condition. Two State, two Indian, and three individual commenters agree with the MMS's proposed provision that costs such as those for compression to meet pipeline pressure requirements to place the gas in marketable condition should be borne by the lessee.

One industry commenter was concerned that "marketable condition" is not a constant, although they acknowledge the lessee should act as a reasonably prudent operator in marketing its products. Five industry commenters believed that the statutory

framework and lease terms provide that royalty is due only on the market value of gas as it is produced at the wellhead and any obligation the lessee may have to render the gas marketable does not entitle the lessor to a free ride on those expenses incurred by the lessee subsequent to production. These commenters also believed the lessee is entitled to deduct all reasonable post-production expenses, including any costs incurred by the lessee to make the product marketable.

Three industry commenters recommended deleting this provision because of the changes occurring in the marketplace. They stated that these costs are subject to negotiation and may be incurred by either party. They believed that it is incorrect to assume that costs incurred by a purchaser have a direct effect on the price to be paid and suggested that the price paid by the purchaser should be used for royalty valuation unless stated specifically in the contract that it was adjusted to cover the subject costs.

One industry commenter noted that the Federal Energy Regulatory Commission has rejected imposition of any national quality standards for gas sold in first sales and has left to each producer-purchaser contract the resolution of which downstream-of-the-wellhead services are to be provided by which party to the contract. Reference was made to FERC Order No. 94–A, 22 FERC 61,055 (1983).

Eleven industry commenters essentially believed that the lessor should proportionately share in all costs subsequent to production, including the costs of placing production in marketable condition. They believed that all so-called "post-production" costs should be shared because such costs are incurred to enhance the value of the production from the lease for the benefit of both the lessee and the lessor; proportionate sharing of those costs would yield a value of production that is equal for both lessee and lessor. These commenters believed that royalty is due on the market value of production at the lease or well, and that proportionate sharing of any post-production costs incurred to enhance the value of production is necessary to meet this requirement.

They stated that, under the proposed rules, no allowance is made for the costs of processing residue gas to place it in marketable condition or for any other post-production costs incurred to dehydrate, compress, or gather the product. They further stated that MMS has abandoned the definition of "associated" and "principal" products but the unjustified concept underlying these terms has apparently been retained.

The industry commenters generally argued that MMS improperly sweeps all post-production operations under the holding of the *California v. Udall* case. They stated that MMS goes so far as to say that even if a buyer willingly buys raw, unconditioned gas (i.e., if there is an actual market for such gas in the field), any of the costs the buyer incurs to place the gas in "marketable" condition will be added on to the purchase price of the gas. They believed that this approach totally distorts the concept of market value at the lease, ignores the holding in *Udall*, and exceeds the reasonable and legal limits of the Secretary's discretion. They further stated that the Secretary should recognize the realities of today's onshore leasing and production and that all post-production costs should be deductible but, at the very least, they believed that off-lease post-production and unusual or extraordinary on-lease post-production costs should be shared proportionately.

The industry commenters stated that the MMS should recognize that manufacturing/processing, transportation, and other post-production costs are legitimate deductions necessary to arrive at the value of production, for royalty purposes, at the lease or well and that such costs should be deductible from the value of all marketable products when necessary to reflect the actual expenditures that enhanced the value of the gas after production. They further stated that if MMS continues to rely on the *Udall* holding, its proper application requires a consideration of the purpose served by a particular facility to distinguish between costs "incidental to marketing" and manufacturing or transportation costs.

MMS Response: Historically, the policy and practice of MMS is that the lessee generally is responsible for placing the lease product in marketable condition at no cost to the lessor. This practice has been upheld by court decision. The MMS has adopted the suggestion that the language "unless otherwise provided in the lease agreement" be added at the end of the first sentence because there are a few leases in which the lessor shares in such costs. Also, as noted earlier, MMS received many comments that so-called post-production costs should be allowed as a deduction in determining value for royalty purposes. Generally, these costs are not allowed as a deduction because they are necessary to make production marketable. However, MMS has considered carefully all of the comments on this issue and decided that there may be certain circumstances where some extraordinary costs for gathering, compression, dehydration, or sweetening should be allowed as a deduction. Such allowances will be authorized only on the basis of individual cases upon application to the MMS. A new § 206.152(i)(2) has been added which establishes a two-part test to qualify for a cost allowance. First, only production from unusually high-cost leases qualifies. The only leases that qualify are those located north of the Arctic Circle, those offshore leases located in water depths in excess of 400 meters, or those which MMS determines to be a unique gas production operation for purposes of this section. Any leases that do not meet this first threshold cannot apply for this allowance. However, even for leases that meet this threshold, MMS will not grant an allowance unless the lessee demonstrates to MMS's satisfaction that the costs are, by reference to standard industry conditions and practice, deemed to be extraordinary, unusual, or unconventional. In some instances, MMS may grant an allowance only to the extent that the extraordinary costs exceed conventional costs for the same operation.

Section 206.152(j)

One industry commenter stated that this provision, as proposed, goes against the firm notion of gross proceeds and grants an exception only in situations where the lessee is entitled to a contractual price increase. According to the commenter, this ignores the reality of the existing situation in the gas marketplace where many purchasers have unilaterally suspended contractually obligated takes and payments under the pretext of "force majeure." The commenter believed that it may be more prudent in many instances to diligently renegotiate contracts which would be in the best interest of the lessee and lessor. The commenter further stated that such renegotiations may take place over an extended period of time during which the lessee may be receiving less than its contract price for its gas; therefore, under these circumstances, where the lessee is taking undocumented, reasonable measures to force purchaser compliance and to favorably renegotiate its contract, the lessee should only be required to pay royalty on the gross proceeds it receives from the purchaser for its gas.

The industry commenter also stated that rapid deterioration of purchasers' markets has caused unilateral price

actions; further, difficult and protracted negotiations have ensued during which proceeds are less than the contractually agreed to price. The commenter mentioned that lengthy litigation is a last resort. The lessor benefits from continued production at market prices pending final resolution and, therefore, a more realistic approach would be to accept proceeds if proceeds were not less than the prevailing market price in the field or area.

One Indian commenter foresaw the ability of willing parties to amend contracts to compromise payments that have accrued to or would accrue to the lessee under its existing contract. The commenter believed that, of course, such contract revisions cannot be avoided in all instances but, if they are made, the lessee should not be able to compromise the lessor's right to receive royalty payments pursuant to the original contract and not under any amendments that have compromised the price.

One State commenter expressed that by freely allowing contract revisions (even retroactive ones), MMS would provide a gaping loophole in the requirement that a lessee seek to enforce its contract "entitlements." The commenter believed that when a lessee is challenged by the MMS about not enforcing its contract rights, there are few buyers who will not agree to assist their sellers by retroactively amending their contracts to the lower amount actually paid.

MMS Response: MMS has adopted this provision with only minor changes from the proposal. However, the paragraph does not preclude the approach suggested by the commenters. This section requires a lessee to pay royalty in accordance with the contract price, but also expressly recognizes that contract prices may be amended retroactively. MMS is aware that often there is a process of negotiation that occurs before the contract is formally amended and that lower payments may be received in the interim. Royalties may be paid on the gross proceeds received by the lessee until all attempts to force the purchaser to renegotiate the contract or to comply with the existing contract are exhausted, provided the lessee takes proper or timely action to receive prices or benefits to which it is entitled, or to revise the contract retroactively. Thus, the MMS will accept a renegotiated or a revised contract price if the main reason for renegotiating or revising the contract is not solely to reduce royalties. However, if a higher price can be legally enforceable under a contract and the lessee is not diligent in obtaining that price, royalties will be due on that higher price.

Two industry commenters suggested that the phrase "the lessee will owe no additional royalty until monies are * * * received" be reworded to insert the phrase "unless or" before the word "until". They believed that it is contrary to the concept of "proceeds received" to attempt to assess royalty on proceeds which have never been received when only part payment is made to the lessee in contract disputes.

MMS Response: MMS adopted the suggested change in the final regulation.

One commenter stated that retroactive application of contract revisions may be inconsistent with FOGRMA because it requires that royalties be keyed to production and not to sales. The commenter further stated that timely application by a lessee for a price increase should not be sufficient to allow a lessee to defer payment of royalties until monies or consideration resulting from the price increase are received. The commenter stated that a lessee should be required to go further in pressing its claim for benefits accruing or which could accrue to the lessee under the contract before nonpayment of additional royalties is allowed, perhaps even to the point of instituting litigation.

Two industry commenters stated that the "prudent operator" clause is unnecessary because it is in the lessee's own best interest to obtain the maximum amount of revenue possible under the terms of the applicable contract. They believed that the inclusion of a "prudent operator" standard in the regulations contradicts the concept of using market proceeds and merely serves to impose an obligation on MMS auditors to evaluate and second-guess the prudency of the actions of lessees. They also believed the "prudent operator" clause opens the door to regulatory uncertainty and the basing of royalties on amounts in excess of the market value of gas. They believe the provision should be eliminated.

MMS Response: Although most lessees will try to maximize the amount of revenue possible under the terms of the applicable contract, not all will be diligent. Therefore, MMS must protect the Federal Government's and Indian's interests by using the "prudent operator" clause.

Two industry commenters stated that they disagreed with MMS's attempt to enforce contract entitlements. They believed that, as proposed, royalties would be based on the highest price obtainable and would serve to encourage the pursuit of price increases, rather than the proper payment of royalties based on the prices received. They also believed that this provision is contrary to MMS's own statement that "value is best determined by the interaction of competing market forces, the 7/8ths or 4/5ths owner is going to negotiate the best deal he/she can to further his/her own interest, advancing those of the royalty owners as well;" therefore, they recommended this provision be deleted.

MMS Response: The MMS does not view this provision as contrary to the approach it has taken to determine values. It would be inconsistent with the theme of these regulations for MMS to not require full compliance with its principal value determinant.

Section 206.152(k)

MMS has added a new paragraph (k) to the final rules which provides that in those situations where MMS may make a preliminary value determination in the course of monitoring compliance with these regulations, that determination will not be binding until MMS has done an audit and the audit formally is closed.

Section 206.152(l)

Two individual commenters stated that this paragraph, which was proposed as paragraph (k), appears to preclude the lessor or overriding royalty interest owner from obtaining any information to substantiate the transportation and processing costs he is being charged. Therefore, they are opposed to this provision.

One Indian commenter stated that this provision perpetuates restrictions upon disclosure of data required in reviewing a lessee's computation of royalty. The commenter believed that Indian Tribes should be provided copies of all reports submitted by their lessees to MMS, upon request. The commenter also stated that the Tribes need this information to monitor lessees as well as responsible Federal agencies, and requested that the information provisions be revised to ease release of this information to Tribes subject to reasonable restrictions upon disclosure to third parties.

One Indian commenter stated that this provision should make it clear that all information will be available to Indian lessors and States without going through the Freedom of Information Act procedures. The commenter also stated that to place such a burden on Indian Tribes and States who are the beneficiaries of the production would not be reasonable.

One Indian commenter stated that the scope of this provision is so broad that it

effectively denies Indian Tribes and allottees and States access to the information required to assure that valuations are properly determined. The commenter reminded MMS that the intent of the FOGRMA is to provide all interested parties, including Indian Tribes and allottees and States, the data necessary to conduct audits, oversee the audits performed by MMS, and in the case of Indian Tribes, to manage their mineral resources and to plan for governmental operations. The commenter stated that it could not understand why the MMS included this provision inasmuch as the almost unanimous vote of the Royalty Management Advisory Committee on a resolution recommending that the regulations provide Indian Tribes access to data demonstrates that industry also understands that Indian Tribes require and should have access to such data.

MMS Response: The intent of this paragraph is not to preclude access to information for those who are working in concert with the MMS to the extent allowed by law, but rather to ensure the lessee that disclosure of proprietary information is in accordance with established procedures. There are restrictions on providing certain types of information to persons outside the Department of the Interior, and MMS must act in accordance with those limitations. States and Indians with FOGRMA delegations and cooperative agreements will have broader access to information which otherwise could not be released. This section is not intended to limit in any manner an Indian lessor's right to obtain information directly from the lessor or from MMS to the extent provided in lease terms or applicable law.

Section 206.153 Valuation standards—processed gas.

This section is almost identical to § 206.152 and the comments received were also similar. Therefore, MMS will not repeat the section-by-section analysis or response to comments for this section. Interested persons should refer to the corresponding part of § 206.152.

Section 206.154 Determination of quantities and qualities for computing royalties.

Section 206.154(a) establishes procedures for determining the volumes and quality of unprocessed gas that must be used in computing royalties. Three industry commenters were opposed to MMS or BLM assigning a point of royalty settlement that is different from the lessee's sales point where the transfer of title occurs, as stipulated in the lessee's arm's-length gas sales contract.

One industry commenter stated that MMS must recognize that the proper point of royalty valuation is the lease and that MMS cannot confiscate the entrepreneurial profits which are added by downstream activities of the lessee and are not part of the value of the production in which the lessor is entitled to share.

Two industry commenters stated that this provision is inconsistent with the statutes, lease terms, and the proposed gross proceeds valuation methodology.

MMS Response: Historically, MMS has required that royalties be computed on the basis of the quantity and quality of unprocessed gas in marketable condition as measured on the lease unless prior approval to measure off-lease is obtained from BLM or MMS, for onshore and offshore leases, respectively. This will assure the lessor that the total production from the lease is accounted for. This provision is consistent with the statutes, lease terms, and the gross proceeds valuation methodology because this provision establishes a point of royalty measurement upon which a quantity, at a quality, is valued for royalty purposes.

One industry commenter stated that paragraph (a)(2) would adjust the price received under an arm's-length contract in the event that there were some line loss between the point of royalty settlement and the point of sale. The commenter stated that the arm's-length contract whose quantity provisions MMS would modify requires the purchaser to pay only for production which is actually received but, by adjusting the quantity figures, MMS is, in effect, amending, solely for royalty purposes, the deal between the lessee and the purchaser.

MMS Response: The MMS must structure its royalty accounting program to be in concert with the administration of oil and gas leases by the other components of the Department of Interior s full mineral leasing program. As such, this provision simply recognizes that it is the measured production, as required by BLM or MMS operations personnel, that must be valued for royalty purposes.

Section 206.154(b) establishes the procedures for determining the quantity of residue gas and gas plant products on which royalty must be paid. One industry commenter suggested that this provision be reworded to indicate that "net output" means the production from the plant and not tailgate deliveries. The commenter stated that net monthly output could be interpreted to mean plant tailgate deliveries. The commenter said that if this were the case, royalty would not be paid on plant products until they were sold.

Another commenter stated that in current marketing situations, it is impossible to avoid temporary storage of gas plant products. The commenter said that purchasers are nominating volumes they will purchase which may or may not coincide with production. The commenter also stated that royalties should not be paid on production stored until it is sold because in that manner, value can be properly determined. The commenter said that residue gas must be delivered as produced because there will normally be no means by which the lessee can store it.

MMS Response: As adopted at § 206.151(a), net output means the quantity of residue gas and/each gas plant product that a processing plant produces. Therefore, royalty is due on residue gas and gas plant products at the time they are produced.

One industry commenter stated that this *methodology* of net output is contrary to the MMS concept of gross proceeds accruing from the *sale* under an arm's-length contract. The commenter said that many gas plants place the net output in temporary storage awaiting sales and that the net output of gas plant products is not valued until removal from temporary storage and sale. The commenter stated that if this section is implemented, it is probable that there would be many MMS audit exceptions as a result of the valuation of net output rather than actual sales from temporary storage facilities.

One industry commenter stated that it may be difficult to establish the value of the product that remains in storage. The commenter also stated that if the lessee is forced to compute a value, then the concept of "gross proceeds" becomes meaningless because the lessee, in effect, becomes the purchaser of the product. The commenter claims that when the product is disposed of at a later date, MMS would have no basis on which to review the proceeds eventually realized by the lessee for sale of the production.

MMS Response: The MMS feels that there is no conflict between the gross proceeds methodology and these provisions. It must be recognized that it is the volume of gas leaving the lease which must be valued, for royalty purposes, and the use of the cumulative value of the residue gas and gas plant products less applicable allowances is the method by which this is done when

gas is processed. As such, all residue gas and gas plant products attributable to this production must be used in determining value. Adjusting the gross proceeds to reflect the net output attributable to the lease would be accomplished by applying the unit value established by the actual product sales to the portion of the net output attributable to the lease, which was not sold in the month produced. Likewise, if the quantity of any product sold during a month is greater than the net output attributable to a lease because of sales of a quantity of product which was previously placed in storage, the gross proceeds would be reduced. If proper documentation is maintained by the lessee and made available to MMS during an audit, no audit exceptions should result.

Section 206.154(c) establishes the procedure to allocate the net output of a processing plant back to the leases. One industry commenter proposed that the language be modified to reflect the view that any lease allocation method agreed to between a seller and purchaser and/or processor will be deemed acceptable, including methods where the parties are affiliates, subject to review by MMS.

One industry commenter suggested that any contractually prescribed method should be deemed acceptable in preference to "a generally accepted lease allocation method", which may be a contention in the future.

MMS Response: The MMS has adopted a specific procedure for allocating the net output of a processing plant back to leases. The method adopted is the method prescribed by the current regulations. MMS believes that this procedure is the predominant method used by industry. However, MMS has adopted a provision in the final rule whereby a lessee may request approval of other allocation methods.

One industry commenter suggested the addition of the sentence "This same methodology shall also apply to allocations among unitized and communitized areas." The commenter believed that this inclusion of units and communitized areas was intended.

One Federal agency commenter suggested the modification of the proposed rule to include a tight definition of the term "generally accepted." The commenter said this term should be defined as an allocation method used consistently by a majority of gas plant operators and this method must be in accordance with the method promulgated by an industry group such as COPAS.

MMS Response: The final rule adopted limits the use of methods other than the one prescribed, as outlined above. Therefore, the term "generally accepted" has been eliminated from the final rule. Unitized and communitized areas will be covered under this provision and MMS does not deem it necessary to add a specific reference.

Paragraph (d) prohibits deductions from royalty volume or royalty value for actual or theoretical losses. One Indian and one State commenter agreed with this provision, stating that no deductions should be allowed for actual or theoretical losses prior to the point of royalty settlement.

Sixteen industry commenters stated that line losses are attributable to several factors. They stated that line losses are partially attributable to metering differences and partially attributable to physical factors, and they are a part of the reality of oil and gas field operations. They believed that the provision should be amended for both valuation and allowance purposes to provide a credit for line loss not attributable to negligence, because such a change in the regulations would be in conformance with FOGRMA. They stated that allowing losses would also make the allowance regulations conform to the overall market orientation underlying the valuation proposal, because costs associated with line loss are commonly explicit components of arm's-length contracts and tariffs.

MMS Response: When a volume of gas, upon which royalty is due, has been determined in accordance with the requirements of MMS's offshore operations and BLM's onshore operations personnel, MMS must collect royalty upon its value. Likewise, it is imperative that the quantities of residue gas and gas plant products attributable to a lease be determined once, and only once, and royalty paid on those volumes. This is consistent with the historical practice of the Department. The treatment of line losses as a cost of transportation is addressed later in this preamble.

Section 206.155 Accounting for Comparison.

In the proposed rule, MMS required so-called dual accounting only in situations where the lessee (or a person to whom the lessee transferred gas pursuant to a non-arm's-length contract) processes the lessee's gas and, after processing, the residue gas is not sold pursuant to an arm's-length contract.

Two industry commenters stated that the removal of the requirement to perform dual accounting for OCS gas sales where the residue is sold pursuant to an arm's-length contract is a substantial improvement in the regulations which will reduce paperwork for both MMS and lessees.

Another industry commenter endorsed the MMS's decision to abolish "accounting for comparison" (more commonly known as dual accounting) for processed gas except where the lessee has no arm's-length contract for the sale of residue gas or where dictated by lease terms. The commenter had no objection to such value comparison if the gas is processed in a lessee-owned plant, and the residue gas is not sold under an arm's-length contract.

Five industry commenters stated that they believed the continuation of dual accounting for most processed gas in non-arm's-length residue sales is unnecessary. They said that because the residue gas will be valued pursuant to MMS's guidelines in both arm's-length and non-arm's-length situations, the elimination of dual accounting for one and not the other will create substantial administrative effort when both arm's-length and non-arm's-length residue sales occur at the same plant. They also stated that as long as a substantial portion of sales from a plant continue to be arm's-length, which they propose to be set at 25 percent or higher, elimination of the dual accounting requirement for the remainder of that plant will not result in any lesser degree of accuracy in determining market value.

One industry commenter stated that this provision stops short of being totally consistent with other MMS proposals on gas valuation. The commenter said that inasmuch as MMS has determined that there is an acceptable method to value residue gas sales under non-arm's-length or no-contract situations, there is justification for eliminating dual accounting for residue gas valued in accordance with this provision, regardless of the types of sales contracts.

Another industry commenter believes that royalty is due only on the market value of gas, associated products and oil because they are produced at the wellhead. The commenter stated that the concept of dual accounting under which MMS assesses royalty on either the value of the principal and associated products after processing or the value of the unprocessed gas, whichever is higher, is fundamentally unfair.

Two industry commenters recommended that this paragraph be deleted because dual accounting results in higher value to the lessor than the lessee. They believed that the value should be based upon the value of the unprocessed gas at the lease if the gas is not processed, or upon net realization

(gross proceeds minus allowances) if gas is processed, and not the higher of the two. They stated that because the proposed method is applied after the fact, only the lessee bears any losses. Another commenter stated that it would be unfair and inequitable to require the payment of royalty on a basis higher than the value of the processed gas when the value differential is not because of the negligence or imprudent actions on the part of the lessee but instead represents the current market fluctuations for the gas plant products and residue gas. The commenter also suggested the addition of the word "applicable" before the word allowances in paragraph (a)(1).

MMS Response: To ensure that the Federal and Indian lessors receive the proper royalties, MMS continues to believe that dual accounting must be used where the lessee, or a person to whom the lessee has transferred gas pursuant to a non-arm's-length contract or no-contract situation, processes the lessee's gas and, after processing the gas, the residue gas is not sold pursuant to an arm's-length contract. This provision will encourage the producer under a non-arm's-length contract to obtain the highest price for the gas produced whether that higher price comes from processing the gas or whether it comes from selling the unprocessed gas.

One industry commenter stated that dual accounting imposes an unreasonable accounting burden on both the lessee and the Department and allows the Department to effectively second-guess the lessee each month on the decision to process the gas.

MMS Response: The MMS's current policy is to require dual accounting for all offshore processed gas processed by the lessee, including affiliates, and for onshore gas processed by the lessee in a lessee-owned plant or onshore gas sold to an affiliate of the lessee and that affiliate processes the gas. Because the requirement for dual accounting adopted in the final rule eliminates some of the current requirements, the accounting and administrative burden should be reduced for both industry and MMS.

Proposed § 206.155(b) specifically provided for dual accounting where required by the terms of a Federal or Indian lease. Six industry commenters agreed with this provision provided that the lease terms, whether Indian or Federal, specifically require dual accounting.

Three Indian commenters stated that dual accounting should be required for all Indian leases whether specifically stated in the lease terms or not. They stated that this is needed for the Secretary to fulfill his trust responsibilities to the Indians.

MMS Response: MMS has adopted this provision essentially as proposed.

Section 206.156 Transportation Allowances—General.

The MMS received a total of 87 different comments from 44 separate commenters on this section of the regulations. Of the 87 comments received, a total of 9 were from various State agencies—4 from State Governors, 3 from State auditors, 1 from a State agency, and 1 from a State trade group. Forty comments were received from Indian interests—35 from Tribal representatives, 2 from Indian trade groups, 1 from an Indian Tribe legal representative, and 2 from joint State and Tribal associations. Thirty-one comments were received from industry—21 from oil and gas companies, 7 from industry trade groups, and 3 from businesses. In addition, 5 comments were received from individuals, and 2 comments were received from local government entities—1 from a mayor and 1 from a superintendent of schools.

Comments on transportation allowances which did not relate to any specific section of the regulations were considered to be addressed to the General section of the transportation regulations, § 206.156. These comments addressed four broad issues—validity issues, adequacy/inadequacy issues, post production costs and other cost issues, and issues relating to the definition of terms.

1. One issue concerned the validity of any transportation allowances whatsoever and proposed that MMS should not consider transportation allowances as valid deductions from royalty computations, or only consider such allowances if transportation is necessary for lease development or results in a higher royalty.

Four parties—two Indian, one State, and one State and Tribal trade organization—stated that transportation allowances should only be granted when necessary (1) to market the product, (2) to promote development of the lease, (3) to obtain a higher royalty value, (4) to enhance offshore development, or (5) if the royalty revenue increases enough to offset the allowance. The key word in these comments was "necessary." None of the parties believed that any transportation allowance should be given if it was not necessary. A State representative suggested approving the transportation allowances on the basis of individual cases only if necessary.

One Indian commenter stated that only the reasonable, actual, and necessary transportation costs from a lease boundary to a point of sale should be allowed and the costs should not include any profit or allocated overhead from the regional or home office.

One Indian commenter stated that the regulations should establish transportation allowances as an exception, not as a rule.

Six Indian commenters stated that MMS should not grant any transportation allowances as a deduction against Indian royalties. The six commenters opposed the transportation allowance for Indian leases for such reasons as (1) Indian leases do not provide for transportation as a deduction from royalty, and (2) transportation allowances have never been granted for Indian leases.

Five Indian commenters emphasized that MMS must take into account its trust responsibility to the Tribes and allottees in preparing valuation regulations. These commenters advised that MMS must protect the Indians' interests.

The MMS received comments from five Tribes and one State representative asserting that the royalty interest should be cost-free. These comments all stressed that royalties have always been and should always remain free of costs. All commenters believed that the costs of making lease production marketable, including transportation, are the responsibility of the lessee. The State representative suggested that MMS "* * * keep the door closed on all presale costs. Once it's opened, it's hard to let only the chosen ones in."

MMS Response: Based on Interior Board of Land Appeals decisions, Solicitor opinions, and judicial decisions, it has been DOI policy since 1961 to grant transportation allowances when production is moved to a sales point off the lease. Furthermore, the IBLA has specifically ruled that transportation allowances must be granted for Indian leases. *Kerr-McGee Corp.*, 22 IBLA 124 (1975). Therefore, the transportation allowance regulations being adopted are consistent with past practice and consistent with the Secretary's responsibility to the Indians. The MMS believes generally that royalty should be free of cost. However, values may have to be adjusted for transportation and/or processing to determine value at the lease. The MMS believes that the policy of granting transportation allowances to properly value lease production is appropriate and should continue.

2. Another issue concerned the adequacy or inadequacy of the proposed gas transportation regulations in general. Some commenters believed that the regulations were generally deficient, while others pointed to specific instances where changes should be made to improve their specific applicability. Following is a brief summary of these types of comments.

Two industry and two State respondents commented on the flexibility of the regulations. One industry commenter stated that the regulations should be modified to embrace both traditional and nontraditional transportation arrangements. Another industry commenter suggested that the regulations should accommodate changes in transportation and marketing. One State representative expressed concern that the regulations do not address new marketing opportunities related to the unbundling of pipeline services and market area gas storage which allow for greater sales levels in higher priced periods.

The MMS received comments from three Tribes regarding the relationship between the lease terms and the regulations. One commenter requested that the regulations not be allowed to change the lease terms. Another commenter stated that the regulations be consistent with the lease terms. A third commenter stated that where the lease is silent, the regulations should not allow the gross proceeds received under an arm's-length contract to be reduced for transportation costs.

The MMS received comments from three commenters regarding the effect of transportation allowances on revenues. A State organization stated that MMS should develop simple and concise rules that do not adversely affect Western States' revenues, and which will allow for more effective auditing. One Tribe requested that the royalty rate not be decreased in effect by redefining the rate basis. One local community commenter stated that the proposed regulations should not be issued without assessing the impact on the school or other local subdivision budgets. Five local community commenters opposed the proposals on the grounds that deductions would be taken too liberally, or perhaps royalty payments would be eliminated completely.

One Tribe stated that the regulations should apply only to new leases. One industry party and one Tribe recommended that a separate set of regulations be developed for Indian lands only.

MMS Response: The MMS believes that the regulations are complete and are sufficiently flexible to apply to the different types of gas transportation arrangements that might arise in the future. MMS is aware of nothing in the transportation allowance regulations that would change the terms of any Indian mineral lease. The MMS agrees that the procedure for determining a transportation allowance places a great deal of reliance on the gas industry. However, this program will be under continuous review and oversight by MMS. Thus, the ability to effectively review, evaluate, and audit transportation allowances has been maintained under the new regulations. The MMS believes that the consideration of transportation costs is necessary to determine the value of lease production at the lease.

3. One broad issue discussed by commenters was the deduction of post-production costs and other costs from royalty payments.

The MMS received many comments concerning the issue of post-production costs as an allowable deduction from royalty. Thirteen commenters (five industry groups, three industry trade organizations, and five local community parties) commented in favor of allowing all post-production costs to be deducted from the royalty portion.

MMS Response: This section of the regulations addresses only transportation allowances. The issue of post-production cost allowances is properly addressed in other sections of the regulations.

4. One issue commented on by several commenters concerns the definition of terms used in the regulations.

Three industry respondents and one industry trade organization commented that the term "reasonable" should be deleted from this section. One industry concern was that this term will only result in a wide diversity of opinion as to what a reasonable cost is.

One industry representative suggested that the term "actual" should be deleted for clarification purposes.

The MMS received eight comments (four Tribes, one State representative, and three industry parties) suggesting that the term "remote from the lease" should be defined or changed. An industry representative stated that many terms, such as "remote" and "field gathering" beg for definition. This commenter requested that a distinction between "gathering" and "transportation" be delineated, for royalty purposes, and also suggested that the term "remote" should mean anything outside the lease boundary. Two industry commenters identically recommended changing this phrase to "first available market."

MMS Response: The term "reasonable" is defined by the Merriam-Webster New Collegiate Dictionary as "moderate, fair." The MMS intends that this same definition apply in the determination of a transportation allowance.

The MMS agrees that the term "gathering" should be defined. The definition of "gathering" has been included in § 206.151 and was discussed above. The phrase "remote from the lease" has been deleted from the final rule which uses the phrase "off the lease."

Section 206.156(b)

The MMS received a total of 12 comments on this section, proposed as section (c), which requires that transportation costs be allocated among all products transported. The section also provides that no allowance may be taken for transporting products which are not royalty bearing.

Five industry commenters and one trade group recommended deletion of this subsection. One industry representative stated that transportation costs represent the rate for moving the aggregate product stream. Three industry commenters stated that allocation is an administrative burden and is unfair and inequitable. Two industry commenters and one trade group commenter stated that it is inequitable to require allocation of transportation costs for the incidental movement of nonroyalty-bearing products.

One industry representative recommended that transportation costs be taken as an aggregate charge against the value of the full product stream.

One industry representative stated that this section adopts an unrealistic transportation deduction exception by not allowing a transportation deduction for nonroyalty-bearing products. According to this commenter, practical realities dictate that nonroyalty-bearing products entrained with gas be transported.

MMS Response: The MMS does not agree in principle with the commenters proposal that the cost of transporting nonroyalty-bearing substances should be shared by the lessor. Therefore, this regulation has been retained as proposed. The MMS is aware that the allocation of transportation costs in situations where more than one product is involved could be burdensome. However, it is MMS's experience that the allocation requirement would only be burdensome in a few instances where the products being transported are not all in the same physical state.

Section 206.156(c)

Section 206.156(c) was proposed as § 206.156(b). The MMS received a total of 71 different comments from 30 commenters on this provision which limited the transportation allowance to 50 percent of the value of the product transported. The comments on this section related to one major topic: whether the limitation should be eliminated or retained.

Eleven industry commenters and five trade group representatives stated that MMS should abolish the 50-percent limitation for one or more of the following reasons: (1) If the proposed limit is retained, the exception to the 50-percent limitation may not be exercised freely enough; (2) the 50-percent limit could impose a serious economic deterrent to the development of frontier areas; (3) the limitation figure is strictly arbitrary and totally unjust to the lessee/working interest owners; (4) it would be a rare case when a gas transportation cost would come close to the proposed 50-percent cap, much less exceed it; (5) the proposed 50-percent cap is a deviation from the stated intent of MMS to base royalty valuation on "gross proceeds."

Ten commenters stated that MMS should approve requests for transportation allowances exceeding the 50-percent limitation upon submission of adequate documentation by the lessee.

Eight industry commenters and three trade groups stated that MMS should allow lessees to carry forward transportation costs otherwise allowable (except for the 50-percent limitation) from the current year to subsequent years. According to the commenters, this procedure should be applied to all transportation systems, but it would be especially important in the frontier areas. One commenter from industry stated that MMS should not permit roll forwards because it would create paperwork and allow the lessees to use the 50 percent limit permanently.

Six industry commenters and two trade groups stated that the 50-percent limit could be a disincentive for exploration and for building transportation systems when costs exceeding the cap may not be recovered.

One State representative stated that the 50-percent limitation provides incentive to keep costs under control while allowing some relief for legitimate hardship conditions.

MMS Response: The MMS has decided generally to retain the 50-percent limit on transportation in the final rule. For unprocessed gas valued pursuant to § 206.152, the transportation allowance deduction based on a selling arrangement is limited to 50 percent of the value of the unprocessed gas determined in accordance with § 206.152. For processed gas, the transportation allowance for gas plant products or residue gas based on a selling arrangement is limited to 50 percent of the value of the residue gas or gas plant product (except sulfur) determined in accordance with § 206.153. Natural gas liquids are considered one product. An exception has been included in the final rule for sulfur recovered through processing gas. Based upon past experience, MMS has decided that limits of 100 percent are warranted for sulfur.

A lessee may request, and MMS may approve, a transportation allowance in excess of 50 percent if the lessee demonstrates that the costs incurred were reasonable, actual, and necessary. Thus, the 50-percent threshold merely gives MMS the ability to monitor more closely the situation where the allowance based on reasonable actual costs will exceed that limit. In no event may the allowance for any lease product exceed 100 percent of the value of that product.

Section 206.156(d)

The MMS received two comments from two industry representatives on this section. The two representatives of oil and gas companies recommended that MMS should be required to pay interest on overpayments by lessees to the extent permitted by law.

MMS Response: The MMS has no legal authority to pay interest to lessees on their overpayments.

Section 206.157 Determination of transportation allowances.

Section 206.157(a) of the regulations addresses transportation allowances where the lessee has an arm's-length contract for transportation services. The MMS received a total of 65 different comments from 42 commenters on this section of the regulations. Although there were comments on a wide variety of subjects, 11 principal issues were addressed: Acceptance of arm's-length transportation agreements; excessive penalty and retroactive approvals; MMS's approval of the transportation allowances; acceptance of transportation reduced prices; status of currently approved allowances; required filing every 12 months; allowance on nonroyalty-bearing production; allocation of transportation costs; suggested deletion to regulations; period for filing a proposed allocation; MMS payment of interest on lease overpayments; and clarification of the conversion process.

1. Acceptance of arm's-length transportation agreements as an accurate indicator of reasonable, actual costs.

Three industry commenters supported the proposal to accept arm's-length contract costs as a reasonable transportation allowance. These commenters explained that arm's-length contracts provide an accurate indicator of "reasonable actual costs" because they reflect the true costs to the lessee for transporting production to a sales point downstream of the lease.

Two Tribes expressed serious concern about the validity of using arm's-length contracts as an indicator of value. One Tribe stated that arm's-length contracts are not a bona fide indicator of reasonable, actual costs. One Tribe expressed doubt that there can ever be an arm's-length contract between companies in the gas industry. Another Tribe stated that arm's-length contracts should not be accepted unless a thorough analysis of lessee/purchaser affiliations is undertaken. One Tribe also expressed considerable doubt that the criteria used by MMS would assure that an arm's-length contract is present in any given case. An Indian trade organization stated that MMS should establish appropriate criteria to determine the accuracy and reasonableness of allowances granted under arm's-length contracts (and non-arm's-length contract situations).

MMS Response: The MMS currently uses the payments made by a lessee under an arm's-length transportation agreement as an accurate indicator of reasonable, actual costs. The MMS has determined that payments made under arm's-length contracts are the best available indicator of reasonable, actual costs incurred by the lessee.

2. Disallowance of a transportation allowance for a reporting period not covered by a Form MMS–4295.

The MMS received responses from 12 industry commenters and 3 industry trade groups stating that the disallowance of a transportation allowance for a reporting period not covered by a Form MMS–4295 is an excessive penalty for what was considered by the commenters to be such a minor infraction of the rules. The point was also made that the lessee does not always have the data to timely file a Form MMS–4295 before the Form MMS–2014 is filed.

Many commenters stated that the regulations should have a provision allowing transportation allowances on a retroactive basis because a lessee does not always have the details on transportation worked out before

production begins. Thus, it sometimes is necessary to go back and revise data related to an allowance after agreements are reached because of the fast changing current oil and gas markets.

It was suggested that MMS should consider a monetary fine for failure to file, or disallow the deduction for any period until Form MMS–4295 is filed. The lessee would not lose a deduction, but would be precluded from taking the deduction until the proper forms are submitted to MMS for the periods covered.

MMS Response: After careful consideration of the comments, MMS has determined that the reporting penalties included in the proposed regulations were excessive. The MMS has also considered the comments on retroactive approvals and has revised the final regulations to allow lessees to request transportation allowances retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4295 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee. Also, § 206.157(d) of the final rules provides that if a lessee deducts a transportation allowance on a Form MMS–2014 without complying with the requirements of this section, the lessee will owe interest on the amount of the deductions until the date proper forms are filed. However, the lessee will be required to repay the amount of any deduction disallowed due to the limitation on retroactivity.

3. The MMS's preapproval of transportation allowances.

The proposed rule provided that prior MMS approval was not required before a lessee could deduct a transportation allowance based on an arm's-length contract. Representatives of four trade organizations, five oil and gas companies, and one business expressed approval of the self-implementing concept for transportation allowance regulations. This was seen as a method of relieving a considerable administrative burden on both industry and MMS. One Tribe disagreed with the self-implementing nature of the regulations because it was seen as a method of establishing the 50-percent limitation as a floor for transportation allowances.

One Tribe stated that MMS should preapprove all transportation allowances and should do so only on a showing of necessity to promote development or a showing that a higher value could be obtained for the gas at a point of sale away from the lease. It was also pointed out by this commenter that neither the MMS nor Indian Tribes have the resources to audit all leases and, if these allowances are not monitored "up front," they will never be audited.

MMS Response: The MMS considers arm's-length contracts a valid indicator of reasonable, actual costs. Thus, it is not necessary to preapprove transportation allowances based on such contracts. The MMS will monitor the transportation allowances, and they are subject to later audit.

4. Acceptance of transportation-reduced prices without requiring the filing of Form MMS–4295 for both arm's-length and non-arm's-length situations.

Representatives of three oil and gas companies and two trade organizations commented that MMS should accept transportation-reduced prices without requiring the filing of Form MMS–4295 for both arm's-length and non-arm's-length situations. It was believed that this policy would reduce the administrative burden on industry and MMS. However, one commenter disagreed with this proposal because it was considered a potential technique to exceed the 50-percent limitation provisions of the regulation.

MMS Response: The MMS has determined that the regulations should be revised to provide that transportation factors which reduce arm's-length sales contract or posted prices are to be considered as reductions in value rather than transportation allowances. This provision is included in § 206.157(a)(5).

5. Should current approved transportation allowances remain in effect until they expire?

One industry respondent stated that the transportation allowance reported on Form MMS–4295 should continue until the applicable contract or rate terminates, or is modified or amended.

MMS Response: The MMS has revised the regulations in § 206.157 (c)(1)(v) and (c)(2)(v) to provide that any transportation allowances in effect on the date these regulations become effective be allowed to continue until such allowances terminate subject to later audit.

6. Should MMS require the filing of Form MMS–4295 every 12 months?

Two industry representatives stated that there is no benefit to MMS in submitting a form that duplicates information on file when a change has not occurred, and there is no apparent reason for MMS to require the filing of Form MMS–4295 every 12 months. One industry representative recommended that this section be deleted.

MMS Response: The MMS requires the annual filing of Form MMS–4295 for use as a control and monitoring mechanism even when there is no change in the applicable contract or rate.

7. Should MMS allow transportation allowances for production which is not royalty bearing.

Several industry representatives suggested deleting this section and proposed that transportation costs be taken as an aggregate charge against the value of lease production or that MMS cover cost allocation methodology in the MMS Royalty Management Program Oil and Gas Payor Handbook. One industry respondent recommended deleting any references concerning the disallowance for transporting lease production which is not royalty bearing.

MMS Response: The MMS will not allow transportation allowances for production which is not royalty bearing. The final regulations in §§ 206.156(b), 206.157(a)(2), 206.157(a)(3), 206.157(b)(3), and 206.157(b)(4) will expressly so provide.

8. Allocation of a cost applicable to more than one product.

One industry representative stated that allocation of costs presents a burdensome administrative task, but if allocation of costs is deemed necessary, it should be allocated on the basis of relative value rather than on relative volume. One business representative suggested that MMS provide an alternative allocation procedure for situations which would require a variance from the proposed allocation method.

Another industry representative recommended that allocation be based on the weighted average value of each product having a commercial value in that area. According to this commenter, transportation costs should not be allocated to by-products or products with no commercial value.

An industry representative suggested using an allocation procedure only when substantial volumes of nonroyalty-bearing products are being transported because of the considerable costs and reporting burdens involved in allocating costs.

MMS Response: The MMS has determined that allocating costs on the basis of relative volume rather than on relative value is more equitable because of the price fluctuations of products and in many instances the allocation of costs based upon value of products would defeat the purpose of the regulations. In situations involving the transportation of both gaseous and liquid products, it is difficult for MMS to provide guidance on acceptable methods of allocation because of the many different circumstances that exist. The MMS believes it would be advantageous to

have the lessee submit an allocation proposal to MMS in these situations.

9. Should MMS extend the period in which to submit a proposed allocation method?

Three representatives from industry and one from a trade organization suggested periods of 90–180 days, instead of the proposed 60-day period, to submit a proposed allocation method where an arm's-length contract includes both gaseous and liquid products and the transportation costs attributable to each cannot be determined from the contract.

Representatives from three oil and gas companies and one trade organization stated that the requirement to submit a proposed allocation method within 60 days will create a significant workload burden, and a more reasonable provision of time would be from 90 to 180 days.

MMS Response: The MMS has modified § 206.157 (a)(3) of the final rule to provide a 3 month period.

10. Should MMS pay interest on lease overpayments?

One industry commenter stated that MMS should pay interest on overpayments consistent with statutory authority.

MMS Response: The MMS currently has no legal authority to pay interest to lessees on their overpayments.

11. Clarification of the conversion process.

Two respondents from the oil and gas industry commented that proposed paragraph (a)(5), concerning the conversion of payment to a dollar-value equivalent, should not be adopted because it is too complicated. If it is retained, it should be clarified with guidelines.

MMS Response: The value of production upon which royalty is due is reported to MMS as a dollar value; therefore, MMS believes that any deduction from that value when determining the royalty due also must be expressed as a dollar value. The MMS does not consider the conversion to a dollar-value equivalent to be complicated. This requirement is included in § 206.157(a)(4) of the final rules.

Section 206.157(b) establishes the procedures for claiming a transportation allowance where the lessee has a non-arm's-length transportation contract or has no contract. The MMS received 142 comments from 32 commenters on this subsection—20 industry commenters, 4 trade groups, 1 Indian trade group, 1 Indian Tribe, 1 State government, 1 city government, and 4 private business representatives.

The comments received under this section addressed eight principal issues: Acceptance of State or FERC tariffs, use of the benchmark system, penalties, prior approval, allowable costs, rate of return, retaining Alternatives 1 and/or 2, and allocation of costs.

1. Should MMS accept published State or FERC tariffs instead of using actual costs as the basis for approving transportation allowances?

Fourteen industry commenters and two trade groups stated that MMS should accept published State or FERC tariffs as the transportation allowance in non-arm's-length and no-contract situations. These commenters believed that MMS should rely on the expertise of FERC and State agencies that set pipeline tariffs to determine fair and reasonable transportation charges. Several industry representatives stated that if MMS does not rely on FERC and/or State tariffs, there would be a wasteful duplication of effort between FERC, State agencies, and MMS.

MMS Response: The MMS has reviewed the FERC procedure for granting tariffs. After careful consideration, MMS has decided that the fairest and best way to determine transportation allowances for non-arm's-length or no-contract situations is to allow actual, reasonable costs plus an acceptable rate of return on the lessee's undepreciated capital equipment. The MMS will recognize FERC tariffs as a valid cost in computing a transportation allowance only when it is an actual (out-of-pocket) expense pursuant to an arm's-length transportation contract. Existence of a FERC-approved tariff for a transportation system, however, is one of the requisite criteria for MMS to consider in granting an exception to the requirement to use actual costs for non-arm's-length or no-contract situations. See discussion below.

2. Should the transportation allowance be based on the market value of transportation service as determined under a benchmark system?

Fourteen industry commenters and four trade groups stated that MMS should allow the market value of the transportation service based on a benchmark system.

For those commenters recommending a benchmark system for determining the transportation allowance, the commenters suggested that MMS allow the lessee the market value of the transportation service based on a benchmark system featuring arm's-length contracts and tariffs and cost accounting to be used only as a last resort. It was suggested that this procedure was in keeping with the market-based concept and objective of bringing certainty to the regulations.

MMS Response: It is MMS's past and present practice to allow only those costs which are directly related to the transportation of lease production. Costs incurred under "comparable arm's-length contracts" or any other benchmark criterion may include costs such as Federal and State income taxes, socioeconomic costs incurred by the lessee in order to obtain State or county land access such as the construction of schools or city sewer facilities. The MMS considered these comments in revising the regulations and decided that it was in the best interests of the Government, States, and Indians to base gas transportation allowances on actual, reasonable costs plus a return on investment.

However, in an effort to simplify procedures for both the lessee and MMS, the regulations at § 206.157(b)(5) will provide a limited exception to the requirement to compute actual costs where the lessor's interest is adequately protected. The lessee must apply to MMS for the exception, and MMS may grant the exception only if (1) the lessee has arm's-length contracts with other persons for transportation through the same transportation system; (2) the lessee has a FERC-approved tariff for the system; and (3) the persons purchasing transportation services from the lessee had a reasonable alternative to using the lessee's system (thus ensuring that the transportation contract price was not arrived at because the person requiring transportation had no choice but to accept the lessee's price). If the MMS grants the exception, the lessee will use as its transportation allowance the volume-weighted average of the prices it charges other persons pursuant to arm's-length contracts.

3. Should a penalty be imposed for late submission of the Form MMS–4295?

One industry commenter objected to the penalty of disallowing a transportation allowance for failure to file the applicable Form MMS–4295.

One industry spokesperson stated that the lessee should be assessed a fee of $10.00 per day for each day the Form MMS–4295 is not received.

One industry commenter suggested 120 days as a reasonable time in which to submit a completed page one of Form MMS–4295.

MMS Response: MMS has determined that the reporting penalties included in the proposed rule were excessive. MMS also has considered the comments on retroactive approvals and has revised the final regulations in § 206.157(b)(1) to allow lessees to request transportation

allowances retroactively for a period of not more than 3 months prior to the first day of the month that the Form MMS–4295 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee. Also, § 206.157(d) provides an interest assessment for taking a transportation allowance without complying with the reporting requirements of the regulations, as well as a requirement that a lessee repay the amount of any deduction disallowed due to the limitation on retroactivity.

4. Should MMS require prior approval for allowances?

Four industry commenters and one trade group commented that they were in support of the self-implementing feature of the regulations which would not require prior approval of each allowance by MMS before the allowance could be claimed.

One State Government and one Indian trade group stated that prior approval of allowances should be required. Because of the numbers of selling arrangements involving costs, these commenters were concerned that as a practical matter MMS will not question or audit the majority of deductions.

One Indian Tribe commenter stated that prior approval should be required before overhead expenses and depreciation are allowed; otherwise, transportation allowances will be subject to abuse and Indian royalties will suffer.

One Indian Tribe representative stated it was not proper to allow depreciation, unless prior approval and prior audit is required.

MMS Response: The MMS currently reviews and approves all transportation allowance requests and has considered preapproval and preaudit of transportation allowances. It has been decided that a more effective use of resources can be attained by doing exception processing on allowances and selectively reviewing certain allowances in depth to determine the propriety of the allowance reported by lessees on Form MMS–4295. Therefore, with limited exceptions, no prior MMS approval will be required. However, the lessee will be required to file a completed Form MMS–4295 before taking the allowance.

5. Should costs other than actual, reasonable costs be considered in calculating the transportation allowance?

One industry commenter, one trade group, and one private business stated that State and Federal income taxes are legitimate expense items and should be allowed.

One industry spokesperson recommended that dismantling costs be included in the calculation of transportation allowances because this is a real cost of doing business.

One trade group representative recommended that MMS reformulate the transportation provisions to allow a firm or entity providing necessary transportation services a complete recovery of costs plus an acceptable profit for assuming the risks involved in providing transportation service.

MMS Response: The MMS views income taxes to be an apportionment of profit rather than a valid operating expense. However, interest on money borrowed for operations would be considered as a valid operating expense. Interest on money borrowed to build a transportation facility is not considered allowable. A return on investment is given in lieu of interest on capital investments.

6. What rate of return should be used to calculate return on capital investment?

Fourteen industry commenters, five trade groups, four private businesses, one city mayor, and one Indian Tribe group stated that the use of the Moody Aaa corporate bond rate proposed by MMS in § 206.157(b) is inequitable for the rate of return. Following are some of the reasons provided by the respondents for this viewpoint.

a. One industry representative stated that the prime rate represents a nearly risk-free return on short-term borrowing.

b. One trade group stated the use of Moody's Aaa bond rate assumes minimal risk and 100-percent debt financing.

c. Three industry commenters and one trade group each stated that, for fairness, a rate of return must consider both cost of credit and equity capital.

d. One industry spokesperson stated that a rate of return based solely on a prime lending rate would not make the investment in the transportation system a competitive project when compared with other projects.

e. One industry, one trade group, and one private business commenter each stated that the choice of Moody's Aaa rated debt is very conservative and arbitrary.

Fifteen industry commenters and four trade groups recommended various alternatives to the Moody Aaa corporate bond rate:

a. Four industry commenters recommended a rate equal to 150 percent of the 20-year T-bill rate.

b. Eleven industry commenters and two trade groups recommended the prime rate plus 5 percent.

c. Three industry commenters and three trade groups suggested one and one-half times the average 30-year T-bill rate.

d. One trade group commenter stated MMS should use the 20-year corporate industrial bond rated Baa.

e. One industry commenter recommended a yearly average of the monthly rate for 20-year T-bills.

f. One industry commenter suggested the 20-year corporate industrial bond rated Baa plus 9 percentage points.

g. One industry commenter recommended one and one-half times the prime rate.

h. Another industry commenter stated that the MMS should use the FERC tariff rate of return.

i. One industry and one trade group supported the before-tax rate of return of double the Moody's Aaa bond rate.

j. One industry commenter suggested that a specific rate of return should be determined for each lessee.

MMS Response: The MMS has examined several options relating to rate of return and decided that a rate of return should be closely associated with the cost of money necessary to build a transportation system. The MMS is not persuaded that a rate of return should include a profitability factor as a part of the transportation allowance. The MMS has examined the use of the corporate bond rate very carefully and has concluded that the use of such a rate would be feasible and would be appropriate for use as a rate of return considering the risks associated with the transportation of gas and gas plant products. There is no doubt that there are some very high risks involved with some oil and gas ventures, such as wildcat drilling. However, the risk associated with building and developing a pipeline to move gas that has already been discovered is a much different risk (and a risk that can reasonably be insured against) than the risk associated with the drilling of a well. Considering the risks related to transportation systems, a rate of return based on an applicable corporate bond rate would be appropriate for transportation systems.

The MMS has considered the prime rate, the prime rate plus 5 points, one and one-half times the average 20-year Treasury Bill rate, the Moody's bond rate, Standard and Poor's bond rate, and the other rates suggested by the commenters. The rate of return used by FERC was not considered because MMS does not believe that the FERC tariff procedure and the MMS transportation allowance are sufficiently similar to warrant the use of similar procedures. The MMS believes that the use of an appropriate rate of return based on the corporate bond rate adequately

considers the risk associated with a transportation system and that there is no rational basis for increasing a rate of return by arbitrarily adding percentage points simply to increase the allowance granted to a lessee. After carefully considering the comments and the options available, MMS determined that the rate of return should be based on Standard and Poor's BBB industrial bond rate. Section 206.157(b)(2)(v) has been revised accordingly in the final rule. However, because of the substantial and diverse comments received on this issue, MMS soon will issue a notice of proposed rulemaking to consider further modifications to this section.

7. Should MMS retain the provisions of Alternative 1 and/or Alternative 2?

Five industry commenters recommended that MMS retain both alternatives of depreciation and return on initial depreciable capital investment. One industry commenter and one trade group stated that both alternatives should be included in any cost-based methodology for determination of a transportation allowance. One industry commenter recommended that both methods be made available for use at the lessee's election on the basis of an individual transportation arrangement basis because adoption of this approach would assure the flexibility necessary to adapt to unforeseen changes in the business and transportation environments.

Two industry commenters and one trade group stated that MMS should retain Alternative 1. One industry spokesperson sought clarification on Alternative 1 to ensure both depreciation and return on depreciated investments are allowed.

One trade group representative endorsed Alternative 2, provided that its use is an option for the lessee. One industry commenter supported Alternative 2, suggesting that the initial capital investment should be the basis for depreciation of any newly acquired transmission facility or gas plant. One trade group representative stated that Alternative 2 should be applicable to instances where a lessee has purchased a transportation system that has previously been depreciated to some extent. One private business representative stated that Alternative 2 should be available without the limitation on new or newly acquired transportation systems because it provides a viable substitute where original cost records no longer exist.

One industry commenter recommended not adopting Alternative 2 because it provides a significantly lower rate of return to the lessee.

Two commenters stated that MMS should not tie the rate of return to a diminishing value. Both commenters stated that if the intention is to provide the lessee with a rate of return for his invested capital, the lessee should not be penalized by a diminishing return caused by tying the return into a depreciation option. One industry representative stated that based on the current Moody's bond rate, Alternative 2 should only be advantageous for projects with over 30 years of life.

One industry commenter stated an inequity could result in the case of transferring transportation facilities from one party to another because it may be impossible to allocate specific capital costs to particular segments for purposes of determining the depreciation cost allowance and the return on undepreciated capital investment cost allowances. One industry commenter stated that MMS should accept a depreciation method recognized by FERC whether or not the method is one of the two suggested. According to the commenter, this would eliminate the administrative burden of maintaining another set of depreciation records. One Federal agency commenter suggested there be no restriction on the depreciation method used.

Seven commenters—five industry, one trade group, and one Federal agency—stated that disallowing recapitalization is inequitable. One industry representative stated that the rule, as proposed, prohibits a new owner from recovering his costs because those costs would be based on the present market value of the pipeline. One industry commenter stated that it would be administratively burdensome to disallow recapitalization because it would require the lessee to maintain two separate sets of books on depreciation, one for normal business and one for royalty purposes. One industry representative stated that prohibiting establishment of a new capital cost based upon the sale or transfer of a pipeline is inconsistent with both the philosophy of arm's-length transactions and of approving an allowance based on actual costs.

Two industry commenters stated that the regulation should be more specific on how the lessee must adjust for continuing changes in reserves. For example, the continued development of different unitized depths in complex geologic areas or in areas with multiple leases will result in the continued redetermination of reserves.

MMS Response: The MMS has reviewed the comments received regarding both Alternative 1 and Alternative 2 and concluded that both alternatives should be retained. However, under the final rule, § 206.157(b)(2)(iv)(B), Alternative 2 can only be used for transportation facilities first placed in service after the effective date of these regulations.

The MMS has considered the issue of recapitalization and decided that it was appropriate for the Government to pay for the depreciation of a system only once.

The MMS has carefully considered the issue of basing the rate of return on a diminishing value and has decided that this procedure is consistent with longstanding Government policy on allowances and that MMS should continue this policy for transportation facilities in operation on the effective date of these regulations.

The use of reserve life as a depreciation method is at the election of the lessee. If the method does not serve the lessee's needs, then a different depreciation method may be chosen. If the reserve life method of depreciation is chosen, it would be entirely appropriate for the lessee to adjust the reserve life when changes in reserves occur.

The MMS has determined that a transportation system may be depreciated only once, and that the depreciation schedule established by the original transporter/lessee cannot be altered by a change in ownership.

8. Should costs be allocated among lease products?

Two industry commenters and one trade group suggested deletion of the sections requiring allocation of costs (§ 206.157(b) (3) and (4) of the final rule). Two industry representatives stated that requiring allocation of transportation costs is an unjustified expense to the lessee and a burdensome administrative task for both industry and MMS.

One industry commenter stated that allocation of costs among products is at odds with the basic valuation equation.

MMS Response: MMS believes that the cost to transport a product should correspond with the product transported. MMS recognizes that accountability is difficult and allocation may be a burdensome task but there is no acceptable way to avoid this responsibility.

Section 206.157(c)

The MMS received a total of 39 comments from 20 different respondents on paragraph (c), which establishes reporting requirements for transportation allowances. Of the 39 comments received, 27 were from

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industry, 10 were from industry trade groups, 1 was from a State respondent, and 1 was from an Indian association.

The comments received addressed the following issues: general comments pertaining to the requirement to file for allowances, comments on the initial 90-day submittal period, the subsequent annual requirement to submit Form MMS–4295, Gas Transportation Allowance Report, establishment of alternate reporting dates, and miscellaneous comments.

1. The requirement to submit a Form MMS–4295 in order to claim a transportation allowance.

Two industry commenters commend the MMS for proposing an allowance that does not require prior approval. One industry commenter and one trade group disagree with proposed Form MMS–4295 because it requires too much information and puts a burden on industry. One trade group representative stated that MMS should substitute a form entitled "Intent to Take a Transportation Allowance" in lieu of the complicated annual filings proposed. One State representative stated that the reporting scheme would demand a major commitment of resources and would be difficult to administer. One trade group commenter stated that submission of Form MMS–4295 will greatly increase the paperwork of both industry and MMS. Two industry commenters stated that without proper public review and comment, they cannot endorse the use of Form MMS–4295. Ten commenters—seven industry and three trade groups, stated that provision should be made for allowances currently in effect on the effective date of the regulations to continue until the allowance expires to avoid an undue administrative burden on MMS and lessees.

MMS Response: Form MMS–4295 is required in order for MMS to monitor the transportation allowance program. The MMS believes it can effectively monitor the transportation allowance deductions without the preapproval of the allowances. The MMS has made the information on Form MMS–4295 as clear and uncomplicated as possible considering the complex nature of transportation allowances. The filing of a Form MMS–4295 equates to an "intent to deduct transportation."

For arm's-length contracts, paragraph (c)(1) requires the filing only of page one of the Form MMS–4295. Pursuant to paragraph (c)(2), for non-arm's-length contracts, the lessee must submit the entire form. For transportation allowances in effect on the effective date of these rules, no form needs to be filed until the allowance terminates. See § 206.157 (c)(1)(v) and (c)(2)(v). These continued allowances will be subject to audit.

2. Requirement to file a Form MMS–4295 within 90 days after the end of the reporting period.

One industry commenter stated that a 120-day filing period should be permitted for filing Form MMS–4295 to ease the administrative burden. This commenter suggested that if the form is not received within the prescribed 120 days, the lessee could be assessed a fee of $10.00 per day for each day the form is not received. One industry representative suggested that a minimum 180-day conversion should be allowed from the date of publication of the final regulations.

One trade group representative agreed that a 12-month term should be endorsed for both onshore and offshore allowances. One industry representative recommended that allowances be based on data from a full calendar year and be reported to MMS by April 1 for the preceding year. Nine commenters, seven industry and two trade groups, stated that an annual reporting request is unduly burdensome and that lessees should only be required to file Form MMS–4295 when there is a change in the allowance amount.

Two industry representatives stated that failure to file a completed Form MMS–4295 should not result in a denial of allowances because this constitutes a substantial penalty.

One industry spokesperson stated that to ease MMS's workload, each lessee should be assigned a particular due date for filing all forms. One Indian trade group was concerned over the provision establishing different reporting dates from those specified in order to provide more effective administration.

MMS Response: The final regulations in § 206.157 (c)(1)(iii) and (c)(2)(iii) give the lessee 3 months after the end of the previous reporting period to file the required forms. Also, as described earlier, the final regulations allow for transportation allowances to be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4295 is filed with MMS. Therefore, even if the lessee is not able to timely file the Form MMS–4295, the lessee could file the Form MMS–4295 and claim the transportation allowance on a corrected Form MMS–2014 at a later date.

The MMS concurs with a 12-month term and the final regulations require that a Form MMS–4295 will be filed on the basis of a calendar-year.

3. Miscellaneous comments received.

One industry representative stated that MMS should continue its policy of not requiring reporting or approval of reduction in sales prices which reflect transportation. One industry commenter recommended that deductions taken as an offset against price should be accepted by MMS without the necessity of filing Form MMS–4295.

MMS Response: In situations where the purchaser is reducing the posted price for a transportation cost and the lessee is incurring no out-of-pocket expense, a Form MMS–4295 is not required. In these situations, because the reductions in price represents a cost incurred past the point of first sale, a transportation allowance would not be allowed by the regulations. However, in determining the value of the gas, the reduction in price for the transportation costs past the point of sale would be considered.

Section 206.157(d)

MMS has added a new § 206.157(d) to the final regulations. This section requires a lessee that deducts a transportation allowance from its royalty payments before complying with the requirements of this section (i.e. filing the proper forms) to pay interest from the date it improperly took the deduction until the form is filed. As noted above, pursuant to paragraph (c), the lessee also will be required to pay back any allowance deducted more than 3 months prior to the first day of the month the proper forms are filed, plus interest.

Section 206.157(e)

This section was proposed as paragraph (d) and provides an adjustment procedure where the estimated allowance differs from the actual allowance.

The MMS received a total of 34 comments, 29 from oil and gas companies and 5 from industry trade groups.

Two industry representatives commented that the MMS proposal for handling interest payments is unfair, and stated that "It is equitable that if the lessee must pay any difference in royalty owed plus interest, MMS should also pay any difference plus interest statutorily authorized."

MMS Response: The MMS has no legal authority to pay interest to lessees on their overpayments.

Ten respondents, including three trade organization representatives and seven oil and gas companies, recommended that positive or negative differences between estimated and actual costs should be rolled forward into the

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transportation rate for the subsequent period because this would relieve the immense administrative burden on MMS and industry. One oil and gas company recommended that actual data from one period be used as the allowance for the following period, thus requiring no adjustments.

MMS Response: The MMS considered alternatives such as (1) rolling forward differences into subsequent periods or (2) using actual data from one period to be used as the next period's allowance, but determined that such procedures could be inequitable to lessees, MMS, Indian Tribes, and Indian allottees. Consequently, MMS has decided to retain the estimated and actual cost procedure.

Two oil and gas companies commented that refunds for estimates tendered in excess of actual costs should not be classified as refunds of a royalty payment under section 10 of the OCS Lands Act because estimates are not "actual" payments of royalty. Overpayments could then be treated as line-item adjustments not subject to the refund process. It was the firms' position that the OCS Lands Act, section 10, does not require requests for refunds when estimated costs are less than actual costs and stated that the concept of estimate versus payment is clearly discernible. "Payment" is defined as a discharge of indebtedness, while "estimate" is a rough or approximate calculation, not an overpayment.

One oil and gas company commented that the current extensive review and audit process is causing lessees to lose the time value of money in the refunds which are due them under section 10 of the OCS Lands Act. Audits on such refunds were described as fruitless and wasteful, and it was suggested that MMS consider transportation allowance adjustments to be exceptions to the refund requirements. Overpayments could then be recovered by line-item adjustments on Form MMS–2014.

Two oil and gas companies strongly emphasized that the requirement to submit written requests for refunds for underdeducted transportation costs in accordance with section 10 of the OCS Lands Act will be an extraordinarily difficult financial and reporting burden for industry and the MMS.

MMS Response: It would not be proper for these rules to prescribe the refund procedures. MMS is reviewing the issue and will provide guidance to lessees.

Three oil and gas companies and one trade organization representative rejected using prior year actual costs for the current reporting period, stating that it automatically requires retroactive adjustment. They recommend that lessees be allowed to use forecast rates based on their knowledge and experience with the operations. Three oil and gas companies proposed that MMS establish an allowable range and not require retroactive adjustments if performance is within the allowable range.

One oil and gas company recommended using market-based allowances, requiring a single entry and resulting in fewer adjustments and fewer transportation records to be reviewed. One oil and gas company recommended that to reduce costs, adjustments should be made by a single entry each year, not monthly.

MMS Response: The MMS was unable to develop an acceptable accounting methodology that would eliminate retroactive adjustments of prior period tentative transportation allowances for non-arm's-length and no-contract situations. The final regulations do, however, permit a lessee to adjust its estimates in the succeeding period based on forecasted rates.

Section 206.157(f)

Section 206.157(f) was proposed as paragraph (e) and, as proposed, provided that no cost is allowed for transportation which results from payments for actual or theoretical losses. The MMS received a total of 23 different comments on this section from industry, trade groups, and one U.S. Senator. Generally, the commenters stated that line losses are actual costs of doing business, should be allowable, and that this section of the regulations should be deleted.

Five industry commenters , two trade organizations, and one U.S. Senator commented that line losses are actual transportation costs which should be allowed by MMS. One industry commenter stated that line losses occur beyond the control of the lessee and are practical and legitimate occurrences. Another industry commenter stated that such allowances are real transportation costs borne by the lessee. Seven industry commenters stated that MMS should allow line losses not attributable to negligence.

Three commenters—two industry and one trade group representative—commented that line losses in arm's-length contracts and FERC tariffs should be allowed. One industry commenter stated that if a loss provision is a part of an arm's-length contract or a FERC tariff, MMS should accept such a provision, just as it accepts the dollars-and-cents rates in the contract or tariff because the losses are part of the total cost of the transportation arrangement. One industry representative stated that producer-owned pipelines should include transportation losses as part of operating expenses in the formulation of an allowance. Other commenters recommended deletion of this section.

MMS Response: All of the issues of theoretical and actual line losses have been considered at length by MMS. Because of the difficulty of demonstrating that losses are valid and not the result of meter error or other difficult to measure causes, MMS has decided not to treat line losses as valid costs for purposes of computing transportation allowances in non-arm's-length and no-contract situations. However, the final rule provides that costs associated with payments for losses under arm's-length transportation agreements should be allowed because the payment is an out-of-pocket expense to the lessee.

Section 206.157(g)

The MMS received two comments on § 206.157(g), which was proposed as paragraph (f). This section allows use of the transportation allowance rules where transportation is a component of a valuation procedure such as a net-back method.

Both industry respondents stated that use of cost-based transportation allowances is inequitable when using net-back valuation because actual costs incurred should be recognized. If MMS collects royalty on the enhanced downstream value, MMS should bear its share of actual costs incurred to move the hydrocarbon for sale downstream.

MMS Response: The MMS remains convinced that the cost-based allowance procedure for determining gas transportation allowances is appropriate for determining value under a net-back procedure.

Section 206.158 Processing Allowances—General.

The processing allowance regulations are almost the same as the transportation allowance regulations. As expected, therefore, most of the comments were the same. Because responding to the same comments and explaining the same regulatory section is duplicative and unnecessary, in this section MMS generally will respond only to comments and explain regulatory provisions which are unique to gas processing allowances.

Section 206.158(a)

The MMS received a total of 43 different comments from 27 separate commenting parties on this section of the regulations, which generally provide

for a processing allowance. Of the 43 comments received, 15 were from Indian Tribal representatives, 10 were from oil and gas companies, 4 from local businesses, 3 from industry trade groups, 3 from State agencies, 2 from Indian Tribal trade representatives, 2 from State spokesmen, 2 from local governments, 1 from a State Governor, and 1 from a royalty interest owner.

Comments on gas processing allowances, which did not relate to any specific section of the regulations, are addressed in this section of the gas processing regulations.

One industry representative cautioned that although the final processing regulations must contain certainty, they should also be flexible enough to encourage innovative marketing of the gas plant products. Similarly, one State agency said that the proposed regulations must reflect the changing nature of industry, serve to encourage rather than discourage new projects, and allow existing operations to identify new markets.

MMS Response: The MMS believes that the regulations are complete and sufficiently flexible to accommodate different types of gas processing arrangements that might arise in the future. The MMS further believes that the regulations are reasonable. To not discourage new development, MMS has provided an exception process whereby a lessee may be able to justify a processing allowance in excess of the 66⅔ percent limitation and has provided the lessee with broad latitude to deduct processing costs under arm's-length contracts. For processing under non-arm's-length and no-contract situations, MMS has provided the lessee with several alternatives for depreciation and return on investment. MMS also has provided for an extraordinary cost allowance for processing gas production from a unique gas production operation. MMS does not believe that the objectives of certainty and flexibility should replace the Federal Government's responsibility to properly account for the removal of minerals from a Federal or Indian lease.

One industry commenter and one industry trade organization thought that this section should incorporate a provision to include the deduction of fractionation costs.

One industry commenter and one industry trade representative recommended that processing allowances continue to be granted on the basis of percentage of value.

MMS Response: The regulations, as adopted, accommodate fractionation costs as part of the processing allowance cost. Therefore, a specific provision is not necessary. The MMS has determined that an allowance based on a cost per unit is more equitable and will result in less difference between actual and estimated allowances than an allowance based on percentage, especially in times of rapid price fluctuations.

Section 206.158(b)

The MMS received a total of 21 comments from 9 different commenters on this section, which requires allocation of processing costs among gas plant products. Fifteen comments were received from industry, five from an industry trade organization, and 1 from a Federal agency.

There was general opposition from industry to the allocation of processing allowances by gas plant product. Nine industry representatives and one industry trade group recommended either to delete this section or to rewrite it in such a manner as to allow all processing costs in full to be deducted from the value of both the residue gas and gas plant products. One industry representative proposed a change which would allow the allocation of processing costs to both the value of gas plant products and residue gas.

One industry representative stated that the cost of processing should not be allocated to one product when it benefits all products. One industry trade group stated that the allocation of costs among products is contrary to the valuation principle that the value of production should equal the sum of all gross proceeds less the sum of all post-production costs.

Two industry representatives plus one industry trade group recommended that if allocation of costs is necessary, allocation should be based on percentage of sales rather than on a cost per unit; that is, based on value rather than volume. Two industry representatives and one trade group thought that the allocation of costs presents an administrative burden for both industry and MMS.

MMS Response: It has been a longstanding MMS policy and regulatory requirement that no processing allowance be granted against the value of residue gas. Among the reasons for this is that processing is viewed as necessary to place the residue gas in marketable condition and that processing does not generally enhance the value of residue gas. Thus, generally no processing allowance is authorized against the value of the residue gas in the final rule. The MMS believes that allocating processing costs based on relative volume rather than on relative value is more equitable because the costs of extracting any given product may be unrelated to that product's value.

Section 206.158(c)

As proposed, this section generally limited the processing allowance deduction to two thirds of the value of each gas plant product. The MMS received 82 comments from 36 commenters on this section. Forty-eight comments were received from industry, 16 from industry trade organizations, 1 from an Indian Tribe, 4 from local businesses, 1 from a town mayor, 3 from a State representative, 3 from oil producers, 2 from interest owners, 3 from a State and Tribal organization, and 1 from an Indian trade group.

Most industry-related commenters expressed their objection to the 66⅔-percent limitation on the processing allowance. Nineteen industry representatives, four industry trade groups, four local businesses, one town mayor, and one State representative opposed either the limitation on the allowance or the exclusion of residue gas value from the allowance determination. Other commenters supported this position.

Six industry respondents and one industry trade group questioned the validity of a 66⅔-percent limitation. For example, one industry commenter stated that the limitation is "* * * entirely arbitrary and has no justification or support in the record."

One State representative suggested that the limitation creates a floor and feared that a 66⅔-percent processing allowance will be taken as an automatic deduction.

An industry trade organization commented that in processing a sour, low quality gas stream, the 66⅔-percent limitation does not reflect actual costs to industry. This trade group plus four industry commenters stated that in high-cost or low-quality areas, the limitation will discourage development.

Seven industry commenters and one industry trade group recommended, in lieu of a strict limitation, that the 66⅔-percent level be a threshold, above which an allowance will be granted according to specific criteria. For example, one industry commenter recommended a higher allowance upon MMS approval. Another industry commenter requested that a higher allowance be approved on the basis of "national interest" criteria.

Six industry commenters and three industry trade groups stated that MMS should allow lessees to carry forward processing costs otherwise allowable (except for the 66⅔-percent limitation)

from the current year to subsequent years.

The MMS also received several comments from parties who supported the proposed 66⅔-percent limitation on the processing allowance. Two oil producers, one interest owner, one State representative, and one State and Tribal organization expressed support of the limitation. Another oil producer added that it opposed increasing the limitation. One interest owner stated that the limitation should be lowered.

An additional comment from a State and Tribal organization stated that it favors the exclusion of residue gas from the allowance determination. An Indian trade group stated its objection to the Director approving an allowance in excess of 66⅔-percent.

Six parties (one oil producer, one State representative, one interest owner, two industry parties, and one State and tribal organization) stated their opposition to a "carry forward" provision for costs exceeding the 66⅔-percent limitation. One industry commenter stated that such a process would be "impractical."

MMS Response: The MMS has devoted considerable time and effort in evaluating the 66⅔-percent limitation on the processing allowance, and the exclusion of the value of residue gas from the allowance computation. Section 206.158(c)(2) of the final rule provides that the processing allowance deduction on the basis of an individual product cannot exceed 66⅔ percent (100 percent for sulfur) of the value of each gas plant product at the point of sale determined in accordance with § 206.153. No processing allowance may be taken against the value of the residue gas, except for certain extraordinary allowances specifically approved by MMS in accordance with paragraph (d), discussed below.

The 66⅔ percent limit is to be applied against the value of the product already reduced by any extraordinary cost allowance and any transportation allowance for transportation costs incurred after the gas is processed. Transportation allowances related to transportation from the field to the processing plant would not be deducted before applying the 66⅔ percent limitation.

The MMS has retained in the final rule a procedure whereby the lessee may request an exception from the 66⅔ percent limitation. The lessee must demonstrate that any costs in excess of the limitation are reasonable, actual, and necessary. This procedure will allow MMS to monitor more closely those situations where the allowance based on reasonable, actual costs will be in excess of the 66⅔ percent limitations. Under no circumstances may the processing allowance exceed 100 percent of the value of any product.

Three industry respondents and three industry trade groups stated their objection to the requirement regarding substitution of other products for residue gas in situations where residue gas is absent. One industry trade group stated that in this situation, the lessee should be able to deduct the processing costs against the sum of all marketable products. Two industry commenters recommended that this sentence be deleted.

MMS Response: The MMS has determined that where residue gas is not present, at least one gas plant product should be viewed as being placed in marketable condition as a result of processing. However, the extraordinary processing allowance procedure discussed below may be applicable in these situations.

Section 206.158(d)

The MMS received 37 comments from 26 parties on this section, which provides generally that no processing cost deduction will be allowed for the costs of placing lease production in marketable condition. Twenty comments were from industry parties, 5 comments were from industry trade organizations, 1 comment was from an Indian Tribe, 4 comments were from local businesses, 1 comment was from a town mayor, 1 comment was from a Federal agency, and 4 comments were from individuals.

The major issue raised in this section was whether costs associated with placing a product in marketable condition, generally referred to by the commenters as post-production costs, should be deductible from royalty.

All industry-related commenters (13 industry and 3 industry trade groups), 4 local businesses, and 1 town mayor supported the concept that all post-production costs be allowable deductions from royalty.

Nine industry commenters and two industry trade groups expressed their view that certain post-production costs should be deductible from royalty. One industry trade group stated that the costs related to the manufacture and sale of separately marketable products are extraordinary and should be allowed. One industry commenter stated that "* * * other off-lease post-production costs and certain 'extraordinary' on-lease costs" should be deductible.

MMS Response: MMS already has addressed the post-production cost issue with regard to other sections of these regulations. Generally, post-production costs excluding those for transportation and processing, are not allowable deductions from royalty. Post-production costs for the services of gathering, separation, measurement, dehydration, compression, and sweetening are considered to be a requirement to place the lease production into marketable condition, at no cost to the lessor. These costs generally are not considered part of the processing costs and, therefore, are not deductible in a processing allowance.

MMS has included in the final regulations a new § 206.158(d)(2). Pursuant to this section, if a lessee incurs extraordinary costs for processing gas production from a unique gas production operation, it may apply to MMS for an extra allowance above that to which it otherwise would be entitled pursuant to these regulations. The allowance is discretionary with MMS, but may be granted only if the lessee can demonstrate that the costs are, by reference to standard industry conditions, extraordinary, unusual or unconventional. Under this section, an allowance could be provided against the value of the residue gas. The extraordinary cost allowance requires annual reconsideration by MMS.

Section 206.159 Determination of processing allowances.

Section 206.159(a)

The MMS received a total of 53 comments from 27 different commenters. Sixteen different industry representatives provided 37 comments, 4 industry trade groups provided 9 comments, 4 Indian Tribal representatives provided 4 comments, and one comment each was provided from an Indian Tribal trade representative, an accounting firm, and a State and Tribal organization.

Again, most of the issues raised in the comments were the same as for the corresponding section of the transportation allowance regulations and will not be repeated.

Two industry commenters responded in favor of the provision in § 206.159(a)(1) whereby MMS would accept costs incurred under arm's-length processing agreements as the reasonable, actual costs incurred by the lessee because they thought these arrangements reflect true processing costs experienced by the lessee. One Indian Tribal trade group opposed this proposal because of the concern that under these procedures the Indian lessor's royalty could be reduced to virtually nothing.

MMS Response: The MMS believes that processing costs incurred by a lessee under arm's-length agreements represent actual costs to the lessee and should be appropriate as a processing allowance. Under the provisions of these regulations, the Indian lessor's royalty cannot be reduced to zero.

With regard to the requirement of § 206.159(a)(2) that processing costs be allocated among all products, one industry commenter was critical of the proposal to treat all NGL's (but no other plant products) as one product. The commenter thought this was discriminatory toward the lessees in favor of processors of wet gas, not only because some lessees typically will be able to recover total processing costs from the value of the NGL's, but if other products are produced, costs would need to be allocated to them, with the possibility that some of these costs would not be totally recovered. This industry representative stated that all of the marketable products should be treated as one product, including residue gas, for purposes of allocating processing costs. Another industry representative made proposals which would make the allocation procedure unnecessary.

MMS Response: The NGL's, historically, have been considered one plant product for royalty purposes because they are commonly extracted first as raw make at an extraction facility. MMS has determined that all other individual plant products must be evaluated separately for processing allowances for the reasons stated previously.

Section 206.159(b)

The MMS received 128 comments from 34 commenters on § 206.159(b), which provides for a processing allowance determination where the lessee has a non-arm's-length contract for processing or no contract. One hundred comments were from industry commenters, 19 were from industry trade organizations, 2 were from a State representative, 1 was from a Federal agency, 1 was from an interest owner, 4 were from local businesses, and 1 was from a town mayor.

The major issues addressed regarding this section were (1) the requirement of a lessee's actual costs versus use of a benchmark system, (2) the use of "Alternative 1" or "Alternative 2" for depreciation or a return on capital investment, and (3) the rate of return on capital investment. These issues are basically the same as for the transportation allowance and have been responded to. However, some comments were specific to processing costs.

Seventeen industry and four industry trade organizations disagreed with the proposal under this section to base allowances on cost accounting procedures.

Six industry commenters and two industry trade groups explicitly voiced their support for a market value concept; i.e., MMS should accept the market value of service for the allowance determination. One industry commenter added that under the proposed methodology, MMS ignores "competitive market forces." Another industry commenter requested that MMS adopt a "market-oriented" approach. Still another industry commenter stated that if a non-arm's-length contract for processing reflects the market value for that service, it should be acceptable.

Twelve industry commenters and four industry trade commenters specifically recommended that MMS should adopt a benchmark system for allowance determinations under this section. These commenters suggested that comparable arm's-length contracts be used to determine the allowance for non-arm's-length processing arrangements in the same facility. One of the industry commenters added that the use of comparable arm's-length contracts will reduce the number of adjustments and other records to be filed.

One State representative opposed a benchmark system.

Four industry commenters and one industry trade group complained that cost accounting is a departure from the valuation requirements and that it discriminates against lessee affiliates.

Another industry commenter recommended that if plant ownership interest is sufficiently small, it should be treated as an arm's-length arrangement.

MMS Response: The MMS considered a benchmark valuation system featuring comparable arm's-length contracts to determine processing allowances, with cost accounting being used as a last resort. MMS concluded that such a procedure is not the fairest and best way to determine gas processing allowances considering the overall interests of industry, the Federal Government, States, and Indian Tribes. The MMS does not believe that allowances generally should be valued on a "market-based system" the way products are valued for royalty determination purposes for several reasons.

First, if the benchmark valuation system were used to determine processing allowances, virtually any MMS oversight of the allowance program would be eliminated. Second, the determination of an allowance on a "market-based system" would not be representative of a lessee's actual, reasonable costs. Third, if one lessee bases its allowance on actual costs, and another lessee processing gas in the same facility bases its allowance on market value, an inequity will result.

For these reasons, MMS has decided that generally the gas processing allowance is best determined on actual, reasonable costs plus a return on undepreciated capital investment, or its initial capital investment. However, MMS has included in § 206.159(b)(4) of the final rules a provision whereby a lessee may apply to MMS for an exception from the requirement to use actual costs. MMS may grant such an exception, at its discretion, only if three conditions are met: (1) The lessee has arm's-length contracts for processing other gas production at the same processing plant; (2) at least 50 percent of the gas processed at the plant is processed pursuant to arm's-length processing contracts; and (3) the persons purchasing processing services from the lessee had a reasonable alternative to processing at the lessee's plant. If the exception is granted, the lessee must use as its allowance the volume-weighted average of the prices it charges other persons pursuant to arm's-length contracts at the same plant. MMS is satisfied that if these conditions are met, the processing allowance will reflect the market and that MMS will be able to monitor the use of these allowances.

Two industry commenters stated that State and Federal income taxes should be considered as allowable costs on the premise that such costs are real, tangible costs to the lessee.

Two other industry commenters suggested that plant dismantling and abandonment costs should be allowable, advising that such costs are a real cost of doing business.

MMS Response: The MMS views income taxes to be an apportionment of profit rather than a valid operating expense. Therefore, income taxes are not an appropriate expense that should be included in the processing allowance. The MMS takes the position that because it does not participate in the profit or losses from the sale of processing facilities, no costs for dismantling and abandonment should be included in processing allowances.

The basic issue regarding requirements to allocate processing costs among all plant products is discussed under § 206.158(b). However, specific comments pertaining to the allocation under non-arm's-length and no-contract situations are discussed here.

Three industry commenters disagreed with the requirement to allocate costs on generally accepted oil and gas accounting principles. One of these commenters recommended deleting this requirement. The other two commenters advised that generally accepted principles for cost allocation do not exist. One commenter suggested instead that allocations be based on (1) cost-benefit analysis, and (2) cause-and-effect relationships.

One industry commenter recommended that this requirement be modified to include an allocation of costs to residue gas.

MMS Response: The MMS believes that, if cost-benefit analysis and cause-and-effect relationships are generally acceptable procedures in cost allocation, these procedures would be acceptable to MMS. MMS will consider cost allocation procedures for unique situations on the basis of individual cases in order to arrive at an equitable allocation procedure. As stated previously, MMS believes that it is not appropriate to allocate processing costs to residue gas.

Section 206.159(c)

The MMS received 28 comments from 19 respondents on this section which addresses reporting requirements for processing allowances. Twenty comments were from industry parties, 7 from industry trade organizations, and 1 was from an Indian Tribe. Again, this section is virtually identical to the corresponding provision for transportation allowances, and the response to comments for that section is, for the most part, applicable here.

The two major areas of concern were (1) use of Form MMS–4109, and (2) the terms of the reporting periods and filing timetables.

Five industry commenters, two industry trade groups, and one Indian Tribe expressed some opposition to Form MMS–4109. One industry respondent and one industry trade group objected to commenting on the form until it is published, adding that it should not conflict with any rights of the lessee. Four industry commenters and one industry trade group opposed the filing of Form MMS–4109 at all. One of the four industry commenters stated that processing rates under an arm's-length or non-arm's-length contract should be accepted at face value. The industry trade group claimed that filing of the form would be an unnecessary burden for both industry and MMS. Another industry commenter stated that it opposed any reporting requirements such as annual renewals or contract change updates. The Tribe opposed industry taking an allowance on the honor system and merely filing a form to claim it.

MMS Response: The MMS believes that Form MMS–4109 must be required in order for MMS to monitor the processing allowance program. The MMS believes it can effectively monitor the processing allowance deductions without the preapproval of the allowances. The MMS has made the information on Form MMS–4109 as clear and uncomplicated as possible considering the complex nature of processing allowances. The filing of a Form MMS–4109 does not conflict with any lease provisions or rights of the lessees. The MMS agrees that the proposed procedure for determining a processing allowance places a great deal of reliance on the gas industry. However, this program will be under continuous review and oversight by MMS. Thus, the ability to effectively review, evaluate, and audit processing allowances has been maintained under the new regulations.

The initial concern about reporting periods was MMS's proposal to create a new reporting period for all allowances which would commence the date the new regulations are effective. Five industry commenters and three industry trade groups opposed this, recommending instead that all existing allowances be grandfathered under the new regulations. Another industry commenter requested 180 days for conversion to the new reporting period.

Another topic addressed by the respondents was the term of the reporting period. Six industry commenters and one industry trade group favored a reporting period that extends as long as the contract terms are effective, instead of an arbitrary 12-month period. One of the industry commenters stated that resources are wasted by requiring the lessee to file year after year even though there are no changes. However, one industry commenter and one industry trade group endorsed the 12-month reporting period. The industry commenter specifically requested a calendar-year period.

Two industry commenters recommended a longer grace period in which to file subsequent Forms MMS–4109. These commenters both suggested 120 days to file updated forms.

MMS Response: The MMS concurs with a 12-month term and the regulations have been changed to allow filing of Form MMS–4109 by calendar year. The regulations have also been changed to allow a grace period of 3 months. The MMS also decided that existing allowances will continue in effect until they expire, subject to later audit, with the exception of processing allowances for OCS production which are based on non-arm's-length or no-contract situations. Because these allowances are based upon a procedure radically different from the procedure adopted in the final rule, they will continue in effect until they expire or until the end of the calendar year, whichever occurs first.

Section 206.159(d)

This section is the same as for transportation allowances. If a lessee deducts a processing allowance without filing the proper forms, it will owe interest on the amount of the deduction until the proper forms are filed, subject to the 3-month retroactivity provision.

Section 206.159(e)

The MMS received 21 comments from 12 commenters on this section. Eighteen comments were from industry, and 3 were from industry trade organizations.

As with transportation allowance adjustments, the issues were (1) the requirement to file adjustments, (2) the refund procedure under section 10 of the OCS Lands Act, and (3) the payment of interest.

It was the general consensus that adjustments were a very large burden on both industry and MMS and that some way should be found to eliminate the need for so many adjustments resulting from differences between actual and estimated processing allowances. Six industry representatives and two industry trade groups recommended that positive or negative differences between estimated and actual costs should be rolled forward into the processing allowance for the subsequent period, or prospectively.

One industry commenter asserted that retroactive adjustments should not be necessary if the actual allowance falls within an allowable range of the estimated allowance, and two other industry commenters suggested rolling forward small differences into next year's costs within an allowable range.

One industry commenter proposed single entry adjustments for an entire year instead of month-by-month adjustments. This party also made the comment that if a market-based allowance was permitted, it would be more certain and fewer adjustments would be necessary.

MMS Response: The MMS expended considerable effort in an attempt to

arrive at an accounting methodology that would eliminate retroactive adjustments of processing allowances and continue to be fair to industry, MMS, and Indian lessors, but was unable to do so.

One industry representative stated that overpayments, when estimates were less than actual costs, should not be judged as refunds of a payment of royalty under section 10 of the OCS Lands Act because estimates are not "actual" payments of royalty. Overpayments could then be treated as line-item adjustments not subject to the refund process.

MMS Response: The refund procedure will not be specified in these regulations. MMS is reviewing the issue and will provide guidance to the lessees on refund procedures.

Three industry representatives commented that the MMS-proposed procedure for handling interest payments was not fair. These commenters believed that if the lessee must pay any difference plus interest, MMS should also pay any difference plus any interest statutorily authorized. Another issue of concern was the payment of interest requirement.

MMS Response: The MMS has no legal authority to pay interest to lessees on their overpayments.

Section 206.159(f)

This section requires that the provisions in this section will apply to determine processing costs in situations where value must be established under other methods such as net-back.

The MMS received one comment on this section. One industry commenter recommended that the definition of "net-back method" be clarified.

MMS Response: A definition of the net-back method has been included in § 206.151, which is slightly different from that proposed. The MMS believes this revised definition clarifies MMS's intent.

IV. Procedural Matters

Executive Order 12291

The Department of the Interior (DOI) has determined that this document is not a major rule and does not require a regulatory analysis under Executive Order 12291. This proposed rulemaking is to consolidate Federal and Indian gas royalty valuation regulations, to clarify the DOI gas royalty valuation policy, and to provide for consistent royalty valuation policy among all leasable minerals.

Regulatory Flexibility Act

Because this rule primarily consolidates and streamlines existing regulations for consistent application, there are no significant additional requirements or burdens placed upon small business entities as a result of implementation of this rule. Therefore, the DOI has determined that this rulemaking will not have a significant economic effect on a substantial number of small entities and does not require a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act

The information collection and recordkeeping requirements located at §§ 206.157 and 206.159 of this rule have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1010–0075.

Lessee reporting requirements will be reduced. All gas sales contracts, transportation agreements and gas processing contracts, as well as any other agreements affecting value, will be required to be retained by the lessee, but will only be required to be submitted upon request rather than routinely, as under the existing regulations.

National Environmental Policy Act of 1969

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

List of Subjects

30 CFR Part 202

Continental shelf, Government contracts, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 206

Continental shelf, Geothermal energy, Government contracts, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated:

Assistant Secretary Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR Parts 202 and 206 are amended as follows:

TITLE 30—MINERAL RESOURCES

CHAPTER II—MINERALS MANAGEMENT SERVICE, DEPARTMENT OF THE INTERIOR

Subchapter A—Royalty Management

PART 202—ROYALTY RATES AND RENTALS

1. The authority citation for Part 202 is revised to read as follows:

Authority: 25 U.S.C. 396 *et seq.;* 25 U.S.C. 396a *et seq.;* 25 U.S.C. 2101 *et seq.;* 30 U.S.C. 181 *et seq.;* 30 U.S.C. 351 *et seq.;* 30 U.S.C. 1001 *et seq.;* 30 U.S.C. 1701 *et seq.;* 43 U.S.C. 1301 *et seq.;* 43 U.S.C. 1331 *et seq.;* and 43 U.S.C. 1801 *et seq.*

§§ 202.150, 202.151 and 202.152 [Redesignated as §§ 202.100, 202.53 and 202.52]

2. Sections 202.150, 202.151 and 202.152 of Subpart D are redesignated as new §§ 202.100 under Subpart C, 202.53 and 202.52 under Subpart B, respectively.

3. A new Subpart D consisting of §§ 202.150, 202.151, and 202.152 is added to read as follows:

Subpart D—Federal and Indian Gas

Sec.
202.150 Royalty on gas.
202.151 Royalty on processed gas.
202.152 Standards for reporting and paying royalties on gas.

Subpart D—Federal and Indian Gas

§ 202.150 Royalty on gas.

(a) Royalties due on gas production from leases subject to the requirements of this Part, except helium produced from Federal leases, shall be at the rate established by the terms of the lease. Royalty shall be paid in value unless MMS requires payment in kind. When paid in value, the royalty due shall be the value, for royalty purposes, determined pursuant to Part 206 of this title multiplied by the royalty rate in the lease.

(b) All gas (except gas unavoidably lost from the lease site or used on, or for the benefit of, the lease, including that gas used off-lease for the benefit of the lease when such off-lease use is permitted by the appropriate agency) produced from a Federal or Indian lease to which this Part applies is subject to royalty. Where the terms of any lease are inconsistent with this section, the lease terms shall govern to the extent of that inconsistency.

(c) If BLM determines that gas was avoidably lost or wasted from an onshore lease, or that gas was drained from an onshore lease for which compensatory royalty is due, or if MMS

determines that gas was avoidably lost or wasted from an OCS lease, then the value of that gas shall be determined in accordance with Part 206 of this title.

(d) In those instances where the lessee of any lease committed to a Federally approved unitization or communitization agreement does not actually take the proportionate share of the production attributable to its Federal or Indian lease under the terms of the agreement, the full share of production attributable to the lease under the terms of the agreement nonetheless is subject to the royalty payment and reporting requirements of this title. The value for royalty purposes of that production will be determined in accordance with Part 206 of this title. In applying the requirements of Part 206, the circumstances involved in the actual disposition of the portion of the production to which the lessee was entitled but did not take shall be considered as controlling in arriving at the value for royalty purposes of that portion, as if the person actually selling or disposing of the production were the lessee of the Federal or Indian lease.

§ 202.151 Royalty on processed gas.

(a) A royalty as provided in the lease shall be paid on the value of the residue gas and all gas plant products resulting from processing the gas produced from a lease subject to this part. The MMS shall authorize a processing allowance for the reasonable, actual costs of processing the gas produced from Federal and Indian leases. Processing allowances shall be determined in accordance with Subpart D of Part 206 of this title.

(b) A reasonable amount of residue gas shall be allowed royalty free for operation of the processing plant, but no allowance shall be made for boosting residue gas or other expenses incidental to marketing, except as provided in Part 206 of this title.

(c) No royalty is due on residue gas, or any gas plant product resulting from processing gas, which is reinjected into a reservoir within the same lease, unit area, or communitized area, when the reinjection is included in a plan of development or operations and the plan has received BLM or MMS approval for onshore or offshore operations, respectively, until such time as they are finally produced from the reservoir for sale or other disposition off-lease.

§ 202.152 Standards for reporting and paying royalties on gas.

(a)(1) Gas volumes and Btu heating values, if applicable, shall be determined under the same degree of water saturation. Gas volumes shall be reported in units of one thousand cubic feet (mcf), and Btu heating value shall be reported at a rate of Btu's per cubic foot, at a standard pressure base of 14.73 pounds per square inch absolute (psia) and a standard temperature base of 60 °F, except that for OCS leases in the Gulf of Mexico, gas volumes and Btu heating values shall be reported at a standard pressure base of 15.025 psia and a standard temperature base of 60 °F. Gas volumes and Btu heating values shall be reported, for royalty purposes, on the same water vapor saturated or unsaturated basis prescribed by Federal Energy Regulatory Commission (FERC) regulation, or on the basis prescribed in the lessee's gas sales contract provided that the sales contract does not conflict with FERC regulation.

(2) The frequency and method of Btu measurement as set forth in the lessee's contract shall be used to determine Btu heating values for reporting purposes. However, the lessee shall measure the Btu value at least semiannually by recognized standard industry testing methods even if the lessee's contract provides for less frequent measurement.

(b)(1) Residue gas and gas plant product volumes shall be reported as specified in this paragraph.

(2) Carbon dioxide (CO_2), nitrogen (N), helium (He), residue gas, and any other gas marketed as a separate product shall be reported by using the same standards specified in paragraph (a) of this section.

(3) Natural gas liquids (NGL) volumes shall be reported in standard U.S. gallons (231 cubic inches) at 60 °F.

(4) Sulfur (S) volumes shall be reported in long tons (2,240 pounds).

PART 206—PRODUCT VALUATION

1. The authority citation for Part 206 is revised to read as follows:

Authority: 25 U.S.C. 396 *et seq.;* 25 U.S.C. 396a *et seq.;* 25 U.S.C. 2101 *et seq.;* 30 U.S.C. 181 *et seq.;* 30 U.S.C. 351 *et seq.;* 30 U.S.C. 1001 *et seq.;* 30 U.S.C. 1701 *et seq.;* 43 U.S.C. 1301 *et seq.;* 43 U.S.C. 1331 *et seq.;* and 43 U.S.C. 1801 *et seq.*

2. The title of Subpart A is changed to read "Subpart A—General Provisions" and a new § 206.10 is added to Subpart A to read as follows:

Subpart A—General Provisions

§ 206.10 Information collection.

The information collection requirements contained in Part 206 have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* The forms and approved OMB clearance numbers are as follows:

Form No., name, and filing date	OMB No.
MMS–4109—Gas Processing Allowance Summary Report—due within 3 months following the last day of the month for which an allowance is claimed, unless a longer period is approved by MMS	1010–0075
MMS–4110—Gas Transportation Allowance Report—due within 3 months following the last day of the month for which an allowance is claimed, unless a longer period is approved by MMS	1010–0061
MMS–4295—Gas Transportation Allowance Report—due within 3 months following the last day of the month for which an allowance is claimed unless a longer period is approved by MMS	1010–0075

The information is being collected by the Department of the Interior to meet its congressionally mandated accounting and audit responsibilities relating to Federal and Indian mineral royalty management. The information will be used to determine the transportation and processing allowances that may be deducted from royalty payments due on Federal and Indian lands. The reports are required to receive a benefit.

§§ 206.106 and 206.107 [Removed]

3. Sections 206.106 and 206.107 are removed from Subpart C.

4. The Table of Contents for Subpart D is revised to read as follows:

Subpart D—Federal and Indian Gas

Sec.
- 206.150 Purpose and scope.
- 206.151 Definitions.
- 206.152 Valuation standards—unprocessed gas.
- 206.153 Valuation standards—processed gas.
- 206.154 Determination of quantities and qualities for computing royalties.
- 206.155 Accounting for comparison.
- 206.156 Transportation allowances—general.
- 206.157 Determination of transportation allowances.
- 206.158 Processing allowance—general.
- 206.159 Determination of processing allowances.

5. Sections 206.150, 206.151, and 206.152 are revised and new §§ 206.153, 206.154, 206.155, 206.156, 206.157, 206.158, and 206.159 are added to read as follows:

§ 206.150 Purpose and scope.

(a) This subpart is applicable to all gas production from Federal and Indian (Tribal and allotted) oil and gas leases (except leases on the Osage Indian Reservation).

(b) If the specific provisions of any statute, treaty, or oil and gas lease subject to the requirements of this Part are inconsistent with any regulation in this Part, then the lease, statute, or treaty provision shall govern to the extent of that inconsistency.

(c) All royalty payments made to MMS or to any Tribe or allottee are subject to audit and adjustment.

(d) The regulations in this Part are intended to ensure that any responsibilities of the United States with respect to the administration of Indian oil and gas leases are discharged in accordance with the requirements of the governing mineral leasing laws, treaties, and lease terms.

§ 206.151 Definitions.

For purposes of this Part (and Parts 202, 203, 207, 210 and 241 of this chapter):

"Allowance" means an approved or an MMS-initially accepted deduction in determining value for royalty purposes. "Processing allowance" means an allowance for the reasonable, actual costs incurred by the lessee for processing gas, or an approved or MMS-initially accepted deduction for costs of such processing, determined pursuant to this subpart. "Transportation allowance" means an allowance for the reasonable, actual costs incurred by the lessee for moving unprocessed gas, residue gas, or gas plant products to a point of sale or point of delivery off the lease, unit area, communitized area, or away from a processing plant, excluding gathering, or an approved or MMS-initially accepted deduction for costs of such transportation, determined pursuant to this subpart.

"Area" means a geographic region at least as large as the defined limits of an oil and/or gas field, in which oil and/or gas lease products have similar quality, economic, and legal characteristics.

"Arm's-length contract" means a contract or agreement between independent, nonaffiliated persons which reflects the total consideration actually transferred directly or indirectly from the buyer to the seller for the gas, residue gas, or gas plant products. For purposes of this subpart, two persons are affiliated if one person controls, is controlled by, or is under common control with another person. For purposes of this section, based on the instruments of ownership of the voting securities of an entity, or based on other forms of ownership:

(1) Ownership in excess of 50 percent constitutes control;

(2) Ownership of 20 through 50 percent creates a presumption of control; and

(3) Ownership of less than 20 percent creates a presumption of noncontrol.

Notwithstanding any other provisions of this section, contracts between relatives, either by blood or by marriage, are not arm's-length contracts. The MMS may require the lessee to certify ownership control. To be considered arm's-length for any production month, a contract must meet the requirements of this definition for that production month as well as when the contract was executed.

"Audit" means a review, conducted in accordance with generally accepted accounting and auditing standards, of royalty payment compliance activities of lessees or other interest holders who pay royalties, rents, or bonuses on Federal and Indian leases.

"BIA" means the Bureau of Indian Affairs of the Department of the Interior.

"BLM" means the Bureau of Land Management of the Department of the Interior.

"Compression" means the process of raising the pressure of gas.

"Condensate" means liquid hydrocarbons (normally exceeding 40 degrees of API gravity) recovered at the surface without resorting to processing. Condensate is the mixture of liquid hydrocarbons that results from condensation of petroleum hydrocarbons existing initially in a gaseous phase in an underground reservoir.

"Contract" means any oral or written agreement, including amendments or revisions thereto, between two or more persons and enforceable by law that with due consideration creates an obligation.

"Field" means a geographic region situated over one or more subsurface oil and gas reservoirs encompassing at least the outermost boundaries of all oil and gas accumulations known to be within those reservoirs vertically projected to the land surface. Onshore fields are usually given names and their official boundaries are often designated by oil and gas regulatory agencies in the respective States in which the fields are located. Outer Continental Shelf (OCS) fields are named and their boundaries are designated by MMS.

"Gas" means any fluid, either combustible or noncombustible, hydrocarbon or nonhydrocarbon, which is extracted from a reservoir and which has neither independent shape nor volume, but tends to expand indefinitely. It is a substance that exists in a gaseous or rarefied state under standard temperature and pressure conditions.

"Gas plant products" means separate marketable elements, compounds, or mixtures, whether in liquid, gaseous, or solid form, resulting from processing gas, excluding residue gas.

"Gathering" means the movement of lease production to a central accumulation and/or treatment point on the lease, unit or communitized area, or to a central accumulation or treatment point off the lease, unit or communitized area as approved by BLM or MMS OCS operations personnel for onshore and OCS leases, respectively.

"Gross proceeds" (for royalty payment purposes) means the total monies and other consideration paid to an oil and gas lessee for the disposition of unprocessed gas, residue gas, or gas plant products. Gross proceeds includes, but is not limited to, payments to the lessee for certain services such as compression, dehydration, measurement, and/or field gathering to the extent that the lessee is obligated to perform them at no cost to the Federal Government or Indian lessor, and payments for gas processing rights. Gross proceeds, as applied to gas, also includes but is not limited to: take-or-pay payments; reimbursements for severance taxes; and other reimbursements. Tax reimbursements are part of the gross proceeds accruing to a lessee even though the Federal or Indian royalty interest may be exempt from taxation. Payments or credits for advanced exploration or development costs or prepaid reserve payments that are subject to recoupment through credits against the purchase price or through reduced prices in later sales and which are made before production commences become part of gross proceeds as of the time of first production. Monies and other consideration including the forms of consideration identified in this paragraph, to which a lessee is contractually or legally entitled but which it does not seek to collect through reasonable efforts are also part of gross proceeds.

"Indian allottee" means any Indian for whom land or an interest in land is held in trust by the United States or who holds title subject to Federal restriction against alienation.

"Indian Tribe" means any Indian Tribe, band, nation, pueblo, community, rancheria, colony, or other group of Indians for which any land or interest in land is held in trust by the United States or which is subject to Federal restriction against alienation.

"Lease" means any contract, profit-share arrangement, joint venture, or other agreement issued or approved by the United States under a mineral leasing law that authorizes exploration for, development or extraction of, or removal of lease products—or the land area covered by that authorization, whichever is required by the context.

"Lease products" means any leased minerals attributable to, originating from, or allocated to Outer Continental

Shelf or onshore Federal or Indian leases.

"Lessee" means any person to whom the United States, an Indian Tribe, or an Indian allottee issues a lease, and any person who has been assigned an obligation to make royalty or other payments required by the lease. This includes any person who has an interest in a lease as well as an operator or payor who has no interest in the lease but who has assumed the royalty payment responsibility.

"Like-quality lease products" means lease products which have similar chemical, physical, and legal characteristics.

"Marketable condition" means lease products which are sufficiently free from impurities and otherwise in a condition that they will be accepted by a purchaser under a sales contract typical for the field or area.

"Minimum royalty" means that minimum amount of annual royalty that the lessee must pay as specified in the lease or in applicable leasing regulations.

"Net-back method" (or work-back method) means a method for calculating market value of gas at the lease when value cannot be calculated on the basis of gas or gas plant products of comparable value. Under this method, costs of transportation, processing, or manufacturing are deducted from the ultimate proceeds received for the gas, residue gas or gas plant products, and any extracted, processed, or manufactured products to ascertain value at the lease.

"Net output" means the quantity of residue gas and each gas plant product that a processing plant produces.

"Net profit share" (for applicable Federal and Indian leases) means the specified share of the net profit from production of oil and gas as provided in the agreement.

"Outer Continental Shelf (OCS)" means all submerged lands lying seaward and outside of the area of land beneath navigable waters as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

"Person" means any individual, firm, corporation, association, partnership, consortium, or joint venture.

"Posted price" means the price, net of all adjustments for quality and location, specified in publicly available price bulletins or other price notices available as part of normal business operations for quantities of unprocessed gas, residue gas, or gas plant products in marketable condition.

"Processing" means any process designed to remove elements or compounds (hydrocarbon and nonhydrocarbon) from gas, including absorption, adsorption, or refrigeration. Field processes which normally take place on or near the lease, such as natural pressure reduction, mechanical separation, heating, cooling, dehydration, and compression, are not considered processing. The changing of pressures and/or temperatures in a reservoir is not considered processing.

"Residue gas" means that hydrocarbon gas consisting principally of methane resulting from processing gas.

"Section 6 lease" means an OCS lease subject to section 6 of the Outer Continental Shelf Lands Act, as amended, 43 U.S.C. 1335.

"Selling arrangement" means the individual contractual arrangements under which sales or dispositions of gas, residue gas and gas plant products are made. Selling arrangements are described by illustration in the MMS Royalty Management Program Oil and Gas Payor Handbook.

"Spot sales agreement" means a contract wherein a seller agrees to sell to a buyer a specified amount of unprocessed gas, residue gas, or gas plant products at a specified price over a fixed period, usually of short duration, which does not normally require a cancellation notice to terminate, and which does not contain an obligation, nor imply an intent, to continue in subsequent periods.

"Take-or-pay payment" means any payment received by a lessee under a "take-or-pay" clause in a sales contract. Such clauses normally require the purchaser to take or, failing to take, to pay for a specified minimum volume or other measure of lease products.

"Warranty contract" means a long-term contract entered into prior to 1970, including any amendments thereto, for the sale of gas wherein the producer agrees to sell a specific amount of gas and the gas delivered in satisfaction of this obligation may come from fields or sources outside of the designated fields.

§ 206.152 Valuation standards—unprocessed gas.

(a)(1) This section applies to the valuation of all gas that is not processed and all gas that is processed but is sold or otherwise disposed of by the lessee pursuant to an arm's-length contract prior to processing. Where the lessee's contract includes a reservation of the right to process the gas and the lessee exercises that right, or where the lessee's contract for the sale of gas prior to processing provides for the value to be determined based upon a percentage of the purchaser's proceeds resulting from processing the gas, § 206.153 shall apply instead of this section. This section also applies to processed gas which must be valued prior to processing in accordance with § 206.155.

(2) The value, for royalty purposes, of gas subject to this section shall be the value of gas determined pursuant to this section less applicable allowances determined pursuant to this subpart.

(3)(i) For any Indian leases which provide that the Secretary may consider the highest price paid or offered for a major portion (major portion) in determining value for royalty purposes, if data are available to compute a major portion MMS will, where practicable, compare the value determined in accordance with this section with the major portion. The value to be used in determining the value for royalty purposes shall be the higher of those two values unless MMS determines that the value for royalty purposes determined in accordance with the other provisions of this section is the highest reasonable royalty value.

(ii) For purposes of this paragraph, major portion means the highest price paid or offered at the time of production for the major portion of gas production from the same field. The major portion will be calculated using like-quality gas from the same field (or, if necessary to obtain a reasonable sample, from the same area) for each month. All such sales will be arrayed from highest price to lowest price (at the bottom). The major portion is that price at which 50 percent (by volume) plus 1 mcf of the gas (starting from the bottom) is sold.

(b)(1) The value of gas which is sold pursuant to an arm's-length contract shall be the gross proceeds accruing to the lessee. The value which the lessee reports, for royalty purposes, is subject to monitoring, review, and audit. In conducting these reviews and audits, MMS will determine whether the contract reflects the total consideration actually transferred either directly or indirectly from the buyer to the seller for the gas, or whether there may be factors which would cause the contract not to be arm's-length. The MMS may direct a lessee to pay royalty based upon a different value if it determines that the lessee's reported value is inconsistent with the requirements of these regulations.

(2) Notwithstanding the provisions of paragraph (b)(1) of this section, the value of gas sold pursuant to a warranty contract shall be determined by MMS, and due consideration will be given to all valuation criteria specified in this

section. The lessee must request a value determination in accordance with paragraph (g) of this section for gas sold pursuant to a warranty contract; *Provided, however,* that any value determination for a warranty contract in effect on the effective date of these regulations shall remain in effect until modified by MMS.

(3) MMS may require a lessee to certify that its arm's-length contract provisions include all of the consideration to be paid by the buyer for the gas.

(c) The value of gas subject to this section which is not sold pursuant to an arm's-length contract shall be the reasonable value determined in accordance with the first applicable of the following paragraphs (c)(1) through (c)(4) of this section.

(1) The gross proceeds accruing to the lessee pursuant to a sale under its non-arm's-length contract (or other disposition other than by an arm's-length contract), provided that those gross proceeds are equivalent to the lessee's (including any affiliates of the lessee) gross proceeds derived from, or paid under, comparable arm's-length contracts for purchases, sales, or other dispositions of like-quality gas in the same field or area. In evaluating the comparability of arm's-length contracts for the purposes of these regulations, the following factors shall be considered: Price, time of execution, duration, market or markets served, terms, quality of gas, volume, and such other factors as may be appropriate to reflect the value of the gas;

(2) The gross proceeds accruing to the lessee pursuant to a sale under its non-arm's-length contract (or other disposition other than by an arm's-length contract) provided that those gross proceeds are equivalent to the gross proceeds under comparable arm's-length contracts between other persons for purchases, sales, or other dispositions of like-quality gas in the same field or area. Comparability shall be determined using the same criteria as specified in paragraph (c)(1) of this section;

(3) A value determined by consideration of other information relevant in valuing like-quality gas, including gross proceeds under arm's-length contracts for like-quality gas in nearby fields or areas, posted prices for gas, prices received in arm's-length spot sales of gas, other reliable public sources of price or market information, and other information as to the particular lease operation or the saleability of the gas; or

(4) A net-back method or any other reasonable method to determine value.

(d) Notwithstanding any other provisions of this section, except paragraph (h) of this section, if the maximum price permitted by Federal law at which gas may be sold is less than the value determined pursuant to this section, then MMS shall accept such maximum price as the value. This limitation shall not apply to gas sold pursuant to a warranty contract and valued pursuant to paragraph (b)(2) of this section.

(e)(1) Where the value is determined pursuant to paragraph (c)(2) of this section, the lessee shall retain all data relevant to the determination of royalty value. Such data shall be subject to review and audit, and MMS will direct a lessee to use a different value if it determines that the reported value is inconsistent with the requirements of these regulations.

(2) Any Federal or Indian lessee will make available upon request to the authorized MMS, State, or Indian representatives, or to the Office of the Inspector General of the Department of the Interior, the General Accounting Office or other person authorized to receive such information, arm's-length sales and volume data for like-quality production sold, purchased or otherwise obtained by the lessee from the field or area or from nearby fields or areas.

(3) A lessee shall notify MMS if it has determined value pursuant to paragraph (c) (3) or (4) of this section. The notification shall be by letter to the MMS Associate Director for Royalty Management or his/her designee. The letter shall identify the valuation method to be used and contain a brief description of the procedure to be followed. The notification required by this section is a one-time notification due no later than the month the lessee first reports royalties on a Form MMS–2014 using a valuation method authorized by paragraph (c) (3) or (4) of this section, and each time there is a change in a method under paragraph (c) (3) or (4) of this section.

(f) If MMS determines that a lessee has not properly determined value, the lessee shall pay the difference, if any, between royalty payments made based upon the value it has used and the royalty payments that are due based upon the value established by MMS. The lessee shall also pay interest computed pursuant to 30 CFR 218.54. If the lessee is entitled to a credit, MMS will provide instructions for the taking of that credit.

(g) The lessee may request a value determination from MMS. In that event, the lessee shall propose to MMS a value determination method, and may use that method in determining value for royalty purposes until MMS issues its decision. The lessee shall submit all available data relevant to its proposal. The MMS shall expeditiously determine the value based upon the lessee's proposal and any additional information MMS deems necessary. That determination shall remain effective for the period stated therein. After MMS issues its determination, the lessee shall make the adjustments in accordance with paragraph (f) of this section.

(h) Notwithstanding any other provision of this section, under no circumstances shall the value for royalty purposes be less than the gross proceeds accruing to the lessee for lease production, less applicable allowances determined pursuant to this subpart.

(i)(1) The lessee is required to place gas in marketable condition at no cost to the Federal Government or Indian lessor unless otherwise provided in the lease agreement or this section. Where the value established pursuant to this section is determined by a lessee's gross proceeds, that value shall be increased to the extent that the gross proceeds have been reduced because the purchaser, or any other person, is providing certain services the cost of which ordinarily is the responsibility of the lessee to place the gas in marketable condition.

(2) If the lessee incurs extraordinary costs for the gathering, compression, dehydration, or sweetening of gas production subject to this section from frontier or deep-water areas, or from a gas production operation recognized by MMS as unique, and those costs relate to unusual or unconventional operations, it may apply to MMS for an allowance. Such an allowance may be granted only if:

(i) The costs are associated with leases located north of the Arctic Circle, the costs are associated with OCS leases located in water depths in excess of 400 meters, or the costs are associated with a unique gas production operation which MMS approves as eligible for the provisions of this paragraph; and

(ii) The lessee can demonstrate that the costs are, by reference to standard industry conditions and practice, extraordinary, unusual, or unconventional.

(3) The MMS shall determine the amount of the extraordinary cost allowance which shall remain in effect for the period specified in the approval, not to exceed 1 year. To retain the authority to deduct the allowance, the lessee must report the deduction to MMS at the end of the approval period, and annually thereafter, in a form and

manner prescribed by MMS. The MMS annually shall reconsider whether a unique gas production operation will continue to be eligible for an extraordinary cost allowance determined in accordance with this paragraph. Extraordinary cost allowance deductions are subject to monitoring, review, audit, and adjustment.

(j) Value shall be based on the highest price a prudent lessee can receive through legally enforceable claims under its contract. If there is no contract revision or amendment, and the lessee fails to take proper or timely action to receive prices or benefits to which it is entitled, it must pay royalty at a value based upon that obtainable price or benefit. Contract revisions or amendments shall be in writing and signed by all parties to an arm's-length contract. If the lessee makes timely application for a price increase or benefit allowed under its contract but the purchaser refuses, and the lessee takes reasonable measures, which are documented, to force purchaser compliance, the lessee will owe no additional royalties unless or until monies or consideration resulting from the price increase or additional benefits are received. This paragraph shall not be construed to permit a lessee to avoid its royalty payment obligation in situations where a purchaser fails to pay, in whole or in part or timely, for a quantity of gas.

(k) Notwithstanding any provision in these regulations to the contrary, no review, reconciliation, monitoring, or other like process that results in a redetermination by the MMS of value under this section shall be considered final or binding as against the Federal Government, its beneficiaries, the Indian Tribes, or allottees until the audit period is formally closed.

(l) Certain information submitted to MMS to support valuation proposals, including transportation or extraordinary cost allowances, is exempted from disclosure by the Freedom of Information Act, 5 U.S.C. 552, or other Federal Law. Any data specified by law to be privileged, confidential, or otherwise exempt may be maintained in a confidential manner in accordance with applicable law and regulations. All requests for information about determinations made under this part are to be submitted in accordance with the Freedom of Information Act regulation of the Department of the Interior, 43 CFR Part 2. Nothing in this section is intended to limit or diminish in any manner whatsoever the right of an Indian lessor to obtain any and all information as such lessor may be lawfully entitled from MMS or such lessor's lessee directly under the terms of the lease, 30 U.S.C. 1733, or other applicable law.

§ 206.153 Valuation standards—processed gas.

(a)(1) This section applies to the valuation of all gas that is processed by the lessee and any other gas production to which this part applies and that is not subject to the valuation provisions of § 206.152 of this part. This section applies where the lessee's contract includes a reservation of the right to process the gas and the lessee exercises that right, or where the lessee's contract for the sale of gas prior to processing provides for the value to be determined based upon a percentage of the purchaser s proceeds resulting from processing the gas.

(2) The value, for royalty purposes, of gas subject to this section shall be the combined value of the residue gas and all gas plant products determined pursuant to this section, less applicable transportation allowances, processing allowances, or other allowances determined pursuant to this subpart.

(3)(i) For any Indian leases which provide that the Secretary may consider the highest price paid or offered for a major portion of production (major portion) in determining value for royalty purposes, if data are available to compute a major portion MMS will, where practicable, compare the values determined in accordance with this section for any lease product with the major portion determined for that lease product. The value to be used in determining value for royalty purposes shall be the higher of those two values unless MMS determines that the value determined in accordance with the other provisions of this section is the highest reasonable royalty value.

(ii) For purposes of this paragraph, major portion means the highest price paid or offered at the time of production for the major portion of gas production from the same field, or for residue gas or gas plant products from the same processing plant, as applicable. The major portion will be calculated using like-quality lease products from the same field or processing plant (or, if necessary to obtain a reasonable sample, from the same area or nearby processing plants) for each month. All such sales will be arrayed from highest price to lowest price (at the bottom). The major portion is that price at which 50 percent (by volume) plus 1 mcf of the gas (starting from the bottom) is sold, or for gas plant products, 50 percent (by volume) plus 1 unit.

(b)(1) The value of the residue gas or any gas plant product which is sold pursuant to an arm's-length contract shall be the gross proceeds accruing to the lessee. The value that the lessee reports for royalty purposes is subject to monitoring, review, and audit. In conducting these reviews and audits, MMS will determine whether the contract reflects the total consideration actually transferred either directly or indirectly from the buyer to the seller for the residue gas or gas plant product, or whether there may be factors which would cause the contract not to be deemed arm's-length. The MMS may direct a lessee to pay royalty upon a different value if it determines that the lessee's reported value is inconsistent with the requirements of these regulations.

(2) Notwithstanding the provisions of paragraph (b)(1) of this section, the value of residue gas sold pursuant to a warranty contract shall be determined by MMS, and due consideration will be given to all valuation criteria specified in this section. The lessee must request a value determination in accordance with paragraph (g) of this section for gas sold pursuant to a warranty contract; *Provided, however,* that any value determination for a warranty contract in effect on the effective date of these regulations shall remain in effect until modified by MMS.

(3) MMS may require a lessee to certify that its arm's-length contract provisions include all of the consideration to be paid by the buyer for the residue gas or gas plant product.

(c) The value of residue gas or any gas plant product which is not sold pursuant to an arm's-length contract shall be the reasonable value determined in accordance with the first applicable of the following paragraphs:

(1) The gross proceeds accruing to the lessee pursuant to a sale under its non-arm's-length contract (or other disposition other than by an arm's-length contract), provided that those gross proceeds are equivalent to the lessee's (including any affiliates of the lessee) gross proceeds derived from, or paid under, comparable arm's-length contracts for purchases, sales, or other dispositions of like-quality residue gas or gas plant products from the same processing plant. In evaluating the comparability of arm's-length contracts for the purposes of these regulations, the following factors shall be considered: Price, time of execution, duration, market or markets served, terms, quality of residue gas or gas plant products, volume, and such other factors as may

be appropriate to reflect the value of the residue gas or gas plant products;

(2) The gross proceeds accruing to the lessee pursuant to a sale under its non-arm's-length contract (or other disposition other than by an arm's-length contract), provided that those gross proceeds are equivalent to the gross proceeds under comparable arm's-length contracts between other persons for purchases, sales, or other dispositions of like-quality residue gas or gas plant products from the same processing plant. Comparability shall be determined using the same criteria as specified in paragraph (c)(1) of this section;

(3) A value determined by consideration of other information relevant in valuing like-quality residue gas or gas plant products, including gross proceeds under arm's-length contracts for like-quality residue gas or gas plant products from other nearby processing plants, posted prices for residue gas or gas plant products, prices received in spot sales of residue gas or gas plant products, other reliable public sources of price or market information, and other information as to the particular lease operation or the saleability of such residue gas or gas plant products; or

(4) A net-back method or any other reasonable method to determine value.

(d) Notwithstanding any other provisions of this section, except paragraph (h) of this section, if the maximum price permitted by Federal law at which any residue gas or gas plant products may be sold is less than the value determined pursuant to this section, then MMS shall accept such maximum price as the value. This limitation shall not apply to residue gas sold pursuant to a warranty contract and valued pursuant to paragraph (b)(2) of this section.

(e)(1) Where the value is determined pursuant to paragraph (c) of this section, the lessee shall retain all data relevant to the determination of royalty value. Such data shall be subject to review and audit, and MMS will direct a lessee to use a different value if it determines upon review or audit that the reported value is inconsistent with the requirements of these regulations.

(2) Any Federal or Indian lessee will make available upon request to the authorized MMS, State, or Indian representatives, or to the Office of the Inspector General of the Department of the Interior, the General Accounting Office or other persons authorized to receive such information, arm's-length sales and volume data for like-quality residue gas and gas plant products sold, purchased or otherwise obtained by the lessee from the same processing plant or from nearby processing plants.

(3) A lessee shall notify MMS if it has determined any value pursuant to paragraph (c) (3) or (4) of this section. The notification shall be by letter to the MMS Associate Director for Royalty Management or his/her designee. The letter shall identify the valuation method to be used and contain a brief description of the procedure to be followed. The notification required by this section is a one-time notification due no later than the month the lessee first reports royalties on a Form MMS–2014 using a valuation method authorized by paragraph (c) (3) or (4) of this section, and each time there is a change in a method under paragraph (c) (3) or (4) of this section.

(f) If MMS determines that a lessee has not properly determined value, the lessee shall pay the difference, if any, between royalty payments made based upon the value it has used and the royalty payments that are due based upon the value established by MMS. The lessee shall also pay interest computed pursuant to § 218.54 of this title. If the lessee is entitled to a credit, MMS will provide instructions for the taking of that credit.

(g) The lessee may request a value determination from MMS. In that event, the lessee shall propose to MMS a value determination method, and may use that method in determining value for royalty purposes until MMS issues its decision. The lessee shall submit all available data relevant to its proposal. The MMS shall expeditiously determine the value based upon the lessee's proposal and any additional information MMS deems necessary. That determination shall remain effective for the period stated therein. After MMS issues its determination, the lessee shall make the adjustments in accordance with paragraph (f) of this section.

(h) Notwithstanding any other provision of this section, under no circumstances shall the value for royalty purposes be less than the gross proceeds accruing to the lessee for residue gas and/or any gas plant products, less applicable transportation allowances, processing allowances, or other allowances determined pursuant to this subpart.

(i)(1) The lessee is required to place residue gas and gas plant products in marketable condition at no cost to the Federal Government or Indian lessor unless otherwise provided in the lease agreement or this section. Where the value established pursuant to this section is determined by a lessee's gross proceeds, that value shall be increased to the extent that the gross proceeds have been reduced because the purchaser, or any other person, is providing certain services the cost of which ordinarily is the responsibility of the lessee to place the residue gas or gas plant products in marketable condition.

(2) If the lessee incurs extraordinary costs prior to processing for the gathering, compression, dehydration, or sweetening of gas production subject to this section from frontier or deep-water areas, or from a gas production operation recognized by MMS as unique, and those costs relate to unusual or unconventional operations, it may apply to MMS for an allowance. Such an allowance may be granted only if:

(i) The costs are associated with leases located north of the Arctic Circle, the costs are associated with OCS leases located in water depths in excess of 400 meters, or the costs are associated with a unique gas production operation which MMS approves as eligible for the provisions of this paragraph; and

(ii) The lessee can demonstrate that the costs are, by reference to standard industry conditions and practice, extraordinary, unusual, or unconventional.

(3) The MMS shall determine the amount of the extraordinary cost allowance which shall remain in effect for the period specified in the approval, not to exceed 1 year. To retain the authority to deduct the allowance, the lessee must report the deduction to MMS at the end of the approval period, and annually thereafter, in a form and manner prescribed by MMS. MMS annually shall reconsider whether a unique gas production operation will continue to be eligible for an extraordinary cost allowance determined in accordance with this paragraph. Extraordinary cost allowance deductions are subject to monitoring, review, audit, and adjustment.

(j) Value shall be based on the highest price a prudent lessee can receive through legally enforceable claims under its contract. Absent contract revision or amendment, if the lessee fails to take proper or timely action to receive prices or benefits to which it is entitled it must pay royalty at a value based upon that obtainable price or benefit. Contract revisions or amendments shall be in writing and signed by all parties to an arm's-length contract. If the lessee makes timely application for a price increase or benefit allowed under its contract but the purchaser refuses, and the lessee takes reasonable measures, which are documented, to force purchaser compliance, the lessee will

owe no additional royalties unless or until monies or consideration resulting from the price increase or additional benefits are received. This paragraph shall not be construed to permit a lessee to avoid its royalty payment obligation in situations where a purchaser fails to pay, in whole or in part, or timely, for a quantity of residue gas or gas plant product.

(k) Notwithstanding any provision in these regulations to the contrary, no review, reconciliation, monitoring, or other like process that results in a redetermination by MMS of value under this section shall be considered final or binding against the Federal Government, its beneficiaries, the Indian Tribes, or allottees, until the audit period is formally closed.

(l) Certain information submitted to MMS to support valuation proposals, including transportation allowances, processing allowances or extraordinary cost allowances, is exempted from disclosure by the Freedom of Information Act, 5 U.S.C. 552, or other Federal law. Any data specified by law to be privileged, confidential, or otherwise exempt, may be maintained in a confidential manner in accordance with applicable law and regulations. All requests for information about determinations made under this Part are to be submitted in accordance with the Freedom of Information Act regulation of the Department of the Interior, Title 43 CFR Part 2. Nothing in this section is intended to limit or diminish in any manner whatsoever the right of an Indian lessor to obtain any and all information as such lessor may be lawfully entitled from the MMS or such lessor's lessee directly under the terms of the lease, 30 U.S.C. 1733, or other applicable law.

§ 206.154 Determination of quantities and qualities for computing royalties.

(a)(1) Royalties shall be computed on the basis of the quantity and quality of unprocessed gas at the point of royalty settlement approved by BLM or MMS for onshore and OCS leases, respectively.

(2) If the value of gas determined pursuant to § 206.152 of this part is based upon a quantity and/or quality that is different from the quantity and/or quality at the point of royalty settlement, as approved by BLM or MMS, that value shall be adjusted for the differences in quantity and/or quality.

(b)(1) For residue gas and gas plant products, the quantity basis for computing royalties due is the monthly net output of the plant even though residue gas and/or gas plant products may be in temporary storage.

(2) If the value of residue gas and/or gas plant products determined pursuant to § 206.153 of this part is based upon a quantity and/or quality of residue gas and/or gas plant products that is different from that which is attributable to a lease, determined in accordance with paragraph (c) of this section, that value shall be adjusted for the differences in quantity and/or quality.

(c) The quantity of the residue gas and gas plant products attributable to a lease shall be determined according to the following procedure:

(1) When the net output of the processing plant is derived from gas obtained from only one lease, the quantity of the residue gas and gas plant products on which computations of royalty are based is the net output of the plant.

(2) When the net output of a processing plant is derived from gas obtained from more than one lease producing gas of uniform content, the quantity of the residue gas and gas plant products allocable to each lease shall be in the same proportions as the ratios obtained by dividing the amount of gas delivered to the plant from each lease by the total amount of gas delivered from all leases.

(3) When the net output of a processing plant is derived from gas obtained from more than one lease producing gas of nonuniform content, the quantity of the residue gas allocable to each lease wi11 be determined by multiplying the amount of gas delivered to the plant from the lease by the residue gas content of the gas, and dividing the arithmetical product thus obtained by the sum of the similar arithmetical products separately obtained for all leases from which gas is delivered to the plant, and then multiplying the net output of the residue gas by the arithmetic quotient obtained. The net output of gas plant products allocable to each lease will be determined by multiplying the amount of gas delivered to the plant from the lease by the gas plant product content of the gas, and dividing the arithmetical product thus obtained by the sum of the similar arithmetical products separately obtained for all leases from which gas is delivered to the plant, and then multiplying the net output of each gas plant product by the arithmetic quotient obtained.

(4) A lessee may request MMS approval of other methods for determining the quantity of residue gas and gas plant products allocable to each lease. If approved, such method will be applicable to all gas production from Federal and Indian leases that is processed in the same plant.

(d)(1) No deductions may be made from the royalty volume or royalty value for actual or theoretical losses. Any actual loss of unprocessed gas that may be sustained prior to the royalty settlement metering or measurement point will not be subject to royalty provided that such loss is determined to have been unavoidable by BLM or MMS, as appropriate.

(2) Except as provided in paragraph (d)(1) of this section and § 206.151(c) of this part, royalties are due on 100 percent of the volume determined in accordance with paragraphs (a) through (c) of this section. There can be no reduction in that determined volume for actual losses after the quantity basis has been determined or for theoretical losses that are claimed to have taken place. Royalties are due on 100 percent of the value of the unprocessed gas, residue gas, and/or gas plant products as provided in this Part, less applicable allowances. There can be no deduction from the value of the unprocessed gas, residue gas, and/or gas plant products to compensate for actual losses after the quantity basis has been determined, or for theoretical losses that are claimed to have taken place.

§ 206.155 Accounting for comparison.

(a) Except as provided in paragraph (b) of this section, where the lessee (or a person to whom the lessee has transferred gas pursuant to a non-arm's-length contract or without a contract) processes the lessee's gas and after processing the gas the residue gas is not sold pursuant to an arm's-length contract, the value, for royalty purposes, shall be the greater of:

(1) The combined value, for royalty purposes, of the residue gas and gas plant products resulting from processing the gas determined pursuant to § 206.153 of this part, plus the value, for royalty purposes, of any condensate recovered downstream of the point of royalty settlement without resorting to processing determined pursuant to § 206.102 of this part; or

(2) The value, for royalty purposes, of the gas prior to processing determined in accordance with § 206.152 of this part.

(b) The requirement for accounting for comparison contained in the terms of leases, particularly Indian leases, will govern as provided in § 206.150(b). When accounting for comparison is required by the lease terms, such accounting for comparison shall be determined in accordance with paragraph (a) of this section.

§ 206.156 Transportation allowances—general.

(a) Where the value of gas has been determined pursuant to § 206.152 or § 206.153 of this part at a point (e.g., sales point or point of value determination) off the lease, MMS shall allow a deduction for the reasonable actual costs incurred by the lessee to transport unprocessed gas, residue gas, and gas plant products from a lease to a point off the lease including, if appropriate, transportation from the lease to a gas processing plant off the lease and from the plant to a point away from the plant.

(b) Transportation costs must be allocated individually among products produced and transported. However, no transportation deduction shall be allowed for products that are not royalty bearing.

(c)(1) Except as provided in paragraph (c)(3) of this section, for unprocessed gas valued in accordance with § 206.152 of this part, the transportation allowance deduction on the basis of a selling arrangement shall not exceed 50 percent of the value of the unprocessed gas determined in accordance with § 206.152 of this part.

(2) Except as provided in paragraph (c)(3) of this section, for gas production valued in accordance with § 206.153 of this part the transportation allowance deduction on the basis of a selling arrangement shall not exceed 50 percent (100 percent for sulfur) of the value of the residue gas or gas plant product determined in accordance with § 206.153 of this part. For purposes of this section, natural gas liquids shall be considered one product.

(3) Upon request of a lessee, MMS may approve a transportation allowance deduction in excess of the limitations prescribed by paragraphs (c)(1) and (c)(2) of this section, except for sulfur. The lessee must demonstrate that the transportation costs incurred in excess of the limitations prescribed in paragraphs (c)(1) and (c)(2) of this section were reasonable, actual, and necessary. An application for exception shall contain all relevant and supporting documentation necessary for the MMS to make a determination. Except for sulfur, under no circumstances shall the value for royalty purposes under any selling arrangement be reduced to zero.

(d) If, after a review and/or audit, MMS determines that a lessee has improperly determined a transportation allowance authorized by this subpart, then the lessee shall pay any additional royalties, plus interest, determined in accordance with § 218.54 of this title, or shall be entitled to a credit, without interest.

§ 206.157 Determination of transportation allowances.

(a) *Arm's-length transportation contracts.* (1) For transportation costs incurred by a lessee pursuant to an arm's-length contract, the transportation allowance shall be the reasonable, actual costs incurred by the lessee for transporting the unprocessed gas, residue gas and/or gas plant products under that contract, subject to monitoring, review, audit, and adjustment. Such allowances shall be subject to the provisions of paragraph (f) of this section. Before any deduction may be taken, the lessee must submit a completed page one of Form MMS–4295, Gas Transportation Allowance Report, in accordance with paragraph (c)(1) of this section. A transportation allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4295 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee.

(2) If an arm's-length transportation contract includes more than one product in a gaseous phase and the transportation costs attributable to each product cannot be determined from the contract, the total transportation costs shall be allocated in a consistent and equitable manner to each of the products transported in the same proportion as the ratio of the volume of each product (including water vapor) to the volume of all products in the gaseous phase. No allowance may be taken for the costs of transporting lease production which is not royalty bearing.

(3) If an arm's-length transportation contract includes both gaseous and liquid products and the transportation costs attributable to each cannot be determined from the contract, the lessee shall propose an allocation procedure to MMS. The lessee may use the transportation allowance determined in accordance with its proposed allocation procedure until MMS issues its determination on the acceptability of the cost allocation. The lessee shall submit all relevant data to support its proposal. The initial proposal must be submitted by [*insert the last day of the month which is 3 months after the last day of the month of the effective date of these regulations*] or within 3 months after the last day of the month for which the lessee requests a transportation allowance, whichever is later (unless MMS approves a longer period). The MMS shall then determine the gas transportation allowance based upon the lessee's proposal and any additional information MMS deems necessary. No allowance may be taken for the costs of transporting lease production which is not royalty bearing.

(4) Where the lessee's payments for transportation under an arm's-length contract are not based on a dollar per unit, the lessee shall convert whatever consideration is paid to a dollar value equivalent for the purposes of this section.

(5) Where an arm's-length sales contract price or a posted price includes a provision whereby the listed price is reduced by a transportation factor, MMS will not consider the transportation factor to be a transportation allowance. The transportation factor may be used in determining the lessee's gross proceeds for the sale of the product.

(b) *Non-arm's-length or no contract.* (1) If a lessee has a non-arm's-length transportation contract or has no contract, including those situations where the lessee performs transportation services for itself, the transportation allowance will be based upon the lessee's reasonable actual costs as provided in this paragraph. All transportation allowances deducted under a non-arm's-length or no contract situation are subject to monitoring, review, audit, and adjustment. Before any estimated or actual deduction may be taken, the lessee must submit a completed Form MMS–4295 in accordance with paragraph (c)(2) of this section. A transportation allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4295 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee. The MMS will monitor the allowance deductions to ensure that deductions are reasonable and allowable. When necessary or appropriate, MMS may direct a lessee to modify its estimated or actual transportation allowance deduction.

(2) The transportation allowance for non-arm's-length or no-contract situations shall be based upon the lessee's actual costs for transportation during the reporting period, including operating and maintenance expenses, overhead, and either depreciation and a return on undepreciated capital investment in accordance with paragraph (b)(2)(iv)(A) of this section, or a cost equal to the initial depreciable investment in the transportation system multiplied by the rate of return (determined pursuant to paragraph (b)(2)(v) of this section) in accordance with paragraph (b)(v) of this section. Allowable capital costs are generally those costs for depreciable fixed assets

(including costs of delivery and installation of capital equipment) which are an integral part of the transportation system.

(i) Allowable operating expenses include: Operations supervision and engineering; operations labor; fuel; utilities; materials; ad valorem property taxes; rent; supplies; and any other directly allocable and attributable operating expense which the lessee can document.

(ii) Allowable maintenance expenses include: Maintenance of the transportation system; maintenance of equipment; maintenance labor; and other directly allocable and attributable maintenance expenses which the lessee can document.

(iii) Overhead directly attributable and allocable to the operation and maintenance of the transportation system is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(iv) A lessee may use either depreciation (paragraph (b)(2)(iv)(A) of this section) or a return on depreciable capital investment (paragraph (b)(2)(iv)(B) of this section). Once a lessee has elected to use either of the paragraphs for a transportation system, the lessee may not later elect to change to the other alternative without approval of the MMS.

(A) To compute depreciation, the lessee may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the reserves which the transportation system services, or a unit of production method. After an election is made, the lessee may not change methods without MMS approval. A change in ownership of a transportation system shall not alter the depreciation schedule established by the original transporter/lessee for purposes of the allowance calculation. With or without a change in ownership, a transportation system shall be depreciated only once. Equipment shall not be depreciated below a reasonable salvage value.

(B) The MMS shall allow as a cost an amount equal to the allowable initial capital investment in the transportation system multiplied by the rate of return determined pursuant to paragraph (b)(2)(v) of this section. No allowance shall be provided for depreciation. This alternative shall apply only to transportation facilities first placed in service after [*insert the effective date of these regulations*].

(v) The rate of return shall be the industrial rate associated with Standard and Poor's BBB rating. The rate of return shall be the monthly average rate as published in *Standard and Poor's Bond Guide* for the first month of the reporting period for which the allowance is applicable and shall be effective during the reporting period. The rate shall be redetermined at the beginning of each subsequent transportation allowance reporting period (which is determined pursuant to paragraph (c)(2) of this section).

(3) The deduction for transportation costs shall be determined on the basis of the lessee's cost of transporting each product through each individual transportation system. Where more than one product in a gaseous phase is transported, the allocation of costs to each of the products transported shall be made in a consistent and equitable manner in the same proportion as the ratio of the volume of each product (including water vapor) to the volume of all products in the gaseous phase. The lessee may not take an allowance for transporting a product which is not royalty bearing.

(4) Where both gaseous and liquid products are transported through the same transportation system, the lessee shall propose a cost allocation procedure to MMS. The lessee may use the transportation allowance determined in accordance with its proposed allocation procedure until MMS issues its determination on the acceptability of the cost allocation. The lessee shall submit all relevant data to support its proposal. The initial proposal must be submitted by [*insert the last day of the month which is 3 months after the last day of the month of the effective date of these regulations*] or within 3 months after the last day of the month for which the lessee requests a transportation allowance, whichever is later, unless MMS approves a longer period. The MMS shall then determine the transportation allowance based upon the lessee's proposal and any additional information MMS deems necessary. The lessee may not take an allowance for transporting a product which is not royalty bearing.

(5) A lessee may apply to the MMS for an exception from the requirement that it compute actual costs in accordance with paragraphs (b)(1) through (b)(4) of this section. The MMS may grant the exception only if:

(i) The lessee has arm's-length contracts for transportation of other production through the same transportation system;

(ii) The lessee has a tariff for the transportation system approved by the Federal Energy Regulatory Commission; and

(iii) The persons purchasing transportation services from the lessee had a reasonable alternative to using the lessee's transportation system.

If the MMS grants the exception, the lessee shall use as its transportation allowance the volume-weighted average prices charged other persons pursuant to arm's-length contracts for transportation through the same transportation system.

(c)(1) *Reporting requirements—arm's-length contracts.* (i) With the exception of those transportation allowances specified in paragraph (c)(1)(v) of this section, the lessee shall submit page one of the initial Form MMS–4295 prior to, or at the same time as, the transportation allowance determined pursuant to an arm's-length contract is reported on Form MMS–2014, Report of Sales and Royalty Remittance.

(ii) The initial Form MMS–4295 shall be effective for a reporting period beginning the month that the lessee is first authorized to deduct a transportation allowance and shall continue until the end of the calendar year, or until the applicable contract or rate terminates or is modified or amended, whichever is earlier.

(iii) After the initial reporting period and for succeeding reporting periods, lessees must submit page one of Form MMS–4295 within 3 months after the end of the calendar year, or after the applicable contract or rate terminates or is modified or amended, whichever is earlier, unless MMS approves a longer period. Lessees may request special reporting procedures in unique allowance reporting situations, such as those related to spot sales.

(iv) The MMS may require that a lessee submit arm's-length transportation contracts, production agreements, operating agreements, and related documents. Documents shall be submitted within a reasonable time, as determined by MMS.

(v) Transportation allowances which are based on arm's-length contracts and which are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate.

(2) *Non-arm's-length or no contract.* (i) With the exception of those transportation allowances specified in paragraph (c)(2)(v) of this section, the lessee shall submit an initial Form MMS–4295 prior to, or at the same time as, the transportation allowance determined pursuant to a non-arm's-length contract or no- contract situation is reported on Form MMS–2014, Report of Sales and Royalty Remittance. The initial report may be based upon estimated costs.

(ii) The initial Form MMS–4295 shall be effective for a reporting period beginning the month that the lessee first is authorized to deduct a transportation allowance and shall continue until the end of the calendar year, or until the transportation under the non-arm's-length contract or the no contract situation terminates, whichever is earlier.

(iii) For calendar-year reporting periods succeeding the initial reporting period, the lessee shall submit a completed Form MMS–4295 containing the actual costs for the previous reporting period. If the transportation is continuing, the lessee shall include on Form MMS–4295 its estimated costs for the next calendar year. The estimated transportation allowance shall be based on the actual costs for the previous reporting period plus or minus any adjustments which are based on the lessee's knowledge of decreases or increases which will affect the allowance. Form MMS–4295 must be received by MMS within 3 months after the end of the previous reporting period, unless MMS approves a longer period.

(iv) For new transportation facilities or arrangements, the lessee's initial Form MMS–4295 shall include estimates of the allowable transportation costs for the applicable period. Cost estimates shall be based upon the most recently available operations data for the transportation system, or if such data are not available, the lessee shall use estimates based upon industry data for similar transportation systems.

(v) Non-arm's-length contract or no contract based transportation allowances which are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate.

(vi) Upon request by MMS, the lessee shall submit all data used to prepare its Form MMS–4295. The data shall be provided within a reasonable period of time, as determined by MMS.

(3) The MMS may establish reporting dates for individual lessees different than those specified in this subpart in order to provide more effective administration. Lessees will be notified of any change in their reporting period.

(4) Transportation allowances must be reported as a separate line item on Form MMS–2014, unless MMS approves a different reporting procedure.

(d) *Interest assessments for incorrect or late reports and failure to report.* (1) If a lessee deducts a transportation allowance on its Form MMS–2014 without complying with the requirements of this section, the lessee shall pay interest only on the amount of such deduction until the requirements of this section are complied with. The lessee also shall repay the amount of any allowance which is disallowed by this section.

(2) If a lessee erroneously reports a transportation allowance which results in an underpayment of royalties, interest shall be paid on the amount of that underpayment.

(3) Interest required to be paid by this section shall be determined in accordance with § 218.54 of this chapter.

(e) *Adjustments.* (1) If the actual transportation allowance is less than the amount the lessee has estimated and taken during the reporting period, the lessee shall be required to pay additional royalties due, plus interest computed pursuant to § 218.54 of this chapter, retroactive to the first month the lessee is authorized to deduct a transportation allowance. If the actual transportation allowance is greater than the amount the lessee has estimated and taken during the reporting period, the lessee shall be entitled to a credit without interest.

(2) For lessees transporting production from onshore Federal and Indian leases, the lessee must submit a corrected Form MMS–2014 to reflect actual costs, together with any payment, in accordance with instructions provided by MMS.

(3) For lessees transporting gas production from leases on the OCS, if the lessee's estimated transportation allowance exceeds the allowance based on actual costs, the lessee must submit a corrected Form MMS–2014 to reflect actual costs, together with its payment, in accordance with instructions provided by MMS. If the lessee's estimated transportation allowances is less than the allowance based on actual costs, the refund procedure will be specified by MMS.

(f) Notwithstanding any other provisions of this subpart, for other than arm's-length contracts no cost shall be allowed for transportation which results from payments (either volumetric or for value) for actual or theoretical losses.

(g) *Other transportation cost determinations.* The provisions of this section shall apply to determine transportation costs when establishing value using a net-back valuation procedure or any other procedure that requires deduction of transportation costs.

§ 206.158 Processing allowance—general.

(a) Where the value of gas is determined pursuant to § 206.153 of this part, a deduction shall be allowed for the reasonable actual costs of processing.

(b) Processing costs must be allocated among the gas plant products. A separate processing allowance must be determined for each gas plant product and processing plant relationship. Natural gas liquids (NGL's) shall be considered as one product.

(c)(1) Except as provided in paragraph (d)(2) of this section, the processing allowance shall not be applied against the value of the residue gas. Where there is no residue gas, the lessee shall propose, for MMS approval, an appropriate gas plant product against which no allowance may be applied.

(2) Except as provided in paragraph (c)(3) of this section, the processing allowance deduction on the basis of an individual product shall not exceed 66⅔ percent (100 percent for sulfur) of the value of each gas plant product determined in accordance with § 206.153 of this part (such value to be reduced first for any transportation allowances related to post-processing transportation authorized by § 206.156 of this part and any extraordinary cost allowances authorized by § 206.153(i) of this part).

(3) Upon request of a lessee, MMS may approve a processing allowance in excess of the limitation prescribed by paragraph (c)(2) of this section, except for sulfur. The lessee must demonstrate that the processing costs incurred in excess of the limitation prescribed in paragraph (c)(2) of this section were reasonable, actual, and necessary. An application for exception shall contain all relevant and supporting documentation for MMS to make a determination. Except for sulfur, under no circumstances shall the value for royalty purposes of any gas plant product be reduced to zero.

(d)(1) Except as provided in paragraph (d)(2) of this section, no processing cost deduction shall be allowed for the costs of placing lease products in marketable condition, including dehydration, separation, compression, or storage, even if those functions are performed off the lease or at a processing plant. Where gas is processed for the removal of acid gases, commonly referred to as "sweetening," no processing cost deduction shall be allowed for such costs unless the acid gases removed are further processed into a gas plant product. In such event, the lessee shall be eligible for a processing allowance as determined in accordance with this subpart. However, MMS will not grant any processing allowance for processing lease production which is not royalty bearing.

(2) (i) If the lessee incurs extraordinary costs for processing gas production from a unique gas production

operation, it may apply to MMS for an allowance for those costs which shall be in addition to any other processing allowance to which the lessee is entitled pursuant to this section. Such an allowance may be granted only if the lessee can demonstrate that the costs are, by reference to standard industry conditions and practice, extraordinary, unusual, or unconventional.

(ii) Prior MMS approval to continue an extraordinary processing cost allowance is not required. However, to retain the authority to deduct the allowance the lessee must report the deduction annually to MMS in a form and manner prescribed by MMS. MMS annually shall reconsider whether an extraordinary processing cost allowance will continue to be authorized.

(e) If MMS determines that a lessee has improperly determined a processing allowance authorized by this subpart, then the lessee shall pay any additional royalties, plus interest determined in accordance with § 218.54 of this chapter, or shall be entitled to a credit, without interest.

§ 206.158 Determination of processing allowances.

(a) *Arm's-length processing contracts.* (1) For processing costs incurred by a lessee pursuant to an arm's-length contract, the processing allowance shall be the reasonable actual costs incurred by the lessee for processing the gas under that contract, subject to monitoring, review, audit, and adjustment. Before any deduction may be taken, the lessee must submit a completed page one of Form MMS–4109, Gas Processing Allowance Summary Report, in accordance with paragraph (c)(1) of this section. A processing allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4109 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee.

(2) If an arm's-length processing contract includes more than one gas plant product and the processing costs attributable to each product can be determined from the contract, then the processing costs for each gas plant product shall be determined in accordance with the contract. No allowance may be taken for the costs of processing lease production which is not royalty bearing.

(3) If an arm's-length processing contract includes more than one gas plant product and the processing costs attributable to each product cannot be determined from the contract, the lessee shall propose an allocation procedure to MMS. The lessee may use its proposed allocation procedure until MMS issues its determination. The lessee shall submit all relevant data to support its proposal. The initial proposal must be submitted by *[insert the last day of the month which is 3 months after the last day of the month of the effective date of these regulations]* or within 3 months after the last day of the month for which the lessee requests a processing allowance, whichever is later (unless MMS approves a longer period). The MMS shall then determine the processing allowance based upon the lessee's proposal and any additional information MMS deems necessary. No processing allowance will be granted for the costs of processing lease production which is not royalty bearing.

(4) Where the lessee s payments for processing under an arm's-length contract are not based on a dollar per unit basis, the lessee shall convert whatever consideration is paid to a dollar value equivalent for the purposes of this section.

(b) *Non-arm's-length or no contract.* (1) If a lessee has a non-arm's-length processing contract or has no contract, including those situations where the lessee performs processing for itself, the processing allowance will be based upon the lessee s reasonable actual costs as provided in this paragraph. All processing allowances deducted under a non-arm's-length or no-contract situation are subject to monitoring, review, audit, and adjustment. Before any estimated or actual deduction may be taken, the lessee must submit a completed Form MMS–4109 in accordance with paragraph (c)(2) of this section. A processing allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4109 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee. The MMS will monitor the allowance deduction to ensure that deductions are reasonable and allowable. When necessary or appropriate, MMS may direct a lessee to modify its estimated or actual processing allowance.

(2) The processing allowance for non-arm's-length or no-contract situations shall be based upon the lessee's actual costs for processing during the reporting period, including operating and maintenance expenses, overhead, and either depreciation and a return on undepreciated capital investment in accordance with paragraph (b)(2)(iv)(A) of this section, or a cost equal to the initial depreciable investment in the processing plant multiplied by the rate of return (determined pursuant to paragraph (b)(2)(v) of this section) in accordance with paragraph (b)(2)(iv)(B) of this section. Allowable capital costs are generally those costs for depreciable fixed assets (including costs of delivery and installation of capital equipment) which are an integral part of the processing plant.

(i) Allowable operating expenses include: Operations supervision and engineering; operations labor; fuel; utilities; materials; ad valorem property taxes; rent; supplies; and any other directly allocable and attributable operating expense which the lessee can document.

(ii) Allowable maintenance expenses include: Maintenance of the processing plant; maintenance of equipment; maintenance labor; and other directly allocable and attributable maintenance expenses which the lessee can document.

(iii) Overhead directly attributable and allocable to the operation and maintenance of the processing plant is an allowable expense. State and Federal income taxes and severance taxes, including royalties, are not allowable expenses.

(iv) A lessee may use either depreciation (paragraph (b)(2)(iv)(A)of this section) or a return on depreciable capital investment (paragraph (b)(2)(iv)(B) of this section). When a lessee has elected to use either of these paragraphs for a processing plant, the lessee may not later elect to change to the other alternative without approval of the MMS.

(A) To compute depreciation, the lessee may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the reserves which the processing plant services, or a unit-of-production method. After an election is made, the lessee may not change methods without MMS approval. A change in ownership of a processing plant shall not alter the depreciation schedule established by the original processor/lessee for purposes of the allowance calculation. With or without a change in ownership, a processing plant shall be depreciated only once. Equipment shall not be depreciated below a reasonable salvage value.

(B) The MMS shall allow as a cost an amount equal to the allowable initial capital investment in the processing plant multiplied by the rate of return determined pursuant to paragraph (b)(2)(v) of this section. No allowance shall be provided for depreciation. This alternative shall apply only to plants first placed in service after [*insert the effective date of these regulations*].

(v) The rate of return shall be the industrial rate associated with Standard and Poor's BBB rating. The rate of return shall be the monthly average rate as published in *Standard and Poor's Bond Guide* for the first month of the reporting period for which the allowance is applicable and shall be effective during the reporting period. The rate shall be redetermined at the beginning of each subsequent processing allowance reporting period (which is determined pursuant to paragraph (c)(2) of this section).

(3) The processing allowance for each gas plant product shall be determined based on the lessee's reasonable and actual cost of processing the gas. Allocation of costs to each gas plant product shall be based upon generally accepted accounting principles. The lessee may not take an allowance for the costs of processing lease production which is not royalty bearing.

(4) A lessee may apply to MMS for an exception from the requirement that it compute actual costs in accordance with paragraphs (b)(1) through (b)(3) of this section. The MMS may grant the exception only if:

(i) The lessee has arm's-length contracts for processing other gas production at the same processing plant;

(ii) At least 50 percent of the gas processed annually at the plant is processed pursuant to arm's-length processing contracts;

(iii) The persons purchasing processing services from the lessee had a reasonable alternative to using the lessee's processing plant. If the MMS grants the exception, the lessee shall use as it processing allowance the volume weighted average prices charged other persons pursuant to arm's-length contracts for processing at the same plant.

(c) *Reporting requirements.*—(1) *Arm's-length contracts.* (i) With the exception of those processing allowances specified in paragraph (c)(1)(v) of this section, the lessee shall submit page one of the initial Form MMS–4109 prior to, or at the same time as, the processing allowance determined pursuant to an arm's-length contract is reported on Form MMS–2014, Report of Sales and Royalty Remittance.

(ii) The initial Form MMS–4109 shall be effective for a reporting period beginning the month that the lessee is first authorized to deduct a processing allowance and shall continue until the end of the calendar year, or until the applicable contract or rate terminates or is modified or amended, whichever is earlier.

(iii) After the initial reporting period and for succeeding reporting periods, lessees must submit page one of Form MMS–4109 within 3 months after the end of the calendar year, or after the applicable contract or rate terminates or is modified or amended, whichever is earlier, unless MMS approves a longer period.

(iv) The MMS may require that a lessee submit arm's-length processing contracts and related documents. Documents shall be submitted within a reasonable time, as determined by MMS.

(v) Processing allowances which are based on arm's-length contracts and which are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate.

(2) *Non-arm's-length or no contract.* (i) With the exception of those processing allowances specified in paragraph (c)(2)(v) of this section, the lessee shall submit an initial Form MMS–4109 prior to, or at the same time as, the processing allowance determined pursuant to a non-arm's-length contract or no contract situation is reported on Form MMS–2014, Report of Sales and Royalty Remittance. The initial report may be based upon estimated costs.

(ii) The initial Form MMS–4109 shall be effective for a reporting period beginning the month that the lessee first is authorized to deduct a processing allowance and shall continue until the end of the calendar year, or until the processing under the non-arm's-length contract or the no-contract situation terminates, whichever is earlier.

(iii) For calendar-year reporting periods succeeding the initial reporting period, the lessee shall submit a completed Form MMS–4109 containing the actual costs for the previous reporting period. If gas processing is continuing, the lessee shall include on Form MMS–4109 its estimated costs for the next calendar year. The estimated gas processing allowance shall be based on the actual costs for the previous period plus or minus any adjustments which are based on the lessee's knowledge of decreases or increases which will affect the allowance. Form MMS–4109 must be received by MMS within 3 months after the end of the previous reporting period, unless MMS approves a longer period.

(iv) For new processing plants, the lessee's initial Form MMS–4109 shall include estimates of the allowable gas processing costs for the applicable period. Cost estimates shall be based upon the most recently available operations data for the plant, or if such data are not available, the lessee shall use estimates based upon industry data for similar gas processing plants.

(v) Processing allowances based on non-arm's-length or no-contract situations which are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate for gas production from onshore Federal and Indian leases. For gas production from OCS leases such allowances will be allowed to continue until they terminate or until the end of the calendar year, whichever is earlier.

(vi) Upon request by MMS, the lessee shall submit all data used by the lessee to prepare its Form MMS–4109, The data shall be provided within a reasonable period of time, as determined by MMS.

(3) The MMS may establish reporting dates for individual leases different from those specified in this subpart in order to provide more effective administration: Lessees will be notified of any change in their reporting period.

(4) Processing allowances must be reported as a separate line on the Form MMS–2014, unless MMS approves a different reporting procedure.

(d) Interest assessments for incorrect or late reports and failure to report. (1) If a lessee deducts a processing allowance on its Form MMS–2014 without complying with the requirements of this section, the lessee shall pay interest only on the amount of such deduction until the requirements of this section are complied with. The lessee also shall repay the amount of any allowance which is disallowed by this section.

(2) If a lessee erroneously reports a processing allowance which results in an underpayment of royalties, interest shall be paid on the amount of that underpayment.

(3) Interest required to be paid by this section shall be determined in accordance with § 218.54 of this chapter.

(e) Adjustments. (1) If the actual gas processing allowance is less than the amount the lessee has estimated and taken during the reporting period, the lessee shall be required to pay additional royalties due-plus interest computed pursuant to § 218.54 of this chapter, retroactive to the first day of the first month the lessee is authorized to deduct a processing allowance. If the actual processing allowance is greater than the amount the lessee has estimated and taken during the reporting period, the lessee shall be entitled to a credit without interest.

(2) For lessees processing production from onshore Federal and Indian leases, the lessee must submit a corrected Form MMS–2014 to reflect actual costs, together with any payment, in accordance with instructions provided by MMS.

(3) For lessees processing gas production from leases on the OCS, if the lessee's estimated processing allowance exceeds the allowance based on actual costs, the lessee must submit a corrected Form MMS–2014 to reflect actual costs, together with its payment, in accordance with instructions provided by MMS. If the lessee's estimated costs were less than the actual costs, the refund procedure will be specified by MMS.

(f) Other processing cost determinations. The provisions of this section shall apply to determine processing costs when establishing value using a net back valuation procedure or any other procedure that requires deduction of processing costs.

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Part III

Department of the Interior

Minerals Management Service

30 CFR Parts 202, 203, 206, 207, 210, and 241

43 CFR Part 3160

Revision of Oil Product Valuation Regulations and Related Topics; Further Notice of Proposed Rulemaking

DEPARTMENT OF THE INTERIOR

30 CFR Parts 202, 203, 206, 207, 210, and 241

43 CFR Part 3160

Revision of Oil Product Valuation Regulations and Related Topics

AGENCY: Minerals Management Service, Interior.

ACTION: Further notice of proposed rulemaking.

SUMMARY: Proposed valuation regulations for oil were published for comment in the Federal Register on January 15, 1987 (52 FR 1858). Public hearings were held in Denver, Colorado, on March 4, 1987, and in New Orleans, Louisiana, on March 17, 1987. Over 100 written comments were received on this proposed rulemaking.

Because of the extensive and diverse interest raised by this and related rulemakings for valuation of gas and coal, MMS established a procedure whereby it would publish draft final regulations and provide an abbreviated public comment period to obtain further public comment before the rules are issued as final regulations on September 30, 1987. The Congress is aware of and understands this process. See Conference Report on H.R. 1827 in the Congressional Record dated June 27, 1987, at pages H5661–H5666.

Accordingly, attached to this notice as an appendix is a draft of the oil valuation regulations in final form, together with a draft of the preamble for the final rule. The draft contains numerous changes from the proposed oil valuation regulations in response to the public hearings and the extensive comments received and reviewed by MMS.

DATE: Comments must be received on or before September 2, 1987.

ADDRESS: Written comments may be mailed to Minerals Management Service, Royalty Management Program, Rules and Procedures Branch, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 628, Denver, Colorado 80225, Attention: Dennis C. Whitcomb.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Chief, Rules and Procedures Branch, (303) 231–3432, (FTS) 326–3432.

SUPPLEMENTARY INFORMATION: The principal authors of this proposed rulemaking are John L. Price, Scott L. Ellis, Thomas J. Blair, Stanley J. Brown, and William H. Feldmiller, of the Royalty Valuation and Standards Division of the Royalty Management Program, Minerals Management Service (MMS); and Peter J. Schaumberg of the Office of the Solicitor, Washington, DC.

In view of the short public comment period necessitated by MMS's proposed schedule, as understood by Congress, whereby MMS will attempt to issue final rules by September 30, 1987, MMS requests that commenters not simply resubmit comments already provided on the proposed rules. All comments received since publication of the first proposed rulemaking on January 15, 1987, will be included in this rulemaking record. Additional comments should be directed to the provision of the draft final rule in the appendix. Commenters are requested to identify, by section, the provision of the draft final rule to which a comment is directed. Besides specific comments on the draft final rule, MMS also requests commenters to address whether there are additional requirements or approaches which would improve the royalty payment process. The MMS believes it has developed a set of rules which will lead to the proper payment of royalties, but given the interest and concerns raised by this rulemaking, MMS would like to learn of all approaches which will reduce underpayments and minimize any abuse in payment and collection of royalties. MMS would specifically like comments on the ability of auditors to determine compliance with these regulations. MMS also would like commenters to address the extent to which these draft rules are responsive to concerns regarding royalty underpayments identified in the Linowes Commission Report and reports of the Congress, the General Accounting Office and the Department's Office of Inspector General.

MMS recognizes that arm's-length contract prices are a principal component of these regulations. Under the draft final rules, the prices under arm's-length contracts would represent value and be the primary values under the benchmarks for non-arm's-length contracts. MMS specifically requests comments on the definition of arm's-length contract and on the use of these contracts to determine value for calculating royalty payments.

The Department of Interior (DOI) has determined that this document is not a major rule and does not require a regulatory impact analysis under Executive Order 12291. This proposed rulemaking is to consolidate Federal and Indian oil royalty valuation regulations; to clarify DOI oil royalty valuation policy and to clarify DOI oil transportation allowance policy; and to provide for consistent royalty valuation policy among all leasable minerals. Because the proposed rule principally consolidates and streamlines existing regulations for consistent application, there are no significant additional requirements or burdens placed upon small business entities.

Lessee reporting requirements will be approximately $130,000. All oil posted price bulletins or sales contracts will be required to be submitted only upon request, or only in support of a lessee's valuation proposal in unique situations, rather than routinely, as under the existing regulations.

The public is invited to participate in this proceeding by submitting data, views, or arguments with respect to this notice. All comments should be submitted by 4:30 p.m. of the day specified in the DATE section to the appropriate address indicated in the ADDRESS section of this preamble and should be identified on the outside envelope and on documents submitted with the designation "Revision of Oil Royalty Valuation Regulations and Related Topics." All comments received by the MMS will be available for public inspection in Room C406, Building 85, Denver Federal Center, Lakewood, Colorado, between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday.

Any information or data submitted which is considered to be confidential must be so identified and submitted in writing, one copy only. MMS reserves the right to determine the confidential status of the information or data and to treat it according to its independent determination.

Regulatory Flexibility Act

Because this rule primarily consolidates and streamlines existing regulations for consistent application, there are no significant additional requirements or burdens placed upon small business entities as a result of implementation of this proposed rule. Therefore, the DOI has determined that this rulemaking will not have a significant economic effect on a substantial number of small entities and does not require a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*).

Paperwork Reduction Act of 1980

The information collection and

recordkeeping requirements located at §§ 206.105, 207.5, and 210.55 of this rule have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3504(h), and assigned OMB Clearance Number 1010–0061.

National Environmental Policy Act of 1969

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

List of Subjects

30 CFR Part 202

Continental shelf, Government contracts, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 203

Coal, Continental shelf, Government contracts, Mineral royalties, Oil and gas exploration, Public lands—mineral resources.

30 CFR Part 206

Continental shelf, Geothermal energy, Government contracts, Mineral royalties, Oil and gas exploration, Public lands—mineral resources.

30 CFR Part 207

Government contracts, Mineral royalties, Public lands—mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 210

Continental shelf, Geothermal energy, Government contracts, mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 241

Administrative practice and procedures, Government contracts, Mineral royalties, Oil and gas exploration, Penalties, Public lands—mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3160

Government contracts, Indian-lands, Land Management Bureau, Mineral royalties, Oil and gas exploration, Penalties, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: August 10, 1987.

James E. Cason,

Acting Assistant Secretary, Land and Minerals Management.

Appendix—Draft Final Rule

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 202, 203, 206, 207, 210, and 241

43 CFR Part 3160

Revision of Oil Product Valuation Regulations and Related Topics

Agency: Minerals Management Service, Interior.

Action: [Draft] Final rule.

Summary: This rulemaking provides for the amendment and clarification of regulations governing valuation of oil for royalty computation purposes. The amended and clarified regulations govern the methods by which value is determined when computing oil royalties and net profit shares under Federal (onshore and Outer Continental Shelf) and Indian (Tribal and allotted) oil and gas leases (except leases on the Osage Indian Reservation, Osage County, Oklahoma).

Effective date: November 1, 1987 (tentative).

For further information contact: Dennis C. Whitcomb, Chief, Rules and Procedures Branch, (303) 231–3432, (FTS) 320–3432.

Supplementary information: The principal authors of this rulemaking are John L. Price, Scott L. Ellis, Thomas J. Blair, Stanley J. Brown, and William H. Feldmiller, of the Royalty Valuation and Standards Division of the Royalty Management Program, Minerals Management Service (MMS); and Peter J. Schaumberg of the Office of the Solicitor, Washington, DC.

I. Introduction

On January 15, 1987, 52 FR 1858, the Minerals Management Service (MMS) of the Department of the Interior issued a notice of proposed rulemaking to amend the regulations governing the valuation of oil from Federal leases onshore and on the Outer Continental Shelf (OCS), and from Indian Tribal and allotted leases. During the public comment period, MMS received over 100 written comments. In addition, public hearings were held in Lakewood, Colorado, on March 4, 1987, and in New Orleans, Louisiana, on March 17, 1987. Sixteen persons made oral presentations at these hearings.

[Tentative: Because of the complexity of the regulations, and in accordance with MMS's understanding with Congress, MMS issued a further notice of proposed rulemaking which included as an appendix MMS's draft of the final regulations. The purpose of the further notice of proposed rulemaking was to obtain further public comment during a short comment period and then to make any necessary revisions to the final regulations. See Conference Report on H.R. 1827, in the *Congressional Record* dated June 27, 1987, at pages H5651–H5666. A total of_____ additional comments were received.]

MMS has considered carefully all of the public comments received during this rulemaking process, which included draft rules and input from the Royalty Management Advisory Committee. A complete account of that process is included in the preamble to the proposed regulations issued in January 1987. Based on its review, MMS hereby adopts final regulations governing the valuation of oil from Federal and Indian leases. These regulations will apply prospectively to production on or after the effective date specified in the *Effective Date* section of this preamble.

II. Purpose and Background

The MMS is revising the current regulations regarding the valuation of oil to accomplish the following:

1. Clarification and reorganization of the existing regulations at 30 CFR Parts 202, 203, 206, 207, 210, 241, and 43 CFR Part 3160.

2. Creation of regulations consistent with the present organizational structure of the Department of the Interior (DOI).

3. Placement of the oil royalty valuation regulations in a format compatible with the valuation regulations for all leasable minerals.

4. Clarification that royalty is to be paid on all consideration received by lessees, less applicable allowances, for lease production.

5. Creation of regulations to guide the lessee in the determination of allowable transportation costs for oil to aid in the calculation of proper royalty due the lessor.

Structurally, these regulations include the reorganization and redesignation of Parts 202, 203, 206, 207, and 210. Each part is reorganized by redesignating "Subpart B—Oil and Gas, General" as "Subpart B—Oil, Gas, and OCS Sulfur, General"; "Subpart C—Oil and Gas, Onshore" as "Subpart C—Federal and Indian Oil"; and "Subpart D—Oil, Gas, and Sulfur, Offshore" as "Subpart D—Federal and Indian Gas."

Also, a number of sections are renumbered and/or moved to a new subpart. In addition, §§ 202.51, 202.102, 206.103, 206.104, 207.1, 207.2, 207.5, and 210.55 are added to the appropriate subparts.

Current § 206.104, proposed as § 202.101, is an onshore operational regulation which is under the jurisdiction of the Bureau of Land Management (BLM). This section is being redesignated as 43 CFR § 3162.7–4, and the existing § 3162.7–4 is being redesignated as § 3162.7–5.

This rule applies prospectively to production on or after the effective date specified in the *Effective Date* section of this preamble. It supersedes all existing oil royalty valuation directives contained in numerous Secretarial, Minerals Management Service, and U.S. Geological Survey Conservation Division (now Bureau of Land Management, Onshore Operations) orders, directives, regulations and Notice to Lessees (NTL's) issued over past years. Specific guidelines governing reporting requirements consistent with these new oil valuation regulations will be incorporated into the MMS Payor Handbook.

For the convenience of oil and gas lessees, payors, and the public, the following chart summarizes the effects of these rules.

Regulation changes	Descriptions
I. REDESIGNATIONS:	
1. Subparts E, F, and G of Part 241 are redesignated as Subparts F, G, and H, respectively.	This administrative action permits the insertion of a new Subpart E—"Solid Minerals, General" in this Part.
2. Sections 202.150, 202.151, and 202.152 are redesignated as §§ 202.100, 202.53, and 202.52, respectively. Section 203.150 is redesignated as § 203.50.	This administrative action more appropriately locates within 30 CFR the information contained in these sections.
Section 206.104 is redesignated under Title 43 CFR as § 3162.7–4. Existing § 3162.7–4 is redesignated as § 3162.7–5.	This section addresses a BLM onshore operations issue which properly belongs in 43 CFR.
3. Sections 210.300 and 210.301 are redesignated as §§ 210.350 and 210.351, respectively.	This action corresponds to the redesignation of Subpart G as Subpart H (see Item 1. above).
4. Section 241.100 is redesignated as § 241.60	This action is the result of retitling of the subparts.
II. DELETIONS:	
1. Subpart H—"Indian Lands" is removed from Part 241	Oil royalty valuation for Indian Lands is now covered by Subpart C—Federal and Indian Oil.
2. Sections 202.100 through 202.103 are removed from Subpart B of Part 202.	These sections cover activities now governed by BLM.
3. Section 203.100 is removed from Subpart C	This section covers an activity now governed by BLM operations personnel.
4. Section 206.103 is removed from Subpart C of Part 206	This section has been rewritten and relocated in the regulations as Subparts C and D of Part 206.
5. Sections 207.1, 207.2, 207.5, 207.6 and 207.7 are removed from Subpart A of Part 207.	The subject matter of these Sections is addressed elsewhere in the regulations. They are, therefore, redundant and have been removed to avoid confusion.
6. Sections 210.100 through 210.105, §§ 210.150 and 210.151 are removed from Subpart C and D, respectively, of Part 210.	These requirements of §§ 210.100 and 210.101 are now covered by Part 207, as amended. Sections 210.102, 210.103 and 210.104 are no longer applicable (these forms are no longer in use). § 210.105 has been replaced by new § 210.55.
7. Section 241.100 is redesignated as § 241.60. Paragraph 241.60(c) is removed from Subpart C of Part 241.	Newly redesignated § 241.60(c)(1) is no longer applicable (this form is no longer in use).
III. ADDITIONS:	
1. The following subparts are added to Part 207:	
Subpart A—General Provisions	Separate subparts have been added to Part 207 to make it consistent with other parts of 30 CFR Chapter II and to provide both structure and space for future expansion of this portion of the regulations.
Subpart B—Oil, Gas and OCS Sulfur, General [Reserved]	
Subpart C—Federal and Indian Oil [Reserved]	
Subpart D—Federal and Indian Gas [Reserved]	
Subpart E—Solid Minerals, General [Reserved]	
Subpart F—Coal [Reserved]	
Subpart G—Other Solid Minerals [Reserved]	
Subpart H—Geothermal Resources [Reserved]	
Subpart I—OCS Sulfur [Reserved]	
2. The following subparts are added to Part 210:	
Subpart H—Geothermal Resources [Reserved]	These new subparts provide space for regulations of general applicability to geothermal resources and OCS sulfur.
Subpart I—OCS Sulfur [Reserved]	
3. The following subparts are added to Part 241:	
Subpart E—Solid Minerals, General [Reserved]	These new subparts provide space for future regulations of general applicability to solid minerals and OCS sulfur.
Subpart I—OCS Sulfur [Reserved]	
4. Sections 202.51 and 202.101 are added to Part 202. Sections 206.103 and 206.104 are added to Part 206.	These new sections provide oil valuation standards and procedures.
5. Sections 207.1, 207.2, and 207.5 are added to Part 207	These new sections reference the definitions in Part 206 and set forth certain recordkeeping requirements.
6. Section 210.55 is added to Part 210	This will replace § 210.105.
IV. AMENDMENTS:	
1. Parts 202, 203, 206, 210, and 241 are amended by retitling the following Subparts:	
Subpart B retitled "Oil, Gas, and OCS Sulfur, General	These subparts have been retitled in order to organize them by a commodity (oil vs. gas, etc.) rather than emphasizing location (onshore vs. offshore) as was done formerly.
Subpart C retitled "Federal and Indian Oil [Reserved]"	
Subpart D retitled "Federal and Indian Gas [Reserved]"	

The rules in § 206.100 expressly recognize that where the provisions of any Indian lease, or any statute or treaty affecting Indian leases, are inconsistent with the regulations, then the lease, statute, or treaty will govern to the extent of the inconsistency. The same principle applies to Federal leases.

A separate oil definitions section applicable to the royalty valuation of oil is included in this rulemaking in Part 206. All definitions contained under each subpart of Part 206 will be applicable to the regulations contained in Parts 202, 203, 207, 210, and 241. Because the definitions are specific to these parts, they may not necessarily conform to definitions of the same terms in other Federal agencies' regulations.

III. Response to General Comments Received on Proposed Oil Product Valuation Regulations and Related Topics

The notice of proposed oil valuation regulations was published in the **Federal Register** on January 15, 1987 (52 FR 1858). The public comment period on the proposal closed on April 15, 1987. Over one hundred commenters provided extensive comments which were received and considered in preparing this notice.

Of the 57 commenters filing comments on valuation issues, 30 commenters represented industry/trade groups; 15 represented State, local, and Federal governmental entities; 10 represented Indian Tribes or allottees; 1 commenter was a State/Tribal association and 1 commenter was an individual. Of the 46 commenters filing comments on transportation issues, 24 commenters represented industry/trade groups; 8 represented State, local, and Federal governmental entities; 11 represented Indian Tribes or allottees; 1 commenter was a State/Tribal association; and 2 commenters were individuals.

General Comments

The MMS received many diverse comments on the principles underlying the proposed valuation methodology. These comments did not address specific sections of the proposed regulations. The respondents generally comprised two groups, with industry (representing eight respondents) on one side of this issue and States and Indians (representing six respondents each) on opposing sides. The general comments were categorized into five more-or-less interrelated issues: (1) Acceptance of gross proceeds under an arm's-length contract, or the benchmark, as the value for royalty purposes; (2) deduction of transportation costs; (3) legal mandates and responsibilities toward Indians; (4) complexity and obscurity of regulations and definitions; and (5) economic impacts.

(1) Acceptance of Gross Proceeds as the Value for Royalty Purposes

Industry commenters generally agreed that the basic premise underlying the proposed rulemaking is sound because value is best determined by the interaction of competing market forces. However, State and Indian commenters disagreed, particularly objecting to the concept of accepting gross proceeds received under arm's-length transactions as representative of market value. The commenters were concerned that the acceptance of gross proceeds, without additional testing of its validity, could lead to manipulation of pricing schedules, an erosion of payors' accountability and, in general, would fail to protect the interests of the lessor. Many pointed out that gross proceeds has historically not been considered equivalent to market value, citing various legal opinions in support. In this vein, two State and three Indian commenters declared that royalty value should be equivalent to the highest price posted for like-quality production in a field or area.

MMS Response: The MMS's experience demonstrates that the highest price posted in a given field does not necessarily reflect a bona fide offer to purchase, nor does it reflect that significant quantities of oil are being purchased at that price. In these regulations, MMS generally will assess royalty on the value to which the lessee is legally entitled under its arm's-length contract. MMS maintains that gross proceeds to which a lessee is legally entitled under arm's-length contracts are determined by market forces and thus represent the best measure of market value. For many Indian leases, MMS will also require consideration of the highest price paid for a major portion of production in accordance with the lease terms.

To assure that gross proceeds represent market value, and thus insure accountability, one Indian and two State commenters suggested that reported gross proceeds values should be tested/validated by using the net-back (work-back) procedure as an independent cross-check. They also suggested that royalty reporting should be routinely monitored by using this procedure.

MMS Response: MMS believes that gross proceeds under arm's-length contracts are representative of market value. However, MMS will continue to monitor value determinations under its regulations to ensure that those determinations yield reasonable values. The performance of labor intensive net-back calculations on a routine basis is impractical.

Two State respondents doubted that the benchmark hierarchy system for determining values under non-arm's-length transactions could be properly applied because of the system's complexity and because the valuation procedure is predicated upon a payor's ability and willingness to identify a transaction as either arm's-length or non-arm's-length. They feared that industry might be reluctant to identify non-arm's-length transactions and thus merely declare gross proceeds as value, thereby placing the burden of proper finding upon MMS during audit.

MMS Response: The MMS supports the benchmark system. Most of industry, those who report under the system, believe it to be a workable system. In general, industry can identify its own arm's-length contracts based on standards established in these regulations and it is in its best interests not to classify non-arm's-length transactions as arm's-length because of the threat of both high interest costs and possible penalties. However, MMS will use the audit process to verify that contracts which are claimed to be arm's-length satisfy all the standards of the definition, discussed in detail below.

(2) Deduction of Transportations Costs

Although industry commenters supported the proposed deductions for transportation costs, many of the respondents believed the allowable deductions were too restrictive, and one suggested that transportation allowances should be actual costs based on Federal Energy Regulatory Commission (FERC) tariffs or arm's-length transportation arrangements. However, comments from States (two) and Indians (two) objected to the allowances as being too liberal and unnecessarily open-ended by effectively granting the allowances regardless of need. They suggested that transportation deductions should be allowed only when transportation costs are necessary to the sale of the production, that transportation allowances should be limited to OCS production only, or that no deductions should be allowed, at least for tribal lands.

MMS Response: The MMS believes that costs incurred by a lessee to transport lease production to a delivery point off the lease increases its value and, therefore, is a recognized deduction. See the transportation allowance section of this preamble for further discussion.

(3) Legal Mandates and Responsibilities Toward Indians

Three State and three Indian respondents questioned the legality of the proposed rulemaking, expressing their view that the proposed modifications, particularly with respect to arm's-length contracts and gross proceeds, are contrary to the intent of the valuation requirements of the Mineral Lands Leasing Act, 30 U.S.C. 181 *et seq.*, and the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. 1701 *et seq.*, and are a marked departure from historical valuation regulations and lease terms. Their basic argument is that the statutes require royalty based on the value of production, and a royalty clause based upon "value" is not satisfied by a valuation procedure based upon gross proceeds; in their opinion, value may be considerably higher than revenues from arm's-length transactions.

MMS Response: The regulations generally define value on the basis of market transactions, consistent with commonly held economic philosophy, rather than some arbitrary "value" which can be easily misconstrued, disputed, or misinterpreted. The MMS believes there is no conflict between the intent of the Mineral Leasing Act, FOGRMA, and the valuation procedures being adopted herein.

The Indian commenters took particular exception to the proposed rulemaking, pointing out that the proposed valuation procedures based on gross proceeds are in conflict with the Secretary's duty under the Unallotted Indian Leasing Act of 1938 and the Indian Mineral Development Act of 1982 to ensure that tribes and allottees receive the maximum return for their property. They disagreed that gross proceeds represented market value, and thus believed they would not receive the maximum benefit accruable from production pursuant to statutes. One respondent suggested that the proposed regulations apply prospectively only to newly issued leases so that royalties owed to Tribes and allottees under existing regulations would not be diminished.

MMS Response: MMS believes the new valuation regulations, with the changes discussed in more detail below, are fully consistent with the Secretary's obligations to Indian lessors.

(4) Complexity and Obscurity of Regulations and Definitions

Some commenters (two State, one Indian, and one Federal bureau) believed the proposed rulemaking generally was excessively complicated, leading to difficulty in interpretation. As a result, they believe the proposed rules fail to achieve the stated goals of simplification and providing certainty.

MMS Response: The MMS has endeavored to correct certain identified deficiencies in the final rulemaking. The regulations combine previous regulations, NTL's, orders, and internal policies. They will provide a single source for product value guidance which necessarily will be simpler and more comprehensive than the existing procedures.

(5) Economic Impacts

One State and four Indian commenters disagreed with MMS's statement that the proposed regulations would yield long-term benefits to royalty owners. Indian commenters in particular believed the proposed valuation rules would have a significant detrimental economic impact on Tribes and allottees. A detailed economic analysis of the economic impacts of the proposed rules was suggested by one commenter to support MMS's claim that the short-term effects on revenues would be limited.

MMS Response: The MMS believes that the regulations provide valuation criteria that will result in reasonable values and will create an atmosphere of certainty in royalty payments and thereby correct some of the royalty deficiencies encountered in the past.

IV. Section-by-section Analysis and Response to Comments

Comments were not received on every section of the proposed regulations. Therefore, if any of those sections were not changed significantly from the proposal, there generally is no further discussion in this preamble. The preamble to the proposed regulation (52 FR 1858, January 15, 1987) may be consulted for a full description of the purpose of those sections. For other sections, this preamble will address primarily the extent to which the final rule was changed from the proposal. Again, a complete discussion of the applicable sections may be found in the preamble to the proposed regulation.

Section 202.52 Royalties.

For purposes of clarity, one State commenter suggested that the word "royalty" be inserted before the words "rate specified", and the words "amount of royalty" be deleted and replaced with the words "royalty rate." This suggestion was made because some lessees have confused the computation of royalty rate and the computation of the amount of royalties due.

MMS Response: The MMS agrees that these suggested changes should be made for purposes of clarity and the final rule has been modified accordingly.

- The MMS has removed from the final rules the two sections addressing the general responsibilities of MMS and lessees. All of these responsibilities are addressed in various provisions of 30 CFR and elsewhere. Thus, these sections were duplicative and, based on the comments received, caused confusion.

Section 202.100 Royalty on oil.

Two industry commenters recommended that this section state that no permission is necessary to exempt from royalty any oil used for the benefit of the lease, either on-lease or off-lease, and including communitized or unitized areas. In addition, another industry commenter stated that where agency approval is necessary, this section should address the procedure to acquire such permission.

MMS Response: The royalty-free use of oil is an operational matter covered by the appropriate operating regulations of the BLM and MMS for onshore and OCS operations, respectively, and, thus, is outside the scope of this rulemaking.

One industry commenter proposed that MMS consider expansion of § 202.100(b) to include appropriate royalty deductions for the oil equivalent cost of alternative fuels which may also be used for beneficial purposes on the lease.

MMS Response: This suggestion was not adopted. This issue is more properly directed to operational regulations, not value regulations, and is outside the scope of this rule. The MMS has included these provisions simply to reflect the general lease terms and regulatory provisions which prescribe the royalty obligation.

A State commenter suggested changes designed to help end the confusion about the distinction between computing the royalty rate and computing the amount of royalties due. MMS has adopted some changes to the wording of § 202.100 (a) and (b) for clarity. The same commenter recommended inserting "from the lease site" in paragraph (b) to assure conformity with the specific requirements of FOGRMA, 30 U.S.C. 1756. MMS has adopted this change.

Section 202.100(c) was proposed as § 206.100(d). The only comment received was from industry suggesting the addition of the phrase "because of negligence of lessee" after the words "offshore lease," in order to be consistent with section 308 of FOGRMA.

MMS Response: This subpart addresses the valuation of oil which has been determined to be "avoidably lost," not the reason(s) for that determination. Determination of "avoidably lost" and "negligence" is a function of MMS OCS Operations for OCS leases and BLM for onshore Federal and Indian leases. The addition of the recommended phrase, therefore, is considered inappropriate for inclusion in this rulemaking.

MMS has added at § 202.100(d) of the final rules a provision concerning production governed by a federally approved unitization or communitization agreement. Section 202.100(d) states that all agreement production attributable to a Federal or Indian lease in accordance with the terms of the agreement is subject to the royalty payment and reporting requirements of Title 30 of the Code of Federal Regulations even if an agreement participant actually taking the production is not the lessee of the Federal or Indian lease. Most important, however, § 202.100(d) requires that the value, for royalty purposes, of this production be determined in accordance with 30 CFR Part 206 under the circumstances involved in the actual disposition of the production. By way of illustration, if a Federal lessee does not sell or otherwise dispose of its allocable share of unit production, then it will be sold or otherwise disposed of by one of the other unit participants. If one of the unit participants other than the Federal lessee transports the oil to a terminal off the unit area under an arm's-length transportation agreement and then sells the oil under an arm's-length sales contract, the value, for royalty purposes, will be that person's gross proceeds less the costs of transportation incurred under the arm's-length transportation agreement. This provision does not address the issue of what person must report and pay the royalties, it only addresses the issue of valuation.

Section 206.100 Purpose and scope.

One industry commenter agreed with the concept that Indian Tribal and allotted leases be treated under the same oil valuation standards applied to Federal leases unless the specific lease terms require otherwise. That commenter also suggested that MMS support Indian Tribes and allottees, if requested, in marketing their royalty share of production. An Indian Tribe commenter asserted that it may be inconsistent to use the same oil valuation standards for Indian and Federal leases "Because of the trust responsibility of the United States to maximize Indian royalties, it may be inconsistent to have Indian and Federal leases treated the same under this subsection, especially if the policy of Interior is to earn a reasonable and long-term maximum rate of return and revenues for all parties."

MMS Response: The MMS believes generally that maintaining a single set of oil valuation regulations that apply to both Federal and Indian lands (except leases on the Osage Indian Reservation) provides for consistency and certainty in the determination of the value of oil for all lands administered by the DOI and will result in obtaining a reasonable and appropriate rate of return to all parties concerned. However, because of the lease terms of many Indian leases, MMS has included in the rules some additional valuation standards applicable only to those Indian leases.

In accordance with paragraph (b) of this section, where the provisions of any statute, treaty, or lease are inconsistent with these regulations, the lease, statute, or treaty provision will govern to the extent of that inconsistency. This policy also applies to court decisions—regulatory revisions will be required to the extent of any inconsistency with the existing regulations, provided they are not ambiguous or unclear in their intent. Thus, MMS maintains the DOI's responsibility to Indians by assuring that the regulations do not supersede the authority granted by the lease, or violate provisions of a statute, treaty, or court decision.

Several Indian respondents commented on § 206.100(b). One suggested that the proposed rules should expressly recognize that "where provisions of any Indian lease, or any statue or treaty affecting Indian leases, as stated or *as interpreted by the courts,* are inconsistent with the regulations, then the lease, statute or treaty, or *court interpretation* would govern to the extent of the inconsistency."

Another commenter expressed the view that "caution should be exercised before stating that 'the lease * * * provision shall govern to the extent of that inconsistency.' Many Indian allottee and tribal leases are very old and were entered into when industry practices were very different than they are now. The parties to the lease may have understood the lease to incorporate standard industry practice at that time. For this reason, some provisions may have been omitted from the written instrument. It may be proper to interpret some of those unwritten provisions in light of today's standards, but it may be grossly unfair to the royalty owner to so interpret others. One such example may be transportation costs. If transportation costs were not being deducted from royalties when the lease was entered into, transportation costs should not be deducted now, even though not mentioned in the lease. It is our conclusion that this should be considered and the regulations should make some mention of this consideration."

MMS Response: Obviously, MMS will comply with court orders and judicial decisions which affect these regulations. It is well known, however, that court decisions often focus only on parts of issues, leaving those decisions open to interpretation. Furthermore, a court's jurisdiction can limit the applicability of its decision. It is for these reasons that MMS has elected not to include an express reference to court decisions or court interpretations in this or any other Subpart of these regulations.

Contrary to the interpretation of this section by the second commenter, the regulations will not change any specific lease provisions.

Only two comments were received concerning § 206.100(c). One from industry endorsed the recommendation of the Royalty Management Advisory Committee (RMAC) Oil Valuation Panel which proposes placing a limit on the time period during which MMS may conduct an audit on a lease. It asserted that such a limitation "encourages prompt action, assures the retention of appropriate records, and gives the lessee assurance that its current business will not be disrupted by examinations of very remote payments. We believe a 6-year limitation is reasonable for both MMS and the lessee."

The Indian respondent is concerned that "Although all royalty payments made to MMS will purportedly be subject to later audit and adjustment, MMS's past audit record does not reassure the tribes that all royalties due will be collected."

MMS Response: These regulations concern valuation procedures, not accounting functions. All MMS audits are subject to the requirements found at 30 CFR 217.50, which does not specify any time limit during which MMS may conduct an audit. Because the reference in § 206.100(c) is intended only to be a general reminder that royalty payments will be audited, the recommendation to place a time limit on audits was not adopted. The MMS has modified the provision in the final rule to make it clear that this provision applies to payments made directly to Indian Tribes or allottees as well as those made to MMS either for Federal or Indian leases.

Proposed § 206.100(e) would have required royalties to be paid on

insurance compensation for unavoidably lost oil. Of the nine comments received concerning this section, eight from industry objected to MMS's concept of value. Their rationale can be summarized as follows: "Royalty is due on production saved, removed, or sold, and insurance proceeds for production unavoidably lost does not fit into any of those categories and is not a royalty assessable event. Because MMS does not share in the expense for insurance coverage, it should not receive any royalty or compensation received as a result of such coverage."

One of these comments expands on this argument by stressing that "if MMS insists on collecting a portion of such proceeds, then to the extent that insurance may cover the royalty interest of unavoidably lost production, proceeds should be shared only if the cost of insurance coverage is recognized as an allowable royalty deduction."

MMS Response: Pursuant to § 202.100(b) of the final rules, no royalty is due on production which is unavoidably lost. Therefore, MMS has concluded that no royalty is due on any insurance compensation for such production.

Section 206.101 Definitions.

Allowance—A total of four comments were received on this paragraph; two were from State entities, one from an Indian Tribe, and one from a Federal agency. One State commenter pointed out that this definition appears to be inconsistent with the sections of the valuation regulations dealing with transportation allowances (§ 206.104 and § 206.105). The word "allowance" is defined in terms of being "authorized," "accepted" or "approved," whereas the regulations state that a transportation "allowance" can be deducted without prior approval. Their concern is that the definition should match the usage in the regulations. An Indian commenter stated that the definition should "clearly specify that the transportation allowance applies only to transportation from *the lease boundary* to a point of sale remote from the lease and that such costs be reasonable, actual, *and necessary.*" A Federal agency comment stated that the definition is too liberal and would result in the Federal Government subsidizing oil companies' operation costs. They cited an example where a transportation allowance of as much as 50 percent could be granted for moving oil in lateral lines to off-lease measurement points; specifically, from wellheads to a Lease Automatic Custody Transfer (LACT) unit. One State commenter suggested that the definition is unnecessarily broad and recommended deleting the language "or an MMS-accepted or approved" as well as deleting the phrase "to a point of sale or point of delivery remote from the lease." This commenter also suggested adding the words "necessary and" before the word "reasonable." The rationale for making these changes is that there are other sections of the regulations that clarify "that MMS need not provide advance approval before a lessee could take an allowance." The "accepted or approved" language could be interpreted to suggest that "allowances are not subject to later adjustments by MMS after full audit, based on arguments that the allowance was accepted by MMS after receipt of the actual costs report under § 206.105(b)(2), or accepted under the terms of the regulations."

MMS Response: These regulations, in effect, "authorize" the lessees to deduct certain costs incurred for transportation from the value without prior approval. (See § 206.104 and § 206.105). Allowances computed by the lessee shall be "accepted" by MMS subject to review and/or audit. The MMS has not included a definition of the phrase "remote from the lease" in the final rules. To eliminate any confusion, MMS has replaced this phrase with the phrase "off the lease." Thus, transportation off the lease, other than gathering, is subject to an allowance. The MMS has included an express statement in the final rule that transportation allowances do not apply to gathering costs.

Area—A single comment was received from industry addressing this definition as being imprecise and in need of specified limits in order to define how large an "area" can be. In addition, the commenter proposed that the definition should be clarified by inserting the phrase "or producing unit" after "oil and/or gas field."

MMS Response: The definition seeks to encompass a concept that is very difficult to describe. Narrowing its scope by describing it in terms of size will only establish an arbitrary basis for the definition. To avoid this, MMS elected to retain the definition as proposed.

Arm's-length contract—A total of 41 comments were received on this definition—27 from industry, 4 from Indians, 1 from a State/Tribal association, 8 from States, and 1 from a Federal agency. The proposed definition of "arm's-length contract" generated a significant number of comments because it is, as one commenter noted, the "* * * linchpin of the benchmark system * * *." Because of the importance of this concept, it is not surprising that several commenters disagreed with the definition, either in part or in its entirety. Indeed, one State commenter described the reliance on the concept of "arm's-length" as a method of determining value to be "both inefficient and inappropriate" and suggested deleting the definition altogether. The majority of commenters, however, focused on what they considered to be flaws in the proposed definition and the specific recommendations they considered necessary to conclusively address those flaws.

One Indian commenter suggested that the basic flaw in the definition is the assumption that the interests of the lessee and the lessor are identical. This commenter pointed out that the courts "have recognized that the interests of lessees and lessors often diverge. See, e.g., *Piney Woods Country Life School v. Shell Oil Company* 726 F.2d 225 (5th Cir. 1984), *cert. denied*, 105 S. Ct. 1868, (1985), *Amoco Production Company v. Alexander*, 622 S.W. 2d 563, (Tex. 1981)." Another State commenter described the definition as "clearly deficient because it is limited to formal affiliation or common ownership interests between the contracting parties." The assumption that arm's-length contract prices reflect market value "ignores the fact that parties may have contractual or other relationships or understandings which would cause them to price oil below its value, especially if the benefit of the reduced royalty burden can be shared by means of the oil sales contract." This commenter believed that the lessee's and lessor's interests may not be the same, and that the royalties due lessors is viewed by many lessees as a cost to be minimized, not maximized. Another comment submitted by the State/Tribal association cited the following as an example of a situation where, although the parties are unaffiliated, the market value may be less than the arm's-length contract price: "Thus, for example, the price received by a lessee/producer who is a captive shipper of a single purchaser pipeline, albeit unaffiliated, will be accepted as the value, despite the fact that competing market forces are not operating. Even if audit revealed facts that would indicate that the sales price is suspect, the government would be bound under the proposed regulations to accept it if the parties were nominally unaffiliated. The MMS proposal would even foreclose the use of standard price checks, presently used * * * in * * * audit efforts, to assure that contract proceeds represent the statutory requirement of fair market value of production." One State commenter concluded that in its attempt to

establish an "almost purely objective" test and provide for certainty in valuation, MMS has inadequately tried to justify "giving away the power to prevent manipulation of the public's royalties." Other State and Indian commenters claimed that the proposed definition, although it may be objective, remains "unworkable" mainly because it does not include any reference to "adverse economic interests" and "free and open market" nor would it serve as an effective audit tool. They urge MMS to use the definition first proposed by MMS to the RMAC because "that definition incorporates the common legal understanding of the term arm's-length—the existence of unaffiliated willing buyers and willing sellers of adverse economic interests operating in a free and open market—and is the only definition that can assure against valuation becoming an industry 'honor system.'"

One State commenter stressed that even though the inclusion of additional criteria ("adverse economic interest" and "free and open market") would increase subjectivity, "the appeals process is in place to provide protection against arbitrary decisions." Six State and Indian commenters specifically recommended that the proposed definition be replaced by the one proposed to RMAC by MMS in the draft regulations.

That definition reads as follows:

> Arm's-length contract means a contract or agreement that has been freely arrived at in the open marketplace between independent, nonaffiliated parties of adverse economic interests not involving any consideration other than the sale, processing, and/or transportation of lease products, and prudently negotiated under the facts and circumstances existing at that time.

One Indian Tribal commenter suggested that "MMS should derive a definition of oil value for royalty purposes (instead of what they consider would be a necessary, all-inclusive, lengthy definition of arm's-length contract) which is simple and which represents the true value of the production. The [commenter] submits that such a definition must be based on the highest price paid or posted for similar oil in the same field or area." Another commenter stressed that the definition limits the discretion of the Secretary to select whatever method he/she considers appropriate to determine the value of oil for royalty purposes.

A large number of industry commenters agreed that the definition of an "arm's-length contract" as "a contract or agreement between independent and nonaffiliated persons" is sound and appropriate. However, these same commenters (plus some Indian and State commenters) objected to the phrase in the proposed definition "or if one person owns an interest (regardless of how small), either directly or indirectly, in another person" as being too "restrictive." [1] The rationale for this position is that the phrase appears to defeat MMS's intent to use arm's-length contracts as the principal valuation method. Many industry commenters addressed the need to clarify the definition in order to insure that joint ventures, joint operating agreements, tax partnerships, and other relationships where the "interest" of one party in another is not one of beneficial control, are specifically excluded. As one of these commenters put it: "Similarly, involvement in one or more joint operations with a competitor should not be viewed as materially affecting the arm's-length nature of transactions between the firms. However, the reference to joint venture in the definition of person, which is referenced in the proposed definition of arm's-length contract, could be improperly construed as including normal joint oil field operations conducted under the terms of joint operating or similar agreements. Joint operations clearly involve no interlocking ownership of the instruments of voting securities as between the firms. Joint operations are undertaken to accomplish effective reservoir management, to satisfy spacing requirements, or to share the enormous costs involved in certain OCS and frontier areas. Such joint operations are often mandated and/or approved and sanctioned by the various governmental agencies having jurisdiction and supervision over the operations (i.e., communitization, unitization, and development plans; and joint bidding agreements). They do not establish joint marketing rights, or otherwise erode the competitive desire of each owner to achieve maximum value for its share of production." Several industry commenters also complained that the ownership by one party of one share of stock in another party would confer affiliated or non-arm's-length status to virtually all otherwise arm's-length transactions between the two parties. They further stated that this would be true even if the pension plan of one party holds one share of stock in the other party. One Indian commenter suggested that MMS would waste its efforts trying to determine ownership interest: "There is also a problem with using ownership interest 'regardless of how small' in the definition. There is no definition in the proposed regulations of 'owns an interest.' Would the ownership of one share of stock be considered owning an interest? Parameters must be set and adhered to. When MMS starts trying to determine ownership interests no matter how small, an endless quagmire will develop, and time and resources will be devoted to this determination when they would be better spent on MMS's other duties."

Another industry commenter pointed out that the definition is inconsistent with the guidelines concerning beneficial control under generally accepted accounting principles, while a number of other industry commenters claimed that it eliminates certainty in valuation.

The majority of all the comments stress the need to replace the phrase "or if one person owns an interest (regardless of how small), either directly or indirectly, in another person" with a statement that specifies quantifiable limits that would be used to determine whether or not one party would be considered to have a controlling interest in another party. Nearly all of these comments recommended that MMS adopt the following language for the definition of control which has already been implemented by BLM as codified at 43 CFR 3400.0–5(rr)(3) (51 FR 43910, December 5, 1986):

> Controlled by or under common control with, based on the instruments of ownership of the voting securities of an entity, means:
>
> (i) Ownership in excess of 50 percent constitutes control;
>
> (ii) Ownership of 20 through 50 percent creates a presumption of control; and
>
> (iii) Ownership of less than 20 percent creates a presumption of noncontrol.

A few industry commenters recommended replacing the word "person" with the word "party" in the definition of arm's-length contract because they foresee that the use of the word "person" will "unnecessarily preclude contracts between joint ventures from qualifying as arm's-length." Similarly, one industry

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[1] Several commenters used the word "restrictive" to mean that the language in the proposed definition regarding "if one person owns an interest (regardless of how small), either directly or indirectly, in another person" significantly restricts the number of situations where an arm's-length contract would actually exist. A few comments espoused this same position, yet they termed the definition as too "broad." As used in this discussion, MMS considers the word "restrictive" to represent the above-mentioned position, and the word "broad" to denote that the language of the definition is either too vague or not restrictive enough.

commenter suggested deleting the words "consortium" and "joint venture" from the definition for "person" ("party") for the same reason.

Finally, one industry commenter objected to "the implicit and explicit presumption throughout the Oil Proposal that proceeds actually received through affiliated sales are less than fair value. This presumption places an unfair, impractical, and impossible standard on a producer who, acting in its best economic interest, elects to sell to an affiliated entity. In this regard, a redefinition of the term "Arm's-Length Contract" is recommended to eliminate reference to and inclusion of de minimis relationships."

MMS Response: Based on the numerous comments concerning the "restrictive" nature of the definition and the soundness of the arguments, MMS has decided to modify the phrase "* * * or if one person owns an interest (regardless of how small), either directly or indirectly, in another person" with the "control" language found in the BLM's regulations at 43 CFR 3400.0–5(rr)(3).

Furthermore, MMS recognizes that for the purposes of determining whether a contract is arm's-length or non-arm's-length (e.g., affiliated), the test of affiliation must be derived contract-by-contract. This means that, for example, two companies may be involved as 60–40 partners in a joint venture to acquire and develop an OCS lease. If the company with the 60-percent interest buys the production from the joint venture company, that contract will be non-arm's-length. However, the two companies who formed the joint venture still may be considered by MMS to have an arm's-length sales contract between them for production from another lease, provided the 20-percent ownership threshold is not exceeded. In the event that one company does own a 20-percent, or greater, interest in the other, then MMS would presume that any transaction between them is non-arm's-length.

The MMS may require a lessee to certify ownership in certain situations. Documents that controllers or financial accounting departments of individual companies file with the Securities and Exchange Commission concerning significant changes in ownership (e.g., 5 percent) must be made available to MMS upon request.

The final rule also provides that to be considered arm's-length for any specific production month, a contract must meet the definition's requirements for that production month as well as when the contract was executed.

The very nature of an arm's-length contract implies an adverse economic interest between the contracting parties. The MMS believes that the intent of the final definition (which includes the BLM "control" language) satisfies the concerns of those commenters who felt that the definition should include specific "adverse economic interest" language. Moreover, MMS has included in the final rule a provision which requires that to be arm's-length a contract must reflect the total consideration actually transferred from the buyer to the seller, either directly or indirectly. For example, if the parties to the contract agree that the price for oil from a Federal or Indian lease will be reduced in exchange for a bonus price to be paid for other production from a fee lease, MMS will not treat that contract as arm's-length. MMS does recognize, however, that two parties may have a course of dealing so that some may argue that any contract between them could be construed as including some consideration other than the specified price. It is not MMS's intention to exclude such bona fide agreements from the definition of arm's-length contract.

This definition in no way limits the Secretary's authority to question or "look behind" an arm's-length agreement if there is reason to suspect that elements of the agreement are less than arm's-length.

Audit—Only a few comments were received on this proposed definition. All the comments focused on the portion of the definition which followed the first sentence. Generally, these comments suggested that the proposed definition limited the scope of MMS's authority, particularly with regard to Indian leases.

MMS Response: It is MMS's intention that the definition not be limited. Therefore, the final rule deletes everything following the first sentence of the proposed definition because the succeeding sentences were only intended to be explanatory.

Condensate—Only one industry comment was received on this proposed definition. This comment advocated adding the phrase "beyond normal lease separation procedures" after the word "processing" in the first sentence of the definition in order to clarify that "liquid hydrocarbons resulting from normal lease separation procedures are condensate" whereas "processing," in this context, refers to more sophisticated facilities that are generally located off lease.

MMS Response: This definition has been retained intact in the final rule. However, a definition of the word "processing" has been added for clarification purposes at § 206.101.

Contract—A single comment was received on this proposed definition. Although this State commenter recognized that "as a matter of law, oral contracts are enforceable," they recommend that the words "oral or" be deleted because they argue that "there is no way that the terms of such contracts can be adequately verified to assure that all of the consideration and benefits under it have been honestly detailed by the lessee under proposed § 207.4. Thus, the government, in a situation involving an oral contract, must assure itself that it has all of the information relevant to the transaction; reliance on the 'contract' document—drafted by one party only—would be insufficient."

MMS Response: The MMS has retained this definition as proposed because, in accordance with § 207.4, oral contracts negotiated by the lessee must be placed in written form and retained by the lessee. If the MMS believes that the written documentation is not a truthful representation of the actual terms of the sales agreements, the lessee may be liable for penalties for submitting false, inaccurate, or misleading data.

Gathering—MMS has included in the final rule a definition of gathering as the movement of lease production to a central accumulation or treatment point on the lease, unit, or communitized area, or to a central accumulation or treatment point off the lease, unit, or communitized area (if authorized by the BLM or MMS operations authority). In most instances, gathering is a cost of production or marketing for which MMS will not grant any deduction.

Gross Proceeds—Twenty-eight respondents commented on the definition of "gross proceeds"—22 from industry, 4 from states, 1 from an Indian tribe, and 1 from a State/tribal association. Of the 28, 2 endorsed the proposed definition as published, 2 recommended changes to clarify or expand the scope of the definition, and 24 objected to it for various reasons. The main objection was that the definition appears to include consideration unrelated to the value of production.

One State agreed with the language of the proposed definition and supported its endorsement as follows: "Such a definition must be all inclusive. Any exceptions would only serve as precedents for carving more exceptions, and invite creative accounting mechanisms aimed at escaping royalty obligations."

One Indian commenter recommended replacing the word "entitled" with the phrase "accrued or accruing to" while

another State commenter supported retaining the word "entitled" because it confirms the lessee's "obligation to act in the best interests of the lessor." This same commenter, however, pointed out: "In the Purpose and Background statement, MMS states that it is the intent of the regulations to include as royalty all of the benefits accruing, or that could accrue, to the lessee. However, the actual definition of gross proceeds does not encompass all potential benefits. For example, a lessee may accept a lower price for its production from a Federal lease for the opportunity to sell to the particular purchaser its production from other leases. Despite the difficulties of attributing a value to such an opportunity, it is a benefit accruing to the lessee under its sales contract. The language of the definition, however, suggests that 'gross proceeds' only encompasses consideration that has been stated in dollar terms. Thus, it technically does not include all of the benefits that could accrue under a sales contract."

A majority of those commenters that objected to the proposed definition expressed the same basic arguments in support of their position. Several industry commenters argued that the proposed definition contains language which is too expansive, claiming that the word "entitled" injects uncertainty and subjectivity into valuation. Additionally, this term is considered objectionable by some because, as one commenter stated, "the intent of 'entitled' is not clearly understood, nor is it a clearly defined legal term. Lessees cannot know how either they or MMS auditors will, or should, apply the 'entitled' concept." They recommend deleting this term and abandoning the underlying concept altogether.

A few industry commenters suggested that the proposed definition does not conform to the terms of Federal and Indian oil and gas leases nor the statutes under which they were issued. They argue that the present definition "attempts to collect royalty on consideration received by the lessee [for] other than production saved, removed, or sold from the lease" and that it seeks to redefine "value" to include income or credits which are unrelated to such production.

Other industry commenters agreed with this overall approach, especially as it relates to reimbursements for "production costs" and "post-production costs." One commenter addressed this point at length: "This definition must be changed to limit the royalty to the value of the production at the lease. The current expansive definition allows MMS to reach far beyond that value to confiscate the value added by post-production activities. The MMS has misread the *The California Co. v. Udall* decision to require the lessee to do much more than place production in a marketable condition. If production could be sold at a lease but the lessee determines to enhance the value by retaining control and further processing it, the value added or reimbursements for the costs of such further handling are not appropriate for consideration in the value of the product for royalty purposes."

Many of the industry commenters objected to the "laundry list" of services they asserted are unrelated to production being included as part of "gross proceeds." One industry commenter urged MMS to adopt language which would specifically allow a variety of costs to be deducted from gross proceeds in order to arrive at the value of production.

A few industry commenters concluded that the definition, in its present form, is inconsistent with industry practice and not responsive to the "interaction of market forces."

One industry commenter noted that "some of the items specifically identified as subject to royalty under the gross proceeds concept are the subject of ongoing litigation and the MMS should not preempt judicial decision through regulation."

One State commenter asserted that the definition is only necessary as a determinant of minimum value and, in this sense, should be as expansive as possible. This commenter suggested that "the words 'but is not limited to' need to be added after the words 'gross proceeds, as applied to oil also includes.' " This language was thought to be needed because there is "no reason to restrict the term gross proceeds to encompass only those items listed." Furthermore, this commenter is concerned that the present language will "restrict the Secretary's authority to react if different types of sales arrangements arise in the future."

Another industry commenter asserted that there are "serious ambiguities and inconsistencies" in the definition of gross proceeds "as related to transportation deductions imposed by oil purchasers. These ambiguities and inconsistencies could be interpreted to preclude the use of a market-based value for royalty oil where oil purchasers in the area deduct actual transportation costs from their posted prices."

A large number of industry commenters recommended that MMS adopt the definition proposed by the RMAC Oil Valuation Panel which reads as follows: "Gross proceeds (for royalty payment purposes) means the consideration accrued to the lessee for production removed or sold from a Federal, Tribal, or Indian allotted lease."

MMS Response: MMS has adopted a definition which is modified slightly from that proposal for purposes of clarification. MMS has retained the intent of the proposed language because gross proceeds to which a lessee is "entitled" means those prices and/or benefits to which it is legally entitled under the terms of the contract. If a lessee fails to take proper or timely action to receive prices or benefits to which it is entitled under the contract, it must pay royalty at a value based upon that legally obtainable price or benefit, unless the contract is amended or revised. As is discussed more fully below, gross proceeds under arm's-length contracts are a principal determinant of value. MMS cannot adopt that standard and then not require lessees to pay royalties in accordance with the express terms of those contracts. (See § 206.102(j)). It is MMS's intent that the definition be expansive to include all consideration flowing from the buyer to the seller for the oil, whether that consideration is in the form of money or any other form of value. Lessees cannot avoid their royalty obligations by keeping a part of their agreement outside the four corners of the contract.

The so-called "laundry list" of services are all benefits that a lessee may be legally entitled to under the terms of the contract and are considered part of the value for the production from the lease. Costs of production and placing production in marketable condition are (with a few exceptions addressed later in this preamble) considered services that the lessee is obligated to perform at no cost to the Federal Government or Indian lessor.

Indian Tribe—MMS has corrected the typographical error in the proposed definition and has replaced the word "state" with the words "United States."

Lease—Only one Indian respondent commented on this definition. The comment focused on the following issue: "Inclusion of any contract, profit-sharing arrangement, joint venture, or other agreement in the term 'lease' as opposed to a more standardized Bureau of Indian Affairs (BIA) form lease may cause confusion. Most joint ventures and profit-sharing arrangements contain

explicit provisions on payment of expenses and division of revenues."

MMS Response: Contracts, profit-sharing arrangements, and joint ventures are all examples of types of valid leases already in existence. All specify royalty provisions, some more detailed than others. Nonetheless, they all qualify under the definition of "lease." Therefore, MMS has retained the proposed definition in the final rule.

Lessee—The proposed definition of "lessee" generated comments from 13 different respondents—12 from industry and 1 from a State. By far the most significant issue raised is that the proposed definition is inconsistent with the statutory definition of "lessee" found in the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA). The proposed definition uses the phrase "or any person who has *assumed* an obligation" whereas the language in FOGRMA uses the word *"assigned"* in place of the word "assumed." The commenters argued that MMS's use of the word "assumed" expands the definition beyond the intent of Congress and "seeks to invalidate the lease provisions with respect to royalty payment * * *" They further asserted that there is no reason to redefine the term and recommended using the definition found in FOGRMA at section 3(7), 30 U.S.C. 1702(7).

Two industry commenters suggested that the definition be narrowed to "exclude persons who have assumed an obligation to make royalty and other payments required by the lease." Their argument focused on the difference in responsibilities between lessees and payors: "The payor is not necessarily a lessee and should not be defined as one. A lessee is bound by the terms of a lease agreement while a payor is not."

Two industry commenters suggested that the definition as provided in FOGRMA should be revised for the purposes of these regulations for the sake of clarity.

The State commenter objected to the proposed definition because it has the effect of spreading "the reporting and payment responsibility among numerous parties. With each of these parties reporting and paying separately, no single party has the responsibility to insure that 100 percent of all production is reported and 100 percent of the royalties are paid."

MMS Response: The MMS agrees with the comments regarding consistency with the definition found in FOGRMA and, therefore, has replaced the word "assumed" with the word "assigned." The term "assigned," as used in this Part, is restricted to the assignment of an obligation to make royalty or other payments required by the lease. It is in no way related to lease "assignments" approved through the MMS, BLM, or BIA.

Load Oil—Two comments were received on this proposed definition—one from a State and one from industry. The industry commenter suggested that the word "fuel" be added as noted in the following proposed language: "*Load oil* means any oil which has been used with respect to the operation of oil or gas wells for *fuel,* stimulation, workover, chemical treatment, production or such other purposes as the operator may elect."

The State commenter recommended deleting the phrase "as the operator may elect" from the definition because: "There is no reason to institutionalize, in an enforceable regulatory form, a standard of lessee discretion."

MMS Response: Load oil is distinguished by MMS as oil used for the purposes of stimulating production through injection into the wellbore. Using oil for the purposes of enhancing the value of, or otherwise treating, lease production at the surface is not considered "load oil." Thus, oil used as fuel is not load oil. Also, in order to eliminate confusion, MMS has deleted the phrase "or such other purposes as the operator may elect."

Marketable Condition—Three respondents commented on this definition— one from industry, one from a Federal agency, and one from a State. The State commenter addressed the following concerns: "The definition states that product will be deemed marketable if it is 'in a condition that will be accepted by a purchaser under a sales contract typical for the field or area.' Such contracts, now or in the future, may provide that the purchaser bear the costs of the treatment necessary to place products in a marketable condition. Under the definition, as written, therefore, there would be a theoretical market for untreated product, and MMS would lose the benefit of the increased value attributable to requiring the lessee to perform the necessary conditioning.

"An additional problem exists because of the difficulty of determining what is 'typical' for the field or area. This is because of the same informational difficulties that disable MMS from adequately applying the majority portion analysis. Without full access to the range of sales arrangements that may exist for production in a given area, MMS will be forced to rely on lessee-selected documentation in order to determine what type of conditioning is typical' for the area."

MMS Response: The MMS believes it is highly unlikely that the oil industry would change the quality requirements for oil sales to avoid paying royalties on nonrecoverable marketing costs. If such an arrangement occurred, MMS would then need to determine if the arrangement is an attempt to avoid paying royalties on the market value of the oil, or a contract to not only purchase the oil, but to place it in marketable condition as well. In either case, the costs for placing the product in marketable condition would not be an allowable deduction from the value for royalty purposes. (See § 206.102(i)(1).)

Net-back method—One industry respondent and two State respondents commented on the proposed definition. The two States objected to the proposed definition and the industry commenters recommended adding clarifying language. The following discussion outlines the position of the two State commenters that found the proposed definition objectionable: "Briefly, our objections are twofold: 1. Net-back is a useful method to independently cross-check lessee declared values, and thus its use should not be restricted to those situations in which the 'first' sale, transfer, or use is downstream from the lease.

"Second, net-back should be allowed from any reasonable point at which a value can be ascribed to the product. There is no guarantee that the 'initial sales point' or 'first alternate point' will exhibit the open market conditions essential for attribution of a true value for the products.

"We therefore propose the following alternate definition: Net-back method means a procedure for valuing or verifying prices assigned to lease products or for independent cross checking of the validity of the gross proceeds of lease products or of prices posted or paid in a field or area. The procedure involves calculating back from any downstream point at which values for such products reasonably and fairly can be derived. In applying the net-back, consideration will be given to the reasonable costs of processing and transportation from the producing lease, unit or communitized area to arrive at a value for the products at the lease."

The industry commenter recommended that the following language be added to the proposed definition: "In net back calculation the alternate point used for value determination shall be the point which is the closest point to the lease at which a price for similar lease products can be established by alternate means. Such

alternate means may include posted prices or published spot market prices."

MMS Response: Upon review, MMS determined that the proposed definition of net-back was too broad—it applied to any situation where lease production is sold at a point off the lease. MMS's intent is that a net-back method be used for valuation primarily where the form of the lease product has changed, and it is necessary to start with the sales prices of the changed product and deduct transportation and processing costs. An example would be where oil production from a Federal lease is used on lease to generate electricity which is then sold. If the value of the oil cannot be determined through application of the first three benchmarks in the regulations (see § 206.102(c)), then a net-back method would involve beginning with the sale price of the electricity and then deducting the costs of generation and transportation, thus working back to a value at the lease. MMS has revised the definition so it more clearly applies to this type of situation.

Person—The MMS received a total of four comments on this definition. One Indian commenter supported the inclusion of "joint venture" in the definition of "person" while two industry commenters recommended that "joint venture" be deleted. The rationale these two commenters rely on as the basis for recommending deletion is that the term "person" is used in the definition of "arm's-length contract" and if "that definition is not altered as suggested herein, then inclusion of a joint venture in the definition of person will further narrow the definition of arm's-length transaction by clouding the issue of control and the application of the definition [of] arm's-length to other joint venturer transactions." Another industry commenter advocated replacing the word "firm" with the word "company" because they believe that, in this context, it would be more appropriate.

MMS Response: Because the definition of arm's-length contract has been modified to include the BLM "control" language, most of the comments on this definition no longer are relevant. Therefore, MMS will retain the proposed definition of "person" intact in the final rule.

Posted price—The proposed definition received four comments, two of which recommended expanding the definition of posted price to include the phrase "or at the specific onshore or offshore terminal(s) listed in the announcement" after the words "in the field." These industry commenters stated that there are "currently very few 'field postings,' rather there are terminal postings" and that expansion of the definition as noted above would avoid confusion in applying the definition.

Another industry commenter believed that the word "posted" is outdated and that some purchasers may not publish a price bulletin, instead providing price quotations or notices to any seller desiring to do business with the purchaser.

A State commenter recommended deleting the phrase "net of all deductions" for the following reasons: "The net of all deductions' language should be deleted. MMS has proposed a system of allowances, which as a practical matter makes the 'net of deduction' language unnecessary for the purposes of defining 'posted price.' This proposal could be interpreted to institutionalize the allowances without a mechanism of independent cross check by MMS.

"Common industry deductions are for transportation and conditioning. Yet there are no restrictions upon what a poster can include as a deduction from the posted price. Thus MMS must retain the power to scrutinize such matters, and add such deductions back into the value of the production when necessary."

This same commenter believed that the definition is too restrictive: "We also object to restricting the definition of posted price to formal price bulletins. Rather, the definition should be broader and include both prices posted and those regularly paid. It is not unusual for a buyer to come into the market and offer publicly a price for crude, which is like a posting but not necessarily a price bulletin. Such publicly announced offers to buy could be at a price higher than offered in a price bulletin, and are no less 'market determined' than supposedly are postings in bulletins. Price bulletins are, generally, only circulated by the major companies and thus reliance on them may give undue advantage to the ability of those companies to establish prices."

MMS Response: The MMS is expanding the definition in the final rule to include references to onshore and offshore "terminal postings" and "price notices." For clarification purposes, the word "condition" replaces the word "quality" which follows the word "marketable" in the first sentence. The phrase "net of all adjustments" has been revised to read "net of all adjustments to." As used in this definition, the term "adjustments" refers to deductions from the price of oil for quality adjustments such as API gravity and sulfur content. Adjustments for location also may be taken into account where appropriate.

Processing—MMS has added a definition of "processing" as any process designed to remove elements or compounds (hydrocarbon and nonhydrocarbon) from gas, including absorption, adsorption, or refrigeration. Field processes such as natural pressure reduction, mechanical separation, heating, cooling, dehydration, and compression are not considered processing. Under this definition, the changing of pressures and/or temperatures in a reservoir is not considered processing.

Section 206.102 Valuation standards.

Section 206.102(a) sets the basic standard that the value for royalty purposes will be the value of the oil determined pursuant to this section less applicable allowances. One State commenter recommended that the phrase "less applicable transportation allowances" be deleted because it is unnecessary, confusing, and because it implies that the lessee can deduct the transportation allowance from the value received and report the resultant reduced value as a single line item.

MMS Response: The regulation as adopted refers to "applicable" allowances, which includes both transportation allowances and the limited allowances provided by § 206.102(i)(2) of the final rule. It does not imply that any and all costs can be deducted. Also, it refers to "this Subpart" which includes § 206.105. That section provides complete details regarding transportation allowances. Therefore, this suggestion was not adopted.

Two Indian commenters recommended that the paragraph be modified by (1) deleting any reference to the transportation allowances because they are improper for Indian leases, and (2) adding the phrase "in marketable condition."

MMS Response: Transportation allowances are allowable under most Indian leases. It has been MMS's practice to grant such allowances. If an Indian lease restricts such allowances, then the lease terms will govern.

The MMS does not agree that the phrase "in marketable condition" should be inserted prior to the word "determined." Section 206.102(i) requires that oil be placed in marketable condition at no cost to the lessor. Thus, because § 206.102(a) provides that value be "determined pursuant to this section," the marketability requirement already is included.

The MMS is including in the final rule a new paragraph (a)(2) which states that for any Indian leases which provide that

the Secretary may consider the highest price paid or offered for a major portion of production (major portion) in determining value for royalty purposes, MMS will, where data are available and where it is practicable, compare the value determined in accordance with the prescribed standards with the major portion. The rule provides that the value for royalty purposes generally will be based upon the higher of those two values. However, if MMS determines that the major portion results in an unreasonably high value, then it will not be used for royalty purposes. This could happen, for example, in a falling market where a seller under an arm's-length contract has the price lowered. If that price is truly the result of an arm's-length process and is lower than the major portion, MMS could conclude that the arm's-length price is the highest reasonable value for royalty purposes.

The MMS is also including in paragraph (2) a description of how the major portion is computed. It will be determined using like-quality oil. The production will be arrayed from highest price to lowest price (at the bottom). The major portion is that price at which 50 percent (by volume) plus one barrel of the oil (starting from the bottom up) is sold.

The MMS believes that for these Indian leases, by comparing the major portion to values determined using arm's-length contract prices or the benchmarks for non-arm's-length contracts, and generally using the higher of the two, the Indians will be receiving royalties in accordance with their contract with the lessee.

Section 206.102(b) provides the valuation procedure for valuing oil sold pursuant to arm's-length contracts. Many comments were received regarding the concept of valuing oil on the basis of gross proceeds received under an arm's-length contract. They were about equally divided in number as to those in favor and those opposed.

Seven State, seven Indian, and one State/Indian association disagreed with the concept of valuing oil on the basis of gross proceeds received under an arm's-length contract. The commenters contend that, historically, gross proceeds has been regarded as a minimum value and that it has long been recognized that a market value clause in a lease "is distinctly and substantially different from a gross proceeds clause." They were concerned that the concept establishes an industry honor system. Also, concern was expressed that the proposed regulations be consistent with the provisions of the Indian lease agreement, and they questioned whether the proposed regulation permits the Secretary to discharge his/her responsibilities to the Indian lessors. These commenters maintained that whether an arm's-length transaction yields market value depends upon the definition of arm's-length contract.

Two State and two Indian commenters expressed concern that the proposed regulations will institutionalize an industry "honor system" for valuation of Federal royalty production. The commenters stated that the rules provide no mechanism for independent oversight and cross-check of lessee declarations of value and impose such impossible information burdens on government that they can only result in total reliance on lessee-generated information. They stated further that whether an arm's-length transaction yields market value depends upon the definition of "arm's-length" and whether independent price checks confirm the receipt of proceeds.

The commenters pointed out that many sales arrangements may appear to be arm's-length on the surface, but in actuality the producers are "captive shippers" subject to forced sale and the producer's take-it-or-leave-it price. This scenario is stated to be contrary to the common legal understanding of an arm's-length market-determined price. The commenters noted that MMS's definition of "arm's-length" does not even contain the minimum acceptable requirements, in a legal sense, necessary to assure that such contracts are, in fact, arm's-length. They argue that the use of an arm's-length/gross proceeds valuation method requires that such matters as open-market conditions and the relationships between parties, beyond mere affiliation, be investigated. Also, the commenters stated that MMS does not confine arm's-length to those contracts that involve only the consideration for the sale of lease products. Coupled with the proposed definition of gross proceeds, the commenters believe "this allows lessees the opportunity to manipulate the prices received for their production from a Federal lease by accepting a lower price in order to sell production from other non-Federal leases, possibly at a more profitable price."

MMS Response: The purpose of these regulations is to determine the reasonable market value of a commodity and use that value for royalty computation purposes. The market value is best determined from the interaction of competing market forces, and an arm's-length contract price is the product of market forces at work. Accordingly, MMS will generally accept the gross proceeds received under an arm's-length contract as the proper value for royalty computation purposes. The usual lease provisions do not preclude the acceptance of gross proceeds under an arm's-length contract as the proper value. In fact, most Indian leases expressly provide that the lessee's proceeds may be considered by the Secretary to be conclusive evidence of the value of production. As discussed above, for many Indian leases, MMS will also consider the major portion in determining the royalty value.

The MMS has added a provision to the final rule which provides that MMS will determine during audits whether the lessee's contract reflects all the consideration transferred either directly or indirectly from the buyer to the seller for the oil, or whether there may be factors which would cause the contract not to be arm's-length. MMS recognizes that some parties may have multiple contracts with one another. This fact alone would not cause a contract to be considered non-arm's-length. Rather, there must be some indication that the contract in question does not reflect the full agreement between the parties.

The MMS also has added a new § 206.102(b)(2) which provides that MMS may require a lessee to certify that its arm's-length contract provisions include all of the consideration to be paid by the buyer for the oil.

One Indian commenter suggested that the lessee should certify that this is the highest price he could have received for that oil at the time of the sale. The same commenter also noted that MMS's regulations, at a minimum, must be consistent with the language of the Indian leases. Other Indian commenters stated that the concept of basing royalty on gross proceeds received under an arm's-length contract is not in accord with the responsibilities of the Secretary. One of these commenters stated that "the lease and regulations provide that that value be determined, not gross proceeds. Gross proceeds is merely evidence of such value. Acceptance of gross proceeds as conclusive evidence of value is an abrogation of the Secretary's fiduciary duties, especially if the previous MMS practice of accepting reports from lessees without scrutiny continues."

MMS Response: The MMS believes that the regulations as adopted, with the changes discussed earlier will permit the Secretary to discharge his/her responsibilities properly.

One State commenter objected to the phrase "monitoring, review and audit" or similar phrases which appear throughout the proposed regulations because it suggests that the terms listed are synonymous. An MMS review or

reconciliation is not the same as a full audit. The commenter suggested that the following paragraph be added:

"[ ] Notwithstanding any provision in these regulations to the contrary, no review, reconciliation, monitoring or other like process that results in a redetermination by MMS of value under this section shall be considered final or binding as against the Federal Government, its beneficiaries, the Indian Tribes or allottees until after full audit."

Also, the commenter suggested that the words "lease terms, or relevant statutes" need to be added after the words "requirements of these regulations" in proposed §§ 206.102 (b) and (d)(1), for purposes of clarification and precision.

MMS Response: The suggested additional paragraph language has been included in the final rule as § 206.102(k) with minor modifications. This paragraph reflects MMS's longstanding view that a value determination based on limited review does not estop the MMS from redetermining that value until an audit has been completed and the audit period formally closed. The phrase "lease terms, or relevant statutes" has not been added to § 206.102(b) because there is a provision in the regulations that in the event of conflict the lease terms govern. Likewise, all persons are subject to statutory requirements.

Two suggestions were made regarding the establishment of a floor value. One Indian commenter objected to the proposed regulations because they "* * * would permit MMS to rely upon an industry honor system for valuation of Federal royalty production." However, if MMS's proposed valuation approach is to be adopted, they suggested that § 206.102(b) be revised to read as follows:

"The value of oil which is sold pursuant to a contract shall be the gross proceeds accruing, or which could accrue to the lessee, *provided that* such proceeds do not fall more than 10 percent below the greater of the highest price paid or posted for similar oil in the same field or area. If such proceeds do fall more than 10 percent of such prices, the value of oil in that case shall be 10 percent below the greater of the highest price paid or posted for similar oil in the same field or area." It was stated that this approach will permit MMS to have a uniform and administratively simple benchmark to establish market value, rather than "evaluating each contract on a case-by-case basis in light of the many possible indicia of a sale at less than fair market value * * *."

Another Indian commenter stated that: "The proposed regulations would allow substantial manipulation and undervaluation of the royalty amount. Most centrally, it is unacceptable to allow lessees to use contract prices as the royalty value without adequate safeguards to assure a fair valuation for the public s resources. At a minimum, only prices under *genuine* arm's-length contracts should be acceptable for royalty purposes. The proposed regulations would allow collusive contracts to qualify as 'arm's-length contracts.' " It was also stated that if MMS remains intent upon accepting royalty on the basis of what the commenter considers to be below-value contract prices, "we urge that MMS at least impose a floor value, such as 80 percent of the value of production as determined under the 'value' criteria applicable to oil not sold under arm's-length contracts."

MMS Response: The MMS generally does not believe that establishment of a "floor value" (other than gross proceeds) is appropriate because it could result in royalty being assessed on a value greater than the lessee received under an acceptable arm's-length contract. Where an arm's-length contract operates to set the price at which the lessee can sell the production, that contract likewise should set the royalty value in most circumstances. However, under the lease and the regulations, MMS has the authority to establish value for royalty purposes and will do so for non-arm's-length contracts where it is justified, even if such value is higher than the gross proceeds received by the lessee. Also, as explained above, for many Indian leases, because of the specific lease terms, MMS will compare values determined using arm's-length contract prices with the highest price paid for a major portion of production, and generally use the higher of the two.

One Indian commenter raised the question of what "which could accrue" means and also pointed out that if the value of oil is to be based on gross proceeds, the regulations need to be more precise in stating which gross proceeds are to be used.

MMS Response: The regulations include a detailed definition of the term "gross proceeds." The MMS believes the definition is adequate. MMS has deleted the phrase "or which could accrue" from the final rule.

Eleven industry, one Federal agency, and one individual commenter approved of the concept of valuing oil on the basis of gross proceeds received under an arm's-length contract. Basic reasons for approval were stated in one comment as follows: "This standard is fair and reasonable; it will promote necessary certainty and consistency for the lessor and lessee alike; it is based on the lease language; it is administratively feasible; and it relies on an objective valuation mechanism—the market. It is appropriate in arm's-length situations because both the buyer and the seller have agreed to be bound by the best price each thought it could get for the duration of the contract. In such circumstances the royalty owner's interest in securing fair market value is protected by the arm's-length nature of the transaction." The 11 industry commenters also objected to use of the phrase "or which could accrue" in the first sentence. This objection can best be summarized in the following comment: "Use of the phrase creates uncertainty and subjectivity and should not be implemented in regulations which must have certainty as a foundation." Industry commenters stated that it is unfair for the lessor to determine after the fact that proceeds "could be accrued." Also, one of these commenters noted that lessees act in a competitive market and "in the absence of fraud, cannot fairly be held to a *post hoc* determination that proceeds could have accrued." One of these commenters summarized as follows: "In sum, the proposed definition of 'gross proceeds' is in need of substantial revision. The MMS should modify it to include only those monies actually received for the sale of production. Other regulations which would require payment of royalties on phantom proceeds should also be amended accordingly."

MMS Response: The MMS believes that gross proceeds under an arm's-length contract generally constitutes the market value of a commodity. This does not preclude MMS from establishing a value where necessary; e.g., the contract does not meet MMS's standards for an arm's-length contract or the lease agreement requires a different value. The phrase, "or which could accrue," is deleted from the final rule. As noted above, many commenters thought that this phrase would allow MMS to second guess the price which the lessee agreed to in its arm's-length contract by arguing that other persons selling oil may have received higher prices—thus, more proceeds "could have accrued" to the lessee. This was not MMS's purpose in including the "or which could accrue" language in the proposed rule. Rather, MMS's intent is to ensure that royalties are paid on the full amount to which the lessee is entitled under its contract, not just on the amount of money it may actually receive from its purchaser. However, MMS is satisfied that the phrase "the gross proceeds accruing to the lessee" properly includes all

consideration to which the lessee is entitled under its contract, not necessarily just what it receives from the buyer. Therefore, the "or which could accrue" phrase was unnecessary. Because it caused confusion as to MMS's intent, it was deleted from the final rule.

Many comments were received regarding the proposed benchmark system in § 206.102(c). They were about equally divided in number as to those in favor and those opposed.

Seven States, eight Indians, and one State/Indian association objected to the proposed benchmark system. Most of these commenters supported highest posted prices using the net-back procedure as verification. One of their objections to the benchmark system is that the proposed methodologies are unworkable and provide no reasonable method of verification. Another objection is that the proposed system would impair effective oversight and reduce royalties. Also, these objectors state that in their view the proposed procedures would severely burden the audit program and, as a practical matter, would preclude adequate verification of the "lessee's declarations." In addition, they stated that the use of the net-back procedure is unduly restricted, and, to the contrary, should be used frequently for independent verification. They believe that more readily verifiable methods should be used to ensure that fair market value is being received.

One of these commenters summarized a number of objections as follows: "Historically, gross proceeds has been regarded as minimum value; however, the proposed benchmarks appear to be primarily aimed at converting gross proceeds as *the* value. Gross proceeds is not necessarily fair market value. Published gross proceeds are not always all consideration received, for example, drilling advances and special equipment lease agreements." Also, "* * * no mechanisms are provided to cross-check * * * values reported under the first three benchmarks; since MMS has taken the notion that it does not have the authority to obtain access to other arm's-length contracts from producers not obligated to report to MMS, comparisons could not be made." It was also stated that "The most effective benchmark, net back calculation, would never be used because of the prioritized order of other valuation methods."

MMS Response: The MMS believes that the proposed benchmark system is workable and fair. Obviously, for OCS leases, MMS has access to information regarding all posted prices and contracts (if any). In addition, the majority of onshore fields with Federal lands are comprised of a significant percentage of such lands (if not the majority) so that needed price information is readily available. In many cases, Indian lands comprise a significant portion of an oil field. Where necessary, information sometimes can be obtained from the appropriate State agency. Although price and field boundary data are available for most onshore leases, the acquisition of volume data associated with an arm's-length sale has been difficult to obtain. Accordingly, MMS has added § 206.102(d) which provides that any Federal or Indian lessee will make available upon request to the authorized MMS, State and Indian representatives, and others, arm's-length sales and volume data for like-quality production in the field or area or nearby fields or areas. Undoubtedly, there will be a few cases where it will be difficult to obtain needed information, but this is true of any procedure adopted.

The MMS believes that in the vast majority of cases gross proceeds constitute market value. In those cases where this is not true, MMS will establish an appropriate value for royalty purposes. "Arm's-length" sales will not be accepted without question. The MMS will obtain needed information to ascertain that they are truly arm's-length as defined in the regulations.

One Indian commenter criticized the benchmark system as follows: "The utter failure of MMS to recognize its obligation to maximize tribal royalties is evidenced also in the provisions governing valuations where arm's-length contracts do not exist. Each of the three alternative methods require a determination that the lessee's sales price is similar to that for purchases of significant quantities of like oil in the same field or area. The MMS, however, relies on lessee-generated information for that determination and, moreover, relies upon the truthfulness of that information. For example, under alternative number one, MMS proposes to look at the lessee's contemporary posted prices. Posted prices in the oil industry, however, are generated by the purchasers and not the sellers. Either MMS had made an error in its drafting or this benchmark plainly is so ridden with potential conflicts of interest that it can not possibly be urged as consistent with the federal fiduciary duty to maximize Indian oil and gas resource returns."

Another Indian commenter suggested that the desired goal of certainty can be accomplished by use of the highest price paid method. "MMS' embracement of the contract price approach in its drive towards certainty in value can be as easily achieved through the highest price paid method. It would also encourage producers when negotiating contracts to come as close to that figure as possible knowing that is what they will have to pay the royalty on. The contract sales approach proposed by MMS does not encourage obtaining the maximum value for the resource by the purchaser [lessee]."

MMS Response: In many cases the lessee, being a purchaser, has published a posted price bulletin. Posted price bulletins are generally available. In addition, the lessee must retain all data which are subject to audit. From experience, MMS does not believe that basing all royalties on the highest price in the field or area is fair or in the best interests of the Federal or Indian lessor. Therefore, such a standard was not adopted.

One State commenter noted that the modifier "contemporaneous" in three of the sections is vague and undefined. "For a purchase under a posting or contract to be used as an indicia of value for the monthly reporting period, it should relate to production during the same reporting period."

MMS Response: MMS has added a § 206.102(c)(6) to the final rule which defines "contemporaneous" as postings or prices in effect at the time the royalty obligation is incurred. In effect, this means the postings or contract prices in effect at the time oil is removed, sold, or otherwise disposed of in a manner which results in royalty being due on the oil.

According to one State commenter, "It is difficult to establish an alternative system to calculate fair market value * * *. The MMS should use the posted price criteria of the benchmark system verified by a net-back analysis to assure the credibility of posted prices."

MMS Response: The MMS believes that the use of a net-back analysis on a routine basis to verify oil value is impractical and unnecessary.

Two Indian commenters expressed concern about the prioritized benchmark system. They argued that restricting the Secretary's ability to use different methodologies in any order the Secretarys chooses will tie the Secretary's hands in dealing with difficult situations.

MMS Response: The MMS believes that the regulations adopted will permit the Secretary to discharge his/her responsibilities to the Tribes and allottees and will provide certainty in the valuation process to both the lessees and lessors. Although a prioritized benchmark system does limit flexibility,

this drawback is outweighed by the benefits of certainty.

One State commenter thought there is a lack of guidance in administering the prioritized benchmark system, and that MMS does not indicate what kind of evidence will be sufficient to permit an auditor to continue down the list of benchmarks.

MMS Response: The MMS will require that the lessee make a reasonable effort to apply a benchmark before proceeding to the next. Auditors must be satisfied that lessee information is sufficiently accurate and complete to implement a benchmark. The addition of § 206.102(d), whereby lessees must provide arm's-length sales and volume information, will assist in the enforcement of these "comparability" requirements. It would be impossible for MMS to attempt to implement a procedure where government has to make all the decisions. Such a procedure would impose a tremendous administrative burden which would be very costly.

Three industry and two State commenters expressed concern regarding the lack of an adequate definition of the terms "significant quantities" and "field or area", and the administrative problems that will result therefrom. One state commenter stated that the term "significant quantities" is vague and undefined. An industry commenter recommended that the term "significant quantities" be deleted because (1) posted prices in an open marketplace "are for no other purpose than determining market value", and (2) the lessee has no way of knowing the quantity of volumes purchased by other purchasers in the area.

MMS Response: As was discussed in the preamble to the proposed rules (52 FR 1858, January 15, 1987), the term "significant quantities" is variable depending on the sales volumes from the field and the volume of production. What constitutes significant production from an onshore field may not be significant for an OCS field. Therefore, "significant quantities" will vary case-by-case.

One Indian commenter stated that "* * * many posted prices are artificially low because there is low demand, but there is still a threshold low amount where a company will purchase more than their demand" and recommended that "* * * the totality of the circumstances should be utilized (and set forth in the regulations), including spot markets, highest posted prices, and to some extent, posting for similar oil in other fields."

MMS Response: The current regulations, which are being revised in response to heavy criticism, list the various criteria with no specific priority. The purpose of the benchmark system is to provide all concerned with a reasonable degree of certainty as to criteria to be used in valuing oil.

One Industry commenter stated that the prioritized benchmark system "imposes a prejudicial valuation on an affiliated lessee" because a nonaffiliate receiving the same price as an affiliate would pay on actual proceeds received, whereas the affiliate may have to pay a higher royalty under, for example, benchmark § 206.102(c)(2). The recommendation was made that "* * * the first applicable of the following subsections "* * * language in § 206.102(c) be replaced with "* * * any of the applicable subsections."

MMS Response: The situation described could occur. However, MMS believes that, generally, posted prices for like-quality oil in the same field or area will be comparable. Thus, there likely will be little or no disparity in the values in most situations.

Fourteen industry commenters, one Federal agency, and one individual approved of the proposed benchmark system. One industry commenter stated that they "* * * strongly support the adoption of clear and consistent standards of valuation for royalty oil based upon the true value of the product—the price received in the marketplace for the sale of that oil. The valuation proposal * * * recognizes the interaction of competing market forces and recognizes that a seller of oil will normally negotiate the best deal it can to further its own interests. The use of a price that is generally available to all sellers is a much more reasonable approach to the determination of "value" for a given supply of oil than the arbitrary selection of a price that one seller may have received under circumstances that do not include all sellers. Where an arm's-length contract does not exist, the benchmark system of valuation permits an objective procedure for arriving at the valuation based upon posted prices which have been the basis for sales of oil for many years." Another industry commenter supported both the benchmarks and their prioritization because both will add certainty to valuation determinations. Also, the use of the lessee's contemporaneous posting will provide a "benchmark valuation for many major producers." One industry commenter noted that "This ordering of the benchmarks is the result of extensive public comment which showed that, for valuation of oil, posted prices should be moved closer to the top of the hierarchy insofar as posted prices account for the vast majority of oil transactions."

MMS Response: The MMS believes that the proposed benchmark system is a valid and realistic system for determining the value of oil not sold pursuant to an arm's-length contract. The benchmarks are primarily based on posted prices which are the normal basis for oil sales and which reflect the price of oil in a free and open market. Posted price information for significant quantities of like-quality oil sold from a field or area will normally be available. The addition of § 206.102(d) will permit necessary information on arm's-length sales to be obtained. In other situations, the benchmarks provide for use of spot sale prices, net-back, or any other reasonable method.

One industry commenter noted that most, if not all, posted prices are prices posted by a purchasing, marketing, or transporting entity, some of which may have producing lessee affiliates. "However, taken literally, there will not be a *lessee's* posted price."

MMS Response: MMS has added a new § 206.102(c)(6) which defines lessee, for purposes of this section, as including a designated purchasing agent.

One State commenter noted that proposed § 206.102(c)(1) fails to anticipate that a lessee could make purchases at different postings within the same reporting period and suggests that, in such a case, "the volume weighted average would seem to be appropriately specified, because it could be easily computed by the payor and would be less susceptible to manipulation by the payor."

MMS Response: The MMS concurs with this change and has included language to implement it in § 206.102(c)(1).

One Indian commenter stated that the use of this benchmark (contemporaneous posted prices) rather than the major portion analysis provided for in existing oil and gas regulations represents a breach of the Secretary's trust obligations.

MMS Response: The MMS believes that the regulations as adopted will permit the Secretary to discharge his/her responsibilities. Major-portion analysis will be used under the final regulations, where appropriate.

One industry commenter recommended that paragraph (c)(2) be modified by adding the phrase "known to the lessee" after the word "prices" so that the first part of the sentence would read, "The arithmetic average of contemporaneous posted prices, known to the lessee, used in arm's-length transactions * * *."

MMS Response: This suggestion was not adopted because it results in too great a degree of subjectivity.

One industry commenter supported the use of "arithmetic average" as a benchmark, but suggested that there should either be an agreement between the lessees and MMS as to which companies' postings are to be used, or that MMS publish a list of the companies whose postings may be used to calculate an arithmetic average. It pointed out that in the case of South Louisiana (used for offshore) there are at least one dozen companies that post oil prices and there could be price changes in one month on different dates by all of the companies.

MMS Response: The MMS may decide, upon request, on the basis of an individual case, to designate postings to be used in calculating an arithmetic average. It is not considered practical to do this continuously.

Three Indian commenters objected to the use of "arithmetic average" and recommended that a "weighted average" be used instead. Another commenter stated that use of "arithmetic average will not yield a true market value because the lessee is given the opportunity to manipulate prices by selling some oil at extremely depressed prices."

MMS Response: Paragraph (c)(2) requires consideration of postings of persons other than the lessee. Although the postings are available to the lessee and to MMS, volumes often are not. Thus, requiring a weight averaging of third party data is not practical.

To make this benchmark "more workable and administratively feasible" one industry commenter recommended using the average of all postings of the relevant type of oil in an area.

MMS Response: The MMS has found that postings do not always indicate a purchaser's willingness to buy. Therefore, any average which includes all postings may become skewed because of posted prices which are not market responsive. Pursuant to § 206.102(c) (1), (2), and (3), there must be significant quantities of oil sold before a posting or contract price can be averaged in.

One industry commenter recommended that paragraph (c)(3) be modified by adding the phrase "known to the lessee" after the word "contracts", and by replacing the phrase "area or nearby areas" with the phrase "field or area" for reasons of "clarification."

MMS Response: The addition of the phrase "known to the lessee" was not adopted because it would result in inserting too great a degree of subjectivity. The term "field or area" was not adopted because the intent is to utilize a larger area than "field or area" in reviewing arm's-length contract prices.

One State commenter stated that "Subparts (iii) and (iv) attempt to distinguish between arm's-length contracts and spot sales. But, there is no basis for saying arm's-length spot sales are not also arm's-length contracts under the definitions. Additionally, there is no requirement (and there should be) that only spot sales which are genuinely arm's-length should qualify as indicia of royalty value."

MMS Response: The MMS concurs that the spot sales used in the benchmark should be arm's-length spot sales and will insert the term "arm's-length" immediately preceding "spot sales" in the final rule, § 206.102(c)(4). With regard to the first comment, if a spot sale is for a significant quantity of oil, it could be considered under paragraph (c)(3).

Most of the 16 State and Indian commenters who opposed the benchmark system supported highest posted price with the use of a net-back method for verification of values used. One of the State commenters in describing MMS's proposed use of net-back in proposed § 206.102(c)(5) as too restrictive, made the following statements: "* * * the government would carry the burden of establishing that none of the preceding benchmarks can be applied before it would [be] authorized to use net-back * * * In effect, net-back will rarely, if ever, be used. At the same time it is the only method of valuation proposed by MMS that can be applied independently from lessee submitted documentation."

MMS Response: The MMS agrees that there will be infrequent use of the net-back method. It is believed, however, that the other benchmarks which have higher priority will result in a reasonable value for royalty purposes and obviate the need to undertake a labor-intensive net-back method. The MMS routinely will verify lessee-generated information used in applying the benchmarks during its monitoring process and through audit.

One State commenter articulated the viewpoint of a large number of other commenters by recommending an alternative method of valuation, namely use of the highest posted price paid or offered in the field or area with the net-back procedure used as verification or backup.

The commenter also stated that "* * * the approach we suggest—highest posted or a refined product value net-back—serves the twin goals of assuring the collection of fair market value and providing certainty to the lessee. Highest [price] posted or paid is more easily determined than the arm's-length nature of a contract, and a refined product value can be calculated by the lessee itself or provided by the government. It also is an approach that is independent of lessee generated information and thus meets Congress intent that independent methods of verification be employed. Gross proceeds would continue as the absolute minimum acceptable value."

MMS Response: The MMS believes that gross proceeds received under arm's-length contracts and posted prices used to purchase significant quantities of oil in arm's-length transactions generally represent the market value of oil and does not agree that it is necessary to perform a refined product net-back analysis to verify them.

One industry commenter expressed approval of the concept in proposed paragraph (e)(1) that prior MMS approval generally need not be obtained where value is determined pursuant to paragraph (c). One Indian commenter expressed concern that "once approval is granted, follow-up audits are unlikely", and recommended that "There should be provisions mandating routine MMS audits of valuation methods occurring at intervals not greater than one year." One industry commenter objected to the fact that MMS will not be giving prior approval stating that this subsection places "the burden—on the producer to prove the determination of value." One State commenter stated that the regulation should specify that the lessee retain "all data relevant to determination of royalty value," instead of "all available data to support its determination of value." That State commenter stated that the regulation should specify that MMS "will" order compliance when incorrect payments are discovered, rather than stating "MMS may direct a lessee to use a different value."

MMS Response: Although MMS will be making periodic audits, it is not appropriate to specify the scheduling, type, and timing of audits in these regulations. With regard to the second comment, the lessee is responsible to comply fully with the regulations by properly valuing the oil for royalty purposes in accord with the appropriate benchmark and to retain all relevant data. The MMS has adopted the suggestion that the phrase "all data relevant to determination of royalty value" be substituted for "all available data to support its determination of value" in § 206.102(e)(1). Also, the word

"will" has been substituted for the word "may" in the last sentence.

Section 206.102(f) was proposed as paragraph (e), and provides that lessees will pay additional royalties and interest if the lessees improperly determine value. One industry commenter recommended that any "retroactive valuation determinations" on the part of MMS "be limited to fraudulent and noncompliance situations." That commenter went on to suggest that if MMS determines that a lessee underpaid royalties, then the interest associated with those royalties should only accrue from the date of that determination until royalties are paid.

MMS Response: The lessee is responsible for properly determining value for royalty purposes in accordance with the lease terms, regulations, and appropriate instructions and court decisions. Accordingly, if royalty is underpaid, the lessee is responsible for the additional royalty due plus any interest from the time such payment(s) should have been made. MMS has adopted this section as it was proposed.

Another industry commenter agreed that underpayment of royalties was subject to interest, but recommended that MMS likewise should pay the lessee/payor any interest "statutorily authorized" on reimbursed credits or royalty offsets when royalty overpayments are discovered.

MMS Response: At this time MMS has no legal authority to pay interest on royalty overpayments.

Section 206.102(g) was proposed as paragraph (f), and prescribes a procedure for a lessee to request a value determination from MMS. It has been adopted as it was proposed with some minor modifications. Three industry commenters suggested that there be a time limit of 120 days for MMS valuation responses. One of these commenters also recommended that there be no penalties or accrual of interest for any underpayment of royalties during this period (which would not be known until after MMS's decision).

MMS Response: The MMS will make every effort to respond timely, but this is necessarily dependent upon available resources. MMS cannot agree to a regulatory time limit. Because the lessee is responsible for proper valuation, interest is assessed if the lessee makes an improper valuation. The MMS believes a lessee should be able to request a valuation determination at any time.

One commenter suggested that there should be opportunity for review of a value determination by the affected royalty recipient (State, Tribe, etc.) before a final decision is made because, without such review, the cooperative audit role is rendered meaningless.

MMS Response: The MMS does not consider it practical to require a review by a State or an Indian lessor when a value determination is made. The MMS will attempt to coordinate its value determinations with States doing audits under section 205 of FOGRMA and Indian Tribes doing audits under section 202 of FOGRMA. This does not make the cooperative audit role, in accordance with FOGRMA, less meaningful or effective.

One industry commenter recommended that the provision be clarified that an MMS rejection of a proposed valuation determination is appealable to either the Director or Interior Board of Land Appeals (IBLA).

MMS Response: This modification is not necessary because all MMS final orders or decisions arising from the regulations in Titles 25, 30, and 43 are appealable pursuant to 30 CFR Parts 243 and 290.

One Indian commenter recommended that lessors also should be able to request MMS determinations. They also recommended that the regulations should require MMS to notify Tribes/allottees of any changes in valuation determinations.

MMS Response: The regulations as adopted in § 206.102(g) do not provide a specific procedure for the Indian lessor to request a valuation determination from MMS. However, MMS always is available to discuss with Indian lessors any valuation issue regarding their leases.

One State commenter recommended that the third sentence be modified by adding the word "all" before "available data", and replacing "to support its proposal" with "relevant to the valuation of its production". Also, the phrase "subject to audit" should be added.

MMS Response: The MMS has made some of these changes for purposes of clarity and comprehensiveness.

Section 206.102(h) was proposed as paragraph (g). It provides that the value for royalty purposes cannot be less than the gross proceeds accruing to the lessee for lease production, less applicable allowances. Eight industry respondents considered the phrase "or which could accrue" objectionable and urged its deletion. The main reason given for their position is that the language creates uncertainty and subjectivity, contrary to MMS's stated objective of gaining certainty and precision in royalty accounting.

MMS Response: MMS has deleted the phrase "which could accrue" from the final rule. As explained above, with respect to § 206.102(b), MMS is satisfied that the term "accruing" includes all consideration to which the lessee is entitled pursuant to its contract, not just what it actually receives.

Two industry commenters suggested that some off-lease post production costs (such as those carried out on leases in "especially hostile or remote environments") and certain onlease post-production costs (such as those deemed to be "extraordinary" for onshore leases, the cost of submerged gathering lines, the cost of environmental compliance, and the cost of post-production facilities installed on leases in water depths greater than 400 feet for offshore leases) should be shared by the lessor and counted as deductions from royalty payments along with transportation allowances. One stated rationale for this suggestion is that some "post-production" costs enhance the value of the oil and, therefore, the costs should be shared by both lessee and lessor, as are the benefits. One commenter simply stated that the phrase "and other deductions" should be added to the "less applicable transportation allowances" language.

MMS Response: The MMS has modified § 206.102(h) to refer to deductions for any type of allowance, not just transportation allowances. As explained below, MMS has adopted a rule which would provide for deduction of certain extraordinary costs.

Three State commenters objected to the deduction of transportation allowances from value and particularly from the gross proceeds, especially if gross proceeds is considered a "minimum value." One of the commenters states that the "less transportation allowances" language is particularly confusing because "it suggests that lessees can deduct the allowance from the value determination" rather than as a separate line item as required by § 206.105(c)(4) of the final rule.

MMS Response: Section 206.102(a) provides that the value for royalty purposes is the value determined in accordance with § 206.102 (i.e., arm's-length gross proceeds or a value determined using benchmarks) less applicable allowances. The purpose of § 206.102(h) is to make it clear that no matter what valuation method is used, the value for royalty purposes cannot be less than the lessee's gross proceeds less applicable allowances. Therefore, if a benchmark derived value less applicable allowances is less than gross proceeds less applicable allowances, gross proceeds less applicable

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allowances is to be used as the value for royalty purposes. In either event, the lessee may be entitled to deduct transportation allowances to determine value for royalty purposes at the lease (unless the benchmark derived value already is a value at the lease—in that event no further transportation allowance would be authorized).

Section 206.102(i) was proposed as paragraph (h). This section addresses the lessee's obligation to place lease production in marketable condition. Five industry commenters opposed the concept that the lessee is responsible for placing the product in marketable condition at no cost to the lessor and recommended specific deletion of language in the proposed regulation to accomplish this. One industry commenter recommended that the language "unless otherwise provided in the lease agreement" be added at the end of the first sentence, and another industry commenter pointed out that the lessor does share in marketable condition costs under net-profit-share leases.

MMS Response: Historically, MMS's policy and practice is that the lessee generally is responsible for placing the lease product in marketable condition at no cost to the lessor. This practice has been upheld by court decision. The MMS has adopted the suggestion that the language "unless otherwise provided in the lease agreement" be added at the end of the first sentence because there are a few leases in which the lessor shares in such costs. Also, as noted earlier, MMS received many comments that so-called post-production costs should be allowed as a deduction in determining value for royalty purposes. Generally, these costs are not allowed as a deduction because they are necessary to make production marketable. However, MMS has considered carefully all of the comments on this issue and decided that there may be certain circumstances where some extraordinary costs for gathering, desulfurization, or storage should be allowed as a deduction. Such allowances will be authorized on individual cases only upon application to the MMS. A new § 206.102(i)(2) has been added which establishes a two-part test for qualification for a cost allowance. First, only production from leases in unusually high-cost or frontier areas qualify. The only leases that qualify are those located north of the Arctic Circle or those OCS leases located in water depths in excess of 400 meters. Any leases that do not meet this first test cannot apply for this allowance. However, even for leases that meet this test, MMS will not grant an allowance unless the lessee demonstrates to MMS's satisfaction that the costs are, by reference to standard industry conditions and practice, deemed to be extraordinary, unusual, or unconventional. In some instances, MMS may grant an allowance only to the extent that the extraordinary costs exceed conventional costs for the same operation.

Section 206.102(j) was proposed as paragraph (i). There were 13 commenters on this section—10 industry, 2 State, and 1 Indian. The majority of the comments were negative in some respect; only two commenters (one industry and one State) concurred with the proposed regulation as written. One State and four industry commenters recommended deleting the regulation in its entirety, indicating that the regulation is inappropriate in the context of oil sales because the majority of oil is sold under monthly posted prices and is not normally subject to contractual price escalations or increments. They suggested that the regulation is more appropriate to gas sales contracts and does not belong as an oil valuation standard.

MMS Response: Although the large majority of oil is sold under posted price bulletins, the division order, which sets forth the division of proceeds and is signed by all interest owners, is considered to constitute the "contract" for purposes of these regulations.

Several modifications, many taking issue with the "prudent operator" concept, were suggested as follows:

Two industry commenters suggested deleting the first sentence ("Value shall be based on the highest price a prudent operator can receive under its contract") because: (1) It countermands the use of the actual proceeds benchmark system established in § 206.102 (b) and (c); and (2) the requirement of a lessee to obtain the highest theoretical price, regardless of the cost involved in obtaining that price, may contradict the definition of "prudent operator" found in the draft coal regulations at § 206.5(nn) and, therefore, ignores "the realities of the marketplace and the courthouse and unfairly precludes the lessee from exercising sound business judgment."

One industry commenter recommended revising the paragraph to conform to the reasonable value standard of § 206.102 generally. Here the commenter argued that the "highest price" standard of this subsection is in direct opposition to the reasonable value standards of previous subsections, thus causing the proposed rulemaking to be contradictory.

MMS Response: The MMS has modified the first sentence of the final rule to read "Value shall be based on the highest price a prudent lessee can receive through legally enforceable claims under its contract." As noted in the preamble to the proposed rule, this section prescribes a diligence concept. As discussed above with regard to the concept of gross proceeds "accruing" to a lessee, MMS requires a lessee to pay royalty on that value which he/she was entitled to get. These regulations reflect MMS's willingness generally to accept arm's-length contract prices as value, but there is a concomitant obligation on the part of the lessee to obtain all to which the lessee is entitled under its contract. If it fails to take such reasonable measures, MMS will assess royalty on the prices which reasonably could have been obtained in accordance with the contract.

One industry commenter suggested changing the fourth sentence to read "the lessee will owe no additional royalty *unless or* until monies are * * * received" in cases of disputed payments.

MMS Response: The MMS has adopted this suggested modification as consistent with its intent. However, this provision does not permit a lessee to avoid paying royalties where a purchaser has failed to pay, in whole or in part or timely, for a quantity of oil.

One State respondent suggested that an explicit provision for the assessment of interest for delayed payments should be added, with such a requirement being an equitable compromise for the lessor's agreement to delay enforcement of its rights to the timely payment of full royalties.

MMS Response: When a matter is being legally contested between the parties, and the lessee has taken appropriate legal action, MMS's policy is not to require payment of the amount in dispute until the lessee actually receives it. If a purchaser fails completely to pay for a volume of production, royalties still are due the month following the month of sale or other disposition. In all cases, interest is due if the royalties are paid late. However, in the case of disputed price increments, the royalties are not due until the end of the month following the month that the lessee receives them.

An Indian commenter also suggested that the last sentence should be clarified to make explicit that the bankruptcy of a purchaser of oil should not permit a lessee to avoid its royalty payment obligation.

MMS Response: The MMS believes that the language already encompasses

a bankruptcy situation and recognizes that the lessee still has an obligation to pay its royalties.

Section 206.102(1) was proposed as paragraph (j). Comments were received from three States and six Indian representatives objecting to the restrictive terms/effect of this paragraph. In general, the comments pointed out that the requirement to obtain valuation information through Freedom of Information Act (FOIA) requests would inhibit Indian Tribes, allottees, and States from gaining access to the information required to assure that valuations are properly determined. In particular, "The second sentence of the proposed regulation appears to be an unlawful effort to preclude the exercise of departmental discretion under FOIA to voluntarily release nonproprietary data to royalty owners on a case-by-case basis. The third sentence appears to prohibit tribes and allottees from requesting such information through the BIA." It was generally recommended that the paragraph should be clarified to indicate that all valuation information should be available to States, Indian Tribes, and allottees without going through FOIA procedures. (Two Indian commenters offered specific language that could be appended to the paragraph to clarify its intent regarding the sharing of information with authorized parties.)

MMS Response: The intent of this paragraph was not to preclude access allowed by law, but rather to ensure the lessee that disclosure of proprietary information is in accordance with established procedures. There are restrictions on providing certain types of information to persons outside the Department of the Interior, and MMS must act in accordance with those limitations. States and Indians with FOGRMA delegations and cooperative agreements will have broader access to information which otherwise could not be released. This section is not intended to limit in any manner an Indian lessor s right to obtain information directly from the lessor or from MMS to the extent provided in lease terms or applicable law.

Section 206.103 Point of royalty settlement.

Twelve industry representatives and two States commented on this section. The two State commenters recommended that § 206.103 be strengthened by defining standards for establishing the point of royalty settlement and thereby minimizing pipeline losses. Lease or unit boundaries were suggested as the point of royalty settlement for onshore production, and the entrance to the first onshore facility was suggested for OCS production.

MMS Response: These regulations pertain to the valuation of oil and are not concerned with the criteria for the point of royalty settlement. The point of royalty settlement is authorized by MMS operations offices for Federal OCS leases and by BLM for onshore Federal and Indian leases.

Two industry commenters addressed the clarity and intent of § 206.103(a)(2). One of these commenters pointed out that the reference to an adjustment for differences in quality and quantity (such as for basic sediment and water) was unclear, asking what adjustments would apply and how these would be made. The other commenter recommended deleting the paragraph altogether because only the quantity and quality actually measured at the point of royalty settlement should be used for royalty computations.

MMS Response: The paragraph cannot be deleted because there are situations, usually onshore, where the gross proceeds accruing to a lessee are based upon the quantity and quality of oil at a point that is different than the point of royalty settlement specified by BLM to be used in calculating Federal or Indian royalty, usually at the tank battery on the lease. In this situation, the quantity and quality criteria measured at the tank battery on the lease must be used to determine the proper value, which, because the quantity of oil at the contractual sales point is less, will be greater than the lessee's gross proceeds.

Ten commenters from industry objected to the provision of § 206.103(b) disallowing actual or theoretical losses between the point of royalty settlement and the actual delivery point. They pointed out that pipeline losses are an integral part of transportation over which the lessees/operators have no control and thus should be an allowable component of transportation deductions. They also pointed out that disallowance of losses is contrary to the concept of accepting gross proceeds under arm's-length transactions because the lessor's royalty may be calculated on a different basis than what the lessee is paid by the purchaser.

MMS Response: The issue addressed here deals with volume and quality measurements upon which royalty must be based. The issue of line losses being included as a component of transportation deductions is addressed in the section of the regulations dealing with transportation (§§ 206.104 and 206.105).

One industry commenter suggested that § 206.103(b) be clarified regarding load oil, and recommended that the section be modified to specifically exclude load oil from royalty obligation.

MMS Response: The determination of whether load oil is considered to be royalty bearing is a function of lease terms and the origin of the oil so used, and is generally the responsibility of the BLM and MMS OCS operations personnel for onshore and OCS leases, respectively. As such, no specific language was added to address this issue.

Section 206.104 Transportation allowances—general.

Comments on transportation allowances that did not relate to any specific section of the regulations were classified in the General section of the oil transportation regulations. Although there were comments on a wide variety of subjects, they have been grouped as follows: post-production costs, validity issues, adequacy/inadequacy issues, cost issues, Royalty-In-Kind (RIK) issues, and issues relating to the definition of terms.

Many commenters addressed the issue of whether MMS should allow lessees to deduct all post-production costs from royalty payments. Transportation costs are one type of post-production cost. MMS will not respond to that issue again in this section as it was fully addressed in the discussion of § 206.102(i). Moreover, because the final rules provide an allowance for transportation costs, it is unnecessary to consider whether such costs also are to be considered "post-production costs."

Many commenters addressed the validity of any transportation allowances whatsoever and proposed that MMS should not consider transportation allowances as valid deductions from royalty computations, or only consider such allowances if transportation is necessary for lease development or results in a higher royalty.

Six State and five Indian commenters stated that transportation allowances should not be granted unless necessary to sell the product or to promote development, or unless the transportation results in a higher royalty value. Six Indian and one State commenter stated that MMS should not grant any transportation allowances under any circumstances.

One Indian commenter stated that the regulations should not be allowed to change the lease terms. According to this commenter, the granting of

transportation allowances is, in effect, a change to the lease terms.

Two Indian commenters stated that MMS must take into account its responsibility to Tribes and allottees in preparing the regulations and must determine the fairness and reasonableness of all transportation allowances.

One industry commenter stated that the reason that MMS grants allowances is because certain Interior Board of Land Appeals (IBLA) decisions required that transportation be considered when determining product value on which royalty is based. Another industry commenter stated that MMS should grant a transportation allowance even if the product value is determined at the lease, if the sales contract required the lessee to incur the expense of transporting the oil to the point of sale.

MMS Response: On the basis of decisions by the Interior Board of Land Appeals (IBLA), Solicitor's opinions, and judicial decisions, it has been longstanding MMS policy to grant transportation allowances when oil is transported to a sales point off the lease. Furthermore, the IBLA has ruled that transportation allowances must be granted for Indian leases.

Kerr-McGee Corp., 22 IBLA 124 (1975). Therefore, the regulations being adopted are consistent with past practice and are consistent with the Secretary's responsibility to the Indians. The MMS believes that royalty should be free of production and marketing costs. However, values may have to be adjusted for transportation and/or processing in determining value at the lease.

The MMS agrees that the proposed procedure for determining a transportation allowance places a great deal of reliance on the oil industry. However, this program will be under continuous review and oversight by MMS. There is nothing in the final oil transportation allowance regulations that would change the terms of any Indian lease. The MMS believes that the policy of granting transportation allowances is appropriate and should continue.

Another issue centered around the adequacy or inadequacy of the proposed oil transportation regulations in general. Some commenters believed that the regulations are completely flawed, while others pointed to specific instances where changes should be made to improve their specific applicability.

One industry commenter suggested that MMS should approve the use of contract prices which are net of transportation costs. Another industry commenter stated that the regulations should be revised to eliminate the alleged bias against frontier and deep-water areas. They also recommended the elimination of the ceiling on transportation allowances. Another industry commenter stated that the regulations should be modified to embrace both traditional and nontraditional transportation arrangements.

Two industry commenters stated that in their view the proposed regulations serve as a disincentive for companies to build and operate transportation facilities. One industry commenter stated that the oil transportation regulations should be revised to achieve certainty by adopting a more rational and realistic approach.

MMS Response: In response to comments received, MMS has changed the regulations to recognize that in arm's-length situations where the specified price is reduced by a transportation factor the lessee does not have to report the transportation factor as a transportation allowance. The MMS also recognizes that transportation costs for frontier and deep-water areas may be extraordinarily high and may exceed 50 percent of the value of oil. Because of this concern, MMS has adopted a provision in the final regulations to permit the transportation allowance to exceed the 50-percent limitation with approval from MMS. As the general rule, however, the transportation allowance authorized by the regulations may not exceed 50 percent of the value of the oil at the point of sale on the basis of a selling arrangement. The MMS has decided that pre-approval of all transportation allowances is not a cost-effective procedure. The 50-percent threshold merely gives MMS the ability to monitor more closely the situation where the allowance, based on reasonable actual costs, will exceed that limit.

The MMS received a number of comments relating to transportation allowances for royalty-in-kind oil. Eight industry commenters stated that MMS should grant a transportation allowance for onshore royalty-in-kind oil. Another industry commenter suggested that the regulations should clearly state that the lessee is not required to transport royalty-in-kind oil from the lease. Three industry commenters stated that this subsection was in conflict with section 208.8 of the proposed RIK regulations.

MMS Response: The suggestion that MMS should grant a transportation allowance for onshore royalty-in-kind oil was not adopted because the onshore lease terms provide that the in-kind oil will be made available to the lessor on the lease at no cost to the lessor. The MMS believes that there is no need to state explicitly that the lessee is not required to transport onshore royalty-in-kind oil. Many of these issues will be addressed in MMS's revisions to the RIK regulations (See 52 FR 2202, January 20, 1987).

Another issue discussed by several commenters concerns the definition of terms used in the regulations. Four respondents commented on the use of the term "reasonable" to describe transportation costs. One State commenter recommended that the term "reasonable" was too vague and should be defined. Three industry commenters recommended that the term "reasonable" be deleted. Six commenters were concerned about the term "remote from the lease." Two Indian and two State respondents commented that the phrase "remote from the lease" should be defined. Two industry commenters stated that the phrase "remote from the lease" should be changed to "the first available market."

MMS Response: The term "reasonable" is defined by the Merriam-Webster New Collegiate Dictionary as "moderate, fair." The MMS intends that this same definition apply in the determination of a transportation allowance and includes the requirement that the transportation costs be necessary to market the oil. The MMS agrees that the phrase "remote from the lease" caused confusion and has replaced it with the phrase "off the lease."

The MMS received comments from 33 respondents on § 206.104(b). This proposed regulation established a 50-percent limit on transportation allowances.

Most of the comments on this paragraph related to one major topic, the limitation of 50 percent on oil transportation allowances. Comments were also received on the proposal not to allow royalty payments to be reduced to zero. Comments on the 50-percent allowance issue were also divided between those commenters who wanted to retain the limit and add additional qualifications, those who wanted to raise the limit, and those who wanted to lower the limit.

Seventeen industry commenters stated that MMS should abolish the 50-percent limitation for one or more of the following reasons: If the proposed limit is retained, the exception to the 50-percent limitation may not be exercised freely enough; the 50-percent limit could impose a serious economic deterrent to the exploration and development of frontier areas and could serve as a

disincentive to the building of transportation systems; the limitation figure is strictly arbitrary and totally unjust to the lessee/working interest owners; it would be a rare case when an oil transportation cost would come close to the proposed 50 percent cap, much less exceed it; the proposed 50-percent cap is a deviation from the stated intent of MMS to base royalty valuation on "gross proceeds."

Twelve industry commenters stated that MMS should approve requests for transportation allowances exceeding the 50-percent limitation upon submission of adequate documentation by the lessee for the following reason: If the actual cost of transportation can be reasonably justified, it should be permitted if a lessee can adequately demonstrate that a higher allowance is in the best interest of the lessor.

One Indian commenter stated MMS should change the 50-percent limitation to a 20-percent limitation because the 50-percent limit is excessively high.

Twelve industry and one State commenter stated that MMS should clarify the exception criteria which would allow transportation allowances to exceed the 50-percent limitation. The proposed "best interest of the lessor" criteria was described as vague and unclear and could be interpreted to exclude all cases. Criteria for approval should allow a lessee to more objectively plan development of oil and gas prospects.

Eight industry respondents stated that MMS should allow lessees to carry forward transportation costs otherwise allowable (except for the 50-percent limitation) from the current year to subsequent years. This procedure should be applied to all transportation systems, but it would be especially important in the frontier areas.

Two State, one State/Tribal association, and one industry commenter stated that MMS should retain the 50-percent limitation in the proposed regulations for the following reasons: The limit should apply in all cases with no distinction made between circumstances where transportation is a component of price and where transportation costs are incurred directly by the lessee; the 50-percent limit is acceptable as a guideline but MMS should freely exercise its authority to allow transportation costs in excess of 50 percent of the value of the lease product; the 50-percent limitation provides incentive to keep costs under control while allowing some relief for legitimate hardship conditions.

One industry respondent and one State commenter stated that royalty payments should not be reduced to zero. The State respondent commented that it is a privilege to use public lands and it should not be possible to take production from it royalty-free. Two industry respondents stated that royalty payments should be allowed to go to zero for marginal production and for cases where reservoir maintenance is a concern.

MMS Response: The MMS has decided generally that the 50-percent limitation should be retained in the final rule. The transportation allowance for oil is limited to 50 percent of the value of the oil on the basis of a selling arrangement. A lessee may request, and MMS may approve, a transportation allowance in excess of 50 percent if the lessee demonstrates that the costs incurred were reasonable, actual, and necessary. In no event, however, can the transportation allowance exceed 100 percent of the value of the oil.

The MMS received a total of seven comments from industry on § 206.104(c) which requires allocation of transportation costs among all products transported. One commenter stated that for transportation allowances, MMS should allocate costs on the basis of relative-value rather than on the basis of relative-volume. Two commenters recommended that costs associated with the transportation of nonroyalty-bearing products (i.e., water) should be deductible. It was also stated that to the extent transportation for certain nonroyalty-bearing products cannot be avoided, the costs should be equally as deductible as the oil transportation. Four commenters recommended deleting the requirement that transportation costs must be allocated among all products for one or more of the following reasons: Allocation would be a labor-intensive process and an onerous burden inflicted upon reporting parties; allocation would be impractical because in many instances volumes are not available; and it would require significant additional effort to complete additional Forms MMS–4110.

MMS Response: The MMS has considered the comments regarding allocating costs on the basis of relative-value. The MMS does not agree with the proposal that nonroyalty-bearing substances should have a transportation allowance. The MMS is aware that the allocation of transportation costs in situations where more than one product is involved could be burdensome. However, it is MMS's experience that the allocation requirement would not be difficult in most instances. Accordingly, MMS has retained the cost allocation on the basis of relative-volume in the regulations. Section 206.104(d) has been retained in the final rule in the same form as proposed.

Section 206.105 Determination of transportation allowances.

The MMS received 28 separate comments on these regulations.

Although there were comments on a wide variety of subjects, they have been grouped under nine issues as follows: acceptance of FERC-approved tariffs and arm's-length transportation agreements, excessive penalty and retroactive approvals, MMS's approval of the transportation allowances, acceptance of transportation reduced prices, status of currently approved allowances, required filing every 12 months, allowance on nonroyalty-bearing production, allocation of transportation costs, and period for filing a proposed allocation method.

1. Acceptance of FERC-approved tariffs and arm's-length transportation agreements as an accurate indicator of reasonable, actual costs.

Five industry commenters responded that the oil transportation allowance regulations should be written to support the use of FERC–101 approved tariffs and arm's-length transportation agreements as an accurate indicator of reasonable, actual costs.

Two Indian commenters expressed serious concern about the validity of using arm's-length contracts as an indicator of value. One Indian commenter stated that arm's-length contracts are not a bona fide indicator of reasonable, actual costs. Another Indian commenter expressed doubt that there can even be an arm's-length contract between companies in the oil industry. One Indian commenter stated that arm's-length contracts should not be accepted unless a thorough analysis of lessee/purchaser affiliations is undertaken. Another Indian respondent expressed considerable doubt that the criteria used by MMS would assure that an arm's-length contract is present in any given case. An Indian commenter also stated that MMS should establish appropriate criteria to determine the accuracy and reasonableness of allowances granted under arm's-length and non-arm's-length contract situations.

MMS Response: The MMS currently uses FERC-approved tariffs and arm's-length transportation agreements as an accurate indicator of reasonable, actual costs. However, for non-arm's-length and no-contract situations, MMS generally will permit only the reasonable actual expenses incurred by the lessee as the allowance. MMS is creating a limited exception to this

policy, discussed below, in regard to § 206.105(b).

2. The disallowance of a transportation deduction for a reporting period not covered by a Form MMS–4110, Oil Transportation Allowance Report.

The MMS received responses from 14 industry respondents stating that the disallowance of a transportation deduction for a reporting period not covered by a Form MMS–4110 is an excessive penalty for what they consider to be a minor infraction of the rules. The point was also made that the lessee does not always have the data to timely file a Form MMS–4110 before the Form MMS–2014 is filed. However, one State commenter agreed with the proposed regulation disallowing the deduction for any period in which the Form MMS–4110 was not received.

Fourteen industry commenters responded on this paragraph stating that the regulations should have a provision allowing retroactive transportation deductions. The general consensus was that a lessee does not always have the details on transportation worked out before production begins, and sometimes it is necessary to go back and revise data related to an allowance after agreements are reached because of the fast changing nature of current oil and gas markets.

MMS Response: The MMS considered the comments on retroactive requests and has revised the regulations, § 206.105 (a)(1) and (b)(1), to allow lessees to request transportation allowances retroactively for a period of not more than 3 months. Pursuant to § 206.105(d), if a lessee takes a deduction without complying with the regulations, interest only must be paid until the date that appropriate forms are filed. However, the lessee will be required to repay the amount of any deduction disallowed owing to the limitation on retroactivity.

3. Prior MMS approval of transportation allowances.

Six industry respondents expressed approval of the self-implementing procedure in the transportation allowance regulations. This was regarded as a method of relieving a considerable administrative burden on both industry and MMS. One Indian commenter disagreed with the self-implementing nature of the regulations because it was regarded as a method of establishing the 50-percent limitation as a floor for transportation allowances.

One State and one Indian commenter stated that MMS should pre-approve all transportation allowances and should provide approval only on a showing of necessity to promote development or a showing that a higher value could be obtained for the oil at a point of sale away from the lease. It was also stated that neither the MMS nor the States and Indian Tribes have the resources to audit all leases and if these allowances are not monitored "up front" they will never be audited.

MMS Response: The MMS has determined that it is not necessary to pre-approve all transportation allowances. The MMS will monitor and review transportation allowances for regulatory compliance and reasonableness. Therefore, most allowances under § 206.105 (a) and (b) do not require prior MMS approval.

4. Acceptance of transportation-reduced prices without requiring the filing of Form MMS–4110 for both arm's-length and non-arm's-length situations.

Six industry commenters responded that MMS should accept transportation-reduced prices without requiring the filing of Form MMS–4110 for both arm's-length and non-arm's-length situations. This policy was regarded as reducing the administrative burden on industry and MMS. However, one commenter disagreed with this proposal because it was regarded as a potential technique to exceed the 50-percent limitation provision of the regulation. One commenter stated that neither industry nor MMS could administer trucking rate transportation allowances on the basis of lease-by-lease and, therefore, MMS will probably be forced to accept transportation-reduced values where trucking is involved.

MMS Response: The MMS considered these comments and determined that § 206.105(a)(5) of the final rule should provide that transportation factors specified in arm's-length contracts are to be considered as reductions in value rather than transportation allowances. The use of Form MMS–4110 for the transportation factors is not required.

5. Should current approved transportation allowances remain in effect until they expire?

Two industry commenters responded that it would be administratively easier if the regulations would allow a current approved transportation allowance to remain in effect until it expires. Seven industry commenters stated that the transportation allowance reported on Form MMS–4110 should continue until the applicable contract or rate terminates or is modified or amended.

MMS Response: The MMS considered these comments and has revised the regulations at § 206.105 (c)(1)(v) and (c)(2)(v) to provide that transportation allowances in effect at the time these regulations become effective will be allowed to continue until they terminate, subject to audit.

6. Should MMS require the filing of Form MMS–4110 every 12 months?

Seven industry commenters stated that there is no benefit to MMS in submitting a form that duplicates information on file when a change has not occurred. Two industry commenters responded that there is no apparent reason for MMS requiring the filing of Form MMS–4110 every 12 months.

MMS Response: The MMS requires the filing of Form MMS–4110 on an annual basis for use in monitoring costs and volumes associated with a multi-million dollar transportation allowance program. The regulation is being adopted as proposed.

7. Should MMS allow transportation allowances for production which is not royalty bearing?

One industry commenter recommended that a transportation allowance should include costs associated with moving water because some water is retained in pipeline oil. Another industry respondent recommended deletion of the last sentences of § 206.105 (a)(2) and (b)(3) which prohibit disallowances for transporting lease production which is not royalty bearing.

MMS Response: It has never been MMS's policy to permit transportation allowances for production which is not royalty bearing. Historically, MMS's policy and practice has been to limit transportation allowance deductions only to the royalty-bearing portion of lease production transported.

8. Allocation of a cost applicable to more than one product.

Two industry commenters stated that allocation of costs presents a burdensome administrative task, but if allocation of costs is deemed necessary, it should be allocated on the basis of relative value rather than on the basis of relative volume. One industry commenter suggested MMS provide an alternative allocation procedure for situations which would require a variance from the proposed allocation method.

One State commenter suggested that MMS provide guidance on what will be an acceptable method of allocation in situations that involve the transportation of both gaseous and liquid products. One industry commenter suggested that the rules could be further enhanced by allowing for the adoption of an allocation procedure contained in a different arm's-length transportation contract where similar conditions and products exist.

MMS Response: The MMS determined that allocating costs on the basis of relative volume rather than on the basis of relative value is more equitable because of the wide variance in relative value between some products. The MMS will allow the lessee to propose an allocation procedure. It would be difficult for MMS to provide guidance on acceptable methods of allocation because of the many different situations involving the transportation of both gaseous and liquid products. The MMS believes that the most advantageous procedure is to have the lessee submit an allocation proposal to MMS in these situations. Thus, § 206.105 (a)(3) and (b)(4) require the lessee to submit such an allocation proposal within prescribed timeframes.

9. The MMS should extend the period to submit a proposed allocation method.

Two commenters stated that the requirement to submit a proposed allocation method within 60 days will create a significant workload and burden, and a more reasonable provision of time would be 120 days.

MMS Response: The MMS determined that 3 months is a reasonable time period to submit a proposed allocation method and § 206.105 (a)(3) and (b)(4) have been revised accordingly.

The MMS received comments from 26 commenters on § 206.105(b) which applies to non-arm's-length or no contract transportation situations—17 from industry, 6 from industry trade groups, 1 from a State association, 1 from an Indian Tribe, and 1 from a Federal agency. Most of the negative comments actually addressed § 206.104(a), and those comments generally expressed the belief that no transportation allowance of any kind should be granted by MMS.

The comments received on these paragraphs have been grouped into nine issues as follows: Acceptance of State or FERC tariffs, acceptance of comparable arm's-length contracts, use of a benchmark system, penalties, increase in estimated allowances, prior approval of allowances, allowable costs, rate of return, and retaining Alternatives 1 and 2 for return on capital.

1. Should MMS accept published State or FERC tariffs instead of using actual costs as the basis for approving transportation allowances?

Thirteen industry commenters stated that MMS should accept published State or FERC tariffs as the transportation allowance in non-arm's-length and no-contract situations. These commenters believed that MMS should "rightfully rely on the expertise of FERC and State agencies which set pipeline tariffs to determine fair and reasonable transportation charges." It was also stated that if MMS does not rely on FERC and/or State tariffs, there would be a wasteful duplication of effort between FERC, State agencies, and MMS. One industry commenter stated that FERC tariffs should be accepted as an allowable deduction regardless of whether the transportation contract is arm's-length or non-arm's-length because the tariff represents the recognized value of the service.

One industry commenter stated that MMS should accept as a transportation allowance either a FERC tariff or the actual cost including a reasonable profit, whichever is higher. This would give the lessee an option that would be more fair than the single method prescribed by MMS.

Two industry commenters stated that MMS should require actual costs only when there was no pipeline or published tariff. The use of internal cost accounting to determine the value of a transportation allowance was believed to be at odds with the interests of the lessee.

MMS Response: The MMS has reviewed the FERC procedure for granting tariffs. After careful consideration, MMS has decided that in most instances, for non-arm's-length or no contract situations, the fairest and best way to determine transportation allowances is to allow actual, reasonable costs plus, if appropriate, an acceptable cost for the lessee's undepreciated capital equipment. The MMS will recognize FERC tariffs as a valid cost in computing a transportation allowance only when it is an actual out-of-pocket expense pursuant to an arm's-length transportation contract. Existence of a FERC-approved tariff for a transportation system, however, is one of the requisite criteria for MMS to consider in granting an exception to the requirement to use actual costs for non-arm's-length or no contract situations. See discussion below.

2. Should MMS accept comparable arm's-length contracts for determining transportation allowances?

Nine industry respondents stated that MMS should accept comparable arm's-length contract costs as the transportation allowance. The costs incurred under comparable arm's-length contracts were described as the best indicator of the value of that service provided by the lessee in transporting oil to a market or to any other point where it could be sold.

MMS Response: It is MMS's past and present practice to allow only those costs which are directly related to the transportation of lease production. Costs incurred under "comparable arm's-length contracts" may include costs such as Federal and State income taxes, socioeconomic costs incurred by the lessee in order to obtain State or county land access such as the construction of schools or city sewer facilities. The MMS considered these comments in revising the regulations and decided that it was in the best interests of the Government, States, and Indians to base oil transportation allowances on actual, reasonable costs plus a return on investment.

However, in an effort to simplify procedures for both the lessee and MMS, the regulations at § 206.105(b)(5) will provide a limited exception to the requirement to use costs where the lessor's interest is adequately protected. The lessee must apply to the MMS for an exception from the requirement that it compute actual costs. The MMS may grant the exception only if: (1) The lessee has arm's-length contracts with other persons for transportation through the same transportation system; (2) the lessee has a FERC-approved tariff for the system; and (3) the persons purchasing transportation services from the lessee had a reasonable alternative to using the lessee's system (thus ensuring that the transportation contract price was not arrived at because the person requiring transportation had no choice but to accept the lessee's price). If the MMS grants the exception, then the lessee will use as its transportation allowance the volume-weighted average of the prices it charges other persons pursuant to arm's-length contracts.

3. Should the transportation allowance be based on the market value of transportation service as determined under a benchmark system?

Twenty-five industry respondents stated that MMS should allow transportation deductions based on a benchmark system. These commenters suggested that MMS allow the lessee the market value of the transportation service on the basis of a benchmark system featuring arm's-length contracts and tariffs with cost accounting being used only as a last resort.

MMS Response: The MMS considered the benchmark valuation system featuring arm's-length contracts and FERC tariffs with cost accounting being used as a last resort. The MMS has not adopted this recommendation for the same reasons as cited in Issue No. 2 above.

4. Should a penalty be imposed for late submission of the Form MMS–4110?

One industry respondent commented that requiring lessees to file Forms MMS–4110 and MMS–2014 at the same time would impose an unfair penalty on

lessees for being unable to complete Form MMS–4110 prior to the Form MMS–2014 reporting deadline and that there is no need to cancel all currently approved allowances. Two other industry commenters suggested that submittal of Form MMS–4110 be only on the basis of as-needed, pursuant to contract changes.

MMS Response: The MMS has reconsidered the reporting requirement that would deny the transportation allowance for those periods for which no Form MMS–4110 was filed. Pursuant to § 206.105(b)(1) of the final rules, a lessee may claim a transportation allowance retroactively for a period of 3 months from the first day of the month that the Form MMS–4110 is filed. However, if the lessee has taken an allowance before filing the form, it must pay interest from the date the allowance was taken until the form is filed. The lessee shall also be required to repay the amount of any allowance which is disallowed owing to the 3-month limitation on retroactivity * * *. See § 206.105(d). The proposal to retain all current allowances in effect until they expire was considered and it was decided that approved allowances in effect on the effective date of these rules will be allowed to continue in effect until they expire. See §§ 206.105(c)(1)(v) and 206.105(c)(2)(v).

5. Should the estimated rate reported on Form MMS–4110 be allowed to increase over the prior period, if justified?

One industry commenter requested that the estimated rate be allowed to increase over the prior period if justified. This respondent also recommended that the initial allowance be effective for a period greater or lesser than the 12 months to allow industry to convert to calendar-year reporting. This would ease the administrative burden. Another industry commenter questioned the cost effectiveness of the two-step submission of estimates and corrections. This commenter recommended that any adjustment, plus or minus, be made prospectively only.

MMS Response: The recommendation to allow an estimated rate to increase over the actual rate for the prior period, if justified, has been addressed in the final regulations. Pursuant to § 206.105(c)(2)(iii), the lessee may use an estimate higher or lower than the previous year's actual if the lessee believes it is appropriate when submitting Form MMS–4110. The recommendation to adjust the initial reporting period to allow industry to convert to a calendar year basis has been considered and the regulations at § 260.105(c) have been revised to provide for calendar-year reporting.

6. Should MMS require prior approval for allowances?

Two industry respondents commented that they were in support of the self-implementing feature of the regulations which would not require prior approval of each allowance by MMS before the allowance could be claimed. Two State commenters proposed that MMS should require prior approval on non-arm's-length contract or no-contract deductions for transportation because adequate audit resources are not available to audit the allowances, and it is very likely that many leases will never be audited. One Indian commenter proposed that MMS require prior approval and audit to prevent abuse in the claiming of depreciation and overhead costs.

MMS Response: The MMS currently reviews and approves all transportation allowance requests and has considered pre-approval and pre-audit of transportation allowances. It has been decided that a more effective use of resources can be attained by doing exception processing on allowances and selectively reviewing certain allowances in depth to determine the propriety of the allowance reported by lessees on Form MMS–4110. Therefore, with limited exceptions, no prior approval of allowances will be required.

7. Should costs other than reasonable actual costs be considered in calculating the transportation allowance?

Four industry respondents stated that MMS should revise the regulations to make an allowance for debt service and State and Federal income taxes. Three industry commenters recommended that MMS provide for a complete recovery of costs plus an acceptable profit for assuming the risks involved in undertaking the service function of transportation. One industry commenter recommended that MMS allow for administrative overhead beyond that which is directly associated with, or attributable to, the transportation system.

MMS Response: The MMS views income taxes to be an apportionment of profit rather than a valid operating expense. However, interest on money borrowed for operations would be considered as a valid operating expense. Interest on money borrowed to build a transportation facility is not considered allowable. A return on investment is given in lieu of interest on capital investments. The proposal to extend the amount of overhead beyond that which is directly allocable or attributable to transportation is not acceptable. Administrative overhead or any other costs not directly associated with transportation are not allowed.

8. What rate of return should be used to calculate return on depreciable investment?

Nineteen industry respondents opposed the use of Moody's Aaa corporate bond rate as unrealistic and too low. One industry commenter stated that "There is no reason to equate pipeline risks with the highest rated, most secure debt rate." Two industry commenters stated that the proposed rate is very conservative and arbitrary and the general consensus of the parties was that the rate of return should be adequate to reflect the risks involved in the oil and gas business. Seven respondents stated that the Aaa rate is the absolute lowest borrowing rate available only to a few "blue chip" companies.

One industry respondent suggested four alternatives to Moody's Aaa bond rate: (1) Prime rate plus 5 percent; (2) one and one-half times the average 20-year Treasury Bill rate; (3) 150 percent of Moody's Aaa rate; or (4) the rate of return methodology adopted by FERC in Opinion No. 154–B. This industry commenter also stated that industry's position supports a rate of return plus additional points to reflect risk factors, and two other industry commenters suggested that the rate of return should include Federal income tax.

Five industry respondents recommended a rate of return based upon the cost of debt and equity financing. One party stated that "Assets are not financed by debt alone; equity financing must be included in the calculation of an actual and reasonable cost of capital * * *" and suggested a rate to account for equity financing and an alternative method for extraordinary circumstances based on the weighted-average cost of capital. Another industry commenter suggested that the proposed rate "* * * would not include any return on equity which is a significant portion of the capitalization of the pipeline." One industry commenter suggested "* * * a true rate of return for the risk involved and the cost of capital for both debt and equity." Another respondent suggested a rate based on "* * * both cost of credit and equity capital." One industry respondent stated that "Most firms receive funds from both debt and equity sources."

Two industry commenters proposed the prime rate plus 5 percent in accordance with the RMAC panel. Two industry respondents suggested the average 20-year Treasury Bill rate times 150 percent. Seven industry commenters

recommended either the average 20-year Treasury Bill rate times 150 percent or the prime rate plus 5 percent as proposed by the Oil Valuation and Gas Valuation Panels, respectively. One industry respondent recommended the prime rate plus 7 percent. Another industry respondent suggested Moody's 20-year Baa rate plus 9 percent as an equitable rate of return. One industry commenter preferred the Treasury Bill rate times 150 percent if MMS fixes the rate at the time of initial investment or the prime rate plus 5 percent if MMS redetermines the rate yearly. Another industry respondent suggested a 23-percent pre-tax rate of return. One industry commenter suggested that a risk component of from 5 to 7 points above the Aaa rate be adopted.

Two industry commenters stated that the limitation on the rate of return serves as an economic disincentive for lessees to invest in high-risk ventures, such as the frontier areas. Three industry respondents commented that a lessee affiliated with the pipeline would be at a disadvantage under the proposed rate of return because it would not be competitive with other producers deducting a transportation allowance that includes risk factors.

MMS Response: The MMS has examined several options relating to rate of return and decided that a rate of return should be closely associated with the cost of money necessary to construct transportation facilities. The MMS has examined the use of the corporate bond rate very carefully and has concluded that such rates are representative of the loan rates on sums of money comparable to that expected for the construction of transportation facilities.

There is no doubt that there are some very high risks involved with some oil and gas ventures, such as wildcat drilling. However, the risk associated with building and developing a pipeline to move oil that has already been discovered is a much different risk. The risk of default (financial risk) is considered in corporate bond rates. Considering the risks related to transportation systems, a rate of return that is based on an applicable corporate bond rate would be appropriate for transportation systems.

The MMS has considered the prime rate, the prime rate plus 5 points, one and one-half times the average 20-year Treasury Bill rate, the Moody's bond rate, and Standard and Poor's bond rate. The rate of return used by FERC was not considered because MMS does not believe that the FERC's obligations in developing tariffs and those of MMS in developing transportation allowances are sufficiently similar to warrant the use of similar procedures.

The MMS believes that the use of an appropriate rate of return based on the corporate bond rate adequately considers the risk associated with a transportation system and that there is no rational basis for increasing a rate of return by arbitrarily adding percentage points simply to increase the allowance granted to a lessee. After carefully considering the comments and the options available, MMS determined that the rate of return should be based on Standard and Poor's BBB industrial bond rate. Section 206.105(b)(2)(v) has been revised accordingly in the final rule. However, because of the substantial and diverse comments on this issue, MMS intends in the near future to issue a notice of proposed rulemaking to reconsider the applicable rate of return for purposes of these regulations.

The MMS does not consider State and Federal income taxes as an appropriate expense that should be included in a transportation allowance and does not agree that the rate of return should be increased to allow for income tax liability.

9. Should MMS retain the provisions of both Alternative 1 and Alternative 2?

Four industry respondents commented that MMS should retain both Alternative 1 and Alternative 2 in proposed § 206.105(b)(5)(iv). One industry commenter recommended that both Alternatives 1 and 2 be included in any cost-based methodology for determination of a transportation allowance. Another industry commenter recommended that both alternatives be made available for use at the lessee's election on the basis of an individual transportation arrangement because adoption of this approach would assure the flexibility necessary to adapt to unforeseen changes in the business and transportation environments. Two industry respondents stated that MMS should retain Alternative 1. One industry commenter stated that it endorsed use of the first alternative because it gives lessees some latitude in choosing the depreciation method.

One industry respondent commented that MMS should not retain Alternative 2. The commenter stated that this alternative would encourage third parties to become involved in the pipeline business, in which case MMS would absorb the full market cost of transportation provided.

Four industry respondents commented that MMS should adopt Alternative 2 and apply it to all existing and future transportation facilities. One commenter stated that limiting Alternative 2 (return on initial capital investment) to new or newly acquired transportation systems is unsupported in the proposed rules and Alternative 2 should be available without the limitation imposed by the MMS. Two industry commenters stated that they presumed Alternative 2 has no limit on the deduction under this alternative. Both industry commenters stated that although Alternative 1 specifically states that a transportation system may be depreciated only once, there is no mention of such a cap on Alternative 2 and, therefore, it is presumed that this option has no limit. One industry commenter stated that it believed it was appropriate to include both Alternative 1 and Alternative 2 in any cost-based methodology for determination of a transportation allowance.

One industry respondent recommended that MMS permit the depreciation schedule to be adjusted to reflect additional capital investment of a subsequent purchaser because if additional capital is invested, there is no double recoupment of capital investment.

Six industry commenters stated that MMS's proposal to disallow recapitalization is inequitable. One commenter stated that because this proposal would only recognize the original capital costs, the additional capital costs which may have been invested by the new owner may not be recovered.

Two industry respondents stated that although they agreed with the concept of allowing a rate of return on the transportation facilities, the application of the allowance is unfair insofar as a company using Alternative 1 (i.e., one with existing facilities) would only be receiving a return on investment for the undepreciated investment (or net book value).

Two industry respondents stated that MMS should not tie the rate of return to a diminishing value. Both commenters stated that because the intention is to provide the lessee with a rate of return for his invested capital he should not be penalized by a diminishing return caused by tying the return into a depreciation option.

Five industry commenters stated that MMS should allow a lessee to add estimated abandonment costs to its depreciable capital investment value. One industry commenter stated that although MMS has set out that the proposed regulations require recognition of salvage values, often the cost of abandonment exceeds any salvage value; consequently, it was suggested

that the estimated cost of abandonment of the transportation system be included as an expense of operation to the lessee.

One industry commenter stated that a transportation system should be depreciated only once. The commenter suggested that the regulation state "A change in ownership of a transportation system shall not alter the depreciation schedule established by the original transporter/lessee for purposes of the allowance calculation. With or without a change in ownership, a transportation system shall be depreciated only once."

MMS Response: The MMS has reviewed the comments received regarding both Alternative 1 and Alternative 2 in proposed § 206.105(b)(5)(iv) and concluded that both alternatives should be retained. However, under the final rule, § 206.105(b)(2)(iv), Alternative 2 can only be used for transportation facilities first placed in service after the effective date of these regulations.

The MMS has considered the issue of recapitalization and decided that it was appropriate for the Government to pay for the depreciation of a system only once.

The MMS has carefully considered the issue of basing the rate of return on the basis of a diminishing value and has decided that this procedure is consistent with longstanding Government policy on allowances and that MMS should continue this policy for transportation facilities in operation on the effective date of these regulations.

The MMS has taken the position that because it does not participate in the profit or losses that could result from the sale of transportation facilities, no costs for dismantling and abandonment should be included in transportation allowances.

The final rules provide that a transportation system may be depreciated only once, and that the depreciation schedule established by the original transporter/lessee may not be altered by a change in ownership.

The MMS received 19 comments from industry and 2 comments from Indians on the reporting requirements, § 206.105(c), in addition to the comments already discussed above. The two major issues of concern relating to the reporting requirements were: (1) Usage of Form MMS–4110, and (2) the terms of the allowance and reporting periods.

1. Should MMS require the filing of Form MMS–4110?

Six industry and one Indian commenter opposed the use of Form MMS–4110. One Indian commenter stated that there should be more monitoring of deductions taken from royalty and requested that MMS retain an approval process instead of the mere filing of Form MMS–4110. One industry commenter stated that Form MMS–2014 will show the transportation allowance taken and that Form MMS–4110 is unnecessary. Two industry commenters recommended the filing of an "Intent to Deduct Transportation." One industry commenter stated that the transportation costs under arm's-length contracts should be part of the value and Form MMS–4110 should be filed only for non-arm's-length transportation.

Five industry commenters stated that it would be burdensome to file a new Form MMS–4110 each time a trucking charge or similar net change occurred in a contract price. One industry commenter stated that price postings have been amended as often as three times per month. One industry commenter suggested that Addendum No. 15 be incorporated into the new regulations and expanded to include offshore leases. One industry commenter stated that the regulations are not clear whether a Form MMS–4110 must be filed for prices net of transportation. This industry commenter also stated that in some situations the lessee may not know a price is being netted of transportation in time to file Form MMS–4110.

One Indian commenter stated that the information on Form MMS–4110 should be clear and uncomplicated and should be available to the Indians.

MMS Response: The MMS believes that Form MMS–4110 must be required in order for MMS to monitor the transportation allowance program. The MMS believes it can effectively monitor the transportation allowance deductions without the pre-approval of the allowances. The MMS has made the information on Form MMS–4110 as clear and uncomplicated as possible considering the complex nature of transportation allowances. The information on these forms will be made available to the Indians upon proper request. The filing of a Form MMS–4110 equates to an "intent to deduct transportation." The transportation costs under an arm's-length contract are separate from the value determination under such a contract so a Form MMS–4110 should be filed for transportation costs determined under both arm's-length and non-arm's-length contracts.

In arm's-length situations where the purchaser is reducing the posted price for a transportation cost and the lessee is incurring no out-of-pocket expense, filing a Form MMS–4110 is unnecessary. In these situations, the point of sale is at the point the purchaser acquires the oil and because the reduction in price represents a cost incurred past the point of first sale, a transportation allowance would not be allowed by the regulations. However, in determining the value of the oil, the reduction of price for the transportation costs past the point of sale would be considered. Section 206.105(a)(5) of the final rule incorporates the necessary regulatory language.

2. Term of the allowance periods and the timetable for reporting.

One industry commenter endorsed the 12-month term for both onshore and offshore leases. Another industry commenter strongly suggested that all transportation allowances based on cost accounting be determined on the basis of calendar-year reporting. This industry respondent also suggested that all existing transportation allowances based on cost accounting be extended until April 1, 1988, when data for the 1987 allowance would be submitted.

Four other industry commenters opposed the termination of all current allowances and recommended continuing allowances in effect for a period of time beyond the effective date of the regulations to allow for smooth transition. The general consensus was that it would be an administrative burden to require the filing of Form MMS–4110 immediately upon passage of the rulemaking. In addition, two of these four industry respondents proposed that the transportation allowances remain in effect for an additional 90 days beyond the issuance date of the regulations. One of these commenters suggested filing new forms only when the current allowance expires.

One industry commenter recommended a grace period for filing all allowances. Another industry commenter proposed a 90-day filing period for new Forms MMS–4110 that are submitted for contract revisions.

MMS Response: The MMS concurs with a 12-month term and the final regulations in § 206.105(c) have been changed to provide that a Form MMS–4110 will be filed by calendar year. The MMS considered extending current allowances and § 206.105 (c)(1)(v) and (c)(2)(v) now provide that certain allowances will continue in effect until they expire. In regard to a grace period for filing, the regulations have been revised to allow a grace period of 3 months for all non-arm's-length and no-contract situations. The regulations in § 206.105(c)(2)(iii) allow the lessee 3 months after the end of the previous reporting period to file the Form MMS–4110. Also, the final regulations at § 206.105 (a)(1) and (b)(1) have been revised to allow for transportation allowances to be claimed retroactively

for a period of not more than 3 months prior to the first day of the month that Form MMS–4110 is filed with MMS. Therefore, even if the lessee is not able to file the Form MMS–4110 timely, the lessee could file the Form MMS–4110 and claim the transportation allowance on a corrected Form MMS–2014 at a later date.

Nine industry respondents commented on § 206.105(e), which was proposed as § 206.105(d), and pertains to adjustments. Four principal issues were identified.

1. Should MMS require retroactive adjustments to transportation allowances?

It was the general consensus in the comments that adjustments were a very large burden on both industry and the MMS and that some way should be found to eliminate the need for the many adjustments that result from differences between actual and estimated transportation allowances. Six industry commenters recommended that positive or negative differences between estimated and actual costs should be rolled forward into the transportation rate for the subsequent period because this would greatly relieve the administrative burden on MMS and industry. Three industry commenters recommended that actual data from one period be used as the allowance for the subsequent period, eliminating the need for adjustments. It was stated also that this procedure would relieve the burden on MMS and industry associated with the requirement to make adjustments to each account, each month, for each year.

MMS Response: To ease the burden resulting from the adjustments requirement, MMS has eliminated the need for many retroactive adjustments by accepting arm's-length-contract transportation costs when the lessee timely files the Form MMS–4110. For non-arm's-length and no-contract situations, MMS did not eliminate the need for adjustments between actual and estimated transportation allowances. The MMS considered alternatives such as (1) rolling forward differences into subsequent periods or (2) using actual data from one period to be used as the next period's actual allowance, but determined that either procedure could be inequitable to lessees, MMS, Indian Tribes, and Indian allottees.

2. Should MMS require refunds to be requested under the refund procedure requirement of section 10 of the Outer Continental Shelf (OCS) Lands Act?

One industry commenter stated that refunds for estimates tendered in excess of actual costs should not be judged as refunds of a payment of royalty under section 10 of the OCS Lands Act, 43 U.S.C. 1339, because estimates are not "actual" payments of royalty. Overpayments could then be treated as line-item adjustments not subject to the refund process. Two industry respondents emphasized that the requirement to submit written requests for refunds for under-deducted transportation costs in accordance with section 10 of the OCS Lands Act will be an extraordinarily difficult financial and reporting burden to industry and MMS. Two industry commenters stated that the current long review and audit process is now causing lessees to lose the time value of money in the refunds which are due the lessees under section 10 of the OCS Lands Act. Audits on such refunds were described as fruitless and wasteful and the suggestion was made that MMS should consider transportation allowance adjustments to be exceptions to the refund requirements of section 10 of the OCS Lands Act. Overpayments would be recovered through line-item adjustments on Form MMS–2014.

Two industry commenters suggested that the submission of Form MMS–4110 should constitute the tolling of the 2-year statute of limitations period defined in section 10 of the OCS Lands Act. These parties believed that this should be put in the regulations to avoid burdensome refund procedures.

MMS Response: It would not be proper for these rules to prescribe the refund procedures. MMS is examining the issue and will provide guidance to lessees.

3. Payment of interest.

Four industry commenters stated that the MMS-proposed procedure for handling interest payments was not fair. These commenters believed that if the lessee must pay any difference plus interest, MMS should also pay any difference plus any interest statutorily authorized.

MMS Response: MMS has no legal authority to pay interest.

The MMS received 17 industry comments on § 206.105(f), which was proposed as paragraph (e). All 17 commenters basically stated that MMS should amend or delete this paragraph to allow actual or theoretical losses as a transportation cost.

Nine industry respondents stated that line losses are actual transportation costs which should be allowed by MMS. The basic premise of these comments was that all costs resulting from line losses should be deductible because if MMS does not absorb its pro rata share of such transportation costs, an inequity results.

As a variation of this issue, eight industry commenters declared that only certain oil losses should be deductible from royalty. Five industry respondents commented that line losses in arm's-length contracts and FERC tariffs should be allowed. One of these commenters stated that if a loss provision is a part of an arm's-length contract or a FERC tariff, MMS should accept such a provision, just as it accepts the dollars-and-cents rates in the contract or tariff. In other words, the losses are part of the total cost of the transportation arrangement and should be deductible. Three industry commenters stated that MMS should allow those line losses not attributable to negligence. One of these commenters stated that a credit should be allowed for line losses not attributable to negligence and such change would conform to section 308 of the FOGRMA which specifies that a lessee is liable for royalty payments on oil and gas lost or wasted from a lease site when such loss or waste is due to negligence on the part of the operator of the lease.

One industry commenter stated that producer-owned pipelines should include transportation losses as part of operating expenses in the formulation of an allowance.

MMS Response: All of the issues of theoretical and actual line losses have been considered at length by MMS. The MMS will include as part of a transportation allowance under an arm's-length contract amounts required to be paid in cash or in kind for line losses. However, because of the difficulty of demonstrating that losses are valid and not the result of meter error or other difficult-to-measure causes, MMS has decided not to treat line losses as valid costs for purposes of computing transportation allowances in non-arm's-length or no contract situations. No change to the final rule was made.

Four comments were received on § 206.105(g), which was proposed as paragraph (f). This section allows use of the transportation allowance rules where transportation is a component of a valuation procedure such as a net-back.

The major concern raised about this paragraph was the application of the transportation allowance regulations to a net-back valuation. Two industry commenters stated that the use of restrictive cost-based transportation allowances is inequitable when the net-back valuation procedure is used and recommended that the section be reworded to recognize total "actual

costs" incurred to move or improve the hydrocarbon for sale downstream.

MMS Response: The MMS has reviewed and analyzed the comments relating to the procedure for netting costs back to the lease to determine a value for royalty purposes. The MMS remains convinced that the cost-based allowance procedure for determining oil transportation allowances is appropriate for determining value under a net-back procedure.

Section 207.5 Contract and sales agreement retention.

Two comments were received regarding § 207.5 (formerly proposed as § 207.4), one from industry and one from a State. The State commenter suggested several modifications to clarify and insure that sufficient documentation on oil sales is maintained and made available to FOGRMA-authorized State auditors and other authorized personnel.

The industry commenter suggested that the regulations should limit the audit period, and thus the time for record retention, to six years. This would avoid "an unnecessary administrative burden" upon industry to maintain records for an indefinite period.

MMS Response: The MMS has modified the final rule to require lessees to maintain and make available all documents relevant to the valuation of production.

This Subpart is not the appropriate place to address record retention requirements. The record retention provisions are found at § 212.51 (a) and (b).

Section 3162.7–4 Royalty rates on oil; sliding and step-scale leases (public land only).

This section was proposed as § 202.101. The Bureau of Land Management (BLM) advised that "the redesignation into 43 CFR must be accomplished prior to finalization of the proposed MMS regulations under 30 CFR Part 202 because the well count regulations (43 CFR Part 3100) must be referenced in the new 30 CFR Part 202." The BLM recommended extensive changes in this part "regardless of whether these regulations remain under 30 CFR or are reassigned to 43 CFR."

MMS Response: No changes to the proposed section will be made in the final rule. However, because this regulation is the responsibility of the BLM, it is being redesignated as 43 CFR 3162.7–4. After redesignation, BLM may elect to make certain revisions. MMS has corrected typographical errors which appeared in the proposed rule.

V. Procedural Matters

Executive Order 12291

The Department of Interior (DOI) has determined that this document is not a major rule and does not require a regulatory analysis under Executive Order 12291. This rulemaking consolidates Federal and Indian oil royalty valuation regulations; clarifies DOI oil royalty valuation and oil transportation allowance policy; and provides for consistent royalty valuation policy among all leasable minerals.

Regulatory Flexibility Act

Because this rule primarily consolidates and streamlines existing regulations for consistent application, there are no significant additional requirements or burdens placed upon small business entities as a result of implementation of this rule. Therefore, the DOI has determined that this rulemaking will not have a significant economic effect on a substantial number of small entities and does not require a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*).

Lessee reporting requirements will increase approximately $4 million. All oil posted price bulletins or sales contracts will be required to be submitted only upon request, or only in support of a lessee's valuation proposal in unique situations rather than routinely, as under the existing regulations.

Paperwork Reduction Act of 1980

The information collection and recordkeeping requirements located at §§ 206.105, 207.4, and 210.55 of this rule have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3504(a), and assigned OMB Clearance Number 1010–0061.

National Environmental Policy Act of 1969

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

List of Subjects

30 CFR Part 202

Continental shelf, Government contracts, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 203

Coal, Continental shelf, Government contracts, Mineral royalties, Oil and gas exploration, Public lands—mineral resources.

30 CFR Part 206

Continental shelf, Geothermal energy, Government contracts, Mineral royalties, Oil and gas exploration, Public lands—mineral resources.

30 CFR Part 207

Government contracts, Mineral royalties, Public lands—mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 210

Continental shelf, Geothermal energy, Government contracts, mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 241

Administrative practice and procedure, Government contracts, Mineral royalties, Oil and gas exploration, Penalties, Public lands—mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3160

Government contracts, Indian-lands, Land Management Bureau, Mineral royalties, Oil and gas exploration, Penalties, Public lands—mineral resources, Reporting and recordkeeping requirements.

Date: _____

_____

Assistant Secretary—Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR Parts 202, 203, 206, 207, 210, 241, and 43 CFR Part 3160 are amended as follows:

TITLE 30—MINERAL RESOURCES

CHAPTER II—MINERALS MANAGEMENT SERVICE, DEPARTMENT OF THE INTERIOR

Subchapter A—Royalty Management

PART 202—ROYALTIES

1. The authority citation for Part 202 is revised to read as follows:

Authority: 25 U.S.C. 396 *et seq.;* 25 U.S.C. 396a *et seq.;* 25 U.S.C. 2101 *et seq.;* 30 U.S.C. 181 *et seq.;* 30 U.S.C. 351 *et seq.;* 30 U.S.C. 1001 *et seq.;* 30 U.S.C. 1701 *et seq.;* 43 U.S.C. 1301 *et seq.;* 43 U.S.C. 1331 *et seq.;* and 43 U.S.C. 1801 *et seq.*

2. 30 CFR Part 202 is amended by revising the part title and the titles of Subparts B, C, and D to read as follows:

PART 202—ROYALTIES

Subpart B—Oil, Gas, and OCS Sulfur, General

Subpart C—Federal and Indian Oil

Subpart D—Federal and Indian Gas [Reserved]

§§ 202.100 through 202.103 [Removed]

3. Sections 202.100, 202.101, 202.102 and 202.103 under Subpart C are removed.

§§ 202.150, 202.151 and 202.152 [Redesignated as §§ 202.100, 202.53 and 202.52]

Subpart D (§§ 202.150 through 202.151) [Reserved]

Sections 202.150, 202.151 and 202.152 under Subpart D are redesignated as new § 202.100 under Subpart C and §§ 202.53 and 202.52 under Subpart B, respectively, and Subpart D is reserved.

4. In Subpart B, add new § 202.51 and revise §§ 202.52 and 202.53 (formerly §§ 202.152 and 202.151, respectively) to read as follows:

Subpart B—Oil, Gas, and OCS Sulfur, General

Sec.
202.51 Scope and definitions.
202.52 Royalties.
202.53 Minimum royalty.

Subpart B—Oil, Gas, and Sulfur, General

§ 202.51 Scope and definitions.

(a) This part is applicable to Federal and Indian (Tribal and allotted) oil and gas leases (except leases on the Osage Indian Reservation, Osage County, Oklahoma) and OCS sulfur leases.

(b) The definitions in Subparts C, D, and I of Part 206 of this Title are applicable to Subparts B, C, D, and I of this part.

§ 202.52 Royalties.

(a) Royalties on oil, gas, and OCS sulfur shall be at the royalty rate specified in the lease, unless the Secretary, pursuant to the provisions of the applicable mineral leasing laws reduces, or in the case of OCS leases reduces or eliminates, the royalty rate or net profit share set forth in the lease.

(b) For purposes of this Subpart, the use of the term "royalty(ies)" includes the term "net profit share(s)".

§ 202.53 Minimum royalty.

For leases that provide for minimum royalty payments, the lessee shall pay the minimum royalty as specified in the lease.

5. 30 CFR Part 202, Subpart C, is amended by revising newly redesignated § 202.100 (formerly § 202.150) and by adding § 202.101 to read as follows:

Subpart C—Federal and Indian Oil

Sec.
202.100 Royalty on oil.
202.101 Standards for reporting and paying royalties.

§ 202.100 Royalty on oil.

(a) Royalties due on oil production from leases subject to the requirements of this part, including condensate separated from gas without processing, shall be at the royalty rate established by the terms of the lease. Royalty shall be paid in value unless MMS requires payment in kind. When paid in value, the royalty due shall be the value for royalty purposes determined pursuant to Part 206 multiplied by the royalty rate in the lease.

(b) All oil (except oil unavoidably lost from the lease site or used on, or for the benefit of, the lease, including that oil used off-lease for the benefit of the lease when such off-lease use is permitted by the appropriate agency) produced from a Federal or Indian lease to which this Part applies is subject to royalty. Where the terms of any lease are inconsistent with this section, the lease terms shall govern to the extent of that inconsistency.

(c) If BLM determines that oil was avoidably lost or wasted from an onshore lease, or that oil was drained from an onshore lease for which compensatory royalty is due, or if MMS determines that oil was avoidably lost or wasted from an offshore lease, then the value of that oil shall be determined in accordance with Part 206.

(d) In those instances where the lessee of any lease committed to a federally approved unitization or communitization agreement does not actually take the proportionate share of the agreement production attributable to its lease under the terms of the agreement, the full share of production attributable to the lease under the terms of the agreement nonetheless is subject to the royalty payment and reporting requirements of this Title. The value for royalty purposes of that production will be determined in accordance with Part 206. In applying the requirements of Part 206, the circumstances involved in the actual disposition of the portion of the production to which the lessee was entitled but did not take shall be considered as controlling in arriving at the value for royalty purposes of that portion as if the person actually selling or disposing of the production were the lessee of the Federal or Indian lease.

§ 202.101 Standards for reporting and paying royalties.

Oil volumes are to be reported in barrels of clean oil of 42 standard U.S. gallons (231 cubic inches each) at 60 °F. When reporting oil volumes for royalty purposes, corrections must have been made for basic sediment and water (BS&W) and other impurities. Reported American Petroleum Institute (API) oil gravities are to be those determined in accordance with standard industry procedures after correction to 60 °F.

PART 203—RELIEF OR REDUCTION IN ROYALTY RATE

1. The authority citation for Part 203 is revised to read as follows:

Authority: 25 U.S.C. 396 *et seq.;* 25 U.S.C. 396a *et seq.;* 25 U.S.C. 2101 *et seq.;* 30 U.S.C. 181 *et seq.;* 30 U.S.C. 351 *et seq.;* 30 U.S.C. 1001 *et seq.;* 30 U.S.C. 1701 *et seq.;* 43 U.S.C. 1301 *et seq.;* 43 U.S.C. 1331 *et seq.;* and 43 U.S.C. 1801 *et seq.*

2. 30 CFR Part 203 is amended by revising the titles of Subparts B, C, and D to read as follows:

Subpart B—Oil, Gas and OCS Sulfur, General

Subpart C—Federal and Indian Oil [Reserved]

Subpart D—Federal and Indian Gas [Reserved]

§ 203.100 [Removed]

3. Section § 203.100 under Subpart C is removed.

§ 203.150 [Redesignated as § 203.50]

Subparts C and D [Reserved]

Section 203.150 under Subpart D is redesignated as § 203.50 under Subpart B, and Subparts C and D are reserved.

PART 206—PRODUCT VALUATION

1. The authority citation for Part 206 is revised to read as follows:

Authority: 25 U.S.C. 396 *et seq.;* 25 U.S.C. 396a *et seq.;* 25 U.S.C. 2101 *et seq.;* 30 U.S.C. 181 *et seq.;* 30 U.S.C. 351 *et seq.;* 30 U.S.C. 1001 *et seq.;* 30 U.S.C. 1701 *et seq.;* 43 U.S.C. 1301 *et seq.;* 43 U.S.C. 1331 *et seq.;* and 43 U.S.C. 1801 *et seq.*

2. 30 CFR Part 206 is amended by revising the titles of Subparts B, C, and D to read as follows:

Subpart B—Oil, Gas, and OCS Sulfur, General—[Reserved]

Subpart C—Federal and Indian Oil

Subpart D—Federal and Indian Gas—[Reserved]

§§ 206.103 and 206.104 [Removed]

3. Sections 206.103 and 206.104 are removed.

4. 30 CFR Part 206, Subpart C, is amended by adding new §§ 206.103 and 206.104 and by revising §§ 206.100, 206.101, 206.102, and 206.105 to read as follows:

§ 206.100 Purpose and scope.

(a) This subpart is applicable to all oil production from Federal and Indian (Tribal and allotted) oil and gas leases (except leases on the Osage Indian Reservation, Osage County, Oklahoma).

(b) If the specific provisions of any statute, treaty, or oil and gas lease subject to the requirements of this Part are inconsistent with any regulation in this Part, then the statute, treaty, or lease provision shall govern to the extent of that inconsistency.

(c) All royalty payments made to MMS or to any Tribe or allottee are subject to audit and adjustment.

(d) The regulations in this part are intended to ensure that any responsibilities of the United States with respect to the administration of Indian oil and gas leases are discharged in accordance with the requirements of the governing mineral leasing laws, treaties, and lease terms.

§ 206.101 Definitions.

For the purposes of this part (and Parts 202, 203, 207, 210, and 241 of this chapter):

"Allowance" means an approved or an MMS-initially accepted deduction in determining value for royalty purposes. "Transportation allowance" means an allowance for the reasonable, actual costs incurred by the lessee for moving oil to a point of sale or point of delivery off the lease, unit area, or communitized area, excluding gathering, or an approved or MMS-initially accepted deduction for costs of such transportation, determined pursuant to this subpart.

"Area" means a geographic region at least as large as the defined limits of an oil and/or gas field in which oil and/or gas lease products have similar quality, economic, and legal characteristics.

"Arm's-length contract" means a contract or agreement between independent, nonaffiliated persons which reflects the total consideration actually transferred directly or indirectly from the buyer to the seller for the oil. For purposes of this subpart, two persons are affiliated if one person controls, is controlled by, or is under common control with another person. For purposes of this section, based on the instruments of ownership of the voting securities of an entity, or based on other forms of ownership:

(a) Ownership in excess of 50 percent constitutes control;

(b) Ownership of 20 through 50 percent creates a presumption of control; and

(c) Ownership of less than 20 percent creates a presumption of noncontrol.

Notwithstanding any other provisions of this section, contracts between relatives, either by blood or by marriage, are not arm's-length contracts. The MMS may require the lessee to certify ownership control. To be considered arm's-length for any production month, a contract must meet the requirements of this definition for that production month, as well as when the contract was executed.

"Audit" means a review, conducted in accordance with generally accepted accounting and auditing standards, of royalty payment compliance activities of lessees or other interest holders who pay royalties, rents, or bonuses on Federal and Indian leases.

"BIA" means the Bureau of Indian Affairs of the Department of the Interior.

"BLM" means the Bureau of Land Management of the Department of the Interior.

"Condensate" means liquid hydrocarbons (normally exceeding 40 degrees of API gravity) recovered at the surface without resorting to processing. Condensate is the mixture of liquid hydrocarbons that results from condensation of petroleum hydrocarbons existing initially in a gaseous phase in an underground reservoir.

"Contract" means any oral or written agreement, including amendments or revisions thereto, between two or more persons and enforceable by law that with due consideration creates an obligation.

"Field" means a geographic region situated over one or more subsurface oil and gas reservoirs encompassing at least the outermost boundaries of all oil and gas accumulations known to be within those reservoirs vertically projected to the land surface. Onshore fields are usually given names and their official boundaries are often designated by oil and gas regulatory agencies in the respective states in which the fields are located. Outer Continental Shelf (OCS) fields are named and their boundaries are designated by MMS.

"Gathering" means the movement of lease production to a central accumulation or treatment point on the lease, unit or communitized area, or to a central accumulation or treatment point off the lease, unit, or communitized area as approved by BLM or MMS OCS operations personnel for onshore and offshore leases, respectively.

"Gross proceeds" (for royalty payment purposes) means the total monies and other consideration paid to an oil and gas lessee for the disposition of the oil. Gross proceeds includes, but is not limited to, payments to the lessee for certain services such as dehydration, measurement, and/or gathering to the extent that the lessee is obligated to perform them at no cost to the Federal Government or Indian lessor. Gross proceeds, as applied to oil, also includes, but is not limited to: reimbursements, including, but not limited to, reimbursements for harboring or terminalling fees. Tax reimbursements are part of the gross proceeds accruing to a lessee even though the Federal or Indian royalty interest may be exempt from taxation. Payment or credits for advanced exploration or development costs or prepaid reserve payments that are subject to recoupment through credits against the purchase price or through reduced prices in later sales and which are made before production commences become part of gross proceeds as of the time of first production. Monies and other consideration, including the forms of consideration identified in this paragraph, to which a lessee is contractually or legally entitled but which it does not seek to collect through reasonable efforts are also part of gross proceeds.

"Indian allottee" means any Indian for whom land or an interest in land is held in trust by the United States or who holds title subject to Federal restriction against alienation.

"Indian Tribe" means any Indian Tribe, band, nation, pueblo, community, rancheria, colony, or other group of Indians for which any land or interest in land is held in trust by the United States or which is subject to Federal restriction against alienation.

"Lease" means any contract, profit-share arrangement, joint venture, or other agreement issued or approved by the United States under a mineral leasing law that authorizes exploration for, development or extraction of, or removal of lease products—or the land area covered by that authorization, whichever is required by the context.

"Lease products" means any leased minerals attributable to, originating

from, or allocated to Outer Continental Shelf, onshore Federal or Indian leases.

"Lessee" means any person to whom the United States, an Indian Tribe, or an Indian allottee issues a lease, and any person who has been assigned an obligation to make royalty or other payments required by the lease. This includes any person who has an interest in a lease as well as an operator or payor who has no interest in the lease but who has assumed the royalty payment responsibility.

"Like-quality lease products" means lease products which have similar chemical, physical, and legal characteristics.

"Load oil" means any oil which has been used with respect to the operation of oil or gas wells for wellbore stimulation, workover, chemical treatment, or production purposes. It does not include oil used at the surface to place lease production in marketable condition.

"Marketable condition" means lease products which are sufficiently free from impurities and otherwise in a condition that they will be accepted by a purchaser under a sales contract typical for the field or area.

"Minimum royalty" means that minimum amount of annual royalty that the lessee must pay as specified in the lease or in applicable leasing regulations.

"Net-back method" (or work-back method) means a method for calculating market value of oil at the lease when value cannot be calculated on the basis of oil of comparable value. Under this method costs of transportation, processing or manufacturing are deducted from the ultimate proceeds received for the oil and any extracted, processed, or manufactured products to ascertain value at the lease.

"Net profit share" (for applicable Federal and Indian lessees) means the specified share of the net profit from production of oil and gas as provided in the agreement.

"Oil" means a mixture of hydrocarbons that existed in the liquid phase in natural underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities and is marketed or used as such. Condensate recovered in lease separators or field facilities is considered to be oil. For purposes of royalty valuation, the term tar sands is defined separately from oil.

"Oil shale" means a kerogen (i.e., fossilized, insoluble, organic material) bearing rock. Separation of kerogen from oil shale may take place in situ or in surface retorts by various processes. The kerogen upon distillation will yield liquid and gaseous hydrocarbons.

"Outer Continental Shelf (OCS)" means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in Section 2 of the Submerged Lands Act (43 U.S.C. 1301) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

"Person" means any individual, firm, corporation, association, partnership, consortium, or joint venture.

"Posted price" means the price specified in publicly available posted price bulletins, offshore or onshore terminal postings, or other price notices net of all adjustments for quality (*e.g.*, API gravity, sulfur content, etc.) and location for oil in marketable condition.

"Processing" means any process designed to remove elements or compounds (hydrocarbon and nonhydrocarbon) from gas, including absorption, adsorption, or refrigeration. Field processes which normally take place on or near the lease such as natural pressure reduction, mechanical separation, heating, cooling, dehydration, and compression are not considered processing. The changing of pressures and/or temperatures in a reservoir is not considered processing.

"Section 6 lease" means an OCS lease subject to section 6 of the Outer Continental Shelf Lands Act, as amended, 43 U.S.C. 1335.

"Selling arrangement" means the individual contractual arrangements under which sales or dispositions of oil are made. Selling arrangements are described by illustration in the MMS Royalty Management Program (Oil and Gas or Solid Minerals) Payor Handbook.

"Spot sales agreement" means a contract wherein a seller agrees to sell to a buyer a specified amount of oil at a specified price over a fixed period, usually of short duration, which does not require a cancellation notice to terminate, and which does not normally contain an obligation, nor imply an intent, to continue in subsequent periods.

"Tar sands" means any consolidated or unconsolidated rock (other than coal, oil shale, or gilsonite) that either contains a hydrocarbonaceous material with a gas-free viscosity greater than 10,000 centipoise at original reservoir temperature, or contains a hydrocarbonaceous material and is produced by mining or quarrying.

§ 206.102 Valuation standards.

(a)(1) The value, for royalty purposes, of oil from leases subject to this subpart shall be the value determined pursuant to this section less applicable allowances determined pursuant to this subpart.

(2)(i) For any Indian leases which provide that the Secretary may consider the highest price paid or offered for a major portion (major portion) in determining value for royalty purposes, if data are available to compute a major portion, MMS will, where practicable, compare the value determined in accordance with this section with the major portion. The value to be used in determining the value for royalty purposes shall be the higher of those two values unless MMS determines that the value for royalty purposes determined in accordance with the other provisions of this section is the highest reasonable royalty value.

(ii) For purposes of this paragraph, major portion means the highest price paid or offered at the time of production for the major portion of oil production from the same field. The major portion will be calculated using like-quality oil sold from the same field (or, if necessary to obtain a reasonable sample, from the same area) for each month. All such oil production will be arrayed from highest price to lowest price (at the bottom). The major portion is that price at which 50 percent (by volume) plus 1 barrel of the oil (starting from the bottom) is sold.

(b)(1) The value of oil which is sold pursuant to an arm's-length contract shall be the gross proceeds accruing to the lessee. The value which the lessee reports for royalty purposes is subject to monitoring, review, and audit. In conducting these reviews and audits, MMS will determine whether the contract reflects the total consideration actually transferred either directly or indirectly from the buyer to the seller for the oil, or whether there may be factors which would cause the contract not to be arm's-length. The MMS may direct a lessee to pay royalty based upon a different value if it determines that the lessee's reported value is inconsistent with the requirements of these regulations.

(2) The MMS may require a lessee to certify that its arm's-length contract provisions include all of the consideration to be paid by the buyer for the oil.

(c) The value of oil production from leases subject to this section which is not sold pursuant to an arm's-length contract shall be the reasonable value determined in accordance with the first applicable of the following paragraphs:

(1) The lessee's contemporaneous posted prices or oil sales contract prices used in arm's-length transactions for purchases or sales of significant

quantities of like-quality oil in the same field or area; if the lessee makes arm's-length purchases or sales at different postings or prices, then the volume-weighted average price for the purchases or sales for the production month reported on Form MMS–2014 will be used;

(2) The arithmetic average of contemporaneous posted prices used in arm's-length transactions by persons other than the lessee for purchases or sales of significant quantities of like-quality oil in the same field or area;

(3) The arithmetic average of other contemporaneous arm's-length contract prices for purchases or sales of significant quantities of like-quality oil in the same area or nearby areas;

(4) Prices received for arm's-length spot sales of significant quantities of like-quality oil from the same field or area, and other relevant matters, including information submitted by the lessee concerning circumstances unique to a particular lease operation or the saleability of certain types of oil;

(5) If an appropriate value cannot be determined using paragraphs (c)(1) through (4), a net-back method or any other reasonable method to determine value may be used; and

(6) For purposes of this subsection, the term lessee includes the lessee's designated purchasing agent, and the term contemporaneous means postings or contract prices in effect at the time the royalty obligation is incurred.

(d) Any Federal or Indian lessee will make available upon request to the authorized MMS, State, or Indian representatives, or to the Office of the Inspector General of the Department of the Interior, the General Accounting Office or other persons authorized to receive such information, arm's-length sales and volume data for like-quality production sold, purchased or otherwise obtained by the lessee from the field or area or from nearby fields or areas.

(e)(1) Where the value is determined pursuant to paragraph (c) of this section, the lessee shall retain all data relevant to the determination of royalty value. Such data shall be subject to review and audit, and MMS will direct a lessee to use a different value if it determines that the reported value is inconsistent with the requirements of these regulations.

(2) A lessee shall notify MMS if it has determined value pursuant to § 206.102(c) (4) or (5). The notification shall be by letter to the MMS Associate Director for Royalty Management or his/her designee. The letter shall identify the valuation method to be used and contain a brief description of the procedure to be followed. The notification required by this section is a one-time notification due no later than the month the lessee first reports royalties on a Form MMS–2014 using a valuation method authorized by § 206.102(c) (4) or (5) and each time there is a change from one to the other of these two methods.

(f) If MMS determines that a lessee has not properly determined value, the lessee shall pay the difference, if any, between royalty payments made based upon the value it has used and the royalty payments that are due based upon the value established by MMS. The lessee shall also pay interest computed pursuant to 30 CFR 218.54. If the lessee is entitled to a credit, MMS will provide instructions for the taking of that credit.

(g) The lessee may request a value determination from MMS. In that event, the lessee shall propose to MMS a value determination method and may use that value for royalty payment purposes until MMS issues a value determination. The lessee shall submit all available data relevant to its proposal. MMS shall expeditiously determine the value based upon the lessee's proposal and any additional information MMS deems necessary. That determination shall remain effective for the period stated therein. After MMS issues its determination, the lessee shall make the adjustments in accordance with paragraph (f) of this section.

(h) Notwithstanding any other provision of this section, under no circumstances shall the value for royalty purposes be less than the gross proceeds accruing to the lessee for lease production, less applicable allowances determined pursuant to this subpart.

(i)(1) The lessee is required to place oil in marketable condition at no cost to the Federal Government or Indian lessor unless otherwise provided in the lease agreement or this section. Where the value established pursuant to this section is determined by a lessee's gross proceeds, that value shall be increased to the extent that the gross proceeds have been reduced because the purchaser, or any other person, is providing certain services the cost of which ordinarily is the responsibility of the lessee to place the oil in marketable condition.

(2) If the lessee incurs extraordinary costs for the gathering, desulfurization or storage of oil from frontier or deep water areas and those costs relate to unusual or unconventional operations, it may apply to MMS for an allowance. Such an allowance may be granted only if:

(i) The costs are associated with leases located north of the Arctic Circle, or the costs are associated with offshore leases located in water depths in excess of 400 meters; and

(ii) The lessee can demonstrate that the costs are, by reference to standard industry conditions and practice, extraordinary, unusual, or unconventional.

(3) The MMS shall determine the amount of the extraordinary cost allowance which shall remain in effect for the period specified in the approval, not to exceed 1 year. To retain the authority to deduct the allowance, the lessee must report the deduction to MMS at the end of the approval period, and annually thereafter, in a form and manner prescribed by MMS. MMS annually shall reconsider whether a unique production operation will continue to be eligible for an extraordinary cost allowance determined in accordance with this subsection. Extraordinary cost allowance deductions are subject to monitoring, review, audit, and adjustment.

(j) Value shall be based on the highest price a prudent lessee can receive through legally enforceable claims under its contract. Absent contract revision or amendment, if the lessee fails to take proper or timely action to receive prices or benefits to which it is entitled, it must pay royalty at a value based upon that obtainable price or benefit. Contract revisions or amendments shall be in writing and signed by all parties to an arm's-length contract. If the lessee makes timely application for a price increase or benefit allowed under its contract but the purchaser refuses, and the lessee takes reasonable measures, which are documented, to force purchaser compliance, the lessee will owe no additional royalties unless or until monies or consideration resulting from the price increase or additional benefits are received. This paragraph shall not be construed to permit a lessee to avoid its royalty payment obligation in situations where a purchaser fails to pay, in whole or in part or timely, for a quantity of oil.

(k) Notwithstanding any provision in these regulations to the contrary, no review, reconciliation, monitoring, or other like process that results in a redetermination by the MMS of value under this section shall be considered final or binding as against the Federal Government, its beneficiaries, the Indian Tribes, or allottees until the audit period is formally closed.

(l) Certain information submitted to MMS to support valuation proposals, including transportation allowances or extraordinary cost allowances, is exempted from disclosure by the

Freedom of Information Act, 5 U.S.C. 552, or other Federal law. Any data specified by law to be privileged, confidential, or otherwise exempt, may be maintained in a confidential manner in accordance with applicable laws and regulations. All requests for information about determinations made under this Part are to be submitted in accordance with the Freedom of Information Act regulation of the Department of the Interior, 43 CFR Part 2. Nothing in this section is intended to limit or diminish in any manner whatsoever the right of an Indian lessor to obtain any and all information to which such lessor may be lawfully entitled from MMS or such lessor's lessee directly under the terms of the lease, 30 U.S.C. 1733, or other applicable law.

§ 206.103 Point of royalty settlement.

(a)(1) Royalties shall be computed on the quantity and quality of oil as measured at the point of settlement approved by BLM or MMS for onshore and offshore leases, respectively.

(2) If the value of oil determined pursuant to § 206.102 is based upon a quantity and/or quality different from the quantity and/or quality at the point of royalty settlement approved by the BLM for onshore leases or the MMS for offshore leases, the value shall be adjusted for those differences in quantity and/or quality.

(b) No deductions may be made from the royalty volume or royalty value for actual or theoretical losses. Any actual loss that may be sustained prior to the royalty settlement metering or measurement point will not be subject to royalty provided that such actual loss is determined to have been unavoidable by BLM or MMS, as appropriate.

(c) Except as provided in paragraph (b) of this section, royalties are due on 100 percent of the volume measured at the approved point of royalty settlement. There can be no reduction in that measured volume for actual losses beyond the approved point of royalty settlement or for theoretical losses that are claimed to have taken place either prior to or beyond the approved point of royalty settlement. Royalties are due on 100 percent of the value of the oil as provided in this part. There can be no deduction from the value of the oil for royalty purposes to compensate for actual losses beyond the approved point of royalty settlement or for theoretical losses that are claimed to have taken place either prior to or beyond the approved point of royalty settlement.

§ 206.104 Transportation allowances—general.

(a) Where the value of oil has been determined pursuant to § 206.102 at a point (e.g. sales point of point of value determination) off the lease, MMS shall allow a deduction for the reasonable actual costs incurred by the lessee to:

(1) Transport oil from an onshore lease to the point off the lease; provided, however, that for onshore leases, no transportation allowance will be granted for transporting oil taken as royalty in kind; or

(2) Transport oil from an offshore lease to the point off the lease; provided, however, that for oil taken as royalty in kind, a transportation allowance shall be provided for the reasonable actual costs incurred to transport that oil to the delivery point specified in the contract between the royalty in kind oil purchaser and the Federal Government.

(b)(1) Except as provided in paragraph (b)(2) of this section, the transportation allowance deduction on the basis of a selling arrangement shall not exceed 50 percent of the value of the oil at the point of sale as determined pursuant to § 206.102. Transportation costs cannot be transferred between selling arrangements or to other products.

(2) Upon request of a lessee, MMS may approve a transportation allowance deduction in excess of the limitation prescribed by paragraph (b)(1) of this section. The lessee must demonstrate that the transportation costs incurred in excess of the limitation prescribed in paragraph (b)(1) of this section were reasonable, actual, and necessary. An application for exception shall contain all relevant and supporting documentation necessary for the MMS to make a determination. Under no circumstances shall the value for royalty purposes under any selling arrangement be reduced to zero.

(c) Transportation costs must be allocated among all products produced and transported. However, no transportation deduction shall be allowed for products which are not royalty bearing. Transportation allowances for oil shall be expressed as dollars per barrel.

(d) If, after a review and/or audit, MMS determines that a lessee has improperly determined a transportation allowance authorized by this Subpart, then the lessee shall pay any additional royalties, plus interest determined in accordance with 30 CFR 218.54, or shall be entitled to a credit, without interest.

§ 206.105 Determination of transportation allowances.

(a) *Arm's-length transportation contracts.* (1) For transportation costs incurred by a lessee pursuant to an arm's-length contract, the transportation allowance shall be the reasonable actual costs incurred by the lessee for transporting oil under that contract, subject to monitoring, review, audit, and adjustment. Such allowances shall be subject to the provisions of paragraph (f) of this section. Before any deduction may be taken, the lessee must submit a completed page one of Form MMS–4110, Oil Transportation Allowance Report, in accordance with paragraph (c)(1) of this section. A transportation allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4110 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee.

(2) If an arm's-length transportation contract includes more than one liquid product and the transportation costs attributable to each product cannot be determined from the contract, then the total transportation costs shall be allocated in a consistent and equitable manner to each of the liquid products transported in the same proportion as the ratio of the volume of each product (including water) to the volume of all liquid products. No allowance may be taken for the costs of transporting lease production which is not royalty bearing.

(3) If an arm's-length transportation contract includes both gaseous and liquid products, and the transportation costs attributable to each product cannot be determined from the contract, the lessee shall propose an allocation procedure to MMS. The lessee may use the oil transportation allowance determined in accordance with its proposed allocation procedure until MMS issues its determination on the acceptability of the cost allocation. The lessee shall submit all available data to support its proposal. The initial proposal must be submitted by [*insert the last day of the month which is 3 months after the last day of the month of the effective date of these regulations*] or within 3 months after the last day of the month for which the lessee requests a transportation allowance, whichever is later (unless MMS approves a longer period). The MMS shall then determine the oil transportation allowance based upon the lessee's proposal and any additional information MMS deems necessary. No allowance may be taken for the costs of transporting lease production which is not royalty bearing.

(4) Where the lessee's payments for transportation under an arm's-length contract are not on a dollar per unit basis, the lessee shall convert whatever consideration is paid to a dollar value

equivalent for the purposes of this section.

(5) Where an arm's-length sales contract price or a posted price includes a provision whereby the listed price is reduced by a transportation factor, MMS will not consider the transportation factor to be a transportation allowance. The transportation factor may be used in determining the lessee's gross proceeds for the sale of the product. No additional transportation allowance will be granted in such circumstances.

(b) *Non-arm's-length or no contract.* (1) If a lessee has a non-arm's-length transportation contract or has no contract, including those situations where the lessee performs transportation services for itself, the transportation allowance will be based upon the lessee's reasonable actual costs as provided in this subsection. All transportation allowances deducted under a non-arm's-length or no contract situation are subject to monitoring, review, audit, and adjustment. Before any estimated or actual deduction may be taken, the lessee must submit a completed Form MMS–4110 in its entirety in accordance with § 206.105(c)(2). A transportation allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4110 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee. The MMS will monitor the allowance deductions to determine whether lessees are taking deductions that are reasonable and allowable. When necessary or appropriate, MMS may direct a lessee to modify its estimated or actual transportation allowance deduction.

(2) The transportation allowance for non-arm's-length or no contract situations shall be based upon the lessee's actual costs for transportation during the reporting period, including operating and maintenance expenses, overhead, and either depreciation and a return on undepreciated capital investment in accordance with paragraph (b)(2)(iv)(A) of this section, or a cost equal to the initial capital investment in the transportation system multiplied by the rate of return (determined pursuant to paragraph (b)(2)(v) of this section) in accordance with paragraph (b)(2)(iv)(B) of this section. Allowable capital costs are generally those for depreciable fixed assets (including costs of delivery and installation of capital equipment) which are an integral part of the transportation system.

(i) Allowable operating expenses include: Operations supervision and engineering; operations labor; fuel; utilities; materials; ad valorem property taxes; rent; supplies; and any other directly allocable and attributable operating expense which the lessee can document.

(ii) Allowable maintenance expenses include: Maintenance of the transportation system; maintenance of equipment; maintenance labor; and other directly allocable and attributable maintenance expenses which the lessee can document.

(iii) Overhead directly attributable and allocable to the operation and maintenance of the transportation system is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(iv) A lessee may use either depreciation (paragraph (b)(2)(iv)(A) of this section) or a return on depreciable capital investment (paragraph (b)(2)(iv)(B) of this section). Once a lessee has elected to use either (A) or (B) for a transportation system, the lessee may not later elect to change to the other alternative without approval of the MMS.

(A) To compute depreciation, the lessee may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the reserves which the transportation system services or on a unit-of-production method. After an election is made, the lessee may not change methods without MMS approval. A change in ownership of a transportation system shall not alter the depreciation schedule established by the original transporter/lessee for purposes of the allowance calculation. With or without a change in ownership a transportation system shall be depreciated only once. Equipment shall not be depreciated below a reasonable salvage value.

(B) The MMS shall allow as a cost an amount equal to the initial capital investment in the transportation system multiplied by the rate of return determined pursuant to paragraph (b)(2)(v) of this section. No allowance shall be provided for depreciation. This alternative shall apply only to transportation facilities first placed in service after [*enter the effective date of these regulations*].

(v) The rate of return shall be the industrial rate associated with Standard and Poor's BBB rating. The rate of return shall be the monthly average rate as published in *Standard and Poor's Bond Guide* for the first month of the reporting period for which the allowance is applicable and shall be effective during the reporting period. The rate shall be redetermined at the beginning of each subsequent transportation allowance reporting period (which is determined pursuant to § 206.105(c)(2)).

(3) The deduction for transportation costs shall be determined based on the lessee's cost of transporting each product through each individual transportation system. Where more than one liquid product is transported, allocation of costs to each of the liquid products transported shall be in the same proportion as the ratio of the volume of each liquid product (including water) to the volume of all liquid products and such allocation shall be made in a consistent and equitable manner. The lessee may not take an allowance for transporting lease production which is not royalty bearing.

(4) Where both gaseous and liquid products are transported through the same transportation system, the lessee shall propose a cost allocation procedure to MMS. The lessee may use the oil transportation allowance determined in accordance with its proposed allocation procedure until MMS issues its determination on the acceptability of the cost allocation. The lessee shall submit all available data to support its proposal. The initial proposal must be submitted by [*insert the last day of the month which is 3 months after the last day of the month of the effective date of these regulations*] or within 3 months after the last day of the month for which the lessee requests a transportation allowance, whichever is later (unless MMS approves a longer period). The MMS shall then determine the oil transportation allowance based upon the lessee's proposal and any additional information MMS deems necessary. The lessee may not take an allowance for transporting a product which is not royalty bearing.

(5) A lessee may apply to the MMS for an exception from the requirement that it compute actual costs in accordance with paragraphs (b)(1) through (b)(4) of this section. The MMS may grant the exception only if:

(i) The lessee has arm's-length contracts for transportation of other production through the same transportation system;

(ii) The lessee has a tariff for the transportation system approved by the Federal Energy Regulatory Commission; and

(iii) The persons purchasing transportation services from the lessee had a reasonable alternative to using the lessee's transportation system.

If the MMS grants the exception, the lessee shall use as its transportation allowance the volume-weighted average prices it charges other persons pursuant to arm's-length contracts for transportation through the same transportation system.

(c) *Reporting requirements*—(1) *Arm's-length contracts.* (i) With the exception of those transportation allowances specified in paragraph (c)(1)(v) of this section, the lessee shall submit page one of the initial Form MMS–4110, Oil Transportation Allowance Report, prior to, or at the same time as, the transportation allowance determined pursuant to an arm's-length contract is reported on Form MMS–2014, Report of Sales and Royalty Remittance.

(ii) The initial Form MMS–4110 shall be effective for a reporting period beginning the month that the lessee is first authorized to deduct a transportation allowance and shall continue until the end of the calendar year, or until the applicable contract or rate terminates or is modified or amended, whichever is earlier.

(iii) After the initial reporting period and for succeeding reporting periods, lessees must submit page one of Form MMS–4110 within 3 months after the end of the calendar year, or after the applicable contract or rate terminates or is modified or amended, whichever is earlier, unless MMS approves a longer period. Lessees may request special reporting procedures in unique allowance reporting situations, such as those that relate to spot sales.

(iv) The MMS may require that a lessee submit arm's-length transportation contracts, production agreements, operating agreements, and related documents. Documents shall be submitted within a reasonable time, as determined by MMS.

(v) Transportation allowances which are based on arm's-length contracts and which are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate.

(2) *Non-arm's-length or no contract.* (i) With the exception of transportation allowances specified in paragraph (c)(2)(v) of this section, the lessee shall submit an initial Form MMS–4110 prior to, or at the same time as, the transportation allowance determined pursuant to a non-arm's-length contract or no contract situation is reported on Form MMS–2014. The initial report may be based upon estimated costs.

(ii) The initial Form MMS–4110 shall be effective for a reporting period beginning the month that the lessee first is authorized to deduct a transportation allowance and shall continue until the end of the calendar year, or until transportation under the non-arm's-length contract or the no contract situation terminates, whichever is earlier.

(iii) For calendar-year reporting periods succeeding the initial reporting period, the lessee shall submit a completed Form MMS–4110 containing the actual costs for the previous reporting period. If oil transportation is continuing, the lessee shall include on Form MMS–4110 its estimated costs for the next calendar year. The estimated oil transportation allowance shall be based on the actual costs for the previous reporting period plus or minus any adjustments which are based on the lessee's knowledge of decreases or increases which will affect the allowance. MMS must receive the Form MMS–4110 within 3 months after the end of the previous reporting period, unless MMS approves a longer period.

(iv) For new transportation facilities or arrangements, the lessee's initial Form MMS–4110 shall include estimates of the allowable oil transportation costs for the applicable period. Cost estimates shall be based upon the most recently available operations data for the transportation system, or if such data are not available, the lessee shall use estimates based upon industry data for similar transportation systems.

(v) Non-arm's-length contract or no contract based transportation allowances which are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate.

(vi) Upon request by MMS, the lessee shall submit all data used to prepare its Form MMS–4110. The data shall be provided within a reasonable period of time, as determined by MMS.

(3) The MMS may establish reporting dates for individual lessees different than those specified in this subpart in order to provide more effective administration. Lessees will be notified as to any change in their reporting period.

(4) Transportation allowances must be reported as a separate line item on Form MMS–2014, unless MMS approves a different reporting procedure.

(d) Interest assessments for incorrect or late reports and for failure to report.

(1) If a lessee deducts a transportation allowance on its Form MMS–2014 without complying with the requirements of this section, the lessee shall pay interest only on the amount of such deduction until the requirements of this section are complied with. The lessee also shall repay the amount of any allowance which is disallowed by this section.

(2) If a lessee erroneously reports a transportation allowance which results in an underpayment of royalties, interest shall be paid on the amount of that underpayment.

(3) Interest required to be paid by this section shall be determined in accordance with 30 CFR 218.54.

(e) *Adjustments.* (1) If the actual transportation allowance is less than the amount the lessee has estimated and taken during the reporting period, the lessee shall be required to pay additional royalties due plus interest computed pursuant to 30 CFR 218.54, retroactive to the first month the lessee is authorized to deduct a transportation allowance. If the actual transportation allowance is greater than the amount the lessee has estimated and taken during the reporting period, the lessee shall be entitled to a credit without interest.

(2) For lessees transporting production from onshore Federal and Indian leases, the lessee must submit a corrected Form MMS–2014 to reflect actual costs, together with any payment, in accordance with instructions provided by MMS.

(3) For lessees transporting production from Federal OCS leases, if the lessee's estimated costs were more than the actual costs, the lessee must submit a corrected Form MMS–2014 to reflect actual costs together with its payment, in accordance with instructions provided by MMS. If the lessee's estimated costs were less than its actual costs, the refund procedure will be specified by MMS.

(f) Notwithstanding any other provisions of this subpart, for other than arm's-length contracts, no cost shall be allowed for oil transportation which results from payments (either volumetric or for value) for actual or theoretical losses.

(g) *Other transportation cost determinations.* The provisions of this section shall apply to determine transportation costs when establishing value using a net-back valuation procedure or any other procedure that requires deduction of transportation costs.

Part 207 is revised to read as follows:

PART 207—SALES AGREEMENTS OR CONTRACTS GOVERNING THE DISPOSAL OF LEASE PRODUCTS

Subpart A—General Provisions

Sec.

207.1 Required recordkeeping.
207.2 Definitions.

Sec.
207.3 Contracts made pursuant to new form leases.
207.4 Contracts made pursuant to old form leases.
207.5 Contract and sales agreement retention.

Subpart B—Oil, Gas and OCS Sulfur, General [Reserved]

Subpart C—Federal and Indian Oil [Reserved]

Subpart D—Federal and Indian Gas [Reserved]

Subpart E—Solid Minerals, General [Reserved]

Subpart F—Coal [Reserved]

Subpart G—Other Solid Minerals [Reserved]

Subpart H—Geothermal Resources [Reserved]

Subpart I—OCS Sulfur [Reserved]

Authority: 30 U.S.C. 181 *et seq.;* 30 U.S.C. 351 *et seq.;* 30 U.S.C. 1001 *et seq.;* and 30 U.S.C. 1701 *et seq.*

Subpart A—General Provisions

§ 207.1 Required recordkeeping.

The recordkeeping requirements contained in Part 207 have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* and assigned OMB Clearance Number 1010–0061.

§ 207.2 Definitions.

The definitions in Part 206 of this title are applicable to this part.

§ 207.3 Contracts made pursuant to new form leases.

On November 29, 1950 (15 FR 8585), a new form of lease was adopted (Form 4–1158, 15 FR 8585) containing provisions whereby the lessee agrees that nothing in any contract or other arrangement made for the sale or disposal of oil, gas, natural gasoline, and other products of the leased land, shall be construed as modifying any of the provisions of the lease, including, but not limited to, provisions relating to gas waste, taking royalty in kind, and the method of computing royalties due as based on a minimum valuation and in accordance with the oil and gas valuation regulations. A contract or agreement pursuant to a lease containing such provisions may be made without obtaining prior approval of the United States as lessor, but must be retained as provided in § 207.5.

§ 207.4 Contracts made pursuant to old form leases.

(a) Old form leases are those containing provisions prohibiting sales or disposal of oil, gas, natural gasoline, and other products of the lease except in accordance with a contract or other arrangement approved by the Secretary of the Interior or by the Director of the Minerals Management Service or his/her representative. A contract or agreement made pursuant to an old form lease may be made without obtaining approval if the contract or agreement either contains the substance of or is accompanied by the stipulation set forth in paragraph (b) of this section, signed by the seller (lessee or operator).

(b) The stipulation, the substance of which must be included in the contract, or be made the subject matter of a separate instrument properly identifying the leases affected thereby, is as follows:

It is hereby understood and agreed that nothing in the written contract or in any approval thereof shall be construed as affecting any of the relations between the United States and its lessee, particularly in matters of gas waste, taking royalty in kind, and the method of computing royalties due as based on a minimum valuation and in accordance with the terms and provisions of the oil and gas valuation regulations applicable to the lands covered by said contract.

§ 207.5 Contract and sales agreement retention.

Copies of all sales contracts, posted price bulletins, etc., and copies of all agreements, other contracts, or other documents which are relevant to the valuation of production are to be maintained by the lessee and made available upon request during normal working hours to authorized MMS, State or Indian representatives, other MMS or BLM officials, auditors of the General Accounting Office, or other persons authorized to receive such documents, or shall be submitted to MMS within a reasonable period of time, as determined by MMS. Any oral sales arrangement negotiated by the lessee must be placed in written form and retained by the lessee. Records shall be retained in accordance with 30 CFR Part 212.

PART 210—FORMS AND REPORTS

1. The authority citation for Part 210 continues to read as follows:

Authority: 25 U.S.C. 396 *et seq.;* 25 U.S.C. 396a *et seq.;* 25 U.S.C. 2101 *et seq.;* 30 U.S.C. 181 *et seq.;* 30 U.S.C. 351 *et seq.;* 30 U.S.C. 1001 *et seq.;* 30 U.S.C. 1701 *et seq.;* 43 U.S.C. 1301 *et seq.;* 43 U.S.C. 1331 *et seq.;* and 43 U.S.C. 1801 *et seq.*

2. 30 CFR Part 210 is amended by revising the titles of Subparts B, C, D, E, F, and G to read as follows:

Subpart B—Oil, Gas, and OCS Sulfur—General

Subpart C—Federal and Indian Oil—[Reserved]

Subpart D—Federal and Indian Gas—[Reserved]

Subpart F—Coal [Reserved]

Subpart G—Other Solid Minerals [Reserved]

3. The following subparts are added to Part 210:

Subpart H—Geothermal Resources [Reserved]

Subpart I—OCS Sulfur—[Reserved]

§§ 210.100 through 210.105, 210.150 and 210.151 [Removed]

4. Sections 210.100, 210.101, 210.102, 210.103, 210.104 and 210.105 under Subpart C and §§ 210.150 and 210.151 under Subpart D are removed.

§§ 210.300 and 210.301 [Redesignated as §§ 210.350 and 210.351]

Sections 210.300 and 210.301 under Subpart F are redesignated as new §§ 210.350 and 210.351, respectively, under new Subpart H.

5. 30 CFR Part 210, Subpart B, is amended by adding § 210.55 to read as follows:

§ 210.55 Special forms or reports.

When special forms or reports other than those referred to in the regulations in this part may be necessary, instructions for the filing of such forms or reports will be given by the MMS.

PART 241—PENALTIES

1. The authority citation for Part 241 is revised to read as follows:

Authority: 25 U.S.C. 396 *et seq.;* 25 U.S.C. 396a *et seq.;* 25 U.S.C. 2101 *et seq.;* 30 U.S.C. 181 *et seq.;* 30 U.S.C. 351 *et seq.;* 30 U.S.C. 1001 *et seq.;* 30 U.S.C. 1701 *et seq.;* 43 U.S.C. 1301 *et seq.;* 43 U.S.C. 1331 *et seq.;* and 43 U.S.C. 1801 *et seq.*

2. 30 CFR Part 241 is amended by revising the titles of Subparts B, C, and D to read as follows:

Subpart B—Oil, Gas, and OCS Sulfur, General

Subpart C—Federal and Indian Oil—[Reserved]

Subpart D—Federal and Indian Gas—[Reserved]

Subpart H—[Removed]

3. Subpart H, Indian Lands, is removed.

Subparts E, F, and G [Redesignated as Subparts F, G, and H]

4. Subparts E, F, and G are redesignated as Subparts F, G, and H, respectively.

5. A new Subpart I is added to read:

Subpart I—OCS Sulfur [Reserved]

6. A new Subpart E is added to read:

Subpart E—Solid Minerals, General [Reserved]

§ 241.10 [Removed and reserved]

7. Section 241.10 is removed and reserved.

§ 241.50 [Amended]

8. Section 241.50 is amended by removing the phrase "this subpart" and replacing it with the phrase "Subparts B, C and D of this part."

§ 241.100 [Redesignated as § 241.60 and amended]

Subpart C (§ 241.100)—[Reserved]

9. Section 241.100 under Subpart C is redesignated as a new § 241.60 under Subpart B and retitled "Assessments for nonperformance" and Subpart C is reserved.

§ 241.60 (New) [Amended]

10. Paragraph (c) from newly redesignated § 241.60 is removed.

TITLE 43—PUBLIC LANDS: INTERIOR

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

PART 3160—ONSHORE OIL AND GAS OPERATIONS—GENERAL

1. The authority citation for Part 3160 continues to read as follows:

Authority: The Mineral Leasing Act, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Act of May 21, 1930 (30 U.S.C. 301–306), the Mineral Leasing Act for Acquired Lands, as amended (30 U.S.C. 351–359), the Act of March 3, 1909, as amended (25 U.S.C. 396), the Act of May 11, 1938, as amended (25 U.S.C. 396a–396q), the Act of February 28, 1891, as amended (25 U.S.C. 397), the Act of May 29, 1924 (25 U.S.C. 398), the Act of March 3, 1927 (25 U.S.C. 398a–398e), the Act of June 30, 1919, as amended (25 U.S.C. 399), R.S. section 441 (43 U.S.C. 1457), the Attorney General's Opinion of April 2, 1941 (40 Op Atty. Gen. 41), the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 *et seq.*), the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), the Act of December 12, 1980 (94 Stat. 2964), the Combined Hydrocarbon Leasing Act of 1981 (95 Stat. 1070), the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701), the Indian Mineral Development Act of 1982 (25 U.S.C. 2102).

§ 3162.7–4 [Redesignated as § 3162.7–5]

2. Section 3162.7–4 is redesignated as a new § 3162.7–5 and a new § 3162.7–4 is added to read as follows:

§ 3162.7–4 Royalty rates on oil; sliding and step-scale leases (public land only).

Sliding- and step-scale royalties are based on the average daily production per well. The BLM authorized officer shall specify which wells on a leasehold are commercially productive, including in that category all wells, whether produced or not, for which the annual value of permissible production would be greater than the estimated reasonable annual lifting cost, but only wells that yield a commercial volume of production during at least part of the month shall be considered in ascertaining the average daily production per well. The average daily production per well for a lease is computed on the basis of a 28-, 29-, 30-, or 31-day month (as the case may be), the number of wells on the leasehold counted as producing, and the gross production from the leasehold. The BLM authorized officer will determine which commercially productive wells shall be considered each month as producing wells for the purpose of computing royalty in accordance with the following rules, and in the authorized officer's discretion may count as producing any commercially productive well shut in for conservation purposes.

(a) For a previously producing leasehold, count as producing for every day of the month each previously producing well that produced 15 days or more during the month, and disregard wells that produced less than 15 days during the month.

(b) Wells approved by the BLM authorized officer as input wells shall be counted as producing wells for the entire month if so used 15 days or more during the month and shall be disregarded if so used less than 15 days during the month.

(c) When the initial production of a leasehold is made during the calendar month, compute royalty on the basis of producing well days.

(d) When a new well is completed for production on a previously producing leasehold and produces for 10 days or more during the calendar month in which it is brought in, count such new wells as producing every day of the month, in arriving at the number of producing well days. Do not count any new well that produces for less than 10 days during the calendar month.

(e) Consider "head wells" that make their best production by intermittent pumping or flowing as producing every day of the month, provided they are regularly operated in this manner with approval of the BLM authorized officer.

(f) For previously producing leaseholds on which no wells produced for 15 days or more, compute royalty on the basis of actual producing well days.

(g) For previously producing leaseholds on which no wells were productive during the calendar month but from which oil was shipped, compute royalty at the same royalty percentage as that of the last preceding calendar month in which production and shipments were normal.

(h) Rules for special cases not subject to definition, such as those arising from averaging the production from two distinct sands or horizons when the production of one sand or horizon is relatively insignificant compared to that of the other, shall be made by the BLM authorized officer as need arises.

(i)(1) In the following summary of operations on a typical leasehold for the

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month of June, the wells considered for the purpose of computing royalty on the entire production of the property for the months are indicated.

Well No. and record	Count (marked X)
1. Produced full time for 30 days	X
2. Produced for 26 days; down 4 days for repairs	X
3. Produced for 28 days; down June 5, 12 hours, rods; June 14, 6 hours, engine down; June 26, 24 hours, pulling rods and tubing	X
4. Produced for 12 days; down June 13 to 30	
5. Produced for 6 hours every day (gas) well	X
6. Idle producer (not operated)	
7. New well, completed June 17; produced for 14 days	X
8. New Well, completed June 22; produced for 9 days	

(2) In this example, there are eight wells on the leasehold, but wells No. 4, 6, and 8 are not counted in computing royalties. Wells No. 1, 2, 3, 5, and 7 are counted as producing for 30 days. The average production per well per day is determined by dividing the total production of the leasehold for the month (including the oil produced by wells 4 and 8) by 5 (the number of wells counted as producing), and dividing the quotient thus obtained by the number of days in the month.

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Part IV

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

August 1, 1987.

This report is submitted in fulfillment of the requirements of section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to the Congress.

This report gives the status as of August 1, 1987, of 57 deferrals contained in the five special messages of FY 1987. These messages were transmitted to the Congress on September 26, and December 15, 1986, and January 5 and 28, and March 4, 1987.

Rescissions (Table A and Attachment A)

As of August 1, 1987, there were no rescission proposals pending before the Congress.

Deferrals (Table B and Attachment B)

As of August 1, 1987, $4,961.8 million in 1987 budget authority was being deferred from obligation. Attachment B shows the history and status of each deferral reported during FY 1987.

Information from Special Messages

The special message containing information on the deferrals covered by this cumulative report is printed in the **Federal Register** listed below:

Vol. 51, FR p. 35976, Tuesday, October 7, 1986
Vol. 51, FR p. 47356, Wednesday, December 31, 1986
Vol. 52, FR p. 964, Friday, January 9, 1987
Vol. 52, FR p. 3552, Wednesday, February 4, 1987
Vol. 52, FR p. 8046, Friday, March 13, 1987

James C. Miller III,
Director.

BILLING CODE 3110-01-M

TABLE A

STATUS OF 1987 RESCISSIONS

	Amount (In millions of dollars)
Rescissions proposed by the President.....	$5,835.8
Accepted by the Congress.....	36.0
Rejected by the Congress.....	5,799.8
Pending before the Congress.....	0

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TABLE B

STATUS OF 1987 DEFERRALS

	Amount (In millions of dollars)
Deferrals proposed by the President.....	11,457.6
Routine Executive releases through August 1, 1987 (OMB/Agency releases of $6,322.2 million and cumulative adjustments of $0.7 million)	-6,321.5
Overturned by the Congress.....	-174.3
Currently before the Congress.....	4,961.8

Attachments

Attachment A - Status of Rescissions - Fiscal Year 1987

As of August 1, 1987 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
DEPARTMENT OF AGRICULTURE								
Agricultural Research Service								
Buildings and facilities	R87-1 R87-1A	28,000		1-5-87 1-28-87		28,000	3-16-87	
Agricultural Stabilization and Conservation Service								
Rural clean water program	R87-2	6,000		1-5-87	6,000	6,000	3-16-87	P.L. 100-71
Agricultural conservation program	R87-3	164,356		1-5-87		164,356	3-16-87	
Water bank program	R87-4	8,166		1-5-87		8,166	3-16-87	
Emergency conservation program	R87-5	10,000		1-5-87		10,000	3-16-87	
Farmers Home Administration								
Rural water and waste disposal grants	R87-6	79,500		1-5-87		79,500	3-16-87	
Rural community fire protection grants	R87-7	2,300		1-5-87		2,300	3-16-87	
Rural housing for domestic farm labor	R87-8	7,400		1-5-87		7,400	3-16-87	
Mutual and self-help housing	R87-9	8,000		1-5-87		8,000	3-16-87	
Very low income housing repair grants	R87-10	9,400		1-5-87		9,400	3-16-87	
Compensation for construction defects	R87-11	500		1-5-87		500	3-16-87	
Rural housing preservation grants	R87-12	14,400		1-5-87		14,400	3-16-87	
Soil Conservation Service								
Watershed and flood prevention operations	R87-13	96,000		1-5-87		96,000	3-16-87	
Great Plains conservation program	R87-14	8,000		1-5-87		8,000	3-16-87	
Resource conservation and development	R87-15	5,000		1-5-87		5,000	3-16-87	
Forest Service								
Land acquisition	R87-16	49,030		1-5-87		49,030	3-16-87	
DEPARTMENT OF COMMERCE								
Economic Development Administration								
Economic development assistance programs	R87-17 R87-17A	169,718 -50		1-5-87 1-28-87		169,668	3-16-87	
International Trade Administration								
Operations and administration	R87-18	11,400		1-5-87		11,400	3-16-87	
National Oceanic and Atmospheric Administration								
Operations, research, and facilities	R87-19	58,857		1-5-87		58,857	3-16-87	
National Telecommunications and Information Administration								
Public telecommunications facilities, planning and construction	R87-20	19,300		1-5-87		19,300	3-16-87	

Attachment A - Status of Rescissions - Fiscal Year 1987

As of August 1, 1987 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
DEPARTMENT OF DEFENSE - MILITARY								
Procurement								
Procurement of weapons and tracked combat vehicles, Army	R87-21	15,000		1-5-87		15,000	3-16-87	
Other procurement, Navy	R87-22	116,000		1-5-87		116,000	3-16-87	
Military Construction								
Military construction, Air Force	R87-23	2,750		1-5-87		2,750	3-16-87	
DEPARTMENT OF DEFENSE - CIVIL								
Corps of Engineers - Civil								
Construction, general	R87-24	7,715		1-5-87		7,715	3-16-87	
DEPARTMENT OF EDUCATION								
Office of Elementary and Secondary Education								
Compensatory education for the disadvantaged	R87-25	7,500		1-5-87		7,500	3-16-87	
Impact aid	R87-26	17,500		1-5-87		17,500	3-16-87	
Special programs	R87-27	54,980		1-5-87		54,980	3-16-87	
Office of Bilingual Education and Minority Languages Affairs								
Bilingual education	R87-28	45,886		1-5-87		45,886	3-16-87	
Office of Special Education and Rehabilitative Services								
Education for the handicapped	R87-29	288,659		1-5-87		288,659	3-16-87	
Rehabilitation services and handicapped research	R87-30	127,455		1-5-87		127,455	3-16-87	
Office of Vocational and Adult Education								
Vocational and adult education	R87-31	432,319		1-5-87		432,319	3-16-87	
Office of Postsecondary Education								
Student financial assistance	R87-32	1,269,000		1-5-87		1,269,000	3-16-87	
Higher education	R87-33	203,050		1-5-87		203,050	3-16-87	
	R87-33A			1-28-87				
Office of Educational Research and Improvement								
Libraries	R87-34	34,500		1-5-87		34,500	3-16-87	

Attachment A - Status of Rescissions - Fiscal Year 1987

As of August 1, 1987 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
DEPARTMENT OF ENERGY								
Energy Programs								
Energy supply, research and development activities	R87-35	81,800		1-5-87		81,800	3-16-87	
Fossil energy research and development	R87-36	44,464		1-5-87		44,464	3-16-87	
Energy conservation	R87-37	87,433		1-5-87				
	R87-37A	-3500		1-28-87		83,933	3-16-87	
DEPARTMENT OF HEALTH AND HUMAN SERVICES								
Food and Drug Administration								
Buildings and facilities	R87-38	500		1-5-87		500	3-16-87	
Health Resources and Services Administration								
Health resources and services	R87-39	161,210		1-5-87		161,210	3-16-87	
	R87-39A			1-28-87				
Indian health facilities	R87-40	57,100		1-5-87		57,100	3-16-87	
	R87-40A			1-28-87				
National Institutes of Health								
National Library of Medicine	R87-41	5,405		1-5-87		5,405	3-16-87	
Office of the Assistant Secretary of Health								
Public health service management	R87-42	5,000		1-5-87		5,000	3-16-87	
Departmental Management								
Policy research	R87-43	2,200		1-5-87		2,200	3-16-87	
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
Housing Programs								
Annual contributions for assisted housing	R87-44	473,313		1-5-87		473,313	3-16-87	
Housing counseling assistance	R87-45	3,500		1-5-87		3,500	3-16-87	
Community Planning and Development								
Community development grants	R87-46	375,200		1-5-87		375,200	3-16-87	
Urban development action grants	R87-47	237,500		1-5-87		237,500	3-16-87	
Management and Administration								
Salaries and expenses	R87-48	19,042		1-5-87		19,042	3-16-87	

Attachment A - Status of Rescissions - Fiscal Year 1987

As of August 1, 1987 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
DEPARTMENT OF THE INTERIOR								
Bureau of Land Management								
Management of lands and resources	R87-49	6,500		1-5-87		6,500	3-16-87	
Construction and access	R87-50	1,600		1-5-87		1,600	3-16-87	
Land acquisition	R87-51	2,700		1-5-87		2,700	3-16-87	
Bureau of Mines								
Mines and minerals	R87-52	16,594		1-5-87		16,594	3-16-87	
United States Fish and Wildlife Service								
Resource management	R87-53	20,500		1-5-87		20,500	3-16-87	
	R87-53A			1-28-87				
Construction	R87-54	23,200		1-5-87		23,200	3-16-87	
Land acquisition	R87-55	26,762		1-5-87		26,762	3-16-87	
National Park Service								
Operation of the national park system	R87-56	7,950		1-5-87		7,950	3-16-87	
Construction	R87-57	58,981		1-5-87		58,981	3-16-87	
Land acquisition	R87-58	97,638		1-5-87	30,000	97,638	3-16-87	P.L. 100-71
Historic preservation fund	R87-59	15,000		1-5-87		15,000	3-16-87	
Bureau of Indian Affairs								
Construction	R87-60	22,811		1-5-87		22,811	3-16-87	
Territorial and International Affairs								
Administration of territories	R87-61	2,500		1-5-87		2,500	3-16-87	
DEPARTMENT OF JUSTICE								
Immigration and Naturalization Service								
Salaries and expenses	R87-62	24,598		1-5-87		24,598	3-16-87	
DEPARTMENT OF LABOR								
Employment and Training Administration								
Training and employment services	R87-63	332,000		1-5-87		332,000	3-16-87	

Attachment A - Status of Rescissions - Fiscal Year 1987

As of August 1, 1987 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
DEPARTMENT OF THE TREASURY								
Federal Law Enforcement Training Center								
Salaries and expenses	R87-64	8,450		1-5-87		8,450	3-16-87	
Bureau of Alcohol, Tobacco, and Firearms								
Salaries and expenses	R87-65	15,000		1-5-87		15,000	3-16-87	
United States Customs Service								
Salaries and expenses	R87-66	38,945		1-5-87		38,945	3-16-87	
ENVIRONMENTAL PROTECTION AGENCY								
Abatement, control, and compliance	R87-67	47,500		1-5-87		47,500	3-16-87	
Buildings and facilities	R87-68	2,500		1-5-87		2,500	3-16-87	
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION								
Research and development	R87-69	25,796		1-5-87		25,796	3-16-87	
VETERANS ADMINISTRATION								
Medical care	R87-70	75,000		1-5-87		(See Note Below)		
OTHER INDEPENDENT AGENCIES								
Appalachian Regional Commission								
Appalachian regional development programs	R87-71	31,059		1-5-87		31,059	3-16-87	
National Endowment for the Humanities								
National capital arts and cultural affairs	R87-72	4,000		1-5-87		4,000	3-16-87	
Selective Service System								
Salaries and expenses	R87-73	409		1-5-87		409	3-17-87	
Total, rescissions		5,835,751	0		36,000	5,760,751		

NOTE. - The $75 million proposed for rescission in Rescission Proposal No. R87-70 was never withheld from obligation. Therefore, there was no need to release the funds on March 16.

✓ Attachment B - Status of Deferrals - Fiscal Year 1987

As of August 1, 1987 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 8-1-87
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Foreign military sales credit	D87-22	4,040,441		12-15-86	2,155,000				1,885,441
Economic support fund	D87-1	95,000		9-26-86					
	D87-1A		2,351,470	12-15-86	1,901,656				544,814
Military assistance	D87-23	847,000		12-15-86	460,641				386,359
International military education and training	D87-24	2,000		12-15-86	2,000				0
Agency for International Development									
Functional development assistance	D87-32	2,278		1-28-87					2,278
International disaster assistance	D87-25	57,000		12-15-86	55,180				1,820
Special Assistance for Central America									
Assistance for the Nicaraguan Democratic Resistance	D87-26	60,000		12-15-86	60,000				0
Promotion of stability and security in Central America	D87-27	1,000		12-15-86					1,000
DEPARTMENT OF AGRICULTURE									
Commodity Credit Corporation									
Temporary emergency food assistance	D87-33	28,559		1-28-87		28,559 P.L. 100-6			0
Rural Electrification Administration									
Reimbursement to the Rural electrification and telephone and revolving fund for interest subsidies and losses	D87-34	20,000		1-28-87	20,000				0
Forest Service									
State and private forestry	D87-35	797		1-28-87		797 P.L. 100-71			0
Land acquisition	D87-36	27,070		1-28-87		27,070 P.L. 100-71			0
Expenses, brush disposal	D87-2	111,202		9-26-86					
	D87-2A		1,534	3-4-87					112,736
Timber roads, purchaser election	D87-37	11,900		1-28-87		11,900 P.L. 100-71			0
Timber salvage sales	D87-3	29,731		9-26-86	6,113			3	23,621
Cooperative work	D87-4	526,938		9-26-86					
	D87-4A		8,336	3-4-87					535,275
Gifts, donations, and bequests for forest and rangeland research	D87-5	200		9-26-86	25				175

Attachment B - Status of Deferrals - Fiscal Year 1987

As of August 1, 1987 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 8-1-87
DEPARTMENT OF DEFENSE - MILITARY									
Military Construction									
Military construction, Defense	D87-6	2,350		9-26-86					
	D87-6A		1,316,152	12-15-86	1,281,553				36,949
Family Housing									
Family housing, Defense	D87-7	76,943		9-26-86					
	D87-7A		190,022	12-15-86	210,650				56,315
DEPARTMENT OF DEFENSE - CIVIL									
Soldiers' and Airmen's Home									
Capital outlays	D87-38	1,132		1-28-87	1,132				0
Wildlife Conservation, Military Reservations									
Wildlife conservation	D87-8	1,065		9-26-86					
	D87-8A		25	1-5-87					
	D87-8B		46	3-4-87	90				1,046
DEPARTMENT OF ENERGY									
Power Marketing Administration									
Alaska Power Administration, Operation and maintenance	D87-9	165		9-26-86					165
Southwestern Power Administration, Operation and maintenance	D87-10	7,554		9-26-86					
	D87-10A		6,106	1-5-87					13,660
Western Area Power Administration, Construction, rehabilitation, operation and maintenance	D87-29	4,485		1-5-87					4,485
Departmental Administration									
Departmental administration	D87-30	24,182		1-5-87					24,182

Attachment B - Status of Deferrals - Fiscal Year 1987

As of August 1, 1987 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 8-1-87
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Health Resources and Services Administration Indian catastrophic health emergency fund..	D87-28	10,000		12-15-86	10,000				0
Centers for Disease Control Disease control, research, and training....	D87-39	2,428		1-28-87					2,428
Alcohol, Drug Abuse, and Mental Health Administration Alcohol, drug abuse, and mental health...	D87-40	10,000		1-28-87	10,000				0
Office of Assistant Secretary for Health Scientific activities overseas (special foreign currency program).....	D87-11	2,900		9-26-86					2,900
Social Security Administration Limitation on administrative expenses (construction).....	D87-12 D87-12A	7,073	89	9-26-86 1-28-87	12				7,151
Limitation on administrative expenses (information technology systems).....	D87-57	134,437		3-4-87					134,437
DEPARTMENT OF THE INTERIOR									
Bureau of Land Management Payments for proceeds, sale of Mineral Leasing Act of 1920, Section 40(d).....	D87-31	49		1-5-87					49
DEPARTMENT OF JUSTICE									
Office of Justice Programs Crime victims fund.....	D87-13	70,000		9-26-86					70,000
DEPARTMENT OF LABOR									
Employment Standards Administration Salaries and expenses.....	D87-41	9,659		1-28-87	9,659				0

Attachment B - Status of Deferrals - Fiscal Year 1987

As of August 1, 1987 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 8-1-87
DEPARTMENT OF STATE									
Bureau for Refugee Programs									
United States emergency refugee and migration assistance fund, executive	D87-14	6,100		9-26-86					
	D87-14A		14,000	1-5-87					20,100
Other									
Assistance for implementation of a Contadora agreement	D87-15	2,000		9-26-86	2,000				0
DEPARTMENT OF TRANSPORTATION									
Federal Railroad Administration									
Rail service assistance	D87-42	462		1-28-87		462	P.L. 100-71		0
Railroad safety	D87-43	1,101		1-28-87	1,101				0
Conrail labor protection	D87-44	646		1-28-87	646				0
Northeast corridor improvement program	D87-45	16,962		1-28-87		16,962	P.L. 100-71		0
Conrail commuter transition assistance	D87-46	10,000		1-28-87		10,000	P.L. 100-71		0
Urban Mass Transportation Administration									
Research, training and human resources	D87-47	4,336		1-28-87		4,336	P.L. 100-71		0
Interstate transfer grants - transit	D87-48	51,800		1-28-87		51,800	P.L. 100-71		0
Federal Aviation Administration									
Operation and maintenance, Metropolitan Washington Airports	D87-49	12,214		1-28-87	12,214				0
Facilities and equipment (Airport and airway trust fund)	D87-16	803,877		9-26-86					
	D87-16A		295,611	12-15-86	19,996				1,079,492
Coast Guard									
Research, development, test, and evaluation	D87-50	5,000		1-28-87	5,000				0
Offshore oil pollution compensation fund	D87-51	2,154		1-28-87	2,154				0
Deepwater port liability fund	D87-52	5,176		1-28-87	5,176				0
Office of the Secretary									
Payments to air carriers	D87-53	10,748		1-28-87	10,748				0

Attachment B - Status of Deferrals - Fiscal Year 1987

As of August 1, 1987 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 8-1-87
DEPARTMENT OF THE TREASURY									
Office of Revenue Sharing									
Local government fiscal assistance trust fund	D87-17	74,149		9-26-86	71,221			5	2,933
Local government fiscal assistance trust fund	D87-21	5,981		9-26-86	6,703			723	1
ENVIRONMENTAL PROTECTION AGENCY									
Research and development	D87-54	11,000		1-28-87		11,000	P.L. 100-71		0
Abatement, control, and compliance	D87-55	11,400		1-28-87		11,400	P.L. 100-71		0
OTHER INDEPENDENT AGENCIES									
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Pennsylvania Avenue Development Corporation Land acquisition and development fund	D87-20	11,873		9-26-86					11,873
United States Railway Association Administrative expenses	D87-56	1,155		1-28-87	1,155				0
TOTAL, DEFERRALS		7,274,185	4,183,392		6,322,236	174,286		731	4,961,786

Note: All of the above amounts represent budget authority except the Local Government Fiscal Assistance Trust Fund (D87-21) of outlays only.

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 28

Cotton Marketing Services; Regulatory Review

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS), in compliance with the requirements for the periodic review of existing regulations, has reviewed the regulations regarding the classification of cotton under the United States Cotton Standards Act, cotton linters classification and cotton classification and market news services for producers. As a result of the review, certain changes in the regulations are being made. These changes amend the wording of the regulations to conform with organizational changes within the Cotton Division of AMS and update terms and definitions.

EFFECTIVE DATE: September 17, 1987.

FOR FURTHER INFORMATION CONTACT: Paul Dickson, Chief, Grading Branch, Cotton Division, AMS, USDA, 4841 Summer Avenue, Memphis, Tennessee 38122, telephone (901) 521–2921.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed in accordance with Executive Order 12291 and Secretary's Memorandum 1512–1 and has been determined not to be a "major rule" since it does not meet the criteria for a major regulatory action as stated in the Order. No new costs or additional requirements are being imposed on the affected industry or others.

The Administrator of the Agricultural Marketing Service has determined that this final rule does not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 6701 *et seq.*) because: (i) The amendments reflect AMS organizational changes and other changes made for clarification purposes; (ii) costs of compliance are not increased; (iii) recordkeeping burdens are not increased; (iv) the changes in the regulations do not affect the competitive position or market access of small entities in the cotton industry.

The information collection requirements contained in subparts A, B, and D of 7 CFR Part 28 of the regulations have been previously assigned Office of Management and Budget (OMB) Control Numbers 0581–0006 and 0581–0009 under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Background

Part 28 of Title 7 of the Code of Federal Regulations is divided into five subparts containing regulations governing cotton classing, testing, and standards.

Subpart C—Standards, and Subpart E—Cotton and Fiber Processing Tests, have previously been reviewed and updated by AMS (Subpart C—48 FR 16873, April 20, 1983 and 51 FR 23037, June 25, 1986; and Subpart E–46 FR 30073, June 5, 1981).

Subpart A sets forth in detail the procedures and requirements for cotton classification under the United States Cotton Standards Act. Other regulations in Subpart A provide for the preparation and sale of practical forms of cotton standards, for the establishment of Universal Cotton Standards, and for the classification of cotton linters.

Regulations covering the classification of foreign growth cotton under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*) are in Subpart B.

Pursuant to the authority of the Cotton Statistics and Estimates Act of 1927 (7 U.S.C. 471 *et seq.*), Subpart D provides for cotton classification and market news service for cotton producers.

The regulations described above also establish the fees to be charged for such services and delineate the responsibilities and duties of the Cotton Division of AMS in administering these cotton marketing service programs.

Regulation Review

The Cotton Division of AMS has undertaken a general review of existing regulations in Subparts A, B, and D or Part 28. The review was conducted in accordance with the requirements of Executive Order 12291 and under Departmental Regulation 1512–1.

The regulations have been examined for their effectiveness. It is determined that the procedures currently in effect are useful and efficient methods of providing cotton classification, practical forms of cotton standards, market news, and other cotton marketing services. The fees for services provided under Part 28 have been reviewed and have been revised as appropriate, effective July 1, 1986 (51 FR 22059). These fees are periodically reviewed by AMS and adjusted as necessary. Accordingly, no changes to fees are proposed in this rulemaking.

Changes to Regulations

A proposed rule was published in the May 5, 1987, Federal Register (52 FR 16394). Comments were to be received on or before May 26, 1987. No comments were received. Based upon all available information, AMS makes the following changes to Part 28 of the regulations.

The changes made by AMS in Subparts A, B, and D of Part 28 do not affect the services provided or the procedures for providing those services. AMS is eliminating masculine references in favor of gender neutral language. Also, to reflect the nomenclature changes made when the Cotton Division was reorganized in 1976 and in 1986, AMS is substituting the terms "Classing Office" for "Board of Cotton Examiners," substituting the term "Quality Control Section" for "Appeal Board of Review Examiners," substituting the term "Area Director" for "Chairman of the Board of Cotton Examiners," substituting the term "Quality Control Section" for Board of Cotton Linters Examiners," and substituting the term "cotton classer" for "cotton examiner."

Specifically, AMS is amending the following sections:

1. Sections 28.2, 28.15, 28.16, 28.25, 28.29, 28.36, 28.45, 28.56, 28.60, 28.105, 28.117, 28.138, 28.145, 28.177, 28.178, and 28.182 by eliminating masculine references in favor of gender neutral language.

2. Sections 28.2, 28.4, 28.7, 28.8, 28.15, 28.17, 28.18, 28.25, 28.26, 28.27, 28.28, 28.32, 28.37, 28.40, 28.47, 28.55, 28.56, 28.59, 28.60, 28.66, 28.115, 28.117, 28.178,

28.180, and 28.181 by substituting the term "Classing Office" for "Board of Cotton Examiners."

3. Sections 28.6, 28.7, 28.18, 28.19, 28.25, 28.36, 28.37, 28.59, 28.60, 28.115, 28.177, 28.178, 28.180, and 28.182 by substituting the term "Area Director" for "Chairman of the Board of Cotton Examiners."

4. Sections 28.66, 28.177, and 28.181 by substituting the term "Quality Control Section" for "Appeal Board of Review Examiners."

5. Sections 28.139, 28.140, 28.142, and 28.146 by substituting the term "Quality Control Section" for "Board of Cotton Linters Examiners."

6. Section 28.8 by substituting the term "cotton classers" for "cotton examiners."

The term "Quality Control Section" is added to the list of terms defined in § 28.2. This new term is designated paragraph (j) in § 28.2, and the present paragraphs (j) through (u) is redesignated paragraphs (k) through (v) respectively.

The term "cotton examiner", also defined in § 28.2, is changed to "cotton classer" and the definition is revised to reflect the requirement that classers must pass the practical cotton classing examination.

Section 28.4 is condensed to delete the obsolete term "Board of Supervising Cotton Examiners," the duties of which had been previously transferred to the "Appeal Board of Review Examiners" which under this final rule is renamed the "Quality Control Section" and defined in § 28.2.

Sections 28.5 and 28.6 describe the duties of the secretary of the board of cotton examiners and the acting secretary. In the 1978 Cotton Division reorganization, secretaries were reclassified as office assistants and the responsibilities of the office assistants were transferred to the Area Directors of the then Marketing Services Offices. Under this final rule the boards are renamed Classing Offices in accordance with a 1986 Cotton Division reorganization. Accordingly, §§ 28.5 and 28.6 are removed and § 28.7 is revised to reflect these changes. References to secretaries in §§ 28.17 and 28.178 are also deleted. Duplicative language in § 28.17 is also deleted.

Additional conforming changes are also made. Section 28.19 is amended to reflect that authority to reject classification requests is with Area Directors and the Head of the Quality Control Section instead of with the Chairman of the Board or the Director. Section 28.28 is amended to state that the Area Director instead of the secretary of the board is responsible for informing applicants of lost or damaged samples. Section 28.36 is changed to reference Area Directors instead of the Chairman of the Board and permits Area Directors more discretion than the present emergency criteria in assigning classification priority. With the new definition of the Quality Control Section in § 28.2, § 28.137 becomes unnecessary and it is removed in this final rule.

Obsolete references to the Board of Cotton Linter Examiners and its secretary are deleted. Their duties are added to the "Quality Control Section" defined in § 28.2. Accordingly, all references to the secretary and the board are removed from §§ 28.139, 28.142, and 28.146.

Section 28.105 is amended to substitute the term "Administrator" for all references to the term "Secretary" in this section including with regard to signatures on practical forms. Presently practical forms are to be certified under the Seal of the United States Department of Agriculture and under the Secretary's own signature or some other official or employee of the Department duly authorized by the Secretary.

Section 28.107 is amended by removing the requirement that the Second Reserve Set of each Universal Cotton Standards Conference be retained by the Cotton Division until a new or revised set of standards is adopted. This requirement is not necessary since the First Reserve Set will continue to be retained, along with the original Universal Standards. The First Reserve Set is sufficient as a true copy of the standards approved at each of the Universal Cotton Standards Conferences, and recent practice has been to refer directly to the original standards when revisions to the standards are at issue. The Second Reserve Set would be retained, if that set is used in place of the First Reserve Set.

Section 28.165, Publications media, was proposed to be deleted from the regulations. This section stated that publications under the U.S. Cotton Standards Act would be made through service and regulatory announcements. Service and regulatory announcements are no longer issued by AMS. However, the final rule provides for a new § 28.165 that will collect and display the control numbers assigned to information collection requirements by OMB in Part 28 under the Paperwork Reduction Act of 1980. The information collection requirements contained in 7 CFR Part 28 have been previously assigned OMB control numbers 0581–0008 and 0581–0009.

List of Subjects in 7 CFR Part 28

Cotton, Samples, Standards, Cotton linters, Grades, Staple, Market news, Testing.

For the reasons set forth in the preamble, Subparts A, B, and D of Part 28, Chapter 1, Title 7 of the Code of Federal Regulations are amended as follows. The Table of Contents is amended accordingly.

PART 28—[AMENDED]

1. The authority citation for Subpart A of Part 28 is revised to read as follows:

Authority: Sec. 5, 50 Stat. 62, as amended (7 U.S.C. 55); Sec. 10, 42 Stat. 1519 (7 U.S.C. 61).

2. The authority citation for Subpart B of Part 28 continues to read as follows:

Authority: Sec. 205, 60 Stat. 1090, as amended (7 U.S.C. 1624).

3. The authority citation for Subpart D of Part 28 is revised to read as follows:

Authority: Sec. 3a, 50 Stat. 62, as amended (7 U.S.C. 473a); Sec. 3c, 50 Stat. 62 (7 U.S.C. 473c).

4. Section 28.2 is amended by redesignating paragraphs (j) through (u) as paragraphs (k) through (v) respectively, by adding a new paragraph (j), and by revising paragraphs (d), (f), (h), (i), and the redesignated paragraph (k) to read as follows:

§ 28.2 Terms defined.

* * * * *

(d) *Secretary.* The Secretary of Agriculture of the United States, or any officer or employee of the Department who has been delegated, or who may hereafter be delegated the authority to act for the Secretary.

* * * * *

(f) *Administrator.* The Administrator of the Agricultural Marketing Service, or any officer or employee of the Service, who has been delegated, or who may hereafter be delegated the authority to act for the Administrator.

* * * * *

(h) *Director.* The Director of the Cotton Division, or any officer or employee of the Division who has been delegated, or who may hereafter be delegated the authority to act for the Director.

(i) *Classing Office.* A facility of the Cotton Division established under the act at any point.

(j) *Quality Control Section.* The national classing supervision office at Memphis, Tennessee performing final review of cotton classification and the classification of cotton linters.

(k) *Cotton classer.* An employee of the Department so designated by the

Director after having passed the prescribed practical cotton classing examination.

* * * * *

5. Section 28.4 is revised to read as follows:

§ 28.4 Classing Offices.

Classing Offices shall be maintained at points designated by the Administrator. Requests for the review of the classification and/or comparison of cotton performed by Classing Offices may be referred to the Quality Control Section.

§§ 28.5 and 28.6 [Removed]

6. Sections 28.5 and 28.6 are removed.

7. Section 28.7 is revised to read as follows:

§ 28.7 Area Director, Classing Office; responsibility.

Subject to this subpart and the instructions of the Director, the Area Director of each Classing Office shall be responsible for the proper performance of the duties imposed on such office and on the persons connected therewith. The Area Director shall be responsible for receiving all correspondence relating to the classification of cotton under the act and for providing that all samples are prepared for classification and/or comparison in such manner that the name of the owner and/or the custodian shall be unknown to the cotton classers until after the samples are classified.

8. Section 28.8 is revised to read as follows:

§ 28.8 Classification of cotton; determination.

For the purposes of the act, the classification and comparison of any cotton, samples, or types submitted to the Department shall be determined or made only by cotton classers properly qualified and designated as such by the Director, and the certificate of a Classing Office or the Quality Control Section with respect to any cotton shall be deemed to be the certificate of the Department.

9. Section 28.15 is amended by revising paragraphs (a) and (c) to read as follows:

§ 28.15 Classification and comparison; requests.

* * * * *

(a) *Form A determination.* The classification or comparison of samples freshly drawn and submitted to a Classing Office direct from a licensed warehouseman, at the request of the owner of the cotton or the owner's agent. Such classification or comparison shall be evidenced by a Form A memorandum which shall be subject to review as provided in § 28.66.

* * * * *

(c) *Form D determination.* The classification or comparison of samples submitted by the owner of the cotton or the owner's agent. Such classification or comparison shall be evidenced by a Form D memorandum which shall be subject to review as provided in § 28.66.

* * * * *

10. Section 28.16 is revised to read as follows:

§ 28.16 Request for return of samples.

Any applicant desiring return of the samples after classification or comparison is completed, at the applicant's expense, shall indicate this service on the form used for requesting such classification or comparison.

11. Section 28.17 is revised to read as follows:

§ 28.17 Filing of requests for classification or comparison.

All requests for classification or comparison leading to Form A, Form D memoranda or, Form C certificates shall be filed with the Classing Office which serves the territory in which the cotton is located. Samples which are submitted to any Classing Office for classification or comparison may be referred by such Classing Office to another Classing Office for classification or comparison.

12. Section 28.18 is revised to read as follows:

§ 28.18 One request only for classification.

Not more than one request for a Form A determination, or a Form C determination, or a Form D determination of the same cotton, except a request for a review determination, shall be filed by the same owner within any 30-day period. Any subsequent request shall be accomplished by redrawn samples and the Area Director may require that any Form A or Form D memoranda, Form C certificates, or other classification data previously issued by a Classing Office with respect to samples purporting to represent the same cotton shall be returned before such redrawn samples are classed.

13. Section 28.19 is revised to read as follows:

§ 28.19 Withdrawal or rejection of classification request.

Any classification request may be withdrawn by the applicant at any time before the classification of the cotton covered thereby, subject to the payment of such fees, if any, as may be prescribed in these regulations. Any classification request may be rejected by the Area Director or the Head of the Quality Control Section for noncompliance with the act or this subpart.

14. Section 28.25 is amended by revising the introductory text and paragraphs (f), (g), and (h) to read as follows:

§ 28.25 Samples for Form A determination.

Samples for Form A determination shall be drawn, handled, identified, and shipped by a licensed warehouse according to the methods and procedures specified in this section. Any samples or set of samples which do not meet these specified requirements may be rejected by the Area Director.

* * * * *

(f) Samples shall be indentified and sacked immediately after they are cut without further handling prior to shipment to the Classing Office.

(g) Samples shall be addressed to and mailed, shiped, or delivered direct to the Classing Office serving the territory in which the warehouse is located. Samples shall in no case be consigned or routed through the owner or custodian of the cotton. Samples mailed or shipped shall be prepaid.

(h) The Area Director may require that any licensed warehouse shall provide the crop year, gin name and gin bale number for each sample submitted whenever the Area Director deems that such information is necessary in order to assure that each sample is properly identified with the correct bale of cotton.

* * * * *

15. Section 28.26 is revised to read as follows:

§ 28.26 Samples for Form C determination.

Samples submitted for Form C determination shall be drawn under the supervision of a Division employee who shall retain custody or control of the samples until they are shipped prepaid or delivered at the applicant's expense to the Classing Office serving the territory in which the bales of cotton are located.

16. Section 28.27 is revised to read as follows:

§ 28.27 Samples for Form D determination.

Samples for Form D determination shall be shipped or delivered at the owner's expense to the Classing Office serving the territory in which the samples are located. A tag or coupon showing the bale number of the bale from which the sample was drawn, or other identification, shall be placed between the two portions of each sample.

17. Section 28.28 is revised to read as follows:

§ 28.28 Lost or damaged samples.

If any samples are lost, damaged, or mutilated, the Area Director shall inform the applicant.

18. Section 28.29 is revised to read as follows:

§ 28.29 Return of samples.

When so stipulated in the classification request for Form A, C or D detemination, the samples submitted shall be returned to the applicant at the applicant's expense, at the time the memorandum is issued or when the request for classification is withdrawn or rejected.

19. Section 28.32 is amended by revising paragraph (a) to read as follows:

§ 28.32 Misrepresentation; deceptive or fraudulent acts or practices; violations.

* * * * *

(a) Any knowing misrepresentation or deceptive or fraudulent act or practice made or committed, or attempted to be committed, by any person in connection with (1) any request for classification, (2) the drawing, handling, identifying, or submitting of any samples for classification, (3) the making, issuing, or using of any memorandum or certificate of classification issued by a Classing Office or the Quality Control or (4) the changing of any warehouse bale tags or numbers after the cotton has been sampled for classification.

* * * * *

20. Section 28.36 is revised to read as follows:

§ 28.36 Order of Classification.

All samples for which classification requests are pending shall be classified, as far as practicable, in the order in which the samples are delivered for classification. When in the opinion of the Area Director there is a need to deviate from this order of classification, the Area Director shall designate which samples will be given priority in classification.

21. Section 28.37 is revised to read as follows:

§ 28.37 Exposing of samples for classification.

Classification shall not proceed until the samples, after being delivered to the Classing Office, shall have been exposed for such length of time as in the judgment of the Area Director shall be sufficient to put them in proper condition for the purpose.

22. Section 28.40 is amended by revising paragraph (b) to read as follows:

§ 28.40 Terms defined; cotton classification.

* * * * *

(b) *Micronaire (mike) reading.* The measurement of the fiber fineness and maturity, in combination, of cotton as determined by an airflow instrument. For any cotton that has a micronaire reading of 2.6 or lower, the Classing Office will enter the micronaire reading on all classification memoranda issued for such cotton.

* * * * *

23. Section 28.45 is revised to read as follows:

§ 28.45 Scope of comparison; requests.

A comparison of cotton samples with a type may be requested with respect to grade, or to staple, including any of the component qualities embodied in the grade, or to all these factors. The classification of the type and the samples in accordance with the official cotton standards of the United States may also be requested. The applicant must specify in a written request the scope of service desired.

24. Section 28.47 is revised to read as follows:

§ 28.47 Statement of finding of Classing Office in comparisons.

For each quality factor (grade, staple, etc.) of the samples that the applicant has requested to be compared to the type, the Classing Office shall state in its findings whether such quality factor for each sample is "better," "equal," or "deficient" in comparison with the type. When appropriate, the findings of the Classing Office may also show the amount of difference in grade and in length between the sample and the type as measured by the official cotton standards of the United States, and other explanatory notations as needed.

25. Section 28.55 is revised to read as follows:

§ 28.55 Issuance of memoranda and certificates.

As soon as practicable after the classification of cotton has been completed by a Classing Office, there shall be issued a cotton class memorandum or certificate of the appropriate kind showing the results of such classification. Upon request from an applicant, classification results may be issued in preliminary form on record sheets.

26. Section 28.56 is amended by revising paragraphs (a) and (b) to read as follows:

§ 28.56 Form A and Form D memorandum.

(a) When a classification and/or comparison has been made of any samples submitted to a Classing Office direct from a public warehouse, the results of such classification and/or comparison may be stated in a Form A memorandum.

(b) When a classification and/or comparison has been made of any samples submitted by the owner of the cotton or the owner's agent, the results of such classification and/or comparison may be stated in a Form D memorandum.

* * * * *

27. Section 28.59 is revised to read as follows:

§ 28.59 Lost memorandum or certificate may be replaced by duplicate.

Upon the written request of the last holder of a valid Form A or Form D memorandum, or Form C Certificate and a showing to the satisfaction of the Area Director of the Classing Office which issued such memorandum or certificate that it has been lost or destroyed and, if lost, that diligent effort has been made to find it without success, a new memorandum or certificate shall be issued without the reclassification of the cotton. Such new memorandum or certificate shall bear the same number and date of issuance as the lost or destroyed memorandum or certificate and shall include a statement to the effect that it is a duplicate issued in lieu of the lost or destroyed original, as the case may be.

28. Section 28.60 is revised to read as follows:

§ 28.60 Surrender of memoranda or certificates.

For good cause, any memorandum or certificate issued under this subpart shall be surrendered to the Area Director of the Classing Office which issued it, upon the Area Director's request or upon the request of the Director. A new memorandum or certificate complying with this subpart may be issued in substitution therefor. If such memorandum or certificate be not surrendered upon such request, it shall nevertheless be invalid for the purposes of the act and this subpart.

29. Section 28.66 is revised to read as follows:

§ 28.66 Review procedure.

A review of any Form A, C, or D determination may be requested by the owner or custodian of the cotton from which the sample was drawn within 30 days after the issuance of the original memorandum. Such review shall cover all of the quality factors for which the original determination was made. Requests for reviews of Form A or D

determinations may be filed with, and the review made by, the Classing Office which issued such memorandum or the Quality Control System. Requests for reviews of Form C determinations shall be filed with, and the reviews made by, the Quality Control System. Redrawn samples shall be required for reviews of Form A and Form C determinations except in cases where the original samples have remained, identity preserved, in the custody of the Division. When redrawn samples are necessary, they shall be drawn and submitted as prescribed in this subpart. As evidence of a review determination, a Form A or D memorandum or Form C certificate appropriately marked to indicate that it represents a review determination shall be issued to the applicant requesting the review. The applicant may be required by the Classing Office or the Quality Control Section issuing such review determination to surrender the original classification memorandum or certificate. In any event the review determination shall supersede and invalidate the original determination.

30. Section 28.105 is amended by revising paragraphs (a), (b)(2), and (b)(3) to read as follows:

§ 28.105 Practical forms of cotton standards.

(a) Practical forms of the cotton standards of the United States prepared in physical form, each certified under the seal of the U.S. Department of Agriculture and under the signature of the Administrator, thereto affixed by the Administrator or by some other official or employee of the Department duly authorized by the Administrator, and in the case of the standards for grade accompanied by photographs representing the cotton in such practical forms on the date of certification, are available for sale to any person requesting the same, subject to the other conditions of this section.

(b) * * *

(2) That said practical forms and the photographs accompanying them shall be subject to inspection on any business day, between the hours of 9 a.m. and 4 p.m., by the Administrator or by an officer or agent of the Department authorized by the Administrator for that purpose.

(3) That the signature of the Administrator certifying to any practical form, or any photograph of said practical form accompanying the same, or both, may be cancelled if it be found, upon such inspection, either that copy of said forms for any reason misrepresents the cotton standards or that any such photographs have been altered or mutilated.

31. Section 28.107 is amended by revising paragraph (d) to read as follows:

§ 28.107 Original cotton standards and reserve sets.

* * * * *

(d) The First Reserve Set of each conference or the Second Reserve Set, if it has been used in place of the First Reserve Set, as provided in paragraph (c) of this section shall be retained by the Division until the currently adopted standards which they represent have been superseded by new or revised standards.

32. Section 28.115 is revised to read as follows:

§ 28.115 Fees and costs; payment.

All charges for practical forms of cotton standards and all fees and expenses for services of inspection of bales and supervision of sampling, classification, comparison, or review by a Classing Office shall be paid at the time of filing the request for the service desired, except that in the discretion of the Director bills may be delivered to persons from whom payment or charges or fees may become due. Such bills shall be rendered as soon as practicable after the last day of each month for amounts due and unpaid on such dates. When necessary, in the discretion of the Area Director, any bill may be rendered at an earlier date for any charges or fees then due from the person to whom such bill may be rendered. Payment of any such bill shall be made as soon as possible after the rendition thereof, but in any event not later than the expiration of 2 weeks thereafter.

33. Section 28.117 is revised to read as follows:

§ 28.117 Fee for new memorandum or certificate.

For each new memorandum or certificate issued in substitution for a prior memorandum or certificate at the request of the holder thereof, on account of the breaking or splitting of the lot of cotton covered thereby or otherwise for the holder's business convenience, the person requesting such substitution shall pay a fee of $3.00 per sheet.

§ 28.137 [Removed]

34. Section 28.137 is removed.

35. Section 28.138 is amended by revising the introductory text to read as follows:

§ 28.138 Classification and comparison; requests, memorandums and certificates.

For each lot or mark of linters which the applicant desires classified or compared separately the applicant shall make a separate written request specifying which of the following forms of service is desired. Only one request within a 30-day period shall be made by the same owner for the classification or comparison of the same linters, except a request for a review determination. If the applicant desires that the samples be returned at the applicant's expense, this must be indicated in the request for classification or comparison. If the return of samples is not requested they shall become the property of the Government and shall be disposed of in accordance with law and applicable regulations.

* * * * *

36. Section 28.139 is revised to read as follows:

§ 28.139 Filing of requests.

All requests for classification or comparison leading to Form D memoranda or Form C certificates shall be filed with the Quality Control Section unless otherwise directed by the Director.

37. Section 28.140 is amended by revising the introductory text to read as follows:

§ 28.140 Samples; weight; drawing.

Each sample submitted to the Quality Control Section shall weigh not less than 8 ounces; shall be wrapped separately; shall contain a coupon or tag showing the bale number or identity of bale from which drawn; and shall be drawn in the following manner:

* * * * *

38. Section 28.142 is revised to read as follows:

§ 28.142 Submission of samples.

All samples submitted to the Quality Control Section for classification or comparison under this subpart shall be delivered or sent to the Quality Control Section with all transportation charges thereto prepaid.

39. Section 28.146 is revised to read as follows:

§ 28.146 Reviews.

A review of any Form C or Form D determination may be requested by the owner of the linters from which the sample was drawn, or the owner's agent, within 30 days after the issuance of the original certificate. Such request shall be filed with the Quality Control Section and shall be accompanied by the original classification memorandum or certificate or a statement explaining why the original classification document cannot be submitted. Redrawn samples will be required for reviews except in

cases where the original samples have remained in the custody of the Quality Control Section. When redrawn samples are necessary, they shall be drawn and submitted in accordance with the applicable provisions of §§ 28.138, 28.140, and 28.142. A Form C certificate or Form D memorandum appropriately marked to indicate that it represents a review determination, shall be issued to the applicant requesting the review. The review classification document shall supersede the original classification document.

40. Section 28.165 and the undesignated title preceeding that section are revised to read as follows:

Publications Media

§ 28.165 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This section collects and displays the control numbers assigned to information collection requirements of the Office of Management and Budget contained in 7 CFR Part 28 under the Paperwork Reduction Act of 1980.

(b) *Display.*

7 CFR sections where identified and described	Current OMB control No.
28.15–28.19	0581–0009
28.20–28.24	0581–0018
28.25	0581–0029
28.66	0581–0008
28.105	0581–0008
28.115	0581–0008
28.120	0581–0008
28.122	0581–0008
28.130	0581–0008
28.146	0581–0008
28.177	0581–0008
28.161–28.164	0581–0008
28.904	0581–0009
28.906	0581–0009
28.911	0581–0009

41. Section 28.177 is revised to read as follows:

§ 28.177 Request for classification and comparison of cotton.

The applicant shall make a separate written request, on a form supplied by the Division, for each lot or mark of cotton which the applicant desires classified or compared separately. The same applicant shall not file more than one request for the classification or comparison of the same cotton within any 30-day period except for a review classification or comparison as provided in § 28.181. All requests for classification or comparison in the United States shall be filed with the Classing Office which serves the territory in which the samples are located. If the cotton is stored outside the United States the request shall be filed with the Classing Office designated by the Director. The Area Director of any Classing Office may refer any request and the samples submitted to another office or to the Quality Control Section for classification or comparison.

42. Section 28.178 is revised to read as follows:

§ 28.178 Submission of cotton samples.

Samples of cotton submitted to a Classing Office for classification and/or comparison shall be drawn from both sides of the bale and shall be delivered to the Classing Office with which the request was filed, as soon as possible after the filing of such request. All such samples shall be enclosed in one or more wrappers, which shall be labeled or marked, or both, in such manner as to show the name and address of the owner, the lot number or marks, if any, the number of bales represented by the samples in each wrapper, and such other information as may be necessary in accordance with the instructions of the Area Director. All transportation charges incident to the submission of samples shall be prepaid by the party making the request or the requester's agent.

43. Section 28.180 is amended by revising the introductory text and paragraph (e) as follows:

§ 28.180 Issuance of cotton classification memoranda.

As soon as practicable after the classification or comparison of cotton has been completed by a Classing Office, there shall be issued a cotton classification memorandum which shall embody within its written or printed terms:

* * * * *

(e) The signature of the Area Director of the Classing Office, the location of the office, and the date of issuance of the memorandum.

44. Section 28.181 is revised to read as follows:

§ 28.181 Review of cotton classification.

A review of any classification or comparison made pursuant to this subpart may be requested by the owner or custodian of the cotton from which the sample was drawn within 30 days after the issuance of the original memorandum. Such request, accompanied by the original memorandum, may be filed with either the Classing Office which issued the original memorandum or the Quality Control Section. Redrawn samples shall be required except in cases where the original samples have remained, identity preserved, in the custody of the Classing Office which issued the original memorandum. As evidence of any review determination, a classification memorandum marked to indicate that it represents a review determination shall be issued to the applicant requesting the review.

45. Section 28.182 is revised to read as follows:

§ 28.182 Surrender of memoranda.

For good cause, any memorandum issued under this subpart shall be surrendered to the Area Director which issued it, upon the Area Director's request or upon the request of the Director, and a new memorandum complying with this subpart issued in substitution therefor. If the memorandum be not surrendered upon such request, it shall nevertheless be invalid for the purpose of this subpart.

Dated: August 11, 1987.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 87–18571 Filed 8–17–87; 8:45 am]

BILLING CODE 3410–02–M

Agricultural Stabilization and Conservation Service

7 CFR Part 713

Farm Marketing Quotas, Acreage, Allotments, and Production Adjustment; Feed Grain, Rice, Cotton, and Wheat

AGENCY: Commodity Credit Corporation ("CCC"), and Agricultural Stabilization and Conservation Service ("ASCS"), USDA.

ACTION: Interim rule and request for comments.

SUMMARY: This interim rule amends the regulations found at 7 CFR Part 713 effective for the 1987 crops of feed grains, rice, upland cotton, and wheat. Various minor changes are necessary to implement provisions of the Farm Disaster Assistance Act of 1987 (the "1987 Act") with respect to: (1) Making available deficiency payments to producers of winter wheat who plant to wheat less than 50 percent of a farm's permitted wheat acreage ("0/92 provision"); (2) a 0/92 provision, under certain conditions, for producers of other types of wheat; (3) a 0/92 provision, under certain conditions, for producers of feed grains, rice, and upland cotton.

EFFECTIVE DATE: May 27, 1987.

Comments must be received on or before September 17, 1987, in order to be assured of consideration.

ADDRESS: Submit Comments to: Director, Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service,

USDA, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Raymond K. Aldrich, Program Specialist, Cotton, Grain, and Rice Price Support Division, ASCS, P.O. Box 2415, Washington, DC 20013, (202) 447–6688.

SUPPLEMENTARY INFORMATION: This interim rule has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation 1512–1 and has been classified "not major". It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined that Regulatory Impact Analyses are not required for the changes which are made in this interim rule.

The titles and numbers of the Federal assistance programs to which this interim rule applies are: Cotton Production Stabilization—10.052; Feed Grain Production Stabilization—10.055; Wheat Production Stabilization—10:058; Rice Production Stabilization—10.065 as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule since neither the Agricultural Stabilization and Conservation Service ("ASCS") nor the Commodity Credit Corporation ("CCC") is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

A draft environmental impact statement pertaining to agricultural acreage adjustment programs has been prepared. Further information is available from Phillip Yasnowsky, Program Analysis Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013; (202) 447–7887.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

The Office of Management and Budget has approved the information collection requirements contained in these regulations under the provisions of 44 U.S.C. Chapter 35 and OMB Numbers 0560–0030, 0560–0071, 0560–0091, and 0560–0650 have been assigned.

Discussion of Changes

In order to receive benefits under the annual Commodity Credit Corporation ("CCC") price support and production adjustment programs, which are authorized by the Agricultural Adjustment Act of 1949, as amended (the "1949 Act"), a producer may be required to reduce the planting of certain crops on the producer's farm. This acreage must be devoted to uses which have been approved by CCC. With respect to the 1987 crop year, a portion of this acreage must be devoted to "conserving uses", as defined in 7 CFR 713.2.

One of the benefits made available to producers is a deficiency payment. A deficiency payment is made if certain market prices are not attained during the marketing year which has been established for a crop. Prior to May 27, 1987, the 1949 Act provided that a producer would be eligible to receive a deficiency payment with respect to the acreage of a program crop which had been planted for harvest so long as the quantity planted did not exceed the "permitted acreage" established by CCC for the crop for the farm. The 1949 Act also provided that if a producer planted less than 92 percent but more than 50 percent of the permitted acreage to a program crop, a deficiency payment would be made as if the producer had planted 92 percent of such amount if the "non-planted" acreage was devoted to conserving uses (the "50/92" provision).

On May 27, 1987, the President signed the Farm Disaster Assistance Act of 1987 (the "1987 Act"). The 1987 Act amended the 1949 Act to provide that producers of wheat, feed grains, upland cotton, and rice may, under certain conditions, designate as conserving use acreages, an acreage up to 100 percent of the permitted acreage of a crop, and receive deficiency payment with respect to 92 percent of such acreage. Accordingly, in order to implement these provisions, it is necessary to amend the regulations found at 7 CFR Part 713.

Section 107D of the 1949 Act was amended by the 1987 Act to provide that producers of winter wheat do not have to plant at least 50 percent of the farm's permitted wheat acreage to wheat in order to be eligible to receive a deficiency payment for the 1987 crop of wheat. This interim rule will enable a winter wheat producer to designate as conserving uses an acreage in an amount not to exceed 100 percent of the farm's permitted wheat acreage and thus receive a deficiency payment with respect to 92 percent of the farm's permitted wheat acreage ("0/92 provision"). Other producers of wheat may utilize the 0/92 provision if they were prevented from planting an intended acreage of wheat for harvest in 1987 because of a natural disaster in 1986 and the farm is located in a county in which producers were eligible to receive disaster emergency loans under the Consolidated Farm and Rural Development Act, as amended, as a result of such disaster. Producers of the 1987 crops of wheat, feed grains, upland cotton, and rice also may utilize the 0/92 provision if they were prevented from planting a minimum of 50 percent of the farm's permitted acreage of such a crop as a result of damage to a levee from flooding that occurred in 1986 and the farm is located in a county in which producers were eligible to receive disaster emergency loans under the Consolidated Farm and Rural Development Act, as amended, as a result of such disaster.

It has been determined that, with respect to producers who utilize the 0/92 provision for such a crop, conserving use acreages in an amount in excess of 50 percent of the respective permitted program crop acreage may be hayed or grazed, since this determination was made applicable to producers utilizing the 50/92 provision. However, it has been further determined that, after July 15, 1987, producers using the 0/92 provision may not hay or graze designated conservation use acreage that represents less than 50 percent of the respective permitted program crop acreage.

It has also been determined that land, otherwise eligible to be designated as conserving use acreage, that is flooded in 1987, but which has been planted or considered planted in at least 2 of the last 5 years, will be eligible for designation.

Since producers wishing to utilize the 0/92 provision may already have hayed or grazed the balance of the farm's acreage which is eligible to be designated as ACR, 7 CFR 713.63(a) is amended to include a provision whereby land designated as ACR for acreages designated as conserving uses may have been hayed or grazed prior to July 15, 1987. Haying of such acreage after that date will be prohibited and grazing will be allowed except during the 5-month non-grazing period established by the State Agricultual Stabilization and Conservation committee.

Since the amendments made herein are necessary to implement the Farm Disaster Assistance Act of 1987, which became effective on May 27, 1987 it has

been determined that the interim rule shall be effective May 27, 1987.

List of Subjects in 7 CFR Part 713

Cotton, Feed grains, Wheat and Rice price support programs.

Interim Rule

Accordingly, the regulations found at Part 713 of Chapter VII of Title 7 of the Code of Federal Regulations are amended as follows:

PART 713—[AMENDED]

1. The authority citation is revised to read as follows:

Authority: Secs. 101A, 103A, 105C, 107C, 107D, 107E, 109, 113, 401, 403, 503, 504, 505, 506, 507, 508, and 509 of the Agricultural Act of 1949, as amended; 99 Stat. 1419, as amended, 1407, as amended, 1385, as amended, 1444, 1383, as amended, 1448; 91 Stat. 950, as amended, 63 Stat. 1054, as amended, 99 Stat. 1461, 1461, as amended, 1462, 1463, 1463, 1464, 1464 (7 U.S.C. 1441–1, 1444–1, 1444b, 1445b–2, 1445b–3, 1445b–4, 1445d, 1445h, 1421, 1423, and 1461 through 1469); sec. 1001 of the Food Security Act of 1985, as amended, 99 Stat. 1444 (7 U.S.C. 1308); Sec. 1001 of the Food and Agriculture Act of 1977, as amended, 91 Stat. 950, as amended (7 U.S.C. 1309); Sec. 1009 of the Food Security Act of 1985, 99 Stat. 1453 (7 U.S.C. 1308a).

2. Section 713.63 is amended by revising paragraph (a) to read as follows:

§ 713.63 Use of ACR Acreage.

(a) *State committee determination.* The State committee, after consulting with interested parties, may authorize grazing of ACR acreage, except that:

(1) With respect to ACR acreage designated for the 1987 through 1990 crops of wheat, feed grains, upland cotton, ELS cotton, and rice, grazing shall not be permitted during any 5-consecutive-month period, as determined by the State committee, during the applicable calendar year.

(2) With respect to the 1987 crop year, haying and grazing of ACR, prior to July 15, 1987, is permitted if the ACR is designated for a conserving use acreage credited as the program crop representing less than 50 percent of the respective permitted program crop acreage.

* * * * *

3. Section 713.97 is amended by revising (e) (1) and (2) and adding (3) to read as follows:

§ 713.97 Ineligible land.

* * * * *

(e) * * *

(1) Before any flooding occurred, the land was planted or could have been planted to a crop for harvest in the current crop year.

(2) After flooding, such land could be planted in the current year by no later than the final reporting date for spring planted crops.

(3) Such land has been planted or considered planted in at least 2 of the last 5 years.

* * * * *

4. Section 713.102(f) is revised to read as follows:

§ 713.102 Determination of farm program acreage.

* * * * *

(f) *Haying and grazing.* (1) Haying and grazing of approved nonprogram crops and conserving use acreages credited as the program crop shall only be permitted if haying and/or grazing is requested by the State committee and the Secretary approves such request.

(2) With respect to the 1987 crop year only, haying and grazing of conserving use acreages credited as the program crop that represents less than 50 percent of the respective permitted program crop acreage shall not be hayed or grazed after July 15, 1987. Haying or grazing of such acreage prior to that date shall not affect the eligibility of such land for designation as conserving use acreage.

5. Section 713.108(b)(2)(i) is revised to read as follows:

§ 713.108 Deficiency payments.

* * * * *

(b) * * *

(2) * * *

(i) If the acreage of the crop planted for harvest is less than 50 percent of the permitted acreage of the crop for the farm, the farm program acreage shall not be increased, unless, for the 1987 crop year:

(A) The farm is one on which winter wheat is produced; or

(B) For farms on which other types of wheat are produced, it is determined that at least 50 percent of the permitted wheat acreage was prevented from being planted due to a natural disaster in 1986 or flooding caused by damage to a levee in 1986 and the farm is located in a county in which producers were eligible to receive disaster emergency loans as a result of such disaster; or

(C) For other program crops, it is determined that at least 50 percent of the permitted acreage of the crop was prevented from being planted due to flooding caused by damage to a levee in 1986 and the farm is located in a county in which producers were eligible to receive disaster emergency loans as a result of such disaster.

(D) The farm program acreage for farms which are subject to subclause (A), (B), or (C) shall be determined in accordance with clause (ii);

* * * * * *

Signed at Washington, DC, on August 11, 1987.

Vern Neppl,

Acting Executive Vice President, Commodity Credit Corporation, and Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 87–18693 Filed 8–17–87; 8:45 am]

BILLING CODE 3410-05-M

Agricultural Marketing Service

7 CFR Parts 1033, 1036, 1040

[Docket Nos. AO–166–A56, AO–179–A51, AO–225–A38]

Milk in the Ohio Valley, Eastern Ohio-Western Pennsylvania, and Southern Michigan Marketing Areas; Order Amending Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action modifies the classification provisions of the Ohio Valley, Eastern Ohio-Western Pennsylvania, and Southern Michigan milk orders based on industry proposals considered at a public hearing held October 28, 1986. These modifications will eliminate raw product cost differences for certain uses of milk between regulated handlers in the three specified order markets and nearby markets by providing the same classified price structure for skim milk and butterfat used in the production of ice cream and other related frozen dessert products, eggnog, and buttermilk biscuit mixes throughout the region.

The action also makes several changes in the Southern Michigan order only that makes it easier to qualify milk for pool status. In this regard, the pooling standards for a cooperative-operated plant and unit are relaxed. Also, less-restrictive diversion provisions are adopted. These changes are necessary to reflect current marketing conditions and assure orderly marketing of the Southern Michigan market's reserve milk supplies.

More than the required percentage of the producers in each of the three markets have approved the issuance of the amended orders.

EFFECTIVE DATE: September 1, 1987.

FOR FURTHER INFORMATION CONTACT: Maurice M. Martin, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States

Department of Agriculture, Washington, DC 20250, (202) 447–7311.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued October 14, 1986; published October 17, 1986 (51 FR 37037).

Recommended Decision: Issued May 1, 1987; published May 11, 1987 (52 FR 17586).

Final Decision: Issued July 14, 1987; published July 20, 1987 (52 FR 27205).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) Findings upon the basis of the hearing record. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the aforesaid marketing areas.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing areas; and the minimum prices specified in the orders as hereby amended, are such prices as well reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders as hereby amended regulate the handling of milk in the same manner as, and are applicable only to persons in the respective classes of industrial or commercial activity specified in, marking agreements upon which a hearing has been held.

(b) Additional findings. It is necessary in the public interest to make this order amending the orders effective not later than September 1, 1987. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing area.

The provisions of this order are known to handlers. The recommended decision of the Administrator, Agricultural Marketing Service, was issued May 1, 1987 (52 FR 17586), and the decision of the Assistant Secretary containing all amendment provisions of this order was issued July 14, 1987 (52 FR 27205). The changes effected by this order will not require extensive preparation or substantial alteration in method of operations for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the orders effective September 1, 1987, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the Federal Register. (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551–559.)

(c) Determinations. It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Sec. 8c (9) of the Act) of more than 50 percent of the milk, which is marketed within each of the respective marketing areas, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending each of the specified orders is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the respective orders; and

(3) The issuance of this order amending each of the specified orders is approved by more than the necessary two-thirds of the producers who were engaged in the production of milk for sale in the respective marketing areas during the determined representative period, or who participated in a referendum.

List of Subjects in 7 CFR Parts 1033, 1036, and 1040

Milk marketing orders, Milk, Dairy products.

Order Relative to Handling

It is therefore ordered that on and after the effective date hereof, the handling of milk in the Ohio Valley, Eastern Ohio-Western Pennsylvania, and Southern Michigan marketing areas shall be in conformity to and in compliance with the terms and conditions of the orders, as amended, and as hereby further amended, as follows:

PART 1033—MILK IN THE OHIO VALLEY MARKETING AREA

1. The authority citation for Parts 1033, 1036, and 1040 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

2. Section 1033.41 is amended by revising paragraphs (b)(3) and (c)(1) to read as follows:

§ 1033.41 Classes of utilization.

* * * * *

(b) * * *

(3) Used to produce yogurt, sour cream, sour mixtures (such as dips and dressings), cottage cheese, cottage cheese curd, pancake mixes, puddings, frozen cream, milk shake and ice milk mixes containing 20 percent or more total solids, frozen desserts, frozen dessert mixes, and any concentrated milk product in bulk, fluid form other than that used to produce a Class III product; and

* * * * *

(c) * * *

(1) Skim milk and butterfat used to produce butter, nonfat dry milk, dry whole milk, dry whey, dry buttermilk, buttermilk biscuit mixes, casein, cheese (except cottage cheese and cottage cheese curd), dietary products and infant formulas in hermetically sealed metal or glass containers, evaporated or condensed milk or skim milk (plain or sweetened) in a consumer-type package, any concentrated milk product in bulk, fluid form used to produce Class III products, any product containing six percent or more nonmilk fat (or oil), and any product that contains by weight less than 6.5 percent nonfat milk solids.

* * * * *

PART 1036—MILK IN THE EASTERN OHIO-WESTERN PENNSYLVANIA MARKETING AREA

3. Section 1036.15 is revised to read as follows:

§ 1036.15 Fluid milk product.

"Fluid milk product" means the following products or mixtures in either fluid or frozen form, including such products or mixtures that are flavored, cultured, modified (with added nonfat milk solids), concentrated, or reconstituted: Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, milk shake mixes containing less than 20 percent total solids, and mixtures of cream and milk or skim milk containing less than 10.5 percent butterfat. The term "fluid milk product" shall not include those products and mixtures

listed in § 1036.40(b) (1) and (3), and (c)(1).

4. Section 1036.40 is amended by revising paragraphs (b)(3) and (c)(1) to read as follows:

§ 1036.40 Classes of utilization.

* * * * *

(b) * * *

(3) Used to produce eggnog, yogurt, sour cream, sour cream products (e.g., dips), cottage cheese, cottage cheese curd, frozen cream, milk shake and ice milk mixes containing 20 percent or more total solids, frozen desserts, frozen dessert mixes, and any concentrated milk product in bulk, fluid form other than that used to produce a Class III product; and

* * * * *

(c) * * *

(1) Skim milk and butterfat used to produce butter, cheese (excluding cottage cheese and cottage cheese curd), evaporated or condensed milk or skim milk (plain or sweetened) in a consumer-type package, any concentrated milk product in bulk, fluid form used to produce Class III products, nonfat dry milk, dry whole milk, dry whey, condensed or dry buttermilk, any product containing six percent or more nonmilk fat (or oil), and sterilized products (except fluid cream products and those products listed in paragraph (b)(3) of this section) in hermetically sealed glass or metal containers;

* * * * *

PART 1040—MILK IN THE SOUTHERN MICHIGAN MARKETING AREA

5. Section 1040.40 is amended by revising paragraphs (b)(3), (c)(1)(ii), (c)(1)(iv), (c)(1)(v) and (c)(1)(vii) to read as follows:

§ 1040.40 Classes of utilization.

* * * * *

(b) * * *

(3) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Frozen cream, milk shake and ice milk mixes containing 20 percent or more total solids, frozen desserts (including frozen yogurt), and frozen dessert mixes (including frozen yogurt mixes);

(iii) Any concentrated milk product in bulk, fluid form other than that used to produce a Class III product;

(c) * * *

(1) * * *

(ii) Butter, plastic cream, and anhydrous milkfat;

* * * * *

(iv) Any concentrated milk product in bulk, fluid form used to produce Class III products;

(v) Custards, puddings, pancake mixes, and buttermilk biscuit mixes;

* * * * *

(vii) Evaporated or condensed milk or skim milk (plain or sweetened) in a consumer-type package;

* * * * *

6. In § 1040.7, the introductory text of paragraph (b) and paragraphs (b) (1), (b) (2), (b)(3), and (b)(4) are revised and a new paragraph (b)(6) is added to read as follows:

§ 1040.7 Pool plant.

* * * * *

(b) A supply plant which during the month meets one of the performance requirements specified in paragraph (b) (1), (2), (3) or (4) of this section. All supply plants which are operated by one handler, or all the supply plants for which a handler is responsible for meeting the performance requirements of this paragraph under a marketing agreement certified to the market administrator by both parties, may be considered as a unit for the purpose of meeting the performance requirements of paragraph (b) (1), (2), (3) or (4) of this section upon written notice to the market administrator specifying the plants to be considered as a unit and the period during which such consideration shall apply. Such notice and notice of any change in designation, shall be furnished on or before the fifth working day following the month to which the notice applies. In any months of March through August a unit shall not contain any plant which was not qualified under this paragraph either individually or as a member of a unit during the previous September through February.

(1) A supply plant from which each month not less than 30 percent of the total quantity of Grade A milk received at such plant from producers and from a handler described in § 1040.9(c), or diverted therefrom by the plant operator or a cooperative association (as described in § 1040.9(b)) pursuant to § 1040.13, less any Class I disposition of fluid milk products which are processed and packaged in consumer-type containers in the plant, is transferred to plants described in paragraph (b)(5) of this section. Not more than one-half of the shipping percentage specified in this paragraph may be met through the diversion of producer milk from the supply plant to pool distributing plants.

(2) A plant operated by a cooperative association which supplies distributing plants qualified under paragraph (a) of this section, if the amount of producer milk of members of the association delivered by transfer from such association's plant to plants described in paragraph (b)(5) of this section and by direct delivery from the farm to plants qualified under paragraph (a) of this section is as follows:

(i) During the month, is not less than that percentage which is designated by the market administrator for the current month pursuant to paragraph (b)(6) of this section; or

(ii) During the second through thirteenth preceding months, was not less than that percentage which was designated by the market administrator for the second through thirteenth preceding months pursuant to paragraph (b)(6) of this section, if such plant was qualified under this paragraph in each of the preceding 13 months.

(3) A plant located in the State of Michigan which has been a pool plant for twelve consecutive months, but is not otherwise qualified under this paragraph, if it has a marketing agreement with a cooperative association and it fulfills the following conditions:

(i) The aggregate monthly quantity supplied by all parties to such an agreement as a percentage of the producer milk receipts included in the unit during the month is not less than that percentage designated by the market administrator for the current month pursuant to paragraph (b)(6) of this section; and

(ii) Shipments for qualification purposes shall include both transfers from supply plants to plants described in paragraph (b)(5) of this section, and deliveries made direct from the farm to plants qualified under paragraph (a) of this section.

(4) A supply plant that qualifies as a pool plant pursuant to paragraph (b) (1), (2), or (3) of this section in each of the months of September through February shall be a pool plant for the following months of March through August. The automatic pool qualification of a plant can be waived if the handler or cooperative requests in writing to the market administrator the nonpool status of such plant. The request must be made prior to the beginning of any month during the March through August period. The plant shall be a nonpool plant for such month and thereafter until it requalifies under paragraph (b)(1) of this section on the basis of actual shipments therefrom. To requalify as a pool plant

under paragraph (b) (2) or (3) of this section or on a unit basis, such plant must first have met the shipping requirements of paragraph (b)(1) of this section for 6 consecutive months.

* * * * *

(6) The shipping percentage that applies to a handler described in paragraphs (b)(2) and (b)(3) of this section shall be determined in the following manner:

(i) The market administrator shall calculate the percentage that producer deliveries used in Class I represent of the total producer milk in that months' pool.

(ii) The following table shall be used in determining a cooperative's delivery requirement in qualifying its balancing plant or a unit of such plants as pool plants for the same month of the following year:

Producer deliveries used in class I as a percent of total producer milk	Applicable delivery percentage
Below 34.99	30
35–39.99	35
40–44.99	40
45–49.99	45
50+	50

* * * * *

§ 1040.50 [Amended]

7. In § 1040.50(b)(1), "15 cents" is revised to read "10 cents".

8. Section 1040.13 is amended by revising paragraphs (d)(1) and (d)(2) to read as follows:

§ 1040.13 Producer milk.

* * * * *

(d) * * *

(1) During each of the months of September through February, not less than one day's production of a producer must be physically received at a pool plant;

(2) The total quantity of producer milk diverted by a cooperative association or by the operator of a pool plant may not exceed 60 percent during each of the months of September through February of the total quantity of producer milk for which it is the handler;

* * * * *

Effective date: September 1, 1987.

Signed at Washington, DC, on August 12, 1987.

Kenneth A. Gilles,

Assistant Secretary for Marketing and Inspection Services.

[FR Doc. 87–18861 Filed 8–17–87; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 2054

Election of County Committee Members

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: By this final rule, the Farmers Home Administration (FmHA) revises and finalizes its interim rule published May 22, 1986. This action is needed to comply with section 1311 of the Food Security Act of 1985 (Pub. L. 99–198). The intended effect of this action is to give farmers an opportunity to choose two persons from their area as County Committee Members.

EFFECTIVE DATE: August 18, 1987.

FOR FURTHER INFORMATION CONTACT: Robert A. Miller, Chief, Personnel Programs and Evaluation Branch, Personnel Division, Farmers Home Administration, USDA, Room 6442, Washington, D.C. 20250, Telephone: (202) 382–1061.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and has been determined to be nonmajor because it will not result in: (1) An annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

FmHA implemented certain provisions of the "Food Security Act of 1985" (Pub. L. 99–198) upon publication by interim rule in the **Federal Register** (51 FR 18763) on May 22, 1986. That rule provided for a 30 day comment period ending June 23, 1986. Fourteen written comments were received. All were considered in developing the final rule. The following is a discussion of comments received.

Five respondents commented on the provision which prohibited members of advisory boards or committees for Agricultural Stabilization and Conservation Service (ASCS), Extension Service (ES), or Soil Conservation Service from serving on FmHA county committees. FmHA reviewed this provision, and determined that it was overly restrictive. These committees and boards do not rule on issues which directly affect the loan making activities of FmHA. Hence the Agency eliminated this restriction in the final rule.

Three respondents commented that bank employees and individuals serving on Boards of Directors of Banks and Savings and Loans be excluded from serving on county committees because of potential conflicts of interest of such individuals. One respondent also wanted members of families of bank or savings and loan association boards of directors prohibited from serving. FmHA reviewed these comments and agreed that such a restriction is supportable because of the financial interests that such individuals have in FmHA loan making activities. Therefore, the Agency adopted this restriction.

Four respondents commented on the provision that excludes borrowers and their spouses and dependent children from serving on county committees. They requested that this provision be revised to permit such individuals to serve. Under the interim rule, borrowers and their immediate families, with the exception of those with Section 502 Rural Housing loans and Emergency Actual Loss loans were excluded from serving on the county committee. The exclusion of borrowers and immediate family members from serving on county committees is based on the requirement that Federal Government employees refrain from engaging in activities that have the appearance of conflict of interest. Decisions of the county committee must be made by disinterested parties in order to ensure confidence in those decisions by loan applicants and the general public. Therefore, the restrictions on borrowers and their immediate family members from serving is maintained in the final rule and is strengthened to permit only borrowers with Section 502 Rural Housing loans to serve because the county committees do not pass on eligibility for Section 502 loans. Borrowers with Emergency Actual Loss loans are no longer eligible for service on the county committee because the county committee does have to certify eligibility for such loans.

One respondent commented that former FmHA borrowers and members of their families whose debts were settled by debt settlement release provisions or by discharge in bankruptcy be prohibited from serving unless the failure to pay the indebtedness was beyond control of the individual. Another respondent stated that former borrowers who have had their FmHA debt charged off or discharged by a bankrupcy court not be

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permitted to serve at all. The Agency does not believe that failure to repay FmHA loans reflects on the character of former borrowers. Neither is a conflict of interest or appearance of conflict of interest possible once a borrower is released from indebtedness. Therefore, the Agency does not favor establishing such a restriction.

One respondent commented that county committee members should be barred from accepting contracts from FmHA. The Agency regulations covering conflict of interest specifically exempt Special Government Employees; e.g., county committee members, from prohibitions related to engaging in business with the Agency. The Agency does not believe that broadening the conflict of interest provisions to cover county committee members is necessary.

One respondent commented that alternates to the county committee should be determined through election with those individuals being designated in the order of the number of votes they receive. State Directors would only be permitted to name alternates when there were no other candidates than the elected member(s). The Agency found that a number of individuals were only willing to serve on the county committee if they did not have to stand for election. The Agency believes that if this provision were to be adopted that fewer individuals would be willing to serve and that many of its county committees would not be able to appoint alternates. Since the legislation does not require election of alternates, the Agency does not wish to adopt this provision.

One respondent commented that it was too restricted to prohibit individuals from serving on the county committee who have served on other committees which make recommendations for approval of Federal Land Bank or Production Credit Association loans. The Agency agrees that this is too restrictive and has amended this provision to include only those individuals who are currently serving on such committees. However, in order to be consistent a provision was added to prohibit employees of the Federal Land Banks and Production Credit Associations of the Farm Credit System from serving on the committees.

One respondent suggested that a provision be added to prohibit a county committee member from participating in a decision on his or her own FmHA loan application or upon an application or a relative or a person with which the committee member has joint operations or business associations which would or can be construed to create a conflict of interest. The Agency has modified the regulations to eliminate county committee members or their families from eligibility for any farm loans. Consequently, they would not be ruling on such loans under the revised regulations. With respect to ruling on loans with those individuals with whom they have business associations, existing conflict of interest provisions, which cover all employees, would require county committee members to recuse themselves from such deliberations.

One respondent commented that voters for county committee elections be of legal voting age. The Agency believes that the stipulation that voters be farmers deriving the principal part of their income from farming ensures that voters will be responsible members of the farm community. There is no legislative requirement for voters being of legal voting age, and the Agency does not feel such an additional requirement is necessary.

One respondent commented that the Agency should adopt the ASCS practice of mailing ballots to eligible farmers. The Agency believes that the system of publishing ballots in publications serving the area and mailing ballots to those individuals who request them provides eligible voters with ample opportunity to vote. The system is also considerably more cost-effective than the ASCS system.

One respondent suggested that language prohibiting discrimination against voters because of race, color, sex, religion, national origin, age, or handicap be specifically added to the section of the regulations covering voter eligibility. The Agency has stated the policy of nondiscrimination as an overriding principle in the regulation. In addition, posters developed to advertise the election carry an equal opportunity statement that covers both voters and candidates. Consequently, the Agency believes that the addition of another such statement for voters in the regulations would be redundant.

One respondent commented that the prohibition on signing more than one nominating petition is too restrictive. The Agency believes that the prohibition is appropriate since it adds protection against small groups of individuals dominating the process. Since the only requirement under the regulations for being placed on the ballot is having three eligible voters (and the candidate may be one of those three) sign a candidate's nominating petition, the Agency does not believe that the current process is too restrictive.

One respondent commented that the law requiring an election process should be repealed since there is little public interest in such a law, and the former process was sufficient and more cost-effective. The Agency has attempted to construct a relatively simple and cost-effective system within the confines of the new law. The Agency has no plan to ask Congress to revoke these provisions.

Two respondents commented that voter eligibility for spouses of farmers was unclear. One of the respondents indicated that clarification should be added to cover situations where members of families were engaged in joint operations that were not legal entities. The Agency has added language to the voter eligibility statement to clarify that all members of the family farm engaged in agricultural production are eligible. We believe that this further clarifies that spouses and other family members may vote if otherwise eligible.

One respondent suggested that loan applicants be prohibited from serving on the county committee. The Agency finds this too restrictive. While county committee members certainly would not be permitted to be involved in any decision relating to their own loan application with FmHA, there is no appearance of conflict of interest in permitting such individuals to run. The regulation has been revised to make it clear that if the applicant's loan is approved and he or she is subsequently elected, he or she will have to resign from the committee.

Four respondents commented on the provision which restricts individuals from being active in the management or affairs of any political club, organization, or committee. These respondents stated that this was overly restrictive since such rules should only apply to those in the civil service covered by the Hatch Act. This statement assumes that county committee members are not Federal employees. This is incorrect. County committee members are intermittent Federal employees and as such are covered by the provisions of the Hatch Act which circumscribe activities in partisan politics. These provisions are necessary to protect the county committee deliberation process from the conflict, or appearance of conflict, of interest.

One respondent commented on the interpretation of the income requirement that elected county committee members earn more than 50 percent of their gross income from farming. The respondent believed that this eligibility requirement was not a proper interpretation of Congress' intent. The respondent argued that this interpretation created an "income" or "means" test which would

be too restrictive and difficult to administer. The Agency believes that the law's requirement that elected members earn the "principal part of their income from farming," left no choice but to establish an income test for serving on the committee. Verification of qualifications is done prior to appointment to the committee through the use of standard appointment documents all Federal employees complete. The Agency is satisfied that these checks are sufficient to ensure compliance with law and regulation.

One respondent commented on the provision that eligible voters must earn more than 50 percent of their gross income from agricultural production. The respondent stated that this would eliminate many farmers from participation in the election process. FmHA has written the voting criteria to coincide with the language of the law. The Agency has no authority to expand the definition of eligible voters beyond that written by Congress.

Two respondents commented on the provision of the regulations which permits the designation of a non-farmer to the county committee. One of these respondents stated that permitting a non-farmer to serve violated the intent of Congress to have loan applicants "judged by a jury of their peers." The law established no criteria whatsoever in determining the eligibility of the non-elected member of the county committee. The Agency determination that this person did not have to be a farmer was a reasonable one given the fact that the Agency has always permitted one county committee member to be a non-farmer. Thus this provision resulted in no diversion from past practice and did not violate any stated or implied requirement of the law.

One respondent commented that the provision restricting former felons from serving on the county committee was too harsh and one respondent thought that those individuals who received a dishonorable discharge from the military should be excluded. The Agency has always barred former felons and dishonorably discharged veterans from serving on the county committee. This provision is retained to ensure that county committee members be of good character and have the confidence of the public.

One respondent stated that the exclusion of any employee, even a clerical employee, of an organization financed by FmHA from serving on the county committee was overly broad and should be dealt with by conflict of interest policy. The Agency believes that a blanket prohibition on such individuals is justified on the basis of the administrative burden in making a case-by-case determination for such individuals.

Two respondents commented that alternate county committee members should not be permitted to serve out the unexpired terms of the elected members that they may replace. They recommended that alternates only serve until the next regular election. FmHA believes that permitting alternates who succeed elected members to serve out the respective terms of those members is consistent with generally accepted political practices of most jurisdictions. Therefore no change is made to this provision.

Two respondents commented on the provision that FmHA State Directors and their designees are permitted to solicit nominations for county committees. One respondent asked that the language be clarified to ensure that State Directors not have any advantage over the public in terms of the deadlines for making nominations. The other respondent objected to any FmHA solicitation of nominations. In the first instance, FmHA has clarified the language regarding solicitation of nominees to ensure that all nominations be completed at the same time. In the second instance, FmHA disagrees that the solicitation of nominees by FmHA constitutes a conflict of interest. In many parts of the country, it is difficult to get farmers to run for the county committee. If Agency personnel did not solicit nominations many committees could not be properly constituted. Also, the regulations are clear that once individuals have been nominated, no further action for or against candidates can be taken by FmHA personnel. The Agency is satisfied that this provision does not limit the freedom of choice of voters.

One respondent commented that the regulations should contain a provision for notifying all rejected nominees advising them of the reasons for disqualification. Under the regulations, election materials, excluding ballots, are to be retained for a period of three years. Interested parties may, under the Freedom of Information Act, request review of these materials. Since the slate of successful candidates is published in the county or area in which the elections take place, unsuccessful candidates will be aware of the decision and may inquire as to the reasons, if they have an interest.

One respondent commented that the language of the regulation governing the filing of nominating petitions was unclear, and could be interpreted as requiring nominees to second their own petitions. The regulation requiring the nominee to sign his or her own petition makes clear reference to only requiring the signature to certify the nominee's willingness to serve if elected. Since the block on the petition where the signature is made is clearly identified, we see no need for further clarification of the point.

One respondent commented that the procedure for retaining invalid voter ballots was unclear, and further recommended that all ballots be retained for 60 days. The Agency has reviewed this proposal, and has adopted it to provide for a greater opportunity for review of elections.

One respondent commented that the determination of voting area be revised to provide for farmers voting where they reside, rather than where there principal farming operation is located. Although the Food Security Act of 1985 makes reference to voters residing in the county or area in which they vote, the terms "reside" or "residence" have been given many different interpretations by the courts and are broader terms than just "domicile," which refers to a person's actual home. "Residence" can mean "domicile," but it can also mean something other than just "domicile." In order to provide for entity voting; e.g., corporations, the Agency interpreted the term residence more broadly. Entities have no "residence" in the strict sense of the word. They would thus be disenfranchised from voting if the interpretation were too strict. In order not to disenfranchise entities and to avoid the confusion that would arise if "reside" was defined as meaning one thing for individuals and another for entities, the Agency established the concept of voting where the farmer's principal farming operation is located.

Four respondents commented that the regulations were insufficiently clear in describing prohibited political activity which could lead to removal of county committee members. The Agency has amended the regulations to specify that county committee members are covered by FmHA Instruction 2045–BB, including Exhibits A and B, "Employee Responsibilities and Conduct" (available in any FmHA office). These regulations provide specific guidance on political activity covering all FmHA employees, including county committee members. The same respondents also commented that provisions in the regulations for removal of county committee members for "personal conduct adverse to FmHA and USDA" was too vague and could be misused. As in the previous response, the Agency believes that the responsibilities and conduct regulations covering county

committee members is clear and is not more restrictive than those covering other FmHA employees. Additionally, the regulations specify that any removals of county committee members for personal conduct will be made only after a full report has been made by the State Director to the Administrator, and a decision is made at that level. The Agency believes that this provides sufficient protections against unwarranted removals.

One respondent commented that county committee salary of $21 per day is too low and should be raised to the Federal minimum wage. FmHA requested and received permission from the Secretary of Agriculture for raising the salary of county committee members to $30 per day. The county committee members, in addition to salary, also receive compensation for travel to and from their home to the meetings. The compensation they receive is in compliance with Federal pay requirements. One respondent transmitted another respondent's comments with a recommendation that the Agency act favorably on the comments. The Agency has done so, and responses to those comments are incorporated in the foregoing responses to commenters.

Several respondents made editorial suggestions relating to use of various personnel forms used by the Agency in the appointment process. Changes were incorporated, as indicated.

In addition to the specific recommendations for changes to the regulations, four respondents commented on the implementation of the regulations and general conduct of the elections, including publicity. The commenters stated that the Agency had improperly published the regulations as interim final without permitting prior public comment, had violate its own regulations by shortening the period for nominations, and had generally not provided sufficient opportunity for farmer participation in the elections. The Agency believes that it acted properly in publishing the regulations as interim final. The Food Security Act of 1985, which contains the law covering the county committee elections, was passed on December 23, 1985. FmHA did not participate in the development, nor was it consulted in the writing of the language dealing with the county committee election process. There was no certainty that the Bill would become law. Thus, no prior work on developing the regulations was done before enactment. Since the new law required a nationwide election process to be developed under a law unique to FmHA, the Agency needed time to consider all the options prior to establishing such a system. Consideration was given to the ASCS model, but this ultimately had to be rejected because of the irreconcilable differences between the laws the two Agencies operate under. At the same time as FmHA was working on the county committee regulations, it was also in the process of rewriting 87 other regulations that were changed as a result of the Food Security Act of 1985. Consequently, FmHA does not believe that the five months it took to publish the regulations were unreasonable. Although Pub. L. 99–198 did not specify that the county committee elections had to occur in 1986, FmHA made it a priority to conduct the elections in that year to permit public participation in the election process at the earliest opportunity. Under the regulations that formerly governed the Employment, Pay, and Functions of the county committee, FmHA instruction 236.1, the terms of one appointed member of each committee was to expire on June 30, 1986. With 2018 committees functioning, that meant that 2018 committee members' terms were expiring. FmHA made a determination to implement the regulations to permit elections to take place in time to maintain the continuity of the committees. Had FmHA gone with a proposed rule instead of an interim rule, this would have seriously delayed the elections, and would have meant permanently following a later schedule than the Agency felt was optimum; i.e., non-disruptive to normal farm activities. Given this situation, the Agency made every attempt to publish the regulations expeditiously. The compressed schedule for nominations in this first election was an unavoidable consequence. FmHA denies, however, that compression of the nomination period from a normal 25 day period to a 5 day period violated its own regulations. The language of the regulation stated that the period for nominations "should" begin 45 days and end 20 days before the election date. The language of the regulation was advisory, rather than mandatory. As previously stated, FmHA felt strongly that it had to get the elections off to a timely start in 1986 in order to fulfill its mission with regard to making farm loans. Therefore, the Agency used a compressed nomination period for this one election. Even with the shortened nomination period, the Agency was successful in holding over 1,700 elections on this schedule, and required only approximately 300 special elections in cases where a full slate of candidates could not be fielded. This generally successful result indicates that even given the shortened timeframes many farmers from across the country did hear about and participate in the elections.

In addition to changes made to the regulation as a result of public comments, the Agency has made several changes to the regulation as a result of experience gained in the first round of elections. The following are the specific changes:

The revised regulation permits State Directors to solicit resignations from elected members where a consolidation of two or more county committees results in more than two elected members resulting from the consolidation. The regulation further requires that the members draw lots, where necessary, to determine who will serve on the consolidated committee.

For consistency, FmHA added a prohibition on service on county committees to employees and agents of Rural Electrification Administration and Federal Crop Insurance Corporation.

The Agency provided for extensions of pro tem appointments beyond the initial 120 day appointment if special elections fail to produce sufficient candidates to complete a slate. Review of such requests would be made by the Personnel Director of FmHA.

The agency has added a policy statement that membership on county committees reflect, to the extent practicable, the diversity of the individuals served by the Farmer Programs. Eligible minorities and females will be designated wherever possible to serve on the committees. Language was also added requiring State Directors and/or County Supervisors to engage in outreach and information activities designed to educate minorities and women on the county committee nomination, election, selection, and appointment process.

In addition to the policy changes described above, the Agency also is taking the opportunity to clear up other sections of the rule that have confusing or misleading language or need further clarification. The principal changes are summarized below:

All individuals elected under special elections serve out the remainder of the term of the position for which the election was called.

To prevent conflict of interest county committee members are prohibited from counseling prospective borrowers regarding loan documents.

A provision was added for the election of a Chairperson for the county committee.

To further attract women and minorities to participating in the county

committee elections, County Supervisors are encouraged to publicize the elections in publications serving women and racial and ethnic minorities.

Language was added to clarify that individuals may run for election to the county committee while temporarily ineligible so long as they sign a statement indicating that they will be eligible prior to taking office.

Language was added to clarify the county supervisors' responsibility to challenge voters they reasonably believe are ineligible.

A provision was added to permit County Supervisors to take verbal as well as written argument for proof of voting eligibility.

The seven day time frame for permitting the ballot count after an election was changed to a seven work-day requirement to permit more time to obtain information on questionable ballots.

Only those candidates who receive votes may be elected.

Corrections were made to several sections relating to the processing of Federal appointments for committee members that related to differentiation between elected and designated members, the need for obtaining DD–214's for military veterans as part of the appointment documents, and the proper completion of forms relating to appointment.

Elected members will lose their eligibility to serve on the county committee if they no longer maintain their principal farming operation in the county.

Designated members will lose their eligibility to serve on the county committee if they move their residence from the county.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." FmHA has determined that his action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, P.L. 91–190, an Environmental Impact Statement is not required.

Intergovernmental Consultation Statement

This action affects the following Catalog of Federal Domestic Assistance numbers and programs:

10.404 Emergency Loans
10.405 Farm Labor Housing Loans and Grants
10.406 Farm Operating Loans
10.407 Farm Ownership Loans
10.416 Soil and Water Loans
10.421 Indian Tribes and Tribal Corporation Loans

For the reasons set forth in the final rule related Notice to 7 CFR 3015 Subpart V, this program/activity is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

List of Subjects in 7 CFR Part 2054

Agriculture, County committee members.

Therefore, Chapter XVIII, Title 7 of the Code of Federal Regulations, is amended by revising Subpart W of Part 2054 as follows:

PART 2054—EMPLOYMENT

1. The authority citation for Part 2054 continues to read as follows:

Authority: 7 USC 1989; 5 USC 301; 7 CFR 2.23; 7 CFR 2.70.

2. Subpart W, consisting of §§ 2054.1101 through 2054.1150, is revised to read as follows:

Subpart W—Employment, Pay, and Functions of County and/or Area Committees

Sec.
2054.1101 General.
2054.1102 Establishment and composition of county and/or area committees.
2054.1103 Function of the county committee.
2054.1104 Eligibility to hold office.
2054.1105 Election requirements.
2054.1106 Voting eligibility.
2054.1107–2054.1110 [Reserved]
2054.1111 Conduction elections.
2054.1112–2054.1114 [Reserved]
2054.1115 Prohibition of employee participation in committee elections.
2054.1116 Ballots.
2054.1117 Absentee ballots.
2054.1118 Ballot boxes and safekeeping of returned ballots.
2054.1119 Basic requirements for ballot count.
2054.1120 Counting ballots and announcing results.
2054.1121–2054.1122 [Reserved]
2054.1123 Notifying condidates of election results.
2054. 1124 Safekeeping and disposition of election records.
2054.1125 [Reserved]
2054.1126 Appointment.
2054.1127 Compensation.
2054.1128 Certification of services.
2054.1129 Termination of services.
2054.1130–2054.1149 [Reserved]
2054.1150 OMB Control Number.

Subpart W—Employment, Pay, and Functions of County and/or Area Committees

§ 2054.1101 General.

This subpart provides instructions of selections of county committee members. Nomination, election, or designation of county committee members are made without regard to race, color, sex, religion, national origin, age, political affiliation, marital status, and/or handicap.

§ 2054.1102 Establishment of composition of county and/or area committees.

(a) *General.* In each county or area in which Farmers Home Administration (FmHA) activities are carrier out, there shall be a county or area committee composed of three members:

(1) Two members shall be elected, by farmers deriving the principal part of their income from farming and have their principal farming operation within the county or area. "Principal part of their income" means more than 50 percent of their gross income must come from agricultural production. One member, who shall reside within the county or area, shall be designated by the State Director. Designations may also be made for alternates for each member of the county committee and will be subject to all other requirements contained in this subpart.

(2) In selecting designated members of the county committee, care should be taken to ensure, to the greatest extent practicable, that the committee is fairly representative of farmers in the county or area. Designated committee members must be in sympathy and accord with the family farm concept, be familiar with the problems of farmers and residents of rural communities, and be in general agreement with the objectives of FmHA. Designated committee members and alternates may be nonfarmers engaged in local business or professional work who reside in the county or area in which the activities of the county committee are carried out. Designated committee members and alternates may also be farmers. However, if they are farmers, they need not meet the criteria in § 2054.1102(a)(1).

(3) It is FmHA policy that membership on county committees reflect, to the extent practicable, the diversity of the individuals served by the Farmer Programs. Eligible minorities and females will be designated wherever possible, to serve on county and/or area committees. Therefore, State Directors and/or County Supervisors will:

(i) Engage in community outreach and information activities designed to educate minorities and women on the nomination, election, selection, or appointment process for FmHA county committees.

(ii) Make efforts to obtain recommendations from civil rights and women's organizations.

(b) *Area committees.* A county committee will normally be established in each county. Area committees may be established by State Directors to serve a part of a county, parts of two or more counties, or a combination of two or more counties when:

(1) Topography and communications make it impractical to establish county committees according to county boundaries;

(2) The workload in an individual county is extremely low;

(3) More than one county office is necessary to service the workload of an individual county; or

(4) It has been determined that there are insufficient interested individuals to create a county committee in a single County Office's jurisdiction.

(c) *Action to create area committees.* When a State Director establishes an area committee, he or she must issue a State supplement designating the boundaries that the committee will serve. The State Director shall give public notice of boundary changes to county or area committees in official county newspapers or publications serving the area at least 30 days before a county committee election takes place. If the establishment of an area committee will result in the elimination of a county committee and a surplus of elected county committee members, the State Director will take the following steps:

(1) Terminate one of the designated members of the two committees, if necessary.

(2) Poll the elected members of the committees as to their continued desire to serve, and accept resignations from those who voluntarily wish to resign in inverse order as to their remaining terms; i.e., 1 year, 2 years, 3 years.

(3) If a surplus of elected members still remain after taking step (2), the County Supervisor should have the members draw lots for the positions.

(d) *Temporary absence of committee members.* When committee members are not available to attend meetings, the County Supervisor can call alternates to become acting members of the committee with the same duties and authorities as regular members. A quorum of at least two members or alternates is needed to have a county committee meeting.

(e) *Permanent vacancies.* In cases of permanent vacancies, alternates may be used to complete the unexpired terms of either elected or designated members. Alternates should be designated in order of succession at the State Director's discretion; e.g., first alternate, second alternate, and third alternate. Alternates succeeding to members' unexpired terms will serve out the remainder of the term. If an alternate is not available to fill the county committee vacancy, the State Director will review the prevailing circumstances and determine the best course of action as follows:

(1) Continue with existing members until the next regular election.

(2) Designate additional alternates.

(3) Call a special election to fill vacancies.

(f) *Special elections.* The State Director may set the date for special elections that might be necessary in filling permanent vacancies or vacancies caused by inability to complete a slate of nominees during a regular election. Vacancies created by the inability to complete a slate of nominees to fill an expired term of an elected member must be filled through special elections held not later than 120 days after the regular elections. Committee members elected through special elections will serve out the remainder of the term of the position for which the election was called.

§ 2054.1103 Functions of the county committee.

(a) The major functions to be performed by FmHA county committees, which are more specifically set out in the FmHA regulations relating to various program activities, consist of:

(1) Determining the eligibility of applicants for certain types of loans, including farmer program loans, irrigation and drainage loans and loans to grazing associations;

(2) Making recommendations on resolving problem cases;

(3) Conferring with the County Supervisor on the servicing of FMHA loans with respect to borrowers who should be referred to other credit sources, including graduation;

(4) Making recommendations regarding applications for compromise or adjustment or cancellation of debts owed to FmHA;

(5) When requested by the County Supervisor, advising the County Supervisor, debtors, and their creditors in connection with voluntary debt adjustment; and

(6) Attending appeal hearings authorized under Subpart B of Part 1900 of this chapter.

(b) Members will not be assigned to perform service as individuals and will be paid for service only when requested to attend county committee meetings, make certain field visits with the County Supervisor, and attend appeal hearings and training meetings in accordance with FmHA regulations. They may not counsel prospective borrowers regarding preparation of loan documents. This will not prohibit a county committee member from making inquiries concerning applicants and borrowers during the normal contacts in his or her county or area.

(c) The County Supervisor is authorized to convene the county committee subject to the limitations specified in § 2054.1127(a)(1) of this subpart. Form FmHA 2006–9, "Notice of Visit or Meeting," may be used to notify county committee members of meetings. The County Supervisor serves without extra compensation as Executive Secretary of the county committee.

(d) At the first meeting after July 31 of each year, the members of the county committee will elect one member to serve as Chairperson for that year.

(e) The County Supervisor will prepare Form 2054–7, "Record of County/Area Committee Meetings," and maintain such files and records as may be required to reflect actions taken by the committee. The County Supervisor may designate the Assistant County Supervisor to represent him or her at county committee meetings, when it is not possible for the County Supervisor to attend. Such designations may be made orally. In these instances, the Assistant County Supervisor will prepare and sign minutes of the meetings as Executive Secretary and other records necessary to reflect actions taken by the committee.

§ 2054.1104 Eligibility to hold office.

Elected committee members must be persons who have their principal farming operation within the county or area in which activities of the county committee are carried out, and derive the principal part of their income from farming (as defined in § 2054.1102(a)(1) of this subpart). Criteria for selection of the designated member and alternates are found in § 2054.1102(a)(2) of this subpart. In addition, the elected and/or designated members and alternates must meet all of the following requirements to hold office as a county committee member:

(a) Be a citizen of the United States, or an alien lawfully admitted to the United States for permanent residence.

(b) Not have been removed for cause from any public office, or have ever been convicted of fraud, larceny, embezzlement, or any felony.

(c) Not have been dishonorably discharged from any branch of the armed services.

(d) Not currently be an officer or employee of a partisan political party, or be active in the management or affairs of any political club, organization, or committee. The general rules are contained in FmHA Instruction 2045–CC

(available in any FmHA office). See especially §§ 2045.1402(b) (Coverage), 2045.1407 (Prohibited activities), and 2045.1410 (Accepting and holding State and local offices). Committee members are also subject to the prohibitions contained in Executive Order 11222 and Department of Agriculture (USDA) policy contained in Part 735, Departmental Personnel Manual (DPM) Supplement 990–1, with respect to holding public office.

(e) Not be employees of FmHA, Agricultural Stablilization and Conservation Service (ASCS), Soil Conservation Service (SCS), Extension Service (ES), Rural Electrification Administration (REA), Federal Crop Insurance Corporation (FCIC), or agents of these agencies.

(f) Not currently be an employee of the Federal Land Bank, Production Credit Association or Farm Credit System or serve on committees which make recommendations for approval of loans to these organizations since FmHA may be involved in participation loans with such Farm Credit System loans.

(g) Not be an individual or the spouse or family member of such an individual living in the same household, or a stock holder of a corporation, member of a cooperative, joint operator of a joint operation, or a partner in a partnership, with an outstanding loan insured or guaranteed by FmHA, except a Section 502 Rural Housing loan as provided in FmHA Instruction 2045–BB (available in any FmHA office). FmHA loan applicants are *not* ineligible to hold office, but must be informed that if the loan is approved and they are elected, they will have to resign from the committee.

(h) Not perform any of the following functions for an FmHA-financed association or organization after appointment:

(1) Serve as an official;

(2) Perform administrative or employee functions including performing clerical services, maintaining financial or other records, preparing financial reports, or developing operating budgets.

(i) Not currently be an employee or serve on Boards of Directors of Banks or Savings and Loan Associations or be the spouse or family member living in the same household of an individual serving on the board of such organizations in the county or area over which the county committee has jurisdiction, since FmHA may be involved in participation loans with such banks.

(j) Meet the legal or regulatory requirements for appointment to Federal employment. (See § 2054.1128 of this subpart.) This determination will be made subsequent to nomination but prior to the committee member taking office.

§ 2054.1105 Election requirements.

(a) *Election dates.* All regular elections of county committee members shall be held in those years that an elected member's term expires. This date must be in June but not either a Saturday or Sunday or a federally or State-recognized holiday. It shall be selected by the State Director and announced to the public.

(b) *Length of terms.* Elected and designated members of the county committee shall serve for a term of three years.

(c) *Beginning dates of terms.* County committee members begin their terms as follows:

(1) For regular elections, no later than July 31.

(2) For special elections, no later than 30 days after the election was held.

(d) *Notice to the public.* Information concerning county committee elections shall be made available to the general public through the use of official county newspapers or publications in general circulation serving the area, through notices prominently posted in FmHA offices within the area, and, if possible, in ASCS and/or ES newsletters, and through public service announcements on radio and/or television stations serving the area. To ensure participation of women and racial and ethnic minorities, publications in circulation serving the area that serve these groups should also be utilized to provide information concerning the elections.

§ 2054.1106 Voting eligibility.

An individual farmer is entitled to one vote. A "Farmer" who is a legal entity such as a corporation, partnership, cooperative, joint operation, association or other legal entity is entitled to one vote by its duly authorized representative. A farmer may vote in only one county or area election. In order to vote in the election of a county committee member, voters must:

(a) Be farmers; e.g., one or more members of a family farm engaged in agricultural production or be representatives of a legal entity engaged in agricultural production.

(b) Derive the principal part of their income from farming (as defined in § 2054.1102(a)(1) of this subpart).

(c) Have their principal farming operation within the county or area for which the election is being held.

§§ 2054.1107–2054.1110 [Reserved]

§ 2054.1111 Conducting elections.

(a) *Election calendar.* An election calendar is provided as Exhibit C of this subpart (available in any FmHA office).

(1) The election calendar provides a sequence of events for conducting the election.

(2) If the final date for any event is a nonworkday, it is automatically extended to the next workday.

(b) *Developing slates of nominees.* Nomination by petition shall be the method used for developing slates of nominees.

(1) The period for nominating by petition will begin at least 45 days and end 20 days before the election date.

(2) The opportunity to nominate by petition shall be announced in official county newspapers or other publications in general circulation serving the county or area and, if possible, in ASCS and/or ES newsletters and through public service announcements on radio and television stations serving the area. In addition, notices shall be posted in all FmHA offices within the area. The Notice of Right to Nominate By Petition shall be completed by the County Supervisor and read as set forth in Exhibit A of this subpart (available in any FmHA office).

(3) The minimum number of eligible nominees for a slate is one per vacant elected committee member position. The State Director or designated staff may solicit nominations during the nominating period.

(4) At least three eligible voters (including the nominee) within the county or area must sign a nominating petition in order for it to be valid. No one may sign more than one nominating perition.

(5) All eligible nominees nominated by valid petition shall be included on the slate for county committee.

(c) *Approval and processing of nominations by public petitions.* The County Supervisor shall review all petitions and verify their validity, including the eligibility of the nominee to hold office. In order to be valid, petitions must be:

(1) Limited to one nominee each.

(2) Signed by the nominee certifying that he or she is willing to serve if elected.

(3) Received in the County Office no later than 20 days before the election date, whether delivered in person or by mail.

(4) Accompanied by a signed statement by the nominee certifying that he or she either currently meets the criteria to hold office, or will do so prior

to taking office. If all the criteria are not met at the time the nomination is filed, the candidate must specify how he or she will meet the criteria; e.g., resign from a position listed in § 2054.1104 (d), (e), (f), (g), (h), or (i).

(d) *Action to complete slate of nominees.* The State Director or designated staff may solicit nominations during the nominating period.

(1) The petitions will be returned to the County Office for execution of Form FmHA 2054–5, "Nominating Petition."

(2) The completed Form FmHA 2054–5 must be in the County Office no later than 20 days before the election.

(3) The County Supervisor will send a letter to all eligible nominees explaining the duties of county committee member and will retain a copy in the County Office files. See FmHA Guide Letter No. 2054–1, "Letter to Nominees" (availabile in any FmHA Office).

(4) If less than the required minimum number of valid nominations are made by petition, the regular election will be cancelled, and the State Director will designate the necessary number of pro tem county committee members to have a full committee. These pro tem designees must meet all the requirements of this subpart concerning designated members and may serve only until a special election can be held and elected members appointed. Pro tem appointments may be made not-to-exceed 120 days. If special election fails to produce a sufficient slate of candidates, requests for extensions of pro tem appointments, with supporting justification, may be made to the Director, Personnel Division.

§§ 2054.1112—2054.1114 [Reserved]

§ 2054.1115 Prohibition of employee participation in committee elections.

FmHA employees shall not campaign for or against any county committee candiate or nominee, or actively participate in the election except as necessary to:

(a) Perform their official duties.

(b) Vote, if eligible.

§ 2054.1116 Ballots.

Ballots shall be published at the time an election is announced in official county newspapers or publications serving the area. The Notice of Election, which contains the ballot, shall be completed by the County Supervisor and read as set forth in Exhibit B to this subpart (available in any FmHA office). Each State may distribute additional ballots through means other than publications, as necessary. The announcement must be made at least 10 days prior to the date of the election. There shall be a statement in the announcement as to where and when the ballots shall be returned. Ballots shall also be available at the County Office. Ballots should be mailed as set forth in § 2054.1117 of the subpart to any person who requests one even though the person's eligibility has not been determined. The names of voters who vote in person will be verified against an ASCS list of producers and checked from that list. A separate list must be maintained manually by the County Supervisor of those individuals voting in person or by absentee ballot in the county committee election. The ASCS producer list will be used by FmHA only as an indicator that the prospective voter has an interest in farming. Presence or absence of an individual from the ASCS list does not automatically qualify or disqualify an individual. The County Supervisor can challenge anyone presenting themselves to vote, if there is a reasonable basis to believe that the voter is not eligible to cast a ballot. However, the County Supervisor should count the vote of a prospective voter if his or her name is found on the ASCS list, is not otherwise known to be ineligible, and submits a ballot. If the prospective voter is not on the voter list, but can provide information that shows he or she is otherwise eligible, the voter should be permitted to vote.

§ 2054.1117 Absentee ballots.

Persons who do not plan to vote in person may request that a ballot be mailed to them. The ballot should be enclosed in an envelope along with voting instructions, a return envelope with the County Office address, and a plain white envelope stamped ballot enclosed. The voter must pay the postage on the return envelope and return the ballot on or before the date set for the election. Upon receipt of the ballot, the name of the voter will be verified against the ASCS producer list, checked off that list, and added to the FmHA voter list. Absentee ballots are subject to the same review process as ballots voted in person. The County Supervisor may challenge any absentee ballot for which there is a reasonable basis to believe that the person voting is not eligible. In these cases, and in cases where the prospective voter is not on the ASCS list, the County Supervisor will hold the ballot in abeyance and write or otherwise contact the individual advising that he or she must provide a verbal explanation or documentation that he or she meets the voter criteria. Individuals must be given 5 working days to respond. If the prospective voter does not respond within the time permitted, or does not provide sufficient information for the County Supervisor to make a determination, the vote will not be counted, and the ballot will be destroyed 30 days after the election. All absentee ballots submitted by eligible voters will be placed unopened in the ballot box by the County Office staff.

§ 2054.1118 Ballot boxes and safekeeping of returned ballots.

Each County Office holding an election will provide a ballot box in the County Office. The boxes must:

(a) Be of sufficient size.

(b) Be constructed so ballots cannot be read or removed.

(c) Be sealed so that tampering with the box would be visible.

(d) Be identified as the ballot box for the county or area in which it is used.

§ 2054.1119 Basic requirements for ballot count.

Ballot count by County Office staff:

(a) Ballots shall be counted with 7 working days after the election.

(b) The counting process should be public. This can be done by counting in the County Office during regular working hours.

§ 2054.1120 Counting ballots and announcing results.

The County Office staff shall:

(a) Announce the beginning of the count, if witnesses are present.

(b) Open the ballot box in the presence of witnesses.

(c) Examine the ballots and determine whether each meets the election requirements.

(d) Separate the valid from the invalid ballots. Invalid ballots will not be counted and will be destroyed as specified in § 2054.1124 of this subpart. Examples of invalid ballots are those that contain write-in candidates, more votes than are specified as being appropriate, or no clear vote.

(e) Call out the votes shown on the ballots.

(f) Review the final vote count and determine the candidates elected.

(g) Settle all two-way ties by coin toss, if necessary. Ties involving more than two will be settled by drawing lots.

(h) Only those candidates who receive one or more votes can be elected. If less than the necessary number of candidates are elected to fill the vacant positions, special elections will be required for those seats left unfilled.

§§ 2054.1121–2054.1122 [Reserved]

§ 2054.1123 Notifying candidates of election results.

The County Supervisor will promptly notify candidates of election results in

writing. See FmHA Guide Letter No. 2054–2, "Letter to Elected County Committee Members" (available in any FmHA office).

§ 2054.1124 Safekeeping and disposition of election records.

(a) Ballots for each County Office should be placed in a sealed container.

(b) Ballots should be retained for 60 days after the elections and then destroyed if no complaint or investigation is initiated.

(c) FmHA voter lists, and other election documents such as the nominating petitions, nominee's certification to hold office, etc., should be retained in the County Office files and disposed of after a period of 3 years.

§ 2054.125 [Reserved]

§ 2054.1126 Appointment.

(a) *Employment conditions.* County committee members both elected and designated are given Federal appointments on an intermittent basis under "Schedule A, Section 213.3113(e)(2)" of Civil Service Rules and Regulations. They are not required to take an Office of Personnel Management (OPM) examination and are not selected from OPM registers. They do not acquire competitive status through their appointment, but such service is creditable toward retention and retirement in connection with other Federal employment. Neither retirement nor social security deductions are made from their pay, nor do they earn annual or sick leave. County committee members are not eligible for life insurance or health benefits coverage.

(b) *Processing accessions.* To document selection of county committee members, specific remark codes have been assigned for use in processing the accession action (SF–52, "Request for Personnel Action," and AD–350A, "Change Action Notice") for members. One of the remark codes listed below must be entered in Blocks 37 and 56 respectively. The National Finance Center (NFC) will supply the descriptive data and complete the remark.

(1) Elected county committee member—remark code 167—remark is—Employee elected as a county committee member.

(2) Designated as a county committee member—remark code 168—remark is—Employee designated as a county committee member.

(3) Designated as an alternate county committee member—remark code 169—remark is—Designated as an alternate county committee member.

(c) *Dual compensation.* A person may be appointed and paid as a county committee member while also holding another Federal appointment in an agency on a part-time or intermittent basis, subject to the exclusions found in § 2054.1104(e) of this subpart. In such cases, the member may not receive pay under both appointments for more than 40 hours in any one calendar week.

(1) A full-time Federal employee may be appointed only on a "Without Compensation" (WOC) basis.

(2) A full-time or part-time State government employee (not disqualified under § 2054.1104 of this subpart) may be appointed. If acceptance of Federal salary would violate a State law, while acceptance of the appointment itself would not be prohibited by the State Constitution or laws, it may be made on a WOC basis.

(3) A retired civilian employee of the Federal Government may be appointed only on a WOC basis.

(4) Dual compensation restrictions do not apply to persons receiving retired pay for enlisted military service, provided they are not receiving other payments from the Federal Government which would constitute a violation of such restrictions.

(5) Dual compensation restrictions apply for persons receiving retired pay for *service as a commissioned officer.* The State Director will make the necessary determinations in such cases in accordance with FPM Chapter 550, Subchapter 6, "Reduction-in-Retired Pay Provision of the Dual Pay Status."

(d) *Appointment procedures.* The following procedures are to be followed:

(1) The County Supervisor will have the prospective county committee members including alternates complete Standard Form 171, "Personal Qualifications Statement," in an original only, which will be forwarded to the State Director by the County Supervisor with Form FmHA 2054–6, "Mileage Certification for County Committee Members," in an original completed by the County Supervisor. Although veteran's preference does not apply to county committee member appointments, copies of the DD–214 should be obtained from veterans in order to accurately establish Service Computation Dates (SCD) for members.

(2) *Care should be taken that all Federal, territorial, State, county, or local offices held by a nominee for county committee appointment are specified on the Standard Form 171,* in the space showing experience, so that the State Director may determine eligibility under the applicable restrictions.

(3) The State Director will review Standard Form 171 for completeness and conformity with requirements and will process Form AD–350A. The State Director will send a copy of Forms AD–350A, AD–349, "Declaration Sheet," SF–61, "Appointment Affidavits," Treasury Form W–4, "Employee's Withholding Exemption Certificate," and State Income Tax withholding form, where applicable, to the County Supervisor. The copy of Form AD–350A will be retained in the County Office committee file. FmHA Instruction 2045–BB and Appendix 1, "Employee Responsibilities & Conduct," will be sent to the County Supervisor with other forms for distribution to the new committee member.

(4) The County Supervisor will instruct the committee member in completing the Form AD–349, SF–61, Treasury Form W–4, and State withholding form, when used, and will return these forms to the State Director for review. The date of Appointment Affidavit must be recorded on Form AD–321–3, "Time and Attendance Report," before Form AD–349 is forwarded to the State Director. Failure to enter the date of the Appointment Affidavit on the Time and Attendance Report will delay the county committee member's pay. Form AD–349 must be executed in its entirety. The State Director will forward the "Employee Copy" of Standard Form 50B printout produced by National Finance Center (NFC) to the County Supervisor for delivery to the county committee member.

(5) The terms of committee members and alternates begin on the effective date of the Schedule A Appointment.

(6) Elected county committee members will be issued a "Certificate of Election." These certificates can be reordered only by State Offices. When ordering from the warehouse, State Offices should ask for item No. 410, Certificate of Election.

(e) County committee members are covered by FmHA Instruction 2045–BB, including Exhibits A and B "Employee Responsibilities and Conduct".

§ 2054.1127 Compensation.

(a) *Computing time.* Service performed by regular and alternate county committee members will be computed in units of whole days. Alternate county committee members who, at the request of County Supervisors, attend county committee meetings for training and/or orientation purposes are entitled to compensation even if all three regular county committee members are present.

(1) *Service time limits.* County committee members are limited to a maximum of 20 days of service in any

one calendar month. Avoid short or unnecessary meetings.

(2) *Compensation restrictions.* Payment of salary for county committee services (as distinguished from the allowance "in lieu of travel and subsistence") may be prohibited in some cases as outlined in § 2054.1126 (c)(3) and (4).

(b) *Rates of pay and allowance.* For county committee services performed in connection with the FmHA program, members will be paid at the basic daily rate of $30.00 plus an allowance in lieu of travel and subsistence on a sliding scale based on the distance from the county committee member's residence to the county office or other place where county committee meetings are normally held, as provided on the following chart:

One-way mileage from residence to meeting place	Salary	Allowance	Total
20 or less	$30.00	$6.00	$36.00
25–50	30.00	9.00	39.00
51 and over	30.00	12.00	42.00

(1) The allowance in lieu of travel and subsistence for each county committee member will be established by the State Director at the time of appointment. The rate will be based upon certification from the County Supervisor as to the mileage between the county committee member's residence and the place where the meetings are normally held, by way of the most commonly traveled route. This rate will remain fixed after initially established, unless there is a change in the residence or place where meetings are normally held, so as to place the member in a lower or higher allowance zone. The change in allowance is effective the first of the month which is not less than 30 calendar days after: (i) the change in residence; or (ii) the first meeting at the new regular location. Changes in allowance in lieu of travel and subsistence will not be made for attendance at training meetings, appeal hearings, or for occasional county committee meetings not held at the regular location.

(2) County Supervisors will certify on Form 2054–6, for each person appointed. The certification will be submitted to the State Director at the time other documents required by 2054.1128 of the subpart are submitted.

(3) A revised certification on Form FmHA 2054–6 will be submitted for a county committee member as required. This certification will be submitted as soon as possible after the county committee member's residence has changed, or after the first county committee meeting at the new location.

(4) If the County Supervisor has positive knowledge of the proper mileage zone, he or she may make the required certification without taking speedometer readings. Otherwise, the certification will be based on actual speedometer readings.

(5) The speedometer readings will be taken to the nearest full mile, with five tenths of a mile counted as the next highest mile. All certification will be prepared in duplicate, with a copy retained in the county office.

§ 2054.1128 Certification of services.

The County Supervisor will certify byweekly on Form AD–321–3, all services for which county committee members are to be paid. These forms should be completed and submitted promptly to NFC according to the Management of Objectives with Dollars through Employees (MODE) Time and Attendance Report Handbook.

§ 2054.1129 Termination of services.

If a county committee member is terminated prior to the expiration of the appointment, the State Director will process Form AD–350A. The Employee's Copy will then be forwarded to the County Supervisor for delivery, using Form FmHA 2054–4, "Separation Notice to County Committee Members," or other suitable letter from the State Director to the committee member. If other than the form letter is used, a copy should be provided for the county committee file. If the form letter is used, no copy is needed.

(a) *Resignation.* The resignation of a county committee member may not be coerced by the County Supervisor or any other person. Members wishing to resign, however, should be urged to do so in writing so that the resignation may be accepted by official action. Resignations will be sent by the County Supervisor to the State Director, accompanied by a recommendation for replacement, if possible (see § 2054.1102(e) of this subpart).

(b) *Other separations.* (1) The County Supervisors will inform members that they no longer meet eligibility requirements when they enter military service. Elected members will lose eligibility if they no longer maintain their principal farming operation in the county or area they represent. Designated and alternate members will lose their eligibility if they move from the area. In all cases the County Supervisor will so notify the State Director. If a resignation is not promptly submitted, termination of the appointment will be processed by the State Director.

(2) When a committee member accepts public office or engages in political activity in violation of the restrictions outlined in § 2054.1104 of this subpart, it is the State Director's responsibility on receipt of such information to make a full report to the Administrator. Upon receipt of a decision or guidance from the Administrator, the State Director will handle the case and direct the processing of any necessary personnel action.

(3) The County Supervisor will notify the State Director if a member dies so that the appropriate action may be processed.

(4) If a County Supervisor or other FmHA officials have information concerning personal conduct of a county committee member which adversely affects FmHA and the USDA, such information should be sent in a confidential letter to the State Director who will forward a report with recommendations to the Administrator. Upon receipt of a decision or guidance from the Administrator, the State Director will handle the case and direct the processing of any necessary personnel action.

(5) Where termination is due to the expiration of the term of appointment, a termination action is not necessary. NFC will automatically drop the county committee member from FmHA rolls. A letter of appreciation will be sent to the county committee member by the State Director.

§ 2054.1130–2054.1149 [Reserved]

§ 2054.1150 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575–0117.

Dated: July 17, 1987.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 87–18767 Filed 8–17–87; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 204

[INS Number: 1012-87]

Petition To Classify Alien as Immediate Relative of a United States Citizen or as a Preference Immigrant

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rulemaking changes the method by which a third preference or sixth preference priority date is established. Under regulations which have been in effect since June 20, 1986, a priority date established by the submission of a request for labor certification is lost if the immigrant visa petition seeking third or sixth preference classification is not filed within 60 days of the date of issuance of the certification, or if the petition is not resubmitted within 60 days of being returned to the petitioner for additional information. The regulations were promulgated in order to prevent certain abuses which existed under the prior regulations. However, the enactment of the Immigration Reform and Control Act of 1986 (IRCA) on November 6, 1986 made the June 20 changes superfluous, since IRCA more effectively prevents the same abuses.

EFFECTIVE DATE: September 17, 1987.

FOR FURTHER INFORMATION CONTACT: Michael L. Shaul, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, Telephone: (202) 633-3946.

SUPPLEMENTARY INFORMATION: Under section 212(a)(14) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. 1182(a)(14), certain aliens may not obtain an immigrant visa for entry into the United States to engage in permanent employment unless the Secretary of Labor has issued a labor certification stating that there are not sufficient workers who are able, willing, qualified, and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform the skilled or unskilled labor, and that the employment of these aliens will not adversely affect the wages and working conditions of similarly employed workers in the United States.

There are three alien immigrant classifications which require a labor certification. These are the third and sixth preference, and under various circumstances, nonpreference classifications (sections 203(a)(3), 203(a)(6) and 203(a)(7) of the Act (8 U.S.C. 1153)). For third and sixth preference applicants, labor certification applications are filed by employers with a state employment service office unless the alien's occupation is a Schedule A occupation (already certified by the Secretary of Labor as in short supply in the United States). If a labor certification is issued or the beneficiary's occupation is on Schedule A, the employer (prospective or current) submits an immigrant visa petition to the Immigration and Naturalization Service ("the Service"). Section 203(c) of the Act (8 U.S.C. 1153(c)) provides that visas will be issued under section 203(a)(1) through (6) to eligible immigrants in the order in which a petition is filed on behalf of each of these immigrants with the Attorney General as provided in section 204 of the Act (8 U.S.C. 1154). If a preference immigrant visa number is immediately available when the petition is approved, the alien beneficiary may be issued an immigrant visa with which to enter the United States for permanent residence or, under certain circumstances, may be permitted to adjust status to that of a permanent resident. If a preference immigrant visa number is not available at the time the petition is approved, the alien's name is instead placed on a waiting list. Petitions are then processed for permanent residence status by date filed. Thus, the filing date has come to be known as the "priority date".

Over the years, the priority date has been computed in different ways at different times. Originally the priority date was based strictly on the date the visa petition was filed with the Service after issuance of the certification by the Department of Labor (DOL). However, because there were varying backlogs and processing times among the offices of the DOL's employment service system, some individuals were able to file the petition earlier than others. Accordingly, in order to eliminate what was seen as an unfair advantage enjoyed by some, the method of computation was changed so that the date that a labor certification request was filed with the local office of the state employment service became the priority date. This method created an opportunity for abuse by those employers and aliens who would obtain a labor certification but not file the I-140 petition until a visa number became available, thereby hiding the illegal alien from the attention of the Service. Accordingly, on June 20, 1986, the regulation was again changed to require that the petitioner file the petition within 60 days of the issuance of the labor certificate, or resubmit the petition within 60 days of the date it was returned for additional information or documentation, in order to retain the priority date. If the petition were not submitted or resubmitted within the allotted period, the date of submission or resubmission would be the new priority date. This provision became known as the "60-day rule".

On November 6, 1986 the Immigration Reform and Control Act (IRCA) became law. By providing for sanctions to be imposed against employers who hire aliens who are not authorized to accept employment in the United States, IRCA removes the incentives for abuse which necessitated the regulatory change of June 20, 1986. With these incentives removed, the 60-day rule became disadvantageous to both the Service and the public.

Accordingly, on May 14, 1987 the Service proposed at 52 FR 18236 to restore the procedure which was in effect prior to June 20, 1986. Additionally, the proposed rulemaking provided that a priority date shall only be established in the case of a third or sixth preference petition for an occupation listed in Schedule A (20 CFR 656.10) if the petition is approved. If the petition is denied, no priority date is established. The proposed rule also invited interested parties to submit comments no later than June 15, 1987.

During the allotted period the Service received eight comments, all but one of which were in favor of abolishing the 60-day rule, with five of them requesting that the rule change be made retroactive to June 20, 1986. The one negative commenter believed that employer sanctions will not be effective in preventing all kinds of illegal employment and feared that the "sunset" provisions of IRCA might take effect and cause the Service to have to reinstitute the 60-day rule.

While neither IRCA nor any other law can be expected to end all illegal employment, it is anticipated that IRCA will be sufficiently effective to obviate the need for the 60-day rule. The Service always recognized that there were both advantages and disadvantages to the rule, with the advantages outweighing the disadvantages only until the enactment of IRCA. Should the sunset provisions of IRCA take effect, the Service will consider reviving the 60-day rule.

In order to facilitate implementation of this rulemaking and to provide for uniformity of procedures, it has been determined that a petitioner who lost a priority date strictly because of the application of the 60-day rule between June 20, 1986 and the effective date of

this rulemaking may have that lost priority date restored by making a written request to the consulate or immigration office where the approved petition is currently located. The written request should include a photocopy of the notice of approval of the petition (Form I–464). Upon receipt of the written request the consular officer or district director will correct the priority date on the petition and, if a visa number is available and the alien is otherwise eligible, allow the alien to apply for an immigrant visa or adjustment of status, as appropriate.

The one person who commented on the clarification of the method of establishing a priority date in a Schedule A case was in favor of the proposal, but asked for clarification as to what was meant by the term "approved" and whether it would also apply to a petition approved on appeal. The term "approved" applies, and the filing date is established as the priority date, regardless of whether the petition is approved by a district director, by the appellate authority, or by a Federal Judge upon judicial review.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule would not, if promulgated, have a significant adverse economic impact on a substantial number of small entities.

This rule is not a major rule within the meaning of section 1(b) of E.O. 12291.

List of Subjects in 8 CFR Part 204

Administrative practice and procedure, Aliens, Petitions.

Accordingly, Chapter I of Title 8, Code of Federal Regulations, is amended as follows:

PART 204—[AMENDED]

1. The authority citation for Part 204 is revised to read as follows:

Authority: 66 Stat. 166, 173, 175, 178, 179, 182, 217; 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1255.

2. In § 204.1, paragraph (d)(2) is revised to read as follows:

§ 204.1 Petition.

* * * * *

(d) * * *

(2) *Filing date.* In the case of a third or sixth preference petition (except for an occupation listed in Schedule A), the filing date of the petition within the meaning of section 203(c) of the Act will be the date the request for certification was accepted for processing by any office within the employment service system of the Department of Labor. If a third or sixth preference petition for an occupation listed in Schedule A is approved, the filing date of the petition shall be the date it is properly filed with the appropriate Service office. If a third or sixth preference petition for an occupation listed in Schedule A is not approved, no priority date shall be established.

* * * * *

Dated: August 3, 1987.

Richard E. Norton,

Associate Commissioner, Examinctions, Immigration and Naturalization Service.

[FR Doc. 87–18872 Filed 8–17–87, 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 87-079]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the regulations governing the interstate movement of cattle because of brucellosis by classifying the state of Texas as Class B. The state of Texas as a whole meets the standards for Class B status. This action relieves certain restrictions on the interstate movement of cattle from Texas.

EFFECTIVE DATE: September 17, 1987.

FOR FURTHER INFORMATION CONTACT: Dr. Jan Huber, Senior Staff Veterinarian, Domestic Programs Support Staff, Veterinary Services, APHIS, USDA, Room 812, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; 301–436–5965.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule published in the Federal Register and effective April 1, 1987 (52 FR 10554–10555, Docket Number 87–042), we amended the regulations governing the interstate movement of cattle because of brucellosis by classifying the state of Texas as Class B. Before publication of the interim rule, Texas had been divided into two areas for brucellosis, Class B and Class C. We did not receive any comments, which were required to be filed on or before June 1, 1987. The facts presented in the interim rule still provide a basis for the amendment.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Cattle moved between the Class B and Class C areas of Texas were required under Texas law and regulations to meet standards equivalent to the regulations in Part 78 for movements between Class B and Class C states. However, Texas still requires most cattle to be tested for brucellosis before intercounty movements and sharply restricts the intercounty movements of brucellosis reactor, suspect, and exposed cattle. Consequently, this rule will not have a significant effect on market patterns or a significant economic impact on those persons involved in the movement of cattle within Texas.

Classifying the entire state of Texas as Class B for brucellosis also reduces certain testing and documentation requirements for cattle moved interstate from the area of Texas previously classified as Class C. However, the requirements for moving cattle interstate to recognized slaughtering establishments or quarantined feedlots, for moving cattle from certified brucellosis-free herds, and for moving cattle interstate to and from two premises owned, leased, or rented by the same individual remain unchanged. Consequently, we anticipate that this rule will not have a significant effect on market patterns or a significant economic impact on those persons involved in the interstate movement of cattle.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a

substantial number of small entities. Executive Order 12372.

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V).

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

PART 78—BRUCELLOSIS

Accordingly, we are adopting as a final rule without change, the interim rule that amended 9 CFR Part 78 and that was published at 52 FR 10554–10555 on April 1, 1987.

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 12th day of August, 1987.

J.K. Atwell,

Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 87-18864 Filed 8-17-87; 8:45 am]

BILLING CODE 3410-34-M

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9 CFR Part 94

[Docket No. 87-069]

Change in Disease Status of the Netherlands Because of African Swine Fever

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations governing the importation of pork and pork products into the United States by removing the Netherlands from the list of countries regulated because of African swine fever (ASF). We are taking this action because we have determined that ASF has been eradicated from the Netherlands. This rule will remove certain restrictions on the importation into the United States of pork and pork products from the Netherlands.

However, the Netherlands is not included in the lists of countries declared to be free of rinderpest and foot-and-mouth disease, hog cholera, and swine vesicular disease. Therefore, even with the adoption of this rule, the restrictions imposed because of these diseases remain in effect for the Netherlands, and pork and pork products must still be heat treated or cured as a condition of importation into the United States.

EFFECTIVE DATE: August 13, 1987.

FOR FURTHER INFORMATION CONTACT: Dr. Mark P. Dulin, Senior Staff Veterinarian, Animal Products and Byproducts of the Import-Export and Emergency Planning Staff, VS, APHIS, USDA, Room 805, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8499.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 94 (referred to below as the regulations), among other things, regulate the importation of pork and pork products to prevent the introduction into the United States of African swine fever (referred to below as ASF). ASF is potentially the most dangerous and destructive of all communicable swine diseases. The causative virus, is highly virulent and may be present in swine, pork, and pork products originating in countries where the disease exists.

On April 24, 1987, we published in the **Federal Register** (52 FR 13693–13694, Docket 87–036), a document proposing to amend § 94.8 of the regulations governing the importation into the United States of pork and pork products by removing the Netherlands from the list of countries regulated because African swine fever exists or the Administrator of the Animal and Plant Health Inspection Service has reason to believe the disease exists. The effect of this action is to remove certain restrictions on the importation into the United States of pork and pork products from the Netherlands.

Our proposal invited the submission of written comments on or before June 23, 1987. We received one comment, which supports the proposed rule. Therefore, we are adopting the provisions of the proposed rule as a final rule.

Effective Date

This final rule was made effective upon signature. It relieves certain restrictions on the importation into the United States of pork and pork products from the Netherlands. Accordingly, prompt action was taken to remove these restrictions.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will not have an effect on the economy of more than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state or local government agencies, or geographical regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

In the year prior to the 1986 outbreak of ASF, less than nine-tenths of one percent of the pork and pork products imported into the United States came from the Netherlands. We therefore anticipate that insignificant quantities of pork and pork products will be imported into the United States from the Netherlands as a result of the adoption of this rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V).

List of Subjects in 9 CFR Part 94

African swine fever, Animal disease, Exotic Newcastle disease, Foot-and-mouth disease, Fowl pest, Garbage, Hog cholera, Imports, Livestock and livestock products, Meat and meat products, Milk, Poultry and poultry products, Rinderpest, Swine vesicular disease.

Accordingly, 9 CFR Part 94 is amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), NEWCASTLE DISEASE (AVIAN PNEUMOENCEPHALITIS), AFRICAN SWINE FEVER, AND HOG CHOLERA: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for Part 94 continues to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a,

134b, 134c, 134f; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

§ 94.8 [Amended]

2. The introductory paragraph in § 94.8 is amended by removing "Netherlands."

Done at Washington, DC, this 13th day of August, 1987.

J.K. Atwell,

Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 87-18863 Filed 8-17-87; 8:45 am]

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 0

Standards and Procedures for Case-by-Case Exemptions for De Minimis Interests From Prohibition Against Employee's Participation in Particular Matter Affecting Employee's Financial Interests

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations governing the granting of statutorily authorized case-by-case exemptions for insubstantial interests from the prohibition against an employee's personal and substantial participation in a particular matter the outcome of which would have a direct and predictable effect on the financial interest of the employee or certain persons or organizations related to the employee. Experience has shown that the agency's procedures and standards for granting such exemptions are in need of clarification and elaboration. The revisions will help assure that the discretion given by statute to agency officers to grant these exemptions will continue to be exercised in an appropriate fashion.

EFFECTIVE DATE: August 18, 1987.

FOR FURTHER INFORMATION CONTACT: Steven Crockett, Attorney, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (202) 634-1465.

SUPPLEMENTARY INFORMATION: Section 0.735-21(a) of the Commission's stanadards of conduct regulations implements the prohibition in 18 U.S.C. 208(a) against an employee's participating personally and substantially in a particular matter in which the employee, or certain persons or organizations related to the employee, has a financial interest. Section 0.735-21(b), under the authority of 18 U.S.C. 208(b)(1), sets out procedures for graing case-by-case exemptions from § 0.735-21(a) in instances where the interest involved is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from the employee.

Experience with § 0.735-21(b) has shown that this paragraph's description of the procedures to be followed in entertaining exemption requests, and the standards to be applied in deciding whether to grant the requests, are in need of clarification and elaboration. For example, strictly read, the paragraph does not cover exemption requests from employees in Commission-level offices. Moreover, experience in the NRC and other agencies has identified important factors to be considered in deciding whether to grant case-by-case exemptions, yet the standard set out in the paragraph merely restates the statutory language.

The revised § 0.735-21(b) applies to all employees. It more clearly assigns the responsibility of deciding whether to grant the request and assures that there will be an adequate written record of each decision. It also sets out a number of factors to be considered in such decisions, including the nature and size of the interest and the nature and significance of the employee's services to the Government.[1] These changes will help assure that the discretion given the agency officers by 18 U.S.C. 208(b) will continue to be exercised in an appropriate fashion.

Under 5 U.S.C. 553(b)(A), because these amendments deal solely with agency organization, practice, and procedures, the notice and comment provisions of the Administrative Procedure Act do not apply. The amendments are effective upon publication in the **Federal Register**. Under 5 U.S.C. 553(d)(3), good cause exists for dispensing with the usual 30-day delay in the effective date, since the amendments are of a minor and administrative nature, simply clarifying and codifying the procedures and standards for the granting of certain statutorily authorized exemptions for agency employees.

[1] In contrast, a number of factors generally would not be relevant to the granting of an ad hoc exemption, including the character of the employee or special government employee making the request for an exemption, and whether, in the case of an employment interest, the outside employer is a nonprofit oeganization.

Environmental Impact: Categorical Exclusion

The action required under the final rule is administrative and would not impact the environment. The NPC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, et seq.).

Regulatory Analysis

Under existing Commission regulations, NRC employees are prohibited from participating personally and substantially in any particular matter in which the employee, or persons or organizations closely related to the employee, has a financial interest. However, a statutorily authorized ad hoc exemption from this prohibition may be granted in any case where the financial interest involved is so insubstantial as to be deemed unlikely to affect the integrity of the services the Government can expect from the interested employee. Experience with the regulation has shown that its description of the procedures to be followed in entertaining exemption requests, and the standards to be applied in deciding whether to grant the requests, are in need of clarification and elaboration. The revised § 0.735-21(b) applies to all employees. It more clearly assigns the responsibility of deciding whether to grant the request, sets out a number of factors to be considered in such decisions, and assures that there will be an adequate written record of each decision. Although these changes are not legally required, the Commission believes they will help assure that the discretion given to agency officers by 18 U.S.C. 208(b) will continue to be exercised in a reasonable fashion and certain conflicts of interests thereby avoided. The revised regulation is thus an alternative which is to be preferred to the unrevised regulation, and the administrative cost to be borne by the agency in promulgating and applying the revision is necessary and appropriate.

Backfit Analysis

This final rule does not modify or add to systems, structures, components, or design of a facility; the design approval or manufacturing license for a facility; or

the procedure or organization required to design, construct, or operate a facility. Accordingly, no backfit analysis pursuant to 10 CFR 50.109(c) is required for this final rule.

List of Subjects in 10 CFR Part 0

Conflict of interest, Penalty.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, E.O. 11222 of May 8, 1965, 5 CFR 735.104, and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR Part 0.

Part 0—Conduct of Employees

1. The authority citation for Part 0 continues to read as follows:

Authority: Secs. 25, 161, 68 p. 925, 948, as amended (42 U.S.C. 2035, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); E.O. 11222, 30 FR 6469, 3 CFR 1964–1965 COMP., p. 306; 5 CFR 735.104.

Sections 0.735–21 and 0.735–29 also issued under 5 U.S.C. 552, 553. Section 0.735–26 also issued under secs. 501, 502, Pub. L. 95–521, 92 Stat. 1864, 1867, as amended by secs. 1, 2, Pub. L. 96–28, 93 Stat. 76, 77 (18 U.S.C. 207).

2. Section 0.735–21 is amended as follows:

a. Paragraph (a) is revised.
b. Paragraph (b) is revised.
c. Paragraph (e) is revised.

§ 0.735–21 Acts affecting a personal financial interest (based on 18 U.S.C. 208).

(a) *General.* Except as permitted by paragraphs (b), (c), and (d) of this section, no employee, or special Government employee, shall participate personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which, to the employee's knowledge, the employee, the employee's spouse, minor child, partner, organization in which the employee is serving as officer, director, trustee, partner, or employee, or any person or organization with whom the employee is negotiating or has any arrangement concerning prospective employment, has a financial interest upon which the outcome of the particular matter will have a direct and predictable effect.

(b) *Granting of ad hoc exemptions.* (1) If an employee, or special Government employee, desires to request an exemption from the prohibitions of paragraphs (a) and (e) of this section, the employee shall fully inform the appropriate agency official under paragraph (b)(6) of this section in writing of the nature and circumstances of the particular matter, the financial interests involved, and any other information relevant and material to the decision to be made under paragraph (b)(2) of this section, and shall request a written determination in advance as to the propriety of the employee's participation in such matter.

(2) If, after examining the information submitted and consulting with the Office of the General Counsel, the appropriate agency official under paragraph (b)(6) of this section determines that the employee, or special government employee, does have a conflict of interest, the official may relieve the employee from participation in the particular matter and so advise the employee in writing; or the appropriate agency official under paragraph (b)(6) of this section may approve the employee's participation in such matter upon advising the employee in writing that the appropriate agency official has determined that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officer or employee, and that no provision of law and no regulation in this part would appear to be violated by the employee's participation in the particular matter.

(3) In the written decision, the appropriate agency official under paragraph (b)(6) of this section shall discuss the following factors as appropriate, and any other relevant and material information:

(i) The nature of the financial interest, an employment interest generally being deemed more substantial than an interest of another kind;

(ii) The size of the interest, both in absolute terms and in relation to the employee's other salary or liquid assets, and, in the case of any class of shares, bonds, or other security interests, the size of the interest in relation to the dollar value of the outstanding shares, bonds, or other security interests in the said class; and

(iii) The nature and significance of the services the employee would render to the agency in the particular matter; provided, however, that if the request for an exemption is being made by a special Government employee, the provisions of paragraph (d) of this section will apply.

(4) A copy of each request and response made under the provisions of paragraphs (b) (1) and (2) of this section as a matter of record will be forwarded to the Office of the General Counsel and maintained there. Copies of all documents referred to in paragraphs (b) (1) and (2) of this section will be filed by the holders thereof in their confidential files.

(5) Whenever it can be reasonably anticipated that there will be a need to invoke these procedures repeatedly, and where it also appears that a burden would be placed on the NRC thereby, consideration should be given by the appropriate official under paragraph (b)(6) of this section to dismissal or transfer of the employee, or special Government employee, to another position where the problems will not arise, or to the elimination of the outside interest creating the difficulty. It is expected that the employee or special Government employee concerned will take the initiative in resolving any problem in this area.

(6) Requests for exemptions under this paragraph will be submitted to the appropriate agency official, who is to be determined as follows:

(i) For employees in offices reporting to the Executive Director for Operations, the office director;

(ii) For office directors in offices reporting to the Executive Director for Operations and for members of the staff of the Executive Director for Operations, the Executive Director for Operations;

(iii) For employees in offices reporting to the Commission, the office director;

(iv) For employees of the Advisory Committee on Reactor Safeguards (ACRS), the Atomic Safety Licensing Board Panel (ASLBP), or the Atomic Safety and Licensing Appeal Panel (ASLAP), the Chairman of the ACRS, ASLBP, or ASLAP, respectively;

(v) For the Executive Director for Operations, members of the ACRS, ASLBP, or ASLAP, or the directors of offices reporting to the Commission, the Chairman of the Commission, except in cases involving policy formulation, when the Commission shall decide whether to grant the exemption; and

(vi) For employees in an individual Commissioner's office, that Commissioner.

* * * * *

(e) *Vested pension interests.* Except as permitted by paragraph (b) of this section, no employee shall participate personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter affecting the

financial interest of a company in which the employee holds a vested pension interest. The appropriate agency official under paragraph (b)(6) of this section is not to grant an exemption pursuant to paragraph (b) of this section unless the Office of the General Counsel has reviewed the pension plan and made a determination that the pension interest is not so substantial as to be deemed likely to affect the integrity of the employee's services to the Government, in that as an NRC employee the individual cannot in any fashion influence the amount of the pension.

Dated at Washington, DC, this 12th day of August, 1987.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 87-18852 Filed 8-17-87; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL ELECTION COMMISSION

11 CFR Parts 106, 9001, 9002, 9003, 9004, 9005, 9006, 9007, 9012, and 9031, 9032, 9033, 9034, 9035, 9036, 9037, 9038 and 9039

[Notice 1987-10]

Public Financing of Presidential Primary and General Election Candidates

AGENCY: Federal Election Commission.

ACTION: Final rule: Announcement of effective date and correction of explanation and justification.

SUMMARY: On June 3, 1987 (52 FR 20864), the Commission published the text of regulations which implement the Presidential Election Campaign Fund Act and the Presidential Primary Matching Payment Account Act, 26 U.S.C. 9001 et seq. and 9031 et seq. The Commission announces that these regulations are effective as of August 18, 1987. In addition, the Commission notes two corrections in the Explanation and Justification published in the June 3 notice.

EFFECTIVE DATE: August 18, 1987.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 376-5690 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: 26 U.S.C. 9009(c) and 9039(c) require that any rule or regulation proposed by the Commission to implement Chapters 95 and 96 of Title 26, United States Code, be transmitted to the Speaker of the House of Representatives and the President of the Senate prior to final promulgation. If neither House of Congress disapproves the regulation within 30 legislative days after its transmittal, the Commission may finally prescribe the regulations in question. The regulations made effective by this notice were transmitted to Congress on May 26, 1987. Thirty legislative days expired in the House and Senate as of August 3, 1987.

Announcement of Effective Date

11 CFR 106.2, Parts 9001 through 9007, 9012, and 9031 through 9039, as published at 52 FR 20864, are effective as of August 18, 1987.

Correction of Explanation and Justification

The Explanation and Justification published on June 3 and transmitted to Congress inadvertently omitted two changes made by the Commission at its meeting of May 21, 1987. At that meeting, the Commission decided to remove the dates limiting the time period within which it would make determinations that a candidate was inactive under 11 CFR 9033.6. Although the final rule reflected this change, the Explanation and Justification did not. See 52 FR 20869. Thus, the Explanation and Justification for § 9033.6 (52 FR 20869) should read as follows:

Section 9033.6 Determination of Inactive Candidacy. Paragraph (a) has been amended to remove the time limitation on when the Commission may determine that a candidate is no longer actively campaigning in more than one state. If it appears at any time that an individual is not an active candidate under this section, the Commission may make an appropriate determination regarding the candidate's entitlement to matching funds.

The time within which a candidate may respond to a Commission notification under this section has been changed to run from the date of service of the Commission's notice.

In addition, the Commission decided at its May 21 meeting to clarify the Explanation of its changes to 11 CFR 9004.6 and 9034.6, regarding reimbursement for transportation and services provided to media personnel. The June 3 notice included the revised language in the Explanation of section 9004.6 but failed to reflect the same revisions in the Explanation of section 9034.6. Compare, 52 FR 20866 and 52 FR 20871. Therefore, (52 FR 20871) the last sentence of the first paragraph and the first sentence of the second paragraph of the Explanation and Justification for section 9034.6 should read as follows:

Section 9034.6 Reimbursements for Transportation and Services Made Available to Media Personnel * * * Conversely, if the campaign receives the full $220 from the reporter, it may only deduct $200 from the limit because the deduction may not exceed the direct cost to the campaign under the rules that were applicable to the 1984 election cycle.

There are two reasons why the 1984 rules allow campaigns to bill 110% of their direct costs to the media even though only 100% may be offset against the limit. * * *

Dated: August 13, 1987.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 87-18818 Filed 8-17-87; 8:45 am]

BILLING CODE 6715-01-M

FEDERAL RESERVE SYSTEM

12 CFR PART 205

[Reg. E; Docket No. R-0578]

Electronic Fund Transfers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board has amended the requirements applicable under Regulation E to electronic fund transfer (EFT) services initiated by non-account-holding financial institutions (at point of sale, for example) and processed through the automated clearing house system for debiting to a consumer's account. The amendments eliminate the periodic statement requirement for persons that provide EFT services to consumers, but do not hold consumer accounts, if they

(1) Issue a debit card to the consumer that includes an address or telephone number to be used by the consumer to contact the service provider;

(2) Send information needed to identify the transaction in accordance with Regulation E (including the terminal location) to the account-holding financial institution; and

(3) Extend the time periods available to the consumer for notice of errors and lost or stolen debit cards, and give certain additional disclosures.

The amendments will also require account-holding financial institutions to include a description of these EFT transactions on periodic statements provided to their customers.

These amendments were made in response to requests from financial institutions and from service providers, current and potential. Changes to the regulation were proposed by the Board

last August (51 FR 28589, August 8, 1986). The amendments should facilitate the development of point-of-sale EFT services that make use of the automated clearing house system for processing, without imposing substantial compliance costs on financial institutions or significantly reducing consumer protections.

DATES: *Effective Date:* November 15, 1987.

However, to facilitate compliance for account-holding institutions, disclosure of the terminal location will not be required until July 1, 1990. In addition, account-holding institutions with assets of $25 million or less will not be required to comply with any aspect of the regulation as to these transactions (except to cooperate with the service provider in the investigation of errors) until July 1, 1990.

FOR FURTHER INFORMATION CONTACT: Regarding the regulatory changes, contact: Gerald P. Hurst or John C. Wood (Senior Attorneys), Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3667. Regarding the regulatory analysis, contact Frederick J. Schroeder (Economist), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–2584. For Telecommunications Device for the Deaf (TDD) users only, contact: Earnestine Hill or Dorothea Thompson, (202) 452–3544.

SUPPLEMENTARY INFORMATION:

(1) Background

The Electronic Fund Transfer Act (EFTA) (15 U.S.C. 1693 *et seq.*), implemented by Regulation E (12 CFR Part 205), establishes the basic rights, liabilities, and responsibilities of consumers who use electronic fund transfer (EFT) services and of financial institutions that offer such services.

The primary objective of the act is to provide individual consumer rights. The act and the Board's Regulation E require financial institutions, for example, to give initial disclosures concerning their EFT services and to provide receipts and periodic account statements. The act and regulation also limit consumer liability for unauthorized EFTs and require institutions promptly to investigate and resolve consumers claims of EFT errors. In part, Congress had in mind that providing these and other safeguards was important to build public confidence in EFT systems (and thus help ensure their development).

At the same time, the statute requires the Board, in prescribing regulations, to take into account and allow for the continuing evolution of electronic banking services and the technology utilized in such services: and to analyze the effects of the Board's regulations on competition in the provision of electronic banking services among large and small financial institutions, and on the availability of such services to different classes of consumers. The Board is also directed, to the extent practicable, to demonstrate that the consumer protections outweigh the compliance costs. (Section 904(a) of the EFTA.)

The EFTA applies to all types of EFT services provided to consumers. These include debits and credits to consumers accounts through the automated clearing house (ACH) system: telephone bill-payment and home banking services; automated teller machine transactions; and debit-card transactions made at point of sale (POS). The EFTA applies principally to account-holding financial institutions (AHFIs), but Section 904(d) of the act also directs the Board to cover in its regulations other providers of EFT services. The regulation carries out this statutory directive by also covering "any person who issues an access device and agrees with a consumer to provide electronic fund transfer services." (Section 205.2(i) of Regulation E.)

Often the person providing the service—the service provider—and the AHFI join together to offer an EFT service. In such cases the parties will usually contract between themselves to ensure that the obligations imposed by the act and regulation are carried out. But if there is no agreement, the regulation allocates the responsibilities between the service provider and the AHFI. Basically, the regulation requires service providers to comply with all the requirements of the act and regulation that relate to the EFT service.

In recent years, there has been growing interest in an alternative to direct debit, on-line systems for processing point-of-sale transactions, one that makes use of the automated clearing house system. Use of the ACH enables a service provider to access consumer accounts at different financial institutions without having to enter into a specific agreement with *each* AHFI on which it may be collecting funds.

Typically, a POS/ACH service will involve a retailer and a traditional financial institution such as a bank. The retailer, or a bank on the retailer's behalf, will issue the consumer a debit card and personal identification number (PIN). The consumer, in turn, furnishes the retailer with the checking-account number and the AHFI's routing number. In the POS/ACH system, when the consumer uses the debit card to make a transaction at point of sale, the transaction is not immediately posted to the consumer's account, as is often the case in direct debit, on-line systems. Instead, the transaction data are initially stored by the retailer (or the retailer's bank) and batched with other transactions; later, the transaction data are sent through the ACH for collection.

In the past several years, the Board has received inquiries about the Regulation E responsibilities of service providers offering POS/ACH services. The inquiries have focused primarily on the requirement governing periodic statements.

The regulation requires service providers to give consumers a periodic statement at least monthly if EFTs have been made by the consumer and quarterly if no EFT has occurred. Typically, the statement given by the service provider will contain the following information regarding transfers made with the debit card issued by the service provider:

- The consumer's account number.
- Information about each transfer made during the cycle—the amount of the transfer, the date the transfer was made by the consumer, the type of transfer, the location of the electronic terminal, and the name of the payee.
- The amount of any fees or charges for transfers.
- The address and telephone number to be used for inquiries or notice of errors.

(2) The Board's August 1986 Proposal

Service providers and financial institutions interested in developing POS/ACH systems asked the Board to eliminate the periodic statement requirement. They believed that, because of the costs involved, the necessity of sending periodic statements impedes the growth of POS/ACH systems. They said that the requirement is particularly onerous for an institution such as a grocery store or other retailer that does not customarily send customers a periodic statement. They also believed such a statement is unnecessary, and claimed that its cost exceeds the consumer benefits. Much of the information, they noted, also appears on the periodic statement received by the consumer from the AHFI.

In August 1986, the Board published for public comment a proposal to amend Regulation E (51 FR 28589, August 8, 1986) to eliminate the periodic statement requirement for service providers if they met certain conditions. The Board also proposed to require AHFIs to include

descriptions of the POS/ACH transactions on their periodic statements to consumers. (Because Regulation E, until now, has imposed no documentation requirements on AHFIs for POS/ACH transactions, AHFIs currently may show only the amount of the debit and the posting date on periodic statements.) The Board proposed to require AHFIs to identify the service provider as the recipient of the funds debited and to give the terminal location—information that would be received through the ACH.

In publishing the proposal for public comment, the Board suggested that the proposed changes would:

- Eliminate a requirement that may pose a barrier to the development and use of POS/ACH systems (thus limiting new EFT services to consumers).
- Provide continued consumer protection by ensuring that consumers receive certain information from service providers on receipts or in periodic notices, and by ensuring that the detailed transaction identification is on the AHFI's periodic statements.
- Result in benefits to consumers, service providers, and financial institutions, without imposing substantial compliance costs on AHFIs.

The Board expressed special interest, however, in hearing from commenters about the effects that the proposed changes might have on AHFIs, particularly small institutions. The Board's notice specifically solicited comment on compliance costs.

The Board received approximately 350 comments on the proposal; about 65 percent of them opposed the changes. But although the majority of financial institutions and almost all of the financial institution trade associations opposed the changes, many banks and other financial institutions supported them. Even among institutions of similar size, there were those that opposed and those that favored the proposal.

The institutions opposing the proposed amendments believed that they would result in increased costs to AHFIs and would reduce consumer protections. They also suggested that the proposal was unfair since it would remove a cost of offering EFT services for service providers, while increasing the cost for some AHFIs. In addition, some institutions were concerned that facilitating POS/ACH development would limit their opportunities to increase usage of the direct debit, on-line systems—in which the institutions have invested large sums of money—for processing POS transfers.

Other commenters were of an opposite view. They believed the proposed changes would benefit development of EFT services, particularly at the point of sale. Some commenters also expressed the opinion that encouraging POS/ACH systems would benefit smaller institutions that can not afford to develop or join a direct debit, on-line program.

Many institutions had difficulty determining the position that would be in their best interest. This was due in part to the fact that the effects of the proposed changes are difficult to predict with any degree of certainty. Some institutions were divided on the proposal since their retail and wholesale divisions took different positions. The retail divisions of financial institutions operate most of the EFT systems that provide consumer services—including the direct debit, on-line systems that support automated teller machine programs. They were generally concerned that the proposed changes would result in their systems not being used for EFTs at the point of sale. The wholesale divisions, on the other hand, offer EFT services to commercial entities, including automated clearing house services. They viewed the proposed changes as making it easier to develop POS/ACH systems that they could offer to corporate customers, some of whom have expressed an interest in this area.

(3) Discussion of Comments and Analysis

After a review of the comments and further analysis of the issues, the Board has amended Regulation E to make the changes that were proposed. Though it is difficult to predict whether elimination of the service-provider periodic statement requirement will in fact lead to widespread adoption of electronic payments by consumer's, the Board believes that keeping the requirement is clearly inconsistent with this goal. The Board continues to believe that the potential costs to service providers of sending periodic statements is a significant impediment to the development and offering of POS/ACH services by some entities (such as grocers and other retailers that do not currently provide periodic statements).

The information given on the service provider's statement is, to a great extent, duplicative of information on the statement the consumer receives from the AHFI. The Board believes that the information that is not duplicative (in particular, the address and telephone number to be used for reporting problems) can be given to the consumer by the service provider effectively, and at a much lower cost, through additional disclosures on debit cards and on transaction receipts. With these increased disclosures, there should be no significant reduction in the protections now afforded consumers under the EFTA and Regulation E.

The compliance costs to AHFIs for capturing and furnishing the required information to consumers can be minimized by providing a long transition period in which institutions can make the operational changes needed to provide the transaction data on periodic statements.

The amendments that the Board has adopted include modifications to the August 1986 proposal. These modifications respond to some of the concerns raised in the comments; they are intended to minimize further the potential costs to AHFIs and the possibility of consumer confusion. The modifications are discussed in the material that follows. However, other concerns raised in the comments—such as the increased costs from returned ACH items and the monitoring of accounts with transaction limitations—do not result from the proposed changes to Regulation E. In the Board's opinion, these concerns are best addressed by the industry and market forces, and not by regulation.

1. Periodic Statement Costs

Under the amendments, all AHFIs will have to identify POS/ACH transactions on their periodic statements in accordance with Regulation E. Currently, they have no such obligation under Regulation E, although some institutions have the capability and do so. As a practical matter, all financial institutions probably post the amount and the date on which they debit the consumer's account, just as they do for checks. Under the amendments, AHFIs will have to identify the transfer by showing (in addition to the amount and date) the name of the payee and the terminal location.

Some commenters suggested that any increased operational costs resulting from the proposed changes would be small. They maintained that most financial institutions currently offer EFT services and, as a result, already have systems in place that are capable of capturing and furnishing transaction data to the consumer in accordance with Regulation E.

Many other commenters, however, claimed that the required changes to periodic statements would result in substantial costs to AHFIs. Frequently mentioned were costs related to operational changes needed for AHFIs to furnish transaction identification information. These commenter's

maintained that financial institutions that handle their data processing in-house will incur expenses in modifying their systems to process the Regulation E transaction information. Operational changes may be necessary, for example, to enable institutions to capture the data, to retain it for the length of the cycle, and to print it on the consumer's periodic statement. Financial institutions that use a service bureau for transaction processing may not incur costs for systems changes, but may be charged higher fees by their service bureau.

A number of commenters addressed the impact that the proposal might have on small institutions. Most of these commenters believed that the proposal would have a disproportionately adverse impact on small institutions due to their limited ability to absorb the added compliance costs. Some commenters singled out certain small institutions, that do not currently have to comply with the regulation, as particularly disadvantaged by the proposal. Regulation E now provides an exemption for preauthorized transfers to or from an account held by a financial institution with assets of $25 million or less. (Preauthorized transfers include, for example, debits such as insurance premiums to an insurance company, and credits such as salary payments deposited by an employer). Thus, if the institution's involvement in EFT is limited to accepting preauthorized ACH items, it is not currently subject to Regulation E.

Based on the comments and the issues raised, the Board notes that the impact on individual institutions probably depends on the extent to which the institution is now participating in EFT programs. Many institutions currently give periodic statements that comply with Regulation E's transaction description requirements.

In addition, because of recent developments, participants in the ACH network are already subject to identification requirements parallel to those that will be imposed by the amendments to Regulation E. The National Automated Clearing House Association (NACHA)[1] last year amended the rules governing POS/ACH transfers, effective April 6, 1987. The revised NACHA rules call for financial institutions that originate POS/ACH transfers to provide to account-holding institutions all of the information that will be required by the Board's changes to Regulation E. (That is, the originating institutions must send detailed information through the ACH so that receiving institutions can describe transactions in accordance with Regulation E.) The rules also call for the receiving institutions to provide consumers with the transaction descriptions required by Regulation E, including the terminal location, on periodic statements.

It is also clear that many financial institutions are not now capturing the terminal location for inclusion on periodic statements. Although these institutions have been receiving ACH transactions for some time (for example, direct deposit of payroll) they have not had to capture any data carried in the ACH "addenda record"— the additional data that accompany the payment record portion of the ACH transaction. (The addenda record contains, among other things, the terminal location for POS/ACH transactions.) Among them, some institutions now have the operational capability to do so, others do not.

Modifications to Proposal. Although many financial institutions already provide other EFT services that require them to comply with Regulation E, listing the terminal location for POS/ACH transfers could be a problem for some of them. The comments and the results of a survey carried out by the Federal Reserve Banks earlier this year support this conclusion. Consequently, the Board has modified the proposal to minimize the impact of the regulatory changes for AHFIs.

The Board believes that any problems and costs associated with compliance will be significantly reduced if AHFIs have a sufficiently long period of time to implement the changes. Therefore, the Board is giving account-holding financial institutions until July 1, 1990, to capture and print the terminal location on periodic statements. Given the speed with which technological developments are occurring, many institutions will be making a significant number of other changes to their computer systems over the next several years. The delayed effective date for disclosure of the terminal location will enable them to implement the operational modifications as they make these other systems changes.

In addition, because the regulatory changes could have a disproportionately greater adverse impact on very small financial institutions, the Board is exempting institutions with assets of $25 million or less from compliance with *all* regulatory requirements for POS/ACH transactions until July 1, 1990. As noted earlier, Regulation E currently exempts from coverage preauthorized credits and debits received by these institutions. Extending this exemption to POS/ACH transfers on a temporary basis will ensure that many small institutions whose EFT involvement is limited to the acceptance of items through the ACH— will continue to have no compliance responsibility under the regulation for the next three years. Again, this action will make it possible for institutions to develop a compliance program and make whatever operational changes need to be made, either in their internal programs or those of an outside processor, over an extended period.

Service providers have not been given a comparable delay for complying with the revised regulation. Service providers will have to transmit the terminal identification for POS transfers in order to take advantage of the exception from the periodic statement requirement. This transmittal will benefit both AHFIs and consumers. It will allow AHFIs that are now capable of capturing the information and printing it on periodic statements to do so, thereby possibly avoiding some questions about transactions. And even if an AHFI chooses not to print the location on the statements during the transition period, it will have the information for reference purposes in case of inquiries.

The Board believes that modifying the periodic statement requirements and providing long lead times for AHFIs to comply fully with the regulation will not significantly reduce consumer protections. The number of POS/ACH programs that are currently in place, and likely to be in place in the next few years, is small.

2. Error Resolution Concerns

A periodic statement given to an EFT customer serves multiple purposes. It summarizes the electronic transfers that have taken place during the statement period, and allows the consumer to verify the accuracy of the entries. The statement also contains the address and telephone number to be used if the consumer has a question, finds an error, or needs to report unauthorized transfers or the loss or theft of a debit card. In many cases, the statement also may contain a brief description of the

[1] NACHA is the national rule-making organization for the automated clearing house network. Through member ACH associations, thousands of financial institutions and corporations have contractually agreed to be bound by the *NACHA Operating Rules and Guidelines*. In addition, the *NACHA Operating Rules* are incorporated into each Federal Reserve Bank's Uniform Operating Circular on Automated Clearing House Items.

error resolution procedures available under the EFTA.

With the adoption of these amendments to Regulation E, consumers will receive periodic statements, identifying the recipient of a POS/ACH transfer, from the AHFI rather than the service provider. They will not, however, be receiving a monthly reminder of the telephone number and address to be used for inquiries, error allegations, or reports of lost or stolen cards.

The Board's August 1986 proposal sought to avoid potential consumer problems by requiring service providers that did not issue periodic statements to make increased disclosures to consumers—both in their initial disclosure statements and on receipts or quarterly notices. In addition, the proposal called for extended time periods for consumers to give service providers notice of errors or lost or stolen debit cards. (Without an extension of the time periods, consumers who mistakenly notified the AHFI of a problem could face increased liability for unauthorized EFTs and the risk of losing certain error resolution rights.)

Nonetheless, some industry commenters expressed concern that the proposed changes might lead to consumer confusion about error resolution responsibility. (No comments were received from any consumer groups or individual consumers.) They suggested that this could result in frustration for consumers when AHFIs are unable to resolve an alleged error that began with the service provider. They thought it would also impose a burden on the AHFI, which could face substantially increased costs for responding to consumer inquiries and error allegations about the service provider's EFT service. Many also suggested that, without a periodic statement from the service provider, consumers might find it more difficult to verify or audit POS/ACH transactions. Other commenters believed that even though the service provider has the sole responsibility to resolve POS/ACH transaction errors, AHFIs would probably also, as a practical matter, become involved in the dispute resolution process. Since the AHFI's telephone number, not the service provider's, would appear on the periodic statement being given, it was considered likely that the consumer would address inquiries to the AHFI. In addition, because AHFIs will want to maintain good customer relations, they will likely attempt to resolve problems for their customers.

In analyzing the potential impact of the proposed changes in Regulation E, it is necessary to separate problems and concerns that might be caused by elimination of the periodic statement from those that will exist in any event. The fact is that any debit transaction, whether by check or POS/ACH, will result in funds being taken from an account held by the AHFI. As a result, consumers are likely to call the financial institution holding their account if an error occurs, whether or not the service provider has given a periodic statement.

Modifications to Proposal

The Board believes that, in the interest of AHFIs and consumers, it is important to minimize the possibility that consumers look to the AHFI as the party responsible for the POS/ACH service. The proposal sought to do so through increased initial disclosures and reminders from the service provider on receipts or quarterly notices. The Board has made two modifications to the proposal to further ensure that the consumer will know whom to notify in case of a problem.

The first modification is to require the service provider to issue its own debit card to consumers, and to include on the card its name and an address or telephone number that may be used to contact the service provider. The fact that the POS/ACH service uses a card issued by the service provider, not the AHFI, will avoid the perception of AHFI responsibility that might result if a service provider could offer a service using a card issued by the AHFI. In addition, the consumer will have readily available an address or telephone number for contacting the service provider.

The second change also relates to the telephone number and address. The proposal would have given service providers the option of putting this information on receipts or in a quarterly notice. The Board has amended the regulation to require that the information be given on each receipt. (The act and regulation already require all financial institutions that offer EFT services to give consumers an annual notice of error resolution rights, unless a summary notice is included on each periodic statement.)

The additional information on the debit card, on receipts, and in initial disclosures should clearly and adequately inform the consumer that the service provider is responsible for the POS/ACH service and is to be notified in the event of a problem. As a result, the possibility that consumers will be confused when an error occurs and will mistakenly look to the AHFI for resolution should not be a significant problem.

3. Other AHFI Costs

A few commenters maintained that significant costs could result in other areas. Several commenters indicated that institutions would incur additional costs to return ACH items that overdraw accounts, and suggested that the number of returns would probably increase. A number of commenters said that it would be expensive to monitor accounts to ensure that transaction limitations under Regulation D are not exceeded.

The Board agrees that if POS/ACH systems become widespread and transaction volume increases, the potential exists for increased problems of the types cited by the commenters. However, since a few retailers are currently offering point-of-sale services using the ACH, AHFIs already face some costs for returning ACH items, monitoring accounts that have transaction limitations, and responding to consumer inquiries and error resolution requests. Also, it is not the issuance or nonissuance of a periodic statement by the service provider that gives rise to these costs; the costs result primarily from the fact that AHFIs hold the consumers accounts being debited for POS/ACH transfers.

Moreover, if the industry acts to ensure that systems are set up properly, while POS/ACH systems are still in their infancy, the difficulties can be minimized. For example, if the originating financial institution (the one setting up a POS/ACH system for a retailer) makes sure that the retailer gives customers access only to a checking or other transaction account, AHFIs will not experience the problem of receiving POS/ACH transfers on non-transaction accounts.

In the end, AHFIs and other participants in the system are free to charge for the services that they provide and to recover the costs they incur. The Board believes that continuing to require that a service provider give a periodic statement is not the answer to these potential problems.

4. Other Concerns

Security. Some of the commenters expressed concern about added risk to the security of EFT systems and individual access devices if Regulation E were amended. They believed the proposal could indirectly result in a lessening of consumer confidence in EFT systems, in general, if problems were to arise. The reason most often given for these concerns was that service providers might permit consumers to use

an access device issued by the AHFI to access accounts through the POS/ACH system. These commenters feared that, in such a case, the service providers might fail to implement adequate safeguards in the system—for example, encryption of personal identification numbers.

The Board's requirement that service providers issue their own debit cards, as a condition to not giving periodic statements, should alleviate some of these concerns. As a practical matter, because the consumer's liability for unauthorized transfers is limited and the AHFI has none in this case, it is the service provider that bears the risk of loss for unauthorized POS/ACH transfers. Thus, there is a substantial basis for believing that service providers will act in their own interest to develop secure systems.

Consumer Liability and Costs. Under the EFTA and Regulation E, the consumer s liability for unauthorized use of an access device is determined by the promptness with which the consumer reports the loss or theft of the device. Liability is limited to $50 if the consumer reports within 2 business days after learning of the loss or theft. It can increase to $500 for unauthorized transfers that take place after 2 business days if the consumer delays reporting (and may be unlimited for unauthorized transfers taking place more than 60 days after unauthorized transfers appear on a statement). Some commenters suggested that the proposed regulatory changes could result in increased losses for consumers. If a consumer is confused about who is responsible for the POS/ACH service, the consumer might initially notify the wrong party about the loss or theft. Substantially higher dollar losses could occur as a result, because the consumer could easily miss the 2-business day deadline.

The Board believes that the actions taken to ensure that the consumer knows whom to notify in case of errors will be equally effective in ensuring that the consumer will notify the service provider when a debit card is lost or stolen. In addition, the amendments provide for longer time periods for notification of a lost or stolen card for these POS/ACH transactions. Consumers should not be exposed to increased liability for unauthorized EFTs under the amendments.

Another concern raised was that the proposal would lead to increased costs for consumers, as AHFIs passed on costs incurred as a result of the regulatory changes. Supporters of the proposal, on the other hand, felt that the proposed changes would benefit consumers, since the cost of payment processing should fall as POS/ACH arrangements become more widespread. These savings would be passed on to consumers in the form of lower priced goods and services, for instance.

AHFIs do of course have the option of passing on costs related to POS/ACH transfers by imposing fees for account services. A consumer would then have various choices: pay the new transaction fees imposed by the AHFI, discontinue use of the POS/ACH service, or, if fees varied among institutions, change AHFIs. There is also evidence to suggest that the availability of the POS/ACH payment alternative may offer consumers the chance to pay a lower price for purchases when using this payment option. For example, at least one gasoline company plans to give customers the cash discount price when they pay with a debit card.

Fair Competition. Many commenters complained that the proposed changes would give service providers an unfair competitive advantage over AHFIs in the offering of EFT services by reducing costs for service providers while increasing costs for AHFIs. A large number of them believed that the proposal would *not* provide any benefits to AHFIs, and only a few suggested that the proposal might result in increased competition.

By facilitating the development and implementation of POS/ACH systems by service providers, the regulatory changes could increase competition in the offering of EFT services. On balance, it is not clear that they will significantly increase existing burdens for AHFIs. Nor is it clear that the changes will create *no* benefits for AHFIs. In the long run, the substitution of EFT transactions for check transactions should result in lower costs to financial institutions.

(4) *Summary.* In conclusion, the Board is adopting in final form the proposed changes to Regulation E that were published in August 1986. To address some of the concerns expressed by the commenters, the Board is modifying certain requirements and imposing additional conditions on service providers. The Board is delaying implementation of certain aspects of the proposal in order to minimize the compliance costs to AHFIs.

The following is a summary of the amendments to Regulation E adopted by the Board:

(1) A service provider—a person that issues an access device and agrees to provide EFT services to a consumer, but has no agreement with the consumer's account-holding financial institution—will not be required to issue a periodic statement summarizing the transactions made if it:

(i) Issues a debit card that bears the name of the service provider and an address or telephone number that can be used by the consumer to contact the service provider, and

(ii) Provides detailed transaction data to the AHFI in the format prescribed by the ACH system, so that the AHFI can comply with the transaction identification requirements of Regulation E.

(2) To take advantage of the exception from the periodic statement requirement, the service provider will also be required to do the following:

(i) Provide the consumer with certain additional information in initial disclosure statements,

(ii) Include the telephone number and address for reporting errors and notice of lost or stolen cards on or with terminal receipts, and

(iii) Extend the time period for reporting a lost or stolen debit card under § 205.6(b)(1) from 2 business days to 4 business days, and extend the time periods under § 205.6(b)(2) and § 205.11(b)(1) from 60 days to 90 days.

(3) AHFIs will be required to describe POS/ACH transactions on consumer periodic statements in accordance with the transaction identification requirements of Regulation E, except that the terminal identification need not be given until July 1, 1990. In addition, financial institutions with assets of $25 million or less will not be required to comply with any requirements as to POS/ACH transactions until July 1, 1990.

5. Regulatory Analysis

The amendments to Regulation E are primarily intended to facilitate the long-term development of electronic fund transfer systems by eliminating duplication of certain documentation currently provided to consumers. By eliminating the periodic statement requirement for service-providing institutions (such as supermarkets, gasoline retailers, and other merchants) that are not the holders of consumer transaction accounts, the amendments will eliminate some duplication of information. Because consumers will continue to receive periodic statements reflecting electronic fund transfers to and from their accounts, they will experience no loss of information or required documentation. Consequently, there will be no elimination of consumer benefits associated with the periodic statement requirements of the act. Potential cost savings to non-account-holding service providers and to the payments system as a whole are likely to be substantial.

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1. Effect on Account-Holding Financial Institutions

The cost burden of providing the additional information is not likely to be great for AHFIs as a group. Most POS transactions will involve accounts at financial institutions that already are able to comply with the periodic statement requirements of the act and regulation. Available evidence indicates that 79 percent of all commercial banks already offer at least one EFT service that requires compliance with Regulation E, and larger banks, which hold most consumer asset and transaction accounts, are even more likely to offer EFT services.[2]

The amendments are not expected to lead to a significant increase in the number of periodic statements that AHFIs will have to deliver to consumers. Most depository institutions already provide monthly periodic statements for transaction accounts. The economic burden for each institution will depend, in part, on its ability to disclose the required information on those statements. Some institutions will also have to devote additional resources to data processing, error resolution, and other functions. The aggregate incremental economic burden on AHFIs as a group is expected to be small in comparison to other compliance costs associated with Regulation E.[3] Nonetheless, certain AHFIs may incur substantially increased costs from having to include additional information in periodic statements, and some institutions will have to issue periodic statements more often.

Financial institutions may be able to recover some of the increased compliance costs directly from consumers. Account-holding institutions may choose to assess charges on consumers who use debit cards issued by service providers.[4] Whether such charges will be assessed is not known because pricing actions will ultimately reflect competitive market conditions.

Concerns about the ability of payment system participants to send, receive, and process the required disclosure information are mitigated by recent developments in EFT message interchange standards. Significant progress has been made toward standardization of electronic debit and credit items. In early 1987, the National Automated Clearing House Association (NACHA) introduced new rules that require all financial institutions that participate in the ACH to identify point-of-sale transactions in accordance with the requirements of Regulation E. This development ensures that electronic items originated through the ACH include all information required for account-holding institutions to make periodic statement disclosures in compliance with Regulation E.

2. Effect on Small Financial Institutions

It does not appear that small financial institutions as a group will be unduly disadvantaged by the amendments. Many small institutions, because they already participate in automated teller machine networks, currently are able to comply with the periodic statement requirements of the act and regulation. In any case, small institutions not currently able to disclose the required information with their periodic statements are likely to be able to get assistance at reasonable cost from their correspondent banks or from service bureaus that specialize in data processing applications for small financial institutions.

Furthermore, to mitigate the compliance burden that might arise, the Board is exempting all small institutions (those with assets of $25 million or less) until July 1, 1990, from providing any new documentation required by the changes.[5] Similarly, all institutions, regardless of size, are exempted until July 1, 1990, from the requirement to disclose the physical location of point-of-sale terminals involved in EFT transactions; among the changes, that disclosure requirement appears to present the most burdensome implementation problem to financial institutions in general. The exemptions give institutions approximately three years to come into full compliance with the changes.

3. Effect on Service Providers

For service-providing institutions (such as supermarkets, gasoline retailers, and other merchants) that issue debit cards but do not hold consumer accounts, the cost savings resulting from the amendments are expected to be substantial. Service providers will be able to offer point-of-sale services to consumers without having to enter into agreements with each financial institution holding consumers accounts. In addition, to the extent that payments cleared through the ACH are less costly than other methods of payment, service providers will be better able to convert transactions from cash, check, and credit card payments to electronic point-of-sale payments.[6]

The greatest economic benefit of the amendments is expected to arise in the future as the volume of POS transactions increases. More potential service providers are likely to be able to justify offering consumers POS services as a result of the amendments. It is expected that the amendments will have a salutary effect on the evolution of the payments system by reducing the average system-wide compliance cost per POS transaction.

By eliminating periodic statements for service providers, the amendments are expected to provide a substantial economic benefit through cost savings to service providers and to the payments system as a whole. The amendments will standardize the way in which documentation of EFT point-of-sale transactions is provided to consumers by requiring that AHFIs disclose all the required information. To ensure that their customers are informed about procedures for error resolution, service providers are required to inform consumers, in expanded disclosures, of the telephone number and address consumers should use to report transaction errors or lost or stolen debit cards.

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[2] As of December 31, 1986, banks with assets of $100 million or more held over 84 percent of all U.S. banking assets. More than 98 percent of those banks already offer at least one EFT service that requires compliance with Regulation E.

[3] Board staff conducted a survey of financial institutions in 1981–82 to determine the magnitude of Regulation E compliance costs. The survey revealed that postage and printing or purchase of statements accounted for 27 percent of total ongoing compliance costs, and that development of statement forms and disclosure documents accounted for 11 percent of start-up compliance costs. See Frederick J. Schroeder, *Compliance Costs and Consumer Benefits of the Electronic Fund Transfer Act Recent Survey Evidence*, Staff Study no. 143, Washington, DC: Board of Governors of the Federal Reserve System, April 1985.

[4] Similar charges are already commonly assessed when a consumer uses an ATM not owned or operated by his or her financial institution. The average service charges per transaction for various kinds of ATM transactions performed on other institutions ATMs are detailed in the *1986 Retail Deposit Services Report*, Washington, DC, American Bankers Association, March 1986, table 126.

[5] As of December 31, 1986, 4,697 commercial banks (34 percent), 8 mutual savings banks (2 percent), 572 savings and loan associations (17 percent), and 14,773 credit unions (92 percent) had total assets of $25 million or less. While large in number, those small institutions together controlled only 3 percent of the total assets of U.S. financial institutions and, consequently, a small share of total consumer transaction accounts that might be affected by Regulation E.

[6] For a discussion of the costs of ACH and other means of payment, see David B. Humphrey, *The U.S. Payments System: Costs, Pricing, Competition and Risk*, Monograph Series in Finance and Economics, no. 1984½, New York: Salomon Brothers Center for the Study of Financial Institutions, Graduate School of Business, New York University, 1984.

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4. Effect on Competition

Some commenters alleged that the amendments would give service providers an unfair competitive advantage over financial institutions in the provision of point-of-sale EFT services. While statement issuance costs for service providers will be eliminated, and compliance costs for financial institutions as a group are likely to increase, the overall effect on competition is not clear. Financial institutions currently provide to consumers basic documentation of transactions from their accounts that are initiated electronically at point of sale and sent by ACH; the additional documentation required by the amendments may be viewed as a service enhancement, and consumers may be willing to pay for it through fees or other account-pricing mechanisms. To the extent that such ACH items substitute for and are cheaper to clear than paper checks, financial institutions may enjoy a long-term reduction in the cost of clearing consumer payments. Furthermore, many financial institutions may be able to profit from the wholesale provision of ACH clearing to service providers that issue POS debit cards. It is expected that market forces will guide both service providers and financial institutions to the optimal supply and pricing of various consumer payment alternatives. However, an immediate effect of the amendments may be to place some financial institutions at a cost disadvantage in their competition with service providers.

5. Effect on Consumers

Available evidence suggests that consumers are satisfied with their EFT accounts. Board-sponsored consumer surveys conducted in 1981 and 1983 showed that the number of account errors and unauthorized transfers is negligible both in absolute terms and relative to the volume of EFT transactions occurring in the payments system.

Data from the Board's Consumer Complaint Control System offer further evidence that consumers have no serious problems with EFT. Of the 2,400 complaints processed in 1986, 94 involved electronic fund transfers. The Federal Reserve System forwarded 32 of those complaints to other agencies for resolution; of the remaining 62, only 2 involved a possible violation of Regulation E.

Because the amendments ensure that consumers will continue to receive all the disclosures required by Regulation E, consumers will experience no loss of information and, consequently, no reduction in the benefits intended by the act.

6. Conclusion

On balance, the amendments are expected to rationalize the way in which consumers receive the periodic statement disclosures required by Regulation E. With the amendments, the payments system as a whole is likely to realize significant cost savings as electronic point-of-sale transactions increase in volume and relative importance. Consumers are likely to benefit from lower transaction costs and increased efficiency in the payments system as the volume of electronic point-of-sale transactions increases. Moreover, with the amendments, there will likely be no loss of the consumer protections provided by the act.

List of Subjects in 12 CFR Part 205

Banks, Banking, Consumer protection, Electronic fund transfers, Federal Reserve System, Penalties.

Regulatory Text

Pursuant to the authority granted in section 904 of the Electronic Fund Transfer Act, 15 U.S.C. 1693b, the Board amends Regulation E, 12 CFR Part 205, as follows:

PART 205—[AMENDED]

1. The authority citation for Part 205 continues to read as follows:

Authority: Pub. L. 95-630, 92 Stat. 3730 (15 U.S.C. 1693b).

2. Section 205.14 is amended by revising paragraphs (a)(2) and (b) as follows:

§ 205.14 Services Offered by Financial Institutions Not Holding Consumer's Account.

(a) *Compliance by service-providing institution.* * * *

(2) Sections 205.7, 205.8, and 205.9 shall require the service-providing institution to provide those disclosures and documentation that are within its knowledge and the purview of its relationship with the consumer. The service-providing institution need not furnish a periodic statement to the consumer under § 205.9(b), if the service-providing institution:

(i) Issues a debit card, to be used by the consumer to initiate electronic fund transfers, that bears the name of the service-providing institution and an address or telephone number that can be used to contact the service-providing institution;

(ii) Transmits the applicable transaction identification information specified by § 205.9(b)(1) to the consumer's account-holding institution, in the format prescribed by the automated clearing house system used to clear the fund transfers;

(iii) Discloses to the consumer, in addition to the information required by § 205.7, that the service-providing institution (not the account-holding institution) is responsible for all electronic fund transfers made with the debit card, and that all inquiries and error notices related to such transfers should be directed to the service-providing institution; that the service-providing institution will not issue a periodic statement, and that the consumer should retain all terminal receipts to verify transactions; and that the consumer must notify the service-providing institution concerning loss or theft of the debit card;

(iv) Provides on or with the receipts required by § 205.9(a) the address and telephone number to be used for inquiries and error notices and for reporting the loss or theft of the debit card; and

(v) Extends the time period set forth in § 205.6(b)(1) for notice of loss or theft of a debit card, from 2 business days to 4 business days after the consumer learns of the loss or theft; and extends the time periods set forth in §§ 205.6(b)(2) and 205.11(b)(1) for reporting unauthorized transfers or alleged errors, from 60 days to 90 days following the transmittal of a periodic statement.

* * * * *

(b) *Compliance by account-holding institution.* An account-holding institution described in paragraph (a) of this section need not comply with the requirements of the act and this regulation with respect to electronic fund transfers to or from the consumer's account made by the service-providing institution, except that the account-holding institution shall:

(1) Comply with § 205.9 by providing a periodic statement and describing each transaction from the service-providing institution that is debited or credited to the consumer's account in accordance with § 205.9(b);[13] but the account-holding institution has no liability for failure to provide this information if the failure is due to its not having received the necessary information from the service-providing institution in the prescribed format; and

[13] Account-holding institutions shall not be required to furnish the terminal location as part of the transaction description until July 1, 1990. In addition, account-holding institutions with assets of $25 million or less shall not be required to comply with section 205.9(b) until July 1, 1990.

(2) Comply with § 205.11 by promptly providing to the service-providing institution, upon its request, information or copies of documents required for the purpose of investigating alleged errors or for furnishing copies of documents to the consumer; and by honoring debits to the account in accordance with § 205.11(f)(2).

* * * * *

3. Appendix A is amended by revising the introductory language and by adding section A(11) as follows:

APPENDIX A—Model Disclosure Clauses

This appendix contains model disclosure clauses for optional use by financial institutions to facilitate compliance with the disclosure requirements of §§ 205.5 (a)(3), (b)(2), and (b)(3), 205.6(a)(3), 205.7, and 205.14(a)(2).

* * * * *

SECTION A(11)—Disclosure From Service-Providing Institution That Does Not Send Periodic Statements (§ 205.14(a)(2))

ALL QUESTIONS ABOUT TRANSACTIONS MADE WITH YOUR (NAME OF CARD) CARD MUST BE DIRECTED TO US (NAME OF SERVICE PROVIDER), AND NOT TO THE BANK OR OTHER FINANCIAL INSTITUTION WHERE YOU HAVE YOUR ACCOUNT. We are responsible for the (name of service) service and for resolving any errors in transactions made with your (name of card) card.

We will not send you a periodic statement listing transactions that you make using your (name of card) card. The transactions will appear only on the statement issued by your bank or other financial institution. SAVE THE RECEIPTS YOU ARE GIVEN WHEN YOU USE YOUR (NAME OF CARD) CARD, AND CHECK THEM AGAINST THE ACCOUNT STATEMENT YOU RECEIVE FROM YOUR BANK OR OTHER FINANCIAL INSTITUTION. If you have any questions about one of these transactions, call or write us at (telephone number and address) (the telephone number and address indicated below).

IF YOUR (NAME OF CARD) CARD IS LOST OR STOLEN, NOTIFY US AT ONCE by calling or writing to us at (telephone number and address).

By order of the Board of Governors of the Federal Reserve System, August 12, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-18788 Filed 8-17-87; 8:45 am]

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12 CFR Part 211

[Docket No. R-0610]

Regulation K; International Banking Operations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule and request for comment.

SUMMARY: The Board has revised its regulation governing permissible foreign investments of U.S. banking organizations to permit investors to acquire from foreign governments ownership of certain foreign companies engaged in nonfinancial activities in the context of exchanging debt obligations of the government for equity ownership interests in the companies. The Board is continuing its examination of regulations governing debt-for-equity investments in heavily indebted countries and requests comments on issues related to such investments.

DATES: The final rule is effective August 18, 1987. Comments are requested on or before September 30, 1987.

ADDRESS: All comments, which should refer to Docket No. R-0610, should be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551, or should be delivered to the Office of the Secretary, Room 2223, Eccles Building, 20th Street and Constitution Avenue, NW., between the hours of 8:45 a.m. and 5:15 p.m. weekdays. Comments may be inspected in Room 1122, Eccles Building, between 9:00 a.m. and 5:00 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Ricki Rhodarmer Tigert, Assistant General Counsel (202/452-3428); Kathleen O'Day, Senior Counsel (202/452-3786), Legal Division; or James Keller, Manager, International Banking Applications (202/452-2523), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, Washington, DC 20551. For the hearing impaired *only*, Telecommunications Service for the Deaf, Earnestine Hill or Dorothea Thompson, (202/452-3544).

SUPPLEMENTARY INFORMATION: Under the Board's regulations, U.S. banking organizations have substantial authority to make investments in foreign financial companies, including investments resulting from debt-for-equity swaps. Generally under Regulation K, a U.S. banking organization may hold as much as 100 percent of the shares of a financial company and up to 20 percent of the shares of nonfinancial companies.

The Board has had these regulations under review in connection with proposed debt-for-equity swaps in heavily indebted developing countries. The revisions adopted are the first result of this review. The Board is continuing its examination of these regulations and invites comments on issues related to debt-for-equity swaps as part of this review. Such comments are requested by September 30, 1987. The Board will consider the comments as part of its continuing evaluation of Regulation K. In addition, at the request of several members of the Senate Committee on Banking, Housing, and Urban Affairs, the Board will be preparing a report on debt-for-equity issues and will take the comments into account in preparing this report.

Involvement by U.S. banking organizations in debt-for-equity transactions has taken three forms. First, U.S. banks have earned fees by acting as brokers between other banks and multinational companies seeking to make equity investments in developing countries. Second, some U.S. and foreign banking organizations making portfolio adjustments have sold loans to other potential investors, usually multinational corporations that have in turn used them to make debt-for-equity investments in developing countries. Substantial debt-for-equity investments have been made by multinational companies because such investments have been viewed as a natural extension of their business operations. Finally, U.S. banking organizations have themselves made limited debt-for-equity investments under Regulation K.

Some countries with substantial debts to foreign creditors allow or encourage a portion of those debts to be converted into equity investments in those countries. The companies available for investment include nonfinancial companies that are currently state-owned. Private investment in such companies may provide some benefits to the countries by reducing economic inefficiencies and governmental subsidies.

A number of U.S. banking organizations are interested in making controlling investments under these programs in foreign companies that are not engaged in banking or financial activities. The Board has determined that in the following circumstances banking organizations may purchase up to 100 percent of the shares of a nonfinancial company:

—The company must be acquired from a foreign government;

—The country in which the company is located must be a country that has restructured its sovereign debt obligations to foreign creditors since 1980;

—The ownership interest in the companies acquired must be divested as soon as practicable and no later than five years from the date of acquisition, unless the Board extends

the time for good cause for up to a total of five additional years; and
—The investment must be held through a bank holding company.

The above framework provides a basis under which U.S. banking organizations may make investments in foreign companies that are not engaged in permissible activities under Regulation K through foreign government-sponsored debt-for-equity conversion programs. The Board has amended Regulation K to reflect this framework.

The liberalizing amendment would permit investments to be made in companies being privatized by a foreign government using sovereign debt held by the banking organization. If there are instances in which a program of debt-for-equity conversions established by the government of a heavily indebted developing country requires that new money be invested in addition to the proceeds of the debt obligation that is swapped, the Board will consider such investments on a case-by-case basis.

Under the amendment to Regulation K, U.S. banking organizations will be able to make investments in companies being privatized in eligible countries. These would include countries that since 1980 have rescheduled external sovereign debt.[1] The amendment would not allow, for example, a U.S. banking organization to buy a controlling interest in a company in an industrialized country where the company is engaged in activities other than those permissible under Regulation K, even if that company is in the process of being privatized.

Because the amendment is intended to provide flexibility in managing portfolios of loans to heavily indebted countries and is not intended to permit permanent investments in nonbank concerns, the equity interests acquired under this proposal must be divested after a temporary period when it becomes feasible. The debt-for-equity conversion programs usually have restrictions on repatriation of dividends and capital; the repatriation restrictions do not, however, prevent the sale of such companies to other foreign non-residents. In light of the ability to divest the company even within the period of repatriation restrictions, the Board has determined that a reasonable holding period appears to be five years. The Board retains the discretion to grant additional extensions of time totaling five additional years for good cause, normally in one-year increments.

[1] *See, e.g.*, Section 1201(e)(2)(H) of The Tax Reform Act of 1986, Pub. L. No. 99-514, 100 Stat. 2527 (1986).

Because this amendment would permit a banking organization to take controlling interests in commercial and industrial companies, even if only for a limited period of time, the Board determined that such investments should be held through the bank holding company and not through the bank itself. This form of ownership attempts to erect an effective barrier between the bank and the commercial and industrial activities of the companies to be acquired. It does this in several ways: the nonbanking activity is further isolated from the bank; ownership through the bank holding company is intended to indicate that the nonbank is not protected by the federal safety net available to banks; and the restrictions of section 23A of the Federal Reserve Act (12 U.S.C. 371c) apply as a matter of law to transactions between banks and affiliated nonbanks. In several previous cases involving non-traditional activities for banking organizations, the Board has required that the investment be held through the bank holding company. *Citibank Overseas Investment Corporation*, 70 Federal Reserve Bulletin 168 (1984); 71 Federal Reserve Bulletin 269 (1985).

Because this new investment authority would permit active involvement of a banking organization in the operations of commercial companies, the Board believes that a number of prudential measures will make an initial contribution toward limiting potential adverse effects, such as conflicts of interest and unsound banking practices.

There are several reasons for these concerns. For example, the affiliation itself could cause the banking organization to extend credit to the nonbank affiliate on other than market terms, even if the affiliate is not creditworthy. Moreover, in instances where the banking organization has joined with one or more other investors to purchase a nonbank affiliate, a bank could feel the same pressure to lend preferentially to the investing partners in order to increase the likelihood of success of the company in which they had invested.

Moreover, experience shows that banking organizations generally stand behind the losses of affiliated institutions in order to protect the international reputation of the organization as a whole. In some instances this has led to losses that have been a multiple of the investments in the affiliated organization. In the case of investments in commercial enterprises, in which banking organizations have little if any expertise, there could be an even greater risk that losses could occur.

As one approach to dealing with these concerns, the Board believes that any loans to the nonbank company acquired pursuant to this amendment should be considered "investments" in that company and subject to the same investment procedures as apply to investments made in the form of equity. Therefore, a bank holding company can make an investment in a foreign nonbank company using existing debt through any combination of loans and equity under the procedures of Regulation K. Under these procedures, any investment of up to the lesser of $15 million or 5 percent of the capital and surplus of the investor may be made under general consent, that is, without any prior notice to the Board. Thereafter, additional investments in the same company generally can be made under general consent in amounts less than or equal to 10 percent of the historical cost of the investment plus any reinvestment of dividends. Any investments that do not qualify for the general consent require 45 days prior notice to the Board. Because they involve interaffiliate transactions and in particular could involve interaffiliate lending, such additional investments would be carefully reviewed from a safety and soundness perspective.

The Board also believes that the banking organization and its nonbank affiliate should not have similar names. Even if there is a legal and functional separation between the bank and its affiliate, there is a danger that the market will perceive the banking organization and the affiliate as one. The restrictions on the sharing of a similar name by the banking organization and its nonbank affiliate would reduce the likelihood that a bank would be identified with the nonbank company and thereby reduce the pressures on a banking organization to support the affiliate in the case of losses.

Acquisition of control of nonbank companies will cause a banking organization to become engaged in the same types of businesses in which some of its customers may be engaged. In order to address this potential conflict, the revised regulation prohibits the banking organization from sharing with the nonbank affiliate any confidential information with respect to customers of the bank holding company or its affiliates that are engaged in the same or related lines of business as the nonbank company.

In addition, care should be exercised to ensure the separateness of the banking organization and the nonbank affiliate. To that end, it is expected that banking organizations will maintain few

interlocks of officers and directors between the banking organization and the nonbank affiliate, and then only to the extent that it is administratively necessary.

The Board emphasizes that an investor must, consistent with prudent banking practices, carefully evaluate the soundness of an investment before it is made. In this connection, an investor would be expected to demonstrate that it has conducted a thorough due diligence review of a proposed investment. Such a review could include an examination of the proposed investment by qualified independent experts with knowledge about, and experience in, the commercial activities of the proposed investment. An investor could also demonstrate that the investment may be considered prudent through the participation of unaffiliated investors willing to put their own capital at risk in exchange for equity interests in the company being acquired. In addition, the investing banking organization could show that the operation of the nonfinancial company would be in the hands of experienced management personnel.

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354); 5 U.S.C. 601 *et seq.*), the Board of Governors of the Federal Reserve System certifies that the amendment will not have a significant economic impact on a substantial number of small entities that would be subject to the regulation. The amendment would liberalize existing regulations and would not have any particular effect on small business entities.

The Board has determined that the provisions of section 553(b) of Title 5, United States Code, with respect to notice, public participation and deferred effective date are not necessary with respect to this revision to Regulation K. As noted above, this amendment liberalizes the investment restrictions of the regulation. An immediate effective date will allow banking organizations to begin to make investments under the revised provisions upon publication in the **Federal Register**.

List of Subjects in 12 CFR Part 211

Banks, banking; Federal Reserve System; Foreign banking, Investments, Reporting and recordkeeping requirements, Export trading companies, Allocated transfer risk reserve, Reporting and disclosure of international assets, Accounting for fees on international loans, Investment made through debt-for-equity conversions.

12 CFR Part 211 is amended as follows:

PART 211—[AMENDED]

1. The authority citation for Part 211 is revised to read as follows:

Authority: Federal Reserve Act (12 U.S.C. 221 *et seq.*); Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 *et seq.*); the International Banking Act of 1978 (Pub. L. 95–369; 92 Stat. 607; 12 U.S.C. 3101 *et seq.*); the Bank Export Services Act (Title II, Pub. L. 97–290, 96 Stat. 1235); and the International Lending Supervision Act (Title IX, Pub. L. 98–181, 97 Stat. 1153, 12 U.S.C. 3901 *et seq.*), unless otherwise noted.

2. Section 211.5 is amended by adding a new paragraph (f) to read as follows:

§ 211.5 Investments and activities abroad.

* * * * *

(f) *Investment made through debt-for-equity conversions*—(1) *Permissible Investment.* In addition to an investment that may be made under other provisions of this section, a bank holding company may acquire up to and including 100 percent of the shares of (or other ownership interest in) a foreign company if:

(i) The shares are acquired from the government of an eligible country or from its agencies or instrumentalities;

(ii) The shares are acquired by conversion of sovereign debt obligations of the eligible country either through a direct exchange of debt obligations or a payment for the debt in local currency, the proceeds of which are used to purchase the shares;

(iii) The shares are held by the bank holding company or its subsidiaries, provided however that such shares may not be held by a U.S. insured bank or its subsidiaries;

(iv) The shares are divested within five years of acquisition unless the Board extends such time period for good cause shown but no such extensions may in the aggregate exceed five years; and

(v) An investment shall be made under this paragraph in accordance with the investment procedures of paragraph (c) of this section and shall be subject to paragraphs (b)(3)(i) (A) and (B) of this section.

(2) *Definitions.* For purposes of this paragraph

(i) An "eligible country" means a country that, since 1980, has restructured its sovereign debt held by foreign creditors; and

(ii) "Investment" shall have the meaning set forth in § 211.2(i) of this part and, for purposes of this paragraph, shall include loans or other extensions of credit by the bank holding company or its affiliates to a company acquired pursuant to this paragraph.

(3) *Conditions.* (i) Any company acquired pursuant to this paragraph shall not bear a name similar to the name of the acquiring bank holding company or any of its affiliates; and

(ii) Neither the bank holding company nor its affiliates shall provide to any company acquired pursuant to this paragraph any confidential business or other information concerning customers that are engaged in the same or related lines of business as the company.

Board of Governors of the Federal Reserve System, August 12, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87–18787 Filed 8–17–87; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87–AWA–31; SFAR 51]

Alteration of the Los Angeles Terminal Control Area, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This Special Federal Aviation Regulation (SFAR) alters the Los Angeles, CA, Terminal Control Area (TCA). This action raises the upper limits of the TCA from 7,000 feet above mean sea level (MSL) to 12,500 feet MSL to enable air traffic control (ATC) to provide terminal ATC service to arriving and departing aircraft in a TCA environment throughout transition to and from the enroute structure. The action additionally will eliminate the visual flight rule (VFR) exclusion in Area A of the TCA, by extending Area A continuously from the surface up to and including 12,500 feet MSL, to minimize the mix of controlled and uncontrolled operations in the vicinity of the Los Angeles TCA airspace.

DATE: Effective date of this Amendment is August 19, 1987. Comments must be received on or before December 9, 1987.

ADDRESSES: Send comments on this final rule in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–204), Docket No. 87–AWA–31, 800 Independence Avenue SW., Washington, D.C. 20591; or deliver comments in triplicate to: Federal Aviation Administration Rules Docket,

Room 916, 800 Independence Avenue SW., Washington, D.C. 20591. Comments must be marked Docket No. 87–AWA–31. Comments may be examined in the Rules Docket on weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert G. Burns, Manager, Air Traffic Rules Branch, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Because of the emergency need for this regulation, it is being adopted without notice and public comment. However, the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979) provide that, to the maximum extent possible, DOT operating administrations should provide an opportunity for public comment, after issuance, for regulations issued without prior notice. Accordingly, interested persons are invited to comment on this final rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and be submitted in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC–204, Docket No. 87–AWA–31, 800 Independence Ave. SW., Washington, DC 20591. All comments received will be available in the Rules Docket for examination by interested persons. This amendment may be changed in the light of comments received.

Commenters wishing the FAA to acknowledge receipt of their comments on this final rule must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 87–AWA–31." The postcard will be date and time stamped and returned to the commenter.

Availability of SFAR

Any person may obtain a copy of this Special Federal Aviation Regulation (SFAR) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue SW., Washington, D.C. 20591, or by calling (202) 267–3484. Communications must identify the number of this SFAR. Persons interested in being placed on a mailing list for future SFAR's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

Background

Federal Aviation Regulations (FAR) Part 71, § 71.12, establishes terminal control areas for the positive control of air traffic in the vicinity of major airports having a high proportion of turbojet airline operations. Operations in a terminal control area are subject to the restrictions set forth in FAR § 91.24, ATC Transponder and Altitude Reporting Equipment and Use, and § 91.90, Terminal Control Areas. In brief, pilots must obtain prior clearance from ATC before operating in the TCA, and aircraft must be equipped with a radio capable of 2-way communications, an operable VOR or TACAN receiver (except for helicopters), a radar transponder, and Mode C automatic altitude reporting equipment. The requirement for an air traffic control (ATC) clearance prior to operation in the TCA, and for sophisticated navigation, radar beacon, and automatic altitude reporting equipment, have the effect of providing ATC with continuous location information and positive control of all aircraft in the TCA.

Turbojet aircraft used by commercial airlines operate at low altitude only when approaching and departing airports. Most general aviation aircraft, however, operate below 12,500 feet because of performance and oxygen limitations and because, under FAR § 91.24(b), an altitude-encoding Mode–C transponder is required for operation above 12,500 feet MSL. As a result, the risk of conflict between air carrier jet aircraft and smaller general aviation aircraft is concentrated in the airspace below 12,500 feet MSL in the vicinity of large commercial airports. TCA's provide a high degree of control by ATC in this low-altitude airspace near major airports.

The Los Angeles TCA extends from the surface (or higher) to a uniform ceiling of 7,000 feet MSL, in an area up to 25 miles from the center of Los Angeles International Airport. The floor of the TCA is the surface in the area immediately surrounding the airport and ranges from 2,000 feet MSL to 6,000 feet MSL in the TCA areas extending outward from the airport. Currently, a VFR (Visual Flight Rules) corridor is provided betwen 2,500 feet MSL and 5,000 feet MSL in an area bounded on the north by Ballona Creek, on the east by the San Diego Freeway, on the south by Imperial Boulevard, and on the west by the Pacific Ocean shoreline. The corridor extends directly over the Los Angeles Airport. The corridor is not within TCA airspace, and aircraft operating in the corridor are not required to contact ATC or have the equipment specified in FAR § 91.90(a).

The Los Angeles area contains the largest concentration of based aircraft in the United States, and there is a high volume of both general aviation aircraft and commercial turbojet aircraft in the airspace near Los Angeles International Airport. The adoption of the Los Angeles TCA was an important measure in maintaining safe and efficient operations in this area.

In August 1986, a DC–9 operated by Aeromexico Airlines collided with a single-engine private plane in Area G of the Los Angeles TCA southeast of the airport, resulting in the loss of 84 lives. While the general aviation pilot was operating in the TCA without ATC clearance, the accident raised questions about the need for changes in terminal airspace regulations. Following that accident, the FAA initiated an intensive review of TCA configuration and operation by a special task group. One of the recommendations made by the TCA Review Task Group and subsequently adopted by the agency was to standardize and simplify TCA configuration. One aspect of the proposed configuration was to raise the ceiling of TCA's from 7,000 feet MSL (in most cases) to a higher altitude to preclude uncontrolled operations by aircraft without transponders or automatic altitude reporting equipment above the top of the TCA.

As a result of the recommendations, the FAA on August 5 issued a Notice of Proposed Rulemaking (NPRM) in Docket 87–AWA–31, Proposed Alteration of the Los Angeles Terminal Control Area (52 FR 29612, August 10, 1987). The comment period on the NPRM closes on December 9, 1987. The NPRM proposes a number of revisions to the Los Angeles TCA, including raising the ceiling of the TCA to 12,500 feet MSL. Also in response to the recommendations, the FAA issued Notice 87–7, Terminal Control Area Classification and TCA Pilot and Equipment Requirements, on June 11, 1987 (52 FR 22918, June 16, 1987). Among other changes, Notice 87–7 proposed to require a Mode C transponder for all operations within 30 miles of a TCA primary airport, to provide continuous information to controllers on the location and altitude of aircraft in the TCA area.

As evident from the proposed rulemaking issued by the FAA in recent weeks, the safe and orderly flow of air

traffic in TCA's generally, and in the Los Angeles TCA in particular, have been a subject of scrutiny by the agency for some time. However, incidents continue to occur which lead the FAA to believe that additional restrictions are needed without further delay. On August 11, an American Airlines Boeing 737 pilot reported a near mid-air collision with a single-engine aircraft above the Los Angeles TCA at approximately 7,400 feet MSL. The B–737 pilot executed an immediate steep turn and descent to avoid collision, and reported missing the small aircraft by about 100 feet. The small aircraft did not appear on ATC radar and apparently did not have, and was not required to have, a radar transponder which would have produced a clear target on the controller's radar screen.

On consideration of the factors which supported the issuance of the NPRM in Docket No. 87–AWA–31 and Notice No. 87–7, and of recent reports of near mid-air collisions including the incident on August 11 in Los Angeles, in conjunction with increased aircraft activity in the region and the complexity of air routes and airspace designations in the area, the FAA finds that there is a situation in the vicinity of Los Angeles International Airport which requires immediate remedial action in the interest of air safety. Revised TCA requirements and airspace configurations which either have been proposed by the FAA for Los Angeles will address the current situation, but in the normal course of rulemaking would not take effect for several months or longer. Accordingly, the FAA is adopting changes to the Los Angeles TCA which will provide control of areas in which there exists a high probability of conflict between IFR turbojet traffic and transient VFR traffic which is not in contact with ATC and does not have transponder or automatic altitude reporting equipment.

The high level and complexity of aircraft activity in the Los Angeles area support specific action at the Los Angeles TCA while further improvements are under consideration and public comment for all terminal airspace. For example, when compared to Miami and San Diego, 2 TCA's with similar climates and aviation environments, Los Angeles experienced 11 reported near mid-air collisions (NMAC) between 7,000 feet and 12,500 feet MSL in the past 12 months compared to 1 at Miami and none at San Diego. There are 27 airports and 17,500 based aircraft in the Los Angeles area, compared to 4,800 aircraft and 10 airports in the Miami area and 2,700 aircraft and 10 airports in the San Diego area.

The agency will continue to receive and review comments on the proposals now published for comment, but will not wait to implement necessary changes pending consideration of those comments.

The Amendment

In consideration of the above, the FAA has determined that there is an immediate need for revision of the Los Angeles TCA to extend the TCA from the surface to 12,500 feet MSL and to eliminate the existing VFR corridor through the center of the TCA. Accordingly, the FAA is adopting a Special Federal Aviation Regulation (SFAR), to take effect August 18, 1987, to implement these revisions. Specifically, the amendment will: (1) Raise the ceiling of each area of the TCA from 7,000 feet MSL to 12,500 feet MSL, and (2) eliminate the exception in Area A of the TCA for the airspace between 2,500 feet MSL and 5,000 feet MSL, so that Area A will be continuous from the surface to 12,500 feet MSL.

The amendment will require pilots operating in this airspace to comply with the requirements of FAR § 91.24, ATC Transponder and Altitude Reporting Equipment and Use, and § 91.90, Terminal Control Areas. Pilots must obtain prior clearance from ATC before operating in the TCA. Aircraft must be equipped with a radio capable of 2-way communications; an operable VOR or TACAN receiver (except for helicopters); a radar transponder; and Mode C automatic altitude reporting equipment.

For the reasons set forth in the corresponding NPRM, the FAA has determined that the proposed rule: (1) Is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this action is an emergency regulation that otherwise would be nonsignificant, a Regulatory Evaluation is not required under Department of Transportation Regulatory Policies and Procedures (44g 11034; February 25, 1979). However, the initial regulatory evaluation prepared for the NPRM issued in Docket No. 87–AWA–31 published in the **Federal Register** (52 FR 29612) substantially encompasses the actions adopted in this SFAR. A copy of the initial regulatory evaluation has been placed in the docket.

Reason for No Notice and Immediate Adoption

These amendments are considered necessary for the safe and efficient operation of aircraft in the vicinity of the Los Angeles International Airport. In consideration of evidence that conflicts between turbojet aircraft and VFR general aviation aircraft continue to occur under existing procedures, the agency finds it necessary to implement immediate remedial action while comments on proposed comprehensive changes to current policy are received and reviewed.

For these reasons, the FAA has determined that notice and public procedure are impracticable and contrary to the public interest, and that good cause exists for making this amendment effective in less than 30 days. The comment in Docket No. 87–AWA–31 remains open to December 9, 1987, and comments on this SFAR as well as the NPRM are invited.

List of Subjects in 14 CFR Part 71

Aviation safety, Terminal control areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.401 of the Federal Aviation Regulations (14 CFR Part 71.401) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.401 [Amended]

2. Paragraph (a) of § 71.401 is amended as follows:

Los Angeles, CA [Amended]

Boundaries. [Revised] That airspace up to and including 12,500 feet MSL.

Area A. [Revised] That airspace extending upward from the surface to 12,500 feet MSL bounded on the north by Ballona Creek, on the east by the San Diego Freeway, on the south by Imperial Highway, and on the west by the Pacific Ocean shoreline.

Areas B–G. [Amended] Areas B–G are amended by changing "7,000 feet MSL" wherever it appears, to read "12,500 feet MSL."

Issued in Washington, DC, on August 12, 1987.

T. Allan McArtor,

Administrator.

[FR Doc. 87-18795 Filed 8-13-87; 11:33 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229 and 249

[Release Nos. 33-6728; 34-24782; FR-30, File No. S7-30-86]

Disclosure of the Effects of Inflation and Other Changes in Prices

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission announces final rules which amend Regulation S-K, Form 20-F and the Codification of Financial Reporting Policies governing the disclosure of the effects of inflation and other changes in prices. These rules delete references to Statement of Financial Accounting Standard ("SFAS") No. 33, "Financial Reporting and Changing Prices," as amended, which was superseded by the Financial Accounting Standards Board ("FASB") in December 1986 with the issuance of SFAS No. 89, "Financial Reporting and Changing Prices." SFAS No. 89 made voluntary the requirements embodied in SFAS No. 33 that certain entities disclose supplemental information of the effects of inflation and other changes in prices. These rule amendments do not affect the current requirements in Item 303 of Regulation S-K for registrants to include, where material, a brief textual presentation of management's views about the impact of inflation and other changes in prices on their financial statements.

EFFECTIVE DATE: September 17, 1987. Registrants, however, are permitted to comply immediately after publication of this Release in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: James R. Bradow, Office of the Chief Accountant (202-272-2130), Securities and Exchange Commission, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is adopting final rules governing the disclosure of the effects of inflation and other changes in prices that amend Items 302 and 303 of Regulation S-K; [1] Item 9 to Part 1 of the text of Form 20-F; [2] and sections 501.05, 504 and 505 of the Codification of Financial Reporting Policies.[3] These rule amendments are being made as a result of the FASB's issuance of SFAS No. 89, "Financial Reporting and Changing Prices," which made voluntary the previous SFAS No. 33 requirement that certain publicly traded companies disclose supplemental information of the effects of inflation and other changes in prices.[4] The Commission's rules had embraced these supplemental disclosures by allowing registrants to combine these disclosures with other disclosures required by the Commission. These rule amendments delete references to the FASB requirements while continuing to encourage registrants to voluntarily present quantified supplemental disclosures on the effects of inflation and other price changes.[5] However, Regulation S-K continues to require registrants to discuss, where material, the impact of inflation on their financial statements in Management's Discussion and Analysis ("MD&A").[6] These existing rules provide for considerable flexibility in the form of a narrative discussion of management's views since no specific numerical financial data need be presented. This release also clarifies that registrants are not required to indicate in their MD&A that inflation has no material impact on their financial statements when such is the case.

Background

On December 18, 1986 the Commission issued Securities Act Release No. 33-6661 [51 FR 47026] inviting public comment on proposed amendments to Regulation S-K, Form 20-F and the Codification of Financial Reporting Policies governing the disclosure of the effects of inflation and other changes in prices. The Commission received letters from fifteen commentators responding to the proposed amendments. Eleven commentators represented commercial enterprises, three were from industry and accounting trade groups and one educator also responded. Commentators generally supported the proposed amendments, including the discussion in that release of the requirement to include a discussion in MD&A of the impact of inflation and changing prices only when it is material. However, several commentators suggested specifying this language in Item 303(a) of Regulation S-K as well. Therefore, appropriate changes have been made to

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[1] 17 CFR 229.302 and 229.303.

[2] 17 CFR 249.220f.

[3] This codification is a composite of the Commission's current published views and interpretations relating to financial reporting. It is not intended to supplant the rules set forth in Regulations S-X and S-K and should be used as only a supplement to those regulations. *See* Financial Reporting Release No. 1 (April 15, 1982) [47 FR 21028, May 17, 1982].

[4] Copies of these documents may be obtained from the Financial Accounting Standards Board, High Ridge Park, P.O. Box 3821, Stamford, CT. 06905-0821.

[5] SFAS No. 89 also encourages companies to continue to present these disclosures on a voluntary basis. That Statement also codifies in an appendix the previously existing guidelines for the presentation of this data that had been included in SFAS No. 33, as amended. This appendix includes disclosures previously required by SFAS No. 39 to be presented by certain publicly traded mining companies. These disclosures (as specified in paragraphs 14 and 15 of SFAS No. 89), that relate to information regarding mineral resource assets, are similar to disclosures required by Item 102 of Regulation S-K (17 CFR 229.102) and have been used to satisfy that disclosure requirement. The Commission encourages the continued use of these disclosures to satisfy the requirements of Item 102.

[6] 17 CFR 229.303.

Item 303(a) as part of this release specifying that registrants are only required to discuss the impact of inflation and other changes in prices when considered material. The Commission emphasizes that the impact of inflation should be considered based on its cumulative impact from the date assets were acquired or obligations incurred. Such determinations should not be based solely on the current year impact of inflation. For example, if a registrant had acquired most of its property, plant and equipment prior to material increases in prices, depreciation expense reflected in the historical financial statements may be significantly less than it would be computed based on current costs.[7]

Registrants are reminded that Accounting Series Release No. 299 (September 28, 1981) [8] indicated the need for all registrants to provide a meaningful discussion of the effects of changing prices on the registrant's business as part of their MD&A. That release contains various illustrations of the types of narrative disclosures made by registrants in their MD&A. Those illustrations should continue to be useful to registrants when responding to the requirements of Item 303(a) of Regulation S–K with regard to disclosure of the impact of inflation.

Costs-Benefits

SFAS No. 89 superseded SFAS No. 33 and its subsequent amendments and made voluntary the previously required supplemental inflation and changing prices disclosures. This release embraces SFAS No. 89 and registrants are no longer required to present these supplemental disclosures. SFAS No. 89 and this release, therefore, should reduce registrant reporting requirements and resultant costs. The FASB performed extensive reasearch [9] relating to the costs and benefits of presenting these supplemental disclosures. The FASB's decision to issue SFAS No. 89 making these disclosures voluntary was based, in part, on their analysis that the benefits of presenting these disclosures did not exceed the costs. Commentators to the Commission's proposing release did not express any views significantly contrary to the FASB's findings in this regard.

Certain Findings

Section 23(a)(2) of the Securities Exchange Act ("the Act") [10] requires the Commission, in adopting rules under the Act, to consider the anti-competitive effect of such rules, if any, and to balance any impact against the regulatory benefits gained in terms of furthering the purposes of the Act. The Commission has considered the amendments and additions to Regulation S–K and Form 20–F in light of the standard cited in section 23(a)(2) and believes that adoption of these changes will not impose any burden on competition not necessary or appropriate in furtherance of the Act.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Chairman of the Commission previously certified that the proposed amendments will not have a significant impact on a substantial number of small entities. No comments were received on that certification.

Codification Update:

The "Codification of Financial Reporting Policies" announced in Financial Reporting Release 1 (April 15, 1982) (47 FR 21028) is updated to:

1. Delete the text of old section 501.05.a, entitled as follows:

501.05.a. General

2. Add new section 501.05.a, as follows:

501.05.a. General

The Commission believes that, where material, management for all registered companies should translate inflation into a meaningful discussion of the effects of changing prices on the registrant's business. Consequently, Item 303(a)(3)(iv) requires that registrants include at least a narrative discussion of any material effects of inflation and other changing prices on net sales and revenues and on income from continuing operations. The Commission believes it is important to emphasize that the impact of inflation should be considered significant for discussion based on its materiality using its cumulative impact from the date assets were acquired or obligations incurred. Such determinations should not be based solely on the current year impact of inflation. The Commission's objective is to elicit useful disclosures concerning the impact of inflation without imposing an undue computational burden. Registrants may elect to provide supplemental disclosure on the effects of inflation and other changing prices as provided for in SFAS No. 89, "Financial Reporting and Changing Prices," or otherwise. Registrants that elect to include these supplemental disclosures may provide a cross reference to the location of such information.

3. Delete the text of old section 501.05.e., entitled as follows:

501.05.e. Impact of Inflation on Plant Assets and Depreciation.

4. Add new section 501.05.e., as follows:

501.05.e. Impact of Inflation on Plant Assets and Depreciation.

Under generally accepted accounting principles, entities record plant assets at actual cost and allocate these costs to operations over the assets' useful lives. During inflationary periods, therefore, depreciation charges are understated and net income overstated under the historical cost model to the extent that the current costs of plant assets exceed original costs. The Commission encourages narrative discussion of the extent of the difference between historical cost and current cost. Information on relative asset ages can also assist users in developing their own estimates of price-adjusted amounts.

5. Delete the second paragraph of section 504, entitled as follows:

504 Selected Financial Data

6. Include in section 504 the following as the new second paragraph:

The deletion of summary of operations and the substitution of Selected Financial Data reflected the Commission's concern that operations summaries duplicated information otherwise available in income statements and may have unduly emphasized income over other enterprise performance measures. The Commission recognizes that a detailed specification of the contents or format of a summary might not cure the perceived deficiencies. Accordingly, the revisions strike a reasonable balance between specified content and a flexible approach which permits registrants to select the data which best indicate performance. For example, those registrants who present voluntary disclosures on the impact of inflation and current prices on their business as specified by SFAS No. 89, "Financial Reporting and Changing Prices," are encouraged to combine this information with the information required by Item 301 of Regulation S–K.

7. Delete the text of old section 505, entitled as follows:

505. Information on the Effects of Changing Prices

8. Add new section 505, as follows:

505. Information on the Effects of Changing Prices

The Commission provides a safe harbor rule for information on the effects of changing prices disclosed by registrants pursuant to Item 303 of Regulation S–K relating to the management's discussion and analysis. This safe harbor was provided by amendment of the previously existing safe harbor rule for projections (*see* Rule 175 under the Securities

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[7] See item 501.05 of the Codification of Financial Reporting Policies, as amended by this release, for a description of items to consider when discussing the impact of inflation on specific assets and liabilities.

[8] This release is included in the Codification of Financial Reporting Policies as Item 501.

[9] Appendix A of the FASB's Exposure Draft, "Financial Reporting and Changing Prices" (dated September 30, 1986) discusses the Board's research efforts as well as other considerations relative to their project. Copies of this document are available from the Financial Accounting Standards Board, P.O. Box 3821, Stamford, CT, 06905–0821.

[10] 15 U.S.C. 78w(a)(2).

Act of 1933, 17 CFR 230.175, and Rule 3b–6 under the Securities Exchange Act of 1934, 17 CFR 240.3b–6) to extend its coverage to information on the effects of changing prices.

The Codification is a separate publication issued by the SEC. It will not appear in the Federal Register/Code of Federal Regulations system.

List of Subjects in 17 CFR Parts 229 and 249

Reporting and recordkeeping requirements, Securities.

Text of Rules

In accordance with the foregoing, Title 17, Chapter II, of the Code of Federal Regulations is amended as follows:

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

1. The authority citation for Part 229 continues to read, in part, as follows:

Authority: Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 12, 13, 14, 15(d) 23 (a), 48 Stat. 892, 894, 901; secs. 205, 209, 48 Stat. 906, 908; sec. 203(a), 49 Stat. 704; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; sec. 301, 54 Stat. 857; secs. 8, 202, 68 Stat. 685, 686; secs. 3, 4, 5, 6, 78 Stat. 565–568, 569, 570–574; sec. 1, 79 Stat. 1051; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3–5, 28(c) 84 Stat. 1435, 1497; sec. 105(b) 88 Stat. 1503; secs. 8, 9, 10, 11, 89 Stat. 117, 118, 119, 155; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 781, 78m, 78n, 781(d), 78w(a)

* * * * *

§ 229.301 [Amended]

2. By amending the Instructions to § 229.301 to remove paragraph 3 and redesignate paragraphs 4 through 8 as paragraphs 3 through 7.

§ 229.302 [Amended]

3. By amending § 229.302 to remove paragraph (b) and redesignate paragraph (c) as paragraph (b). The instructions heading in newly redesignated paragraph (b) is amended to change the reference reading "Paragraph (c)" to read "Paragraph (b)".

4. By amending § 229.303 by revising paragraphs 8 and 9 to the *Instructions to Paragraph 303(a)* to read as follows:

§ 229.303 (Item 303) Management's discussion and analysis of financial condition and results of operations.

(a) *Full fiscal years.* * * *

Instructions to Paragraph 303(a).

* * * * *

8. Registrants are only required to discuss the effects of inflation and other changes in prices when considered material. This discussion may be made in whatever manner appears appropriate under the circumstances. All that is required is a brief textual presentation of management's views. No specific numerical financial data need be presented except as Rule 3–20(c) of Regulation S–X (§ 210.3–20(c) of this chapter) otherwise requires. However, registrants may elect to voluntarily disclose supplemental information on the effects of changing prices as provided for in Statement of Financial Accounting Standards No. 89, "Financial Reporting and Changing Prices" or through other supplemental disclosures. The Commission encourages experimentation with these disclosures in order to provide the most meaningful presentation of the impact of price changes on the registrant's financial statements.

9. Registrants that elect to disclose supplementary information on the effects of changing prices as specified by SFAS No. 89, "Financial Reporting and Changing Prices," may combine such explanations with the discussion and analysis required pursuant to this Item or may supply such information separately with appropriate cross reference.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

5. The authority citation for Part 249 continues to read, in part, as follows:

Authority: *The Securities Act of 1934*, 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

§ 249.220f [Amended]

6. By amending Form 20–F, § 249.220f by removing paragraph 8 under Item 9 and redesignating paragraphs 9, 10, 11 and 12 as paragraphs 8, 9, 10 and 11.

(Form 20–F does not appear in The Code of Federal Regulations.)

By the Commission.

Jonathan G. Katz,

Secretary.

August 6, 1987.

[FR Doc. 87–18695 Filed 8–17–87; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 86F–0209]

Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of sodium di (*p-tert*-butylphenyl)phosphate as a clarifying agent for propylene homopolymer and high-propylene copolymer articles intended for contact with food. This action responds to a petition filed by Argus Chemical, Division of Witco Chemical Corp.

DATES: Effective August 18, 1987; objections by September 17, 1987.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of May 30, 1986 (51 FR 19606), FDA announced that a petition (FAP 6B3932) had been filed on behalf of Argus Chemical, Division of Witco Chemical Corp., c/o 1150 17th St. NW., Washington, DC 20036; proposing that § 178.3295 *Clarifying agents for polymers* (21 CFR 178.3295) be amended to provide for the safe use of sodium di (*p-tert*-butylphenyl)phosphate as a clarifying agent for propylene homopolymer and high-propylene copolymer articles intended for contact with food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that the regulations should be amended as set forth below.

In accordance with § 171(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This

action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before September 17, 1987, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the even that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Food Safety and Applied Nutrition, Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 178.3295 is amended by adding a new item in the list of substances to read as follows:

§ 178.3295 Clarifying agents for polymers.

* * * * *

Substances	Limitations
• • •	• • •
Sodium di(*p-tert*-butylphenyl)phosphate (CAS Reg. No. 10491-31-3).	For use only as a clarifying agent at a level not exceeding 0.35 parts per hundred of the resin in olefin polymers complying with § 177.1520(c) of this chapter, items 1.1, 3.1, or 3.2 (where the copolymers complying with items 3.1 and 3.2 contain not less than 85 weight percent of polymer units derived from propylene).

Dated: August 3, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-18785 Filed 8-17-87; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 22

Care of Indian Children in Contract Schools

July 16, 1987.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule; removal.

SUMMARY: The Bureau of Indian Affairs is removing Part 22 in its entirety from Chapter I, Title 25 of the Code of Federal Regulations. The Bureau of Indian Affairs no longer provides for the support of Indian children who require institutional care through the method described in this rule. Current procedures governing this program appear in 25 CFR Part 23; therefore, there is no further need for or applicability of the rule in this part.

EFFECTIVE DATE: September 17, 1987.

SUPPLEMENTARY INFORMATION: The authority to remove this rule and regulation is vested in the Secretary of the Interior by 5 U.S.C. 301 and 25 U.S.C. 2 and 9. This rule is published in exercise of rulemaking authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

The Bureau of Indian Affairs is removing 25 CFR Part 22 in its entirety. The rule provides for contracts to missions and institutions to provide for the care of Indian children who reside within the exterior boundaries of Indian reservations or on trust or restricted lands under the jurisdiction of the Bureau of Indian Affairs. The Bureau no longer provides for the support of Indian children who require institutional care through the method provided under this rule.

Current procedures governing the care of Indian children appear in the implementing regulations for the Indian Child Welfare Act, 25 CFR Part 23, and Chapter 66 of the Bureau of Indian Affairs' Manual. Therefore, there is no further need for or applicability of the rule in Part 22.

Notice of proposed removal was published in 52 FR 17988 on May 13, 1987, and no comments were received.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). This rule does not constitute a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969.

This Part contains information collections; however, because this Part is being removed, the information collection requirements will not require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 25 CFR Part 22

Government contracts, Indians—education, Indians—social welfare, Schools.

PART 22—[REMOVED AND RESERVED]

Accordingly, Part 22 of Title 25, Chapter I of the Code of the Federal Regulations is removed and reserved.

Ross O. Swimmer,

Assistant Secretary, Indian Affairs.

[FR Doc. 87-18812 Filed 8-17-87; 8:45 am]

BILLING CODE 4310-02-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[FRL-3248-7]

Addenda to Delegation Agreements for National Emission Standards for Hazardous Air Pollutants (NESHAP) Program: the States of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Addenda to delegation agreements.

SUMMARY: This notice clarifies the authority delegated to the States of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas under their

current delegation agreements for implementation and enforcement of National Emission Standards for Hazardous Air Pollutants (NESHAP), and announces addition of certain addenda to the delegation agreements of these States. The addenda explain that these States do not have delegated authority to implement and enforce the radionuclide portion of NESHAP, even though they have otherwise received automatic authority (either full or partial) with respect to the NESHAP program. The addenda further explain that the EPA may delegate the radionuclide standards to the States if the States request and demonstrate their capabilities and expertise for implementing and enforcing the radionuclide NESHAP.

EFFECTIVE DATE: August 10, 1987.

ADDRESSES: The related materials in support of this action may be requested by writing to the following address:
Chief, SIP New Source Section (6T–AN), Air Programs Branch, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202

FOR FURTHER INFORMATION CONTACT: Mr. J. Behnam, P.E., SIP New Source Section, Air Programs Branch, United States Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, telephone (214) 655–7214.

SUPPLEMENTARY INFORMATION: Under section 112(d)(1) of the Clean Air Act, any State may develop and submit to the Administrator a procedure for implementing and enforcing emission standards for hazardous air pollutants from stationary sources located in such state. If the Administrator determines that the procedures for implementing and enforcing the standards are adequate, the Federal authority may be delegated to the State. To facilitate this process, the EPA Region 6 Office has entered into agreements with certain states for "automatic" delegation of authority for new subparts of the NESHAP. The automatic delegation mechanism allows the States to assume the responsibility for the new NESHAP standards without a written request and further qualification approval from the EPA.

The EPA promulgated the radionuclide standards on February 6, 1985 (50 FR 5190). The preamble of that notice established the EPA's policy on delegating the radionuclide NESHAP to the states and specifically stated that *automatic* delegation shall *not* be applicable to the radionuclide final rules. The Agency's rationale for this action has been that the states' capabilities and expertise in the field of radiation were not considered when the EPA originally delegated the NESHAP program to them. The EPA Region 6 Office had delegated the NESHAP program to the majority of Region 6 States before February 6, 1985. The approval of these delegations was based on general qualifications and capabilities of the states rather than their specific expertise and resources in regard to radiation controls and radionuclides.

On December 2, 1986, the Regional Office notified each State in advance of its intention to exclude the State's automatic (partial or full) authority for the radionuclide NESHAP. Region 6 allowed ample time for the States to consider their options in accepting or rejecting authority for implementation and enforcement of the radionuclide standards. None of the Region 6 States sought authority for the radionuclide NESHAP.

This notice notifies the public that the States located in Region 6 do not have authority (either partial or full) to implement and enforce the radionuclide portion of the NESHAP program. The affected States are Arkansas, Louisiana, New Mexico, Oklahoma, and Texas. The EPA will continue to allow any state to request authority for implementation and enforcement of the radionuclide NESHAP and will approve delegation if the state can satisfactorily demonstrate its capabilities and expertise in the subject area.

Any inquiries or questions concerning implementation and enforcement of the radionuclide NESHAP for the sources located in the States of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas should be directed to the EPA Region 6 Office, 1445 Ross Avenue, Dallas, Texas 75202. The telephone inquiries should be directed to (214) 655–7208 for technical and enforcement questions, and (214) 655–7214 for delegation of authority issues.

The Office of Management and Budget has exempted this information notice from the requirements of section 3 of Executive Order 12291.

This delegation addendum is issued under the authority of section 112(d) of the Clean Air Act, as amended [42 U.S.C. 7412(d)].

List of Subjects in 40 CFR Part 61

Air pollution control, Hazardous materials, Radionuclides.

Dated: August 10, 1987.

Robert E. Layton Jr.,

Regional Administrator.

[FR Doc. 87–18831 Filed 8–17–87; 8:45 am]
BILLING CODE 6560–50–M

Proposed Rules

Federal Register
Vol. 52, No. 159
Tuesday, August 18, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1079

Proposed Temporary Revision of Shipping Percentage; Milk in the Iowa Marketing Area

AGENCY: Agricultural Marketing Services, USDA.

ACTION: Proposed temporary revision of rule.

SUMMARY: This notice invites written comments on a proposal to relax temporarily certain provisions of the Iowa Federal milk order. The proposed action would relax for September, October and November 1987 the supply plant shipping requirements. This action was requested by the operator of a pool supply plant who ships milk to distributing plants regulated by the order.

DATE: Comments are due not later than August 25, 1987.

ADDRESS: Comments (two copies) should be sent to: Dairy Division, AMS, Room 2968, South Building, U. S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U. S. Department of Agriculture, Washington, DC 20250 (202) 447–4829.

SUPPLEMENTARY INFORMATION: The Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact on certain milk handlers and would tend to assure that the market would be adequately supplied with milk for fluid use with a small proportion of milk shipments from pool supply plants.

This rule has been reviewed under Executive Order 12291 and Department Regulation 1512–1 and has been determined to be a "non-major" rule under the criteria contained therein.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the provisions of § 1079.7(b)(1) of the order, the temporary revision of certain provisions of the order regulating the handling of milk in the Iowa marketing area, 7 CFR Part 1079, is being considered for the months of September, October and November 1987.

All persons who desire to submit written data, views or arguments about the proposed revision should send two copies of their views to the Dairy Division, AMS, Room 2968, South Building, U. S. Department of Agriculture, Washington, DC 20250, by the 7th day after publication of this notice in the **Federal Register.** The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include September 1987 in the temporary revision.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

The provisions proposed to be revised are the supply plant shipping percentages for the months of September, October and November 1987. The proposed action would reduce the shipping requirement 10 percentage points from the present 35 percent to 25 percent.

Pursuant to the provisions of § 1079.7(b)(1), the supply plant shipping percentages set forth in § 1079.7(b) may be increased or decreased by up to 10 percentage points during any month to encourage additional milk shipments to pool distributing plants or to prevent uneconomic shipments.

Beatrice Companies, Inc. (Beatrice), on behalf of Beatrice Cheese, requested this action in order to prevent uneconomic shipments of milk during September, October and November 1987. Beatrice said that the market's producer milk receipts during the April through June 1987 period showed an increase each month over the same month of 1986. The monthly increases for this period cited by Beatrice were 6.4, 2.0 and 3.9 percent, respectively. Beatrice indicated that receipts at their supply plant, while slightly decreasing in April, had increased by 2.4 percent in June and that they expect their receipts for the balance of 1987 to increase about 3.0 percent. Beatrice also indicated that without a downward revision in the supply plant shipping standards, it would have to uneconomically backhaul approximately 3.4 to 3.7 million pounds of milk per month in order to pool this milk.

The petitioner stated that distributing plants could be adequately served if supply plant shipping requirements were lowered to 25 percent. Beatrice said that thus there will be no need for supply plants to ship as much as 35 percent of their producer receipts and that a temporary lowering of the supply plant shipping requirement to a 25 percent shipping standard, is needed to prevent uneconomic shipments of fluid milk.

List of Subjects in 7 CFR Part 1079

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1079 continues to read as follows:

Authority: (Secs. 1–19, 48 Stat. 31, as amended, 7 U.S.C. 601–674.)

Signed at Washington, DC, on: August 13, 1987.

C. H. Plumb,

Acting Director, Dairy Division.

[FR Doc. 87–18862 Filed 8–17–87; 8:45 am]
BILLING CODE 3410–02–M

Food Safety and Inspection Service

9 CFR Parts 317 and 381

[Docket No. 86–037P]

Ingredients That May Be Identified as Flavors or Natural Flavors When Used in Meat or Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the Federal meat and poultry products inspection regulations to better define and limit the substances which are permitted to be identified only as "flavors", "natural flavors", or "spices' on packages of meat and poultry products. The proposed rule addresses

the use of substances which are often added to product for the purpose of serving as flavor enhancers, emulsifiers, stabilizers, binders, extenders, and as nutrients, but are currently only identified as flavorings or spices. Most of the substances that would be affected by the proposed rule are proteinaceous materials, having nutritional value, and which may be considered foods in their own right. The proposed rule would require that when used in meat and poultry products these substances be identified on product labels by their common or usual names, thereby informing consumers of the origin of these materials including the species and specific animal tissues from which thye are derived, if animal in origin. The proposed rule would address the personal, cultural, and religious concerns of consumers, as well as the allergies or sensitivities some consumers may have to some of the substances.

DATE: Comments must be received on or before: October 19, 1987.

ADDRESS: Written comments to: Policy Office, Attn: Linda Carey, FSIS Hearing Clerk, Room 3168, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments, as provided by the Poultry Products Inspection Act, should be directed to Margaret O'K. Glavin, Director, Standards and Labeling Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250; (202) 447–6042.

FOR FURTHER INFORMATION CONTACT: Margaret O'K. Glavin, Director, Standards and Labeling Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250; Area Code (202) 447–6042.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Administrator has determined that this proposed rule is not a "major rule" within the scope of E.O. 12291. It would not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The proposed rule would identify those substances which may be declared as flavors or natural flavors in the ingredients statement on labels of meat or poultry products. While there may be some costs involved in label changes, these costs would be minimized by providing adequate time to use existing label inventories and to include required changes in normal redesigning or repurchasing of labels.

Effect on Small Entities

Under the circumstances mentioned above, the Administrator, Food Safety and Inspection Service, has determined that the proposed rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. 601 et seq.). The proposed rule treats all businesses alike. Any economic impact would be minimized as described above in the statement under Executive Order 12291.

Comments

Interested persons are invited to submit comments concerning this proposal. Written comments must be sent in duplicate to the Hearing Clerk and must bear reference to the docket number located in the heading of this document. Any person desiring an opportunity for an oral presentation of views, as provided for in the Poultry Products Inspection Act (21 U.S.C. 451 et seq.), should make such request to Ms. Glavin so that arrangements can be made for such views to be presented. A transcript will be made for such views orally presented. All comments submitted pursuant to this proposal will be made available for public inspection in the Policy Office, Room 3168-S between 9:00 a.m. and 4:00 p.m., Monday through Friday.

Background

Many meat and poultry products contain proteinaceous (substances containing protein or nitrogen) ingredients obtained from a variety of sources other than meat, meat byproducts, Mechanically Separated (Species), or poultry. These proteinaceous ingredients may be of plant, yeast, dairy, egg, or fish origin as well as derivatives of slaughtered animals such as hydrolyzed collagen, soluble bone protein, dried meat stocks, and blood components. These ingredients serve many functions and are added to perform a multiplicity of physical or other technical effects, the most significant of which are binding, extending, and flavor enhancing. In the last decade, there has been a marked increase in the use of proteinaceous ingredients in meat and poultry products in order to replace meat, meat byproducts, or poultry in these products and for flavor enhancement.

The FSIS labeling regulations require that all ingredients be listed on labels of products fabricated from two or more ingredients by their common or usual names (9 CFR 317.8(b)(7), 317.2 (c)(2) and (f)(1), and 381.118 (a) and (c)), except that flavorings, including natural spices, essential oils, oleoresins, and other natural spice extractives, may be identified together as "flavorings" without listing each separately. FSIS has permitted "flavorings" to include powdered onion, garlic, and celery which are added for flavoring purposes and which do not provide a significant nutritional contribution.

In recent years, FSIS granted an exception to the common or usual name rule to proteinaceous materials, including products of livestock, poultry, egg, milk, plant or yeast origin, permitting them to be identified as flavorings in meat and poultry products under the incorrect assumption that they were being used as such.

More recently, however, the levels at which these ingredients are used in products have increased as manufacturers of these substances have promoted them expressly for their nutritional and other functional values, especially as low cost meat replacements.

Most of the proteinaceous substances addressed in this proposed rule would not be defined as flavorings under Food and Drug Administration (FDA) regulations (21 CFR 101.22) which take a functional approach to these ingredients. FDA ingredient labeling regulations explicitly state that the name of an ingredient shall be a specific name, not a collective or generic name (21 CFR 101.4(b)). Specific exemptions are listed, including exemptions for "spices" and "flavorings" (21 CFR 101.4(b)(1)). The term "spice" is defined as "any aromatic vegetable substance in the whole, broken, or ground form, except for those substances which have been traditionally regarded as foods, such as onions, garlic and celery; whose significant function in food is seasoning rather that nutritional; that is true to name; and from which no portion of any volatile oil or other flavoring principle has been removed. . ." (21 CFR 101.22(a)(2)).

The term "natural flavor" or "natural flavoring" is identified as "the essential oil, oleoresin, essence or extractive, protein hydrolysate, distillate, or any product of roasting, heating or enzymolysis, which contains the flavoring constituents derived from a spice, fruit or fruit juice, vegetable or

vegetable juice, edible yeast, herb, bark, bud, root, leaf or similar plant material, meat, seafood, poultry, eggs, dairy products, or fermentation products thereof, whose significant function in food is flavoring rather than nutritional. . . ." (21 CFR 101.22(a)(3)).

FSIS has become concerned that the policy of allowing proteinaceous substances or ingredients to be declared as "flavorings" has resulted in the term "flavoring" being inappropriately used to list ingredients that should be identified by their common or usual name because their functions include more than flavoring.

When these ingredients are labeled as "flavorings," there is not method by which consumers can determine the presence of specific components. Many people would want to avoid certain ingredients for health reasons or because of religious or cultural preferences but cannot do so unless those ingredients are listed on the product label by their common or usual names.

FSIS's paramount concern is public health. Many individuals suffer allergic reactions from eating certain proteinaceous substances. When such ingredients are declared on meat or poultry product labels only as "flavoring", consumers who are sensitive ingest these ingredients without knowledge of their presence, discovering their presence only after the susceptible consumer suffers an allergic response. For example, the Agency has received several letters from persons afflicted with celiac sprue disease which prevents them from digesting gluten-containing products. Some substances now identified on labels of meat and poultry products as "flavorings" may contain gluten. Consumers are unable in these cases to identify and thereby avoid these substances.

FSIS is aware of and concerned about the potential severity of such allergic reactions. Label declaration of these proteinaceous ingredients by their common or usual names is essential to reduce the likelihood of consumers ingesting them unknowingly.

Similarly, protein hydrolysates may contain high levels of salt. Unless hydrolysates are declared by their common or usual names, consumers are not aware of their presence and those on sodium-restricted diets unknowingly may be consuming relatively high levels of salt.

There are also many consumers who have cultural or religious preferences regarding meat and poultry products that are frustrated by the absence of disclosure of these ingredients. For example, when components of slaughtered animal tissues, even though they may be hydrolysates or extracts (e.g., blood components), are not specifically identified, consumers have no way of determining their presence and exercising dietary preferences.

It should be noted that other substances used mainly to flavor foods, such as salt, sugar, and corn syrup (a plant material hydrolysate), are already required by regulation to be identified in the ingredients statement by their common or usual name.

Accordingly, the Administrator is proposing to amend Part 317 of the Federal meat inspection regulations and Part 381 of the Federal poultry products inspection regulations to require that such ingredients be listed, without exception, in the ingredients statements on meat and poultry product labels, and that their common and usual names include the species of origin and the specific tissue from which they are derived.

The proposed regulation would specify that only natural spices, essential oils, oleoresins, and other natural spice extractives, and powdered onion, powdered garlic, and powdered celery may be listed as "flavorings". The term "spices" would be allowed to designate only natural spices. Further, the proposed regulation would specify that any other ingredients, including ingredients that contribute to flavor, must be identified by their common or usual names. When these ingredients are blends or mixture of more than one substance or ingredient, each individual component of that mixture or blend would have to be identified by its common or usual name on the label of the product in which the blend is used as an ingredient unless the component is a spice or flavoring as specified above.

For the reasons set out in the preamble, Parts 317 and 381 would be amended as set forth below:

List of Subjects

9 CFR Part 317

Labeling, Marking devices, containers.

9 CFR Part 381

Poultry products inspection regulations.

PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

1. The authority citation for Part 317 continues to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*, 33 U.S.C. 1254, unless otherwise noted.

2. Section 317.2(f)(1)(i) would be revised to read as follows:

§ 317.2 Labels: definition; required features.

* * * * *

(f)(1) * * *

(i) The term "flavorings" may be used only to designate natural spices, essential oils, oleoresins, and other natural spice extractives, powdered onion, powdered garlic, and powdered celery, and the term "spices" may be used only to designate natural spices without naming each.

* * * * *

3. Section 317.8(b)(7) would be revised to read as follows:

§ 317.8 False or misleading labeling or practices generally; specific provisions and requirements for labels and containers.

* * * * *

(b)(7)(i) No ingredient shall be designated on the label as a spice, flavoring, or coloring unless it is a spice, flavoring, or coloring, as the case may be, except that spice may be considered to be a flavoring as provided in § 317.2(f)(1)(i). An ingredient that is both a spice and a coloring, or both a flavoring and a coloring, shall be designated as "spice and coloring," or "flavoring and coloring," as the case may be, unless such ingredient is designated by its specific name.

(ii) All other ingredients whose function is flavoring, either in whole or in part, must be identified by their common or usual names, including species origin and animal tissues. When such ingredients are blends or mixtures of more than one substance or ingredient, each individual component of that mixture or blend must be identified by its common or usual name on the label of the product in which the blend is used as an ingredient unless the component is a spice or flavoring as defined in § 317.2(f)(1)(i).

* * * * *

4. The authority citation for Part 381 continues to read as follows:

Authority: 71 Stat. 441, 82 Stat. 791, as amended, 21 U.S.C. 451 et seq., 76 Stat. 663 (7 U.S.C. 450 et seq.).

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

5. Section 381.118(c) would be revised to read as follows:

§ 381.118 Ingredients statement.

* * * * *

(c) Spices, flavorings, and colorings may be listed as spices, flavorings, and colorings without naming each.

However, no ingredient shall be designated on the label as a spice, flavoring, or coloring, unless it is a spice, flavoring, or coloring, as the case may be. However, the term "flavorings" may be used only to designate natural spices, essential oils, oleoresins, and other spice extractives, powdered onion, powdered garlic, and powdered celery, and the term "spices" may be used only to designate natural spices, without naming each. An ingredient that is both a spice and a coloring, or both a flavoring and a coloring, shall be designated as "spice and coloring" or "flavoring and coloring," as the case may be, unless such ingredient is designated by its common or usual name. All other ingredients whose function is flavoring, either in whole or part, must be identified by their common or usual names, including species origin and animal tissue. When such ingredients are blends or mixtures of more than one substance or ingredient, each individual component of that mixture or blend must be identified by its common or usual name on the lable of the product in which the blend is used as an ingredient unless the component is a spice or flavoring as defined above.

* * * * *

Done at Washington, DC, on August 12, 1987.

Lester M. Crawford,

Acting Administrator, Food Safety and Inspection Service.

[FR Doc. 87-18804 Filed 8-17-87; 8:45 am]

BILLING CODE 3410-DM-M

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9 CFR Part 318

[Docket No. 86-038P]

Determination of "Added Water" in Cooked Sausages

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the Federal meat inspection regulations to define the method by which the Agency determines the quantity of added water in cooked sausages. "Added water" in cooked sausage means any water not directly attributable to the meat, meat byproducts, Mechanically Separated (Species), or poultry ingredients. The Federal meat inspection regulations limit the amount of added water to a maximum of 10 percent of finished product weight in cooked sausages. The amount of added water is determined by laboratory analysis and appropriate calculations. First, total water and total protein are determined. Then, "meat protein" is determined by subtracting the "nonmeat protein" from total protein. The amount of water indigenous to the various livestock and poultry ingredients is then calculated based on amount of "meat protein" present. The water attributable to these ingredients is then subtracted from the total water to determine "added water". If the amount of protein derived from nonmeat sources is not subtracted from the total protein content, it is possible that added water in excess of the 10 percent permitted by regulations would be present in the product. Such product would be in violation of the regulations.

Each 1 percent of nonmeat protein not subtracted results in the addition of 4 percent added water in a cooked sausage. This situation has resulted in cooked sausages containing upward of 30 percent added water in the finished product. FSIS considers the current substitution of nonmeat protein and water for "meat" ingredients in some cooked sausages not in keeping with both the letter and spirit of the Federal Meat Inspection Act and the Federal meat inspection regulations. Accordingly, FSIS is proposing to amend the regulations to correct this discrepancy by clarifying the method by which the amount of added water in cooked sausages is determined.

DATE: Comments must be received on or before October 19, 1987.

ADDRESS: Written comments may be mailed to: Policy Office, Attn: Linda Carey, FSIS Hearing Clerk, Room 3168, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Margaret O'K. Glavin, Director, Standards and Labeling Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-6042.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Administrator has determined that this proposed rule is not a major rule under Executive Order 12291. It will not result in an annual effect on the economy of $100 million; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or upon the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The proposed rule would clarify and set forth provisions to determine whether added water in cooked sausage is at a level in compliance with existing regulatory requirements. The regulatory standard for added water is already in effect; the proposed rule only identifies the method by which compliance with the standard would be determined. FSIS can continue to monitor compliance within the framework of its inspection program, initiating no new costs to the Agency.

Effect on Small Entities

A regulatory flexibility analysis is required under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) for every rule proposed unless the head of the Agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The RFA mandates that agencies consider regulatory alternatives when a proposed rule would have a significant economic impact upon a substantial number of small entities.

The proposed rule would affect a substantial number of small entities. Over 2500 plants have approved labels for the production of cooked sausages subject to an added water limitation. Those meat processors using proteins from nonmeat sources could be required to modify formulations for certain standardized cooked sausages now produced. The majority of these plants or processors would be viewed as small businesses under any reasonable definition.

The Department does not have sufficient information to conclusively determine whether the economic impact on small entities would be significant. A preliminary analysis conducted by FSIS has shown that, on the average, the ingredient costs for the affected products could increase by $.008 per pound. The preliminary analysis has also indicated that the greatest impact would be on those processors that have operated furthest outside the intent of the current regulation, i.e., using substantial quantities of proteinaceous substances indentified on product labels as "flavorings" that have no or minimal flavoring function. The Department does not believe these costs should be viewed as an economic impact of the proposed rule. In addition, the Department has no reason to believe that the small processors are using proportionally more of the nonmeat proteins than larger processors. Furthermore, the proposal would affect

only standardized cooked sausage products and would not have an impact upon other products produced by a plant. (The proposal would not directly limit the use of nonmeat proteins in any products. It would simply not allow them to count as "meat protein".)

In view of the above, the Department does not believe the impact on the small entities would be significant. Because the proposal will allow all processors to compete on an equal basis, the proposal may benefit many small entities. The Department is requesting data on how small entities would be affected by the adoption of the proposed rule.

Comments

Interested persons are invited to submit comments concerning this porposal. Written comments must be sent in duplicate to the Policy Office and must bear reference to the docket number indicated in the heading of this document. All comments submitted pursuant to this proposal will be made available for public inspection in the Policy Office between 9:00 a.m. and 4:00 p.m., Monday through Friday.

Background

Many meat and poultry products contain added water. The amount of added water in a product is controlled by food standard regulations (see 9 CFR Part 319 and Part 381, Subpart P) or by label declarations (see 9 CFR Part 317 and Part 381, Subpart N) to ensure that consumers receive products that are not adulterated with excess water in violation of the Federal Meat Inspection Act and Poultry Products Inspection Act (21 U.S.C. 601(m)(8), 453(g)(8), respectively). Products containing added water include such widely diverse groups as sausages, cured products, and seasoned fresh products. Methods of control currently employed by FSIS to ensure product compliance with regulatory requirements include formulation control, weight measurement, and laboratory analysis. Laboratory analysis of finished product is being used more and more as the preferred method of measurement to ensure product compliance with standards and/or label declarations. Laboratory analysis is the only method for determining compliance with added water limits for cooked sausages, which are the subject of this proposed regulation.

Cooked sausages are meat food products which have existed as recognized items of commerce for generations. They are commonly known by such names as frankfurters, bologna, liverwurst, cotto salami, and many others (see 9 CFR 319.140, 319.180–319.182). These products are mixtures of tissues of slaughtered animal origin, water, salt, seasonings, and other ingredients. Cooked sausages may be cured or smoked and may contain binders which are added for functional purposes. The amount of added water which may be lawfully present in the finished product is limited by regulations (9 CFR 319.140, 319.180–319.182). Added water may be water that is added as such or contained in ingredients which are of nonmeat origin; it does not include water naturally contained in meat, meat byproducts, Mechanically Separated (Species), or poultry ingredients. These ingredients comprise the meat block.

The procedure traditionally employed by FSIS to determine the amount of added water present in a product has been: (1) Calculating the protein attributable to the meat block: (2) multiplying that figure by four to get the amount of water attributable to the meat block; and (3) subtracting the meat block water from the total water present to get "added water". This calculation is based on the fact that the meat block has a consistent moisture-to-protein ratio (MPR) of approximately 4:1 that can be utilized for this compliance determination.

Protein content is determined by measuring the amount of nitrogen present in a sample of product and making appropriate calculations. Therefore, when nonmeat proteins or other nitrogenous substances are added to cooked sausages, they must be deducted from total analytical protein in order to determine the amount of meat block protein present, and to determine what proportion of the water present in the product is attributable to the meat block. This calculation is easily accomplished if the laboratory knows the amount of nitrogenous substances that have been added so that a deduction can be made from the total protein content of the finished product. This information is normally available to, and provided by, the inspector taking the sample at the establishment.

The present policy of USDA laboratories is to deduct all nonmeat proteins except for autolyzed yeast, autolyzed yeast extract, milk protein hydrolysate, milk albuminate, and 0.35 percent of the protein contributed by cereals and spices. Cereal and mustard have always been exempted; each may contribute up to 0.35 percent protein without deduction. All other nitrogen-containing substances such as binders, extenders, and flavor enhancers either are or have been deducted. Recently, however, in the absence of a regulation, autolyzed yeast, autolyzed yeast extract, milk protein hydrolysate and milk albuminate have been permitted to be added to products, and to be labeled as "flavorings". As such, they may be added together with other flavorings and not listed as separate ingredients either on the product label or formulation statement. Therefore, they may not be specifically identified on the sample transmittal form to the laboratory and, thus, the laboratory may not deduct them while performing the analysis for added water. In addition, even if identified, these particular substances have not been deducted during the analysis.

In recent years, proteinaceous materials identified as flavorings have been utilized in increasingly large quantities as ingredients in cooked sausages. They may constitute as much as 20 percent or more of the protein in some cooked sausage formulations without being deducted in the added water calculations. This has permitted products to contain more than 10 percent added water without being considered in violation of the regulations.

The Agency has been petitioned by trade associations and companies to reassess the situation in which nonmeat proteins have been counted in determining added water in cooked sausages. These petitioners have asked the Agency to deduct nonmeat proteins when determining the added water content of cooked sausages and to enforce existing regulatory standards and labeling requirements. The Agency agrees that while these proteinaceous additives might serve as flavorings or flavor enhancers, they should be deducted when determining the added water content of cooked sausages.

The added water limitation is based on the weight of the finished product and is determined by the calculations described earlier. Whatever the function of such nonmeat proteinaceous substances, whether added as spices, flavor enhancers, or meat replacements, their protein content must be deducted in order to perform proper calculations. This deduction is necessary because added water is any water in cooked sausage not attributable to the meat block.

As the use of nonmeat proteins increases, so do the economic implications. One pound of nonmeat protein can replace the protein contributed by more than 5 pounds of the meat block. This use would also add 4 pounds of water. Thus, when nonmeat proteins are not deducted, there is an economic incentive to increase their level of use. This allows substitution of

such ingredients for meat blo ingredients and permits the addition of water in violation of the Federal Meat Inspection Act and regulations issued thereunder which restrict the amount of added water in cooked sausages.

The Agency has, in response to other petitions, considered the option of permitting a limited amount of nonmeat proteins and four times that amount of added water to be considered as "meat" when calculating added water in cooked sausages. FSIS believes that any such crediting of nonmeat proteins, even a limited amount, would be inconsistent with current Agency policy as reflected in the protein fat free (PFF) regulations for cured pork products, which do not allow any nonmeat protein contribution to minimum PFF percentages (9 CFR 319.104, 319.105, 318.19 and 327.23). Choosing and justifying a maximum percentage appeared to be an arbitrary exercise. Furthermore, and attempt by the Agency to review nonmeat proteins on a substance-by-substance basis to determine whether or not its protein should be treated the same as "meat protein" would be unworkable because so many ingredients are utilized to perform various functions, such as binding, emulsifying, and stabilizing.

Therefore, FSIS is proposing that all "nonmeat proteins" be deducted from total protein present during compliance determinations of added water in cooked sausages.

Description of Proposed Rule

The proposed rule would ensure that products to which protein contributing substances have been added are in compliance with prescribed regulatory standards, guaranteering that such products would not be considered adulterated, misbranded, or otherwise not in accordance with the requirements of the Federal Meat Inspection Act. The proposed rule, which is consistent with regulations concerning the addition of proteinaceous substances to cured pork products, would address and resolve concerns expressed by three trade associations, and would implement the principle that nonmeat protein used for functional purposes should not result in any replacement of principal protein and associated nutrients in the food to which they are added.

Under the proposed rule, the determination of added water in cooked sausage products would be based solely on the amount of protein which is of slaughtered animal orign and contributed by meat, meat byproduct, Mechanically Separated (Species), and poultry ingredients. These ingredients, either raw or cooked, comprise the meat block. The total protein contributed by the meat block must be known in order to ensure compliance with regulatory limits for added water. Products such as partially defatted chopped (species), partially defatted (species) fatty tissues, and proteolytic enzyme treated (species) trimmings would be credited as part of the meat block because these are moderately processed ingredients which are used as a significant nutrient source and not for specific functional purposes, such as binding, emulsifying, stabilizing, flavoring, and similar uses (see 9 CFR 301.2(tt) and 301.2(uu); see also 9 CFR 319.5, 319.15(e), 319.180(g), and 381.1(b)(41)).

In determining the amount of creditable protein during added water calculations: (1) All proteinaceous materials which are not of slaughtered animal origin would be identified as to the amount added to the product formulation and these proteinaceous materials would be deducted from total protein when calculating the amount of added water (such substances include, but are not limited to, plant products, yeast products, milk products, egg products, or their derivatives; (2) proteinaceous materials which are of slaughtered animal origin, but which are processed by such means as extracting, concentrating, drying, centrifuging, and hydrolysis, would also not be credited as part of the meat block. The amount added to the product formulation by such ingredients would be required to be identified for deduction from total protein (such proteinaceous materials include, but are not limited to, (species or kind) extract, (species or kind) stock or broth, (species or kind) flavor, (species or kind) concentrate, enzyme modified powdered (species or kind), hydrolyzed (species or kind) collagen, and soluble bone protein). These materials, while of slaughtered animal origin, have been so extensively processed that they have lost their identity as livestock or poultry ingredients, described as comprising the meat block. These materials have also been added as functional ingredients, e.g., flavors, rather than as significant nutrient sources. These new ingredients should not be considered part of the meat block which has a determined moisture-to-protein ratio. The degree of processing used to make these ingredients is such that the natural moisture-to-protein ratio has been altered.

Accordingly, the Administrator is proposing to amend Part 318 of the Federal meat inspection regulations by adding a new section establishing a procedure to be followed when determining the amount of "added water" in cooked sausages subject to added water limitations.

List of Subjects in 9 CFR Part 318

Meat inspection, Preparation of product, Approval of substances.

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

1. The authority citation for Part 318 continues to read as follows:

Authority: 34 Stat. 1260, 81 Stat. 584, as amended (21 U.S.C. 601 *et seq.*); 72 Stat. 862, 92 Stat. 1069, as amended (7 U.S.C. 1901 *et seq.*) 76 Stat. 663 (7 U.S.C. 450 *et seq.*), unless otherwise noted.

2. Part 318 would be amended by adding a new § 318.22 to Subpart A to read as follows:

§ 318.22 Determination of added water in meat products.

(a) The amount of added water in cooked sausage will be determined by calculating the amount of water contributed to the formulation by the meat block and subtracting this amount from the total finished product water content. The meat block water is calculated as being four times the protein contributed by the combined meat, meat byproducts, Mechanically Separated (Species), and poultry ingredients.

(b) The protein contributed by the meat block is calculated as total protein less:

(1) All proteinaceous material contributed by ingredients which are not of slaughtered animal origin. These ingredients include, but are not limited to, plant products, yeast products, milk products, egg products, or their derivatives.

(2) Proteinaceous material contributed by ingredients of slaughtered animal origin which have been processed by such means as hydrolysis, extraction, concentrating, or drying. These ingredients include, but are not limited to, (species or kind) extracts, stocks and broths, hydrolyzed tissues, and tissue extracts.

Done at Washington, DC, on August 12, 1987.

Lester M. Crawford,

Acting Administrator, Food Safety and Inspection Service.

[FR Doc. 87-18803 Filed 8-17-87; 8:45 am]

BILLING CODE 3410-DM-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 338

Fair Housing

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Proposed rule.

SUMMARY: The Federal Deposit Insurance Corporation ("FDIC") proposes to amend its fair housing regulation, 12 CFR Part 338, which applies to insured state nonmember banks. Part 338 says that such banks must ask applicants for certain data in connection with any application for a "home loan." At present the data-gathering requirement applies not only to loans taken out for the purpose of purchasing or constructing or refinancing the borrower's dwelling, but also to so-called "home-equity loans"—*i.e.*, general purpose, open-end loans secured by the borrower's dwelling—used in some part for the purpose of repairing, maintaining, or improving the borrower's dwelling. The proposed amendment, would eliminate home-equity loans, as well as home improvement, maintenance, and repair loans from the data-gathering requirement. The requirement would then only apply to home purchase, construction and refinancing loans. The FDIC believes that the proposed amendment could reduce the paperwork burden on the banking industry without imparing enforcement of fair housing lending laws.

DATE: Comments must be submitted on or before October 19, 1987.

ADDRESS: Send comments to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. Comments may be hand delivered to, and are available for reviewing in, Room 6108 on weekdays between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Patricia A. McCormick, Fair Lending Analyst, Office of Consumer Affairs (202/898–3538 or toll-free 800/424–5488), Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Background

Part 338, 12 CFR Part 338, is the FDIC's fair housing regulation. It applies to all state-chartered banks which are insured by the FDIC, but which do not belong to the Federal Reserve System ("state nonmember banks").

Part 338 implements the Fair Housing Act ("FHA"), 42 U.S.C. 3533(a), 3535(c), & 3601–19. It also carries out the monitoring responsibilities delegated to the FDIC pursuant to the Federal Reserve Board's Regulation B, 12 CFR Part 202, which implements the Equal Credit Opportunity Act of 1974 ("ECOA") (15 U.S.C. 1691–91f).

Part 338 has two main purposes. The FHA forbids banks (and certain other creditors) from engaging in unlawful discrimination in making housing related loans. 42 U.S.C. 3605. Part 338 sets certain data-gathering requirements for state nonmember banks and thereby helps to provide the information needed to enforce that prohibition. In the same vein, the ECOA forbids banks (and all other creditors) from engaging in unlawful discrimination in making loans generally and commands the Federal Reserve Board ("FRB") to prescribe rules carrying out that mandate. 15 U.S.C. 1691 & 1691b. The FRB's Regulation B specifies data-gathering rules for most consumer loans; but in the case of certain loans—those related to the purchase or refinancing of the borrower's dwelling—the FRB has delegated the responsibility to set the data-gathering requirements to its sister federal financial regulatory agencies. *See* 12 CFR 202.13. The FDIC has adopted Part 338 in part to carry out the duty delegated to it by the FRB.

Part 338 requires state nonmember banks to collect certain information from anyone who applies for a "home loan." Part 338 defines a home loan as follows:

> "Home loan" means any extension of credit relating to:
>
> (1) The purchase or construction of or the refinancing for a dwelling which is or will be comprised of one to four residential units, at least one of which the applicant intends to occupy as a principal residence, and which secures or will secure the extension of credit; or
>
> (2) The improvement, repair, or maintenance of a dwelling which is comprised of one to four residential units, at least one of which the applicant intends to occupy as a principal residence, and which secures or will secure the extension of credit. 12 CFR 338.1(f).

Every state nonmember bank that receives a home loan application must request and retain information regarding the applicant's race/national origin, sex, marital status and age. 12 CFR 338.4(a)(1)(i) & (2)(i). Certain state nonmember banks—those with assets exceeding $10 million and having an office in a primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area—must collect additional data. The extra data include, but are not limited to, the applicant's total assets and liabilities, the purchase price or current market value of the property, and the property's census tract. *Id.* 338.4(a)(2)(ii). Certain state nonmember banks that collect the additional information must also keep a log-sheet of home loan applications on a branch-by-branch basis. *Id.* 338.4(a)(2)(iv).

A state nonmember bank must ask for this information during the initial contact with the home loan applicant. *Id.* 338.4(a)(1)(ii) & (2)(iii)(A). The bank must retain the information on file for 25 months after notifying the applicant of the action taken on the application. *Id.* 338.4(c).

FDIC Proposal

The FDIC proposes to amend the definition of "home loan" to read as follows:

> "Home loan" means any extension of credit the primary purpose of which is the purchase or construction of or the refinancing for a dwelling that secures or will secure the extension of credit, which dwelling is or will be comprised of one to four residential units, at least one of which the applicant intends to occupy as a principal residence.

The proposed amendment would also make technical and conforming changes to the rest of Part 338. These changes eliminate language that would become superfluous as a result of the change in the definition of "home loan."

The FDIC has three reasons for changing the definition of "home loan." First, the FDIC would like to remove "home-equity" loans from the data-gathering requirement. Home-equity loans are general-purpose, open-end loans secured by the borrower's dwelling. The FDIC does not believe that the FHA was meant to apply to loans of this kind, or that it is useful to distinguish home-equity loans from other kinds of general purpose, open-end consumer credit.

Second, the FDIC would like to bring its data-gathering requirements into line with those of the Comptroller of the Currency ("OCC") and the FRB. Neither agency applies the data-gathering requirement to loans made for improving, repairing, or maintaining the borrower's dwelling (herein referred to generally as "home improvement loans").

Finally, the FDIC would like to eliminate recordkeeping requirements that have not proven useful. Although the FDIC has monitored home improvement loans for several years, the number of complaints alleging unlawful discrimination in making such loans has been very small.

Reasons for Proposal

A. Home-equity loans

Under current Part 338, a home-equity loan is a "home loan" if the borrower intends to use the proceeds for repairing, improving, or maintaining his or her residence. If the borrower intends to use the proceeds for other purposes—*e.g.*, to buy a car, or to invest in a business enterprise—the loan is not a home loan.[1] State nonmember banks must ask applicants for information on sex and race in the case of "home loans;" state nonmember banks are forbidden to ask for such information in other cases.

The FDIC adopted Part 338's data-gathering requirement in 1978, before home-equity loans became widely available. In 1981 the FDIC affirmed that Part 338 applies to general or multi-purpose loans when the borrower uses part of the proceeds for home loan purposes and further specified that the state nonmember bank is responsible for establishing whether any part of the loan will be used for such purposes. See 1 *FDIC Law, Regulations, Related Acts* 2655 (1981). The FDIC did not have home-equity loans in mind when it took this position, however. The FDIC's only purpose was to assure that Part 338 reached all forms of closed-end home loans.

Home-equity loans present a special problem. Both banks and borrowers regard these lines of credit as a variety of consumer loans—albeit with a higher degree of security for the lender—rather than as residential real estate loans. Moreover, current tax rules provide a tax deduction for interest on residential loans under certain conditions. Home-equity loans are likely to become popular as substitutes for unsecured, open-end credit.

While it is comparatively easy to determine the purpose of a closed-end loan at the time the loan is made, and to segregate home loans from other loans at that time, it is not so easy to do so in the case of open-end, home-equity loans. Banks do not typically place any constraints on the use of the loan proceeds; borrowers want the funds for a variety of purposes, often for purposes yet to be determined. In short, the borrower's primary purpose in taking out a home-equity loan is simply to gain additional liquidity. That remains true even if the borrower happens to draw upon it to reduce or pay-off a mortgage loan.

[1] If the borrower uses a home-equity loan to buy or build a new house, the loan still is not a "home loan," because it is not secured by the dwelling to be acquired. 12 CFR 338.1(f).

Neither the OCC nor the FRB require lenders to obtain monitoring information on home-equity loans for the purpose of home improvement, repair or maintenance. The OCC only imposes the special data-gathering requirement in the case of loans made "for the purchase, permanent financing for construction, or the financing of the borrower's residence 12 CFR 27.2(f). The FRB's parallel data-gathering requirement only applies to loans "primarily for the purchase or refinancing" of the borrower's residence. *Id.* 202.13(a). The FRB has published a staff interpretation explicitly declaring that home-equity loans—at least those that are "made primarily for a purpose other than the purchase or refinancing of the principal residence"—are not subject to the requirement. See *Fed. Reg. Res. Serv.* Paragraph 6–197.5 (1987). Accordingly, the FDIC may be placing state nonmember banks at a competitive disadvantage.

The data-monitoring requirement seems to be only marginally useful in the case of home-equity loans. Banks generally advertise these loans in the media, and offer to mail the customer a loan application on request. This procedure automatically reduces the likelihood of unlawful discrimination—at least discrimination on the basis of race—as the applicant is not visible to the lender. Imposing the requirement could, therefore, be counterproductive in some instances, since the lender would not otherwise be aware of the applicant's race.

The more extensive information required under Part 338 from larger, more urban banks reflects required standardized information on the "Residential Loan Application" and "Second Mortgage or Home Improvement Application" forms authorized by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation. Such standardized information was designed for investment quality mortgages for sale on the secondary markets. Lenders do not have to collect this information in the case of general purpose consumer loans which are not home loans. Lenders do not typically inquire into the purpose of home-equity loans; nor do they concern themselves with how the funds are used. Accordingly, there does not appear to be any sound reason to collect this information in the case of home-equity loans.

Finally, the process of requesting the monitoring information is cumbersome and confusing in the case of home-equity loans and tends to deter consumers from supplying the information voluntarily. The loan application must indicate that the monitoring information is being requested by the federal government for compliance with statutes that prohibit creditors from discriminating against applicants on certain bases. But at the same time, the application must also explain that the monitoring information is only requested when the home-equity loan is a home improvement type loan. In effect, many borrowers are given an incentive to avoid labeling a home-equity loan as a home improvement loan.

B. Home-improvement loans

The FDIC applied the data-gathering requirement to home improvement loans in order to provide more comprehensive enforcement of the FHA. This procedure does not appear to be cost-effective, however. From January of 1985 to May of 1987, neither the FDIC nor the Department of Housing and Urban Development received any complaints alleging unlawful discrimination by state nonmember banks involving secured home improvement loans. The FDIC received only two home improvement loan complaints in 1984, and no unlawful discrimination was found in either case.

Generally, home improvement loans are usually viewed by lenders as preferred loans, because the improvements increase the value of the house. Also, applicants for such loans are generally more financially established and more creditworthy than applicants for other consumer credit.

By continuing to require monitoring information on home improvement loans, the FIC imposes costs on state nonmember banks that national and state member banks do not sustain. Neither the OCC nor the FRB applies the data-gathering requirement to such loans.

The OCC omits home improvement loans from the category "home loan." See 12 CFR 27.2(f); 44 FR 63084. The FRB takes essentially the same view. See *id.* 202.13(a). The FRB has rejected a proposal to apply the monitoring requirement to home improvement loans, on the ground that the data-gathering effort would be costly and of questionable value. See 2 *Fed. Res. Reg. Serv.* Paragraph 6–197.5 (1987); see also 50 FR 10690 & 48018 (1985).

Accordingly, the FDIC considers that it is appropriate to propose to eliminate the monitoring requirement for home improvement loans and home-equity loans.

BEST COPY AVAILABLE

Suggested Issues for Comment

Issue 1: From all interested parties, general comments regarding the proposal to delete home improvement, repair and maintenance loans from inclusion under the definitions of 338.1(f) and specifically any comments which would support or challenge the "Reasons for the Proposal."

Issue 2: From the standpoint of consumer and civil rights groups and banks, comments would be helpful regarding perceived possible effects on bank compliance with fair housing lending laws of omitting home improvement, repair, and maintenance loans from the scope of Part 338.

Issue 3: From the standpoint of banks, comments on the following would be helpful:

a. What specific problems, if any, have banks had in complying with the information recording requirements of Part 338 regarding home improvement, repair and maintenance loan applicants for both secured closed-end and open-end (*e.i.*, home equity) loans?

b. How many hours or staff time are estimated to be required in a year to comply with the information recording requirements for home improvement, repair and maintenance loan applicants for both secured closed-end and open-end loans? What are the estimated dollar costs? Please explain the way in which these estimates were computed.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Board of Directors of the FDIC hereby certifies that the proposed amendments, if adopted, will not have a significant economic impact on a substantial number of small entities. The proposed amendments would ease the existing collection of information requirements. The effect of the amendments is expected to be beneficial, not adverse, and small entities are expected to receive all benefits of the amendments.

Paperwork Reduction Act

The information collection requirements prescribed herein have been submitted to the Office of Management and Budget for review. See 44 U.S.C. 3504(h). Written comments may be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the FDIC, Washington, DC 20503.

List of Subjects in 12 CFR Part 338

Advertising, Banks, banking, Fair Housing, Mortgages, Reporting and recordkeeping requirements, Signs and symbols, State nonmember banks.

The Board of Directors of the Federal Deposit Insurance Corporation proposes to amend Part 338 of title 12 of the Code of Federal Regulations as follows:

PART 338—FAIR HOUSING

1. The authority citation for Part 338 continues to read as follows:

Authority: Sec. 2, Pub. L. 88–671, 74 Stat. 547 (12 U.S.C. 1817); sec. 8, Pub. L. 797, 64 Stat. 879, as amended by secs. 202, 204, Pub. L. 89–695, 80 Stat. 1046, 1054, and sec. 110, Pub. L. 93–495, 88 Stat. 1506 (12 U.S.C. 1818); sec. 9, Pub. L. 797, 64 Stat. 881, as amended by sec. 205, Pub. L. 89–695, 80 Stat. 1055 (12 U.S.C. 1819); sec. 203, Pub. L. 89–695, 80 Stat. 1053 (12 U.S.C. 1820(b)); sec. 805, Pub. L. 90–284, 82 Stat. 83, 84, as amended by sec. 808, Pub. L. 93–383, 88 Stat. 729 (42 U.S.C. 3605, 3608); sec. 501, Pub. L. 93–495, 88 Stat. 1521, as amended by sec. 2, Pub. L. 94–239, 90 Stat. 251 (15 U.S.C. 1691, et seq.); 40 FR 49306, 12 CFR Part 202; 37 FR 3429, 24 CFR Part 110.

2. Section 338.1 is amended by revising paragraph (f) to read as follows:

§ 338.1 Definitions.

* * * * *

(f) "Home loan" means any extension of credit the primary purpose of which is the purchase or construction of or the refinancing for a dwelling that secures or will secure the extension of credit, which dwelling is or will be comprised of one to four residential units, at least one of which the applicant intends to occupy as a principal residence.

3. Section 338.4 is amended by revising paragraphs (a)(2)(i)(G) and (a)(2)(ii)(C)(*1*)(*v*) to read as follows:

§ 338.4 Recordkeeping requirements.

(a) *Records to be retained.* * * *

* * * * *

(2) * * *

* * * * *

(i) * * *

* * * * *

(G) Loan type, using the following categories: purchase of existing dwelling; refinancing of existing home loan; construction loan only; construction-permanent; other (specify).

* * * * *

(ii) * * *

* * * * *

(C) * * *

(*1*) * * *

* * * * *

(*v*) Other (specify).

* * * * *

By Order of the Board of Directors.

Dated at Washington, DC, this 12th day of August, 1987.

Federal Deposit Insurance Corporation,

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87–18874 Filed 8–17–87; 8:45 am]

BILLING CODE 6714–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

Extension of Deadline for the Permanent State Regulatory Program of Texas

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for a public comment period on a request submitted by the State of Texas to further extend the deadline for Texas to resubmit rules governing a blaster training, examination and certification program as required by the Federal regulations at 30 CFR Part 850.

All States with regulatory programs approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) were required to develop and adopt a blaster certification program by March 4, 1984. Section 850.12(b) of OSMRE's regulations provides that the Director, OSMRE, may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause.

Texas has previously requested and received four such extensions (March 21, 1985, 49 FR 37062; June 3, 1985, 50 FR 23299; January 17, 1986, 51 FR 2489; and August 8, 1986, 51 FR 28554). In a letter dated June 4, 1987, Texas requested a further extension of its blaster certification program submission deadline to December 31, 1987. OSMRE is proposing to again modify the deadline for Texas to develop and adopt its blaster program. This notice sets forth the dates and locations for submission of written comments.

DATE: Comments not received by 4:00 p.m. c.d.t. September 17, 1987, will not necessarily be considered.

ADDRESSES: Written comments should be mailed or hand delivered to: Mr. James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 333 West 4th Street, Room 3432, Tulsa, Oklahoma 74103.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Moncrief, Director, Tulsa

Field Office, Office of Surface Mining Reclamation and Enforcement, 333 West 4th Street, Room 3432, Tulsa, Oklahoma 74103; Telephone: (918) 581–7927.

SUPPLEMENTARY INFORMATION: On March 4, 1983, OSMRE issued final rules effective April 14, 1983, establishing the Federal standards for the training and certification of blasters at 30 CFR Part 850 (48 FR 9486). Section 850.12 of these regulations stipulates that the regulatory authority in each State with an approved program under SMCRA shall develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation within 12 months after approval of a State program or within 12 months after publication date of OSMRE's rule at 30 CFR Part 850, whichever is later. In case of Texas' program, the applicable date was March 4, 1984, 12 months after the publication date of OSMRE's rule.

On March 1, 1984, Texas submitted an amendment to its approved program that was intended to implement the Federal requirements for a blaster training, examination and certification program. OSMRE published a notice of public comment period and opportunity for public hearing in the **Federal Register** on March 23, 1984 (49) FR 10943). In its subsequent review of the proposed amendment, OSMRE identified several deficiencies and pointed these out to the State.

On June 25, 1984, Texas advised OSME that it would require a 6-month extension of the deadline for resubmission of a blaster program in order that Texas might adequately address and respond to the issues raised of OSMRE. Texas also requested suspension of the current rulemaking on this subject. In the September 21. 1984 **Federal Register**, OSMRE announced its decision to suspend current rulemaking and extend Texas' deadline to March 21, 1985 (49 FR 37062).

On March 7, 1985, Texas requested an additional 4-month extension through July 15, 1985, to submit the state's blaster certification rules, training and certification program. In the June 3, 1985, **Federal Register**, OSMRE announced its decision to extend the deadline to May 15, 1986. In the August 8, 1986, **Federal Register**, OSMRE further extended the deadline to May 15, 1987.

In a letter dated June 4, 1987, Texas requested additional time to submit its blaster certification program, citing "unexpected delays in the final adoption of amendments concerning notices of violation, prime farmland, lands unsuitable for mining and effluent limitation." In addition, Texas stated that, as a result of discussions with OSME, priority has been given to amendments concerning self-bonding.

OSMRE is seeking comment on the State's request for additional time to develop and adopt a blaster certification program. Section 850.12(b) of OSMRE's regulations provides that the Director, OSMRE, may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause.

List of Subjects in 30 CFR Part 943

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: August 7, 1987.

Raymond L. Lowrie

Assistant Director, Western Field Operation.

[FR Doc. 87–18793 Filed 8–17–87; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122 and 123

[FRL–3213–9]

NPDES Permit Regulations; Application Requirements; Duration of Certain NPDES Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this notice, the EPA proposes to withdraw provisions in the Agency's NPDES regulations which authorize the Director of a NPDES program to grant case-by-case extensions for the submission of certain types of effluent data by permit renewal applicants (40 CFR 122.21(d)(2)(ii) and 123.62(e)). Repeal of these provisions would obligate applicants to submit effluent data by the deadlines established for the submission of a permit application established in 40 CFR 122.21(d).

DATE: Comments must be submitted on or before September 17, 1987.

ADDRESSES: Send written comments to Stephen Bugbee, Permits Division (EN–336), Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Stephen Bugbee, Permits Division (EN–336), Environmental Protection Agency, 401 M St. SW., Washington, DC 20460; (202) 475–9539.

SUPPLEMENTARY INFORMATION:

I. Background

On August 9, 1984, EPA promulgated regulations authorizing NPDES program directors to grant extensions for permit renewal applicants to submit certain effluent data beyond the expiration date of the discharger's NPDES permit (49 FR 31840). In *National Wildlife Federation* v. *EPA*, 84–1547 (D.C. Cir. 1984), the petitioners challenged the data submission rule, arguing that the regulation was not adopted in accordance with the Administrative Procedure Act, and that the rule was inconsistent with provisions of the Clean Water Act. In light of issues raised by the petition for review, EPA sought a voluntary remand of the regulation in order to address NWF's procedural concerns in a new rulemaking. On July 1, 1985, the court granted the Agency's motion of a voluntary remand, and denied NWF's motion for a stay of the rule. Therefore, the data submission rule has remained in effect during the remand of this regulation.

The Agency believes that withdrawing the 1984 regulation is appropriate because the circumstances which the rule was designed to address have been largely alleviated during the last three years. At the time the rule was promulgated, there was a relatively large backlog of major permits. Due to lack of resources, the Agency had to administratively extend some permits beyond their expiration date. Under these circumstances, effluent data that was submitted 180 days before the permit expiration date might have been outdated by the time the Agency was able to reissue the permit. The Agency believed that granting extensions on a case-by-case basis would insure that the permit writer had current effluent data with which to establish permit limitations and conditions.

At present, however, the large backlog of major permits has been essentially eliminated. When the rule was originally proposed, approximately 67% of the Agency's NPDES permits had been continued beyond their expiration date. Currently, that figure is below 15%. Since the permitting backlog has been drastically reduced, the Agency believes that effluent data submitted with the rest of the NPDES permit application will not be outdated when Directors reissue NPDES permits.

In addition, at the time the data submission rule was adopted, shortages in priority pollutant laboratory testing capacity made it difficult for some permit applicants to submit effluent data by certain deadlines. The Agency

believed that the regulations would enable Directors to respond to local laboratory shortages by adjusting the timing of effluent data submission. However, there is now adequate laboratory capacity to accommodate the testing needs of NPDES permit applicants.

Finally, EPA stated in the preamble to the data submission rule that extensions were appropriate in light of uncertainty regarding testing regulations which had not yet been finalized by the Agency (49 FR 31840). At that time EPA was involved in negotiations for settlement of litigation of the Agency's Consolidated Permit Regulations. Since the Agency's testing requirements could change as a result of that proceeding, commenters on the proposed data submission rule had suggested that the Agency postpone the deadline for submission of effluent data until some time after final testing requirements were promulgated. EPA has promulgated regulations pursuant to settlement of the Consolidated Permit Regulations litigation. [49 FR 37998, (Sept. 26, 1984)]. Therefore, there is no longer uncertainty justifying retention of the 1984 data submission rule.

Furthermore, the Agency believes that there may be some advantages to having all applicants submit effluent data along with the rest of their permit application. Timely submission of effluent data promotes the efficient use of permitting resources by State and federal agencies which may utilize that data in establishing permitting priorities. Also, uniform submission requirements may tend to promote public participation in the permitting activities of agencies administering the NPDES program.

The Agency has conducted an informal survey of EPA's regional offices to determine how frequently permit applicants have requested extensions for the submission of effluent data. The ten regional offices indicated that they were not aware that any requests for extensions had been made to EPA. Thus, it appears that the data submission rule has not been utilized by EPA since it was adopted almost three years ago.

Since the data submission rule was remanded to the Agency, EPA has considered other options for revising the regulation. These alternatives have been rejected on the grounds that they would place too heavy an administrative burden on permit-issuing agencies. The data submission rule could be modified to provide that requests must be made in writing to a specified official in EPA or the State agency administering the NPDES program. Copies of all requests and extensions could also be made available for public inspection. The Agency believes that imposing these administrative requirements on permittees and the relevant agencies is not justified, especially since the circumstances underlying adoption of the rule are no longer of concern to the NPDES program, and since the rule has rarely been utilized since it was adopted.

As noted above, since effluent data may be used by the Director in setting permitting priorities, the data submission rule could be modified to provide that extensions would be granted if the Director had other data, such as ambient monitoring data or guidelines development documents, with which to allocate the agency's permitting resources. However, EPA believes that implementing such a requirement would be unduly burdensome for the federal and State agencies administering the NPDES program.

The proposed rule, by deleting 40 CFR 122.21(d)(2)(ii) and the last sentence in 40 CFR 123.62(e), would result in requiring all permit renewal applicants, without exception, to submit effluent data required in § 122.21 (f), (g) and (h) by the deadline established for the submission of a permit reapplication. *See* § 122.21(d). Thus, dischargers would have to submit their effluent data at least 180 days before their permit expiration date. However, the Director would retain the authority under § 122.21(d)(1) and (2)(i) to grant extensions for submission up to the expiration date of the existing permit.

II. Executive Order 12291

Executive Order 12291 requires EPA and other agencies to perform regulatory analyses of major regulations. Major rules are those that impose a cost on the economy of $100 million or more annually or have certain other economic impacts. This regulation is not a major rule because it merely deletes a time extension for submission of Form 2c effluent data. Thus it meets none of the criteria of a major rule as set forth in section 1(b) of the Executive Order. This rule has been submitted to the Office of Management and Budget for review. Any comments from OMB and any EPA response to those comments will be available for public inspection at EPA, Room 3220, 401 M Street, SW., Washington, DC 20460.

III. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., EPA must submit a copy of any proposed rule that contains a collection of information requirements to the Director of the Office of Management and Budget for review and approval. This proposed regulation contains no additional information collection requirements and therefore the Paperwork Reduction Act is not applicable.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act, 2 U.S.C. 601 *et seq.*, requires EPA and other agencies to prepare an initial regulatory flexibility analysis for all proposed regulations that have a significant impact on a substantial number of small entities. No regulatory flexibility analysis is required, however, where the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Since the proposed regulatory change does not impose any new requirements on permit applicants, but merely adjusts the timing for submission of effluent data, the Administrator certifies, pursuant to 5 U.S.C. 605(b), that this proposed regulation will not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Parts 122 and 123

Administrative practice and procedure, Reporting and recordkeeping requirements, Water pollution control.

Date: August 12, 1987.

Lee M. Thomas,

Administrator.

For the reasons set out in the preamble, 40 CFR Parts 122 and 123 are proposed to be amended as follows:

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

1. The authority citation for Part 122 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 et seq.

§ 122.21 [Amended]

2. Section 122.21 is amended by removing paragraph (d)(2)(ii).

PART 123—STATE PROGRAM REQUIREMENTS

3. The authority citation for Part 123 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 et seq.

§ 123.62 [Amended]

4. The last sentence in § 123.62(e) is removed.

[FR Doc. 87-18833 Filed 8-17-87; 8:45 am]
BILLING CODE 6560-50-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1165

[Ex Parte No. MC-142 (Sub-No. 2)]

Freight Forwarder Restrictions

AGENCY: Interstate Commerce Commission.

ACTION: Discontinuance of proceeding.

SUMMARY: By a decision served June 19, 1986 (51 FR 22537, June 20, 1986) the Commission requested comments on proposed amendments to the rules at 49 CFR Part 1165 to provide for the removal of restrictions from freight forwarder permits. The Commission is discontinuing the proceeding in response to changed circumstances, specifically: (1) The intervening Freight Forwarder Deregulation Act of 1986, Pub. L. No. 99-521, 100 Stat. 2993, enacted October 22, 1986; and (2) the proposed elimination of the Part 1165 rules and relocation of modified restriction removal provisions to Part 1160, in Ex Parte No. MC-142 (Sub-No. 4), *Revision of Licensing Procedures to Include Applications for Removal of Restrictions from Authorities of Motor Carriers of Property and Passengers—Elimination of 49 CFR Part 1165*, 52 FR 17420 (May 8, 1987).

EFFECTIVE DATE: This decision will be effective on September 17, 1987.

FOR FURTHER INFORMATION CONTACT:
Suzanne Higgins (202) 275-7203
or
Andrew Lyon (202) 275-7691

SUPPLEMENTARY INFORMATION: The Commission's decision contains additional information. To purchase a copy of the decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357, or TDD for hearing impaired (202) 275-1721.

This action will not affect significantly the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1165

Freight forwarders, Motor carriers.

Authority: 49 U.S.C. 10101, 10321, and 10923(d)(1); and 5 U.S.C. 553.

Decided: August 6, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,
Secretary.

[FR Doc. 87-18800 Filed 8-17-87; 8:45 am]
BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 52, No. 159
Tuesday, August 18, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

State of Ohio Abandoned Mined Lands Reclamation Program; Determination

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of determination.

SUMMARY: The Secretary of Agriculture has determined that all state cost-share payments made under the Ohio Abandoned Mined Lands Program pursuant to § 1513.28 of the Ohio Revised Code have been made primarily for the purpose of soil and water conservation, protecting or restoring the environment, improving forests, or providing a habitat for wildlife. The determination is in accordance with section 126(b) of the Internal Revenue Code of 1954 as amended by section 543 of the Revenue Act of 1978 and the Technical Corrections Act of 1979. The determination permits recipients of these payments to exclude them from gross income to the extent allowed by the Internal Revenue Service (IRS).

FOR FURTHER INFORMATION CONTACT: Robert S. Baker, Manager, Division of Reclamation, Abandoned Mined Lands Section, Ohio Department of Natural Resources, Fountain Square, Building H–2, Columbus, Ohio 43224, (616) 265–1092; or Director, Land Treatment Program Division, Soil Conservation Service, USDA, P.O. Box 2890, Washington, DC 20013, (202) 382–1870.

SUPPLEMENTARY INFORMATION:

Section 126 of the Internal Revenue Code of 1954, 26 U.S.C. 126, as amended by the Revenue Act of 1978 and the Technical Corrections Act of 1979, provides that certain payments made to persons under state conservation programs may be excluded from the recipient's gross income for federal income tax purposes if the Secretary of Agriculture determines that payments are made "primarily for the purpose of soil and water conservation, protecting or restoring the environment, improving forests, or providing a habitat for wildlife . . ." The Secretary of Agriculture evaluates these conservation programs on the basis of criteria set forth in 7 CFR Part 14 and makes a "primary purpose" determination for the payments made under each program. Before there may be an exclusion, the Secretary of the Treasury must determine that the payments made to a person under these conservation programs do not substantially increase the annual income derived from the property benefited by the payments.

The Ohio Abandoned Mined Lands Reclamation cost-share program operates pursuant to § 1513.28 of the Ohio Revised Code. It is funded by grants of money from the Unreclaimed Lands Special Account created by § 1513.30 of the Ohio Revised Code. The Unreclaimed Lands Special Account is funded by an excise tax created under § 5749.02 of the Ohio Revised Code, which is assessed for the severance of coal and industrial minerals. Under § 1513.28, the Chief of reclamation may make grants up to 75 percent of the reasonable and necessary expenses incurred by the owner of any unreclaimed land affected by mining before April 10, 1972, or pursuant to a license issued before April 10, 1972, that causes of may cause pollution of the waters of the state or damage to the adjacent property, that is not likely to be mined in the foreseeable future, and that lies within the boundaries of a project area approved by the Board on Unreclaimed Strip Mined Lands, in accordance with a plan of reclamation approved by the Chief. Cost-share payments accomplish one or more of the following purposes:

1. To establish vegetative cover;
2. To substantially reduce or eliminate erosion, sedimentation, or discharge of acid water, flooding, and damage to adjacent property; or
3. To properly conserve and utilize the water and related land resources.

Procedural Matters

The Department of Agriculture has classified this determination as "not major" in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512–1. The Secretary has determined that these program provisions will not result in an annual effect on the economy of $100 million or more; will not cause a major increase in cost to consumers, individuals, industries, government agencies, or geographic regions; and will not cause significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

An Ohio Abandoned Mined Reclamation Program, "Primary Purpose Determination for Federal Tax Purposes," Record of Decision, has been prepared and is available upon request from the Director, Land Treatment Program Division, Soil Conservation Service, P.O. Box 2890, Washington, DC 20013; or Robert S. Baker, Manager, Division of Reclamation, Abandoned Mined Lands Section, Ohio Department of Natural Resources, Fountain Square, Building H–2, Columbus, Ohio 43224, (614) 265–1092.

Determination

As required by section 126(b) of the Internal Revenue Code of 1954, as amended, I have examined the authorizing legislation, regulations, and operating procedures of the Ohio Abandoned Mined Lands Reclamation Program. In accordance with the criteria set out in 7 CFR Part 14, I have determined that all cost-share payments made under this program are for soil and water conservation, protecting or restoring the environment, or providing wildlife habitat. Subject to further determination by the Secretary of the Treasury, this determination permits payment recipients to exclude from gross income, for federal income tax purposes, all or part of such payments made under § 1513.28 of the Ohio Revised Code after January 15, 1986.

Signed at Washington, DC, on August 12, 1987.

Peter C. Myers,

Acting Secretary.

[FR Doc. 87–18860 Filed 8–17–87; 8:45 am]

BILLING CODE 3410-01-M

Forest Service

Oil and gas leasing; Escalante Known Geological Structure (KGS); Utah

AGENCY: Forest Service, USDA.

ACTION: Notice of availability of draft environmental impact statement and public meeting schedule.

SUMMARY: The Draft Environmental Impact Statement (DEIS) for Oil and Gas Leasing in the Escalante Known Geological Structure (KGS), Garfield County, Utah, is now available for public review. In addition, the Forest Service gives notice of two public meetings to be held to receive public comments on the DEIS.

DATES: Written comments on the analysis and recommendations contained in the DEIS will be accepted until October 20, 1987. Public meetings will be held to receive public comments on the DEIS on Wednesday, September 9, 1987, at 7 p.m., at the Hilton Hotel (Downtown) 150 West 500 South, Salt Lake City, Utah; and on Monday, September 14, 1987, at 7 p.m., at the Escalante Community Center, Escalante, Utah.

ADDRESSES: Requests for copies as well as written comments on the DEIS should be addressed to: Forest Supervisor, Dixie National Forest, P.O. Box 580, Cedar City, Utah 84720.

FOR FURTHER INFORMATION CONTACT: Clavin Bird, Planner, Dixie National Forest, P.O. Box 580, Cedar City, Utah, 84720; telephone 801/586–2421.

SUPPLEMENTARY INFORMATION: The Escalante Known Geological Structure (KGS) encompasses approximately 80,000 acres of land within the Escalante and Teasdale Ranger Districts of the Dixie National Forest and the Cedar City District managed by the Bureau of Land Management, U.S. Department of the Interior. In addition to nonwilderness lands, the KGS includes lands within the Box-Death Hollow Wilderness and the Phipps-Death Hollow Instant Study Area.

The DEIS assesses potential impacts associated with oil and gas and carbon dioxide leasing in the KGS. No site-specific proposals have been submitted by industry; therefore, the levels of leasing and subsequent development considered in the DEIS are based on assumptions utilizing available information.

The preparation of the DEIS was a cooperative effort between the Forest Service, as Lead Agency, and the Bureau of Land Management, as Cooperating Agency

In accordance with established guidelines, the Forest Service is giving supplementary notice to the notice of availability published by the Environmental Protection Agency in the **Federal Register**. This will insure that interested parties are aware that the DEIS is available for review and give notice of public meetings scheduled to receive public comments.

Date: August 12, 1987.

T.A. Roederer,

Deputy Regional Forester, Resources.

[FR Doc. 87–18782 Filed 8–17–87; 8:45 am]

BILLING CODE 3410–11–M

National Environmental Policy Act; Revised Implementing Procedures

AGENCY: Forest Service, USDA.

ACTION: Notice of interim policy.

SUMMARY: The Forest Service is issuing an interim directive to clarify its National Environmental Policy Act implementation policy on categorical exclusions from documentation. The new direction emphasizes the importance of recordkeeping in conjunction with categorical exclusion determinations, and it limits the types of low-impact silvicultural activities that normally qualify for categorical exclusion. This directive is being issued to Agency personnel in the Forest Service Manual and replaces existing policy, which was published in the **Federal Register** on June 24, 1985 (50 FR 26081–26082).

EFFECTIVE DATE: In order to allow sufficient time for distribution of the interim directive to affected Forest Service personnel, the policy will become effective on August 25, 1987. The limitation on low-impact silvicultural activities applies only to the salvage, thinning, and small harvest cuts that are proposed, analyzed, and decided after issuance of the interim directive. In other words, proposed actions which have been analyzed and categorically excluded under previous policy do not have to be re-analyzed as a result of the interim directive.

FOR FURTHER INFORMATION CONTACT: Questions and comments about this policy should be addressed to David E. Ketcham, Director of Environmental Coordination, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090, (202) 447–4708.

SUPPLEMENTARY INFORMATION: The Forest Service is in the process of revising Forest Service Manual Chapter 1950 and Forest Service Handbook 1909.15, which contain the Forest Service policy and procedures for implementing the National Environmental Policy Act (NEPA) and Council on Environmental Quality (CEQ) implementing regulations at 40 CFR Part 1500 et seq. A draft of the proposed changes will be published in the **Federal Register** this fall for public comment; the final policy and procedures should be adopted by January 1988.

In the interim, to respond to questions raised about the use of categorical exclusions, the Forest Service is issuing an interim directive to clarify its policy. The interim directive will be in effect until the final policy and procedures become effective. The interim directive:

—Deletes a paraphrase of the Council on Environmental Quality's definition of categorical exclusion and requires employees to refer directly to the CEQ regulations, thus eliminating a potential for inconsistent interpretation between the Manual paraphrase and the actual CEQ regulations.

—Emphasizes that, as for all proposed actions, units must establish and maintain a project file for any records created during environmental analyses of proposed actions found to be categorically excluded from documentation in an environmental assessment or an environmental impact statement.

—Provides examples of the types of records that might be included in the project file.

—Limits the use of categorical exclusions for low-limit silvicultural activities to "salvage, thinning, and small harvest cuts of less than 100 thousand board feet or less than 10 acres."

—Adds "miscellaneous forest product sales" as a representative example of the type of activity that may be categorically excluded from documentation.

The full text of the interim directive appears at the conclusion of this notice.

Allan J. West,

Acting Chief, FS.

Date: August 13, 1987.

Forest Service Manual

Washington, DC

Interim Directive No. 14.
Duration: One year.
Chapter: 1950—Environmental Policy and Procedures.
Posting Notice: Last ID was No. 13 to FSM 1920, dated 1/20/87.

This interim directive clarifies direction in section 1952.2—Categorical Exclusion From Documentation. It

removes a paraphrase of the Council on Environmental Quality's definition of categorical exclusion. It emphasizes that a project file should be maintained for any records created during analyses of actions that are categorically excluded from documentation in an environmental assessment or an environmental impact statement. It provides examples of the types of records that might be included in the project file. It also limits the use of categorical exclusions for low-impact silvicultural activities to "salvage, thinning, and small harvest cuts of less than 100 thousand board feet or less than 10 acres" and adds "miscellaneous forest product sales."

This policy change applies only to the salvage, thinning, and small harvest cuts that are proposed, analyzed, and decided after the effective date of this interim directive. In other words, proposed actions which have been analyzed and categorically excluded under previous policy do not have to be re-analyzed and documented in an environmental assessment or an environmental impact statement as a result of this interim directive.

1952.2—Categorical Exclusion From Documentation In An Environmental Assessment Or An Environmental Impact Statement. (40 CFR 1508.4). In addition to the seven categories of actions excluded from documentation in 7 CFR 1b.3, certain other actions may be categorically excluded from documentation in an environmental assessment or environmental impact statement. To determine if an action may be categorically excluded, an environmental analysis, including scoping, must be conducted. (FSH 1909.15, ch. 10 and 20).

The guide for determining whether an action may be excluded is the significance of the effects (40 CFR 1508.27). In unusual circumstances an action that normally might be categorically excluded may have a significant environmental effect on the quality of the human environment and require an environmental impact statement. Unusual circumstances might include areas involving threatened and endangered species; critical habitat; flood plains; wetlands; and specially designated areas, such as wilderness, wilderness study areas, or roadless areas designated for further planning.

Interested and affected persons must be informed in an appropriate manner (40 CFR 1506.6 and FSM 1950.3) of a decision to proceed with an action that has been categorically excluded from documentation in an environmental assessment or environmental impact statement.

During the analysis, maintain a project file for any records prepared, such as (1) a list of interested and affected people contacted during scoping, (2) the results of the analysis, (3) documentation of the determination of consistency with the Forest Plan (FSM 1920, ID No. 13, 1/20/87), (4) documentation of the notification given of the decision to proceed with an action that has been categorically excluded from documentation in an environmental assessment or environmental impact statement (for example, telephone message, news release, and so forth), and (5) a list of the people notified of the decision to proceed.

Typical classes and representative examples of actions that might be categorically excluded are listed below. Experience and environmental analysis indicate that these actions and classes usually do not significantly affect the quality of the human environment, individually or cumulatively. These typical classes include most forest management activities that normally could be categorically excluded. Proposed actions considered for categorical exclusion which are not clearly within a typical class must have no more environmental impact than those which are.

1. Administrative actions, such as road and area closures; restrictions on travel or use, such as camping, boating, or hunting; and posting signs and markers.

2. Construction of low-impact facilities or improvements, such as auxiliary support buildings or other structures; picnic areas and campgrounds; temporary and other low-standard roads, such as traffic service level "D" roads (FSH 7709.56); and trails.

3. Repair and maintenance activities, such as on buildings, grounds, trails, rights-of-way, and range improvements.

4. Low-impact silvicultural activities that are limited in size and duration and that primarily use existing roads and facilities, such as firewood and miscellaneous forest product sales; salvage, thinning, and small harvest cuts of less than 100 thousand board feet or less than 10 acres; site preparation; and planting and seeding.

5. Low-impact range management activities, such as fencing, seeding, and installing water facilities.

6. Issuance or modification of authorizations or agreements for such uses of lands or facilities as road maintenance and additional use of existing roads, rights-of-way, and easements.

7. Low-impact pest management activities, such as suppressing nuisance insects and poisonous plants in campgrounds and picnic areas; controlling cone and seed insects in seed orchards; and fumigating to control weeds in nurseries.

8. Mineral and energy activities of limited size, duration, and degree of disturbance, such as preliminary exploration and removal of small mineral samples.

9. Fish and wildlife management activities, such as improving habitat, installing fish ladders, and stocking native or established species.

10. Transfer of interests in land, such as sales, exchanges, or interchanges pursuant to the Small Tracts Act; purchases and gifts; and small transfers and trades with other Federal agencies.

[FR Doc. 87-18839 Filed 8-17-87; 8:45 am]
BILLING CODE 3410-11-M

Soil Conservation Service

Availability of Record of Decision; Howard Creek Watershed, WV

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of availability of a record of decision.

SUMMARY: Paul S. Dunn, responsible Federal official for projects administered under the provisions of Pub. L. 83-566, 16 U.S.C. 1001-1008, in the State of West Virginia, is hereby providing notification that a record of decision to proceed with the installation of the Howard Creek Watershed project is available. Single copies of this record of decision may be obtained from Paul S. Dunn at the address shown below.

FOR FURTHER INFORMATION CONTACT: Paul S. Dunn, Assistant State Conservationist, Soil Conservation Service, 75 High Street, Room 301, Morgantown, West Virginia, 26505, telephone (304) 291-4151.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. State and local review procedures for Federal and Federally assisted programs and projects are applicable.)

Paul S. Dunn,

Assistant State Conservationist.

August 10, 1987.

Record of Decision, Howard Creek Watershed, Greenbrier County, West Virginia

1 *Purpose:* As State Conservationist for the Soil Conservation Service, I am the Responsible Federal Official (RFO) for all Soil Conservation Service projects in West Virginia.

The recommended plan for the Howard Creek Watershed involves works of improvement to be installed under authorities administered by the Soil Conservation Service. This project includes the installation of 2,910 feet of channel work along Howard Creek, accelerated land treatment on 1,615 acres, and construction of floodwater retarding dam 12 on Dry Creek.

The Howard Creek Watershed plan was prepared under the authority of the Watershed Protection and Flood Prevention Act (Pub. L. 566, 83rd Congress, 68 Stat. 666, as amended) by the Greenbrier Valley Soil Conservation District, city of White Sulfur springs, and Greenbrier County Commission. The Soil Conservation Service (SCS), U.S. Department of Agriculture, is the lead agency, and the Forest Service (FS)–USDA, U.S. Environmental Protection Agency (EPA), West Virginia Department of Natural Resources (DNR), West Virginia Department of Highways (DOH), and U.S. Army Corps of Engineers (COE) are cooperating agencies.

2. *Measures Taken to Comply with National Environmental Policies:* The Howard Creek watershed project has been planned in accordance with existing Federal legislation concerned with preservation of environmental values. The following actions were taken to insure that the Howard Creek Watershed plan is consistent with National goals and policies.

The environmental evaluation was accomplished by an interdisciplinary team under the direction of SCS in 1985, prior to the scoping meeting, and it concluded that significant impacts on the human environment may occur because of the complexity and public interest of the proposed action. As RFO, I directed that a draft Environmental Impact Statement (EIS) be prepared.

The interdisciplinary environmental evaluation of the Howard Creek Watershed project was conducted by the cooperating agencies, U.S. Fish and Wildlife Service, and the Soil Conservation Service. Information was obtained from many groups and agencies. Reviews were held with the Environmental Protection Agency, Fish and Wildlife Service, and West Virginia Department of Natural Resources. The State Historic Preservation officer and the West Virginia Geologic Survey, Archaeology Section, were consulted. Inputs from these reviews and consultations were included in the EIS.

A draft Enviromental Impact Statement was prepared in January 1987, and made available for public review. The recommendations and comments obtained from public meetings held during project planning and assessment were considered in the preparation of the statement. Projects of other agencies were included only when they related to the Public Law 566 project, and they were not evaluated with regard to their individual merit.

About 100 copies of the draft Environmental Impact Statement were distributed to agencies, conservation groups, organizations, and individuals for comment. A public meeting was held on March 5, 1987, to review the planned project and draft Environmental Impact Statement with the general public. The draft Environmental Impact Statement was filed with the Environmental Protection Agency on January 30, 1987.

Numerous public meetings were held to solicit public participation in the environmental evaluation, to assure that all interested parties had sufficient information to understand how their concerns are affected by water resource problems to affaord local interests the opportunity to express their views regarding the plans which can best solve these problems, and to provide all interests an opportunity to participate in the plan selection. The March 5, 1987, meeting was attended by about 80 persons. A transcript of the minutes of this meeting was developed and is on file.

Testimony and recommendations were received relative to the following subjects:

a. Location of structural measures.

b. Land rights acquisition procedures, structures to be relocated, and property values.

c. Time required for project installation.

d. Protection afforded by each alternative.

e. Maintenance responsibilities.

f. Project cost and funding sources.

g. Potential road relocations and bridge replacements.

h. Bank erosion and stablization concerns.

i. Employment opportunities.

All existing data and information pertaining to the project's probable environmental consequences were obtained by SCS with assistance from other scientists and engineers. Documentary information as well as the views of interested Federal, State, and local agencies and concerned individuals and organizations having special knowledge of, competence over, or interest in the project's environmental impact were sought. This process continued until it was felt that all information necessary for a comprehensive, reliable assessment had been gathered.

A complete picture of the project's current and probable future environmental setting was assembled to determine the proposed project's impact and identify unavoidable adverse environmental impacts that might be produced. During these phases of evaluation, it became apparent that there are legitimate conflicts of scientific theory and conclusions leading to differing views of the project's environmental impact. In such cases, after consulting with persons qualified in the appropriate disciplines, those theories and conclusions appearing to be the most reasonable and having scientific acceptance, were adopted.

The consequences of a full range of reasonable and viable alternatives to specific project features were considered, studied, and analyzed. In reviewing these alternatives, all courses of action that could reasonably accomplish the project purposes were considered. Attempts were made to identify the economic, social, and environmental values affected by each alternative. In accordance with existing policy and procedures, the possibilities of structural and nonstructural alternatives for the project were considered.

Four alternatives considered reasonable to accomplish the project's objectives were: (1) dam and clearing and snagging; (2) land treatment, dam, and channel work (Recommended Plan); (3) land treatment and dam; and (4) land treatment, dam, channel work, and nonstructural measures. Other alternatives were suggested and evaluated that would accomplish part of the objectives of the planned project. The full range of effects as set forth in the alternatives section of the EIS. Individual flood plain management strategies, actions, and programs that would meet some of the project's goals were considered.

3. *Conclusions:* the following conclusions were reached after carefully reviewing the proposed Howard Creek Watershed project in light of all National goals and policies, particularly those expressed in the National Environmental Policy Act, and after evaluating the overall merit of possible alternatives to the project:

a. The Howard Creek Watershed project will employ a reasonable and practicable means that is consistent with the National Environmental Policy Act while permitting the application of other National policies and interests. These means include, but are not limited to, a project planned and designed to minimize adverse effects on the natural environment, while accomplishing an

authorized project purpose. Project features designed to preserve environmental values, for future generations, include: (1) installation of a subchannel throughout the length of the channel work; (2) maintaining existing channel alignment; (3) construction of a fish pool; (4) one sided construction on 455 feet of stream; (5) application of erosion and sediment control measures during construction; (6) acceleration in the application of land treatment practices to reduce erosion and sediment damage to streams and ecosystems; (7) establishment of vegetation on the sediment pool shoreline, channel berms, spoil disposal areas, and disturbed areas to protect them from erosion and provide food for wildlife; (8) placement of trees and shrubs for landscape purposes; (9) maintenance easements along 2,910 feet of Howard Creek to assure "greenbelt" establishment and preservation; (10) acquisition of a 100-year easement on the 81-acre flood pool area to protect the area's wildlife habitat from future alteration or disturbance; (11) placement of boulders in the channelized reach for fish habitat; (12) provisions for public access at the dam and constructed fish pool on Howard Creek; (13) retention of standing timber in the sediment pool; (14) construction of two waterfowl nesting islands; (15) deepening of the sediment pool where practical; (16) boulder placement (if available) in the sediment pool; and (17) placement of rock riprap on the bases of the islands

b. The Howard Creek Watershed project was planned using a systematic interdisciplinary approach involving integrated uses of the natural and social sciences and environmental design arts. The results of this review constitute the basis for the conclusions and recommendations. All conclusions concerning the environmental impact of the project and overall merit of existing plans were based on a review of data and information that would be reasonably expected to reveal significant environmental consequences of the proposed project. This data included additional studies prepared specifically for the project and comments and views of all interested Federal, State, and local agencies and individuals. The project will not affect any cultural resources eligible for inclusion in the National Register of Historic Places; nor will the project affect any species of fish, wildlife, or plant, or their habitats that have been designated as endangered or threatened.

c. In studying and evaluating the environmental impact of the Howard Creek Watershed project, ever effort was made to express all environmental values quantitatively. Failure to quantify particular environmental amenities and values is the result of the absence of a methodology having general scientific acceptance. Nevertheless, every effort was made to identify and give appropriate weight and consideration of nonquantifiable environmental values.

d. Wherever legitimate conflicts of scientific theory and conclusions existed and conclusions led to different views, persons qualified in the appropriate environmental disciplines were consulted. Theories and conclusions appearing to be the most reasonable, scientifically acceptable, or both, were adopted.

e. Every possible effort has been made to idenfity those adverse environmental effects which cannot be avoided if the project is constructed.

f. The long-term and short-term resource uses, long-term productivity, and the irreversible and irretrievable commitment of resources are accurately described in the final environmental impact statement.

g. All reasonable and viable alternatives to project features and to the project itself were studied and analyzed with reference to National policies and goals, especially those expressed in the National Environmental Policy Act and the Federal waters resource development legislation under which the project was planned. Each possible course of action was evaluated as to its possible economic, technical, social, and overall environmental consequences to determine the trade-offs necessary to accommodate all National policies and interests. Some alternatives may tend to protect more of the present and tangible environmental amenities than the proposed project will preserve. However, no alternative or combination of alternatives will afford greater protection of the environmental values while accomplishing the other project goals and objectives.

h. I conclude, therefore, that the proposed project will be the most effective means of meeting National goals and serving the public interest.

4. *Recommendations:* Having concluded that the proposed Howard Creek Watershed project uses all practicable means, consistent with other essential considerations of the National Policy, to meet the goals established in the National Environmental Policy Act, that the project will thus serve the overall public interest, that the final environmental impact statement has been prepared, reviewed, and accepted in accordance with the provisions of the National Environmental Policy Act as implemented by Department regulations for the preparation of environmental impact statements, and that the project meets the needs of the project sponsors, I propose to implement the Howard Creek Watershed project.

Paul S. Dunn,

Assistant State Conservationist, Soil Conservation Service, U.S. Department of Agriculture.

Date: August 10, 1987.

[FR Doc. 87-18811 Filed 8-17-87; 8:45 am]

BILLING CODE 3410-16-M

Environmental Statement; Monroe County Airport CAT & LD RC&D Measure, Monroe, IN

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of a finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Robert L. Eddleman, State Conservationist, Indianapolis, Indiana, 46224, telephone 317-248-4350.

Notice

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Monroe County Airport CAT & LD RC&D Measure, Monroe, Indiana.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Robert L. Eddleman, State Conservationist, has determined that the preparation of and review of an environmental impact statement are not needed for this project.

The project concerns a plan for Critical Area Treatment and Land Treatment. The planned works of improvement include the reconstruction of a grassed waterway, the installation of a concrete block chute structure and a diversion, the stabilization of three 1300 square yards of steep gullied slopes, and the installation of subsurface drains and approximately 40 surface water inlets. Three hundred feet of outlet channel will be reshaped and seeded.

The Notice of Finding of No Significant Impact (FNSI) has been forwarded to the Environmental

Protection Agency. The basic data developed during the environmental evaluation is on file and may be reviewed by contacting Robert L. Eddleman, State Conservationist. The FNSI has been sent to various Federal, State and local agencies and interested parties. A limited number of copies of the FNSI are available to fill single requests at the above address.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: August 11, 1987.

Robert L. Eddleman,

State Conservationist

[FR Doc. 87-18777 Filed 8-17-87; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments; National Museum of Natural History et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No.: 87-226. Applicant: National Museum of Natural History, Smithsonian Institution, 10th & Constitution Avenue, Washington, DC 20560. Instrument: Electron Microscope, Model JEM 1200EX-SEG. Manufacturer: JEOL Ltd., Japan. Intended Use: Studies of routinely prepared, ultrathin sections of normal plant and animal tissue and abnormal growths (tumors) in lower vertebrate animals. The broad range of projects will include research of pollen, marine nematodes, tumors and riftia. Application Received by Commissioner of Customs: June 11, 1987.

Docket No.: 87-227. Applicant: American Red Cross, SE Michigan Blood Services, 100 Mack Avenue, Box 351, Detroit, MI 48232. Instrument: Rapid Kinetic Accessory, SFA-11. Manufacturer: Hi-Tech, United Kingdom. Intended Use: Quantitatively determine the effects of proteinase inhibitors on the blood clotting factors. Application Received by Commissioner of Customs: June 11, 1987.

Docket No.: 87-228. Applicant: Miami University, 213 Roudebush Hall, Oxford, OH 45056. Instrument: Electron Microscope, EM 10CA. Manufacturer: Carl Zeiss, West Germany. Intended Use: Ultrastructural studies of algae, fungi, higher plants and animals. Attention will be focused on the structure of the flagellar apparatus and nuclear division process as aids to understanding how organisms are related to each other. In addition, the pattern of partitioning the transfer of toxic metals in plants which have vesicular arbuscular mycorrhizae associated with their roots will be investigated. Application Received by Commissioner of Customs: June 18, 1987.

Docket No.: 87-229. Applicant: Fidia-Georgetown Institute for the Neurosciences, 3900 Reservoir Road NW., Washington, DC 20007. Instrument: Electron Microscope, Model EM 902. Manufacturer: Carl Zeiss, West Germany. Intended Use: Study of brain and peripheral neuronal function. Application Received by Commissioner of Customs: June 18, 1987.

Docket No.: 87-230. Applicant: U.S. Department of Energy, Argonne National Laboratory, 9700 South Cass Avenue, Argonne, IL 60439-4812. Instrument: Streak Camera, Model C1587. Manufacturer: Hamamatsu Photonic Systems Corp., Japan. Intended Use: Study the wake field phenomena in metallic structures and in plasmas. These studies are part of the broader search for new methods of particle acceleration. Application Received by Commissioner of Customs: June 18, 1987.

Docket No.: 87-231. Applicant: National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892. Instrument: Electron Microscope, Model JEM 1200EX/SEG/DP/DP. Manufacturer: JEOL Ltd., Japan. Intended Use: Study of the ultrastructure of heart and lung tissues, including the following:

1. Evaluation of heart and lung biopsy and necropsy specimens from patients with different diseases.

2. Evaluation of artificial heart valves recovered after implantation in patients and experimental animals.

3. Evaluation of cardiac effects of drugs given to experimental animals. The instrument will also be used on a one-to-one basis in the training of medical and graduate students and postdoctoral fellows: Application Received by Commissioner of Customs: June 18, 1987.

Docket No.: 87-232. Applicant: University of California, College of Chemistry, 2405 Bowditch Street, Berkeley, CA 94720. Instrument: Mass Spectrometer, Model VG ZABEQ with VG 11-250J Data System. Manufacturer: VG Analytical Ltd., United Kingdom. Intended Use: The instrument is intended to be used for varied research projects which include the following:

1. Synthesis, characterization and separation of complicated organotransition metal complexes and studies of the course and mechanism of their reactions.

2. Determination of the structure of the phycobilisome—a light-harvesting complex in cyanobacteria.

3. Investigations into the structure of phycobiliproteins.

4. Oligonucleotide analysis.

5. Study of the relationship between primary structure and biological function in proteins.

6. Total synthesis of potentially physiologically active compounds and construction of novel polycyclic benzenoid hydrocarbons and their potential mutagenic activity.

7. Design and synthesis of metal-ion specific sequestering agents.

8. Studies of synthesis and characterization of molecular compounds that can serve as models for zeolite and polyphosphate materials.

Application Received by Commissioner of Customs: June 18, 1987.

Docket No.: 87-233. Applicant: University of California, Department of Chemistry & Biochemistry, 405 Hilgard Avenue, Los Angeles, CA 90024-1569. Instrument: Surface Analysis System, Model XSAM 800. Manufacturer: Kratos Analytical, United Kingdom. Intended Use: The instrument will be used to examine the atomic composition and structure and electronic properties of solid surfaces. The materials studied will be inorganic solids that may be insulating, semiconducting, or metallic. Application Received by Commissioner of Customs: June 23, 1987.

Docket No.: 87-234. Applicant: Rutgers University, Procurement & Contracting, P.O. Box 1089, Piscataway, NJ 08854. Instrument: Fluorescence Lifetime Instrument. Manufacturer: Photochemical Research Associates, Canada. Intended Use: Studies of Solutions of polysaccharides and

proteins using fluorescence probes. Fluorescence lifetime and fluorescence depolarization will be measured and analyzed for heterogeneity by deconvolution methods in the absence and presence of quencher molecules. The objectives pursued are to improve the understanding of the interactions of polysaccharides with proteins and with water. Application Received by Commissioner of Customs: June 24, 1987.

Docket No.: 87–235. Applicant: McLean Hospital, 115 Middle Street, Belmont, CA 02178. Instrument: Electron Microscope, Model JEM 1200EX/SEG/DP/DP. Manufacturer: JOEL Ltd., Japan. Intended Use: Study of the ultrastructure of neurons and their connections in the central nervous system. Specimens will be of biological origin, primarily experimental animals, although there will be some tissue culture and human pathology samples. Experiments will be conducted for advancement of neuroscience research and advancements in the understanding and treatment of neuropsychiatric disorders. Application Received by Commissioner of Customs: June 24, 1987.

Docket No.: 87–236. Applicant: University of South Carolina, Department of Chemistry, Columbia, SC 29208. Instrument: Gas Chromatograph Mass Spectrometer, Model VG–70–SQ with Model VG 11–250J Data System. Manufacturer: VG Instruments, United Kingdom. Intended Use: The instrument will be used for studies of organic natural products, organometallic and biological compounds ranging in molecular weight from about 100 to 8000 daltons and in polarity from volatile liquids to non-volatile liquids to non-volatile salts. The instrument will produce molecular ions and fragmentation ions for each natural product or biomolecule under study and display the various ions in a spectrum. Application Received by Commissioner of Customs: June 25, 1987.

Docket No.: 87–237. Hospital of the University of Pennsylvania, 3400 Spruce Street, Philadelphia, PA 19104. Instrument: Cerebrograph for Measuring Blood Flow. Manufacturer: Scan-Delectronics, Denmark.

Intended Use: Research to determine changes in behavioral measures of cognitive and emotional functioning associated with normal aging and senile dementia of the Alzheimer type and relate them to changes in whole-brain and regional brain anatomy and physiologic function. The instrument will also be used to train medical students, neurophysiology and neuropsychology graduate students and postdoctoral fellows and faculty in the use of the device. Application Received by Commissioner of Customs: June 25, 1987.

Docket No.: 87–238. Applicant: University of Denver, Chemistry Department, 2101 East Westley, Denver, CO 80218. Instrument: Luminox NO_2 In Air Monitor, Model LMA–3. Manufacturer: Scintrex/Unisearch, Canada. Intended Use: Studies of oxides of nitrogen, peroxycetyl nitrate, ozone and free radicals in air pollution and acid rain. Field experiments will be conducted to determine better the cause and effects of acid rain. Application Received by Commissioner of Customs: June 26, 1987.

Docket No.: 87–239. Applicant: University of Arizona, Optical Sciences Center, 3rd & Cherry, Tucson, AZ 85721. Instrument: Electron Microscope, Model JEM–2000FX. Manufacturer: JEOL Ltd., Japan. Intended Use: Studies of thin film inorganic materials including dielectrics such as Al_2O_3, SiO_2, TiO_2, MgF_2; semiconductors such as ZnS and GaAs; and metals such as Zn, Au, Ag, Sm. The structure of these materials, including the existence of microcrystalline regions, defects and columnar morphology will be probed. Experiments will be conducted to elucidate the relationship between the fabrication conditions and the resulting structure of these thin film materials. Application Received by Commissioner of Customs: June 29, 1987.

Docket No.: 87–240. Applicant: Connecticut College, Mohegan Avenue, New London, CT 06320. Instrument: Electron Microscope, Model EM 109T. Manufacturer: Carl Zeiss, West Germany. Intended Use: The instrument will be used to teach Biology 213, Theory and Practice of Electron Microscopy. Application Received by Commissioner of Customs: July 2, 1987.

Docket No.: 87–241. Applicant: University of California, Los Angeles, 405 Hilgard Avenue, Los Angeles, CA 90024. Instrument: X–Ray Diffractometer. Manufacturer: Stoe & Cie, West Germany. Intended Use: Studies of metallic and inorganic glasses, prepared by rapid solidification or by irradiation (metamic materials). Metallic glasses will also be produced by mechanical alloying and inorganic glasses by the sol-gel process. In order to understand their mechanical and electrical properties, it will be necessary to determine the topological and chemical short range order. Other materials to be studied are solid electrolytes and coatings. Application Received by Commissioner of Customs: July 6, 1987.

Docket No.: 87–242. Applicant: Argonne National Laboratory, 9700 South Cass Avenue, Argonne, IL 60439. Instrument: Daly Scintillation Detector. Manufacturer: VG Isotopes, Ltd., United Kingdom. Intended Use: The instrument will be used to upgrade an existing mass spectrometer which is being used for studies of elemental samples derived from materials submitted for high-recision assay and isotopic analysis. The experiments conducted involve the precise measurement of isotope ratios for an element of interest, from which the isotopic composition of element may be directly calculated. Samples containing such elements as uranium, plutonium, lithium, strontium, boron rare earths, and others are analyzed in support of nuclear safeguards, fusion research, geochemical research and materials science research. Application Received by Commissioner of Customs: July 7, 1987.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87–18847 Filed 8–17–87; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments; University of Montana

Pursuant to section 6(c) of the Eduational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with §§ 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No.: 87–243. Applicant: University of Montana, Purchasing Department, Lodge Room 113, Missoula, MT 59812. Instrument: Magnetic Susceptibility & Anisotropy Instrument, Model SI–2. Manufacturer: Sapphire Instruments, Canada. Intended Use: The instrument will be used to measure the variation of magnetic susceptibility with direction in rock samples. The data acquired will allow determination of whether the remanence direction of a sample or suite of samples is correlated with, or biased by, a fabric in the rock. The data also allow determination of finite strain (deformation) in rocks that do not have obvious macroscopic strain

indicators. Application Received by Commissioner of Customs: July 8, 1987.

Docket No.: 87–244. Applicant: The Penn State University, Center for Advanced Materials, 226 Steidle Building, University Park, PA 16802. Instrument: Optical Extensometer, Model 200X. Manufacturer: Zimmer, OHB, West Germany. Intended Use: The instrument is intended to be used to determine the creep and time-to-failure behavior of various silicon carbide materials. These materials include siliconized, hot pressed and sintered silicon carbides. Application Received by Commissioner of Customs: July 8, 1987.

Docket No.: 87–245. Applicant: University of Nevada Reno, Department of Mining Engineering, Reno, NV 89557–0047. Instrument: Friction Hoist Test Rig. Manufacturer: Hattam Engineering, Ltd., United Kingdom. Intended Use: Studies of elmwood, brake lining material, aluminum and plastics with the objective of improvement of safety features of friction hoists. The instrument will also be used for training of professional mining engineers. Application Received by Commissioner of Customs: July 8, 1987.

Docket No.: 87–246. Applicant: University of Nevada Reno, Department of Mining Engineering, Reno, NV 89557–0047. Instrument: Air Compressor & Air Motor Test Unit. Manufacturer: G. Cusson, Ltd., United Kingdom. Intended Use: Trining professional mining engineers in the course Mine Plant Design. Application Received by Commissioner of Customs: July 8, 1987.

Docket No.: 87–247. Applicant: Rutgers University, Procurement and Contracting, P.O. Box 1089, Piscataway, NJ 08854. Instrument: Electron Microscope, Model JEM 100CX. Manufacturer: JEOL Ltd., Japan. Intended Use: Ultrastructural studies of protistan cells from the division Euglenophyta. Research will be conducted to examine selected ultrastructural features in a variety of euglenoid general. The data obtained will be used to make comparisons of the flagellar ultrastructure. Such information will then be applied to the construction of a more natural taxonomic scheme for the Euglenophyta. Application Received by Commissioner of Customs: July 8, 1987.

Docket No.: 87–249 Applicant: University of California, Santa Cruz, Institute of Marine Sciences, Room 272, Applied Science Building, Santa Cruz, CA 95064. Instrument: Gas Chromatograph Mass Spectrometer/Data System, Model MAT 90. Manufacturer: Finnigan MAT GmbH, West Germany. Intended use: Research activities which will require the detection and identification of trace organic compounds extracted from water, sediment and biological tissues. Compounds of interest will include those of biogenic origin (natural products), petroleum derived and synthetic organics (pesticides, polychlorinated biphenyls, industrial contaminants, etc.). Considerable effort will be given to the identification of unknown components which are now routinely detected by electron capture gas chromatography and low resolution mass spectrometry. Application Received by Commissioner of Customs: July 14, 1987.

Docket No.: 87–250 Applicant: New York University, 100 Washington Square, New York, NY 10003. Instrument: Electron Microscope, Model CM–10/PC. Manufacturer: Philips, The Netherlands. Intended use: The instrument is intended to be used for the following research purposes:

1. The effect of polypeptide toxins on specific cellular membrane channels—designed to examine the nature of the secretory tissue of a flat fish, *pardachirus marmoratus*, found in the Red Sea and the nature of the toxin it produces.

2. Immunocytochemical study at the ultrastructural level to compare the myelination of cholinergic fibers in the cortex of aged animals with normal adult monkeys.

3. Investigation of the growth cone of neurites growing in tissue culture.

4. Studies of the development of the neuromuscular junction and the apparent plasticity of this junction during its development.

Application Received by Commissioner of Customs: July 15, 1987.

Docket No.: 87–252 Applicant: University of Alabama in Huntsville, Sparkman Drive, Huntsville, AL 35899. Manufacturer: Spectrometer, Model XSAM 800. Manufacturer: Kratos Analytical, United Kingdom. Intended use: Corrosion research or the research of the microfouling of copper alloys used in shipping industries to provide a better understanding of the chemical processes associated with corrosion of surface carbonaceous films or organic matters formed due to microorganisms in seawater. Application Received by Commissioner of Customs: July 16, 1987.

Docket No.: 87–253. Applicant: Boston University, Department of Chemistry, 590 Commonwealth Avenue, Boston, MA 02215. Instrument: Rapid Kinetics Accessory, Model SFA–11. Manufacturer: Hi-Tech Scientific, United Kingdom. Intended use: The instrument is an accessory which will be used for the study of the ways in which various metal complexes can influence the rates of reactions for phosphate species of biological interest. The systems to be studied will be useful in elucidating the various roles of metal ions in enzyme promoted reactions. Application Received by Commissioner of Customs: July 16, 1987.

Docket No.: 87–254. Applicant: N. C. Agricultural and Technical State University, 1601 East Market Street, Greensboro, NC 27411. Instrument: Electron Microscope, Model JEM 1200EX-SEG, JEOL Ltd., Japan. Manufacturer: JEOL Ltd., Japan. Intended use: The ultracytochemical study of (1) the localization of Ca^{++} binding sites in Limus sperm acrosomes, (2) the development of mesomes during the cell cycle of Caulobacter, (3) the effect of chloroquine on the interaction of human chronionic gonadotropin with corpus luteum membranes, and (4) the association of infectious pancreatic necrosis virus with fish eggs. Application Received by Commissioner of Customs: July 17, 1987.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87–18848 Filed 8–17–87; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments; University of Nevada-Reno et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with §§ 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No.: 86–186R. Applicant: University of Nevada-Reno, Reno, NV 98557. Instrument: Circular Dichroism Spectropolarimeter, Model J–500A with Accessories. Manufacturer: JASCO, Japan. Original of this resubmitted application was published in the **Federal Register** Tuesday, May 6, 1986.

Docket No.: 87–209. Applicant: University of California at Berkeley,

School of Optometry, c/o Purchasing Department, 2405 Bowditch Street, Berkeley, CA 94720. Instrument: Two (2) Display Oscilloscopes, Model DM–2. Manufacturer: Joyce Electronics, United Kingdom. Intended Use: Studies of spatial vision with the intent of relating normal vision, peripheral vision, amblyopic vision, and computer vision. Application Received by Commissioner of Customs: May 22, 1987.

Docket No.: 87–212. Applicant: NASA, NASA Resident Office, Jet Propulsion Laboratory, 4800 Oak Grove Drive, Pasadena, CA 91109. Instrument: Xenon Chloride Excimer Laser System. Manufacturer: Lambda Physik, West Germany. Intended Use: Measurement of ozone and temperature profiles, specifically detection of changes in the stratosphere. Application Received by Commissioner of Customs: May 29, 1987.

Docket No.: 87–213. Applicant: Loma Linda University Medical Center, 11234 Anderson Street, Loma Linda, CA 92354. Instrument: Kidney Lithotripter. Manufacturer: Dornier Medizintechnik, GmbH, West Germany. Intended Use: The instrument will be used to allow medical students to observe and participate in the treatment of urology patients and to help these students decide their field of medical practice and to provide training for residents who have selected urology as their field. Application Received by Commissioner of Customs: May 28, 1987.

Docket No.: 87–214. Applicant: University of Colorado, Campus Box 380, Boulder, CO 80309. Instrument: Rapid Kinetics Stopped Flow Instrument. Manufacturer: Hi-Tech, United Kingdom. Intended Use: Study of the fast reactions of metal complexes with substrates to aid in the study of asymmetric hydrogenation reactions and to examine the energetics of metal-small ligand interations. These studies will aid in the design of new metal catalysts for chemical reactions. The kinetics of metal-substrate interaction will be examined using the instrument. Application Received by Commissioner of Customs: June 1, 1987.

Docket No.: 87–215. Applicant: University of Washington, Department of Chemistry, BG–10, Seattle, WA 98195. Instrument: Molecular Beam Equipment. Manufacturer: Australian National University, Australia. Intended Use: Investigations of cluster formation, infrared spectra, photodissociation and scattering cross-sections of small molecules, particularly hydrocarbons and gases which are found in the atmosphere. Experiments will consist of sub-doppler spectroscopy, time-of-flight analyses, and angular distribution of scattering events. In addition, the instrument will be used in the course Chemistry 600, Independent Research to provide thorough training in modern methods of chemical research including advanced instrumentation. Application Received by Commissioner of Customs: June 3, 1987.

Docket No.: 87–216. Applicant: Boston Biomedical Research Institute, 20 Staniford Street, Boston, MA 02114. Instrument: Stopped Flow Module 3 Syringe, Model SFM–3. Manufacturer: BioLogic, France. Intended Use: The instrument will be used for investigations of calcium transport and relese in muscle membrane. Application Received by Commissioner of Customs: June 3, 1987.

Docket No.: 87–217. Applicant: Rutgers University, 195 University Avenue, Newark, NJ 07102. Instrument: Electron Microscope, Model CM–10. Manufacturer: Philips, The Netherlands. Intended Use: Examination of a variety of biological samples, including cell cultures, cells and tissues isolated from vertebrate and invertebrate sources and samples of isolated proteins and nucleic acids. Primary interests are in understanding structure-function relationships at the cellular level and how such relationships change relative to cell/tissue differentiation, age or disease. The instrument will also be used for teaching cell ultrastructure and electron microscopy to undergraduate students. Application Received by Commissioner of Customs: June 3, 1987.

Docket No.: 87–218. Applicant: U.S. Department of Energy, New Brunswick Laboratory, Building 350, 9800 South Cass Avenue, Argonne, IL 60439. Instrument: Mass Spectrometer System, Model 261. Manufacturer: Finnigan Mat GmbH, West Germany. Intended Use: Studies of uranium for routing isotopic analysis as well as for the characterization of isotopic standards and reference materials. In addition, isotope dilution techniques will be used to determine the elemental concentration for these materials. The state-of-the-practice nuclear materials measurement technology will be evaluated. Application Received by Commissioner of Customs: June 3, 1987.

Docket No.: 87–219. Applicant: National Institutes of Health, Room 3W13, Bethesda, Md 20892. Instrument: Scanning Transmission Electron Microscope, Model HB 501. Manufacturer: VG Instruments, United Kingdom. Intended Use: Ultrahigh resolution study of various biological cellular components including chemical determination at the near atomic level of spatial resolution. The material studied will include neurofibrillary tangles from Alzheimer disease victims, synaptic cells from human brain and spinal cord and chromaffin granules. Application Received by Commissioner of Customs: June 3, 1987.

Docket No.: 87–221. Applicant: NASA Ames Research Center, Acquisition Division, M/S241–1, Moffett Field CA 94035. Instrument: Electron Microscope, Model EM 902. Manufacturer: Carl Zeiss, West Germany. Intended Use: As a research instrument to determine ion distributions (particularly calcium and sodium) in inner ear tissue, to achieve 3-dimensional reconstructions of complex neural connectivity in macular end organs (balance organs), to develop methodology for recording images directly from the microscope to the laser disk. Application Received by Commissioner of Customs: July 5, 1987.

Docket No.: 87–222. Applicant: University of Michigan, Department of Geological Science, 1006 C. C. Little Building, 425 East University, Ann Arbor, MI 48109–1063. Instrument: Mass Spectrometer, Model VG Sector. Manufacturer: VG Isotopes Ltd., United Kingdom. Intended Use: Measurement of the isotopic compositions of the elements rubidium, strontium, samarium, neodymium, lead and uranium in terrestrial rocks, minerals and other natural materials (e.g., water). In addition, the instrument will be used for training graduate students for the Ph.D. degree in which major parts of the research involve radiogenic isotope geochemistry and for graduate and undergraduate students in the principles of isotope geochemistry. Application Received by Commissioner of Customs: June 8, 1987.

Docket No.: 87–223. Applicant: Research Triangle Institute, Office of Research Contracts, P.O. Box 12194, Research Triangle Park, NC 27709. Instrument: UltraVacuum Surface Analysis System, Model LHS–12. Manufacturer: Leybold-Heraeus Vacuum Products Inc., West Germany. Intended Use: The instrument is intended to be used for investigating semiconducting properties of synthetic diamond films. Application Received by Commissioner of Customs: June 8, 1987.

Docket No.: 87–224. Applicant: Boston University, Center of Remote Sensing, 725 Commonwealth Avenue, Boston, MA 02215. Instrument: Electromagnetic Meter, EM31–D. Manufacturer: Geonics Ltd., Canada. Intended Use: Studies of archaeological and geologic subsurface structures. Educational purposes will include instruction in the principles and techniques of remote sensing and archaeological reconnaissance. Students will use the instrument for understanding the principles of

electromagnetic conductivity and subsurface surveying. Application Received by Commissioner of Customs: June 10, 1987.

Docket No.: 87-225. Applicant: Children's Medical Center of Dallas, 1935 Motor Street, Dallas, TX 75235. Instrument: Electron Microscope, Model JEM 100SX. Manufacturer: JEOL Ltd., Japan. Intended Use: Assisting in such research areas as morphologic identification and subsequent classification of leukemias and viruses. The material examined and the information derived through use of the instrument will be used in teaching conferences for medical students in the fields of pathology and cell biology and pediatric and pathology house staff by enabling visualization and photographic recording of both normal and altered cell ultrastructure. Application Received by Commissioner of Customs: June 10, 1987.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87-18849 Filed 8-17-87; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Applications; Minority Business Development Center Program, Commerce

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a three (3) year period, subject to available funds. The cost of performance for the first *twelve* months is estimated at *$347,000* for the project performance of *January 1, 1988* to *December 31, 1988*. The New England MBDC will operate in the Massachusetts, New Hampshire, Rhode Island, Maine and Vermont Standard Metropolitan Statistical Areas (SMSA) but excluding the State of Connecticut. The first year cost for the MBDC will consist of *$347,000* in Federal funds and a minimum of *$81,235* in Non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian Tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

CLOSING DATE: The closing date for applications is September 21, 1987.

Applications must be postmarked on or before September 21, 1987.

ADDRESS: New York Regional Office, Minority Business Development Agency, Jacob K. Javits Federal Building, Room 3720, New York, New York 10278 (212) 264-3262.

FOR FURTHER INFORMATION CONTACT: Gina A. Sanchez, Regional Director, New York Regional Office at (212) 264-3262.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

Dated: August 10, 1987.

William R. Fuller,

Deputy Regional Director, New York Regional Office.

[FR Doc. 87-18780 Filed 8-17-87; 8:45 am]

BILLING CODE 3510-21-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Negotiated Settlement and Adjustment of the 1987 Import Restraint Limit for Certain Cotton Textile Products in Category 335 Produced or Manufactured in the People's Republic of China

August 13, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on August 19, 1987. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 566-6828. For information on embargoes and quota re-openings, please call (202) 377-3715.

Summary

In the letters published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase the 1987 limit for Category 335 and to deduct certain 1986 overshipment charges made to the 1987 limit. As a result, the 1987 limit for Category 335, which is currently filled, will re-open.

Background

A CITA directive dated December 23, 1986 (51 FR 47041) established import restraint limits for certain cotton, wool and man-made fiber textile products, including Category 335, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

During recent consultations between the Governments of the United States and the People's Republic of China, agreement was reached, effected by exchange of notes dated August 10 and 11, 1987, to establish restraint limits concerning cotton textile products in Category 335, produced or manufactured in the People's Republic of China and exported to the United States during the period which begins on January 1, 1988 and extends through December 31, 1991. The levels will be published in the Federal Register at a later date.

Also during these consultations, under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreements of August 19, 1983, as amended, the two governments further agreed to increase the 1987 level for Category 335, for special carryforward of 75,000 dozen, to 405,474 dozen.

To the extent used, carryforward will be deducted from the level established for the 1988 agreement year.

In reviewing the import charges, the U.S. Customs Service determined that 7,969 dozen were incorrectly charged to the 1986 limit for Category 335 and has reduced the charges accordingly. As a result, overshipment charges of 7,969 dozen are being deducted from the 1987 limit and charged back to the 1986 limit.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register.**

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

August 13, 1987

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 23, 1986, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Effective on August 19, 1987, the directive of December 23, 1986 is further amended to include an adjusted limit of 405,474 dozen [1] to the previously established restraint limit for cotton textile products in Category 335, as provided under the terms of the bilateral agreement of August 19, 1983, as amended.[2]

Also effective on August 19, 1987, you are directed to deduct 1986 overshipment charges, amounting to 7,969 dozen, from the charges made to the import restraint limit established in the directive of December 23, 1986 for Category 335 for the twelve-month period which began on January 1, 1987 and extends through December 31, 1987. This same amount is to be charged to the 1986 limit.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-16869 Filed 8-17-87; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Armor Anti-Armor Competition; Cancellation

ACTION: Cancellation of Meeting.

SUMMARY: The meeting notice for the Defense Science Board Task Force on Armor Anti-Armor Competition for August 12 and 17, 1987 as published in the **Federal Register** (Vol. 52, No. 133, Page 26171, Monday, July 13, 1987, FR Doc 87-15844.) has been cancelled. In all other respects the original notice remains unchanged.

Linda Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

August 12, 1987.

[FR Doc. 87-16819 Filed 8-17-87; 8:45 am]

BILLING CODE 3810-01-M

[1] The limit has not been adjusted to account for any imports exported after December 31, 1986.

[2] The agreement provides, in part, that (1) with the exception of Category 315, any specific limit may be exceeded by not more than 5 percent of its square yard equivalent total, provided that the amount of the increase is compensated by an equivalent square decrease in one or more other specific limits in that agreement year; (2) the specific limits for categories may be increased for carryover or carryforward; (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

Engineers Corps, Department of the Army

[Regulatory Permit Application No. 16611S91]

Intent To Prepare a Draft Environmental Impact Statement (DEIS); Proposed Expansion of Ox Mountain Sanitary Landfill Into Apanolio Canyon; San Mateo County, CA

AGENCY: San Francisco District, U.S. Army Corps of Engineers, Department of Defense.

ACTION: Notice of Intent to Prepare a DEIS.

SUMMARY:

1. Proposed Action

Browning-Ferris Industries (BFI), San Carlos, California, has applied for a Department of the Army permit under section 404 of the Clean Water Act (33 U.S.C. 1344) to expand the existing Ox Mountain Ranch solid waste disposal site into the adjacent Apanolio Canyon. The site is along Apanolio Creek, approximately three miles northeast of Half Moon Bay, San Mateo County, California. The expansion site is 285 acres in the upper portion of Apanolio Canyon. The Canyon would be filled from a 500-foot elevation to a 1200-foot elevation, with an average depth of 185 feet. Refuse would be dumped at the working face and compacted by heavy equipment. The San Francisco District, Corps of Engineers, will prepare an environmental impact statement (EIS) for the proposed project pursuant to the National Environmental Policy Act.

2. Alternatives

The EIS will address all the practicable alternatives that will go before the ultimate decision maker for the permit application. The EIS will consider those reasonable alternatives which are both practical and within the capability of the applicant and within the jurisdiction of the Corps; those alternatives which are within the capability of the applicant but outside the jurisdiction of the Corps; those which are reasonably foreseeable, beyond the capability of the applicant but within the jurisdiction of the Corps; and those reasonably foreseeable, although beyond both the capability of the applicant and outside jurisdiction of the Corps. Based on the above, the alternatives being considered by the Corps of Engineers at this time are:

a. *Proposed project:* The 285 acre expansion into Apanolio Canyon

b. *Reduced project at proposed location:* Filling of less acreage

c. *No action:* Permit denial, no expansion into Apanolio Canyon

(1) Offsite landfill disposal alternatives—new and existing landfill sites.

(2) Alternative technologies including waste recycling and refuse to energy.

Additional alternatives identified during the scoping process will also be considered in the EIS.

3. Scoping Process

a. A scoping meeting will be held on Thursday, September 3, 1987, at the offices of the San Francisco District, Corps of Engineers, 211 Main Street, San Francisco, California, Room 917A, from 9 AM to 11 AM. Government agencies, public and private interest groups, and the public are invited to participate in the scoping process by attending the meeting. The purpose of the scoping meeting is to identify significant issues and alternatives to be considered in depth in the EIS.

b. Any person may also participate in the scoping process by submitting written comments to the Corps of Engineers. Comments should be addressed to Colonel Galen H. Yanagihara, District Engineer, San Francisco District, Corps of Engineers, 211 Main Street, San Francisco, California, 94105 and received within 21 calendar days of the date of this notice.

c. The issues which have been identified to date and which will be analyzed in the EIS include impacts on:

(1) Aquatic ecosystem
(2) Wetlands
(3) Hydrology and water quality
(4) Riffle and pool areas/fish habitat
(5) Terrestrial ecosystem
(6) Endangered species
(7) Cultural resources
(8) Business and industrial activity
(9) Economics
(10) Public facilities and services
(11) Public health and safety

Additional significant issues identified during the scoping process will also be analyzed in the EIS.

D. Environmental review and consultation as required by sections 401 and 404 of the Clean Water Act, as amended (33 U.S.C. 1341 and 1344); section 307 of the Coastal Zone Management Act of 1972, as amended (16 U.S.C.1456(c)); the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*); the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*); Executive Order 11990, "Protection of Wetlands", 24 May 1977; and other applicable statutes or regulations will be conducted concurrently with the EIS process.

It is estimated that the draft EIS will be made available to the public on or about 20 November 1987.

5. Questions regarding the scoping process or preparation of the EIS may be directed to Barney Opton, Environmental Branch, San Francisco District, Corps of Engineers (Telephone No.: (415) 974–0441. General questions concerning the processing of the permit application may be directed to Dave Hodges, Regulatory Branch (Telephone: (415) 974–0426).

Dated: August 11, 1987.

Galen H. Yanagihara,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 87–18778 Filed 8–17–87; 8:45 am]

BILLING CODE 3710-FS-M

Defense Communications Agency

Membership of the Defense Communications Agency SES Performance Review Board

AGENCY: Defense Communications Agency, DOD.

ACTION: Notice of membership of the Defense Communications Agency SES Performance Review Board.

SUMMARY: This notice announces the appointment of the members of the SES Performance Review Board (PRB) of the Defense Communications Agency. The publication of PRB membership is required by 5 U.S.C. 4314(c)(4).

The Performance Review Board provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance and performance awards to the Director, Defense Communications Agency.

EFFECTIVE DATE: August 1, 1987.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Painter, Personnel Management Services Branch, Civilian Personnel Division, Personnel and Administration Directorate, Defense Communications Agency (202) 692–2794.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are names and titles of the executives who have been appointed to serve as members of the SES Performance Review Board. They will serve a one-year renewable term, effective August 1, 1987.

Gordon K. Soper, Associate Director for Engineering and Technology (Code H110)
John W. Beach, Deputy Director, Resource Management (Code H600)
Benham E. Morriss, Deputy Manager, National Communications System (Code Q100)
E. William Harding, Acting Director, Defense Communications System Organization (Code B100)
David T. Signori, Jr., Director, Center for Command and Control, and Communications Systems (Code A100)
Glenwood M. Stevener, Director, Joint Data Systems Support Center (Code C100)
George A. Bombel, Brigadier General, USA Director, Joint Tactical Command, Control and Communications Agency (Code JTC$_3$A)

T. R. M. Emery

Rear Admiral, USN, Vice Director.

[FR Doc. 87–18791 Filed 8–17–87; 8:45 am]

BILLING CODE 3610-05-M

DEPARTMENT OF EDUCATION

Compromise Claim; Deganawidah-Quetzalcoatl University

AGENCY: Office of Postsecondary Education, ED.

ACTION: Notice of intent of compromise claim.

SUMMARY: Notice is given that the Department intends to compromise a claim of $33,820.05 against Deganawidah-Quetzalcoatl University (D-Q University) pursuant to 20 U.S.C. 1234a(f). That claim is the subject of an appeal now pending before the United States Court of Appeals for the Ninth Circuit, *D-Q University v. Bennett*, CA No. 86–7097.

DATE: Interested persons may comment on the proposed action by submitting written data, views, or arguments on or before October 2, 1987.

ADDRESSES: Comments should be addressed to Richard A. Hastings, Director, Debt Collection and Management Assistance Service, U.S. Department of Education, Room 5102, R.O.B. 3, 7th and D Streets SW., Washington, DC 20202.

SUPPLEMENTARY INFORMATION: The claim in question was based on a March 8, 1978 Final Letter of Determination (FLD) which was issued by the Department of Health, Education and Welfare (DHEW), Office of Education. The audit report which supported the FLD was issued on November 14, 1975 by an independent certified public accounting firm. The audit covered the University's general funds and certain grants it administered for the one-year periods ending June 30, 1974, August 31, 1974, and June 30, 1975. The grant programs involved included, among

others, the College Library Resources Program, Title II of the Higher Education Act of 1965, 20 U.S.C. 1029, and four programs under Title IV of the Indian Education Act, 20 U.S.C. 3385: the Native American Language Education Program, Special Services Program, Training Teachers of Indian and Chicano Studies, and the Civil Rights Training Program.

The March 8, 1978 FLD issued by DHEW disallowed $49,609 of claimed costs based on inadequate documentation, misallocation of funds, and violation of grant terms under 20 U.S.C. 1231(c); 31 U.S.C. 1301, and 45 CFR Part 100, Appendix C. In accordance with the Agency review procedure applicable at the time (45 CFR Part 16), D-Q timely appealed the disallowances to the DHEW Grants Appeal Board. By letter dated October 6, 1980, both parties were notified that the case was transferred to the Education Appeal Board (EAB). During the EAB proceedings, conducted in accordance with the procedures in 34 CFR Part 78, D-Q submitted documentation substantiating approximately $15,000 of the disallowed costs. The Department, therefore, reduced the outstanding claim amount from $49,609 to $33,820.05.

The EAB issued an Initial Decision on October 11, 1985, and required D-Q to repay $33,820.05 pursuant to 20 U.S.C. 1234a(d).

On December 24, 1985, the EAB's Initial Decision became the Department's Final Decision. D-Q has since appealed this decision to the United States Court of Appeals for the Ninth Circuit. The Department proposes to compromise the full amount of the claim of $33,820.05 for $14,800. Under the proposal the Department would require D-Q to pay the Department $14,800 in quarterly payments over a 24-month period plus interest of 8 percent. D-Q University would agree to dismiss with prejudice the Ninth Circuit appeal upon the execution of a compromise agreement by both parties.

In making this proposal, the Department has taken into consideration its review of the record in this matter, evidence from an independent certified public accountant that D-Q's accounting system is now in conformity with generally accepted accounting principles, the demonstrated financial weakness of the University, and the likely difficulty of rapid collection. Additionally, the Department has taken into account that if this case is not settled, the Department could incur substantial litigation costs and risks associated with litigating the pending appeal in the United States Court of Appeals for the Ninth Circuit. For these reasons, the Department has determined it would not be practical or in the public interest to require full payment.

Because of the specific facts of this case, the proposed compromise will not adversely affect any other audit proceeding currently pending before the EAB or any Federal courts of appeals.

FOR FURTHER INFORMATION: The public is invited to comment on the Secretary's intent to compromise this claim. Additional information may be obtained by writing to Richard A. Hastings, Director, Office of Debt Collections and Management Assistance Service, at the address given at the beginning of this Notice. Mr. Hastings has been delegated authority to compromise this claim.

(20 U.S.C. 1234a(f))

Dated: August 12, 1987.

Mary Rose,

Deputy Under Secretary for Management.

[FR Doc. 87-18844 Filed 8-17-87; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No.: 84.003L]

Notice Inviting Applications for New Awards Under the Bilingual Education; Special Populations Program for Fiscal Year 1988

Purpose: Provides awards to eligible applicants to establish, operate, or improve preparatory or supplemental preschool, special education, and gifted and talented programs for limited English proficient children.

Deadline for Transmittal of Applications: November 16, 1987.

Deadline for Intergovernmental Review Comments: January 18, 1988.

Priorities: The Secretary will give a competitive preference, in accordance with 34 CFR 75.105(c)(2)(ii), to projects for preschool children or for LEP children who by reason of outstanding abilities are capable of high performance as stated in 34 CFR 526.10 and 526.30.

Applications Available: September 4, 1987.

Available Funds: The President's budget request for fiscal year 1988 includes approximately $1,300,000 for new awards in this program. The Congress has not yet completed action on the 1988 appropriation. The estimates below assume passage of the President's Budget.

Estimated Range of Awards: $25,000–$200,000.

Estimated Number of Awards: 12.

Project Period: 12 to 36 months.

Applicable Regulations: (a) The Bilingual Education: Special Populations Program Regulations, 34 CFR Part 526, (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 79.

Additional Factors: In accordance with 34 CFR 526.31(b), the Secretary—in evaluating applications under the published criteria—distributes an additional 15 points among the factors listed in § 525.32 as follows: (1) Historically underserved (4 points); (2) Geographic distribution (4 points); (3) Need (4 points); (4) Relative number and proportion of children from low-income families (3 points).

For Applications or Information Contact: Barbara Wells, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 421, Reporters Building), Washington, DC 20202. Telephone (202) 732–1840.

Program Authority: 20 U.S.C. 3231(a)(6).

Dated: August 13, 1987.

Anna Maria Farias,

Acting Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 87-18845 Filed 8-17-87; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No.: 84.003S]

Notice Inviting Applications for New Awards Under the Bilingual Education; Training Development and Improvement Program for Fiscal Year 1988

Purpose: Provides awards to institutions of higher education to encourage reform, innovation, and improvement in higher education programs related to programs for limited English proficient persons.

Deadline for Transmittal of Applications: October 14, 1987.

Deadline for Intergovernmental Review Comments: December 14, 1987.

Applications Available: September 4, 1987.

Available Funds: The President's budget request for fiscal year 1988 includes approximately $200,000 for new awards under this program. The Congress has not yet completed action on the 1988 appropriation. The estimates below assume passage of the President's Budget.

Estimated Average Size of Awards: $100,000 per year.

Estimated Number of Awards: 2.

Project Period: 12 to 36 months.

Applicable Regulations: (a) The Bilingual Education: Training Development and Improvement Program Regulations, 34 CFR Part 573, (b) the Education Department General

Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 79.

For Applications or Information Contact: Cynthia Ryan, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 421, Reporters Building), Washington, DC. 20202. Telephone: (202) 245–2595.

Program Authority: 20 U.S.C. 3251(a)(3).

Dated: August 13, 1987.

Anna Maria Farias,

Acting Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 87–18842 Filed 8–17–87; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No. 84.003A]

Notice Inviting Applications for New Awards Under the Program of Transitional Bilingual Education for Fiscal Year 1988

Purpose: Provides grants to local educational agencies (LEAs) and institutions of higher education applying jointly with one or more LEAs to establish, operate, and improve programs of transitional bilingual education.

Deadline for Transmittal of Application: December 1, 1987.

Deadline for Intergovernmental Review Comments: February 2, 1988.

Applications Available: September 4, 1987.

Available Funds: The President's Budget for fiscal year 1988 includes approximately $22,000,000 for new awards under this program. The Congress has not yet completed action on the 1988 appropriation. The estimates below assume passage of the President's Budget.

Estimated Range of Awards: $40,000–$500,000.

Estimated Number of Awards: 160.

Project Period: 36 months.

Applicable Regulations: (a) The Programs of Transitional Bilingual Education Regulations, 34 CFR Part 501, and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 79.

Additional Factors: In accordance with 34 CFR 501.32(b), the Secretary—in evaluating applications under the published criteria—distributes an additional 15 points among the factors listed in § 501.32(a) as follows: (1) Historically underserved (4 points); (2) Relative need (4 points); (3) Geographic distribution (3 points); (4) Relative number and proportion of children from low-income families (4 points).

For Applications or Information Contact: Rudy Munis, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 421, Reporters Building), Washington, DC 20202. Telephone: (202) 245–2609.

Program Authority: 20 U.S.C. 3231(a)(1).

Dated: August 13, 1987.

Anna Maria Farias,

Acting Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 87–18843 Filed 8–17–87; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement; Australia

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Australia concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the following sale:

Contract Number S–AU–130, for the sale of 150 milligrams of uranium-236 and 5 milligrams of uranium-234 to the Australian National University, Canberra, Australia for use in isotope dilution measurements in geological samples.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: August 11, 1987.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 87–18828 Filed 8–17–87; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[ERA Docket No. 87–24–NG]

Order Granting Blanket Authorization To Import Natural Gas From Canada; Cherhill Resources Inc.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Order Granting Blanket Authorization to Import Natural Gas From Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Cherhill Resources Inc. (Cherhill) blanket authorization to import natural gas from Canada. The order issued in ERA Docket No. 87–24–NG authorizes Cherhill to import up to 100 Bcf over a two-year period for sale in the domestic spot market.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA–076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 11, 1987.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87–18827 Filed 8–17–87; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 87–41–NG]

Application To Import Natural Gas From Canada; Goetz Oil Corp.

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of Application For Blanket Authorization to Import Natural Gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on July 28, 1987, of an application from Goetz Oil Corporation (Goetz) for blanket authorization to import Canadian natural gas for short-term and spot market sales in the United States. Authorization is requested to import up to 140 Bcf of natural gas for a two-year term beginning on the date of the first delivery. Goetz is a New York corporation with its principal place of business in Tonawanda, New York. Goetz states that it intends to use

existing pipeline facilities and facilities specifically at Emerson, Manitoba and Niagara Falls, Ontario.

The firm proposes to submit quarterly reports giving details of individual transactions within 30 days following each calendar quarter.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than September 17, 1987.

FOR FURTHER INFORMATION CONTACT:

Allyson Reilly, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9394

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

All parties should be aware that if the ERA approves this requested blanket import, it may designate a total amount of authorized volumes for the term rather than a daily or annual limit, in order to provide the applicant with maximum flexibility of operation. ERA will also condition the authorization on the filing of quarterly reports to facilitate ERA monitoring of the operation and effectiveness of the blanket program.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decisions on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m., e.d.t., September 17, 1987.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comment, an oral presentation, a conference, or trial-type hearing. A request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts. If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Goetz's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076–A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 7, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87–18828 Filed 8–17–87; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 87–38–NG]

Application for Blanket Authorization to Export Natural Gas; Vector Energy (U.S.A.) Inc.

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of Application for Blanket Authorization to Export Natural Gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on July 15, 1987, of an application from Vector Energy (U.S.A.) Inc. (Vector) for blanket authorization to export, for its own account or the account of others, up to 60 Bcf of U.S. natural gas to Canada over a two-year period, beginning on the date of first delivery, for short-term or spot market sales. Vector, a Deleware corporation, is a wholly owned subsidiary of Vector Energy Inc., an Alberta corporation. Vector intends to use existing pipeline facilities for the transportation of the requested exports, and proposes to submit quarterly reports giving details of individual transactions.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motion to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than September 17, 1987.

FOR FURTHER INFORMATION CONTACT:

Lot Cooke, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8116

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independece Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the Secretary of Energy's Delegation Order to the Administrator of the ERA (49 FR6690, February 22, 1984), under which the domestic need for the gas to be exported is the primary consideration in

determining whether it is in the public interest. Parties that may oppose this application should comment in their response on the issue of the domestic need for the gas as set forth in the Delegation Order.

Public Comment Procedues.

In response to this notice, and person may file a protest, motion intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropirate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m. e.s.t., September 17, 1987.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necesssary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that addional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevent and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide, notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Vector's application is available for inspection and copying in the Natural Gas Division Docket Room GA–076–A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC August 11, 1987.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Program Economic Regulatory Administration.

[FR Doc. 18829 Filed 8–17–87; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Research

High Energy Physics Advisory Panel; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: High Energy Physics Advisory Panel (HEPAP).

Date and Time: Wednesday, September 9, 1987, 9:00 am—6:00 pm; Thursday, September 10, 1987, 9:00 am—4:00 pm.

Place: U.S. Department of Energy, Room A–410, 19901 Germantown Rd., Germantown, MD 20874.

Contact: Dr. P.K. Williams, Executive Secretary, High Energy Physics Advisory Panel, U.S. Department of Energy, ER–221:GTN, Washington, DC 20545, Telephone: 301/353–4829.

Purpose of Panel: To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

Tentative Agenda:

Wednesday, September 9, 1987

—Discussion of the National Science Foundation Elementary Particle Physics Program FY 1988 Budget Plan
—Discussion of the Department of Energy High Energy Physics Program FY 1988 Initial Financial Plan (IFP) Budget
—Discussion of the FY 1988 Budget Plans for the Laboratories and Universities
—Status Reports on the Superconducting Super Collider (SSC)
—Status Report on SLC (Stanford Linear Collider) Construction at SLAC (Stanford Linear Accelerator Center)
—Status Report on the BESAC (Basic Energy Sciences Advisory Committee) Subpanel on High Temperature Superconductors
—Discussion of the October meeting of the International Committee on Future Accelerators
—Public Comment (10 minute rule)

Thursday, September 10, 1987

—Status Report on Tevatron Operations at Fermilab
—Discussion of a proposed experiment to measure the antiproton gravitational force
—Discussion of the Subpanel on Future Modes of Experimental Research in High Energy Physics
—Further Discussion of Foregoing Items
—Public Comment (10 minute rule)

Public Participation: The meeting is open to the public. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to agenda items should contact the Executive Secretary at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Minutes: Available for public review and copying at the Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on August 12, 1987.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 87–18830 Filed 8–17–87; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project No. 3043–009]

Proposed Transmission Line Corridor Revision; Arkansas Electric Cooperative Corp.

August 12, 1987.

Take notice that Arkansas Electric Cooperative Corporation filed on June 30, 1987, a revised Exhibit G drawing showing the final proposed lengths and directions of the 161–kV transmission

BEST COPY AVAILABLE

line segments for Arkansas River Lock and Dam No. 13, Project No. 3043.

The license for Project No. 3043 was issued on October 18, 1983, and would expire on September 30, 2033. The project is located on the Arkansas River in Crawford County, Arkansas.

Correspondence with the applicant should be directed to: Mr. W. B. Smith, Benham—Holway Power Group, 5314 South Yale Avenue, Tulsa, Oklahoma 74135–7457. Phone Number (918) 492–1000.

Comments, Protests, or Motions to Intervene

Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 F.R. 19025–19026 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests or motions to intervene must be filed on or before September 25, 1987.

Filing and Service of Responsive Documents

Any filings must bear in all capital letters the title *"Comments", "Protest", or "Motion To Intervene"*, as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: Mr. William C. Wakefield II, Acting Director, Division of Project Management, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any motion to intervene must also be served upon each representative of the applicant specified in the third paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–18754 Filed 8–17–87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85–13–015]

Change in FERC Gas Tariff; Northwest Pipeline Corp.

August 12, 1987.

Take notice that on August 5, 1987, Northwest Pipeline Corporation (Northwest) submitted for filing, to be a part of its FERC Gas Tariff, Original Volume No. 1–A and Original Volume No. 2, the following tariff sheets.

Orginal Volume No. 1–A

Tenth Revised Sheet No. 201

Original Volume No. 2

Fifth Revised Sheet No. 2.2

Northwest states that the purpose of the filing is to reflect the new statutory corporation federal income tax rate of 34 percent, with respect to the credit for gathering payments in its T–5 transportation schedule, pursuant to the settlement terms in Docket No. RP85–13–000.

Northwest requests that the Commission grant such waivers of its regulations as it deems necessary to enable this filing to become effective July 1, 1987.

A copy of this filing has been served on Northwest's jurisdictional customers and affected state regulatory Commissions.

Any persons desiring to be heard or protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 20, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–18822 Filed 8–17–87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87–15–017]

Proposed Changes in FERC Gas Tariff; Panhandle Eastern Pipe Line

August 12, 1987

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on August 6, 1987 tendered for filing the following sheets to its FERC Gas Tariff, Original Volume No. 2:

First Revised Sheet Nos. 1621, 1931 and 2432
Second Revised Sheet No. 2707
Fourth Revised Sheet Nos. 1557, 1558, 1610, 1920, 1995, 2489, 2524 and 2672
Fifth Revised Sheet No. 2731
Sixth Revised Sheet No. 2242
Twelfth Revised Sheet Nos. 694 and 695

Panhandle states that such changes are made to amend certain Rate Schedules for the transportation of natural gas on behalf of various Panhandle transport customers to reflect Trunkline Gas Company's current transportation rates as approved in Docket No. RP87–67–000 by Commission Order issued May 29, 1987 and ERRATUM Notice dated June 9, 1987 to be effective May 1, 1987. Panhandle proposes that these tariff sheets be given an effective date of May 1, 1987.

A copy of this filing has been served on the various transport customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before August 20, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–18823 Filed 8–17–87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. EC87–20–000, et al.]

Electric Rate and Corporate Regulation Filings; Southern California Edison Co. et al.

August 11, 1987.

Take notice that the following filings have been made with the Commission:

1. Southern California Edison Company

[Docket No. EC87–20–000]

Take notice that on August 6, 1987, Southern California Edison Company (Edison), pursuant to section 203 of the Federal Power Act, tendered for filing an application for an order authorizing its proposed corporate reorganization.

Edison is a public utility primarily engaged in the business of supplying electric energy to a 50,000 square mile area in central and southern California. In addition to its regulated utility operations, Edison owns all of The Mission Group, an unregulated, non-utility company, which in turn owns all of several unregulated, non-utility

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subsidiaries. Edison proposes to carry out a plan of reorganization whereby an as yet unnamed parent corporation would own all of the common equity shares of Edison, as well as all of the shares of The Mission Group.

Edison's position is that the corporate reorganization is consistent with the public interest.

Comment date: August 24, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. Connecticut Yankee Atomic Power Company

[Docket No. ER87-390-002]

Take notice that on July 15, 1987, Connecticut Yankee Atomic Power Company tendered for filing pursuant to the Commission's Order issued June 12, 1987, a supplement to its proposed rate schedule to reflect the annual charge for decommissioning.

Comment date: August 24, 1987, in accordance with Standard Paragraph E at the end of this notice.

3. Appalachian Power Company, Indiana & Michigan Electric Company, Kentucky Power Company, Ohio Power Company, Wheeling Electric Company

[Docket No. ER87-280-001]

Take notice that on July 14, 1987, in accordance with ordering Paragraph (C), of the Commission's Order Accepting Proposed Rates for Filing, Noting Interventions, Granting Waiver of Notice Requirements in Part, and Terminating Dockets issued June 16, 1987 in Dockets Nos. ER87-280-000, ER87-281-000 and ER87-355-000, American Electric Power Service Corporation on behalf of its affiliates, Appalachian Power Company, Indiana & Michigan Electric Company, Kentucky Power Company, Ohio Power Company, and Wheeling Electric Company (sometimes collectively referred to as the AEP Parties), tendered for filing a Compliance Filing to the above referenced dockets.

The purpose of the Compliance Filing is to incorporate changes ordered by the Commission by adding a statement that modifies the AEP Parties' hourly Non-Displacement rates and hourly transmission rates so that no hourly customer will pay more than the equivalent daily rate.

Copies of the filing were served upon the public service commissions in the states of Ohio, Kentucky, Indiana, Michigan, Virginia, and West Virginia, and all parties.

Comment date: August 24, 1987, in accordance with Standard Paragraph E at the end of this notice.

4. Sierra Pacific Power Company

[Docket No. ER87-506-000]

Take notice that on July 22, 1987, Sierra Pacific Power Company (Sierra) tendered for filing the second part of a two part filing regarding the following contracts Sierra filed in this docket:

A. Agreements For Service Under Sierra's Tariff RT between Sierra and the following companies:

1. Idaho Power Company,
2. Montana Power Company,
3. Pacific Power & Light,
4. Portland General & Electric Company,
5. Washington Water Power Company,
6. Intermountain Consumer Power Association, and
7. Northern California Power Agency.

B. Amendment No. 1 to the May 19, 1981 Agreement between Sierra and Idaho Power Company.

C. First and Second Addenda to the February 24, 1971 Agreement between Sierra and Mr. Wheeler Power, Inc.

D. July 1, 1986 North Valmy Plant Operation Agreement between Sierra and Idaho Power Company.

E. August 6, 1986 Silver Peake 55kv Interconnection Agreement between Sierra and Southern California Edison Company.

F. August 16, 1985 Special Facilities Agreement between Sierra and Beowawe Geothermal Power Company.

G. August 6, 1986 Operation and Maintenance Services Agreement between Sierra and Beowawe Geothermal Power Company.

Comment date: August 24, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commisison and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 87-18820 Filed 8-17-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. QF87-554-000 et al.]

Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.; E.F. Chollas, Inc., et al.

Comment date: September 17, 1987 in accordance with Standard Paragraph E at the end of this notice.

August 11, 1987.

Take notice that the following filings have been made with the Commission.

1. E.F. Chollas, Inc.

[Docket No. QF87-564-000]

On July 31, 1987, E.F. Chollas, Inc. (Applicant) of 401 B Street, Suite 1000, San Diego, California 92101, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at Harbor Drive and 28th Street, San Diego, California. The facility will consist of a combustion turbine generator, a waste generator. The thermal output of the facility, in the form of steam, will be sold to a local water distribution company for use in a flash desalinization process. The primary energy source will be natural gas. The net electric power production capacity of the facility will be 45.7 MW. Construction of the facility is expected to begin in January 1990.

2. E.F. Torrey Pines, Inc.

[Docket No. QF87-565-000]

On July 31, 1987, E.F. Torrey Pines, Inc. (Applicant) of 401 B Street, Suite 1000, San Diego, California, 92101, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located on the campus of the University of California San Diego in La Jolla, Califorina. The facility will consist of a combustion turbine generator and a supplementary-fired waste heat recovery steam generator (HRSG). Steam from the HRSG will be

utilized by Applicant for purposes of campus heating and cooling. The primary energy source of the facility will be natural gas. The maximum net electric power production capacity of the facility will be 11.35 MW. Construction of the facility is expected to begin in November 1988.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18821 Filed 8-17-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER87-570-000, et al.]

Electric Rate and Corporate Regulation Filings: Idaho Power Co. et al.

August 13, 1987.

Take notice that the following filings have been made with the Commission:

1. Idaho Power Company

[Docket No. ER87-570-000]

Take notice that on August 7, 1987, the Idaho Power Company tendered for filing in compliance with the Federal Energy Regulatory Commission's Order of October 7, 1978, a summary of sales made under the Company's 1st Revised FERC Electric Tariff, Volume No. 1 (Supersedes Original Volume No. 1) during June 1987, along with cost justification for the rate charged. This filing includes the following supplements:

Pacific Power & Light Co., Supplement No. 20
Utah Power & Light Co., Supplement No. 67
Montana Power Co., Supplement No. 52
Washington Water Power Co., Supplement No. 50
Sierra Pacific Power Co., Supplement No. 65
Puget Sound Power & Light Co., Supplement No. 29
City of Pasadena, Supplement No. 30
City of Burbank, Supplement No. 32
Pacific Gas & Electric Co., Supplement No. 25
Sacramento Municipal Utility District, Supplement No. 3
City of Glendale, Supplement No. 32
Los Angeles Dept. of Water and Power, Supplement No. 37

Comment Date: August 27, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. Wisconsin Public Service Corporation

[Docket No. ER87-571-000]

Take notice that on August 10, 1987, Wisconsin Public Service Corporation (Company) of Green Bay, Wisconsin, filed a supplement to its service agreement with Wisconsin Public Power Incorporated System (WPPI). The service agreement supplement relates to the company's FERC Electric Tariff, Original Volume No. 2 for all requirements service and contains provisions relative to the point of delivery and location of electric metering at the City of Algoma. The filing does not change the level of the Company's rates or affect terms and conditions other than those related to the said metering location.

The company asks that the supplemental agreement become effective upon the operational date of the new facilities which is estimated to occur about September 27, 1982. The company represents that WPPI joins in the request for this effective date and also supports the filing which the company has made. The company states that it has furnished copies of the filing to WPPI and the Wisconsin Public Service Commission.

Comment Date: August 27, 1987, in accordance with Standard Paragraph E at the end of this notice.

3. Boston Edison Company

[Docket No. ER84-705-000]

Take notice that on August 10, 1987 Boston Edison Company (Boston Edison) tendered for filing revised Exhibit Bs to its Rate Schedules FPC Nos. 47 and 51 for service to the Towns of Concord and Wellesley, Massachusetts, to reflect the direct cost of service effects on the S-8/PR Rate charged the two Towns of the reduction in the federal income rate from 46% to 34%, pursuant to the Tax Reform of 1986. Boston Edison asks that the rate schedule changes be made effective as of July 1, 1987.

Boston Edison states that this filing has been posted and that copies of the filing have been served upon the two Towns and the Massachusetts Department of Public Utilities.

Comment Date: August 27, 1987, in accordance with Standard Paragraph E at the end of this notice.

4. Consolidated Edison Company of New York, Inc.

[Docket No. ER87-572-000]

Take notice that on August 10, 1987, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing Supplements to thirteen of its Rate Schedules:

Rate schedule No.	Supplement No.	Person receiving service
55	6	Philadelphia Electric Company (PE).
56	6	Public Service Electric and Gas Company (Public Service).
57	6	Northeast Utilities (NU).
62	6	Orange and Rockland Utilities, Inc (O&R).
69	3	NU.
70	1	Niagara Mohawk Power Corporation (Mohawk) and Pennsylvania Power & Light Company (PP&L).
71	1	New England Power Co. (NEP).
74	4	PP&L.
75	5	GPU Service Corporation (GPU).
78	4	Power Authority of the State of New York (Power Authority).
82	2	Baltimore Gas & Electric Company (BG&E).
83	2	Atlantic City Electric Company (Atlantic).
84	2	Connecticut Municipal Electric Energy Cooperative (CMEEC).

The Supplements provide for a decrease in rate from 2.6 mills to 2.3 mills per Kwh of interruptible transmission of power and energy over Con Edison's transmission facilities, thus decreasing annual revenues under the Rate Schedules by a total of $169,318.80. The Supplement to No. 57 also provides for an additional source for the power to be transmitted. Con Edison has requested waiver of notice requirements so that the Supplements can be made effective as of September 1, 1987.

Con Edison states that copies of this filing have been served by mail upon PE, Public Service, NU, O&R, Mohawk, PP&L, NEP, GPU, the Power Authority, BG&E, Atlantic and CMEEC.

Comment date: August 27, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or

protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion in intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18854 Filed 8-17-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP87-472-000, et al.]

Natural Gas Certificate Filings; United Gas Pipe Line Co., et al.

August 13, 1987.

Take notice that the following filings have been made with the Commission:

1. United Gas Pipe Line Company

[Docket No. CP87-472-000]

Take notice that on July 31, 1987, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP87-472-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a direct industrial sale service to New Orleans Public Service Inc. (NOPSI), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United states that continuation of the present service is not in the public interest and requests that the Commission permit the termination of direct sale service to the extent required.

United asserts it is not requesting abandonment authority of any facilities. United states that the subject delivery facilities would be left in place to accommodate either future transportation service or new sales service if appropriate contractual arrangements can be made. United states that if such new arrangements are not made, it would file to abandon such facilities.

Comment date: September 3, 1987, in accordance with Standard Paragraph F at the end of this notice.

2. United Gas Pipe Line Company

[Docket NO. CP87-481-000]

Take notice that on August 5, 1987, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP87-481-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a direct industrial sale service to Louisiana Power & Light Company, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United states that continuation of the present service is not in the public interest and it requests that the Commission permit the termination of direct sale service to the extent required.

United contends that it is not requesting abandonment authority of any facilities. United states that the subject delivery facilities would be left in place to accommodate either future transportation service or new sales service if appropriate contractual arrangements can be made. United states that if such new arrangements are not made, it will file to abandon such facilities.

Comment date: September 3, 1987, in accordance with Standard Paragraph F at the end of this notice.

3. Natural Gas Pipeline Company of America

[Docket No. CP87-485-000]

Take notice that on August 7, 1987, Natural Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP87-485-000 an application pursuant to section 7 of the National Gas Act for a certificate of public convenience and necessity authorizing: (1) The continuation of the existing grandfathered transportation service provided in Docket No. ST86-73 on behalf of Tennessee Gas Pipeline Company (Tennessee) for a limited term extending through September 9, 1988, and (2) the increase in the maximum daily volume of synthetic natural gas delivered from 41,250 MMBtu to up to 48,000 MMBtu, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural entered into a limited term gas transportation agreement with Tennessee dated August 2, 1985 (Agreement) to provide on an interruptible basis transportation of up to 41,250 MMBtu per day of gas from a receipt point in Mills County, Iowa to delivery points in Wharton County, Texas and Cameron Parish, Louisiana, pursuant to the transitional provisions of Order No. 436, *et al.* and Subpart G of Part 284 of the Commission's Regulations. Natural receives the gas for Tennessee's account from Northern Natural Gas Company, a Division of Enron Corp. (Northern). The gas transported is synthetic natural gas produced at the Great Plains coal gasification plant located in Beulah, North Dakota. Northern Border Pipeline Company receives the gas from the plant and delivers it to Northern near Ventura, Hancock County, Iowa. Natural's grandfathered transportation service for Tennessee expires September 9, 1987.

Natural proposes to extend the transportation service for Tennessee for one year expiring on September 9, 1988 (pursuant to the agreement, as amended by Amendment No. 1 dated July 23, 1987) pursuant to the same terms and conditions set forth in Docket No. ST86-73. Natural proposes to charge Tennessee a transportation rate of 11.46 cents per MMBtu. Natural also proposes to reduce the volumes of gas redelivered for the account of Tennessee by five-tenths percent (0.5%) per MMBtu for gas lost and unaccounted for and gas used as fuel. Natural states that no additional facilities would be required to continue such service.

Comment date. September 1, 1987, in accordance with Standard paragraph F at the end of this notice.

4. United Gas Pipe Line Company

[Docket No. CP87-476-000]

Take notice that on August 3, 1987, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP87-476-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a direct industrial sale service to American Cyanamid Company (American), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United states that it has notified American by letters dated August 4, 1986 and August 11, 1986, that its present firm service contract would terminate on September 4, 1986. It is further stated that continuation of this service is not in the public interest and it requests that the Commission permit the termination of direct sale service to the extent required.

United States it is not requesting abandonment authority of any facilities. United further states that the subject delivery facilities would be left in place to accommodate either future transportation service or new sales service if appropriate contractual arrangements can be made. It is stated that if such new arrangements are not made, United would file to abandon such facilities.

Comment date: September 3, 1987, in accordance with Standard Paragraph F at the end of this notice.

5. Natural Gas Pipeline Company of America

[Docket No. CP86-437-006]

Take notice that on August 6, 1987, Natural Gas Pipeline Company of America (NGPL), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP86-437-006 a petition to further amend the order issued September 3, 1986, in Docket No. CP86-437-000, as amended, on September 29, 1986, and January 27, 1987, pursuant to section 7(c) of the Natural Gas Act NGPL requests authorization so as to extend the term of transportation service for Olin Corporation (Olin), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

NGPL states that in the order issued September 3, 1986, in Docket No. CP86-437-000, as amended, NGPL is authorized to transport up to 4,000 MMBtu of natural gas per day on an interruptible basis for Olin for a term ending September 4, 1987.

NGPL states that in the amendment to the transportation agreement dated March 27, 1986, as amended, NGPL and Olin seek to continue transportation service beyond the currently authorized termination date. NGPL requests that the certificate, in Docket No. CP86-437-000, as amended, be extended for a limited term ending September 4, 1989.

NGPL does not propose any other changes in the authorized service, and further states that no new facilities are proposed herein.

Comment date: September 3, 1987, in accordance with the first subparagaph of Standards Paragraph F at the end of this notice.

Standard Paragraph

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, and hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed with the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18855 Filed 8-17-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF87-560-000 et al.]

Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.; Applied Energy, Inc., et al.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

August 13, 1987.

Take notice that the following filings have been made with the Commission.

1. Applied Energy, Inc.

[Docket No. QF87-560-000]

On July 31, 1987, Applied Energy, Inc. (Applicant), of 401 B Street, Suite 1000, San Diego, California 92101, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in San Diego, California. The facility will consist of a combustion turbine generating unit, a heat recovery steam generator, and an extraction/condensing steam turbine generating unit. Steam produced from the facility will be sold to the United States Navy for space and water heating, and for steam blanketing. The primary energy source will be natural gas. The net electric power production capacity of the facility will be 45.5 MW. Installation of the facility is expected to begin in October 1988.

2. E. F. Kenilworth, Inc.

[Docket No. QF87-559-000]

On July 31, 1987, E. F. Kenilworth, Inc. (Applicant), of 401 B Street, Suite 1000, San Diego, California 92101, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Kenilworth, New Jersey. The facility will consist of one combustion turbine generating unit, one heat recovery steam generator, and an extraction/condensing steam turbine generating unit. Steam produced from the facility will be sold to Schering Plough for sterilization, pharmaceutical processing and space heating. The primary energy source will be natural gas. The net electric power production capacity of the facility will be 25 MW. Installation of the facility is expected to begin in September, 1987.

3. E. F. Union, Inc.

[Docket No. QF87-558-000]

On July 31, 1987, E. F. Union, Inc. (Applicant), of 401 B Street, Suite 1000, San Diego, California 92101, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Union, New Jersey. The facility will consist of two combustion turbine generating units and two heat recovery steam generators. Steam produced from the facility will be sold to Schering Plough for sterilization, pharmaceutical processing and space heating. The primary energy source will be natural gas. The net electric power production capacity of the facility will be 7.1 MW. Installation of the facility is expected to begin in September, 1987.

4. Solar Turbines Incorporated

[Docket No. QF87-567-000]

On July 31, 1987, Solar Turbines Incorporated (Applicant), of 2200 Pacific Highway, San Diego, California 92138-5376 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Chicago, Illinois. The facility will consist of two combustion turbine generators and two heat recovery steam generators. Thermal energy recovered from the facility will be used by the Chicago Union Station Company for building space heating and cooling, and domestic hot water production. The primary energy source for the facility will be natural gas. The net electric power production capacity of the facility will be 3.89 MW. Installation will begin in January 1988.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18856 Filed 8-17-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-58-003]

Compliance Filing; Michigan Gas Storage Co.

August 13, 1987.

Take notice that on August 7, 1987, Michigan Gas Storage Company (Storage Company) tendered for filing the following revised tariff sheets pursuant to the letter order of the Commission dated July 23, 1987, in the subject proceeding:

First Substitute First Revised Sheet No. 8
First Substitute First Revised Sheet No. 20

The proposed effective date of these revised tariff sheets is July 1, 1986.

Storage Company respectfully requests waiver of such provisions of the Commission's Regulations, as may be necessay so that this compliance filing and the accompanying tariff sheets may be accepted to be effective July 1, 1986.

Copies of the filing were served on all intervenors, jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before August 21, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18857 Filed 8-17-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-83-000]

Proposed Changes in FERC Gas Tariff; Northern Natural Gas Co., Division of Enron Corp.

August 13, 1987.

Take Notice that on August 3, 1987, Northern Natural Gas Company, Division of Enron Corp. (Northern), tendered for filing to become a part of Northern Natural Gas Company's (Northern) F.E.R.C. Gas Tariff, Third Revised Volume No. 1,

Third Revised Volume No. 1

First Revised Sheet No. 52c.2
Original Sheet No. 52c.2a
First Revised Sheet No. 52c.3
First Revised Sheet No. 52f.4

The First Revised Sheet Nos. 52c.2, 52c.3 and 52f.4 and Original Sheet Nos. 52c.3a and 52f.4a are being filed to expand the time period Northern will have available to schedule daily transportation volumes under Rate Schedules FT-1 and IT-1 effective September 2, 1987. Additionally, Northern proposes that its transportation customers confirm verbal nominations in writing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with the Commission's Rules of Practice & Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 19, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18858 Filed 8-17-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-52-009]

Compliance Filing; United Gas Pipe Line Co.

August 13, 1987.

Take notice that on August 7, 1987, United Gas Pipe Line Company (United) tendered for filing Revised Fourth, Revised Sheet No. 9-A, Revised Second Revised Sheet No. 13, Revised Fourteenth Revised Sheet No. 14, Revised Twelfth Revised Sheet No. 25, and Revised Fifth Revised Sheet No. 26 to its FERC Gas Tariff, First Revised Volume No. 1, to comply with Ordering Paragraph (B) of the Commission's July 23, 1987, order in Docket No. RP87-52-002, *et al.* These tariff sheets reflect removal of the 75% nomination entitlement ratio for Rate Schedules DG, G and PL. United states that it is making this filing under protest and without prejudice to its application for rehearing of the Commission's May 8, 1987, order in Docket No. CP86-526-000, *et al.*

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance withh Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 18, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18859 Filed 8-17-87; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL COMMUNICATIONS COMMISSION

[MM Docket No. 87-272, File Nos. BTCH851205HO and BTCH851205 HP]

Oyate, Inc.; Order to Show Cause, Hearing Designation Order, and Notice of Apparent Liability

Adopted: July 20, 1987; Released: July 31, 1987.

By the Commission:

1. The Commission has before it for consideration the license of the captioned licensee, Oyate, Inc. (Oyate), for Radio Station KQHU–FM, Yankton, SD, and two applications for transfer of control of Oyate, as hereinafter described. On December 5, 1985, Oyate submitted applications seeking simultaneous Commission approval of two separate transfers of control of the licensee corporation. The first (BTCH 85 1205HO), sought *nunc pro tunc* Commission approval of an October 1982 transfer of stock from the then majority shareholder, Willis F. Stanage, to then minority shareholder, Robert O. Link.[1] The second (BTCH 851205HP) requested approval of a transfer of control of Oyate from Link to North American Storage, Inc., a South Dakota Corporation, pursuant to an agreement between Link and North American, dated October 17, 1985.

2. Information supplied by Oyate in the applications for transfer of control and obtained as a result of a subsequent Commission inquiry into the actual ownership and control of the licensee, raises substantial and material questions as to whether the licensee possesses the requisite qualifications to be or remain a licensee of the captioned radio station and whether the public interest, convenience and necessity would be served by grant of either or both of the captioned applications. This information has come to the attention of the Commission since its grant of the renewal of Oyate's license and, if substantiated, could warrant revocation of the license,[2] or denial of the subject applications.[3]

3. Accordingly, it is ordered, that pursuant to section 312(a) of the Communitcations Act of 1934, as amended, Oyate, Inc. is directed to show cause why the license of Station KQHU–FM, Yankton, SD, should not be revoked, at a hearing to be held at a time and place specified in a subsequent Order, upon the following issues:

(a) To determine whether the principals of Oyate, Inc., engaged in unauthorized transfers of control of the license of KQHU–FM in violation of Section 310(d) of the Communications Act;

(b) To determine whether the principals of Oyate, Inc., made misrepresentations to the Commission, were lacking in candor in their dealings with the Commission or attempted to mislead or deceive the Commission as to the true ownership of the licensee in their 1982 renewal application (File No. 821129WF) and in a related Ownership Report filed November 29, 1982;

(c) To determine, whether Oyate, Inc. violated Section 73.3613(b) of the Commission's Rules by failing to report contracts or agreements affecting ownership of the licensee;

(d) To determine, in light of the evidence adduced under the foregoing issues, whether Oyate, Inc., possesses the requisite qualifications to be or remain a licensee of the captioned radio station; and

(E) If, in light of the evidence adduced pursuant to the foregoing issues, it is determined that revocation of license for station KQHU–FM Yankton, South Dakota, is not warranted, to determine, pursuant to Section 309(e) of the Communications Act of 1934, as amended, whether grant of the captioned applications will serve the public interest, convenience, and necessity.

4. It is further ordered, that the Chief, Mass Media Bureau, is directed to serve upon Oyate, Inc., within thirty (30) days of the release of this Order, a Bill of Particulars with respect to Issues (a) through (c) above.

5. It is further ordered, that pursuant to section 312(d) of the Communications Act of 1934, as amended, both the burden of proceeding with the evidence and the burden of proof shall be upon the Mass Media Bureau as to issues (a) through (d) inclusive.

6. It is further ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, both the burden of proceeding with the introduction of evidence and the burden of proof with respect to issue (e), shall be upon Oyate, Inc.

7. It is further ordered, that to avail itself of the opportunity to be heard, the licensee, pursuant to § 1.91(c) of the Commission's Rules, in person or by attorney shall file with the Commission within thirty (30) days of the receipt of the Order to Show Cause a written appearance stating it will appear at the hearing and present evidence on the matters specified in the Order. If the licensee fails to file an appearance within the time specified, the right to a hearing shall be deemed to have been waived. *See* § 1.92(a) of the Commission's Rules. Where a hearing is waived, a written statement in mitigation or justification may be submitted within thirty (30) days of the receipt of the Order to Show Cause. *See* 1.92(b) of the Commission's Rules. In the event the right to a hearing is waived, the presiding officer or the Chief Administrative Law Judge, if no presiding officer has been designated, will terminate the hearing proceeding and certify the case to the Commission in the regular course of business and an appropriate order will be entered. *See* § 1.92 (c) and (d) of the Commission's Rules. Because this matter involves allegations of consummated but not authorized transfers of control, we think it to be particularly well-suited for expedited treatment at the next stages. Accordingly, the presiding Administrative Law Judge and the Review Board are directed to accord this matter expedited treatment. In this regard, all concerned should be mindful of unnecessary delays and extensions of time.

8. It is further ordered, that if it is determined that the hearing record does not warrant an Order revoking the license of Oyate, Inc., for Radio Station KQHU–FM it shall also be determined if Oyate has willfully or repeatedly violated section 310(d) of the Communications Act of 1934, as amended (unauthorized transfer of control) and § 73.3613(b) of the Commission's Rules (failure to file contracts or agreements relating to transfer of stock in the licensee corporation). If so, it shall also be determined whether an Order for Forfeiture shall be issued pursuant to

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[1] Prior to the transfer, Stanage held 224 of the 400 issued and outstanding shares of the licensee representing a 56%, and controlling, interest. Link held 132 shares, which constituted a 33% interest.

[2] Section 312(a)(1) of the Communications Act of 1934, as amended, states that "[t]he Commission may revoke any station license or construction permit . . . for false statements knowingly made . . . in the application." Section 312(a)(2) permits the Commission to revoke a station license "because of conditions coming to the attention of the Commission which would warrant it in refusing to grant a license or permit on an original application." Section 312(a)(4) permits the Commission to revoke a station license for willful or repeated violation of, or failure to observe, any provision of the Act or the Commission's Rules.

[3] Section 309(e) of the Communications Act of 1934, as amended, states in pertinent part, that, "If, in the case of any application to which subsection (a) of this section applies, a substantial and material question of fact is presented or the Commission for any reason is unable to make the finding specified in such subsection, it shall formally designate the application for hearing. . . ."

section 503(b) of the Communications Act of 1934, as amended, in the amount of $20,000 for the willful or repeated violations of section 310(d) of the Communications Act of 1934, as amended and § 73.3613(b) of the Commission's Rules.

9. It is further ordered, that this document constitutes a Notice of Apparent Liability for a forfeiture for violations of section 310(d) of the Communications Act and § 73.3613(b) of the Commission's Rules.

The Commission has determined that, in every case designated for hearing involving revocation or denial of assignment, transfer, or renewal of license for alleged violations which also come with the purview of section 503(b) of the Communications Act of 1934, as amended, it shall, as a matter of course, include thus forfeiture notice so as to maintain the fullest possible flexibility of action. Since the procedure is this a routine or standard one, we stress that the inclusion of this notice is not to be taken as in any way indicating what the initial or final disposition of the case should be.

10. It is further ordered, that North American Storage, Inc. be made a party to this proceeding.

11. It is further ordered, that the Secretary, Federal Communications Commission, send a copy of this Order by *Certified Mail—Return Receipt Requested*, to:

Oyate, Inc., 904 West 23rd, P.O. Box 794, Yankton, SD 57078

and also to each of the following:

Robert O. Link, 16 Pine Street, Yankton, SD 57078

North American Storage, Inc., c/o Wesley Heppler, Cole, Raywid & Braverman, 1919 Pennsylvania Avenue NW., Washington, DC 20006

Dr. Willis F. Stanage, c/o Boyce, Murphy, McDowell & Greenfield, Northwest Center Suite 505, P.O. Box 5015, Sioux Falls, SD 57117–0515

Lawrence W. Magnuson, c/o Frederick A. Polner, Rothman, Gordon, Foreman & Groudine, P.A., 300 Grant Building, Pittsburgh, PA 15219

Federal Communications Commision.

William J. Tricarico,

Secretary.

[FR Doc. 87–18873 Filed 8–17–87; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

[No. AC–646]

Liberty Savings Bank Marietta, OH; Final Action Approval of Conversion Application

Date: August 12, 1987.

Notice is hereby given that on August 10, 1987, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Liberty Savings Bank, Marietta, Ohio for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552 and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Cincinnati, 2000 Atrium TWO, Cincinnati, Ohio 45202.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87–18796 Filed 8–17–87; 8:45 am]

BILLING CODE 6720-01-M

[No. AC–647]

Valley Federal Savings and Loan Association, Sheffield, AL; Final Action Approval of Conversion Application

Date: August 12, 1987.

Notice is hereby given that on August 10, 1987, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Valley Federal Savings and Loan Association, Sheffield, Alabama for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Atlanta, 1475 Peachtree Street, NE., Atlanta, Georgia 30309.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87–18797 Filed 8–17–87; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under OMB Review

August 12, 1987.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received on or before September 8, 1987.

ADDRESS: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or delivered to Room B–2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B–1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Robert Fishman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once

approved may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822)

Proposal To Approve Under OMB Delegated Authority the Extension, With Revision, of the Following Report

Report title: Report of Condition for Edge and Agreement Corporations
Agency from number: FR 2886b
OMB Docket number: 7100–0086
Frequency: Quarterly or Annually
Reporters: Edge and Agreement Corporations
Annual reporting hours: 4945 hours
Small businesses are not affected.

Note.—This notice is a correction of an earlier notice published July 1, 1987 Vol. 52, No. 126, p. 24531.

General Description of the Report

This reports collects balance sheet and income data from Edge and Agreement corporations. The data are used to supplement examination reports and support the applications process, to monitor aggregate institutional trends, and to measure the effect of and compliance with the Board's Regulation K. The proposed revisions consist of changes to Schedule E that are designed to maintain consistency with similar information collect from commercial banks in Schedule N of the Reports of Condition and Income (FFIEC 031–034). Under the proposal, the title of Schedule E would be changed to "Past Due, Nonaccrual Loans and Leases;" item 4, entitled Renegotiated "troubled" debt would be deleted; item 5, Total would be renumbered item 4; and a memorandum item would be added to collect restructured loans and leases included in the total reported in item 4.

This report is required and authorized by law [12 U.S.C. 602 and 605]. Certain respondent data are given confidential treatment [5 U.S.C. 552(b) (4) and (8)].

Board of Governors of the Federal Reserve System, August 12, 1987.
William W. Wiles,
Secretary of the Board.
[FR Doc. 87–18792 Filed 8–17–87; 8:45 am]
BILLING CODE 6210–01–M

Formations of, Acquisition by, and Mergers of Bank Holding Companies; NBS Bancorp et al.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 10, 1987.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *NBS Bancorp,* New Brunswick, New Jersey; to become a bank holding company by acquiring 100 percent of the voting shares of New Brunswick Savings Bank, New Brunswick, New Jersey, a mutual savings bank which will be converted to stock form.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Herky Hawk Financial Corp.,* Hopkinton, Iowa; to become a bank holding company by acquiring 80 percent of the voting shares of Citizens State Bank, Hopkinton, Iowa. Comments on this application must be received by September 4, 1987.

2. *Tri City Bankshares Corporation,* Oak Creek, Wisconsin; to acquire 100 percent of the voting shares of Tri City National Bank of Menomonee Falls, Menomonee Falls, Wisconsin, *de novo* bank. *Comments on this application must be received by September 2, 1987.*

C. **Federal Reserve Bank of St. Louis** (Randall C. Summer, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First City, Inc.,* Memphis, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of First City, A Federal Savings Bank, Memphis, Tennessee.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Union Savings Bancshares, Inc.,* Sedalia, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Union Savings Bank, Sedalia, Missouri.

Board of Governors of the Federal Reserve System, August 12, 1987.
William W. Wiles,
Secretary of the Board.
[FR Doc. 87–18824 Filed 8–17–87; 8:45 am]
BILLING CODE 6210–01–M

Acquisitions of Companies Engaged in Permissible Nonbanking Activities; Premier Bancorp, Inc., et al.

The organizations listed in this notice have applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the

offices of the Board of Governors not later than September 10, 1987.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Premier Bancorp, Inc.*, formerly Louisiana Bancshares, Inc., Baton Rouge, Louisiana; to acquire Terre Agency, Inc., Houma, Louisiana, and thereby engage in the sale of insurance that is directly related to extensions of credit by its affiliates, or that is directly related to the provision of other financial services by its affiliates pursuant to § 225.25(b)(8) of the Board's Regulation Y. These activities will be conducted in Louisiana or in adjoining states.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Valley Bancorporation*, Appleton, Wisconsin; to acquire Valley Bancard, Inc., Madison, Wisconsin, and thereby engage in credit card servicing activities pursuant to § 225.25(b)(1) of the Board's Regulation Y. Comments on this application must be received by September 2, 1987.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Canadian Imperial Bank of Commerce*, Toronto, Ontario, Canada, and Canadian Imperial Holdings, Inc., Wilmington, Delaware, to acquire CIBC Leasing Inc., Wilmington, Delaware, formerly Canadian Imperial Leasing Company, Chicago, Illinois, and thereby engage in the leasing of real and personal property pursuant to § 225.25(b)(5) of the Board's Regulation Y. Comments on this application must be received by September 4, 1987.

Board of Governors of the Federal Reserve System, August 12, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-18790 Filed 8-17-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 85F-0115]

Morton Thiokol, Inc.; Withdrawal of Good Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal without prejudice to future filing of a petition proposing that the food additive regulations be amended to provide for the safe use of *N*-(2-methyl-1-naphthyl)maleimide as a preservative in adhesives used in articles intended for packaging, transporting, or holding food.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumback, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 29, 1985 (50 FR 12652), FDA published a notice that it had filed a petition (FAP 5B3850) from Morton Thiokol, Inc., Ventron Division, 150 Andover St., Danvers, MA 01923, proposing that § 175.105 *Adhesives* (21 CFR 175.105) be amended to provide for the safe use of *N*-(2-methyl-1-naphthyl)maleimide as a preservative in adhesives used in articles intended for packaging, transporting, or holding food. The firm has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: August 3, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition

[FR Doc. 87-18786 Filed 8-17-87; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

Health Resources and Services Administration; Statement of Organization, Functions and Delegations of Authority

Notice is hereby given that an Office of Rural Health has been established in the Immediate Office of the Administrator, Health Resources and Services Administration, effective July 31, 1987.

Date: August 3, 1987.

David N. Sundwall,

Administrator, Health Resources and Services Administration.

[FR Doc. 87-18784 Filed 8-17-87; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-87-1723; FR 2397]

Office of Lender Activities and Land Sales Registration Interstate Land Sales Registration Divison; Notice of Administrative Proceedings

AGENCY: Assistant Secretary for Housing—Federal Housing Commissioner, Office of Lender Activities and Land Sales Registration, Interstate Land Sales Registration Division, HUD.

ACTION: Notice of proceedings and opportunity for hearing.

SUMMARY: The Interstate Land Sales Registration Division gives public notice of its attempt to serve upon certain persons (defined by statute (15 U.S.C. 1701) as individuals, unincorporated organizations, partnerships, associations, corporations, trusts, or estates) at their last known addresses, a notice requiring revisions to their Statement of Record. Service of this notice was attempted by mail and was found to be undeliverable. Therefore, in accordance with 44 U.S.C. 1508, the Department is publishing this Notice of Proceedings and Opportunity for Hearing in order to effect constructive notice upon the persons listed in the attached Appendix.

DATE: Requests for hearings should be filed on or before September 2, 1987.

ADDRESSES: Requests shall be filed with the docket Clerk for Administrative Proceedings, Room 10251, HUD Building, 451 Seventh Street SW., Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Roger G. Henderson, Branch Chief, Land Sales Enforcement Branch, Department of HUD, Room 6278, Washington, DC 20410. Telephone: (202) 755-0502. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Notice of Proceedings and Opportunity for hearing is issued pursuant to the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1706(d)) and related regulations at 24 CFR 1710.45(b)(1) and 24 CFR 1710.215. The Department hereby serves the following Notice of Proceedings and Opportunity for Hearing to the persons listed in the attached Appendix:

Notice of Proceedings and Opportunity for Hearing

I

Docket No. _____
In the matter of: (subdivision) _____
_____
(developer) _____
_____
Representative Respondent _____
OILSR No. _____

The Secretary in administering the Interstate Land Sales Full Disclosure Act of 1968, 15 U.S.C. 1701 et seq., and its Regulations finds his public files disclose that:

A. Respondent is a corporation organized under the laws of the State of _____ and has its principal office in _____.

B. The mailing address of Respondent's last known principal office or place of business is _____
_____

C. The Respondent filed a Statement of Record and Property Report for the above subdivision, located in _____ County, _____ State, which Statement of Record and Property Report, as amended, if any amendments have been filed, became effective on _____ and is still effective.

D. _____ is an authorized Representative of Respondent.

(Information for completing the above format follows. The captioned matters in the Appendix are listed alphabetically by subdivision in each State. Paragraph I of the Notice of Proceedings and Opportunity for Hearing includes the captions of the separate matters. Information for the completion of the captions of each of the matters is set out in columns 1 and 2 of the aforementioned Appendix. Information for Lines A, B and C above is set out in columns 3, 4 and 5 respectively of the Appendix. Information for Line D of Paragraph I is contained in the caption of the matter, and the same information is supplied in the last line of Column 1 of the Appendix. The entire Notice is completed by inserting the applicable information from the Appendix in the appropriate blanks of paragraph I. In this form it is constructively noticed that the Notice of Proceedings and Opportunity for Hearing is served upon the persons listed in column 1 of the Appendix.)

II

The Interstate Land Sales Registration Division (ILSRD) from its records or from other sources has obtained information which tends to show, and it so alleges, that the Statement of Record and Property Report of the subdivision captioned above include untrue statements of material fact, or omit to state material facts required to be stated therein or necessary to make the statements therein not misleading, to wit:

The developer has failed to file amendments (including an annual report of activity) to comply with revised regulations of the Interstate Land Sales Registration Division or, alternatively, to file documentation establishing that no such amendments are necessary by the time required in 24 CFR 1710.23(a) and/or 1710.310 (1984 Edition), as amended by 49 FR 31366 (August 6, 1984) (as codified in the 1985 edition).

III

In view of the allegations contained in Part II above, the Secretary will provide an opportunity for a public hearing to determine:

A. Whether the allegations set forth in Part II are true and in connection therewith to afford Respondent an opportunity to establish any defenses to such allegations; and

B. What, if any, remedial action is appropriate in the public interest and for the protection of purchasers pursuant to the Interstate Land Sales Full Disclosure Act.

IV

If the respondent desires a hearing, he shall file a request for hearing accompanied by an answer within 15 days after service of this Notice of Proceedings. Respondent is hereby notified that if he fails to file a response pursuant to 25 CFR 1720.240 and 1720.245 within 15 days after service of this Notice of Proceedings, Respondent shall be deemed in default, and the proceedings shall be determined against him, the allegations of which shall be determined to be true, and an order suspending the Statement of Record will be issued. The said order shall remain in effect until the Statement of Record and Property Report have been amended in accordance therewith, and thereupon the order shall cease to be effective.

V

Any request for hearing, answer, motion, amendment to pleadings, offer of settlement or correspondence forwarded during the pendency of this proceeding shall be filed with the Docket clerk for Administrative Proceedings, Room 10251, HUD Building, 451 Seventh Street SW., Washington, DC 20410. All such papers shall clearly identify the type of matter and the docket numbers as set forth in this Notice of Proceedings.

VI

It is hereby ordered, that upon request of the Respondent a public hearing for the purpose of taking evidence on the questions set forth in Part III hereof be held before an Administrative Law Judge, HUD Building, 451 Seventh Street SW., Washington, DC 20410, at 10:00 a.m. on the 30th day after receipt of the answer or at such other time as the Secretary or a designee may fix by further order.

This Notice of Proceedings shall be served upon the Respondent pursuant to 24 CFR 1720.170 and/or 44 U.S.C. 1508.

Date: August 7, 1987.

Thomas T. Demery,

Assistant Secretary for Housing, Federal Housing Commissioner.

In the matter of (subdivision) developer, representative and title; respondent	OILSR No. and land sales enforcement branch docket No.	State of organization and location of principal office	Last known mailing address	Location of subdivision (county, State) and effective date
(1)	(2)	(3)	(4)	(5)
Arizona:				
Rancho Del Sol Lindo, Charles W. Rubinstein, Managing Co-owner Respondent.	0-05790-02-992, M-86-051, Order of Suspension returned as undeliverable.	Arizona, Tucson, AZ.	131 West Vista Grande, Tucson, AZ 85704	Pima County, AZ Jan 23, 1981.
Golden Shores, The Dutch Golden Shores, Ltd. Robert J. Dorn, General Partner.	0-5838-2-998, M-87-026	Arizona, Las Vegas, NV.	438 East Sahara Avenue, Las Vegas, Nevada 89104	Mohave County, AZ. Aug. 1, 1981.
California:				
Victoria Estates, Bruce L Johnsey, Partner, Victoria Estates, Limited Partnership.	C-0-06292-04-1048, M-86-046	California, Fresno, CA.	3040 E. Olive, Fresno, CA 93701 or 1001 Sylmar #101 Clovis, CA 93612.	Fresno County, CA, Aug. 31, 1984.
Meadow Oaks Ranch Tract 13403, J. R. Brown, General Partner.	C-0-06381-04-1066, M-86-045	California, Irvine, CA.	2151 Michelson, Suite 200, Irvine, CA 92715	Riverside County, CA, Dec. 24, 1984.

In the matter of (subdivision) developer, representative and title; [redacted]	OILSR No. and land sales enforcement branch docket No.	State of organization and location of principal office	Last known mailing address	Location of subdivision (county, State) and effective date
(1)	(2)	(3)	(4)	(5)
Kentucky:				
Driftwood Estates, Keneth T. Turner, President.	0-03268-20-0051, M-86-021	Kentucky, Murray, KY.	Post Office Box 621, Murray, Kentucky 42036	Lyon County, KY, Nov 9, 1973.
Tennessee:				
Starpoint Village, A Limited Partnership, Paul Scott, General Partner.	0-05747-48-15, M-86-049	Tennessee, Byrdstown, TN.	Post Office Box 163, Byrdstown, TN 38549	Pickett County, TN, Oct 2, 1980.

[FR Doc. 87-18846 Filed 8-17-87; 8:45 am]
BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Intent for EIS on Placer Mining Activities; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare cumulative environmental impact statements on the Birch Creek drainage, the Beaver Creek drainage, portions of the Fortymile drainage, and selected streams draining into Minto Flats such as the Tolovana and Chatanika Rivers and Goldstream Creek; and to request comments on the scope of these environmental impact statements.

SUMMARY: Pursuant to section 102(2)c of the National Environmental Policy Act of 1969, as amended, the Department of the Interior, Bureau of Land Management (BLM) intends to prepare cumulative environmental impact statements for the Birch Creek drainage, the Beaver Creek drainage, portions of the Fortymile drainage and selected streams draining into Minto Flats such as the Tolovana and Chatanika Rivers and Goldstream Creek.

At issue are the direct, indirect and cumulative impacts to the human environment, in particular water quality and subsistence uses, stemming from placer mining operations in the watersheds of these streams.

The BLM manages the areas encompassed by these EISs under the following plans:

(1) The Beaver Creek area in accordance with the White Mountains National Recreation Area Resource Management Plan and the Beaver Creek Wild River Plan.

(2) The Birch Creek area in accordance with the Steese National Conservation Area Resource Management Plan and the Birch Creek Wild River Plan,

(3) The Fortymile River area in accordance with the Fortymile Management Framework Plan and the Fortymile Wild, Scenic and Recreation River Plan and

(4) Portions of the Minto Flats area as Public Domain. BLM regulates mining on Federal mining claims in all these areas in accordance with 43 CFR Part 3809, the BLM Alaska Handbook H 3809-1, the provisions of the Land Use and River Plans, and other applicable laws and regulations.

The orders of the United States District Court dated May 14, 1987 and May 28, 1987 require the BLM to evaluate the cumulative impacts of placer mining operations within the Birch Creek watershed, and the Beaver Creek drainage, determine the effects of placer mining on Alaska National Interest Lands Conservation Act (ANILCA) section 810 (subsistence) in the Minto Flats Area, and assess the cumulative impacts from placer mining and visual quality in the Fortymile drainage.

The purpose of each of the four environmental impact statements is to determine the cumulative impacts of placer mining within the affected watershed when such activities are conducted pursuant to the proposed State and Federal permitting and regulatory framework scenarios identified below as possible EIS alternatives.

Possible alternatives include: Allow placer mining to continue under current standards of review based upon existing regulations at 43 CFR 3809. Under this alternative, areas that are open remain open and existing operations are allowed to continue operating. BLM would review plans of operation according to existing BLM guidelines. The State of Alaska/Environmental Protection Agency (EPA) Clean Water Act (CWA) section 402 National Pollutant Discharge Elimination System (NPDES) permits would be approved in accordance with existing standards. The U.S. Army Corps of Engineers CWA section 404 (dredge and fill) and Rivers and Harbor (RHA) section 10 permits would be approved in accordance with existing standards. This is the Proposed Action.

Alternative 1. Allow placer mining to continue under revised standards of review based on existing regulations at 43 CFR Part 3809. Areas that are open to placer mining would remain open and existing operations would be allowed to continue operating. BLM would review plans of operation according to a revised set of BLM guidelines for surface management. The State of Alaska/EPA CWA section 402 NPDES permits would be approved in accordance with existing standards. The U.S. Army Corps of Engineers CWA section 404 (dredge and fill) and Rivers and Harbor (RHA) section 10 permits would be approved in accordance with existing standards. This alternative could be implemented solely using existing BLM authority.

Alternative 2. Allow placer mining to continue under revised standards of review based on existing regulations at 43 CFR 3809, a revised NPDES standard of discharge based upon EPA proposed regulations. Areas that are open to placer mining would remain open and existing operations would be allowed to continue operating. The BLM would review plans of operation according to a revised set of BLM guidelines for surface management. The State of Alaska/EPA CWA section 402 NPDES permits would be approved in accordance with the new proposed discharge standards. The U.S. Army Corps of Engineers CWA section 404 (dredge and fill) and Rivers and Harbor (RHA) section 10 permits would be approved in accordance with existing standards. BLM's implementation of this alternative is dependent upon State of Alaska/EPA action to adopt the more stringent discharge standards.

Alternative 3. Cease placer mining operations on the public lands by a partial or complete buy-out based on a finding of valid existing rights. Some or all of the areas that are currently open will be withdrawn from operations under the Mining Law of 1872. All existing placer mining operations on BLM administered lands would cease. If adopted, this alternative could require that land use plans be amended due to changes in land use allocations.

DATES:

The EIS and scoping meetings will be held at:

Name	Location	Date/Time
Central	Central School	Sept. 9, 1987 7-10 pm
Livengood	Road House	Sept. 10, 1987 7-10 pm
Chicken	School House	Sept. 15, 1987 7-10 pm
Fairbanks	Noel Wein Library	Sept. 16, 1987 7-10 pm
Anchorage	BLM Anchorage District Office.	Sept. 17, 1987 7-10 pm
Minto	Community Hall	Oct. 5, 1987 7-10 pm
Birch Creek Village.	Community Hall	Oct. 6, 1987 7-10 pm

The purpose of these meetings is to identify EIS alternatives and issues to be considered. All interested parties are invited to participate in the scoping process

Federal and State agencies specifically invited to participate include, but are not limited to:

Alaska Department of Environmental Conservation
Alaska Department of Fish and Game
Alaska Department of Natural Resources
U.S. Army Corps of Engineers
U.S. Bureau of Indian Affairs
U.S. Environmental Protection Agency
U.S. Fish and Wildlife Service
U.S. National Park Service

ADDRESSES: To be considered in the scoping process, all written comments and suggestions must be received by Mike Penfold, State Director, Alaska State Office, Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513, no later than October 9, 1987.

FOR FURTHER INFORMATION CONTACT: Dick Dworsky, Project Manager, Bureau of Land Management, 701 C St., Box 13, Anchorage, Alaska 99513, (907) 271-3114.

Robert W. Arndorfer,
Acting State Director.

[FR Doc. 87-18781 Filed 8-17-87; 8:45 am]
BILLING CODE 4310-JA-M

[NV-030-07-4322-02]

Meeting; Carson City District Grazing Advisory Board

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Carson City District Grazing Advisory Board will meet at 10:00 am on Wednesday, September 6, 1987 at the Carson District Office Conference Room, 1535 Hot Spring Road, #300, Carson City, Nevada.

The primary topics will be the FY 1988 Rangeland Improvement Projects, Allotment Management Plans and status of the Land Use Plans as they pertain to grazing.

FOR FURTHER INFORMATION CONTACT: Andy Anderson, Carson City District, Bureau of Land Management, 1535 Hot Spring Road, Suite 300, Carson City, Nevada, 89706 (702) 882-1631.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Interested persons may make oral statements at 1:00 pm or file written statements for the board's consideration.

James W. Elliott,
District Manager, Carson City District.

[FR Doc. 87-18774 Filed 8-17-87; 8:45 am]
BILLING CODE 4310-HC-M

[CA-020-07-4322-14]

California; Susanville District Advisory Council Meeting and Tour

AGENCY: Bureau of Land Management, Department of the Interior, Susanville District Advisory Council, Susanville, California 96130.

ACTION: Notice of meeting and tour.

SUMMARY: Notice is hereby given in accordance with Pub. L. 94-579 (FLPMA), that a District Advisory Council Meeting and tour will be held on September 22 and 23. The tour will leave from the front of the Surprise Resource Area Office, 602 Cressler Street, Cedarville, California at 1:00 p.m. The Hog Mountain Mine and High Rock Canyon will be toured by the Council. The meeting will begin at 7:00 p.m. on September 22 at Steven's Camp, which is located south of Nevada Highway 8A, east of Cedarville, California. The meeting will include discussions of issues involving the High Rock Canyon ACEC values. The meeting is open to the public and interested persons may make oral statements to the Council or file a written statement for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 705 Hall Street, Susanville, California, 96130 by September 15, 1987. Depending upon the number of persons wishing to make oral statements, a per person time limit may be established.

Summary minutes of the Council meeting will be maintained in the District Office, and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

For further information, contact John Bosworth, Planning and Environmental Coordinator, at (916) 257-5381.

C. Rex Cleary,
District Manager.

[FR Doc. 87-18775 Filed 8-17-87; 8:45 am]
BILLING CODE 4310-40-M

[NV-940-07-4220-10; N-37165]

Proposed Withdrawal and Opportunity For Public Meeting; Nevada

August 7, 1987.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw ten acres of public land to protect Lovelock Cave archaeological site. Notice of the proposed withdrawal has been published which closed the land for up to two years from surface entry and mining. This notice provides a public comment period and the opportunity for a public meeting.

DATE: Comments and requests for a public meeting must be received by November 16, 1987.

ADDRESS: Comments and meeting requests should be sent to the Nevada State Director, BLM, P.O. Box 12000, Reno, Nevada 89520.

FOR FURTHER INFORMATION CONTACT: Vienna. Wolder, BLM Nevada State Office, 702-784-5481.

SUPPLEMENTARY INFORMATION: On July 23, 1987, a Notice of Proposed Withdrawal was published in the **Federal Register** 52 FR 27736 (FR Doc. 87-16750) (a copy of which will be supplied upon request) which segregated the land described therein from settlement, sale, location, or entry under the public land laws, including mining laws, for up to two years from the date of publication of that notice.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

Robert G. Steele

Deputy State Director, Operations, Nevada.

[FR Doc. 87-18776 Filed 8-17-87; 8:45 am]

BILLING CODE 4310-HC-M

Fish and Wildlife Service

[Information No. 16]

Endangered Species Convention; Foreign Law Notification, Laos

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Information No. 16.

Subject: Laos—Ban on Wildlife Importations.

This is a Schedule II notice.

Source of Foreign Law Information: United States Department of State. An October 28, 1986 Decree by the Council of Ministers of Laos prohibits the trading and exportation of all species of wildlife including birds, reptiles, and mammals.

Action by the Fish and Wildlife Service: The Service will detain wildlife imported from Laos until satisfied that the shipment was legally exported from that country. If acceptable proof of legal export is not provided, the Service will refuse clearance and may seize the wildlife involved. Seized wildlife may be subject to forfeiture proceedings.

EFFECTIVE DATE: Date of publication.

Expiration Date: None until further notice.

FOR FURTHER INFORMATION CONTACT: Nancy J. Roeper, Division of Law Enforcement, U.S. Fish and Wildlife Service, P.O. Box 28006, Washington, DC 20005, Telephone: 202-343-9242.

Dated: August 7, 1987.

Steve Robinson,

Deputy Director.

[FR Doc. 87-18807 Filed 8-17-87; 8:45 am]

BILLING CODE 4310-55-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-3 (Sub-No. 65X)]

Missouri Pacific Railroad Co.; Abandonment Exemption in Omaha, NE

AGENCY: Interstate Commerce Commission.

ACTION: Notice of partial exemption and request for comments.

SUMMARY: Missouri Pacific Railroad Company (MP) has filed a petition seeking an exemption under 49 U.S.C. 10505 from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, to abandon approximately 2.28 miles of railroad, known as the Omaha Belt Line, between milepost 492.33 and milepost 494.59, in Omaha, Douglas County, NE.

The Commission determined that the impact of the proposed abandonment on shippers cannot be ascertained with respect to the 1.59-mile portion of the line between milepost 493.00 and milepost 494.59, which following abandonment would be reclassified as yard track or switching track. Notice and comment procedures were ordered for this portion of the line, and MP was directed to serve a copy of the decision on affected shippers within 5 days of its service date.

The Commission exempted MP's abandonment of the remaining 0.67-mile portion of the line, between milepost 492.33 and milepost 493.00, subject to standard employee protective conditions.

DATES: Comments regarding the 1.59-mile portion must be filed with the Commission and served on MP's representative by September 8, 1987. Replies to comments must be filed by September 17, 1987.

The exeption of the 0.67-mile segment will be effective on September 17, 1987. Petitions to stay the effective date of the exemption must be filed by September 2, 1987, and petitions for reconsideration of the exemption must be filed by September 14, 1987.

ADDRESSES: Send pleadings referring to Docket No. AB-3 (Sub-No. 65X) to:[1]

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Joseph D. Anthofer, 1416 Dodge Street, Omaha, NE 68179.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245, [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4537 (assistance for the hearing impaired is available through TDD services (202) 275-1721) or by pickup from TSI in Room 2229 at Commission headquarters.

Decided: August 10, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87-18801 Filed 8-17-87; 8:45 am]

BILLING CODE 7035-01M

[Docket No. AB-3 (Sub-No. 68X)]

Missouri Pacific Railroad Co. Abandonment and Discontinuance of Trackage Rights Exemption in Marion and Clinton Counties, IL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of partial exemption.

SUMMARY: Missouri Pacific Railroad Company (MP) has filed a petition seeking an exemption under 49 U.S.C. 10505 from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, to abandon portions of a branch line of a railroad, known as the Sparta Branch, in Marion and Clinton Counties, IL, and to discontinue service over an intermediate segment of the line. Specifically, MP proposes: (1) To abandon that portion of the line between milepost 0.0 near Salem and milepost 11.1 near Branch Junction; (2) to discontinue service, performed under a trackage rights agreement with the Illinois Central Gulf Railroad Company, over that segment of the line between milepost 11.1 and milepost 13.9; and (3) to abandon the remaining portion of the line between milepost 13.9 and 14.4 near Centralia. The total distance involved is approximately 14.4 miles.

The Commission has determined that the impact of the proposed abandonment on shippers cannot be ascertained with respect to the 2.0-mile portion of the line between milepost 0.0 and milepost 2.0, which following abandonment would be reclassified as industrial track. Notice and comment procedures were ordered for this portion of the line and MP was directed to serve a copy of the decision on affected shippers within 5 days of its service date.

The Commission exempted MP's abandonment of, and discontinuance of service over, the remaining portions of the line, between milepost 2.0 and milepost 14.4, a distance of 12.4 miles, subject to standard employee protective conditions.

DATES: Comments regarding the 2.0-mile portion of the line must be filed with the Commission and served on MP's representative by September 8, 1987. Replies must be filed by September 17, 1987.

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[1] Send an original and 10 copies of comments and replies to the Commission and one copy to petitioner's representative.

The exemption of the remaining 12.4-mile line segement will be effective on September 17, 1987. Petitions to stay the effective date of the exemption must be filed by September 2, 1987, and petitions for reconsideration of the exemption must be filed by September 14, 1987.

ADDRESSES: Send pleadings referring to Docket No. AB–3, (Sub-No. 68X) to:[1]

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Joseph D. Anthofer, 1416 Dodge Street, Omaha, NE 68179.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245, (TDD for hearing impaired: (202) 275–1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289–4537 (assistance for the hearing impaired is available through TDD services (202) 275–1721) or by pickup from TSI in Room 2229 at Commission headquarters.

Decided: August 10, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee

Secretary.

[FR Doc. 87–18602 Filed 8–17–87; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB–33 (Sub-No. 46X)]

Abandonment of Railroad Line in Madison County, NE; Union Pacific Railroad Co.; Exemption

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F — *Exempt Abandonments* to abandon its .22-mile line of railroad between milepost 49.06 and milepost 49.28 near Norfolk, in Madison County, NE.

Applicant has certified that (1) no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

Applicant has filed an environmental report which shows that no significant environmental or energy impacts are likely to result from this abandonment.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979).[1]

The exemption will be effective on September 17, 1987 (unless stayed pending reconsideration). Petitions to stay must be filed by August 28, 1987, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by September 7, 1987 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Joseph D. Anthofer, Law Department, 1416 Dodge St., Omaha, NE 68179.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: August 13, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87–18837 Filed 8–17–87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Notice of Lodging of a Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended by the Superfund Amendments and Reauthorization Act;

In accordance with Section 122(d)(1)(A) of CERCLA as amended by SARA, notice is hereby given that a proposed Consent Decree in *United States, et al. v. Ottati & Goss, et al.*, Civil Action No. 80–225–L, has been lodged with the United States District Court for the District of New Hampshire, on August 10, 1987. The Consent Decree resolves an action brought by the United States under Sections 106 and 107 of CERCLA and 7003 of the Resources Conservation and Recovery Act and common law nuisance against K. J. Quinn and Company, Inc., and the State of New Hampshire against the same defendant under section 107(a) of CERCLA, the Hazardous Waste Management Act, statutory nuisance and common law nuisance. The decree resolves only the liability of the above-named defendant.

The Consent Decree requires Quinn, Inc., to pay $300,000 to the plaintiffs.

For thirty (30) days from the date of publication of this notice, the Department of Justice will receive written comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States, et al. v. Ottati & Goss, et al.*, D.J. Ref. No. 90–7–1–79.

The proposed Consent Decree may be examined at the Office of the United States Attorney, District of New Hampshire, Federal Building, 55 Pleasant Street, Concord, New Hampshire 03301; at the Region I Office of the Environmental Protection Agency, John F. Kennedy Federal Building, Boston, Massachusetts 02203; and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87–18809 Filed 8–17–87; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Final Judgment on Consent Pursuant to the Clean Air Act; Benjamin Kurzban & Son, Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed final judgment (on consent) ("final judgment") in *United States v. Benjamin Kurzban and Son, Inc.*, Civil Action No. 85 Civ. 2267 (VLB), was lodged in the United States District Court for the Southern District of New York on July 24, 1987.

[1] Send an original and 10 copies of comments and replies to the Commission and one copy to petitioner's representative.

[1] The Railway Labor Executives' Association filed a request for labor protection. The United Transportation Union joins in RLEA's request. Since this transaction involves an exemption from 49 U.S.C. 10903, whereby the imposition of labor protective conditions is mandatory, those conditions have been routinely imposed.

The proposed final judgment concerns alleged violations of the National Emission Standard for Hazardous Air Pollutants ("NESHAP") for asbestos, codified at 40 CFR 61.20, *et seq.* (1983) and the Clean Air Act, 42 U.S.C. 7401, *et seq.*, during the removal of friable asbestos from buildings located on Ellis Island and 120 Church Street, New York, New York. The proposed final judgment requires the defendant to comply with the Clean Air Act and the asbestos NESHAP regulations, as well as continue its program to educate employees regarding proper methods of asbestos removal. The proposed final judgment also requires payment of a $5,000 civil penalty.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed final judgment. Comments should be addressed to the Assistant Attorney General for the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Benjamin Kurzban and Son, Inc.*, D.J Ref. No. 90–5–2–1–793.

The proposed final judgment may be examined at the Office of the United States Attorney, One St. Andrew's Plaza, New York, New York 10007, the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278, and the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Aveune, NW., Washington, DC 20530. A copy of the proposed final judgment may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

August 6, 1987.

[FR Doc. 87–18610 Filed 8–17–87; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–3629]

Notice of Proposed Exemption for Certain Transactions Involving the Equitable Life Assurance Society of the United States (Equitable) Located in New York City, NY

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt certain transactions that may occur as a result of the sharing of real estate investments among various Accounts maintained by Equitable, including the Equitable general account (the General Account) and the ERISA-Covered Accounts with respect to which Equitable is a fiduciary. As an acknowledged investment manager and fiduciary, Equitable is primarily responsible for the acquisition, management and disposition of the assets allocated to the ERISA-Covered Accounts.

EFFECTIVE DATE: If granted, this proposed exemption would be effective for transactions occurring on or after July 27, 1982, except as otherwise stated herein with reference to Section IV(e).

DATES: Written comments and requests for a public hearing must be received by the Department on or before October 16, 1987.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, Room N–5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Application No. D–3629. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, NW., Washington, DC 20216.

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1) (A) through (E) of the Code. The proposed exemption was requested in an application filed by Equitable pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

1. Equitable is a mutual life insurance company organized under the laws of the State of New York and subject to supervision and examination by the Superintendent of Insurance of the State of New York. It is the third largest life insurance company in the United States. Among the wide variety of insurance products and services it offers, Equitable provides funding, asset management and other services for several thousand employee benefit plans subject to the provisions of Title I of the Act. Equitable maintains several pooled separate accounts in which pension, profit-sharing and thrift plans participate, and also manages all or a portion of the assets of a number of large plans pursuant to various single customer separate accounts and advisory accounts (the ERISA-Covered Accounts). A number of ERISA-Covered Accounts invest in equity interests in real estate or in mortgage loans. These include Equitable's open-end real estate pooled separate account (Separate Account No. 8), its closed-end "New Property Fund" pooled separate account (Separate Account Series No. 16), and various of its real estate single customer separate accounts and investment advisory accounts. The ERISA-Covered Accounts, the General Account (including the general accounts of Equitable affiliates which are managed by Equitable), accounts maintained by Equitable for foreign pension plans and other "non-ERISA" investors, and accounts which Equitable may establish in the future (collectively, the Accounts) may participate in the transactions which are the subject of this proposed exemption.

2. The applicant represents that in recent years real estate has proven to be an excellent form of investment for employee benefit plans and has, therefore, gained increasing popularity among plan sponsors. Various high quality commercial real estate investments from time to time become available which offer the potential for a higher rate of return than do other real estate investments. Because there are relatively few potential investors for large scale investments such as office buildings, shopping centers, and industrial parks, the owner or developer of such real estate investments must offer a higher return in order to attract

investors. In many cases, Equitable's real estate accounts would be precluded from acquiring these investments on an individual basis because such investments would require the commitment of a disproportionately large percentage of account assets to one or a few investments. By sharing these investments, Equitable is able to maximize investment opportunities for its contractholders, including its employee benefit plan contractholders, consistent with appropriate account portfolio diversification. In addition, some smaller properties may be of such high quality that it is advisable to share the investment opportunity among more than one account.

3. The real estate investments which Equitable proposes to share may either take the form of a direct investment in real property or an interest in a joint venture partnership which holds title to, manages, and/or develops real property. Equitable's investments in joint venture partnerships frequently include an equity interest in the joint venture and a debt interest in mortgages to which the joint venture property is subject. Development joint venture arrangements are customarily "leveraged"; that is, acquisition and development costs are met by the equity contribution of the joint venture partners and by substantial loans to the partnership which are secured by the joint venture's interest in its real property. Frequently, Equitable on behalf of its Accounts will own 50 percent of the joint venture partnership and provide 100 percent of the debt financing.

4. The applicant represents that, ordinarily, where a real estate investment is to be shared, each Account participating in the investment will participate in the equity and debt components on a proportionate basis. For example, assume that Equitable intends to hold a 50 percent interest in a joint venture partnership and that P, a developer unrelated to Equitable, will hold the other 50 percent interest. Assume further that Equitable and P each contribute $1,000,000 as an equity investment in the partnership and that Equitable makes a $20 million loan to the partnership. If Equitable's General Account is allocated a 75 percent share of Equitable's investment in the joint venture and an ERISA-Covered Account is allocated a 25 percent share, $750,000 of the equity interest and $15 million of the loan (75 percent of $20 million) will be allocated to the General Account and $250,000 of the equity interest and $5 million of the loan (25 percent of $20 million) will be allocated to the ERISA-Covered Account.

5. During the course of Equitable's holding of a real estate investment, certain situations may arise which require a decision to be made with regard to the management or disposition of the investment. For example, there may be a need for additional contributions of operating capital, or there may be an offer to purchase the investment by a third party or a joint venture partner. When Equitable shares these investments among more than one Account, a potential for conflict arises since the same decision may not be in the best interest of each Account. Therefore, the applicant has submitted a framework of proposed safeguards to protect the interests of any participating ERISA-Covered Account in the resolution of potential or actual conflicts. With respect to these safeguards, all conditions applicable to the General Account are also applicable to the general accounts of Equitable affiliates.

6. Until recently, all of Equitable's real estate investment activities with respect to the Accounts were conducted by Equitable's Realty Operations Area, a division of Equitable, which was responsible for developing recommendations regarding the acquisition, management and disposition of properties for the Accounts to be considered by the Investment Committee of Equitable's Board of Directors. The Realty Operations Area was also responsible for overseeing the management of equity investments for the Accounts and the servicing of debt investments (mortgage loans). On May 18, 1984, Equitable created Equitable Real Estate Investment Management, Inc. (EREIM) as an indirect wholly-owned subsidiary and has assigned to EREIM the responsibilities previously performed by the Realty Operations Area. Equitable continues to be the investment manager for each of the existing Accounts and to be responsible for all investment management decisions made for the Accounts, but it allocates all or a portion of the investment management fees it receives from the Accounts to EREIM. The fees payable by an Account to Equitable for investment management services provided to the Accounts have not changed by virtue of the creation of EREIM.

7. The origination and the initial evaluation of an investment opportunity is usually the responsibility of EREIM's regional office staff. In evaluating a possible investment opportunity, the regional offices perform numerous key functions, including on-site inspections of properties, property appraisals, and credit analyses of potential borrowers, real estate developers and the proposed major tenants for a property. The regional offices also analyze other relevant investment factors, such as the size, location and use of a property, financing terms and conditions, taxes, insurance, title requirements, and general compliance with environmental and zoning laws. The regional offices also initially determine whether a prospective investment meets Equitable's investment and financial standards and, based on its review and analysis of all relevant factors, makes a recommendation as to whether the investment should be made.

8. Investment opportunities that are recommended by the regional offices are reviewed in detail by personnel at EREIM's home office. As a part of its overall review, the home office may concur in or reject a regional office recommendation. The home office also works with the regional office staff to establish the financial structure (i.e., the equity and debt components) of the investment. At this time, the possible sharing of an investment among two or more Accounts may become an important factor in determining whether an investment will be made. For example, a very large real estate investment may satisfy Equitable's investment and financial standards, but may nevertheless be an inappropriate investment for any single Account, other than the General Account, because it would result in an unacceptable concentration of the Account's assets or because of the lack of sufficient available funds in the Account. By allocating a portion of such a large investment to two or more Accounts, each participating Account may be able to take advantage of the investment at the level best suited to each Account's particular investment needs. Thus, in determining whether an investment recommendation should be made, EREIM will consider not only whether the investment meets the investment and financial standards of Equitable, but also whether an investment could be allocated to an Account (or Accounts) in a manner suited to meet each particular Account's portfolio requirements.

9. Each real estate Account maintained by Equitable, including ERISA-Covered Accounts, has a portfolio manager who is an employee of EREIM. The main function of a portfolio manager is to make investment recommendations to senior Equitable officials designed to fulfill Equitable's responsibilities to manage the assets of

an Account in accordance with investment policies and objectives established for the Account. The investment recommendations made by a portfolio manager are, in turn, based on his or her analysis of the appropriateness for a particular Account of investment opportunities and investment decisions recommended by the real estate operations staff of EREIM.

10. A portfolio manager is also responsible for making recommendations to senior Equitable officials regarding the appropriate management of Account assets. Asset management functions typically include the establishment of leasing guidelines for Account properties, the financial management of properties (*e.g.*, taxes, insurance, capital expenditures, etc.), and the hiring and oversight of property managers for Account properties. In addition, a portfolio manager is responsible for making recommendations regarding the disposition of Account investments.

11. Preliminary determinations with respect to the acquisition and allocation of real estate investments for particular accounts are made at monthly meetings of the portfolio managers. In carrying out these functions, a portfolio manager takes into account, among other things, the investment policies and objectives of the Account, the Account's size, liquidity needs and asset diversification needs, the availability of funds in the Account, and whether a proposed investment is compatible with the Account's existing investment portfolio. Equitable's Investment Policy Committee, which is composed of senior officers of Equitable, including the chief executive officer of EREIM, reviews and makes recommendations with respect to these preliminary acquisition and allocation determinations.

12. Overall responsibility for the making of real estate investments rests with the Investment Committee, which is composed primarily of directors who are otherwise unaffiliated with Equitable, or EREIM. The Investment Committee must approve all decisions involving the acquisition, allocation, management and disposition of real estate equity and debt investments involving more than $35 million. In the case of real estate investments of $35 million or less, the authority to make the decisions to invest and to allocate the investments to particular Accounts has been delegated by the Investment Committee to the chief investment officer of Equitable. The chief investment officer has subdelegated this authority to the chief executive officer of EREIM, who is also an officer of Equitable. If any such investment is to be shared by more than one Account, however, the allocation of the investment must be approved by the Investment Committee. In the case of shared investments that involve the participation of one or more ERISA-Covered Accounts, certain additional requirements, regardless of the size of the investment, have been added, as detailed below.

13. Each plan contractholder participating in an ERISA-Covered Account that shares or proposes to share real estate investments must be furnished with a written description of the transactions that may occur involving such investments which might raise questions under the conflict of interest prohibitions of the Act with respect to Equitable's involvement in such transactions and which are the subject to this proposed exemption. This description must discuss the reasons why such conflicts of interest may be present (*i.e.*, because the General Account participates in the investment and may benefit from the transaction or because the interests of the various Accounts participating in the investment may be adverse with respect to the transaction). The description must detail the relationship between Equitable and EREIM and indicate that the ERISA-Covered Account has its own portfolio manager who is an employee of EREIM. The description must also disclose the principles and procedures to be used to resolve anticipated impasses, as will be outlined below. In addition, each contractholder in an ERISA-Covered Account that currently shares investments must receive a copy of this notice of pendency within thirty days of its publication, and a copy of the exemption when granted.

14. With respect to new contractholders in an ERISA-Covered Account that currently participates in the sharing of investments, each prospective contractholder must be provided with the above mentioned written description, a copy of the notice of pendency and a copy of the exemption as granted before the contractholder begins to participate in the Account. With respect to contractholders who are already in an ERISA-Covered Account that proposes to participate in the sharing of investments in the future, each such contractholder must be provided with the description outlined above, a copy of the notice of pendency and a copy of the exemption as granted before the Account begins to participate in the sharing of investments. A plan contractholder may withdraw from a single customer or open-end pooled ERISA-Covered Account by providing written notice to Equitable. A plan contractholder in a closed-end pooled ERISA-Covered Account does not have a right to have its interest redeemed prior to the predetermined termination date, but it may sell its interest to a third party.

15. An independent fiduciary or independent fiduciary committee must be appointed on behalf of each ERISA-Covered Account participating in the sharing of investments. The independent fiduciary, acting on behalf of the ERISA-Covered Account, shall have the responsibility and authority to approve or reject recommendations made by Equitable or its affiliates regarding the allocation of shared real estate investments to the ERISA-Covered Account and recommendations concerning those transactions occurring subsequent to the allocation which are the subject of this proposed exemption. The independent fiduciary is informed of the procedures set forth in the proposed exemption for the resolution of anticipated impasses prior to his or its acceptance of the appointment. Equitable and its affiliates shall provide the independent fiduciary with the information and materials necessary for the independent fiduciary to make an informed decision on behalf of the ERISA-Covered Account. No allocation or transaction which is the subject of the proposed exemption will be undertaken prior to the rendering of such informed decision by the independent fiduciary. The independent fiduciary shall also review on an as-needed basis, but not less than twice annually, the shared real estate investments in the ERISA-Covered Account's portfolio to determine whether the shared real estate investments are held in the best interest of the ERISA-Covered Account.[1]

[1] For example, in the case of an investment shared by the General Account and an ERISA-Covered Account, if the independent fiduciary of the ERISA-Covered Account determined, after its review of the account's shared investment portfolio and financial information relating thereto, that the ERISA-Covered Account's interest in the shared investment should be disposed of, Equitable would be required to carry out the decision of the independent fiduciary. If the portfolio manager of the General Account agreed that its interest in the shared investment should also be disposed of, then Equitable would sell the entire shared investment. If the portfolio manager of the General Account did not agree that its interest in the shared investment should be sold, Equitable would first try to sell only the ERISA-Covered Account's interest in the shared investment. However, to the extent that it is not feasible or possible to sell the ERISA-Covered Account's interest alone, the entire shared

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16. The independent fiduciary must be unrelated to Equitable or its affiliates. The independent fiduciary may not be, or consist of, any officer, director or employee of Equitable, or be affiliated in any way with Equitable or any of its affiliates. The independent fiduciary must be either (1) a business organization which has at least five years of experience with respect to commercial real estate investments, (2) a committee comprised of three to five individuals who each have at least five years of experience with respect to commercial real estate investments, or (3) the plan sponsor (or its designee) of a plan or plans that is the sole participant in an ERISA-Covered Account. An organization or individual may not serve as an independent fiduciary for an ERISA-Covered Account for any fiscal year if the gross income received by such organization or individual (or any partnership or corporation of which such organization or individual is an officer, director, or ten percent or more partner or shareholder) from Equitable and its affiliates for that fiscal year exceeds five percent of its or his annual gross income from all sources for the prior fiscal year. If such organization or individual had no income for the prior fiscal year, the five percent limitation shall be applied with reference to the fiscal year in which such organization or individual serves as an independent fiduciary. The income limitation will include services rendered to the Accounts as independent fiduciary under any prohibited transaction exemptions granted by the Department. In addition, effective for transactions occurring after the date of publication of this notice of pendency, no organization or individual who is an independent fiduciary, and no partnership or corporation of which such organization or individual is an officer, director or ten percent or more partner or shareholder, may (i) acquire any property from, sell any property to, or borrow any funds from, Equitable, its affiliates, during the period that such organization or individual serves as an independent fiduciary and a period of six months after such organization or individual ceases to be an independent fiduciary, or (ii) negotiate any such transaction during the period that such organization or individual serves as independent fiduciary. A plan sponsor (or its designee) of a plan participating in an ERISA-Covered Account may not serve as independent fiduciary with respect to any pooled ERISA-Covered Account. A business organization or committee member may not serve as an independent fiduciary of more than one ERISA-Covered Account.

17. In the case of a single customer ERISA-Covered Account, if the plan sponsor or its designee decides not to act as the independent fiduciary, the independent fiduciary or independent fiduciary committee will be selected initially by Equitable. The independent fiduciary must be approved by the plan sponsor or another plan fiduciary prior to the commencement of its fiduciary responsibilities on behalf of the ERISA-Covered Account. In the case of a closed-end pooled ERISA-Covered Account, the appropriate plan fiduciary of each participating plan will be required to approve the initial selection of the independent fiduciary or the membership of the independent fiduciary committee proposed by Equitable prior to the commencement of its fiduciary responsibilities on behalf of the ERISA-Covered Account. In the case of an open-end pooled ERISA-Covered Account, the independent fiduciary or the independent fiduciary committee will be selected initially by Equitable. The applicant represents that because these Accounts often include several hundred plan contractholders, the independent fiduciary will not be approved initially by plan contractholders. The selection of the independent fiduciary, however, must be approved by a majority of the contractholders in such an Account within twelve months after the selection has been made.

18. For both single customer and pooled ERISA-Covered Accounts, prior to the making of any decision to approve the selection of an independent fiduciary, plan contractholders must be furnished appropriate biographical information pertaining to the independent fiduciary or members of the independent fiduciary committee. This biography must set forth the background and qualifications of the fiduciary (or fiduciaries) to serve in that capacity. In the case of any biographical information furnished after the date of this proposed exemption, the information must also disclose the total amount of compensation received by the fiduciary (or each member of a fiduciary committee) from Equitable or an Equitable affiliate during the preceding year, including pension or other deferred compensation paid to fiduciaries who may be former employees of Equitable, and compensation for any business services performed by the fiduciary or any affiliate for Equitable or its affiliates. The disclosure relating to compensation must be updated annually thereafter. Subsequent disclosures must also include the amount of fees and expenses paid for independent fiduciary services. The plans will be able to use this information to determine whether to approve Equitable's initial selection of the fiduciary or fiduciary committee and whether to continue such approval each year thereafter.[2]

19. Once an independent fiduciary committee or organization is appointed, the members of the committee or the organization will continue to serve subject to an annual vote by each of the plans participating in the ERISA-Covered Account. An independent fiduciary or committee member may be removed by a majority vote of the Account's contractholders or, in the case of a committee member, "for cause" by a majority vote of the other members of the committee. The term "for cause" means that there must be sufficient and reasonable grounds for removal and the reasons for removal must be related to the ability and fitness of an individual to perform his or her required duties. Equitable will not have the authority to remove an independent fiduciary or a member of an independent fiduciary committee. If a vacancy occurs by virtue of the death, resignation or removal of a member of an independent fiduciary committee, replacement members of the committee will be appointed by a majority vote of remaining members of the committee. Possible replacements may be suggested by anybody, including members of the committee or Equitable. If an organization acting as independent fiduciary is removed by majority vote of the Account's contractholders, the procedure described above for the initial selection of an independent fiduciary will apply to the replacement.

20. The independent fiduciary will be compensated by the ERISA-Covered Account. Equitable will indemnify any independent fiduciary or members of an independent fiduciary committee with

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investment would be sold notwithstanding the non-acquiescence of the General Account.

[2] Equitable represents that the contractholders in its single customer and pooled closed-end real estate Accounts are knowledgeable and sophisticated investors who fully understand the operation of the ERISA-Covered Accounts. As an example, the plans participating in Separate Account No. 16 (the only pooled separate Account presently sharing real estate investments) are all plans of large corporations. These plans range in size from $43 million in total assets to more than $2 billion in total assets. In addition, no plan's investment in the Account exceeds 3 percent of the total assets of the plan. Separate Account No. 141 (the only single customer account presently that will share real estate investments) is maintained on behalf of a large corporate plan. The plan has more than $10 billion in assets and the plan's investment in the account will equal less than 3.5 percent of the total assets of the plan.

respect to any action or threatened action to which such person is made a party by reason of his or her service as an independent fiduciary. Indemnification will be provided as permitted under the laws of the State of New York and subject to the requirement that such person acted in good faith and in a manner he or she reasonably believed to be solely in the interests of the participants and beneficiaries of the plans participating in the Account.

21. Written minutes must be taken and maintained in connection with all meetings involving independent fiduciary committees of ERISA-Covered Accounts. Such minutes must include a rationale as to why decisions were made. Where the independent fiduciary is a committee, decisions will be made on the basis of a majority vote. Any dissenting committee member will provide a written rationale for his dissent. Where the independent fiduciary is a single entity (e.g., a business organization) for which no minutes of meetings would be maintained, all decisions of such independent fiduciary and rationale thereof must be set forth in writing and maintained by Equitable pursuant to the recordkeeping requirements outlined in the General Conditions below.

22. The independent fiduciary of each ERISA-Covered Account is required to approve any recommendation by Equitable involving a shared investment. Situations may arise where a conflict of interest may develop and the independent fiduciaries of the ERISA-Covered Accounts may not agree on what the appropriate course of action should be with respect to a proposed transaction. In such cases, Equitable will make recommendations, which may be outlined as alternatives, to the independent fiduciaries regarding the proposed transaction. If an alternative course of action is not found that is acceptable and the independent fiduciaries of such Accounts are in effect stalemated, a procedure has been developed by Equitable to ensure that a decision can be made.

23. This stalemate procedure is designed to provide a result that is the same as would be followed in comparable situations where unrelated parties to a transaction were dealing at arm's length. This means that the action that will be taken in such cases is the one that does not require an ERISA-Covered Account to invest new money and will not change the terms of an existing agreement or the existing relationship between the Accounts. For example, in the case of a proposed modification to a debt investment shared by two ERISA-Covered Accounts, if the independent fiduciaries cannot agree on such modification, no modification will be made. Rather, the terms of the loan agreement, as originally stated, will be carried out. Or, in the case of a joint venture interest shared by two ERISA-Covered Accounts, the exercise of a buy-sell provision in the joint venture agreement by a co-venturer will require the two ERISA-Covered Accounts which share Equitable's interest in the joint venture to either sell their join venture interest to the co-venturer at a stated price, as determined by the joint venture agreement, or buy the co-venturer's interest at the stated price. If the independent fiduciaries cannot agree on the action to be taken and no alternative course of action is found to be acceptable, the ERISA-Covered Accounts will be required to sell their interest to the co-venturer. This action would be taken because the other (purchase) option would require the expenditure of additional funds by an objecting Account.

Specific Transactions

I. Direct Real Estate Investments

(a) *Transfers between Accounts.* 24. Following the initial sharing of investments, it may be in the best interests of the Accounts participating in the investment for one Account to sell its interest to the other(s). Such a situation may arise, for example, when one Account experiences a need for liquidity in order to satisfy the cash needs of the plans participating in the Account, while for the other Account(s) the investment remains appropriate. One possible means of reconciling this situation is for the "selling" Account to sell its interest in the shared investment to the remaining participating Account(s) or to another Account(s) at current fair market value. Such sales may not, however, be appropriate in all circumstances. An inter-Account transfer will only be permitted when it is determined to be in the best interests of each Account that would be involved in the transaction. Where two or more separate accounts are involved in such a transfer, the transfer would also be subject to the approval of the New York State Insurance Department. In addition, Equitable had determined that no such transfers will be permitted between the General Account and an ERISA-Covered Account. Because Equitable would be acting on behalf of both the "buying" and "selling" Accounts in such an inter-Account transfer, the transfer might be deemed to constitute a prohibited transaction under section 406 of the Act. Accordingly, exemptive relief is requested herein for the sale or transfer of an interest in a shared real estate investment by one ERISA-Covered Account to another Account of which Equitable is a fiduciary. Such transfers would have to be at fair market value and approved by the independent fiduciary for each ERISA-Covered Account involved in the transfer. See section I(a).

(b) *Joint Sales of Property.* 25. In situations involving shared real estate investments, an opportunity may arise to sell the entire investment to a third, party, and it may be determined for all of the participating Accounts that the sale is desirable. When Equitable's general account is participating in the investment, and the sale is therefore determined to be in the best interests of the General Account (in addition to being in the interests of the other Account(s)), the sale might be deemed to constitute a prohibited transaction under section 406 of the Act and section 4975 of the Code.[3] Similarly, Equitable may be acting on behalf of two ERISA-Covered Accounts or an ERISA-Covered Account and a non-ERISA-Covered Account other than the General Account. Accordingly, exemptive relief is requested for these joint sales. The sales would have to be approved by the independent fiduciary for each ERISA-Covered Account involved in the sale. See section I(b).

(c) *Additional Capital Contributions.* 26. On occasion, commercial real estate investments require infusions of additional capital in order to fulfill the investment expectations of the property. For example, developmental real estate investments sometimes require additional capital in order to complete the construction of the property. In addition, the cash flow needed to improve or operate completed buildings may also result in the need for additional capital. Such additional capital is frequently provided by the owners of the property. In the case of a property that is owned entirely by Equitable on behalf of the Accounts, it is contemplated that needed additional capital will ordinarily be contributed in connection with the investment in the form of an equity capital contribution made by each participating Account in an amount equal to such Account's existing percentage equity interest in the

[3] The Department notes that all future references to the provisions of the Act shall be deemed to include the parallel provisions of the Code.

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shared investment; [4] that is, in the first instance, each Account would be afforded the opportunity to contribute additional capital on a fully proportionate basis. In the case of ERISA-Covered Accounts all decisions regarding the making of additional capital contributions must be approved by the independent fiduciary for the Account. The making of an additional capital contribution could be deemed to involve a prohibited transaction under section 406 of the Act. If one or more participating Accounts in a shared investment is unable to provide it share of the needed additional capital, various alternatives may be appropriate, including having the other Account(s) make a disproportionate contribution. For example, where the General Account and an ERISA-Covered Account participate in a shared investment and the need for additional capital arises, it might be determined for liquidity reasons or other factors involving the ERISA-Covered Account that the additional contribution should not be made by that Account. As a result, the additional equity capital may be provided entirely by the General Account with the further consequence that the General Account would thereafter have a larger interest in the investment and, therefore, a larger share in the appreciation and income to be derived from the property.[5] Such an adjustment in ownership interests might be deemed to constitute a prohibited (indirct sales) transaction under section 406 of the Act. In addition, these situations could also occur where two ERISA-Covered Accounts are involved or an ERISA-Covered Account and a non-ERISA-Covered Account. Accordingly, the applicant is requesting exemptive relief that would permit the contribution of additional equity capital for a shared investment by Accounts participating in the investment (including the General Account). Any decision made or action taken by an ERISA-Covered Account (*i.e.*, the contribution of either no additional capital, the Account's pro rata share of additional capital, less than or more than the Account's pro rata share, etc.) must be approved by such independent fiduciary. See section I(c).

(d) *Lending of Funds to Meet Additional Capital Requirements.* 27. If the General Account and an ERISA-Covered Account participate in a shared investment that experiences the need for additional capital, and it is determined that the ERISA-Covered Account does not have sufficient funds available to meet the call for additional capital, The General Account might be willing and able to loan the required funds to the ERISA-Covered Account. Prior to any loan being made, it must be approved by the independent fiduciary for the ERISA-Covered Account. Such loan will be unsecured and non-recourse, will bear interest at a rate that will not exceed the prevailing interest rate on 90-day Treasury Bills, will not be callable at any time by the General Account, and will be prepayable at any time without penalty at the discretion of the independent fiduciary of the ERISA-Covered Account. See section I(d).

(e) *Shared Debt Investments.* 28. Equitable occasionally makes real estate investments consisting of interim construction loans or medium or long-term mortgage loans on a property. In some instances, Equitable may have the opportunity to obtain an equity ownership interest in the underlying real property upon maturity of the debt or at the election of Equitable. It is possible that shared real estate debt investments might raise questions under sections 406 of the Act in essentially two situations: (1) a material modification in the terms of a loan agreement, or (2) a default on a loan. From time to time, the terms of outstanding real estate loans need to be modified to take into account new developments. Such modifications may commonly include extensions of the term of the loan, revised interest rates, revised repayment schedules, changes in covenants or warranties to permit, for example, additional financing to be provided. These situations require a decision on behalf of the lender whether it would be in its own interest to make the modifications in question. Similarly, when a borrower commits an act of default under a loan agreement, the lender must determine, in its own interest, what action, if any, it wishes to take. Such action might involve foreclosure on the loan, a restructuring of the loan arrangement, or, in some cases as appropriate, no action at all. When a debt investment is shared among Accounts, a decision must be made on behalf of each Account with respect to the action to be taken when a loan modification or loan default situation occurs. In some cases, moreover, it is conceivable that different actions might be desired by different Accounts. Normally, however, only one unified course of action is possible in the situation. Since Equitable maintains each of these Accounts, the action it decides to take for the participating Accounts may raise questions under section 406 of the Act. Accordingly, exemptive relief is being requested that will permit Equitable on behalf of the Accounts to take appropriate action with respect to the modification of the material terms of a loan or with respect to a default situation when the loan is a shared investment involving one or more ERISA-Covered Accounts. Each such action would require approval of the independent fiduciary for each ERISA-Covered Account. If there is an agreement among the independent fiduciaries as to the course of action to follow with regard to a proposed loan modification, or an adjustment in the rights upon default, such modification or adjustment will be implemented. If, upon full discussion of the matter, no course of action can be agreed upon by the independent fiduciaries, no modification of the terms of the loan or adjustment in the rights upon default would be made. The terms of the loan agreement as originally stated would be carried out. See section I(e).

II. Joint Venture Investments

29. Many real estate investments are structured as joint venture arrangements (rather than 100 percent ownership interest in property) in which Equitable and another party, such as a real estate developer or manager, participate as joint venturer partners (or co-venturers). Generally, Equitable's co-venturer acts as managing partner of the joint venture. Equitable, in turn, may allocate its interest in the venture to more than one Equitable account. Joint venture investments typically involve several particular features by virtue of the terms and conditions of the joint venture agreements that may, when Equitable's joint venture interest is shared, result in possible violations of section 406 of the Act.

(a) *Additional Capital Contributions to Joint Ventures.* 30. As in the case of investments made entirely by Equitable, joint venture real estate investments sometimes require additional operating capital. Typically, the joint venture agreements entered into by Equitable and many other real estate investors provide for a capital call by the general partner of the joint venture to be made to each joint venturer and that each venturer provide the needed capital on a

[4] In any case where the General Account participates in a shared investment with one or more ERISA-Covered Accounts and a call for additional capital is made, the General Account will always make a capital contribution that is at least equivalent proportionately to the highest capital contribution made by an ERISA-Covered Account.

[5] In the case of shared real estate investments owned entirely by Equitable accounts, if an Account contributes capital equalling less than its pro rata interest in the investment (or makes no contribution at all), that Account's equity interest will be re-adjusted and reduced based on the change in the fair market value of the property caused by the infusion of new capital.

pro rata basis either in the form of an equity contribution or a loan to the joint venture. If one joint venturer refuses to contribute its pro rata equity share of the capital call, the other joint venturer(s) may contribute additional capital to cover the short-fall and thereby "squeeze down" the interest in the venture of the non-contributing joint venturer.[6] Alternatively, if sufficient additional capital is not provided by the joint venturers, other financing may be sought, or the joint venture may be liquidated. In the case of a capital call where Equitable's joint venture interest is shared by two or more Accounts, a determination must be made on behalf of each Account participating in the shared investment with respect to whether it is appropriate for the Account to provide its proportionate share of additional capital requested by the joint venture. The general rule that Equitable will follow is that each Account will be given the opportunity to provide its pro rata share of the capital call, but for some Accounts it may be determined to be appropriate to provide less than a full share or no additional capital at all. In such cases, the interest of the Account would be reduced proportionately on a fair market basis. In the case of ERISA-Covered Accounts, all decisions regarding the making of additional capital contributions must be approved by the independent fiduciary for the Account. In addition to situations where some Accounts participating in the ownership of Equitable's joint venture interest may not be in a position to provide their share of a capital call, other situations may arise where the co-venturer is unable to make its additional capital contributions. Both of these situations may result in prohibited transactions under section 406 of the Act.

31. *Equitable Shortfall.* The General Account and an ERISA-Covered Account may experience a capital call from the general partner of the joint venture for either an additional equity or debt contribution. If it is determined that the ERISA-Covered Account does not have sufficient funds available to meet its contribution requirement,[7] the General Account will not make an additional equity contribution to the joint venture to cover the ERISA-Covered Account's shortfall. However, the General Account may make a loan to the ERISA-Covered Account to enable the ERISA-Covered Account to make its required pro rata capital contribution. Accordingly, subject to the conditions of the proposed exemption, Section II(a)(2) would provide relief for loans of this type. Prior to any loan being made, it would have to be approved by the independent fiduciary for the ERISA-Covered Account. Such loan will be unsecured and non-recourse, will bear interest at a rate that will not exceed the prevailing interest rate on 90-day Treasury Bills, will not be callable at any time by the General Account, and will be prepayable at any time without penalty at the discretion of the independent fiduciary of the ERISA-Covered Account. In this way, the needed capital may be provided without causing a "squeeze down" in the equity interest of the participating ERISA-Covered Account. A similar situation may arise where two ERISA-Covered Accounts, or an ERISA-Covered and a non-ERISA-Covered Account, participate in a joint venture investment. If one Account is unable or unwilling to provide its proportionate share of a capital call, the other Account (but not the General Account) may be interested in making up the shortfall. This might be accomplished by means of an equity contribution with a resulting re-adjustment on a current fair market value basis in the equity ownership interests of the participating Accounts. Thus, any of these disproportionate contribution situations between Accounts (other than the General Account) might result in a violation of section 406(b)(2) of the Act. Subject to the generally applicable conditions of this proposed exemption, Section II(a)(3) provides limited relief for these disproportionate contributions.

32. *Co-Venturer Shortfall.* In some cases, Equitable's co-venturer in a joint venture investment may be unable to meet its additional capital obligation, and Equitable may deem it advisable for some or all of the participating Accounts to contribute capital in excess of the pro rata share of Equitable's Accounts in the joint venture in order to finance the operation of the property (and thereby squeeze down the equity interest of the co-venturer).[8] The applicant is requesting exemptive relief that would permit additional capital contributions to be made by participating Accounts (including the General Account) on a non-proportionate basis if the need arises. Any instance involving the infusion of additional capital to a joint venture will be considered by the independent fiduciary for each ERISA-Covered Account participating in the investment and any action to be taken by the Account must be approved by the independent fiduciary. These actions might include contributing a pro rata share of additional equity capital (including a capital contribution that squeezes down the interest of a co-venturer on the basis provided in the joint venture agreement), contributing more or less than a pro rata share, or contributing no additional capital. See Section II(a)(4).

(b) *Third Party Purchases of Joint Venture Properties.* 33. Under the terms of certain joint venture agreements entered into by Equitable and other real estate investors, if an offer is received from a third party to purchase the assets of the joint venture, and one joint venture partner (irrespective of the percentage ownership interest of the joint venture partner) wishes to accept the offer, the other joint venture partner must either (1) also accept the offer, or (2) buy out the first partner's interest at the portion of the offer price that is proportionate to the first partner's share of the venture. For example, if Equitable on behalf of the Accounts and a real estate developer are joint venture partners in a property and an offer is received from another person to acquire the entire property that the developer wants to accept, Equitable on behalf of the Accounts would be obligated either to sell its interest also to the third party or to buy out the interest of the developer at the portion of the price offered by the third party proportionate to the developer's share of the venture.

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[6] In the case of a call for additional capital involving a typical joint venture arrangement entered into between parties dealing at arm's-length, the joint venture agreement may commonly provide that the equity interest of any non-contributing venturer be re-adjusted, or "squeezed down", on a capital interest basis. This involves re-adjusting the equity interests of the venturers solely on the basis of the percentage of total capital contributed without taking into account any appreciation on the underlying property. This "capital interest" adjustment can substantially diminish the equity interest of the non-contributing venturer in the actual current market value of the underlying property. Thus, this type of re-adjustment is intended to provide an incentive to all venturers to make their proportionate capital contributions so that improvements can be made and the operation of a property continued without burdening the other venturers.

[7] In any case where the General Account and one or more ERISA-Covered Accounts share Equitable's interest in a joint venture, the General Account will always make a capital contribution that is at least equivalent proportionately to the highest capital contribution made by an ERISA-Covered Account (but not higher than the General Account's pro rata share of the required additional capital except, as described in paragraph 32, in the event of a co-venturer shortfall). Thus, the General Account will never be the cause as between the Accounts of a capital contribution shortfall by Equitable that would result in a capital basis squeeze down by a co-venturer.

[8] In any case involving a shared joint venture interest held by the General Account and an ERISA-Covered Account, if it is determined that the ERISA-Covered Account will contribute its pro rata share of extra capital, The General Account would also contribute at least its pro rata share of such capital.

When Equitable's interest in a real estate joint venture is shared by two or more Accounts, it is likely that the same decision will be appropriate for each Account in any third-party purchase situation. See Sections I(b) and II(b)(1). It is also possible, however, that it might be in the interests of some Accounts to reject the offer and buy-out the partner, while other Accounts might not have the funds to do so or, for some other reason, would elect to sell to the third party. The joint venture agreements typically require, however, that Equitable on behalf of the Accounts provide the co-venturer with a buy or sell reply. Thus, in making a buy or sell decision in any of these cases involving an ERISA-Covered Account, Equitable might be deemed to be acting in violation of section 406 of the Act. Further, in order to resolve situations where the same reply is not appropriate for all participating Accounts, various alternatives may be adopted. For example, the Account(s) that wishes to continue owning the property may be willing and able itself to buy-out not only the co-venturer, but also the other participating Account(s) that wishes to accept the third party offer to sell. The General Account, however, will not participate in the buy-out of another Account(s). Or, one Account may itself be willing and able to buy-out the co-venturer while the other Account chooses to continue holding its original interest in the property. Alternatively, all of the Accounts may choose to participate in the buy-out, but on a basis that is not in proportion to their existing ownership interests. Such alternatives, when an ERISA-Covered Account is involved, while all possibly desirable from case to case, may also raise questions under section 406 of the Act, whether or not the General Account is a participant in the investment. Accordingly, the applicant is requesting exemptive relief that would permit Equitable to respond to third-party property purchase offers as appropriate under the circumstances. Such a response might involve acceptance of the offer on behalf of all participating Accounts, a buy-out of a co-venturer by some or all of the participating Accounts on a pro rata or non-pro rata basis, or a buy-out of the interest of one participating Account (and of the co-venturer) by other participating Accounts. Any action by any ERISA-Covered Account in these situations will be required to be approved by the independent fiduciary for the Account. Further, in any case involving the sharing of a joint venture interest between the General Account and an ERISA-Covered Account, Equitable has determined that the action taken by the General Account in such third-party purchase offer situations will not be inconsistent with the action approved for the ERISA-Covered Account by the independent fiduciary for such Account. For example, where Equitable recommends that a third-party purchase offer be accepted and the independent fiduciary nevertheless determines that the interest of the co-venturer should be bought out, both Accounts will buy out the interest of the co-venturer on a proportionate basis, unless a disproportionate buy-out is agreeable to both Equitable and the independent fiduciary. However, where an offer to sell is acceptable to the co-venturer (and Equitable has the option of selling to the third party or buying out the co-venturer) and it is determined that the General Account is willing and able alone to buy out the co-venturer's interest, the independent fiduciary may elect that the ERISA-Covered Account retain its existing ownership interest. In such case, the General Account may buy out the co-venturer pursuant to Section II(b)(1). In any case in which more than one ERISA-Covered Account participates in a shared joint venture investment and there is a lack of agreement among the independent fiduciaries with respect to whether to accept a "sell" offer or to buy-out a co-venturer, Equitable, as indicated above, must nevertheless provide a unified response to the co-venturer on behalf of all participating Accounts. Accordingly, in these instances, all participating Accounts will be required to accept the "sell" offer, unless the Account or Accounts that prefer the buy-out can buy-out both the co-venturer's and the "selling" Account's interest, or unless one Account elects to retain its original ownership interest while the other Account(s) alone buys out the joint venturer's interest. The applicant represents that this action is preferred because the purchase option would require the expenditure of additional funds by an objecting Account.[9] See section II(b).

(c) *Rights of First Refusal in Joint venture Agreements.* 34. Under the terms of certain joint venture agreements entered into by Equitable and other real estate investors, if a joint venture partner wishes to sell its interest in the venture to a third party, the other joint venture partner must be given the opportunity to exercise a right of first refusal to purchase the first partner's interest at the price offered by the third party. For example, if Equitable and a real estate developer are joint venture partners and the developer decided to sell its interest to a third party, Equitable would have the right to purchase the developer's interest at the price offered by the third party. In the case of shared real estate joint ventures, the decision by Equitable on behalf of the Accounts with respect to whether or not to exercise a right of first refusal might raise questions under section 406 of the Act since each Account participating in the investment might be affected differently by such decision. Because, under the terms of the joint venture agreement, only one option (exercise or not exercise) may be chosen by Equitable on behalf of the Accounts, exemptive relief is being requested that would permit Equitable to exercise or not exercise a right of first refusal as may be appropriate under the circumstances. Any action taken on behalf of an ERISA-Covered Account regarding the exercise of such a right would have to be approved by the independent fiduciary. Further, under the requested exemption, if the General Account and an ERISA-Covered Account share a joint venture investment, even though Equitable may initially decide on behalf of the General Account not to make a purchase under a right of first refusal option, the General Account will be required to participate in the purchase of the other joint venturer's interest if the independent fiduciary determines that it is appropriate for the ERISA-Covered Account to participate in the exercise of the right of first refusal on at least a pro rata basis. If, however, two Accounts other than the General Account participate in a joint venture and agreement cannot be reached on behalf of the Accounts on whether to exercise a right of first refusal, the right will not be exercised and the co-venturer will be permitted to sell its interest to the third party, unless one Account decides to buy-out the co-venturer alone. In this regard, it is conceivable that some participating Accounts may elect to take advantage of a right of first refusal opportunity and buy-out a co-venturer without other participating Accounts taking part in the transaction. For example, in the case of a shared joint venture investment involving the General Account (or any other Account) and an ERISA-Covered Account, if the

[9] Similarly, in any case involving an ERISA-Covered Account and a non-ERISA-Covered Account, if there is a lack of agreement between the independent fiduciary and, for example, the trustees of a foreign or public plan (or Equitable in the case of a discretionary non-ERISA-Covered Account), all participating Accounts will be required to accept the "sell" offer unless an alternative accommodation as described above is made.

co-venturer wishes to accept an offer to sell its interest and the independent fiduciary of the ERISA-Covered Account decides not to have the account participate in purchasing the co-venturer's interest, the General Account (or other participating Account) would be free to make the purchase on its own. The exercise of a right of first refusal on such a disproportionate basis might also raise questions under section 406 of the Act for which exemptive relief may be needed. See section II(c).

(d) *Buy-Sell Provisions in Joint Venture Agreements.* 35. Certain joint venture agreements entered into by Equitable may provide that one joint venture partner may demand that the other partner either sell its interest to the first partner at a price as determined by the terms of the joint venture agreement or buy out the interest of the first partner at such price. If the other joint venture partner refuses to exercise either option within a spetified period, it must sell its interest to the first partner at the stated price. These "buy-sell" provisions are generally used to resolve serious difficulties or impasses in the operation of a joint venture, but generally a joint venture agreement permits the buy-sell provision to be exercised at any time. As in the situations discussed above, the decision by Equitable on behalf of the Accounts to make a buy-sell offer, or its reaction to such an offer made by a co-venturer, may affect various participating Accounts differently. Accordingly, any decision make by Equitable in these cases involving ERISA-Covered Accounts might raise questions under section 406 of the Act. The applicant is requesting exemptive relief that would permit Equitable to make an appropriate decision under the circumstances on behalf of all participating Accounts to make a buy-sell offer to a co-venturer or to react to a buy-sell offer from a co-venturer. Any such decision must be approved by the independent fiduciary for each ERISA-Covered Account participating in the investment. Further, under the requested exemption, if Equitable decides to exercise (i.e., initiate) a buy-sell option with respect to the co-venturer's interest and the independent fiduciary of a participating ERISA-Covered Account objects, the buy-sell option will not be exercised. Similarly, if the buy-sell option is initiated by the co-venturer and there is a split among the independent fiduciaries of participating ERISA-Covered Accounts with respect to whether to buy or sell, all such Accounts will be required to sell, unless the Account(s) that wishes to buy-out the co-venturer (or the co-venturer and the other participating Account) can do so without the participation of the other Accounts. Also, where a buy-sell option is initiated by the co-venturer and Equitable determines that the General Account should purchase the co-venturer's interest, if the independent fiduciary of a participating ERISA-Covered Account determines that, as between "buy" or "sell", such Account's interest should be sold, Equitable's entire joint venture interest will be sold unless the independent fiduciary agrees that it would be preferable for the ERISA-Covered Account to retain its share of the joint venture interest and Equitable determines that the General Account is willing and able to purchase the entire interest of the co-venturer. Any such disproportionate purchases may, however, also raise questions under section 406 of the Act. See section II(d).

(e) *Transactions with Joint Venture Party in Interest.* 36. The applicant represents that when the General Account holds a 50 percent or more interest in a joint venture, the joint venture itself may be deemed to be a party in interest under section 3(14)(G) of the Act. Thus, any subsequent transaction involving the joint venture and a separate Account or investment advisory Account that is also participating in the venture (*e.g.*, an additional contribution of capital) may be deemed to be a transaction between the plans participating in an ERISA-Covered Account and a party in interest (the joint venture itself) in violation of section 406. Accordingly, the applicant is requesting exemptive relief from the restrictions of section 406(a) of the Act, only, which would permit: (1) any additional equity or debt capital contributions to a joint venture by an ERISA-Covered Account which is participating in an interest in the joint venture, where the joint venture is a party in interest solely by reason of the ownership on behalf of the General Account of a 50 percent or more interest in such joint venture; or (2) any material modification in the terms of, or action taken upon default with respect to, a loan to the joint venture in which the ERISA-Covered Account has an interest as a lender. Either action would be conditioned upon the approval of the independent fiduciary for the ERISA-Covered Account. See section III.

Initial Proportionate Allocations

Pending review by the Department of the investment structure and post-initial allocation transactions described in this notice, the applicant, Equitable, has not requested exemptive relief for the initial allocation of shared real estate investments by Equitable among two or more Accounts, at least one of which is an ERISA-Covered Account, where each of the Accounts participating in a real estate investment participates in the debt and equity interests in the same relative proportions as described in paragraph 4 above. It is the applicant's position that the initial sharing of a real estate investment pursuant to the described allocation by two or more accounts maintained by Equitable (which may include both its General Account and one or more ERISA Accounts) does not involve a *per se* violation of sections 406(a)(1)(D) and 406(b)(1) and (b)(2) of the Act.

Regulations under section 408(b)(2) of the Act (29 CFR 2550.408b–2(e)) provide that the prohibitions of section 406(b) are imposed on fiduciaries to deter them from exercising the authority, control or responsibility which makes them fiduciaries when they have interests which may conflict with the interests of the plans for which they act. In such cases, the regulation states that the fiduciaries have interests in the transactions which may affect the exercise of their best judgment as fiduciaries. It is the Department's view, however, that a fiduciary does not violate section 406(b)(1) with respect to a transaction involving the assets of a plan if he does not have an interest in the transaction that may affect his best judgment as a fiduciary.

Similarly, a fiduciary does not engage in a violation of section 406(b)(2) in a transaction involving the plan if he represents or acts on behalf of a party whose interests are not adverse to those of the plan. Nonetheless, if a fiduciary causes a plan to enter into a transaction where, by the terms or nature of that transaction, a conflict of interest between the plan and the fiduciary exists or will arise in the future, that transaction would violate either section 406(b)(1) or (b)(2) of the Act. Moreover, if, during the course of a transaction which, at its inception, did not involve a violation of section 406(b)(1) or 406(b)(2), a divergence of interests develops between the plan and the fiduciary, the fiduciary must take steps to eliminate the conflict of interest in order to avoid engaging in a prohibited transaction.

In the view of the Department, the mere investment of assets of a plan on identical terms with a fiduciary's investment for its own account and in the same relative proportions as the fiduciary's investment would not, in itself, cause the fiduciary to have an interest in the transaction that may

affect its best judgment as a fiduciary. Therefore, such an investment would not, in itself, violate section 406(b)(1). In addition, such shared investment, or an investment by a plan with another account maintained by a common fiduciary, pursuant to reasonable procedures established by the fiduciary would not cause the fiduciary to act on behalf of (or represent) a party whose interests are adverse to those of the plan, and therefore, would not, in itself, violate section 406(b)(2).[10]

With respect to section 406(a)(1)(D) of the Act which prohibits the transfer to, or use by or for the benefit of a party in interest (including a fiduciary) of the assets of a plan, it is the opinion of the Department that a party in interest does not violate that section merely because he derives some incidental benefit from a transaction involving plan assets. We are assuming, for purposes of this analysis, that the fiduciary does not rely upon and is not otherwise dependent upon the participation of plans in order to undertake its share of the investment.

Thus, with respect to the investment of plan assets in shared investments which are made simultaneously with investments by a fiduciary for its own account on identical terms and in the same relative proportions, it is the view of the Department that any benefit that the fiduciary might derive from such investment under these circumstances is incidental and would not violate section 406(a)(1)(D) of the Act.

Accordingly, since it appears that the method by which the interests in the real estate investments are allocated to the Accounts maintained by Equitable does not result in *per se* prohibited transactions under the Act, the Department has not proposed exemptive relief with respect to the initial sharing of these investments.

Notice to Interested Persons

Those persons who may be interested in the pendency of the requested exemption include fiduciaries and participants of plans investing in ERISA-Covered Accounts which are engaging in transactions described in the proposed exemption. Because of the number of affected persons, the Department has determined that the only practical form of providing notice to interested persons is the distribution, by Equitable, of the notice of proposed exemption as published in the Federal Register to the plan sponsor of each plan described above. The distribution will occur within 30 days of the publication of the notice of proposed exemption in the Federal Register.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Section I—Exemption for Certain Transactions Involving the Management of Investments Shared by Two or More Accounts Maintained by Equitable

If the exemption is granted, as indicated below, the restrictions of certain sections of the Act and the sanctions resulting from the application of certain parts of section 4975 of the Code shall not apply to the following transactions if the conditions set forth in section IV are met:

(a) *Transfers Between Accounts*—The restrictions of section 406(b)(2) of the Act shall not apply to the sale or transfer of an interest in a shared investment (including a shared joint venture interest) between two or more Accounts (except the General Account), provided that each ERISA-Covered Account pays no more, or receives no less, than fair market value for its interest in a shared investment.

(b) *Joint Sales of Property*—The restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the sale to a third party of the entire interest in a shared investment (including a shared joint venture interest) by two or more Accounts, provided that each ERISA-Covered Account receives no less than fair market value for its interest in the shared investment.

(c) *Additional Capital Contributions*—The restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply either to the making of a pro rata equity capital contribution by one or more of the Accounts to a shared investment; or to the making of a Disproportionate (as defined in Section V(d)) equity capital contribution by one or more of such Accounts which results in an adjustment in the equity ownership interests of the Accounts in the shared investment on the basis of the fair market value of such interests subsequent to such contribution, provided that each ERISA-Covered Account is given an opportunity to make a pro rata contribution.

(d) *Lending of Funds*—The restrictions of section 406(a), 406(b)(1)

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[10] This analysis does not address any issues which may arise under section 406(b)(2) where investments are shared solely by two or more separate accounts maintained by a common fiduciary and the participation of one account is relied upon to support the initial investment of the other account.

and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the lending of funds from the General Account to an ERISA-Covered Account to enable the ERISA-Covered Account to make an additional pro rata contribution, provided that such loan—

(A) is unsecured and non-recourse with respect to participating plans,

(B) bears interest at a rate not to exceed the prevailing rate on 90-day Treasury Bills,

(C) is not callable at any time by the General Account, and

(D) is prepayable at any time without penalty.

(e) *Shared Debt Investments*—In the case of a debt investment that is shared between two or more Accounts, including one or more of the ERISA-Covered Accounts, (1) the restrictions of section 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to any material modification in the terms of the loan agreement resulting from a request by the borrower or any decision regarding the action to be taken, if any, on behalf of the Accounts in the event of a loan default by the borrower, and (2) the restrictions of section 406(b)(2) of the Act shall not apply to any decision by Equitable thereof on behalf of two or more ERISA-Covered Accounts: (A) not to modify a loan agreement as requested by the borrower; or (B) to exercise any rights provided in the loan agreement in the event of a loan default by the borrower, even though the independent fiduciary for one (but not all) of such Accounts has approved such modification or has not approved the exercise of such rights.

Section II—Exemption for Certain Transactions Involving the Management of Joint Venture Interests Shared by Two or More Accounts Maintained by Equitable

If the exemption is granted, the restrictions of certain sections of the Act and the sanctions resulting from the application of certain parts of section 4975 of the Code shall not apply to the following transactions resulting from the sharing of an investment in a real estate joint venture between two or more Accounts, if the conditions set forth in Section IV are met:

(a) *Additional Capital Contributions*—(1) The restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the making of additional pro rata capital contributions by one or more Accounts participating in the joint venture.

(2) The restrictions of section 406(a) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the lending of funds from the General Account to an ERISA-Covered Account to enable the ERISA-Covered Account to make an additional pro rata capital contribution, provided that such loan—

(A) is unsecured and non-recourse with respect to the participating plans,

(B) bears interest at a rate not to exceed the prevailing rate on 90-day Treasury Bills,

(c) is not callable at any time by the General Account, and

(D) is prepayable at any time without penalty.

(3) The restrictions of section 406(b)(2) of the Act shall not apply to the making of Disproportionate additional equity capital contributions (or the failure to make such additional contributions) in the joint venture by ERISA-Covered Accounts which result in an adjustment in the equity ownership interests of the ERISA-Covered Accounts in the joint venture on the basis of the fair market value of such joint venture interests subsequent to such contributions, provided that each ERSIA-Covered Account is given an opportunity to provide its proportionate share of the additional equity capital contributions; and

(4) In the event a co-venturer fails to provide all or any part of its pro rata share of an additional equity capital contribution, the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the making of Disproportionate additional equity capital contributions to the joint venture by the General Account and an ERISA-Covered Account up to the amount of such contribution not provided by the co-venturer which result in an adjustment in the equity ownership interests of the Accounts in the joint venture on the basis provided in the joint venture agreement, provided that such ERISA-Covered Account is given an opportunity to participate in all additional equity capital contributions on a proportionate basis.

(b) *Third Party Purchase Offers*—(1) In the case of an offer by a third party to purchase any property owned by the joint venture, the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the acquisition by the Accounts, including one or more ERISA-Covered Account[s], on either a proportionate or Disproportionate basis of a co-venturer's interest in the joint venture in connection with a decision on behalf of such Accounts to reject such purchase offer, provided that each ERISA-Covered Account is first given an opportunity to participate in the acquisition on a proportionate basis; and

(2) The restrictions of section 406(b)(2) of the Act shall not apply to any acceptance by Equitable on behalf of two or more Accounts, including one or more ERISA-Covered Account[s], of an offer by a third party to purchase a property owned by the joint venture even though the independent fiduciary for one (but not all) of such ERISA-Covered Account[s] has not approved the acceptance of the offer, provided that such declining ERISA-Covered Account[s] are first afforded the opportunity to buy out both the co-venturer and "selling" Account's interests in the joint venture.

(c) *Rights of First Refusal*—(1) In the case of the right to exercise a right of first refusal described in a joint venture agreement to purchase a co-venturer's interest in the joint venture at the price offered for such interest by a third party, the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the acquisition by such Accounts, including one or more ERISA-Covered Account[s], on either a proportionate or Disproportionate basis of a co-venturer's interest in the joint venture in connection with the exercise of such a right of first refusal, provided that each ERISA-Covered Account is first given an opportunity to participate on a proportionate basis; and

(2) The restrictions of section 406(b)(2) of the Act shall not apply to any decision by Equitable on behalf of the Accounts not to exercise such a right of first refusal even though the independent fiduciary for one (but not all) of such ERISA-Covered Accounts has approved the exercise of the right of first refusal, provided that none of the ERISA-Covered Accounts that approved the exercise of the right of first refusal

decides to buy-out the co-venturer on its own.

(d) *Buy-Sell Options*—(1) In the case of the exercise of a buy-sell option set forth in the joint venture agreement, the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the acquisition by one or more of the Accounts on either a proportionate or Disproportionate basis of a co-venturer's interest in the joint venture in connection with the exercise of such a buy-sell option, provided that each ERISA-Covered Account is first given the opportunity to participate on a proportionate basis; and

(2) The restrictions of section 406(b)(2) of the Act shall not apply to any decision by Equitable on behalf of two or more Accounts, including one or more ERISA-Covered Account[s], to sell the interest of such Accounts in the joint venture to a co-venturer even though the independent fiduciary for one (but not all) of such ERISA-Covered Accounts[s] has not approved such sale, provided that such disapproving ERISA-Covered Account is first afforded the opportunity to purchase the entire interest of the co-venturer.

Section III—Exemption for Transactions Involving a Joint Venture or Persons Related to a Joint Venture

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply, if the conditions in Section IV are met, to any additional equity or debt capital contributions to a joint venture by an ERISA-Covered Account that is participating in an interest in the joint venture, or to any material modification in the terms of, or action taken upon default with respect to, a loan to the joint venture in which the ERISA-Covered Account has an interest as a lender, where the joint venture is a party in interest solely by reason of the ownership on behalf of the General Account of a 50 percent or more interest in such joint venture.

Section IV—General Conditions

(a) The decision to participate in any ERISA-Covered Account that shares real estate investments must be made by plan fiduciaries who are totally unrelated to Equitable and its affiliates.

(b) Each contractholder or prospective contractholder in an ERISA-Covered Account which shares or proposes to share real estate investments is provided with a written description of potential conflicts of interest that may result from the sharing, a copy of the notice of pendency, and a copy of the exemption as granted.

(c) An independent fiduciary must be appointed on behalf of each ERISA-Covered Account participating in the sharing of investments. The independent fiduciary shall be either

(1) a business organization which has at least five years of experience with respect to commercial real estate investments.

(2) a committee comprised of three to five individuals who each have at least five years of experience with respect to commercial real estate investments, or

(3) the plan sponsor (or its designee) of a plan (or plans) that is the sole participant in an ERISA-Covered Account.

(d) The independent fiduciary or independent fiduciary committee member shall not be or consist of Equitable or any of its affiliates.

(e) No organization or individual may serve as an independent fiduciary for an ERISA-Covered Account for any fiscal year if the gross income received by such organization or individual (or any partnership or corporation of which such organization or individual is an officer, director, or ten percent or more partner or shareholder) from Equitable and its affiliates for that fiscal year exceeds five percent of its or his annual gross income from all sources for the prior fiscal year. If such organization or individual had no income for the prior fiscal year, the five percent limitation shall be applied with reference to the fiscal year in which such organization or individual serves as an independent fiduciary.

In addition, effective for transactions occurring after the date of publication of this notice of pendency, no organization or individual who is an independent fiduciary, and no partnership or corporation of which such organization or individual is an officer, director or ten percent or more partner or shareholder, may acquire any property from, sell any property to, or borrow any funds from, Equitable, its affiliates, or any Account maintained by Equitable or its affiliates, during the period that such organization or individual serves as an independent fiduciary and continuing for a period of six months after such organization or individual ceases to be an independent fiduciary, or negotiate any such transaction during the period that such organization or individual serves as independent fiduciary.

(f) The independent fiduciary acting on behalf of an ERISA-Covered Account shall have the responsibility and authority to approve or reject recommendations made by Equitable or its affiliates for each of the transactions in this proposed exemption. Equitable and its affiliates shall involve the independent fiduciary in the consideration of contemplated transactions prior to the making of any decisions, and shall provide the independent fiduciary with whatever information may be necessary in making its determinations.

In addition, the independent fiduciary shall review on an as-needed basis, but not less than twice annually, the shared real estate investments in the ERISA-Covered Account to determine whether the shared real estate investments are held in the best interest of the ERISA-Covered Account.

(g) Equitable maintains for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (h) of this Section to determine whether the conditions of this exemption have been met, except that a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Equitable or its affiliates, the records are lost or destroyed prior to the end of the six-year period.

(h)(1) Except as provided in paragraph (2) of this subsection (h) and notwithstanding any provisions of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in subsection (g) of this Section are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(B) Any fiduciary of a plan participating in an ERISA-Covered Account who has authority to acquire or dispose of the interests of the plan, or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any plan participating in an ERISA-Covered Account or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any plan participating in an ERISA-Covered Account, or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this subsection (h) shall be authorized to examine trade secrets of Equitable, any of its affiliates, or commercial or financial information which is privileged or confidential.

Section V—Definitions

For the purposes of this exemption:

(a) An "Affiliate" of Equitable includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with Equitable,

(2) Any officer, director or employee of Equitable or person described in section V(a)(1), and

(3) Any partnership in which Equitable is a partner.

(b) An "Account" means the General Account (including the general accounts of Equitable affiliates which are managed by Equitable), any separate account managed by Equitable, or any investment advisory account, trust, limited partnership or other investment account or fund managed by Equitable.

(c) An "ERISA-Covered Account" means any Account (other than the General Account) in which employee benefit plans subject to Title I or Title II of the Act participate.

(d) "Disproportionate" means not in proportion to an Account's existing equity ownership interest in an investment, joint venture or joint venture interest.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

FOR FURTHER INFORMATION CONTACT: Linda Shore of the Department, telephone (202) 523–8671. (This is not a toll-free number.)

Signed at Washington, DC, this 13th day of August, 1987.

Elliot I. Daniel,

Associate Director for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 87–18815 Filed 8–17–87; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D–4950A]

Notice of Proposed Exemption for Certain Transactions Involving the Metropolitan Life Insurance Company (Metropolitan) Located in New York City, New York

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1986 (the Code). The proposed exemption relates to the initial allocation and sharing by Metropolitan of certain real estate investments between the general account of Metropolitan and the commingled separate account (Account RE or the Account) of Metropolitan in which employee benefit plans invest. Metropolitan is a fiduciary with respect to the assets of plans invested in Account RE and is responsible for the acquisition, management and disposition of the assets of Account RE.

EFFECTIVE DATE: If granted, this proposed exemption would be effective January 1, 1975.

DATES: Written comments and rquests for a public hearing must be received by the Department on or before October 16, 1987.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Regulations and Interpretations, Pension and Welfare Benefits Administraion, Room N–5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Application No. D–4950A. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, NW., Washington, DC 20216.

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed by Metropolitan pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

1. Metropolitan is a mutual life insurance company organized under the laws of the State of New York. Metropolitan has under management, in its general account and all of its separate accounts, a portfolio of mortgage loans and real estate equities of approximately $22.1 billion. In 1986, approximately $3.8 billion was invested in real estate investments. As of December 31, 1986, real estate investments comprised approximately 27 percent of all assets of Metropolitan.

2. Metropolitan organized Account RE in 1972. Account RE is a spearate account within the meaning of section 3(17) of the Act, under which income and gains and losses, whether or not realized, from assets allocated to the Account are credited or charged against the Account without regard to other income, gains, or losses of Metropolitan. Account RE is "open-ended" both with respect to investments and participation. Participation in Account RE is effected pursuant to group annuity contracts issued to participating employee benefit plans (or plan sponsors) which provided, among other things, that amounts received under the contracts are applied to Account RE and that the investment experience of the Account will be credited or charged, as the case may be, to the participating contracts proportionately to the relative interests of such contracts in the assets held in the Account. Account RE invests in equity and debt interests in real estate. The value of the real estate interests held in Account RE as of June 30, 1987 was approximately $332 million, and 27 pension plans were then participating in the Account.

3. Metropolitan is an investment manager/fiduciary with respect to the investment of the assets of Account RE and, as such, seeks to make investments in real estate for Account RE on a shared or parallel basis with Metropolitan's general account, pursuant to the Operational Investment Guidelines for Separate Account RE (the Investment Guidelines) established by the Investment Committee of Metropolitan's Board of Directors. Metropolitan represents that an inherent advantage of parallel or shared investments in real estate is the opportunity to enhance the diversity of investments available to Account RE and its participating plans. Where the resources of a plan or a number of plans participating in a separate account must be applied to the full ownership of discrete real estate investments, each dollar invested will of necessity buy

interests in fewer separate properties than where the greater portion of each investment has been acquired by the general account of Metropolitan. In order to maintain diversity which will permit an account to avoid the risk of large losses, all but the largest accounts may be forced to invest in smaller investments which, in Metropolitan's view, typically generate less return than the larger, more prestigious properties. By investing on a parallel or shared basis with the general account, Account RE can obtain the advantage of interests in the largest number of high quality properties, regardless of cost. Further, Metropolitan represents that shared or parallel investment frequently results in substantial savings associated with administrative and start-up costs. Costs such as legal fees, architectural inspections, engineering reports and title insurance, are ordinarily not proportional to the size of the investment, so that sharing of such costs allows Account RE to reduce its administrative costs per investment dollar.

4. The Account's investments are ordinarily in the form of equity interests in joint venture partnerships which hold title to, manage and/or develop real properties such as hotels and office buildings, and also in debt interests in the mortgages to which the properties are subject. Development joint venture arrangements are customarily "leveraged"; that is, acquisition and development costs are met by the equity contribution of the joint venture partners and by substantial loans to the partnerships which are usually made on a nonrecourse basis. Such financing generally takes the form of a mortgage loan made by Metropolitan on behalf of its general account and Account RE to the joint venture partnership which is secured by the joint venture partnership's interest in its real property. Pursuant to the Investment Guidelines, Metropolitan, on behalf of its general account and Account RE, typically owns 50 percent of the equity interest in the joint venture partnership and provides 100 percent of the debt financing. Ordinarily, the real estate developer-partner will own the remaining 50 percent of the equity of the joint venture partnership. However, from time to time the general account may acquire, on its own behalf, 50 percent or more of the equity interest in a joint venture partnership. Under these circumstances, the applicant notes that the joint venture partnership would be a party in interest within the meaning of section 3(14)(G) of the Act. Thus, (in addition to the exemptive relief requested for the allocation and sharing of debt and equity interests in any real estate joint venture investment pursuant to the Investment Guidelines), the applicant has requested exemptive relief for the (continuing) extension of credit that arises in connection with the initial allocation by Metropolitan of a debt interest in such party in interest joint venture partnership to Account RE.

The applicant represents that the long term debt element of the joint venture arrangement is primarily a result of the investment requirements of the real estate developer-partner. Developer-partners, whose expertise Metropolitan considers essential to the success of the joint venture partnership, need and expect long term mortgage financing to leverage their equity interest. The actual interest rate for the mortgage financing is the result of arm's-length negotiation between Metropolitan and the developer-partner and is subject to competitive market demands.

5. The developer-partner, in addition to participating in the joint venture itself, generally acts as the managing partner of the venture, receiving for its services a percentage of the gross income of the venture. Major decisions with respect to the joint venture are specified in the establishing partnership agreement and are made jointly by the developer and Metropolitan, acting for the general account and Account RE. Under this structure, the managing partner is responsible for the implementation of the decisions of the venturers and for conducting the ordinary day-to-day affairs of the venture. The building manager will ordinarily be an affiliate of the developer, and, in such case, the building manager would normally be compensated from the management fee received by the developer. The fee paid to the developer as managing partner is established on a fully competitive basis and reflects the market rate for similar services. Metropolitan generally retains the right to terminate the management authority of the developer and/or of the building manager with or without cause at any time.

In certain cases where Metropolitan, acting for its general account and Account RE, invests in a project prior to or during its construction phase, the debt portion of Metropolitan's investment may include construction financing as well as the long-term mortgage investment described above. In addition, in some transactions Metropolitan, acting for its general account and Account RE, will make an "equity" loan to its developer-partner in the joint venture. An equity loan is a personal loan made to a joint venture partner to enable the partner to finance its equity position in the joint venture. The loan is secured by the partner's interest in the joint venture. Pursuant to the Investment Guidelines, the portion of any construction loan or equity loan which would be obtained by Account RE would be the same as its percentage of the mortgage investment.

6. Commitments for investments for the general account and Account RE are issued pursuant to resolutions of the Investment Committee of the Board of Directors of Metropolitan. However, the decision with respect to the investment by Account RE in a joint venture partnership is specifically made by a senior real estate officer of Metropolitan who is responsible for real estate investments for separate accounts and acts solely on behalf of Account RE in making the decision. The commitments for investments are made in the name of Metropolitan. As a result, Metropolitan is required in its corporate capacity to meet the commitment and is prepared in each case to take the entire investment into its general account if for any reason Account RE cannot take its allocated share.

7. Investments made by Metropolitan have been shared by the Account, to the extent funds have been available therein, from time to time. Metropolitan represents that the relative amounts of assets available for investment by Metropolitan's general account and Account RE are such that the general account in no way relies upon investment by Account RE to support or complete its investment but rather provides the latter Account access to relatively small interests in larger investments which would be made for the general account in any event.

8. Under the Investment Guidelines, the maximum share of an eligible investment made by Metropolitan which is to be allocated to Account RE is fixed from time to time by the Investment Committee of Metropolitan's Board of Directors. The maximum share to be allocated to the Account remains in effect and is applicable to all eligible investments until the allocation policy is superseded by another policy with similar general applicability. Each investment on behalf of Account RE can only be made on the basis of the Investment Guidelines which have been established by Metropolitan to carry out these determinations.

In addition to describing the participation of Metropolitan's general account and Account RE in the debt and equity elements of an investment, the Investment Guidelines describe the role

and interests of the real estate developers which act as joint venture partners in Account investments, as well as the exceptions to participation by Account RE in general account investments due to legal restrictions, diversification requirements or the availability of funds for investment. Under the initial policy established at the inception of Account RE in 1972, the Account participated in eligible investments, subject to availability of assets for a particular transaction, to the extent of 10 percent of Metropolitan's equity interest in the joint venture and 10 percent of Metropolitan's debt investment with respect to the property. Under this "proportionate" method of allocation, if, for example, Metropolitan acquires (on behalf of its general account and Account RE a total of) 50 percent of the equity and 100 percent of the debt of a joint venture, Account RE would be allocated 5 percent of the equity interest and 10 pecent of the debt interest in the joint venture. However, under the current policy established by Metropolitan pursuant to Board authorization, Account RE participates in eligible investments, subject to the availability of assets for the particular transaction, to the extent of 25 percent of Metropolitan's equity interest in the joint venture and a percentage of Metropolitan's debt investment with respect to the property which is equal to the Account's percentage equity ownership fo the joint venture. Under this "equity equivalent" method of allocation (more fully described hereinafter), generally the Account will obtain a 12.5 percent interest in both the equity of the joint venture and the debt on the property. As a result, generally, Metropolitan will obtain for its general account a 37.5 percent interest in the joint venture and 87.5 percent of the debt on the property. However, if Account RE does not have sufficient funds to acquire its maximum share of an investment, the Account's respective shares in both the debt and equity elements of the investment would be reduced on an equivalent percentage basis but not below a minimum investment in each element of 5 pecent. The Investment Guidelines allow for no discretion by Metropolitan or Account RE to select soley the debt or equity element of any investment; nor may the equivalent percentages of Account RE's debt and equity participation be altered on a transaction by transaction basis.

9. As currently structured, the actual allocation of appropriate investments to Account RE is essentially an automatic process. A fixed maximum percentage of each eligible investment commitment is allocated to Account RE if funds are available therein when the investment is closed. If the amount of new contributions to Account RE, plus available earnings and proceeds of sales, is sufficient to cover its allocated share of the investment, such share will be placed in the Account. Except for appropriate reserves of operating capital to meet expected cash requirements, all funds in the Account are considered available for investment. Investments by Account RE are funded in the order in which investments are closed. If two such investments were to close on the same day, Account RE would first participate in the investment that had the earliest commitment date. Occasionally, the amount of cash in Account RE available for investment is sufficient to purchase only a *de minimis* interest in an investment; in such event, the Account will not participate in the investment but rather will accumulate cash for the next eligible investment.

If, by reason of the nature of the investments being acquired from time to time by the general account, and the fact that the general account was making real estate equity investments prior to the establishment of Account RE in 1972, Account RE's participation in a particular kind of investment would cause the diversification of the Account to diverge significantly from the appropriate diversification requirements of the Account (which are generally similar to the general account's real estate equity investments), the Account may forego certain investments. To date, this has occurred only once; under a policy in early 1982, Account RE suspended investment in interests in hotel properties.

10. The investment decision to acquire units of participation in the Account is made by the fiduciaries (independent of Metropolitan) responsible for the investment management of the plan. However, Metropolitan, as administrator for a pension plan covering its employees and agents, is a participant in Account RE. Prior to its initial investment in Account RE, a prospective contractholder (or plan fiduciary) is provided detailed information regarding the structure and investment policy of Account RE. Moreover, a prospective contractholder (or plan fiduciary) also receives prior to investment a statement of the financial condition of the Account and a description of the particular investments which are held by the Account. Such information also apprises the prospective contractholder of the fees and expenses charged as well as the economic effects of the combined debt and equity interests which ordinarily comprise such investments. Following investment in Account RE, each contractholder receives a quarterly written report which reflects the transactions in, and the current status of, the Account. The Investment Guidelines are revised by Metropolitan only infrequently. Any modification will be subject to the review and approval of an independent fiduciary (the Independent Fiduciary).

11. Because the applicant was uncertain whether the initial sharing of investments between the accounts, and specifically whether investments allocated and shared primarily on an "equity equivalent basis" pursuant to the Investment Guidelines, would result in prohibited transactions under the Act, a prohibited transaction exemption was sought.[1]

[1] In this regard, the Department has considered the application of the prohibited transaction provisions of section 406 of the Act to the initial allocation of shared investments by a fiduciary among two or more accounts, at least one of which contains plan assets, where each of the accounts participates in the debt and equity components of an investment on a proportionate basis.

In the view of the Department, the mere investment of assets of a plan on identical terms with a fiduciary's investment for its own account and in the same relative proportions as the fiduciary's investment would not, in itself, cause the fiduciary to have an interest in the transaction that may affect its best judgment as a fiduciary. Therefore, such an investment would not, in itself, violate section 406(b)(1). In addition, such shared investment, or an investment by a plan with another account maintained by a common fiduciary, pursuant to reasonable procedures established by the fiduciary would not cause the fiduciary to act on behalf of (or represent) a party whose interests are adverse to those of the plan, and therefore, would not, in itself, violate section 406(b)(2).

With respect to section 406(a)(1)(D) of the Act which prohibits the transfer to, or use by or for the benefit of a party in interest (including a fiduciary) of the assets of a plan, it is the opinion of the Department that a party in interest does not violate that section merely because he derives some incidental benefit from a transaction involving plan assets. We are assuming, for purposes of this analysis, that the fiduciary does not rely upon and is not otherwise dependent upon the participation of plans in order to undertake its share of the investment.

Thus, with respect to the investment of plan assets in shared investments which are made simultaneously with investments by a fiduciary for its own account on identical terms and in the same relative proportions, it is the view of the Department that any benefit that the fiduciary might derive from such investment under these circumstances is incidental and would not violate section 406(a)(1)(D) of the Act.

Accordingly, to the extent that real estate investments are allocated to accounts maintained by Metropolitan on a "proportionate" basis as described above, no exemptive relief is necessary for the initial allocation of such shared investments. However, the applicant has requested exemptive relief for the continuing extension of credit that arises in connection with the initial "proportionate" allocation by Metropolitan of a debt interest in a

Continued

12. The applicant believes that the method by which investments are shared under the described circumstances meets the requirements necessary for an administrative exemption in that inherent in the investment is an allocation procedure and structure which, at least at the outset of any joint venture investment, curtails any conflict between the interests of Metropolitan and Account RE. The applicant asserts that where Account RE obtains an equal percentage of the debt and equity of the joint venture partnership, the aggregate income that will be realized by the Account from both elements of the investment will be effectively insulated from the effect of any action which may be taken by Metropolitan with respect to the joint venture partnership. Various examples are furnished in order to demonstrate that Account RE's typical 12.5% interest in both the debt and equity provides Account RE with a 12.5% overall interest in the income which would be generated by the property or properties owned by the joint venture, whether such income is in the form of debt service on the mortgage or distributions of the net income or gains of the partnership.

Similarly, the applicant represents that under the joint venture partnership investment structure, Account RE will at all times retain a 12.5% ownership interest in the property or properties owned by the joint venture, regardless of actions which may be taken by Metropolitan with respect to the long term mortgage loan. Thus, upon repayment of the long term mortgage loan, Account RE will have an unencumbered 12.5% equity interest in the property. Conversely, if the joint venture partnership were to fail and a foreclosure proceeding were to be brought, Account RE's 12.5% interest in the mortgage loan would, in effect, preserve its 12.5% interest in the property or properties owned by the joint venture.

Notice to Interested Persons

Those persons who may be interested in the pendency of the requested exemption include fiduciaries and participants of plans which have invested or which may invest in Account RE. Because of the number of plans which currently invest in the Account RE, the Department has determined that the only practical form of providing notice to interested persons is the distribution, by Metropolitan, of the notice of proposed exemption as published in the Federal Register to these plan fiduciaries. Such distribution will occur within 30 days of the publication of the notice of proposed exemption in the Federal Register.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relive a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

And interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above.

All comments will be made a part of the record. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

Section I—Exemption for Certain Transactions Involving the Allocation of Shared Joint Venture Partnership Investments to the General Account of Metropolitan and Account RE by Metropolitan

If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975(c)(1) (A) through (E) of the Internal Revenue Code (the Code) shall not apply t the following transactions if the conditions set forth in Section II are met:

(a) The initial allocation by Metropolitan of equity and debt interests in a joint venture partnership investment that is shared between the general account of Metropolitan and Account RE;

(b) The making of an "equity" loan to a developer-partner in a joint venture partnership by Metropolitan on behalf of the general account of Metropolitan and Account RE; and

(c) The making of the initial equity and debt contributions to a joint venture partnership by Metropolitan on behalf of the general account of Metropolitan and Account RE, where the joint venture partnership is a party in interest solely by reason of the ownership on behalf of the general account of a 50 percent or

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joint venture partnership where the partnership itself is a party in interest solely by reason of the ownership on behalf of the general account of a 50 percent or more interest in such joint venture partnership. With respect to the "equity equivalent" method of allocation, which forms the principal basis for this application (or any other method for the initial allocation of shared investments), the Department is unwilling to provide advance assurance that such allocation method(s) and the consequent sharing of investments would not result in *per se* violations of section 406 of the Act. Thus, this proposed exemption relates primarily to the initial allocation and sharing of investments between the general account of Metropolitan and Account RE pursuant to the "equity equivalent" procedures currently utilized.

With respect to transactions subsequent to the initial allocation of shared investments that present additional issues under section 406 of the Act, the Department notes that the applicant has applied for a separate prohibited transaction exemption (D-4950S). The Department has not completed its consideration of this application for additional relief.

more interest in such joint venture partnership.

Section II—General Conditions

(a) The decision to participate in Account RE is made by plan fiduciaries independent of Metropolitan and its affiliates following full disclosure to such fiduciaries of all relevant information regarding Account RE. Such information includes, but is not limited to, a detailed description of the structure and investment policy of Account RE, a description of the fees and expenses typically charged Account RE, a statement of the financial condition of the Account, a description of the particular investments held by the Account, and a description of the economic effects of the combined debt and equity interests which ordinarily comprise Account RE investments. In addition, a quarterly written report is provided to plan fiduciaries which reflects the transactions in, and the current status of, the Account. This condition shall not apply to plans covering employees of Metropolitan.

(b) On the basis of written Investment Guidelines that are available upon request to all plan investors, the Board of Directors of Metropolitan adopts, and then applies consistently, a policy which, until formally superseded, determines the maximum share of the debt and equity interests in a real estate joint venture investment that is allocated and shared between the general account and Account RE.

(c) As result of any initial allocation, the equity interest of Account RE in the joint venture partnership is equivalent to Account RE's debt interest in such partnership.

(d) The rights and obligations of Metropolitan's general account and Account RE in their respective debt and equity holdings in a joint venture partnership, as well as in their respective interests in any "equity" loan to a developer-partner, are identical.

(e) Metropolitan does not rely upon the participation of the assets of Account RE in order to undertake, support or complete investments in real estate joint ventures on behalf of the Metropolitan general account.

(f) Account RE's interest in any "equity" loan to a developer-partner is equivalent to Account RE's debt interest in the joint venture partnership.

(g) After September 16, 1987, any material modification of the Investment Guidelines is subject to the review and approval of an Independent Fiduciary.

(h) Sections II(b), (c), (f) and (g) do not apply to transactions described in Section I(c) of this exemption, if the debt and equity interests of the joint venture partnership which are allocated by Metropolitan to Account RE are in the same relative proportions as the debt and equity interests held by Metropolitan on behalf of its general account.

Section III—Definitions

For purposes of this exemption:

(a) an "affiliate" of Metropolitan includes:

(1) any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with Metropolitan; (2) any officer, director or employee of Metropolitan or person described in this subparagraph III(a)(1); and (3) any partnership in which Metropolitan is a partner.

(b) the term "debt" means any debt of a joint venture partnership described herein, including construction or long term mortgage loans.

(c) The term "equity" loan means any loan to a developer-partner in a joint venture partnership described herein which is secured by the developer-partner's equity interest in the joint venture partnership.

FOR FURTHER INFORMATION CONTACT: Linda Shore of the Department, telephone (202) 523–8671. (This is not a toll-free number).

Signed at Washington, DC, this 13th day of August, 1987.

Elliot I. Daniel,

Associate Director for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 87–18814 Filed 8–17–87; 8:45 am]

BILLING CODE 4510-29-M

Advisory Council on Employee Welfare and Pension Benefits Plans; Work Group Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Work Group on Employee Stock Ownership Plans (ESOP) of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 2:00 p.m., Tuesday, September 15, 1987, in Room N–3437A,B, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This nine-member work group was formed by the Advisory Council to study varius ERISA issues relating to employee stock ownership plans (ESOP's).

The purpose of the September 15 meeting is to review and consider a draft report on the use of ESOPs in conjunction with leveraged buyouts involving multiple investors.

Individuals, or representatives of organizations, wishing to address the work group should submit written requests on or before September 10, 1987 to Charles W. Lee, Jr., Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Consitution Avenue, NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before September 10, 1986.

David M. Walker,

CPA, Assistant Secretary-Designate for Pension and Welfare Benefits.

Signed at Washington, DC.

[FR Doc. 87–18870 Filed 8–17–87; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 87–67]

Intent To Grant an Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant an exclusive patent license.

SUMMARY: NASA hereby gives notice of intent to grant to Integrated Chemical Sensors Corporation, of Newton, Massachusetts, a limited, exclusive, royalty-bearing, revocable license to practice the invention as described in U.S. Patent No. 4,055,072 for an "Apparatus for Measuring a Sorbate Dispersed in a Fluid Stream," which issued on October 25, 1977, to the Administrator of the National Aeronautics and Space Administration on behalf of the United States of America. The proposed exclusive license will be for a limited number of years and will contain appropriate terms and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR Part 1245, Subpart 2. NASA will negotiate the final terms and conditions and grant the exclusive license unless, within 60 days of the date of the Notice, the Director of Patent Licensing receives written

objections to the grant, together with supporting documentations. The Director of Patent Licensing will review all written responses to the Notice and then recommend to the Associate General Counsel (Intellectual Property) whether to grant the exclusive license.

DATE: Comments to this notice must be received by October 19, 1987.

ADDRESS: National Aeronautics and Space Administration, Code GP Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Lupuloff, (202) 453–2420.

Dated: August 7, 1987.

Edward A. Frankle,

Deputy General Counsel.

[FR Doc. 87–18772 Filed 8–17–87; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Proposed Records Schedules; Availability and Request for Comment

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 USC 3303a(a).

DATE: Requests for copies must be received in writing on or before October 2, 1987. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESS: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal Agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of the Air Force (N1–AFU–87–28). Information concerning Foreign Military Attaches.

2. Department of the Air Force (N1–AFU–87–30). Food service records.

3. Department of Agriculture, Office of Information and Records Management (N1–16–87–1). Update of disposition standards for records of offices served by the Assistant Secretary for Administration.

4. Department of Agriculture, Forest Service, Human Resource Programs (N1–95–86–3). General correspondence and routine administrative and housekeeping records, relating to human resources programs.

5. Department of Agriculture, Forest Service, Policy Analysis Staff (N1–95–87–4). General correspondence regarding conditions related to the need for economic or social analysis.

6. Office of the Secretary of Defense, Department of Defense Dependent Schools (DODDS) (N1–330–87–1). Files relating to routine administrative operations of the DODDS.

7. Environmental Protection Agency, Office of Pesticide Programs (NC1–412–85–24). Comprehensive schedule for pesticide program records.

8. Federal Communications Commission, Common Carrier Bureau (N1–173–86–3). Accounting and Audits Division records.

9. Federal Deposit Insurance Corporation, Division of Bank Supervision (N1–3[illegible]–87–1). Comprehensive schedule for the Division.

10. Department of the Interior, Bureau of Land Management (N1–49–86–1). Records of several branches of the former General Land Office, 1900–1972.

11. Small Business Administration, Office of Administrative Services (N1–309–87–1). Change in retention period for time and attendance records covered by General Records Schedule 2, item 3a.

12. Department of State, Bureau of International Organization Affairs (N1–59–86–6). Comprehensive schedule providing for the permanent retention of policy documentation and the destruction of facilitative records and duplicate copies.

13. Department of State, Bureau of Administration, Office of Foreign Buildings (N1–59–87–11). Real Estate Management System.

14. Department of State, Bureau of Administration, Commissary and Recreation Staff (N1–59–87–12). Financial statements relating to non-government activities.

15. Tennessee Valley Authority, Division of Property and Services (N1–142–87–8). Correspondence, photographs, and drawings that do not have sufficient value for documenting the construction of prefabricated housing.

16. Department of Treasury, Internal Revenue Service (N1–58–87–8). IRS Form 2031, Waiver Certificate to Collect Social Security.

Dated: August 12, 1987.

Claudine J. Weiher,

Acting Archivist of the United States.

[FR Doc. 87–18808 Filed 8–17–87; 8:45 am]

BILLING CODE 7515–01–M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Hydropower Assessment Steering Committee Meeting

AGENCY: The Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting.

STATUS: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Hydropower Assessment Steering Committee to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1–4. Activities will include:

- Hydro Assessment Study report
- Other
- Public comment

DATE: August 25, 1987, 10:00 a.m.

ADDRESS: The meeting will be held in the Council's central office, 850 S.W. Broadway, Suite 1100, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Peter Paquet, 503–222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 87–18905 Filed 8–17–87; 8:45 am]

BILLING CODE 0000-00-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 22–17124]

Application and Opportunity for Hearing; American Airlines, Inc.

August 11, 1987.

Notice is hereby given that American Airlines, Inc. (the "Applicant") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Securities and Exchange Commission (the "Commission") that (a) the trusteeships in a single transaction of the Connecticut National Bank ("CNB") under certain indentures that are not subject to qualification under the Act and two or more indentures to be qualified under the Act and (b) the trusteeships of CNB under one or more of such qualified indentures and under a certain other indenture described below not subject to qualification under the Act, are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify CNB from acting as trustee under such qualified indentures or the other indentures.

Section 310(b) of the Act provides, in part, that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the section), it shall within ninety days after ascertaining that it has such conflicting interest either eliminate such conflicting interest or resign. Subsection (1) of such section provides, with certain exceptions, that a trustee is deemed to have a conflicting interest if it is acting as trustee under another indenture under which any other securities of the same obligor are outstanding.

The Applicant alleges that:

1. CNB currently acts as indenture trustee (the "Loan Trustee") under six separate leveraged lease indentures (each, a "Lease Indenture") entered into in 1986, each of which relates to a separate leveraged lease transaction in which an owner trustee (the "Owner Trustee") for the benefit of certain institutional investors acting as equity participants issued in a private placement loan certificates (the "Loan Certificates") to institutional investors acting as loan participants.

2. The proceeds of the Loan Certificates issued under each Lease Indenture were used by the relevant Owner Trustee to finance approximately 80% of the cost of one McDonnell Douglas aircraft (each an "Aircraft") that was then leased by such Owner Trustee to the Applicant. The Applicant is not a party to any of the Lease Indentures, but the Applicant's unconditional obligation to make rental payments under the relevant lease is the only credit source for payments of the related Loan Certificates.

3. The Loan Certificates issued with respect to each Lease Indenture are secured by a security interest in the Aircraft to which such Lease Indenture relates and the right of the Owner Trustee to receive rentals on such Aircraft from the Applicant. No Aircraft is covered by more than one Lease Indenture or by the Other Indenture (as defined below) and the Loan Certificates issued pursuant to any one Lease Indenture are separate from the Loan Certificates issued pursuant to any other Lease Indenture.

4. None of the Lease Indentures is subject to the Act and, accordingly, none contains the language regarding conflicts required by section 310(b) of the Act for qualified indentures.

5. The Applicant has filed a Registration Statement on Form S–3 (the "Registration Statement") covering the proposed public offering of Equipment Note Pass Through Certificates (the "Pass Through Certificates") representing fractional undivided interests in one or more grantor trusts (each, a "Grantor Trust"), each to be formed under a Trust Agreement between CNB, as Trustee (the "Pass Through Trustee"), and the Applicant. Each Trust Agreement will be qualified as an Indenture under the Act and is referred to herein as a "Qualified Indenture".

6. The Loan Certificates issued under each Lease Indenture are to be refinanced by means of the relevant Owner Trustee issuing multiple series (anticipated to be seven) of new Loan Certificates (such new Loan Certificates being referred to as "Equipment Notes") to CNB as Pass Through Trustee under an equal number of Grantor Trusts. The Equipment Notes purchased by the Pass Through Trustee under each Granter Trust will be purchased with the proceeds of the public offering of Pass Through Certificates relating to such Grantor Trust issued pursuant to the related Qualified Indenture. The proceeds from such purchases will be applied to redeem in full the outstanding Loan Certificates under the Lease Indentures.

7. Each series of the Equipment Notes issued by the Owner Trustee under a Lease Indenture will have a maturity and interest rate that differs from the other series issued thereunder, but a series issued under one Lease Indenture will have an identical maturity and interest rate to the corresponding series issued under each of the other five lease Indentures. For tax reasons, it is not desirable for Pass Through Certificates to be issued under a single Qualified Indenture relating to multiple series of Equipment Notes having different maturities and interest rates. Accordingly, the six corresponding series of Equipment Notes issued under the six Leased Indentures that have an identical maturity and interest rate will be issued to a single Grantor Trust that will then issue a single series of Pass Through Certificates under a Qualified Indenture. The other series of Equipment Notes under each Lease Indenture, each series having a different maturity and interest rate, will be issued to separate Grant or Trusts issuing Pass Through Certificates under separate Qualified Indentures. Although the number of series of Equipment Notes to be issued under each Lease Indenture has not been finally established, it is currently anticipated that there will be seven series and that, accordingly, seven series of Pass Through Certificates will be issued under seven Qualified Indentures.

8. Each Qualified Indenture will provide, pursuant to Section 310(b) of

the Act, for the resignation of the Pass Through Trustee in the event that it does not eliminate a conflicting interest, and will provide that trusteeship under another indenture of the Applicant constitutes a conflicting interest, provided, however, that the Applicant may apply to the Commission for a finding that no material conflict exists.

9. CNB acts as indenture trustee under an indenture, dated as of October 15, 1986, between CNB and Wilmington Trust Company ("WTC"), which relates to a leveraged lease transaction in which WTC, as owner trustee for the benefit of certain institutional investors acting as equity participants, issued in a private placement loan certificates to institutional investors acting as loan participants. Such loan certificates have a final maturity date of January 2, 2005.

10. The proceeds of the issuance of the loan certificates issued under the Other Indenture were used by the owner trustee to purchase one Boeing aircraft that was then leased by such owner trustees to the Applicant. The Applicant is not a party to the Other Indenture but the Applicant's unconditional obligation to make rental payments under the lease relating to such Other Indenture is the only credit source for principal and interest payments on the loan certificates.

11. The loan certificates issued under the Other Indenture are secured by a security interest in the aforementioned Boeing aircraft and the right of the owner trustee to receive rentals on such aircraft from the Applicant. Such aircraft is not covered by any of the Lease Indentures or any other indentures, and the loan certificates issued under the Other Indenture are separate from the Loan Certificates issued under the Lease Indentures and from loan certificates issued under any Other Indenture.

12. The Other Indenture is not subject to the Act and, accordingly, does not contain the language regarding conflicts required by Section 310(b) of the Act for qualified indentures.

The Applicant waives notice of hearing and waives hearing and waives any and all rights to specify procedures under the Rules of Practice of the Commission with respect to the application.

For a more detailed account of the matters of fact and law asserted, all persons are referred to said application, File No. 22-17124, which is a public document on file in the offices of the Commission at the Public Reference Room, 450 Fifth Street, NW., Washington, DC.

Notice is further given that any interested person may, not later than August 31, 1987, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of law or fact raised by such application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Jonathan G. Katz, Secretary, Securities and Exchange Commission, Washington, DC 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest or for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-18809 Filed 8-17-87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-15911; 812-6663]

Notice of Application; Gold Reserve Corp.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Gold Reserve Corporation.

Relevant 1940 Act Sections: Order requested under section 3(b)(2) of the 1940 Act or, alternatively, under section 6(c) granting a temporary exemption from all provisions of the 1940 Act.

Summary of Application: Applicant seeks an order declaring it not to be primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities or, alternatively, granting it an exemption from all provisions of the 1940 Act and the rules and regulations thereunder until July 31, 1988.

Filing Date: The application was filed on April 13, 1987 and amended on June 3, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the Application will be granted. Any interested person may request a hearing on this Application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on September 4, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, DC 20549. Applicants: c/o Robert L. Magnuson, Witherspoon, Kelley, Davenport & Toole, Old National Bank Building, Spokane, Washington 99201.

FOR FURTHER INFORMATION CONTACT: Curtis R. Hilliard, Special Counsel (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the Application; the complete Application is available for a fee from either the Commission's Public Reference Branch in person, or the Commission's commercial copier (800) 231-3282 (in Maryland (301) 258-4300)

Applicant's Representations

1. The Applicant was organized in 1956 for the purpose of exploring and developing mining properties. For the last thirty years the Applicant has been engaged in the business of exploring, developing and mining mineral properties. In addition to its own exploration and development activities, the Applicant owns a forty-three percent partnership interest in the U.S. Mining Limited Partnership, a limited partnership engaged in the exploration for natural resources properties.

2. Until June 1986, the Applicant's principal assets consisted of patented and unpatented claims to property known as the Zortman Mine, a gold and silver mine in Montana, and certain property located in Nevada known as the Florida Canyon property. The Applicant explored, developed and, through a joint venture with Pegasus Gold Inc. ("Pegasus"), placed the Zortman Mine into commercial production. From 1980 to 1985, the Zortman Mine produced over 190,000 ounces of gold and 339,000 ounces of silver, and employed over 150 workers during its most active period. The Applicant also owned a fifteen percent working interest in patented and unpatented claims to the Florida Canyon property in Nevada which it acquired in 1983. The Applicant, through a joint venture with Pegasus, jointly managed and operated the Florida Canyon property.[1] In 1984 and 1985, the parties

[1] The Applicant and Pegasus shared common management from June 1976 until February 1987.

Continued

developed ore reserves in the Florida Canyon property in order to commence operating it as a mine. In late 1985, the Applicant and Pegasus announced that the property would enter into commercial production. Placing the Florida Canyon property into production would have required a substantial additional capital contribution from the Applicant. Moreover, since the Zortman Mine had been actively mined for five years, the Applicant recognized that its proven and probable reserves might soon be depleted.

3. Due to the high cost involved in putting the Florida Canyon property into commercial production and the depleting ore reserves at the Zortman Mine, on June 27, 1986 the Applicant transferred its interest in these properties to Pegasus in exchange for 1,240,000 shares of Pegasus common stock (the "Exchange Transaction"). The shares received pursuant to this exchange are "restricted securities" under the Securities Act; the two-year holding period required by Rule 144 will not lapse until June 27, 1988. As a result of the Exchange Transaction, the value of the shares owned by the Applicant exceeds forty percent of the value of its total assets and thus Applicant falls within the definition of an investment company in section 3(a)(3) of the 1940 Act. Since completion of the Exchange Transaction, the Applicant has been relying on the transient investment company exemption under Rule 3a–2 of the 1940 Act. the Company also has been relying on the exception to the definition of an investment company contained in section 3(b)(1) of the 1940 Act.

4. The Applicant's ownership of the shares marks a transitional phase for the Applicant. Notwithstanding Applicant's ownership of the Pegasus stock, it has been and continues to be, actively involved in the mining business and it has been actively searching both independently and with other mining companies for additional properties to develop. Applicant owns a forty-three percent partnership interest in U.S. Mining L.P., a Washington limited partnership that is engaged in the exploration for mining properties. Since November 1986 the Applicant has independently investigated over thirty properties and regularly employs a geological consulting firm to inspect properties under consideration. Since it was formed in 1985, the Partnership has explored over 200 properties. The Applicant plans to finance any acquisitions through the sale or pledge of the Pegasus shares consistent with federal and state securities laws.

5. The Applicant believes that it meets the requirements of section 3(b)(1) both in letter and spirit and is not an investment company because it is engaged directly in a business other than that of investing, reinvesting, owning, holding or trading in securities. Accordingly, if the Commission finds that the Applicant is "primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding or trading in securities," the Applicant is entitled to an order declaring it not to be an investment company under the provisions of section 3(b)(2). In the alternative, the Applicant requests that the Commission grant a temporary exemption under section 6(c) of the 1940 Act from all provisions of the 1940 Act and the rules and regulations thereunder until July 31, 1988.

6. Applicant argues that it has always been primarily engaged in the business of mining, through its exploration, development and mining of the Zortman Mine and its exploration and development of the Florida Canyon property. In addition, the Applicant has been and continues to be actively engaged in investigating new mining properties, both in its own capacity and as a partner of U.S. Mining Limited Partnership, a Washington limited partnership that is engaged in the exploration for mining properties.

7. The Applicant has never held itself out as an investment company. Every Form 10-K report, Form 10-Q report, annual report and proxy statement has emphasized the Applicant's mining business. Moreover, through December 31, 1986, the Pegasus shares were carried by the Applicant as an equity investment, not as marketable securities. The Applicant's public communications have uniformly dealt with the Applicant's participation in the mining business. The activities of the Applicant's officers, directors and employees are exclusively devoted to investigating, exploring and developing mining properties. The officers and directors have no professional training or experience in managing investment portfolios; they do not devote any professional time to investment portfolio activities for the simple fact that the Applicant neither trades in any securities nor owns any securities other than the Pegasus shares.

8. The Applicant contends that a review of the nature of its assets supports the conclusion that the Applicant is primarily engaged in a business other than that of investing, holding or trading securities. The transaction in which Applicant acquired the Pegasus stock was a commercial transaction opposed to an investment transaction. The Applicant's interest in Pegasus merely reflects a changed form of participation in the mining business. The Applicant ultimately plans to sell or pledge the Pegasus shares and reinvest the proceeds of such sales in other mining ventures. The Applicant has already sold approximately 36,000 shares of Pegasus stock it acquired through a series of open market transactions before the Exchange Transaction. The Applicant has used the proceeds of these sales to finance exploration and operation costs.

9. The Applicant also contends that its revenues and expenditures contradict any claim that it is an investment company. Its revenues from securities constitute a fraction of its total revenues. Even including 1986, during which the Applicant sold the Zortman and Florida Canyon properties, such securities revenues (which included dividends and gain on sale of Pegasus) equaled only three percent of the total revenues of the Applicant over the last four years. During that four-year period, approximately 92% of Gold Reserve's total revenues came from its interest in mining operations at the Zortman Mine. These figures do not include the Applicant's equity in earnings from the Pegasus shares. Since its sale of the Zortman and Florida Canyon properties in 1986, the Applicant's cash flow has consisted solely of the proceeds from the sale of Pegasus shares acquired prior to the Exchange Transaction and interest income, which revenue has been expended on the Applicant's exploration activities and daily operations. The applicant anticipates that revenues will increase as soon as it is able to find suitable mining property to explore, develop and put into commercial production.

10. Recently, the Applicant received an offer to be acquired by Pegasus. On May 14, 1987, the parties signed a Proposed Acquisition Agreement (the "Agreement") and the parties recently signed a definitive agreement whereby the Applicant will merge with a wholly-owned subsidiary of Pegasus and the Applicant's shareholders will receive 0.3050 of a share of Pegasus common stock for each share of common stock of the Applicant. The merger is subject to the approval of the Applicant's shareholders and a favorable ruling from the Internal Revenue Service. Upon the merger of the Applicant into a subsidiary of Pegasus, Applicant will be exempt from the definition of an

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when Siebert Tanoff, the Applicant's President, resigned as President and Chairman of the Board of Pegasus.

investment company under section 3(b)(3) of the 1940 Act and Rule 3a–3 thereunder.

11. The transaction contemplated by the Agreement presents additional grounds for the Commission to grant an exemption from the requirements of the 1940 Act under Section 6(c). Upon such merger, the Applicant will be exempt from the definition of an investment company under Section 3(b)(3) and Rule 3a–3 of the 1940 Act. Accordingly, the Applicant requests that the Commission consider its proposed acquisition by Pegasus and the impact of Section 3(b)(3) of the 1940 Act and Rule 3a–3 in reviewing its exemptive application.

12. Accordingly, for the foregoing reasons, the Applicant has requested that the Commission grant an order under Section 3(b)(2) of the 1940 Act, finding and declaring that the Applicant is primarily and directly engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities. In the alternative, the Applicant has requested an order under section 6(c) of the 1940 Act granting a temporary exemption from all provisions of the 1940 Act and the rules and regulations promulgated thereunder until July 31, 1988.

Applicant's Conditions

1. Applicant will not engage in trading in securities for short-term speculative purposes; and

2. Applicant will continue to be primarily engaged in non-investment company businesses.

Temporary Order

The request for temporary exemptive relief pending a final determination on the application by the Commission has been considered, and it is found that, in view of the circumstances set forth above and in the application, that it is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act to grant an immediate temporary order as requested by Applicant. Accordingly,

It is ordered, pursuant to section 6(c) of the Act, that the application for a temporary order exempting Applicant from all provisions of the 1940 Act be and hereby is, granted, during the period from April 13, 1987 until the Commission shall make a final determination upon the request for exemption set forth in the application, subject to the undertakings to which Applicant has consented and which are set forth above and in the application.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Date: August 11, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–18866 Filed 8–17–87; 8:45am]

BILLING CODE 8010–01–M

[Rel. No. IC–15917; 812–6487]

Application for Exemption; Provident Mutual Life Insurance Co. of Philadelphia et al.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: Provident Mutual Life Insurance Company of Philadelphia ("Provident Mutual"), Provident Mutual Variable Growth Separate Account, Provident Mutual Variable Money Market Separate Account, Provident Mutual Variable Bond Separate Account, Provident Mutual Variable Managed Separate Account, Provident Mutual Variable Zero Coupon Bond Separate Account, (collectively, "Modified Separate Accounts"), Provident Mutual Variable Growth Separate Account A, Provident Mutual Variable Money Market Separate Account A, Provident Mutual Variable Bond Separate Account A, Provident Mutual Variable Managed Separate Account A, (collectively, "Scheduled Separate Accounts"), and PML Securities Company ("PML").

Relevant 1940 Act Sections: Order requested under sections 11(a) and 11(c), approving the terms of an exchange offer, under section 17(d) and Rule 17d–1 approving participation of Applicants in such offers of exchange, and under section 6(c) for exemption from the provisions of section 22(d).

Summary of Application: Applicants seek an order of the Commission approving the terms of certain offers by Applicants, to exchange variable life insurance contracts issued through the Scheduled Separate Accounts for somewhat different variable life insurance contracts issued through the Modified Separate Accounts and permitting the participation of the Applicants in such offers of exchange, and an order of exemption from the provisions of section 22(d) to permit the exchanges.

Filing Date: The application was filed on September 29, 1986 and amended on July 30, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on the application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on September 8, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send a copy to the Secretary of the SEC, along with proof of service by affidavit, or in the case of an attorney-at-law, by certificate. Request notification of the date of hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary SEC, 450 5th Street, NW., Washington, DC 20549; Provident Mutual and PML, 1600 Market Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: David S. Goldstein, Staff Attorney (202) 272–2622 or Lewis B. Reich, Special Counsel (202) 272–2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the Commission's Public Reference Branch in person or the Commission's commercial copier (800) 231–3282 (in Maryland (301) 253–4300).

Applicants' Representations

1. Provident Mutual, a mutual life insurance company, currently issues Modified Premium Variable Life Insurance Policies ("Modified Policies") through the Modified Separate Accounts. The Modified Separate Accounts are collectively registered as a single unit investment trust under the 1940 Act. Each Account invests in a single portfolio of the Market Street Fund ("Series Fund") or in one of three series of The Stripped ("Zero") U.S. Treasury Securities Fund, Provident Mutual Series A ("Zero Coupon Trust").

2. Provident Mutual offers Scheduled Premium Variable Life Insurance Policies ("Scheduled Policies") through the Scheduled Separate Accounts. It no longer issues new Scheduled Policies. The Scheduled Separate Accounts are registered as a unit investment trust under the 1940 Act and invest in the same portfolios of the Series Fund as do the Modified Separate Accounts.

3. The Modified Policy provides for the payment of both scheduled and unscheduled premium payments. Additional premiums must be paid for supplemental benefits and for Policies issued on a substandard basis. If all scheduled premiums are paid when due, the Policy cannot lapse, even if adverse

investment experience results in no cash value. Ordinarily, the Policy will lapse if scheduled premiums are not paid on or before the end of the grace period; however, in certain circumstances, the owner can skip scheduled premium payments for the following year without causing the Policy to lapse. Unscheduled premiums may be paid at any time, subject to certain limitations described in the Policy.

4. Under the Modified Policy a $1.00 processing charge is deducted from scheduled and unscheduled premiums. In addition, two other charges are deducted from each scheduled and unscheduled premium: (1) a state premium tax charge equal to 2.5% of each scheduled premium or unscheduled premium; and (2) a sales charge equal to 5% of each scheduled premium or unscheduled premium.

5. Under the Modified Policy, a monthly deduction is made from the cash value of each Policy on the policy date and on each monthly anniversary of the policy date for the cost of insurance, the monthly administrative charge, the first year monthly policy charge and the death benefit guarantee. Cost of insurance rates will be based on the insured's sex, attained age and smoking status. These rates will not be greater than the rates based on the 1980 Commissioners' Standard Ordinary Mortality Table with Smoker/Nonsmoker modifications. The monthly administrative charge is $3.25 per policy plus $.015 per $1,000 of face amount. The first year monthly policy charge is $5.00 per Policy per month. The death benefit guarantee charge is $0.01 per $1,000 of face amount per Policy per month.

6. The Modified Policy imposes, during the first nine policy years, a surrender charge consisting of a contingent deferred administrative charge and a contingent deferred sales charge if the Policy is surrendered or remains in default past its grace period. The contingent deferred administative charge will be $5.00 for each $1,000 of face amount on surrenders or lapses occurring on or before the Policy's fifth anniversary. For Policies that surrender or lapse in policy years 6, 7, 8, and 9 the deferred administrative charge will be $4.00, $3.00, $2.00, and $1.00 per $1,000 of face amount, respectively. The maximum deferred sales charge equals 25% of the first year's scheduled premium payments and 5% of the scheduled premium payments for the next four policy years (or 9% of the total scheduled premium payments for the first five policy years).

7. The Modified Policy also imposes a mortality and expense risk charge at an effective annual rate of 0.60% against the assets of all five Modified Accounts. In addition, an asset charge of up to an effective annual rate of .50% is made against the Zero Coupon Account to cover transaction costs incurred in purchasing units of the Trust.

8. Under the Modified Policy, the death benefit at any time is equal to the greatest of: (1) The face amount; (2) the face amount plus the excess of the current cash value over an amount equal to the net single premium which, if paid in one sum, would keep the Policy in force until maturity (based on certain assumptions including current cost of insurance rates, current expense charges, a death benefit equal to the face amount and an interest rate of 7.5%); and (3) the Policy's cash value times the death benefit factor which depends on the insured' sex, attained age and smoker/nonsmoker classification. This death benefit factor will be calculated using the 1980 Commissioners' Standard Ordinary Mortality Table with Smoker/Nonsmoker modifications and 4% interest. The minimum guaranteed death benefit is equal to the face amount of the Policy.

9. The Modified Policy may be surrendered at any time for its net cash surrender value, however, a partial withdrawal of cash value may be made only to the extent that the cash surrender value (the cash value decreased by any surrender charge) exceeds by $300 an amount equal to the net single premium which, if paid in one sum, would keep the Policy in force until maturity.

10. The Scheduled Policy provides for the payment of scheduled premium payments which, if paid, guarantee continuation of coverage. Additional premiums must be paid for supplemental benefits and for Policies issued on a substandard basis. Failure to pay a premium on or before the end of the grace period will cause the Policy to lapse.

11. The Scheduled Policy requires an annual administrative charge of $35. The Scheduled Policies also provide for an additional first year administrative charge of not more than $5.00 per $1,000 of face amount; a state premium tax charge of 2% of the basic (remaining) annual premium; a death benefit guarantee charge of 1.2% of the basic annual premium; and a sales charge guaranteed not to exceed 30% of the first year basic annual premium, 14% of the second year basic annual premium and 9% of the basic annual premium for the third year and each year thereafter.

12. Under the Scheduled Policy, a mortality and expense risk charge at an effective annual rate of 0.35% is made against the assets of all four Scheduled Accounts. A charge for the cost of insurance is deducted from the cash value of each Policy daily and deducted from the amount provided for investment at the end of each policy year. The amount of the charge is computed based upon the amount of insurance provided during the year, the 1958 Commissioners' Standard Ordinary Mortality Table, and the insured's attained age.

13. Under the Scheduled Policy, the death benefit is equal to the greater of: (i) The face amount; and (ii) the face amount plus; if positive, the variable adjustment amount. The minimum guaranteed death benefit is equal to the face amount.

14. The Scheduled Policy may be surrendered at any time for its cash value less any indebtedness. Partial surrenders are permitted with certain restrictions while the insured is still living. A partial surrender reduces the minimum death benefit.

15. Applicants propose to offer the owners of Scheduled Policies an exchange of their Scheduled Policies for Modified Policies. Under the exchange, a Modified Policy will be issued by Provident Mutual at the insured's then-current attained age and with an issue date equal to the date of exchange. Upon exchange, Provident Mutual will refund all charges previously deducted from the premiums paid under the Scheduled Policy and any unearned premiums in connection with optional term insurance. The refunded charges, the unearned premiums (if any), plus the cash value of the Scheduled Policy immediately prior to the exchange (the "proceeds") must be applied by the exchanging owner to the purchase of a Modified Policy. Sales charges under the Modified Policy will be waived on the amount of proceeds applied to the Modified Policy which is in excess of the premium payments made under the Scheduled Policy.

16. This exchange offer does not constitute an effort on the part of Applicants to impose additional sales charges. No sales charge will be imposed on any transferred amounts in excess of the premium payments made under the Scheduled Policy. Morover, in contrast to the front-end sales charge imposed under the Scheduled Policy, a portion of the sales charge under the Modified Policy is deferred and contingent upon the withdrawal of contract value within a specified perioid of time. Thus; the total sales charge under the Modified Policy may be less than the sales charge under the Scheduled Policy.

17. The Modified Policy offers greater investment flexibility than is available under the Scheduled Policy because the Modified Policy also enables an owner to allocate his or her investment to the Zero Coupon Trust. The Modified Policy also offers greater flexibility with respect to the payment of premiums and partial withdrawals than is available under the Scheduled Policy.

Under the Modified Policy the owner is permitted, subject to certain restrictions, to make unscheduled premium payments. Also, under certain circumstances, scheduled premium payments are not required to keep the Modified Policy in force. Under the Modified Policy an owner is permitted to make partial withdrawals.

18. The proposed exchange is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

19. The proposed exchange offer is not on a basis less advantageous to any one participant than to another, its terms are fair and reasonable, and it does not involve overreaching on the part of any of the Applicants.

20. Notwithstanding that an exchanging owner will be able to purchase the Modified Policy without the full sales charge described in the prospectus in the circumstances presented, the second sentence of section 22(d) (which provides that the subsection may not prevent a sale made pursuant to an offer of exchange permitted by section 11 of the 1940 Act) contemplated exchange offers such as this. The waiver of sales charges on amounts representing appreciation under the exchanged contract is consistent with the purpose of section 11 to prevent the imposition of additional sales charges in connection with exchanges of securities and is appropriate in the public interest and consistent with the protection of investors. Therefore, the requested exception from section 22(d) of the Act meets the statutory standards of section 6(c) of the 1940 Act.

Applicants' Conditions:

If the requested order is granted the Applicants agree to the following conditions:

1. A written offer of exchange, including a currently effective prospectus under the Securities Act of 1933 describing Provident Mutual, the Modified Accounts, the Modified Policy and the terms of the exchange offer, will be mailed to owners of Scheduled Policies.

2. The exchange offer will remain valid in any given jurisdiction for a period of six months commencing on the date which is the later of the date that the Modified Policy becomes available for purchase in that jurisdiction and the date that a Post-Effective Amendment to the Registration Statement for the Modified Policies (which provides disclosure with respect to the offer of exchange described in the application) is declared effective by the Commission.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Date: August 11, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-18861 Filed 8-17-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15913; File No. 812-6780]

Application for Exemption; Harmony Investment Trust

August 11, 1987

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Harmony Investment Trust.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from sections 15(a)(2), 18(f)(1), 22(f) and 22(g) and approval requested under section 17(d) and Rule 17d-1 thereunder

Summary of Application: Applicant seeks an order of the SEC granting exemptions from the Act to the extent necessary to implement a deferred compensation plan for its Trustees (the "Plan").

Filing Date: June 30, 1987

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on September 8, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 1350 Avenue of the Americas, New York, NY 10019.

FOR FURTHER INFORMATION CONTACT: Heidi Stam, Staff Attorney, (202) 272-3017 or Lewis B. Reich, Special Counsel, (202) 272-2061, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Harmony Investment Trust (the "Applicant"), was organized as a business trust under the laws of the Commonweaalth of Massachusetts on August 29, 1986. It is registered under the Act as an open-end, diversified management investment company.

2. On May 1, 1987, Applicant acquired the investment-related assets and liabilities of Separate Account Nos. 301, 302, 303 and 304 of The Equitable Life Assurance Society of the United States ("Equitable"), a New York mutual life insurance company.

3. Applicant currently offers its shares exclusively to separate accounts of Equitable and certain subsidiaries of Equitable, including Integrity Life Insurance Company ("Integrity") and National Integrity Life Insurance Company ("National Integrity"). The Applicant's investment adviser is Equitable Capital Management Corporation ("Equitable Capital"), an indirect wholly-owned subsidiary of Equitable and Integrity.

4. Applicant currently intends to have only disinterested Trustees. None of the six members of Applicant's present Board of Trustees is an "interested person," as defined in the Act, of Applicant, Equitable, Integrity, National Integrity, Equitable Capital, or any of Equitable's other subsidiaries. Each Trustee will receive from Applicant an annual retainer fee of $12,000 and fees of $1,000 per Board meeting (four are regularly scheduled annually), $600 per committee meeting attended and $600 for each day spent performing special services for the Applicant as may be requested by the Chairman or the President. The meeting fee paid to the Trustee acting as meeting Chairman will be increased by 50%.

5. The purpose of the Plan is to permit any Trustee to elect to defer the receipt of all or a portion of the fees he or she is due for services as a Trustee of Applicant. A Trustee may wish to defer fees in order to delay the payment of income taxes, avoid a loss or reduction of social security benefits, or for other reasons. The Applicant believes that the

Plan will better enable Applicant to attract and retain high caliber Trustees, thereby benefitting Applicant, its shareholders and ultimately the holders of contracts and policies supported by shares of Applicant.

6. Each Trustee electing to defer the receipt of fees will enter into an Agreement with Applicant and an account will be established under the Plan for each Trustee with whom Applicant has entered into an Agreement ("Account"). The deferred fees will be credited to the Account. In addition, Applicant states that it will, from time to time, credit to the Account balance interest in an amount equal to the interest rate credited to fixed income accounts under Equitable's Investment Plan for Employees, Managers and Agents ("Equitable's Investment Plan"). Applicant has reserved the right to prospectively change the rate of interest credited to Account balances. Payments of deferred fees and credited interest are to commence on an initial disbursement date specified by the Trustee, which may be the earlier of the Trustee's retirement from the Board or the attainment of a designated age. The payments will be made in monthly installments for the number of years elected by the Trustee, or until the amount credited under the Account is exhausted. Account balances will continue to be credited with interest during the pay out period.

7. The amounts credited to an Account, including deferred fees and accrued interest, will represent an unsecured obligation of Applicant to the Trustee, payable solely from the Applicant's general assets. Applicant will not purchase any of its share for any Account, nor create any specified fund or segregate any of its assets for purposes of the Plan. Trustees will have the status of general creditor. Neither the Plan, nor any Agreement or Account, will create a trust or fiduciary relationship between Applicant and any Trustee, nor will those arrangements constitute a security interest of any kind in any of Applicant's assets. No provision of the Plan requires Applicant to retain a Trustee on its Board or to pay a Trustee any level of fee income. Account balances may not be assigned, commuted or encumbered by the Trustee. The amounts to be paid under the Plan will not depend upon, or in any way reflect, the investment performance of Applicant.

8. Applicant states that the interest rate for fixed income accounts under Equitable's Investment Plan is inherently no different from a prime rate, the interest rate on U.S. Treasury Bills or other assumed rates of interest for fixed retirement-type obligations. Accordingly, Applicant submits that the interest rate under Equitable's Investment Plan will merely be used as a reference Applicant believes to be fair in crediting interest to Account balances.

9. Applicant requests exemption from sections 13(a)(2), 18(f)(1), 22(f) and 22(g) of the Act, and an order pursuant to section 17(d) and Rule 17d–1 thereunder, to the extent necessary to permit implementation of the Plan described above.

10. With respect to sections 13(a)(2) and 18(f)(1), Applicant submits that the Agreements are contractual arrangements, not in the nature of securities, and do not give rise to any of the concerns of Congress that led to the enactment of sections 13(a)(2) or 18(f)(1). In that regard, Applicant states that it will not be "borrowing" from its Trustees for securities speculation; the Agreements will not disturb the perception of an investment company as a mutual enterprise with mutuality of risk; they will not provide an opportunity for manipulation of expenses and profits; and control of Applicant will not be affected. Applicant further submits that in view of the widespread use of deferred compensation arrangements today and the immaterial amounts expected to be involved relative to Applicant's size, the Plan will not confuse investors, make it difficult for them to value Applicant's shares or convey a false impression of safety.

11. As to section 22(f), Applicant represents that the Agreements will plainly set forth applicable restrictions against the assignment, commutation and encumbrance of any amounts credited to an Account under the Plan. These restrictions, Applicant states, are designed to benefit Trustees and would not adversely affect their interests or the interests of any shareholder of Applicant.

12. Applicant's position with respect to section 22(g) is that the Agreements will not be "issued" for services, but for Applicant not having to pay Trustees' fees on a current basis. Applicant notes that the deferred fees would, in any event, be due the Trustee independent of the Plan, and that the Trustees' compensation arrangements, including the right to defer fees under the Plan, will be described in Applicant's proxy statements pursuant to the Commission's disclosure requirements.

13. Applicant submits, with respect to section 17(d) and Rule 17d–1, that the Agreements do not possess "profit-sharing" characteristics as contemplated by Rule 17d–1 and that the participating Trustees will be deferring fees they are otherwise entitled to receive on a current basis. In support of its requested order, Applicant points out that the amounts deferred will remain as assets of Applicant until eventually paid to the Trustee; there will be no segregation of any monies or assets for purposes of the Plan; and Trustees will not share in any increase or decrease in the value of amounts retained by Applicant or otherwise participate in its investment experience. Applicant further states that except for accrued interest to be paid on Account balances, the Trustee will receive the same fixed amount he or she would have received if fees were paid on a current, rather than on a deferred basis. Applicant asserts that the deferral of Trustees' fees will have a negligible effect on its assets, liabilities and net income per share, and that, under the Plan, the Trustees essentially will be in the same position as if their fees were paid on a current basis. In Applicant's view, its "participation" in the Plan would not be different from or less advantageous than that of the Trustees in all the circumstances.

14. Applicant believes that the benefits to its shareholders will outweigh any benefit that may be realized by a Trustee under the Plan because Applicant will be in a better position to attract and retain qualified Trustees if it is able to offer them the opportunity to defer receipt of their fees.

15. Applicant submits that the requested order is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–18868 Filed 8–17–87; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–87–19]

Petition for Exemption; Summary of Petitions Received, Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

BEST COPY AVAILABLE

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: September 2, 1987.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. ———, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on August 7, 1987.

Denise D. Hall,

Acting Manager, Program Management Staff.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
25254	American Cyanamid	14 CFR 135.169(a)	To allow petitioner to continue to operate certain aircraft without complying with the seat cushion flammability standards of Section 25.853 until the next replacement of the cabin interiors or until the present interiors are 5 years old, whichever occurs first.
25293	Martin Aviation, Inc	14 CFR 135.169	To allow petitioner to continue to operate certain aircraft without complying with the seat cushion flammability requirement of Section 25.285 for a period of time that would be determined.
25258	Jet East International Airlines, et al	14 CFR 25.853(c) and 121.312(b)	To allow clients of petitioner to operate all-cargo aircraft without complying with the seat cushion flammability requirements of those sections which become effective November 26, 1987.
20048	Chalk's International Airlines	14 CFR 135.175(a)	To allow petitioner to conduct day visual flight rules operations, in large transport category aircraft, to specific points in Florida, Nassau, and the Bahamas without having approved radar equipment installed in the airplanes. *Granted, July 24, 1987.*
22469	Parks College of St. Louis University	14 CFR Part 141, Appendices A, C, D, and F	To allow petitioner to graduate students after they have been trained to a performance standard instead of requiring a minimum number of flight hours. *Granted, July 24, 1987.*
22672	Air Transport Association of America	14 CFR 61.157(a) and 121.424 (a) and (b), Item I(b) of Appendix A of Part 61, and Item I(a) of Appendix E of Part 121.	To allow: (1) a pilot employee of a certificate holder, who is a candidate for a type rating in a large airplane requiring only two flight crewmembers for its operation, to use approved advanced pictorial means for the preflight visual inspection practical test requirement without conducting an actual visual inspection of the passenger cabin compartment and the exterior of the airplane and to use an approved training device for the flight deck portion of the preflight visual inspection; and (2) a pilot employee of a certificate holder who is enrolled in that certificate holder's course of instruction in a large airplane requiring only two crewmembers, to use an approved training device for the flight deck portion of the preflight visual inspection. *Granted, July 24, 1987.*

[FR Doc. 87-18770 Filed 8-17-87; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

Motor Vehicle Safety Research Advisory Committee; Request for Nominations

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for nominations.

SUMMARY: The National Highway Traffic Safety Administration is seeking nominations for initial appointment to the Motor Vehicle Safety Research Advisory Committee (MVSRAC). This Committee was established to provide information and advice to the agency on vehicle safety research, and to serve as a forum for communication of research issues. The Committee Charter was published at 52 FR 18318 (May 14, 1987).

The Committee will be composed of fifteen (15) members, two (2) from the Department of Transportation and thirteen (13) from outside the Federal Government, who are appointed by the Secretary of Transportation after consultation with private and public organizations that have an established expertise in vehicle safety research. By this notice, NHTSA is requesting those organizations and any other interested groups or persons to recommend individuals for appointment to this Committee. Each person nominated should have the appropriate technical expertise to permit effective representation of the organization or concern. Nominations will be reviewed by NHTSA, and appointments will then be made by the Secretary.

DATES: Requests for nomination forms should be submitted as indicated below and received by the agency not later than August 28, 1987. All completed nomination forms should be received by NHTSA by September 15, 1987.

ADDRESS: Any interested organization or person should write to Todd Wyatt, Executive Secretariat, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Room 5221, Washington, DC 20590, or for further information call (202) 366-2870.

Sharon Goldstein,

Director, Executive Secretariat.

[FR Doc. 87-18871 Filed 8-17-87; 8:45 am]

BILLING CODE 4910-59-M

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DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: August 12, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: Schedule S (Form 706)
Type of Review: New Collection
Title: Increased Estate Tax on Excess Retirement Accumulations
Description: Schedule S (Form 706) is used by estates to compute and pay the increased estate tax imposed by Internal Revenue Code section 4981A(d). IRS uses the information to determine whether the tax was correctly computed and paid.
Respondents: Individuals or households
Estimated Burden: 729 hours

OMB Number: 1545-0051
Form Number: 990-C
Type of Review: Revision
Title: Farmers' Cooperative Association Income Tax Return
Description: Form 990-C is used by farmers' cooperatives to report the tax imposed by section 1381. IRS uses the information to determine whether the tax is being properly reported.
Respondents: Farms, Businesses or other for-profit
Estimated Burden: 74,320 hours

OMB Number: 1545-0070
Form Number: 2350
Type of Review: Revision
Title: Application for Extension of Time to File U.S. Income Tax Return
Description: Form 2350 is used to request an extension of time to file in order to meet the bona fide residence or physical presence tests required to gain the benefits permitted under section 911. The information furnished is used to determine if the extension should be granted.
Respondents: Individuals or households
Estimated Burden: 12,924 hours

Clearance Officer: Garrick Shear (202) 566-6150, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Dale A. Morgan,
Department Reports Management Officer.
[FR Doc. 87-18798 Filed 8-17-87; 8:45 am]
BILLING CODE 4810-25-M

Internal Revenue Service

Commissioner's Advisory Group; Open Meeting

There will be a meeting of the Commissioner's Advisory Group on September 9 and 10, 1987. The meeting will be held in Room 3313 of the Internal Revenue Service Building. The building is located at 1111 Constitution Avenue, NW., Washington, DC. The meeting will begin at 9:00 A.M. on Wednesday, September 9 and 9:00 A.M. on Thursday, September 10. The agenda will include the following topics:

Wednesday, September 9, 1987

Introduction to Compliance
Unreported Income (Tax Gap)
Penalties

Thursday, September 10, 1987

Role of the Practitioner
General Discussion

The meeting, which will be open to the public, will be in a room that accommodates approximately 50 people, including members of the Commissioner's Advisory Group and IRS officials. Due to the limited conference space, notification of intent to attend the meeting must be made with Robert F. Hilgen, Executive Secretary, no later than September 1, 1987. Mr. Hilgen may be reached on (202) 566-4143 (not toll-free).

If you would like to have the committee consider a written statement, please call or write Robert F. Hilgen, Executive Secretary, 1111 Constitution Ave., NW., Room 3014, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Robert F. Hilgen, Executive Secretary, (202) 566-4143 (Not toll-free).

Lawrence B. Gibbs,
Commissioner.
[FR Doc. 87-18850 Filed 8-17-87; 8:45 am]
BILLING CODE 4830-01-M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains an extension and lists the following information: (1) The department of staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Elaine Norden, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: August 12, 1987.
By direction of the Administrator

David A. Cox
Associate Deputy Administrator for Management

Extension

1. Office of Budget and Finance (Controller)
2. Work Study Time Record (Veteran-Student Services)
3. VA Form 4-8690
4. This information is used by education institutions and the VA for posting the number of actual hours worked by a work study student under the VA Work Study Program. The information on this form is required to process payment for services rendered, similar to a time card.
5. On occasion
6. Small businesses or organizations
7. 41,520 responses
8. 10,380 hours
9. Not applicable

[FR Doc. 87-18771 Filed 8-17-87; 8:45am]
BILLING CODE 8320-01-M

Agency Information Collection Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains an reinstatement and lists the following information: (1) The department or staff office issuing the information collection requirement, (2) the title of the information collection, (3) the agency form numbers if applicable, (4) a description of the need and use, (5) frequency of reporting, (6) who will be required or asked to report, (7) an estimate of the number of response, (8) an estimate of the total number of hours needed to complete the report, and (9) an indication of whether section 3504(h) of Public Law 96–511 applies.

ADDRESSES: Copies of the regulations and supporting documents may be obtained from Patti Viers, Agency Clearance Office (732), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Elaina Norden, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: August 13, 1987.
By direction of the Administrator.

David A. Cox,

Associate Deputy Administrator for Management.

Reinstatement

1. Office of Equal Opportunity.
2. Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance, 38 CFR 18.406(c), Self-Evaluation.
3. VA Form N/A.
4. This information is needed to assist recipients of Federal financial assistance and the VA in ensuring nondiscrimination on the basis of handicap in Federally assisted programs and activities. It will be used by recipients and the VA to evaluate compliance with 29 U.S.C. 794 and implementing regulations.
5. One time basis.
6. State or local governments; Businesses or other for-profit; Non-profit institutions; and Small businesses or organizations.
7. 163 responses.
8. 28 hours.
9. Not applicable.

Reinstatement

1. Office of Equal Opportunity.
2. Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance, 38 CFR 18.422(e), Transition Plan.
3. VA Form N/A.
4. This information is needed to assist recipients of Federal financial assistance in achieving program accessibility for handicapped individuals, in cases where alteration or modification of existing facilities is necessary to ensure program accessibility. The information will be used by recipients, the VA and the public in assessing compliance with 29 U.S.C. 794.
5. One time basis.
6. State or local governments; Businesses or other for-profit; Non-profit institutions; and Small businesses or organizations.
7. 163 responses.
8. 13 hours.
9. Not applicable.

Extension

1. Office of Budget and Finance (Controller).
2. Application for Refund of Educational Contributions.
3. VA Form 4–5281.
4. This information is needed prior to processing the claimant's request for disenrollment in the Veterans Educational Assistance Program and constitutes the authorization for refund payment.
5. One-time.
6. Individuals or households; and Federal agencies or employees.
7. 78,000 responses.
8. 13,000 hours.
9. Not applicable.

[FR Doc. 87–18941 Filed 8–17–87; 8:45 am]

BILLING CODE 8320-01-M

Meeting of the Geriatrics and Gerontology Advisory Committee

The Veterans Administration gives notice under Pub. L. 92–463 that a meeting of the Geriatrics and Gerontology Advisory Committee will be held in the Administrator's Dining Room on the 10th floor of the Veterans Administration Central Office, 810 Vermont Avenue NW., Washington, DC, on September 4, 1987. The purpose of the Geriatrics and Gerontology Advisory Committee is to advise the Administrator and the Chief Medical Director relative to the care and treatment of the aging veterans, and to evaluate the Geriatric Research, Education and Clinical Centers established by the Department of Medicine and Surgery.

The morning session on September 4 will convene at 8:30 a.m. and conclude at noon. That session will be open to the public up to the seating capacity of the room. Topics to be discussed at the morning session will include an overview of the VA treatment and plans for patients with Dementia; the quality of care and life in long term care settings, the progress and impact of geriatric education, and a brief description of the VA Day Care Program. Because this capacity is limited, it will be necessary for those wishing to attend to contact Mrs. Jacqueline Holmes, Program Assistant, Office of the Assistant Chief Medical Director for Geriatrics and Extended Care, Veterans Administration Center Office (phone 202/233–3781) prior to August 22, 1987.

The afternoon session will convene at 1 p.m. and conclude at 5 p.m. This session will be closed since they will be evaluating the research, education and clinical services being provided through the Geriatric Research, Education and Clinical Centers as requested by Public Law 96–330.

The closed portion of the meetings involve: discussion, examination, reference to, and oral review of site visits, staff and consultant critiques of research protocols, and similar documents. The discussion and recommendations will deal with qualifications of personnel conducting these studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action regarding such research projects. Closure of these meetings is in accordance with subsection 10(d) of Pub. L. 92–463, as amended by Public Law 94–409, and as cited in 5 U.S.C. 552(c)(6) and (9)(B).

Dated: August 10, 1987.
By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

TENTATIVE AGENDA.—GERIATRICS AND GERONTOLOGY ADVISORY COMMITTEE, VA CENTRAL OFFICE, 810 VERMONT AVENUE, NW.

	September 4, 1987	
8:30	Opening Remarks—Introduction of new Members.	William Hazzard, MD, Chairman, GGAC

TENTATIVE AGENDA.—GERIATRICS AND GERONTOLOGY ADVISORY COMMITTEE, VA CENTRAL OFFICE, 810 VERMONT AVENUE, NW.—Continued

	September 4, 1987	
8:45	Chief Medical Director Comments.	John A. Gronvall, MD
9:00	Welcome	ACMD for Geriatrics and Extended Care
9:15	Dementia in the VA	Karen Boise
9:45	Break—Coffee	
10:00	Quality of Care and Life in LTC.	Frank Conrad, MD
10:30	Geriatric Education	Marsha Goodwin, RN
11:00	VA Day Care Program	James Kelly
11:30	Lunch	
	Closed Session	
1:00	Oral Health in Elderly Report Update.	Robert Rhyne, DDS
	GEU Update	William Hazzard, MD
1:30	Gainesville GRECC	
2:30	Break	
2:45	Future of GGAC	
	Has Mission Been Accomplished?.	
	Is Termination Eminent?.	

[FR Doc. 87-18840 Filed 8-17-87; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 159
Tuesday, August 18, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of subsections (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Wednesday, August 12, 1987, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Mr. Robert J. Herrmann, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Memorandum re: Petition requesting the Corporation to issue a regulation establishing criteria for determining when a bank being considered for open bank assistance under section 13(c) of the Federal Deposit Insurance Act has met the "essentially test" of that statute.

By the same majority vote, the Board further determined that no earlier notice of this change in the subject matter of the meeting was practicable.

The Board further determined, by the same majority vote, that Corporation business required the withdrawal from the agenda for consideration in open session and the addition to the agenda for consideration at the Board's closed meeting held at 2:30 p.m. the same day, of the application of Gateway American Bank of Florida, a proposed new bank to be located at 1451 N.W. 62nd Street, Fort Lauderdale, Florida, for Federal deposit insurance.

In voting to move this matter from open session to closed session, the Board further determined, by the same majority vote, that the public interest did not require consideration of the matter in a meeting open to public observation; that the matter could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)); and that no earlier notice of this change in the subject matter of the meeting was practicable.

Dated: August 13, 1987.
Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 87-18875 Filed 8-14-87; 9:35 am]
BILLING CODE 6714-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

August 12, 1987

TIME AND DATE: 10:00 a.m., Wednesday, August 19, 1987.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Closed [Pursuant to 5 U.S.C. 552b(c)(10)].

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Emery Mining Corporation,* Docket Nos. WEST 86-35-R, WEST 86-36-R. (Issues include whether the violations occurred as a result of the operator's unwarrantable failure.)

2. *Youghiogheny & Ohio Coal Company,* Docket No. LAKE 86-58. (Issues are same as above.)

It was determined by a unanimous vote of Commissioners that these items be considered in closed session.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5629.

Jean H. Ellen,
Agenda Clerk.
[FR Doc. 87-18878 Filed 8-14-87; 10:58 am]
BILLING CODE 6735-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

August 12, 1987

TIME AND DATE: 10:00 a.m., Thursday, August 20, 1987.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Closed [Pursuant to 5 U.S.C. 552b(c)(10)].

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. White Country Coal Corporation, Docket No. LAKE 86-59-R, etc. (Issues include consideration of requirements for taking enforcement actions under Section 104(d) of the Mine Act, 30 U.S.C. 814(d).)

2. Greenwich Collieries, Docket No. PENN 85-188-R, etc. (Issues are same as above.)

It was determined by a unanimous vote of Commissioners that these items be discussed in closed session.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5629.

Jean H. Ellen,
Agenda Clerk.
[FR Doc. 87-18879 Filed 8-14-87; 10:58 am]
BILLING CODE 6735-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, August 24, 1987.

PLACE: Marriners S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: August 14, 1987.
William W. Wiles,
Secretary of the Board.
[FR Doc. 87-18965 Filed 8-14-87; 3:56 pm]
BILLING CODE 6210-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of August 17, 24, 31, and September 7, 1987

PLACE: Commissioners' Conference Room, 1717 H Street NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of August 17

No commission meetings

Week of August 24—Tentative

No commission meetings

Week of August 31—Tentative

Wednesday, September 2

10:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Thursday, September 3

2:00 p.m.
Briefing on Status of Decommissioning Activities (Public Meeting)

Week of September 7—Tentative

Wednesday, September 9

2:00 p.m.
Briefing on Performance of Sandia Containment Tests (Public Meeting)

Thursday, September 10

2:00 p.m.
Discussion of Integration of AEOD Reports into the Regulatory Process (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Robert McOsker (202) 634–1410.

Robert B. McOsker,
Office of the Secretary.
August 13, 1987.

[FR Doc. 87–18952 Filed 8–14–87; 3:38 pm]
BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [52 FR 28509 July 30, 1987].

STATUS: Closed/open meetings.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Friday, July 24, 1987.

CHANGE IN THE MEETING: Additional meeting/deletion.

The following item was considered at a closed meeting on Thursday, August 6, 1987, at 9:00 a.m.

Status report of judicial proceeding.

The following item was not considered at an open meeting on Thursday, August 6, 1987, at 10:00 a.m.

Consideration of whether to propose changes in Forms 10–K and 10–Q that would require registrants, after reasonable inquiry, to provide information not filed in Form 3 and 4 reports required during the reporting period and identify any of their directors, officers, or ten percent security holders that have failed to file all of their Form 3 and 4 reports required during the reporting period in a timely manner. Copies of the Form 3 and 4 would be required to be sent to the registrant to aid its monitoring of such filings. In addition, the Commission will consider proposing to condition the safe harbor of Rule 144 upon the seller having filed all required Forms 3 and 4 in a timely manner during the 12 months preceding filing of Form 144 and any sales pursuant to the Rule. Form 144 would be amended to include a positive representation concerning the seller's compliance with Section 16(a) of the Securities Exchange Act of 1934. For further information, please contact Brian Lane at (202) 272–2589.

Commissioner Grundfest, as duty officer, determined that Commission business required the above changes.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Douglas Michael at (202) 272–2467.

Jonathan G. Katz,
Secretary.
August 13, 1987.

[FR Doc. 87–18966 Filed 8–14–87; 3:59 pm]
BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of August 17, 1987:

A closed meeting will be held on Wednesday, August 19, 1987, at 2:30 p.m. An open meeting will be held on Thursday, August 20, 1987, at 10:00 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Peter, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Wednesday, August 19, 1987, at 2:30 p.m., will be:

Institution of an administrative proceedings of an enforcement nature.
Settlement of injunctive actions.
Settlement of administrative proceedings of an enforcement nature.
Litigation matters.
Formal order of investigation.
Institution of injunctive actions.
Opinion.

The subject matter of the open meeting scheduled for Thursday, August 20, 1987, at 10:00 a.m., will be:

Consideration of whether the Commission should agree in principal to the revision of Investment Advisers Act Release No. 770 (August 31, 1981) that would update and clarify the views expressed and to state that the revised release was developed jointly by the staff of the Division of Investment Management and the North American Securities Administrators Association, Inc. in order to provide uniform interpretations of federal and state investment adviser laws as they apply to financial planners and other persons. For further information, please contact A. Thomas Smith at (202) 272–2810.

As times changes in Commission priorities require alternations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Bernard Black at (202) 272–2466.

August 12, 1987.

Jonathan G. Katz,
Secretary.

[FR Doc. 87–18865 Filed 8–13–87; 4:29 pm]
BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 52, No. 159
Tuesday, August 18, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-930-07-4212-11; N-43395]

Realty Action; Lease/Purchase for Recreation and Public Purposes; Clark County, NV

Correction

In notice document 87-16621 appearing on page 27591 in the issue of Wednesday, July 22, 1987, make the following correction:

In the second column, under **Mount Diablo Meridian, Nevada,** in the fifth line, "E½SE¼" should read "E½SW¼".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 601

Statement of Procedural Rules

Correction

In proposed rule document 87-16836 beginning on page 28000 in the issue of Monday, July 27, 1987, make the following corrections:

1. On page 28001, in the first column, in the ninth line, "(c)(4)(viii)" should read "(c)(3)(viii)".

§ 601.702 [Corrected]

2. On the same page, in the second column, in the second line "§ 601.702" should read "§ 601.701".

3. On page 28002, in the second column, in § 601.702(c)(4), in the second line, "(1)" should read "(i)".

4. On page 28003, in the second column, in § 601.702(c)(7)(1)(ii), in the 25th line, after "request" insert ". Any fees involved in complying with the request".

5. On page 28004, in the first column, in § 601.702(c)(11), in the 11th line, "is" should read "in".

6. On the same page, in the second column, in § 601.702(d)(2), in the third line, "no" should read "not".

7. On page 28005, in the second column, in § 601.702(f)(2)(iv) in the second line, "solely" was misspelled.

8. On page 28006, in § 601.702(f)(3)(i)(C), in the first column, in the third line "public" was misspelled.

9. On the same page, in § 601.702(f)(3)(i)(E), in the first column, in the first line "requester" was misspelled.

10. On the same page, in § 601.702(f)(5)(i)(D), in the third column, in the fourth line, insert "cost" after "actual".

In § 601.702(g) make the following corrections:

11. On page 28008, in the first column, under "Augusta District", in the ninth line, "64" should read "68".

12. On the same page, in the third column, under "Baltimore District", in the fifth line, "Office" should read "Officer".

13. On the same page, in the same column, under "Newark District", in the fifth line, "Office" should read "Officer".

14. On page 28009, in the first column, under "Philadelphia Service Center", in the fourth line, "Request" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Delegation Order No. 77 (Revision 21)]

Delegation of Authority

Correction

In the notice document beginning on page 26624 in the issue of Wednesday, July 15, 1987, make the following corrections:

1. On the same page, in the third column, the seventh line should read--

Effective date: June 29, 1987.

2. On page 26625, the file line at the end of the document was omitted and should have appeared as follows:

[FR Doc. 87-16040 Filed 7-14-87; 8:45 am]

BILLING CODE 1505-01-D

federal register

Tuesday
August 18, 1987

Part II

Department of Energy

48 CFR Part 970

Acquisition Regulations on Management and Operating Contractor Purchasing; Proposed Rule

DEPARTMENT OF ENERGY

48 CFR Part 970

Acquisition Regulations on Management and Operating Contractor Purchasing

AGENCY: Department of Energy.
ACTION: Proposed rule.

SUMMARY: The Department of Energy (DOE) today proposes a rule which will provide a standard for the purchasing activities of DOE's management and operating (M&O) contractors. DOE's M&O contractors are employed in the operation of Government-owned facilities, the design and production of nuclear weapons, energy research and development, and the performance of other services. In carrying out these various missions, these M&O contractors perform large numbers of purchasing transactions for all types of supplies, property, and equipment, and services. The purchasing activities of these M&O contractors are not generally subject to the Federal Acquisition Regulation (FAR). Currently, those purchasing activities are regulated principally in the Department of Energy Acquisition Regulation (DEAR) at Subpart 970.44. Many applicable standards are, however, discussed throughout DEAR Part 970. The purposes of this proposed rule are to centralize the DEAR coverage in one subpart; to make that coverage comprehensive; and to update and appropriately alter the existing provisions applicable to purchasing by M&O contractors.

DATE: Written comments must be received on or before October 2, 1987.

ADDRESS: Written comments must be addressed to: Robert M. Webb, MA–421, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Robert M. Webb, Department of Energy, Office of Policy, MA–421, 1000 Independence Avenue SW., Washington, DC 20585, Telephone (202) 586–8247 or (FTS) 896–8247.
Paul Sherry, Department of Energy, Office of the Assistant General Counsel for Procurement and Finance, GC–34, 1000 Independence Avenue SW., Washington, DC 20585, Telephone (202) 586–1526 or (FTS) 896–1526.

SUPPLEMENTARY INFORMATION:

I. Background
A. Discussion
B. Section-by-Section Analysis
II. Procedural Requirements
A. Review Under Executive Order 12291
B. Review Under Regulatory Flexibility Act
C. Review Under Paperwork Reduction Act
D. Public Hearing
III. Public Comments

I. Background

A. Discussion

Throughout the history of American involvement in the development of atomic energy and nuclear weapons, dating back to the Manhattan Engineer District in World War II, the United States has relied upon private entities, whether educational institutions, non-profit organizations, or commercial businesses, to furnish the necessary technological and management expertise to bring the nation's nuclear program to fruition. The Atomic Energy Commission (AEC), whose mission it was to oversee the atomic energy and nuclear program, and its successor agencies, the Energy Research and Development Administration (ERDA), and the Department of Energy (DOE), has established the goals and direction of the necessary research, development, and production activities in the areas of nuclear weapons, nuclear energy, and non-nuclear energy. The vehicles by which the non-Federal entities provided their knowledge and expertise were management and operating contracts (M&O). Under these contracts, the Government provided for use of Federal facilities and gave these contractors significant latitude in achieving the designated goals in the assigned direction. A major contribution to their ability to attain these goals has been the fact that these contractors are not Federal entities and, therefore, are not directly subject to the bulk of the statutes and regulations that govern the conduct of Federal agencies.

The AEC (and subsequently, ERDA and DOE) devoted portions of its procurement regulations to specifying to the requirements of statute, Executive order, Federal regulation, and agency policy and regulation to which such contractors are to be held responsible. Those regulations are currently located in Part 970 of the Department of Energy Acquisition Regulation (DEAR). One major function necessary to the accomplishment of the mission of the management and operating contractor is its purchasing. Some of the applicable provisions concerning purchasing are currently located at Subpart 970.44.

The following proposed rule is intended to replace the existing coverage of subcontracting and purchasing by DOE M&O contractors. This rulemaking has, as one objective, the consolidation of all DEAR coverage on this subject. In addition, it is an attempt to provide a single baseline for the requirements of M&O purchasing systems and for the review of those purchasing systems by the individual management and operating contractors and by cognizant Federal oversight organizations, both within and outside of DOE. Finally, this proposed revision is intended to update the existing coverage and reflect such things as the effect of recent legislation, e.g., the Competition in Contracting Act of 1984 (Pub. L. 98–369), which, while it does not apply directly to purchasing by management and operating contractors, affects DOE policy toward and oversight of M&O purchasing activities.

The General Accounting Office (GAO) has, for more than 40 years, heard protests by disappointed competitors for subcontract awards. Over time an analytical concept was developed by GAO to assess the propriety of such awards by M&O contractors. That concept became known as "the Federal norm." By that standard, M&O prime contractors are judged by whether their subcontracting practices achieved the intent and spirit of the requirements otherwise applicable to the Federal purchasing system, i.e., a fair and competitive purchase at a reasonable price, not whether they met the "letter" of the Federal and DOE procurement regulations. GAO has over the years assumed jurisdiction over fewer and fewer subcontractor protests until now, by its own regulations, its jurisdiction is limited to purchases by Federal prime contractors that are "by or for" the United States. Upon that basis, GAO has assumed jurisdiction over purchases made by DOE M&O contractors. Today's proposal reflects DOE's application of the "Federal norm" concept, as it has evolved, to purchasing by its M&O contractors.

B. Section-By-Section Analysis

Part 970

The following description of the changes proposed to be made to Part 970 demonstrates that much of the existing coverage dealing with M&O purchasing is spread throughout that part. This description is not comprehensive, but is intended as a discussion of any meaningful changes. In all such cases the proposed location of the material is noted, and there is a reference to the current location of the material. When the material in 970.50 is discussed, any meaningful changes to the existing material, as relocated, are discussed. That discussion includes a parenthetical reference to the source of the material.

The subject matter of Subpart 970.08 is treated at subsection 970.5004–1 as it relates to management and operating contractors. The subject matter of section 970.0407 is treated at subsection 970.5004–2.

The subject matter of section 970.0611 is treated at subsection 970.5004–5.

The subject matter of section 970.0670 is treated at subsection 970.5004–6.

The subject matter of section 970.0671 is treated at subsection 970.5004–7.

A new paragraph (b) has been added in order to provide for the more efficient purchasing of general utility items.

The subject matter of section 970.0672 is treated at subsection 970.5004–8.

The subject matter of section 970.0902 is treated at subsection 970.5004–9.

The portion of section 970.0905 relating to purchasing by management and operating contractors is moved to 970.5004–10.

Paragraphs (b) and (c) of subsection 970.1508–1 are treated at subsection 970.5004–11.

The subject matter of paragraphs (a)–(f) of section 970.1901 is treated at subsection 970.5004–12. Paragraph (g) has been altered and is treated principally at 970.5003(b)(3)(v).

The subject matter of section 970.2001 is treated at subsection 970.5004–13.

The subject matter of section 970.2202 is treated at subsection 970.5004–14.

The subject matter of section 970.2203 is treated at subsection 970.5004–15.

The subject matter of section 970.2204 is treated at subsection 970.5004–16.

Paragraph (a) of section 970.2206 is treated at subsection 970.5004–17.

The portion of section 970.2208 relating to purchasing by management and operating contractors is treated at subsection 970.5004–18.

The portion of section 970.2210 relating to purchasing by management and operating contractors is treated at subsection 970.5004–19.

The subject matter of section 970.2213 is treated at subsection 970.5004–20.

The subject matter of section 970.2214 is treated at subsection 970.5004–41.

The subject matter of section 970.2501 is treated at subsection 970.5004–22.

The subject matter of sections 970.2800 through 970.2805 is treated at subsection 970.5004–24.

The portion of section 970.2903 relating to purchasing by management and operating contractors is treated at subsection 970.5004–26.

The portion of section 970.3101–4 relating to purchasing by management and operating contractors is treated at subsection 970.5004–27.

The current references to Subpart 970.44 and section 970.4404 in subsection 970.3102–15 (a) and (b) are changed to conform to the new citations.

The subject matter of sections 970.3600, 970.3801, 970.3802, 970.3804, 970.3807, and 970.3808 is treated in subsection 970.5004–28. The subject matter of sections 970.3803 and 970.3805 is treated in subsection 970.5004–16.

Subpart 970.44 is deleted and its subject matter is treated in the new comprehensive Subpart 970.50.

The subject matter of Subpart 970.46 is treated at subsection 970.5004–29.

The subject matter of paragraph (b) of section 970.4901 is treated at subsection 970.5004–30.

Section 970.5001 contains material currently at 970.4401. The new provision updates and expands the existing provision.

Section 970.5002 contains the material currently at 970.4402. The new provision assigns the overall responsibility for oversight of performance of management and operating contractors, including their purchasing activities, to the cognizant DOE Head of Contracting Activity (HCA). In this regard, 970.5002 makes clear that, except in specified sections, HCA means HCA or duly authorized representative of the HCA. The authorities and duties of the HCA in sections 970.5004–8, 970.5004–9(b), 970.5004–22, and 970.0008 are those of the HCA alone. This section also clarifies, updates, and expands the existing provision.

Section 970.5003 contains the material currently at 970.4403. This material has been rewritten to reflect the balance DOE desires to be achieved in the purchasing practices of its management and operating contractors. On the one hand, a management and operating contractor is expected to establish a purchasing system that reflects its private sector experience, creativity, expertise, and initiative while supporting the purchasing demands of its contractual mission. This private sector-based experience and practice must be tempered to meet the requirements of and to achieve the goals of applicable Federal laws, regulations and agency policies.

In this section the changes begin primarily in paragraph (b). The new provisions recognize the existence of the "Federal norm." That concept is an evolving analytical tool which has been used by the General Accounting Office (GAO) in its resolution of protests against the award of subcontrats under Federal prime contracts, recently limited to DOE M&O contracts. That concept recognizes that the Federal laws and regulations governing the process by which a prime contract is awarded by a Federal agency do not apply *per se* to the awarding of subcontracts under that prime. However, the process used by Federal prime contractors whose purchasing comes within GAO's bid protest jurisdiction must accomplish the intended result of a Federal procurement, i.e., result in award based upon fair and equitable treatment of all bidders/proposers and based upon the most advantageous offer/proposal, price and other factors considered. As stated by the Comptroller General in *Piasecki Aircraft Corporation*, B–190178, July 6, 1978, 78–2 CPD ¶10 at 10:

> It is our view that while Federal statutes and regulations which apply to direct procurement by Federal agencies may not apply *per se* to procurement by prime operating contractors, [case cited], the prime contractor's procurements must be consistent with and achieve the same policy objectives as the Federal statutes and regulations. This we believe, is what is meant by the "Federal norm."

The principles enumerated in subparagraphs (b)(1) through (b)(3) of this section are not attempt to restate the "Federal norm" tenets as espoused by GAO but rather represent a statement of subcontracting principles that, in the opinion of DOE, if properly implemented by management and operating contractors, would allow them to efficiently utilize their private sector purchasing expertise in the award of subcontracts while meeting the tests of the "Federal norm."

Specifically, the detailed purchasing procedure descriptions stated currently in 970.4403(b)(1) and (b)(2) have been deleted in favor of the necessary, systemic requirements of the carrying out of an individual purchase. In recognition of the Competition in Contracting Act of 1984 and its emphasis on competition in Federal procurements, DOE is emphasizing competition and fairness in the new provisions. The principles stated are intended to achieve meaningful competition and fair and equitable treatment of all bidders/proposers. Latitude is provided management and operating contractors in designing their purchasing systems, as overseen by the cognizant HCA, in establishing "small purchase" thresholds for simplified purchasing procedures, and in the documentation standards for justifying noncompetitive awards.

Section 970.5004 is intended as a comprehensive listing of required subject matter to be treated in the ways designated in appropriate subcontracts. The basis for many of these subjects is their current coverage in the DEAR and,

in almost all of those cases, the current DEAR Part 970. This list is intended as a DOE-wide standard against which DOE contracting officers will review the treatment of these subjects in management and operating contractors' purchasing systems and methods.

The coverage of subsection 970.5004–7 (from 970.0871) has been altered by the addition of paragraph (b) to reflect open market pricing or delivery advantages that may be available.

The coverage of subsections 970.5004–8 (from 970.0872) and 970.5004–9 (from 970.0902) has been clarified and expanded.

The coverage of subsection 970.5004–10 (from a portion of 970.0905) has been clarified. Subsection 970.5004–11 (from 970.1506–1) has been updated.

The coverage of subsection 970.5004–12 (from 970.19) has remained the same except for the deletion of the existing paragraph (g) requiring the use of the *Commerce Business Daily* (CBD) for proposed purchases expected to exceed $100,000. This coverage has been deleted and the use of the CBD is discussed instead at 970.5003(b)(3)(v). Paragraph (e) allows set asides for small, disadvantaged business, in accordance with the M&O contractor's purchasing system and methods.

Subsection 970.5004–27 (from a portion of 970.3101–4) has been clarified to assure the DOE contracting officer an opportunity to participate in the resolution of audit questions by the M&O contractor before settlement with the subcontractor.

Subsection 970.5004–28 (from 970.3600, 3601, 3602, 3604, 3607, and 3608) has been clarified and expressly provides for a "Federal norm" standard application of the "Brooks Architect-Engineer (A-E) Act" (40 U.S.C. 541–544) procedures to the A-E purchasing process of M&O contractors.

Subsection 970.5004–30 (from 970.4901(b)) has been expanded to allow discretion in the design of termination provisions in subcontracts awarded by M&O contractors.

The portions of section 970.5004 which follow subsection 970.5004–32 are additions in order to assure a comprehensive listing, including treatment of the recently enacted Anti-Kickback Enforcement Act of 1986 (Pub. L. 99–634).

Section 970.5005 (from 970.4404) has been clarified and updated.

Section 970.5006 (from 970.4405) has been significantly altered to allow the design of a procedure responsive to the substantive issues that arise in treatment of mistakes in bid rather than to merely follow a prescribed, detailed procedure.

Section 970.5007 (from 970.4406) has been relocated with no substantive or other change. The review and approval provisions under 970.5006 reflect clarification and systematization of the existing coverage of 970.4407. The responsibilities of the Head of the Contracting Activity are clearly stated and an emphasis is placed upon documentation to provide cognizant DOE operations offices a basis for review and approval of individual subcontracting actions above designated thresholds and for periodic and systematic review of the implementation of the contractors' purchasing systems and methods in transactions below the threshold.

Section 970.5009 (from 970.4408) has been clarified. Section 970.5010 (from 970.4409) calls, in paragraph (a)(3), for the use of "an independent third party" as an "umpire" in resolution of disagreements over the quantity of material.

The clause at 970.5204–22 has been clarified and updated to more closely approximate the system created by the changes discussed above.

II. Procedural Requirements

A. Review Under Executive Order 12291

This proposed rule is exempt from review by the Office of Management and Budget under E.O. 12291 of February 17, 1981, pursuant to an exemption for procurement regulations as discussed in OMB Bulletin No. 85–7, dated December 14, 1984.

B. Review Under Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (the Act), 5 U.S.C. 601–612, requires, in part, that an agency prepare an initial regulatory flexibility analysis for any rule, unless it determines that the rule will not have a "significant economic impact" on a substantial number of small entities. This proposed rule concerns the purchasing policies and procedures used by DOE M&O contractors. While many subcontractors may be small businesses, the proposed rule imposes no significant burdens and will have no significant impact on small entities. Therefore, as required by section 603(b) of the Act, DOE certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities and, accordingly, no regulatory flexibility analysis has been prepared.

C. Review Under Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed by this proposed rulemaking. Accordingly, no OMB clearance is required by section 350(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*).

D. Public Hearing

The Department has concluded that this proposed rule does not involve a substantial issue of fact or law and that the proposed rule should not have substantial impact on the nation's economy or large numbers of individuals or businesses. Therefore, the Department does not plan to hold a public hearing on this proposed rule.

III. Public Comments

Interested persons are invited to participate in this rulemaking process by submitting data, views, or arguments with respect to the proposed revisions to the Department of Energy Acquisition Regulation set forth in this notice. All written comments received will be assessed and fully considered prior to publication of the final regulation resulting from this rulemaking process.

List of Subjects in 48 CFR Part 970

Management, Operating contracts.

The following redesignation table shows the location, in the proposed regulation, of material treated in the existing regulation.

REDESIGNATION TABLE

Old section	New section
970.03	970.5004–1
970.0407	970.5004–2
970.0811	970.5004–3
970.0870	970.5004–6
970.0871	970.5004–7
970.0872	970.5004–8
970.0902	970.5004–9
970.0905	970.5004–10
970.1506–1(b)	970.5004–11
970.1901(a)–70	970.5004–12
970.1901(g)	970.5003(b)(3)(v)
970.2001	970.5004–13
970.2003	970.5004–15
970.2204	970.5004–16
970.2206(a)	970.5004–17
970.2206	970.5004–18
970.2210	970.5004–19
970.2213	970.5004–20
970.2214	970.5004–21
970.2501	970.5004–22
970.2800 through 970.2806	970.5004–24
970.2903	970.5004–25
970.3101–4	970.5004–27
970.3600, 970.3601, 970.3602, 970.3604, 970.3607 and 970.3608	970.5004–28
970.3603 and 970.3605	970.5004–16
970.3606	970.3601
970.4401	970.5001
970.4402	970.5002
970.4403	970.5003
970.4404	970.5005
970.4405	970.5006
970.4406	970.5007
970.4407	970.5008
970.4408	970.5009
970.4409	970.5010
970.46	970.5004–29
970.4901(b)	970.5004–30

For the reasons set out in this preamble, Part 970 of Title 48 of the Code of Federal Regulations is proposed to be amended, as set forth below.

Issued in Washington, DC July 27, 1987.

Berton J. Roth,

Director, Procurement and Assistance Management Directorate.

PART 970—[AMENDED]

1. The authority citation for Part 970 is revised to read as follows:

Authority: Sec. 644 of the Department of Energy Organization Act (42 U.S.C. 7254) and Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)).

Subpart 970.03 [Removed and reserved]

2. Subpart 970.03 is removed and reserved.

970.0407 [Amended]

3. Section 970.0407 is amended by putting a period after "management and operating contracts" in the first sentence and removing the remainder of the sentence.

970.0611, 970.0670, 970.0671, 970.0672, and 970.0902 [Removed]

4. Sections 970.0611, 970.0670, 970.0671, 970.0672, and 970.0902 are removed.

970.0905 [Amended]

5. Section 970.0905 is amended by removing the paragraph designation "(a)" from the first paragraph; removing all of the first paragraph after the third complete sentence; and removing paragraph (b).

970.1508–1 [Amended]

6. Section 970.1508–1 is amended by removing the paragraph designation "(a)" from the first paragraph and removing paragraph (b) and (c).

970.1901 [Amended]

7. Section 970.1901 is amended by removing paragraphs (a) through (g) and by removing the paragraph designation "(h)" from the remaining paragraph.

Subpart 970.20 [Removed and reserved]

8. Subpart 970.20 is removed and reserved.

970.2202, 970.2203, and 970.2204 [Removed]

9. Sections 970.2202, 970.2203, and 970.2204 are removed.

970.2206 [Amended]

10. Section 970.2206 is amended by removing paragraph (a) and by removing the paragraph designation "(b)" from the remaining paragraph.

970.2208 [Amended]

11. Section 970.2208 is amended by inserting a period after "management and operating contracts" the first time it appears in the paragraph and by removing the remainder of the paragraph.

970.2210 [Amended]

12. Section 970.2210 is amended by removing the paragraph designation "(a)"; removing all of the first paragraph after the first sentence; and removing all of paragraph (b).

970.2213 and 970.2214 [Removed]

13. Sections 970.2213 and 970.2214 are removed.

Subpart 970.25 [Removed and reserved]

14. Subpart 970.25 is removed and reserved.

970.2800, 970.2801, 970.2803, 970.2804, and 970.2805 [Removed]

15. Sections 970.2800, 970.2801, 970.2803, 970.2804, and 970.2805 are removed.

970.2903 [Amended]

16. Section 970.2903 is amended by removing the paragraph designation "(a)" from the first paragraph; by inserting a period after "management and operating contracts" the first time it appears and removing the remainder of the paragraph; and by removing paragraph (b).

970.3101–4 [Amended]

17. Subsection 970.3101–4 is amended by removing the paragraph designation "(a)" from the first paragraph; by removing the remainder of the paragraph after the fourth sentence; and by removing paragraph (b).

970.3102–15 [Amended]

18. Subsection 970.3102–15 is amended by substituting "970.50" in place of "970.44" as it appears twice in paragraph (a) and by substituting "contractor-affiliated sources (See 970.5005)" for "contractor-controlled sources (See 970.4404)" in the title of paragraph (b).

970.3600, 970.3601, 970.3602, 970.3603, 970.3604, and 970.3605 [Removed]

19. Sections 970.3600, 970.3601, 970.3602, 970.3603, 970.3604, and 970.3605 are removed.

970.3606 [Redesignated as 970.3601]

20. Section 970.3606 is redesignated as section 970.3601.

970.3607 and 970.3608 [Removed]

21. Sections 970.3607 and 970.3608 are removed.

Subparts 970.44 and 970.46 [Removed]

22. Subparts 970.44 and 970.46 are removed.

970.4901 [Amended]

23. Section 970.4901 is amended by removing "principles" from the title, by removing the paragraph designation "(a)" from the first paragraph; and by removing paragraph (b).

24. Subpart 970.50 is proposed to be added as follows:

Subpart 970.50—Management and Operating Contractor Purchasing

Sec.

970.5001 General.
970.5002 DOE responsibility.
970.5003 Policies.
970.5004 Conditions of purchasing by management and operating contractors.
970.5004–1 Contingent fees.
970.5004–2 Record retention requirements.
970.5004–3 Acquisition of utility services.
970.5004–4 [Reserved].
970.5004–5 Leasing of motor vehicles.
970.5004–6 Strategic and critical materials.
970.5004–7 Purchase of special items.
970.5004–8 Purchase or lease determinations.
970.5004–9 Qualifications requirements.
970.5004–10 Organizational conflicts of interest.
970.5004–11 Cost or pricing data.
970.5004–12 Small business and small disadvantaged business concerns.
970.5004–13 Labor surplus area concerns.
970.5004–14 Convict labor.
970.5004–15 Contract Work Hours and Safety Standards Act (other than construction contracts).
970.5004–16 Labor standards for contracts involving construction.
970.5004–17 Walsh-Healey Public Contracts Act.
970.5004–18 Equal employment opportunity.
970.5004–19 Service Contract Act.
970.5004–20 Special disabled and Vietnam Era veterans.
970.5004–21 Application of environmental and occupational safety and health programs.
970.5004–22 Buy American.
970.5004–23 Patents, data, and copyrights.
970.5004–24 Bonds and insurance.
970.5004–25 Indemnification.
970.5004–26 Taxes.
970.5004–27 Audit of subcontractors.
970.5004–28 Construction and A–E contracts.
970.5004–29 Quality assurance.
970.5004–30 Termination.
970.5004–31 Authorization for subcontractor's use of Government supply sources.
970.5004–32 Safeguarding classified information.
970.5004–33 Cost Accounting Standards.
970.5004–34 Clean air and water.

Sec.
970.5004–35 Air transportation by U.S.-flag carriers.
970.5004–36 Acquisition of real property.
970.5004–37 Management, acquisition, and use of information resources.
970.5004–38 Privacy Act.
970.5004–39 Officials not to benefit.
970.5004–40 Subcontractor reporting systems.
970.5004–41 Employment of the handicapped.
970.5004–42 Unclassified controlled nuclear information.
970.5004–43 Government property.
970.5004–44 Foreign travel.
970.5004–45 Anti-Kickback Enforcement Act of 1986.
970.5004–46 Additional flowdown and extension provisions.
970.5005 Acquisition from contractor-affiliated sources.
970.5006 Procedures for handling mistakes relating to management and operating contractor purchases.
970.5007 Protest of management and operating contractor procurements.
970.5008 Review and approval.
970.5009 Advance notification.
970.50010 Nuclear material transfers.

Subpart 970.50—Management and Operating Contractor Purchasing

970.5001 General.

(a) The Department of Energy contracts for the management and operation of DOE facilities, the design and production of nuclear weapons, energy research and development, and the performance of other services. These management and operating contractors have been selected for their technical and managerial expertise and are expected to bring to bear these technical and managerial skills to accomplish the significant Federal mission(s) described in their contracts with, and work plans approved by, DOE.

(b) The purchasing activities of management and operating contractors are one area in which the particular skills of the contractor will be brought to bear in order to more readily accomplish the contractors' assigned missions. The contractors' corporate contracting procedures, therefore, for the basis for the development of purchasing systems and methods that will comply with their contract with DOE and this subpart.

(c) Competition is fundamental to M&O purchasing.

(d) The Federal Acquisition Regulation generally is not directly applicable to the purchasing activities of management and operating contractors. There are, however, certain Federal laws, Executive Orders and Federal and DOE regulations which do pertain to and apply to purchases by management and operating contractors and thus should be reflected in the contractor's purchasing system and methods. These requirements are identified in this subpart.

970.5002 DOE responsibility.

(a) In the Department of Energy, overall responsibility for the oversight of the performance of management and operating contractors, including their purchasing activities, rests with the cognizant DOE contracting activity and, in particular, the Head of Contracting Activity [HCA]. (For the purposes of this subpart, the term "Head of Contracting Activity" includes his or her duly authorized representative except when the context is one of approval of a specific action, *i.e.*, 970.5004–8, 970.5004–9(b), 970.5004–22 and 970.5008, in which cases the approval authority is limited to the Head of Contracting Activity alone.) Contracting officers are, however, responsible for the day-to-day oversight of purchasing activities by management and operating contractors, including contractors' conformance with this subpart and their contracts, and for determining whether those purchasing activities provide timely and effective support to DOE programs.

(b) In carrying out this responsibility, HCAs shall:

(1) Require management and operating contractors to maintain written descriptions of their individual purchasing systems and methods and further require that not less often than once every three years the entire written description is submitted for review and approval; and

(2) Require that any changes to the management and operating contractor's written descriptions having any substantive impact upon the contractor's subcontracting practices are submitted for review prior to issuance;

(3) Review individual purchasing actions of certain types or above stated dollar levels to assure that management and operating contractors implement DOE policies and requirements, as defined in this subpart, in accordance with the contractor's approved system and methods;

(4) Make periodic appraisals (e.g. Contractor Purchasing System Review (CPSR) and Surveillance Review) of the contractor's management of the purchasing function in accordance with established criteria (See Subpart 944.3);

(c) In performing the reviews required by paragraphs (b)(1) and (b)(2) and appraisals of paragraph (b)(4) of this section HCAs shall assure that the contractor's written systems and methods are consistent with this subpart and the provisions of their contracts.

970.5003 Policies.

The following shall apply to the purchasing practices of management and operating contractors. Within these policies it is expected that purchasing systems and methods will vary according to the types and kinds of purchases to be made, the mission needs of the particular programs and facilities, and the experiences, methods, and practices of the contractor. In the development of their purchasing systems and methods, contractors should use their experience, expertise, and initiative consistent with this subpart.

(a) The purchasing systems and methods used by the management and operating contractor should be well defined, consistently applied, and should follow good business practices appropriate for the requirement and dollar amount of the purchase involved.

(b) The management and operating contractor purchasing systems should produce the proper balance between the Government's decision to use their experience and expertise in managing and operating its programs and facilities and the objectives and the attendant requisites of the Federal acquisition process. In evaluating the proper balance between commercial purchasing practices and the requisites of the Federal acquisition process a concept referred to as the "Federal norm" has evolved. The Federal norm refers to those fundamental principles embodied in law and regulation that should be reflected in contractor purchases even though such purchases are not Federal procurements. The DOE has identified the following specific tenets of Federal purchasing policy that must be addressed in a contractor's purchasing system:

(1) Purchases must be effected in the manner that will be most advantageous in meeting the overall mission with price, quality, and efficient performance of the contract considered.

(2) Although the Competition in Contracting Act of 1984 (Pub. L. 98–369) is not applicable to management and operating contractor procurement, the contractor's policies must ensure competitive subcontracting consistent with the contractor's efficient performance of the contractual mission and the nature of supplies and services purchased. The objective is to provide effective competition through application of the principles set out below.

(3) The contractor's policies and procedures shall ensure that for purchases in excess of those discussed in paragraph (b)(4) below, all

competitors are treated fairly and equitably by:

(i) Describing the requirement as completely as possible and in adequate time to promote competition. Supplies and services should be purchased through the use of specifications, standards or descriptions which clearly and accurately describe the supplies or services to be purchased;

(ii) Preparing solicitation documents setting forth the contract terms and conditions, describing the requirement clearly, accurately, and completely, but avoiding unnecessarily restrictive specifications or requirements;

(iii) Stating in the solicitation the factors that will comprise the basis for award, i.e., lowest evaluated price or a combination of price and technical merit. In the event of the latter the solicitation shall state the importance of technical considerations versus cost considerations and note any criterion(ia) that is of significantly greater or lesser importance than other criteria.

(iv) Proposal evaluation should be conducted and award should be made in accordance with the stated factors and the descriptions of their importance;

(v) Publicizing the solicitation by (A) distribution to a reasonable number of prospective offerors and (B) use of such means as plan rooms, journals, expressions of interest or other notices, and the Commerce Business Daily, as appropriate, particularly where there are not adequate numbers of qualified sources in the local area;

(vi) Providing equal access to solicitation data and information;

(vii) Offering sufficient numbers of qualified entities the opportunity to propose and tailoring the method of carrying out the competition such that there is every expectation that proposals will be received in numbers that will substantiate that the cost or price is in the Government's best interest;

(viii) Allowing sufficient time for preparation and submission of proposals;

(ix) Providing for a uniform time for submission;

(x) Taking precautions to assure that the contents of each proposal are maintained in confidence to prevent technical transfusion and technical leveling;

(xi) Handling responses in a manner to assure fairness and impartiality, and communicating, where necessary to clarify solicitations, with all potential proposers;

(xii) Conducting negotiations, as appropriate, in such a way as to enhance competition and ensure the understanding of substantive aspects of the offeror's proposal. A management and operating contractor's purchasing system and methods may provide for receipt of amended proposals following communication with a select group of offerors deemed most likely to receive the award in accordance with the expressed evaluation criteria; for award without communication; and for clarification as part of negotiation;

(xiii) Awarding only to capable offerors whose offers conform to the solicitation. Awards shall not be made to firms or individuals listed on the GSA Consolidated List of Debarred, Suspended, and Ineligible Contractors or the DOE List of Debarred, Suspended, Ineligible or Voluntarily Excluded Awardees without prior approval of the DOE contracting officer; and

(xiv) Ensuring that access authorizations to classified information will not be a limiting factor in obtaining competition except where time will not permit securing additional authorizations.

(4) Small purchases (those valued at $25,000 or less or other value that may be established by the HCA) should be made by methods designed, considering the award value, to (i) obtain fair and reasonable prices, (ii) reduce administrative costs of making such purchases to the minimum required to establish the propriety of placing the order at the price paid with the supplier concerned, and (iii) improve opportunities for small and small disadvantaged business concerns to obtain a fair proportion of awards.

(5) A fair proportion of supplies and services shall be purchased from small business concerns, small disadvantaged business concerns, labor surplus area concerns, and woman-owned business concerns. The Commerce Business Daily is an appropriate means to promote the participation of such concerns.

(6) Price or cost analyses shall be performed consistent with the principles of FAR Subpart 15.8 and Subpart 915.8 of this regulation.

(7) Allowable costs for cost reimbursable subcontracts are to be determined in accordance with the cost principles of FAR Part 31, appropriate for the type of organization to which the subcontract is to be awarded, as supplemented by Part 931. Allowable costs in the purchase or transfer from contractor-affiliated sources shall be determined in accordance with 970.5005 and 970.3102–15(b).

(8) The contractor's purchasing systems and methods shall establish a dollar value above which the basis for each non-competitive procurement must be clearly documented and a dollar value above which non-competitive procurements must be supported by separate justifications prepared by the requesting organization, and approved at appropriate levels in the contractor's procurement organization.

(9) The selection of the type of contract to be used should be based on consideration of the nature of the supplies and services required and other circumstances surrounding the purchase. The cost-plus-percentage-of-cost system of contracting shall not be used in any event.

970.5004 Conditions of purchasing by management and operating contractors.

The following provisions pertain to purchasing by DOE management and operating contractors. Some of these provisions are implementations of statutory or applicable Government and DOE policies. To the extent these provisions allow for the exercise of discretion by management and operating contractors, HCAs will use as the standard of compliance the exercise of good business judgment by the management and operating contractor in pursuit of carrying out the contractual mission.

970.5004–1 Contingent fees.

The policies and requirements of FAR Subpart 3.4 shall be applied to all purchasing activities of management and operating contractors. See 970.5203–1 for the amendment to the clause at FAR 52.203–5.

970.5004–2 Record retention requirements.

The record retention requirements for cost-reimbursement type subcontractors to management and operating contractors shall be in accordance with 970.0407.

970.5004–3 Acquisition of utility services.

When authorized by DOE (subject to appropriate delegation) to acquire utility services, such acquisition shall be in compliance with 970.0803.

970.5004–4 [Reserved]

970.5004–5 Leasing of motor vehicles.

Management and operating contractors shall abide by the provisions of FAR Subpart 8.11 and Subpart 908.11 in the leasing of motor vehicles.

970.5004–6 Strategic and critical materials.

Management and operating contractors who use strategic and critical materials shall fulfill their requirements in accordance with Subpart 908.70.

970.5004-7 Purchases of special items.

(a) HCAs shall assure that the management and operating contractors' purchasing systems and methods provide for the purchase of the following items in accordance with the provisions of the DEAR and FPMR, as shown.

Item	Citation
(1) Motor vehicles	908.7101
(2) Aircraft	908.7102
(3) Office machines	908.7103
(4) Office furniture and furnishings	908.7104
(5) Filing cabinets	908.7105
(6) Security cabinets	908.7106
(7) Alcohol	908.7107
(8) Helium	908.7108
(9) Fuels and packaged petroleum products	908.7109
(10) Coal	908.7110
(11) Arms and ammunition	908.7111
(12) Replacement materials handling equipment.	908.7112
(13) Calibration services	908.7113
(14) Wiretapping and eavesdropping equipment.	908.7114
(15) Forms	908.7115
(16) Electronic data processing tapes	908.7116
(17) Tabulating machine cards	908.7117
(18) Rental of post office boxes	908.7118
(19) Heavy water	908.7121(a)
(20) Precious metals	908.7121(b)
(21) Lithium	908.7121(c)
(22) Products and services of the blind and other severely handicapped.	FPMR 41 CFR 101-26.701
(23) Products made in Federal penal and correctional institutions.	FPMR 41 CFR 101-26.702

(b) The management and operating contractor's purchasing system and methods may provide for the acquisition of items (3), (4), and (5) above from non-Federal Supply Schedule sources in those circumstances in which items of the same or greater quality may be purchased at a lesser price, or there is otherwise an inability to meet a critical program schedule.

970.5004-8 Purchase or lease determinations.

Using FPMR 41 CFR 101-25.5 as a guide, management and operating contractors shall provide in their purchasing systems and methods for a system to determine whether required equipment should be purchased or leased. The system based upon these guidelines shall establish appropriate thresholds for application (as approved by the HCA) of lease-versus-purchase determinations and shall be used in making such determinations (a) at time of original acquisition, (b) when lease renewals are being considered, or (c) at other times as circumstances warrant.

970.5004-9 Qualifications requirements.

(a) Management and operating contractors are authorized to use Qualified Bidders Lists (QBL), Qualified Material Lists (QML) and Qualified Products Lists (QPL), developed by executive agencies pursuant to FAR Subpart 9.2, for the purchase of goods or services for which such list(s) was developed.

(b) Heads of Contracting Activities may authorize management and operating contractors to develop QBLs, QMLs, or QPLs for critical applications; however, management and operating contractors shall not unnecessarily restrict potential suppliers from qualification testing and inclusion among qualified vendors.

970.5004-10 Organizational conflicts of interest.

(a) Management and operating contractors shall abide by Subpart 909.5 in their acquisition of supplies and services as if their subcontractors at any tier and consultants were performing the work as prime contractors to DOE.

(b) The cognizant HCA is the individual authorized to determine whether there exists, with regard to a proposed subcontract, little or no likelihood of an organizational conflict of interest.

(c) In obtaining disclosure of relevant interests in appropriate potential subcontracts, management and operating contractors may allow proposers to submit their responses directly to the cognizant HCA.

970.5004-11 Cost or pricing data.

(a) Management and operating contractors are required to:

(1) Obtain certified cost or pricing data prior to the:

(i) Award of a negotiated subcontract at any tier when the subcontract price is expected to exceed $100,000; or

(ii) Modification of any subcontract when the price adjustment is expected to exceed $100,000, unless unrelated and separately priced changes, for which certified cost or pricing data would not otherwise be required, are included.

(2) Incorporate appropriate contract provisions that provide for the reduction of a negotiated subcontract price by any significant amount when the subcontract price was increased because of submission of subcontractor defective cost or pricing data, at any tier.

(b) The exemptions to certified cost or pricing data identified by FAR 15.804-3 shall also apply in implementing the above cost or pricing data requirements.

(c) The clause at 970.5204-24 shall be included in management and operating contracts requiring the flowdown of the provision contained therein to subcontractors at all tiers as described therein.

970.5004-12 Small business and small disadvantaged business concerns.

(a) The policies and procedures in the following FAR sections shall be applied to the acquisition activities of management and operating contractors in their unilateral initiation of small business set-asides:

(1) 19.301
(2) 19.302
(3) 19.502-2
(4) 19.502-3
(5) 19.508(b)
(6) 19.508(c)
(7) 19.508(d)

(b) Protests received by management and operating contractors regarding small business status or questions concerning small disadvantaged business shall be referred to the Small Business Administration through the cognizant DOE contracting officer.

(c) Purchases of $25,000 or less awarded through small purchase procedures shall be reserved exclusively for small businesses where there is a reasonable expectation that bids will be obtained from two or more responsible small business concerns that are competitive with market prices, quality and delivery.

(d) Acquisition by a management and operating contractor of construction estimated to cost $3 million or less, including new construction, and repair and alteration of structures, shall be required to be set aside on a class basis for small business concerns. When, in the judgment of the contractor, a particular acquisition falling within these dollar limits is determined to be unsuitable for a small business set-aside, notification shall be made to the DOE contracting officer. Upon obtaining the approval of the DOE contracting officer, the contractor may proceed to process the acquisition on an unrestricted basis. For acquisition of construction in excess of $3 million, small business set-aside preferences should be considered on a case-by-case basis.

(e) Management and operating contractors may provide in their purchasing systems and methods for the setting aside of requirements for small disadvantaged business, provided there are sufficient such qualified entities available to assure effective competition, and provided that the cost or price of the successful offer is found by the M&O to be fair and reasonable.

(f) In pursuit of the objective of M&O purchasing of a fair proportion of supplies and services from the concerns described at 970.5003(b)(5), the HCA may authorize the use of innovative means after approval by the Procurement Executive and the DOE Office of Small and Disadvantaged Business Utilization.

(g) Management and operating contractors shall prepare quarterly reports on utilization of small business,

small disadvantaged business, and women-owned small business in accordance with the directions of the DOE contracting officer.

970.5004-13 Labor surplus area concerns.

(a) Management and operating contractors are authorized to unilaterally initiate labor surplus area (LSA) set-asides where there is a reasonable expectation that bids or proposals will be obtained from a sufficient number of responsible LSA concerns so as to ensure that awards will be made at fair and reasonable prices. The priorities set forth in FAR 19.504 are to be utilized in determining the type of set-aside to be employed.

(b) Protests received or questions raised by contractors regarding LSA status shall be handled in consultation with the Department of Labor through the DOE contracting officer.

(c) LSA set-aside acquisitions awarded by management and operating contractors shall be reported quarterly in a form satisfactory to the DOE contracting officer.

970.5004-14 Convict labor.

The provisions of FAR Subpart 22.2 shall apply to purchases by management and operating contractors.

970.5004-15 Contract Work Hours and Safety Standards Act (other than construction contracts).

The requirements of FAR Subpart 22.3 shall apply to purchases by management and operating contractors to the same extent and under the same conditions such requirements apply to direct DOE procurements.

970.5004-16 Labor standards for contracts involving construction.

The requirements of FPR Temp. Reg. 70 (48 FR 31028, July 6, 1983), as amended by Pub. L. 99-145, or successor FAR coverage, apply to subcontracts involving construction awarded by DOE management and operating contractors to the same extent that they would if the subcontract had been directly awarded by DOE. Subpart 922.4 provides guidance, including examples of work situations, to assist in determining the applicability of these standards. The Davis-Bacon Act is deemed to apply to purchases by management and operating contractors in accordance with 970.2273.

970.5004-17 Walsh-Healey Public Contracts Act.

The requirements of FAR Subpart 22.6 and this section shall apply to purchases by management and operating contractors to the same extent and under the same conditions such requirements apply to direct DOE procurements.

970.5004-18 Equal employment opportunity.

The equal employment opportunity provisions of FAR Subpart 22.8 and Subpart 922.8, of this chapter, including E.O. 11246 and 41 CFR Part 60, are applicable to subcontracts awarded by DOE management and operating contractors.

970.5004-19 Service Contract Act.

(a) Subcontracts awarded by management and operating contractors are subject to the Service Contract Act to the same extent and under the same conditions as contracts awarded directly by DOE.

(b) Subcontracts awarded by management and operating contractors shall include the applicable clause in FPR Temporary Regulation No. 76, 49 FR 6728, February 23, 1984, or successor FAR coverage with such modifications as would otherwise be appropriate had this clause been included in the prime contract.

970.5004-20 Special disabled and Vietnam Era veterans.

The provisions of FAR Subpart 22.13 shall apply to purchases by management and operating contractors.

970.5004-21 Application of environmental and occupational safety and health programs.

HCAs shall assure that management and operating contractors treat environmental and occupational safety and health concerns in covered purchases in accordance with 970.2303. Management and operating contractors shall include the clauses at 970.5204-2, 970.5204-26, 952.223-72, and 952.223-75 in appropriate subcontracts and provide for flowdown to appropriate lower tier subcontracts.

970.5004-22 Buy American.

(a) Management and operating contractors are required, through the contract clauses prescribed at 970.5203-3 and 970.5203-5, to comply with the provisions of the Buy American Act. The list at FAR 25.108(d) contains excepted articles, materials, and supplies which have been determined to be unavailable in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(b) Determination of nonavailability under FAR 25.102 may be made by the DOE contracting officer responsible for the administration of the contract.

(c) When the management and operating contractor's purchasing systems and methods have been approved after a review in accordance with 970.5002(b), the Head of the Contracting Activity may authorize the contractor to make determinations of nonavailability for individual items under individual procurement actions. Each authorization shall be in writing and shall specify a dollar value limit for the aggregate of domestically unavailable items in individual procurement actions. Each authorization shall also specify the effective date, the activity, the division or facility authorized to make the applicability, and any special conditions or requirements. Authorizations for dollar value limits in excess of $25,000 require the prior concurrence of the Procurement Executive.

970.5004-23 Patents, data, and copyrights.

HCAs shall assure that management and operating contractors' purchasing systems and methods provide for distribution of patent and data rights and copyrights in their purchases in accordance with Subpart 970.27.

970.5004-24 Bonds and insurance.

The HCA shall assure that management and operating contractors provide in their purchasing systems and methods for obtaining bonds (i.e. bid, performance and payment bonds) from subcontractors in such a manner to assure adequacy and legal sufficiency of all types of bonds and the acceptability of sureties in accordance with this subsection to protect the interests of the United States. The contractor's purchasing systems and methods shall treat the obtaining of insurance in accordance with FAR Subpart 28.3 and DEAR Subpart 928.3

(a) *Performance bonds.*—(1) *Construction subcontracts.* A performance bond on Standard Form 25 (modified to name the contractor as well as the United States of America as obligees) shall be required for all fixed price and unit-price construction subcontracts in excess of $25,000 and subcontracts under cost-reimbursement type subcontracts. The penal amounts are set forth in FAR 28.102.

(2) *Other than construction subcontracts.* Situations which may warrant the requiring of a performance bond are listed in FAR 28.103-2(a).

(i) Where doubt exists as to the financial or technical ability of all possible suppliers.

(ii) Where the subcontractor's talent is overly concentrated in a few key personnel whose illness or departure could seriously impair the

subcontractor's ability to perform the proposed work.

(iii) Where other commitments of the subcontractor might delay performance.

(iv) Where a delay in performance of the proposed work might disrupt other operations of the management and operating contractor and impair its overall efficiency; or

(v) Where the item being manufactured is a component for another article and is required by a particular date in order to avoid delay in delivery of the end product.

(b) *Payment bonds.*—(1) *Construction subcontracts.* A management and operating contractor shall be required to obtain from the subcontractor a payment bond on Standard Form 25A, modified to name the management and operating contractor, as well as the United States of America, as obligees for all fixed price and unit-price construction subcontracts in excess of $25,000. The management and operating contractor shall be required to include such a requirement in its cost reimbursement construction subcontracts in excess of $25,000. The penal amounts shall be as set forth in FAR 28.102–2.

(2) *Other than construction subcontracts.* The management and operating contractor may make a determination that it is necessary on an individual subcontract to require payment bonds in connection with other than construction work. Whenever the management and operating contractor has reason to believe that work under a proposed action might be delayed because of concern over the credit standing of a prospective subcontractor, it should consider the advisability of requiring a payment bond.

(c) *Corporate co-sureties.* More than one corporate surety may be accepted as surety upon recognizance, stipulation, bond, or undertaking in connection with either construction or other contracts, provided that in no case will the liability of any such co-surety exceed the maximum penal sum in which the corporate surety is qualified to any one obligation. On bonds covering contracts other than construction contracts, where the amount of the bond is greater than the limitation of the corporate surety, the latter may reinsure with a corporation on the acceptable list of corporate sureties having the required underwriting capacity. Reinsurance agreements are not acceptable in connection with construction contracts. Corporate co-sureties need not obligate themselves for the full amount of the bond. Each corporate surety may, by setting forth the limit of its liability in the bond as a definite and specified sum, limit such liability on the condition that each co-surety bind itself "jointly and severally" for purpose of allowing a joint action or actions against any or all of them.

970.5004–25 Indemnification.

HCAs shall assure that management and operating contractors provide in their purchasing systems and methods for the treatment of nuclear hazards indemnification in subcontracts in accordance with 970.2870. No subcontractor may be otherwise indemnified except with the prior approval of the Procurement Executive, Headquarters.

970.5004–26 Taxes.

(a) HCAs should assure that tax matters are appropriately treated in their review and approval of management and operating contractors' purchasing systems and methods and in their review and approval of individual subcontracts by the contractor.

(b) The purchasing system and methods of a management and operating contractor shall require:

(1) The inclusion of a clause similar to that at 970.5204–23 in cost-type subcontracts where the higher-tier subcontracts are cost-type which will require the contractor to take certain actions with regard to nonpayment, payment, protest, or other treatment of specific taxes.

(2) The inclusion of an appropriate tax clause in all fixed-price purchase orders and subcontracts and should contain provisions covering all tax matters which may require special consideration.

970.5004–27 Audit of subcontractors.

(a) HCAs shall assure that management and operating contractors provide in their purchasing systems and methods for (1) periodic postaward audit of cost-reimbursement subcontractors at all tiers and (2) audits, where necessary, to provide a valid basis for pre-award cost or price analysis.

Responsibility for determining the costs allowable under each cost reimbursement subcontract remains with the management and operating contractor or next higher-tier subcontractor, subject to the appropriate and timely involvement of the management and operating contractor (if lower than first-tier subcontractor) and the DOE contracting officer or his or her representative.

(b) Where the amount of cost-type work to be performed in a particular subcontractor's facility is less than that being performed at the same facility for other Federal agencies, arrangements may be made to have the cognizant Federal agency perform the audit of the subcontract. These arrangements shall be made administratively between DOE and the other agency involved and shall provide for the cognizant agency to audit in a manner appropriate in light of the magnitude and nature of the costs of the subcontract. The contracting officer shall assure that the audit results properly reflect the application of the applicable cost principles of the subcontract (See 970.5003(b)(7)). In no case, however, shall these arrangements preclude determination by the DOE contracting officer of the allowability or unallowability of subcontractor costs claimed for reimbursement by the management and operating contractor.

970.5004–28 Construction and A–E contracts.

(a) *Scope.* The HCA shall assume that management and operating contractors provide in their procurement systems and methods for acquisition of A–E services and construction and in conformance with this subsection. FAR Part 36 and DEAR Part 936 shall be used as guides.

(b) *Independent estimates.* An independent estimate of costs shall be prepared for all construction work to be subcontracted under management and operating contracts. The services of an architect-engineer, another management and operating contractor, or construction contractor may be used, as appropriate, in the independent preparation of the estimate.

(c) *Specifications.* Management and operating contractors are required to comply with the DOE publication entitled "General Design Criteria Manual" (DOE Order 6430.1, dated December 12, 1983, or successor version) in preparing specifications for construction work.

(d) *Agreement for rental of construction equipment.* Management and operating contractors shall provide in their purchasing systems and methods for the rental of construction equipment from a third party in accordance with the agreement outlined at 936.7302.

(e) *Guidelines for the award of architect-engineer subcontracts.* The Brooks Act, Pub. L. 92–582, establishes the policy and procedures necessary to assure that selection of A–E contractors by the Federal government shall be based solely upon the qualifications of competing A–E firms. That Act does not directly govern the award of A–E subcontracts by DOE management and operating contractors. HCAs shall assure that the purchasing systems and

methods of management and operating contractors reflect the essence of the Federal policy; however, this does not preclude the consideration of other factors, including cost or price, in the selection of A–E subcontractors.

(f) *Prevention of conflict of interest*—(1) *Limitations on architect-engineer/construction services.* Combinations of subcontracts for architect-engineer and construction services, which may result in self-inspection of construction work, tend to prevent a subcontractor from rendering unbiased decisions, or create difficulties in segregating costs between subcontracts, and should be avoided. However, it is recognized that sometimes it is advantageous under carefully circumscribed conditions for a management and operating contractor to subcontract with a single firm for both architect-engineer and construction management services which may include performance of a segment of the construction work with the subcontractor's own forces. Unless otherwise authorized by the HCA the following combinations of subcontracts shall not be awarded by a management and operating contractor to the same firm or to affiliated companies:

(i) Both a cost-reimbursement subcontract and fixed-price subcontract if any portion of the work under either subcontract will be performed concurrently in the same general location. This restriction applies to subcontractors for construction services, architect-engineer services, or construction and architect-engineer services.

(ii) A fixed-price subcontract or subcontracts for both architect-engineer and construction services on the same construction project, or a cost-type subcontract for architect-engineer services and a fixed-price subcontract for construction services on the same constuction project. If a firm is to be responsible under such contractual arrangements for both design and construction services, Title III inspection services shall be performed by another organization selected by DOE.

(iii) A cost-type subcontract for both architect-engineer and construction services on the same construction project (engineer-constractor contract). If this contractual arrangement is used upon appropriate approvals, the subcontract shall provide for performance of the Title III inspection services by subcontractor's engineering personnel who are not responsible to the subcontractor's construction personnel, or the Title III services shall be performed by another organization selected by DOE.

(iv) Neither paragraph (f)(1)(ii) or (iii) of this section shall preclude the award of a single contract for the delivery of a discrete facility, e.g., "turnkey contract," so long as the contractor assumes all liability for defects in design and construction and consequential damages. Such contracts should provide for periodic inspection of the construction of the facility by the management and operating contractor or DOE or both.

(2) *Limitations on inspection.* (i) Inspection services may be performed be the architect-engineer responsible for the design. Inspection service may not be procured from a fixed-price construction subcontractor with respect to its own work. Under cost-reimbursement type subcontracts where the construction subcontractor and architect-engineer subcontractor are the same, some degree of self-inspection may be permitted, but shall not constitute final inspection and acceptance by the Government.

(ii) When one subcontractor is to inspect the work of another, the inspecting subcontractor will be given written instructions defining its responsibilities and stating that it is not authorized to modify the terms and conditions of the subcontract, direct any additional work, waive any requirements of the subcontract, or settle any claims or disputes. Copies of the instructions will be given to the subcontractor who is to be inspected, with a request to acknowledge receipt on one copy and return it to the contracting officer. In this manner, both subcontractors are on notice as to the authority and limitations on the authority of the inspecting subcontractor.

970.5804–29 Quality assurance.

HCAs shall assure that management and operating contractors provide in their purchasing systems and methods for inspection and acceptance and the use of an appropriate clause. Such provisions shall provide no less protection for the Government than are provided by the contract articles in prime contracts.

970.5804–30 Termination.

(a)(1) The termination clause included in management and operating contracts gives the Government the right to terminate the contract for convenience or default and provides that after receipt of a termination notice the contractor shall, to the extent requested by the contracting officer, cancel existing orders, subcontracts and commitments. Also, management and operating contractors may find it necessary to terminate subcontracts either for default or convenience in the course of exercising responsibilities for program or project performance under the contract rather than as a result of termination of the prime contract. Therefore, HCAs shall assure that the purchasing systems and methods of management and operating contractors provide for the inclusion of an appropriate termination clause or clauses in their subcontracts. The termination clauses set forth at FAR 52.249–1 through 52.249–14 may be used as guides in the development of subcontract termination clauses.

(2) In developing subcontract clauses the contractor should ensure that the relationship between the contractor and subcontractor is clearly stated, that references to the Government and the contracting officer are changed, as appropriate, to refer to the contractor, and that any inapplicable provisions of the cited FAR clauses be deleted.

(b) When a management and operating contract is fully or partially terminated by the Government, the policies and principles set forth in FAR Part 49 will be followed by the Government in settling the terminated contract or terminated portion of the contract. Therefore, when subcontracts are terminated as a result of the termination of all or a portion of the prime contract, contractors shall settle with subcontractors in conformity with the policies and principles relating to settlement of prime contracts in FAR Subparts 49.1, 49.2, and 49.3. When subcontracts are terminated for reasons other than termination of the prime contract, the contractor may settle such subcontract terminations in general conformity with the policies and principles in FAR Subparts 49.1, 49.2, and 49.3, and 49.4. In any event, each such termination settlement shall be documented. Those which require approval by the Government pursuant to prime contract requirements or approved procedures must be supported by accounting data and other information as may be directed by the DOE contracting officer. Also, the settlement must be consistent with provisions of the management and operating contract, such as Allowable Costs and Property, and in conformity with the provisions of the subcontract.

970.5804–31 Authorization for subcontractors' use of Government supply sources.

With the approval of the DOE contracting officer, management and operating contractors may authorize cost-reimbursement type subcontractors,

where all higher tier subcontractors are cost-reimbursement types, to acquire materials and services directly from such Government sources of supply in accordance with the requirements of Subpart 970.51 or the consent of agencies involved.

970.5004–32 Safeguarding classified information.

HCAs shall assure that management and operating contractors include clauses in appropriate subcontracts consistent with 970.0404.

970.5004–33 Cost Accounting Standards.

The provisions of FAR Part 30 shall apply to purchases by management and operating contractors.

970.5004–34 Clean air and water.

The provisions of FAR Subpart 23.1 shall apply to purchases by management and operating contractors.

970.5004–35 Air transportation by U.S.-flag carriers.

The provisions of FAR Subpart 47.4 shall apply to purchases by management and operating contractors.

970.5004–36 Acquisition of real property.

Management and operating contractors shall contract for the lease or purchase of real property pursuant to their contract in accordance with 917.74.

970.5004–37 Management, acquisition, and use of information resources.

HCAs shall assure that management and operating contractors provide in their purchasing systems and methods, with regard to the purchase of automatic data processing resources and telecommunication facilities, services, and equipment, for review and approval of requirements in ways that conform to the procedures contained in applicable DOE orders (1360 series and 5300 series, respectively).

970.5004–38 Privacy Act.

Management and operating contractors shall award subcontracts in accordance with FAR Subpart 24.1

970.5004–39 Officials not to benefit.

Management and operating contractors shall abide by the provisions of FAR Subpart 3.1 in the award of subcontracts.

970.5004–40 Subcontractor reporting systems.

HCAs shall assure that management and operating contractors provide in their purchasing systems and methods for the flowdown of the cost and schedule control system requirements as provided at 970.5204–50. In addition for subcontracts of lesser value, those purchasing systems and methods shall provide for the receipt from subcontractors of status, manpower, and financial information necessary to comply with DOE requirements for financial and performance data for subcontracts at all tiers.

970.5004–41 Employment of the handicapped.

The provisions of FAR Subpart 22.14 shall apply to purchases by management and operating contractors.

970.5004–42 Unclassified controlled nuclear information.

HCAs shall assure that management and operating contractors provide in their purchasing systems and methods for treatment of unclassified controlled nuclear information in accordance with 10 CFR Part 1017.

970.5004–43 Government property.

HCAs shall assure that management and operating contractors provide in their purchasing systems and methods for the identification, inspection, maintenance, protection, and disposition of Government property consistent with FAR Part 45.

970.5004–44 Foreign travel.

HCAs shall assure that management and operating contractors provide in their purchasing systems and methods for DOE approval consistent with the clause at 952.247–70 of foreign travel under subcontracts.

970.5004–45 Anti-Kickback Enforcement Act of 1986.

HCAs shall assure that management and operating contractor purchasing systems and methods provide for conformance in subcontracting with the FAR implementation of Pub. L. 99–634. See 48 CFR Parts 3, 9 and 52 (FAC 84–24, as published at 52 FR 6120, Feb. 27, 1987).

970.5004–46 Additional flowdown and extension provisions.

In addition to the clauses and provisions required to be included in appropriate subcontracts awarded by management and operating contractors, there are certain clauses the provisions of which require flowdown or extension to subcontractors. These are:

(a) Examination of Records by the Comptroller General—970.5203–2.

(b) Priorities, Allocations, and Allotments—970.5204–33.

(c) Printing—970.5204–19.

970.5005 Acquisition from contractor-affiliated sources.

(a) A management and operating contractor may acquire from sources affiliated with the contractor (any division, subsidiary, or affiliate of the contractor or its parent company) in the same manner as from other sources, provided:

(1) The management and operating contractor's purchasing function is independent of the proposed contractor-affiliated source;

(2) The same terms and conditions would apply if the purchase were from a third party;

(3) Award is made in accordance with policies and procedures particularly designed to permit effective competition which have been approved by the HCA (see 970.5002(b)(1)). (This requirement for competition shall not preclude acquisition of technical services from contractor-affiliated entities where those entities have a special expertise, and the basis therefor is documented.); and

(4) Award is legally enforceable where the entities are separately incorporated.

(b) Subcontracts for performance of contract work itself (as distinguished from the purchase of supplies and services needed in connection with the performance of work) require DOE authorization and may involve an adjustment of the contractor's fee, if any. If the management and operating contractor seeks authorization to have some part of the contract work performed by a contractor-affiliated source, and that contractor's performance of that work was a factor in the negotiated fee, DOE approval would normally require (1) that the contractor-affiliated source perform such work on a basis without profit, or (2) an equitable downward adjustment to the management and operating contractor's fee, if any.

(c) Determination on cost of money allowance as prescribed at FAR 31.205–10 shall be treated as follows:

(1) When a purchase from a contractor-affiliated source results from competition and is in accord with provisions and conditions of paragraphs (a)(1) through (a)(4) of this section, the contractor-affiliated source may include cost of money as an allowable element of the costs of its goods or services supplied to the contractor; provided (i) the purchase is based on cost as set forth in 970.3102–15 and (ii) the cost of money amount is computed in accordance with FAR 31.205–10 and related procedures (see Subpart 970.30).

(2) When a purchase from a contractor-affiliated source is made non-competitively, cost of money shall not be considered an allowable element of the cost of the contractor-affiliated source purchase.

970.5006 Procedures for handling mistakes relating to management and operating contractor purchases.

(a) HCAs shall assure that management and operating contractors include in their purchasing system and methods provision for correction of mistakes in bids and withdrawal of offers.

(b) Such a system shall make provision for correction of mistakes before award only upon the offering by the bidder of clear and convincing evidence of the mistake and the bid intended. It shall distinguish between situations in which another bidder's lower bid may be displaced if the correction were to be allowed.

(c) The system shall deal with mistakes after award and shall result in rescission or reformation of the contract only upon a clear and convincing showing of mutual mistake.

(d) The system shall allow withdrawal of a bid if there is sufficient evidence to establish a mistake but otherwise does not meet the necessary tests for correction, stated in paragraphs (b) and (c) above.

(e) In all cases before any remedial action is allowed, it shall be determined that the mistake was in good faith and that the interests of the United States are not prejudiced.

(f) Corrections of mistakes or other remedial actions taken pursuant to this section shall be documented by a written statement setting forth the circumstances and basis for such action and shall be made a part of the subcontract file.

970.5007 Protest of management and operating contractor procurements.

(a) The General Accounting Office (GAO) policies on protests state that GAO will consider subcontract-level protests when the subcontracts are "by" or "for" the Government. The term "for" has generally been defined by the GAO as including acquisitions by management and operating (M&O) contractors.

(b) The Department of Energy will also consider protests of acquisitions of M&O contractors.

(c) Upon receipt or notice of a protest filed with the GAO, or with the Department against an M&O contractor acquisition, the cognizant DOE contracting activity shall assure that the M&O contractor is aware of such protest and prepare or coordinate the preparation by the contractor of a report for submittal to the GAO or the Department official deciding the protest. Such a report shall be prepared in accordance with the applicable procedures in FAR Part 33 and Part 933 of the DEAR.

(d) Assistance shall be obtained from the local DOE Counsel in the preparation of the reports setting forth the position of the contracting activity relative to a protest.

(e) Upon receiving notice of a protest to the Department involving an M&O procurement action prior to award, the contracting activity shall direct that award not be made prior to resolution of such protest unless an HCA request to make award, concurred in by counsel, using the criteria of 933.103(a), endorsed by the program secretarial officer, is approved by the Procurement Executive. If notice of a protest is filed with the contracting officer within 10 days after award, the contracting activity shall contact the Business Clearance Division, Headquarters, for guidance as to continuation of performance or issuance of a stop work order.

(f) Since the bid protest provisions of the Competition in Contracting Act of 1984 (Pub. L. 98-369) (CICA) only apply to acquisitions by Federal executive agencies, the CICA "stay" provisions (sections 3553(c) and (d) of Pub. L. 98-369 and cost recovery provisions (section 3554(c), Pub. L. 98-369) do not apply to protests lodged with the GAO that involve M&O contractor acquisitions. Nevertheless, upon receiving notice of a protest to the GAO involving an M&O acquisition whether prior to or after award, the contracting activity shall immediately contact the Business Clearance Division, Headquarters, for guidance on suspending award or suspending performance.

(g) The General Services Board of Contract Appeals hears subcontract level protests involving the purchase of Automatic Data Processing Equipment (ADPE), as defined at 40 U.S.C. 759 (a)(2)(A), only in cases in which the prime contractor is acting as a purchasing agent for the Government. Management and operating contractors rarely, if ever, act as purchasing agents of the Department of Energy in the purchase of ADPE. Should a protest be lodged against a purchase of ADPE by an M&O, upon receiving notice of the protest, the cognizant DOE contracting officer shall promptly notify local counsel and the Office of The Assistant General Counsel for Procurement and Finance, Headquarters (AGCPF). The Department's position on such subcontract level protests shall be coordinated with the AGCPF. The contracting officer promptly after receipt of a protest and the decision(s) of the GSBCA shall also furnish a copy thereof with related pertinent correspondence to the Business Clearance Division, Headquarters.

970.5008 Review and approval.

(a) Heads of Contracting Activities shall establish thresholds by subcontract type and dollar level for the review and approval of proposed subcontracting actions by each management and operating contractor under their cognizance. Such threshholds may not exceed the approval authority for subcontracting delegated to the Head of the Contracting Activity by the Procurement Executive. In establishing these review and approval thresholds, the Heads of Contracting Activities should consider such factors as the following:

(1) The nature of work to be performed under the management and operating contract;

(2) The size, experience, ability, reliability, and organization of the management and operating contractor's purchasing function;

(3) The internal controls, procedures, and organizational stature of the management and operating contractor's purchasing function; and

(4) Policies with respect to such reviews and approvals established by the Procurement Executive.

(b) Prior approval shall be required for the subcontracting of any work a contractor is obligated to perform under a contract entered into under section 41, entitled Production of Special Nuclear Material, of the Atomic Energy Act of 1954, as amended.

(c) Heads of Contracting Activities shall take such action as may be required to insure compliance with the procedure for purchasing from contractor-affiliated sources or the purchase of specific items, or classes of items, which by the terms of the contract may require DOE approval.

(d) The Head of the Contracting Activity may raise or lower the review and approval thresholds established pursuant to paragraph (a) at any time. Such action may be considered upon the periodic review of the contractor's purchasing system. The thresholds may not exceed the approval authority delegated to the Head of the Contracting Activity by the Procurement Executive.

(e) Department of Energy approvals of specific proposed purchases pursuant to this section shall communicate that such approval does not relieve the management and operating contractor of any obligation under its prime contract with DOE; is given without prejudice to any rights or claims of the Government thereunder; creates no obligation on the part of the Government to the

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subcontractor, and is not a predetermination of the allowability of costs to be incurred under the subcontract.

(f) Contracting officers shall assure that the contractors establish and maintain subcontract files which contain those documents essential to present an accurate and adequate record of all procurement transactions.

(g) Management and operating contractors shall be required to document purchases in writing, setting forth the information and data used in determining that the purchases are in the best interest of the Government. The scope and detail of this documentation shall be consistent with the nature, dollar value, and complexity of the procurement.

(h) Heads of Contracting Activities will assure that the contracting activity establishes and maintains files of the documents associated with the review and approval of subcontract actions subject to DOE review and approval. Those files shall include, among other necessary documentation, an appraisal of the proposed action by the contracting activity and a copy of the approving or disapproving document forwarded to the management and operating contractor, containing a listing of any deficiencies, a listing of any required corrective actions, any suggestions, or other relevant comments.

970.5009 Advance notification.

(a) Pursuant to section 304(b) of the Federal Property and Administrative Services Act of 1949, as amended, contracting officers shall assure that the written description of the management and operating contractor's purchasing system and methods provides for advance notice of the award of the following specified types of subcontracts, except as stated in paragraph (b):

(1) Cost reimbursement-type subcontracts of any award value; and

(2) Fixed price-type subcontracts which exceed $25,000; and

(3) Purchases from contractor-affiliated sources over a value established by the HCA.

(b) Pursuant to section 602(d)13 of the Act referred to in paragraph (a), the advance notification requirement for the types of purchases listed in paragraphs (a)(1) and (a)(2) shall not apply to subcontracts relating to functions derived from the Atomic Energy Commission.

(c) The advance notice shall contain, as a minimum, a description of work, estimated cost, type of contract or reimbursement provisions, and extent of anticipated competition, or justification for a noncompetitive procurement. The contracting officer may at any time request additional information that must be furnished promptly and prior to award of the subcontract.

970.5010 Nuclear material transfers.

(a) Management and operating contractors, in preparing contracts or other agreements in which monetary payments or credits depend on the quantity and quality of nuclear material, shall be required to assure that each such contract or agreement contains a:

(1) Description of the material to be transferred;

(2) Provision specifying the method by which the quantities are to be measured and reported;

(3) Provision specifying the procedures to be used in resolving any differences arising as a result of such measurements;

(4) Provision for the use of an independent third party as an umpire to settle unresolved differences in the analytical samples; and

(5) Provision specifying in detail which party shall bear the costs of resolving a difference and what constitutes such costs.

(b) The provisions providing for resolution of measurement differences must be such that resolution is always accomplished, while at the same time minimizing any advantage one party may have over the other.

25. Section 970.5204–22, is revised to read as follows:

970.5204–22 Contractor purchasing system.

Contractor Purchasing System (July 1987)

(a) (*Name of contractor*) shall develop and implement formal policies, practices, and procedures used or to be used in the award of subcontracts, which purchasing systems and methods shall be fully documented, acceptable to the contracting officer, in accordance with the policies set forth in DEAR 970.50. DOE reserves the right at any time to require that the contractor submit for approval any or all purchases under this contract. The contractor shall not purchase any item or service the purchase of which is expressly prohibited by the written direction of DOE and shall use such special and directed sources as may be expressly required by the DOE contracting officer.

(b) The obligations of (*name of contractor*) under paragraph (a) above, including the development of the purchasing system and methods and purchases made pursuant thereto, shall not relieve the contractor of any obligation under this contract (including, among other things, the obligation to properly supervise, administer, and coordinate the work of subcontractors). Subcontracts shall be in the name of the contractor, and shall not bind or purport to bind the Government.

(c) In addition to, and without derogation of any rights under paragraph (a) of this clause and any other provision in this contract, (*name of contractor*) shall require all subcontractors to furnish cost or pricing data under those conditions and in accordance with the requirements set forth in FAR 15.804, and shall include in such subcontracts the appropriate clause set forth in 970.5204–24 except as otherwise directed or approved by DOE.

(d) Procurement or transfer of equipment, materials, supplies, or services from a contractor-affiliated source shall be treated in accordance with DEAR 970.5005.

(e) Proposed awards to firms or individuals on either the GSA Consolidated List of Debarred, Suspended, and Ineligible Contractors or the DOE Consolidated List of Debarred, Suspended, Ineligible, and Voluntarily Excluded Awardees shall be forwarded to DOE for approval notwithstanding any prior procurement system approval.

(f) (*Name of Contractor*) shall provide advance notice of proposed subcontract awards in accordance with DEAR 970.5009 and shall comply with the review and approval requirements of DEAR 970.5008.

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August 18, 1987

Part III

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Removal of Juveniles From Adult Jails and Lockups; Notice

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Removal of Juveniles From Adult Jails and Lockups

AGENCY: Office of Juvenile Justice and Delinquency Prevention, DOJ.

ACTION: Notice of a solicitation of applicants for a competitive grant program to provide support to selected State agencies to enhance statewide strategies to achieve compliance with the Juvenile Justice and Delinquency Prevention (JJDP) Act provision, Section 223(a)(14), Removal of Juveniles from Adult Jails and Lockups.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) pursuant to section 224(b)(6) of the Juvenile Justice and Delinquency Prevention Act, as amended, announces a program entitled: Removal of Juveniles from Adult Jails and Lockups: Assistance for Selected States Currently Not in Full Compliance with section 223(a)(14) of the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, as amended.

Up to $1 million is available in Fiscal Year 1987 for awards to qualified State agencies. Up to $50,000 will be awarded to each of approximately 20 states for the implementation of a statewide jail removal strategy. The funds are to be used to support jail removal strategies through limited staffing and implementation activities pertaining to training, technical assistance and information dissemination.

ELIGIBILITY: State agencies designated under section 223(a)(1) of the JJDP Act in states where full compliance with section 223(a)(14) was not demonstrated in the State 1986 Monitoring Report, submitted pursuant to section 223(a)(15) of the Act. Excluded from eligibility are those States which did not achieve substantial compliance, but were notified by OJJDP, that they are expected to achieve full compliance with *de minimis* exceptions in early FY 1988. Eligible states are identified in Appendix 1.

DATES: Applications meeting all requirements will be funded in the order that they are received, but all applications must be received by September 15, 1987, when no further applications will be accepted.

FOR FURTHER INFORMATION CONTACT: Frank M. Porpotage, II, Special Emphasis Division (202/724-5931) or Cindy Stein of the State Relations and Assistance Division (202/724-5921), OJJDP, 633 Indiana Ave., NW. Washington, DC 20531.

I. Introduction and Background

To insure that juveniles taken into custody would not suffer undue physical and psychological harm with adults while in confinement, Congress amended the JJDP Act in 1980. The amendment provided that juveniles not be confined in jails or lockups with adults, and that states participating in the formula grant program would take steps to ensure the removal of juveniles from such facilities.

This initiative is designed to assist a selected number of states which have failed to achieve full compliance with the jail removal provision, section 223(a)(14) of the JJDP Act as amended, and as a result are not currently eligible for FY 1988 JJDP Act formula grant funds or may not be eligible for FY 1991 JJDP Act formula grant funds. The jail removal provision of the Act requires the removal of all juveniles from adult jails and lockups by December 8, 1988. This requirement excepts only those juveniles formally waived or transferred to criminal court and against whom criminal felony charges have been filed or juveniles over whom a criminal court has original or concurrent jurisdiction and such court's jurisdiction has been invoked through the filing of criminal felony charges.

Since passage of the Amendment, the OJJDP has conducted several programs to assist with the development of effective alternatives for states and communities to use in establishing jail removal strategies. From these efforts it has been to use in establishing jail removal strategies. From these efforts it has been determined that states and communities successful with jail removal share a common pattern of success. It was also determined that some combination of the following nine elements are essential to achieving jail removal:

1. Nonsecure Alternatives

Secure juvenile detention is not the only appropriate placement option for youths who are being held in jails, and for many youths it is totally inappropriate. Communities that recognize this and develop a network of alternatives to secure detention are better equipped to meet their jail removal goals. In addition, sites with nonsecure alternatives are able to make better use of available resources, and consequently can rely less on secure detention, which is generally two to three times more expensive than nonsecure alternatives.

2. Access to Secure Juvenile Detention

Even when nonsecure options are available, a community must provide for serious offenders who pose a threat to public safety and thus require some sort of secure placement. If the only secure settings available are adult jails and lockups, then jailings will most likely continue. Communities that cannot afford to build a secure facility can usually avoid having to jail serious offenders by arranging purchase-of-care agreements with other counties. For many rural areas, purchase-of-care agreements are the most important components of their systems. It is possible to reduce reliance on secure detention, but it is not possible to eliminate it.

3. Objective Detention Criteria

There must be, at the heart of a community's removal plan, a set of detention criteria that local officials have approved and adopted. These criteria must be designed to provide specific and objective guidelines for each placement referral. The more these guidelines emphasize verifiable information such as offense and court history, the more likely are the chances that each case will be handled equitably and that only those youths who require secure custody would be placed in secure detention.

4. Twenty-four Hour Intake

To insure that intake guidelines will be applied consistently, formal, centralized intake services must be available on a 24-hour basis, and must be staffed by trained personnel. For most communities, 24-hour services can be provided fairly economically through "on call" staffing arrangements.

Police can bring a youth to the unit where intake staff make all placement decisions according to objective detention criteria. Whenever intake staff fail to control all placement decisions, chances are much greater that there will be a large number of unscreened jailings.

5. Commitment from the Community

Local officials need to make an active commitment to the goals of jail removal if a jail removal program is to succeed. Whenever youths are taken into custody, usually a variety of agencies and individuals have contact with them, including law enforcement officials, juvenile judges, probation officers, detention center directors, and intake personnel. If any one of these individuals or agencies fails to endorse the jail removal program, then jailings will most likely continue.

6. Written Policies and Procedures

Carefully written policies and procedures do not in themselves prevent juvenile jailings, since formal guidelines can of course be ignored. Written guidelines indicate a commitment to efficiency and consistency in a program. They also represent effective administration of a program. Written guidelines convey a commitment to a general philosophy as well, and perhaps even more important, they articulate clearly the reasons for doing things in certain ways. Communities that take the time to develop written policies and procedures often avoid problems which less successful ones can not overcome, simply because their personnel have specific guidelines to follow for most situations.

7. An Effective Monitoring System

It is not enough to simply implement removal plans and then wait for the results. Removal strategies must be modified periodically as problems occur, circumstances change, and obstacles appear. Communities that actively monitor their programs from the start are generally able to identify problem areas more quickly and adjust their policies on an as-needed basis, while sites without effective monitoring programs often realize the magnitude of their problems only after it is too late to solve them.

8. State and Local Sponsorship and Funding

State and local funds and personnel to administer jail removal programs help increase confidence in the program, and insure that those most directly affected by the program will understand and support it. The more state and local officials take an interest in jail removal, the more actively they will support a jail removal program, and consequently the more successful the program will be. The same holds true for the amount of state and local funding pledged to a project. It increases the incentive for making the project succeed and helps win support for jail removal.

9. Legislation

The adoption of enforceable legislation mandating jail removal is one of the best means of assuring that juveniles will not be admitted to jails in any jurisdiction in the state. The development, passage, and enforcement of such legislation may involve all eight of the previously described points. Jail removal legislation may include standards for the detention of children that require intake criteria, twenty-four hour intake screening, the use of the least restrictive alternative, and the prohibition against jailing children. Essential to such legislation is the vesting of authority for enforcement and specification of sanctions for violations.

States participating in this initiative will utilize these nine point criteria as an assessment and strategy development tool to guide them in implementing their jail removal strategy.

II. Program Goals And Objectives

The goal of the program is to enhance the capacity of states to achieve full compliance, by December 8, 1988, with the Jail Removal Provision, section 223(a)(14) of the JJDP Act, as amended. The objective of the program is to provide funds to selected States to develop and implement a statewide jail removal strategy. In some states this will mean strengthening a strategy already developed, while in others it will mean developing a new strategy. Funds are only available at this time to fund approximately 20 of the eligible States.

III. Program Strategy

Implementation of this initiative by the participating states will be accomplished in two successive steps: (1) Identification of current barrirs to compliance and strategy development; and, (2) strategy implementation. The strategy must incorporate a discussion about how some combination of the nine point criteria, set forth in Section I above, will be accomplished in order to achieve full compliance. Each step of the incremental process is designed to result in removing juveniles from adult jails and lockups.

Within 90 days of grant award, each grantee must complete a detailed jail removal strategy in relation to the barriers to jail removal and workplan. The strategy must be designed to bring the state into full compliance by December 8, 1988. Technical assistance and training in development and implementation of the strategy will be available from Community Research Associates. The technical assistance and training provided will transfer knowledge about effective strategies used by States that have already achieved full compliance with the jail removal requirement.

In addition, each grantee will be required to utilize its State Advisory Group (SAG), pursuant to section 223(a)(3) of the Act, or a Board, committee, or SAG subcommittee appointed or approved by the SAG, to participate in the analysis and development of all aspects of the Jail Removal Strategy.

IV. Eligibility Criteria

Eligible applicants include only those State agencies which have sole responsibility for administration of the Formula Grant Program under section 224(a)(1) of the JJDPAct, *and* where full compliance with section 223(a)(14), the Jail Removal Provision, has not or will not be demonstrated in their 1986 Monitoring Report which was due to OJJDP on December 31, 1986. Excluded from eligible states are those who did not achieve substantial compliance but were notified by OJJDP that they are expected to achieve full compliance with *de minimis* exceptions early in 1988. Eligible States are identified in Appendix 1. A public or private-not-for-profit organization designated and approved by the State agency administering the Formula Grant Program will also be an eligible applicant for this program. Documentation of the designation or approval must be submitted with the application.

V. Dollar Amount and Duration

Up to $50,000 has been allocated for each state award. One grant will be awarded per state and the budget period will be for 15 months. No additional funding will be available to successful applicants.

VI. Application Requirements

Eligible State agencies are required to submit:

1. A completed federal application, form 424, including assurances.

2. In Part IV, Program Narrative, of the Standard 424, the applicant will be judged on the description of prior efforts since 1980 to achieve jail removal, inclusive of allocation of formula funds to support Jail Removal, attempts to pass legislation, development of detention criteria, etc. The applicant will be evaluated on the brief description of the barriers that exist within the state to achieving full compliance with jail removal. The analysis of these barriers should utilize the nine criteria set forth in Section I above. In addition, the applicant will be judged on the proposed strategy outlined for overcoming these barriers, identifying a combination of the nine criteria listed in Section I above which will be used in order to overcome the barriers or problems preventing jail removal in the applicant's state, and identify the resources beyond this grant which will be used. All nine criteria may not apply and applicants are expected to determine what combination will impact the barriers in their State.

The applicant will be evaluated on the following:

(a) A schedule of proposed activities and an estimated timetable to complete each activity of the project; and,

(b) A summary budget which indicates to what extent funds under the grant will be utilized for planning versus implementation of the proposed strategy.

The narrative should not be more than 10 pages in length.

Within 90 days of the award the recipient agency will submit a detailed program implementation plan which does the following:

(1) Details a strategy for overcoming the barriers to achieving full compliance with jail removal;

(2) Outlines clearly and concisely how the major activities will be accomplished in implementing the jail removal effort;

(3) Displays an annotated organizational chart depicting the roles and responsibilities of staff;

(4) Outlines a detailed time task plan for the 15 month project period; and,

(5) Outlines a detailed budget which fully justifies all costs.

VII. Procedures and Criteria for Selection

Applications will be logged by time and date of arrival, and subsequently screened to determine if: (1) The applicant is eligible; and, (2) qualified for funding by virtue of having submitted a full application, inclusive of all elements identified in Section VI of this solicitation. Those applications which meet these requirements will be evaluated by a peer review panel according to the OJJDP Competition and Peer Review Policy, 28 CFR Part 34, Subpart B, published August 2, 1985 at 50 FR 31366–31367. Applications will be selected for funding based upon the order of receipt, if they are determined by the Peer Review Panel to have satisfactorily met the evaluation criteria listed below:

1. Nature of barriers to be overcome have been identified and are clearly described.

2. The efforts to achieve jail removal since 1980 have been substantial.

3. The proposed strategy includes a combination of the nine criteria, and has merit with respect to overcoming the stated barriers.

4. The summary program implementation plan is clear and appropriate to the tasks identified.

VIII. Submission Requirements

All applicants responding to this solicitation should be aware of the following requirements for submission:

1. Applicants must submit the original signed application and three copies to OJJDP. The necessary forms for application (Standard Form 424) and a copy of the Program Announcement will be mailed to the eligible State agencies by OJJDP. Applications will be funded in the order that they are received, but all applications must be received by September 15, 1987, when no further applications will be accepted. Those applications sent by mail should be addressed to Frank Porpotage, SED/OJJDP, U.S. Department of Justice, 633 Indiana Avenue, NW., Washington, DC 20531. Hand delivered applications must be taken to the OJJDP, Room 758, 633 Indiana Avenue, NW., Washington, DC 20531, between the hours of 8:00 a.m. and 5:00 p.m. except Saturdays, Sundays or Federal holidays.

2. The OJJDP will notify applicants in writing of the receipt of their application. Subsequently, applicants will be notified by letter as to the decision made regarding whether or not their submission will be recommended for funding. It is anticipated that the grants may be awarded as early as September 30, 1987.

IX. Civil Rights Compliance

A. All recipients of OJJDP assistance must comply with the non-discrimination requirements of the Juvenile Justice and Delinquency Prevention Act of 1974 as amended; Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973 as amended; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; and the Department of Justice Non-Discrimination Regulations (28 CFR Part 42 Subparts C, D, E, and G).

B. In the event a Federal or State court, or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office of Civil Rights Compliance (OCRC), of the Office of Justice Programs.

C. Applicants shall maintain such records and submit to the OJJDP upon request timely, complete and accurate data establishing the fact that no person or persons will be or have been denied or prohibited from participation in, benefits of, or denied or prohibited from obtaining employment in connection with any program activity funded in whole or in part with funds made available under this program because of their race, national origin, sex, religion, handicap or age. In the case of any program under which a primary recipient of Federal funds extends financial assistance to any other recipient or contracts with any other person(s) or group(s), such other recipient, person(s) or group(s) shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to assure its civil rights compliance obligations under any grant award.

Verne L. Speirs,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

Appendix 1—List of Eligible States

Alabama
Alaska
Arkansas
California
Colorado
District of Columbia
Florida
Georgia
Idaho
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maine
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Mexico
North Carolina
Ohio
Oklahoma
Rhode Island
South Carolina
Tennessee
Utah
Vermont
Virginia
Washington
West Virginia
Wisconsin
Trust Territories
Northern Mariana Islands

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federal register

Tuesday
August 18, 1987

Part IV

Department of Energy

10 CFR Part 600
Financial Assistance; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 600

Financial Assistance

AGENCY: Department of Energy.

ACTION: Proposed rule.

SUMMARY: The Department of Energy (DOE) today proposes a comprehensive revision of Subpart C of the DOE Financial Assistance Rules, 10 CFR Part 600, and conforming and technical amendments to Subparts A and B. The proposed amendments update and clarify the policy and procedural requirements that apply to cooperative agreements.

The proposed rule would be a generic rule, providing a uniform baseline for DOE cooperative agreement use and administration, and would substantially revise DOE's policies and procedures for cooperative agreements. While the existing rule provides application, funding, and administrative requirements which are derived from both assistance and acquisition policies and procedures, the proposed rule is primarily based upon Government-wide assistance policies and procedures. As a result, the proposed application, funding, and administrative requirements for cooperative agreements (Subpart C) are essentially the same as those for grants (Subpart B).

DATE: Written comments on the proposed rule must be received by close of business October 19, 1987.

ADDRESS: All written comments should be addressed to Department of Energy, Procurement and Assistance Management Directorate, Office of Policy (MA–42), 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Cherlyn Seckinger, Procurement and Assistance Management Directorate (MA–422), Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9737

Paul Sherry, Office of the Assistant General Counsel for Procurement and Finance (GC–34), Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–1525

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I. Background

On July 8, 1980, the Department of Energy (DOE) published a final rule establishing specific procedures and requirements for the award and administration of cooperative agreements (45 FR 46044). These rules were codified at 10 CFR Part 600, Subpart C. Subparts A and B of those rules, covering general financial assistance policies and procedures and specific policies and procedures for grants, had been published on March 8, 1979 (44 FR 12920).

On October 5, 1982, DOE published a final rule which revised and superseded Subparts A and B and amended Subpart C to conform with the revised Subparts A and B (47 FR 44076). Subsequently, on August 7, 1984, DOE made additional conforming amendments to Subpart C (49 FR 31390). Today's proposed revision of Subpart C will supersede the existing Subpart C, as amended, in its entirety.

II. Proposed Rule

A. Introduction

Proposed Subpart C sets forth the instrument selection, application, funding, administrative, and other requirements for cooperative agreements.

DOE may award cooperative agreements if there is a specific statutory authority which authorizes DOE to accomplish a public purpose of support or stimulation in carrying out a program or mission or on the basis of the generic authority in the DOE Organization Act. The decision to use the cooperative agreement instrument will require a written determination that substantial involvement is anticipated between DOE and the participant during performance of the contemplated activity.

The comprehensive revision of Subpart B of 10 CFR Part 600, published on October 5, 1982 (47 FR 44076), generally extended coverage of Office of Management and Budget (OMB) Circular A–110 to all grant recipients other than those covered by OMB Circular A–102, regardless of type. This action was taken primarily in the interest of achieving uniformity of administrative requirements to the extent possible. The effect of extending coverage of OMB Circular A–110 provisions to all grant recipients (including commercial organizations) other than those covered by OMB Circular A–102 was to assure that administrative requirements placed on grant recipients other than State and local governments not vary simply on the basis of recipient type. DOE believes the same to be true in regard to cooperative agreement recipients and therefore believes that similar extension of the coverage of OMB Circular A–110 to all cooperative agreement participants other than those covered by A–102 is appropriate.

B. Conforming and Technical Amendments to Subparts A and B

Sections 600.4, 600.6, 600.9, 600.10, 600.14, 600.19, 600.25, 600.26, 600.107 and 600.118 are amended, in part, to conform to the changes proposed in Subpart C, to clarify policy and procedural requirements pertaining to Program Opportunity Notices (PON), preapplications and cost sharing, and to implement the Government-wide patent provisions of Pub. L. 96–620 and 37 CFR Part 401.

Section 600.6(a)(3) specifies that the procedures set forth in 48 CFR 917.72 as supplemented by the solicitation and application provisions of §§ 600.9 and 600.10 shall be used when the PON is selected as the solicitation method for financial assistance. This revision establishes a uniform preaward process for a PON intended to result in a financial assistance award(s), regardless of whether the award will be a grant or a cooperative agreement.

Section 600.10 requires a preapplication for all construction, land acquisition, and land development projects or programs when Federal funding exceeds $100,000 unless a written program determination is made waiving the preapplication requirement. The preapplication is a much shorter and less detailed document than an application for such projects. Although the preapplication requirement is derived from OMB Circular A–102 for State and local governments, we believe the requirement should also be extended to applicants other than State and local governments because it reduces the paperwork burden for those applicants whose projects are eliminated during the preapplication phase.

Section 600.107 clarifies the existing provisions for cost sharing which require DOE to specify, in the solicitation or in the program rule, if any, and in the award document, the minimum amount or percentage of any required cost sharing. The revision requires DOE to specify the cost sharing requirement in the solicitation or program rule, but does not require DOE

to express the cost sharing requirement in these documents in terms of a minimum amount or percentage of total costs. This change gives DOE flexibility in negotiating the amount of cost sharing for an award when there is no statutory requirement specifying a minimum amount or percentage. DOE will, however, still be required in the award document to specify the cost sharing requirement in terms of a minimum amount for the recipient or a percentage of total costs.

Section 600.118 is amended to make the DOE patent provisions for small business firms or nonprofit organizations consistent with 37 CFR Part 401, the Department of Commerce regulations which have Government-wide applicability.

C. Proposed Requirements for Cooperative Agreements—Subpart C

Proposed § 600.200 sets forth the scope and applicability of Subpart C and indicates that the requirements of this subpart pertaining to the award and administration of cooperative agreements shall apply to any solicitation and resulting award issued on or after the effective date of this subpart, and to any new award resulting from an unsolicitated application, and to any continuation, or renewal award with a beginning date on or after the effective date of this subpart, except as otherwise provided by Federal statute or program rule.

Proposed § 600.201 states that the definitions contained in § 600.101 except for "formula grant" and "subgrant" shall apply to all cooperative agreements. The term "participant" has been added to this section and is defined as the recipient of a cooperative agreement award.

Proposed paragraph 600.202(a) states that a cooperative agreement will be selected as the award instrument when DOE determines in accordance with the Federal Grant and Cooperative Agreement Act (Act), Pub. L. 97–258, that the principal purpose of the relationship is assistance and anticipates that there will be substantial involvement between DOE and the participant during performance of the contemplated activity.

Proposed paragraph 600.202(b) defines substantial involvement and makes a distinction between programmatic and administrative involvement.

DOE believes that an agency of the Federal Government and a participant become substantially involved, within the spirit and intent of the Act, when they share the responsibilities and authorities for conducting or performing the specific activity(ies) for which funds were awarded. DOE does not feel that the addition of administrative requirements which exceed or augment those set forth in OMB Circulars A–102 or A–110, such as requirements added pursuant to Paragraph 10 of OMB Circular A–102 or Paragraph 9 of OMB Circular A–110, as implemented by DOE, automatically necessitate use of a cooperative agreement. DOE views such requirements as heightened Federal monitoring, not as substantial involvement between the parties. DOE believes that substantial involvement between DOE and the participant during performance of the contemplated activity is an assumption by DOE of project responsibilities or authorities which would reside in the recipient only under a grant and that it is the need to share in those responsibilities or authorities with the participant that distinguishes a cooperative agreement relationship from a grant relationship.

Proposed § 600.202(b)(1) states that substantial involvement between DOE and the participant during performance of the activity would exist when DOE shares responsibility for the conduct or performance of the project with the participant, or has the right to intervene in the conduct or performance of the project.

Proposed § 600.202(b)(2) states that technical assistance or guidance of a programmatic nature would not constitute substantial involvement between DOE and the recipient during performance of the contemplated activity if the recipient is not required to follow such guidance or if the technical assistance or guidance is provided at the request of the recipient and is not expected to result in continuing involvement by DOE in the performance of the project.

Proposed § 600.202(b)(3) states that technical assistance or guidance which pertains to the administrative requirements of the award would not constitute substantial involvement.

Proposed § 600.203 permits DOE to obtain budgetary information in addition to that specified in §§ 600.10 and 600.206 for applications submitted in response to solicitations covered by the Source Evaluation Board (SEB) process except for applications submitted by State, local, and Indian tribal governments.

Proposed § 600.204 sets forth the basis for determining whether a grant should be converted to a cooperative agreement or a cooperative agreement to a grant.

Proposed paragraph § 600.(a) provides that DOE would be able to unilaterally decide to convert a grant to a cooperative agreement only when DOE anticipates it will be substantially involved in the performance of the project for a period of at least twelve months after the end of the current budget period. DOE would provide the recipient notice of its intent to convert from a grant to a cooperative agreement at least sixty days prior to the expiration date of the current budget period. If, at the time of negotiation of the continuation award, renewal award, or extension, the recipient does not agree to the conversion, the recipient's refusal to agree would be the basis for not making a continuation, renewal award, or extension and the recipient would not have a right of appeal under § 600.26 (Subpart A). If the recipient does not take exception to the conversion during negotiations, but refuses to accept the cooperative agreement award, DOE would deobligate the funds obligated by the award in accordance with § 600.22 (Subpart A). However, a grant may be converted to a cooperative agreement at any time after award if both parties agree to the conversion.

Proposed paragraph § 600.204(b) provides that a cooperative agreement may be converted to a grant after award if DOE determines that substantial involvement between DOE and the participant is not necessary during performance of the activity as was anticipated in the award document. This action shall be accomplished by a bilateral amendment.

DOE is proposing in § 600.205 to make the application, funding, and administrative requirements for grants as contained in Subpart B of 10 CFR Part 600 applicable to cooperative agreements except for the patents, data, and copyright light provisions. DOE believes that these generic requirements for grants and cooperative agreements should be the same because both instruments represent financial assistance relationships. As stated earlier, a cooperative is different from a grant only because of the substantial Federal involvement in the performance of the project, which is based upon programmatic rather than generic administrative considerations.

Proposed § 600.206 specifies the cost sharing requirements for cooperative agreements. In addition to the requirements of § 600.107, DOE will continue to require cost sharing under cooperative agreements for research, development, and demonstration purposes when it is reasonable to expect that the participant will receive significant present or future benefits beyond the instant award.

Proposed § 600.207 provides patents, data, and copyright clauses applicable

to cooperative agreements. Full text clauses applicable to small business firms are contained in 10 CFR 600.118. Coverage applicable to large business firms has been included in this section for the first time.

III. Review Under Executive Order 12291

In accordance with the requirements of Executive Order 12291 (46 FR 13193, February 27, 1981), this rulemaking has been reviewed by DOE. DOE has concluded that the rule is not a "major rule" because its promulgation will not result in (1) an annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete in domestic or export markets. Pursuant to the requirements of the Executive order, DOE submitted to OMB the proposed rule for review. The OMB has concluded its review.

IV. Review Under the Regulatory Flexibility Act

This proposed rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, 94 Stat. 1164, which requires preparation of a regulatory flexibility analysis for any rule that is likely to have a significant economic impact on a substantial number of small entities. The proposed rule does not impose any new administrative requirements on small entities that are small government jurisdictions or small nonprofit organizations. These entities will continue t be convered by the administrative requirements of OMB Circulars A–102 and A–110. Small businesses will be affected by the proposed rule only as eligible recipients of cooperative agreement awards. Since DOE is proposing to lessen the administrative requirements imposed on such recipients, DOE certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities, and no regulatory flexibility analysis has been prepared.

V. Review Under the Paperwork Reduction Act

The information collection and recordkeeping requirements imposed by this rule are subject to the provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 94 Stat. 2812 (44 U.S.C. Chapter 3501 *et seq.*). Except for Subpart D of the Part, Audit Requirements for State and Local Governments, the information and recordkeeping requirements imposed by this rule have been cleared by OMB for DOE use under OMB Clearance number 1910–0400. A control number to be issued by OMB for information collections under OMB Circular A–128 will apply to the information collection and recordkeeping requirements imposed by Subpart D. Comments on information collection and recordkeeping requirements may be submitted to:

Mr. Vartkes Broussalian, Department of Energy, Desk Officer, Office of Management and Budget (OIRA), Room 3001, NEOB, Washington, DC 20503, (202) 586–7313

and to:

Mr. Howard H. Raiken, Director, Management Systems Analysis Division (MA–213), U.S. Department of Energy, Washington, DC 20585, (202) 586–9383

VI. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.* (1976)), the Council on Environmental Quality Regulations (40 CFR Parts 1500 through 1506), and the DOE guideline (10 CFR Part 1021) and, therefore, does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

VII. Public Comments

Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments with respect to the proposed changes set forth in this notice. Comments should be submitted in writing to the address indicated in the "ADDRESS" section of this notice. All comments received will be available for public inspection in the DOE Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. All written comments received by October 19, 1987, will be fully considered prior to publication of a final rule resulting from this proposal.

The Department has concluded that this proposed rule does not involve a substantial issue of fact or law and that the proposed rule will not have a substantial impact on the nation's economy or a large number of individuals or businesses. Therefore, pursuant to Pub. L. 95–91, the DOE Organization Act, the Department does not plan to hold a public hearing on this proposed rule.

List of Subjects in 10 CFR Part 600

Administrative practice and procedure, Applications, Audit, Cooperative agreements/energy, Copyrights, Educational institutions, Eligibility, Energy financial assistance, For-profit organizations, Grants, Hospitals, Indian tribes, Individuals, Inventions and patents, Local governments, Management standards, Nonprofit organizations, Patents, Reporting requirements, Solicitations, Small businesses, States, Technical data, Uniform administrative requirements.

Issued in Washington, DC, August 11, 1987.

Berton J. Roth,

Director, Procurement and Assistance Management Directorate.

For the reasons set out in the preamble, Part 600 of Title 10 of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 600—[AMENDED]

1. The authority citation for Part 600 continues to read as follows:

Authority: Secs. 644 and 646, Pub. L. 95–91, 91 Stat. 599, (42 U.S.C. 7254 and 7256); Pub. L. 97–258, 96 Stat. 1003–1006 (31 U.S.C. 6301–6308).

2. The table of contents for Subpart C of Part 600 is revised to read as follows:

Subpart C—Cooperative Agreements

Sec.

600.200 Scope and applicability.
600.201 Definitions.
600.202 Selection of cooperative agreement as financial assistance instrument.
600.203 Application budgetary information.
600.204 Instrument conversion.
600.205 Application, funding, and administrative requirements.
600.206 Cost sharing.
600.207 Patents, data, and copyrights.

Subpart A—[Amended]

3. In Part 600, Subpart A, "Head of Procuring Activity" should be changed to read "Head of Contracting Activity."

4. In part 600, Subpart A, "Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95–224 (41 U.S.C. 501 *et seq.*)" should be changed to read "Federal Grant and Cooperative Agreement Act", Pub. L. 97–258 (31 U.S.C. 6301–6308)."

5. Section 600.4 (c)(2)(i) and (c)(3) are to revised as follows:

§ 600.4 Deviations.

* * * * *

(c) * * *

(2) * * *

(i) A single-case deviation may be authorized by the responsible Head of Contracting Activity (HCA). Any proposed single-case deviation from the requirements of § 600.118 or § 600.208 concerning patents or technical data shall be referred to the Assistant General Counsel for Patents for review and concurrence prior to submission to the HCA.

* * * * * *

(3) Whenever the approval of OMB, other Federal agency, or other DOE office is required to authorize a deviation, the proposed deviation must be submitted to the Director or designee for concurrence prior to submission to the authorizing official. Any proposed class deviation from the requirements of § 600.118 or § 600.208 concerning patents or technical data shall be forwarded through the Assistant General Counsel for Patents.

* * * * * *

6. Section 600.6 is amended by revision paragraph (a)(3) and by adding paragraph (a)(4).

§ 600.6 Discretionary awards.

(a) * * *

(3) Applications submitted in response to a Program Opportunity Notice (PON) (see 48 CFR 917.72 for the submission, evaluation, and selection procedures to be used for a PON. When it is anticipated that a PON will result in a financial assistance award(s), the procedures in 48 CFR 917.72 shall be supplemented by the provisions set forth in §§ 600.9 and 600.10 to cover those solicitation and application requirements which are specific to financial assistance and for which there is no alternate coverage in 48 CFR 917.72; e.g., presubmission reviews and clearances, preaward assurances, etc.).

(4) Applications submitted in response to a Program Research and Development Announcement (see 48 CFR 917.73) if, after an application is selected for award, DOE determines that a grant or cooperative agreement is the appropriate award instrument.

* * * * * *

7. Section 600.9(c)(19) is revised to read as follows:

§ 600.9 Solicitation.

* * * * * *

(c) * * *

(19) A statement that DOE is under no obligation to pay for any costs associated with preparation or submission of applications if an award is not made. If an award is made, such costs may be allowable as provided in the applicable cost principles (see § 600.103);

* * * * * *

8. Section 600.10 is revised to read as follows:

§ 600.10 Form and content of applications and preapplications.

(a) *General.* Applications shall be required for all financial assistance projects or programs. Preapplications shall be required for all construction, land acquisition, and land development projects or programs for which the need for Federal funding exceeds $100,000 unless the cognizant program office makes a written program determination to waive the preapplication requirement.

(b) *Forms.* Applications or preapplications shall be on the form or in the format and in the number of copies specified by DOE either in this Part, in a program rule, or in the applicable solicitation, and must include all required information. For State governments, local governments, or Indian tribal governments, applications shall be made on the forms prescribed by OMB Circular A–102, Attachment M. Such applicants shall not be required to submit more than the original and two copies of the application or preapplication.

(c) *Signature.* The application and any preapplication must be signed by the individual who is applying or by an individual who is authorized to act for the applicant organization and to commit the applicant to comply with the terms and conditions of the financial assistance instrument, if awarded.

(d) *Contents of a preapplication.* In general, a financial assistance preapplication shall include:

(1) A facesheet containing basic identifying information. The facesheet shall be the Standard Form (SF)424;

(2) A brief narrative statement describing the project objectives and method of accomplishment; and

(3) A project budget identifying the estimated amounts of Federal funds and non-federal contributions (cash or in-kind) needed to support the project.

(e) *Contents of an application.* In general, a financial assistance application shall include:

(1) A facesheet containing basic identifying information. The facesheet shall be the Standard Form (SF)424;

(2) A detailed narrative description of the proposed project, including the objectives of the project and the applicant's plan for carrying it out;

(3) A budget with supporting justification (see §§ 600.102 and 600.203); and

(4) Any required preaward assurances.

(f) *Incomplete applications.* DOE may return an application which does not include all information and documentation required by statute, program rule, and the solicitation, if in the judgment of the DOE Contracting Officer, the nature of the omission precludes review of the application.

(g) *Supplemental information.* During the review of a complete application, DOE may request the submission of additional information only if the information is essential to evaluate the application.

9. Section 600.14(e)(2) is revised as follows:

§ 600.14 Unsolicited applications.

* * * * * *

(e) * * *

(2) Any request for continuation, renewal, or supplemental funding of a project which was originally funded as the result of an unsolicited application shall be evaluated in the same manner as any other request for such funding and shall not be subject to the selection criterion of paragraph (e)(1)(ii) of this section.

* * * * * *

10. Section 600.19 is revised as follows:

§ 600.19 Application evaluation and selection.

(a) Applications for discretionary financial assistance, whether solicited or unsolicited, shall be evaluated by reviewers in accordance with this rule, DOE directives, and the terms and conditions of the solicitation, if any.

(b) In deciding which new applications (other than unsolicited applications) or renewal applications for discretionary financial assistance to select for award, DOE shall consider the results of the application evaluation (technical, business and financial) which has been conducted in accordance with this section, plus any intergovernmental review comments (see § 600.11), or other available advice or information as well as published program policy factors, if any. The selection of applications under any given solicitation shall be made by responsible program Assistant Secretary or his or her designee; however, the Secretary may make selections of applications submitted in response to solicitations where, in accordance with applicable DOE directives, such selection is required to be made by the Secretary.

(c) Program policy factors are factors which the selection official may use to select a range of projects that would best serve program objectives. DOE

shall describe in the solicitation any program policy factor that may be used in making selections, the justification for its use and, if appropriate, the relative priority of each such factor. Examples of program policy factors are:

(1) Geographic distribution;

(2) Diverse types and sizes of applicant entities;

(3) A diversity of methods, approaches, or kinds of work; and

(4) Projects which are complementary to other DOE programs or projects.

(d) After the selection of an application, DOE may, if necessary, enter into negotiations with an applicant. Such negotiations are not a commitment that DOE will make an award.

(e) For cooperative agreements, DOE may use the source evaluation board (SEB) process (see DEAR 915.613) for the solicitation and evaluation of applications and selection of awardees.

(f) See § 600.106 for the selection process for continuation applications and § 600.14 for the selection process for unsolicited applications.

11. Section 600.25(d) is revised to read as follows:

§ 600.25 Access to records.

* * * * *

(d) *Duration of access right.* The rght of access may be exercised for as long as the applicable records are retained by the recipient, subrecipient, contractor, or subcontractor. (See § 600.124 for record retention requirements).

12. Section 600.26(d)(1) (iii), (iv) and (v) are revised to read as follows:

§ 600.26 Disputes and appeals.

* * * * *

(d)(1) * * *

(iii) DOE denial of a request for a budget revision or other change in the approved project under §§ 600.103 and 600.114 of this part or under another term or condition of the award;

(iv) Any DOE action authorized under § 600.121(b) (1), (2), (3), or (5) of this part with respect to recipient noncompliance, or such actions authorized by program rule;

(v) Any DOE decision about an action requiring prior DOE approval under § 600.112(g) or § 600.119 of this part or under another term or condition of the award;

* * * * *

13. Section 600.107(a) is revised as follows:

§ 600.107 Cost sharing.

(a) *General.* DOE shall specify in the solicitation or in the program rule, if any, any cost sharing requirement. The award document shall be specific as to whether the cost sharing is based on a minimum amount for the recipient or on a percentage of total costs.

* * * * *

14. Section 600.118(b)(1) is revised as follows:

§ 600.118 Patents, data and copyrights.

* * * * *

(b) * * *

(1) *Patent Rights (Small Business Firm or Nonprofit Organization).* This clause shall apply to grants to small business firms and domestic nonprofit organizations where such grants have as a purpose the conduct of experimental, developmental, demonstration, or research work and where the small business firm or domestic nonprofit organization states in writing that it qualifies as a small business firm or domestic nonprofit organization. In exceptional circumstances, DOE may, as determined by Patent Counsel, use a patent rights clause other than the clause specified in this paragraph (b)(1). Exceptional circumstances have been declared for classified subject matter, high level radioactive waste, and uranium enrichment. In addition, if the particular grant is affected by an international agreement or treaty, special provisions are to be included in the clause specified herein.

Patent Rights—Small Business Firm or Nonprofit Organization

(a) Definitions. (1) "Invention" means a any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code (U.S.C.) or any novel veriety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 *et seq.*).

(2) "Subject Invention" means any invention of the grantee conceived or first actually reduced to practice in the performance of work under this grant, provided that in the case of a variety of plant the date of determination (as defined in section 44(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of grant performance.

(3) "Practical Application" means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is utilized and that its benefits are, to the extent permitted by law or government regulations, available to the public on reasonable terms.

(4) "Made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(5) "Small Business Firm" means a small business concern as defined at Section 2 of Pub. L. 85–536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standard for small business concerns involved in Government procurement and subcontracting, at 13 CFR 121.3–8 and 13 CFR 121.3–12, respectively, will be used.

(6) "Nonprofit Organization" means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(7) "Patent Counsel" means the Department of Energy (DOE) Patent Counsel assisting the DOE contracting activity.

(b) Allocation of principal rights. (1) The grantee may retain the entire right, title and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the grantee retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(2) (Reserved.)

(c) Invention disclosure, election of title and filing of patent application by grantee. (1) The grantee will disclose each subject invention to the Patent Counsel within two months after the inventor discloses it in writing to grantee personnel responsible for patent matters. The disclosure to the Patent Counsel shall be in the form of a written report and shall identify the grant under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time to the disclosure of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the Patent

Counsel, the grantee will promptly notify the Patent Counsel of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the grantee.

(2) The grantee will elect in writing whether or not to retain title to any such invention by notifying the Patent Counsel within two years of disclosure to the Patent Counsel. However, in any case where publication, on sale or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by Patent Counsel to a date that is no more than sixty days prior to the end of the statutory period.

(3) The grantee will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The grantee will file patent applications in additional countries or international patent offices within either ten months of the corresponding initial patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure to the Patent Counsel, election, and filing, under subparagraphs (1), (2), and (3) may, at the discretion of the Patent Counsel be granted.

(d) Conditions when the Government may obtain title. The grantee will convey to the DOE, upon written request, title to any subject invention:

(1) If the grantee fails to disclose or elect title to the subject invention within the times specified in (c) above, or elects not to retain title; provided that the DOE may only request title within 60 days after learning of the failure of the grantee to disclose or elect within the specified times;

(2) In those countries in which the grantee fails to file patent applications within the times specified in (c) above; provided, however, that if the grantee has filed a patent application in a country after the time specified in (c) above the prior to its receipt of the written request of the Patent Counsel, the grantee shall continue to retain title in that country; or

(3) In any country in which the grantee decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in a reexamination or opposition proceeding on, a patent on a subject invention.

(e) *Minimum rights to grantee and protection of the grantee right to file.* (1) The grantee will retain a nonexclusive, royalty-free license throught the world in each subject invention to which the Government obtains title except if the grantee fails to disclose the subject invention within the times specified in (c) above. The grantee's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the grantee is a part and includes the right to grant sublicenses of the same scope to the extent the grantee was legally obligated to do so at the time the grant was awarded. The license is transferable only with the approval of DOE except when transferred to successor of the part of the grantee's business to which the invention pertains.

(2) The grantee's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR Part 404 and 10 CFR Part 781. This license will not be revoked in that field of use or the geographical areas in which the grantee has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DOE to the extent the grantee, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, DOE will furnish the grantee a written notice of its intention to revoke or modify the license, and the grantee will be allowed thirty days (or such other time as may be authorized by DOE for good cause shown by the grantee) after the notice to show cause why the license should not be revoked or modified. The grantee has the right to appeal, in accordance with 37 CFR Part 404 and 10 CFR Part 781, any decision concerning the revocation or modification of its license.

(f) *Grantee action to protect the Government's interest.* (1) The grantee agrees to execute or to have executed and promptly deliver to the Patent Counsel all instruments necessary to:

(i) Establish or confirm the rights the Government has throughout the world in those subject inventions to which the grantee elects to retain title, and

(ii) Convey title to DOE when requested under (d) above and to enable the Government to obtain patent protection throughout the world in the subject invention.

(2) The grantee agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the grantee each subject invention made under this grant in order that the grantee can comply with disclosure provisions of (c) above and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. The disclosure format should require, as a minimum, the information required by (c)(1) above. The grantee shall instruct such employees through the employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to United States or foreign statutory bars.

(3) The grantee will notify the Patent Counsel of any decision not to continue prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty days before expiration of the response period required by the relevant patent office.

(4) The grantee agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement "This invention was made with Government support under (identify the grant) awarded by the Department of Energy. The Government has certain rights in this invention."

(5) The grantee agrees to:

(i) Upon request, provide a report prior to the close-out of the grant listing all subject inventions or stating that there were none;

(ii) Provide, upon request, a copy of the patent application, filing date, serial number and title, patent number and issue date for any subject invention in any country in which the grantee has applied for a patent; and

(iii) Provide upon request, but not more than annually, listings of all subject inventions which were disclosed to DOE during the applicable reporting period.

(g) Contracts and Subgrants under the Grant. (1) The grantee will include this clause, suitably modified to identify the

parties, in all contracts and subgrants under the grant, regardless of tier, for experimental, developmental or research work to be performed by a small business firm or a domestic nonprofit organization. The contractor or subgrantee will retain all rights provided for the grantee in this clause, and the grantee will not, as part of the consideration for awarding the contract or subgrant, obtain rights in the contractor's or subgrantee's subject inventions.

(2) The grantee will include in all other contracts or subgrants under the grant, regardless of tier, for experimental, development, demonstration or research work the patent rights clause of 41 CFR 9–9.107–5(a) or 9–9.107–6 as appropriate, modified to identify the parties.

(3) In the case of a contract or subgrant under the grant at any tier, DOE, the contractor or subgrantee, and the grantee agree that the mutual obligations of the parties created by this clause constitute a contract between the contractor or subgrantee and DOE with respect to those matters covered by this clause.

(h) Reporting on utilization of subject inventions. The grantee agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the grantee or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the grantee, and such other data and information as DOE may reasonably specify. The grantee also agrees to provide additional reports as may be requested by DOE in connection with any march-in proceeding undertaken by DOE in accordance with paragraph (j) of this clause. As required by 35 U.S.C. 202(c)(5), DOE agrees it will not disclose such information to persons outside the Government without permission of the grantee.

(i) Preference for United States industry. Notwithstanding any other provision of this clause, the grantee agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject inventions in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by DOE upon a showing by the grantee or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) March-in-rights. The grantee agrees that with respect to any subject invention in which it has acquired title, DOE has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of DOE to require the grantee, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are responsible under the circumstances, and if the grantee, assignee, or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if DOE determines that:

(1) Such action is necessary because the grantee or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the grantee, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the grantee, assignee, or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a license of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) Special provisions for grants with nonprofit organizations. If the grantee is a nonprofit organization it agrees that:

(1) Rights to a subject invention in the United States may not be assigned without the approval of DOE, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the grantee;

(2) The grantee will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when DOE deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the grantee with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms and that it will give a preference to a small business firm when licensing a subject invention if the grantee determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided that the grantee is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the grantee. However, the grantee agrees that the Secretary of Commerce may review the grantee's licensing program and decisions regarding small business applicants, and the grantee will negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when the Secretary of Commerce's review discloses that the grantee could take reasonable steps to implement more effectively the requirements of this paragraph (k)(4).

(l) Communications. The DOE central point of contact for communications or matters relating to this clause is the Patent Counsel.

* * * * *

15. Subpart C is proposed to be revised as follows:

Subpart C—Cooperative Agreements

§ 600.200 Scope and applicability.

(a) This subpart establishes requirements for the award and administration of cooperative agreements. For purposes of this subpart, the terms "grant" and "grantee" as used in Subpart B of this part shall be read as "cooperative agreement" and "participant" when incorporated by reference in this subpart. For cooperative agreements and subawards, this subpart implements OMB Circulars A–102, A–110, and the Federal cost principles.

(b) The requirements of this subpart shall apply as indicated in § 600.2 except that this subpart shall not apply to any new award resulting from a solicitation issued before the effective date of this subpart.

(c) The noncompliance procedures of § 600.121 and the suspension and termination procedures of § 600.122 which are specified for cooperative agreement use in § 600.206 shall apply, with the concurrence of the affected parties, to any applicable action initiated before the effective date of this subpart and shall apply to any applicable action initiated after the effective date of this subpart under an active cooperative agreement. The closeout procedures of § 600.123 which are specified in § 600.206 shall apply to any terminated or expired cooperative agreement which has not been closed out prior to the effective date of this subpart.

§ 600.201 Definitions.

The definitions contained in § 600.101 except for "formula grant" and "subgrant" shall apply to all cooperative agreements. In addition, for purposes of this subpart, "participant" means the organization, individual, or other entity that receives a cooperative agreement award from DOE and is financially accountable for the use of any DOE funds or property provided for the performance of the project, and is legally responsible for carrying out the terms and conditions of the award.

§ 600.202 Selection of cooperative agreement as financial assistance instrument.

(a) *Determinations.* When DOE determines in accordance with the appropriate authorizing statute, the Federal Grant and Cooperative Agreement Act, Pub. L. 97–258, and § 600.5 that the principal purpose of the relationship is assistance and it is anticipated that there will be substantial involvement between DOE and the participant during performance of the contemplated activity, the award instrument shall be a cooperative agreement.

(b) *Substantial involvement.* Anticipated substantial involvement between DOE and the participant during performance of the contemplated activity is the only criterion which distinguishes a grant relationship from a cooperative agreement relationship.

(1) Substantial involvement exists when:

(i) Responsibility for the management, control, or direction of the project is shared by DOE and the participant, or

(ii) Responsibility for the performance of the project is shared by DOE and the participant, or

(iii) DOE has the right to intervene in the conduct or performance of project activities for programmatic reasons. Intervention includes the interruption or modification of the conduct or performance of project activities. (Suspension or termination of the cooperative agreement under § 600.122 does not constitute "intervention in the conduct or performance of project activities.")

(2) Providing technical assistance or guidance of programmatic nature to a recipient does not constitute substantial involvement if the recipient is not required to follow such guidance or if the technical assistance or guidance is provided at the request of the recipient, and such assistance or guidance is not expected to result in continuing DOE involvement in the performance of the project.

(3) Technical assistance or guidance which pertains to the administrative requirements of the award does not constitute substantial involvement.

(c) *Statement of substantial involvement between DOE and the participant.* Every cooperative agreement shall explicitly state the substantial involvement anticipated between DOE and the participant during performance of the project.

(1) The cooperative agreement award document shall affirmatively state, under the heading "Substantial Involvement between DOE and the Participant," all relevant information concerning the substantial involvement anticipated between DOE and the participant during performance of the project. This statement shall describe the following:

(i) The project activities in which substantial involvement between DOE and the participant is anticipated;

(ii) The specific responsibilities and authorities of DOE and the participant in the conduct and/or performance of each of the project activities in which substantial involvement is anticipated;

(iii) Any limitations on DOE/participant responsibilities and authorities in the conduct and/or performance of each of the project activities;

(iv) The duration of DOE/participant responsibilities and authorities in the conduct and/or performance of each of the project activities; and

(v) Any liability DOE assumes by its substantial involvement in the project.

(2) A statement of substantial involvement between DOE and the participant shall be developed so that it:

(i) Represents only the DOE involvement intended and does not unnecessarily increase DOE liability under the cooperative agreement;

(ii) Integrates, as appropriate, DOE's responsibilities and involvement in project activities with administrative requirements such as performance reporting and monitoring, property management, and suspension and termination; and

(iii) Specifies which general administrative requirements applicable to cooperative agreements are deleted or modified because they are inconsistent with the provisions related to substantial involvement.

§ 600.203 Application budgetary information.

For cooperative agreement applications subject to the SEB process, DOE may require that applicants, other than governmental entities, submit budget information in a different format and in greater detail than that specified in §§ 600.10 and 600.206 only when that information is essential to evaluation under the SEB process. State, local, and Indian tribal governments shall continue to provide budget information as specified in §§ 600.10 and 600.206 and shall be excluded from this requirement. (Also see §§ 600.10 and 600.206 for the other requirements pertinent to application contents.)

§ 600.204 Instrument conversion.

(a) *Conversion of a grant to a cooperative agreement.* Subsequent to the award of a grant, it may be necessary for DOE to become substantially involved with the participant in the performance of the project. However, the introduction of substantial involvement does not by itself constitute a conversion from a grant to a cooperative agreement relationship nor does it necessarily require that a change be made in instrument type.

(1) *Determination.* When DOE determines in accordance with § 600.202 that a cooperative agreement would be the appropriate instrument because of the necessity for substantial involvement between the parties, and the substantial involvement is necessary for a period of at least twelve months beyond the expiration date of the current budget period, DOE will initiate action to convert the grant to a cooperative agreement.

(2) *Conversion.* DOE shall notify the grantee of its intention to convert from a grant to a cooperative agreement as soon as the decision is made, but no later than sixty days prior to the expiration date of the current budget period. Conversion of a grant to a cooperative agreement shall be effected at the time of negotiation of the continuation or renewal award or any extension of twelve months or more. A grant may also be converted to a cooperative agreement at any time after

award when it is mutually agreed that DOE should be substantially involved in the performance of the project. The conversion shall be accomplished by an amendment to the award. The amendment documents shall:

(i) Change the instrument-type designation in the award document from "Grant" to "Cooperative Agreement";

(ii) Indicate that thereafter Subpart C of this part shall apply to the agreement in lieu of Subpart B of this part;

(iii) Add a statement of substantial involvement between DOE and the participant in accordance with § 600.202(c); and

(iv) Change any other terms, as appropriate (e.g., special provisions, reporting), to reflect the increased involvement by DOE.

(3) In the event DOE determines substantial involvement between the parties is necessary for at least twelve months after the expiration date of the current budget period and the grantee does not agree to conversion of the instrument at the time of negotiation, the grantee's refusal to agree to the conversion will be the basis for not making a continuation award, renewal award, or extension and the recipient shall have no right of appeal under § 600.26. Any refusal to accept a cooperative agreement award shall be treated in accordance with § 600.22.

(b) *Conversion of a cooperative agreement to a grant.* A cooperative agreement may be converted to a grant if DOE determines after award of a cooperative agreement that the anticipated substantial involvement between the parties will not be necessary. Conversion of a cooperative agreement to a grant shall be accomplished by a bilateral amendment to the award as soon as possible after it is determined that no substantial involvement will be necessary between DOE and the participant during performance of the activity. The amendment shall:

(1) Change the instrument type designation in the award document from "Cooperative Agreement" to "Grant";

(2) Indicate that thereafter Subpart B of this part will apply to the agreement in lieu of Subpart C of this part;

(3) Delete the "Substantial Involvement Between DOE and Participant" section from the agreement; and

(4) As necessary, change any other administrative terms which relate to the substantial involvement between DOE and the participant. If the participant does not agree to the conversion, DOE shall initiate a termination of the agreement in accordance with § 600.122(d).

§ 600.205. Application, funding, and administrative requirements.

Except for § 600.118 and unless otherwise specified in this subpart, §§ 600.102 through 600.124 of Subpart B which set forth the application, funding, and administrative requirements for grants shall also apply to cooperative agreements. Furthermore, the audit requirements set forth in Subpart D of this Part shall apply to cooperative agreements.

§ 600.206 Cost sharing.

In addition to the requirements of § 600.107, the following requirements apply to research, development, and demonstration projects:

(a) When DOE awards cooperative agreements for research, development, and demonstration projects where the primary purpose of the project is the ultimate commercialization and utilization of technology by the private sector and when there are reasonable expectations that the participant will receive significant present or future economic benefits beyond the instant award as a result of the performance of the cooperative agreement, cost sharing shall be required unless waived by the cognizant Program Assistant Secretary or designee.

(b) DOE will decide, on a case-by-case basis, the amount of cost sharing required for a particular project.

(c) Factors in addition to those specified in § 600.107(c) which may be considered when negotiating cost sharing for research, development, and demonstration projects include the potential benefits to a participant resulting from the project and the length of time before a project is likely to be commercially successful.

§ 600.207 Patents, data, and copyrights.

(a) *General.* Cooperative agreements shall be awarded and administered by DOE in compliance with the patent, data, and copyright provisions of this section and 48 CFR Part 927. DOE shall specify in each award, the applicable patent, data, and copyright provisions.

(b) *Required clauses.* DOE shall determine which of the clauses listed in this paragraph or in 48 CFR Part 927 apply, based on DOE review of the application, other information submitted by the applicant, and any negotiations. These clauses may be modified by DOE Patent Counsel, in accordance with the procedures of 48 CFR Part 927, for a particular cooperative agreement or for a class of cooperative agreements. In each patent, data, and copyright clause selected for inclusion in the cooperative agreement, the terms "grant" or "contract" shall be read as "cooperative agreement" or "agreement," the terms "grantee" or "contractor" shall be read as "participant," the term "subgrant" shall be read as "subaward," and "subcontract" or "contract" awarded under a grant shall be read as "contract" under a cooperative agreement.

(1) *Patent Rights (Small Business Firm or Nonprofit Organization).* The clause set forth in § 600.118(b)(1) shall be included in cooperative agreements with small business firms and nonprofit organizations where such cooperative agreements have as a purpose the conduct of experimental, developmental, demonstration, or research work. The policies and procedures of § 600.118(b)(1) require the small business firm or nonprofit organization to state in writing that it qualifies as a small business firm or nonprofit organization. In exceptional circumstances, DOE may, as determined by Patent Counsel, use a patent rights clause other than the clause specified in paragraph (b)(1) of § 600.118 for such participants. Exceptional circumstances have been declared for classified subject matter, high level radioactive waste, and uranium enrichment. In addition, if the cooperative agreement is affected by an international agreement or treaty, special provisions are to be included in the clause specified herein.

(2) *Patent Rights (Long Form).* As specified by 48 CFR 927.300(a), the clause set forth in 41 CFR 9–9.107–5(a) shall be included in all cooperative agreements awarded to participants other than small business firms or nonprofit organizations, where such cooperative agreements have as a purpose the conduct of experimental, developmental, demonstration, or research work. The applicant/participant may request in advance of, or within thirty days after the award is signed, a waiver of all or any part of the rights of the United States with respect to subject inventions. DOE shall notify the applicant of this right by inserting the notice of 48 CFR 952.227–84 in all solicitations which may result in cooperative agreements calling for experimental, research, developmental, and demonstration work. For unsolicited applications, DOE shall provide this notice to the applicant prior to award. If a waiver is granted, the appropriate waiver clause shall be substituted for the Patent Rights (Long Form) clause. DOE also may authorize an advance waiver for a class of awards, when appropriate, and shall specify the applicable patent rights clause in every award covered by such a waiver. The clause set forth in 41 CFR 9–9.107–5(a)

shall be modified in accordance with 41 CFR 9–9.107–5, as appropriate.

(3) *Rights in Technical Data (Long Form).* The clause set forth in 48 CFR 952.227–75 shall be included in all cooperative agreements having as a purpose the conduct of experimental, developmental, demonstration, or research work. This clause shall be modified in accordance with 48 CFR 952.227–75 Alternate I and II, as appropriate.

(4) *Additional technical data requirements.* The clause set forth in 48 CFR 952.227–73 shall be included in all cooperative agreements having as a purpose the conduct of experimental, developmental, demonstration, or research work unless all technical data requirements are known in advance of the agreement and are set forth in the cooperative agreement project description/statement of work.

(5) *Patent indemnity.* As specified in 48 CFR 927.300(a), the clause set forth in 41 CFR 9–9.103–3(b) shall be included in all cooperative agreements for experimental, developmental, demonstration, or research work, when DOE determines that the cooperative agreement will require standard supplies sold or offered for sale to the public on the commercial open market or will use the participant's practices or methods which normally are or have been used in providing goods and services on the commercial open market or will use any parts, components, practices, or methods to the extent to which the participant has secured indemnification from liability. The participant shall include this clause in contracts for the types of activities described in this paragraph.

(6) *Classified inventions.* As specified in 48 CFR 927.300(a), the clause set forth in 41 CFR 9–9.106 shall be included in every cooperative agreement which covers, or is likely to cover, classified subject matter.

(7) *Authorization and consent.* The clause set forth in § 600.118(b)(5) shall be included in all cooperative agreements under which experimental, developmental, demonstration, or research work is to be performed within the United States, its possessions, or Puerto Rico.

(8) *Notice and assistance.* The clause set forth in § 600.118(b)(6) shall be included in all cooperative agreements in excess of $10,000 for construction, experimental, developmental, demonstration, or research work which is to be performed within the United States, its possessions, or Puerto Rico.

(9) *Reporting of royalties.* In order that DOE may be informed regarding royalty payments to be made by a participant in connection with any cooperative agreement where the amount of the royalty payments is included in the proposed budget, the applicant shall provide:

(i) Information concerning the royalty payments expected to be made under the cooperative agreement, if awarded, together with the name of the licensors, and either the patent numbers involved or such other information as will permit identification of the patents and patent applications as well as the basis on which the royalties are to be paid; or

(ii) A certification that the proposed budget includes no amount representing any royalty that would be paid by the participant directly to others in connection with the performance of the award.

(iii) If the information or certification specified in paragraphs (b)(9)(i) and (b)(9)(ii) is not available at the time of award, DOE shall include the clause set forth in § 600.118(c)(2) in any applicable cooperative agreement award.

(10) *Subawards and contracts under cooperative agreements or subawards.* The participant shall include the applicable clauses of this section in any subaward or contract awarded under a cooperative agreement and assure that the applicable clauses are also included by subrecipients in contracts.

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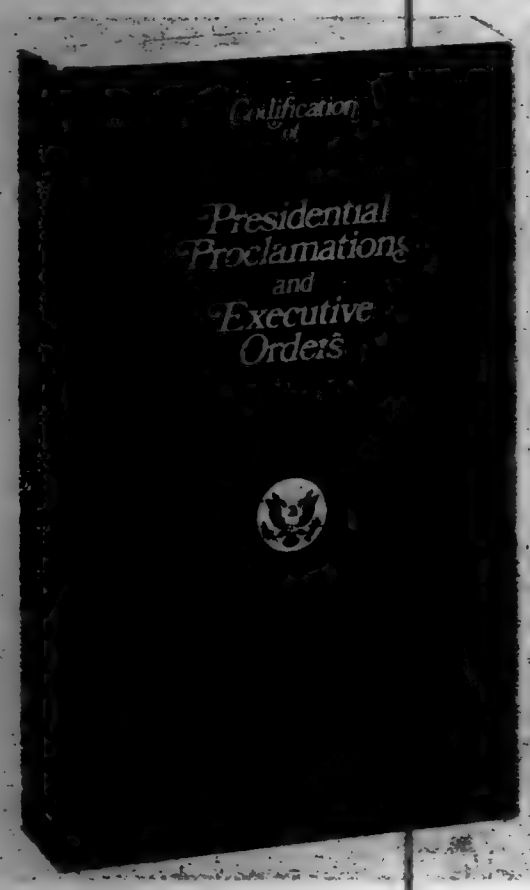

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WASHINGTON, DC

WHEN: September 29, at 9 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: Janice Booker, 202-523-5239

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1944

Section 502 Rural Housing Loan Policies, Procedures and Authorizations

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulation regarding section 502 Rural Housing (RH) loans. This action is taken for more efficient administration of the program. The intended effect is to permit State Directors to contract for the processing of interest credit renewals without obtaining prior approval from the Administrator.

EFFECTIVE DATE: August 19, 1987.

FOR FURTHER INFORMATION CONTACT: Nancy Monesson, Senior Loan Specialist, Single Family Housing, Processing Division, Farmers Home Administration, USDA, Room 5330, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250, telephone: (202) 382–1474.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and has been determined to be exempt from those requirements because it involves only internal Agency management and matters of contract.

This final action has been reviewed in accordance with FmHA Instruction 1940–G, "Environmental Program." FmHA has determined that this final action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

This action requires no increase in costs to the Government. There is no impact on proposed budget levels and funding allocations will not be affected because of this action. There will be no increase in the reporting requirements of the public. The Agency has determined that this regulation maximizes net benefit to society at the lowest net cost.

This program activity is listed in the Catalog of Federal Domestic Assistance under No. 10.410. For the reasons set forth in the final rule related Notice to 7 CFR Part 3015, Subpart V, 48 FR 29115, June 24, 1983, this program/activity is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials. This action does not directly affect any FmHA programs or projects which are subject to intergovernmental consultation.

List of Subjects in 7 CFR Part 1944

Home improvement, Loan programs—housing and community development, Low-and moderate-income housing—rental, Mobile homes, Mortgages, Rural housing, Subsidies.

Therefore, FmHA amends Subpart A of Part 1944, Chapter XVIII, Title 7, Code of Federal Regulations as follows:

PART 1944—HOUSING

1. The authority citation for Part 1944 continues to read as follows:

Authority: 42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Section 502 Rural Housing Loan Policies, Procedures and Authorizations

2. Section 1944.34(h)(3) introductory text is revised to read as follows.

§ 1944.34 Interest credit.

* * * * *

(h) *Interest credit modification.*

* * * * *

(3) *Interest credit renewal.* Pursuant to delegations of procurement authority included in FmHA Instruction 2024–A (available in any FmHA Office), State Directors are authorized to enter into contracts for the processing of interest credit renewals. Contractor will not be given the authority to approve or disapprove Interest Credit Agreements.

* * * * * *

Dated: July 17, 1987.

Vance L. Clark,
Administrator, Farmers Home Administration.

[FR Doc. 87–18983 Filed 8–18–87; 8:45 am]
BILLING CODE 3410–07–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 211

[Release No. SAB–71]

Staff Accounting Bulletin No. 71 on Requirements for Financial Statements of Properties Securing Mortgage Loans

AGENCY: Securities and Exchange Commission.

ACTION: Publication of Staff Accounting Bulletin.

SUMMARY: This staff accounting bulletin expresses the staff's views regarding the requirements for financial statements of properties securing mortgage loans.

DATE: August 12, 1987.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Jones or John M. Riley, Office of the Chief Accountant, (202–272–2130), or Howard P. Hodges, Jr. or Joseph S. Aleknavage, Division of Corporation Finance, (202–272–2553), Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The statements in staff accounting bulletins are not rules or interpretations of the Commission nor are they published as bearing the Commission's official approval. They represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal securities laws.

Jonathan G. Katz,
Secretary.

PART 211—[AMENDED]

Accordingly, Part 211 of Title 17 of the Code of Federal Regulations is amended by adding Staff Accounting Bulletin No. 71 to the table found in Subpart B.

The staff hereby adds section I to Topic 1 of the staff accounting bulletin series. Section I discusses the staff's views regarding the requirements for financial statements of properties securing mortgage loans.

Topic 1: Financial Statements

* * * * *

I. Financial Statements of Properties Securing Mortgage Loans

Facts: A registrant files a Securities Act registration statement covering a maximum of $100 million of securities. Proceeds of the offering will be used to make mortgage loans on operating residential or commercial property. Proceeds of the offering will be placed in escrow until $1 million of securities are sold at which point escrow may be broken, making the proceeds immediately available for lending, while the selling of securities would continue.

Question 1. Under what circumstances are the financial statements of a property on which the registrant makes or expects to make a loan required to be included in a filing?

Interpretive Response: Rule 3–14 of Regulation S–X (17 CFR 210.3–14) specifies the requirements for financial statements when the registrant has acquired one or more properties which in the aggregate are significant, or since the date of the latest balance sheet required has acquired or proposes to acquire one or more properties which in the aggregate are significant.

Included in the category of properties acquired or to be acquired under Rule 3–14 are operating properties underlying certain mortgage loans, which in economic substance represent an investment in real estate or a joint venture rather than a loan. Certain characteristics of a lending arrangement indicate that the "lender" has the same risks and potential rewards as an owner or joint venturer. Those characteristics are set forth in the American Institute of Certified Public Accountants' February 1986 Notice to Practitioners—ADC [1] Arrangements (the "Notice") as published in the April 1986 issue of the Journal of Accountancy. In September 1986 the Financial Accounting Standards Board's Emerging Issues Task Force [2] reached a consensus on this issue [3] to the effect that, although the Notice was issued to address the real estate ADC arrangements of financial institutions, preparers and auditors should consider the guidance contained in the Notice in accounting for shared appreciation mortgages, loans on operating real estate and real estate ADC arrangements entered into by enterprises other than financial institutions.

In certain cases the "lender" has virtually the same potential rewards as those of an owner or a joint venturer by virtue of participating in expected residual profit.[4] In addition, the Notice includes a number of other characteristics which, when considered individually or in combination, would suggest that the risks of an ADC arrangement are similar to those associated with an investment in real estate or a joint venture or, conversely, that they are similar to those associated with a loan. Among those other characteristics is whether the lender agrees to provide all or substantially all necessary funds to acquire the property, resulting in the borrower having title to, but little or no equity in, the underlying property. The staff believes that the borrower's equity in the property is adequate to support accounting for the transaction as a mortgage loan when the borrower's initial investment meets the criteria in paragraph 11 of Statement of Financial Accounting Standards No. 66 ("SFAS 66")[5] and the borrower's payments of principal and interest on the loan are adequate to maintain a continuing investment in the property which meets the criteria in paragraph 12 of SFAS 66.[6]

The financial statements of properties which will secure mortgage loans made or to be made from the proceeds of the offering which have the characteristics of real estate investments or joint ventures should be included as required by Rule 3–14 in the registration statement when such properties secure loans previously made, or have been identified as security for probable loans prior to effectiveness, and in filings made pursuant to the undertaking in Item 20D of Securities Act Industry Guide 5.

Rule 1–02(v) of Regulation S–X (17 CFR 210.1–02(v)) includes the conditions used in determining whether an acquisition is significant. The separate financial statements of an individual property should be provided when a property would meet the requirements for a significant subsidiary under this rule using the amount of the "loan" as a substitute for the "investment in the subsidiary" in computing the specified conditions. The combined financial statements of properties which are not individually significant should also be provided. However, the staff will not object if the combined financial statements of such properties are not included if none of the conditions specified in Rule 1–02(v), with respect to all such properties combined, exceeds 20% in the aggregate.

Under certain circumstances, information may also be required regarding operating properties underlying mortgage loans where the terms do not result in the lender having virtually the same risks and potential rewards as those of owners or joint venturers. Generally, the staff believes that, where investment risks exist due to substantial asset concentration, financial and other information should be included regarding operating properties underlying a mortgage loan that represents a significant amount of the registrant's assets. Such presentation is consistent with Rule 3–13 of Regulation S–X (17 CFR 210.3–13) and Rule 408 under the Securities Act of 1933 (17 CFR 230.408).

Where the amount of a loan exceeds 20% of the amount in good faith expected to be raised in the offering, disclosures would be expected to consist of financial statements for the underlying operating properties for the periods contemplated by Rule 3–14. Further, where loans on related properties are made to a single person or group of affiliated persons which in the aggregate amount to more than 20% of the amount expected to be raised, the staff believes that such lending arrangements result in a sufficient

---

[1] Acquisition, development and construction.

[2] The Emerging Issues Task Force ("EITF") was formed in 1984 to assist the Financial Accounting Standards Board in the early identification and resolution of emerging accounting issues. Topics to be discussed by the EITF are publicly announced prior to its meetings and minutes of all EITF meetings are available to the public.

[3] *See* Issue No. 86–21 (September 4, 1986).

[4] Expected residual profit is defined in the Notice as the amount of profit, whether called interest or another name, such as equity kicker, above a reasonable amount of interest and fees expected to be earned by the "lender".

[5] SFAS 66 establishes standards for the recognition of profit on real estate sales transactions. Paragraph 11 states that the buyer's initial investment shall be adequate to demonstrate the buyer's commitment to pay for the property and shall indicate a reasonable likelihood that the seller will collect the receivable. Guidance on minimum initial investments in various types of real estate is provided in paragraphs 53 and 54 of SFAS 66.

[6] Paragraph 12 of SFAS states that the buyer's continuing investment in a real estate transaction shall not qualify unless the buyer is contractually required to pay each year on its total debt for the purchase price of the property an amount at least equal to the level annual payment that would be needed to pay that debt and interest on the unpaid balance over not more than (a) 20 years for debt for land and mortgage loan by an independent established lending institution for other real estate.

concentration of assets so as to warrant the inclusion of financial and other information regarding the underlying properties.

Question 2. Will the financial statements of the mortgaged properties be required in filings made under the 1934 Act?

Interpretive Response: Rule 3–09 of Regulation S–X (17 CFR 210.3–09) specifies the requirements for significant, as defined, investments in operating entities, the operations of which are not included in the registrant's consolidated financial statements.[7] Accordingly, the staff believes that the financial statements of properties securing significant loans which have the characteristics of real estate investments or joint ventures should be included in subsequent filings as required by Rule 3–09. The materiality threshold for determining whether such an investment is significant is the same as set forth in paragraph (a) of that Rule.[8]

Likewise, the staff believes that filings made under the 1934 Act should include the same financial and other information relating to properties underlying any loans which are significant as discussed in the last paragraph of Question 1, except that in the determination of significance the 20% disclosure threshold should be measured using total assets. The staff believes that this presentation would be consistent with Rule 12b–20 under the Securities Exchange Act of 1934 (17 CFR 240.12b–20).

[FR Doc. 87–18902 Filed 8–18–87; 8:45 am]
BILLING CODE 8010–01–M

[7] Rule 3–14 states that the financial statements of an acquired property should be furnished if the acquisition took place during the period for which the registrant's income statements are required. Paragraph (a) of the Rule states that the information required by the Rule is not required to be included in a filing on Form 10–K. That exception is consistent with Item 6 of Form 10–K which excludes acquired company financial statements, which would otherwise be required by Rule 3–05 of Regulation S–X (17 CFR 210.3–05), from inclusion in filings on that Form. Those exceptions are based, in part, on the fact that acquired properties and acquired companies will generally be included in the registrant's consolidated financial statements from the acquisition date.

[8] Rule 3–09(a) states, in part, that "[i]f any of the conditions set forth in [Rule] 1–02[v], substituting 20 percent for 10 percent in the tests used therein to determine significant subsidiary, are met . . . separate financial statements . . . shall be filed."

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM85–1–183]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol

Issued: August 13, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order Granting Rehearing Solely for the Purpose of Further Consideration.

SUMMARY: On July 2, 1987, the Federal Energy Regulatory Commission issued an order in Docket No. RM85–1–000 which stayed the effectiveness of § 284.10 of its regulations, 18 CFR 284.10 (1987). Tennessee Gas Pipeline Company seeks clarification or rehearing that the stay of § 284.10 implemented by that order was effective June 23, 1987, the date of the United States Court of Appeals decision in *Associated Gas Distributors v. FERC*, Nos. 85–1811, *et al.*, (D.C. Cir. June 23, 1987). In order to afford additional time for consideration of the issues raised in the request for rehearing it is necessary to grant rehearing of the July 2, 1987 order for the limited purpose of further consideration.

EFFECTIVE DATE: This order is effective August 14, 1987.

FOR FURTHER INFORMATION CONTACT: Andrea Wolfman, Acting Assistant General Counsel, Pipeline Rates and Valuation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357–8497.

SUPPLEMENTARY INFORMATION:

Order Granting Rehearing Solely for the Purpose of Further Consideration

Issued: August 13, 1987.

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt, and C. M. Naeve.

On July 2, 1987, the Commission issued an order in this proceeding staying the effectiveness of § 284.10 of the Commission's regulations.[1] Tennessee Gas Pipeline Company seeks clarification or rehearing that the stay of § 284.10 implemented by that order was effective June 23, 1987, the date of the U.S. Court of Appeals' decision in *Associated Gas Distributors v. FERC*.[2]

In order to afford additional time for consideration of the issues raised in the above request for rehearing it is necessary to grant rehearing of the July 2, 1987 order for the limited purpose of further consideration.

The Commission Orders

Rehearing of the Commission's order of July 2, 1987 in this proceeding is hereby granted for the limited purpose of further consideration. As provided in Rule 713(d)[3] of the Commission's Rules of Practice and Procedure, no answers to the request for rehearing will be entertained by the Commission.

By the Commission.

Kenneth F. Plumb,
Secretary.

[FR Doc. 87–18867 Filed 8–18–87; 8:45 am]
BILLING CODE 6717–01–M

[1] 40 FERC ¶ 61,018 (1987).

[2] Associated Gas Distributors v. FERC, No. 85–1811 (D.C. Cir. June 23, 1987).

[3] 18 CFR 385.713(d) (1987).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 6E3421/R905; FRL–3248–8]

Pesticide Tolerances for Paraquat

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the desiccant, defoliant, and herbicide paraquat in or on the raw agricultural commodities cassava, taniera, and yams. This regulation to establish maximum permissible levels for residues of the pesticide in or on the commodities was requested in a petition submitted by the Interregional Research Project No. 4 (IR–4).

EFFECTIVE DATE: August 19, 1987.

ADDRESS: Written objections, identified by the document control number [PP 6E3421/R905], may be submitted to: Hearing Clerk (A–110), Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Donald R. Stubbs, Emergency Response and Minor Use Section (TS–767C), Registration Division, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 716B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557–1806.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of June 3, 1987 (52 FR 20751), which announced that the Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition 6E3421 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR–4 Project, and the Agricultural Experiment Station of Puerto Rico.

The petitioner requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of tolerances for residues of the pesticide paraquat (1,1'-dimethyl-4,4'-bipyridinium ion) derived from application of either the bis(methylsulfate) or the dichloride salt (both calculated as the cation) in or on the raw agricultural commodities cassava, taniers, and yams at 0.05 part per million (ppm). The petitioner proposed that use on these commodities be limited to Puerto Rico based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration division at the address provided above.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the request and all other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the amendment will protect the public health. Therefore, the amendment is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(d), 68 Stat. 512 (21 U.S.C. 346a(d)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 7, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.205(b) is amended by adding and alphabetically inserting entries for cassava, taniers, and yams, to read as follows:

§ 180.205 Paraquat; tolerance for residues.

* * * * *

(b) * * *

Commodities	Parts per million
Cassava	0.05
* * * * *	
Taniers	0.05
* * * * *	
Yams	0.05

[FR Doc. 87–18832 Filed 8–18–87; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

45 CFR Part 96

Low Income Home Energy Assistance; Announcement of the FY 1988 State Median Income

AGENCY: Family Support Administration, HHS.

ACTION: Announcement of estimated median income.

SUMMARY: This notice announces the estimated median income for four-person household in each state and the District of Columbia for FY 1988. This listing of state median incomes concerns maximum income levels for households to which the states may make home energy assistance payments.

FOR FURTHER INFORMATION CONTACT: Leon Litow, (202) 245–2951.

SUPPLEMENTARY INFORMATION: Under the provisions of section 2603(7) of Title XXVI of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35), we are announcing the median income of a four-person household for each state, the District of Columbia, and for the 50 states and the District of Columbia for the period of October 1, 1987 through September 30, 1988. The purpose of this announcement is to provide information on one of the income criteria for eligibility under the Low Income Home Energy Assistance Program (LIHEAP). Section 2605(b)(2)(B)(ii) of Pub. L. 97–35 provides that 60 percent of the median income for each state, as annually established by the Secretary of Health and Human Services, is one of the income eligibility criteria for LIHEAP.

The Low Income Home Energy Assistance Program is currently authorized through the end of fiscal year 1990 by provisions of title V of The Human Services Reauthorization Act of 1986, Pub. L. 99–425, enacted on September 30, 1986. Under this Act, the current income eligibility provisions relating to state median income remain unchanged.

Estimates of the median income of four-person households for each state and the District of Columbia for fiscal year 1988 were developed by the Bureau of the Census. In developing the median incomes, the Bureau of the Census used the following three sources of data: (1) The March 1986 Current Population Survey; (2) the 1980 Census of Population; and (3) per capita income estimates from the Bureau of Economic Analysis.

The estimating method for FY 1988 is similar to that used in previous years. Beginning with the estimating method for FY 1987, Current Population Survey (CPS) sample estimates for three- and five-person families and their statistical relationships to four-person family medians are now used in addition to the CPS sample estimates of four-person family medians already in use. For further information, contact Dan Burkhead, Economic Statistician, at the Bureau of the Census (301–763–5060).

A state-by-state listing of median income, and 60 percent of median income, for a four-person household for fiscal year 1988 follows. The listing describes our method for adjusting median income for households of different sizes as specified in 45 CFR 96.85 (which was published in the Federal Register on July 2, 1984 at 49 FR 27145).

Dated: August 14, 1987

Wayne A. Stanton,

Administrator, Family Support Administration.

ESTIMATED STATE MEDIAN INCOME FOR 4-PERSON HOUSEHOLDS, FISCAL YEAR 1988 [1]

State	Estimated State median income 4-person households [2]	60 percent of estimated State median income 4-person households [3]
Alabama	$26,497	$17,044
Alaska	42,897	25,738
Arizona	32,129	19,277
Arkansas	26,256	15,753
California	36,223	21,734
Colorado	35,214	21,129
Connecticut	40,677	24,406
Delaware	34,104	20,462
District of Columbia	32,510	19,506
Florida	31,364	18,818
Georgia	31,907	19,144
Hawaii	34,636	20,782
Idaho	27,360	16,420
Illinois	34,374	20,624
Indiana	31,369	18,821
Iowa	29,425	17,655
Kansas	31,114	18,668
Kentucky	27,307	16,384
Louisiana	29,910	17,946
Maine	28,537	17,122
Maryland	40,056	24,033
Massachusetts	39,078	23,447
Michigan	33,908	20,345
Minnesota	34,376	20,626
Mississippi	25,716	15,430
Missouri	31,414	18,848
Montana	27,998	16,799
Nebraska	30,655	18,393
Nevada	32,314	19,388
New Hampshire	35,702	21,421
New Jersey	40,800	24,480
New Mexico	27,127	16,276
New York	34,478	20,687
North Carolina	30,290	18,174
North Dakota	28,962	17,377
Ohio	32,478	19,487
Oklahoma	29,050	17,430
Oregon	30,741	18,445
Pennsylvania	32,285	19,371
Rhode Island	34,154	20,492
South Carolina	29,417	17,650
South Dakota	26,153	15,692
Tennessee	27,917	16,750
Texas	32,188	19,313
Utah	29,624	17,780
Vermont	30,019	18,011
Virginia	35,353	21,212
Washington	32,791	19,675
West Virginia	28,170	16,902
Wisconsin	32,007	19,204
Wyoming	30,741	18,445

NOTE.—The estimated median income for 4-person households living in the United States is $32,777 for the period of October 1, 1987 through September 30, 1988.

[1] In accordance with 45 CFR 96.85, each State's estimated median income for a 4-person household is multiplied by the following percentages to adjust for household size: 52% for 1-person households, 69% for 2-person households, 84% for 3-person households, 100% for 4-person households, 116% for 5-person households, and 132% for 6-person households. For household sizes greater than six persons, add 3% to 132% for each additional household member and multiply the new percentage by the State's dollar amount for 4-person households.

[2] Prepared by the Bureau of the Census from the March 1986 Current Population Survey, 1980 Census of Population and Housing, and per capita income estimates from the Bureau of Economic Analysis.

[3] Prepared by the Family Support Administration, Office of Energy Assistance.

[FR Doc. 87-18836 Filed 8-18-87; 8:45 am]

BILLING CODE 4150-04-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-358; RM-5384]

Radio Broadcasting Services; Rupert, ID

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Class C Channel 223 for Channel 221A at Rupert, Idaho, (with a site restriction 4.8 miles north of the city) and modifies the Class A license for Station KNAQ(FM) accordingly, at the request of the licensee, Inland Broadcasting Company. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 28, 1987.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-358, adopted July 23, 1987, and released August 12, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended, under Idaho, by amending the entry for Rupert to add Channel 223 and removed Channel 221A.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-18966 Filed 8-18-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-81; RMs-5558, 5610, 5558, 5843]

Radio Broadcasting Services; Los Ranchos de Albuquerque, Los Alamos, Corrales, and Armijo, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of: (1) LV Broadcasting Associates, allocates Channel 236A to Corrales, New Mexico, as the community's first local FM service; (2) substitutes Class C Channel 294 for Channel 296A at Los Alamos, New Mexico, and modifies the permit of Station KBOM to specify the higher powered channel, at the request of KBOM Limited Partnership; and (3) substitutes Channel 296C2 for Channel 296A at Armijo, New Mexico, and modifies the permit of Station KLQS-FM to specify the higher powered channel, at the request of Matteucci Broadcasting Company, Inc. The request of Dorothy D. Davis to allocate Channel 294A to Los Ranchos de Albuquerque, New Mexico, as the community's first local service, has been dismissed due to a lack of continuing interest. The untimely and inappropriate comments of Great American Southwest Broadcasting Company expressing interest in use of Channel 296C2 at Armijo were not considered. Channel 236A at Corrales and Channel 294 at Los Alamos can be allocated to their respective communities in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. Channel 296C2 at Armijo requires a site restriction of 15.6 kilometers (9.7 miles) southwest to avoid a short-spacing to Station KHFM, Channel 242, Albuquerque, New Mexico. With this action, this proceeding is terminated.

DATES: *Effective Date:* September 28, 1987. The window period for filing applications for Channel 236A at Corrales, New Mexico, will open on September 29, 1987, and close on October 29, 1987.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–81, adopted July 16, 1987, and released August 12, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for New Mexico is amended by adding Corrales, Channel 236A, by amending the entry for Armijo by removing Channel 296A and adding Channel 296C2 and by amending the entry for Los Alamos by removing Channel 296A and adding Channel 294.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–18889 Filed 8–18–87; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 675

[Docket No. 61225–7052]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notices of closure to directed fishing and inseason adjustment.

SUMMARY: NOAA announces the closure of the Bering Sea subarea to directed fishing for sablefish and the apportionment of amounts of Alaska groundfish to the domestic annual processing (DAP) portion of the domestic annual harvest (DAH) under provisions of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). Groundfish are apportioned according to the regulations implementing the FMP. The intent of these actions is to assure optimum use of these groundfish while conserving sablefish stocks.

EFFECTIVE DATES: From noon, Alaska Daylight Time, August 15, 1987, until midnight, Alaska Standard Time, December 31, 1987. Comments will be accepted through August 31, 1987.

ADDRESS: Comments should be mailed to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK. 99802, or be delivered to Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Janet E. Smoker [Resource Management Specialist, NMFS), 907–586–7230.

SUPPLEMENTARY INFORMATION: The FMP governs the groundfish fishery in the exclusive economic zone under the Magnuson Fishery Conservation and Management Act. The FMP was developed by the North Pacific Fishery Management Council (Council) and implemented by rules appearing at 50 CFR 611.93 and Part 675. The total allowable catches (TACs) for various groundfish species are apportioned initially among DAH, reserves and total allowable level of foreign fishing (TALFF). The reserve amount, in turn, is to be apportioned to DAH and/or TALFF during the fishing year, under 50 CFR 611.93(b) and 675.20(b). As soon as practicable after April 1, June 1, August 1 and on such other dates as are necessary, the Secretary of Commerce apportions to DAH all or part of the reserve that he finds will be harvested by U.S. vessels during the remainder of the year, except that part or all of the reserve may be withheld if an apportionment would adversely affect the conservation of groundfish resources or prohibited species.

The initial specifications of domestic annual processing (DAP) for 1987 were based on the needs of the U.S. industry as projected by the Director, Alaska Region, NMFS (Regional Director). Certain species, including sablefish, are considered fully utilized by DAP, and bycatch amounts only are made available to JVP and TALFF. After 15 percent of TAC was placed in the nonspecific reserve, as required at § 675.20(a)(3), the initial specification for the Bering Sea sablefish DAP was determined to be 3,145 mt (52 FR 785, January 9, 1987).

On January 1, JVP was supplemented by 18,330 mt of the nonspecific reserve, including 350 mt to the Bering Sea sablefish JVP to provide bycatch for joint venture fisheries, and TALFF by 10,071 mt of the nonspecific reserve, including 40 mt to the Bering Sea sablefish TALFF to provide bycatch in foreign fisheries. Subsequent actions (May 15, 52 FR 18367; June 10, 52 FR 21958; June 30, 52 FR 24297, and August 5, 52 FR 29021) have reduced the nonspecific reserve to 49,527 mt.

In the Bering Sea subarea, five catcher/processors and about a dozen U.S. longliners delivering fish to shoreside plants are conducting directed fisheries for sablefish. The estimated catch through July 25 was 2,645 mt. When the Bering Sea sablefish TAC is taken, current regulations require that all domestic vessels operating in the Bering Sea area discard sablefish in the same manner as prohibited species. The Regional Director estimates that the entire Bering Sea sablefish TAC will be taken by the directed DAP fishery by late August. Thus, sablefish taken in fisheries for other groundfish species and discarded as required by regulation would be wasted for the remainder of the year.

Notice of Closure to Directed Fishing

Under § 675.20(a)(7), when the Regional Director determines that the remaining amount of the TAC of any target species is necessary for bycatch in fisheries for other groundfish species during the remaining fishing year., the Secretary will publish a notice in the **Federal Register**, prohibiting directed fishing for that species for the remainder of the fishing year. The Regional Director has determined that the remaining amount of sablefish DAP will be needed for bycatch in DAP fisheries targeting on up to 100,000 mt of other groundfish species during the remainder of the year. Therefore, to prevent wastage and encourage the full utilization of all sablefish harvested, directed fishing for sablefish by DAP fishermen in the Bering Sea area must cease, effective noon, ADT, August 15, 1987.

TABLE 1.—BERING SEA/ALEUTIANS REAPPORTIONMENTS OF TAC

[Metric tons (mt)]

	Current	This action	Revised
Sablefish (Bering Sea Subarea), DAP	3,145	+165	3,310
TAC=3,700; EY=3,700:			
JVP	350		350
TALFF	40		40
Total (TAC=2,000,000):			
DAP	416,018	+165	416,183
JVP	1,446,480		1,446,891
TALFF	87,995		87,995
Reserves	49,527	−165	49,362

The following action is taken by this notice to reapportion specifications in the BSA fisheries.

To the BSA DAP

To provide for sufficient sablefish bycatch in DAP fisheries, 165 mt of the nonspecific reserve is apportioned to the Bering Sea sablefish DAP. This is the maximum reserve amount that can be apportioned to the Bering Sea sablefish TAC without resulting in a TAC greater than the equilibrium yield (EY). The Secretary is providing that the reserve apportionment amount plus any remaining sablefish quota is to be used for bycatch only.

Thus, U.S. vessels participating in DAP fisheries may continue fishing for other groundfish species and retain sablefish provided that their take of sablefish does not exceed 20 percent of their take as defined at 50 CFR 675.2. DAP fishermen should note, that DAP fisheries should rarely experience bycatches of sablefish in excess of 5 percent, and most DAP fisheries should have bycatches of less than 1 percent. If higher bycatches occur, and the remaining sablefish TAC is taken prior to the end of the year, sablefish must be treated in the same manner as a prohibited species. Under this circumstance, the Secretary could, under § 675.20(a)(9), limit directed fishing for other groundfish by any method, including area closures, gear restrictions or prohibition of directed fishing on certain species in order to prevent overfishing of sablefish.

This apportionment does not result in overfishing of the sablefish stock, as the resulting TAC is 3,700 mt, equal to the equilibrium yield (EY).

Comments and Responses: In accordance with 50 CFR 611.93(b) and 675.20(b), aggregated reports on U.S. catches of Alaska groundfish and the processing of those groundfish were available for public inspection to facilitate informed public comment. In addition, those provisions afforded the public an opportunity to submit comments on the extent to which U.S. fishermen will harvest and the extent to which U.S. processors will process Alaska groundfish. No comments were received.

Classification

This action is taken under the authority of 50 CFR 611.93(b), 675.20(b) and 675.20(a)(7), and complies with Executive Order 12291.

The Assistant Administrator for Fisheries finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment. Immediate effectiveness of this notice is necessary to prevent wastage and encourage the full utilization of all sablefish harvested. However, interested persons are invited to submit comments in writing to the address above for 15 days after the effective date of this notice.

List of Subjects in 50 CFR Parts 611 and 675

Fisheries.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 14, 1987.

Bill A. Powell,

Acting Executive Director, National Marine Fisheries Service.

[FR Doc. 87-18955 Filed 8-14-87; 4:03 pm]

BILLING CODE 3510-22-M

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50 CFR Part 661

[Docket No. 70645-7065]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustments and request for comments.

SUMMARY: NOAA announces inseason adjustments to recreational ocean salmon management measures from Cape Falcon, Oregon, to the U.S.-Canada border. The Director, Northwest Region, NMFS (Regional Director), has determined in consultation with representatives of the Pacific Fishery Management Council (Council), the Oregon Department of Fish and Wildlife (ODFW) and the Washington Department of Fisheries (WDF), that the adjustments are necessary to extend two subarea recreational seasons. These actions are intended to maximize the harvest of chinook salmon without exceeding the ocean share of chinook allocated to the recreational fishery.

EFFECTIVE DATE: This notice is effective at 0001 hours Pacific Daylight Time, August 14, 1987. Comments on this notice will be received until August 28, 1987.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, NMFS, BIN C15700, 7600 Sand Point Way NE., Seattle, WA 98115-0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the same address.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten (Regional Director), 206-526-6150.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries are codified at 50 CFR Part 661. Management measures for 1987 were effective on May 1, 1987 (52 FR 17264, May 6, 1987). The 1987 recreational fishery for all salmon species north of Cape Falcon, Oregon, is divided into three subareas. The recreational season in all three subareas began on June 28 and was to continue through the earliest of September 24, attainment of subarea chinook or coho quotas, or attainment of overall troll and recreational chinook or coho quotas for the area between Cape Falcon, Oregon, and the U.S.-Canada border.

Recreational subarea quotas for chinook and coho salmon were established preseason and have been adjusted twice (52 FR 27560, July 22, 1987; 52 FR 29019, August 5, 1987). The following adjusted recreational quotas for chinook and coho salmon currently are in effect for subareas north of Cape Falcon:

Subarea	Current chinook quota	Current coho quota
U.S.-Canada Border to Queets River (northern subarea)	3,400	25,650
Queets River to Leadbetter Point (central subarea)	27,675	74,300
Leadbetter Point to Klipsan Beach; Red Buoy Line to Cape Falcon (southern subarea)	13,525	100,050

The central subarea closed on August 7 (52 FR 29700, August 11, 1987), when the subarea chinook quota was projected to be met. Based on the best available information, approximately 300 chinook (less than the number which would be caught in one day) and 41,300 coho salmon were left in the central subarea quota when it closed.

Therefore, NOAA issues this notice to adjust the two remaining recreational salmon fisheries north of Cape Falcon, Oregon, by transferring salmon not harvested in the central subarea to the other two subareas. However, the number of coho salmon being transferred to both areas (31,950) is less than that left in the central subarea quota (41,300) to account for an increased impact on Skagit River coho stocks. This is because the northern subarea fishery impacts Skagit River coho stocks, which are depressed, to a greater extent than the central subarea fishery. In addition, the division of chinook and coho salmon being transferred to the northern and southern subareas was agreed to by State and Federal managers taking into consideration the greater impacts on Skagit River coho in the northern

subarea. The revised northern and southern subarea quotas are as follows:

Subarea	Revised Chinook quota	Revised Coho quota
U.S.-Canada Border to Queets River (northern subarea)	3,570	95,000
Leadbetter Point to Klipsan Beach; Red Buoy Line to Cape Falcon (southern subarea)	12,975	123,550

This notice does not apply to treaty Indian fisheries or to other fisheries which may be operating in this or other areas.

The Regional Director consulted with representatives of the Council, ODFW, and WDF regarding these inseason adjustments for the recreational fisheries north of Cape Falcon, Oregon. The ODFW and WDF representatives confirmed that Oregon and Washington will manage the recreational fisheries in state waters adjacent to these areas of the EEZ in accordance with this federal action.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

(16 U.S.C. 1801 *et seq.*)

Dated: August 14, 1987.

Bill A. Powell,

Acting Executive Director, National Marine Fisheries Service.

[FR Doc. 87-18956 Filed 8-14-87; 4:04 pm]

BILLING CODE 3510-22-M

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50 CFR Part 663

[Docket No. 70131-7031]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustment.

SUMMARY: NMFS announces an inseason adjustment to the 1987 specifications for two species of groundfish caught in the ocean off Washington, Oregon, and California. The adjustment increases the acceptable biological catch (ABC) for widow rockfish to 12,500 metric tons (mt) and the ABC for chilipepper rockfish to 3,600 mt. This action is authorized under the Pacific Coast Groundfish Fishery Management Plan and its implementing regulations, and is necessary to make use of the best available scientific information for estimating the 1987 specifications. It is intended to promote full utilization of the groundfish resource without biological stress to these or other species.

EFFECTIVE DATE: August 14, 1987.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten (Director, Northwest Region NMFS), 206-526-6150; E. Charles Fullerton (Director, Southwest Region, NMFS), 213-514-6196; or the Pacific Fishery Management Council, 503-221-6352.

SUPPLEMENTARY INFORMATION: A notice of proposed inseason adjustment, with a request for public comment, was published on May 19, 1987 (52 FR 18723) announcing recommendations to increase the 1987 specifications of ABC and optimum yield (OY) in accordance with the Pacific Coast Groundfish Fishery Management Plan (FMP) and its implementing regulations. The Pacific Fishery Management Council (Council) recommended increasing the coastwide widow rockfish ABC by 3 percent, from 12,100 mt to 12,500 mt, the coastwide chilipepper rockfish ABC by 20 percent, from 3,000 mt to 3,600 mt, and the coastwide sablefish ABC and OY by 12 percent, from 12,000 mt to 13,400 mt. Written public comments were requested by June 3, 1987; none was received.

The increases to the ABCs for widow and chilipepper rockfishes are supported by the most recent data considered to be the best available scientific information for estimating the 1987 specifications; the proposed notice discusses this information, which is not repeated here. At its July 8-10, 1987, meeting in Millbrae, California, the Council reconsidered the proposed increases to the ABC and OY for sablefish based on the Groundfish Management Team's reevaluation of the most recent data available and heard testimony by the Groundfish Advisory Subpanel, the Scientific and Statistical Committee, and the public on this issue. The analysis supporting the proposed increase was found to be faulty and could no longer be considered the best available scientific information. Therefore, the Council recommended the ABC and OY for sablefish be maintained at their present values of 12,000 mt.

The Secretary of Commerce considered the Council's revised recommendation for sablefish in his determination that the coastwide ABC and OY for sablefish will remain at 12,000 mt. The Secretary also considered the factors discussed in the notice of proposed inseason adjustment pertaining to widow and chilipepper rockfishes in his determination that the inseason adjustment will not increase the likelihood of biological stress on widow rockfish, chilipepper rockfish, sablefish, or any other species, and will promote full utilization of the groundfish resource. Therefore, only the coastwide ABCs for widow and chilipepper rockfish (52 FR 682, January 8, 1987) are hereby superseded.

These increases are too small to warrant changes to the trip limits for widow rockfish or the multispecies *Sebastes* complex of rockfish as a whole (which includes chilipepper rockfish).

By this notice Table 1 (published at 52 FR 683) is revised as indicated below. Only the part of the table (including footnotes) pertaining to widow and chilipepper rockfish is revised and printed here. The rest of that table is not changed.

REVISION TO TABLE 1 AT 52 FR 683: "FINAL ESTIMATES OF ABC FOR 1987 IN METRIC TONS (mt) FOR GROUNDFISH OFF WASHINGTON, OREGON, AND CALIFORNIA BY INTERNATIONAL NORTH PACIFIC FISHERIES COMMISSION AREAS."

Species	Vancouver	Columbia	Eureka	Monterey	Conception	Total
Rockfish:						
Widow	-	-	-	-	-	[3] 12,500
Other Rockfish: [4]						
Chilipepper	-	-	-	-	-	[3] 3,600

[3] Total all areas.
[4] "Other Rockfish" means rockfish species at § 663.2, as amended, which do not have a numerical OY.

Classification

The determination to impose this inseason adjustment is based on the best scientific information available. This action is taken under the authority of 50 CFR 663.22 and 663.23 and is in compliance with Executive Order 12291. This action is covered by the Regulatory Flexibility Analysis prepared for the authorizing regulations.

List of Subjects in 50 CFR Part 663

Fisheries, Fishing.

(16 U.S.C. 1801 et seq.)

Dated: August 13, 1987.

Bill A. Powell,

Acting Executive Director, National Marine Fisheries Service.

[FR Doc. 87-18912 Filed 8-14-87; 11:58 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 52, No. 160
Wednesday, August 19, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF MANAGEMENT AND BUDGET

5 CFR Part 1303

The Freedom of Information Reform Act of 1986 (Pub. L. 99–570); Proposed Revision of Fee Schedule, Fee Waiver Policy, and the Law Enforcement Exemption

AGENCY: Office of Management and Budget.

ACTION: Proposed rule.

SUMMARY: This proposed rule implements certain provisions of the Freedom of Information Reform Act of 1986 (Pub. L. 99–570) regarding fees, fee waivers, and law enforcement records. Under the terms of the Freedom of Information Reform Act of 1986, the Office of Management and Budget is required to promulgate for public notice and comment a proposed new schedule of fees to be charged and guidelines to be followed in its processing of requests for records under the Freedom of Information Act. As required by that Act, OMB has developed these proposed regulations pursuant to and in conformity with the Uniform Freedom of Information Act fee schedule and guidelines published by OMB in the **Federal Register** on March 27, 1987.

DATE: Comments must be received before September 1, 1987.

ADDRESS: Send comments to the Office of Management and Budget, Office of the General Counsel, Room 464, Old Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

John F. Cooney, Deputy General Counsel, Office of Management and Budget, 202–395–5600.

SUPPLEMENTARY INFORMATION: The Freedom of Information Reform Act of 1986 (Pub. L. 99–570) amended the Freedom of Information Act (5 U.S.C. 552) by modifying the terms of exemption 7 and by adding new provisions relating to the charging and waiving of fees. That Act specifically required the Office of Management and Budget to develop and issue a schedule of fees and guidelines for use by Federal agencies in devising their individual FOIA fee rules. Proposed guidelines were published for public comment on January 16, 1987. As a result of comments received, OMB issued the final fee schedule and guidelines implementing certain provisions of the Act on March 27, 1987 (52 FR 10012).

By this Notice, OMB is proposing amendments to 5 CFR Part 1303 to reflect, in its own regulations, the general guidance issued to the agencies on March 27, as well as the amended language of exemption 7 pertaining to law enforcement records, and the amended fee waiver provision.

PART 1303—[AMENDED]

For the reasons set forth in the Preamble, it is proposed to amend 5 CFR Part 1303 as follows:

1. The authority citation for Part 1303 is revised to read as follows:

Authority: 5 U.S.C. 552, as amended by Pub. L. 93–502 and Pub. L. 99–570.

2. By revising § 1303.20(c)(7) to read as follows:

§ 1303.20 Inspection, copying, and exceptions.

* * * * *

(c) * * *

(7) Records of information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution that furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law information investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

3. By revising § 1303.30 and adding §§ 1303.40, 1303.50, 1303.60 and 1303.70 to read as follows:

§ 1303.30 Definitions.

For the purpose of these regulations:

(a) All the terms defined in the Freedom of Information Act apply.

(b) A "statute specifically providing for setting the level of fees for particular types of records" (5 U.S.C. 552(a)(4)(A)(vi)) means any statute that specifically requires a government agency, such as the Government Printing Office (GPO) or the National Technical Information Service (NTIS), to set the level of fees for particular types of records, in order to:

(1) Serve both the general public and private sector organizations by conveniently making available government information;

(2) Ensure that groups and individuals pay the cost of publications and other services that are for their special use so that these costs are not borne by the general taxpaying public;

(3) Operate an information dissemination activity on a self-sustaining basis to the maximum extent possible; or

(4) Return revenue to the Treasury for defraying, wholly or in part, appropriated funds used to pay the cost of disseminating government information. Statutes, such as the User Fee Statute, which only provide a general discussion of fees without explicitly requiring that an agency set and collect fees for particular documents do not supersede the Freedom of Information Act under section (a)(4)(A)(vi) of that statute.

(c) The term "direct costs" means those expenditures that OMB actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the

employee performing work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(d) The term "search" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. OMB employees should ensure that searching for material is done in the most efficient and least expensive manner so as to minimize costs for both the agency and the requester. For example, employees should not engage in line-by-line search when merely duplicating an entire document would prove the less expensive and quicker method of complying with a request. "Search" should be distinguished, moreover, from "review" of material in order to determine whether the material is exempt from disclosure (see paragraph (f) of this section). Searches may be done manually or by computer using existing programming.

(e) The term "duplication" refers to the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others. The copy provided must be in a form that is reasonably usable by requesters.

(f) The term "review" refers to the process of examining documents located in response to a request that is for a commercial use (see paragraph (g) of this section) to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, *e.g.*, doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(g) The term " 'commerical use' request" refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, OMB must determine the use to which a requester will put the documents requested. Moreover, where an OMB employee has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the requester itself, the employee should seek additional clarification before assigning the request to a specific category.

(h) The term "educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education, that operates a program or programs of scholarly research.

(i) The term "non-commercial scientific institution" refers to an institution that is not operated on a "commerical" basis as that term is referenced in paragraph (g) of this section above, and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(j) The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (*e.g.*, electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but OMB may also look to the past publication record of a requester in making this determination.

§ 1303.40 Fees to be charged—general.

OMB will charge fees that recoup the full allowable direct costs it incurs. Moreover, it shall use the most efficient and least costly methods to comply with requests for documents made under the FOIA. When documents that would be responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs (see definition in § 1303.30(b)), such as the NTIS, OMB should inform requesters of the steps necessary to obtain records from those sources.

(a) *Manual searches for records.* OMB will charge at the salary rate(s) *i.e.*, basic pay plus 16 percent) of the employee(s) making the search.

(b) *Computer searches for records.* OMB will charge at the actual direct cost of providing the services. This will include the cost of operating the central processing unit (CPU) for that portion of operating time that is directly attributable to searching for records responsive to a FOIA request and operator/programmer salary apportionable to the search.

(c) *Review of records.* Only requesters who are seeking documents for commercial use may be charged for time spent reviewing records to determine whether they are exempt from mandatory disclosure. Charges may be assessed only for the *initial* review; i.e., the review undertaken the first time OMB analyzes the applicability of a specific exemption to a particular record or portion of a record. Records or portions of records withheld in full under an exemption that is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review is assessable.

(d) *Duplication of records.* Records will be duplicated at a rate of $.25 per page. For copies prepared by computer, such as tapes or printouts, OMB shall charge the actual cost, including operator time, of production of the tape or printout. For other methods of reproduction or duplication, OMB will charge the actual direct costs of producing the document(s). If OMB estimates that duplication charges are likely to exceed $25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(e) *Other charges.* OMB will recover the full costs of providing services such as those enumerated below when it elects to provide them:

(1) Certifying that records are true copies;

(2) Sending records by special methods such as express mail.

(f) Remittances shall be in the form either of a personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to the order of the Treasury of the United States and

mailed or delivered to the Deputy Assistant Director for Administration, Office of Management and Budget, Washington DC 20503.

(g) A receipt for fees paid will be given upon request. Refund of fees paid for services actually rendered will not be made.

(h) *Restrictions on assessing fees.* With the exception of requesters seeking documents for a commercial use, OMB will provide the first 100 pages of duplication and the first two hours of search time without charge. Moreover, OMB will not charge fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself.

(1) The elements to be considered in determining the "cost of collecting a fee," are the administrative costs of receiving and recording a requester's remittance, and processing the fee for deposit in the Treasury Department's special account.

(2) For purposes of these restrictions on assessment of fees, the word "pages" refers to paper copies of "8½ x 11" or "11 x 14." Thus, requesters are not entitled to 100 microfiche or 100 computer disks, for example. A microfiche containing the equivalent of 100 pages or 100 pages of computer printout, does meet the terms of the restriction.

(3) Similarly, the term "search time" in this context has as its basis, *manual search.* To apply this term to searches made by computer, OMB will determine the hourly cost of operating the central processing unit and the operator's hourly salary plus 16 percent. When the cost of search (including the operator time and the cost of operating the computer to process a request) equals the equivalent dollar amount of two hours of the salary of the person performing the search, *i.e.*, the operator, OMB will begin assessing charges for computer search.

§ 1303.50 Fees to be charged—categories of requesters.

There are four categories of FOIA requesters: Commercial use requesters; educational and non-commercial scientific institutions; representatives of the news media; and all other requesters. The specific levels of fees for each of these categories are:

(a) *Commercial use requesters.* When OMB receives a request for documents for commercial use, it will assess charges that recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Requesters must reasonably describe the records sought. Commercial use requesters are not entitled to two hours of free search time nor 100 free pages of reproduction of documents. OMB may recover the cost of searching for and reviewing records even if there is ultimately no disclosure of records (see § 1303.60(b)).

(b) *Educational and non-commercial scientific institution requesters.* OMB shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that thue request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. Requesters must reasonably describe the records sought.

(c) *Requesters who are Representatives of the News Media.* OMB shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must meet the criteria in § 1303.30(j), and his or her request must not be made for a commercial use. In reference to this class of requester, a request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use. Requesters must reasonably describe the records sought.

(d) *All other requesters.* OMB shall charge requesters who do not fit into any of the categories above fees that recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. Moreover, requests for records about the requesters filed in OMB's systems of records will continue to be treated under the fee provisions of the Privacy Act of 1974 which permit fees only for reproduction. Requesters must reasonably describe the records sought.

§ 1303.60 Miscellaneous fee provisions.

(a) *Charging interest—notice and rate.* OMB may begin assessing interest charges on an unpaid bill starting on the 31st day following the day on which the billing was sent. The fact that the fee has been received by OMB within the thirty day grace period, even if not processed, will suffice to stay the accrual of interest. Interest will be at the rate prescribed in section 3717 of Title 31 of the United States Code and will accrue from the date of the billing.

(b) *Charges for unsuccessful search.* OMB may assess charges for time spent searching, even if it fails to locate the records or if records located are determined to be exempt from disclosure. If OMB estimates that search charges are likely to exceed $25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Such a notice shall offer the requester the opportunity to confer with agency personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(c) *Aggregating requests.* A requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When OMB reasonably believes that a requester or, on rare occasions, a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, OMB may aggregate any such requests and charge accordingly. One element to be considered in determining whether a belief would be reasonable is the time period over which the requests have occurred.

(d) *Advance payments.* OMB may not require a requester to make an advance payment, *i.e.*, payment before work is commenced or continued on a request, unless:

(1) OMB estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250. Then, OMB will notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment; or

(2) A requester has previously failed to pay a fee charged in a timely fashion (*i.e.*, within 30 days of the date of the billing). Then, OMB may require the requester to pay the full amount owed plus any applicable interest as provided above or demonstrate that he has, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before the agency begins to process a new request or a pending request from that requester.

When OMB acts under paragraph (d)(1) or (2) of this section above, the administrative time limits prescribed in subsection (a)(6) of the FOIA (*i.e.*, 10

working days from receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits) will begin only after OMB has received fee payments described above.

(e) *Effect of the Debt Collection Act of 1982 (Pub. L. 97–365).* OMB should comply with provisions of the Debt Collection Act, including disclosure to consumer reporting agencies and use of collection agencies, where appropriate, to encourage repayment.

§ 1303.70 Waiver of reduction of charges.

Fees otherwise chargeable in connection with a request for disclosure of a record shall be waived or reduced where—

(a) It is determined that disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester; or

(b) It is determined that the cost of collection would be equal to or exceed the amount of such fees.

James C. Miller III,

Director.

[FR Doc. 87–18836 Filed 8–18–87; 8:45 am]

BILLING CODE 3110–01–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2580

Proposed Regulation Exempting Certain Broker-Dealers and Investment Advisers From Bonding Requirements

AGENCY: Department of Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains a proposed regulation under the Employee Retirement Income Security Act of 1974 (ERISA, or the Act) which would provide certain broker-dealers and investment advisers with an exemption from the bond otherwise required under section 412 of ERISA. The proposed regulation, if adopted, would affect participants and beneficiaries of employee benefit plans, officials of employee benefit plans and employees of broker-dealers and investment advisers.

DATE: Written comments concerning the proposed regulation must be received by October 19, 1987.

ADDRESS: All written comments (at least three copies) should be sent to the Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, Room N–5669, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, Attention: Proposed Bonding Regulation. The application relating to the proposed regulation herein and any comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Linda Shore, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, (202) 523–8671. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: This document contains a proposed regulation which would provide an alternative to the bonding requirements of section 412 of ERISA for certain broker-dealers and investment advisers. The proposed exemption was requested in an application filed on November 30, 1982 by the Securities Industry Association (SIA), which was later clarified by letters dated September 11, 1983, June 5, 1986, and September 24, 1986. The Department is proposing the regulation pursuant to the authority contained in section 412(e) of ERISA.

A. Background

Section 412(a) of ERISA generally requires that every fiduciary of an employee benefit plan and every person who "handles" funds or other property of any plan (plan official) be bonded in an amount equal to not less than 10 percent of the amount of each plan's funds and other property "handled" by such person. In no case shall the bond with respect to each plan be less than $1,000 nor more than $500,000.[1]

Temporary bonding regulation section 29 CFR 2580.412–6 defines the term "handling" to encompass more than actual physical contact with plan funds. "Handling" occurs whenever the duties or activities of the plan official with respect to given funds or other property are such that there is a risk that such funds or other property could be lost in the event of fraud or dishonesty on the part of the plan official, acting either alone or in collusion with others. This section further provides that a person would be considered to be "handling" where, as a result of such person's decisionmaking responsibility with respect to given funds or other property, the person exercises such close control over the plan's investment policy that the person, in effect, determines all specific investments.

In this regard, the Department has stated (question FR–8, 29 CFR 2509.75–5) that a person who, under ERISA section 3(21(A)(ii), renders investment advise to a plan for a fee or other compensation, direct or indirect, but who does not exercise or have the right to exercise discretionary authority with respect to plan assets, is not considered to be "handling" funds or other property of such plan and, accordingly, is not required to be bonded solely by reason of the provision of such investment advice. However, if the person, in addition to rendering investment advice, exercises or has the right to exercise discretionary authority or control and thereby makes specific investment decisions, such person is considered to be "handling" funds or other property, and accordingly, must be bonded.

Section 412(e) of ERISA provides that when, in the opinion of the Secretary of Labor, the administrator of a plan offers adequate evidence of the financial responsibility of the plan, or that other bonding arrangements would provide adequate protection of the beneficiaries and participants, the Secretary may provide an exemption from the requirements of section 412 of ERISA. The Conference Report, H.R. Report No. 93–1280, 93rd Cong. 2nd Sess. 324 (1974), in explaining this provision, indicates that Congress contemplated that the Department would provide an exemption for plans where other bonding arrangements of the employer, employee organization, investment manager or other fiduciaries or the overall financial condition of the plan or the fiduciaries meet standards deemed adequate to protect the interests of the beneficiaries and participants, including bonds subject to a reasonable maximum for professional investment managers supervising large aggregation of clients' funds.

Proposed regulation 29 CFR 2580.412–33, discussed in detail below, would provide an exemption for certain broker-dealers and investment advisers which meet standards that the Department believes are adequate to protect the interests of the beneficiaries and participants. This proposed regulation would permit an alternative to the bond required by section 412(a) of the Act if the alternative bonding arrangement comes within the terms of the proposed regulation.

[1] *See* 29 CFR 2580.412–16.

B. Discussion of Application

The representations of the applicant are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The SIA represents that its members engage in diverse facets of the securities business within the United States and Canada, including the provision of brokerage and investment advisory services. All SIA members doing business in the United States are broker-dealers registered with the Securities and Exchange Commission (SEC) under the Securities Exchange Act of 1934 (Exchange Act). Some SIA members perform investment advisory functions within the same entity as their broker-dealer operations while others perform these functions through an entity affiliated with the borker-dealer. SIA members that provide investment advice for separate nontransactional compensation must be registered with the SEC as investment advisers under the Investment Advisers Act of 1940 (Advisers Act).[2]

2. The applicant requests an exemption from the bonding requirements contained in section 412 of ERISA for two classes of entities: Registered broker-dealers; and those registered investment advisers which are: (1) Affiliates of registered broker-dealers and (2) do not maintain actual custody or possession of plan assets.[3]

The applicant states that to comply with the bonding requirements of section 412 of ERISA, broker-dealers and investment advisers often obtain bonding coverage through the use of an "agent's rider" attached to the bond otherwise secured by a plan. Broker-dealers and investment advisers which desire to secure their own fidelity bonding coverage find that such coverage is generally available only through the use of an individual or schedule bond, at greatly increased cost. The applicant represents that such bonds are typically two party bonds naming the broker-dealer as insured, rather than the client plan as required by section 412 of ERISA.[4] The applicant further represents that third party fidelity bonds naming client plans as insureds are not presently offered by fidelity insurance companies and have not been offered in the past. To the extent that bonding coverage complying with section 412 could be procured, that section would require a progressively larger bond as the number of client plans to which the broker-dealer provides services increases. As a consequence, the SIA requests exemptive relief for broker-dealers and their investment adviser affiliates that are covered by the two party blanket bonds required by the self-regulatory organization (SRO) of which the broker-dealer is a member.[5] The SIA asserts that the requested exemption will adequately protect the interests of plan participants and beneficiaries.

3. The applicant represents that, in addition to the bonding arrangement (described below) required for broker-dealers by each of the SROs, plans are also protected by the extensive regulation of broker-dealers by the SEC. Such regulation includes requirements for registration, recordkeeping, net capital, customer protection and insurance. The SIA states that these substantive requirements provide customers of broker-dealers with protections similar to those afforded to customers of banks and insurance companies which are exempt from the bonding requirements of section 412 of ERISA.

4. Since December 6, 1983, all registered broker-dealers have been subject to a two-tiered system of regulation and inspection under the general supervision of the SEC. A broker-dealer, in addition to being registered with the SEC, must be a member of one or more SROs.[6] Under this regulatory system, broker-dealers are regulated primarily by one or more SROs which, in turn, are subject to intensive oversight by the SEC. Periodic examinations of broker-dealers are conducted by the SEC and the SROs under this system without prior notification. It is not unusual for a broker-dealer to be examined several times a year by the various examining authorities.

5. Registration subjects broker-dealers to the recordkeeping rules adopted by the SEC pursuant to the Exchange Act. These rules require broker-dealers to make and preserve accurate books and records to provide a basis upon which the SEC or SRO may monitor compliance with the applicable regulatory requirements. In accordance with these rules, broker-dealers are required to file with the SRO and/or the SEC a standard form of report, partially completed on a monthly basis and fully completed quarterly. In addition, all broker-dealers must file audited financial statements on an annual basis.

6. The net capital rule [Securities Exchange Act of 1934, Rule 15c3–1, 17 CFR 240.15c3–1 (1974)] imposes minimum financial requirements on broker-dealers. The customer protection rule [Securities Exchange Act of 1934, Rule 15c3–3, 17 CFR 240.15c3–3 (1974)] establishes reserve and segregation requirements for broker-dealers which limit the use of customers' funds by broker-dealers in their business and requires broker-dealers to obtain and maintain physical possession or control of all fully paid and excess margin securities carried in accounts of customers. The purpose of the customer protection rule is to safeguard customers' funds and prevent unsound use of customers' assets by ensuring that such funds are deployed in limited areas of a broker-dealer's business. The Securities Investor Protection Act of 1970 established a fund, administered by the Securities Investor Protection corporation (SIPC), to ensure the reimbursement of customers of insolvent broker-dealers for up to $500,600 in losses arising out of the insolvency. In this regard, the SIA represents that SIPC would have no defenses against the reimbursement of a pension plan for up to the maximum insured amount where a broker-dealer holding securities as customer property for such plan became insolvent and was put into a SIPC receivership. With certain limited exceptions, all registered broker-dealers are required to contribute to the fund and to be members of SIPC.

7. Broker-dealers are required under the Exchange Act to maintian a blanket fidelity bond covering all of their officers and employees. Each of the SROs has adopted its own bonding requirements. Currently, the amount of the bond is based on a percentage of the net capital of the broker-dealer. At the present time, the various SRO bonding rules are substantially similar. However, the New York Stock Exchange (NYSE) has proposed to increase its minimum bonding requirements for its members and to base such requirements on total securities and money values in the

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[2] We note that the definition of investment adviser contained in section 202(a)(11) of the Advisers Act may encompass persons who exercise the type of discretion described in section 3(21)(A)(i) of ERISA rather than merely providing advice about investment decisions. Such persons would be considered to be "handling" funds or other property of a plan so as to require bonding under section 412 of ERISA.

[3] We note that the applicant's request for relief is specifically limited to those broker-dealers and investment advisers described above.

[4] *See* 29 CFR 2580.412–18.

[5] American Stock Exchange, Boston Stock Exchange, Midwest Stock Exchange, New York Stock Exchange, Pacific Stock Exchange, Philadelphia Stock Exchange, Chicago Board of Options Exchange and National Association of Securities Dealers.

[6] 15 U.S.C. 78(o)(b)(8).

possession and control of a member.[7] The minimum coverage for member firms that carry customer accounts or clear transactions would range from $1 million for firms with under $50 million of securities and money values in possession and control, to $50 million for firms with over $2 billion of securities and money values in possession and control. The SIA represents that a solvent broker-dealer would be strictly liable to a plan if the broker-dealer issued a receipt evidencing that it was holding securities for the account of the plan and subsequently could not deliver such securities.

8. If the investment adviser and broker-dealer functions of the SIA member are performed within the same entity, the investment adviser is subject to the regulation and examination requirements, including the bonding requirements, of the broker-dealer. Registered investment advisers that do business through entities affiliated with a broker-dealer are subject to the regulation and examination requirements of the Advisers Act. Pursuant to the registration requirements of the Advisers Act, investment advisers must file Form ADV. Form ADV provides information concerning the ownership and business of the investment adviser, the nature and scope of its authority with respect to client funds and accounts, its methods of analysis, sources of information and investment strategies; and the background, including prior securities violations, of its officers and directors and any person who controls the investment adviser. Information on Form ADV must be kept up to date. The Advisers Act requires that investment advisers keep accurate and current books and records which are subject to examination by the SEC, without prior notice at irregular intervals every several years. Although the Advisers Act does not have a bonding requirement, the applicant represents that most sureties are willing to extend the broker-dealer's blanket bond to cover all of the investment advisory activities of an affiliated investment adviser, thereby extending fidelity bond protection to the clients of the affiliated investment adviser.

C. Discussion of Proposed Regulation

The Department has in the past exercised its statutory authority under section 13(e) of the Welfare and Pension Plans Disclosure Act (WPPDA) to grant exemptions from the bonding requirements of that statute where the parties seeking exemptive relief were subject to other bonding requirements that included minimum bonding amounts and periodic examination and review by supervisory authorities.[8] Section 412(e) of ERISA contains provisions substantially similar to those contained in section 13(e) of the WPPDA.

After consideration of the representations of the applicant, the Department has tentatively determined that, as modified below, the bonding arrangements imposed by the various SROs on their member firms constitute other bonding arrangements that would adequately protect the beneficiaries and participants of employee benefit plans under section 412(e) of ERISA.

However, the Department recognizes that the present bonding requirements of the various SROs set the amount of the bond based on the net capital of the broker-dealer. In the Department's view, a bonding requirement based on the total securities and money in the possession and control of the broker-dealer is a more appropriate basis on which to propose exemptive relief since it would more closely parallel the requirement of section 412(a) of ERISA. For this reason, the Department has included a condition in the proposed exemption which requires minimum bonding coverage similar to that proposed under the NYSE rule. In all other respects, the proposed exemption provides flexibility by permitting broker-dealers and investment adviser affiliates to satisfy the bond required under section 412 of ERISA by maintaining a fidelity bond that complies with the rules of the broker-dealer's SRO.

Finally, the Department has determined to provide only limited relief from sections 412(a) and 412(b) of ERISA. The exemption retains the requirement contained in section 412(a) that the surety on a fidelity bond must be a corporate surety company which is an acceptable surety on Federal bonds under authority granted by the Secretary of the Treasury pursuant to sections 9304 through 9308 of title 31, United States Code.

In addition, the exemption retains the prohibitions of section 412(b) which make it unlawful for a plan official to "handle" funds or other property without being bonded as required by section 412(a) or to permit the "handling" of funds or other property by another plan official who is not similarly bonded. However, broker-dealers and investment adviser affiliates which comply with the requirements of this exemption shall be deemed to be bonded as required by section 412(a) of ERISA. The exemption provides no relief from section 412(c) which makes it unlawful for anyone to procure a bond required by ERISA from any surety or through an agent or broker in whose business operations the plan or any party in interest with respect to the plan has any control or significant financial interest, direct or indirect. In the Department's view, the exemption as proposed will adequately address the concerns of the SIA.

Regulatory Flexibility Act

The Department has determined that this regulation would not have a significant economic effect on small plans or other small entities. The proposed regulation would exempt certain broker–dealers and investment advisers from bonding requirements that, in the absence of this exemption, would be imposed by section 412(a) of ERISA. The regulation does not impose paperwork or other types of costs and burdens on those broker-dealers and investment advisers who meet the criteria for exemptive relief.

Executive Order 12291 Statement

The Department has determined that the proposed regulatory action would not constitute a "major rule" as that term is used in Executive Order 12291 because the action would not result in: an annual effect on the economy of $100 million; a major increase in costs or prices for consumers, individual industries, government agencies, or geographical regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets.

Paperwork Reduction Act Statement

This proposed regulation does not contain any new information collection requirements and does not modify any existing requirements.

Statutory Authority

The proposed regualtion set forth herein is issued pursuant to sections 412(e) (Pub. L. 93–406, 88 Stat. 889, 29 U.S.C. 1112(3)) and 505 of ERISA (Pub. L. 93–406, 88 Stat. 894, 29 U.S.C. 1135); and under Secretary of Labor's Order No. 1–[illegible].

[7] SEC File No. SR–NYSE–83–13, 48 FR 20837, May 9, 1983.

[8] *See* EXR–179, St. Louis Union Trust Company, March 9, 1972.

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List of Subjects in 29 CFR Part 2580

Employee benefit plans, Employee Retirement Income Security Act, Pension plans, Welfare plans, Bonding, Exemptions.

In view of the foregoing, the Department proposes to amend Part 2580 of Chapter XXV of Title 29 of the Code of Federal Regulations as follows:

PART 2580—TEMPORARY BONDING RULES

1. By revising the authority citation for Part 2580 to read as set forth below:

Authority: Sec. 505, Pub. L. 93–406, 88 Stat. 894 (29 U.S.C. 1135); Sec. 412(e), Pub. L. 93–406, 88 Stat. 889 (29 U.S.C. 1112), Secretary of Labor's Order No. 1–86.

§§ 2580.412–33 through 2580.412–36 [Redesignated as §§ 2580.412–45 through 2580.412–48]

2. By redesignating §§ 2580.412–33 through 2580.412–36, which constitute subpart G, as §§ 2580.412–45 through 2580.412–48 respectively.

3. By adding to subpart F of Part 2580 a new centered heading and a new § 2580.412–33 to read as follows:

Broker-Dealers and Investment Advisers Subject to Federal Regulation

§ 2580.412–33 Exemption.

(a) *Persons covered.* If the alternative bonding arrangement set forth in paragraph (b) of this section is satisfied, the bond required by section 412(a) of ERISA shall not apply to the following persons:

(a) Any broker-dealer registered under the Securities Exchange Act of 1934 (Exchange Act),

(2) Any investment adviser registered under the Investment Advisers Act of 1940 which—

(A) Controls, is controlled by, or is under common control with a broker-dealer registered under the Exchange Act (investment adviser affiliate),

(B) Does not maintain actual custody or possession of assets of employee benefit plans, and

(C) Is named as an additional insured on the registered broker-dealer's bond described in paragraph (b) of this section.

Persons complying with the alternative bonding arrangement set forth in paragraph (b) of this section shall be deemed to be bonded as required by section 412(a) of ERISA.

(b) *Alternative bonding arrangement.* (1) Each broker-dealer relying on the exemption in paragraph (a) of this section shall maintain a fidelity bond covring the broker-dealer and/or its investment adviser affiliate in the form required by each self-regulatory organization (SRO) of which the broker-dealer is a member, except that the following minimum limits of coverage are substituted for any other limits otherwise prescribed by the SRO.

Securities and money values in possession and control	Basic minimum coverage
$0–50 million	$1 million
50–100 million	3 million
100–500 million	5 million
500 million–$1 billion	10 million
1–2 billion	25 million
Above $2 billion	50 million

(2) The surety on any bond procured in accordance with this exemption must be a corporate surety company which is an acceptable surety on Federal bonds under authority granted by the Secretary of the Treasury pursuant to sections 9304 through 9308 of title 31, United States Code.

(c) *Definitions.* For the purposes of this exemption:

(1) The terms "broker-dealer" and "investment adviser" include any partner, director, officer or employee of such broker-dealer or investment adviser.

(2) Ther term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

Signed at Washington, DC, this 13th day of August, 1987.

David M. Walker,

Deputy Assistant Secretary, Pension and Welfare Benefits Administration, United States Department of Labor.

[FR Doc. 87–18922 Filed 8–18–87; 8:45 am]

BILLING CODE 4510–29–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket No. 87–274; FCC]

Elimination of Cellular Capitalization Plan Requirements

AGENCY: Federal Communications Commission (FCC).

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes the amendment of § 22.901(d) of the FCC Rules to eliminate the requirements that the Regional Bell Holding Companies (RBOCs) obtain FCC approval of the way in which their separate cellular subsidiaries are to be capitalized prior to obtaining any interest in transferring any asset to them, and prior to modifying any FCC-approved cellular capitalization plan. This action is being taken as part of the FCC's ongoing effort to provide a regulatory framework which permits markets for communications services to function properly, while eliminating regulations which are unnecessary or inimical to the public interest.

DATES: Comments are due by September 25, 1987, and reply comments by October 13, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: William A. Kehoe III, Common Carrier Bureau, (202) 634–1861.

SUPPLEMENTARY INFORMATION: This is a summary of the FCC's Notice of Proposed Rulemaking in CC Docket 87–274, FCC 87–254, adopted July 22, 1987, and released August 4, 1987. The full text of the FCC's decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rulemaking

1. This action proposes the amendment of § 22.901(d)(3) of the FCC Rules to eliminate capitalization plan filing and updating requirements for mobile radio cellular systems. Section 22.901 requires that the Regional Bell Holding Companies (RBOCs) offer cellular services only through subsidiaries which are structurally separated from RBOC subsidiaries providing landline telephone exchange and transmission services. Section 22.901(d)(3) requires that the RBOCs obtain FCC approval of the way in which their separate cellular subsidiaries are to be capitalized prior to obtaining any interest in transferring any asset to them, and prior to modifying any FCC-approved cellular capitalization plan. The Notice of Proposed Rulemaking (NPRM) proposes the amendment of § 22.901(d) to eliminate those capitalization plan requirements.

Ordering Clauses

1. Accordingly, it is ordered, pursuant to sections 1, 4(i), 4(j), 201–205, 218, 220, 303(g), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–205, 218, 220, 303(g), 303(r), and 403, and section 553 of the Administrative Procedure Act, 5 U.S.C. 553, that notice is hereby given of proposed amendments to Part 22 of the

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Commission's Rules, 47 CFR Part 22, in accordance with the proposals, discussion, and statements in this Notice of Proposed Rulemaking.

2. It is further ordered, that interested persons may file comments on the specific proposals discussed in this Notice by the dates specified in the Preamble.

In accordance with the provisions of § 1.419 of the Commission's Rules, 47 CFR 1.419, an original and five (5) copies of all comments shall be furnished to the Commission. Copies of the comments will be available for public inspection in the Commission's Docket Reference Room, 1919 M Street NW., Washington, DC.

List of Subjects in 47 CFR Part 22

Public mobile service.

Rule Changes

Part 22 of the Commission's Rules and Regulations, 47 CFR Part 22, is proposed to be amended as follows:

PART 22—[AMENDED]

1. The authority citation for Part 22 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended (47 U.S.C. 154, 303), sec. 553 of the Administrative Procedure Act (5 U.S.C. 553), unless otherwise noted.

§ 22.901 Eligibility.

2. Section 22.901(d)(1) is amended by inserting the word "and" after the semicolon.

Section 22.901(d)(2) is amended by removing "; and" and inserting "." after the word "conditions".

Section 22.901(d)(3) is removed.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-18331 Filed 8-18-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-295, RM-5754]

Radio Broadcasting Services; Garden City, IN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Martin L. Hensley proposing the allotment of FM Channel 275A to Garden City, Indiana, as that community's first FM service.

DATE: Comments must be filed on or before October 5, 1987, and reply comments on or before October 20, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consulant, as follows: Martin L. Hensley, 1655 Olive Street, Evansville, Indiana 47714 (Petitioner).

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-298 adopted July 24, 1987, and released August 12, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Docket Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-18890 Filed 8-18-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-294, RM-5733]

Radio Broadcasting Services; Jefferson City and Vandalia, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule and order to show cause.

SUMMARY: This document requests comments on a petition filed by Triple D. Properties, proposing the substitution of FM Channel 261C2 for 261A at Jefferson City, Missouri, and modification of the license of FM Station KJMO-FM to reflect the higher class of channel. To accommodate the substitution at Jefferson City, it would be necessary to substitute FM Channel 282A for 261A at Vandalia, Missouri, Station WLRK.

DATES: Comments must be filed on or before October 5, 1987, and reply comments on or before October 20, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Richard J. Hayes, Jr., 1359 Black Meadow Road, Greenwood Plantation, Spotsylvania, Virginia 22553, (Counsel for Triple D. Properties).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-294, adopted July 24, 1987, and released August 12, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-18891 Filed 8-18-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-295, RM-5756]

Radio Broadcasting Services; Edenton, NC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Edenton Christian Radio, Inc. to substitute Channel 261C2 for Channel 261A at Edenton, North Carolina, and the modification of its license for Station WBXB to specify the higher powered channel. The substitution of channels could provide the community with expanded radio service. In accordance with § 1.420(g) of the Rules, the Commission will not accept competing expressions of interest in use of the channel at Edenton nor require the petitioner to show the availability of an additional equivalent channel. Channel 261C2 can be allocated to Edenton in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.7 kilometers (4.2 miles) northeast to avoid a short-spacing to the licensed site of Station WYFI, Norfolk, Virginia, and the recently allocated Channel 262C2 at Hatteras, North Carolina (MM Docket 86-377).

DATES: Comments must be filed on or before October 5, 1987, and reply comments on or before October 20, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: David M. Hunsaker, Esq., Putbrese & Hunsaker, 6800 Fleetwood Road, P.O. Box 539, McLean, Virginia 22101 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No.87-295, adopted July 23, 1987, and released August 12, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or curt review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division Mass Media Bureau.

[FR Doc. 87-18892 Filed 8-18-87; 8:45 am]

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47 CFR Part 73

[MM Docket No. 87-296, RM-5902]

Radio Broadcasting Services; Jacksonville, NC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Winfas, Inc. proposing the substitution of Channel 254C1 for Channel 254C2 at Jacksonville, NC, and the modification of its construction permit to specify operation on the higher powered channel. Channel 254C1 can be allocated to Jacksonville in compliance with the Commission's minimum distance separation requirements with a site restriction of 19.8 kilometers (12.3 miles) south to avoid short-spacings to Station WNOF-FM, Channel 251, Norfolk, Virginia; to the allocation and pending applications for Channel 257A at Grifton, NC, and to the application of Station WKSI, Channel 254C1, Greensboro, NC, specifying full Class C facilities. Use of petitioner's construction permit site would result in a 1.7 kilometer short-spacing to Station WKSI's pending application. Thus, petitioner is requested to state that it will either relocate its transmitter to a site complying with the Commission's minimum distance separation requirements or seek a waiver at the application stage to operate from its current construction permit site. In accordance with the Commission's rules and policies, petitioner will not be required to demonstrate the availability of an additional equivalent channel for use by other interested parties and we shall not accept competing expressions of interest in use of Channel 254C1 at Jacksonville.

DATES: Comments must be filed on or before October 5, 1987, and reply comments on or before October 20, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Gary S. Smithwick, Esq., Baraff, Koerner, Olender & Hochberg, P.C., 2033 M Street, NW., Suite 203, Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-296, adopted July 23, 1987, and released August 12, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

-Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-18893 Filed 8-18-87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal To Determine Threatened Status for Solidago houghtonii (Houghton's Goldenrod)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine threatened status for *Solidago houghtonii* (Houghton's goldenrod), a perennial native to the sand beach flats of the northern shorelines of Lakes Michigan and Huron. This plant is threatened by residential development, hydrologic changes of the Great Lakes, destabilization of the shoreline sand dunes and beach flats, human disturbance, and the use of off-road vehicles. *S. houghtonii* is presently known to occur at 39 sites within eight Michigan counties. There are also several populations in Ontario, Canada. This proposal, if made final, will implement the protection provided by the Endangered Species Act of 1973, as amended, for *S. houghtonii*. The Service seeks data and comments from the public.

DATES: Comments from all interested parties must be received by October 19, 1987. Public hearing requests must be received by October 5, 1987.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Endangered Species Coordinator, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the above address.

FOR FURTHER INFORMATION CONTACT: James M. Engel, Endangered Species Coordinator, at the above address (612–725–3276 or FTS 725–3276).

SUPPLEMENTARY INFORMATION:

Background

Solidago houghtonii (Houghton's goldenrod), a plant of the family Asteraceae, was discovered in 1839, by Douglas Houghton, Michigan's first State Geologist, along the north shore of Lake Michigan in Mackinac County, Michigan, between what are not the communities of Naubinway and Epoufette (Morton 1979). This largeheaded goldenrod, 8–20 inches tall, is characterized by a highly developed fibrous root system. The stem is slender and smooth, with a few tiny hairs on the upper portions. Leaves are smooth and linear, are alternately arranged, and number 7 to 15. The basal and lower leaves are up to 8 inches long and ¾ inch wide, tapering and partially clasping the stem. The upper leaves are similar but reduced upwards. All leaves are weakly triple veined, acute, and scabrous. Inflorescences, which appear from midsummer until fall, consist of a few somewhat flat-topped clusters of 5-15 heads containing relatively large flowers. The stems of the inflorescence are hairy.

Solidago houghtonii typically occurs on the sparsely vegetated, moist calcareous sand beach shoreline flats, and the damp hollows or depressions between the foredune ridges of northern Lake Michigan and Lake Huron (Nepstad 1981). Its occurrence behind the lakefront dunes has also been noted (Morton 1979). Two other candidates for Federal listing, *Cirsium pitcheri* (Pitcher's thistle) and *Iris lacustris* (dwarf lake iris) occur in some of the same areas.

Nepstad (1981) described localities in six Michigan counties (Cheboygan, Chippewa, Crawford, Delta, Emmet, and Mackinac) where *S. houghtonii* is found in more or less continuous or semicontinuous populations along the lakeshore. He noted that it may be misleading to count each population as an individual occurance, as these populations are merely separated by local discontinuities in habitat. He considered there to be no more than 18 known populations of *S. houghtonii*. However, after later survey work, Sue Crispin (The Nature Conservancy, pers comm., December 1985 and February 1986) identified additional populations. A review of data furnished by The Nature Conservancy, indicates that within the general areas of the 18 populations noted by Nepstad (1981), about 39 sites of occurrence now actually exist. *S. houghtonii* is currently known from about 37 sites in seven Michigan counties (Cheboygan, Chippewa, Delta, Emmet, Mackinac, Presque Isle, and Schoolcraft) along the northern shores of Lake Michigan and Lake Huron, and from 2 sites in inland Crawford County within the confines of the State-owned Camp Grayling military reservation (Nepstad 1981). The plant is also known from several sites in Canada, specifically the Manitoulin district of Ontario on the Bruce Peninsula near Cabot Head, and Great Cloche Island in Lake Huron (Morton 1979). The taxon is considered rare in the Province of Ontario (Semple and Ringius 1983).

An additional population of *S. houghtonii* has been reported to occur in Berger Swamp, Genesee County, New York (Guire and Voss 1963). That population, however, is now considered to represent recent hybridization between the species *Solidago ohioensis* and *Aster ptarmicoides* (Morton 1979).

Solidago houghtonii is threatened by residential development, lakefront dune destablization because of hydrologic changes, human disturbance, and outdoor recreational vehicle traffic (Nepstad 1981). Section 12 of the Endangered Species Act of 1973 (Act) directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service Published a notice in the Federal Register (40 FR 27823) of its acceptance of this report as a petition within the context of former section 4(c)(2) of the Act (petition acceptance is now governed by section 4(b)(3)) and of its intention to review the status of the plant taxa named within. *S. houghtonii* was named in the Smithsonian Report as threatened and was included in the Service's 1975 notice of review. *S. houghtonii* was also included as a category 1 species in an updated notice of review for plants published in the Federal Register of December 15, 1980 (45 FR 82480). Category 1 comprises taxa for which the Service presently has sufficient biological information to support their being proposed to be listed as endangered or threatened species.

The Endangered Species Act Amendments of 1982 required that all petitions pending as of October 13, 1982, be treated as having been submitted on that date. Section 4(b)(3) of the Act, as amended, requires that, within 12 months of the receipt of a petition, as finding be made as to whether the requested action is warranted, not warranted, or warranted but precluded by other listing activity. On October 13, 1983, October 12, 1984, October 11, 1985, and October 10, 1986, the petition finding was made that listing *S. houghtonii* was warranted but precluded. Such a finding requires a reevaluation of the petition within 12 months, pursuant to section 4(b)(3)(C)(i) of the Act. Therefore, a new finding must be made; this proposed rule constitutes the new finding that the petitioned action in warranted, in accordance with section 4(b)(3)(B)(ii) of the Act.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Solidago houghtonii* Torrey and Gray are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range. S. houghtonii* is presently threatened by the potential development of the shoreline along those portions of Lakes Michigan and Huron where the species is found (Nepstad 1981). Private development has already rendered some lakeshore areas unsuitable as long-term habitat for this species. Crispin (pers. comm.) also has reported that beachfront development has destroyed part of a population of *S. houghtonii* in Cheboygan County, Michigan. In addition to current and potential shoreline development, *S. houghtinii* is threatened by disturbances to the lakefront dune habitat caused by recreational vehicles and by other human activities. Nepstad (1981) stated that while the ability of *S. houghtonii* to tolerate changes in the habitat has not yet been determined, the narrow habitat requirements of the plant indicate that destabilization of the foredunes and beach flats could be detrimental to the species. Presently, *S. houghtonii* is found at about 37 sites in seven Michigan counties along the shores of Lake Michigan and Lake Huron, 2 sites inland in Crawford County, Michigan, and several sites in Ontario. Of the 39 sites in Michigan, 14 are publicly owned; 11 by the State, 2 by the Federal Government, and 1 by the Nature Conservancy. The remaining 25 areas are privately owned and subject to various types of habitat alterations, which could adversely affect *S. houghtonii*.

Data do not indicate that this plant was ever more widespread geographically than it now is; however, some formerly known populations within the current range can no longer be located (Crispin pers. comm.). Current information indicates that 10 populations may have been extirpated within the last 10 years. Crispin has further noted that several monitoring projects for *S. houghtonii* have been initiated by The Nature Conservancy. However, extensive knowledge of the species' ecological requirements are not known.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* There is no known trade in this species, and scientific or horticultural collecting is not known to pose any threat to it. The species is attractive, and publicity concerning its rarity could stimulate greater interest and collecting.

C. *Disease or predation.* This species is not known to be threatened by disease or predation.

D. *The inadequacy of existing regulatory mechanisms. S. houghtonii* is official listed as threatened in Michigan and afforded protection under State law, which generally prohibits taking possession, sale, purchase, and transport of plant species on the Federal and State endangered and threatened lists. Federal listing would reinforce and broaden protection for the species and its habitat.

E. *Other natural or manmade factors affecting its continued use.* Since many populations of this species occur on lake beachfronts, the plants are subject to hydrologic changes, as well as human and vehicular disturbances. The fact that approximately 20 percent of earlier known populations have not been found since 1975 (Crispin pers. comm.) points out the need for research into the population dynamics of the taxon.

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by this taxon in determining to propose this rule. Based on this evaluation, the preferred action is to list *Solidago houghtonii* as a threatened species. Although not thought to be in imminent danger of extinction, this plant is rare, has suffered the loss of many local populations, and faces the prospect of further losses occurring as a result of habitat alteration. For reasons detailed below, it is not considered prudent to propose designation of critical habitat.

Critical Habitat

Section 4(a)(3) of the Act, as amended, required that, to the maximum extent prudent and determinable, the Secretary designate any habitat of a species that is considered to be critical habitat at the time the species is determined to be endangered or threatened. The designation of critical habitat is not considered to be prudent when such designation would not be of net benefit to the species involved (50 CFR 424.12). In the present case, the Service considers that designation of critical habitat would not be prudent because no benefit to the taxon can be identified that would outweigh the potential threat of vandalism or collection, which might be exacerbated by the publication of a detailed critical which might be exacerbated by the publication of a detailed critical habitat description.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for land acquisition, if necessary, and cooperation with the States; it also requires that recovery actions be carried out for all listed species. These actions are initiated by the Service following listing. Some actions may be initiated prior to listing, circumstances permitting. Management actions that may be of benefit to *S. houghtonii* include monitoring populations, obtaining protective easements at sites of occurrence, providing protection against human disturbance, investigating measures to prevent long-term habitat degradation, and State-Federal cooperation in habitat management and reintroduction projects. The protection required of Federal agencies and applicable prohibitions are discussed in part below.

Section 7(a) of the act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. When a species is listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If an activity may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Two of the sites at which *S. houghtonii* occurs are administered by Federal agencies, but not authorized

activities, actually or potentially detrimental to the species, are known in these areas. The U.S. Bureau of Land Management has jurisdiction over a small island in Chippewa County, Michigan, where the plant is found. It is contemplated that ownership of this island will soon be transferred to the State of Michigan. Another small population is located on the Hiawatha National Forest in Mackinac County. Implementation of the management plan for this area, by the U.S. Forest Service, could involve *S. houghtonii* and its habitat.

Section 9 of the act, and implementing regulations found at 50 CFR 17.71 and 17.72, set forth a series of general trade prohibitions and exceptions that apply to all threatened plant species. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any threatened plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from land under Federal jurisdiction and reduce it to possession. Seeds from cultivated specimens of threatened plant species are exempt from trade prohibitions, provided that a statement of "cultivated origin" appears on their containers. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. It is anticipated that few collecting or trade permits would ever be sought or issued, since this plant is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235–1903).

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *S. houghtonii;*

(2) The location of any additional populations of *S. houghtonii* and the reasons why any habitat of this species should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on *S. houghtonii.*

Final promulgation of the regulation on *S. houghtonii* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if one is requested. Requests must be filed within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Regional Director, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111.

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments, as defined under the authority of the National Environmental Policy Act 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. The reasons for this determination were published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Guire, K.E., and E.G. Voss. 1963. Distribution of distinctive shoreline plants in the Great Lakes region. The Michigan Botanist 2:99–114.

Morton, J.K. 1979. Observations on Houghton's Goldenrod (*Solidago houghtonii*). The Michigan Botanist 18:31–35.

Nepstad, D.C. 1981. Status report on *Solidago houghtonii* Torrey and Gray. Department of Botany and Plant Pathology, Michigan State University, Unpbl. ms., 29 pp.

Semple, J.C., and G.S. Ringius. 1983. *Solidago houghtonii* Torrey and Gray. *In* G.W. Argus and D.J. White, eds., Atlas of the rare vascular plants of Ontario, National Museum of Natural Science, Ottawa.

Author

The primary author of this proposed rule is William F. Harrison (see **ADDRESSES** section) (612–725–3276 or FTS 725–3276).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the family Asteraceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Asteraceae—Aster family:						
Solidago houghtonii	Houghton's goldenrod	U.S.A. (MI), Canada (ON)	T		NA	NA

Dated: August 3, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–18983 Filed 8–18–87; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal To Determine *Hymenoxys acaulis* var. *glabra* (Lakeside Daisy) To Be a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to list *Hymenoxys acaulis* var. *glabra* (Lakeside daisy), as a threatened species. This plant is known only from Manitoulin Island and the Bruce Peninsula in Ontario, Canada, where it is considered rare, and from one fragmented population in Ottawa County, Ohio. It has apparently been extirpated from three counties in Illinois. The Ohio population occurs on private land, where its continued existence is threatened by habitat alteration caused by limestone quarrying activities and the unmanaged succession of woody overgrowth. This proposal, if made final, would implement the protection provided by the Endangered Species Act of 1973, as amended, for this plant. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by October 19, 1987. Public hearing requests must be received by October 5, 1987.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Endangered Species Division, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: James M. Engel, Endangered Species Coordinator (see **ADDRESSES** section) at 612/725–3276 or FTS 725–3276.

SUPPLEMENTARY INFORMATION:

Background

Hymenoxys acaulis var. *glabra* (Lakeside daisy) is a member of the family Asteraceae. It has previously been recognized as *Actinea herbacea* (Greene) Robins. and *Actinea acaulis* (Pursh) Spring. var. *glabra* (Gray) Parker. While conducting taxonomic research on the western species of *Actinea*, Parker (1950) demonstrated that *Hymenoxys acaulis* var. *glabra* is the correct name for this plant.

A perennial with a taproot and branching caudex, *Hymenoxys acaulis* var. *glabra* is characterized by densely tufted, thick spatulate to nearly linear basal leaves 1–8 centimeters (0.4–3.1 inches) long and up to 1 centimeter (0.4 inches) wide, strongly punctate, with a scape-like peduncle 5-25 centimeters (2-10 inches) high, which bears a solitary head with 10-30 radiating yellow rays. Most individuals in a population tend to bloom at the same time in late April to mid-May, producing a radiant mass of yellow flowers. After flowering the plants become light gray in color and quite inconspicuous and easily overlooked; in a few weeks the rich green color returns (R.E. Moseley, Ohio Department of Natural Resources, pers. comm. Sept. 1985).

In the United States *Hymenoxys acaulis* var. *glabra* is currently known from one fragmented population on the Marblehead Peninsula in Ottawa County Ohio, where it occurs on dry rocky prairie habitat, much of which has been altered by limestone quarrying activities (Weed 1890, Wunderlin 1971, Cusick and Burns 1984). The plant has also been recorded from Mason, Will, and Tazewell Counties in Illinois (Wunderlin 1971, John Schwegman, Illinois Department of Conservation, pers. comm. April 1986). The Illinois populations, however, are considered to be extirpated (Schwegman, pers. comm. April 1986). In Canada, where the plant is considered rare, it is known from four locations on the Bruce Peninsula, the largest scattered over about 10 acres, and approximately seven sites on Manitoulin Island (White and Maher 1983, Elliott 1984). Available records do not indicate a serious recent decline in the Canadian populations, but uncontrolled woody overgrowth always poses a threat.

Moseley (1930) raised a question about whether this plant is indigenous to Ohio, although Weed (1890) had pointed out that it had been found on the Marblehead Peninsula of Ottawa County as long as anyone then alive could remember. Cusick and Burns (1984) noted that the habitat in Ohio closely resembles the Canadian habitat, where the plant is considered indigenous. Allison Cusick (Ohio Department of Natural Resources, pers. comm. April 17, 1986) considers the plant native to the Marblehead Peninsula. Some additional research under provisions of the Endangered Species Act is needed regarding population genetics of this plant.

Federal actions on the Lakeside daisy began with section 12 of the Endangered Species Act of 1973 (Act), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the Smithsonian Institution report as a petition within the context of section 4(c)(2) (petition acceptance is now governed by section 4(b)(3) of the Act), and of its intention thereby to review the status of the plant taxa named within. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. *Hymenoxys acaulis* var. *glabra* was included in the July 1, 1975, notice of review and the June 16, 1976, proposal. General comments received in relation to the 1976 proposal were summarized in the **Federal Register** on April 26, 1978 (43 FR 17909). On December 10, 1979, the Service published a notice (44 FR 70796) withdrawing the portion of the June 16, 1979, proposal that had not been made final, along with four other proposals that had expired due to a procedural requirement of the 1978 Amendments. On December 15, 1980 (45 FR 82480), and September 27, 1985 (50 FR 39525), the Service published revised notices of review for native plants in the **Federal Register**; *Hymenoxys acaulis* var. *glabra* was included in those notices as a category 1 species. Category 1 species are those for which data in the Service's possession indicate that proposing to list is warranted.

The Endangered Species Act Amendments of 1982 required that all petitions pending as of October 13, 1982, be treated as having been submitted on that date. The deadline for a finding on those species, including *Hymenoxys acaulis* var. *glabra*, was October 13, 1983. In October 1983, 1984, 1985, and 1986 the petition finding was made that listing *Hymenoxys acaulis* var. *glabra* was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act.

Such a finding requires that the petition be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. The present proposal constitutes a finding that the listing is warranted. The Service proposes to implement the petitioned action in accordance with section 4(b)(3)(B)(ii) of the Act.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424) set forth the procedures for adding species to the Federal Lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their appliction to *Hymenoxys acaulis* (Pursh) Parker var. *glabra* (Gray) Parker (Lakeside daisy) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The most serious threat to the Lakeside daisy is habitat destruction. This plant is found in open, dry, rocky, prairie areas where active limestone quarrying occurs. The Marblehead Peninsula population consists of seven scattered sites within a 2-square-mile area, all on privately owned land in an area where active limestone quarrying is being conducted now, and has been conducted for 150 years. Quarrying activity has destroyed most of the original prairie habitat. Where quarrying activities are conducted, any existing Lakeside daisy plants are completely destroyed. Once quarrying has ceased on an area, the plant occasionally reappears after a period of 15–20 years, but not abundantly (Cusick pers. comm. 1986). Because the quarrying activities have moved from area to area, the "cycle" from destroyed habitat to subsequent reappearance of the plant years later has been continuous for 70–80 years on this small area of the Marblehead Peninsula (Cusick pers. comm. 1986). Cusick points out that while the Lakeside daisy is easily grown when transplanted into gardens, it does not seem to expand its natural range. In addition, the succession of overgrowth by woody species reduces the open sunny habitat necessary for the plant's survival (Cusick and Burns 1984). Cusick and Burns (1984) also noted that overcollecting for gardens is a hazard, because the plant is one of Ohio's more spectacular wildflowers. Populations have been extirpated in Mason, Tazewell and Will Counties in Illinois due to quarrying, grazing, and industrial activities (Schwegman, pers. comm. 1986). Since all of the remaining Lakeside daisy plants are found on privately owned land, some form of land protection and management rights are needed in order to protect the existing population and manage the woody overstory. Provisions of the Endangered Species Act of 1973, as amended, will enhance and reinforce protection efforts.

B. *Overutilization for commercial, recreational, scientific or educational purposes.* Commercial trade of this plant is not known to exist. However, because it is easly transplanted, wildflower collectors may reduce the population in more accessible sites. Because it is easily transplanted and has very showy flowers, the possibility for commercial trade is present.

C. *Disease or predation.* None known.

D. *The inadequacy of existing regulatory mechanisms. Hymenoxys acaulis* var. *glabra* is officially listed as endangered by the State of Ohio. Ohio law prohibits commercial taking of any State-listed plant from its native habitat. The law also prohibits the taking of any listed species for any purpose without either the written permission of the landowner, or a collecting permit from the Department of Natural Resoures (DNR) and verbal permission of the landowner. These prohibitions on trade and collecting do not specifically provide for protection or managment of the species' habitat. These regulations will be further strengthened by prohibitions of the Endangered Species Act. The Ohio DNR has attempted to purchase a site where the Lakeside daisy occurs, but so far has been unsuccessful. *Hymenoxys acaulis* var. *glabra* is not protected under the Ontario Endangered Species Law.

E. *Other natural or manmade factors affecting its continued existence.* None known.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species throughout its range in determining to propose this rule. Based on this evaluation, the preferred action is to list *Hymenoxys acaulis* var. *glabra* as threatened. In the United States only one fragmented population of this species is known to survive. It is on privately owned property and receives no protection or special management to enhance its likelihood of continued existence. Threatened status is appropriate for the species as a whole, because without protection and further research the present vulnerability of this species to become endangered will continue. For reasons detailed below, it is not considered prudent to propose designation of critical habitat.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species that is considered to be critical habitate at the time the species is determined to be endangered or threatened. The designation of critical habitat is not considered to be prudent when such designation would not be of net benefit to the species involved (50 CFR 424.12). The Service believes that designation of critical habitat for *Hymenoxys acaulis* var. *glabra* would not be prudent because no benefit to the species can be identified that would outweigh the potential threat of vandalism or collection, which might be exacerbated by the publication of a detailed critical habitat description and map.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition, if necessary, and cooperation with the States. It also requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following the listing. Some actions may be undertaken prior to listing. Potential recovery activities include vegetation control of woody overstory and reintroduction into areas of its historic range. The protection required of Federal agencies and the prohibitions against collecting are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires

Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service. Since the Lakeside daisy is not known to grow on Federal lands, little if any Federal involvement is anticipated.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all threatened plants. With respect to *Hymenoxys acaulis* var. *glabra*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71 would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any threatened plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. Seeds from cultivated specimens of threatened plants are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. International and interstate commerce in *Hymenoxys acaulis* var. *glabra* is not known to exist. It is anticipated that few trade permits would ever be sought or issued, since this plant is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235–1903).

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered and threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule, are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Hymenoxys acaulis* var. *glabra*;

(2) The location of any additional populations of *Hymenoxys acaulis* var. *glabra* and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on *Hymenoxys acaulis* var. *glabra*.

Final promulgation of the regulation on *Hymenoxys acaulis* var. *glabra* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Endangered Species Field Division (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. The reasons for this determination were published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Cusick, A.W. and J.F. Burns. 1984. *Hymenoxys acaulis* (Pursh) Parker var. *glabra* (Gray) Parker. 2 pages *In:* R.M. McCance, Jr. and J.F. Burns, Eds. Ohio Endangered and Threatened Vascular Plants. Department of Natural Resources, Columbus, Ohio. n.p.

Elliott, V. 1984. New Stations of the Rare Plant *Hymenoxys acaulis* var. *glabra* (Stemless Rubberweed) on the Bruce Peninsula. The Plant Press 2(1):6–7.

Moseley, E.L. 1930. Some plants that were probably brought to northern Ohio from the west by Indians. Papers of the Mich. Acad. of Sci., Arts, and Letters 13:169–172.

Parker, K.F. 1950. New combinations in *Hymenoxys*. Madrono 10:59.

Weed, C.M. 1890. The Lakeside daisy. J. Columbus Horticultural Soc. 5:72–73.

White D.J. and R.V. Maher. 1983. *Hymenoxys acaulis* (Pursh) Parker var. *glabra* (Gray) Parker. 1 page *In:* G.W. Argus and D.J. White, Eds. Atlas of the Rare Vascular plants of Ontario. National Museum of Natural Sciences, Ottawa. n.p.

Wunderlin, R.P. 1971. Contributions to an Illinois Flora No. 4. Trans. Illinois Acad. Sci. 64:317–327.

Author

The primary author of this proposed rule is William F. Harrison (see **ADDRESSES** section) (612/725–3276 or FTS 725–3276).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants, (agriculture).

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the family Asteraceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species							
Scientific name	Common name	Historic range	Status	When listed	Critical habitat	Special rules
Asteraceae—Aster family.						
Hymenoxys acaulis var. *glabra*	Lakeside daisy	U.S.A. (OH,IL), Canada (ON)	T		NA	NA

Dated: August 3, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87-18962 Filed 8-18-87; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Visayan Deer

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine endangered status for the Visayan deer, a mammal found only in the central archipelago of the Philippines. It survives in a very restricted range, and is jeopardized by human habitat disruption and direct killing. This proposal, if made final, would implement the protection of the Endangered Species Act of 1973, as amended, for the Visayan deer. The Service seeks relevant data and comments from the public.

DATES: Comments must be received by October 19, 1987. Public hearing requests must be received by October 5, 1987.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Director (OES), Broyhill 500, U.S. Fish and Wildlife Service, Washington, DC 20240. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Service's Office of Endangered Species, Suite 500, Broyhill Building, 1000 N. Glebe Road, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. John Christian, Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, DC 20240, (703-235-2771 or FTS 235-2771).

SUPPLEMENTARY INFORMATION:

Background

The Visayan deer *(Cervus alfredi)* was described in 1870, and for many years thereafter was considered a separate species (Taylor 1934). In recent decades, however, it was generally treated as a subspecies of the more widespread Philippine sambar *(C. mariannus)*, or even of the common sambar *(C. unicolor)* found throughout Southeast Asia (Honacki, Kinman, and Koeppl 1982; Nowak and Paradiso 1983). Then, Grubb and Groves (1983), in a detailed study of the taxonomy of Philippine deer, again recognized *C. alfredi* as a full species. Moreover, they considered it the most, or perhaps second most, distinct kind of sambar deer.

According to Taylor (1934), *C. alfredi* is a small deer, standing about 25 inches (640 millimeters) at the shoulder. The ears, tail, and antlers (of the male) are relatively short. The hair is very fine and remarkably dense and soft. Coloration of the upper parts is generally very dark brown, and the underparts are buffy. The shoulders, back, and sides are marked throughout the year by yellowish white spots. Grubb and Groves (1983) emphasized that the presence of a spotted adult coat distinguishes *C. alfredi* from all other sambar deer. *C. alfredi* also differs from the others in its fine and dense pelage, in having a relatively narrow skull, and in various other cranial characters.

As pointed out by Grubb and Groves (1983), *C. alfredi* is one of the rarest deer, with only 11 museum specimens being reliably recorded. Its range is the most restricted of all extant species of the genus *Cervus*. It is known only from certain of the Visayan Islands in the central archipelago of the Philippines, and not from the larger islands of Luzon or Mindanao. For many years it seems to have been ignored by the world's conservation community, perhaps because it was thought to be only a subsepcies of the Philippine sambar, but also because so little was known of its status. There has been a recent upsurge of interest by the Government of the Philippines and conservation organizations. A field survey by the International Union for Convervation of Nature (Cox 1985) has clarified the precarious situation of this rare deer and shown that it warrants classification as endangered. In addition, at its June 1986 meeting, the American Society of Mammalogists passed a resolution recognizing that the Visayan deer is in imminent danger of extinction, and encouraging conservation efforts.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Visayan deer *(Cervus alfredi)* are as follows (information from Cox 1985, unless otherwise noted):

A. The present or threatened destruction, modification, or curtailment of its habitat or range.

The Visayan deer originally inhabited eight islands in the central Phillippine archipelago: Bohol, Cebu, Guimaras, Leyte, Negros, Panay, Samar, and Siquijor. It was fairly widespread in the early 20th century, but a precipitous decline began after World War II, with the advent of intensive upland logging. Such activity eliminated much of the dense forest habitat on which the deer depends, and also made its range more accessible to settlers and hunters. The increasing human population in the region comprised both indigenous peoples and peasants from coastal lowlands and villages. Each group practiced slash and burn agriculture, which involves clearing an area of forest, planting and harvesting crops, and then moving on to another area. This practice has accounted for nearly as much forest destruction as has commercial logging. In an ironic twist, the latter activity was greatly curtailed in the Philippines in 1983, but the resulting unemployment forced many people to turn to slash and burn agriculture and to subsistence hunting.

Dr. Lawrence R. Heaney (U.S. National Museum of Natural History, pers. comm., 1987), an authority on the mammals of the Phillippines, reports that in the area occupied by the Visayan deer, "the habitat has been destroyed at a rate that is truly frightening. On Negros Island, for example, where I and my students have done extensive field work since 1981, we have documented a reduction in primary forest from 60 percent of the island's area at the end of World War II to 6 percent currently. There is no island that is exempt from this."

Habitat loss has been so devastating that the Visayan deer is thought to have disappeared entirely from the islands of

Bohol, Cebu, Guimaras, and Siquijor. It still survives on the other four islands of its original range, but only in relatively small and isolated patches of remnant habitat. Two extremely localized populations are known on Leyte, one in the north and one in the south of the island. There are also four small groups in south-central Samar and two in southern Negros. On Panay, the Visayan deer is still found in six parts of the western mountain chain. The largest group is in the Mount Madja-as/Mount Baloy area, but if the current rate of habitat loss and hunting pressure continues, even this population would not be expected to survive to the end of the century.

B. Overutilization for commercial, recreational, scientific or educational purposes.

Athough the Visayan deer is protected by Philippine law, hunting pressure is intense, especially during the dry season when the forests are more accessible. The deer is sought as a source of food by both indigenous peoples of the region and increasing numbers of immigrants from crowded towns and coastal areas. It is not only shot, but is trapped, snared, and run down with dogs.

C. Disease or predation.

Not known to be factors at the present time.

D. The inadequacy of existing regulatory mechanisms.

The Visayan deer is legally protected by the Phillippine Government, and its habitat also falls to some extent within parks and reserves. Such protective mechanisms, however, are having only a slight effect. Although the present Government is highly concerned about the status of the deer and its habitat, enforcement personnel and funding for conservation efforts are very limited. Rangers can do little to cover all the remote areas where illegal hunting and forest destruction are taking place (see also "E" below). The Government has attempted to establish a captive breeding facility, but no success has yet been achieved and funds are needed to improve the operation.

E. Other natural or manmade factors affecting its continued existence.

The Visayan deer occurs to a large extent in areas that are sometimes under the influence of revolutionary forces and where military operations are carried out. Such activity places further restrictions on the ability of the Government to enforce protective laws and undertake conservation measures.

The decision to propose endangered status for the Visayan deer was based on an assessment of the best available scientific information, and of past, present, and probable future threats to the species. A decision to take no action would exclude this mammal from benefits provided by the Endangered Species Act. A decision to propose only threatened status would not adequately reflect the evident rarity and multiplicity of problems confronting the species. Critical habitat is not being proposed, as its designation is not applicable to foreign species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages conservation measures by Federal, international, and private agencies, groups, and individuals.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service. However, an opinion of August 31, 1981, from the Office of the Solicitor, U.S. Department of the Interior, indicates that the jeopardy prohibition of section 7(a)(2) does not apply in foreign countries.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance propagation or survival, or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, comments and suggestions concerning any aspect of this proposed rule are hereby solicited from the public, concerned governmental agencies, the scientific community, industry, private interests, and other parties. Comments are particularly sought concerning the following:

(1) Biological, commercial, or other relevant data concerning any threat (or lack thereof) to the subject species;

(2) The location of any additional populations of the subject species;

(3) Additional information concerning the distribution of this species; and

(4) Current or planned activities in the involved areas, and their possible effect on the subject species.

Final promulgation of the regulation on the subject species will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal, should be in writing, and should be directed to the party named in the above "**ADDRESSES**" section.

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. A notice outlining the Service's reason for this determination was published in the **Federal Register** of October 25, 1983 (48 FR 49244).

References Cited

Cox, C.R. 1985. A field survey of the distribution and conservation status of the wild pig (*Sus barbatus cebifrons*) and Prince Alfred's spotted rusa (*Cervus alfredi*) in the Visayan Islands, Republic of the Philippines. International Union for Conservation of Nature, 27 pp.

Grubb, P., and C.P. Groves. 1983. Notes on the taxonomy of the deer (Mammalia,

Cervidae) of the Philippines. Zool. Anz. Jena 210:119–144.

Honacki, J.H., K.E. Kinman, and J.W. Koeppl. 1982. Mammal species of the world. Allen Press, Inc., and Assoc. Systematic Collections, Lawrence, Kansas, ix + 694 pp.

Nowak, R.M., and J.L. Paradiso. 1983. Walker's mammals of the world. Johns Hopkins Univ. Press, Baltimore, 2 vols.

Taylor, E.H. 1934. Philippine land mammals. Philippine Bur. Sci. Monogr. no. 30, 548 pp.

Author

The primary author of this proposed rule is Ronald M. Nowak, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, DC 20240, (703/235–1975 or FTS 235–1975).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under "MAMMALS," to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species: Common name	Scientific name	Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
MAMMALS							
*	*	*	*	*			
Deer, Visayan	*Cervus alfredi*	Philippines	Entire	E		NA	NA
*	*	*	*	*			

Dated: August 3, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–18984 Filed 8–18–87; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 52, No. 160
Wednesday, August 19, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Meeting

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of meeting.

SUMMARY: Notice of hereby given that the Advisory Council on Historic Preservation will meet on Monday and Tuesday, August 31–1 September 1987. The meeting will be held at the United Bank of Denver, 1700 Lincoln, Denver, Colorado.

The Council was established by the National Historic Preservation Act of 1966 (16 U.S.C. 470) to advise the President and the Congress on matters relating to historic preservation and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The Council's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, Housing and Urban Development, Treasury, and Transportation; the Director, Office of Administration; the Chairman of the National Trust for Historic Preservation; the Chairman of the National Conference of State Historic Preservation Officers; a Governor, a Mayor; and eight non-Federal members appointed by the President.

The agenda for the meeting includes the following:

I. Chairman's Report
II. Executive Director's Report
III. Task Force Reports
IV. Legislation
V. New Business
VI. Adjourn

Note.–The meetings of the Council are open to the public. If you need special accommodations due to a disability, please contact the Advisory Council on Historic Preservation, 730 Simms Street, Room 450, Golden, Colorado 80401, 303–236–2682 at least seven (7) days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Ave. NW., #809, Washington, DC 20004.

Date: August 13, 1987.

Robert D. Bush,
Executive Director.

[FR Doc. 87–18894 Filed 8–18–87; 8:45 am]
BILLING CODE 4310-10-M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

Agust 14, 1987.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information.

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

• Agricultural Research Service.

Application for Nonexclusive Patent License for USDA Invention.

On occasion.

Individuals or households; State or local governments; Farms; Businesses other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations; 50 responses; 150 hours; not applicable under 3504(h) M. Ann Whitehead, (301) 344–2786

Jane A. Benoit,
Departmental Clearance Officer.

[FR Doc. 87–18980 Filed 8–18–87; 8:45 am]
BILLING CODE 3410-01-M

Cooperative State Research Service

Committee of Nine; Meeting

In accordance with the Federal Advisory Committee Act of October 6, 1972, (Pub. L. 92–463, 86 Stat. 770–776), the Cooperative State Research Service announces the following meeting:

Name: Committee of Nine
Date & time: September 14–16, 1987, 12:00 Noon–12:00 Noon
Place: Stoweflake Hotel, Stowe, Vermont 05672
Type of meeting: Open to the public. Persons may participate in the meeting as time and space permit.
Comments: The public may file written comments before or after the meeting with the contact person listed below.
Purpose: To evaluate and recommend proposals for cooperative research on problems that concern agriculture in two or more States, and to make recomemndations for allocation of regional research funds appropriated by Congress under the Hatch Act for research at the State agricultural experiment stations.
Contact Person for Agenda and More Information: Dr. Edward M. Wilson, Executive Secretary, U.S. Department of Agriculture, Cooperative State Research Service, Room 223 Justin Smith Morrill Building, Washington, DC 20251–2200, Telephone: 202/447–4587.

Done at Washington, DC, this 11th day of August 1987.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 87-18981 Filed 8-18-87; 8:45 am]

BILLING CODE 3410-22-M

Policy Advisory Committee for the Science and Education Research Grants Program; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the Cooperative State Research Service announces the following meeting:

Name: Policy Advisory Committee for the Science and Education Research Grants Program.

Date: September 22, 1987

Time: 9:00 a.m. to 5:00 p.m.

Place: U.S. Department of Agriculture, Room 107-A, Administration Building, 14th and Independence Avenue, SW., Washington, DC 20250

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person listed below.

Purpose: To advise the Secretary of Agriculture with respect to the research to be supported, priorities to be adopted and emphasized, and the procedures to be followed in implementing those programs of research grants to be awarded competitively.

Contact person for agenda and more information: Anne Holiday Schauer, Associate Chief, Competitive Research Grants Office, Cooperative State Research Service, U.S. Department of Agriculture, Room 112, J.S. Morrill Building, Washington, DC 20251, telephone: 202-475-5022.

Done at Washington, DC this 11th day of August, 1987.

Anne Holiday Schauer,

Executive Secretary, Policy Advisory Committee.

[FR Doc. 87-18982 Filed 8-18-87; 8:45 am]

BILLING CODE 3410-22-M

Soil Conservation Service

Finding of No Significant Impact; Cat Run RC&D Measure, Ohio

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Cat Run RC&D Measure, Belmont County, Ohio.

FOR FURTHER INFORMATION CONTACT: Harry W. Oneth, State Conservationist, Soil Conservation Service, Federal Building, 200 North High Street, Room 522, Columbus, Ohio 43215, telephone: (614) 469-6962.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impact on the environment. As a result of these findings, Harry W. Oneth, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

This measure concerns a plan for the critical area treatment along the roadbank/streambank adjacent to Cat Run Road. Planned works of improvement include the installation of 400 feet of concrete crib wall to protect and stabilize Cat Run Road.

The notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Harry W. Oneth.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development Program—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials)

Roger A. Hansen,

Deputy State Conservationist.

August 12, 1987.

[FR Doc. 87-18988 Filed 8-18-87; 8:45 am]

BILLING CODE 3410-16-M

Finding of No Significant Impact; Ives Group RC&D Measure, Ohio

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(c)(C) of the National Environmental Policy Act of 1969, the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Ives Group RC&D Measure, Fulton County, Ohio.

FOR FURTHER INFORMATION CONTACT: Harry W. Oneth, State Conservationist, Soil Conservation Service, Federal Building, 200 North High Street, Room 522, Columbus, Ohio 43215, telephone: (614) 469-6962.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impact on the environment. As a result of these findings, Harry W. Oneth, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

This measure concerns a plan for the critical area treatment of approximately 100 acres of cropland that is severely eroding and depositing sediment on county and township roads and in the drainage ditches. Planned works of improvement include the installation of 16 water and sediment control basins.

The notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Harry W. Oneth.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development Program—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Roger A. Hansen,

Deputy State Conservationist.

August 12, 1987.

[FR Doc. 87-18927 Filed 8-18-87; 8:45 am]

BILLING CODE 3410-16-M

BEST COPY AVAILABLE

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting; Alabama Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission of Civil Rights, that a meeting of the Alabama Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 12:00 noon, on September 11, 1987, at the Sheraton Riverfront Hotel, 200 Coosa Street, Montgomery, Alabama. The purpose of the meeting is to discuss current civil rights issues in the State and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Rodney Max, or Melvin Jenkins, Director of the Central Regional Division (816) 374–5253, (TDD 816/374–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 14, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87–18928 Filed 8–18–87; 8:45 am]

BILLING CODE 6335-01-M

Agenda and Notice of Public Meeting; Louisiana Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission of Civil Rights, that a meeting of the Louisiana Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 12:30 p.m., on September 10, 1987, at the Pallas Suite Hotel, 1732 Canal Street, New Orleans, Louisiana. The purpose of the meeting is to develop background information for a possible forum on the administration of justice for homosexual persons and to select topics for future community forums.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Michael R. Fontham, or Melvin Jenkins, Director of the Central Regional Division (816) 374–5253, (TDD 816/374–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 14, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87–18929 Filed 8–18–87; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration
Title: Survey for Data Collection for Office of Undersea Research's Undersea Tools and Technology Inventory and Library (UTTIL)
Form Number: N/A; OMB—N/A
Type of Request: New Collection
Burden: 100 respondents; 50 reporting hours
Needs and Uses: This survey will collect information on sampling tools used on remotely operated vehicles for undersea research. The results will be put in a database, and made available to the scientific community to reduce duplication of energy and expense. Respondents will be members of the marine science community who do undersea research.
Affected Public: Non-profit institutions
Frequency: One-time only
Respondent's Obligation: Voluntary
OMB Desk Officer: John Griffen, 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th & Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3228, New Executive Office Building, Washington, DC 20503.

Dated: August 11, 1987.

Edward F. Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87–18895 Filed 8–18–87; 8:45 am]

BILLING CODE 3510-CW-M

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: August 19, 1987.

FOR FURTHER INFORMATION CONTACT: William L. Matthews or Richard W. Moreland, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–5253/2786.

SUPPLEMENTARY INFORMATION:

Background

On August 13, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 32556) a notice outlining the procedures for requesting administrative reviews. The Department has received timely requests, in accordance with §§ 353.53a (a)(1), (a)(2), (a)(3), and § 355.10(a)(1) of the Commerce Regulations, for administrative reviews of various antidumping and countervailing duty orders and findings.

Initiative of Reviews

In accordance with §§ 353.53a(c) and 355.10(c) of the Regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later then August 31, 1988.

Antidumping duty proceedings and firms	Periods to be reviewed
Certain heavy salted codfish from Canada:	
Bay Harbour Fisheries	07/01/86–06/30/87
Canada Packers	07/01/86–06/30/87
Canadian Fish Exporters	07/01/86–06/30/87
Canadian Saltfish	07/01/86–06/30/87
Groupe Purdel	07/01/86–06/30/87
Island Saltfish	07/01/86–06/30/87
Lelievre, Leliever & Lemoignan	07/01/86–06/30/87
Pecheries GPS	07/01/86–06/30/87
Pecheries Shashun	07/01/86–06/30/87
Pecheries Trudel & Guradeau	07/01/86–06/30/87
Poissonnerie Clondorma	07/01/86–06/30/87
Poisson Sale Gaspesien	07/01/86–06/30/87
R.E. Newell Fisheries	07/01/86–06/30/87
Sable Fish Packers	07/01/86–06/30/87

Antidumping duty proceedings and firms	Periods to be reviewed
Sans Souci Seafoods	07/01/86-06/30/87
Fabric and expanded Neoprene laminate from Japan:	
Heiwa Rubber	07/01/86-06/30/87
Yamamoto	07/01/86-06/30/87
High power microwave amplifiers and components thereof from Japan:	
NEC	07/01/86-06/30/87
Synthetic methionine from Japan:	
Mitsui	07/01/86-06/30/87

Countervailing duty proceeding	Period to be reviewed
Leather wearing apparel from Uruguay	01/01/86-06/30/87

Interested parties are encouraged to submit applications for administrative protective orders as early as possible in the review process.

These initiations and thus notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and §§ 353.53a(c) and 355.10(c) of the Commerce Regulations (19 CFR 353.53a(c), 355.10(c)).

Date: August 10, 1987.

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 87-18957 Filed 8-18-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-508-604]

Antidumping Duty Order; Industrial Phosphoric Acid From Israel

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: In separate investigations concerning industrial phosphoric acid (IPA) from Israel, the U.S. Department of Commerce (the Department) and the U.S. International Trade Commission (ITC) have determined that IPA from Israel is being sold at less than fair value and that sales of IPA from Israel are materially injuring a U.S. industry.

Therefore, based on these findings, all unliquidated entries, or warehouse withdrawals, for consumption of IPA from Israel made on or after April 20, 1987, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register**, will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping duty order in the **Federal Register**.

EFFECTIVE DATE: August 19, 1987.

FOR FURTHER INFORMATION CONTACT: Ross Cotjanle, Office of Investigations, or William Matthews, Office of Compliance, 377-3534 or 377-3601, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: The product covered by this order is industrial phosphoric acid (IPA), currently provided for in item 416.30 of the *Tariff Schedules of the United States*.

In accordance with section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b), on April 14, 1987, the Department made its preliminary determination that there was reason to believe or suspect that IPA from Israel was being sold at less than fair value and that critical circumstances did not exist with respect to these imports (52 FR 12952, April 20, 1987). On June 29, 1987, the Department made its final determination that these imports were being sold at less than fair value and that critical circumstances did not exist with respect to these imports (52 FR 25440, July 7, 1987).

On August 12, 1987, in accordance with section 735(d) of the Act (19 U.S.C. 1673d(d)), the ITC notified the Department that such imports materially injure a U.S. industry.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department directs U.S. Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of IPA from Israel. These antidumping duties will be assessed on all unliquidated entries of IPA entered, or withdrawn from warehouse, for consumption on or after April 20, 1987, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register**.

On and after the date of publication of this notice, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit of 1.77 percent, equal to the estimated weighted-average antidumping duty margin less an amount due to export subsidies.

Article VI.5 of the General Agreement of Tariffs and Trade provides that "[n]o product shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act, which prohibits assessing antidumping duties on the portion of the margin attributable to export subsidies. In the final countervailing duty determination on IPA from Israel we found export subsidies. Since antidumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit for that amount. Thus, the amount of the export subsidies has been subtracted for deposit purposes from the dumping margins.

This determination constitutes an antidumping duty order with respect to IPA from Israel, pursuant to section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48). We have deleted from the Commerce Regulations, Annex I of 19 CFR Part 353, which listed antidumping duty findings and orders currently in effect. Instead, interested parties may contact the Central Records Unit, Room B-099, Import Administration, for copies of the updated list of orders currently in effect.

Notice of Review

In accordance with section 751(a)(1) of the Act (19 U.S.C. 1675)(a)(1)), the Department hereby gives notice that, if requested, it will commence an administrative review of this order. For further information regarding this review, contact William Matthews at (202) 377-3601.

This notice is published in accordance with section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48).

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 87-19083 Filed 8-18-87; 8:45 am]

BILLING CODE 3510-DS-M

[C-508-605]

Countervailing Duty Order; Industrial Phosphoric Acid From Israel

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: In its investigation, the U.S. Department of Commerce determined that industrial phosphoric acid (IPA)

from Israel is being subsidized within the meaning of the countervailing duty law. In a separate investigation, the U.S. International Trade Commission (ITC) determined that imports of IPA from Israel are materially injuring a U.S. industry

Therefore, based on these findings, all unliquidated entries of IPA from Israel which were entered, or withdrawn from warehouse, for consumption, on or after Febuary 5, 1987, the date on which the Department published its preliminary countervailing duty determination in the **Federal Register**, and on or before June 5, 1987, the date we instructed the U.S. Customs Service to discontinue the suspension of liquidation, and all entries and withdrawals made on or after the date of publication of this order will be liable for the possible assessment of countervailing duties. Further, a cash deposit of estimated countervailing duties of 15.11 percent *ad valorem* for Haifa Chemicals Ltd. and 5.36 percent *ad valorem* for all other companies in Israel must be made on all entries of the subject merchandise from Israel, or withdrawals from warehouse, for consumption, made on or after the date of publication of this countervailing duty order in the **Federal Register**.

EFFECTIVE DATE: August 9, 1987.

FOR FURTHER INFORMATION CONTACT: David Levine, Office of Investigations, or Richard Moreland, Office of Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: 202/377–1673 (Levine) or 202/377–2786 (Moreland).

SUPPLEMENTARY INFORMATION: The product covered by this investigation is industrial phosphoric acid (IPA), currently provided for in item 416.30 of *Tariff Schedules of the United States*.

In accordance with section 703 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1671b), on February 5, 1987, the Department published its preliminary determination that there was reason to believe or suspect that manufacturers, producers, or exporters of IPA in Israel received benefits which constitute subsidies within the meaning of the countervailing duty law and that critical circumstances did not exist with respect to these imports (52 FR 3684). On July 7, 1987, the Department published its final determination that these imports are being subsidized and that critical circumstances did not exist with respect to these imports (52 FR 25447).

On August 12, 1987, in accordance with section 705(d) of the Act (19 U.S.C. 1671d), the ITC notified the Department that subsidized imports of IPA from Israel materially injure a U.S. industry.

Therefore, in accordance with sections 706 and 751 of the Act (19 U.S.C. 1671e and 1675), the Department directs U.S. Customs officers to assess, upon further advice of the administering authority pursuant to section 706(a)(1) and 751 of the Act (19 U.S.C. 1671e(a)(1) and 1675), countervailing duties equal to the amount of the estimated net subsidy on all entries of IPA from Israel. These countervailing duties will be assessed on all unliquidated entries of IPA from Israel which were entered, or withdrawn from warehouse, for consumption, on or after February 5, 1987, the date on which the Department published its preliminary affirmative countervailing duty determination notice in the **Federal Register** (52 FR 3684) and on or before June 5, 1987, the date we instructed the U.S. Customs Service to discontinue the suspension of liquidation on future entries, and on all entries and withdrawals made on or after of publication of this order in the **Federal Register**. Entries of IPA after June 5, 1987, and prior to the date of publication of this order in the **Federal Register** are not liable for the assessment of countervailing duties since we cannot impose the suspension of liquidation of the subject merchandise for more than 120 days without the issuance of a final affirmative ITC injury determination.

On or after the date of publication of this notice, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this mechandise, a cash deposit of 15.11 percent *ad valorem* on entries of IPA by Haifa Chemicals Ltd. and a cash deposit of 5.36 percent *ad valorem* for all other entries of IPA from Israel.

This determination constitutes a countervailing duty order with respect to IPA from Israel pursuant to section 706(a)(1) of the Act (19 U.S.C. 1671e(a)(q1)) and § 355.36 of the Commerce Regulations (19 CFR 355.36). We have deleted from the Commerce Regulations Annex III of 19 CFR Pat 355, which listed countervailing duty orders currently in effect. Instead, interested parties may contact the Central Records Unit, Room B–099, Import Administration, for copies of the updated list of orders currently in effect.

Notice of Review

In accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)), the Department hereby gives notice that, if requested, it will commence an administrative review of this order. For further information regarding this review, contact Richard Moreland at (202) 377–2786.

This notice is published in accordance with section 706 of the Act (19 U.S.C. 1671e) and § 355.36 of the Commerce Regulations (19 CFR 355.36).

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

August 17, 1987.

[FR Doc. 87–19064 Filed 8–18–87; 8:45 am]

BILLING CODE 3510-DS-M

[C–301–001]

Leather Wearing Apparel From Colombia; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final results of Countervailing Duty Administrative Review.

SUMMARY: On May 26, 1987, the Department of Commerce published the preliminary results of its administrative review of the agreement suspending the countervailing duty investigation on leather wearing apparel from Colombia. The review covers the period July 1, 1984 through December 31, 1985 and ten programs. We determine that the final results are the same as the preliminary results.

EFFECTIVE DATE: August 19, 1987.

FOR FURTHER INFORMATION CONTACT: Susan Silver or Paul McGarr, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On May 26, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 19547) the preliminary results of its administrative review of the agreement suspending the countervailing duty investigation on leather wearing apparel from Colombia (46 FR 19963; April 2, 1981). The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by this review are shipments of Colombian mens, boys, womens, girls and infants leather coats and jackets, and other leather wearing apparel (such as vests, pants and

shorts), as well as parts and pieces thereof, currently classifiable under items 791.7620, 791.7640, and 791.7660 of the Tariff Schedules of the United States Annotated.

The review covers the period July 1, 1984 through December 31, 1985 and ten programs: (1) CERT; (2) Resolution 59; (3) Resolution 19; (4) Special Systems of Commercial Exchange under Decrees 370 and 3707; (5) Resolution 22 loans; (6) Resolution 42 loans; (7) Decree 2366 loans; (8) duty and tax exemptions under the Plan Vallejo; (9) benefits to free industrial zones; and (10) export credit insurance.

Final Results of Review

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. The final results of the review are the same as the preliminary results.

We determine that Confecciones Amazonas Orinoco ("CAO") did not account for 85 percent of Colombian leather wearing apparel exports to the United States during the review period because it had gone out of business and did not export. We also determine that Astrakan, Ltda., accounted for over 85 percent of Colombian leather wearing apparel exports to the United States during the review period. On December 8, 1986, in conjunction with our last administrative review, we revised the suspension agreement (51 FR 44099) to substitute Astrakan for CAO and to require Astrakan to renounce all programs that we consider countervailable or potentially countervailable.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675 (a)(1)) and § 355.10 of the Commerce Regulations (19 CFR 355.10).

Date: August 12, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 87-18958 Filed 8-18-87; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-001]

Leather Wearing Apparel From Mexico; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of preliminary results of Countervailing Duty Administrative Review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on leather wearing apparel from Mexico. We preliminarily determine the total bounty or grant to be zero for 19 firms and 3.35 percent *ad valorem* for all other firms during the period July 1, 1984 through December 31, 1984. We preliminary determine the total bounty or grant to be zero for 20 firms and 2.96 percent *ad valorem* for all other firms during the period January 1, 1985 through December 31, 1985. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: August 19, 1987.

FOR FURTHER INFORMATION CONTACT: Stephen Nyschot or Paul McGarr, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On August 8, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 28611) the final results of its last administrative review of the countervailing duty order on leather wearing apparel from Mexico (46 FR 21357, April 10, 1981). On April 30, 1986, a domestic interested party, the Amalgamated Clothing and Textile Workers Union, AFL-CIO, requested in accordance with 19 CFR 355.10 an administrative review of the order. We published the initiation of the administrative review on May 20, 1986 (51 FR 18475). The Department has now conducted this administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS") by January 1, 1988. In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by this review are shipments of Mexican leather wearing apparel, currently classifiable under TSUSA item numbers 791.7620, 791.7640, and 791.7660. These products include leather coats and jackets for men, boys, women, girls and infants, and other leather apparel products including leather vests, pants and shorts. Also included are outer leather shells and parts and pieces of leather wearing apparel. These products are currently classifiable under HS item number 4203.10.40—0. We invite comments from all interested parties concerning this HS number. The review covers the periods July 1, 1984 through December 31, 1984 ("the 1984 period"), and January 1, 1985 through December 31, 1985 ("the 1985 period") and 12 programs.

Analysis of Programs

(1) FOMEX

The Fund for the Promotion of Exports of Mexican Manufactured Products ("FOMEX") is a trust of the Mexican Treasury Department, with the National Bank of Foreign Trade acting as trustee for the program. The National Bank of Foreign Trade, throuhg financial institutions, makes FOMEX loans available at preferential rates to Mexican exporters and U.S. importers for two purposes: Pre-export financing and export financing. We consider both pre-export and export FOMEX loans to confer export bounties or grants since these loans are given only on merchandise destined for export. We found that the annual interest rate financial institutions charged leather wearing apparel manufacturers for peso-denominated FOMEX pe-export financing outstanding during the period of review ranged from 17.50 to 39.60 percent. The annual interest rate for dollar-denominated FOMEX export financing was 8.50 percent to the one leather wearing apparel manufacturer that received such a loan during the period of review.

We consider the benefit from loans to occur when the interest is paid. Interest on FOMEX pre-export loans is paid at

maturity, and interest on FOMEX export loans is pre-paid.

We have sufficient information to measure effective interest rates for the peso-denominated loans. (*See* final results of administrative review on fabricated automotive glass from Mexico (51 FR 44652, December 11, 1986).) To determine the effective interest rate benchmark for peso loans obtained in 1984, we calculated an average annual effective rate from data published by the Banco de Mexico in its monthly publication, *Indicadores Economicos* (I.E.). In 1985, the Banco de Mexico stopped publishing data on nominal and effective interest rates. Therefore, we calculated the average spread between the Costo Porcentual Promedio (CPP) rates, *i.e.*, the average cost of short-term funds to banks, and the I.E. effective rates for the period 1982 through 1984, the only period for which we have I.E. rates. The effective interest rate benchmark for 1985 is the sum of this average spread and the average CPP rate for 1985. In this way, we calculated a benchmark of 73.78 percent for pre-export peso loans obtained in 1984, and 86.31 percent for per-export peso loans obtained in 1985.

We had no available data to measure effective interest rates on dollar-denominated loans for 1984. Therefore, for our 1984 dollar benchmark (used for the one FOMEX export loan), we compared a nominal interest rate benchmark to the nominal preferential interest rate. We used as our benchmark a rate of 13.97 percent, which was published in the *Federal Reserve Bulletin*.

Two of the 22 known exporters of this merchandise used this program during the period of review. For the FOMEX export loan, we found that the exporter was able to tie the loan to exports to the United States. Therefore, we allocated this FOMEX benefit over U.S. shipment, excluding those firms with zero benefits. FOMEX pre-export loans were not tied to leather wearing apparel exports to specific countries, so for each firm that used these loans we measured the benefit from all FOMEX pre-export loans for leather wearing apparel and allocated benefits over exports of leather wearing apparel to all countries. We then weight-averaged the resulting benefits by each firm's proportion of total exports to the United States, excluding those firms with zero benefits. We preliminarily determine the benefit from FOMEX to be 3.23 percent *ad valorem* for the 1984 period, and 1.92 percent *ad valorem* for the 1985 period.

In February 1987, the Banco de Mexico changed the interest rates on FOMEX peso loans to 95.00 percent and on FOMEX dollar loans to 8.40 percent. To calculate the FOMEX benefit for cash deposit purposes, we followed the same methodology used in calculating assessment rates for the 1985 period. Leather wearing apparel manufacturers only received benefits from peso loans in 1985, and we used as our benchmark the sum of the most recent CPP rate, i.e., February 1987, and the average 1982–1984 spread between the CPP and the I.E. effective rates. On this basis, we preliminarily find, for purposes of cash deposits of estimated countervailing duties, a FOMEX benefit of 0.70 percent *ad valorem*.

(2) FOGAIN

The Guarantee and Development Fund for Medium and Small Industries (FOGAIN) is a program that provides long-term loans to all small and medium-size firms in Mexico. The interest rates available under the program vary depending on whether a small or medium-size business has been granted priority status, and whether a business is located in a zone targeted for industrial growth. Although FOGAIN loans are available to all small and medium-size firms in Mexico, regardless of the type of industry or location, some firms receive more beneficial rates than others. Therefore, to the extent that this program provides financing at rates below the least beneficial rate available under FOGAIN, we consider it be countervailable.

One firm had FOGAIN loans on which interest payments were due during the period of review. Because the interest rates are variable, we treated each loan as a series of short-term loans. To determine the benefit, we used as our benchmark the least beneficial interest rate in effect during the period of review and compared it to the interest rate for each FOGAIN loan payment. We allocated the benefit from each loan over this firm's total sales to all markets. We then weight-averaged the resulting benefit by the firm's proportion of exports to the United States, excluding exports from firms with zero benefits. We preliminarily determine the benefit from FOGAIN loans to be 0.12 percent *ad valorem* for the 1984 period and 1.04 percent *ad valorem* for the 1985 period.

Another firm that had zero benefits during the review period was found to have received a FOGAIN loan in early 1986. As a result, a cash deposit of estimated countervailing duties will be required on exports from that firm.

(3) Other Programs

We also examined the following programs and preliminarily find that exporters of leather wearing apparel did not use them during the review period:

(A) Certificates of Fiscal Promotion (CEPROFI);
(B) Fund for Industrial Development (FONEI);
(C) Bancomext loans;
(D) Article 15 loans;
(E) Import duty reductions and exemptions;
(F) State tax incentives;
(G) NDP preferential discounts;
(H) Delay of payments on loans;
(I) Delay of payments to PEMEX of fuel charges; and
(J) Certificado de Devolucion de Impuesto (CEDI).

Firms Not Receiving Benefits

We preliminarily determine that the following 19 firms received zero benefits during the 1984 and 1985 periods:

(1) Antonio Huratado
(2) Confecciones de Piel Reno, S.A.
(3) Creaciones Italianas de Mexico, S.A.
(4) Elegance de Baja California, S.A.
(5) Fernando Nila
(6) Fidel Ruiz
(7) Hector Garcia
(8) Jesus Hernandez
(9) Jesus Jasso
(10) Jesus Rivera
(11) Jose Mora
(12) Jose Salcedo
(13) Jose Sotelo
(14) Juan Manuel Hernandez
(15) Karen Internacional, S.A. de C.V.
(16) Manaufacturas Industriales de Nogales, S.A.
(17) Raymundo Diaz
(18) Rocio Gallardo
(19) Rosa Ramos

In addition, the rate for Manufacturera Baja de Articulos de Piel was zero during the 1985 period.

Preliminary Results of Review

As a result of our review, we preliminarily determine the total bounty or grant during the 1984 period to be zero for 19 firms and 3.35 percent *ad valorem* for all other firms. We preliminarily determine the total bounty or grant during the 1985 period to be zero for the same 19 firms as well as Manufacturera Baja de Articulos de Piel, and 2.96 percent *ad valorem* for all other firms.

The Department intends to instruct the Customs Service to liquidate, without regard to countervailing duties, shipments of this merchandise from the 19 firms listed above and to assess countervailing duties of 3.35 percent of the f.o.b. invoice price on shipments from all other firms exported on or after

July 1, 1984 and on or before December 31, 1984, and to liquidate, without regard to countervailing duties, shipments of this merchandise from Manufacturera Baja de Articulos de Piel and the 19 firms and to assess countervailing duties of 2.96 percent of the f.o.b. invoice price on shipments from all other firms exported on or after January 1, 1985 and on or before December 31, 1985.

The Department intends to instruct the Customs Service to waive cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on shipments of this merchandise from Manufacturera Baja de Articulos de Piel and 18 of the 19 firms listed above (with the exception of Creaciones Italianas de Mexico, S.A.), and, due to the change in the FOMEX interest rates and a FOGAIN loan to Creaciones Italianas de Mexico, S.A., to collect a cash deposit of estimated countervailing duties of 1.74 percent of the f.o.b. invoice price on shipments from Creaciones Italianas de Mexico, S.A. and all other firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. This deposit requirement and waiver shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday following. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.10.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

Date: August 12, 1987.

[FR Doc. 87-18959 Filed 8-18-87; 8:45 am]

BILLING CODE 3510-DS-M

Automated Manufacturing Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Automated Manufacturing Equipment Technical Advisory Committee will be held September 9, 1987, 9:30 a.m., Herbert C. Hoover Building, Room 4830, 14th Street & Constitution Avenue NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to automated manufacturing equipment and related technology.

AGenda

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Discussion of Numerically Controlled Machines.
4. Discussion of Programmable Controllers.
5. Discussion of TAC Committee Communications.
6. Discussion of CAD/CAM Software.
7. Discussion of Shop Floor Computers/ Controllers.

Executive Session

8. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time befor or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: 202/377-4217. For further information or copies of the minutes, call Betty Ferrell at 202/377-4959.

Dated: August 12, 1987.

Margaret A. Cornejo,

Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 87-18896 Filed 8-18-87; 8:45 am]

BILLING CODE 3510-DT

Biotechnoloy Technical Advisory Committee; Partially Closed Meeting

A meeting of the Biotechnology Technical Advisory Committee will be held September 14 and 15, 1987, National Institutes of Health, Medical Center, Building 1, Wilson Hall, Bethesda, Maryland. The Committee advises the Office of Technology and Policy Analysis, Export Administration, with respect to technical questions that affect the level of export controls applicable to biotechnology and related equipment or technology.

Agenda

September 14, 1987, 9:30 a.m.:

General Session

1. Welcoming remarks by the Chairman.
2. Introduction of Committee members and speakers.
3. Responsibilities and mission of the Biotechnology Technical Advisory Committee—Department of Commerce.
4. National security and biotechnology—Department of Defense.
5. COCOM and export controls—Department of State.
6. Biotechnology and export controls—Association of German Chemical Industry.
7. Presentation of papers or comments by the Public.

Executive Session

8. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

September 15, 1987, 9:00 a.m.:

Agenda

General Session

1. The militarily critical technologies list and the Export Administration Regulations—Department of Commerce.
2. The role of the Office of Foreign Availability in export controls—Department of Commerce.
3. The Office of Export Licensing and its functions—Department of Commerce.
4. Biotechnology in Western Europe and Asia—University of Maryland.
5. Harmonization of regulations in Biotechnology—Office of the U.S. Trade

Representative, Executive Office of the President.

6. Export Controls and Impact on International Technology Transfer—National Academy of Sciences.

Executive Session

7. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general sessions will be open to the public. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 19, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, telephone: (202) 377–4217. For further information or copies of the minutes, contact Betty Ferrell, (202) 377–2583, or 377–4950.

Date: August 14, 1987.

Margaret A. Cornejo,

Director, Technical Support Staff, Office of Technology & Policy Analysis.

[FR Doc. 87–18960 Filed 8–18–87; 8:45 am]

BILLING CODE 3510-DT-M

Transportation and Related Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Transportation and Related Equipment Technical Advisory Committee will be held September 10, 1987 at 9:30 a.m., Herbert C. Hoover Building, Room 6802, 14th Street and Constitution Avenue, NW., Washington, DC.

The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to transportation and related equipment or technology.

Agenda

General Session

1. Opening remarks by the Chairman.
2. Introduction of Members and Visitors.
3. Presentation of Papers or Comments by the Public.
4. Discussion of 1987 Report.
5. Discussion of 1988 Plan.
6. New Business.

Executive Session

7. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on December 30, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government in The Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: (202) 377–4217. For further information or copies of the minutes call Ruth D. Fitts, 202–377–4959.

Date: August 13, 1987.

Margaret A. Cornejo,

Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 87–18961 Filed 8–18–87; 8:45 am]

BILLING CODE 3510-DT-M

National Oceanic and Atmospheric Administration

[P250A]

Marine Mammals, Proposed Permit Modification; Washington Department of Game

Notice is hereby given that the Washington Department of Game, Marine Mammal Investigation, EX–12, 600 North Capitol Way, GJ–11, Olympia, Washington 98504–0091, has requested a modification to Permit No. 473 issued on June 15, 1984 (49 FR 25882), under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Parts 216), as modified on November 5, 1986 (51 FR 40997).

The Permit Holder is requesting that:

1. Oxytoxin may be administered intermuscularly to a maximum of 30 lactating harbor seal females (*Phoca vituline*) at a dosage of C.a. 1cc of a 20–30 IU/cc solution. The objective of this amendment is to obtain information on the milk composition of lactating harbor seals.
2. The last sentence of Section B.7 of the Permit be changed to allow the use of oxygen-18 and/or attached depth recorders at the time of initial capture instead of when the harbor seals are recaptured.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of the modification request to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this modification request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this request are summaries of those of the Applicant and do not necessarily reflect the view of the National Marine Fisheries Service.

Documents submitted in connection with the above modification are

available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Rm. 805, Washington, DC; and

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington 98115.

Date: August 12, 1987.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fiheries Service.

[FR Doc. 87-18913 Filed 8-18-87; 8:45 am]

BILLING CODE 3510-22-M

[P8E]

Marine Mammals, Issuance of Permit; Naval Surface Weapons Center

On June 10, 1987, notice was published in the **Federal Register** (52 FR 21981) that an application had been filed by the Naval Surface Weapons Center, Dalgren, Virginia 22448 for a permit to take marine mammals by harassment during scientific research to devise a means which will evacuate marine mammals from an area in which other activities may cause them harm, and to determine the maximum range at which the SUS Mk 61 Mod 0 and SUS Mk 64 Mod 0 effect the evacuation of the animals.

Notice is hereby given that on August 7, 1987, as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Room 805, Washington, DC 20009;

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415; and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Date: August 11, 1987.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 87-18870 Filed 8-18-87; 8:45 am]

BILLING CODE 3510-22-M

[P402]

Marine Mammals, Application for Permit; Mr Bernie Tershy

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammals Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531–1544), and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217–222).

1. Applicant: Mr. Bernie Tershy, Moss Landing Marine Laboratories, P.O. box 450, Moss Landing, California 95039–0450.

2. Type of Permit: Scientific Research.

3. Types of Marine Mammals:

Fin whales (*Balaenoptera physalus*)
Blue whales (*Balaenoptera musculus*)
Humpback whales (*Megaptera novaeangliae*)
Minke whales (*Balaenoptera acutorostrata*)

4. Type of Take: The Applicant requests to tag cetaceans using radio tag/TDR units on individuals whales. No more than 25 individuals of the any one species will be taken and no more than a total of 40 individuals of the four species will be tagged. The study is to determine the depth of dive over time for some of the balaenopteral whales off the coast of northern California.

5. Location of Activity: Monterey Bay, California

6. Period of Activity: 1 year

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Rm 805, Washington, DC;

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415.

Bill Powell,

Executive Director, National Marine Fisheries Service.

August 14, 1987.

[FR Doc. 87-18971 Filed 8-18-87; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to:

Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S Department of Commerce.

Department of Agriculture

SN 6-708,613 (4,678,748), Monoclonal Antibodies to Epizootic Hemorrhagic Disease Virus Antigen

SN 6-822,574 (4,679,803), Apparatus for Maintaining Stability of Mobile Land Vehicles on Sloping Terrain

SN 7-050,436, Wrinkle Resistant Fabric Produced by Crosslinking Cellulosic Materials with Acetals of Glyceraldehyde

SN 7-055, 285, Process for the Preparation of Ketones and Novel Insecticides Produced Therefrom

Department of Commerce

SN 6–762,740 (4,681,855), Humidity Sensing and Measurement Employing Halogenated Organic Polymer Membranes
SN 7–063,558, Multiple Actuator Hydraulic System and Rotary Control Valve Thereof
SN 7–065,530, Process for Producing Quasi-Crystals

Department of Health and Human Services

SN 6–536,579 (4,599,308), Protein From SV40 Recombinants
SN 7–013,919, Peptides With Laminin Activity
SN 7–062,583, Clone For Human Multidrug Resistance Gene and Applications Thereof
SN 7–066,989, Novel Interleukin 2 Receptor and Applications Thereof
SN 7–071,356, Preparation of Human Monoclonal Antibodies of Selected Specificity and Isotypes

Department of Interior

SN 6–838,490 (4,679,435) Gas Content Determination of Evaporite Formations Using Acoustic Emissions During Dissolution

Department of the Air Force

SN 6–502,818 (4,655,420), Low Height Fin Control Actuator
SN 6–640,624 (4,658,246), Matrix Display Simulation
SN 6–653,641 (4,660,143), Programmable Realtime Interface Between A Block Floating Point Processor and Memory
SN 6–689,736 (4,656,919), Sabot/Gun Gas Diverter
SN 6–706,205 (4,661,176), Process For Improving the Quality Of Epitaxial Silicon Films Grown On Insulating Substrates Utilizing Oxygen Ion Conductor Substrates
SN 6–708,926 (4,655,554), Spatial Light Modulator Having A capacitively Coupled Photoconductor
SN 6–740,107 (4,657,639), Electrostatic Filtration of N_2O_4 For Removal of Solid and Vapor Contaminants
SN 6–758,549 (4,659,941), Power Sensing Device
SN 6–758,926 (4,655,855), Method for Refining Microstructures of Prealloyed Titanium Powder Compacted Articles
SN 6–772,815 (4,661,369), A new NDE Method for Coated Carbon-Carbon Composites
SN 6–790,714 (4,655,608), Non-Perturbing Beam Deflection System and Method for High Repetition Rate Temperature Measurement of Combustion Flames
SN 6–791,955 (4,658,858), Electromechanical Oxygen Regulator Valve Assembly
SN 6–807,155 (4,657,708), Ethynyl-Containing Aromatic Monomers
SN 6–810,432 (4,857,140), Fiber Optic Cable Storage Device
SN 6–838,850 (4,660,676), Ductless Acoustical Noise Attenuator
SN 7–013,817, Method To Produce Titanium Aluminide Metal Matrix Composite Articles
SN 7–013,818, Method for Producing Very Fine Microstructures in Titanium Alloy Powder Compacts
SN 7–030,401, Target Support Apparatus
SN 7–035,332, Integratable Differential Light Detector
SN 7–035,425, Brian O_2 Reverse Limiter For High Performance Aircraft

Department of the Army

SN 7–059,347, Microstrip To Dielectric Waveguide Transition
SN 7–061,626, Defect Detection and Thickness Mapping of the Passivation Layer(s) of Integrated Circuits
SN 7–061,627, Projectile With A Detachable Header For Eletromagnetic Launcher

Tennessee Valley Authority

SN 6–803,690 (4,848,966), Process For Beneficiation Of Dolomitic Phosphate Ores

[FR Doc. 87–18877 Filed 8–18–87; 8:45 am]
BILLING CODE 3510-04-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange Proposed Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The Chicago Mercantile Exchange ("CME") has applied for designation as a contract market in silver. The Director of the Division of Economic Analysis of the Commodity Futures Trading Commission ("Commission"), acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publilcation of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before October 19, 1987.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the CME silver futures contract.

FOR FURTHER INFORMATION CONTACT: Richard Shilts, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, (202) 254–7303.

Copies of the terms and conditions of the proposed futures contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the CME in suport of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1984)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contract, or with respect to other materials submitted by the CME in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, by October 19, 1987.

Issued in Washington, DC, on August 13, 1987.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 87–18876 Filed 8–18–87; 8:45 am]
BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency Scientific Advisory Committee; Closed Meeting

AGENCY: Defense Intelligence Agency Scientific Advisory Committee, DOD.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of Subsection (d) of section 10 of Pub. L. 92–463, as amended by section 5 of Pub. L. 94–409, notice is hereby given that a closed meeting of the DIA Scientific Advisory Committee has been scheduled as follows:

DATES: Tuesday and Wednesday, 29–30 September 1987, 9:00 a.m. to 5:00 p.m. each day.

ADDRESS: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John E. Hatlelid, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, DC 20340, (202–373–4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. The Committee will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA on related scientific and technical intelligence matters.

Linda Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

August 14, 1987.

[FR Doc. 87–19002 Filed 8–18–87; 8:45 am]

BILLING CODE 3810–1–M

Defense Logistics Agency

Membership of the Defense Logistics Agency (DLA) Performance Review Board

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice of membership of the Defense Logistics Agency Performance Review Boards.

SUMMARY: This notice announces the appointment of the members of the Performance Review Boards (PRBs) of the Defense Logistics Agency. The publication of PRB membership is required by 5 U.S.C. 4314(c)(4).

The Performance Review Board provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance and performance awards to the Director, Defense Logistics Agency.

EFFECTIVE: August 19, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Herbert W. Johnson, Employee Development Specialist, Workforce Effectiveness and Development Division, Defense Logistics Agency, Department of Defense, Cameron Station, Alexandria, VA, (202) 274–6049 or 274–6035.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 5314(c)(4), the following are names and titles of the executives who have been appointed to serve as members of the Performance Review Boards. They will serve a 1-year renewable term, effective upon publication of this notice.

Initial PRB—
- Mr. William V. Gordon, Chairman, Executive Director, Contract Management
- Mr. Richard G. Bruner, Executive Director, Technical and Logistics services
- Mr. Raymond F. Chiesa, Executive Director, Contracting

2nd Level Review—
- Major General Joe P. Morgan, USAF, Executive Director Quality Assurance
- Mr. Gary P. Quigley, Associate Counsel
- Mr. Thomas J. Knap, Assistant Director for Telecommunications & Information Systems

Anthony W. Hudson,

Staff Director, Civilian Personnel.

August 12, 1987.

[FR Doc. 87–18901 Filed 8–18–87; 8:45 am]

BILLING CODE 3620–01–M

Department of the Navy

Public Hearing on the Draft Environmental Impact Statement for U.S. Navy Family Housing, Naval Weapons Station, Earle, NJ

Pursuant to the National Environmental Policy Act of 1969 (43 U.S.C. 4321–4361) and the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), the U.S. Navy has prepared and filed with the U.S. Environmental Protection Agency a Draft Environmental Impact Statement (DEIS) for the Construction of up to 500 units of family housing on or in the vicinity of the Naval Weapons Station, Earle, New Jersey. This DEIS was prepared in response to an Order from the U.S. District Court of New Jersey dated 25 March 1987. The DEIS has been distributed to various federal, state, and local government agencies, interest groups, individuals, and the media. Copies of the DEIS may also be viewed at the following locations:

Colts Neck Library, Heyers Mill Road
Middlesex Library, Mountain Avenue
Middletown Township Library, 55 New Monmouth Road

A public hearing to inform the public of the DEIS findings and to solicit comments on the Navy's proposed housing development will be held on Wednesday, 16 September 1987 at the Pollack Auditorium, Monmouth College, West Long Branch, New Jersey. Two sessions will be held to better facilitate public participation, 2 p.m. to 5 p.m. and 7 p.m. to 12 midnight.

In a separate, but related action, the U.S. Navy has applied to the U.S. Army Corps of Engineers for a permit to fill wetlands under section 404 of the Clean Water Act (33 U.S.C. 1344). Therefore, the hearing will be co-chaired by the U.S. Navy and the Corps of Engineers in accordance with the National Environmental Policy Act and the Council on Environmental Quality regulations. All interested parties are invited to be present or represented at this hearing to comment on the DEIS and the permit application that is before the Corps of Engineers. This includes representatives of federal, state, and local agencies; private industries, civic and environmental groups; and other interested and concerned citizens. All parties will be afforded an opportunity to express their views, but, in order to allow all an opportunity to speak, oral statements will be limited to 10 minutes. Speakers in the first session who wish to also speak in the second session will be allowed to speak only after first-time speakers have had an opportunity.

Technical statements, statements of considerable length, or statements from persons unable to attend the hearing should be delivered in writing to a Navy representative at the hearing or mailed to: Mr. Tom Peeling (Code 20Y), Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, Virginia 22332.

Oral statements will be heard and transcribed by a stenographer, but, for accuracy of record, all statements should be submitted in writing. All statements, oral and written, will become part of the official record for preparation of a Final EIS. Final decision on the proposed action will be made only after consideration is given to the views of responsible agencies, groups, and individuals.

All written statements/comments resulting from the public hearing and review of the DEIS must be postmarked no later than 21 September 1987. Questions concerning this public notice may be directed to Mr. Tom Peeling at the address given above or by telephone at (202) 325–7344.

Written comments concerning the issuance of a permit by the Corps of Engineers will be accepted by the Army until 28 September 1987.

Date: August 14, 1987.

Jane M. Virga,

LT, JAGC, USNR, Federal Register Liaison Officer.

[FR Doc. 87–18949 Filed 8–18–87; 8:45 am]

BILLING CODE 3810–AE–M

Naval Research advisory Committee Panel on the Role of Space Based Activities in Support of Naval Warfare; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee Panel on the Role of Space Based Activities in Support of Naval Warfare will meet on September 17, 1987. The meeting will be held at the Office of the Chief of Naval Research, 800 North Quincy Street, Arlington, Virginia. The meeting will commerce at 8:30 A.M. and terminate at 4:30 p.m. on September 17, 1987. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to conduct an Executive Session of finalize the review of space activities related to naval operations, identify efforts of concern and provide suggestions for validating the utility of those efforts, prepare an independent warfare assessment of space based surveillance and targeting alternatives, and assess the potential for inexpensive reconstitution of wartime space assets. The agenda will include technical decussions related to space technology. These discussions will contain classified information that in specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander T.C. Fritz, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217–5000, Telephone number (202) 696–4870.

Dated: August 14, 1987.

Jane Virga,

Lieutenant, JAGC, U.S. Navy Reserve, Federal Register Liaison Officer.

[FR Doc. 87–18950 Filed 8–18–87; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection concerning Limitation of Costs/Funds.

ADDRESS: Send comments to Mr. Ed Springer, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Van Lierde, Office of Federal Acquisition and Regulatory Policy, (202) 523–3781 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697–7268.

SUPPLEMENTARY INFORMATION:

a. *Purpose:* Firms performing under Federal cost-reimbursement contracts are required to notify the contracting officer in writing whenever they have reason to believe that—

(1) The costs the contractors expect to incur under the contracts in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the estimated cost of the contracts; or

(2) The total cost for the performance of the contracts will be greater or substantially less than estimated. As a part of the notifications, the contractors must provide a revised estimate of total cost.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, *63,456;* responses per respondent, *1;* total annual responses *63,456;* hours per response, *.5;* and total burden hours, *31,728.*

Obtaining Copies of Proposals: Requesters may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0074, Limitation of Costs/Funds.

Dated: August 11, 1987.

Lawrence J. Rizzi,

Director, Office of Federal Acquisition and Regulatory Policy.

[FR Doc. 87–18900 Filed 8–18–87; 8:45 am]

BILLING CODE 6820-61-M

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of an information collection concerning Progress Payments and SF 1443.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Van Lierder, Office of Federal Acquisition and Regulatory Policy, (202) 523–3781 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697–7268.

SUPPLEMENTARY INFORMATION:

a. *Purpose:* Certain Federal contracts provide for progress payments to be made to the contractor during performance of the contract. The requirement for certifications and supporting information are necessary for the administration of statutory and regulatory limitations on the amount of progress payments under the contract The submission of supporting cost schedules is an optional procedure that, when the contractor elects to have a group of individual orders treated as a single contract for progress payments purposes, is necessary for the administration of statutory and regulatory requirements concerning progress payments.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, *27,000;* responses per respondent, *32;* total annual responses *864,000;* hours per response, *.55;* and total burden hours, *475,200.*

Obtaining Copies of Proposals: Requesters may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0010, Progress Payments and SF 1443.

Dated: August 11, 1987.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 87–18869 Filed 8–18–87; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Proposed Consent Order; Sun Co., Inc.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of proposed consent order and opportunity for comments.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces a proposed Consent Order for $2,500,000.00 with Sun Company, Inc. and provides an opportunity for public comment on the terms and conditions of the proposed Consent Order.

Comments by: September 18, 1987.

ADDRESS: Send comments to Sun Company, Inc. Comments, Office of the Solicitor, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Alan R. Fedman, Office of the Solicitor (RG–43), Economic Regulatory Administration, 1000 Independence Avenue SW., Washington, DC 20585. Copies of the proposed Consent Order may be obtained free of charge by writing or calling this office at (202) 586–2050.

SUPPLEMENTARY INFORMATION: On July 10, 1987, the ERA executed a proposed Consent Order with Sun Company, Inc. Under 10 CFR 205.199J(b), a proposed Consent Order which involves the sum of $500,000.00 or more, excluding interest and penalties, becomes effective no sooner than thirty (30) days after publication of a notice in the **Federal Register** requesting comments concerning the proposed Consent Order. Although ERA has signed and tentatively accepted the proposed Consent Order, the ERA may, after consideration of the comments it receives, withdraw its acceptance and, if appropriate, attempt to negotiate a modification of the Consent Order, or issue the Consent Order as signed.

I. Background

During the period July 1, 1980 through December 31, 1980, Sun Company, Inc. (Sun) owned and operated working interests in the B. Benson, Boyd Conglomerate Unit and O.L. Wilson properties respectively located in the states of Montana, Texas, and Mississippi. As a result of this activity, Sun was a "producer" of crude oil, as defined in 10 CFR 212.31, and was therefore subject to the provisions of the Mandatory Petroleum Price Regulations located at 10 CFR Part 212, Subpart D, which governed the first sale of domestic crude oil prior to decontrol on January 28, 1981.

The ERA conducted an audit of the books and records of Sun for the period July 1, 1980 to December 31, 1980, and on October 22, 1984 issued a Proposed Remedial Order (PRO) to Sun. The PRO alleged that Sun caused overcharges in the amount of $1,436,761.32 during the audit period attributable to sales from the properties. The PRO ordered Sun to refund the overcharge amount, plus interest, to DOE for proper distribution. Sun filed a Notice of Objection to the PRO on November 14, 1984. Sun's Statement of Objections (S/O) to the PRO was filed on February 19, 1985.

In its S/O, Sun did not contest the allegations in the PRO relative to the Boyd and Wilson properties, which constituted a small portion of the total alleged overcharges. Sun did object to the allegations concerning overcharges at the B. Benson property. Sun contended that crude oil extracted from the B. Benson property during exploratory testing procedures did not constitute "production" within the meaning of 10 CFR 212.79(b), and therefore subsequent production from the property qualified as "newly discovered crude oil." Sun also maintained that its liability at the Boyd and B. Benson properties should be reduced with respect to crude oil which was allegedly "taken in-kind" and, Sun alleged, independently priced by interest owners. After considering briefs submitted by ERA and Sun, DOE's Office of Hearings and Appeals (OHA) issued the PRO as a Remedial Order (R.O.) on August 19, 1985. The R.O. rejected Sun's contentions and ordered Sun to pay refunds in the full amount of the overcharges plus interest. On September 11, 1985, Sun appealed this decision to the Federal Energy Regulatory Commission (Commission). On November 10, 1986, the Commission affirmed the R.O. in part. The Commission upheld the R.O. in all respects, but upon joint motion of the parties, modified the refund methodology of the R.O.

Based on the firm's arguments and the entire record in this proceeding, and in light of the expense to the government associated with any additional litigation, ERA believes that a payment of $2,500,000.00 is a satisfactory compromise of the issues raised on this audit. This amount includes interest.

II. The Consent Order

The proposed Consent Order has been entered into in order to resolve all civil and administrative disputes, claims, and causes of action by DOE against Sun regarding the alleged regulatory violations addressed in the October 22, 1984 PRO. Although Sun contends that in all respects it correctly construed and compiled with applicable regulations, Sun has entered into this proposed Consent Order to avoid possible further expense and disruption of its business. DOE believes the proposed Consent Order is in the public interest and provides a satisfactory resolution of the issues raised in the PRO.

III. Refunds

Under the terms of the proposed Consent Order, Sun shall pay to DOE the sum of $2,500,000.00 within sixty days of the effective date of the Consent Order. The refund amounts will be deposited in a suitable account and ERA will petition OHA to implement special refund procedures pursuant to 10 CFR Part 205, Subpart V to distribute the monies in a manner consistent with the Statement of Modified Restitutionary Policy in Crude Oil Cases adopted by DOE in 51 FR 17819, August 4, 1986.

IV. Submission of Written Comments

Interested persons are invited to submit written comments concerning the terms and conditions of this proposed Consent Order to the address given above. The ERA will consider all comments it receives by 4:30 P.M., local time, on the 30th day after the date of publication of this notice. Any information or data considered confidential by the person submitting it must be identified as such in accordance with the procedures in 10 CFR 205.9(f).

Issued in Washington, DC, on this 10th day of August 1987.

Marshall Staunton,

Acting Solicitor, Office of the Solicitor, Economic Regulatory Administration.

[FR Doc. 87–18939 Filed 8–18–87; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 87-43-NG]

Application To Import Natural Gas From Canada; EnTrade Corp.

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of application for blanket authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (ERA) gives notice of receipt on July 29, 1987, of an application filed by EnTrade Corporation (EnTrade) for blanket authority to import up to 175 Bcf of natural gas over a period of two years beginning on the date of first delivery of the import. The natural gas would be purchased from a variety of Canadian suppliers and sold on a short-term basis in the domestic spot market to customers that are expected to include gas distribution companies, pipelines, and commercial and industrial end-users. EnTrade may also act as an agent for both Canadian suppliers and U.S. purchasers. The specific terms of each import and sale would be individually negotiated, including the price and volumes, and would be responsive to current market conditions. In its application, EnTrade asks that it be given the flexibility to import gas at any U.S.-Canadian pipeline interconnection along the international border. EnTrade intends to use only existing facilities to provide the transportation services, and proposes to submit quarterly reports to the ERA describing the import transactions that it enters into.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than September 18, 1987.

FOR FURTHER INFORMATION:

P.J. Fleming, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA-076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4819

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All Protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076, RG-23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. They must be filed no later than 4:30 p.m. e.d.t., September 18, 1987.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. A request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial questions of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of EnTrade's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076-A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC August 10, 1987.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-18940 Filed 8-18-87; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. G-19036-001 et al.)

Natural Gas Co.; Applications for Certificates, Abandonments of Service and Petitions To Amend Certificates; [1] ARCO Oil and Gas Co., Division of Atlantic Richfield Co. et al.

August 14, 1987.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before September 1, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,
Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price Per Mcf	Pressure base
G-19036-001 D, 7/13/87.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, Texas 75221.	Northern Natural Gas Company, Division of Enron Corp. Perryton Field, Ochiltree County, Texas.	(1)	
C-13126-001, D, 8/6/87.	....do	Northern Natural Gas Company, Division of Enron Corp., McKinney Field, Clark County, Kansas.	(1)	
CI87-812-000, (CI65-65-241), B, 8/6/87.	....do	West Perryton Field, Ochiltree County, Texas.	(1)	
CI87-813-000, (CI65-1150), B, 8/6/87.	....do	ANR Pipeline Company, Gageby Creek Field, Wheeler County, Texas.	(1)	
G-18748-003, D, 7/17/87.	....do	El Paso Natural Gas Company, Clear Lake Field, Beaver County, Oklahoma.	(2)	
G-3219-001, D, 7/20/87.	....do	Natural Gas Pipeline Company of America, Blocks 75 and 85, Clayton Field, Live Oak County, Texas.	(3)	
CI87-814-000, (G-19085), B, 8/6/87.	....do	Cities Service Gas Company, Woodward Field, Woodward County, Oklahoma.	(4)	
G-4550-001, D, 8/6/87	....do	Tennessee Gas Pipeline Company, a Division of Tenneco Inc., San Salvador Field, Hidalgo County, Texas.	(5)	
CI75-327-001, C, 8/10/87.	Cities Service Oil & Gas Corp., P.O. Box 330, Tulsa, Okla. 74102.	United Gas Pipe Line Company, West Cameron Block 587 Well B-2, OCS-G-2021, Offshore Louisiana.	(6)	
G-16218-002 D, 8/10/87.	Chevron U.S.A. Inc., P.O. Box 7309, San Francisco, Calif. 94120-7309.	Transwestern Pipeline Company, Mocana-Laverne Field, Beaver County, Oklahoma.	(7)	
CI62-398-001, D, 8/6/87.	Kerr-McGee Corporation, P.O. Box 25861, Oklahoma City, Okla. 73125.	Texas Gas Transmission Corporation, Jeanerette Field, St. Mary Parish, Louisiana.	(8)	
CI87-810-000, E, 8/6/87.	Permian Operating Limited Partnership, P.O. Box 1183, Houston, Texas 77251-1183.	El Paso Natural Gas Company, El Paso's meter station at the outlet of Midway Lane Plant, Crockett County, Texas.	(9)	
CI87-818-000, B, 8/7/87.	Amoco Production Company, P.O. Box 3092, Houston, Texas 77253.	Texas Eastern Transmission Corporation, Yoward Field, Bee County, Texas.	(10)	
CI87-808-000, (CI73-342), B, 8/7/87.	Conoco Inc., P.O. Box 2197, Houston, Texas 77252.	Tennessee Gas Pipeline Company, a Division of Tenneco Inc., N/2 SE/4 & S/2 NE/4 Ship Shoal Block 94, Offshore Louisiana.	(11)	
CI87-819-000 (CI70-570), B, 8/7/87.	Cabot Oil and Gas Corporation of West Virginia, P.O. Box 4544, Houston, Texas 77210-4544.	Columbia Gas Transmission Corporation, Pineville Field, Wyoming County, West Virginia.	(12)	

[1] Effective 1-1-87, ARCO assigned its interest in certain acreage to Hondo Oil and Gas Company.

[2] Effective 1-1-87, ARCO assigned its interest in certain acreage to Shell Western E&P Inc.

[3] Effective 5-1-86, ARCO assigned its interest in certain acreage to Mobil Producing Texas and New Mexico, Inc., Murphy Oil USA, Inc., and Petrus Oil Company.

[4] The last well in the McCormick Unit was plugged and abandoned in July, 1982 and there are no prospects for additional gas sales from this property. Cities Service Gas Company and ARCO have agreed to terminate subject contract effective 9-25-84.

[5] By Assignment, Release, or Surrender ARCO has relinquished its interest in certain acreage under contract dated 11-1-54 and Rate Schedule No. 491.

[6] By Amendment dated 6-9-87, Cities Service Oil and Gas Corporation's 10% working interest in the West Cameron Block 587 Well B-2, OCS-G-2021, Offshore Louisiana, converted from an overriding royalty interest effective 11-1-86, was added to the subject contract.

[7] Acreage has been partially assigned to Tidemark Exploration, Inc.

[8] This dual well is now depleted. No recompletion possibilities exist. Well plugged and abandoned.

[9] Permian Corporation assigned certain acreage to Permian Operating Limited Partnership.

[10] By assignment effective 9-1-85, Amoco sold its interest in the H.E. Yoward and R.R. Dubose Leases to B & T Oil Company. The remaining producing leases have been plugged and abandoned.

[11] The lease covering OCS-G-1983 expired on 7-6-86.

[12] Depletion of reserves.

Filing Code: A—Initial Service. B—Abandonment. C—Amendment to add acreage. D—Amendment to delete acreage. E—Total Succession. F—Partial Succession.

[Docket No. C87-800-000]

Application of DoMar Oil and Gas, Inc. for Order Permitting Abandonment and Pre-Granted Abandonment Authorization; DoMar Oil and Gas, Inc.

August 14, 1987.

Take notice that on July 29, 1987, DoMar Oil and Gas, Inc. (Applicant), pursuant to Section 7 of the Natural Gas Act and §§ 157.80 and 250.7 of the Commission's regulations, filed an application for an order permitting abandonment and for pre-granted abandonment authorization as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant states that it currently sells gas from the Warden No. 1 well located in Seward County, Kansas, to Panhandle Eastern Pipeline Company. Applicant states that the gas for which abandonment authorization is sought is subject to NGPA Section 104—minimum rate. [1]Applicant further states that at the minimum rate it has lost money on the well, but that the well may be capable of producing gas profitably if the gas were priced at current market levels. Panhandle Eastern is unwilling to grant a price increase, and, as a result, applicant seeks abandonment authorization. To expedite future changes in purchasers, applicant requests pre-granted abandonment authorization for a term of three years.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 1, 1987, file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure. All protests filed with the Commission will be considered by it in determining the appropriate actions to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing herein must file a motion to intervene in accordance with the Commission's Rules.

Under the procedures herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[FR Doc. 87-18973 Filed 8-18-87; 8:45 am]
BILLING CODE 6717-01-M

[1] Deliverability is approximately 50 Mcf/day.

[Docket No. CI87-807-000

Supplemental Applications for Certificates of Public Convenience and Necessity; Sonat Exploration Co. (Successor to Eason Oil Co.)

August 14, 1987.

Take notice that on April 8 and May 3, 1985, Sonat Exploration Company (Applicant), of P.O. Box 1513, Houston, Texas 77251-1513, filed applications pursuant to section 7 of the Natural Gas Act, for a Certificate of Public Convenience and Necessity covering the sale of gas from certain properties once owned by Eason Oil Company and produced under Small Producer Certificates, and now assigned to Applicant. On May 5, 1986, Applicant supplemented that Application to add five additional sales agreements.

Applicant proposes to continue service as rendered by Eason Oil Company as authorized in Docket No. CS71-631, by selling gas to various gas purchasers pursuant to numerous gas purchase and sales agreements which are further set forth in Exhibit A and on file with this Commission and open for public inspection. Applicant purchased the assets of Eason Oil Company on January 18, 1985, effective July 1, 1984.

Any person desiring to be heard or to make any protest with reference to said applications should, on or before September 1, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,
Secretary.

Exhibit A

Applicant hereby makes application for Rate Schedules. Attached hereto are the Gas Sales Agreements on the transferred properties. Applicant requests the following designated rate schedule numbers be assigned as follows:

Purchaser	Date of last contract	Requested rate schedule
Transco	Nov. 3, 1980	92
Florida Gas	Nov. 3, 1980	93
Arkla	March 3, 1976	94

[FR Doc. 87-18974 Filed 8-18-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP87-475-000]

Application; Trunkline Gas Co.

August 14, 1987.

Take notice that on July 31, 1987, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251, filed in Docket No. CP87-475-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation service for Texas Eastern Transmission Corporation (TETCO), all as more fully set forth in the application on file with the Commission and open to public inspection.

Trunkline explains that the transportation service to be abandoned includes gas that TETCO initially receives at West Cameron Block 522 offshore Louisiana. TETCO transports the gas to other natural gas pipelines for ultimate redelivery onshore to TETCO in Allen Parish, Louisiana. Gas is being transported pursuant to authority granted in Docket No. CP76-310 and in accordance with the terms of two transportation agreements dated March 22, 1976, which provide for a quantity of up to 11,000 Mcf per day on a firm basis and up to 4,000 Mcf per day on a best efforts basis, it is asserted. Trunkline concludes that the authorization to abandon include specifically Rate Schedule T-7 and Rate Schedule T-8. TETCO and Trunkline have executed a letter agreement dated February 25, 1986, which provides for the termination of the two transportation agreements effective July 1, 1987, it is noted.

No abandonment of facilities is proposed in the application.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 4, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time requried herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Trunkline to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18975 Filed 8-18-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-141-000]

Redesignation; Williams Natural Gas Co.

August 14, 1987.

On January 30, 1987, Williams Natural Gas Company, filed in Docket No. G-141-000 an application requesting that it be designated as certificate holder under its new name in lieu of its former name, Northwest Central Pipeline Corporation. In accordance with a corporate name change, the jurisdictional natural gas operations are to be conducted under the name of Williams Natural Gas Company.

A listing of authorizations and pending proceedings is set forth in the appendix attached hereto.

This action is taken pursuant to 18 CFR 375.302(s) of the Commission's rules.

Kenneth F. Plumb,

Secretary.

WILLIAM NATURAL GAS COMPANY.—PENDING PROCEEDINGS AND EXISTING AUTHORIZATIONS

Docket No.	Order date
G-141	7/25/43
G-256	12/26/43
G-436	9/30/43
G-493	9/30/43
G-525	6/23/44
G-527	7/22/44
G-576	8/19/44
G-604	3/12/47
G-629	5/29/45
G-640	4/22/47
G-650	7/8/47
G-711	8/18/46
G-720	7/23/46
G-758	10/4/46
G-778	10/31/46
G-811	2/25/47
G-821	2/25/47
G-840	3/23/47
G-849	4/23/47
G-896	8/18/47
G-906	9/24/47
G-934	11/10/47
G-937	11/13/47
G-966	1/20/48
G-1000	3/24/48
G-1038	7/27/48
G-1170	5/3/49
G-1294	2/14/50
G-1355	6/6/50
G-1421	8/22/50
G-1503	2/27/51
G-1508	5/15/51
G-1704	10/23/51
G-1736	9/19/51
G-1760	2/20/52
G-1795	12/18/51
G-1845	5/10/55
G-1867	5/6/52
G-1874	4/29/52
G-1877	5/18/52
G-1882	4/17/52
G-1969	9/12/52
G-1974	1/13/53
G-1986	10/29/52
G-2007	11/20/52
G-2039	11/10/52
G-2112	4/16/55
G-2149	9/23/53
G-2161	7/2/53
G-2187	12/22/53
G-2202	9/17/53
G-2209	3/5/54
G-2214	9/23/53
G-2265	11/25/53
G-2285	7/7/54
G-2410	5/25/56
G-2457	10/27/54
G-2471	9/23/54
G-2493	7/27/55
G-2542	10/14/54
G-4092	2/16/55
G-6615	5/18/56
G-6571	6/29/55
G-6572	6/29/55
G-6760	7/20/55
G-9125	1/6/55
G-9230	11/30/55
G-9457	1/18/56
G-9466	2/1/56
G-9564	1/18/56
G-9664	6/13/56
G-9584	2/1/56
G-9606	7/29/56
G-9666	10/22/56
G-9667	12/11/56

WILLIAM NATURAL GAS COMPANY.—PENDING PROCEEDINGS AND EXISTING AUTHORIZATIONS—Continued

Docket No.	Order date
G-10347	7/13/56
G-10436	3/16/57
G-10520	12/11/56
G-10725	8/23/57
G-10921	8/24/57
G-10934	8/24/57
G-10950	1/23/58
G-10974	8/24/57
G-10975	4/26/57
G-11050	8/24/57
G-12048	8/8/57
G-12125	8/24/57
G-12542	1/26/58
G-12938	11/12/57
G-13206	1/25/57
G-13545	3/25/58
G-13982	2/11/58
G-14721	10/8/58
G-14950	8/7/58
G-14973	8/7/58
G-15345	10/28/58
G-16742	3/24/59
G-16743	2/16/59
G-17020	1/16/60
G-17941	7/24/59
G-18451	7/16/59
G-18545	3/7/60
G-18668	3/1/60
G-20521	4/11/60
CP60-12	4/18/60
CP60-32	10/4/60
CP60-108	10/3/60
CP60-113	12/16/60
CP61-10	2/10/60
CP61-11	2/13/61
CP61-29	2/10/61
CP61-57	1/30/61
CP61-179	5/15/61
CP61-183	9/20/61
CP61-184	8/24/61
CP61-240	7/7/61
CP61-283	3/30/61
CP61-313	8/31/61
CP62-15	11/6/61
CP62-36	12/1/61
CP62-82	2/26/62
CP62-139	7/2/62
CP62-147	8/7/62
CP62-211	6/15/62
CP62-245	6/3/62
CP62-253	9/21/62
CP62-262	9/13/62
CP62-274	9/6/62
CP62-296	9/24/62
CP63-1	10/29/62
CP63-39	2/15/63
CP63-51	11/21/62
CP63-58	2/5/63
CP63-89	2/25/63
CP63-100	4/1/63
CP63-142	3/15/63
CP63-169	4/3/58
CP63-185	11/18/63
CP63-201	4/29/63
CP63-216	4/29/63
CP63-249	7/23/63
CP63-278	7/3/63
CP63-280	7/31/63
CP63-304	7/23/63
CP63-343	9/20/63
CP63-345	10/29/63
CP63-349	9/6/63
CP64-42	11/18/63
CP64-89	1/2/64
CP64-100	2/4/64
CP64-109	1/27/64
CP64-131	5/31/65
CP64-179	9/4/64
CP64-250	8/14/64
CP64-251	7/13/64
CP64-306	9/10/64
CP64-305	10/6/64
CP64-311	10/9/64
CP65-12	8/17/65
CP65-34	10/21/65
CP65-77	12/15/64
CP65-137	1/13/65
CP65-140	12/1/67
CP65-180	1/29/65

WILLIAM NATURAL GAS COMPANY.—PENDING PROCEEDINGS AND EXISTING AUTHORIZATIONS—Continued

Docket No.	Order date
CP65-152	1/13/65
CP65-162	2/29/65
CP65-166	3/22/65
CP65-194	5/13/65
CP65-216	3/23/65
CP65-230	4/15/65
CP65-231	4/16/65
CP65-241	6/3/65
CP65-327	11/19/65
CP65-334	8/7/65
CP65-410	8/27/65
CP66-14	8/25/65
CP66-79	9/10/65
CP66-113	12/20/65
CP66-176	3/7/66
CP66-177	12/15/65
CP66-186	2/11/66
CP66-188	3/7/66
CP66-193	3/7/66
CP66-194	3/7/66
CP66-219	4/4/66
CP66-226	1/24/68
CP66-273	5/31/66
CP66-419	9/29/66
CP67-7	9/16/66
CP67-37	10/3/66
CP67-67	1/25/67
CP67-90	12/8/66
CP67-92	11/29/66
CP67-150	3/10/67
CP67-190	3/28/67
CP67-203	3/20/67
CP67-275	5/31/67
CP67-316	9/8/67
CP67-335	7/6/67
CP67-364	9/18/67
CP68-128	1/24/68
CP68-216	6/25/68
CP68-320	8/23/68
CP68-369	8/26/68
CP69-7	9/26/68
CP69-8	9/19/68
CP69-180	3/18/69
CP69-221	5/8/69
CP69-258	7/1/69
CP69-322	9/4/69
CP69-352	10/27/69
CP70-53	12/2/69
CP70-74	1/5/70
CP70-75	1/7/70
CP70-118	3/5/70
CP70-[illegible]	3/16/70
CP70-159	3/9/70
CP70-186	4/14/70
CP70-256	7/22/70
CP71-19	10/21/70
CP71-64	12/30/70
CP71-65	12/2/70
CP71-173	4/16/70
CP71-180	3/31/71
CP71-194	5/20/72
CP71-210	6/1/71
CP71-269	6/30/71
CP71-286	10/21/71
CP72-15	11/1/71
CP72-158	7/13/72
CP72-174	7/14/72
CP72-229	7/13/72
CP72-290	11/20/72
CP73-156	7/17/73
CP73-325	9/6/73
CP74-8	10/19/73
CP74-10	10/24/73
CP74-65	1/10/74
CP74-151	5/6/74
CP74-179	7/22/74
CP74-215	8/29/74
CP74-234	8/4/74
CP74-324	4/1/75
CP75-116	4/17/74
CP75-121	2/3/75
CP75-345	11/26/75
CP75-356	9/16/75
CP76-32	10/15/75
CP76-113	1/8/76
CP76-115	1/8/76
CP76-137	11/2/76
CP76-208	5/20/77
CP76-217	12/16/76

WILLIAM NATURAL GAS COMPANY.—PENDING PROCEEDINGS AND EXISTING AUTHORIZATIONS—Continued

Docket No.	Order date
CP76-268	11/2/76
CP76-269	11/2/76
CP76-282	11/4/76
CP76-335	5/20/77
CP76-345	11/2/76
CP76-371	9/13/76
CP76-373	9/15/76
CP76-415	5/9/77
CP76-417	11/2/76
CP76-465	1/19/77
CP76-500	5/1/78
CP77-68	3/7/77
CP77-149	4/5/77
CP77-215	4/25/77
CP77-306	6/20/77
CP77-376	9/9/77
CP77-460	8/29/77
CP77-461	2/22/78
CP77-562	12/30/77
CP77-572	12/20/77
CP77-573	12/20/77
CP77-575	12/20/77
CP77-586	1/11/77
CP78-26	4/13/78
CP78-93	2/13/78
CP78-132	3/13/78
CP78-226	5/30/78
CP78-276	7/19/78
CP78-303	7/6/78
CP78-373	8/22/78
CP78-513	11/22/78
CP79-99	3/27/79
CP79-114	8/8/79
CP79-156	5/8/79
CP79-197	9/7/79
CP79-326	7/26/79
CP79-346	10/12/79
CP79-395	10/23/79
CP79-406	12/10/79
CP79-420	10/24/79
CP80-25	5/23/80
CP80-28	2/27/80
CP80-115	2/25/80
CP80-171	4/18/80
CP80-173	4/21/80
CP80-197	5/23/80
CP80-237	4/2/80
CP80-272	6/4/80
CP80-302	5/26/80
CP80-328	10/10/80
CP80-474	11/25/80
CP80-499	12/22/80
CP80-517	2/23/80
CP80-536	2/24/81
CP80-586	2/24/81
CP81-60-000	4/7/81
CP81-203-000	6/5/81
CP81-273-000	2/23/82
CP81-275-000	7/6/81
CP81-427-000	10/9/81
CP81-461-000	3/4/82
CP81-502-000	2/11/82
CP82-27-000	5/5/82
CP82-77-000	2/23/82
CP82-124-000	3/30/82
CP82-159-000	6/11/82
CP82-201-000	6/4/82
CP82-229-000	8/25/82
CP82-233-000	12/2/82
CP82-274-000	7/14/82
CP82-301-000	6/31/82
CP82-303-000	8/31/82
CP82-316-000	3/8/83
CP82-319-000	6/2/83
CP82-343-000	9/10/82
CP82-387-000	12/2/82
CP82-479-000	9/30/82
CP82-540-000	2/7/83
CP83-184-000	7/18/83
CP83-344-000	6/10/83
CP83-345-000	6/29/83
CP83-445-000	8/19/83
CP83-453-000	9/20/83
CP83-76-000	12/14/83
CP83-76-000	12/30/83
CP84-145-000	6/20/84
CP84-216-000	2/21/84
CP84-541-000	7/19/84
CP84-544-000	4/5/84

WILLIAM NATURAL GAS COMPANY.—PENDING PROCEEDINGS AND EXISTING AUTHORIZATIONS—Continued

Docket No.	Order date
CP84-568-000	8/3/84
CP84-581-000	6/9/84
CP84-611-000	8/21/84
CP82-627-000	8/24/84
CP85-16-000	10/29/84
CP85-148-000	12/4/84
CP85-149-000	1/10/85
CP85-314-000	6/1/85
CP85-362-000	11/12/85
CP85-363-000	7/26/85
CP85-386-000	8/22/85
CP85-426-000	14/30/85
CP85-429-000	14/25/85
CP85-435-000	5/2/85
CP85-436-000	5/2/85
CP85-450-009	8/23/85
CP85-451-000	1/14/86
CP85-452-000	5/3/85
CP85-461-000	5/3/85
CP85-485-000	5/23/85
CP85-550-000	8/21/85
CP85-580-000	10/31/85
CP85-582-000	10/31/85
CP85-583-000	10/31/85
CP85-584-000	10/31/85
CP85-620-000	7/9/85
CP85-646-000	7/15/85
CP85-712-000	8/2/85
CP85-786-000	9/6/85
CP85-812-000	9/9/85
CP85-827-000	9/13/85
CP85-847-000	9/13/85
CP85-905-000	10/4/85
CP85-906-000	10/22/85
CP86-2-000	10/22/85
CP86-2-001	12/8/85
CP86-9-000	10/17/85
CP86-11-000	10/22/85
CP86-47-000	11/7/85
CP86-64-000	11/13/85
CP86-66-000	11/19/85
CP86-168-000	12/2/85
CP86-286-000	2/21/86
CP86-295-000	7/24/86
CP86-495-000	6/5/86
CP86-512-000	8/28/86
CP86-514-000	6/16/86
CP86-515-000	6/13/86
CP86-533-000	6/19/86
CP86-535-000	6/19/86
CP86-570-000	7/3/86
CP86-624-000	7/24/86
CP86-634-000	8/5/86
CP86-640-000	8/11/86
CP86-740-000	10/9/86
CP87-23-000	10/27/86
CP87-24-000	10/24/86
CP87-91-000	12/2/86
CP87-133-000	1/12/87
CP87-168-000	2/11/87
CP87-183-000	2/19/87
ST82-260	3/10/82
ST82-297	7/8/82
ST84-62-000	11/31/83
ST84-380-000	3/14/84
ST84-381-000	3/14/84
ST84-775-000	4/30/84
ST84-928-000	6/5/84
ST84-1065-000	8/25/84
ST84-1068-000	8/29/84
ST85-73-000	12/21/84
ST85-101-000	12721/84
ST85-336-000	12/21/84
ST82-477-000	3/19/85
ST85-646-000	4/19/85
ST85-669-000	4/19/85
ST85-689-000	5/3/85
ST85-699-000	5/3/85
ST85-830-000	8/10/85
ST85-834-000	6/10/85
ST85-879-000	6/10/86
ST85-1347-000	9/10/85
ST85-1517-000	10/16/85
ST85-1518-000	10/16/85
ST85-1519-000	10/16/85
ST85-131-000	12/17/85
ST85-140-000	12/17/85
ST85-141-000	12/17/85
ST85-153-000	12/17/85

WILLIAM NATURAL GAS COMPANY.—PENDING PROCEEDINGS AND EXISTING AUTHORIZATIONS—Continued

Docket No.	Order date
ST85-383-000	1/27/86
ST86-467-000	1/27/86
RP62-1	7/21/86
RP64-9	11/22/63
RP64-17	2/24/64
RP65-21	9/29/64
RP68-18	12/11/68
RP68-39	7/16/69
RP70-22	1/22/70
RP71-106	5/21/71
RP72-142	6/8/72
RP74-4	8/22/73
RP75-6-1	4/3/76
RP75-27	9/13/76
RP76-13	5/10/77
RP76-118	7/20/76
RP76-135	8/18/78
RP79-76	7/20/76
RP80-43	1/30/79
RP81-37-000	2/10/81
RP81-64-000	5/21/81
RP81-78-000	7/22/78
RP81-127-000	8/28/81
RP81-70-000	2/7/85
RP85-32-000	
RP86-55-000	5/22/86
TC79-150	10/30/79

WILLIAM NATURAL GAS COMPANY.—PENDING PROCEEDINGS AND EXISTING AUTHORIZATIONS—Continued

Docket No.	Order date
TC82-114	5/11/82
SA79-30	6/4/80
SA85-34	4/15/86
SA85-39	4/4/86
GP80-31	3/6/85
GT82-15-000	1/18/82
GT83-14-000	3/9/83
GT84-8-000	1/9/84
GT86-2-000	1/31/86

[1] Or Notice Issue Date, as applicable.

[FR Doc. 87-18976 Filed 8-18-87; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed During the Week of July 3 Through July 10, 1987

During the Week of July 3 through July 10, 1987, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the applicatioin within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Thomas O. Mann,

Acting Director, Office of Hearings and Appeals.

August 12, 1987.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of July 3 through July 10, 1987]

Date	Name and location of applicant	Case no.	Type of submission
June 30, 1987	Einck Trucking, Primghar, Iowa	RR270-7	Modification/Rescission in the Surface Transporter Refund Proceeding. *If granted:* The June 3, 1987 Decision and Order (Case No. RF270-2455) issued to Einck Trucking would be modified regarding the firm's Application for Refund submitted as a surface transporter in the Stripper Well Litigation Refund Proceeding.
July 6, 1987	Husky Oil Co./Metro Oil Products, Inc., Washington, DC	RR161-1	Request for Modification/Rescission in the Husky Refund Proceeding. *If granted:* The June 3, 1987 Decision and Order (Case No. RF161-14) issued to Metro Oil Products, Inc. would be modified regarding the firm's Application for Refund submitted in the Husky Oil Company refund proceeding.
July 10, 1987	Citizen/Labor Energy Coalition, Washington, DC	KFA-0110	Appeal of an Information Request Denial. *If granted:* The June 12, 1987 Freedom of Information Request Denial issued by the Office of Oil and Gas of the Energy Information Administration would be rescinded, and Citizen/Labor Energy Coalition would receive access to certain DOE information.
July 10, 1987	Kathryn Howe Britton, Aptos, California	KFA-0109	Appeal of an Information Request Denial. *If Granted:* The November 14, 1986 Freedom of Information Request Denial issued by the Office of Administration would be rescinded, and Kathryn Howe Britton would receive access to classified information relating to a report by Trevor Gardner on the topic of space program options.
July 10, 1987	Kern Oil & Refining Company, Washington, DC	KRO-0520	Motion for Discovery. *If granted:* Discovery would be granted to Kern Oil & Refining Company in connection with the Statement of Objections submitted in the response to the Proposed Remedial Order (Case No. KRO-0520) issued to Kern Oil & Refining Company.

REFUND APPLICATIONS RECEIVED

[Week of July 3 to July 10, 1987]

Date received	Name of refund proceeding/name of refund applicant	Case No.
2/20/87	Brucker's Mobil	RF225-10955
7/06/87	Circle Service Station	RF225-10956
7/06/87	Circle Service Station	RF225-10957
7/02/87	Westport Energy Corporation	RF47-22
7/02/87	Consolidated Gas Transmission	RF277-58
7/06/87	Thatcher Glass Mfg. Co	RF277-59
7/06/87	Pennsylvania Gas and Water Co	RF277-60
7/06/87	Frito-Lay, Inc	RF277-61
6/04/87	The Trans-Lease Group	RF225-10958
8/15/86	Valders Oil Company	RF225-10959
7/09/87	Gas 'N Save, Inc	RF225-10960
7/09/87	Dan River, Inc	RF277-62
7/09/87	J.S. Skelly Fuel Company	RF253-25

[FR Doc. 87-18941 Filed 8-18-87; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed During the Week of July 10 Through July 17, 1987

During the Week of July 10 through July 17, 1987, the applications for relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Thomas O. Mann,

Acting Director, Office of Hearings and Appeals.

August 12, 1987.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of July 10 through July 17, 1987]

Date	Name and location of applicant	Case no.	Type of submission
July 6, 1987	Missouri, Jefferson City, Missouri	RM7-71, RM251-72, RM13-73	Modification/Rescission in the Vickers, Amoco & OKC Corp. Second Stage Refund Proceedings. *If granted:* The January 12, 1987 Decision and Order (Case Nos. RQ1-349, RQ251-331 and RQ13-332) would be modified regarding the State's Application for Refund submitted in the Vickers, Amoco and OKC Corporation Second Stage Refund Proceedings.

REFUND APPLICATIONS RECEIVED

[Week of July 10 to July 17, 1987]

Date received	Name of refund proceeding/name of refund of refund applicant	Case No.
7/10/87 thru 7/17/87	Getty Refund Applications Received	RF265-2309 thru RF265-2456
7/10/87 thru 7/17/87	Crude Oil Refund Applications Received	RF272-1162 thru RF272-2066
7/13/87	Amoco/New York	RQ21-305
7/10/87	Ralph Marino	RF276-293
7/10/87	Arthur Mulvey	RF276-294
7/13/87	Sybron Corporation	RF277-63
7/13/87	UGI Corporation	RF277-64
7/13/87	Square D Company	RF277-65
7/13/87	Monongahela Power Company	RF277-66
7/13/87	Defense Logistics Agency	RF293-6
7/13/87	Butler Manufacturing Company	RF294-7
7/14/87	The Dayton Power & Light Company	RF277-67
7/14/87	H.B. Lauster and Sons	RF277-68
7/14/87	Bottle Gas Service	RF206-19
7/14/87	Fix Hardware, Inc	RF277-69
7/15/87	Godwin Gas Company	RF277-70
9/22/86	Home Oil Company	RF225-10661
5/01/86	Monte Clark	RF225-10662
5/15/86	Hartung Oil Company	RF225-10663
5/01/86	Noonan Bros. Oil Company, Inc	RF225-10664
5/01/86	Noonan Bros. Oil Company, Inc	RF225-10665
5/01/86	Noonan Bros. Oil Company, Inc	RF225-10666
3/11/86	Wolf Brothers Fuel, Inc.	RF225-10667

[FR Doc. 87-18942 Filed 8-18-87; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed During the Week of July 17 Through July 24, 1987

During the Week of July 17 through July 24, 1987, the applications for relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Thomas O. Mann,

Acting Director, Office of Hearings and Appeals.

August 12, 1987.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of July 17 through July 24, 1987]

Date	Name and location of applicant	Case No.	Type of submission
July 20, 1987	LaJet, Inc., Washington, DC	KRO-0510	Motion for Discovery. *If granted:* Discovery would be granted to LaJet, Inc. in connection with a Statement of Objections which it filed in response to the February 13, 1987 Proposed Remedial Order issued to the firm (Case No. KRO-0510).

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of July 17 through July 24, 1987]

Date	Name and location of applicant	Case No.	Type of submission
July 23, 1987	Corinth & Counce Railroad Company, Atlanta, Georgia	RR271-4	Request for Modification/Rescission in the Stripper Well Litigation Refund Proceeding. *If granted:* The May 29, 1987 Decision and Order (Case No. RF271-28) issued to Corinth & Counce Railroad Company would be modified regarding the firm's Application for Refund submitted as a surface transporter in the Stripper Well Litigation Refund Proceeding.

REFUND APPLICATIONS RECEIVED

[Week of July 17 to July 24, 1987]

Date received	Name of refund proceeding/name of refund applicant	Case No.
07/20/87	Amoco, II / Montana	RQ251-366
07/17/87 thru 07/24/87	Crude Oil Refund Applications Received	RF272-2057 thru RF272-2520
07/06/87	Todd Pacific Shipyards Corp.	RF297-1
06/30/87	Fannett-Metal School District	RF297-2
06/30/87	Chevron, U.S.A., Inc.	RF265-3467
06/30/87	Rowell & Watson Co., Inc.	RF265-3468
07/17/87	Rural Gas Service of Warren	RF277-71
11/18/86	Cheker Oil Company	RF250-2730
07/17/87	Maine Central Railroad Company	RF271-228
07/17/87	Delaware & Hudson	RF271-230
07/17/87	Boston & Maine Corporation	RF271-231
05/02/86	Kenneth J. Blair	RF225-10668
05/02/86	Kennoth J. Blair	RF225-10669
05/05/86	Anthony Salvato	RF225-10670
05/07/87	Shenango China Div., Inter	RF277-72
07/20/87	Pittsburgh Forgings Company	RF277-73
07/14/87	Schatz Crossroad Truck Stop	RF265-3470
11/10/86	Stottlemyre Truck Stop	RF265-3469
07/22/87	The Greif Companies	RF297-3
01/20/87	Marion Truck Plaza, Inc.	RP265-2471
07/21/87	General Motors Corporation	RF277-74
07/16/87	Defense Fuel Supply Center	RF265-4
07/06/87	Three Brothers Gulf	RF40-3703
07/21/87	Gulf States Oil & Refining	RF277-75
07/20/87	Marion Truck Plaza, Inc.	RF265-2472
07/24/87	The Berkshire Gas Company	RF277-76
07/24/87	Diebold, Inc.	RF277-77
07/24/87	McCall Services Station	RF294-6

[FR Doc. 87-18943 Filed 8-18-87; 8:45 am]

BILLING CODE 6560-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3295-3]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.)* requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that EPA has forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The ICRs that follow are available for review and comment.

FOR FURTHER INFORMATION CONTACT: Carla Levesque at EPA, (202) 382-2740 (FTS 382-2740).

Office of Air and Radiation

Title: NSPS for Petroleum Dry Cleaners, Information Requirements (Subpart JJJ) (EPA ICR #1167). (This is a renewal without change of a currently approved collection.)

Abstract: Owners or operators of affected facilities must notify EPA of the date of construction or reconstruction, anticipated and actual dates of startup, any physical or operational change to an existing facility that may increase the regulated pollutant emission rate, and the date of the initial performance test. Owners/operators must also maintain records of the occurrence and duration of any startup, shutdown, or malfunction, or any period during which the monitoring system is inoperative. State and EPA staff will use the information to maintain an inventory of regulated facilities, which further enable the scheduling of periodic compliance inspections.

Respondents: Petroleum dry cleaning plants with a dryer capacity rated at 84 lb. after 14 December 1982.

Estimated Annual Burden: 1,458 hours.

Title: NSPS for Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels (Subparts AA and AAa)— Information Requirements (EPA ICR #1060). (This is a reinstatement of a previously cleared collection.)

Abstract: Owners or operators of affected facilities must notify EPA of construction, modification, startup, shutdowns, malfunctions, and the date and results of initial performance tests. Facilities must also install a continuous monitoring device to measure opacity, maintain records of flow rate and pressure, and submit quarterly or semiannual reports of excess opacity, high fan motor amperage, and low flow rates. Facilities subject to Subpart AA must also maintain records concerning the duration of each tap and charge. EPA and the states use the information to ensure that facilities continue to operate control equipment as required, to target inspections, and, when necessary, as evidence in court.

Respondents: Steel plants with electric arc furnaces constructed or modified after 23 September 1975.

BEST COPY AVAILABLE

Estimated Annual Burden: 17,343 hours.

Office of Pesticides and Toxic Substances

Title: Notification of Unreasonable Adverse Effects—section 6(a)(2) of FIFRA ICR #1204). (This is a renewal without change of a currently approved collection.)

Abstract: Whenever a pesticide registrant receives information about a previously registered pesticide indicating that potential adverse and unreasonable environmental effects may ensue from its use, the registrant must report this information to EPA [FIFRA section 6(a)(2)].

Respondents: Certain pesticide registrants.

Estimated Annual Burden: 2,000 hours.

Agency PRA Clearance Requests Completed by OMB

No actions received since the last **Federal Register** publication of abstracts.

Send comments on the above abstract(s) to:

Carla Levesque, PM–223, U.S. Environmental Protection Agency, Information and Regulatory Systems Division, 401 M Street, SW., Washington, DC 20460

and

Nicolas Garcia (ICRs 0997, 1060) and Timothy Hunt (ICR 1204), Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, 728 Jackson Place, NW., Washington, DC 20503.

Date: August 12, 1987.

Daniel J. Fiorino,

Director, Information and Regulatory Systems Division.

[FR Doc. 87–18945 Filed 8–18–87; 8:45 am]

BILLING CODE 6560-50-M

[OPP–30000/20D; FRL–3247–6]

Cadmium; Intent To Cancel Registrations of Pesticide Products Containing Cadmium; Denial of Applications for Registration of Pesticide Products Containing Cadmium; Conclusion of Special Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final determination and intent to cancel.

SUMMARY: On October 26, 1977, EPA initiated a Special Review of all pesticide products that contain cadmium compounds (salts of chloride, sebacate, succinate, carbonate and anilino cadmium dilactate) as active ingredients and that are registered for use on turf of golf courses and home lawns. On September 10, 1986, EPA issued a Preliminary Determination (PD 2/3) proposing to cancel registrations and deny applications for all uses of cadmium products on turf sites. The proposed cancellation action was based on the Agency's determination that the use of cadmium fungicides would result in unreasonable adverse effects to applicators of these products for these uses. A **Federal Register** Notice was published concerning these actions on October 10, 1986 (51 FR 36524).

This Notice concludes the Special Review and announces EPA's final determination to (1) cancel registrations and deny applications of all pesticide products containing any of the five cadmium compounds as active ingredients that are registered for use on golf course fairways and home lawns, and (2) to modify the terms and conditions of registration of cadmium products for use on golf course greens and tee areas.

DATE: A request for a hearing by a registrant or applicant must be received by September 18, 1987, or 30 days from receipt by mail of this Notice, whichever is the later applicable deadline. A request for a hearing from any other adversely affected person must be received by: September 18, 1987.

ADDRESS: Requests for a hearing must be submitted to: Hearing Clerk (A–110), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Other relevant addresses are found under Unit IV and Unit V.D. 1.

FOR FURTHER INFORMATION CONTACT:

By mail: Valerie Meredith Bael, Special Review Branch, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Room 1006, Crystal Mall Building #2, 1921 Jefferson Davis Highway, Arlington, Virginia 22202, (703) 557–2314.

SUPPLEMENTARY INFORMATION: This Notice is organized into six units. Unit I is the Introduction. It provides the background information concerning this regulatory action. Units II and III summarize the applicator risks and the benefits associated with the use of cadmium on golf courses and home lawns. They also contain a review and evaluation of comments received by the Agency in response to the PD 2/3. Unit IV contains the comments of the Scientific Advisory Panel, the Secretary of Agriculture, and other public comments and EPA's response to those comments. Unit V describes the Agency's final determination, the regulatory actions required by this Notice, and the procedures which will be followed in implementing the regulatory actions EPA is announcing in this Notice. Unit VI is the bibliography.

I. Introduction

A. Regulatory History

On October 26, 1977, a **Federal Register** Notice (42 FR 56574) was published concerning the Special Review of all pesticide products that contain as an active ingredient cadmium compounds (salts of chloride, sebacate, succinate, carbonate and anilino cadmium dilactate) and that are registered for use on turf of golf courses and home lawns. This action was based on the determination that cadmium pesticide products exceeded risk criteria relating to oncogenicity, mutagenicity, teratogenicity, and fetotoxicity.

Following review of public comments and available data, a Preliminary Determination was issued on October 10, 1986, in which the Agency determined that the risk concerns relating to oncogenicity remained and risk concerns for kidney effects were added. Risk concerns for mutagenicity, teratogenicity and fetotoxicity no longer remain. A review of the many mutagenicity tests provided conflicting results because of the many end points and protocols used. The Agency concluded that the weight of evidence from the composite of the many studies does not support the risk criteria for mutagenicity. Based on the Agency's review of animal studies, cadmium has been shown to produce developmental toxicity (embryotoxicity, fetotoxicity and teratogenicity) at high dose levels. The available data are not considered adequate to support the risk criteria for teratogenic and fetotoxic effects at exposure levels encountered by pesticide applicators.

The October 10, 1986 Notice announced (1) the Preliminary Determination proposing to cancel registrations for all pesticide products that contain cadmium compounds as active ingredients that are used on turf of golf courses and home lawns based on oncogenic and kidney risks, and (2) the availability of the Support Document. The Support Document (Ref. 1) contains the background information which supported the Agency's action. This information included an assessment of the hazard to applicators,

the benefits of use on golf courses and home lawns, and a discussion of measures to reduce exposure to applicators. In consideration of the toxicological effects of cadmium compounds, the estimated potential risks of these effects to applicators, the lack of effective measures to mitigate these unacceptable risks, the availability of effective alternatives and an estimated minor economic impact to users, the Agency concluded that the risks of continued use of cadmium pesticide products outweighed the benefits. Therefore, the Agency proposed cancellation of all pesticidal uses of cadmium compounds.

This Notice concludes the Special Review and announces EPA's final determination to cancel registrations and deny applications of all registered uses of cadmium on golf course fairways and home lawns and to modify the terms and conditions of registration for products used on golf course greens and tee areas. The weight of evidence continues to lead the Agency to conclude that the oncogenic kidney and risks associated with the use of cadmium on golf course greens and tee areas (with hand-held sprayers), and the kidney risks associated with the use of cadmium on golf course fairways by ground boom sprayers and on home lawns outweigh the low benefits. The use of cadmium on golf course fairways and home lawns may also pose some oncogenic concern. During development of the PD 2/3, the Agency assumed that heavy mechanical power spray equipment could not be used on greens and tee areas. Therefore, exposure estimates used in the Agency's risk assessment for greens and tee areas were based on hand-held spray equipment only. Since publication of the PD 2/3, the Agency received new information indicating that most golf course applicators use power spray equipment (i.e., mini-boom sprayers and walking boom sprayers) rather than hand-held sprayers to apply cadmium to greens and tee areas. The Agency defines a "mini-boom" sprayer as a boom that can be drawn by a small vehicle. The Agency reviewed its existing data base and determined that it lacks adequate data on this application method. In order to assess the risk of oncogenic and kidney effects from the use of this equipment, the Agency has required applicator exposure data through a FIFRA section 3 (c)(2)(B) Data Call in Notice. Deadline for submission of these data is July, 1988. The Agency will allow continued use of cadmium on golf course greens and tee areas with the following modifications in the terms and conditions of registration: (1) "Restricted Use" for retail sale to and use only by certified applicators and only for those uses covered by the Certified Applicator's certification, (2) application to golf course greens and tees only, (3) application by mini-boom sprayers only, and (4) use of protective clothing during mixing, loading and application (chemical resistant gloves at all times and chemical resistant apron during mixing and loading). If exposure data on mini-boom sprayers indicate unreasonable risks to applicators, further regulatory action will be taken.

B. Legal Background

In order to obtain a registration for a pesticide under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, an applicant for registration must demonstrate that the pesticide satisfies the statutory standard for registration, section 3(c)(2)(B) of FIFRA. That standard requires, among other things, that the pesticide performs its intended function without causing "unreasonable adverse effects on the environment." The term "unreasonable adverse effects on the environment" is defined under FIFRA section 2(bb) as "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide." This standard requires a finding that the benefits of the use of the pesticide exceed the risks of use, when the pesticde is used in compliance with the terms and conditions of registration or in accordance with commonly recognized practices.

The burden of proving that a pesticide satisfies the standard for registration is on the proponents of registration and continues as long as the registration remains in effect. Under FIFRA section 6, the Administrator may cancel the registration whenever it is determined that the pesticide causes unreasonable adverse effects on the environment. The Agency created the RPAR process, now known as the Special Review process, to facilitate the identification of pesticide uses which may not satisfy the statutory requirements for registration and to provide an informal procedure to gather and evaluate information about the risks and benefits of these uses.

A Special Review is initiated if a pesticide meets or exceeds the risk criteria set out in the regulations at 40 CFR 154.7. The Agency announces that a Special Review is initiated by issuing a notice for publication in the **Federal Register**. Registrants and other interested persons are invited to review the data upon which the review is based and to submit data and information to rebut the presumption by showing that the Agency's initial determination of risk was in error, or by showing that use of the pesticide is not likely to result in any significant risk to humans or the environment. In addition to submitting evidence to rebut the risk presumption, commenters may submit evidence as to whether the economic, social, and environmental benefits of the use of the pesticide outweigh the risk of use. Unless all presumptions of risk are rebutted, the Special Review is concluded by issuance of a Notice of Intent to Cancel.

In determining whether the use of a pesticide poses risks which are greater than the benefits, the Agency considers possible changes to the terms and conditions of registration which can reduce risks, and the impacts of such modifications on the benefits of use. If the Agency determines that such changes reduce risks to the level where the benefits outweigh the risks, it may require that such changes be made in the terms and conditions of registration. Alternatively, the Agency may determine that no changes in the terms and conditions of the registration will adequately ensure that use of the pesticide will not pose any unreasonable adverse effects. If the Agency makes such a determination, it may seek cancellation and, if necessary, suspension. In either case, the Agency may issue a Notice of Intent to Cancel the registration. If the Notice requires changes in the terms and conditions of registration, cancellation may be avoided by making the specified corrections set forth in the Notice, if possible. Adversely affected persons may also request a hearing on the cancellation of a specified registration and use, and if they do so in a legally effective manner, that registration and use will be maintained pending a decision at the close of an administrative hearing.

II. Summary of the Agency's Risk Assessment and Response to Comments

In this unit the Agency provides a summary of the oncogenic and kidney hazards associated with the use of cadmium on golf courses and home lawns. This includes information discussed in the PD 2/3, as well as a review and discussion of comments received by the Agency after the Preliminary Determination to Cancel all cadmium registrations was issued.

A. Summary of the Applicator Risk Assessment in the PD 2/3

In the PD 2/3 the Agency evaluated laboratory animal and human epidemiological studies and concluded that cadmium compounds are oncogenic and can cause kidney effects.

Based upon results of the studies in which (1) rats exposed to cadmium chloride aerosol by inhalation developed lung tumors, (2) rats and mice injected with cadmium or cadmium salts developed injection site, testicular and pancreatic islet tumors, and (3) workers exposed to airborne cadmium and cadmium compounds experienced a dose-related increase in lung tumors, the Agency has classified cadmium as a "probable" human carcinogen (Group B1 substance) according to the Agency's Cancer Assessment Guidelines, 51 FR 33992 (September 24, 1986).

The Agency prepared a risk assessment of the oncogenic risks of persons applying cadmium fungicides to golf courses and home lawns based on inhalation exposure studies. Only inhalation exposure (rather than inhalation and dermal exposures) was considered pertinent because the toxicological data base supported the formation of lung tumors following inhalation exposure by laboratory animals and smelter workers. The oncogenic risks (via inhalation) for golf course applicators range from 10^{-4} (applying cadmium to greens and tee areas by hand-held sprayers) to 10^{-6} (applying cadmium to fairways by ground boom sprayers). The oncogenic risks for home lawn applicators is 10^{-3}. Although the oncogenic risks could be reduced by one order of magnitude by the use of half-face respirators, the Agency does not believe this equipment would be rigorously utilized by golf course applicators or home lawn applicators. Hence, a label requirement for respiratory protection is not likely to provide risk reduction in actual practice.

The Agency further concluded that the risk criteria for kidney effects has been met based on results of (1) animal studies which showed that high doses of cadmium resulted in formation of fatty bodies and degeneration of renal tubules, and (2) human studies in which chronic inhalation exposure to cadmium was associated with renal tubular proteinurea (which is symptomatic of increasingly severe irreversible kidney damage). Friberg et al. (1974) estimated that the lowest observed effect level (LOEL) associated with humans is 5 ug/kg/d (Ref. 2). A no observable effect level (NOEL) has not been established.

In order to assess the risks of exposure to pesticidal cadmium on the human kidney, the Agency conducted a quantitative assessment of the ratio of the low effect level (LOEL) derived from the Friberg study to the estimated inhalation and dermal exposures from registered uses. These comparisons are expressed as "Effect Ratios" (ERs). Although the LOEL is a chronic dose, the Agency feels it is appropriate to use this value in its risk assessment because: (1) Cadmium is a cumulative toxicant whose half-life in the body is unusually long (10–30 years in man), (2) excretion via urine and the gastrointestinal tract is extremely low, and (3) its consequent adverse health effects appear to be essentially irreversible. In order to accurately assess risks to workers having intermittant, acute exposure, the Agency used an "annualized" LOEL of 0.18 mg/kg/yr based on the human inhalation data. To estimate inhalation ERs, the annualized LOEL was divided by inhalation exposure estimates for each application scenario. To estimate dermal ERs, the LOEL was multiplied by the ratio of absorption rates for inhalation (40 percent) to dermal (1 percent) exposure and then divided by dermal exposure estimates.

The following table presents dermal and inhalation ERs for golf course (greens and tee areas and fairways) and home lawn applicators. Also included are dermal ERs assuming proper use of protective gloves for golf course applicators. Dermal ERs with protective gloves are not given for home lawn applicators because protective gloves are not considered to be rigorously utilized by this population due to cost and inconvenience.

In calculating the ERs, the Agency made the following assumptions: (1) Cadmium is applied to golf course greens and tee areas by hand-held sprayers, to golf course fairways by ground boom sprayers, and to home lawns by hose-end sprayers, (2) cadmium is applied to golf course turf and home lawns at the rate of 0.2 oz ai/1,000 ft ^{2}, and (3) cadmium is typically applied to golf course turf 8–12 times per year and to home lawns 3 times per year.

CADMIUM EFFECT RATIOS FOR KIDNEY EFFECTS

Applicator and application equipment		ER's	ER's with protective gloves
Golf course:			
Greens and tees—Hand-held spray gun:			
dermal		0.1	3
inhalation		4.3	n/a
Fairways—Ground boom sprayers:			
dermal		45	91

CADMIUM EFFECT RATIOS FOR KIDNEY EFFECTS—Continued

Applicator and application equipment	ER's	ER's with protective gloves
inhalation	418	n/a
Home lawns:		
Hose-end sprayers:		
dermal	81	n/a
inhalation	6668	n/a

B. New Information Concerning Application

Since publication of the PD 2/3, the Agency received information indicating that power spray equipment ("mini-boom" sprayers) are commonly used to apply cadmium to golf course greens and tee areas. During development of the PD 2/3, the Agency assumed that heavy mechanical power spray equipment could not be used on greens and tee areas. Therefore, exposure estimates for greens and tees were based on hand-held spray guns only.

In a telephone conversation with a representative of the Golf Course Superintendents Association of America, the Agency was informed that the majority of golf course applicators use power spray equipment (i.e., "mini-boom") to apply cadmium to greens and tee areas (Ref. 3). Smaller golf courses are still likely to treat greens and tee areas with hand-held sprayers.

Results of a published study submitted to the Agency by a major registrant indicate that dermal exposure to the limbs and torso during mini-boom application is lower than during hand-held spraying (Ref. 4). In the study several fungicides (benomyl, cycloheximide, cadmium succinate, thiophanate-ethyl) and insecticides (carbaryl and trichlorfon) were applied to golf course turf by various application methods: (1) Hand-held spray guns, (2) a boom carried on a small vehicle ("mini-boom"), and (3) a boom sprayer pushed by hand. Cadmium succinate applied without protective clothing by a hand-held sprayer at a rate of 0.5 oz/1000 ft^2 yielded the highest dermal exposures levels recorded of all the other pesticides. Dermal pads placed outside the clothing of applicators applying benomyl by mini-boom sprayers showed levels of residue below detection limits (10 ug/100 cm^2). Similar results were observed with the application of thiophanate-ethyl and trichlorfon (detection limit not given) by hand pushed boom; however, when thiophanate and carbaryl were applied with the same equipment, detectable residues were found. An explanation of these different results was not provided.

The major deficiency in the study was that hand exposure was not measured, which can account for a significant percentage of total dermal exposure. Although the study was found to be inadequate for regulatory purposes, it does provide qualitative data regarding exposure during application by mini-boom spraying.

C. Conclusions Concerning Applicator Risks

Based on the hazard assessment described in the Support Document and on the new information, the Agency concludes that the weight of evidence demonstrates that (1) unreasonable oncogenic and kidney risks are associated with the use of cadmium on golf course greens and tee areas (with hand held sprayers) and, (2) unreasonable kidney risks are associated with use of cadmium on golf course fairways and home lawns. Due to the absence of adequate exposure data, the Agency is currently unable to calculate oncogenic and kidney risks to applicators applying cadmium to greens and tee areas by power spray ("mini-boom") equipment. The use of cadmium on golf course fairways and home lawns may also pose some oncogenic concern. Nevertheless, based on application rates, application pressure levels, and the small acreage of greens and tees, the Agency believes that oncogenic and kidney risks may be lower with mini-boom sprayers than with hand-held sprayers. In order to consider appropriate regulatory action for this application method, the Agency has required applicator exposure data through a section 3(c)(2)(B) Data Call in Notice. Deadline for submission of these data is July, 1988. Once these data are received and reviewed, oncogenic and kidney risks will be reassessed for golf course greens and tee uses.

III. Summary of the Agency's Benefits Analysis and Response to Comments

In this unit the Agency provides a summary of the benefits associated with the use of cadmium on golf courses and home lawns. This includes information discussed in the PD 2/3, as well as a review and discussion of comments received by the Agency after the PD 2/3 proposing to cancel all cadmium registrations was issued.

A. Summary of the Benefits Analysis in the PD 2/3

Cadmium is a low volume pesticide used primarily in the mid-western states of Michigan, Ohio, Indiana, Illinois and Minnesota for control of copper spot, red thread and grey snow mold turf diseases on golf courses and home lawns. The benefits of cadmium were assessed in the PD 2/3 in terms of the economic impact which would result if cadmium were cancelled and users chose to use other registered pesticides as alternatives. Eleven alternatives were evaluated as to their known toxicological risks. The Agency has initiated or completed Special Reviews and/or Registration Standards on a number of the alternatives. Triadimefon is one alternative that has shown no adverse oncogenic, mutagenic or reproductive effects. Although it does show a positive teratogenic effect, the Margins-of-Safety (NOEL/estimated exposures) are larger than 100.

Although several fungicides are available to control the aforementioned turf diseases, only cadmium and triadimefon are registered to control all three diseases. Because triadimefon is the only fungicide which is registered to control each of the turf diseases controlled by cadmium, it was assumed that all golf course acreage historically treated with cadmium would be treated with triadimefon if cadmium were unavailable. Based on this assumption, the economic impact of the cancellation of cadmium fungicides for use on golf courses is estimated to be $240,000 annually. The increased cost of substituting triadimegon would be approximately $500 annually for each of the affected golf courses. Because cadmium fungicides are not sufficiently effective against diseases which are of primary concern to the average homeowner, very little cadmium is used by home lawn applicators. Therefore, practically no economic impact would result from cancellation of cadmium use on home lawns.

B. New Information Concerning the Benefits

In response to the PD 2/3, the Agency received two written comments (as attachments to a comment received from a registrant) regarding the benefits of continuing registrations of cadmium pesticides and one personal communication. The first commenter was a turfgrass pathologist from the University of Rhode Island who commented that although cadmium compounds are no longer widely used, they are of value in disease resistant programs (Attachment A To Ref. 5) The Agency agrees with the commenter that having a variety of available fungicides is significant for turfgrass resistance suppression although it is difficult to measure this impact in economic terms. However, the Agency does not believe that the cancellation of cadmium for the golf course fairway use will create a resistance problem because of the many alternatives available.

The second commenter, a representative of the Golf Course Superintendent's Association of America (GCSAA), reported that in a survey of 300 golf course superintendents cadmium usage on golf course turf was very low. None of the superintendents in the survey reported using the product more than twice a year. Nevertheless, the majority of the superintendents polled stressed the value of having cadmium available to their pest managers to control disease resistant pathogens. GCSAA recommended to the Agency that cadmium be a restricted use chemical and sold as a liquid or dry flowable to decrease applicator exposure (Attachment B. To Ref. 5). The Agency is, in fact, restricting the use of cadmium on golf course greens and tee areas (Unit V.B.), rather than cancelling this use.

The third comment was a personal communication between a representative of the GCSAA and the Agency. In the conversation, the Agency was informed that cadmium is used mostly on golf course greens and tee areas; very little, if any, is used on fairways (Ref. 3). The commenter stated that the greens and tee areas account for approximately 2 acres while fairways account for over 40 acres of the golf course acreage. He further noted that use on greens and tee areas is a high priority activity for golf course superintendents. This information supports the Agency's conclusion that the benefits of use of cadmium on golf course fairways is very low, and that cancellation of this use is not expected to have any significant economic impact.

C. Conclusions Concerning the Benefits

The impact of cancellation estimated in the Support Document did not change as a result of the new information. Based on the new information, the Agency concludes that although the majority of golf course superintendents polled agree that cadmium is a valuable component in turfgrass resistance programs, the use of cadmium may be lower than originally estimated in the PD 2/3. Therefore, the Agency's estimate of the cost impact of cancellation may have been overstated.

IV. Comments of the Scientific Advisory Panel, the Secretary of Agriculture, and the Public

The Agency transmitted the Support Document to the United States Department of Agriculture (USDA) and the Scientific Advisory Panel (SAP) for review and requested comment. The

Agency also submitted additional information (Ref. 6) to the SAP. Unit IV A and B contain the SAP and USDA comments and the Agency's response. The Agency also received public comments in response to the public comment period for the Federal Register Notice. These comments along with the Agency's response are summarized in Unit IV.C.

Copies of all comments, minutes of meetings with and correspondence among various interested parties are contained in a docket maintained for this Special Review, as provided in EPA's Special Review regulations under 40 CFR Part 154, published in the Federal Register of November 27, 1985 (50 FR 49003).

The docket is available for public inspection from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays in: Rm. 236, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

A. Comments of the Scientific Advisory Panel

EPA presented its proposed decision to the SAP in a public meeting held on November 19, 1986. On November 25, 1986 the Panel responded to EPA. The Panel's comments are reproduced in their entirety.

Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) Scientific Advisory Panel—A Set of Scientific Issues Being Considered by the Agency in Connection With the Special Review of Cadmium Fungicides

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) has completed review of the data base supporting the Environmental Protection Agency's (EPA) decision to cancel registrations and to deny applications for pesticide products containing cadmium compounds for use on turf. The review was conducted in an open meeting held in Arlington, Virginia, on November 18, 1986. All panel members, except Dr. Harold L. Bergman, Dr. John J. Lech and Dr. Thomas W. Clarkson, were presented for the review.

Although Dr. Clarkson was not present at the Panel meeting on November 19, 1986, he was present at the meeting on November 20, 1986. Dr. Clarkson provided his comments to the Panel on November 20, 1986, and agreed with the Panel's recommendations.

Public notice of the meeting was published in the Federal Register on Friday, October 24, 1986.

Oral statements were received from staff of the Environmental Protection Agency and from Mr. Martin W. McGinn and Dr. Paul Sartoretto of W.A. Cleary Chemical Corporation.

In consideration of all matters brough out during the meeting and careful review of all documents presented by the Agency, the Panel unanimously submits the following report.

Report of Panel Recommendations: Cadmium

The Agency requested the Panel to focus its attention upon a set of scientific issues relating to the Special Review of Cadmium Fungicides. There follows a list of the issues and the Panel's response to each issue:

Issue: Friberg, et. al., (1974), concluded that the critical concentration of cadmium in the renal cortex of humans, associated with renal dysfunction, is 200 ug/g. Since cadmium is a cumulative poison (acute exposure will add to the body burden) and the half-life for elimination of cadmium is very long, the Agency requests any comments that the Panel may wish to make regarding the use of the Friberg data to assess the risks to workers having intermittant, acute exposure to cadmium fungicides.

Panel Response: The Panel believes that the Friberg, et. al., (1974) report contains reliable and dependable scientific data that can be used to assess the risks to workers having intermittant, acute exposure to cadmium fungicides. The Panel further believes that the small quantity of cadmium that is used as a fungicide would not constitute a threat to man or the environment. Thus, the restricted use of cadmium that was suggested to the Panel becomes a risk-benefit decision outside the purview of this committee.

For the Chairman.

Certified as an accurate report of the Findings:

Stephen L. Johnson,

Executive Secretary, FIFRA Scientific Advisory Panel.

Date: November 25, 1986.

The SAP's comments support the scientific basis for the Agency's conclusions concerning kidney effects from cadmium application to golf courses and home lawns. The SAP commented that the small amount of pesticidal cadmium would not constitute a threat to man or the environment. The Agency agrees that compared to occupational exposure (approximately 1.5 million workers), pesticidal exposure to cadmium is minimal. Nevertheless, the oncogenic and kidney risks to applicators applying cadmium pesticides to golf course turf and the kidney risks to home lawns applicators are unacceptable in light of the low benefits and inadequacy of reasonable protective measures for the use pattern of this pesticide.

B. USDA's Comments

The USDA's comments on the Special Review and the proposed cancellation are printed in full below:

Mr. Douglas D. Campt,

Director, Office of Pesticide Programs, U.S. Environmental Protection Agency, Washington, DC 20460.

Dear Mr. Campt: This is the Department of Agriculture's response to EPA's preliminary decision to cancel the registrations and deny applications for all products containing cadmium registered for use on turf.

We do not have any objection to your proceeding with your proposal as indicated.

Sincerely,

Charles L. Smith,

Coordinator, Pesticides and Pesticide Assessment.

C. Public Comments Received in Response to the Special Review

The Agency received 3 comments relating to the preliminary determination to cancel all registrations of cadmium for use on golf courses and home lawns. Two comments received were from registrants and one was from Public Citizen Health Research Group.

One registrant proposed the following label changes which it claimed would reduce pesticidal exposure to applicators: (1) Restricted Use Pesticide for use only by Certified Golf Course Superintendents, (2) use on golf course greens, tees and aprons only, (3) application by power spraying equipment only, and (4) requirement for the use of protective clothing (rubber gloves, long sleeve shirts, pants, apron, and bodycovering clothing) (Ref. 5). Along with these proposed changes, the registrant included letters from a turfgrass pathologist from the University of Rhode Island and the Golf Course Superintendents Association of America. These comments are discussed in Unit III.B. The same registrant later submitted a formal written request to the Agency for the aforementioned label changed (ref. 7). These proposed changed are in fact included in this Notice.

Another registrant stated that cadmium products are applied at a lower application rate per year (2.56 lb/A/yr) than the estimate which was stated in the Draft Notice of Intent to Cancel and therefore yield lower risks to applicators (Ref. 8). Contrary to the contention of this commenter, the estimate of 30 lb/A/yr stated in Unit IV of the Draft Notice of Intent to Cancel was based on the maximum allowable label rate. This estimate was not used for the Agency's risk assessment purposes. Oncogenic and kidney risk estimates were based on annual application rates of 2.4 to 4.8 oz ai/1000ft^2 (golf course greens and tees), 0.9 oz ai/1000ft^2 (golf course fairways) and 0.6 oz ai/1000ft^2 (home lawns).

Public Citizen supported the Agency's proposal to cancel all cadmium registrations based on oncogenic and kidney risks to applicators. They also contended that the Agency's risk assessments are likely to understate the risks for cancer and kidney damage

since they fail to take into account additional exposure from skin absorption and ingestion (Ref. 9). The Agency believes that the regulatory measures set forth in this Notice will provide adequate protection to applicators. The Agency's risk assessments for oncogenicity and kidney effects were based on applicator inhalation and dermal exposure to pesticidal cadmium. However, the Agency also considered additional potential exposures from ambient sources (including food and water) and concluded that for certain sensitive individuals any additional cadmium accumulation over a long period of time may be sufficient to cause adverse health effects. As noted above, even without these additional factors, the risks calculated for oncogenicity and kidney damage were unreasonable in light of the low benefits of use for golf course fairways and home lawn uses, and for the golf course greens and tee area uses without the protective measures required by this Notice.

V. Initiation of Regulatory Action

This unit has several sections. The first section summarizes EPA's reasons for concluding that products containing the active ingredient cadmium be cancelled for all registered uses on golf course fairways and home lawns. The second section describes the Agency's final determination and the regulatory actions required by this Notice. The third section establishes provisions concerning the sale, distribution, and use of existing stocks of cancelled products. The last section outlines procedures which will be followed in implementing the regulatory actions set forth in this Notice.

A. Agency's Conclusions

Based on the Agency's analysis in the Support Document and the information reviewed after the Notice of Special Review was issued, the Agency has concluded that the risk of oncogenic and kidney effects to applicators outweighs the benefits of use of cadmium on golf course greens and tee areas (with hand-held sprayers), and that the risk of kidney effects outweighs the benefits of use for fairways and home lawns. The use of cadmium on golf course fairways and home lawns may also pose some oncogenic concern. Oncogenic and kidney effects associated with applying cadmium to golf course greens and tee areas (with mini-boom sprayers) cannot be assessed due to the lack of adequate exposure data. Nevertheless, as discussed in Unit II.C., the Agency believes that oncogenic and kidney risks on greens and tee areas may be lower with mini-boom sprayers than with hand-held sprayers.

In evaluating the hazards, the Agency considered cadmium's chronic toxicity, estimated exposures to applicators, and application practices. In evaluating the benefits, the Agency considered the user cost impact of cancellation and the efficacy of cadmium and its major alternatives.

The Agency also considered requiring protective clothing (i.e., elbow length gloves and half-face respirators) and prohibiting use of hand-held sprayers as alternatives to cancellation and concluded the following:

1. For golf course greens and tee areas (hand-held sprayers), protective clothing (i.e., elbow length gloves) would not sufficiently reduce the risks of kidney effects. Dermal ERs would increase from 0.1 to 3. Requiring half-face respirators could reduce oncogenic risks from 10^{-4} to 10^{-5} but the Agency believes that this equipment would not be rigorously utilized for the golf course use. Prohibiting the use of hand-held spray equipment is expected to reduce both oncogenic and kidney effects to reasonable levels, based on currently available data.

2. For golf course fairways, elbow length gloves would not sufficiently reduce kidney risks. Dermal ERs would increase from 45 to 91.

3. For home lawns, kidney risks would not be sufficiently reduced by requiring protective gloves, as the Agency believes this equipment would not be rigorously utilized for the home lawn use pattern. Prohibiting the use of hand-held sprayers on home lawns would be tantamount to cancellation due to a lack of suitable alternative application equipment.

The weight of evidence leads the Agency to conclude that the risks associated with application of cadmium to home lawns, golf course greens and tee areas (by hand-held sprayers) and golf course fairways, outweigh the minor benefits and that cancellation of these uses is the only appropriate action. The Agency intends to cancel all current uses of cadmium on home lawns and golf course fairways. The risks associated with application of cadmium to golf course greens and tee areas (by mini-boom sprayers) cannot be quantitatively assessed due to the lack of adequate exposure data. Therefore, the Agency is requiring applicator exposure data on this application method. The Agency intends to continue registrations of cadmium on golf course greens and tee areas with label modifications as outlined in Unit V.C. of this document.

B. Final Determination and Requirements for Complying With This Notice

1. The Agency has determined to cancel the registrations and deny applications for registration for all products containing cadmium compounds (salts of chloride, sebacate, succinate, carbonate, and anilino cadmium dilactate) and rgistered for use on golf course fairways.

2. The Agency has determined to cancel the registrations containing cadmium compounds (salts of chloride, sebacate, succinate, carbonate, and anilino cadmium dilactate) and registered for use on home lawns.

3. The Agency has determined that modifications to the terms and conditions of registration are necessary for all products containing cadmium compounds (salts of chloride, sebacate, succinate, carbonate, and anilino cadmium dilactate) and registered for use on golf course greens and tees. In order to avoid cancellation, registrants of cadmium products labeled for use on golf course greens and tees must make the modifications specified below to the labeling of their products within 30 days of publication of this Notice in the **Federal Register** or within 30 days of receipt of this Notice, whichever is later, as set forth in Unit V.D. of this Notice:

a. RESTRICTED USE pesticide for retail sale to and use only by certified applicators or persons under the direct supervision of a certified applicator and only for those uses covered by the Certified Applicator's certification.

b. Cadmium has been shown to produce kidney toxicity in humans and tumors in laboratory animals.

c. This product is only to be applied by power boom spraying equipment to golf course greens and tee areas only. Do not apply through portable, manned or hand-held pump sprayers.

d. Wear chemical resistant gloves, long sleeve shirts, and long legged pants. In addition, wear a chemical resistant apron during mixing and loading.

e. Wash gloves with soap and water before removing. Launder all clothing worn during use before reusing and launder separately from household articles.

For a cadmium product which is currently labeled for multiple uses subject to this Notice, the registrant must amend the label, within the time specified by Unit V.D. of this Notice, to delete the cancelled uses and modify the other uses in accordance with the requirements of this Notice in order to avoid cancellation of the product.

C. Existing Stocks

The following paragraphs describe the conditions under which registrants and others may sell and distribute existing stocks of cancelled cadmium products. Existing stocks may not be sold and distributed except as provided below:

1. No manufacturer may release for shipment after January 31, 1988, any cadmium product subject to this Notice unless the product bears an amended label or has supplemental labeling affixed which complies with Unit V.B.

2. No cadmium product subject to this Notice may be distributed or sold by a retailer or other person after April 30, 1988, unless the product bears an amended label or has supplemental labeling affixed which complies with Unit V.B.

D. Procedural Matters

This Notice announces EPA's determination to cancel the registrations of products that contain cadmium and that are used on golf course fairways and home lawns. This Unit also explains how registrants may apply to amend their registrations for cadmium products registered for use on golf course greens and tee areas to comply with the terms and conditions discussed in Units V.B. and C. above.

Under sections 6(b) and 3(c)(6) of FIFRA, applicants, registrants, and certain other adversely affected persons are also entitled to respond to this Notice by requesting a hearing on the actions that EPA is initiating. Unless a hearing is properly requested with regard to a particular registration or application, this action will become final by operation of law.

This section of the Notice explains how such persons may request a hearing on EPA's final cancellation and denial Notice (and the consequences of requesting a hearing and failing to request a hearing in accordance with those procedures).

1. Procedure for Amending the Terms and Conditions of Registration to Avoid Cancellation or Denial of Application

Registrants affected by the cancellation actions set forth in this Notice may avoid cancellation by filing for an application for an amended registration which contains the label modifications detailed in Unit V.B. of this Notice. This application must be filed within 30 days of receipt of this Notice or within 30 days from the publication of this Notice, whichever occurs later. Applicants for a registration subject to this Notice must file an amended application registration within the applicable 30-day period to avoid denial of their pending application.

Applications must be submitted to: Lois Rossi, Product Manager 21, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 Main St., SW., Washington, DC 20460, (703–557–1900).

2. Procedures for Requesting a Hearing

To contest the cancellation action set forth in this Notice, Federal registrants or applicants may request a hearing within 30 days of receipt of this Notice, or within 30 days from publication of this Notice, whichever occurs later. Any person adversely affected by the action described in this Notice may request a hearing within 30 days of publication of this Notice in the **Federal Register**.

A registrant or other adversely affected party who requests a hearing must file the request in accordance with the procedures established by FIFRA and EPA's Rules of Practice Governing Hearings under 40 CFR Part 164. These procedures require, among other things, that all requests must identify the specific pesticide product(s) for which a hearing is requested, and that all requests must be received by the Hearing Clerk within the applicable 30-day period. Failure to comply with these requirements will result in a denial of the request for a hearing. Requests for a hearing should also be accompanied by objections that are specific for each use of each pesticide product(s) for which a hearing is requested.

Requests for a hearing must be submitted to: Hearing Clerk (A–101), Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

a. *Consequences of filing a timely and effective hearing request.* If a hearing on the action initiated by this Notice is requested in a timely and effective manner, the hearing will be governed by EPA's Rules of Practice for hearings under FIFRA section 6 (40 CFR Part 164), as modified below. The hearing will be limited to the specific uses and specific product registrations for which the hearing is requested.

In the event of a hearing, the specific use or uses of the specific registered product which is the subject of the hearing will not be cancelled except pursuant to an order of the Administrator at the conclusion of the hearing.

b. *Consequences of failure to file in a timely and effective manner.* If a hearing concerning the registration of a specific pesticide product subject to this Notice is not requested by the end of the applicable 30-day period, registration of that product will be cancelled, unless the registrant files a request for an amended registration within the statutory period provided herein (See Unit V.D.1).

If the registration of a product covered by this Notice is cancelled by operation of law, the sale and distribution of existing stocks is governed by the provisions of Unit V.C. of this Notice.

3. *Separation of Functions.*

EPA's Rules of Practice forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives (40 CFR 164.7).

Accordingly, the following EPA offices, and the staffs thereof, are designated as the judicial staff to perform the judicial function of EPA in any administrative hearing on this Notice of Intent to Cancel: the Office of the Administrative Law Judge, the Office of the Judicial Officer, the Administrator, the Deputy Administrator, and the members of the staff in the immediate office of the Administrator and Deputy Administrator. None of the persons designated as the judicial staff may have any *ex parte* communication with the trial staff or any other interested person not employed by EPA on the merits of any of the issues involved in this proceeding, without fully complying with the applicable regulations.

VII. References

The references in this **Federal Register** Notice are as follows:

(1) U. S. Environmental Protection Agency. "Cadmium Technical Support Documents," U.S. Environmental Protection Agency, 1988, Public Docket No. D–5838A.

(2) Friberg, L., Piscator, M., Nordberg, G.F., Kjellstrom, T. "Cadmium In The Environment," 2nd. ed., CRC Press, Inc., Boca Raton, Florida, 1974, Public Docket No. D–05783, Att. 23.

(3) Golf Course Superintendents Association of America. Personal communication (telephone) between Jerry Faubel, Golf Course Superintendents Association of America and Valerie Bael, EPA, January 30, 1987, Public Docket No. D–7644.

(4) Daniel, W.H., Freeborg, R.P., and Knopinski, V.J. "An On-Course Look At Pesticide Exposure," *Golf Course Management*, March, 1984, pp. 71–85, Public Docket No. D–7645.

(5) W. A. Cleary Chemical Corporation. Response of W. A. Cleary Chemical Corporation to the Special Review and Proposed Cancellation of cadmium, W.A.

Cleary Chemical Corporation, November 24, 1986, Public Docket No. D–6607, submitted to USEPA December 2, 1986, with attachments:

A. University of Rhode Island. Response to the Special Review and Proposed Cancellation of Cadmium. A letter to Mr. Martin McGinn of the W.A. Cleary Chemical Corporation, University of Rhode Island, Kingston, RI.

B. Golf Course Superintendents Association of America. Response to the Special Review and Proposed Cancellation of Cadmium. A letter to Mr. Martin McGinn of the W. A. Cleary Chemical Corporation.

(6) U.S. Environmental Protection Agency. Materials submitted to the Scientific Advisory Panel in consideration of the Special Review of Cadmium, USEPA, November 7, 1986, Public Docket No. D–7754.

(7) W.A. Cleary Chemical Corporation. Proposed label change, W.A. Cleary Chemical Corporation, January 12, 1987, Public Docket No. D–7753, submitted to USEPA January 16, 1987.

(8) Seacoast Laboratories. Response of Seacoast Laboratories to the Special Review and Proposed Cancellation of Cadmium, Seacoast Laboratories, November 3, 1986, Public Docket No. D–6034, submitted to USEPA November 14, 1986.

(9) Public Citizen. Response of Public Citizen to the Special Review and Proposed Cancellation of Cadmium, Public Docket No. D–6115A, submitted to USEPA November 21, 1986.

All references with Public Docket numbers are available for inspection in Rm. 236, Crystal Mall Building #2, 1921 Jefferson Davis Highway, Arlington, VA., from 9 a.m. to 4 p.m., Monday through Friday excluding legal holidays.

Dated: August 4, 1987.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 87–18488 Filed 8–18–87; 8:45 am]

BILLING CODE 6560–50–M

[PP 6G3341/T548; FRL–3247–2]

Carboethoxy; Establishment of Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established a temporary tolerance for residues of the herbicide 1-(carboethoxy) ethyl 5-[2-chloro-4-(trifluoromethyl) phenoxy]-2-nitrobenzoate in or on the raw agricultural commodity cottonseed at 0.01 part per million (ppm) when applied post-directed. Use is limited to one post-directed application at a rate not to exceed 0.2 pound per acre applied after the cotton is at least 8 inches high, but not less than 90 days before harvest. Treated plants are not to be used for feed or forage.

DATE: This temporary tolerance expires June 3, 1989.

FOR FURTHER INFORMATION CONTACT: By mail:

Richard Mountfort, Porduct Manager (PM) 23, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557–1830).

SUPPLEMENTARY INFORMATION: PPG Industries, Inc., One PPG Place, Pittsburgh, PA 15272, has requested in pesticide petition PP 6G3341 the establishment of a temporary tolerance for residues of the herbicide 1-(carboethoxy) ethyl 5-[2-chloro-4-(trifluoromethyl) phenoxy]-2-nitrobenzoate in or on cottonseed at 0.01 part per million when applied post-directed. Use is limited to one post-directed application at a rate not to exceed 0.2 pound per acre applied after the cotton is at least 8 inches high, but not less than 90 days before harvest. Treated plants are not to be used for feed or forage.

This temporary tolerance will permit the marketing of the above raw agricultural commodity when treated in accordance with the provisions of experimental use permit 748–EUP–21, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerance will protect the public health. Therefore, the temporary tolerance has been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental used permit.

2. PPG Industries, Inc., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires June 3, 1989. Residues not in excess of this amount remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 610–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

Dated: August 3, 1987.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 87–18489 Filed 8–18–87; 8:45 am]

BILLING CODE 6560–50–M

[OPP–100046; FRL–3247–7]

Transfer of Data; American Scientific International, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). American Scientific International Inc. (ASI) has been awarded a contract to perform work for the EPA Environmental Research Laboratory-Deluth, and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. Contractor access to FIFRA and FFDCA CBI is authorized by 40 CFR 2.307(h) and 40 CFR 2.308(h)(2), respectively. This action will enable ASI to fulfill the obligations of the contract and serves to notify affected persons.

DATE: ASI will be given access to this information no sooner than August 24, 1987.

FOR FURTHER INFORMATION CONTACT:
By mail:
William C. Grosse, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.
Office location and telephone number: Room 222, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–2613).

SUPPLEMENTARY INFORMATION: Under Contract No. 68–03–3373, ASI will provide technical support to EPA's Environmental Research Laboratory-Duluth, which will review scientific literature and compile information useful to the laboratory data-base development in support of deriving numerical national water quality criteria and advisories. This contract involves no subcontractors.

The Environmental Research Laboratory-Duluth and the Office of Pesticide Programs have jointly determined that the contract herein described involves work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 6, and 7 of FIFRA and obtained under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.301(h)(2), the contract with ASI prohibits use of the information for any purpose other than purpose(s) specified in the contract; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency or affected business; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release. In addition, ASI is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Project Officer for this contract in the EPA Environmental Research Laboratory-Duluth. All information supplied to ASI by EPA for use in connection with this contract will be returned to EPA when ASI has completed its work.

Dated: July 31, 1987.

Douglas D. Campt,
Director, Office of Pesticide Programs.

[FR Doc. 87–18601 Filed 8–18–87; 8:45 am]
BILLING CODE 6560-50-M

[OPP–30220C/392268; FRL–2349–7]

Approval of Pesticide Product Registrations; Ciba-Geigy Corp.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications submitted by Ciba-Geigy Corp., to register the pesticide products Triumph Technical and Triumph 4E Insecticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT:
By mail: William Miller, Product Manager (PM) 13, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.
Office location and telephone number: Rm. 211, TS–767C, Environmental Protection Agency, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703–557–2600).

SUPPLEMENTARY INFORMATION: EPA issued notices, published in the Federal Register of July 30, 1982 (47 FR 32601), and on April 13, 1983 (48 FR 15949), which announced that Ciba-Geigy Corp., PO Box 18300, Greensboro, NC 27419 had submitted applications to register the pesticide products CGA–12223 Technical Insecticide (100–AGL), and CGA–12223 4E Insectivide (100-AUG), containing the active ingredient isaxophos *o*-[5-chloro-1-[methylethyl]-1*H*1,2,4,-triazol-3-y1) *o,o*-diethyl phosphorothioate at 93.0 percent and 46.8 percent respectively, an ingredient not included in any previously registered products.

The applications were approved on June 25, 1987 as Triumph Technical (EPA Reg. No. 100–630), and Triumph 4E Insecticide (EPA Reg. No. 100–643). The technical product if for formulation into end-use insecticide products intended for domestic outdoor use on lawns, and the 4E product is for use on lawns.

The Agency has considered all required data on the risks associated with the proposed use of isaxophos and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of isazophos of when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects on the environment.

More detailed information on this registration is contained in a Chemical Fact Sheet on isazophos.

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from Registration Division (TS–767C), Environmental Protection Agency, Registration Support and Emergency Response Branch, 401 M St., SW., Washington, DC 20460.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 236, CM#2, Arlington, VA 22202 (703–557–3262). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 401 M St., SW., Washington, DC. 20460.

Such requests should: (1) Identify the product's name and registation numbers and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

Dated: August 11, 1987.

Douglas D. Campt,
Director, Office of Pesticide Programs.

[FR Doc. 87–18946 Filed 8–18–87; 8:45 am]
BILLING CODE 6560-50-M

[PP 3G2932/T548; FRL–3249–6]

Renewal of Temporary Tolerances; Sandoz Crop Protection Corp.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has renewed temporary tolerances for residues of the insecticide (alpha *RS,2R*-fluvalinate [(*RS*)-alpha-cyano-3-phenoxy-benzyl-(*R*)-2-[2-chloro-4-(trifluoromethyl)-aniliono]-3-methyl-butanoate] in or on certain raw agricultural commodities.

DATE: These temporary tolerances expire July 1, 1988.

FOR FURTHER INFORMATION CONTACT:
By mail:
Arturo Castillo, Product Manager (PM) 17, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW, Washington, DC 20460.
Office location and telephone number: Rm. 207, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-2690).

SUPPLEMENTARY INFORMATION: EPA issued a notice, which was published in the **Federal Register** of November 7, 1984 (49 FR 44551), stating that temporary tolerances had been established for residues of the insecticide alpha *RS,2R*-fluvalinate [(*RS*)-alpha-cyano-3-phenoxybutanoate] in or on the raw agricultural commodities applies at 2.0 parts per million (ppm); and meat, fat, and meat byproducts of cattle, horses, goats, and sheep at 0.01 ppm; and milk at 0.01 ppm. These tolerances were renewed in response to pesticide petition PP 3G2932, submitted by Sandoz Crop Protection Corp., Corporate Headquarters, 341 East Ohio St., Chicago, IL 60611.

The company has requested a 1-year renewal of the temproary tolerance to permit the continued marketing of the above raw agricultural commodities when treated in accordance with the provisions of experimental use permit 20954-EUP-28, which is being renewed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that a renewal of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been renewed on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Sandoz Crop Protection Corp. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance, and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire July 1, 1988. Residues not in excess of this amount remaining in or on the above raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).
Dated: August 5, 1987.

Edwin F. Tinsworth,
Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 87-18947 Filed 8-18-87; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

August 11, 1987.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3507.

Copies of these submissions may be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, NW., Suite 140, Washington, DC 20037, or telephone (202) 857-3815. Persons wishing to comment on an information collection should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, telephone (202) 395-4814. Copies of these comments should also be sent to the Commission. For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632-7513.

OMB No.: 3060-0128
Title: Application for Private Land Mobile and General Mobile Radio Services
Form No.: FCC 574
Action: Revision (Includes data previously on FCC 574-A)
Respondents: Applicants requesting initial authorization or modification of an existing one
Frequency of Response: On occasion
Estimated Annual Burden: 168,231 Responses; 740,216 Hours

Needs and Uses: Filing is required to request authorization or modification of a Private Land Mobile or General Mobile Radio Service. The data is used to determine eligibility for rulemaking proceedings, enforcement purposes, and for use in resolution of treaty obligations. It is vital to the maintenance of an accurate data base and for issuing authorizations.

OMB No.: 3060-0130
Title: Private Fixed, Mobile, and Radiolocation Services Supplementary Information to FCC Form 574
Form No.: FCC 574-B
Action: Extension (Renewal)
Respondents: Applicants for operation on frequencies below 27.5 MHz
Frequency of Response: On occasion
Estimated Annual Burden: 640 Responses; 1,920 Hours

Needs and Uses: Filing is required in conjunction with the FCC 574 to provide additional HF applicant data enabling the FCC to comply with treaty agreements and report data to the International Telecommunications Union to aid in resolution of disputes between member nations.

Federal Communications Commission.
William J. Tricarico,
Secretary.

[FR Doc. 87-18969 Filed 8-18-87; 8:45 am]
BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Orlando FM Group Limited Partnership et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/State	File No	MM docket No
A. Orlando FM Group Limited Partnership	Orlando, Florida	BPH-860407MO	87-305
B. B. F. J. Timm	Orlando, Florida	BPH-860502MC	
C. Franklin D. Graham	Orlando, Florida	BPH-860505MJ	
D. PN Radio Company, A Partnership	Orlando, Florida	BPH-860505ML	
E. Barber/Gardner, A Limited Partnership	Orlando, Florida	BPH-860506MI	
F. Sergio Lezcano	Orlando, Florida	BPH-860506MK	
G. Radio Orlando, Ltd	Orlando, Florida	BPH-860506ML	
H. George M. Arroyo & Esperanza T. Arroyo d/b/a Florida Broadcasters, A Partnership	Orlando, Florida	BPH-860506MM	
I. 98.9, Ltd.	Orlando, Florida	BPH-860506MO	
J. HIS Communications, Ltd	Orlando, Florida	BPH-860507MK	
K. Innovative Broadcasting, Inc	Orlando, Florida	BPH-860507MU	
L. J & M Communications, Ltd	Orlando, Florida	BPH-860507MV	
M. Orlando Broadcast Group, A Partnership	Orlando, Florida	BPH-860507MW	
N. O. F. Limited Partnership	Orlando, Florida	BPH-860507MX	
O. Pruitt and Owen, A Partnership	Orlando, Florida	BPH-860507MY	
P. Nicolas Garza	Orlando, Florida	BPH-860507MZ	
Q. Sun Broadcasting Limited Partnership	Orlando, Florida	BPH-860507NA	
R. Oscar Juarez & Assoc., Ltd.	Orlando, Florida	BPH-860507NB	
S. Roberta Roe Johnson d/b/a Kosmo Broadcasting Company	Orlando, Florida	BPH-860507NC	
T. Charisma Radio Partners	Orlando, Florida	BPH-860507ND	
U. Bristol Communications, Ltd	Orlando, Florida	BPH-860507NE	
V. Orlando Media, Ltd	Orlando, Florida	BPH-860507NF	
W. Orlando Broadcasting Foundation, A Partnership	Orlando, Florida	BPH-860507NG	
X. A BCD Broadcasting Co	Orlando, Florida	BPH-860507NH	
Y. Reddick Communications, Inc	Orlando, Florida	BPH-860507NI	
Z. Benjamin Macwan	Orlando, Florida	BPH-860507NJ	
AA. Rebecca Radio of Orlando, A Partnership	Orlando, Florida	BPH-860507NL	
BB. Orlando Skywave, Inc	Orlando, Florida	BPH-860507NM	
CC. Sandra Harper Weiss, Benjamin McKenzie, Linda Atchley, Romelle Atchley, A General Partnership	Orlando, Florida	BPH-860507NO	
DD. WNKI, Inc	Orlando, Florida	BPH-860507NP	
EE. James Lynn Gardner	Orlando, Florida	BPH-860507NQ	
FF. Orlando Vision Broadcasting, A Limited Partnership	Orlando, Florida	BPH-860507NR	
GG. Urban Broadcasting Corporation	Orlando, Florida	BPH-860507NS	
HH. Hispanic Radio of Orlando, Inc	Orlando, Florida	BPH-860507NT	
II. Claire Tow	Orlando, Florida	BPH-860507NU	
JJ. Ms. Judith Fernandez Watson	Orlando, Florida	BPH-860507NV	
KK. American Radio Broadcasting Network, Inc	Orlando, Florida	BPH-860507NW	
LL. Better News, Inc	Orlando, Florida	BPH-860507NX	
MM. Kenneth E. Harris	Orlando, Florida	BPH-860507NY	
NN. BMS Communications of Orlando, A Partnership	Orlando, Florida	BPH-860507NZ	
OO. FM Orlando Limited Partnership	Orlando, Florida	BPH-860507OA	
PP. Orlando Broadcasters, Inc	Orlando, Florida	BPH-860507OC	
QQ. Pereira Communications, Inc	Orlando, Florida	BPH-860507OD	
RR. Jerome Morgan d/b/a Morgan Media, Ltd	Orlando, Florida	BPH-860507OW	
SS. Stunner Broadcasting, Inc	Orlando, Florida	BPH-860508MJ (dismissed)	
TT. Cathy R. Washington	Orlando, Florida	BPH-860508ND (dismissed)	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's names, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. City Coverage—ALL
2. Character—X
3. Character—LL
4. Main Studio—G, PP
5. Air Hazard—A, E, J, K, N, Q, S, U, W, X, Y, BB, CC, DD, FF, GG, HH, II, JJ, KK, MM, NN, PP
6. Comparative—ALL
7. Ultimate—ALL

3. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87–18894 Filed 8–18–87; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

[No. 87–877]

Application for Unlisted Trading Privileges and Opportunity for Hearing; Midwest Stock Exchange

Date: August 13, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: On July 30, 1987 the Midwest Stock Exchange filed, pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, an application ("Application") with the Federal Home Loan Bank Board ("Board") for unlisted trading privileges in the following securities.

Northeast Savings F.A.
Hartford Connecticut (FHLBB No. 3231)
Common Stock, $.01 Par Value

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Comments: Any interested person may inspect the Application at the Board, and, within 15 days of publication of this notice in the Federal Register, submit to the Corporate and Securities Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, written data, views and arguments bearing upon whether the extensions of unlisted trading privileges pursuant to the Application are consistent with the maintenance of fair

and orderly markets and the protection of investors. Following this opportunity for hearing, the Board will approve the Application after the date mentioned above if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to the Application are consistent with the maintenance of fair and orderly markets and the protection of investors.

FOR FURTHER INFORMATION CONTACT: John P. Harootunian, Assistant General Counsel for Securities Policy, Corporate and Securities Division, Office of General Counsel, at (202) 377-6415 or at the above address.

By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 87-18984 Filed 8-18-87; 8:45 am]
BILLING CODE 6720-01-M

[No. AC-649]

Approval of Conversion Application; Anchor Savings and Loan Association, Somers Point, NJ

Date: August 14, 1987.

Notice is hereby given that on August 13, 1987, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Anchor Savings and Loan Association, Somers Point, New Jersey for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552 and at the Office of the Supervisory Agent at the Federal Home Loan Bank of New York, One World Trade Center, Floor 103, New York, New York 10048.

By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 87-18985 Filed 8-18-87; 8:45 am]
BILLING CODE 6720-01-M

[No. AC-648]

Approval of Conversion Application; Security Federal Savings Bank of South Carolina, Aiken, SC

Dated: August 14, 1987.

Notice is hereby given that on August 13, 1987, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Security Federal Savings Bank of South Carolina, Aiken, South Carolina for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, and at the Ofice of the Supervisory Agent at the Federal Home Loan Bank of Atlanta, 1475 Peachtree Street, NE., Atlanta, Georgia 30309.

By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 87-18986 Filed 8-18-87; 8:45 am]
BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

[DOCKET NO. 87-17]

Atlantic & Gulf Stevedores of Alabama and Alabama Insurance Guaranty Association v. the Alabama State Docks Department and Aetna Casualty & Surety Co.; Filing of Complaint and Assignment

Notice is given that a complaint filed by the Atlantic & Gulf Stevedores of Alabama and Alabama Insurance Guaranty Association ("Complainants") against The Alabama State Docks Department and Aetna Casualty and Surety Company ("Respondents") was served August 13, 1987. Complainants allege that Respondents have violated section 17 of the Shipping Act, 1916, 46 U.S.C. app. section 816, and section 10(b)(12) and 10(d)(1) of the Shipping Act of 1984, 46 U.S.C. app. sections 1709(b)(12) and (d)(1), through the application of tariff provisions which are unreasonable and unjust in connection with the receiving, handling, storing, and delivering of property.

This proceeding has been assigned to Administrative Law Judge Norman D. Kline ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by August 15, 1988, and the final decision of the Commission shall be issued by December 15, 1988.

Joseph C. Polking,
Secretary.
[FR Doc. 87-18851 Filed 8-18-87; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Formations of; Acquisitions by; and Mergers of Bank Holding Companies; MASSBANK Corp. et al.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 11, 1987.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *MASSBANK Corp.*, Reading, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of MASSBANK for Savings, Reading, Massachusetts, which engages in Massachusetts Savings Bank Life Insurance activities.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *South Branch Valley Bancorp, Inc.* Moorefield, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of South

Branch Valley National Bank of Moorefield, Moorefield, West Virginia.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *SouthTrust Corporation,* Birmingham, Alabama; to merge with Bank of Florida Corporation, St. Petersburg, Florida, and thereby indirectly acquire Bank of Florida, formerly Bank of Florida in St. Petersburg, St. Petersburg, Florida.

D. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Winchester Bancorporation, Inc.,* Winchester, Indiana; to acquire 51 percent of the voting shares of The Saratoga State Bank, Saratoga, Indiana, and Greensfork Township State Bank, Spartanburg, Indiana.

Board of Governors of the Federal Reserve System, August 13, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-18885 Filed 8-18-87; 8:45 am]

BILLING CODE 6210-01-M

Applications To Engage de Novo in Permissible Nonbanking Activities; USBANCORP, Inc., et al.

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 11, 1987.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *USBANCORP, Inc.,* Johnstown, Pennsylvania; to engage *de novo* through its subsidiary, United Bancorp Life Insurance Company, Phoenix, Arizona, in acting as reinsurer of credit life, accident and health insurance in connection with extensions of credit made by the Applicant's subsidiary banks pursuant to § 225.25(b)(8) of the Board's Regulation Y. These activities will be conducted in Southwestern Pennsylvania.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Business Bancorp,* San Jose, California; to engage *de novo* in data processing services pursuant to § 225.25(b)(7) of the Board's Regulation Y. These activities will be conducted in the State of California.

Board of Governors of the Federal Reserve System, August 13, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-18886 Filed 8-18-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Smokeless Tobacco Products; Delegation of Authority

By the authority vested in me as Secretary, I hereby delegate to the Assistant Secretary for Health, with authority to redelegate, the authorities under sections 2, 4, and 8(a) of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (Pub. L. 99-252), as amended hereafter. This delegation excludes the authority to promulgate regulations and to submit reports to the Congress. This delegation is effective immediately.

Date: August 10, 1987.

Otis R. Bowen,

Secretary.

[FR Doc. 87-18979 Filed 8-18-87; 8:45 am]

BILLING CODE 4160-18-M

Alcohol, Drug Abuse, and Mental Health Administration

National Institute on Drug Abuse, Scientific Counselors Board; Reestablishment

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776) and the Anti-Drug Abuse Act of 1986 (Pub. L. 99-570, section 501(j)), the Administrator, Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), announces the reestablishment, effective August 11, 1987, of the Board of Scientific Counselors, National Institute on Drug Abuse.

Date: August 13, 1987.

Donald Ian Macdonald,

Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 87-18897 Filed 8-18-87; 8:45 am]

BILLING CODE 4160-20-M

Centers for Disease Control

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HC (Centers for Disease Control) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (45 FR 67772-67776, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 52 FR 11887, Apr. 13, 1987), is amended to reflect the name change of the center for Environmental Health to the Center for Environmental Health and Injury Control.

Section HC-B, Organization and Functions, is hereby amended as follows:

After the heading and statements for the *Center for Prevention Services (HCM),* make the following changes:

1. Delete the heading for the *Center for Environmental Health (HCN)* and insert the heading *Center for Environmental Health and Injury Control (HCN).*

2. Under the heading *Office of the Director (HCN1),* change item (1) to read: (1) Manages, directs, coordinates, and evaluates the activities of the Center for Environmental Health and

Injury Control (CEHIC); and in items (3), (4), and (5), change "CEH" to "CEHIC".

3. Under the heading *Office of Planning, Legislation, and Information Management (HCN13)*, in items (1) and (5), change "CEH" to "CEHIC"; and in item (2), change "CEH's" to "CEHIC's".

4. Under the heading *Office of Program Operations and Management (HCN14)*, in items (1), (4), and (5), change "CEH" to "CEHIC"; and in item (2), change "CEH-wide" to "CEHIC-wide".

Dated: August 3, 1987.

Otis R. Bowen,

Secretary.

[FR Doc. 87-17878 Filed 8-18-87; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

[Docket No. 87N-0273]

Drug Export; Activase® (Tissue Plasminogen Activator)

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Genentech, Inc., has filed an application requesting approval for the export of the human drug Activase® (Tissue Plasminogen Activator) to New Zealand.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Rudolf Apodaca, Center for Drugs and Biologics (HFN-310), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8063.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Genentech, Inc., 460 Point San Bruno Blvd., South San Francisco, CA 94080, has filed an application requesting approval for the export of the drug Activase® (Tissue Plasminogen Activator) to New Zealand. Activase® is indicated in adults for the lysis of suspected occlusive coronary artery thrombi associated with evolving transmural myocardial infarction. The application was received and filed in the Center for Drugs and Biologics on August 7, 1987, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on he application to do so by August 31, 1987, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Art (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drugs and Biologics (21 CFR 5.44).

Dated: August 10, 1987.

Daniel L. Michels,

Director, Office of Compliance, Center for Drugs and Biologics.

[FR Doc. 87-18948 Filed 8-18-87; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Transfer of Excess Federal Facilities; Red Lake Band of Chippewa Indians, Red Lake, MN

July 22, 1987.

This Notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

On April 7, 1987, pursuant to authority contained in the Federal Property and Administrative Services Act of 1949, as amended by Pub. L. 93-599 dated January 2, 1975 (88 Stat. 1954), the below described property was transferred by the Acting Director, Office of Real Estate Sales, General Services Administration, Boston, Massachusetts, to the Secretary of the Interior, without reimbursement, to be held in trust for the benefit and use of the Red Lake Band of Chippewa Indians.

Eleven (11) housing units located at Red Lake, Minnesota, GSA Control No. 1-F-MN-507-C.

These improvements are to be treated as and receive the same benefits and protection as other facilities held for the benefit and use of the Red Lake Band of Chippewa Indians. Appropriate notation will be made in the records of the Bureau of Indian Affairs.

Ross O. Swimmer,

Assistant Secretary, Indian Affairs.

[FR Doc. 87-18861 Filed 8-18-87; 8:45 am]

BILLING CODE 4310-22-M

Bureau of Land Management

[NM-060-07-4212-14; NM 67284, 67285]

Realty Action; Competitive Sale and Modified Competitive Sale of Public Lands, Chaves County, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action NM 67284-proposed competitive sale of public land, NM67285-proposed modified competitive sale of public land, both tracts in Chaves County.

SUMMARY: The following described land has been identified through the East Chaves Management Framework Plan and found suitable for disposal by sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1712), at no less than the appraised fair market value.

Legal Description NM 67284

New Mexico Principal Meridian

T. 15 S., R. 31 E.,
Sec. 14, NW¼SW¼.
Acreage: 40 acres.
Appraised Fair Market Value—$1,600.00.

Legal Description NM 67285

New Mexico Principal Meridian

T. 15 S., R. 31 E.
Sec. 13, SE¼, SE¼NE¼, NW¼SW¼;
Sec. 14, N½SE¼, NE¼SW¼.
Acreage: 360 acres.

Appraised Fair Market Value—$14,400.00.

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, until a patent is issued or 270 days from the date of publication of this notice, whichever occurs first. The above described lands will be offered for sale at public auction at 2:00 PM, on Wednesday, September 30, 1987 at the Roswell Resource Area Conference Room, Federal Building, 5th and Richardson Streets, Roswell, New Mexico. Because tract NM 67285 has no legal access, and is located predominently within the ranch boundaries of Medlin Cattle Company the sale of this tract will be by modified competitive sale, i.e., Medlin Cattle Company will be given the opportunity to meet the highest bid received at the public auction. Bidding must be submitted to the BLM's Roswell Resource Area Office in an envelope clearly marked "Bid for Public Sale NM 67284 or NM 67285" no later than 4:30 PM, September 29, 1987. No bids will be accepted for less than the fair market value specified in this notice. Each sealed bid must be accompanied by a certified check, postal money order, bank draft, or cashier's check made payable to the Bureau of Land Management for not less than 10% of the amount bid. Federal law requires that all bidders be United States citizens, or in the case of corporations, be subject to the laws of any State in the United States. Proof of these requirements must accompany the bid. An apparent high bid will be declared at the auction. The apparent high bidder, and in the case of NM 67285, the designated bidder, (Medlin Cattle Company), will be notified. The designated bidder shall have 14 days from the date of the sale to exercise their preference consideration. Should the designated bidder fail to submit a bid that matches the apparent high bid within the specified time period, the tract will be sold to the apparent high bidder. The successful bidder must pay the balance of the full bid price within 180 days of notification by the BLM. Failure to pay the full price within 180 days shall disqualify the apparent high bidder and cause the bid deposit to be forfeited to the BLM.

If no valid bids are received the parcel/s will be offered competitively on a continuing basis at the Roswell Resource Area Office until May 11, 1988. Sale will be by sealed bid. Sealed bids will be opened on the first and third Wednesdays of each month at 10:00 am. All bids must be received at the Roswell Resource Area Office no later than 4:30 pm on the day before the sale. Terms and conditions applicable to the sale are:

(1) The patent will contain a reservation to the United States for ditches and canals constructed under the authority of the Act of August 30, 1890 (27 Stat. 391, 43 U.S.C. 945).

(2) All minerals, together with the right to prospect for, mine, and remove the minerals shall be reserved to the United States.

(3) The patent will be subject to those rights granted to the existing mineral lessee to use as much of the surface as is necessary for exploration, development, and production of the mineral estate.

(4) In the case of tract NM 67285 the patent will be subject to a 50' powerline right of way granted to Lea County Electric Cooperative Inc.

SUPPLEMENTARY INFORMATION: Detailed information concerning the sale, including the reservations, conditions of sale, and planning and environmental documents are available at the Roswell Resource Area Office, Federal Building, 5th and Richardson Streets, Roswell, New Mexico.

For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, Roswell District, P.O. Box 1397, Roswell, New Mexico 88201. Any adverse comments will be evaluated by the District Manager who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

David L. Mari,

Associate District Manager.

[FR Doc. 87-18830 Filed 8-18-87; 8:45 am]

BILLING CODE 4310-FB-M

[UT-040-07-3110-10-4444; U-58197]

Realty Action; Exchange of Surface and Mineral Interests in Public and State Lands, Kane and Washington Counties, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: The surface and mineral estate of the following described public lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, (43 U.S.C. 1716): T42S R14W SLB&M, Sec. 18, Lots 8–10, NW4NE4; T42S R15W SLB&M, Sec. 13, E2NE4SE4, S2SW4NE4SE4, NE4SW4NE4SE4, SE4NW4NE4SE4, SE4SE4, S2NE4SW4SE4, S2SW4SE4; comprising 295.27 acres. In exchange for these lands, the United States will acquire the surface and mineral estate of the following described lands from the State of Utah: T43S R1E SLB&M, Sec. 36, W2SE4SW4, SW4SW4, SE4SE4SW4, S2SWSE4; T43S R1W SLB&M, Sec. 25, SW4SE4, SW4NW4SE4, SW4SE4SE4; T43S R2W SLB&M, Sec. 36, All; T43S R17W SLB&M, Sec. 32, All, Sec. 36, All; T43S R18W SLB&M, Sec. 36, All; T44S R1E SLB&M, Sec. 2, S2, Sec. 6, Lots 1 and 2; comprising 2391.93 acres. The purpose of this exchange is to acquire the Utah State lands which are inholdings in the Paria Canyon/Vermilion Cliffs and Beaver Dam Mountain Wilderness areas. By eliminating these inholdings the wilderness character and other values of the wilderness areas will be better preserved. The values of the lands to be exchanged will be equalized by an adjustment in acreage of the public lands based on the values to be determined by an appraisal. The public lands described are hereby segregated from the operation of the federal mining laws pending disposition of this action.

ADDRESS: Detailed information concerning this exchange is available at the Bureau of Land Management, Cedar City District Office, 176 East DL Sargent Drive, Cedar City, Utah 84720, (801) 586-2401. Comments should be sent to the same address.

DATE: Interested parties may submit comments on or before October 5, 1987.

SUPPLEMENTARY INFORMATION: The terms and conditions applicable to the exchange are:

1. Title will be transferred subject to valid existing rights.

2. Title will contain restrictions against construction of structures for human habitation such as homes, hospitals, nursing homes, etc.; and landfills or hazardous waste dumps in the floodplain. Any structures built in the floodplain must be resistant to flood damage.

Any objections received during the comment period will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this Realty Action Notice will become the final determination of the Department of the Interior.

Date: August 5, 1987.

Morgan S. Jensen,

District Manager.

[FR Doc. 87-18882 Filed 8-18-87; 8:45 am]

BILLING CODE 4310-DQ-M

[UT-060-07-4212-11; U-58709]

Realty Action, Classification for Lease/Conveyance of Public Lands in San Juan County, UT for Recreation and Public Purposes

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following described parcel of public land has been examined and has been found suitable for Lease/Conveyance to San Juan County for use as a county roadshed and storage facility. The land is hereby classified as suitable for recreation and public purposes under the Recreation and Public Purposes Act (R&PP) of June 14, 1926, as amended (44 Stat. 741; 43 U.S.C. 869 et seq.) and the regulations thereunder (43 CFR Parts 2740 and 2912):

Salt Lake Meridian, Utah

T. 40 S., R. 23 E.,
Sec. 25, Lot 14.
The described land aggregates 5.97 acres.

San Juan County has filed a petition for classification of the lands and concurrently filed an application for Lease/Conveyance of the lands. The County is proposing to construct, maintain, and operate a county roadshed and storage facility on the site over a three (3) year lease period, then purchase the land.

The lands are not needed for federal purposes. Lease or conveyance is consistent with current BLM land use planning and would be in the public interest.

Publication of this notice in the **Federal Register** constitutes notice to the grazing permittee. Miller Brothers, that their grazing lease it directly effected by this action. Specifically, the premitted AUMs will not be reduced because of this lease/Conveyance, but the land (acreage) will have to be excluded from the allotment effective upon issuance of the lease.

Upon publication of this notice in the **Federal Register** the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for recreation and public purposes and leasing under the mineral leasing laws, as provided by the regulations in 43 CFR 2741.5(h)(2). The segregative effect will end upon issuance of a patent.

The Lease and/or Patent, when issued, will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. All minerals, including oil and gas, shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at the Moab District Office and the San Juan Resource Area Office.

3. A right-of-way will be reserved for ditches and canals constructed by the authority of the United States (Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945).

4. Subject to the following powersite stipulation of section 24 of the Federal Power Act:

The United States, its permittees, lessees, and licensees shall not be responsible or held liable or incur any liability for the damage, destruction, or loss of any land, crops, facility installed or erected, income, or other property or investments resulting from the use of such lands, or portions thereof, for hydroelectric development at any time where such hydroelectric development is made by or under the authority of the United States. Furthermore, in the event the reserved lands are required for hydroelectric development, any structures or improvements placed thereon found to interfere with such development shall be removed or relocated as necessary to eliminate such interference at no cost to the United States, its permittees or licensees.

5. Subject to compliance with executive Order No. 11246 of September 24, 1965, as amended and the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant thereto.

6. Subject to compliance with section 106 of the National Historic Preservation Act and other applicable cultural resource laws and regulations.

7. Subject to all valid existing rights and reservations of record. Existing rights and privileges of record include, but are not limited to, the following:

a. Oil and Gas Pipeline Rights-of-way U-033545 and U-030000.

b. State Highway appropriated by the Federal Highway Administration.

8. All survey monuments, witness corners, reference monuments and bearing trees must be protected against destruction.

9. Any other reservations the Authorized Officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

COMMENTS: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Bureau of Land Management, District Manager, Moab District Office, P. O. Box 970, Moab, Utah 84532. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, the classification will become final, effective sixty (60) days from the date of publication of this notice.

SUPPLEMENTARY: Additional information concerning this action may be obtained from David L. Krouskop, Area Realty Specialist, San Juan Resource Area Office, 435 North Main, P.O. Box 7, Monticello, Utah 84535, (801) 587-2141, or from Brad Groesbeck, District Realty Specialist, Moab District Office, 82 East Dogwood, P.O. Box 970, Moab, Utah 84532, (801) 259-8111.

Date: August 10, 1987.

Gene Nodine,
District Manager.

[FR Doc. 87-18883 Filed 8-18-87; 8:45 am]
BILLING CODE 4310-DQ-M

[MT-920-07-4520-11]

Land Resource Management; Filing of Plats of Survey; Montana

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of filing of plats of survey.

SUMMARY: Plats of survey of the lands described below accepted July 30, 1987, were officially filed in the Montana State Office effective 10 a.m. on August 5, 1987.

Principal Meridian, Montana

T. 8 S., R. 24 E.

The supplemental plat of section 4, Township 8 South, Range 24 East, Principal Meridian, Montana, showing a subdivision of original lot 3, is based on the township plats approved January 16, 1900 and March 22, 1957, was accepted July 30, 1987. The area described is in Carbon County.

Principal Meridian, Montana

T. 9 S., R. 26 E.

The supplemental plat of section 32, Township 9 South, Range 26 East, Principal Meridian, Montana, showing the subdivision of original lots 3 and 10, is based on the township plat approved February 20, 1922, was accepted July 30, 1987. The area described is in Carbon County.

These surveys were executed at the request of the Deputy State Director, Division of Mineral Resources for the

issuance of mineral patents for the above lands.

EFFECTIVE DATE: August 5, 1987.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107.

Marvin LaNoue,
Acting State Director.

Dated: August 10, 1987.

[FR Doc. 87-18931 Filed 8-18-87; 8:45 am]
BILLING CODE 4310-DN-M

Minerals Management Service

Development Operations Coordination Document; Tenneco Oil Exploration and Production

AGENCY: Minerals Management Service, Interior

ACTION: Notice of the receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Tenneco Oil Exploration and Production, Unit Operator of the Vermilion Block 218 Federal Unit Agreement No. 14-08-0001-8816, has submitted a DOCD describing the activities it proposes to conduct on the Vermilion Block 218 Federal unit. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intercoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on August 7, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Al Durr; Minerals Management Service; Gulf of Mexico OCS Region; Production and Development; Development and Unitization Section; Unitization Unit; Telephone (504) 736-2559].

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: August 12, 1987.

J. Rogers Pearcy,
Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-18932 Filed 8-18-87; 8:45 am]
BILLING CODE 4310-MR-M

Development Operations Coordination Document; Union Exploration Partners, Ltd.

AGENCY: Minerals Management Service, Interior

ACTION: Notice of the receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Union Exploration Partners, Ltd. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 4787, Block 66, Vermilion Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on August 10, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: August 12, 1987.

J. Rogers Pearcy,
Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-18933 Filed 8-18-87; 8:45 am]
BILLING CODE 4310-MR-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 8, 1987. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by September 3, 1987.

Carol D. Shull,
Chief of Registration, National Register.

ARIZONA

Gila County

Payson, *Haught Cabin*, 4 mi. N of Kohl's Ranch

COLORADO

Weld County

Greeley, *First Baptist Church*, Tenth Ave. at Eleventh St., NW corner

CONNECTICUT

Fairfield County

Bridgeport, *Bassikville Historic District*, 20-122 Bassick, 667-777 Howard, & 1521-1523 Fairview Aves. & 1350-1380 State St.

Tolland County

Mansfield, *Mansfield Training School and Hospital*, Jct. of CT 32 & CT 44

DELAWARE

New Castle County

Middletown vicinity, *Biggs, Gov. Benjamin R., Farm*, CR 435, Choptank Rd.
Middletown vicinity, *Cornucopia*, CR 433, Bethel Church Rd.
Middletown vicinity, *Fairview*, CR 433, Bethel Church Rd.

Sussex County

Georgetown, *Messick, Dr. John W., House and Office*, 144 E. Market St.
Portsville, *Portsville Lighthouse*, N side of CR 493

INDIANA

Clark County

Jeffersonville, *Old Jeffersonville Historic District*, roughly bounded by Court Ave., Graham St., Ohio River, & I-65

IOWA

Polk County

Des Moines, *St. John's Roman Catholic Church*, 1915 University Ave.

LOUISIANA

Beauregard Parish

Merryville, *Burks House*, Jct. of Railroad Ave. & Main St.

Bienville Parish

Arcadia, *Vicksburg, Shreveport, and Pacific Railroad Depot*, LA 151

Evangeline Parish

Ville Platte, *LaTour, Alexis, House*, 247 E. Main

Morehouse Parish

Bastrop, *Rose Theatre*, US 165

Quachita Parish

Monroe vicinity, *Whitehall Plantation House*, Buckhorn Bend Rd.

Rapides Parish

Pineville, *Cottingham House*, 1403 College Dr.

St. Landry Parish

Opelousas, *Opelousas City Hall*, Jct. of Market & Bellevue Sts., Courthouse Sq.

Vermilion Parish

Abbeville, *Abbeville Residential Historic District*, roughly bounded by W. Oak, W. State & Cherry Sts. & Vermilion River

Webster Parish

Minden, *Bank of Webster*, 704 Main St.

MASSACHUSETTS

Essex County

Peabody, *First Unitarian Church*, 7 Park St.

Norfolk County

Needham, *Fuller, Robert, House*, Burrill Lane

Suffolk County

Boston, *Austin, Francis B., House*, 58 High St.

Boston, *St. Augustine Chapel and Cemetery*, Dorchester St. between W. Sixth & Tudor Sts.

NEVADA

Washoe County

Reno, *Gray, Joseph H., House*, 457 Court St.

OREGON

Clackamas County

Oak Grove, *Broetje, John F. and John H., House*, 3101 SE Courtney Rd.

Multnomah County

Portland, *Schnabel, Charles J. and Elsa, House*, 2375 SW Park Pl.

Portland, *Canterbury Castle*, 2910 SW Canterbury Lane

Portland, *East Portland Branch, Public Library of Multnomah County*, 1110 SE Alder

Portland, *King, Samuel W., House*, 1000 SW King Ave.

Portland, *Ormonde Apartment Building*, 2046–2048 NW Flanders

Portland, *Pittock Block*, 921 SW Washington St.

Wasco County

Dufur, *Balch Hotel*, 40 S. Main

VIRGINIA

Halifax County

Omega vicinity, *Buckshoal Farm*, VA 737

[FR Doc. 87–18899 Filed 8–18–87; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701–TA–283 and 731–TA–364 (Final)]

Import Investigation; Acetylsalicylic Acid (Aspirin) From Turkey

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines,[2] pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)), that an industry in the United States is materially injured by reason of imports from Turkey of bulk acetylsalicylic acid,[3] provided for in item 410.72 of the Tariff Schedules of the United States, that have been found by the Department of Commerce to be subsidized by the Government of Turkey. The Commission also determines,[2] pursuant to section 735(b) of the Act (19 U.S.C. 1673d(b)), that an industry in the United States is materially injured by reason of imports from Turkey of bulk acetylsalicylic acid that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted investigation No. 701–TA–283 (Final) effective March 3, 1987, following a preliminary determination by the Department of Commerce that imports of the subject product from Turkey were being subsidized. Investigation No. 731–TA–364 (Final) was instituted effective April 14, 1987, following a preliminary determination by the Department of Commerce that imports of the subject product from Turkey were being sold at LTFV.

Notice of the institutions of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notices in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notices in the **Federal Register** of March 25, 1987 (52 FR 9552) and April 29, 1987 (52 FR 15565). The hearing was held in Washington, DC, on July 2, 1987, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on August 11, 1987. The views of the Commission are contained in USITC Publication 2001 (August 1987), entitled "Certain Acetylsalicylic Acid (Aspirin) from Turkey: Determination of the Commission in Investigation No. 701–TA–283 (Final) and Determination of the Commission in Investigation No. 731–TA–364 (Final), Together With the Information Obtained in the Investigations."

By Order of the Commission.
Issued: August 11, 1987.

Kenneth R. Mason,
Secretary.

[FR Doc. 87–18893 Filed 8–18–87; 8:45 am]

BILLING CODE 7020-02-M

[1] The record is defined in § 207.2 (i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2 (i)).

[2] Chairman Liebeler and Vice Chairman Brunsdale dissenting; Commissioner Lodwick not participating.

[3] The product covered by these investigations is acetylsalicylic acid (aspirin), containing no additives other than inactive substances (such as starch, lactose, cellulose, or coloring material) and/or active substances in concentrations less than that specified for particular non-prescription drug combinations of aspirin and active substances as published in the *Handbook of Non-Prescription Drugs*, 8th edition, American Pharmaceutical Association, and is not in tablet, capsule, or similar forms for direct human consumption.

[Investigation No. 337–TA–260]

Change of the Commission Investigative Attorney; Certain Feathered Fur Coats and Pelts, and Process for the Manufacture Thereof

Notice is hereby given that, as of this date, Jeffrey L. Gertler, Esq., of the Office of Unfair Import Investigations, 701 E Street, NW Washington, DC 20436, will be the Commission Investigative Attorney in the above-cited investigation instead of Deborah S. Strauss, Esq.

The Secretary is requested to publish this Notice in the **Federal Register.**

Dated: August 13, 1987.

Arthur Wineburg,
Director, Office of Unfair Import Investigations.

[FR Doc. 87–18894 Filed 8–18–87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-255]

Certain Garment Hangers; Decision Not To Review Initial Determination

AGENCY: U.S. International Trade Commission.

ACTION: Nonreview of initial determination.

SUMMARY: Notice is given that the Commission has determined not to review the presiding administrative law judge's (ALJ's) initial determination (ID) that there is no violation of section 337 of the Tariff Act of 1930 in the above-captioned investigation. By virtue of its decision not to review the ALJ's ID, the Commission has determined that there is no violation of section 337 in this investigation.

FOR FURTHER INFORMATION CONTACT: Charles H. Nalls, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-1626.

SUPPLEMENTARY INFORMATION: On September 17, 1986, the Commission instituted this investigation to determine whether there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation or sale of certain garment hangers. The investigation was instituted on the basis of a complaint filed by Batts, Inc., alleging unfair methods of competition and unfair acts by virtue of: (1) Infringement of claims 5 and 9 of U.S. Letters Patent 3,698,507; (2) infringement of claims 1-41 of U.S. Letters Patent 3,787,092; (3) infringement of claims 1-10 of U.S. Letters Patent 4,194,274; (4) infringement of claims 14, 15, 23, 24, 26, 29, 35, 36, and 37 of U.S. Letters Patent 4,123,864; and (5) trade secret misappropriation, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated in the United States.

Named as respondents were the following companies: A & E Products Group, Inc. of New Jersey; A & E Products (Far East) Ltd. of Hong Kong; A & E Products (Far East) Ltd. of Taiwan; Build-Up Plastic & Metal Co., Ltd. of Hong Kong; Kaung-Kai Industrial Co. Ltd. of Taiwan; Lo Tung, Ltd. of Taiwan; Galdo Plast Industria e Comercio Ltda. of Brazil; Pasargarda of New York; and Hangers Unlimited of Wisconsin.

On June 17, 1987, the ALJ issued an ID that there is no violation of section 337. Complainant and respondents filed petitions for review of various parts of the ID, pursuant to § 210.54(a) (19 CFR 210.54(a)) of the Commission's rules.

On page 125 of the ID it is stated that "[w]hen multiple patents are involved, a single domestic industry exists only if all the patents are practiced in all of the products at issue." The Commission notes that this rule may not be applicable to investigations presenting fact situations that differ from the instant investigation.

Copies of the nonconfidential version of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161.

By order of the Commission.

Issued: August 13, 1987.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-18995 Filed 8-18-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-268]

Change of the Commission Investigative Attorney; Certain High Intensity Retroreflective Sheeting

Notice is hereby given that, as of this date, Ralph Mittelberger, Esq., of the Office of Unfair Import Investigations, 701 E Street, NW., Washington, DC 20436, will be the Commission Investigative Attorney in the above-cited investigation instead of Ethel L. Morgan, Esq.

The Secretary is requested to publish this Notice in the **Federal Register.**

Dated: August 13, 1987.

Arthur Wineburg,

Director, Office of Unfair Import Investigations.

[FR Doc. 87-19096 Filed 8-18-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-286 (Final) and 731-TA-365 and 366 (Final)]

Industrial Phosphoric Acid From Belgium and Israel

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines,[2] pursuant to section 705(b) of the Tariff Act 1930 (19 U.S.C. 1671d(b)), that an industry in the United States is materially injured by reason of imports from Israel [3] of industrial phosphoric acid, provided for in item 416.30 of the Tariff Schedules of the United States, that have been found by the Department of Commerce to be subsidized by the Government of Israel. The Commission also determines,[4] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)), that an industry in the United States is materially injured by reason of imports from Belgium [5] and Israel [6] of industrial phosphoric acid, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted its final countervailing duty investigation effective February 5, 1987, following a preliminary determination by the Department of Commerce that imports of industrial phosphoric acid from Israel were being subsidized within the meaning of section 701 of the Act (19 U.S.C. 1671.) [7] Notice of the institution of the Commission's investigation was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of March 4, 1987 (52 FR 6631). Notice of the Commission's hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of May 13, 1987 (52 FR 18031). Similarly, the Commission instituted its final antidumping investigations effective April 20, 1987, following preliminary determinations by the Department of Commerce that imports of industrial phosphoric acid from Belgium and Israel were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Chairman Liebeler and Vice Chairman Brunsdale dissenting.

[3] Inv. No. 701-TA-286 (Final).

[4] Chairman Liebeler and Vice Chairman Brunsdale dissenting.

[5] Inv. No. 731-TA-365 (Final).

[6] Inv. No. 731-TA-366 (Final).

[7] The Commission also instituted a final countervailing duty investigation concerning imports from Belgium of industrial phosphoric acid. Following a negative final determination by the Department of Commerce, the Commission terminated the investigation effective July 17, 1987.

the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of April 29, 1987 (52 FR 15566). The hearing was held in Washington, DC. on July 7, 1987, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on August 12, 1987. The views of the Commission are contained in USITC Publication 2000 (August 1987), entitled "Industrial Phosphoric Acid from Belgium and Israel: Determination of the Commission in Investigtion No. 701–TA–286 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation and Determinations of the Commission in Investigations Nos. 731–TA–365 and 366 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: August 12, 1987.

By Order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87–18997 Filed 8–18–87; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–348 (Final)]

Certain Malleable Cast-Iron Pipe Fittings From Thailand

Determination

On the basis of the record [1] developed in the subject investigation, the Commission unanimously determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)), that an industry in the United States is materially injured by reason of imports from Thailand of nonalloy, malleable cast-iron pipe fittings,[2] whether or not advanced in condition by operations or processes (such as threading) subsequent to the casting process, provided for in items 610.70 and 610.74 of the Tariff Schedules of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective February 13, 1987, following a preliminary determination by the Department of Commerce that imports of certain malleable cast-iron pipe fittings from Thailand were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of March 4, 1987 (52 FR 6631). The hearing was held in Washington, DC, on April 28, 1987, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on August 12, 1987. The views of the Commission are contained in USITC Publication 2004 (August 1987), entitled "Certain Malleable Cast-iron Pipe Fittings from Thailand: Determination of the Commission in Investigation No. 731–TA–348 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

By Order of the Commission.

Issued; August 12, 1987.

Kenneth R. Mason,

Secretary.

[FR Doc. 87–19009 Filed 8–18–87; 8:45 am]

BILLING CODE 7020–02–M

[Inv. No. 337–TA–263]

Change of the Commission Investigative Attorney; Certain Office Filing Cabinets

Notice is hereby given that, as of this date, Juan Cockburn, Esq., of the Office of Unfair Import Investigations, 701 E Street, NW., Washington, DC 20436, will be the Commission Investigative Attorney in the above-cited investigation instead of Regina Loughran, Esq.

The Secretary is requested to publish this Notice in the **Federal Register.**

Dated: August 13, 1987.

Arthur Wineburg,

Director, Office of Unfair Import Investigations.

[FR Doc. 87–18998 Filed 8–18–87; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–190]

Commission Action and Order; Certain Softballs and Polyurethane Cores Therefor

Background

On June 12, 1987, complainant Lannom Manufacturing Co., Inc. (Lannom) moved (Motion No. 190–31–C) for partial reconsideration of the Commission's Action and Order issued May 21, 1987. Lannom seeks (1) to limit the scope of the inquiry (*i.e.*, to bar a redetermination of the relevant domestic industry and whether that industry is efficiently and economically operated), (2) to prohibit Success Chemical Co., Ltd. (Success), from participating or to require Success, as a condition precedent to its participation, to respond to discovery already promulgated by Lannom, and (3) to permit introduction of evidence relating to Success' softball production and importation of softballs *after* November 2, 1984.

Action

The Commission has determined to deny the motion for reconsideration.

For a full explanation of the Commission's reasons, *see* the Commission Memorandum Opinion issued concurrently herewith.

Order

Accordingly, it is hereby ordered that—

1. Motion No. 190–31–C is hereby denied; and

2. The Secretary shall serve copies of this Commission Action and Order and the accompanying Commission Memorandum Opinion upon each party of record to this investigation and publish notice thereof in the **Federal Register.**

By order of the Commission.

Kenneth R. Mason

Secretary.

Issued: August 13, 1987

Commission Memorandum Opinion

Introduction

On June 12, 1987, complainant Lannom Manufacturing Co., Inc. (Lannom) moved (Motion No. 190–31–C) for partial reconsideration of the Commission's Action and Order issued May 21, 1987.[1]

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[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Such fittings are those with standard pressure ratings of 150 pounds per square inch (psi) or heavy-duty pressure ratings of 300 psi. Groove-lock fittings are not included.

[1] The Commission's Action and Order of May 21, 1987, remanded this investigation to the administrative law judge (ALJ) for further fact-finding and issuance of an initial determination (ID) regarding: (1) Construction of the claims of the patent in controversy; (2) reading the properly construed claims on the accused imported

BEST COPY AVAILABLE

Lannom seeks (1) to limit the scope of the inquiry (*i.e.*, to bar a redetermination of the relevant domestic industry and whether that industry is efficiently and economically operated), (2) to prohibit Success Chemical Co., Ltd. (Success), from participating or to require Success, as a condition precedent to its participation, to respond to discovery already promulgated by Lannom, and (3) to permit introduction of evidence relating to Success' softball production and importation of softballs *after* November 2, 1984.[2] [3]

Discussion [4]

With regard to the first question presented, Lannom correctly points out that the definition of the domestic industry is based on the exploitation of the intellectual property rights at issue. However, the scope of that industry (in terms of the production related activities dedicated to the exploitation of the intellectual property rights) may vary depending on the breadth given to the intellectual rights at issue. Thus, a narrow reading of a patent claim may imply a narrower domestic industry than would be the scope of that industry if the same claim were read broadly. Accordingly, while the Commission has not remanded to the ALJ any question regarding the proper legal definition of the industry, it did remand the question of determining the scope of the domestic industry and its efficient and economic operation because the scope could change as a result of the ALJ's construction of the patent claims at issue.[5]

With regard to Success' participation in the remand, petitions for reconsideration are "confined to new questions raised by the determination or action ordered to be taken thereunder and upon which the petitioner had no opportunity to submit arguments." [6] Lannom's motion fails this test since Lannom addressed the question of Success' participation in its motions to strike and in the papers supporting those motions.

Procedural considerations aside, in its May 21, 1987, Action and Order, the Commission noted the inadequacy of the record developed in the original investigation, particularly in the area of claim construction. In that light, and notwithstanding Success' earlier failure to participate (which would ordinarily be sufficient to deny participation rights to Success at this time), the Commission stated that "[t]he participation of Success . . . may assist in obtaining a more complete record and may serve to focus the factual and legal questions before the ALJ." [7]

Lannom argues, alternatively, that Success be required to "respond to all outstanding discovery of Lannom without objection" as a condition to participation.[8] Because a significant portion of Lannom's discovery was directed to patent validity, an issue not present in the remand, having Success respond to such discovery now serves no legitimate purpose. Lannom, of course, may re-serve its earlier discovery addressed to other issues.

The IA has proposed that participation be conditioned on Success compliance with future discovery.[9] The Commission's rules place control of discovery in the hands of the presiding ALJ. Although the Commission expects that Success will fully comply with all proper discovery, there is a broad range of sanctions available, including evidentiary sanctions and default, in the event of its failure to comply.

Finally, as to evidence of events after November 2, 1984, Lannom argues that it should be permitted to pursue testimony "for the limited purpose of testing the ALJ's prior assumptions regarding the future activities of Success Chemicals.[10] The present investigation, however, is a remand investigation, not a new one. The CAFC remanded the case to the Commission for a redetermination of the question of injury, which, in the CAFC's view, is dependent on the determination of infringement.[11] Nothing in the CAFC's opinion suggests that it contemplated that the investigation should be extended to cover subsequent periods of time.[12]

The proper vehicle for the consideration of updated information is the conduct of a new investigation.[13] In *Union Manufacturing Co., Inc.* v. *U.S. International Trade Commission*, No. 85-2473 (Fed. Cir. July 2, 1987), the CAFC upheld the Commission's determination not to reconsider its determination under rule 211.57 and approved a procedure in which new evidence should be considered in the context of determining whether to institute a new investigation.

Lannom is free to file a new complaint directed to allegedly infringing acts occurring after November 2, 1984, and, assuming sufficiency of the complaint under the Commission's rules, the Commission will institute a new investigation regarding those acts. However, the matters considered in such an investigation may be limited, to the extent applicable, by claim preclusion and issue preclusion arising from the current investigation.

For the foregoing reasons, the Commission has determined to deny the motion for reconsideration.

[FR Doc. 87-18999 Filed 8-18-87; 8:45 am]
BILLING CODE 7020-02-M

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structures; (3) determining the relevant domestic industry; (4) determining whether that industry is efficiently and economically operated; and (5) determining whether there is an effect or tendency to destroy or substantially injure that industry. The Action and Order authorized the ALJ to develop a supplementary evidentiary record, but directed that no evidence be admitted on matters occurring after November 2, 1984—the date the evidentiary record in the original investigation was closed—and denied complainant's motions to strike the entry of appearance of Success and its agreement to be bound by the protective order.

[2] The Commission investigative attorney (IA) opposes the motion on the issue of limiting the scope of the remand, argues that the participation of Success be conditioned on compliance with *future* discovery requests, and supports the motion as to introduction of evidence concerning matters occurring after November 2, 1984.

The IA's opposition was filed out of time and accompanied by a motion for late filing (Motion No. 190-32-C) on the ground that Lannom had failed to serve a copy of the motion on her. The motion was granted by the Chairman.

[3] Success opposes reconsideration of the motions to strike, opposes the motion on limiting the scope of the remand, and "is ambivalent about the much mooted November 2, 1984, cutoff date for evidence on Success' activities." Success' Response at 4.

Success' opposition was filed out of time and was accompanied by a motion (Motion No. 190-33-C) for acceptance of late filing on the ground that the motion was served on Success' counsel's prior address. The motion was granted by the Chairman.

[5] Of course, if construction of the claims leads to a domestic industry whose scope is identical to that considered previously, there would be no need to again determine whether it is efficiently and economically operated.

[6] 19 CFR 210.60.

[7] Action and Order of May 21, 1987, at 4.

[8] Motion at 8.

[9] IA's response at 4.

[10] Petition at 10. Lannom argues that a critical consideration during the investigation was whether, as the result of an agreement, Success would be precluded from participating in the importation of softballs into the United States except through Diamond Sports. Lannom argued to the Commission and to the CAFC on appeal that the determination that Success would be so precluded was not based on substantial evidence. Lannom's position is supported by the IA who argues that, because of Success' earlier failure to participate, fairness requires that parties be permitted to fully explore Success' activities. IA's response at 6. The argument is unpersuasive because information on activities *after* November 2, 1984, would have been unavailable, regardless of Success' participation.

[11] *Lannom Mfg. Co., Inc.* v. *U.S. Int'l Trade Comm'n*, 799 F.2d 1572, 1580-81 (Fed. Cir. 1986).

[12] This appears to be Lannom's understanding as well, as Lannom seeks the post-November 2, 1984, information for the limited purpose of testing the accuracy of earlier-developed testimony and the conclusions drawn therefrom, not presenting additional infringement or injury data.

[13] *Certain Heavy-Duty Mobile Scrap Shears*, Inv. No. 337-TA-252, Commission Action and Order of July 20, 1987; *Certain Vacuum Bottles*, Inv. No. 337-TA-108, Commission Action and Order of May 17, 1983, *aff'd sub nom. Union Mfg. Co., Inc.* v. *U.S. Int'l Trade Comm'n*, No. 85-2473 (Fed. Cir. July 2, 1987).

[Investigation No. 337-TA-274]

Investigation of Certain Toggle Clamps for Clamping, Fixturing, Processing, and Original Equipment Manufacturing

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 13, 1987, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) by DE-STA-CO Division, Dover Corp–oration, 250 Park Street, Troy, Michigan 48007. Supplements to the complaint were filed on July 24, 1987, July 29, 1987 and August 7, 1987. The complaint, as supplemented, alleges unfair methods of competition and unfair acts in the importation of certain toggle clamps used for clamping, fixturing, processing, and original equipment manufacturing into the United States, or in their sale, by reason of alleged (1) infringement of federally registered trademarks in violation of section 32(l) of the Lanham Act (15 U.S.C. 1114(1)); (2) common law passing off; (3) infringement of common law trademark in violation of section 43(a) of the Lanham Act (15 U.S.C. 1125(a)); (4) violation of 19 U.S.C. 1304; and (5) misappropriation of trade dress. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

FOR FURTHER INFORMATION CONTACT: Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–523–1272.

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on August 10, 1987, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain toggle clamps for claamping, fixturing, processing, original equipment manufacturing into the United States, or in their sale, by reason of alleged (1) infringement of federally registered trademarks; (2) common law passing off; (3) infringement of common law trademark; (4) failure to designate the country of origin; or (5) misappropriation of trade dress, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—DE-STA-CO Division, Dover Corporation, 250 Park Avenue, Troy, Michigan 48007.

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Tai-Wu Industry, Co., 5, Yung-Hsing Lane, Chen Hsing Road, Hsin-Kuang Village, Tai-Ping Hsiang, Taichung Hsien, Taiwan

Good Hand Enterprises Co., No. 2–46, Lanetung, Che Road, Chin Chun, Tai Chung City, Taiwan

All American Products Co., 405 Railroad Avenue, Glendale, California 91201

Material Supply International, Inc., 4553 SW. 96th, Beaverton, Oregon 97005

(c) Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 701 E Street NW., Room 128, Washington, DC 20436, shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses to the complaint and notice of investigation must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules (19 CFR 201.16(d) and 210.21(a)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, DC 20436, telephone 202–523–0471. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Issued: August 10, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87–18992 Filed 8–18–87; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–12 (Sub–No. 119X)]

Southern Pacific Transportation Co., Exemption, Abandonment in Harris County, TX

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by the Southern Pacific Transportation , Company of approximately 1.697 miles of track in Harris County, TX, subject to standard labor protective conditions.

DATES: This exemption will be effective on September 16, 1987. Petitions to stay must be filed by September 3, 1987, and petitions for reconsideration must be filed by September 14, 1987.

ADDRESSES: Send pleadings referring to Docket No. AB–12 (Sub–No. 119X) to:.

(1) Office of Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioners' representative: Gary A. Laakso, One Market Plaza, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase

a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area), or TDD for hearing impaired: (202) 275-1721.

Decided: August 10, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87-18938 Filed 8-18-87; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-281X]

Texas North Western Railway Co., Abandonment and Discontinuance of Service Exemption, Hansford and Hutchinson Counties TX; Texas County, OK; and Seward County, KS

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from prior approval under 49 U.S.C. 10901, *et seq.*, the abandonment by Texas North Western Railway Company of 56 miles of its line of railroad between milepost 34 near Morse, TX and milepost 79 near Hardesty, OK, and between milepost 7 south near Pringle, TX and milepost 18 near Stinnett, TX; and the discontinuance of service provided pursuant to trackage rights over 37 miles of rail line between milepost 79 near Hardesty, OK, and milepost 116 near Liberal, KS, subject to standard labor protection conditions.

DATES: This exemption is effective September 18, 1987. Petitions to stay must be filed by August 31, 1987, and petitions for reconsideration must be filed by September 8, 1987.

ADDRESSES: Send pleadings referring to Docket No. AB-281X to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Petitioner's representative: John P. Legendre, 5831 Caladium, Dallas, TX 75230

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. (TDD for hearing impaired: (202) 275-1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystem, Inc., Room 2229, Interstate Commerce Commission, Washington, DC 20423, or call (202) 289-4357 (assistance for the hearing impaired is available through TDD services (202) 275-1721) or by pickup from TSI in Room 2229 at Commission headquarters.

Decided: August 4, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Commissioner Simmons concurred in the result with a separate expression. Vice Chairman Lamboley dissented with a separate expression.

Noreta McGee,

Secretary.

[FR Doc. 87-18944 Filed 8-18-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[Docket No. (M-87-189-C)]

Petition for Modification of Application of Mandatory Safety Standard; the Florence Mining Co.

The Florence Mining Company, P.O. Box 729, Indiana, Pennsylvania 15701 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Heshbon Mine (I.D. No. 36-07885) located in Indiana County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that air which is coursed through belt haulage entries not be used to ventilate active working places.

2. As an alternate method, petitioner proposes to use belt air to ventilate active working places. In support of this request, petitioner proposes to install an early warning fire detection system. A low-level carbon monoxide (CO) detection system will be installed in all belt entries used as intake or return aircourses and at each belt drive and tailpiece located in intake aircourses. The monitoring devices will be capable of giving warning of a fire for four hours should the power fail; a visual alert system will be activated when the CO level is 10 parts per million (ppm) above ambient air and an audible signal will sound at 15 ppm above ambient air. All persons will be withdrawn to a safe area at 10 ppm and evacuated at 15 ppm. The fire alarm signal will be activated at an attended surface location where there is two-way communication. The CO system will be capable of identifying any activated sensor and for monitoring electrical continuity to detect any malfunctions.

5. The CO system will be visually examined at least once each coal-producing shift and tested for functional operation weekly to insure the monitoring system is functioning properly. The monitoring system will be calibrated with known concentrations of CO and air mixtures at least monthly.

6. If the CO monitoring system is deenergized for routine maintenance or for failure of a sensor unit, the belt conveyor will continue to operate and qualified persons will patrol and monitor the belt conveyor using hand-held CO detecting devices.

7. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 18, 1987. Copies of the petition are available for inspection at that address.

Date: August 10, 1987.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-18917 Filed 8-18-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. (M-87-190-C)]

Petition for Modification of Application of Mandatory Safety Standard; the Florence Mining Co.

The Florence Mining Company, P.O. Box 729, Indiana, Pennsylvania 15701 has filed a petition to modify the application of 30 CFR 75.1103-4 (automatic fire sensor and warning device systems; installation; minimum requirements) to its Heshbon Mine (I.D. No. 36-07885) located in Indiana County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that automatic fire sensor and warning device systems provide identification of fire within each belt flight.

2. In a separate petition (M-87-189-C), petitioner proposes to use belt air to ventilate active working places.

3. As an alternate method, petitioner proposes to install an early warning fire detection system with specific

conditions as outlined in the petition and M–87–189–C.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 18, 1987. Copies of the petition are available for inspection at that address.

Date: August 10, 1987.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Miney Safety and Health.

[FR Doc. 87–18918 Filed 8–18–87; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. (M–87–180–C)]

Petition for Modification of Application of Mandatory Safety Standard; International Anthracite Corp.

International Anthracite Corporation, Box 546, Valley View, Pennsylvania 17983 has filed a petition to modify the application of 30 CFR 77.1914(a) (electrical equipment) to its B & M Tunnel Mine (I.D. No. 36–01781) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that electric equipment employed below the collar of a slope or shaft during excavation be permissible and be maintained in a permissible condition.

2. Petitioner is presently mining the Lykens Valley No. 5 anthracite coal vein at the B & M Tunnel Mine. The method of extraction is by modified sub-level caving. A gangway is driven in the footwall juxtaposed to the strike, and shuttle entries are driven from the gangway to the coal vein. Approximately each 2,000 feet a Ventilation Haulage Drift (VHD) is driven to connect the gangway to surface to allow the haulage of rock, ventilate the development and production areas, and to provide an additional escape route.

3. Petitioner further states that the minimum air flow to the face is 3,000 C.F.M. while the exhaust fan used to clear smoke and fog is capable of removing 10,000 C.F.M. Three VHD's have been driven in the past, in the same geological sequence, and there has been no evidence of methane gas.

4. Petitioner plans to excavate two VHD rock entries from surface to intercept the gangway approximately 6,450 feet westerly from the main tunnel. These VHD's will be approximately 700 feet long at minus 1/2 percent and be driven primarily through sandstone. No coal or carbonaceous shale is expected to be encountered except possibly within the last 60 feet of intercepts.

5. As an alternate method, petitioner proposes to use non-permissible locomotives in the VHD. In support of this request petitioner states:

(a) A non-permissible locomotive will not be allowed beyond the intake end of the exhaust tubing. The tubing will be maintained and kept close enough to the active face so that muck cars will take the space between the mucking machine and the end of the exhaust tubing;

(b) A minimum 50 horse power (H.P.) fan will be operated from surface. The fan will run immediately after shots are fired and be capable of exhausting at least 10,000 C.F.M.;

(c) A minimum 5 H.P. fan will be used to ventilate the face area and will be attached to ventilation pipe capable of ducting 3,000 C.F.M. to within 20 feet of the working face;

(d) Tests will be conducted after each blast to insure the air volumes are being met. If the air volumes are not in accordance with the minimum requirements, ventilation ducting will be repaired, fans will be moved ahead and repaired and any other necessary action will be taken; and

(e) Tests will be conducted to ascertain that the methane level will not exceed 1.00% volume of the air. If such reading is reached, the non-permissible locomotive will not be allowed to enter the VHD entry.

6. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 18, 1987. Copies of the petition are available for inspection at that address.

Date: August 12, 1987.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87–18919 Filed 8–18–87; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–87–28–M]

Petition for Modification of Application of Mandatory Safety Standard; Menter Sand & Gravel Co.

Menter Sand & Gravel Company, P.O. Box 1051, 55 Jarmon Trail Road, Douglas, Wyoming 82633 has filed a petition to modify the application of 30 CFR 56.12028 (testing grounding systems) to its Crusher No. 1 Mine (I.D. No. 48–01343) located in Niobrara County, Wyoming. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that continuity and resistance grounding systems be tested immediately after installation, repair, and modification, and annually thereafter.

2. Petitioner requests a modification of the standard as it pertains to the testing of the resistance of the grounding electrodes where the portable plants relocate.

3. In support of this request, petitioner states that—

(a) When a grounding electrode system is made, one or more of the electrodes specified below will be used. Made electrodes will be imbedded below the permanent moisture level;

(b) Made electrodes will be free from nonconductive coatings such as paint or enamel;

(c) Where more than one electrode system is used (including those used for lightning rods), each electrode of one system will not be less than 6 feet from the other electrode of another system;

(d) Rod and pipe electrodes will not be less than 8 feet in length;

(e) Electrodes of pipe or conduit will not be smaller than ¾ inch trade size and, where of iron or steel, shall have the outer surface galvanized or otherwise metal-coated for corrosion protection;

(f) Electrodes of rods of steel or iron shall be at least ⅝ inch diameter. Nonferrous rods or their equivalent will not be less than ½ inch in diameter;

(g) Where rock bottom is not encountered, the electrodes will be driven to a depth of less than 4 feet. Where rock bottom is encountered at a depth of less than 4 feet, electrodes not

less than 8 feet long will be buried in a trench;

(h) The ground rods and associated bonds will be visually inspected for physical deterioration and mechanical bonding each time a portable operation is relocated;

(i) Annual ground bed measurements shall be performed at the site where any portable plant remains in the same location for more than one calendar year; and

(j) The grounding conductor is not susceptible to breaking due to flexing and disconnecting/reconnecting during these moves. Therefore, equipment grounding conductor continuity measurements will be performed after each relocation of a portable plant.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 18, 1987. Copies of the petition are available for inspection at that address.

Date: August 12, 1987.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-18920 Filed 8-18-87; 8:45 am]

BILLING CODE [illegible]

[Docket No. [illegible]]

Petition for Modification of Application of Mandatory Safety Standard; the Morie Co., Inc.

The Morie Company Inc., 1201 N. High Street, Millville, New Jersey 08332 has filed a petition to modify the application of 30 CFR 56.9087 (audible warning devices and back-up alarms) to its Goff Division (I.D. No. 28-00155) located in Cumberland County, New Jersey. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that heavy duty mobile equipment be provided with audible warning devices, and that when the operator of such equipment has an obstructed view to the rear, the equipment shall have either an automatic reverse signal alarm which is audible above the surrounding noise level or an observer to signal when it is safe to back up.

2. Petitioner has received numerous complaints from community residents concerning the noise of the back-up alarms.

3. As an alternate method, petitioner proposes to install strobe light back-up devices on the front end loaders and dump trucks for use during the dark hours of the mine's operation. These strobe light devices will also be used in conjunction with the audible back-up alarms during day-light operations. In addition, each employee will receive literature concerning the new device.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 18, 1987. Copies of the petition are available for inspection at that address.

Date: August 12, 1987.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-18921 Filed 8-18-87; 8:45 a.m.]

BILLING CODE 4510-43-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-237/249]

Environmental Assessment and Finding of No Significant Impact; Commonwealth Edison Co.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of schedular exemptions from the requirements of 10 CFR 50.48 to the Commonwealth Edison Company (CECo) (the licensee) for the Dresden Nuclear Power Station, Unit Nos. 2 and 3, located at the licensee's site in Grundy County, Illinois.

Environmental Assessment

Identification of the Proposed Action

The proposed action would grant schedular exemptions from requirements of 10 CFR 50.48 relating to the completion dates of modifications consisting mainly of additional suppression and detection and the upgrading of fire barriers and emergency lighting. These modifications were determined by the license to be necessary at Dresden during a reverification initiated in response to Commission clarification of Appendix R requirements.

The Need for the Proposed Action

When the reverification program indicated the need for additional modifications, necessary engineering and procurement were required by CECo. The magnitude of the work associated with the modifications is such that it does not allow the 10 CFR 50.48(c) schedule to be met. The exemptions are strictly schedular in the they allow the modification schedule to be extended, with interim compensatory measures in place which will provide the necessary fire protection, until the corresponding modifications are completed.

Environmental Impact of the Proposed Action

The proposed action only affects the length of time for the required modifications to be completed. An environmental assessment was issued on March 31, 1986. The licensee submittals since that time have served to update the exemption request and reduce the number of schedular exemptions needed. Everything will be completed by August 1, 1987. The licensee has proposed interim compensatory measures to provide the necessary level of fire protection until the modifications are completed. Thus, fire-related radiological releases will not differ from those determined previously and the proposed exemption does not otherwise affect facility radiological effluent or occupational exposures. With regard to potential nonradiological impacts, the proposed exemption does not affect plant nonradiological effluents and has no other environmental impact. Therefore, the Commission concludes there are no measurable radiological or nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed exemption, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the exemption would be to require rigid compliance with the § 50.48(c)(4) requirements. Such action would not enhance the protection of the

environment and would result in unjustified costs for the licensee.

Alternative Use of Resources

This action does not involve the use of resources not considered previously in the Final Environmental Statement for Dresden Units 2 and 3.

AGencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission had determined not to prepare an environmental impact statement for the proposed exemption. Based upon the environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the licensee's letter dated March 1, 1985, as supplemented by letters dated December 4, 1985, and March 12, April 18, May 30 and August 18, 1986 and January 30 and April 14, 1987. These letters are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC and at the Morris Public Library, 604 Liberty Street, Morris, Illinois 60451.

Dated at Bethesda Maryland, this 13th day of August 1987

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Director Project Directorate III–2, Division of Reactor Projects—III, IV, V and Special Projects

[FR Doc. 87–18987 Filed 8–18–87; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 30–16155–SP, ASLBP No. 87–545–01–SP; BML No. 34–19086–01 and EA 86–155]

Advance Medical Systems, Inc.; Order Setting Prehearing Conference

August 12, 1987.

In the matter of Advanced Medical Systems, Inc., One Factory Row, Geneva, Ohio 44041.

The parties or their counsel are directed to appear at a prehearing conference on September 10, 1987 beginning at 1:00 p.m. at the Commission's Hearing Room, Fifth Floor, East West Towers, 4350 East West Highway, Bethesda, Maryland.

The parties shall be prepared to present their respective views on the legal and factual issues surviving for hearing given the Regional Administrator's action relaxing the October 10, 1986 Order Suspending License and Order to Show Cause (Effective Immediately). In particular the parties shall be prepared to specify the relief sought by each in the proceeding. The parties shall also attempt to arrive at a joint position as to the issues and, if possible, present their position in wiring before or at the beginning of the prehearing conference.

Once the issues for hearing have been identified, the scope of discovery on the issues will be addressed. The parties shall also be prepared to discuss the Department of Justice request to extend the suspension of the proceeding as set out in the NRC Staff's respective motion of August 10, 1987.

Counsel for the parties were notified of the time, place and general scope of the prehearing conference during a telephone conference on August 11, 1987.

It is so ordered.

Ivan W. Smith,

Administrative Law Judge.

Bethesda, Maryland, August 12, 1987.

[FR Doc 87–18854 Filed 8–18–87 8:45 am]

BILLING CODE 7590–01–M

Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination; Duquesne Light Co.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–66 issued to Duquesne Light Company (the licensee) for operation of the Beaver Valley Power Station, Unit 1 located in Shippingport, Pennsylvania.

The proposed amendment would revise the Technical Specifications to allow the storage of fuel assemblies of enrichment up to 4.5 weight percent U–235 in the fresh fuel racks and spent fuel storage pool. These revisions to the Technical Specifications would be made in response to the licensee's application for amendment dated March 9, 1987.

The amendment request was initially noticed on August 12, 1987 (52 FR 29914). Due to administrative reasons solely attributed to the staff, that notice was issued a few days too late to support timely issuance of the amendment.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

In the August 12, 1987 notice, the Commission has made a proposed determination that the amendment request involves no significant hazard considerations.

The Commission has determined that failure to act in a timely way would prevent the licensee from receiving fuel for the upcoming reloading, and thus incur an unnecessary delay and cost. Therefore, the Commission has insufficient time to issue its usual 30-day notice of the proposed action for public comment.

If the proposed determination becomes final, an opportunity for a hearing will be published in the Federal Register at a later date and any hearing request will not delay the effective date of the amendment.

If the Commission decides in its final determination that the amendment does involve a significant hazards consideration, a notice of opportunity for a hearing will be published in the Federal Register, and, if a hearing is granted, it will be held before any amendment is issued.

The Commission is seeking public comments on this proposed determination of no significant hazards consideration. Comments on the proposed determination may be telephoned to John F. Stolz, Project Director, Project Directorate I–4, by collect call to (301–492–7040) or submitted in writing to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, Washington, DC. All comments received by September 3, 1987, will be considered in reaching a final determination. A copy of the application and any comments received may be examined at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Dated at Bethesda, Maryland, this 14th day of August, 1987.

For the Nuclear Regulatory Commission.

Peter S. Tam,

Project Manager, Project Directorate I–4, Division of Reactor Projects, I/II.

[FR Doc. 87–18988 Filed 8–18–87; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–250 and 50–251]

Notice of Exemption; Florida Power and Light Company (Turkey Point Plant, Unit Nos. 3 and 4)

I

Florida Power and Light Company (the licensee) is the holder of Facility Operating License Nos. DPR–31 and DPR–41 which authorize the operation of the Turkey Point Plant, Unit Nos. 3 and 4 (the facilities) at steady-state power levels not in excess of 2200 megawatts thermal. The facilities are pressurized water reactors (PWRs) located at the licensee's site in Dade County, Florda. The licensee provide, among other things, that the facilities are subject to all rules, regulations and orders of the Commission now or hereafter in effet.

II

On November 19, 1980, the Commission published a revised section 10 CFR 50.48 and a new Appendix R to 10 CFR Part 50 regarding fire protection features of nuclear power plants (45 FR 76602). The revised § 50.48 and Appendix R became effective on February 17, 1981. Section III of Appendix R contains 15 subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant. One of these fifteen subsections, III.G, is the subject of this exemption request. Specifically, Subsection III.G.2 requires that one train of cables and equipment necessary to achieve and maintain safe shutdown be maintained free of fire damage by one of the following means:

a. Separation of cables and equipment and associated non-safety circuits of redundant trains by a fire barrier having a 3-hour rating. Structural steel forming a part of or supporting such fire barriers shall be protected to provide fire resistance equivalent to that required of the barrier;

b. Separation of cables and equipment and associated non-safety circuits or redundant trains by a horizontal distance of more than 20 feet with no intervening combustible or fire hazards. In addition, fire detectors and an automatic fire suppression system shall be installed in the fire area; or

c. Enclosure of cables and equipment and associated non-safety circuits of one redundant train in a fire barrier having a 1-hour rating. In addition, fire detectors and an automatic fire suppression system shall be installed in the fire area.

III

By letter dated April 25, 1986, as supplemented on February 11, 1987, the licensee requested approval of four exemptions from the technical requirements of Section III.G.2 of Appendix R to 10 CFR Part 50, which requires physical separation and/or fire protection systems to protect redundant trains of safe shutdown related cable and equipment.

The licensee has stated that the existing and proposed fire protection features at the Turkey Point site accomplish the underlying purpose of the rule. Requiring additional suppression systems, detection systems, and fire barriers would require the expenditure of engineering and construction resources as well as the associated capital costs and unnecessary radiation exposure to workers which would represent an unwarranted burden on the licensee's resources. Information relevant to the "special circumstances" finding required by 10 CFR 50.12(a) (see 50 FR 50764) are:

- Engineering and construction costs for additional fire suppression and detection systems.
- Engineering and construction costs for additional fire barriers.
- Increased surveillance on new or extended fire suppression and fire detection systems.
- Significant radiation exposure in associated work areas which could result in exposures in excess of 10 CFR Part 20.
- Temporary shielding to reduce radiation is labor-intensive resulting in higher cost and radiation exposure to workers.

The licensee indicated that these costs and personnel exposure to high radiation levels are significantly in excess of those required to meet the underlying purpose of the rule. The staff concludes that "special circumstances" exist for the licensee's requested exemptions in that application of the regulation in these particular circumstances is not necessary to achieve the underlying purposes of Appendix R to 10 CFR Part 50. See 10 CFR 50.12(a)(2)(ii). The staff's evaluation of each request follows:

Fire Barrier Separating Fire Area AAA (Fire Zone 24) from Fire Areas A (Fire Zones 4 and 5)

The licensee requested an exemption from the requirements of Section III.G.2 of Appendix R to the extent that it requires separation of cables and equipment and associated non-safety circuits or redundant trains by a fire barrier having a 3-hour rating.

Fire Zone 24 and Fire Zones 4 and 5 are located in the auxiliary building. The floor separating these zones is a rated fire barrier; however, it contains five unsealed penetrations.

The in situ fire load is negligible for Fire Zone 24. The highest in situ fire load is Fire Zone 5 and is equivalent to a fire severity of 34 minutes as represented by the ASTM E–119 time-temperature curve. Personnel access to these zones is strictly controlled. Therefore, the potential for accumulation of sigificant quanities of extraneous combustible material is reduced.

There are no redundable safe shutdown cables in Fire Zone 24 or immediately below the 3-hour rated floor in Fire Zones 4 and 5. Fire protection features include portable fire extinguishers and fire hose stations. Fire detection is provided which annunicates in the control room.

The fire protection in the above fire zones does not comply with the technical requirements of Section III.G.2.a of Appendix R because complete 3-hour fire rated barriers do not separate redundant divisions of safe shutdown components.

Because of the low combustible loading, any fire would develop slowly and have a low heat output. Smoke detectors located in Fire Zones 4 and 5 and near Fire Zone 24 provide reasonable assurance that any fire would be detected quickly and annunicated in the control room, resulting in a response by the brigade. The fire brigade would extinguish the fire using extinguishers or adjacent hose stations. The low fire loads in Fire Zones 4 and 5 will limit the severity of any fire near the penetrations. Since there is no redundant safe shutdown cable in Fire Zone 24, there is reasonable assurance that a fire in the vicinity of the penetrations would not affect the safe shutdown capability of the plant.

Based on the above evaluation, the licensee's existing fire protection configuration provides an equivalent level of safety to that achieved by compliance with Section III.G.2 of Appendix R. Therefore, the licensee's request for exemption, as described above, should be granted.

Fire Barrier Separating Fire Area F (Fire Zones 48, 49, and 50) from Fire Area A (Fire Zone 10)

The licensee requested an exemption from the technical requirements of Section III.G.2 of Appendix R to the extent that it requires separation of cables and equipment and associated non-safety circuits of redundant trains by a fire barrier having a 3-hour rating.

Fire Zones 48, 49, and 50, and Fire Zone 10 are located in the auxiliary building. The floor separating these zones is a 3-hour rated fire barrier; however, it is penetrated by two 8-inch sleeves in the floor of Fire Zone 48, and one 6-inch sleeve in each of Fire Zones 49 and 50.

The in situ fire load is negligible in all zones except Fire Zone 10, which is equivalent to a fire severity of 14 minutes as represented by the ASTM E–119 fire test curve. Personnel access to this zone is strictly controlled. Therefore, the potential for accumulation of significant quantities of transient combustible material is reduced.

There are no redundant safe shutdown cables in Fire Zones 48, 49, and 50. The nearest safe shutdown cable is located in Fire Zone 10, approximately 10 feet away from the nearest unsealed penetration. Fire Zones 48, 49 and 50 are enclosed by full height concrete shield walls, and the floor penetrations are located behind a labyrinth wall.

Fire protection includes portable fire extinguishers and fire hose stations. Fire detection is provided which annuciates in the control room.

The fire protection in the above fire zones does not comply with the technical requirements of Section III.G.2.a of Appendix R because complete 3-hour fire rated barriers do not separate redundant divisions of safe shutdown components. Because of the low combustible loading, any fire would develop slowly with low heat output. The smoke detectors provide reasonable assurance that any fire would be detected quickly and annunciated in the control room, resulting in a response by the fire brigade. The fire brigade would extinguish the fire using extinguishers or adjacent hose stations.

The low fire loads in Fire Zone 10 will limit the severity of any fire near the penetrations. Since there are no redundant safe shutdown cables in Fire Zones 48, 49 and 50, there is reasonable assurance that a fire in the vicinity of the penetrations would not affect the safe shutdown capability of the plant.

Based on the above evaluation, the licensee's existing fire protection configuration provides an equivalent level of safety to that achieved by conformance with Section III.G.2 of Appendix R. Therefore, the licensee's request for exemption, as described above, should be granted.

Fire Detection and Suppression in Outdoor Fire Zones 76, 77, 78, 79, 80, 81, 82, 83, 85, 86, 87, 88, 90, 91, 92, 105, 106R, 117, and 118

The licensee requested an exemption from the technical requirements of 10 CFR Part 50 to the extent that it requires fire detection and automatic fire suppression systems in areas containing redundant safe shutdown components.

The fire zones listed above are located in outside areas or within the perimeter of the open structure turbine building. The majority of redundant safe shutdown equipment and cable located in outdoor areas are located in Fire Zones 79, 84 and 89. An exemption from the requirement of fire detection and suppression systems for these three zones was previously granted by letter dated March 27, 1984.

The combustible materials in the zones that are the subject of this evaluation consist of cables and combustible liquids enclosed in stationary containers, such as lube oil storage tanks and transformers. The combustible liquids have high flash points and are protected by automatic fire suppression systems.

Fire protection includes portable fire extinguishers, hose stations, and fire hydrants. Redundant safe shutdown cables are separated horizontally by a distance of at least 20 feet or are provided with 1-hour rated barriers where 20 feet of separation cannot be maintained.

The fire protection in the above zones does not comply with the technical requirements of Section III.G.2 of Appendix R because fire detection and automatic fire suppressions systems are not provided.

The open nature of these areas will prevent stratification of hot gases in the event of a fire, thereby limiting the size and heat output of the fire. Further assurance that a fire would not affect safe shutdown components exists because redundant cables and components are separated by at least 20 feet or have a 1-hour rated fire wrap where 20 feet of separation cannot be maintained. Hazards from combustible liquids have been minimized because of their storage in containers conforming to the guidelines of NFPA standard no. 30 and existing local fire protection including automatic fire suppression systems.

The addition of area-wide fire detection and automatic fire suppression systems would not significantly improve the level of fire protection.

Based on the above evaluation, the existing fire protection features provide a level of fire protection equivalent to the technical requirements of Section III.G.2 of Appendix R. Therefore, the licensee's request for exemption, as described above, should be granted.

Inside Containment, Fire Areas P and Q

The licensee requested an exemption from the technical requirements of Section III.G.2.d of Appendix R to the extent that it requires no intervening combustibles when cables and equipment and associated non-safety circuits of redundant trains are separated by a horizontal distance of at least 20 feet.

Each containment building is classified as one fire area (Fire Areas O and P) for Turkey Point Units 3 and 4. The containment building is essentially an open area. There are three intermediate floor levels, a primary shield wall around the reactor, and a secondary shield wall around the primary loop.

The redundant safe shutdown cables tend to run radially away from the reactor and follow the containment perimeter to their electrical penetration rooms. Although the cables are generally separated by much more than 20 feet, there are intervening combustible materials, mostly lubricating oil and other cable.

The reactor coolant pump motors are located in separate cubicles and are fitted with oil collection assemblies to address Appendix R, Section III.0 requirements. The other oil sources are relatively small quantities located away from most safe shutdown cables, and are not in close proximity to piping with temperatures higher than the oil flash point. Most of the area fire load is comprised of the oil in the reactor coolant pump motors.

The other major source of combustible material, the cables, are either coated with a fire retardant coating or qualified to the requirements of IEEE Standard 383–1974. Since access to the containment during plant operation is strictly limited, the probability of large amounts of transient combustibles being accumulated is low.

Fire protection features include physical separation of the redundant equipment and their associated cables and 1-hour rated fire barriers. Portable fire extinguishers are located inside containment and in the immediate vicinity of each personnel access hatch.

Smoke detectors which alarm in the control room are installed in the electrical penetration area.

The fire protection in the above fire areas does not comply with Section III.G.2 because of intervening combustibles between redundant safe shutdown components and circuitry.

Although there is a significant fire load due to lubricating oil in the reactor coolant pump motors, the motors have an oil collection system which minimizes the possibility of a fire. The fire potential in the cables is reduced because they are either coated with a fire retardant coating or are IEEE 383 rated. The location of the cables and equipment of the mid-elevation of the large containment building will also limit their damage from hot gases caused by stratification.

The above features reduce the amount of combustible material to a low level, and along with the large volume of the containment provide reasonable assurance that any fire would develop slowly and have limited heat output. Therefore, it is not probable that a single fire could jeopardize both trains of redundant safe shutdown components or circuitry.

Based on the above evaluation, the licensee's existing fire protection configuration provides an equivalent level of protection to that achieved by compliance with Section III.G.2 of Appendix R. Therefore, the licensee's request for exemption, as described above, should be granted.

IV

Accordingly, the Commission has determined pursuant to 10 CFR 50.12(a), that (1) these exemptions as described in Section III are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security, and (2) special circumstances are present for these exemptions in that application of the regulation in these particular circumstances is not necessary to achieve the underlying purposes of Appendix R to 10 CFR Part 50. Therefore, the Commission hereby grants the exemption requests identified in Section III above.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of these exemptions will not result in any significant environmental impact (August 12, 1987, 52 FR 29940).

A copy of the Safety Evaluation dated August 12, 1987, related to this action is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555 and at the Environmetal and Public Affairs Library, Florida International University Miami, Florida 33199. A copy may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects-I/II.

This exemption is effective upon issuance

Dated at Bethesda, Maryland, the 12th day of August, 1987.

For the Nuclear Regulatory Commission.

Steven A. Varga

Director, Division of Reactor Projects-I/II.

[FR Doc. 87-18989 Filed 8-18-87; 8:45 am]

BILLING CODE 7590-01-M

Intent To Establish a Local Public Document Room at the University of Nevada, Las Vegas, Pertaining to the Potential High-Level Waste Geologic Repository Site in Nevada

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of intent to establish a local public document room at the University of Nevada, Las Vegas, for records pertaining to the potential High-Level Waste Geologic Repository Site, Yucca Mountain, Nevada.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) is intending to establish a Local Public Document Room (LPDR) at the Library of the University of Nevada, Las Vegas, Nevada, for records pertaining to the potential High-Level Waste Geologic Repository Site, located near Yucca Mountain, Nevada. The collection currently measures approximately 60 linear feet of material.

DATE: Comment period expires October 19, 1987. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments filed on or before this date.

ADDRESSES: Written comments may be submitted to David L. Meyer, Chief Procedures Branch, Division of Rules and Records, Office of Administration Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Jona L. Souder, Chief, Local Public Document Room Branch, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone 301-492-7536 or Toll Free 800-638-8081.

Among the factors the NRC considers in selecting a location for the collection are:

(1) The willingness and ability of the library to house and maintain the collection;

(2) The physical facilities available, including shelf space, work space, and copying and micrographics equipment;

(3) The willingness and ability of the library staff to assist the public in locating records;

(4) The public accessibility of the library including parking, ground transportation, and hours of operation, particularly evening and weekend hours;

(5) The proximity of the library to the potential High-Level Waste Geologic Repository Site located near Yucca Mountain, Nevada;

(6) The proximity of the library to existing user groups of the collection, if known.

Public comments are requested on the establishment of the Library of the University of Nevada, Las Vegas, Nevada, as a Local Public Document Room for records pertaining to the Potential High-Level Waste Geologic Repository Site being considered in Nevada.

Dated at Bethesda, Maryland, this 13th day of August, 1987

For the U.S. Nuclear Regulatory Commission.

Donnie H. Grimsley,

Director, Division of Rules and Records, Office of Administration and Resources Management.

[FR Doc. 87-18838 Filed 8-18-87; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Review of Methods for Increasing Competition for Government Contracts

AGENCY: Office of Federal Procurement Policy, OMB.

ACTION: The office of Federal Procurement Policy is requesting comments and suggestions with regard to specific Government-wide policy or procedural actions that could be taken to increase the percentage of Government contract dollars awarded under competitive procedures. The percentage of competitively awarded contract dollars has increased from 41% in 1981 to 53% in 1986. The administration has set a goal to increase competition by an additional 4% to 6% by 1989. Comments or suggestions for

helping achieve this goal should be submitted to the office of Federal Procurement Policy, 726 Jackson Place NW., Washington, DC 20503.

Public Meeting: A public meeting will be held in Room 2010, New Executive Office Building, 726 Jackson Place NW., Washington, DC, at 10:00 a.m., October 1, 1987. Persons or organizations wishing to present ideas or suggestions about specific actions that OFPP or other Government agencies and departments could take to increase competition are encouraged to attend the meeting. Written statements will be accepted by the Office of Federal Procurement Policy at the public meeting and persons or organizations wishing to make oral statements will be given 10 minutes each to present their views. Persons and organizations with similar positions are encouraged to select a common spokesman for the presentation of their views. Persons wishing to attend and/or present statements at the public meeting should contact Ms. Margaret B. Davis, telephone number (202) 395–6803 prior to 3:30 p.m., September 30, 1987, in order to be cleared for admittance to the New Executive Office Building. Entrance to the building is on 17th Street NW.

DATE: Comments and suggestions in response to this **Federal Register** notice must be received in OFPP by close of business, September 25, 1987. Statements to be presented at the public meeting should be received by September 25, 1987.

ADDRESS: Comments and statements should be submitted to the Office Management and Budget, Office of Federal Procurement Policy, Room 9013, New Executive Office Building, 726 Jackson Place NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Charles W. Clark, Deputy Associate Administrator for Policy Development, (202) 395–6803.

Robert P. Bedell,

Administrator.

Dated: August 10, 1987.

[FR Doc. 87–18934 Filed 8–18–87; 8:45 am]

BILLING CODE 3110-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of proposal(s)

(1) Collection title: Aged Monitoring Questionnaire.

(2) Form(s) submitted: G–19c.

(3) Type of request: New collection.

(4) Frequency of use: On occasion.

(5) Respondents: Individuals or households.

(6) Annual responses: 4,000.

(7) Annual reporting hours: 333.

(8) Collection description: The collection will obtain information about age beneficiaries over age ninety who may no longer be competent or who are deceased but who death has not been reported. Under the RRA, the Board may pay benefits to someone other than the beneficiary if it is in the beneficiary's interest and terminate payments to a deceased beneficiary who death is unreported.

Additional information or comments

Copies of the proposed forms and supporting documents may be obtained from Pauline Lohens, the agency clearance officer (312–751–4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Elaina Norden (202–395–7316), Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

Pauline Lohens,

Director of Information and Data Management.

[FR Doc. 87–18935 Filed 8–18–87; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–24793; File No. SR–Amex–87–20]

Self-Regulatory Organizations; Proposed Rule Change by the American Stock Exchange, Inc.; Relating to Institutional Index Options Executed Through AUTO–EX

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 16, 1987, the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. ("AMEX" or "Exchange") proposes to increase the size of the orders which may be used in the AUTO–EX system for Institutional Index ("XII") options to 100 contracts.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Following SEC approval in December 1985 (File No. SR–ANEX–85–29), the Exchange introduced AUTO–EX, an automatic execution system that results in instantaneous executions of selected active Major Market Index ("XMI") options series against the current quote. AUTO–EX then reports such executions back to the entering member firm as well as to the last sale tape, thus effectively resulting in "locked in" trades (since the Exchange submits both sides to comparison) and thereby eliminating operational burdens for such trades.

Overall, member firms are strongly suportive of the Exchange's AUTO–EX system which has been used recently during a number of active "break-out" situations in stock options. (*See* File No. SR–AMEX–87–4)

Current order eligibility (market and marketable limit orders) for AUTO–EX is 10 contracts; however, the Exchange is presently awaiting SEC approval to expand the eligible number to 20 contracts.

Although SEC approval to use AUTO–EX for Institutional Index (XII) options was obtained when XII was launched in October 1986, the Exchange decided not to use AUTO–EX until experience was

gained in trading the new option. (See File No. SR–AMEX–86–23)

Recently, the Exchange completed offering of 36 Limited Trading Permits which has brought additional traders to the trading floor. A portion of such traders' activities must take place in XII options. Further, the XII specialist now uses a computer-driven real time option pricing capability which interfaces directly with the AMEX Market Data System to automatically generate quotation updates in XII options. Based on this enhanced capability, it is proposed that AUTO–EX be provided in every outstanding XII series for up to 100 contracts. Only the XII specialist will be permitted to take the contra side of AUTO–EX orders.

In order to implement this expansion without disadvantaging brokers and traders in the crowd, the specialist will commit to fill any order (both in the crowd and on the book) that was bidding or offering at the executed price at the time of an AUTO–EX execution. For example, should the specialist be notified on a 75–contract AUTO–EX execution against the quoted bid of 3, he would be obliged to execute any bids of 3 which were currently entitled in the crowd, for up to 75 contracts. To help ensure compliance with the above proposals, the overhead display screens in the XII trading area will be modified to indicate when the last sale is an AUTO–EX execution.

The proposal for XII AUTO–EX is intended to have great appeal to potential institutional users of this option contract and should significantly help the Exchange from a competitive standpoint.

The proposed change is consistent with the requirements of the Securities Exchange Act of 1934 ("1934 Act") and the rules and regulations thereunder applicable to the Exchange since it will not only foster cooperation and coordination with persons engaged in executing transactions in XII options but also protect limit orders on the specialist's book as well as comparable orders in the trading crowd. Therefore, the proposed rule change is consistent with section 6(b)(5) of the 1934 Act, which provides in pertinent part that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

B. Self-Regulatory Organization's Statement on Burden on Competition

The AMEX believes that the proposed rule change will not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Options Committee, a committee of the AMEX Board of Governors comprised of members and representatives of member firms, has endorsed the proposed rule change.

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to file number SR–Amex–87–20 and should be submitted by September 9, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 12, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–18903 Filed 8–18–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–24792; File No. SR–CBOE–87–34]

Self-Regulatory Organizations; Notice and Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Market-Maker Eligibility for RAES in OEX

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 21, 1987, the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Text of the Proposed Rule Change

The pilot for Market-Maker Eligibility for RAES in OEX, set forth in SR–CBOE–87–01, is extended until September 30, 1987 or until superceded by new eligibility standards.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The pilot for market-maker eligibility for RAES in OEX is set forth in SR–CBOE–87–01. The purpose of this filing is to extend the pilot while new eligibility standards, proposed in SR–CBOE–87–22, are under Commission consideration. The statutory basis is set forth in SR–CBOE–87–01.[1]

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change will impose any burden on competition.

[1] SR–CBOE–87–01 was noticed and approved in Securities Exchange Act Release No. 24127, 52 FR 6254 (March 2, 1987). SR–CBOE–87–22 was noticed in Securities Exchange Act Release No. 24561, 52 FR 22871 (June 16, 1987).

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Chicago Board Options Exchange ("CBOE") has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act, in order that the pilot procedures approved by the Commission in SR–CBOE–87–01 may continue in effect until such time as the Commission has concluded its review of the new RAES eligibility standards proposed by the CBOE in SR–CBOE–87–22. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a securities exchange, and in particular, the requirements of section 6 and the rules and regulations thereunder. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in that the eligibility requirements set out in SR–CBOE–87–01 were previously approved by the Commission, and the Commission believes it is appropriate to allow these procedures to remain in effect until the Commission has completed its review of the proposed new CBOE RAES participation requirements.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 9, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 12, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–18904 Filed 8–18–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–15912; File No. 812–6781]

Mutual Benefit Life Insurance Co. et al.; Application for Exemption

Date: August 11, 1987.

AGENCY: Securities and Exchange Commission (the "SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

Applicants: The Mutual Benefit Life Insurance Company (the "Company") Mutual Benefit Variable Contract Account-9 (the "Account"), and Mutual Benefit Financial Service Company (the "Underwriter").

Relevant 1940 Act sections: Exemption requested under section 6(c) from sections 26(a)(2)(C) and 27 (c)(2).

Summary of application: Applicants seek an order to permit them to issue variable annuity contracts which provide for the deduction of mortality and expense risk charges from the assets of the separate account.

Filing date: June 30, 1987.

Hearing of notification of hearing: If no hearing is ordered, the Application will be granted. Any interested person may request a hearing on this Application, or ask to be notified if a hearing is ordered. Any requests must be received by the Commission by 5:30 p.m., on September 8, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant(s) with the request, either personally or by mail, and also send it to the Secretary of the Commission, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW. Washington, DC 20549. The Mutual Benefit Life Insurance Company and Mutual Benefit Variable Contract Account-9 at 520 Broad Street, Newark, New Jersey 07101 and Mutual Benefit Financial Service Company at 290 Westminster Street, Providence, Rhode Island 02903.

FOR FURTHER INFORMATION CONTACT: Heidi Stam, Staff Attorney, (202) 272–3017 or Lewis B. Reich, Special Counsel, (202) 272–2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations

1. The Company is a mutual life insurance company organized under the law of New Jersey. The Account is a separate account of the Company currently seeking registration under the Act as a unit investment trust.

2. The Account is divided into sub-accounts which invest solely in the shares of one of the five corresponding portfolios of Seligman Mutual Benefit Portfolios, Inc. The Account was established to fund the individual flexible purchase payment deferred variable annuity contracts (the "Contracts") to be issued by the Company.

3. The Company proposes to deduct from the Account a daily charge for mortality and expense risks ("Risk Charge") equivilent to an annual rate of 1.25% of the average daily net asset value of the Account. The porposed Risk Charge consists of approximately .35% for mortality risks and approximately .90% for expense risks.

4. The Company assumes a mortality risk by its contractual obligations to pay a death benefit prior to the annuity date. The Company assumes a further mortality risk by its contractual obligation to continue to make annuity payments to each annuitant for the entire life of the annuitant under annuity options involving life contingencies.

5. The Company assumes an expense risk because the Administration Charge, which is assessed against each Contract annually, may be insufficient to cover certain administrative service fees and other administrative expenses assumed by the Company. The Administration Charge, initially set at $30, may not be increased above $80 per year.

6. The level of the Risk Charge is within the range of industry practice for comparable annuity contracts. Applicants have reviewed publicly available information regarding products of other companies taking into consideration such factors as: Guaranteed minimum death benefits;

guaranteed annuity purchase rate; minimum initial and subsequent purchase payments; other contract charges; the manner in which charges are imposed; market sector; investment options under contracts; and availability to individual qualified and non-tax-qualified plans. Based upon this review, Applicants have concluded that the Risk Charge is within the range of charges determined by industry practice. Applicants will maintain at their principal office, and make available to the SEC, a memorandum setting forth in detail the variable annuity products analyzed and the methodology and results of the Company's comparative review.

7. The Risk Charge is reasonable in relation to the risks assumed and guarantees provided in the Contract. This representation is based upon Applicant's analysis of the mortality risks (taking into consideration such factors as any contractual right to increase charges above current levels, the guaranteed annuity purchase rates and the guaranteed minimum death benefit) and the expense risks (taking into account deductions from the Account assets other than Risk Charges and the estimated costs, now and in the future, for certain product features). The Company will maintain at its principal office, available to the SEC, a memorandum setting forth in detail this analysis.

8. No front end sales charge is collected or deducted at the time purchase payments are applied under the Contracts. A Contingent Deferred Sales Charge will be assessed when redemption (withdrawal) of a purchase payment is made within five years of its payment date. The amounts obtained from deferred sales charges will be used to reimburse the Company for expenses incurred in selling the Contracts. These expenses include commissions and other promotional or distribution expenses associated with marketing the Contracts and the costs of printing and distributing prospectuses, Contracts, sales material and any other relevant information concerning the Contracts. The Contingent Deferred Sales Charge is 6% of any purchase payment withdrawn within five years of its payment date. In no event will the Contingent Deferred Sales Charge be made against any purchase payments redeemed which have been held under the Contract longer than five years immediately preceding the date of redemption. Payments made first are considered to be withdrawn first.

9. Applicants acknowledge that the Contingent Deferred Sales Charge may be insufficient to cover all costs relating to the distribution of the Contracts and that if a profit is realized from the Risk Charge, all or a portion of such profit may be used for distribution expenses. Not withstanding the foregoing, the Company has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect to the Contract will benefit the Account and the contract owners. The basis for that conclusion is set forth in a memorandum which will be maintained by the Company at its principal office and will be available to the SEC.

10. The Account will invest only in an underlying mutual fund which undertakes, in the event it should adopt any plan under Rule 12b–1 to finance distribution expenses, to have that plan formulated and approved by a board of directors, a majority of the members of which are not "interested persons" of such fund within the meaning of section 2(a)(19) of the Act.

11. Applicants submit, based on all of their representations stated herein, that their exemptive requests meet the standards set out in section 6(c) and that an order should, therefore, be granted. Accordingly, Applicants request an exemption pursuant to section 6(c) of the Act from the operation of the provisions of sections 26(a)(2)(C) and 27(c)(2) to the extent necessary to permit the assessment of the Risk Charge with respect to the Contracts.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–18905 Filed 8–18–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–24797; File Nos. 4–218 and S7–433]

Joint Industry Plan; Filing and Summary Effectiveness of Amendments and Order Withdrawing Amendments to the Consolidated Quotation Plan and Consolidated Transaction Plan Fee Schedules

On August 12, 1987, the participants in the Consolidated Tape Association ("CTA") and Consolidated Quotation System ("CQS") submitted amendments to the Plan governing the operation of the consolidated quotation reporting system ("CQ Plan") and the Plan governing the operation of the consolidated transaction reporting plan ("CTA Plan").[1]

I. Description of the Amendments

The amendments revise Network B[2] fees to accommodate "Other Services" (services subscribers offer customers that differ from conventional services);[3] raise the Network B analysis programs charge; and establish a new, combined, lower fee for receipt of Network B last sale and bid-ask data by nonprofessional subscribers. The amendments also make several conforming and technical changes.

First, the amendments incorporate into the CTA and CQ Plans new fees for Other Services that are substantially lower than other professional Network B charges. In effect, the new fees charge the broker-dealer or vendor on the basis of "device equivalency" as if the broker-dealer or vendor were serving its customers by manual interrogation of a last sale data base.

Second, the amendments reduce the monthly fees vendors pay to provide their nonprofessional customers with Network B data. Previously vendors paid $5.00 under the CTA Plan and $4.00 under the CQ Plan. The amendment provides for a single, combined monthly fee of $3.00 for CTA and CQ data.

Finally, the amendments increase the monthly Network B analysis programs charge from $50.00 to $200.00. Under the old fee schedule, use of CTA and CQ data for other categories of computer programs (for example, compilation of stock tables and operations control programs) required payment of a monthly fee of $200.00. Thus, the fee

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[1] The participants originally submitted the amendments on March 31, 1987. *See* Securities Exchange Release No. 24314 (April 13, 1987). 52 FR 12997. On August 12, 1987, the participants withdrew those amendments and refiled them pursuant Rule 11Aa3–2(c)(4). *See* letter dated August 12, 1987, from Carrie E. Dwyer, Senior Vice President and General Counsel, American Stock Exchange ("Amex"), to Kathryn V. Natale, Assistant Director, SEC. The Commission requested that the Amex, which is the Network B Plan Administrator, provide it with certain information on the proposed amendments. Amex did not respond to the Commission before the summary effectiveness of the amendments lapsed. Thus, Amex has refiled the amendments pursuant to Rule 11Aa3–2(c)(4).

[2] "Network B" refers to the consolidated data stream representing transaction and quotation data on eligible securities that are listed on the American Stock Exchange ("Amex") or that are traded on another exchange but substantially meet the Amex listing standards.

[3] Examples of "Other Services" are services that allow customers to: (1) Obtain real-time stock market information over the telephone through an automated process involving a computer-generated voice; or (2) obtain real-time stock market information over a leased printer located in their homes or offices.

increase merely brings the fee for the analysis program classification in line with similar classifications.

The participants stated that they designed the amendments to permit wider dissemination of market data by making it less expensively available to investors. They believe that the new fees also offer greater flexibility to broker-dealers and vendors in designing new market data services. Finally, the participants stated that they believe the amendments fulfill the national market system objectives of dissemination of last sale information and thus are consistent with section 11A of the Securities Exchange Act of 1934.

II. Summary Effectiveness of the Amendments

Rue 11Aa3–2 provides that the Commission may, upon publication of notice of the amendment, summarily put into effect for 120 days an amendment to a national market system plan. The Commission first must determine, however, that it is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act. The Commission believes that granting summary effectiveness for these amendments is consistent with the Act.

First, the fees for "Other Services" already are in effect under experimental authority granted the CQS and CTA.[4] Further, making these fees a permanent part of the CTA and CQ Plan fee structure and reducing the non-professional fees will enable a greater number of investors to receive last sale and quotation data and should encourage innovation among broker-dealers and vendors in creating new methods of providing information to customers.

The Commission also believes that the increase in the fee subscribers pay for the program analysis classification is consistent with the Act. The Commission believes the increase corrects an apparent inequity among the charges for different computer program classifications.

The Commission has requested that the Amex supply it with additional information on the purposes and justifications of the proposed amendments so that it can determine whether the proposed amendments are consistent with the Act. The 120-day period will afford the Amex adequate time to respond to the Commission's inquiries. Further, while the Commission reviews Amex's responses, the Plan participants will be able to apply the modified fee schedule, rather than reverting to the old schedule during this interim period.[5]

III. Request for Comment

To assist the Commission in determining whether to approve permanently the amendments, interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 9, 1987.

IV. Withdrawl of Amendments to the CTA and CQ Plans

As noted above, the CTA and CQ Network B Participants requested that the Commission order withdraw the amendments to the CTA and CQ Plans submitted on March 31, 1987.

It is therefore ordered, that the above-described amendments be withdrawn.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 13, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–18977 Filed 8–18–87; 8:45 am]

BILLING CODE 8010-01-M

[4] *See* Securities Exchange Act Release No. 20216 (September 23, 1986), 48 FR 44299, in which the Commission approved amendments to the CTA and CQ Plans authorizing the Plan administrators (*i.e.*, the New York Stock Exchange and the Amex) to engage in market tests and pilot programs of limited scope and duration without the prior approval of the Operating Committee or, implicily, the Commission.

[5] It is important to note that the Commission recently considered and approved similar changes to the CTA and CQ Network A Fee Schedule. *See* Securities Exchange Act Release No. 24130 (February 20, 1987), 52 FR 6413.

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of Reporting Requirements Submitted for Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATE: Comments should be submitted on or before September 18, 1987. If you intend to comment but cannot prepare comments promptly please advise the OMB Reviewer and the Agency Clearance Officer before the deadline..

Copies: Request for clearance (S.F. 83s), supporting statements, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer William Cline, Small Business Administration, 1441 L Street NW., Room 200, Washington, DC 20416, Telephone: (202) 653–8538.

OMB Reviewer: Robert Neal, Office of Information and Regulatory Affairs, Office of Managment and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395–7340.

Title: Inquiry Record
Form No. SBA 149
Frequency: On occasion
Description of Respondents: The interview is required so the applicant can communicate the loan needs to SBA, and the latter can make preliminary determination of size eligibility, purpose of the loan and credit worthiness.
Annual Responses: 240,000
Annual Burden Hours: 120,000
Type of Request: Extension

Title: Business Loan Reconsideration Request
Frequency: On occasion
Description of Respondents: Applicants, whose request for business loans are declined are permitted to request reconsideration on the basis of information submitted to overcome the reasons for the decline.
Annual Responses: 3,600
Annual Burden Hours: 7,200
Type of Request: Extension

Title: Amendements to License Application
Form No. SBA 415C
Frequency: On occassion
Description of Respondents: The form is completed by the Small Busniess Development Company (SBIC) and the information collected identifies that information in the original license application which has been changed.
Annual Responses: 1419
Annual Burden Hours: 354
Type of Request: Extension
Title: SBA Recruitment Mailing List Survey
Frequency: One time, non recurring
Description of Respondents: The survey will be completed by each recipient of our Job Opportunity Announcements (JOAS). The SBA intends to evaluate current mailing lists for the distribution of JOAs.
Annual Responses: 2,500
Annual Burden Hours: 410
Type of Request: New

William Cline,

Chief, Administrative Information Branch, Small Business Administration.

August 13, 1987.

[FR Doc. 87-18908 Filed 8-18-87; 8:45 am]

BILLING CODE 8025-01-M

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of Reporting Requirements Submitted for Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATE: Comments should be submitted on or before September 3, 1987. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: William Cline, Small Business Administration, 1441 L Street, NW., Room 200, Washington, DC 20416, Telephone: (202) 653-8538.

OMB Reviewer: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Officer Building, Washington, DC 20503, Telephone: (202) 395-7340.

Title: Secondary Market Disclosure and Assignment Form
Form No. SBA 1088
Frequency: Whenever a certificate is traded
Description of Respondents: The holder of the guaranteed portion must, prior to any sale, disclose to the purchaser the terms and conditions. In addition, such information must be provided in writing on the transfer document.
Annual Responses: 5,000
Annual Burden Hours: 10,000
Type of Request: Revision

William Cline,

Chief, Administrative Information Branch, Small Business Administration.

August 13, 1987.

[FR Doc. 87-18909 Filed 8-18-87; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 02/02-0509]

Application for a Small Business Investment Company License; SLK Capital Corp.

An application for a license to operate a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 *et seq.*) has been filed by SLK Capital Corporation, 20th Floor, 115 Broadway, New York, NY 10006, with the Small Business Administration (SBA) pursuant to 13 CFR 107.103 (1987).

The officers, directors and shareholders of the Applicant are as follows:

Edward A. Kerbs, President, 8 South Cherry Lane, Rumson, NJ 07760
Stephen E. Levenson, Vice President, 111 Tewkesbury Road, Scarsdale, NY 10583
Frank E. Witt, Treasurer & Director, 5.97%, 55 Liberty Street, #17B, New York, NY 10005
Louis R. Proyect, Secretary, 1.77%, 18 Clover Drive, Great Neck, NY 11021
Peter R. Kellogg, Director, 12.83%, 39 Stewart Road, Short Hills, NJ 07078
Harvey Silverman, 10.18%, 40 Brook Drive, Milltown, NJ 08850
David P. Nolan, Director, 10.18%, 110 East 70th Street, New York, NY 10021

There are 26 additional shareholders, none of whom owns as much as 10 percent of the Applicant's stock.

The Applicant, SLK, a New York corporation, will begin operations with $1,000,000 paid-in capital and paid-in surplus. SLK will conduct its activities primarily in the State of New York but will consider investments in businesses in other areas of the United States.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the company under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act of 1958, and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, DC 20416.

A copy of the Notice will be published in a newspaper of general circulation in New York, NY.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 12, 1987.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 87-18911 Filed 8-18-87; 8:45 am]

BILLING CODE 8025-01-M

Region IX Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration, San Francisco District Advisory Council will hold a public meeting at 10:00 a.m. Thursday, September 10, 1987, 211 Main Street—5th Floor—Room 543, San Francisco, California, to discuss such matters as may be presented by members, staff of the U.S. Small Business Adminstration, or others present.

For further information, write or call the Office of District Director, San Francisco District Office, 211 Main Street—4th Floor, San Francisco, California 94105, (415) 974-0642.

Joan M. Nowak,

Director, Office of Advisory Councils.

August 11, 1987.

[FR Doc. 87-18910 Filed 8-18-87; 8:45 am]

BILLING CODE 8025-01-M

Region III Advisory Council Executive Board; Public Meeting

The U.S. Small Business Administration Region III Advisory Council Executive Board will hold a public meeting from noon on Thursday,

September 3 to noon on Friday, September 4, 1987, at Glenhardie Country Club, Valley Forge, Pennsylvania to discuss such matters as may be presented by members, staff or the U.S. Small Business Administration, or others present.

For further information, write or call Robert H. Miller, Regional Administrator, U.S. Small Business Administration, One Bala Cynwyd Plaza, 231 St. Asaphs Road, Bala Cynwyd, Pennsylvania 19004, (215) 596-5901.

Jean M. Novak,

Director, Office of Advisory Councils.

August 13, 1987

[FR Doc. 87-19001 Filed 8-18-87; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 87-8-36; Docket 44922]

Application of Air Transport International, Inc.; Order To Show Cause

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of Order to Show Cause

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding that Air Transport International, Inc., continues to be fit to engage in the cargo air transportation authorized by its domestic section 401 and 418 certificate.

DATE: Persons wishing to file objections should do so not later than August 28, 1987.

ADDRESSES: Responses should be filed in Docket 44922 and addressed to the Documentary Services Division, Department of Transportation, 400 7th Street SW., Room 4107, Washington, DC 20590 and should be served on the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Carol A. Szekely, Air Carrier Fitness Division, P-56, U.S. Department of Transportation, 400 7th Street SW., Washington, DC 20590, (202) 366-9721.

Dated: August 13, 1987.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 87-18925 Filed 8-18-87; 8:45 am]

BILLING CODE 4910-62-M

Federal Highway Administration

Nationwide Section 4(f) Evaluations and Approvals for Federally-Aided Highway Projects With Minor Involvement With Public Parks, Recreation Lands, Wildlife and Waterfowl Refuges, and Historic Sites

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: The FHWA has approved two nationwide Section 4(f) evaluations. The first one covers federally assisted highway projects which use minor amounts of land from publicly owned public parks, recreation areas, and wildlife and waterfowl refutes. The second covers federally assisted highway projects which use minor amounts of land from historic sites which are on or are eligible for inclusion on the National Register of Historic Places. These programmatic evaluations can be applied to individual projects with similar fact patterns. Utilization of nationwide programmatic evaluations can streamline the processing of qualifying projects by eliminating a certain amount of project-by-project internal review and interagency coordination.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick Skaer, Office of Environmental Policy, Room 3232, (202) 366-2050; Mr. Harold Aikens, Office of the Chief Counsel, Right-of-Way and Environmental Law Division, Room 4230, (202) 366-1373, FHWA, DOT, 400 Seventh Street, SW., Washington, DC 20590. Office hours are 7:45 a.m. to 4:15 p.m., ET, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

Federally aided highway projects that propose to use land from significant publicly owned public parks, recreation areas, and wildlife and waterfowl refuges, or from significant historic sites are subject to Section 4(f) of the DOT Act,[1] which prohibits such use unless (1) there are no feasible and prudent alternatives and (2) all possible planning to minimize harm has occurred. To demonstrate that these conditions are met, FHWA requires that appropriate analyses and coordination be undertaken.

It was FHWA's practice in the years following the passage of Section 4(f) to present these analyses and coordination for every project in a document known as an individual Section 4(f) evaluation. In approving the individual Section 4(f) evalution for a project, FHWA made a finding that the statutory provisos of Section 4(f) had been complied with.

After many years of processing projects with individual Section 4(f) evaluations, it became apparent that many projects had similar fact patterns from a Section 4(f) standpoint. This situation gave rise to the concept of a programmatic Section 4(f) evaluation. Under the programmatic concept, a given project scenario is evaluated from a Section 4(f) perspective. Development of this evaluation is not based on any particular project, but on experience gained from processing many projects that had a fact pattern similar to that assumed in the scenario. The programmatic evaluation is applied to a project by comparing the project facts with those established in the programmatic evaluation. If the project facts fall within the applicability criteria of the programmatic evaluation and if the specific conditions contained in the programmatic evaluation are met, (e.g., coordination, mitigation), then the statutory requirements of Section 4(f) are met, i.e., there are no feasible and prudent alternatives and all possible planning to minimize harm has occurred. If the project facts do not fall within the applicability criteria of the programmatic evaluation or if any of the conditions of the programmatic evaluation are not met, then an individual Section 4(f) evaluation is required.

The FHWA first utilized the programmatic approach in 1977 with a programmatic Section 4(f) evaluation for bikeway projects, and subsequently in 1979 and 1983 with programmatic Section 4(f) evaluations for Great River Road projects and projects involving historic bridges, respectively. In 1984, the FHWA Region 1 office issued a regionwide programmatic Section 4(f) evaluation for projects requiring minor amounts of parkland. Since then it has been applied about 20 times. In 1985, representatives from FHWA, the Office of the Secretary of Transportation, and the U.S. Department of Interior (DOI) field reviewed several of the projects processed with the Region 1 programmatic evaluation and determined that the procedure was achieving its goal of expediting the projects without jeopardizing the values protected by Section 4(f).

The two nationwide programmatic Section 4(f) evaluations published with this notice, one for highway projects

[1] Section 4(f), Pub. L. 89-670, 80 Stat. 934 was repealed by Pub. L. 97-449, 96 Stat 2444 and recodified at 49 U.S.C. 303. Because of common usage and familiarity the term Section 4(f) continues to be used by the Department of Transportation in matters relating to 49 U.S.C. 303.

using minor amounts of lands from publicly owned public parks, recreation areas, and wildlife and waterfowl refuges, the other for highway projects using minor amounts of land from historic sites, are an extension of the Region 1 programmatic Section 4(f) evaluation. In addition to extending the geographic applicability to cover the entire Nation, the nationwide evaluations extend the Section 4(f) resources covered to include wildlife and waterfowl refuges and historic sites.

New Nationwide Section 4(f) Evaluation

The fact patterns established for these new nationwide Section 4(f) evaluations are very similar. This is why they are published in the same notice. The essential factual criteria are as follows: (1) The project entails an improvement of an existing highway, (2) the impacts of the highway project on the Section 4(f) property are minor, and (3) the officials with jurisdiction over the property have agreed with the assessment of impacts and the proposed mitigation. All of these facts must be established for a project to be processed using either of these nationwide Section 4(f) evaluations.

The use of a nationwide Section 4(f) evaluation does not mean that the project will escape a close scrutiny under Section 4(f). The FHWA Division Administrator will apply the appropriate Section 4(f) evaluation to a project only after assuring and documenting that the project meets the applicability criteria provided in the nationwide evaluation, that alternatives to the use of the Section 4(f) land have been fully considered, and that mitigation measures consistent with agreements with the official(s) with jurisdiction over the Section 4(f) property have been incorporated into the project planning. It is important to note that a project failing to comply with Section 4(f) if processed with an individual Section 4(f) evaluation would also fail under the nationwide Section 4(f) evaluations.

Why Issue These Nationwide Section 4(f) Evaluations?

The FHWA approves approximately 120 individual Section 4(f) evaluations each year. Each approval is based on extensive internal review and interagency coordination. The internal review consists of a review by the FHWA Division Office, Regional Office and sometimes the Headquarters Office. In addition to this review by the FHWA environmental program managers, each individual Section 4(f) evaluation undergoes a separate review by FHWA counsel to ensure legal sufficiency. Interagency coordination is undertaken on all individual Section 4(f) evaluations with the official(s) with jurisdiction over the Section 4(f) land, and with the DOI. In addition, on projects involving Section 4(f) lands for which they have program responsibilities, the U.S. Departments of Agriculture (USDA) and Housing and Urban Development (HUD) are consulted.

The above process of review and consultation is comprehensive but time consuming. Nevertheless, it is appropriate for projects that substantially impair the functions of Section 4(f) lands. On many projects, however, the Section 4(f) lands are not substantially impaired. Project impacts on Section 4(f) lands are sometimes minor, with no controversy between FHWA and the official(s) with jurisdiction, with no apparent feasible and prudent alternative, and with substantial or complete mitigation provided. It is these projects that the new nationwide Section 4(f) evaluations address.

The nationwide Section 4(f) evaluations streamline the processing of qualifying projects by eliminating a certain amount of project-by-project internal review and interagency coordination. As established in the nationwide evaluations, the FHWA Division Administrator will review the facts of a project and determine if the nationwide Section 4(f) evaluation can be applied. If it can, then appropriate documentation is placed in the project file. The project is not reviewed by a higher level FHWA office. Similarly, interagency coordination is streamlined by consulting only with the official(s) with jurisdiction and not with DOI, USDA, or HUD (unless the Federal agency has a specific action to take, such as DOI approval of a conversion of land acquired using Land and Water Conservation Funds). The time savings that result from the streamlining steps outlined above will typically amount to 3–6 months and sometimes will result in a project being built during one construction season rather than the next. Equally important, the extent of internal review and interagency coordination is made more commensurate with the severity of impacts and lack of alternatives.

Actions Taken to Date

The draft nationwide Section 4(f) evaluations were published on January 7, 1986, at 51 FR 697 requesting public and agency comment (Docket No. 86–2). In addition, copies of the draft evaluations were sent to various Federal agencies and national organizations for comment.

After careful analysis of all comments received, the FHWA decided to finalize and approve these nationwide Section 4(f) evaluations. This decision was based upon the belief that the nationwide evaluations will assure full compliance with the statutory requirements of Section 4(f) while at the same time reducing duplicative administrative processing and delays for eligible projects.

On December 23, 1986, FHWA distributed the approved nationwide Section 4(f) evaluations to its field offices with instructions that they could be applied to future qualified projects. The FHWA also provided copies of the approved evaluations to Federal agencies and national organizations that commented on the draft evaluations. Because of comments received after issuing the approved nationwide Section 4(f) evaluations, FHWA delayed issuing this notice until we had an opportunity to fully evaluate the comments. After careful consideration, FHWA is issuing this final notice with the nationwide evaluations as approved on December 23, 1986. However, the comments and response section of the notice has been modified to address the comments.

Comments and Responses on the Draft Nationwide Section 4(f) Evaluations

Ninety-eight responses to the request for comments were received. Of these, 72 generally supported the proposal, 23 opposed it, and 3 took no specific position, but raised questions for clarification. The respondents included 5 Federal agencies, 11 national organizations, 38 State transportation agencies, 3 State natural resource agencies, 29 local public works departments, 7 local associations, 4 individuals, and 1 petition.

Those opposing the proposal cited various reasons. The most frequently stated bases for opposition are summarized below, followed by a response:

Comment: The programmatic mechanism is illegal.

Response: The statute does not require any particular form of documentation. The FHWA Chief Counsel has evaluated the two nationwide Section 4(f) evaluations and determined that they comply with applicable statutory requirements, and with case law, i.e., they allow a determination as to whether there is a feasible prudent alternative and that there has been all possible planning to minimize harm. The mechanism is very similar to programmatic environmental evaluations conducted under the National Environmental Policy Act, e.g.,

categorical exclusions and programmatic Findings of No Significant Impacts. The courts have repeatedly upheld such programmatic evaluations.

Comment: The proposed nationwide evaluations would reduce the effectiveness of Section 4(f) by making it easier to use Section 4(f) lands.

Response: While the nationwide evaluations will allow projects to be processed with fewer delays, the statutory tests that a project must pass if processed with a nationwide evaluation are identical to those applied for an individual Section 4(f) evaluation.

Comment: A programmatic evaluation is no substitute for project-by-project review.

Response: The programmatic evaluations lay out certain uniform conditions and findings; however, they do not eliminate a project-by-project reveiw of the appropriateness of applying these conditions and findings. Each project will be reviewed to assure that the conditions are satisfied. This review will be comprehensive, including an analysis of alternatives, impacts and mitigation.

Comment: The programmatic mechanism insufficient opportunity for public input on individual projects.

Response: Section 4(f) does not require any public involvement. The public involvement activities employed on a project are prescribed in FHWA approved State public involvement procedures. Such procedures typically base the level of public involvement on the environmental class of action and on other factors which reflect the severity of impacts and the degree of public interest. Therefore, the use of a programmatic evaluation will not affect the type of public involvement activities undertaken for a project. However, project specific documentation supporting the use of the nationwide evaluation would be available to members of the public upon request.

Several commenters expressed reservations regarding the ability of the official(s) with jurisdiction over the Section 4(f) land to adequately protect it, and the FHWA's ability to implement the nationwide evaluations as intended. Both of these points will be the subject of systematic program monitoring to assure that officials with jurisdiction are fully aware of the process and that FHWA and State transportation agency offices are properly utilizing the process.

One State transportation agency opposed the nationwide evaluations on the grounds that they gave the officials with jurisdiction too much authority. It is important to keep in mind that a major premise upon which these nationwide evaluations are based is that the officials with jurisdiction agree with the assessment of impacts and the mitigation proposed. This does not obligate the State transportation agency or the FHWA to modify its impact assessment or mitigation proposal if it feels that the position of the official with jurisdiction is unreasonable. It does, however, mean that agreement has not been reached and that an individual Section 4(f) evaluation is required.

Several commenters requested that FHWA provide guidance on which nationwide evaluation to use when a project fits within the applicability criteria of more than one of the nationwide evaluations. For example, a project involving a park that is also historic could qualify under either the nationwide evaluation for parks, etc., or the nationwide evaluation for historic sites. In such a case the project should meet the applicability criteria and other conditions for both nationwide evaluations in order to be processed using a programmatic approach.

Another situation for which clarification was requested was the relationship between the nationwide evaluation for historic sites and the nationwide Section 4(f) evaluation for historic bridges issued in 1983. A project may require the use or demolition of an historic bridge and may also use land from an historic site. If the historic bridge and the historic site are separable, then both programmatic Section 4(f) evaluations should be utilized independently on the separate parts of the project. If the historic bridge is the historic site, then the nationwide evaluation for historic bridges should be used. The use of the land would in this instance be incidental to the use of the structure itself.

One commenter noted the possibility of avoiding minor Section 4(f) involvements with historic sites althogether by establishing historic boundaries more carefully or by revising boundaries that were arbitrarily set. The FHWA supports such actions but recognizes that boundary revisions are sometimes difficult to accomplish. In such cases the use of historically non-contributing elements from the historic site is best handled by applying the nationwide Section 4(f) evaluation for historic sites.

Two commenters questioned whether Section 4(f) should apply at all to situations where either a "non-effect" or "no adverse effect" determination is made pursuant to the process for review of effects on historic properties under section 106 of the National Historic Preservation Act and 36 CFR Part 800 (the Section 106 Process). They reasoned that since the undertaking does not impair the historic integrity of the site, it does not "use" it within the meaning of Section 4(f). Such an interpretation is not consistent with interpretations of Section 4(f) by the courts, which have determined that the physical occupancy of land from an hitoric site is a "use" under Section 4(f) except in certain cases involving historic transportation facilities.

Section by Section Analysis

Many changes to particular sections of the nationwide evaluations were suggested. Many of these comments are discussed below. Most of the comments applied equally to both of the nationwide evaluations. Where only the nationwide evaluation for parks, etc., or the nationwide evaluation for historic sites is affected, a reference to this effect is made.

The DOI undertook a comprehensive review of the nationwide evaluations and commented on virtually all of the sections. Most of the comments offered alternative wording to enhance the understandability and workability of the nationwide evaluations. The FHWA has adopted most of the DOI's suggestions.

Introduction

This section has been edited to remove unnecessary verbiage and to emphasize that the project specific analyses conducted in support of the use of the nationwide evaluation should be compiled into a single document.

Applicability

Several commenters suggested modifying the paragraph describing the types of projects for which the nationwide evaluation could be used. Some felt that projects that substantially increase the capacity of the highway should be excluded as should projects processed with an environmental impact statement (EIS). Others felt that projects to be built on new location should qualify. The FHWA has reviewed the positions carefully and decided to maintain essentially the same requirements contained in the draft. To allow projects on new location would introduce a new scenario not contemplated in the development of these nationwide evaluations. To prohibit projects that substantially increase capacity would place unnecessary restrictions on the use of the nationwide evaluations. Such projects are within the contemplated scenario of improving an existing highway adjacent to Section 4(f) lands. Substantial capacity increases need not translate into substantial impacts to the Section 4(f) lands. If the impacts are

more than minor, then these nationwide evaluations cannot be used, regardless of whether or not the highway capacity is increased.

Regarding whether the nationwide evaluations can be used on projects processed with an EIS, FHWA has decided against an outright prohibition, while recognizing that in the vast majority of cases use of the nationwide evaluations would be inappropriate. It would be inappropriate in that since an individual Section 4(f) evaluation is incorporated into the EIS, no additional coordination requirements are imposed nor should project delays result from the preparation of the individual Section 4(f) evaluation. On the other hand, there may be cases where Section 4(f) lands are identified late in the process, after a final EIS has been approved. In such cases the use of the nationwide evaluations would be appropriate, provided that the applicability criteria are met. These considerations have been incorporated into a new applicability criterion.

One commeter requested that FHWA clarify what is meant by a "highway on new location" since many projects involve sections of highway on new location and sections on the existing location. Insofar as the nationwide evaluations are concerned, the nature of the highway in the vicinity of the Section 4(f) lands is critical. If the highway can be characterized as being planned on new location through the Section 4(f) lands, then the nationwide evaluations cannot be used.

Many commenters addressed the provision in the nationwide evaluation for historic sites that defined "minor" as meaning "no effect" or "no adverse affect" as defined in the section 106 regulation. Several persons correctly noted that the Advisory Council for Historic Preservation (ACHP) was considering eliminating the "no adverse effect" category. Since then, the ACHP has finalized its new regulation and has retained the "no adverse effect" determination.

Several commenters felt that the nationwide evaluation for historic sites should also apply to cases with a small or mitigated adverse effect. After careful consideration of how this might be accomplished and its ramifications, FHWA has decided to limit the use of the programmatic evaluation to "no effect" and "no adverse effect."

One commenter suggested defining "minor" totally independently of the determinations of effect made pursuant to the section 106 process. Given the similarity between the determinations of effect and the concept of minor impact, FHWA has opted for the administrative simplicity of tying the two together for purposes of this nationwide evaluation.

One commenter suggested that the applicability criteria for the nationwide evaluation for historic sites be modified to allow the use of non-contributing elements, such as, modern buildings and appurtenances. The FHWA views this suggestion as being entirely consistent with the intent of the programmatic evaluation and has adopted it by rewording the applicability criteria to exclude only the removal or alteration of the historic elements (buildings, structures, or objects) of a site.

One commenter questioned whether or not the nationwide evaluation for historic sites applied also to archeological sites. Our intention is to have the evaluation apply only to archaeological resources located within the boundary of the historic site in question and only if the archaeological resources are not important for preservation in place. The applicability criteria have been modified to reflect this intent.

Another commenter indicated that the nationwide evaluation for historic sites should apply in historic districts provided that all other conditions have been met. The FHWA has long taken the position that Section 4(f) applies only to contributing elements in a historic district. As such, the district is viewed as a collection of individual sites. Given this approach, the nationwide evaluation could be used provided the impacts on the contributing elements within the district are minor, i.e., there is "no effect" or "no adverse effect" under the section 106 process and the Section 4(f) involvement is limited to the use of land or non-historic improvements.

Numerous comments were received regarding the provisions in the nationwide evaluation for parks, etc., that dealt with what constitutes a minor use. Of particular concern was the provision that precluded utilizing the nationwide evaluation if the project's use of Section 4(f) lands exceed the lesser of 1 acre and 10 percent of the Section 4(f) lands. Many State transportation agencies, particularly from western States, indicated that minor strip takes from extremely large Section 4(f) lands could easily exceed the 1 acre limitation. Several commenters felt that the limitation was arbitrary and redundant since other factors adequately defined what constitutes a minor use. While there is no doubt that the limitation was somewhat arbitararily set, FHWA has decided to maintain a numerical limitation to assure that the other criteria defining minor use are not too broadly construed. In recognition of the concern expressed by the western States, the limitation has been raised from 1 acre to 1 percent of the Section 4(f) lands, for Section 4(f) lands greater than 100 acres.

One commenter asked whether the acreage limitations apply on a per project or per site basis. They would be applied separately for each Section 4(f) site.

In response to a suggestion, the paragraphs in the nationwide evaluation for parks, etc., dealing with the effects of the land taking and the project impacts on the Section 4(f) lands have been revised. This revision makes it clear that in addition to the functions of Section 4(f) lands not being directly impaired by physical taking of land, the proximity impacts of the highway must not impair the functions of the remaining Section 4(f) lands.

One commenter suggested that "use" be explicitly defined as including "constructive use." The FHWA considers constructive use to occur only when the functions of the Section 4(f) lands are substantially impaired. Situations involving substantial impairment of the Section 4(f) lands are clearly ineligible for the nationwide evaluations.

Several commenters were troubled by the provision requiring that the official(s) with jurisdiction over the Section 4(f) lands agree in writing with the assessment of impacts and the proposed mitigation. They felt that this would allow such officials to hold the project up until they got exactly what they wanted. The nationwide evaluations assume that the pertinent parties are in agreement. If this is not the case, an individual Section 4(f) evaluation is the correct mechanism for processing the project.

In response to a comment, the paragraph in the natonwide evalaution for parks, etc., dealing with the conversion of lands for which Land and Water Conservation Funds have been employed has been broadened to take into account other similar laws and Federal agencies in addition to the DOI. In carrying out this provision, the FHWA and the State transportation agency must make every effort to identify any Federal encumbrances on the Section 4(f) lands. A statement has been added to clarify that the nationwide evaluation cannot be used if the affected agency objects to the proposed land conversion or transfer. The FHWA believes that if there is an objection that cannot be resolved through additional coordination, then the potential for serious problems is

sufficiently great that an individual Section 4(f) evaluation is warranted.

One commenter noted that the DOI routinely approves Land and Water conservation Fund conversions but that the process usually takes a long time. The nationwide evalaution does not require that the DOI approve the conversion, only that it take a position. In those States where a State agency takes an active role in approving Land and Water Conservation Fund conversions, an arrangement may be worked out for DOI to delegate its coordination role to the State.

Alternatives

One commenter felt that the consideration of alternatives on new location that avoid the Section 4(f) lands was in most cases a meaningless exercise. Another commenter remarked that the "full evaluation" of alternatives implied a rigor that is not warranted in most cases. Notwithstanding these comments, this section has been kept essentially unchanged from the draft. The degree of evaluation of avoidance alternatives will vary on a project-by-project basis and will depend upon how much information is needed to support the finding that the avoidance alternatives are not prudent and feasible. Where the disadvantages of the avoidance alternatives are self-evident, less analysis will be required than where they are more subtle.

In weighing alternatives under Section 4(f), it is clearly appropriate to consider the cumulative impacts of adopting or rejecting a particular alternative. Thus, even if no single negative impact is so great as to justify rejection of an alternative, all negative impacts of that alternative as a whole may require its rejection as not feasible and prudent. This applies as much to the evaluation of the do-nothing alternative, where not implementing the project has many negative repurcussions to the community, as it does to avoidance "build" alternatives, where implementing the project in a manner that avoids using Section 4(f) lands may have a variety of impacts to non-4(f) resources. While this principle of cumulative impacts applies to all Section 4(f) determinations, it is of particular relevance to programmatic Section 4(f) approvals because these approvals apply to relatively small projects, where very often no single impact alone reaches extraordinary magnitude. Thus, in making decisions under these programmatic approvals, FHWA will consider all of the impacts of alternatives in context, weighing positive and negative factors as a whole.

Findings

As suggested by one commenter, the findings in this section have been restructed to be more straightforward. That the avoidance alternatives are accompanied by unique problems, unusual factors or impacts of extraordinary magnitudes is explicitly stated at the close of each finding. A modifying phrase has been included to recognize that these problems, factors and imports are not considered in a vacuum, but rather in light of the degree of use of the Section 4(f) lands by the highway project. In considering whether avoidance alternatives are feasible and prudent for a project, FHWA considers such factors as: (1) The importance of the Section 4(f) property, (2) the severity of the project impacts on the Section 4(f) property, (3) the importance of the project, and (4) the opportunities for mitigating the project impacts. The relative importance of these factors varies from case to case.

Measures to Minimize Harm

Two commenters were uncertain whether all of the mitigation measures listed in the draft nationwide evaluation for parks, etc., were required to be implemented. In response, this section has been reorganized to clarify that one or more of the mitigation measures listed must be included in the project. The exact mitigation package would be worked out in cooperation with the official(s) with jurisdiction over the Section 4(f) lands. In any event, the mitigation would have to minimize project impacts and be a reasonable public expenditure in light of the severity of the impact and the expected benefits of the mitigation.

Several of the mitigation items have been modified in response to comments made. In particular, the item covering highway design features has been expanded to include examples and to indicate that the flexible application of Association of State Highway and Transportation Officials (AASHTO) Standards should be exercised, provided that traffic safety is not compromised.

A new item has been added to recognize that monetary payments are sometimes made in lieu of, or in addition to, other forms of mitigation.

Coordination

One commenter requested that the programmatic evaluation for parks, etc., be modified to contain a mechanism for determining the existence of Federal encumbrances to non-Federal lands. In response, a requirement has been added that the State or local official with jurisdiction be asked to identify any Federal encumbrances. In addition, for those lands likely to have been acquired or improved with Federal funds, we recommend that FHWA or State highway agency (SHA) representatives telephone the appropriate Federal agency to verify the possibility of a Federal encumbrance existing.

At the request of the DOI, specific instructions have been included in the nationwide evaluation for parks, etc., regarding coordination with the Department's various bureaus.

The paragraph dealing with coordination with the Coast Guard has been modified to underscore that this coordination should take place *before* the nationwide evaluation is applied to projects requiring individual bridge permits. In practice, the FHWA should coordinate with the Coast Guard as soon as possible after determining that the conditions are right for applying one of the nationwide evaluations.

The ACHP requested that the nationwide evaluation for historic sites be modified to better reflect coordination with the ACHP under the section 106 regulations. Rather than repeat the coordination procedures contained in the section 106 regulations, the final nationwide evaluation specifies that successful completion of this coordination is a condition of using the nationwide evaluation. References have been added to the sections on *Applicability* and *Measures to Minimize Harm* to further highlight the ACHP's role.

Several commenters addressed the provision in the nationwide evaluation for historic sites that covered coordination with other groups such as a local historical society and with the property owner. One commenter suggested adding Indian tribes to the list. Another suggested making coordination with a private property owner optional. Another requested guidance concerning how to handle disagreements between a private property owner and the State Historic Preservation Officer (SHPO). The section 106 regulations indicate the points in the process where "interested persons" should be consulted. Rather than duplicating these procedures, the final nationwide evaluation for historic sites references the section 106 regulations and encourages coordination with interested persons.

Procedures

This section has been moved to the end of each nationwide evaluation in recognition of its integrative function.

Several commenters expressed doubts as to the level of documentation and the

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paper flow involved in using the nationwide evaluations. Documentation should be roughly equivalent in detail to that produced for an individual Section 4(f) evaluation. It should demonstrate that the applicability criteria for nationwide evaluation have been met, that avoidance alternatives have been evaluated, that the findings contained in the nationwide evaluation fit the project facts, and that appropriate mitigation measures have been included. It should also include correspondence demonstrating that the official(s) with jurisdiction over the Section 4(f) lands agree with the assessment of impacts and with the proposed mitigation measures. This documentation should be self-contained and self-explanatory since it will be available to the public upon request. Where an environmental assessment (EA) is prepared for a project, the EA should state that Section 4(f) requirements will be complied with by applying a nationwide evaluation.

The paper flow between the State transportation agency and the FHWA Division Office can be as simple as an exchange of letters and supporting documentation.

(49 U.S.C. 303; 23 U.S.C. 138; 49 CFR 1.48(b))

(Catalog of Federal Domestic Assistance Number 20.205, Highway Research, Planning and Construction)

Issued on: August 14, 1987.

R. A. Barnhart,

Federal Highway Administrator.

Final Nationwide Section 4(F) Evaluation and Approval for Federally-Aided Highway Projects With Minor Involvements With Public Parks, Recreation Lands, and Wildlife and Waterfowl Refuges

This programmatic Section 4(f) evaluation has been prepared for projects which improve existing highways and use minor amounts of publicly owned public parks, recreation lands, or wildlife and waterfowl refuges that are adjacent to existing highways. This programmatic Section 4(f) evaluation satisfies the requirements of Section 4(f) for all projects that meet the applicability criteria listed below. No individual Section 4(f) evaluations need be prepared for such projects.

(Note.—A similar programmatic Section 4(f) evaluation has been prepared for projects which use minor amounts of land from historic sites).

The FHWA Division Administrator is responsible for reviewing each individual project to determine that it meets the criteria and procedures of this programmatic Section 4(f) evaluation. The Division Administrator's determinations will be thorough and will clearly document the items that have been reviewed. The written analysis and determinations will be combined in a single document and placed in the project record and will be made available to the public upon request. This programmatic evaluation will not change the existing procedures for project compliance with the National Environmental Policy Act (NEPA) or with public involvement requirements.

Applicability

This programmatic Section 4(f) evaluation may be applied by FHWA only to projects meeting the following criteria:

1. The proposed project is designed to improve the operational characteristics, safety, and/or physical condition of existing highway facilities on essentially the same alignment. This includes "4R" work (resurfacing, restoration, rehabilitation, and reconstruction); safety improvements, such as shoulder widening and the correction of substandard curves and intersections; traffic operation improvements, such as signalization, channelization, and turning or climbing lanes; bicycle and pedestrian facilities; bridge replacements on essentially the same alignment; and the construction of additional lanes. This programmatic Section 4(f) evaluation does not apply to the construction of a highway on a new location.

2. The Section 4(f) lands are publicly owned public parks, recreation lands, or wildlife and waterfowl refuges located adjacent to the existing highway.

3. The amount and location of the land to be used shall not impair the use of the remaining Section 4(f) land, in whole or in part, for its intended purpose. This determination is to be made by the FHWA in concurrence with the officials having jurisdiction over the Section 4(f) lands, and will be documented in relation to the size, use, and/or other characteristics deemed relevant.

The total amount of land to be acquired from any Section 4(f) site shall not exceed the values in the following Table:

Total size of section 4(f) site	Maximum to be acquired
<10 acres	10 percent of site
10 acres–100 acres	1 acre
>100 acres	1 percent of site

4. The proximity impacts of the project on the remaining Section 4(f) land shall not impair the use of such land for its intended purpose. This determination is to be made by the FHWA in concurrence with the officials having jurisdiction over the Section 4(f) lands, and will be documented with regard to noise, air and water pollution, wildlife and habitat effects, aesthetic values, and/or other impacts deemed relevant.

5. The officials having jurisdiction over the Section 4(f) lands must agree, in writing, with the assessment of the impacts of the proposed project on, and the proposed mitigation for, the Section 4(f) lands.

6. For projects using land from a site purchased or improved with funds under the Land and Water Conservation Fund Act, the Federal Aid in Fish Restoration Act (Dingell-Johnson Act), the Federal Aid in Wildlife Act (Pittman-Robertson Act), or similar laws, or the lands are otherwise encumbered with a Federal interest (e.g., former Federal surplus property), coordination with the appropriate Federal agency is required to ascertain in the agency's position on the land conversion or transfer. The programmatic Section 4(f) evaluation does not apply if the agency objects to the land conversion or transfer.

7. This programmatic evaluation does not apply to projects for which an environmental impact statement (EIS) is prepared, unless the use of Section 4(f) lands is discovered after the approval of the final EIS. Should any of the above criteria not be met, this programmatic Section 4(f) evaluation cannot be used, and an individual Section 4(f) evaluation must be prepared.

Alternatives

The following alternatives avoid any use of the public park land, recreational area, or wildlife and waterfowl refuge:

1. Do nothing.

2. Improve the highway without using the adjacent public park recreational land, or wildlife and waterfowl refuge.

3. Build an improved facility on new location without using the public park, recreation land, or wildlife or waterfowl refuge.

This list is intended to be all-inclusive. The programmatic Section 4(f) evaluation does not apply if a feasible and prudent alternative is identified that is not discussed in this document. The project record must clearly demonstrate that each of the above alternatives was fully evaluated before the FHWA Division Administrator concluded that the programmatic Section 4(f) evaluation applied to the project.

Findings

In order for this programmatic Section 4(f) evaluation to be applied to a project, each of the following findings must be supported by the circumstances, studies, and consultations on the project:

1. *Do Nothing Alternative.* The Do Nothing Alternative is not feasible and prudent because: (a) It would not correct existing or projected capacity deficiencies; or (b) it would not correct existing safety hazards; or (c) it would not correct existing deteriorated conditions and maintenance problems; and (d) not providing such correction would constitute a cost or community impact of extraordinary magnitude, or would result in truly unusual or unique problems, when compared with the proposed use of the Section 4(f) lands.

2. *Improvement Without Using the Adjacent Section 4(f) Lands.* It is not feasible and prudent to avoid Section 4(f) lands by roadway design or transportation system management techniques (including, but not limited to, minor alignment shifts, changes in geometric design standards, use of retaining walls and/or other structures, and traffic diversions or other traffic management measures) because implementing such measures would result in: (a) Substantial adverse community impacts to adjacent homes, businesses or other improved properties; or (b) substantially increased roadway or structure cost; or (c) unique engineering, traffic, maintenance, or safety problems; or (d) substantial adverse social, economic, or environmental impacts; or (e) the project not meeting identified transportation needs; and (f) the impacts, costs, or problems would be truly unusual or unique, or of extraordinary magnitude when compared with the proposed use of Section 4(f) lands. Flexibility in the application of American Association of State Highway and Transportation Officials (AASHTO) geometric standards should be exercised, as permitted in 23 CFR Part 625, during the analysis of this alternative.

3. *Alternatives on New Location.* It is not feasible and prudent to avoid Section 4(f) lands by constructing on new alignment because (a) the new location would not solve existing transportation, safety, or maintenance problems; or (b) the new location would result in substantial adverse social, economic, or environmental impacts (including such impacts as extensive severing of productive farmlands, displacement of a substantial number of families or businesses, serious disruption of established travel patterns, substantial damage to wetlands or other sensitive natural areas, or greater impacts to other Section 4(f) lands); or (c) the new location would substantially increase costs or engineering difficulties (such as an inability to achieve minimum design standards, or to meet the requirements of various permitting agencies such as those involved with navigation, pollution, and the environment); and (d) such problems, impacts, costs, or difficulties would be truly unusual or unique, or of extraordinary magnitude when compared with the proposed use of Section 4(f) lands. Flexibility in the application of AASHTO geometric standards should be exercised, as permitted in 23 CFR Part 625, during the analysis of this alternative.

Measures to Minimize Harm

This programmatic Section 4(f) evaluation and approval may be used only for projects where the FHWA Division Administrator, in accordance with this evaluation, ensures that the proposed action includes all possible planning to minimize harm. This has occurred when the officials having jurisdiction over the Section 4(f) property have agreed, in writing, with the assessment of impacts resulting from the use of the Section 4(f) property and with the mitigation measures to be provided. Mitigation measures shall include one or more of the following:

1. Replacement of lands used with lands of reasonably equivalent usefulness and location and of at least comparable value.

2. Replacement of facilities impacted by the project including sidewalks, paths, benches, lights, trees, and other facilities.

3. Restoration and landscaping of disturbed areas.

4. Incorporation of design features (e.g., reduction in right-of-way width, modifications to the roadway section, retaining walls, curb and gutter sections, and minor alignment shifts); and habitat features (e.g., construction of new, or enhancement of existing, wetlands or other special habitat types); where necessary to reduce or minimize impacts to the Section 4(f) property. Such features should be designed in a manner that will not adversely affect the safety of the highway facility. Flexibility in the application of AASHTO geometric standards should be exercised, as permitted in 23 CFR Part 625, during such design.

5. Payment of the fair market value of the land and improvements taken or improvements to the remaining Section 4(f) site equal to the fair market value of the land and improvements taken.

6. Such additional or alternative mitigation measures as may be determined necessary based on consultation with the officials having jurisdiction over the parkland, recreation area, or wildlife or waterfowl refuge.

If the project uses Section 4(f) lands that are encumbered with a Federal interest (see *Applicability*), coordination is required with the appropriate agency to ascertain what special measures to minimize harm, or other requirements, may be necessary under that agency's regulations. To the extent possible, commitments to accomplish such special measures and/or requirements shall be included in the project record.

Coordination

Each project will require coordination in the early stages of project development with the Federal, State and/or local agency officials having jurisdiction over the Section 4(f) lands. In the case of non-Federal Section 4(f) lands, the official with jurisdiction will be asked to identify any Federal encumbrances. Where such encumbrances exist, coordination will be required with the Federal agency responsible for the encumbrance.

For the interests of the Department of Interior, Federal agency coordination will be initiated with the Regional Directors of the U.S. Fish and Wildlife Service, the National Park Service, and the Bureau of Reclamation; the State Directors of the Bureau of Land Management; and the Area Directors of the Bureau of Indian Affairs. In the case of Indian lands, there will also be coordination with appropriate Indian Tribal officials.

Before applying this programmatic evaluation to projects requiring an individual bridge permit, the Division Administrator shall coordinate with the U.S. Coast Guard District Commander.

Copies of the final written analysis and determinations required under this programmatic Section 4(f) evaluation shall be provided to the officials having jurisdiction over the involved Section 4(f) area and to other parties upon request.

Approval Procedure

This programmatic Section 4(f) approval applies only after the FHWA Division Administrator has:

1. Determined that the project meets the applicability criteria set forth above;

2. Determined that all of the alternatives set forth in the Findings section have been fully evaluated;

3. Determined that the findings in this document (which conclude that there are no feasible and prudent alternatives to the use of the publicly owned public park, recreation area, or wildlife or waterfowl refuge) are clearly applicable to the project;

4. Determined that the project complies with the Measures to Minimize Harm section of this document;

5. Determined that the coordination called for in this programmatic evaluation has been successfully completed;

6. Assured that the measures to minimize harm will be incorporated in the project; and

7. Documented the project file clearly identifying the basis for the above determinations and assurances.

Issued on: December 23, 1986.

Ali F. Sevin,

Director, Office of Enviromental Policy, Federal Highway Administration.

Final Nationwide Section 4(F) Evaluation and Approval for Federally-Aided Highway Projects With Minor Involvements With Historic Sites

This programmatic Section 4(f) evaluation has been prepared for projects which improve existing highways and use minor amounts of land (including non-historic improvements thereon) from historic sites that are adjacent to existing highways. This programmatic Section 4(f) evaluation satisfies the requirements of Section 4(f) for all projects that meet the applicability criteria listed below. No individual Section 4(f) evaluations need be prepared for such projects. (Note: a similar programmatic Section 4(f) evaluation has been prepared for projects which use minor amounts of publicly owned public parks, recreation lands, or wildlife and waterfowl refuges).

The FHWA Division Administrator is responsible for reviewing each individual project to determine that it meets the criteria and procedures of this programmatic Section 4(f) evaluation. The Division Administrator's determination will be thorough and will clearly document the items that have been reviewed. The written anlaysis and determinations will be combined in a single document and placed in the project record and will be made available to the public upon request. This programmatic evaluation will not change the existing procedures for project compliance with the National Environmental Policy Act (NEPA) or with public involvement requirements.

Applicability

This programmatic Section 4(f) evaluation may be applied by FHWA only to projects meeting the following criteria:

1. The proposed project is designed to improve the operational characteristics, safety, and/or physical condition of existing highway facilities on essentially the same alignment. This includes "4R" work (resurfacing, restoration, rehabilitation, and reconstruction); safety improvements, such as shoulder widening and the correction of substandard curves and intersections; traffic operation improvements, such as signalization, channelization, and turning or climbing lanes; bicycle and pedestrian facilities; bridge replacements on essentially the same alignment; and the construction of additional lanes. This programmatic Section 4(f) evaluation does not apply to the construction of a highway on a new location.

2. The historic site involved is located adjacent to the existing highway.

3. The project does not require the removal or alteration of historic buildings, structures or objects on the historic site.

4. The project does not require the disturbance or removal of archeological resources that are important to preserve in place rather than to recover for archeological research. The determination of the importance to preserve in place will be based on consultation with the State Historic Preservation Officer (SHPO) and, if appropriate, the Advisory Council on Historic Preservation (ACHP).

5. The impact on the Section 4(f) site resulting from the use of the land must be considered minor. The word minor is narrowly defined as having either a "no effect" or "no adverse effect" (when applying the requirements of section 106 of the National Historic Preservation Act and 36 CFR Part 800) on the qualities which qualified the site for listing or eligibility on the National Register of Historic Places. The ACHP must not object to the determination of "no adverse effect."

6. The SHPO must agree, in writing, with the assessment of the impacts of the proposed project on and the proposed mitigation for the historic sites.

7. This programmatic evaluation does not apply to projects for which an environmental impact statement (EIS) is prepared, unless the use of Section 4(f) lands is discovered after the approval of the final EIS.

Should any of the above criteria not be met, this programmatic Section 4(f) evaluation cannot be used, and an individual Section 4(f) evaluation must be prepared.

Alternatives

The following alternatives avoid any use of the historic site.

1. Do nothing.

2. Improve the highway without using the adjacent historic site.

3. Build an improved facility on new location without using the historic site.

This list is intended to be all-inclusive. The programmatic Section 4(f) evaluation does not apply if a feasible and prudent alternative is identified that is not discussed in this document. The project record must clearly demonstrate that each of the above alternatives was fully evaluated before the FHWA Division Administrator concluded that the programmatic Section 4(f) evaluation applied to the project.

Findings

In order for this programmatic Section 4(f) evaluation to be applied to a project, each of the following findings must be supported by the circumstances, studies, and consultations on the project:

1. *Do Nothing Alternative.* The Do Nothing Alternative is not feasible and prudent because: (a) It would not correct existing or projected capacity deficiencies *or* (b) it would not correct existing safety hazards; *or* (c) it would not correct existing deteriorated conditions and maintenance problems; *and* (d) not providing such correction would constitute a cost or community impact of extraordinary magnitude, or would result in truly unusual or unique problems, when compared with the proposed use of the Section 4(f) lands.

2. *Improvement Without Using the Adjacent Section 4(f) Lands.* It is not feasible and prudent to avoid Section 4(f) lands by roadway design or transportation system management techniques (including, but not limited to, minor alignment shifts, changes in geometric design standards, use of retaining walls and/or other structures, and traffic diversions or other traffic management measures) because implementing such measures would result in: (a) Substantial adverse community impacts to adjacent homes, businesses or other improved properties; *or* (b) substantially increased roadway or structure cost; *or* (c) unique engineering, traffic, maintenance, or safety problems; *or* (d) substantial adverse social, economic, or environmental impacts; *or* (e) the project not meeting identified transportation needs; *and* (f) the impacts, costs, or problems would be truly unusual or unique, or of extraordinary magnitude when compared with the proposed use of Section 4(f) lands. Flexibility in the application of American Association of State Highway and Transportation Officials (AASHTO) geometric standards should be exercised, as

permitted in 23 CFR Part 625, during the analysis of this alternative.

3. *Alternatives on New Location.* It is not feasible and prudent to avoid Section 4(f) lands by constructing on new alignment because (a) the new location would not solve existing transporation, safety, or maintenance problems; *or* (b) the new location would result in substantial adverse social, economic, or environmental impacts (including such impacts as extensive severing of productive farmlands, displacement of a substantial number of families or businesses, serious disruption of established travel patterns, substantial damage to wetlands or other sensitive natural areas, or greater impacts to other Section 4(f) lands); *or* (c) the new location would substantially increase costs or engineering difficulties (such as an inability to achieve minimum design standards, or to meet the requirements of various permitting agencies such as those involved with navigation, pollution, and the environment); *and* (d) such problems, inpacts, costs, or difficulties would be truly unusual or unique, or of extraordinary magnitude when compared with the proposed use of Section 4(f) lands. Flexibility in the application of AASHTO geometric standards should be exercised, as permitted in 23 CFR Part 625, during the analysis of this alternative.

Measures to Minimize Harm

This programmatic Section 4(f) evaluation and approval may be used only for projects where the FHWA Division Administrator, in accordance with this evaluation, ensures that the proposed action includes all possible planning to minimize harm. Measures to minimize harm will consist of those measures necessary to preserve the historic integrity of the site and agreed to, in accordance with 36 CFR Part 800 by the FHWA, the SHPO, and as appropriate, the ACHP.

Coordination

The use of this programmatic evaluation and approval is conditioned upon the satisfactory completion of coordination with the SHPO, the ACHP, and interested persons as called for in 36 CFR Part 800. Coordination with interested persons, such as the local government, the property owner, a local historical society, or an Indian tribe, can facilitate in the evaluation of the historic resource values and mitigation proposals and is therefore highly encouraged.

For historic sites encumbered with Federal interests, coordination is required with the Federal agencies responsible for the encumbrances.

Before applying this programmatic evaluation to projects requiring an individual bridge permit, the Division Administrator shall coordinate with the U.S. Coast Guard District Commander.

Approval Procedure

This programmatic Section 4(f) approval applies only after the FHWA Division Administrator has:

1. Determined that the project meets the applicability criteria set forth above;
2. Determined that all of the alternatives set forth in the Findings section have been fully evaluated;
3. Determined that the findings in this document (which conclude that there are no feasible and prudent alternatives to the use of land from or non-historic improvements on the historic site) are clearly applicable to the project;
4. Determined that the project complies with the Measures to Minimize Harm section of this document;
5. Determined that the coordination called for in this programmatic evaluation has been successfully completed;
6. Assured that the measures to minimize harm will be incorporated in the project; and
7. Documented the project file clearly identifying the basis for the above determinations and assurances.

Issued on: December 23, 1986.

Ali F. Sevin,

Director, Office of Environmental Policy, Federal Highway Administration.

[FR Doc. 87-18991 Filed 8-18-87; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

[Docket No. IP 87-10; Notice 1]

Automobiles Peugeot; Receipt of Petition for Determination of Inconsequential Noncompliance

Automobiles Peugeot of Paris, France, has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.208, Federal Motor Vehicle Safety Standard No. 208, "Occupant Crash Protection", on the basis that it is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Paragraph S7.3 of Standard No. 208 requires that a manual seat belt assembly installed in a passenger car be equipped with a warning system that activates for a period of not less than 4 seconds and not more than 8 seconds a continuous or flashing warning light, visible to the driver, and a continuous or intermittent audible signal. A passenger car equipped with an automatic seat belt assembly is required by Paragraph S4.5.3.3.(b) of Standard No. 208 to have a warning system that activates a continuous or intermittent audible signal for a period of not less than 4 seconds and not more than 8 seconds and that activates a continuous or flashing warning light visible to the driver for not less than 60 seconds (beginning when the vehicle ignition switch is moved to the "on" or "start" position).

Automobiles Peugeot determined that 3,186, 1987 model year and 1,100, early 1988 model year Peugeot 505's manufactured between April 1986 and March 1987 do not comply with Standard No. 208. These vehicles are equipped with manual 3-point seat belts however, the seat belt warning system is wired according to the requirements for automatic seat belts. The warning lights on these vehicles are illuminated for as long as the ignition switch is in the "on" or "start" position and the driver's belt is not fastened. Peugeot believes the noncompliance is inconsequential as it relates to mtor vehicle safety, since the extended illumination of the seat belt warning light may encourage seat belt usage.

Interested persons are invited to submit written data, views and arguments on the petition of Automobiles Peugeot described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5108, 400 Seventh Street SW., Washington, DC 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: September 18, 1987.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: August 14, 1987.

Ralph J. Hitchcock,

Actiang Associate Administrator for Rulemaking.

[FR Doc. 87-18923 Filed 8-18-87; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. IP 87-11; Notice 1]

Grumman Olson; Receipt of Petition for Determination of Inconsequential Noncompliance

Grumman Olson, a division of Grumman Allied Industries, Inc., of Sturgis, Michigan, has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.101, Federal Motor Vehicle Safety Standard No. 101, "Controls and Displays", on the basis that it is inconsequential as it relates to motor vehicle safety.

This Notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Standard No. 101 requires that headlamp controls have the identifying symbol or the specified identifying word placed on or adjacent to the controls. Grumman Olson produced approximately 280, 1987 model year walk-in vans that do not comply with Standard No. 101. These vans are equipped with unidentified headlamp controls. Grumman Olson believes the noncompliance with Standard No. 101 is inconsequential for the following reasons:

1. The position of the light switch has not changed in these vehicles in 10 years.
2. It would be reasonable to assume that new drivers would familiarize themselves with the vehicle before driving it.
3. These vehicles are used by commercial enterprises and typically driven by one person who is familiar with this vehicle.
4. All other controls on the instrument panel are identified allowing the driver to determine that the remaining control is the light switch.

Interested persons are invited to submit written data, views and arguments on the petition of Grumman Olson, described above. Comments should refer to the Docket Number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: September 18, 1987.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: August 14, 1987.

Ralph J. Hitchcock,

Acting Associate Administrator for Rulemaking.

[FR Doc. 87-18924 Filed 8-18-87; 8:45 am]

BILLING CODE 4910-59-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 160
Wednesday, August 19, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

UNITED STATES INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Monday, August 24, 1987 at 3:30 p.m.

PLACE: Room 117, 701 E. Street, NW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints:
5. Investigations 701–TA–287 (P) and 731–TA–378 (P) (Certain Electrical Conductor Aluminum Redraw Rod from Venezuela)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523–0161.

Kenneth R. Mason,

Secretary.

August 10, 1987.

[FR Doc. 87–19004 Filed 8–14–87; 5:13 pm]

BILLING CODE 7020–02–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Thursday, August 27, 1987 at 10:00 a.m.

PLACE: Room 117, 701 E Street NW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Investigations 731–TA–379 and 380 (P) (Certain Brass Sheet and Strip from Japan and the Netherlands)—briefing and vote.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523–0161.

Kenneth R. Mason,

Secretary.

August 10, 1987.

[FR Doc. 87–19005 Filed 8–14–87; 5:13 pm]

BILLING CODE 7020–02–M

LEGAL SERVICES CORPORATION

TIME AND DATE: The Operations and Regulations Committee meeting will commence at 4:00 p.m., Thursday, August 27, 1987, and continue until all official business is completed.

PLACE: Seattle Sheraton Hotel & Towers, Metropolitan Ballroom, 1400 6th Avenue, Seattle, Washington 98101.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Minutes: Meeting of June 26, 1987
3. Discussion of 45 CFR 1612.13 Restrictions on Lobbying and Certain Other Activities
—Private Funds
—Analysis and Review
—Public Comments

Meeting will reconvene at 2:30 p.m. on Friday, August 28, to complete consideration of 45 CFR 1612.13.

CONTACT PERSON FOR MORE INFORMATION: Maureen R. Bozell, Executive Office, (202) 863–1839.

Date issued: August 14, 1987.

Maureen R. Bozell,

Acting Secretary.

[FR Doc. 87–19006 Filed 8–14–87; 5:14 pm]

BILLING CODE 6820–35–M

LEGAL SERVICES CORPORATION

TIME AND DATE: The Audit and Appropriations Committee meeting will commence at 9:00 a.m., Friday, August 28, 1987, and continue until all official business is completed.

PLACE: Seattle Sheraton Hotel & Towers, Metropolitan Ballroom, 1400 6th Avenue, Seattle, Washington 98101.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
3. Review of Budgets for FY 1987 and FY 1988
4. Public Comment

CONTACT PERSON FOR MORE INFORMATION: Maureen R. Bozell, Executive Office, (202) 863–1839.

Maureen R. Bozell,

Acting Secretary.

[FR Doc. 87–19007 Filed 8–14–87; 5:14 pm]

BILLING CODE 6820–35M

LEGAL SERVICES CORPORATION

TIME AND DATE: The Board of Directors meeting will commence at 8:00 p.m., Thursday, August 27, 1987, and continue at 10:30 a.m., Friday, August 28, 1987 and will reconvene at 3:15 p.m. and continue until all official business is completed.

PLACE: Seattle Sheraton Hotel & Towers, Board Room, 4th Floor (Executive Session), Metropolitan Ballroom, 1400 6th Avenue, Seattle, Washington, 98101.

STATUS OF MEETING: Open (A portion of the meeting is to be closed to discuss personnel, personal, litigation, and investigatory matters under The Government in the Sunshine Act (5 U.S.C. 552b(c), (2), (6), (7), (9)(B), and (10)) and 45 CFR 1622.5 (a), (e), (f), (g), and (h)).

MATTERS TO BE CONSIDERED:

1. Personnel and Personal Matters (closed, Executive Session)
2. Litigation and Investigation Matters (closed, Executive Session)
3. Approval of Agenda
4. Approval of Minutes
—June 26, 1987
5. Migrant Report Analysis and Review
6. Update on National and State Support
7. Update on Computer Assisted Legal Research Meeting will reconvene at 3:15 p.m. to consider:
8. 45 CFR 1612.13 Restrictions on Lobbying and Certain Other Activities
—Private Funds
—Discussion
—Public Comment

CONTACT PERSON FOR MORE INFORMATION: Maureen R. Bozell, Executive Office, (202) 863–1839.

Dated issued: August 14, 1987.

Maureen R. Bozell,

Acting Secretary.

[FR Doc. 87–19008 Filed 8–14–87; 5:14 pm]

BILLING CODE 6820–35–M

MARINE MAMMAL COMMISSION

TIME AND DATE: The Marine Mammal Commission, and its Committee of Scientific Advisors on Marine Mammals will meet in executive session on Thursday, December 10, 1987, from 8:30 a.m. to 10:00 a.m. The public sessions of the Commission and the Committee meeting will be held on Thursday, December 10, from 10:00 a.m. to 5:30 p.m., on Friday, December 11, from 9:00 a.m. to 5:30 p.m., and on Saturday, December 12, from 9:00 a.m. to 5:30 p.m.

PLACE: Hyatt Regency, 400 SE. Second Avenue, Miami, Florida 33131–2197.

STATUS: The executive session will be closed to the public. All other portions of the meeting will be open to public observation. Public participation will be allowed if time permits and it is determined to be desirable by the Chairman.

MATTERS TO BE CONSIDERED: While the Commission and Committee will meet in public session to discuss a broad range of marine mammal issues such as the

mid-Atlantic die-off of bottlenose dolpins (*Tursiops truncatus*), international activities affecting marine mammals, marine debris, permits, and re-authorization of the Marine Mammal Protection Act, emphasis at this meeting will be on the West Indian Manatee and habitat protection.

CONTACT PERSON FOR MORE INFORMATION: John R. Twiss, Jr., Executive Director, Marine Mammal Commission, 1625 I Street, NW., Washington, DC 20006, 202/653-6237.

Date: August 13, 1987.

John R. Twiss, Jr.,

Executive Director.

[FR Doc. 87-19094 Filed 8-17-87; 8:45 am]

BILLING CODE 6820-31-M

VOL 52 ISS 160 AG 19 1987 UMI

Corrections

Federal Register
Vol. 52, No. 160
Wednesday, August 19, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 131

[Docket No. 81N-204C]

Milk, Lowfat Milk, and Skim Milk, Pasteurization Requirements for Fluid Milk Products for Consumer Use

Correction

In rule document 87-18191 appearing on page 29509 in the issue of Monday, August 10, 1987, make the following correction:

In the first column, under **SUPPLEMENTARY INFORMATION**, in the second paragraph, in the fourth line, "that milk" should read "that fluid milk".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-050-07-4212-13-I-22245]

Realty Action; Exchange of Public Land in Jerome and Gooding Counties for Private Land Within Camas County, ID

Correction

In notice document 87-17838 appearing on page 29312 in the issue of Thursday, August 6, 1987, make the following correction:

In the first column, in the land description, in "Sec. 29", "NW¼SW¼" should read "NW¼SE¼".

BILLING CODE 1505-01-D

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federal register

Wednesday
August 19, 1987

Part II

Environmental Protection Agency

40 CFR Parts 80, 86, and 600

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Refueling Emission Regulations for Gasoline-Fueled Light-Duty Vehicles and Trucks and Heavy-Duty Vehicles; Notice of Proposed Rulemaking

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 80, 86, and 600

[AMS-FRL-3172-4]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Refueling Emission Regulations for Gasoline-Fueled Light-Duty Vehicles and Trucks and Heavy-Duty Vehicles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice contains EPA's proposed regulatory requirements for a vehicle-based program to control refueling emissions from gasoline-fueled light-duty vehicles, light-duty trucks, and heavy-duty vehicles. The proposed standard is 0.10 grams of vapor per gallon (g/gal) of dispensed fuel. For light-duty vehicles and light-duty trucks, a 0.10 g/gal standard is also proposed for high-altitude conditions. The proposed test procedure for determining compliance with the standard uses the Sealed Housing for Evaporative Determination (SHED) in a way similar to that currently used for testing evaporative hydrocarbon emissions. The year of implementation is proposed to be two or more model years after promulgation of the final rule.

The Agency believes that the proposed control of refueling emissions is warranted for a number of reasons. It can improve ambient ozone levels in all areas of the country including those that are currently, or are projected to be, in violation of the National Ambient Air Quality Standard for this pollutant. Also, the proposed vehicle-based control program will provide important ozone-related benefits in areas that are now in compliance with the ambient standard. Further, the proposed emission controls will help protect the general public from the risks of cancer due to exposure to benzene, a component of gasoline vapor, and to evaporated gasoline as a whole. This proposal would reduce emissions of gasoline refueling vapors by nearly 90 percent from uncontrolled levels.

In another part of today's **Federal Register**, the Agency is proposing to regulate the volatility of commercial gasoline. Due to the interactions between that rulemaking and this action on refueling emissions, the Agency suggests the interested reader consult both notices for a better understanding of today's proposals.

DATES: EPA will conduct a three-day public hearing on this Notice of Proposed Rulemaking and on the gasoline volatility proposal approximately 60 days after **Federal Register** publication. The specific dates of the hearing will be announced in a subsequent **Federal Register** notice. Comments on this proposal will be accepted for 30 days following the conclusion of the hearing. Additional information on the public hearing and the submission of comments can be found under "Public Participation" in the Supplementary Information section of today's notice.

ADDRESSES: The public hearing will be held in Washington, DC. The exact location will be announced in a subsequent **Federal Register** notice.

Interested parties may submit written comments (in duplicate if possible) to Public Docket No. A–87–11, at: Central Docket Section (A–130), U.S. Environmental Protection Agency, Attention: Docket No. A–87–11, 401 M Street, SW., Washington, DC 20460.

Materials relevant to this proposed rulemaking have been placed in Docket No. A–87–11 by EPA. Public Docket No. A–84–07, established in support of EPA's assessment of air pollution regulatory strategies for the gasoline marketing industry, also contains considerable background information and has been incorporated by reference into A–87–11. The dockets are located at the above address in Room 4, South Conference Center, and may be inspected between 8 a.m. and 3 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. Richard S. Wilcox, Standards Development and Support Branch, Emission Control Technology Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105, Telephone: (313) 668–4272.

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

Questions regarding the need for control of refueling emissions from gasoline-fueled vehicles and how such control should be obtained have stimulated considerable interest. To facilitate an understanding of the complexity of the issues surrounding the control of refueling emissions, a short review of the history of this subject is presented in the remainder of this section (Section I), including a brief overview of the environmental issues which have led to present concerns about these emissions. Following that background information, Section II more fully describes and quantifies the environmental effects associated with refueling emissions in terms of ambient air quality (ozone), the human cancer risks due to direct personal exposure, the need for control of these emissions, and the decisionmaking process that has led to EPA's conclusion that requiring vehicle-based vapor recovery, or onboard systems,[1] is the preferred control approach. Section IV discusses potential challenges to EPA's legal authority for implementing onboard rather than Stage II refueling controls.

Elsewhere in today's **Federal Register**, EPA is proposing to reduce the volatility of in-use gasoline from current levels. This action will control excessive evaporative emissions from the motor vehicle fleet and also reduce evaporative VOC from certain stationary sources (*i.e.*, storage tanks). However, the analyses contained in this refueling proposal were performed under the assumption that onboard control systems would be certified with fuels representing current summertime commercial fuels (*i.e.*, with certification fuel having a Reid Vapor Pressure (RVP) of 11.5 pounds per square inch). This situation represents the most difficult case in terms of motor vehicle manufacturer compliance and also indicates the Agency's intent to adopt onboard controls regardless of what decision is eventually made with respect to fuel volatility. The effect of volatility control as it regards the decision to control refueling vapors will be highlighted at appropriate points in this notice. The effect of fuel volatility on the benefits, cost, and cost effectiveness of refueling control is also separately discussed in Section V.

The last section of this preamble (Section VI) presents a complete description of today's proposal and other relevant information. This includes the derivation of the proposed standard, a review of the proposed test procedure and its integration with the existing test protocols, leadtime, enforcement protocols, safety and economic impacts. Section VI also describes several proposed test procedure changes that are related to evaporative emissions control. They are being proposed primarily to ensure that evaporative emissions are appropriately measured in determining compliance with emission standards and to clarify the definition of evaporative emissions. The revisions are intended to parallel the same proposed changes included in EPA's proposal to

[1] Onboard vapor recovery controls are self-contained systems located entirely within the vehicle. *See* Section II.D. of this notice.

regulate fuel volatility, which appears elsewhere in today's Federal Register. While they are described further later in this refueling proposal, the principal rationale for these changes is found in the fuel volatility proposal.

Finally, it should be noted that the cost and benefit analyses which are described in today's proposal were based on the assumptions that Stage II controls would begin to be implemented as early as mid-1988 or as late as 1990, depending on the control scenario, and that onboard controls would be implemented beginning with the 1990 model year. Depending on the time required to complete this rulemaking, different effective dates than these could be promulgated. However, this fact does not significantly affect the decision to propose an onboard vapor recovery standard, because the costs and benefits of the two control technologies are essentially unaffected and the relative ranking of the alternatives is unchanged by the exact effective dates ultimately chosen. (More detailed descriptions of the potential leadtime requirements and the effective date of the standard are presented in the safety and leadtime discussions found in Section V.)

B. History of Refueling Controls

The contribution of hydrocarbon emissions from gasoline refueling operations to ambient ozone levels has been of concern for some time.[2] This concern led EPA to promulgate regulations under Section 110(c) of the Clean Air Act (CAA) in the mid-1970s that would have required the installation of gasoline vapor recovery systems at service stations, or Stage II systems,[3] in all or part of eleven Air Quality Control Regions (AQCRs) in eight states [*e.g.*, 38 FR 30524 (November 7, 1973), 39 FR 4861 (February 8, 1974), and 39 FR 21053 (June 18, 1974)]. The Agency proposed amendments to those regulations in October 1975 (40 FR 47668) and, based on the comments received and information developed during that rulemaking, new regulations were proposed in November 1976 (41 FR 48043). On May 31, 1977, EPA deferred until further notice the required Stage II compliance dates for these eleven AQCRs (42 FR 27674). Action on the proposed revisions to the earlier Stage II regulations was never completed, nor were the previous compliance dates reinstated. Also, in August 1977 the CAA was amended to add several specific provisions pertaining to the control of refueling emissions.

Section 202(a)(6) of the CAA, added in 1977, directs the Administrator of EPA to "determine the feasibility and desirability of requiring new motor vehicles to utilize onboard hydrocarbon control technology which would avoid the necessity of gasoline vapor recovery of uncontrolled emissions emanating from the refueling of motor vehicles." This section further provides, that, "[if] the Administrator finds that it is feasible and desirable to employ such technology, he shall * * * prescribe, by regulation, standards requiring the use of onboard hydrocarbon technology * * *." In response to this statutory requirement, EPA undertook a review and analysis of available information in the late 1970's, and tentatively determined that onboard control for light-duty vehicles was technically feasible.[1]

However, in light of the serious financial difficulties faced by the automotive industry in 1980 and 1981, EPA conducted a review of its regulatory programs to identify possible changes that could reduce the regulatory burden on the industry. As a result of that review, EPA decided in 1981 that the use of onboard technology for the control of refueling emissions was undesirable at that time. Thus, the Agency announced that onboard controls were not being required (46 FR 21629, April 13, 1981). Now that the economic crisis within the automotive industry has passed, and in light of new information concerning the need for ozone reduction measures and the potential adverse health effects from inhaling gasoline vapors, EPA is reevaluating possible action under section 202(a)(6) of the CAA.

Although no onboard standard or revised final regulations for Stage II controls have been promulgated by EPA, refueling emission control has been achieved in limited geographical areas of the country. Stage II control systems are being used in 26 counties of California and in the District of Columbia as a means of improving ozone air quality. These requirements have been in effect since the mid-1970s, and have demonstrated the feasibility of Stage II controls.

In addition, EPA and certain states continue to view the control of refueling emissions as a desirable ozone reduction strategy. For example, several states committed in their 1982 ozone state implementation plans (SIPs) to consider Stage II regulations. These states were among a number of states that, as of February 1983, contained ozone non-attainment areas and had been granted extensions by EPA beyond the statutory attainment date of December 31, 1982, as provided for under section 110 of the CAA. Further, resolutions were passed in 1982 and again in 1985 by both the State and Territorial Air Pollution Program Administrators (STAPPA) and the Association of Local Air Pollution Control Officials (ALAPCO). These resolutions requested that EPA review Stage II control technology and publish a control techniques guideline document for use by the various state air pollution control agencies that would define Stage II controls as "reasonably available control technology" under section 172 of the CAA. Such an action would have the effect of promoting the use of such controls in ozone non-attainment areas. Similar resolutions were also passed in 1986, and included the request that EPA promulgate onboard control requirements as a long-term emission reduction strategy.

The relationship between refueling emissions and ozone air quality has been carefully considered by EPA ozone experts. As described more fully later in today's notice, the ozone attainment problem facing the nation is now extremely serious, and its solution will require a well-coordinated, aggressive effort aimed at bringing all areas of the country into compliance with the ozone NAAQS. This effort will include a mixture of state and Federal actions. Among the potential Federal actions that EPA has considered as possible nationwide emission control measures is the reduction of refueling emissions through the use of onboard or Stage II technology. EPA anticipates publishing a proposed comprehensive ozone strategy in the near future and refueling controls almost certainly will play a significant role in that strategy.

While the link between refueling emissions and ozone formation has been recognized for some time, there is also evidence that exposure to gasoline vapor resulting from refueling emissions poses direct risks to public health. Gasoline and its vapors are a complex mixture of volatile organic compounds (VOC). One of the most important constituents in gasoline, from a public health effects perspective, is benzene. Epidemiological studies strongly suggest that benzene is a human carcinogen. Also, laboratory studies have shown this compound to cause multiple cancers in animals. Based on this evidence, benzene was listed by the Agency in June 1977 as a hazardous air pollutant

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[2] Diesel refueling operations have not been a concern due to the low volatility and, hence, low emissions potential of diesel fuel relative to gasoline.

[3] Stage II vapor recovery systems are integrated with the fuel dispensing equipment. *See* Section II.D.

under section 112 of the Act (42 FR 29332).

(Additional information regarding EPA's decision to list benzene as a hazardous air pollutant can be found in Docket Number OAQPS-79-3 (Part I).)

More recently, carcinogenic concerns with refueling emissions have focused not just on benzene, but gasoline vapors in general. Laboratory tests conducted by the American Petroleum Institute (API) have shown wholly vaporized gasoline causes cancer in animals. The API and other studies were independently reviewed by EPA's Science Advisory Board (SAB) and by the Health Effects Institute (HEI).[4] After carefully considering the available evidence, EPA has concluded that gasoline vapors are a probable human carcinogen under EPA's Cancer Risk Assessment Guidelines (51 FR 33992, September 24, 1986). This conclusion is shared by SAB and HEI The basis of EPA's decision and accompanying risk estimates are discussed further in Section II.C of today's notice.

C. EPA's Study of Refueling Emissions

On August 8, 1984, EPA announced the public availability of an extensive analysis of the gasoline marketing industry (49 FR 31706). This draft study, "Evaluation of Air Pollution Regulatory Strategies for Gasoline Marketing Industry."[2] (hereafter referred to as "the draft gasoline marketing study") was prepared by EPA's Office of Air Quality Planning and Standards and the Office of Mobile Sources. The analyses included in that document quantified the emissions and health risks associated with all components of the gasoline distribution and marketing network, from the delivery of gasoline from refineries, to the refueling of vehicles at service stations. The analyses also estimated the costs, emission reductions, risk reductions, and economic impacts associated with the many control strategies considered. Implicit in this draft study was EPA's desire to reevaluate the 1981 decision not to require onboard controls.

In making the draft gasoline marketing study publicly available, EPA solicited comment on the document's methodology, assumptions, and conclusions. At that time, EPA stated that all such comments would be considered in determining the need for and nature of any regulatory strategies for this industry. Over 180 written comments from individuals, state and local governments, and industry were received. The submissions ranged from one-page letters to detailed analytical documents consisting of hundreds of pages from such industry groups as the American Petroleum Institute (API) and the Motor Vehicle Manufacturers Association (MVMA). The comments were broad in scope, covering all aspects of the Agency's analyses.

As a result of the comments and the availability of new or updated information, the Agency undertook a thorough and lengthy review of the gasoline marketing study. This effort has culminated in a revised analysis. Based on the contents of this final study and other supporting analyses, which are contained in the draft Regulatory Impact Analysis (RIA),[3] EPA believes that the control of vehicle refueling emissions is appropriate, and that onboard controls are feasible and desirable. Thus, EPA proposes to require onboard controls.

The following sections review key findings of EPA's analyses and present the decision rationale that supports today's proposal. Readers wishing to obtain more detailed technical information should consult the draft RIA, which is available in the public docket for inspection.

II. Environmental Concerns and Evaluation of Control Strategies

A. Introduction

This section quantifies the environmental effects associated with refueling vapors and describes the need for control of these emissions. It also contains an overview of the alternative refueling emission control technologies, and presents the Agency's rationale for choosing onboard vapor recovery systems as the most desirable and appropriate means of addressing the environmental concerns. As a prelude to these discussions, the next section presents a brief characterization of the emissions associated with the refueling process.

B. Sources and Composition of Refueling Emissions

About 90 percent of all refueling emissions consist of vapors displaced from the vehicle fuel tank by the incoming gasoline. The mass of these emissions depends on the volume of vapor displaced and its density, which in turn are determined by the temperature of the fuel being dispensed and of that already in the tank, the tank size and geometry, the volatility of the fuel, and a number of other minor factors. (The determinants of mass refueling emissions are discussed in greater detail in "Refueling Emissions from Uncontrolled Vehicles,"[4] an EPA technical report available for review in the public docket.)

Less significant sources of refueling emissions are spillage and underground tank emptying losses. Spillage occurs as a result of "splash back" from the fill pipe or the escape of gasoline from the dispensing nozzle. Underground tank emptying losses represent the escape of vapor from the vent of the service station underground storage tank. This emptying loss occurs because as fuel is pumped into the vehicle fuel tank, ambient air is ingested into the service station tank through its tank vent. This "fresh" air causes liquid fuel to evaporate in the tank until an equilibrium concentration between the vapor and liquid phases is reestablished. As this process occurs, the pressure within the tank may temporarily become greater than the atmospheric pressure. The excess pressure within the underground tank is relieved when a small volume of gasoline vapor is emitted from the vent. The spillage and emptying loss sources each account for about 5 percent of the total emissions associated with the refueling process.[3]

The composition of refueling vapors depends on their source (*e.g.*, fuel tank displacement or spillage), the fuel type (*e.g.*, leaded or unleaded), and the volatility of the fuel. Gasoline, in general, is a complex mixture containing varying amounts of hydrocarbons belonging to four main groups, and much smaller amounts of various additives. The hydrocarbons in gasoline are classified as paraffins (alkanes), olefins (alkenes), naphthenes (cycloparaffins or cyclanes), and aromatics (benzene or benzene derivatives). Gasoline also contains certain additives, which are generally present in very limited amounts, to provide specific product qualities.

The composition of the liquid gasoline and that of its vapor are not necessarily the same. For example, the largest source of refueling emissions, that portion resulting from vapor displacement in the vehicle fuel tank, does not consist of fully volatilized gasoline. All available information shows that the "light-end" hydrocarbons generally evaporate more readily than the higher molecular weight hydrocarbons, and so refueling emissions are primarily light-end hydrocarbons. In general, data show that 70 percent or more of the emissions

[4] The SAB is a group of experts from various scientific organizations that advises the Administrator on the scientific validity and usefulness of information developed in support of regulatory activities. HEI is a non-profit research organization established and sponsored jointly by EPA and the automotive industry to provide and evaluate data on the health effects of emissions from motor vehicles.

by mass are comprised of hydrocarbon molecules containing 5 or fewer carbon atoms (*e.g.*, butanes and pentanes). Further, data show that paraffins (alkanes) are the largest constituent among the other major hydrocarbon groups in refueling emissions.

The portion of refueling emissions that results from spilling gasoline, on the other hand, reflects the composition of the liquid fuel. This is due to the total evaporation of liquid fuel that is spilled. However, as noted above, EPA estimates that no more than 5 percent of total refueling emissions currently result from fuel spillage and evaporation. Thus, the statements made with respect to the composition of refueling emissions due to vapor displacement are essentially valid for total refueling emissions as well.

While the majority of refueling emissions are the light-end hydrocarbons, the other components of liquid gasoline are also represented in the vapor emissions generated during the refueling event. Benzene is of particular concern to EPA, as previously noted. A recent EPA study suggests that under average conditions, a liquid fuel containing 1.6 weight percent benzene would generate refueling vapors containing 0.8 weight percent benzene.[5]

C. Environmental Need for Control

The principal environmental concerns associated with refueling emissions focus on their contribution to ozone formation in the atmosphere and on their direct health effects. Each of these areas is discussed separately below.

1. Refueling Emissions as an Ozone Precursor

As noted above, refueling emissions consist almost entirely of hydrocarbons. In the presence of sunlight, these volatile organic compounds (VOC) combine with other pollutants, in a series of chemical reactions, to produce ozone (and other photochemical oxidants). The myriad of adverse effects that may result from exposure to ozone, are thoroughly described elsewhere and are not repeated in detail here.[6] In summary, ozone and other oxidants are pulmonary irritants that adversely affect pulmonary membranes, lung tissues, and lung function. Animal studies also indicate that ozone may lead to an increased susceptibility to bacterial infection. These detrimental health effects may aggravate existing illness or lead to a lung disease. In addition to human health concerns, ozone may adversely affect vegetation and cause damage to various types of materials (*e.g.*, elastic compounds).

In accordance with section 109 of the CAA, EPA promulgated and revised primary and secondary National Ambient Air Quality Standards (NAAQS) for ozone in the 1970's. The primary standard is intended to protect the public health with an adequate margin of safety.[5] The secondary standard is aimed at protecting the public welfare. The current NAAQS (*i.e.*, both primary and secondary) for ozone requires that the expected number of days in a calendar year with one-hour measured concentrations above 0.12 parts per million (ppm) be less than or equal to one.

Section 172 of the CAA generally required all states to submit State Implementation Plans (SIPs) that provided for attainment of the national primary standard by December 31, 1982. This deadline was extended to December 31, 1987 for states that showed attainment by 1982 to be impossible despite the application of all reasonably available control measures. The SIPs for these "extension" areas were to include certain specific measures (*e.g.*, vehicle inspection and maintenance programs) and, like the SIPs for areas with a 1982 attainment date, were to contain stationary source emission controls reflecting reasonably available control technology. Also, this section of the statute mandates that SIPs provide for attainment of the national secondary standard as expeditiously as practicable.

Section 109(d) of the CAA requires EPA to periodically reassess each NAAQS, including the ozone standards, to ensure that the public health and welfare continues to be protected within the statutory guidelines. Based on the results of such reviews, including an independent assessment by the Clean Air Scientific Advisory Committee (CASAC), EPA may revise the applicable ambient air quality standards as appropriate. In the last several years, EPA and numerous independent research organizations launched a massive effort to better understand and quantify the environmental effects of ozone air pollution. The NAAQS for ozone is currently being reassessed by the Agency and CASAC in light of resulting health and welfare effects research.

Non-Attainment Areas. Despite the imposition of various HC controls, many areas of the nation continue to violate the ozone NAAQS. Based on the latest three-year period for which complete air quality monitoring data are available (1982–84), EPA has determined that more than 70 urban areas are currently exceeding the ambient standard. Twelve of these areas are located in California. The significance of the nationwide non-attainment problem is clearly indicated by considering the fact that well over 100 million people live in the areas which are known to exceed the ozone standards.

In addition to reviewing the present state of ozone air quality, EPA has also assessed the need for additional future hydrocarbon control by making projections of future air quality trends. For this rulemaking, estimates of future air quality were made for 61 non-California urban areas that are currently in non-attainment status.[6] California areas were excluded from the modeling projections because that state already controls refueling emissions with Stage II vapor recovery systems in non-attainment areas. Current attainment areas were also excluded from the analysis, although it should be noted that a number of these areas are very close to the standard. If these areas had been included in EPA's analysis, it is possible that some of them would have been projected to become non-attainment areas in the future due to the effects of growth. Thus, the total number of non-attainment areas in the future may be greater than shown below.

As with any projection of future events, air quality models rely on a variety of assumptions regarding such things as emission rates, growth rates, control technologies, emission standards, and control efficiencies. A more detailed description of these inputs for the various mobile and stationary source categories is contained in the draft RIA.[3]. It is sufficient here to note that for mobile sources, the model reflects the continuing gains in emissions control that accrue from the Federal Motor Vehicle Control Program, under which increasingly stringent exhaust and evaporative emission standards have been promulgated. For stationary sources, the model accounts for the emission reductions that have been achieved as of the base year (*i.e.*, 1983) from which the projections begin.[7]

Figure 1 illustrates EPA's general projections of non-methane hydrocarbon (NMHC) emissions and ozone NAAQS attainment status for the years 1988,

[5] The current primary standard is principally based on well documented studies of acute health effects.

[6] This represents the estimated number of non-attainment areas at the time this analysis was performed.

[7] This represents a conservative assumption for some of the urban areas modeled, because some states may further control existing stationary sources. The degree of such control, however, is currently unknown.

1995, 2000, and 2010 assuming no additional VOC control measures are promulgated in the future. The results for 1988 indicate that a substantial number of urban areas (51 of the 61 modeled) may fail to comply with the NAAQS by the statutory deadline. Beyond that, the most obvious trend between now and 1995 is that improvements in air quality are projected to occur as a result of the emission standards that already have been promulgated for both stationary and mobile sources. However, most of the largest urban areas modeled (*i.e.*, those with the greatest populations) remain in non-attainment status throughout the projection period.

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FIGURE 1
NMHC Inventories and Ozone NAAQS Attainment Status
for 61 Urban Non-Attainment Areas - Base Case

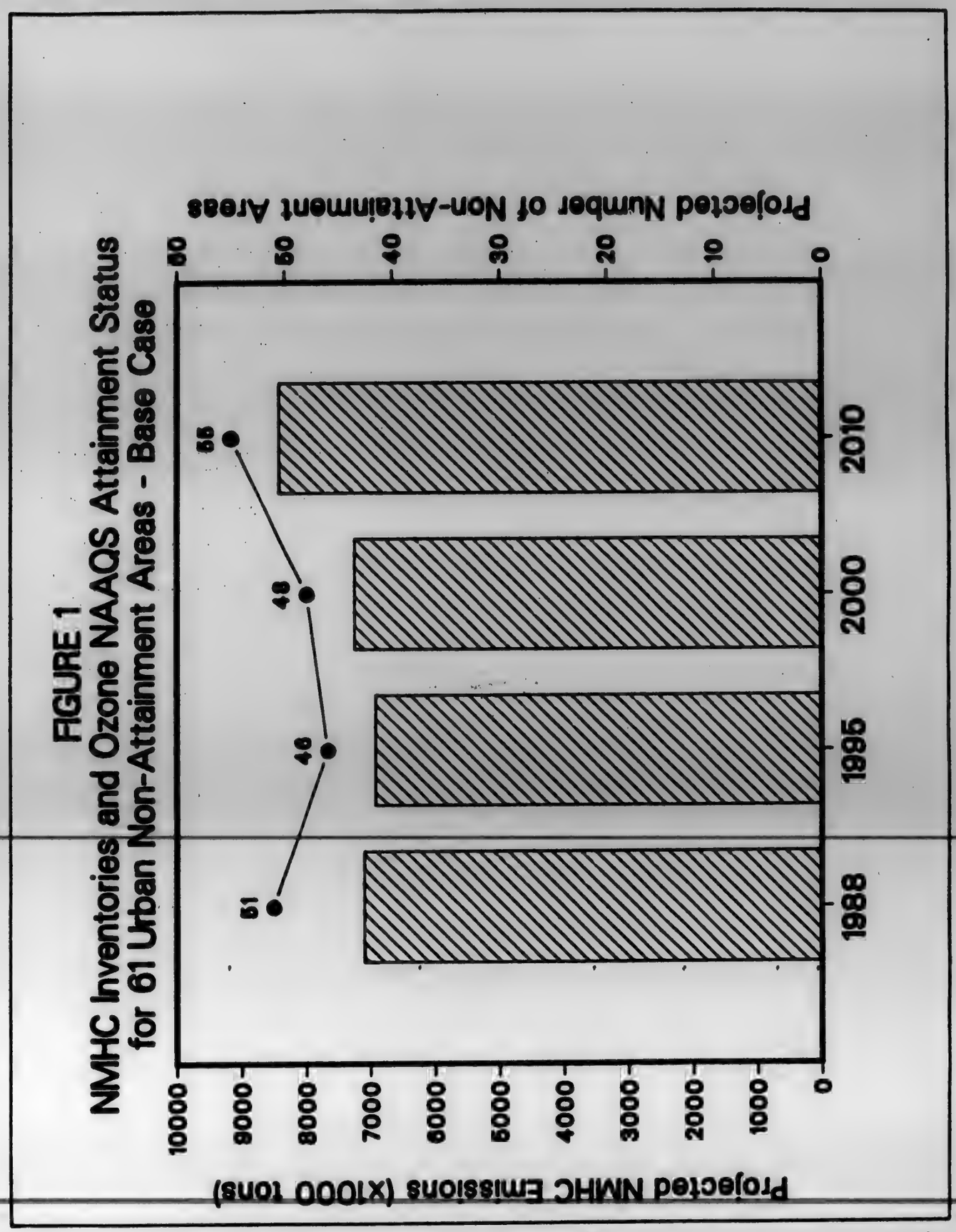

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Figure 1 also illustrates that in the more distant future, growth is projected to cause the problem to worsen without further controls. More specifically, these projections indicate that by early in the next century, emission inventories will again be rising steadily. By the end of the projection period (*i.e.*, 2010), emission inventories in the areas modeled apparently will be worse than in 1988. The number of areas violating the ozone NAAQS follows this trend.[8]

The magnitude of the ozone air quality problem facing the nation is further illustrated by additional estimates made by EPA. The results of this analysis show the emission reductions that are needed relative to the 1983 base-year NMHC inventory to eliminate the projected non-attainment problem. As shown in Table 1, reductions of up to about 90 percent appear necessary to bring all areas of the country into compliance. Based on estimates by the Agency's Ozone Task Force, there is a clear need to implement all reasonable controls on volatile organic compounds (VOC) if progress toward attainment of the ozone NAAQS is to be assured. Further, EPA has concluded that refueling controls, either Stage II or onboard, could provide part of the needed VOC reductions.

TABLE 1.—EFFECT OF VOC INVENTORY REDUCTIONS ON OZONE NAAQS COMPLIANCE SITUATIONS

[61 non-California areas]

Percent reduction from baseline VOC emissions inventory [1]	Number of non-attainment areas		
	1988	1995	2000
10	42	39	42
20	32	29	31
30	24	24	24
40	16	14	17
50	9	9	10
60	3	4	5
70	1	2	3
80	1	1	1
90	0	0	0

[1] Beyond those that will already accrue from the existing Federal Motor Vehicle Control Program in the 61 non-attainment areas modeled.

Other Areas. While the benefits associated with controlling VOC emissions in non-attainment areas are readily apparent, reducing these emissions in attainment areas is also beneficial. The benefits accruing from these reductions can be grouped into three categories. First, ozone is a regional concern because VOC emissions originating in one area may be transported through the atmosphere and adversely affect air quality in another area. This phenomenon allows VOC emissions in attainment areas to exacerbate problems in complying with the ozone NAAQS in non-attainment areas. Thus, the Agency believes that reducing such attainment area emissions is of value in terms of non-attainment area reductions. Second, section 110 of the CAA makes it clear that in addition to attaining the NAAQS, a primary purpose of the statute is to maintain compliance with the ambient standards in order to prevent the adverse health and welfare effects associated with excess concentrations of pollutants such as ozone. Similarly, section 101(b)(1) provides that a key purpose of the Act is to "protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare * * *." [9] These goals apply to all areas of the country, including attainment areas. Thus, VOC control measures that help maintain the ozone NAAQS, or prevent the deterioration of air quality, in attainment areas have value for those purposes. Therefore, the benefits of VOC reductions in attainment areas, as well as non-attainment areas, are an important consideration in the overall evaluation of refueling controls.

2. Refueling Emissions as a Carcinogenic Risk

In addition to the health and welfare risks posed by ozone, of which refueling emissions are a precursor, EPA has found that gasoline vapor is probably carcinogenic to humans. Generally, quantifying the cancer risk posed by an environmental threat is an inexact science that, by necessity, relies on a variety of estimates and assumptions. Due to the complexity of the subject, it is important to understand the basis of EPA's carcinogenic risk assessment for refueling emissions before describing the results of the analysis. Therefore, an overview of the basis of EPA's risk analysis will precede the presentation of the actual cancer incidence estimates. For a more detailed discussion of the results of the risk assessment, the interested reader is referred to the draft RIA.[3]

The ambient concentrations of benzene and gasoline vapors generated from refueling operations are quite low, especially compared to animal exposures in laboratory studies. Moreover, it is impossible to directly measure the risk of contracting cancer using the analytical techniques which are currently available. As an alternative, EPA has estimated the cancer risk at these concentrations by extrapolating from estimates of risk due to higher concentrations in the studies of workplace and laboratory exposure. Thus, the estimated risks from these low concentrations represent plausible upper limits on the actual risk.

Using this approach, the assessment of carcinogenic risk can be separated into two very broad categories. The first is estimating the potency of the active agent in causing a particular carcinogenic end point. The more potent the agent, the more probable it is that a person may contract cancer after being exposed to the substance over a period of time. The second broad category involves estimating the degree of exposure to the substance. This includes such variables as the number of individuals exposed, in addition to the concentration and duration of the exposure. Of the two broad categories, estimating the potency of a suspected carcinogen is often the most critical and difficult to quantify. Hence, in assessing the carcinogenic risk associated with refueling emissions, it is especially important to acknowledge the principal uncertainties in this area.

As already mentioned, the carcinogenic concerns associated with the refueling process have historically focused on benzene, a normal constituent of gasoline, and gasoline vapors as a whole. The cancer risk associated with benzene has been widely evaluated in both epidemiological and animal studies. The epidemiological studies have shown an increased incidence of leukemia among workers exposed to benzene. Both rats and mice have shown a statistically significant increase in carcinogenesis associated with relatively high benzene exposures through inhalation and ingestion. Additionally, the dose-response relationships derived from the human and animal studies were similar. The Agency believes this evidence provides an adequate basis for classifying benzene as a human carcinogen and for estimating the carcinogenic potency of this compound at the lower exposure levels that are typical of refueling operations, because the studies are of good quality and they show consistent results.

As discussed earlier, the Agency listed benzene as a hazardous air pollutant under section 112 of the CAA in 1977 (42 FR 29332), based on the results of the occupational studies and EPA's finding that "ambient exposures [to benzene] may constitute a cancer risk and should be reduced." In 1984, the

[8] Given the uncertainties inherent in projecting absolute values for emission inventories and attainment status into the next century, it is more appropriate to emphasize the trends in these measures.

[9] *See Sierra Club v. EPA*, 540 F.2d 1114 (D.C. Cir.), *vacated* (on other grounds) *sub nom Montana Power Company v. EPA*, 434 US 809 (1977).

potency estimate derived from these studies was used by EPA to establish standards for "fugitive" benzene emissions from stationary source equipment leaks (49 FR 23513).

The quantitative estimate of risk from benzene exposure has been updated based on a recent review of the scientific literature.[7] The cancer potency estimate was increased slightly (*i.e.*, 17 percent), and this updated estimate is used in the risk analysis accompanying this proposal.

Like benzene, the carcinogenic risk associated with exposures to gasoline vapors as a whole has also been assessed by evaluating existing epidemiological and animal studies. The available epidemiological studies of workers in the petroleum industry are considered to be suggestive of increased cancer incidence. However, due to methodological difficulties in distinguishing between gasoline exposures and other chemicals, the Agency considers these studies to be inconclusive concerning the casual role of gasoline vapors at this time. As a result, the carcinogenic risk of exposure to gasoline vapors has been estimated largely on the basis of animal studies conducted by the American Petroleum Institute (API). In the API work, rats and mice were exposed to relatively high concentrations of wholly vaporized unleaded gasoline for two years. These well designed, chronic inhalation studies showed evidence of significantly increased kidney cancer in male rats and liver cancer in female mice. The Agency's refueling risk assessment is based on the potency estimates from the male rat tests. However, the quantitative risk estimates derived by EPA from both animal species were in close agreement.

The carcinogenic activity observed in these animal tests is thought to be induced by active agents contained in the fuel other than benzene. This is a reasonable assumption, since the sites of carcinogenic activity are generally observed to be different for benzene than for gasoline vapors (*i.e.*, circulatory system and bone marrow *vs.* liver and kidney), and since the concentration of benzene during the animal experiments was too small to induce the observed response. In estimating human risks to gasoline vapor, the risk of the benzene component itself is added to the human-equivalent gasoline vapor risk determined from the animal experiments, since the two effects are apparently independent of each other and additive at low concentrations. Such an approach for estimating the potential risks posed by a mixture of carcinogens is suggested in EPA's Carcinogen Risk Assessment Guidelines (51 FR 33992).

The use of animal data in carcinogenic risk assessments is a generally accepted practice when epidemiological evidence is inconclusive. In this particular case, the Agency finds the induction of tumors in two animal species provides adequate evidence to consider gasoline vapor as a probable human carcinogen under both EPA's Carcinogen Risk Assessment Guidelines and the criteria established by the International Agency for Research on Cancer. Also, the EPA believes the evidence is sufficient to justify a quantitative estimate of human risk from exposures to gasoline vapors in order to gauge the magnitude of the potential public health problem. Nevertheless, extrapolating test results from highly exposed animals to humans that are exposed to much lower concentrations in the ambient air is inherently uncertain, and the Agency's analysis recognizes these uncertainties.

Due to the importance of the issues involved, the basis of EPA's risk assessment has been independently reviewed by the Agency's Science Advisory Board (SAB) and the Health Effects Institute (HEI). Both of these scientific groups generally agree that gasoline vapors are probable human carcinogens; however, they also have recognized the uncertainties inherent in extrapolating animal data to quantify human risk.

In reviewing EPA's risk assessment, SAB concluded that the degree of scientific uncertainty in the resulting quantitative estimate of human risk should be clearly acknowledged. HEI expressed a more cautious view regarding the actual quantification of carcinogenic risk, stating that it is not presently possible to draw accurate conclusions concerning the degree of human risk.

In SAB's opinion, the two areas of greatest uncertainty in EPA's analysis of gasoline vapors are: (1) The relevance of using a quantitative risk factor based on the male rat kidney response in human quantitative risk estimates, and (2) the difference in chemical composition between the gasoline exposures in the API laboratory studies and that typical of actual population exposure during refueling emissions. Similar opinions have also been expressed by HEI and API.

Regarding the first area of uncertainty, some investigators have argued that the male rats used in the chronic inhalation studies may be unique in their susceptibility to kidney cancer after being exposed to gasoline vapors. The male rat has been shown to be susceptible to renal toxicity (*i.e.*, kidney cell damage) from gasoline vapors, and some scientists postulate that such damage ultimately leads to the development of tumors. Further, the mechanism of this toxic response is thought to be unique to the male rat species used in the laboratory studies. Such a finding of uniqueness in the male rat would weaken, but not eliminate, the presumption of a carcinogenic response in humans.

The Agency finds several reasons to question the conjecture that the male rat responds uniquely to gasoline vapors. First, the link between acute or chronic hydrocarbon-induced kidney damage and carcinogenicity is not clear, nor has it been proven. Second, the kidney of experimental animals has been demonstrated to be the target organ of over 100 carcinogenic compounds. Third, a statistically significant increase in liver tumors was detected for female mice in the API studies, with no report of accompanying tissue damage. Finally, other types of malignant tumors have appeared in other strains of animals when exposed to synthetic fuels.

Overall, most scientists agree with EPA that the role of acute kidney toxicity in the induction of kidney tumors in male rats and its relevance to human cancer are currently unresolved issues. However, it is important to note that a carcinogenic response to gasoline vapors was also demonstrated in the API laboratory studies of female mice. Further the Agency, HEI, and SAB all agree that the carcinogenic effect of gasoline vapors in animals is real and can not be ignored as a potential human hazard.

Regarding the second area of uncertainty raised by SAB and HEI, EPA agrees there may be a difference between the vapor composition to which animals were exposed in the chronic inhalation study and that to which humans may be exposed under ambient conditions. As previously discussed, refueling emissions consist of a greater proportion of "light-end" hydrocarbon molecules than does wholly vaporized gasoline. Due to the obvious differences in chemical composition, it is possible that the carcinogenic potential of gasoline vapors emitted during refueling is not well represented by the test results derived from wholly vaporized gasoline. API, among others, has specifically made this claim.

In support of its position, API has performed short-term bioassay screening tests using different fractions of vaporized gasoline to identify the hydrocarbon compounds that initiate the

renal toxicity observed in the male rat kidney. These tests showed branch-chain paraffins with 6 to 9 carbon atoms (*i.e.*, $>C_6$ compounds) to be the primary causal agents of the toxic effects. As a result, API has concluded that because the percentage of $>C_6$ compounds in wholly vaporized gasoline is substantially more than in refueling vapors, EPA's estimate of the potential cancer risk from gasoline vapors is overly conservative. Specifically, the refueling vapor fraction composed of $>C_6$ hydrocarbons molecules has been shown to be 25 percent or less of that in wholly vaporized gasoline. Thus, if API is correct, EPA's quantitative assessment of population risk to gasoline vapors would be too high by at least a factor of four.

The Agency has considered API's argument, but notes that the crucial evidence demonstrating the association between kidney toxicity and kidney tumors is lacking. Also, SAB concluded "* * * that the issue of the representativeness of the inhaled vapors, while certainly a complicating factor in the API bioassay should not be regarded as a major flaw." In addition, EPA could find no data to indicate which fraction of the gasoline vapor is responsible for the induction of liver tumors in female mice. For these reasons, the Agency believes it would be unwise to base the quantitative risk assessment on an assumption that may significantly underestimate the potential health problem. Instead, EPA finds it prudent to interpret the results of the risk assessment as plausible upper limits, with the actual risks being at or below the estimates. Nonetheless, to illustrate the effects of the assumption that the heavier molecular weight compounds are responsible for the carcinogenic properties of refueling emissions, EPA has included an estimate of the incidences attributed to the $>C_6$ fraction of gasoline vapors in its risk assessment.

Using the potency estimates for benzene and gasoline vapors described above, the risk assessment analysis focused on four exposure scenarios: occupational, self-service, community, and excess evaporative emissions. Each of these exposure scenarios can be characterized in terms of the intensity, frequency, and duration of exposure; the number of people affected; and the geographic range of emissions.

The occupational exposure scenario, in terms of refueling emission control, is a rough estimate of the potential risk to service station attendants exposed to gasoline vapor. The purpose of this analysis was to give EPA an approximation of potential risks posed to individuals chronically exposed to gasoline vapor in the occupational setting.

Self-service exposure refers to the exposure persons are subjected to in refueling their own vehicles. Like occupational exposure, it is characterized by high gasoline vapor concentrations for relatively brief durations. However, the frequency of exposure is much lower than that to which service station attendants are subjected. The rapid expansion of self-serve gasoline outlets means that, today and for the foreseeable future, the majority of the population experiences such exposure.

Community exposure refers to the exposure experienced by persons residing in the immediate vicinity of service stations. As such, it has a wider geographic range than do the occupational or self-service scenarios. The dispersion of gasoline vapor into the atmosphere in the vicinity of service stations means that the concentration of gasoline vapors is much lower than that of the preceding scenarios. However, the duration of such exposures is much longer, approaching constant exposure in the case of 24-hour stations.

For each scenario, the estimated annual incidences are summarized in Table 2. The column headed "Bz" refers to incidences resulting from exposure to benzene. The column headed "GV" refers to incidences resulting from exposure to gasoline vapor as a whole. While the benzene exposure occurs as part of the exposure to gas vapor, EPA is treating these risk and incidence estimates as additive, for reasons already outlined. Thus, adding the "Bz" and "GV" estimates gives the estimated total incidences by scenario. In light of the uncertainties associated with these values, the Agency again believes they should be interpreted as plausible upper bounds of risk for possible effects.

TABLE 2.—ESTIMATED TOTAL CANCER INCIDENCES RESULTING FROM UNCONTROLLED REFUELING EMISSIONS

[Annual incidence 1987–2020]

Scenario	Bz	$>C_6$	GV	Total [1] (Bz + GV)
Occupational	2	4	17	19
Self-serve	5	8	33	38
Community	1	3	10	10
Total [1]	7	15	60	67

[1] Columns and rows may not add exactly to totals due to rounding.

The column in Table 2 headed "$>C_6$" refers to the estimated incidences resulting from exposure to that fraction of gas vapor composed of "heavy-end" hydrocarbon compounds. These values are presented to illustrate the effects of using only these heavier compounds to evaluate the carcinogenic risk associated with exposures to gasoline vapors.

In addition to the annual incidences, which are based on "average" exposures, EPA also estimated the lifetime risk for individuals highly exposed to gasoline vapors for each of the refueling-related exposure scenarios. The lifetime risks are 4×10^{-3}, 8×10^{-5}, and 1×10^{-4} for occupational, self service, and community exposures, respectively.

The results of EPA's assessment show that the highest lifetime risk of cancer is incurred by service station attendants. The lowest lifetime risk is for individuals using self-service pumps. These individuals may potentially be exposed to significant vapor concentrations from the fillneck, but the number of refueling events is far lower than for the occupational category. Nonetheless, as shown in Table 2, self-service exposure shows the greatest annual cancer incidence because of the large number of people that pump their own gasoline. The upper bound of annual incidences (*i.e.*, Bz plus GV) for all refueling categories is estimated to be about 67. Of this, about 90 percent are attributable to gasoline vapors, with the remainder attributed to benzene.

D. Overview of Alternative Control Techniques

As mentioned earlier in this notice, there are two basic alternatives for the control of refueling emissions. These are generally referred to as "Stage II" and "onboard." The two vapor recovery systems are vastly different, with Stage II equipment installed at the service station and onboard equipment installed in the vehicle. This difference makes a basic understanding of the two control techniques especially important in facilitating the subsequent discussion of EPA's decision rationale. With this goal in mind, the following discussion presents a brief description of the Stage II and onboard systems, and explores a few of the more important features associated with each technology.

1. Basic Description of Stage II and Onboard

Stage II vapor recovery systems, as noted earlier, are installed at the service station. With these systems, the vapor in the vehicle fuel tank that is displaced by liquid gasoline being dispensed is prevented from escaping to the atmosphere by a flexible rubber "boot" at the juncture of the fillneck and the dispensing nozzle. This boot is fitted

over the nozzle's spout, and is attached to a hose similar to (but generally smaller than) the liquid dispensing hose. This hose, in turn, is connected to piping which routes the vapors to the underground fuel tank. A vapor-for-liquid exchange is made as liquid gasoline displaces gasoline vapor from the vehicle fuel tank to the underground storage tank.

Recovering the vapor in this manner eliminates the ingestion of air by the underground tank that would normally occur as fuel is pumped out. This, in turn, prevents gasoline from evaporating inside the storage tank to reestablish the vapor-liquid equilibrium, as discussed earlier. The service station owner realizes an economic benefit from this recovered vapor, since liquid fuel that otherwise would be evaporated can instead be sold. This is referred to as the vapor recovery credit,[10] and will be cited by that term in the economic impact discussion later in this notice.

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[10] Similarly, if Stage II is in place, the vapor from the underground tank that normally would be lost as this tank is refilled can be recycled back to the cargo truck via a vapor return line for subsequent reprocessing.

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Figure 2

STAGE II VAPOR RECOVERY BALANCE SYSTEM

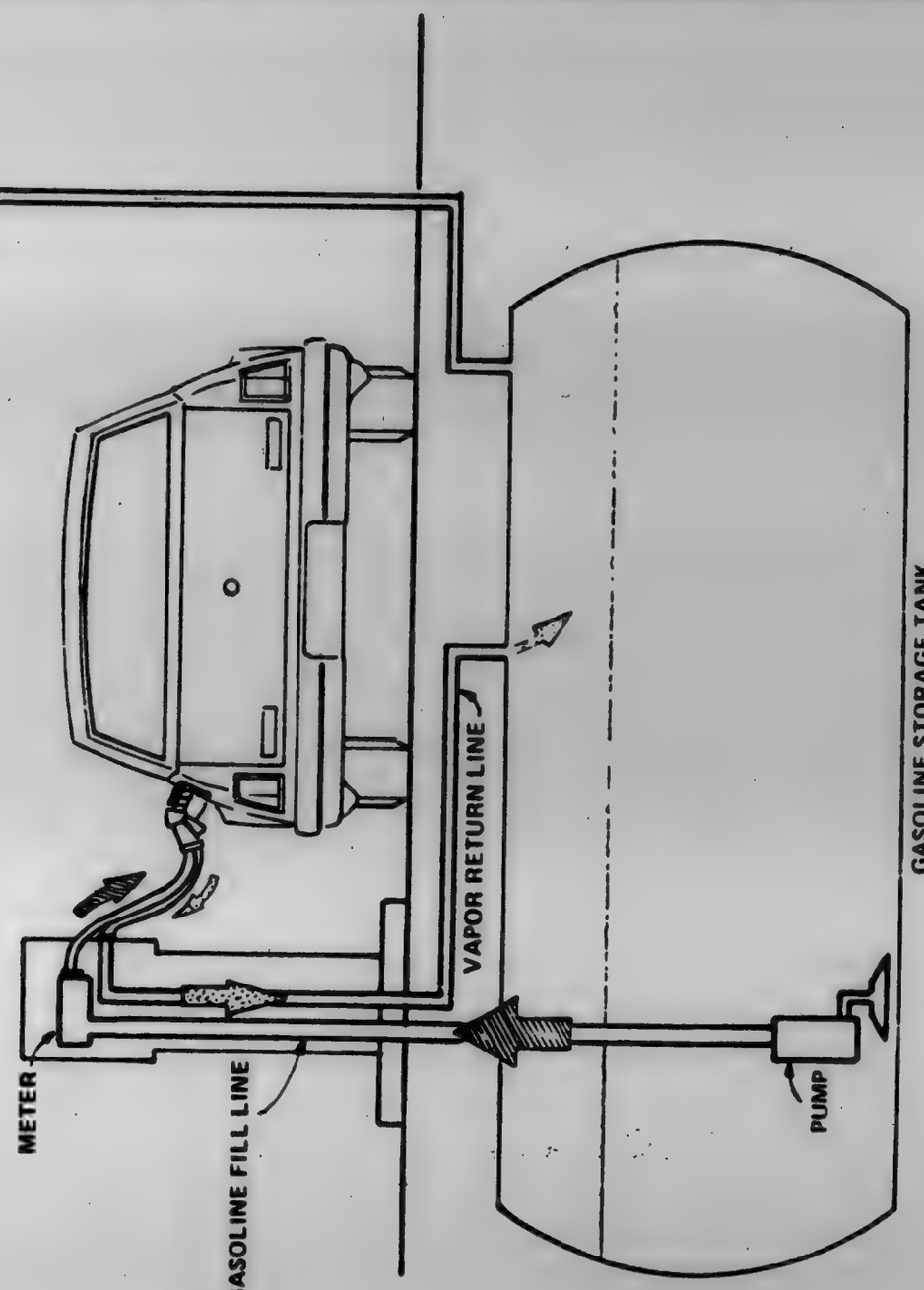

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Stage II systems can be subdivided into two broad types on the basis of the method used to return the displaced vapor to the underground storage tank. The first type, known as the "balance system," is the simpler, less expensive, and more widely used of the two (Figure 2). (About 80 percent of current Stage II system installations are balance systems.) Vapor transfer to the storage tank is accomplished by exploiting the slight pressure created in the vehicle fuel tank by the incoming flow of gasoline. This system is "passive," and operates on the basis of very small differences in pressure. Therefore, a tight seal is required at the juncture of the dispensing nozzle and the fillneck. In order to ensure a good seal, the dispensing nozzle in a balance system is equipped with a "no-seal, no-flow" feature, consisting of a spring-loaded bellows and an interlock mechanism. For fuel to be dispensed, enough pressure must be applied to the nozzle by the operator to sufficiently compress the bellows and thus deactivate the interlock mechanism.

The other broad type of Stage II system is known as "vacuum assist." Such systems enhance the recovery of gasoline vapor by employing a device (*i.e.*, a blower or an aspirator) to create a slight vacuum at the nozzle. This vacuum acts to actively draw (assist) the gasoline vapor into the rubber boot for return to the storage tank. This vacuum assist is advantageous in that it obviates the need for a tight seal at the fillneck/nozzle juncture, but has the disadvantage that ambient air is drawn into the vapor return hose along with the vapor. For blower-assisted systems, this results in the total volume of the returning vapor-plus-ambient air being greater than the volume of liquid gasoline withdrawn from the underground tank. The excess vapor, which cannot be accommodated by the storage tank, thus requires some form of secondary processing (*e.g.*, incineration). The complexity and added hardware associated with the vacuum assist system make it more expensive than the balance system, and it is significantly less popular for those areas currently employing Stage II vapor recovery.

The second basic alternative for the control of vehicle refueling emissions is the onboard vapor recovery system (Figure 3). As implied by the name, the requisite control hardware is located on the vehicle. Consequently, no discernible modifications to the fuel dispensing equipment are required, and consumers perceive no difference when dispensing fuel. Onboard systems function during the refueling of the vehicle by sealing the vehicle fillneck, then routing the displaced vapor from the fuel tank to a storage canister. This canister is loaded with granules of activated carbon, and the hydrocarbon molecules in the vapor are absorbed onto the surfaces of these granules. When the vehicle's engine is started, fresh (ambient) air is drawn through the canister to desorb, or purge, the hydrocarbons from the activated carbon. The resulting mixture of air and hydrocarbon vapors is transferred to the fuel metering system and then burned in the engine. This provides the onboard system with a fuel recovery credit similar to that previously described in connection with Stage II, because gasoline vapors that would normally be lost to the atmosphere are instead used to power the vehicle.

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Figure 3

Onboard Vapor Control System

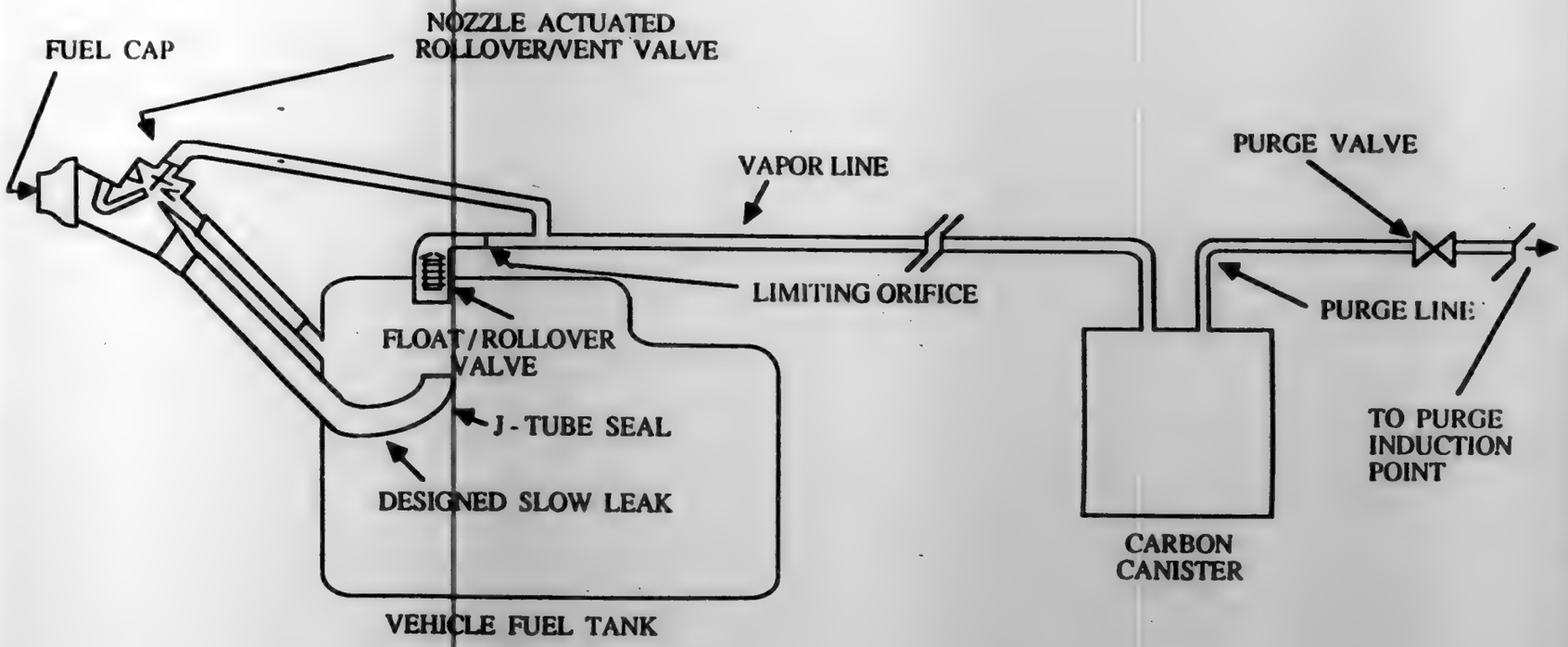

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The Agency would like to add, however, that although the onboard vapor recovery system most widely discussed at the present time is based on the use of a charcoal storage canister, other alternative control technologies do exist. One such alternative, which is described in more detail in Section VI of this notice, is a flexible fuel tank bladder. The use of a bladder-based system is an attractive possibility not only because of its effectiveness in controlling refueling vapors, but also because this type of technology can improve vehicle safety beyond present levels in the event of a crash. EPA encourages the full exploration of this and any other alternative control technologies. Specifically, comments are requested on the advantages and disadvantages of alternatives to canister-based onboard controls, including the areas of technical feasibility, control effectiveness, and cost.

2. Salient Features of Each Control Technique

Onboard Refueling Controls and Evaporative Emissions. An issue closely associated with reducing emissions during the refueling process is the interaction between the requisite onboard control technology, fuel volatility, and the potential for reductions in evaporative emissions from motor vehicles. Recent data from EPA's in-use surveillance program [11] indicate that many vehicles fail to comply with the applicable evaporative emission standards in customer service.[8] A contributing cause of these failures is that in-use fuel typically is more volatile than fuel used in emissions certification testing and generates a greater volume of evaporative emissions. Evaporative emission control systems, if designed solely for use with certification fuel, may be undersized and insufficiently purged when used to control in-use fuel of a higher volatility than the fuel specified for certification, resulting in excess evaporative emissions.

The Agency has identified several ways to help assure in-use compliance with the evaporative emission standards. The possible solutions generally reflect EPA's intent to have the volatility of certification fuel represent that of in-use fuel. In particular, in a separate proposed rulemaking, contained elsewhere in today's **Federal Register**, EPA proposes to reduce the Reid Vapor Pressure (RVP) (a volatility measure) of commercially available gasoline in Class C areas (as defined by the American Society of Testing Materials) in two stages, from the current recommended summertime maximum of 11.5 pounds per square inch (psi) to 9.0 psi (the volatility level for certification test fuel) by 1992.[12] Volatility levels in other areas of the country would be reduced proportionally. This would help assure that evaporative control systems are designed and tested to handle fuel volatility representative of what they will encounter in-use.

Another approach to attaining the evaporative standards would be to increase the volatility of the certification test fuel to match that of commercial fuel. If done in conjunction with relatively simple revisions to the current test procedure, this revision would basically require the use of larger storage canisters and/or higher purge rates to control excess evaporative emissions.

This last approach is also evaluated in EPA's volatility proposal and is assumed in the base analyses in support of today's refueling proposal. In particular, the refueling analyses presume a certification test fuel RVP of 11.5 psi, rather than the current certification requirement of 9.0 psi. The Agency chose this approach for analyzing the impact of volatility controls on refueling controls because a certification RVP of 11.5 psi not only represents the highest in-use volatility level currently used in the vast majority of non-attainment areas as specified by the American Society for Testing and Materials during the summer ozone season, but also is a worst-case situation with respect to the cost and design of onboard controls. In its final rulemaking, the Agency will ensure that the volatility of the certification fuel for onboard refueling controls is fully consistent with the final decisions made about test fuel in the volatility rulemaking.

If EPA reduces the volatility of commercial fuel, the costs and benefits of refueling controls would change, although the effect is relatively small. EPA has analyzed these effects for the range of volatility limits proposed in the volatility rulemaking. These effects and their interactions with the Agency's decision to control refueling emissions are fully discussed in Section V of this proposal. The analyses accompanying the final onboard rule will reflect the actual in-use volatility of commercial fuel as specified by the final volatility rule.

In the context of solving the evaporative emissions problem, it is also important to understand that onboard refueling controls would generally be designed with the inherent ability to control excess evaporative emissions. This is possible because these systems are similar in design and function to evaporative control systems. If onboard were combined with the control of excess evaporative emissions in this manner, the resulting cost effectiveness of the reductions of excess HC emissions would be more attractive than the control of only refueling emissions. The Agency's draft gasoline marketing study used this approach. However, because EPA is proposing to address the excess evaporative emissions problem by controlling fuel volatility, the Agency believes it is most appropriate to determine the best refueling control strategy exclusive of excess evaporative emissions control. Therefore, the costs and benefits of eliminating excess evaporative emissions are excluded from EPA's analysis of refueling controls and the associated decision rationale (*i.e.*, onboard is analyzed incrementally to the control of excess evaporative emissions). Instead, they are considered in the separate EPA rulemaking action on fuel volatility and excess evaporative emissions contained elsewhere in today's **Federal Register**.

User Convenience. Regardless of their design, all Stage II systems share a common drawback in that the recovery nozzles and hoses are somewhat heavier, bulkier, and more awkward than their conventional counterparts. Even though the overall inconvenience associated with Stage II systems of more recent design has been greatly reduced from early systems, the Agency believes that some small inconvenience factor is, and will continue to be, associated with the consumer use of Stage II equipment.

The inconvenience of using Stage II equipment can be especially significant for balance systems, which are the dominant type of installation The spring-loaded bellows and interlock mechanism associated with the "no seal, no flow" feature of these systems has some potentially inconvenient characteristics. The operator must exert pressure on the nozzle when inserting it into the fillpipe in order to compress the bellows, disengage the interlock system, and allow fuel to be dispensed.

The interlock itself adds a possible failure mode to the refueling operation. In addition, for proper operation, the

[11] This test program is conducted by EPA to determine if vehicles that are certified to be in compliance with specific emission standards continue to meet the applicable requirements in day-to-day service.

[12] The Agency's volatility rulemaking considers RVP changes as low as 8.0 psi.

person conducting the refueling must wait several seconds after stopping the flow of fuel before removing the nozzle, in order to allow the pressure within the system to equalize. If the nozzle is removed too soon (as often happens) vapor loss may occur. Of course, the extent to which these characteristics of Stage II systems are perceived to be an inconvenience will vary by individual.

Onboard vapor recovery systems, by contrast, remain unnoticed by the consumer during the refueling process. The requisite hardware is an integral, self-contained part of the vehicle, and there is no direct human involvement in the control process, since no special action or attention is required in order to dispense the fuel. Finally, contrary to some vehicle manufacturers' claims, onboard systems are expected to be integrated within the vehicle in a way that will not interfere with occupant or trunk space. Hence, onboard systems avoid the consumer inconvenience often associated with Stage II systems.

It should also be noted that both Stage II and onboard vapor recovery systems may present some benefit to the consumer in terms of: (1) Personal discomfort due to breathing gasoline vapors, and (2) fuel spitback and spillage during the dispensing process. Stage II, of course, removes gasoline vapors from the breathing zone,[13] and the more recent generation of equipment appears to reduce the frequency of spitback. Similarly, onboard mitigates the inhalation of gasoline vapors. It also should reduce spitback, since the systems will be required to control this phenomenon at high dispensing rates as part of the certification process, which is discussed later in today's notice. In fact, because of this specific regulatory requirement, it is possible that onboard may provide a somewhat greater benefit to the consumer in avoiding this particular annoyance than Stage II.

The difference between onboard and Stage II in terms of user convenience is a significant distinction. The fact that consumers perceive no difference in refueling a vehicle equipped with onboard controls relative to a vehicle without such controls (or perhaps even some advantages), means that one of the primary incentives for tampering with emission control systems does not exist for onboard. This is not the case with Stage II systems where tampering (*e.g.*, substitution of conventional nozzles and hoses by station owners) may occur in an attempt to mitigate potentially annoying characteristics associated with the dispensing equipment. As discussed below, this difference has an impact on the projected relative in-use control efficiencies for the two systems.

The inconvenience associated with the use of Stage II systems, as compared to onboard control, also can be assigned a certain economic value. If consumers would willingly pay more for their gasoline simply to avoid the use of Stage II dispensing equipment, then there exists a relative cost between the two control approaches which is defined as the Stage II "inconvenience cost." Due to the wide variation in which consumers may value Stage II inconvenience, it is impossible to specifically quantify this cost. However, to provide an indication of the importance of this factor, the effect of small inconvenience costs will be indicated in the analyses presented below.

Control Efficiency. Both Stage II and onboard vapor recovery systems have the potential to control nearly all refueling emissions. Certification tests of new Stage II installations by the State of California indicate that the systems initially are about 95 percent efficient. Test data for experimental onboard systems have shown control efficiencies as high as 99 percent.

Of course, it is the *in-use* effectiveness that is important in assessing the environmental benefits associated with each control technology. This is determined by combining the theoretical efficiency of each system with estimates of the losses in control frequency and effectiveness resulting from such factors as misinstallation, improper maintenance, and tampering. The Agency's analysis of data from existing Stage II programs indicates that the frequency of the above events, and therefore the resulting in use efficiency of the control technology, is highly dependent on the level of enforcement (*e.g.*, inspections by State or local authorities). Based on these data, national average Stage II in-use efficiencies were estimated by EPA to range from 62 percent, in areas of minimal enforcement (*i.e.*, essentially no inspections), to 00 percent, in areas with annual enforcement programs. EPA would expect enforcement to vary between these extremes throughout the country.

Unlike Stage II systems, which have been in use in certain areas of the country for several years, onboard systems have yet to be used in production vehicles. Consequently, there are no extensive in-use data on the performance of production versions of this technology. However, EPA notes that prototype onboard systems have been installed in in-use vehicles and have successfully accumulated more than 50,000 miles of service at the theoretical maximum level of control, providing evidence of successful in-use performance.

In such cases, where specific in-use data is lacking, in-use data from similar control technology is often used as a surrogate for the purpose of analysis. This approach is particularly useful here, in that EPA has a significant amount of surveillance survey data for evaporative emission control systems, which are very similar in design and function to onboard vapor recovery systems. Because of these similarities, EPA anticipates that the in-use performanceof onboard systems in capturing vapors displaced from a vehicle's fuel tank should be very much like that of evaporative emission control systems that have been properly designed. In particular, little or no deterioration in performance over the useful life of the vehicle would be expected for properly maintained systems. Hence, using the rates of malmaintenance, defect, and tampering found for in-use evaporative storage canisters, EPA has estimated the in-use efficiency of onboard systems to be about 93 percent. This in-use efficiency is not directly comparable to the Stage II values discussed above, however, because onboard does not control the emptying losses from the service station's underground tank as Stage II controls do. If these losses are included in expressing the overall system efficiency for onboard, EPA estimates these controls capture about 83 percent of all refueling emissions.

Exemptions. The installation of Stage II control systems requires a sizeable capital investment by service station owners. For many stations, Stage II control could be prohibitively expensive, resulting in significant economic hardship or even station closure. Section 324 of the CAA addresses this issue for smaller service stations by mandating that any independent facility with a throughput less than 50,000 gallons per month (gal/mo) be exempt from any *Federal* Stage II requirements promulgated by EPA. Additionally, the Agency's analysis of this issue showed that coupling the Congressionally-mandated 50,000 gal/mo exemption limit for independents

[13] General Motors has examined the costs and benefits of using Stage II controls in California. Although the Agency does not endorse the conclusions of the study, the results suggest that consumers perceive a significant benefit associated with breathing fewer vapors when using Stage II equipment. If this is the case, EPA believes that onboard would also be perceived as providing this type of benefit, because it also reduces vapor inhalation.

with a 10,000 gal/mo exemption limit for non-independents, which as a byproduct of their affiliation with petroleum companies may have greater economic resources, appeared to provide the most cost-effective Federal Stage II program. This exemption scenario was used extensively in the draft RIA, and results in about 75 percent of all public and private outlets (representing about 25 percent of the total gasoline consumption) being uncontrolled.[3]

Although the CAA mandates that any Federally required Stage II program incorporate a 50,000 gal/mo exemption limit for independent stations (and although EPA could adopt a 10,000 gal/mo limit for non-independents to maximize cost effectiveness), if Stage II were selectively implemented in non-attainment areas, State governments could impose more stringent exemption levels than specified by EPA or simply not allow exemptions. As an example of other possible exemption levels, many areas of California with Stage II programs exempt stations with throughputs of less than 2,000 gal/mo.[14] Lower exemption levels have the advantage of providing greater emission reductions. One of the primary disadvantages is that the marginal cost of control increases significantly as smaller and smaller stations are added to the program. Also, the number of facilities escalates rapidly as the exemption limit is reduced, with a concomitant increase in the scope and difficulty of implementing, and then administering such programs.

The Agency's sensitivity analysis of this issue showed that the incremental cost effectiveness of control rapidly escalates for stations with throughputs less than 10,000 gal/mo. For example, VOC reductions from stations pumping between 2,000 and 10,000 gal/mo would cost more than nine times more on an incremental basis than the reductions provided under the 10,000/50,000 gal/mo Federal exemption scenario. Given the potential adverse economic effects of lower exemption levels, the Agency can not rule out the possibility that many States would decline adopting substantially lower exemption levels than might be required by EPA. Therefore, the Agency has assumed the 10,000/50,000 gal/mo Federal exemption scenario in analyzing the costs and emission benefits of Stage II, while at the same time acknowledging that, if selectively implemented in non-attainment areas, individual States may prefer more stringent Stage II programs.

[14] Exemption levels in California non-attainment areas range from 0–30,000 gal/mo.

The existence of any Stage II exemptions effectively decreases the overall efficiency of the program with regard to reducing all the potentially controllable refueling emissions. If the exemptions provided under the 10,000/50,000 gal/mo Federal limits are included in expressing the overall system efficiency for Stage II, EPA estimates these controls capture about 50–70 percent of all refueling emissions. The basis for this estimate is discussed more fully in Section II.E. of today's notice.

By contrast, no analogous exemptions are necessary, or contemplated, for the classes of vehicles subject to onboard requirements.[15]

Unit Cost. The estimated total capital cost of a Stage II vapor recovery system for the moderately-sized nonexempt service station is $12,200. When this is amortized over the expected lifetime of the equipment, and the annual operating expenses and fuel recovery credit are included, such a nonexempt service station will spend approximately $2,600 per year for vapor recovery controls. In the case of onboard control, when expressed as an increment to the cost of reducing excess evaporative emissions, the vapor recovery system is estimated to increase the purchase price of the average vehicle by $19. If the anticipated fuel recovery credit for a well-maintained vehicle is discounted to the year of purchase and added to the above hardware cost, the average buyer will incur a net cost of about $14 per vehicle.

E. Decision Rationale and Selection of Control Technology

This section explains the Agency's overall rationale for proposing refueling controls in general, and for proposing onboard control technology in particular. In discussing whether refueling controls should be adopted, the costs and benefits of other strategies that have either been adopted or are under serious consideration will be used as comparative benchmarks. In choosing between the alternative control technologies, several important factors affecting the decision will be evaluated: Emission reductions, cancer incidence reductions, timing of the benefits, cost, cost effectiveness, enforcement burden, user convenience, equity, and competitive effects. Some of these topics were introduced in the previous sections of today's notice, the others will be described where appropriate in the analysis which follows.

The overall presentation of EPA's decision rationale begins by focusing on refueling control as a strategy to reduce ozone precursor emissions in non-attainment areas. The presentation then focuses on the value of reducing VOC emissions in attainment areas and the reduction in carcinogenic risk that results from a refueling control program.

1. Refueling Controls for Ozone NAAQS Attainment

To assess refueling controls as an ozone reduction strategy in non-attainment areas, the Agency's analysis includes only the costs and benefits of implementing Stage II control technology in 61 urban non-attainment areas[16] outside of California, because Stage II is already in place there, as discussed previously. For onboard, the *costs* of a nationwide program are used (since onboard cannot be implemented solely in non-attainment areas), while the *benefits* are restricted to only those that would occur in the same 61 areas.

Evaluating the two control technologies in this manner does not reflect the possible reduction in cancer incidences or the reduction in ozone levels in attainment areas associated with onboard control requirements. It is clear, for example, that in addition to reducing the ozone health effects associated with non-attainment areas, essentially all reductions in ozone precursor emissions have potential value, even those occurring outside of non-attainment areas. Including these potential effects in the analysis would improve the estimate of onboard cost effectiveness. The additional benefits of a nationwide onboard program, and the effects of such benefits on cost effectiveness, are further discussed in Section II.E.3. of today's notice.

Table 3 summarizes the results of EPA's non-attainment area analysis. It can be seen from this table that implementing either Stage II or onboard can provide a significant degree of VOC control in non-attainment areas. The range of potential emission reductions using Stage II is just less than or equal to about two percent of the total base year VOC inventory, while for onboard it is about two percent of the base year inventory. Few of the remaining VOC control strategies known to EPA can provide significantly more emission reduction in non-attainment areas, since the larger sources are already subject to emission control requirements.

[15] Motorcycles and some off-road vehicles are the only vehicles potentially controlled by Stage II systems that would be exempt from onboard requirements. Off-road vehicles are not subject to control under section 202 of the Act, while EPA would exempt motorcycles due primarily to either economic or technical feasibility considerations.

[16] This is the estimated number of non-attainment areas at the time this analysis was performed.

TABLE 3.—VOC RESULTS FOR REFUELING CONTROLS IN 61 URBAN NON-ATTAINMENT AREAS

Strategy	Annual VOC reduction (1,000 mg/yr)	Annualized costs ($MM/yr)	Cost effectiveness ($/mg)
Stage II [1]	86-100	58-93 ([2] 185-295)	850-1100 ([2] 2700-3600)
Onboard	[3] 110	180	[4] 2200

[1] Stage II values are based on the 10,000/50,000 gal/mo Federal exemption scenario.

[2] To illustrate the importance of even a small inconvenience cost, these numbers include an average inconvenience cost of about 10 cents per refueling event. This represents a cost of $137 to 203 MM/yr. An inconvenience cost of only about one half a cent per gallon (5 cents per fill-up) would make Stage II and onboard cost effectiveness values similar. [3]

[3] Includes only reductions in 61 urban NA areas; nationwide reductions are 280,000 Mg/yr.

[4] As discussed later in this section, when the other benefits of an onboard program are included, the cost effectiveness becomes substantially better.

To put the cost effectiveness of refueling control in perspective, the cost-effectiveness values in Table 3 can be compared to those of other control options that are available for non-attainment areas. In this regard, refueling emissions control remains within the cost-effectiveness range represented by other VOC reduction strategies, and appears significantly less expensive than some of the options which have been identified. (For example, controlling VOC emissions from metal rolling operations has a cost effectiveness ranging up to $9,500/Mg.) Furthermore, as mentioned earlier, the other control programs are generally more difficult to implement relative to a refueling control program.

From this information, it not only appears that the control of refueling emissions, whether by Stage II or by onboard, represents a significant reduction in VOC emissions,[17] but can be achieved with a cost effectiveness in the range of other available control alternatives.

If refueling emissions are to be controlled to obtain non-attainment area VOC emissions reductions, EPA must choose between the two alternative control technologies. Leaving aside the effect of inconvenience costs, the cost-effectiveness values in Table 3 favor Stage II. However, there are a number of other relevant factors which must be considered that make onboard controls more desirable overall than Stage II.

First, viewing the expected emission benefits, Table 3 shows onboard has the potential to provide greater emission reductions than Stage II in the long run.[18] This advantage of onboard stems from both the likelihood of somewhat higher in-use control efficiency and the lack of significant exemptions, relative to Stage II.[19] As shown in Figure 4, onboard reduces refueling emissions by 83 percent from uncontrolled levels after full implementation. Onboard's long-term control capability far exceeds the range of 48 to 66 percent reduction (depending on level of enforcement) achieved by Stage II systems with the Federal exemption levels. This advantage is especially significant when it is recalled that the non-attainment problem is projected to become more severe after the mid-1990's and that few other currently available strategies identified by the Agency appear capable of providing a significant degree of VOC control.

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[17] Reductions in potential cancer risk are proportional to VOC reductions. This topic is further discussed in Section II.E.3.

[18] For more stringent exemption scenarios than the 10,000/50,000 gal/mo Federal exemption level assumed in the analysis, the average annual emission reductions for onboard are at the mid-point in the range of possible values for Stage II.[3]

[19] Onboard appears to retain this long-term advantage, except when Stage II exemptions are allowed only for stations with throughputs of less than 2,000 gal/mo and annual enforcement is assumed. This exemption level is *not* consistent with section 324 of the CAA.

Figure 4. PERCENT VOC EMISSION REDUCTION

For 61 Nonattainment Areas

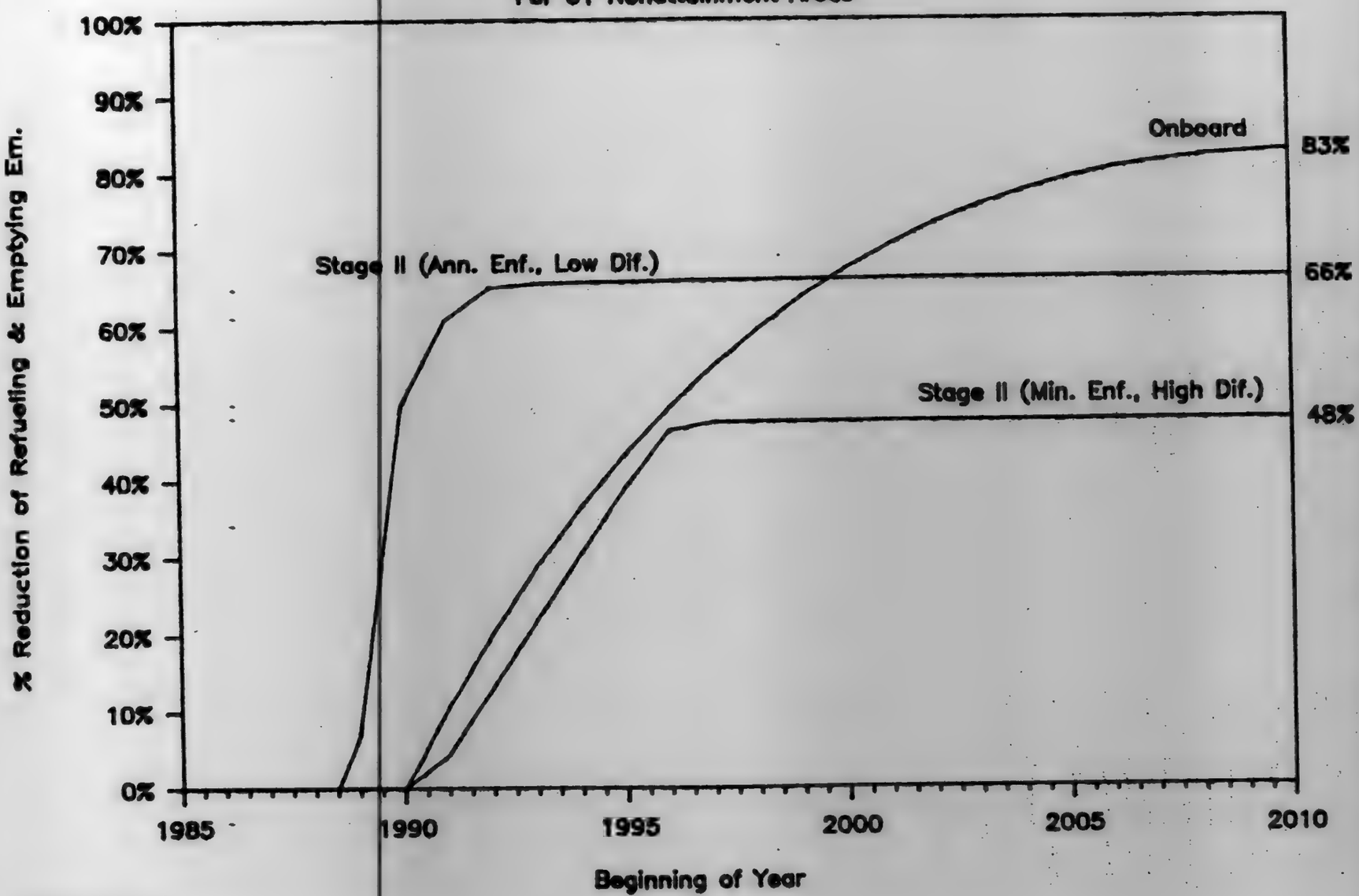

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In the short-term, the comparison is less clear cut. Figure 4 shows that Stage II systems could provide greater emission reductions than onboard in the initial years after implementation, depending on what assumptions are made with respect to the implementation schedule of such systems. The maximum advantage occurs under the assumption that Stage II systems could be fully installed in all non-attainment areas within a three-year period. By contrast, onboard controls would be phased-in over a longer period of time as new vehicles displace existing vehicles in the fleet.

There is a degree of uncertainty associated with the 3-year phase-in schedule for Stage II. The logistics and resource requirements of equipping the large number of service stations in non-attainment areas with Stage II systems, and the potential for local resistance to such an extensive program make it very difficult to judge when full implementation would actually occur. The uncertain nature of any short-term advantage that may be associated with Stage II systems in terms of emission reductions is readily illustrated if a somewhat longer implementation schedule is assumed. For example, Figure 4 indicates that a seven-year implementation schedule, which has been suggested by API, as a reasonable schedule and which could occur in conjunction with the minimal enforcement scenario, would eliminate any short-term benefit of Stage II.

The Agency believes there are two other considerations pertaining to VOC reductions that are important in choosing between onboard and Stage II in non-attainment areas. The first involves the fact that the nationwide scope of an onboard program would provide automatic coverage for marginal attainment areas which may otherwise violate the standard in the future due to population or industrial growth. The second consideration involves the broad geographic nature of ozone air quality problems. This pollutant generally is a regional concern because VOC emissions in attainment areas may be transported through the atmosphere into adjacent non-attainment areas.

Turning from the immediate issue of emission reductions, there are a number of practical areas where Stage II and onboard are quite different. Adopting Stage II in non-attainment areas across the country would result in an extensive new air pollution control program. For example, under the Federal exemption criteria assumed by EPA, the 61 non-attainment areas have about 43,000 service stations that would be affected. If individual states adopted more stringent requirements, this number would escalate rapidly. In most cases, Stage II programs would be implemented through action by each affected state government. In some cases, state legislative approval may be required. Individual states would then be primarily responsible for administration, inspection, and enforcement after implementation. While the existence of such complications is not, in itself, sufficient reason not to implement Stage II controls, it is another factor to be considered in the decision.

In a related area, an effective enforcement of Stage II programs would require annual inspections in order to ensure maximum in-use effectiveness. Hence, the increase in enforcement staff for states and local areas associated with a Stage II program would be quite significant. When the scope of these programs, the implementation and continuing enforcement costs, and the inconvenience associated with the dispensing equipment are all taken into consideration, EPA believes that Stage II vapor recovery could prove to be an unpopular control strategy at both the state and local government levels in many areas of the country, as numerous comments on EPA's gasoline marketing study tend to confirm.

The number of different parties involved in the successful use of Stage II controls as an ozone reduction strategy could also have significant adverse impacts on the rate of implementation and in-use effectiveness of Stage II. It likely would lead to delays in the implementation of Stage II control systems in some areas, and even after implementation, there could be pressures operating against the concurrent establishment of strong provisions for inspections and enforcement.

Onboard has none of these practical disadvantages. Onboard avoids the establishment of a multitude of new state and local programs with potentially large enforcement burdens. Rather, this control technology would represent the addition of a new mobile source emission standard to the existing Federal Motor Vehicle Control Program that has demonstrated its success. In addition, it would be implemented, managed, and enforced in conjunction with the existing administrative and enforcement functions that already exist as part of the current motor vehicle program. Therefore, onboard holds a clear advantage over Stage II in terms of the implementation and enforcement aspects of a program to control vehicle refueling emissions.

There are certain economic considerations that are also important in choosing between onboard and Stage II. These concern the distribution of costs and resultant effects on competition. The installation and maintenance of Stage II control systems clearly imposes a significant cost burden on service station owners, particularly those near the exemption level selected.

Further, increased operating costs associated with maintaining Stage II systems could adversely affect competition between some controlled and uncontrolled stations. This could occur for stations located just within the boundary of a non-attainment area relative to their uncontrolled counterparts, or for controlled stations just above the exemption cutoff level relative to their uncontrolled competition below the exemption level.

Such economic disruptions are avoided through the use of onboard systems, since the costs of control are spread across a much greater number of economic entities (*i.e.*, all the purchasers of new automobiles and trucks). EPA believes that this distribution of costs is inherently more equitable than that for Stage II. Indeed, it is likely that because of this basic characteristic of onboard controls, section 202(a)(6) of the CAA directed EPA to specifically consider the "equitable distribution of costs" in evaluating onboard control systems.

It might be also argued, however, that an onboard program is not equitable because vehicle owners residing outside of non-attainment areas would be required to share the cost of a program directed primarily at non-attainment area benefits. As will be discussed below, the equities in this case are not so clear-cut, because there are potentially significant benefits from onboard controls in attainment areas.

Finally, turning once again to the question of inconvenience costs, EPA believes that while it may be very difficult to assign a specific value to either the operator inconvenience attributable to Stage II or the various implementation and competitive disadvantages of Stage II just described, they clearly have some value. Referring back to Table 3, it can be seen that even a small value for such inconvenience radically worsens Stage II cost effectiveness compared to onboard. In fact, an inconvenience cost of about one half a cent per gallon (multiplied by a large number of gallons per year) makes the Stage II and onboard cost-effectiveness values equal.[3] Hence, even ignoring the nationwide benefits

inherent in an onboard program, EPA believes that onboard has many advantages over Stage II as a VOC control strategy for non-attainment areas.

2. Overall Benefits of Onboard Control

This section provides EPA's overall assessment of the benefits of alternative refueling emissions control programs. Onboard, as a national refueling emissions control strategy, would provide additional ambient air quality benefits and direct health benefits throughout the country. The benefits of reducing emissions of ozone precursors in non-attainment areas are relatively obvious, and have been examined in detail in the preceding section. While the potential benefits of similar emission reductions in areas currently meeting the ozone NAAQS may not be as readily apparent, they are still important. In addition, benefits in terms of direct health effects (cancer risk reductions) occur in both attainment and non-attainment areas as a result of controlling refueling emissions.

The potential value of controlling ozone precursor emissions in attainment areas have been discussed earlier in this preamble. Such potential effects include the atmospheric transport of VOC emissions from attainment to non-attainment areas, making it more difficult to comply with the ozone NAAQS in regions with existing air quality problems. There are also a considerable number of areas which, while in attainment of the ozone NAAQS, are very close to the standard. VOC reductions in these areas can be expected to have a value similar to non-attainment area reductions if they are necessary to maintain compliance. These facts suggest that there is a benefit from a refueling emissions control program that achieves emission reductions in attainment areas as well as non-attainment areas.

Reducing human exposures to refueling vapors also directly reduces the potential cancer risk associated with these emissions. EPA's estimates of these reductions are given in Table 4. Again, the numbers given here for Stage II reflect the fact that Stage II would be implemented in non-attainment areas only, since it has already been shown that on a nationwide basis onboard is more desirable than Stage II. Stage II incidence reduction benefits could, of course, be increased by implementing a nationwide program. However, under the Federal exemption limits, overall Stage II benefits would not be as great as those for onboard, because of its lower overall efficiency and the fact that incidence reductions are proportional to emission reductions.

TABLE 4.—INCIDENCE REDUCTIONS FROM STAGE II AND ONBOARD

[Annual incidence 1988-2020]

Scenario	Bz	>C_6	GV
Stage II	1	2-4	10-15
Onboard	4	10	36

On the basis of overall control effectiveness, onboard produces larger cancer incidence reductions, because control is not confined to non-attainment areas only. Therefore, the numbers in Table 4 strongly favor an onboard program. These additional effects are certainly of value to society, just as are ozone reductions in non-attainment areas. They accrue without any added expense and can be viewed as partially offsetting the costs of ozone reduction in non-attainment areas. Therefore, giving some reasonable value to these effects will more accurately reflect the overall cost effectiveness of refueling control.

Assigning exact monetary values to ozone reductions in attainment areas and to the number of cancer incidences avoided is problematic, given the number of variables involved and the ways various segments of the society may value the two types of benefits. Estimates for these values can be identified, however. For example, for VOC reductions in attainment areas, a value of $250/Mg has been cited by General Motors in a previous evaluation of hydrocarbon control benefits.[9] Although the Agency has not yet completed its own analysis of the best value to use for attainment area benefits, $250/Mg has been used in the analysis. Similarly, a range of $0.5 to $7.5 million per incidence avoided has sometimes been used by EPA and others to evaluate the benefits of reduced cancer risks. While the Agency does not endorse these specific values, they are useful when combined in various ways to evaluate the cost effectiveness of adopting refueling control as an ozone reduction strategy in the 61 urban non-attainment areas.

If the values cited above for emission reductions in attainment areas and cancer incidences averted are combined with the cost-effectiveness analysis previously summarized in Table 3, the results shown in Table 5 are obtained. The first value ($2200/Mg for onboard) is taken directly from Table 3, and represents the case where costs are applied only to the VOC reductions occurring in the 61 non-attainment areas. Subsequent entries in Table 5 present the resulting cost-effectiveness for onboard VOC control in non-attainment areas if credits for other benefits are included as indicated.

TABLE 5.—VOC COST EFFECTIVENESS IN 61 URBAN NON-ATTAINMENT AREAS

Quantity being valued	Onboard ($/mg)	Stage ($/mg)
VOC reductions in non-attainment (NA) areas only	2200	850-1100
VOC reductions in NA areas, with benzene incidence reductions valued at $7.5 MM	1900	740-970
VOC reductions in NA areas, with $250/Mg benefit for VOC reductions in attainment areas (AA) and benzene incidence reductions valued at $7.5 MM	1500	740-970
VOC reductions in NA areas, with $250/Mg benefit for VOC reductions in AA and benzene and >C_6 incidence reductions valued at $7.5MM	850	480-640
VOC reductions in NA areas, with $250/Mg benefit for VOC reductions in AA and benzene and all GV incidence reductions valued at $7.5MM	(1)	(1)

[1] Negative.

In viewing the progression of cost-effectiveness values as various benefits are included in Table 5, note that the cost effectiveness of onboard rapidly improves. In fact, if all the potential benefits are included in the analysis, the VOC cost effectiveness in non-attainment areas becomes negative. This simply means that the value of all the benefits is greater than the cost of the onboard program.

However, as discussed earlier, it is particularly difficult to accurately estimate the magnitude of the toxic impact of gasoline vapors given the scientific uncertainties involved. This uncertainty suggests that the non-attainment area VOC cost effectiveness for onboard is in the range from negative to $1500/Mg. EPA believes such cost-effectiveness values are well within the range of and generally lower than other available VOC control measures. Indeed, the overall desirability of onboard relative to Stage II could make it preferable even if its cost effectiveness were substantially worse than that for Stage II.

3. Conclusions

The above analysis has presented the reasonableness and need for refueling control and the comparison between onboard and Stage II from a number of perspectives. EPA believes that the results show refueling control to be a cost-effective strategy for reducing VOC emissions and the potential cancer risk associated with refueling vapors. Moreover, the Agency believes that onboard is more desirable than Stage II as a means to attain those reductions.

4. Proposed Policy Concerning the Role of Stage II Controls in Nonattainment Areas

As described above, the Agency believes that onboard is the preferred strategy to limit motor vehicle refueling emissions and is proceeding with the accompanying regulatory proposal. It should be noted that choosing a refueling control strategy presents an unusual issue in that one control measure (Stage II) could be employed and eventually made obsolete by a more effective system (onboard). This introduces the need to evaluate the effectiveness over time of requiring essentially redundant systems. There are, however, a variety of reasons for, choosing onboard over Stage II, both as a nationwide strategy and as a control strategy for helping non-attainment areas ultimately to attain the ozone standard. Compared to requiring Stage II controls in non-attainment areas only, onboard's advantages include: (1) Greater long-term emission reduction potential, (2) the fact that the consumer does not have to handle new and possibly inconvenient refueling equipment, (3) ozone reduction benefits in attainment areas, including helping to maintain the standard, and (4) nationwide benefits from reduced exposure to known and probable carcinogens in refueling vapors.

Congress clearly intended under section 202(a)(6) of the Clean Air Act that onboard controls potentially could be a substitute for requiring Stage II controls. In comparing onboard controls to Stage II, EPA believes that onboard is the most effective refueling control technology and would provide the greatest overall benefits for public health and welfare. Thus, EPA believes that onboard would be an effective substitute for Stage II controls. Accordingly, this proposal to require onboard refueling controls is also a proposed determination that the Agency will not regard Stage II controls as a "reasonably available control measure" within the meaning of section 172(b)(2) of the Clean Air Act. The effect of this determination would be that EPA would not require that all SIPs for ozone non-attainment areas subject to Part D of the Act contain Stage II controls as a minimum attainment measure.

Although EPA believes onboard is the preferable refueling control approach, the time needed for onboard to become effective raises the question of whether refueling should also be controlled in the near term by means of Stage II implemented as an interim measure in some (or all) ozone nonattainment areas. The Agency has examined such a dual strategy, as described in Volume 1 of the accompanying draft RIA. That analysis examined three hypothetical implementation schedules for Stage II, in the context of a decision having been made to require onboard controls on motor vehicles. The analysis indicated that the value and reasonableness of Stage II as an interim measure was largely dependent on the speed with which Stage II could be implemented in practice. The longer it takes, the more the Stage II implementation would overlap that of onboard, and thus Stage II as an interim measure would result in rapidly diminishing benefits at essentially constant cost.

An important factor that can affect the reasonableness of the interim use of Stage II is the degree of progress in the development of Stage II regulations at the State level. Stage II is clearly more feasible as an interim refueling control measure where it has been installed (or is in the process of installation) than in a situation where regulations would have to be developed and approved under State procedures, and then go through the EPA review and approval process prior to implementation. A factor related to the speed with which Stage II rules could be developed, approved and implemented would be the level of controversy surrounding implementation at the local level. As discussed earlier in this notice, judging by the correspondence received by EPA on the refueling issue, such controversy would likely be substantial and the likelihood of delays and litigation would be great.

In light of the above, EPA believes that the decision as to whether States must implement Stage II controls for the interim period before onboard controls become fully effective should depend on the extent to which States have already planned for and implemented Stage II. Accordingly, areas where Stage II has already been installed, or is now in the process of being installed, must continue to use these systems while onboard controls are phased in. In these circumstances, the continued use of existing Stage II would provide interim environmental benefits at little additional cost. Such areas could, however, phase out these systems as onboard is phased in. Such changes, of course, would need to be incorporated in revisions to the applicable SIP.

Areas that have not begun implementation of Stage II controls but whose SIPs contain commitments to do so, should proceed with implementation or submit SIP revisions providing adequate substitute reductions. In other non-attainment areas, interim Stage II controls would remain a control measure that States could consider including as a part of the area's overall ozone attainment strategy.

III. Key Analytical Issues Affecting EPA's Decision

The above discussion has attempted to fully set forth the analyses and interpretations used by EPA in arriving at its decision to propose the onboard control program contained in today's notice. The Agency has expended considerable effort in its analyses and has considered the many issues and uncertainties involved. At the same time, EPA is cognizant that there is controversy regarding the refueling control issue and is desirous of obtaining the fullest degree of public participation in the rulemaking process. To assist commenters, this section will again review the main options considered by the Agency and then present a discussion of the analytical issues which may be most important in affecting the outcome of EPA's final decision.

A. Options

EPA's first main issue concerning refueling was to consider whether to control or not control refueling emissions. As described earlier in this preamble, the Agency believes that control is appropriate. Refueling control is important for reducing the generation of ozone precursors in non-attainment areas. In addition, today's proposal will provide additional benefits in terms of cancer incidence reductions and in terms of ozone reductions in attainment areas.

Given the apparent need for refueling control, Agency analyses indicate that both onboard and Stage II are cost effective approaches. Thus, the second issue facing the Agency was to evaluate competing technologies for control. As already indicated, the onboard control approach has been selected for proposal. Stage II has a potential advantage in terms of total cost because it could be applied selectively in non-attainment areas only. It also has the potential for implementation in the shortest overall leadtime (although that advantage is not completely clear). However, onboard's greater total cost arises largely from its nationwide character, which brings additional benefits beyond those offered by Stage II.

Given a decision to propose onboard controls, there is as well an option to propose Stage II control for the short term. This approach could provide emission reductions in the short term while new cars with onboard controls

were being phased into the fleet. However, the realization of these short term benefits is unclear because of uncertainty over the timetable for implementing Stage II. They would also be substantially more costly than the benefits of either onboard or Stage II alone since they would be short term benefits and incremental to onboard. Thus, as described earlier in Section II, EPA believes that decisions about the use of Stage II in the short term should be included in the State Implementation Plan development process. It may be as well that additional areas will adopt Stage II controls. Any such adoption of Stage II by local governments may alter the cost effectiveness of a Stage II program compared to onboard control.

A final option to be mentioned concerns possible Agency action subsequent to its final rulemaking on today's proposal. If the onboard requirement were to be finalized with a substantially longer leadtime requirement than proposed, EPA would have the option of reviewing the basis for its action shortly before the requirement were actually implemented to determine if onboard control was still appropriate. This might be reasonable given the sensitivity of EPA's decision to factors which could change in the future. The length of time required to implement onbaord control affects its benefit and cost-effectiveness compared to Stage II, as does the number of non-attainment areas exceeding the air quality standard. In addition, if a large number of non-attainment areas were to adopt Stage II requirements it could alter the desireability of implementing onboard controls. Such a review would be conducted approximately one year before the first applicable model year.

B. Analytical Issues

The proposed choice between onboard and Stage II has relied upon an extensive body of analysis which has been conducted over a several year period. These analyses are quite complex and by their nature involve a great number of projections, judgments and assumptions. Some of these areas are generally agreed upon, while others are not. In addition, some matters have more impact on the outcome of the analyses than others. The following sections review assumptions which are either controversial or known by EPA to have a significant impact on its analyses. They are being described here for the purpose of inviting public scrutiny and comment.

The Agency wishes to caution commenters however, that it is quite possible that important analytical issues exist which are not identified below. Thus, the Agency encourages all parties to carefully review all of its analyses and not to confine comments solely to issues raised below.

1. Fuel Volatility

The impact of fuel volatility on the analysis of refueling controls will be reviewed further in Section VI, therefore it will not be described in depth here. As noted, the primary analyses described in today's proposal have been conducted under the assumption of in-use fuels being at current ASTM limits (11.5 RVP for summertime months in Class C areas). These conditions pose the most difficult technical challenge and greatest cost to manufacturers. If the Agency finalizes its proposed reduction of fuel volatility to 9.0 RVP for Class C areas, then manufacturer costs would decline while cost effectiveness values would increase. As described above, the cost effectiveness of onboard controls would increase about 22 percent while Stage II would increase about 13 percent.

The single best volatility assumption to use is difficult to determine at this point, since EPA has not yet finalized its volatility regulation. The presentation in today's notice indicates that EPA would expect to proceed with onboard controls regardless of whether or not volatility is controlled to the levels proposed. At the same time, interactions between the two proposals indicate that the question of fuel volatility be resolved before final action on refueling. Thus, at the time of final rulemaking, EPA intends to present its refueling analyses under the volatility conditions being promulgated at that time. In the meanwhile, commenters are requested to consider the effect of varying fuel volatility in their comments on this proposal.

2. Number of Non-Attainment Areas

Based upon 1982 through 1984 (the latest data for which modeling is completed), there are currently 61 urban non-attainment areas outside of California. In valuing ozone reductions, EPA has credited reductions in all 61 of these areas as contributing to solution of the non-attainment problem. However, the projections of future conditions used in analyzing the effects of control show that the number of non-attainment areas may drop significantly in the mid-1990s under various possible circumstances. For example, the analysis supporting the volatility proposal indicates that there may be as few as 29 non-attainment areas in 1995 with the adoption of both volatility control and onboard controls.[20] Thus, it might be argued that ozone reductions should be counted in as few as about 30 areas.

There are several important reasons why the Agency has not followed the above approach in its analyses. First, the same projections which indicate a decline in the number on non-attainment areas to 29 also predict an increase to 39 again by the year 2010, the period when onboard controls will be fully phased in and come to their maximum level of control. Thus, 40 areas may be the better estimate. Second, and more importantly, a closer look at the modeling results indicates that almost none of the modeled areas ever gain a substantial margin of compliance against the ozone air quality standard. For example, even assuming volatility control to 9 RVP and the adoption of onboard controls, 58 of the 61 areas modeled remain at or above 0.11 ppm ozone throughout the period of analysis. This represents only about a 12 percent margin below the 0.12 ppm standard. Such levels are well within the uncertainty of EPA's models, which have historically tended to overpredict reductions.[21] Thus, EPA believes that reductions in all the modeled areas have value in controlling non-attainment conditions.

There is another reason arguing for considering an even larger number of areas than the 61 which EPA has identified. Ozone is a broad regional phenomena, not confined within the specific geographic boundaries of non-attainment areas. The transport of ozone forming precursors into non-attainment areas from adjacent attainment areas is a significant contributor to non-attainment problems. Thus, emissions in areas adjacent to the 61 non-attainment areas should also be valued for attainment of the standard (the inherent ability of onboard to control such emissions is one of the advantages of this technology). EPA is not in a position

[20] The volatility air quality analysis is based upon somewhat different assumptions concerning the future of stationary source controls than the onboard analysis. There is considerable uncertainty about how much new VOC control is available from stationary sources for the future. The onboard analysis assumes no additional stationary source controls, while the volatility analysis includes some moderate gains. For the same conditions, this causes the onboard analysis, to predict 4 to 6 more non-attainment areas than the volatility analysis. EPA is unsure which of these approaches is the more accurate. For this discussion, the lower numbers from the volatility analysis are being used.

[21] The Agency has consistently stressed the need for caution in interpreting modeling results of this sort. Year to year meteorology variations can rapidly change the number of non-attainment areas when so many areas lie very close to the standard. One indication of this effect is found in recent data estimating the number of non-attainment areas. Based upon 1983 through 1985 data, the number of non-attainment areas appears to have increased from 61 to 65 while modeling would predict some decline.

at this time to identify specific areas where this overlap occurs, but believes it could be substantial. Comments on estimating this effect would be helpful.

Examination of a few different assumptions about the number of non-attainment areas to use indicates that the sensitivity of onboard cost effectiveness to this parameter is small for most combinations (Table 6). For example, Table 6 indicates that decreasing the number of areas from 61 to 50 increases the cost effectiveness of onboard controls by 9 to 13 percent (depending upon which sets of benefits are being valued, see Table 5). Using 40 areas represents a 19 to 27 percent increase.

TABLE 6.—EFFECT OF VARYING THE NUMBER OF NON-ATTAINMENT AREAS ON ONBOARD COST EFFECTIVENESS

Benefits included	N/A area VOC cost effectiveness			
	40 Areas (28 percent) [1]	50 Areas (31 percent) [1]	61 Areas (35 percent) [1]	81 Areas (50 percent) [1]
N/A area VOC only	2,900	2,400	2,200	1,500
N/A area VOC+BZ and C6 GV incidences + A/A VOC reductions	1,000	924	850	670

[1] Percent of national gasoline consumption.

As noted, there are reasons for considering even more than 61 areas in the non-attainment area analysis. Ozone is a broad scale regional phenomenon, involving geographic transport and ongoing photochemical processes. As the technical understanding of ozone formation grows, it appears more and more important to consider emission controls beyond the specific designated non-attainment areas which have historically been analyzed. Here, because the exact identification of adjacent areas which might be directly involved is difficult. EPA lacks a specific set of areas to include. Since non-attainment area benefits are a direct function of fuel consumption in the selected areas, the Agency has used an alternative based upon an increase in the fraction of fuel assumed consumed in non-attainment areas. The current 61 areas represent 35 percent of nationwide fuel consumption. Assuming an increase in the amount of controlled fuel to 50 percent would improve the cost effectiveness of onboard by 20 to 30 percent.

3. Value of Health Benefits and Attainment Area Ozone Reductions

Closely related to the question of how many non-attainment areas to use is the question of the value of the benefits of reducing cancer incidences and the ozone reductions from attainment areas. EPA's analysis examined the overall cost effectiveness of onboard assuming values of $7.5MM per incidence avoided (for varicus assumed incidence levels) and $250 per ton of VOC reduction in attainment areas (which EPA believes is conservative). To illustrate the effect of changing the assumed values, some alternate values have been considered. The cost per incidence avoided (assuming incidences related only to benzene plus C6 and above gasoline vapor components) has been assumed to range from $3.5MM per incidence avoided to as high as $10MM For potential attainment area benefits, a value of $500 per ton has been used in addition to $250 per ton.

Table 7 presents the results of this sensitivity analysis. From Table 7, it can be seen that the overall attainment area VOC cost effectiveness of onboard ranges from a low of $150 per ton for the maximum valuation of all benefits up to as high as $2200 per ton if no value is assigned to either attainment area VOC reductions or incidence reductions.

TABLE 7.—ONBOARD COST EFFECTIVENESS ($/ MG)

Benefit value		VOC value in N/A areas considering BZ+C6 GV incidence and A/A VOC reduction benefits
$MM/INCID	$/Mg of A/A VOC	
0	0	2200
3.5	250	1300
7.5	250	850
10	250	540
3.5	500	950
7.5	500	450
10	500	150

Table 7 does not include the case where all incidences attributable to whole gasoline vapors are valued. They have been omitted from the table to indicate the cost-effective nature of onboard controls even if this more controversial source of incidences is excluded. If all gas vapors were included, the cost effectiveness of VOC control in non-attainment areas would remain negative for most of the cases given in Table 7.

4. In-Use Efficiency of Onboard Controls

There are three factors affecting the average in-use efficiency of onboard systems: the theoretical efficiency, the rate of tampering with in-use systems and the rate of malmaintenance and defects for in-use systems. For all of these areas, the Agency has had to derive appropriate values to use based upon indirect data, since onboard systems are not yet in routine production. Since the overall control efficiency directly affects emission reductions to be gained, EPA's approach to these areas is important.

The theoretical efficiency used for EPA's analysis corresponds to a 97 percent reduction of uncontrolled emissions. By comparison, the reductions required to attain the standard of today's proposal are about 99 percent. The reason for the difference in values comes from the fact that the basic analysis of onboard impacts was conducted based upon earlier estimates of onboard control efficiency than that eventually embodied in the proposed standard. The impacts analyses have not been revised to reflect this more recent assessment, largely because the impact is small and because any error can be considered conservative (*i.e.*, underestimating benefits rather than overestimating them). A revised analysis would reflect about a two percent improvement in cost effectiveness due to the inclusion of this change. EPA's analysis for its final rule will reflect the efficiency of the standard adopted.

Tampering rates for onboard systems were derived from EPA's experience with evaporative controls. Those components of onboard systems directly accessible to the operator (vapor lines, purge lines, canisters, etc.) are essentially the same as components on current evaporative controls. Thus, EPA assumed that tampering with these components would occur at the same rate as currently occurs on evaporative systems. This tampering rate, on a fleet weighted average basis, amounts to 2.8 percent. Assuming that tampered systems are completely disabled, there is a corresponding 2.8 percent loss in average control efficiency.

EPA's analysis has been conducted based upon the assumptions as just described. However, there is reason to believe that these assumptions are overly conservative. Recent indications from some manufacturers indicate that onboard canisters, in at least some applications, will be less accessible than evaporative canisters. That is, some manufacturers have indicated that they may locate refueling canisters in underbody locations or toward the rear of the vehicle. The degree to which this will occur is currently unclear. However, if such approaches are used, they will likely reduce the degree of tampering which occurs. This effect has not been estimated, and comments on the appropriate approach to this question would be valuable.

The third factor affecting in-use efficiency identified above is the effect of malmaintenance and defects (M&D) in emissions. As for tampering rates,

EPA has relied on experience with evaporative systems to estimate the effect of M&D on onboard systems. However, the translation of M&D effects from evaporative systems to onboard systems is more problematic than tampering, as will be described below.

In its approach, EPA examined M&D data for evaporative systems to identify problems which are common to onboard systems. For example, problems such as missing gas caps or damaged air cleaner gaskets will cause excess evaporative emissions to occur, but will not alter the performance of onboard systems. These were therefore excluded from the onboard analysis. After these exclusions, 7.9 percent of the vehicles were found to have M&D problems. Next, using test data gathered using commercial (high RVP) fuel, the evaporative emissions of these problem vehicles were compared to the emissions of problem free vehicles. When weighted into the fleet average, this comparison indicated a 10.9 percent increase in evaporative emissions was occurring due to relevant M&D problems when tested on commercial fuel. EPA then applied this percent increase to onboard emissions, and related this amount to an equivalent loss in control efficiency. That is, the M&D problems would increase emissions from onboard equipped cars from approximately 0.177 grams per gallon to 0.196 grams per gallon (compared to uncontrolled rates of about 5.9 grams per gallon). This increase in emission corresponded to a change in control efficiency from 97 percent to 96.7 percent. Being so small, the M&D impact was considered negligible and not considered further in the analyses.

An alternative approach to evaluating M&D impacts has been advanced which indicates a greater possible effect. Under this alternative approach, rather than computing a proportional increase in emissions, M&D vehicles are evaluated for an indicated loss in overall evaporative control efficiency, and this loss is applied directly to the corresponding onboard control efficiency. Operating on the most current M&D data for M&D problem rates and emission impacts on commercial fuel, this approach has been argued to produce a loss in efficiency of three to four percent. However, there are several considerations which must be addressed before a reasonable estimate can be determined using this approach.

The viability of using a direct transfer of efficiency effects depends upon establishing equivalent conditions for evaluating impacts for the two technologies. First is the need to evaluate the effect of M&D impacts on evaporative systems under conditions these systems were designed to manage. This means that the M&D impacts must be evaluated with 9 RVP fuel. Even problem free vehicles have excess emissions when tested on commercial fuel, because the evaporative controls are operating beyond their design capacity. Thus, a small disablement might increase emissions on commercial fuel but have no impact with 9 RVP fuel. Since onboard controls will be designed to properly operate on whatever commercial fuel is eventually established through EPA's volatility proposal, design fuel must be used to evaluate evaporative emission effects.

When results on 9 RVP fuel are considered, the impact of M&D problems on evaporative emissions is different. The number of vehicles which can be considered to have M&D problems is reduced because some of the problem vehicles meet the evaporative standard when tested on 9 RVP fuel. The absolute amount of excess emissions is also greatly decreased. However, emissions from problem free vehicles decline even further and, expressed as a percentage change, M&D problems have a greater effect at 9 RVP than at 11.5. Thus, whereas M & D problems with 11.5 RVP fuel were described above as increasing average emissions by 10.9 percent, at 9 RVP the increase is 30 percent. Using EPA's original methodology, this would mean a reduction of onboard control efficiency to 96.3 percent.

To apply this data to an estimated loss of control efficiency, the emission levels of the M&D vehicles on 9 RVP fuel were compared to expected uncontrolled levels. On this basis, the M&D vehicles experienced a loss of control of about 35 percent. Averaged over the fleet this amounts to about a 2.5 percent loss of efficiency and changes the onboard control efficiency to 94.5 percent.

This value represents an estimate of the maximum impact M&D problems could have on onboard systems. However, the actual impact is likely to be much less. For example, 45 percent of the M&D problems were the result of clogged or dirty filters on the evaporative canister. EPA expects that most, if not all, onboard systems will use closed bottom canisters which do not have such filters. Furthermore, there is an essential difference between how manufacturers will approach the design of onboard systems compared to evaporative systems which is imposed by the proposed test procedure. The evaporative procedure tests systems under near average conditions while the onboard procedure uses a near "worst case" set of conditions. This difference will result in onboard systems which have a substantial degree of excess capacity for average conditions. Thus, partial disablements as represented by the M&D problems on evaporative systems will have little or no impact on refueling emissions under most conditions. In fact, EPA believes it quite reasonable to assume that currently known M&D problems will not noticeably affect onboard emissions, which was the result of EPA's original approach to estimating the effect of this problem.

There is actually a potential benefit of onboard controls related to M&D problems which has yet to be quantified. This benefit is the likely elimination of evaporative excess emissions caused by M&D problems. Given the excess capacity to be designed into onboard systems, and given the fact that for most of its driving miles the onboard canister will be in a highly purged condition, onboard systems will have the ability to absorb M&D effects without any corresponding loss of evaporative emissions control. This means that onboard systems could capture excess evaporative emissions which are not expected to be eliminated by the proposed controls of fuel volatility or other changes to the evaporative emission test procedure being considered to make it more effective.

There are other conditions besides M&D problems which are currently believed to cause excess evaporative emissions which will also be affected by onboard controls. In general, they consist of those conditions which result in cumulative evaporative emissions which will exceed the capacity of even a well designed system. This would include such things as vehicles which are not driven regularly and undergo repeated diurnal emission loads without adequate opportunity to purge the canister. An onboard canister would be able to absorb several diurnals before emissions breakthrough would occur. A similar situation would occur for vehicles driven on mostly short trips, again allowing insufficient opportunity for the evaporative system to purge. An onboard system would be much more tolerant of such deviations than would current evaporative systems. The Agency has no quantitative estimate of this benefit at present, but believes it could be significant.

The question of the appropriate level of in-use efficiency to use for analysis of onboard systems is an important matter. The Agency therefore requests comment directed at this issue, especially dealing

with the points discussed above. Any assistance from commenters in quantifying these impacts would be most helpful.

5. Fuel Recovery Credits for Onboard

The net cost for onboard or Stage II systems includes a credit for the fuel value of recovered vapors. For onboard this credit is partially offset by the impact of the added weight of the onboard hardware on the fuel economy of affected vehicles. Some manufacturers have argued that when the added weight of the onboard hardware is incorporated into new vehicle designs there will be an added weight increase through the effect of the onboard component weights on the design of other vehicle systems (*e.g.*, frame members, springs, engine and drive train components, etc.).

For every pound increase in payload, this argument goes, there will be an additional 0.7 pounds added to the rest of the vehicle. Thus, the impact of the onboard weight must be increased by a factor of 1.7 before computing its effect on fuel consumption. Manufacturers have also argued that the fuel economy sensitivity of newly designed vehicles to changes in weight will be greater than that assumed by EPA because the engine displacement would be adjusted to maintain a constant driving performance characteristic. In addition, additional cost must be associated with this added weight and counted as part of the onboard control cost.

EPA's current analysis assumes that the onboard hardware on future vehicles will not impact the weight of any other parts of new vehicles. It is appropriate in some contexts to relate overall vehicle weight to "payload" weight, since the design of frames, springs, etc., is clearly determined by the required payload. However, in the range of four to five pounds of net weight change as involved here, the vehicle platform design should not be sensitive to such small changes. This is a change comparable to the weight of a set of floor mats. There are undoubtedly changes of greater magnitude than this made to new vehicle components as the vehicle design evolves, and EPA does not believe it is reasonable to argue that changes are made in, for example, how big the springs will be each time this happens. Indeed, this value undoubtedly falls well within the range of normal design tolerance and even random vehicle to vehicle weight variability. The allocation of total vehicle weight to payload item weights in this range is more an accounting technique than a reflection of actual effects.

While EPA does not necessarily feel that the weight multiplication argument is appropriate in the onboard situation because of the small weight changes involved, it has done a sensitivity analysis to assess the impact of such an assumption. This analysis has been done using a weight multiplying factor of 1.3 instead of the 1.7 value advanced by some manufacturers and NHTSA. The 1.7 value has been developed by NHTSA in connection with the development of bumper standards, and used for weight changes generally twice or more those being considered here. The range of possible values for this parameter according to the NHTSA analysis was from 1.3 to 2.0. In addition, any effect for light-duty trucks or heavy-duty vehicles would be lower than for passenger cars, because truck design is more heavily determined by cargo weight requirements.

EPA has made no adjustment to the sensitivity factor for fuel economy versus weight change. The changes involved are simply too small to be reasonably able to impact engine design. For example, the change in 0 to 60 miles per hour acceleration time associated with the weight of onboard controls would amount to an acceleration loss of some 0.03 seconds. Such a small change would not even be detectable. EPA finds little basis to assume that such small impacts would actually affect engine design decisions.

In determining a cost value to assign to the added weight the Agency began with representative costs for steel purchased by the automobile industry (20¢/lb), assumed 100 percent in value added and 36 percent for overhead and profit to arrive at a value of 50¢ per pound. Since the effect is being assumed to only affect newly designed vehicles, a phase-in schedule was developed assuming a two year lag following implementation of the new standards, and a fleet turn-over of six years following that.

Based upon the above assumptions, EPA estimates that the overall cost of onboard controls on newly designed vehicles would increase by about 10 percent ($1.40). The fleet average impact considering the phase-in schedule would be to increase the overall onboard cost effectiveness by about 5.5 percent.

There is another factor in the calculation of fuel recovery credits which directly affects their overall value. That is the assumed price for a gallon of gasoline. The value used in EPA's current analysis is $1.20, which relates approximately to a crude oil price of $30 per barrel. Some forecasts of future crude oil prices indicate costs rising above the $30 per barrel level. Based upon an increase in the crude oil price to $33 per barrel, there would be a 6¢ per gallon increase in the cost of gasoline. If such an increase is applied to the fuel recovery credits for onboard, there is a net reduction in the onboard cost effectiveness of about three percent. In a similar fashion, a 6¢ per gallon increase in fuel cost would improve Stage II cost effectiveness by about three percent.

6. Control of Spillage Emissions

One source of gasoline vapor emissions associated with refueling operations is the spillage of fuel. What might generally be considered spillage can come from several causes. Spitback spillage can occur when fuel is discharged from the fillpipe due to excess pressure buildup in the fuel tank vapor space. This can happen near the end of a fillup as the tank is nearly full. It can also occur earlier when in use fuel dispensing rates exceed the rates that the fillpipe and fuel tank are able to accept. Overflow spillage can also occur from the operator's attempt to "top off" the fuel tank following automatic nozzle shutoff, or if the nozzle malfunctions and fails to shut off. Taken as a whole spillage emissions have been estimated to represent about 5 percent of total refueling emissions and have been considered unchanged by either onboard or Stage II controls.

Although not yet considered, both onboard and Stage II equipment are likely to affect spillage. The onboard test procedure requirements will require vehicles to be able to refuel at the maximum in-use dispensing rate, thus eliminating spitback. Finally, given the improved fillability this represents, it is likely that reduced topping off operations will occur.

Stage II equipment will not directly bring about the elimination of spillage sources. However, since the fuel would be contained within the vapor collection boot on the Stage II nozzle, spillage would be contained somewhat. However, since some of that fuel could subsequently be spilled as the operator replaced the nozzle on the dispenser, the degree of possible control is difficult to estimate. In addition, since the operator cannot visually observe the refueling operation, attempts to top off the tank may cause increased spillage.

Overall, it appears that onboard and Stage II will help reduce spillage. Onboard appears likely to control spillage better than will Stage II, but the Agency has no incorporated quantitative estimates of these benefits into its cost-effectiveness analysis.

Based upon the estimates of spillage noted above, however, without any fuel recovery credit for the recovered fuel the total control of spillage could improve cost effectiveness as much as 5 percent.

7. Control of Emptying Losses

Another component of overall refueling emissions is that category of emissions known as emptying losses. These emissions, which contribute about 5 percent of overall refueling emissions, are considered to be generated as part of the process in which ambient air is drawn into the gasoline underground storage tank to replace the lost volume of fuel having been dispensed. The air, as it becomes saturated with the gasoline vapors in the underground tank, expands slightly. This expansion is then presumed to give rise to emissions back out the underground tank's vent pipe.

Emptying losses have not been measured, but have been estimated based upon the theoretical considerations just outlined. EPA believes that there is reason to believe that emptying losses may actually be either much smaller than estimated or essentially non-existent. The process of drawing out fuel is relatively slow compared to the whole volume of the underground tank, and it appears likely that air drawn into the tank during the early portion of a refueling event will come into equilibrium while the refueling operation is continuing. In this event, rather than causing an actual release of vapor saturated air, the expansion process would merely reduce the amount of replacement air needed to be drawn in during the later portions of the refueling event. Thus, the only likely emissions would come at the very end of the refueling event.

Beyond this, since refueling is an ongoing process wherein multiple refueling events are generally occurring in overlapping fashion, even the potential emptying loss emissions at the end of one refueling event would tend to be eliminated by entrainment demands from other, continuing refuelings.

Thus, it appears that emptying losses may, in fact, be very small. In EPA's current analysis, these emissions are assumed to be controlled by Stage II, which recirculates vapor back from the vehicle fuel tank to the underground tank, eliminating air entrainment. Onboard, on the other hand, is assumed to have no effect on emptying losses. Thus, eliminating the 5 percent of emptying loss emissions from the analysis would not change onboard cost effectiveness, but would increase the Stage II value about 5 percent.

8. Stage II Exemption Levels and Inconvenience Costs

Both exemption levels and inconvenience costs have been discussed earlier in this preamble and their effects upon Stage II performance and cost effectiveness described. The exemption level used by EPA corresponds to approximately the most cost effective level for Stage II. Reducing exemptions would increase the fraction of vapors captured by Stage II, but would do so at high marginal cost effectiveness. For example, VOC reductions from including stations between 2,000 and 10,000 gal/mo would cost more than nine times those included in EPA's primary analysis and would increase the average cost effectiveness of Stage II about 55 percent.

Inconvenience costs have been shown to have a dramatic impact upon Stage II cost effectiveness even at a very low valuation. At only 10¢ per refueling event inconvenience costs more than triple the Stage II cost effectiveness. While the Agency does not have an exact estimate for actual inconvenience costs for Stage II, the use of Stage II systems requires the involvement of the public and will result in some inconvenience to them.

9. Coordination of Stage II and EPA's Underground Storage Tank Program

The Agency's recently proposed Underground Storage Tank (UST) program could potentially reduce the overall cost of a Stage II vapor recovery program. The UST program is designed to detect and replace or repair, as needed, leaking storage tanks that cause groundwater contamination. If the installation of Stage II controls were coordinated with underground tank repair or replacement, the trenching and paving costs associated with Stage II vapor recovery lines potentially could be reduced.

The Agency's sensitivity analysis of a coordinated Stage II/UST program is contained in Volume 1 of the draft RIA. In essence, EPA assumed a five-year phase-in period for the coordinated program to correspond to the UST provisions requiring that all underground storage tank systems must be tested for leaks within that time. Further, it was assumed that 35 percent of the tanks would be found leaking and that immediate corrective action at service stations would occur at a relatively linear rate over the five-year period. Based on these principle assumptions, combining the Stage II program with the UST program would improve the cost effectiveness of Stage II by about six percent.

Nonetheless, even this small improvement may be overly optimistic. The assumption that 35 percent of the underground storage tanks will need repair or replacement is a worst-case estimate. Information that is only recently becoming available suggests this value is too high, perhaps by a factor of three. If the final value is closer to 10 percent, the resulting improvement in Stage II cost effectiveness would be only two percent. These results are also predicated on fully coordinating the two programs. In reality, it is doubtful that Stage II installation and UST repairs would occur simultaneously in every instance

Finally, it is important to note that a coordinated Stage II/UST program could delay the environmental benefits of vapor recovery controls. The Agency's "optimum" phase-in schedule for Stage II in non-attainment areas is three years, but as discussed above this could be extended to five years if coordinated with the UST requirements. Then again, even this latter phase in schedule assumes that leak detection and corrective action occur at a relative linear rate over the five-year period. This may be unrealistic, because many tank owners are likely to wait until the last moment to conduct leak tests. If this is the case, a shortage of contractors to perform the necessary work may develop, leading to a delay in corrective action and a stretch-out of Stage II implementation. The longer Stage II implementation takes, the more it approaches the onboard phase-in schedule, eroding or eliminating the potential short-term emissions reduction advantage of Stage II.

C. Summary of Sensitivity Issues

The previous section has reviewed a number of issues affecting onboard and Stage II cost effectiveness values, and attempted to identify the possible impacts associated with each. Most of the impacts are small, except for Stage II inconvenience costs. Today's proposal is based upon a Regulatory Impact Analysis which assumes 61 principal non-attainment areas, a fuel volatility of 11.5 RVP, and values for the other key parameters as just described. The appropriate values for these and other parameters to be included in EPA's final Regulatory Impact Analysis may significantly affect the results of the final analyses. Therefore, the Agency encourages comment on all of these factors, along with any others which commenters believe to be of importance. Specific areas for comment as identified

above are: (1) The proper treatment of fuel volatility, (2) the appropriate number of non-attainment areas to use, (3) the appropriate values for health benefits and attainment area ozone reductions, (4) the in-use efficiency of onboard controls, (5) treatment of fuel recovery credits for onboard, (6) control of spillage emissions, (7) the control of emptying losses, (8) Stage II exemption levels and inconvenience costs, and (9) the coordination of Stage II and EPA's underground storage tank program. Clearly, specific quantitative analysis with supporting data will be of most use to the Agency in completing its final study.

IV. Response to Challenges Regarding EPA's Legal Authority

It has been suggested to EPA that the Administrator is obligated to require Stage II controls by regulation for all ozone non-attainment areas and, thus, as a practical matter, that the Agency has no discretion to choose onboard controls over Stage II. This argument is based principally on the assumption that section 172 of the CAA requires the SIPs for these areas to include Stage II controls as a "reasonably available control measure" (RACM).[22] EPA does not agree. As discussed in more detail in a separate memorandum in the public docket, the Agency believes that Congress' intent, as expressed in section 202(a)(6) of the CAA, is that EPA should make a careful, reasoned choice, on the merits, between onboard and Stage II controls. [10] Thus, the argument that Stage II must be considered RACM and that Congress assumed Stage II controls were RACM, is inconsistent with the purpose of section 202(a)(6) and would effectively render that section a nullity. The Agency does not believe Congress would have intended such a result. Moreover, EPA's interpretation is consistent with other provisions of the CAA (and its legislative history), which indicate that Congress anticipated that the Administrator might not require Stage II controls.

EPA's conclusion is not changed by the fact that section 172 sets December 31, 1987 as the deadline for ozone attainment. It does not follow from the existence of the deadline that EPA is precluded from thoroughly considering Stage II and onboard under section 202(a)(6) and then choosing the more "desirable" technology. Nothing in section 202(a)(6), or any other statutory provision, requires that the Administrator base his decision on whether to require Stage II or onboard solely or primarily on which technology can more easily meet the December 1987 deadline, or that he sacrifice the potential long-term benefits from onboard controls in favor of the greater short-term ozone reductions that Stage II might produce. In any case, for any non-attainment area not already implementing Stage II, the leadtime necessary for installation of these controls, although shorter than the time needed for onboard to become fully effective, is far too long to affect attainment by December 31, 1987.

Finally, EPA does not agree with the additional argument that the Agency itself has previously declared Stage II to be RACM. Although some older EPA information and SIP policy documents show that Stage II was considered technologically feasible, EPA has never required that a State include Stage II as RACM in its ozone non-attainment SIP as a condition for SIP approval, or otherwise defined Stage II to be RACM in any SIP or other rulemaking.

In summary, EPA is not legally required to declare Stage II to be RACM in all ozone non-attainment areas and is not precluded from proposing onboard control as an alternative to Stage II.

V. Interactions Between the Control of Vehicle Refueling Emissions and the Proposed Regulation of Fuel Volatility

This section explores the effect of controlling fuel volatility on various aspects of today's proposal, and in large part is a summary of the more detailed analysis contained in the draft RIA. Such a consideration is important because EPA is proposing to control the volatility of commercial fuel, as described elsewhere in today's **Federal Register**. As already discussed in Section II.D.2. of this notice, the volatility of commercially available fuel has risen steadily in the last several years and is now significantly higher than that of the fuel used in emissions certification testing. The Agency has determined that this situation is a primary reason why many vehicles exceed the applicable evaporative emission standards in customer service.

In the future EPA intends to have the volatility of certification fuel reflect that of in-use fuel. There are two basic approaches for ensuring this occurs. The first consists of increasing the certification fuel's volatility until it reflects the summertime volatility of commercial fuel for "Class C" areas of the country as defined by the American Society for Testing and Materials. (Class C areas are important because the temperature conditions associated with the emission test procedures most closely resemble the summertime temperatures of these locations.) As described earlier, this approach was assumed in the previous analyses of refueling controls. Specifically, the analyses used an assumed certification fuel RVP of 11.5 psi, rather than the current requirement of 9.0 psi (which represented Class C area summertime values in the early 1970's).

As an alternative, the volatility of commercial and certification fuels could be regulated to some level below that currently found in the marketplace. This is the approach taken in the Agency's parallel proposal to establish, ultimately, the volatility of commercial gasoline in Class C areas at an RVP of 9.0 psi during the summer months (*i.e.*, May through September), when the majority of ozone NAAQS violations occur. This level corresponds to that of current certification fuel, which would be maintained at 9.0 psi. The RVP of commercial fuels would be uncontrolled by the Federal rules for the remainder of the year. In areas other than Class C, RVP would be reduced proportionally. If EPA follows this approach and acts to regulate fuel volatility in the future, the benefits, costs, and cost effectiveness of refueling controls would be affected, in addition to the specific design of onboard systems. The implications of such control on these two general areas are discussed below.

Turning first to the sensitivity of the refueling analysis to volatility control, the relative changes in benefits, costs, and cost effectiveness will be illustrated for the case where the in-use summertime RVP in Class C areas and the RVP of certification fuel is 9.0 psi. The sensitivity analysis will first focus on the resulting changes in emission reductions, costs, and cost effectiveness of the alternative refueling control technologies, and then on the estimated cancer incidences.

The principal effect of changing the volatility level is on the gasoline vapor emission factor (*i.e.*, grams of vapor per gallon of dispensed fuel). Under the 9.0 RVP case, the annual average gasoline refueling emission factor is about 11 percent less than for the 11.5 RVP case. This change in emission factor has a similar effect on the hydrocarbon emission reductions associated with Stage II and onboard controls. In each

[22] Section 172(b)(2) of the CAA requires that all non-attainment area SIPs provide for implementation of all "reasonably available control measures as expeditiously as practicable" to ensure attainment of each primary NAAQS by December 31, 1982 or, in the case of ozone and CO, by December 31, 1987. Neither the statute nor EPA's implementing regulations expressly define RACM and the Agency has broad discretion to determine whether and under what circumstances any control measure should be considered "reasonably available."

case, the benefits are directly proportional to the change in emission factors, so that the overall mass of emissions controlled also decreases by about 11 percent. Unlike the emission reductions, however, the costs of the two control technologies are affected differently by changes in the emission factor.

As stated previously, the costs of Stage II controls fall into three basic categories: Capital costs, operating expenses, and a vapor recovery credit. Of these, only the vapor recovery credit is affected by changes in the gasoline emission factor. Like emission reductions, the vapor recovery credit is about 11 percent less for 9.0 RVP fuel than for 11.5 RVP fuel. Using this lower vapor recovery credit in the analysis raises the overall cost of Stage II controls by about 6 percent.

For onboard, a change in the gasoline emission factor affects both the cost of the requisite control hardware and the vapor recovery credit. Regarding the hardware, it must be remembered that EPA's estimate of onboard control costs is incremental to that necessary to control excess evaporative emissions. With this in mind, lowering the certification fuel's volatility from an RVP of 11.5 psi to 9.0 psi results in both a smaller, less costly refueling emissions storage canister, and a reduction in the cost of the requisite vehicle-based evaporative emission controls. However, the change associated with the canister is significantly smaller than the change in the evaporative controls. Therefore, the incremental cost of onboard controls over evaporative emission controls with 9.0 RVP fuel is about 5 percent higher than the incremental cost of onboard over evaporative controls with 11.5 RVP fuel.

The extent to which the onboard vapor recovery credit is affected by a less volatile fuel depends on changes in the amount of fuel that is recovered (the gross recovery credit) and in the amount of fuel that is used by the vehicle to overcome the added weight of the onboard system. As was the case for Stage II, the gross recovery credit for onboard under the 9.0 RVP case directly relates to the change in the emission factors. However, regardless of the fuel's volatility, there is no significant change in the weight penalty associated with the onboard system. Therefore, the net change in the onboard vapor recovery credit is larger than indicated by the ratio of the emission factors alone. That is, in response to the 11 percent reduction in the emission factor, the fuel recovery credit decreases by 17 percent. Using the higher system cost and the lower vapor recovery credit in the analysis raises the overall incremental cost of onboard controls by about 8 percent.

Now that the relative changes in emission reductions and costs for the two RVP scenarios have been identified, the accompanying changes in the respective cost-effectiveness values can be discussed. For Stage II, the lower emission reductions and higher costs result in increasing the cost per megagram of VOC reduced by about 13 percent for 9.0 RVP fuel compared to 11.5 RVP fuel. For onboard, the cost-effectiveness value increases about 22 percent. These relatively small changes in cost effectiveness, however, do not affect the overall conclusion (as discussed previously) that refueling controls are a reasonable and reasonably cost-effective method for reducing ozone precursors in non-attainment areas. Neither does the small potential increase in onboard's cost effectiveness relative to Stage II controls significantly affect EPA's preference for onboard as the required control technique, because the overall benefits of onboard still make it more desirable.

In considering the benefits of mitigating the cancer risk associated with exposures to refueling emissions, the effect of volatility control depends on the type of emissions being evaluated: Whole gasoline vapors (GV), the heavier molecular weight fraction ($>C_6$), or benzene. In each case the differences in cancer incidence reductions should be approximately proportional to the change in the emission factors, but the relative change for each pollutant type will be different. For the GV category, moving from 11.5 RVP fuel to 9.0 RVP fuel reduces the emission factor by about 9 percent as already mentioned. This should cause the estimated incidence reductions associated with GV exposures to decline by a similar percentage.

The change in emission factors for the $>C_6$ fraction and benzene depends on the methods gasoline refiners use to reduce volatility. Generally, EPA believes producers will reduce the amount of lighter hydrocarbon compounds in the fuel. This will cause the relative percentage of heavier compounds to increase somewhat, making the emission factor and associated change in incidence reductions associated with the $>C_6$ vapor fraction slightly greater for 9.0 RVP fuel than 11.5 RVP fuel. The effect of RVP control on the estimated incidences for benzene is difficult to assess. If volatility is indeed reduced by decreasing the fraction of lighter hydrocarbons, there also will be a concomitant reduction in octane rating. This may necessitate the use of octane boosting compounds to maintain desired driveability and performance. One method of accomplishing octane enhancement is to increase the amount of benzene in the fuel. The Agency estimates that, if in-use fuel RVP is reduced from 11.5 psi to 9.0 psi, the benzene emission factor may increase slightly, causing the relative incidence reductions to also increase somewhat.

Considering all sources of refueling related incidences, as well as what is known about likely changes in fuel composition, controlling fuel volatility may either slightly increase or decrease the cancer incidence reductions associated with refueling controls. Neither of these changes would appreciably affect the overall results of EPA's cancer risk assessment.

Turning to the interaction between certification fuel volatility and onboard designs, some manufacturers have suggested that it is impossible to identify the specific characteristics of their control systems until a final decision is made on the volatility issue. They claim that this prevents them from adequately commenting on an onboard proposal. The Agency disagrees with this claim. The form and function of onboard systems are well understood as a result of the significant prototype development that has already occurred. Fuel volatility affects such parameters as the exact canister size or purge rate required, but not the basic system design. Furthermore, the 11.5 RVP certification test fuel assumed in EPA's base analyses represents a worst-case situation with respect to the cost and feasibility of onboard controls, because less volatile fuels reduce hardware costs and ease the task of accommodating higher canister purge rates. Thus, the proposal in the volatility rulemaking to retain a lower volatility fuel does not significantly affect the decision to promulgate refueling controls in general or onboard controls in particular.

Nevertheless, because of the interaction between onboard designs and volatility, EPA is publishing both the onboard and volatility proposals simultaneously to help manufacturers focus their comments. Therefore, although comments on both proposals should principally be made in the context of 9.0 RVP certification fuel, they should reflect the fact that the final RVP of certification fuel could be anywhere from 8.0 to 11.5 psi.

The Agency agrees with the comments made by some manufacturers regarding the need to know the exact certification

fuel volatility before finalizing the design of an onboard system for specific applications. Therefore, EPA intends to complete action on the proposed volatility rulemaking issue before, or in conjunction with, a final rulemaking on the onboard refueling control requirements.

In summary, the Agency believes that while the ultimate level of fuel volatility is relevant, it is not an impediment to the proposal to implement onboard refueling controls. Nonetheless, to ensure that this issue is fully considered in the onboard rulemaking, comments are specifically requested on the interaction between volatility and all aspects of refueling control. The Agency believes adequate information is available to enable interested parties to fully consider the effect of various volatility levels (*i.e.*, from 8.0 to 11.5 psi) on the refueling proposal, and to provide substantial, detailed comments.

VI. Description of the Proposal

A. Introduction

As described earlier, today's notice proposes that the emissions of gasoline vapors to the atmosphere resulting from the refueling of light-duty vehicles, light-duty trucks and gasoline-fueled heavy-duty vehicles be limited to 0.10 grams of vapor per gallon of fuel dispensed (g/gal) (0.026 grams of vapor per liter of fuel dispensed).[23] The exact effective date of the regulations will be determined as part of the rulemaking process. However, as discussed more fully later in this portion of the Preamble, it would not be feasible to begin the requirements earlier than two model years after promulgation.

Associated with the new standards are proposed changes to the existing certification protocols to incorporate such things as the definition of refueling families and allowable maintenance provisions. Test procedures for determining the levels of refueling emissions are also being proposed and are contained in a new subpart of the regulations, Subpart C (applicable to both light- and heavy-duty vehicles). Also, related changes to evaporative and exhaust emissions test procedures are proposed, including that canister systems be loaded at least to the "breakthrough" point prior to beginning the evaporative test sequence, and that heavy-duty gasoline-fueled engine exhaust tests be performed with evaporative and refueling canisters connected to the engine.

Also included in the proposed regulatory language is a clarified definition of evaporative emissions, as well as revised specifications for certification fuel. These evaporative emission and certification fuel related changes are also being proposed in a separate action on the regulation of fuel volatility, which appears elsewhere in today's **Federal Register**. For additional information on these revisions, the interested reader should consult the volatility proposal.

The remainder of this section provides a further description of today's proposal. Presented first is a discussion of the proposed standard and its technological feasibility. Next the proposed test procedures are summarized. This will be followed by a discussion of several matters related to the proposal including such things as in-use vehicle testing, vehicle safety, Selective Enforcement Audit testing and Nonconformance Penalties. Finally, leadtime requirements and projected economic impacts of the proposed regulation are discussed.

More detailed information is available on the topics addressed in this section. Background information on the development of the proposed test procedure can be found in the "Summary and Analysis of Comments on the Recommended Practice for the Measurement of Refueling Emissions." [11] For information on the technological feasibility of onboard controls and the other impacts of the proposal, the reader is referred to Volumes 1 and 2 of the draft Regulatory Impact Analysis (RIA)[3] and the "Evaluation of Air Pollution Regulatory Strategies for Gasoline Marketing Industry—Response to Public Comments." [12] All of these documents are available in the public docket (A–87–11).

B. Selection of the Standard

The technology expected to be used to control refueling emissions is similar to that currently used to control evaporative emissions. Vapors generated during refueling are directed to a canister of activated carbon where they are absorbed on the surface of the carbon particles. These vapors are subsequently removed by a purging process which draws fresh air over the carbon and then feeds the purged vapors to the engine where they are burned as fuel. Given the similarity in control technology, EPA has followed the same basic philosophy in selecting a proposed refueling emissions standard as was used to derive the evaporative emission standard.

The current evaporative hydrocarbon standard for light-duty vehicles and light-duty trucks under low altitude test conditions (2 grams/test) (40 CFR 86.087–8 and 86.087–9) is essentially a "zero emissions" standard. That is, evaporative control systems can be designed to effectively control essentially all of the evaporative hydrocarbon emissions from the vehicle. The standard was set at 2 grams/test to provide an adequate margin for such things as in-use background emissions and testing variability.[24] EPA believes that refueling emission control systems can be designed to conform to a similarly stringent standard.

Some automobile manufacturers have commented that current evaporative emission control systems are functioning poorly in use and are not really capable of the high degree of control EPA requires. However, EPA's investigation of evaporative emissions has shown that excess emissions in the field from well-maintained vehicles are due, in part, to the high volatility of in-use fuels or to system underdesign, or both. [8] There is no evidence that the problem is due to any inherent inadequacies in the basic control technology. Properly designed evaporative emission control systems have demonstrated the ability to control hydrocarbon emissions to extremely low levels, and EPA would expect refueling systems to perform in a similar fashion.

Several test programs have been performed which have shown that refueling emission control systems can effectively control the emissions of refueling vapors in practice. EPA tests have demonstrated that more than 98 percent of the hydrocarbons emitted during the refueling of an uncontrolled vehicle can be controlled when the vehicle is equipped with an onboard control system.[13] The American Petroleum Institute report, "Vehicle Onboard Refueling Control" shows the results of refueling tests on three vehicles in which refueling emissions were limited to less than 0.1 gram per gallon (g/gal)[14]. General Motors also

[23] The current emission regulations require that, unless exempted, light-duty trucks sold in designated high-altitude locations must meet separate high-altitude standards. Further, emission standards for light-duty vehicles apply at all altitudes, as required by section 202 of the CAA. Therefore, as discussed more fully later in this section, a refueling standard of 0.10 g/gal is being proposed for light-duty trucks at both low and high altitude and for light-duty vehicles regardless of elevation.

[24] EPA is proposing to use the term "evaporative emissions" to replace "fuel evaporative emissions" in the evaporative emission standards, 40 CFR Part 86, so as to clearly identify that the existing evaporative regulations encompass background emissions and account for testing variability rather than just evaporative emissions emanating from fuel sources. The wording "fuel" was not in the original standards, but was erroneously introduced at a later date.

recently performed a series of refuelings on a passenger car equipped with an onboard system and observed emissions ranging from 0.05 to 0.06 g/gal. EPA notes that these tests, showing results already capable of meeting the proposed standard, were conducted on "first generation" onboard systems. System refinements would be expected to produce even lower emission levels from future vehicles.

Currently EPA knows of no test data for refueling control systems installed on heavy-duty gasoline vehicles. However, since the same control technology would be used and since the standard is expressed on a per-gallon basis, EPA believes that the required level of control should be no more difficult for heavy-duty vehicles than for light-duty motor vehicles. Therefore, EPA is proposing the same standard for heavy-duty gasoline vehicles as for light-duty vehicles and light-duty trucks.

Since both light-duty vehicles and light-duty trucks will have to meet the proposed refueling standard at higher elevations, it is also important to consider the effects of altitude on refueling emissions. In this regard, the Agency is unaware of any test data that characterizes refueling emissions at higher elevations. However, there does not appear to be any reason that the lower atmospheric pressure at high altitude would have a significant adverse effect on refueling emissions.

Actually, in the context of today's onboard and volatility proposals, complying with the same numerical standard should be less difficult at high altitude than at low altitude. This occurs because, in the proposal, the RVP of high-altitude certification test fuel may be lower than that of the low-altitude test fuel, and a less volatile fuel will produce fewer refueling emissions. Therefore, EPA believes the proposed refueling standards are feasible at both low and high altitudes.

Based upon its evaluation of the factors described above, EPA has selected the proposed 0.10 g/gal standard. This level represents a high degree of control (a reduction of 98 to 99 percent over baseline levels), but based on data available from current generation systems, this level appears reasonably attainable. The standard set at this level, moreover, allows sufficient leeway to account for any measurement variability.

C. Description of Test Procedures

In July of 1985, EPA released a draft recommended practice for the measurement of refueling emissions from motor vehicles.[15] The recommended practice did not represent a final EPA determination of a refueling test procedure, and was not a rulemaking action, but outlined the procedures that, at that time, EPA expected would be used as the basis for a refueling test procedure. EPA recognized that there were certain deficiencies in the test procedure as proposed, and undertook two key steps to generate improvements. The first was to solicit public comment on the draft procedure. The second was to undertake a test program to gain a better understanding of the performance of activated carbon canisters in the control of refueling emissions.

The response to the request for public comment was extensive and the comments suggested several areas in the procedures where improvements were needed. EPA concurred with the comments in several areas, the most significant of which were: (1) Vehicle preconditioning for the refueling test, (2) specifications for fuel and vapor temperatures required in the refueling test, (3) fuel tank heating methods, and (4) the value of a clear line of demarcation between the refueling segment of the procedure and other segments.

In response to these comments, and as a result of EPA's own testing program, the recommended procedure was modified so that the onboard system could be evaluated in a single test following an initial preconditioning sequence. This revised recommended procedure was presented at a public workshop on April 10, 1986 and was generally received as a significant improvement which overcame the major limitations of the original draft procedure. The series of specific changes that made up the described modifications resulted in a recommended procedure which was greatly shortened from its original form and which was not affected by the history of the vehicle prior to testing. Numerous other changes of lesser magnitude were also made to simplify the recommended procedure and/or reduce the possible costs associated with any such vehicle testing. These changes generally involved fuel temperature specifications and the procedures that would have to be followed to achieve the prescribed temperatures.

The procedure proposed today is essentially that which was described at the April 10, 1986 workshop. There have been some minor changes and refinements based upon comments received since the workshop, but the basic concepts and functioning of the procedure are unchanged. The proposed procedure has also been broadened in scope to include heavy-duty gasoline-fueled vehicles. (A more complete understanding of the proposed procedure can be gained from a review of the draft regulations themselves as well as from Reference 11.)

1. Overview of Test Procedure

The purpose of an onboard system for the control of refueling emissions is to prevent the escape to the atmosphere of those hydrocarbon vapors generated during the refueling of the motor vehicle throughout the useful life of the vehicle. In order to serve this purpose, the system must have hydrocarbon storage capacity sufficient to accommodate the vapors generated during a full refueling performed at any condition, including near worst case conditions. In addition, the system must have a means of regeneration capable of purging the collected vapors and restoring ample storage capacity between successive refuelings. If it is to be effective, any procedure designed to test the functioning of an onboard refueling emission control system must test both the storage capacity and restorative capability of the system.

Conceptually, the proposed test procedure can be broken into three segments (Figure 5). The first two segments taken together constitute a preconditioning sequence designed to exercise the purging part of the system that serves to restore hydrocarbon storage capacity. These segments involve first loading the hydrocarbon storage medium to an approximation of saturation[25] and then operating the

[25] In the proposed test procedures, EPA has actually specified a canister loading procedure which will result in canisters being loaded at least to the "breakthrough" point. This is a minimum condition and systems will be required to pass the test even if loaded beyond this point prior to entering the test sequence, as might occur, for example, on some in-use vehicles.

vehicle on a driving schedule which would provide sufficient opportunity for a properly functioning control system to restore hydrocarbon storage capacity corresponding to that normally available by the time the fuel tank is essentially empty. The third part of the procedure is designed to test the overall system storage capacity. It involves refueling the vehicle in a SHED[26] under fuel temperature specifications which represent fairly severe conditions for refueling vapor generation.[27]

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[26] SHED is an acronym for Sealed Housing for Evaporative Determination, which is an airtight enclosure used to measure emissions from the entire vehicle during refueling emission tests. This is the same enclosure which is currently used for evaporative testing.

[27] Activated carbon is not a proportional control device. Rather, once it's storage capacity is exceeded, farther emissions are essentially uncontrolled. Therefore, it is necessary to test vehicles in a way which will insure the use of designs having the capacity to handle nearly all situations.

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Figure 5
ON-BOARD TEST PROCEDURE FLOW CHART

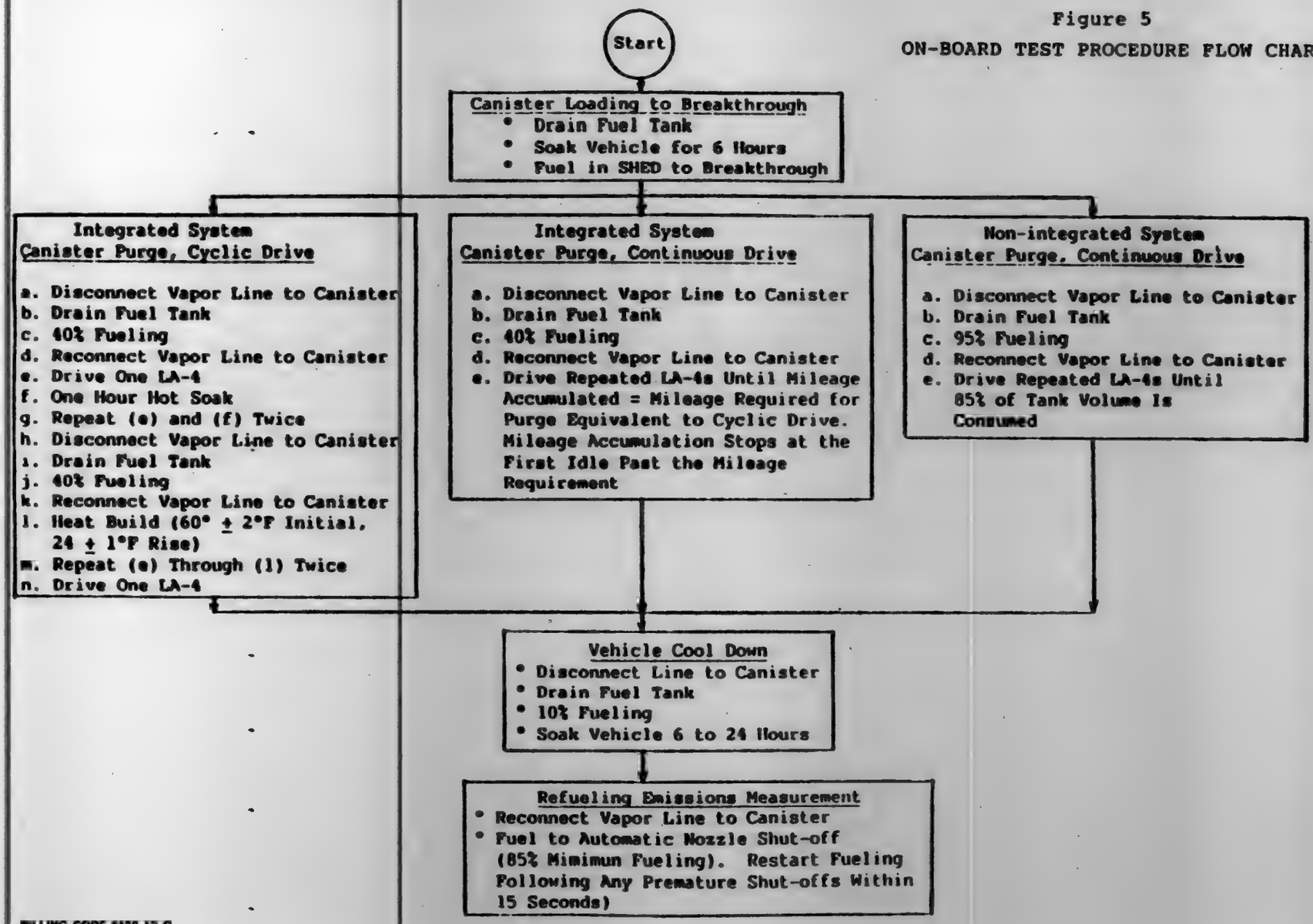

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In a related matter, EPA is concerned that present mixing blower flow rate specifications for SHED testing are inappropriate for refueling tests, because of the short time intervals associated with the mixing of both breakthrough and refueling vapors in the SHED relative to time intervals available for mixing of evaporative emissions. The Agency is proposing, therefore, that the lower flow rates in the current SHED test specifications (40 CFR 86.207) no longer be allowed. The increase in flow rate is proposed to be achieved by raising the lower limits (light and heavy-duty) of the mixing blower flow rate specification.

A more detailed outline of the steps required to conduct the refueling test is given in Figure 6.

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Figure 6

Proposed Test Procedure Flow Diagram

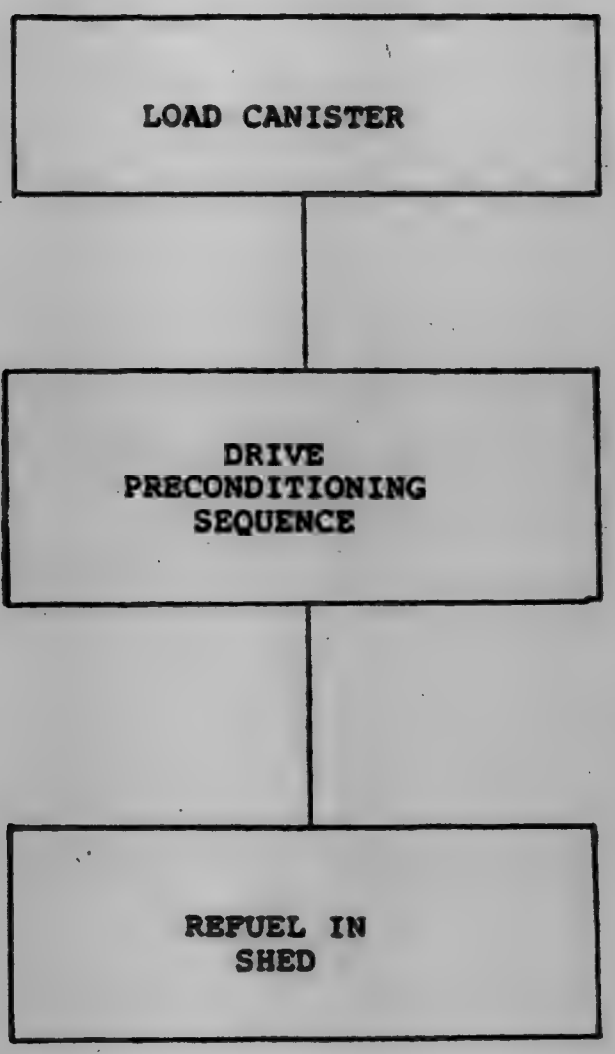

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Canister Loading. The initial step in the test, as identified above, involves loading the vehicle's refueling canister(s) with refueling vapors. EPA believes that under in-use conditions, it is entirely possible that a vehicle's refueling emission control canister could become saturated with hydrocarbons. This could occur, for example, if the vehicle were not driven regularly and therefore accumulated a series of repeated diurnals (fuel tank emissions produced by typical diurnal temperature changes), or under driving patterns consisting mainly of very short trips with inadequate opportunity to purge the canister. It could also occur due to high volatility commercial fuels, the use of alcohol blend fuels, or abnormally high ambient temperatures experienced by the vehicle. EPA would expect that under conditions such as represented by the proposed preconditioning sequence, such a vehicle's purge system would have the ability to quickly restore the hydrocarbon storage capacity of the canister. If the vehicle were incapable of doing this, additional hydrocarbon loads (whether refueling or evaporative) would result in uncontrolled emissions. Therefore, to insure that purge systems are sufficient, the proposed test procedure calls for a heavy, near saturation, loading at the start of the refueling test.

The canister loading step, as proposed, consists of repeated refuelings in a SHED until, at a minimum, canister "breakthrough" occurs, as defined in the procedure (basically, the point at which the SHED hydrocarbon analyzer detects a sudden rise in hydrocarbon vapors). During testing of in use vehicles this may be performed with vapors escaping from the fuel filler neck, or some other possible sources, being allowed to vent outside the SHED. EPA has received considerable comment on the suggested procedure for defining breakthrough, requiring as it does the use of a SHED. The possibility has been raised that a method for determining breakthrough without the SHED may be possible. EPA is sensitive to the issue of resource impacts, and agrees that a non-SHED procedure could be desirable, but has not yet successfully developed an alternative approach. However, recent testing by the Agency has indicated that a non-SHED procedure using a hydrocarbon probe placed at the canister outlet may be viable. If this proves to be the case, then EPA would expect to include such an approach in the final rule. Comment is therefore requested on this possibility and how the procedure might deal with such things as varying canister outlet configurations or the control of room air currents outside of a SHED.

Driving Cycles. Following canister loading, the vehicle is driven over one of three preconditioning driving cycles which are designed to exercise the vehicle's purge system. The purpose of all of the driving schedules is the same: To allow the vehicle's purge control system to restore the storage capacity of the refueling canister to a level approximating that which would be available (under in-use driving conditions) were the fuel tank to be essentially empty and ready to be refueled. Selection of the proper cycle to use in any particular case is primarily a function of the control system type as described below.

In order to understand the functioning of the driving cycles, it is first necessary to describe some key aspects of the purge operation of a refueling system. With respect to purging, there are two broad types of refueling systems: integrated and non-integrated. An integrated system refers to a system which uses the refueling emission control canister to store both the refueling vapors and some or all of the evaporative emission load. A non-integrated system is one in which the refueling canister stores only refueling vapors, and all evaporative emissions are handled by a separate canister.

The functioning of the two system types will be quite different under typical driving conditions. For an integrated system (which EPA believes will be the preferred design), as the vehicle goes through the normal patterns of driving, there will be an ongoing process of unloading and loading as driving (unloading via purge) alternates with parking (loading via hot soaks and diurnal emissions). Under repetitive conditions, an equilibrium is quickly established between the hot soak and/or diurnal loadings to the canister and the amount of vapor purged. Once this equilibrium is reached, additional periods of similar driving no longer result in an increase in refueling storage capacity. (The equilibrium point would, of course, change if a different driving pattern were followed. Less driving per day would generally produce a lower equilibrium capacity point.)

In contrast, a non-integrated system experiences no added loading to the refueling canister between vehicle trips. Therefore it will continue to purge the canister to lower levels as the vehicle is driven. In this case, available refueling capacity continues to increase right up until the time the vehicle is refueled and a lower average rate of purge than required for integrated systems can be used. However, the purge process is highly non-linear, with very rapid purge initially, followed by increasingly less and less purge as the canister approaches "empty." So, even in this case most of the available capacity for refueling vapors is generated early in the driving process (often referred to as fuel tank "drivedown") following fuel tank fillup.

For vehicles with integrated onboard systems, there are two proposed optional driving schedules. The first schedule involves operation of the vehicle over a cyclic drive sequence which simulates several days of in-use driving. For each simulated "day," the vehicle would be subjected to three Urban Dynamometer Driving Schedules (UDDS's),[28] each followed by an hour long hot-soak, and a single diurnal heat build. As outlined above, operation of the vehicle for only a limited number of days restores the full capacity for the storage of a refueling load. Based upon its modeling analysis, EPA believes that a period of three "days" should be sufficient to establish equilibrium for nearly all cases. For those cases requiring more driving to come to full equilibrium, the impact of restricting the conditioning period to three days is marginal, involving only a few grams of stored hydrocarbons. On the other hand, every "day" of simulated driving represents increased testing time and cost, which EPA desires to minimize. Therefore, the Agency is proposing three simulated days for the length of this preconditioning drive.

The optional second driving schedule for vehicles with integrated systems would involve much less driving time than would be needed for the cyclic drive. This proposed schedule is a short continuous drive designed to purge the canister to the same level as attained by the cyclic drive without going through the actual load/purge cyclic process. It is an abbreviated schedule designed primarily to reduce testing time compared to the full cyclic drive. The actual length of the drive would be determined by testing to establish equivalence to the cyclic drive, and would be established uniquely for each refueling family during the certification process. EPA's analysis indicates that most systems should be properly purged with only five to twenty-five miles of continuous UDDS driving.

[28] The UDDS for light-duty vehicles and trucks, also called the LA–4, is a 7.5 mile trip which was designed to represent the typical trip an urban commuter makes. For heavy-duty vehicles, the UDDS represents approximately 5.6 miles of operation at an average speed of 18.9 mph. These cycles are found in 40 CFR Part 86, Appendix I.

The short continuous drive provides a means of testing the restorative capacity of the refueling system with a greatly abbreviated procedure. Because of this, EPA expects to use the continuous drive for most of its testing work. EPA also expects that manufacturers would use the abbreviated procedure wherever possible to minimize testing resources. The Agency recognizes that there is some added burden for manufacturers in having to conduct the cyclic procedure initially in order to develop the appropriate continuous drive mileage, but once this is done for a particular configuration, the abbreviated cycle could be used for subsequent repetitive tests (*e.g.*, on durability vehicles).

In spite of its usefulness as an abbreviated preconditioning cycle, the continuous drive has some limitations. The abbreviated procedure does not physically demonstrate that the system has the ability to sufficiently purge the canister when hot soak and diurnal loads are included. Rather, this procedure assumes the control system has been designed such that this would be the case were the cyclic drive to be used. Therefore, although the continuous drive would be the procedure of choice for most routine testing, the cyclic drive could be used should EPA desire to perform confirmatory testing and to more fully exercise the onboard system. Thus, all vehicles would have to be designed to be able to meet refueling emissions standards after following either driving schedule and EPA could choose to confirmatory test any vehicle using the cyclic drive or the short continuous drive.

Both the cyclic and the short continuous drives just described are intended for vehicles using integrated refueling control systems. The third driving sequence is intended for vehicles with non-integrated refueling and evaporative control systems. Because non-integrated systems continue to gain purge capacity while being driven, it is difficult to completely test the restorative capability of the system using an abbreviated driving schedule. Therefore, in today's notice, EPA proposes a continuous drive which involves a repetitive series of UDDS's which would use fuel equivalent to approximately 85 percent of the vehicle's nominal tank capacity. By actually driving out the tank of fuel, a non-integrated system will clearly be prepared for a full refueling. Since non-integrated systems are not affected by diurnal or hot soak loadings, the driving schedule is a continuous process.

A full drive-down requirement such as this is obviously quite resource-intensive and EPA would like to develop a suitable alternative. One alternative which appears promising is based upon the non-linear nature of the purging process. Because of this non-linearity, it appears that a partial drive-down of perhaps 30 to 40 percent of tank volume would generate most of the refueling control capacity which the vehicle was capable of producing. In such a case, it would be possible to perform a refueling test which would measure nearly all the expected emissions after only a partial drive-down. While such a test would not directly verify full refueling capacity, . test points could be derived from an engineering analysis which would clearly indicate that satisfactory performance at that intermediate level would be expected to result in full performance on an essentially empty tank. Based, as it would be, on a less than full verification of system performance, EPA would treat such an approach similarly to the short continuous drive for integrated systems. That is, the partial drive-down would be an optional abbreviated test, with all vehicles being required to be able to pass the full drive-down if so required by EPA. EPA specifically requests comment on this concept as an alternative driving sequence for vehicles with non-integrated systems. If after further analysis, such a concept is found to be valid, EPA could choose to include such a provision in the final rulemaking.

Final SHED Refueling Procedure. As stated earlier, following the performance of the appropriate driving schedule, the vehicle would be fueled in a SHED under specific conditions of fuel temperature and volatility. The refueling would be accomplished with a typical nozzle inserted through a boot in the wall of the SHED. The test would begin with residual fuel in the tank corresponding to 10 percent of tank capacity; refueling would proceed until automatic nozzle shutoff. For a valid test, the tank would have to be fueled to at least 95 percent of capacity. The fueling operation would be re-started if automatic shutoff occurred before this point.

Based on a variety of government and industry test programs, it has been shown that the temperature and volatility of the dispensed and residual tank fuels during the refueling largely determine the uncontrolled refueling emission rate. In order to insure the maximum degree of control, these temperatures have been selected such that refueling at the proposed conditions results in refueling emissions of greater magnitude than are generated in most actual in-use refuelings.

Although EPA is reasonably confident that the proposed conditions would adequately ensure that a system is capable of meeting the proposed refueling standard under most conditions, it is difficult to determine exactly what percentage of all refueling situations will be fully controlled. Data describing the distribution of tank and dispensed fuel temperatures during summertime conditions formed the original basis for EPA's parameter selection. [15] Based upon consideration of that data alone, the test conditions may appear somewhat severe. However, there are other variables affecting the control system performance that are not so easily quantified. One of these is vehicle driving patterns. The proposed preconditioning cycles for integrated systems described earlier are based upon a driving pattern of three trips per day. For those vehicles driving fewer trips, canister purging can be significantly reduced, thereby reducing effective refueling capacity. Another important variable is the degree to which hot soak and diurnal evaporative loadings during ozone non-attainment days may exceed the nominal values used in the preconditioning sequence. Increased loadings of these sorts would also reduce available refueling capacity, and do it precisely at those times when it is most needed. That is why EPA proposes to require systems to be designed to function effectively regardless of these and other variables.

Overall, EPA believes that the preconditioning and refueling test condition requirements as proposed will ensure control system designs capable of adequate control over nearly all expected refueling events. There may be some combinations of in-use conditions where refueling emissions may not be fully controlled. The Agency believes that those conditions will be sufficiently infrequent as to have no significant impact on overall compliance with the proposed standard, or on the level of vapor emission reduction projected under the proposed standard.

2. Fuel Nozzle Design

During the development of the recommended refueling test procedures, the topic of differences between fuel nozzles produced by different manufacturers has occasionally been raised. For example, Ford has performed a limited number of uncontrolled refueling tests using nozzles of various designs and has suggested that nozzle geometry can strongly influence refueling emissions. In fact, Ford claims that nozzle dimensions can affect both the uncontrolled emission rate and the

rate at which a particular fillneck design will permit refueling. Because of these effects Ford has strongly urged EPA to specify a standard nozzle for use in the refueling test. [16]

EPA is also concerned about the impact that nozzle geometry may have on refueling emissions, but has little data at present with which to evaluate these claims. If it were true that nozzle geometry can substantially affect the performance of refueling systems, then a standardized design would be indicated. In EPA's view, if this were the case, such standardization would have to be applied both to test equipment and to in-use nozzles. Otherwise, refueling system performance would suffer in practice.

EPA requests comments on the need for standardized nozzle geometry. Particularly, EPA requests the submission of test data demonstrating the degree of sensitivity refueling controls may show to nozzle variants, as well as specification of which nozzle design parameters would need to be standardized. The Agency believes that if such geometry standards are needed, the most likely design parameters involved would include total length, spout bending angle, length of spout straight section, and automatic shut-off port location. Commenters should address the standardization of these and any other parameters of principal concern. This should also be accompanied by an analysis clearly demonstrating why it would be better to standardize nozzle geometry than to require refueling designs which are less sensitive to these factors. If the comments substantiate the need for nozzle standards, EPA may include them in the final rulemaking on today's proposal.

3. Related Changes to Existing Test Procedures

In addition to the regulations governing the measurement of refueling emissions, EPA is proposing several changes in the current Federal Test Procedure as part of today's notice. The most significant changes will be discussed later in this section and involve the preconditioning of emission control canisters prior to evaporative emission compliance testing, the inclusion of canisters in heavy-duty gasoline-fueled engine emissions testing and the manner in which canisters are preconditioned for fuel economy testing. Other revisions include changes to the research octane number, aromatic content, sulfur content, and distillation characteristics of certification fuel. In addition, the oxygen content of certification fuel is being specified for the first time. These changes, as well as those just described, are also being proposed in EPA's action to control the volatility of commercial motor vehicle fuel. That notice appears elsewhere in today's **Federal Register** and should be consulted by the reader for more detail on the evaporative and certification fuel related revisions.

There are also other minor, technical changes to the test procedure being proposed as part of today's notice, in order to update the procedure and make it more consistent with actual practice. The reader who wishes a full understanding of the details of these technical changes should consult the appendix and draft regulations accompanying today's notice

It has been EPA's position that evaporative emission control systems should be designed to work effectively and maintain their level of control under in-use operating conditions. It also has been EPA's position that evaporative emission control systems should be able to quickly recover their hydrocarbon storage capacity after experiencing any of the various conditions that might occur in-use. In particular, the Agency described its intent that evaporative emission control systems have the capability to restore hydrocarbon storage capacity with a single UDDS (even if the canister is saturated at the start of the test sequence) in EPA Advisory Circular 50A. Nonetheless, some vehicle manufacturers continue to express confusion on this issue.

In order to clarify this matter, and avoid a similar problem regarding the capability of refueling emission control systems, the Agency is proposing a requirement to load evaporative and refueling control canisters at least to the breakthrough point prior to the FTP preconditioning UDDS. For evaporative emissions testing, breakthrough would be defined by the same procedure as developed for the refueling test. This change would apply to both light- and heavy-duty vehicles.

A closely related change is being proposed for the testing of heavy-duty gasoline engines. In the current Federal Test Procedure for heavy-duty engines, there is no requirement for evaporative emission control systems to be in operation during the performance of the exhaust emission test sequence. This means that any evaporative hydrocarbon loads that would be sent to the engine during normal operations are not sent to the engine during the exhaust test. Therefore, any impacts that the evaporative hydrocarbons might have on exhaust emissions are overlooked in the current test procedure. EPA does not believe that this situation is appropriate for either evaporative or refueling control systems. Therefore, EPA is proposing that prior to the heavy-duty engine test, the vehicle's evaporative and refueling control canister(s) be attached to the engine. Loading of the canister(s) will correspond to a point equivalent to the loading which would exist at the end of the diurnal breathing loss test. This change will insure that manufacturers focus appropriate attention on eliminating any exhaust impacts of the control systems, as is already required by the light-duty procedures after the 1990 model year.

Other proposed change(s) would affect the test procedures used for determining light-duty fuel economy values, which are ultimately used in calculating a manufacturer's corporate average fuel economy (CAFE). Because it has been argued that the addition of onboard control systems could affect vehicle fuel economy measurements, EPA is proposing to give the manufacturer the choice of performing the fuel economy test with or without the step of loading the canister beforehand. The manufacturer would be allowed to pick the procedure which it desires, with the condition that all fuel economy tests with unloaded canisters would be subject to prior approval by the Administrator.

The Agency is considering other CAFE-related changes. First, rather than the manufacturer performing a duplicate test with an unloaded canister for fuel economy purposes only, which could increase testing costs, EPA might include a CAFE adjustment to account for the fuel economy effect of testing with a loaded canister. Second, EPA is contemplating whether or not a CAFE credit should be developed representing the expected recovery and use of refueling vapors. Comments are specifically solicited on the appropriateness of such a CAFE adjustment and credit, as well as the methodologies for their determination. In addition, EPA invites comments on other alternatives that would avoid double testing for fuel economy purposes.

The Agency would also like to acknowledge that if the volatility of test fuel is changed from the currently specified RVP of 9.0 psi, an option which has been evaluated as part of the volatility proposal, then appropriate revisions to the CAFE determination procedures would be made as part of the final rulemaking on volatility.

4. Testing In-Use Vehicles

EPA has always intended for motor vehicle emission standards to be met in-

use. That is, EPA expects that properly maintained and used vehicles will comply with applicable emission standards in-use if tested at any mileage point up to their full useful life. Vehicles would, of course, also be expected to comply with refueling emissions standards in-use and the procedures described in today's proposal were designed for use in both certification and in-use testing. During the development of the proposed procedures, careful consideration has been given to the implications of testing in-use vehicles. EPA has also consulted extensively with industry on this topic and believes that the procedures proposed today will test in-use vehicles appropriately.

One important concern raised by manufacturers about testing in-use vehicles is that the condition of the vehicle (especially the activated carbon canisters) is unknown before the vehicle begins the test sequence. It is important that the procedure be able to accurately assess the performance of the control system regardless of its state prior to testing. The proposed refueling test procedure has been designed so that this is the case.

As described above, the first step in the refueling test is that of loading the refueling canister at least to the breakthrough point. Thus, for all those vehicles presented for testing with canister loading at some point below the breakthrough level, the procedure results in a standardized condition at the beginning of testing. For those vehicles beginning the sequence with their canisters already loaded past the breakthrough point, the situation would be somewhat different. Two observations apply to this situation. First, it is EPA's position that the vehicle purge system should be able to fully recover from such a condition without added preconditioning. The breakthrough loading sequence is intended only as a minimum loading requirement. If a significant number of vehicles were actually operating with saturated canisters it would be as a consequence of the manufacturer's system design. In such a case, EPA would require that these vehicles pass the test as received.

The second observation on this point is that all the information available to EPA indicates that a saturated refueling canister will present no significant liability for a properly designed system because such heavily loaded canisters purge extremely rapidly on the proposed preconditioning cycles. Following the preconditioning drive sequences, it would be difficult to distinguish between a canister which began the test saturated and one which was only loaded to breakthrough. It should also be noted that EPA believes that the preconditioning sequence effectively eliminates any unanticipated effects on the refueling system due to such causes as the use of non-standard fuels.

Another facet of in-use testing involves those vehicles for which optional preconditioning cycles exist. The Agency wishes to make it clear that when optional preconditioning cycles are available, the option selected by EPA for certification testing does not dictate the option to be used to test for in-use compliance; moreover, the vehicle must be able to pass using any applicable optional cycles both during certification and in-use. Similarly, failure of a vehicle using one preconditioning cycle would not entitle the manufacturer to ask for testing using another cycle.

D. Selective Enforcement Audits

During the development of the recommended test procedure for refueling emissions, two minor issues were raised which may need to be addressed in Selective Enforcement Audit (SEA) test procedures[29] for refueling emissions. These potential issues are related to the fact that SEA involves the testing of newly-built motor vehicles, and for that reason they are unique to the SEA program.

The first issue regards a possible influence of new vehicle background evaporative emissions (*i.e.*, hydrocarbon emissions from such things as the fresh paint on a new vehicle which has not yet fully cured) on the refueling emissions measurement. EPA understands why non-fuel background emissions are significant in evaporative emissions testing for SEA purposes and consequently EPA does not normally conduct SEA testing for evaporative emissions. However, EPA does not believe that background emissions will improperly affect refueling loss measurements during SEA testing.[30] Refueling emission measurements have a duration of less than five minutes, so the actual time for background evaporative losses to occur is very short. Also, refueling measurements are taken at an ambient temperature of approximately 80 °F, so fuel and non-fuel evaporative emissions will not be increased by heating of the vehicle fuel tank, engine or other subsystems, as occurs during the usual evaporative emissions testing. Because of those factors, it is reasonable to expect that background emissions will have little or no impact on the measurement of refueling emissions, and EPA does not believe that provisions to address the effects of background emissions during SEA refueling testing are necessary.

However, EPA is open to comment on this issue and specifically requests any available data suggesting that non-fuel background emissions from newly built vehicles would be significant in the refueling test procedure proposed by EPA. Since the proposed refueling standard is intended to include whatever normal background emissions occur for in-use vehicles, data supporting the impact of background emissions during SEA testing must demonstrate that new vehicle background emissions significantly exceed in-use vehicle background emissions.

If evidence exists that background emissions are significant, EPA proposes to incorporate an additional procedure into the SEA refueling emissions test procedures. This procedure would provide for the measurement of new vehicle background emissions and subtract them from the refueling emissions measurement. In general, the proposed procedure is as follows:

1. Place the vehicle in the SHED immediately prior to the refueling emissions measurement sequence of the refueling test.

2. Seal the SHED and measure the ambient concentration of hydrocarbons in the SHED.

3. After a 10 minute period take another measurement of the SHED ambient hydrocarbon concentration, calculate the total grams of hydrocarbon emitted (final minus initial measurement) and divide by 10 to calculate a per-minute emission rate.

4. Perform the refueling emissions measurement as described in the refueling test procedure, recording the duration of the refueling measurement process, rounded to the nearest minute.

5. Multiply the background emission rate (determined in step 3) by the number of minutes obtained in step 4, and subtract this number from the total grams of emissions calculated from the refueling emissions measurement to obtain a corrected value for total refueling emissions.

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[29] SEA testing refers to testing under section 206(b) of the CAA and 40 CFR Part 86 of a statistical sample of assembly-line vehicles to ensure that vehicles being produced do in fact conform with emission standards and the terms of the applicable certificate.

[30] In addition, under the proposed refueling standard no attempt will be made to distinguish other evaporative emissions from those generated by refueling. As already noted, the standard is intended to include background emissions.

The second issue pertains to the condition of the refueling/evaporative emission canister(s) prior to SEA testing. It is generally accepted that activated carbon canisters require a number of hydrocarbon load and purge cycles (aging) to attain a stabilized condition. During this cycling, the canister's capacity to retain hydrocarbons is reduced from its virgin (new canister) level to some lower stabilized level generally referred to as the working capacity. This loss in capacity is commonly known as the "heel". To help account for any *large* difference that may exist between an unused canister and a somewhat used canister, EPA proposes that refueling/evaporative emission canister(s) of SEA vehicles be aged through a bench procedure, prior to being tested for refueling emissions. The proposed procedure for aging the canister is detailed in the accompanying draft regulations. The Agency wants to make it clear, however, that this procedure is meant only to approximate some degree of canister aging. It is not known to what extent it simulates actual real-world canister stabilization or deterioration with age. Therefore, while proposed for SEA testing, the bench aging process is inappropriate for the purpose of certification testing or the development of deterioration factors.

The Agency is interested in obtaining comments addressing the appropriateness of performing SEA refueling emission tests without stabilizing refueling canisters on the vehicles, other possible procedures or requirements for cycling (aging) canisters, and the level to which canisters should be aged.

E. Nonconformance Penalties (NCPs)

In the regulations governing NCPs (40 CFR 86.1103–87), EPA specifies the criteria which must be met before an NCP will be made available for a new emission standard applicable to any subclass of heavy-duty vehicles (i.e., vehicles with a GVWR in excess of 6000 lbs). As described in those regulations, an NCP may be established for a new emission standard if substantial work will be required to meet the new standard and a technological laggard is likely to exist. Substantial work means the application of technology not previously used in a vehicle class or subclass or the significant modification of existing technology or design parameters.

While onboard systems have not been used to control refueling emissions on heavy-duty vehicles, EPA does not believe that an onboard requirement constitutes substantial work as defined in the NCP regulations nor does EPA believe that a technological laggard will exist. The fundamental design of an onboard control system is basically an extension of existing evaporative emission control technology rather than the application of new technology. EPA expects manufacturers to use activated carbon for storage of refueling vapors and air stripping for regeneration, just as is now used in evaporative emission control systems on heavy-duty gasoline vehicles. Purge systems would have to be refined to handle increased hydrocarbon loads, but these improvements would not involve the application of new technology, especially given the manufacturers' plans to incorporate fuel injection and feedback control systems to upgrade the performance of these vehicles.

While there may be some subjective disagreement on whether or not "substantial work" will be involved in meeting the standard, EPA believes all the manufacturers of these vehicles will be able to comply with the standard and that no technological laggard will exist. EPA recognizes that effort will be required to equip heavy-duty vehicles with onboard control systems, but the control technology required is well defined and available to all affected manufacturers.

In addition, the NCP regulations also permit consideration of NCPs for other emission standards, for which NCPs are not already provided, if the standards become more difficult to meet as a result of a new standard. However, as is discussed in the technological feasibility portions of the support documents, EPA does not believe that manufacturers will encounter significant additional difficulty in maintaining compliance with current standards as a result of the proposed onboard standard. "Substantial work" will not be required and no technological laggards are expected. Therefore, EPA proposes not to make additional NCP's available for exhaust or evaporative emission standards as a result of any new onboard standard.

Given the information currently available regarding onboard control technology, EPA proposes not to make NCPs available for the refueling emissions standard. However, EPA may change this position based on information presented in the comments. If NCPs for refueling are ultimately proposed, they will be addressed in a rulemaking action separate from the refueling emission standard. However, the parameter values needed to calculate any proposed penalty rates and the upper limit analyses may be based on information used in the final rulemaking analysis for refueling controls.

F. Changes to Certification Protocols

In addition to new emission standards and test procedures for refueling, this notice proposes a number of revisions to the certification protocols in Subpart A. These revisions are necessary to integrate the proposed refueling control program into the existing protocols for exhaust and evaporative emission certification. In general, the certification requirements for refueling emissions are quite similar to the existing evaporative emissions requirements. However, some new provisions and changes to existing provisions were required by the addition of the refueling standards. The most significant revisions to Subpart A are as follows:

Section 86.090–21 (Application for certification) requires manufacturers to describe the method used to determine refueling emission deterioration factors for their refueling emission families. These requirements are similar to those currently governing evaporative emissions deterioration factor determination. Additionally, however, manufacturers are required to state in their application the length of the continuous drivedown necessary to purge the refueling canister(s) to the appropriate level required by the test procedure.

Section 86.090–23 (Required data) data requirements for refueling certification for light-duty vehicles and trucks are similar to current exhaust and evaporative emissions data requirements. Similarly, the requirements for heavy-duty manufacturers are similar to the current heavy-duty evaporative emissions requirements. (Note that Subpart C now requires that a loaded evaporative/refueling canister be attached to the engine during exhaust emission testing.)

Section 86.090–24 (Test vehicles and engines) contains criteria for determining refueling families and refueling control systems. Many of these criteria are the same as those for evaporative family and control system determination, due to basic system design similarities. However, other criteria such as degree of integration with the evaporative control system, type of fillpipe seal and fill limiter are unique to refueling systems. Therefore, a refueling family may not necessarily cover the same portion of a manufacturer's product line as an evaporative family. The same refueling family/system criteria are applicable to both light-duty and heavy-duty vehicles. Suggested criteria for identifying worst-

case emitters within a given family/system combination for certification purposes can be found in a memorandum entitled "Refueling Configuration Criteria" in the public docket.

Section 86.090–25 (Maintenance) defines refueling emission components as critical emission-related components and prescribes full-life maintenance intervals for such items as fillpipe seals, vapor storage canisters, and purge system hardware.

Section 86.090–28 (Compliance with standards) provides that refueling emission deterioration factors shall be additive.

Section 86.090–35 (Labeling) requires that refueling families be labeled as such and that secondary manufacturers must add vapor storage capacity in proportion to any added fuel tank volume. Furthermore, it requires them to certify that any additional fuel tank capacity beyond the maximum specified for a refueling family will not cause that family to exceed the applicable exhaust, evaporative or refueling standards.

Although the major changes in the regulations have been summarized above, the interested reader is urged to consult the appendix to this notice and the proposed amendments to Subpart A in their entirety for a complete understanding of the technical effects of the proposed new refueling standards on the test procedures. The Agency invites comments on all aspects of the proposed revisions. In particular, EPA requests that each manufacturer submit a projection of the likely number of refueling families and refueling control systems that would exist under the proposed criteria.

G. In-Use Dispensing Rate/Nozzle Geometry Standards

As part of this action, beginning in September 1989, EPA is proposing to limit the in-use dispensing rate of gasoline to 10 gallons per minute (gpm). Furthermore, as discussed earlier in section VI.C.2. of this notice, EPA is seeking comment on the need to standardize fuel nozzle spout design geometries. As described below, EPA is considering these actions to insure compatibility between in-use operating conditions for onboard systems and those under which the systems will be certified.

The fuel dispensing rate during refueling operations affects the design of onboard controls through such parameters as fillpipe capacity, fillneck seal performance, excess air entrainment, vapor line sizing, canister size and geometry, the generation of nuisance shutoffs and fuel spitback. This topic has been raised to EPA by manufacturers in comments on the development of the suggested refueling test procedure discussed earlier. [14] Therefore, in developing its proposed certification test procedures, EPA conducted an analysis of prevailing in-use dispensing rates. The proposed dispensing rate for test conditions (10 gpm) is based upon the highest dispensing rates presently found at most gasoline dispensers. However, as vehicles capable of accepting fuel at the current maximum flow rates become more prevalent in use, gasoline marketing pressures for increased throughput (*i.e.*, to increase sales volume) would be expected to lead to increased in-use dispensing rates up to the point where customer complaints begin to arise due to spitback and other spillage.[31] (The likelihood of this occurring has been acknowledged by gasoline marketers in discussions with EPA). Thus, in order to maintain the full effectiveness of onboard systems in the future, EPA believes it is important to also insure that in-use dispensing rates are limited so as to be compatible with the certification procedure. If the in-use and certification rates are compatible, onboard systems would perform as designed. This would also have the effect of reducing spillage in-use due to the fuel spitback which often accompanies nozzle shut-off.

The Agency has pursued the development of a voluntary in-use dispensing rate standard with the American Petroleum Institute (API), which represents petroleum industry interests. As summarized in their statement of August 6, 1986 [17], API has concluded that it is not feasible to develop a voluntary standard. API also concluded that it should be the motor vehicle manufacturers' responsibility to develop refueling control systems which cause nozzle shutoff without spitback if design flow limits are exceeded.

While recognizing the position taken by API, EPA believes that it is more appropriate to limit in-use dispensing rates to a level equivalent to that which manufacturers must use in certifying the performance of their onboard systems. Since the 10 gpm limit has been selected to encompass most current industry practice, it will impose little or no burden on station owners. On the other hand, it will provide manufacturers a fixed target for system designs by making maximum certification and in-use dispensing rates the same. EPA does not believe it is reasonable or practical to require manufacturers to certify onboard system performance for undefined, ever increasing flow rates. Therefore, EPA has decided to propose the limits contained in today's proposal.

More specifically, the proposed method for controlling the in-use dispensing rate is to require that every gasoline retailer or wholesale purchaser-consumer (as defined in 40 CFR 80.2 (k) and (o), respectively) equip each pump from which gasoline is introduced into motor vehicles, with a nozzle that shall dispense gasoline at a maximum flow rate not to exceed 10 gpm. This approach, patterned after current nozzle spout diameter regulations for leaded and unleaded fuels, places responsibility directly on the retailer or wholesale purchaser-consumer [nozzle owner]. Enforcement of this alternative would be by direct flow measurements at the station.[32] Since all aspects of compliance would be the owners responsibility, assignment of liability for violations would be straightforward, although the testing requirement would represent some increased enforcement burden for EPA.

The Agency believes that little or no cost to station owners will be associated with this aspect of the proposal. Pumps at most stations already meet the 10 gpm limit and will therefore be able to retain existing nozzles. For those stations which require some reduction in flow rate, actual cost for a simple flow limiting device, such as a limiting-flow orifice, should be minimal. Therefore, the proposed limits do not affect the cost of today's proposal given elsewhere in this document.

EPA is proposing the in-use flow rate restriction under section 211(c) of the CAA. This provision allows EPA to regulate or prohibit the offering for sale of any fuel if the emission products of such fuel (in this case, the refueling vapors or evaporated spilled fuel associated with high dispensing rates) will impair, to a significant degree, the performance of the emission control device or system. The flow rate restriction proposed today is intended to enhance the performance of refueling control systems in actual use, by limiting the in-use rate to the certification test flow rate. In addition, even moderate amounts of gasoline spillage can offset

[31] "Spillage" is any loss of gasoline during a refueling event due to: Dripping from the nozzle spout, spitback, or overflow. "Spitback" is the loss of gasoline from the fillpipe which sometimes occurs in a refueling event when pressure builds up in the fuel tank and the automatic shut-off mechanism of the fuel nozzle is activated.

[32] The Agency intends to develop an in-use compliance test procedure for measuring dispensing rates in a separate action. The test procedure will utilize either an in-line flow meter or a volume/time measurement technique.

the emission reductions to be achieved through onboard systems and could cause the refueling standard to be exceeded. A dispensing rate limit will reduce gasoline spillage and help ensure the effectiveness of onboard controls.

Section 211(c) further requires the Administrator to consider available scientific and economic data on possible alternative emission controls, which would not require such a limitation on fuel sales. In this case, the only alternative that might be advanced would be to require Stage II instead of onboard. That alternative has been exhaustively analyzed by EPA, as described earlier in today's notice, and has been rejected. Moreover, Stage II systems would also likely include flow rate limits of their own. Therefore, the Agency believes the proposed in-use flow rate restriction is consistent with section 211(c).

EPA requests comment on all aspects of its proposal to regulate nozzle flow rates, including such areas as the need for control, liability aspects, hardware costs of flow regulating controls and alternative regulatory schemes. For further information on the effects of in-use dispensing rates and nozzle geometries, an EPA technical report entitled "Investigation of the Need for In-Use Dispensing Rate Limits and Fuel Nozzle Geometry Standardization" is available in the public docket. [18]

EPA is also seeking comment on the need to standardize nozzle geometries. As noted in the discussion of the refueling test procedure, EPA has received comment indicating that different nozzle spout designs may affect onboard efficiency and contribute to refueling spillage. If this were the case, EPA would consider it an in-use issue as well as a testing issue. That is, if it became necessary to standardize test nozzles, then EPA would also expect to standardize commercial nozzles. This would be absolutely necessary to insure compatibility between commercial nozzles and onboard systems designed around the certification test procedure. Since all current nozzle geometries are relatively similar, however, such standardization may not be absolutely necessary. The Agency solicits comments from concerned parties on this issue. Comments are especially solicited which identify the principle parameters of concern and quantify the claimed impact of nozzle designs. If significant impacts are identified which cannot be accommodated in onboard system designs, EPA's preferred course of action would be to establish voluntary nozzle design standards through combined efforts with professional and trade organizations. However, such standards could also be included in EPA's final rulemaking on today's proposal.

H. Safety Issues Related to Onboard Controls

Section 202(a)(6) of the CAA directs the Agency to consult with the Department of Transportation (DOT) concerning motor vehicle safety before requiring the use of onboard control technology. During the development of today's proposal, consultations were held with representatives of DOT's National Highway Traffic Safety Administration (NHTSA) to discuss the potential safety hazards associated with onboard controls. During these discussions, EPA's analysis [19] was reviewed and the Agency sought NHTSA's review and comment on each of the safety issues identified. It is EPA's finding that there appears to be no obstacle which would prevent the design and production of safe onboard systems, although additional study may be necessary before final rulemaking action to ensure adequate leadtime is available for vehicle design and testing. The Agency, of course, will continue to be responsive to the Congressional mandate by consulting further with DOT on potential safety concerns as new information on probable system designs becomes available. A final safety evaluation will be made as part of the final rulemaking.

The Agency has also met with the Insurance Institute for Highway Safety (IIHS). This trade association, which is supported by the nation's property and casualty insurers, has expressed general concerns to EPA regarding the safety of onboard vapor recovery systems in vehicle accidents. The views expressed by IIHS have been fully considered in EPA's safety analysis and will be included in the evaluation supporting the final rulemaking.

It is EPA's belief that no increase in overall safety risk should be accepted because of the presence of onboard control systems. Of course, the final choices about exact system designs will be with the manufacturers, but EPA would not adopt an onboard program unless it were clear that safe fuel system designs were available and the requisite hardware could be incorporated in the motor vehicle fleet within the leadtime provided by the regulation. At this time EPA believes that this is the case. In fact, the Agency's analysis indicates that it would be quite possible for fuel system safety to improve along with the adoption of onboard controls. One example of how this might occur would be through the use of flexible bladders inside the fuel tank to contain the liquid fuel and eliminate the presence of any fuel vapors. Such containment would improve fuel system safety and also eliminate the need for much of the evaporative control hardware already on current vehicles (*e.g.*, reduce or eliminate the need for the vapor storage canister).

There are other aspects of overall fuel system design which might be modified at the time of introducing onboard controls. Such things as the placement and configuration of the fuel tank, the use of side fill versus rear fill fueling designs, and external versus internal fueling vapor vent lines, are all areas of design determined as a result of tradeoffs between competing design goals. EPA believes that current fuel system designs can be improved in such areas as these and that the safety of onboard equipped vehicles need not be compromised.

Several specific design-related safety issues have been raised as being of greatest concern in the design of onboard systems. The potential problem areas involve fuel spillage, fuel tank pressurization, and vapor storage canister location. Each of these areas is discussed separately below.

The concern with fuel spillage centers on preventing the escape of liquid gasoline from a vehicle's fuel tank as a result of the vehicle rolling over in an accident. The high vapor flowrates associated with refueling require the use of relatively large diameter vapor line (*i.e.*, approximately ½ to ¾ inches in inner diameter) to minimize system back pressure as vapors are forced from the fuel tank to the carbon canister. Without a rollover protection system, such a large vapor line could lead to a substantial fuel spill under certain circumstances, with an attendant risk of fire.

Fuel spills resulting from motor vehicle accidents are regulated by DOT in Federal Motor Vehicle Safety Standard (FMVSS) 301.[33] For onboard systems to comply with the requirements of this standard, a rollover valve would have to be included in the vent line to automatically close if the vehicle rolled over. For various reasons, manufacturers would most likely design this valve to remain closed in most normal operating modes, and open only during the refueling process. Several specific designs have been suggested for

[33] Federal Motor Vehicle Safety Standard 301 regulates the rate at which fuel is allowed to flow from a vehicle following a collision and vehicle rollover.

just such a valve by the developers of prototype onboard control systems. Generally, the valve is located at the fillneck mouth and is mechanically activated by the insertion of the nozzle into the fillneck mouth. Although it is unclear which of the valves currently in development would be best for ultimate use, the valve is conceptually simple and would require no new technology.

The concern about fuel tank pressurization during the refueling operation is related to the use of a mechanical fillneck seal to prevent the escape of fuel vapors to the atmosphere. This device is installed in the mouth of the fillneck and creates a physical seal between the nozzle spout and the fillneck when the nozzle is inserted. Under some failure scenarios, if the fuel tank becomes overfilled, the resulting excess pressure in the tank could cause fuel to squirt out between the nozzle and seal, or out of the fillneck when the nozzle was removed. This problem can be avoided by including a relief valve in the system to ensure that pressure is released from the fuel tank before it could reach a dangerous level. Such devices are not complex or difficult to design. Furthermore, other methods of sealing the fillneck are available (*i.e.*, the liquid seal) that completely avoid this potential problem.

The last potential safety problem concerns the location of the onboard canister. If a refueling canister were already full, or the system were tampered with so that the vent line to the canister was disconnected, refueling vapors could be vented into the space near the canister when the vehicle was refueled. There is some concern that if the canister were located in the engine compartment and this situation occurred, a spark, or some other ignition source, could cause an explosion or fire. The extent to which this could actually become a problem is not completely clear at this time. Evaporative emissions control canisters, which are similar to onboard canisters, are often located in the engine compartment and are not known to present a safety hazard. In any case, it appears that this potential problem could be resolved by locating the canister outside of the engine compartment, possibly in a fender well or near the fuel tank. However, EPA will continue to study this safety question, in consultation with DOT, to ensure that it is fully resolved before a final refueling regulation is issued.

Overall, the Agency finds that the design experience with existing evaporative emission control systems should be useful in designing onboard systems and that there is nothing extraordinary about the equipment needed to assure safe operation. Furthermore, each of the potential safety hazards discussed above is well known to the various motor vehicle manufacturers, and can be accommodated in designing onboard systems. For these reasons, EPA believes that practical and effective onboard systems can be designed and built, at a reasonable cost, that will not adversely affect vehicle safety.

Finally, the interaction between safety and leadtime should be mentioned. EPA acknowledges the need to provide adequate time for development and crash testing in order to fully integrate onboard-related hardware into existing vehicles. The Agency believes that a minimum of two years of leadtime between promulgation of the final rule and its effective date will be necessary to complete these and other related activities, and fully address safety concerns. However, the Agency acknowledges that some uncertainty exists regarding the length of time which may be necessary to complete development and crash testing for all vehicles. To ensure adeguate leadtime is provided in the final rulemaking, EPA solicits comments on the leadtime issue, with emphasis on specific safety-related areas.

The Agency is also considering a gradual phase-in of refueling controls over a multi-year period in order to ease the burden associated with simultaneous emissions and safety certification. Such a phase-in could also be advantageous if some individual vehicle configurations were to require added leadtime to address safety-related issues.

Regardless of whether all vehicles are ultimately required to meet an onboard standard beginning in the same model year, or a phase-in of controls is allowed, EPA is committed to ensuring that manufacturers have adequate leadtime to address potential safety concerns. In fact, the Agency would be especially open to allowing more leadtime if it would result in enhancing overall vehicle safety. A more detailed discussion of EPA's leadtime analysis is contained in the next section.

I. Leadtime

Section 202(a)(6) of the CAA requires EPA to provide adequate leadtime before the implementation of a final onboard rule, so that the regulated industry has sufficient opportunity to prepare for compliance with the standards set forth in the rule. As in the case of other motor vehicle emission standards, this involves component and system design, vehicle development and proveout, tooling, and certification. EPA has carefully considered the impact that a refueling emission regulation will have and believes that, although some uncertainty exists (especially as related to safety), a miniumum of 24 months after promulgation will be necessary to provide manufacturers with sufficient leadtime to comply with the refueling emission standard. The 24-month minimum period allows 12 months for component/system design and vehicle development and proveout. An additional 12 months is provided for certification (emissions, fuel economy, and safety). Vehicle and component tooling actions can occur simultaneously with development or certification. Thus, EPA is proposing a minimum two year leadtime for manufacturers to implement the onboard standard.

The Agency's rationale for the adequacy of a minimum two year leadtime is detailed in the response to public comments document. [12] In general, EPA's one year allowance for onboard system development and design may be adequate based on the following considerations. Onboard technology is very similar to that used in current evaporative emission control systems. With the exception of two onboard system components (the fillpipe seal and fuel tank valve), all hardware items resemble those presently used in evaporative emission control systems. EPA expects onboard systems will utilize activated carbon for hydrocarbon storage and air stripping for regeneration. While improvements in the air stripping or "purge" system probably will be necessary, these improvements should involve the extension of existing air management techniques and equipment. Even the new components needed for onboard systems pose no serious development problems because several parties have already proposed and demonstrated fillpipe seal and fuel tank valve designs. In fact, most manufacturers have already begun active onboard system development, and EPA believes all system design parameters are well defined with no major uncertainties.

On the other hand, EPA recognizes there may be some uncertainty regarding the adequacy of the 12-month period, if developing onboard systems for certain vehicle configurations were to take longer than is now expected. To address this uncertainty, specific, detailed comments are requested on the length of time necessary to complete the design and development of onboard systems for all vehicles.

In addition to system design and development, EPA believes

manufacturers may be able to make any necessary component or vehicle tooling changes within the 24 months of leadtime. It is not necessary for all pre-production compliance preparation actions to occur sequentially; much of it can be completed in parallel. In this particular rulemaking, the only critical path items that should proceed in sequence are component/system design, vehicle development/proveout and certification. Any necessary tooling changes can be performed in parallel with these critical path items.

Once onboard system vehicle development and proveout work is completed, the certification process can begin. While 12 months is normally adequate leadtime for manufacturers to certify, EPA also recognizes that the implementation of refueling controls may present a unique situation. Some uncertainty exists in the 12-month estimate because manufacturers will be facing recertification of their entire product lines and the Federal Test Procedure will be expanded to include a refueling emissions test. Manufacturers also need to conduct vehicle safety crash testing to assure compliance with FMVSS 301. Simultaneous emissions and safety certification have occurred previously, but not for all three vehicle classes (light-duty vehicles, light-duty trucks, and heavy-duty vehicles) in the same model year. Comments specifically addressing this aspect of EPA's leadtime analysis are invited.

One way to reduce the certification burden would be to use a gradual phase-in approach to refueling controls rather than requiring all vehicles to comply in the same year. Such an approach could involve the phase-in of onboard controls over a two- or three-year period, with the majority of vehicles being required to comply in the first year (*e.g.*, 70 percent of production certified in the first year, 90 percent in the second and the remainder certified in the third year). Such a "front-loaded" phase-in period would also provide more time to deal with any unique onboard system packaging problems, or safety-related concerns. In addition, it could actually improve the cost efficiency of controls by permitting manufacturers to forego development of onboard systems for vehicle models scheduled for elimination by the end of the phase-in period.

A gradual phase-in might also be an especially appropriate means of dealing with onboard controls for heavy-duty gasoline vehicles. Historically, heavy-duty emission control technology has been based on systems developed successfully for light-duty applications. Although refueling emission control technology is basically identical for either vehicle type, heavy-duty onboard control presents some additional concerns because of the significantly larger canister capacity requirements and the inherent complexity of the two part heavy-duty test procedure. A front-loaded onboard phase-in period would allow manufacturers to certify most light-duty vehicles and trucks in the first year while allowing additional time for heavy-duty vehicles and/or any isolated light-duty problem cases. As already noted, EPA is open to comment on the adequacy of 12 months for certification, but asks that any request for additional leadtime or a phase-in period should be supported by specific, concrete information demonstrating the need for additional leadtime and justifying any suggested phase-in period.

Another way to reduce the certification burden would be to allow carryover of exhaust durability data for previously-certified LDV family/system combinations for the initial year of the new standards. Since LDV engine families constitute about two-thirds of all engine families subject to certification requirements, providing LDV exhaust emission durability carryover would also represent a significant decrease in the initial recertification burden associated with the proposed refueling regulations. However, one potential problem with this approach concerns how well pre-refueling control deterioration data would represent emissions from new vehicles with different purge systems operating on potentially different certification fuel. EPA invites comments regarding how these concerns might be addressed and the appropriateness of the use of durability data carryover for LDVs to reduce the burden of the initial recertification effort.

Overall, then, EPA believes a leadtime period of at least two years may be adequate for the vast majority, if not all, vehicle families. All previous evaporative emission standards have been implemented with two years of leadtime. Due to the importance of ensuring adequate leadtime, especially as it relates to addressing any potential safety concerns, EPA remains open to comment on leadtime and on the need for a phase-in period.

J. Economic Impact

The complete economic analysis of this rule is contained in the draft Regulatory Impact Analysis (RIA), which is available in the docket. The highlights of the analysis are summarized here. All figures are in 1986 dollars, and a ten percent discount rate is assumed.

1. Light-Duty Vehicles

The aggregate cost to the nation resulting from the first five years of a refueling emission control requirement for light-duty vehicles is estimated to be $602 million, discounted to 1990. This estimate includes fixed costs of $46 million for development and design, $29 million for recertification, and all necessary hardware costs. Because the addition of onboard refueling emission control systems is expected to have an impact on vehicle fuel consumption, the aggregate cost also includes an allowance for the expected net change in operating costs.

Manufacturers are projected to recover their costs through an estimated increase of approximately $17 in the purchase price of an average light-duty vehicle produced during the first five years. Vehicle owners are projected to recover an average of approximately $4 of this cost over the life of the vehicle through improved fuel consumption.

2. Light-Duty Trucks

The total five year aggregate cost to the nation resulting from a refueling emission control requirement for light-duty trucks is estimated to be $266 million, discounted to 1990. This estimate includes fixed costs of $21 million for development and design, $12 million for recertification, and all necessary hardware costs. As with light-duty vehicles, the aggregate cost also includes an allowance for the expected decrease in operating costs.

Manufacturers are projected to recover their costs through an estimated increase of approximately $23 in the purchase price of an average light-duty truck produced during the first five years of the standard. Single fuel tank light-duty truck prices would increase by $18; dual tank truck prices would increase by $42. Truck owners are expected to recover an average of approximately $6 of this cost over the life of the vehicle due to improved fuel consumption.

3. Heavy-Duty Gasoline Vehicles

The total five year aggregate cost to the nation for heavy-duty gasoline vehicles is estimated to be $25 million, discounted to 1990. This estimate includes fixed costs of $2.5 million for development and design, $3 million for recertification, and all necessary hardware costs, as well as an allowance for the expected net change in operating costs.

Manufacturers are projected to recover their costs through an estimated increase of approximately $31 in the price of an average new heavy-duty vehicle produced during the first five years of the standard. For smaller heavy-duty gasoline vehicles this price increase is expected to average $26; for larger ones an average price increase of $44 is expected. Vehicle owners are projected to recover an average of approximately $15 of this cost over the life of the vehicle through improved fuel consumption.

4. Aggregate Impacts

The total five year aggregate cost to the nation resulting from refueling emission control standards for all gasoline fueled vehicles is estimated to be $892 million discounted to 1990. This estimate includes fixed costs of $70 million for development and design, $44 million for recertification, and all necessary hardware costs. The aggregate cost also includes an allowance for the expected net decrease in operating costs for vehicles produced in those five years.

The average first price increase for all gasoline vehicle classes will be approximately $19. Likewise, the average fuel recovery credit is expected to be approximately $5.

The overall socioeconomic impact of these regulations is expected to be minimal. Auto and truck manufacturers are expected to have no trouble underwriting the capital investment required and vehicle sales will not be impacted by the very small first price increase caused by onboard controls. Employment in the automotive and related supplies industries may increase slightly as the result of the need to manufacture and install onboard control systems. These regulations are not expected to have any net effect on the balance of trade. Any increase in the manufacturer's invoice price of imported vehicles should be offset by the reduction in oil imports permitted by the net fuel consumption improvement.

VII. Public Participation

Comments and the Public Docket

As in past rulemaking actions, EPA desires full public participation in arriving at final decisions. In addition to those areas where specific comment has been requested earlier in this preamble, EPA solicits comments on all aspects of today's proposal from all interested parties. Wherever applicable, full supporting data and detailed analyses should also be submitted to allow EPA to make maximum use of the comments. Commenters are especially encouraged to provide specific suggestions for changes to any aspects of the proposal that they believe need to be modified or improved. All comments should be directed to the EPA Central Docket Section, Docket No. A–87–11 (see "ADDRESSES").

Persons intending to participate in the hearings may submitt written questions on any matters relevant to this proposal to the presiding officer at any time. To the extent that time permits the presiding officer, at his discretion, may direct these questions to witnesses testifying at the hearing or as appropriate to EPA personnel present at the hearing for answers. If time does not permit all such written questions to be addressed at the hearing, EPA will provide the remaining questions to the appropriate witnesses or EPA personnel for written response to be placed in the rulemaking docket.

Public Hearing

Any person desiring to present testimony at the public hearing (see "DATES") should notify the contact person listed above of such intent at least seven days prior to the day of the hearing. The contact person should also be provided an estimate of the time required for the presentation of the testimony and notification of any need for audio/visual equipment. A sign–up sheet will be available at the registration table the morning of the hearing for scheduling of the order of testimony.

It is suggested that sufficient copies of the statement or material to be presented be brought to the hearing for distribution to be audience. In addition, it will be helpful for EPA to receive an advance copy of any statement or material to be presented at the hearing at least one week before the scheduled hearing date, in order for EPA staff to have adeguate time to give such material full consideration. Such advance copies should be submitted to the contact person listed above.

The official record of the hearing will be kept open for 30 days following the hearing to allow submission of rebuttal and supplementary testimony. All such submittals should be directed to the EPA Central Docket Section, Docket No. A–87–11 (see "ADDRESSES").

The hearing will be conducted informally, and technical rules of evidence will not apply. Written transcripts of the hearing will be made. Anyone desiring to purchase a copy of the transcript should make individual arrangements with the court reporter recording the proceedings.

Pursuant to section 202(a)(6), EPA must consult with the Secretary of Transportation with respect to motor vehicle safety before promulgating a requirement for onboard technology. Because of the statutory significance attached to this consultation, EPA will reopen the record of this rulemaking when the Agency receives the comments from the Secretary of Transportation and will repropose the rule for comment to assess changed circumstances. This reproposal shall occur prior to final decision on the merits of the onboard regulation and sufficiently prior to the full commercial manufacture of vehicles with onboard technology to allow the public a meaningful opportunity to comment on whatever significant changes in circumstances may occur prior to full manufacture. In the reproposal, the Agency will specifically ask for comments on whether, in light of safety or other relevant concerns, the onboard regulation should be structured to provide an internal checkpoint or "second look" prior to the full commercial manufacture of vehicles equipped with onboard technology. The "second look" would provide, in effect, a formal mechanism for the Agency to reassess the desirability of going forward with an onboard requirement in light of potentially changed circumstances, such as further information on safety concerns, non-attainment status, lead time requirements or other issues.

VIII. Administrative Designation and Regulatory Analysis

The Administrator has determined that this proposal constitutes a major proposed regulation, and accordingly a Draft Regulatory Impact Analysis has been prepared as required under Executive Order 12291. This analysis includes detailed assessments of the estimated economic and environmental impacts of the regulations proposed here, as well as more thorough analyses of the technological feasibility of the emission standards and other regulatory provisions proposed here, and the alternatives that were considered in the development of this proposal.

The Draft Regulatory Impact Analysis has been placed in the public docket referenced at the beginning of today's notice. In addition, interested parties may obtain single copies through a written request to the public contact listed previously.

This proposed regulation also was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB and EPA response to those comments have been

placed in the public docket for this rulemaking.

IX. Impact on Small Entities

Section 605 of the Regulatory Flexibility Act requires that the Administrator certify regulations that do not have a significant impact on a substantial number of small entities. I certify that this proposed regulation will not have such an effect because it primarily affects only manufacturers of motor vehicles and motor vehicle engines, a group which does not contain a substantial number of small entities. In addition, the proposed nozzle flow rate limitation applicable to nozzle owners will not have significant impact because it would require little, if any, investment.

X. Reporting and Recordkeeping Requirements

The information collection provisions relating to the proposed refueling emissions standard have been submitted to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA (ICR No. 738) and a copy may be obtained from Bryan C. Wood-Thomas, Information Policy Branch; EPA 401 M Street, SW. (PM–223) Washington, DC 20460 or by calling (202) 475–8791. Comments may be submitted to EPA at the above address, but should also be sent to the Office of Information and Regulatory Affairs; Office of Management and Budget; 726 Jackson Place, NW.; Washington, DC 20503 marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements.

List of Subjects

40 CFR Part 80

Fuel additives, Gasoline, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

40 CFR Part 86

Administrative practice and procedures, Air pollution control, Gasoline, Motor vehicles, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

40 CFR Part 600

Administrative practice and procedures, Electric power, Energy conservation, Fuel economy, Gasoline, Labeling, Motor vehicles, Reporting and recordkeeping requirements.

Authority for the actions proposed in this notice is granted EPA by sections 202, 206, 207, 208, 211, and 301 of the Clean Air Act (42 U.S.C. 7521, 7525, 7541, 7542, and 7601).

Dated: July 22, 1987.

Lee M. Thomas,

Administrator.

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17. "API Response to EPA Request for Comments on Petroleum Marketing Industry Refueling Rate Voluntary Standard", American Petroleum Institute, August 6, 1986.
18. "Investigation of the Need for In-Use Dispensing Rate Limits and Fuel Nozzle Geometry Standardization," U.S. EPA, OAR, OMS, ECTD, EPA–AA–SDSB–87–07, May 1987.
19. "Safety Implications of Onboard Refueling Vapor Recovery Systems," U.S. EPA, OAR, OMS, ECTD, EPA–AA–SDSB–87–05, June 1987.

Appendix: Table of Changes Made to Various Subparts

Section	Change	Reason
1. Authority, Part 80	None	
2. § 80.22	Add (l)	Limit fuel dispensing rate to 10 gpm.
3. Authority, Part 86	None	
4. § 86.078–3	Add T_D	Required for onboard refueling emission control procedure.
5. § 86.XXX–2	Add § 86.XXX–2	Incorporation of definitions of new terms.
6. § 86.XXX–8	Add § 86.XXX–8	Addition of onboard refueling emission control procedure.
7. § 86.XXX–9	Add § 86.XXX–9	Do.
8. § 86.XXX–10	Add § 86.XXX–10	Do.
9. § 86.XXX–21	Add § 86.XXX–21	Do.
10. § 86.XXX–23	Add § 86.XXX–23	Do.

Section	Change	Reason
11. § 86.XXX-24	Add § 86.XXX-24	Do.
12. § 86.XXX-25	Add § 86.XXX-25	Do.
13. § 86.XXX-26	Add § 86.XXX-25	Do.
14. § 86.XXX-28	Add § 86.XXX-28	Do.
15. § 86.XXX-29	Add § 86.XXX-29	Do.
16. § 86.XXX-30	Add § 86.XXX-30	Do.
17. § 86.XXX-35	Add § 86.XXX-35	Do.
18. § 86.107-XX	Add § 86.107-XX	Do.
19. § 86.113-XX	Add § 86.113-XX	Do.
20. § 86.130-XX	Add § 86.130-XX	Do.
21. § 86.131-XX	Add § 86.131-XX	Do.
22. § 86.132-XX	Add § 86.132-XX	Do.
23. § 86.133-XX	Add § 86.133-XX	Do.
24. Subpart C	Add Subpart C	Do.
25. § 86.602	Change definition of "Configuration"	Do.
26. § 86.603	Revision to incorporate onboard control of refueling emissions.	Do.
27. § 86.605	....do	Do.
28. § 86.608	....do	Do.
29. § 86.609	....do	Do.
30. § 86.610	....do	Do.
31. § 86.1002-XX	Add § 86.1002-XX	Do.
32. § 86.1003-XX	Add § 86.1003-XX	Do.
33. § 86.1005-XX	Add § 86.1005-XX	Do.
34. § 86.1008-XX	Add § 86.1008-XX	Do.
35. § 86.1009-XX	Add § 86.1009-XX	Do.
36. § 86.1010-XX	Add § 86.1010-XX	Do.
37. § 86.1207-XX	Add § 86.1207-XX	Do.
38. § 86.1213-XX	Add § 86.1213-XX	Do.
39. § 86.1230-XX	Add § 86.1230-XX	Do.
40. § 86.1231-XX	Add § 86.1231-XX	Do.
41. § 86.1232-XX	Add § 86.1232-XX	Do.
42. § 86.1233-XX	Add § 86.1233-XX	Do.
43. § 86.1313-XX	Add § 86.1313-XX	Do.
44. § 86.1327-XX	Add § 86.1327-XX	Do.
45. § 86.1330-XX	Add § 86.1330-XX	Do.
46. § 86.1337-XX	Add § 86.1337-XX	Do.
47. § 86.1513-XX	Add § 86.1513-XX	Do.
48. Authority, Part 600	None	
49. § 600.111-XX	Revision to incorporate onboard control of refueling emissions.	Do.

For the reasons set forth in the preamble, 40 CFR Parts 80, 86, and 600 are proposed to be amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for Part 80 is revised to read as follows:

Authority: Sections 114, 211 and 301(a) of the Clean Air Act as amended; 42 U.S.C. 7414, 7545 and 7601(a).

2. Section 80.22 of Subpart B is amended by adding a new paragraph (j), to read as follows:

§ 80.22 Controls Applicable to Gasoline Retailers and Wholesale Purchaser-Consumers.

* * * * *

(j) After September 1, 19XX every retailer and wholesale purchaser-consumer shall equip each pump from which gasoline is introduced into motor vehicles with a nozzle that shall dispense gasoline at a maximum flow rate not to exceed 10.0 gallons per minute.

PART 86—CONTROL OF AIR POLLUTION FROM NEW MOTOR VEHICLES AND NEW MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

3. The authority citation for Part 86 is revised to read as follows:

Authority: Sections 202, 203, 206, 207, 208, 215, and 301(a) of the Clean Air Act, as amended; 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550, and 7601(a).

4. Section 86.078-3 of Subpart A is proposed to be revised, to read as follows:

§ 86.078-3 Abbreviations.

(a) The abbreviations in this section apply to this subpart and also to Subparts B, C, D, I, M, N and P of this part and have the following meanings:

accel.—acceleration.
AECD—auxiliary emission control device.
API—American Petroleum Institute.
ASTM—American Society for Testing and Materials.
BHP—brake horsepower.
BSCO—brake specific carbon monoxide.
BSHC—brake specific hydrocarbons.
BSNOx—brake specific oxides of nitrogen.
C—Celsius.
cfh—cubic feet per hour.
CFV—critical flow venturi.
CFV—CVS—critical flow venturi—constant volume sampler.
CL—chemiluminescence.
CO_2—carbon dioxide.
CO—carbon monoxide.
conc.—concentration.
cfm—cubic feet per minute.
CT—closed throttle.
cu. in.—cubic inch(es).
CVS—constant volume sampler.
decel—deceleration.
EP—end point.
evap.—evaporative.
F—Fahrenheit.
FID—flame ionization detector.

FL—full load.
ft.—feet.
g—gram(s).
gal.—U.S. gallon(s).
GVW—gross vehicle weight.
GVWR—gross vehicle weight rating.
h—hour(s).
H_2O—water.
HC—hydrocarbon(s).
HFID—heated flame ionization detector.
Hg—mercury.
hi—high.
hp.—horsepower.
IBP—initial boiling point.
ID—internal diameter.
in.—inch(es).
K—Kelvin.
kg—kilogram(s).
km—kilometer(s).
kPa—kilopascal(s).
lb.—pound(s).
lb.-ft.—pounds-feet.
m—meter(s).
max.—maximum.
mg—milligram(s).
mi.—mile(s).
min.—minute(s).
ml—milliliter(s).
mm—millimeter(s).
mph—miles per hour.
mv—millivolt(s).
N_2—nitrogen.
NDIR—nondispersive infrared.
NO—nitric oxide.
NO_2—nitrogen dioxide.
NOx—oxides of nitrogen.
No.—number.
O_2—oxygen.
Pb—lead.
pct.—percent.
PDP—CVS—positive displacement pump-constant volume sampler.
ppm—parts per million by volume.
ppmC—parts per million, carbon.
psi—pounds per square inch.
psig—pounds per square inch gauge.
PTA—part throttle acceleration.
PTD—part throttle deceleration.
R—Rankin.
rpm—revolutions per minute.
RVP—Reid vapor pressure.
s—second(s).
SAE—Society of Automotive Engineers.
SI—international system of units.
sp.—speed.
T_D—dispensed fuel temperature.
TEL—tetraethyl lead.
TML—tetramethyl lead.
UDDS—urban dynamometer driving schedule.
V—volt(s).
vs—versus.
W—watt(s).
WF—weighting factor.
WOT—wide open throttle.
wt.—weight.
'—feet.
"—inch(es).
°—degree(s).
Σ—summation.

5. A new § 86.XXX–2 is proposed to be added to Subpart A, to read as follows:

§ 86.XXX–2 Definitions.

The definitions in § 86.088–2 remain effective. The definitions in this section apply beginning with the 19XX model year.

Dispensed fuel temperature means the temperature (°F or °C may be used) of the fuel being dispensed into the tank of the test vehicle during a refueling test.

Evaporative emissions canisters(s) means any vapor storage unit(s) that is exposed to either vehicle diurnal or hot soak or both diurnal and hot soak emissions, except for vapor storage units located in the primary path of and purged by the engine intake air, whenever the engine is operated, for the sole purpose of storing miscellaneous evaporative emissions from the intake system.

Fully integrated refueling emission control system means a system where vapors resulting from refueling are stored in a common vapor storage unit(s) with both the diurnal heating emissions and the hot soak emissions of the vehicle and are purged through a common purge system.

Integrated refueling emission control system means either a fully or partially integrated system.

Non-integrated refueling emission control system means a system where vapors from refueling are stored in a vapor storage unit(s) assigned solely to the function of storing refueling vapors.

Partially integrated refueling emissions control system means a system where vapors resulting from refueling are stored in a vapor storage unit(s) with either the diurnal heating emissions or the hot soak emissions of the vehicle.

Refueling emissions means vapors emitted into the atmosphere from a motor vehicle fuel tank(s) during a refueling operation.

Refueling emissions canister(s) means any vapor storage unit(s) that is exposed to the vapors generated during refueling.

Refueling emissions control system means a unique combination within a refueling family of canister adsorptive material, purge system configuration, purge strategy, and other parameters determined by the Administrator to affect refueling emission control system durability or deterioration factor.

Refueling emission family means the basic classification unit of a manufacturers' product line used for the purpose of refueling emissions test fleet selection and determined in accordance with § 86.XXX–24.

6. A new § 86.XXX–8 is proposed to be added to Subpart A, to read as follows:

§ 86.XXX–8 Emission standards for 19XX light-duty vehicles.

(a)(1) Exhaust emissions from 19XX and later model year light-duty vehicles shall not exceed:

(i) *Hydrocarbons.* 0.41 gram per vehicle mile (0.255 gram per vehicle kilometer).

(ii) *Carbon monoxide.* 3.4 grams per vehicle mile (2.11 grams per vehicle kilometer).

(iii) *Oxides of nitrogen.* 1.0 gram per vehicle mile (0.629 gram per vehicle kilometer).

(iv) *Particulate emissions* (diesels only). 0.20 gram per vehicle mile (0.124 gram per vehicle kilometer). A manufacturer may elect to include all or some of its diesel light-duty vehicle engine families in the particulate averaging program, provided that vehicles produced for sale in California or designated high-altitude areas may be averaged only within each of these areas. If the manufacturer elects to average diesel light-duty vehicles and diesel light-duty trucks together in the particulate averaging program, its composite particulate standard applies to the combined set of diesel light-duty vehicles and diesel light-duty trucks included in the average and is calculated as defined in § 86.087–2.

(2) The standards set forth in paragraph (a)(1) of this section refer to the exhaust emitted over a driving schedule as set forth in Subpart B of this part and measured and calculated in accordance with these procedures.

(b)(1) Evaporative emissions from 19XX and later model year gasoline-fueled light duty vehicles shall not exceed: *Hydrocarbons.* 2.0 grams per test.

(2) The standard set forth in paragraph (b)(1) of this section refers to a composite sample of the evaporative emissions collected under the conditions set forth in Subpart B of this pert and measured in accordance with those procedures.

(c) No crankcase emissions shall be discharged into the ambient atmosphere from any 19XX and later model year gasoline-fueled light-duty vehicle.

(d)(1) Refueling emissions from 19XX and later model year gasoline-fueled light duty vehicles shall not exceed: *Hydrocarbons.* 0.10 gram per gallon (0.026 gram per liter) of fuel dispensed.

(2) The standard set forth in paragraph (d)(1) of this section refers to a sample of refueling emissions collected under the conditions set forth

in Subpart C of this part and measured in accordance with those procedures.

(e)–(f) [Reserved]

(g) Any 19XX and later model year light-duty vehicle that a manufacturer wishes to certify for sale shall meet the emission standards of paragraphs (a)–(d) of this section under both low- and high-altitude conditions as specified in § 86.082–2, except as provided in paragraphs (h) and (i) of this section. Vehicles shall meet emission standards under both low- and high-altitude conditions without manual adjustments or modifications. Any emission control device used to meet emission standards under high-altitude conditions shall initially actuate (automatically) no higher than 4,000 feet above sea level.

(h) A manufacturer may exempt 19XX model year vehicles from compliance at high altitude with the emission standards set forth in paragraphs (a) and (b) of this section if the vehicles are not intended for sale at high altitude and if the requirements of paragraphs (h) (1) and (2) of this section are met.

(1) A vehicle configuration shall only be considered eligible for exemption under this paragraph if the requirements of either paragraph (1) (i), (ii), (iii), or (iv) of this paragraph are met.

(i) Its design parameters (displacement-to-weight ratio (D/W) and engine speed-to-vehicle-speed ratio (N/V) fall within the exempted range for that manufacturer for that year. The exempted range is determined according to the following procedure:

(A) The manufacturer shall graphically display the D/W and N/V data of all vehicle configurations it will offer for the model year in question. The axis of the abscissa shall be D/W (where (D) is the engine displacement expressed in cubic centimeters and (W) is the equivalent vehicle test weight expressed in pounds), and the axis of the ordinate shall be N/V (where (N) is the crankshaft speed expressed in revolutions per minute and (V) is the vehicle speed expressed in miles per hour). At the manufacturer's option, either the 1:1 transmission gear ratio or the lowest numerical gear ratio available in the transmission will be used to determine N/V. The gear selection must be the same for all N/V data points on the manufacturer's graph. For each transmission/axle ratio combination, only the lowest N/V value shall be used in the graphical display.

(B) The product line is then defined by the equation, $N/V = C(D/W)^{-0.9}$, where the constant, C, is determined by the requirement that all the vehicle data points either fall on the line or lie to the upper right of the line as displayed on the graphs.

(C) The exemption line is then defined by the equation $N/V = C(0.84\ D/W)^{-0.9}$, where the constant C is the same as that found in paragraph (h)(1)(i)(B) of this section.

(D) The exempted range includes all values of N/V and D/W which simultaneously fall to the lower left of the exemption line as drawn on the graph.

(ii) Its design parameters fall within the alternate exempted range for that manufacturer that year. The alternate exempted range is determined by substituting rated horsepower (hp) for displacement (D) in the exemption procedure described in paragraph (h)(1)(i) of this section and by using the product line $N/V = C(hp/W)^{-0.9}$.

(A) Rated horsepower shall be determined by using the Society of Automotive Engineers Test Procedure J 1349, or any subsequent version of that test procedure. Any of the horsepower determinants within that test procedure may be used, as long as it is used consistently throughout the manufacturer's product line in any model year.

(B) No exemptions will be allowed under paragraph (h)(1)(ii) of this subsection to any manufacturer that has exempted vehicle configurations as set forth in paragraph (h)(1)(i) of this section.

(iii) Its acceleration time (the time it takes a vehicle to accelerate from 0 miles per hour to a speed not less than 40 miles per hour and not greater than 50 miles per hour) under high-altitude conditions is greater than the largest acceleration time under low-altitude conditions for that manufacturer for that year. The procedure to be followed in making this determination is:

(A) The manufacturer shall list the vehicle configuration and acceleration time under low-altitude conditions of that vehicle configuration which has the highest acceleration time under low altitude conditions of all the vehicle configurations it will offer for the model year in question. The manufacturer shall also submit a description of the methodology used to make this determination.

(B) The manufacturer shall then list the vehicle configurations and acceleration times under high-altitude conditions of all those vehicle configurations which have higher acceleration times under high-altitude conditions than the highest acceleration time at low altitude identified in paragraph (h)(1)(iii)(A) of this section.

(iv) In lieu of performing the test procedure of paragraphs (h)(1)(iii) (A) and (B) of this section, its acceleration time can be estimated based on the manufacturer's engineering evaluation, in accordance with good engineering practice, to meet the exemption criteria of paragraph (h)(1)(iii) of this section.

(2) A vehicle shall only be considered eligible for exemption under this paragraph if at least one configuration of its model type (and transmission configuration in the case of vehicles equipped with manual transmissions, excluding differences due to the presence of overdrive) is certified to meet emission standards under high-altitude conditions as specified in paragraphs (a) through (g) of this section. The Certificate of Conformity (the Certificate) covering any exempted configuration(s) will also apply to the corresponding non-exempt configuration(s) required under this paragraph. As a condition to the exemption, any suspension, revocation, voiding, or withdrawal of the Certificate as it applies to a nonexempt configuration for any reason will result in a suspension of the Certificate as it applies to the corresponding exempted configuration(s) of that model type, unless there is at least one other corresponding non-exempt configuration of the same model type still covered by the Certificate. The suspension of the Certificate as it applies to the exempted configuration(s) will be terminated when any one of the following occurs:

(i) Another corresponding non-exempt configuration(s) receive(s) coverage under the Certificate; or

(ii) Suspension of the Certificate as it applies to the corresponding non-exempt configuration(s) is terminated; or

(iii) The Agency's action(s), with respect to suspension, revocation, voiding or withdrawal of the Certificate as it applies to the corresponding non-exempt configuration(s), is reversed.

(3) The sale of a vehicle for principal use at a designated high-altitude location that has been exempted as set forth in this paragraph will be considered a violation of section 203(a)(1) of the Clean Air Act.

(4) The manufacturers may exempt 19XX and later model year vehicles from compliance at low altitude with the emission standards set forth in paragraphs (a) and (b) of this section if the vehicles:

(i) Are not intended for sale at low altitude; and

(ii) Are equipped with a unique, high-altitude axle ratio (rear-wheel drive vehicles) or a unique, high-altitude drivetrain (front-wheel drive vehicles) with a higher N/V ratio than other configurations of that model type which are certified in compliance with the emission standards of paragraphs (a)

and (b) of this section under low-altitude conditions.

(5) The sale of a vehicle for principal use at low altitude that has been exempted as set forth in paragraph (h)(4) of this section will be considered a violation of section 203(a)(1) of the Clean Air Act.

7. A new § 86.XXX–9 is proposed to be added to Subpart A, to read as follows:

§ 86.XXX–9 Emission standards for 19XX and later model year light-duty trucks.

(a)(1) The standards set forth in paragraphs (a) through (d) of this section shall apply to light-duty trucks sold for principal use at other than a designated high-altitude location. Exhaust emissions from 19XX and later model year light-duty trucks shall not exceed:

(i) *Hydrocarbons.* 0.80 gram per vehicle mile (0.5 gram per vehicle kilometer).

(ii)(A) *Carbon monoxide.* 10 grams per vehicle mile (6.2 grams per vehicle kilometer).

(B) 0.50 percent of exhaust gas flow at curb idle (gasoline fueled-light-duty trucks only).

(iii) *Oxides of nitrogen.* (A) For light-duty trucks up to and including 3,750 lbs loaded vehicle weight, 1.2 grams per vehicle mile (0.75 grams per vehicle kilometer).

(B) For light-duty trucks 3,751 lbs and greater loaded vehicle weight, 1.7 grams per vehicle mile (1.1 grams per vehicle kilometer).

(C) A manufacturer may elect to include all or some of its light-duty truck engine families in the NO_x averaging program, provided that trucks produced for sale in California or designated high-altitude areas may be averaged only within each of those areas. Diesel and gasoline-fueled engine families may not be averaged together. If the manufacturer elects to average together NO_x emissions of light-duty trucks subject to the standards of paragraphs (a)(1)(iii)(A) and (a)(1)(iii)(B) of this section, its composite NO_x standard applies to the combined fleets of light-duty trucks up to and including, and over, 3,750 lbs loaded vehicle weight included in the average and is calculated as defined in § 86.088–2.

(iv) *Particulate emissions* (diesel light-duty trucks only). 0.26 gram per vehicle mile (0.16 gram per vehicle kilometer). A manufacturer may elect to include all or some of its diesel light-duty truck engine families in the particulate averaging program provided that trucks produced for sale in California or in designated high-altitude areas may be averaged only within each of those areas. If the manufacturer elects to average both diesel light-duty vehicles and diesel light-duty trucks together in the particulate averaging program, its composite particulate standard applies to the combined set of diesel light-duty vehicles and diesel light-duty trucks included in the average and is calculated as defined in § 86.085–2.

(2) The standards set forth in paragraphs (a)(1)(i), (a)(1)(ii)(A), (a)(1)(iii), and (a)(1)(iv) of this section refer to the exhaust emitted over a driving schedule as set forth in Subpart B of this part and measured and calculated in accordance with those procedures. The standard set forth in paragraph (a)(1)(ii)(B) of this section refers to the exhaust emitted at curb idle and measured and calculated in accordance with the procedures set forth in Subpart P of this part.

(b)(1) Evaporative emissions from 19XX and later model year gasoline-fueled light-duty trucks shall not exceed:

(i) *Hydrocarbons.* 2.0 grams per test.

(2) The standard set forth in paragraph (b)(1) of this section refers to a composite sample of the evaporative emissions collected under the conditions set forth in Subpart B of this part and measured in accordance with those procedures.

(c) No crankcase emissions shall be discharged into the ambient atmosphere from any 19XX and later model year light-duty truck.

(d)(1) Refueling emissions from 19XX and later model year gasoline-fueled light duty trucks shall not exceed: *Hydrocarbons.* 0.10 gram per gallon (0.026 gram per liter) of fuel dispensed.

(2) The standard set forth in paragraph (d)(1) of this section refers to a sample of refueling emissions collected under the conditions as set forth in Subpart C of this part and measured in accordance with those procedures.

(e)(1) Model year 19XX and later light-duty trucks sold for principal use at a designated high-altitude location shall be capable of meeting the following exhaust emission standards when tested under high-altitude conditions:

(i) *Hydrocarbons.* 1.0 grams per vehicle mile (0.62 grams per vehicle kilometer):

(ii) *Carbon Monoxide.* (A) 14 grams per vehicle mile (8.7 grams per vehicle kilometer).

(B) 0.50 percent of exhaust gas flow at curb idle (gasoline-fueled light-duty trucks only).

(iii) *Oxides of Nitrogen.* (A) For light-duty trucks up to and including 3,750 lbs loaded vehicle weight, 1.2 grams per vehicle mile (0.75 grams per vehicle kilometer).

(B) For light-duty trucks 3,751 lbs and greater loaded vehicle weight, 1.7 grams per vehicle mile (1.1 grams per vehicle kilometer).

(iv) *Particulate emissions* (diesel light-duty trucks only). 0.26 gram per vehicle mile (0.16 gram per vehicle kilometer).

(2) The standards set forth in paragraphs (e)(1)(i), (e)(1)(ii)(A), (e)(1)(iii), and (e)(1)(iv) of this section refer to the exhaust emitted over a driving schedule as set forth in Subpart B of this part and measured and calculated in accordance with those procedures. The standard set forth in paragraph (e)(1)(ii)(B) of this section refers to the exhaust emitted at curb idle and measured and calculated in accordance with the procedures set forth in Subpart P of this part.

(f)(1) Evaporative emissions from 19XX and later model year gasoline-fueled light-duty trucks sold for principal use at a designated high-altitude location shall not exceed: *Hydrocarbons.* 2.6 grams per test when tested under high-altitude conditions.

(2) The standard set forth in paragraph (f)(1) of this section refers to a composite sample of the evaporative emissions collected under the conditions set forth in Subpart B of this part and measured in accordance with those procedures.

(g) No crankcase emissions shall be discharged into the ambient atmosphere from any 19XX and later model year light-duty trucks sold for principal use at a designated high-altitude location.

(h)(1) Refueling emissions from 19XX and later model year gasoline-fueled light duty trucks sold for principal use at a designated high altitude location shall not exceed: *Hydrocarbons.* 0.10 gram per gallon (0.026 gram per liter) of fuel dispensed.

(2) The standard set forth in paragraph (h)(1) of this section refers to a sample of refueling emissions collected under the conditions as set forth in Subpart C of this part and measured in accordance with those procedures.

(i)(1) Any light-duty truck that a manufacturer wishes to certify for sale at low altitude must be capable of meeting high altitude emission standards (specified in paragraphs (e) through (h) of this section). The manufacturer may specify vehicle adjustments or modifications to allow the vehicle to meet high-altitude standards but these adjustments or modifications may not alter the vehicle's basic engine, inertia weight class, transmission configuration, and axle ratio.

(i) A manufacturer may certify unique configurations to meet the high-altitude standards but is not required to certify these vehicle configurations to meet the low-altitude standards.

(ii) Any adjustments or modifications that are recommended to be performed on vehicles to satisfy the requirements of paragraph (i)(1) of this section:

(A) Shall be capable of being effectively performed by commercial repair facilities, and

(B) Must be included in the manufacturer's application for certification.

(2) The manufacturer may exempt 19XX and later model year vehicles from compliance with the high-altitude emission standards set forth in paragraphs (e), (f) and (h) of this section if the vehicles are not intended for sale at high altitude and if the following requirements are met. A vehicle configuration shall only be considered eligible for exemption if the requirements of either paragraph (i)(2)(i), (ii), (iii), or (iv) of this section are met.

(i) Its design parameters (displacement-to-weight ratio) (D/W) and engine speed-to-vehicle-speed ratio (N/V)) fall within the exempted range for that manufacturer for that year. The exempted range is determined according to the following procedure:

(A) The manufacturer shall graphically display the D/W and N/V data of all vehicle configurations it will offer for the model year in question. The axis of the abscissa shall be D/W (where (D) is the engine displacement expressed in cubic centimeters and (W) is the gross vehicle weight (GVW) expressed in pounds), and the axis of the ordinate shall be N/V (share (N) is the crankshaft speed expressed in revolutions per minute and (V) is the vehicle speed expressed in miles per hour). At the manufacturer's option, either the 1:1 transmission gear ratio or the lowest numerical gear ratio available in the transmission will be used to determine N/V. The gear selection must be the same for all N/V data points on the manufacturer's graph. For each transmission/axle ratio combination, only the lowest N/V value shall be used in the graphical display.

(B) The product line is then defined by the equation $N/V=C(D/W)^{-0.9}$, where the constant, C, is determined by the requirement that all the vehicle data points either fall on the line or lie to the upper right of the line as displayed on the graphs.

(C) The exemption line is then defined by the equation, $N/V=C(0.84\ D/W)^{-0.9}$, where the constant, C is the same as that found in paragraph (i)(2)(i)(B) of this section.

(D) The exempted range includes all values of N/V and D/W which simultaneously fall to the lower left of the exemption line as drawn on the graph.

(ii) Its design parameters fall within the alternate exempted range for that manufacturer that year. The alternate exempted range is determined by substituting rated horsepower (hp) for displacement (D) in the exemption procedure described in paragraph (i)(2)(i) of this section and by using the product line $N/V=C(hp/W)^{-0.9}$.

(A) Rated horsepower shall be determined by using the Society of Automotive Engineers Test Procedure J 1349, or any subsequent version of that test procedure. Any of the horsepower determinants within that test procedure may be used, as long as it is used consistently throughout the manufacturer's product line in any model year.

(B) No exemptions will be allowed under paragraph (i)(2)(ii) of this section to any manufacturer that has exempted vehicle configurations as set forth in paragraph (i)(2)(i) of this section.

(iii) Its acceleration time (the time it takes a vehicle to accelerate from 0 to a speed not less than 40 miles per hour and not greater than 50 miles per hour) under high-altitude conditions is greater than the largest acceleration time under low-altitude conditions for that manufacturer for that year. The procedure to be followed in marking this determination is:

(A) The manufacturer shall list the vehicle configuration and acceleration time under low-altitude conditions of that vehicle configuration which has the highest acceleration time under low-altitude conditions of all the vehicle configurations it will offer for the model year in question. The manufacturer shall also submit a description of the methodology used to make this determination.

(B) The manufacturer shall then list the vehicle configurations and acceleration times under high-altitude conditions of all those vehicle configurations which have higher acceleration times under high altitude conditions than the highest acceleration time at low altitude identified in paragraph (i)(2)(iii)(A) of this section.

(iv) In lieu of performing the test procedure of paragraph (i)(2)(iii) of this section, its acceleration time can be estimated based on the manufacturer's engineering evaluation, in accordance with good engineering practice, to meet the exemption criteria of paragraph (i)(2)(iii) of this section.

(3) The sale of a vehicle for principal use at a designated high-altitude location that has been exempted as set forth in paragraph (i)(2) of this section will be considered a violation of section 203(a)(1) of the Clean Air Act.

8. A new § 86.XXX–10 is proposed to be added to Subpart A, to read as follows:

§ 86.XXX–10 Emission standards for 19XX and later model year gasoline-fueled heavy-duty engines and vehicles.

(a)(1) Exhaust emissions from new 19XX and later model year gasoline-fueled heavy-duty engines shall not exceed:

(i) For engines intended for use in all vehicles except as provided in paragraph (a)(3) of this paragraph.

(A) *Hydrocarbons.* 1.1 grams per brake horsepower-hour (0.41 gram per megajoule), as measured under transient operating conditions.

(B) *Carbon monoxide. (1)* 14.4 grams per brake horsepower-hour (5.36 grams per megajoule), as measured under transient operating conditions.

(2) Gasoline fueled heavy-duty engines utilizing aftertreatment technology. 0.50 percent of exhaust gas flow at curb idle.

(C) *Oxides of nitrogen. (1)* 6.0 grams per brake horsepower-hour (2.2 grams per megajoule), as measured under transient operating conditions.

(ii) For engines intended for use only in vehicles with a Gross Vehicle Weight Rating of greater then 14,000 pounds.

(A) *Hydrocarbons.* 1.9 grams per brake horsepower-hour (0.71 gram per megajoule), as measured under transient operating conditions.

(B) *Carbon Monoxide. (1)* 37.1 grams per brake hoursepower-hour (13.8 grams per megajoule), as measured under transient operating conditions.

(2) Gasoline fueled heavy-duty engines utilizing aftertreatment technology. 0.50 percent of exhaust gas flow at curb idle.

(C) *Oxides of nitrogen.* 6.0 grams per brake hoursepower-hour (2.2 grams per megajoule), as measured under transient operating conditions.

(2) The standards set forth in paragraph (a)(l) of this section refer to the exhaust emitted over the operating schedule set forth in paragraph (f)(1) of Appendix I to this part, and measured and calculated in accordance with the procedures set forth in Subpart N or P.

(3)(i) A manufacturer may certify one or more gasoline-fueled heavy-duty engine configurations intended for use in all vehicles to the emission standards set forth in paragraph (a)(1)(ii) of this paragraph: Provided, that the total

model year sales of such configuration(s) being certified to the emission standards in paragraph (a)(1)(ii) of this section represent no more than 5 percent of total model year sales of all gasoline-fueled heavy-duty engines intended for use in vehicles with a Gross Vehicle Weight Rating of up to 14,000 pounds by the manufacturer.

(ii) The configurations certified to the emission standards of paragraph (a)(1)(ii) of this section under the provisions of paragraph (a)(3)(i) of this section shall still be required to meet the evaporative emission standards set forth in paragraphs (b)(1)(i)(A) and (b)(2)(i) of this section.

(b)(1) Evaporative emissions from 19XX and later model year gasoline-fueled heavy-duty vehicles shall not exceed:

(i) *Hydrocarbons.* (A) For vehicles with a Gross Vehicle Weight Rating of up to 14,000 pounds, 3.0 grams per test.

(B) For vehicles with a Gross Vehicle Weight Rating of greater than 14,000 pounds, 4.0 grams per test.

(2)(i) For vehicles with a Gross Vehicle Weight Rating of up to 26,000 pounds, the standards set forth in paragraph (b)(1) of this section refer to a composite sample of evaporative emissions collected under the conditions set forth in Subpart M and measured in accordance with those procedures.

(ii) For vehicles with a Gross Vehicle Weight Rating of greater than 26,000 pounds, the standard set forth in paragraph (b)(1)(i)(B) of this section refers to the manufacturer's engineering design evaluation using good engineering practice (a statement of which is required in § 86.088–23(b)(4)(ii)).

(c) No crankcase emissions shall be discharged into the ambient atmosphere from any new 19XX or later model year gasoline-fueled heavy-duty engine.

(d)(1) Refueling emissions from 19XX and later model year gasoline-fueled heavy-duty vehicles shall not exceed:

Hydrocarbons. 0.10 gram per gallon (0.026 gram per liter) of fuel dispensed.

(2)(i) For vehicles with a Gross Vehicle Weight Rating of up to 26,000 pounds, the standard set forth in paragraph (d)(1) of this section refers to a sample of refueling emissions collected under conditions set forth in Subpart C of this part and measured in accordance with those procedures.

(ii) For vehicles with a Gross Vehicle Weight Rating of greater than 26,000 pounds, the standard set forth in paragraph (d)(1) of this section refers to the manufacturer's engineering design evaluation using good engineering practice (a statement of which is required in § 86.XXX–23(b)(4)(iv)).

(e) Every manufacturer of new motor vehicle engines subject to the standards prescribed in this section shall, prior to taking any of the actions specified in section 203(a)(1) of the Act, test or cause to be tested motor vehicle engines in accordance with applicable procedures in Subpart N or P of this part to ascertain that such test engines meet the requirements of paragraphs (a) and (c) of this section.

9. A new § 86.XXX–21 is proposed to be added to Subpart A, to read as follows:

§ 86.XXX–21 Application for certification.

(a) A separate application for a certificate of conformity shall be made for each set of standards (or family emission limits, as appropriate) and each class of new motor vehicles or new motor vehicle engines. Such application shall be made to the Administrator by the manufacturer and shall be updated and corrected by amendment.

(b) The application shall be in writing, signed by an authorized representative of the manufacturer, and shall include the following:

(1)(i) Identification and description of the vehicles (or engines) covered by the application and a description of their engine (vehicles only), emission control system and fuel system components. This shall include a detailed description of each auxiliary emission control device (AECD) to be installed in or on any certification test vehicle (or certification test engine).

(ii)(A) The manufacturer shall provide to the Administrator in the application for certification:

(*1*) A list of those parameters which are physically capable of being adjusted (including those adjustable parameters for which access is difficult) and that, if adjusted to settings other than the manufacturer's recommended setting, may affect emissions;

(*2*) A specification of the manufacturer's intended physically adjustable range of each such parameter, and the production tolerances of the limits or stops used to establish the physically adjustable range;

(*3*) A description of the limits or stops used to establish the manufacturer's intended physically adjustable range of each adjustable parameter, or any other means used to inhibit adjustment;

(*4*) The nominal or recommended setting, and the associated production tolerances, for each such parameter.

(B) The manufacturer may provide, in the application for certification, information relating to why certain parameters are not expected to be adjusted in actual use and to why the physical limits or stops used to establish the physically adjustable range of each parameter, or any other means used to inhibit adjustment, are expected to be effective in preventing adjustment of parameters on in-use vehicles to settings outside the manufacturer's intended physically adjustable ranges. This may include results of any tests to determine the difficulty of gaining access to an adjustment or exceeding a limit as intended or recommended by the manufacturer.

(C) The Administrator may require to be provided detailed drawings and descriptions of the various emission related components, and/or hardware samples of such components, for the purpose of making his determination of which vehicle or engine parameter will be subject to adjustment for new certification and Selective Enforcement Audit testing and of the physically adjustable range for each such vehicle or engine parameter.

(2) Projected U.S. sales data sufficient to enable the Administrator to select a test fleet representative of the vehicles (or engines) for which certification is requested. The sales data shall also include the altitude of intended sale for light-duty trucks.

(3) A description of the test equipment and fuel proposed to be used.

(4)(i)(A) For light-duty vehicles and light-duty trucks, a description of the test procedures to be used to establish the evaporative emission deterioration factors required to be determined and supplied in § 86.XXX–23(b)(2).

(B) For light-duty vehicles and light-duty trucks, a description of the test procedures to be used to establish the refueling emission deterioration factors required to be determined and supplied in § 86.XXX–23(b)(5).

(ii)(A) For gasoline-fueled heavy-duty vehicles, the Administrator does not assume that each evaporative emission family-evaporative emission control system combination or that each refueling emission family-refueling control system combination will deteriorate in a unique manner during the useful life of the vehicle.

(B) The manufacturer shall therefore identify those evaporative emission deterioration factors which shall be applied to the various evaporative emission family-evaporative emission control system combinations which are expected to exhibit similar deterioration characteristics during the useful life of the vehicle.

(C) The manufacturer shall also identify those refueling emission deterioration factors which shall be applied to the various refueling emission

family-refueling emission control system combinations which are expected to exhibit similar deterioration characteristics during the useful life of the vehicle.

(5)(i)(A) For light-duty vehicles, light-duty trucks, and heavy-duty engines, a description of the test procedures to be used to establish the durability data or the exhaust emission deterioration factors required to be determined and supplied in § 86.XXX–23(b)(1).

(B) A statement of the useful life of use of each light-duty truck engine family or heavy-duty engine family.

(C) For engine families provided an alternative useful-life period under paragraph (f) of this section, a statement of that alternative period and a brief synopsis of the justification.

(ii) For heavy-duty diesel engine families, a statement of the primary intended service class (light, medium, or heavy) and an explanation as to why that service class was selected. Each diesel engine family shall be certified under one primary intended service class only. After reviewing the guidance in § 86.085–2, the class shall be determined on the basis of which class best represents the majority of the sales of that engine family.

(iii)(A) A statement of recommended maintenance and procedures necessary to assure that the vehicles (or engines) covered by a certificate of conformity in operation conform to the regulations, and a description of the program for training of personnel for such maintenance, and the equipment required.

(B) A description of vehicle adjustments or modifications necessary, if any, to assure that light-duty vehicles and light-duty trucks covered by a certificate of conformity conform to the regulations while being operated at any altitude locations, and a statement of the altitude at which the adjustments or modifications apply.

(iv) At the option of the manufacturer, the proposed composition of the emission-data test fleet or (where applicable) the durability-data test fleet.

(v) For gasoline-fueled light-duty vehicles, light-duty trucks and heavy-duty engines, one of the following:

(A) For vehicles with non-integrated refueling emission control systems, the number of continuous UDDS miles, determined from the fuel economy on the UDDS of that refueling emission family-refueling emission control system combination, required to use a volume of fuel equal to 85% of fuel tank volume so as to purge the canister of refueling vapor.

(B) For vehicles with partially-integrated or fully-integrated refueling emission control systems, the number of continuous UDDS miles for that refueling emission family-refueling control system combination, required to purge the evaporative/refueling canister to a stabilized level.

(6)(i)(A) If the manufacturer elects to participate in the particulate averaging program for diesel light-duty vehicles and/or diesel light-duty trucks, the application must list the family particulate emission limit and the projected U.S. production volume of the family for the model year.

(B) The manufacturer shall choose the level of the family particulate emission limits, accurate to one-hundredth of a gram per mile.

(C) The manufacturer may at any time during production elect to change the level of any family diesel particulate emission limit(s) by submitting the new limit(s) to the Administrator and by demonstrating compliance with the limit(s) as described in § 86.085–2 and § 86.XXX–28(b)(5)(i).

(ii)(A) If the manufacturer elects to participate in the NO_x averaging program for light-duty trucks, the application must list the family NO_x emission limit and the projected U.S. production volume of the family for the model year.

(B) The manufacturer shall choose the level of the family NO_x emission limits, accurate to one-tenth of a gram per mile.

(C) The manufacturer may at any time during production elect to change the level of any family NOx emission limit(s) by submitting the new limits to the Administrator and by demonstrating compliance with the limit(s) as described in § 86.088–2 and § 86.XXX–28(b)(5)(ii).

(7)(i) For gasoline-fueled heavy-duty engines, the application must state whether the engine family is being certified for use in all vehicles regardless of their Gross Vehicle Weight Rating (see § 86.XXX–10(a)(1)(i) and (a)(3)(i)), or, only for use in vehicles with a Gross Vehicle Weight Rating greater than 14,000 pounds.

(ii) If the engine family is being certified for use in all vehicles and, is being certified to the emission standards applicable to gasoline-fueled heavy-duty engines for use only in vehicles with a Gross Vehicle Weight Rating over 14,000 pounds under the provisions of paragraph (a)(3) of § 86.XXX–10, then the application must also attest that the engine family, together with all other engine families being certified under the provisions of paragraph (a)(3) of § 86.XXX–10, represent no more than 5 percent of model year sales of the manufacturer of all gasoline-fueled heavy-duty engines for use in vehicles with Gross Vehicle Weight Ratings of up to 14,000 pounds.

(c) Complete copies of the application and of any amendments thereto, and all notifications under § 86.079–32, § 86.079–33, and § 86.082–34 shall be submitted in such multiple copies as the Administrator may require.

(d) Incomplete light-duty trucks shall have a maximum completed curb weight and maximum completed frontal area specified by the manufacturer.

(e) For gasoline-fueled heavy-duty vehicles the manufacturer shall specify a maximum nominal fuel tank capacity for each evaporative emission family-evaporative emission control system combination and for each refueling emission family-refueling emission control system combination.

(f) Light-duty truck and heavy-duty engine manufacturers who believe that the useful-life periods of § 86.085–2 are significantly unrepresentative for one or more engine families (either too long or too short), may petition the Administrator to provide an alternative useful-life period. This petition must include the full rationale behind the request together with any supporting data and other evidence. Based on this or other information the Administrator may assign an alternative useful-life period. Any petition should be submitted in a timely manner, to allow adequate time for a thorough evaluation.

10. A new § 86.XXX–23 is proposed to be added to Subpart A, to read as follows:

§ 86.XXX–23 Required data.

(a) The manufacturer shall perform the tests required by the applicable test procedures, and submit to the Administrator the following information: *Provided, however,* that if requested by the manufacturer, the Administrator may waive any requirement of this section for testing of vehicles (or engines) for which emission data are available or will be made available under the provisions of § 86.XXX–29.

(b)(1)(i) Exhaust emission durability data on such light-duty vehicles tested in accordance with applicable test procedures and in such numbers as specified, which will show the performance of the systems installed on or incorporated in the vehicle for extended mileage, as well as a record of all pertinent maintenance performed on the test vehicles.

(ii) Exhaust emission deterioration factors for light-duty trucks and heavy-duty engines and all test data that are derived from the testing described under § 86.XXX–21(b)(5)(i)(A) as well as a record of all pertinent maintenance.

Such testing shall be designed and conducted in accordance with good engineering practice to assure that the engines covered by a certificate issued under § 86.XXX–30 will meet the emission standards (or family emission limits, as appropriate) in § 86.XXX–9, § 86.XXX–10, or § 86.088–11 as appropriate, in actual use for the useful life of the engine.

(2) For light-duty vehicles and light-duty trucks, evaporative emission deterioration factors for each evaporative emission family-evaporative emission control system combination and all test data that are derived from testing described under § 86.XXX–21(b)(4)(i) designed and conducted in accordance with good engineering practice to assure that the vehicles covered by a certificate issued under § 86.XXX–30 will meet the evaporative emission standards in § 86.XXX–8 or § 86.XXX–9, as appropriate, for the useful life of the vehicle.

(3)(i) For gasoline-fueled heavy-duty vehicles, evaporative emission deterioration factors for each evaporative emission family-evaporative emission control system combination identified in accordance with § 86.XXX–21(b)(4)(ii). Furthermore, a statement that the test procedure(s) used to derive the deterioration factors includes, but need not be limited to, a consideration of the ambient effects of ozone and temperature fluctuations, and the service accumulation effects of vibration, time, and vapor saturation and purge cycling. The deterioration factor test procedure shall be designed and conducted in accordance with good engineering practice to assure that the vehicles covered by a certificate issued under § 86.XXX–30 will meet the evaporative emission standards in § 86.XXX–10 in actual use for the useful life of the vehicle/engine. Furthermore, a statement that a description of the test procedure, as well as all data, analyses and evaluations, is available to the Administrator upon request.

(ii) For gasoline-fueled heavy-duty vehicles with a Gross Vehicle Weight Rating of up to 26,000 pounds, a written statement to the Administrator certifying that the manufacturer's vehicles meet the evaporative emission standards of § 86.XXX–10 as determined by the provisions of § 86.XXX–28. Furthermore, a written statement to the Administrator that all data, analyses, test procedures, evaluations, and other documents, on which the above statement is based, are available to the Administrator upon request.

(iii) For gasoline fueled, heavy-duty vehicles with a Gross Vehicle Weight Rating of greater than 26,000 pounds, a written statement to the Administrator certifying that the manufacturer's evaporative emission control systems are designed, using good engineering practice, to meet the standards of § 86.XXX–10 as determined by the provisions of § 86.XXX–28. Furthermore, a written statement to the Administrator that all data, analyses, test procedures, evaluations, and other documents, on which the above statement is based, are available to the Administrator upon request.

(4)(i) For light-duty vehicles and light-duty trucks, refueling emission deterioration factors for each refueling emission family-refueling emission control system combination and all test data that are derived from testing described under Subpart C, designed and conducted in accordance with good engineering practice to assure that the vehicles covered by a certificate issued under § 86.XXX–30 will meet the refueling emission standards in § 86.XXX–8 emission or § 86.XXX–9, as appropriate, for the useful life of the vehicle.

(ii) For gasoline-fueled heavy-duty vehicles, refueling emission deterioration factors for each refueling emission family-refueling emission control system combination identified in accordance with § 86.XXX–21(b)(4)(ii). Furthermore, a statement that the test procedure(s) used to derive the deterioration factors includes, but need not be limited to, a consideration of the ambient effects of ozone and temperature fluctuations, and the service accumulation effects of vibration, time, and vapor saturation and purge cycling. The deterioration factor test procedure shall be designed and conducted in accordance with good engineering practice to assure that the vehicles covered by a certificate issued under § 86.XXX–30 will meet the refueling emission standards in § 86.XXX–10 in actual use for the useful life of the vehicle/engine. Furthermore, a statement that a description of the test procedure, as well as all data, analyses and evaluations, is available to the Administrator upon request.

(iii) For gasoline-fueled heavy-duty vehicles with a Gross Vehicle Weight Rating of up to 26,000 pounds, a written statement to the Administrator certifying that the manufacturer's vehicles meet the refueling emission standards of § 86.XXX–10 as determined by the provisions of § 86.XXX–28. Furthermore, a written statement to the Administrator that all data, analyses, test procedures, evaluations, and other documents, on which the above statement is based, are available to the Administrator upon request.

(iv) For gasoline-fueled, heavy-duty vehicles with a Gross Vehicle Weight Rating of greater than 26,000 pounds, a written statement to the Administrator certifying that the manufacturer's refueling emission control systems are designed, using good engineering practice, to meet the standards of § 86.XXX–10 as determined by the provisions of § 86.XXX–28. Furthermore, a written statement to the Administrator that all data, analyses, test procedures, evaluations, and other documents, on which the above statement is based, are available to the Administrator upon request.

(c) *Emission data.* (1) Emission data on such vehicles tested in accordance with applicable test procedures and in such numbers as specified. These data shall include zero-mile data, if generated, and emission data generated for certification as required under § 86.084–26(a)(3)(i) or § 86.084–26(a)(3)(ii).

(2) *Certification engines.* (i) Emission data on such engines tested in accordance with applicable emission test procedures of this subpart and in such numbers as specified. These data shall include zero-hour data, if generated, and emission data generated for certification as required under § 86.084–26(c)(4). In lieu of providing emission data on CO emissions from diesel certification engines the Administrator may, on request of the manufacturer, allow the manufacturer to demonstrate (on the basis of previous emission tests, development tests, or other information) that the engine will conform with the CO emission standard of § 86.088–11.

(ii) For heavy-duty diesel engines, a manufacturer may submit hot-start data only, in accordance with Subpart N, when making application for certification. However, for conformity SEA and recall testing by the Agency, both the cold-start and hot-start test data, as specified in Subpart N, will be included in the official results.

(d) A statement that the vehicles (or engines) for which certification is requested conform to the requirements in § 86.084–5(b), and that the descriptions of tests performed to ascertain compliance with the general standards in § 86.084–5(b), and the data derived from such tests, are available to the Administrator upon request.

(e)(1) A statement that the test vehicles (or test engines) with respect to which data are submitted to demonstrate compliance with the applicable standards (or family emission

limits, as appropriate) of this subpart are in all material respects as described in the manufacturer's application for certification, have been tested in accordance with the applicable test procedures utilizing the fuels and equipment described in the application for certification and that on the basis of such tests the vehicles (or engines) conform to the requirements of this part. If such statements cannot be made with respect to any vehicle (or engine) tested, the vehicle (or engine) shall be identified, and all pertinent data relating thereto shall be supplied to the Administrator. If, on the basis of the data supplied and any additional data as required by the Administrator, the Administrator determines that the test vehicle (or test engine) was not as described in the application for certification or was not tested in accordance with the applicable test procedures utilizing the fuels and equipment as described in the application for certification, the Administrator may make the determination that the vehicle (or engine) does not meet the applicable standards (or family emission limits, as appropriate). The provisions of § 86.XXX–30(b) shall then be followed.

(2) For evaporative emission durability, refueling emission durability, or light-duty truck or heavy-duty engine exhaust emission durability, a statement of compliance with paragraph (b)(1)(ii), (b)(2), (b)(3) or (b)(4) of this section, as applicable.

(3) For light-duty vehicle, light-duty truck, or heavy duty gasoline vehicle refueling certification, a statement that the drivedown (daily cyclic or continuous or both as appropriate) used to purge the refueling canister was the same as described in the manufacturers' application for certification. Furthermore, a description of the procedures used to determine the number of equivalent UDDS miles required to purge the refueling canisters, as determined by the provisions of § 86.XXX–21(b)(5)(v) and Subpart C. Furthermore, a written statement to the Administrator that all data, analyses, test procedures, evaluations and other documents, on which the above statement is based, are available to the Administrator upon request.

(f) Additionally, manufacturers participating in the diesel particulate averaging program shall submit:

(1) In the application for certification, a statement that the vehicles for which certification is requested will not, to the best of the manufacturer's belief, when included in the manufacturer's production-weighted average emission level, cause the applicable particulate standard(s) to be exceeded.

(2) No longer than 90 days after the end of a given model year of production of engine families included in the diesel particulate averaging program, the number of vehicles produced in each engine family at each certified family diesel particulate emission limit, along with the resulting production-weighted average particulate emission level.

(g) Additionally, manufacturers participating in the light-duty truck NO_x averaging program shall submit:

(1) In the application for certification, a statement that the vehicles for which certification is requested will not, to the best of the manufacturer's belief, when included in the manufacturer's production-weighted average emission level, cause the applicable NO_x standard(s) to be exceeded.

(2) No longer than 90 days after the end of a given model year of production of engine families included in the light-duty truck NO_x averaging program, the number of vehicles produced in each engine family at each certified family NO_x particulate emission limit, along with the resulting production-weighted average NO_x emission level.

11. A new § 86.XXX–24 is proposed to be added to subpart A to read as follows:

§ 86.XXX–24 Test vehicles and engines.

(a)(1) The vehicles or engines covered by an application for certification will be divided into groupings of engines which are expected to have similar emission characteristics throughout their useful lives. Each group of engines with similar emission characteristics shall be defined as a separate engine family.

(2) To be classed in the same engine family, engines must be identical in all the following respects:

(i) The cylinder bore center-to-center dimensions.

(ii)–(iii) [Reserved]

(iv) The cylinder block configuration (air cooled or water cooled; L–6, 90° V–8, etc.).

(v) The location of the intake and exhaust valves (or ports).

(vi) The method of air aspiration.

(vii) The combustion cycle.

(viii) Catalytic converter characteristics.

(ix) Thermal reactor characteristics.

(x) Type of air inlet cooler (e.g., intercoolers and after-coolers) for diesel heavy-duty engines.

(3)(i) Engines identical in all the respects listed in paragraph (a)(2) of this section may be further divided into different engine families if the Administrator determines that they may be expected to have different emission characteristics. This determination will be based upon a consideration of the following features of each engine:

(A) The bore and stroke.

(B) The surface-to volume ratio of the nominally dimensioned cylinder at the top dead center position.

(C) The intake manifold induction port size and configuration.

(D) The exhaust manifold port size configuration.

(E) The intake and exhaust valve sizes.

(F) The fuel system.

(G) The camshaft timing and ignition or injection timing characteristics.

(ii) Light-duty trucks and heavy-duty engines produced in different model years and distinguishable in the respects listed in paragraph (a)(2) of this section shall be treated as belonging to a single engine family if the Administrator requires it, after determining that the engines may be expected to have similar emission deterioration characteristics.

(4) Where engines are of a type which cannot be divided into engine families based upon the criteria listed in paragraphs (a) (2) and (3) of this section, the Administrator will establish families for those engines based upon those features most related to their emission characteristics. Engines that are eligible to be included in the same engine family based on the criteria in paragraphs (a)(2) and (3)(i) of this section may be further divided into different engine families if the manufacturer determines that they may be expected to have different emission characteristics. This determination will be based upon a consideration of the following features of each engine:

(i) The dimension from the center line of the crankshaft to the center line of the camshaft.

(ii) The dimension from the center line of the crankshaft to the top of the cylinder block head face.

(iii) The size of the intake and exhaust valves (or ports).

(5) The gasoline-fueled light-duty vehicles and light-duty trucks covered by an application for certification will be divided into groupings which are expected to have similar evaporative emission characteristics throughout their useful life. Each group of vehicles with similar evaporative emission characteristics shall be defined as a separate evaporative emission family.

(6) For gasoline-fueled light-duty vehicles and light-duty trucks to be classed in the same evaporative emission family, vehicles must be similar with respect to:

(i) Type of vapor storage device (*e.g.*, canister, air cleaner, crankcase).

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(ii) Basic canister design.
(iii) Fuel system.

(7) Where vehicles are of a type which cannot be divided into evaporative emission families based on the criteria listed above, the Administrator will establish families for those vehicles based upon the features most related to their evaporative emission characteristics.

(8)(i) If the manufacturer elects to participate in the Alternative Durability Program, the engine families covered by an application for certification shall be grouped based upon similar engine design and emission control system characteristics. Each of these groups shall constitute a separate engine family group.

(ii) To be classed in the same engine family group, engine families must contain engines identical in all of the following respects:

(A) The combustion cycle.

(B) The cylinder block configuration (air-cooled or water-cooled; L–6, V–8, rotary, etc.).

(C) Displacement (engines of different displacement within 50 cubic inches or 15 percent of the largest displacement and contained within a multidisplacement engine family will be included in the same engine family group).

(D) Catalytic converter usage and basic type (noncatalyst, oxidation catalyst only, three-way catalyst equipped).

(9) Engine families identical in all respects listed in paragraph (a)(8) of this section may be further divided into different engine family groups if the Administrator determines that they expected to have significantly different exhaust emission control system deterioration characteristics.

(10) A manufacturer may request the Administrator to include in an engine family group, engine families in addition to those grouped under the provisions of paragraph (a)(8) of this section. This request must be accompanied by the information the manufacturer believes supports the inclusion of these additional engine families.

(11) A manufacturer may combine into a single engine family group those light-duty vehicle and light-duty truck engine families which otherwise meet the requirement of paragraphs (a) (8) through (10) of this section.

(12) The gasoline-fueled heavy-duty vehicles covered by an application for certification will be divided into groupings of vehicles on the basis of physical features which are expected to affect evaporative emissions. Each group of vehicles with similar features shall be defined as a separate evaporative emission family.

(13) For gasoline-fueled heavy-duty vehicle to be classed in the same evaporative emission family, vehicles must be identical with respect to:

(i) Method of fuel/air metering (*i.e.*, carburetion versus fuel injection).

(ii) Carburetor bowl fuel volume, within a 10 cc range.

(14) For gasoline fueled heavy-duty vehicles to be classed in the same evaporative emission control system, vehicles must be identical with respect to:

(i) Method of vapor storage.
(ii) Method of carburetor sealing.
(iii) Method of air cleaner sealing.
(iv) Vapor storage working capacity, within a 20g range.
(v) Number of storage devices.
(vi) Method of purging stored vapors.
(vii) Method of venting the carburetor during both engine off and engine operation.
(viii) Liquid fuel hose material.
(ix) Vapor storage material.

(15) Where gasoline-fueled heavy-duty vehicles are types which cannot be divided into evaporative emission family-control system combinations based on the criteria listed above, the Administrator will establish evaporative emission family control system combinations for those vehicles based on features most related to their evaporative emission characteristics.

(16) The gasoline-fueled light-duty vehicles, gasoline-fueled light-duty trucks and gasoline-fueled heavy-duty vehicles covered by an application for certification will be divided into groupings which are expected to have similar refueling emission characteristics throughout their useful life. Each group of vehicles with similar refueling-emission characteristics shall be defined as a separate refueling emission family.

(17) For vehicles to be classified in the same refueling emission family, vehicles must be identical in all of the following respects:

(i) Type of control system—non-integrated, partially integrated, or fully integrated with the evaporative control system. Further, if the system is partially integrated, whether the diurnal or hot soak emissions are captured in the same storage device as the refueling emissions.

(ii) Basic canister design.

(A) Working capacity—grams adsorption within a 10g. range.

(B) System configuration—number of canisters and method of connection (i.e., series, parallel).

(iii) Fillpipe seal mechanism—mechanical, liquid trap, other.

(iv) Fill limiter system.

(v) Vapor control system or method of controlling vapor flow through the vapor line to the canister.

(18) Vehicles which differ in the parameters listed in § 86 XXX–24 (a)(17) above may be judged by EPA to be equivalent (i.e. belonging to the same refueling emission family) based on a review of data submitted to EPA by the manufacturer in support of a claim of vehicle equivalency.

(19) Vehicles will be classified as having the same refueling emission control system if they are identical in all of the following respects:

(i) Canister adsorptive material—type and size.

(ii) Canister configuration—purge and vent mechanism, open bottom, closed bottom.

(iii) Purge system configuration.

(A) Purge technique—controlled or uncontrolled.

(B) Method of control (e.g. electrical, vacuum).

(C) Conditioning of purge air (e.g. heated, dried).

(iv) Purge strategy (e.g., rate, schedule) and point of induction (e.g., carburetor, intake manifold, air cleaner).

(v) Vapor/liquid separator usage.

(20) Vehicles which differ in the parameters listed in § 86.XXX–24(a)(19) above may be judged by EPA to be essentially equivalent (i.e., having the same refueling emission control system) based on a review of data submitted to EPA by the manufacturer in support of a claim of equivalency.

(b) Emission data:

(1) *Emission-data vehicles.* Paragraph (b)(1) of this section applies to light-duty vehicle and light-duty truck emission-data vehicles.

(i) Vehicles will be chosen to be operated and tested for emission data based upon engine family, one test vehicle will be selected based on the following criteria: The Administrator shall select the vehicle with the heaviest equivalent test weight (including options) within the family. Then within that vehicle the Administrator shall select, in the order listed, the highest road-load power, largest displacement, the transmission with the highest numerical final gear ratio (including overdrive), the highest numerical axle ratio offered in that engine family and the maximum fuel flow calibration.

(ii) The Administrator shall select one additional test vehicle from within each engine family. The vehicle selected shall be the vehicle expected to exhibit the highest emissions of those vehicles remaining in the engine family. If all vehicles within the engine family are

similar the Administrator may waive the requirements of this paragraph.

(iii) Within an engine family and exhaust emission control system, the manufacturer may alter any emission-data vehicle (or other vehicles such as including current or previous model year emission-data vehicles, fuel economy data vehicles, and development vehicles provided they meet emission data vehicles' protocol) to represent more than one selection under paragraph (b)(1) (i), (ii), (iv), or (vii) of this section.

(iv) If the vehicles selected in accordance with paragraphs (b)(1) (i) and (ii) of this section do not represent each engine-system combination, then one vehicle of each engine-system combination not represented will be selected by the Administrator. The vehicle selected shall be the vehicle expected to exhibit the highest emissions of those vehicles remaining in the engine family.

(v) For high-altitude exhaust emission compliance for each engine family, the manufacturer shall follow one of the following procedures:

(A) The manufacturer will select for testing under high-altitude conditions the vehicle expected to exhibit the highest emissions from the nonexempt vehicles selected in accordance with paragraphs (b)(1) (ii), (iii), and (iv) of this section or,

(B) In lieu of testing vehicles according to paragraph (b)(1)(v)(A) of this section, a manufacturer may provide a statement in its application for certification that, based on the manufacturer's engineering evaluation of such high-altitude emission testing as the manufacturer deems appropriate,

(*1*) That all light-duty vehicles not exempt under § 86.XXX–8(h) comply with the emission standards at high altitude, and

(*2*) That light-duty trucks sold for principal use at designated high-altitude locations comply with the high altitude emission requirements, and that all light-duty trucks sold at low altitude, which are not exempt under § 86.XXX–9(g)(2), are capable of being modified to meet high-altitude standards.

(vi) If 90 percent or more of the engine family sales will be in California, a manufacturer may substitute emission-data vehicles selected by the California Air Resources Board criteria for the selections specified in paragraphs (b)(1)(i), (b)(1)(ii), and (b)(1)(iv) of this section.

(vii)(A) Vehicles of each evaporative emission family will be divided into evaporative emission control systems.

(B) The Administrator will select the vehicle expected to exhibit the highest evaporative emissions, from within each evaporative family to be certified, from among the vehicles represented by the exhaust emission-data selections for the engine family, unless evaporative testing has already been completed on the vehicle expected to exhibit the highest evaporative emissions for the evaporative family as part of another engine family's testing.

(C) If the vehicles selected in accordance with paragraph (b)(1)(vii)(B) of this section do not represent each evaporative emission control system then the Administrator will select the highest expected evaporative emission vehicle from within the unrepresented evaporative system.

(viii) For high-altitude evaporative emission compliance for each evaporative emission family, the manufacturer shall follow one of the following procedures:

(A) The manufacturer will select for testing under high-altitude conditions the one nonexempt vehicle previously selected under paragraph (b)(1)(vii)(B) or (C) of this section which is expected to have the highest level of evaporative emissions when operated at high altitude, or

(B) In lieu of testing vehicles according to paragraph (A) of this section, a manufacturer may provide a statement in its application for certification that based on the manufacturer's engineering evaluation of such high-altitude emission testing as the manufacturer deems appropriate,

(*1*) That all light-duty vehicles not exempt under § 86.XXX–8(h) comply with the emission standards at high altitude, and

(*2*) That light-duty trucks sold for principal use at designated high-altitude locations comply with the high-altitude emission requirements, and that all light-duty trucks sold at low altitude, which are not exempt under § 86.XXX–9(g)(2), are capable of being modified to meet high-altitude standards.

(ix) Vehicles selected under paragraph (b)(1)(v)(A) of this section may be used to satisfy the requirements of (b)(1)(viii)(A) of this section.

(x)(A) Vehicles of each refueling emission family will be divided into refueling emission control systems.

(B) The Administrator will select the vehicle expected to exhibit the highest refueling emissions from within each refueling family to be certified from among the vehicles represented by exhaust emission-data selections for the engine family, unless refueling emission testing has already been completed on the vehicle expected to exhibit the highest refueling emission for the refueling family as part of another engine family testing.

(C) If the vehicles selected in accordance with paragraph (b)(1)(xi)(B) of this section do not represent each refueling emission control system, then the Administrator will select the highest expected refueling emission vehicle from within the unrepresented system.

(xi) For high-altitude refueling emission compliance for each refueling emission family, the manufacturer shall follow one of the following procedures:

(A) The manufacturer will select for testing under high-altitude conditions the one nonexempt vehicle previously selected under paragraph (b)(1)(x)(B) or (C) of this section which is expected to have the highest level of refueling emissions when operated at high altitude or

(B) In lieu of testing vehicles according to paragraph (A) of this section, a manufacturer may provide a statement in its application for certification that based on the manufacturer's engineering evaluation of such high-altitude emission testing as the manufacturer deems appropriate,

(*1*) That all light-duty vehicles not exempt under § 86.XXX–8(i) comply with the emission standards at high altitude, and

(*2*) That light-duty trucks sold for principal use at designated high altitude locations comply with the high-altitude emission requirements, and that all light-duty trucks sold at low altitude, which are not exempt under § 86.XXX–9(g)(2), are capable of being modified to meet high altitude standards.

(xii) Vehicles selected under paragraphs (b)(1)(v)(A) or (b)(1)(vii)(A) of this section may be used to satisfy the requirements of (b)(1)(xi)(A) of this section.

(xiii) *(Light-Duty Trucks Only):* (A) The manufacturer may reconfigure any of the low-altitude emission-data vehicles to represent the vehicle configuration required to be tested at high altitude.

(B) The manufacturer is not required to test the reconfigured vehicle at low altitude.

(2) *Gasoline-fueled heavy-duty emission-data engines.* Paragraph (b)(2) of this section applies to gasoline fueled heavy-duty engines.

(i)–(ii) [Reserved]

(iii) The Administrator shall select a maximum of two engines within each engine family based upon features indicating that they may have the highest emission levels of the engine in the engine family as follows:

(A) The Administrator shall select one emission-data engine first based on the largest displacement within the engine family. Then within the largest

displacement the Administrator shall select, in order listed, highest fuel flow at the speed of maximum rated torgue, the engine with the most advanced spark timing, largest evaporative and/or refueling emissions canister, no EGR or lowest actual flow air pump.

(B) The Administrator shall select one additional engine, from within each engine family. The engine selected shall be the engine expected to exhibit the highest emissions of those engines remaining in the engine family. If all engines within the engine family are similar the Administrator may waive the requirements of this paragraph.

(iv) If the engines selected in accordance with paragraphs (b)(2) (ii) and (iii) of this section do not represent each engine displacement-exhaust emission control system combination, then one engine of each engine displacement-exhaust emission control system combination not represented shall be selected by the Administrator.

(v) Within an engine family/displacement/control system combination, the manufacturer may alter any emission-data engine (or other engine including current or previous model year emission-data engines and development engines provided they meet the emission-data engines' protocol) to represent more than one selection under paragraph (b)(2)(iii) of this section.

(3) *Diesel heavy-duty emission-data engines.* Paragraph (b)(3) of this section applies to diesel heavy-duty emission-data vehicles.

(i) Engines will be chosen to be run for emission data based upon engine family groupings. Within each engine family, the requirements of this paragraph must be met.

(ii) Engines of each engine family will be divided into groups based upon their exhaust emission control systems. One engine of each engine system combination shall be run for smoke emission data and gaseous emission data (including data for particulate matter). Either the complete gaseous emission test or the complete smoke test may be conducted first. Within each combination, the engine that features the highest fuel feed per stroke, primarily at the speed of maximum rated torgue and secondarily at rated speed, will usually be selected. If there are military engines with higher fuel rates than other engines in the same engine system combinations, then one military engine shall also be selected. The engine with the highest fuel feed per stroke will usually be selected.

(iii) The Administrator may select a maximum of one additional engine within each engine-system combination based upon features indicating that it may have the highest emission levels of the engines of that combination. In selecting this engine, the Administrator will consider such features as the injection system, fuel system, compression ratio, rated speed, rated horsepower, peak torgue speed, and peak torgue.

(iv) Within an engine family control system combination, the manufacturer may alter any emission-data engine (or other engine such as including current or previous model year emission-data engines and development engines provided they meet the emission-data engines protocol) to represent more than one selection under paragraphs (b)(3) (ii) and (iii) of this section.

(c) *Durability data*—(1) *Light-duty vehicle durability-data vehicles.* Paragraph (c)(1) of this section applies to light-duty vehicle durability-data vehicles.

(i) A durability-data vehicle will be selected by the Administrator to represent each engine-system combination. The vehicle selected shall be of the engine displacement with the largest projected sales volume of vehicles with that control-system combination in that engine family and will be designated by the Administrator as to transmission type, fuel system, inertia weight class, and test weight.

(ii) A manufacturer may elect to operate and test additional vehicles to represent any engine-system combination. The additional vehicles must be of the same engine displacement, transmission type, fuel system and inertia weight class as the vehicle selected for that engine-system combination in accordance with the provisions of the paragraph (c)(1)(i) of this section. Notice of an intent to operate and test additional vehicles shall be given to the Administrator no later than 30 days following notification of the test fleet selection.

(2) *Light-duty trucks.* Paragraph (c)(2) of this section applies to vehicles, engines, subsystems, or components used to establish exhaust emissions deterioration factors for light-duty trucks.

(i) The manufacturer shall select the vehicles, engines, subsystems, or components to be used to determine exhaust emission deterioration factors for each engine-family control system combination. Whether vehicles, engines, subsystems, or components are used, they shall be selected so that their emissions deterioration characteristics may be expected to represent those of in-use vehicles, based on good engineering judgement.

(3) *Heavy-duty engines.* Paragraph (c)(3) of this section applies to engines, subsystems, or components used to establish exhaust emission deterioration factors for heavy-duty engines.

(i) The manufacturer shall select the engines, subsystems, or components to be used to determine exhaust emission deterioration factors for each engine-family control system combination. Whether engines, subsystems, or components are used, they shall be selected so that their emissions deterioration characteristics may be expected to represent those of in-use engines, based on good engineering judgement.

(d) For purposes of testing under § 86.084–26 (a)(9) or (b)(11), the Administrator may require additional emission-data vehicles (or emission-data engines) and durability data vehicles (light-duty vehicles only) identical in all material respects to vehicles (or engines) selected in accordance with paragraphs (b) and (c) of this section, provided, that the number of vehicles (or engines) selected shall not increase the size of either the emission-data fleet by more than 20 percent or one vehicle (or engine), whichever is greater.

(e)(1) Any manufacturer whose projected sales for the model year in which certification is sought is less than:

(i) 2,000 gasoline-fueled light-duty vehicles, or

(ii) 2,000 diesel light-duty vehicles, or

(iii) 2,000 gasoline-fueled light-duty trucks, or

(iv) 2,000 diesel light-duty trucks, or

(v) 2,000 gasoline-fueled heavy-duty engines, or

(vi) 2,000 diesel heavy-duty engines, may request a reduction in the number of test vehicles (or engines) determined in accordance with the foregoing provisions of this section. The Administrator may agree to such lesser number as he determines would meet the objectives of this procedure.

(2) Any manufacturer may request to certify engine families with combined total sales of fewer than 10,000 light-duty vehicles, light-duty trucks, and heavy-duty engines utilizing assigned deterioration factors prescribed by the Administrator. The assigned deterioration factors shall be applied only to entire engine families.

(f) In lieu of testing an emission-data or durability vehicle (or engine) selected under paragraph (b) or (c) of this section, and submitting data therefor, a manufacturer may, with the prior written approval of the Administrator, submit exhaust emission data, evaporative emission data and/or

refueling emission data, as applicable on a similar vehicle (or engine) for which certification has been obtained or for which all applicable data required under § 86.XXX–23 has previously been submitted.

(g)(1) This paragraph applies to light-duty vehicles and light-duty trucks, but does not apply to the production vehicles selected under paragraph (h) of this section.

(2)(i) Where it is expected that more than 33 percent of a carline, within an engine-system combination, may be equipped with an item (whether that item is standard equipment or an option), the full estimated weight of that item shall be included in the curb weight computation of each vehicle available with that item in that carline, within that engine-system combination.

(ii) When it is expected that 33 percent or less of the carline, within an engine-system combination, will be equipped with an item (whether that item is standard equipment or an option) no weight for that item will be added in computing the curb weight for any vehicle in the carline, within that engine-system combination, unless that item is standard equipment on the vehicle.

(iii) In the case of mutually exclusive options, only the weight of the heavier option will be added in computing the curb weight.

(iv) Optional items weighing less than three pounds per item need not be considered.

(3)(i) Where it is expected that more than 33 percent of a carline, within an engine-system combination, will be equipped with an item (whether that item is standard equipment or an option) that can reasonably be expected to influence emissions, then such items shall actually be installed (unless excluded under paragraph (g)(3)(ii) of this section) on all emission-data and durability-data vehicles of that carline, within that engine-system combination, on which the items are intended to be offered in production. Items that can reasonably be expected to influence emissions are: Air conditioning, power steering, power brakes, and other items determined by the Administrator.

(ii) If the manufacturer determines by test data or engineering evaluation that the actual installation of the optional equipment required by paragraph (g)(3)(i) of this section does not affect the emissions or fuel economy values, the optional equipment need not be installed on the test vehicle.

(iii) The weight of the options shall be included in the design curb weight and also be represented in the weight of the test vehicles.

(iv) The engineering evaluation, including any test data, used to support the deletion of optional equipment from the test vehicles, shall be maintained by the manufacturer and shall be made available to the Administrator upon request.

(4) Where it is expected that 33 percent or less of a carline within an engine-system combination will be equipped with an item (whether that item is standard equipment or an option) that can reasonably be expected to influence emissions, that item shall not be installed on any emission-data vehicle or durability-data vehicle of that carline, within that engine-system combination, unless that item is standard equipment on that vehicle or specifically required by the Administrator.

(h) *Alternative Durability Program durability-data vehicles.* This section applies to light-duty vehicle and light-duty truck durability-data vehicles selected under the Alternative Durability Program described in § 86.085–13.

(1) In order to update the durability data to be used to determine a deterioration factor for each engine family group, the Administrator will select durability-data vehicles from the manufacturer's production line. Production vehicles will be selected from each model year's production for those vehicles certified using the Alternative Durability Program procedures.

(i) The Administrator shall select the production durability-data vehicle designs from the designs that the manufacturer offers for sale. For each model year and for each engine family group, the Administrator may select production durability-data vehicle designs of equal number to the number of engine families within the engine family group, up to a maximum of three vehicles.

(ii) The production durability-data vehicles representing the designs selected in paragraph (h)(1)(i) of this section will be randomly selected from the manufacturer's production. The Administrator will make these random selections unless the manufacturer (with prior approval of the Administrator) elects to make the random selections.

(iii) The manufacturer may select additional production durability-data vehicle designs from within the engine family group. The production durability-data vehicles representing these designs shall be randomly selected from the manufacturer's production in accordance with paragraph (h)(1)(ii) of this section.

(iv) For each production durability-data vehicle selected under paragraph (h)(1) of this section, the manufacturer shall provide to the Administrator (before the vehicle is tested or begins service accumulation) the vehicle identification number. Before the vehicle begins service accumulation the manufacturer shall also provide the Administrator with a description of the durability-data vehicle as specified by the Administrator.

(v) In lieu of testing a production durability-data vehicle selected under paragraph (h)(1) of this section, and submitting data therefor, a manufacturer may, with the prior written approval of the Administrator, submit exhaust emission data from a production vehicle of the same configuration for which all applicable data has previously been submitted.

(2) If, within an existing engine family group, a manufacturer requests to certify vehicles of a new design, engine family, emission control system, or with any other durability-related design difference, the Administrator will determine if the existing engine family group deterioration factor is appropriate for the new design. If the Administrator cannot make this determination or deems the deterioration factor not appropriate, the Administrator shall select preproduction durability-data vehicles under the provisions of paragraph (c) of this section. If vehicles are then certified using the new design, the Administrator may select production vehicles with the new design under the provisions of paragraph (h)(1) of this section.

(3) If a manufacturer requests to certify vehicles of a new design that the Administrator determines are a new engine family group, the Administrator shall select preproduction durability-data vehicles under the provisions of paragraph (c) of this section. If vehicles are then certified using the new design, the Administrator may select production vehicles of that design under the provisions of paragraph (h)(1) of this section.

12. A new § 86.XXX–25 is proposed to be added to Subpart A, to read as follows:

§ 86.XXX–25 Maintenance.

(a) *Applicability.* This section applies to light-duty vehicles, light-duty trucks, and heavy-duty engines.

(1) Maintenance performed on vehicles, engines, subsystems, or components used to determine exhaust, evaporative or refueling emission deterioration factors is classified as either emission-related or non-emission-

related and each of these can be classified as either scheduled or unscheduled. Further, some emission-related maintenance is also classified as critical emission-related maintenance.

(b) This section specifies emission-related scheduled maintenance for purposes of obtaining durability data and for inclusion in maintenance instructions furnished to purchasers of new motor vehicles and new motor vehicle engines under § 86.087–38.

(1) All emission-related scheduled maintenance for purposes of obtaining durability data must occur at the same mileage intervals (or equivalent intervals if engines, subsystems, or components are used) that will be specified in the manufacturer's maintenance instructions furnished to the ultimate purchaser of the motor vehicle or engine under § 86.XXX–35. This maintenance schedule may be updated as necessary throughout the testing of the vehicle/engine provided that no maintenance operation is deleted from the maintenance schedule after the operation has been performed on the test vehicle or engine.

(2) Any emission-related maintenance which is performed on vehicles, engines, subsystems, or components must be technologically necessary to assure in-use compliance with the emission standards. The manufacturer must submit data which demonstrate to the Administrator that all of the emission-related scheduled maintenance which is to be performed is technologically necessary. Scheduled maintenance must be approved by the Administrator prior to being performed or being included in the maintenance instructions provided to purchasers under § 86.087–38. As provided below, EPA has determined that emission-related maintenance at shorter intervals than that outlined in paragraphs (b)(3) and (b)(4) of this section is not technologically necessary to ensure in-use compliance. However, the Administrator may determine that maintenance even more restrictive (*e.g.*, longer intervals) than that listed in paragraphs (b)(3) and (b)(4) of this section is also not technologically necessary.

(3) For gasoline-fueled light-duty vehicles, light-duty trucks and heavy-duty engines, emission-related maintenance in addition to, or at shorter intervals than, the following will not be accepted as technologically necessary, except as provided in paragraph (b)(7) of this section.

(i)(A) The cleaning or replacement of light-duty vehicle or light-duty truck spark plugs at 30,000 miles of use and at 30,000-mile intervals thereafter.

(B) The cleaning or replacement of gasoline-fueled heavy-duty engine spark plugs at 12,000 miles (or 360 hours) of use and at 12,000-mile (or 360-hour) intervals thereafter, for engines certified for use with leaded fuel.

(C) The cleaning or replacement of gasoline-fueled heavy-duty engine spark plugs at 25,000 miles (or 750 hours) of use and at 25,000-mile intervals (or 750-hour) intervals thereafter, for engines certified for use with unleaded fuel only.

(ii) For light-duty vehicles, the adjustment, cleaning, repair, or replacement of the following may not be performed within the 50,000-mile useful life of the vehicle:

(A) Positive crankcase ventilation valve.

(B) Emission-related hoses and tubes.

(C) Ignition wires.

(D) Carburetors (including idle mixture).

(E) Catalytic converter.

(F) Exhaust gas recirculation system (including all related filters and control valves).

(G) Air injection system components.

(H) Fuel injectors.

(I) Electronic engine control unit and its associated sensors (including oxygen sensor) and actuators.

(J) Evaporative and refueling emission canister(s).

(K) Turbochargers.

(L) Fillpipe seal for refueling emission control.

(M) Evaporative and refueling emission purge control valves and related or similar hardware.

(N) Refueling emission vapor control valve(s) and related or similar hardware.

(iii) For light-duty trucks and heavy-duty engines, the adjustment, cleaning, repair, or replacement of the following at 50,000 miles (or 1,500 hours) of use and at 50,000-mile (or 1,500-hour) intervals thereafter:

(A) Positive crankcase ventilation valve.

(B) Emission-related hoses and tubes.

(C) Ignition wires.

(D) Idle mixture.

(iv) For light-duty trucks and heavy duty engines, the adjustment, cleaning, repair, or replacement of the following at 80,000 miles (or 2,400 hours) of use and at 80,000-mile (or 2,400 hour) intervals thereafter:

(A) Oxygen sensor.

(v) For light-duty trucks and heavy-duty engines, the adjustment, cleaning, repair, or replacement of the following at 100,000 miles (or 3,000 hours) of use and at 100,000-mile (or 3,000 hour) intervals thereafter:

(A) Catalytic converter.

(B) Air injection system components.

(C) Fuel injectors.

(D) Electronic engine control unit and its associated sensors (except oxygen sensor) and actuators.

(E) Evaporative and refueling emission canister(s).

(F) Turbochargers.

(G) Carburetor(s).

(H) Fillpipe seal for refueling emissions control.

(I) Evaporative and refueling emission purge control valves and related or similar hardware.

(J) Refueling emissions vapor control valve(s) and related or similar hardware.

(vi)(A) For heavy-duty engines certified for use with leaded fuel, the adjustment, cleaning, repair, or replacement of the exhaust gas recirculation (EGR) system (including all related filters and control valves) at 24,000 miles (or 720 hours) of use and at 24,000-mile (or 720-hour) intervals thereafter.

(B) For light-duty trucks, and for heavy-duty engines certified for use with unleaded fuel only, the adjustment, cleaning, repair, or replacement of the EGR system (including all related filters and control valves) at 50,000 miles (or 1,500 hours) of use and at 50,000-mile (or 1,500-hour) intervals thereafter.

(4) For diesel powered light-duty vehicles, light-duty trucks, and heavy-duty engines, emission-related maintenance in addition to, or at shorter intervals than, the following will not be accepted as technologically necessary, except as provided in paragraph (b)(7) of this section.

(i) For light-duty vehicles, the adjustment, cleaning, repair, or replacement of the following may not be performed within the 50,000-mile useful life of the vehicle:

(A) Exhaust gas recirculation system (including all related filters and control valves).

(B) Positive crankcase ventilation valve.

(C) Fuel injectors.

(D) Turbocharger.

(E) Electronic engine control unit and its associated sensors and actuators.

(F) Particulate trap or trap-oxidizer system (including related components).

(ii) For light-duty trucks and heavy-duty engines, the adjustment, cleaning, repair, or replacement of the following at 50,000 miles (or 1,500 hours) of use and at 50,000-mile (or 1,500-hour) intervals thereafter:

(A) Exhaust gas recirculation system (including all related filters and control valves).

(B) Positive crankcase ventilation valve.

(C) Fuel injector tips (cleaning *only*).

(iii) The following maintenance at 100,000 miles (or 3,000 hours) of use and at 100,000-mile (or 3,000-hour) intervals thereafter for light-duty trucks and light heavy-duty engines, or, at 150,000 miles (or 4,500 hours) of use and at 150,000-mile (or 4,500-hour) intervals thereafter for medium and heavy heavy-duty engines: The adjustment, cleaning, repair, or replacement of

(A) Fuel injectors.

(B) Turbocharger.

(C) Electronic engine control unit and its associated sensors and actuators.

(D) Particulate trap or trap-oxidizer system (including related components).

(5) [Reserved]

(6)(i) The following components are currently defined as critical emission-related components:

(A) Catalytic converter.

(B) Air injection system components.

(C) Electronic engine control unit and its associated sensors (including oxygen sensor if installed) and actuators.

(D) Exhaust gas recirculation system (including all related filters and control valves).

(E) Positive crankcase ventilation valve.

(F) Evaporative emission control system components (excluding canister air filter).

(G) Particulate trap or trap-oxidizer system.

(H) Refueling emission control system components.

(ii) All critical emission-related scheduled maintenance must have a reasonable likelihood of being performed in-use. The manufacturer shall be required to show the reasonable likelihood of such maintenance being performed in-use, and such showing shall be made prior to the performance of the maintenance on the durability data vehicle. Critical emission-related scheduled maintenance items which satisfy one of the following conditions will be accepted as having a reasonable likelihood of the maintenance item being performed in-use:

(A) Data are presented which establish for the Administrator a connection between emissions and vehicle performance such that as emissions increase due to lack of maintenance, vehicle performance will simultaneously deteriorate to a point unacceptable for typical driving.

(B) Survey data are submitted which adequately demonstrate to the Administrator that, at an 80 percent confidence level, 80 percent of such engines already have this critical maintenance item performed in-use at the recommended interval(s).

(C) A clearly displayed visible signal system approved by the Administrator is installed to alert the vehicle driver that maintenance is due. A signal bearing the message "maintenance needed" or "check engine," or a similar message approved by the Administrator, shall be actuated at the appropriate mileage point or by component failure. This signal must be continuous while the engine is in operation, and not be easily eliminated without performance of the required maintenance. Resetting the signal shall be a required step in the maintenance operation. The method for resetting the signal system shall be approved by the Administrator.

(D) A manufacturer may desire to demonstrate through a survey that a critical maintenance item is likely to be performed without a visible signal on a maintenance item for which there is no prior in-use experience without the signal. To that end, the manufacturer may in a given model year market up to 200 randomly selected vehicles per critical emission related maintenance item without such visible signals, and monitor the performance of the critical maintenance item by the owners to show compliance with paragraph (b)(6)(ii)(B) of this section. This option is restricted to two consecutive model years and may not be repeated until any previous survey has been completed. If the critical maintenance involves more than one engine family, the sample will be sales weighted to ensure that it is representative of all the families in question.

(E) The manufacturer provides the maintenance free of charge, and clearly informs the customer that the maintenance is free in the instructions provided under § 86.087–38.

(F) Any other method which the Administrator approves as establishing a reasonable likelihood that the critical maintenance will be performed in-use.

(iii) Visible signal systems used under paragraph (b)(6)(ii)(C) of this section are considered an element of design of the emission control system. Therefore, disabling, resetting, or otherwise rendering such signals inoperative without also performing the indicated maintenance procedure is a prohibited act under section 203(a)(3) of the Clean Air Act, as amended in August 1977 (42 U.S.C. 7522(a)(3)).

(7) *Changes to scheduled maintenance.*

(i) For maintenance practices that existed prior to the 1980 model year, only the maintenance items listed in paragraphs (b)(3) and (b)(4) of this section are currently considered by EPA to be emission-related. The Administrator may, however, determine additional scheduled maintenance items that existed prior to the 1980 model year to be emission-related by announcement in a **Federal Register** Notice. In no event may this notification occur later than September 1 of the calendar year two years prior to the affected model year.

(ii) In the case of any new scheduled maintenance, the manufacturer must submit a request for approval to the Administrator for any maintenance that it wishes to recommend to purchasers and perform during durability determination. New scheduled maintenance is that maintenance which did not exist prior to the 1980 model year, including that which is a direct result of the implementation of new technology not found in production prior to the 1980 model year. The manufacturer must also include its recommendations as to the category (*i.e.*, emission-related or non-emission related, critical or non-critical) of the subject maintenance and, for suggested emission-related maintenance, the maximum feasible maintenance interval. Such requests must include detailed evidence supporting the need for the maintenance requested, and supporting data or other substantiation for the recommended maintenance category and for the interval suggested for emission-related maintenance. Requests for new scheduled maintenance must be approved prior to the introduction of the new maintenance. The Administrator will then designate the maintenance as emission-related or non-emission related. For maintenance items established as emission-related, the Administration will further designate the maintenance as critical if the component which receives the maintenance is a critical component under paragraph (b)(6) cf this section. For each maintenance item designated as emission-related, the Administrator will also establish a technologically necessary maintenance interval, based on industry data and any other information available to EPA. Designations of emission-related maintenance items, along with their identification as critical or non-critical, and establishment of technologically necessary maintenance intervals, will be announced in the **Federal Register**.

(iii) Any manufacturer may request a hearing on the Administrator's determinations in paragraph (b)(7) of this section. The request shall be in writing, signed by an authorized representative of the manufacturer, and shall include a statement specifying the manufacturer's objections to the Administrator's determinations, and data in support of such objections. If,

after review of the request and supporting data, the Administrator finds that the request raises a substantial factual issue, he shall provide the manufacturer a hearing in accordance with § 86.078–6 with respect to such issue.

(c) Non-emission-related scheduled maintenance which is reasonable and technologically necessary (*e.g.*, oil change, oil filter change, fuel filter change, air filter change, cooling system maintenance, adjustment of idle speed, governor, engine bolt torque, valve lash, injector lash, timing, etc.) may be performed on durability-data vehicles at the intervals recommended by the manufacturer to the ultimate purchaser.

(d) *Unscheduled maintenance on light-duty durability data vehicles.*

(1) Unscheduled maintenance may be performed during the testing used to determine deterioration factors, except as provided in paragraph (d)(2) and (d)(3) of this section, only under the following provisions:

(i) A fuel injector or spark plug may be changed if a persistent misfire is detected.

(ii) Readjustment of a gasoline-fueled vehicle cold-start enrichment system may be performed if there is a problem of stalling.

(iii) Readjustment of the engine idle speed (curb idle and fast idle) may be performed in addition to that performed as scheduled maintenance under paragraph (c) of this section, if the idle speed exceeds the manufacturer's recommended idle speed by 300 rpm or more, or if there is a problem of stalling.

(2) Any other unscheduled vehicle, emission control system, or fuel system adjustment, repair, removal, disassembly, cleaning, or replacement during testing to determine deterioration factors shall be performed only with the advance approval of the Administrator. Such approval will be given if the Administrator:

(i) Has made a preliminary determination that the part failure or system malfunction, or the repair of such failure or malfunction, does not render the vehicle or engine unrepresentative of vehicles or engines in-use, and does not require direct access to the combustion chamber, except for spark plug, fuel injection component, or removable prechamber removal or replacement; and,

(ii) Has made a determination that the need for maintenance or repairs is indicated by an overt indication of malfunction such as persistent misfiring, engine stalling, overheating, fluid leakage, loss of oil pressure, excessive fuel consumption or excessive power loss. The Administrator shall be given the opportunity to verify the existence of an overt indication of part failure and/or vehicle/engine malfunction (*e.g.*, misfiring, stalling, black smoke), or an activation of an audible and/or visible signal, prior to the performance of any maintenance to which such overt indication or signal is relevant under the provisions of this section.

(3) Emission measurement may not be used as a means of determining the need for unscheduled maintenance under paragraph (d)(2) of this section, except under the following conditions:

(i) The Administrator may approve unscheduled maintenance on durability-data vehicles based upon a significant change in emission levels that indicates a vehicle or engine malfunction. In these cases the Administrator may first approve specific diagnostic procedures to identify the source of the problem. The Administrator may further approve of specific corrections to the problem after the problem has been identified. The Administrator may only approve the corrective action after it is determined that:

(A) The malfunction was caused by nonproduction build practices or by a previously undetected design problem,

(B) The malfunction will not occur in production vehicles or engines in-use, and

(C) The deterioration factor generated by the durability-data vehicle or engine will remain unaffected by the malfunction or by the corrective action (*e.g.*, the malfunction was present for only a short period of time before detection, replacement parts are functionally representative of the proper mileage or hours, etc.).

(ii) Following any unscheduled maintenance approved under paragraph (d)(3)(i) of this section, the manufacturer shall perform an after-maintenance emissions test. If the Administrator determines that the after-maintenance emission levels for any pollutant indicates that the deterioration factor is no longer representative of production, the Administrator may disqualify the durability-data vehicle or engine.

(4) If the Administrator determines that part failure or system malfunction occurrence and/or repair rendered the vehicle/engine unrepresentative of vehicles in-use, the vehicle/engine shall not be used for determining deterioration factors.

(5) Repairs to vehicle components of a durability data vehicle other than the engine, emission control system, or fuel system, shall be performed only as a result of part failure, vehicle system malfunction, or with the advance approval of the Administrator.

(e) *Maintenance on emission data vehicles and engines.*

(1) Adjustment of engine idle speed on emission data vehicles may be performed once before the low-mileage/low-hour emission test point. Any other engine, emission control system, or fuel system adjustment, repair, removal, disassembly, cleaning, or replacement on emission data vehicles shall be performed only with the advance approval of the Administrator.

(2) Maintenance on light duty-truck emission-data vehicles selected under § 86.XXX–24(b)(1) (v) or (viii), and permitted to be tested for purposes of § 86.XXX–23(c)(1)(ii) under the provisions of § 86.XXX–24(b)(2), may be performed in conjunction with emission control system modifications at the low-mileage test point, and shall be performed in accordance with the maintenance instructions to be provided to the ultimate purchaser required under § 86.087–38.

(3) Maintenance on those light-duty truck emission-data vehicles selected under § 86.XXX-24(b)(1)(v) which are not capable of being modified in the field for the purpose of complying with emission standards at an altitude other than that intended by the original design, may be performed in conjunction with the emission control system modifications at the low-mileage test point, and shall be approved in advance by the Administrator.

(4) Repairs to vehicle components of an emission data vehicle other than the engine, emission control system, or fuel system, shall be performed only as a result of part failure, vehicle system malfunction, or with the advance approval of the Administrator.

(f) Equipment, instruments, or tools may not be used to identify malfunctioning, maladjusted, or defective engine components unless the same or equivalent equipment, instruments, or tools will be available to dealerships and other service outlets and:

(1) Are used in conjunction with scheduled maintenance on such components, or

(2) Are used subsequent to the identification of a vehicle or engine malfunction, as provided in paragraph (d)(2) of this section for durability data vehicles or in paragraph (e)(1) of this section for emission-data vehicles, or

(3) Unless specifically authorized by the Administrator.

(g)(1) Paragraph (g) of this section applies to light-duty vehicles.

(2) Complete emission tests (see §§ 86.106 through 86.145) are required, unless waived by the Administrator.

before and after scheduled maintenance approved for durability data vehicles. The manufacturer may perform emission tests before unscheduled maintenance. Complete emission tests are required after unscheduled maintenance which may reasonably be expected to affect emissions. The Administrator may waive the requirement to test after unscheduled maintenance. These test data may be submitted weekly to the Administrator, but shall be air posted or delivered within 7 days after completion of the tests, along with a complete record of all pertinent maintenance, including a preliminary engineering report of any malfunction diagnosis and the corrective action taken. A complete engineering report shall be delivered to the Administrator concurrently with the manufacturer's application for certification.

(h) All test data, maintenance reports, and required engineering reports shall be compiled and provided to the Administrator in accordance with § 86.XXX–23.

13. A new § 86.XXX–26 is proposed to be added to Subpart A, to read as follows:

§ 86.XXX–26 Mileage and service accumulation; emission requirements.

(a)(1) Paragraph (a) of this section applies to light-duty vehicles.

(2) The procedure for mileage accumulation will be the Durability Driving Schedule as specified in Appendix IV to this part. A modified procedure may also be used if approved in advance by the Administrator. Except with the advance approval of the Administrator, all vehicles will accumulate mileage at a measured curb weight which is within 100 pounds of the estimated curb weight. If the loaded vehicle weight is within 100 pounds of being included in the next higher inertia weight class as specified in § 86.129, the manufacturer may elect to conduct the respective emission tests at higher loaded vehicle weight.

(3) *Emission-data vehicles.* Unless as otherwise provided for in § 86.XXX–23(a), emission-data vehicles shall be operated and tested as follows:

(i) *Gasoline-fueled.* (A) The manufacturer shall determine, for each engine family, the mileage at which the engine-system combination is stabilized for emission-data testing. The manufacturer shall maintain, and provide to the Administrator if requested, a record of the rationale used in making this determination. The manufacturer may elect to accumulate 4,000 miles on each test vehicle within an engine family without making a determination. Any vehicle used to represent emission-data vehicle selections under § 86.XXX–24(b)(1) shall be equipped with an engine and emission control system that has accumulated at least the mileage determined under this paragraph. Fuel economy data generated from certification vehicles selected in accordance with § 86.XXX–24(b)(1) with engine-system combinations that have accumulated more than 10,000 kilometers (6,200 miles) shall be factored in accordance with § 600.006–82(c). Complete exhaust and evaporative and refueling (if required) emission tests shall be conducted for each emission-data vehicle selected under § 86.XXX–24(b)(1). The Administrator may determine under § 86.XXX–24(f) that no testing is required.

(B) Emission tests for emission-data vehicle(s) selected for testing under § 86.XXX–24(b)(1) (v) or (xi) shall be conducted at the mileage at which the engine system combination is stabilized for emission testing under high altitude conditions.

(C) Exhaust, evaporative and refueling emissions tests for emission-data vehicle(s) selected for testing under § 86.XXX–24(b)(1) (i), (ii), (iii), (iv), or (x) shall be conducted at the mileage at which the engine-system combination is stabilized for emission testing under low-altitude conditions.

(D) For each engine family, the manufacturer will either select one vehicle previously selected under § 86.XXX–24(b) (i) through (iv) to be tested under high-altitude conditions or provide a statement in accordance with § 86.XXX–24(b)(1)(v). Vehicles shall meet emission standards under both low- and high-altitude conditions without manual adjustments or modifications. In addition, any emission control device used to conform with the emission standards under high-altitude conditions shall initially actuate (automatically) no higher than 4,000 feet above sea level.

(ii) *Diesel* (A) The manufacturer shall determine, for each engine family, the mileage at which the engine-system combination is stabilized for emission-data testing. The manufacturer shall maintain, and provide to the Administrator if requested, a record of the rationale used in making this determination. The manufacturer may elect to accumulate 4,000 miles on each test vehicle within an engine family without making a determination. Any vehicle used to represent emission-data vehicle selections under § 86.XXX–24(b)(1) shall be equipped with an engine and emission control system that has accumulated at least the mileage determined under this paragraph. Fuel economy data generated from certification vehicles selected in accordance with § 86.XXX–24(b)(1) with engine-system combinations that have accumulated more than 10,000 kilometers (6,200 miles) shall be factored in accordance with § 600.006–82(c). Complete exhaust emission tests shall be conducted for each emission-data vehicle selected under § 86.XXX–24(b)(1). The Administrator may determine under § 86.XXX–24(f) that no testing is required.

(B) Emission tests for emission-data vehicle(s) selected for testing under § 86.XXX–24(b)(1)(v) shall be conducted at the mileage at which the engine-system combination is stabilized for emission testing under low altitude conditions.

(C) Exhaust emission tests for emission-data vehicle(s) selected for testing under § 86.XXX–24(b)(1) (i) through (iv) shall be conducted at the mileage at which the engine system combination is stabilized for emission testing under low altitude conditions.

(D) For each engine family, the manufacturer will either select one vehicle previously selected under § 86.XXX–24(b)(1) (i) through (iv) to be tested under high-altitude conditions or provide a statement in accordance with § 86.XXX–24(b)(1)(v). Vehicles shall meet emission standards under both low- and high-altitude conditions without manual adjustments or modifications. In addition, any emission control device used to conform with the emission standards under high-altitude conditions shall initially actuate (automatically) no higher than 4,000 feet above sea level

(4) *Durability-data vehicles.* Unless as otherwise provided for in § 86.XXX–23(a), durability-data vehicles shall be operated and tested as follows:

(i) *Gasoline-fueled.* Each gasoline-fueled durability-data vehicle selected by the Administrator or elected by the manufacturer under § 86.XXX–24(c)(1) shall be driven, with all emission control systems installed and operating, for 50,000 miles or such lesser distance as the Administrator may agree to as meeting the objective of this procedure. Complete exhaust emission tests shall be made on all durability-data vehicles selected by the Administrator or elected by the manufacturer under § 86.XXX–24(c) at test point mileage intervals that the manufacturer determines. At a minimum, complete exhaust emission tests shall be made at 5,000 miles, and at 50,000 miles. The mileage interval between test points must be of equal length for the interval between zero miles and 5,000 miles, the final interval,

and any interval before or after testing conducted in conjunction with vehicle maintenance as specified in § 86.XXX–25(a)(10). The Administrator may determine under § 86.XXX–24(f) that no testing is required.

(ii) *Diesel.* Each diesel durability-data vehicle shall be driven, with all emission control systems installed and operating, for 50,000 miles or such lesser distance as the Administrator may agree to as meeting the objectives of the procedure. Complete emission tests (see §§ 86.106 through 86.145) shall be made at test point mileage intervals that the manufacturer determines. At a minimum, complete exhaust emission tests shall be made at 5,000 miles and at 50,000 miles. The mileage interval between test points must be of equal length for the interval between zero miles and 5,000 miles, the final interval, and any interval before or after testing conducted in conjunction with vehicle maintenance as specified in § 86.XXX–25(a)(10).

(iii) The manufacturer may, at its option, alter the durability-data vehicle at the selected test point to represent emission-data vehicle(s) within the same engine/system combination and perform emission tests on the altered vehicle. Upon completion of emission testing, the manufacturer may return the test vehicle to the durability-data vehicle configuration and continue mileage accumulation.

(5)(i) All tests required by this subpart on emission-data vehicles shall be conducted at a mileage equal to or greater than the mileage the manufacturer determines under paragraph (a)(3) of this section.

(ii) All tests required by this subpart on durability-data vehicles shall be conducted within 250 miles of each of the test points.

(6)(i)(A) The manufacturer may conduct multiple tests at any test point at which the data are intended to be used in the deterioration factor. At each test point where multiple tests are conducted, the test results from all valid tests shall be averaged to determine the data point to be used in the deterioration factor calculation. except under paragraph (a)(6)(i)(B) of this section. The test results from emission tests performed before maintenance affecting emissions shall not be averaged with test results after the maintenance.

(B) The manufacturer is not required to average multiple tests if the manufacturer conducts no more than three tests at each test point and if the number of tests at each test point is equal. All test points must be treated the same for all exhaust pollutants.

(ii) The results of all emission testing shall be supplied to the Administrator. The manufacturer shall furnish to the Administrator explanation for voiding any test. The Administrator will determine if voiding the test was appropriate based upon the explanation given by the manufacturer for the voided test. Tests between test points may be conducted as required by the Administrator. Data from all tests (including voided tests) may be submitted weekly to the Administrator, but shall be air posted or delivered to the Administrator within 7 days after completion of the test. In addition, all test data shall be compiled and provided to the Administrator in accordance with § 86.XXX–23. Where the Administrator conducts a test on a durability-data vehicle at a prescribed test point, the results of that test will be used in the calculation of the deterioration factor.

(iii) The results of all emission tests shall be rounded, using the "Rounding Off Method" specified in ASTM E 29–67, to the number of places to the right of the decimal point indicated by expressing the applicable emission standard of this subpart to three significant figures.

(7) Whenever a manufacturer intends to operate and test a vehicle which may be used for emission or durability data, the manufacturer shall retain in its records all information concerning all emissions tests and maintenance, including vehicle alterations to represent other vehicle selections. For emission-data vehicles, this information shall be submitted, including the vehicle description and specification information required by the Administrator, to the Administrator following the emission-data test. For durability-data vehicles, this information shall be submitted following the 50,000-mile test.

(8) Once a manufacturer submits the information required in paragraphs (a)(7) of this section for a durability-data vehicle, the manufacturer shall continue to run the vehicle to 50,000 miles, and the data from the vehicle will be used in the calculations under § 86.XXX–28. Discontinuation of a durability-data vehicle shall be allowed only with the consent of the Administrator.

(9)(i) The Administrator may elect to operate and test any test vehicle during all or any part of the mileage accumulation and testing procedure. In such cases, the manufacturer shall provide the vehicle(s) to the Administrator with all information necessary to conduct this testing.

(ii) The test procedures in §§ 86.106 through 86.145 will be followed by the Administrator. The Administrator will test the vehicles at each test point. Maintenance may be performed by the manufacturer under such conditions as the Administrator may prescribe.

(iii) The data developed by the Administrator for the engine-system combination shall be combined with any applicable data supplied by the manufacturer on other vehicles of that combination to determine the applicable deterioration factors for the combination. In the case of a significant discrepancy between data developed by the Administrator and that submitted by the manufacturer, the Administrator's data shall be used in the determination of deterioration factors.

(10) Emission testing of any type with respect to any certification vehicle other than that specified in this part is not allowed except as such testing may be specifically authorized by the Administrator.

(11) This section does not apply to testing conducted to meet the requirements of § 86.XXX–23(b)(2).

(b)(1) Paragraph (b) of this section applies to light-duty trucks.

(2) There are three types of mileage or service accumulation applicable to light duty trucks:

(i) Mileage or service accumulation on vehicles, engines, subsystems, or components selected by the manufacturer under § 86.XXX–24(c)(2)(i). The manufacturer determines the form and extent of this mileage or service accumulation, consistent with good engineering practice, and describes it in the application for certification.

(ii) Mileage accumulation of the duration selected by the manufacturer on emission-data vehicles selected under § 86.XXX–24(b)(1). The procedure for mileage accumulation will be the Durability Driving Schedule as specified in Appendix IV to this part. A modified procedure may also be used if approved in advance by the Administrator. Except with the advance approval of the Administrator, all vehicles will accumulate mileage at a measured curb weight which is within 100 pounds of the estimated curb weight. If the loaded vehicle weight is within 100 pounds of being included in the next higher inertia weight class as specified in § 86.129, the manufacturer may elect to conduct the respective emission tests at the test weight corresponding to the higher loaded vehicle weight.

(iii) Service or mileage accumulation which may be part of the test procedures used by the manufacturer to establish evaporative or refueling emission deterioration factors.

(3) Exhaust emission deterioration factors will be determined on the basis

of the mileage or service accumulation described in paragraph (b)(2)(i) of this section and related testing, according to the manufacturer's procedures.

(4) Each emission-data vehicle shall be operated and tested as follows:

(i) *Gasoline-fueled* (A) The manufacturer shall determine, for each engine family, the mileage at which the engine-system combination is stabilized for emission-data testing. The manufacturer shall maintain, and provide to the Administrator if requested, a record of the rationale used in making this determination. The manufacturer may elect to accumulate 4,000 miles on each test vehicle within an engine family without making a determination. Any vehicle used to represent emission-data vehicle selections under § 86.XXX-24(b)(1) shall be equipped with an engine and emission control system that has accumulated at least the mileage determined under this paragraph. Fuel economy data generated from certification vehicles selected in accordance with § 86.XXX-24(b)(1) with engine-system combinations that have accumulated more than 10,000 kilometers (6,200 miles) shall be factored in accordance with § 600.006-82(c). Complete exhaust emission tests shall be conducted for each emission-data vehicle selected under § 86.XXX-24(b)(1). The Administrator may determine under § 86.XXX-24(f) that no testing is required.

(B) Emission tests for emission-data vehicle(s) selected for testing under § 86.XXX-24(b)(1) (v), (viii) or (xi) shall be conducted at the mileage at which the engine-system combination is stabilized for emission testing or at 6,436 kilometers (4,000 miles) under high-altitude conditions.

(C) Exhaust, evaporative and refueling emission tests for emission-data vehicle(s) selected for testing under § 86.XXX-24(b)(1) (ii), (iii), (iv)(A), (vii)(B) or (X) shall be conducted at the mileage at which the engine-system combination is stabilized for emission testing or at the 6,436-kilometer (4,000 mile) test point under low-altitude conditions.

(D) If the manufacturer recommends adjustments or modifications in order to conform to emission standards at high altitude, such adjustments or modifications shall be made to the test vehicle selected under § 86.XXX(b)(1) (v), (viii) and (xi) (in accordance with the instructions to be provided to the ultimate purchaser) before being tested under high-altitude conditions.

(ii) *Diesel.* (A) The manufacturer shall determine, for each engine family, the mileage at which the engine-system combination is stabilized for emission-data testing. The manufacturer shall maintain, and provide to the Administrator if requested, a record of the rationale used in making this determination. The manufacturer may elect to accumulate 4,000 miles on each test vehicle within an engine family without making a determination. Any vehicle used to represent emission-data vehicle selections under § 86.XXX-24(b)(1) shall be equipped with an engine and emission control system that has accumulated at least the mileage determined under this paragraph. Fuel economy data generated from certification vehicles selected in accordance with § 86.XXX-24(b)(1) with engine-system combinations that have accumulated more than 10,000 kilometers (6,200 miles) shall be factored in accordance with § 600.006-82(c). Complete exhaust emission tests shall be conducted for each emission-data vehicle selected under § 86.XXX-24(b)(1) The Administrator may determine under § 86.XXX-24(f) that no testing is required

(B) Emission tests for emission-data vehicle(s) selected for testing under § 86.XXX-24(b)(1)(v) shall be conducted at the mileage at which the engine-system combination is stabilized for emission testing or at the 6,436-kilometer (4,000-mile) test point under low-altitude conditions.

(C) Exhaust emission tests for emission-data vehicle(s) selected for testing under § 86.XXX-24(b)(1) (ii), (iii), and (iv) shall be conducted at the mileage at which the engine-system combination is stabilized for emission testing or at the 6,436-kilometer (4,000-mile) test point under low altitude conditions.

(D) If the manufacturer recommends adjustments or modifications in order to conform to emission standards at high altitude, such adjustments or modifications shall be made to the test vehicle selected under § 86.XXX-24(b)(1) (v) and (viii) (in accordance with the instructions to be provided to the ultimate purchaser) before being tested under high-altitude conditions.

(iii) [Reserved]

(iv) All tests required by this subpart on emission-data vehicles shall be conducted at a mileage equal to or greater than the mileage the manufacturer determines under paragraph (b)(4) of this section.

(c)(1) Paragraph (c) of this section applies to heavy-duty engines.

(2) There are two types of service accumulation applicable to heavy duty engines:

(i) Service accumulation on engines, subsystems, or components selected by the manufacturer under § 86.XXX-24(c)(3)(i). The manufacturer determines the form and extent of this service accumulation, consistent with good engineering practice, and describes it in the application for certification.

(ii) Dynamometer service accumulation on emission-data engines selected under § 86.XXX-24(b)(2) or § 86.XXX-24(b)(3). The manufacturer determines the engine operating schedule to be used for dynamometer service accumulation, consistent with good engineering practice. A single engine operating schedule shall be used for all engines in an engine family-control system combination. Operating schedules may be different for different combinations.

(3) Exhaust emission deterioration factors will be determined on the basis of the service accumulation described in paragraph (b)(2)(i) of this section and related testing, according to the manufacturer's procedures.

(4) The manufacturer shall determine, for each engine family, the number of hours at which the engine system combination is stabilized for emission-data testing. The manufacturer shall maintain, and provide to the Administrator if requested a record of the rationale used in making this determination. The manufacturer may elect to accumulate 125 hours on each test engine within an engine family without making a determination. Any engine used to represent emission-data engine selections under § 86.XXX-24(b)(2) shall be equipped with an engine system combination that has accumulated at least the number of hours determined under this paragraph. Complete exhaust emission tests shall be conducted for each emission-data engine selection under § 86.XXX-24(b)(2). Evaporative and refueling emission controls need not be connected during service accumulation, provided normal operating conditions are maintained in the engine induction system, but shall be connected for the exhaust emission tests. The Administrator may determine under § 86.XXX-24(f) that no testing is required.

(d)(1) Paragraph (d) of this section applies to both light-duty trucks and heavy-duty engines.

(2)(i) The results of all emission testing shall be supplied to the Administrator. The manufacturer shall furnish to the Administrator explanation for voiding any test. The Administrator will determine if voiding the test was appropriate based upon the explanation given by the manufacturer for the voided test. Tests between test points may be

conducted as required by the Administrator. Data from all tests (including voided tests) may be submitted weekly to the Administrator, but shall be air posted or delivered to the Administrator within 7 days after completion of the tests. In addition, all test data shall be compiled and provided to the Administrator in accordance with § 86.XXX–23. Where the Administrator conducts a test on a durability-data vehicle at a prescribed test point, the results of that test will be used in the calculation of the deterioration factor.

(ii) The results of all emission tests shall be recorded and reported to the Administrator using two places to the right of the decimal point. These numbers shall be rounded in accordance with the "Rounding Off Method" specified in ASTME 29–67.

(3) Whenever a manufacturer intends to operate and test a vehicle (or engine) which may be used for emission data, the manufacturer shall retain in its records all information concerning all emissions tests and maintenance, including vehicle (or engine) alterations to represent other vehicle (or engine) selections. This information shall be submitted, including the vehicle (or engine) description and specification information required by the Administrator, to the Administrator following the emission-data test.

(4) [Reserved]

(5) [Reserved]

(6) Emission testing of any type with respect to any certification vehicle or engine other than that specified in this subpart is not allowed except as such testing may be specifically authorized by the Administrator.

14. A new § 86.XXX–28 is proposed to be added to Subpart A, to read as follows:

§ 86.XXX–28 Compliance with emission standards.

(a)(1) Paragraph (a) of this section applies to light-duty vehicles.

(2) The applicable exhaust, evaporative and refueling emission standards (and family particulate emission limits, as appropriate) of this subpart apply to the emissions of vehicles for their useful life.

(3) Since it is expected that emission control efficiency will change with mileage accumulation on the vehicle, the emission level of a vehicle which has accumulated 50,000 miles will be used as the basis for determining compliance with the standards (or family particulate emission limit, as appropriate).

(4) The procedure for determining compliance of a new motor vehicle with exhaust emission standards (or family particulate emission limit, as appropriate) is as follows, except where specified by paragraph (a)(7) of this section for the Alternative Durability Program:

(i) Separate emission deterioration factors shall be determined from the exhaust emission results of the durability-data vehicle(s) for each engine-system combination. A separate factor shall be established for exhaust HC, exhaust CO, exhaust NO_x, and exhaust particulate (diesel vehicles only) for each engine-system combination. A separate evaporative emission deterioration factor shall be determined for each evaporative emission family-evaporative emission control system combination from the testing conducted by the manufacturer (gasoline-fueled vehicles only). A separate refueling emission deterioration factor shall be determined for each refueling emission family-refueling emission control system combination from the testing conducted by the manufacturer (gasoline-fueled vehicles only).

(A) The applicable results to be used unless excluded by paragraph (a)(4)(i)(A)(*4*) of this section in determining the exhaust emission deterioration factors for each engine-system combination shall be:

(*1*) All valid exhaust emission data from the tests required under § 86.XXX–26(a)(4) except the zero-mile tests. This shall include the official test results, as determined in § 86.XXX–29 for all tests conducted on all durability-data vehicles of the combination selected under § 86.XXX–24(c) (including all vehicles elected to be operated by the manufacturer under § 86.XXX–24(c)(1)(ii)).

(*2*) All exhaust emission data from the tests conducted before and after the scheduled maintenance provided in § 86.XXX–25.

(*3*) All exhaust emission data from tests required by maintenance approved under § 86.XXX–25, in those cases where the Administrator conditioned his approval for the performance of such maintenance on the inclusion of such data in the deterioration factor calculation.

(*4*) The manufacturer has the option of applying an outlier test point procedure to completed durability data within its certification testing program for a given model year. The outlier procedure will be specified by the Administrator. For any pollutant, durability-data test points that are identified as outliers shall not be included in the determination of deterioration factors if the manufacturer has elected this option. The manufacturer shall specify to the Administrator before the certification of the first engine family for that model year, if it intends to use the outlier procedure. The manufacturer may not change procedures after the first engine family of the model year is certified. Where the manufacturer chooses to apply both the outlier procedure and averaging (as allowed under § 86.XXX–26(a)(6)(i)) to the same data set, the outlier procedure shall be completed prior to applying the averaging procedure.

(B) All applicable exhaust emission results shall be plotted as a function of the mileage on the system, rounded to the nearest mile, and the best fit straight lines, fitted by the method of least squares, shall be drawn through all these data points. The data will be acceptable for use in the calculation of the deterioration factor only if the interpolated 4,000-mile and 50,000-mile points on this line are within the low-altitude standards provided in § 86.087–8. Exceptions to this where data are still acceptable are when a best fit straight line crosses an applicable standard but no data points exceeded the standard, or the best fit straight line crosses an applicable standard with a negative slope (the 4,000-mile interpolated point is higher than the 50,000-mile interpolated point) but the 50,000-mile actual data point is below the standard. A multiplicative exhaust emission deterioration factor shall be calculated for each engine-system combination as follows:

Factor = Exhaust emissions interpolated to 50,000 miles divided by exhaust emissions interpolated to 4,000 miles.

These interpolated values shall be carried out to a minimum of four places to the right of the decimal point before dividing one by the other to determine the deterioration factor. The results shall be rounded to three places to the right of the decimal point in accordance with ASTM E 29–67.

(C) An evaporative emissions deterioration factor (gasoline-fueled vehicles only) shall be determined from the testing conducted as described in § 86.XXX–21(b)(4)(i), for each evaporative emission family-evaporative emission control system combination to indicate the evaporative emission level at 50,000 miles relative to the evaporative emission level at 4,000 miles as follows:

Factor = Evaporative emission level at 50,000 miles minus the evaporative emission level at 4,000 miles.

The factor shall be established to a minimum of two places to the right of the decimal.

(D) A refueling emissions deterioration factor (gasoline-fueled vehicles only) shall be determined from testing conducted and described in § 86.XXX–21(b)(4)(i)(B) for each refueling emission family-refueling emission control system combination to indicate the refueling emission level at 50,000 miles relative to the refueling emission level at 4,000 miles as follows:

Factor=Refueling emission level at 50,000 miles minus the refueling emission level at 4,000 miles.

The factor shall be established to a minimum of two places to the right of the decimal.

(ii)(A) The official exhaust emission test results for each emission-data vehicle at the selected test point shall be multiplied by the appropriate deterioration factor: *Provided*, that if a deterioration factor as computed in paragraph (a)(4)(i)(B) of this section is less than one, that deterioration factor shall be one for the purposes of this paragraph.

(B) The official evaporative emission test results (gasoline-fueled vehicles only) for each evaporative emission-data vehicle at the selected test point shall be adjusted by addition of the appropriate deterioration factor: *Provided*, that if a deterioration factor as computed in paragraph (a)(4)(i)(C) of this section is less than zero, that deterioration factor shall be zero for the purposes of this paragraph.

(C) The official refueling emission test results (gasoline-fueled vehicles only) for each refueling emission-data vehicle at the selected test point shall be adjusted by addition of the appropriate deterioration factor: *Provided* that if a deterioration factor as computed in paragraph (a)(4)(i)(D) of this section is less than zero, that deterioration factor shall be zero for purposes of this paragraph.

(iii) The emissions to compare with the standard (or the family particulate emission limit, as appropriate) shall be the adjusted emissions of paragraphs (a)(4)(ii) (A), (B) and (C) of this section for each emission-data vehicle. Before any emission value is compared with the standard (or the family particulate emission limit, as appropriate), it shall be rounded, in accordance with ASTM E 29–67, to two significant figures. The rounded emission values may not exceed the standard (or the family particulate emission limit, as appropriate).

(iv) Every test vehicle of an engine family must comply with the exhaust emission standards (or the family particulate emission limit, as appropriate), as determined in paragraph (a)(4)(iii) of this section, before any vehicle in that family may be certified.

(v) Every test vehicle of an evaporative emission family must comply with the evaporative emission standard, as determined in paragraph (a)(4)(iii) of this section, before any vehicle in that family may be certified.

(vi) Every test vehicle of a refueling emission family must comply with the refueling emission standard, as determined in paragraph (a)(4)(iii) of this section, before any vehicle in that family may be certified.

(5) If a manufacturer chooses to change the level of any family particulate emission limit(s) in the particulate averaging program, compliance with the new limit(s) must be based upon existing certification data.

(6) If a manufacturer chooses to participate in the diesel particulate averaging program, the production-weighted average of the family particulate emission limits of all affected engine families must comply with the particulate standard in § 86.XXX–8(a)(1)(iv), or the composite particulate standard defined in § 86.085–2, as appropriate, at the end of the production year.

(7) The procedure to determine the compliance of new motor vehicles in the Alternative Durability Program (described in § 86.085–13) is the same as described in paragraphs (a)(4)(iii) through (a)(4)(vi) of this section. For the engine families that are included in the Alternative Durability Program, the exhaust emission deterioration factors used to determine compliance shall be those that the Administrator has approved under § 86.085–13(c). The evaporative emission deterioration factor for each evaporative emission family shall be determined and applied according to paragraph (a)(4) of this section. The refueling emission deterioration factor for each refueling emission family shall be determined and applied according to paragraph (a)(4) of this section. The procedures to determine the minimum emissions deterioration factors required under § 86.085–13(d) are as follows:

(i) Separate deterioration factors shall be determined from the exhaust emission results of the durability-data vehicles for each engine family group. A separate factor shall be established for exhaust HC, exhaust CO, exhaust NO_x and exhaust particulate for each engine family group. The evaporative emission deterioration factor for each evaporative family will be determined and applied in accordance with paragraph (a)(4) of this section. The refueling emission deterioration factor for each family will be determined and applied in accordance with paragraph (a)(4) of this section.

(ii) The deterioration factors for each engine family group shall be determined by the Administrator using historical durability data from as many as three previous model years. These data will consist of deterioration factors generated by durability-data vehicles representing certified engine families and of deterioration factors from vehicles selected under § 86.XXX–24(h). The Administrator shall determine how these data will be combined for each engine family group.

(A) The test results to be used in the calculation of each deterioration factor to be combined for each engine family group shall be those test results specified in paragraph (a)(4)(i)(A) of this section.

(B) For each durability-data vehicle selected under § 86.XXX–24(h), all applicable exhaust emissions results shall be plotted as a function of the mileage on the system rounded to the nearest mile, and the best fit straight lines, fitted by method of least squares, shall be drawn through all these data points. The exhaust deterioration factor for each durability-data vehicle shall be calculated as specified in paragraph (a)(4)(i)(B) of this section.

(C) *Line-crossing.* For the purposes of paragraph (a)(5) of this section, line crossing occurs when either of the interpolated 4,000- and 50,000-mile points of the best fit straight line exceeds the applicable emission standard and at least one applicable data point exceeds the standard.

(*1*) The Administrator will not accept for certification line-crossing data from preproduction durability-data vehicles selected under § 86.XXX–24(c), § 86.XXX–24 (h)(2), or (h)(3).

(*2*) The Administrator will not accept for certification line-crossing data from production durability-data vehicles selected under § 86.XXX–24(h)(1) unless the 4,000-mile test result multiplied by the engine family group deterioration factor does not exceed the applicable emission standards. The deterioration factors used for this purpose shall be those that were used in the certification of the production vehicle. Manufacturers may calculate this product immediately after the 4,000-mile test of the vehicle. If the product exceeds the applicable standards, the manufacturer may, with the approval of the Administrator, discontinue the vehicle and substitute a new vehicle. The manufacturer may continue the original vehicle, but the

data will not be acceptable if line crossing occurs.

(b)(1) Paragraph (b) of this section applies to light-duty trucks.

(2) The exhaust, evaporative and refueling emission standards (and family emission limits, as appropriate) of § 86.XXX–9 apply to the emissions of vehicles for their useful life.

(3) Since emission control efficiency generally decreases with the accumulation of mileage on the vehicle, deterioration factors will be used in combination with emission-data vehicle test results as the basis for determining compliance with the standards (or family emission limits, as appropriate).

(4)(i) Paragraph (b)(4) of this section describes the procedure for determining compliance of a new vehicle with exhaust emission standards (or family emission limits, as appropriate), based on deterioration factors supplied by the manufacturers, except where specified by paragraph (b)(5) of this section for the Alternative Durability Program.

(ii) Separate exhaust emission deterioration factors, determined from tests of vehicles, engines, subsystems, or components conducted by the manufacturer, shall be supplied for each engine system combination. Separate factors shall be established for HC, CO, and NO_x, idle CO (gasoline vehicles only), and exhaust particulate (diesel vehicles only).

(iii) For HC, CO, and NO_x, idle CO (gasoline vehicles only), and exhaust particulate (diesel vehicles only), the official exhaust emission results for each emission-data vehicle at the selected test point shall be adjusted by multiplication by the appropriate deterioration factor. However, if the deterioration factor supplied by the manufacturer is less than one, it shall be one for the purposes of this paragraph.

(iv) The emission values to compare with the standards (or family emission limits, as appropriate) shall be the adjusted emission values of paragraph (b)(4)(iii) of this section rounded to two significant figures in accordance with ASTM E 29–67 for each emission-data engine.

(5)(i) Paragraph (b)(5)(i) of this section applies only to manufacturers electing to participate in the particulate averaging program.

(A) If a manufacturer chooses to change the level of any family particulate emission limit(s), compliance with the new limit(s) must be based upon existing certification data.

(B) The production-weighted average of the family particulate emission limits of all applicable engine families, rounded to two significant figures in accordance with ASTM E 29–67, must comply with the particulate standards in § 86.XXX–9 (a)(1)(iv) or (d)(1)(iv), or the composite particulate standard defined in § 86.085–2, as appropriate, at the end of the product year.

(ii) Paragraph (b)(5)(ii) of this section applies only to manufacturers electing to participate in the NO_x averaging program.

(A) If a manufacturer chooses to change the level of any family NO_x emission limit(s), compliance with the new limit(s) must be based upon existing certification data.

(B) The production-weighted average of the family NO_x emission limits of all applicable engine families, rounded to two significant figures in accordance with ASTM E 29–67, must comply with the NO_x emission standards of § 86.XXX–9(a)(1)(iii) (A) or (B), or of § 86.XXX–9(d)(1)(iii) (A) or (B), or the composite NO_x standard as defined in § 86.088–2, at the end of the product year.

(6) The procedure to determine the compliance of new motor vehicles in the Alternative Durability Program (described in § 86.085–13) is the same as described in paragraphs (b)(4)(iv), (b)(7)(iv), (b)(8)(iv) and (b)(9) of this section. For the engine families that are included in the Alternative Durability Program, the exhaust emission deterioration factors used to determine compliance shall be those that the Administrator has approved under § 86.085–13(c). The evaporative emission deterioration factor for each evaporative emission family shall be determined and applied according to paragraph (b)(7) of this section. The refueling emission deterioration factor for each refueling emission family shall be determined and applied according to paragraph (b)(8) of this section. The procedures to determine the minimum emissions deterioration factors required under § 86.085–13(d) are as follows:

(i) Separate deterioration factors shall be determined from the exhaust emission results of the durability-data vehicles for each engine family group. A separate factor shall be established for exhaust HC, exhaust CO, and exhaust NO_x for each engine family group. The evaporative emission deterioration factor for each evaporative family will be determined and applied in accordance with paragraph (b)(7) of this section. The refueling emission deterioration factor for each refueling family will be determined and applied in accordance with paragraph (b)(8) of this section.

(ii) The deterioration factors for each engine family group shall be determined by the Administrator using historical durability data from as many as three previous model years. These data will consist of deterioration factors generated by durability-data vehicles representing certified engine families and of deterioration factors from vehicles selected under § 86.XXX–24(h). The Administrator shall determine how these data will be combined for each engine family group.

(A) The test results to be used in the calculations of each deterioration factor to be combined for each engine family group shall be those test results specified in paragraph (a)(4)(i)(A) of this section.

(B) For each durability-data vehicle selected under § 86.XXX–24(h), all applicable exhaust emission results shall be plotted as a function of the mileage on the system rounded to the nearest mile, and the best fit straight lines, fitted by the method of least squares, shall be drawn through all these data points. The exhaust deterioration factor for each durability-data vehicle shall be calculated as specified in paragraph (a)(4)(i)(B) of this section.

(C) *Line crossing.* For the purposes of paragraph (b)(5) of this section, line crossing occurs when either of the interpolated 4,000- and 120,000-mile points of the best fit straight line exceeds the applicable emission standard and at least one applicable data point exceeds the standard.

(*1*) The Administrator will not accept for certification line-crossing data from preproduction durability-data vehicles selected under § 86.XXX–24(c)(1), or § 86.XXX–24 (h)(2) or (h)(3)

(*2*) The Administrator will not accept for certification line-crossing data from production durability-data vehicles selected under § 86.XXX–24(h)(1) unless the 4,000-mile test result multiplied by the engine family group deterioration factor does not exceed the applicable emission standard. The deterioration factors used for this purpose shall be those that were used in the certification of the production vehicle. Manufacturers may calculate this product immediately after the 4,000-mile test of the vehicle. If the product exceeds the applicable standard, the manufacturer may, with the approval of the Administrator, discontinue the vehicle and substitute a new vehicle. The manufacturer may continue the original vehicle, but the data will not be acceptable if line crossing occurs.

(7)(i) Paragraph (b)(7) of this section describes the procedure for determining compliance of a new vehicle with fuel evaporative emission standards. The procedure described here shall be used for all vehicles in all model years.

(ii) The manufacturer shall determine, based on testing described in § 86.XXX–21(b)(4)(i)(A), and supply an evaporative emission deterioration factor for each evaporative emission family-evaporative emission control system combination. The factor shall be calculated by subtracting the emission level at the selected test point from the emission level at the useful life point.

(iii) The official evaporative emission test results for each evaporative emission-data vehicle at the selected test point shall be adjusted by the addition of the appropriate deterioration factor. However, if the deterioration factor supplied by the manufacturer is less than zero, it shall be zero for the purposes of this paragraph.

(iv) The emission value to compare with the standards shall be the adjusted emission value of paragraph (b)(7)(iii) of this section rounded to two significant figures in accordance with ASTM E 29–67 for each evaporative emission-data vehicle.

(8)(i) Paragraph (b)(8) of this section describes the procedure for determining compliance of a new vehicle with refueling emission standards. The procedure described here shall be used for all vehicles in all model years.

(ii) The manufacturer shall determine, based on testing described in § 86.XXX–21(b)(4)(i)(B), and supply a refueling emission deterioration factor for each refueling emission family-refueling emission control system combination. The factor shall be calculated by subtracting the emission level at the selected test point from the emission level at the useful life point.

(iii) The official refueling emission test results for each refueling emission-data vehicle at the selected test point shall be adjusted by the addition of the appropriate deterioration factor. However, if the deterioration factor supplied by the manufacturer is less than zero, it shall be zero for the purposes of this paragraph.

(iv) The emission value to compare with the standards shall be the adjusted emission value of paragraph (b)(8)(iii) of this section rounded to two significant figures in accordance with ASTM E 29–67 for each evaporative emission-data vehicle.

(9) Every test vehicle of an engine family must comply with all applicable standards (and family emission limits, as appropriate), as determined in paragraphs (b)(4)(iv), (b)(7)(iv) and (b)(8)(iv) of this section, before any vehicle in that family will be certified.

(c)(1) Paragraph (c) of this section applies to heavy-duty engines.

(2) The exhaust emission standards for gasoline-fueled engines in § 86.XXX–10 or for diesel engines in § 86.088–11 apply to the emissions of engines for their useful lives.

(3) Since emission control efficiency generally decreases with the accumulation of service on the engine, deterioration factors will be used in combination with emission-data engine test results as the basis for determining compliance with the standards.

(4)(i) Paragraph (c)(4) of this section describes the procedure for determining compliance of an engine with emission standards (or family emission limits, as appropriate) based on deterioration factors supplied by the manufacturer.

(ii) Separate exhaust emission deterioration factors, determined from tests of engines, subsystems, or components conducted by the manufacturer, shall be supplied for each engine-system combination. For gasoline engines, separate factors shall be established for transient HC, CO, and NO_x; and for idle CO, for those engines utilizing aftertreatment technology (*e.g.*, catalytic converters). For diesel engines, separate factors shall be established for transient HC, CO, NO_x, and exhaust particulate. For diesel smoke testing, separate factors shall also be established for the acceleration mode (designated as "A"), the lugging mode (designated as "B"), and peak opacity (designated as "C").

(iii)(A) Paragraph (c)(4)(iii)(A) of this section applies to gasoline-fueled heavy-duty engines.

(*1*) *Gasoline-fueled heavy-duty engines not utilizing aftertreatment technology (e.g., catalytic converters).* For transient HC, CO, and NO_x, the official exhaust emission results for each emission-data engine at the selected test point shall be adjusted by the addition of the appropriate deterioration factor. However, if the deterioration factor supplied by the manufacturer is less than zero, it shall be zero for the purposes of this paragraph.

(*2*) *Gasoline-fueled heavy-duty engines utilizing aftertreatment technology (e.g., catalytic converters).* For transient HC, CO, and NO_x, and for idle CO, the official exhaust emission results for each emission-data engine at the selected test point shall be adjusted by multiplication by the appropriate deterioration factor. However, if the deterioration factor supplied by the manufacturer is less than one, it shall be one for the purposes of this paragraph.

(B) Paragraph (c)(4)(iii)(B) of this section applies to diesel heavy-duty engines.

(*1*) *Diesel heavy-duty engines not utilizing aftertreatment technology (e.g., particulate traps).* For transient HC, CO, NO_x, and particulate, the official exhaust emission results for each emission-data engine at the selected test point shall be adjusted by the addition of the appropriate deterioration factor. However, if the deterioration factor supplied by the manufacturer is less than zero, it shall be zero for the purposes of this paragraph.

(*2*) *Diesel heavy-duty engines utilizing aftertreatment technology (e.g., particulate traps).* For transient HC, CO, NOx, and particulate, the official exhaust emission results for each emission-data engine at the selected test point shall be adjusted by multiplication by the appropriate deterioration factor. However, if the deterioration factor supplied by the manufacturer is less than one, it shall be one for the purposes of this paragraph.

(*3*) For acceleration smoke ("A"), lugging smoke ("B"), and peak smoke ("C"), the official exhaust emission results for each emission-data engine at the selected test point shall be adjusted by the addition of the appropriate deterioration factor. However, if the deterioration factor supplied by the manufacturer is less than zero, it shall be zero for the purposes of this paragraph.

(iv) The emission values to compare with the standards (or family emission limits, as appropriate) shall be the adjusted emission values of paragraph (c)(4)(iii) of this section rounded to two significant figures in accordance with ASTM E 29–67 for each emission-data engine.

(5)–(6) [Reserved]

(7) Every test engine of an engine family must comply with all applicable standards (or family emission limits, as appropriate), as determined in paragraph (c)(4)(iv) of this section, before any engine in that family will be certified.

(d)(1) Paragraph (d) of this section applies to gasoline-fueled heavy-duty vehicles.

(2) The applicable evaporative emission standard in § 86.XXX–10 applies to the emissions of vehicles for their useful life.

(3)(i) For vehicles with a GVWR of up to 26,000 pounds, because it is expected that emission control efficiency will change during the useful life of the vehicle, an evaporative emission deterioration factor shall be determined from the testing described in § 86.XXX–23(b)(3) for each evaporative emission family-evaporative emission control system combination to indicate the evaporative emission control system deterioration during the useful life of the vehicle (minimum 50,000 miles). The

factor shall be established to a minimum of two places to the right of the decimal.

(ii) For vehicles with a GVWR of greater than 26,000 pounds, because it is expected that emission control efficiency will change during the useful life of the vehicle, each manufacturer's statement as required in § 86.XXX–23(b)(4)(ii) shall include, in accordance with good engineering practice, consideration of control system deterioration.

(4) The evaporative emission test results, if any, shall be adjusted by the addition of the appropriate deterioration factor: *Provided,* that if the deterioration factor as computed in paragraph (d)(3) of this section is less than zero, that deterioration factor shall be zero for the purposes of this paragraph.

(5) The emission level to compare with the standard shall be the adjusted emission level of paragraph (d)(4) of this section. Before any emission value is compared with the standard, it shall be rounded, in accordance with ASTM E 29–67, to two significant figures. The rounded emission values may not exceed the standard.

(6) Every test vehicle of an evaporative emission family must comply with the evaporative emission standard, as determined in paragraph (d)(5) of this section, before any vehicle in that family may be certified.

(e)(1) Paragraph (e) of this section applies to gasoline-fueled heavy-duty vehicles.

(2) The applicable refueling emission standard in § 86.XXX–10 applies to the emissions of vehicles for their useful life.

(3)(i) For vehicles with a GVWR of up to 26,000 pounds, because it is expected that emission control efficiency will change during the useful life of the vehicle, a refueling emission deterioration factor shall be determined from the testing described in § 86.XXX–23(b)(4) for each refueling emission family-refueling emission control system combination to indicate the refueling emission control system deterioration during the useful life of the vehicle (minimum 50,000 miles). The factor shall be established to a minimum of two places to the right of the decimal.

(ii) For vehicles with a GVWR of greater than 26,000 pounds, because it is expected that emission control efficiency will change during the useful life of the vehicle, each manufacturer's statement as required in § 86.XXX–23(b)(5)(iv) shall include, in accordance with good engineering practice, consideration of control system deterioration.

(4) The refueling emission test results, if any, shall be adjusted by the addition of the appropriate deterioration factor: *Provided,* that if the deterioration factor as computed in paragraph (e)(3) of this section is less than zero, that deterioration factor shall be zero for the purpose of this paragraph.

(5) The emission level to compare with the standard shall be the adjusted emission level of paragraph (e)(4) of this section. Before any emission value is compared with the standard, it shall be rounded, in accordance with ASTM E 29–67, to two significant figures. The rounded emission values may not exceed the standard.

(6) Every test vehicle of a refueling emission family must comply with the refueling emission standard, as determined in paragraph (e)(5) of this section, before any vehicle in that family may be certified.

15. A new § 86.XXX–29 is proposed to be added to Subpart A, to read as follows:

§ 86.XXX–29 Testing by the Administrator.

(a)(1) Paragraph (a) of this section applies to light-duty vehicles and light-duty trucks.

(2) The Administrator may require that any one or more of the test vehicles be submitted to him, at such place or places as he may designate, for the purposes of conducting emissions tests. The Administrator may specify that he will conduct such testing at the manufacturer's facility, in which case instrumentation and equipment specified by the Administrator shall be made available by the manufacturer for test operations. Any testing conducted at a manufacturer's facility pursuant to this paragraph shall be scheduled by the manufacturer as promptly as possible.

(3)(i) Whenever the Administrator conducts a test on a test vehicle, the results of that test, unless subsequently invalidated by the Administrator, comprise the official data for the vehicle at the prescribed test point and the manufacturer's data for that prescribed test point shall not be used in determining compliance with emission standards (or family emission limits, as appropriate).

(ii) Whenever the Administrator does not conduct a test on a test vehicle at a test point, the manufacturer's test data will be accepted as the official data for that point: *Provided,* that if the Administrator makes a determination based on testing under paragraph (a)(2) of this section, that there is a lack of correlation between the manufacturer's test equipment and the test equipment used by the Administrator, no manufacturer's test data will be accepted for purposes of certification until the reasons for the lack of correlation are determined and the validity of the data is established by the manufacturer, *and further provided,* that if the Administrator has reasonable basis to believe that any test data submitted by the manufacturer is not accurate or has been obtained in violation of any provisions of this part, the Administrator may refuse to accept that data as the official data pending retesting or submission or further information. If the manufacturer conducts more than one test on a vehicle, as authorized under § 86.084–26 (a)(3)(i)(A) or (b)(4)(i)(A), the data from the last test in that series of tests on that vehicle, will constitute the official data.

(iii)(A)(*1*) The Administrator may adjust or cause to be adjusted any adjustable parameter of an emission data vehicle or engine which the Administrator has determined to be subject to adjustment for certification and Selective Enforcement Audit testing in accordance with § 86.085–22(e)(1), to any setting within the physically adjustable range of that parameter, as determined by the Administrator in accordance with § 86.085–22(e)(3)(i), prior to the performance of any tests to determine whether such vehicle or engine conforms to applicable emission standards, including tests performed by the manufacturer under § 86.XXX–23(c)(1). However, if the idle speed parameter is one which the Administrator has determined to be subject to adjustment, the Administrator shall not adjust it to a setting which causes a higher engine idle speed than would have been possible within the physically adjustable range of the idle speed parameter on the engine before it accumulated any dynamometer service, all other parameters being identically adjusted for the purpose of the comparison. The Administrator, in making or specifying such adjustments, will consider the effect of the deviation from the manufacturer's recommended setting on emissions performance characteristics as well as the likelihood that similar settings will occur on in-use light-duty vehicles or light-duty trucks. In determining likelihood, the Administrator will consider factors such as, but not limited to, the effect of the adjustment on vehicle performance characteristics and surveillance information from similar in-use vehicles.

(*2*) For those vehicles or engine parameters which the Administrator has not determined to be subject to adjustment during certification and Selective Enforcement Audit testing in accordance with § 86.085–22(e)(1), the emission-data vehicle presented to the Administrator for testing shall be calibrated within the production

tolerances applicable to the manufacturer's specifications to be shown on the vehicle label (see § 86.XXX–35 (a)(1)(iii)(D) or (a)(2)(iii)(D)) as specified in the application for certification. If the Administrator determines that a vehicle is not within such tolerances, the vehicle will be adjusted, at the facility designated by the Administrator, prior to the test and an engineering report shall be submitted to the Administrator describing the corrective action taken. Based on the engineering report, the Administrator will determine if the vehicle will be used as an emission-data vehicle.

(B) If the Administrator determines that the test data developed on an emission-data vehicle under paragraph (a)(3)(i) of this section would cause that vehicle to fail due to excessive 4,000-mile emissions or by application of the appropriate deterioration factor, then the following procedure shall be observed:

(*1*) The manufacturer may request a retest. Before the retest, those vehicle or engine parameters which the Administrator has not determined to be subject to adjustment for certification and Selective Enforcement Audit testing in accordance with § 86.085–22(e)(1) may be readjusted to manufacturer's specification, if these adjustments were made incorrectly prior to the first test. The Administrator may adjust or cause to be adjusted any parameter which the Administrator has determined to be subject to adjustment to any setting within the physically adjustable range of that parameter, as determined by the Administrator in accordance with § 86.085–22(e)(3)(i). Other maintenance or repairs may be performed in accordance with § 86.XXX–25. All work on the vehicle shall be done at such location and under such conditions as the Administrator may prescribe.

(*2*) The vehicle will be retested by the Administrator and the results of this test shall comprise the official data for the emission-data vehicle.

(iv) If sufficient durability data are not available at the time of any emission test conducted under paragraph (a)(2) of this section to enable the Administrator to determine whether an emission-data vehicle would fail, the manufacturer may request a retest in accordance with the provisions of paragraphs (a)(3)(iii)(A) and (B) of this section. If the manufacturer does not promptly make such request, he shall be deemed to have waived the right to a retest. A request for retest must be made before the manufacturer removes the vehicle from the test premises.

(b)(1) Paragraph (b) of this section applies to heavy-duty vehicles/engines.

(2) The Administrator may require that any one or more of the test vehicles/engines be submitted to him, at such place or places as he may designate, for the purpose of conducting emissions tests. The Administrator may specify that he will conduct such testing at the manufacturer's facility, in which case instrumentation and equipment specified by the Administrator shall be made available by the manufacturer for test operations. Any testing conducted at a manufacturer's facility pursuant to this paragraph shall be scheduled by the manufacturer as promptly as possible.

(3)(i) Whenever the Administrator conducts a test on a test vehicle/engine the results of that test, unless subsequently invalidated by the Administrator, shall comprise the official data for the engine at that prescribed test point and the manufacturer's data for that prescribed test point shall not be used in determining compliance with emission standards (or family emission limits, as appropriate).

(ii) Whenever the Administrator does not conduct a test on a test vehicle/engine at a test point, the manufacturer's test data will be accepted as the official data for that test point: *Provided,* that if the Administrator makes a determination based on testing under paragraph (b)(2) of this section, that there is a lack of correlation between the manufacturer's test equipment and the test equipment used by the Administrator, no manufacturer's test data will be accepted for purposes of certification until the reasons for the lack of correlation are determined and the validity of the data is established by the manufacturer, *and further provided,* that if the Administrator has reasonable basis to believe that any test data submitted by the manufacturer is not accurate or has been obtained in violation of any provision of this part, the Administrator may refuse to accept that data as the official data pending retesting or submission of further information.

(iii)(A)(*1*) The Administrator may adjust or cause to be adjusted any adjustable parameter of an emission-data vehicle/engine which the Administrator has determined to be subject to adjustment for certification testing in accordance with § 86.085–22(e)(1), to any setting within the physically adjustable range of that parameter, as determined by the Administrator in accordance with § 86.085–22(e)(3)(i), prior to the performance of any tests to determine whether such engine conforms to applicable emission standards, including tests performed by the manufacturer under § 86.XXX–23(c)(2). The Administrator, in making or specifying such adjustments, may consider the effect of the deviation from the manufacturer's recommended setting on emissions performance characteristics as well as the likelihood that similar settings will occur on in-use heavy-duty vehicles/engines. In determining likelihood, the Administrator may consider factors such as, but not limited to, the effect of the adjustment on engine performance characteristics and surveillance information from similar in-use vehicles/engines.

(*2*) For those engine parameters which the Administrator has not determined to be subject to adjustment for certification testing in accordance with § 86.085–22(e)(1), the emission-data engine presented to the Administrator for testing shall be calibrated within the production tolerances applicable to the manufacturer's specifications to be shown on the engine label (see § 86.XXX–35(a)(3)(iii)) as specified in the application for certification. If the Administrator determines that an engine is not within such tolerances, the engine shall be adjusted at the facility designated by the Administrator prior to the test and an engineering report shall be submitted to the Administrator describing the corrective action taken. Based on the engineering report, the Administrator will determine if the engine shall be used as an emission-data engine.

(B) If the Administrator determines that the test data developed under paragraph (b)(3)(iii)(A) of this section would cause the emission-data vehicle/engine to fail due to excessive 125-hour emission values or by the application of the appropriate deterioration factor, then the following procedure shall be observed:

(*1*) The manufacturer may request a retest. Before the retest, those engine parameters which the Administrator has not determined to be subject to adjustment for certification testing in accordance with § 86.085–22(e)(1) may be readjusted to the manufacturer's specifications, if these adjustments were made incorrectly prior to the first test. The Administrator may adjust or cause to be adjusted any parameter which the Administrator has determined to be subject to adjustment in accordance with § 86.085–22(e)(3)(i). However, if the idle speed parameter is one which the Administrator has determined to be subject to adjustment, the Administrator shall not adjust it to a setting which

causes a higher engine idle speed than would have been possible within the physically adjustable range of the idle speed parameter on the engine before it accumulated any dynamometer service, all other parameters being identically adjusted for the purpose of the comparison. Other maintenance or repairs may be performed in accordance with § 86.XXX–25. All work on the vehicle/engine shall be done at such locations and under such conditions as the Administrator may prescribe.

(2) The engine will be retested by the Administrator and the results of this test shall comprise the official data for the emission-data engine.

(iv) If sufficient durability data are not available at the time of any emission test conducted under paragraph (b)(2) of this section to enable the Administrator to determine whether an emission-data engine would fail, the manufacturer may request a retest in accordance with the provisions of paragraph (b)(3)(iii)(B) (1) and (2) of this section. If the manufacturer does not promptly make such request, he shall be deemed to have waived the right to a retest. A request for retest must be made before the manufacturer removes the engine from the test premises.

(c)(1) Paragraph (c) of this section applies to gasoline-fueled heavy-duty vehicles.

(2) The Administrator may require that any one or more of the evaporative emission family-system combinations or refueling emission family-system combinations included in the manufacturer's statement(s) of compliance be installed on an appropriate vehicle and such vehicle be submitted to him, at such place or places as he may designate, for the purpose of conducting emissions tests. The Administrator may specify that he will conduct such testing at the manufacturer's facility, in which case instrumentation and equipment specified by the Administrator shall be made available by the manufacturer for test operations. Any testing conducted at a manufacturer's facility pursuant to this paragraph shall be scheduled by the manufacturer as promptly as possible.

(3)(i) Whenever the Administrator conducts a test on an evaporative emission or refueling family-system combination the results of that test, unless subsequently invalidated by the Administrator, shall comprise the official data for the evaporative emission or refueling emission family-system combination and the manufacturer's data, analyses, etc., shall not be used in determining compliance with emission standards.

(ii) Whenever the Administrator does not conduct a test on an evaporative emission or refueling emission family-system combination, the manufacturer's test data will be accepted as the official data: *Provided,* that if the Administrator makes a determination, based on testing under paragraph (c)(2) of this section, that there is a lack of correlation between the manufacturer's test equipment and the test equipment used by the Administrator, no manufacturer's test data will be accepted for purposes of certification until the reasons for the lack of correlation are determined and the validity of the data is established by the manufacturer, *and further provided,* that if the Administrator has reasonable basis to believe that any test data, analyses, or other information submitted by the manufacturer is not accurate or has been obtained in violation of any provision of this part, the Administrator may refuse to accept those data, analyses, etc., as the official data pending retesting or submission of further information.

16. A new § 86.XXX–30 is proposed to be added to Subpart A, to read as follows:

§ 86.XXX–30 Certification.

(a)(1)(i) If, after a review of the test reports and data submitted by the manufacturer, data derived from any inspection carried out under § 86.078–7(c), and any other pertinent data or information, the Administrator determines that a test vehicle(s) (or test engine(s)) meet(s) the requirements of the Act and of this subpart, he will issue a certificate of conformity with respect to such vehicle(s) (or engine(s)) except in cases covered by paragraphs (a)(1)(ii) and (c) of this section.

(ii)(A) *Gasoline-fueled heavy-duty vehicles.* If, after a review of the statement(s) of compliance submitted by the manufacturer under § 86.XXX–23(b)(4) and any other pertinent data or information, the Administrator determines that the requirements of the Act and this subpart have been met, he will issue one certificate of conformity per manufacturer with respect to the evaporative emission family(s) covered by such statement(s) except in cases covered by paragraph (c) of this section.

(B) If, after a review of the statement(s) of compliance submitted by the manufacturer under § 86.XXX–23(b)(5) and any other pertinent data or information, the Administrator determines that the requirements of the Act and this subpart have been met, he will issue one certificate of conformity per manufacturer with respect to the refueling emission family(s) covered by such statement(s) except in cases covered by paragraph (c) of this section.

(2) Such certificate will be issued for such period not to exceed one model year as the Administrator may determine and upon such terms as he may deem necessary or appropriate to assure that any new motor vehicle (or new motor vehicle engine) covered by the certificate will meet the requirements of the Act and of this part.

(3)(i) One such certificate will be issued for each engine family. For gasoline-fueled light-duty vehicles and light duty-trucks, one such certificate will be issued for each engine family-evaporative emission family-refueling emission family combination.

(A) *Light-Duty Vehicles.* Each certificate will certify compliance with no more than one set of standards (or one family particulate emission limit, as appropriate).

(B) *Light-Duty Trucks.* Each certificate will certify compliance with no more than one set of standards (or one family emission limit, as appropriate), except for low-altitude standards and high-altitude standards. The certificate shall state that it covers vehicles sold or delivered to an ultimate purchaser for principal use at a designated high-altitude location only if the vehicle conforms in all material respects to the design specifications that apply to those vehicles described in the application for certification at high-altitude.

(ii) For gasoline-fueled heavy-duty vehicles, one such certificate will be issued for each manufacturer and will certify compliance for those vehicles previously identified in that manufacturer's statement(s) of compliance as required in § 86.XXX–23(b)(4) (i) and (ii).

(iii) For diesel light-duty vehicles and light-duty trucks included in the particulate averaging program, the manufacturer may at any time during production elect to change the level of any family particulate emission limit by demonstrating compliance with the new limit as described in §§ 86.XXX–28(a)(6) and 86.XXX–28(b)(5)(i). New certificates issued under this paragraph will be applicable only for vehicles produced subsequent to the date of issuance.

(iv) For light-duty trucks included in the NO_x averaging program, the manufacturer may at any time during production elect to change the level of any family NO_x emission limit by demonstrating compliance with the new limit as described in § 86 XXX–28(b)(5)(ii). New certificates issued under this paragraph will be applicable only for vehicles produced subsequent to the day of issue.

(v) For gasoline-fueled light-duty vehicles, light-duty trucks, and heavy duty vehicles, one certificate will be issued for each manufacturer and will certify compliance for those vehicles previously identified in that manufacturers' statement(s) of compliance as required in § 86.XXX-23(b)(4).

(4)(i) The adjustment or modification of any light-duty truck in accordance with instructions provided by the manufacturer for the altitude where the vehicle is principally used will not be considered a violation of section 203(a)(3) of the Clean Air Act.

(ii) A violation of section 203(a)(1) of the Clean Air Act occurs when a manufacturer sells or delivers to an ultimate purchaser any light-duty vehicle or light-duty truck, subject to the regulations under the Act, under any of the conditions specified in the remainder of this paragraph.

(A) When a light-duty vehicle or light-duty truck is not configured to meet high-altitude requirements:

(*1*) At a designated high-altitude location, unless such manufacturer has reason to believe that such vehicle will not be sold to an ultimate purchaser for principal use at a designated high-altitude location; or

(*2*) At a location other than a designated high-altitude location, when such manufacturer has reason to believe that such motor vehicle will be sold to an ultimate purchaser for principal use at a designated high-altitude location.

(B) When a light-duty vehicle is not configured to meet low-altitude requirements, as provided in § 86.XXX-8(i):

(*1*) At a designated low-altitude location, unless such manufacturer has reason to believe that such vehicle will not be sold to an ultimate purchaser for principal use at a designated low-altitude location; or

(*2*) At a location other than a designated low-altitude location, when such manufacturer has reason to believe that such motor vehicle will be sold to an ultimate purchaser for principal use at a designated low-altitude location.

(iii) A manufacturer shall be deemed to have reason to believe that a light-duty vehicle that has been exempted from compliance with emission standards at high-altitude, or a light-duty truck which is not configured to meet high-altitude requirements, will not be sold to an ultimate purchaser for principal use at a designated high-altitude location if the manufacturer has informed its dealers and field representatives about the terms of these high-altitude regulations, has not caused the improper sale itself, and has taken reasonable action which shall include, but not be limited to, either paragraphs (a)(4)(iii) (A) or (B), and (a)(4)(iii)(C) of this section:

(A) Requiring dealers in designated high-altitude locations to submit written statements to the manufacturer signed by the ultimate purchaser that a vehicle which is not configured to meet high-altitude requirements will not be used principally at a designated high-altitude location; requiring dealers in counties contiguous to designated high-altitude locations to submit written statements to the manufacturer, signed by the ultimate purchaser who represents to the dealer in the normal course of business that he or she resides in a designated high-altitude location, that a vehicle which is not configured to meet high-altitude requirements will not be used principally at a designated low-altitude location; and for each sale or delivery of fleets of ten or more such vehicles in a high-altitude location or in counties contiguous to high-altitude locations, requiring either the selling dealer or the delivering dealer to submit written statements to the manufacturer, signed by the ultimate purchaser who represents to the dealer in the normal course of business that he or she resides in a designated high-altitude location, that a vehicle which is not configured to meet high-altitude requirements will not be used principally at a designated high-altitude location. In addition, the manufacturer will make available to EPA, upon reasonable written request (but not more frequently than quarterly, unless EPA has demonstrated that it has substantial reason to believe that an improperly configured vehicle has been sold), sales, warranty, or other information pertaining to sales of vehicles by the dealers described above, maintained by the manufacturer in the normal course of business relating to the altitude configuration of vehicles and the locations of ultimate purchasers; or

(B) Implementing a system which monitors factory orders of low-altitude vehicles by high-altitude dealers, or through other means, identifies dealers that may have sold or delivered a vehicle not configured to meet the high-altitude requirements to an ultimate purchaser for principal use at a designated high-altitude location; and making such information available to EPA upon reasonable written request (but not more frequently than quarterly, unless EPA has demonstrated that it has substantial reason to believe that an improperly configured vehicle has been sold); and

(C) Within a reasonable time after receiving written notice from EPA or a State or local government agency that a dealer may have improperly sold or delivered a vehicle not configured to meet the high-altitude requirements to an ultimate purchaser residing in a designated high-altitude location, or based on information obtained pursuant to paragraph (a)(4)(iii) of this section that a dealer may have improperly sold or delivered a significant number of such vehicles to ultimate purchasers so residing, reminding the dealer in writing of the requirements of these regulations, and, where appropriate, warning the dealer that sale by the dealer of vehicles not configured to meet high-altitude requirements may be contrary to the terms of its franchise agreement with the manufacturer and the dealer certification requirements of § 85.2108 of this chapter.

(iv) A manufacturer shall be deemed to have reason to believe that a light-duty vehicle which has been exempted from compliance with emission standards at low-altitude, as provided in § 86.XXX-8, will not be sold to an ultimate purchaser for principal use at a designated low-altitude location if the manufacturer has informed its dealers and field representatives about the terms of these high-altitude regulations, has not caused the improper sale itself, and has taken reasonable action which shall include, but not be limited to, either paragraph (a)(4)(iv) (A) or (B), and (a)(4)(iv)(C) of this section:

(A) Requiring dealers in designated low-altitude locations to submit written statements to the manufacturer signed by the ultimate purchaser that a vehicle which is not configured to meet low-altitude requirements will not be used principally at a designated low-altitude location; requiring dealers in counties contiguous to designated low-altitude locations to submit written statements to the manufacturer, signed by the ultimate purchaser who represents to the dealer in the normal course of business that he or she resides in a designated low-altitude location, that a vehicle which is not configured to meet low-altitude requirements will not be used principally at a designated low-altitude location; and for each sale or delivery of fleets of ten or more such vehicles in a low-altitude location or in counties contiguous to low-altitude locations, requiring either the selling dealer or the delivering dealer to submit written statements to the manufacturer, signed by the ultimate purchaser who represents to the dealer in the normal course of business that he or she resides in a designated low-altitude location, that a vehicle which is not configured to meet low-altitude requirements will not

be used principally at a designated low-altitude location. In addition, the manufacturer will make available to EPA, upon reasonable written request (but not more frequently than quarterly, unless EPA has demonstrated that it has substantial reason to believe that an improperly configured vehicle has been sold), sales, warranty, or other information pertaining to sales of vehicles by the dealers described above maintained by the manufacturer in the normal course of business relating to the altitude configuration of vehicles and the locations of ultimate purchasers; or

(B) Implementing a system which monitors factory orders of high-altitude vehicles by low-altitude dealers, or through other means, identifies dealers that may have sold or delivered a vehicle not configured to meet the low-altitude requirements to an ultimate purchaser for principal use at a designated low-altitude location; and making such information available to EPA upon reasonable written request (but not more frequently than quarterly, unless EPA has demonstrated that it has substantial reason to believe that an improperly configured vehicle has been sold); and

(C) Within a reasonable time after receiving written notice from EPA or a state or local government agency that a dealer may have improperly sold or delivered a vehicle not configured to meet the low-altitude requirements to an ultimate purchaser residing in a designated low-altitude location, or based on information obtained pursuant to paragraph (a)(4)(iv) of this section that a dealer may have improperly sold or delivered a significant number of such vehicles to ultimate purchasers so residing, reminding the dealer in writing of the requirements of these regulations, and, where appropriate, warning the dealer that sale by the dealer of vehicles not configured to meet low-altitude requirements may be contrary to the terms of its franchise agreement with the manufacturer and the dealer certification requirements of § 85.2108 of this chapter.

(5)(i) For the purpose of paragraph (a) of this section, a "designated high-altitude location" is any county which has substantially all of its area located above 1,219 meters (4,000 feet) and:

(A) Requested an extension past the attainment date of December 31, 1982, for compliance with either the National Ambient Air Quality Standards for carbon monoxide or ozone, as indicated in Part 52 (Approval and Promulgation of Implementation Plans) of this title; or

(B) Is in the same state as a county designated as a high-altitude location according to paragraph (a)(5)(i)(A) of this section.

(ii) The designated high-altitude locations defined in paragraph (a)(5)(i) of this section are listed below:

State of Colorado

Adams	Kit Carson
Alamosa	Lake
Arapahoe	La Plata
Archuleta	Larimer
Boulder	Las Animas
Chaffee	Lincoln
Cheyenne	Mesa
Clear Creek	Mineral
Conejos	Moffat
Costilla	Montezuma
Crowley	Montrose
Custer	Morgan
Delta	Otero
Denver	Ouray
Dolores	Park
Douglas	Pitkin
Eagle	Pueblo
Elbert	Rio Blanco
El Paso	Rio Grande
Fremont	Routt
Garfield	Saguache
Gilpin	San Juan
Grand	San Miguel
Gunnison	Summit
Hinsdale	Teller
Huerfano	Washington
Jackson	Weld
Jefferson	

State of Nevada

Carson City	Lyon
Douglas	Mineral
Elko	Nye
Esmeralda	Pershing
Eureka	Storey
Humboldt	Washoe
Lander	White Pine
Lincoln	

State of New Mexico

Bernalillo	Mora
Catron	Rio Arriba
Colfax	Roosevelt
Curry	Sandoval
De Baca	San Juan
Grant	San Miguel
Guadalupe	Santa Fe
Harding	Sierra
Hidalgo	Socorro
Lincoln	Taos
Los Alamos	Torrance
Luna	Union
McKinley	Valencia
Otero	

State of Utah

Beaver	Morgan
Box Elder	Piute
Cache	Rich
Carbon	Salt Lake
Daggett	San Juan
Davis	Sanpete
Duchesne	Sevier
Emery	Summit
Garfield	Tooele
Grand	Uintah
Iron	Utah
Juab	Wasatch
Kane	Wayne
Millard	Weber

(iii) For the purpose of paragraph (a) of this section, a "designated low altitude location" is any county which has substantially all of its area located below 1,219 meters (4,000 feet).

(iv) The designated low-altitude locations so defined include all counties in the United States which are not listed in either paragraph (a)(5)(ii) of this section or in the list below:

State of Arizona

Apache	Navajo
Cochise	Yavapai
Coconino	

State of Idaho

Bannock	Franklin
Bear Lake	Fremont
Bingham	Jefferson
Blaine	Lemhi
Bonneville	Madison
Butte	Minidoka
Camas	Oneida
Caribou	Power
Cassia	Teton
Clark	Valley
Custer	

State of Montana

Beaverhead	Meagher
Deer Lodge	Park
Gallatin	Powell
Jefferson	Silver Bow
Judith Basin	Wheatland
Madison	

State of Nebraska

Banner	Kimball
Cheyenne	Sioux

State of Oregon

Harney	Lake
Klamath	

State of Texas

Jeff Davis	Parmer
Hudspeth	

State of Wyoming

Albany	Natrona
Campbell	Niobrara
Carbon	Park
Converse	Platte
Fremont	Sublette
Goshen	Sweetwater
Hot Springs	Teton
Johnson	Uinta
Laramie	Washakie
Lincoln	Weston

(6) Catalyst-equipped vehicles, otherwise covered by a certificate, which are driven outside the United States, Canada, and Mexico will be presumed to have been operated on leaded gasoline resulting in deactivation of the catalysts. If these vehicles are imported or offered for importation without retrofit of the catalyst, they will be considered not to be within the coverage of the certificate unless included in a catalyst control program operated by a manufacturer or a United States Government agency and approved by the Administrator as provided in § 85.1509.

(7) For incomplete light-duty trucks, a certificate covers only those new motor vehicles which, when completed by

having the primary load-carrying device or container attached, conform to the maximum curb weight and frontal area limitations described in the application for certification as required in § 86.XXX-21(d).

(8) For heavy-duty engines, a certificate covers only those new motor vehicle engines installed in heavy-duty vehicles which conform to the minimum gross vehicle weight rating, curb weight, or frontal area limitations for heavy-duty vehicles described in § 86.082-2.

(9) For incomplete gasoline-fueled heavy-duty vehicles a certificate covers only those new motor vehicles which, when completed, conform to the nominal maximum fuel tank capacity limitations as described in the application for certification as required in § 86.XXX-21(e).

(10) For diesel light-duty vehicles and diesel light-duty truck families which are included in a particulate averaging program, the manufacturer's production-weighted average of the particulate emission limits of all engine families in a participating class or classes shall not exceed the applicable diesel particulate standard, or the composite particulate standard defined in § 86.085-2, as appropriate, at the end of the model year, as determined in accordance with 40 CFR Part 86. The certificate shall be void *ab initio* for those vehicles causing any exceedance of the particulate standard.

(11) For light-duty truck families which are included in the NO_x averaging program, the manufacturer's production-weighted average of the NO_x emission limits of all such engine families shall not exceed the applicable light-duty truck NO_x standard, or the composite NO_x standard defined in § 86.088-2, as appropriate, at the end of the model year, as determined in accordance with 40 CFR Part 86. The certificate shall be void *ab initio* for those vehicles causing any exceedance of the NO_x standard.

(b)(1) The Administrator will determine whether a vehicle (or engine) covered by the application complies with applicable standards (or family emission limits, as appropriate) by observing the following relationships:

(i) *Light-duty vehicles.* (A) The durability-data vehicle(s) selected under § 86.XXX-24(c)(1)(i) shall represent all vehicles of the same engine-system combination.

(B) The emission-data vehicle(s) selected under § 86.XXX-24(b)(1) (ii) through (iv) shall represent all vehicles of the same engine-system combination as applicable.

(C) The emission-data vehicle(s) selected under § 86.XXX-24(b)(1)(vii) (A) and (B) shall represent all vehicles of the same evaporative control system within the evaporative family.

(D) The emission-data vehicle(s) selected under § 86.XXX-24(b)(1)(xi) shall represent all vehicles of the same refueling control system within the refueling family.

(ii) *Light-duty trucks.* (A) The emission-data vehicle(s) selected under § 86.XXX-24(b)(1) (i) through (iv), shall represent all vehicles of the same engine-system combination as applicable.

(B) The emission-data vehicle(s) selected under § 86.XXX-24(b)(1)(vii) (A) and (B) shall represent all vehicles of the same evaporative control system within the evaporative family.

(C) The emission data vehicles selected under § 86.XXX-24(b)(1)(x) shall represent all vehicles of the same refueling control system within the refueling family.

(D) The emission-data vehicle(s) selected under § 86.XXX-24(b)(1)(v) shall represent all vehicles of the same engine-system combination as applicable.

(E) The emission-data vehicle(s) selected under § 86.XXX-24(b)(1)(viii) shall represent all vehicles of the same evaporative control system within the evaporative emission family, as applicable.

(F) The emission data vehicle(s) selected under § 86.XXX-24(b)(1)(xi) shall represent all vehicles of the same refueling control system within the refueling family.

(iii) *Heavy-duty engines.* (A) A gasoline-fueled emission data test engine selected under § 86.XXX-24(b)(2)(iv) shall represent all engines in the same family of the same engine displacement-exhaust emission control system combination.

(B) A gasoline-fueled emission-data test engine selected under § 86.XXX-24(b)(2)(iii) shall represent all engines in the same engine family of the same engine displacement-exhaust emission control system combination.

(C) A diesel emission-data test engine selected under § 86.XXX-24(b)(3)(ii) shall represent all engines in the same engine-system combination.

(D) A diesel emission-data test engine selected under § 86.XXX-24(b)(3)(iii) shall represent all engines of that emission control system at the rated fuel delivery of the test engine.

(iv) *Gasoline-fueled heavy-duty vehicles.* A statement of compliance submitted under § 86.XXX-23(b)(4)(i) or (ii) shall represent all vehicles in the same evaporative emission family-evaporative emission control system combination.

(v) *Gasoline-fueled heavy-duty vehicles.* A statement of compliance under § 86.XXX-23(b)(4) shall represent all vehicles in the same refueling emission family-refueling emission control system combination.

(2) The Administrator will proceed as in paragraph (a) of this section with respect to the vehicles (or engines) belonging to an engine family or engine family-evaporative emission family and/or refueling emission family combination (as applicable), all of which comply with all applicable standards (or family emission limits, as appropriate).

(3) If, after a review of the test reports and data submitted by the manufacturer, data derived from any additional testing conducted pursuant to § 86.XXX-29, data or information derived from any inspection carried out under § 86.078-7(c) or any other pertinent data or information, the Administrator determines that one or more test vehicles (or test engines) of the certification test fleet do not meet applicable standards (or family emission limits, as appropriate), he will notify the manufacturer in writing, setting forth the basis for his determination. Within 30 days following receipt of the notification, the manufacturer may request a hearing on the Administrator's determination. The request shall be in writing, signed by an authorized representative of the manufacturer and shall include a statement specifying the manufacturer's objections to the Administrator's determination and data in support of such objections. If, after a review of the request and supporting data, the Administrator finds that the request raises a substantial factual issue, he shall provide the manufacturer a hearing in accordance with § 86.078-6 with respect to such issue.

(4) For light-duty vehicles and light-duty trucks the manufacturer may, at its option, proceed with any of the following alternatives with respect to an emission-data vehicle determined not in compliance with all applicable standards (or family emission limits, as appropriate) for which it was tested:

(i) Request a hearing under § 86.078-6; or

(ii) Remove the vehicle configuration (or evaporative or refueling vehicle configuration, as applicable) which failed, from his application;

(A) If the failed vehicle was tested for compliance with exhaust emission standards (or the family emission limits, as appropriate) only: The Administrator may select, in place of the failed vehicle, in accordance with the selection criteria employed in selecting the failed vehicle,

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a new emission-data vehicle to be tested for exhaust emission compliance only.

(B) If the failed vehicle was tested for compliance with two or more of the exhaust, evaporative and refueling emission standards (or family emission limits, as appropriate): The Administrator may select, in place of the failed vehicle, in accordance with the selection criteria employed in selecting the failed vehicle, a new emission-data vehicle which will be tested for compliance with the applicable emission standards (or family emission limits, as appropriate). If one vehicle cannot be selected in accordance with the selection criteria employed in selecting the failed vehicle, then two or more vehicles may be selected (*e.g.*, one vehicle to satisfy the exhaust emission vehicle selection criteria and one vehicle to satisfy the evaporative emission vehicle selection criteria). The vehicle selected to satisfy the exhaust emission vehicle selection criteria will be tested for compliance with exhaust emission standards (or family emission limits, as appropriate) only. The vehicle selected to satisfy the evaporative and/or refueling emission vehicle selection criteria will be tested for compliance with exhaust, evaporative and/or refueling emission standards; or

(iii) Remove the vehicle configuration (or evaporative or refueling vehicle configuration, as applicable) which failed from the application and add a vehicle configuration(s) (or evaporative or refueling vehicle configuration(s), as applicable) not previously listed. The Administrator may require, if applicable, that the failed vehicle be modified to the new engine code (or evaporative or refueling emission code, as applicable) and demonstrate by testing that it meets applicable standards (or family emission limits, as appropriate) for which it was originally tested. In addition, the Administrator may select, in accordance with the vehicle selection criteria given in § 86.XXX–24(b), a new emission-data vehicle or vehicles. The vehicles selected to satisfy the exhaust emission vehicle selection criteria will be tested for compliance with exhaust emission standards (or family emission limits, as appropriate) only. The vehicles selected to satisfy the evaporative emission and/or refueling emission vehicle selection criteria will be tested for compliance with both exhaust and evaporative and/or refueling emission standards (or family emission limits, as appropriate); or

(iv) Correct a component or system malfunction and show that with a correctly functioning system or component the failed vehicle meets applicable standards (or family emission limits, as appropriate) for which it was originally tested. The Administrator may require a new emission-data vehicle, of identical vehicle configuration (or evaporative or refueling vehicle configuration, as applicable) to the failed vehicle, to be operated and tested for compliance with the applicable standards (or family emission limits, as appropriate) for which the failed vehicle was originally tested.

(5) For heavy-duty engines the manufacturer may, at his option, proceed with any of the following alternatives with respect to any engine family represented by a test engine(s) determined not in compliance with applicable standards:

(i) Request a hearing under § 86.078–6; or

(ii) Delete from the application for certification the engines represented by the failing test engine (Engines so deleted may be included in a later request for certification under § 86.079–32.) The Administrator may then select in place of each failing engine an alternate engine chosen in accordance with selection criteria employed in selecting the engine that failed; or

(iii) Modify the test engine and demonstrate by testing that it meets applicable standards. Another engine which is in all material respects the same as the first engine, as modified, may then be operated and tested in accordance with applicable test procedures.

(6) If the manufacturer does not request a hearing or present the required data under paragraphs (b)(4) or (b)(5) of this section (as applicable) of this section, the Administrator will deny certification.

(c)(1) Notwithstanding the fact that any certification vehicle(s) (or certification engine(s)) may comply with other provisions of this subpart, the Administrator may withhold or deny the issuance of a certificate of conformity (or suspend or revoke any such certificate which has been issued) with respect to any such vehicle(s) (or engine(s)) if:

(i) The manufacturer submits false or incomplete information in his application for certification thereof;

(ii) The manufacturer renders inaccurate any test data which he submits pertaining thereto or otherwise circumvents the intent of the Act, or of this part with respect to such vehicle (or engine);

(iii) Any EPA Enforcement Officer is denied access on the terms specified in § 86.078–7(c) to any facility or portion thereof which contains any of the following:

(A) The vehicle (or engine);

(B) Any components used or considered for use in its modification or buildup into a certification vehicle (or certification engine);

(C) Any production vehicle (or production engine) which is or will be claimed by the manufacturer to be covered by the certificate;

(D) Any step in the construction of a vehicle (or engine) described in paragraph (c)(iii)(C) of this section;

(E) Any records, documents, reports, or histories required by this part to be kept concerning any of the above;

(iv) Any EPA Enforcement Officer is denied "reasonable assistance" (as defined in § 86.078–7(c)) in examining any of the items listed in paragraph (c)(1)(iii) of this section.

(2) The sanctions of withholding, denying, revoking, or suspending of a certificate may be imposed for the reasons in paragraphs (c)(1) (i), (ii), (iii), or (iv) of this section only when the infraction is substantial.

(3) In any case in which a manufacturer knowingly submits false or inaccurate information or knowingly renders inaccurate or invalid any test data or commits any other fraudulent acts and such acts contribute substantially to the Administrator's decision to issue a certificate of conformity, the Administrator may deem such certificate void *ab initio*.

(4) In any case in which certification of a vehicle (or engine) is proposed to be withheld, denied, revoked, or suspended under paragraph (c)(1) (iii) or (iv) of this section, and in which the Administrator has presented to the manufacturer involved reasonable evidence that a violation of § 86.078–7(c) in fact occurred, the manufacturer, if he wishes to contend that, even though the violation occurred, the vehicle (or engine) in question was not involved in the violation to a degree that would warrant withholding denial, revocation, or suspension of certification under either paragraph (c)(1) (iii) or (iv) of this section, shall have the burden of establishing that contention to the satisfaction of the Administrator.

(5) Any revocation or suspension of certification under paragraph (c)(1) of this section shall:

(i) Be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.078–6 hereof.

(ii) Extend no further than to forbid the introduction into commerce of vehicles (or engines) previously covered

by the certification which are still in the hands of the manufacturer, except in cases of such fraud or other misconduct as makes the certification invalid *ab initio*.

(6) The manufacturer may request in the form and manner specified in paragraph (b)(3) of this section that any determination made by the Administrator under paragraph (c)(1) of this section to withhold or deny certification be reviewed in a hearing conducted in accordance with § 86.078–6. If the Administrator finds, after a review of the request and supporting data, that the request raises a substantial factual issue, he will grant the request with respect to such issue.

(d)(1) *For light-duty vehicles.* Notwithstanding the fact that any vehicle configuration or engine family may be covered by a valid outstanding certificate of conformity, the Administrator may suspend such outstanding certificate of conformity in whole or in part with respect to such vehicle configuration or engine family if:

(i) The manufacturer refuses to comply with the provisions of a test order issued by the Administrator pursuant to § 86.603; or

(ii) The manufacturer refuses to comply with any of the requirements of § 86.603; or

(iii) The manufacturer submits false or incomplete information in any report or information provided pursuant to the requirements of § 86.609; or

(iv) The manufacturer renders inaccurate any test data which he submits pursuant to § 86.609; or

(v) Any EPA Enforcement Officer is denied access to a facility on the terms specified in § 86.606; or

(vi) Any EPA Enforcement Officer is denied the opportunity on the terms specified in § 86.606, to:

(A) Monitor vehicle selection pursuant to § 86.607, or

(B) Select vehicles for testing pursuant to § 86.607, or

(C) Monitor vehicle testing performed to satisfy any of the requirements of this part; or

(vii) Any EPA Enforcement Officer is denied "reasonable assistance" as defined in § 86.606 in examining any of the items listed in that section; or

(viii) The manufacturer refuses to comply with the requirements of §§ 86.604(a), 86.605, and 86.607, 86.608, 86.610, or 86.611.

(2) The sanction of suspending a certificate may not be imposed for the reasons in paragraphs (d)(1) (i), (ii), or (viii) of this section where such refusal is caused by conditions and circumstances outside the control of the manufacturer which renders it impossible to comply with those requirements. Such conditions and circumstances shall include, but not be limited to, any uncontrollable factors which results in the temporary unavailability of equipment and personnel needed to conduct the required tests, such as equipment breakdown or failure or illness of personnel, but shall not include failure of the manufacturer to adequately plan for and provide the equipment and personnel needed to conduct the tests. The manufacturer will bear the burden of establishing the presence of the conditions and circumstances required by this paragraph.

(3) The sanctions of suspending a certificate may be imposed for the reasons in paragraphs (d)(1) (iii), (iv), (v), (vi), or (vii) of this section only when the infraction is substantial.

(4) In any case in which a manufacturer knowingly submitted false or inaccurate information or knowingly rendered inaccurate any test data or committed any other fraudulent acts, and such acts contributed substantially to the Administrator's original decision not to suspend or revoke a certificate of conformity in whole or in part, the Administrator may deem such certificate void from the date of such fraudulent act.

(5) In any case in which certification of a vehicle is proposed to be suspended under paragraph (d)(1) (v), (vi), or (vii) of this section, and in which the Administrator has presented to the manufacturer involved reasonable evidence that a violation of § 86.606 in fact occurred, the manufacturer, if he wishes to contend that even though the violation occurred, the vehicle configuration or engine family in question was not involved in the violation to the degree that would warrant suspension of certification under either paragraph (d)(1) (v), (vi), or (vii) of this section, shall have the burden of establishing that contention to the satisfaction of the Administrator.

(6) Any suspension of certification under paragraph (d)(1) of this section shall:

(i) Be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.613 hereof, and

(ii) Not apply to vehicles no longer in the hands of the manufacturer.

(e)(1) *For light-duty trucks and heavy-duty engines.* Notwithstanding the fact that any vehicle configuration or engine family may be covered by a valid outstanding certificate of conformity, the Administrator may suspend such outstanding certificate of conformity in whole or in part with respect to such vehicle or engine configuration or engine family if:

(i) The manufacturer refuses to comply with the provisions of a test order issued by the Administrator pursuant to § 86.1003; or

(ii) The manufacturer refuses to comply with any of the requirements of § 86.1003; or

(iii) The manufacturer submits false or incomplete information in any report or information provided pursuant to the requirements of § 86.1009; or

(iv) The manufacturer renders inaccurate any test data submitted pursuant to § 86.1009; or

(v) Any EPA Enforcement Officer is denied the opportunity to conduct activities related to entry and access as authorized in § 86.1006 of this part and in a warrant or court order presented to the manufacturer or the party in charge of a facility in question; or

(vi) EPA Enforcement Officers are unable to conduct activities related to entry and access as authorized in 86.1006 of this part because a manufacturer has located a facility in a foreign jurisdiction where local law prohibits those activities; or

(vii) The manufacturer refuses to or in fact does not comply with the requirements of §§ 86.1004(a), 86.1005, 86.1007, 86.1008, 86.1010, 86.1011, or 86.1013.

(2) The sanction of suspending a certificate may not be imposed for the reasons in paragraphs (e)(1) (i), (ii), or (vii) of this section where such refusal or denial is caused by conditions and circumstances outside the control of the manufacturer which renders it impossible to comply with those requirements. Such conditions and circumstances shall include, but are not limited to, any uncontrollable factors which result in the temporary unavailability of equipment and personnel needed to conduct the required tests, such as equipment breakdown or failure or illness of personnel, but shall not include failure of the manufacturer to adequately plan for and provide the equipment and personnel needed to conduct the tests. The manufacturer will bear the burden of establishing the presence of the conditions and circumstances required by this paragraph.

(3) The sanction of suspending a certificate may be imposed for the reasons outlined in paragraph (e)(1) (iii), (iv), or (v) of this section only when the infraction is substantial.

(4) In any case in which a manufacturer knowingly submitted false or inaccurate information or knowingly

rendered inaccurate any test data or committed any other fraudulent acts, and such acts contributed substantially to the Administrator's original decision not to suspend or revoke a certificate of conformity in whole or in part, the Administrator may deem such certificate void from the date of such fraudulent act.

(5) In any case in which certification of a light-duty truck or heavy-duty engine is proposed to be suspended under paragraph (e)(1)(v) of this section and in which the Administrator has presented to the manufacturer involved reasonable evidence that a violation of § 86.1006 in fact occurred, if the manufacturer wishes to contend that, although the violation occurred, the vehicle or engine configuration or engine family in question was not involved in the violation to a degree that would warrant suspension of certification under paragraph (e)(1)(v) of this section, he shall have the burden of establishing that contention to the satisfaction of the Administrator.

(6) Any suspension of certification under paragraph (e)(1) of this section shall:

(i) Be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.1014, and

(ii) Not apply to vehicles or engines no longer in the hands of the manufacturer.

(7) Any voiding of a certificate of conformity under paragraph (e)(4) of this section shall be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.1014.

17. A new § 86.XXX–35 is proposed to be added to Subpart A, to read as follows:

§ 86.XXX–35 Labeling.

(a) The manufacturer of any motor vehicle (or motor vehicle engine) subject to the applicable emission standards (and family emission limits, as appropriate) of this subpart shall, at the time of manufacture, affix a permanent legible label, of the type and in the manner described below, containing the information hereinafter provided, to all production models of such vehicles (or engines) available for sale to the public and covered by a certificate of conformity under § 86.XXX–30(a).

(1) *Light-duty vehicles.* (i) A permanent, legible label shall be affixed in a readily visible position in the engine compartment.

(ii) The label shall be affixed by the vehicle manufacturer who has been issued the certificate of conformity for such vehicle, in such a manner that it cannot be removed without destroying or defacing the label. The label shall not be affixed to any equipment which is easily detached from such vehicle.

(iii) The label shall contain the following information lettered in the English language in block letters and numerals, which shall be of a color that contrasts with the background of the label:

(A) The label heading: Vehicle Emission Control Information;

(B) Full corporate name and trademark of manufacturer;

(C) Engine displacement (in cubic inches), engine family identification, evaporative family identification and refueling family identification.

(D) Engine tune-up specifications and adjustments, as recommended by the manufacturer in accordance with the applicable emission standards (or family emission limits, as applicable), including but not limited to idle speed(s), ignition timing, the idle air-fuel mixture setting procedure and value (*e.g.*, idle CO, idle air-fuel ratio, idle speed drop), high idle speed, initial injection timing, and valve lash (as applicable), as well as other parameters deemed necessary by the manufacturer. These specifications should indicate the proper transmission position during tune-up and what accessories (*e.g.*, air conditioner), if any, should be in operation;

(E) An unconditional statement of compliance with the appropriate model year U.S. Environmental Protection Agency regulations which apply to light-duty vehicles;

(F) For vehicles which are part of the diesel particulate averaging program, the family particulate emission limit to which the vehicle is certified;

(G) For vehicles that have been exempted from compliance with the emission standards at high altitude, as specified in § 86.XXX–8(h),

(*1*) A highlighted statement (e.g., underscored or boldface letters) that the vehicle is certified to applicable emission standards at low altitude only,

(*2*) A statement that the vehicle's unsatisfactory performance under high-altitude conditions makes it unsuitable for principal use at high altitude, and

(*3*) A statement that the emission performance warranty provisions of 40 CFR Part 85, Subpart V do not apply when the vehicle is tested at high altitude; and

(H) For vehicles that have been exempted from compliance with the emission standards at low altitude, as specified in § 86.XXX–8(i),

(*1*) A highlighted statement (e.g., underscored or boldface letters) that the vehicle is certified to applicable emission standards at high altitude only, and

(*2*) A statement that the emission performance warranty provisions of 40 CFR Part 85, Subpart V do not apply when the vehicle is tested at low altitude.

(2) *Light-duty trucks.* (i) A legible, permanent label shall be affixed in a readily visible position in the engine compartment.

(ii) The label shall be affixed by the vehicle manufacturer who has been issued the certificate of conformity for such vehicle, in such a manner that it cannot be removed without destroying or defacing the label. The label shall not be affixed to any equipment which is easily detached from such vehicle.

(iii) The label shall contain the following information lettered in the English language in block letters and numerals, which shall be of a color that contrasts with the background of the label.

(A) The label heading: Important Vehicle Information;

(B) Full corporate name and trademark of manufacturer;

(C) Engine displacement (in cubic inches), engine family identification, evaporative family identification and refueling family identification;

(D) Engine tune-up specifications and adjustments, as recommended by the manufacturer in accordance with the applicable emission standards (or family emission limits, as appropriate), including but not limited to idle speed(s), ignition timing, the idle air-fuel mixture setting procedure and value (e.g., idle CO, idle air-fuel ratio, idle speed drop), high idle speed, initial injection timing, and valve lash (as applicable), as well as other parameters deemed necessary by the manufacturer. These specifications should indicate the proper transmission position during tune-up and what accessories (e.g., air conditioner), if any, should be in operation. If adjustments or modifications to the vehicle are necessary to insure compliance with emission standards (or family emission limits, as appropriate) at either high or low altitude, the manufacturer shall either include the instructions for such adjustments on the label, or indicate on the label where instructions for such adjustments may be found. The label shall indicate whether the engine tune-up or adjustment specifications are applicable to high altitude, low altitude or both;

(E) The prominent statement: "This vehicle conforms to U.S. EPA regulations applicable to 19—— Model Year New Light-Duty Trucks."

(F) If the manufacturer is provided an alternate useful life period under the provisions of § 86.XXX–21(f), the prominent statement: "This vehicle has been certified to meet U.S. EPA standards for a useful-life period of —— years or ——— miles of operation, whichever occurs first. This vehicle's actual life may vary depending on its service application." The manufacturer may alter this statement only to express the assigned alternate useful life in terms other than years of miles (e.g., hours, or miles only);

(G) A statement, if applicable, that the adjustments or modifications indicated on the label are necessary to ensure emission control compliance at the altitude specified;

(H) A statement, if applicable, that the high-altitude vehicle was designated or modified for principal use at high altitude. This statement must be affixed by the manufacturer at the time of assembly or by any dealer who performs the high-altitude modification or adjustment prior to sale to an ultimate purchaser;

(I) For vehicles that have been exempted from compliance with the high-altitude emission standards, as specified in § 86.XXX–9(g)(2),

(*1*) A highlighted statement (e.g., underscored or boldface letters) that the vehicle is certified to applicable emission standards at low altitude only,

(*2*) A statement that the vehicle's unsatisfactory performance under high-altitude conditions makes it unsuitable for principal use at high altitude, and

(*3*) A statement that the emission performance warranty provisions of 40 CFR Part 85, Subpart I do not apply when the vehicle is tested at high altitude; and,

(J) For vehicles which are included in the diesel particulate averaging program, the family particulate emission limit to which the vehicle is certified.

(K) For vehicles which are included in the light duty truck NOx averaging program, the family NO_x emission limit to which the vehicle is certified.

(3) *Heavy-duty engines.* (i) A permanent legible label shall be affixed to the engine in a position in which it will be readily visible after installation in the vehicle.

(ii) The label shall be attached to an engine part necessary for normal engine operation and not normally requiring replacement during engine life.

(iii) The label shall contain the following information lettered in the English language in block letters and numerals which shall be of a color that contrasts with the background of the label:

(A) The label heading: Important Engine Information;

(B) Full corporate name and trademark of manufacturer;

(C) Engine displacement (in cubic inches) and engine family and model designations;

(D) Date of engine manufacture (month and year). The manufacturer may, in lieu of including the date of manufacture on the engine label, maintain a record of the engine manufacture dates. The manufacturer shall provide the date of manufacture records to the Administrator upon request;

(E) Engine specifications and adjustments as recommended by the manufacturer. These specifications should indicate the proper transmission position during tuneup and what accessories (e.g., air conditioner), if any, should be in operation;

(F) For gasoline-fueled engines the label should include the idle speed, ignition timing, and the idle air-fuel mixture setting procedure and value (e.g., idle CO, idle air-fuel ratio, idle speed drop), and valve lash;

(G) For diesel engines the label should include the advertised hp at rpm, fuel rate at advertised hp in mm^3/stroke, valve lash, initial injection timing, and idle speed;

(H) The prominent statement: "This engine conforms to U.S. EPA regulations applicable to 19—— Model Year New Heavy-Duty Engines "

(I) If the manufacturer is provided with an alternate useful-life period under the provisions of § 86.XXX–21(f), the prominent statement: "This engine has been certified to meet U.S EPA standards for a useful-life period of ——— miles or ——— hours of operation, whichever occurs first. This engine's actual life may vary depending on its service application." The manufacturer may alter this statement only to express the assigned alternate useful life in terms other than miles or hours (e.g., years, or hours only);

(J) *For diesel engines.* The prominent statement: "This engine has a primary intended service application as a ——— heavy-duty diesel engine." (The primary intended service applications are light, medium, and heavy, as defined in § 86.085–2);

(K) *For gasoline-fueled engines.* One of the following statements, as applicable:

(*1*) For engines certified to the emission standards under § 86.XXX–10(a)(1)(i), the statement: "This engine is certified for use in all heavy-duty vehicles."

(*2*) For engines certified under the provisions of § 86.XXX–10(a)(3)~~(i)~~, the statement: "This engine is certified for use in all heavy-duty vehicles under the special provision of 40 CFR 86.XXX–10(a)(3)(i)."

(*3*) For engines certified to the emission standards under § 86.XXX–10(a)(1)(ii), the statement: "This engine is certified for use only in heavy-duty vehicles with a gross vehicle weight rating above 14,000 lbs."

(iv) The label may be made up of one or more pieces: *Provided,* that all pieces are permanently attached to the same engine or vehicle part as applicable.

(4)(i) *Gasoline-fueled heavy-duty vehicles.* A permanent, legible label shall be affixed in a readily visible position in the engine compartment. If such vehicles do not have an engine compartment, the label required in paragraphs (a)(4) and (g)(1) of this section shall be affixed in a readily visible position on the operator's enclosure or on the engine.

(ii) The label shall be affixed by the vehicle manufacturer who has been issued the certificate of conformity for such vehicle, in such a manner that it cannot be removed without destroying or defacing the label. The label shall not be affixed to any equipment which is easily detached from such vehicle.

(iii) The label shall contain the following information lettered in the English language in block letters and numericals, which shall be of a color that contrasts with the background of the label:

(A) The label heading: Vehicle Emission Control Information;

(B) Full corporate name and trademark of manufacturer;

(C) Evaporative family identification;

(D) Refueling family identification;

(E) The maximum nominal fuel tank capacity (in gallons) for which the evaporative and refueling control systems are certified; and,

(F) An unconditional statement of compliance with the appropriate model year U.S. Environmental Protection Agency regulations which apply to gasoline-fueled heavy-duty vehicles

(b) The provisions of this section shall not prevent a manufacturer from also reciting on the label that such vehicle (or engine) conforms to any applicable state emission standards for new motor vehicles (or new motor vehicle engines) or any other information that such manufacturer deems necessary for, or useful to, the proper operation and satisfactory maintenance of the vehicle (or engine).

(c)(1) The manufacturer of any light-duty vehicle or light-duty truck subject to the emission standards (or family emission limits, as appropriate) of this

subpart shall, in addition and subsequent to setting forth those statements on the label required by the Department of Transportation (DOT) pursuant to 49 CFR 567.4, set forth on the DOT label or on an additional label located in proximity to the DOT label and affixed as described in 40 CFR 567.4(b), the following information in the English language, lettered in block letters and numerals not less than three thirty-seconds of an inch high, of a color that contrasts with the background of the label:

(i) The Heading: "Vehicle Emission Control Information."

(ii)(A) *For light-duty vehicles,* the statement: "This Vehicle Conforms to U.S. EPA Regulations Applicable to 9—— Model Year New Motor Vehicles."

(B) *For light-duty trucks.* (*1*) The statement: "This vehicle conforms to U.S EPA regulations applicable to 19—— Model Year New Light-Duty Trucks."

(*2*) If the manufacturer is provided an alternate useful-life period under the provisions of § 86.XXX–21(f), the prominent statement: "This vehicle has been certified to meet U.S. EPA standards for a useful-life period of —— years or ——— miles of operation, whichever occurs first. This vehicle's actual life may vary depending on its service application." The manufacturer may alter this statement only to express the assigned alternate useful life in terms other than years or miles (e.g., hours, or miles only).

(iii) One of the following statements, as applicable, in letters and numerals not less than six thirty-seconds of an inch high and of a color that contrasts with the background of the label:

(A) For all vehicles certified as non-catalyst-equipped: "NON-CATALYST"

(B) For all vehicles certified as catalyst-equipped which are included in a manufacturer's catalyst control program for which approval has been given by the Administrator: "CATALYST—APPROVED FOR IMPORT"

(C) For all vehicles certified as catalyst-equipped which are not included in a manufacturer's catalyst control program for which prior approval has been given by the Administrator: "CATALYST"

(2) In lieu of selecting either of the labeling options of paragraph (c)(1) of this section, the manufacturer may add the information required by paragraph (c)(1)(ii) of this section to the label required by paragraph (a) of this section. The required information will be set forth in the manner prescribed by paragraph (c)(1)(iii) of this section.

(d) Incomplete light-duty trucks or incomplete heavy-duty vehicles optionally certified as light-duty trucks shall have the following prominent statement printed on the label required by paragraph (a)(2) of this section in lieu of the statement required by paragraph (a)(2)(iii)(E) of this section: "This vehicle conforms to U.S. EPA regulations applicable to 19—— Model Year New Light-Duty Trucks when completed at a maximum curb weight of ——— pounds or at a maximum gross vehicle weight rating of ——— pounds or with a maximum frontal area of square feet."

(e) Incomplete heavy-duty vehicles having a gross vehicle weight rating of 8,500 pounds or less shall have one of the following statements printed on the label required by paragraph (a)(3) of this section in lieu of the statement required by paragraph (a)(3)(iii)(H) of this section: "This engine conforms to U.S. EPA regulations applicable to 19—— Model Year New Heavy Duty Engines when installed in a vehicle completed at a curb weight of more than 6,000 pounds or with a frontal area of greater than 45 square feet."

(f) The manufacturer of any incomplete light-duty vehicle or light-duty truck shall notify the purchaser of such vehicle of any curb weight, frontal area, or gross vehicle weight rating limitations affecting the emission certificate applicable to that vehicle. This notification shall be transmitted in a manner consistent with National Highway Traffic Safety Administration safety notification requirements published in 49 CFR Part 568.

(g)(1) Incomplete gasoline-fueled heavy-duty vehicles shall have the following prominent statement printed on the label required in paragraph (a)(4) of this section: "(Manufacturer's corporate name) has determined that this vehicle conforms to U.S. EPA regulations applicable to 19— Model Year New Gasoline-Fueled Heavy-Duty Vehicles when completed with a nominal fuel tank capacity not to exceed —— gallons. Persons wishing to add fuel tank capacity beyond the above maximum must submit a written statement to the Administrator that the hydrocarbon storage system has been upgraded according to the requirements of 40 CFR 86.XXX–35(g)(2)."

(2) Persons wishing to add fuel tank capacity beyond the maximum specified on the label required in paragraph (g)(1) of this section shall take steps to ensure that the vapor storage capacity of the larger system is adequate to handle both evaporative and refueling emissions from the larger system. These persons shall:

(i) Increase the amount of fuel tank vapor storage material according to the following function:

$$Cap_f = Cap_i \left(\frac{T.\ Vol.}{Max.\ Vol.} \right)$$

Where:

Cap_f = final amount of fuel tank vapor storage material needed for refueling and evaporative emissions control, grams.

Cap_i = initial amount of fuel tank vapor storage material needed for refueling and evaporative emissions control, grams.

T. Vol. = total fuel tank volume of completed vehicle, gallons.

Max. Vol. = maximum fuel tank volume as specified on the label required in paragraph (g)(1) of this section, gallons.

(ii) Use, if applicable, hosing for fuel vapor routing which is at least as impermeable to hydrocarbon vapors as that used by the primary manufacturer.

(iii) Use vapor storage material with the same adsorptive characteristics as that used by the primary manufacturer.

(iv) Connect, if applicable, any new hydrocarbon storage device to the existing hydrocarbon storage device in series such that the original hydrocarbon storage device is situated between the fuel tank and the new hydrocarbon storage device. The original hydrocarbon storage device shall be sealed such that vapors cannot reach the atmosphere. The elevation of the original hydrocarbon storage device shall be equal to or lower than the new hydrocarbon storage device.

(v) Certify that after adding fuel tank capacity, the vehicle/engine will still meet the applicable emission standards in § 86.XXX–10. Further, the person adding the fuel tank capacity shall certify that the determination of compliance with the emission standards was made using good engineering practice and that all data, analyses, test procedures, evaluations and other documents upon which the determination was based are available to the Administrator upon request.

(vi) Submit a written statement to the Administrator that their vehicles/engines comply with paragraphs (g)(2)(i) through (g)(2)(v) of this section.

(3) If applicable, the Administrator will send a return letter verifying the receipt of the written statement required in paragraph (g)(2)(v) of this section.

18. A new § 86.107–XX is proposed to be added to Subpart B, to read as follows:

§ 86.107–XX Sampling and analytical system; evaporative emissions.

(a) Component description (evaporative emissions sampling system). The following components will

be used in evaporative emissions sampling systems for testing under this subpart.

(1) *Evaporative emission measurement enclosure.* The enclosure shall be readily sealable, rectangular in shape, with space for personnel access to all sides of the vehicle. When sealed, the enclosure shall be gas tight in accordance with § 86.117. Interior surfaces must be impermeable to hydrocarbons. One surface should be of flexible, impermeable material to allow for minor volume changes, resulting from temperature changes. Wall design should promote maximum dissipation of heat and if artificial cooling is used, interior surface temperatures shall not be less than 68 °F (20 °C).

(2) *Evaporative emission hydrocarbon analyzers.* A hydrocarbon analyzer utilizing the hydrogen flame ionization principle (FID) shall be used to monitor the atmosphere within the enclosure. Instrument bypass flow may be returned to the enclosure. The FID shall have a response time to 90 percent of final reading of less than 1.5 seconds, and be capable of meeting performance requirements expressed as a function of C_{std}: where C_{std} is the specific enclosure hydrocarbon level, in ppm, corresponding to the evaporative emission standard:

(i) Stability of the analyzer shall be better than 0.01 C_{std} ppm at zero and span over a 15-minute period on all ranges used.

(ii) Repeatability of the analyzer, expressed as one standard deviation, shall be better than 0.005 C_{std} ppm on all ranges used.

(3) *Evaporative emission hydrocarbon data recording system.* The electrical output of the FID shall be recorded at least at the initiation and termination of each diurnal or hot soak. The recording may be by means of a strip chart potentiometric recorder, by use of an on-line computer system or other suitable means. In any case, the recording system must have operational characteristics (signal to noise ratio, speed of response, etc.) equivalent to or better than those of the signal source being recorded, and must provide a permanent record of results. The record shall show a positive indication of the initiation and completion of each diurnal or hot soak along with the time elapsed between initiation and completion of each soak.

(4) *Tank fuel heating system.* The tank fuel heating system shall consist of a heat source and a temperature controller. A typical heat source is a 2000 W heating pad. Other sources may be used as required by circumstances. The temperature controller may be manual, such as a variable voltage transformer, or may be automated. The heating system must not cause hot spots on the tank wetted surface which could cause local overheating of the fuel. Heat must not be applied to the vapor in the tank above the liquid fuel. The temperature controller must be capable of controlling the fuel tank temperature during the diurnal soak to within ±3 °F (1.7 °C), of the following equation:

$$F = T_o + 0.4t$$

or for SI units:

$$C = T_o + (2/9)t$$

where:
F=Temperature in F°
C=Temperature in C°
t=Time since start of test in minutes
T_o=Initial temperature

(5) *Temperature recording system.* Strip chart recorder(s) or automatic data processor shall be used to record enclosure ambient and vehicle fuel tank temperature during the evaporative emissions test. The temperature recorder or data processor shall record each temperature at least once every minute. The recording system shall be capable of resolving time to ±15s and capable of resolving temperature to ±0.75 °F (0.42 °C). The temperature recording system (recorder and sensor) shall have an accuracy of ±3 °F (1.7 °C). The recorder (data processor) shall have a time accuracy of ±15s and a precision of ±15s. Two ambient temperature sensors, connected to provide one average output, shall be located in the enclosure. These sensors shall be located at the approximate vertical centerline of each side wall extending four inches (nominally) into the enclosure at a height of 3±0.5 ft (0.9±0.2 m). The vehicle fuel tank temperature sensor shall be located in the fuel tank so as to measure the temperature of the prescribed test fuel at the approximate mid-volume of the fuel. Manufacturers shall arrange that vehicles furnished for testing at Federal certification facilities be equipped with iron-constantan Type J thermocouples for measurement of fuel tank temperature.

(6) *Purge blower.* One or more portable or fixed blowers shall be used to purge the enclosure. The blowers shall have sufficient flow capacity to reduce the enclosure hydrocarbon concentration from the test level to the ambient level between tests Actual flow capacity will depend upon the time available between tests.

(7) *Mixing blower.* One or more small blowers or fans with a total capacity of 200 to 1,000 cfm shall be used to mix the contents of the enclosure during evaporative emission testing. No portion of the air stream shall be directed towards the vehicle. Maintenance of uniform concentrations throughout the enclosure is important to the accuracy of the test.

(8) *Gasoline vapor generating equipment.* The equipment used to generate gasoline vapor shall consist of a five gallon capacity (liquid) container constructed such that nitrogen gas can be bubbled through liquid gasoline at a rate between 0.05 and 0.10 cfm. The system should be designed such that it is capable of producing at least 30 grams of hydrocarbon vapor, containing no entrained liquid, in the effluent stream within one hour of operation using the nitrogen gas flow rates specified with a charge of five gallons of fuel meeting the specifications outlined in § 86.113–XX. The system should be free of vapor leaks and shall be capable of sustaining pressures of at least 100 psig. The vapor space over the liquid fuel shall be 1.0±0.5 gallons. A heating mechanism shall be required such that the gasoline in the container can be heated to and maintained at 120±10 °F and the temperature of the effluent shall be 120±10 °F. A shutoff valve and a pressure regulator to limit the discharge pressure of effluent to the canister to 1.0 psig shall be incorporated in the line connecting the vapor generator and the evaporative emission canister.

19. A new § 86.113–XX is proposed to be added to Subpart B, to read as follows:

§ 86.113–XX Fuel specifications.

(a) *Gasoline.* (1) Gasoline having the following specifications will be used by the Administrator in exhaust, evaporative and refueling emission testing. Gasoline having the following specifications or substantially equivalent specifications approved by the Administrator, shall be used by the manufacturer in exhaust, evaporative and refueling testing.

Item	ASTM	Value
Octane, research:		
Regular[1]	D2699	91±1
Premium[2]	D2699	96±1
Sensitivity, minimum.		7.5
Lead (organic):		
g/U.S. gal	D3237	0.050[3]
(g/liter)		(0.013)[3]
Distillation Range:		
IBP[4]:		
°F	D86	75–100
(°C)		(23.9–35)
10 pct. point:		
°F	D86	110–135
(°C)		(43.3–57.2)
50 pct. point:		
°F	D86	185–230

Item	ASTM	Value
(°C)		(85.0–110)
90 pct. point:		
°F	D86	285–325
(°C)		(140.6–162.8)
EP, (max.):		
°F	D86	437
(°C)		(225)
Percent evaporated @160 °F (71.1 °C).	D86	20–35
Sulfur, weight, percent, minimum.	D1266	0.03
Phosphorus:		
g/U.S. gal., maximum.	D3231	0.005
(g/liter)		(0.0013)
RVP[5]:		
psi	D323	8.7–9.2[6][7]
(kPa)		(60.0–63.4)
RVP[8]:		
psi	D323	8.0±0.2 to 11.5±0.2[9]
(kPa)		(55.2±1.4 to 79.3±1.4)
Hydrocarbon composition:		
Olefins, percent, maximum.	D1319	10
Aromatics, percent, maximum:		
Regular [1]	D1319	40
Premium [2]	D1319	45
Saturates	D1319	[10]

[1] For use in all vehicles except those meeting the conditions for testing with premium gasoline.

[2] For testing only those vehicles for which the manufacturer clearly notifies the customer that use of non-premium grade fuel will likely result in engine damage. Additionally, the manufacturer must state in its certification application that information substantiating likely engine damage is available; such information would be subject to audit by EPA.

[3] Maximum.

[4] For testing at altitudes above 1,219 m (4,000 ft), the specified range is 75°–105 °F (23.9–40.6 °C).

[5] For testing involving exhaust emissions and evaporative emissions.

[6] For testing involving exhaust emissions only, the specification is 8.0–9.2 psi (55.2–63.4 kPa).

[7] For testing at altitudes above 1,219 m (4,000 ft), the specified range is 7.5–8.0 psi (51.7–55.2 kPa).

[8] For testing involving refueling emissions only.

[9] For testing at altitudes above 1,219 m (4,000 ft), the specified range is 7.0±0.2 to 10.0±0.2 psi (48.3±1.4 to 69.0±1.4 kPa).

[10] Remainder.

(2) Unleaded gasoline representative of commercial gasoline which will be generally available through retail outlets shall be used in service accumulation. Leaded gasoline will not be used in service accumulation.

(i) The octane rating of the gasoline used shall be no higher than 1.0 Research octane number above the minimum recommended by the manufacturer and have a minimum sensitivity of 7.5 octane numbers, where sensitivity is defined as the Research octane number minus the Motor octane number.

(ii) The Reid Vapor Pressure of the gasoline used shall be characteristic of the motor fuel used during the season in which the service accumulation takes place.

(3) The specification range of the gasoline to be used under paragraph (a)(2) of this section shall be reported in accordance with § 86.XXX–21(b)(3).

(b) *Diesel fuel.* (1) The diesel fuels employed for testing shall be clean and bright, with pour and cloud points adequate for operability. The diesel fuel may contain nonmetallic additives as follows: Cetane improver, metal deactivator, antioxidant, dehazer, antirust, pour depressant, dye, dispersant and biocide.

(2) Diesel fuel meeting the following specifications, or substantially equivalent specifications approved by the Administrator, shall be used in exhaust emission testing. The grade of diesel fuel recommended by the engine manufacturer, commercially designated as "Type 2–D" grade diesel, shall be used.

Item	ASTM test method No.	Type 2–D
Cetane Number	D613	42–50
Distillation range.		
IBP:		
°F	D86	340–400
(°C)		(171.1–204.4)
10 pct. point:		
°F	D86	400–460
(°C)		(204.4–237.8)
50 pct. point:		
°F	D86	470–540
(°C)		(243.3–282.2)
90 pct. point:		
°F	86	550–610
(°C)		(287.8–321.1)
EP:		
F	D86	580–660
(°C)		(304.4–348.9)
Gravity, °API	D287	33–37
Total sulfur, percent.	D129 or D2622.	0.2–0.5
Hydrocarbon composition.	D1319	
Aromatics, percent, minimum.		27
Parafins, Naphthenes, Olefins.		[1]
Flashpoint, minimum:		
°F	D93	130
(°C)		(54.4)
Viscosity, centistokes.	D445	2.0–3.2

[1] Remainder

(3) Diesel fuel meeting the following specifications, or substantially equivalent specifications approved by the Administrator, shall be used in service accumulation. The grade of diesel fuel recommended by the engine manufacturer commercially designated as "Type 2–D" grade diesel fuel, shall be used.

Item	ASTM test method No	Type 2–D
Cetane Number	D613	38–58
distillation range.		
90 pct. point:		
°F	D86	430–630
(°C)		(221.1–332.2)
Gravity, °API	D287	30–42
Total sulfur, percent, minimum.	D129 or D2622	0.20
Flashpoint.		
°F, minimum	D93	130
(°C)		(54.4)
Viscosity, centistokes.	D455	1.5–4.5

(4) Other petroleum distillate fuel specifications:

(i) Other petroleum distillate fuels may be used for testing and service accumulation provided they are commercially available, and

(ii) Information, acceptable to the Administrator, is provided to show that only the designated fuel would be used in customer service, and

(iii) Use of a fuel listed under paragraphs (b)(2) and (b)(3) of this section would have a detrimental effect on emissions or durability, and

(iv) Written approval from the Administrator of the fuel specifications must be provided prior to the start of testing.

(5) The specification range of the fuels to be used under paragraphs (b)(2), (b)(3), and (b)(4) of this section shall be reported in accordance with § 86.XXX–21(b)(3).

(c) Fuels not meeting the specifications set forth in this section may be used only with the advance approval of the Administrator.

20. A new § 86.130–XX is proposed to be added to Subpart B, to read as follows:

§ 86.130–XX Test sequence; general requirements.

The test sequence shown in Figure BXX–10 shows the steps encountered as the test vehicle undergoes the procedures subsequently described to determine conformity with the standards set forth. Ambient temperature levels encountered by the test vehicle shall not be less than 68° F (20 °C) nor more than 86 °F (30 °C). The temperatures monitored during testing must be representative of those experienced by the test vehicle. The vehicle shall be approximately level during all phases of the test sequence to prevent abnormal fuel distribution.

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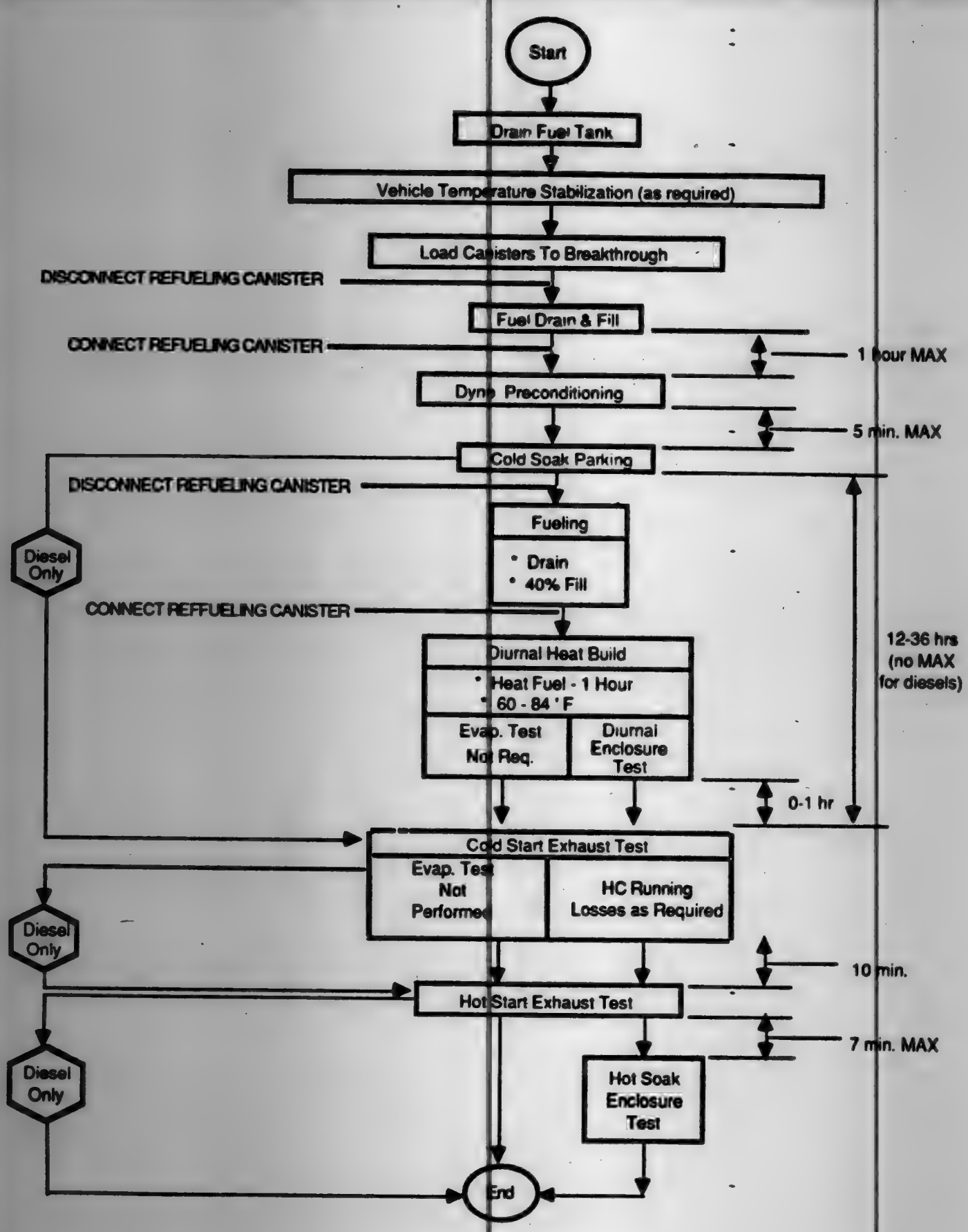

Figure BXX - 10 Test Sequence

21. A new § 86.131–XX is proposed to be added to Subpart B, to read as follows:

§ 86.131–XX Vehicle preparation.

(a) For gasoline–fueled vehicles prepare the fuel tank(s) for recording the temperature of the prescribed test fuel at the approximate mid-volume of the fuel.

(b) Provide additional fittings and adapters, as required, to accommodate a fuel drain at the lowest point possible in the tank(s) as installed on the vehicle.

(c) For non-integrated and partially integrated refueling control systems, provide valving or other means to allow loading of the evaporative emissions canister with gasoline vapor.

22. A new § 86.132–XX is proposed to be added to Subpart B, to read as follows:

§ 86.132–XX Vehicle preconditioning.

(a) During any period that the vehicle is parked awaiting testing, the fuel tank cap(s) shall be removed to prevent unusual loading of the canister(s). During this time care must be taken to prevent entry of water or other contaminates into the fuel tank. The vehicle shall be moved into the test area and the following operations performed:

(1) For gasoline fueled vehicles only, the refueling emission canister(s), and the evaporative emission canister(s) if the vehicle is so equipped, shall be loaded to breakthrough as specified below. Canister shall not be purged prior to beginning this sequence. If the vehicle is to undergo testing for fuel economy only, this step is not required.

(i) Drain the vehicle fuel tank(s).

(ii) *Vehicle Temperature Stabilization.* For vehicles entering evaporative and/or exhaust emissions testing the vehicle shall be soaked at a temperature between 68 °F and 86 °F (20 °C and 30 °C) for a minimum of six hours. This temperature stabilization step may be omitted on vehicles which are already temperature stabilized as a result of the refueling emission test.

(iii) *Canister(s) loading to breakthrough.*

Note.—If at any time the hydrocarbon concentration exceeds 15,000 ppm C the enclosure should be immediately purged. This concentration provides a 4:1 safety factor against the lean flammability limit.

(A) *Evaporative Emissions Canister(s).* For vehicles equipped with either non-integrated or partially integrated refueling emission control systems, the evaporative canister(s) shall be loaded to breakthrough.

(*1*) For vehicles with evaporative emissions canisters which are not connected to the fuel tank, the following procedures shall be performed:

(*i*) The SHED shall be opened and purged of hydrocarbon vapor.

(*ii*) Place the vehicle in the SHED. Ground the vehicle.

(*iii*) The gasoline vapor generating equipment shall be drained of fuel and then refueled with 5 gallons of gasoline meeting the test fuel specifications, § 86.113–90. Ground the vapor generating equipment and heat the gasoline to 120±10 °F. No gasoline vapor shall be allowed to escape from the gasoline vapor generating equipment.

(*iv*) Equipment to generate gasoline vapor shall be placed in the SHED and grounded, and the vehicle hood opened if required to provide access to the evaporative emissions canister.

(*v*) The heating mechanism of the gasoline vapor generating equipment shall be operated to insure that the effluent vapor stream will be at 120±10 °F.

(*vi*) The gasoline vapor generating equipment shall be connected to the evaporative emissions canister. The SHED shall be closed and the doors sealed.

(*vii*) The mixing blower shall be turned on, if not already on. Initiate measurement the hydrocarbon level in the SHED.

(*viii*) Open the gasoline vapor generating equipment shutoff valve, flow nitrogen gas into the gasoline vapor generating equipment at a rate of between 0.05 and 0.1 ft^3/min (1.4 to 2.8 l/min) until breakthrough occurs (breakthrough is defined as the point at which the change in hydrocarbon concentration in the SHED indicates that at least ⅓ gram of hydrocarbon has been emitted from the canister for each gallon of nominal fuel tank capacity; *i.e.*, $\Delta HC_{grams} = ⅓$ [nominal fuel tank capacity(gallons)], where $\Delta HC_{grams} = M_{HC}$ as calculated in § 86.143). If canister breakthrough does not occur within one hour of the start of nitrogen flow, the nitrogen shall be turned off, and the sequence described in (a)(1)(iii)(A)(*1*)(*i*) through; (*viii*) above shall be repeated.

(*ix*) Remove the vehicle from the SHED without starting the engine.

(*2*) For vehicles equipped with evaporative emission canisters connected to the fuel tank, the following procedure shall be performed:

(*i*) The evaporative emission enclosure shall be purged for several minutes immediately prior to the test.

(*ii*) If not already on, the evaporative enclosure mixing fan shall be turned on at this time.

(*iii*) The fuel tank(s) of the prepared vehicle shall be drained. Charge the fuel tank with the specified test fuel, § 86.113, to the prescribed "tank fuel volume," defined in § 86.078–2. The temperature of the fuel prior to its delivery to the fuel tank(s) shall be between 45 and 60 °F (7.2 and 16 °C). The fuel tank cap(s) is not installed until the diurnal heat build begins.

(*iv*) The test vehicle, with the engine shut off, shall be moved into the evaporative emission enclosure, the vehicle shall be grounded, the fuel tank temperature sensor shall be connected to the temperature recording system, and, if required, the heat source shall be properly positioned with respect to the fuel tank(s) and/or connected to the temperature controller.

(*v*) The temperature recording system shall be started.

(*vi*) The fuel may be artificially heated to the starting diurnal temperature.

(*vii*) When the fuel temperature recording system reaches 60±2 °F (16±1.1 °C), immediately; start diurnal heat build.
already off at this time, close and seal enclosure doors and initiate measurement of the hydrocarbon level in the SHED.

(*viii*) When the fuel temperature recording system reaches 60±2 °F (161.1 °C), immediately; start diurnal heat build.

(*ix*) The fuel shall be heated in such a way that its temperature change conforms to the following function to within ±4 °F (±2.2 °C):

$F = T_o + 0.4t$
for SI units,
$C = T_o + (2/9)t$
where:
F=fuel temperature, °F.
C=fuel temperature, °C.
t=time since beginning of test, minutes.
T_o=initial temperature.

(*x*) As soon as breakthrough occurs (breakthrough is defined as the point at which the change in hydrocarbon concentration in the SHED indicates that at least ⅓ gram of hydrocarbon has been emitted from the canister for each gallon of nominal fuel tank capacity; *i.e.*, $\Delta HC_{grams} = ⅓$ [nominal fuel tank capacity(gallons)], where $\Delta HC_{grams} = M_{HC}$ as calculated in § 86.143) or the fuel temperature reaches 84 °F (28.9 °C) the heat source shall be turned off, the enclosure doors shall be unsealed and opened, and the vehicle fuel tank cap(s) shall be removed. If breakthrough has not occurred by the time the fuel temperature reaches 84 °F, the vehicle shall be removed (with engine shut off) from the evaporative emission enclosure and the entire procedure outlined in (a)(1)(iii)(A)(*2*) of this section shall be repeated as many

times as necessary until breakthrough occurs.

(B) *Refueling emissions canister(s).* *(1)* Place the vehicle in the SHED. Ground the vehicle.

(2) Purge the SHED of hydrocarbon vapor, turn on the mixing blower, close and seal the SHED doors.

(3) Start measurement of the hydrocarbon level in the SHED.

(4) The tank(s) shall be filled to the nominal tank capacity or until canister breakthrough occurs (breakthrough is defined as the point at which the change in hydrocarbon concentration in the SHED indicates that at least ⅓ gram of hydrocarbon has been emitted from the canister for each gallon of nominal fuel tank capacity; *i.e.*, $\Delta HC_{grams} = ⅓$ [nominal fuel tank capacity(gallons)], where $\Delta HC_{grams} = M_{HC}$ as calculated in § 86.143), whichever occurs first, with the specified fuel (§ 86.113) at a temperature of 79 °F to 86 °F (26.1 °C to 30.0 °C) and at a fueling rate of 3–4 gal./min. (11.4–15.1/min.). If canister breakthrough does not occur during the first fueling operation, the SHED shall be opened and draining of the fuel tank(s) shall be initiated within 10 minutes of completing the first fueling operation. The tank(s) shall be drained, the SHED purged of hydrocarbon vapors and the doors closed and resealed. Within 10 minutes of completion of fuel tank draining, the second fueling operation shall be initiated. A second full fueling or fueling to breakthrough, whichever occurs first, as described above shall be performed. If breakthrough has not occurred, fuel draining, SHED purging and resealing, and fueling as described above, shall be repeated until breakthrough occurs.

(5) If the vehicle is equipped with dual fuel tanks and a common canister, either fuel tank may be filled first. If the vehicle is equipped with dual fuel tanks and canisters dedicated to each tank, one canister shall be loaded to breakthrough, the SHED shall be opened and purged of hydrocarbon vapors and resealed and the second canister shall be loaded to breakthrough.

(6) Remove the vehicle from the SHED without starting the engine.

(2) The refueling emission canister(s) shall be disconnected (gasoline-fueled vehicles only). The fuel tank(s) shall be drained through the provided fuel tank(s) drain(s) and filled to the prescribed "tank fuel volume" with the specified test fuel, § 86.113. The refueling emission canister(s) shall be reconnected (gasoline-fueled vehicles only).

(3) Within one hour of being fueled the vehicle shall be placed either by being driven or pushed, on a dynamometer and operated through one Urban Dynamometer Driving Schedule test procedure, see § 86.115 and Appendix I. A test vehicle may not be used to set dynamometer horsepower.

(b) Within five minutes of completion of preconditioning, the vehicle shall be driven off the dynamometer and parked. The vehicle shall be stored for not less than 12 hours nor for more than 36 hours prior to the cold start exhaust test. (Gasoline-fueled vehicles undergo a one-hour diurnal heat build prior to the cold start exhaust test. A wait of up to one hour is permitted between the end of the diurnal heat build and the beginning of the cold start exhaust test. See § 86.130 and Figure B90–10.)

(c) Vehicles to be tested for evaporative emissions shall be processed in accordance with procedures in §§ 86.133 through 86.138. Vehicles to be tested for exhaust emissions only shall be processed according to §§ 86.133 through 86.137.

23. A new § 86.133–XX is proposed to be added to Subpart B, to read as follows:

§ 86.133–XX Diurnal breathing loss test.

(a)(1) Following vehicle preparation and vehicle preconditioning procedures described in §§ 86.131 and 86.132 the test vehicle shall be allowed to soak for a period of not less than 12 or more than 36 hours prior to the exhaust emission test. The diurnal test shall start not less than 10 or more than 35 hours after the end of the preconditioning procedure. The start of the exhaust test shall follow the end of the diurnal test within one hour.

(2) Gasoline-fueled vehicles to be tested for exhaust emissions only shall undergo the diurnal heat build. Since no evaporative measurements are necessary, an evaporative enclosure is not required.

(b) The evaporative emission enclosure shall be purged for several minutes immediately prior to the test.

Note.—If at anytime the hydrocarbon concentration exceeds 15,000 ppm C the enclosure should be immediately purged. This concentration provides a 4:1 safety factor against the lean flammability limit.

(c) The FID hydrocarbon analyzer shall be zeroed and spanned immediately prior to the test.

(d) If not already on, the evaporative enclosure mixing fan shall be turned on at this time.

(e) Immediately prior to the diurnal breathing loss test, the refueling emissions canister(s) shall be disconnected, the fuel tank(s) of the prepared vehicle shall be drained and recharged with the specified test fuel, § 86.113, to the prescribed "tank fuel volume," defined in § 86.078–2. The temperature of the fuel prior to its delivery to the fuel tank(s) shall be between 45 and 60 °F (7.2 and 16 °C). The fuel tank cap(s) is not installed and the refueling emissions control canister(s) is not reconnected until the diurnal heat build begins.

(f) The test vehicle, with the engine shut off, shall be moved into the evaporative emission enclosure, the test vehicle windows and luggage compartments shall be opened, the fuel tank temperature sensor shall be connected to the temperature recording system, and, if required, the heat source shall be properly positioned with respect to the fuel tank(s) and/or connected to the temperature controller.

(g) The temperature recording system shall be started.

(h) The fuel may be artificially heated to the starting diurnal temperature

(i) When the fuel temperature recording system reaches at least 58 °F (14 °C), immediately:

(1) Install fuel tank cap(s) and reconnect refueling emissions control canister(s).

(2) Turn off purge blowers, if not already off at this time.

(3) Close and seal enclosure doors.

(j) When the fuel temperature recording system reaches 60±2 °F (16±1.1 °C), immediately:

(1) Analyze enclosure atmosphere for hydrocarbons and record. This is the initial (time=0 minutes) hydrocarbon concentration, C_{HC1} § 86.143.

(2) Start diurnal heat build and record time. This commences the 60±2 minute test period.

(k) The fuel shall be heated in such a way that its temperature change conforms to the following function to within ±3 °F (±1.6 °C):

$F = T_o + 0.4t$

for SI units,

$C = T_o + (2/9)t$

where:

F=fuel temperature, °F
C=fuel temperature, °C
t=time since beginning of test, minutes.
T_o=initial temperature.

After 60±2 minutes of heating, the fuel temperature rise shall be 24±1 °F (4 °C±0.5 °C).

(l) The FID hydrocarbon analyzer shall be zeroed and spanned immediately prior to the end of the diurnal test.

(m) The end of the diurnal breathing loss test occurs 60±2 minutes after the heat build begins, paragraph (j)(2). Analyze the enclosure atmosphere for hydrocarbons and record. This is the final (time=60 minutes) hydrocarbon concentration, C_{HC2} § 86.143. The time

(or elapsed time) of this analysis shall be recorded.

(n) The heat source shall be turned off and the enclosure doors unsealed and opened

(o) The heat source shall be moved away form the vehicle, if requires, and/or disconnected from the temperature controller, the fuel tank temperature sensor shall be disconnected from the temperature recording system, the test vehicle windows and the luggage compartments may be closed and the test vehicle, with the engine shut off, shall be removed from the evaporative emission enclosure.

(p) For vehicles with multiple tanks, the largest tank shall be designated as the primary tank and shall be heated in accordance with the procedures described in paragraph (k) of this section. All other tanks shall be designated as auxiliary tanks and shall undergo a similar heat build such that the fuel temperature shall be within 3 °F (1.6 °C) of the primary tank.

24. A new Subpart C of Part 86 is proposed to be added to read as follows:

Subpart C—Emission Regulations for 19XX and Later Model Year New or In-Use Light-Duty Gasoline Vehicles, New or In-Use Light-Duty Gasoline Trucks and New or In-Use Heavy-Duty Gasoline Vehicles; Refueling Emissions Test Procedure

Sec.
86.201 General applicability.
86.202 Definitions.
86.203 [Reserved]
86.204 Introduction; structure of subpart.
86.205–86.206 [Reserved]
86.207 Sampling and analytical system.
86.208–86.212 [Reserved]
86.213 Fuel specifications.
86.214 [Reserved]
86.215 EPA urban dynamometer driving schedules.
86.216–86.226 [Reserved]
86.227 Test procedure; overview.
86.228–86.229 [Reserved]
86.230 Test sequence; general requirements.
86.231 Vehicle preparation.
86.232 Vehicle and canister preconditioning.
86.233 Refueling emissions measurement.
86.234–86.241 [Reserved]
86.242 Records required.
86.243 Calculations.

§ 86.201 General applicability.

(a) The provisions of this subpart are applicable for testing of both new and in-use 19XX and later model year light-duty gasoline vehicles, light-duty gasoline trucks and heavy-duty gasoline vehicles.

(b) Provisions of this subpart apply to tests performed by both the Administrator and motor vehicle manufacturers.

(c) The procedure of this subpart is intended to be performed in conjunction with the exhaust and evaporative emissions tests of Subpart B for light-duty vehicles and light-duty trucks and in conjunction with evaporative emission tests of Subpart M for heavy-duty gasoline vehicles, and in conjunction with exhaust emissions tests of Subpart N for heavy-duty gasoline engines. The following sections or parts thereof, of Subparts B and M apply to this section and will not be repeated in this section:

Sec.
86.103 Abbreviations.
86.104 Section numbering; construction.
86.108–XX Dynamometer.
86.113–XX Fuel Specifications.
86.114–XX Analytical gases.
86.116–XX Calibration, frequency and overview.
86.117–XX Evaporative emission enclosure calibrations.
86.118–XX Dynamometer calibration.
86.121–XX Hydrocarbon analyzer calibration.
86.128–XX Transmissions.
86.129–XX Road load power test weight and inertia weight class determination.
86.136–XX Engine starting and restarting.
86.1203–XX Abbreviations.
86.1213–XX Fuel specifications.
86.1214–XX Analytical gases.
86.1216–XX Calibrations; frequency and overview.
86.1217–XX Evaporative emissions enclosure calibrations.
86.1218–XX Dynamometer calibration.
86.1221–XX Hydrocarbon analyzer calibration.
86.1226–XX Calibration of other equipment.
86.1228–XX Transmissions.
86 1229–XX Dynamometer load determination.
86.1235–XX Dynamometer procedure.
86.1236–XX Engine starting and restarting.

§ 86.202 Definitions.

(a) The definitions of Subpart A and of Subpart B and of Subpart M and of Subpart N apply to this subpart.

(b) Specific terms used in this subpart are defined as follows.

Evaporative emissions canister(s) means any vapor storage unit(s) that is exposed to either vehicle diurnal or hot soak or both diurnal and hot soak emissions, except for vapor storage unit(s) located in the primary path of and purged by the engine intake air, whenever the engine is operated, for the sole purpose of storing miscellaneous evaporative emissions from the intake system.

Fully integrated refueling emission control system means a system where vapors resulting from refueling are stored in a common vapor storage unit(s) with both the diurnal heating emissions and the hot soak emissions of the vehicle and are purged through a common purge system.

Integrated refueling emission control system means either a fully or partially integrated system.

In-use vehicle means a light-duty vehicle or light-duty truck or a heavy-duty vehicle which is used on the public highways by the "ultimate purchaser" as described in section 216 of the Clean Air Act, or any subsequent purchaser.

Non-integrated refueling emission control system means a system where fuel vapors from refueling are stored in a vapor storage unit assigned solely to the function of storing refueling vapors.

Partially integrated refueling emission control system means a system where vapors resulting from refueling are stored in a vapor storage unit(s) with either the diurnal heating emissions or the hot soak emissions of the vehicle.

Refueling emissions canister(s) means any vapor storage unit(s) that is exposed to the vapors generated during refueling.

§ 86.203 [Reserved]

§ 86.204 Introduction; structure of subpart.

This subpart describes the equipment required and the testing procedures to follow in order to perform refueling emissions tests on light duty gasoline-fueled vehicles and light-duty gasoline-fueled trucks and heavy-duty gasoline-fueled vehicles. Subpart A sets forth the testing requirements and test intervals necessary to comply with EPA certification procedures.

§§ 86.205—86.206 [Reserved]

§ 86.207 Sampling and analytical system.

(a) *Component description.* The components used in refueling emissions sampling systems are the same components used in the evaporative emissions sampling systems as described in § 86.107 and in § 86.1207, except for the following modifications to the evaporative emission measurement enclosure and components which are exclusive to refueling testing.

(1) *Evaporative emission measurement enclosure.* (i) In addition to the requirements detailed in §§ 86.107(a)(1) and 86.1207(a), the enclosure shall have one or more access ports leading to flexible, automatic sealing boots, in the wall(s) of the enclosure. The function of the access port(s) and boots shall be to allow fueling of the test vehicle from a fuel nozzle and hose located outside of the enclosure, with only the spout of the nozzle passing through the automatic sealing opening of the boot during fueling and no loss in the gas tightness of the enclosure at the opening of the

boot either when the nozzle is inserted or when the nozzle is not inserted.

(ii) *Mixing blower.* (A) *Light-Duty vehicles and Light Duty trucks.* One or more small blowers or fans with a total capacity of 750 to 1,000 cfm shall be used to mix the contents of the enclosure during canister(s) loading to breakthrough and during refueling emissions measurements. No portion of the air stream shall be directed towards the vehicle. Maintenance of uniform concentrations throughout the enclosure is important to the accuracy of the test.

(B) *Heavy-Duty Vehicles.* One or more blowers or fans with a total capacity of 500 to 750 cfm per 1,000 ft^3 of enclosure volume shall be used to mix the contents of the enclosure during canister(s) loading to breakthrough and during refueling emissions measurements. The mixing blower(s) shall be arranged such that a uniform concentration is maintained. No portion of the air stream shall be directed towards the vehicle.

(2) *Refueling equipment.* The refueling equipment shall consist of a fuel delivery system with temperature control equipment, fuel flow safety switch, service station type dispensing pump, hose, nozzle and a meter to measure the dispensed fuel volume. A fuel recirculation system from the temperature control equipment to the nozzle shall be utilized to avoid trapping of unheated fuel in the hose. The fuel delivery system must be capable of delivering fuel at 61 °F to 84 °F (27.2 °C to 28.9 °C) and at a flow rate of 9.8±0.3 gal/min (37.1±1.1 1/min) during the refueling emissions measurement phase of the test. During the canister loading to breakthrough phase of the test the dispersed fuel temperature may be between 79 °F and 86 °F (26.1 °C and 30.0 °C). The accuracy of the meter for measuring the dispensed fuel volume shall be ±2 percent at the test flow rate.

(3) *Temperature recording system.* Strip chart recorder(s) or automatic data processor shall be used to record vehicle soak area ambient temperature, enclosure ambient temperature, and dispensed fuel temperature at the nozzle during the test. The temperature recorder(s) or data processor shall record each temperature at least once every 20 seconds (the soak area ambient temperature recorder may be a continuous recording system). The recording system shall be capable of resolving time to ±15s and be capable of resolving temperature to ±0.75 °F (0.42 °C). The temperature recording system (recorder and sensor) shall have an accuracy of ±1 °F (0.6 °C). Two ambient temperature sensors, connected to provide one average output, shall be located in the enclosure. These sensors shall be located at the approximate vertical centerline of each side wall extending 4 inches (10 cm) (nominally) into the enclosure at a height of 3±0.5 ft (0.9±0.2m).

(4) *Spilled Fuel Mixing blower.* An explosion-proof blower of 100–200 ft^3/min (2.8–5.7 m^3/min) capacity is required to enhance mixing of vapors from spilled fuel through the enclosure atmosphere during tests. The discharge from this blower shall be directed toward the region of the enclosure floor where fuel spillage during fueling may occur.

§ 86.208—86.212 [Reserved]

§ 86.213 Fuel specifications.

Fuel meeting the specifications of § 86.113 shall be employed.

§ 86.214 [Reserved]

§ 86.215 EPA urban dynamometer driving schedules.

(a) The dynamometer driving schedules are listed in Appendix I. The driving schedules are defined as a smooth trace drawn through the specified speed vs. time relationships. The driving schedules consist of nonrepetitive series of idle, acceleration, cruise and deceleration modes of various time sequences and rates.

(b) The speed tolerance at any given time for this schedule, or a for a driver's aid chart approved by the Administrator, when conducted to meet the requirements of § 86.232, are:

(1) The upper limit is 4 mph (6.4 km/h) higher than the highest point on the trace within 1 second of the given time.

(2) The lower limit is 4 mph (6.4 km/h) lower than the lowest point on the trace within 1 second of the given time.

(3) Speed variations greater than the tolerances (such as may occur during gear changes) are acceptable provided they occur for less than 2 seconds on any occasion.

(4) Speeds lower than those prescribed are acceptable provided the vehicle is operated at maximum available power during such occurrences.

§ 86.216–86.226 [Reserved]

§ 86.227 Test procedure; overview.

(a) The refueling emissions test procedure described in this and subsequent sections is used to determine the conformity of vehicles with the refueling emissions standards set forth in Subpart A for light-duty vehicles, light-duty trucks and heavy-duty vehicles. The refueling emissions test procedure may be performed as an individual test or in combination with the evaporative and exhaust emissions tests sequences of either § 86.130 or § 86.1230.

(b) The refueling emissions test is designed to measure hydrocarbon emissions resulting from the generation or displacement of fuel tank vapor during vehicle refueling. The refueling emissions shall be measured by the enclosure technique.

(c) All emission control systems installed on or incorporated in a new motor vehicle shall be functioning during all procedures in this subpart except: (1) In cases of component malfunction or failure, and (2) during certain specified fuel drain and fill operations at which times the refueling emission control canister is disconnected. Maintenance to correct component malfunction or failure shall be authorized in accordance with § 86.XXX–25.

§ 86.228–86.229 [Reserved]

§ 86.230 Test sequence; general requirements.

(a) The refueling emissions procedure, Figure CXX–1, starts with loading of the refueling emissions canister(s) to breakthrough and continues with the canister stabilization drivedown followed by the refueling emissions measurement.

(b) The vehicle shall be approximately level during all phases of the test sequence to prevent abnormal fuel distribution.

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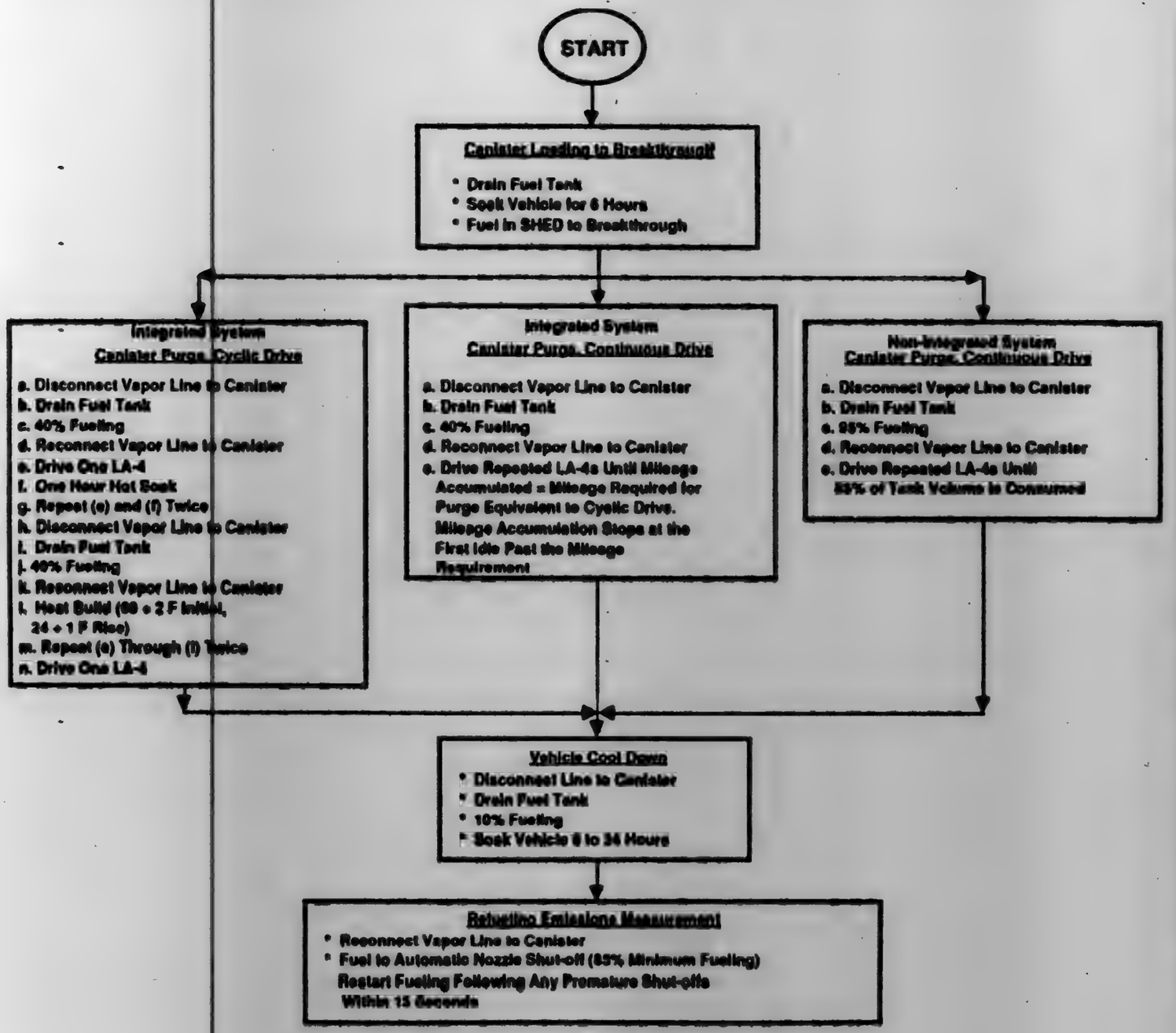

Figure CXX - 1 Refueling Test Procedure

§ 86.231 Vehicle preparation.

(a) Provide additional fittings and adapters, as required, to accommodate a fuel drain at the lowest point possible in the tank(s) as installed on the vehicle. In-use vehicles shall be modified, if at all, in a manner which causes no permanent alteration of the vehicle.

(b) Provide valving or other means to allow the venting of the refueling vapor line to the atmosphere rather than to the refueling emissions canister(s) when required by this test procedure.

(c) For non-integrated systems and for partially integrated systems, provide valving or other means to allow loading of the evaporative emissions canister(s) with gasoline vapor.

§ 86.232 Vehicle and canister preconditioning.

(a) During any period that the vehicle is parked awaiting entry into refueling testing, the fuel tank cap(s) shall be removed to prevent unusual loading of the canister(s). During this time care must taken to prevent entry of water or other contaminates into the fuel tank. Canisters shall not be purged prior to the performance of this sequence.

(b) Prior to the start of the refueling emissions measurement portion of the refueling control test, § 86.233, vehicles shall be prepared for the refueling emissions measurement as follows:

(1) *Vehicle temperature stabilization.* Drain the vehicle fuel tank(s). The vehicle, either manufacturer-supplied certification vehicles or in-use vehicles, shall be soaked at 80°±3 °F (27°±1.7 °C) for a minimum of six hours.

(2) Refueling emissions canister(s) loading procedure. (i) Place the vehicle in the SHED.

(ii) Purge the SHED of hydrocarbon vapor, turn on the mixing blower, close and seal the SHED doors.

(iii) Measure the hydrocarbon level in the SHED.

(iv) The tank(s) shall be filled to the nominal tank capacity or until canister breakthrough occurs (breakthrough is defined as a three fold increase in the hydrocarbon concentration in the SHED in one minute or less), whichever occurs first, with the specified fuel at a temperature no lower than 79 °F (26.1 °C) and no higher than 86 °F (30.0 °C) and at a fueling rate of 3–4 gal./min (11.4–15.1 l/min). If canister breakthrough does not occur during the first fueling operation, the SHED shall be opened and draining of the fuel tank(s) shall be initiated within 10 minutes of completing the first fueling operation. The tank(s) shall be drained, the SHED purged of hydrocarbon vapors and the doors closed and resealed. Within 10 minutes of completion of fuel tank draining the second fueling operation shall be initiated. A second full fueling or fueling to breakthrough, whichever occurs first, as described above shall be performed. If breakthrough has not occurred, fuel draining, SHED purging and resealing, and fueling as described above, shall be repeated until breakthrough occurs.

(v) If the vehicle is equipped with dual fuel tanks and a common canister, either fuel tank may be filled first. If the vehicle is equipped with dual fuel tanks and canisters dedicated to each tank, one canister shall be loaded until breakthrough occurs, the SHED shall be opened and purged of hydrocarbon vapors and resealed and the second canister shall be loaded until breakthrough occurs.

(vi) Remove the vehicle from the SHED without starting the engine.

(3) *Canister stabilization.* (i) *Integrated systems.* Within one hour of completion of canister loading to breakthrough, the fuel tank(s) shall be drained and filled to 40 percent of nominal capacity determined to the nearest one-tenth of a U.S. gallon (0.38 liter) with the specified fuel at a temperature of 81 °F to 84 °F (27.2 °C to 28.9 °C). During this fueling operation, the refueling emissions canister(s) shall be disconnected. Following completion of fueling, the refueling emissions canister(s) shall be reconnected and vehicle driving to purge the canister to a stabilized loading level shall be initiated using either (A) or (B) below. If the vehicle is equipped with dual fuel tanks and refueling emission canister(s) common to both fuel tanks, 50 percent ±5 percent of the canister purge drive shall be performed using fuel from one tank, the fuel supply shall be changed to the second tank, and the remainder of the purge drive shall be completed. If the vehicle is equipped with dual fuel tanks and refueling emissions canister(s) dedicated to each fuel tank, each canister shall be separately purged to the stabilized loading level.

(A) *Cyclic drive purge.* The canister stabilization cyclic drive purge shall consist of a repetitive sequence of cyclic operations with each cyclic operation comprising three UDDSs, each followed by a one hour hot soak and one diurnal heat build following the last hot soak in the cycle.

(*1*) Each cyclic operation shall be performed as follows:

(*i*) Drive the first UDDS; hot soak the vehicle for one hour (55 minutes to 75 minutes) either on or off the dynamometer.

(*ii*) Perform the second UDDS drive and the second one hour hot soak.

(*iii*) Perform the third UDDS drive and the third one hour hot soak.

(*iv*) Within 10 minutes of completion of the third hot soak, remove the fuel tank cap and initiate fuel tank(s) draining.

(*v*) Drain fuel tank(s), disconnect the refueling emissions canister and fuel to 40 percent of nominal capacity to the nearest one-tenth of a U.S. gallon (0.38 liter) with the specified fuel at a temperature of between 45° and 60 °F (7.2° and 16 °C).

(*vi*) Perform a diurnal heat build (§ 86.133 or § 86.1233 as applicable). Reconnect the refueling emissions canister at the time that the fuel filler cap is installed. Emissions measurements are not made and an evaporative enclosure is not required.

(*vii*) If the vehicle is hot soaked off of the dynamometer, it may be removed from the dynamometer under its own power provided minimal engine power is used and the total engine operating time from engine start to engine off does not exceed 30 seconds.

(*2*) The complete cyclic drive operation shall be repeated twice for a total of 3 complete cycles. The second and subsequent cyclic drive operations shall be performed using the fuel in the tank at the completion of the preceding diurnal heat build. The elapsed time between the completion of the diurnal heat build at the end of one cyclic operation and the start of the next cyclic operation shall not exceed 24 hours.

(*3*) Following completion of the last cyclic operation sequence, one additional UDDS shall be performed using the fuel that is in the fuel tank.

(*4*) During breaks in work schedules between shifts and during periods when no shift is scheduled, the engine shall be turned off and the vehicle parked on the dynamometer (the vehicle may be parked off of the dynamometer to facilitate maintenance or repairs if required) if on the dynamometer, or in the soak area if in the soak area. At the start of the next work shift, resumption of canister stabilization shall be initiated at the next step in the sequence.

(B) *Continuous drive purge. (1)* The canister stabilization continuous drive purge shall consist of a continuous drive using the Urban Dynamometer Driving Schedule (UDDS) replicated as many times as necessary until the required purge mileage has been accumulated. Purge mileage accumulation shall stop at the end of the first deceleration to idle on the UDDS following accumulation of the required purge mileage. The engine shall be turned off within 2 seconds of reaching idle. The vehicle may be removed from the dynamometer under

its own power. If the vehicle is driven off the dynamometer, minimal power shall be used and total engine operating time from engine start to engine off shall not exceed 30 seconds.

(2) The required continuous drive purge mileage shall be the number of miles, demonstrated experimentally, required to purge the refueling emissions canister, starting at the breakthrough loading, of a weight of stored hydrocarbons equal to the weight purged, within 3 percent, from the canister during the cyclic drive procedure. Under the cyclic drive procedure, canister purge is terminated at the end of § 86.232(b)(3)(i)(A)(3) above.

(ii) *Non-integrated systems.* Within one hour of completion of canister loading to breakthrough, the fuel tank(s) shall be drained and filled to 95 percent of nominal tank capacity determined to the nearest one-tenth of a U.S. gallon (0.38 liter) with the specified fuel at a temperature of 81°F to 84°F (27.2°C to 28.9 °C). During this fueling operation, the refueling emissions canister shall be disconnected. Following completion of refueling, the refueling emissions canister shall be reconnected. Vehicle driving to purge the refueling canister shall be performed using either the chasis dynamometer procedure (A) or the test track procedure (B) below. For vehicles equipped with dual fuel tanks, the required volume of fuel shall be driven out of one tank, the second tank shall be selected as the fuel source, and the required volume of fuel shall be driven out of the second tank.

(A) *Chassis Dynamometer Procedure.* Vehicle driving on a chassis dynamometer shall consist of repeated drives on the UDDS until 85 percent of fuel tank capacity has been consumed. The number of UDDSs required to consume 85 percent of tank fuel capacity (total capacity of both tanks when the vehicle is equipped with dual fuel tanks) shall be determined from the fuel economy of vehicles with that refueling emission family-refueling emission control system combination on the UDDS and from the number of gallons to the nearest 0.1 gallon (0.38 liter) which constitutes 85 percent of tank volume. If this fuel consumed point occurs part way through a UDDS cycle, the cycle shall be completed in its entirety (for vehicles equipped with dual fuel tanks, fuel switching from the first tank to the second tank shall occur at the 10 percent volume of the first tank and only the last UDDS on the second tank is to be completed in its entirety). During breaks in work schedules, between shifts and during periods when no shift is scheduled, the engine shall be turned off and the vehicle parked on the dynamometer (the vehicle may be parked off of the dynamometer to facilitate maintenance or repairs if required) if on the dynamometer, or in the soak area if in the soak area. At the start of the next work shift, resumption of canister stabilization shall be initialed at the next step in the sequence.

(B) *Test Track Procedure.* Vehicle driving on a test track shall follow the Durability Driving Schedule (DDS) as specified in Appendix IV and shall consist of repeated drives on the DDS until 85 percent of fuel tank capacity has been consumed. If the distance from the emission laboratory to the test track is less than 2 miles (3.23 km) the vehicle may be driven to the test track at a speed not to exceed 25 mph. If the distance is greater than 2 miles (3.23 km) the vehicle shall be moved to the test track with the engine off. The number of DDSs required to consume 85 percent of tank capacity (total capacity of both fuel tanks when the vehicle is equipped with duel fuel tanks) shall be determined from the fuel economy of the vehicle on the DDS and from the number of gallons to the nearest 0.1 gallon (0.38 liter) which constitutes 85 percent of tank volume. If this fuel consumed point occurs partway through a lap of the DDS that lap of the DDS shall be completed. The vehicle shall be driven at a speed not exceeding 25 mph from the test track to the laboratory provided the distance from the test track to the laboratory does not exceed 2 miles (3.23 km). If the distance from the test track to the emissions laboratory is greater than 2 miles (3.23 km) the vehicle shall be moved from the test track with the engine off. For vehicles equipped with dual fuel tanks, fuel supply switching from the first tank to the second tank shall occur at the 10 percent volume of the first tank. During breaks in work schedules, between shifts and during periods when no shift is scheduled, the engine shall be turned off and the vehicle either parked on the test track or moved to a storage facility with the engine off. If the vehicle is moved from the test track, it shall be returned to the track with the engine off when mileage accumulation is to be resumed.

(4) *Vehicle cool down.* Within 10 minutes of completion of refueling emissions canister stabilization (§ 86.232(b)(3)), the refueling emissions canister(s) shall be disconnected. Within 60 minutes of completion of refueling emissions canister stabilization (§ 86.232(b)(3) the vehicle tank shall be drained, the fuel tank(s) fueled to 10 percent of nominal tank capacity determined to the nearest one-tenth of a U.S. gallon (0.38 liter) with the specified fuel at a temperature of 81°F to 84°F (27.2°C to 28.9°C) and the vehicle parked (without starting the engine) and soaked at 80±3°F (27±1.7°C) for a minimum of 6 hours and a maximum of 24 hours.

§ 86.233 Refueling emissions measurement.

(a) Collect a sample of fuel from the fuel delivery system and measure the RVP of the sample. The RVP must be within the required specification (§ 86.113).

(b) The evaporative emission enclosure shall be purged for several minutes immediately prior to the test.

Note.—If at any time the hydrocarbon concentration exceeds 15,000 ppm C the enclosure should be immediately purged. This concentration provides a 4:1 safety factor against the lean flammability limit.

(c) The FID hydrocarbon analyzer, and additional analyzer, if needed, shall be zeroed and spanned immediately prior to the test.

(d) If not already on, the enclosure mixing fan and the spilled fuel mixing blower shall be turned on at this time.

(e) The refueling emission measurement portion of the refueling control test shall be performed as follows:

(1) The line from the fuel tank(s) to the refueling emissions canister shall be connected.

(2) The test vehicle, with the engine shut off, shall be moved into the enclosure. The test vehicle windows and luggage compartment shall be opened.

(3) An electrical ground shall be attached to the vehicle. The enclosure door shall be closed and sealed. The FID trace shall be allowed to stabilize

(4) The dispensed fuel temperature recording system shall be started.

(5) The initial reading of the evaporative enclosure FID analyzer shall be taken.

(6) Within one minute of obtaining the initial FID reading, the fuel nozzle shall be inserted into the filler neck of the test vehicle and the refueling operation shall be started. The fuel shall be dispensed at a temperature no lower than 81°F (27.2°C) and no higher than 84°F (28.9°C) and at a dispensing rate of 9.8±0.3 gallons/minute (37.1±1.1 l/min). The Administrator may, at his discretion, specify a lower dispensing rate for vehicles which may exhibit reduced control at lower dispensing rates. The fuel flow shall continue until the refueling nozzle automatic shut-off is activated. The amount of fuel dispensed

must be at least 85 percent of fuel tank volume, determined to the nearest one-tenth of a U.S. gallon (0.38 liter). If automatic nozzle shut-off occurs prior to this point, the nozzle shall be reactivated within 15 seconds and fuel dispensing continued as needed.

(7) The final reading of the evaporative enclosure FID analyzer shall be taken 60±5 seconds following the shut-off of fuel flow. The elapsed time, in minutes, between the initial and final FID readings shall be recorded.

(8) For vehicles equipped with more than one fuel tank, the procedures described in paragraphs (a) through (d)(7) above shall be performed for each fuel tank.

§§ 86.234–86.241 [Reserved]

§ 86.242 Records required.

The following information shall be recorded with respect to each test:

(a) Test number.

(b) System or device tested (brief description).

(c) Date and time of day.

(d) Instrument operated.

(e) Operator.

(f) Vehicle: ID number, manufacturer, model year, engine family, refueling emission family, refueling emission control system, refueling emission canister continuous drive purge miles for integrated systems and description of how mileage is determined, refueling emissions canister continuous drive purge miles for non-integrated systems, fuel system (including number of carburetors, number of carburetor barrels, fuel injection type, and fuel tank(s) capacity and location), basic engine description (including displacement, number of cylinders, turbocharger (if used), and catalyst usage), engine code, odometer reading.

(g) All pertinent instrument information including nozzle and fuel delivery system description. As an alternative, a reference to a vehicle test cell number may be used, with advance approval of the Administrator, provided test cell calibration records show the pertinent instrument information.

(h) Recorder charts: Identify zero, span, and sample traces

(i) Enclosure barometric pressure and ambient temperature.

Note.—A central laboratory barometer may be used, *provided* that individual test cell barometric pressures are shown to be within ±0.1 percent of the barometric pressure at the central barometer location.

(j) Temperatures: Soak area; dispensed fuel, initial and final.

(k) Fuel dispensing rate(s).

(l) Dispensed fuel volume.

(m) All additional information necessary for the calculations specified in § 86.243.

§ 86.243 Calculations.

(a) The calculation of the net hydrocarbon mass change in the enclosure is used to determine refueling mass emissions. The mass is calculated from initial and final hydrocarbon concentrations in ppm carbon, initial and final enclosure ambient temperatures, initial and final barometric pressures, and net enclosure volume using the evaporative emissions equation of § 86.143–78 or § 86.1243 as applicable, with the hydrogen-carbon ratio equal to that of diurnal emissions. For vehicles with multiple tanks, the results for each tank shall be calculated and then summed to determine overall refueling emissions.

(b) The final results for comparison with the refueling control emission standard shall be computed by dividing the total refueling mass emissions by the total gallons of fuel dispensed in the refueling test.

(c) The results of all emission tests shall be rounded, in accordance with ASTM E 29–67, to the number of decimal places contained in the applicable emission standard expressed to one additional significant figure.

25. Section 86.602 of Subpart G is proposed to be amended by revising paragraphs (b)(3) and (b)(4) to read as follows:

§ 86.602 Definitions.

* * * * *

(b) * * *

(2) * * *

(3) "Configuration" may be defined as in paragraphs (b)(3) (i) and/or (ii) of this section.

(i) "Configuration" when used for LDV exhaust-emission testing, means a subclassification of an engine-system combination on the basis of engine code, inertia weight class, transmission type and gear ratio, axle ratio, and other parameters which may be designated by the Administrator.

(ii) "Configuration" when used for refueling emission testing, means a subclassification of a refueling emission family on the basis of refueling control system and other parameters which may be designated by the Administrator.

(4) "Test Sample" means the collection of vehicles of the same configuration which have been drawn from the population of vehicles of that configuration and which will receive exhaust emission and/or refueling emission testing.

* * * * *

26. Section 86.603 of Subpart G is proposed to be amended by revising paragraph (d) to read as follows:

§ 86.603 Test orders.

* * * * *

(d) A manufacturer may indicate preferred assembly plants for the various engine families and refueling families produced by the manufacturer for selection of vehicles in response to a test order. This shall be accomplished by submitting a list of engine families with the associated refueling families, and the corresponding assembly plants from which the manufacturer desires to have vehicles selected, to the Administrator. In order that a manufacturer's preferred location for issuance of a test order for a configuration of a particular engine family and/or refueling family be considered, the list must be submitted prior to issuance of the test order. Notwithstanding the fact that a manufacturer has submitted the above list, the Administrator may, upon making the determination that evidence exists indicating noncompliance at other than the manufacturer's preferred plant, order testing at such other plant where vehicles of the configuration specified in the test order are assembled.

* * * * *

27. Section 86.605 of Subpart G is proposed to be amended by adding paragraphs (a)(1)(i)(E) and (a)(1)(i)(F) to read as follows:

§ 86.605 Maintenance of records; submittal of information.

(a) * * *

(1) * * *

(i) * * *

(E) Refueling Enclosure (Refueling SHED) (For gasoline vehicles only).

(*1*) Total internal volume.

(*2*) Capacity of mixing blower.

(*3*) Location of refueling access ports.

(*4*) Enclosure barometric pressure and ambient temperature.

(*5*) Soak area temperature records.

(F) Fuel Dispenser for Refueling (For gasoline vehicles only).

(*1*) Maximum dispensing rate.

(*2*) Manufacturer and model of fuel nozzle.

(*3*) Dispensed fuel temperature.

(*4*) Actual fuel dispensing rate(s).

* * * * *

28. Section 86.606 of Subpart G is proposed to be revised to read as follows:

§ 86.606 Test procedures.

(a) The prescribed test procedures are contained in Subparts B and C of Part 86. For purposes of Selective

Enforcement Audit testing, the manufacturer shall not perform any of the test procedures in Subpart B of this part relating to evaporative emission testing except as specified in paragraph (a)(3) of this section.

(1) Vehicle Exhaust Emission tests, as defined in Subpart B of this part and § 86.608(a)(3), shall be performed for a specific test order only if the configuration selected was based upon the parameters outlined in § 86.602(b)(3)(i). Vehicle Refueling Emission Tests, as defined in Subpart C of this part and § 86.608(a)(4), shall be performed only if the configuration selected was based upon the parameters outlined in § 86.602(b)(3)(ii).

(2) The Administrator may, on the basis of written application by a manufacturer, prescribe test procedures other than those in Subpart B or Subpart C of this part for any motor vehicle which he determines is not susceptible to satisfactory testing using the procedures in Subpart B or Subpart C, respectively, of this part.

(3) The following exceptions to the test procedures in Subpart B of this part are applicable to Selective Enforcement Audit testing:

(i) The manufacturer may use test fuel meeting the specifications of paragraph (a)(1) or (b)(2) of § 86.113–82 for mileage accumulation. Otherwise, the manufacturer may use fuels other than those specified in this section only with advance approval of the Administrator.

(ii) The manufacturer may measure the temperature of the test fuel at other than the approximate mid-volume of the fuel tank, as specified in paragraph § 86.131(a), and may drain the test fuel from other than the lowest point of the tank, as specified in paragraph § 86.131(b), with the advance approval of the Administrator.

(iii) The manufacturer may perform additional preconditioning on SEA test vehicles other than the preconditioning specified in § 86.132 only if the additional preconditioning had been performed on certification test vehicles of the same configuration.

(iv) The manufacturer shall perform the heat build procedure 11 to 34 hours following vehicle preconditioning rather than according to the time period specified in paragraph § 86.133(a). All references in § 86.133 to an evaporative emission enclosure (SHED) and analyzing for HC during the heat build can be ignored.

(v) The manufacturer may substitute slave tires for the drive wheel tires on the vehicle as specified in paragraph § 86.135(e): Provided, That the slave tires are the same size.

(vi) The cold start exhaust emission test described in § 86.137 shall follow the heat build procedure described in § 86.133 by not more than one hour.

(vii) In performing exhaust sample analysis under § 86.140:

(A) When testing diesel vehicles, the manufacturer shall allow a minimum of 20 minutes warm-up for the HC analyzer, and a minimum of 2 hours warm-up for the CO, CO_2 and NO_x analyzers. (Power is normally left on infrared and chemiluminescent analyzers. When not in use, the chopper motors of the infrared analyzers are turned off and the phototube high voltage supply to the chemiluminescent analyzers is placed in the standby position.)

(B) The manufacturer shall exercise care to prevent moisture from condensing in the sample collection bags.

(viii) The manufacturer need not comply with § 86.142, since the records required therein are provided under other provisions of Subpart G of this part.

(ix) In addition to the requirements of Subpart B of this part, the manufacturer shall prepare gasoline-fueled vehicles as follows prior to exhaust emission testing:

(A) The manufacturer shall inspect the fuel system to insure the absence of any leaks of liquid or vapor to the atmosphere by applying a pressure of 14.5 ± 0.5 inches of water to the fuel system, allowing the pressure to stabilize, and isolating the fuel system from the pressure source. Following isolation of the fuel system, pressure must not drop more than 2.0 inches of water in 5 minutes. If required, the manufacturer shall perform corrective action in accordance with paragraph § 86.608(d) and report this action in accordance with paragraph § 86.609(d).

(B) When performing this pressure check, the manufacturer shall exercise care to neither purge nor load the evaporative emission control system.

(C) The manufacturer shall not modify the test vehicle's evaporative or refueling emission control systems by component addition, deletion, or substitution, except to comply with paragraph (a)(2)(ii) of this section if approved in advance by the Administrator.

(4) The following exceptions to the test procedures in Subpart C of this part are applicable to Selective Enforcement Audit Testing:

(i) The manufacturer may use test fuel meeting the specification of paragraph (a)(1) or (b)(2) of 86.113–82 for mileage accumulation. Otherwise, the manufacturer may use fuels other than those specified in this section only with advance approval of the Administrator.

(ii) The manufacturer may substitute slave tires for the drive wheel tires on the vehicle as specified in paragraph 86.135–82(e). Provided, that the slave tires are the same size.

(iii) The manufacturer need not comply with § 86.242 since the records required therein are provided under other provisions of Subpart G of this part.

(iv) The manufacturer shall not modify the test vehicle's evaporative emission control system or refueling emission control system by component addition, deletion, or substitution, except to comply with § 86.231.

(v) Any vapor storage device which adsorbs hydrocarbon vapors generated during refueling and subsequently releases them to the engine induction system during vehicle operation shall be subjected to either a minimum of 30 load-purge cycles using the following procedure or 4,000 miles of vehicle service accumulation prior to the start of the refueling emission test procedure. Prior to performing the laboratory procedure the canister shall be fully purged and the canister weight shall be recorded. Perform the following sequence a minimum of 30 repetitions for each canister:

(A) Flow gasoline vapors into the canister at a rate not to exceed 0.5 SCFM until at least 10 percent of the input hydrocarbon mass passes through the canister;

(B) Purge the canister with air at a maximum rate of 1.0 SCFM until approximately 80 percent of the total hydrocarbon mass retained by the canister is removed (i.e. 60% of the difference between the fully loaded canister weight and the initial, fully purged canister weight);

(C) Record the vapor flow-rate, the method used to generate the vapors, the air flow-rate, the initial canister weight, and the canister weights after each loading cycle.

(b)(1) The manufacturer shall not adjust, repair, prepare or modify the vehicles selected for testing and shall not perform any emission tests on vehicles selected for testing pursuant to the test order unless that adjustment, repair, preparation, modification, and/or tests are documented in the manufacturer's vehicle assembly and inspection procedures and are actually performed or unless these adjustments and/or tests are required or permitted under this subpart or are approved in advance by the Administrator.

(2) For 1981 and later model years the Administrator may adjust or cause to be

adjusted any engine or vehicle parameter which the Administrator has determined to be subject to adjustment for new vehicle compliance testing (e.g., for certification or Selective Enforcement Audit testing) in accordance with § 86.085–22(c)(1), to any setting within the physically adjustable range of that parameter, as determined by the Administrator in accordance with § 86.085–22(e)(3)(ii), prior to the performance of any tests. However, if the idle speed parameter is one which the Administrator has determined to be subject to adjustment, the Administrator shall not adjust it to a setting which causes a lower engine idle speed than will be possible within the physically adjustable range of the idle speed parameter on the vehicle when it has accumulated 4,000 miles, all other parameters being adjusted identically for the purpose of comparison. The Administrator, in making or specifying such adjustments, will consider the effect of the deviation from the manufacturer's recommended setting on emissions performance characteristics as well as the likelihood that similar settings will occur on in-use light-duty vehicles or light-duty trucks. In determining likelihood, the Administrator will consider factors such as, but not limited to, the effect of the adjustment on vehicle performance characteristics and surveillance information from similar in-use vehicles.

(c) Prior to performing exhaust emission testing and/or refueling emission testing on an SEA test vehicle, the manufacturer may accumulate on each vehicle a number of miles equal to the greater of 4,000 miles, or the number of miles the manufacturer accumulated during certification on the emission-data vehicle corresponding to the configuration specified in the test order.

(d) The manufacturer shall not perform any maintenance on test vehicles after selection for testing nor shall the Administrator allow deletion of any test vehicle from the test sequence, unless requested by the manufacturer and approved by the Administrator before any test vehicle maintenance or deletion.

(e) The manufacturer will be allowed 24 hours to ship test vehicles from the assembly plant or storage facility to the test facility if the test facility is not located at the plant or storage facility or in close proximitv to the plant or storage facility: Except, That the Administrator may approve more time based upon a request by the manufacturer accompanied by a satisfactory justification.

(f) If a vehicle cannot complete the mileage accumulation or emission tests because of vehicle malfunction, the manufacturer may request the Administrator to authorize the repair of that vehicle or its deletion from the test sequence.

(g) Whenever the manufacturer conducts testing pursuant to a test order issued under this subpart, the manufacturer shall notify the Adminstrator within one working day of receipt of the test order, which test facility will be used to comply with the test order and the number of available test cells at that facility. If no test cells are available at the desired facility, the manufacturer must provide alternate testing capability satisfactory to the Administrator.

(i) If the manufacturer is not performing refueling emission tests pursuant to the test order, the manufacturer shall complete exhaust emission testing on a minimum of four vehicles per 24-hour period including voided tests for each available test cell at his testing facility.

(ii) When a manufacturer is performing refueling emissions tests pursuant to a test order on vehicles with integrated refueling emission control systems, the manufacturer shall for each available test cell:

(A) Perform a minimum of four exhaust emission tests per 24 hour period, including voided tests, or

(B) Perform a minimum of four refueling emission tests per 24 hour period, including voided tests, or

(C) Perform a combination of refueling and exhaust emission tests so that a minimum of four tests are performed per 24 hour period, including voided tests.

(iii) When a manufacturer is performing refueling emissions test pursuant to a test order on vehicles with non-integrated refueling emission control systems the manufacturer shall for each available test cell:

(A) Perform a minimum of four exhaust emission tests per 24 hour period, including voided tests, or

(B) Perform a minimum of one refueling emission test per 24 hour period, including void tests.

(iv) The Administrator may approve a longer period based upon a request by a manufacturer accompanied by satisfactory justification.

(h) The manufacturer shall perform test vehicle selection, preparation, mileage accumulation, shipping, and testing in such a manner as to assure that the audit is performed in an expeditious manner.

(i) The manufacturer may retest any test vehicle after a fail decision has been reached in accordance with paragraph (d) of § 86.610 based on the first test on each vehicle; except, that the Administrator may approve retesting at other times during the audit based upon a request by the manufacturer accompanied by a satisfactory justification. The manufacturer may test each vehicle a total of three times. The manufacturer shall test each vehicle the same number of times. The manufacturer may accumulate additional mileage on test vehicles before conducting retests, subject to the provisions of paragraph (c) of this section.

29. Section 86.609 of Subpart G is proposed to be revised to read as follows:

§ 86.609 Calculation and reporting of test results.

(a) Initial test results are calculated following the Federal Test Procedure or the refueling emission test procedure specified in paragraph (a) of § 86.608. Round the initial test results in accordance with ASTM E29–67 to the number of places to the right of the decimal point indicated by expressing the appropriate emission standard or family particulate emission limits, as defined in Part 86, to three significant figures.

(b) Final test results for each test vehicle shall be calculated by summing the initial test results derived in § 86.609(a) above for each test vehicle, dividing by the number of tests conducted on the vehicle, and rounding in accordance with ASTM E29–67, to the same number of decimal places to the right of the decimal point as the initial test results.

(c) The final deteriorated exhaust emission test results for each test vehicle shall be calculated by multiplying the final test results by the appropriate deterioration factor derived from the certification process for the engine family and model year to which the selected configuration belongs and rounding in accordance with ASTM E29–67 to two significant figures. For the purpose of this paragraph, if an exhaust emission deterioration factor as computed during the certification process is less than one, that deterioration factor shall be one.

(d) The final deteriorated refueling emission test results for each test vehicle shall be calculated by adding the final test results to the deterioration factor derived from the certification process for the refueling family and model year to which the selected configuration belongs and rounded in accordance with ASTM E29–67 to two significant figures. For the purpose of this paragraph, if a deterioration factor is computed during the certification

process is less than zero than that deterioration factor shall be zero.

(e) Within five working days after completion of testing of all vehicles pursuant to a test order, the manufacturer shall submit to the Administrator a report which includes the following information:

(1) The location and description of the manufacturer's emission test facilities which were utilized to conduct testing reported pursuant to this section;

(2) The applicable standards against which the vehicles were tested;

(3) Deterioration factor(s) for the selected configuration;

(4) A description of the vehicle selection method used;

(5) For each test conducted,

(i) Test vehicle description including:

(A) Configuration and engine family identification.

(B) Year, make, build date, and model of vehicle.

(C) Vehicle Identification Number.

(D) Miles accumulated on vehicle.

(ii) Location where mileage accumulation was conducted and description of accumulation schedule.

(iii) Test number, date, initial test results, final results and final deteriorated test results for all valid and invalid emission tests, and the reason for invalidation.

(iv) A complete description of any modification, repair, preparation, maintenance and/or testing which was performed on the test vehicle and evaporative and refueling emissions control canisters and (A) has not been reported pursuant to any other paragraph of this subpart and (B) will not be performed on all other production vehicles.

(v) Carbon dioxide emission values for all valid and invalid exhaust emission tests;

(vi) Where a vehicle was deleted from the test sequence by authorization of the Administrator, the reason for the deletion; and

(vii) Any other information the Administrator may request relevant to the determination as to whether the new motor vehicles being manufactured by the manufacturer do in fact conform with the regulations with respect to which the certificate of conformity was issued.

(6) The following statement and endorsement:

This report is submitted pursuant to sections 206 and 208 of the Clean Air Act. This Selective Enforcement Audit was conducted in complete conformance with all applicable regulations under 40 CFR Part 86 et seq. and the conditions of the test order. No emission related change(s) to production processes or quality control procedures for the vehicle configuration tested have been made between receipt of this test order and conclusion of the audit. All data and information reported herein is, to the best of

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(Company Name)

Knowledge, true and accurate I am aware of the penalties associated with violation of the Clean Air Act and the regulations thereunder.

(Authorized Company Representative)

(Approved by the Office of Management and Budget under Control Number 2000-0064.)

30. Section 86.610 of Subpart G is proposed to be amended by revising paragraph (b) to read as follows:

§ 86.610 Compliance with acceptable quality level and passing and failing criteria for Selective Enforcement Audits.

* * * * *

(b) A failed vehicle is one whose final deteriorated test results pursuant to paragraph (c) or (d) of § 86.609, for one or more of the applicable pollutants exceed the applicable emission standard.

* * * * *

31. A new § 86.1002-XX is proposed to be added to Subpart K, to read as follows:

§ 86.1002-XX Definitions.

(a) The definitions of this section apply to this subpart.

(b) As used in this subpart, all terms not defined herein have the meaning given them in the Act.

"Acceptable Quality Level" (AQL) means the maximum percentage of failing engines or vehicles, that for purposes of sampling inspection, can be considered satisfactory as a process average.

"Compliance Level" means an emission level determined during a Production Compliance Audit pursuant to Subpart L of this part.

"Configuration" means a subclassification, if any, of a heavy-duty engine family for which a separate projected sales figure is listed in the manufacturer's Application for Certification and which can be described on the basis of emission control system, governed speed, injector size, engine calibration and other parameters which may be designated by the Administrator, or for light-duty trucks a subclassification of a light-duty truck engine family/emission control system combination on the basis of engine code, inertia weight class, transmission type and gear ratios, axle ratio, and other parameters which may be designated by the Administrator and/or a subclassification of a light-duty truck refueling emission family/emission control system.

"Compliance Level" means an emission level determined during a Production Compliance Audit pursuant to Subpart L of this part.

"Test Sample" means the collection of vehicles or engines of the same configuration which have been drawn from the population of engines or vehicles of that configuration and which will receive emission testing.

"Inspection Criteria" means the pass and fail numbers associated with a particular sampling plan.

"Test Engine" means an engine in a test sample.

"Test Vehicle" means a vehicle in a test sample.

32. A new § 86.1003-XX is proposed to be added to Subpart K, to read as follows:

§ 86.1003-XX Test orders.

(a) The Administrator shall require any testing under this subpart by means of a test order addressed to the manufacturer.

(b) The test order will be signed by the Assistant Administrator for Air and Radiation or his designee. The test order will be delivered in person by an EPA Enforcement Officer to a company representative or sent by registered mail, return receipt requested, to the manufacturer's representative who signs the Application for Certification submitted by the manufacturer pursuant to the requirements of the applicable section of Subpart A of this part. Upon receipt of a test order, the manufacturer shall comply with all of the provisions of this subpart and instructions in the test order.

(c)(1) The test order will specify the engine or vehicle configuration selected for testing, the manufacturer's vehicle or engine assembly plant or associated storage facility from which the engines or vehicles must be selected, the time and location at which engines or vehicles must be selected, and the procedure by which engines or vehicles of the specified configuration must be selected.

(2) The test order may include alternative configurations to be selected for testing in the event that engines or vehicles of the specified configuration are not available for testing because those engines or vehicles are not being manufactured during the specified time, or not being stored at the specified assembly plant or associated storage facilities.

(3) If the specified configuration is not being manufactured at a rate of at least four vehicles per day, in the case of light-duty truck manufacturers, two engines per day, in the case of heavy-

duty engine manufacturers specified in paragraph (g)(1) of § 86.1008–XX, or one engine per day, in the case of heavy-duty engine manufacturers specified in paragraph (g)(2) of § 86.1008–XX, over the expected duration of the audit, the Assistant Administrator or his designated representative may select engines or vehicles of the alternate configuration for testing.

(4) In addition, the test order may include other directions or information essential to the administration of the required testing.

(d) A manufacturer may submit a list of engine families and, if applicable, refueling emission families and the corresponding assembly plants or associated storage facilities from which the manufacturer prefers to have engines or vehicles selected for testing in response to a test order. In order that a manufacturer's preferred location be considered for inclusion in a test order for a configuration of a particular engine family, or refueling emission family, the list must be submitted prior to issuance of the test order. Notwithstanding the fact that a manufacturer has submitted the above list, the Administrator may order selection at other than a preferred location.

(e) Upon receipt of a test order, a manufacturer shall proceed in accordance with the provisions of this subpart.

(f)(1) During a given model year, the Administrator shall not issue to a manufacturer more Selective Enforcement Auditing (SEA) test orders than an annual limit determined by the following:

(i) For manufacturers of heavy-duty engines, either gasoline-fueled or diesel, the number determined by dividing the projected heavy-duty engine sales bound for the United States market for that year, as made by the manufacturer in its Application for Certification, by 30,000 and rounding to the nearest whole number, unless the projected sales are less than 15,000, in which case the number is one;

(ii) For manufacturers of gasoline-fueled or diesel light-duty trucks, the number determined by dividing the projected light-duty truck sales bound for the United States market for that model year, as made by the manufacturer in its report submitted under paragraph (a)(2) of § 600.207–80 of the Automobile Fuel Economy Regulations, by 300,000 and rounding to the nearest whole number, unless the projected sales are less than 150,000, in which case the number is one.

(iii) If a manufacturer submits to EPA in writing prior to or during the model year a reliable sales projection update, that update will be used for recalculating the manufacturer's annual limit of SEA test orders.

(2) Any SEA test order for which the configuration fails in accordance with § 86.1010–84 or for which testing is not completed will not be counted against the annual limit.

(3) When the annual limit has been met, the Administrator may issue additional test orders for those configurations for which evidence exists indicating noncompliance. An SEA test order issued on this basis will include a statement as to the reason for its issuance.

33. A new § 86.1005–XX is proposed to be added to Subpart K, to read as follows:

§ 86.1005–XX Maintenance of records; submittal of information.

(a) The manufacturer of any new gasoline-fueled or diesel heavy-duty engine or light-duty truck subject to any of the provisions of this subpart shall establish, maintain, and retain the following adequately organized and indexed records:

(1) General records. A description of all equipment used to test engines or vehicles in accordance with § 86.1008–XX pursuant to a test order issued under this subpart, specifically:

(i) If testing heavy duty gasoline engines, the equipment requirements specified in §§ 86.1306–84 and 86.1506–84 of this part;

(ii) If testing heavy-duty diesel engines, the equipment requirements specified in §§ 86.1306–84, 86.1506–84, 86.884–8, and 86.884–9 of this part;

(iii) If testing light-duty gasoline fueled trucks, the equipment requirements specified in §§ 86.106–82 (excluding all references to evaporative and particulate emission testing), 86.207–XX and 86.1506–84 of this part; and

(iv) If testing light-duty diesel trucks, the equipment requirements specified in § 86.106–82 (excluding all references to evaporative emission testing) of this part.

(2) Individual records. These records pertain to each audit conducted pursuant to this subpart.

(i) The date, time, and location of each test;

(ii) The number of hours of service accumulated on the engine or the number of miles on the vehicle when the test began and ended;

(iii) The names of all supervisory personnel involved in the conduct of the audit;

(iv) A record and description of any repairs performed prior to and/or subsequent to approval by the Administrator, giving the date and time of the repair, the reason for it, the person authorizing it, and the names of all supervisory personnel responsible for the conduct of the repair;

(v) The date when the engine or vehicle was shipped from the assembly plant or associated storage facility and when it was received at the testing facility;

(vi) A complete record of all emission tests performed pursuant to this subpart (except test performed by EPA directly), including all individual worksheets and/or other documentation relating to each test, or exact copies thereof, specifically—

(A) If testing heavy-duty gasoline engines, the record requirements specified in §§ 86.1344–88, (c), (d), and (e) and 86.1542–84 of this part;

(B) If testing heavy-duty diesel engines, the record requirements specified in §§ 86.1344–88 (c), (d) and (e), 86.1542–84, and 86.884–10;

(C) If testing light-duty gasoline fueled trucks, the record requirements specified in §§ 86.142–82 (excluding all references to diesel vehicles), 86.242–XX and 86.1542–84; and

(D) If testing light-duty diesel trucks, the record requirements specified in § 86.142–82; and

(vii) A brief description of any significant audit events commencing with the test engine or vehicle selection process, but not described by any subparagraph under paragraph (a)(2) of this section, including such extraordinary events as engine damage during shipment or vehicle accident.

(3) The manufacturer shall record test equipment description, pursuant to paragraph (a)(1) of this section, for each test cell that can be used to perform emission testing under this subpart.

(b) The manufacturer shall retain all records required to be maintained under this subpart for a period of one (1) year after completion of all testing in response to a test order. Records may be retained as hard copy or reduced to microfilm, punch cards, etc., depending upon the manufacturer's record retention procedure: Provided, That in every case all the information contained in the hard copy is retained.

(c) Pursuant to a request made by the Administrator, the manufacturer shall submit to him the following information with regard to engine or vehicle production:

(1) Number of engines or vehicles, by configuration and assembly plant, scheduled for production for the time period designated in the request.

(2) Number of engines or vehicles, by configuration and assembly plant,

produced during the time period designated in the request which are complete for introduction into commerce.

(d) Nothing in this section limits the Administrator's discretion in requiring the manufacturer to retain additional records or submit information not specifically required by this section.

(e) The manufacturer shall address all reports, submissions, notifications, and requests for approvals made under this subpart to: Director, Manufacturers Operations Division, U.S. Environmental Protection Agency, EN 340, 401 M Street SW., Washington, DC 20460.

(f) Whenever a manufacturer submits information pursuant to the requirements of this subpart, the manufacturer shall clearly identify over which information it wishes to assert a business confidentiality claim and shall specify the time period for which that confidentiality claim will apply. If no claim accompanies business information when it is received by EPA, it may be made available to the public by EPA without further notice to the manufacturer. If a claim is received, the information covered by the claim will be disclosed by EPA only to the extent, and by means of the procedures, specified in 40 CFR Part 2.

34. A new § 86.1008–XX is proposed to be added to Subpart K, to read as follows:

§ 86.1008–XX Test procedures.

(a)(1) For heavy-duty engines, the prescribed test procedure is the Federal Test Procedure as described in Subparts N, I, and P of this part.

(2) For light-duty trucks, the prescribed exhaust test procedure is the Federal Test Procedure as described in Subparts B and P of this part and the refueling emissions test procedure described in Subpart C of this part. The manufacturer shall not perform the evaporative emission test procedure contained in Subpart B.

(i) If the test order designates both an exhaust emission configuration and a refueling emission configuration, the manufacturer shall perform, on each light-duty truck tested, all of the test procedures described in Subparts B, C and P, except as noted in (a)(3) below.

(ii) If the test order designates an exhaust emission configuration and does not designate a refueling emission configuration, the manufacturer shall perform only the exhaust emissions test procedures described in Subparts B and P, except as noted in (a)(3) below. The manufacturer shall not perform the refueling emission test procedures of Subpart C and is exempt from any requirements that are due exclusively to references to Subpart C.

(iii) If the test order designates a refueling emission configuration and does not designate an exhaust emission configuration, the manufacturer shall perform only the refueling emission test procedure described in Subpart C. The manufacturer shall not perform the exhaust emission test procedures of Subparts B and P and is exempt from the requirements that are due exclusively to references to Subparts B and P.

(3) When testing light-duty trucks for exhaust emissions the following exceptions to the test procedures in Subpart B are applicable:

(i) The manufacturer may use test fuel meeting the specifications of paragraph (a)(1) or (b)(2) of § 86.113–82 for mileage accumulation. Otherwise, the manufacturer may use fuels other than those specified in this section only with advance approval of the Administrator.

(ii) The manufacturer may measure the temperature of the test fuel at other than the approximate mid-volume of the fuel tank, as specified in paragraph (a) of § 86.131–78, and may drain the test fuel from other than the lowest point of the fuel tank, as specified in paragraph (b) of § 86.131–78, with the advance approval of the Administrator.

(iii) The manufacturer may perform additional preconditioning of SEA test vehicles other than the preconditioning specified in § 86.132–82 only if the additional preconditioning had been performed on certification test vehicles of the same configuration.

(iv) The manufacturer shall perform the heat build procedure 11 to 34 hours following vehicle preconditioning rather than according to the time period specified in paragraph (a) of § 86.133–78. All references in § 86.133–78 to an evaporative emission enclosure (SHED) and analyzing for HC during the heat build can be ignored.

(v) The manufacturer may substitute slave tires for the drive wheel tires on the vehicle as specified in paragraph (e) of § 86.135–82: Provided, That the slave tires are the same size.

(vi) The cold start exhaust emission test described in § 86.137–82 shall follow the heat build procedure described in § 86.133–78 by not more than one hour.

(vii) In performing exhaust sample analysis under § 86.140–82:

(A) When testing diesel vehicles, the manufacturer shall allow a minimum of 20 minutes warm-up for the HC analyzer, and a minimum of 2 hours warm-up for the CO, CO_2, and NO_x analyzers. [Power is normally left on infrared and chemiluminescent analyzers. When not in use, the chopper motors of the infrared analyzers are turned off and the phototube high voltage supply to the chemiluminescent analyzers is placed in the standby position];

(B) The manufacturer shall exercise care to prevent moisture from condensing in the sample collection bags.

(viii) In addition to the requirements of Subpart B of this part, the manufacturer shall prepare gasoline-fueled vehicles as follows prior to exhaust emission testing:

(A) The manufacturer shall inspect the fuel system to ensure the absence of any leaks of liquid or vapor to the atmosphere by applying a pressure of 14.5+0.5 inches of water to the fuel system, allowing the pressure to stabilize, and isolating the fuel system from the pressure source. Following isolation of the fuel system, pressure must not drop more than 2.0 inches of water in 5 minutes. If required the manufacturer shall perform corrective action in accordance with paragraph § 86.1006(d) and report this action in accordance with paragraph § 86.1009(d).

(B) When performing this pressure check, the manufacturer shall exercise care to neither purge nor load the evaporative emission control system.

(C) The manufacturer shall not modify the test vehicle's evaporative emission control system or the refueling emission control system by component addition, deletion, or substitution, except to comply with paragraph (a)(3)(ii) of this section if approved in advance by the Administrator.

(4) When testing light-duty trucks for refueling emissions the following exceptions to the test procedures in subpart C are applicable:

(i) The manufacturer may use test fuel meeting the specifications of paragraph (a)(1) or (b)(2) of § 86.113 for mileage accumulation. Otherwise, the manufacturer may use fuels other than those specified in this section only with advance approval of the Administrator.

(ii) In addition to the requirements of Subpart C of this part, the manufacturer shall not modify the test vehicle's evaporative emission control system or the refueling emission control system by component addition, deletion, or substitution except to comply with section § 86.231.

(iii) Any vapor storage device which adsorbs hydrocarbon vapors generated during refueling and subsequently releases them to the engine induction system during vehicle operation shall be subjected to either a minimum of 30 load-purge cycles using the following procedure or 4,000 miles of vehicle service accumulation prior to the start of

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the refueling emission test procedure. Prior to performing the laboratory procedure the canister shall be fully purged and the canister weight shall be recorded. Perform the following sequence a minimum of 30 repetitions for each canister:

(A) Flow gasoline vapors into the canister at a rate not to exceed 0.5 SCFM until at least 10 percent of the input hydrocarbon mass passes through the canister.

(B) Purge the canister with air at a maximum rate of 1.0 SCFM until approximately 60 percent of the total hydrocarbon mass retained by the canister is removed (i.e., 60 percent of the difference between the fully loaded canister weight and the initial, fully purged canister weight).

(C) Record the vapor flow-rate, the method used to generate the vapors, the air flow-rate, the initial canister weight, and the canister weights after each loading cycle.

(5) The Administrator may, on the basis of a written application by a manufacturer, prescribe minor test procedure variations from those set forth in paragraph (a)(1) of this section for any heavy-duty engine.

(b)(1) The manufacturer shall not adjust, repair, prepare, or modify the engines or vehicles selected for testing and shall not perform any emission test(s) on engines or vehicles selected for testing pursuant to the test order unless the adjustment, repair, preparation, modification, and/or test(s) is documented in the manufacturer's engine or vehicle assembly and inspection procedures and are actually performed or unless these adjustments and/or tests are required or permitted under this subpart or are approved in advance by the Administrator.

(2) For 1984 and later model years the Administrator may adjust or cause to be adjusted any engine parameter which the Administrator has determined to be subject to adjustment for certification and Selective Enforcement Audit testing in accordance with § 86.084–22(e)(1), to any setting within the physically adjustable range of that parameter, as determined by the Administrator in accordance with § 86.084–22(e)(3)(ii), prior to the performance of any tests. However, if the idle speed parameter is one which the Administrator has determined to be subject to adjustment, the Administrator shall not adjust it to any setting which causes a lower engine idle speed than would have been possible within the physically adjustable range of the idle speed parameter if the manufacturer had accumulated 125 hours of service on the engine or 4,000 miles on the vehicle under paragraph (c) of this section, all other parameters being identically adjusted for the purpose of the comparison. The manufacturer may be requested to supply information to establish such an alternative minimum idle speed. The Administrator, in making or specifying these adjustments, may consider the effect of the deviation from the manufacturer's recommended setting on emissions performance characteristics as well as the likelihood that similar settings will occur on in-use heavy-duty engines or light-duty trucks. In determining likelihood, the Administrator may consider factors such as, but not limited to, the effect of the adjustment on engine or vehicle performance characteristics and surveillance information from similar in-use engines or vehicles.

(c) Prior to performing exhaust emission testing on an SEA test engine, the manufacturer may accumulate on each engine a number of hours of service equal to the greater of 125 hours or the number of hours the manufacturer accumulated during certification on the emission-data engine corresponding to the configuration specified in the test order. Prior to performing emission testing on an SEA vehicle, the manufacturer may accumulate a number of miles equal to the greater of 4,000 miles or the number of miles the manufacturer accumulated during certification on the emission-data vehicle corresponding to the configuration specified in the test order. Service or mileage accumulation may be performed in any manner the manufacturer desires.

(d) The manufacturer shall not perform any maintenance on test vehicles or engines after selection for testing, nor shall the Administrator allow deletion of any test vehicle or engine from the test sequence, unless requested by the manufacturer and approved by the Administrator before any test vehicle or engine maintenance or deletion.

(e) The manufacturer shall expeditiously ship test engines or vehicles from the point of selection to the test facility. If the test facility is not located at or in close proximity to the point of selection, the manufacturer shall assure that test engines or vehicles arrive at the test facility within 24 hours of selection: *Except*, That the Administrator may approve more time based upon a request by the manufacturer accompanied by a satisfactory justification.

(f) If an engine or vehicle cannot complete the service or mileage accumulation or emission test because of a malfunction, the manufacturer may request that the Administrator authorize the repair of that engine or vehicle or its deletion from the test sequence.

(g) Within one working day of receipt of the test order, the manufacturer shall notify the Administrator which test facility will be used to comply with the test order. If no test cells are available at a desired facility, the manufacturer must provide alternate testing capability satisfactory to the Administrator.

(1) Heavy-duty engine manufacturers with projected sales bound for the United States market for that year of 30,000 or greater, as made in their respective Applications for Certification, shall complete emission testing at their testing facility on a minimum of two engines per 24-hour period, including voided tests.

(2) Heavy-duty engine manufacturers with projected sales bound for the United States market for that year of less than 30,000, as made in their respective Applications for Certification, shall complete emission testing at their testing facility on a minimum of one engine per 24-hour period, including voided tests.

(3) If the manufacturer is not performing refueling emission tests pursuant to the test order the manufacturer shall complete exhaust emission testing on a minimum of four vehicles per 24-hour period including voided tests for each available test cell at his testing family.

(i) When a manufacturer is performing refueling emissions tests pursuant to a test order on vehicles with integrated refueling emission control systems the manufacturer shall, for each available test cell:

(A) Perform a minimum of four exhaust emission tests per 24 hour period including voided tests, or

(B) Perform a minimum of four refueling emission tests per 24 hour period including voided test, or

(C) Perform a combination of refueling and exhaust emission tests so that a minimum of four tests are performed, including voided tests.

(ii) When a manufacturer is performing refueling emission testing pursuant to a test order on vehicles with non-integrated refueling emission control systems the manufacturers shall for each available test cell:

(A) Perform a minimum of four exhaust emission tests per 24 hour period, including voided tests, or

(B) Perform a minimum of one refueling emission test, including voided tests.

(4) The Administrator may approve a longer period of time for conducting emission tests based upon a request by

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a manufacturer accompanied by a satisfactory justification.

(h) The manufacturer shall perform test engine or vehicle selection, shipping, preparation, service or mileage accumulation, and testing in such a manner as to assure that the audit is performed in an expeditious manner.

(i) The manufacturer may retest any engines or vehicles tested during a Selective Enforcement Audit once a fail decision for the audit has been reached in accordance with § 86.1010–XX(d) based on the first test on each engine or vehicle: *Except,* That the Administrator may approve retesting at other times based upon a request by the manufacturer accompanied by a satisfactory justification. The manufacturer may test each engine or vehicle a total of three times. The manufacturer shall test each engine or vehicle the same number of times. The manufacturer may accumulate additional service or mileage before conducting a retest, subject to the provisions of paragraph (c) of this section.

35. A new § 86.1009–XX is proposed to be added to Subpart K, to read as follows:

§ 86.1009–XX Calculation and reporting of test reports.

(a) Initial test results are calculated following the Federal Test Procedure or, where applicable, the refueling emission test procedure specified in paragraph (a) of § 86.1008–XX. Round these results, in accordance with ASTM E29–67, to the number of decimal places contained in the applicable emission standard expressed to one additional significant figure.

(b) Final test results are calculated by summing the initial test results derived in paragraph (a) of this section for each test engine or vehicle, dividing by the number of tests conducted on the engine or vehicle, and rounding in accordance with ASTM E29–67 to the same number of decimal places contained in the applicable standard expressed to one additional significant figure.

(c) Final deteriorated test results.

(1) The final deteriorated exhaust emission test results for each heavy-duty engine utilizing aftertreatment technology or light-duty truck tested according to Subpart B, N or P of this part are calculated by multiplying the final test results by the appropriate deterioration factor, derived from the certification process for the engine family-control system combination and model year for the selected configuration to which the test engine or vehicle belongs. If the deterioration factor computed during the certification process is less than one, that deterioration factor will be one.

(2) The final deteriorated test results for each heavy-duty engine not utilizing aftertreatment technology tested according to Subpart P or N of this part, and each diesel heavy-duty engine tested according to Subpart I of this part, are calculated by adding the appropriate deterioration factor, derived from the certification process for the engine family-control system combination and model year for the selected configuration to which the test engine belongs, to the final test results. If the deterioration factor computed during the certification process is less than zero, that deterioration factor will be zero.

(3) The final deteriorated test results for light-duty trucks tested according to Subpart C of this part are calculated by adding the final test results to the deterioration factor derived from the certification process for the refueling family-control system combination and model year for the selected configuration to which the test vehicle belongs. If the deterioration factor computed during the certification process is less than zero that deterioration factor will be zero.

(4) The final deteriorated test results are rounded to the same number of significant figures contained in the applicable standard in accordance with ASTM E29–67.

(d) Within five working days after completion of testing of all engines or vehicles pursuant to a test order, the manufacturer shall submit to the Administrator a report which includes the following information.

(1) The location and description of the manufacturer's emission test facilities which were utilized to conduct testing reported pursuant to this section.

(2) The applicable standards or compliance level against which the engines or vehicles were tested.

(3) Deterioration factors for the engine family to which the selected configuration belongs.

(4) A description of the engine or vehicles and any emission-related component selection method used.

(5) For each test conducted.

(i) Test engine or vehicle description, including:

(A) Configuration and engine family identification.

(B) Year, make and build date.

(C) Engine or vehicle identification number, and

(D) Number of hours of service accumulated on engine or number of miles on vehicle prior to testing;

(ii) Location where service or mileage accumulation was conducted and description of accumulation procedure and schedule;

(iii) Test number, date, initial test results before and after rounding, final test results and final deteriorated test results for all emission test, whether valid or invalid, and the reason for invalidation, if applicable.

(iv) A complete description of any modification, repair, preparation, maintenance, and/or testing which was performed on the test engine or vehicle and evaporative and refueling emission control canister(s) and has not been reported pursuant to any other paragraph of this subpart and will not be performed on all other production engines or vehicles.

(v) Where an engine or vehicle was deleted from the test sequence by authorization of the Administrator, the reason for the deletion.

(vi) For all valid and invalid exhaust emission tests, carbon dioxide emission values for LDTs and brake-specific fuel consumption values for HDEs; and

(vii) Any other information the Administrator may request relevant to the determination as to whether the new heavy-duty engines or light-duty trucks being manufactured by the manufacturer do in fact, conform with the regulations with respect to which the certificate of conformity was issued; and

(6) The following statement and endorsement:

This report is submitted pursuant to sections 206 and 208 of the Clean Air Act This Selective Enforcement Audit was conducted in complete conformance with all applicable regulations under 40 CFR Part 86 *et seq.* and the conditions of the test order. No emission-related changes to production processes or quality control procedures for the vehicle or engine configuration tested have been made between receipt of the test order and conclusion of the audit. All data and information reported herein is, to the best of (Company Name _____) knowledge, true and accurate. I am aware of the penalties associated with violation of the Clean Air Act and the regulations thereunder.

_____

(Authorized Company Representative)

36. A new § 86.1010–XX is proposed to be added to Subpart K, to read as follows:

§ 86.1010–XX Compliance with acceptable quality level and passing and failing criteria for Selective Enforcement Audits.

(a) The prescribed acceptable quality level is 40 percent.

(b) A failed engine or vehicle is one whose final deteriorated test results pursuant to paragraph 86.1009–84(c), for one or more of the applicable pollutants, exceed the applicable emission standard or compliance level.

(c) The manufacturer shall test heavy-duty engines or light-duty trucks comprising the test sample until a pass decision is reached for all pollutants, or a fail decision is reached for one pollutant. A pass decision is reached when the cumulative number of failed engines or vehicles, as defined in paragraph (b) of this section, for each pollutant is less than or equal to the pass decision number appropriate to the cumulative number of engines or vehicles tested. A fail decision is reached when the cumulative number of failed engines or vehicles for one or more pollutants is greater than or equal to the fail decision number appropriate to the cumulative number of engines or vehicles tested. The pass and fail decision numbers associated with the cumulative number of engines or vehicles tested are determined by using the tables in Appendix X of this part appropriate to the projected sales as made by the heavy-duty engine manufacturer in its Application for Certification or as made by the light-duty truck manufacturer in its report submitted under paragraph (a)(2) of § 600.207–80 of the Automobile Fuel Economy Regulations. In the tables in Appendix X to this part, sampling plan "stage" refers to the cumulative number of engines or vehicles tested. Once a pass or fail decision has been made for a particular pollutant, the number of engines or vehicles whose final deteriorated test results exceed the emission standard or compliance level, if applicable, for that pollutant shall not be considered any further for the purposes of the audit.

(d) Passing or failing of an SEA occurs when the decision is made on the last engine or vehicle required to make a decision under paragraph (c) of this section.

(e) The Administrator may terminate testing earlier than required in paragraph (c) of this section.

37. A new § 86.1207–XX is proposed to be added to Subpart M, to read as follows:

§ 86.1207–XX Sampling and analytical system; evaporative emissions.

The following is a description of the components which will be used in evaporative emission sampling system for testing under this subpart.

(a) *Evaporative emission measurement enclosure.* The enclosure shall be readily sealable, rectangular in shape, with space for personnel access to all sides of the vehicle. When sealed, the enclosure shall be gas tight in accordance with § 86.1217–81. Interior surfaces must be impermeable to hydrocarbons. At least one surface shall be constructed of flexible, impermeable material to allow for minor volume changes which result from temperature changes. No interior surface temperatures shall be less than 68 °F (20 °C).

(b) *Evaporative emission hydrocarbon analyzer.* A hydrocarbon analyzer utilizing the hydrogen flame ionization principle (FID) shall be used to monitor the atmosphere within the enclosure. Instrument bypass flow may be returned to the enclosure. The FID shall have a response time to 90 percent of final reading of less than 1.5 seconds, and be capable of meeting performance requirements expressed as a function of C_{std}, where C_{std} is the specific enclosure hydrocarbon level, in ppm, corresponding to the evaporative emission standard.

(1) Stability of the analyzer shall be better than 0.01 C_{std} ppm at zero and span over a 15 minute period on all ranges used.

(2) Repeatability of the analyzer, expressed as one standard deviation, shall be better than 0.005 C_{std} ppm on all ranges used.

(c) *Evaporative emission hydrocarbon date recording system.* The electrical output of the FID shall be recorded at least at the initiation and termination of each diurnal and hot soak. The recording may be by means of a strip chart potentiometric recorder, by use of an online computer system, or by other suitable means. In any case, the recording system must have operational characteristics (signal to noise ratio, speed of response, etc.) equivalent to or better than those of the signal source being recorded, and must provide a permanent record of results. The record shall show a positive indication of the initiation and completion of each soak.

(d) *Tank fuel heating system.* The tank fuel heating system shall consist of a heat source and a temperature controller. A typical heat source is a 2000 W heating pad. Other sources may be used as required by circumstances. The temperature controller may be manual, such as a variable voltage transformer, or may be automated. The heating system must not cause hot spots on the tank wetted surface which could cause local overheating of the fuel. Heat must not be applied to the vapor in the tank above the liquid fuel. The temperature controller must be capable of controlling the fuel tank temperature during the diurnal soak to within ±3 °F (1.7 °C) of the following equation:

$$F=T_o+0.4t$$

or for SI units:

$$C=T_o+(2/9)t$$

Where:
F=Temperature in °F
C=Temperature in °C
t=Time since start of test in minutes
T_o=Initial temperature in °F (or in °C for SI units)

(e) *Temperature recording system.* Strip chart recorder(s) or an automatic data processor shall be used to record enclosure ambient and vehicle fuel tank temperature at least once every minute. The temperature recorder or data processor shall have a time accuracy of ±15s, a time precision of ±15s and be capable of resolving temperature to ±0.75 °F (0.42 °C). The temperature recording system (recorder and sensor) shall have an accuracy of ±3 °F (1.7 °C). Two ambient temperature sensors, connected to provide one average output, shall be located in the enclosure. These sensors shall be located at the approximate vertical centerline of each side wall extending four inches (nominally) into the enclosure at a height of 3±0.5 ft (0.9+0.2 m). The vehicle fuel tank temperature sensor shall be located in the fuel tank so as to measure the temperature of the prescribed test fuel at the approximate mid-volume of the fuel. Manufacturers shall arrange that vehicles furnished for testing at Federal certification facilities be equipped with iron-constantan Type J thermocouples for measurement of fuel tank temperature.

(f) *Purge blower.* One or more portable or fixed blowers shall be used to purge the enclosure. The blowers shall have sufficient flow capacity to reduce the enclosure hydrocarbon concentration from the test level to the ambient level between tests. Actual flow capacity will depend upon the time available between tests.

(g) *Mixing blower.* One or more blowers or fans with a total capacity of 250 to 750 cfm per 1,000 ft^3 of enclosure volume shall be used to mix the contents of the enclosure during evaporative emission testing. The mixing blower(s) shall be arranged such that a uniform concentration is maintained. No portion of the air stream shall be directed towards the vehicle.

(h) *Gasoline vapor generating equipment.* The equipment used to generate gasoline vapor shall consist of a five gallon capacity (liquid) container constructed such that nitrogen gas can be bubbled through liquid gasoline at a rate between 0.05 and 0.10 cfm. The system should be designed such that it is capable of producing at least 30 grams of hydrocarbon vapor, containing no entrained liquid, in the effluent stream within one hour of operation at the nitrogen gas flow rates specified with a

charge of five gallons of fuel meeting the specifications outlined in § 86.113 XX. The system should be free of vapor leaks and shall be capable of sustaining pressures of at least 100 psig. The vapor space over the liquid fuel shall be 1.0±0.5 gallons. A heating mechanism shall be required such that the gasoline in the container can be heated to and maintained at 120±10 °F and the temperature of the effluent shall be 120±10 °F. A shutoff valve and a pressure regulator to limit the discharge pressure of the effluent to the canister to 1.0 psig shall be incorporated in the line connecting the vapor generator and the evaporative emission canister.

38. A new § 86.1213–XX is proposed to be added to Subpart M, to read as follows:

§ 86.1213–XX Fuel specifications.

(a) *Gasoline.* Gasoline having the following specifications will be used in emissions testing.

Item	ASTM	Value
Octane, research:		
Regular [1]	D2699	91±1
Premium [2]	D2699	96±1
Sensitivity, minimum.		7.5
Lead (organic):		
g/U.S. gal.	D3237	0.050 [3]
(g/liter)		(0.013.) [3]
Distillation range:		
IBP [4]:		
°F	D86	75-100
(°C)		(23.9–37.8)
10 pct. point:		
°F	D86	110–135
(°C)		(43.3–57.2)
50 pct. point:		
°F	D86	185–230
(°C)		(85.0–110)
90 pct. point:		
°F	D86	285–325
(°C)		(140.6–162.8)
EP, (max.):		
°F	D86	437
(°C)		(225)
Percent evaporated @160 °F(71.1 °C).	D86	20–35
Sulfur, weight, percent, minimum.	D1266	0.03
Phosphorus:		
g/U.S. gal., maximum.	D3231	0.005
(g/liter)		(0.0013)
RVP [5]:		
psi	D323	8.7–9.2 [6] [7]
(kPa)		(60.0–63.4)
RVP [8]:		
psi	D323	8.0±0.2 to 11.5±0.2 [9]
(kPa)		(55.2±1.4 to 79.3±1.4)
Hydrocarbon composition:		
Olefins, percent, maximum.	D1319	10
Aromatics, percent, maximum:		
Regular [1]	D1319	40
Premium [2]	D1319	45
Saturates	D1319	[10]

[1] For use in all vehicles except those meeting the conditions for testing with premium gasoline.

[2] For testing only those vehicles for which the manufacturer clearly notifies the customer that use of non-premium grade fuel will likely result in engine damage. Additionally, the manufacturer must state in its certification application that information substantiating likely engine damage is available; such information would be subject to audit by EPA.

[3] Maximum.

[4] For testing at altitudes above 1,219 m (4.000 ft), the specified range is 75°–105 °F (23.9–40.6°C).

[5] For testing involving exhaust emissions and evaporative emissions.

[6] For testing involving exhaust emissions only, the specification is 8.0–9.2 psi (55.2–63.4 kPa)

[7] For testing at altitudes above 1,219m (4,000 ft), the specified range is 7.5–8.0 psi (51.7–55.2 kPa).

[8] For testing involving refueling emissions only.

[9] For testing at altitudes above 1,219 m (4,000 ft), the specified range is 7.0±0.2 to 10.0±0.2 psi (48.3±1.4 to 69.0±1.4 kPa).

[10] Remainder.

(b)(1) Unleaded gasoline representative of commercial gasoline which will be generally available through retail outlets shall be used in service accumulation. Leaded gasoline will not be used in service accumulation.

(2) The octane rating of the gasoline used shall be no higher than 1.0 Research octane number above the minimum recommended by the manufacturer and have a minimum sensitivity of 7.5 octane numbers, where sensitivity is defined as the Research octane number minus the Motor octane number.

(3) The Reid Vapor Pressure of the gasoline used shall be characteristic of the motor fuel used during the season in which the service accumulation takes place.

(c) The specification range of the gasoline to be used under paragraph (b) of this section shall be recorded.

39. A new § 86.1230–XX is proposed to be added to Subpart M, to read as follows:

§ 86.1230–XX Test sequence; general requirements.

The test sequence shown in Figure MXX–1 show the steps encountered as the test vehicle undergoes the test procedure. Ambient temperature levels encountered by the test vehicle throughout the test sequence shall not be less than 68 °F (20 °C) nor more than 86 °F (30 °C). The vehicle shall be approximately level during all phases of the test sequence to prevent abnormal fuel distribution.

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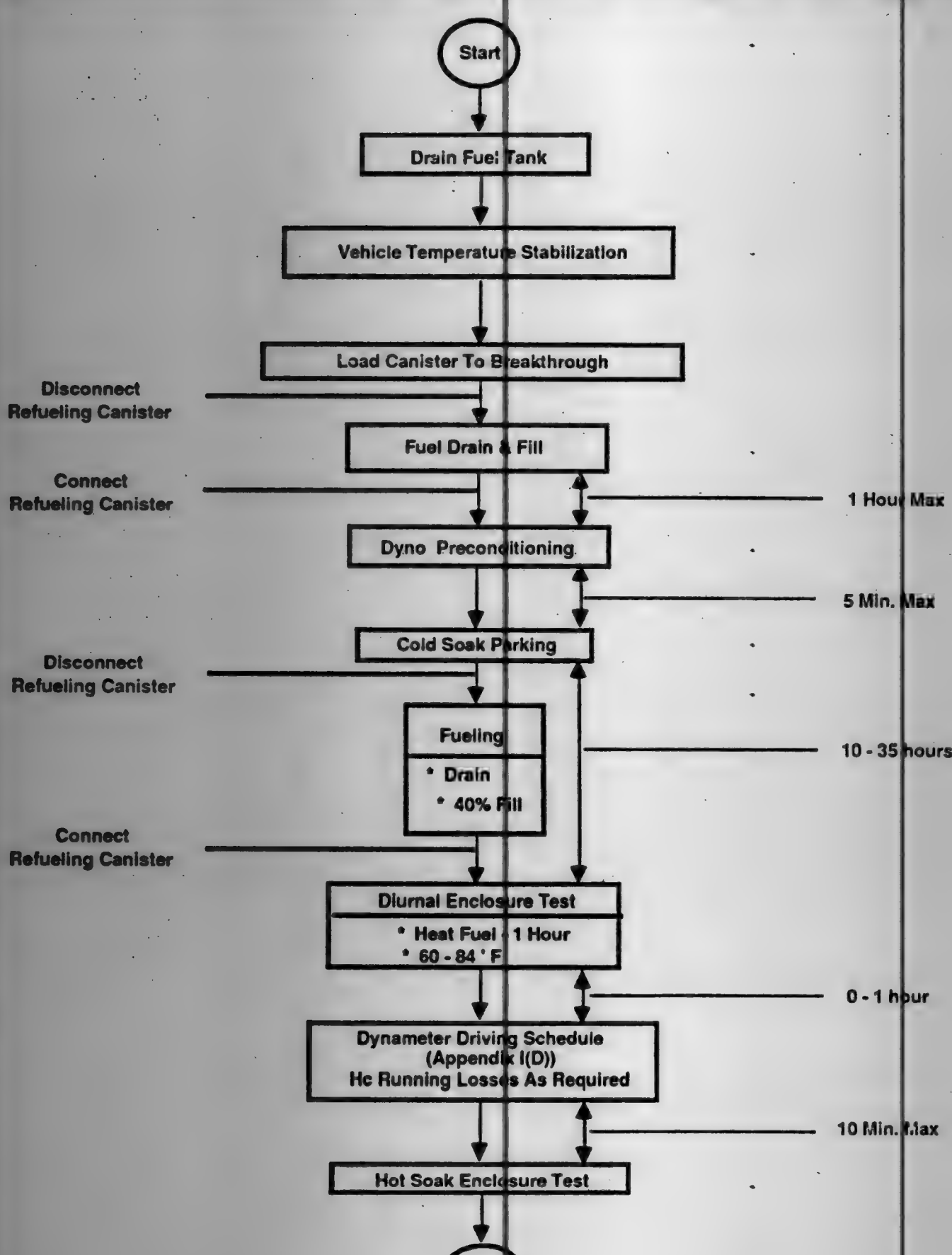

Figure MXX - 1 - Test Sequence

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40. A new § 86.1231–XX is proposed to be added to Subpart M, to read as follows:

§ 86.1231–XX Vehicle preparation.

(a) Prepare the fuel tank(s) for recording the temperature of the prescribed test fuel at the approximate mid-volume of the fuel when the tank is 40 percent full.

(b)(1) Provide additional fittings and adapters, as required, to accommodate a fuel drain at the lowest point possible in the tank(s) as installed on the vehicle.

(2) For non-integrated and partially integrated refueling control systems, provide valving or other means to allow loading of the evaporative canister with gasoline vapor.

(c)(1) Any vapor storage device which adsorbs HC vapors and subsequently releases them to the engine induction system during vehicle operation shall be subjected to a minimum of 30 load-purge cycles or the equivalent thereof (4,000 miles or more of actual in-use vehicle service accumulation shall be considered equivalent). One load-purge cycle shall be accomplished by conducting one of the following procedures:

(i) Vehicle Procedure. Park a fully-warm vehicle (a vehicle that has been driven for at least 15 minutes) for a time period of at least 3 hours. Fill the fuel tank(s) to the prescribed "tank fuel volume" with specified test fuel (§ 86.1213–85) at room temperature. Then drive the vehicle through at least one cycle of the HDV reference (transient) urban dynamometer driving schedule.

(ii) Laboratory Procedure. Flow gasoline vapors into a pre-purged vapor storage device until at least 10 percent of the input HC mass flow rate is passing through the device. Purge the device with a volume of air which has a temperature no higher than that which would be drawn through the device if it were installed on the test vehicle and the vehicle was operated according to the HDV reference (transient) urban dynamometer driving schedule. The vapor flow rate, the method used to generate the vapors, the air flow rate, and the air temperature shall be recorded. If pre-blended gas is used, then the composition and characteristics of the gas shall be recorded.

(2) Ten load-purge cycles accumulated immediately prior to testing shall be conducted according to the method in paragraph (c)(1)(i) of this section. The preceding 20 cycles (minimum) shall be conducted according to either of the methods in paragraph (c)(1) (i) or (ii) of this section.

41. A new § 86.1232–XX is proposed to be added to Subpart M, to read as follows:

§ 86.1232–XX Vehicle preconditioning.

(a) During any period that the vehicle is parked awaiting testing, the fuel tank cap(s) shall be removed to prevent unusual loading of the canister(s). During this time care must be taken to prevent entry of water or other contaminants into the fuel tank. The vehicle shall be moved to the test area and the following operations performed:

(1) The refueling emission canister(s), and the evaporative emission canister(s) if the vehicle is so equipped, shall be loaded to breakthrough as specified below. Canister shall not be purged prior to beginning this sequence.

(i) Drain the vehicle fuel tank(s).

(ii) *Vehicle Temperature Stabilization.* The test vehicle shall be soaked at a temperature between 68 °F and 86 °F (20° and 30°C) for a minimum of six hours. This temperature stabilization step may be omitted on vehicles which are already temperature stabilized as a result of the refueling emission test.

(iii) *Canister(s) loading to breakthrough.*

Note: If at any time the hydrocarbon concentration exceeds 15,000 ppm C the enclosure should be immediately purged. This concentration provides a 4:1 safety factor against the lean flammability limit.

(A) *Evaporative Emission Canisters*

(*1*) For vehicles with evaporative emissions canisters which are not connected to the fuel tank, the following procedures shall be performed:

(*i*) The SHED shall be opened and purged of hydrocarbon vapor.

(*ii*) Place the vehicle in the SHED. Ground the vehicle.

(*iii*) The gasoline vapor generating equipment shall be drained of fuel and then refueled with 5 gallons of gasoline meeting the test fuel specifications, § 86.113–90. Ground the vapor generating equipment and heat the gasoline to 120±10 °F. No gasoline vapor shall be allowed to escape from the gasoline vapor generating equipment.

(*iv*) Equipment to generate gasoline vapor shall be placed in the SHED and grounded, and the vehicle hood opened if required to provide access to the evaporative emissions canister.

(*v*) The heating mechanism of the gasoline vapor generating equipment shall be operated to insure that the effluent vapor stream will be at 120±10 °F.

(*vi*) The gasoline vapor generating equipment shall be connected to the evaporative emissions canister. The SHED shall be closed and the doors sealed.

(*vii*) The mixing blower shall be turned on, if not already on. Initiate measurement of the hydrocarbon level in the SHED.

(*viii*) Open the gasoline vapor generating equipment shutoff valve, flow nitrogen gas into the gasoline vapor generating equipment at a rate of between 0.05 and 0.1 ft^3/min (1.4 to 2.8 1/min) until breakthrough occurs (breakthrough is defined as the point at which the change in hydrocarbon concentration in the SHED indicates that at least ⅓ gram of hydrocarbon has been emitted from the canister for each gallon of nominal fuel tank capacity; *i.e.*, $\Delta HC_{grams} = ⅓$ [nominal fuel tank capacity(gallons)], where $\Delta HC_{grams} = M_{HC}$ as calculated in § 86.1243). If canister breakthrough does not occur within one hour of the start of nitrogen flow, the nitrogen shall be turned off, and the sequence described in (a)(1)(iii)(A)(*1*) (*i*) through (*viii*) above shall be repeated.

(*ix*) Remove the vehicle from the SHED without starting the engine.

(*2*) For vehicles equipped with evaporative emission canisters connected to the fuel tank, the following procedure shall be performed:

(*i*) The evaporative emission enclosure shall be purged for several minutes immediately prior to the test.

(*ii*) If not already on, the evaporative enclosure mixing fan shall be turned on at this time.

(*iii*) The fuel tank(s) of the prepared vehicle shall be drained. Charge the fuel tank with the specified test fuel, § 86.113, to the prescribed "tank fuel volume," defined in § 86.078–2. The temperature of the fuel prior to its delivery to the fuel tank(s) shall be between 45 and 60 °F (7.2 and 16 °C). The fuel tank cap(s) is not installed until the diurnal heat build begins.

(*iv*) The test vehicle, with the engine shut off, shall be moved into the evaporative emission enclosure, the vehicle shall be grounded, the fuel tank temperature sensor shall be connected to the temperature recording system, and, if required, the heat source shall be properly positioned with respect to the fuel tank(s) and/or connected to the temperature controller.

(*v*) The temperature recording system shall be started.

(*vi*) The fuel may be artificially heated to the starting diurnal temperature.

(*vii*) When the fuel temperature recording system reaches at least 58 °F (14 °C), immediately; install fuel tank cap(s), turn off purge blowers, if not

already off at this time, close and seal enclosure doors and initiate measurement of the hydrocarbon level in the SHED.

(*viii*) When the fuel temperature recording system reaches 60±2 °F (16±1.1 °C), immediately; start diurnal heat build.

(*ix*) The fuel shall be heated in such a way that its temperature change conforms to the following function to within ±4 °F (±2.2 °C):

$$F = T_o + 0.4t$$

for SI units,

$$C = T_o + (\tfrac{4}{9})t$$

where:
F = fuel temperature, °F
C = fuel temperature, °C
t = time since beginning of test, minutes
T_o = initial temperature

(*x*) As soon as breakthrough occurs (breakthrough is defined as the point at which the change in hydrocarbon concentration in the SHED indicates that at least ⅓ gram of hydrocarbon has been emitted from the canister for each gallon of nominal fuel tank capacity; *i.e.*, $\Delta HC_{grams} = \frac{1}{3}$ [nominal fuel tank capacity(gallons)], where $\Delta HC_{grams} = M_{HC}$ as calculated in § 86.1243) or the fuel temperature reaches 84 °F (28.9 °C) the heat source shall be turned off, the enclosure doors shall be unsealed and opened, and the vehicle fuel tank cap(s) shall be removed. If breakthrough has not occurred by the time the fuel temperature reaches 84 °F, the vehicle shall be removed (with engine shut off) from the evaporative emission enclosure and the entire procedure outlined in (a)(1)(iii)(A)(*2*) of this section shall be repeated as many times as necessary until breakthrough occurs.

(B) *Refueling emissions canister(s).* (*1*) Place the vehicle in the SHED. Ground the vehicle.

(*2*) Purge the SHED of hydrocarbon vapor, turn on the mixing blower, close and seal the SHED doors.

(*3*) Start measurement of the hydrocarbon level in the SHED.

(*4*) The tank(s) shall be filled to the nominal tank capacity or until canister breakthrough occurs (breakthrough is defined as the point at which the change in hydrocarbon concentration in the SHED indicates that at least ⅓ gram of hydrocarbon has been emitted from the canister for each gallon of nominal fuel tank capacity; *i.e.*, $\Delta HC_{grams} = \frac{1}{3}$ [nominal fuel tank capacity(gallons)], where $\Delta HC_{grams} = M_{HC}$ as calculated in § 86.1243), whichever occurs first, with the specified fuel (§ 86.113) at a temperature of 79 °F to 86 °F (26.1 °C to 30.0 °C) and at a fueling rate of 3–4 gal./min (11.4–15.1/min.). If canister breakthrough does not occur during the first fueling operation, the SHED shall be opened and draining of the fuel tank(s) shall be initiated within 10 minutes of completing the first fueling operation. The tank(s) shall be drained, the SHED purged of hydrocarbon vapors and the doors closed and resealed. Within 10 minutes of completion of fuel tank draining, the second fueling operation shall be initiated. A second full fueling or fueling to breakthrough, whichever occurs first, as described above shall be performed. If breakthrough has not occurred, fuel draining, SHED purging and resealing, and fueling as described above, shall be repeated until breakthrough occurs.

(*5*) If the vehicle is equipped with dual fuel tanks and a common canister, either fuel tank may be filled first. If the vehicle is equipped with dual fuel tanks and canisters dedicated to each tank, one canister shall be loaded to breakthrough, the SHED shall be opened and purged of hydrocarbon vapors and resealed and the second canister shall be loaded to breakthrough.

(*6*) Remove the vehicle from the SHED without starting the engine.

(2) The refueling emission canister shall be disconnected. The fuel tank(s) shall be drained through the provided fuel tank(s) drain(s) and filled to the prescribed "tank fuel volume" with the specified test fuel, § 86.1213. The refueling emission canister(s) shall be reconnected.

(3) Within one hour of being fueled the vehicle shall be placed, either by being driven or pushed, on a dynamometer and operated through one HDV urban dynamometer driving schedule (see § 86.1251–85). A test vehicle may not be used to set dynamometer horsepower.

(b) After completion of preconditioning, the vehicle shall be driven off the dynamometer and parked. The engine shall be turned off within five minutes of completion of preconditioning. The vehicle may be pushed to its parking location after its engine has been turned off.

42. A new § 86.1233–XX is proposed to be added to Subpart M, to read as follows:

§ 86.1233–XX Diurnal breathing loss test.

(a) Following vehicle preparation and vehicle preconditioning procedures described in §§ 86.1231 and 86.1232 the diurnal test shall start not less than 10 or more than 35 hours after the end of the preconditioning procedure. The start of vehicle operation shall follow the end of the diurnal test within one hour.

(b) The evaporative emissions enclosure shall be purged for several minutes immediately prior to the test.

Note.—If at any time the hydrocarbon concentration exceeds 15,000 ppm C the enclosure should be immediately purged. This concentration provides a 4:1 safety factor against the lean flammability limit.

(c) The FID hydrocarbon analyzer shall be zeroed and spanned immediately prior to the test.

(d) If not already on, the evaporative enclosure mixing fan(s) shall be turned on at this time.

(e) For vehicles with multiple tanks, the largest tank shall be designated as the primary tank and shall be heated in accordance with the procedures described in paragraph (1) of this section. All other tanks shall be designated as auxiliary tanks and shall undergo a similar heat build such that the fuel temperature shall be within 3 °F (1.6 °C) of the primary tank.

(f) Immediately prior to the diurnal breathing loss test, the refueling emission canister(s) shall be disconnected, the fuel tank(s) of the prepared vehicle shall be drained and recharged with the specified test fuel as defined in § 86.1213 to the prescribed "tank fuel volume", as defined in § 86.078–2. The temperature of the fuel prior to its delivery to the fuel tank shall be between 45 and 60 °F (7.2 and 16 °C). The fuel tank cap(s) is not installed and the refueling emission control canister(s) is not reconnected until the diurnal heat build begins.

(g) The test vehicle, with the engine shut off, shall be moved into the evaporative emission enclosure, the test vehicle windows and any storage compartments shall be opened, the fuel tank temperature sensor shall be connected to the temperature recording system, and, if required, the heat source shall be properly positioned with respect to the fuel tank(s) and/or connected to the temperature controller.

(h) The temperature recording system shall be started.

(i) The fuel may be artificially heated to the starting diurnal temperature, 60±2 °F (16±1.1 °C).

(j) When the fuel temperature recording system reaches at least 58 °F (14 °C), immediately:

(1) Install fuel tank cap(s) and reconnect refueling emissions control canister(s).

(2) Turn off purge blowers, if not already off at this time.

(3) Close and seal enclosure doors.

(k) When the fuel reaches 60±2 °F (16±1.1 °C) immediately:

(1) Analyze enclosure atmosphere for hydrocarbons and record. This is the initial (time=0 minutes) hydrocarbon concentration, C_{HC_i} (see § 86.1243–85).

(2) Record barometric pressure reading. This is the initial (time=0 minutes) barometric pressure, $P_{b\,i}$ (see § 86.1243–85).

(3) Record enclosure ambient temperature. This is the initial (time=0 minutes) enclosure ambient temperature, T_i (see § 86.1243–85).

(4) Start diurnal heat build and record time. This commences the 60±2 minute test period.

(l) The fuel shall be heated in such a way that its temperature change conforms to the following function to within ±3 °F (±1.6 °C):

$F=T_o+0.4t$
for SI units, $C=T_o+(2/9)t$
Where:
F=fuel temperature, F°
C=fuel temperature, C°
t=time since beginning of test, minutes.
T_o=initial temperature in F° (or in °C for SI units).

After 60±2 minutes of heating, the fuel temperature rise shall be 24±°F (13.3±0.5 °C).

(m) The FID hydrocarbon analyzer shall be zeroed and spanned immediately prior to the end of the diurnal test.

(n)(1) The end of the diurnal breathing loss test occurs 60±2 minutes after the heat build begins (paragraph (k)(4)). Analyze the enclosure atmosphere for hydrocarbon and record. This is the final (time=60 minutes) hydrocarbon concentration, $C_{H\,C\,f}$ (see § 86.1234–85). The time (or elapsed time) of this analysis shall be recorded.

(2) Record barometric pressure reading This is the final (time=60 minutes) barometric pressure, $P_{b\,f}$ (see § 86.1234–85).

(3) Record enclosure ambient temperature. This is the final (time=60 minutes) enclosure ambient temperature, T_f (see § 86.1234–85).

(o) The heat source shall be turned off and the enclosure doors unsealed.

(p) The heat source shall be moved away from the vehicle, if required, and/or disconnected from the temperature controller, the fuel tank temperature sensor shall be disconnected from the temperature recording system, and the test vehicle windows and any storage compartments may be closed. The vehicle shall be either driven or pushed out of the evaporative emission enclosure.

43. A new § 86.1313–XX is proposed to be added to Subpart N, to read as follows:

§ 86.1313–XX Fuel specifications.

(a) *Gasoline.* (1) Gasoline having the following specifications will be used by the Administrator in exhaust emission testing. Gasoline having the following specification or substantially equivalent specifications approved by the Administrator, shall be used by the manufacturer in exhaust testing.

Item	ASTM	Value
Octane, research:		
Regular [1]	D2699	91±1
Premium [2]	D2699	96±1
Sensitivity, minimum.		7.5
Lead (organic):		
g/U.S. gal.	D3237	0.050 [3]
(g/liter)		(0.013) [3]
Distillation range:		
IBP [4]:		
°F	D86	75-100
(°C)		(23.9–37.8)
10 pct. point:		
°F	D86	110–135
(°C)		(43.3–57.2)
50 pct. point:		
°F	D86	185–230
(°C)		(85.0–110)
90 pct point:		
°F	D86	285–325
(°C)		(140.6–162.8)
EP, (max.):		
°F	D86	437
(°C)		(225)
Percent evaporated @ 160 °F(71.1 °C).	D86	20–35
Sulfur, weight, percent, minimum.	D1266	0.03
Phosphorus:		
g/U.S. gal., maximum.	D3231	0.005
(g/liter)		(0.0013)
RVP [5]		
psi	D323	8.7–9.2 [6] [7]
(kPa)		(60.0–63.4)
RVP [8]:		
psi	D323	8.0±0.2 to 11.5±0.2 [9]
(kPa)		(55.2±1.4 to 79.3±1.4)
Hydrocarbon composition:		
Olefins, percent, maximum.	D1319	10
Aromatics, percent, maximum.		
Regular [1]	D1319	40
Premium [2]	D1319	45
Saturates	D1319	[10]

[1] For use in all vehicles except those meeting the conditions for testing with premium gasoline.

[2] For testing only those vehicles for which the manufacturer clearly notifies the customer that use of non-premium grade fuel will likely result in engine damage. Additionally, the manufacturer must state in its certification application that information substantiating likely engine damage is available; such information would be subject to audit by EPA.

[3] Maximum.

[4] For testing at altitudes above 1,219 m (4,000 ft), the specified range is 75°–105°F (23.9–40.6°C).

[5] For testing involving exhaust emissions and evaporative emissions.

[6] For testing involving exhaust emissions only, the specification is 8.0–9.2 psi (55.2–63.4 kPa)

[7] For testing at altitudes above 1,219m (4,000 ft), the specified range is 7.5–8.0 psi (51.7–55.2 kPa).

[8] For testing involving refueling emissions only.

[9] For testing at altitudes above 1,219 m (4,000 ft), the specified range is 7.0±0.2 to 10.0±0.2 psi (48.3±1.4 to 69.0±1.4 kPa).

[10] Remainder.

(2) Unleaded gasoline representative of commercial gasoline which will be generally available through retail outlets shall be used in service accumulation. Leaded gasoline will not be used in service accumulation.

(i) The octane rating of the gasoline used shall be no higher than 1.0 Researc octane number above the minimum recommended by the manufacturer and have a minimum sensitivity of 7.5 octane numbers, where sensitivity is defined as the Research octane number minus the Motor octane number.

(ii) The Reid Vapor Pressure of the gasoline used shall be characteristic of the motor fuel used during the season in which the service accumulation takes place.

(3) The specification range of the gasoline to be used under paragraph (a)(2) of this section shall be reported in accordance with § 86.XXX–21(b)(3).

(b) *Diesel fuel.* (1) The diesel fuels employed for testing shall be clean and bright, with pour and cloud points adequate for operability. The diesel fuel may contain nonmetallic additives as follows: Cetane improver, metal deactivator, antioxidant, dehazer, antirust, pour depressant, dye, dispersant and biocide.

(2) Diesel fuel meeting the following specifications, or substantially equivalent specifications approved by the Administrator, shall be used in exhaust emission testing. The grade of diesel fuel recommended by the engine manufacturer, commercially designated as "Type 1–D" or "Type 2–D" grade diesel fuel shall be used.

Item	ASTM test method No.	Type 1-D	Type 2-D
Cetane Number	D613	48–54	42–50
Distillation range:			
IBP:			
°F	D86	330–390	340–400
(°C)		(165.6–198.9)	(171.1–204.4)
10 pct. point:			
°F	D86	370–430	400–460
(°C)		(187.7–221.1)	(204.4–237.8)
50 pct. point:			
°F	D86	410–480	470–540
(°C)		(210–248.9)	(243.3–282.2)
90 pct. point:			
°F	D86	460–520	550–610
(°C)		(237.8–271.1)	(287.8–321.1)
EP:			
°F	D86	500–560	580–660
(°C)		(260–293.3)	(304.4–348.9)
Gravity, °API	D287	40–44	33–37
Total sulfur, percent	D129 or D2622	0.05–0.20	0.2–0.5
Hydrocarbon composition	D1319		
Aromatics, percent, minimum		8	27
Parafins, Naphthenes, Olefins		[1]	[1]
Flashpoint, minimum:			
°F	D93	120	130
(°C)			(54.4)
Viscosity, centistokes	D445	1.6–2.0	2.0–3.2

[1] Remainder.

(3) Diesel fuel meeting the following specifications, or substantially equivalent specifications approved by the Administrator, shall be used in service accumulation. The grade of diesel fuel recommended by the engine manufacturer, commercially designated as "Type 1–D" or "Type 2–D" grade diesel fuel, shall be used.

Item	ASTM test method No.	Type 1–D	Type 2–D
Cetane Number	D613	42–56	30–58
Distillation range:			
90 pct. point:			
°F	D86	440–530	430–630
(°C)		(226.7–276.7)	(221.1–312.2)
Gravity, °API	D287	39–45	30–42
Total sulfur, percent minimum	D129 or D2622	0.05	0.20
Flashpoint:			
°F. minimum	D93	120	130
(°C)		(48.9)	(54.4)
Viscosity, centistokes	D455	1.2–2.2	1.5–4.5

(4) Other petroleum distillate fuel specifications:

(i) Other petroleum distillate fuels may be used for testing and service accumulation provided they are commercially available, and

(ii) Information, acceptable to the Administrator, is provided to show that only the designated fuel would be used in customer service, and

(iii) Use of a fuel listed under paragraphs (b)(2) and (b)(3) of this section would have a detrimental effect on emissions or durability, and

(iv) Written approval from the Administrator of the fuel specifications must be provided prior to the start of testing.

(5) The specification range of the fuels to be used under paragraphs (b)(2), (b)(3), and (b)(4) of this section shall be reported in accordance with § 86.XXX–21(b)(3).

44. A new § 86.1327–XX is proposed to be added to Subpart N, to read as follows:

§ 86.1327–XX Engine Dynamometer test procedures; overview.

(a) The engine dynamometer test procedure is designed to determine the brake-specific emissions of hydrocarbons, carbon monoxide, oxides of nitrogen and particulate (diesels only). The test procedure consists of a "cold" start test following either natural or forced cool-down periods described in § 86.1334–84 and § 86.1335–84, respectively. A "hot" start test follows the "cold" start test after a hot soak of

20 minutes. The idle test of Subpart P may be run after the "hot" start test. The exhaust emissions are diluted with ambient air and a continuous proportional sample is collected for analysis during both the cold- and hot-start tests. The composite samples collected are analyzed either in bags or continuously for hydrocarbons (HC), carbon monoxide (CO), carbon dioxide (CO_2), and oxides of nitrogen (NO_x) A bag or continuous sample of the dilution air is similarly analyzed for background levels of hydrocarbon, carbon monoxide, carbon dioxide, and oxides of nitrogen. In addition, for diesels only, particulates are collected on fluorocarbon-coated glass fiber filters or fluorocarbon-based (membrane) filters, and the dilution air may be prefiltered.

(b) Engine torque and rpm shall be recorded continuously during both the cold- and hot-start tests. Data points shall be recorded at least once every second.

(c) Using the torque and rpm feedback signals the brake horsepower is integrated with respect to time for the cold and hot cycles. This produces a brake horsepower-hour value that enables the brake-specific emissions to be determined (see § 86.1342–84, Calculations; gaseous exhaust emissions and § 86.1343–87, Calculations; particulate exhaust emissions).

(d)(1) When an engine is tested for exhaust emissions or is operated for service accumulation on an engine dynamometer, the complete engine shall be tested, with all emission control devices installed and functioning.

(2) Evaporative and refueling emission controls shall be connected.

(3) On air-cooled engines, the fan shall be installed.

(4) Additional accessories (e.g., oil cooler, alternators, air compressors, etc.) may be installed or their loading simulated if typical of the in-use application.

(5) The engine may be equipped with a production type starter.

(e) Means of engine cooling which will maintain the engine operating temperatures (e.g., temperatures of intake air, oil, water, etc.) at approximately the same temperature as specified by the manufacturer shall be used. Auxiliary fan(s) may be used to maintain engine cooling during operation on the dynamometer. Rust inhibitors and lubrication additives may be used, up to the levels recommended by the additive manufacturer. Antifreeze mixtures and other coolants typical of those approved for use by the manufacturer may be used.

(f) Exhaust system. The exhaust system shall meet the following requirements:

(1) Gasoline fueled engines. A chassis-type exhaust system shall be used. For all catalyst systems, the distance from the exhaust manifold flange(s) to the catalyst shall be the same as in the vehicle configuration unless the manufacturer provides data showing equivalent performance at another location.

(2) Diesel engines. Either a chassis-type or a facility type exhaust system or both systems simultaneously may be used. The exhaust backpressure or restriction shall be typical of those seen in the actual average vehicle exhaust system configuration and may be set with a valve (muffler omitted).

(i) The diesel engine exhaust system shall meet the following requirements:

(A) The total length of the tubing from the exit of the engine exhaust manifold or turbocharger outlet to the primary dilution tunnel should not exceed 32 feet.

(B) The initial portion of the exhaust system may consist of a typical in-use (i.e., length, diameter, material, etc.) chassis-type exhaust system.

(C) The distance from the exhaust manifold flange(s) to any exhaust aftertreatment device shall be the same as in the vehicle configuration unless the manufacturer is able to demonstrate equivalent performance at another location.

(D) If the exhaust system tubing from the exit of the engine exhaust manifold or turbocharger outlet to the primary dilution tunnel exceeds 12 feet in length, than all tubing in excess of 12 feet (chassis and/or facility type) shall be insulated.

(E) If the tubing is required to be insulated, the radial thickness of the insulation must be at least R inches, where $R = 16(k) - (2)r$.

Where:

(1)k = Thermal conductivity of the insulating material (Btu/(hr)(ft²)(°F/ft)), and

(2)r = Outer radius of uninsulated tubing (inches).

(F) A smoke meter or other instrumentation may be inserted into the exhaust system tubing. If this option is exercised in the insulated portion of the tubing, then a minimal amount of tubing not to exceed 18 inches may be left uninsulated. However, no more than 12 feet of tubing can be left uninsulated in total, including the length at the smoke meter.

(ii) The facility-type exhaust system shall meet the following requirements:

(A) It must be composed of smooth tubing made of typical in-use steel or stainless steel. This tubing shall have a maximum inside diameter of 6.0 in. (15.2 cm).

(B) Short sections (altogether not to exceed 20 percent of the entire tube length) of flexible tubing at connection points are allowed.

45. A new § 86.1330–XX is proposed to be added to Subpart N to read as follows:

§ 86.1330–XX Test sequence, general requirements.

(a) The test sequence shown in Figure NXX–10 shows the major steps of the test procedure.

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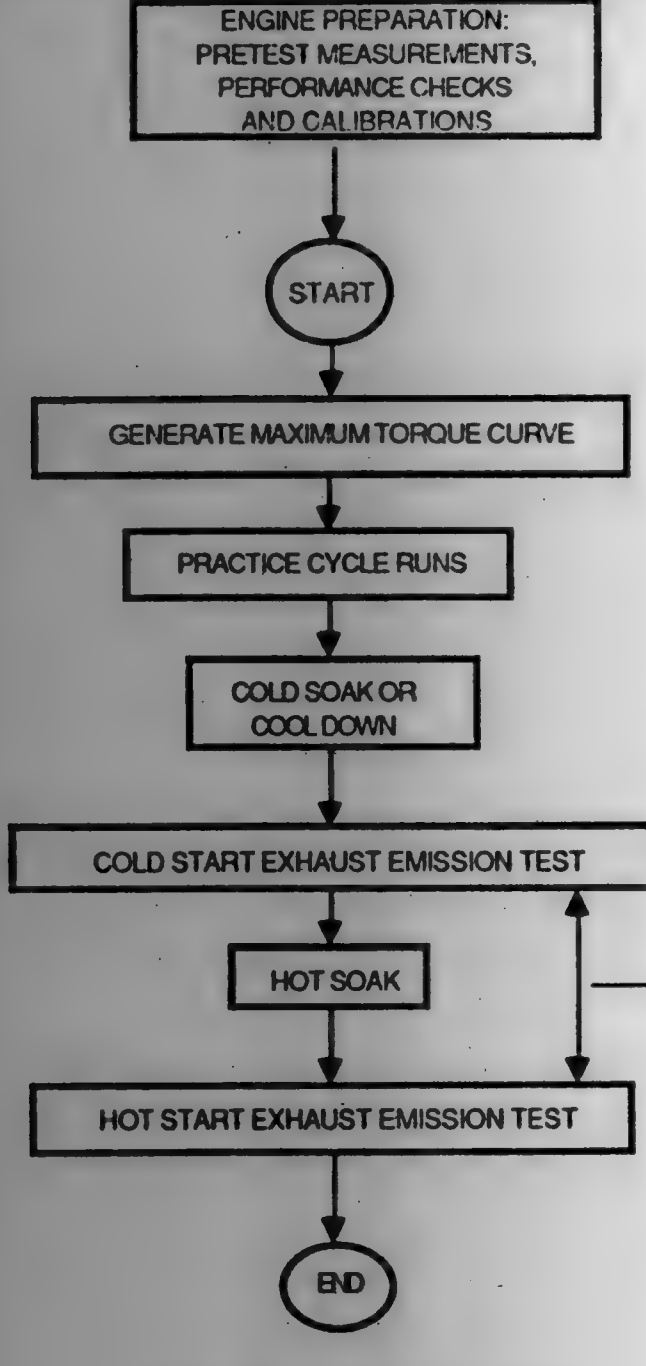

FIGURE NXX - 10 TEST SEQUENCE

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(b) Control of Air Temperature.

(1) The temperature of the CVS dilution air shall be maintained at greater than 20 °C (68 °F) throughout the test sequence.

(2) For engines with auxiliary emission control devices which are temperature dependent (e.g., chokes, air cleaner hot air doors) the test cell ambient air temperature and the temperature of the engine intake air, and for gasoline-fueled engines only, the temperature of the air entering the refueling and evaporative canister(s) shall be maintained at 25 °C±5 °C (77 °F±9 °F) throughout the test sequence.

(3) For engines which are not equipped with temperature dependent auxiliary emission control devices, the test cell ambient air temperature and the temperature of the engine intake air shall be greater than 20 °C (68 °F). No corrections will be made in test results or measured engine power if 30 °C (86 °F) is exceeded.

(4) The only exceptions to these temperatures are as noted in § 86.1335–84.

(c) No control of ambient air, engine intake air or CVS dilution air humidity is required.

(d) The idle test of Subpart P may be run after completion of the hot start exhaust emission test, if applicable.

(e) The barometric pressure observed during the generation of the maximum torque curve shall not deviate more than 1 inch Hg from the value measured at the beginning of the map. The average barometric pressure observed during the exhaust emission test must be within 1 inch Hg of the average observed during the maximum torque curve generation.

(f) Diesel-Fueled Engines only. Air inlet and exhaust restrictions shall be set to represent the average restrictions which would be seen in use in a representative application. Inlet depression and exhaust backpressure shall be set with the engine operating at rated speed and wide open throttle, except for the case of inlet depression for naturally aspirated engines, which shall be set at maximum engine speed (high idle). The settings shall take place during the final mode of the preconditioning prior to determining the maximum torque curve.

(g) Pre-test engine measurements (e.g., governed diesel-fueled engine high idle speed, diesel fueled engine fuel flows, etc.), pre-test engine performance checks (e.g., verification of actual rated rpm, etc.) and pre-test system calibrations (e.g., inlet and exhaust restrictions. etc.) shall be made prior to generation of the maximum torque curve. This can be done during engine preconditioning, or at the manufacturer's convenience subject to the requirements of good engineering practice.

46. A new § 86.1337–XX is proposed to be added to Subpart N, to read as follows:

§ 86.1337–XX Engine dynamometer test run.

(a) The following steps shall be taken for each test:

(1) Prepare the engine, the refueling and evaporative emission canister(s) (for gasoline-fueled engines only), dynamometer, and sampling system for the cold-start test. Change filters, etc., and leak check as necessary.

Note: For a single dilution particulate system, a propane check will not reveal a pressure side leak (that portion of the system downstream of the pump) since the volume concentration in ppm will not change if a portion of the sample is lost. A separate leak check is needed.

A leak check of a filter assembly that has only one seal ring in contact with the filter media will not detect a leak tested under vacuum. A pressure leak test should be performed.

(2) Connect evacuated sample collection bags to the dilute exhaust and dilution air sample collection systems.

(3) Attach the CVS to the engine exhaust system any time prior to starting the CVS.

(4) Start the CVS (if not already on), the sample pumps (except for the diesel particulate sample pump(s), if applicable), the engine cooling fan(s), and the data collection system. The heat exchanger of the constant volume sampler (if used), and the heated components of any continuous sampling system(s) (if applicable) shall be preheated to their designated operating temperatures before the test begins. (See § 86.1340–84(e) for continuous sampling procedures.)

(5) Adjust the sample flow rates to desired flow rates and set the CVS gas flow measuring devices to zero.

Note.—CFV–CVS sample flow rate is fixed by the venturi design.

(6) For diesels only, carefully install a clean particulate sample filter into each of the filter holders and install the assembled filter holders in the sample flow line. (Filter holders may be preassembled.)

(7) For gasoline fueled engines only, attach the refueling and evaporative emissions control canister(s) to the engine using the canister purge plumbing and controls employed in vehicle applications of the engine under test. The plumbing connection, which in vehicle applications would be attached to the fuel tank(s) shall be plugged. Prior to attachment, the canister(s) shall be prepared for use in this testing in accordance with the procedures specified in § 86.1231–XX(c) followed by the procedures specified in §§ 86.1232–XX and 86.1233–XX. Alternatively, the hydrocarbon loading in the refueling and evaporative canisters at the time that the canisters are attached to the engine may be developed on a bench procedure which results in a canister loading equal to that produced by starting with the canister loaded to breakthrough and performing one HDV UDDS followed by a hot soak and a diurnal heat build.

(8) Follow the manufacturer's choke and throttle instructions for cold starting. Simultaneously start the engine and begin exhaust and dilution air sampling. For diesel engines, turn on the hydrocarbon and NOx (and CO and CO_2, if continuous) analyzer system integrators (if used) and turn on the particulate sample pumps and indicate the start of the test on the data collection medium.

(9) As soon as it is determined that the engine is started, start a "free idle" timer.

(10) Allow the engine to idle freely with no-load for 24±1 seconds. This idle period for automatic transmission engines may be interpreted as an idle speed in neutral or park. All other idle conditions shall be interpreted as an idle speed in gear. It is permissible to lug the engine down to curb idle speed during the last 8 seconds of the free idle period for the purpose of engaging dynamometer control loops.

(11) Begin the transient engine cycles such that the first non-idle record of the cycle occurs at 25±1 seconds. The free idle time is included in the 25±1 seconds. During diesel particulate testing without the use of flow compensation, adjust the sample pump(s) so that the flow rate through the particulate sample probe or transfer tube is maintained at a constant value within ±5 percent of the set flow rate. Record the average temperature and pressure at the gas meter(s) or flow instrumentation inlet. If the set flow rate cannot be maintained because of high particulate loading on the filter, the test shall be terminated. The test shall be rerun using a lower flow rate and/or a larger diameter filter.

(12) On the last record of the cycle, cease sampling. Immediately turn the engine off, and start a hot-soak timer. For diesel engines, also turn off the particulate sample pumps, the gas flow measuring device(s) and any continuous analyzer system integrators and indicate the end of the test on the data collection medium. Sampling systems should continue to sample after the end of the

test cycle until system response times have elapsed.

(13) Immediately after the engine is turned off, turn off the engine cooling fan(s) if used, and the CVS blower (or disconnect the exhaust system from the CVS). As soon as possible, transfer the "cold start cycle" exhaust and dilution air bag samples to the analytical system and process the samples according to § 83.1340–84. A stabilized reading of the exhaust sample on all analyzers shall be obtained within 20 minutes of the end of the sample collection phase of the test. For diesel engines, carefully remove the filter holder from the sample flow apparatus, and remove each particulate sample filter from its holder and place each in a petri dish and cover.

(14) Allow the engine to soak for 20±1 minutes.

(15) Prepare the engine and dynamometer for the hot start test.

(16) Connect evacuated sample collection bags to the dilute exhaust and dilution air sample collection systems.

(17) Start the CVS (if not already on) or connect the exhaust system to the CVS (if disconnected). Start the sample pumps (except the diesel particulate sample pump(s), if applicable), the engine cooling fan(s) and the data collection system. The heat exchanger of the constant volume sampler (if used) and the heated components of any continuous sampling system(s) (if applicable) shall be preheated to their designated operating temperatures before the test begins. See § 86.1340–84(e) for continuous sampling procedures.

(18) Adjust the sample flow rates to the desired flow rate and set the CVS gas flow measuring devices to zero.

(19) For diesels only, carefully install a clean particulate filter in each of the filter holders and install assembled filter holders in the sample flow line. (Filter holders may be preassembled.)

(20) Follow the manufacturer's choke and throttle instruction for hot starting. Simultaneously start the engine and begin exhaust and dilution air sampling. For diesel engines, turn on the hydrocarbon and NO_x (and CO and CO_2, if continuous) analyzer system integrators (if used), indicate the start of the test on the data collection medium, and turn on the particulate sample pump(s).

(21) As soon as it is determined that the engine is started, start a "free idle" timer.

(22) Allow the engine to idle freely with no-load for 24±1 seconds. The provisions and interpretations of paragraph (a)(10) of this section apply.

(23) Begin the transient-engine cycle such that the first non-idle record of the cycle occurs at 25±1 seconds. The free idle is included in the 25±1 seconds.

(24) On the last record of the cycle, allowing sampling system response times to elapse, cease sampling. For diesel engines, turn off the particulate sample pump(s), the gas flow measuring device(s) and any continuous analyzer system integrators and indicate the end of the test on the data collection medium.

(25) As soon as possible, transfer the "hot start cycle" exhaust and dilution air bag samples to the analytical system and process the samples according to § 86.1340–84. A stabilized reading of the exhaust sample on all analyzers shall be obtained within 20 minutes of the end of the sample collection phase of the test. For diesel engines, carefully remove the assembled filter holder from the sample flow lines and remove each particulate sample filter from its holder and place in a clean petri dish and cover as soon as possible. Within 1 hour after the end of the hot start phase of the test, transfer the four particulate filters to the weighing chamber for post-test conditioning.

(26) The CVS and the engine may be turned off, if desired.

(b) The procedure in paragraph (a) of this section is designed for one sample bag for the cold-start portion and one for the hot-start portion. It is also permissible to use more than one sample bag per test portion.

(c) If a dynamometer test run is determined to be void, corrective action may be taken. The engine may then be allowed to cool (naturally or forced) and the dynamometer test rerun per paragraph (a) or (b) of this section.

47. A new § 86.1513–XX is proposed to be added to Subpart P, to read as follows:

§ 86.1513–XX Fuel specifications.

The requirements of this section are set forth in § 86.1313–XX(a) for heavy-duty engines, and in § 86.113–XX(a) for light-duty trucks.

PART 600—FUEL ECONOMY OF MOTOR VEHICLES

48. The authority citation for Part 600 continues to read as follows:

Authority: Title III of the Energy Policy and Conservation Act of 1975, Pub. L. 94–163, 89 Stat. 871, Title IV of the National Energy Conservation Policy Act of 1978, Pub. L. 95–619, 92 Stat. 3206.

49. A new § 600.111–XX is proposed to be added to Subpart B, to read as follows:

§ 600.111–XX Test procedures.

(a) The test procedures to be followed for generation of the city fuel economy data are those prescribed in §§ 86.127 through 86.138 of this chapter, as applicable. (The evaporative loss portion of the test procedure may be omitted unless specifically required by the Administrator.)

(b) The test procedures to be followed for generation of the highway fuel economy data are those specified in § 600.111–XX (b) through (h) inclusive.

(1) The Highway Fuel Economy Dynamometer Procedures consists of a preconditioning highway driving sequence and a measured highway driving sequence.

(2) The highway fuel economy test is designated to simulate non-metropolitan driving with an average speed of 48.6 mph and a maximum speed of 60 mph. The cycle is 10.2 miles long with 0.2 stops per mile and consists of warmed-up vehicle operation on a chassis dynamometer through a specified driving cycle. A proportional part of the diluted exhaust emissions is collected continuously for subsequent analysis using a constant volume (variable dilution) sampler. Diesel dilute exhaust is continuously analyzed for hydrocarbons using a heated sample line and analyzer.

(3) Except as provided below, in paragraphs (b)(3)(i) and (b)(3)(ii) all emission control systems installed on or incorporated in a new motor vehicle must be functioning during all procedures in this subpart.

(i) In cases of component malfunction or failure, the Administrator may authorize maintenance to correct the malfunction or failure.

(ii) At the option of the manufacturer, the refueling emissions canister, and the evaporative emissions canister if so equipped, need not be fully loaded for highway fuel economy testing under this subpart. The manufacturer may at his option also generate city fuel economy data without a fully-loaded refueling emissions canister or evaporative emissions canister, *provided* that such testing is done for fuel economy data purposes only and shall not be used to generate emission data. For both city and highway testing, the canister may be loaded to the level that the manufacturer deems appropriate.

(c) *Transmission.* The provisions of § 86.128 of this chapter apply for vehicle transmission operation during highway fuel economy testing under this subpart.

(d) *Road load power and test weight determination.* Section 86.129 of this chapter applies for determination of road load power and test weight for highway fuel economy testing. The test weight for the testing of a certification vehicle will be that test weight specified

by the Administrator under the provisions of Part 86. The test weight for a fuel economy data vehicle will be that test weight specified by the Administrator from the test weights covered by that vehicle configuration. The Administrator will base his selection of a test weight on the relative projected sales volumes of the various test weights within the vehicle configuration.

(e) *Vehicle preconditioning.* The Highway Fuel Economy Dynamometer Procedure is designed to be performed immediately following the Federal Emission Test Procedure, §§ 86.127 through 86.138 of this chapter. When conditions allow, the tests should be scheduled in this sequence. In the event the tests cannot be scheduled within three hours of the Federal Emission Test Procedure (including one hour hot soak evaporative loss test, if applicable) the vehicle should be preconditioned as in paragraph (e) (1) or (2) of this section, as applicable.

(1) If the vehicle has experienced more than three hours of soak (68 °F–86 °F) since the completion of the Federal Emission Test Procedure, or has experienced periods of storage outdoors, or in environments where soak temperature is not controlled to 68 °F–86 °F, the vehicle must be preconditioned by operation on a dynamometer through one cycle of the EPA Urban Dynamometer Driving Schedule, § 86.115 of this chapter.

(2) In unusual circumstances where additional preconditioning is desired by the manufacturer, the provisions of paragraph (a)(3) of § 86.132 of this chapter apply.

(f) *Highway fuel economy dynamometer procedure.* (1) The dynamometer procedure consists of two cycles of the Highway Fuel Economy Driving Schedule (§ 600.109 (b)) separated by 15 seconds of idle. The first cycle of the Highway Fuel Economy Driving Schedule is driven to precondition the test vehicle and the second is driven for the fuel economy measurement.

(2) The provisions of paragraphs (b), (c), (e), (f), (g), and (h) of § 86.135 *Dynamometer procedure* of this chapter, apply for highway fuel economy testing.

(3) Only one exhaust sample and one background sample are collected and analyzed for hydrocarbons (expect diesel hydrocarbons which are analyzed continuously), carbon monoxide, and carbon dioxide.

(4) The fuel economy measurement cycle of the test includes two seconds of idle indexed at the beginning of the second cycle and two seconds of idle indexed at the end of the second cycle.

(g) *Engine starting and restarting.* (1) If the engine is not running at the initiation of the highway fuel economy test (preconditioning cycle), the start-up procedure must be according to the manufacturer's recommended procedures.

(2) False starts and stalls during the preconditioning cycle must be treated as in paragraphs (d) and (e) of § 86.136 of this chapter. If the vehicle stalls during the measurement cycle of the highway fuel economy test, the test is voided, corrective action may be taken according to § 86.XXX–25 of this chapter, and the vehicle may be rescheduled for test. The person taking the corrective action shall report the action so that the test records for the vehicle contain a record of the action.

(h) *Dynamometer test run.* The following steps must be taken for each test:

(1) Place the drive wheels of the vehicle on the dynamometer. The vehicle may be driven onto the dynamometer.

(2) Open the vehicle engine compartment cover and postion the cooling fan(s) required. Manufacturers may request the use of additional cooling fans for additional engine compartment or under-vehicle cooling and for controlling high tire or brake temperatures during dynamometer operation.

(3) Preparation of the CVS must be performed before the measurement highway driving cycle.

(4) Equipment preparation. The provisions of paragraphs (b) (3) through (5) inclusive of § 86.137 of this chapter apply for highway fuel economy test except that only one exhaust sample collection bag and one dilution air sample collection bag need be connected to the sample collection systems.

(5) Operate the vehicle over one Highway Fuel Economy Driving Schedule cycle according to the dynamometer driving schedule specified in paragraph (b) of § 600.109.

(6) When the vehicle reaches zero speed at the end of the preconditioning cycle, the driver has 17 seconds to prepare for the emission measurement cycle of the test. Reset and enable the roll revolution counter.

(7) Operate the vehicle over one Highway Fuel Economy Driving Schedule cycle according to the dynamometer driving schedule specified in paragraph (b) of § 600.109 while sampling the exhaust gas.

(8) Sampling must begin two seconds before beginning the first acceleration of the fuel economy measurement cycle and must end two seconds after the end of the deceleration to zero. At the end of the deceleration to zero speed, the roll or shaft revolutions must be recorded.

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Part III

Environmental Protection Agency

40 CFR Parts 80, 86, and 600
Air Pollution Control; Fuel and Fuel Additives and New Motor Vehicles and Engines, etc.: Gasoline and Alcohol Blends Volatility and Evaporative Emissions; Notice of Proposed Rulemaking

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 80, 86, and 600

[AMS-FRL-3172-5]

Regulation of Fuels and Fuel Additives: Volatility Regulations for Gasoline and Alcohol Blends Sold in 1989 and Later Calendar Years and Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines: Evaporative Emissions Regulations for 1990 and Later Model Year Gasoline-Fueled Light-Duty Vehicles, Light-Duty Trucks, and Heavy-Duty Vehicles

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA proposes in today's notice a comprehensive new national program of evaporative emission control which in turn would contribute to the Agency's ozone control program. In large part, the proposed action would require gasoline refiners to reduce the volatility of their summertime commercial fuels. In addition, manufacturers of most gasoline-fueled vehicles would need to make minor improvements in the design of their existing evaporative emission control systems.

DATES: EPA will conduct a three-day public hearing on both this Notice of Proposed Rulemaking and the onboard vapor recovery proposal approximately 60 days after **Federal Register** publication. The specific dates of the hearing will be announced in a subsequent **Federal Register** notice. Comments on this proposal will be accepted for 30 days following the conclusion of the hearing. Additional information on the public hearing and submission of comments can be found under "Public Participation" in the Supplementary Information section of today's notice.

ADDRESSES: The public hearing will be held in Washington, DC. The exact dates and location will be announced in a subsequent **Federal Register** notice.

Interested parties may submit written comments (in duplicate if possible) to Public Docket No. A–85–21, at: Central Docket Section (A–130), U.S. Environmental Protection Agency, Attention: Docket No. A–85–21, 401 M Street, SW., Washington, DC 20460.

Materials relevant to this proposed rulemaking have been placed in Docket No. A–85–21 by EPA. Public docket No. A–84–07, established in support of EPA's assessment of air pollution regulatory strategies for the gasoline marketing industry, also contains considerable background information and has been incorporated by reference into A–85–21. The dockets are located at the above address in Room 4, South Conference Center, and may be inspected between 8 a.m. and 3 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. Tad Wysor, Standards Development and Support Branch, Emission Control Technology Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105. Telephone: (313) 668–4332.

SUPPLEMENTARY INFORMATION:

I. Introduction

This preamble presents the major issues raised by today's proposed action and discusses EPA's justification for each proposed provision. A brief overview of the background of the proposal (Section II) follows this Introduction. Then Section III describes the environmental need for this action. Section IV of today's notice reviews EPA's decision-making rationale for the proposed vehicular evaporative emissions and gasoline volatility—as measured by Reid Vapor Pressure (RVP)—requirements.

Section V presents a separate analysis of the treatment of the RVP control of alcohol blends relative to that of gasoline, due to some unique issues associated with the production and distribution of certain alcohol blends. Section VI presents a brief summary of the enforcement aspects of RVP control. Section VII addresses the need to revise certain aspects of the evaporative emission test procedure for motor vehicles. Section VIII presents a summary of our analysis of the need to control mid-range volatility in addition to RVP. Section IX presents an analysis of other aspects of certification fuel which are unrelated to volatility, but, like RVP, are currently unrepresentative of current in-use fuel. The final major section of this preamble, Section X, summarizes in detail the specific requirements of this proposed rulemaking.

II. Background

Concern about the environmental effects of evaporative emissions from gasoline-fueled vehicles dates back to the early years of Federal emission control legislation and regulation. In response to section 202(b)(1)(C) of the Clean Air Act, EPA has established a series of evaporative emission control requirements.

Beginning in 1971, light-duty gasoline vehicles (passenger cars) and light-duty gasoline trucks with gross vehicle weights (GVWs) less than 6000 lbs. were subject to an evaporative hydrocarbon standard. The original standard of 2 grams/test was based on a canister-only test.[1] Beginning in 1978, the standard was adjusted to 6.0 grams/test, to be measured according to the more stringent Sealed Housing Emission Determination, or SHED, test.[2] Also in 1978, light-duty gasoline trucks over 6000 lbs GVW became subject to the same standard. Later, in the 1981 model year, this standard was lowered to the current 2.0 grams/test value for both passenger cars and light trucks. Most recently, in 1985, EPA began to regulate evaporative emissions from heavy-duty gasoline vehicles. Two heavy-duty standards apply, depending on vehicle weight: 3.0 grams/test (14,000 lbs. GVW or less) and 4.0 grams/test (greater than 14,000 lbs. GVW).[3]

The EPA test fuel which has been used since 1971 for evaporative emission testing during vehicle certification has a volatility roughly comparable to the average volatility of in-use summertime fuels of that period—9.0 psi RVP: Since then, there has been a steady rise in in-use fuel volatility, as explained in more detail in Section IV below, while EPA's test fuel has remained at 9.0 psi RVP.

Extensive EPA testing of in-use vehicles certified to the 2-gram standard has shown that when higher-RVP fuels were used in the field, evaporative emissions were usually very high, greatly exceeding the 2.0 gram per test standard (See Section IV, below). This led EPA to conduct an extensive study of the effects of potential fuel volatility controls and improved vehicle evaporative control systems, the conclusions of which were published in November 1985.[4] This study examined

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[1] That is, only hydrocarbons emitted from the evaporative emissions control charcoal canister, rather than those from the whole vehicle, were measured.

[2] The SHED test uses an enclosure to measure evaporative emissions from the entire vehicle.

[3] EPA is proposing to use the term "evaporative emissions" to replace "fuel evaporative emissions" in the evaporative emission standards, 40 CFR 86.085–8, 86.087–8, so as to clearly identify that the existing evaporative regulations encompass background emissions and account for testing variability rather than just evaporative emissions emanating from fuel sources. The wording "fuel" was not in the original standards, but was erroneously introduced at a later date.

[4] "Study of Gasoline Volatility and Hydrocarbon Emissions from Motor Vehicles," EPA–AA–SDSB–85–5, available for a reasonable charge from the National Technical Information Service (Phone Number: 703–487–4650, Order Number: PB 86 141785).

in detail how evaporative emissions originate and how they affect air quality. On the basis of this information, a range of possible vehicle-based and fuel-based control programs were evaluated and then compared side-by-side. The results showed that both an evaporative control system improvement and in-use fuel volatility reduction were feasible and cost effective.

Release of this report sparked a high level of interest, and through a public hearing and a public workshop EPA sought comment on the analyses and conclusions the report presented. Interested parties have responded by providing the Agency with a wide range of comments covering all major aspects of the study.

On the basis of many of these comments, as well as the Agency's subsequent internal analyses, EPA has revised the content of the 1985 study substantially. The revisions include both new analyses and improvements in the original analyses. The primary areas in which comments were received and in which analyses have been introduced or improved include the modeling of refinery costs (including the effect of the recent drop in crude oil costs), the modeling of vehicle evaporative emissions, and the special issues relating to the fuel alcohols industries (see Sections IV.C., IV.D., and V below).

According to both the original and updated studies, the largest portion of the total emission reductions available could be captured at essentially zero cost through vehicle-based control (*i.e.*, requiring vehicle evaporative emission control system improvements by increasing certification fuel RVP). However, this effect would only begin to become significant in the long term as vehicles with improved evaporative systems began to dominate the fleet after several years of fleet turnover. Fuel-based controls (*i.e.*, limitations on in-use fuel RVP) could achieve additional reductions in the short term and also, to a lesser extent, in the long term. The results of the revised study indicate that most approaches to fuel controls would produce significantly greater emission reductions—but that overall costs would be higher—than the original study concluded.

The newly revised study is published today as the Draft Regulatory Impact Analysis (Draft RIA) supporting this proposed rulemaking action and has been placed in Docket A–85–21, as referenced above. The Draft RIA comprises the technical basis for today's proposal, and in it the reader will find the detailed technical analysis in support of the issues and decisions outlined in this preamble. The Draft RIA, however, also addresses all of the relevant information and suggestions received in comments to the 1985 study. Since the Draft RIA completely supersedes the earlier 1985 study, most readers should no longer need to reference the earlier study (although it is available in the docket).

Finally, in a related Agency initiative, EPA today is also proposing control of refueling emissions through onboard vehicle control systems. The effect of various RVP levels on the proposed onboard controls is discussed in detail in the refueling control proposal found in today's **Federal Register**. The anticipated effect of onboard controls on the selection here of a proposed level for fuel RVP control is included in all of our analyses of costs and emission reductions. EPA intends to evaluate this interrelationship between the two actions when it takes final action on either or both.

III. Environmental Need for Control

Evaporative hydrocarbon (HC) emissions from gasoline-related sources are volatile organic compounds (VOC), and as such they contribute substantially to the formation of ozone (and other photochemical oxidants) in the atmosphere. Ozone formation is most active during the summer months because the chemical reactions involved rely on direct sunlight and high ambient temperatures.

Ozone is a powerful oxidant, and as such reacts readily with a wide range of substances. In humans, ozone irritates the respiratory system and reduces lung function and laboratory studies suggest that it may damage lung and other tissue. There is concern that this damage can impair breathing and reduce immunity to disease for people in good health, and the effect may be more severe for people with pre-existing respiratory diseases. Thus, violation of the National Ambient Air Quality Standard (NAAQS) is considered a serious public health concern.

Oxidation by ozone and other photochemical oxidants can impair plant tissue and reduce the yield of some crops, as well as damage materials such as rubber products.

Section 172 of the Clean Air Act (CAA) generally required all areas of the country to comply with the national primary ozone standard by December 31, 1982. This deadline may be extended to December 31, 1987 for states with especially onerous air quality problems, provided that the required state implementation plan (SIP) identifies certain measures (*e.g.*, vehicle inspection and maintenance programs and stationary source emission controls) which, if executed, would lead to attainment by that date.

Section 109(d) of the CAA requires EPA to periodically reassess each NAAQS, including the ozone standards, to ensure that the public health and welfare continues to be protected within the statutory guidelines. Based on the results of that review, including an independent assessment by the Clean Air Scientific Advisory Committee (CASAC), EPA may revise the applicable ambient air quality standards as appropriate. In the last several years, EPA and numerous independent research organizations have launched massive efforts to better understand and quantify the environmental effects of ozone air pollution. The NAAQS for ozone is currently being reassessed by the Agency and CASAC in light of resulting health and welfare effects research.

A. Non-Attainment Areas

Despite the imposition of various HC controls, many areas of the nation continue to violate the ozone NAAQS. Based on the latest three-year period for which complete air quality monitoring data are available (1982–84), EPA has determined that 73 urban areas are currently exceeding the ambient standard. Twelve of these areas are located in California. The significance of the nationwide non-attainment problem is clearly indicated by considering the fact that well over 100 million people live in the 73 urban areas which are known to exceed the ozone standard.

Ozone non-attainment is almost entirely a summertime problem. About 96 percent of ozone violations occur during the five-month period from May through September. As we describe in Section IV below, EPA's approach to volatility control focuses on reducing emissions during these five months.

In addition to reviewing the present state of ozone air quality, EPA has also assessed the need for additional future hydrocarbon control by making projections of future air quality trends. For this rulemaking, nationwide VOC inventory projections as well as estimates of future air quality were made for the 61 non-California urban areas currently in non-attainment status, as mentioned above. The specific ozone air quality impacts of today's proposal on urban non-attainment areas in California were not modeled. California has separate and distinct motor vehicle standards and the emission levels of California vehicles are not included in EPA's MOBILE3 motor vehicle emissions model. The differences in the

two types of vehicles could affect projected future ozone levels of California urban areas, especially since vehicular emissions unsually dominate the total VOC inventories in California cities.

At the same time, however, to make our projected nationwide emissions reductions as comparable as possible to those of other nationwide programs, we have included California in the nationwide inventory projections and thus in the cost effectiveness evaluations presented in Section IV below. For this nationwide projection, the assumption was made that California vehicles would experience the same emission reductions per psi of RVP control as Federal vehicles. Since California vehicles represent only ten percent of the nation's fleet, any error due to these assumptions should be relatively small. Also, in projecting emission reductions, the absolute levels before and after control are not important. (By contrast, in projecting future air quality, both absolute emissions and the reduction are important. Thus another potential source of significant error would be present in the specific projection of the future air quality of California urban areas, and such projections were not performed. (See Chapter 3 of the the Draft RIA for a more detailed discussion.))

Current attainment areas were also excluded from the analysis, although it should be noted that a number of these areas are very close to the standard. If these areas had been included in EPA's analysis, it is possible that some of them would have been projected to become non-attainment areas in the future due to the effects of growth. Thus, absent any new control measures, the total number of non-attainment areas in the future may be greater than shown below. In any event, the number of non-attainment areas chosen for this analysis affects cost effectiveness results, as described in Section IV below. EPA requests comment on how many non-attainment areas should be included.

As with any projection of future events, air quality modeling relies on a variety of assumptions regarding such things as emission rates, growth rates, control technologies, emission standards, and control efficiencies. A more detailed description of these inputs for the various mobile and stationary source categories is contained in the Draft RIA. It is sufficient here to note that for mobile sources, the modeling reflects the continuing gains in emissions control that accrue from the Federal Motor Vehicle Control Program, under which increasingly stringent exhaust and evaporative emission standards have been promulgated, as well as gains based on improvements in vehicle technology (such as the recent move toward fuel injection technology). The modeling here also assumes that onboard refueling controls have been implemented beginning in 1990, as discussed above. For stationary sources the modeling accounts for the emission reductions that have been achieved as of the base year (1983) from which the projections begin, as well as EPA's most recent estimates of the degree to which such emissions are likely to be further reduced.

Figure 1 illustrates EPA's projections of non-methane hydrocarbon (NMHC) emissions and ozone NAAQS attainment status for the years 1988, 1995, 2000, and 2010 assuming no additional VOC control measures are promulgated in the future. The results for 1988 indicate that a substantial number of urban areas (40 of the 61 modeled) may fail to comply with the NAAQS by the statutory deadline. Beyond that, the most obvious trend between now and 1995 is that improvements in air quality are projected to occur as a result of the emission standards that already have been promulgated for both stationary and mobile sources. However, most of the largest urban areas modeled (*i.e.*, those with the greatest populations) remain in non-attainment status throughout the projection period.

FIGURE 1

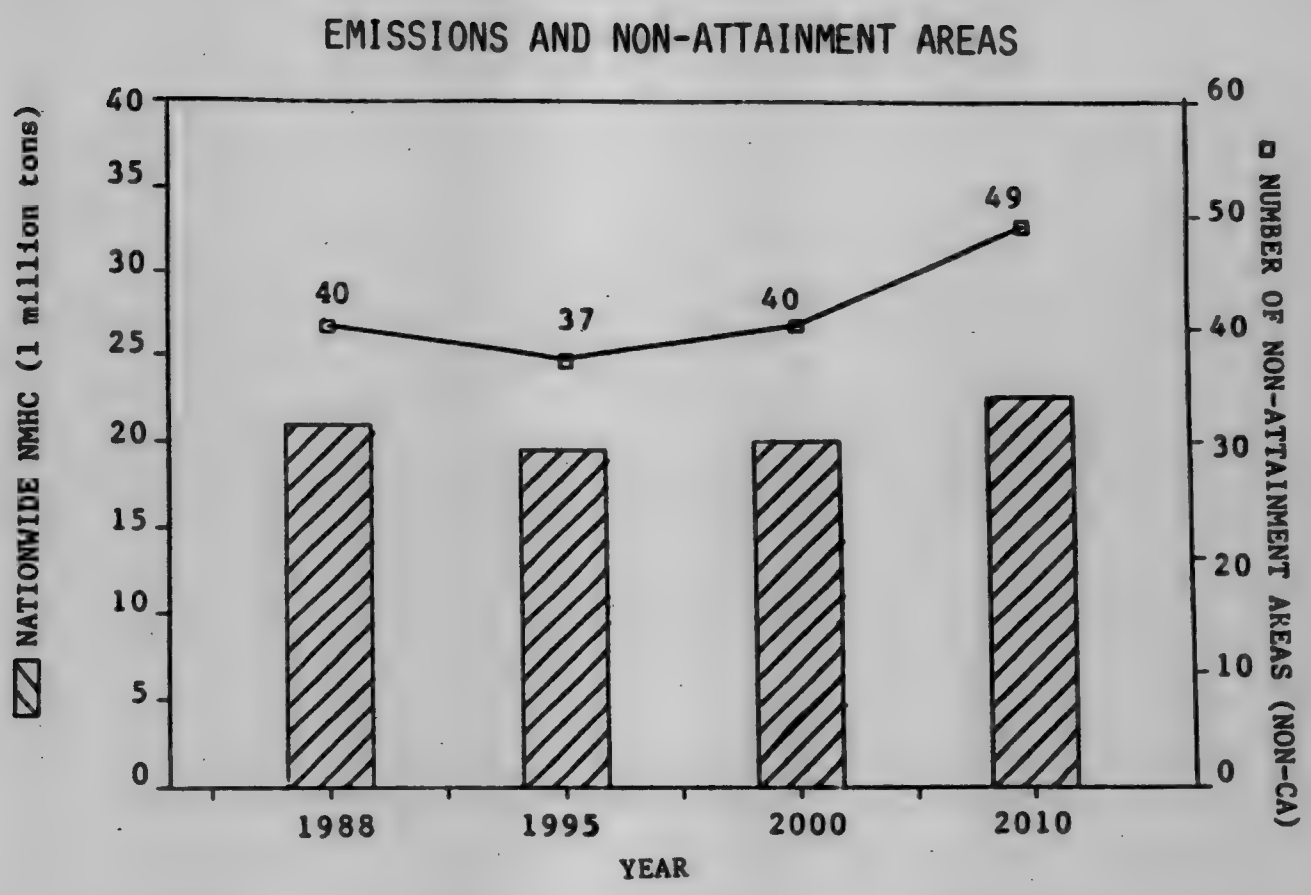

Figure 1 also illustrates that without further controls, growth is projected to cause the problem to worsen in the future. More specifically, these projections indicate that by early in the next century, emission inventories will again be rising steadily. By the end of the projection period (*i.e.*, 2010), emission inventories in the areas modeled apparently will be worse than in 1988. The number of areas violating the ozone NAAQS follows this trend.[5]

The magnitude of the ozone air quality problem facing the nation is further illustrated by additional estimates made by EPA. The results of this analysis show the emission reductions that are needed relative to the 1983 base-year nationwide NMHC inventory to eliminate the projected non-attainment problem. VOC emission reductions of 50 to 80 percent appear necessary to bring some cities into compliance. Based on these estimates, there is a clear need to implement additional controls on volatile organic compounds (VOC) if progress toward attainment of the ozone NAAQS is to be assured. Further, EPA has concluded that gasoline RVP controls could achieve emission reductions more significant than most other control programs now under consideration.

B. Other Areas

While the benefits associated with controlling VOC emissions in non-attainment areas are readily apparent, reducing these emissions in attainment areas is also beneficial. The benefits accruing from these reductions can be grouped into three categories. First, ozone is a regional concern because VOC emissions originating in one area may be transported through the atmosphere and adversely affect air quality in another area. This phenomenon allows VOC emissions in attainment areas to exacerbate problems in complying with the ozone NAAQS in non-attainment areas. Thus, the Agency believes that reducing such attainment area emissions is of value in terms of non-attainment area reductions. Second, section 110 of the CAA makes it clear that in addition to attaining the NAAQS, a primary purpose of the statute is to maintain compliance with the ambient standards in order to prevent the adverse health and welfare effects associated with excess concentrations of pollutants such as ozone. Similarily, section 101(b)(1)

[5] Given the uncertainties inherent in projecting absolute values for emission inventories and attainment status into the next century, it is more appropriate to emphasize the trends in these measures.

provides that a key purpose of the Act is to "protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare. . . ."[58] These goals apply to all areas of the country, including attainment areas. Thus, VOC control measures that help maintain the ozone NAAQS, or prevent the deterioration of air quality, in attainment areas have value for those purposes. Therefore, the benefits of VOC reductions in attainment areas, as well as non-attainment areas, are an important consideration in the overall evaluation of refueling controls.

Before turning to the evaluation of various approaches to VOC control, the reader should note how the various characteristics of the ozone problem described above help define the course EPA should follow. In particular, the summertime nature of the problem and the differing degrees to which ozone affects non-attainment vs. attainment areas are fundamental considerations when comparing control programs.

In general, our primary focus is to protect the public health and welfare, in this case by helping to move ozone non-attainment areas toward attainment. Thus, control programs which have a significant positive effect on non-attainment area emissions are the most desirable.

A second aspect of the ozone problem against which one can judge control programs is the seasonality of ozone violations. As stated above, almost all violations occur during the summer months. Thus, when comparing control programs, one should give greater weight to emission reductions occurring during the summer, when they matter most.

Finally, while emission reductions in non-attainment areas are the most valuable, reductions in attainment areas are certainly important. EPA believes that for the purpose of evaluating evaporative control options some economic benefit should be assumed for attainment area reductions. A rigorously analyzed value for this benefit is not available, but EPA and industry previously have used a rough value of $250 per ton of effective annual attainment-area VOC emission control. This value is useful in comparing the overall impacts of nationwide control programs such as the one proposed today, since they control emissions in attainment areas as well as non-attainment areas. We welcome comments on the value of these benefits.

[58] *See Sierra Club* v. *EPA*, 540 F.2d 1114 (D.C. Cir.), *vacated* (on other grounds) *sub nom Montana Power Company* v. *EPA*, 434 US 809 (1977).

The factors described above are incorporated into our evaluation of the cost effectiveness of various control programs, as presented in the next section. This makes it possible for appropriate comparisons to be made between the control options evaluated here and other VOC control programs.

IV. The Control of Gasoline RVP

A. Commercial Gasoline Volatility

The volatility of a liquid is a measure of its tendency to evaporate. Gasoline is composed of a number of hydrocarbon components which are very volatile under most conditions. When these vapors are present in sufficient quantities in the atmosphere on hot, sunny summer days, they can react to form substantial ground-level concentrations of ozone.

Gasoline components vary in their respective volatilities. Since "light-end" hydrocarbons—particularly butane—are the most volatile components in commercial gasoline, they make up the largest part of gasoline vapor. However, evaporated gasoline will also include smaller amounts of heavier hydrocarbons. The aromatic compound benzene is one of these components, and we discuss it further below because it is a known human carcinogen in addition to contributing to ozone formation.

Evaporative emissions from gasoline are very sensitive to temperature and atmospheric pressure. Thus, for a given commercial gasoline there will be greater evaporation in warmer climates and at higher elevations.

Although vehicles are able to operate well on a fairly wide range of gasoline volatilities, there are technological upper and lower limits. For the vehicle to start cold, there must be enough fuel vapor in the air reaching the cylinder to ignite—fuel of too low volatility at too low a temperature can cause starting problems. At the other extreme, a fuel whose volatility is to high for the temperature or elevation it is experiencing can actually vaporize inside the fuel system, interrupting the fuel supply ("vapor lock").

The automotive and gasoline refining industries have for many years worked together the American Society for Testing and Materials (ASTM) to try to minimize these driveability problems. ASTM's goal has been to offset climate and elevation effects by recommending that gasolines of certain volatilities be supplied to geographic areas with certain prevailing conditions. They have developed a state-by-state and month-by-month system of nonbinding volatility limits which roughly compensates for the effects of climate and altitude on vehicle operation around the country. When followed by gasoline suppliers, the ASTM system is designed to balance the interests of vehicle manufactures and the driving public in well-functioning vehicles with the gasoline refiners' interest in minimizing costs.

The most common measure of fuel volatility under ambient conditions—which is useful in evaluating vehicle evaporative emissions—is the Reid Vapor Pressure, or RVP. RVP is measured at 100° F, which is in the usual range of temperatures found in vehicle fuel tanks during the summer. (Another measure relating to fuel volatility, the percent of fuel which evaporates at 160° F, is useful when evaporation occurs at higher temperatures and will be discussed later in Section VI.) ASTM only specifies upper limits for RVP, since fuel of too low a volatility rarely occurs in use (largely because butane, the major contributor to higher volatility levels, is a relatively cheap component of commercial gasoline). The five geographical ASTM volatility classes have RVP limits as follows:

ASTM class	RVP limit (Psi)
A	9.0
B	10.0
C	11.5
D	13.5
E	15.0

Each state in the U.S. is assigned an ASTM RVP class, which may vary from month to month. (For reasons discussed below, the RVP in Class C areas will appear as a reference point for EPA's analyses throughout today's notice.)

If EPA were to enact in-use fuel volatility controls, as proposed in today's notice, some system of varying volatility would be needed to account for the regional effects of climate and altitude on evaporative emissions and thus ozone formation, as discussed above. While it might be desirable to focus volatility control on areas most needing ozone reductions, the centralized nature of the gasoline distribution system probably makes such a program infeasible. Only among regions defined much more broadly would variations in fuel volatility likely be possible for the distribution system to achieve. Since all major regions for the country include areas needing significant VOC reductions, EPA's approach would be to vary volatility among regions in such a way that the greatest degree of emission control reasonable occurred in each region.

EPA believes that the existing ASTM system does an adequate job of accounting for regional climate and altitude effects, as demonstrated by the emissions projected using our city-specific diurnal emissions model.

The ASTM system is clearly workable and has been familiar to gasoline refiners, distributors, and retailers for a number of years.

There has been a steady trend upward in the average volatility of commercial gasoline over the past 30 years. Two main factors account for this increase. First, vehicle design has over the years become progressively more tolerant of higher RVP fuels primarily due to the increasing availability of fuel injected engines. As vehicle tolerance of higher volatility has increased, ASTM has adjusted their recommended RVP limits upward as well. (This last happened in 1970 and could occur again since vehicle technology continues to improve.) Second, there is a strong economic incentive to add as much butane to fuel as vehicles will tolerate since butane is much cheaper than gasoline. The improved vehicle technology has thus allowed refiners to increase the fraction of butane in the fuels they produce, resulting in a substantial increase in the average volatility of fuels available across the country. Whereas in 1970 commercial summertime gasolines averaged around 9.0 psi RVP, current gasolines nationwide average about 10.5 psi in the summertime and for the most part have reached the ASTM limits for the areas in which they are sold. The in-use average is about 11.6 RVP for Class C areas. (In-use average RVPs are significantly above the Class C ASTM limit in a number of areas.)

Although today's notice represents the first Federal proposal of volatility controls, almost 30 states regulate volatility in some manner—usually following the ASTM limits (see Section VI below). However, there is wide variation in the stringency of enforcement. The result is that in a number of states, ASTM limits are currently exceeded. Only California has volatility limits substantially tighter than ASTM's, resulting in significantly lower volatility—and hence emission reductions—in that state. Even California's current RVP limitation, however, is less stringent than that proposed today for 1992 and later.

B. Sources of Volatility-Related Emissions

In motor vehicles, fuel-related evaporative emissions originate in two parts of the fuel system—the fuel tank and the fuel metering system (that is, the carburetor or fuel injectors). Significant evaporation occurs during episodes of increased temperature in these parts of the fuel system. Evaporative losses occurring during these higher-temperature periods are called "hot-soak" and "diurnal" emissions.

Hot-soak emissions are generated by the continued heating of the fuel by the engine after it is shut off. During this period, fuel in the fuel line, the carburetor or fuel injection system, and in the fuel tank rises in temperature. The vapors created through the resulting evaporation are lost from the fuel metering system (much more so with carburetors than with most fuel injectors) as well as from the fuel tank. The purpose of the evaporative control system is to vent the vapors through a sealed system to the charcoal canister as they are produced, where they can be adsorbed and retained on the charcoal granules.

Diurnal emissions are caused by the daily heating of the fuel tank by outside air. As with hot-soak emissions, the vapors created during this temperature rise are channeled to the charcoal canister.

The capacity of evaporative canisters to store gasoline vapors is limited, and the vapors must be stripped from the charcoal each time the engine is operated. Vehicles are equipped with a purging system for this purpose, which simply draws air across the carbon granules and carries the purged vapors to the engine to be burned. There must be sufficient purged air to remove enough vapor to make room for the next loading, and the flow rate must be controlled so that a rush of purged vapor does not increase exhaust emissions or cause driveability problems. This control can be mechanical or can be provided by the onboard computer (electronic control unit or ECU) if the vehicle is so equipped.

Vehicles with properly designed and functioning evaporative control systems should emit almost no gasoline vapors into the air under most circumstances. For a number of reasons, however, many light-duty vehicles in use today fail to meet the 2 gram/test evaporative standard (which represents essentially zero fuel evaporative emissions, as discussed later in this notice).

It is clear that the upward trend in commercial fuel volatility described above has had a strong effect on how well vehicle evaporative systems operate. An extensive EPA testing program involving several hundred vehicles has shown emissions to be 5–7 times the standard when tested with 11.4–12.0 psi RVP fuel (*i.e.*, in the range for Class C areas). The fuel used during certification testing has a volatility of 9.0 psi RVP, which is similar to that of typical commercial fuels in the early 1970s. It appears manufacturers generally design their vehicles to control evaporative emissions from the 9.0 psi RVP fuel without providing adequate excess storage capacity. When vehicles are then produced and sold, however, they encounter today's fuels which average slightly above 11.5 psi RVP in Class C areas. The higher volatility in-use fuels produce excessive evaporative emissions which can overload the carbon canister. Any vapors which cannot be absorbed onto the charcoal simply flow through and are vented into the air.

The Clean Air Act's intent with automotive emission regulations is to require manufacturers to produce vehicles that will control emissions effectively during their useful lives. However, even when tested on 9.0 psi RVP fuel over a quarter of problem-free, carbureted vehicles exceed the evaporative emission standard by factors of two to three. EPA attributes this effect primarily to manufacturers relying on the present certification requirements as their design criteria without paying adequate attention to the environment in which a vehicle will be operated during its projected life. The certification of new motor vehicles is an important program to the Agency because it provides assurance that emission control systems, as designed, can conceivably control emissions in the field.

EPA's intent is not and has never been that the manufacturers use certification protocols and procedures as their design and acceptance criteria for emission control systems. This is especially important for the evaporative emission control systems where certification vehicles arrive for testing with thoroughly purged canisters. Evaporative emission control systems are designed to regenerate their storage capacity so that emissions can continue to be controlled in spite of the potential for in-use saturation. The systems must be designed so that there is a balance between the storage capacity and the regenerative capability in order to adequately control emissions. Factors that must be accounted for in designing the systems to work in the field include the volatility of commercial fuels, the availability of gasohol and other alcohol/gasoline blends, the wide variance of vehicle driving patterns, and the temperatures to which vehicles are exposed.

The Agency fully expects that during use evaporative emission control systems will at least occasionally have

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their storage capacities exceeded by extreme operating conditions in the field that are more stringent than the established test protocols used to evaluate these systems. As stated previously in Advisory Circular 50A, it is EPA's intent that these systems be able to recover quickly and effectively from such conditions so that they can continue to control emissions. The change in the test procedure proposed today to require, as a minimum, that the evaporative emission canister be loaded until breakthrough occurs prior to performing a single LA–4 preconditioning cycle will ensure that manufacturers look beyond certification to their in-use responsibilities (see Section VII below).

EPA in-use testing shows that this non-RVP related emission effect primarily occurs with carbureted vehicles; fuel injected vehicles generally meet the standard. Thus, changing the test procedure in this manner may not have an effect on most new (*i.e.*, fuel-injected) vehicles, although some carbureted engine families will require some improvement. Therefore, even in the absence of an upward trend in commercial fuel volatility, vehicle manufacturers would need to improve the capacity and purging process at least on some vehicles in order to meet emission standards in the field. Revisions to the certification test procedure to remedy this problem (Section VIII of today's notice) are thus a part of all the control scenarios described below.

While high RVP primarily affects evaporative emissions, the increased purging to the engine caused by these excess vapors also affects HC and CO exhaust emissions. EPA's extensive in-use testing program has shown a small but statistically significant effect. This effect, again, appears to be due to the fact that vehicles' emission control systems appear to be designed for 9 psi RVP with regard for the effects of in-use conditions, including higher volatility in-use fuels. The feedback control systems apparently are not capable of sufficiently adjusting fuel metering when this larger quantity of purged vapors reaches the engine.

Up until this point we have focused on emissions from vehicles with properly functioning evaporative controls. Another source of emissions is the group of vehicles which have control systems that are disabled or not working as they were designed. This group of vehicles (relatively small in number but significant as a source of evaporative emissions) includes those with systems which have not been maintained properly, those with defective system components, and those with systems which have been disabled through tampering. In each of these situations some or all of the vapors generated by the vehicles are lost to the atmosphere.

The final major source of gasoline evaporative emissions is the transportation and distribution system which supports the gasoline-fueled vehicle fleet. Displacement of vapors occurs during the daily warming of bulk gasoline storage tanks and during the transfer of fuel—from pipelines to bulk storage tanks, from bulk storage to tank trucks and service stations, and from service stations to vehicles during refueling.

C. Emission Impacts of High RVP

EPA has developed a sophisticated motor vehicle emissions model to project what the VOC emissions "picture" might be in future years and how that "picture" would change under various potential control scenarios. The emissions model incorporates all classes of motor vehicles and accounts for their growth or reductions over time.

In light of comments received since the November 1985 study was published and our own internal analyses, EPA has made a number of improvements in the way we use the emissions model to project vehicle evaporative emissions and potential reductions in them. Chief among the improvements is a better accounting of the effect of climate and altitude on emissions by replacing a standard temperature with actual city-by-city temperatures known to occur on high-ozone days.

Another improvement has been to characterize the overall effect of the fraction of vehicles that operate on alcohol blend fuels. EPA has also "fine-tuned" its modeling of individual vehicles' emissions to take into account such effects as fuel "weathering" in the tank (loss of RVP as evaporation takes place over time), and the amount of fuel in the tank.

As described earlier, evaporative emissions arise from a number of vehicle- and distribution-related sources, and emissions are greater when fuel is more volatile. Figure 2 shows that the national emissions effect of the upward trend in commercial fuel volatility is very significant. In 1988, EPA projects the annual non-methane hydrocarbon (NMHC) emissions due to current RVP levels (about 11.6 psi in Class C areas) will be 2,074,000 tons greater than they would be with 9.0 psi RVP fuel (Class C). This represents 28 percent of all gasoline-related NMHC emissions and 10 percent of all VOC emissions. Looking ahead to the year 2010, the effect would still be large; the difference between current RVP levels and 9.0 psi is 1,799,000 tons of hydrocarbons, representing over 35 percent of gasoline-related sources and 8 percent of all VOC emissions in that year.[6]

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[6] The calculations assume that onboard refueling controls are in place on 1990 and later model year vehicles and that fuel volatility rises no further than today's levels.

FIGURE 2

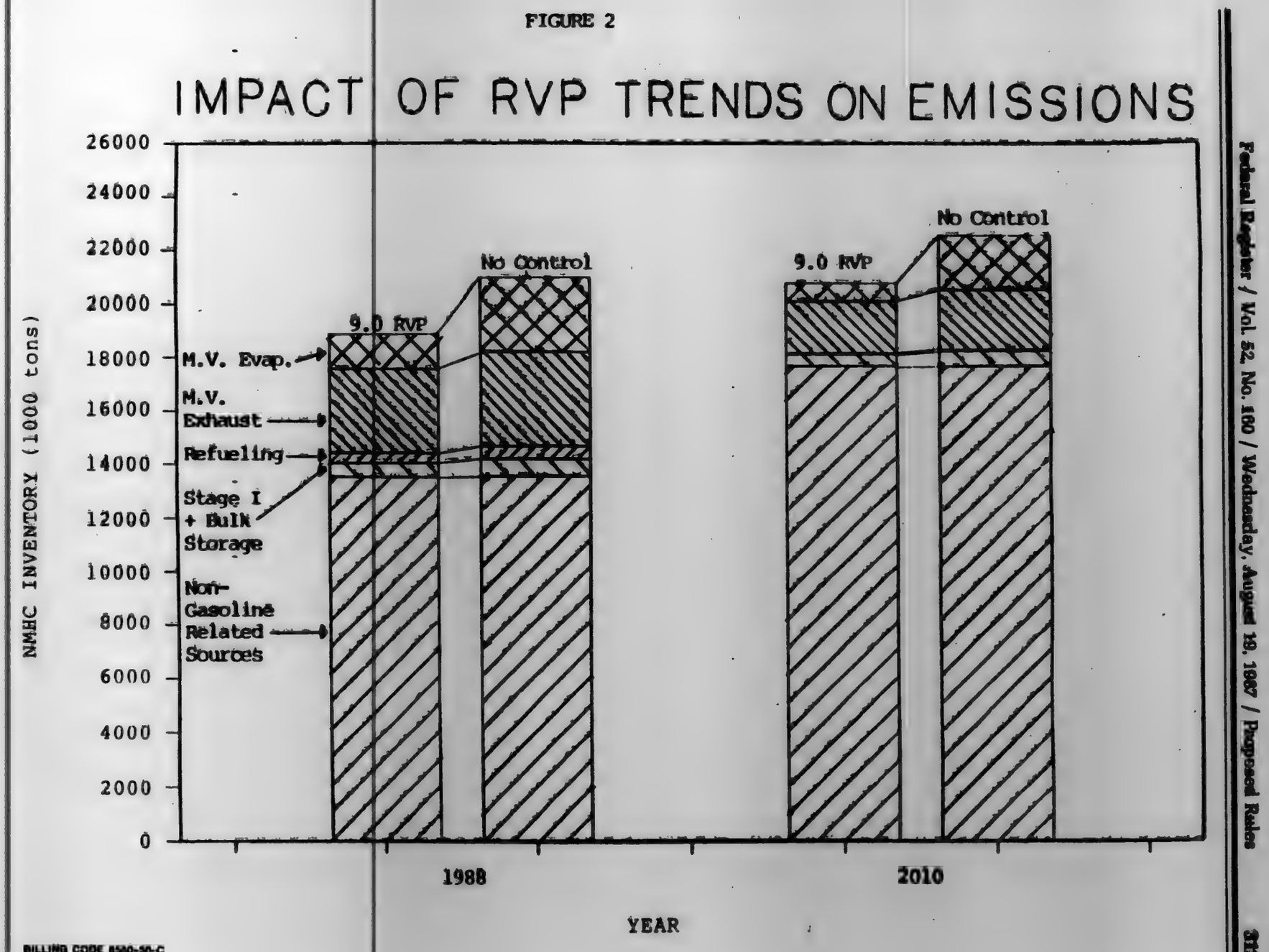

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Figure 2 also shows how the RVP-related emission effect is mostly due to evaporative emissions from motor vehicles, which accounts for 80 percent of the 1988 effect and 83 percent of the 2010 effect. The remainder of the RVP-related emissions increase is roughly evenly distributed among motor vehicle exhaust emissions, motor vehicle refueling emissions and gasoline storage and distribution emissions (the exact distribution varies depending on the year).

This effect of RVP on emissions can also be expressed in terms of the ozone non-attainment problem. In Section III we described how EPA's modeling projects that the current 61 non-California non-attainment areas would drop to about 37 in 1995 but then rise back to 49 by 2010 and continue climbing. The effect of today's proposed volatility controls would be to lower the number in 1995 to 29 areas and also lower the number of non-attainment areas in 2010 to 39. Volatility controls alone will not be able to reverse the long-term climb in number of non-attainment areas and additional controls will be needed to eliminate ozone NAAQS violations in the future. However, volatility controls represent one of the single largest national VOC reduction strategies available today.

Another air quality issue that is raised by today's proposed action is whether human exposure to aromatic compounds, particularly benzene, will be affected. Butane removed from gasoline to reduce RVP would be replaced to some extent by aromatics. Benzene, a known human carcinogen, is likely to increase with other aromatics as a fraction of gasoline as butane content and volatility are reduced. However, actual human exposure to benzene is projected to decrease very slightly due to RVP control. While the benzene fractions in evaporative and exhaust emissions are likely to increase due to the higher benzene fraction in liquid gasoline, EPA's analysis indicates that substantial reductions in total evaporative and exhaust emissions would offset this effect. Thus, the issue of benzene exposure is not a significant one in this rulemaking (See Chapter 3, Section IV of the Draft RIA associated with today's notice.)

As with benzene, EPA is also examining whole gasoline vapor, which has been classified as a probable human carcinogen. In this case, there is uncertainty as to which compounds in gasoline cause this effect. A program of gasoline volatility controls would reduce human exposure to total hydrocarbon vapors; most of that reduction would result from less butane in the fuel. Unless butane is the carcinogenic component in whole vapor, RVP control would likely result in a higher concentration of the carcinogenic compounds in gasoline and thus in whole gasoline vapor. The result would be to offset nearly all of the effect of reduced total exposure, as in the case of benzene described above. We do not believe it is possible to quantify such an offsetting effect, but an overall increase in cancer incidences appears very unlikely. Regardless of the direction of such an overall effect, we believe that in general exposure to whole gasoline vapor from evaporative emissions is small compared to sources of more concentrated vapors such as refueling events.

D. Emission Control Approaches

EPA has always intended that the specifications of certification test fuels should represent in-use fuels as closely as possible in order to assure that the performance of certification vehicles will reflect actual performance in-use. As we discussed above, the RVP gap between certification fuel and in-use fuel has grown over the years, and EPA has recently become aware of the serious evaporative emissions problem that has resulted from the failure to design the system for actual in-use conditions.

Matching the volatility of certification fuel to that of commercial fuels would make certification testing more representative of in-use conditions. Further, such matching would largely eliminate the problem of higher in-use fuel volatility and the resulting excess evaporative emissions and would help ensure that vehicles are designed to handle actual in-use conditions. This would be true regardless of the RVP level at which the fuels were matched. However, lowering in-use fuel volatility would further reduce emissions from all gasoline-related sources, including vehicles with malfunctioning control systems and the gasoline distribution system.

EPA has analyzed the costs and VOC emission reductions associated with a range of matched certification and in-use RVP levels—from 11.5 psi to 8.0 psi RVP for Class C ("Class C RVP"). EPA has determined that it is appropriate to match certification fuel RVP to the in-use fuel RVP in ASTM Class C areas because the climate implicit in the certification test most closely matches that of Class C areas. (It should be understood that when we refer in this notice to changes in Class C volatility levels, we would expect to make proportional changes in all other areas, as discussed later in this section.) The choice of Class C RVP for matching with certification fuel, instead of Class B or A RVP, was based on a comparison of the temperatures inherent in EPA's evaporative emission test procedure and typical summer temperatures in Class A, B, and C areas, particularly on high ozone days.

The RVP level of 11.5 psi was selected as the high end of the range of analysis since: (1) This is the current ASTM Class C RVP limit, (2) Class C fuels are currently close to that value, (3) the November 1985 study and its subsequent update showed control at this level to be very cost effective, and (4) the American Petroleum Institute (API) has recommended that EPA cap summertime gasoline volatility at this level.[7]

The low end of our range of analysis is 8.0 psi RVP, lower than the minimum 9.0 psi RVP that we evaluated in the November 1985 volatility study referenced earlier. The analysis was extended down to 8.0 psi because the updated analysis began to show that 9.0 psi might be a reasonable control scenario, and we desired to ensure that the analysis indicate when further control would no longer be reasonable. Because of the limited vehicle operational data available regarding Class C RVPs lower than 9.0 psi, however, this analysis is necessarily less detailed below 9.0 psi. The possibility of cold-starting difficulties cannot be ruled out below 9.0 psi, in Class C areas though available data show both driveability benefits and detriments between 9 and 8 psi RVP (Class C).

As mentioned above, in other than Class C areas RVP would be controlled to the same proportion as that in Class C areas. For example, the 9.0 psi Class C scenario results in RVPs of 7.8 and 7.0 psi in Class B and A areas, respectively; these all represent 22 percent reductions from ASTM limits. This approach is designed to produce the same degree of emission control in all areas of the country. It is based on the assumption that the current ASTM RVP designations roughly compensate for temperature variations. This assumption is supported by the results of EPA's evaporative emissions model.

Also, the commercial fuel volatility control in all options is considered to be effectively in place for five months out of the year, May through September. About 96 percent of ozone violations

[7] "API Comments on Gasoline Volatility and Vehicle Hydrocarbon Emissions," March 27, 1986 (Page 2), available from the Public Docket referenced at the beginning of this notice.

occur during this period. Since a substantial number of violations occur in both May and September, we believe it would be unwise to propose a shorter control period. However, a longer control period extending into April or October would add little to ozone control since there are very few violations during these months (see Chapter 2 of the Draft RIA associated with today's notice).

The actual period in which emission reductions occur could be longer than the regulatory control period due to the RVP control of some fuel both before and after the proposed regulatory control period (*e.g.*, May 16 through September 15) as refiners and distributors ensure that they are in compliance throughout the distribution system at the beginning and end of the period.[8] However, the draft analysis is based on five months of actual costs and emission reductions.

1. Approaches to Control

Matching the RVP of the certification test fuel to the RVP of typical in-use fuels would greatly reduce the problem of vehicles with properly functioning control systems exceeding the evaporative standard in the field. By removing the RVP disparity between the fuels on which vehicles receive their certification and the fuels they will see in actual use, EPA would better ensure that the vast majority of new vehicles were designed to capture all fuel vapors under all but the most extreme in-use conditions.

This effect would occur at any RVP level at which certification and in-use fuels were matched. If the matched RVP level were set near the current in-use fuel RVP level (11.6 psi in Class C areas), improved vehicle controls would be needed for certification and would account for most of the emission reductions and costs; if the RVP matching occurred near the current EPA test fuel RVP (9.0 psi), fuel-based control would predominate (that is, oil companies would have to produce much less volatile fuel). At intermediate levels, both vehicle controls and fuel controls would play significant roles.

a. *Vehicle Control Technology.* Most evaporative emission control approaches include at least a small component of vehicle-based control. Even if certification fuel RVP were to remain at 9.0 psi (and in-use fuel were reduced to that level), proposed changes in the evaporative test procedure would require manufacturers to design vehicle control systems for in-use performance as EPA originally intended.[9] Matching RVP at higher levels would require progressively more improvement. In order to pass the evaporative emissions test, and to protect themselves from in-use recall, vehicle manufacturers would improve the ability of their control systems to capture and then to purge evaporative hydrocarbons. In most cases, we expect that these improvements would include a larger canister with more charcoal granules and a more sophisticated purging system. The goal would be to capture all vapors from the fuel tank and fuel system of the parked vehicle under all but the most extreme in-use conditions and then to purge the canister completely, burning the purged vapors cleanly and efficiently while the engine is running.

Because evaporative controls already exist on nearly all new vehicles, improving those systems for new vehicles would be relatively straightforward for vehicle manufacturers. At a certification fuel/in-use fuel match of 11.5 RVP, the highest level analyzed, vehicle manufacturers would experience their most difficult scenario. Charcoal canister volume would need to increase by about 60 percent, and more sophisticated valves in the purging system would be needed. EPA does not expect that vehicle computer control units would need additional capacity or capability, although some revision of existing software (programs and memory) would be necessary to optimize the purge. Development and tooling for production of the required hardware would require additional resources, although the basic hardware appears already to be available to manufacturers "off the shelf."

Expressed as an average of all affected vehicles, these improvements would raise the price of new vehicles by about $3.41. In addition, a small lifetime cost of about 30 cents per vehicle could result from the loss of fuel economy due to the slight weight increase. Thus, even under the worst-case scenario, only a very moderate effort should be required.

EPA's original 1985 study (referenced in the Background section above) considered canister enlargement as the only likely control system improvement. Comments from the vehicle manufacturers requested EPA to also account for purging system improvements, which has been done. Even the revised EPA cost numbers, however, are generally lower than those submitted by manufacturers (see Chapter 4 of the Draft RIA).

At the opposite extreme, EPA considered the effects of lowering of certification fuel and in-use fuel RVPs to 8 psi. Because this RVP level is lower than that of current certification fuel, manufacturers would be able to actually reduce the size of current evaporative canisters at some savings. However, the Agency expects that the proposed test procedure changes may still require some expenditure for development and certification testing, tending to offset the savings from the smaller canister.

If EPA implements requirements for improved vehicle evaporative controls no sooner than the 1990 model year, we believe that would provide adequate lead time for necessary development, certification, and manufacture, regardless of the level of matched RVP. This lead time is based largely on the experience of implementing the original evaporative emission standards (*e.g.*, 48 FR 1458, January 12, 1983 for heavy-duty vehicles) as well as the fact that necessary hardware is readily available and need only be integrated into existing system designs. In addition, because of the fact (discussed above) that many in-use vehicles do not meet the evaporative standard even when tested on 9 psi RVP fuel, manufacturers should already be reevaluating their evaporative system designs. EPA may choose to implement test fuel and test procedure changes for the earliest possible model year (1990); or, if implementation of onboard refueling controls is scheduled for a later model year, we may choose to delay implementation to coincide with onboard requirements. (An advantage of concurrent implementation is that manufacturers could integrate new onboard refueling controls and redesigned evaporative control systems on their vehicles.)

b. *Fuel Control Techniques.* Whereas matching certification fuel RVP to that of in-use fuel at any level would eliminate most evaporative emissions from new vehicles, reducing the volatility of this match-up (*i.e.*, reducing the RVP of commercial fuel) would reduce evaporative emissions from all existing gasoline-related sources as well as from new vehicles. While improving new vehicle controls would be the responsibility of the vehicle manufacturing industry, gasoline refiners would be responsible for fuel volatility reductions.

[8] This issue is addressed in the EPA contractor report *Petroleum Storage and Transport Times*, Jack Faucett Associates, September 26, 1986, available in the docket.

[9] Proposed test procedure changes require that certification and in-use testing begin with a charcoal canister loaded at least until breakthrough occurs, as discussed in Section VII below.

The primary approach that refiners would take to reduce the volatility of their gasoline products would be to add less butane during the refining process. In some more extreme cases butane that is already present—and even longer-chain hydrocarbons—might have to be removed from existing gasoline stocks.

EPA's revised analysis of the refinery costs and leadtime requirements associated with various kinds of fuel RVP control were derived from a number of refinery/petrochemical modeling studies performed for EPA in 1985 and 1986 by Bonner and Moore Management Science, a major consultant to the petroleum industry.[10] Bonner and Moore's work is based on a unique computer modeling system. In it, they simulate the response of the refining industry to various RVP control scenarios by dividing the country into regions and developing a computer model for each as though each region were a "super refinery".

The revised EPA analysis on which today's action is based incorporates a number of improvements that commenters suggested we make to the original Bonner and Moore analyses. (Among those suggesting improvements were Sobotka and Co., Inc.; Turner, Mason, and Co.; and American Petroleum Institute (API.) The most important change was to reflect the precipitous drop in crude oil prices which occurred after the study was published, since the analysis is sensitive to this factor. (A price of $20 per barrel of crude oil was used throughout the new analysis.) These results are presented in the draft RIA. Another alternative is to use oil price forecasts by the Department of Energy and other leading energy and economic institutions. Although some cost estimates using this approach are presented here, in general, today's proposal is based on the cost analysis using an assumption of $20 per barrel crude oil. Finally, the shorter effective control period in the new analysis (five vs. twelve months) has reduced the amortization time assumed for capital expenditures, increasing the estimated per-year costs.

Our analysis of the effect on the natural gas liquids (NGL) industry of the excess butane refiners would place on the market is the same as that in the 1985 study. The analysis uses refinery costs based on the average of two NGL scenarios: an "open" NGL market in which refiners could choose not to buy butane; and a "fixed" case in which refiners were required to buy all butane projected to be available at the pre-RVP-control price, no matter what the value to the refinery. EPA believes that this is a conservative approach since in reality it is likely that most if not all of the NGL industry impact will be simply transfers of revenues from one sector of the economy to another. Lost revenues to the NGL industry would largely be made up by increased revenues to current butane users or by reduced costs to consumers of products which involve butane in their manufacture.

Although the Bonner and Moore studies show that some control of in-use fuel volatility is possible with very little new capital expenditure on the part of refiners (down to about 10.5 psi RVP for Class C fuels), further reduction would require new equipment and longer lead time. Most refiners would need to install additional refining capacity to make up for the lost volume of butane and for a small loss in octane value. Some would also need added equipment to "back-out" butane from existing gasoline blend stocks if Class C RVP were reduced below 10–10.5 psi.

Today's proposal would provide four years of leadtime for refiners to implement the second stage of fuel control (to 9 psi for Class C areas in 1992 with proportional reductions in other areas). While capital investment would certainly be required, the necessary technology is readily available. Three to four years should be sufficient for design work and the permitting, installing, and testing of new equipment.

The costs of fuel RVP control incurred by refiners would be higher for progressively lower limits on in-use fuel RVP. The U.S. economy as a whole, however, would see a substantially smaller overall cost. This is because in the process of reducing butane content, the refiners would also in effect increase the energy content per gallon of fuel, improving the fuel economy of vehicles and saving owners some fuel costs.

Another factor considered by EPA in analyzing the costs of volatility control is the willingness of consumers to pay for the better vehicle driveability resulting from lower volatility fuels. The American Automobile Association in its testimony on the 1985 volatility study stated that its survey data indicate people will willingly pay one to three cents per gallon extra for fuel on which their vehicle will perform better. EPA has estimated the fraction of the vehicle fleet which experiences driveability problems and how it will decrease with each incremental step RVP reduction. EPA then applied a one to three cent per gallon "driveability credit" to those vehicles which would perform better. The result is a very slight reduction in the overall costs control (up to four thousandths of one cent per gallon). This reduction varies according to the level of RVP control.

As section VII of Chapter 5 of the Draft RIA states, the estimated costs of enforcing an RVP control program would be relatively small under any scenario (about two million dollars per year or less). These costs are not included in the cost and cost effectiveness analyses presented in Section D.2. below because they are extremely small (less than six thousandths of one cent per gallon) and because they do not vary from one RVP scenario to another.

Average total refinery costs are presented in the following table:

Degree of RVP control (psi)	Refinery costs ($/gallon)
1	0.43
2	1.06
3	1.87

It is important to note that the refinery costs of fuel RVP control would be somewhat sensitive to changes in the price of crude oil to refiners. This issue is addressed in Section IV.D.3. below.

c. *Combinations of Vehicle and Fuel Control.* As we stated above, a combination of vehicle and fuel controls would really be necessary to completely solve the current evaporative problem and prevent it from recurring in the future. For example, if the certification fuel were simply raised to 11.5 psi RVP—with no accompanying in-use fuel control—commercial Class C RVP might increase to 12.0 or 12.5 psi in a few years, repeating the current situation. Thus, commercial fuel should be controlled to whatever level is chosen as the certification fuel level.

At the high end of the spectrum of possible "certification—equals—in-use" RVP levels, a combined program would primarily consist of vehicle-based control. That is, gasoline refiners would find it relatively easy to make sure that the RVP of their fuels did not exceed the current average value—although this

[10] EPA commissioned a third study from Bonner & Moore to support today's proposal. The study was intended both to address comments made to the original study by performing additional computer modeling and to more fully evaluate alternative uses for butane. However, the late delivery of the draft and unresolved issues relating to the effect of crude oil costs and the calculation of impacts on the natural gas liquids industry prevent EPA from using the results without further analysis. The draft report has been placed in the docket referenced at the beginning of this notice (along with EPA's comments to the contractor and the work order for changes), and we encourage comment on it. The final version of the third report will be added to the docket when it has been accepted by EPA.

approach would cap RVP levels and the historic upward trend in commercial gasoline RVP could not continue. Vehicle manufacturers, on the other hand, would need to make improvements in their evaporative control systems to assure compliance on higher volatility fuels.

The reverse situation would occur if the "matched" RVP set by EPA were at or below that of current certification fuels. In this case, the program would be largely a fuel volatility control program. Vehicle manufacturers would need to make minor improvements in their control systems to adjust to the test procedure modification discussed in Section VIII below. But the larger effort would clearly be required of the gasoline refiners, since the summertime volatility of their gasolines would need to be reduced substantially.

Table 1 shows the effects of various levels of matched certification and in-use fuel RVP. The refinery-level costs include the savings from the increased energy content of the fuel (as described above) as well as the savings from using fuel that would have otherwise been lost through evaporation.

TABLE 1.—LIFETIME CONSUMER COSTS OF VEHICLE AND FUEL CONTROLS ($/VEHICLE)

Certification/in-use matched RVP level (psi)	Total vehicle cost	Vehicle weight penalty	Total [1] refinery cost	Net cost to consumer
11.5	3.41	0.32	−5.09	−1.36
11.0	2.71	0.24	−3.66	0.71
10.5	2.05	0.18	−1.70	0.53
10.0	1.43	0.12	0.80	2.35
9.5	0.81	0.05	4.19	5.05
9.0	0.22	0.00	8.17	8.39
8.5	−0.39	−0.04	12.99	12.56
8.0	−0.80	−0.09	17.87	16.98

[1] Includes 5 months per year of savings from increased fuel energy content and recovered evaporative emissions.

Vehicle-based control would produce significant emission reductions primarily in the long term. This is because only after a number of years would a significant number of vehicles be equipped with improved emission control systems.

In-use fuel RVP control, on the other hand, would produce significant emission reductions as soon as it were implemented. Moreover, even after vehiele controls were fully implemented, fuel controls would produce additional emission reductions from other gasoline-related sources, as we stated above. In earlier years, before all vehicles are equipped with improved evaporative systems, the emission reductions fuel controls could provide are even greater. Thus, RVP reductions lower than the long-term RVP limit might be a useful complement to the program in the earlier years.

Because a combined fuel- and vehicle-control program reaches a "steady state" in the long term (after all vehicles have improved control systems), it is important to evaluate possible programs first in the long term, as in the next section. We have also analyzed a broad range of scenarios in which possible long-term combined programs are supplemented by additional short-term fuel RVP control.

As we will show in the next section, the nature of additional short-term fuel control is that is would be most effective in the earlier years of the combined program. This occurs for two reasons. First, the proportion of total control already accomplished by improved vehicle-based systems increases as the number of years under a combined program increases. Thus, the excess RVP effect remaining to be addressed only by in-use fuel volatility controls lessens. Second, for analytical purposes here, whatever additional equipment purchases would be required by refiners for short-term control needs to be amortized over the number of years the additional control is in place. The shorter this period of short-term supplementary control, the greater the cost per gallon.

2. Evaluation of Control Scenarios

Our decision to propose a program of fuel volatility and vehicle evaporative emission controls, as well as our selection of a proposed RVP level for such a program, is based on several factors. The first and most important of these is our statutory responsibility to protect the public health and welfare. In the case of ozone (as stated in Section III above), a NAAQS has been set and is widely violated. This is demonstrated by the projections of future ozone non-attainment areas shown in Table 2. As can be seen, without RVP control, the number of non-attainment areas varies from 37–51 in the 1990 and 2010 timeframe. Thus, given this clear need for more VOC control, our goal is to evaluate and prioritize VOC control programs according to their potential for reducing ozone non-attainment. In proposing individual programs, our goal is to respond to the need for VOC control while avoiding requirements that are infeasible or economically unreasonable.

TABLE 2.—PROJECTED NUMBER OF NON-CALIFORNIA URBAN OZONE NON-ATTAINMENT AREAS

Control scenario	Projection year			
	1990	1995	2000	2010
No RVP Control	40	[1] 37–38	40–41	49–51
RVP:				
11.5	38	35	34–35	41–43
11.0	37	33	33–34	41–43
10.5	36	32–33	33–34	41
10.0	[3] 36	31–33	32–34	41
9.5	[2] 36	30–31	30–33	41
9.0	[2] 36	29–30	30–33	39–41
8.5	[2] 36	29–30	30–32	39–41
8.0	[2] 36	29–30	30–31	39–41

[1] Lower limit of range assumes onboard refueling controls were implemented in the 1990 model year. Upper limit assumes no control of refueling emissions.

[2] Certification fuel changes in 1990. In-use RVP control to less than 10.5 psi is delayed until 1992 (see Chapter 5).

Cost effectiveness analysis is a useful tool for comparing various control programs among themselves. The cost effectiveness of a pollution control program is a simple ratio of the projected cost of such control to the amount of emissions that would be controlled. The resulting cost effectiveness can then be compared to that of other related controls to provide a measure of how "reasonable" the program is relative to the others. Cost effectiveness for air pollution control programs is usually expressed in terms of dollars per ton of pollutant.

Because of the apparent need described in Section III for VOC control beyond that available from even the 8.0 psi RVP scenario, it is appropriate to consider whether the additional emission reductions achievable by lowering fuel RVP are economically reasonable when compared to other available programs. Cost effectiveness analysis is helpful in this process.

Tables 3 and 4 compile the projected long-term (year 2010) costs, VOC emission reduction, and cost effectiveness for RVP control levels between 8.0 and 11.5 psi. Costs and cost effectiveness appear as ranges to reflect different assumed values for the improved fuel economy resulting from increased fuel energy density and for the "driveability credit" discussed above (at 9.0 psi RVP, the driveability factor accounts for only about 3 percent of the total ranges appearing in the tables).

TABLE 3.—LONG-TERM (2010), STEADY-STATE ANALYSIS OF RVP CONTROL[1]

Long term class C RVP (psi)	Incremental emission reductions 1000 tons/yr)	Incremental cost dollars per million/yr)	Incremental cost effectiveness dollars per/ton)
11.5 (Vehicle Control)	576	−25 to −22	−43 to −39
11.0	40	7 to 11	166 to 279
10.5	39	17 to 22	430 to 562
10.0	34	30 to 35	873 to 1026
9.5	30	46 to 51	1575 to 1762
9.0	29	56 to 62	1894 to 2084
8.5	26	73 to 79	2777 to 2999
8.0	25	75 to 81	2935 to 3177

[1] Five months of actual nationwide control (costs and emissions reductions); assumes onboard refueling controls are in place (includes no credits for reductions in refueling emissions) and a crude oil price of $20 per barrel.

TABLE 4.—LONG-TERM (2010), STEADY-STATE ANALYSIS OF RVP CONTROL—ADJUSTED [1]

Long term class C RVP (psi)	Incremental emission reductions (1,000 tons/yr.)	Incremental cost (million dollar/yr.)	Incremental cost effectiveness (dollar/ton)
11.5 (Vehicle Control)	536	−169 to 167	−310 to −306
11.0	38	−5 to −1	−140 to −21
10.5	37	5 to 10	129 to 267
10.0	32	19 to 24	590 to 750
9.5	28	36 to 42	1,311 to 1,509
9.0	28	46 to 52	1,653 to 1,854
8.5	25	64 to 70	2,565 to 2,798
8.0	24	66 to 72	2,744 to 3,000

[1] Costs based on 5 months of actual control. 61 N/A areas are included and their emission reductions are assumed to occur over 12 month period; $250 per ton credit for attainment area reductions. Assumes onboard refueling controls are in place (includes no credits for reductions in refueling emissions) and a crude oil price of $20 per barrel.

By the year 2010 all aspects of the strategies being considered are assumed to be fully implemented and all vehicles on the road equipped with improved evaporative systems. The reader should note that the emission reductions, cost, and cost effectiveness results are presented incrementally, representing the effect of only the last one-half-psi RVP reduction; for the emission reductions and costs, the total effect is the sum of all the values from 11.5 psi down to the RVP level in question. The tables yield a Class C RVP level which would result in the maximum possible VOC reduction which is still economically and technologically reasonable in the long term.

Table 3 shows projected actual costs and emission reductions for a five-month RVP control program. As we described in Section III, the great majority of ozone violations occur during the five-month summer period, and the VOC reductions in violating areas during this period are the most relevant for comparing the ability of various VOC control strategies to bring urban areas into compliance with the ozone NAAQS. However, the resulting emission reductions and costs per ton presented on Tables 3 and 4 are not directly comparable to those of other programs which achieve emission reductions throughout the year.

Thus, as described in Chapter 6 of the Draft Regulatory Impact Analysis associated with today's notice and in Section III above, EPA has made three adjustments in the cost effectiveness calculation to provide a more appropriate comparison to year-round VOC control strategies. First, we have increased the actual five-month projected emission reductions shown in Table 3 by a factor of twelve-fifths. Also, we have included in the denominator only the fraction of nationwide emission reductions occurring in non-attainment areas (39.5 percent of the total based on the 61 non-California areas violating the ozone NAAQS using 1982–84 ozone data) since these are the reductions that most directly affect population exposure to unhealthy ozone levels. Finally, we have assigned a credit of $250 per ton to the emission reductions achieved in attainment areas as a way of acknowledging that these areas potentially benefit from VOC reductions. Table 4 presents these adjusted cost effectiveness values, which will be the focus of the remaining discussion of EPA's cost effectiveness analysis below.

As shown in Table 4, raising certification fuel RVP to 11.5 psi and capping in-use fuel at the ASTM limits provides the bulk (*i.e.*, 72 percent) of the total emission reductions available at a net savings to society. While a VOC control strategy producing a net savings is very desirable, Table 2 shows that 34–43 ozone non-attainment areas will remain after this level of control in the 1990–2010 timeframe. Thus, additional VOC controls are needed and additional steps of RVP control need to be evaluated.

The great majority of national VOC control programs in effect today cost less than $2,000 per ton (in the terms detailed above). However, the sizeable VOC reductions still needed in some areas to attain the ozone NAAQS will require more costly programs. While detailed costs are not available for many of the programs needed for compliance, $2,000 per ton of VOC reduced is presently considered by EPA to be reasonable for additional reductions. Many programs currently under consideration have cost effectiveness values significantly higher.

As shown in Table 4, an RVP limit of 9.0 psi RVP in Class C areas in the long term has a cost effectiveness of about $2,000 per ton. According to this analysis, any higher RVP level would forego reasonably available VOC reductions needed to bring many current ozone non-attainment areas into compliance. An RVP level of 9.0 psi in Class C areas would correspond to levels of 7.0, 7.8, 10.6, and 11.7 psi in Classes A, B, D, and E areas, respectively.

Table 4 indicates that cost per ton rises quickly below 9.0 psi RVP. In addition, reducing Class C RVP below 9.0 psi could also be problematic for reasons besides cost effectiveness. First, vehicle operational data at RVPs lower than 9.0 psi are scarce. Some data indicate that cold starting may begin to be a problem while other data do not. This may mean that costs would be higher than shown in Tables 3 and 4. On the cost side, the derivation of refinery costs for RVP control to 8.5 or 8.0 psi requires extrapolation and increases the likelihood of error. Thus, today's proposal is to reduce long-term Class C volatility to 9.0 psi RVP.

In Chapter 6 of the Draft RIA associated with this notice, EPA also considered additional short-term control of gasoline RVP below the long-term RVP level. We concluded that at a long-term Class C RVP of 9.0 psi, little if any additional cost-effective control appears possible in the short term. The major reason is that these additional short-term RVP reductions would become less effective over time as the vehicle fleet included more and more new evaporative systems. Also, additional control under these circumstances would likely introduce additional refinery costs (because of fewer years of equipment amortization, as discussed above).

The approach to RVP control presented in today's notice is to equate certification fuel RVP with Class C in-use fuel RVP, as described above. Since certification fuel RVP is currently 9.0 psi, the proposed in-use Class C RVP reduction to 9.0 psi achieves the desired equating—without changing the certification RVP.

Finally, although today's proposal would effectively match certification and in-use fuels with respect to RVP, there remains a significant disparity between several other specifications for certification fuel and current 9.0 RVP in-use fuels. Sections VIII and IX discuss a better matching of these specifications.

3. Sensitivity to Key Technical Estimates and Analytical Methodologies

The above discussion has attempted to fully set forth the analyses and assumptions used by EPA in arriving at its decision to propose the RVP control program contained in today's notice. The Agency has expended considerable effort in these analyses and it has fairly considered the many issues and uncertainties involved. At the same time, the discussion and selection of the proposed 9.0 RVP control scenario in the preceeding section focused on the costs and emission reductions of RVP control under a specified set of conditions. Prime among these conditions were: (1) The focus on a single, distant, steady-state year (*i.e.*, 2010), (2) the grouping of the costs and emission reductions for all ASTM class areas, (3) the number of non-attainment areas over which emission reductions are determined, and (4) the future cost of crude oil. While the Agency has expended considerable effort to consider these and other issues, reasonable disagreement may exist over these issues. Thus, to aid the generation of useful comments on this proposal, the extent to which each major assumption may affect the cost, emission reduction and cost effectiveness of each of the eight RVP control levels is examined below.

In addition to the explicit discussion of the four above-mentioned issues, two additional items are discussed below. The first is the inclusion of Federal income taxes in the refinery costs presented in Sections 1 and 2 above. This issue is discussed along with the sensitivity of RVP control cost to crude oil price. The other is the existance of vehicle running losses which are controllable via in-use RVP control, which is discussed in its own section below. EPA plans to incorporate these issues into its analyses subsequent to this proposal, so comment on them is invited and encouraged.

a. *Steady-State, 2010, Long-Term Analysis.* The use of a long-term steady-state analysis has a number of advantages. It allows time for vehicle-related controls to be phased in so that their full effect can be determined. It also avoids making long-term decisions on near-term effects which may be temporary in nature. One disadvantage is that it ignores short-term and start-up effects altogether. With vehicle controls, equipping the fleet with control hardware initially can be costly. Also, between 1990 and 2010, the nation's vehicle fleet will be switching from primarily carbureted to primarily fuel-injected. The effect of RVP on emissions is somewhat more pronounced on the former than the latter. Only in-use RVP control can affect these older cars.

One alternative to long-term, steady-state analysis is to determine cost effectiveness over a number of years by summing both discounted costs and emission reductions over the period and then determining the ratio. The EPA analysis of refueling emissions referred to above, for example, included such an analysis and used a 33-year period. When such an analysis is performed for RVP control, the results are those shown in Table 5. The period 1992–2024 was evaluated since 1992 is the first year in which EPA projects that in-use RVP can be reduced below 10.5 psi. Also, only the "adjusted" cost effectiveness is shown since these figures are the most comparable to those of other programs.

TABLE 5.—33-YEAR AVERAGE ANALYSIS OF RVP CONTROL—ADJUSTED [1]

Long term Class C RVP (psi)	Incremental emission reductions (1,000 tons/yr.)	Incremental cost (dollars per million/yr.)	Incremental cost effectiveness (dollars/ton)
11.5 (Vehicle control)	389	−91 to −92	−233 to 237
11.0	77	−16 to −21	−209 to −273
10.5	68	−3 to −9	−45 to −127
10.0	56	8 to 14	150 to 254
9.5	46	29 to 35	642 to 773
9.0	41	41 to 47	982 to 1,129
8.5	29	64 to 70	2,178 to 2,376
8.0	27	66 to 72	2,444 to 2,671

[1] Costs based on 5 months of actual control. 61 in N/A areas are included and their emission reductions are assumed to occur over a 12 month period; $250 per ton credit for attainment area reductions. Assumes onboard refueling controls are in place (includes no credits for reductions in refueling emissions) and a crude oil price of $20/bbl. 33-year period is 1992–2024.

As can be seen, for the 11.5 RVP scenario, both the 33-year average cost savings and the emission reductions are lower than the 2010 figures, as is the cost per ton. This is due to the fact that the effectiveness of this all vehicle-control scenario starts out slowly as the fleet gradually turns over and the annual vehicle hardware cost starts immediately at its steady-state level.

For the 9.0–11.0 RVP scenarios, the 33-year average emission reduction is much greater than the steady-state 2010 figure because incremental in-use RVP control is much more effective prior to the full implementation of accompanying vehicle controls. Average annual costs decrease primarily due to the fuel credits associated with this additional control. The result is that the cost per ton of these scenarios is markedly improved over those of the steady-state 2010 analysis.

The cost effectiveness of the 8.0 and 8.5 RVP scenarios also improve over the steady-state analysis. However, the improvement is not as great as that for the 9.0–11.0 RVP scenarios, because the incremental emission control obtained below 9.0 RVP (*i.e.*, once in-use RVP is matched to the current certification fuel RVP of 9.0) is small.

Thus, use of a 33-year analysis lends even stronger support for the proposal of 11.0 RVP.

b. *Nationwide versus ASTM Class-Specific Analysis.* The figures in Tables 3, 4 and 5 apply to the entire U.S. Both the costs and emission reductions estimated are those for ASTM Class A, B, C and D areas combined according to their occurrence during the 5-month effective control period and their fraction of U.S. fuel consumption.

The effect of RVP on emissions in the various areas is generally expected to be quite similar, because the areas with the highest temperatures have the lowest RVP. At the same time, EPA's use of city-specific, design-value day temperatures taken from a short (*i.e.*, 1982–84) time frame in determining emissions introduces substantial variability in the emission reductions projected for individual cities. Thus, differences in the projected emission reductions (per capita or per mile) between cities or small groups of cities may be due to meteorological variability that would disappear if the temperatures were taken from a longer timespan.

While the emission reductions (per capita or per mile) are likely to be the same regardless of ASTM class, the cost of RVP control increases from ASTM Class D to Class A. Two factors interact to result in this increase. First, the reduction in RVP in the various ASTM class areas is proportional to the ASTM limit for each class. Thus, the actual reduction in RVP for each 1.0 psi reduction in Class C RVP is 1.2 psi in Class D areas, but only 0.8 psi in Class A areas. This would tend to make the RVP control cost in Class A areas lower than that in Class D areas, since less butane would need to be removed. However, the cost per psi of reducing RVP increases as the base RVP decreases, because the cost of removing butane increases as the butane content decreases. The latter effect is larger than the former, so the cost of each step of RVP control is larger in Class A areas than Class D areas. Thus, the cost per ton of a given Class C RVP control step will most likely be largest in Class A areas and lowest in Class D areas.

There are currently two Class A, non-California, non-attainment areas: Phoenix and El Paso. Table 6 shows both steady-state 2010 and 33-year average adjusted, incremental cost effectiveness for these two areas combined. As can be seen, the cost per ton of RVP control below 11.5 is somewhat greater than the nationwide average cost per ton shown in Tables 4 and 5 (by $550 per ton in the year 2010 and by $200–250 per ton over 33 years for the 9 RVP scenario). In the year 2010, the cost per ton of the 9 RVP (7.8 RVP Class A) scenario is $2200–2400. For the 33-year analysis, the cost per ton is roughly $1200–1400 at 9 RVP Class C.

TABLE 6.—ADJUSTED INCREMENTAL COST EFFECTIVENESS OF RVP CONTROL IN CLASS A AREAS

Class C RVP (psi)	Class A RVP (psi)	Steady-State 2010 (dollars per ton)	33-year average (dollars per ton)
11.5	9.0	−479 to −471	−289 to −282
11.0	8.6	554 to 706	−41 to 32
10.5	8.2	883 to 1044	196 to 307
10.0	7.8	1,311 to 1,469	546 to 658
9.5	7.4	1,846 to 2,077	818 to 956
9.0	7.0	2,205 to 2,411	1211 to 1387
8.5	6.6	2,607 to 2,840	2,381 to 2,597
8.0	6.2	4324 to 4584	4,429 to 4,694

As alluded to above the emissions projected for any two cities may vary dramatically due to the use of only 1982–84 design values and temperatures. A more robust set of high-ozone temperatures should be available during the course of this rulemaking. Also, the Bonner and Moore modeling effort currently underway will allow a more accurate estimation of RVP control costs in the 7.0–8.0 RVP region. EPA will add any such new information to the docket as it becomes available. In the meantime, EPA requests comments on both the value and the cost effectiveness of controlling Class A and B RVP proportional to Class C RVP.

C. *Non-Attainment Area Emission Reductions.* The emission reductions considered in the adjusted cost effectiveness figures of Tables 4 and 5 were those in the 61 urban, non-California areas in non-attainment of the ozone NAAQS using 1982–84 ambient ozone data.

However, certain projections of future conditions used in analyzing the effects of control (as discussed below) show that the number of non-attainment areas may drop significantly in the mid-1990's. For example, the projections shown in Table 2 indicate that there may be as few as 38 non-attainment areas without the adoption of either volatility control and onboard controls. Thus, it might be argued that ozone reductions should be counted in as few as 38 areas.

There are several important reasons why the Agency has not followed the above approach in its analyses. First, the same projections which indicate a decline in the number on non-attainment areas to 38 also predict an increase to 51 again by the year 2010. Thus, at least 50 areas must be used. Second, and more importantly, a closer look at the modeling results indicates that almost none of the modeled areas ever gain a substantial margin of compliance

against the air quality standard. For example, even assuming volatility control to 9 RVP and the adoption of onboard controls, 58 of the 61 areas modeled remain at or above 0.11 ppm ozone throughout the period of analysis. This represents only about a 12 percent margin below the 0.12 ppm standard. Such levels are well within the uncertainty of EPA's models, which have historically tended to overpredict reductions. [11] Thus, EPA believes that reductions in all the modeled areas have value in controlling non-attainment conditions.

There is yet another reason for considering an even larger number of areas than the 61 which EPA has identified. Ozone is a broad regional phenomena, not confined within the specific geographic boundaries of non-attainment areas. The transport of ozone forming precursors into non-attainment areas from adjacent attainment areas is a significant contributor to non-attainment problems. Thus, emissions in areas adjacent to the 61 non-attainment areas should also be valued for attainment of the standard. EPA is not in a position at this time to identify specific areas where this overlap occurs, but believes it is substantial. Comments on estimating this effect would be helpful.

The effect of only considering the emission reductions in the worst 40 and 50 non-attainment areas versus the current 61 areas is shown in Table 7 for both steady-state and 33-year average analyses. As can be seen, for those cases where the cost per ton with 61 non-attainment areas is below $250, reducing the number of areas actually improves the cost effectiveness since a $250 per ton credit is obtained for the emission reductions shifted to attainment areas. For those cases with a 61-area cost per ton over $250, the effect of reducing the number of areas to 40 or 50 increases as the 61-area cost per ton increases. For example, for the 9 RVP scenario, the 33-year average cost per ton increases from $982–1192 to $1186–1371. Even this increase is not very significant since the cost effectiveness values change by only 20 percent. This is because those areas at the margin tend to have smaller populations and gasoline use than those areas that remain in non-attainment under all scenarios.

TABLE 7.—EFFECT OF THE NO. OF NON-ATTAINMENT AREAS ON THE ADJUSTED INCREMENTAL COST EFFECTIVENESS OF RVP CONTROL (DOLLARS PER TON)

	40 areas	50 areas	61 areas
	Steady-state (2010)		
11.5	−438 to −433	−369 to −364	−310 to −306
11.0	−232 to −81	−182 to −49	−140 to −21
10.5	106 to 282	118 to 274	129 to 267
10.0	689 to 892	635 to 815	590 to 750
9.5	1,599 to 1,850	1,443 to 1,665	1,311 to 1,509
9.0	2,032 to 2,287	1,827 to 2,052	1,653 to 1,854
8.5	3,184 to 3,479	2,849 to 3,111	2,565 to 2,798
8.0	3,413 to 3,737	3,051 to 3,338	2,744 to 3,000
	33-year average		
11.5	−346 to −341	−287 to −282	−237 to −233
11.0	−396 to −315	−330 to −258	−273 to −209
10.5	−215 to −110	−168 to −75	−127 to −45
10.0	135 to 256	143 to 250	150 to 254
9.5	757 to 923	695 to 842	642 to 773
9.0	1,186 to 1,371	1,075 to 1,240	982 to 1,129
8.5	2,699 to 2,949	2,417 to 2,639	2,178 to 2,376
8.0	3,032 to 3,320	2,714 to 2,969	2,444 to 2,671

d. *Future Cost of Crude Oil.* Accurately predicting the future cost of crude oil is problematic. When EPA was reviewing the technical details of the Bonner and Moore refinery modeling, the choice of $20 per barrel of crude oil appeared to be appropriate, with sensitivity analyses being performed at $15 and $25 per barrel.

The steady-state 2010 cost effectiveness of RVP control assuming crude oil costs of $15, $20 and $25 per barrel is shown in Table 8. As can be seen, the effect of a $5 per barrel change in crude oil cost on the cost per ton of the 9 RVP scenario is roughly $550–600.

TABLE 8.—ADJUSTED, STEADY-STATE, 2010 INCREMENTAL COST EFFECTIVENESS OF RVP CONTROL VERSUS CRUDE OIL COST (DOLLARS PER TON)

Class C RVP (psi)	$15 per barrel	$20 per barrel	$25 per barrel
11.5	−293 to −289	−310 to −306	−325 to −320
11.0	−557 to −448	−140 to −21	152 to 280

[11] The Agency has consistently stressed the need for caution in interpreting modeling results of this sort. Year to year meteorology variations can rapidly change the number of non-attainment areas when so many areas lie very close to the standard. One indication of this effect is found in recent data estimating the number of non-attainment areas. Based upon 1983 through 1985 data, the number of non-attainment areas appears to have increased from 61 to 65 while modeling would predict some decline. However, there is as yet insufficient emission inventory data to revise the Agency analyses based upon any of the newer values.

TABLE 8.—ADJUSTED, STEADY-STATE, 2010 INCREMENTAL COST EFFECTIVENESS OF RVP CONTROL VERSUS CRUDE OIL COST (DOLLARS PER TON)—Continued

Class C RVP (psi)	$15 per barrel	$20 per barrel	$25 per barrel
10.5	−79 to 46	129 to 267	554 to 704
10.0	381 to 526	590 to 750	999 to 1,174
9.5	725 to 903	1,311 to 1,509	1,650 to 1,866
9.0	1,029 to 1,209	1,653 to 1,854	2,271 to 2,491
8.5	1,959 to 2,167	2,565 to 2,798	3,136 to 3,392
8.0	2,375 to 2,603	2,744 to 3,000	3,325 to 3,606

The Department of Energy has made a projection that crude oil will cost $27 per barrel in 1995 and $33 per barrel in 2000, all in today's dollars. While it is not possible to determine the relative accuracy of this projection versus the $20 per barrel projection, it is of interest to determine how this might affect the cost effectiveness of RVP control.

In developing the refinery costs for this DOE crude price scenario, EPA discovered that the refinery costs determined by the Bonner and Moore model included Federal income taxes. Specifically, a capital recovery factor of 0.262 was used, which assumes: (1) A 13-year depreciation period and economic life, (2) a 15 percent per annum after-tax cost of capital, and (3) a 48 percent Federal income tax rate. (EPA requests comments on this capital recovery factor, particularly the 13-year economic life for equipment and the 15 percent after-tax cost of capital (in constant dollars). While Federal income tax should be included in Bonner and Moore's model (since refiners will consider taxes in deciding between various modifications to their capital stock and operations), they should be excluded when determining the net cost to society of RVP control. Taxes are not costs, but transfer payments from one segment of society to another. Taxes have been excluded from other segments of this analysis, such as the value of the gasoline saved through reduced evaporative emissions. These taxes represent about 8 percent of the total refinery RVP control costs.

As mentioned above, the exclusion of these taxes from the analysis of the net cost to society would not have affected EPA's decision to propose 9 RVP as the long-term gasoline volatility. However, EPA intends to incorporate this change in any future analysis supporting a final rule.

Table 9 shows the effect of both the $33 per barrel cost of crude oil in 2000 and beyond ($21 per barrel in 1990, and increasingly linearly through 2000) and the exclusion of income taxes. As can be seen, the steady-state cost effectiveness of the 9 RVP scenario increases to $2500–2800 per ton with the higher crude cost. However, when the early, pre-2010 benefits are factored in along with 14 years of post-2010 control, the 33-year cost per ton is only $1400–1600.

TABLE 9.—ADJUSTED INCREMENTAL COST EFFECTIVENESS OF RVP CONTROL WITH $33/BBL CRUDE (IN 2000) AND EXCLUDING FEDERAL INCOME TAXES

Class C RVP (psi)	Incremental emission reduction (1,000 tons per yr)	Incremental cost (million dollars per year)	Incremental cost effectiveness (dollar per ton)
Steady-State 2010			
11.5	546	−192 to −189	−352 to −346
11.0	38	22 to 26	582 to 752
10.5	37	30 to 36	807 to 978
10.0	32	45 to 51	1,376 to 1,576
9.5	28	56 to 62	2,012 to 2,259
9.0	28	71 to 78	2,533 to 2,787
8.5	25	102 to 110	4,105 to 4,401
8.0	24	116 to 124	4,816 to 5,140
33-Year Average			
11.5	389	−104 to −102	−267 to −262
11.0	77	−3 to 2	−44 to 28
10.5	88	8 to 15	123 to 224
10.0	56	25 to 32	442 to 563
9.5	46	40 to 47	880 to 1,034
9.0	41	57 to 54	1,385 to 1,558
8.5	29	87 to 94	2,974 to 3,211
8.0	27	96 to 104	3,574 to 3,847

Tables 10 and 11 show the effect of a $33 per barrel crude cost on the earlier sensitivity analyses presented above. The tables are similar to tables 6 and 7, with the substitution of $33 per barrel crude oil (for the $20 per barrel) and the exclusion of refinery income taxes.

TABLE 10.—ADJUSTED INCREMENTAL COST EFFECTIVENESS OF RVP CONTROL IN CLASS A AREAS

[$33 per bbl Crude Price With Taxes Excluded]

Class C RVP (psi)	Class A RVP (psi)	Steady-state 2010 (dollars per ton)	33-Year average (dollars per ton)
11.5	9.0	−545 to −534	−350 to −343
11.0	8.6	1,080 to 1,263	31 to 99
10.5	8.2	1,471 to 1,688	270 to 381
10.0	7.8	2,409 to 2617	828 to 961
9.5	7.4	2,683 to 2,923	940 to 1068
9.0	7.0	3,040 to 3,360	1,315 to 1,499
8.5	6.6	4,195 to 4,485	2,915 to 3136
8.0	6.2	4,685 to 4,998	4,771 to 5,127

TABLE 11.—EFFECT OF THE NUMBER OF NON-ATTAINMENT AREAS ON THE ADJUSTED INCREMENTAL COST EFFECTIVENESS OF RVP CONTROL (DOLLARS PER TON)

[$33 per bbl Crude Price With Taxes Excluded]

	Steady-state (2010)		
	40 Areas	50 Areas	61 Areas
11.5	−491 to −484	−416 to −410	−352 to −346
11.0	682 to 864	628 to 789	582 to 725
10.5	966 to 1,182	880 to 1,072	807 to 978
10.0	1,685 to 1,938	1,518 to 1,742	1,376 to 1,576
9.5	2,486 to 2,799	2,229 to 2,507	2,012 to 2,259
9.0	3,147 to 3,468	2,815 to 3,100	2,533 to 2,789
8.5	5,133 to 5,508	4,577 to 4,910	4,105 to 4,401
8.0	6,036 to 6,447	5,376 to 5,740	4,816 to 5,140
33-Year Average			
11.5	−384 to −378	−320 to −315	−267 to −262
11.0	−107 to −15	−73 to 8	−44 to 28
10.5	103 to 219	114 to 221	123 to 224
10.0	505 to 657	471 to 606	442 to 563
9.5	1,059 to 1,253	962 to 1,134	880 to 1,034
9.0	1,696 to 1,915	1,528 to 1,722	1,385 to 1,558
8.5	3,707 to 4,006	3,311 to 3,576	2,974 to 3,211
8.0	4,463 to 4,809	3,983 to 4,289	3,574 to 3,847

Not included in the above analyses is one other cost-related sensitivity, the weight sensitivity factor. When weight is added to a vehicle, as occurs with a larger charcoal canister, the issue arises as to whether an even greater weight gain results due to the need for heavier brakes, shock absorbers, brackets, etc. The analyses presented in the previous tables all assume a weight sensitivity factor of 1.0; that is, only the added weight of the charcoal canister itself will result. If the weight sensitivity factor were increased to 1.3, this would increase the cost of vehicle-based evaporative emission control slightly. This, in turn, would increase the vehicle-related savings associated with in-use RVP control. For example, the cost per ton of the 9 RVP scenario would decrease by roughly $15. This is insignificant and is due to the fact that the weight gain associated with a larger evaporative emission control canister is quite small. This issue is described in greater detail in today's **Federal Register** notice associated with the proposal of onboard refueling controls.

e. *Running Losses.* One potential source of RVP-sensitive vehicular emissions not considered in the above analyses are the "running losses." Running losses occur when a vehicle's fuel tank heats up while the vehicle is running, causing vapors to be emitted from the tank much like diurnal emissions when a vehicle is not being operated. Normally, these running losses would be routed directly to the engine (often via the charcoal canister) and consumed, causing no emissions. However, very recent testing of 11 vehicles at the National Institute of Petroleum and Energy Research indicates that much of this vapor does not reach the engine, but escapes through the gas cap or evaporative canister while the vehicle is running. These data are too preliminary to be relied upon in this proposal. However, those vehicles with severely disabled or tampered evaporative control systems, such as a misrouted fuel tank vent line or a missing gas cap, are likely to send their running losses directly to the atmosphere. Though the amount of test data under such conditions is even more limited than those for properly operating vehicles, uncontrolled running losses are more amenable to theoretical estimation, much like uncontrolled diurnal emission, as is the effect of RVP on such emissions. Such modelling confirms that conclusions EPA has reached from the limited data under uncontrolled conditions are reasonable.

Using the tampering survey data contained in the Draft RIA, at 50,000 miles, 4.2 percent of the vehicle fleet experiences the kind of evaporative control system tampering which would be expected to result in uncontrolled running losses. Adding the control of uncontrolled running losses to the analyses shown in Tables 3, 4, 5 and 9

would increase the incremental emission reductions associated with in-use RVP control (in the range of 9.0–10.5 RVP) by 20 percent. Because the control of these running losses would also reduce gasoline consumption, producing a cost credit, their inclusion would reduce the incremental cost per ton of RVP control in this range by roughly 30 percent. Consideration of the effect of RVP control on running losses from properly operating vehicles could reduce the cost per ton even further. EPA requests comments on the amount of running losses occurring today from both properly and improperly operating vehicles, their relationship to in-use RVP and any other methods available for their control.

f. *Other Options Considered.* Today's proposal is supported by a Regulatory Impact Analysis that assumes a crude oil price of $20 per barrel and 61 non-California non-attainment areas, along with the sensitivity analyses contained in the draft RIA. Because of the major costs and emission reductions associated with controlling evaporative emissions, and the numerous important uncertainties involved in evaluating alternative approaches (such as the number of future non-attainment areas and the price of crude oil), we are considering a number of alternative approaches, such as:

Option 1. A national volatility limit of 10.5 psi with adjustment in the volatility of certification fuel to 10.5 psi.

Option 2. Alternative volatility limits of 8.0, 8.5, 9.5, 10.0 and 11.0 psi RVP (with appropriate adjustment of certification fuel volatility).

Option 3. A volatility limit of 10.5 psi thru 1992 (as in today's proposal), with a cerification fuel limit of 10.5 psi and a subsequent future public review of the need for lower volatility limits beyond 1992, based on an updated analysis of the various cost and effectiveness issues involved.

Option 4. Reduce RVP only in non-attainment areas. Wholesalers would be free to sell lower RVP gasoline in attainment areas at their discretion.

Option 5. Nationwide RVP of 10.5 psi; states would be free to lower RVP if they desired.

g. *Summary of Sensitivity Issues.* In this section EPA has reviewed a number of issues and uncertainties potentially affecting the cost effectiveness of RVP control and attempted to identify the possible impacts associated with each. Some of the effects could increase the cost effectiveness values and others could decrease them. As noted at the outset of this section, the Agency encourages comment on all of these factors, along with any others which commenters believe to be of importance. Clearly, specific quantitative analysis with supporting data will be of most use to the Agency in completing its final study.

V. Control of Alcohol Blend RVP

During the past several years commercial fuel has been introduced which consists of gasoline blended with ethanol, methanol, and other alcohols.[12] Blending an alcohol into gasoline increases the volatility of the final product, making the potential increase in evaporative and exhaust emissions a special concern. However, certain approaches to volatility control could have serious economic impacts on the fuel-alcohol industries, particularly on ethanol blenders. Thus, we evaluate alcohol blends separately from straight gasoline and consider the desirability of a separate regulatory approach for alcohol blends.

A. Industry Economics and Blend RVP

The fuel ethanol and methanol industries have developed in ways that give them unique economic characteristics. It is important to view the impact blends have on HC emissions in light of these characteristics.

Gasohol (*i.e.*, gasoline mixed with about 10 percent ethanol by volume) began entering certain fuel markets in the late 1970's with the enactment of a tax credit applicable to the Federal gasoline tax. The credit has grown to 6 cents/gallon of gasohol (equivalent to 60 cents/gallon of ethanol) and was the result of dual Congressional desires to reduce U.S. dependence on imported oil and to make use of excess agricultural production (specifically, corn). A number of states have also enacted tax credits ranging from one-half to 14 cents/gallon of gasohol.

New alcohol blends with unleaded gasoline require an EPA waiver in order to be introduced commercially (as provided in section 211(f) of the Clean Air Act). In 1978, when a waiver was requested for gasohol, the Agency did not act to disapprove the waiver application within the statutorily required 180 days and the waiver was automatically granted under section 211(f).

An important result of the automatic approval of the gasohol waiver was that in accordance with the waiver request no constraints were imposed on the volatility of gasohol. This factor has in turn meant a great deal of flexibility for the industry in the gasolines they can use for blending with ethanol. Since final product volatility is not regulated, ethanol blenders have been able to use gasolines that were originally refined as final-use fuels. These fuels are more easily and cheaply obtained than specially-formulated low-RVP base fuels, and the ability to use the standard finished gasoline has continued to play a significant (and, perhaps, crucial) role in the development of the gasohol market. For the purposes of today's notice we will use the term "splash blending" to describe this practice of blending alcohols with "final-use" gasoline. The practice of splash blending increases the RVP of gasohol by up to about 1.0 psi as compared to straight gasoline.

A physical phenomenon which affects the actual volatility effect of gasohol (or any acohol blend) in the field is called commingling. This occurs when vehicle fuel tanks are intermittently filled with alcohol blends and then with straight gasoline. Depending on the mixture, the resulting RVP can be significantly higher than that of the blend or the straight gasoline. At current market levels we estimate the effect of commingling to be equivalent to an increase of about 0.2 psi in the in-use RVP of gasohol. (See the Draft RIA for further details.)

Nationally, gasohol accounts for about seven percent of the gasoline market, varying among states (because of different state tax exemptions) from zero to more than 30 percent. About 80 percent of gasohol is sold in Midwest states (that is, close to major corn producing areas).

Several blends of methanol and unleaded gasoline have received EPA waivers permitting their sale at one time or another. The two waivered methanol blends which are expected to be most common are an ARCO blend called "Oxinol" and a DuPont blend. Each blend involves five percent or less methanol and also includes a higher molecular weight alcohol "cosolvent" (*e.g.*, ethanol) to help prevent phase separation in the presence of water.

Unlike gasohol, these methanol blends are subject to volatility limits as a provision of their EPA waivers. The requirement is that the RVP of the final blend not exceed the current ASTM limits for gasoline. The volatility limits are meant to ensure that evaporative emissions from methanol blend-fueled vehicles will not exceed emissions from gasoline-fueled vehicles.

Since adding methanol and a cosolvent to gasoline to produce these blends increases RVP by about 2 psi,

[12] For convenience, we refer to alcohol blends containing only ethanol as gasohol. In practice, these blends rarely contain more or less than 9–10 percent ethanol. Any blend containing methanol, even though ethanol may be present as a cosolvent, will be referred to as a methanol blend.

and since the RVPs of few gasolines are 2 psi below the ASTM limits, these methanol blends require specially formulated lower-RVP base gasolines. Because of this, methanol cannot be "splash blended" (as defined above).

At a 10 percent local market penetration by methanol blends, the commingling effect would boost the effective RVP by about 0.7 psi RVP for those vehicles using the blends.

To date, only the ARCH "Oxinol" blend has actually been marketed, achieving a 1.3 percent market share during 1985. Today neither Oxinol nor the DuPont blend is available commercially, in large part because the low price of crude oil has removed much of their economic advantage.

B. Emission Effects of Blend Usage

Several factors interact to affect the evaporative and exhaust VOC emissions of alcohol blends and their effect on urban ozone formation (see Chapter 2, Section B of the Draft RIA). EPA's analysis compares the effect on ozone formation of VOC emissions from vehicle fleets including some alcohol blend use with a gasoline-only fleet at the same RVP. Certain factors would tend to reduce the fleetwide ozone potential of alcohol blends relative to gasoline, including potentially lower VOC exhaust emission and less photochemically reactive evaporative emissions. However, assuming 10 percent market shares for the blends, other factors such as commingling offset these positive effects. The resulting fleetwide increase or decrease in ozone formation potential between gasoline and either gasohol or methanol blends if RVPs are matched is less than one percent.

The RVP of current gasohol, however, is about 1.0 psi higher than gasoline RVP, as stated above. Because of this, blend-fueled vehicles have significantly higher evaporative emissions than gasoline-fueled vehicles, although their exhaust emissions are slightly lower. The evaporative increase, however, would more than offset the exhaust reduction for both ethanol and methanol blends. The increase in ozone potential of evaporative plus exhaust emissions from a gasohol-fueled vehicle is about 15 to 35 percent (depending on RVP level) compared to gasoline-fueld vehicle emissions. On a fleetwide basis (assuming 10 percent market penetration by gashol) the increase in total ozone potential over a gasoline-only fleet would be about two to three percent. (At a similar market penetration, methanol blends would have about the same fleetwide effect on ozone potential as gasohol.)

C. Effect of RVP Control on Alcohol Blends

1. Effect on Emissions

For each psi RVP that alcohol blend RVP were reduced, essentially the same VOC emission reductions would be achievable as for gasoline. However, we stated earlier that gasohol is currently about 1.0 psi RVP higher than gasoline. Thus if gasohol were controlled to the same RVP as gasoline, about two or three percent additional emission control would be possible.

2. Effect on Refinery and Distribution Costs

As with emissions, refinery-level costs resulting from alcohol blend RVP control would be similar to gasoline RVP control costs, since reducing RVP would require about the same effort for both final-use gasoline and for gasoline base stocks for alcohol blends.

Costs might be slightly higher (roughly 0.5 cents/gallon) in cases where lower RVP base gasolines were required (as is the case today for methanol blends) because the cost effects of RVP control can become more pronounced at lower RVP levels. Offsetting these higher costs, however, would be the savings to refiners of making use of ethanol's octane value. Currently, such of the octane-enhancing quality of ethanol is "wasted" in a sense. This happens because with splash blending, existing final-use gasolines that already have a sufficient octane rating are blended with ethanol, further increasing octane unnecessarily.

However, if refiners were to produce lower-RVP fuels as blend stock for gasohol, the octane value of those fuels would not need to be as high as for final-use fuels because ethanol would be added. The blending could happen at the refinery or later if the lower RVP, lower octane base fuel were kept segregated during distribution. This ability to take advantage of ethanol's octane value at the refinery would be an economic benefit to refiners because the costs of boosting octane through additives or additional refining would be reduced. In their study for EPA, Bonner and Moore conclude that the value of this octane savings would more than make up for the cost of producing the lower-RVP base gasoline.

Despite this ability by refiners to take advantage of ethanol's octane value, a requirement to meet the same RVP as gasoline could introduce new distribution-related costs to gasohol producers. If this issue is ignored for the moment, the discussion above shows that both the emission reductions and refinery-level control costs would be about the same as those associated with gasoline RVP control—and thus the cost per ton of RVP control for alcohol blends would be almost exactly the same as for gasoline. This means that absent the distribution effects, cost effectiveness (*i.e.*, cost per ton) is not a deciding factor in determining whether to treat blends differently from gasoline; absent such effects, EPA would control all fuels to the same RVP level.

In reality, however, a requirement that gasohol meet gasoline RVP limits could create serious new problems for the gasohol industry. As we stated above, gasoline is subject to non-binding ASTM volatility limits (and some binding state regulations), unleaded methanol blend RVPs are controlled to typical gasoline levels, but gasohol is free from any administrative volatility constraints. The gasohol industry has relied heavily on their ability to market their product at a higher RVP than the other fuels, and hence to splash blend ethanol with gasoline.

If volatility controls required gasohol to meet the same limits as gasoline, the gasohol industry might be unable to obtain sufficient amounts of special reduced-RVP gasoline stock; costs could be prohibitive in any case, largely because separate distribution and storage facilities would be needed in order to keep the special stock segregated from higher RVP levels. EPA contractors have conducted three studies of this economic impact,[13] but the dependence of the result on local factors, such as the number of storage tanks and their current availability, makes the task of developing reliable estimates very difficult. Nevertheless, it is clear to us that a major impact on gasohol sales and the industry as a whole is possible.

Another factor that could potentially affect gasohol distribution should be mentioned. The state of Colorado is considering a carbon monoxide emission control strategy that could mandate the use of oxygenated fuels during the winter months. If enacted, this program could expand gasohol's current market. In addition, since distribution of low-octane, low-RVP gasoline to Colorado gasohol blenders

[13] The following reports are available in the docket referenced at the beginning of today's notice:

(a) "The Effect of Gasoline Volatility Control in Selected Aspects of Ethanol Blending," Jack Faucett Associates, November 4, 1985.

(b) "The Effect of Gasoline Volatility Control on Methanol and Ethanol Blend Usage," Draft Final Report Jack Faucett Associates, September 12, 1986.

(c) "The Impact of Volatility Reductions on the Fuel-Grade Ethanol Industry," Sobotka & Co., Inc., March, 1987.

would probably increase, part of the necessary distribution system might be in place and a transition to a summertime gasohol RVP control program could conceivably be less costly with these wintertime oxygenated fuel requirements in place. EPA requests comments on how the gasohol market and distribution network would respond to such a program in Colorado.

D. Gasohol Control Options

Without the potential for major costs to the gasohol industry, EPA would simply require that gasohol meet the same RVP standards as gasoline (*i.e.*, the same requirement as for methanol blends). However, the public policy concerns about the importance of a gasohol industry in the U.S. have led us to develop and evaluate additional options. In light of our conclusions about gasohol, we also consider in the next section two options that could apply to methanol blends.

EPA has considered each of the following gasohol RVP control options:

Option 1. Continue the existing gasohol exemption from RVP control.

Option 2. Instead of a total exemption, establish a gasohol RVP standard 1.0 psi higher than that for gasoline (*i.e.*, a 1.0 psi RVP allowance).

Option 3. Require gasohol RVP to equal the RVP of straight gasolines.

a. Apply this requirement nationwide.

b. Apply requirement only to gasohol sold in ozone non-attainment areas; provide a 1.0 psi RVP allowance in attainment areas.

c. Delay requirement until 1993; provide a 1.0 psi RVP allowance in the interim.

The following paragraphs discuss each gasohol option.

Option 1. Administratively, this option represents the current situation—gasohol blenders could continue to use commercial gasolines for base stock. For this reason, it is unlikely that the ethanol industry would experience any adverse economic impact.

However, if EPA requires gasoline refiners to significantly reduce the volatility of their fuels, as today's notice proposes to do, refiners will have surpluses of certain very high RVP gasoline components and a desire to market them. If gasohol continued to have no RVP restrictions, it is very likely that more of these very high RVP components would be used as gasohol base stock, a current but not yet widespread practice. Although gasohol today averages 1.0 psi RVP above gasoline RVP or less, this practice could boost gasohol RVP much higher, with an associated increase in VOC emissions. Another result would be to make ethanol more attractive and thus more valuable as a gasoline extender, possibly increasing gasohol usage. The loss of emission control associated with a gasohol RVP exemption under an in-use RVP control program would probably be even greater than what would occur under Option 2 below.

Option 2. A 1.0 psi RVP allowance for gasohol, like the exemption, would continue to allow splash-blending (ethanol adds up to 1.0 psi to gasoline RVP) and hence would not economically threaten the gasohol industry. Unlike the exemption, the fixed allowance would eliminate the ability to market very high RVP gasoline as gasohol base stock.

The emissions impact of allowing a 1.0 psi RVP disparity between gasoline and gasohol, as with the total RVP exemption, is significant. EPA estimates that at least one to two percent of the potential fleetwide ozone control achievable in the year 2010 by reducing Class C gasoline RVP to 9.0 psi could be lost because of gasohol's higher RVP. In areas with high gasohol market shares, the emissions effect would be greater—two percent of all Chicago VOC emissions, for example.

Option 3. Under this option EPA would require that gasohol's RVP be no higher than the RVP of in-use gasolines. Environmentally, this approach is most logical since RVP affects in-use emissions and all gasolines and blends would meet the same RVP standard. Thus, gasohol use under this option would add very little to evaporative and vehicle exhaust emissions and their effect on ozone production as compared to a fleet using only straight gasoline.

However, as we discussed earlier, requiring gasohol to meet the same RVP limits as gasoline would create serious economic burdens for the gasohol industry. On the other hand, refiners could take advantage of ethanol's octane value, as discussed above, which might make gasohol cheaper.

a. Implementing Option 3 nationwide simultaneously with new gasoline volatility controls would mean that the impact of distribution-related costs would be felt by the gasohol industry immediately. If measures are available to the industry which could cushion the effect, there would be very little time to implement them.

b. Another approach might be to implement Option 3 only in ozone-nonattainment areas. The adverse effects of requiring in-use gasohol RVP to equal gasoline RVP might occur, but only in non-attainment areas. Outside non-attainment areas, the program under this option would have the characteristics described above for Option 2 (1.0 psi RVP allowance for gasohol), in effect providing a continued but more limited splash-blending market for gasohol producers.

This kind of approach would target emission control primarily in the areas that need it most, eliminating some of the environmental concerns associated with Option 2 above. (There would remain the concern that HC emissions would still be higher in attainment areas, where emission reductions do have some value.) In any case, it is possible that such targeting would not sufficiently relieve the economic burden on the gasohol industry. According to the Ad Hoc Ethanol Committee (a group of ethanol producers),[14] the reason is that the widespread nature of the ozone problem results in over half of the gasohol market being within current non-attainment areas. The Committee agrees that it is unlikely that gasohol market penetration could be increased in attainment areas enough to make up the difference. Thus, if prohibiting splash blending gasohol in non-attainment areas would effectively eliminate that market, as the industry claims, then the nationwide gasohol market would be severely reduced, resulting in increased production costs, higher prices or lower profit margins, and still lower sales.

Finally, as with any policy which is geographically targeted, issues of competition are likely to arise among businesses near the boundaries. On one side of a boundary, service stations might be able to obtain gasohol to sell, and on the other side, not.

c. A third approach would delay Option 3 until 1993, the year in which the Fedeal tax credit for gasohol is set to end. The effect of this alternative would be that the additional emissions as well as the ability to splash blend associated with Option 2 (1.0 psi RVP allowance) would occur from the date of implementation of gasoline RVP control through December 31, 1992 (essentially until May 1993, since RVP control is not being considered during non-summer months). After that, gasohol RVP would need to match gasoline RVP, with the same ramifications we described for Option 3a above.

This option would allow ethanol producers about four years to change their marketing strategy (*i.e.*, develop sources of low-RVP, low-octane base gasoline stock). Since splash-blended gasohol is not expected to be profitable without the Federal tax credit (unless perhaps crude oil prices exceed their previous highs), the application of the

[14] Letter to EPA dated June 26, 1986, found in the docket referenced at the beginning of today's notice.

RVP limit after the tax credit expires will have little economic impact. This option would also allow time for Congress to comprehensively review the issues of RVP, the gasohol tax credit, and the overall national economic policy toward gasohol.

We do not propose to adopt Options 1 and 3b. Option 1 is associated with the serious potential of making gasohol a "dumping ground" for high RVP gasolines. Most if not all of the economic benefits of Option 1 are also present under Option 2, which is why even the gasohol industry is not requesting the complete exemption represented by Option 1. Option 3b would only be a serious alternative if the geographic targeting would substantially reduce the economic impact in the gasohol industry, which does not appear to be the case.

However, for the reasons discussed above, the remaining three options all have sufficient merit for further consideration and EPA may incorporate one of them in the final rule. EPA invites comment on all of the technical, environmental, and economic issues raised by these options (see Section X below).

E. Methanol-Blend Control Options

Methanol blends have not historically received the same degree of public attention and special incentives that gasohol has. Volatility requirements are a part of all EPA methanol blend waivers (*e.g.*, ARCO "Oxinol" and the DuPont blend, as discussed earlier). These waiver requirements have meant that, from the start, methanol blenders have expected to operate using special low-RVP base gasolines as a base stock. A 1.0 psi RVP allowance for methanol blends, while it would be a substantial benefit to that industry, is clearly not key to preserving any existing market for these products; in fact, none are sold at this time. (Methanol is established as a feedstock in the chemical industry but not yet as a gasoline blend stock; fuel-grade ethanol, in contrast, has no established market except gasohol.)

However, if EPA were to select Option 2 or Option 3c for gasohol, which would establish a permanent or temporary volatility allowance for gasohol, it would raise the issue of whether to also provide a similar RVP allowance for methanol blends. Increased emissions would certainly result if methanol blends were marketed at a 1.0 psi higher RVP than gasoline. However, it is not clear at this time whether such an allowance would be merited for other reasons. As with the gasohol options above, we invite comment on the issues relating to the two options of extending or not extending a temporary or permanent 1.0 psi allowance to methanol blends. EPA may incorporate one of these options in the final rule.

VI. Enforcement Options and Selection

A. Overall Enforcement Mechanism

1. Introduction

There are several major issues that must be addressed in the development of a plan for enforcement of gasoline RVP control regulations. These issues include: (1) How compliance with the regulations will be monitored by the Agency, (2) where in the distribution network gasoline will be subject to RVP controls, (3) how gasoline will be sampled and tested to determine compliance with regulatory requirements, and (4) which parties will be liable for violations of the regulations. The first two issues will be discussed in this portion of the notice, while issues related to sampling, testing, and liability will be discussed in following sections.

2. Current State Practices

Twenty-nine states currently regulate RVP.[15] Of these twenty-nine states, seven are not currently testing fuel or otherwise enforcing their RVP limitations. Twenty-one states conduct some type of RVP inspection program in conjunction with inspections of other fuel properties (*e.g.*, lead content, octane). Hawaii requires refiners located in that state to perform their own sampling of product and report to the State.

Those states enforcing RVP requirements by inspections vary greatly in the number and scope of inspections that they conduct. The number of inspections conducted by these states range from five in the last two years (Delaware) to 12,000 per year (Florida). One state (Illinois) inspects for RVP violations only upon receiving complaints, none of which were received in the most recent year. In terms of types of facilities inspected, some states (*e.g.*, Florida and Wisconsin) focus primarily on terminals and pipelines while others (*e.g.*, North Carolina and Maryland focus on service stations. Four states (Georgia, Hawaii, Maryland and Missouri) have some type of reporting requirements.[16]

California is apparently the only state now regulating RVP solely for air quality purposes. An RVP regulation was first adopted by the California Air Resources Board (CARB) in 1971, and enforcement began in 1977. The CARB regulation applies to gasoline that is sold or supplied as a motor fuel in thirteen air basins during compliance periods of four to seven months. Compliance is monitored through inspections of refineries, bulk terminals, and service stations.

An Agency subcontractor has prepared a detailed report on RVP control programs in states other than California, a copy of whch has been placed in the rulemaking docket. Information on the California program has also been placed in the docket.

3. Compliance Monitoring Program—Options Considered by the Agency

The Agency considered three overall mechanisms to monitor compliance with gasoline RVP controls:

a. Self-reporting by refiners and importers;

b. In-field sampling and testing; and

c. A combination of a. and b.

Under the first option, refiners and importers would be required to test the volatility of fuel and report it to EPA. EPA would prescribe sampling and testing methodologies. The standard could be on a "per batch" or "per shipment" basis, or it could be based on some type of averaging scheme (*e.g.*, monthly). Regulated parties would be required to submit periodic reports to EPA and to maintain any records necessary to substantiate their reports (*e.g.*, test results). EPA would perform a limited number of audits (based on probable cause and/or random criteria) of regulated parties' records and testing capability to monitor compliance, in addition to reviewing the periodic reports. This enforcement mechanism would be similar to that currently used by the Agency to monitor compliance with its gasoline lead content regulations, 40 CFR Section 80.20.

Under the second option, the regulatory standard(s) would apply to fuel in the field. Inspectors (EPA, contractor, state, or a combination) would take samples at one or more types of fuel distribution facilities according to a prescribed sampling methodology. If an acceptable RVP field screening test were available, it would be performed by the inspector to determine which samples are likely to be in violation of the applicable standard, and only these samples would be shipped to a testing laboratory. If such a screening test were not available,

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[15] One other state (New Mexico) has authority to do so, but has not established any RVP limits.

[16] If EPA promulgates RVP controls as proposed, it is possible that some or all state RVP regulations (except California's) would be preempted under Section 211(c)(4) of the CAA, as discussed in Section XII of this notice.

all samples would be shipped to a laboratory. Samples would be tested at the laboratory according to a prescribed testing methodology. Regulated parties might be required to maintain records to facilitate the tracing of violating samples through the distribution network. This enforcement mechanism would be similar to that currently used by the Agency in the enforcement of its unleaded fuels regulations, 40 CFR 80.21 to 80.21.

The third option is a combination of the first two options. Refiners and importers would be required to submit periodic reports to EPA based on their own sampling and testing of fuel volatility. Audits of records and testing capability would be performed by the Agency. In addition, fuel in the distribution network would be subject to sampling and testing by EPA to determine compliance with regulatory standards.

The Agency is today proposing an enforcement mechanism based on the second option. EPA believes that a program based on testing fuel that is being sold and distributed would be the most effective means to detect violations and to assure that the emission reduction benefits from RVP controls are actually achieved. An in-field inspection program, if it includes service stations, would also account for RVP boosters (*e.g.*, ethanol) added to gasoline in the distribution network. This is the enforcement mechanism used by almost all states with RVP control programs.

Although it would have certain benefits compared to an in-field testing program, the Agency is not proposing a self-reporting enforcement mechanism because of its serious disadvantages. Among its advantages, self-reporting scheme and enforce (an analysis of RVP enforcement costs is discussed in Chapter 5 of the Draft RIA). Identification of liable parties (once a violation is detected) would also be less difficult in a self-reporting system.

On the other hand, it would be very difficult to assure that regulated parties comply with a self-reporting system. Verification of RVP test results would be very difficult because there does not appear to be an independent means to cross-check reports like that provided by lead additive manufacturer reports under the lead phasedown self-reporting regulations. Even with such a cross-check, EPA audits have detected substantial unreported violatoins of the lead phasedown regulations. The Agency has considered butane usage as a possible RVP cross-check, but tracking would be very difficult because about 80 percent of butane is internally generated through refinery processing and the remainder can be purchased from a number of sources (*e.g.*, natural gas producers). Under a self-reporting system, there would also be potential difficulties in finding all entities that should be reporting to the Agency, particularly if self-reporting is required for all entities that add RVP boosters to gasoline (*e.g.*, splash blenders). In its administration of the lead phasedown program, EPA has found that inclusion of such blenders in a self-reporting system significantly increases the Agency workload and the number of regulatory violations because of these entities' unfamiliarity with regulatory programs. Self-reporting could also result in a large amount of data to be processed by the Agency, with potential backlogs and enforcement delays.

It would also be very difficult to correlate a self-reporting scheme with the state-by-state, month-by-month ASTM-type regulatory standards system would require a refiner or importer to allocate product to the states in which they will be used. Since product can be transported across the country through pipelines and other transportation modes, this is likely to make such allocations difficult to monitor.

In addition, a self-reporting system would not result in the removal of violating product from the market, as would a field inspection program in which testing of samples took place promptly. Once reports are received and processed by the Agency, violating product would already have been sold and consumed, and the adverse environmental effects of excess hydrocarbon emissions would have occurred.

The third option would also have some advantages. An enforcement scheme that combines self-reporting and in-field inspections would be somewhat less resource intensive than the second option (assuming that inspections would be reduced by 50 percent in a combined enforcement program). It would also be more effective than the first option in detecting violations and assuring that emission reduction benefits are achieved, and it would account for RVP boosters added in the distribution chain (assuming sampling includes service stations).

Despite these advantages, a combined enforcement mechanism is not being proposed because the Agency believes this scheme would be less effective than a program based solely on in-field inspections. The self-reporting portion of the program would divert Agency resources to administration and data processing activities with little enforcement benefit (for the reasons outlined above). These resources would be better used for inspections to assure that product being sold is actually in compliance with regulatory standards. In addition, savings in resources under the combined option would not be substantial compared to an in-field inspection program (see resource estimates in the Draft RIA).

4. Locations at Which Standard Applies—Options Considered by the Agency

Another important issue in development of a regulatory enforcement mechanism is where in the distribution network fuel will be subject to RVP limitations. The regulatory standard could be applicable to fuel at one or more points in the distribution network: Refinery (*e.g.* shipping tanks), import facility, pipeline, bulk terminal, bulk plant, blending facility, service station, fleet refueling facility. Sampling could then take place at any facility at which fuel is subject to the standard, although the Agency may choose to concentrate sampling activities at only certain types of facilities.

The Agency considered five options as to where the RVP standard would be applicable:

a. All points in the distribution network;

b. Only "downstream" points in the distribution newtwork (*i.e.*, service stations and fleet facilities);

c. Only "upstream" points in the distribution network (*i.e.*, refineries and import facilities);

d. "Donwstream" and "midstream" points in the distribution network (*i.e.*, service stations, fleet facilities, blending facilities, bulk terminals and bulk plants); and

e. "Upstream" and "midstream" points in the distribution network (*i.e.*, refineries, import and blending facilities, bulk terminals and bulk plants).

None of these options is clearly superior in all respects. Selection of any option requires an analysis of a number of relevant factors and a determination as to which are the most important. These factors (some of them interrelated) include: (1) The likelihood of achieving expected environmental benefits, (2) whether violating product could be prevented from reaching consumers, (3) the amount of enforcement resources needed by the Agency, (4) the number of facilities that must be monitored, (5) the difficulty of determining parties liable for violations, (6) whether the addition of KVP boosters during distribution would be accounted for, and (7) whether better

quality control efforts by refiners and importers would be encouraged.

The Agency is today proposing a standard applicable to gasoline and gasoline-alcohol blends that are sold or supplied (or offered for sale or supply) at any point in the distribution network (or transported between such points). EPA believes this option is preferable because it is the most likely to result in expected environmental benefits and to be the most effective in preventing violating product from reaching end users. Through "upstream" inspections violating product can be identified relatively long before it is even available for sale to end users, and "downstream" inspections can assure that RVP boosters added during distribution do not cause violations after product leaves a refinery or import facility. Finally, potential liability for violations detected at refineries and import facilities will likely result in better quality control by refiners and importers.

The Agency believes that the relative disadvantages of this option are outweighed by the above benefits, and in any case that any disadvantages can be dealt with. This option would result in the largest number of facilities subject to regulation and would be more resource intensive to monitor (assuming a constant number of inspections) than other options due to longer inspection times at "upstream" facilities. These difficulties can be resolved by an inspection program that targets inspections at those facilities at which violations are most likely to occur and at which their deterrent effect would be the greatest. Although liability issues will be more complex the further "downstream" the standard applies, the Agency believes that the proposed liability scheme described below (see Section VI.D. of this notice) will be equitable and workable.

B. Sampling Methodology

1. Introduction

A sampling methodology prescribes the procedures that must be followed to obtain a valid sample for performance of an RVP test. A sampling methodology is necessary to assure that a sample's volatility is representative of the volatility of the whole product being sampled. Such a methodology should also provide a clear standard for enforcement purposes, alleviating disputes that may result when there is no methodology or an ambiguous methodology. Industry quality control efforts are assisted by providing notice of the sampling methodology that will be followed by the Agency in its RVP enforcement program.

2. Current Industry Practices

Based on a study by an EPA contractor, it appears that RVP is measured extensively in the refinery, blending, and importing segments of the gasoline industry, but is measured much less so in the distribution and retail segments of the industry. Whenever gasoline is sold from one party to another as it moves along in the distribution system, either RVP is measured by the purchaser or it is deemed not necessary to measure RVP if the parties do business with each other on a frequent basis. Often gasoline is not meaured for RVP after it leaves the refinery because the distribution system is owned by the same entity that owns the refinery; in those cases RVP is only spot-checked, perhaps monthly, as an in-house quality control check. Thus, the contractor concluded, virtually all gasoline sold has had its RVP measured, normally in the refining, blending or importing segments of the industry.

The most commonly used sampling procedure, particularly when RVP is measured in gasoline sales transactions or in any disputed situation, is the American Society for Testing and Materials (ASTM) D–4057 *Standard Practice for Manual Sampling of Petroleum and Petroleum Products.*

The ASTM D–4057 standard specifies manual sampling procedures for a wide variety of petroleum products, including crude petroleum, greases, waxes, asphaltic materials, and gasoline. The sampling procedures in ASTM D–4057 that pertain to gasoline are bottle sampling, tap sampling, and pipeline stream manual sampling.

Bottle sampling may be used to obtain an "all-levels" sample or a "running" sample. An all-levels sample is obtained by lowering a stoppered container to the draw-off level of a tank, pulling out the stopper with a sharp jerk of the line, and raising the container at a uniform rate so that it is about 75 percent full as it emerges from the product. A running sample is obtained by lowering an unstoppered container to the level of the bottom of the outlet connection or swing line of a tank, and then raising it at a uniform rate so that it is about 75 percent full when withdrawn. Bottle sampling may also be used to obtain: a top, upper, middle, lower and outlet sample; a multiple tank composite sample; a composite spot sample; or a middle spot sample.

Tap sampling is done by drawing a sample directly from one or more sampling taps located on the upper, middle, and/or lower outside surfaces of a storage tank. Tap sampling may include the use of a sample cooler, in which case the cooler must be flushed before a sample is taken.

A manual line sampling procedure is used to sample product in pipelines, filling lines, and transfer lines. A tube that extends to the center line of the pipe and faces upstream is used to divert a sample stream to a sampling container in a quantity adequate for testing.

In addition to the ASTM D–4057 method, there appears to be significant usage by the industry of a non-ASTM approved automatic sampler/analyzer manufactured by Precision Scientific, Inc. This equipment operates "on-line" at processing points like component blending lines and blending tanks in refineries, import facilities, and blending facilities. RVP and other specifications are measured continuously by gauge and, at large operations, readings are sent every few seconds to a computer which adjusts blending rates of butane (the primary RVP-related input) and other blend components. One problem with this sampling methodology is that some "flash-off" (*i.e.*, volatilization of vapors) can occur in a partially full sampling line and lead to an understatement of RVP. However, it appears that refineries and blenders have found this method adequate for in-house quality control purposes, although sampling by the ASTM D–4057 method is used for "official" purposes (*e.g.*, to assure that product specifications for a sale are met).

The EPA contractor report, a copy of which has been placed in the rulemaking docket, contains additional information on current industry practices concerning RVP sampling, testing and recordkeeping procedures.

3. Current State Practices

The twenty-two states currently enforcing RVP limitations vary greatly in their sampling practices, as partially discussed above. The Agency subcontractor report that has been placed in the rulemaking docket includes extensive information on state sampling procedures.

In the area of sampling methodology, eight non-California states reportedly follow ASTM D–4057 (or its predecessor standard, ASTM D–270) exclusively. Eight states reportedly use ASTM D–4057 (or a modified version thereof) except at retail stations, where some type of nozzle sampling method is used. Finally, five states use nozzle sampling only or some other type of state-developed methodology.

CARB regulations now prescribe a specific detailed sampling methodology. (Cal. Admin. Tit. 13, R. 2261.) The CARB sampling regulation essentially adopts the ASTM D–270 methodology except as it relates to sampling petroleum products other than gasoline. It also includes specific instructions for sampling at the nozzles of service station pumps. Nozzle sampling procedures consist of: (1) Rinsing a sample container with gasoline immediately after a sale; (2) inserting a nozzle extension into a sample container and inserting the pump nozzle in the extension; (3) placing the sample container in a chilling medium and filling it slowly through the nozzle extension until 70–80 percent full; and (4) removing the nozzle extension, capping the sample container, checking for leaks, and (if no leaks are found) placing the container in a chest of ice water.

4. Options Considered by the Agency

Three sampling methodology options were considered by the Agency:

a. Adoption of the ASTM gasoline sampling methodologies only;

b. Adoption of a CARB–type nozzle sampling methodology only; and

c. Adoption of the ASTM methodologies and a nozzle sampling methodology of the type prescribed by CARB.

In this notice EPA is proposing adoption of the third option.

There are a number of reasons for proposing adoption of both the ASTM methodologies and a CARB-type nozzle sampling methodology. First, neither the ASTM methodologies nor a nozzle sampling methodology alone are adequate for the RVP enforcement mechanism envisioned by the Agency. Under this scheme, violations could occur at any point in the gasoline network from a refinery or import facility to a service station or fleet dispensing station. The ASTM methodologies appear to be widely accepted and usable at refineries, import facilities, blending facilities, pipelines, bulk terminals, and bulk plants. At these types of facilities it appears feasible to use one or more of the ASTM methodologies: bottle, tap, and pipeline stream sampling.

However, none of the ASTM methodologies is easily and inexpensively usable at service stations. Use of the bottle sampling method, for example, would likely require removal of the stage I vapor recovery submerged fill drop tube (*i.e.*, the piping through which fuel is transferred from the tank truck into a station's storage tanks) now found in a very large number of service station tanks. (Stage I vapor recovery equipment is now required in approximately 50 percent of all stations in the country.) Bottle sampling through the fill pipe would probably not result in a sample representative of gasoline in the tank because only gasoline contained in the fill pipe or gasoline present at the very bottom of the storage tank would be sampled (stage I fill pipes generally extend to within six inches of the tank bottom). The gasoline contained in the fill pipe would be representative of only the last load of gasoline delivered, and thus its RVP could differ from the RVP of the gasoline in the tank as a whole. However, removal of the drop tube would be difficult and time-consuming, and is likely to be objectionable to many station owners and operators.

One way (other than removal of the submerged fill drop tube) to obtain a representative sample from a service station underground storage tank would be to install sampling taps in accordance with the tap sampling procedure in ASTM D–4057. The Agency believes that this method would be objectionable to station owners because of the cost and inconvenience involved in the installation of new taps. At least one major oil company in California indicated it would not install such taps when requested to do so by CARB.

The Agency believes that an easy, quick and reliable procedure is needed for service station sampling. There are a very large number of service stations and other gasoline retail outlets in the nation; and monitoring of RVP at a significant percentage of these stations is necessary to detect and deter violations caused by the addition of oxygenates and any other RVP-boosting activities downstream in the gasoline distribution system. Nozzle sampling is clearly the easiest and quickest available sampling procedure, and its acceptability and reliability appear to have been proven by over six years of usage under the revised CARB regulations. In addition, some type of nozzle sampling method is used by nearly two-thirds of the other states that are enforcing RVP controls, again with apparent acceptance by the industry.

The Agency has conducted a study to compare RVP test results for samples obtained through ASTM D–4057 bottle sampling and three nozzle sampling techniques. One of the nozzle techniques evaluated is identical to that specified in the CARB regulations, and the second uses the CARB procedures except that the sample container is not chilled. The third is an EPA-developed technique, in which an adapter is attached to the nozzle and the fuel sample flows through a 25-foot copper tubing coil that is packed in crushed ice. The end of the tubing is fitted to a stopper that allows bottom filling of the sample container, which is also packed in crushed ice.

Thirty-six samples were collected using each of the four sampling techniques, or a total of 144 samples. Three different fuel types were used in the study: ASTM Class A (approximately 9 psi) gasoline, ASTM Class C (approximately 11.5 psi) gasoline, and gasohol. Two different test methodologies were used: ASTM P–176 (a proposed ASTM methodology similar to the current ASTM D–323 but designed to eliminate sample contact with water) and a similar methodology using the semi-automated Herzog test instrument. Table 12, below, contains the results of this study. Based on an evaluation of these results, the Agency believes that any of the three tested nozzle techniques can be used to obtain a representative sample of "straight" gasoline for RVP testing purposes. With additional care in avoiding water contamination, samples of alcohol-gasoline blends can be obtained in a manner similar to gasoline.

TABLE 12.—THE EFFECT OF SAMPLING TECHNIQUE ON THE MEASUREMENT OF GASOLINE VOLATILITY RESULTS OF INDIVIDUAL ANALYSES FOR REID VAPOR PRESSURE

	ASTM P–176				Herzog			
	ASTM (1)	EPA (2)	CARB (3)	Ambient CARB (4)	ASTM (1)	EPA (2)	CARB (3)	Ambient CARB (4)
Unleaded Test Gasoline (96 RON)	8.59	8.76	8.58	8.65	9.02	8.93	8.92	8.89
	8.54	8.72	8.67	8.79	8.93	8.94	8.95	8.90

TABLE 12.—THE EFFECT OF SAMPLING TECHNIQUE ON THE MEASUREMENT OF GASOLINE VOLATILITY RESULTS OF INDIVIDUAL ANALYSES FOR REID VAPOR PRESSURE—Continued

	ASTM P-176				Herzog			
	ASTM (1)	EPA (2)	CARB (3)	Ambient CARB (4)	ASTM (1)	EPA (2)	CARB (3)	Ambient CARB (4)
	8.75	8.93	8.54	8.92	8.96	8.93	8.95	8.91
	8.71	8.52	8.67	9.05	8.89	8.90	8.98	8.88
	8.39	8.80	8.36	9.02	8.86	9.01	8.89	8.86
	8.45	8.56	8.45	9.01	8.94	8.86	8.98	8.88
Mean	8.57	8.72	8.55	8.91	8.93	8.93	8.95	8.89
Std Dev	0.14	0.15	0.12	0.16	0.06	0.05	0.04	0.02
Unleaded Test Gasoline (Comm.)								
	11.82	11.68	11.24	11.85	12.04	12.17	12.00	12.11
	11.81	11.92	12.04	12.38	12.17	12.09	11.95	12.04
	11.91	11.36	11.67	11.71	12.07	12.12	12.00	12.03
	11.86	11.83	11.66	11.41	11.93	12.15	12.07	11.99
	11.94	11.85	11.74	11.73	11.95	12.09	12.00	12.09
	11.72	11.88	11.73	11.71	11.99	12.16	11.92	12.03
Mean	11.84	11.75	11.68	11.80	12.03	12.13	11.99	12.05
Std Dev	0.08	0.21	0.26	0.32	0.09	0.04	0.05	0.04
Super Unleaded Gasoline (Gasohol)								
	12.63	12.78	12.93	12.89	13.07	12.80	12.82	12.88
	12.66	11.87	12.87	12.71	12.93	12.80	12.84	12.79
	12.82	12.67	12.54	12.05	12.86	12.81	12.47	12.79
	12.77	12.33	12.68	12.21	12.94	12.83	12.73	12.81
	12.91	12.29	12.64	12.37	12.91	12.89	12.86	12.80
	12.89	12.80	12.62	12.64	13.04	12.88	12.95	12.95
Mean	12.78	12.46	12.71	12.48	12.96	12.84	12.78	12.84
Std Dev	0.12	0.36	0.15	0.32	0.08	0.04	0.17	0.07

Note: Values expressed in psi.
(1) ASTM D–4057 bottle sampling methodology.
(2) EPA nozzle sampling methodology.
(3) CARB nozzle sampling methodology.
(4) CARB nozzle sampling methodology (without chilling medium).

A copy of the evaluation report, which also addresses other RVP sampling and storage issues, has been placed in the rulemaking docket. Any additional work by the Agency on this subject will be placed in the docket upon completion. A copy of the result, of similar comparative tests performed by CARB, which showed almost no variation in test results, has also been placed in the docket.

C. Testing Methodologies

1. Introduction

A testing methodology will be needed for the measurement of gasoline and gasoline-oxygenate blend RVP levels to insure that a standard technique is used for enforcement of the volatility regulations. In addition, a testing methodology for alcohol content in gasoline-oxygenate blends would also need to be adopted if the Agency promulgates a different RVP standard for such fuels. Industry quality control efforts are assisted by providing notice of the testing methodologies that will be followed by the Agency in its RVP enforcement program.

2. Current Industry Practices

The following is a summary of information gathered by an EPA contractor. A copy of the contractor report has been included in the rulemaking docket. At this time several methods are available for determining the RVP of gasoline and gasoline-oxygenate blends. The available RVP measurement techniques are: (1) ASTM D–323; (2) ASTM P–176; (3) Herzog (wet and dry methods); (4) Southwest Research Institute automatic analyzer; (5) Precision Scientific automatic analyzer; and (6) ASTM D–2551 (Micromethod).

ASTM D–323 is the current "wet" RVP test methodology prescribed by the ASTM. ASTM P–176, as used in this notice, refers to the proposed RVP "dry" test method set forth in Annex A3. of that ASTM proposed specification. These methods are identical except that ASTM P–176 can be used for oxygenates since any contact with water has been eliminated. In both methods the gasoline chamber of the vapor pressure apparatus is filled with the chilled sample and connected to the air chamber at 100 °F. The apparatus is immersed in a bath at 100 °F and is manually shaken periodically until a constant pressure is observed.

The Herzog wet and dry methods are essentially the same as the wet and dry ASTM methods except that an instrument manufactured by Walter Herzog, GMBH, of West Germany is used. The samples are automatically rotated clockwise and counterclockwise to provide controlled and consistent mixing of the bomb.

The ASTM methods require 40–90 minutes to obtain results while results from Herzog are available in approximately 8–10 minutes. For petroleum refineries or blenders these methods are considered slow since these types of facilities both perform high volume blending operations involving thousands of gallons per hour. Fuel produced at these facilities must meet RVP specifications for sale purposes and it is believed that RVP results must be obtained every few minutes, as opposed to the time required to obtain results from the ASTM or Herzog methods. These are at least two types of automatic analyzers that provide continuous or rapid RVP results

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that allow blending operators to rapidly adjust butane feed rates.

One type of automatic analyzer is manufactured by Precision Scientific, Inc. It operates on-line and measures RVP continuously by gauge and sends signals every few seconds to the computer. This equipment has reportedly not been accepted by ASTM as an equivalent testing method to D–323 because some "flash-off" (*i.e.*, volatilization of vapors) can occur in a partially full sampling line and lead to an understatement of the measurement in the test equipment. The RVP measurements reportedly tend to differ from those using the D–323 methods by up to 0.3 pounds per square inch (psi) according to Precision Scientific.

However, refineries and blenders have reportedly found, through correlation studies, that they can use this equipment with satisfactory results to meet in-house quality control specifications. These operations use the second type of automatic laboratory analyzer as the "official" RVP record and only use the Precision Scientific results for on-line "working" purposes.

The second type of automatic analyzer is sold by Southwest Research Institute (SRI) and measures RVP in four minutes. It appears that refineries and blenders use the SRI equipment results for their official motor gasoline RVP records for purposes of final product specifications for sale. Where also used, the Precision Scientific results are kept but are not considered official. Samples of final blended products are taken at least once per 8-hour shift, using the ASTM D–4057 sampling method, and tested by the SRI equipment. The digital readout results are charted and entered into a computer at larger operations for computing periodic averages. The SRI testing method has been proposed as one of two equivalent methods in ASTM P–176 (Annex A4.) for the measurement of vapor pressure in gasoline and oxygenated fuels (the other method is the manual "dry" method discussed above).

The ASTM D–2551 Micromethod test procedure (not discussed in the contractor's report) is another technique for the measurement of petroleum product vapor pressure. Vapor pressure equivalent to RVP, in method D–323, is obtained by the use of a correlation. A sample of known volume is introduced into an evacuated, temperature-controlled bulb of known volume. The relative volumes are chosen to give the desired vapor-to-liquid ratio (V/L). The rise in pressure in the bulb, resulting from the sample introduction, is equivalent to the sum of the vapor pressure of the sample and the partial pressure of dissolved air, practically all of which come out of solution. The rise in pressure is measured with a mercury manometer or equivalent pressure-measuring device. Conversion to Reid vapor pressure is made through the use of a correlation.

The contractor report shows the test methods used by the refiners, retailers, importers, blenders, distributors and pipeline services that were surveyed by the EPA contractor.

3. Current State Practices

This section summarizes testing-related information contained in an EPA subcontractor report on state RVP programs. A copy of the report has been placed in the rulemaking docket.

The test methods used by most states are ASTM D–323 for gasoline and ASTM P–176 for gasohol and other alcohol blends. Some of the states (Utah, Maryland, Louisiana and Arizona) use D–323 for both blends and gasoline while one state (North Carolina) follows P–176 for both gasoline and blends. California uses ASTM D–323 for both gasoline and blends.

The enforcement tolerance used in the non-California states is the current ASTM D–323 reproductibility [17] value of 0.55 psi. Initial indications from the subcontractor researching the state practices indicated a tolerance of less than 0.55 psi in many cases, but followup conversations with state officials confirmed that the ASTM reproducibility value is used. California's enforcement tolerance is set at 0.3 psi. This is the reproducibility value which ASTM recommended prior to changing to its current 0.55 psi (*i.e.*, in the 1958 version of ASTM D–323).

4. Options Considered by the Agency

a. *RVP Test Methodologies.* The following options for RVP testing were considered for proposal by the Agency: (1) ASTM D–323; (2) ASTM P–176; (3) Herzog (wet and dry methods); and (4) SRI automatic analyzer.

The Precision Scientific automatic analyzer was not considered since it is an on-line unit which is generally used to measure RVP continuously during blending operations. This method would not be very useful for this regulation since testing of product at facilities other than refineries will be necessary. In addition, this method reportedly undermeasures volatility and is apparently used by the industry only for internal quality control.

The ASTM D–2251 method was not considered since it is an obsolete method. The equipment needed for it is not manufactured any more and only a few of them exist.

Based on the EPA contractor reports, it appears that the ASTM D–323 "wet" method is the most widely used RVP testing methodology in both industry and state RVP control programs. This method is not being proposed, however, because it apparently cannot be used to determine the vapor pressure of gasoline-oxygenate blends which contain water-extractable oxygenates because the fuel sample comes into contact with water. A similar problem exists for the "wet" Herzog method.

Instead the Agency is proposing to adopt the ASTM P–176 proposed "dry" method. This method is nearly identical to ASTM D–323 except that it is designed to eliminate contact of the fuel sample with water. For a similar reason, EPA is proposing to adopt a second "dry" testing method which uses the Herzog testing instrument to simulate the P–176 procedures. Use of these "dry" testing methods is necessary because under any of the regulatory options proposed in this notice it would be necessary to test the RVP of gasoline-oxygenate blends as well as straight gasoline. The P–176 method is also currently used in the industry and many state programs.

The SRI automatic method is not proposed in specific regulatory language in this notice because it is expensive and reportedly not readily available. However, it has been proposed by ASTM in the P–176 proposal as an alternative test method and (as discussed below) limited testing by EPA indicates it may be a much more precise methodology than the two dry methods being proposed by the Agency. Public comments on this method are being requested and the Agency may adopt this as an alternative test method in final rulemaking.

To determine the precision statement for this regulation a test program was conducted by EPA in late 1986. Forty-five testing laboratories within the United States and Canada analyzed four fuels (in duplicate) for RVP. The laboratories were asked to evaluate each set of fuel by the test methods they had available. Methods were evaluated by the following number of labs: 25 ASTM P–176, 21 dry Herzog, 4 SRI, 1 ASTM D–2551, 2 ASTM D–323 and 1 wet Herzog. The fuels evaluated were 9.0 psi unleaded gasoline, 12.0 psi unleaded gasoline, 10.2 psi reagent grade

[17] "Reproducibility" is defined by ASTM as the difference between two single and independent results, obtained by different laboratories on identical material, which would (in the long run and in the normal and correct operation of the test method) be exceeded in only one case in twenty.

cyclopentane and 12.0 psi gasohol. A report summarizing this study has been placed in the rulemaking docket.

Table 13 shows the repeatability and reproducibility found during EPA's test program and in a 1985 study conducted by ASTM. EPA test results have been calculated by: (1) Use of standard ASTM statistical analysis techniques, and (2) "normalizing" the values in (1) based on the accepted RVP of the cyclopentane used in the test program (as discussed in the test program report). ASTM's1985 study included 17 laboratories and 18 fuels and evaluated D–323, P–176, wet and dry Herzog, and the SRI automatic method.

TABLE 13.—REPEATABILITY AND REPRODUCTIBILITY OF ROUND-ROBIN RVP MEASUREMENT PROGRAMS

	Repeatability (psi)	Reproducibility (psi)
P–176:		
EPA-ASTM analysis	0.68	1.33
EPA-normalized	.68	1.02
ASTM	.77	1.42
Herzog:		
EPA-ASTM analysis	.48	1.57
EPA-normalized	.48	1.01
ASTM	.43	1.16
SRI:		
EPA-ASTM analysis	.28	1.32
EPA-normalized	.28	.42
ASTM	.31	1.32

EPA has not reached a conclusion about the precision of these test methodologies. The Agency believes that additional study may lead to improved precision. Several areas in particular need investigation. First, the SRI results under the EPA test program show significantly better precision than the other methods, and the reasons for this are not apparent at this time. Also, EPA believes that additional procedures, such as the use of pure components for calibration of the total measurement process, may be beneficial. Closer attention should be given to the pressure measuring devices (i.e., pressure gauges and tranducers).

In addition, we expect more data to become available within the next year when ASTM completes another round-robin evaluation of RVP test methodologies. EPA requests comments on the prevision of RVP in Section X below.

In addition to laboratory analysis techniques, the Agency would like to use a field screening test to determine which samples are likely to be in violation of an RVP standard. If such a test were available, only these samples would be sent for lab analysis. The RVP field screening test is being developed at this time. It would not be used as an enforcement tool, but only as a screening technique.

b. *Alcohol Content Test Methodologies.* Three options have been considered for determining the alcohol content in gasoline-oxygenate blends. Option 1 is currently being used by the Agency to determine compliance of fuels with waiver specifications under section 211(f) of the Clean Air Act. This method consists of analyzing gasoline samples which are extracted with water prior to analysis on a gas chromatograph (GC). The extraction eliminates hydrocarbon interference during chromatography. A known quality of isopropanol is added to the fuel prior to extraction to act as an internal standard. Results are calculated to act as an internal standard. Results are calculated and reported by data reduction software on the GC using peak area, retention times and other data obtained during the run.

Option 2 also utilizes a GC to perform the analysis but uses direct injection with a single column which is capable of resolving the individual alcohols without interference from hydrocarbon fuel components. This option would take a somewhat longer time for analysis but should provide more accurate results given the lesser amount of sampling handling that is necessary.

The third option is also a direct GC method but utilizes a two-column backflush method in which the sample is injected and loaded onto a primary column.

All three options are being considered as appropriate techniques to measure the alcohol content of oxygenates.

In addition to laboratory analysis techniques for alcohol content, the Agency is considering use of a field screening test. At this time the only known field test will indicate only the presence or absence of alcohol but not the actual quantity of specific oxygenates. In this test a sample of fuel is shaken with a pre-measured amount of ethylene glycol. An increase in volume of the ethylene glycol portion of the sample will indicate the presence of alcohol in the original gasoline sample.

D. Liability Provisions

1. Introduction

A regulation which imposes liability on certain parties for violation of regulatory standards should serve two purposes: it should put all responsible parties on notice as to their potential liability and it should equitably place liability upon the parties responsible for the violation. Ideally, liability should be placed upon the party(ies) actually responsible for the violation. However, in practice this determination is often very difficult, if not impossible to make. Therefore, the Agency has studied two alternative schemes which attempt to serve the two purposes above.

2. Current State Practices

A study done by an EPA subcontractor shows that 25 states (excluding California) have liability provisions with respect to volatility regulations. Of these 25 states, four have either had no experience implementing the liability provisions or have never had a violation occur which would trigger the liability provisions.

Of the 21 remaining states, ten have liability attaching only to the party responsible for the fuel at the point of the violation. These ten states do not try to trace the fuel back to find the actual source of the problem.

The other eleven non-California states have provisions which direct them to attempt to trace the product in violation back to the party that actually caused the violation. However, of these eleven states nine have had no experience with actually tracing back a violation and the remaining two states only do so when multiple problems occur in a short time period. Their experience has been that to trace back a violation in every instance would be too resource intensive and time consuming due to the complexity of the distribution network.

In addition, California has provisions which direct its inspectors to trace the product in violation back to the specific tank at the terminal and to the refinery from which the product came. Inspectors obtain information at the retail station concerning the last five deliveries of gasoline and then attempt to follow the paper trail back to the source of the product in violation.

Additional information concerning these provisions has been placed in the rulemaking docket.

3. Options Considered by the Agency

The Agency considered two schemes concerning liability for violations of RVP regulations:

a. Liability based upon tracing the source of the violating product to the party which actually caused the violation; and

b. Liability based upon a presumption of liability and/or vicarious liability.

The first alternative, the "tracing back" scheme, would require the Agency to attempt to trace the movement of a fungible product back through the distribution network to find the source of the violation (generally the

refinery or import facility at which the product was produced or imported). The Agency would require that a source at which a violation was discovered provide it with records showing where the product came from and then would attempt to retrace the specific load of product to the point where the violation was caused. This scheme is currently used by the California Air Resources Board, as well as by two other states (both of whom have significantly less experience using the scheme).

The second alternative would involve presuming certain parties who produced, imported, transported, stored, blended, distributed, or sold product that was subsequently found to be in violation liable for their participation in the production, transportation, distribution and sale of the product; certain defenses would also be made available that would negate the presumption of liability. In addition, the concept of vicarious liability is included in this alternative. This concept involves imputing liability for a violation to a party with some degree of control over the party actually found to be in violation. In practice, this results in one party, who has responsibility for and/or control over the actions of a second party, being liable for the actions of the second party. This concept is currently being used successfully by the Agency in its fuel contamination liability regulations (40 CFR 80.23).

The Agency today is proposing a liability scheme for volatility regulations based upon the second option. EPA believes that a liability scheme based upon a presumption of liability and/or vicarious liability, with appropriate defenses, would be the most effective and equitable method of placing liability upon the party(ies) responsible for causing the violation to occur. This in turn would induce all parties in the gasoline distribution network to act together to limit the occurrence of a product exceeding RVP limitations, thus assuring that the emission reduction benefits from RVP controls are actually achieved. This mechanism would also make the most efficient use of the Agency's resources.

EPA believes that the proposed liability scheme is the best alternative for several reasons. This type of provision is currently used, quite successfully, in the fuel contamination liability regulations. It is a scheme which is familiar both to EPA and to the industry. This type of provision also puts the burden of showing compliance with the regulations on the responsible parties, not on EPA, which is appropriate given that those parties have unique or better access to the relevant evidence than the Agency. However, it does not specifically require EPA to promulgate additional recordkeeping provisions. Finally, it is a workable program while being less resource intensive than the alternative mechanism.

The Agency recognizes that a scheme which would attach liability only to the party that actually caused the violation would also be equitable; however, such a provision is not being proposed for three reasons.

A "tracing back" enforcement mechanism, to identify the single party directly responsible for a violation, would require the Agency to attempt to follow a paper trail which is often scarce or nonexistent. Even where such a trail exists it is often difficult, if not impossible, to trace a fungible product such as gasoline particularly due to: (1) Extensive commingling of product at the pipeline and other distribution terminals; and (2) the addition at the "midstream" and "downstream" levels of alcohol and other octane boosters which increase a product's RVP. The Agency had an independent contractor attempt to trace gasoline from a retail outlet back through the distribution network to its source, and the contractor found that it could only do so in five of nine cases. The Agency could not run an effective enforcement program based upon a scenario where liability could be determined only slightly more than fifty percent of the time.

In addition, a "tracing back" scheme would be very resource intensive for the Agency's enforcement program. The inspectors would have to obtain information at the time of the inspection which would allow the tracing effort to begin, and additional resources would have to be allocated as the tracing got further into the distribution network. Both of the states (other than California) that attempt to trace back now do so only where a major problem exists because they have found it too time consuming and resource intensive to do it for every violation. In addition, the independent contractor spent approximately 115 man-hours to trace back the nine samples mentioned above and, even with this huge expenditure of resources, they could only successfully trace back five of the nine.

Finally, a "tracing back" liability provision would put the burden on the Agency to promulgate additional regulations requiring all parties to keep extensive records in order to have an effective enforcement program. EPA believes that such a requirement is not the best method upon which to base an enforcement program.

For these reasons the Agency is proposing, as the most effective means of supporting its enforcement program with respect to volatility regulations, a liability provision based upon presumptions of liability combined with some vicarious liability. EPA believes that imposing vicarious liability upon refiners, under specified circumstances, is reasonable because a refiner should have responsibility and control over other parties who operate under its trade, corporate or brand name. Such a refiner is responsible for ensuring a product's integrity and quality when the product is being marketed under that refiner's name. In addition, the refiner is in the unique position of being able to control product quality and integrity through the imposition of contractual obligations upon a party operating under the refiner's name. Thus, the Agency believes that the imposition of vicarious liability upon a refiner for violations found at its branded facilities (including retail outlets and distributors) is both necessary and reasonable under these circumstances.

VIII. Changes to Certification Test Procedures

In addition to the regulations governing gasoline volatility, EPA is proposing several changes in the current Federal Test Procedure (FTP) used for certification of new motor vehicles as part of today's notice. The changes are necessary to remedy the failure of certain in-use vehicles to adequately purge their canisters and the resulting excess emissions, as described in Section IV.B. above. The most significant changes would involve the loading of emission control canisters prior to beginning the evaporative emission compliance test sequence and the inclusion of canisters in heavy-duty gasoline-fueled engine emissions testing. These changes would ensure that the test procedure actually tests the purging capability of the control system.

As we stated in Section IV above, it has been EPA's position that evaporative emission control systems should be designed to work effectively and maintain their level of control under in-use operating conditions. It also has been EPA's position that evaporative emission control systems should be able to quickly recover their hydrocarbon storage capacity after experiencing any of the various operating conditions that might occur in-use. Some of these conditions are the high volatility of commercial fuels, the use of alcohol blend fuels, high ambient temperatures,

and widely varying in-use driving patterns. Even if the volatility of commercial fuels is controlled there would still be occurrences of high volatility commercial fuel before fuel controls were completely implemented in 1992, and before and after each summer control period thereafter; this would also occur if alcohol blends were to receive a special RVP allowance. In particular, the Agency described its intent that evaporative emission control systems have the capability to restore hydrocarbon storage capacity with a single Urban Dynamometer Driving Schedule cycle (UDDS) even if the canister is saturated at the start of the test sequence (see EPA Advisory Circular 50A). Nonetheless, some vehicle manufacturers continue to express confusion on this issue.

In order to clarify this matter and resolve the problem of insufficient purge, the Agency has evaluated a requirement to load evaporative control canisters at least to the "breakthrough" point prior to the FTP preconditioning UDDS (that is, to the point during loading where, because of saturation of most of the charcoal granules, most vapors are no longer captured and emissions begin to rise sharply). This proposed change would apply to both light- and heavy-duty vehicles.

Two procedures are proposed for loading the canister to breakthrough, depending on canister configuration. Canisters connected to the fuel tank would be subjected to a series of diurnal heat builds until breakthrough was reached. For canisters not connected to the fuel tank, gasoline vapor generating equipment would be required (specifications for which are proposed in today's regulations).

The express purpose of the certification process is to result in compliance with emission standards in actual use throughout a vehicle's useful life. EPA also conducts testing of in-use vehicles to monitor in-use vehicle emission compliance. In-use vehicles would undergo the same pre-conditioning as a certification vehicle; *e.g.*, the canister would be loaded at least to breakthrough before the driving cycles begin. EPA proposes that in-use vehicles received with a canister already loaded to breakthrough or beyond would also be tested according to the same procedures, with no additional steps taken to reduce canister loading. Vehicles are expected to comply under real-world conditions, and in fact heavily loaded canisters purge very rapidly during the preconditioning driving cycles. For properly functioning systems we expect that there would be little difference in canister loading after the preconditioning driving cycle between canisters loaded to breakthrough by EPA and canisters loaded by in-use experience—even if they are very heavily loaded.

A closely related proposed change would affect the testing of heavy-duty gasoline engines. In the current Federal Test Procedure for heavy-duty engines, there is no requirement for evaporative emission control systems to be in operation during the performance of the exhaust emission test sequence. This means that any evaporative hydrocarbon loads that would be sent to the engine during normal operations are not sent to the engine during the exhaust test. Therefore, any impacts that the evaporative hydrocarbons might have on exhaust emissions are overlooked in the current test procedure. EPA does not believe that this situation is appropriate for evaporative control systems. Therefore, changing the test procedure so that prior to the heavy-duty engine test the vehicle's evaporative control canister(s) (and refueling control canister, if present) would be attached to the engine appears appropriate and necessary to ensure that manufacturers focus appropriate attention on eliminating any exhaust impacts of the control systems (as the light-duty procedures require after the 1990 model year). Loading of the canister(s) would correspond to a point equivalent to the loading which would exist at the end of the diurnal breathing loss test.

There are also other less significant changes to the regulations for evaporative emissions testing being proposed as a part of today's notice. Two of these changes relate to the standardization of the conditions experienced by test vehicles before undergoing testing. One proposed change is to require that vehicles received for testing be stored with their fuel cap removed. The reason for this is to prevent any unusual loading of the evaporative emissions canister which may result from the generation of vapors in the fuel tank. The second change, proposed to eliminate any potential effect that temperature variations may play on the loading characteristics of the evaporative emissions canister, is to require that test vehicles be conditioned or "soaked" at ambient temperatures between 68 °F and 86 °F for a period of no less than six hours prior to loading the evaporative emission canister to breakthrough. This measure would prevent temperature variations from affecting the test results.

Other minor changes to the wording of the regulations have been proposed in today's notice for the sake of clarification. Most notable are several references in the regulations to "fuel evaporative emissions" which are proposed to be changed to "evaporative emissions" as mentioned in Section II above. The reader who wishes a better understanding of the details of these and other less significant changes should consult the appendix and proposed regulations accompanying today's notice.

These test procedure changes would result in a small additional cost to the consumer (less than 25 cents per vehicle; see Chapter 4 of the Draft RIA).

VIII. Mid-Range Volatility Control

Although today's notice primarily focuses on RVP as the appropriate measure of fuel volatility, another fuel parameter is important with respect to emissions. RVP is primarily useful in assessing evaporative emissions in the range of common ambient temperatures. At higher temperatures, additional, heavier gasoline components begin to boil away, increasing the need to assess the "mid-range" volatility characteristics of the fuel. These higher-temperature conditions (120 °F–200 °F) occur in the carburetor float bowl or (for fuel injected vehicles) in the fuel tank during the hot-soak period after the engine is shut off.

The mid-range volatility parameter considered most appropriate for evaluating evaporative emissions at the higher soak temperatures is the percent of fuel evaporated at 160 °F, abbreviated "$\%_{160}$". EPA has analyzed the need for both fuel-based control and vehicle-based control of $\%_{160}$ (see the Draft RIA associated with today's notice).

Our analysis of the costs and emission reductions associated with controlling the $\%_{160}$ of in-use fuels concludes that the potential VOC reductions in the year 2010 would be no more than 26,000 tons at a cost of about one cent per gallon. The resulting cost effectiveness would be at least $22,000 per ton of emission control. We do not believe such an initiative is necessary or appropriate in light of the very limited potential for VOC reduction and the extremely high cost.

However, just as a mismatch exists between the RVPs of certification test fuel and in-use gasolines (see Section IV of today's notice), a similar mismatch exists between the $\%_{160}$ specifications of certification fuel and current in-use Class C gasoline (about 20–22 percent vs. 31 percent). Under a gasoline volatility control program reducing in-use RVP to 9.0 psi, as is proposed today, the $\%_{160}$ of in-use fuel would likely drop,

but may still be higher than the $\%_{180}$ range of today's certification fuel specifications. (MVMA's fuel surveys for 1982–1985 estimate that Class A in-use fuels in the range of 9.0 psi had $\%_{180}$ values around 27 percent.)

Our intent is for the properties of certification fuel to be similar to those of in-use fuels. To improve the representativeness of certification fuel under an in-use RVP control program, we propose to introduce a specified range of 20–35 percent for $\%_{180}$. We also propose to change the specified distillation points for certification fuel so as to accommodate the new $\%_{180}$ requirement.

Since it is not clear what the $\%_{180}$ of in-use fuels would be under an RVP control program, the proposed broader range would allow certification fuel to represent a range of potential in-use $\%_{180}$ levels. EPA would monitor the mid-range volatility of commercial fuels to ensure that certification fuel remained representative. If this monitoring demonstrated that the $\%_{180}$ of in-use fuels had stabilized within a narrower range, EPA might choose at that time to narrow the specifications for certification fuel $\%_{180}$ and distillation characteristics.

If the current distillation properties of in-use fuels remain unchanged in the future, our previous vehicle cost analysis described in Section IV will have already included the vehicle cost of manufacturers adjusting to the proposed $\%_{180}$ range. This is because the test fuels used in determining uncontrolled emissions and canister purge capacity had $\%_{180}$ levels representative of current in-use fuels. If, however, the $\%_{180}$ of in-use fuels rises in the future and certification fuel is changed to reflect the rise (within the 20–35 $\%_{180}$ range), there may be an additional vehicle cost associated with controlling a slightly higher level of uncontrolled hot-soak emissions. We do not believe this cost would be significant and, in any event, it would apply to a decreasing number of vehicles since fewer and fewer vehicles are carbureted.

IX. Other Changes to Certification Test Fuel

In addition to the proposed change in the mid-range volatility of EPA's certification test fuel (see Section VIII above), we also propose changes in three non-RVP-related specifications of certification test fuel: Research octane number (RON), fuel sulfur content and fuel aromatics content. The changes would make the certification fuel significantly more representative of in-use fuels at very little (if any) cost to vehicle manufacturers.

First, we propose to change test fuel RON from its current 96.0 to 91.0 ±1.0, with one exception (described below). In addition to improving representatives (summertime regular-grade gasolines average about 92 RON), the change in RON could actually simplify the certification process for vehicles equipped with knock sensors. At present, EPA requires these vehicles to undergo data acquisition on both certification fuel and on a second, lower-octane fuel to prevent the improper use of knock sensors. Improving the representativeness of the certification fuel octane would thus eliminate the need for this dual testing. While we do not expect this change to have any significant overall effect on emissions, there may be improvement in some individual cases.

We are also proposing a special provision to allow the use of 96 RON test fuel for the testing of certain vehicles. For example, we do not believe it is appropriate to use 91 RON test fuel in cases where it might cause the vehicle to suffer engine damage. However, before testing is allowed on 96 RON test fuel, we would want sufficient assurance that regular fuel would not be used for the vehicles in use. Thus, EPA is proposing to allow testing on 96 RON fuel only if the manufacturer both *requires* the use of premium fuel in all appropriate customer literature for all driving modes and states in the application for certification that it has information that operation on regular unleaded fuel could cause engine damage. The manufacturer's determination that operation on regular unleaded fuel could cause engine damage, and the information upon which it is based, would be subject to audit by EPA.

Second, we propose to increase the minimum sulfur content of certification test fuel from 0.0042 to a minimum of 0.03 percent. This change would make the test fuel more representative of in-use fuels, which average about 0.032 percent sulfur. Sulfur content has been shown to affect the conversion efficiency of vehicle catalysts. A General Motors Research Laboratories study (described in the support document referenced at the end of this section) found that an increase in test fuel sulfur content from 0.01 to 0.03 weight percent can significantly reduce catalytic conversions of CO and NO_x emissions. Use of a test fuel with a sulfur content more representative of in-use fuels thus should result in emissions measurements more representative of in-use emissions.

Finally, we propose to increase the fraction of aromatic compounds in certification test fuel from 35 percent to 40 percent (for regular-grade test fuel) and to 45 percent (for premium-grade test fuel). These values are more representative of current and anticipated future in-use fuels. We do not believe that this change would have any significant effect on emissions measured during certification testing.

In addition, EPA proposes slight changes in the specifications for the initial boiling point (IBP) and distillation end point (EP) of certification fuel. Expanding the range for the IBP by 5 °F (from 79–85 to 75–100 °F) and increasing the EP from 415 to 437 °F (437 °F is the ASTM D439 specification for in-use fuels) would facilitate the procurement of test fuel without, we believe, a significant effect on emissions.

Changes in test procedures, including test fuel changes, can in some circumstances affect the calculation of vehicle fuel economy that is used to assess compliance with the Federal Corporate Average Fuel Economy (CAFE) standards. However, we are unaware of any data that would indicate that the fuel specifications proposed today, individually or collectively, would have any significant effect on the CAFE fuel economy calculation. We do request comments (and supporting analyses) on this issue. (Although no change in certification fuel RVP is proposed today, if the final rule were to establish a test fuel RVP higher than 9.0 psi, we would consider the effect of that change on the CAFE calculation as a part of the final rulemaking.)

The EPA Support Paper "Proposed Octane Reduction and Sulfur Content Increase of Certification Test Fuel", found in the public docket for this rulemaking contains further details of the proposed RON and sulfur content certification fuel changes discussed above.

As previously discussed, changes in test fuel properties can also have an effect on vehicle emissions. If significant, this effect could provide a basis for EPA to disallow use of data carried-over for certification purposes from tests completed before the fuel property changes. EPA does not anticipate that the fuel changes proposed in this notice will significantly affect emissions and, consequently, limit the use of carryover data. Therefore, EPA proposes to allow the use of data carried over from tests completed in model years prior to the fuel change to model years after the change. However,

EPA proposes to use the new fuel to perform in-use enforcement testing of vehicles certified after the fuel change even if carryover data from before the fuel change is used to certify the vehicle.

X. Description of the Proposal

This section summarizes in detail the proposed control measures discussed in today's notice. The proposed requirements may be found in their entirety in the proposed regulations published with today's notice.[18]

A. Commercial Fuel Volatility Requirements

We propose the following:

1. Standards

a. *Gasoline:* Gasoline sold, suplied, offered for sale or supply, or transported [19] in any state except Hawaii and Alaska [20] during the period of May 16 through September 15 would be subject to the following volatility limits:

Current ASTM area Classification[1]	RVP limits (psi)	
	Beginning May 16, 1989	Beginning May 16, 1992
A	9.2	7.0
B	9.1	7.8
C	10.5	9.0
D	12.3	10.5
E	13.7	11.7

[1] Where more than one class of fuel is allowed by ASTM during a particular month, the proposed standard is based on the ASTM classification with the lower volatility.

b. *Gasohol.* Three alternative RVP control options for gasohol:[22]

i. Gasohol offered for sale beginning May 16, 1989 wold be subject to volatility limits equal to the corresponding gasoline RVP limit plus 1.0 psi RVP; or

ii. Gasohol offered for sale beginning May 16, 1989 would be subject to the same volatility limits as gasoline; or

iii. Gasohol offered for sale from May 16, 1989 through September 15, 1992 would be subject to volatility limits equal to the corresponding gasoline RVP limit plus 1.0 psi RVP. Beginning May 16, 1993, gasohol offered for sale would be subject to the same volatility limits as gasoline.

c. *Methanol blends:* Two alternative options for methanol blends in the event a 1.0 psi RVP allowance for gasohol were established, as in b.i. or b.iii. above:[23]

i. Methanol blends offered for sale beginning May 16, 1989 would be subject to volatility limits equal to the corresponding gasoline RVP limit plus 1.0 psi RVP. This provision would remain effective for the same period of time as any similar provision for ethanol blends; or

ii. Methanol blends offered for sale beginning May 16, 1989 would be subject to the same volatility limits as gasoline.

2. Enforcement Provisions

a. *Overall Enforcement Scheme.* The proposed enforcement provisions in this notice are based on the requirement that gasoline and alcohol-blend fuels not exceed RVP limits at any point in the distribution network at which they are sold, supplied, offered for sale or supply, or transported. These points include (but are not limited to): Refinery shipping tanks, importer shipping tanks, pipeline and other common carrier facilities, bulk terminals, bulk plants, service stations, and other facilities at which gasoline or alcohol-blend fuels are dispensed to motor vehicles.

The proposed regulations define the "applicable standard" which may not be exceeded as the RVP standard applicable to the geographic area and the time period in which gasoline is intended to be dispensed to motor vehicles. When such area and time period cannot be determined, the applicable standard will be assumed to be the most stringent RVP limit for that volatility season (i.e., the standard for Class A areas). The issue of what is the applicable standard will only arise when gasoline is moving through the distribution system. Once gasoline is delivered to a service station or fleet dispensing facility, the applicable standard will be the RVP standard for the area in which the facility is located and the time period in which the gasoline is being sold or offered for sale. For gasoline in other parts of the distribution network, the Agency anticipates that refiners, importers, distributors, resellers, and carriers will clearly designate the volatility class of gasoline and the location and time period in which it is intended to be dispensed to vehicles. Where this is not done and this information cannot be determined, the Agency will assume that the Class A standard is applicable.

The Agency intends to establish a vigorous inspection program to monitor compliance with whatever RVP limits are adopted. This notice sets forth proposed sampling and testing procedures that would be used to determine whether violations of the RVP standards have occurred. In addition, the notice proposes testing procedures that would be used to measure the ethanol and/or methanol content of fuel samples. Such a measurement of alcohol content would be necessary to determine whether the sample is subject to any special RVP limit that is established for alcohol-blend fuels.

This notice also sets forth proposed provisions for determining which parties are presumed liable for violations that are detected. The proposal also would provide defense that could be raised to rebut potential liability in many cases.

These proposed enforcement provisions are discussed in more detail below.

b. *Sampling Methodology.* The proposed sampling methodology, set forth at 40 CFR Part 80 Appendix D, is essentially identical to that used by the

[18] Where several control options are proposed for gasohol and methanol blends, the proposed regulations include a provision for special regulatory treatment of both types of blends on a permanent basis. If the final rule provides such treatment for only a limited period of time and/or for only one type of blend, this provision would be modified accordingly. If no special regulatory treatment is provided in the final rule, this provision would be deleted.

[19] As used in this section, "offered for sale" inlcudes sale, supply, offering for sale or supply, and transport.

[20] An exemption for Hawaii and Alaska is proposed because neither of these states has an ozone problem and both have independent gasoline supply networks. These states are effectively included in EPA's analyses of costs and emission reductions because Hawaii and Alaska fuel consumption and vehicle-miles-traveled (VMT) projections are built into the national estimates we used. However, fuel consumption and VMT in these states are very small compared to nationwide totals (about one-half of one percent). Moreover, exempting Hawaii and Alaska would slightly decrease both costs and effectiveness and thus would have an insignificant impact on the overall cost effectiveness of the proposed rule.

[22] In order to qualify for treatment as gasohol, fuel would have to contain at least 9 percent ethanol. In addition, pumps from which such fuel is dispensed at retail outlets and fleet facilities would have to indicate that the fuel being dispensed contains ethanol (and its percentage concentration). Invoice and other delivery documents would have to be similarly labeled. A minimum ethanol content is specified to assure that fuel containing only trace amounts of alcohol does not qualify for this treatment. The 9 percent ethanol content is based on the 10 percent maximum ethanol content allowed by the Section 211(f) gasohol waiver, with some allowance for blending variations. The maximum limit set by the waiver would still apply. These proposed marketing requirements would aid enforcement.

[23] In order to qualify for this treatment, fuel would have to contain at least 4 percent methanol. The marketing requirements described above for gasohol would also apply to such methanol blends. The same rationales for these provisions apply as for the similar gasohol provisions. The 4 percent methanol content is based on the maximum 4.75 percent and 5 percent methanol content allowed by the ARCO and DePont waivers, respectively, with some allowance for blending variations. The maximum methanol limits set by those waivers would still apply.

California Air Resources Board (Cal. Admin. Code Tit. 13, R. 2261).[24] CARB's methodology is a combination of the ASTM sampling methodologies for gasoline products and a service station nozzle sampling procedure developed by CARB.

The ASTM methodologies would be used by the Agency in sampling gasoline and alcohol-blend fuels at facilities such as refineries, import facilities, blending facilities, pipelines, bulk terminals, and bulk plants. These sampling procedures include bottle sampling, tap sampling, and manual line sampling. The nozzle sampling procedure would be used at service stations and similar dispensing facilities (*e.g.*, fleets). These procedures are discussed in detail in Part VI.B. of this notice, above.

The Agency is also considering adoption of two alternative nozzle sampling techniques: (1) Instead of placing the sample container in a chilling medium while being filled and stored (as in the CARB procedures), the container would remain at ambient temperatures prior to pre-testing cooling; and (2) sampling would be done using the EPA-developed equipment and procedures described in Part VI.B.4. of this notice, above. That portion of the notice also describes testing conducted by the Agency of these alternative nozzle sampling techniques as well as of the CARB procedures.

c. *Testing Methodologies.* Two RVP laboratory testing methodologies are proposed as a new Appendix E to 40 CFR Part 80. Method 1 is almost identical to the "dry" ASTM P–176 method (Annex A.3) and would be used for analysis of both gasoline and gasoline-oxygenate blends. The gasoline chamber of the vapor pressure apparatus is filled with the chilled sample and connected to the air chamber at 100 °F. The apparatus is immersed in a bath at 100 °F and is shaken periodically until a constant pressure is observed on the guage attached to the apparatus. The guage reading, suitably corrected, is reported as the RVP of the sample.

Proposed RVP Test Method 2 uses the Herzog testing equipment and is patterned after Method 1. The difference is that the sample bombs are automatically rotated clockwise and counterclockwise to provide controlled and consistent mixing of the bomb. This procedure also uses a bath temperature of 100 °F and has other similarities to the "dry" P–176 ASTM method.

Three alcohol content laboratory testing methods are proposed as a new Appendix F to 40 CFR Part 80. Under Method 1, gasoline samples are extracted with water prior to analysis on a gas chromatograph (GC). The extraction eliminates hydrocarbon interference during chromatography. A known quantity of isopropanol is added to the fuel prior to extraction to act as an internal standard. Results are calculated and reported by data reduction software in the GC using peak area, retention times and other data obtained during the run.

Method 2 is a direct GC injection technique utilizing a single column (30 to 60 meter length) which is capable of resolving the individual alcohols without interference from hydrocarbon fuel components. Little sample handling is necessary, resulting in potentially more accurate results. The GC run time per sample is approximately 30 minutes but it might be possible to reduce this time depending on running conditions.

Method 3 is a two-column backflush method in which the sample is injected and loaded onto a primary column. This column retains the alcohols but does not retain the lighter weight hydrocarbon fractions of the fuel. After the lighter fractions are rinsed out of the primary column, the carrier gas flow through the column is reversed, the alcohols and heavier hydrocarbon fractions are loaded onto a secondary column and are individually separated for analysis. This method may take approximately 20 minutes of GC run time per sample, as opposed to four minutes for an indirect GC sample run time, and also requires careful carrier gas flow time switching.

The specific procedures for Method 1 are set forth in detail in Appendix F of the proposed regulations. Specific method 2 and 3 procedures have not been developed at this time but the Agency has placed in the rulemaking docket a copy of proposed ASTM P–176 Appendices X9 and X11: "Proposed Test Method for the Determination of Oxygenates in Spark Ignition Engine Fuel by Gas Chromatography" (two-column method) and (single-column method). It is expected that any final Agency procedures adopting direct injection test methods will be similar to these proposed ASTM procedures, and comments are requested on the ASTM proposals.

d. *Liability Provisions.* The proposed enforcement liability provisions (40 CFR 80.28) are very closely patterned after the liability scheme used in the Agency's fuel contamination regulations, 40 CFR 80.23. The proposed regulation combines specified presumptions of liability with vicarious liability for some parties involved in the production, importation, distribution, and sale of gasoline. The following paragraphs summarize what parties would be liable for violations detected at each point of the distribution network as well as what defenses would be available to those parties.

The Agency has already adopted definitions of most parties involved in the gasoline distribution network at 40 CFR 80.2. These have been used in the fuel contamination liability regulation, 40 CFR 80.23, and would be applicable to liability determinations for the volatility regulation. Two clarifications are proposed. First, the definition of "distributor" in 40 CFR 80.2(1) would be expanded to include a person who transports gasoline between an import facility (any facility owned, leased, or controlled by an importer) and a retail outlet or wholesale purchaser-consumer facility. Second, any distributor who transports petroleum products without taking title to the product or altering either the quality or quantity of the product would be defined as a "carrier" in proposed 40 CFR 80.2(t).

i. *Refinery or Import Facility.* EPA proposes that where a violation is found at a refinery or an import facility, the refiner or importer would be solely liable. A refiner or importer could attempt to show that no violation had occurred, for example by proving that the product was not being sold or supplied.

ii. *Carrier Facility.* When a violation is detected at a carrier facility, either in the actual carrier (pipeline, truck, etc.) or in the carrier's storage facilities, EPA proposes to hold the carrier presumptively liable because either: (1) The carrier physically "caused" the violation through its affirmative act or omission, or (2) the carrier "transported" product which was in violation. The Agency would provide a defense to a carrier if the carrier can show bills of lading or other documents from the source of the product which represented to the carrier that the product met the applicable standard. Also, the carrier would have to show some evidence of an oversight program, such periodic sampling of the product that it carries, which shows that the carrier is attempting to ensure that the product which it carries meets the applicable RVP standard(s).

The Agency considered proposing to hold a carrier liable only where it actually "caused" the violation by act or omission; however, EPA believes the

[24] Changes from the CARB methodology include numbering and editorial changes, extension of the nozzle sampling method to cover all retail and fleet storage tanks (not just those that are underground), deletion of portions not applicable to fuels to be tested, and clarification that EPA must agree to any alternative sampling procedures.

proposed expanded liability will most effectively encourage carriers to more closely monitor the product they carry, thus helping to eliminate product in violation from reaching the retail level. EPA had an independent contractor study what level of testing is currently done in the gasoline industry, including at the carrier level, and the results of the study show that at least one major pipeline company conducts testing on each batch that it ships; in addition, this company takes monthly samples of product in its pipeline to ensure product integrity.

In addition to the carrier's liability, EPA proposes that a refiner or importer would be held presumptively liable for a violation detected at the carrier level where the product in violation can be traced back to one or more specific refiner(s)/importer(s). The refiner/importer would have a defense where it could show that it, or its employees or agents, did not cause the violation, and produced test results showing that the product was in compliance with the applicable standard when it was delivered to the carrier.

iii. *Branded Distributor and Reseller Facilities.* When a violation is discovered at a distributor or reseller facility which operates under a specific refiner's brand name (a "branded" distributor/reseller), the distributor or reseller would be presumed liable subject to the following defense. A distributor/reseller would have a defense to liability if it can show: (1) That it, or its employees or agents, did not cause the violation (*e.g.*, by showing actual causation elsewhere); and (2) records, such as invoices or bills of lading, which represent to the distributor/ reseller that the product met the applicable standard when it was delivered to the distributor/reseller. EPA is also considering an alternative proposal which would not grant this defense to the distributor/reseller, thus effectively requiring the distributor/reseller to promptly test all incoming product and reject any that is out of compliance in order to avoid liability. The Agency also requests comments on this alternative option.

EPA also proposes that a carrier would be held liable for a violation detected at a distributor/reseller facility only where it actually caused the product to exceed the standard.

Where the distributor or reseller operates under a refiner's corporate, brand or trade name, the refiner has a degree of responsibility and control over that entity's operation. The refiner has a responsibility to ensure that its product is being marketed under proper conditions and in compliance with federal regulations. In addition, the refiner is in the unique position to control product quality through contractual obligations imposed upon distributors and resellers operating under its name. For these reasons, the Agency is proposing to impose vicarious liability upon refiners for violations detected at such "branded" facilities.

A refiner who is held vicariously liable for such violations would have a defense where it can show all of the following elements:

(A) Records of testing done on the product as it left the refinery showing the product to be in compliance with the applicable standard; and

(B) The violation was caused by action(s) of someone other than the refiner or its employees or agents; and

(C) The violation was caused by an act:

(1) In violation of law (*e.g.*, sabotage, vandalism), or

(2) In violation of a contractual obligation owed by the distributor/reseller to the refiner, and despite reasonable efforts by the refiner (*i.e.*, an oversight or compliance monitoring program by the refiner of the distributor/reseller) to ensure compliance with such contractual obligation, or

(3) In contravention of reasonable efforts by the refiner aimed at the party which caused the violation and designed to prevent the action(s) which caused the violation, where the party responsible for the violation is not subject to a contractual obligation to the refiner.

This proposed defense is very closely modeled upon that used by the Agency in its fuel contamination regulations, 40 CFR 80.23(b)(2)(1-vii).

For example, a refiner could avoid liability for a violation detected at a branded distribution facility where it could show: (1) A contract with the distributor to supply the gasoline to a state with a different RVP standard; (2) test results showing the gasoline in compliance with that state's standard; (3) that diversion of the product was caused by the distributor; and (4) that the refiner had an oversight program covering the distributor's facility.

iv. *Unbranded Distributor Facilities.* EPA proposes that when a violation is detected at a distributor facility which is not operating under a refiner's corporate, brand, or trade name, the distributor would be presumed liable subject to a defense if it can show: (1) The violation was not caused by the distributor, its agents or employees; and (2) documents (*e.g.*, invoices or bills of lading) representing to the distributor that the violating product met the applicable standard when delivered. As for branded distributors, the Agency is also considering a strict liability approach with no available defense, and welcomes comments on this option.

Where the product in violation at the unbranded distributor facility is traceable back to one or more specific refiner(s) or importer(s), the refiner/importer(s) also would be held liable unless it can show the two elements of a defense: (1) The violation was not caused by the refiner/importer, its employees or agents; and (2) records with RVP test results showing that all products shipped to that particular distributor met the applicable standard.

In addition, the carrier of the product would be liable in this situation only if it actually caused the violation.

v. *Branded Retail Outlets.* If a violation is detected at the retail outlet level, there would be a distinction between refiner branded and non-branded stations. Where the retail outlet is operating under a refiner's corporate, trade, or brand name, the refiner would be subject to the same vicarious liability provision described above with respect to a violation found at a branded distributor/reseller facility, the refiner would also have the opportunity to establish the same four-step defense as described in Part X.A.2.d.iii, above.

The distributor or reseller who sold the gasoline in violation to the branded retailer would also be held liable for the violation. the distributor/reseller would have a defense where it can show: (1) The violation was not caused by the distributor/reseller, its employees or agents; and (2) records with RVP test results showing that the product met the applicable standard when delivered to the retail outlet.

In addition, in this situation the carrier would be held liable, without defense, only where it, or its employees or agents, actually caused the product to not be in compliance with the applicable standard.

The retailer would also be held liable for the violation unless it could show that the violation was not caused by the retailer or its employees or agents. This defense could be met by showing causation elsewhere in the distribution chain.

vi. *Unbranded Retail Outlets and Wholesale Purchaser-Consumer Facilities.* Where a retailer is not operating under a refiner's corporate, trade, or brand name, the distributor would be presumed liable for the violation.The distributor would have a defense where it can show that: (1) The violation was not caused by it, its employees or agents; and (2) records

with RVP test results showing that the product was in compliance with the applicable standard when delivered to the retail outlet.

The carrier would again be held liable only if it actually caused the product to exceed the applicable standard.

The retailer would also be held liable unless it could show that the violation was not caused by it, its employees or agents, *i.e.*, by showing causation elsewhere in the distribution network.

For the purpose of these provisions, a wholesale purchaser-consumer (as defined in 40 CFR Section 80.2(o)) would have the same liabilities and defenses as a retailer.

B. Vehicle Evaporative Emission Control Requirements

We propose the following:

1. *Certification Fuel:* The EPA certification test fuel would be formulated to meet the following specifications, beginning with testing for 1990 model year gasoline-fueled vehicles:

a. Distillation Range, °F (Leaded and unleaded, tested according to ASTM D86):

IBP	75–100
10 pct. point	110–135
50 pct. point	185–230
90 pct. point	285–325
EP (maximum)	437

b. Percent of Fuel Evaporated at 160° ($\%_{160}$): 20–35 percent.

c. Octane Number (RON):

i. 91.0 (± 1.0) for all vehicles except those meeting the conditions for testing with premium gasoline, and

ii. 96.0 (± 1.0) for only those vehicles for which the manufacturer requires the use of premium gasoline and states in the certification application that information exists showing that using regular-grade fuel could damage the engine.

d. Sulfur Content: Not less than 0.03 percent by weight.

e. Aromatics Fraction:

i. 40 percent (maximum) for regular grade fuel, and

ii. 45 percent (maximum) for premium grade fuel.

2. *Certification Test Procedure:* The EPA certification test procedure would be changed to require that:

a. During any period that the test vehicle is parked awaiting testing the fuel tank cap(s) be removed, and

b. Prior to evaporative emissions canister preconditioning, the test vehicle be soaked at temperatures between 68 °F and 86 °F, and

c. Testing begin with the evaporative canister loaded at least to the breakthrough point, and

d. Heavy-duty engine testing be done with the evaporative canister(s) attached.

C. *Requests for Comments on Specific Issues*

We request and encourage general and specific comments with supporting data and analyses on the following issues:

1. The Draft RIA investigated in detail the emission reductions and costs associated with matched certification and in-use RVP not only at the proposed 9.0 psi RVP level but also at a range of RVPs both higher and lower. Please comment on our analysis and results (including issues of safety and driveability) at other levels of potential control, especially 10.5 and 11.5 RVP, as well as the proposed level. EPA specifically requests comments on Option 1 through 5 outlined in Section IV.D.3.f. above. EPA requests comments on technical issues related to such programs. EPA also requests comments on the legal aspects of such approaches, particularly the ease with which states desiring to implement further RVP controls could comply with the requirements of Section 211(c)(4).

2. EPA has performed several sensitivity analyses as discussed in Section IV.D.3. above. Please comment on each of the following issues analyzed:

a. Nationwide versus ASTM class-specific analysis,

b. Number of non-attainment areas used in analysis,

c. Future cost of crude oil and inclusion of income taxes,

d. Running evaporative losses.

3. EPA's intent is to respond to the need for VOC control while avoiding requirements that are infeasible or economically unreasonable. Cost effectiveness analysis is a useful tool for comparing various control programs. A cost-effectiveness value of $2000/ton is presently considered by EPA to be reasonable for additional VOC reductions. Please comment on the use of this value. What level of cost imposed on attainment areas is justified given that the most significant need for ozone control is in non-attainment areas?

4. The proposed RVP limits for ASTM classes other than Class C represent the same *proportional* reductions from current ASTM limits. EPA's intention is to produce roughly the same degree of emission control in all areas of the nation. Is this an appropriate approach to defining RVP levels? Please also comment on the proposed exemption of Hawaii and Alaska from volatility requirements.

5. Today's proposal matches certification fuel RVP to that of post–1991 Class C commercial fuel. A limited analysis confirms that the choice of Class C over Class B or A fuel RVP is cost-effective. Should the certification fuel RVP be set at the in-use Class C limit or at a lower or higher level? Should other parameters of the evaporative emission certification test procedure be adjusted?

6. Please comment on the appropriateness of the proposed regulatory control period for RVP controls (May 16 through September 15). For example would it be appropriate to require compliance during the "ozone season" specified in State Implementation Plans or during the period when an area is designated by ASTM as Class A, B, or C? The Agency specifically requests comments on whether it would be more feasible and effective to provide different control periods for fuel at different stages in the gasoline distribution network (*e.g.*, a regulatory control period beginning earlier than May 16 and ending earlier than September 15 for fuel located at refineries and import facilities).

7. We discussed in Section IV above our belief that additional in-use RVP reductions below 9.0 psi in the 1992–2010 time period would not be cost effective, and we do not propose such reductions. Please comment on this issue.

8. A revised study of the refinery costs of RVP control was completed by Bonner and Moore, but the results were not included in today's notice (see Section IV.D.1. above). Please comment on the analysis and conclusions of this draft report, which is found in the docket for this rulemaking.

9. Our analysis indicates that the fraction of aromatic compounds in in-use gasoline, including benzene, would likely increase with control of RVP, but that overall human exposure would slightly decrease (Section III above). If EPA decides to finalize RVP control, should we also consider introducing in-use fuel content standards for benzene and/or other aromatics? If so, how would they be enforced?

10. Please comment on and provide data as to whether any of the requirements proposed today would, individually or collectively, introduce a systematic bias greater than 0.01 mpg in the results of the CAFE fuel economy calculation.

11. Specific degrees of accuracy are proposed for specifying certification test fuel parameters. Is the accuracy

proposed for these specifications appropriate?

12. EPA has never specified the oxygen content for certification test fuel. There may be some benefit to clarifying whether or how much oxygen would be allowed in test fuel. However, no well-accepted method for measuring oxygen content is currently available. Please comment on the need for a fuel oxygen specification and on what would be the most appropriate measurement procedure.

13. Requiring gasohol to meet the same RVP limits as gasoline would probably have serious effects on the gasohol industry. Please comment in detail on the nature of these effects, including data about the likely availability of fuel storage and transfer facilities for lower-RVP gasoline blendstock for gasohol. Please also comment on how the possible mandating of oxygenated fuel use in Colorado and other states would change the scenario.

14. Certain proposed options for ethanol-and methanol-blend fuels propose a value of 1.0 psi RVP for the margin that would be allowed above gasoline RVP. Please comment on the appropriateness of the value 1.0 psi RVP, as well as whether such special regulatory treatment would be consistent with the criteria for regulation under section 211(c) of the Act. Also, the proposed regulations specify the content of ethanol or methanol in gasoline which would qualify the blend for special regulatory treatment. Please comment on these content specifications.

15. EPA is proposing two methods for loading evaporative canisters to breakthrough before emission testing—a series of diurnal heat builds and, for canisters not attached to the fuel tank, a procedure using vapor generating equipment. Please comment on the proposed specifications for the design and construction of vapor generating equipment and the representativeness of the composition, temperature, and flowrate of the vapors introduced to a canister by such equipment. Please comment also as to whether the vapor generation procedure and equipment for canisters not connected to the fuel tank would be an appropriate replacement for the repeated diurnal build method proposed for canisters connected to the fuel tank.

EPA welcomes detailed suggestions for alternative canister loading procedures and equipment which would result in canister loading representative of in-use experience with regard to vapor composition, temperature, and flowrate.

16. Currently the FTP diurnal heat build procedure is performed over the course of one hour to facilitate efficient testing; actual average in-use heat builds occur over 6 to 8 hours. Preliminary analysis by EPA indicates that one hour is not enough time to allow the composition of the vapor and liquid vapor phases to equilibrate. As a result, the FTS may underestimate in-use diurnal emissions. Please comment on the need to adjust the FTP to account for this discrepancy and how such an adjustment could appropriately be made.

17. Overall Enforcement Scheme

a. Does a mechanism exist that could be used as a viable cross-check in an RVP self-reporting system, like lead additive manufacturer reports in the lead phasedown program? Comments are requested on the availability and mechanics of a similar cross-check (*e.g.*, butane usage).

b. Although all facilities at which gasoline is sold or supplied would be subject to inspection under the proposed enforcement scheme, the Agency may wish to place its emphasis on inspection of only certain types of facilities to conserve resources and/or to obtain the greatest environmental benefits. Comments are requested as to which type of facilities (if any) should be given priority in inspections.

18. Sampling Methodology

a. The proposed sampling regulations include the CARB nozzle sampling procedures, which provide for placing the sample container in a chilling medium while being filled and stored. EPA is considering promulgation of the nozzle sampling procedure without the chilling medium requirement. Comments are requested on whether such chilling is necessary to obtain accurate RVP test results, or whether maintaining the sample container at ambient temperatures prior to any chilling required by the testing methodology is adequate. Comments on the EPA evaluation of these nozzle sampling procedures are also requested.

b. The EPA evaluation of nozzle sampling techniques also included testing of an EPA-developed technique. Comments are requested on the adequacy of this technique as an alternative to the CARB nozzle sampling procedure.

c. The proposed sampling methodologies and the ASTM and CARB methodologies on which they are based are complex and detailed. Comments are requested on whether a more simplified procedure can be adopted and still result in representative samples for RVP testing purposes. If so, what are the critical elements of the proposed sampling procedure that should be retained?

d. The Agency has conducted testing on the effects of sample storage time and temperature on RVP test results, with results indicating that refrigerated and non-refrigerated samples were not significantly different from one another over the total storage period of 59 days.

Test procedures and results are described more fully in the report "The Effects of Sampling Technique on Measurement of Gasoline Volatility" that has been placed in the rulemaking docket. Comments are requested on the findings of this report.

e. The Agency has conducted some testing on the issue of what volume of fuel should be purged from a fuel dispenser prior to the taking of a sample, with results indicating no difference between samples taken without any purge volume and samples taken with a three-gallon purge volume (see the evaluation report in the rulemaking docket). Comments are requested on this issue.

f. The proposed sampling regulations (based on CARB's regulations) would require that tap sampling be performed using a cooling bath. However, Note 9 of ASTM D4057–81 requires that a cooling bath be used only if the RVP of a product is more than 16 psi but not more than 26 psi. Since the regulatory standards being proposed today would be significantly lower than 16 psi, the Agency is considering elimination of the use of a cooling bath for tap sampling. Instead the sample container could be chilled during sampling by placing it in an ice chest, as proposed for samples collected by the nozzle sampling procedure. Sections 11.3.1.2, 11.3.2.2, 12.2, 12.6, 12.7, and 12.10 of Appendix D would be affected. Comments are requested on whether any cooling of a sample (via cooling bath or ice chest) obtained by tap sampling is necessary.

g. The proposed sampling regulations indicate that sample containers should be filled to a level of 70–85 percent of the sample container volumes. The Agency is considering raising the maximum amount of fuel to be sampled to 90 percent of the sample container volume to give the inspectors sampling the product more leeway in obtaining samples. Comments are requested on this proposed change.

19. Testing Methodologies

a. Further work is planned to develop RVP and alcohol content field screening methods. Comments are requested regarding the feasibility of developing

such field screening methods. Specific comments on the following possible methods are also solicited:

i. Establish a correlation between the readings of a portable VOC analyzer and the RVP of a gasoline sample. The concentration of volatiles above a liquid sample should be related to the fuel volatility. If it is practical to use a butane-specific analyzer, the correlation between butane concentration and RVP should be even greater.

ii. Establish a correlation between the density of a sample of gasoline and its RVP. Theoretically, these two parameters should change in some form of inverse relationship, as light ends evaporate from gasoline stocks.

iii. Develop a small unit using a thermal-jacketed sample bomb to sample directly from a nozzle and eliminate the sample chilling step.

iv. Use a gasoline test kit manufactured by Miller Special Tools, which includes an RVP test.

v. Utilize available alcohol content tests that could be used in the field, including the ethylene glycol test and the Petroleum Alcohol Test Kit (PAT kit); comments should include any available data to show the methods' success in determining the amount and type of alcohlol content in gasoline.

Information on any other field screening tests for RVP or alcohol which are available or potentially feasible is also solicited.

b. A question of major concern is what enforcement tolerance should be allowed in the enforcement of this regulation. At this time the following tolerances (based on RVP test reproducibility) could be used by the Agency for the proposed RVP test methods:

ENFORCEMENT TOLERANCES

Source	Level
California Air Resources Board [1].	0.3 psi
Other states with RVP enforcement programs [2].	0.55 psi
ASTM D-323 [2]	0.55 psi
1985 ASTM Round Robin: P-176.	1.42 psi
1985 ASTM Round Robin: Herzog (dry).	1.16 psi
1986 EPA Round Robin: P-176.	1.02-1.33 psi
1986 EPA Round Robin: Herzog (dry).	1.01-1.57 psi

[1] Based on ASTM D-323 method (1958 version).

[2] Based on ASTM D-323 method (current version).

Comments are requested on which of these potential enforcement tolerances should be used by the Agency. In order to achieve the largest emission reductions from a volatility regulation, the Agency intends to use a value that is as low as technically justified. Due to the wide variation in potential tolerances, the Agency is particularly interested in determining why the RVP reproducibility has steadily increased over the years. EPA would like any suggestions on modifications that could be instituted in the analysis procedures to cause the RVP reproducibility to be improved. Comments should address the RVP test procedures and the way in which the "round robin" evaluation were conducted.

c. The Agency is considering adopting the SRI automatic method as an additional RVP testing methodology. This procedure is set forth in Annex A4. of the ASTM P-176 proposal, a copy of which has been placed in the rulemaking docket. Comments are requested on whether this method should be adopted and on what enforcement tolerance (reproducibility value) should be used for this method. Specific comments on the "round robin" evaluations of this method are also requested.

d. Appendix E Method 1 is modelled after the ASTM P-176 method. The Agency is considering the following modifications, on which comments are requested.

i. Section 8.4.5. The Agency is considering specifying the time the sample is being cooled to 32-34°F to insure that the vapor in the sample container has also been cooled. The Agency requests submittal of any test data available on this issue.

ii. Section 7.3. Eliminate the option of putting the fuel chamber into an ice bath for cooling, and instead require the cooling be done in a refrigerator. This would eliminate another source of water contamination.

iii. Section 7.4. Change the time the air chamber is immersed in the water bath from 20 minutes to 10 minutes, the amount of time allowed in ASTM D-323.

iv. Section 8.2. Due to some difficulty in meeting the 10 second requirement of assembly of the apparatus, the Agency is considering allowing 30 seconds for assembly and requests comments on the effects of such a change.

v. Section 8.5. Comments are requested on the effects of changing the solutions used to rinse the apparatus to hot water and acetone, and of drying the apparatus either by blowing dried air or by pulling a vacuum.

e. Comments are requested on the need for gauges and transducers to be calibrated against a dead weight tester or mercury manometer. In addition, comments are sought on whether, when using the mercury manometer, the temperature correct density should be used.

f. The Agency has proposed a semi-automatic RVP measurement method based on Herzog measurement equipment. Comments are requested on any other available semi-automatic instrumentation and on whether the Agency should allow use of other such methods (and if so, how this should be incorporated into the regulations).

g. The Agency is also considering use of the proposed alcohol test procedures to determine compliance with section 211(f) waiver requirements. Comments are requested on the appropriateness of these techniques for this purpose.

20. Liability Provisions

a. With respect to the liability of a carrier for a violation found at its facility, the Agency is proposing that the carrier be held liable, subject to the defense described below, for either "causing" the violation through a physical act or omission, or for transporting product which was in violation when the carrier accepted it for delivery. The carrier would have a defense where it can show records from the source of the product representing the product to be in compliance with the applicable standard, plus evidence of an oversight program, such as periodic sampling, which indicates the carrier is attempting to monitor the quality of the product which it receives for shipping. The Agency is also considering adoption of a provision similar to that used in the fuel contamination regulations, 40 CFR 80.21(b), which would attach liability only where the carrier, or its employee or agent, actually caused the product to exceed the applicable standard. Comments are requested as to which of these alternatives is the appropriate defense for these violations.

b. With respect to the liability of a distributor or reseller when a violation is found at its facility, the Agency is proposing to allow a defense to liability where it is shown that the violation was not caused by the distributor or reseller, its employees or agents, and that records show that the source of the product represented to the distributor/reseller that the product was in compliance when delivered. The Agency is also considering a strict liability provision which would hold the distributor/reseller liable for any product in its possession found to be in violation. This would have the practical effect of requiring a distributor/reseller to test all incoming product and to reject all of that which is out of compliance.

EPA requests coments as to whether the proposed defense would hinder enforcement actions: in addition, EPA requests comments as to whether there is an alternative between the two considered by EPA which would allow for a more effective enforcement program.

c. Under current definitions, a person who blends gasoline components (such as alochol) with finished gasoline and transports or stores the resulting product is both a "refiner" and a "distributor" (as defined in 40 CFR 80.2(i) and (1), respectively). The blender would thus be subject to the liabilities and available defenses for both of these types of parties. The Agency requests comments as to whether this is appropriate treatment under the proposal.

d. The Agency also considered an enforcement provision that would have defined "applicable standard" to be the RVP standard applicable to the geographic area and time period in which gasoline was in possession of a regulated party. A defense would have been provided to allow a presumptively liable party to escape liability for violations detected at refineries or the facilities of importers, carriers, distributors, or resellers if the party could demonstrate that the violating product would have been in compliance with the standard applicable to the area and time period in which it was intended to be dispensed. The Agency is not proposing these provisions because they could result in a number of "false" violations and because they might not allow detection of "true" violations for gasoline being transported from areas with less stringent standards to those with more stringent ones (e.g., New York to North Carolina). Comments are requested on this approach.

XI. Interaction With State Volatility Requirements

Section 211(c)(4) of the Clean Air Act prohibits states from enacting controls or prohibitions on a fuel that are different from EPA controls or prohibitions on the fuel, except in certain circumstances. The Act specifically allows California to enact programs (such as RVP controls) whether or not EPA implements its own program. If today's proposed RVP control program is implemented, however, other states could enforce gasoline volatility regulations different from EPA's only if: (1) The purpose of the state regulations was other than vehicle emission control; [25] or (2) a State Implementation Plan (SIP) specifically provided for such a program, the program was necessary to attainment of the national ambient standard to which the SIP applied, and EPA approved inclusion of the program in the SIP.

The effect of these statutory provisions is that in California both that state's current requirements and, if promulgated, the federal requirements proposed today would be in effect; in practical terms, the more stringent of the two in a given month and year would be the one that affected parties would have to meet.

Current RVP control programs in other states are usually year-round, but rarely vary from the current ASTM limits by more than 0.5 psi RVP. These programs, while possible providing some emission control benefits of late, appear to be primarily designed to ensure adequate vehicle driveability. We request comments on the purposes of the existing state RVP controls and the extent to which any existing or planned state programs can or would escape preemption.

In any event, states desiring to enact or enforce summertime RVP control more stringent than that proposed today, or RVP control outside of the four-month period proposed today for purposes of emission control, could submit an appropriate SIP as described above, which EPA would consider for approval under its regular SIP review procedures.

XII. Public Participation

Comments and the Public Docket. As in past rulemaking actions, EPA desires full public participation in arriving at final decisions. In addition to those areas where specific comment has been requested earlier in this preamble, EPA solicits comments on all aspects of today's proposal from all interested parties. Wherever applicable, full supporting data and detailed analyses should also be submitted to allow EPA to make maximum use of the comments. Commenters are especially encouraged to provide specific suggestions for changes to any aspects of the proposal that they believe need to be modified or improved. All comments should be directed to the EPA Central Docket Section, Docket No. A–85–21 (see "Addresses").

The Agency will base its decision on the disclosable public record. However, the Agency realizes that some manufacturers may want EPA to consider pertinent information that may be proprietary. Commenters desiring to submit proprietary information for consideration should clearly distinguish such information from other comments to the greatest possible extent, and clearly label it "Confidential Business Information." Submissions containing such proprietary information should be sent directly to the contract person listed above, and not to the public docket, to ensure that proprietary information in not inadvertently placed in the docket. If a commenter wants EPA to base the final rule in part on a submission labeled as confidential business information, then a non-confidential version of the document which summarizes the key data or information should be placed in the docket.

Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR Part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, it may be made available to the public without further notice to the commenter.

Persons intending to participate in the hearings may submit written questions on any matters relevant to this proposal to the presiding officer at any time. To the extent that time permits the presiding officer, at his discretion, may direct these questions to witnesses testifying at the hearing or as appropriate to EPA personnel present at the hearing for answers. If time does not permit all such written questions to be addressed at the hearing, EPA will provide the remaining questions to the appropriate witnesses or EPA personnel for written response to be placed in the rulemaking docket.

Public Hearing. Any person desiring to present testimony at the public hearing (see "DATES") should notify the contact person listed above of such intent at least seven days prior to the day of the hearing. The contact person should also be provided an estimate of the time required for the presentation of the testimony and notification of any need for audio/visual equipment. A sign-up sheet will be available at the registration table on the morning of the hearing for scheduling of the order of testimony.

It is suggested that sufficient copies of the statement or material to be presented be brought to the hearing for distribution to the audience. In addition, it will be helpful for EPA to receive an advance copy of any statement or material to be presented at the hearing at least one week before the scheduled

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[25] If a state's volatility controls are for the purpose of emission control, it is possible that they might be preempted even if EPA does not promulgate federal volatility limits, given EPA's existing regulation of other characteristics of in-use fuels. See *Exxon Corp* v *City of New York*, 548F. 2d. 1088, 1095–1098 (2d Cir. 1977).

hearing date, in order for EPA staff to have adequate time to give such material full consideration. Such advance copies should be submitted to the contact person listed above.

The official record of the hearing will be kept open for 30 days following the hearing to allow submission of rebuttal and supplementary testimony. All such submittals should be directed to the EPA Central Docket Section, Docket No. A–85–21 (see "Addresses").

The hearing will be conducted informally, and technical rules of evidence will not apply. Written transcript of the hearing will be made. Anyone desiring to purchase a copy of the transcript should make individual arrangements with the court reporter recording the proceedings.

XIII. Statutory Authority

Authority for the actions proposed in this notice is granted to EPA by sections 114, 202, 206, 207, 208, 211, and 301 of the Clean Air Act [42 U.S.C. 7414, 7521. 7525, 7541, 7542, 7545, and 7601].

XIV. List of Subjects

40 CFR Part 80

Fuel Additives, Gasoline, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

40 CFR Part 86

Administrative practice and procedures, Air Pollution Control, Gasoline, Motor Vehicles, Labeling, Motor Vehicle Pollution, Reporting and recordkeeping requirements.

40 CFR Part 600

Administrative practice and procedures, Electric power, Energy conservation, Fuel economy, Gasoline, Labeling, Motor vehicles, Reporting and recordkeeping requirements.

XV. Administrative Designation and Regulatory Analysis

The Administrator has determined that this proposed action would constitute a major regulation, and accordingly a Draft Regulatory Impact Analysis has been prepared as required under Executive Order 12291. This analysis includes detailed assessments of the estimated economic and environmental impacts of the regulations proposed here, as well as thorough analyses of the technological feasibility of the emission standards and other regulatory provisions proposed here, and the alternatives that were considered in the development of this proposal.

The Draft Regulatory Impact Analysis has been placed in the public docket referenced at the beginning of today's notice. In addition, interested parties may obtain single copies through a written request to the public contact listed previously.

This proposed regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB and any EPA response to those comments are in the public docket for this rulemaking.

XVI. Impact on Small Entities

Section 605 of the Regulatory Flexibility Act requires EPA to perform an analysis of the impact of proposed regulations on small entities when a significant impact on a substantial number of such entities would occur. I certify that the regulations proposed in this notice would not have a significant impact on a substantial number of small entities.

An analysis performed by Sobotka and Co., an EPA contractor,[26] evaluated the impacts of RVP control on small refineries.[27] The Sobotka report indicates that most small refineries (*i.e.*, those small refiners with "catalytic cracking" capability) would incur smaller costs than larger refiners. This is because these small refiners have excess refining capacity which would facilitate their response to reducing the butane content of gasoline. Because small catalytic cracking refiners usually compete with large refiners, and because they are very similar in their complexity and product slate to the larger refiners, the lower incremental production costs should be an economic advantage.

The subset of small refiners called "hydroskimming refineries," representing about 15 percent of small refinery gasoline production, lack equipment to easily make up for removed butane. These refiners could experience production cost increases perhaps three times higher than those for larger refineries in the short term (although increased costs would still be less than one cent per gallon). With the acquisition of additional equipment, these costs would drop to a level about 15 percent higher than the increases seen by large refineries. EPA does not believe that these impacts would be significant overall because hydroskimming refiners would have significant flexibility in the amount of gasoline they produce. Gasoline production is not the primary focus of such refineries, as evidenced by the fact that gasoline production is a relatively small portion of the total activity of these refiners (21 percent for small hydroskimming refiners vs. 53 percent for small catalytic cracking refiners and 48 percent for the nation's refineries as a whole). Thus small hydroskimming refiners should be able to adjust their product mix to respond to RVP regulations if necessary.

Another subset of small refiners are "topping" refiners, representing one percent of the gasoline production of small refiners. These refiners need to purchase additional high octane components in order to produce gasoline. Under a program of RVP controls, the costs of these components would not likely increase more than the marginal price increase for gasoline, with a resulting impact similar to that for larger refiners. Because only a very small fraction of topping refinery activity is in gasoline production (less than 3 percent), these refiners would have great flexibility in responding to RVP controls, and EPA believes that the impact will not be significant.

XVII. Reporting and Recordkeeping Requirements

The information collection requirements relating to the proposed fuel volatility regulations have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA (ICR No. 1367) and a copy may be obtained from Bryan C. Wood-Thomas, Information Policy Branch; EPA; 401 M Street, SW., (PM–223); Washington, DC 20460 or by calling (202) 475–8791. Comments may be submitted to EPA at the above address, but should also be sent to the Office of Information and Regulatory Affairs; Office of Management and Budget; 726 Jackson Place, NW., Washington, DC 20503 marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements.

Dated: July 22, 1987.

Lee M. Thomas,

Administrator.

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[26] Impact of Volatility Reductions on Small Refiners, Sobotka and Co., Inc., March 1987, found in Public Docket A–85–21.

[27] EPA believes that the impacts on other small entities (*e.g.*, small blenders, importers, retailers, etc.) would occur primarily in the form of a slightly higher wholesale gasoline price which would then be passed along in product price increases. Since all wholesale suppliers would increase prices by about the same amount, the competitive environment for small entities purchasing that gasoline should not be affected significantly. Also, EPA believes that because the new reporting, recordkeeping, labeling requirements proposed in today's notice are small, these requirements would not significantly impact small entities.

APPENDIX: TABLE OF CHANGES MADE TO VARIOUS SUBPARTS OF PART 86

Section	Specific change	Reason
1. Authority		
2. Amend § 86.084–15	Remove "fuel" in (b)(2), (e)(1), and (e)(2)	Clarify inclusion of Evaporative emissions from sources other than fuel.
3. Amend § 86.085–8	Remove "fuel" in (b)(2)	Do.
4. Amend § 86.085–9	Remove "fuel" in (b)(2), (e)(1), and (e)(2)	Do.
5. Amend § 86.085–10	Remove "fuel" in (b)(2)(i)	Do.
6. Amend § 86.085–28	Remove "fuel" in (b)(2)	Do.
7. Amend § 86.087–8	Do.	Do.
8. Amend § 86.087–9	Remove "fuel" in (b)(2), (e)(1), and (e)(2)	Do.
9. Amend § 86.087–10	Remove "fuel" in (b)(2)	Do.
10. Amend § 86.087–28	Remove "fuel" in (b)(2)	Do.
11. Amend § 86.088–8	Remove "fuel" in (b)(2), (e)(1) and (e)(2)	Do.
12. Amend § 86.088–10	Remove "fuel" in (b)(2)(i)	Do.
13. Amend § 86.088–28	Remove "fuel" in (b)(2)	Do.
14. Add New § 86.090–2	Define evaporative emission canister	
15. Add New § 86.107–90	Add new (a)(8)	Specify gasoline vapor generating equipment.
16. Add New § 86.113–90	Revise table in (a)(1), Remove old (a)(2)(i) and (ii), Renumber rest of (a).	Revise fuel specifications and removed leaded fuel.
17. Add New § 86.130–90	Revise Figure B90–10	Add "canister loading to breakthrough" to diagram.
18. Add New § 86.131–90	Add new (b), Revise old (b) and renumber	Provide means of loading canister.
19. Add New § 86.132–90	Add new (a)(1) through (a)(4), Remove old (a)(3), Renumber rest of (a).	Require loading of evaporative emission canister to breakthrough, remove fuel cap, and stabilize temperature of test vehicle.
20. Add New § 86.609	Add "exhaust emission" to (c) and "evaporative emissions canister" to (d)(5)(iv).	Clarification.
21. Add New § 86.1009–90	Revise (c) to mention aftertreatment, Remove "exhaust" from (d)(1), Add "evaporative emission control canister" to (d)(5)(iv).	Clarification re. deterioration factors. Clarification. Clarification.
22. Add New § 86.1207–90	Add new (h)	Specify gasoline vapor generating equipment.
23. Add New § 86.1213–90	Revise table in (a), Remove parts of old (b), Renumber section.	Revise fuel specifications and removed leaded fuel.
24. Add New § 86.1230–90	Revise Figure M90–1	Add "canister loading to breakthrough" to diagram.
25. Add New § 86.1231–90	Add new (b)(2)	Provide means of loading canister.
26. Add New § 86.1232–90	Add new (a)(1), through (a)(4), Remove old (a)(3), Renumber rest of (a).	Require loading of evap canister to breakthrough, remove fuel cap, and stabilize vehicle temperature.
27. Add New § 86.1313–90	Revise a(1), Remove old (a)(2)(i) and (ii), Renumber rest of (a).	Revise test fuel specifications and removed leaded fuel.
28. Add New § 86.1327–90	Revise (d)(2)	Connect evaporative emission controls for exhaust testing.
29. Add New § 86.1330–90	Revise (b)(2)	Specify temperature of air entering evap canister.
30. Add New § 86.1337–90	Add "evaporative emission canisters" to (a)(1), Add (a)(7), Renumber remainder of (a).	Condition evaporative emission canisters for exhaust emission testing.
31. Add New § 86.1513–90	Revise fuel table	Revise test fuels specifications and remove lead.
32. Authority		
33. Add New § 600.111–90	Revise (b)(3)	Revision to exempt fuel economy testing from loading canister to breakthrough.

For the reasons set out in the preamble, Parts 80, 86 and 600 of Title 40 of the Code of Federal Regulations are proposed to be amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The "Authority" citation for Part 80 is revised to read as follows:

Authority: Secs. 114, 211 and 301(a) of the Clean Air Act as amended, 42 U.S.C. 7414, 7545, and 7601(a).

2. Section 80.2 is proposed to be amended by revising paragraph (l) and by adding a new paragraph (t), to read as follows:

§ 80.2 Definitions.

* * * * *

(l) "Distributor" means any person who transport or stores or causes the transportation or storage of gasoline at any point between any gasoline refinery or importer's facility and any retail outlet or wholesale purchaser-consumer's facility.

* * * * *

(t) "Carrier" means any distributor who transport or stores or causes the transportation or storage of gasoline without taking title to or otherwise having any ownership of the gasoline, and without altering either the quality or quantity of the gasoline.

3. New §§ 80.27 and 80.28 are proposed to be added, to read as follows:

Note.—Text enclosed in arrows in paragraph (d) indicates language which would be included if the Agency promulgates a time limit on special provisions for alcohol blends. If such special provisions are not adopted at all, paragraph (d) would not be promulgated.

§ 80.27 Controls and prohibitions on gasoline volatility.

(a) *Prohibited Activities.* No refiner, importer, distributor, reseller, carrier, retailer or wholesale purchaser-consumer shall sell, offer for sale, supply, offer for supply, or transport gasoline whose Reid vapor pressure exceeds the applicable standard. As used in this section and § 80.28, "applicable standard" means the standard listed in this paragraph for the geographical area and time period in which gasoline is intended to be dispensed to motor vehicles or, if such area and time period are not known, the standard listed in this paragraph that specifies the lowest Reid vapor pressure for the year in which the gasoline is sampled.

(1) 1989–1991

[May 16 to September 15] [1]

State	May	June	July	Aug.	Sept.
Alabama	10.5	10.5	9.1	9.1	9.1
Arizona	8.2	8.2	8.2	8.2	8.2
Arkansas	10.5	9.1	9.1	9.1	9.1
California [2]:					
North Coast	10.5	9.1	9.1	9.1	9.1
South Coast	9.1	9.1	9.1	9.1	9.1
Southeast	8.2	8.2	8.2	8.2	8.2
Interior	9.1	9.1	9.1	9.1	9.1
Colorado	9.1	9.1	8.2	8.2	9.1
Connecticut	10.5	10.5	10.5	10.5	10.5
Delaware	10.5	10.5	10.5	10.5	10.5
District of Columbia	10.5	10.5	10.5	10.5	10.5
Florida	10.5	10.5	10.5	10.5	10.5
Georgia	10.5	10.5	9.1	9.1	9.1
Idaho	9.1	9.1	9.1	9.1	9.1
Illinois:					
North of 40° Latitude	10.5	10.5	10.5	10.5	10.5
South of 40° Latitude	10.5	10.5	9.1	9.1	10.5
Indiana	10.5	10.5	10.5	10.5	10.5
Iowa	10.5	9.1	9.1	10.5	10.5
Kansas	9.1	9.1	9.1	9.1	9.1
Kentucky	10.5	10.5	10.5	10.5	10.5
Louisiana	10.5	10.5	9.1	9.1	9.1
Maine	10.5	10.5	10.5	10.5	10.5
Maryland	10.5	10.5	10.5	10.5	10.5
Massachusetts	10.5	10.5	10.5	10.5	10.5
Michigan	10.5	10.5	10.5	10.5	10.5
Minnesota	10.5	10.5	10.5	10.5	10.5
Mississippi	10.5	10.5	9.1	9.1	9.1
Missouri	10.5	9.1	9.1	9.1	9.1
Montana	9.1	9.1	9.1	9.1	9.1
Nebraska	9.1	9.1	9.1	9.1	9.1
Nevada:					
North of 38° Latitude	9.1	9.1	9.1	9.1	9.1
South of 38° Latitude	8.2	8.2	8.2	8.2	8.2
New Hampshire	10.5	10.5	10.5	10.5	10.5
New Jersey	10.5	10.5	10.5	10.5	10.5
New Mexico:					
North of 34° Latitude	8.2	8.2	8.2	8.2	9.1
South of 34° Latitude	8.2	8.2	8.2	8.2	8.2
New York	10.5	10.5	10.5	10.5	10.5
North Carolina	10.5	10.5	9.1	9.1	9.1
North Dakota	10.5	9.1	9.1	9.1	9.1
Ohio	10.5	10.5	10.5	10.5	10.5
Oklahoma	9.1	9.1	9.1	9.1	9.1
Oregon:					
East of 122° Longitude	10.5	9.1	9.1	9.1	9.1
West of 122° Longitude	10.5	10.5	10.5	10.5	10.5
Pennsylvania	10.5	10.5	10.5	10.5	10.5
Rhode Island	10.5	10.5	10.5	10.5	10.5
South Carolina	10.5	10.5	9.1	9.1	9.1
South Dakota	9.1	9.1	9.1	9.1	9.1
Tennessee	10.5	10.5	9.1	9.1	9.1

(1) 1989–1991—Continued

[May 16 to September 15] [1]

State	May	June	July	Aug.	Sept.
Texas:					
East of 99° Longitude	10.5	9.1	9.1	9.1	9.1
West of 99° Longitude	8.2	8.2	8.2	8.2	8.2
Utah	9.1	9.1	8.2	8.2	9.1
Vermont	10.5	10.5	10.5	10.5	10.5
Virginia	10.5	10.5	10.5	10.5	10.5
Washington:					
East of 122° Longitude	10.5	9.1	9.1	9.1	9.1
West of 122° Longitude	10.5	10.5	10.5	10.5	10.5
West Virginia	10.5	10.5	10.5	10.5	10.5
Wisconsin	10.5	10.5	10.5	10.5	10.5
Wyoming	9.1	9.1	9.1	9.1	9.1

[1] Standards are expressed in pounds per square inch (psi).

[2] California areas include the following counties:

North Coast—Alameda, Contra Costa, Del Norte, Humbolt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, San Francisco, San Mateo, Santa Clara, Santa Cruz, Solano, Sonoma, and Trinity.

Interior—Lassen, Modoc, Plumas, Sierra, Siskiyou, Alpine, Amador, Butte, Calaveras, Colusa, El Dorado, Fresno, Glenn, Kern (except that portion lying east of the Los Angeles County Aqueduct), Kings, Madera, Mariposa, Merced, Placer, Sacramento, San Joaquin, Shasta, Stanislaus, Sutter, Tehama, Tulare, Tuloumne, Yolo, Yuba, and Nevada.

South Coast—Orange, San Diego, San Luis Obispo, Santa Barbara, Ventura, and Los Angeles (except that portion north of the San Gabriel mountain range and east of the Los Angeles County Aqueduct).

Southeast—Imperial, Riverside, San Bernardino, Los Angeles (that portion north of the San Gabriel mountain range and east of the Los Angeles County Aqueduct), Mono, Inyo, and Kern (that portion lying east of the Los Angeles County Aqueduct).

(2) 1992 AND SUBSEQUENT YEARS

[May 16 to September 15]

State	May	June	July	Aug.	Sept.
Alabama	9.0	9.0	7.8	7.8	7.8
Arizona	7.0	7.0	7.0	7.0	7.0
Arkansas	9.0	7.8	7.8	7.8	7.8
California [2]:					
North Coast	9.0	7.8	7.8	7.8	7.8
South Coast	7.8	7.8	7.8	7.8	7.8
Southeast	7.0	7.0	7.0	7.0	7.0
Interior	7.8	7.8	7.8	7.8	7.8
Colorado	7.8	7.8	7.0	7.0	7.8
Connecticut	9.0	9.0	9.0	9.0	9.0
Delaware	9.0	9.0	9.0	9.0	9.0
District of Columbia	9.0	9.0	9.0	9.0	9.0
Florida	9.0	9.0	9.0	9.0	9.0
Georgia	9.0	9.0	7.8	7.8	7.8
Idaho	7.8	7.8	7.8	7.8	7.8
Illinois:					
North of 40° Latitude	9.0	9.0	9.0	9.0	9.0
South of 40° Latitude	9.0	9.0	7.8	7.8	9.0
Indiana	9.0	9.0	9.0	9.0	9.0
Iowa	9.0	7.8	7.8	9.0	9.0
Kansas	7.8	7.8	7.8	7.8	7.8
Kentucky	9.0	9.0	9.0	9.0	9.0
Louisiana	9.0	9.0	7.8	7.8	7.8
Maine	9.0	9.0	9.0	9.0	9.0
Maryland	9.0	9.0	9.0	9.0	9.0
Massachusetts	9.0	9.0	9.0	9.0	9.0
Michigan	9.0	9.0	9.0	9.0	9.0
Minnesota	9.0	9.0	9.0	9.0	9.0
Mississippi	9.0	9.0	7.8	7.8	7.8
Missouri	9.0	7.8	7.8	7.8	7.8
Montana	7.8	7.8	7.8	7.8	7.8
Nebraska	7.8	7.8	7.8	7.8	7.8
Nevada:					
North of 38° Latitude	7.8	7.8	7.8	7.8	7.8
South of 38° Latitude	7.0	7.0	7.0	7.0	7.0
New Hampshire	9.0	9.0	9.0	9.0	9.0

(2) 1992 AND SUBSEQUENT YEARS—Continued

[May 16 to September 15]

State	May	June	July	Aug.	Sept.
New Jersey	9.0	9.0	9.0	9.0	9.0
New Mexico:					
North of 34° Latitude	7.0	7.0	7.0	7.0	7.8
South of 34° Latitude	7.0	7.0	7.0	7.0	7.0
New York	9.0	9.0	9.0	9.0	9.0
North Carolina	9.0	9.0	7.8	7.8	7.8
North Dakota	9.0	7.8	7.8	7.8	7.8
Ohio	9.0	9.0	9.0	9.0	9.0
Oklahoma	7.8	7.8	7.8	7.8	7.8
Oregon:					
East of 122° Longitude	9.0	7.8	7.8	7.8	7.8
West of 122° Longitude	9.0	9.0	9.0	9.0	9.0
Pennsylvania	9.0	9.0	9.0	9.0	9.0
Rhode Island	9.0	9.0	9.0	9.0	9.0
South Caroline	9.0	9.0	7.8	7.8	7.8
South Dakota	7.8	7.8	7.8	7.8	7.8
Tennessee	9.0	9.0	7.8	7.8	7.8
Texas:					
East of 99° Longitude	9.0	7.8	7.8	7.8	7.8
West of 99° Longitude	7.0	7.0	7.0	7.0	7.0
Utah	7.8	7.8	7.0	7.0	7.8
Vermont	9.0	9.0	9.0	9.0	9.0
Virginia	9.0	9.0	9.0	9.0	9.0
Washington:					
East of 122° Longitude	9.0	7.8	7.8	7.8	7.8
West of 122° Longitude	9.0	9.0	9.0	9.0	9.0
West Virginia	9.0	9.0	9.0	9.0	9.0
Wisconsin	9.0	9.0	9.0	9.0	9.0
Wyoming	7.8	7.8	7.8	7.8	7.8

[1] Standards are expressed in pounds per square inch (psi).
[2] California areas include the following counties:

North Coast—Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, San Francisco, San Mateo, Santa Clara, Santa Cruz, Solano, Sonoma, and Trinity.

Interior—Lassen, Modoc, Plumas, Sierra, Siskiyou, Alpine, Amador, Butte, Calaveras, Colusa, El Dorado, Fresno, Glenn, Kern (except that portion lying east of the Los Angeles County Aqueduct), Kings, Madera, Mariposa, Merced, Placer, Sacramento, San Joaquin, Shasta, Stanislaus, Sutter, Tehama, Tulare, Tuolumne, Yolo, Yuba, and Nevada.

South Coast—Orange, San Diego, San Luis Obispo, Santa Barbara, Ventura, and Los Angeles (except that portion north of the San Gabriel mountain range and east of the Los Angeles County Aqueduct).

Southeast—Imperial, Riverside, San Bernardino, Los Angeles (that portion north of the San Gabriel mountain range and east of the Los Angeles County Aqueduct), Mono, Inyo, and Kern (that portion lying east of the Los Angeles County Aqueduct).

(b) *Determination of Compliance.* Compliance with the standards listed in paragraph (a) shall be determined by use of one of the sampling methodolgies specified in Appendix D to this part and one of the testing methodologies specified in Appendix E to this part.

(c) *Liability.* Liability for violations of paragraph (a) shall be determined according to the provisions of § 80.28.

(d) *Special Provisions for Alcohol Blends.* (1) Any gasoline which meets the requirements of paragraph (d)(2) of this section and which is marketed in accordance with the requirements of paragraph (d)(3) of this section shall not be in violation of this section if its Reid vapor pressure does not exceed the applicable standard in paragraph (a) of this section by more than one pound per square inch ►and if it is sampled on or before September 15, 1992◄.

(2) In order to qualify for the special regulatory treatment specified in paragraph (d)(1) of this section, gasoline must contain at least 9% ethanol (by volume) or 4% methanol (by volume). The ethanol and methanol content of gasoline shall be determined by use of one of the testing methodologies specified in Appendix F to this part. The maximum ethanol and methanol content of gasoline shall not exceed any applicable waiver conditions under section 211(f)(4) of the Clean Air Act.

(3) In order to qualify for the special regulatory treatment specified in paragraph (d)(1) of this section, gasoline must be marketed in accordance with each of the following requirements:

(i) Each gasoline pump stand from which such gasoline is dispensed at a retail outlet or wholesale purchaser-consumer facility shall be affixed with a legible and conspicuous label which states that the gasoline dispensed from the pump contains ethanol, methanol, or ethanol and methanol, whichever is appropriate, and the percentage concentration of each alcohol.

(ii) Each invoice, loading ticket, bill of lading, delivery ticket and other document which accompanies the shipment of such gasoline shall contain a legible and conspicuous statement that the gasoline being shipped contains ethanol, methanol, or ethanol and methanol, whichever is appropriate. Such documents shall be retained by distributors, resellers, carriers, retailers, and wholesale purchaser-consumers for at least one year, and shall be available for inspection by the Administrator or his authorized representative during such period.

§ 80.28 Liability for violations of gasoline volatility controls and prohibitions.

(a) *Violations at Refineries or Importer Facilities.* Where a violation of the applicable standard set forth in § 80.27 is detected at a refinery or importer's facility, the refiner or importer shall be deemed in violation.

(b) *Violations at Carrier Facilities.* Where a violation of the applicable standard set forth in § 80.27 is detected at a carrier's facility, whether in a transport vehicle, in a storage facility, or elsewhere at the facility, the following parties shall be deemed in violation:

(1) The carrier, except as provided in paragraph (g)(1); and

(2) The refiner or importer at whose refinery or import facility the gasoline was produced or imported, except as provided in paragraph (g)(2).

(c) *Violations at Branded Distributor or Reseller Facilities.* Where a violation of the applicable standard set forth in § 80.27 is detected at a distributor or reseller facility which is operating under the corporate, trade, or brand name of a gasoline refiner or any of its marketing subsidiaries, the following parties shall be deemed in violation:

(1) The distributor or reseller, except as provided in paragraph (g)(3).

(2) The carrier (if any), if the carrier caused the gasoline to violate the applicable standard; and

(3) The refiner under whose corporate, trade, or brand name (or that of any of its marketing subsidiaries) the distributor or reseller is operating, except as provided in paragraph (g)(4).

(d) *Violations at Unbranded Distributor Facilities.* Where a violation of the applicable standard set forth in § 80.27 is detected at the facility of a distributor not operating under a refiner's corporate, trade, or brand name, or that of any of its marketing subsidiaries, the following parties shall be deemed in violation:

(1) The distributor, except as provided in paragraph (g)(3);

(2) The carrier (if any), if the carrier caused the gasoline to violate the applicable standard; and

(3) The refiner or importer at whose refinery or import facility the gasoline was produced or imported, except as provided in paragraph (g)(2).

(e) *Violations at Branded Retail Outlets or Wholesale Purchaser-Consumer Facilities.* Where a violation of the applicable standard set forth in § 80.27 is detected at a retail outlet or at a wholesale purchaser-consumer facility displaying the corporate, trade, or brand name of a gasoline refiner or any of its marketing subsidiaries, the following parties shall be deemed in violation:

(1) The retailer or wholesale purchaser-consumer, except as provided in paragraph (g)(5);

(2) The distributor and/or reseller (if any), except as provided in paragraph (g)(6);

(3) The carrier (if any), if the carrier caused the gasoline to violate the applicable standard; and

(4) The refiner whose corporate, trade, or brand name (or that of any of its marketing subsidiaries) is displayed at the retail outlet or wholesale purchaser-consumer facility, except as provided in paragraph (g)(4).

(f) *Violations at Unbranded Retail Outlets or Wholesale Purchaser-Consumer Facilities.* Where a violation of the applicable standard set forth in § 80.27 is detected at a retail outlet or at a wholesale purchaser-consumer facility not displaying the corporate, trade, or brand name of a refinery or any of its marketing subsidiaries, the following parties shall be deemed in violation:

(1) The retailer or wholesale purchaser-consumer, except as provided in paragraph (g)(5);

(2) The distributor (if any), except as provided in paragraph (g)(6); and

(3) The carrier (if any), if the carrier caused the gasoline to violate the applicable standard.

(g) *Defenses.* (1) In any case in which a carrier would be in violation under paragraph (b)(1) of this section, the carrier shall not be deemed in violation if he can demonstrate:

(i) Bills of lading, invoices, delivery tickets, loading tickets or other documents from the refiner or importer at whose refinery or import facility the gasoline was produced or imported which represented to the carrier that the gasoline was in compliance with the applicable standard when delivered to the carrier; and

(ii) Evidence of an oversight program conducted by the carrier, such as periodic sampling and testing of incoming gasoline, for monitoring the volatility of product stored or transported by that carrier; and

(iii) That the violation was not caused by the carrier or his employee or agent.

(2) In any case in which a refiner or importer would be in violation under paragraphs (b)(2) or (d)(3) of this section, the refiner or importer shall not be deemed in violation if he can demonstrate:

(i) That the violation was not caused by him or his employee or agent; and

(ii) Test results, performed in accordance with the sampling and testing methodologies set forth in Appendices D and E to this part, which evidence that gasoline determined to be in violation was in compliance with the applicable standard when it was delivered to the next party in the distribution system.

(3) In any case in which a distributor or reseller would be in violation under paragraphs (c)(1) or (d)(1) of this section, the distributor or reseller shall not be deemed in violation if he can demonstrate:

(i) That the violation was not caused by him or his employee or agent; and

(ii) Bills of lading, invoices, delivery tickets, loading tickets or other documents from the refiner at whose refinery the gasoline was produced, the importer at whose facility the gasoline was imported, or a carrier, reseller or distributor from whom the gasoline was received, which represented to the distributor or reseller that the gasoline was in compliance with the applicable standard when delivered to the distributor or reseller.

(4) In any case in which a refiner would be in violation under paragraphs (c)(3) or (e)(4) of this section, the refiner shall not be deemed in violation if he can demonstrate all of the following:

(i) Test results, performed in accordance with the sampling and testing methodologies set forth in Appendices D and E to this part at the refinery at which the gasoline was produced, which evidence that the gasoline determined to be in violation was in compliance with the applicable standard when transported from the refinery;

(ii) That the violation was not caused by him or his employee or agent; and

(iii) That the violation:

(A) Was caused by an act in violation of law (other than the Act or this part), or an act of sabotage or vandalism, whether or not such acts are violations of law in the jurisdiction where the violation of the requirements of this part occurred, or

(B) Was caused by the action of a reseller or a retailer supplied by such reseller, in violation of a contractual undertaking imposed by the refiner on such reseller designed to prevent such action, and despite reasonable efforts by the refiner (such as periodic sampling) to insure compliance with such contractual obligation, or

(C) Was caused by the action of a retailer who is supplied directly by the refiner (and not by a reseller), in violation of a contractual undertaking imposed by the refiner on such retailer designed to prevent such action, and despite reasonable efforts by the refiner (such as periodic sampling) to insure compliance with such contractual obligation, or

(D) Was caused by the action of a distributor subject to a contract with the refiner for transportation of gasoline from a terminal to a distributor, retailer or wholesale purchaser-consumer, in violation of a contractual undertaking imposed by the refiner on such distributor designed to prevent such action, and despite reasonable efforts by the refiner (such as periodic sampling) to insure compliance with such contractual obligation, or

(E) Was caused by a carrier or other distributor not subject to a contract with the refiner but engaged by him for transportation of gasoline from a terminal to a distributor, retailer or wholesale purchaser-consumer, despite reasonable efforts by the refiner (such as specification or inspection of equipment) to prevent such action, or

(F) Occurred at a wholesale purchaser-consumer facility: *Provided, however,* that if such wholesale purchaser-consumer was supplied by a reseller, the refiner must demonstrate that the violation could not have been prevented by such reseller's compliance with a contractual undertaking imposed by the refiner on such reseller as provided in paragraph (g)(4)(iii)(B) of this section.

(iv) In paragraphs (g)(4)(iii)(A) through (E) of this section, the term "was caused" means that the refiner must demonstrate by reasonably specific showings, by direct or circumstantial evidence, that the violation was caused or must have been caused by another.

(5) In any case in which a retailer or wholesale purchaser-consumer would be in violation under paragraph (e)(1) or (f)(1) of this section, the retailer or wholesale purchaser-consumer shall not be deemed in violation if he can demonstrate that the violation was not caused by him or his employee or agent.

(6) In any case in which a distributor or reseller would be in violation under paragraph (e)(2) or (f)(2) of this section, the distributor or reseller shall not be deemed in violation if he can demonstrate:

(i) That the violation was not caused by him or his employee or agent; and

(ii) Test results, performed in accordance with the sampling and testing methodologies set forth in Appendices D and E to this part, which evidence that the gasoline determined to be in violation was in compliance with the applicable standard when it was delivered to the retailer or wholesale purchaser-consumer.

4. New Appendices D, E and F are proposed to be added to read as follows:

Appendix D—Sampling Procedures for Fuel Volatility

1. *Scope.*

1.1 This method covers procedures for obtaining representative samples of gasoline for the purpose of testing for compliance with Reid vapor pressure (RVP) standards set forth in § 80.27.

2. *Summary of Method.*

2.1 It is necessary that the samples be truly representative of the gasoline in question. The precautions required to ensure the representative character of the samples are numerous and depend upon the tank, carrier, container or line from which the sample is being obtained, the type and cleanliness of the sample container, and the sampling procedure that is to be used. A summary of the sampling procedures and their application is presented in Table 1. Each procedure is suitable for sampling a material under definite storage, transportation, or container conditions. The basic principle of each procedure is to obtain a sample in such manner and from such locations in the tank or other container that the sample will be truly representative of the gasoline.

3. *Description of Terms.*

3.1 "Average sample" is one that consists of proportionate parts for all sections of the container.

3.2 "All-levels sample" is one obtained by submerging a stoppered beaker or bottle to a point as near as possible to the draw-off level, then opening the sampler and raising it at a rate such that it is 70–85% full as it emerges from the liquid. An all-levels sample is not necessarily an average sample because the tank volume may not be proportional to the depth and because the operator may not be able to raise the sampler at the variable rate required for proportionate filling. The rate of filling is proportional to the square root of the depth of immersion.

3.3 "Running sample" is one obtained by lowering an unstoppered beaker or bottle from the top of the gasoline to the level of the bottom of the outlet connection or swing line, and returning it to the top of the gasoline at a uniform rate of speed such that the beaker or bottle is 70–85% full when withdrawn from the gasoline.

3.4 "Spot sample" is one obtained at some specific location in the tank by means of a thief bottle, or beaker.

3.5 "Top sample" is a spot sample obtained 6 inches (150 mm) below the top surface of the liquid (Figure 1).

3.6 "Upper sample" is a spot sample taken at the mid-point of the upper third of the tank contents (Figure 1).

3.7 "Middle sample" is a spot sample obtained from the middle of the tank contents (Figure 1).

3.8 "Lower sample" is a spot sample obtained at the level of the fixed tank outlet or the swing line outlet (Figure 1).

3.9 "Clearance sample" is a spot sample taken 4 inches (100 mm) below the level of the tank outlet (Figure 1).

3.10 "Bottom sample" is one obtained from the material on the bottom surface of the tank, container, or line at its lowest point.

3.11 "Drain sample" is one obtained from the draw-off or discharge valve. Occasionally, a drain sample may be the same as a botton sample, as in the case of a tank car.

3.12 "Continuous sample" is one obtained from a pipeline in such manner as to give a representative average of a moving stream.

3.13 "Mixed sample" is one obtained after mixing or vigorously stirring the contents of the original container, and then pouring out or drawing off the quantity desired.

3.14 "Nozzle sample" is one obtained from a gasoline pump nozzle which dispenses gasoline from a storage tank at a retail outlet or a wholesale purchaser-consumer facility.

4. *Sample Containers.*

4.1 Sample containers may be clear or brown glass bottles, or cans. The clear glass bottle is advantageous because it may be examined visually for cleanliness, and also allows visual inspection of the sample for free water or solid impurities. The brown glass bottle affords some protection from light. The only cans permissible are those with the seams soldered on the exterior surface with a flux of rosin in a suitable solvent. Such a flux is easily removed with gasoline, whereas many others are very difficult to remove.

4.2 Container closure. Cork or glass stoppers, or screw caps of plastic or metal, may be used for glass bottles; screw caps only shall be used for cans to provide a vapor-tight closure seal. Corks must be of good quality, clean and free from holes and loose bits of cork. Never use rubber stoppers. Contact of the sample with the cork may be prevented by wrapping tin or aluminum foil around the cork before forcing it into the bottle. Glass stoppers must be a perfect fit. Screw caps must be protected by a cork disk faced with tin or aluminum foil, or other material that will not affect petroleum or petroleum products.

4.3 Cleaning procedure. All sample containers must be absolutely clean and free of water, dirt, lint, washing compounds, naphtha, or other solvents.

soldering fluxes or acids, corrosion, rust, and oil. Before using a container, rinse it with Stoddard solvent or other naphtha of similar volatility. (It may be necessary to use sludge solvents to remove all traces of sediment and sludge from containers previously used.) Then wash the container with strong soap solution, rinse it thoroughly with tap water, and finally with distilled water. Dry either by passing a current of clean, warm air through the container or by placing it in a hot dust-free cabinet at 104 degrees Fahrenheit (40 degrees centigrade) or higher. When dry, stopper or cap the container immediately.

5. *Sampling Apparatus.*

5.1 Sampling apparatus is described in detail under each of the specific sampling procedures. Clean, dry, and free all sampling apparatus from any substance that might contaminate the material, using the procedure described in 4.3.

6. *Time and Place of Sampling.*

6.1 When loading or discharging gasoline, take samples from both shipping and receiving tanks, and from the pipeline if required.

6.2 Ship or barge tanks. Sample each product after the vessel is loaded or just before unloading.

6.3 Tank cars. Sample the product after the car is loaded or just before unloading.

Note.—When taking samples from tanks suspected of containing flammable atmospheres, precautions should be taken to guard against ignitions due to static electricity. Metal or conductive objects, such as gage tapes, sample containers, and thermometers, should not be lowered into or suspended in a compartment or tank which is being filled or immediately after cessation of pumping. A waiting period of approximately one minute will generally permit a substantial relaxation of the electrostatic charge; under certain conditions a longer period may be deemed advisable.

7. *Obtaining Samples.*

7.1 Directions for sampling cannot be made explicit enough to cover all cases. Extreme care and good judgment are necessary to ensure samples that represent the general character and average condition of the material. Clean hands are important. Clean gloves may be worn but only when absolutely necessary, such as in cold weather, or when handling materials at high temperature, or for reasons of safety. Select wiping cloths so that lint is not introduced, contaminating samples.

7.2 As many petroleum vapors are toxic and flammable, avoid breathing them or igniting them from an open flame or a spark produced by static. Follow all safety precautions specific to the material being sampled.

7.3 When sampling relatively volatile products (more than 2 pounds (0.14 kgf/cm^2) RVP), the sampling apparatus shall be filled and allowed to drain before drawing the sample. If the sample is to be transferred to another container, this container shall also be rinsed with some of the volatile product and then drained. When the actual sample is emptied into this container, the sampling apparatus should be upended into the opening of the sample container and remain in this position until the contents have been transferred so that no unsaturated air will be entrained in the transfer of the sample.

8. *Handling Samples.*

8.1 Volatile samples. It is necessary to protect all volatile samples of gasoline from evaporation. Transfer the product from the sampling apparatus to the sample container immediately. Keep the container closed except when the material is being transferred. After delivery to the laboratory, volatile samples should be cooled before the container is opened.

8.2 Container outage. Never completely fill a sample container, but allow adequate room for expansion, taking into considereation the temperature of the liquid at the time of filling and the probable maximum temperature to which the filled container may be subjected.

9. *Shipping Samples.*

9.1 To prevent loss of liquid and vapors during shipment, and to protect against moisture and dust, cover the stoppers of glass bottles with plastic caps that have been swelled in water, wiped dry, placed over the tops of the stoppered bottles, and allowed to shrink tightly in place. The caps of metal containers must be screwed down tightly and checked for leakage. Postal and express office regulations applying to the shipment of flammable liquids most be observed.

10. *Labeling Sample Containers.*

10.1 Label the container immediately after a sample is obtained. Use waterproof and oilproof ink or a pencil hard enough to dent the tag, since soft pencil and ordinary ink markings are subject to obliteration from moisture, oil smearing and handling. Include the following information:

10.1.1 Date and time (the period elapsed during continuous sampling);

10.1.2 Name of the sample;

10.1.3 Name or number and owner of the vessel, car, or container;

10.1.4 Brand and grade of material; and

10.1.5 Reference symbol or identification number.

11. *Sampling procedures.*

11.1 The standard sampling procedures described in this method are summarized in Table 1. Alternative sampling procedures may be used if a mutually satisfactory agreement has been reached by the party(ies) involved and EPA and such agreement has been put in writing and signed by authorized officials.

11.2 Bottle or beaker sampling. The bottle or beaker sampling procedure is applicable for sampling liquids of 16 pounds (1.12 kgf/cm^2) RVP or less in tank cars, tank trucks, shore tanks, ship tanks, and barge tanks.

11.2.1 Apparatus. A suitable sampling bottle or beaker as shown in Figure 2 is required. Recommended diameter of opening in the bottle or beaker is ¾ inch (19mm).

11.2.2 Procedure.

11.2.2.1 All-levels sample. Lower the weighted, stoppered bottle or beaker as near as possible to the draw-off level, pull out the stopper with a sharp jerk of the cord or chain and raise the bottle at a uniform rate so that it is 70–85% full as it emerges from the liquid.

11.2.2.2 Running sample. Lower the unstappered bottle or beaker as near as possible to the level of the bottom of the outlet connection or swing line and then raise the bottle or beaker to the top of the gasoline at a uniform rate of speed such that it is 70–85% full when withdrawn from the gasoline.

11.2.2.3 Upper, middle, and lower samples. Lower the weighted, stoppered bottle to the proper depths (Figure 1) as follows:

Upper sample.....	Middle of upper third of the tank contents.
Middle sample.....	Middle of the tank contents.
Lower sample.....	Level of the fixed tank outlet or the swing-line outlet.

At the selected level pull out the stopper with a sharp jerk of the cord or chain and allow the bottle or beaker to fill completely, as evidenced by the cessation of air bubbles. When full, raise the bottle or beaker, pour off a small amount, and stopper immediately.

11.2.2.4 Top sample. Obtain this sample (Figure 1) in the same manner as specified in 11.2.2.3 but at six inches (150 mm) below the top surface of the tank contents.

11.2.2.5 Handling. Stopper and label bottle samples immediately after taking them, and deliver to the laboratory in the original sampling bottles.

11.3 Tap sampling. The tap sampling procedure is applicable for sampling liquids of twenty-six pounds (1.83 kgf/

cm^2) RVP or less in tanks which are equipped with suitable sampling taps or lines. This procedure is recommended for volatile stocks in tanks of the breather and bellen roof type, spheroids, etc. (Samples may be taken from the drain cocks of gage glasses, if the tank is not equipped with sampling taps.) The assembly for tap sampling is shown in Figure 3.

11.3.1 Apparatus.

11.3.1.1 Tank taps. The tank should be equipped with at least three sampling taps placed equidistant throughout the tank height and extending at least three feet (0.9 meter) inside the tank shell. A standard ¼ inch pipe with suitable valve is satisfactory.

11.3.1.2 Tube. A delivery tube that will not contaminate the product being sampled and long enough to reach to the bottom of the sample container is required to allow submerged filling. When a cooling bath is used while tap sampling, a similar suitable tube should be used between the tank tap and the cooler inlet.

11.3.1.3 Sample containers. Use clean, dry glass bottles of convenient size and strength or metal containers to receive the samples.

11.3.2 Procedure.

11.3.2.1 Before a sample is drawn, flush the tap (or gage glass drain cock) and line until they are purged completely. Connect the clean delivery tube to the tap. Draw upper, middle, or lower samples directly from the respective taps after the flushing operation. Stopper and label the sample container immediately after filling, and deliver it to the laboratory.

11.3.2.2 When a sample cooler is used during the tap sampling operation, flush the tap (or gage glass drain cock). Then using a section of clean tubing, connect the tap to the cooler inlet. Flush the cooler thoroughly, after which connect the clean delivery tube to the cooler outlet and proceed with the sampling operation.

11.4 Continuous sampling. The continuous sampling procedure is applicable for sampling liquids of 16 pounds (1.12 kgf/cm^2) RVP or less and semiliquids in pipelines, filling lines, and transfer lines. The continuous sampling may be done manually or by using automatic devices.

11.4.1 Apparatus.

11.4.1.1 Sampling probe. The function of the sampling probe is to withdraw from the flow stream a portion that will be representative of the entire stream. The apparatus assembly for continuous sampling is shown in Figure 4. Probe designs that are commonly used are as follows:

11.4.1.1.1 A tube extending to the center of the line and beveled at a 45 degree angle facing upstream (Figure 4(a)).

11.4.1.1.2 A long-radius forged elbow or pipe bend extending to the center line of the pipe and facing upstream. The end of the probe should be reamed to give a sharp entrance edge (Figure 4(b)).

11.4.1.1.3 A closed-end tube with a round orifice spaced near the closed end which should be positioned in such a way that the orifice is in the center of the pipeline and is facing the stream as shown in Figure 4(c).

11.4.1.2 Probe location. Since the fluid to be sampled may not in all cases be homogeneous, the location, the position and the size of the sampling probe should be such as to minimize stratification or dropping out of heavier particles within the tube or the displacement of the product within the tube as a result of variation in gravity of the flowing stream. The sampling probe should be located preferably in a vertical run of pipe and as near as practicable to the point where the product passes to the receiver. The probe should always be in a horizontal position.

11.4.1.2.1 The sampling lines should be as short as practicable and should be cleared before any samples are taken.

11.4.1.2.2 Where adequate flowing velocity is not available, a suitable device for mixing the fluid flow to ensure a homogeneous mixture at all rates of flow and to eliminate stratification should be installed upstream of the sampling tap. Some effective devices for obtaining a homogeneous mixture are as follows: Reduction in pipe size; a series of baffles; orifice or perforated plate; and a combination of any of these methods.

11.4.1.2.3 The design or sizing of these devices is optional with the user, as long as the flow past the sampling point is homogeneous and stratification is eliminated.

11.4.1.3 To control the rate at which the sample is withdrawn, the probe or probes should be fitted with valves or plug cocks.

11.4.1.4 Automatic sampling devices that meet the standards set out in 11.4.1.5 may be used in obtaining samples of gasoline. The quality of sample collected must be of sufficient size for analysis, and its composition should be identical with the composition of the batch flowing in the line while the sample is being taken. An automatic sampler installation necessarily includes not only the automatic sampling device that extracts the samples from the line, but also a suitable probe, connecting lines, auxiliary equipment, and a container in which the sample is collected. Automatic samplers may be classified as follows:

11.4.1.4.1 Continuous sampler, time cycle (nonproportional) type. A sampler designed and operated in such a manner that it transfers equal increments of liquid from the pipeline to the sample container at a uniform rate of one or more increments per minute is a continuous sampler.

11.4.1.4.2 Continuous sampler, flow-responsive (proportional) type. A sampler that is designed and operated in such a manner that it will automatically adjust the quantity of sample in proportion to the rate of flow is a flow-responsive (proportional) sampler. Adjustment of the quantity of sample may be made either by varying the frequency of transferring equal increments of sample to the sample container, or by varying the volume of the increments while maintaining a constant frequency of transferring the increments to the sample container. The apparatus assembly for continuous sampling is shown in Figure 4.

11.4.1.4.3 Intermittent sampler. A sampler that is designed and operated in such a manner that it transfers equal increments of liquid from a pipeline to the sample container at a uniform rate of less than one increment per minute is an intermittent sampler.

11.4.1.5 Standards of installation. Automatic sampler installations should meet all safety requirements in the plant or area where used, and should comply with American National Standard Code for Pressure Piping, and other applicable codes (ANSI B31.3). The sampler should be so installed as to provide ample access space for inspection and maintenance.

11.4.1.5.1 Small lines connecting various elements of the installation should be so arranged that complete purging of the automatic sampler and of all lines can be accomplished effectively. All fluid remaining in the sampler and the lines from the preceding sampling cycle should be purged immediately before the start of any given sampling operation.

11.4.1.5.2 In those cases where the sampler design is such that complete purging of the sampling lines and the sampler is not possible, a small pump should be installed in order to circulate a continuous stream from the sampling tube past or through the sampler and back into the line. The automatic sampler should then withdraw the sample from the sidestream through the shortest possible connection.

11.4.1.5.3 Under certain conditions, there may be a tendency for water and

heavy particles to drop out in the discharge line from the sampling device and appear in the sample container during some subsequent sampling period. To circumvent this possibility, the discharge pipe from the sampling device should be free of pockets or enlarged pipe areas, and preferably should be pitched downward to the sample container.

11.4.1.5.4 To ensure clean, free-flowing lines, piping should be designed for periodic cleaning.

11.4.1.6 Field calibration. Composite samples obtained from the automatic sampler installation should be verified for quantity performance in a manner that meets with the approval of all parties concerned (including EPA), at least once a month and more often if conditions warrant. In the case of time-cycle samplers, deviations in quantity of the sample taken should not exceed ± five percent for any given setting. In the case of flow-responsive samplers, the deviation in quantity of sample taken per 1,000 barrels of flowing stream should not exceed ± five percent. For the purpose of field-calibrating an installation, the composite sample obtained from the automatic sampler under test should be verified for quality by comparing on the basis of physical and chemical properties, with either a properly secured continuous nonautomatic sample or tank sample. The tank sample should be taken under the following conditions:

11.4.1.6.1 The batch pumped during the test interval should be diverted into a clean tank and a sample taken within one hour after cessation of pumping.

11.4.1.6.2 If the sampling of the delivery tank is to be delayed beyond one hour, then the tank selected must be equipped with an adequate mixing means. For valid comparison, the sampling of the delivery tank must be completed within eight hours after cessation of pumping, even though the tank is equipped with a motor-driven mixer.

11.4.1.6.3 When making normal full-tank delivery from a tank, a properly secured sample may be used to check the results of the sampler if the parties (including EPA) mutually agree to this procedure.

11.4.1.7 Receiver. The receiver must be a clean, dry container of convenient size to receive the sample. All connections from the sample probe to the sample container must be free of leaks. Two types of container may be used, depending upon service requirements.

11.4.1.7.1 Atmospheric container. The atmospheric container shall be constructed in such a way that it retards evaporation loss and protects the sample from extraneous material such as rain, snow, dust, and trash. The construction should allow cleaning, interior inspection, and complete mixing of the sample prior to removal. The container should be provided with a suitable vent.

11.4.1.7.2 Closed container. The closed container shall be constructed in such a manner that it prevents evaporation loss. The construction must allow cleaning, interior inspection and complete mixing of the sample prior to removal. The container should be equipped with a pressure-relief valve.

11.4.2 Procedure.

11.4.2.1 Nonautomatic sample. Adjust the valve or plug cock from the sampling probe so that a steady stream is drawn from the probe. Whenever possible, the rate of sample withdrawal should be such that the velocity of liquid flowing through the probe is approximately equal to the average linear velocity of the stream flowing through the pipeline. Measure and record the rate of sample withdrawal as gallons per hour. Divert the sample stream to the sampling container continuously or intermittently to provide a quantity of sample that will be of sufficient size for analysis.

11.4.2.2 Automatic sampling. Purge the sampler and the sampling lines immediately before the start of a sampling operation. If the sample design is such that complete purging is not possible, circulate a continuous stream from the probe past or through the sampler and back into the line. Withdraw the sample from the side stream through the automatic sampler using the shortest possible connections. Adjust the sampler to deliver not less than one and not more than 40 gallons (151 liters) of sample during the desired sampling period. For time-cycle samplers, record the rate at which sample increments were taken per minute. For flow-responsive samplers, record the proportion of sample to total stream. Label the samples and deliver them to the laboratory in the containers in which they were collected.

11.5 Nozzle sampling. The nozzle sampling procedure is applicable for sampling gasoline from a retail outlet or wholesale purchaser-consumer facility storage tank.

11.5.1 Apparatus. Sample containers conforming with 4.1 should be used. A spacer, if appropriate, and a nozzle extension as shown in Figures 6 and 7 shall be used when nozzle sampling.

11.5.2 Procedure. Immediately after gasoline has been delivered from the pump and the pump has been reset, deliver a small amount of product into the sample container, using a spacer (Figure 6), if needed, on the pump nozzle (vapor recovery type). Rinse sample container and dump product into waste container. Insert nozzle extension (Figure 7) into sample container and insert pump nozzle into extension with slot over air bleed hole. Replace sample container in chilling medium and fill slowly through nozzle extension to 70–80 percent full (Figure 8). Remove nozzle extension. Cap sample container at once. Check for leaks. Discard sample container and resample if leak occurs. If sample container is leak tight, place container in a cold chest of ice water.

12. *Special Precautions and Instructions.*

12.1 Precautions. Vapor pressures are extremely sensitive to evaporation losses and to slight changes in composition. When obtaining, storing, or handling samples, observe the necessary precautions to ensure samples representative of the product and satisfactory for RVP tests. Official samples should be taken by, or under the immediate supervision of, a person of judgment, skill, and sampling experience. Never prepare composite samples for this test. Make certain that containers which are to be shipped by common carrier conform to applicable Interstate Commerce Commission, state, and local regulation. When flushing or purging lines or containers, observe the pertinent regulations and precautions against fire, explosion, and other hazards.

12.2 Cooling bath. A bath (Figure 5) of sufficient size to hold the sample container and a cooling coil of about 25 feet (7.6 meters) of copper tubing (3/8 inch (9.5 mm) or less outside diameter) shall be required when using the procedure described in 12.7. One end of the coil is provided with a connection for attaching it to the tank sampling tap or valve. The other end is fitted with a suitable valve (outlet) of good quality. A removable copper tube of 3/8 inch (9.5 mm) or less outside diameter and of sufficient length to reach the bottom of the sample container shall be connected to the open end of the outlet valve.

12.3 Sample containers. Use containers of not less than one quart (0.9 liter) nor more than two gallons (7.6 liters) capacity, of sufficient strength to withstand the pressures to which they may be subjected, and of a type that will permit replacement of the cap or stopper with suitable connections for transferring the sample to the gasoline chamber of the vapor pressure apparatus. Open-type containers have a single opening which permits sampling

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by immersion. Closed-type containers have two openings, one in each end (or the equivalent thereof), fitted with valves suitable for sampling by water displacement or by purging.

12.4 Transfer connections. The transfer connection for the open-type container consists of an air tube and a liquid delivery tube assembled in a cap or stopper. The air tube extends to the bottom of the container. One end of the liquid delivery tube is flush with the inside face of the cap or stopper and the tube is long enough to reach the bottom of the gasoline chamber while the sample is being transferred to the chamber. The transfer connection for the closed-type container consists of a single tube with a connection suitable for attaching it to one of the openings of the sample container. The tube is long enough to reach the bottom of the gasoline chamber while the sample is being transferred.

12.5 Sampling open tanks. Use clean containers of the open type when sampling open tanks and tank cars. An all-level sample obtained by the bottle procedure described in 11.2 is recommended. Before taking the sample, flush the container by immersing it in the product to be sampled. Then obtain the sample immediately. Pour off enough so that the container will be 70–80 percent full and close it promptly. Label the container and deliver it to the laboratory.

12.6 Sampling closed tanks. Containers of either the open or closed type may be used to obtain samples from closed or pressure tanks. If the open type is used, follow the cooling bath procedure described in 12.7 or 12.10. If the closed type is used, obtain the sample using the water displacement procedure described in 12.8 or the purging procedure described in 12.9. The water displacement procedure is preferable because the flow of product involved in the purging procedure may be hazardous.

12.7 Cooling bath procedure. When using a container of the open type, keep it at a temperature of 32 degrees to 40 degrees Fahrenheit (0 degrees to 4.5 degrees centigrade) during the sampling operation by using the cooling bath (Figure 5). Connect the coil to the tank sampling tap or valve and flush it with a sufficient amount of product to ensure complete purging. When obtaining a sample, throttle the outlet valve so that the pressure in the coil will be approximately the same as that in the tank. Fill the container once to wash and cool it, and discard the wash product. Then draw the sample immediately. Pour off enough so that the container will be 70–80 percent full and close it promptly. Label the container and deliver it to the laboratory.

12.8 Water displacement procedure. Completely fill the closed-type container with water and close the valves. The water should be at the same temperature or lower than that of the product to be sampled. While permitting a small amount of product to flow through the fittings, connect the top or inlet valve of the container to the tank sampling tap or valve. Then open all valves on the inlet side of the container. Open the bottom or outlet valve slightly to allow the water to be displaced slowly by the sample entering the container. Regulate the flow so that there is no appreciable change in pressure within the container. Close the outlet valve as soon as gasoline discharges from the outlet; then in succession close the inlet valve and the sampling valve on the tank. Disconnect the container and withdraw enough of the contents so that it will be 70–80 percent full. If the vapor pressure of the product is not high enough to force liquid from the container, open both the upper and lower valves slightly to remove the excess. Promptly seal and label the container, and deliver is to the laboratory.

12.9 Purging procedure. Connect the inlet valve of the closed-type container to the tank sampling tap or valve. Throttle the outlet valve of the container so that the pressure in it will be approximately equal to that in the container being sampled. Allow a volume of product equal to at least twice that of the container to flow through the sampling system. Then close all valves, the outlet valve first, the inlet valve of the container second, and the tank sampling valve last, and disconnect the container immediately. Withdraw enough of the contents so that the sample container will be 70–80 percent full. If the vapor pressure of the product is not high enough to force liquid from the container, open both the upper and lower valves slightly to remove the excess. Promptly seal and label the container, and deliver it to the laboratory.

12.10 Nozzle sampling procedure. When using a container of the open type, keep it at a temperature of 32 degrees to 40 degrees Fahrenheit (0 degree to 4.5 degrees centigrade) when sampling by the nozzle sampling procedure. The container may be chilled by placing it into an ice chest containing ice (frozen water). The sampling is accomplished following the procedures in 11.5. Promptly seal and label the container, and deliver it to the laboratory.

TABLE 1.—SUMMARY OF GASOLINE SAMPLING PROCEDURES AND APPLICABILITY

Type of container	Procedure	Paragraph
Storage tanks, ship and barge tanks, tank cars, tank trucks	Bottle sampling	11.2
Storage tanks with taps	Tap sampling	11.3
Pipes and lines	Continuous line sampling	11.4
Retail outlet and wholesale purchaser-consumer facility storage tanks	Nozzle sampling	11.5

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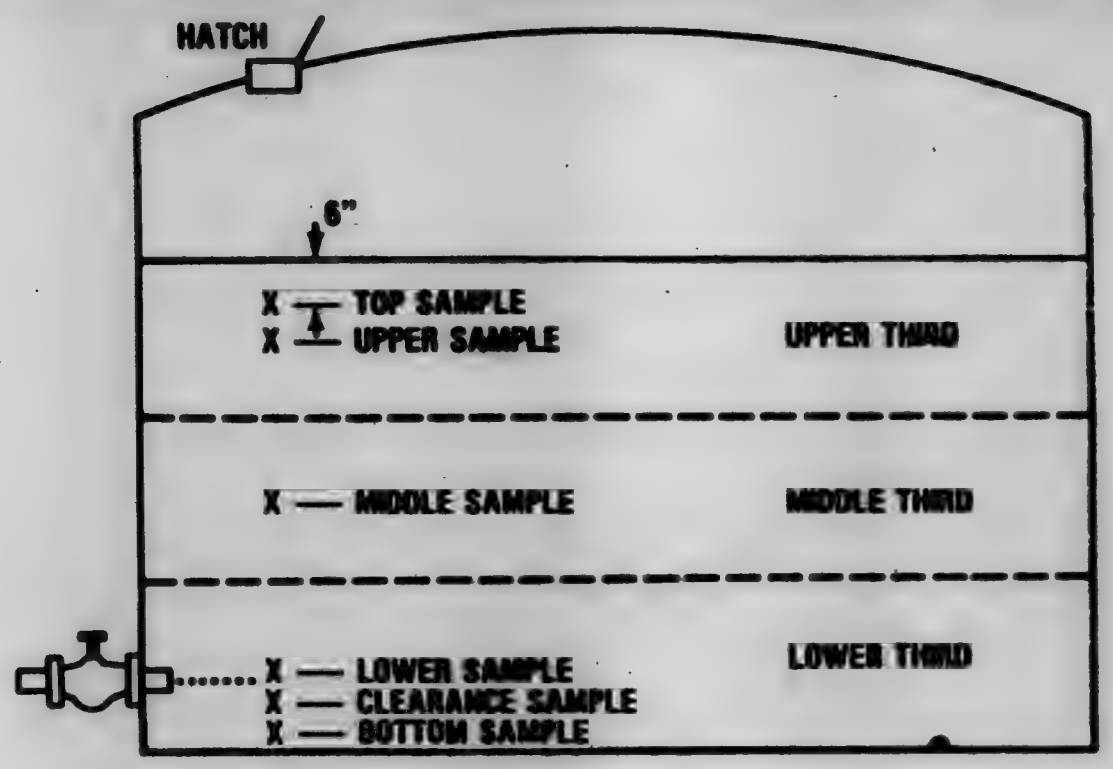

Figure 1. Sampling Depths

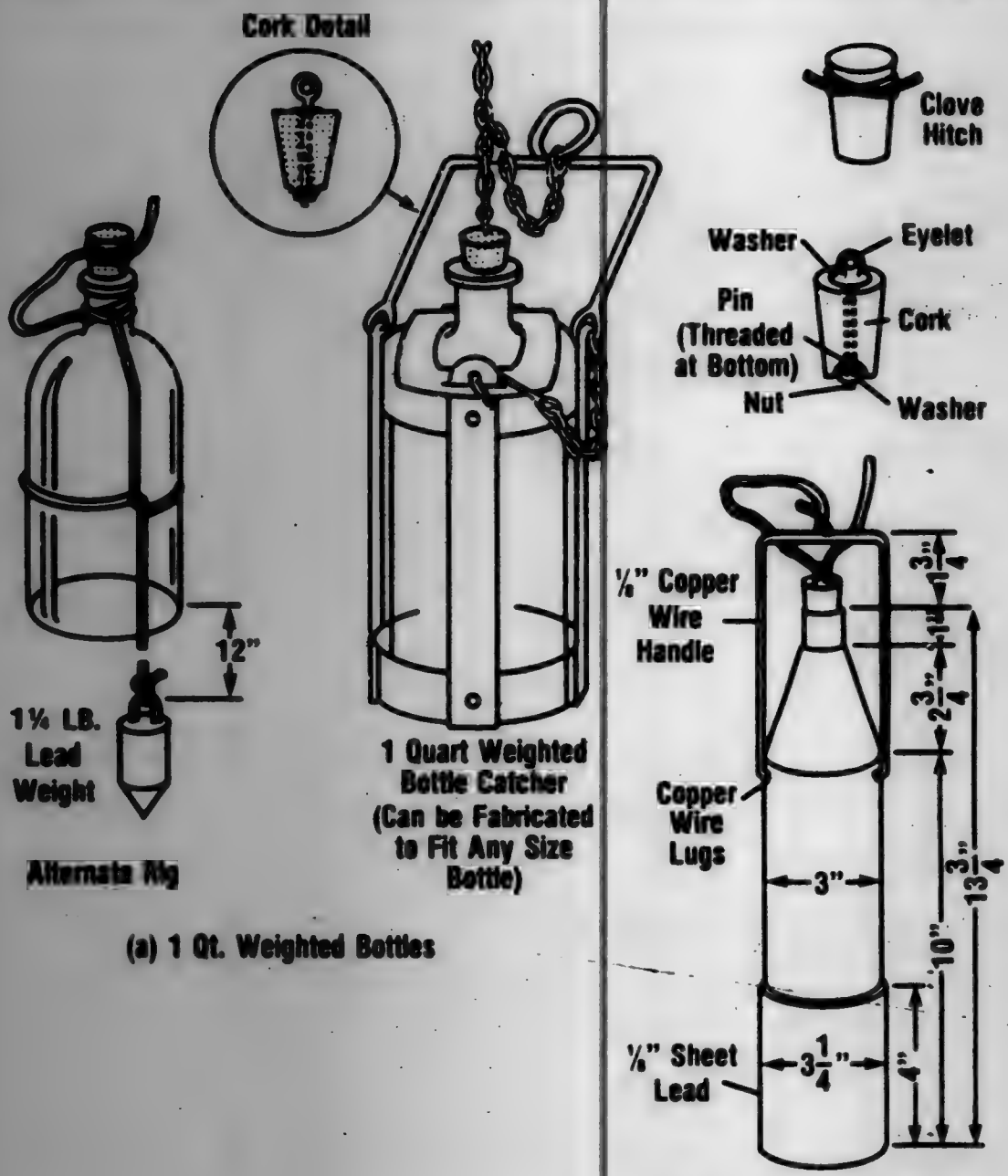

(a) 1 Qt. Weighted Bottles

(b) 1 Qt. Weighted Beaker

METRIC EQUIVALENTS

in.	⅛	1	1¾	2¾	3¼	4	10	12	13¾
mm	3	25	45	70	83	102	250	300	350

Figure 2. Assembly for Bottle Sampling

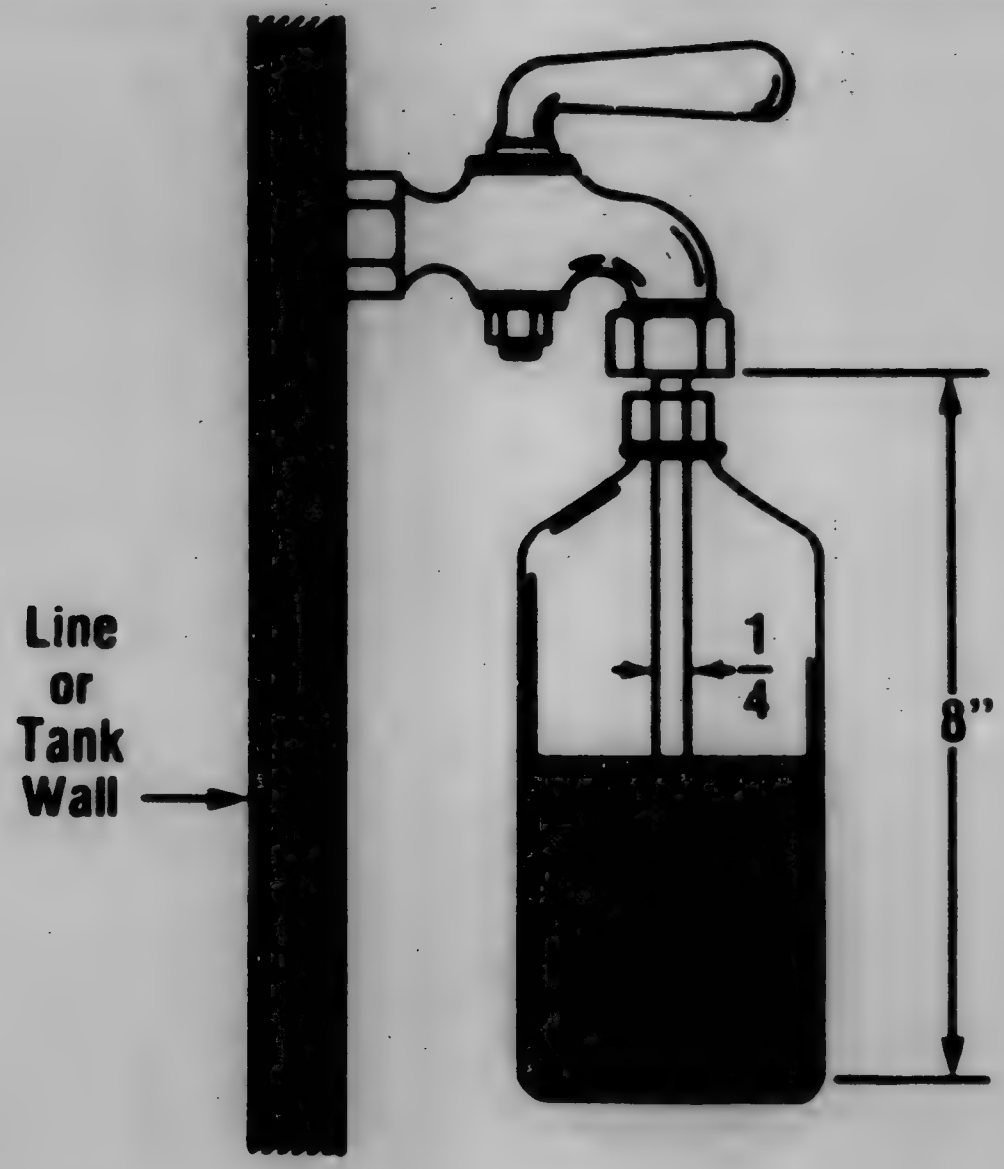

Figure 3. Assembly for Tap Sampling

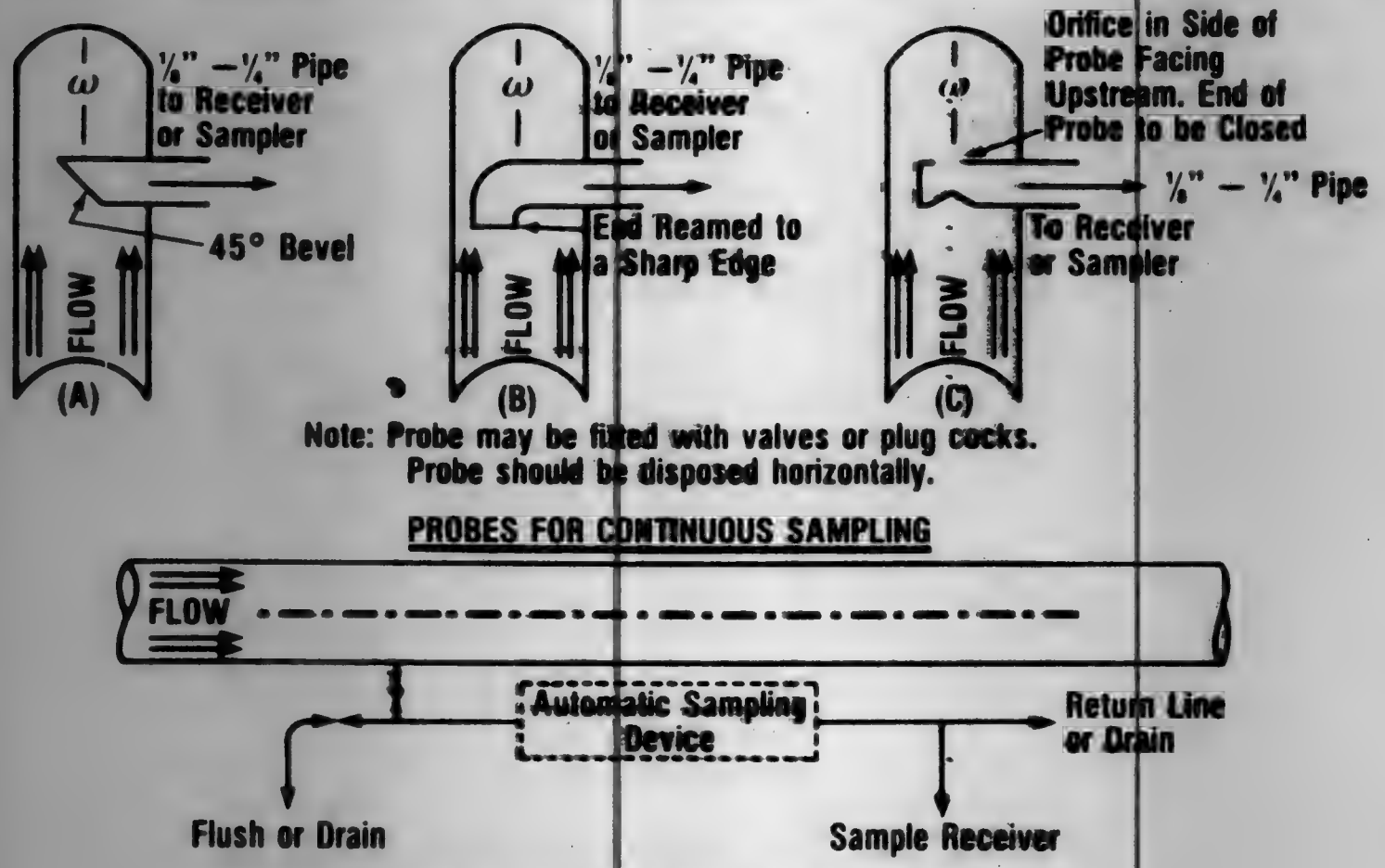

Note: Probe may be fitted with valves or plug cocks.
Probe should be disposed horizontally.

PROBES FOR CONTINUOUS SAMPLING

TYPICAL ASSEMBLY FOR LINE SAMPLING

Figure 4. Probes for Continuous Sampling

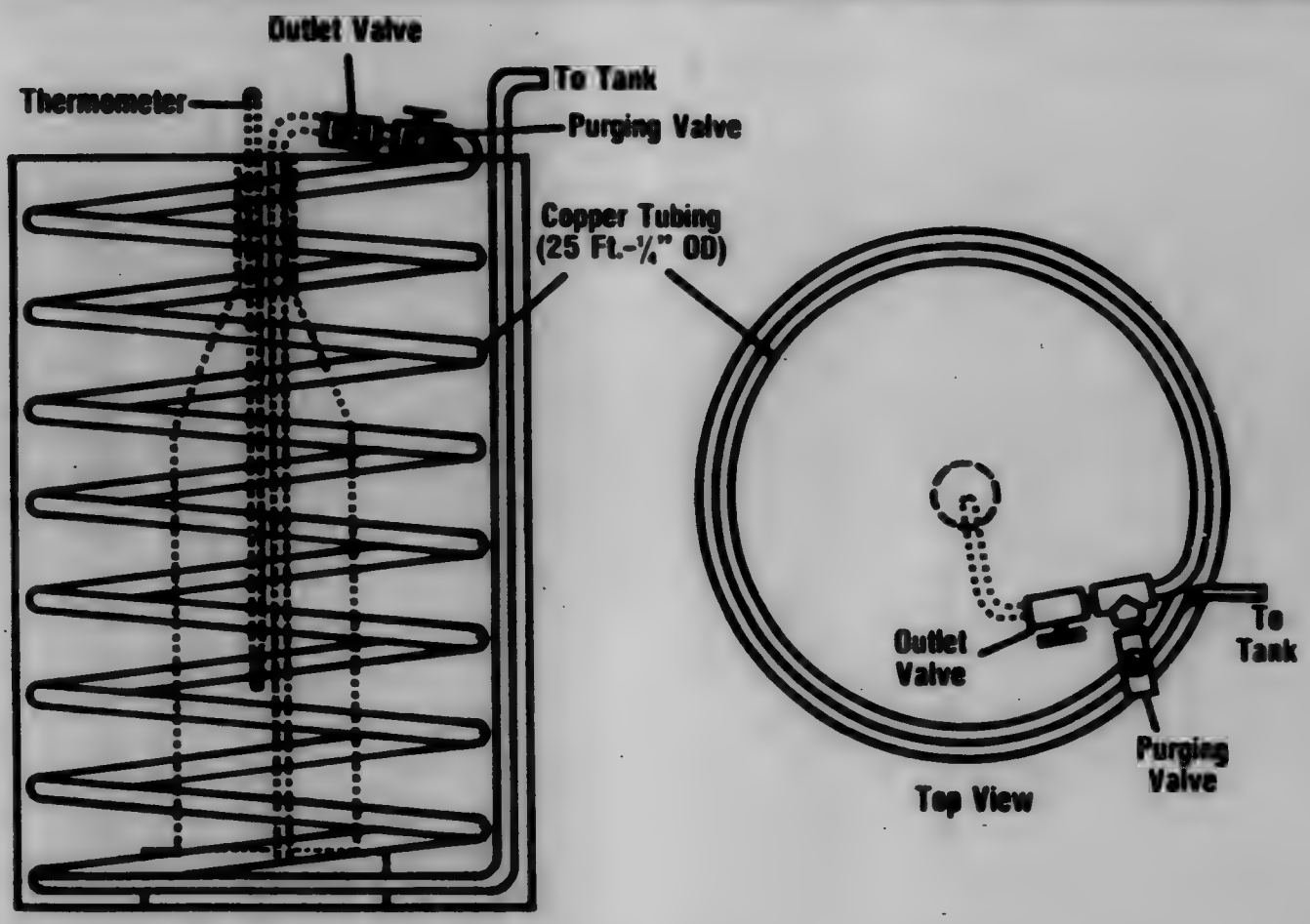

Figure 5. Cooling Bath for Reid Vapor Pressure Sampling

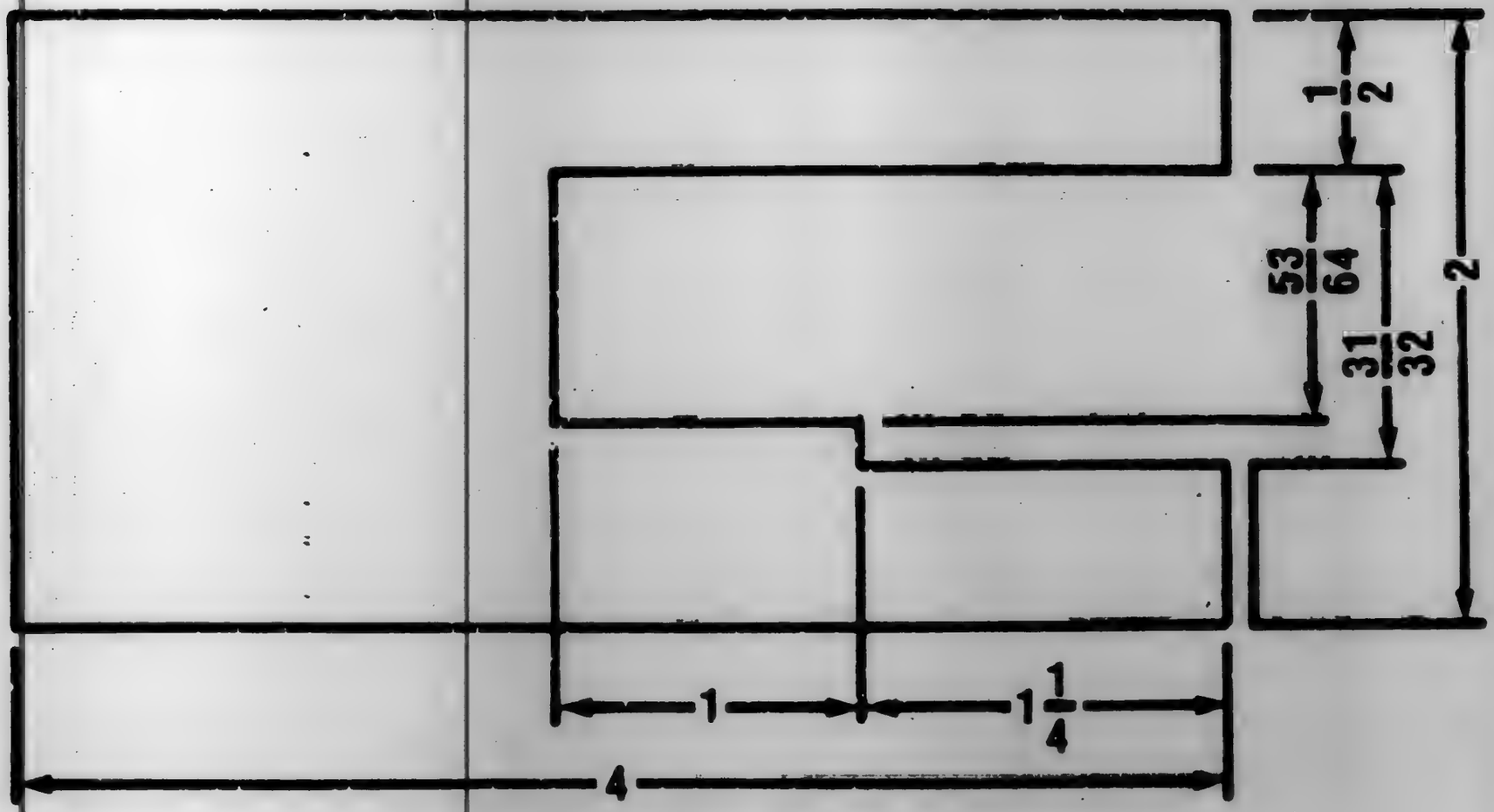

Make from ¼ inch flat steel
All dimensions in inches
Break all edges and corners

Figure 6. Spacer for Nozzle Sampling

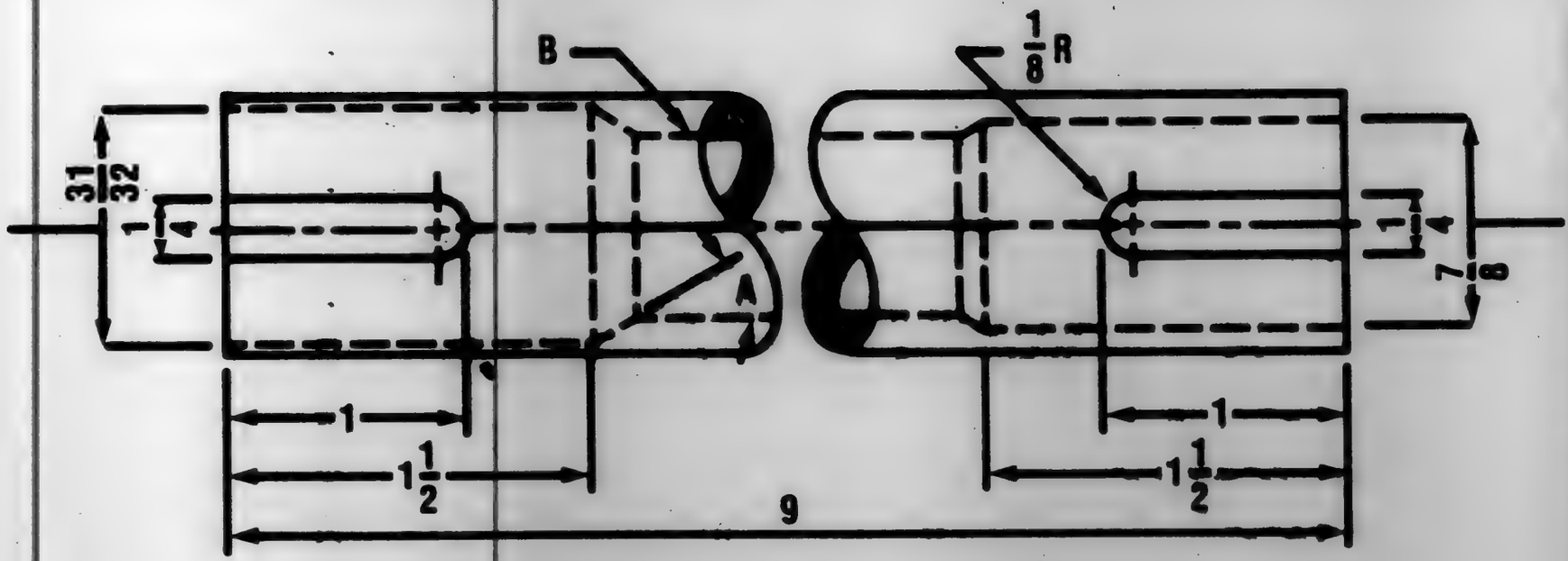

Use ¾ in. Schedule 80 Black Iron Pipe
All dimensions in inches
All tolerances ± 1/128

A—Recommend 30°
B—Inside Diameter Schedule 80 Black Iron Pipe

Figure 7. Nozzle Extension for Nozzle Sampling

(a) Nozzle without vapor recovery

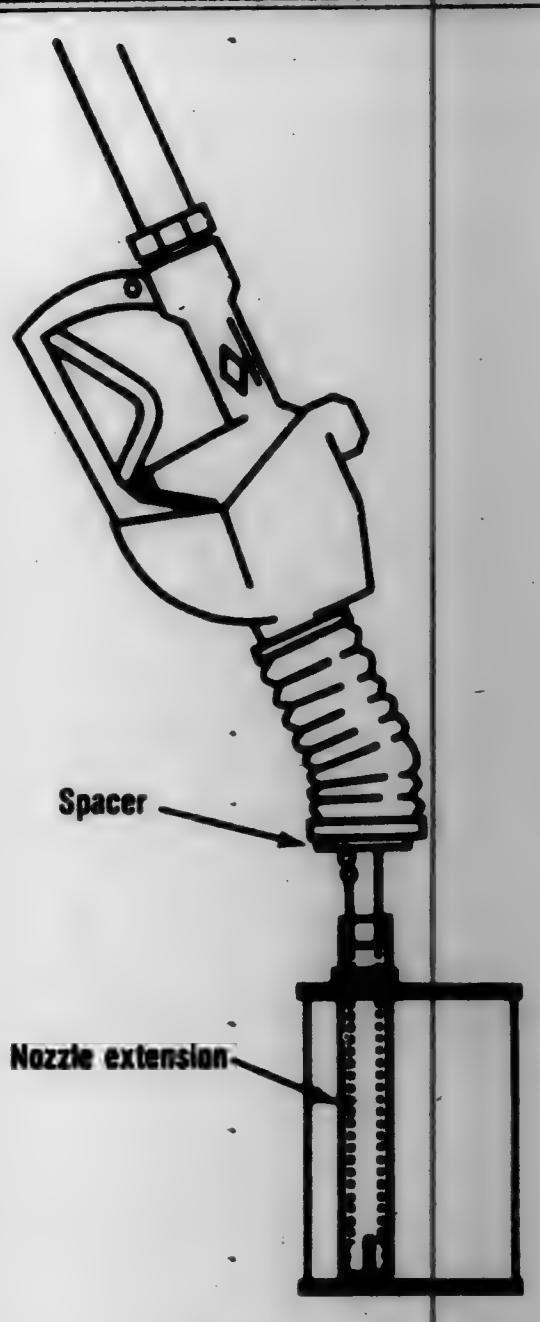

(b) Nozzle with vapor recovery

Figure 8. Assembly for Nozzle Sampling

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Appendix E—Tests for Determining Reid Vapor Pressure (RVP) of Gasoline and Gasoline-Oxygenate Blends

Method 1—Dry RVP Measurement Method.

1. Scope

1.1 This test method covers the determination of the absolute vapor pressure (Note 1) of gasolines and gasoline-oxygenate blends.

Note 1.—Because the external atmospheric pressure is counteracted by the atmospheric pressure initially present in the air chamber, the "vapor pressure" is an absolute pressure at 100°F (37.8°C) in pounds-force per square inch or kilopascals (kPa = kN/m^2). This vapor pressure differs from the true vapor pressure of the sample due to some small sample vaporization and the presence of air in the confined space.

1.2 The values stated in inch-pound units are standard.

2. Summary of Method

2.1 The fuel chamber of the vapor pressure apparatus is filled with the chilled sample and connected to the air chamber at 100°F (37.8°C). The apparatus is immersed in a bath at 100°F and is skaken periodically until a constant pressure is observed on the gage attached to the apparatus. The gage reading, suitably corrected, is reported as the vapor pressure.

3. Significance and Use

3.1 Test Method ASTM D–323 cannot be used to determine the vapor pressure of gasoline-oxygenate blends which contain water-extractable oxygenates because the fuel sample comes into contact with water. This test method is a modification of Test Method ASTM D–323 where contact with water has been eliminated.

4. Apparatus

4.1 The construction of the required apparatus is described in Annex A1.1 of this Appendix.

5. Reagents

5.1 Purity of Reagents—Use reagent grade chemicals in all tests. Unless otherwise indicated, it is intended that all reagents conform to the specifications of the Committee on Analytical Reagents of the American Chemical Society where such specifications are available. Other grades may be used, provided it is first ascertained that the reagent is of sufficiently high purity to permit its use without lessening the accuracy of the determination.

5.2 Acetone (Danger—Extremely flammable. See Annex A3).

5.3 Naphtha (Danger—Extremely flammable. See Annex A2).

6. Handling of Samples

6.1 The extreme sensitivity of vapor pressure measurements to losses through evaporation and the resulting changes in composition is such as to require the utmost precaution and the most meticulous care in the handling of samples. The provisions of this section apply to all samples for vapor pressure determinations.

6.2 Sample in accordance with 40 CFR Part 80, Appendix D.

6.3 Sample Container Size—The size of the sample container from which the vapor pressure sample is taken is 1 quart (1 liter). It will be 70 to 85% filled with the sample.

6.4 Precautions.

6.4.1 Determine vapor pressure as the first test run on a sample. Do not withdraw more than one sample from the sample container for this test.

6.4.2 Protect samples from excessive heat prior to testing.

6.4.3 Do not test samples in leaky containers. Discard them and obtain new samples.

6.4.4 Discard samples that have separated into two phases and obtain new samples (see Note 4).

6.4.5 Sample Handling Temperature—In all cases, cool the sample container and contents to 32 to 34°F (0 to 1°C) before the container is opened. To ensure sufficient time to reach this temperature, directly measure the temperature of a similar liquid at a similar initial temperature in a like container placed in the cooling bath at the same time as the sample.

7. Preparation for Test

7.1 Verification of Sample Container Filling—With the sample at a temperature of 32 to 34°F (0 to 1°C), take the container from the cooling bath, wipe dry with an absorbent material, unseal it, and examine its ullage. The sample content, as determined by use of a suitable gage, must be equal to 70 to 80% of the container capacity.

7.1.1 Discard the sample if its volume is less than 70% of the container capacity.

7.1.2 If the container is more than 80% full, pour out enough sample to bring the container contents within the 70 to 80% range. Under no circumstance may any sample poured out be returned to the container.

7.2 Air Saturation of Sample in Sample Container.

7.2.1 With the sample at a temperature of 32 to 34°F (0 to 1°C), take the container from the cooling bath, wipe it dry with an absorbent material,

unseal it momentarily, taking care to prevent water entry, reseal it, and shake it vigorously. Return it to the bath for a minimum of 2 minutes.

7.2.2 Repeat 7.2.1 twice more. Return the sample to the bath and keep there until the beginning of the procedure (8.1).

7.3 Preparation of Fuel Chamber—Observe the apparatus preparation procedure of 8.5, then store the stoppered fuel chamber and the sample transfer connection in a refrigerator or ice-water bath for a sufficient time to allow the chamber and the connection to reach a temperature of 32 to 34°F (0 to 1°C). If an ice-water bath is used, keep the chamber upright, corked, and not immersed over the top of the coupling threads. The transfer connection is inserted into a plastic bag to keep it completely dry during cooling.

7.4 Preparation of Air Chamber—Observe the apparatus preparation procedure of 8.5. Connect the gage to the air chamber and close the lower opening securely with a dry No. 6½ rubber stopper. Make sure the stopper is inserted far enough to securely close the vent hole in the air chamber connection. Immerse the air chamber to at least 1 inch (25 mm.) above its top in the water bath maintained at 100±0.2°F (37.8±0.1°C) for not less than 20 minutes. Do not remove the air chamber from the water bath until the fuel chamber has been filled with the sample as described in 8.1

8. Procedure

8.1 Sample Transfer—With everything in readiness, remove the chilled sample container from the bath, dry it with absorbent material, uncap it, dry and insert the chilled transfer apparatus (see Fig. 1.1). Quickly place the chilled fuel chamber, in an inverted position, over the sample delivery tube of the transfer apparatus. Invert the entire system rapidly so that the fuel chamber is upright, with the end of the delivery tube touching the bottom of the fuel chamber. Fill the fuel chamber to overflowing. Withdraw the delivery tube from the fuel chamber while allowing the sample to continue flowing up to the moment of complete withdrawal.

8.1.1 Caution—Make provision for suitable collection and disposal of the overflowing fuel to avoid fire hazard.

8.2 Assembly of Apparatus—Immediately remove the air chamber from the water bath and immediately dry the exterior of the chamber with absorbent material, giving particular care to the connection between the air chamber and the fuel chamber. Remove the stopper after drying and immediately couple the two chambers. Not more than 30 seconds shall be consumed in coupling the two chambers.

Note 2.—When the air chamber is removed from the water bath, is dried, and the stopper is removed, connect it to the fuel chamber without undue movements through the air, which could promote exchange of room temperature air with the 100°F (37.8°C) air in the chamber.

8.3 Introduction of Apparatus into Bath—Turn the assembled vapor pressure apparatus upside down to allow the sample in the fuel chamber to run into the air chamber. With apparatus still inverted, shake it vigorously eight times in a direction parallel to the length of the apparatus. With the gage end up, immerse the assembled apparatus in the bath, maintained at 100±0.2°F (37.8±0.1°C), in an inclined position so that the connection of the fuel and air chambers is below the water level and may be carefully examined for leaks. It no leaks are observed, further immerse the apparatus to at least 1 inch (25 mm.) above the top of the air chamber. Observe the apparatus for leakage throughout the test. Discard the test at any time a leak is detected.

Note 3.—Liquid leaks are more difficult to detect than vapor leaks; because the coupling between the chambers is normally in the liquid section of the apparatus, give the coupling particular attention.

Note 4.—After the apparatus has been immersed in the bath, check the remaining sample for phase separation. If the sample is contained in a glass container, this observation can be made prior to sample transfer (8.1). If the sample is contained in a non-transparent container, shake the sample vigorously for 5 seconds and then immediately pour a portion of the remaining sample into a clear glass container. Immediately after shaking this sample again for 5 seconds, observe the sample for phase separation. If this sample is not clear and bright, and free of a second phase, discard the test and the sample.

8.4 Measurement of Vapor Pressure—After the assembled vapor pressure apparatus has been immersed in the bath for at least 5 minutes, tap the pressure gage lightly and observe the reading. Withdraw the apparatus from the bath and repeat 8.3. At intervals of not less than 2 minutes, perform 8.3 until a total of not less than five shakings and gage readings have been made; continue thereafter, if necessary, until the last two consecutive gage readings are constant, indicating equilibrium attainment. These operations normally require 20 to 30 minutes. Read the final gage pressure to the nearest 0.05 psi (0.25 kPa) for gages with intermediate graduations of 0.1 psi (0.5 kPa) or less and to the nearest 0.1 psi for gages with

graduations of 0.2 to 0.5 psi (1.0 to 2.5 kPa), and record the value as the "uncorrected vapor pressure" of the sample. Without undue delay remove the pressure gage and, without attempting to remove any liquid which may be trapped in the gage, check its reading against that of the manometer while both are subjected to a common steady pressure which is no more than 0.2 psi (1.0 kPa) different from the recorded "uncorrected vapor pressure". If a difference is observed between the gage and manometer readings, the difference shall be added to or subtracted from the "uncorrected vapor pressure" recorded for the sample being tested, and the resulting value shall be recorded as the vapor pressure of the sample.

Note 5.—Cooling the assembly prior to disconnecting the gage will facilitate disassembly and reduce the amount of hydrocarbon vapors released in the room.

Note 6.—Verification of Sample Integrity—Disconnect the air chamber from the fuel chamber. Drain the sample from the air and fuel chambers as completely as possible into a dry 8-ounce clear glass bottle. Seal the bottle and shake it vigorously for 5 seconds. If the sample is clear and bright and free of a second phase, note this observation and record that the test is valid. If the sample is not clear and bright and free of a second phase, immerse the bottle in the 100 °F (37.8 °C) water bath up to about 1 inch (25 mm.) above the top of the sample level for 15 minutes in order to heat the sample to the test temperature. Remove the sample from the water bath and immediately shake it vigorously for 5 seconds and observe the sample. If the sample is not clear and bright and free of a second phase, note this observation and record that the test is not valid because of phase separation. A fuel that is not clear and bright and free of a second phase at this point of the test indicates that the fuel was contacted with sufficient water to exceed the water tolerance of the fuel during the test procedure. Water can most likely get into the test chambers during preparation of the fuel and air chambers (7.3 and 7.4) or assembly of the air and fuel chambers (8.2), or both, especially if water baths are used for these procedures.

8.5 Preparation of Apparatus for Next Text—Thoroughly purge the air chamber of residual sample by filling it with warm water above 90 °F (32 °C) and allowing it to drain (Note 5). Repeat this purging at least five times. After disconnecting the pressure gage from its manifold connection with the manometer, remove trapped fluid in the Bourdon tube of the gage by repeated centrifugal thursts. This may be accomplished in the following manner: hold the gage between the palms of the hands with the right hand on the face side and the threaded connection of the gage forward. Extend the arms forward and upward at an angle of 45° with the coupling of the gage pointing in the same direction. Swing the arms downward through an arc of about 135° so that the centrifugal force aids gravity in removing the trapped liquid. Repeat this operation three times to expel all liquid. Purge the pressure gage by directing a small jet of air into its Bourdon tube for at least 5 minutes. Rinse both chambers and the sample transfer connection several times with hot water, then several times with acetone, then blow dry using dried air. Stopper the fuel chamber and place it in the refrigerator or ice-water bath for the next test.

Note 7.—If the purging of the air chamber is done in a bath, be sure to avoid small and unnoticeable films of floating sample by keeping the bottom and top openings of the chamber closed as they pass through the water surface.

9. Precautions

9.1 Gross errors can be obtained in vapor pressure measurements if the prescribed procedures is not followed carefully. The following list emphasizes the importance of strict adherence to the precautions given in the procedure.

9.1.1 Checking the Pressure Gage—Check all gages against a manometer after each test in order to ensure high precision of results (8.4). Read all gages while the gages are in a vertical position and after tapping them lightly.

9.1.2 Shake the container vigorously to ensure equilibrium of the sample with the air in the container (7.2).

9.1.3 Checking for Leaks—Check the apparatus before and during each test for both liquid and vapor leaks (Annex A1.1.6 to this Appendix and Note 3).

9.1.4 Check O-rings before each test for cracking and clean if necessary.

9.1.5 Sampling—Because initial sampling and the handling of samples will greatly affect the final results, employ the utmost precaution and the most meticulous care to avoid losses through evaporation and even slight changes in composition (6.5 and 8.1). In no case shall any part of the apparatus itself be used as the sample container previous to actually conducting the test.

9.1.6 Purging the Apparatus—Thoroughly purge the pressure gage, the fuel chamber and the air chamber to be sure they are free of residual sample. (This is most conveniently done at the end of the previous test. See 8.5). It is important to remove all water from the apparatus before cooling the gasoline chambers and heating the air chamber. In high-humidity conditions be alert for and avoid condensation on the transfer connection and interior walls of the apparatus.

9.1.7 Coupling the Apparatus—Carefully observe the requirements of 8.2.

9.1.8 Shaking the Apparatus—Shake the apparatus "vigorously" as directed in 8.3 in order to ensure equilibrium.

10. Report

10.1 Reporting Results—Report to the nearest 0.05 psi (0.25 kPa) or 0.1 psi (0.5 kPa) the gage result observed in 8.4, after correcting for any difference between the gage and manometer, as the "vapor pressure" in pounds-force per square inch (or kilopascals) without reference to temperature.

11. Precision and Accuracy

11.1 Precision—The precision of this test method has not been determined, but is under study.

11.2 Accuracy—The accuracy of this test method has not been determined, but is under study.

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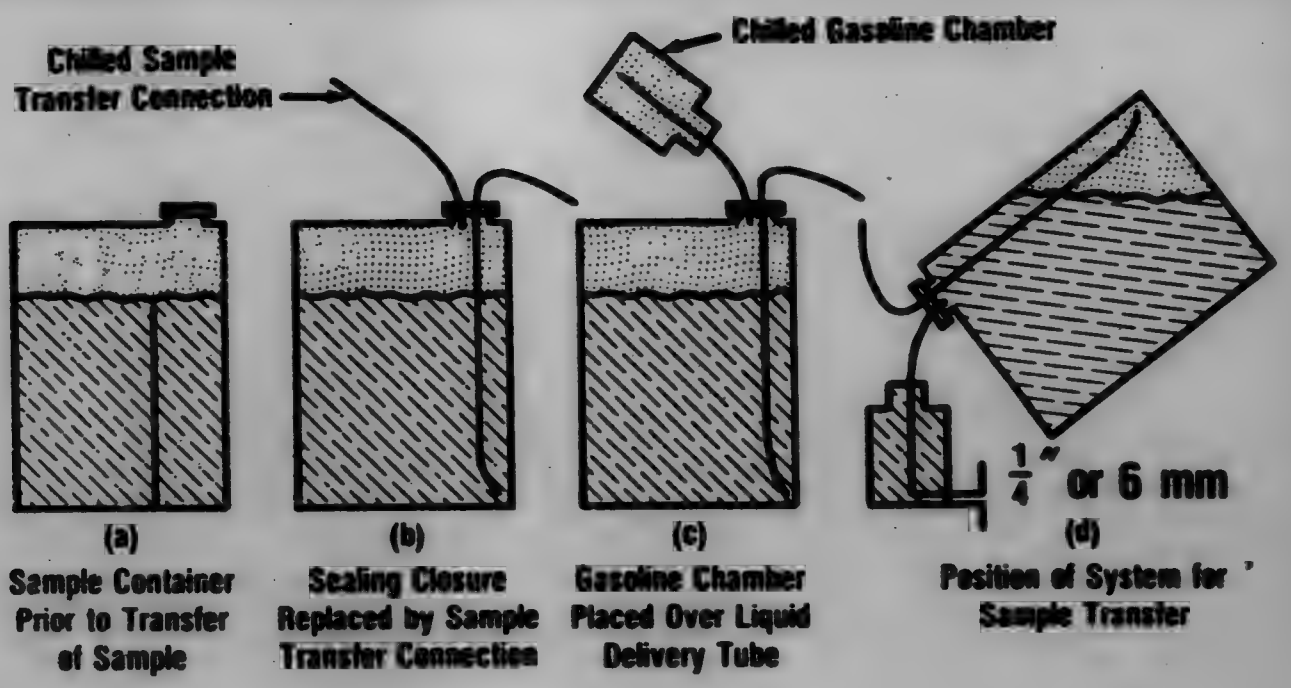

Figure 1.1 Simplified Sketches Outlining Method of Transferring Samples of Gasoline Chamber from Open-Type Containers

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Annex A1. Apparatus for Reid Vapor Pressure Test

A1.1 Reid Vapor Pressure Bomb, consisting of two chambers, an air chamber (upper section) and a gasoline chamber (lower section) shall conform to the following requirements:

Note A1.1.—Caution—To maintain the correct volume ratio between the air chamber and the gasoline chamber, the units shall not be interchanged without recalibrating to ascertain that the volume ratio is within satisfactory limits.

A1.1.1 Air Chamber—The upper section or air chamber, as show in Fig. A1.1, shall be a cylindrical vessel 2± ⅛ inches (51±3 mm.) in diameter and 10± ⅛ inches (254±3 mm.) in length, inside dimensions, with the inner surfaces of the ends slightly sloped to provide complete drainage from either end when held in a vertical position. On one end of the air chamber, a suitable gage coupling with an internal diameter not less than 3/16 inch shall be provided to receive the ¼ inch gage connection. In the other end of the air chamber an opening approximately ½ inch in diameter shall be provided for coupling with the gasoline chamber. Care shall be taken that the connections to the end openings do not prevent the chamber from draining completely.

A1.1.2 Gasoline Chamber (One-Opening)—The lower section or gasoline chamber, as shown in Fig. A1.1, shall be a cylindrical vessel of the same inside diameter as the air chamber and of such volume that the ratio of the volume of the air chamber to the volume of gasoline chamber shall be between the limits of 3.8 and 4.2. In one end of the gasoline chamber an opening approximately ½ inch in diameter shall be provided for coupling with the air chamber. The inner surface of the end containing the coupling member shall be sloped to provide complete drainage when inverted. The other end of the gasoline chamber shall be completely closed.

A1.1.3 Gasoline Chamber (Two-Opening)—For sampling from closed vessels, the lower section or gasoline chamber, as shown in Fig. A1.1 shall be essentially the same as the gasoline chamber described in A1.1.2, except that a ¼ inch valve shall be attached near the bottom of the gasoline chamber and a ½ inch straight-through, full-opening valve shall be introduced in the coupling between the chambers. The volume of the gasoline chamber, including only the capacity enclosed by the valves, shall fulfill the volume ratio requirements as set forth in A1.1.2.

Note A1.2.—In determining capacities for the two-opening gasoline chamber (Fig. A1.1), the capacity of the gasoline chamber shall be considered as that below the ½ inch valve closure. The volume above the ½ valve closure, including the portion of the coupling permanently attached to the gasoline chamber, shall be considered as a part of the air chamber capacity.

A1.1.4 Method of Coupling Air and Gasoline Chambers—Any method of coupling the air and gasoline chambers may be employed, provided that no gasoline is lost during the coupling operation, that no compression effect is caused by the act of coupling, and that the assembly is free of leaks under the conditions of the tests. To avoid displacement of gasoline during assembly, it is desirable that the male fitting of a suitable coupling be on the gasoline chamber. To avoid compression of air during the assembly of a suitable screw coupling, a vent hole may be used to ensure atmospheric pressure in the air chamber at the instant of sealing.

Note A1.3.—Caution—Some commercially available equipment does not make adequate provision for avoiding air compression effects. Before employing any apparatus, it shall be established that the act of coupling does not compress the air in the air chamber. This may be accomplished by tightly stoppering the gasoline chamber opening and assembling the apparatus in the normal manner, utilizing the 0 to 5-psi (0 to 35-kPa) gage. Any observable pressure increase on the gage is an indication that the apparatus does not adequately meet the specifications of the method. If this problem is encountered, the manufacturer should be consulted for remedy.

A1.1.5 Volumetric Capacity of Air and Gasoline Chambers—In order to ascertain if the volume ratio of the chambers is between the specified limits of 3.8 to 4.2, measure a quantity of water greater than will be needed to fill the gasoline and air chambers. The gasoline chamber shall be completely filled with water, and the difference between the original volume and the remaining volume is the volume of the gasoline chamber. Then, after connecting the gasoline and air chambers, the air chamber shall be filled to the seat of the gage connection with more of the measured water, and the difference in volumes shall be the volume of the air chamber.

A1.1.6 Checking for Freedom of Leaks—Before placing new apparatus in service and as often as necessary thereafter, the assembled vapor pressure apparatus shall be checked for freedom of leaks by filling with air to 100-psi (700 kPa) gage pressure and completely immersing in a water bath. Only apparatus which stand this test without leaking shall be used.

A1.2 Pressure Gage—The pressure gage shall be a Bourdon-type spring gage of test gage quality 4½ to 5½ inches (100 to 150 mm) in diameter provided with a nominal ¼ inch male thread connection with a passageway not less than 3/16 inch in diameter from the Bourdon tube to the atmosphere. The range and graduations of the pressure gage shall be governed by the vapor pressure of the sample being tested, in accordance with Table A1.1. Only accurate gages shall be continued in use. The calibration correction shall not be greater than 0.15 psi (0.3 kPa) for a 0 to 15-psi (0 to 30-kPa) gage or 0.3 psi (0.9 kPa) for a 0 to 30-psi (0 to 90-kPa) gage.

A1.3 Water Cooling Bath—A water cooling bath shall be provided of such dimensions that the sample containers and gasoline chambers may be completely immersed. Means for maintaining the bath at a temperature of 32 to 40 °F (0 to 4.5 °C) shall be provided.

Note A1.4.—Solid carbon dioxide shall not be used to cool samples in storage or in the preparation of the air saturation step. Carbon dioxide is appreciably soluble in gasoline, and its use has been found to be the cause of erroneous vapor pressure data.

A1.4 Water Bath—The water bath shall be of such dimensions that the vapor pressure apparatus may be immersed to at least 1 inch (25 mm.) above the top of the air chamber. Means for maintaining the bath at a constant temperature of 100± 0.2°F (37.8± 0.1°C) shall be provided. In order to check this temperature, the bath thermometer shall be immersed to the 98°F (37°C) mark throughout the vapor pressure determination.

A1.5 Thermometers

A1.5.1 For 100°F (37.8°C) Air Chamber Procedure—Asn ASTM Reid Vapor Pressure Thermometer 18F (18C) having a range from 94 to 100°F (34 to 42°C).

A1.5.2 For Water Bath—Use the ASTM Thermometer 18F (18C) described in A1.5.1.

A1.6 Mercury Manometer—A mercury manometer, having a range suitable for checking the pressure gage employed, shall be used. The manometer scale may be graduated in steps of 1 mm., 0.1 inch, 0.1 psi, or 0.001 bar.

TABLE A1.1.—PRESSURE GAGE RANGE AND GRADUATION

Reid vapor pressure		Gage to be used				Maximum intermediate graduations	
		Scale range		Maximum numbered intervals			
psi	kPa	psi	kPa	psi	kPa	psi	kPa
4 and under	27.5 and under	0 to 5	0 to 35	1	5.0	0.1	0.5
3 to 12	20.0 to 75.0	0 to 15	0 to 100	3	15.0	0.1	0.5
10 to 26	70.0 to 180.0	0 to 30	0 to 200	5	25.0	0.2	1.0
10 to 36	70.0 to 250.0	0 to 45	0 to 300	5	25.0	0.2	1.0

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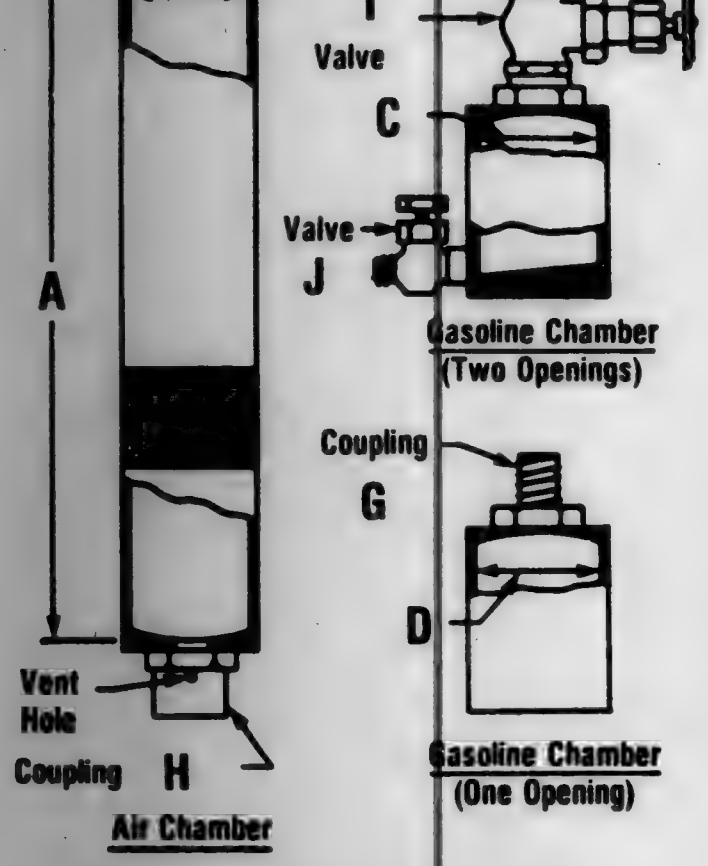

DIMENSIONS OF VAPOR PRESSURE BOMB

Key	Description	In.
A	Air chamber, length	10 ± ⅛
B, C, D	Air and gasoline chambers, ID	2 ± ⅛
E	Coupling, ID min	3/16
F, G	Coupling, OD	½
H	Coupling, ID	½
I	Valve	½
J	Valve	¼

Figure A1.1 Vapor Pressure Bomb

BILLING CODE 6560-50-C

Annex A2. Gasoline, Gasoline-Oxygenate Blends, Naphtha, Methyl Cyclopentane, Cyclopentane, N-Pentane, Methyl Tert-Butyl Ether, Tert-Amyl Methyl Ether

A2.1 Danger—Extremely flammable. Vapors harmful if inhaled. Vapors may cause flash fire.

A2.2 Keep away from heat, sparks, and open flame.

A2.3 Keep container closed.

A2.4 Use with adequate ventilation.

A2.5 Avoid build-up of vapors and eliminate all sources of ignition, especially nonexplosion-proof electrical apparatus and heaters.

A2.6 Avoid prolonged breathing of vapor or spray mist.

A2.7 Avoid prolonged or repeated skin contact.

Annex A3. Acetone

A3.1 Danger—Extremely flammable. Vapors may cause flash fire.

A3.2 Keep away from heat, sparks, and open flame.

A3.3 Keep container closed.

A3.4 Use with adequate ventilation.

A3.5 Avoid build-up of vapors, and eliminate all sources or ignition, especially nonexplosion-proof electrical apparatus and heaters.

A3.6 Avoid prolonged breathing of vapor or spray mist.

A3.7 Avoid contact with eyes or skin.

Method 2—Herzog Semi-Automatic Method.

1. Scope

1.1 This test method cover the determination of the absolute vapor pressure of gasolines and gasoline-oxygenate blends using the Herzog Semi-Automatic Apparatus [1]. Test procedures will follow Method 1 except for the additions and changes as noted.

2. Summary of Method

2.1 The chilled liquid chamber is filled with a chilled sample and connected to the heated air chamber by means of a screwed connection. The assembled test chambers are immersed in a constant temperature bath controlled to 100°F±0.2°F (37.8°±0.1°C) and rotated systematically until a constant pressure is observed on the pressure gauge (approximately 10 minutes). The pressure observed, suitably corrected, is reported as the Reid vapor pressure.

3. Significance and Use

3.1 This method is to be used as an alternative to Method 1. The procedures are essentially the same except that they are modified to represent the use of the Herzog Semi-Automatic Apparatus. As is the case with Method 1, this is considered to be a "dry" method since it can be used to evaluate both gasoline and gasoline-oxygenate blends.

4. Apparatus

4.1 The Herzog Semi-Automatic Appratus is composed of air and liquid test chambers, a constant temperature bath and means for observing the absolute pressure developed in the test chamber during the test. The analyzer is designed to allow the testing of three samples simultaneously.

4.2 The Herzog Semi-Automatic Apparatus consists of the equipment and accessories listed below:

1 Waterbath, stainless steel, with motor-driven support bearings for the rotation of three sample test chamber assemblies simultaneously.

1 Electronic bath control unit with LED indicator providing temperature control of ± 0.1°F (0.05°C) or better and maximum temperature cutoff and minimum liquid level protection.

1 Control thermometer (35–40°C) and silicone rubber stopper.

1 Bath cover, stainless steel.

3 Liquid sample chambers.

3 Air chambers.

3 Special screw fittings with teflon spiral.

3 Pressure guages.

1 Liquid chamber filling device.

1 Table key.

1 115V to 220W step-up transformer (if ordered for 115V operation).

5. Physical Size and Weight

5.1 Net weight without accessories (empty): 16 pounds (35 kg).

5.2 Dimensions: 39 x 20 x 16.5 inches (86 x 51 x 42 cm.).

6. Installation Requirements

6.1 Laboratory bench or table providing a work space approximately four feet wide by two feet deep.

6.2 One 220 or 115V 50/60 Hz, 1000 watt grounded receptacle.

6.3 Means for cooling the test sample and the liquid sample test chamber to 32–34°F (0—1°C).

7. Installation Instructions

The recommended installation procedure is outlined below:

7.1 Verify that the working voltage corresponds to the requirements of the analyzer.

7.2 Place and level the analyzer on a stable table or laboratory work bench near the required power supply.

7.3 Release all of the function keys on the control unit.

7.4 Fill the heating bath with *distilled* water to the upper line on the guide tube for the bath control thermometer at the rear right of the bath. (Water containing dissolved salts may shorten the life of the analyzer.)

7.5 Insert the bath control thermometer through the bored silicone rubber stopper (supplied) and place in the thermometer guide tube. (Be sure to coat the glass thermometer with a lubricant and wear punctureproof gloves and safety glasses to avoid breakage and possible injury.)

7.6 Connect the analyzer to the power supply.

7.7 Press the "MAINS" key.

7.8 Press the "STIRRER" key; bath circulation will start.

7.9 Press the "HEATING" bath heater will start.

Note 1.—It may be necessary to press the "START TROUBLE" switch to begin operation.

7.10 After the preset temperature is reached, the bath is regulated electronically. The bath's temperature stability is indicated by a string of LED's.

7.11 When the LED marked "O" lights, the bath temperature of 100°F (37.8°C) (factory set) has been reached.

Note 2.—The LED indicator is an optical aid, indicating a deviation from a preset temperature. Compare the bath control thermometer with the LED indicator. Checking the temperature with a calibrated thermometer is recommended. If the bath temperature does not agree with the desired temperature, adjust as follows:

Above the string of LED's is an opening marked "TEMP", behind which is a potentiometer for adjusting the bath temperature. the bath temperature can be *raised*, using a screw driver, by turning the potentiometer *clockwise* and can be *lowered* by turning the potentiometer *counterclockwise*. The readjusted temperature is reached when the LED at the "O" mark lights up.

Note 3.—Maximum bath temperature and level is provided if the bath temperature should rise 4° F (2 °C) above the set test temperature, or the water level should drop below the minimum acceptable level, heating and stirring will automatically shut off. After the problem is corrected, the heating and stirring can be reactivated by pressing the "START TROUBLE" key.

7.12 Remove the shipping screw from the back of the Bourdon precision pressure gauge and replace the screw with the screw that will be found in the small envelope taped to the front of the gauge.

7.13 Fasten the three pressure gauges to the appropriate vapor line

[1] Manufactured by Walter Herzog, GMBH, D-6970, Lauda, West Germany.

connections along the back of the analyzer with the union nut. *Make certain that the teflon seals are in place and the connection is vapor tight.*

8. Test Procedure

Observe all sections of Method 1 from Section 5, "*Reagents*," through Section 11, "*Precision and Accuracy*," except for the following changes:

7.4 Preparation of Air Chamber—Observe the apparatus preparation procedure of Section 8.5. Stopper the lower connection of the Herzog air chamber with a #3 rubber stopper and the vent hole either a #000 cork or a small rubber stopper. Connect the spiral tubing T handle coupling to the air chamber and the quick action coupling to the gage or transducer connection. Immerse the air chamber in the water bath maintained at 100°±0.2 °F (37.8°±0.1 ° C) for not less than 10 minutes just prior to coupling it with the gasoline chamber. Do not remove the air chamber for the bath until the gasoline chamber has been filled with sample as described in 8.1.

8.2 Assembly of Apparatus—Immediately remove the air chamber from the water bath, and as quickly as possible dry the exterior of the chamber with absorbent material with particular care given to the connection between the air chamber and the gasoline chamber. Remove the stopper after drying and immediately couple the two chambers. Not more than 30 seconds shall be consumed in coupling the two chambers.

8.3 Introduction of the Apparatus into Bath—Tilt the assembled apparatus to 20° to 30° downward for four to five seconds to allow the sample to flow into the vapor chamber without getting into the tube extending into the vapor chamber. Place the assembled apparatus in the water bath (maintained at 100°F± 9.2°F (37.8°C±0.1°C)) in such a way that the base of the gasoline chamber engages the drive coupling and the other end of the assembly rests on its support bearing. Observe the apparatus for leakage throughout the test. Discard the test at any time a leak is detected.

8.4 Measurement of Vapor Pressure—After the assembled vapor pressure apparatus has been immersed in the bath for at least 5 minutes, tap the pressure gage lightly and observe the reading. Repeat the tapping at intervals of not less than 2 minutes until two consecutive readings agree. (Tapping is not necessary with the transducer model but reading intervals should be the same.) Record this value as the "uncorrected vapor pressure". Refer to the gage on transducer calibration for the respective unit and add or subtract from the observed uncorrected value any offset indicated by the calibration in that range. Record this value as the Reid vapor pressure of the sample.

8.5 Preparation of Apparatus for Next Test—Disconnect the quick action and T handle coupliungs. Separate the air and gasoline chambers and discard the contained sample. Thoroughly purge the air chamber of residual sample by filling it with warm water above 90 °F (32 °F) and allowing it to drain (Note 5). Repeat this purging at least five times. Rinse both chambers and sample transfer connection several times with hot water, then several times with acetone. Assure that no liquid is present in the T handle fitting or spiral tubing by pulling a vacuum through the tubing. Stopper the gasoline chamber and place it in the refrigerator or icewater bath for the next test.

Appendix F—Test for Determining the Quantity of Alcohol in Gasoline

Method 1—Water Extraction Method.

1. Scope

This test method covers the determination of the type and amount of alcohols in gasoline.

2. Summary of Method

Gasoline samples are extracted with water prior to analysis on a gas chromatograph (GC). The extraction eliminates hydrocarbon interference during chromatography. A known quantity of isopropanol is added to the fuel prior to extraction to act as an internal standard.

3. Sample Description

3.1 Sample in accordance with 40 CFR Part 80, Appendix D.

3.2 At least 100 ml. of gasoline suspected of containing ethanol and/or methanol are required.

4. Apparatus

4.1 Gas Chromatograph—A gas chromatograph equipped with a flame ionization detector.

4.2 Column—A gas chromatograph column, glass, 1800 by 6.35 cm. outside diameter, packed with chromosorb 102.

4.3 Recorder—A l-mv recorder with a 1 second full scale response and a chart speed of 10 mm. per minute (0.4 inches per minute).

4.4 Syringe (100 ul.) for adding the internal standard.

4.5 Pipet.

4.6 Injection syringe (10 ul.).

4.7 Extraction syringe (1–5 ml.) with 3-inch needle.

4.8 250 ml. (½ pint) glass sample bottles with screw caps or equivalent.

4.9 Calibration standard solutions extracted from gasoline containing known quantities of alcohols.

4.10 Reference standard solutions extracted from gasoline containing known quantities of alcohols.

4.11 Distilled water.

4.12 Reagent Grade Isopropanol.

4.13 Rubber Gloves.

4.14 I.D. tags.

5. Precautions

Note 1.—Gasoline and alcohols are extremely flammable and may be toxic over prolonged exposure. Methanol is particularly hazardous. Persons performing this procedure must be familiar with the chemicals involved and all precautions applicable to each.

5.1 Extractions and dilutions must be performed in well-ventilated areas, preferably under a fume hood, away from open flames and sparks.

5.2 Rubber gloves must be worn during the handling of gasoline and alcohols.

5.3 Avoid breathing fumes from gasoline and alcohols, particularly methanol.

5.4 Gas cylinders must be properly secured and the hydrogen FID fuel must be segregated from the compressed air (oxidizer) tank.

6. Visual Inspection

6.1 Ensure that the samples do not contain sediment or separated phases prior to extraction.

6.2 Ensure adequate quantities of GC supply gases to maintain a run.

7. Test Article Preparation

7.1 Gas Chromatography—Use carrier gas, flow rates, detector and injection temperatures and column as specified in the GC manufacturer's specifications.

7.2 Sample Extraction, Preparation and Analysis.

7.2.1 Label two 6 ml. vials with the sample identification number supplied with the original sample. The estimated percent alcohol from any screening tests must also be included on the label.

7.2.2 Pipet 4 ml.±0.01 ml. of sample into one of the vials. Label as vial #1.

7.2.3 Measure 100 ul. (0.1 ml.)±0.5 ul. of isopropanol into vial #1.

Note.—This adds an internal standard to the sample which is required for accurate analysis.

7.2.4 Add 1 ml.±0.2 ml. of distilled water to the gasoline sample in vial #1 and shake for 10 seconds.

7.2.5 Allow the mixture to separate into two phases (at least 5 minutes).

7.2.6 Carefully draw off the aqueous (lower) phase using a 5 ml. syringe and long needle.

Note.—Be careful not to allow any of the gasoline phase to get into the needle. Leave a small amount (approximately 0.2 ml.) of the aqueous phase in the vial.

7.2.7 Transfer the aqueous phase into the other 6 ml. vial (vial #2).

7.2.8 Repeat steps 7.2.4 to 7.2.6 two more times.

7.2.9 Fill vial #2 (the aqueous phase) to 4 ml. ±0.05 ml. with distilled water.

7.2.10 Retain the remaining original gasoline sample (not the gasoline phase).

7.2.11 Discard the extracted gasoline phase in vial #1 in an appropriate manner.

7.2.12 Perform a second extraction on one sample in every 20. This sample is to be labeled with the sample number and as a duplicate and run as a normal sample.

7.2.13 Transfer approximately 2 ml. of the aqueous solution to vials compatible with the autosampler. Tag the vial with the sample number.

7.2.14 Perform analysis of the sample according to the GC manufacturer's specifications.

7.3 Standards.

7.3.1 Calibration standard solutions (made in gasoline).

7.3.1.1 Reagent grade or better alcohols (including undenatured ethanol) are to be diluted with regular unleaded gasoline. The isopropanol internal standard is to be added during extraction of the alcohols. Newly acquired stocks of reagent grade alcohols shall be diluted to 10% with hydrocarbon-free water and analyzed for contamination by GC before use.

7.3.1.2 Required calibration standards (% by volume in gasoline):

Alcohol	Range (%)	Blend (MIN)
Methanol	0.5–12	5
Ethanol	0.5–11	5

The standards should be as equally spaced within the range as possible and may contain more than one alcohol.

Note.—Level #1 must contain all of the alcohols.

8. Quality Control Provisions

8.1 Alcohol(s) in water solution may be used to characterize the GC. The resulting characterization always reflects the absolute sensitivity of the instrument to each alcohol.

8.2 Calibration standards are made by extraction of known alcohol(s) in gasoline blends. These standards account for inaccuracies caused by incomplete extraction of alcohols.

8.3 The addition of isopropanol as an internal standard reduces errors

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caused by variations in injection volumes, and further reduces inaccuracies caused by incomplete extraction of alcohols.

8.4 Sufficient sample should be retained to permit reanalysis.

8.5 Running averages of reference standards data must not exceed 0.75% of applicable limits or investigation should be started for the cause of such variation.

9. Calculations

9.1 Calculate purity of component as follows:

$$P_i = \frac{A_i}{\Sigma A} \quad \text{expressed as a decimal fraction, that is 0.999}$$

where:

P_i = purity of component i,
A_i = area of response of component i, and
ΣA = total area response of all components.

9.2 Calculate response factors as follows:

$$F_i = \frac{A_{is} \times W_i \times P_i}{A_i \times W_{is} \times P_{is}}$$

Where:

F_i = response factor for component of interest i,
A_i = area response for component of interest i,
A_{is} = area response of internal standard,
W_i = weight of component of interest i (be sure to consider all sources),
W_{is} = weight of internal standard,
P_i = purity of component of interest i as determined in 9.1 expressed as a decimal, and
P_{is} = purity of internal standards as determined in 9.1 expressed as a decimal.

9.3 Calculate the percent alcohols as follows:

$$C_i = \frac{W_{is} \times A_i \times F_i}{W_i \times A_{is}} \times 100 = \text{weight \% component i}$$

where:

A_i = peak area component i,
A_{is} = peak area of internal standard,
W_i = weight of sample,
W_{is} = weight of internal standard, and
F_i = response factor for component i.

10. Report

10.1 Report results to the nearest 0.1%.

11. Precision and Accuracy

11.1 Precision—The precision of this test method has not been determined, but is under study.

11.2 Accuracy—The accuracy of this test method has not been determined, but is under study.

PART 86—CONTROL OF AIR POLLUTION FROM NEW MOTOR VEHICLES AND NEW MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

1. The authority citation for Part 86 is revised to read as follows:

Authority: Secs. 202, 203, 206, 207, 208, 215, and 301(a) of the Clean Air Act as amended; 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550, and 7601(a).

2. Section 86.084–15 is proposed to be amended by revising paragraphs (b) and (e) to read as follows:

§ 86.084–15 Emission standards for 1984 model year heavy-passenger cars.

* * * * *

(b)(1) Evaporative emissions from 1984 model year heavy-passenger cars when tested under low-altitude conditions shall not exceed:

(i) Hydrocarbons, 2.0 grams per test.

(2) The standard set forth in paragraph (b)(1) of this section refers to a composite sample of the evaporative emissions collected under the conditions set forth in Subpart B of this part for light-duty vehicles, except as otherwise provided, and measured in accordance with those procedures.

* * * * *

(e)(1) Evaporative emissions from 1984 model year heavy passenger cars shall not exceed 2.0 grams per test when tested under high altitude conditions.

(2) The standard set forth in paragraph (e)(1) of this section refers to a composite sample of evaporative emissions collected under the conditions set forth in Subpart B of this part for light-duty vehicles, except as otherwise provided, and measured in accordance with those procedures.

* * * * *

3. Section 86.085–8 is proposed to be amended by revising paragraph (b) to read as follows:

§ 86.085–8 Emission standards for 1985 and later model year light-duty vehicles.

* * * * *

(b)(1) Evaporative emissions from 1985 and later model year gasoline fueled light-duty vehicles shall not exceed:

(i) Hydrocarbons, 2.0 grams per test.

(2) The standard set forth in paragraph (b)(1) of this section refers to a composite sample of the evaporative emissions collected under the conditions set forth in Subpart B of this part and

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measured in accordance with those procedures.

* * * * *

4. Section 86.085–9 is proposed to be amended by revising paragraphs (b) and (e) to read as follows:

§ 86.085–9 Emission standards for 1985 and later model year light-duty trucks.

* * * * *

(b)(1) Evaporative emissions from 1985 and later model year gasoline fueled light-duty trucks shall not exceed:

(i) Hydrocarbons, 2.0 grams per test.

(2) The standard set forth in paragraph (b)(1) of this section refers to a composite sample of the evaporative emissions collected under the conditions set forth in Subpart B of this part and measured in accordance with those procedures.

* * * * *

(e)(1) Evaporative emissions from 1985 and later model year gasoline-fueled light-duty trucks sold for principal use at a designated high altitude location shall not exceed 2.6 grams per test when tested under high-altitude conditions.

(2) The standard set forth in paragraph (e)(1) of this section refers to a composite sample of evaporative emissions collected under the conditions set forth in Subpart B of this part and measured in accordance with those procedures.

* * * * *

5. Section 86.085–10 is proposed to be amended by revising paragraph (b)(2)(i) to read as follows:

§ 86.085–10 Emission standards for 1985 and later model year gasoline-fueled heavy-duty engines and vehicles.

* * * * *

(b) * * *

(2)(i) For vehicles with a Gross Vehicle Weight Rating of up to 26,000 pounds, the standards set forth in paragraph (b)(1) of this section refer to a composite sample of evaporative emissions collected under the conditions set forth in Subpart M and measured in accordance with these procedures.

* * * * *

6. Section 86.085–28 is proposed to be amended by revising paragraph (b)(2) to read as follows:

§ 86.085–28 Compliance with emission standards.

* * * * *

(b) * * *

(2) The exhaust and evaporative emission standards of § 86.085–9 apply to the emissions of vehicles for their useful life.

* * * * *

7. Section 86.087–8 is proposed to be amended by revising paragraph (b) to read as follows:

§ 86.087–8 Emission standards for 1987 light-duty vehicles.

* * * * *

(b)(1) Evaporative emissions from 1987 and later model year gasoline-fueled light-duty vehicles shall not exceed:

(i) Hydrocarbons, 2.0 grams per test.

(2) The standard set forth in paragraph (b)(1) of this section refers to a composite sample of the evaporative emissions collected under the conditions set forth in Subpart B of this part and measured in accordance with those procedures.

* * * * *

8. Section 86.087–9 is proposed to be amended by revising paragraphs (b) and (e) to read as follows:

§ 86.087–9 Emission standards for 1987 light-duty trucks.

* * * * *

(b)(1) Evaporative emissions from 1987 and later model year gasoline-fueled light-duty trucks shall not exceed:

(i) Hydrocarbons, 2.0 grams per test.

(2) The standard set forth in paragraph (b)(1) of this section refers to a composite sample of the evaporative emissions collected under the conditions set forth in Subpart B of this part and measured in accordance with those procedures.

* * * * *

(e)(1) Evaporative emissions from 1987 and later model year gasoline fueled light-duty trucks sold for principal use at a designated high-altitude location shall not exceed 2.6 grams per test when tested under high-altitude conditions.

(2) The standard set forth in paragraph (e)(1) of this section refers to a composite sample of evaporative emissions collected under the conditions set forth in Subpart B of this part and measured in accordance with those procedures.

* * * * *

9. Section 86.087–10 is proposed to be amended by revising paragraph (b)(2)(i) to read as follows:

§ 86.087–10 Emission standards for 1987 and later model year gasoline-fueled heavy-duty engines and vehicles.

* * * * *

(b) * * *

(2)(i) For vehicles with a Group Vehicle Weight Rating of up to 26,000 pounds, the standards set forth in paragraph (b)(1) of this section refer to a composite sample of evaporative emissions collected under the conditions

set forth in Subpart M and measured in accordance with these procedures.

* * * * *

10. Section 86.087–28 is proposed to be amended by revising paragraph (b)(2) to read as follows:

§ 86.087–28 Compliance with emission standards.

* * * * *

(b) * * *

(2) The exhaust and evaporative emission standards (and the family particulate emission limits, as appropriate) of § 86.087–9 apply to the emissions of vehicles for their useful life.

* * * * *

11. Section 86.088–9 is proposed to be amended by revising paragraphs (b) and (e) to read as follows:

§ 86.088–9 Emission standards for 1988 and later model year light-duty trucks.

* * * * *

(b)(1) Evaporative emissions from 1988 and later model year gasoline-fueled light-duty trucks shall not exceed:

(i) Hydrocarbons, 2.0 grams per test.

(2) The standard set forth in paragraph (b)(1) of this section refers to a composite sample of the evaporative emissions collected under the conditions set forth in Subpart B of this part and measured in accordance with those procedures.

* * * * *

(e)(1) Evaporative emissions from 1988 and later model year gasoline-fueled light duty trucks sold for principal use at a designated high-altitude location shall not exceed 2.6 grams per test when tested under high-altitude conditions.

(2) The standard set forth in paragraph (e)(1) of this section refers to a composite sample of evaporative emissions collected under the conditions set forth in Subpart B of this part and measured in accordance with those procedures.

* * * * *

12. Section 86.088–10 is proposed to be amended by revising paragraph (b)(2)(i) to read as follows:

§ 86.088–10 Emission standards for 1988 and later model year gasoline-fueled heavy-duty engines and vehicles.

* * * * *

(b) * * *

(2)(i) For vehicles with a Gross Vehicle Weight Rating of up to 26,000 pounds, the standards set forth in paragraph (b)(1) of this section refer to a composite sample of evaporative emissions collected under the conditions set forth in Subpart M and measured in accordance with these procedures.

* * * * *

13. Section 86.088–28 is proposed to be amended by revising paragraph (b)(2) to read as follows:

§ 86.088–28 Compliance with emission standards.

* * * * *

(b) * * *

(2) The exhaust and evaporative emission standards (and family particulate emission limits, and family NO_x emission limits, as appropriate) of § 86.088–9 apply to the emissions of vehicles for their useful lives.

* * * * *

14. A new § 86.090–2 is proposed to be added to Subpart A, to read as follows:

§ 86.090–2 Definitions.

The definitions in § 86.088–2 remain effective. The definitions in this section apply beginning with the 1990 model year.

Evaporative emissions canister(s) means any vapor storage unit(s) that is (are) exposed to either vehicle diurnal or hot soak or both diurnal and hot soak emissions, except for vapor storage units located in the primary path of and purged by the engine intake air, whenever the engine is operated, for the sole purpose of storing miscellaneous evaporative emissions from the intake system.

15. A new § 86.107–90 is proposed to be added to Subpart B, to read as follows:

§ 86.107–90 Sampling and analytical system; evaporative emissions.

(a) Component description (evaporative emissions sampling system). The following components will be used in evaporative emissions sampling systems for testing under this subpart.

(1) *Evaporative emission measurement enclosure.* The enclosure shall be readily sealable, rectangular in shape, with space for personnel access to all sides of the vehicle. When sealed, the enclosure shall be gas tight in accordance with § 86.117. Interior surfaces must be impermeable to hydrocarbons. One surface should be of flexible, impermeable material to allow for minor volume changes, resulting from temperature changes. Wall design should promote maximum dissipation of heat and if artificial cooling is used, interior surface temperatures shall not be less than 68 °F (20 °C).

(2) *Evaporative emission hydrocarbon analyzers.* A hydrocarbon analyzer utilizing the hydrogen flame ionization principle (FID) shall be used to monitor the atmosphere within the enclosure. Instrument bypass flow may be returned to the enclosure. The FID shall have a

response time to 90 percent of final reading of less than 1.5 seconds, and be capable of meeting performance requirements expressed as a function of C_{std}, where C_{std} is the specific enclosure hydrocarbon level, in ppm, corresponding to the evaporative emission standard:

(i) Stability of the analyzer shall be better than 0.01 C_{std} ppm at zero and span over a 15-minute period on all ranges used.

(ii) Repeatability of the analyzer, expressed as one standard deviation, shall be better than 0.005 C_{std} ppm on all ranges used.

(3) *Evaporative emission hydrocarbon data recording system.* The electrical output of the FID shall be recorded at least at the initiation and termination of each diurnal or hot soak. The recording may be by means of a strip chart potentiometric recorder, by use of an on-line computer system or other suitable means. In any case, the recording system must have operational characteristics (signal to noise ratio, speed of response, etc.) equivalent to or better than those of the signal source being recorded, and must provide a permanent record of results. The record shall show a positive indication of the initiation and completion of each diurnal or hot soak along with the time elapsed between initiation and completion of each soak.

(4) *Tank fuel heating system.* The tank fuel heating system shall consist of a heat source and a temperature controller. A typical heat source is a 2,000 W heating pad. Other sources may be used as required by circumstances. The temperature controller may be manual, such as a variable voltage transformer, or may be automated. The heating system must not cause hot spots on the tank wetted surface which could cause local overheating of the fuel. Heat must not be applied to the vapor in the tank above the liquid fuel. The temperature controller must be capable of controlling the fuel tank temperature during the diurnal soak to within ±3 °F (1.7 °C) of the following equation:

$F = T_o + 0.4t$

or for SI units:

$C = T_o + (2/9)t$

where:

F = Temperature in F°
C = Temperature in C°
t = Time since start of test in minutes
T_o = Initial temperature

(5) *Temperature recording system.* Strip chart recorder(s) or automatic data processor shall be used to record enclosure ambient and vehicle fuel tank temperature during the evaporative emissions test. The temperature recorder or data processor shall record each temperature at least once every minute. The recording system shall be capable of resolving time to ±15s and capable of resolving temperature to ±0.75 °F (0.42 °C). The temperature recording system (recorder and sensor) shall have an accuracy of ±3 °F (1.7 °C). The recorder (data processor) shall have a time accuracy of ±15s and a precision of ±15s. Two ambient temperature sensors, connected to provide one average output, shall be located in the enclosure. These sensors shall be located at the approximate vertical centerline of each side wall extending four inches (nominally) into the enclosure at a height of 3±0.5 ft (0.9±0.2 m). The vehicle fuel tank temperature sensor shall be located in the fuel tank so as to measure the temperature of the prescribed test fuel at the approximate mid-volume of the fuel. Manufacturers shall arrange that vehicles furnished for testing at Federal certification facilities be equipped with iron-constantan Type J thermocouples for measurement of fuel tank temperature.

(6) *Purge blower.* One or more portable or fixed blowers shall be used to purge the enclosure. The blowers shall have sufficient flow capacity to reduce the enclosure hydrocarbon concentration from the test level to the ambient level between tests. Actual flow capacity will depend upon the time available between tests.

(7) *Mixing blower.* One or more small blowers or fans with a total capacity of 200 to 1,000 cfm shall be used to mix the contents of the enclosure during evaporative emission testing. No portion of the air stream shall be directed towards the vehicle. Maintenance of uniform concentrations throughout the enclosure is important to the accuracy of the test.

(8) *Gasoline vapor generating equipment.* The equipment used to generate gasoline vapor shall consist of a five gallon capacity (liquid) container constructed such that nitrogen gas can be bubbled through liquid gasoline at a rate between 0.05 and 0.10 cfm. The system should be designed such that it is capable of producing at least 30 grams of hydrocarbon vapor, containing no entrained liquid, in the effluent stream within one hour of operation using the nitrogen gas flow rates specified with a charge of five gallons of fuel meeting the specifications outlined in § 86.113–90. The system should be free of vapor leaks and shall be capable of sustaining pressures of at least 100 psig. The vapor space over the liquid fuel shall be 1.0±0.5 gallons. A heating mechanism

shall also be required such that the gasoline in the container can be heated to and maintained at 120±10 °F and the temperature of the effluent shall be 120°±10 °F. A shutoff valve and a pressure regulator to limit the effluent to the canister to 1.0 psig shall be incorporated in the line connecting the vapor generator and the evaporative emission canister.

16. A new § 86.113–90 is proposed to be added to Subpart B, to read as follows:

§ 86.113–90 Fuel specifications.

(a) *Gasoline.* (1) Gasoline having the following specifications will be used by the Administrator in exhaust and evaporative emission testing for both certification and in-use enforcement testing. Gasoline having the following specifications or substantially equivalent specifications approved by the Administrator, shall be used by the manufacturer in exhaust and evaporative emission testing.

Item	ASTM	Value
Octane, research, regular [1]	D2699	91 ± 1
Octane, research, premium [2]	D2699	96 ± 1
Sensitivity, minimum		7.5
Lead (organic), g/U.S. gal. (g/liter)	D3237	[3] 0.050 [3](0.013)
Distillation Range:		
IBP [4], °F (°C)	D86	75–100 (23.9–37.8)
10 pct. point, °F (°C)	D86	110–135 (43.3–57.2)
50 pct. point °F (°C)	D86	185–230 (85.0–110)
90 pct. point, °F (°C)	D86	285–325 (140.6–162.8)
EP, (max.) °F, (°C)	D86	437 (225)
Percent Evaporated at 160°F (71.1°C)	D86	20–35
Sulfur, weight, percent, minimum	D1266	0.03
Phosphorus, g/U.S. gal., maximum (g/liter)	D3231	0.005 (0.0013)
RVP psi (kPa)	D323	[5,6] 8.7–9.2 (60.0–63.4)
Hydrocarbon composition:		
Olefins, percent, maximum	D1319	10
Aromatics, percent, maximum, regular [1]	D1319	40
Aromatics, percent maximum, premium [2]	D1319	45
Saturates	D1319	[7]

[1] For use in all vehicles except those meeting the conditions for testing with premium gasoline.
[2] For testing only those vehicles for which the manufacturer clearly notifies the customer that use of non-premium grade fuel will likely result in engine damage. Additionally, the manufacturer must state in its certification application that information substantiating likely engine damage is available; such information would be subject to audit by EPA.
[3] Maximum.
[4] For testing at altitudes above 1,219 m (4,000 ft), the specified range is 75°–105°F (23.9–40.6°C).
[5] For testing at altitudes above 1,219 m (4,000 ft), the specified range is 7.5–8.0 psi (51.7–55.2 kPa).
[6] For testing involving exhaust emissions only, the specification is 8.0–9.2 psi (55.2–63.4 kPa).
[7] Remainder.

(2) Unleaded gasoline representative of commercial gasoline which will be generally available through retail outlets shall be used in service accumulation. Leaded gasoline will not be used in service accumulation.

(i) The octane rating of the gasoline used in service accumulation shall be no higher than 1.0 Research octane number above the minimum recommended by the manufacturer and have a minimum sensitivity of 7.5 octane numbers, where sensitivity is defined as the Research octane number minus the Motor octane number.

(ii) The Reid Vapor Pressure of the gasoline used in service accumulation shall be characteristic of the motor fuel used during the season in which the service accumulation takes place.

(3) The specification range of the gasoline to be used under paragraph (a)(2) of this section shall be reported in accordance with § 86.088–21(b)(3).

(b) *Diesel fuel.* (1) The diesel fuels employed for testing shall be clean and bright, with pour and cloud points adequate for operability. The diesel fuel may contain nonmetallic additives as follows: Cetane improver, metal deactivator, antioxidant, dehazer, antirust, pour depressant, dye, dispersant and biocide.

(2) Diesel fuel meeting the following specifications, or substantially equivalent specifications approved by the Administrator, shall be used in exhaust emission testing. The grade of diesel fuel recommended by the engine manufacturer, commercially designated as "Type 2–D" grade diesel, shall be used.

Item	ASTM Text Method No.	Type 2–D
Cetane Number	D613, D86	42–50
Distillation range:		
IBP, °F (°C)		340–400 (171.1–204.4)
10 pct. point, °F (°C)		400–460 (204.4–237.8)
50 pct. point, °F (°C)		470–540 (234.3–282.2)
90 pct. point, °F (°C)		550–610 (287.8–321.1)
EP, °F (°C)		580–660 (304.4–348.9)
Gravity, ° API	D287	33–37
Total sulfur, percent	D129 or D2622	0.2–0.5

Item	ASTM Text Method No.	Type 2-D
Hydrocarbon composition	D1319	
Aromatics, percent, minimum		27
Parafins, Naphthenes, Olefins		([1])
Flashpoint, minimum °F (°C)	D93	130(54.4)
Viscosity, centistokes	D445	2.0–3.2

[1] Remainder.

(3) Diesel fuel meeting the following specifications, or substantially equivalent specifications approved by the Administrator, shall be used in service accumulation. The grade of diesel fuel recommended by the engine manufacturer, commercially designated as "Type 2–D" grade diesel fuel, shall be used.

Item	ASTM test method No.	Type 2–D
Cetane Number	D613	36–58
Distillation range: 90 pct. point, °F (°C)	D86	430–630 (221.1–332.2)
Gravity, °API	D287	30–42
Total sulfur, percent, minimum	D129 or D2622	0.20
Flashpoint, °F, minimum (°C)	D93	130 (54.4)
Viscosity, centistokes	D455	1.5–4.5

(4) Other petroleum distillate fuels may be used for testing and service accumulation provided:

(i) They are commercially available;

(ii) Information, acceptable to the Administrator, is provided to show that only the designated fuel would be used in customer service;

(iii) Use of a fuel listed under paragraphs (b)(2) and (b)(3) of this section would have a detrimental effect on emissions or durability; and

(iv) Written approval from the Administrator of the fuel specifications is provided prior to the start of testing.

(5) The specification range of the fuels to be used under paragraphs (b)(2), (b)(3), and (b)(4) of this section shall be reported in accordance with § 86.088–21(b)(3).

(c) Fuels not meeting the specifications set forth in this section may be used only with the advance approval of the Administrator.

17. A new § 86.130–90 is proposed to be added to Subpart B, to read as follows:

§ 86.130–90 Test sequence; general requirements.

The test sequence shown in Figure B90–10 shows the steps encountered as the test vehicle undergoes the procedures subsequently described to determine conformity with the standards set forth. Ambient temperature levels encountered by the test vehicle shall not be less than 68 °F (20 °C) nor more than 86 °F (30 °C). The temperatures monitored during testing must be representative of those experienced by the test vehicle. The vehicle shall be approximately level during all phases of the test sequence to prevent abnormal fuel distribution.

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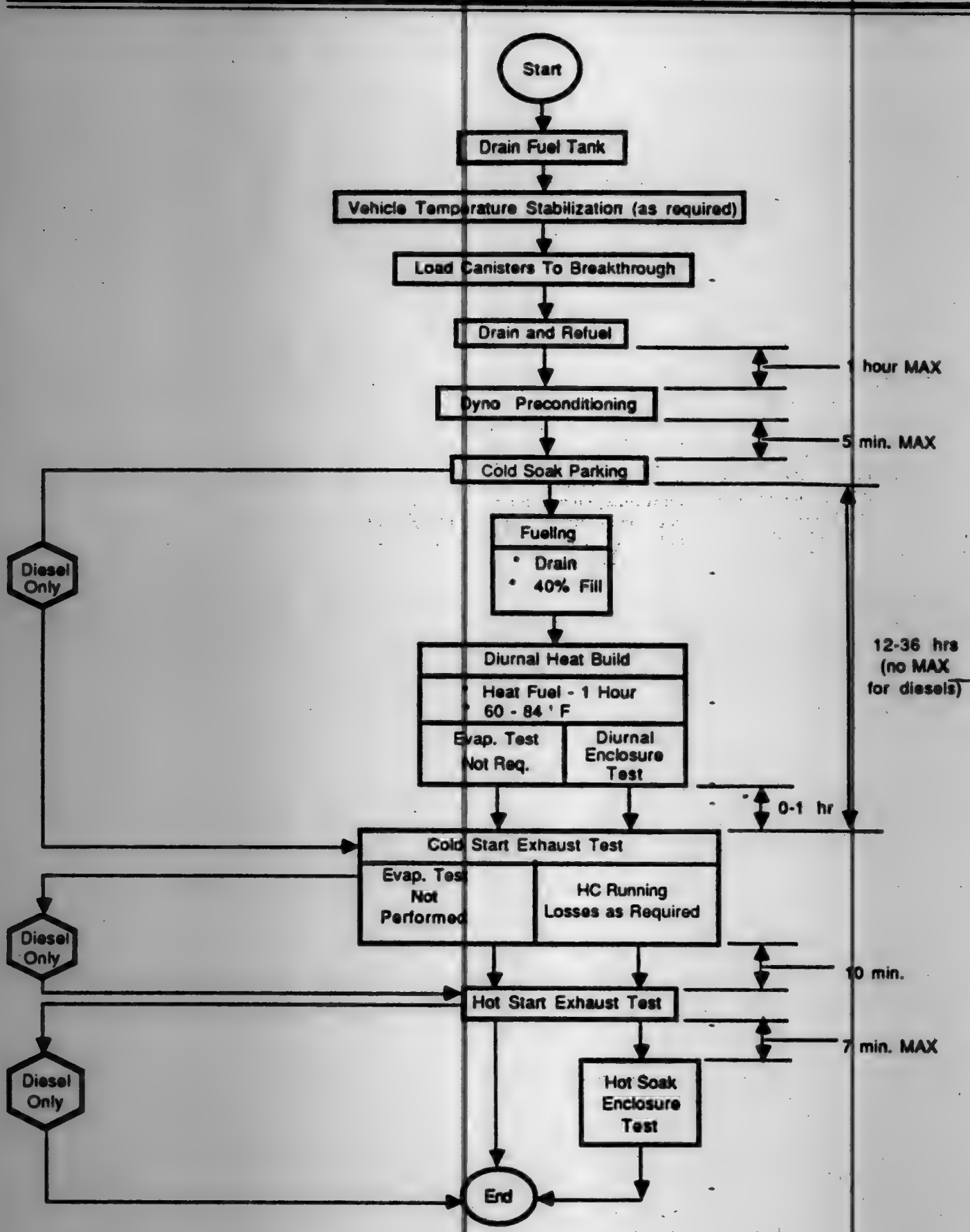

Figure B90 - 10 Test Sequence

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18. A new § 86.131–90 is proposed to be added to Subpart B, to read as follows:

§ 86.131–90 Vehicle preparation.

(a) For gasoline-fueled vehicles prepare the fuel tank(s) for recording the temperature of the prescribed test fuel at the approximate mid-volume of the fuel.

(b) For gasoline-fueled vehicles, provide valving or other means to allow loading of the evaporative emissions canister(s) with gasoline vapor.

(c) For both gasoline and diesel-fueled vehicles, provide additional fittings and adapters, as required, to accommodate a fuel drain at the lowest point possible in the tank(s) as installed on the vehicle.

19. A new § 86.132–90 is proposed to be added to Subpart B, to read as follows:

§ 86.132–90 Vehicle preconditioning.

(a) During any period that the vehicle is parked awaiting testing, the fuel tank cap(s) shall be removed to prevent unusual loading of the evaporative emissions canister(s). During this time care must be taken to prevent entry of water or other contaminates into the fuel tank. The vehicle shall be moved into the test area and the following operations performed:

(1) For gasoline fueled vehicles only, the evaporative emissions canister(s) shall be loaded to breakthrough as specified below. The evaporative emission canister(s) shall not be purged prior to beginning this sequence. If the vehicle is to undergo testing for fuel economy only, this step is not required.

(2) Drain the vehicle fuel tank(s).

(3) *Vehicle Temperature Stabilization.* The test vehicle shall be soaked at a temperature between 68 °F and 86 °F (20° and 30 °C) for a minimum of six hours.

(4) *Evaporative Emissions Canister(s) loading to breakthrough.*

Note: If at anytime the hydrocarbon concentration exceeds 15,000 ppm C the enclosure should be immediately purged. This concentration provides a 4:1 safety factor against the lean flammability limit.

(i) For vehicles with evaporative emissions canisters which are not connected to the fuel tank, the following procedures shall be performed:

(A) The SHED shall be opened and purged of hydrocarbon vapor.

(B) Place the vehicle in the SHED. Ground the vehicle.

(C) The gasoline vapor generating equipment shall be drained of fuel and then refueled with 5 gallons of gasoline meeting the test fuel specifications, § 86.113–90. Ground the vapor generating equipment and heat the gasoline to 120±10 °F. No gasoline vapor shall be allowed to escape from the gasoline vapor generating equipment.

(D) Equipment to generate gasoline vapor shall be placed in the SHED and grounded and the vehicle hood opened if required to provide access to the evaporative emissions canister.

(E) The heating mechanism of the gasoline vapor generating equipment shall be operated to insure that the effluent vapor stream will be at 120±10 °F.

(F) The gasoline vapor generating equipment shall be connected to the evaporative emissions canister. The SHED shall be closed and the doors sealed.

(G) The mixing blower shall be turned on, if not already on. Initiate measurement of the hydrocarbon level in the SHED.

(H) Open the gasoline vapor generating equipment shutoff valve. Flow nitrogen gas into the gasoline vapor generating equipment at a rate of between 0.05 and 0.1 ft^3/min (1.4 to 2.8 1/min) until breakthrough occurs (breakthrough is defined as the point at which the change in the hydrocarbon concentration in the SHED indicates that 5 grams of hydrocarbon vapors have been emitted from the canister). If canister breakthrough does not occur within one hour of the start of nitrogen flow, the nitrogen shall be turned off, and the sequence described in (a)(4)(i)(A) through (H) above shall be repeated.

(I) Remove the vehicle from the SHED without starting the engine.

(ii) For vehicles equipped with evaporative emission canisters connected to the fuel tank, the following procedure shall be performed:

(A) The evaporative emission enclosure shall be purged for several minutes immediately prior to the test.

(B) If not already on, the evaporative enclosure mixing fan shall be turned on at this time.

(C) The fuel tank(s) of the prepared vehicle shall be drained and recharged with the specified test fuel, § 86.113, to the prescribed "tank fuel volume," defined in § 86.078–2. The temperature of the fuel prior to its delivery to the fuel tank(s) shall be between 45 and 60 °F (7.2 and 16 °C). The fuel tank cap(s) is not installed until the diurnal heat build begins.

(D) The test vehicle, with the engine shut off, shall be moved into the evaporative emission enclosure, the fuel tank temperature sensor shall be connected to the temperature recording system, and, if required, the heat source shall be properly positioned with respect to the fuel tank(s) and/or connected to the temperature controller.

(E) The temperature recording system shall be started.

(F) The fuel may be artificially heated to the starting diurnal temperature.

(G) When the fuel temperature recording system reaches at least 58 °F (14 °C), immediately:

(*1*) Install fuel tank cap(s).

(*2*) Turn off purge blowers, if not already off at this time.

(*3*) Close and seal enclosure doors.

(*4*) Initiate measurement of the hydrocarbon level in the SHED.

(H) When the fuel temperature recording system reaches 60±2 °F (16±1.1 °C), immediately:

(*1*) Start diurnal heat build.

(I) The fuel shall be heated in such a way that its temperature change conforms to the following function to within ±4 °F (±2.2 °C):

$F = T_o + 0.4t$

for SI units,

$C = T_o + (2/9)t$

where:

F = fuel temperature, °F
C = fuel temperature, °C
t = time since beginning of test, minutes.
T_o = initial temperature.

(J) As soon as breakthrough occurs (breakthrough is defined as the point which the change in hydrocarbon concentration in the SHED indicates that the emissions from the canister has reached a level (in grams)) equal to ⅛ of the nominal fuel tank capacity (in gallons) or the fuel temperature reaches 84 °F (28.9 °C), the heat source shall be turned off, the enclosure doors shall be unsealed and opened, and the vehicle fuel tank cap(s) shall be removed. If the breakthrough has not occurred by the time the fuel temperature reaches 84 °F, the vehicle shall be removed (with engine shut off) from the evaporative emission enclosure and the entire procedure outlined in (a)(4)(ii) of this section shall be repeated as many times as necessary until breakthrough occurs.

(5) Drain and fill the vehicle fuel tank(s) to the prescribed "tank fuel volume" with the specified test fuel, § 86.113.

(6) Within one hour of being fueled the vehicle shall be placed either by being driven or pushed, on a dynamometer and operated through one Urban Dynamometer Driving Schedule test procedure, *see* § 86.115 and Appendix I. A test vehicle may not be used to set dynamometer horsepower.

(b) Within five minutes of completion of preconditioning, the vehicle shall be driven off the dynamometer and parked. The vehicle shall be stored for not less than 12 hours nor for more than 36 hours prior to the cold start exhaust test. (Gasoline-fueled vehicles undergo a one-hour diurnal heat build prior to the cold start exhaust test. A wait of up to one hour is permitted between the end of the diurnal heat build and the beginning of the cold start exhaust test. *See* § 86.130 and Figure B90–10.)

(c) Vehicles to be tested for evaporative emissions shall be processed in accordance with procedures in §§ 86.133 through 86.138. Vehicles to be tested for exhaust emissions only shall be processed according to §§ 86.133 through 86.137.

20. Section 86.609 of Subpart G is proposed to be amended by revising paragraphs (c) and (d)(5)(iv) to read as follows:

§ 86.609 Calculation and reporting of test results.

* * * * *

(c) The final deteriorated exhaust emission test results for each test vehicle shall be calculated by multiplying the final test results by the appropriate deterioration factor derived from the certification process for the engine family and model year to which the selected configuration belongs and rounding in accordance with ASTM E29–67 to two significant figures. For the purpose of this paragraph, if an exhaust emission deterioration factor as computed during the certification process is less than one, that deterioration factor shall be one.

(d) * * *

(5) * * *

(iv) A complete description of any modification, repair, preparation, maintenance and/or testing which was performed on the test vehicle or evaporative emissions canister(s) and (A) has not been reported pursuant to any other paragraph of this subpart and (B) will not be performed on all other production vehicles.

* * * * *

21. A new § 86.1009–90 is proposed to be added to Subpart K, to read as follows:

§ 86.1009–90 Calculation and reporting of test reports.

(a) Initial test results are calculated following the Federal Test Procedure specified in paragraph (a) of § 86.1009–84. Round these results, in accordance with ASTM E29–67, to the number of decimal places contained in the applicable emission standard expressed to one additional significant figure.

(b) Final test results are calculated by summing the initial test results derived in paragraph (a) of this section for each test engine or vehicle, dividing by the number of tests conducted on the engine or vehicle, and rounding in accordance

with ASTM E29–67 to the same number of decimal places contained in the applicable standard expressed to one additional significant figure.

(c) Final deteriorated test results.

(1) The final deteriorated exhaust emission test results for each heavy-duty engine utilizing aftertreatment technology or light duty truck tested according to Subpart B, N or P of this part are calculated by multiplying the final test results by the appropriate deterioration factor, derived from the certification process for the engine family-control system combination and model year for the selected configuration to which the test engine or vehicle belongs. If the deterioration factor computed during the certification process is less than one, that deterioration factor will be one.

(2) The final deteriorated test results for each heavy-duty engine not utilizing aftertreatment technology tested according to Subpart P or N of this part, and each diesel heavy-duty engine tested according to Subpart I of this part, are calculated by adding the appropriate deterioration factor, derived from the certification process for the engine family-control system combination and model year for the selected configuration to which the test engine belongs, to the final test results. If the deterioration factor computed during the certification process is less than zero, that deterioration factor will be zero.

(3) The final deteriorated test results are rounded to the same number of significant figures contained in the applicable standard in accordance with ASTM E29–67.

(d) Within five working days after completion of testing of all engines or vehicles pursuant to a test order, the manufacturer shall submit to the Administrator a report which includes the following information.

(1) The location and description of the manufacturer's emission test facilities which were utilized to conduct testing reported pursuant to this section.

(2) The applicable standards against which the engines or vehicles were tested.

(3) Deterioration factors for the engine family to which the selected configuration belongs.

(4) A description of the engine or vehicles and any emission-related component selection method used.

(5) For each test conducted,

(i) Test engine or vehicle description, including:

(A) Configuration and engine family identification.

(B) Year, make and build date.

(C) Engine or vehicle identification number, and

(D) Number of hours of service accumulated on engine or number of miles on vehicle prior to testing;

(ii) Location where service or mileage accumulation was conducted and description of accumulation procedure and schedule;

(iii) Test number, date, final test results before and after rounding, final test results and final deteriorated test results for all emission test, whether valid or invalid, and the reason for invalidation, if applicable.

(iv) A complete description of any modification, repair, preparation, maintenance, and/or testing which was performed on the test engine or vehicle or evaporative emission control canister(s), and

(A) Has not been reported pursuant to any other paragraph of this subpart, and

(B) Will not be performed on all other production engines or vehicles.

(v) Where an engine or vehicle was deleted from the test sequence by authorization of the Administrator, the reason for the deletion.

(vi) For all valid and invalid exhaust emission tests, carbon dioxide emission values for LDTs and brake specific fuel consumption values for HDEs, and

(vii) Any other information the Administrator may request relevant to the determination as to whether the new heavy-duty engines or light-duty trucks being manufactured by the manufacturer do in fact, conform with the regulations with respect to which the certificate of conformity was issued; and

(6) The following statement and endorsement:

This report is submitted pursuant to sections 206 and 208 of the Clean Air Act. This Selective Enforcement Audit was conducted in complete conformance with all applicable regulations under 40 CFR Part 86 et seq. and the conditions of the test order. No emission-related changes to production processes or quality control procedures for the vehicle or engine configuration tested have been made between receipt of the test order and conclusion of the audit. All data and information reported herein is, to the best of (Company Name ———) knowledge, true and accurate. I am aware of the penalties associated with violation of the Clean Air Act and the regulations thereunder.

———

(Authorized Company Representative)

22. A new § 86.1207–90 is proposed to be added to Subpart M, to read as follows:

§ 86.1207–90 Sampling and analytical system; evaporative emissions.

The following is a description of the components which will be used in

evaporative emission sampling system for testing under this subpart

(a) *Evaporative emission measurement enclosure.* The enclosure shall be readily sealable, rectangular in shape, with space for personnel access to all sides of the vehicle. When sealed, the enclosure shall be gas tight in accordance with § 86.1217–81. Interior surfaces must be impermeable to hydrocarbons. At least one surface shall be constructed of flexible, impermeable material to allow for minor volume changes which result from temperature changes. No interior surface temperatures shall be less than 68 °F (20 °C).

(b) *Evaporative emission hydrocarbon analyzer.* A hydrocarbon analyzer utilizing the hydrogen flame ionization principle (FID) shall be used to monitor the atmosphere within the enclosure. Instrument bypass flow may be returned to the enclosure. The FID shall have a response time to 90 percent of final reading of less than 1.5 seconds, and be capable of meeting performance requirements expressed as a function of C_{enc}, where C_{enc} is the specific enclosure hydrocarbon level, in ppm, corresponding to the evaporative emission standard.

(1) Stability of the analyzer shall be better than 0.01 C_{enc} ppm at zero and span over a 15-minute period on all ranges used.

(2) Repeatability of the analyzer, expressed as one standard deviation, shall be better than 0.005 C_{enc} ppm on all ranges used.

(c) *Evaporative emission hydrocarbon date recording system.* The electrical output of the FID shall be recorded at least at the initiation and termination of each diurnal and hot soak. The recording may be by means of a strip chart potentiometric recorder, by use of an online computer system, or by other suitable means. In any case, the recording system must have operational characteristics (signal to noise ratio, speed of response, etc.) equivalent to or better than those of the signal source being recorded, and must provide a permanent record of results. The record shall show a positive indication of the initiation and completion of each soak.

(d) *Tank fuel heating system.* The tank fuel heating system shall consist of a heat source and a temperature controller. A typical heat source is a 2000 W heating pad. Other sources may be used as required by circumstances. The temperature controller may be manual, such as a variable voltage transformer, or may be automated. The heating system must not cause hot spots on the tank wetted surface which could cause local overheating of the fuel. Heat must not be applied to the vapor in the tank above the liquid fuel. The temperature controller must be capable of controlling the fuel tank temperature during the diurnal soak to within ±3 °F (1.7 °C) of the following equation:

$$F = T_o + 0.4t$$

or for SI units:

$$C = T_o + (2/9)t$$

Where:

F = Temperature in °F
C = Temperature in °C
t = Time since start of test in minutes
T_o = Initial temperature in °F (or in °C for SI units)

(e) *Temperature recording system.* Strip chart recorder(s) or an automatic data processor shall be used to record enclosure ambient and vehicle fuel tank temperature at least once every minute. The temperature recorder or data processor shall have a time accuracy of ±15s, a time precision of ±15s and be capable of resolving temperature to ±0.75 °F (0.42 °C). The temperature recording system (recorder and sensor) shall have an accuracy of ±3 °F (1.7 °C). Two ambient temperature sensors, connected to provide one average output, shall be located in the enclosure. These sensors shall be located at the approximate vertical centerline of each side wall extending four inches (nominally) into the enclosure at a height of 3±0.5 ft (0.9+0.2 m). The vehicle fuel tank temperature sensor shall be located in the fuel tank so as to measure the temperature of the prescribed test fuel at the approximate mid-volume of the fuel. Manufacturers shall arrange that vehicles furnished for testing at Federal certification facilities be equipped with iron-constantan Type J thermocouples for measurement of fuel tank temperature.

(f) *Purge blower.* One or more portable or fixed blowers shall be used to purge the enclosure. The blowers shall have sufficient flow capacity to reduce the enclosure hydrocarbon concentration from the test level to the ambient level between tests. Actual flow capacity will depend upon the time available between tests.

(g) *Mixing blower.* One or more blowers or fans with a total capacity of 250 to 750 cfm per 1000 ft^3 of enclosure volume shall be used to mix the contents of the enclosure during evaporative emission testing. The mixing blower(s) shall be arranged such that a uniform concentration is maintained. No portion of the air stream shall be directed towards the vehicle.

(h) *Gasoline vapor generating equipment.* The equipment used to generate gasoline vapor shall consist of a five gallon capacity (liquid) container constructed such that nitrogen gas can be bubbled through liquid gasoline at a rate between 0.05 and 0.10 cfm. The system should be designed such that it is capable of producing at least 30 grams of hydrocarbon vapor, containing no entrained liquid, in the effluent stream within one hour of operation at the nitrogen gas flow rates specified with a charge of five gallons of fuel meeting the specifications outlined in § 86.113–90. The system should be free of vapor leaks, and shall be capable of sustaining pressures of at least 100 psig. The vapor space over the liquid fuel shall be 1.0±0.5 gallons. A heating mechanism shall also be required such that the gasoline in the container can be heated to and maintained at 120±10 °F and the temperature of the effluent shall be 120°±10 °F. A shutoff valve and a pressure regulator to limit the effluent to the canister to 1.0 psig shall be incorporated in the line connecting the vapor generator and the evaporative emission canister.

23. A new § 86.1213–90 is proposed to be added to Subpart M, to read as follows:

§ 86.1213–90 Fuel specifications.

(a) *Gasoline.* (1) Gasoline having the following specifications will be used in emission testing.

Item	ASTM	Value
Octane, research, regular [1]	D2699	91±1
Octane, research, premium [2]	D2699	96±1
Sensitivity, minimum		7.5
Lead (organic, g/U.S. gal. (g/liter)	D3237	[3]0.050 [3] (0.013)
Distillation Range:		
IBP [4] °F (°C)	D86	75-100 (23.9-37.8)
10 pct. point, °F (°C)	D86	110-135 (43.3-57.2)
50 pct. point, °F (°C)	D86	185-230 (85.0-110)

Item	ASTM	Value
90 pct. point, °F (°C)	D86	285-325 (140.6-162.8)
EP, (max.)°F (°C)	D86	437 (225)
Percent Evaporated at 160°F (71.1°C)	D86	20-35
Sulfur, weight, percent, minimum	D1266	0.03
Phosphorus, g/U.S. gal., maximum (g/liter)	D3231	0.005 (0.0013)
RVP, psi (kPa)	D323	[5, 6] 8.7-9.2 (60.0-63.4)
Hydrocarbon composition:		
Olefins, percent, maximum	D1319	10
Aromatics, percent, maximum, regular[1]	D1319	40
Aromatics, percent, maximum, premium[2]	D1319	45
Saturates	D1319	([7])

[1] For use in all vehicles except those meeting the conditions for testing with premium gasoline.
[2] For testing only those vehicles for which the manufacturer clearly notifies the customer that use of non-premium grade fuel will likely result in engine damage. Additionally, the manufacturer must state in its certification application that information substantiating likely engine damage is available; such information would be subject to audit by EPA.
[3] Maximum.
[4] For testing at altitudes above 1,219 m (4,000 ft), the specified range is 75°-105°F (23.9-40.6°C).
[5] For testing at altitudes above 1,219 m (4,000 ft), the specified range is 7.5-8.0 psi (51.7-55.2 kPa).
[6] For testing involving exhaust emissions only, the specification is 8.0-9.2 psi (55.2-63.4 kPa).
[7] Remainder.

(2) Unleaded gasoline representative of commercial gasoline which will be generally available through retail outlets shall be used in service accumulation. Leaded gasoline will not be used in service accumulation.

(i) The octane rating of the gasoline used in service accumulation shall be no higher than 1.0 Research octane number above the minimum recommended by the manufacturer and have a minimum sensitivity of 7.5 octane numbers, where sensitivity is defined as the Research octane number minus the Motor octane number.

(ii) The Reid Vapor Pressure of the gasoline used in service accumulation shall be characteristic of the motor fuel used during the season in which the service accumulation takes place.

(3) The specification range of the gasoline to be used under paragraph (a)(2) of this section shall be recorded.

24. A new § 86.1230–90 is proposed to be added to Subpart M, to read as follows:

§ 86.1230–90 Test sequence; general requirements.

The test sequence shown in Figure M90–1 show the steps encountered as the test vehicle undergoes the test procedure. Ambient temperature levels encountered by the test vehicle throughout the test sequence shall not be less than 68 °F (20 °C) nor more than 86 °F (30 °C). The vehicle shall be approximately level during all phases of the test sequence to prevent abnormal fuel distribution.

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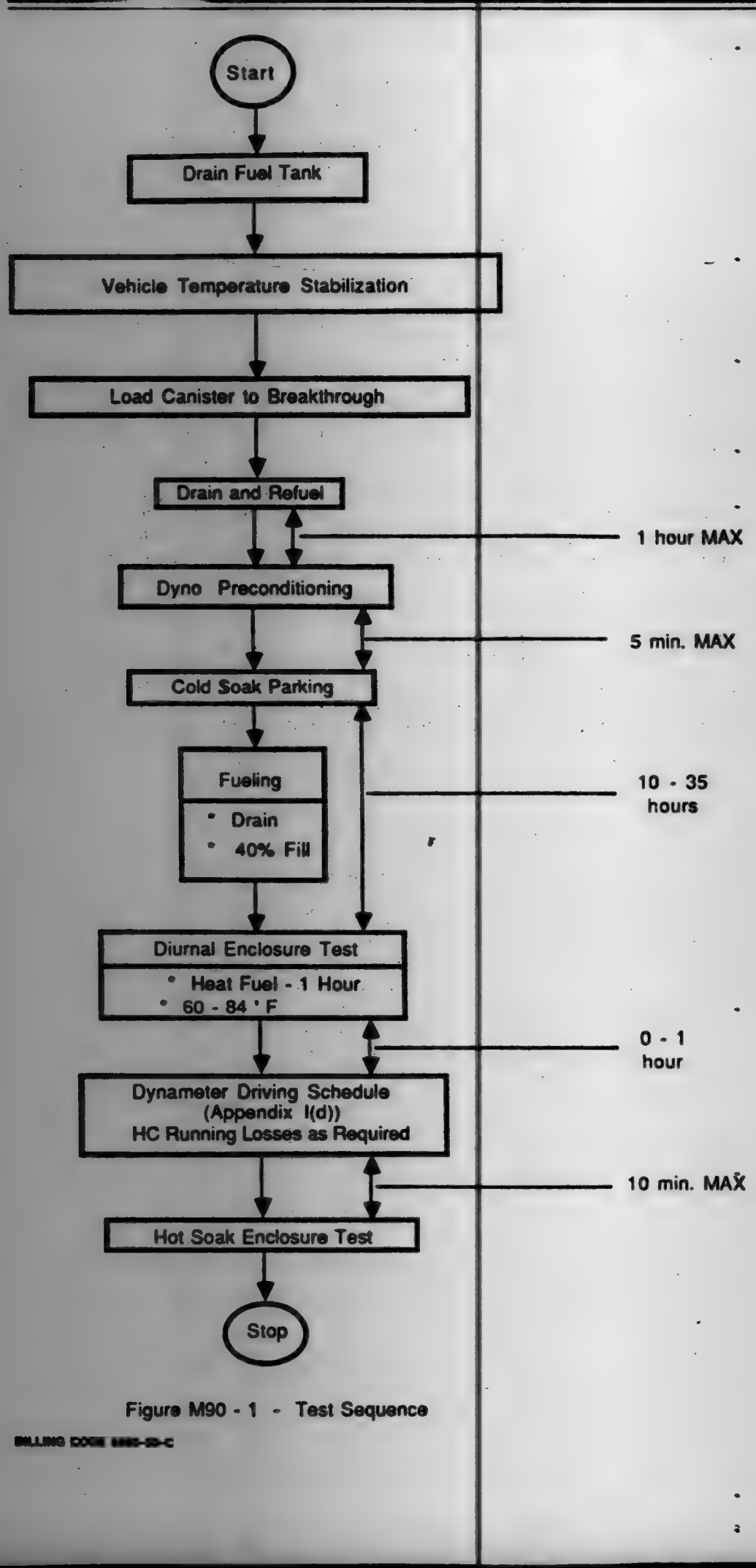

Figure M90 - 1 - Test Sequence

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25. A new § 86.1231–90 is proposed to be added to Subpart M, to read as follows:

§ 86.1231–90 Vehicle preparation.

(a) Prepare the fuel tank(s) for recording the temperature of the prescribed test fuel at the approximate mid-volume of the fuel when the tank is 40 percent full.

(b)(1) Provide additional fittings and adapters, as required, to accommodate a fuel drain at the lowest point possible in the tank(s) as installed on the vehicle.

(2) Provide valving or other means to allow loading of the evaporative emissions canister(s) with gasoline vapor.

(c)(1) Any vapor storage device which adsorbs HC vapors and subsequently releases them to the engine induction system during vehicle operation shall be subjected to a minimum of 30 load-purge cycles or the equivalent thereof (4,000 miles or more of actual in-use vehicle service accumulation shall be considered equivalent). One load-purge cycle shall be accomplished by conducting one of the following procedures:

(i) *Vehicle Procedure.* Park a fully-warm vehicle (a vehicle that has been driven for at least 15 minutes) for a time period of at least three hours. Fill the fuel tank(s) to the prescribed "tank fuel volume" with specified test fuel (§ 86.1213–90) at room temperature. Then drive the vehicle through at least one cycle of the HDV reference (transient) urban dynamometer driving schedule.

(ii) *Laboratory Procedure.* Flow gasoline vapors into a pre-purged vapor storage device until at least 10 percent of the input HC mass flow rate is passing through the device. Purge the device with a volume of air which has a temperature no higher than that which would be drawn through the device if it were installed on the test vehicle and the vehicle was operated according to the HDV reference (transient) urban dynamometer driving schedule. The vapor flow rate, the method used to generate the vapors, the air flow rate, and the air temperature shall be recorded. If pre-blended gas is used, then the composition and characteristics of the gas shall be recorded.

(2) Ten load-purge cycles accumulated immediately prior to testing shall be conducted according to the method in paragraph (c)(1)(i) of this section. The preceding 20 cycles (minimum) shall be conducted according to either of the methods in paragraph (c)(1) (i) or (ii) of this section.

26. A new § 86.1232–90 is proposed to be added to Subpart M, to read as follows:

§ 86.1232–90 Vehicle preconditioning.

(a) During any period that the vehicle is parked awaiting testing, the fuel tank cap(s) shall be removed to prevent unusual loading of the evaporative emissions canister(s). During this time care must be taken to prevent entry of water or other contaminates into the fuel tank. The vehicle shall be moved to the test area and the following operations performed:

(1) The evaporative emission canister(s) shall be loaded to breakthrough as specified below. The evaporative emissions canister(s) shall not be purged prior to beginning this sequence.

(2) Drain the vehicle fuel tank(s).

(3) *Vehicle Temperature Stabilization.* The test vehicle shall be soaked at a temperature between 68 °F and 86 °F (20° and 30 °C) for a minimum of six hours.

(4) *Evaporative Emissions Canister(s) loading to breakthrough.*

Note.—If at anytime the hydrocarbon concentration exceeds 15,000 ppm C the enclosure should be immediately purged. This concentration provides a 4:1 safety factor against the lean flammability limit.

(i) For vehicles with evaporative emissions canisters which are not connected to the fuel tank, the following procedures shall be performed:

(A) The SHED shall be opened and purged of hydrocarbon vapor.

(B) Place the vehicle in the SHED. Ground the vehicle.

(C) The gasoline vapor generating equipment shall be drained of fuel and then refueled with five gallons of gasoline meeting the test fuel specifications, § 86.113 90. Ground the vapor generating equipment and heat the gasoline to 120±10 °F. No gasoline vapor shall be allowed to escape from the gasoline vapor generating equipment.

(D) Equipment to generate gasoline vapor shall be placed in the SHED and grounded and the vehicle hood opened if required to provide access to the evaporative emissions canister.

(E) The heating mechanism of the gasoline vapor generating equipment shall be operated to insure that the effluent vapor stream will be at 120±10 °F.

(F) The gasoline vapor generating equipment shall be connected to the evaporative emissions canister. The SHED shall be closed and the doors sealed.

(G) The mixing blower shall be turned on, if not already on. Initiate measurement the hydrocarbon level in the SHED.

(H) Open the gasoline vapor generating equipment shutoff valve, flow nitrogen gas into the gasoline vapor generating equipment at a rate of between 0.05 and 0.1 ft^3/min (1.4 to 2.8 1/min) until breakthrough occurs (breakthrough is defined as the point at which the change in the hydrocarbon concentration in the SHED indicates that 5 grams of hydrocarbon vapors have been emitted from the canister). If canister breakthrough does not occur within one hour of the start of nitrogen flow, the nitrogen shall be turned off, and the sequence described in (a)(4)(i)(A) through (H) above shall be repeated.

(I) Remove the vehicle from the SHED without starting the engine.

(ii) For vehicles equipped with evaporative emission canisters connected to the fuel tank, the following procedure shall be performed:

(A) The evaporative emission enclosure shall be purged for several minutes immediately prior to the test.

(B) If not already on, the evaporative enclosure mixing fan shall be turned on at this time.

(C) The fuel tank(s) of the prepared vehicle shall be drained and recharged with the specified test fuel, § 86.113, to the prescribed "tank fuel volume," defined in § 86.079–2. The temperature of the fuel prior to its delivery to the fuel tank(s) shall be between 45 and 60 °F (7.2 and 16 °C). The fuel tank cap(s) is not installed until the diurnal heat build begins.

(D) The test vehicle, with the engine shut off, shall be moved into the evaporative emission enclosure, the fuel tank temperature sensor shall be connected to the temperature recording system, and, if required, the heat source shall be properly positioned with respect to the fuel tank(s) and/or connected to the temperature controller.

(E) The temperature recording system shall be started.

(F) The fuel may be artificially heated to the starting diurnal temperature.

(G) When the fuel temperature recording system reaches at least 58 °F (14 °C), immediately:

(*1*) Install fuel tank cap(s).

(*2*) Turn off purge blowers, if not already off at this time.

(*3*) Close and seal enclosure doors.

(*4*) Initiate measurement of the hydrocarbon level in the SHED.

(H) When the fuel temperature recording system reaches 60±2 °F (16±1.1 °C), immediately:

(1) Start diurnal heat build.

(I) The fuel shall be heated in such a way that its temperature change conforms to the following function to within ±4 °F (±2.2 °C):

$F = T_o + 0.4t$

for SI units,

$C = T_o + (2/9)t$

where:
F = fuel temperature, °F
C = fuel temperature, °C
t = time since beginning of test, minutes.
T_o = initial temperature.

(J) As soon as breakthrough occurs (breakthrough is defined as the point at which the change in hydrocarbon concentration in the SHED indicates that the emissions from the canister has reached a level (in grams) equal to ⅙ of the nominal fuel tank capacity (in gallons)) or the fuel temperature reaches 84 °F (28.9 °C), the heat source shall be turned off, the enclosure doors shall be unsealed and opened, and the vehicle fuel tank cap(s) shall be removed. If the breakthrough has not occurred by the time the fuel temperature reaches 84 °F, the vehicle shall be removed (with engine shut off) from the evaporative emissions enclosure and the entire procedure outlined in (a)(4)(ii) of this section shall be repeated as many times as necessary until breakthrough occurs.

(5) Drain and fill the vehicle fuel tank(s) to the prescribed "tank fuel volume" with the specified test fuel, § 86.1213.

(6) Within one hour of being fueled the vehicle shall be placed, either by being driven or pushed, on a dynamometer and operated through one HDV urban dynamometer driving schedule, (see § 86.1251–85). A test vehicle may not be used to set dynamometer horsepower.

(b) After completion of preconditioning the vehicle shall be driven off the dynamometer and parked. The engine shall be turned off within five minutes of completion of preconditioning. The vehicle may be pushed to its parking location after its engine has been turned off.

27. A new § 86.1313–90 is proposed to be added to Subpart N, to read as follows:

§ 86.1313–90 Fuel specifications.

(a) *Gasoline.* (1) Gasoline having the following specifications will be used by the Administrator in exhaust and evaporative emission testing. Gasoline having the following specification or substantially equivalent specifications approved by the Administrator, shall be used by the manufacturer in exhaust and evaporative emission testing.

Item	ASTM	Value
Octane, research, regular [1]	D2699	91 ±1
Octane, research, premium [2]	D2699	96 ±1
Sensitivity, minimum		7.5
Lead (organic), g/U.S. gal. (g/liter)	D3237	[3] 0.050 [3] (0.013)
Distillation Range:		
IBP [4], °F (°C)	D86	75–100 (23.9–37.8)
10 pct. point, °F (°C)	D86	110–135 (43.3–57.2)
50 pct. point, °F (°C)	D86	185–230 (85.0–110)
90 pct. point, °F (°C)	D86	285–325 (140.6–162.8)
EP, (max.) °F (°C)	D86	437 (225)
Percent Evaporated at 160 °F (71.1°C)	D86	20–35
Sulfur, weight, percent, minimum	D1266	0.03
Phosphorus, g/U.S. gal., maximum (g/liter)	D3231	0.005 (0.0013)
RVP, psi (kPa)	D323	[5,6] 8.7–9.2 (60.0–63.4)
Hydrocarbon composition:		
Olefins, percent, maximum	D1319	10
Aromatics, percent, maximum, regular [1]	D1319	40
Aromatics, percent, maximum, premium [2]	D1319	45
Saturates	D1319	[7]

[1] For use in all vehicles except those meeting the conditions for testing with premium gasoline.
[2] For testing only those vehicles for which the manufacturer clearly notifies the customer that use of non-premium grade fuel will likely result in engine damage. Additionally, the manufacturer must state in its certification application that information substantiating likely engine damage is available; such information would be subject to audit by EPA.
[3] Maximum.
[4] For testing at altitudes above 1,219 m (4,000 ft), the specified range is 75°–105°F (23.9–40.6°C).
[5] For testing at altitudes above 1,219 m (4,000 ft), the specified range is 7.5–8.0 psi (51.7–55.2 kPa).
[6] For testing involving exhaust emissions only, the specification is 8.0–9.2 psi (55.2–63.4 kPa).
[7] Remainder.

(2) Unleaded gasoline representative of commercial gasoline which will be generally available through retail outlets shall be used in service accumulation. Leaded gasoline will not be used in service accumulation.

(i) The octane rating of the gasoline used in service accumulation shall be no higher than 1.0 Research octane number above the minimum recommended by the manufacturer and have a minimum sensitivity of 7.5 octane numbers, where sensitivity is defined as the Research octane number minus the Motor octane number.

(ii) The Reid Vapor Pressure of the gasoline used in service accumulation shall be characteristic of the motor fuel used during the season in which the service accumulation takes place.

(3) The specification range of the gasoline to be used under paragraph (a)(2) of this section shall be reported in accordance with § 86.088–21(b)(3).

(b) *Diesel fuel.* (1) The diesel fuels employed for testing shall be clean and bright, with pour and cloud points adequate for operability. The diesel fuel may contain nonmetallic additives as follows: Cetane improver, metal deactivator, antioxidant, dehazer, antirust, pour depressant, dye, dispersant and biocide.

(2) Diesel fuel meeting the following specifications, or substantially equivalent specifications approved by the Administrator, shall be used in exhaust emission testing. The grade of diesel fuel recommended by the engine manufacturer, commercially designated as "Type 1–D" or "Type 2–D" grade diesel fuel shall be used.

Item		ASTM Test Method No.	Type 1-D	Type 2-D
Cetane Number		D613	48-54	42-50
Distillation range:				
IBP	°F	D85	330-390	340-400
	(°C)		(165.6-198.9)	(170.1-204.4)
10 pct. point	°F	D86	370-430	400-460
	(°C)		(187.7-221.1)	(204.4-237.8)
50 pct. point	°F	D86	410-480	470-540
	(°C)		(210-248.9)	(243.3-282.2)
90 pct. point	°F	D86	460-520	550-610
	(°C)		(237.8-271.1)	(287.8-321.1)
EP	°F	D86	500-560	580-660
	(°C)		(260-293.3)	(304.4-348.9)
Gavity, °API		D287	40-44	33-37
Total sulfur, percent		D129 or D2622	0.05-0.20	0.2-0.5
Hydrocarbon composition		D1319		
Aromatics, percent, minimum			8	27
Parafins, Naphthenes, Olefins			(1)	(1)
Flashpoint, minimum	°F	D93	120	130
	(°C)			(54.4)
Viscosity, centistokes		D445	1.6-2.0	2.0-3.2

[1] Remainder.

(3) Diesel fuel meeting the following specifications, or substantially equivalent specifications approved by the Administrator, shall be used in service accumulation. The grade of diesel fuel recommended by the engine manufacturer, commercially designated as "Type 1-D" or "Type 2-D" grade diesel fuel, shall be used.

Item		ASTM Test Method No.	Type 1-D	Type 2-D
Cetane Number		D613	42-56	30-59
Distillation range:				
90 pct. point	°F	D86	440-530	430-630
	°C)		(226.7-276.7)	(221.1-332.2)
Gravity, °API		D287	39-45	30-42
Total sulfur, percent, minimum		D129 or D2622	0.05	0.20
Flashpoint	°F, minimum	D93	120	130
	(°C)		(48.9)	(54.4)
Viscosity, centistokes		D455	1.2-2.2	1.5-4.5

(4) Other petroleum distillate fuel specifications:

(i) Other petroleum distillate fuels may be used for testing and service accumulation provided they are commercially available, and

(ii) Information, acceptable to the Administrator, is provided to show that only the designated fuel would be used in customer service, and

(iii) Use of a fuel listed under paragraphs (b)(2) and (b)(3) of this section would have a detrimental effect on emissions or durability, and

(iv) Written approval from the Administrator of the fuel specifications must be provided prior to the start of testing.

(5) The specification range of the fuels to be used under paragraphs (b)(2), (b)(3), and (b)(4) of this section shall be reported in accordance with § 86.088-21(b)(3).

28. A new § 86.1327-90 is proposed to be added to Subpart N, to read as follows:

§ 86.1327-90 Engine Dynamometer test procedures; overview.

(a) The engine dynamometer test procedure is designed to determine the brake-specific emissions of hydrocarbons, carbon monoxide, oxides of nitrogen and particulate (diesels only) The test procedure consists of a "cold" start test following either natural or forced cool-down periods described in § 86.1334-84 and § 86.1335-84, respectively. A "hot" start test follows the "cold" start test after a hot soak of 20 minutes. The idle test of Subpart P may be run after the "hot" start test. The exhaust emissions are diluted with ambient air and a continuous proportional sample is collected for analysis during both the cold-and hot-start tests The composite samples collected are analyzed either in bags or continuously for hydrocarbons (HC), carbon monoxide (CO), carbon dioxide (CO_2), and oxides of nitrogen (NO_x). A bag or continuous sample of the dilution air is similarly analyzed for background levels of hydrocarbon, carbon monoxide, carbon dioxide, and oxides of nitrogen. In addition, for diesels only, particulates are collected on fluorocarbon coated glass fiber filters or fluorocarbon-based (membrane) filters, and the dilution air may be pre filtered.

(b) Engine torque and rpm shall be recorded continuously during both the cold and hot start tests. Data points shall be recorded at least once every second.

(c) Using the torque and rpm feedback signals the brake horsepower is integrated with respect to time for the cold and hot cycles This produces a brake horsepower-hour value that enables the brake-specific emissions to be determined (see § 86.1342-84.

Calculations; gaseous exhaust emissions and § 86.1343–87, Calculations; particulate exhaust emissions)

(d)(1) When an engine is tested for exhaust emissions or is operated for service accumulation on an engine dynamometer, the complete engine shall be tested, with all emission control devices installed and functioning.

(2) Evaporative emission controls shall be connected.

(3) On air-cooled engines, the fan shall be installed.

(4) Additional accessories (*e.g.*, oil cooler, alternators, air compressors, etc.) may be installed or their loading simulated if typical of the in-use application.

(5) The engine may be equipped with a production type starter.

(e) Means of engine cooling which will maintain the engine operating temperatures (*e.g.*, temperatures of intake air, oil, water, etc.) at approximately the same temperature as specified by the manufacturer shall be used. Auxiliary fan(s) may be used to maintain engine cooling during operation on the dynamometer. Rust inhibitors and lubrication additives may be used, up to the levels recommended by the additive manufacturer. Antifreeze mixtures and other coolants typical of those approved for use by the manufacturer may be used.

(f) *Exhaust system.* The exhaust system shall meet the following requirements:

(1) *Gasoline-fueled engines.* A chassis-type exhaust system shall be used. For all catalyst systems, the distance from the exhaust manifold flange(s) to the catalyst shall be the same as in the vehicle configuration unless the manufacturer provides data showing equivalent performance at another location.

(2) *Diesel engines.* Either a chassis-type or a facility type exhaust system or both systems simultaneously may be used. The exhaust backpressure or restriction shall be typical of those seen in the actual average vehicle exhaust system configuration and may be set with a valve (muffler omitted).

(i) The diesel engine exhaust system shall meet the following requirements:

(A) The total length of the tubing from the exit of the engine exhaust manifold or turbocharger outlet to the primary dilution tunnel should not exceed 32 feet.

(B) The initial portion of the exhaust system may consist of a typical in-use (*i.e.*, length, diameter, material, etc.) chassis-type exhaust system.

(C) The distance from the exhaust manifold flange(s) to any exhaust aftertreatment device shall be the same as in the vehicle configuration unless the manufacturer is able to demonstrate equivalent performance at another location.

(D) If the exhaust system tubing from the exit of the engine exhaust manifold or turbocharger outlet to the primary dilution tunnel exceeds 12 feet in length, then all tubing in excess of 12 feet (chassis and/or facility type) shall be insulated.

(E) If the tubing is required to be insulated, the radial thickness of the insulation must be at least R inches, where $R = 16(k) - (2)r$,

Where:

(*1*) k = Thermal conductivity of the insulating material (Btu/(hr)(ft²)(°F/ft)), and

(*2*) r = Outer radius of uninsulated tubing (inches).

(F) A smoke meter or other instrumentation may be inserted into the exhaust system tubing. If this option is exercised in the insulated portion of the tubing, then a minimal amount of tubing not to exceed 18 inches may be left uninsulated. However, no more than 12 feet of tubing can be left uninsulated in total, including the length at the smoke meter.

(ii) The facility-type exhaust system shall meet the following requirements:

(A) It must be composed of smooth tubing made of typical in-use steel or stainless steel. This tubing shall have a maximum inside diameter of 6.0 in. (15.2 cm).

(B) Short sections (altogether not to exceed 20 percent of the entire tube length) of flexible tubing at connection points are allowed.

29. A new § 86.1330–90 is proposed to be added to Subpart N to read as follows:

§ 86.1330–90 Test sequence, general requirements.

(a) The test sequence shown in Figure N90–10 shows the major steps of the test procedure.

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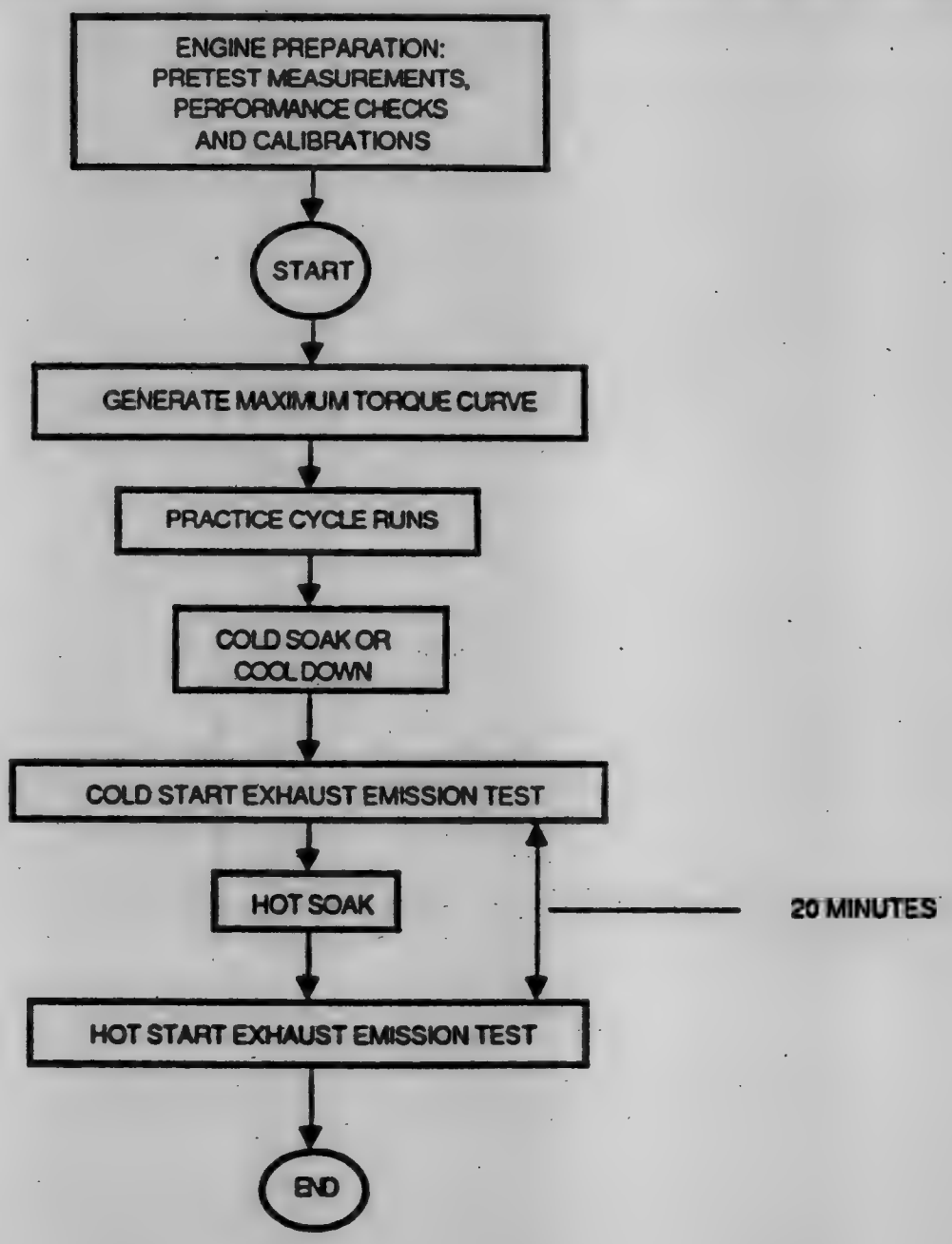

FIGURE N90 - 10 TEST SEQUENCE

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(b) Control of Air Temperature.

(1) The temperature of the CVS dilution air shall be maintained at greater than 20 °C (68 °F) throughout the test sequence.

(2) For engines with auxiliary emission control devices which are temperature dependent (*e.g.*, chokes, air cleaner hot air doors) the test cell ambient air temperature and the temperature of the engine intake air, and for gasoline-fueled engines only, the temperature of the air entering the evaporative canister(s) shall be maintained at 25 °C±5 °C (77 °F±9 °F) throughout the test sequence.

(3) For engines which are not equipped with temperature dependent auxiliary emission control devices, the test cell ambient air temperature and the temperature of the engine intake air shall be greater than 20 °C (68 °F). No corrections will be made in test results or measured engine power if 30 °C (86 °F) is exceeded.

(4) The only exceptions to these temperatures are as noted in § 86.1335–84.

(c) No control of ambient air, engine intake air or CVS dilution air humidity is required.

(d) The idle test of Subpart P may be run after completion of the hot start exhaust emission test, if applicable.

(e) The barometric pressure observed during the generation of the maximum torque curve shall not deviate more than 1 inch Hg from the value measured at the beginning of the map. The average barometric pressure observed during the exhaust emission test must be within 1 inch Hg of the average observed during the maximum torque curve generation.

(f) *Diesel-Fueled Engines only.* Air inlet and exhaust restrictions shall be set to represent the average restrictions which would be seen in use in a representative application. Inlet depression and exhaust backpressure shall be set with the engine operating at rated speed and wide open throttle, except for the case of inlet depression for naturally aspirated engines, which shall be set at maximum engine speed (high idle). The settings shall take place during the final mode of the preconditioning prior to determining the maximum torque curve.

(g) Pre-test engine measurements (*e.g.*, governed diesel-fueled engine high idle speed, diesel fueled engine fuel flows, etc), pre-test engine performance checks (*e.g.*, verification of actual rated rpm, etc.) and pre-test system calibrations (*e.g.*, inlet and exhaust restrictions, etc.) shall be made prior to generation of the maximum torque curve. This can be done during engine preconditioning, or at the manufacturer's convenience subject to the requirements of good engineering practice.

30. A new § 86.1337–90 is proposed to be added to Subpart N, to read as follows:

§ 86.1337–90 Engine dynamometer test run.

(a) The following steps shall be taken for each test:

(1) Prepare the engine, the evaporative emissions canister(s) (for gasoline-fueled engines only), dynamometer, and sampling system for the cold-start test. Change filters, etc., and leak check as necessary.

[Note.—For a single dilution particulate system, a propane check will not reveal a pressure side leak (that portion of the system downstream of the pump) since the volume concentration in ppm will not change if a portion of the sample is lost. A separate leak check is needed.

A leak check of a filter assembly that has only one seal ring in contact with the filter media will not detect a leak tested under vacuum. A pressure leak test should be performed.]

(2) Connect evacuated sample collection bags to the dilute exhaust and dilution air sample collection systems.

(3) Attach the CVS to the engine exhaust system any time prior to starting the CVS.

(4) Start the CVS (if not already on), the sample pumps (except for the diesel particulate sample pump(s), if applicable), the engine cooling fan(s), and the data collection system. The heat exchanger of the constant volume sampler (if used), and the heated components of any continuous sampling system(s) (if applicable) shall be preheated to their designated operating temperatures before the test begins. (See § 86.1340–84(e) for continuous sampling procedures.)

(5) Adjust the sample flow rates to desired flow rates and set the CVS gas flow measuring devices to zero.

[Note.—CFV–CVS sample flow rate is fixed by the venturi design.]

(6) For diesels only, carefully install a clean particulate sample filter into each of the filter holders and install the assembled filter holders in the sample flow line. (Filter holders may be preassembled.)

(7) For gasoline fueled engines only, attach the evaporative emissions control canister(s) to the engine using the canister purge plumbing and controls employed in vehicle applications of the engine under test. The plumbing connection, which in vehicle applications would be attached to the fuel tank(s), shall be plugged. Prior to attachment, the canister(s) shall be prepared for use in this testing in

accordance with the procedures specified in § 86.1231–90(c) followed by the procedures specified in §§ 86.1232–90 and 86.1233–85. Alternatively, the hydrocarbon loading in the evaporative canister(s) at the time that the canister(s) are attached to the engine may be developed on a bench procedure which results in a canister loading equal to that produced by starting with the canister loaded to breakthrough and performing one HDV UDDS followed by a hot soak and a diurnal heat build.

(8) Follow the manufacturer's choke and throttle instructions for cold starting. Simultaneously start the engine and begin exhaust and dilution air sampling. For diesel engines, turn on the hydrocarbon and NO_x (and CO and CO_2, if continuous) analyzer system integrators (if used) and turn on the particulate sample pumps and indicate the start of the test on the data collection medium.

(9) As soon as it is determined that the engine is started, start a "free idle" timer.

(10) Allow the engine to idle freely with no-load for 24±1 seconds. This idle period for automatic transmission engines may be interpreted as an idle speed in neutral or park. All other idle conditions shall be interpreted as an idle speed in gear. It is permissible to lug the engine down to curb idle speed during the last 8 seconds of the free idle period for the purpose of engaging dynamometer control loops.

(11) Begin the transient engine cycles such that the first non-idle record of the cycle occurs at 25±1 seconds. The free idle time is included in the 25±1 seconds. During diesel particulate testing without the use of flow compensation, adjust the sample pump(s) so that the flow rate through the particulate sample probe or transfer tube is maintained at a constant value within ±5 percent of the set flow rate. Record the average temperature and pressure at the gas meter(s) or flow instrumentation inlet. If the set flow rate cannot be maintained because of high particulate loading on the filter, the test shall be terminated. The test shall be rerun using a lower flow rate and/or a larger diameter filter.

(12) On the last record of the cycle, cease sampling. Immediately turn the engine off, and start a hot-soak timer. For diesel engines, also turn off the particulate sample pumps, the gas flow measuring device(s) and any continuous analyzer system integrators and indicate the end of the test on the data collection medium. Sampling systems should continue to sample after the end of the test cycle until system response times have elapsed.

(13) Immediately after the engine is turned off, turn off the engine cooling fan(s) if used, and the CVS blower (or disconnect the exhaust system from the CVS). As soon as possible, transfer the "cold start cycle" exhaust and dilution air bag samples to the analytical system and process the samples according to § 83.1340–84. A stabilized reading of the exhaust sample on all analyzers shall be obtained within 20 minutes of the end of the sample collection phase of the test. For diesel engines, carefully remove the filter holder from the sample flow apparatus, and remove each particulate sample filter from its holder and place each in a petri dish and cover.

(14) Allow the engine to soak for 20±1 minutes.

(15) Prepare the engine and dynamometer for the hot start test.

(16) Connect evacuated sample collection bags to the dilute exhaust and dilution air sample collection systems.

(17) Start the CVS (if not already on) or connect the exhaust system to the CVS (if disconnected). Start the sample pumps (except the diesel particulate sample pump(s), if applicable), the engine cooling fan(s) and the data collection system. The heat exchanger of the constant volume sampler (if used) and the heated components of any continuous sampling system(s) (if applicable) shall be preheated to their designated operating temperatures before the test begins. *See* § 86.1340–84(e) for continuous sampling procedures.

(18) Adjust the sample flow rates to the desired flow rate and set the CVS gas flow measuring devices to zero.

(19) For diesels only, carefully install a clean particulate filter in each of the filter holders and install assembled filter holders in the sample flow line. (Filter holders may be preassembled.)

(20) Follow the manufacturer's choke and throttle instruction for hot starting. Simultaneously start the engine and begin exhaust and dilution air sampling. For diesel engines, turn on the hydrocarbon and NO_x (and CO and CO_2, if continuous) analyzer system integrators (if used), indicate the start of the test on the data collection medium, and turn on the particulate sample pump(s).

(21) As soon as it is determined that the engine is started, start a "free idle" timer.

(22) Allow the engine to idle freely with no-load for 24±1 seconds. The provisions and interpretations of paragraph (a)(10) of this section apply.

(23) Begin the transient-engine cycle such that the first non-idle record of the

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cycle occurs at 25±1 seconds. The free idle is included in the 25±1 seconds.

(24) On the last record of the cycle, allowing sampling system response times to elapse, cease sampling. For diesel engines, turn off the particulate sample pump(s), the gas flow measuring device(s) and any continuous analyzer system integrators and indicate the end of the test on the data collection medium.

(25) As soon as possible, transfer the "hot start cycle" exhaust and dilution air bag samples to the analytical system and process the samples according to § 86.1340–84. A stabilized reading of the exhaust sample on all analyzers shall be obtained within 20 minutes of the end of the sample collection phase of the test. For diesel engines, carefully remove the assembled filter holder from the sample flow lines and remove each particulate sample filter from its holder and place in a clean petri dish and cover as soon as possible. Within 1 hour after the end of the hot start phase of the test, transfer the four particulate filters to the weighing chamber for post-test conditioning.

(26) The CVS and the engine may be turned off, if desired.

(b) The procedure in paragraph (a) of this section is designed for one sample bag for the cold-start portion and one for the hot-start portion. It is also permissible to use more than one sample bag per test portion.

(c) If a dynamometer test run is determined to be void, corrective action may be taken. The engine may then be allowed to cool (naturally or forced) and the dynamometer test rerun per paragraph (a) or (b) of this section.

31. A new § 86. 1513–90 is proposed to be added to Subpart P, to read as follows:

§ 86.1513–90 Fuel specifications.

The requirements of this section are set forth in § 86.1313–90(a) for heavy-duty engines, and in § 86.113–90(a) for light-duty trucks.

PART 600—FUEL ECONOMY OF MOTOR VEHICLES

32. The "Authority" for Part 600 continues to read:

Authority: Title III of the Energy Policy and Conservation Act of 1975, Pub. L. 94–163, 89 Stat. 871, Title IV of the National Energy Conservation Policy Act of 1978, Pub. L. 95–619, 92 Stat. 3206.

33. A new § 600.111–90 is proposed to be added to Subpart B, to read as follows:

§ 600.111–90 Test procedures.

(a) The test procedures to be followed for generation of the city fuel economy data are those prescribed in §§ 86.127 through 86.138 of this chapter, as applicable. (The evaporative loss portion of the test procedure may be omitted unless specifically required by the Administrator.)

(b) The test procedures to be followed for generation of the highway fuel economy data are those specified in § 600.111–90 (b) through (h) inclusive.

(1) The Highway Fuel Economy Dynamometer Procedures consists of a preconditioning highway driving sequence and a measured highway driving sequence.

(2) The highway fuel economy test is designated to simulate non-metropolitan driving with an average speed of 48.6 mph and a maximum speed of 60 mph. The cycle is 10.2 miles long with 0.2 stops per mile and consists of warmed-up vehicle operation on a chassis dynamometer through a specified driving cycle. A proportional part of the diluted exhaust emissions is collected continuously for subsequent analysis using a constant volume (variable dilution) sampler. Diesel dilute exhaust is continuously analyzed for hydrocarbons using a heated sample line and analyzer.

(3) Except as provided below, in paragraphs (b)(3)(i) and (b)(3)(ii), all emission control systems installed on or incorporated in a new motor vehicle must be functioning during all procedures in this subpart.

(i) In cases of component malfunction or failure, the Administrator may authorize maintenance to correct the malfunction or failure.

(ii) At the option of the manufacturer, the evaporative emissions canister need not be fully loaded for highway fuel economy testing under this subpart. The manufacturer may at his option also generate city fuel economy data without a fully-loaded evaporative emission canister, *provided* that such testing is done for fuel economy data purposes only and shall not be used to generate emission data. For both city and highway testing, the canister may be loaded to the level that the manufacturer deems appropriate.

(c) *Transmission.* The provisions of § 86.128 of this chapter apply for vehicle transmission operation during highway fuel economy testing under this subpart.

(d) *Road load power and test weight determination.* Section 86.129 of this chapter applies for determination of road load power and test weight for highway fuel economy testing. The test weight for the testing of a certification

vehicle will be that test weight specified by the Administrator under the provisions of Part 86. The test weight for a fuel economy data vehicle will be that test weight specified by the Administrator from the test weights covered by that vehicle configuration. The Administrator will base his selection of a test weight on the relative projected sales volumes of the various test weights within the vehicle configuration.

(e) *Vehicle preconditioning.* The Highway Fuel Economy Dynamometer Procedure is designed to be performed immediately following the Federal Emission Test Procedure, §§ 86.127 through 86.138 of this chapter When conditions allow, the tests should be scheduled in this sequence. In the event the tests cannot be scheduled within three hours of the Federal Emission Test Procedure (including one hour hot soak evaporative loss test, if applicable) the vehicle should be preconditioned as in paragraph (e) (1) or (2) of this section, as applicable.

(1) If the vehicle has experienced more than three hours of soak (68 °F–86 °F) since the completion of the Federal Emission Test Procedure, or has experienced periods of storage outdoors, or in environments where soak temperature is not controlled to 68 °F–86 °F, the vehicle must be preconditioned by operation on a dynamometer through one cycle of the EPA Urban Dynamometer Driving Schedule, § 86.115 of this chapter.

(2) In unusual circumstances where additional preconditioning is desired by the manufacturer, the provisions of paragraph (a)(3) of § 86.132 of this chapter apply.

(f) *Highway fuel economy dynamometer procedure.* (1) The dynamometer procedure consists of two cycles of the Highway Fuel Economy Driving Schedule (§ 600.109(b)) separated by 15 seconds of idle. The first cycle of the Highway Fuel Economy Driving Schedule is driven to precondition the test vehicle and the second is driven for the fuel economy measurement.

(2) The provisions of paragraphs (b), (c), (e), (f), (g), and (h) of § 86.135, *Dynamometer procedure,* of this chapter apply for highway fuel economy testing.

(3) Only one exhaust sample and one background sample are collected and analyzed for hydrocarbons (except diesel hydrocarbons which are analyzed continuously), carbon monoxide, and carbon dioxide

(4) The fuel economy measurement cycle of the test includes two seconds of idle indexed at the beginning of the second cycle and two seconds of idle indexed at the end of the second cycle.

(g) *Engine starting and restarting.* (1) If the engine is not running at the initiation of the highway fuel economy test (preconditioning cycle), the start-up procedure must be according to the manufacturer's recommended procedures.

(2) False starts and stalls during the preconditioning cycle must be treated as in paragraphs (d) and (e) of § 86.136 of this chapter. If the vehicle stalls during the measurement cycle of the highway fuel economy test, the test is voided, corrective action may be taken according to § 86.079–25 of this chapter, and the vehicle may be rescheduled for testing. The person taking the corrective action shall report the action so that the test records for the vehicle contain a record of the action.

(h) *Dynamometer test run.* The following steps must be taken for each test:

(1) Place the drive wheels of the vehicle on the dynamometer. The vehicle may be driven onto the dynamometer.

(2) Open the vehicle engine compartment cover and position the cooling fan(s) required. Manufacturers may request the use of additional cooling fans for additional engine compartment or under-vehicle cooling and for controlling high tire or brake temperatures during dynamometer operation.

(3) Preparation of the CVS must be performed before the measurement highway driving cycle.

(4) *Equipment preparation.* The provisions of paragraphs (b) (3) through (5) inclusive of § 86.137 of this chapter apply for highway fuel economy test except that only one exhaust sample collection bag and one dilution air sample collection bag need be connected to the sample collection systems.

(5) Operate the vehicle over one Highway Fuel Economy Driving Schedule cycle according to the dynamometer driving schedule specified in paragraph (b) of § 600.109.

(6) When the vehicle reaches zero speed at the end of the preconditioning cycle, the driver has 17 seconds to prepare for the emission measurement cycle of the test. Reset and enable the roll revolution counter.

(7) Operate the vehicle over one Highway Fuel Economy Driving Schedule cycle according to the dynamometer driving schedule specified in paragraph (b) of § 600.109 while sampling the exhaust gas.

(8) Sampling must begin two seconds before beginning the first acceleration of the fuel economy measurement cycle and must end two seconds after the end of the deceleration to zero. At the end of the deceleration to zero speed, the roll or shaft revolutions must be recorded.

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Part IV

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Employment Standards Administration, Wage and Hour Division
Office of the Secretary

29 CFR Parts 1 and 5

Procedures for Predetermination of Wage Rates; Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction and Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act: Proposed Rule

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DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Office of the Secretary

29 CFR Parts 1 and 5

Procedures for Predetermination of Wage Rates; Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Proposed rule.

SUMMARY: This document is a proposal resulting from the Department of Labor's reexamination of revised regulations previously issued under the Davis-Bacon and Related Acts as required by an injunction and subsequent decision of the U.S. Court of Appeals for the District of Columbia Circuit.

The proposed rule contains provisions governing the use of semi-skilled "helpers" on federally financed and assisted construction contracts subject to the prevailing wage standards of the Davis-Bacon and Related Acts.

DATE: Comments are due October 19, 1987.

ADDRESS: Submit written comments (preferably in triplicate) to Paula V. Smith, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210. Any commenters desiring notification of receipt of comments should include a self-addressed, stamped post card.

FOR FURTHER INFORMATION CONTACT: Herbert J. Cohen, Deputy Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone: 202–523–8305.

SUPPLEMENTARY INFORMATION: On May 28, 1982, the Department published revised final Regulations, 29 CFR Part 1, Procedures for Predetermination of Wage Rates, and Regulations, 29 CFR Part 5, Subpart A—Davis-Bacon and Related Acts Provisions and Procedures (47 FR 23644 and 23658, respectively), containing, among other rules, new provisions intended to allow contractors to expand their use of semi-skilled helpers on Davis-Bacon projects at wages lower than those paid to skilled journeymen, wherever the helper classification, as defined in the regulations, was "identifiable" in the area. To protect against possible abuse, a provision was included limiting the number of helpers which could be used on a covered project to a maximum of two helpers for every three journeymen.

These regulations were challenged in a lawsuit brought by the Building and Construction Trades Department, AFL–CIO, and a number of individual unions. The U.S. District Court for the District of Columbia issued a permanent injunction on December 28, 1982 (*Building and Construction Trades Department, AFL–CIO, et al.*, v. *Donovan, et al.*, 553 F. Supp. 352) which, as modified by its order of January 17, 1983, enjoined the implementation of the following regulatory sections of the May 28, 1982 final rules pertaining to the use of helpers: 29 CFR 1.7(d); 29 CFR 5.2(n)(4); 29 CFR 5.5(a)(1)(ii)(A); and 29 CFR 5.5(a)(4)(iv). The Department appealed this injunction and deferred the enjoined provisions until further notice pending the outcome of the appeal (see 48 FR 19368; April 29, 1983).

On July 5, 1983, the U.S. Court of Appeals for the District of Columbia Circuit issued a decision upholding the Department's authority to allow increased use of helpers, and approving the regulatory definition of a helper's duties. However, the court struck down the provision for issuing a helper wage rate where helpers were "identifiable" (29 CFR 1.7(d)), thereby requiring a modification to the regulations to provide that the helper classification be "prevailing" in the area before it may be used. The Court did not rule on the remaining helper provisions. *Building and Construction Trades Department, AFL–CIO, et al.*, v. *Donovan, et al.*, 712 F. 2d 611.

On October 28, 1983, the AFL–CIO filed a petition for a writ of certiorari in the U.S. Supreme Court seeking review of the appeals court decision. On January 16, 1984, the U.S. Supreme Court denied the petition. 464 U.S. 1069. On December 21, 1984, the U.S. District Court for the District of Columbia issued an order which, *inter alia*, lifted the injunction on the definition of a helper in 29 CFR 5.2(n)(4), but continued the injunction with respect to the remaining helper provisions. The order stated the Department could submit to the Court reissued regulations governing the use of helpers, and that they would be approved if they conformed to the Court of Appeals decision.

The following is a description of the previously enjoined provisions which are now being reproposed with necessary revisions to conform them to the rulings of the courts in the litigation.

Part 1

Section 1.7(d) Scope of consideration.

This subsection provides that wage rates for semi-skilled classifications of helpers will be issued when they are "prevailing" in the area. The previous language that such classifications would be issued when "identifiable" in the area has been eliminated in accordance with the ruling of the appeals court. In addition, the Department is proposing, in the alternative, the following two approaches for determining whether there is a "prevailing" practice of using a helper classification.

Alternative Option A

If the prevailing journeyman wage for a classification is determined by the "majority rule" (29 CFR 1.2(a)(1); i.e., more than 50% of the journeymen are paid the same wage), then the determination of whether use of a helper classification prevails will be made according to the practice of those contractors whose rates are adopted as prevailing for the journeymen. Thus, if a union wage for a particular classification prevails by the majority rule, the applicable union practice as to whether helpers are used would be followed (i.e., the use of a helper classification would be recognized as prevailing in such cases if the union practice is for a separate helper classification to be used; conversely, the use of a helper classification would not be recognized as prevailing if the union contractors do not use such a helper classification). Similarly, if an open shop rate prevails by the majority rule and the open shop contractors who paid such rate use a separate helper classification, the use of a helper classification would be recognized as prevailing for Davis-Bacon projects.

On the other hand, if the prevailing journeyman wage for a particular classification is determined by the "weighted average rule" (29 CFR 1.2(a)(1), i.e., the *average* of the wages paid to the journeymen, weighted by the total journeymen in the classification), then the total number of workers (i.e., journeymen plus helpers as defined in 29 CFR 5.2(n)(4)) in the classification employed by contractors using helpers on projects reported in the survey will be compared to the total number of workers in the classification employed by contractors not using helpers (journeymen only). The practice which covers the majority of the workers

reported in the survey (i.e., the majority of workers associated either with, or without, the use of helpers) will determine whether a helper classification prevails.

For illustration, a survey discloses 150 journeymen carpenters working on projects where no carpenter helpers are employed and 80 journeymen carpenters working on projects where 30 carpenter helpers are employed. If the majority of such journeymen do not receive the same wage rate then the "weighted average rule" would apply. In this situation, helpers would not prevail since the majority of the workers in the craft in the survey, 150 journeymen — employed on projects with no helpers compared to 110 (i.e., 80 journeymen plus 30 helpers) employed on projects with helpers, are employed by contractors not using helpers.

In contrast, if 50 carpenter helpers are employed with 100 journeymen carpenters on projects where helpers were utilized, compared to 100 journeymen carpenters employed on projects where no carpenter helpers were employed, under the "weighted average rule" helpers would be recognized as prevailing since the majority of workers in the craft, 150 (100 journeymen plus 50 helpers) out of 250, are employed by contractors who use helpers.

Alternative Option B

For each separate classification, compare the total number of workers (journeymen plus helpers, as defined) in the classification employed by contractors using helpers on projects reported in the survey to the total number of workers in the classification employed by contractors not using helpers (journeymen only). The practice which covers the majority of the workers reported in the survey will in all cases determine whether use of a helper classification prevails. (This approach, in essence, is the same as Option A when the "weighted average rule" determines the prevailing journeyman wage.)

Additional Options Considered

The Department is presently proposing to determine the "prevailing" use of a helper classification in one of the two manners described above, and seeks comments on each alternative. In addition, the Department has given careful consideration to several other alternatives and invites comments on the legal and practical feasibility of the alternatives set forth in (c) through (e) below.

Alternative Option C: Count by Number of Projects

For each journeyman classification in which helpers were utilized, determine from the wage survey results the number of projects on which helpers worked in the particular classification and compare this number to the number of projects on which no helpers worked in that classification. The practice covering the majority of the projects would be considered prevailing.

Alternative Option D: Count by the Dollar Value of Construction Projects

For each journeyman classification in which helpers were utilized, determine from the wage survey results the total dollar value of the construction projects on which helpers were utilized in the particular classification and compare this amount to the total dollar value of the construction projects on which no helpers were used in that classification. The practice followed on the construction projects which comprise the larger dollar value would be considered prevailing.

Alternative Option E: Count by the Number of Contractors

For each journeyman classification in which helpers were utilized, determine from the wage survey results the number of contractors who used helpers in the particular classification and compare this number to the number of contractors who did not use helpers in that classification. The practice covering the majority of the contractors would be considered prevailing.

In order to assist the Department in establishing the most appropriate method for determining when the use of a helper classification is a prevailing practice on construction projects in an area, commenters are requested to provide specific information and supporting documentation which addresses, in detail, the practices in their local communities of using helpers (including estimates thereof) by craft classification (journeymen versus helpers), dollar volume, size and type (building, residential, heavy, or highway) of construction project, workforce size and type of construction contractor, and the presence or absence of collective bargaining agreements applicable to construction work performed in the area.

Part 5

Section 5.5(a)(1)(ii)(A) Conformance procedures.

This subsection provides that helper classifications (as defined in § 5.2(n)(4)) and rates can be conformed, without regard to whether the work of the helper classification is performed by another classification listed in the wage determination. As a result of the appeals court decision, the previously stayed provision has been revised to provide that helper classifications may be conformed only where they prevail in the area.

Regulatory Definition of Helper

The district court has lifted the injunction on the regulatory definition of the term helper which was published on May 28, 1982 in 29 CFR 5.2(n)(4). Accordingly, no changes are being proposed in the helper definition. The Department intends to implement this definition when the remaining related provisions in this proposal are finalized. The definition is being repeated here for informational purposes.

Section 5.2 Definitions

* * * * *

(n) The terms apprentice, trainee, and helper are defined as follows:

* * * * *

(4) A "helper" is a semi-skilled worker (rather than a skilled journeyman mechanic) who works under the direction of and assists a journeyman. Under the journeyman's direction and supervision, the helper performs a variety of duties to assist the journeyman such as preparing, carrying and furnishing materials, tools, equipment, and supplies and maintaining them in order; cleaning and preparing work areas; lifting, positioning, and holding materials or tools; and other related, semi-skilled tasks as directed by the journeyman. A helper may use tools of the trade at and under the direction and supervision of the journeyman. The particular duties performed by a helper vary according to area practice.

* * * * *

In addition, § 5.5(a)(4)(iv) of the May 28, 1982 final rules provided conditions governing the use of helpers on Davis-Bacon covered projects, including a ratio which permitted employment of no more than two helpers for every three journeymen (or not more than 40 percent of the total number of helpers and journeymen) in the contractor's workforce on the project. No changes are being proposed in these provisions, which the Department also intends to implement in the final rulemaking.

As previously provided in the May 28, 1982 publication, to assure that this ratio does not disrupt existing established local practices in areas where wage determinations currently contain helper classifications without restriction as to the number permitted, it is proposed to allow interested parties (which would include contracting agencies), prior to bid opening on a contract, to request a variance from the ratio provision

pursuant to § 5.14 of the regulations. Such variances would be considered for the applicable helper classification(s) upon a showing that the wage determination for the type of construction in effect in the area prior to the effective date of the final helper regulations contains one or more helper classifications, and that there was a prevailing practice in the area of utilizing such helpers on Davis-Bacon projects in excess of a ratio of two to every three journeymen in the classification.

Regulatory Impact and Flexibility Analyses

The Department prepared its preliminary regulatory impact and regulatory flexibility analysis in connection with the proposed helper regulations published on August 14, 1981 (46 FR 41444; 46 FR 41456). A final regulatory impact and regulatory flexibility analysis was prepared and summarized in the May 28, 1982 publication of the helper regulations (47 FR 23644; 47 FR 23658). As set forth in the final analysis, the annual cost savings to be realized from implementing the helper regulations were estimated to range from $246.43 million to $479.89 million, with the midpoint estimate of likely cost savings at approximately $363 million, and the changes were projected to have a substantial beneficial impact on small contractors. The Department has since updated its analysis of the helper provisions in connection with the proposed rule being published today, as set forth below.

The Cost Impact of the Increased Usage of Semi-Skilled Workers on Davis-Bacon Projects [1]

Introduction

In order to quantify the cost savings that would result from an increase in the use of semi-skilled workers on projects covered by the Davis-Bacon and Related Acts (DBRA) as provided in this regulatory proposal, a disaggregated approach will be used. We will analyze the cost effects in each of four regions: The northeast, north central, west, and south. The aggregate annual cost savings will then be determined by computing the arithmetic sum of the regional cost savings estimates.

The disaggregated approach is used as a means of capturing some degree of the existing local differences in construction industry practices. This approach incorporates changes in the occupational mix on Davis-Bacon projects by region which would occur as a result of changes being made in the regulations, and the effects these changes have on the wage cost component of Davis-Bacon projects. Therefore, the aggregate cost estimates derived from this method will provide a more accurate picture of total wage cost savings than would cost estimates derived from a more highly aggregated analysis, (i.e., one that relied solely on national data).

Admittedly, a four region disaggregation does not approach the level of refinement to wage cost savings estimates that would result from the use of county-specific estimates; however, disaggregation to any significantly greater degree of detail as an attempt to measure cost effects in every locality is not possible due to data source limitations. In addition to this, the regions are defined to include selected metropolitan areas (in part, due to limitations of BLS data sources). This assumption is consistent with the view that most construction activity occurs in metropolitan areas. However, exclusion of wage rates in rural and less populated areas may cause our results to overestimate cost savings since wage rates in these areas are typically lower than in larger metropolitan areas.

As a final note, the primary analysis includes an important analytical assumption that helpers will only substitute for some portion of journeymen. Recognizing that the regulations may allow for the substitution of helpers for some laborers, as well as journeymen, we will include an additional range of cost estimates for cases where helpers substitute for some portion of workers in both classes. We also assume comparable productivity levels for helpers, journeymen, and laborers.

The 1984 Wage Bill for Helpers and Journeymen on Davis-Bacon Construction Projects

The initial step in the methodology is to determine the existing wage bill (i.e., labor cost) by region for all helpers and journeymen employed on Davis-Bacon projects. Once determined, the cost savings associated with the regulations can be derived by comparing these wage bills with regional wage bills that would result from increased helper usage on covered projects. Towards this end, we must first determine for each region, the size of the Davis-Bacon labor force, its occupational mix, and the average wage associated with each occupational classification.

Employment levels by craft classification and region are derived from regional construction employment shares and national aggregate industry and craft employment levels obtained from Bureau of Labor Statistics (BLS) data sources.[2] The initial step is to determine the total helper-journeyman wage bill by region. This requires deriving the 1984 (the most recent year for which data for all variables are available) regional helper share of Davis-Bacon employment. (See tables in the appendix.)

If we assume the value of construction to vary in like manner with construction employment, then based on our estimate that the share of DBRA construction is 18 percent of all new construction put into place, we assume that a corresponding share of all construction employment in each region works on covered projects.[3] This assumption is also used to derive the number of employees in the various craft classifications that are employed on covered projects.

Thus, in 1984 out of a total of 3,375,000 construction workers, we estimate that 607,500 were engaged in work on projects covered by the DBRA. BLS data on employment levels within various

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[1] This regulatory impact and flexibility analysis is based on the assumption that the revisions to §§ 5.2(n)(4) and 5.5(a)(4)(iv) of the regulations (which have been stayed pending approval of the U.S. District Court for the District of Columbia) will be implemented together with the revisions being proposed.

[2] Supplement to Employment, Hours, and Earnings, States and Areas, 1965, USDOL/BLS; and Occupational Employment Statistics Survey of Selected Nonmanufacturing Industries, 1985, USDOL/BLS.

[3] We estimate all new public construction put into place in 1984, approximately $55 billion as reported in the U.S. Bureau of Census publication *Construction Reports*, to represent the share of all construction (18%) that is subject to DBRA. "All new construction put into place" includes renovations that cost $100,000 or more, rehabilitation projects that cost $500,000 or more, conversions, additions, improvements, remodeling, and replacement (e.g., heating systems, elevators). Using this as our estimate of construction covered by Davis-Bacon may cause a positive bias because it includes public construction projects funded exclusively by State and local governments that are therefore not covered by DBRA as well as federally assisted construction funded under statutes which do not require payment of Davis-Bacon wages. However, an opposing bias arises from the exclusion of small rehabilitation, repair, and renovation projects, and private projects that only indirectly receive federal assistance.

The alternative is to assume that only the value of the Federal share of all new construction put into place represents the covered universe. This would underestimate coverage since it also excludes small projects and projects to which Davis-Bacon is indirectly applied by virtue of statutes providing Federal assistance. Other estimates of Davis-Bacon covered construction include those of the GAO and OMB at $37.8 billion in 1979 and $30.0 billion for FY 1982 respectively. Their corresponding shares of all new construction put into place are 16 percent in 1979 and 13 percent for FY 1982.

construction trade occupations indicate that if the occupational mix on Davis-Bacon projects mirrors the mix that exists in the economy as a whole, 248,796 (41 percent) of those working on Davis-Bacon projects will be journeymen, and 92,515 (15 percent) will be helpers (with the difference representing other workers in the construction industry such as truck drivers, draftsmen, laborers, etc.).

However, since the use of helpers under current regulations is limited to situations where the helper is a separate class of worker whose duties can be distinguished from the journeymen and the helper is not used as an informal apprentice or trainee, it is safe to assume that the helper share of employment on Davis-Bacon projects is substantially lower than that found in the industry. The helper share of total Davis-Bacon employment was determined to be 5.98 percent in the 1982 Final Regulatory Impact Analysis (FRIA).[4] We assume an identical share of helpers on covered projects in 1984 despite the decline in unionization in the construction industry. Our assumption is valid in view of the fact that the use of helpers is still greatly restricted by Davis-Bacon regulations. We assume that the regional helper shares of Davis-Bacon employment are also 5.98 percent due to current restrictions on helper usage.

The additional elements necessary for estimation of the wage bill on Davis-Bacon projects are the median weekly earnings data for journeymen and helpers. Unpublished data from BLS indicate that the seasonally adjusted median weekly earnings for journeymen and helpers are $377 and $218, respectively. These aggregate median weekly earnings for journeymen and helpers were adjusted to reflect regional differences in wage levels. Using this information, the 1984 wage bill for helpers and journeymen in each of the four regions can be determined. Estimated Regional Wage Bills:

	Billions
North East	$2.0
North Central	1.2
West	1.8
South	1.3

It is with these wage bills that alternative helper usage scenarios will be compared in order to determine the labor cost savings associated with increased usage of helper classifications on Davis-Bacon projects.

Methodology for the Determination of the Prevailing Practice

Detailed occupational employment data provide employment levels for various craft classifications of journeymen and helpers. If we assume that each helper in a particular craft works in association with one journeyman in the craft, then the number of helpers combined with the number of journeymen that work with helpers can be defined as the number of workers in that craft employed by contractors that use helpers. If we subtract this number from the total number of journeymen plus helpers in that craft, and identify the difference as the number of journeymen in that craft employed by contractors who do not use helpers, we can compare the two numbers to see which is larger, and therefore determine whether or not helpers prevail utilizing the proposed rule published herein.

We find that if one helper works in association with one journeyman, helpers will prevail in two thirds of the craft categories. Where helpers are found to prevail, the regulations would allow their usage on Davis-Bacon projects in a ratio not to exceed 2:3 (i.e., two helpers to three journeymen). Thus, if the maximum allowable number of helpers is used in each craft classification for which helpers are found to prevail, and helpers substitute only for journeymen, the helper-journeyman wage bill on Davis-Bacon projects by region will be as follows:

	Billions
North East	$1.9
North Central	1.1
West	1.7
South	1.2
Total	5.9

The potential cost savings that result if the maximum number of helpers are used in two thirds of the craft classifications are $110 million in the north east, $94 million in the north central, $142 million in the west, and $105 million in the south. (See Table I)

This method provides a low estimate because in determining whether helpers prevail, it does not take into consideration the use of helpers who work in association with more than one journeyman. For this scenario, we make the modest assumption that one helper in a particular craft works in association with two journeymen in the classification. In this case, the number of helpers combined with the number of journeymen that work with helpers can, as before, be defined as the number of workers in that craft employed by contractors that use helpers. If we subtract this number from the total number of journeymen plus helpers in the craft and identify this difference as the number of journeymen in the craft employed by contractors who do not use helpers, we can compare the two numbers, determine which is larger and subsequently determine whether or not helpers prevail.

Our results indicate that if one helper works in association with two journeymen, helpers are found to prevail in all craft classifications. Once again, the regulations would allow helpers to be used in a ratio not to exceed 2:3. In this case, the regional Davis-Bacon helper-journeyman wage bills will be as follows:

	Billions
North East	$1.8
North Central	1.0
West	1.6
South	1.2
Total	5.6

The potential cost savings that result if the maximum number of helpers are used in all craft classifications are $202 million in the north east, $157 million in the north central, $236 million in the west, and $175 million in the south.

This estimate is an upper limit. If helpers have been found to prevail their share of Davis-Bacon employment will be limited by their share of employment in a particular craft in a particular locality. In addition, it is extremely unlikely that if individual county determinations were made, helpers would be found to prevail in all localities in all classifications. It is for this reason that we select $610 million, the midpoint of the high and low estimates as a more representative measure of the actual annual cost savings that will result from the increased usage of helpers on Davis-Bacon projects in all regions.

In sum, we find that in each region, if one helper works in association with one journeyman, helpers prevail in two thirds of the craft classifications. If we assume that one helper works in association with two journeymen, helpers are found to prevail in all craft classifications. The estimated regional wage cost savings that result from the subsequent usage of helpers in a 2:3 ratio are summarized in Table I.

[4] *Final Regulatory Impact and Regulatory Flexibility Analysis on Davis-Bacon Related Regulations, DSDOL, 1982.*

TABLE I.—REGIONAL COST SAVINGS

[In millions of dollars]

Region	Low [1]	High [2]	Mid-point
North East	110	202	156
North Central	94	156	125
West	142	236	189
South	105	175	140
Regional Sum	451	769	610

[1] Helpers prevail in two thirds of the craft classifications.
[2] Helpers prevail in all of the craft classifications.

NOTE.— The aggregate annual cost savings derived here are $610 million. The 1982 FRIA estimated cost savings resulting from an increase in the number of helpers on Davis-Bacon covered contracts to be roughly $473 million. The difference between these estimates can be attributed to methodological differences. This analysis used a disaggregated approach and actual helpers employment data for eleven craft classifications. By contrast, the FRIA used a national aggregate approach and estimates of helper employment levels for most of the eleven craft classifications.

Substitution of Helpers for Both Journeymen and Laborers

The previous analysis assumed that helpers substituted for journeymen only. Principal substitution is likely to be for journeymen. However, there may be some degree of helper substitution for laborers. We therefore have done an additional analysis that assumes that where it has been determined that helpers prevail, helpers will substitute for laborers as well as journeymen. Based on regional employment and wage data derived from aggregate data available from BLS, we can make certain assumptions about the rate at which helpers will substitute for laborers and journeymen, and derive the associated cost savings. The regional cost savings will be lower than those derived based on the assumption that helpers substitute for journeymen only due to differences between wage costs of journeymen and laborers. Once helpers have been determined to prevail, if we assume that half of the allowable helpers will substitute for laborers and half for journeymen, the cost savings estimates are as provided in Table II. Alternatively, we assume that one third of the allowable helpers will substitute for laborers and two thirds for journeymen. These results are also in Table II.

The results indicate that cost savings will indeed be smaller when helpers substitute for both journeymen and laborers. Assuming half the allowable helpers substitute for journeymen and half substitute for laborers, the midpoint of the estimated cost savings from both the high and low scenarios is $422 million. Alternatively, assuming that two thirds of the allowable helpers substitute for journeymen and one third substitute for laborers, the midpoint of the estimated cost savings from both the high and low scenarios is $484 million. By comparing this with our results from the scenario where helpers only substitute for journeymen (where the midpoint of the estimated cost savings is $610 million), we see that cost savings are reduced when there is some degree of substitution for both journeymen and laborers.

The results of this analysis represent the upper limit in potential cost savings from the two proposed options. The analysis assumes the determination of whether helpers prevail is, in all cases, determined by the practice covering the majority of the workers reported in the survey, rather than the practice of particular contractors whose wage rates establish the prevailing wage. Data limitations prevented estimation of the effects on construction cost savings when the practices of contractors whose wage rates establish prevailing wages also determine helper utilization.

As indicated in the Department's previous analyses of the helper regulations, the cost savings set forth above will provide substantial benefits for smaller contractors who predominate in the industry.

TABLE II.—REGIONAL COST SAVINGS WHEN THERE IS SOME SUBSTITUTION OF HELPERS FOR BOTH JOURNEYMEN AND LABORERS

Region	Low [1]		High [2]	
	Half for journeymen and half for laborers	Two thirds for journeymen and one third for laborers	Half for journeymen and half for laborers	Two thirds for journeymen and one third for laborers
North East	77	88	140	161
North Central	65	74	108	124
West	98	112	163	187
South	72	83	121	139
Regional sum	312	357	532	611

[1] Helpers prevail in two thirds of the craft classifications.
[2] Helpers prevail in all of the craft classifications.

Appendix

TABLE A1.—CONSTRUCTION EMPLOYMENT IN METROPOLITAN AREAS—1984

[In thousands]

Area	Employment [1]	Percent of total [2]
North East	327.5	32
Boston	48.7	
Nassau-Suffolk	45.3	
Newark	33.5	
New York	120.0	
Philadelphia	80.0	
North Central	179.8	17
Cleveland	27.6	
Detroit	41.4	
Chicago	110.8	
West	264.5	26
Los Angeles-Long Beach	105.0	

TABLE A1.—CONSTRUCTION EMPLOYMENT IN METROPOLITAN AREAS—1984—Continued

[In thousands]

Area	Employment [1]	Percent of total [2]
Denver	54.6	
San Francisco-Oakland	67.4	
Seattle-Everett	37.5	
South	264.6	26
Atlanta	56.1	
Baltimore	50.1	
Dallas-Fort-Worth	105.9	
Miami	41.1	
Washington	11.4	
Total	1,836.5	

[1] Employment levels in all projects, private and Davis-Bacon.

[2] Percent of total employment in each of these four regions. (May not add to 100 due to rounding.)

Source: Supplement to Employment, Hours, and Earnings, States and Areas, 1985, USDOL/BLS.

TABLE A2.—CONSTRUCTION TRADE EMPLOYMENT ON DAVIS-BACON PROJECTS—1984 [1]

[Actual employment levels]

Occupation	Employment
Journeymen	248,797
Bricklayers	15,858
Carpenters	78,044
Cement masons	15,694
Electricians	55,034
Painters	21,913
Pipefitters	391
Plumbers	36,317
Roofers	15,863
Sheet metal workers	10,651
Structural ironworkers	9,032
Helpers	92,516

TABLE A2.—CONSTRUCTION TRADE EMPLOYMENT ON DAVIS-BACON PROJECTS—1984 [1]—Continued

[Actual employment levels]

Occupation	Employment
Bricklayers	12,393
Carpenters	27,821
Cement masons	5,998
Electricians	9,566
Painters	10,336
Pipefitters	4,664
Plumbers	6,506
Roofers	3,626
Sheet metal workers	1,256
Structural ironworkers	2,911
Other helpers	3,143

[1] Davis-Bacon employment by craft classification is assumed to be 18 percent of total employment by craft classification.

Source: Derived from Occupational Employment Statistics Survey of Selected Nonmanufacturing Industries, 1985, USDOL/BLS.

TABLE A3.—REGIONAL CONSTRUCTION TRADE EMPLOYMENT ON DAVIS-BACON PROJECTS—1984 [4]

[Actual employment levels]

Occupation	North East	North Central	West	South
Journeymen	79,613	42,295	64,685	64,685
Bricklayers	5,075	2,696	4,123	4,123
Carpenters	24,974	13,267	20,291	20,291
Cement Masons	5,022	2,668	4,080	4,080
Electricians	14,410	7,656	11,709	11,709
Painters	7,012	3,725	5,697	5,697
Pipefitters	125	66	102	102
Plumbers	11,621	6,174	9,442	9,442
Roofers	5,076	2,697	4,124	4,124
Sheet Metal Workers	3,408	1,811	2,769	2,769
Structural Ironworkers	2,890	1,535	2,348	2,348
Helpers	29,605	15,728	24,003	24,003
Bricklayers	3,956	2,107	3,222	3,222
Carpenters	9,908	4,738	7,233	7,233
Cement Masons	2,579	1,530	2,339	2,339
Electricians	3,089	1,643	2,513	2,513
Painters	3,359	1,757	2,687	2,687
Pipefitters	1,492	793	1,213	1,213
Plumbers	2,755	1,463	2,238	2,238
Roofers	1,158	615	941	941
Sheet Metal workers	402	214	327	327
Structural Ironworkers	644	342	523	523
Other Helpers	2,851	1,515	1,857	1,857

[4] Regional employment levels are derived from the aggregate level by calculating regional shares of Davis-Bacon construction employment in each craft classification. Davis-Bacon employment is 18 percent of all construction employment.

Paperwork Reduction Act

The information collection requirements contained in § 5.5(a)(1)(ii) of Part 5 were previously approved by the Office of Management and Budget under the Paperwork Reduction Act and assigned OMB control number 1215–0140.

This document was prepared under the direction and control of Paula V. Smith, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects

29 CFR Part 1

Administrative practice and procedures, Government contracts, Labor, Minimum wages, Wages.

29 CFR Part 5

Administrative practice and procedures, Government contracts, Investigations, Labor, Minimum wages, Penalties, Reporting and recordkeeping requirements, Wages.

Accordingly, 29 CFR Parts 1 and 5 are proposed to be amended as set forth below.

Signed at Washington, DC, on this 13th day of August 1987.

William E. Brock,

Secretary of Labor.

Fred W. Alvarez,

Assistant Secretary for Employment Standards.

Paula V. Smith,

Administrator, Wage and Hour Division.

PART 1—PROCEDURES FOR PREDETERMINATION OF WAGE RATES

1. The authority citation for Part 1 continues to read as follows:

Authority: 5 U.S.C. 301; R.S. 161,64 Stat 1267; Reorganization Plan No. 14 of 1950, 5 U.S.C. Appendix; 29 U.S.C. 259;40 U.S.C. 276a–276a–7; 40 U.S.C. 276c; and the laws listed in Appendix A of this Part.

2. Section 1.7 is proposed to be amended by adding a new paragraph (d) to read as follows:

Proposed Option A

§ 1.7 Scope of consideration.

* * * * *

(d) The use of "helpers", "apprentices" and "trainees" is permitted in accordance with Part 5 of this subtitle. Wage rates for semi-skilled classifications of helpers will be issued when the classifications are prevailing in the area. In determining whether use of a particular helper classification prevails in the area, the Administrator will follow the criteria set forth in paragraphs (d)(1) and (d)(2) of this section.

(1) If the prevailing wage for a particular journeyman classification is a wage that is paid to the majority of the journeymen in the classification as defined in § 1.2(a)(1) of this part, then the practice followed by those contractors whose rates are adopted as prevailing for the journeyman shall also be deemed the prevailing practice in determining whether to issue a helper classification. Any ambiguity with regard to such practice, will be resolved by following the rule in paragraph (d)(2) of this section with respect to those contractors.

(2) If the prevailing wage for a particular journeyman classification is the average of the wages paid to the journeymen, weighted by the total number of journeymen in the classification as defined in § 1.2(a)(1) of this part, then the total number of workers in the classification employed by contractors utilizing helpers (journeymen plus helpers as defined in § 5.2(n)(4) of this chapter) on reported projects will be compared to the total number of workers in the classification employed by contractors not utilizing helpers (journeymen only), and the practice which covers the majority of such workers shall be deemed the prevailing practice in determining whether to issue a helper classification.

Proposed Option B

§ 1.7 Scope of consideration.

* * * * *

(d)(1) The use of "helpers", "apprentices" and trainees" is permitted in accordance with Part 5 of this subtitle. Wage rates for semi-skilled classifications of helpers will be issued when the classifications are prevailing in the area. In determining whether use of a particular helper classification prevails in the area, the Administrator will follow the criteria set forth in paragraph (d)(2) of this section.

(2) The total number of workers in the particular classification employed by contractors utilizing helpers (journeymen plus helpers as defined in § 5.2(n)(4) of this chapter) on reported projects will be compared to the total number of workers in the classificaton employed by contractors not utilizing helpers (journeymen only), and the practice which covers the majority of such workers shall be deemed the prevailing practice in determining whether to issue a helper classification.

PART 5—LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS COVERING FEDERALLY FINANCED AND ASSISTED CONSTRUCTION (ALSO LABOR STANDARDS PROVISIONS APPLICABLE TO NONCONSTRUCTION CONTRACTS SUBJECT TO THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT)

Subpart A—Davis Bacon and Related Acts Provisions and Procedures

3. The authority citation for Part 5 continues to read as follows:

Authority: 40 U.S.C. 276a–276a–7; 40 U.S.C. 276c; 40 U.S.C. 327–332; Reorganization Plan No. 14 of 1950, 5 U.S.C. Appendix; 5 U.S.C. 301; 29 U.S.C. 259; and the statutes listed in § 5.1(a) of this part.

4. Section 5.5 is proposed to be amended by revising paragraph (a)(1)(ii)(A) to read as follows:

§5.5 Contract provisions and related matters.

(a) * * *

(1) * * *

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(*1*) Except with respect to helpers as defined in 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a claassification in the wage determination; and

(*2*) The classification is utlized in the area by the construction industry; and

(*3*) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(*4*) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

* * * * *

[FR Doc. 87–18853 Filed 8–18–87; 8:45 am]

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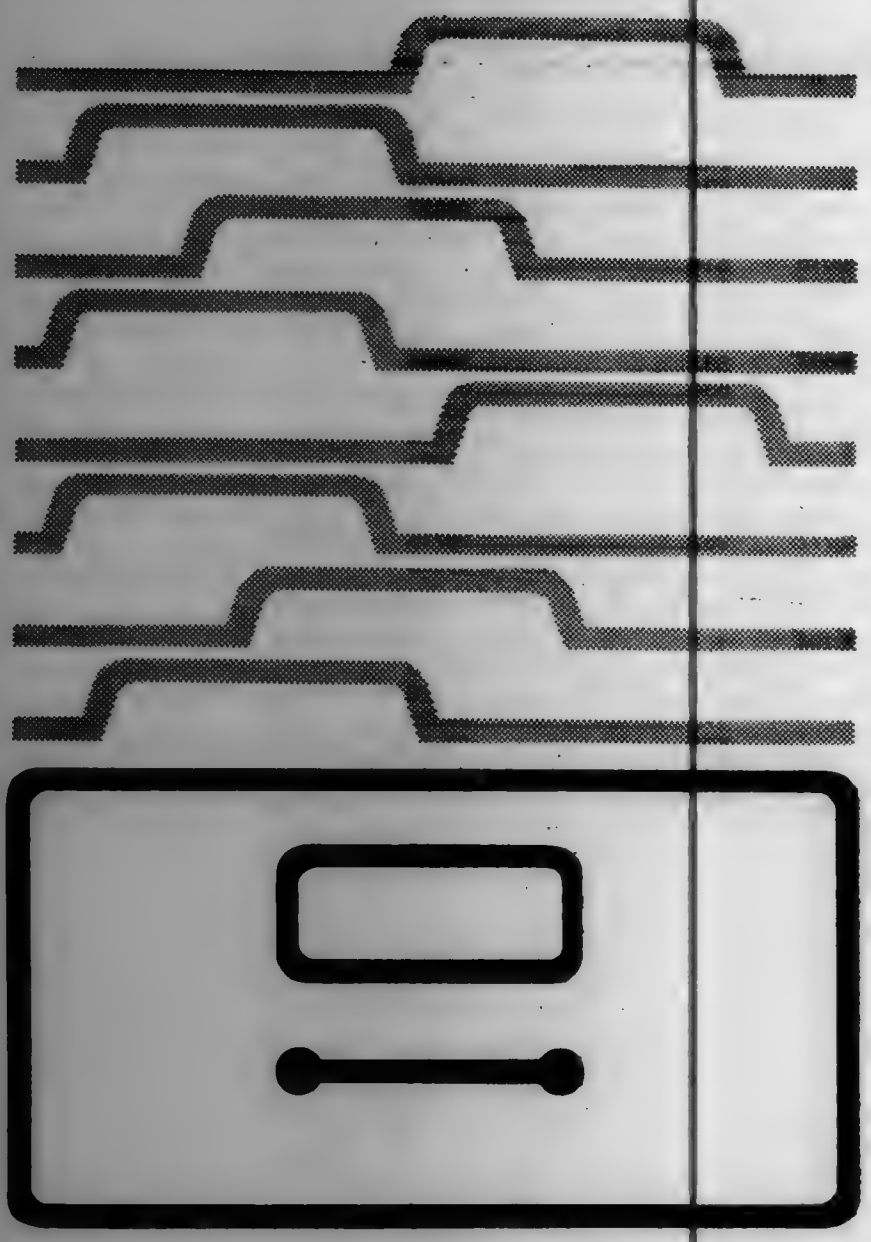

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Rules and Regulations

Federal Register
Vol. 52, No. 161
Thursday, August 20, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Department of Agriculture.
ACTION: Final rule.

SUMMARY: This document amends the delegations of authority from the Secretary of Agriculture and General Officers of the Department to reflect the abolishment of the Office of Grants and Program Systems and the transfer of its authorities, responsibilities and activities to the Cooperative State Research Service.

EFFECTIVE DATE: August 20, 1987.

FOR FURTHER INFORMATION CONTACT: Richard L. Prather, Director, Personnel and Management Services Division, Extension Service, United States Department of Agriculture, Washington, DC 20250, (202) 475–4806.

SUPPLEMENTARY INFORMATION: The delegations of authority of the Department of Agriculture are amended to reflect the abolishment of the Office of Grants and Program Systems (OGPS). This Office administered programs of competitive grants for research in the food and agricultural sciences, programs in higher education, and the Small Business Innovative Research Program.

Funding for OGPS activities was provided by the Cooperative State Research Service (CSRS) which also administers extramural agricultural research programs involving many of the same participants. In order to consolidate the nationwide system of agricultural research program planning and coordination, all of the authorities, responsibilities and activities of OGPS are transferred to CSRS.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the Federal Register.

Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Finally, this action is not a rule as defined by the Regulatory Flexibility Act and thus is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2

Authority delegations (Government Agencies).

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Accordingly, Part 2, Title 7, Code of Federal Regulations is amended as follows:

1. The authority citation for Part 2 continues to read as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953, except as otherwise stated.

Subpart N—Delegations of Authority by the Assistant Secretary for Science and Education

2. Section 2.107 is amended by adding new paragraphs (a)(26) through (a)(34) as follows:

§ 2.107 Administrator, Cooperative State Research Service.

(a) *Delegations.* * * *

(26) Administer a program of competitive grants to State agricultural experiment stations, colleges, and universities, other research institutions and organizations, Federal agencies, private organizations or corporations and individuals for research to further the programs of the Department of Agriculture (7 U.S.C. 450i).

(27) Participate with agencies reporting to the Assistant Secretary for Science and Education in the administration of competitive grants (i) to develop or administer programs to meet unique food and agricultural educational problems, and (ii) to administer and conduct specialized programs to attract individuals for undergraduate and graduate programs and to administer and conduct graduate fellowship programs in the food and agricultural sciences (7 U.S.C. 3152).

(28) Participate with agencies reporting to the Assistant Secretary for Science and Education in the administration of competitive research grants related to uses of solar energy (7 U.S.C. 3241).

(29) Administer the Small Business Innovation Development Act of 1982 for the Department of Agriculture (15 U.S.C. 638(e)(k).

(30) Enter into grants for the purpose of carrying out the Department's Small Business Innovation Research Program (7 U.S.C. 3318).

(31) Provide management support services to agencies reporting to the Assistant Secretary for Science and Education in the administration of discretionary grants.

(32) Administer the appropriation for the endowment and maintenance of colleges for the benefit of agriculture and the mechanics arts (7 U.S.C. 321–326a).

(33) Administer teaching funds authorized under section 22 of the Bankhead Jones Act as amended (7 U.S.C. 329).

(34) Administer higher education programs in the food and agriculture sciences as well as grants to colleges and universities (7 U.S.C. 3152).

§ 2.110 [Removed and reserved]

3. Section 2.110 is removed and reserved.

Date: August 14, 1987.

For Subpart N.

Robert W. Long,

Acting Assistant Secretary for Science and Education.

[FR Doc. 87–19047 Filed 8–19–87; 8:45 am]
BILLING CODE 3410–01–M

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 87–022]

Sugarcane Diseases

AGENCY: Animal and Plant Health Inspection Service, USDA.
ACTION: Final rule.

SUMMARY: We are amending the regulations concerning sugarcane diseases by specifically designating

sugarcane juice as a regulated article. We are also amending the regulations by adding provisions for the interstate movement of sugarcane juice from Hawaii and Puerto Rico pursuant to the issuance of a certificate based upon a determination by an inspector that the sugarcane juice has been heated at 100° C for 10 or more minutes. This action is necessary to relieve current restrictions on the interstate movement of sugarcane juice without increasing the risk of spreading diseases of sugarcane.

EFFECTIVE DATE: September 21, 1987.

FOR FURTHER INFORMATION CONTACT: Bhisham Singh, Biological Assessment Support Staff, PPQ, APHIS, USDA, Room 627, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–5215.

SUPPLEMENTARY INFORMATION: In a document published in the Federal Register on December 18, 1986 (51 FR 45332–45333, Docket No. 85–394), we proposed to amend the regulations by specifically designating sugarcane juice as a regulated article since its interstate movement from Hawaii and Puerto Rico constitutes a substantial risk of causing the interstate spread of sugarcane diseases. We also proposed to amend the regulations by adding provisions for the interstate movement of sugarcane juice from Hawaii and Puerto Rico pursuant to the issuance of a certificate based upon a determination made by an inspector that the sugarcane juice has been heated at 100° C for 10 or more minutes. Juice extracted from infected sugarcane during processing may contain *Xanthomonas campestris* pv. *vasculorum* (Cobb) Dye and *Xanthomonas albilineans* (Ashby) Dowson, which are destroyed when sugarcane juice is subjected to this heat treatment.

Our proposal of December 18, 1986, invited the submission of written comments on or before February 17, 1987. One comment was received, which asked two questions:

(1) Is there a published scientific basis to assure the destruction of the *Xanthomonas* species by heating sugarcane juice for 10 or more minutes at 100° C?

The book, "Sugarcane Diseases of the World," edited by Martin, Abbott, and Hughes, describes the characteristics of the organism. It states that the thermal death point of one of the organisms in question is 50° C. We have increased this to 100° C to ensure that the organism is destroyed and to avoid the possibility of measurement errors. Plant Protection and Quarantine Inspectors can visually verify the treatment since water boils at 100° C.

(2) Is it possible that the exteriors of the shipping containers or vessels might become contaminated at the point of origin with untreated sugarcane juice containing the bacteria?

The possibility that the exteriors of the shipping containers would become contaminated is very unlikely. However, even if the exteriors become contaminated, the disease organism would die within two hours of the juice drying out.

Based on the rationale set forth in the proposal, and in this document, we are adopting this proposed rule as a final rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

These amendments provide for regulations governing the interstate movement of sugarcane juice from Hawaii and Puerto Rico. Under the requirements for issuance of limited permits and certificates, movement of these juices will not increase the risk of the spread of diseases of sugarcane.

The commercial demand for sugarcane juice from Hawaii and Puerto Rico is extremely limited. It appears that quantities marketed interstate will not represent a significant portion of the sales or inventory of affected entities. In addition, although we are specifically designating sugarcane juice as a regulated article, sugarcane juice has been considered to be a regulated article under the previously designated § 301.87–2(d).

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 7 CFR Part 301

Agricultural commodities, Hawaii, Plant diseases, Plant pests, Plants (Agricultural), Puerto Rico, Quarantine, Sugarcane, Transportation.

Accordingly, 7 CFR Part 301, is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICE

1. The authority citation for Part 301 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 301.87–1, the definition of "regulated article" is revised to read as follows:

§ 301.87–1 Definitions.

* * * * *

Regulated article. Any article listed in § 301.87–2(a), (b), (c), (d), or otherwise designated as a regulated article in accordance with § 301.87–2(e).

* * * * *

3. In paragraph (c) of § 301.87–2, the word "and" following the semicolon is removed.

4. In paragraph (d) of § 301.87–2, the reference to "paragraph (a), (b), or (c) of this section" is revised to read "paragraph (a), (b), (c), or (d) of this section".

5. In § 301.87–2, paragraph (d) is redesignated as paragraph "(e)" and a new paragraph (d) is added to read as follows:

§ 301.87–2 Regulated articles.

* * * * *

(d) Sugarcane juice; and

* * * * *

6. Section 301.87–10 is amended by adding a new paragraph (e) to read as follows:

§ 301.87–10 Treatments.

* * * * *

(e) Sugarcane juice: Heat at 100° C (212° F) for 10 or more minutes.

Done in Washington, DC, this 17th day of August, 1987.

D. Husnik,

Acting Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 87–19100 Filed 8–19–87; 8:45 am]

BILLING CODE 3410–34–M

Agricultural Marketing Service

7 CFR Parts 916, 917, 921, 923, 924, 931, 945, 946, 947, and 948

Expenses and Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes assessment rates under Marketing Orders 916, 917, 921, 923, 924, 931, 945, 946, 947, and 948 for the 1987–88 fiscal period established for each order, and amends the 1986–87 fiscal period budget for Marketing Order 948. Funds to administer these programs are derived from assessments on handlers.

EFFECTIVE DATES: July 1, 1986–August 31, 1987 (§ 948.295); March 1, 1987–February 29, 1988 (§§ 916.226, 917.247, 917.248, and 917.249); April 1, 1987–March 31, 1988 (§§ 921.226, 923.227, and 924.227); July 1, 1987–June 30, 1988 (§§ 931.222, 946.240 and 947.240); August 1, 1987–July 31, 1988 (§ 945.240); September 1, 1987–August 31, 1988 (§ 948.296).

FOR FURTHER INFORMATION CONTACT: James M. Scanlon, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250–0200, telephone (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has considered the economic impact on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (the Act, 7 U.S.C. 601–674), and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are an estimated 649 handlers of California nectarines, plums, and peaches, 43 handlers of California pears, 84 handlers of Washington peaches, 68 handlers of Washington cherries, 41 handlers of Washington-Oregon prunes, 78 handlers of Oregon-Washington Bartlett pears, 71 handlers of Idaho-Oregon potatoes, 60 handlers of Washington potatoes, 42 handlers of Oregon-California potatoes, and 72 handlers of Colorado Area 2 potatoes who will be subject to regulation under these marketing orders during the course of the respective season for each specified commodity. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last 3 years of less than $100,000, and agricultural services firms, which include handlers, are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers may be classified as small entities.

Each marketing order requires that the assessment rate for a particular fiscal period shall apply to all assessable commodities handled from the beginning of such year. An annual budget of expenses is prepared by each administrative committee and submitted to the Department of Agriculture for approval. The members of administrative committees are handlers and producers of the regulated commodities. This is appropriate because they are familiar with the committees' needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings; thus all directly affected persons have an opportunity to participate and provide input.

While this action may impose some additional costs on handlers, including small entities, the costs are in the form of uniform assessments on all handlers which do not impose a significant economic impact on the small entities involved.

Based on available information, the Administrator of the Agricultural Marketing Service has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

The assessment rate recommended by each committee is derived by dividing anticipated expenses by expected shipments of the commodity (e.g. pounds, tons, boxes, cartons, etc.). That rate is applied to actual shipments to produce income sufficient to pay the committees' expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committees shortly before a season starts and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited in order that the committees will have funds to pay their expenses.

Based on the foregoing, the Secretary finds that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and to engage in public rulemaking procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register (5 U.S.C. 553). It is found that the specified expenses and assessment rates will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Parts 916, 917, 921, 923, 924, 931, 945, 946, 947, and 948

Marketing agreements and orders, Nectarines (California), Pears, Plums, Peaches (California), Peaches (Washington), Cherries (Washington), Prunes (Washington-Oregon), Pears (Oregon-Washington), Potatoes (Idaho-Oregon), Potatoes (Washington), Potatoes (Oregon-California), Potatoes (Colorado).

For the reasons set forth in the preamble, Parts 916, 917, 921, 923, 924, 931, 945, 946, 947, and 948 of Title 7 of the Code of Federal Regulations are amended as follows:

1. The authority citation for 7 CFR Parts 916, 917, 921, 923, 924, 931, 945, 946, 947, and 948 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.)

2. New §§ 916.226, 917.247, 917.248, 917.249, 921.226, 923.227, 924.227, 931.222, 945.240, 946.240, 947.240, and 948.296 are added; and § 948.295 (52 FR 36997, October 17, 1986) is revised to read as follows (the following sections prescribe annual expenses and assessment rates and will not be published in the Code of Federal Regulations):

PART 916—NECTARINES GROWN IN CALIFORNIA

§ 916.226 Expenses and assessment rate.

Expenses of $2,844,417 by the Nectarine Administrative Committee are authorized, and an assessment rate of $0.16 per No. 22D standard lug box of assessable nectarines is established for the fiscal period ending February 29, 1988. Unexpended funds may be carried over as a reserve.

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

§ 917.247 Expenses and assessment rate.

Expenses of $3,036,485 by the Plum Commodity Committee are authorized,

and an assessment rate of $0.19 per No. 22D standard lug box of assessable plums is established for the fiscal period ending February 29, 1988. Unexpended funds may be carried over as a reserve.

§ 917.248 Expenses and assessment rate.

Expenses of $2,401,435 by the Peach Commodity Committee are authorized, and an assessment rate of $0.16 per No. 22D standard lug box of assessable peaches is established for the fiscal period ending February 29, 1988. Unexpended funds may be carried over as a reserve.

§ 917.249 Expenses and assessment rate.

Expenses of $899,551 by the Pear Commodity Committee are authorized, and an assessment rate of $0.20 per No. 29B special lug box of assessable pears is established for the fiscal period ending February 29, 1988. Unexpended funds may be carried over as a reserve.

PART 921—FRESH PEACHES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

§ 921.226 Expenses and assessment rate.

Expenses of $25,136 by the Washington Fresh Peach Marketing Committee are authorized, and an assessment rate of $2.00 per ton of assessable peaches is established for the fiscal period ending March 31, 1988. Unexpended funds may be carried over as a reserve.

PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

§ 923.227 Expenses and assessment rate.

Expenses of $85,100 by the Washington Cherry Marketing Committee are authorized, and an assessment rate of $2.00 per ton of assessable cherries is established for the fiscal period ending March 31, 1988. Unexpended funds may be carried over as a reserve.

PART 924—FRESH PRUNES GROWN IN DESIGNATED COUNTIES IN WASHINGTON AND IN UMATILLA COUNTY, OREGON

§ 924.227 Expenses and assessment rate.

Expenses of $29,462 by the Washington-Oregon Fresh Prune Marketing Committee are authorized, and an assessment rate of $3.00 per ton of assessable prunes is established for the fiscal period ending March 31, 1988. Unexpended funds may be carried over as a reserve.

PART 931—FRESH BARTLETT PEARS GROWN IN OREGON AND WASHINGTON

§ 931.222 Expenses and assessment rate.

Expenses of $86,656 by the Northwest Fresh Bartlett Pear Marketing Committee are authorized, and an assessment rate of $0.015 per Western Standard pear box of assessable pears is established for the fiscal period ending June 30, 1988. Unexpended funds may be carried over as a reserve.

PART 945—IRISH POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

§ 945.240 Expenses and assessment rate.

Expenses of $66,470 by the Idaho-Eastern Oregon Potato Committee are authorized, and an assessment rate of $0.0026 per hundredweight of assessable potatoes is established for the fiscal period ending July 31, 1988. Unexpended funds may be carried over as a reserve.

PART 946—IRISH POTATOES GROWN IN WASHINGTON

§ 946.240 Expenses and assessment rate.

Expenses of $29,400 by the State of Washington Potato Committee are authorized, and an assessment rate of $0.002 per hundredweight of assessable potatoes is established for the fiscal period ending June 30, 1988. Unexpended funds may be carried over as a reserve.

PART 947—IRISH POTATOES GROWN IN MODOC AND SISKIYOU COUNTIES IN CALIF., AND ALL COUNTIES IN OREGON, EXCEPT MALHEUR COUNTY

§ 947.240 Expenses and assessment rate.

Expenses of $36,800 by the Oregon-California Potato Committee are authorized, and an assessment rate of $0.004 per hundredweight of assessable potatoes is established for the fiscal period ending June 30, 1988. Unexpended funds may be carried over as a reserve.

PART 948—IRISH POTATOES GROWN IN COLORADO

§ 948.295 Amended expenses and assessment rate.

Expenses of $45,500 by the Colorado Area 2 Potato Committee are authorized, and an assessment rate of $0.0031 per hundredweight of assessable potatoes is established for the fiscal period ending August 31, 1987. Unexpended funds may be carried over as a reserve.

PART 948—IRISH POTATOES GROWN IN COLORADO

§ 948.296 Expenses and assessment rate.

Expenses of $42,202 by the Colorado Area 2 Potato Committee are authorized, and an assessment rate of $0.0034 per hundredweight of assessable potatoes is established for the fiscal period ending August 31, 1988. Unexpended funds may be carried over as a reserve.

Dated: August 14, 1987.

Ronald L. Cioffi,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 87-19101 Filed 8-19-87; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1250

Egg Research and Promotion

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This document implements a decrease in the rate of assessment for the activities of the American Egg Board from 5 cents per 30-dozen case of eggs to 2½ cents. This action is intended to secure a broader base of producer support for programs of primary importance to the egg industry.

DATES: Interim rule effective September 1, 1987; comments must be received on or before September 21, 1987.

ADDRESS: Written comments, in duplicate, may be mailed to Janice L. Lockard, Poultry Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 3955-South Agriculture Building, Washington, DC 20250-0200.

FOR FURTHER INFORMATION CONTACT: Janice L. Lockard, (202) 382-8132.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been designated as a "non-major" rule under the criteria contained therein. It will not (i) result in an annual effect on the economy of $100 million or more; (ii) result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (iii) have significant effects on competition, employment, investment, productivity, innovation, or on the ability of the United States based enterprises to compete with foreign-

based enterprises in domestic or export markets. No additional costs would be incurred in administering the change in assessment and only a minor alteration in computer programming would be required for implementation by the American Egg Board. In addition, there would be no added regulatory burden to egg producers and handlers as a result of the decrease in the assessment as the procedure for collection and remittance of assessments under the Egg Research and Promotion Rules and Regulations (7 CFR 1250.500–522) would remain unchanged.

Effect on Small Entities

The Administrator, Agricultural Marketing Service, has determined that this proposed action will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). The purpose of the FRA is to fit regulatory action to the scale of businesses subject to such action in order that small businesses will not be unduly or disproportionately burdened. The majority of handlers and producers may be characterized as small entities. Rather than creating a burden, the action to decrease the assessment would result in an advantage to small entities, while at the same time contributing to programs which are anticipated to have long-term benefits for the industry. In addition, inasmuch as producers may request refunds of their assessments under the Egg Research and Consumer Information Act (7 U.S.C. 2701 *et seq.*), the disadvantage to any producer under this program would be minuscule. There also would be no change in the reporting or recordkeeping requirements imposed on producers and handlers as a result of this action to decrease the rate of assessment.

Background and Proposed Change

The Egg Research and Promotion Order in § 1250.347 authorizes the American Egg Board to collect assessments at the rate of 5 cents per 30-dozen case of eggs, or the equivalent thereof. The assessment is refundable upon demand. The 5-cent rate has been unchanged under the Order since the program was first implemented in August 1976. The Order also provides that the Board may set a lower assessment rate with the approval of the Secretary of Agriculture. On July 22, 1987, the 18-producer-member American Egg Board reviewed the 5-cent assessment rate in light of current participation by egg producers in the program, the costs of the various activities conducted by the Board, and the anticipated needs of the industry. It was determined that a broader base of producer support was needed to carry out programs on a national basis which are essential to the industry and which cannot feasibly be carried out by individual producer entities or State or other egg organizations. To achieve this objective, the Board recommended that beginning on September 1, 1987, the assessment be set at 2½ cents per 30-dozen case of eggs (case of commercial eggs) to fund, in addition to normal authorized operating costs, the following ongoing primary American Egg Board activities: (i) Egg nutrition and education—to communicate information concerning the diet/cholesterol issue to health professionals, the media, and consumers; (ii) Foodservice—to encourage greater usage of eggs in commercial and institutional operations; (iii) Consumer education—to continue development of materials of consumer interest and to assist State and regional egg promotion organizations in their promotion efforts; and (iv) New product development—to demonstrate the use of eggs in food processing to major food manufacturing companies.

This action also revises the authority citation that appears in the Code of Federal Regulations for 7 CFR Part 1250.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because this action decreases the rate of assessment charged and should be implemented as soon as possible to permit the Board to develop in a timely programs and a budget for the 1988 fiscal period and to secure a broader base of producer support for Board programs.

List of Subjects in 7 CFR Part 1250

Research and promotion, Eggs.

For the reasons set out in the preamble and under authority contained in the Egg Research and Consumer Information Act (7 U.S.C. 2701 *et seq.*), Title 7, Chapter XI, Part 1250 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1250—EGG RESEARCH AND PROMOTION

1. The authority citation for Part 1250 is revised to read as follows:

Authority: Pub. L. 93–428, 88 Stat. 1171, as amended; 7 U.S.C. 2701–2718.

2. Section 1250.514 is revised to read as follows:

§ 1250.514 Levy of assessments.

An assessment of 2½ cents per case of commercial eggs is levied on each case of commercial eggs handled for the account of each producer, except that the following shall be exempt from the provisions of this section:

(a) Any egg producer whose aggregate number of laying hens at any time during the 3-consecutive-month period immediately prior to the month in which assessments are due and payable has not exceeded 3,000 laying hens, and

(b) Any flock of breeding hens whose production of eggs is primarily utilized for the hatching of baby chicks.

Each case of commercial eggs shall be subject to assessment only once.

Signed at Washington, DC, on August 14, 1987.

J. Patrick Boyle,

Administrator, Agricultural Marketing Service.

[FR Doc. 87–19046 Filed 8–19–87; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87–NM–19–AD; Amdt. 39–5710]

Airworthiness Directives: Am-Safe, Inc., Restraint System Assemblies

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive, applicable to certain Am-Safe, Inc., restraint systems, which requires inspections and replacement, if necessary, of incorrectly manufactured lap belt connectors. This amendment is prompted by a report that some connectors were installed which were not manufactured to the correct dimensions. This condition, if not corrected, could lead to the inadvertent unbuckling of the restraint system, with the resultant lack of occupant restraint under either flight loads or crash loads.

EFFECTIVE DATE: September 22, 1987.

ADDRESSES: The applicable service information may be obtained from Am-Safe, Inc., 240 North 48th Avenue, Phoenix, Arizona 85043. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Western Aircraft

Certification Office, 15000 Aviation Boulevard, Hawthorne, California.

FOR FURTHER INFORMATION CONTACT: Mr. Walter Eierman, Aerospace Engineer, Western Aircraft Certification Office, ANM–173W, FAA, Northwest Mountain Region, 15000 Aviation Boulevard, Hawthorne, California; telephone (213) 297–1388.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires inspection and replacement, if necessary, of certain Am-Safe occupant restraint system assembly connectors was published in the **Federal Register** on March 31, 1987 (52 FR 10236).

Interested persons have been afforded an opportunity to participate in the making of this amendment.

No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 1250 connectors will be affected by this AD, that it will take approximately one-half manhour per connector to inspect, remove and replace an unsatisfactory connector, and that the average labor cost will be $40 per manhour. Am-Safe, Inc., will supply replacement connectors at no charge. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $25,000.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities, because of the minimal cost of compliance per airplane ($20). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

PART 39—[AMENDED]

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

AM-Safe, Inc.: Applies to Am–Safe, Inc., occupant restraint system assemblies, Part Numbers 501825–403, 501907–401, 501907–403, 501907–405, 502061–401, 502147–401, and 502147–403, which may be installed in large or small aircraft. (Seal belt portion approved under Technical Standard Order C22f.) Compliance required within 90 days after the effective date of this AD, unless previously accomplished.

To eliminate restraint system connectors with the incorrect dimensions, which could allow inadvertant opening of occupant restraint system assemblies, accomplish the following:

A. Inspect the affected restraint system assemblies in accordance with Am-Safe, Inc., Service Bulletin No. AS001, dated November 5, 1986, or later FAA-approved revisions, to determine the Lot Number of the connector. If the connector is not of Lot 04, no further action is required. If the connector is found to be of Lot 04, the connector must be removed and replaced with a connector of a different lot number before further flight.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Western Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Am-Safe, Incorporated, 240 North 48th Avenue, Phoenix, Arizona 85043. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 15000 Aviation Boulevard, Hawthorne, California.

This amendment becomes effective September 222, 1987.

Issued in Seattle, Washington, on August 10, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87–19017 Filed 8–19–87; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 86–NM–196–AD; Amdt. 39–5715]

Airworthiness Directives; General Dynamics Models 340, 440, and C–131 (Military) Series Airplanes, Including Those Modified for Turbo-propeller Power

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to General Dynamics Models 340, 440, and C–131 (Military) series airplanes, including turbo-propeller conversions, which requires repetitive inspections of the main landing gear drag strut pivot bolt and replacement, if necessary. This amendment is prompted by reports of one fractured and several cracked main landing gear drag strut pivot bolts. This condition, if not corrected, could lead to failure of the main landing gear drag strut pivot bolt and collapes of the main landing gear.

EFFECTIVE DATE: September 24, 1987.

ADDRESSES: The applicable service information may be obtained from General Dynamics, Convair Division P.O. Box 85377, San Diego, California 92138. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Western Aircraft Certification Office, 15000 Aviation Boulevard, Hawthorne, California.

FOR FURTHER INFORMATION CONTACT: Mr. Don Dirian, Aerospace Engineer, Western Aircraft Certification Office, ANM–172W, FAA, Northwest Mountain Region, 15000 Aviation Boulevard, Hawthorne California; telephone (213) 297–1167.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires inspection of main landing gear drag strut pivot bolts and removal from service of cracked bolts, was published in the **Federal Register** on March 31, 1987 (52 FR 10238).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter advised that a new, superior P/N 340–5110105–5 bolt assembly is now available that is made with the latest "state-of-the-art" technology. The commenter requested

the AD be revised to indicate that this -5 bolt assembly could be used as an alternative replacement assembly, and that installation of the -5 bolt assembly would eliminate the need for repetitive inspections required by the proposed AD. The FAA concurs and has revised the final rule accordingly.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously mentioned.

It is estimated that 350 airplanes of U.S. registry will be affected by this AD, that it will take approximately 16 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Two bolts are required per airplane; each bolt is estimated to cost $800. Based on these figures, the total cost impact of the AD on the U.S. operators is estimated to be $644,000.

For these reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, General Dynamics Model 340, 440, or C-131 (Military) service airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

General Dynamics (Convair): Applies to Models 340, 440, and C-131 (Military) series airplanes, including all such model airplanes converted to turbo-propeller power, equipped with main landing gear drag strut pivot bolt assembly Part Numbers (P/N) 340-5110105, or 340-5110105-1, or 340-5110105-3, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent failure of the main landing gear drage strut pivot bolt and possible subsequent main landing gear collapse, accomplish the following:

A. Within 500 hours time-in-service after the effective date of this AD, inspect the main landing gear drag strut pivot bolt assembly P/N 340-5110105 or 340-5110105-1 or 340-5110105-3, using magnetic particle inspection procedures, in accordance with Paragraph 2., "Accomplishment Instructions" of General Dynamics, Convair Division, Service Bulletin 640(340D)32-14, dated October 10, 1986, or later revisions approved by the Manager, Western Aircraft Certification Office, FAA, Northwest Mountain Region.

1. If no cracks are found, reinstall the bolt and repeat the bolt inspection in accordance with paragraph A., above, at intervals not to exceed 500 hours time-in-service since last bolt inspection.

2. If any crack is found, prior to further flight replace main landing gear drag strut pivot bolt assembly with P/N 340-5110105, 340-5110105-1, 340-5110105-3, 340-5110105-5, or equivalent approved by the Manager, Western Aircraft Certification Office, FAA, Northwest Mountain Region.

a. If a new P/N 340-5110105 or 340-5110105-1 main landing gear drag strut pivot bolt assembly is used as a replacement, repeat the bolt inspection in accordance with paragraph A., above, within 3,000 hours time-in-service after bolt installation and thereafter at intervals not to exceed 500 hours time-in-service since last bolt inspection.

b. If a new main landing gear drag strut pivot bolt assembly P/N 340-5110105-3 is used as a replacement part, repeat bolt inspection in accordance with paragraph A., above, within 8,000 hours time-in-service after bolt installation and thereafter at intervals not to exceed 500 hours time-in-service since last bolt inspection.

c. Installation of main landing gear drag strut pivot bolt assembly P/N 340-5110105-5 constitutes terminating action for the repetitive inspections required by this AD.

B. Upon the request of an operator, an FAA Maintenance Inspector, subject to prior approval by the Manager, Western Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the repetitive inspection intervals specified in this AD to permit compliance at an established inspection period of that operator if the request contains substantiating data to justify the change for that operator.

C. Alternate means of compliance which provide an acceptable level of safety, may be used when approved by the Manager, Western Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to a base to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the General Dynamics, Convair Division, P.O. Box 85377, San Diego, California 92138, Attn: Chief, Aircraft Logistical Support, Mail Zone 92-2920. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at FAA, Western Aircraft Certification Office, 15000 Aviation Boulevard, Hawthorne, California.

This amendment becomes effective September 24, 1987.

Issued in Seattle, Washington, on August 11, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87-19022 Filed 8-19-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-NM-219-AD; Amdt. 39-5716]

Airworthiness Directives; McDonnell Douglas Model DC-8-62, -62F, -63, and -63F Series Airplanes, Modified by Aeronautic Development Corp. Supplemental Type Certificate (STC) SA2494NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-8-62, -62F, -63, and -63F series airplanes, which requires repetitive inspections and modification, as necessary, of the engine inlet nose dome extension aft attachment ring flanges. This amendment is prompted by reports of fatigue cracking of these flanges. This condition, if not corrected, could lead to the loss of the engine inlet nose dome assembly, which can cause engine stalls and lead to subsequent engine in-flight shut down (IFSD) or other severe degradation of engine performance during critical flight regimes. The potential exists for multiple IFSD's.

EFFECTIVE DATE: September 24, 1987.

ADDRESSES: The applicable service information may be obtained from Rohr Industries, Inc., Post Office Box 878, Chula Vista, California 92012-0878; Attention: Robert Dickenson. This

information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. David Y.J. Hsu, Aerospace Engineer, Airframe Branch, ANM-122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6319.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires repetitive inspection and modification, as necessary, of the engine inlet nose dome extension aft attachment ring flanges on McDonnell Douglas Model DC-8 series airplanes, was published in the Federal Register on March 19, 1987 (52 FR 8612). The comment period for the proposal closed on May 11, 1987.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the three comments received.

The first commenter suggested that the modification described in Rohr Industries, Inc., Service Bulletin QDC8-71-10, dated March 2, 1987, be considered as terminating action for the AD. The FAA agrees. Since issuance of the NPRM, Rohr has issued Service Bulletins QDC8-71-10, dated March 2, 1987, and Revision 1, dated April 15, 1987, which describe a modification to replace existing spacers, captive nuts, and retainers on aft nose dome extension ring with support fittings and to add support fittings on forward nose dome extension ring. The FAA has determined that accomplishment of this modification constitutes terminating action for the requirements of this AD, and the final rule has been revised to reflect this.

The second commenter suggested that operators be given the option of performing a "feel" check (by hand) for looseness, in lieu of the rigid repetitive inspection which requires removal of the nose bullet. The commenter also advised that repeated nose bullet removal and installation, as would be necessary in performing the inspections required by the AD, increases the risk of accidental and premature damage. The FAA disagrees. The risk associated with the removal of the nose bullet is outweighed by the need to ensure that fatigue cracks are detected promptly.

The third commenter questioned the need for the proposed rule. The commenter advised that operators have promised to voluntarily comply with Rohr Industries, Inc., Service Bulletin QDC8-71-10. The FAA disagrees and considers AD action to be appropriate to ensure that all affected operators comply in a timely manner with the requirements that are intended to correct a condition in aircraft determined to adversely affect the safety of flight.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the following rule with the changes previously noted.

It is estimated that 29 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 manhours per airplane to accomplish the required initial inspection, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators to accomplish the initial inspection is estimated to be $9,280. The recurring inspection costs to the affected operators are estimated to be 56 manhours per airplane per year, at an average labor cost of $40 per manhour. Based on these figures, the annual recurring cost of this AD for U.S. operators is etimated to be approximately $64,960. The cost of accomplishing the optional terminating action modification to the affected operators is estimated to be 21 manhours per airplane, at an average labor cost of $40 per manhour. Based on these figures, the cost of closing the AD requirements for U.S. operators is estimated to be approximately $24,360.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities, because of the minimal cost of compliance per airplane ($320). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-8-62, -62F, -63, and -63F series airplanes, modified in accordance with Aeronautic Development Corporation Supplemental Type Certificate (STC) SA2494NM, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent the loss of engine inlet extended nose dome assembly due to metal fatigue failure of the aft attachment ring flanges and possible damage to the engine, accomplish the following:

A. Within 250 flight-hours after the effective date of this AD, unless already accomplished within last 250 flight-hours, visually inspect nose dome extension aft attachment ring flanges, Rohr Industries, Inc. Part Numbers 236-0002, in accordance with paragraph 2.A. of Rohr Industries, Inc., Alert Service Bulletin QDC8-A71-10, dated October 21, 1986, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—Removal of the nose dome and extension requires disconnecting the PT² probe sense line extension. Care must be taken to ensure proper connection when re-installing to prevent erroneous EPR indication.

B. If no cracks are found, repeat the visual inspections of the flanges in accordance with paragraph A. of this AD, at intervals not to exceed 500 flight-hours, until such time as the modification is accomplished in accordance with paragraph D. of this AD.

C. If cracks are found on flanges with attachments, prior to further flight, accomplish either of the following:

1. Accomplish the modification in accordance with paragraph D. of this AD, or

2. Accomplish repair and repetitive inspections as follows:

a. For extended nose dome with five alternate blank flanges:

(1) Relocate the five attachments in accordance with paragraph 2.A.(3) through (13) of the Rohr Industries, Inc., Alert Service Bulletin QDC8-A71-10, dated October 21, 1986, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

(2) Repeat visual inspections of the flanges at the relocated attachments in accordance with paragraph A. of this AD, at intervals not to exceed 500 flight-hours.

b. For extended nose dome without the five alternate blank flanges:

(1) Remove and replace the aft attachment ring of the extended nose dome in accordance with FAA approved data.

(2) Repeat visual inspections of the flanges of the newly installed attachment rings in accordance with paragraph A. of this AD, at intervals not to exceed 500 flight-hours.

D. Accomplish of the modification to replace existing spacers, captive nuts, and retainers on aft nose dome extension ring with support fittings and to add support fittings on forward nose dome extension ring in accordance with paragraph 2.A.(1) thorugh (56) of the Rohr Industries, Inc., Service Bulletin QDC8-71-10, dated March 2, 1987, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, constitutes terminating action for the requirements of this AD.

E. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Rohr Industries, Inc., Post Office Box 878, Chula Vista, California 92012-0878; Attention: Robert Dickenson. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

This amendment becomes effective September 24, 1987.

Issued in Seattle, Washington, on August 11, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87-19021 Filed 8-19-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-NM-33-AD; Amdt. 39-5713]

Airworthiness Directives; Short Brothers PLC Model SD3-60 Series, Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Short Brothers PLC Model SD3-60 series airplanes, which requires the installation of a new locking bolt for the nose landing gear shock absorber lower pin. This amendment is prompted by a recent report of a shock absorber lower pin working loose. This condition, if not corrected, could result in the loss of structural integrity of the nose landing gear.

EFFECTIVE DATE: September 22, 1987.

ADDRESSES: The applicable service information may be obtained from Short Brothers PLC, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3702. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy M. Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, which requires modification of the nose landing gear on certain Short Brothers Model SD3-60 series airplanes, was published in the Federal Register on May 11, 1987 (52 FR 17601).

Interested parties have been afforded an opportunity to participate in the making of this amendment.

No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 33 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 manhour per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $1,320.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because of the minimal cost of compliance per airplane ($40). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of The Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983; and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Short Brothers PLC: Applies to Short Brothers PLC Model SD3-60 series airplanes, equipped with Dowty Rotol nose under carriage type numbers 200921001 or 200921003, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent loss of structural integrity of the nose landing gear, as a result of a loose shock absorber lower pin, accomplish the following:

A. Within 90 days after the effective date of this AD, install a new locking bolt for the nose landing gear shock absorber pin in accordance with the Accomplishment Instructions of Shorts Service Bulletin No. SD360-32-20, dated May 1985.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to Short Brothers PLC, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3702. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective September 22, 1987.

Issued in Seattle, Washington, on August 10, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87-19018 Filed 8-19-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 87-NM-28-AD; Amdt. 39-5711]

Airworthiness Directives: Short Brothers Model SD3-60 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Short Brothers Model SD3-60 series airplanes, which requires remarking the green band on the elevator trim control indicator on airplanes equipped with Pratt and Whitney PT6A-65R and PT6A-65AR engines, and rerigging the elevator tab on airplanes equipped with the PT6A-65AR engines. This amendment is prompted by reports of operational experience and further test flying which indicate that excessive control column force is required during takeoff. This condition, if not corrected, could result in unsafe out-of-trim condition.

EFFECTIVE DATE: September 22, 1987.

ADDRESSES: The applicable service information may be obtained from Shorts Aircraft, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3702. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, which requires remarking the green band on the elevator trim control indicator on Shorts Model SD3-60 airplanes equipped with Pratt and Whitney PT6A-65R and PT6A-65AR engines, and rerigging the elevator tab on airplanes equipped with the PT6A-65AR engines, was published in the **Federal Register** on May 11, 1987 (52 FR 17588).

Interested parties have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 53 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $12,720.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because of the minimal cost of compliance per airplane ($240). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Short Brothers PLC: Applies to Model SD3-60 airplanes with Pratt and Whitney PT6A-65R and PT6A-65AR engines installed, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent an unsafe out-of-trim condition accomplish the following within 90 days after the effective date of this AD:

A. For airplanes equipped with Pratt and Whitney PT6A-65R engines, remark the green band on the elevator trim control indicator in accordance with the Accomplishment Instructions of Shorts Service Bulletin No. SD360-27-10, Revision 1, dated May 1986.

B. For airplanes equipped with Pratt and Whitney PT6A-65AR engines, remark the green band on the elevator trim control indicator and rerig the elevator tab in accordance with the Accomplishment Instructions of Shorts Service Bulletin No. SD360-27-11, Revision 1, dated March 1986.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to Shorts Aircraft, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3702. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective September 22, 1987.

Issued in Seattle, Washington, on August 10, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87-19024 Filed 8-19-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 87-NM-29-AD; Amdt. 39-5712]

Airworthiness Directives: Short Brothers PLC Model SD3-60 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Short Brothers PLC Model SD3-60 series airplanes, which requires sealing the fuselage top skin to prevent fuel leaks, should they occur in certain areas, from entering the main fuselage cabin. This action is prompted by a report of a failure of the fuel purge valve, which resulted in fuel ingress into the main cabin. This condition, if not corrected, could result in a fire.

EFFECTIVE DATE: September 22, 1987.

ADDRESSES: The applicable service information may be obtained from Shorts Aircraft, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3702. Information may be examined at the FAA Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy M. Golder, Standardization Branch, ANM-113; telephone (206) 431-

1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, which requires application of sealant to fuselage top skin on certain Short Brothers PLC Model SD3-60 series airplanes, was published in the **Federal Register** on May 11, 1987 (52 FR 17600).

Interested parties have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 33 airplanes of U.S. registry will be affected by this AD, that it will take approximately 30 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $39,600.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because of the minimal cost of compliance per airplane ($1,200). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Short Brothers PLC: Applies to Model SD3-60 airplanes, serial numbers SH3601 through SH3678, certificated in any category. Compliance required as indicated, unless previously accomplished.

To ensure that failure of the fuel purge valve cannot result in fuel ingress into the main cabin, accomplish the following:

A. Within 90 days after the effective date of this AD, apply sealant to the fuselage top skin in accordance with the "Accomplishment Instructions," of Short Service Bulletin SD360-53-22, Revision 1, dated April 1986.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to Shorts Aircraft, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3702. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective September 22, 1987.

Issued in Seattle, Washington, on August 10, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87-19023 Filed 8-19-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-AWP-15]

Establishment of Glendale, AZ, Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a control zone at Glendale, Arizona. This control zone provides controlled airspace for aircraft on instrument flight rules (IFR) flight plans and allows special visual flight rules (SVFR) operations when visibility is less than 3 statute miles.

EFFECTIVE DATE: 0901 UTC, January 14, 1988.

FOR FURTHER INFORMATION CONTACT: Frank T. Torikai, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261; telephone (213) 297-1648.

SUPPLEMENTARY INFORMATION:

History

On June 5, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a control zone at Glendale, Arizona (52 FR 21316). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations establishes a control zone at Glendale, Arizona. This control zone provides controlled airspace for aircraft on instrument flight rules (IFR) flight plans and allows special visual flight rules (SVFR) operations when visibility is less than 3 statute miles. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Excutive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 25, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 77

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

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PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Glendale, AZ [New]

Within a 3-mile radius of Glendale Municipal Airport (lat. 33°31'30" N., long. 112°17'40" W.) excluding that portion west of a line beginning at lat. 33°34'03" N., long. 112°16'14" W. to lat. 33°33'00" N., long. 112°18'05" W. to lat. 33°29'32" N., long 112°19'25" W. This control zone will be effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in Los Angeles, California, on July 24, 1987.

James A. Holweger,

Assistant Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 87–19026 Filed 8–19–87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87–AWP–25]

Revision to Phoenix-Litchfield Control Zone in Arizona

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The Litchfield, Arizona, Airport was renamed Goodyear Municipal Airport. This action revises the Phoenix-Litchfield, Arizona, control zone description to reflect this change.

EFFECTIVE DATE: 0901 UTC, January 14, 1988.

FOR FURTHER INFORMATION CONTACT: Frank T. Torikai, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261; telephone (213) 297–1648.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations revises the Phoenix-Litchfield, Arizona, control zone description to change the name of Litchfield Airport to Goodyear Municipal Airport. I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor amendment in which the public would not be particularly interested. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987. The FAA had determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subject in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71), is amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Phoenix-Litchfield, AZ [Revised]

Phoeniz-Goodyear Municipal Airport, AZ

Within a 4-mile radius of Phoenix-Goodyear Municipal Airport (lat. 33°25'22" N., long. 112°22'31" W.), excluding the portion within the Phoneix-Luke AFB, Arizona, control zone. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in Los Angeles, California, on August 5, 1987.

James A. Holweger,

Assistant Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 87–19031 Filed 8–19–87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87–AWP–26]

Revision to Phoenix-Luke AFB, AZ, Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The Glendale, Arizona, control zone, a new control zone, encompasses a portion of the airspace currently designated for the Phoenix-Luke AFB, Arizona, control zone. This action revises the description of the Phoenix-Luke AFB, Arizona, control zone to exclude that portion within the new Glendale control zone. This change will be effective concurrently with the establishment of the Glendale control zone.

EFFECTIVE DATE: 0901 UTC, January 14, 1988.

FOR FURTHER INFORMATION CONTACT: Frank T. Torikai, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261; telephone (213) 297–1648.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations revises the Phoenix-Luke AFB, Arizona, control zone to exclude that portion within the new Glendale, Arizona, control zone. I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor amendment in which the public would not be particularly interested. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities

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under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71), as amended (52 FR 6136), is amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Phoenix-Luke AFB, AZ [Revised]

Within a 5-mile radius of Luke AFB (lat. 32°32'06" N., long. 112°22'56" N.); within 2 miles each side of the Luke TACAN 058° radial, extending from the 5-mile radius zone to 6 miles northeast of the TACAN; and within 2 miles each side of the Luke TACAN 209° radial, extending from the 5-mile radius zone to 6.5 miles southwest of the Luke TACAN; excluding that portion within the Glendale, Arizona, control zone. This control zone is effective from 0600 to 0000 hours local time daily, or during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in Los Angeles, California, on July 31, 1987.

James A. Holweger,

Assistant Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 87–19027 Filed 8–19–87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87–AWP–21]

Amendment to Santa Maria, CA, Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment reestablished the Santa Maria, CA., control zone as a part-time control zone. The part-time designation was inadvertently omitted in amendment 50 FR 52767, December 26, 1985. To have a control zone, hourly and special weather observations must be taken at the primary airport during the times and dates the control zone is designated. Since Santa Maria weather observations are available only during certain hours, the control zone hours must match the period that weather observations are taken.

DATES: Effective date—0901 UTC, January 14, 1988.

Comments on the rule must be received on or before October 20, 1987.

ADDRESSES: Send comments on the rule in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace and Procedures Branch, AWP–530, Docket No. 87–AWP–21, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6W14, 15000 Aviation Boulevard, Lawndale, California.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace and Procedures Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Frank T. Torikai, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261; telephone (213) 297–1648.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is in the form of a final rule, which involves reestablishing a part-time control zone at Santa Maria, CA and was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of this amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to reestablish the Santa Maria, CA, control zone as a part-time control zone. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

Under the circumstances presented, the FAA concludes that there is an immediate need for a regulation to amend the description of the Santa Maria, CA, control zone. Therefore, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71), as amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Santa Maria, CA [Amended]

Add the following to the end of the Santa Maria, CA, control zone description: "This control zone is effective the specific dates and times established in advance by a Notice to Airmen. The effective date and times will thereafter be continuously published in the Airport/Facility Directory.

Issued in Los Angeles, California, on August 6, 1987.

James A. Helwegen,

Assistant Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 87-19028 Filed 8-19-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-AEA-8]

Alteration of Control Zone, New York LaGuardia Airport, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the published description of the New York LaGuardia Airport control zone. The intended effect of this action is to provide ingress/egress for aircraft operating under visual weather conditions in controlled airspace at Pan Am Metroport.

EFFECTIVE DATE: 0901 UTC, November 19, 1987.

FOR FURTHER INFORMATION CONTACT: Glenn A. Bales, Airspace Planning Branch, AEA-530, Air Traffic Division, Federal Aviation Administration, Fitzgerald Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Telephone: 718-917-1228.

SUPPLEMENTARY INFORMATION:

History

On May 18, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the published description of the New York LaGuardia Airport control zone (52 FR 18576). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C, dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations is to alter the published description of the New York LaGuardia Airport, NY, control zone. This action, when taken, will provide ingress/egress for aircraft operating under visual weather conditions in controlled airspace at Pan Am Metroport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria or the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

New York LaGuardia, NY [Amended]

By adding the words "Excluding that portion within 1-mile radius of Pan Am Metroport (Lat. 40°45'36" N., Long. 73°57'28" W.)".

Issued in Jamaica, New York, on August 4, 1987.

John B. Rinteul, Jr.,

Acting Assistant Manager, Air Traffic Division.

[FR Doc. 87-19025 Filed 8-19-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-AEA-7]

Amended Description of Control Zone and Transition Area, Harrisburg, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment redefines the description of the Harrisburg, PA, Control Zone and Transition Area by deleting reference to the Harrisburg VORTAC and substituting geographical coordinates. No change in size or configuration is intended. This action is taken due to relocation of the Harrisburg, PA, VORTAC.

EFFECTIVE DATE: 0901 UTC, September 24, 1987.

FOR FURTHER INFORMATION CONTACT: Glenn A. Bales, Manager, Airspace Planning Branch, AEA-530, Air Traffic Division, Federal Aviation Administration, Fitzgerald Federal Building, JFK International Airport, Jamaica, New York 11430; Telephone: 718-917-1228.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations redefines the description of the Harrisburg, PA, Control Zone and Transition Area by deleting reference to the Harrisburg VORTAC and substituting geographical coordinates. The amendment does not change the size or configuration of controlled airspace. This action is taken due to the relocation of the Harrisburg, PA, VORTAC.

Therefore, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor amendment in which the public would not be particularly interested.

Sections 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zone, Transition area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Harrisburg, PA (Amended)

By removing the words "within 2 miles each side of the Harrisburg, PA, VORTAC 100° radial, extending from the 6.5 mile radius zone to 2.5 miles east of the VORTAC"; and inserting the words "within 2 miles each side of line bearing 100° from a point at latitude 40°14'29" N, longitude 77°01'19" W, extending from the 6.5 mile radius zone to 2.5 miles east of latitude 40°14'20" N, longitude 77°01'19" W;".

And

§ 71.181 [Amended]

3. Section 71.181 is amended as follows:

Harrisburg, PA (Amended)

By removing the words "within 5.5 miles each side of the Harrisburg, PA, VORTAC 274° radial, extending from the VORTAC to 11.5 miles west of the VORTAC;" and inserting the words "within 5.5 miles each side of a line bearing 274° from a point at latitude 40°14'29" N, longitude 77°01'91" W, extending from latitude 40°14'29" N, longitude 77°01'19" W, to 11.5 miles west of this point;".

Issued in Jamaica, New York, on August 7, 1987.

John B. Rintoul, Jr.,

Acting Assistant Manager, Air Traffic Division.

[FR Doc. 87-19030 Filed 8-19-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 81-AEA-42]

Designation of Transition Area, Punxsutawney, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The Rule designates a new transition area at Punxsutawney, PA. A VOR/DME-A instrument approach procedure has been developed to the Punxsutawney, PA, Airport. The transition area will provide protected airspace for aircraft departing/arriving under Instrument Flight Rules (IFR).

EFFECTIVE DATE: 0901 UTC, September 24, 1987.

FOR FURTHER INFORMATION CONTACT: Glenn A. Bales, Airspace Planning Branch, AEA-530, Air Traffic Division, Federal Aviation Administration, Fitzgerald Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Telephone: (718) 917-1228.

SUPPLEMENTARY INFORMATION:

History

On January 4, 1982, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate a new transition area at Punxsutawney, PA (81 FR 37405). Interested parties were invited to participate in this proposed rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C, dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations is to designate a new transition area at Punxsutawney, PA. This action, when taken, will provide protected airspace for aircraft departing/arriving under Instrument Flight Rules (IFR).

The FAA has determined that this amendment only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of The Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Punxsutawney, PA (New)

That airspace extending upwards from 700 feet above the surface within a 6-mile radius area of Punxsutawney Municipal Airport (40°58'15" N., 78°55'30" W.).

Issued in Jamaica, New York, on August 4, 1987.

John B. Rintoul, Jr.,

Acting Assistant Manager, Air Traffic Division.

[FR Doc. 87-19032 Filed 8-19-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 81-AEA-50]

Designation of Transition Area, Bedford, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This Rule designates a new transition area at Bedford, PA. A new instrument approach procedure has been developed to the Bedford, PA, Airport. The transition area will provide protected airspace for aircraft departing/arriving under Instrument Flight Rules (IFR).

EFFECTIVE DATE: 0901 UTC, September 24, 1987.

FOR FURTHER INFORMATION CONTACT: Glenn A. Bales, Airspace Planning Branch, AEA-530, Air Traffic Division, Federal Aviation Administration, Fitzgerald Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Telephone: (718) 917-1228.

SUPPLEMENTARY INFORMATION:

History

On January 4, 1982, the FAA issued a Notice of Proposed Rulemaking to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate a new transition area at Bedford, PA. Interested parties were invited to participate in this proposed rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the

proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations is to designate a new transition area at Bedford, PA. This action, when taken, will provide protected airspace for aircraft departing/arriving under Instrument Flight (IFR).

The FAA has determined that this amendment only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Bedford, PA (New)

That airspace extending upward from 700 feet above the surface within a 13.5 mile radius of the center of Bedford Airport, 40°03'45" N, 78°30'35" W, extending clockwise from a 002° bearing to a 073° bearing from the airport; within a 7-mile radius of the center of the airport extending clockwise from a 073° bearing to a 132° bearing from the airport; within a 13.5 mile radius of the center of the airport extending clockwise from a 132° bearing to a 225° bearing from the airport; within an 8.5 mile radius of the center of the airport extending clockwise from a 225° bearing to a 002° bearing from the airport; and within 4.5 miles each side of the St. Thomas, Pennsylvania, VORTAC 267° radial extending from 14 to 25 miles west of the VORTAC.

Issued in Jamaica, New York, on August 4, 1987.

John B. Rintoul, Jr.,

Acting Assistant Manager, Air Traffic Division.

[FR Doc. 87-19016 Filed 8-19-87; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

23 CFR Part 630

Agreement Provisions Regarding Overruns in Contract Time

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This final rule revises the existing regulation contained in 23 CFR Part 630 concerning the assessment of liquidated damages on projects where a contractor overruns the contract time. The revised regulation requires each State highway agency (SHA) to keep liquidated damages provisions current so that the amounts recovered through contractor assessments would at a minimum cover the SHA's average daily construction engineering (CE) cost attributable to the contract time overrun. In addition, the FHWA rate table presently in the regulation is removed, and the provisions for the FHWA recovery of costs have been modified. A definition of "incentive/disincentive for early completion" has also been added to this part.

EFFECTIVE DATE: October 5, 1987. The provisions contained in this final rule apply to all Federal-aid contracts advertised for bid on or after October 5, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. William A. Weseman, Chief, Construction and Maintenance Division, Telephone: (202) 366-0392, or Mrs. Ruth R. Anders, Office of Chief Counsel, Telephone: (202) 366-0780. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: The term "liquidated damages" means the daily amount set forth in the contract to be deducted from the contract price to cover additional costs incurred by an SHA because of the contractor's failure to complete the contract work within the number of calendar days or workdays specified. The term may also mean the total of all daily amounts deducted under the terms of a particular contract.

Regulation 23 CFR 630.305 prescribes agreement provisions regarding overruns in contract time and provides guidance on the amount of these assessments. This guidance has remained unchanged since December 1975. At that time, the rate table included in the regulation was identical to the table found in the 1972 edition of the American Association of State Highway and Transportation Officials (AASHTO) *Guide Specifications for Highway Construction.*[1] The amounts included in these 1972 tables represented an estimate of the nationwide average CE costs to the SHA. Since that time, CE costs have risen significantly; however, the FHWA rate table has not been updated to take account of the increases. The AASHTO subsequently revised its Guide Specifications in 1979, and increased the rates by an inflationary factor of 1.5. No change was made in the 1984 edition; however, further changes are being consisted for future editions.

During audit reviews in several regions of the county, the Department of Transportation Office of Inspector General (OIG) found that liquidated damages provisions in use by several of the SHAs were not allowing for the full recovery of CE costs due to contractor caused time overruns. Many of the provisions were based on either the FHWA or the AASHTO rates.

The FHWA agrees that the current rate table found in the regulations is outdated and may not allow for full recovery of extra CE costs associated with contract time overruns. While the regulation allows the SHAs to set higher rates based upon CE costs in their States, there has been some reluctance to increase the rates significantly from the FHWA or AASHTO amounts. The FHWA is also aware that nationwide rate table does not provide adequate guidance to the SHAs concerning liquidated damages assessments for their States. For these reasons, and because it is difficult to maintain an ever changing table in a regulatory format, the table is being deleted from the regulation and, instead, each SHA will be required to maintain its own rate schedule(s). The revised regulation also requires the rates to be reviewed periodically and updated, as appropriate.

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[1] The *Guide Specifications for Highway Construction*, 1984, is published by and available for purchase from the American Association of State Highway and Transportation Officials, Suite 225, 444 North Capitol Street NW., Washington, DC 20001.

In addition, the revised regulation addresses the use of liquidated damages to cover anticipated delay-related costs above and beyond those attributed to CE. Such costs to the SHA are those that could be reasonably anticipated if a delay were to occur in project completion, such as costs resulting from winter shutdown, retaining detours for an extended time, or additional demurrage. The amounts, however, are to be specified separately when the SHA submits claims for reimbursement. This permits an accounting of net CE costs to the project for Federal participation purposes.

The portion of the regulation dealing with the FHWA recovery of the pro rata share of the assessed liquidated damages has been modified slightly to address cases where assessments include more than CE expense factors. There is also a change concerning how the liquidated damages are credited to the project when the FHWA did not participate in the cost of CE. Whereas the current regulation indicates the amount of liquidated damages is to be credited to the federally participating cost of contract construction before calculating the Federal share, the revised rule allows the recovery of the SHA's CE costs first. This revision corrects this inequity of the existing regulation.

The revised regulation requires the SHA's liquidated damages provisions to be approved by the FHWA. By law, all specifications and special provisions has to be approved by the FHWA before use on a Federal-aid project. The only additional "burden" on the SHA will be the periodic review of its CE cost data to determine that the liquidated damages figures are adequate. The FHWA feels this is an SHA responsibility and should be a routine management task.

A notice of proposed rulemaking (NPRM) was published in the **Federal Register** on March 18, 1986, at 51 FR 9217 in which the FHWA requested comments on the proposed regulation revisions. Comments were to be received by May 2, 1986. Seventeen written comments were received in the docket. Of the 17 comments, 15 were from SHAs, 1 was from a local highway agency, and 1 was from an industry association. Most of the comments favored the regulation revisions and recommended minor procedural or editorial changes. Two commenters opposed the revisions. One believed it would cause an unreasonable administrative burden while the other suggested the rule should not be finalized until AASHTO completed its work on the liquidated damages provisions for its Guide Specifications.

The FHWA is aware that some SHAs may prefer to use liquidated damages rates established in the AASHTO table. The SHAs may choose to adopt the AASHTO table/schedule of liquidated damages provided it meets the requirements of this rule. This does not relieve the SHA of the requirement to periodically submit for FHWA approval, supporting verification that the rate table/schedule closely approximates the average daily CE costs associated with the type and size of projects in the State.

Another commenter suggested that local highway agencies be permitted to establish their own liquidated damages rates so as not to be tied to State rates. The FHWA believes that local highway agencies (subrecipients) may use liquidated damages rates established by the SHAs in accordance with § 630.305(b) of this regulation or establish their own liquidated damages rates. However, if local highway agencies choose to establish their own liquidated damages rates, those rates should be established in accordance with this regulation and submitted through the SHA to the FHWA for approval.

Several commenters suggested using costs other than the average daily CE costs associated with the type of work encountered on the project as the basis for liquidated damages rates. Another commenter objected to the inclusion of CE costs as liquidated damages.

The FHWA believes the average daily CE costs associated with the type of work on a project provides an equitable and reasonable method to estimate liquidated damages regardless of the phase of project construction in which the time overrun occurs. Furthermore, the FHWA believes there is sufficient legal justification to support the inclusion of CE costs as liquidated damages. Therefore, no changes in the provisions were made in the final rule from those proposed in the NPRM regarding this matter.

A few commenters expressed concern regarding the requirement to review and update liquidated damages rates on a 2-year frequency. The FHWA believes that the economic parameters that impact CE and other related costs change at a rate to warrant the review frequency proposed. The 2-year review frequency is retained in this final rule.

One commenter took exception to the requirement that other project delay related costs, which may be included as liquidated damages, be shown separately from CE costs in the contract documents to permit an accounting of net CE cost for Federal participation purposes. This commenter believed such a separate showing would jeopardize the enforceability of the liquidated damages provision.

Although the FHWA does not agree that a separate showing of anticipated CE costs from other liquidated damages amounts would jeopardize the enforceability of liquidated damages provisions, the requirement has been deleted. Thus the SHAs now have the option of showing CE costs and other project delay related costs separately or combined in the contract documents. However, because of Federal participation accounting purposes, it remains necessary that these amounts be specified separately when the SHA submits claims for reimbursement.

In addition to the regulatory changes, a definition of "incentive/disincentive for early completion" (I/D) is added to § 630.302. Procedures regarding the use of such provisions have been added to this part of the regulation.

The inclusion of I/D provisions in this regulation caused concern for one SHA. That SHA traditionally defines liquidated damages as being damages to the public for inconveniences or road user costs. It does not consider anticipated CE costs to be liquidated damages. As noted by that SHA, the only reference to road user cost in the NPRM is contained in the I/D provisions. Therefore, the SHA concluded that in order to continue assessing liquidated damages, in accordance with its definition, an I/D provision would be necessary in every contract.

The FHWA does not believe this final rule conflicts with State law or administrative procedures for assessing liquidated damages. Furthermore, this final rule does not require the inclusion of an I/D provision in any contract for assessing liquidated damages. The I/D provision is intended for use on those critical projects where it is imperative that traffic inconvenience and delays be held to a minimum. The FHWA recognizes liquidated damages to include not only CE costs but other project delay related costs that the State may choose to include with FHWA concurrence. Under § 630.305(c), the SHA may assess costs for public inconveniences without the inclusion of an I/D provision. Although road user costs were not mentioned specifically in the NPRM, the types of costs included under § 630.305(c) were not intended to be all inclusive. To clarify this point the FHWA has revised § 630.305(c) to specifically address such costs. The slight differences in the State and

Federal interpretations of liquidated damages will have no impact on the State's assessment of CE costs and costs for public inconveniences.

Other comments to the docket on the NPRM were editorial in nature and suggested that some provisions be clarified. Those comments have been adopted in this final rule where deemed appropriate.

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the Department of Transportation. The proposed revisions will improve the current undesirable situation that has developed and will provide for increased awareness by the SHA of the project related CE costs. Since there is no substantive change in the FHWA approach or procedures concerning liquidated damages assessments, it is anticipated that this action will not have a significant economic impact. Accordingly, for the foregoing reasons and under the criteria of the Regulatory Flexibility Act, it is certified that this action will not have a significant impact on a substantial number of small entitles and that the preparation of a full regulatory evaluation is not required.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*, Pub. L. 96–511), the reporting or recordkeeping requirements that are included in this regulation are being submitted for approval to the Office of Management and Budget (OMB).

In consideration of the foregoing, the FHWA is amending Part 630, Subpart C of Chapter I of Title 23, Code of Federal Regulations, as set forth below.

(Catalog of Federal Domestic Assistant Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

List of Subjects in 23 CFR Part 630

Government contracts, Grant programs—Transportation, Highways and roads, Project agreement provisions.

Issued on: August 14, 1987.

R.A. Barnhart,

Federal Highway Administrator.

The Federal Highway Administration (FHWA) is amending Part 630, Subpart C of Chapter I of Title 23, Code of Federal Regulations, as follows:

PART 630—PRECONSTRUCTION PROCEDURES

Subpart C—Project Agreements—[Amended]

1. The authority citation for Part 630 contines to read as follows:

Authority: 23 U.S.C. 101(a), 104, 109, 110, 113, 115, 121(f), 121(c), 125, 315, and 320; 23 CFR 1.32; 49 CFR 1.48(b), unless otherwise noted.

2. Section 630.302 is amended by redesignating paragraphs (h), (i), and (j) to read as (i), (j), and (k), respectively, and by adding a new definition "incentive/disincentive for early completion" as paragraph (h) as follows:

§ 630.302 Definitions.

* * * * *

(h) The term "incentive/distincentive for early completion," as used in this subpart, describes a contract provision which compensates the contractor a certain amount of money for each day identified critical work is completed ahead of schedule and assesses a deduction for each day the contractor overruns the incentive/disincentive time. Its use is primarily intended for those critical projects where traffic inconvenience and delays are to be held to a minimum. The amounts are based upon estimates of such items as traffic safety, traffic maintenance, and road user delay costs.

* * * * *

3. Section 630.305 is revised to read as follows:

§ 630.305 Agreement provisions regarding overruns in contract time.

(a) Each State highway agency (SHA) shall establish specific liquidated damages rates applicable to projects in that State. The rates may be project-specific or may be in the form of a table or schedule developed for a range of project costs and/or project types. These rates shall, as a minimum, be established to cover the estimated average daily construction engineering (CE) costs associated with the type of work encountered on the project. The amounts shall be assessed by means of deductions, for each calendar day or workday overrun in contract time, from payments otherwise due to the contractor for performance in accordance with the contract terms.

(b) The rates established shall be subject to FHWA approval either on a project-by-project basis, in the case of project-specific rates, or on a periodic basis after initial approval where a rate table or schedule is used. In the latter case, the SHA shall periodically review its cost data to ascertain if the rate table/schedule closely approximates, at a minimum, the actual average daily CE costs associated with the type and size of the projects in the State. Where rate schedules or other means are already included in the SHA specifications or standard special provisions, verification by the SHA that the amounts are adequate shall be submitted to the FHWA for review and approval. After initial approval by the FHWA of the rates, the SHA shall review the rates at least every 2 years and provide updated rates, when necessary, for FHWA approval. If updated rates are not warranted, justification of this fact is to be sent to the FHWA for review and acceptance.

(c) The SHA may, with FHWA concurrence, include additional amounts as liquidated damages in each contract to cover other anticipated costs of project related delays or inconveniences to the SHA or the public. Costs resulting from winter shutdowns, retaining detours for an extended time, additional demurrage, or similar costs as well as road user delay costs may be included.

(d) In addition to the liquidated damages provisions, the SHA may also include incentive/disincentive for early completion provisions in the contract. The incentive/disincentive amounts shall be shown separately from the liquidated damages amounts.

(e) When there has been an overrun in contract time, the following principles shall apply in determining the cost of a project that is eligible for Federal-aid reimbursement:

(1) A proportional share, as used in this section, is the ratio of the final contract construction costs eligible for Federal participation to the final total contract construction costs of the project.

(2) Where CE costs are claimed as a participating item based upon actual expenses incurred or where CE costs are not claimed as a participating item, and where the liquidated damages rates cover only CE expenses, the total CE costs for the project shall be reduced by the assessed liquidated damages amounts prior to figuring any Federal pro rata share payable. If the amount of liquidated damages assessed is more than the actual CE totals for the project, a proportional share of the excess shall be deducted from the federally participating contract construction cost before determining the final Federal share.

(3) Where the SHA is being reimbursed for CE costs on the basis of an approved percentage of the participating construction cost, the total contract construction amount that would

be eligible for Federal participation shall be reduced by a proportional share of the total liquidated damages amounts assessed on the project.

(4) Where liquidated damges include extra anticipated non-CE costs due to contractor caused delays, the amount assessed shall be used to pay for the actual non-CE expenses incurred by the SHA, and, if a Federal participating item(s) is involved, to reduce the Federal share payable for that item(s). If the amount assessed is more than the actual expenses incurred by the SHA, a proportional share of the excess shall be deducted from the federally participating contract construction cost of the project before the Federal share is figured.

(f) When provisions for incentive/disincentive for early completion are used in the contract, a proportion of the increased project costs due to any incentive payments to the contractor shall be added to the federally participating contract construction cost before calculating the Federal share. When the disincentive provision is applicable, a proportion of the amount assessed the contractor shall be deducted from the federally participating contract construction cost before the Federal share calculation. Proportions are to be calculated in the same manner as set forth in paragraph (e)(1) of this section.

[FR Doc. 87-19073 Filed 8-19-87; 8:45 am]
BILLING CODE 4310-25-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 76

Enrollment of Indians of the San Pasqual Band of Mission Indians in California

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs (BIA) is revising the regulations contained in Part 76 governing the enrollment of Indians in the San Pasqual Band of Mission Indians in California. The Band was granted a judgment award by the United States Claims Court in Docket 80-A. In accordance with a judgment plan, effective April 27, 1985, which was prepared pursuant to the Indian Judgment Funds Distribution Act, as amended, a portion of the judgment funds is to be distributed on a per capita basis to all tribal members living on April, 27 1985. The revision to the regulations will provide procedures, including a deadline for filing applications, to govern the preparation of a membership roll of the San Pasqual Band as of April 27, 1985, which will serve as the basis for the per capita distribution of judgment funds. This part has been previously redesignated from 25 CFR Part 48 at 47 FR 13327, March 30, 1982.

EFFECTIVE DATE: September, 21 1987.

FOR FURTHER INFORMATION CONTACT: Tom W. Dowell, Superintendent, Southern California Agency, Bureau of Indian Affairs, 3600 Lime Street, Suite 722, Riverside, California 92506, telephone number, (714) 351-6624 (FTS 796-6624).

SUPPLEMENTARY INFORMATION: The authority to issue these ruels and regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and 25 U.S.C. 2 and 9; and 25 U.S.C. 1401 et seq. This final rule is published in exercise of rulemaking authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs in the Department Manual at 209 DM 8.

A proposed revision to the regulations contained in Part 76 governing the enrollment of Indians of the San Pasqual Band of Mission Indians in California was published for public comment in the **Federal Register** on Wednesday, June 3, 1987 (52 FR 20727). The period for commenting on the proposed revision to the regulations contained in Part 76 closed on July 6, 1987. No comments on suggestions were received from the public with regard to the proposed revision. Except for the insertion of dates, where appropriate, and the correction of some minor errors, no changes are being made to the final rule revising Part 76 from what was published as the proposed revision.

On November 21, 1983, the United State Claims Court granted, in a compromise settlement, an award originally filed with the Indian Claims Commission in Docket 80-A to the San Pasqual Band of Mission Indians. Funds to satisfy the award were appropriated by Congress on January 3, 1984.

A judgment plan for the use and distribution of the funds was prepared pursuant to the Judgment Funds Distribution Act of October 19, 1973, as amended, 25 U.S.C. 1401 et seq., and became effective on April 27, 1985. The plan provides for eighty (80) percent of the award, less attorney fees and litigation expenses and including all interest and investment income accrued, to be distributed in the form of per capita payments by the Secretary of the Interior in sums as equal as possible to all tribal members born on or prior to and living on the effective date of the plan. To distribute the judgment funds, the membership roll of the San Pasqual Band of Mission Indians will have to be brought current to April 27, 1985.

The regulations contained in Part 76 originally provided procedures for the preparation of a membership roll of the San Pasqual Band as of January 1, 1959, and the authority to maintain a current roll thereafter, No revision or amendment has been made to the regulations since they were promulgated in 1960. Subsequent to the preparation and the approval by the Secretary of the January 1, 1959, membership roll, a constitution and bylaws was adopted by the San Pasqual Band of Mission Indians and approved by the Secretary. The constitution provided that membership in the Band would be in accordance with the regulations contained in this Part 76. Although there were procedures for maintaining a current membership roll, no final enrollment actions have occurred since the completion of the 1959 roll. Consequently, the membership roll of the San Pasqual Band will have to be brought current from January 1, 1959.

Revision to Part 76 is necessary to prepare a membership roll of the San Pasqual Band of Mission Indians as of April 27, 1985, both as a result of the fact that the primary purpose of the regulations as originally promulgated was to prepare a roll as of January 1, 1959, and as a result of the time that has elapsed since the rule was promulgated. The revision is to update and make miscellaneous changes of an administrative nature, including the elimination of sex-based and gender specific terminology. With one exception the revision is not intended to change the enrollment requirements now in effect, i.e., those requirements contained in § 76.14 Current membership roll. The exception is the inclusion of a provision for the enrollment of individuals who would have qualified for inclusion on the January 1, 1959, roll had they applied by the deadline for filing applications.

The stated purpose of the regulations has been changed. The purpose of revised Part 76 is to provide procedures to bring current the membership roll of the San Pasqual Band to serve as the basis for the distribution of judgment funds awarded the Band by the United States Claims Court in Docket 80-A. The procedures are being characterized as making additions to and deletions from the January 1, 1959, membership roll. Persons whose names appear on the January 1, 1959, membership roll do not need to reapply. However, verification forms will be mailed to them at their last

known addresses to ascertain their current names and address, if they are still living and, if deceased, their dates of death.

The qualifications for enrollment are specified in § 76.4 of the revised rule. To establish eligibility for enrollment individuals will have to file or have filed on their behalf applications on the prescribed form with the Superintendent of the California Agency of the BIA by the deadline specified in § 76.4. Application forms filed after that date will be rejected for failure to file on time regardless of whether the applicant otherwise meets the qualifications for membership. Rejected applicants may still, however, be considered for membership for future purposes.

To provide actual notice to as many potentially eligible beneficiaries as possible, the Superintendent shall mail notices of the preparation of the roll to all persons whose names appear on the January 1, 1959, membership roll at the last available address. Notices shall advise individuals of the preparation of the roll and the relevant procedures to be followed including the qualifications for enrollment and the deadline for filing application forms.

The primary author of this document is Kathleen L. Slover, Branch of Tribal Enrollment Services, Division of Tribal Government Services, Bureau of Indian Affairs.

The Office of Management and Budget has informed the Department of the Interior that the information collection requirements contained in this Part 76 need not be reviewed by them under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

The Department of the Interior has determined that this is not a major rule under E.O. 12291 because only a limited number of individuals will be affected and those individuals who are determined eligible will be participating in a per capita distribution made by the Secretary of a relatively small amount of funds.

The Department of the Interior has determined that this rule will not have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because of the limited applicability as stated above.

The Department of the Interior has determined that this rule does not significantly affect the quality of the human environment and, therefore, does not require the preparation of an Environmental Impact Statement under section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4334(2)(C).

List of Subjects in 25 CFR Part 76

Indians—claims, Indians—enrollment.

Accordingly, Part 76 of Subchapter F of Chapter I of Title 25 of the Code of Federal Regulation is revised to read as follows:

PART 76—ENROLLMENT OF INDIANS OF THE SAN PASQUAL BAND OF MISSION INDIANS IN CALIFORNIA

Sec.

76.1 Definitions.
76.2 Purpose.
76.3 Information collection.
76.4 Additions to and deletions from the membership roll and the deadline for filing application forms.
76.5 Notices.
76.6 Application forms.
76.7 Filing of application forms.
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76.9 Burden of proof.
76.10 Enrollment Committee election.
76.11 Review of applications by the Enrollment Committee.
76.12 Action by the Superintendent.
76.13 Appeals.
76.14 Decision of the Assistant Secretary of appeals.
76.15 Preparation, certification and approval of the roll.
76.16 Special instructions.

Authority: 5 U.S.C. 301; 25 U.S.C. 2 and 9; and 25 U.S.C. 1401 et seq., as amended.

§ 76.1 Definitions.

As used in these regulations:

"Adopted person" means a person whose biological parents' parental rights have been given to others to exercise by court order.

"Assistant Secretary" means the Assistant Secretary of the Interior for Indian Affairs or an authorized representative acting under delegated authority.

"Band" means the San Pasqual Band of Mission Indians in California.

"Census Roll" means the June 30, 1910, Census Roll of the San Pasqual Band of Mission Indians.

"Commissioner" means the Commissioner of Indian Affairs or an authorized representative acting under delegated authority.

"Descendant(s)" means those persons who are the issue of the ancestor through whom enrollment rights are claimed; namely, the children, grandchildren, etc. It does not include collateral relatives such as brothers, sisters, nephews, nieces, cousins, etc., or adopted children, grandchildren, etc.

"Director" means the Area Director, Sacramento Area Office, Bureau of Indian Affairs or an authorized representative acting under delegated authority.

"Enrollment Committee" means a committee of three (3) members whose names appear on the membership roll of the San Pasqual Band of Mission Indians prepared as of January 1, 1959, to assist in enrollment.

"General Council" means the governing body of the San Pasqual Band of Mission Indians which consists of all members of the Band 18 years of age or older.

"Living" means born on or before and alive on the date specified.

"Member(s)" means persons who names appear on the membership roll of the San Pasqual Band of Mission Indians prepared as of January 1, 1959.

"Membership Roll" means the membership roll of the San Pasqual Band of Mission Indians prepared as of Janaury 1, 1959, and approved October 5, 1966.

"Plan" means the plan for the use and distribution of judgment funds awarded the San Pasqual Band of Mission Indians by the U.S. Court of Claims in Docket 80–A, prepared pursuant to the Act of October 19, 1973, 25 U.S.C. 1401 et seq., as amended, and effective April 27, 1985.

"Secretary" means the Secretary of the Interior or an authorized representative acting under delegated authority.

"Sponsor" means any person who files an application for enrollment or appeal on behalf of another person.

"Staff Officer" means the Enrollment Officer of other personal authorized to prepare the roll.

"Superintendent" means the Superintendent, Southern California Agency, Bureau of Indian Affairs, or an authorized representative acting under delegated authority.

§ 76.2 Purpose.

The regulations in this Part 76 are to provide procedures to bring current the membership roll of the San Pasqual Band of Mission Indians to serve as the basis for the distribution of judgment funds awarded the Band by the U.S. Court of Claims in Docket 80–A.

§ 76.3 Information collection.

The Office of Management and Budget has informed the Department of the Interior that the information collection requirements contained in this Part need not be reviewed by them under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

§ 76.4 Additions to and deletions from the membership roll and the deadline for filing application forms.

(a) The membership roll of the Band shall be brought current to April 27, 1985, by:

(1) Adding the names of persons living on April 27, 1985, who are not enrolled with some other tribe or band; and

(i) Who would have qualified for the inclusion of their names on the January 1, 1959, membership roll of the Band had they filed applications within the time prescribed, or

(ii) Who were born after January 1, 1959, and

(A) Are descendants of Indians whose names appear as members of the Band on the Census Roll, provided such descendants possess one-eighth (⅛) or more degree of Indian blood of the Band, or

(B) Are Indians who can furnish sufficient proof to establish that they are ⅛ or more degree of Indian blood of the Band; and

(iii) Who file or have filed on their behalf application forms with the Superintendent, Southern California Agency, Bureau of Indian Affairs, 3600 Lime Street, Suite 722, Riverside, California 92501, by November 18, 1987. Application forms filed after that date will be rejected for failure to file on time regardless of whether the applicant otherwise meets the qualifications for membership. Except that members whose names appear on the membership roll shall not be required to file applications in accordance with this paragraph.

(2) Deleting the names of members who have relinquished in writing their membership in the Band or who have died since January 1, 1959, but prior to April 27, 1985, for whom certified documentation has been submitted.

(b) Members whose names appear on the membership roll whose enrollment was based on information subsequently determined to be inaccurate may be deleted from the roll subject to the approval of the Assistant Secretary.

§ 76.5 Notices.

(a) The Director shall give notice to all Directors of the Bureau of Indian Affairs and all Superintendents within the jurisdiction of the Director, of the preparation of the roll for public display in Bureau field offices. Reasonable efforts shall be made to place notices for public display in community buildings, tribal buildings, and Indian centers.

(b) The Superintendent shall, on the basis of available residence data, publish and republish when advisable, notices of the preparation of the roll in appropriate locales utilizing media suitable to the circumstances.

(c) The Superintendent shall mail notices of the preparation of the roll to enrollees at the last address available.

(d) Notices shall advise of the preparation of the roll and the relevant procedures to be followed including the qualifications for enrollment and the deadline for filing application forms to be eligible for enrollment. The notices shall also state how and where application forms may be obtained as well as the name, address, and telephone number of a person who may be contacted for further information.

§ 76.6 Application forms.

(a) Application forms to be filed by or for applicants for enrollment will be furnished by the Director, Superintendent, or other designated persons, upon written or oral request. Each person furnishing application forms shall keep a record of the names of individuals to whom forms are given, as well as the control numbers of the forms and the date furnished. Instructions for completing and filing applications shall be furnished with each form. The form shall indicate prominently the deadline for filing application forms.

(b) Among other information, each application form shall contain:

(1) Certification as to whether application form is for a biological child or adopted child of the parent through whom eligibility is claimed.

(2) If the application form is filed by a sponsor, the name and address of sponsor and relationship to applicant.

(3) A control number for the purpose of keeping a record of forms furnished interested individuals.

(4) Certification that the information given on the application form is true to the best of the knowledge and belief of the person filing the application form. Criminal penalties are provided by statute for knowingly filing false information in such applications (18 U.S.C. 1001).

(c) Application forms may be filed by sponsors on behalf of other persons.

(d) Every applicant or sponsor shall furnish the applicant's mailing address on the application form. Thereafter, the applicant or sponsor shall promptly notify the Superintendent of any change in address, giving appropriate identification of the application, otherwise the mailing address as stated on the form shall be acceptable as the address of record for all purposes under the regulations in this Part 76.

§ 76.7 Filing of application forms.

(a) Application forms filed by mail must be postmarked no later than midnight on the deadline specified. Where there is no postmark date showing on the envelope or the postmark date is illegible, application forms mailed from within the United States, including Alaska and Hawaii, received more than 15 days and application forms mailed from outside of the United States received more than 30 days after the deadline specified in the office of the Superintendent, will be denied for failure to file in time.

(b) Application forms filed by personal delivery must be received in the office of the Superintendent no later than close of business on the deadline specified.

(c) If the deadline for filing application forms falls on a Saturday, Sunday, legal holiday, or other nonbusiness day, the deadline will be the next working day thereafter.

§ 76.8 Verification forms.

The Superintendent shall mail a verification form to each member at the last available address to be completed and returned. The verification form will be used to ascertain the member's current name and address and that the member is still living, or if deceased, the member's date of death. Name and/or address changes will only be made if the verification form is signed by an adult member, if living, or the parent or guardian having legal custody of a minor member, or an authorized sponsor. The verification form may be used by any sponsor to notify the Superintendent of the date of death of a member.

§ 76.9 Burden of proof.

The burden of proof rests upon the applicant to establish eligibility for enrollment. Documentary evidence such as birth certificates, death certificates, baptismal records, copies of probate findings, or affidavits, may be used to support claims of eligibility for enrollment. Records of the Bureau of Indian Affairs may be used to establish eligibility. Except that where the Enrollment Committee recommends the deletion of the name of a member from the membership roll, the burden of proof is on the Enrollment Committee.

§ 76.10 Enrollment Committee election.

(a) At a regular or special meeting at which there is a quorum, the General Council shall elect three (3) persons whose names appear on the membership roll to serve as members of the Enrollment Committee and two (2) persons to act as alternates to the Committee. The three (3) persons receiving the highest number of votes shall constitute the Enrollment Committee of the Band and the persons receiving the fourth and fifth highest number of votes shall serve as alternate members of the Enrollment Committee. The person receiving the highest number

of votes shall serve as chairman of the Enrollment Committee.

(b) The Band may elect the Enrollment Committee prior to September 21, 1987. The term of office for the members of the Enrollment Committee shall be two (2) years from September 21, 1987. The Enrollment Committee, so elected, shall replace any Enrollment Committee previously elected under the regulations contained in this Part 76.

§ 76.11 Review of applications by the Enrollment Committee.

(a) The Superintendent shall submit all applications to the Enrollment Committee for review and recommendations; except that, in the cases of adopted persons where the Bureau of Indian Affairs has assured confidentiality to obtain the information necessary to determine the eligibility for enrollment of the individual or has the statutory obligation to maintain the confidentiality of the information, the confidential information may not be released to the Enrollment Committee, but the Superintendent shall certify as to the eligibility for enrollment of the applicant to the Enrollment Committee.

(b) The Enrollment Committee shall review all applications and make its recommendations in writing stating the reasons for acceptance or rejection for enrollment.

(c) The Enrollment Committee shall return the applications to the Superintendent with its recommendations and any additional evidence used in determining eligibility for enrollment within 30 days of receipt of the applications by the Enrollment Committee. The Superintendent may grant the Enrollment Committee additional time, upon request, for its review.

(d) The Enrollment Committee shall also submit the names of members it recommends be deleted from the membership roll to the Superintendent stating in writing the reasons for such deletions.

§ 76.12 Action by the Superintendent.

(a) The Superintendent shall accept the recommendations of the Enrollment Committee unless clearly erroneous.

(1) If the Superintendent does not accept the tribal recommendation, the Enrollment Committee shall be notified in writing, by certified mail, return receipt requested, or by personal delivery, of the action and the reasons therefor.

(2) The Enrollment Committee may appeal the decision of the Superintendent not to accept the tribal recommendation. Such appeal must be in writing and must be filed pursuant to Part 62 of this chapter.

(b) The Superintendent, upon determining an individual's eligibility, shall notify the individual, parent or guardian having legal custody of a minor, or sponsor, as applicable, in writing of the decision. If an individual files applications on behalf of more than one person, one notice of eligibility or adverse action may be addressed to the person who filed the applications. However, the notice must list the name of each person involved. Where an individual is represented by a sponsor, notification of the sponsor of eligibility or adverse action shall be considered to be notification of the individual.

(1) If the Superintendent determines that the individual is eligible, the name of the individual shall be placed on the roll.

(2) If the Superintendent determines that the individual is not eligible, he/she shall notify the individual, parent or guardian having legal custody of a minor, or sponsor, as applicable, in writing by certified mail, to be received by the addressee only, return receipt requested, and shall explain fully the reasons for the adverse action and the right to appeal to the Secretary. If correspondence is sent out of the United States, registered mail will be used. If a certified or registered notice is returned as "Unclaimed," the Superintendent shall remail the notice by regular mail together with an acknowledgment of receipt form to be completed by the addressee and returned to the Superintendent. If the acknowledgment of receipt is not returned, computation of the appeal period shall begin on the date the notice was remailed. Certified or registered notices returned for any reason other than "Unclaimed" need not be remailed.

(c) Except as provided in paragraph (b)(2) of this section, a notice of adverse action is considered to have been made and computation of the appeal period shall begin on the earliest of the following dates:

(1) Of delivery indicated on the return receipt;

(2) Of acknowledgment of receipt;

(3) Of personal delivery; or

(4) Of the return by the post office of an undelivered certified or registered letter.

(d) In all cases where an applicant is represented by an attorney, the attorney shall be recognized as fully controlling the application on behalf of the applicant and service on the attorney of a document relating to the application shall be considered to be service on the applicant. Where an applicant is represented by more than one attorney, service upon one of the attorneys shall be sufficient.

(e) To avoid hardship or gross injustice, the Superintendent may waive technical deficiencies in applications or other submissions. Failure to file by the deadline does not constitute a technical deficiency.

§ 76.13 Appeals.

Appeals from or on behalf of applicants who have been denied enrollment must be in writing and must be filed pursuant to Part 62 of this chapter. When the appeal is on behalf of more than one person, the name of each person must be listed in the appeal. A copy of Part 62 of this chapter shall be furnished with each notice of adverse action.

§ 76.14 Decision of the Assistant Secretary on appeals.

The decision of the Assistant Secretary on an appeal shall be final and conclusive and written notice of the decision shall be given the individual, parent or guardian having legal custody of the minor, or sponsor, as applicable. The name of any person whose appeal has been sustained will be added to the roll.

§ 76.15 Preparation, certification and approval of the roll.

(a) The staff officer shall prepare a minimum of five (5) copies of the roll of those persons determined to be eligible for enrollment. The roll shall contain for each person a roll number, name, address, sex, date of birth, date of death, when applicable, degree of Indian blood and in the remarks column, name and relationship of ancestor on the census roll through whom eligibility was established.

(b) A certificate shall be attached to the roll by the Superintendent certifying that to the best of his/her knowledge and belief the roll contains only the names of those persons who were determined to meet the qualifications for enrollment.

(c) The Director shall approve the roll.

§ 76.16 Special instructions.

To facilitate the work of the Superintendent, the Assistant Secretary may issue special instructions not inconsistent with the regulations in this Part 76.

Hazel E. Elbert,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 87-19052 Filed 8-19-87; 8:45 am]

BILLING CODE 4310-02-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 09-87-25]

Special Local Regulations; Annual Labor Day Fire Works Display, Maumee River, Toledo, OH

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Annual Labor Day Fireworks Display. This event will be held on the Maumee River on 07 September 1987 with an alternate date of 11 September 1987. The regulations are needed to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATES: These regulations become effective on 07 September 1987 and terminate on 11 September 1987.

FOR FURTHER INFORMATION CONTACT: CWO Gerald M. Trackim, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522-3982.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received by the Commander, Ninth Coast Guard District, until 10 August, 1987, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

This has been an annual event for many years and no negative comments concerning it have been received.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Because of the short duration of these regulations, their economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary.

Since the impact of these regulations is expected to be minimal the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The drafters of this regulation are CWO Gerald M. Trackim, project officer, Office of Search and Rescue and LCDR C.V. Mosebach, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The Annual Labor Day Fireworks Display will be conducted on the Maumee River on 07 September 1987. The alternate date for the event will be 11 September 1987. This event will have falling debris and ash and an unusually large concentration of spectator boats could pose hazards to navigation in the area. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (U.S. Coast Guard Station, Toledo, OH).

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended to add a temporary § 100.35-0925 to read as follows:

§ 100.35-0925 Annual Labor Day fire works Display, Maumee River.

(a) *Regulated area.* (1) The following area will be closed to vessel navigation or anchorage for vessels of 65 feet in length or greater from 8:30 P.M. (local time) until 10:00 P.M. on 07 September 1987:

That portion of the Maumee River from the Cherry Street Bridge to the Anthony Wayne Bridge.

(2) The following portion of the Maumee River will be closed to all vessel traffic, from 8:30 P.M. (local time) until 10:00 P.M. on 07 September 1987:

That portion of the Maumee River within a 500 foot radius of the fireworks barges.

(b) *Special local regulations.* (1) Vessels under 65 feet shall begin clearing the shipping channels at 9:45 P.M. local or when the fireworks display ends, whichever comes first.

(2) Two 60 foot fireworks barges will be moored at the City of Toledo Division of Streets, Harbor and Bridges Building Dock. Vessel masters shall pass with caution.

(3) If the weather on 07 September 1987 is inclement, the fireworks display and the river closure will be postponed until 8:30 p.m. to 10:00 p.m. on 11 September 1987. If postponed, notice will be given on 07 September 1987 over the U.S. Coast Guard Radio Net.

(4) Vessels desiring to transit the restricted area may do so only with prior approval of the Patrol Commander and when so directed by that officer. The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Vessels will be operated at a "no wake" speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. These rules shall not apply to participants in the event or vessels of the patrol, in the performance of their assigned duties.

(5) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with the orders of the Patrol Vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(6) This section is effective from 8:30 PM (EDT) on 07 September 1987 until 10:00 PM on 11 September 1987.

Dated: August 14, 1987.

A.M. Danielsen,

RADM U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 87-19077 Filed 8-19-87; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[COTP PHILA 87-003]

Security Zone Regulations; Delaware River and Bay

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a temporary security zone around the vessel USS THOMAS S. GATES while the vessel transits the Captain of the Port, Philadelphia zone to and from commissioning ceremonies scheduled for August 22, 1987, at Penn's Landing, Philadelphia, Pennsylvania. The zone is needed to safeguard the USS THOMAS S. GATES against destruction from sabotage or other subversive acts, accidents, or other causes of a similar nature. Except for vessels which are moored at marinas, wharves, or piers, or are anchored in established anchorage areas, and which remain moored or anchored while the USS THOMAS S. GATES passes their location, entry into this zone is

prohibited unless authorized by the Coast Guard commissioned, warrant, or petty officer in charge of a Coast Guard vessel enforcing the security zone.

EFFECTIVE DATES: This regulation becomes effective when the USS THOMAS S. GATES passes the Delaware Bay Entrance Channel Lighted Buoy Number 6 while headed for Philadelphia, Pennsylvania, at approximately 0300 (3:00 AM EDT) on August 18, 1987. It terminates when the USS THOMAS S. GATES passes the Delaware Bay Entrance Channel Lighted Buoy Number 6 while headed for sea at approximately 1800 (6:00 PM EDT) on August 25, 1987.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Ellis Davison at (609) 456–1370.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent destruction of the USS THOMAS S. GATES.

Drafting Information

The drafters of this regulation are Lieutenant Commander Ellis Davison, project officer for the Captain of the Port, and Commander Robert J. Reining, project attorney, Commander Fifth Coast Guard District Legal Staff.

Discussion of Regulation

The commissioning of the U.S. Navy cruiser USS THOMAS S. GATES is considered to be a cornerstone of the We the People 200 Celebrations planned for Summer of 1987 in Philadelphia. As such it will receive extensive media attention and could be a target for subversive, terrorist, or anti-nuclear demonstrations or activities. The Thomas S. Gates Commissioning Committee, consisting of representatives from the Coast Guard, local government, local and federal law enforcement and intelligence agencies, the Navy, and the We The People 200 organization, has been meeting since December 1986 to plan for the event. The Committee has requested a security zone be established by the Captain of the Port, Philadelphia, around the vessel for the period during which the vessel is transiting the Delaware River and Bay. This regulation is issued pursuant to 50 U.S.C. 191 as set out in the authority citation for all of Part 165.

Economic Assessment and Certification

This rule is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The extent of the security zone is so small that it will not prevent or impede maritime traffic except during the short maneuvering period while docking and undocking at Penn's Landing. During other periods of time while the regulation is in effect, maritime commerce will be able to transit the river freely and maintain the required distance from the USS THOMAS S. GATES with no, or at most minor, course or speed alterations. Since the impact of this rule is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulations

In consideration of the foregoing, Subpart D of Part 165 of Title 33, Code of Federal Regulations is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 33 CFR 160.5.

2. A new § 165.T05047 is added to read as follows:

§ 165.T05047 Security Zone: Delaware River and Bay in the vicinity of the USS THOMAS S. GATES.

(a) *Location.* The following area is a temporary security zone while the vessel USS THOMAS S. GATES is on the Delaware River or Bay for commissioning activities:

(1) The waters of the Delaware River and Bay, within 200 yards of the USS THOMAS S. GATES, but excluding the USS THOMAS S. GATES, while this ship transits inbound or outbound, between the Delaware Bay Entrance Channel Lighted Buoy Number 6 (light list number 37910) and Penn's Landing, Philadelphia, Pennsylvania.

(b) *Effective date.* This regulation becomes effective when the USS THOMAS S. GATES passes the Delaware Bay Entrance Channel Lighted Buoy Number 6 while headed for Philadelphia, Pennsylvania, at approximately 0300 (3:00 AM EDT) on August 18, 1987. It terminates when the USS THOMAS S. GATES passes the Delaware Bay Entrance Channel Lighted Buoy Number 6 while headed for sea at approximately 1800 (6:00 PM EDT) on August 25, 1987.

(c) *Regulation.* (1) Except for vessels which are moored at marinas, wharves, or piers, or are anchored in established anchorage areas, and which remain moored or anchored while the USS THOMAS S. GATES passes their location, no vessel or person may enter or remain within this security zone without the permission of the Coast Guard commissioned, warrant, or petty officer in charge of a Coast Guard vessel enforcing the security zone.

Dated: July 21, 1987.

E.K. Roe,

Captain, U.S. Coast Guard, Captain of the Port, Philadelphia.

[FR Doc. 87–19074 Filed 8–19–87; 8:45 am]

BILLING CODE 4910-14-M

PANAMA CANAL COMMISSION

35 CFR Part 9

Implementation of the Freedom of Information Reform Act of 1986 and Revisions to the Fee Schedule of the Freedom of Information Act

AGENCY: Panama Canal Commission.

ACTION: Interim rule with request of comments.

SUMMARY: The Panama Canal Commission amends its regulations to implement the Freedom of Information Reform Act of 1986 and to update its fee schedule for Freedom of Information Act and Privacy Act requests. These changes would identify different types of requesters and bring the fees into conformance with current costs incurred by the agency in processing requests.

DATES: Effective November 18, 1987; comments must be received on or before October 19, 1987.

ADDRESS: Send written comments to Thomas C. Duty, Chief, Administrative Services Division, Agency Records Officer, Panama Canal Commission, APO Miami 34011–5000.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Fuller, Assistant to the Secretary for Commission Affairs, Panama Canal Commission, 2000 L Street NW., Suite 550, Washington, DC 20036–4996 (Telephone: 202–634–6441).

SUPPLEMENTARY INFORMATION: The Panama Canal Commission is publishing interim regulations to implement the Freedom of Information Reform Act (Pub. L. 99–570) and to update the fees it charges requesters under the Freedom of Information Act and the Privacy Act to recover direct costs incurred by the agency in processing such requests.

This rule is not a major rule under the requirements of Executive Order 12291. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small business entities.

List of Subjects in 35 CFR Part 9

Freedom of information, Organization, Functions and availability of records, Panama Canal Commission, Privacy.

For the reasons set out in the preamble, 35 CFR Part 9 is amended as follows:

PART 9—ORGANIZATION, FUNCTIONS AND AVAILABILITY OF RECORDS—PANAMA CANAL COMMISSION

1. The authority citation for Part 9 is revised to read as follows:

Authority: 5 U.S.C. 552, as amended by Pub. L. 99–570, 100 Stat. 3207; 22 U.S.C. 3611.

2. Section 9.2 is revised to read as follows:

§ 9.2 Organization

The principal office of the Panama Canal Commission is located at Balboa Heights, Republic of Panama. The Office of the Secretary of the Panama Canal Commission is located at 2000 L Street NW., Suite 550, Washington, DC 20036–4996. The Commission also maintains a procurement office at 4400 Dauphine Street, New Orleans, LA 70146–6600.

§§ 9.4, 9.6, and 9.8 [Amended]

3. In § 9.4, §§ 9.6(a)(1) and 9.8(b)(1), all references to zip code "34011" are revised to read "34011–5000".

4. Section 9.5(a) is revised to read as follows:

§ 9.5 The Freedom of Information Act.

(a) The Freedom of Information Act (5 U.S.C. 552) is a law which creates a procedure for any person to request official records from United States Government agencies. The rest of the rules in this subpart explain how you may request official records from the Panama Canal Commission.

5. Section 9.6(b) is revised to read as follows:

§ 9.6 How to make a Freedom of Information Act request.

* * * * *

(b) The Panama Canal Commission may request that you furnish information as to the purpose of your request. Such information is required to assist agency officials in categorizing your request in order to accurately assess fees.

6. Section 9.11 is revised to read as follows:

§ 9.11 Fees for Freedom of Information Act requests.

(a) The following are fees charged by the Commission for document search and reproduction.

(1) Search for records: $7.10 per hour of search conducted by clerical personnel, and $23.50 per hour of search conducted by supervisory or professional personnel.

(2) Search requiring computers: $185.94 for the first two hours or fraction of the first two hours; $92.97 for each additional hour.

(3) Copying: $0.13 per page for the first copy of a record. The word "page" refers to a paper copy of a standard agency size which is 8½" x 11" or 11" x 14". For additional copies, you will be charged the official Panama Canal Commission tariff rate for reproduction.

(4) Converting microfilm to paper copy: $0.13 per page for the first copy of a record. For additional copies, you will be charged the official Panama Canal Commission tariff rate for reproduction. Microfilm search charges will be at the clerical rate.

(5) Duplication of tape recordings: (i) *Labor costs:* $10.65 per ½ hour for 40 channel tape recording; $7.30 per ½ hour for basic tape recording; $9.35 per ½ hour for video tape recording. Minimum charge for taping is ½ hour.

(ii) *Material costs:* No cost will be assessed to tapes if provided by requester. If agency furnishes tapes, the requester will be charged direct purchasing costs.

(6) Duplication of photographs: Black and white, up to 8" x 10", $2.55 per print; color, up to 8" x 10", $9.20 per print.

(7) Duplication of canal sounding and engineering charts, graphs, and drawings (reproducible and non-reproducible) at cost recovery rate.

(8) Other services: If there is no specific fee listed in this section for a service necessary for handling your request, you will be charged the official agency tariff for that service. If no tariff exists for that service, the Agency Records Officer is authorized to charge the direct cost to the Commission of that service.

(b) Review fees are chargeable only when a request is for a commercial use, as defined in 9.12(1). Review fees will be charged in accordance with the search fee rates set forth in 9.11(a)(1).

(c) If the Commission estimates that search charges are likely to exceed $25.00, and the requester has not previously agreed to pay fees as high as those anticipated, the agency will notify the requester of the estimated amount of fees, and offer the requester the opportunity to revise the request.

(d) The Panama Canal Commission may require a requester to pay fees in advance only if the estimated charges are likely to exceed $250.00, or the requester has previously failed to pay a fee in a timely fashion (i.e., within 30 days of the date of billing).

(1) If the requester has a history of prompt payment, and the estimated charges are likely to exceed $250.00, the Commission will notify the requester of the estimated cost and obtain satisfactory assurance of full payment.

(2) If the requester has no prior payment history, and the estimated charges are likely to exceed $250.00, the agency may require an advance payment of an amount up to the full amount of estimated charges.

(3) If the requester has a poor payment history, the agency may require advance payment of the full amount of the estimated fees, as well as any amount currently owed, plus interest on the delinquent amount, before the agency begins to process a new or pending request from that requester.

(4) When the agency acts under this subsection, the administrative time limits prescribed in sections 9.7(a) and 9.9(a) will begin only after receipt of the required fee payments.

(e) If you wish to request a waiver or reduction of fees, you must do so in writing. The official granting or denying your request or appeal may waive or reduce the fees if the official decides that providing the records you request would be in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government, and disclosure of the information is not primarily in the commercial interest of the requester.

(f) This agency will assess interest charges on an unpaid bill starting on the 31st day following the day on which the bill was sent. Interest will be computed at the rate prescribed in Section 3717 of Title 31, United States Code, and will accrue from the date of the billing.

§§ 9.12 and 9.13 [Redesignated as §§ 9.14 and 9.15]

7. Sections 9.12 and 9.13 are redesignated as §§ 9.14 and 9.15, respectively.

New §§ 9.12 and 9.13 are added to read as follows:

§ 9.12 Definitions.

"Commercial use" refers to a request or a requester seeking information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

"Duplication" refers to the process of making a copy of document necessary to respond to a Freedom of Information Act request. Such copies can take the form of paper copy, microfilm, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others. The copy provided will be in a form that is reasonably usable by the requester.

"Educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates programs of scholarly research.

"Non-commercial scientific institution" refers to an institution that is not operated on a commercial basis and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

"Representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. As used herein, the word "news" means information that is about current events or that would be of current interest to the public.

"Review" refers to the process of examining documents located in response to a request that is for a commercial use to determine whether any portion of any document located is permitted to be withheld. It also includes the time spent processing any documents for disclosure; i.e., doing all that is necessary to delete unreleasable portions and prepare documents for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

"Search time" is the time spent by the agency to identify the documents requested and will be charged in accordance with 9.11(a) (1) and (2).

§ 9.13 Classifying requests for fee purposes.

(a) When the Panama Canal Commission receives a request for documents that appears to be for commercial use, fees will be assessed for the total search time, review time, and all duplication of the documents. Requestors must reasonably describe the records sought. When the agency has reasonable cause to doubt the stated use of the documents, or where the use is not clear from the request itself, the agency can seek additional clarification. Requesters should note that the Panama Canal Commission may assess fees for search and review even if no documents are determined to be releasable under the Freedom of Information Act.

(b) Educational institution requesters will be provided the first 100 pages of duplication without charge and will not be charged for search time. To be eligible for this reduction in fees, the requester must show that the request is being made under the auspices of a qualifying institution and that the records are being sought to further scholarly research and not for commercial use. The requester must reasonably describe the records sought.

(c) Non-commercial scientific institution requesters will be provided the first 100 pages without charge and will not be charged for search time. To be eligible for this reduction in fees, the requester must show that the request is being made under the auspices of a qualifying institution and that the records are being sought to further scientific research and not for commercial use. The requester must reasonably describe the records sought.

(d) Representatives of the news media will be provided the first 100 pages without charge and will not be charged for search time. To be eligible for reduction in fees, the requester must meet the criteria prescribed in § 9.12(4) and the request must not be for commercial use. A request for records supporting the news dissemination function of the requester will not be considered to be a request that is for a commercial use. The requester must reasonably describe the records sought.

(e) For all other requesters who do not fit into the above categories, fees will be charged which recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time will be furnished without charge. The requester must reasonably describe the records sought.

(f) Those requesters searching for records about themselves will be treated under the Privacy Act of 1974 and will only be charged for reproduction costs.

(g) A requester may not file multiple requests solely in order to avoid payment of fees. When the agency reasonably believes that a requester is attempting to separate a request into a series of requests for the purpose of evading the assessment of fees, the agency may aggregate any such requests and charge accordingly.

Dated: July 30, 1987.

D.P. McAuliffe,

Administrator, Panama Canal Commission.

[FR Doc. 87-18835 Filed 8-19-87; 8:45 am]

BILLING CODE 3640-04-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[MM Docket No. 87-13; FCC 87-244]

FM Radio, Television; Amendment to the Commission's Rules Concerning FM Booster Stations and Television Booster Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Report and Order amends the Commission's rules to permit substantial increases in the output power of FM booster stations and to eliminate the restriction that such stations may only rebroadcast signals received over-the-air. The Report and Order also establishes a new television booster service to authorize licensees of television stations to operate TV boosters within their predicted service areas in a manner similar to that of FM boosters. The Commission believes these rule changes will provide opportunities for more efficient and effective use of on-channel FM and TV booster facilities to provide service to underserved and unserved areas and populations in areas where the signals of full service stations cannot reach due to intervening terrain obstructions.

EFFECTIVE DATE: September 21, 1987.

FOR FURTHER INFORMATION CONTACT: Marcia Glauberman, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in MM Docket 87-13, adopted July 16, 1987, and released August 5, 1987. The full text of this Commission decision, including the amendments to our rules, is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, Northwest, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street,

Northwest, Suite 140, Washington, DC 20037.

Summary of the Report and Order

1. The existing restrictions on the permissible output power of FM booster stations limit their usefulness as a secondary, fill-in service which enables licensees to provide FM radio to audiences within their predicted service areas that cannot be reached directly due to intervening terrain obstructions. By this Report and Order, the Commission amends its rules to increase the maximum permissible effective radiated power (ERP) of FM boosters from the existing limit of 10 watts to 20 percent of the maximum ERP for the class of the primary station being rebroadcast. FM boosters will continue to be limited such that the predicted service contour of the booster station may not extend service beyond the predicted service area of the primary station it rebroadcasts. This is consistent with the Commission's policy of licensing boosters only to the licensee of their primary FM station for the purpose of providing a spectrum-efficient means to deliver signals to audiences the primary stations are licensed to serve.

2. In the *Notice of Proposed Rule Making* in this proceeding, the Commission proposed interference protection standards based on desired to undesired signal ratios of co-channel and first, second, and third adjacent channel stations to that of the boosters in order to ensure that higher power FM boosters do not increase interference to other signals. The technical standards adopted in this Report and Order are a modified version of those proposed in the *Notice*. The revised technical standards will balance the Commission's concern that booster stations not cause additional interference to other broadcast services with the desire to facilitate the increased use of booster facilities in the least burdensome manner. To protect against increased interference to co-channel stations, the Commission will rely on the protection afforded by the rule that booster service may not extend the service area of the primary station. This rule is designed to match the predicted contours of stations operating at maximum facilitates for their class with the required separation distances between stations that serve to prevent undesirable co-channel interference. As proposed in the *Notice*, to protect against undue interference to first adjacent channel stations, the Commission will require that that the ratio of the signal of any such station to the booster's signal be at least 6 dB at any location within the predicted contour of the adjacent channel station. In addition, because interference from FM boosters to second and third adjacent channel stations is unlikely, the existing interference protection standards for FM translators will be used to protect second and third adjacent channel stations from increased interference from FM boosters.

3. The operation and placement of FM booster stations also is limited in many areas by the restriction that such stations may only retransmit signals received over-the-air from the primary FM station. Therefore, the Commission will eliminate this restriction and will permit FM licensees full discretion to feed signals to their FM boosters by whatever technical means they deem suitable, including the use of aural broadcast auxiliary channels on a secondary, noninterference basis.

4. The Report and Order also establishes a new "television broadcast booster station" service which will permit the licensees or permittees of full service television stations to operate on-channel boosters to fill in TV service, on a secondary basis, to areas within their predicted contours that are unable to receive service due to intervening terrain obstructions. TV booster facilities will be permitted to be located only within the predicted Grade B contour of the primary station and will not be permitted to be used to extend that predicted service area. TV booster stations will be subject to the existing technical standards, including output power limits, for TV translators and low power TV stations to ensure that they do not cause undue interference to other broadcast services. The ownership of TV boosters will be limited to the licensee of the primary station being rebroadcast and generally will be authorized on a noncompetitive basis.

5. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 604, a final regulatory flexibility analysis has been prepared. It is available for public viewing as part of the full text of this decision, which may be obtained from the Commission or its copy contractor.

6. The rules adopted herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose new or modified requirements or burdens on the public. Implementation of these new/modified requirements and burdens will be subject to approval by the Office of Management and Budget as prescribed by the Act.

7. Accordingly, it is ordered that under the authority contained in sections 4(i) and 303 of the Communications Act of 1934, as amended, Parts 73 and 74 of the Commission's Rules and Regulations are amended as set forth below.

8. It is further order that this proceeding is terminated.

Lists of Subjects in 47 CFR Parts 73 and 74

Radio broadcasting, Television broadcasting.

Rule Changes

Parts 73 and 74 of Title 47 of the Code of Federal Regulations are amended to read as follows:

1. The authority citations for Parts 73 and 74 continue to read as follows:

Authority: 47 U.S.C. 154 and 303.

PART 73—[AMENDED]

2. 47 CFR 73.1001 is amended by revising paragraph (c) to read as follows:

§ 73.1001 Scope.

* * * * *

(c) Certain provisions of this subpart apply to International Broadcast Stations (Subpart F, Part 73), Low Power TV, TV Translator and TV Booster Stations (Subpart G, Part 74) where the rules for those services so provide.

* * * * *

3. 47 CFR 73.1010 is amended by revising paragraph (e)(5) to read as follows:

§ 73.1010 Cross reference to rules in parts.

* * * * *

(e) * * *

(5) Subpart G, Low Power TV, TV Translator and TV Booster Stations;

* * * * *

4. 47 CFR 73.3500 is amended by renaming Form 346; renaming Form 347; and removing Form 349–R and its title, Application for Renewal of FM Booster Station License, to read as follows:

§ 73.3500 Application and report forms.

Form No.	Title
*	* * * *
346	Application for Authority to Construct or Make Changes in a Low Power TV, TV Translator, TV Booster or FM Translator Station.
347	Application for a Lower Power TV, TV Translator, TV Booster, or FM Translator Station License.
*	* * * *

5. 47 CFR 73.3521 is Revised to read as follows:

§ 73.3521 Mutually exclusive applications for low power television, television translators and television booster stations.

When there is a pending application for a new low power television, television translator, or television booster station, or for major changes in an existing station, no other application which would be directly mutually exclusive with the pending application may be filed by the same applicant or by any applicant in which any individual in common with the pending application has any interest, direct or indirect, except that interests or less than 1% will not be considered.

6. 47 CFR 73.3522 is amended by revising paragraph (a) to read as follows:

§ 73.3522 Amendment of applications.

(a) Predesignation amendment. (1) Subject to the provisions of §§ 73.3525, 73.3571, 73.3572, 73.3573, and 73.3580, and except as provided in paragraph (a)(2) of this section, any application, other than an application for a low power TV, TV translator, TV booster or a nonreserved band FM station may be amended as a matter of right prior to the adoption date of an order designating such applications for hearings, merely by filing the appropriate number of copies of the amendments in question duly executed in accordance with § 73.3513. If a petition to deny (or to designate for hearing) has been filed, the amendment shall be served on the petitioner.

(2) Subject to the provisions of §§ 73.3525, 73.3571, 73.3572, 73.3573 and 73.3580, and except for applications for low power TV, TV translator, TV booster or non-reserved band FM stations, mutually exclusive broadcast applications may be amended as a matter of right by the date specified (not less than 30 days after issuance) in the FCC's Public Notice announcing the acceptance for filing of the last-filed mutually exclusive application. Subsequent amendments prior to designation of the proceeding for hearing will be considered only upon a showing of good cause for late filing or pursuant to § 1.65 or § 73.3514. Unauthorized or untimely amendments are subject to return by the FCC's staff without consideration.

(3) Subject to the provisions of §§ 73.3525, 73.3572, and 73.3580, and except as provided in paragraph (a)(4) of this section, any application for a low power TV, TV translator or TV booster station may be amended at any time.

(4) No applicant for a low power TV, TV translator or TV booster station which is mutually exclusive can improve its status with respect to § 1.1622 by amendment of its application subsequent to the release of the initial Public Notice announcing the public lottery that will resolve the applicant's mutual exclusivity pursuant to § 1.1601 *et seq.*, not withstanding the requirements of § 1.65.

(5) Paragraphs (b) and (c) of this section are not applicable to applications for low power TV, TV translator, or TV booster stations.

* * * * *

7. 47 CFR 73.3533 is amended by revising paragraph (a)(6) to read as follows:

§ 73.3533 Application for construction permit or modification of construction permit.

(a) * * *

(6) FCC Form 346, "Application for Authority to Construct or Make Changes in a Low Power TV, TV Translator, TV Booster or FM Translator Station."

* * * * *

8. 47 CFR 73.3536 is amended by revising paragraph (a)(5) to read as follows:

§ 73.3536 Application for license to cover construction permit.

(a) * * *

(5) FCC Form 347, "Application for a Low Power TV, TV Translator, TV Booster, or FM Translator Station License."

* * * * *

9. 47 CFR 73.3564 is amended by revising paragraphs (a) and (c) to read as follows:

§ 73.3564 Acceptance of applications.

(a) Applications tendered for filing are dated upon receipt and then forwarded to the Mass Media Bureau, where an administrative examination is made to ascertain whether the applications are complete. Except for low power TV, TV translator, TV booster and non-reserved band FM (except for Class D) applications, those found to be complete or substantially complete are accepted for filing and are given file numbers. In the case of minor defects as to completeness, the applicant will be required to supply the missing information. Applications that are not substantially complete will be returned to the applicant. In the case of non-reserved band FM applications, those found to be substantially complete at tender will be accepted for tender and given file numbers. Non-reserved band FM applications that are not substantially complete will be returned to the applicant. In the case of low power TV, TV translator and TV booster applications, those found to be complete and sufficient will be accepted for filing and given file numbers. Low power TV, TV translator, and TV booster applications that are not complete and sufficient will be returned to the applicant.

* * * * *

(c) At regular intervals, the FCC will issue a Public Notice listing all applications and major amendments thereto which have been accepted for filing, except for low power TV, TV translator, TV booster, and non-reserved band FM stations. Pursuant to §§ 73.3571(c), 73.3572(c) and 73.3573(d) such notice shall establish a cut-off date (not less than 30 days from the date of issuance) for the filing of mutually exclusive applications and petitions to deny. However, no application will be accepted for filing unless certification of compliance with the local notice requirements of § 73.3580(h) has been made in the tendered application.

* * * * *

10. 47 CFR 73.3572 is amended by revising the heading, revising paragraphs (a), (c), (d), (e), and adding paragraph (f)(5) to read as follows:

§ 73.3572 Processing of TV broadcast, low power TV, TV translator and TV booster station applications.

(a) Applications for TV stations are divided into two groups:

(1) In the first group are applications for new stations or major changes in the facilities of authorized stations. A major change for TV broadcast stations authorized under this part is any change in frequency or community of license which is in accord with a present allotment contained in the Table of Allotments (§ 73.606). Other requests for change in frequency or community of license for TV broadcast stations must first be submitted in the form of a petition for rulemaking to amend the Table of Allotments. In the case of low power TV, TV translator, and TV booster stations authorized under Part 74 of this chapter, a major change is any change in:

(i) Frequency (output channel) assignment (does not apply to TV boosters);

(ii) Transmitting antenna system including the direction of the radiation, directive antenna pattern or transmission line;

(iii) Antenna height;

(iv) Antenna location exceeding 200 meters; or

(v) Authorized operating power.

(2) However, if the proposed modification of facilities, other than a change in frequency, will not increase the signal range of the low power TV, TV translator or TV booster station in

any horizontal direction, the modification will not be considered a major change. Provided, that in the case of an authorized low power TV, TV translator or TV booster station which is predicted to cause or receive interference to or from an authorized TV broadcast station pursuant to § 74.705 or interferes with broadcast or other services under §§ 74.703 or 74.709, that an application for a change in output channel, together with technical modifications which are necessary to avoid interference (including a change in antenna location of less than 16.1 km), will not be considered as an application for a major change in those facilities. Provided further, that the FCC may, within 15 days after the acceptance of any other application for modification of facilities, advise the applicant that such application is considered to be one for a major change and therefore subject to the provisions of §§ 73.3580 and 1.1111 pertaining to major changes.

* * * * *

(c) Applications for TV stations, other than low power TV, TV translator and TV booster stations, will be processed as nearly as possible in the order in which they are filed. Such applications will be placed in the processing line in numerical sequence, and will be drawn by the staff for study, the lowest file number first. In order that those applications which are entitled to be grouped for processing may be fixed prior to the time processing of the earliest filed application is begun, the FCC will periodically release a Public Notice listing applications which have been accepted for filing and announcing a date (not less than 30 days after issuance) on which the listed applications will be considered available and ready for processing and by which all mutually exclusive applications and petitions to deny the listed applications must be filed.

(d) Except for applications for low power TV, TV translator and TV booster stations, regardless of the number of applications filed for channels in a city or the number of assignments available in that city, those applications which are mutually exclusive, i.e., which request the same channel, will be designated for hearing. All other applications for channels will, if the applicants are duly qualified, receive grants. For example, if channels 6, 13, 47 and 53 have been assigned to City X and there are pending two applications for Channel 6 and one application for each of the remaining channels, the latter three applications will be considered grants without hearing and the two mutually exclusive applications requesting Channel 6 will be designated for hearing. If there are two pending applications for Channel 6 and two applications for Channel 13, separate hearings will be held.

(e) Where applications, other than applications for low power TV, TV translator, and TV booster stations, are mutually exclusive because the distance between the respective proposed transmitter sites is contrary to the station separation requirements set forth in § 73.610, such applications will be processed and designated for hearing at the time the application with the lower file number is reached for processing. In order to be considered mutually exclusive with a lower file number application, the higher file number application must have been accepted for filing at least one day before the lower file number application has been acted upon by the FCC.

(f) * * *

(5) TV booster station applications may be filed at any time and will be subject to the following procedures:

(i) Subsequent to filing, the FCC will release a Public Notice accepting for filing and proposing for grant those applications which are not mutually exclusive with any other TV translator, low power TV, or TV booster application, and providing for the filing of Petitions To Deny pursuant to § 73.3584;

(ii) Any application received during the filing period for TV translator, low power TV, or TV booster applications with which it is mutually exclusive will be included in the relevant public lottery pursuant to § 1.1601 *et seq.;* and

(iii) Applications received after the filing date for applications with which it is mutually exclusive will be dismissed as an untimely filing.

11. 47 CFR 73.3580 is amended by revising paragraphs (c), (d)(1) (d)(3), and (g) introductory text to read as follows:

§ 73.3580 Local public notice of filing of broadcast applications.

* * * * *

(c) An applicant who files an application or amendment thereto which is subject to the provisions of this section, must give a notice of this filing in a newspaper. Exceptions to this requirement are applications for renewal of AM, FM, TV and International broadcasting stations; low power TV stations; TV and FM translator stations, TV booster stations; FM booster stations; and applications subject to paragraph (e) of this section. The local public notice must be completed within 30 days of the tendering of the application. In the event the FCC notifies the applicant that a major change is involved, requiring the applicant to file public notice pursuant to §§ 73.3571, 73.3572, 73.3573 or 73.3578, this filing notice shall be given in a newspaper following this notification.

* * * * *

(d) * * *

(1) An applicant who files for renewal of a broadcast station license, other than a low power TV station license not locally originating programming as defined by § 74.701(h), FM translator station, FM booster station, TV booster station or a TV translator station license, must give notice of this filing by broadcasting announcements on applicant's station. (Sample and schedule of announcements are below.) Newspaper publication is not required. An applicant who files for renewal of a low power TV station license not locally originating programming as defined by § 74.701(h), FM translator station, FM booster station, TV booster station or TV translator station licensee will comply with (g) below.

(2) * * *

(3) An applicant who files for modification, assignment or transfer of a broadcast station license (except for International broadcast, low power TV, TV translator, TV booster, FM translator and FM booster stations) shall give notice of the filing in a newspaper as described in paragraph (c) of this section, and also broadcast the same notice over the station as follows:

* * * * *

(g) An applicant who files for an authorization, major modifications, assignment, transfer or renewal, or a major amendment thereto, for a low power TV, TV translator, TV booster, FM translator, or FM booster station must give notice of this filing in a daily, weekly or biweekly newspaper of general circulation in the community or area to be served.

(An applicant who files for renewal of a low power TV station locally originating programming as defined by § 74.701(h) must give notice pursuant to (d)(1) of this section.) The filing notice will be given immediately following the tendering for filing of the application or amendment, or immediately following notification to the applicant by the FCC that public notice is required pursuant to §§ 73.3572, 73.3573, or 73.3578.

* * * * *

12. 47 CFR 73.3584 is amended by revising paragraphs (a), (b), and (c) introductory text to read as follows:

§ 73.3584 Petitions to deny.

(a) Except in the case of applications for new low power TV, TV translator or

TV booster stations, for major changes in the existing facilities of such stations, or for applications for a change in output channel tendered by displaced low power TV and TV translator stations pursuant to § 73.3572(a)(1), any party in interest may file with the Commission a Petition to Deny any application (whether as originally filed or if amended so as to require a new file number pursuant to §§ 73.3571(j), 73.3572(b), 73.3573(b), 73.3574(b) or 73.3578) for which local notice pursuant to § 73.3580 is required, provided such petitions are filed prior to the day such applications are granted or designated for hearing; but where the FCC issues a public notice pursuant to the provisions of §§ 73.3571(c), 73.3572(c) or § 73.3573(d), establishing a "cut-off" date, such petitions must be filed by the date specified. In the case of applications for transfers and assignments of construction permits or station licenses, Petitions to Deny must be filed not later than 30 days after issuance of a public notice of the acceptance for filing of the applications. In the case of applications for renewal of license, Petitions to Deny may be filed at any time up to the last day for filing mutually exclusive applications under § 73.3516(e). Requests for extension of time to file Petitions to Deny applications for new broadcast stations or major changes in the facilities of existing stations or applications for renewal of license will not be granted unless all parties concerned, including the applicant, consent to such requests, or unless a compelling showing can be made that unusual circumstances make the filing of a timely petition impossible and the granting of an extension warranted.

(b) Except in the case of applications for new low power TV, TV translator, or TV booster stations, for major changes in the existing facilities of such stations, or for applications for a change in output channel tendered by displaced low power TV or TV translator stations pursuant to § 73.3572(a)(1), the applicant may file an opposition to any Petition to Deny, and the petitioner a reply to such opposition in which allegations of fact or denials thereof shall be supported by affidavit of a person or persons with personal knowledge thereof. The times for filing such oppositions and replies shall be those provided in § 1.45 except that as to a Petition to Deny an application for renewal of license, an opposition thereto may be filed within 30 days after the Petition to Deny is filed, and the party that filed the Petition to Deny may reply to the opposition within 20 days after opposition is filed, whichever is longer. The failure to file an opposition or reply will not necessarily be construed as an admission of any fact or argument contained in a pleading.

(c) In the case of applications for new low power TV, TV translator, or TV booster stations, for major changes in the existing facilities of such stations, or for applications for a change in output channel tendered by displaced low power TV and TV translator stations pursuant to § 73.3572(a)(1), any party in interest may file with the FCC a Petition to Deny any application (whether as originally filed or if amended so as to require a new file number pursuant to § 73.3572(b)) for which local notice pursuant to § 73.3580 is required, provided such petitions are filed within 30 days of the FCC Public Notice proposing the application for grant (applicants may file oppositions within 15 days after the Petition to Deny is filed); but where the FCC selects a tentative permittee pursuant to Section 1.1601 *et seq.*, Petitions to Deny shall be accepted only if directed against the tentative selectee and filed after issuance of and within 15 days of FCC Public Notice announcing the tentative selectee. The applicant may file an opposition within 15 days after the Petition to Deny is filed. In cases in which the minimum diversity preference provided for in § 1.1623(f)(1) has been applied, an "objection to diversity claim" and opposition thereto, may be filed against any applicant receiving a diversity preference, within the same time period provided herein for Petitions and Oppositions. In all pleadings, allegations of fact or denials thereof shall be supported by appropriate certification. However, the FCC may announce, by the Public Notice announcing the acceptance of the last-filed mutually exclusive application, that a notice of Petition to Deny will be required to be filed no later than 30 days after issuance of the Public Notice.

* * * * *

13. 47 CFR 73.3598 is amended by revising paragraph (b) to read as follows:

§ 73.3598 Period of construction.

* * * * *

(b) Other broadcast, auxiliary and Instructional TV Fixed Stations. Each original permit for the construction of a new AM, FM or International Broadcast; low power TV, TV translator; TV booster; FM translator; FM booster; broadcast auxiliary; or Instructional TV Fixed station, or to make changes in such existing stations, shall specify a period of no more than 18 months from the date of issuance of the original construction permit within which construction shall be completed and application for license be filed.

14. 47 CFR 74.1 is amended by revising paragraph (b) to read as follows:

§ 74.1 Scope.

* * * * *

(b) Rules in Part 74 which apply exclusively to a particular service are contained in that service subpart, as follows: Experimental Broadcast Stations, Subpart A; Remote Pickup Broadcast Stations, Subpart D; Aural Broadcast STL and Intercity Relay Stations, Subpart E; TV Auxiliary Broadcast Stations, Subpart F; Low Power TV, TV Translator and TV Booster Stations, Subpart G; Low Power Auxiliary Stations, Subpart H; Instructional TV Fixed Service, Subpart I; FM Broadcast Translator Stations and FM Broadcast Booster Stations, Subpart L.

15. 47 CFR 74.15 is amended by revising paragraph (c) to read as follows:

§ 74.15 Station license period.

* * * * *

(c) The license of an FM broadcast booster station or a TV broadcast booster station will be issued for a period running concurrently with the license of the FM radio broadcast station or TV broadcast station (primary station) with which it is used.

* * * * *

16. 47 CFR 74.501 is amended by revising paragraphs (a) and (b) to read as follows:

§ 74.501 Classes of aural broadcast auxiliary stations.

(a) *Aural broadcast STL station.* A fixed station utilizing telephony for the transmission of aural program material between a studio and the transmitter of a broadcasting station other than an international broadcasting station, for simultaneous or delayed broadcast, or other purposes as authorized in § 74.531.

(b) *Aural broadcast intercity relay stations.* A fixed station for the transmission of aural program material between radio broadcast stations, other than international broadcast stations, and between FM radio broadcast stations and their co-owned FM booster stations, or other purposes as authorized in § 74.531.

* * * * *

17. 47 CFR 74.531 is amended by redesignating paragraphs (c) through (f) as (d) through (g) and adding new paragraph (c) to read as follows:

§ 74.531 Permissible service.

* * * * *

(c) An aural broadcast STL or intercity relay may be used to transmit material between an FM broadcast radio station and an FM booster station owned, operated, and controlled by the licensee of the originating FM radio station. This use shall not interfere with or otherwise preclude use of these broadcast auxiliary facilities by broadcast auxiliary stations transmitting aural programming between the studio and transmitter location of a broadcast station or between broadcast stations as provided in paragraphs (a) and (b) above.

* * * * *

18. 47 CFR 74.532 is amended by revising paragraph (a) to read as follows:

§ 74.532 Licensing requirements.

(a) An aural broadcast STL or intercity relay station will be licensed only to the licensee or licensees of broadcast stations other than international broadcast stations, and for use by broadcast stations or FM booster stations owned entirely by or under common control of the licensee or licensees.

* * * * *

PART 74—[AMENDED]

19. In 47 CFR Part 74, the heading for Subpart G is revised to read as follows:

Subpart G—Low Power TV, TV Translator, and TV Booster Stations

20. 47 CFR 74.701 is amended by adding paragraph (i) to read as follows:

§ 74.701 Definitions.

* * * * *

(i) *Television broadcast booster station.* A station in the broadcast service operated by the licensee or permittee of a full service television broadcast station for the purpose of retransmitting the programs and signals of such primary station without significantly altering any characteristic of the original signal other than its amplitude. A television broadcast booster station may only be located such that its entire service area is located within the protected contour of the primary station it retransmits. For purposes of this paragraph, the service area of the booster and the protected contour of the primary station will be determined by the methods prescribed in § 74.705(c).

21. 47 CFR 74.702 is amended by adding paragraph (c) to read as follows:

§ 74.702 Channel assignments.

* * * * *

(c) A television broadcast booster station will be authorized on the channel assigned to its primary station.

22. 47 CFR 74.703 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 74.703 Interference.

(a) An application for a new low power TV, TV translator, or TV booster station or for a change in the facilities of such an authorized station will not be granted when it is apparent that interference will be caused. The licensee of a new low power TV, TV translator, or TV booster shall protect existing low power TV and TV translator stations from interference within the protected contour defined in § 74.707.

(b) It shall be the responsibility of the licensee of a low power TV, TV translator, or TV booster station to correct at its expense any condition of interference to the direct reception of the signal of any other TV broadcast station operating on the same channel as that used by the low power TV, TV translator, or TV booster station or an adjacent channel which occurs as a result of the operation of the low power TV, TV translator, or TV booster station. Interference will be considered to occur whenever reception of a regularly used signal is impaired by the signals radiated by the low power TV, TV translator, or TV booster station, regardless of the quality of the reception or the strength of the signal so used. If the interference cannot be promptly eliminated by the application of suitable techniques, operation of the offending low power TV, TV translator, or TV booster station shall be suspended and shall not be resumed until the interference has been eliminated. If the complainant refuses to permit the low power TV, TV translator, or TV booster station to apply remedial techniques that demonstrably will eliminate the interference without impairment of the original reception, the licensee of the low power TV, TV translator, or TV booster station is absolved of further responsibility.

(c) It shall be the responsibility of the licensee of a low power TV, TV translator, or TV booster station to correct any condition of interference which results from the radiation of radio frequency energy outside its assigned channel. Upon notice by the FCC to the station licensee or operator that such interference is caused by spurious omissions of the station, operation of the station shall be immediately suspended and not resumed until the interference has been eliminated. However, short test transmissions may be made during the period of suspended operation to check the efficacy of remedial measures.

* * * * *

23. 47 CFR 74.705 is amended by revising paragraphs (c), (d) introductory text, and (d)(1)(ii) to read as follows:

§ 74.705 TV broadcast station protection.

* * * * *

(c) The low power TV, TV translator, or TV booster station field strength is calculated from the proposed effective radiated power (ERP) and the antenna height above average terrain (HAAT) in pertinent directions.

(1) For co-channel protection, the field strength is calculated using Figure 9a, 10a, or 10c of § 73.699 (F(50,10) charts) of Part 73 of this chapter.

(2) For low power TV, TV translator, and TV boosters that do not specify the same channel as the TV broadcast station to be protected, the field strength is calculated using Figure 9, 10, or 10b of § 73.699 (F(50,50) charts) of Part 73 of this chapter.

(d) A low power TV, TV translator, or TV booster station application will not be accepted if the ratio in dB of its field strength to that of the TV broadcast station at the protected contour fails to meet the following:

(1) * * *

(ii) A description of the means by which the low power TV, TV translator, or TV booster station will be maintained within the tolerances specified in § 74.761 for offset operation.

* * * * *

24. 47 CFR 74.707 is amended by revising paragraphs (a)(1) introductory text, (b)(1), (b)(3), (c) introductory text, (c)(2) (d) introductory text and (d)(1)(ii) to read as follows:

§ 74.707 Low power TV and TV translator station protection.

(a)(1) A low power TV or TV translator will be protected from interference from other low power TV or TV translator stations, or TV booster stations within the following predicted contours:

* * * * *

(b)(1) An application to construct a new low power TV, TV translator, or TV booster station or change the facilities of an existing station will not be accepted if it specifies a site which is within the protected contour of a co-channel or first adjacent channel low power TV, TV translator, or TV booster station, except that a TV booster station may be located within the protected contour of its co-channel primary station.

(2) * * *

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(3) A UHF low power TV, TV translator, or TV booster construction permit application will not be accepted if it specifies a site within the UHF low power TV, TV translator, or TV booster station's protected contour and proposes operation on a channel either 7 channels below or 14 or 15 channels above the channel in use by the low power TV, TV translator, or TV booster station.

(c) The low power TV, TV translator, or TV booster construction permit application field strength is calculated from the proposed effective radiated power (ERP) and the antenna above average terrain (HAAT) in pertinent directions.

(1) * * *

(2) For low power TV, TV translator, or TV booster applications that do not specify the same channel as the low power TV, TV translator, or TV booster station to be protected, the field strength is calculated using Figure 9, 10, or 10b of § 73.699 (F(50,50) charts) of Part 73 of this chapter.

(d) A low power TV, TV translator, or TV booster station application will not be accepted if the ratio in dB of its field strength to that of the authorized low power TV, TV translator, or TV booster station at its protected contour fails to meet the following:

(1) * * *

(ii) A description of the means by which the low power TV, TV translator, or TV booster station's frequencies will be maintained within the tolerances specified in § 74.761 for offset operation.

* * * * *

25. 47 CFR 74.731 is amended by revising paragraphs (a) and (b) introductory text and adding paragraphs (j) and (k) to read as follows:

§ 74.731 Purpose and permissible service.

(a) Television broadcast translator stations and television broadcast booster stations provide a means whereby the signals of television broadcast stations may be retransmitted to areas in which direct reception of such television broadcast stations is unsatisfactory due to distance or intervening terrain barriers.

(b) Except as provided in paragraph (f) of this section, a television broadcast translator station or television broadcast booster station may be used only to receive the signals of a television broadcast station, another television broadcast translator station, a television translator relay station, a television intercity relay station, a television STL station, or other suitable source such as a CARS or common carrier microwave station, for the simultaneous retransmission of the programs and signals of a television broadcast station. Such retransmissions may be accomplished by either:

* * * * *

(j) Television broadcast booster stations provide a means whereby the licensee of a television broadcast station may provide service to areas of low signal strength in any region within the primary station's Grade B contour. The booster station may not be located outside the predicted Grade B of its primary station nor may the predicted Grade B signal of the television booster station extend beyond the predicted Grade B contour of the primary station. A television broadcast booster station is authorized to retransmit only the signals of its primary station; it shall not retransmit the signals of any other stations nor make independent transmissions. However, locally generated signals may be used to excite the booster apparatus for the purpose of conducting tests and measurements essential to the proper installation and maintenance of the apparatus.

(k) The transmissions of a television broadcast booster station shall be intended for direct reception by the general public. Such stations will not be permitted to establish a point-to-point television relay system.

26. 47 CFR 74.732 is amended by adding paragraphs (g) and (h) to read as follows:

§ 74.732 Eligibility and licensing requirements.

* * * * *

(g) A television broadcast booster station will be authorized only to the licensee or permittee of the television station whose signals the booster will rebroadcast, to areas within the Grade B contour of the primary station.

(h) No numerical limit is placed on the number of booster stations that may be licensed to a single licensee. A separate license is required for each television broadcast booster station.

27. 47 CFR 74.735 is amended by revising paragraphs (a) and (d) to read as follows:

§ 74.735 Power limitations.

(a) The power output of the final radio frequency amplifier of a VHF low power TV, TV translator, or TV booster station, except as provided for in paragraphs (d) and (f) of this section, shall not exceed 0.01 kW visual power. A UHF station shall be limited to a maximum of 1 kW peak visual power except as provided for in paragraph (f) of this section. In no event shall the transmitting apparatus be operated with a power output in excess of the manufacturer's rating.

* * * * *

(d) VHF low power TV, TV translator, and TV booster stations authorized on channels listed in the TV table of allocations (see § 73.606(b) of Part 73 of this chapter) will be authorized a maximum output power of the radio frequency amplifier of 0.1 kW peak visual power.

* * * * *

28. 47 CFR 74.736 is amended by revising paragraph (a) to read as follows:

§ 74.736 Emissions and bandwidth.

(a) The license of a low power TV, TV translator, or TV booster station authorizes the transmission of the visual signal by amplitude modulation (A5) and the accompanying aural signal by frequency modulation (F3).

* * * * * *

29. 47 CFR 74.737 is amended by revising paragraph (a) to read as follows:

§ 74.737 Antenna location.

(a) An applicant for a new low power TV, TV translator, or TV booster station or for a change in the facilities of an authorized station shall endeavor to select a site that will provide a line-of-sight transmission path to the entire area intended to be served and at which there is available a suitable signal from the primary station, if any, that will be retransmitted.

* * * * *

30. 47 CFR 74.750 is amended by revising paragraphs (a), (d) introductory text, (e)(1), (e)(2), and (g) to read as follows:

§ 74.750 Transmission system facilities.

(a) Applications for new low power TV, TV translator, and TV booster stations and for increased transmitter power for previously authorized facilities will not be accepted unless the transmitter is listed in the FCC's list of equipment type accepted for licensing under the provisions of this subpart.

* * * * *

(d) Low power TV, TV translator and transmitting equipment using a modulation process for either program origination or rebroadcasting TV booster transmitting equipment using a modulation process must meet the following requirements:

* * * * *

(e) * * *

(1) Any manufacturer of apparatus intended for use at low power TV, TV translator, or TV booster stations may request type acceptance by following the procedures set forth in Part 2, Subpart J, of this chapter. Equipment

found to be acceptable by the FCC will be listed in the "Radio Equipment List" published by the FCC. These lists are available for inspection at the FCC headquarters in Washington, DC or at any of its field offices.

(2) Low power TV, TV translator, and TV booster transmitting apparatus that has been type accepted by the FCC will normally be authorized without additional measurements from the applicant or licensee.

* * * * *

(g) Low power TV, TV translator, or TV booster stations installing new type accepted transmitting apparatus incorporating modulating equipment need not make equipment performance measurements and shall so indicate on the station license application. Stations adding new or replacing modulating equipment to existing low power, TV translator, or TV booster station transmitting apparatus must have a qualified operator (§ 74.16) examine the transmitting system after installation. This operator must certify in the application for the station license that the transmitting equipment meets the requirement of paragraph (d)(1) of this section. A report of the methods, measurements, and results must be kept in the station records. However, stations installing modulating equipment solely for the limited local origination of signals permitted by § 74.731 need not comply with the requirements of this paragraph.

31. 47 CFR 74.751 is amended by revising paragraph (b)(1) to read as follows:

§ 74.751 Modification of transmission systems.

* * * * *

(b) * * *

(1) Replacement of the transmitter as a whole, except replacement with a transmitter of identical power rating which has been type accepted by the FCC for use by low power TV, TV translator, and TV booster stations, or any change which could result in a change in the electrical characteristics or performance of the station.

* * * * *

32. 47 CFR 74.761 is amended by revising the introductory text and paragraph (d) to read as follows:

§ 74.761 Frequency tolerance.

The licensee of a low power TV, TV translator, or TV booster station shall maintain the transmitter output frequencies as set forth below. The frequency tolerance of stations using direct frequency conversion of a received signal and not engaging in offset carrier operation as set forth in paragraph (d) of this section will be referenced to the authorized plus or minus 10 kHz offset, if any, of the primary station.

* * * * *

(d) The visual carrier shall be maintained to within 1 kHz of the assigned channel carrier frequency if the low power TV, TV translator, or TV booster station is authorized with a specified offset designation in order to provide protection under the provisions of § 74.705 or § 74.707.

33. 47 CFR 74.762 is amended by revising paragraphs (a) and (b) to read as follows:

§ 74.762 Frequency measurements.

(a) The licensee of a low power TV station, a TV translator, or a TV booster station must measure the carrier frequencies of its output channel as often as necessary to ensure operation within the specified tolerances, and at least once each calendar year at intervals not exceeding 14 months.

(b) In the event that a low power TV, TV translator, or TV booster station is found to be operating beyond the frequency tolerance prescribed in § 74.761, the licensee promptly shall suspend operation of the transmitter and shall not resume operation until transmitter has been restored to its assigned frequencies. Adjustment of the frequency determining circuits of the transmitter shall be made only by a qualified person in accordance with § 74.750(g).

34. 47 CFR 74.763 is amended by revising paragraphs (a) and (c) to read as follows:

§ 74.763 Time of operation.

(a) A low power TV, TV translator, or TV booster station is not required to adhere to any regular schedule of operation. However, the licensee of a TV translator or TV booster station is expected to provide service to the extent that such is within its control and to avoid unwarranted interruptions in the service provided.

* * * * *

(c) Failure of a low power TV, TV translator, or TV booster station to operate for a period of 30 days or more, except for causes beyond the control of the licensee, shall be deemed evidence of discontinuation of operation and the license of the station may be cancelled at the discretion of the FCC.

* * * * *

35. 47 CFR 74.780 is amended by revising the heading and the introductory text to read as follows:

§ 74.780 Broadcast regulations applicable to translators, low power, and booster stations.

The following rules are applicable to TV translator, low power TV, and TV booster stations:

* * * * *

36. 47 CFR 74.781 is amended by revising paragraph (a) to read as follows:

§ 74.781 Station records.

(a) The licensee of a low power TV, TV translator, or TV booster station shall maintain adequate station records, including the current instrument of authorization, official correspondence with the FCC, contracts, permission for rebroadcasts, and other pertinent documents.

* * * * *

37. 47 CFR 74.783 is amended by adding paragraph (e) to read as follows:

§ 74.783 Station identification.

* * * * *

(e) TV broadcast booster station shall be identified by their primary stations by broadcasting of the primary station's call letters and location in accordance with the provisions of § 73.1201 of this chapter.

38. 47 CFR 74.784 is amended by redesignating paragraph (d) as paragraph (e) and adding a new paragraph (d) to read as follows:

§ 74.784 Rebroadcasts.

* * * * *

(d) A TV booster station may rebroadcast only programs and signals that are simultaneously transmitted by the primary station to which it is authorized.

* * * * *

39. 47 CFR 74.1201 is amended by revising paragraph (f) to read as follows:

§ 74.1201 Definitions.

* * * * *

(f) *FM broadcast booster station.* A station in the broadcasting service operated for the sole purpose of retransmitting the signals of an FM radio broadcast station, by amplifying and reradiating such signals, without significantly altering any characteristic of the incoming signal other than its amplitude.

40. 47 CFR 74.1203 is revised to read as follows:

§ 74.1203 Interference.

(a) FM translators and FM boosters will be authorized and permitted to continue to operate only where they cause no interference to the direct reception by the public of the off-the-air

signals of any authorized broadcast station including Class D (secondary) noncommercial educational FM stations. FM translators and FM boosters shall not cause harmful interference to the transmissions of any other authorized radio station nor shall an FM translator or FM booster cause interference to reception by a television broadcast translator station of its input signals. FM translator stations or FM booster stations which may cause any such interference will not be authorized. FM booster stations will be exempt from the provisions of this paragraph to the extent that they may cause limited interference to their primary stations' signals subject to the conditions of paragraph (e) of this section.

(b) Interference will be considered to occur whenever reception to a regularly used off-the-air signal by viewers or listeners is impaired by the signals radiated by the translator or booster, regardless of the quality of such reception, the strength of the signals so used, or the channel on which the protected signal is transmitted.

(c) If interference cannot be promptly eliminated by the application of suitable techniques, operation of the offending translators or booster shall be immediately suspended and shall not be resumed until the interference has been eliminated. Short test transmissions may be made during the period of suspended operation to check the efficacy of remedial measures. If a complainant refuses to permit the translator or booster licensee to apply remedial techniques which demonstrably will eliminate the interference without impairment to the original reception, the licensee of the translator or booster is absolved of further responsibility.

(d) It shall be the responsibility of the licensee of an FM translator station or FM booster station to correct any condition of interference which results from the radiation of radio frequency energy by its equipment on any frequency outside the assigned channel. Upon notice by the Commission to the station licensee or operator that such interference is being caused, the operation of the translator station or booster station shall be immediately suspended and shall not be resumed until the interference has been eliminated or it can be demonstrated that the interference is not due to spurious emissions by the FM translator station or FM booster station: *Provided, however,* That short test transmissions may be made during the period of suspended operation to check the efficacy of remedial measures.

(e) An FM booster station may not disrupt the existing service of its primary stations nor may it cause interference to the signal provided by the primary station within the boundaries of the principal community to be served.

41. 47 CFR 74.1231 is amended by revising paragraph (h) to read as follows:

§ 74.1231 Purpose and permissible service.

* * * * *

(h) FM broadcast booster stations provide a means whereby the licensee of an FM broadcast station may provide service to areas of low signal strength in any region within the primary station's predicted service contour. An FM broadcast booster station is authorized to retransmit only the signals of its primary station; it shall not retransmit the signals of any other station nor make independent transmissions: *Provided, however,* That locally generated signals may be used to excite the booster apparatus for the purpose of conducting tests and measurements essential to the proper installation and maintenance of the apparatus.

* * * * *

42. 47 CFR 74.1232 is amended by revising paragraph (e), removing paragraph (g) and redesignating paragraph (h) as (g).

§ 74.1232 Eligibility and licensing requirements.

* * * * *

(e) An FM broadcast booster station will be authorized only to the licensee or permittee of the FM radio broadcast station whose signals the booster station will retransmit, to serve areas within the predicted service contour of the primary station, subject to Note, § 74.1231(h).

* * * * *

43. 47 CFR 74.1235 is amended by revising paragraph (a) introductory text and by adding paragraph (c) to read as follows:

§ 74.1235 Power limitations.

(a) The power output of the final radio frequency amplifier of an FM translator shall not exceed 10 watts, except that FM broadcast translator stations serving areas east of the Mississippi River or in Zone I–A shall be limited to 1 watt. This power may be fed into a single transmitting antenna or may be divided between two or more transmitting antennas or arrays of antennas or any manner found useful or desirable by the licensee. In individual cases, the Commission may authorize the use of more than one final radio frequency amplifier at a single station under the following conditions:

* * * * *

(c) The output power of FM booster stations shall be limited such that the predicted service contour of such stations computed in accordance with § 73.313 (a)–(d), may not extend beyond the area covered by the predicted service contour of the primary station that they rebroadcast and that such output power may not exceed 20 percent of the maximum allowable effective radiated power for the primary station's class. Further, FM booster stations shall be subject to the requirement that the signal of any first adjacent channel station must exceed the signal of the booster station by 6 dB at all points within the protected contour of any first adjacent channel station.

44. 47 CFR 74.1236 is amended by revising paragraph (a) to read as follows:

§ 74.1236 Emissions and bandwidth.

(a) The license of a station authorized under this subpart authorizes the transmission of each F3 or other types of frequency modulation upon a showing of need as long as the emission complies with the following:

(1) For transmitter output powers no greater than 10 watts, paragraphs (b), (c), and (d) of this section apply.

(2) For transmitter output powers greater than 10 watts, § 73.317 (a), (b), (c), and (d) apply.

* * * * *

45. 47 CFR 74.1250 is amended by revising paragraph (c), redesignating paragraphs (d) through (f) as paragraphs (e) through (g) and adding new paragraph (d) to read as follows:

§ 74.1250 Transmitters and associated equipment.

* * * * *

(c) The following requirements must be met before translator or booster equipment of 10 watts or less output power will be type accepted by the Commission:

* * * * *

(d) Booster station transmitters having power outputs in excess of 10 watts must meet the requirements of § 73.1660 of this chapter.

* * * * *

46. 47 CFR 74.1261 is revised to read as follows:

§ 74.1261 Frequency tolerance.

The licensee of an FM translator station shall maintain the center frequency at the output of the translator within 0.01 percent of its assigned frequency. The output frequency of an FM booster station shall comply with the requirements of § 73.1545(b).

Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 87-19040 Filed 8-19-87; 8:45 am]
BILLING CODE 6712-01-M

NATIONAL RAILROAD PASSENGER CORPORATION

49 CFR Part 701

Freedom of Information Act; Schedule of Fees and Other Administrative Changes

AGENCY: National Railroad Passenger Corporation (Amtrak or the Corporation).

ACTION: Technical Amendments.

SUMMARY: The National Railroad Passenger Corporation (NRPC), also known as Amtrak, promulgated amendments to its rules concerning the Freedom of Information Act (FOIA) to incorporate recent changes to the Act regarding the establishment of fees charged for the search, review, and duplication of records in response to FOIA requests (52 FR 15321–15323, April 28, 1987). The rules followed the guidelines established by the Office of Management and Budget and the Department of Justice. In addition, Amtrak amended its regulations to reflect certain administrative changes within the Corporation. Section 701.7(e) of the rules as promulgated specified the charge per hour for personnel searching for records but did not specify the charge for review of any records found. This technical correction specifies that the same charge per hour will be made for review as for search. In view of the technical nature of the action being taken, no public comments are being requested, and the change shall be effective immediately upon publication in the **Federal Register**.

EFFECTIVE DATE: August 20, 1987.

FOR FURTHER INFORMATION CONTACT: Medaris Oliveri, FOIA Officer, (202) 383–3991.

SUPPLEMENTARY INFORMATION:

List of Subjects in 49 CFR Part 701

Freedom of Information Act.

PART 701—[AMENDED]

49 CFR Part 701 is amended as follows:

§ 701.7 [Amended]

1. The authority citation for Part 701 continues to read as follows:

Authority: 5 U.S.C. 552 as amended by sections 1801–1804 of the Omnibus Anti-Drug Abuse Act of 1986 (Pub. L. 99–570) which contains the Freedom of Information Reform Act of 1986 and sec. 306(g) of the Rail Passenger Service Act, 45 U.S.C. 546(g).

2. Section 701.7, paragraph (e)(1) is amended by adding the words "and review" immediately before the period at the end of the first sentence thereof.

Stephen C. Rogers,
Acting Vice President—Law.
[FR Doc. 87-19079 Filed 8-19-87; 8:45 am]
BILLING CODE 9000-00-M

Proposed Rules

Federal Register
Vol. 52, No. 161
Thursday, August 20, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1004

Milk in the Middle Atlantic Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This action invites written comments on a proposal to suspend certain provisions relating to how much milk not needed for fluid (bottling) used may be moved directly from farms to manufacturing plants and still be priced under the Middle Atlantic milk order. The proposed suspension would apply during the months of September 1987 through February 1988. The action was requested by a cooperative association to insure the efficient disposition of milk not needed for fluid use and still maintain producer status under the order for dairy farmers regularly associated with the market. A substantial change in the method of disposing much of the market's reserve milk supplies prompted the request by the cooperative association.

DATE: August 27, 1987.

ADDRESS: Comments (two copies) should be filed with USDA/AMS, Dairy Division, South Office Building, Room 2968, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: Maurice M. Martin, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20090-6456, (202) 447-7311.

SUPPLEMENTARY INFORMATION: The Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers. Also, it would tend to ensure that dairy farmers regularly associated with the market would continue to have their milk pooled and priced under the order and thereby receive the benefits that accrue from such pricing.

This proposed action has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 through 674), the suspension of the following provisions of the order regulating the handling of milk in the Middle Atlantic marketing area is being considered for the months of September 1987 through February 1988:

In § 1004.12, all of paragraph (d) except the introductory text.

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to USDA/AMS, Dairy Division, South Office Building, P.O. Box 96456, Washington, DC 20090-6456, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include September 1987 in the suspension period.

All comments that are received will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed suspension would make inoperative for September 1987 through February 1988 the provisions of the Middle Atlantic Federal milk order that limit the amount of milk may be diverted from farms to nonpool plants and still retain producer milk status. The order now provides that during any month of September through February a handler may divert not more than 18 days' production of each producer or in the alternative all diversions of a proprietary handler and a cooperative association handler may not exceed 40 and 50 percent, respectively, of the volume of such handler's total producer receipts.

The suspension was requested by Atlantic Dairy Cooperative (ADC), which handles a substantial part of the market's reserve milk supplies. The basis for the request is that current production and marketing conditions have caused the cooperative to change the manner in which much of its reserve milk supplies are handled. Normally, a substantial portion of ADC's reserve milk supplies are delivered to reserve pool plants, including the proponent cooperative's reserve pool processing plant at Mt. Holly Springs. However, because of tighter supply-demand conditions this year over last year, ADC expects that the proportion of deliveries to non-pool plants will significantly increase while deliveries to reserve pool processing plants will markedly decline. Consequently, beginning in September 1987, ADC projects that deliveries to nonpool plants, which are received on a diverted basis, are expected to exceed the quantity of milk that could be diverted to nonpool plants under the present diversion limits and still maintain producer status for all such milk. Proponent cooperative stated that it would be forced to make uneconomic shipments of a substantial part of such deliveries of its member milk to nonpool plants that has been regularly associated with the market to qualify it for pooling beginning in September.

Accordingly, it may be appropriate to remove the limits on milk diversions to nonpool plants for the period September 1987 through February 1988 to avoid uneconomic movements of reserve milk supplies solely to maintain pool status for milk supplies historically associated with the Middle Atlantic market.

List of Subjects in 7 CFR Part 1004

Milk marketing orders, Milk, Dairy products.

The authority action for 7 CFR Part 1004 continues to read as follows:

Authority: (Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674).

Signed at Washington, DC, on: August 17, 1987.

J. Patrick Boyle,

Administrator, Agricultural Marketing Service.

[FR Doc. 87-19102 Filed 8-19-87; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-98-AD]

Airworthiness Directives; Airbus Industrie A300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive (AD), applicable to certain Airbus Industrie Model A300 series airplanes, that would require modification of fuselage section 13 and 14 lap splices from stringer 31 and below. This action is prompted by reports of corrosion of these longitudinal bonded joints. This condition, if not corrected, could lead to decompression of the fuselage.

DATES: Comments must be received no later than September 21, 1987.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-98-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-98-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The French Direction Générale de L'Aviation Civile (DGAC) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of several instances of corrosion in the fuselage lap splices of section 13 and 14 from stringer 31 and below on certain Airbus Industrie Model A300 series airplanes. This condition, if not corrected, could lead to decompression of the airplane.

Airbus Industrie has issued Airbus Service Bulletin A300-53-206, dated December 1, 1986, which describes modification of certain longitudinal lap splices to eliminate corrosion and bond delamination. The DGAC has classified the service bulletin as mandatory and has issued French AD 87-019-077(B), dated April 20, 1987, which requires modification of the Model A300, Serial Numbers 1 through 107, in accordance with the Airbus service bulletin.

This airplane model is manufactured in France and type certificated in the United States under the provisions of section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require modification of the longitudinal lap splice prior to the accumulation of 24,000 landings or 12 years since date of manufacture, whichever occurs first, in accordance with the Airbus service bulletin previously mentioned.

On March 27, 1985, the FAA issued AD 85-07-09, Amendment 39-5033 (50 FR 13548; April 5, 1985) which requires inspection for bonding delamination, corrosion, and cracking of certain longitudinal lap and circumferential splices, which are addressed in this proposal. Accomplishment of the modification required by this proposed AD would constitute terminating action for the inspections required by AD 85-07-09, for the lap splices modified.

It is estimated that 14 airplanes of U.S. registry would be affected by this AD, that it would take approximately 3,726 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $2,087,000.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Airbus Model A300 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority. 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89

2. By adding the following new airworthiness directive:

Airbus Industrie. Applicable to Model A300 series airplanes, Serial Number 1 through Serial Number 107, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent decompression of the airpline, accomplish the following:

A. Prior to the accumulation of 24,000 landings or 12 years since date of manufacture, whichever occurs first, modify the fuselage lap splices in accordance with

Airbus Service Bulletin A300–53–208, dated December 1, 1986.

B. For airplanes with more than 9 years since date of manufacture on the effective date of this AD: The modification required by paragraph A., above, may be deferred not to exceed 26,000 landings or 15 years since date of manufacture, whichever occurs first, provided the conditions specified in paragraph 1.B. of Airbus Service Bulletin A300–53–208, dated December 1, 1986, are met.

C. For airplanes which have had lap splices repaired, as noted below, accomplish the following, as applicable:

1. For airplanes repaired with an external doubler in accordance with Chapter 53–10–20, Revision 46 of the Structural Repair Manual: Within 3,000 landings after the effective date of this AD, inspect the repaired area for corrosion. If there is any sign of corrosion, remove the repair and replace prior to further flight, in accordance with Airbus Service Bulletin A300–53–208, dated December 1, 1986.

2. For airplanes repaired in accordance with Chapter 53–10–20 of the Structural Repair Manual, figure 701, sheet 2, Revision dated July 1, 1986, or previous issues; or repaired in accordance with Service Manual 53–10–20, figure 701, sheet 3, Revision dated January 30, 1985, or previous issues, and where repair exceeds half a frame bay: Prior to the accumulation of 16,000 landings since the repairs were installed, modify the repaired lap slices in accordance with FAA-approved methods.

3. For airplanes repaired in accordance with Airbus Service Bulletin 53–215 or 53–216: No further action is necessary in the repaired areas.

D. Modification of the longitudinal lap joints in Sections 13 and 14 in accordance with Airbus Service Bulletin A300–53–208, dated December 1, 1986, constitutes terminating action for the inspections required by AD 86–07–09 for the splices which have been modified.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this proposal who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certificate Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 10, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87–19020 Filed 8–19–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 87–NM–95–AD]

Airworthiness Directives; British Aerospace Model H.S. 748 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness diretive (AD), applicable to all Model H.S. 748 series airplanes, that would require a visual inspection of bearings held in place by certain bearing retaining rings, and repair, if necessary. This action is prompted by a report that bearings in these installations may be improperly retained. This condition, if not corrected, could lead to excessive wear and/or loss of function of the affected control systems.

DATE: Comments must be received no later than September 21, 1987.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional; Counsel (Attention: ANM–103), Attention: Airworthiness Rules Docket No. 87–NM–95–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, Seattle Aircraft Certification Office, ANM–113; telephone (206) 431–1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM–103), Attention: Airworthiness Rules Docket No. 87–NM–95–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of bilateral airworthiness agreement, notified the FAA of an unsafe condition that may exist on all British Aerospace Model H.S. 748 series airplanes. It has been reported that certain bearing retention rings have been improperly installed. This condition, if not corrected, could lead to excessive wear, binding, and/or restriction of motion of affected control systems.

British Aerospace (BAe) issued Service Bulletin 27/110, dated November 1986, which describes inspection of bearing retention, and repair, if necessary, of the rudder spring tab, the flap center torque shaft assemblies, flap torque shaft at Station 296.366, and the flap interference roller at Station 91.91. The CAA has classified the service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require

visual inspection, and repair, if necessary, of the subject bearing installations in accordance with the service bulletin previously mentioned.

It is estimated that 2 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $160.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($80). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration prooses to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

British Aerospace: Applies to all Model H.S. 748 series airplanes, as listed in the BAe Service Bulletin 27/110, dated November 1986, certificated in any category. Compliance is required within 60 days after the effective date of this AD unless previously accomplished.

To prevent interference caused by loose bearings, accomplish the following:

A. Inspect the bearing installations of the rudder spring tab, flap torque shaft assemblies, and flap interference roller in accordance with BAe Service Bulletin 27/110, dated November 1986. Any bearing installation found to be loose must be repaired prior to further flight, in accordance with the BAe service bulletin.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this proposal who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 7, 1987.

Frederick M. Isaac,

Acting Director Northwest Mountain Region.

[FR Doc. 87–19019 Filed 8–19–87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87–ACE–07]

Proposed Alteration of Transition Area, Millard, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to alter the 700-foot transition area at Millard, Nebraska, to provide additional controlled airspace for aircraft executing a new instrument approach procedure to the Millard Municipal Airport, Millard, Nebraska, utilizing the Omaha VORTAC as a navigational aid.

DATE: Comments must be received on or before September 21, 1987.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Manager, Traffic Management and Airspace Branch, Air Traffic Division, ACE–540, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374–3408.

The official docket may be examined at the Office of the Regional Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the Office of the Manager, Traffic Management and Airspace Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Dale L. Carnine, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE–540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374–3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views, or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the Traffic Management and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before the closing date for comments will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for Examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Traffic Management and Airspace Branch, 601 East 12th Street, Kansas City, Missouri 64106, or by calling (816) 374–3408.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMS should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

Discussion

The FAA is considering an amendment to Subpart G, § 71.181, of the Federal Aviation Regulations [14 CFR 71.181] by altering the 700-foot transition area at Millard, Nebraska. To enhance airport usage, additional instrument approach capability was requested by the airport manager. Therefore, a new instrument approach procedure to the Millard, Nebraska Municipal Airport is being established utilizing the Omaha VORTAC as a navigational aid. The establishment of this new instrument approach procedure based on this navigational aid entails alteration of the transition area at Millard, Nebraska, at and above 700 feet above ground level within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the

approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR). Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C, January 2, 1987.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 71 of the FAR (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. By amending § 71.181 as follows:

Millard, NE [Revised]

That airspace extending upward from 700 feet above the surface within a 6½ mile radius of the Millard Municipal Airport (Lat. 41°11'46" N., Long. 96°06'43" W.); and within 4.75 miles each side of the 310° bearing from the Millard Municipal Airport extending from the 6½ mile radius area to 9½ miles northwest of the airport.

Issued in Kansas City, Missouri, on August 6, 1987.

Clarence E. Newbern,

Acting Manager, Air Traffic Division.

[FR Doc. 87-19029 Filed 8-19-87; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 871-0046]

Supermarket Development Corp.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair method of competition, this consent agreement, accepted subject to final Commission approval, would allow, among other things, Furr's, a subsidiary of Supermarket Development Corp. of Dallas, Texas, to acquire Safeway's El Paso division. The companies would be required to divest grocery stores in 12 towns throughout Texas and New Mexico. The respondent would be required to divert within nine months after the order becomes final, to a Commission-approved acquirer, to hold the Safeway assets separate and treat them as an independent business until all of the required divestitures are made, and would require the respondent to seek prior FTC approval before acquiring any grocery store in 19 cities in west Texas and New Mexico.

DATE: Comments must be received on or before October 19, 1987.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave. NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: FTC/S-3302, Joan Greenbaum, Washington, DC 20580. (202) 326-2629.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Grocery stores, Trade practices.

In the matter of Supermarket Development Corporation, a corporation, and SSI Associates, L.P., a limited partnership.

Agreement Containing Consent Order

The Federal Trade Commission ("the Commission"), having initiated an investigation of the proposed acquisition of certain assets of SSI Associates, L.P.'s ("SSI") subsidiary Safeway Stores, Incorporated (hereinafter collectively "Safeway") by Furr's, Inc., a wholly-owned subsidiary of Supermarket Development Corporation (hereinafter collectively "Furr's"), and it now appearing that Safeway and Furr's are willing to enter into an Agreement Containing a Consent Order ("Agreement") to divest certain assets:

It is hereby agreed by and between Furr's and Safeway by their duly authorized officers and their attorneys and counsel for the Commission that:

1. SDC, which owns 100 percent voting securities and controls Furr's, Inc., is a corporation organized and existing under the laws of the State of Texas with its executive offices located at 1500 Diamond Shamrock Tower, Dallas, Texas 75201;

Furr's Inc. is a corporation organized and existing under the laws of the State of Texas with its executive offices located at 1708 Avenue G, Lubbock, Texas 79409 (hereinafter, SDC and Furr's will be referred to as "Furr's");

SSI Associates, L.P., which owns 96.4 percent of the voting securities of Safeway and controls Safeway, is a limited partnership organized and existing under the laws of the State of Delaware with its executive offices located c/o Kohlberg Kravis Roberts & Company, 101 California Street, San Francisco, California 94111;

Safeway is a corporation organized and existing under the laws of the State of Delaware, with its executive offices located at 201 Fourth Street, Oakland, California 94660 (hereinafter, SSI and Safeway will be referred to as "Safeway").

2. Furr's and Safeway have been furnished a draft complaint, here attached, that the Bureau of Competition will present to the Commission for its consideration, which Furr's and Safeway understand may then be issued by the Commission.

3. Furr's and Safeway admit all jurisdictional facts set forth in the attached draft of the complaint.

4. Furr's and Safeway waive:

a. any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise challenge or contest the

validity of the order entered pursuant to this agreement; and

d. All rights under the Equal Access to Justice Act.

5. This agreement shall not become a part of the public record unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify Furr's and Safeway, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by Furr's or Safeway that the law has been violated as alleged in the draft of the complaint here attached.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to Furr's or Safeway, (1) issue its complaint corresponding in form and substance with the draft of the complaint attached hereto and its decision containing the following Order to divest and to cease and desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the Order to divest and to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to Order to Supermarket Development Corporation and SSI Associates, L.P.'s addresses as stated in this agreement shall constitute service. Furr's and Safeway waive any right they may have to any other manner of service. The complaint may be used in constructing the terms of the Order, and no agreement, understanting, representation or interpretation not contained in the Order or the agreement may be used to vary or contradict the terms of the Order.

8. Furr's and Safeway have read the draft of complaint and Order contemplated hereby. They understand that once the Order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the Order. Furr's and Safeway further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I.

As used in this Order, the following definitions shall apply:

(a) "Furr's means Furr's, Inc., its predecessors, subsidiaries, divisions, groups and affiliates controlled by Furr's and their respective directors, officers, employees, agents and representatives and their respective successors and assigns, and Supermarket Development Corporation, its predecessors, subsidiaries, divisions, groups and affiliates controlled by Supermarket Development Corporation and their respective directors, officers, employees, agents and respresentatives and their respective successors and assigns.

(b) "Safeway" means Safeway, its predecessors, subsidiaries, divisions, groups and affiliates controlled by Safety and their respective directors, officers, employees, agents and representatives and their respective successors and assigns and SSI Associates, L.P., its predecessors, subsidiairies, divisions, groups and affiliates controlled by SSI Associates, L.P. and their respective directors, officers, employees, agents and representatives and their respective successors and assigns.

(c) "Acquisition" means Furr's acquisition of the assets of Safeway's El Paso Division.

(d) "El Paso Division" means the sixty grocery stores of Safeway in its El Paso Division, inventory, an administrative building, a distribution center and all related real property and facilities, excluding the dairy and ice cream plants.

(e) "Assets to be divested" means the assests described in Paragraph II (A), also known as "II (A) properties."

(f) "To be acquired store" means a retail grocery store in the El Paso Division.

II.

It is ordered that:

(A) Furr's shall divest, absolutely and in good faith, within nine months from the date this Order becomes final, either a to be acquired store or a grocery store presently operated by Furr's in each of the following locations:

(a) Alamagordo, New Mexico;
(b) Artesia, New Mexico;
(c) Clovis, New Mexico;
(d) Espanola, New Mexico;
(e) Fort Stockton Texas;
(f) Hobbs, New Mexico;
(g) Las Vegas, New Mexico;
(h) Lovington, New Mexico;
(i) Pecos, Texas;
(j) Portales, New Mexico;
(k) Roswell, New Mexico; and
(l) Silver City, New Mexico.

(B) Furr's and Safeway shall maintain the viability and marketability of the assets required to be divested and shall not cause or permit the destruction, removal or impairment of any assets or business to be divested except in the ordinary course of business and except for ordinary wear and tear.

(C) The divestitures required by Paragraph II(A) shall be divested to an acquirer or acquirers, and only in a manner, that receives the prior approval of the Commission. The purpose of the divestiture and Agreements is to ensure the continuation of the assets as ongoing, viable enterprises engaged in the retail sale of groceries and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

(D) If Furr's has not secured approval from the Commission of a divestiture of all the properties within the nine-month period specified in Paragraph II(A), Furr's consents to the appointment by the Commission of a trustee to divest the properties. In the event that the Commission brings an action pursuant to section 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. 45(*l*), or any other statute enforced by the Commission, Furr's consents to the appointment of a trustee in such action. The appointment of a trustee shall not preclude the Commission from seeking civil penalties and other relief available to it for any failure by Furr's to comply with this Order.

(E) If a trustee is appointed by the Commission or a court pursuant to Paragraph II(D) of this Order, Furr's consents to the following terms and conditions regarding the trustee's duties and responsibilities:

1. The Commission shall select the trustee, subject to Furr's consent, which shall not be unreasonably withheld. The trustee shall be a person with experience and expertise on acquisitions and divestitures.

2. The trustee shall have the power and authority to divest any properties listed in Paragraph II(A) in any location listed therein in which a store has not been divested or for which a contract of sale has not been approved by the Commission within the time period for divestiture in paragraph II(A). The

trustee shall have six months from the date of appointment to accomplish the divestiture, which shall be subject to the prior approval of the Commission and, if the trustee is appointed by a court, subject also to the prior approval of the court.

3. If, at the end of the six-month period, the trustee has not secured approval of divestiture as required by Paragraph II(A), the trustee may, if the Commission requires in order to accomplish the divestiture, add such other assets acquired pursuant to the Acquisition as are required to effectuate the divestiture of the II(A) properties.

4. The trustee shall have full and complete access to the personnel, books, records and facilities of any store that the trustee has the duty to divest, and Furr's shall develop such financial or other information relevant to the assets to be divested as such trustee may reasonably request. Furr's shall cooperate with the trustee, and shall take no action to interfere with or impede the trustee's accomplishment of the divestiture.

5. The power and authority of the trustee to divest shall be at the most favorable price and terms available consistent with the Order's absolute and unconditional obligation to divest and the purposes of the divestiture as stated in paragraph II(C).

6. The trustee shall serve at the cost and expense of Furr's on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall account for all moneys derived from the sale and all expenses incurred. After approval by the Commission or the court of the account of the trustee, including fees for his or her services, all remaining moneys shall be paid to Furr's and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee divesting the trust property.

7. Within 30 days of the appointment of the trustee, Furr's shall, subject to the Commission's prior approval, and consistent with provisions of this order, transfer to the trustee all rights and powers necessary to permit the trustee to cause divestiture and sign agreements for the divestiture of the trust properties.

8. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed.

9. The trustee shall report in writing to the Commission and Furr's every sixty days concerning the trustee's efforts to accomplish divestiture.

(F) The Agreement to Hold Separate is attached hereto as Appendix I and made a part hereof. It shall continue in effect until such time as a store in each of the locations listed in Paragraph II (A) has been divested either by Furr's or a trustee.

III.

It is further ordered that, within sixty days after the date of service of this Order, and every sixty days thereafter until Furr's and Safeway have fully complied with the provisions of paragraph II of this Order, Furr's and Safeway shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying with, or have complied with that provision. Furr's and Safeway shall include in compliance reports, among other things that are required from time to time, a full description of contacts or negotiations for the divestiture of the II (A) properties, including the identity of all parties contacted. Furr's and Safeway also shall include in compliance reports copies of all written communications to and from such parties, and all internal memoranda, reports and recommendations concerning divestiture.

IV.

It is further ordered that for a period commencing on the date of service of this Order and continuing for ten years from and after the date of service of this Order, Furr's shall cease and desist from acquiring, without the prior approval of the Federal Trade Commission, directly or indirectly, through subsidiaries or otherwise, any retail grocery store, including any facility that has been operated as a retail grocery store within six months of the date of the offer to purchase the facility, or any interest in a retail grocery store or any interest in any individual, firm, partnership, corporation or other legal or business entity that directly or indirectly owns or operates a retail grocery store in the following cities or towns:

Albuquerque, New Mexico;
Alamagordo, New Mexico;
Artesia, New Mexico;
Carlsbad, New Mexico;
Clovis, New Mexico;
El Pase, Texas;
Espanola, New Mexico;
Fort Stockton, Texas;
Hobbs, New Mexico;
Las Cruces, New Mexico;
Las Vegas, New Mexico;
Lovington, New Mexico;
Midland, Texas;
Odessa, Texas;
Pecos, Texas;
Portales, New Mexico;
Roswell, New Mexico;
Santa Fe, New Mexico; and
Silver City, New Mexico, Provided, however, that these prohibitions shall not relate to the construction of new facilities by Furr's or the leasing of a facility by Furr's not presently a grocery store in those locations.

One year from the date of service of this Order and annually thereafter, Furr's shall file with the Commission a verified written report of its compliance with this paragraph.

V.

For the purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and on reasonable notice to Furr's or Safeway made to their principal offices, Furr's and Safeway shall permit any duly authorized representatives of the Commission:

1. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Furr's or Safeway relating to any matters contained in this Order; and

2. Upon five days' notice to Furr's or Safeway and without restraint or interference from them, to interview officers or employees of Furr's or Safeway, who may have counsel present, regarding such matters.

VI.

It is Further Ordered that Furr's shall notify the Commission at least thirty days prior to any change in its corporate structure that may affect compliance obligations arising out of this Order including but not limited to dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change.

In the Matter of Supermarket Development Corporation, a corporation, and SSI Associates, L.P., a limited partnership.

Agreement to Hold Separate

Agreement dated as of August 13, 1987 (the "Agreement"), by and between Supermarket Development Corporation, a corporation organized and existing under the laws of the State of Texas, with executive offices located at 1500 Diamond Shamrock Tower, Dallas, Texas 75210, and Furr's, Inc., a corporation organized and existing under the laws of the State of Texas, with executive offices located at 1708 Avenue G, Lubbock, Texas 79408, (collectively "Furr's"), SSI Associates, L.P., a limited partnership organized and existing under the laws of the State of Delaware with executive officers located c/o Kohlberg Kravis Roberts &

Company, 101 California Street, San Francisco, California 94111, and Safeway Stores, Incorporated, a corporation organized and existing under the laws of the State of Delaware, with executive offices located at 201 Fourth Street, Oakland, California 94660 (collectively "Safeway") and the Federal Trade Commission ("the Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, et seq. (collectively, the "Parties").

Premises

Whereas, Furr's, pursuant to an agreement dated April 9, 1987, agreed to purchase substantially all of the assets of Safeway's El Paso Division ("the Acquisition"); and

Whereas, the Commission having reason to believe that the Acquisition would violate the statutes enforced by the Commission; and

Whereas, if the Commission accepts the attached Agreement Containing Consent Order ("Consent Order") the Commission must place it on the public record for a period of at least sixty days and may subsequently withdraw such acceptance pursuant to the provisions of § 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached preserving the status qou ante of Safeway's El Paso Division during the period prior to the divestiture of the properties to be divested pursuant to paragraph II (A) of the Consent Order ("II (A) properties") or the Acquisition is not preliminarily enjoined, divestiture resulting from any proceeding challenging the legality of the Acquisition might not be possible or might be a less than effective remedy; and

Whereas, the Commission is concerned that if the acquisition is consummated, it may be necessary to preserve the Commission's ability to require the divestiture of the II (A) properties and the Commission's ability to seek to restore the El Paso Division as a viable competitor; and

Whereas, the purpose of this Agreement and the Consent Order is to preserve Safeway's El Paso Division as a viable operation pending the divestiture of the II (A) properties as viable, ongoing enterprises, in order to remedy any anticompetitive effects of the Acquisition and to preserve Safeway's El Paso Division as a viable operation in the event that divestiture of the II (A) properties is not achieved; and

Whereas, Furr's and Safeway's entering into this Agreement shall in no way be construed as an admission by Furr's or Safeway that the Acquisition is illegal; and

Whereas, Furr's and Safeway understand that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement.

Now, therefore, upon the understanding that the Commission has determined that the Acquisition would be challenged, and in consideration of the Commission's agreement that, unless the Commission determines to reject the Consent Order, it will not seek further relief from the parties with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement and the Consent Order to which it is annexed and made a part thereof, the Parties agree as follows:

1. Furr's and Safeway agree to execute and be bound by the attached Consent Order.

2. Furr's and Safeway agree that from the date the Commission accepts this Agreement:

(a) Until three business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of Section 2.34 of the Commission's rules; or

(b) Until such time as all of the II(A) properties have been divested or until the expiration of the time period during which a trustee may attempt to divest the II(A) properties as provided in Paragraph II(D) and II(E) of the Consent Order,

Furr's shall hold separate and apart Safeway's El Paso Division assets and business, which consists of the sixty grocery stores, inventory, an administrative building, a distribution center and all related real preperty and facilities of the Division (the assets and businesses to be held separately are collectively referred to hereinafter as "El Paso Division"), subject to the following terms and conditions:

(i) Furr's shall not exercise direction or control over, or influence directly or indirectly, the El Paso Division, except as is necessary to insure compliance with this Agreement and except as hereinafter provided;

(ii) Furr's shall not cause or permit the wasting or deterioration of the EL Paso Division assets in any manner that impairs the marketability of any such assets and operations or impairs in any manner the viability of the assets and operations as a going concern engaged in the retail grocery business until such time as the divestiture as required by the Consent Order has been accomplished;

(iii) Furr's shall assure that the El Paso Division shall maintain separate financial and operating books and records, shall prepare separate financial statements for the El Paso Division assets and shall, within 10 days after they become available to Furr's, provide the Commission's Bureau of Competition with quarterly and annual financial statements for the El Paso Division assets, which annual financial statements shall be audited and certified by independent certified public accountants;

(iv) Furr's will not replace any executive of the El Paso Division or Safeway's Store Manager, Produce Manager or Meat Manager in any El Paso Division store (except to fill a vacancy) but may replace any other employee of the El Paso Division;

(v) Consistent with the El Paso Division's use of its distribution center and assets in such a way as to assure the maintenance of the El Paso Division as a viable competitor, the El Paso Division distribution center may supply stores operated by Furr's during the pendency of this Agreement, provided that Furr's will pay a fee to the El Paso Division for distribution, space and services in accordance with the El Paso Division's current established rates;

(vi) Furr's will not sell or otherwise dispose of the distribution center or any retail grocery stores of the El Paso Division (except the stores required to be sold pursuant to Paragraph II(A) of the Consent Order) during the pendency of the hold separate agreement. Furr's shall not mortgage, pledge or incur lines against the El Paso Division assests or a portion thereof as security for any indebtedness of Furr's or pursuant to any loan transaction unless the proceeds are utilized entirely for operation of the El Paso Division assets;

(vii) Purchasing for the Furr's and the El Paso Division shall be done by each entity for its retail grocery operations; and

(viii) Except for payables incurred for inventory, supplies and services in connection with the El Paso Division's normal operations, Furr's prior consent may be required for the following actions of the El Paso Division:

(a) Entering into any contractual agreement which involves commitments in excess of $25,000 and which may not be terminated without penalty on notice of 30 days or less;

(b) Committing for any capital expenditure in excess of $25,000 except for normal maintenance of facilities and equipment;

(c) Incurring any indebtedness in excess of $25,000; and

(d) Entering into any union agreements or modifying any existing union agreements.

3. If the Commission seeks in any proceeding with respect to the Acquisition to compel Furr's to divert itself of the El Paso Division assets it may acquire, or to compel Furr's to divest itself of any assets it may hold, or to seek any other injunctive or equitable relief, neither Furr's nor Safeway shall raise an objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting periods or the fact that the Commission has permitted the El Paso Division assets to be acquired and a formal merger concluded pursuant to the terms of this Agreement. Furr's and Safeway also waive all rights to contest the validity of this Agreement.

4. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to Furr's or Safeway made to their principal offices, Furr's and Safeway shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of Furr's or Safeway, in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Furr's or Safeway relating to compliance with this Agreement;

b. Upon five days notice to Furr's or Safeway and without restraint or interference from them, to interview officers or employees of Furr's or Safeway, who may have counsel present, regarding any such matters.

c. Any information or documents furnished to or obtained by the Commission from Furr's or Safeway shall be accorded such confidential treatment as is available pursuant to sections 6(f) and 21 of the Federal Trade Commission Act, as amended.

4. This Agreement shall not be binding until approved by the Commission.

Analysis to Aid Public Comment on Provisionally Accepted Consent Order

The Federal Trade Commission has accepted for public comment from Supermarket Development Corporation and SSI Associates, L.P., an agreement containing consent order. This agreement has been placed on the public record for sixty days for reception of comments from interested persons.

Comments received during this period will become part of the public record. After sixty days, the Commission will again review the agreement and comments received, and will decide whether it should withdraw from the agreement or make final the agreement's order.

The Commission's investigation of this matter concerns the proposed acquisition by Supermarket Development Corporation ("SDC"), through its wholly-owned subsidiary, Furr's, Incorporated ("Furr's"), of the assets of the El Paso Division of Safeway Stores, Incorporated ("Safeway"). SDC and Safeway operate supermarkets throughout west Texas and New Mexico. Both SDC and Safeway also operate various warehouses and manufacturing facilities in support of their retail operations.

The agreement containing consent order would, if issued by the Commission, settle the complaint that alleges an anticompetitive effect in the retail sale of groceries by supermarkets in twelve cities and towns in west Texas and New Mexico, including: Fort Stockton and Pecos in Texas; and Alamagordo, Artesia, Clovis, Espanola, Hobbs, Las Vegas, Lovington, Portales, Roswell and Silver City in New Mexico.

The Commission has reason to believe that the acquisition would have an anticompetitive effect in the retail sale of groceries by supermarkets in the cities and towns described above, and would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act, unless an effective remedy eliminates the anticompetitive effect.

The Order accepted for public comment contains provisions requiring the divestiture, in each of the twelve cities and towns described above, of either: (1) A store acquired by SDC from Safeway; or (2) a store currently operated by SDC.

Under the terms of the Order, SDC must complete the required divestitures within nine months of the date of the Order becomes final. If SDC fails to complete the required divestitures within the nine-month period, SDC shall consent to the appointment of a trustee, who would have six additional months to divest the Safeway assets. After the initial six-month period, if the trustee is not able to find purchasers for the assets, the trustee would have discretion, if the Commission finds it necessary, to sell any other assets of the El Paso Divisions, up to and including all of the assets of the Division, in order to effectuate a sale of the stores in the twelve towns described above. Any proposed divestiture pursuant to the Order must be approved by the Federal Trade Commission after the divestiture proposal has been placed on the public record for reception of comments from interested persons.

For a period of ten years from its effective date, the Order would also prohibit SDC from acquiring, without prior Commission approval, assets or any interest in any retail grocery store, or in any retail grocery store closed within 6 months preceding the offer to purchase, or in any company operating retail grocery stores, in nineteen cities and towns in west Texas and New Mexico, including: El Paso, Fort Stockton, Midland, Odessa, and Pecos, in Texas; and Albuquerque, Alamagordo, Artesia, Carlsbad, Clovis, Espanola, Hobbs, Las Cruces, Las Vegas, Lovington, Portales, Roswell, Santa Fe, and Silver City, in New Mexico. In these nineteen cities and towns, both SDC and Safeway currently operate retail grocery stores.

It is anticipated that the provisions of the Order would resolve the competitive problems alleged in the complaint. The purpose of this analysis is to invite public comment concerning the consent Order, in order to aid the Commission in its determination of whether it should make final the order contained in the agreement.

This analysis is not intended to constitute an official interpretation of the agreement and order to modify its terms in any way.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 87-19043 Filed 8-19-87; 8:45 am]

BILLING CODE 6750-01-M

VETERANS ADMINISTRATION

38 CFR Part 21

Election of Benefits

AGENCY: Veterans Administration.

ACTION: Proposed amendments.

SUMMARY: The Veterans Administration (VA) is proposing to amend the rules affecting election of benefits under the vocational rehabilitation program. The Veterans' Compensation and Program Improvement Amendments of 1984 allowed concurrent receipt of benefits under the vocational rehabilitation program and another program of education administered by the VA under certain limited conditions. The Omnibus Veterans' Benefits Improvement and Health Care Authorization Act of 1986 bars concurrent receipt of benefits under the vocational rehabilitation program and another program of education administered by the VA under any conditions. The proposed regulatory

amendments would bring existing rules into conformity with these statutory changes.

DATES: Comments must be received on or before September 21, 1987. Comments will be available for public inspection until October 2, 1987. These amendments are proposed to be effective October 28, 1986, except for § 21.21(a)(2), which is proposed to be effective March 2, 1984.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding these changes to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection at the above address only between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays) until October 2, 1987.

FOR FURTHER INFORMATION CONTACT: Morris Triestman, Rehabilitation Consultant, Policy and Program Development, Vocational Rehabilitation and Education Service, Department of Veterans Benefits, (202) 233–2686.

SUPPLEMENTARY INFORMATION: Prior to the enactment of Pub. L. 98–223, Veterans' Compensation and Program Improvement Amendments of 1984, a veteran who was eligible for benefits under the vocational rehabilitation program and another program of education had to elect the program under which he or she wished to receive benefits. Pub. L. 98–223 continued the prior policy barring benefits for pursuit of the same training under the vocational rehabilitation program and another education program administered by the VA. However, the law allowed an otherwise eligible veteran to receive benefits under the vocational rehabilitation program and another program if he or she were pursuing different types of training under each of these programs of education. Pub. L. 99–576, Omnibus Veterans' Benefits Improvement and Health Care Authorization Act of 1986, bars concurrent payment of benefits under the vocational rehabilitation program and another program of education administered by the VA under any conditions. The change made by Pub. L. 99–576, therefore, restores the policy which was in effect prior to the enactment of Pub. L. 98–223. Section 21.21 is amended to conform with both statutory changes.

The VA proposes to make these regulations retroactively effective. The amendment allowing receipt of benefits under the vocational rehabilitation program and another program of education administered by the VA under certain conditions is retroactively effective March 2, 1984. The rule barring concurrent receipt of benefits under any conditions is retroactively effective October 28, 1986. In each case, the effective date is the date the statutory provision becomes effective. These are interpretive rules which implement statutory changes. Moreover, the VA finds that good cause exists for making these rules, like the sections of law which they implement, retroactively effective to the respective dates of enactment. A delayed effective date would be contrary to statutory design; would complicate implementation of these provisions of law; and might result in denial of a benefit to a veteran who is entitled by law to that benefit.

These proposed amendments do not meet the criteria for major rules as contained in Executive Order 12291, Federal Regulation. The proposal will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not have any other significant adverse effects on the economy.

The regulations contained herein will better acquaint eligible veterans, vocational training and rehabilitation facilities, and the public at large with the way these provisions will be implemented.

The Administrator certifies that these proposed amendments will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), these proposed rules are therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reasons for this certification are that the proposed regulatory amendments implement and interpret statutory provisions. These changes only concern the eligibility and participation of individual veterans under the program.

(The Catalog of Federal Domestic Assistance Number is 64.116)

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs, Loan programs, Reporting requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: July 23, 1987.

Thomas K. Turnage,

Administrator.

PART 21—[AMENDED]

38 CFR Part 21, Vocational Rehabilitation and Education, is proposed to be amended by revising § 21.21 to read as follows:

§ 21.21 Election of benefits under education programs administered by the Veterans Administration.

(a) *Election of benefits.* A veteran must make an election of benefits in all cases. The veteran may reelect at any time. The veteran's election of benefits is subject to the following conditions:

(1) A veteran who has basic entitlement to rehabilitation under chapter 31 and is also eligible for assistance under one of the other programs listed in § 21.4020 may not receive benefits concurrently under more than one program except as indicated in paragraph (a)(2) of this section;

(2) An eligible veteran may receive benefits concurrently for pursuit of different programs of education or training under chapter 31 and another program of education listed in § 21.4020 during the period from March 2, 1984 to October 27, 1986.

(38 U.S.C. 1761(b); sec. 317, Pub. L. 99–576)

(b) *Use of prior training in formulating a rehabilitation program.* If a veteran has pursued an educational or training program under an education program listed in § 21.4020, the earlier program of education or special restorative training shall be utilized to the extent practicable. (38 U.S.C. 1795)

[FR Doc. 87–19066 Filed 8–19–87; 8:45 am]

BILLING CODE 8320–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–6014]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed base flood elevation modifications listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already

in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for selected locations in the nation, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001 through 4128, and 44 CFR 67.4(a).

These elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

PART 67—[AMENDED]

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

The proposed base (100-year) flood elevations for selected locations are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
ALABAMA	
Cottonwood (town), Houston County	
Boggy Creek:	
Just upstream of State Highway 53	*141
Just downstream of Ashford Road	*167
Boggy Creek Tributary:	
At confluence with Boggy Creek	*148
Just downstream of Pine Tree Street	*157
Buck Creek:	
About 2,000 feet downstream of confluence of Buck Creek Tributary	*133
About 3,050 feet upstream of State Line Road	*155
Buck Creek Tributary:	
At confluence with Buck Creek	*138
Just downstream of Metcalf Road	*162
Maps available for inspection at the City Hall, Cottonwood, Alabama.	
Send comments to The Honorable Bobby Monk, Mayor, Town of Cottonwood, City Hall, P.O. Box 447, Cottonwood, Alabama 36320.	
ARKANSAS	
Cherry Valley (city), Cross County	
Cooper Creek:	
At downstream corporate limits	*270
Upstream side of Missouri Pacific Railroad	*278
Approximately 1,200 feet upstream of confluence of Halk Creek	*286
Halk Creek:	
At confluence with Cooper Creek	*283
Approximately 3,100 feet upstream of State Route 42	*299
Maps available for inspection at the City Hall, Cherry Valley, Arkansas.	
Send comments to The Honorable Lawrence Sanders, Mayor of the City of Cherry Valley, Cross County, P.O. Box 233, Cherry Valley, Arkansas 72324.	
CONNECTICUT	
Lebanon (town), New London County	
Susquetonscut Brook:	
At downstream corporate limits	*241
Upstream side of Chappell Road	*274
Approximately 0.6 mile upstream of confluence of Hayward Road	*340
Approximately 0.5 mile downstream of Bender Road	*380
At Bender Road	*453
Tennile River:	
At downstream corporate limits	*251
At Cook Hill Road	*296
At confluence of Gifford Brook	*346
At confluence of Palmer Pond	*377
Yantic River:	
Approximately 150 feet downstream of Gilman Dam	*218
At Sisson Road	*294
Maps available for inspection at the Town Office, Lebanon, Connecticut.	
Send comments to The Honorable Edward Clark, Chairman of the Board of Selectmen of the Town of Lebanon, New London County, Town Office, Lebanon, Connecticut 06249.	
Voluntown (town), New London County	
Denison Brook:	
At State Route 138	*269
Approximately 0.9 mile upstream of State Route 138	*274
Approximately 2.2 miles upstream of State Route 138	*318
Great Meadow Brook:	
At confluence with Pachaug River	*271
Upstream side of Campbell Road	*291
Approximately 0.9 mile upstream of Wylie Road	*322
Pachaug River:	
At downstream corporate limits	*225
Downstream side of Sawmill Pond Dam	*248
Downstream side of Shetucket Turnpike	*271
At upstream corporate limits	*297
Maps available for inspection at the Town Office, Voluntown, Connecticut.	
Send comments to The Honorable Willis Maynard, First Selectman of the Town of Voluntown, New London County, Town Office, P.O. Box 98, Voluntown, Connecticut 06384.	
FLORIDA	
Arcadia (city), DeSoto County	
Peace River:	
At intersection of Lincoln Avenue and Bonaparte Street	*25
Upstream side of Old Bradenton Road	*27
Maps available for inspection at the City Hall, Arcadia, Florida.	
Send comments to The Honorable Edward J. Straube, Administrator of the City of Arcadia, DeSoto County, P.O. Box 381, Arcadia, Florida 33821-0351.	
Bowling Green (city), Hardee County	
Little Payne Creek:	
Approximately 1,600 feet upstream of confluence with Payne Creek	*73
Approximately 2,050 feet upstream of confluence with Payne Creek	*73
Maps available for inspection at the City Hall, 107 West Main Street, Bowling Green, Florida.	
Send comments to Mr. Mack D. Bryan, City Manager of Bowling Green, Hardee County, P.O. Box 808, Bowling Green, Florida 33834.	
DeSoto County (unincorporated areas)	
Peace River:	
At downstream County boundary	*8
Approximately 1,000 feet downstream of confluence of Horse Creek	*15
Approximately 0.8 mile upstream of Old Bradenton Road	*27
At upstream County boundary	*39
Horse Creek:	
At confluence with Peace River	*15

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Approximately 400 feet downstream of State Route 761	*20
Downstream side of State Route 72	*25
Joshua Creek:	
At confluence with Peace River	*22
Approximately 1,000 feet upstream of Hillsborough Avenue	*30
Approximately 400 feet upstream of State Route 31	*40
Downstream side of State Route 70	*64
Durrance Branch:	
At confluence with Joshua Creek	*39
Approximately 750 feet downstream of Durrance Street	*40
Downstream side of Durrance Street	*48
Approximately .41 mile upstream of Durrance Street	*51
Whidden Branch:	
At confluence with Joshua Creek	*44
Approximately 200 feet downstream of Brown Street	*51
Approximately 500 feet upstream of State Route 70	*59
McDede Branch:	
At confluence with Peace River	*30
Downstream side of Masters Road	*51
Approximately 150 feet downstream of State Route 660	*60
Prairie Creek:	
Approximately 5.5 miles downstream of State Route 31	*32
Approximately 1,000 feet upstream of State Route 31	*40
Maps available for inspection at the County Engineer's Office, Arcadia, Florida.	
Send comments to The Honorable Frederick C. Nutt, Administrator of the County of DeSoto, P.O. Drawer 2076, Arcadia, Florida 33821.	
Hardee County (unincorporated areas)	
Peace River:	
Approximately .45 mile downstream of downstream County boundary	*38
Approximately 400 feet downstream of State Route 64	*51
Approximately .23 mile upstream of State Route 652	*60
At upstream County boundary	*72
Troublesome Creek:	
At confluence with Peace River	*44
At Vandolah Road	*91
Thompson Branch:	
At confluence with Peace River	*57
Approximately 50 feet upstream of State Route 35B	*123
Hog Branch:	
At confluence with Peace River	*87
Approximately .82 mile upstream of Altman Road	*118
Payne Creek:	
At confluence with Peace River	*70
Approximately .35 mile upstream of confluence of Hickey Branch	*91
Little Payne Creek:	
At confluence with Payne Creek	*72
Approximately 425 feet upstream of County boundary	*86
Maps available for inspection at the Courthouse Annex, Wauchula, Florida.	
Send comments to The Honorable Sam Rawls, Chairman of the Hardee County Commission, Courthouse Annex, Room A204, 412 West Orange Street, Wauchula, Florida 33873.	
Lake Wales (city), Polk County	
Lake Wales: Along shoreline	*116
Lake Weader: Along shoreline	*120
North Lake Wales: Along shoreline	*120
Lake Altamaha: Along shoreline	*121
Crystal Lake: Along shoreline	*121
Lake Cooper: Along shoreline	*124
Twin Lakes: Along shoreline	*126

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Grassy Lake: Along shoreline	*129
Maps available for inspection at the City Hall, 152 East Central Avenue, Lake Wales, Florida.	
Send comments to The Honorable Ronnie R. Russell, City Manager, City of Lake Wales, P.O. Box 1320, Lake Wales, Florida 33859-1320.	
Zolfo Springs (town), Hardee County	
Peace River:	
Approximately .52 mile downstream of State Route 64	*50
Approximately 1,550 feet downstream of State Route 64	*51
Approximately 650 feet upstream of State Route 64	*52
Approximately 800 feet upstream of CSX Transport (Seaboard Coast Line Railroad	*58
Maps available for inspection at the Town Hall, Highway 17, Zolfo Springs, Florida.	
Send comments to The Honorable Robert Ballard, Mayor of the Town of Zolfo Springs, Hardee County, P.O. Box 162, Zolfo Springs, Florida 33890.	
GEORGIA	
Aragon (city), Polk County	
Euharlee Creek:	
About 2,300 feet downstream of confluence of Mill Creek	*720
About 3,000 feet upstream of Hisville Road	*750
Mill Creek:	
At mouth	*722
Just upstream of State Route 101	*725
Maps available for inspection at the City Clerk's Office, City Hall, Aragon, Georgia.	
Send comments to The Honorable Henry Shepherd, Mayor, City of Aragon, City Hall, P.O. Drawer B, Aragon, Georgia 30104.	
Young Harris (city), Towns County	
Corn Creek:	
About 2,550 feet downstream of Sunset Drive	*1,834
Just downstream of Cupid Falls Dam	*1,883
Just upstream of Cupid Falls Dam	*1,905
About 1,400 feet upstream of Bryson Road	*1,918
Brasstown Creek Tributary:	
About 3,300 feet downstream of Reed Street	*1,824
Just upstream of Reed Street	*1,873
Maps available for inspection at the City Hall, Young Harris, Georgia.	
Send comments to The Honorable Thomas W. Nolan, Mayor, City of Young Harris, P.O. Box 122, Young Harris, Georgia 30528.	
IDAHO	
Nezperce (city), Lewis County	
Long Hollow Creek:	
At downstream corporate limits	*3,199
740 feet from downstream corporate limits along Third Avenue	*3,201
At Fifth Avenue	*3,203
At upstream of Eighth Avenue	*3,216
At upstream corporate limits	*3,238
Maps are available for review at City Hall, 502 Fifth Street, Nezperce, Idaho.	
Send comments to Mayor Jerry Elven, City Hall, 502 Fifth Street, Nezperce, Idaho 83543.	
Stites (city), Idaho County	
South Fork Clearwater River:	
At northern corporate limits	*1,308
At upstream side of Bridge Street	*1,316
100 feet downstream of southern corporate limits	*1,320
Maps are available for review at City Hall, 113 Main Street, Stites, Idaho.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Send Comments to Mayor Tom Johnson, P.O. Box 127, Stites, Idaho 83552.	
ILLINOIS	
Amboy (city), Lee County	
Green River:	
About 0.85 mile downstream of South Washington Street	*731
Just upstream of U.S. Route 52	*736
West Tributary:	
At mouth	*736
About 400 feet upstream of Sterling Road	*748
Maps available for inspection at the Zoning Office, City Hall, 227 East Main Street, Amboy, Illinois.	
Send comments to The Honorable Otto Gehant, Mayor, City of Amboy, City Hall, 227 East Main Street, Amboy, Illinois 61310.	
Dixon (city), Lee County	
Rock River:	
About 2,850 feet downstream of confluence of Plum Creek	*648
About 1.2 miles downstream of confluence of Sevenmile Branch	*658
Plum Creek:	
At mouth	*650
Just upstream of Palmyra Avenue	*653
Fargo Creek:	
At mouth	*650
About 340 feet upstream of Eastern Avenue	*715
West Branch Fargo Creek:	
At mouth	*650
Just downstream of Madison Avenue	*655
Just upstream of Monroe Avenue	*675
About 1,300 feet upstream of Monroe Avenue	*690
Maps available for inspection at the Building and Zoning Department, City Hall, 121 West 2nd Street, Dixon, Illinois.	
Send comments to The Honorable James Dixon, Mayor, City of Dixon, City Hall, 121 West 2nd Street, Dixon, Illinois 61021.	
Evansville (village), Randolph County	
Mississippi River: Within community	*395
Maps available for inspection at the Village Hall, Evansville, Illinois.	
Send comments to The Honorable Erwin C. Becker, Village President, Village of Evansville, Village Hall, Box 257, Evansville, Illinois 62242.	
Lee County (unincorporated areas)	
Rock River:	
At western county boundary	*641
At northern county boundary	*654
Green River:	
About 3,700 feet downstream of Rockyford Road	*721
About 1,500 feet upstream of Burlington Northern railroad	*743
Steward Creek:	
Just downstream of Perry Bridge	*799
About 3,600 feet upstream of Steward Bridge	*820
Maps available for inspection at the Lee County Zoning Office, County Courthouse, Dixon, Illinois.	
Send comments to The Honorable Graham Hoffman, Chairman, County Board, Lee County, County Courthouse, Dixon, Illinois 61021.	
Nelson (village), Lee County	
Nelson Creek:	
About 1,500 feet downstream of Chicago and North Western railroad	*644
Just downstream of Chicago and North Western railroad	*647

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Just upstream of Chicago and North Western railroad	*652
About 1,500 feet upstream of Nelson Road	*652
Maps available for inspection at the Village Hall, Nelson, Illinois.	
Send comments to The Honorable Henry Jansen, Village President, Village of Nelson, Village Hall, Nelson, Illinois 61053.	
Ogle County (unincorporated areas)	
Rock River:	
About 1.9 miles downstream of confluence of Pine Creek	*659
At eastern County Boundary	*662
Kyte River:	
Just upstream of Flagg Road	*764
At City of Rochelle corporate limits (north of Flagg Road)	*782
Stillman Creek:	
At mouth	*686
Just downstream of County Route 4	*696
Kyte River Tributary: Within Community	*772
Mill Creek:	
At mouth	*684
About 700 feet upstream of Mill Road	*691
Ryley Ditch: Within Community	*789
Maps available for inspection at Office of the Zoning Administrator, County Courthouse Annex, 106 South 5th Street, Oregon, Illinois.	
Send comments to The Honorable Robert Ginerich, Chairman, County Board, Ogle County, County Courthouse, Oregon, Illinois 61061.	
KENTUCKY	
Johnson County	
Levisa Fork:	
At downstream county boundary	*598
At downstream city of Paintsville corporate limits	*613
At upstream city of Paintsville corporate limits	*614
At upstream county boundary	*624
Miller Creek:	
At confluence with Levisa Fork	*618
At upstream side of Miller Creek Road	*636
Approximately 513 feet upstream of Butcher Hollow Road	*715
Paint Creek:	
Approximately 300 feet downstream of Second Street	*614
At upstream side of U.S. Highway 460	*614
At downstream side of Subdivision Road	*615
Approximately 1,100 feet upstream of State Highway 40	*620
Mudlick Creek:	
At confluence with Paint Creek	*617
Approximately 200 feet downstream of Rocky Knob Branch Road	*626
At downstream side of Sturgeon Branch Road	*687
Approximately 1.04 miles upstream of State Highway 580	*759
Little Mudlick Creek:	
At confluence with Mudlick Creek	*620
Approximately 1.24 miles upstream of confluence with Mudlick Creek	*747
Jobs Creek:	
At confluence with Mudlick Creek	*724
Approximately .9 mile upstream of confluence with Mudlick Creek	*774
Jennys Creek:	
At confluence with Paint Creek	*614
At Hilton Hollow Road	*633
Upstream side of Swamp Branch Road	*686
At Narrows Fork Road	*705
Elk Fork:	
At confluence with Jennys Creek	*621
Approximately 1,320 feet upstream of Middle Fork Road	*626
Approximately 1.5 miles upstream of Middle Fork Road	*636
Maps available for inspection at the Johnson County Courthouse, Paintsville, Kentucky.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Send comments to The Honorable Wayne Blevins, Judge Executive of Johnson County, County Courthouse, Paintsville, Kentucky 41240.	
LOUISIANA	
Bogalusa (city), Washington Parish	
Coburn Creek:	
At downstream corporate limits	*78
At upstream side of State Route 21	*83
At upstream side of Jefferson Street	*95
At upstream side of Van Buren Street	*97
At upstream corporate limits	*102
Bogue Lusa Creek:	
At downstream corporate limits	*78
At upstream side of State Route 21	*82
At upstream side of Illinois Central Gulf Railroad	*88
At downstream side of Verret Avenue	*94
At upstream corporate limits	*102
Yellow Branch:	
At downstream side of Illinois Central Gulf Railroad	*95
Approximately 100 feet downstream of Avenue I	*102
Coburn Creek Tributary:	
At confluence of Coburn Creek	*98
Approximately 100 feet upstream of Hudson Street	*101
Approximately .7 mile upstream of Hudson Street	*117
Ice Water Branch: Approximately 200 feet downstream of Rio Grande Street	*93
Maps available for inspection at the City Hall, Atlantas Avenue, Bogalusa, Louisiana.	
Send comments to The Honorable Toye Taylor, Mayor of the City of Bogalusa, Washington Parish, P.O. Box 1179, Bogalusa, Louisiana 70427.	
Broussard (town), Lafayette Parish	
Grenvilleras Swamp	*31
Maps available for inspection at 416 East Main, Broussard, Louisiana.	
Send comments to The Honorable Leroy Miquez, Mayor of the Town of Broussard, Lafayette Parish, 416 East Main, Broussard, Louisiana 70518.	
Calahoula Parish	
Ouachita River:	
At confluence with Tensas River	*82
Streambank at State Route 559 (extended)	*86
Tensas River:	
At confluence with Black River	*83
Streambank at State Route 921 (extended)	*84
Black River:	
At confluence with the Red River	*80
At confluence of Ouachita River and Tensas River	*83
Red River: At confluence of Black River	*80
Boeuf River:	
At confluence with Ouachita River	*85
At upstream corporate limits	*86
Little River:	
Approximately 3.6 miles upstream of U.S. Route 84	*82
At confluence with Black River	*83
Maps available for inspection at the Courthouse, Sicily Street, Harrisonburg, Louisiana.	
Send comments to The Honorable Emmitt Taylor, President of the Calahoula Parish Police Jury, P.O. Box 258, Sicily Street, Harrisonburg, Louisiana 71340.	
Harrisonburg (village), Calahoula Parish	
Ouachita River: Entire shoreline (or length) affecting community	*84
Maps available for inspection at the Town Hall, Harrisonburg, Louisiana.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Send comments to The Honorable James Alpin, Mayor of the Village of Harrisonburg, Calahoula Parish, P.O. Box 320, Harrisonburg, Louisiana 71340.	
Pearl River (town), St. Tammany Parish	
West Pearl River:	
At upstream side of U.S. Route 11 and Interstate Route 59 (1st crossing)	*18
At confluence with Pump Slough	*19
At confluence with Bogue Lusa Bayou	*19
At confluence with Old Channel	*21
Old Channel:	
At upstream side of U.S. Route 11 and Interstate Route 59	*21
At Shingle Mill Road (extended)	*23
Gum Creek:	
At Shingle Mill Road (extended)	*23
Approximately 0.35 mile downstream of State Route 41	*25
At State Route 41	*27
Little Gum Creek:	
At confluence with Gum Creek	*24
At State Route 41	*28
South Tributary of Little Gum Creek:	
At confluence with Little Gum Creek	*24
Upstream side of Oak Street (extended)	*28
At State Route 41	*32
Maps available for inspection at the Town Hall, Willie Lane, Pearl River, Louisiana.	
Send comments to The Honorable Janice McQueen, Mayor of the Town of Pearl River, St. Tammany Parish, P.O. Box 1270, Pearl River, Louisiana 70452.	
Washington Parish (unincorporated areas)	
Bogue Chitto River:	
Downstream side of Isabel Highway	*86
Downstream side of State Route 437	*109
Approximately 7 miles upstream of State Route 437	*128
Upstream side of State Routes 10, 16 and 25	*147
Pushepatapa Creek:	
Downstream side of Mt. Olive Cemetery Road	*105
Upstream side of Illinois Central Gulf Railroad	*120
Downstream side of Seal Cemetery Road	*136
Approximately 2 miles upstream of Seal Cemetery Road	*144
Upstream side of Munnie Creek Church Road	*168
Approximately 300 feet upstream of State Route 438	*195
Mile Branch:	
Downstream side of State Route 25	*149
Downstream side of State Route 430	*159
Downstream side of Sixteenth Avenue	*168
Approximately .8 mile upstream of Seventeenth Avenue	*186
Maps available for inspection at the Courthouse, Washington Street, Franklinton, Louisiana.	
Send comments to The Honorable Billy Wayne Rester, Parish President, Washington Parish, Washington Courthouse Building, Franklinton, Louisiana 70438.	
MAINE	
Georgetown (town), Sagadahoc County	
Atlantic Ocean:	
At Ocean Avenue (extended)	*10
At Indian Point	*14
At Todds Point	*15
At southern tip of Long Island	*18
At Kennebec Point	*19
At Outer Head	*29
At Bay Point	*29
Kennebec River:	
Approximately 1,600 feet west of intersection of Bay Point Road and Sagahadoc Bay Road	*10
At West Georgetown Hill	*10

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Sassanoa River:	
At Soldier Point	*10
At northern tip of Beaneck Island	*11
Sheepscot River:	
At Gotts Cove	*18
Approximately 0.50 mile south of Northeast Point	*14
At southern tip of Mink Island	*18
Sheet Flow (caused by Atlantic Ocean):	
Approximately 900 feet north of Indian Point	#1
Approximately 0.40 mile northeast of lower parking lot for Reid State Park	#1
Approximately 1,100 feet south of intersection of Indian Point Road and Loop Road	#1
Maps available for inspection at the Georgetown Office, Bay Point Road, Georgetown, Maine.	
Send comments to The Honorable Charles Collins, Chairman of the Board of Supervisors of the Town of Georgetown, Sagadahoc County, Town Office, Georgetown Central School, Georgetown, Maine 04548.	
Masardis (town), Aroostook County	
Aroostook River:	
At downstream corporate limits	*548
At Garfield Road bridge	*548
Approximately 0.7 mile upstream of confluence of St. Croix Stream	*553
St. Croix Stream:	
At confluence of Aroostook River	*552
Approximately 1.5 miles upstream of confluence of Aroostook River	*557
Maps available for inspection at the Town Clerk's Office, Masardis, Maine.	
Send comments to The Honorable John Weeks, Chairman of the Board of Selectmen of the Town of Masardis, Aroostook County, Town Clerk's Office, Masardis, Maine 04758.	
Southport (town), Lincoln County	
Atlantic Ocean:	
At State Route 27 crossing of Townsend Gut	#10
At Cape Newagen	#15
Approximately 600 feet north of Cape Newagen	#23
Approximately 1.9 miles north of Cape Newagen	#28
Shallow Flood (caused by Atlantic Ocean): Approximately 600 feet northeast of intersection of State Routes 27 and 238	#1
Sheepscot River:	
At Dry Ledge	#10
On west side of Prata Island	#20
At McRys Head	#21
Shallow Flooding (Sheepscot River): At eastern side of Cedarbush Island	#1
Maps available for inspection at the Town Clerk's Office, West Southport, Maine.	
Send comments to The Honorable Eugene Huskins, Chairman of the Board of Selectmen for the Town of Southport, Lincoln County, Municipal Building, West Southport, Maine 04576.	
MICHIGAN	
Cheboygan (city), Cheboygan County	
Cheboygan River:	
At mouth	*583
Just downstream of Cheboygan Dam	*583
Just upstream of Cheboygan Dam	*594
About 0.7 miles upstream of Lincoln Avenue	*594
Lake Huron: Along shoreline	*583
Maps available for inspection at the City Hall, 202 Backson Street, Cheboygan, Michigan.	
Send comments to The Honorable Ellis N. Olson, Mayor, City of Cheboygan, City Hall, 202 Backson Street, Cheboygan, Michigan 49721-0039.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Memphis (city), St. Clair & Macomb Counties	
Belle River:	
About 1,950 feet downstream of Bordman Road	*698
About 2,200 feet upstream of the Memphis Ridge Road	*723
Sage Creek:	
At mouth	*717
About 2,200 feet upstream of the Belle River Road	*722
Maps available for inspection at the City Hall, 35085 Potter Street, Memphis, Michigan.	
Send comments to The Honorable William A. Tatton, Mayor, City of Memphis, City Hall, 35085 Potter Street, Memphis, Michigan 48041.	
Sault Sainte Marie (city), Chippewa County	
Mission Creek:	
At mouth	*584
Just upstream of Tenth Avenue	*589
Mission Creek Tributary:	
At mouth	*591
About 500 feet upstream of Shunk Road	*599
Naimun Creek:	
At mouth	*605
About 0.6 mile upstream of Easterday Avenue	*637
Edison Sault Power Canal: Within community	*605
St. Mary's River:	
About 3.8 miles downstream of Interstate 75	*584
Just downstream of Soo Locks Tailgate	*585
Just upstream Soo Locks Tailgate	*605
About 5.8 miles upstream of Interstate 75	*605
Maps available for inspection at City Hall, 325 Court Street, Sault Ste. Marie, Michigan.	
Send comments to The Honorable James A. Afford, Mayor, City of Sault Ste. Marie, City Hall, 325 Court Street, Sault Ste. Marie, Michigan 49783-2183.	
Vernon (village), Shiawassee County	
Shiawassee River:	
Just downstream of State Highway 71	*761
Just upstream of confluence of Holly Drain	*763
Holly Drain:	
At mouth	*762
About 500 feet upstream of Leaver Street	*765
Maps available for inspection at the Village Hall, 120 East Main Street, Vernon, Michigan.	
Send comments to The Honorable John C. Rosser, Village President, Village of Vernon, Village Hall, 120 East Main Street, Vernon, Michigan 48476.	
MISSISSIPPI	
Monroe County (unincorporated areas)	
Tombigbee River:	
At county boundary	*195
About 3.7 miles upstream of confluence of Sogowgaloa Creek	*241
Tennessee-Tombigbee Canal:	
At confluence with Tombigbee River	*204
Just downstream of Lock A	*209
Just upstream of Lock A	*222
Just downstream of Lock B	*223
Just upstream of Lock B	*245
At county boundary	*249
Old Tombigbee River: Within community	*194
Mallalby Creek:	
At confluence with Old Tombigbee River	*184
About 3.5 miles upstream of Meridian Street	*202
Wanner Creek:	
At mouth	*207
Just downstream of County Highway 617	*272
James Creek Tributary No. 1:	
Just upstream Thayer Road	*210
Just downstream of State Highway 25	*211
Just upstream of State Highway 25	*217
Just upstream of Central Drive	*254

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
James Creek Tributary No. 2:	
Just upstream of Illinois Central Gulf Railroad	*200
About 850 feet upstream of Hamilton Street	*217
Roundhouse Branch:	
About 1,500 feet downstream of 108th Street	*222
At divergence from Burkatta Creek Tributary No. 1	*244
Town Creek:	
At mouth	*213
About 1.0 mile upstream of U.S. Highway 45	*236
Burkatta Creek:	
About 600 feet downstream of State Highway 25	*219
Just upstream of Boulevard Drive	*238
Burkatta Creek Tributary No. 1:	
At confluence with Burkatta Creek	*238
Just upstream of Tschudi Street	*254
Burkatta Creek Diversion Channel:	
Just upstream of drop structure	*236
About 0.57 mile upstream of State Highway 25	*242
Upper Burkatta Creek:	
About 1,800 feet downstream of Phillips School Road	*242
Just upstream of Mississippian Railway	*245
City Ditch:	
At mouth	*183
About .75 mile downstream of Illinois Central Gulf Railroad	*189
Maps available for inspection at the County Courthouse, Aberdeen, Mississippi.	
Send comments to The Honorable Jimmy Kirkpatrick, President, County Board of Supervisors, Monroe County, County Courthouse, P.O. Box 576, Aberdeen, Mississippi 39720.	
Smithville (town), Monroe County	
Tennessee-Tombigbee Canal: Within community	*249
Maps available for inspection at the City Hall, Smithville, Mississippi.	
Send comments to The Honorable M. E. Medley, Mayor, Town of Smithville, City Hall, P.O. Box 125, Smithville, Mississippi 38870.	
MISSOURI	
Scott City (city), Scott County	
Ramsey Creek Diversion Channel: Within community	*353
Ramsey Creek:	
About 1,300 feet downstream of Old Highway 61	*353
At confluence of Illmo Branch	*355
Illmo Branch:	
At confluence with Ramsey Creek	*355
Just downstream of East First Street	*371
Illmo Tributary:	
At mouth	*361
Just downstream of State Street	*372
Maps available for inspection at the City Hall, 712 Main Street, Scott City, Missouri.	
Send comments to The Honorable Alvis Modglin, Mayor, City of Scott City, City Hall, 712 Main Street, Scott City, Missouri 63780.	
NEW MEXICO	
Socorro (city), Socorro County	
Rio Grande River:	
At downstream corporate limits (extended)	*4,585
Approximately 1,350 feet upstream of most upstream corporate limits	*4,589
Maps available for inspection at the City Hall, 200 Church Street, Socorro, New Mexico.	
Send comments to The Honorable Angelo A. Melero, Mayor of the City of Socorro, Socorro County, P.O. Box K, Socorro, New Mexico 87801.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
NEW YORK	
Annsville (town), Oneida County	
East Branch Fish Creek:	
At confluence with Fish Creek	*406
Approximately 1.2 miles upstream of State Route 69	*450
Approximately 180 feet upstream of Old State Route 69 (Main Street)	*510
Approximately 1.09 miles upstream of State Route 69	*560
Approximately 0.5 mile upstream of Palmer Road	*826
Furnace Creek:	
At confluence with East Branch Fish Creek	*504
Approximately 60 feet upstream crossing of Old State Route 69 (Main Street)	*555
Approximately 0.5 mile upstream crossing of Glenmore Road	*807
Fish Creek:	
At downstream corporate limits	*402
At confluence with West Branch Fish Creek	*406
West Branch Fish Creek:	
At downstream corporate limits	*406
Approximately 1.6 miles upstream of McConnellsville Road	*463
Maps available for inspection at the Town Vault, Maine Street, Taberg, New York.	
Send comments to The Honorable Michael Noble, Supervisor of the Town of Annsville, Oneida County, Glenmore Road, R.D. #1, Taberg, New York 13471.	
Vernon (village), Oneida County	
Sconondoa Creek:	
Downstream corporate limits	*591
Upstream corporate limits	*648
Maps available for inspection at the Village Hall, Vernon, New York.	
Send comments to The Honorable Violet Trost, Mayor of the Village of Vernon, Oneida County, 217 West Seneca Street, Vernon, New York 13476.	
OREGON	
Dallas (city), Polk County	
Rickreall Creek:	
Approximately 1,100 feet downstream of Fir Villa Road	*256
200 feet downstream of Levens Street	*312
Approximately 7,800 feet downstream of Ellendale Road	*349
North Fork Ash Creek:	
Approximately 1,800 feet downstream of Godsey Road	*273
50 feet upstream of Holman Street	*300
Approximately 2,100 feet upstream of Main Street	*321
North Fork Tributary:	
Approximately 1,050 feet downstream of Godsey Road	*279
400 feet upstream of Monmouth Cutoff Highway	*297
Maps are available for review at City Hall, Main Street, Dallas, Oregon.	
Send comments to Mayor Gwen Vandenbosch, P.O. Box 67, Dallas, Oregon 97338.	
Independence (city), Polk County	
Willamette River:	
Approximately 3,400 feet downstream of the confluence of Ash Creek	*157
200 feet downstream of South River Road	*159
Ash Creek:	
100 feet upstream of Main Street (State Highway 51)	*159
Approximately 2,400 feet upstream of Gun Club Road	*168
South Fork Ash Creek:	
At confluence with Ash Creek	*159
20 feet upstream of F Street	*165
Maps are available for review at City Hall, Independence, Oregon.	
Send comments to Mayor Marion Rossi, City Hall, P.O. Box 7, Independence, Oregon 97351.	
Monmouth (city), Polk County	
Ash Creek:	
850 feet downstream of Sewage Lagoon Road	*170
At confluence of North Fork Ash Creek and Middle Fork Ash Creek	*174
North Fork Ash Creek:	
At confluence with Ash Creek and Middle Fork Ash Creek	*174
Middle Fork Ash Creek:	
At confluence with Ash Creek and North Fork Ash Creek	*174
Approximately 2,000 feet upstream of U.S. Highway 99 West (Pacific Highway)	*183
Middle Fork Tributary:	
At confluence with Middle Fork Ash Creek	*177
100 feet upstream of U.S. Highway 99 West (Pacific Highway)	*181
Maps are available for review at City Hall, 151 West Main Street, Monmouth, Oregon.	
Send comments to Mayor Wesley N. Hedlund, City Hall, 151 West Main Street, Monmouth, Oregon 97361.	
PENNSYLVANIA	
Cranberry (township), Venango County	
Sage Run:	
At downstream corporate limits	*1,020
Downstream side of U.S. Route 62 second upstream crossing	*1,070
Upstream side of U.S. Route 62 fifth upstream crossing	*1,150
Upstream side of U.S. Route 62 seventh upstream crossing	*1,237
Upstream side of U.S. Route 62 ninth upstream crossing	*1,261
Allegheny River:	
At downstream corporate limits	*961
Upstream side of U.S. Route 322 Bridge	*976
Upstream side of CONRAIL bridge	*997
Approximately 4.3 miles upstream of CONRAIL bridge	*1,006
Lower Twomile Run:	
At confluence with Allegheny River	*971
Upstream side of Deep Hollow Road first crossing	*991
Approximately 75 feet upstream of Deep Hollow Road second crossing	*1,041
Maps available for inspection at the Township Building, Route 257, Seneca, Pennsylvania.	
Send comments to The Honorable Richard C. Carothers, Chairman of the Township of Cranberry Board of Supervisors, Venango County, P.O. Box 378, Seneca, Pennsylvania 16346.	
East Franklin (township), Armstrong County	
Allegheny River:	
Approximately 0.5 mile downstream of U.S. Route 422 and State Route 28 Bridge	*783
Downstream side of Lock and Dam No. 7	*795
Upstream of Lock and Dam No. 7	*798
At confluence of Limestone Run	*802
At CSX Transport	*804
Approximately 1.7 miles upstream of CSX Transport	*806
Maps available for inspection at the Municipal Building, R.D. #3, Kittanning, Pennsylvania.	
Send comments to The Honorable David M. Gallagher, Chairman of the Board of Supervisors for the Township of East Franklin, Armstrong County, R.D. #3, Kittanning, Pennsylvania 16201.	
Freedom (township), Adams County	
Middle Creek:	
At downstream corporate limits	*430
Upstream side of U.S. Route 15	*450
Approximately 1,000 feet upstream of L.R. 01052	*466
Marsh Creek:	
Approximately 0.05 mile upstream of U.S. Route 15	*423
Approximately 40 feet upstream of U.S. Business Route 15	*446
Approximately 0.4 mile upstream of T-327	*460
At upstream corporate limits	*478
Maps available for inspection with the Township Engineer, Gettysburg Engineer Company, 40 East High Street, Gettysburg, Pennsylvania 17325.	
Send comments to The Honorable Robert E. Wenschhof, Chairman of the Township of Freedom Board of Supervisors, Adams County, P.O. Box 418, Gettysburg, Pennsylvania 17325.	
Gilpin (township), Armstrong County	
Allegheny River:	
At confluence of Kiskiminetas River	*772
Upstream side of Lock and Dam No. 5	*776
At Danley Island	*778
Approximately 5.3 miles upstream of Lock and Dam No. 5	*780
Kiskiminetas River:	
At confluence with Allegheny River	*772
Approximately 1.3 miles upstream of confluence of Elder Run	*775
At confluence with Goffy Run	*782
Maps available for inspection at the Township Building, Leechburg, Pennsylvania.	
Send comments to The Honorable Robert Zhrasvan, Chairman of the Board of Supervisors of the Township of Gilpin, Armstrong County, R.D. #4, Box 491, Leechburg, Pennsylvania 15656.	
Kiskiminetas (township), Armstrong County	
Kiskiminetas River:	
Most downstream corporate limits	*702
Confluence with Roaring Run	*811
Confluence with Long Run	*826
Approximately 0.9 mile upstream of State Road 56	*832
Maps available for inspection at the Township Building, Apollo, Pennsylvania.	
Send comments to The Honorable Ronald E. Heid, Chairman of the Township of Kiskiminetas Board of Supervisors, Armstrong County, Old State Road, Apollo, Pennsylvania 15613.	
Lower Nazareth (township), Northampton County	
Monocacy Creek:	
At downstream corporate limits	*321
Downstream side of Hanoverville Road	*332
Confluence of East Branch Monocacy Creek	*339
Upstream corporate limits	*351
East Branch Monocacy Creek:	
Confluence with Monocacy Creek	*339
Upstream side of Steinen Road	*343
Confluence of Unnamed Tributary to East Branch Monocacy Creek	*359
At upstream corporate limits	*374
Unnamed Tributary to East Branch Monocacy Creek:	
Confluence with East Branch Monocacy Creek	*359
Upstream side of Newburg Road	*372
At upstream corporate limits	*376
Shoemack Creek:	
At downstream corporate limits	*345
Approximately 200 feet upstream of the Sewage Treatment Plant Road	*348

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Maps available for inspection at the Township Office, 306 Butztown Road, Bethlehem, Pennsylvania.	
Send comments to The Honorable Willard Hambach, Chairman of the Township of Lower Nazareth Board of Supervisors, Northampton County, 306 Butztown Road, Bethlehem, Pennsylvania 18017.	
New Florence (borough), Westmoreland County	
Conemaugh River:	
Approximately 840 feet downstream of Ligonier Street	*1,071
Approximately 1,200 feet upstream of Ligonier Street	*1,075
Maps available for inspection at the Borough Building, Franklin, Pennsylvania.	
Send comments to The Honorable Eugene Gorrcesi, New Florence Borough Council, Westmoreland County, Ligonier Street, New Florence, Pennsylvania 15944.	
Perry (township), Armstrong County	
Kiskiminetas River:	
At downstream corporate limits	*781
Upstream of confluence of Carnahan Run	*785
At State Route 66 Alternate	*790
At upstream corporate limits	*792
Maps available for inspection at the Township Building, Vandergrift, Pennsylvania.	
Send comments to The Honorable Steven Rishel, Chairman of the Board of Supervisors for the Township of Parks, Armstrong County, R.D. #1, Vandergrift, Pennsylvania 15690.	
Perry (township), Armstrong County	
Allegheny River:	
Approximately .5 mile downstream of confluence of Armstrong Run	*859
Confluence of Birch Run	*856
Approximately 2.3 mile upstream of confluence of Birch Run	*860
At confluence of Bear Creek	*866
Maps available for inspection at the Township Building, Kams City, Pennsylvania.	
Send comments to The Honorable Hartzell Young, Chairman of the Board of Supervisors of the Township of Perry, Armstrong County, R.D. 2, Kams City, Pennsylvania 16041.	
SOUTH CAROLINA	
Hampton (town), Hampton County	
Coosawhatchie River Tributary:	
At downstream corporate limits	*85
Approximately 150 feet downstream of State Route 363	*93
Just downstream of State Route 363	*99
At upstream corporate limits	*101
Sanders Branch:	
At downstream corporate limits	*62
Approximately 2,000 feet upstream of downstream corporate limits	*83
Maps available for inspection at the Town Hall, 606 First Street, Hampton, South Carolina.	
Send comments to The Honorable Harold S. McMillan, Mayor of the Town of Hampton, Hampton County, 606 First Street, Hampton, South Carolina 29924.	
TENNESSEE	
Claiborne County (unincorporated areas)	
Clear Fork:	
At western County Boundary	*1,085
At northern State Boundary	*1,262
Straight Creek:	
At mouth	*1,108
Just downstream of Straight Creek Road	*1,119
Valley Creek:	
At mouth	*1,185
About 0.53 mile upstream of Norfolk Southern Railway	*1,229
Davis Creek:	
At western County Boundary	*1,040
About 0.55 mile upstream of State Route 63	*1,260
Cawood Branch:	
At mouth	*1,095
About 0.7 mile upstream of Dunn Lane	*1,170
Maps available for inspection at the County Executive's Office, County Courthouse, Tazewell, Tennessee.	
Send comments to The Honorable William C. O'Donnell, County Executive, Claiborne County, County Courthouse, Tazewell, Tennessee 37879.	
Red Boiling Springs (city), Macon County	
Salt Lick Creek:	
About 1,900 feet downstream of North Main Street	*762
About 1,700 feet upstream of Market Street	*776
Salt Lick Creek Tributary:	
At Mouth	*774
About 550 feet upstream of Market Street	*795
McClure Hollow:	
Just downstream of Market Street	*772
About 1,000 feet upstream of Sunset Drive	*781
Maps available for inspection at the City Hall, Red Boiling Springs, Tennessee.	
Send comments to The Honorable Faulby Parkhurst, Mayor, City of Red Boiling Springs, City Hall, P.O. Box 190, Red Boiling Springs, Tennessee 37150.	
VIRGINIA	
Honaker (town), Russell County	
Lewis Creek:	
At downstream corporate limits	*1,815
At upstream corporate limits	*1,823
Maps available for inspection at the Municipal Building, Honaker, Virginia.	
Send comments to The Honorable Walter Jones, Mayor of the Town of Honaker, Russell County, P.O. Box 746, Honaker, Virginia 24260.	
Washington County (unincorporated areas)	
Wolf Creek:	
Approximately 0.4 miles downstream of confluence of Town Creek	*1,900
Upstream side of the most upstream portion of State Highway 794	*1,992
Upstream side of State Highway 662	*2,019
Approximately 1,270 feet upstream of U.S. Highway 19	*2,052
Town Creek:	
Confluence with Wolf Creek	*1,935
Upstream side of most upstream crossing of State Highway 670	*1,971
Downstream side of State Highway 699	*2,053
Laurel Creek:	
Approximately 211 feet upstream of confluence with South Fork Holston River	*1,825
Downstream side of the most upstream State Highway 91	*2,001
Greenway Creek:	
Approximately 0.8 mile downstream of State Highway 706	*1,822
Downstream side of U.S. Highway 11	*2,016
Tributary to Hutton Creek:	
Upstream side of Norfolk and Western Railway	*2,037
Approximately 1 mile upstream of the Norfolk and Western Railway	*2,061
Beaverdam Creek:	
Approximately 0.84 mile downstream of the confluence with Belvins Branch	*1,953
Approximately 1,200 feet downstream of the confluence with Belvins Branch	*1,985
Maps available for inspection at the Planning and Zoning Office, 205 Academy Drive, Abingdon, Virginia.	
Send comments to The Honorable Richard Barton, Washington County Administrator, 205 Academy Drive, Abingdon, Virginia 24210.	
WASHINGTON	
Columbia County (unincorporated areas)	
Tucannon River:	
360 feet downstream from the Powers Road Bridge	*572
790 feet upstream from the Powers Road Bridge near the intersection of State Route 261 and Little Goose Dam Road	*615
At downstream corporate limits of the City of Starbuck	*635
80 feet upstream from the Tucannon Street Bridge	*648
At upstream corporate limits of the City of Starbuck	*664
Touchet River:	
970 feet downstream from County Road 2427	*1,509
2,975 feet upstream from County Road 2427	*1,532
At the corporate limits of the City of Dayton	*1,580
70 feet upstream from the corporate limits of Dayton	*1,650
At the confluence of North and South Forks Touchet River	*1,672
North Fork Touchet River:	
At the confluence of North and South Forks Touchet River	*1,672
70 feet upstream from South Touchet Road Bridge	*1,703
120 feet upstream from County Road Bridge	*1,739
At a point approximately 200 feet downstream from the Junction of Crail Hollow Road and North Fork Touchet River Road	*1,761
South Fork Touchet River:	
At the confluence of North and South Forks Touchet River	*1,672
2,400 feet above confluence of North and South Forks of Touchet River	*1,690
6,200 feet above confluence of North and South Forks of Touchet River	*1,730
50 feet upstream from County Road Bridge	*1,766
Johnson Hollow:	
200 feet upstream from Dayton Avenue and 80 feet upstream from corporate limits of Dayton	*1,625
50 feet upstream from a private bridge located 2,350 feet above confluence with Patit Creek	*1,662
100 feet upstream from double culverts at a private bridge located 5,200 feet above confluence with Patit Creek	*1,708
140 feet downstream from Edgar Road Bridge	*1,725
Maps are available for review at the Columbia County Planning Department, 341 East Main Street, Dayton, Washington.	
Send comments to Mr. Vernon Marill, Chairman, Columbia County Board of Commissioners, 341 East Main Street, Dayton, Washington 99328.	
Dayton (city), Columbia County	
Patit Creek:	
Confluence with Touchet River	*1,591
100 feet downstream from Patit Street Bridge	*1,600
20 feet upstream from the First Street Bridge	*1,604
100 feet upstream from the Sixth Street Bridge	*1,626
140 feet upstream from U.S. Highway 12 Bridge	*1,633
Patit Creek Left Overbank:	
Confluence with Patit Creek	*1,594
50 feet downstream from First Street	*1,609
75 feet upstream from Second Street	*1,605
60 feet downstream from Fourth Street	*1,613
Touchet River:	
At southwest corner of the corporate limits surrounding waste water treatment plant	*1,560
At western corporate limits of the City of Dayton	*1,579
Confluence with Patit Creek	*1,591
Confluence with Mustard Hollow	*1,618

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PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Upstream corporate limits of City of Dayton	*1,649
Johnson Hollow:	
Confluence with Pratt Creek	*1,628
20 feet upstream from Dayton Avenue Bridge	*1,633
City of Dayton corporate limits	*1,634
Maps are available for review at City Hall, Planning Department, 111 South First, Dayton, Washington.	
Send comments to Mayor Carl Rowe, City Hall, 111 South First, Dayton, Washington 99328.	
Mason County (unincorporated areas)	
Hood Canal:	
At confluence with Jorsted Creek	*10
At northern County Boundary	*10
Union River:	
At State Route 300 (North Shore Road)	*13
At Old Belfair Highway	*54
Approximately 3,000 feet upstream of confluence with Bear Creek (at County Boundary)	*129
Tahuya River:	
At State Route 300 (North Shore Road)	*9
Approximately 400 feet downstream of confluence with Howell Lake Tributary	*90
Approximately 400 feet upstream of Haven Way	*177
Skokomish River:	
At State Route 106	*16
Approximately 400 feet upstream of U.S. Route 101	*28
Approximately 500 feet downstream of confluence with North Fork Skokomish River	*57
Goldsborough Creek:	
Approximately 1,800 feet downstream of confluence with Coffee Creek	*35
Approximately 900 feet upstream of U.S. Highway 101	*56
Coffee Creek:	
At confluence with Goldsborough Creek	*45
Approximately 1,700 feet upstream of West Oregon Road	*80
Maps are available for review at the Mason County Courthouse, General Services Department, Annex 1, Fourth and Alder, Shelton, Washington.	
Send comments to Mr. John Eager, Chairman, Mason County Commissioners, County Courthouse, 411 North Fifth, Shelton, Washington 98584.	
Starbuck (city), Columbia County	
Tucannon River:	
450 feet downstream of the southwest corporate limits of Starbuck	*632
350 feet downstream from the Tucannon Street Bridge	*640
105 feet downstream from the Tucannon Street Bridge	*645
500 feet upstream of the Tucannon Street Bridge	*648
200 feet upstream of the southeast corporate limits of Starbuck	*655
Maps are available for review at City Hall, Main Street, Starbuck, Washington.	
Send comments to Mayor Zack Zink, City Hall, P.O. Box 296, Starbuck, Washington 99359.	
WEST VIRGINIA	
Barrackville (town), Marion County	
Buffalo Creek:	
Downstream corporate limits	*891
Upstream corporate limits	*909
Maps available for inspection at the City Hall, Barrackville, West Virginia.	
Send comments to The Honorable Mark Bolyard, Mayor of the Town of Barrackville, Marion County, P.O. Box 26, Barrackville, West Virginia 26559.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Fairview (town), Marion County	
Paw Paw Creek:	
At downstream corporate limits	*992
Approximately 132 feet upstream of Madison Street	*996
Upstream corporate limits	*1,006
Maps available for inspection at the City Hall, Fairview, West Virginia.	
Send comments to The Honorable Richard Robinson, Mayor of the Town of Fairview, Marion County, P.O. Drawer 119, Fairview, West Virginia 26570.	
Farmington (town), Marion County	
Buffalo Creek:	
Downstream corporate limits	*937
Downstream side of State Route 15	*939
Upstream corporate limits	*940
Maps available for inspection at the City Hall, Farmington, West Virginia.	
Send comments to The Honorable Harvey Markley, Jr., Mayor of the Town of Farmington, Marion County, P.O. Box 520, Farmington, West Virginia 26571.	
Rivesville (town), Marion County	
Monongahela River:	
Entire shoreline affecting community	*868
Entire shoreline of Paw Paw Creek within community	*868
Maps available for inspection at the Town Hall, Rivesville, West Virginia.	
Send comments to The Honorable Kenneth Stottlemire, Mayor of the Town of Rivesville, Marion County, P.O. Box 45, Rivesville, West Virginia 26588.	
Shinnston (city), Harrison County	
West Fork River:	
Downstream corporate limits	*906
Upstream corporate limits	*913
Shins Run: Entire length of Shins Run within the community	*911
Maps available for inspection at the City Hall, 43 Bridge Street, Shinnston, West Virginia.	
Send comments to The Honorable Wanda Ashcraft, Mayor of the City of Shinnston, Harrison County, 43 Bridge Street, Shinnston, West Virginia 26431.	
WISCONSIN	
Manawa (city), Waupaca County	
Little Wolf River:	
About 1.2 miles downstream of Bridge Street	*808
Just downstream of Manawa Dam	*809
Just upstream of Manawa Dam	*815
About 0.5 mile upstream of Manawa Dam	*815
Maps available for inspection at the City Hall, 590 Clark Street, Manawa, Wisconsin.	
Send comments to The Honorable William Levezow, Mayor, City of Manawa, City Hall, Box 248, 590 Clark Street, Manawa, Wisconsin 54949.	
Marion (city), Waupaca County	
North Branch Pigeon River:	
About 1.0 mile downstream of Parkview Avenue	*832
Just downstream of Main Street	*841
Marion Pond: Along shoreline	*854
Maps available for inspection at the City Hall, 402 North Main Street, Marion, Wisconsin.	
Send comments to The Honorable Byron Beversdorf, Mayor, City of Marion, 707 NE. 3rd Street, Marion, Wisconsin 54950.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
WYOMING	
Converse County (unincorporated areas)	
North Platte River (near Orin):	
Approximately 600 feet downstream of State Highway 319	*4,668
Approximately 1,500 feet downstream of Interstate Highway 25	*4,676
North Platte River (near Glenrock):	
Approximately 1.2 miles downstream of State Highway 95	*4,967
Approximately 100 feet downstream of State Highway 95	*4,973
Maps are available for review at the Converse County Planning Office, County Courthouse, 107 North Fifth, Douglas, Wyoming.	
Send comments to Mr. John Paxton, Chairman, Converse County Board of Commissioners, County Courthouse, 107 North Fifth, Douglas, Wyoming 82633.	
Jackson (town), Teton County	
Flat Creek:	
Upstream face of U.S. Routes 26, 89, 187, and 189 (southern corporate limits)	*6,121
20 feet upstream of the end of Virginian Lane	*6,162
Downstream face of U.S. Routes 26, 84, and 187 (northern corporate limits)	*6,214
Cache Creek:	
Upstream face of Norwood Avenue	*6,322
Approximately 2,400 feet downstream of confluence with Woods Canyon Creek (at corporate limits)	*6,383
Maps are available for review at the Town Planner's Office, 155 Pearl Street, Jackson, Wyoming.	
Send comments to Mayor Abi Garman, P.O. Box 1687, Jackson, Wyoming 83001.	
Manchester (town), Sheridan County	
Tongue River:	
Approximately 1.2 miles downstream of Wolf Creek County Road	*3,742
Approximately 900 feet downstream of Wolf Creek County Road	*3,759
Approximately 1,600 feet upstream of the confluence with Five Mile Creek	*3,766
Maps are available for review at the Town Clerk's Office, 145 Colleen Street, Manchester, Wyoming.	
Send comments to Mayor Gerald T. Laya, P.O. Box 655, Manchester, Wyoming 82801.	
Teton County	
Snake River:	
Upstream face of U.S. Routes 26, 89, 187, and 189	*5,949
At confluence with Mosquito Creek	*5,968
Approximately 100 feet upstream from State Highway 22	*6,159
Approximately 600 feet upstream of confluence with Gros Ventre River	*6,242
Approximately 4.6 miles upstream of confluence with Gros Ventre River	*6,310
Approximately 1,600 feet upstream of confluence with Stewart Draw	*6,400
Flat Creek:	
Upstream face of U.S. Routes 26, 89, 187, and 189	*5,949
Downstream face of Big Trail Drive	*6,071
Downstream face of U.S. Routes 26, 89, 187, and 189 (southern corporate limits of Town of Teton)	*6,120
Spring Creek:	
At confluence with Snake River	*5,968
Approximately 3.6 miles downstream of U.S. Highway 22	*6,077
Approximately 400 feet upstream of U.S. Highway 22	*6,158

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Gros Ventre River:	
Confluence with Snake Creek	*6,240
At Golf Course Bridge	*6,310
Approximately 3,000 feet downstream of U.S. Routes 26, 89, and 187	*6,357
Fish Creek:	
Approximately 1,700 feet downstream of Pine Meadow Road	*6,109
At Main Street Bridge	*6,146
At upstream face of Fish Creek Road (upstream crossing)	*6,173
At confluence with Jenson Canyon Creek	*6,220
At confluence with Rock Springs Canyon Creek	*6,267
Approximately 12,200 feet upstream of confluence with Rock Springs Canyon Creek	*6,320
Lake Creek:	
At confluence with Fish Creek	*6,191
Approximately 100 feet upstream of Moose Wilson Road	*6,233
At confluence with Granite Creek	*6,257

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Approximately 10,500 feet upstream of confluence with Granite Creek	*6,318
Cache Creek:	
Approximately 2,400 feet downstream of confluence with Woods Canyon Creek (at Town of Jackson corporate limits)	*6,383
Approximately 2,100 feet downstream of confluence with Woods Canyon Creek (Approximately 250 feet upstream of Town of Jackson corporate limits)	*6,388
Teton Creek:	
At County Line Road	*6,373
Approximately 1.8 miles upstream of County Line Road	*6,480
Approximately 900 feet upstream of confluence with Mill Creek	*6,602
Buffalo Fork:	
Approximately 800 feet downstream of U.S. Routes 26, 89, and 187	*6,720

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Approximately 800 feet downstream of U.S. Routes 26 and 287	*6,781
Approximately 3,500 feet downstream of confluence with Blackrock Creek	*6,813

Maps are available for review at the Teton County Planner's Office, County Courthouse, 161 South King Street, Jackson, Wyoming.

Send comments to Mr. Leslie Peterson, Chairman, Teton County Board of Commissioners, County Courthouse, P.O. Box 1727, Jackson, Wyoming 83001.

The proposed modified base (100-year) flood elevations for selected locations are:

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
California	City of Benicia, Solano County	Sulphur Springs Creek	Just downstream of the Southern Pacific Railroad Spur	None	*8
			Just upstream of Park Road	None	*11
			Above East Second Street	None	*27
			Approximately 130 feet downstream of Industrial Way	None	*49
			At intersection of Industrial Way and West Channel Road.	None	#2
		Carquinez Strait	At Benicia Marina	None	*5
		Southampton Bay	Just downstream of Interstate Highway 780 at Benicia State Park.	None	*5

Maps are available for inspection at the Department of Public Works, City Hall, 250 East L Street, Benicia, California.

Send comments to Mayor Marylyn Crouke, City Hall, 250 East L Street, Benicia, California 94510.

California	Sacramento County (Unincorporated Areas).	Morrison Creek	At Interstate Highway Just upstream of Highway 5	*13	*14
			Just upstream of Elk Grove-Florin Road	*47	*46
			Just downstream of Kiefer Boulevard	*76	*75
			Approximately 200 feet downstream of Mather Boulevard.	None	*65
		Florin Creek	Just upstream of Center Parkway	None	*20
			Just downstream of Stockton Boulevard	*25	*26
			Just upstream of McComber Street	*35	*36
			At Florin-Perkins Road	*36	*37
		Elder Creek	Just downstream of State Highway 99	*20	*23
			Just downstream of Elk Grove-Florin Road	*43	*45
			Just upstream of Bradshaw Road	*60	*60
			Just upstream of Excelsior Road	None	*90
			Approximately 1,500 feet upstream of Excelsior Road	None	*92
		Gerber Creek	Approximately 1,000 feet downstream of Passala Lane.	*44	*46
			Just downstream of Central California Traction Railroad.	*51	*52
			Upstream of Gerber Road, 300 feet east of Vineyard Road intersection.	None	*73
		Unionhouse Creek	Just upstream of Stockton Boulevard	*26	*25
			1,200 feet east of Elk Grove-Florin Road	*37	*40
		Strawberry Creek	Approximately 250 feet upstream of the confluence with Unionhouse Creek.	*20	*21
			Just upstream of State Highway 99	*25	*26
			Just upstream of Southern Pacific Railroad	*34	*35
		North Fork Laguna Creek	Just upstream of Bruceville Road	None	*24
			Just upstream of State Highway 99	None	*21
			Approximately 3,100 feet upstream of State Highway 99.	None	*33
		Laguna Creek	At Western Pacific Railroad	*13	*14
			Just upstream of State Highway 99	*29	*31
			Just Downstream of Vineyard Road	*66	*67
			Just downstream of Excelsior Road	*79	*83
		Laguna Creek Tributary 1	Approximately 1,500 feet upstream of the confluence with Laguna Creek.	None	*50
			Just upstream of Bader Road	None	*58
			Approximately 100 feet upstream of Excelsior Road	None	*70
		Whitehouse Creek	At the confluence with Laguna Creek	*27	*26
			Just upstream of State Highway 99	*28	*30

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Just upstream of Campbell Road	None	*45
			Approximately 1,300 feet upstream of Campbell Road	None	*46
		Elk Grove Creek	Just upstream of Elk Grove-Florin Road	*36	*39
			Just upstream of Waterman Road	*48	*47
		Sacramento River	At the intersection of Victory Highway and Emmaton Road on Sherman Island (RD 341).	None	*7
			At the City of Isleton southern corporate limits	None	*9
			At the confluence with Delta Cross Channel	None	*14
			At Interstate Highway 80	None	*30
		Georgiana Slough	At the confluence with North Fork Mokelumne River	None	*7
			Just upstream of Southern Pacific Railroad	None	*10
			Approximately 900 feet downstream of Walnut Grove-Thorton Road Extended.	None	*13
		North Fork Mokelumne River	At the intersection of Southern Pacific Railroad and Brunk Road on Tyler Island (RD 563).	None	*7
			At Walnut Grove-Thorton Road Extended	None	*12
			At the confluence of Dead Horse Cut	None	*15
		Mokelumne River	Approximately 600 feet upstream of the confluence with Dead Horse Cut.	None	*15
			Just upstream of New Hope Road	None	*24
		Snodgrass Slough	At the confluence with North Fork Mokelumne River	None	*12
			At Southern Pacific Railroad	None	*15
		Delta Cross Channel	On the east side of Southern Pacific Railroad	None	*15
		Sutter Slough	At the confluence with Steamboat Slough	None	*13
			Approximately 4,000 feet upstream of Sutter Island Cross Road Extended.	None	*16
		Steamboat Slough	Approximately 5,000 feet upstream of the confluence of Grand Island.	None	*9
			At State Highway 220 Extended	None	*12
			At State Highway 160, just downstream of the confluence with Sacramento River.	None	*16
		Threemile and Sevenmile Sloughs	At the confluence of these two sloughs	None	*7

Maps are available for review at the Sacramento County Department of Public Works, 827 Seventh Street, Sacramento, California.
Send comments to Mr. Tubbs Johnson, Chairman, Sacramento County Board of Supervisors, 700 H Street, Suite 2450, Sacramento, California 95814.

California	San Joaquin County Unincorporated Areas.	Mokelumne River	50 feet upstream of New Hope Road (Walnut Grove Road).	*22	*24
			Approximately 500 feet upstream of Peltzer Road	*32	*34
			Approximately 750 feet upstream of State Highway 99	*49	*51
			Approximately 1,250 feet downstream of State Highway 99.	None	*89
			Approximately 450 feet downstream of Comanche Dam.	None	*102
		North Fork Mokelumne River	At confluence with South Fork Mokelumne River	None	*7
			Approximately 50 feet upstream of Walnut Grove Road.	None	*12
			At divergence from South Fork Mokelumne River	None	*15
		Middle River	Approximately 3,000 feet upstream of State Highway 4	None	*8
			At the confluence with Old River	None	*16
		Middle River (Delta Area)	At the confluence-with Empire Cut	None	*7
		Old River	2,000 feet upstream of Fabian and Bell Canal	None	*8
			At the confluence with Salmon Slough	None	*13
			3,000 feet downstream of the confluence with San Joaquin River.	None	*22
		Old River (Delta Area)	At the confluence of Woodward Canal and Old River	None	*7
			Approximately 1,000 feet easterly along State Highway 4 from the bridge crossing at Old River.	None	*8
		Paradise Cut	At the Confluence with Sugar Cut	None	*12
			Approximately 550 feet upstream of Paradise Road	None	*17
			Approximately 1,000 feet downstream of Paradise Dam.	None	*23
		South Fork Mokelumne River	At the confluence of Hog Slough	None	*8
			Approximately 100 feet upstream of Walnut Grove Road.	None	*15
		South Fork Mokelumne River (Delta Area).	Approximately 1,000 feet west along State Highway 12 from the bridge crossing of Little Potato Slough.	None	*7
			At confluence of Little Potato Slough	None	*8
		San Joaquin River (Delta Area)	Intersection of Jacobs Road and McDonald Road	None	*7
			Intersection of Mathews Road and Wells Road	None	*17
			Intersection of Woodward Avenue and McKinley Avenue.	None	*25
			Approximately 3,000 feet north of the intersection of Kasson Road and Durham Ferry Road (Airport Way).	None	*32
		Beaver Slough	Approximately 100 feet downstream of Blossom Road	None	*9
		Bishop Cut (Delta Area)	At confluence of Telephone Cut Bishop Cut	None	*8
		Columbia Cut (Delta Area)	At the confluence of San Joaquin River and Columbia Cut.	None	*7
		Connection Slough (Delta Area)	Approximately 100 feet upstream of the confluence with Old River.	None	*7
		Disappointment Slough (Delta Area).	At the confluence of Ward Cut	None	*7
		Empire Cut (Delta Area)	At the confluence of Middle River	None	*7
		Hog Slough (Delta Area)	At the confluence of South Fork Mokelumne River	None	*8
		Honker Cut (Delta Area)	At the confluence of White Slough	None	*8
		Latham Slough (Delta Area)	At the confluence of Empire Cut	None	*7
		Little Connection Slough (Delta Area).	At confluence with San Joaquin River	None	*7

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground °Elevation in feet (NGVD)	
				Existing	Modified
		Little Potato Slough	At the confluence with Potato Slough	None	°7
			At State Highway 12	None	°8
		Potato Slough (Delta Area)	At the confluence with San Joaquin River	None	°7
		Sycamore Slough (Delta Area)	At the confluence of South Fork Mokelumne River	None	°8
		Telephone Cut (Delta Area)	At the confluence of Bishop Cut	None	°8
		Turner Cut (Delta Area)	At the confluence of Empire Cut, Whiskey Slough and Turner Cut.	None	°7
		Whiskey Slough (Delta Area)	At the confluence of Empire Cut, Turner Cut and Whiskey Slough.	None	°7
		White Slough (Delta Area)	At the confluence with San Joaquin River	None	°7
			At the confluence of Potato Slough	None	°8
		Woodward Canal (Delta Area)	At the confluence of Middle River	None	°7
		Victoria and North Canals (Delta Areas).	At the confluence of Middle River and Victoria and North Canals.	None	°8

Maps are available for review at the San Joaquin County Planning and Inspection Department, 1810 East Hazelton, Stockton, California.

Send comments to Mr. Douglas W. Wilhoit, Chairman, San Joaquin County Board of Supervisors, 222 East Weber Avenue, Room 70701, Stockton, California 95201.

California	Solano County Unincorporated Areas.	Sacramento River	At Toland Landing	None	°7
			At the upstream corporate limits of the City of Rio Vista	°8	°8
		Sacramento River Via Sutter Slough and Miner Slough.	At Elevator Road extended on Prospect Island (RD 1667).	None	°15
		Steamboat Slough	At the southern tip of Ryer Island	None	°9
			Approximately one half mile upstream of State Highway 220 Extended.	None	°13
		Sutter Slough	At the confluence with Steamboat Slough	None	°13
			At the border with Yolo County	None	°16
		Miner Slough	At the southern tip of Prospect Island	None	°13
			At the divergence from Sutter Slough	None	°15
		Yolo Bypass	At the confluence with Steamboat Slough	None	°9
			Approximately 1,500 feet south of Liberty Ferry	None	°13
			At the border with Yolo County	None	°17
			Along Liberty Island Road just south of Lindsey Slough on Egbert Tract (RD 536).	None	°14
			At the intersection of Swan Road and Liberty Island Road on Cache Haas Area (RD 2098).	None	°15
		Elk Slough	At the intersection of Oxford Road and Jefferson Boulevard on Netherlands Island (RD 999).	None	°10
		Cache Slough	At the southern tip of Ryer Island	None	°9
			At the confluence of Sacramento River Deep Water Ship Channel.	None	°13
			At the confluence of Hass Slough	None	°15
		Suisun Bay	At the eastern limits of the city of Benicia	None	°8
			At the meeting of Grizzly Island Slough Road and Montezuma Slough.	None	°7
			At a footbridge south of the Vermink Club on Grizzley Island.	None	°9
			Entire Chipps Island	None	°9

Maps are available for review at the Solano County Department of Public Works, 550 Union Street, Fairfield, California.

Send comments to Mr. Richard Brann, Chairman, Solano County Board of Supervisors, County Courthouse, Fairfield, California 94533.

Florida	Wauchula, City, Hardee County	Thompson Branch	Approximately 1,420 feet upstream of Stenstrom Road	None	°80
			Approximately 1,850 feet upstream of Stenstrom Road	None	°82

Maps available for inspection at the City Hall, 225 East Main Street, Wauchula, Florida.

Send comments to The Honorable E. J. Wilson, Mayor of the City of Wauchula, Hardee County, P.O. Box 818, Wauchula, Florida 33873.

Mississippi	City of Aberdeen, Monroe County.	City Ditch	About 2,400 feet downstream of Illinois Central Gulf Railroad.	°189	°184
			Just upstream of Long Street	°214	°215
		Old Tombigbee River	At mouth at Tombigbee River	°200	°184
			At confluence of Mattuby Creek	°202	°184
		Mattuby Creek	At confluence with Old Tombigbee River	°202	°184
			About 2.5 miles upstream of Meridian Street	°203	°202

Maps available for inspection at the City Hall, Aberdeen, Mississippi.

Send comments to The Honorable Frank W. Harrington, Mayor, City of Aberdeen, City Hall, P.O. Box 98, Aberdeen, Mississippi 39730.

Mississippi	City of Amory, Monroe County	Roundhouse Branch	About 1,500 feet downstream of 109th Street	°223	°222
		Burketts Creek	About 600 feet downstream of State Highway 25	°223	°219
			Just upstream of Boulevard Drive	°240	°238
		Burketts Creek Tributary No. 1	At confluence with Burketts Creek	°240	°238
			Just upstream of Tschudi Street	°255	°255
		Burketts Creek Diversion Channel	Just upstream of drop structure	None	°238
			About 0.56 mile upstream of State Highway 25	None	°242
		Upper Burketts Creek	About 1,800 feet downstream of Phillips School Road	None	°242
			About 1,350 feet upstream of Mississippian Railway	None	°246

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	*Depth in feet above ground *Elevation in feet (NGVD) Existing	Modified
Maps are available for inspection at the City Hall, Amory, Mississippi.					
Send comments to The Honorable Thomas Griffith, Mayor, City of Amory, City Hall, P.O. Drawer 457, Amory, Mississippi 38821.					
Mississippi	City of Long Beach, Harrison County.	Canal No. 1	About 800 feet downstream of Beatline Road	*14	*19
			About 0.7 mile upstream of Commission Road	*19	*22
		Canal No. 3	Just downstream of Epey Avenue	*13	*15
			Just downstream of 28th Street	*19	*22
Maps available for inspection at the City Hall, Long Beach, Mississippi.					
Send comments to The Honorable Clean Mitchell, Mayor, City of Long Beach, P.O. Box 929, Long Beach, Mississippi 39560.					
New York	Kingston (Town) Ulster County	Saw Kill	At downstream corporate limits	None	*163
			Approximately 140 feet downstream of County Highway 30.	None	*179
			Approximately 1,760 feet upstream of County Highway 30.	None	*190
			Approximately 1,600 feet downstream of Powder Mill Road.	None	*218
			Approximately 350 feet upstream of Powder Mill Road	None	*237
			Approximately 1,660 feet downstream of corporate limits.	None	*247
			At upstream corporate limits	None	*262
Maps available for inspection at the Town Hall, Sawkill Road, R.D. #2, Kingston, New York.					
Send comments to The Honorable Jeffrey J. Martin, Supervisor of the Town of Kingston, Ulster County, Town Hall, Sawkill Road, R.D. #2, Kingston, New York 12401.					
New York	Owasco, Town, Cayuga County	Sucker Brook	Confluence with Owasco Lake	None	*718
			Approximately 680 feet upstream of State Route 38 A	None	*718
			Approximately 1,200 feet upsteram of State Route 38 A.	None	*725
		Dutch Hollow Brook	Approximately 0.5 mile upstream of State Route 38 A	None	*733
			At Confluence with Owasco Lake	None	*718
			Downstream side of State Route 38 A	None	*724
			Approximately 0.4 mile upstream of State Route 38 A	None	*744
		Owasco Outlet	At downstream corporate limits	None	*695
			Upstream side of State dam	None	*716
		Owasco Lake	At confluence with Owasco Lake	None	*718
			Entire shoreline within corporate limits	None	*718
Maps available for inspection at the Owasco Town Hall, Two Bristol Avenue, Auburn, New York.					
Send comments to The Honorable Michael O'Leary, Supervisor of the Town of Owasco, Cayuga County, Town Hall, Two Bristol Avenue, Auburn, New York 13021.					
New York	Spring Valley, Village, Rockland County.	Pascack Brook	At downstream corporate limits	None	*349
		At upstream corporate limits	None	None	*359
		Upper Pascack Brook	At confluence of Pascack Brook	None	*350
			Approximately 800 feet downstream of State Route 59	*432	*411
			Upstream side of Maple Avenue	*444	*441
			Downstream side of Union Road	*459	*470
Maps available for inspection at the Spring Village Hall, Building Department, 8 Maple Avenue, Spring Valley, New York.					
Send comments to The Honorable Joel Rosenthal, Mayor of the Village of Spring Valley, Rockland County, Spring Valley Municipal Building, 8 Maple Avenue, Spring Valley, New York 10977.					
Oregon	Polk County (Unincorporated Areas).	Willamette River	Approximately 13,900 feet downstream of the confluence of Glenn Creek.	None	*123
			Approximately 6,800 feet upstream of the Southern Pacific Railroad Bridge.	*143	*144
			Approximately 4,000 feet upstream of the confluence of Rickreall Creek.	*147	*148
		South Yamhill River	Approximately 3,400 feet downstream of the confluence of Ash Creek.	None	*157
			Approximately 3,330 feet upstream of South River Road.	None	*160
			At confluence of Santiam River	None	*183
			Approximately 13,700 feet of Santiam River	None	*188
			Approximately 2.3 miles downstream of Bellevue Ballston Road Bridge.	None	*155
			Approximately 1.26 miles upstream of Bellevue Ballston Road Bridge.	None	*166
			Approximately 0.58 mile downstream of the Condemned Steel Bridge.	None	*224
			Approximately 0.22 mile downstream of State Highway 2 (Wallace Bridge).	*240	*239
			100 feet upstream of Gold Creek Road	*270	*269
		Rickreall Creek	Approximately 0.29 mile upstream of the confluence of Agency Creek.	None	*341
			700 feet downstream of the crossing of the Southern Pacific Railroad.	*152	*146
			100 feet upstream of Bowersville Road	*238	*235

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			200 feet upstream of Fir Villa Road	*285	*289
			50 feet downstream of Ellendale Road	None	*383
			At U.S. Geological Survey Gage No. 14-1907.00 (Approximately 1.9 miles upstream of Ellendale Road).	None	*403
		Ash Creek	Approximately 2,000 feet downstream of Gun Club Road.	None	*162
			At confluence of North Fork Ash Creek and Middle Fork Ash Creek.	None	*174
		South Fork Ash Creek	Just upstream of Helmick Road	None	*191
			400 feet upstream of Monmouth Highway (State Highway 51).	None	*195
		North Fork Ash Creek (at Monmouth).	At confluence with Ash Creek and Middle Fork Ash Creek.	None	*174
			10 feet downstream of Hoffman Road	None	*178
		North Fork Ash Creek (at Dallas)	Approximately 1,800 feet downstream of Godsey Road	None	*272
			10 feet upstream of Kings Valley Highway	None	*308
		Middle Fork Ash Creek	At confluence with Ash Creek and North Fork Ash Creek.	None	*174
			Approximately 1,950 feet upstream of Riddell Road	None	*189
		North Fork Tributary	Approximately 1,000 feet upstream of confluence with North Fork Ash Creek.	None	274
			500 feet downstream of Godsey Road	None	*282

Maps are available for review at the Polk County Courthouse, 850 Main Street, Dallas, Oregon.

Send comments to Mr. Craig Hanneman, Chairman, Polk County Board of Supervisors, County Courthouse, 850 Main Street, Dallas, Oregon.

Pennsylvania	Londonderry, Township, Chester County.	Doe Run	Approximately 150 feet of downstream corporate limits	None	*338
			Upstream side of dam	None	*373
			Approximately 0.27 mile upstream of Creek Road	None	*412

Maps available for inspection at the Londonderry Township Building, Daleville Road, Londonderry, Pennsylvania.

Send comments to The Honorable Richard Henryson, Chairman of the Township of Londonderry Board of Supervisors, Chester County, R.D. #2, Cochranville, Pennsylvania 19330.

Virginia	St. Paul, Town, Wise and Russell Counties.	Lick Creek	At confluence with Clinch River	None	*1,471
			Approximately 285 feet upstream of upstream corporate limits.	None	*1,481
		Clinch River	Approximately 1,800 feet upstream of downstream corporate limits along cut-off portion of channel.	*1,466	*1,464
			Approximately 3,000 feet upstream of Clinchfield Railway along cut-off portion of channel.	*1,466	*1,464

Maps available for inspection at the Municipal Building, Russell Street, St. Paul, Virginia.

Send comments to The Honorable William Kiser, Mayor of the Town of St. Paul, Wise and Russell Counties, Town Hall, P.O. Box 66, St. Paul, Virginia 24283.

West Virginia	Pax, Town, Fayette County	Paint Creek	At downstream corporate limits	None	*1,026
			At upstream corporate limits	None	*1,031

Maps available for inspection at the City Hall, Pax, West Virginia.

Send comments to The Honorable Margaret A. Hunter, Mayor of the Town of Pax, Fayette County, P.O. Box 116, Pax, West Virginia 25904.

Issued August 10, 1987.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 87-18783 Filed 8-19-87; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 10, 157, and 187

[CGD 87-017]

Assistance Towing Licenses

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to amend the regulations for the licensing of maritime personnel to include specific licensing and manning requirements for all vessels, regardless of size, which engage in towing a disabled vessel for consideration. This proposal is being made in response to a statutory change requiring such licenses. This action is intended to provide assurance to all involved parties that persons who provide assistance towing services have met minimum established standards for knowledge and experience.

DATES: Comments must be received on or before October 19, 1987.

ADDRESSES: Comments should be mailed to Commandant (G-CMC/21) (CGD 87-017), U.S. Coast Guard, Washington, DC, 20593-0001. Between 8:00 am and 3:00 pm, Monday through Friday, comments may be delivered to and will be available for inspection and copying at the Marine Safety Council (G-CMC/21), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC 20593, (202) 267-1477.

FOR FURTHER INFORMATION CONTACT: LCDR Gary R. Kaminski, Merchant Vessel Personnel Division, Room 1210, U.S. Coast Guard Headquarters, 2100 Second St. SW., Washington, DC 20593-0001, (202) 267-0218.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments. Written comments should include the docket number (CGD 87-017), the name and address of the person submitting the comments, and the specific portion of the proposed rulemaking to which the comment is addressed. Persons desiring an acknowledgment that their comment has been received should enclose a stamped, self-addressed post card or envelope. All comments received prior to the close of the comment period will be considered before final action is taken. No public hearings are planned,

but they may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The principal persons involved in drafting this proposed rule are Lieutenant Commander Gary R. Kaminski, Project Manager, and Commander Ronald C. Zabel, Office of the Chief Counsel, Project Attorney.

Background and Discussion

In 1982 Congress directed the Coast Guard to review its policies for towing and salvage to minimize the possibility of Coast Guard competition with commercial capability where it exists. The towing industry was recognized as having the ability and right to engage in business responding to assistance requests from disabled vessels. Accordingly, since 1983 it has been the Coast Guard's policy to defer to existing commercial capability those non-emergency assistance requests which did not require an immediate rescue response from Coast Guard units. As more operators began to engage in the assistance towing business, it became obvious that the existing laws and regulations regarding vessel manning and licensing did not adequately address this area of the commercial marine industry. A license was required to operate a towing vessel only if it was 26 feet or more in length. The existing license for operator of uninspected towing vessels provided a license appropriate for the traditionally larger harbor and coastwise towboats, however it required higher levels of expertise than was necessary for assistance towing with many smaller vessels under 100 gross tons but still 26 feet or more in length.

In 1983 the holders of licenses as operator and ocean operator of inspected small passenger vessels under 100 gross tons were authorized to operate any vessel, including towing vessels, within the scope of their license. This was done in anticipation of these licenses being converted to masters and mates of vessels up to 200 gross tons and a goal of removing trade restrictions from all inspected vessel licenses. This allowed persons with less expertise to operate towing vessels of 26 feet or more in length but did not address the issue of whether persons operating towing vessels under 26 feet in length should be licensed.

In 1986, the 99th Congress passed legislation amending 46 USC 8904 to require a license for persons operating assistance towing vessels. It provides that "a vessel that tows a disabled vessel for consideration shall be operated by an individual licensed by the Secretary to operate that type of vessel in the particular geographic area under prescribed regulations," and becomes effective January 1, 1988. The Coast Guard is proposing to implement this requirement by establishing an endorsement to most existing licenses which authorizes the holder to engage in assistance towing.

The use of an endorsement is considered more practical than establishing an entirely new, specialized license. The Coast Guard has a proposed rule under consideration which will streamline the entire license structure and eliminate most trade restricted licenses. It is believed that a specialty license, while it could be directly tailored to assistance towing, would be too limited in its application. Holders of a license for assistance towing only would not be authorized to engage in other trades such as carrying passengers or freight. For this reason, creating a specialty license was rejected.

An endorsement is preferred over the simple acceptance of all of the existing licenses. With the exception of the license for operator of uninspected towing vessels, the examinations and experience requirements for most existing licenses do not specifically address an applicant's knowledge of towing. It is recognized that many persons are currently engaging in the assistance towing trade safely and competently under the authority of a license as ocean operator or operator of small passenger vessels. However, years of Coast Guard experience have shown that apparently routine assistance towing incidents can deteriorate rapidly, requiring specialized knowledge and skills. If the authority of a license is to explicitly include providing commercial towing assistance to disabled vessels, the interests of safety demand that the Coast Guard be assured that the license holder can not only operate his or her own vessel safely but also posseses sufficient knowledge of towing procedures in general and specific knowledge of the problems encountered with disabled vessels.

The need to measure the knowledge and skills of the persons operating the assisting vessel is of more concern when considering persons licensed to operate only smaller vessels. These licenses can be obtained with relatively limited experience. Licenses to operate larger vessels, particularly those over 1600 gross tons, typically require longer sea service and are normally held by persons with broad experience. Therefore, for the "upper level" or unlimited" licenses above 1600 gross tons, the traditional authority of a licensed master or mate to serve on any vessel in any trade including towing or assistance towing would be retained, and no endorsement would be required.

Under this proposed rule the holder of any license as master, mate or operator of vessels of not more than 1600 gross tons, except operator of uninspected towing vessels, would be required to obtain an additional endorsement authorizing assistance towing in order to engage in that trade. These licenses have, in past, all been trade restricted or in some way limited by their nature. The endorsement would allow the license holder to engage in assistance towing on any size vessel that is within the scope of the license. The holder of a license as operator of uninspected towing vessels could engage in assistance towing without the additional endorsement.

The holders of licenses as operator of uninspected passenger vessels (formerly motorboat operator) could obtain an endorsement authorizing them to engage in assistance towing only with vessels of less than 26 feet in length.

Under current laws and regulations, a person holding a license as operator of uninspected passenger vessels is not authorized to operate a towing vessel of 26 feet or more in length. It is not the intent of this proposal to alter this restriction.

In order to obtain the endorsement, an applicant would be required to pass a written examination covering towing equipment, procedures, and safety. The following subjects would be included in the examination:

(1) Towing safety precautions
(2) Static and dynamic forces in towing
(3) Towlines and bridles
(4) Thimbles and other hardware
(5) Fenders and drouges
(6) Approaches
(7) Passing and connecting towline
(8) Determining towing speed
(9) Towing astern, alongside, or in tandem
(10) Towing in current, surf, or across a bar
(11) Handling a sinking tow
(12) Assisting a vessel aground

No additional service would be required to obtain the endorsement on an existing license. Applicants who do not have a license as master, mate, or operator, would have to qualify for a license appropriate for the size of vessel they intend to operate, and pass the basic examination for that license in addition to an assistance towing module as an addendum to the basic examination. The holder of an existing

license would only be required to pass the assistance towing module.

These regulations would apply only to persons operating vessels which tow a disabled vessel for consideration. A volunteer or "good Samaritan" who assists a disabled vessel and does not do so commercially or for consideration would not be required to hold a license.

A license is not required for anyone who operates a towing vessel of under 26 feet in length for purposes other than assisting a disabled vessel, for example, towing vessels between berths at a marina or boat yard. The present requirement of 46 U.S.C. 8904 for licensed operators of towing vessels of 26 feet or over in length still applies to all commercial towing operations other than assistance towing. All individuals who are presently licensed to operate those towing vessels would retain that authority.

Proposed Regulations

An interim final rule on Licensing of Maritime Personnel, is expected to be published before a final rule in this proposal. The supplemental notice of proposed rulemaking was published on 24 October 1985, at 50 FR 43316. If that occurs, these regulations would be incorporated into the newly revised licensing and manning regulations. If that interim final rule is not published before this rule is ready for publication, these regulations will be incorporated into the existing licensing and manning regulations in Parts 10, 157, and 187 of this chapter. In either case, only the specific subpart and section numbers and headings would be different; the text of the regulations would remain virtually the same. The proposed test is as follows:

A new section would be added to the licensing regulations to read:

Assistance Towing

(a) This section contains the requirements to qualify for an endorsement authorizing an individual to engage in assistance towing. The endorsement is applicable to all licenses except operator of uninspected towing vessels and master or mate licenses authorizing service on inspected vessels of over 1600 gross tons. Holders of these license are authorized to engage in assistance towing without endorsement.

(b) An applicant for an assistance towing endorsement shall pass a written examination demonstrating his or her knowledge of assistance towing safety, equipment, and procedures. (c) An assistance towing endorsement on a master or mate license authorizes the holder to engage in assistance towing services with any vessel within the scope of the license. (d) An assistance towing endorsement on a license as operator of uninspected passenger vessels authorizes the holder to engage in assistance towing services with a vessel of less than 26 feet in length, within the scope of the license. (e) The period of validity of the endorsement is the same as the license on which it is endorsed and the endorsement may be renewed with the license without reexamination. (f) An applicant for a raise in grade of a license below "unlimited" master or mate must be reexamined on assistance towing subjects in order to obtain an assistance towing endorsement for the higher grade license.

A new section would be added to the Manning Requirements to read:

Assistance Towing

An individual operating a vessel which tows a disabled vessel for consideration must hold one of the following licenses:

(a) Operator of uninspected towing vessels.
(b) Master or mate of inspected steam or motor vessels authorizing service on vessels of more than 1600 gross tons.
(c) Any other license as master, mate, or operator which has been endorsed for assistance towing.

These regulations would be promulgated under the authority of 46 U.S.C. 7101 and 8904, and 49 CFR 1.46 b.

Regulatory Evaluation

This proposed rule is considered to be non-major under Executive Order 12291 and non-significant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal has been found to be so minimal that further evaluation is unnecessary. The rulemaking will affect the approximately 300 persons presently engaged in providing assistance towing services. Approximately 10%, or 30, of these individuals hold an unlimited license as master or mate or a license as operator of uninspected towing vessels and would need no additional endorsement to continue operating under these regulations. Approximately 40%, or 120 persons, hold a small passenger vessel operator license or a limited master or mate license and would need to obtain the assistance towing endorsement. Approximately 50%, or 150 persons, presently do not hold any license and are operating vessels of less than 26 feet in length. These persons would be required to obtain at least a license as operator of uninspected passenger vessels, with the assistance towing endorsement.

There are no direct costs such as application, examination, or person to take the examination. The examination for an original operator's license with the assistance towing endorsement requires 1 full day (5 to 7 hours) to complete. The assistance towing addendum for an endorsement on an existing license would require approximately ½ day (2–3 hours) of an applicant's time. Incidental expenses an applicant for an original license would incur include the cost of a physical exam (approximately $75), and a First Aid and CPR class (approximately $50). Thus the total cost will equal the costs of a physical examination plus a First Aid and CPR class times the number of persons required to obtain an original license or: 150 persons × ($125)=$18,750

There are no casualty statistics or other data available to specifically support or refute the need for this action. However, the statute clearly requires standards be established for persons operating assistance towing vessels. The primary effect of this proposal will be to prevent unqualified persons from engaging in the growing field of commercial assistance towing. It is not a reaction to current unsafe conditions.

An additional benefit of this rulemaking is the intangible assurances provided by the establishment of minimum qualifications for persons engaging in assistance towing. Persons licensed to provide assistance towing could display evidence of their credentials to potential clients, and would assure the boating public that they are receiving assistance from persons with demonstrated knowledge and capabilities.

Since the impact on individuals engaged in this service is so minimal, the Coast Guard certifies that this proposal will not have a significant economic impact on a substantial number of small entities.

This proposed rule contains no new information collection requirements. The information collection requirements for the issuance of marine licenses have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and have been approved by OMB. The OMB approval numbers are listed in section 46 CFR 10.01–6.

List of Subjects

46 CFR Part 10

Seamen, Marine safety, Navigation (water), Passenger vessels.

46 CFR Part 157

Seaman, Vessels.

46 CFR Part 187

Marine safety, Passenger vessels, Seaman.

W.J. Ecker,

Acting Chief, Office of Marine Safety, Security and Environmental Protection.

Dated: June 10, 1987.

[FR Doc. 87-19078 Filed 8-19-87; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[Gen. Docket No. 87-212]

Equipment Authorization and Identification Requirements; Correction

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rule making; correction.

SUMMARY: On June 4, 1987, the Commission adopted a Notice of Proposed Rule Making in Gen. Docket No. 87-212, regarding equipment authorization procedures. This document corrects certain errors in that document.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Ruby Moore, Equipment Authorization Branch, Office of Engineering and Technology, (301) 725-1585.

SUPPLEMENTARY INFORMATION: The Commission's Notice of Proposed Rule Making, 52 FR 24042 (June 26, 1987) is corrected as follows:

§ 2.926 [Amended]

1. The example following § 2.926(a) should read:

FCC ID: XXX123
XXX-Grantee code
123-Equipment product code

§ 2.934 [Amended]

2. In § 2.934, the phrase "30 days before," should read "no later than 30 days after."

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-18967 Filed 8-19-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

MM Docket No. 84-281; FCC 87-259

Radio Broadcasting Services; Nighttime Broadcasting on Canadian, Mexican, and Bahamian Clear Channels

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action reopens the rule making proceeding in MM Docket No. 84-281 relating to the establishment of new unlimited-time AM stations on the 14 foreign AM clear channels: 540 kHz, 690 kHz, 730 kHz, 740 kHz, 800 kHz, 860 kHz, 900 kHz, 990 kHz, 1010 kHz, 1050 kHz, 1220 kHz, 1540 kHz, 1570 kHz, and 1580 kHz. This was done in compliance with an order by the United States Court of Appeals. All interested parties will thereby be given due opportunity to comment on the requirements that the FCC proposes to apply to applications for unlimited-time use of these 14 channels.

DATES: Comments must be filed by October 5, 1987, and reply comments on or before October 20, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Louis C. Stephens, Policy and Rules Division, Mass Media Bureau (202) 254-3394.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rule Making, in MM Docket No. 84-281, FCC 87-259 adopted July 28, 1987 and released August 12, 1987.

The full text of this Commission document is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this Further Notice of Proposed Rule Making may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857-3800, 2100 M Street NW., Washington, DC 20037.

Summary of Further Notice of Proposed Rule Making

1. This Further Notice of Proposed Rule Making, adopted pursuant to a remand order by the United States Court of Appeals for the Second Circuit, provides notice and opportunity for comment on revisions to the FCC's rules relating to the assignment of new unlimited-time stations on the fourteen AM foreign clear channels.

2. The issue of the use of the foreign clear channels had been considered earlier by the Commission, and rules for such use were adopted by Report and Order, adopted April 16, 1985. In that document, 50 FR 24515 (June 11, 1985), the Commission dealt with two aspects of the use of these channels. The first related to the grant of nighttime authority to existing daytime-only stations on these channels. The second involved the standards to govern the assignment of new full-time stations on these channels. Subsequently, minor revisions in these rules were made by the Commission in a Memorandum Opinion and Order adopted on February 3, 1986, 103 FCC 2d 532 (1986) 52 FR 21308, June 5, 1987. These revisions, however, were not the subject of the appeal nor are they at issue in the further rule making. Likewise, no issue was raised as to nighttime authorizations for existing daytime-only stations. Thus, it is only the matter of the assignment of new full-time stations that is before the Commission on remand.

3. In deciding upon the standards to apply to the acceptance of applications for new stations, the Commission needs to consider where and to what extent such filings are possible, given the current pattern of use of these channels. Based on this information, it will be possible to evaluate various approaches to the use of these channels. One approach that the Commission originally proposed would confine unlimited-time use of the foreign clear channels to applicants who could meet stated service requirements (such as, for example, provision of a first nighttime primary service or a first nighttime local service) from which minority and noncommercial applicants would be exempted. Since the Commission proposed to adopt such requirements and exemptions for the foreign clear channels, the Rules were amended to eliminate those requirements from all AM channels. When that was done, the Commission also discontinued the above-mentioned exemption from those requirements. It had been applied only on one group of AM channels: the Class I-A clear channels. In these circumstances, the Commission does not now propose to apply to the foreign clear channels the service requirements formerly applied to all AM channels or the exemptions that were formerly applicable only to the Class I-A clear channels.

4. In order to help provide data on which to base its decisions, the Commission's staff has done extensive studies of the current use of these frequencies and the degree to which additional filing opportunities remain. In

essence, these studies show that there are relatively few opportunities to establish new stations except in generally underserved areas. Thus, most applicants would have been able to qualify by virtue of proposing service to underserved areas or communities, and they would not need to rely on alternative standards such as being a minority applicant.

5. For the information of commenting parties, the FCC appended to the Further Notice a statement of the methodology used as well as the complete results of the studies. Interested parties are invited to examine these studies and to respond to them in their filings in this proceeding.

Ex Parte Considerations

6. This is a non-restricted notice and comment rule making proceeding. *See* § 1.1231 of the Commission's Rules, 47 CFR 1.1231 for rules governing permissible *ex parte* contacts.

Paperwork Reduction Act Statement

7. The proposal herein has been analyzed with respect to the Paperwork Reduction Act of 1980, and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements and will not increase or decrease burden hours imposed on the public.

Regulatory Flexibility Analysis

8. With reference to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, the Commission noted that the action proposed will not have a notable effect on the opportunities of small entities to apply for stations on the foreign clear channels that are the subject of this proceeding. Public comment is requested on the initial regulatory flexibility analysis set out in full in the Commission's complete Further Notice of Proposed Rule Making.

9. The Secretary shall cause a copy of this Further Notice of Proposed Rule Making, including the regulatory flexibility analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

Comment Instruction

10. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before October 5, 1987, and reply comments on or before October 20, 1987. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

Authority Citation

11. Authority for the rule changes on which comments are invited is contained in sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

William J. Tricarico,

Secretary.

[FR Doc. 87-18908 Filed 8-19-87; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 52, No. 161
Thursday, August 20, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Intent To Enter Into Cooperative Agreement; Agricultural Research Institute

AGENCY: Office of International Cooperation and Development (OICD), USDA.

ACTION: Notice of intent.

Activity: OICD intends to enter into a Cooperative Agreement with the Agricultural Research Institute (ARI) to sponsor an International Symposium on Water Quality Modeling of Non-Point Agricultural Sources.

Authority: Section 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3291), and the Food Security Act of 1985 (Pub. L. [illegible]-198).

OICD anticipates the availability of funds for fiscal year 1987 (FY 1987) to enter into an agreement with ARI for joint sponsorship of a symposium on water quality modeling. The symposium goals are to provide a forum for maximum interaction between model developers and managers who use models in order to promote improved water quality; to compare and contrast US and foreign views regarding the model development and use; and to produce a state-of-the-art text consisting of invited papers and synopses of discussions which will serve as a benchmark for further discussions. Assistance will be provided only to ARI. Based on the above, this is not a formal request for application. An estimated $5,000 will be available in FY 1987 to support the pre-symposium administration; and an estimated $32,000 in FY 1988 for actual conduct of the symposium. It is anticipated that this cooperative agreement will be funded over a budget period of 15 months.

Information on proposed agreement number 58-319R-7-024 may be obtained from: Nancy J. Croft, Contracting Officer, USDA/OICD/Management Services Branch, Washington, DC 20250-4300.

Dated: August 14, 1987.

Allen Wilder,
Contracting Officer.

[FR Doc. 87-19011 Filed 8-19-87; 8:45 am]
BILLING CODE 3410-DP-M

Intent To Enter Cooperative Agreement With Virginia Polytechnic Institute and State University

AGENCY: Office of International Cooperation and Development (OICD), USDA.

ACTION: Notice of intent.

Activity: OICD intends to enter into a Cooperative Agreement with Virginia Polytechnic Institute and State University (VPI&SU) to identify food materials which demonstrate the ability to prevent growth of pathogenic organisms which cause diarrhea in children.

Authority: Section 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3291), and the Food Security Act of 1985 (Pub. L. 99-198).

OICD anticipates the availability of funds for fiscal year 1987 (FY1987) to enter into a cooperative agreement with VPI&SU. The University will identify food materials which have the ability to prevent growth of pathogenic organisms which cause diarrhea in children; verify the effectiveness of these materials in animal models; develop recommendations for testing the materials; and describe the physical/chemical characteristics of the successful material(s). Assistance will be provided only to VPI&SU, which was selected because of its expressed interest in research in this area, and its ongoing activities in projects relative to the work to be covered by this agreement. Based on the above, this is not a formal request for application. An estimated $87,000 will be available in FY1987 to support this work. It is anticipated that this cooperative agreement will be funded over a budget period of 15 months.

Information on proposed agreement number 58-319R-7-021 may be obtained from: Nancy J. Croft, Contracting Officer, USDA/OICD/Management Services Branch, Washington, DC 20250-4300.

Dated: August 14, 1987.

Allen Wilder,
Contracting Officer.

[FR Doc. 87-19012 Filed 8-19-87; 8:45 am]
BILLING CODE 3410-DP-M

Agricultural Marketing Service

National Advisory Committee for Tobacco Inspection Services; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App. 1) announcement is made of the following Committee meeting:

Name: National Advisory Committee for Tobacco Inspection Services.

Date: October 2, 1987.

Place: U.S. Department of Agriculture, Agricultural Marketing Service, Tobacco Division, Training Laboratory, Room 402, 333 Waller Avenue, Lexington, Kentucky 40504.

Time: 1:30 p.m.

Purpose: To review various regulations issued pursuant to the Tobacco Inspection Act (7 U.S.C. 511 *et seq.*) and to discuss the level of tobacco inspection and related services. In particular, the Committee will consider the pairing or grouping of burley markets and the distribution of graders among burley markets for the 1987-88 selling season.

The meeting is open to the public. Persons, other than members, who wish to address the Committee at the meeting should contact Lioniel S. Edwards, Director, Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, 300 12th Street SW., Washington, DC 20250, (202) 447-2567, prior to the meeting. Written statements may be submitted prior to or at the meeting.

Dated: August 14, 1987.

J. Patrick Boyle,
Administrator.

[FR Doc. 87-19045 Filed 8-14-87; 8:45 am]
BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

[Docket No. 87-116]

Availability of Environmental Assessment and Finding of No Significant Impact for Alabama, Florida, Georgia, and South Carolina Boll Weevil Eradication Program

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are providing notice that we have prepared an environmental assessment and finding of no significant impact concerning a boll weevil eradication program for Alabama, Florida, Georgia, and South Carolina. Based on the assessment, we have determined that no significant adverse effect on the environment will result from implementation of the selected alternative. Therefore, we will not prepare an environmental impact statement for this program.

ADDRESS: You may obtain a copy of the environmental assessment from Robert E. Pizel, Regulatory and Environmental Documentation Section, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, United States Department of Agriculture, Room 638, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782.

The environmental assessment is available for public inspection at the above address and at the Animal and Plant Health Inspection Service, United States Department of Agriculture, 4120 Reedy Creek Road, Raleigh, North Carolina 27622. Hours for inspection are between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Robert E. Pizel, Regulatory and Environmental Documentation Section, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, United States Department of Agriculture, Room 638, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782 (301) 436–8295.

SUPPLEMENTARY INFORMATION:

Background

The boll weevil, *Anthonomus grandis* (Boheman), is an introduced pest from Mexico that entered the United States near Brownsville, Texas, in approximately 1892, spreading by 1922 throughout a region known as the Cotton Belt. This areas includes all or part of 13 states extending from western Texas to Virginia, and involves approximately 11 million acres of cotton. As the boll weevil through the Cotton Belt, it inflicted more damage than any other cotton pest, and currently costs cotton producers and the U.S. economy close to $300 million annually in losses and control costs.

The Alabama, Florida, Georgia, South Carolina boll weevil eradication program has the following primary goals: (1) To maintain eradication areas in Virginia, North Carolina, and South Carolina, and to eliminate any reintroductions; (2) to eradicate the boll weevil from all of Florida and Georgia, the southern half of Alabama, and a buffer zone in South Caroline; and (3) to maintain a buffer zone on the western edge of the program area, in which boll weevil populations will be suppressed to subeconomic levels. This buffer zone will also decrease the threat of seasonal migration into the eradication area.

Sites targeted for program treatments are infested cotton fields. The amount of acres requiring treatment varies from year to year depending on levels of infestation, which are determined by boll weevil trapping surveys.

The following alternatives were considered in selecting the recommended course of action:

(1) No action to contain or eradicate.

(2) Sterile insect technique.

(3) Cultural.

(4) *Chemical.* Under the chemical alternative, the following procedures were proposed: (a) Aerial application of azinphosmethyl; (b) ground application of azinphosmethyl; (c) aerial application of diflubenzuron; (d) ground application of diflubenzuron; (e) aerial application of malathion; (f) ground application of malathion; (g) use of propoxur in boll weevil traps.

(5) *Integrated pest management (IPM).* We have selected alternative five (5) because this would allow the program to use any of the identified control alternatives in the containment and eradication of the boll weevil. The alternatives may be used singly or in combination, depending upon environmental and pest conditions. As an integration of control strategies in a systems approach, the IPM alternative affords the best combination of environmental protection and program efficacy.

After considering the effects of implementing the selected alternative, we have concluded there will be no primary or secondary effects on the human environment as a result of the program, and that any long-term negative effects will be negligible. We have also considered cumulative impacts, and anticipate that the program will have significant beneficial effects on the environment through the coordination and planned reduction of current pesticide use.

In the environmental assessment, we evaluated the uniqueness or rareness of resources being affected and concluded that the selected alternative will not have an effect on the continued existence of any endangered or threatened species, or result in the destruction of adverse modification of the habitats of those species.

We have reviewed this action under the requirements of the National Environmental Policy Act (NEPA) as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality's National Environmental Policy Act Regulations (40 CFR Parts 1500 through 1508), and the APHIS Guidelines Concerning the Implementation of NEPA Procedures (44 FR 50381–50384).

Done in Washington, DC, this 17th day of August, 1987.

D. Husmik,

Acting Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 87–19099 Filed 8–19–87; 8:45 am]

BILLING CODE 3410-34-M

Commodity Credit Corporation

1987 Peanut Program; 1987 Crop Price Support Differentials; Determination

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of determination—1987-Crop Peanut Price Support Differentials.

SUMMARY: This notice of determination sets forth specified price support loan and purchase rates for the 1987-crop of quota and additional peanuts which reflect adjustments for differences in type, quality, location and other factors. These adjusted loan and purchase rates apply to warehouse-stored loans and farm-stored Loans and purchases. The adjustments are made in accordance with section 403 of the Agricultural Act of 1949 (the "1949 Act"). The prices set forth in this notice are the same as were proposed in the notice published on April 22, 1987 (52 FR 13258) except for a technical adjustment with respect to farm-stored peanuts.

EFFECTIVE DATE: August 20, 1987.

FOR FURTHER INFORMATION CONTACT: Solomon J. Whitfield, Tobacco and Peanuts Division, ASCS, USDA, Room 5725 South Building, P.O. Box 2415, Washington, DC 20013, (202) 447–7127. A final Regulatory Impact Analysis describing options considered in developing this determination and the impact of implementing such options is available upon request from Mr. Whitfield.

SUPPLEMENTARY INFORMATION: This notice of determination has been reviewed under USDA procedures in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified "not major". It has been determined that this determination will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, industries,

Federal, State or local governments, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal assistance program to which this determination applies are: Commodity Loans and Purchases, 10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice of determination since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking With respect to the subject matter of this determination.

Section 1017 of the Food Security Act of 1985 (Pub. L. 99–198) provides explicitly that the Secretary of Agriculture shall determine the rate of loans, payments, and purchases under a program established under the Agricultural Act of 1949 (7 U.S.C. 1421 *et seq.*) for any of the 1986 through 1990 crops of a commodity without regard to the requirements for notice and public participation in rulemaking prescribed in section 553 of Title 5, United States Code, or in any directive of the Secretary.

On the basis of an environmental evaluation, it has been determined that this action will have no significant impact on the quality of the human environment. In addition, it has been determined that this action will not adversely affect environmental factors such as wildlife habitats, water quality, air quality, and land use and appearance. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed. This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Under the provisions of Section 108B of the 1949 Act, as added by section 705 of the Food Security Act of 1985, the Secretary is required to announce price support levels for quota peanuts (peanuts marketed under a quota held by or acquired by the producer) and additional peanuts (nonquota peanuts). The 1987 quota support level of $607.47 per ton and the additional support level of $149.75 per ton were announced on February 13, 1987. Section 403 of the 1949 Act permits adjustments in the support levels for type, quality, location and other factors.

Section 403 also provides that on the application of such adjustments the average level of support shall, to the extent practicable and based on the expected incidence of the factors on which the adjustments are made, be equal to the support level announced by the Secretary for the crop year involved.

A Notice of Proposed Determination regarding adjustments (or "differentials") in the levels of price support for the 1987-crop of peanuts was published in the Federal Register on April 22, 1987 (52 FR 13259). In that notice, it was proposed that the premium for extra large kernels (ELKs) of Virginia-type peanuts would remain at the 1986-crop level of 35 cents per percentage ELKs in a farmers stock ton. In addition, because abnormal weather in 1983 produced low quality Virginia-type peanuts, it was also proposed that the customary 5-year average used to estimate the incidence of quality and other factors be adjusted to exclude the 1983 crop average and be replaced by the 1981-crop. The April 22, 1987 notice also proposed that the minimum support value for any quota lot of eligible peanuts of any type would remain at 7 cents per pound of kernels in the lot so that the minimum level would not exceed the support level for loose shelled kernels (LSKs). Aside from the changes indicated in the April 22, 1987 notice, no other changes from the method of determining differentials for recent crop years were proposed.

Three commenters responded to the April 22 notice. They were: two grower organizations and one sheller/handler organization. The grower organizations supported the proposed differentials. The sheller/handler organization suggested that the basic differentials be changed to make the base value percentage of sound mature kernels (SMK) uniform for all peanut types; i.e., uniform for Virginia, Runner, Spanish and Valencia-type peanuts, and to reduce the 35 cents premium for Virginia-type peanuts per percentage of ELKs in a ton of peanuts to 25 cents per percentage ELKs or to limit the years used to project the expected incidence of Virginia-type for the 1987-crop ELK to the average ELK percentages for the 1984, 1985 and 1986-crop years.

Under the differentials which applied to the 1986-crop and all preceding crops since 1976, the base SMK value per percentage for Virginia-type peanuts has been 2 percent higher than the base SMK value per percentage for Runner-type peanuts. For Spanish-type peanuts, the base SMK value per percentage has been ½ percent higher than the Runner base SMK value per percentage. The Valencia base SMK value per percentage has not been established as a proportion of any other base SMK value. However, peanut differentials have traditionally been established in such a manner that the average Valencia support per ton has been tied to either the average level of support per ton for Virginia-type peanuts or Spanish-type peanuts depending on the quality and location of the Valencia-type peanuts.

The commenter seeking a uniform SMK value between types seeks to reduce the relative price of Virginia-type peanuts. This suggested change has not been adapted. Uniform SMK levels could cause many handlers to use larger than normal quantities of Spanish and Virginia-type peanuts in primary products, which would subsequently cause a larger than normal loan intake of quota Runner-type peanuts at a possible loss to CCC and with undue disruption of market relationships. Peanut crop production information published by the U.S. Department of Agriculture's Statistical Reporting Service over the past eight years shows only slight shifts in production of peanuts by type and CCC's loan intake of edible quality peanuts of all types appears to have reached a balance. CCC normally sells a large percentage of its Virginia-type loan inventory, which is mostly additional peanuts, under the "immediate buyback" provisions for domestic edible use at the quota support rate. This indicates that the Virginia-type peanut price has not been disproportionate with that of other types.

Further, the ELK premium for 1987-crop Virginia-type peanuts has not been reduced. A reduction could cause handlers to use slightly more Virginia-type peanuts for domestic edible use, resulting in larger than normal purchases by handlers of Virginia-type quota peanuts and increased purchases of Virginia-type additional peanuts under the "buyback" authority. Also, the value of the other quality factors would have to be increased so that the weighted average of the loan rate per ton for all types would equal the national average loan rate. CCC has not crushed substantial quantities of Virginia-type quota peanuts in recent years. There does not appear to be any reason for that trend to change for the 1987-crop. Accordingly, it does not appear that the 35 cent premium on

Virginia-type peanuts will result in an oversupport of 1987-crop Virginia-type peanuts or cause a reduction in the use of Virginia-type peanuts in primary products.

As to averaging, use of different averaging methods for the same peanut type for different quality factors would produce an inaccurate picture of the expected crop. Use of a five year average provides the most reliable statistical picture of the overall crop. The use of a five-year average should not result in an excess of support for the 1987 crop, even though some quality factors may exceed the expected incidence as determined by using the five year average. The differentials set forth in this notice are the same as set forth in the April 22, 1987 proposal except that the average price per ton for farm-stored loans has been changed to an unrounded figure. This change follows normal CCC disbursement practices for such loans.

Except as indicated in the proposed notice, the 1987-crop differentials have been calculated in the same manner as the 1986-crop differentials, and employ the same premiums and discounts.

As indicated in the proposed determination, the value of additional peanuts for price support purposes will be calculated by using a two-step process. The first step will be to calculate the level at which the peanuts would be supported if they were quota peanuts. That figure will then be reduced by a factor (.2465) that represents the ratio of the national average support level for additional peanuts for the 1987-crop ($149.75/ton) to the national average support level for quota peanuts for the 1987-crop ($607.47/ton).

Price support loans made on the basis of the prices set forth in this notice will be subject to adjustments for deductions permitted to be made by CCC or required by law.

Because of the onset of the marketing year for the 1987-crop and the need for interested parties to be informed as soon as practicable of the prices set forth in this notice, this final determination shall be effective upon publication.

Determination

Accordingly, the following support prices and applicable adjustments are set forth with respect to the 1987-crop of peanuts.

(a) Average 1987 Support Values for Quota Peanuts by Type Per Average Grade Ton of Peanuts

(1) Support Value for Warehouse-Stored Peanuts

	Per average grade ton
Type:	
Virginia	$608.73
Runner	611.61
Spanish	573.26
Valencia:	
Southwest area—suitable for cleaning and roasting	608.73
Southwest area—not suitable for cleaning and roasting	573.26
Areas other than Southwest	573.26

(2) Support Value for Farm-Stored Peanuts:

	Per average grade ton
Type:	
Virginia	$608.73
Runner	611.61
Spanish	573.26
Valencia:	
Southwest Area	608.73
Areas Other Than Southwest	573.26

(b) Calculation of Support Prices for Quota Peanuts by Type and Quality

The support price per ton for 1987-crop quota peanuts of a particular type and quality shall be calculated on the basis of the following rates (with no value assigned to damaged kernels (DKs)), premiums, and discounts (including a DK discount) except that the minimum support value for any quota lot of eligible peanuts of any type shall be 7 cents per pound of kernels in the lot:

(1) Kernel Value Per Ton Excluding Loose Shelled Kernels (LSKs)

(i) The price per ton for each percent of sound mature (SM) and sound split (SS) kernels in the ton shall be:

	Per Percent
Type:	
Virginia	$8.743
Runner	8.572
Spanish	8.616
Valencia:	
Southwest area—suitable for cleaning and roasting	8.987
Southwest area—not suitable for cleaning and roasting	8.615
Areas other than Southwest	8.615

(ii) The price per ton for each percent of other kernels (OK) shall be: All types, per percent, $1.40.

(iii) The premium per ton for each percent of Extra Large Kernels (ELKs) for Virginia-type peanuts shall be: $0.35.

However, no premium for ELKs shall be applicable to any ton of such peanuts containing more than four-percent DKs.

(2) Price of LSKs Per Pound. The price for each pound of LSKs shall be: All types, per pound, $0.07.

(3) Foreign Material Discount. For all types of peanuts, the discount per ton for foreign material by percentage of foreign material in the ton shall be as follows:

Percent	Discount
0 to 4	$0
5	1.00
6	2.00
7	3.00
8	4.00
9	5.00
10	6.00
11	7.00
12	8.50
13	10.00
14	11.50
15	13.00
16 and over	[1]

[1] For each full percent in excess of 15 percent deduct an additional $2.

(4) SS Kernel Discount

For all types of peanuts, the discount per ton for SS kernels by percentage of SS kernels in the ton shall be as follows:

Percent	Discount
1 through 4	$0
5	1.00
6	1.80
7 and over	[1]

[1] For each full percent in excess of 6 percent deduct an additional $0.80.

(5) DK Discount

(i) For all types of peanuts, the discount per ton for DKs shall by percentage of DKs in the ton be as follows:

Percent	Discount
1	$ 0
2	3.40
3	7.00
4	11.00
5	25.00
6	40.00
7	60.00
8 to 9	80.00
10 and over	100.00

(ii) Notwithstanding the above discount schedule, the DK discount for Segregation 2 peanuts transferred from additional to quota loan pools shall not exceed $25 per ton.

(6) Adjustment for Peanuts Sampled with Other Than Pneumatic Sampler

The support price per ton for Virginia-type peanuts sampled with other than a

pneumatic sampler shall be reduced by $0.10 per every percentage in the ton of SM and SS kernels.

(7) Mixed Type Discount

Individual lots of farmers stock peanuts containing mixtures of two or more types in which there is less than 90 percent of any one type will be supported at a price which is $10 per ton less than the support price applicable to the type in the mixture having the lowest support price.

(8) Adjustments for Location Where Peanuts are not Customarily Shelled or Crushed

(i) Farmers stock peanuts for which price support is made available in the following States shall be discounted in those States as follows:

State	Per ton
Arizona	$25.00
Arkansas	10.00
California	33.00
Louisiana	7.00
Mississippi	10.00
Missouri	10.00
Tennessee	25.00

(ii) Farmers stock peanuts on which price support is made available in Puerto Rico and all other States, territories and possessions of the United States (excluding the States specified in paragraph (8)(i) and Alabama, Florida, Georgia, New Mexico, North Carolina, Oklahoma, South Carolina, Texas, and Virginia) shall be discounted $40.00 per ton.

(9) Virginia-Type Peanuts

Virginia-type peanuts, in order to be eligible for price support as Virginia-type, must contain 40 percent or more "fancy" size peanuts, as determined by a presizer with the rollers set with a $^{34}/_{64}$ inch space. Virginia-type peanuts so determined to contain less than 40 percent "fancy" size peanuts will be supported (but not classed) as though they were Runner-type peanuts.

(10) Discount for Aspergillus Flavus Mold (Segregation 3 Peanuts)

There will be no discount applied to Segregation 3 peanuts for Aspergillus flavus mold when such peanuts are pledged as loan collateral at the additional loan rate. Should such peanuts later be transferred to a quota loan pool under 7 CFR Part 1446, they will be discounted at the rate of $25 per net ton from the quota price support rate.

(c) Calculation of Support Values for Additional Peanuts

The support price per ton for 1987-crop additional peanuts of a particular type and quality shall be calculated on the basis of 24.65 percent of the same rates, premiums and discounts which are applicable to quota peanuts. This percentage has been computed by dividing the national average support rate per ton for 1987-crop additional peanuts by the national average support rate ton for 1987-crop quota peanuts.

Signed at Washington, DC on August 17, 1987.

Milton Hertz,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 87-19064 Filed 8-17-87; 3:28 pm]

BILLING CODE 3410-05-M

Federal Grain Inspection Service

Advisory Committee Meeting

Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), a notice is hereby given of the following committee meeting:

Name: Federal Grain Inspection Service Advisory Committee.

Date: September 14, 1987.

Place: Holiday Inn, DFW Airport North, 4441 Highway 114 and Esters Blvd., Irving, TX 75063.

Time: 9:00 A.M.

Purpose: A subcommittee to review and prepare recommendations to the Federal Grain Inspection Service Advisory Committee on sorghum odor and damage determinations.

The agenda includes a review of methods used for determining sorghum odor and damage.

The meeting will be open to the public. Public participation will be limited to written statements unless otherwise requested by the Committee Chairman. Persons, other than members, who wish to address the Committee at the meeting or submit written statements before or at the meeting should contact Marion Stackhouse, Subcommittee Chairman, P.O. Box 1290, Indianapolis, IN 46206, telephone (317) 203-7851.

Dated: August 14, 1987.

W. Kirk Miller,

Administrator.

[FR Doc. 87-19044 Filed 8-19-87; 8:45 am]

BILLING CODE 3410-EN-M

Soil Conservation Service

Environmental Statement; Hagerman Water Drainage RC&D Measure, Idaho

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Stanley N. Hobson, State Conservationist, Soil Conservation Service, 304 North 8th Street, Rm. 345 Boise, Idaho 83702, telephone (208) 334-1601.

Notice: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Hagerman Water Drainage RC&D Measure, Gooding County, Idaho.

The environmental assessment of this federally assisted action indicates that the measure will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Stanley N. Hobson, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

Hagerman Water Drainage RC&D Measure will provide assistance to the City of Hagerman for the removal of excess surface and sub-surface waters within the City. Planned treatments include both surface and sub-surface collective systems to reducing standing water problems within the City, and to prevent entry of these waters into the City sewer system.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Stanley N. Hobson. The FONSI has been sent to various Federal, State and local agencies, and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the address on the previous page.

Implementation of the proposal will not be initiated until 30 days after the date of this publication in the Federal Register.

(This activity is listed in the Catalog of Federal Domestic Assistance Program No. 10.901—Resources Conservation and Development—and is subject to the provisions of Executive Order 12372 which

requires intergovernmental consultation with State and local officials.)

Stanley N. Hobson,

State Conservationist.

Date: August 11, 1987.

[FR Doc. 87-19086 Filed 8-19-87; 8:45 am]

BILLING CODE 3410-16-M

Environmental Statement; Pigeon Creek Watershed, IN

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Pigeon Creek Watershed, Steuben County, Indiana.

FOR FURTHER INFORMATION CONTACT: Robert L. Eddleman, State Conservationist, Soil Conservation Service, Corporate Sq-West, Suite 2200, 5610 Crawfordsville Road, Indianapolis, IN 46224, telephone (317) 248-4350.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Robert L. Eddleman, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for watershed protection. The planned works of improvement include conservation tillage systems, water and sediment control basins, and land use conversion.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Robert L. Eddleman.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Robert L. Eddleman,

Date: August 12, 1987.

[FR Doc. 87-19087 Filed 8-19-87; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-423-602]

Antidumping Duty Order; Industrial Phosphoric Acid From Belgium

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: In separate investigations concerning industrial phosphoric acid (IPA) from Belgium, the U.S. Department of Commerce (the Department) and the U.S. International Trade Commission (ITC) have determined that IPA from Belgium is being sold at less than fair value and that sales of IPA from Belgium are materially injuring a U.S. industry.

Therefore, based on these findings, all unliquidated entries, or warehouse withdrawals, for consumption of IPA from Belgium made on or after April 22, 1987, the on which the Department published its "Preliminary Determination" notice in the **Federal Register**, will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping duty order in the **Federal Register.**

EFFECTIVE DATE: August 20, 1987.

FOR FURTHER INFORMATION CONTACT: Mary Martin, Office of Investigations, or William Matthews, Office of Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-2830 (Martin) or (202) 377-3601 (Matthews).

SUPPLEMENTARY INFORMATION: The product covered by this order is IPA as currently provided for in item 416.30 of the *Tariff Schedules of the United States.*

In accordance with section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b), on April 14, 1987, the Department made its preliminary determination that there was reason to believe or suspect that IPA from Belgium was being sold at less than fair value and that critical circumstances did not exist with respect to these imports (52 FR 13263, April 22, 1987). On June 29, 1987, the Department made its final determination that these imports were being sold at less than fair value and that critical circumstances did not exist with respect to these imports (52 FR 25436, July 7, 1987).

On August 12, 1987, in accordance with section 735(d) of the Act (19 U.S.C. 1673d(d)), the ITC notified the Department that such imports materially injure a U.S. industry.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department directs U.S. Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of IPA from Belgium. These antidumping duties will be assessed on all unliquidated entries of IPA entered, or withdrawn from warehouse, for consumption on or after April 22, 1987, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register.**

On and after the date of publication of this notice, U.S. Customs officers must require, at the time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margin of 14.67 percent.

This determination constitutes an antidumping duty order with respect to IPA from Belgium, pursuant to section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48). We have deleted from the Commerce Regulations, Annex I of 19 CFR Part 353, which listed antidumping duty findings and orders currently in effect. Instead, interested parties may contact the Central Records Unit, Room B-099, Import Administration, for copies of the updated list of orders currently in effect.

Notice of Review

In accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)), the Department hereby gives notice that, if requested, it will commence an administrative review of this order. For further information regarding this review, contact William Matthews at (202) 377–3601.

This notice is published in accordance with section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48).

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

August 17, 1987.

[FR Doc. 87–19207 Filed 8–19–87; 8:45 am]

BILLING CODE 3510-DS-M

[A-549-601]

Antidumping Duty Order; Malleable Cast Iron Pipe Fittings From Thailand

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: In separate investigations the United States Department of Commerce (the Department) and the United States International Trade Commission (the ITC) have determined that malleable cast iron pipe fittings (pipe fittings) from Thailand are being sold at less than fair value and that sales of pipe fittings from Thailand are materially injuring a United States industry. Therefore, based on this finding, we will continue suspension of all unliquidated entries, or warehouse withdrawals, for consumption of pipe fittings from Thailand made on or after February 13, 1987, the date on which the Department published its preliminary determination notice in the **Federal Register**. These entries will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption on or after the date of publication of this antidumping duty order in the **Federal Register**.

EFFECTIVE DATE: August 20, 1987.

FOR FURTHER INFORMATION CONTACT: Charles Wilson (202) 377–5288 or James Riggs (202) 377–1766, Office of Investigations, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, 20230.

SUPPLEMENTARY INFORMATION:

The products covered by this investigation are malleable cast iron pipe fittings advanced in condition by operations or processes subsequent to the casting process other than with grooves, or not advanced, of cast iron other than alloy cast iron, as provided for in items 610.7000 and 610.7400 of the *Tariff Schedules of the United States Annotated* (*TSUSA*).

In accordance with section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b), on February 5, 1987, the Department made its preliminary determination that there was reason to believe or suspect that pipe fittings from Thailand were being sold at less than fair value (52 FR 4837 February 13, 1987). On June 29, 1987, the Department made its final determination that these imports were being sold at less than fair value (52 FR 29282 July 7, 1987).

On August 12, 1987, in accordance with section 735(d) of the Act (19 U.S.C. 1673d(d)), the ITC notified the Department that such imports materially injure a United States industry.

Therefore, in accordance with sections 726 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department directs United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of pipe fittings from Thailand. These antidumping duties will be assessed on all unliquidated entries of pipe fittings entered, or withdrawn from warehouse, for consumption on or after February 13, 1987, the date on which the Department published its preliminary determination.

On and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margin of 2.75 percent.

This determination constitutes an antidumping duty order with respect to pipe fittings from Thailand, pursuant to section 736 of the Act (19 U.S.C. 1673e) and 19 CFR 353.48. We have deleted from the Commerce Regulations, Annex I of 19 CFR Part 353, which listed antidumping duty findings and orders currently in effect. Instead, interested parties may contact the Central Records Unit, Room B–099, Import Administration, for copies of the updated list of orders currently in effect.

This notice is published in accordance with section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48).

August 17, 1987.

Joseph A. Spetrini,

Acting Duty Assistant Secretary for Import Administration.

[FR Doc. 87–19085 Filed 8–19–87; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review; Calcined Petroleum Coke, Inc.

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the certificate should be issued.

FOR FURTHER INFORMATION CONTACT: George Muller, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97–290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A certificate of review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a certificate should be issued. An original and five (5) copies should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of

Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 87–00011." A summary of the application follows.

Applicant: Calcined Petroleum Coke, Inc., 230 Park Avenue Suite 2717, New York, New York 10017, (212)983–4500

Application #: 87–00011

Date deemed submitted: August 6, 1987.

Summary of the Application:

Export Trade: Product

Calcined Petroleum Coke.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

Calcined Petroleum Coke, Inc., seeks certification to offer the major U.S. producers of Calcined Petroleum Coke a proposal to (and carry out that proposal, should the producers accept) become their exclusive export sales agent for an initial period of two years. As exclusive agent, Calcined Petroleum Coke, Inc., would

(1) Purchase from each producer its annual export capacity and resell this capacity to aluminum smelters outside of the U.S.;

(2) Have sole discretion to set prices and other terms for export sales of Calcined Petroleum Coke;

(3) Agree with each producer to pay the producer a fixed amount per metric ton of capacity in excess of current export requirements on the condition that the producer not sell from that capacity directly or indirectly into the export market; and

(4) Seek to negotiate advantageous transportation rates with carriers and with conferences for the shipment of exported Calcined Petroleum Coke.

Date: August 14, 1987.

George Muller,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 87–19041 Filed 8–19–87; 8:45 am]

BILLING CODE 3510-DR-M

Solicitation of Comments on Machine Tool Special Issue License Request

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for special issue licenses under Paragraph 10 of the U.S.-Taiwan Arrangement Concerning Trade in Certain Machine Tools.

DATE: Comments must be submitted no later than August 31, 1987.

ADDRESS: Send all comments to Lee Mercer, Deputy Assistant Secretary for Trade Administration, International Trade Administration, Department of Commerce, Room 3892, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Nicholas C. Tolerico, Acting Director, Office of Agreements Compliance, International Trade Administration, Department of Commerce, Washington, DC 20230, at (202) 377–3793, or John Richards, Director, Office of Industrial Resource Administration, International Trade Administration, Department of Commerce, Washington, DC 20230, at (202) 377–4506.

SUPPLEMENTARY INFORMATION: Paragraph 10 of the U.S.-Taiwan Arrangement Concerning Trade in Certain Machine Tools provides for the authorization of special issue licenses. Such licenses may be authorized for importation of machine tools in excess of the export limit when the United States Government determines that regular licenses are not available, and there is a national security need for that product, and/or the domestic industry is unable to meet demand for that product.

Special issue licenses are granted for a limited time period and for a specified number of machines, on a product-by-product basis.

We have received a request for 56 special issue licenses for bed-type machining center frames which meet the following specifications: Work envelopes of 22" x 14" x 14", 30" x 20" x 20", 40" x 30" x 22", and 52" x 30" x 23.6"; table loads of 550, 1,100, and 3,300 pounds; continuous spindle horsepowers of 3HP, 7.5HP, and 10HP; positioning accuracy of + or − .0004"; and positioning repeatability of + or − .0002".

The Department of Commerce is particularly interested in public comments regarding the domestic availability of the items described above, and any effects that the proposed additional imports of these items would have upon domestic machine tool manufacturers.

Public information will be made available at the Department of Commerce for public inspection and copying. Material that is national security classified information or business confidential information is subject to the provisions of Paragraph 359.6 of the regulations (15 CFR 359.6).

The public record concerning this request will be maintained in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4104, U.S. Department of Commerce, Washington, DC, 20230. The records in this facility may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations.

Further information about the inspection and copying of records at the facility can be obtained from Patricia Mann, Freedom of Information Officer, International Trade Administration, Department of Commerce, Room 4001, Washington, DC 20230, at (202) 377–3031.

Lee Mercer,

Deputy Assistant Secretary for Trade Administration.

[FR Doc. 87–19063 Filed 8–19–87; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Senior Executive Service; Membership of the National Oceanic and Atmospheric Administration Performance Review Boards

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of membership of NOAA Performance Review Boards.

SUMMARY: In conformance with the Civil Service Reform Act of 1978, 5 U.S.C. 4314(c)(4), NOAA announces the appointment of persons to serve as members of NOAA Performance Review Boards (PRB's). The NOAA PRB's are responsible for reviewing performance appraisals and ratings of Senior Executive Service (SES) members and making written recommendations to the appointing authority on SES retention and compensation matters, including performance-based pay adjustments, awarding of bonuses and amounts, and initial recommendations for potential rank awards. The appointment of these members to the NOAA PRB's will be for

periods of 24 months service beginning August 31, 1987.

DATE: The effective date of service of appointees to the NOAA Performance Review Board is August 31, 1987.

FOR FURTHER INFORMATION CONTACT: Susan Johnson, NOAA Personnel Officer, Office of Administration, NOAA, 6010 Executive Blvd., Rockville, Maryland 20852, (301) 443–8811.

SUPPLEMENTARY INFORMATION: The names and titles of the members of the NOAA PRB's (NOAA officials unless otherwise identified) are set forth below:

Dennis F. Geer, Director, Office of Administration
Curtis T. Hill, Director, Mountain Administrative Support Center
Kelly C. Sandy, Director, Western Administrative Support Center
Robert S. Smith, Director, Eastern Administrative Support Center
Frank W. Maloney, Chief, Aeronautical Charting division, National Ocean Service
Andrew Robertson, Chief, Ocean Resources Assessment Division, National Ocean Service
Peter L. Tweedt, Director, Ocean and Coastal Resource Management Office, National Ocean Service
Paul M. Wolff, Assistant Administrator for Ocean Services and Coastal Zone Management
Michael A. Chinnery, Director, National Geophysical Data Center, National Environmental Satellite, Data, and Information Service
Kenneth D. Hadeen, Director, National Climatic Data Center, National Environmental Satellite, Data, and Information Service
Russell Koffler, Director, Office of Satellite Data Processing and Distribution, National Environmental Satellite, Data, and Information Service
Gregory W. Withee, Director, National Oceanographic Data Center, National Environmental Satellite, Data, and Information Service
Richard P. Augulis, Director, Central Region, National Weather Service
Louis J. Boezi, Director, Transition Program Office, National Weather Service
William D. Bonner, Director, National Meteorological Center, National Weather Service
Anthony F. Durham, Director, NEXRAD Joint Systems Program, National Weather Service
Elbert W. Friday, Deputy Assistant Administrator for Weather Services
Richard E. Hallgren, Assistant Administrator for Weather Services
Michael D. Hudlow, Director, Office of Hydrology, National Weather Service
Frederick P. Ostby, Director, National Severe Storms Forecast Center, National Weather Service
Douglas H. Sargeant, Director, Office of Systems Development, National Weather Service
Eddie Bernard, Director, Pacific Marine Environmental Laboratory, Office of Oceanic and Atmospheric Research
B. Kent Burton, Director, Office of Legislative Affairs
Kathleen J. Charles, Deputy Comptroller
Timothy R. Keeney, Deputy General Counsel for Policy, Research, Services and Coastal Zone
Augustine J. LaCovey, Director, Office of Public Affairs
William Maruszeski, Director, Office of A–76 Activities
Daniel W. McGovern, General Counsel
J. Roy Spradley, Jr., Special Advisor, Office of Assistant Secretary for Oceans and Atmosphere
Joseph W. Angelovic, Deputy Assistant Administrator for Science and Technology, National Marine Fisheries Service
Izadore Barrett, Director, Southwest Fisheries Center, National Marine Fisheries Service
Henry R. Beasley, Director, Office of International Fisheries, National Marine Fisheries Service
Richard J. Berry, Director, Southeast Fisheries Center, National Marine Fisheries Service
Carmen J. Blondin, Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service
Ellsworth C. Fullerton, Director, Southwest Region, National Marine Fisheries Service
Samuel McKeen, Chief, Management and Budget Staff, National Marine Fisheries Service
Bill A. Powell, Executive Director, National Marine Fisheries Service
Richard B. Roe, Director, Office of Fisheries Management, National Marine Fisheries Service
Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service
John J. Carey, Deputy Assistant Administrator for Ocean Services and Coastal Zone Management
Bruce C. Douglas, Chief, Geodetic Research and Development Laboratory, National Ocean Service
Charles N. Ehler, Director, Office of Oceanography and Marine Assessment, National Ocean Service
Hugo F. Bezdek, Director, Atlantic Oceanographic and Meteorological Laboratories, Office of Oceanic and Atmospheric Research
Kirk Bryan, Supervisory Research Meteorologist, Geophysical Fluid Dynamics Laboratory, Office of Oceanic and Atmospheric Research
Vernon E. Derr, Director, Environmental Research Laboratories, Office of Oceanic and Atmospheric Research
Lester Machta, Director, Air Resources Laboratory, Office of Oceanic and Atmospheric Research
Jerry D. Mahlman, Director, Geophysical Fluid Dynamics Laboratories, Office of Oceanic and Atmospheric Research
Syukuro Manabe, Supervisory Research Meteorologist, Geophysical Fluid Dynamics Laboratory, Office of Oceanic and Atmospheric Research
Alan R. Thomas, Deputy Assistant Administrator for Oceanic and Atmospheric Research
Richard J. Caldwell, Manager of the Office of Facilities, United States Information Service
Joseph E. Clark, Deputy Director, National Technical Information Service
Harriet G. Jenkins, Assistant Administrator for Equal Opportunity Programs, National Aeronautics & Space Administration
Roy R. Mullen, Associate Chief, National Mapping Division, United States Geological Survey
Joe D. Simmons, Deputy Director, Center for Basic Standards, National Bureau of Standards

Date: August 11, 1987.

Anthony J. Calio,
Under Secretary, NOAA.

[FR Doc. 87–19088 Filed 8–19–87; 8:45 am]
BILLING CODE 3510–12–M

Patent and Trademark Office

[Docket No. 70470–7070]

Electronic Data Dissemination Polices and Guidelines

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Proposed Amendment of Electronic Patent Data Dissemination Policies and Guidelines; Request for Public Comment.

SUMMARY: The U.S. Patent and Trademark Office (PTO) issues this notice to request comments on policies and guidelines for the dissemination and distribution of electronic patent and trademark data by the PTO. The purposes of this notice are (1) to inform the public of the PTO's intention to amend its pricing policy for data base products, and to expand the scope of its dissemination policies and guidelines to encompass patent and trademark electronic data; (2) to explain the current

situation with regard to public access to automated patent and trademark search rooms and libraries; and (3) to solicit public comments on the intended proposals. The proposed pricing would amend the policies and guidelines published in 49 FR 24585 on June 14, 1984.

DATE: Comments should be submitted no later than September 21, 1987.

ADDRESS: Comments should be addressed to: Donald J. Quigg, Assistant Secretary and Commissioner of Patents and Trademarks, U.S. Patent and Trademark Office, Washington, DC 20231.

FOR FURTHER INFORMATION CONTACT: Bradford R. Huther at 703–557–1572.

SUPPLEMENTARY INFORMATION: This notice follows the form of a notice of proposed rulemaking in that the text of the amendment of policies and guidelines is accompanied by this Supplementary Information section containing introductory and background material.

The Patent and Trademark Office has determined that this notice is not a major rule within the meaning of section 1(b) of Executive Order 12291. Therefore, a Regulatory Impact Analysis has not will be prepared. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this amended policy statement by the Administrative Procedure Act under 5 U.S.C. 553(b)(A), no initial or final Regulatory Flexibility Analysis has to be or will be prepared. This notice does not contain a collection of information for purposes of the Paperwork Reduction Act.

It is the intention of the PTO to revise immediately its pricing policy for the sale of its data base products in compliance with OMB Circular A–130 entitled "Management of Federal Information Resources." Under the revised pricing policy, PTO would recover only the marginal cost (i.e., that amount that is sufficient to cover the costs of reproduction and dissemination). This will result in a lowering of most fees charged for data base products. It is also the intention of the PTO to explain the situation under Pub. L. 99–607, the 1986 legislation authorizing appropriations for the PTO, with regard to public access to the patent or trademark search rooms and libraries, and to solicit public comments on alternatives for funding public access to those search rooms and libraries. Such comments will be considered by the PTO in formulating further modifications to the PTO's current information guidelines and policies, which modifications will be published at a later date in the form of a separate proposed rulemaking.

Background

In response to Pub. L. 96–517, the 1980 legislation which amended patent and trademark laws, the PTO prepared and submitted a plan for the automation of its operations to Congress on December 13, 1982. The plan centered on two basic concepts: the creation of electronic data bases that (1) would replace the PTO's all-paper patent and trademark files, and thereby improve their intergrity and quality; and (2) would support searches, examinations, office actions and other office functions through electronic workstations which would provide text and image retrieval capabilities and perform other automation functions.

Active Federal trademark registrations have been converted to an electronic data base of textual and digital image data. A computer system has been installed to enable examiners to search the data base for textual data and codes describing designs, and within calendar year 1987 will be fully operational to retrieve and display all information as substitute for paper file searches.

An Automated Patent System (APS) is being installed for test and evaluation purposes, using one patent examining group as an operational testbed. Major operational components of APS—large scale computers with conventional magnetic storage devices, a high-speed local area data communications network, and electronic workstations equipped with dual resolution display graphics control devices and laser printers—were interconnected on July 1, 1986, to enable system test and evaluation to begin in the testbed group. Optical disk storage units were subsedquently installed to house the test data base of digital images of U.S. and foreign patents. Other equipment that will be needed to simulate the system's performance under full workload conditions will be installed and evaluated during 1987.

The text of U.S. patents issued since 1975 was entered in the system to provide the data base for use with full text searching capabilities of APS. Images of all U.S. and relected foreign patents in the testbed group's search files have been converted to digital form and are being placed on optical disks for use in electronic classification and combined text classification searches. Work has begun to digitize the entire backfile of U.S. patents. Through exchange agreements with the European and Japanese Patent Offices, European patents issued since 1920 and all Japanese patents have been or will be converted to a common facsimile standard and key patent will be entered for on-line retrieval.

Text search capabilities of APS are now being made available to all PTO examiners. A decision on the deployment of the digital image retrieval and other electronic searching capabilities is planned to be made in 1988. Additional system capabilities for office automation and other administrative support will be added to those already installed in the testbed over the next several months to supplement the search and retrieval capabilities. Examiners will be provided with access to commercial data bases, such as industry-specific data bases, through APS, from the electronic workstations.

At the present time, neither the trademark nor the patent automated systems has been deployed to the public search rooms. It is expected that the trademark automated system could be ready for public deployment prior to the end of the current authorization cycle, which is September 30, 1988. According to the 1987 edition of the Automation Master Plan, full deployment of the automated patent system to the public search room is scheduled for fiscal year 1991. Public evaluation of the automated patent system is scheduled to begin in fiscal year 1987.

Under the provisions of Pub. L. 99–607, which authorizes appropriations through September 30, 1988, "The Commissioner of Patent and Trademarks may not impose a fee for use of public patent or trademark search rooms and libraries. The costs of such rooms and libraries shall come from amounts appropriated by Congress." In anticipation of the need to propose authorizing legislation for fiscal years 1989 through 1991, comments are being requested regarding three potential funding alternatives to support the automated public search rooms. They are:

(1) *Use of taxpayer revenues.* The costs of supporting the automated public search rooms could be covered by funds appropriated specifically for that purpose by Congress. No statutory changes would be required for this option. Presently, the paper search rooms are being supported with appropriated funds. Under current funding levels and, in the absence of authority to charge fees for this purpose, the public's access to automated search rooms would be restricted.

(2) *Use of general fee revenues.* The marginal costs of supporting the

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automated public search rooms could be apportioned as a cost of prosecuting an application or derived from the total available fee revenues collected by the PTO. Under this alternative, the costs for the automated public search rooms would be borne by all users of the patent and trademark systems. The user charge prohibition in Pub. L. 99-607 would have to be modified to permit this option.

(3) *Establish specific user charges for access to the public search rooms.* Under this alternative such charges for access to the automated trademark and patent systems in the public search rooms would be consistent with the guidelines of OMB Circular A-130, and would be established through the rulemaking process. The marginal costs for the public search rooms under this alternative would be borne only by those who actually use the public search rooms. The user charge prohibition in Pub. L. 99-607 would have to be rescinded to permit this option.

Electronic Data Dissemination Policies and Guidelines

The Patent and Trademark Office proposes to amend its notice entitled Electronic Patent Data Dissemination Policies and Guidelines, published in 49 FR 24585 on June 14, 1984, as follows:

The title of the guidelines would be changed to read Electronic Data Dissemination Policies and Guidelines.

Guideline III, paragraphs C and D would be amended to read:

C. Fees charged to commercial data base vendors for bulk data developed by the PTO will be based on the marginal cost of providing such distribution services.

D. Normally, arrangements with commercial data base vendors will be non-exclusive. Bulk resale of PTO data by commercial data base vendors will be permitted subject to the terms of each bulk data sales agreement.

A new Guideline V, entitled Data Base Product Pricing would be added as follows:

V. Data Base Product Pricing

Fees charged to the public for U.S. patent and trademark data products will be based on the marginal cost of providing such products.

Dated: August 17, 1987.

Rene D. Tegtmeyer,

Assistant Commissioner for Patents.

[FR Doc. 87-19056 Filed 8-19-87; 8:45 am]

BILLING CODE 3510-16-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Gas Transportation Rate Design and the Use of Auctions to Allocate Capacity; Technical Conference

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of Technical Conference.

SUMMARY: On July 29, 1987, the Federal Energy Regulatory Commission (Commission) released for public comment a staff discussion paper entitled "Gas Transportation Rate Design and the Use of Auctions for the Allocation of Capacity." The staff discussion paper offers auction options that could be used as part of a gas pipeline rate proceeding for the allocation of pipeline capacity. The Commission is exploring the use of auctions as part of its gas strategy policy announced on January 15, 1987. The purpose of the technical conference is to permit interested persons the opportunity to orally comment on the contents of the discussion paper.

DATE: The technical conference will be held on Thursday, August 27, 1987, beginning at 10:00 a.m.

ADDRESS: The technical conference will be held at: Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426.

The technical conference will be held in Hearing Room A located on the second floor of the Commission's headquarters at the above address. Requests to participate, including the length of time requested to make oral comments, should be directed to Richard P. O'Neill, Director, Office of Pipeline and Producer Regulation, at (202) 357-8500 by August 25, 1987.

FOR FURTHER TECHNICAL INFORMATION CONTACT: Wayne R. Guest, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, (202) 357-8201.

FOR FURTHER LEGAL INFORMATION CONTACT: Thomas J. Lane, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC. 20426, (202) 357-8530.

SUPPLEMENTARY INFORMATION: On July 29, 1987, the Commission released for public comment a staff paper which discusses transportation rate design and, in particular, the use of various auction mechanisms, as part of the rate design to allocate transmission capacity. The staff paper was drafted by the Commission's Office of Economic Policy and the Office of Pipeline and Producer Regulation.

The staff paper offers options that are being considered for implementing an auction for allocating pipeline capacity. The paper also details various benefits and goals of the action process including how actions could more efficiently assign capital costs by establishing peak and off-peak seasonal rates, allocate pipeline capacity more efficiently than the first-come, first-served provisions of Order No. 436 and provide market signals to indicate where expansion should occur.

The technical conference will not be of a judicial or evidentiary nature. There will be no cross-examination of persons presenting comments and there will not be a transcript of the oral presentations. However, the Commission's staff may ask questions of persons making statements and persons making statements may address questions and make suggestions to the Commission's staff present at the conference. Persons participating at the technical conference should, if possible, bring, in written form, 10 copies of their oral presentation.

Finally, any persons wishing to submit written comments on the staff paper should submit them by September 9, 1987, by sending them to: Federal Energy Regulatory Commission, Office of the Secretary, 825 North Capitol Street, NW., Washington, DC 20426.

Written comments should reference the staff paper "Gas Transportation Rate Design and the Use of Auctions for the Allocation of Capacity." Copies of the discussion paper are available to the general public for $2.75 each through the Commission's Public Reference Branch, Room 1000, at the above address.

The staff discussion paper does not necessarily reflect the views of the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-19203 Filed 8-19-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. C187-287-000]

Application for Pregranted Abandonment for an Unlimited Term; Jack L. Burrell, et al.

August 17, 1987.

Take notice that on February 9, 1987, Jack L. Burrell, *et al.*, (Applicant), 2301 Cedar Springs, Suite 400, Dallas, Texas 75201, filed an application for pregranted abandonment relating to sales for resale in interstate commerce

of natural gas from properties located in Reeves and Pecos Counties, Texas. Applicant states that sales from such properties were made to Transwestern Pipeline Company (Transwestern) and were authorized under a small producer certificate issued in Docket No. CS72–46. Applicant states that it previously filed an application requesting permanent abandonment and three-year pregranted abandonment authorization in Docket No. CI87–87–000 pursuant to § 2.77 of the Commission's rules after Transwestern terminated its gas purchase contract. Applicant states that the subject gas is NGPA section 106(a) and 108 gas and that prior to being shut in such gas had a deliverability of 700 Mcf/d. Applicant further states that by order issued January 9, 1987, such application was granted as requested.

Applicant now requests pregranted abandonment authorization for an unlimited term relating to sales of gas from the subject properties. The price to be charged for any subsequent sale of such gas would not exceed maximum lawful prices including any allowances permitted by regulation. Approval of this pregranted abandonment would allow Applicant to make sales of varying terms in the interstate market, including sales for resale to local distribution companies and interstate pipelines, making this gas equally available to jurisdictional and nonjurisdictional purchasers in response to marketplace needs. Applicant states that this pregranted abandonment is the same in scope as that provided for in the Commission's Order No. 451 which prescribed § 157.301(b) of the Commission's Regulations. If Applicant had not been forced to seek expedited abandonment under § 2.77 as a result of Transwestern's actions, and had instead invoked the good faith negotiation procedures in Oder No. 451 and abandoned sales to Transwestern thereby, Applicant states it would have had such pregranted abandonment authority. For the foregoing reasons, Applicant states it is in the public convenience and necessity that Applicant be granted the requested pregranted abandonment authority.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 2, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in a proceeding must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–19066 Filed 8–19–87; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS–42059D; FRL–3250–7]

Testing Consent Agreement Development for 1,1,1-Trichloroethane Under TSCA Secton 4; Solicitation for Public Participation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA published a final test rule on 1,1,1-trichloroethane (TCEA; CAS No. 71–55–6) in the **Federal Register** of October 10, 1984 (49 FR 39810). The rule required manufacturers and processors of TCEA to test this chemical substance for developmental toxicity effects. The Agency is considering developing a testing consent agreement for mutagenicity and neurotoxicity testing of TCEA and is soliciting public participation in the process. EPA invites persons interested in becoming involved in or monitoring negotiations for the development of a consent agreement to identify themselves as "interested parties". A public meeting is announced to discuss the Agency's consideration of a testing consent agreement for TCEA.

DATES: Submit written notice of interest to be designated an interested party on or before September 17, 1987.

ADDRESS: Submit written notice of interest in being designated an "interested party" in triplicate identified by the document control number (OPTS–42059D) to: TSCA Public Information Office (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. NE–G004, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Rm. E–543, 401 M St., SW., Washington, DC 20460, (202) 554–1404.

Persons interested in attending the public meeting should notify EPA by telephone before September 10, 1987.

SUPPLEMENTARY INFORMATION: In October, 1984, when EPA issued a test rule for TCEA, the Agency deferred requiring mutagenicity and neurotoxicity testing because the tiered testing scheme for mutagenicity and the neurotoxicity testing guidelines had not been developed. Both are now available and the Agency is considering developing a testing consent agreement for mutagenicity and neurotoxicity testing.

EPA has issued amendments to the procedural regulations in 40 CFR Part 790, which govern the development and implementation of testing requirements under secton 4 of TSCA. These amendments established procedures for using enforceable consent agreements to develop testing requirements under section 4 of the Act. This notice serves three purposes under those procedures. First, it requests "interested parties" who wish to participate in testing negotiations for TCEA to identify themselves to EPA. Second, it announces a public meeting to initiate testing. Third it proposes a target schedule for implementation of the consent agreement process for TCEA.

I. Identification of Interested Parties

Under 40 CFR 790.22, the testing negotiation procedures are initiated by the publication of a **Federal Register** notice which invites persons interested in participating in or monitoring negotiations for the development of a consent agreement to notify the Agency in writing. Those individuals and groups who respond to EPA's notice by the deadline established in the notice will have the status of "interested parties" and will be afforded opportunities to participate in the negotiation process. These "interested parties" will not incur any obligations by being designated "interested parties". The procedures for these negotiations are described in 40 CFR 790.22.

Individuals and groups desiring to have the status of "interested parties" for TCEA should submit a written notice of this fact to the Agency at the address given above on or before September 17, 1987.

The Agency is considering initiating the consent agreement process for TCEA rather than the formal rule making process because industry has requested EPA to consider the consent agreement process for TCEA and because EPA believes this process will lead to the development of necessary test data significantly earlier.

II. Public Meeting

A public meeting will be held to discuss EPA's evaluation of testing needs for TCEA and industry's testing proposal on September 10, 1987 at 10 a.m. This meeting will be held in Room 103, Northeast Mall, EPA Headquarters, 401 M. Street, SW., Washington, DC 20460. Persons interested in attending this meeting should notify the EPA TSCA Assistance Office by telephone at the telephone number listed above before September 10, 1987.

III. Timetable for Negotiating Consent Agreements

In accordance with the procedures for the development of consent agreements established in 40 CFR 790.22, the following target schedule is established for TCEA. EPA has shortened the negotiating time for this chemical because an industry group has already come together and has been able to agree on some joint testing.

September 10, 1987—Public meeting to discuss EPA's preliminary testing decisions.

September 17, 1987—Deadline for the notice of interested party designation.

October 8, 1987—Decision by EPA on whether to negotiate a consent order or prepare a test rule.

October 22, 1987—Draft consent order sent to interested parties for comment (if EPA decides to use the consent order).

January 14, 1988—Issue consent order.

Dated: August 14, 1987.

J. Miranda,

Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 87-19197 Filed 8-19-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Jacksonville Port Authority

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200019
Title: Jacksonville Terminal Agreement
Parties: Jacksonville Port Authority (JPA), Green Grove Maritime, Inc. (GCM)
Synopsis: The proposed agreement would allow GCM to stevedore and handle cargo at JPA at incentive rates.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: August 17, 1987.

[FR Doc. 87-19103 Filed 8-19-87; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 212-010286-013.
Title: South Europe/U.S.A. Pool Agreement.
Parties:

Compania Trasatlantica Espanola, S.A.
Costa Line (Costa Container Lines, S.p.A., Genoa)
Evergreen Marine Corporation
Farrell Lines, Inc.
"Italia" Di Navigazione, S.p.A.
Jugolinija
Lykes Lines (Lykes Bros. Steamship Co., Inc.)
A.P. Moller-Maersk Line
Nedlloyd Lines (Nedlloyd Lijnen B.V.)
Sea-Land Service, Inc.
Trans Freight Lines
Zim Israel Navigation Company, Ltd.

Synopsis: The proposed amendment would delete the requirement for unanimous agreement for modifications to the list of cargoes excluded from the scope of the pool.

Agreement No.: 217-010731-002.
Title: Sea-Land Service/United Arab Shipping Company Space Charter Agreement.
Parties:

Sea-Land Service, Inc. (Sea-Land)
United Arab Shipping Company (SAG)

Synopsis: The proposed amendment would assure Sea-Land up to 15 refrigerated container slots per vessel sailing and would provide that up to 30 refrigerated container spaces would be available for "Mid-East interport cargoes." It would also provide for an expedited approval process should Sea-Land request a greater number of refrigerated container spaces.

Agreement No.: 212-010746-001.
Title: Columbus/PACE/SCNZ/BSL/PAD Space Charter and Sailing Agreement.
Parties:

Columbus Line Associated Container Transportation (Australia) Ltd.

Synopsis: The proposed amendment would add The Shipping Corporation of New Zealand Ltd., Blue Star Line, Ltd. and Pacific Australia Direct Line as parties to the agreement and would make other changes in the agreement reflecting the increase in the number of parties. It would also permit the parties to pool revenues from certain cargo and would provide maximum vessel numbers and capacities for each party. The agreement was formerly designated as Agreement No. 217-010746, the Columbus/Pace Cross Charter Agreement.

Agreement No.: 217-011023-001.
Title: Hyundai Merchant Marine/Hanjin Container Lines Space Charter Agreement.
Parties:

Hyundai Merchant Marine Co., Ltd.
Hanjin Container Lines, Ltd.

Synopsis: The proposed amendment would extend the termination date of the agreement until March 28, 1988.

Agreement No.: 203-011141.
Title: Gulfway.
Parties:

Lykes Bros. Steamship Co., Inc.
Hapag-Lloyd AG
Sea-Land Service, Inc.
Trans Freight Lines
Gulf Container Line (GCL), B.V.
Compagnie Generale Maritime (CGM)
Nedlloyd Lijnen, B.V.
South Atlantic Cargo Shipping (Atlanticargo) N.V.

Synopsis: The proposed agreement would permit the parties to meet or otherwise communicate and to agree

upon rates, tariffs, practices and conditions of service in the trade between U.S. Gulf ports and other U.S. ports and points via such ports, and ports and points in the United Kingdom, Ireland, Scandinavia and Northern Europe and other points in Europe via such ports. Adherence to any agreement reached would be voluntary.

By Order of the Federal Maritime Commission.

Dated: August 17, 1987.

Joseph C. Polking,

Secretary.

[FR Doc. 87-19057 Filed 8-19-87; 8:45 am]

BILLING CODE 6730-01-M

Issuance of Certificate (Performance); Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation

Notice is hereby given that the following has been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Pub. L. 89-777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540): Raymond & Whitcomb New York, Inc., (d/b/a Raymond & Whitcomb Co.), 400 Madison Avenue, New York, NY 10017.

Date: August 17, 1987.

Joseph C. Polking,

Secretary.

[FR Doc. 87-19056 Filed 8-19-87; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act, 1984 (46 U.S.C. app. 1718 and 46 CFR Part 510).

Persons knowing of any reason why any of the following persons should not receive a license are requested to contact the Office of Freight Forwarder and Passenger Vessel Operations, Federal Maritime Commission, Washington, DC 20573.

Dora V. Soderberg dba DVS International Co., 358 S.W. 27th Avenue, Apt. 1, Miami, FL 33135

Zust Bachmeier of Switzerland Inc., 114 East 28th Street, New York, NY 10016

Officers: Dr. Edgar Scherer, Chairman, Thomas Graefe, President, George Pavia, Secretary

Alternative Freight Services, Inc., Peace Bridge Plaza Warehouse, Suite 211, Buffalo, NY 14213

Officers: Peter K. Vaccaro, President, Sylvia K. Phillips, Vice President, Thomas deGuehery, Vice President

Enterprise Forwarders, Inc., 2350 N.W. 93rd Avenue, Miami, FL 33172

Officers: Susy Barba, President, Maria Jacqueline Maestri, Vice President/Secretary

Kokusai Soko America, Inc., 305 No. Oak Street, Inglewood, CA 90302

Officers: Susumu Ikejiri, President, Takashi Ozawa, Vice President, Katsutoshi Ozawa, Corporate Secretary, James Kodaira, Corporate Treasurer

Robert Sordo dba Aldemar Shipping Company, 10910 S. La Cienega Blvd., Inglewood, CA 90304

International Freight Forwarders, Inc., 5445 Mariner, Suite 314, Tampa, FL 33609

Officers: Deborah Walker Hill, President/Director, Deborah Lynn Page, Secretary

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: August 17, 1987.

[FR Doc. 87-19059 Filed 8-19-87; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Advisory Committee Meetings

Summary

This notice sets forth the schedule and proposed agenda of the forthcoming meetings of the agency's national advisory bodies and one of its initial review committees in the month of September 1987. These committees will be open for discussion of administrative announcements and program developments. The committees will be performing initial review of applications for Federal assistance. Therefore, portions of the meetings will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552(b)(6) and 5 U.S.C. app. 2 10(d). Notice of these meetings is required under the Federal Advisory Committee Act, Pub. L. 92-463.

Committee Name: Mental Health Small Grant Review Committee.

Date and Time: September 10-11: 9:30 a.m.

Place: The Dupont Plaza Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036.

Status of Meeting: Open—September 10: 9:30-10:30 a.m.; Closed—Otherwise.

Contact: Monica Woodfork, Room 9C-05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-4943.

Purpose: The Committee is charged with the initial review of applications for research in all disciplines pertaining to alcohol, drug abuse, and mental health for support of research in the areas of psychology, psychiatry, and the behavioral and biological sciences.

Committee Name: National Advisory Council on Drug Abuse.

Date and Time: September 14-16: 9:00 a.m.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31C, Conference Room 8, Bethesda, MD 20892.

Status of Meeting: Open—September 14: 9:00 a.m.-5:00 p.m.; Closed—Otherwise.

Contact: Sheila H. Gardner, Room 10A-43, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-6441.

Purpose: The National Advisory Council on Drug Abuse advises and makes recommendations to the Secretary, Department of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute on Drug Abuse, on the development of new initiatives and priorities and the efficient administration of drug abuse research, including prevention and treatment research, and research training. The Council also gives advice on policies and priorities for drug abuse grants and contracts, and reviews and makes final recommendations on grant applications.

Committee Name: National Advisory Mental Health Council, NIMH.

Date and Time: September 14-16: 9:00 a.m.

Place: September 14: National Institutes of Health, Building 31C, Conference Room 6, 9000 Rockville, Pike, Bethesda, MD 20892.

September 15-16: Parklawn Building, Conference Rooms G and H, 5600 Fishers Lane, Rockville, MD 20857.

Status of Meeting: Open—September 14: 9:00 a.m.-5:00 p.m.; Closed—Otherwise.

Contact: Rachel Driver, Room 9-105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-3367.

Purpose: The National Advisory Mental Health Council advises the Secretary of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute of Mental Health, regarding policies and programs of the Department in the field of mental health. The Council reviews applications for grants-in-aid relating to research and training in the field of mental health and makes recommendations to the Secretary with respect to approval of applications for, and amount of, these grants.

Committee Name: National Advisory Council on Alcohol Abuse and Alcoholism.

Date and Time: September 17-18: 10:00 a.m.

Place: National Institutes of Health, Wilson Hall, Building 1, 9000 Rockville Pike, Bethesda, MD 20892.

Status of Meeting: Open—September 17; Closed—Otherwise.

Contact: James Vaughan, Room 16C–20, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–4375.

Purpose: The National Advisory Council on Alcohol Abuse and Alcoholism advises the Secretary, Department of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National institute on Alcohol Abuse and Alcoholism, regarding policy direction and program issues of national significance in the area of alcohol abuse and alcoholism. Reviews all grant applications submitted, evaluates these applications in terms of scientific merit and adherence to Department policies, and makes recommendations to the Secretary with respect to approval and amount of award.

Substantive information may be obtained from the contact persons listed above. Summaries of the meetings and rosters of committee members may be obtained as follows: NIAAA: Ms. Diana Widner, Committee Management Officer, Room 16C20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4375; NIDA: Ms. Camilla Holland, Committee Management Officer, Room 10–22, Parklawn Building; 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1644; NIMH: Ms. Joanna Kieffer, Committee Management Officer, Room 9–95, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4333.

Date: August 7, 1987.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 87–19061 Filed 8–19–87; 8:45 am]

BILLING CODE 4160-20-M

Centers for Disease Control

Cooperative Agreement; Intent to Contract for Sanitation Inspection of Cruise Ships

AGENCY: Centers for Disease Control (CDC), Public Health Service, HHS.

ACTION: Notice of intent to contract for sanitation inspection of cruise ships.

SUMMARY: The Public Health Service intends to contract with a party, or parties, for routine vessel sanitation inspections. The Contractor(s) would conduct physical inspections only and would report results to CDC. CDC would retain primary responsibility for the program including scheduling inspections, determining the content of the inspections, oversight of inspections, and reporting inspection results to the public.

DATE: Comments on the implementation of this proposed procedure must be received on or before September 21, 1987.

ADDRESS: Comments may be mailed to Director, Center for Environmental Health, Centers for Disease Control, 1600 Clifton Road, Atlanta, Georgia 30333.

FOR FURTHER INFORMATION CONTACT: Vernon N. Houk, M.D., Director, Center for Environmental Health, CDC, Atlanta, Georgia, 30333. Telephones: FTS: 236–4111, Commercial: (404) 452–4111.

SUPPLEMENTARY INFORMATION:

Purpose and Background

The purpose of this announcement is to specify administrative changes in vessel sanitation inspections conducted by the Vessel Sanitation Program, CDC.

CDC operates a vessel sanitation inspection program for cruise ships having international itineraries and calling at United States ports, under the Public Health Service Act (sections 361 through 369, 42 U.S.C. 264 through 272). Regulations for the inspection program appear at 42 CFR Part 71.

A notice of two public meetings with the cruise ship industry, private sanitation consultants, consumers, and other interested parties to be convened by CDC was published in the **Federal Register**, on Tuesday, June 16, 1987 [52 FR 22848]. Matters considered at the first meeting included consideration of contracting, by CDC, the inspection portion of the Vessel Sanitation Program. The **Federal Register** notice also included an announcement of the administrative assignment of the Vessel Sanitation Program to the Center for Environmental Health, CDC.

The first of the two public meetings was held in Miami, Florida, on Wednesday, June 24, 1987. The official record of that meeting remained open through the close of business, Monday, July 6, 1987, to allow all interested parties ample opportunity to submit materials and comments to be made part of the record of the meeting. Matters discussed at the meeting included the proposal by CDC to recover the costs of the program by charging fees for sanitation inspections and consideration of contracting, by CDC, the routine inspection portion of the Vessel Sanitation Program. A notice of a proposal for the collection of fees from the cruise ship companies for conducting sanitation inspections of cruise ships was published in the **Federal Register** on Friday, July 17, 1987 [52 FR 27060]. The second of the two public meetings is scheduled for Wednesday, September 23, 1987 in Miami, Florida.

After considering the comments made during the public meeting and reviewing the written comments received after the meeting, regarding contracting the inspection portion of the Vessel Sanitation Program, CDC is proposing to contract for the sanitation inspections. Under the proposed contract, the Contractor(s) would perform routine, unannounced, complete sanitation inspections on passenger cruise ships having international itineraries and calling at United States ports. Contractor(s) responsibilities under the contract would include:

1. Providing qualified inspectors who meet the minimum qualifications specified in Exhibit 1 of the Vessel Sanitation Program Operations Manual and have at least one year's work experience in the actual performance of sanitation inspections of large institutional food service operations;
2. Adhering to the inspection manual and specifications provided by CDC when conducting inspections;
3. Adhering to the inspection and reinspection schedules provided by CDC when conducting inspections;
4. Maintaining confidentiality of inspection schedule;
5. Immediately alerting CDC when inspection indicates a ship should not sail based on CDC criteria;
6. Leaving copies of inspection reports with the appropriate officials on the ships; and,
7. Reporting results to CDC within a specified time period.

CDC would retain overall responsibility for the Vessel Sanitation Program and would be responsible for:

1. Contracting for the inspections;
2. Training inspectors;
3. Establishing all inspection frequencies;
4. Establishing the content of the inspections;
5. Assuring quality inspections;
6. Analyzing the inspection data;
7. Taking immediate remedial or other action where appropriate;
8. Publishing the results bi-weekly in a separate document not related to Quarantine documents;
9. Providing technical consultation for new construction and major refitting of ships;
10. Providing inspection reports to the public on request;
11. Providing copies of the inspection manual to interested parties;
12. Billing shipping companies for the inspections;
13. Continuing to encourage the cruise ship lines to obtain appropriate consultation and training for their staffs;
14. Maintaining the process for cruise lines to appeal the results of a specific inspection;
15. Continuing to coordinate outbreak investigations;
16. Continuing regularly scheduled open meetings of interested parties; and,

17. Keeping inspection guidelines and procedures up to date.

Under the terms of any resulting inspection services contract, the Contractor(s) will not be allowed to enter into separate financial arrangements with vessel owners, operators, and/or staff for providing consultations or training related to the improvement of sanitation activities on board vessels inspected under the Vessel Sanitation Program.

Comments previously received as a result of the June 24, 1987, public meeting in Miami will automatically be considered during the comment period of this Notice.

Dated: August 14, 1987.

Glenda S. Cowart,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 87-19014 Filed 8-19-87; 8:45 am]

BILLING CODE 4160-18-M

Notice of Meeting; Effects of Long-Term Low-Dose Exposure to Chemical Agents To Be Destroyed by Department of Defense

Time and Date:

8:30 a.m.–5:00 p.m.—September 29, 1987

8:30 a.m.–1:00 p.m.—September 30, 1987

Place: Viscount Hotel, 2061 North Druid Hills Road NE., Atlanta, Georgia 30329

Status: Open

Matters To Be Discussed

This meeting is being convened to discuss issues related to possible effects of long-term exposure to low doses of agents GB (CAS 107-44-8), VX (CAS 50782-69-9), mustard (CAS 505-60-2), Lewisite (dichloro(2-chlorovinyl)arsine, CAS 541-25-3), and GA (CAS 77-81-6). The purpose of the meeting is to enable the Surgeon General to make sound recommendations for the protection of the general public and of workers engaged in transportation or destruction of these agents.

The meeting will be open to the public, limited only by the space available. The meeting room accommodates approximately 75 people.

Contact person for more information: Additional information concerning the meeting may be obtained from:

Linda Anderson, Chief, Special Programs Group, CEH, CDC, 1600 Clifton Road, NE., Atlanta, GA 30333. Telephones: FTS: 236-4595, Commercial: 404/454-4595.

Dated: August 7, 1987.

Elvia Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 87-19013 Filed 8-19-87; 8:45 am]

BILLING CODE 4160-18-M

Health Resources and Services Administration

Final Special Considerations for Nursing Special Project Grants; Demonstration Activities

The Health Resources and Services Administration announces the final Special Considerations which will govern the distribution of grant awards in Fiscal Year 1987 for Nursing Special Project Grants; Demonstration Activities under Purposes 7, 8 and 9 of the Public Health Service Act, as amended by Pub. L. 99-92.

Nursing Special Project Grants are authorized to improve nursing practice through projects that increase knowledge and improve skills of nursing personnel which enhance their effectiveness in health care delivery.

The Nurse Education Amendments of 1985 (Pub. L. 99-92), enacted, August 16, 1985, added three additional purposes (Nos. 7, 8 and 9) for the support of demonstration activities. The purposes for which grant support may be sought are:

Purpose 7

Demonstrate clinical nurse education programs which combine educational curricula and clinical practice in health care delivery organizations, including acute care, facilities, long-term care facilities and ambulatory care facilities.

Purpose 8

Demonstrate methods to improve access to nursing services in noninstitutional settings through support of nursing practice arrangements in communities.

Purpose 9

Demonstrate methods to encourage nursing graduates to practice in health manpower shortage areas (designated under sections 332) in order to improve the specialty and geographical distribution of nurses in the United States.

Proposed Special Considerations were published for public comment in the **Federal Register** on May 6, 1987 (FR 16907).

One response has been received from an Associate Director for Nursing, and Associate Dean for Nursing Practice in a university based school of nursing. This respondent indicated a desire that a broad special consideration be given to projects which demonstrate efforts to recruit and retain nurses regardless of their majority/minority status rather than limiting the special consideration to projects which identify recruitment and retention of minority nurses.

The Department recognizes that recruitment and retention of professional nurses, regardless of their majority/minority status is a priority concern of some nursing administrators. This fact, however, does not detract from the Department's belief that continued efforts must be made to encourage employment of minority nurses. Although the number of minority nurses is slowly increasing, continued efforts are needed in order to effect a proportional change that will more nearly reflect the composition of the population.

Therefore, as proposed, special consideration will be given to:

(1) Projects which include a target population of minority or disadvantaged persons.

(2) Projects that plan to continue beyond the period in which Federal funding is available and meet a clear financial need.

(3) Projects which demonstrate efforts to recruit and retain minority nurses.

Dated: July 31, 1987.

David N. Sundwall,

Administrator, Assistant Surgeon General.

[FR Doc. 87-19033 Filed 8-19-87; 8:45 am]

BILLING CODE 4160-15-M

Public Health Service

National Commission on Orphan Diseases; Public Hearing and Public Meeting

AGENCY: Office of the Assistant Secretary for Health, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (DHHS) and the Office of the Assistant Secretary for Health are announcing a forthcoming hearing and meeting of the National Commission on Orphan Diseases scheduled on September 17 and 18, 1987, respectively.

DATE: Date, time and place: Public hearing, September 17, 1987 at 9 a.m.; Commission meeting on September 18, 1987, 9 a.m., Hubert H. Humphrey Building, 200 Independence Avenue SW., Room 800, Washington, DC 20201. The entire proceedings are open to the public.

FOR FURTHER INFORMATION CONTACT: Written requests to participate in the

public hearing should be sent to: Mary C. Custer, Ph.D., Executive Secretary, National Commission on Orphan Diseases, Office of the Assistant Secretary for Health, 5600 Fishers Lane, Room 18–38, Rockville, MD 20857, 301–443–6156. Persons desiring more information regarding the responsibilities and activities of the Commission should contact Stephen C. Groft, Pharm. D., Executive Director, National Commission on Orphan Diseases, at the same address and phone number.

Agenda: Open Public Hearing (September 17)

The Commission has identified twelve issues or questions that form the primary focus for the Commission's public hearings. These issues and questions have been published previously in the **Federal Register** notice announcing the Commission's first public hearing (52 FR, page 23083, June 17, 1987). Copies of these issues may be obtained from the contact persons listed above.

Persons desiring to make oral presentations that address these issues should notify either of the contact persons before September 3, 1987 and submit a written statement of the information to be presented to the Commission. Oral presentations will be limited to ten minutes. Longer presentations should be summarized orally and submitted in writing in their entirety. Any person attending the hearing who did not request an opportunity to speak in advance of the hearing may be allowed to make an oral presentation at the conclusion of the hearing, if time permits, at the chairperson's discretion.

Persons who are not able to attend the public hearing, but want to submit information, may do so in writing. These statements should be forwarded to the Executive Secretary. Other issues and questions identified by the participants may also be included. Such information should be mailed to the contact persons at the address listed above.

The Commission has scheduled two additional public hearings in Chicago, Illinois, on November 6 and in Dallas, Texas, on February 4, 1988.

Agenda: Open Public Meeting (September 18)

The Commission will discuss plans to review the organization of the peer review process at the Alcohol, Drug Abuse and Mental Health Administration, the National Institutes of Health and the Food and Drug Administration with respect to rare disease research applications and a questionnaire for a survey of the research on rare disease and related issues at Federal agencies. Additionally, the Commission will discuss the status of general clinical research centers, research training activities and intramural and extramural research programs supported by the National Institutes of Health.

SUPPLEMENTARY INFORMATION: According to the Orphan Drug Act (Pub. L. 97–414), an orphan disease or condition is any disease or condition which (a) affects fewer than 200,000 persons in the United States, or (b) affects more than 200,000 persons in the United States and for which there is no reasonable expectation that the cost of developing or making available in the United States a drug for such disease or condition will be recovered from sales in the United States.

Public Law 99–91 (Orphan Drug Amendments of 1985) established the National Commission on Orphan Diseases. The National Commission on Orphan Diseases is to assess the activities of the National Institutes of Health (NIH), the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), the Food and Drug Administration (FDA), other public agencies, and private entities in connection with:

(1) Basic research conducted on rare diseases;

(2) The use in research on rare diseases of knowledge developed in other research;

(3) Applied and clinical research on the prevention, diagnosis, and treatment of rare diseases; and

(4) The dissemination to the public, health care professionals, researchers, and drug and medical device manufacturers of knowledge developed in research on rare diseases and other diseases which can be used in the prevention, diagnosis, and treatment of rare diseases.

Meetings of the Commission will be conducted, insofar as is practical, in accordance with the agenda published in the **Federal Register** notices. Changes in the agenda will be announced at the beginning of the meeting.

Persons interested in specific agenda items may contact Dr. Mary Custer, Exectuve Secretary of the Commission, for the approximate time of discussion.

A list of Commission members and the charter of the Commission will be available at the meeting. Interested persons who are unable to attend the meeting may request this information or summary minutes of the meeting from the Executive Secretary.

This notice is issued under 10(a) (1) and (2) of the Federal Advisory Committee Act, Pub. L. 92–463 (5 U.S.C. Appendix I).

Dated: August 14, 1987.

Robert E. Windom,

Assistant Secretary for Health.

[FR Doc. 87–19071 Filed 8–19–87; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–130–07–4410–08; GP7–271]

Planning Analysis for Iceberg Point and Point Colville, Lopez Island, San Juan County, WA

AGENCY: Bureau of Land Management, Interior

ACTION: Notice of Intent, and Initiation of Scoping Process.

SUMMARY: The Bureau of Land Management is initiating a planning analysis pursuant to section 43 CFR 1610.8 of the planning regulations for two parcels of public land, located on Lopez Island in San Juan County, Washington, described as follows: Section 23, Lot 4, Section 24, Lots 6 and 7, T. 34 N., R. 2 W., containing 55.59 acres on Iceberg Point, and Section 21, Lot 6, T. 34 N., R. 1 W., containing 60.0 acres on Point Colville.

This planning analysis is in response to wide spread public interest in keeping these areas in a natural condition. The proposed plan analysis will focus only on these two parcels totaling 115.59 acres (55.59 acres for Iceberg Point and 60.0 acres for Point Colville). The proposal is to provide special management protection measures through the designation as Areas of Critical Environmental Concern (ACEC).

The ACEC designation is the primary issue to be addressed in this plan. This designation would be protective in nature and emphasize preserving these areas in a natural condition. The only alternative presently being considered is the No Action alternative. Under this alternative management emphasis would remain the same.

The interdisciplinary team which will prepare the planning analysis includes BLM resource specialists in botany, wildlife biology, access, recreation, geology and minerals.

All persons with an interest in management of these two areas and resources are requested to submit comments on this proposal within 30 days of the date on this federal register notice. Comments and requests for further information or requests to be

placed on a mailing list should be addressed to Joseph Buesing, District Manager, Spokane District Office, East 4217 Main Avenue, Spokane Washington 99202, (509) 456–2570 or James Fisher, Area Manager, Wenatchee Resource Area Office, 1133 North Western Avenue, Wenatchee, Washington 98801, (509) 662–4223. No public meetings are anticipated but may be scheduled if necessary. Copies of the planning document will be available for public review at the above offices of the BLM, and at public locations in San Juan County. The draft analysis will be available in October and the final in November 1987.

The date of this notice initiates the 30 day scoping period.

EFFECTIVE DATE: August 12, 1987.

ADDRESS: Spokane District, Bureau of Land Management, East 4217 Main Avenue, Spokane, Washington 99202.

Dated: August 12, 1987.

Joseph Buesing,

District Manager.

[FR Doc. 87–19035 Filed 8–19–87; 8:45 am]

BILLING CODE 4310-33-M

[MT–070–07–4322–01–ADVB]

District Advisory Council Meeting; Montana

AGENCY: Bureau of Land Management, Butte District Office, Interior.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Butte District Advisory Council will be held Tuesday and Wednesday, September 15 and 16. The meeting will begin at 1:00 p.m. on September 15 in the Butte District Conference Room, 106 North Parkmont (Industrial Park), Butte, Montana. The agenda will include: (1) A discussion of the pilot program's progress to date, (2) rights-of-way procedures, (3) archeological activity at the district's early man site, (4) cooperative arrangements with local organizations, (5) a status report on current wilderness studies and (6) council topics. On September 16 the council will go on a field tour in conjunction with the Butte District Grazing Advisory Board of various points of interest in the Garnet Resource Area. The field tour will depart at 9:00 a.m. from the Deer Lodge Ranger Station (USFS) in Deer Lodge, Montana.

The meeting and the field tour are open to the public although transportation will not be provided on the field tour for members of the public. Interested persons may make oral statements to the council or file written statements for the council's consideration. Anyone wishing to make oral statements should make prior arrangements with the district manager. Summary minutes of the meeting will be maintained in the district office and will be available for public inspection and reproduction during regular business hours within 30 days followng the meeting.

FOR FURTHER INFORMATION CONTACT: James A. Moorhouse, District Manager, Butte District, Bureau of Land Management, Box 3388, Butte, Montana 59702.

J.A. Moorhouse,

District Manager.

August 13, 1987.

[FR Doc. 87–19089 Filed 8–19–87; 8:45 am]

BILLING CODE 4310-DN-M

[MT–070–07–4322–01–ADVB]

District Grazing Advisory Board Meeting; Montana

AGENCY: Bureau of Land Management, Butte District Office, Interior.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Butte District Grazing Advisory Board will be held Wednesday, September 16 in the conference room of the Deer Lodge Ranger District (USFS), 91 North Frontage Street in Deer Lodge, Montana. The meeting will begin at 8:00 a.m. On the agenca will be a discussion of range project maintenance throughout the district. At about 9:00 a.m., the board will depart on a field tour in conjunction with the Butte District Advisory Council of points of interest in the Garnet Resource Area.

The meeting and the field tour are open to the public although transportation will not be provided on the field tour for members of the public. Interested persons may make oral statements to the board or file written statements for the board's consideration. Anyone wishing to make oral statements should make prior arrangements with the district manager. Summary minutes of the meeting will be maintained in the district office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: James A. Moorhouse, District Manager, Butte District, Bureau of Land Management, Box 3388, Butte, Montana 59702.

J.A. Moorhouse,

District Manager.

August 13, 1987.

[FR Doc. 87–19090 Filed 8–19–87; 8:45 am]

BILLING CODE 4310-DN-M

[WY–920–07–4111–15; W–99258]

Proposed Reinstatement of Terminated Oil and Gas Lease; Sweetwater County, WY

Pursuant to the provisions of Pub. L. 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease W–99258 for lands in Sweetwater County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–99258 effective May 1, 1987, subject to the original terms and conditions of the lease and the iancreased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 87–19091 Filed 8–19–87; 8:45 am]

BILLING CODE 4310-22-M

[UT–060–07–4212–13; U–59956]

Realty Action; Partial Cancellation, U–59956; Land Exchange with Private Party in Grand and San Juan Counties, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of partial cancellation of Notice of Realty Action (50 FR 6259 (February 14, 1985)).

SUMMARY: Notice is given that the following described parcel of public land has been examined, and through the development of land-use planning decisions (based upon public input, resource considerations, regulations, and Bureau policies) has been found

suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976 (FLPMA) (90 Stat. 2756; 43 U.S.C. 1716). The parcel contains 35.00 acres of public land in San Juan County, Utah described as follows:

Salt Lake Meridian, Utah

T.34S., R.24E.,
Sec. 30, N½SW¼SE¼, N½W¼ SW¼SE¼, S½S½SW¼SE¼.

The Notice of Realty Action published in the Federal Register, Vol. 50, page 6259 (February 14, 1985) is canceled, in part, as to the offering of the above described public lands for direct sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713). This partial cancellation will allow for the exchange of these lands.

In exchange for these lands, the United States will acquire the following described 40.00 acres of land in Grand County, Utah from The Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter Day Saints:

Salt Lake Meridian, Utah

T.20S., R.23E.,
Sec. 33, E½SW¼SE¼, W½SE¼SE¼.

The purpose of this exchange is to acquire properties listed on the National Register of Historic Places. These properties would be managed for public use, interpretation, and protection. This exchange will also serve to resolve trespass occurring on public lands.

The public interest will be well served by making the exchange. The values of the lands to be exchanged are approximately equal and the acreage will be adjusted or money will be used to equalize values upon completion of the final appraisal of the lands. The exchange involves surface estate interests only.

The public lands will be conveyed subject to the following terms and conditions:

1. All minerals, including oil and gas, shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at the Moab District Office and the Grand Resource Area Office.

2. A right-of-way will be reserved for ditches and canals constructed by the authority of the United States (Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945).

3. The conveyance of the lands will be subject to all valid existing rights and reservations of record. Existing rights and privileges of record include, but are not limited to, the following:

a. Federal oil and gas lease U–57468.
b. Road right-of-way U–53767 to San Juan County for County Road 146.

The private lands will be acquired subject to the following terms and conditions:

1. A reservation of all minerals.
2. Subject to all valid existing rights.

Publication of this notice in the Federal Register segregates the public lands from the operation of the public land laws, and mining laws, excepting the mineral leasing laws. The segregative effect will end upon issuance of patent or two years from the date of publication, whichever occurs first.

Comments: For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the Bureau of Land Management, District Manager, Moab District Office, P.O. Box 970, Moab, Utah 84532. Objections will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

SUPPLEMENTARY INFORMATION: Additional information concerning this action may be obtained from Jim Ward, Area Realty Specialist, Grand Resource Area Office, Sand Flats Road, P.O. Box M, Moab, Utah 84532, (801) 259–8193, or from Brad Groesbeck, District Realty Specialist, Moab District Office, 82 East Dogwood, P.O. Box 970, Moab, Utah 84532, (801) 259–8111.

Date: August 10, 1987.

Gene Nodine,
District Manager.

[FR Doc. 87–19092 Filed 8–19–87; 8:45 am]
BILLING CODE 4310-DQ-M

[MT–020–07–4322–02]

Miles City District Grazing Advisory Board, Montana; Meeting

AGENCY: Bureau of Land Management, Miles City District Office, Interior.

ACTION: District Grazing Advisory Board Meeting Notice.

SUMMARY: Notice is hereby given in accordance with Pub. L. 92–463 that the Miles City District Grazing Advisory Board will meet September 17, 1987. The meeting will begin at 10 a.m. in the conference room of the Miles City District Office, Bureau of Land Management, Garryowen Road, Miles City, Montana 59301.

The agenda for the Grazing Advisory Board meeting includes updates on the wild horse program, the District weed control program, range program evaluation results, proposed regulations on agricultural trespass, fiscal 1988 range improvement projects, and the range management budget.

The meeting is open to the public. The public may make oral statements before the board or file written statements for their consideration. Summary minutes of the meeting will be maintained in the Bureau of Land Management District Office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: District Manager, Miles City District, Bureau of Land Management, P.O. Box 940, Miles City, Montana 59301.

Dated: August 12, 1987.

Arnold E. Dougan,
Acting District Manager.

[FR Doc. 87–19036 Filed 8–19–87; 8:45 am]
BILLING CODE 4310-DN-M

[NM–060–07–4211–02–NCGG]

Right-of-Way Application Filing Locations; Roswell District, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of right-of-way application filing locations for the Roswell District.

SUMMARY: To accommodate and be more responsive to public needs, effective October 1, 1987, Right-of-Way applications shall be filed at the respective Resource Area Office where the right-of-way being requested is physically located.

Pursuant to 43 CFR 1821.2–1(d) the following offices will accept Right-of-Way applications for proposed Rights-of-Ways to be constructed within their respective jurisdictional boundaries:

Carlsbad Resource Area, P.O. Box 1778, Carlsbad, NM 88220–1778

Roswell Resource Area, P.O. Box 1857, Roswell, NM 88201–1857

General questions concerning Right-of-Way application procedures should also be directed to the affected office.

David L. Mari,
Associate District Manager.

[FR Doc. 87–19093 Filed 8–19–87; 8:45 am]
BILLING CODE 4310-FB-M

[NV-920-07-4133-12]

Review of Mineral Reports on Wilderness Study Areas (WSAs); Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of the availability of 15 mineral survey reports produced by the U.S. Geological Survey/U.S. Bureau of Mines on Bureau of Land Management Wilderness Study Areas (WSAs) in Nevada. Announcement of a 60-day comment period to obtain previously unknown mineral information on the areas.

SUMMARY: The Federal Land Policy and Management Act (Pub. L. 94–579) requires the U.S. Geological Survey and the U.S. Bureau of Mines to conduct mineral surveys on certain Bureau of Land Management (BLM) WSAs to determine the mineral value, if any, that may be present. In Nevada, 15 such reports on WSAs have been completed. This notice gives the public an opportunity to obtain the reports and to review and offer previously unknown mineral information on the WSAs. New public comment information/data will be screened by the Bureau of Land Management. The State Director of that agency may ask the Geological Survey or the Bureau of Mines to determine if the information contains significant new data or an interpretation that was not available at the time the mineral survey report was prepared. Geological Survey or the Bureau of Mines would determine if additional field investigations should be undertaken. Recommendations for the designation of an area as wilderness will be made to the Secretary of the Interior by the BLM. The Secretary shall, in turn, make recommendations to the President who will advise Congress. A recommendation of the President for designation as wilderness shall become effective only if so provided by an Act of Congress.

DATES: The public review of the 15 mineral survey reports named in this notice shall begin on September 15, and shall continue for 60 days (November 15).

ADDRESS: All data and written comments should be directed to the State Director (NV–920), Bureau of Land Management, P.O. Box 12000, Reno, Nevada 89520. Copies of the reports may be purchased from: Books and Open-File Reports Section, U.S. Geological Survey, Federal Center, Box 25425, Denver, CO 80225.

FOR FURTHER INFORMATION CONTACT: Jack Crowley, Minerals Division, (702) 784–5138, or Linda Hansen, Wilderness EIS Coordinator, (702) 784–5748, Nevada State Office, Bureau of Land Management, P.O. Box 12000, 850 Harvard Way, Reno, Nevada 89520.

SUPPLEMENTARY INFORMATION: The 15 mineral reports available for review and for purchase are listed below. The price noted is that charged by the Books and Open-File Reports Section, U.S. Geological Survey, and includes third or fourth class mailing. First class or foreign mailings require an addition of ten percent.

Bad Lands WSA, Elko County, Nevada (USGS 1725–A). $1.25.

South Pequop WSA, Elko County, Nevada (USGS 1725–B). $1.50.

Mount Limbo WSA, Pershing County, Nevada (USGS 1728–A). $1.25.

South Jackson Mountains WSA, Humboldt County, Nevada (USGS 1728–B). $1.25.

Pahute Peak WSA, Humboldt County, Nevada (USGS 1728–C). $1.25.

Worthington Mountains WSA, Lincoln County, Nevada (USGS 1728–A). $1.25.

White Rock Range WSA, Lincoln County, Nevada and Beaver and Iron Counties, Utah (USGS 1728–B). $1.50.

Far South Egans WSA, Lincoln and Nye Counties, Nevada (USGS 1728–C). $1.25.

Parsnip Peak WSA, Lincoln County, Nevada (USGS 1728–D). $1.25.

Weepah Spring WSA, Lincoln and Nye Counties, Nevada (USGS 1728–E). $1.25.

La Madre Mountains WSA, Clark County, Nevada (USGS 1730–A). $1.00.

Morey and Fandango WSAs, Nye County, Nevada (USGS 1731–A). $1.50.

Palisade Mesa and The Wall WSAs, Nye County, Nevada (USGS 1731–B). $1.25.

South Reveille WSA, Nye County, Nevada (USGS 1731–C). $1.25.

Roberts WAS, Eureka County, Nevada (USGS 1731–K). $2.00.

The reports are also available for review in the offices of the Bureau of Land Management in Nevada. Those are in Reno, Elko, Winnemucca, Carson City, Ely, Las Vegas, Battle Mountain, Caliente and Tonopah. Libraries with copies include the Nevada State Library in Carson City; the Government Documents Section of the University of Nevada, Las Vegas, Library; and the Mines Library of the University of Nevada, Reno. Community libraries which have been sent copies are located in the following Nevada cities: Fallon, Minden, Elko, Winnemucca, Pioche, Yerington, Hawthorne, Lovelock, Ely, Austin, Eureka, Caliente, Tonopah, Pahrump, Goldfield and Battle Mountain. Upon receipt of additional mineral survey reports on Nevada WSAs, additional comment periods will be held.

Date: August 10, 1987.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 87–19084 Filed 8–19–87; 8:45 am]

BILLING CODE 4310-HC-M

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–690766

Applicant: Robert J. Jessup, Downers Grove, IL

The applicant requests an amendment to his current permit to capture, identify and release Indiana bats *(Myotis sodalis)* in DuPage, Findley, Boone and Benton Counties, Illinois, while surveying for bats in those counties. The applicant was formerly authorized for capture activities only in DuPage County.

PRT–720641

Applicant: San Diego Zoological Society, San Diego, CA

The applicant requests a permit to import one captive born female northern Chinese leopard *(Panthera pardus japonensis)* for enhancement of propagation through the introduction of new blood lines.

PRT–702631

Applicant: U.S. Fish & Wildlife Service, Regional Director—Region One, Portland, OR

The applicant requests an amendment of the regional comprehensive permit to include authorization to conduct continuing research activities with California condors *(Gymnogyps californianus)*, all of which have been removed from the wild and are currently being maintained in captivity for scientific research and the enhancement of propagation and survival of the species.

PRT–720894

Applicant: Life Fellowship Bird Sanctuary, Seffner, FL

The applicant requests a permit to import two Galapagos tortoises *(Geochelone elephantopus)*, from the Bermuda Aquarium, Museum, and Zoo for the purpose of research and captive propagation.

PRT-720917

Applicant: Fresno Zoo, Fresno, CA

The applicant requests a permit to purchase two pairs of Darwin's rheas *(Pterocnemia pennata)* from the International Animal Exchange, Inc., Ferndale, Michigan, for purposes of captive propagation and educational display. The rheas were born in captivity in Chile and will be imported by the International Animal Exchange, Inc., for sale to the Fresno Zoo.

PRT-720929

Applicant: Cecil A. Ferguson, Perryopolis, PA

The applicant requests a permit to purchase three pairs of Hawaiian (=nene) geese *(Nesochen (=Branta) sandvicensis)* from a breeder in Ohio or a breeder in New Hampshire for the purpose of captive propagation.

PRT-720922

Applicant: Walter A. Huston, West Hollywood, CA

The applicant requests a permit to import one male peregrine falcon *(Falco peregrinus peregrinus)* that was captive born in Scotland and that has been owned by the applicant for two years. The applicant will import the bird and place it with a raptor propagator in Olympia, Washington, for captive breeding purposes.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate applicant and PRT number when submitting comments.

Date: August 17, 1987.

R. K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 87-19063 Filed 8-19-87; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Development Operations Coordination Document; Amoco Production Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Amoco Production Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 7281, Block 175, High Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Freeport, Texas.

DATE: The subject DOCD was deemed submitted on August 12, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert, Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: August 13, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-19095 Filed 8-19-87; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 751-TA-14]

Import Investigations; Liquid Crystal Display Television Receivers From Japan

AGENCY: International Trade Commission.

ACTION: Institution of a review investigation concerning the Commission's affirmative determination in investigation No. AA1921-66, Television Receiving Sets from Japan.

SUMMARY: The Commission hereby gives notice that it has initiated an investigation pursuant to section 751(b) of the Tariff Act of 1930 (19 U.S.C. 1675(b)) to review its determination in investigation No. AA1921-66. The purpose of the investigation is to determine whether an industry in the United States would be materially injured, or would be threatened with material injury, or the establishment of an industry in the United States would be materially retarded, by reason of imports of liquid crystal display television receivers (LCD TVs) from Japan if the antidumping order regarding such merchandise were to be modified. LCD TVs are provided for in items 684.98 and 685.04 of the Tariff Schedules of the United States. As provided in § 207.45(b) of the Commission's Rules of Practice and Procedure (19 CFR 207.45(b)), the 120-day period for completion of this investigation begins on the date of publication of this notice in the **Federal Register.**

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult Part 207, Subparts A and E (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201) of the Commission's rules.

EFFECTIVE DATE: August 20, 1987.

FOR FURTHER INFORMATION CONTACT: Vera Libeau (202-523-0368), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-523-0161.

SUPPLEMENTARY INFORMATION:

Background

On March 4, 1971, the Commission determined that an industry in the United States was being injured by reason of imports of television receivers, monochrome and color, from Japan which the Department of Treasury had determined were being, or were likely to be sold at less than fair value (LTFV) within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)). Accordingly, on March 9, 1971, a dumping finding with respect to television receivers from Japan was published in the **Federal Register** as Treasury Decision 71-76 (36 FR 4597).

On April 28, 1987, the Commission received a request, pursuant to section 751(b) of the Act, to modify T.D. 71-76 to exclude LCD TVs from the scope thereof. This request was filed by counsel on behalf of Casio Computer Co., Ltd., Casio, Inc., Citizen Watch Co., Ltd., Hitachi, Ltd., Hitachi Sales Corporation of America, Hitachi Sales Corporation of Hawaii, Inc., Matsushita Electrical Industrial Co., Ltd., Matsushita Electric Corporation of America, NEC Corporation, NEC Home Electronics (U.S.A.), Inc., Seiko Epson Corporation, Sharp Corporation, Sharp Electronics Corporation, Toshiba Corporation, and Toshiba America, Inc.

On June 8, 1987, the Commission published a request for comments concerning the institution of a section 751(b) review investigation on television receivers from Japan (52 FR 21630). In response to the Commission's request for comments, statements in support of the institution of a review investigation were received from Cable Value Network, Caldor, Trader Horn, W.R. Light Company, Inc., and 47th St. Photo. All of these firms are retailers of consumer products and argued that LCD TVs do not compete with CRT TVs. A memorandum in opposition to the institution of a review investigation was filed by Collier, Shannon, Rill & Scott on behalf of the Independent Radionic Workers of America, the International Brotherhood of Electrical Workers, the International Union of Electronic, Electrical, Technical, Salaried and Machine Workers, AFL-CIO-CLC, and the Industrial Union Department, AFL-CIO. Their submission argued that the requisite showing of changed circumstances had not been made by the petitioners and their petition for an investigation should consequently be denied.

After consideration of the request for review and the responses to the notice inviting comments, the Commission has determined, pursuant to 19 U.S.C. 1675(b) and rule 19 CFR 207.45, that the request shows changed circumstances sufficient to warrant institution of a review investigation regarding LCD TVs from Japan.

Participation in the Investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the Federal Register. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff Report

A public version of the prehearing staff report in this investigation will be placed in the public record on October 26, 1987, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on November 12, 1987, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on October 27, 1987. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on November 2, 1987, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is November 5, 1987.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written Submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of section 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on November 18, 1987. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before November 18, 1987.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.45 of the Commission's rules (19 CFR 207.45).

By order of the Commission.

Issued: August 14, 1987.

Kenneth R. Mason,
Secretary.

[FR Doc. 87-19010 Filed 8-19-87; 8:45 am]
BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[No. MC-F-18385]

ConAgra, Inc.; Control Exemption; Monfort Transportation Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 11343(e) and the Commission's regulations in *Procedures—Handling Exemptions Filed by Motor Carriers*, 367 I.C.C. 113 (1982), the Interstate Commerce

Commission exempts from the requirement of prior approval under 49 U.S.C. 11343(a)(5), the acquisition, by ConAgra, Inc. (ConAgra), a noncarrier, of stock control of motor carrier Monfort Transportation Company (MTC) (No. MC–144572). MTC holds authority to operate: (1) As a common carrier, transporting general commodities (with exceptions), between all points in the United States (except Alaska and Hawaii); and (2) as a contract carrier, transporting general commodities (with exceptions), between all points in the United States (except Alaska and Hawaii), under continuing contracts with shippers and receivers of such commodities. MTC also operates in intrastate commerce in Colorado and Nebraska and these intrastate operations are subject to the instant exemption petition. *See* 49 U.S.C. 11341(a). Under the terms of the transaction, MTC's noncarrier parent, Monfort of Colorado, Inc. (Monfort), will become a first-tier, noncarrier subsidiary of ConAgra. ConAgra presently controls motor and water carrier ConAgra Transportation, Inc. (No. MC–150422 and No. W–1333); and motor carriers Lynn Transportation Company, Inc. (No. MC–133604); Balcom Chemicals, Inc. (No. MC–174324); Armour Food Express Company (Nos. MC–140364 and MC–152245); U.S. Tire, Inc. (No. MC–170511); and Yellowstone Valley Chemicals, Inc. (No. MC–185117). A petition for exemption of control by ConAgra of motor carrier Miller Bros. Co., Inc. (No. MC–117699), is currently pending in No. MC–F–18138.

DATES: This exemption will be effective on September 21, 1987. Petitions for reconsideration must be filed by September 9, 1987. Petitions for stay must be filed by August 31, 1987.

ADDRESSES:

Send pleadings, referring to No. MC–F–18265, to

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

and

(2) ConAgra's representative: Peter A. Greene, Thompson, Hine and Flory, 1920 N Street, NW., Washington, DC 20036

and

(3) MTC's representative: John T. Wirth, Nelson & Harding, 717–17th Street, Suite 2600, Denver, CO 80202–3357.

FOR FURTHER INFORMATION CONTACT: Andrew Lyon, (202) 275–7291) (TDD for hearing impaired: (202) 275–1721).

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289–4357 (assistance for the hearing impaired is available through TDD services (202) 275–1721) or by pickup from TSI in Room 2229 at Commission headquarters.

Decided: August 11, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87–19096 Filed 8–19–87; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB–18 (Sub-No. 101X)]

Chesapeake and Ohio Railway Co.; Exemption; Abandonment in Floyd County, KY

Applicant has filed a notice of exemption under 49 CFR Part 1152, Subpart F—*Exempt Abandonments* to abandon its 1.32-mile line of railroad known as Steele Creek Spur between milepost 0.00 and milepost 1.32 near Wayland, in Floyd County, KY.

Applicant has certified that (1) no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

Applicant has filed an environmental report which shows that no significant environmental or energy impacts are likely to result from this abandonment.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979).[1]

The exemption will be effective on September 19, 1987 (unless stayed pending reconsideration). Petitions to stay must be filed by August 31, 1987, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by September 9, 1987 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Lawrence H. Richmond, CSX Transportation, 100 North Charles Street, Baltimore, MD 21201.

If the notice of exemption contains false or misleading information, use of the exemption is void *ad initio.*

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: August 13, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87–19097 Filed 8–19–87; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB–3 (Sub-No. 69X)]

Missouri Pacific Railroad Co.; Abandonment Exemption; Lancaster County, NE

The Missouri Pacific Railroad Company (applicant) has filed a notice of exemption under 49 CFR Part 1152, Subpart F—*Exempt Abandonments* to abandon its 3.78-mile line of railroad between milepost 489.10 and milepost 492.88 near Lincoln, NE.

Applicant has certified that (1) no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

Applicant has filed an environmental report which shows that no significant environmental or energy impacts are likely to result from this abandonment.

As a condition to use of this exemption, any employee affected by

[1] The Railway Labor Executives' Association filed a request for labor protection. Since this transaction involves an exemption from 49 U.S.C. 10903, whereby the imposition of labor protective conditions is mandatory, those conditions have been routinely imposed.

the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979).[1]

The exemption will be effective on September 19, 1987 (unless stayed pending reconsideration). Petitions to stay must be filed by August 31, 1987, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by September 9, 1987 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Joseph D. Anthofer, Law Department, 1416 Dodge St., Omaha, NE 68179.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: August 13, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,
Secretary.

[FR Doc. 87-19098 Filed 8-19-87; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Safe Drinking Water Act; J.E. Tuten et al.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on August 3, 1987, a proposed consent decree in *United States v. J.E. Tuten, et al.*, Civil Action No. C86-0316 was lodged with the United States District Court for the District of Wyoming. The proposed consent decree concerns the supplying of contaminated drinking water by the North Cody Water Company, North Cody, Wyoming to its users in violation of the Safe Drinking Water Act. The proposed consent decree acknowledges payment of a civil penalty, and the construction of a tie-in to the Cody, Wyoming water system to eliminate the contamination in the water supplied to North Cody users. The decree also requires the North Cody Water Company to comply with all requirements of the Safe Drinking Water Act in the future.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Acting Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. J.E. Tuten, et al.*, DJ Ref. 90-5-1-1-2710.

The proposed consent decree may be examined at the Office of the United States Attorney, District of Wyoming, Room 2139, J.C. O'Mahoney Federal Center, 2141 Capitol Avenue, Cheyenne, Wyoming 82003 and at the Region VIII office of the Environmental Protection Agency, One Denver Place, 999 18th Street, Suite 500, Denver, Colorado 80202-2413. Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice. In requesting a copy, please enclose a check in the amount of $1.60 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Dated: August 4, 1987.

Roger J. Marzulla,
Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87-19038 Filed 8-19-87; 8:45 am]
BILLING CODE 4410-01-M

NUCLEAR REGULATORY COMMISSION

National State Liaison Officers; Meeting

On September 9 and 10, 1987, the Nuclear Regulatory Commission (NRC) will sponsor a national meeting with the State Liaison Officers to discuss items of mutual regulatory interest. The State Liaison Officers are appointed by each of the fifty Governors and the Commonwealth of Puerto Rico to provide a communications channel between the States and NRC. Topics of discussion will include State and NRC roles in nuclear power facility regulation, economic performance incentives for utilities, low-level and high-level waste activities, and emergency preparedness. The meeting will be conducted at the Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland, 20814. The meeting is open to the public for attendance and observation and will take place from 8:30 a.m. until 5:00 p.m. on Wednesday, September 9, and from 8:30 a.m. until 12:30 p.m. on Thursday, September 10, 1987. Questions regarding the meeting should be directed to Mindy Landau at (301) 492-9880.

Dated at Washington, DC this 14th day of August, 1987.

For the Nuclear Regulatory Commission.

Harold R. Denton,
Director, Office of Governmental and Public Affairs.

[FR Doc. 87-19072 Filed 8-19-87; 8:45 am]
BILLING CODE 7590-01-M

RAILROAD RETIREMENT BOARD

Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C., 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning October 1, 1987, shall be at the rate of 24 cents.

In accordance with directions in section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning October 1, 1987, 29.9 percent of the taxes collected under sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 70.1 percent of the taxes collected under such sections 3211(b) and 3221(c) plus one hundred percent of the taxes collected under section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

By Authority of the Board

Beatrice Ezerski,
Secretary to the Board.

Dated: August 13, 1987.

[FR Doc. 87-19062 Filed 8-19-87; 8:45 am]
BILLING CODE 7905-01-M

[1] The Railway Labor Executives' Association filed a request for labor protection. since this transaction involves an exemption form 49 U.S.C. 10903, whereby the imposition of labor protective conditions is mandatory, those conditions have been routinely imposed.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-24758; File No. SR-CBOE-87-32]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc., Accelerated Approval of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 13, 1987, the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Text of the Proposed Rule Change

The Chicago Board Options Exchange proposes to extend for an additional one year and increase the number of equity options subject to the pilot program, described in SR–CBOE–85–03, providing for four expiration months, including the two near-term months.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In June 1985, the Exchange, along with other exchanges, implemented a pilot of near-term expiration option cycles. See SR–CBOE–85–03.

The Exchange has twice extended the pilot for six month additional periods. See SR–CBOE–86–21 and SR–CBOE–87–02. Although the pilot as filed did not limit the Exchange as to the options series which could be selected for the pilot program, the Exchange selected only January cycle options (as did other options exchanges). After the June expiration, however, a dually traded option on the March cycle was added in order to conform strike prices.

The Exchange now intends to expand the number of options subject to the pilot program. Therefore, the Exchange proposes to extend the pilot an additional year in order to phase in and assess the effects of trading a larger number of options under the pilot program.

The Exchange believes that the proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934 and the rules and regulations thereunder, to meet investor preferences for stock options with near-term expiration cycles. In particular, the proposed rule change is consistent with section 6(b)(5) of the Exchange Act, which provides, among other things, that the pilot is designed to facilitate transactions in securities and to remove impediments to and perfect the mechanism of a free and open market.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act because the rule change is substantively identical to a proposed rule change previously filed by the American, Philadelphia and New York Stock Exchanges and approved by the Commission.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Section 6 and the rules and regulations thereunder, in that it continues and expands an expiration cycle pilot designed to appeal to investors' interests.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof because the proposed rule change will allow the CBOE to incorporate additional options into the pilot and keep in place a program the Exchange has found to be successful. The proposal also is substantively identical to proposals previously filed by the American, New York and Philadelphia Stock Exchanges and approved by the Commission.[1]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 10, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 10, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-19051 Filed 8-19-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24759; File No. SR-CBOE-87-31]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Chicago Board Options Exchange, Inc.; Exemptions to Position and Exercise Limits

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 14, 1987, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described below, which has been prepared by the self-regulatory organization. The Commission is

[1] *See e.g.*, Securities Exchange Act Release No. 24452 (May 14, 1987).

publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposed rule change sets forth a revised, CBOE policy with regard to granting exemptions to position and exercise limits under CBOE Rules 4.11 and 4.12. The Exchange is adopting a policy memorandum that primarily restates existing Exchange policy, previously submitted to the Securities and Exchange Commission. See SR–CBOE–84–06; Release No. 20692, 49 FR 7484; SR–CBOE–84–20 and Exchange Act Release No. 21358, 49 FR 39137. The policy memorandum has only been substantively revised to reflect exchange policy authorizing instant exemptions in appropriate circumstances. In particular, the CBOE notes that an instant exemption would be appropriate in extraordinary circumstances, such as an order imbalance, an off-floor executable order in the crowd or position limit restrictions of market makers who are near the intraday limit. The instant exemption also may specify the extent to which a resulting position may be carried in option series of one or more particular expiration cycles. To facilitate requests for instant exemptions, the Exchange's Exemption Committee has authorized certain individuals who can grant instant exemptions, whose names are included in the policy memorandum.

The statutory basis for this rule change is section 6(b)(5) of the Exchange Act and that it will protect investors, promote just and equitable principles of trade, and enhance market liquidity.

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Act and subparagraph (e) of Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 10, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: August 11, 1987.

[FR Doc. 87–19069 Filed 8–19–87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–24795; File No. SR–NASD–87–30]

Self-Regulatory Organizations; Filing and Order Granting Immediate Effectiveness to Proposed Rule Change by National Association of Securities Dealers, Inc.; NASD Assessments and Fees

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 3, 1987, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed amendment to section 1(a) of Schedule A to the NASD By-Laws increases the annual basic membership fee from $300.00 to $500.00. The proposed amendment to section 1(c) of Schedule A increases the annual per capita assessment for registered principals and registered representatives from $5.00 to $10.00. The proposed amendment to section 1(d) of Schedule A establishes a credit during fiscal year 1987–88 of fifty-two and one-half (52.5) percent toward certain annual assessment fees set forth in sections 1(b) and 1(c) of Schedule A.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed amendment to section 1(a) of Schedule A to the NASD's By-Laws increases the annual basic membership fee from $300.00 to $500.00. The Board of Governors approved the proposed increase to assure that the basic membership fee more closely reflects the costs of membership.

The proposed amendment to Schedule 1(c) of Schedule A increases the annual per capita assessment for registered principals and registered representatives from $5.00 to $10.00. The per capita assessment has not changed since 1971.

The proposed amendment to section 1(d) of Schedule A establishes a special credit during fiscal year 1987–88 of 52.5% toward certain annual assessment fees for each member firm. After preparing manpower projections to determine the number of persons required to perform the NASD's regulatory functions during the coming fiscal year and forecasting required expenditures for operations and for new projects, the Board of Governors concluded that a fiscal year 1988 operating budget increase of approximately $14.9 million and a capital budget of approximately $7.3 million were required. This includes a budgeted personnel increase of 181 positions over Fiscal Year 1987. Since the current assessment rates would yield greater income than necessary to fund such a budget, the Board of Governors believes it appropriate to permit a temporary, proportionate reduction for fiscal year 1987–88 in the rate of certain assessments previously approved by the Commission as being fair and equitable.

For reasons stated above, the proposed rule change is consistent with and in furtherance of section 15A(b)(5) of the Act which requires that the rules

of the NASD provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that the NASD operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not anticipate that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received with respect to the proposed rule change contained in this filing.

III. Date of Effectiveness of Proposed Rule Change and Timing for Commission Action

The proposed rule change is effective on filing pursuant to section 19(b)(3)(A)(ii) of the Act in that it affects assessments and fees imposed by the NASD exclusively upon its members. Imposition of the fees will, however, be delayed until the start of the NASD's fiscal year on October 1, 1987.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, and, in particular, the requirements of section 15A(b)(5) and the rules and regulations thereunder.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD-87-30 and should be submitted by September 10, 1987.

It is therefore ordered, pursuant to section 19(b)(3) of the Act, that the proposed rule change referenced above be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Jonathan G. Katz,

Secretary.

Dated: August 13, 1987.

[FR Doc. 87-19050 Filed 8-19-87; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Application for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

August 14, 1987.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stock:

UniLever, N.V.

Ordinary Shares (File No. 7-0286)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 4, 1987 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-19048 Filed 8-19-87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-15831; 812-6706]

Application for Exemption; The Equitable Funds et al.

August 14, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: The Equitable Funds ("Trust"), Equico Securities, Inc. ("Distributor"), Alliance Capital Reserves, Alliance Government Reserves and Alliance Tax-Exempt Reserves ("Alliance Funds"), all Alliance Fund Distributors, Inc. ("Alliance Distributor") on behalf of themselves, future series of the Trust and any other registered investment companies which are money market funds and for which the Alliance Distributor acts as principal underwriter.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) and Rule 22c-1 thereunder, approval of exchange offers under section 11(a), and permission for joint transactions under section 17(d) and Rule 17d-1 thereunder.

Summary of Application: Applicants seek an order (1) to permit the Trust to assess, defer and waive a contingent deferred sales charge ("CDSC") on its shares in certain circumstances, (2) to permit certain exchange offers among any of the existing and future series of the Trust and any of the Alliance Funds, and (3) to permit certain joint transactions in connection with the collection of the CDSC.

Filing Dates: The application was filed on May 4, 1987, and amended on July 2, July 22, July 29, and August 12, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on September 4, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC. 450 5th Street, NW., Washington, DC 20549. The Equitable Funds and Equico Securities, Inc., 135 West 50th Street, New York, New York 10020. Alliance Funds and Alliance Distributor, 1345 Avenue of the Americas, New York, New York 10105.

FOR FURTHER INFORMATION CONTACT: Victor R. Siclari, Staff Attorney (202) 272–2190, or Brion R. Thompson, Special Counsel (202) 272–3016 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contracted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicants, Representations:

1. The Trust filed a registration statement on Form N–1A to register under the 1940 Act as an open-end, diversified, management investment company. The Trust currently consists of four series, the shares of which will be offered for sale to the public under a distributor's contract with the Distributor. The Trustees of the Trust may authorize additional series. The Trust will be managed by the Equitable Life Assurance Society of the United States (the "Manager") and Equitable Capital Management Corporation (the "Adviser").

2. The Alliance Funds are money market funds registered under the 1940 Act as open-end, diversified, management investment companies and are sold without a front end sales load or a CDSC. Their investment adviser is Alliance Capital Management Corporation ("Alliance Adviser") and their principal underwriter is Alliance Distributor. Although Alliance Adviser and Alliance Distributor are each under common control with the Manager and the Distributor, the Trust and the Alliance Funds are members of a separate mutual fund complex.

3. The Trust proposes to offer its shares without an initial sales charge and proposes to impose a CDSC on the proceeds of certain redemptions of the Trust's shares, and to pay such amounts to the Distributor. The CDSC will be imposed if an investor redeems shares within five years of purchasing them. However, no charge will be imposed when shares are redeemed to the extent that such shares (i) represent unrealized appreciation in the value of shares purchased during the five years preceding the redemption, (ii) represent the value of reinvested dividends or capital gain distributions, or (iii) represent the value of investments made more than five years before they are redeemed. In determining whether a CDSC is applicable, the Trust will redeem shares first from the amounts referred to in clauses (i), (ii) and (iii) above, and then from (iv) shares representing the value of payments for Trust shares made during the last five years.

4. The amount of the CDSC (if any) is calculated by determining the date on which the purchase payment that is the source of the redemption was made, and applying the appropriate percentage to the amount of the redemption subject to the charge. The CDSC imposed will be five percent during the first year following the purchase and will decrease one percent per year through the fifth year with no charge imposed in the sixth and subsequent years. In determining the rate of any CDSC, it will be assumed that a redemption is made of shares held by the investor for the longest period of time within the applicable five-year period. This will result in any such charge being imposed at the lowest possible rate. Solely for purposes of determining the number of years from the time of any payment for the purchase of shares, all payments during a month will be aggregated and deemed to have been made on the first day of the month.

5. The Trust proposes to waive the CDSC on redemptions of certain shares as described more fully in the application. The trust will meet all the conditions set forth in Rule 22d–1 under the 1940 Act when allowing and administering such waivers of the CDSC.

6. Applicants propose of offer exchange privileges and will defer the CDSC in those circumstances where Trust shares are exchanged for those of any other Trust series, Trust shares are exchanged for any of the Alliance Fund shares, and Alliance Fund shares acquired by an exchange from the Trust are exchanged for any of the Alliance Fund shares or Trust shares, all exchanges being at the respective net asset value of the shares being exchanged. In the instance when a Trust shareholder exchanges his investment from one series into another series of the Trust, the shareholder will be subject to a CDSC upon redemption of the Trust shares, unless he qualifies for a waiver of the CDSC, based upon the sum of the time periods in which he was invested in each Trust series. In the case when a Trust shareholder exchanges shares of the Trust into one of the Alliance Funds (and subsequently into another Alliance Fund), the period of time during which the shareholder holds such Alliance Fund shares will not be included for purposes of calculating the Trust's CDSC (i.e., the CDSC period will be "tolled," subject to the notice procedure proposed to be incorporated in a condition to any order granting the requested relief). Thus, if the shareholder subsequently redeems his investment from such Alliance Fund, a CDSC will be imposed, unless he qualifies for a waiver of the CDSC, based only upon the investment period in the Trust up until the exchange into the Alliance Fund. If the shareholder instead exchanges the Alliance Fund investment back into the Trust, a CDSC will be imposed upon redemption of the Trust shares, unless he qualifies for a waiver, based upon the sum of the time periods during which only Trust shares were held. If a shareholder of the Trust transfers his shares to another individual or entity, the transferring shareholder will pay no CDSC upon the transfer. However, if the receiving shareholder subsequently redeems the transferred shares, the Trust will subject him to the CDSC, which will be calculated as if the receiving shareholder had acquired the transferred shares in the same manner and at the same time as the transferring shareholder. Applicants undertake that they will not encourage or promote any transfer of Trust shares, except that the recordation of such transfer on the books of the Trust will not consitute encouraging or promoting any such transfer.

7. Any CDSC assessed upon redemption of an Alliance Fund investment in any of the circumstances described above will be collected by the Alliance Distributor and paid to the Distributor under arrangements among the Applicants. In the event that some or all of these arrangements may be collectively viewed as a joint enterprise in which the Applicants are joint and several participants, Applicants request an order under Rule 17d–1 of the 1940 Act to the extent necessary to enable them to the into the arrangements.

8. The Trust reserves the right to impose a processing charge not exceeding $5.00 on redemptions of Trust shares other than involuntary redemptions and on exchanges among the Trust series or on exchanges to or from the Trust from the Alliance Funds, although it has no present intention to do so. Any such charge would be payable to the Trust (not to the Distributor) and would be intended to compensate the trust for any expenses incurred in connection with such redemptions or exchanges. The Alliance Funds do not charge a fee on exchanges among the Alliance Funds and do not

intend to charge a fee on exchanges between the Alliance Funds and the Trust.

9. The Trust proposes to assist in financing the distribution of its shares under a distribution plan adopted under Rule 12b–1 of the 1940 Act (the "Trust Plan"). Under the proposed Trust Plan, the Trust will pay an annual fee equal to one percent of each series' average daily net asset value to the Distributor as compensation for services it provides. The Distributor's expenses incurred are expected to exceed the amounts received by it under the Trust Plan. In evaluating the continued appropriateness of the Trust Plan and in making a determination whether to continue the Trust Plan, the Trustees of the Trust will consider, among other things, the expenses of the Distributor related to or intended to result in the sale of Trust shares and, in this regard, will also consider the use by the Distributor or revenues raised by the CDSC.

10. The Alliance Funds have distribution plans adopted under Rule 12b–1 of the 1940 Act ("Alliance Plan") which allow the payment of a distribution fee equal to 0.15 percent of the relevant Fund's average daily net assets to the Alliance Adviser. Alliance Plan payments are made only if the Trustees of the relevant Alliance Fund have determined that there is a reasonable likelihood that the relevant Alliance Plan will benefit the Alliance Fund and its shareholders. Alliance Plan payments are not used to finance the distribution of shares of any registered investment company other than the particular Alliance Fund. To the extent payments by an Alliance Fund to the Alliance Adviser are required to be spent on distribution, distribution-assistance or other services the plan is not a so-called "compensation" type plan. To the extent that the Alliance Adviser is authorized to make payments for distribution services out of its own resources, which may include the management fee it receives from the relevant Alliance Fund, the plan is, in effect, a so-called "defesive" plan.

11. In contrast to the Alliance Plan, the Trust Plan does not make payments to the Manager or authorize the Manager to finance distribution indirectly from its own resources. Rather, the fee payable under the Trust Plan is payable to the Distributor as compensation for services rendered in connection with the distribution of Trust shares (without regard to the Distributor's expenses) and is therefore a so-called "compensation" type plan. This divergence demonstrates that the Trust Plan and the Alliance Plan each address different distribution problems and, accordingly, each is structured differently.

Applicants' Legal Conclusions: 1. Applicants submit that the requested exemption under section 6(c) and the approval under section 11(a) are appropriate and in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Applicants also assert that the participation of any Applicant in any joint transaction as described in section 17(d) of the 1940 Act and Rule 17d–1 thereunder is on a basis no different from or less advantageous than that of any other Applicant participating in such joint transaction, and is consistent with the provisions, policies, and purposes of the 1940 Act.

2. The CDSC is fair, equitable and in the best interests of the Trust shareholders because, they will have the advantage of greater investment dollars working for them from the time of their purchase of the Trust's shares than with the traditional front-end sales charge. With respect to the proposed waivers of the CDSC for certain classes of Trust shares, these monies will continue to be managed by the Equitable organization in another capacity or there will be an absence of selling expenses incurred in connection with such sales, and any such waivers will comply with the requirements of Rule 22d–1 of the 1940 Act which permits scheduled variations in, or elimination of, front-end sales loads.

3. The proposed exchange privileges enable shareholders of the Trust and the Alliance Funds to exchange their shares at relative net asset value and provide a high degree of flexibility in the shareholder's financial planning. In the absence of such relief permitting deferral of the CDSC, a Trust shareholder who sought to shift his investment into an Alliance Fund would generally be required to pay the CDSC at the time of such exchange. This would mean that the amount invested upon the exchange would be less than the net asset value of the investor's shares immediately prior to the exchange. Also, the tolling of the CDSC period while an investment is made in an Alliance Fund is necessary and appropriate in the public interest and consistent with the protection of investors because (a) redemptions of Alliance Fund shares (other than acquired by transfer from the Trust) are not subject to a CDSC, (b) each Alliance Fund is subject to a distribution related fee under the Alliance Plan which is structured differently from and is substantially less than the distribution fee paid by the Trust under the Trust Plan and (c) the amounts transferred from the Trust to the Alliance Funds are not included in the assets of any series of the Trust for the purposes of determining the amount payable by the Trust's series under the Trust Plan.

4. The imposition and collection of the CDSC by the Alliance Distributor upon redemption of an Alliance Fund investment acquired in an exchange from the Trust and payment of such CDSC by the Alliance Distributor to the Distributor will not be on a basis which benefits any one Applicant to the disadvantage of and other Applicant, including in particular the Alliance Funds and the Trust. The arrangement is intended to compensate the Distributor for its sales efforts in connection with the initial sale of Trust shares, does not leave the Alliance Distributor any worse off than if the CDSC were assessed at the time of exchange from the Trust to the Alliance Fund and paid at that time to the Distributor, and does not, *per se*, result in any profit or financial benefit to the Alliance Distributor or the Distributor. The only effect of the proposed arrangement is to defer the payment of the CDSC, not to change the payee.

Applicants' Conditions:

If the requested order is granted, Applicants agree to the following conditions:

1. Applicants will comply with the provisions of Rule 12b–1 under the 1940 Act as they are now in effect and as they may be revised in the future.

2. Applicants will comply with the provisions of Rule 22d–1 under the 1940 Act.

3. Applicants will comply with the provisions of proposed Rule 11a–3 under the 1940 Act to the extent applicable when, and if, the rule is adopted by the SEC.

4. Applicant agree that if the distribution fees payable directly by any Alliance Fund under any Alliance Plan are increased beyond the annual rate of 0.15 percent of the average daily net asset value of the respective Alliance Fund, the Applicants will notify the staff of the Division of Investment Managment of the SEC and, it the staff believes that such increase raises a significant question as to whether the CDSC should be "tolled" during the period that an investment is made in the Alliance Fund, the Applicants will seek an amended exemptive order to resolve the question.

For the SEC, by the Division of Investment Mangement, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-19089 Filed 8-19-87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-15926; File No. 812-6490]

Applications for Exemption; New England Mutual Life Insurance Co., et al.

August 14, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: New England Mutual Life Insurance Company, New England Variable Life Insurance Company ("NEVLICO"), New England Variable Life Separate Account ("Account"), The New England Zenith Fund, Inc. ("Fund"), and certain life insurance companies and their separate accounts that may invest in the Fund.

Relevant 1940 Act Sections: Exemption requested *under* section 6(c) *from* sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and Rules 6e-2(b)(15) and 6e-3(T)(b)(15) thereunder.

Summary of Application: Applicants seek an order to permit shares of the Fund to be sold to and held by variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies.

Filing Date: The application was filed on September 18, 1986, and amended on August 5, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on September 8, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Marie C. Swift, Esq., 501 Boylston Street, Boston, MA 02117.

FOR FURTHER INFORMATION CONTACT: Financial Analyst Margaret Warnken (202) 272-2058 or Special Counsel Lewis B. Reich (202) 272-2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 253-4300).

Applicants' Representations:

1. The Fund is an open-end management company of the series type organized under Massachusetts law, and currently is the underlying investment medium for scheduled premium variable life insurance contracts issued by the Account. The Account is a separate account of NEVLICO and is registered under the 1940 Act as a unit investment trust.

2. The Fund proposes to offer its shares to other separate accounts that issue either variable annuity contracts or single premium, scheduled premium or flexible premium variable life insurance contracts. These separate accounts will be separate accounts of affiliated or unaffiliated insurance companies. (The use of a common management company as the investment medium for both variable annuities and variable life insurance is referred to as "mixed funding". The use of a common management company as the investment medium for separate accounts of unaffiliated insurance companies is referred to as "shared funding".)

3. Rules 6e-2 and 6e-3(T) provide certain exemptions to permit insurance company separate accounts to issue variable life insurance. Rule 6e-2(b)(15) precludes mixed and shared funding, and Rule 6e-3(T)(b)(15) precludes shared funding. Applicants propose the requested relief extend to a class consisting of life insurers and variable life separate accounts investing in the Fund (and principal underwriters and depositors of such separate accounts) that would otherwise be precluded from investing in the Fund by virtue of the Fund offering its shares to variable life separate accounts and variable annuity separate accounts of affiliated or unaffiliated life insurance companies.

4. Mixed and shared funding will benefit variable contractowners by: (1) Eliminating a significant portion of the costs of establishing and administering separate funds; (2) allowing for the development of larger pools of assets resulting in greater cost efficiencies; and (3) encouraging more insurance companies to offer variable contracts, which should result in increased competition and lower contract charges. The Fund will not be managed to favor or disfavor any particular insurer or type of insurance product.

5. Applicants propose that the relief granted by paragraphs (b)(15) of Rules 6e-2 and 6e-3(T) from section 9(a) be extended to a class of insurance companies and variable life separate accounts which may use the Fund as an investment medium for variable life insurance contracts, subject to certain conditions regarding conflicts. The same policies that limit the provisions of section 9(a) to those employees of the insurance company engaged in managing the separate account are applicable to insurance companies and their separate accounts that are funded by a fund offering mixed and shared funding. There is no regulatory purpose to apply the provisions of section 9(a) to the many employees of the insurance companies whose separate accounts may utilize the Fund as a funding medium for variable life insurance contracts. Applying the requirements of section 9(a) in such cases would increase the costs of monitoring for compliance with that section, which would reduce the net rates of return realized by contractowners.

6. Applicants propose that the relief granted by paragraphs (b)(15) of Rules 6e-2 and 6e-3(T) from sections 13(a), 15(a) and 15(b) be extended to a class of insurance companies and variable life separate accounts that may use the Fund as an investment medium for variable life contracts, subject to certain conditions regarding conflicts. All variable annuity and variable life contractowners will be provided pass-through voting rights with respect to Fund shares held by registered separate accounts. Because paragraphs (b)(15) of Rules 6e-2 and 6e-3(T) permit the insurance company to disregard these voting instructions in certain limited circumstances, this may cause an irreconcilable conflict to develop among the separate accounts. Applicants propose to resolve these potential conflicts through certain undertakings it proposes as conditions to receipt of the requested exemptive relief. If a particular insurance company's disregard of voting instructions conflicted with a majority of contractowners' voting instructions, or precluded a majority vote, the insurer may be required, at the Fund's election, to withdraw its separate account's investments in the Fund.

Applicants' Conditions: If the requested order is granted, the Applicants agree to the following conditions:

1. A majority of the Board of Directors of the Fund will consist of persons who are not "interested persons" of the Fund, as defined by section 2(a)(19) of the 1940

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Act and the rules thereunder, and as modified by any applicable order of the SEC.

2. The Board of the Fund will monitor the Fund for the existence of any material irreconcilable conflict between the interests of the participants of all separate accounts investing in the Fund. A material irreconcilable conflict may (but will not necessarily) arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, or any similar action by insurance, tax or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of any portfolio are being managed; (e) a difference in voting instructions given by variable annuity and variable life insurance contractowners; or (f) a decision by an insurer to disregard the voting instructions of its contractowners.

(3) The Board of the Fund will require participating insurance companies and the investment adviser to the Fund to report any potential or existing conflicts to the Board. Participating insurance companies and the investment adviser will be responsible for assisting the Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. The responsibility to report such information and conflicts, and to assist the Board, will be a contractual obligation of all insurers investing the Fund under their agreements governing participation in the Fund.

4. If it is determined by a majority of the Board of the Fund, or a majority of its disinterested directors, that a material irreconcilable conflict exists, each insurance company designated by the Board will, at its expense, take whatever steps are necessary to remedy or eliminate the irreconcilable conflict, which steps could include: (a) Withdrawing the assets allocable to some or all of the separate accounts from the Fund or any portfolio, and reinvesting such assets in a different investment medium, including another portfolio of the Fund, or submitting the question of whether such segregation should be implemented to a vote all affected participants and, as appropriate, segregating the assets of any particular group (i.e. annuity or life insurance contractowners of one or more insurer) that votes in favor of such segregation or offering to the affected participants the option of making such a change; and (b) establishing a new registered management investment company or management separate account. If a material irreconcilable conflict arises because of an insurer's decision to disregard voting instructions and that decision represents a minority position or would preclude a majority vote, the insurer may be required at the Fund's election to withdraw its separate account's investment in the Fund. No charge or penalty will be imposed against a separate account as a result of a withdrawal due to any material irreconcilable conflict. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict, and to bear the cost of such remedial action, will be a contractual obligation of all insurers under their agreements governing participation in the Fund, and these responsibilities will be carried out with a view only to the interests of participants. A majority of the disinterested members of the Board shall determine whether any proposed action adequately remedies any material irreconcilable conflict, but in no event will the Fund be required to establish a new funding medium for any variable contract. No insurer will be required to establish a new funding medium for any variable annuity or variable life insurance contract if an offer to do so has been declined by vote of a majority of affected participants.

5. In the event of a determination of the existence of a material irreconcilable conflict, the Board may consider whether to cause the Fund to take action, such as establishing one or more additional portfolios, to remedy the conflict. The Board will cause the Fund to take action only if it, in its sole discretion, determines such action to be in the interest of the participants of all separate accounts in the aggregate investing in the Fund in view of all applicable factors, such as cost, feasibility, tax, investment objective and performance, regulatory, and other considerations. In no event will these conditions require the Board or the Fund to take any such action to remedy a material irreconcilable conflict.

6. The Board's determination of the existence of a material irreconcilable conflict and its implications will be made known promptly to all participating insurance companies investing the Fund.

7. As to contracts issued by registered separate accounts, participating insurance companies will provide pass-through voting privileges to all participants so long as and to the extent that the SEC continues to interpret the 1940 Act to require pass-through voting privileges for variable contract-owners. As to contracts issued by unregistered separate accounts, pass-through voting privileges will be extended to participants to the extent granted by the issuing insurance company. Participating insurance companies will be responsible for assuring that each of their separate accounts participating in the Fund calculate voting privileges in a manner consistent with other participating insurance companies. The obligation to calculate voting privileges in a manner consistent with all other separate accounts investing in the Fund will be a contractual obligation of all participating insurance companies under their agreements governing participating in the Fund.

8. All reports received by the Board of potential or existing conflicts, determining the existence of a conflict, notifying participating insurance companies of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records and such minutes or other records will be made available to the SEC upon request.

9. If and to the extent that Rule 6e–2 or Rule 6e–3(T) is amended, or Rule 6e–3 is adopted, to provide exemptive relief from any provision of the 1940 Act or the rules promulgated thereunder that materially differs from any exemptive order issued by the SEC in connection with this application, then the appropriate Applicants will take all steps as may be necessary to comply with Rule 6e–2 or Rule 6e–3(T), as amended, or Rule 6e–3, as adopted, to the extent such rules are applicable.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–19070 Filed 8–19–87; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[(Order 87–8–40), Docket 40208]

Proposed Revocation of the Section 401 Certificate of Wright Air Lines, Inc.

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Notice of Order to Show Cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order revoking the certificate of Wright Air Lines, Inc., issued under section 401 of the Federal Aviation Act.

DATE: Persons wishing to file objections should do so no later than September 1, 1987.

ADDRESSES: Responses should be filed in Docket 40208 and addressed to the Documentary Services Division, Department of Transportation, 400 7th Street, SW., Room 4107, Washington, DC, 20590, and should be served on the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mary Catherine Terry, Air Carrier Fitness Division, U.S. Department of Transportation, 400 7th Street, SW. Washington DC 20590, (202) 366-2343.

Dated: August 17, 1987.

Vance Fort,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 87-19055 Filed 8-19-87; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

[Summary Notice No. PE-87-20]

Petition for Exemption; Summary of Petitions Received and Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before September 9,1987.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No._____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 915G, FAA Headquarters Building (POB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on August 14, 1987.

Denise Donohue Hall,

Acting Manager, Program Management Staff.

Petitions for Exemption

Docket No.	Petitioner	Regulations affected	Description of relief sought
25289	National Business Aircraft Association, Inc.	14 CFR 121.312(b)	To allow companies represented by petitioner to operate certain aircraft under Part 135 without complying with the seat cushion flammability requirements of § 121.312(b), for a period of time that could be determined.
19634	Douglas Aircraft Company	14 CFR 121.310(d)(4)	To allow operation of all DC-9 aircraft without a cockpit control device that has an "on," "off," and "armed" position.
25337	ERA Helicopters, Inc.	14 CFR 43.3(g)	To allow petitioner's pilots to remove and replace seats when away from the maintenance base.

Petitions for Exemption

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
20060	Sierra Academy of Aeronautics	14 CFR 61.63(d)(2) and (3), 61.157(d)(1)	To allow trainees of petitioner, who are applicants for a type rating to be added to any grade of pilot certificate, to substitute the practical test requirements of § 61.157(a) for those of § 61.63(d)(2) and (3), and, to complete a portion of that practical test in a simulator as authorized by § 61.157(d). *Granted, August 5, 1987.*
25169	Parachute Center	14 CFR 105.43(a)	To allow petitioner's jump master, instructors, and pilots to make parachute training jumps wearing a tandem dual harness, dual parachute pack with at least one main parachute and one approved reserve parachute packed in accordance with § 105.43(a)(2). *Granted, August 5, 1987.*
25159	Bemidji Airlines	14 CFR 135.265(c)(3)	To allow petitioner to assign a flight crewmember and its flight crewmembers to accept duty during flight time without having had at least 8 consecutive hours of rest during the 24-hour period preceding the planned completion of the assignment. *Granted, August 5, 1987.*

[FR Doc. 87-19015 Filed 8-19-87; 8:45 a.m.]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Proposed Widening of Maryland Route 650 in Montgomery County, MD

AGENCY: Federal Highway Administration (FHWA) DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advice the public that an environmental impact statement is being prepared for the proposed widening of Maryland Route 650 in Montgomery County.

FOR FURTHER INFORMATION CONTACT: Mr. Edward A. Terry, Jr., Field Operations Engineer, Federal Highway Administration, The Rotunda, Suite 220, 711 W. 40th Street, Baltimore, Maryland 21211, telephone 301/962–4010, and/or Mr. Louis Ege, Jr., Deputy Director, Project Development Division, Maryland State Highway Administration, 707 North Calvert Street, Room 310, Baltimore, Maryland 21202, telephone 301/333–1130.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Maryland State Highway Administration, is preparing an environmental impact statement to develop acceptable alternates to provide additional capacity on a 3.8 mile portion of MD Route 650 between Randolph Road and MD Route 198.

Segment I, which lies between Randolph Road and the proposed Intercounty Connector, would be widened to a six-lane divided highway. Segment II, which lies between the proposed Intercounty Connector and Maryland Route 198, would be widended to a four-lane divided highway. In addition, a realignment of Briggs Chaney Road is proposed which would relocate it opposite Norwood Road at the intersection with MD Route 650. Construction of an interchange at the existing MD Route 650/Randolph Road intersection is being studied under a separate project.

Impacts of particular concern will be the residential and business relocations, noise impacts, and impacts to the natural trout population of the Good Hope Tributary of the Paint Branch.

A public meeting to discuss the preliminary alternates has been held. A public hearing will be held after circulation of the DEIS. A public notice will give the time and place of the public hearing, and individual notices will be sent to those agencies, groups, and individuals on the mailing lists. The DEIS will be available for public and agency review and comment prior to the public hearing. To ensure that the full range of issues relating to this proposal are addressed and all significant issues identified, comments and suggestions are invited from all interested parties.

(Catalog of Federal Domestic Assistance Program Number 20.025, Highway Research, Planning and Construction. The provisions of Executive Order 12372 regarding State and Local review of Federal and Federally assisted programs and projects apply to this program).

Emil Elinsky,

Division Administrator, Baltimore, Maryland.

[FR Doc. 87–19081 Filed 8–19–87; 8:45 am]

BILLING CODE 4910-22-M

Urban Mass Transportation Administration

UMTA Section 3 and 9 Grant Obligations; Rochester-Genesee Regional Transportation Authority et al.

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Notice.

SUMMARY: Public Law 99–500 signed into law by President Reagan on October 18, 1986, contained a provision requiring the Urban Mass Transportation Administration to publish an announcement in the **Federal Register** each time a grant is obligated pursuant to sections 3 and 9 of the Urban Mass Transportation Act of 1964, as amended. The statute requires that the announcement include the grant number, the grant amount, and the transit property receiving each grant. This notice provides the information as required by statute.

FOR FURTHER INFORMATION CONTACT: Edward R. Fleischman, Chief, Resource Management Division, (202) 366–2053, 400 Seventh Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: The section 3 program was established by the Urban Mass Transportation Act of 1964 to provide capital assistance to eligible recipients in urban areas. Funding for this program is distributed on a discretionary basis. The section 9 formula program was established by the Surface Transportation Assistance Act of 1982. Funds appropriated to this program are allocated on a formula basis to provide capital and operating assistance in urbanized areas. Pursuant to Pub. L. 99–500, UMTA reports the following grant information:

SECTION 3 GRANT

Transit property	Grant No.	Grant amount	Date obligated
Rochester-Genesee Regional Transportation Authority, Rochester, NY	NY–03–0211–01	$3,000,000	7/31/87

SECTION 9 GRANT

Transit property	Grant No.	Grant amount	Date obligated
Kansas City Area Transportation Authority, Kansas City, MO	MO–90–X039	$11,618,486	7/31/87
Oklahoma Department of Transportation, Oklahoma City, OK	OK–90–X020	772,756	7/21/87

Issued On: August 17, 1987.

Alfred A. DelliBovi,

Deputy Administrator.

[FR Doc. 87–19104 Filed 8–19–87; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular—Public Debt Series—No. 22-87]

Treasury Bonds of 2017

August 11, 1987.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $9,000,000 of United States securities, designated Treasury Bonds of 2017 (CUSIP No. 912810 DZ 8), hereafter referred to as Bonds. The Bonds will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Bonds and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Bonds may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Bonds may also be issued at the average price to Federal Reserve Banks, as agents for foreign and intenational monetary authorities.

2. Description of Securities

2.1. The Bonds will be dated August 15, 1987, and issued August 17, 1987. Payment for the Bonds will be based on the price equivalent to the bid yield determined in accordance with this circular, plus accrued interest from August 15, 1987, to August 17, 1987. Interest on the Bonds is payable on a semiannual basis on February 15, 1988, and each subsequent 6 months on August 15 and February 15 through the date that the principal becomes payable. They will mature August 15, 2017, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Bonds are subject to all taxes imposed under the Internal Revenue Code of 1954. The Bonds are exempt from all taxation now or heareafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Bonds will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Bonds will be issued only in book-entry form, and in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. A Bond may be held in its fully constituted form or it may be divided into its separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as fiscal agents of the United States. The provisions specifically applicable to the separation, maintenance, transfer, and reconstitution of Principal and Interest Components are set forth in section 6 of this circular. Subsections 2.1. through 2.4. of this section are descriptive of Bonds in their fully constituted form; the description of the separate Principal and Interest components is set forth in seciton 6 of this circular.

2.6. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TRESASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Bonds offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239, prior to 1:00 p.m., Eastern Daylight Saving time, Thursday, August 13, 1987. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Wednesday, August 12, 1987, and received no later than Monday, August 17, 1987.

3.2. The par amount of Bonds bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; intenational organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Bonds applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 92.500. That stated rate of interest will be paid on all of the Bonds. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to

pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Bonds specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this section is final.

5. Payment and Delivery

5.1. Settlement for the Bonds allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement must include accrued interest from August 15, 1987, to August 17, 1987. The amount of accrued interest will be determined after the auction, and investors will be notified of the amount. Settlement on Bonds allotted to institutional investors and to others whose tenders are acompanied by a guarantee as provided in section 3.5. must be made or completed on or before Monday, August 17, 1987. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, August 13, 1987. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Bonds allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Monday, August 17, 1987. When payment has been submitted with the tender and the purchase price of the Bonds allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Bonds allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Bonds allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered defintive security is identical to the registration of the Bond being purchased. In anysuch case, the tender form used to place the Bonds allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. Separability of Principal and Interest

6.1. Under the Treasury's STRIPS Program (Separate Trading of Registered Interest and Principal of Securities), a Bond may be divided into its separate components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The separate STRIPS components are: Each future semiannual interest payment (referred to as an Interest Component) and the principal payment (referred to as the Principal Component). Each Interest Component and the Principal Component shall have an identifying designation and CUSIP number, which are set forth in Attachment A to this circular.

6.2. Attachment A also provides the payable dates for the separate components. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

6.3. For a Bond to be separated into the components described in section 6.1., the par amount of the Bond must be in an amount which, based on the stated interest rate of the Bond, will produce a semi-annual interest payment of $1,000 or a multiple of $1,000. Attachment B to this circular provides the minimum par amounts required to separate a security at various interest rates, as well as the interest payments corresponding to those minimum par amounts. Par amounts greater than the minimum amount must be in multiples of that amount. The minimum par amount for this offering will be provided in the public announcement of the amount and yield range of accepted bids.

6.4. A Bond may be separated into its components at any time from the issue date until maturity. A request for separation must be made to the Federal Reserve Bank maintaining the account for the Bonds. Once a Bond has been separated into its components, the components may be maintained and transferred in multiples of $1,000.

6.5. Interest Components and Principal Components in multiples of $1,000 will be accepted to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

6.6. Interest and Principal Components of separated securities may be reconstituted, i.e., restored to their fully constituted form, on the book-entry records of the Federal Reserve Banks. A Principal Component and all related unmatured Interest Components, in the appropriate minimum or multiple amounts previously announced, must be submitted together for reconstitution.

6.7. Detached physical interest coupons, coupons held under the CUBES Program, or cash payments may not be substituted for missing Interest or Principal Components. Any reconstitution request which does not comprise all of the necessary STRIPS components in the appropriate amounts will not be accepted.

6.8. The book-entry transfer of each Interest Component and Principal Component included in a reconstitution transaction will be subject to the fee schedule generally applicable to transfers of book-entry Treasury securities.

6.9. Unless otherwise provided in this offering circular, the Department of the Treasury's general regulations governing United States securities apply to the Bonds separated into their components.

7. General Provisions

7.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Bonds.

7.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such

supplements or amendments do not adversely affect existing rights of holders of the Bonds. Public announcement of such changes will be promptly provided.

7.3. The Bonds issued under this circular shall be obligations of the United States, whether held in the fully constituted form or as separate Interest and Principal Components, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Bonds.

7.4. Attachments A and B are incorporated as part of this circular.

Gerald Murphy,

Fiscal Assistant Secretary.

Attachment A.—CUSIP Numbers and Designations for the Principal Component and Interest Components of Treasury Bonds of August 15, 2017, CUSIP No. 912810 DZ 8

The Principal Component is designated (Interest Rate) Treasury Principal (TPRN) 2017 due August 15, 2017, CUSIP No. 912803 AM 5.

INTEREST COMPONENTS

Designation	Cusip No. 912833
Treasury Interest (TINT) due:	
Feb. 15, 1988	BB 5
Aug. 15, 1988	BC 3
Feb. 15, 1989	BD 1
Aug. 15, 1989	BE 9
Feb. 15, 1990	BF 6
Aug. 15, 1990	BG 4
Feb. 15, 1991	BH 2
Aug. 15, 1991	BJ 8
Feb. 15, 1992	BK 5
Aug. 15, 1992	BL 3
Feb. 15, 1993	BM 1
Aug. 15, 1993	BN 9
Feb. 15, 1994	BP 4
Aug. 15, 1994	BQ 2
Feb. 15, 1995	BR 0
Aug. 15, 1995	BS 8
Feb. 15, 1996	BT 6
Aug. 15, 1996	BU 3
Feb. 15, 1997	BV 1
Aug. 15, 1997	BW 9
Feb. 15, 1998	BX 7
Aug. 15, 1998	BY 5
Feb. 15, 1999	BZ 2
Aug. 15, 1999	CA 6
Feb. 15, 2000	CB 4
Aug. 15, 2000	CC 2
Feb. 15, 2001	CD 0
Aug. 15, 2001	CE 8
Feb. 15, 2002	CF 5
Aug. 15, 2002	CG 3
Feb. 15, 2003	CH 1
Aug. 15, 2003	CJ 7
Feb. 15, 2004	CK 4
Aug. 15, 2004	CL 2
Feb. 15, 2005	CM 0
Aug. 15, 2005	CN 8
Feb. 15, 2006	CP 3
Aug. 15, 2006	CQ 1
Feb. 15, 2007	CR 9
Aug. 15, 2007	CS 7
Feb. 15, 2008	CT 5
Aug. 15, 2008	CU 2
Feb. 15, 2009	CV 0
Aug. 15, 2009	CW 8
Feb. 15, 2010	CX 6
Aug. 15, 2010	CY 4
Feb. 15, 2011	CZ 1
Aug. 15, 2011	DA 5

INTEREST COMPONENTS—Continued

Designation	Cusip No. 912833
Feb. 15, 2012	DB 3
Aug. 15, 2012	DC 1
Feb. 15, 2013	DD 9
Aug. 15, 2013	DE 7
Feb. 15, 2014	DF 4
Aug. 15, 2014	DG 2
Feb. 15, 2015	DH 0
Aug. 15, 2015	JT 8
Feb. 15, 2016	KG 4
Aug. 15, 2016	KJ 8
Feb. 15, 2017	KL 3
Aug. 15, 2017	KH 0

Attachment B

MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1000

Coupon (percent)	Minimum face (dollars)	Interest payment (dollars)
5.000	40000	1000
5.125	1600000	41000
5.250	800000	21000
5.375	1600000	43000
5.500	400000	11000
5.625	320000	9000
5.750	800000	23000
5.875	1600000	47000
6.000	100000	3000
6.125	1600000	49000
6.250	32000	1000
6.375	1600000	51000
6.500	400000	13000
6.625	1600000	53000
6.750	800000	27000
6.875	320000	11000
7.000	200000	7000
7.125	1600000	57000
7.250	800000	29000
7.375	1600000	59000
7.500	80000	3000
7.625	1600000	61000
7.750	800000	31000
7.875	1600000	63000
8.000	25000	1000
8.125	320000	13000
8.250	800000	33000
8.375	1600000	67000
8.500	400000	17000
8.625	1600000	69000
8.750	160000	7000
8.875	1600000	71000
9.000	200000	9000
9.125	1600000	73000
9.250	800000	37000
9.375	64000	3000
9.500	400000	19000
9.625	1600000	77000
9.750	800000	39000
9.875	1600000	79000
10.000	20000	1000
10.125	1600000	81000
10.250	800000	41000
10.375	1600000	83000
10.500	400000	21000
10.625	320000	17000
10.750	800000	43000
10.875	1600000	87000
11.000	200000	11000
11.125	1600000	89000
11.250	160000	9000
11.375	1600000	91000
11.500	400000	23000
11.625	1600000	93000
11.750	800000	47000
11.875	320000	19000
12.000	50000	3000
12.125	1600000	97000
12.250	800000	49000
12.375	1600000	99000
12.500	16000	1000
12.625	1600000	101000
12.750	800000	51000
12.875	1600000	103000

MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1000—Continued

Coupon (percent)	Minimum face (dollars)	Interest payment (dollars)
13.000	200000	13000
13.125	320000	21000
13.250	800000	53000
13.375	1600000	107000
13.500	400000	27000
13.625	1600000	109000
13.750	160000	11000
13.875	1600000	111000
14.000	100000	7000
14.125	1600000	113000
14.250	800000	57000
14.375	320000	23000
14.500	400000	29000
14.625	1600000	117000
14.750	800000	59000
14.875	1600000	119000
15.000	40000	3000
15.125	1600000	121000
15.250	800000	61000
15.375	1600000	123000
15.500	400000	31000
15.625	64000	5000
15.750	800000	63000
15.875	1600000	127000
16.000	25000	2000
16.125	1600000	129000
16.250	160000	13000
16.375	1600000	131000
16.500	400000	33000
16.625	1600000	133000
16.750	800000	67000
16.875	320000	27000
17.000	200000	17000
17.125	1600000	137000
17.250	800000	69000
17.375	1600000	139000
17.500	80000	7000
17.625	1600000	141000
17.750	800000	71000
17.875	1600000	143000
18.000	100000	9000
18.125	320000	29000
18.250	800000	73000
18.375	1600000	147000
18.500	400000	37000
18.625	1600000	149000
18.750	32000	3000
18.875	1600000	151000
19.000	200000	19000
19.125	1600000	153000
19.250	800000	77000
19.375	320000	31000
19.500	400000	39000
19.625	1600000	157000
19.750	800000	79000
19.875	1600000	159000
20.000	10000	1000
20.125	1600000	161000
20.250	800000	81000

[FR Doc. 87-19111 Filed 8-18-87; 9:44 am]

BILLING CODE 4810-40-M

[Supplement to Department Circular—Public Debt Series—No. 87]

Treasury Bonds of 2017

August 14, 1987.

The Secretary announced on August 13, 1987, that the interest rate on the bonds designated Bonds of 2017, described in Department Circular—Public Debt Series—No. 22-87 dated August 11, 1987, will be 8¾ percent.

Interest on the bonds will be payable at the rate of 8¾ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 87-19112 Filed 8-18-87; 9:44 am]

BILLING CODE 4810-40-M

[Department Circular—Public Debt Series—No. 21-87]

Treasury Notes of August 15, 1987, Series B-1987

August 11, 1987.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $9,250,000,000 of United States securities, designated Treasury Notes of August 15, 1987, Series B-1987 (CUSIP No. 912827 VE 9), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated August 15, 1987, and issued August 17, 1987. Payment for the Notes will be based on the price equivalent to the bid yield determined in accordance with this circular, plus accrued interest from August 15, 1987, to August 17, 1987. Interest on the Notes is payable on a semiannual basis on February 15, 1988, and each subsequent 6 months on August 15 and February 15 through the date that the principal becomes payable. They will mature August 15, 1997, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. A Note may be held in its fully constituted form or it may be divided into its separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as fiscal agents of the United States. The provisions specifically applicable to the separation, maintenance, transfer, and reconstitution of Principal and Interest Components are set forth in section 6 of this circular. Subsections 2.1. through 2.4. of this section are descriptive of Notes in their fully constituted form; the description of the separate Principal and Interest components is set forth in section 6 of this circular.

2.6. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260 *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239, prior to 1:00 p.m., Eastern Daylight Saving time, Wednesday, August 12, 1987. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, August 11, 1987, and received no later than Monday, August 17, 1987.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a 1/8 of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 97.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each

competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1 The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement must include accrued interest from August 15, 1987, to August 17, 1987. The amount of accrued interest will be determined after the auction, and investors will be notified of the amount. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Monday, August 17, 1987. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defind in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, August 13, 1987. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Monday, August 17, 1987. When payment has been submitted with the tender and the purchase price of the Notes allotted is over pay, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the Note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. Separability of Principal and Interest

6.1. Under the Treasury's STRIPS Program (Separate Trading of Registered Interest and Principal of Securities), a Note may be divided into its separate components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The separate STRIPS components are: each future semiannual interest payment (referred to as an Interest Component) and the principal payment (referred to as the Principal Component). Each Interest Component and the Principal Component shall have an identifying designation and CUSIP number, which are set forth in Attachment A to this circular.

6.2. Attachment A also provides the payable dates for the separate components. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

6.3. For a Note to be separated into the components described in section 6.1., the par amount of the Note must be in an amount which, based on the stated interest rate of the Note, will produce a semiannual interest payment of $1,000 or a multiple of $1,000. Attachment B to this circular provides the minimum par amounts required to separate a security at various interest rates, as well as the interest payments corresponding to those minimum par amounts. Par amounts greater than the minimum amount must be in multiples of that amount. The minimum par amount for this offering will be provided in the public announcement of the amount and yield range of accepted bids.

6.4. A Note may be separated into its components at any time from the issue date until maturity. A request for separation must be made to the Federal Reserve Bank maintaining the account for the Notes. Once a Note has been separated into its components, the components may be maintained and transferred in multiples of $1,000.

6.5. Interest Components and Principal Components in multiples of $1,000 will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

6.6. Interest and Principal Components of separated securities may be reconstituted, i.e., restored to their fully constituted form, on the book-entry records of the Federal Reserve Banks. A Principal Component and all related unmatured Interest Components, in the appropriate minimum or multiple amounts previously announced, must be submitted together for reconstitution.

6.7. Detached physical interest coupons, coupons held under the CUBES Program, or cash payments may not be substituted for missing Interest or Principal Components. Any reconstitution request which does not comprise all of the necessary STRIPS components in the appropriate amount will not be accepted.

6.8. The book-entry transfer of each Interest Component and Principal Component included in a reconstitution transaction will be subject to the fee schedule generally applicable to transfers of book-entry Treasury securities.

6.9. Unless otherwise provided in this offering circular, the Department of the Treasury's general regulations governing United States securities apply to the Notes separated into their components.

7. General Provisions

7.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain,

service, and make payment on the Notes.

7.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

7.3. The Notes issued under this circular shall be obligations of the United States, whether held in the fully constituted form or as separate Interest and Principal Components, and, therefore, the faith of the United States government is pledged to pay, in legal tender, principal and interest on the Notes.

7.4. Attachments A and B are incorporated as part of this circular.

Gerald Murphy,

Fiscal Assistant Secretary.

Attachment A.—CUSIP Numbers and Designations for the Principal Component and Interest Components of Treasury Notes of August 15, 1997 Series B 1997 CUSIP No. 912827 VE 9

The Principal Component is designated (Interest Rate) Treasury Principal (TPRN) Series B–1997 due August 15, 1997, CUSIP No. 912820 AK 3.

INTEREST COMPONENTS

Designation	CUSIP No. 912833
Treasury Interest (TINT) due:	
Feb. 15, 1988	BB 5
Aug. 15, 1988	BC 3
Feb. 15, 1989	BD 1
Aug. 15, 1989	BE 9
Feb. 15, 1990	BF 6
Aug. 15, 1990	BG 4
Feb. 15, 1991	BH 2
Aug. 15, 1991	BJ 8
Feb. 15, 1992	BK 5
Aug. 15, 1992	BL 3
Feb. 15, 1993	BM 1
Aug. 15, 1993	BN 9
Feb. 15, 1994	BP 4
Aug. 15, 1994	BQ 2
Feb. 15, 1995	BR 0
Aug. 15, 1995	BS 8
Feb. 15, 1996	BT 6
Aug. 15, 1996	BU 3
Feb. 15, 1997	BV 1
Aug. 15, 1997	BW 9

Attachment B

MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1000

Coupon (percent)	Minimum face (dollars)	Interest payment (dollars)
5.000	40000	1000
5.125	1600000	41000
5.250	800000	21000
5.375	1600000	43000
5.500	400000	11000
5.625	320000	9000
5.750	800000	23000
5.875	1600000	47000
6.000	100000	3000
6.125	1600000	49000
6.250	32000	1000
6.375	1600000	51000
6.500	400000	13000
6.625	1600000	53000
6.750	800000	27000
6.875	320000	11000
7.000	200000	7000
7.125	1600000	57000
7.250	800000	29000
7.375	1600000	59000
7.500	80000	3000
7.625	1600000	61000
7.750	800000	31000
7.875	1600000	63000
8.000	25000	1000
8.125	320000	13000
8.250	800000	33000
8.375	1600000	67000
8.500	400000	17000
8.625	1600000	69000
8.750	160000	7000
8.875	1600000	71000
9.000	200000	9000
9.125	1600000	73000
9.250	800000	37000
9.375	64000	3000
9.500	400000	19000
9.625	1600000	77000
9.750	800000	39000
9.875	1600000	79000
10.000	20000	1000
10.125	1600000	81000
10.250	800000	41000
10.375	1600000	83000
10.500	400000	21000
10.625	320000	17000
10.750	800000	43000
10.875	1600000	87000
11.000	200000	11000
11.125	1600000	89000
11.250	160000	9000
11.375	1600000	91000
11.500	400000	23000
11.625	1600000	93000
11.750	800000	47000
11.875	320000	19000
12.000	50000	3000
12.125	1600000	97000
12.250	800000	49000
12.375	1600000	99000
12.500	16000	1000
12.625	1600000	101000
12.750	800000	51000
12.875	1600000	103000
13.000	200000	13000
13.125	320000	21000
13.250	800000	53000
13.375	1600000	107000
13.500	400000	27000
13.625	1600000	109000
13.750	160000	11000
13.875	1600000	111000
14.000	100000	7000
14.125	1600000	113000
14.250	800000	57000
14.375	320000	23000
14.500	400000	29000
14.625	1600000	117000
14.750	800000	59000
14.875	1600000	119000
15.000	40000	3000
15.125	1600000	121000
15.250	800000	61000
15.375	1600000	123000
15.500	400000	31000
15.625	64000	5000
15.750	800000	63000
15.875	1600000	127000
16.000	25000	2000
16.125	1600000	129000
16.250	160000	13000
16.375	1600000	131000
16.500	400000	33000

MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1000—Continued

Coupon (percent)	Minimum face (dollars)	Interest payment (dollars)
16.625	1600000	133000
16.750	800000	67000
16.875	320000	27000
17.000	200000	17000
17.125	1600000	137000
17.250	800000	69000
17.375	1600000	139000
17.500	80000	7000
17.625	1600000	141000
17.750	800000	71000
17.875	1600000	143000
18.000	100000	9000
18.125	320000	29000
18.250	800000	73000
18.375	1600000	147000
18.500	400000	37000
18.625	1600000	149000
18.750	32000	3000
18.875	1600000	151000
19.000	200000	19000
19.125	1600000	153000
19.250	800000	77000
19.375	320000	31000
19.500	400000	39000
19.625	1600000	157000
19.750	800000	79000
19.875	1600000	159000
20.000	10000	1000
20.125	1600000	161000
20.250	800000	81000

[FR Doc. 87–19113 Filed 8–18–87; 9:45 am]

BILLING CODE 4810-40-M

[Supplement to Department Circular—Public Debt Series—No. 21–87]

Treasury Notes, Series B–1997

August 13, 1987.

The Secretary announced on August 12, 1987, that the interest rate on the notes designated Series B–1997, described in Department Circular—Public Debt Series—No. 21–87 dated August 11, 1987, will be 8⅝ percent. Interest on the notes will be payable at the rate of 8⅝ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 87–19114 Filed 8–18–87; 9:45 am]

BILLING CODE 4810-40-M

[Department Circular—Public Debt Series—No. 20–87]

Treasury Notes of August 15, 1990, Series U–1990

August 11, 1987.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $9,750,000,000 of United States securities, designated Treasury Notes of August 15, 1990, Series U–1990 (CUSIP No. 912827 VD 1),

hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated August 17, 1987, and will accrue interest from that date, payable on a semiannual basis on February 15, 1988, and each subsequent 6 months on August 15 and February 15 through the date that the principal becomes payable. They will mature August 15, 1990, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4 The Notes will be issued only in book-entry form in denominations of $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239, prior to 1:00 p.m., Eastern Daylight Saving time, Tuesday, August 11, 1987. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, August 10, 1987, and received no later than Monday, August 17, 1987.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the

Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Monday, August 17, 1987. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, August 13, 1987. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Monday, August 17, 1987. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 87-19115 Filed 8-18-87; 9:46 am]

BILLING CODE 4810-40-M

[Supplement to Department Circular—Public Debt Series—No. 20-87]

Treasury Notes, Series U-1990

August 12, 1987.

The Secretary announced on August 11, 1987, that the interest rate on the notes designated Series U-1990, described in Department Circular—Public Debt Series—No. 20-87 dated August 11, 1987, will be 7⅞ percent. Interest on the notes will be payable at the rate of 7⅞ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 87-19116 Filed 8-18-87; 9:46 am]

BILLING CODE 4810-40-M

Fiscal Service

Surety Companies Acceptable on Federal Bonds, Gramercy Insurance Co.; Fraudulent Bond Powers

Federal bond approving officers are advised that Gramercy Insurance Company, Houston, Texas, has informed the Treasury Department that certain Powers of Attorney have been stolen from the company, reproduced, altered, and are being used to write federal bonds. Powers of Attorney that are presented with Gramercy Insurance Company bonds should be closely scrutinized to determine whether irregularities appear to exist.

Gramercy Insurance Company writes Customs bonds, acts as a co-surety on contract bonds written throughout the country with International Fidelity Insurance Company, and writes small appearance, contract, and miscellaneous bonds in the States of Texas and Maryland.

It should be noted that unauthorized bonds written thus far have been bid, performance and payment bonds and have contained the name of Nelson Gasmann as the Attorney-in-Fact. Gramercy Insurance Company does not write surety bonds in excess of its Treasury Underwriting Limitation of $230,000.

Questions related to the authenticity of bond powers should be directed to Mr. Tom West of Gramercy Insurance Company at (214) 404-0022.

Mitchell A. Levine,

Assistant Commissioner, Comptroller Financial Management Service.

Dated: August 10, 1987.

[FR Doc. 87-19140 Filed 8-19-87; 8:45 am]

BILLING CODE 4810-35-M

UNITED STATES INFORMATION AGENCY

United States Advisory Commission on Public Diplomacy; Conference

The United States Advisory Commission on Public Diplomacy will sponsor a conference on *"PUBLIC DIPLOMACY IN THE INFORMATION AGE"* on September 16, 1987 at Department of State, Washington, DC. Topics for discussion include Foreign Policy in the Information Age; U.S. Public Diplomacy: Building for the Future; International Communication in the 1990s; Public Diplomacy: The View from Congress; and Public Diplomacy and Changing East-West Relations. Panels for leaders in the foreign policy, legislative, media, business, labor, and academic communities will allow an exchange of views on the importance of ideas, communication, and international information and educational exchange programs.

Please call Gloria Kalamets, (202) 485-2457, if you are interested in attending the conference.

Dated: August 14, 1987.

Charles N. Canestro,

Management Analyst, Federal Register Liaison.

[FR Doc. 87-19060 Filed 8-19-87; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 161
Thursday, August 20, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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TIME AND DATE: Tuesday, September 1, 1987, 10:00 a.m.

PLACE: 1111 20th Street, NW., Suite 450, Washington, DC 20036.

STATUS: Closed pursuant to a vote taken August 17, 1987.

MATTERS TO BE CONSIDERED:
Adjudication of the 1985 jukebox distribution proceeding.

CONTACT PERSON FOR MORE INFORMATION: Robert Cassler, General Counsel, Copyright Royalty Tribunal, 1111 20th Street, NW., Suite 450, Washington, DC 20036, 202-653-5175.

Dated: August 17, 1987.

Edward W. Ray,

Acting Chairman.

[FR Doc. 87-19177 Filed 8-18-87; 2:10 pm]

BILLING CODE 1410-09-M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m., August 26, 1987.

PLACE: Hearing Room One, 1100 L Street, NW., Washington, DC 20573.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Freight Brokers and Payment of Brokerage.
2. Docket No. 86-13—Application of Tariff Filing Requirements to the Carriage of Forest Products Under the Shipping Act of 1984—Petition for a Declaratory Order.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary (202) 523-5725

Joseph C. Polking,

Secretary.

[FR Doc. 87-19191 Filed 8-18-87; 3:18 pm]

BILLING CODE 6730-01-M

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 p.m., Wednesday, September 9, 1987.

PLACE: Board Hearing Room 8th Floor, 1425 K. Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during the month of August, 1987.
2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION:
Copies of the monthly report of the Board's notating voting actions will be available from the Executive Director's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Charles R. Barnes, Executive Director, Tel: (202) 523-5920.

Date of notice: August 17, 1987.

Charles R. Barnes,

Executive Director National Mediation Board.

[FR Doc. 87-14152 Filed 8-18-87; 1:30 pm]

BILLING CODE 7550-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [52 FR 30995, August 18, 1987].

STATUS: Open meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Wednesday, August 12, 1987.

CHANGE IN THE MEETING: Deletion.

The following item will not be considered at an open meeting on Thursday, August 20, 1987, at 10:00 a.m.

Consideration of whether the Commission should agree in principal to the revision of Investment Advisers Act Release No. 770 (August 31, 1981) that would update and clarify the views expressed and to state that the revised release was developed jointly by the staff of the Division of Investment Management and the North American Securities Administrators Association, Inc. in the order to provide uniform interpretations of federal and state investment adviser laws as they apply to financial planners and other persons. For further information, please contact A. Thomas Smith at (202) 272-2810.

Commissioner Grundfest, as duty officer, determined that Commission business required the above change.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Bernard Black at (202) 272-2468.

Jonathan G. Katz,

Secretary.

August 17, 1987.

[FR Doc. 87-19169 Filed 8-18-87; 1:31 pm]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of August 24, 1987:

A closed meeting will be held on Tuesday, August 25, 1987, at 2:30 p.m. An open meeting will be held on Thursday, August 27, 1987, at 10:00 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Grundfest, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, August 25, 1987, at 2:30 p.m., will be:

Settlement of administrative proceedings of an enforcement nature.
Subpoena enforcement actions.
Institution of injunctive actions.

The subject matter of the open meeting scheduled for Thursday, August 27, 1987, at 10:00 a.m., will be:

1. Consideration of whether the Commission should agree in principle to the revision of Investment Advisers Act Release No. 770 (August 31, 1981) that would update and clarify the views expressed and to state that the revised release was developed jointly by the staff of the Division of Investment Management and the North American Securities Administrators Association, Inc. in order to provide uniform interpretations of federal and state investment adviser laws as they apply to

financial planners and other persons. For further information, please contract A. Thomas Smith at (202) 272–2810.

2. Consideration of an application filed by ML-Lee Acquisition Fund, L.P., ("Partnership") a closed-end fund that has elected to be regulated as a business development company, Mezzanine Investments, L.P., ("Managing General Partner") and Thomas H. Lee Advisors, Inc., ("Investment Adviser") (collectively, "Applicants") requesting an order under Sections 6(c), 17(d), 57(c), and 57(i) of the Investment Company Act of 1940 ("IC Act") exempting the Applicants from Section 57 (a)(1) of the IC Act to permit the Partnership to acquire interim investments from the Managing General Partner, and to permit the Partnership to co-invest in joint transactions with its Investment Adviser, up to a maximum of 85% of its assets, in speculative debt securities issued in connection with leveraged buy-out transactions. For further information, please contact Richard Pfordte at (202) 272–2811.

At time changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Judith Axe at (202) 272–2092.

Jonathan G. Katz,

Secretary.

August 18, 1987.

[FR Doc. 87–19218 Filed 8–18–87; 4:03 pm]

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Corrections

Federal Register
Vol. 52, No. 161
Thursday, August 20, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes; University of Nevada School of Medicine et al.

Correction

In notice document 87-17439 beginning on page 28586 in the issue of Friday, July 31, 1987, make the following correction:

On page 28586, in the third column, under "Docket No.: 87-113", in the fourth line, "JEM-100CS" should read "JEM 100-CX"

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulation Nos. 1, 4, and 16]

Revision of Authority Citations

Correction

In rule document 87-16637 beginning on page 27539 in the issue of Wednesday, July 22, 1987, make the following correction:

On page 27541, in the second column, under amendatory instruction 7, in the first line of the Authority, after "1611," insert "1612,".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-020-07-4212-13; A-22795]

Realty Action: Public Land Exchange; Coconino, La Paz, Mohave, Maricopa, Pinal, and Yavapai Counties, AZ

Correction

In notice document 87-14387 beginning on page 23893 in the issue of Thursday, June 25, 1987, make the following corrections:

1. On page 23893, in the third column, in the last line, "Sec. 3" should read "Sec. 13".

2. On page 23894, in the third column, in the last paragraph, in the sixth line, "AR-01112" should read "AR-0112".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-060-07-4212-14; CA 18690]

Realty Action; San Diego County, CA

Correction

In notice document 87-16620 beginning on page 27590 in the issue of Wednesday, July 22, 1987, make the following correction:

On page 27590, in the third column, in the eighth complete paragraph, in the third line, "September 20" should read "September 30".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[I-23542; ID-030-07-4212-12]

Realty Action; Exchange of Public Lands in Bingham and Bonneville Counties, ID

Correction

In notice document 87-17909 beginning on page 29312 in the issue of Thursday, August 6, 1987, make the following corrections to land descriptions appearing on page 29312, in the third column:

1. The 23rd line should read—
"Sec. 28: NW¼NW¼; T. 1 N., R. 34 E.,".

2. The 28th line should read—
"SW¼, SW¼NW¼SE¼, S½SE¼;".

3. The 27th and 28th lines from the bottom should read—
"NW¼NW¼, SW¼SW¼, N½SE¼SW¼, W½NW¼SE¼, NW¼SW¼SE¼;".

4. The 23rd line from the bottom should read—
"Sec. 32: SW¼NE¼, SW¼NW¼, SW¼,".

5. The 16th line from the bottom should read—
"N½SE¼, SE¼SE¼;".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-060-07-4212-14]

Realty Action; Modified Competitive Sale of Public Lands in Goshen County, WY

Correction

In notice document 87-17331 beginning on page 28488 in the issue of Thursday, July 30, 1987, make the following correction:

On page 28488, in the third column, in the table, in the second column, in the fourth line, "NE¼" should read "NW¼".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 21

[Docket No. 87-9]

Minimum Security Devices and Procedures, Reports of Crimes and Suspected Crimes and Bank Secrecy Act Compliance

Correction

In rule document 87-17562 beginning on page 28681 in the issue of Monday,

August 3, 1987, make the following corrections:

1. On page 28681, in the second column, in the first complete paragraph, in the fifth line, "standard" should read "standards".

§ 21.5 [Corrected]

2. On page 28682, in § 21.5(a), in the statement, in the second line, "was" should read "has".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Customs Service

Automated Surety Interface; Significant New Information Dissemination Product Pursuant to OMB Circular A-130

Correction

In notice document 87-18653 beginning on page 30762 in the issue of Monday, August 17, 1987, make the following corrections:

1. On page 30762, in the third column, the heading should read as set forth above.

2. On page 30763—

a. In the first column, in the third line from the top, "gauge" was misspelled.

b. In the same column, in the second complete paragraph, in the eighth line, "conceived" was misspelled.

c. In the second column, in the first complete paragraph, in the sixth line, "of" should read "to".

d. In the same column, in the fourth line from the bottom, "disclosure" was misspelled.

3. On page 30764—

a. In the first column, in paragraph *C* 11. "L-Flay" should read "L-Flag".

b. In the second column, in paragraph *A* 31. "Estimate" should read "Estimated".

c. In the third column, in paragraph "*D* 13. "Principal" was misspelled.

BILLING CODE 1505-01-D

federal register

Thursday
August 20, 1987

Part II

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Announcement of New Program; Youth Drug and Alcohol Abuse: The Introduction of Effective Strategies Systemwide; Notice

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Announcement of New Program; Youth Drug and Alcohol Abuse: The Introduction of Effective Strategies Systemwide

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of issuance of solicitation for applications to develop and implement a comprehensive demonstration program for the replication of effective anti-drug and alcohol strategies for youth on a systemwide basis.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) pursuant to section 224(b)(1) announces a new program entitled "Youth Drug and Alcohol Abuse: The Introduction of Effective Strategies Systemwide." This program is co-funded with the National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

The purpose of this program is to perform three separate but integrated activities. The grantee will conduct a conference of selected national private not-for-profit organizations in order for them to define their constituencies' needs; explain their current and planned programmatic responses; and encourage coordination with each other and cooperation with the Federal government in the present effort. The grantee will also demonstrate a community planning and organization strategy for communities to assess and respond to their current juvenile drug abuse problems and needs, as well as provide information concerning the most promising technologies in drug abuse prevention and treatment through a systemwide response curriculum. Finally, the grantee will develop and test a training program for high school students to assist them in organizing their high schools to prevent drug and alcohol abuse.

OJJDP and NHTSA are aware of the multiplicity of anti-substance abuse programs currently implemented by public, private and not-for-profit organizations. There is a significant body of research and experience to support the expectation that these programs can have a major impact provided that information about these programs is effectively disseminated to communities throughout the nation. OJJDP is involved in this initiative because of a strong statistical link between alcohol and drug abuse and delinquency. Therefore, OJJDP and NHTSA intend to fund a program to demonstrate systemwide community planning and implementation strategies that enable a community to address the problem of juvenile substance abuse. To accomplish the goals of this initiative the grantee will implement a four stage, incremental developmental process consisting of the following:

Identification and assessment of selected planning and programmatic strategies;
Development of descriptive planning and program operations manuals;
Development of training and technical assistance materials to transfer the planning and program information contained in the operations manuals to demonstration sites; and,
Provision of training and technical assistance to demonstration sites.

Eligibility

Public and private not-for-profit organizations which can demonstrate the capability to conduct a demonstration program and deliver training and technical assistance in the area of alcohol and substance abuse are invited to submit applications to enter into a cooperative agreement with OJJDP. OJJDP, in cooperation with NHTSA, will select the applicant which presents the most cost effective approach, and which best demonstrates the organizational capability, knowledge of and experience in the fields of alcohol and substance abuse, juvenile justice, program evaluation and training. The project period for this program is eighteen (18) months. The budget period is for 18 months not to exceed $260,000 and during which all four stages of this demonstration initiative will be implemented. Applicants are encouraged to present cost-competitive proposals.

DATES: The deadline for receipt of applications is September 14, 1987.

FOR FURTHER INFORMATION CONTACT: John E. Dawson, Jr., Special Emphasis Division, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue NW., Room 748, Washington, DC 20531, Telephone (202)724-8491.

Contents

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VIII. Submission Requirements
IX. Civil Rights Compliance

I. Introduction and Background

This program is the result of the need for effective systemwide strategies to address drug and alcohol abuse among young people in communities throughout the nation. Interest in this endeavor began with the Alcohol Safety Action Workshops for Juvenile Court Judges which were developed by NHTSA with support from the National Council of Juvenile and Family Court Judges. The purpose of these workshops is to train judges about issues related to juvenile substance abuse which often takes place in, or involves, automobiles.

Juveniles under the influence of one or more substances are responsible for twice as many highway fatalities as adults, but are adjudicated for driving under the influence half as frequently. These state workshops give the judges a perspective for analysis of juvenile substance abuse in their communities and enables them to make recommendations for more effective adjudication and disposition of juveniles charged with substance use or possession. Through the Federal Coordinating Council for Juvenile Justice and Delinquency Prevention, NHTSA approached OJJDP with the concept of providing follow-on training and technical assistance to the judges who attend the state workshops in order to address the prevention, intervention, adjudication and supervision needs of their local jurisdictions. OJJDP has an interest in providing such training to juvenile court judges because of the frequency with which young people come in contact with the juvenile justice system for traffic violations. In addition, OJJDP recognized in the NHTSA workshops a significant opportunity to address the critical problem of related juvenile substance abuse. Out of the recognition of the training and technical assistance needs came the development of the present program that proposes to develop a curriculum which will describe the services and program assistance available to communities from a diverse group of organizations oriented to the issues of youth drug and alcohol abuse. This Systemwide Response Curriculum (SRC) will be presented at the NHTSA sponsored state judges workshops in a summary fashion in order to encourage selected jurisdictions to seek the detailed presentation identified in Stage 3 of Section III entitled "Program Strategy."

Concurrent with the decision to supplement the training of the NHTSA judges workshops with follow-on community based seminars was the decision to develop a conference to

bring prominent public and private not-for-profit organizations together to share information about the services they offer and the programs they are planning in the area of drug and alcohol abuse. This conference concept will be integrated into the overall development of the NHTSA/OJJDP systemwide response program. The conference will fulfill the goal of information sharing and promotion of program and resource coordination but will also provide the opportunity to persuade the participating organizations to have their programs represented on the community level through the SRC and subsequently implemented in those communities participating in the follow-on community-based seminars.

Also concurrent with the preceeding was the development of a program at NHTSA that empowers students in communities to initiate drug and alcohol programs in their schools among their fellow students. The approach is based on the assumption that student leaders will be more effective at influencing their peers toward nonuse of drugs and alcohol than adults would be by imposing such programs from the top down. NHTSA intends that this demonstration effort enhance and serve as a youth component to their Techniques for Effective Alcohol Management (TEAM) project operating in communities to curb alcohol and drug use at sporting events. OJJDP views this effort as a new and innovative approach to creating a positive peer influence in schools to counter the negative influence toward substance abuse. This new student training curriculum will be called the Student Training Opportunity Program (STOP).

II. Program Goals and Objectives

A. Goals

1. Conduct a conference of selected national private not-for-profit organizations in order for them to define their constituencies' needs; their current and planned programmatic responses; and encourage their coordination with each other and cooperation with the Federal government in this effort.

2. To demonstrate a community planning and organization strategy for communities to assess and respond to their current juvenile drug abuse problems and needs, as well as provide information concerning the most promising technologies in drug abuse prevention and treatment through a systemwide response curriculum.

3. To develop and test a training program for high school students to assist them in organizing their high schools to prevent drug and alcohol abuse.

B. Objectives

1. Assessment of existing community planning and organization strategies and substance abuse programs for youth and review literature pertaining to effective program activities and organize a conference of public and private not-for-profit organizations implementing promising approaches to drug and alcohol abuse prevention and treatment;

2. Development of descriptive program operation manuals based on the assessment of selected planning and program strategies.

3. Development of a demonstration strategy and related training and technical assistance materials to facilitate the transfer of the operation manuals to communities on a systemwide basis.

4. Provision of training and technical assistance to demonstration sites.

III. Program Strategy

OJJDP planning and program development activities are guided by a framework which specifies four sequential phases of development: research, research and development, demonstration and dissemination. The framework guides the decision-making process regarding the funding of future phases of the program.

This is a demonstration initiative. The purpose of the demonstration phase is to transfer a method of analysis, planning and adoption of effective program strategies to the state and local level. The program will be conducted in four discrete, incremental stages. The stages consist of: (1) An assessment of effective anti-substance abuse programs for community systemwide planning; (2) a comprehensive description of the development, implementation and operation of selected program approaches and a systemwide planning strategy; (3) the development and implementation of a dissemination strategy that includes a development of training and technical assistance materials for communities interested in implementing the selected program and planning strategies; and, (4) the delivery of training and technical assistance at selected sites to demonstrate program models. All technical and subject matter portions of the program will be guided by recommendations of an Advisory Committee established specifically for the program. This advisory committee will provide advise and guidance to the recipient.

Each stage of the incremental program development process detailed below is designed to result in a complete and publishable product (e.g. final assessment report) which can be disseminated to the field. A decision is made at the completion of each stage, based on availability of funds, and the quality and utility of the products, whether to invest additional funds to complete the current stage or terminate the program.

Stage 1—Assessment

The first phase of the program consists of an assessment of the state-of-the-art of operational anti-substance abuse programs for youth and community based, systemwide (i.e. schools, community, law enforcement, courts and supervision) planning strategies. The literature review should address the extent of the problem and define the aspects of a communities' response to substance abuse. It should focus on the types of youth where the problem is most prevalent, risk factors relating to substance abuse and the system's responses to the affected youth. The purpose of the literature review is to identify the most definitive theoretical and empirical research findings in order to apply them to the review of existing programs and planning strategies, and the selection of the most promising approaches.

The grantee will develop criteria for identifying promising programs for prevention, intervention, adjudication and supervision relating to substance abuse and use the criteria to select programs for review and documentation. Information to be collected and assessed should include, at a minimum, the historical development of the program; conceptual framework/theoretical assumptions; number and type of youth served; program costs per unit of service and per client; evaluation findings; sources of funding; staffing requirements; and program approach to management and administration.

The assessment should provide the basis for selecting the programs most appropriate for national dissemination.

A significant part of the assessment will consist of the national conference of private, not-for-profit organizations who will explain their current and planned activities. There will be approximately 30 organizations present that represent the spectrum of anti-substance activity for youth.

An assessment will also be made of community planning strategies to identify techniques to facilitate planning activities on the local level as well as school based drug prevention activities for the STOP curriculum.

Activities

The major activities of this stage are:
1. Establishment of a program advisory committee;
2. Development of the assessment plan;
3. Conduct of the literature review;
4. Development of criteria for identifying promising programs and planning strategies;
5. Conduct the conference of private, not-for-profit organizations;
6. Identification and description of existing promising programs and planning strategies for the SRC and the STOP curriculum; and,
7. Preparation of an assessment report.

Products

The products to be completed during this stage are:
1. Assessment Plan—specifying, in detail, the approach and activities to be undertaken for each step of the assessment stage including a list of organizations which should attend the national conference;
2. Draft and final report on the results of the assessment which includes:
a. The literature review.
b. Description of operation promising program planning strategies for inclusion in the SRC and the STOP curriculum.
c. Recommendations to the Administrator, OJJDP, of programs which should be represented in the SRC.

Stage 2—Operations Manual Development Process

Upon successful completion of Stage 1, the assessment, the grantee will develop descriptive program operation manuals for the SRC and STOP. The activities and products of this stage will be based on the information generated as a result of the assessment. Appropriate technical and subject matter expertise will be utilized to design the operations manuals which detail the promising programs and planning strategies.

The operation manuals will provide guidance regarding identification of the appropriate target population; relationship of the program to other public and private youth and community serving agencies; funding; program organization and management; philosophy and content of the intervention; resource development; program monitoring; and evaluation of program effectiveness.

This information will become part of a training and technical assistance package for dissemination to the appropriate state and local agencies.

These manuals will be continually updated to include new programs as they develop programs such as OJJDP's "Promising Approaches for the Prevention, Intervention and Treatment of Illegal Drug and Alcohol Abuse Among Juveniles" and "Law Enforcement Handling of Drug Offenders."

Activities

The major activities of this stage are:
1. Preparation of a plan for developing the operation manuals;
2. Development of the operation manuals; and,
3. Review of the operation manuals by the Program Advisory Committee and subsequent revision as necessary.

Products

The products to be completed during this stage are:
1. Plan for operation manuals development which specifies, in detail, the approach and activities to be undertaken for each step, and the projected costs on a monthly basis; and,
2. Draft and final operation manuals.

Stage 3—Training and Technical Assistance

Upon successful completion of Stage 2 and with the approval of OJJDP, the grantee will transfer the program operation manual and related material into training and technical assistance manuals. Comprehensive training manuals that outline the major issues in juvenile substance abuse, detail the program design, and operations, must be developed to encourage and facilitate implementation of the promising programs.

The SRC training manual should be the focal point of the entire training and technical assistance dissemination strategy. The major audience will be policy makers on the community level involved in resource allocation and program development related to substance abuse. The manual should be designed for presentation in brief at the state judges workshops and for a more comprehensive presentation within participating communities. The manuals should also be designed for independent use in jurisdictions that do not participate in formal training seminars. Therefore, each manual should include a complete description of the promising programs and incorporate related policies and procedures. The manual should also contain instructions and supplementary materials for trainers to facilitate presentation, and assure understanding and successful adaptation and implementation of the promising programs.

The STOP training manual will be used to conduct the four day, residential training of 100 students from one of the TEAM sites. This manual will also be designed for presentation at the community meetings and for use by jurisdictions that wish to conduct the training on their own.

Activities

The major activities of this stage are:
1. Preparation of a plan for developing the demonstration strategy;
2. Development of the training and technical assistance materials;
3. Recruitment and preparation of the training and technical assistance personnel;
4. Participation and review by the advisory committee;
5. Testing of the SRC at two sites;
6. Implementation of the demonstration strategy:
a. Conduct the SRC summary version at the state judges workshops;
b. Present the SRC at the local level community meetings;
c. Conduct the STOP training at one test site.

Products

The products to be completed during this stage are:
1. Plan for the development of a demonstration strategy;
2. Identification of trainer and technical assistance personnel; and,
3. Draft and final training and technical assistance package—including the training curriculum manuals, and information materials.

Stage 4—Provision of Training and Technical Assistance to Demonstration Sites

During this stage, the grantee will provide site selection assistance to OJJDP to facilitate the selection of demonstration sites. The grantee will provide intensive training and technical assistance through the SRC to the sites to conduct analysis; reorient existing resources; use new resources effectively; seek a systemwide impact; and, employ new strategies. The grantee must develop and implement a dissemination strategy, to disclose information on promising programs and their evaluation results, if available, to policymakers and practioners at the state and local level.

Activities

The major activities of this stage are:
1. Assistance to OJJDP in review and selection of demonstration sites;
2. Provision of intensive training and technical assistance to demonstration sites; and,
3. Implementation of a dissemination strategy.

Products

The products to be completed during this stage are:

1. Plan for providing training and technical assistance to demonstration sites; and,

2. Refinement of the dissemination strategy to inform the field of the development of the program, and the products and results of this stage.

IV. Dollar Amount and Duration

Up to $260,000 has been allocated for the initial award. One cooperative agreement will be awarded competitively, and the initial period will be for 18 months. It is anticipated that this demonstration program will entail 18 months of program activities (i.e. 18 month project period), and consist of four phases (assessment, operational manual development, training and technical assistance development, and training and technical assistance to demonstration sites). The initial award will provide support for stages one through four.

V. Eligibility Criteria

Applications are invited from public and private not-for-profit organizations. The applicant must have experience in the development and delivery of training or technical assistance, in the design and implementation, or the management and operation of national juvenile justice or delinquency prevention programs. The applicant must also have experience in applied research or evaluation of adult or juvenile and delinquency prevention programs and policies. Special consideration will be given to applicants with experience in substance abuse prevention, intervention, treatment programs or research. In addition, the applicant must have the management structure, financial capability and facilities to effectively implement a project of this size and scope.

VI. Program Application Requirements

All applicants must submit a completed Standard Form 424, Application for Federal Assistance (SF 424), including a program narrative, a detailed budget, and a budget narrative. All applicants will be rated based on the information furnished in the program narrative as outlined in this section VI of the solicitation in Part IV, Program Narrative portion of the application. The Program Narrative shall not exceed 70 double-spaced pages in length.

In submitting applications which contain more than one organization, the relationships among the parties must be set forth in the application. As a general rule, organizations which describe their working relationship in the development of products and the delivery of services as primarily cooperative or collaborative in nature will be considered co-applicants. In the event of a co-applicant submission, one co-applicant must be designated as the payee to receive and disburse project funds and be responsible for the supervision and coordination of the activities of the other co-applicants. Under this arrangement each eligible organization would agree to be jointly and severally responsible for all projects funds and services. Each co-applicant must sign the SF–424 and indicate their acceptance of the conditions of joint and several responsibility with the other co-applicants.

Applications which include non-competitive contracts for the provision of specific services must include a sole source justification for any procurement in excess of $10,000.

A. Organizational Capability

Applicants must demonstrate that they are eligible to compete for this cooperative agreement on the basis of eligibility criteria established in Section V of this solicitation.

1. Organizational Experience: Applicants must concisely describe their organizational experience with respect to the eligibility criteria specified in Section V above. Applicants will be judged on how their organizational experience and capabilities will enable them to achieve the goals and objectives of this initiative. Applicants are invited to submit one prior work product of a similar nature.

2. Financial Capability: In addition to the assurances provided in Part V, Assurances (SF–424), applicants will be judged on their organizations ability to adequately manage and account for federal funds. To this end procedures to ensure this must currently exist or be established. Applicants who have not previously received Federal funds will be asked to submit a copy of the Office of Justice Assistance, Research and Statistics (OJARS) Accounting System and financial Capability Questionnaire (OJARS From 7120/1). Copies of the form will be provided in the application kit and must be prepared and submitted along with the application. Other eligible applicants may be requested to submit this form. All questions are to be answered regardless of instructions (section C.1.b. note). The CPA certification is required only of those applicants who have not previously received Federal funding.

B. Program Strategy and Goals

Applicants must describe their strategy and approach to meet the goals and objectives outlined for the program, including a clear and concise description of how they will accomplish each of the distinct phases of the program.

C. Program Implementation Plan

Applicants shall describe how they will allocate the available resources to implement the Systemwide Response program.

1. Applicants must furnish an implementation plan which addresses the activities and functions described in Section III. of the solicitation. The plan must include:

a. An annoted organizational chart depicting the roles and describing the responsibilities of key organizational/ functional components;

b. A list of key personnel responsible for managing and implementing the six major elements of the program. Applicants must present detailed position descriptions, qualifications, and selection criteria for each position. This documentation and individuals' resumes may be submitted as appendices to the application; and,

c. A concise discussion of the coordination and administration issues related to the program design and how their program strategy would address these issues.

2. Applicants must present a concise discussion of the major substantive—i.e., training and technical transfer—issues involved in achieving the goals of the program and how these issues will be addressed in the development of products specified in Section III. and indicate the anticipated cost schedule per month for the entire period.

3. Applicants must provide a time-task plan for the 18-month period, clearly identifying major milestones. This must include designation of organizational responsibility and a schedule for the completion of the tasks and products identified in Section III.

D. Program Budget

Applicants shall provide a 18-month budget with a detailed justification for all costs, including the basis for computation of these costs. Applications submitted by co-applicants and those containing contracts must include detailed budgets for each organization's expenses.

VII. Procedures and Criteria for Selection

Applications will be rated based on the extent to which they meet the

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following weighted criteria. These criteria fall into four groups: the demonstrated capability to meet the goals of the project on the part of the organization applying; the quality of the staff chosen to direct the project, scored in conjunction with a review of staff position descriptions and a project plan including an organizational plan for project staff; a product development plan; and a budget narrative. The selection criteria will be consistently applied to all applicants.

A. Organizational Capability (40 Points)

1. The extent and quality of organizational experience in the development, delivery, or coordination of adult or juvenile justice related research, training, or technical assistance which have been national in scope or impact. (10)

2. The presence and extent of adequate fiscal controls and accounting procedures to ensure that the applicant can effectively implement a project of this size and scope, and to ensure the proper disbursal and accounting of Federal funds. (10)

3. The calibre of staff identified to manage and implement the program including staff to be hired through contracts. (10)

4. The clarity and appropriateness of position dispositions, required qualifications and selection criteria relative to the specific functions set out in the Implementation Plan. (10)

B. Proposed Strategy (20 points)

Understanding of the nature of the program area and the soundness of the approach to each stage of the program development process for meeting the goals and objectives; and the potential utility of proposed products.

C. Program Implementation Plan (25 Points)

Appropriateness of allocation of resources to accomplish the goals and objectives of the program within the 18-month project period. Particular attention will be paid to the clarity and reasonableness of the time-task plan which identifies organizational, and individual roles and responsibilities for the completion of significant tasks and development of products.

D. Budget (15 Points)

Applicants must include an 18-month budget with a detailed narrative justifying the costs as specified in section VI.D. Applications will be rated based on the cost competitiveness, completeness, reasonableness and appropriateness of the budget in relation to the tasks to be accomplished.

Applications will be evaluated by a peer review panel. The application which receives the highest total score on the above criteria will be recommended for funding to the Administrator, OJJDP, provided that required changes in the application can be successfully negotiated. The final decision will be made by the OJJDP Administrator.

VIII. Submission Requirements

One signed original and three copies of the application must be mailed or delivered to the Office of Juvenile Justice and Delinquency Prevention (OJJDP), Room 742, 633 Indiana Avenue, NW., Washington, DC 20531, by 5:30 p.m. on September 14, 1987. Applications mailed to the above address by certified or registered mail, return receipt, must be postmarked no later than September 14, 1987. Date of receipt is evidenced by the U.S. Postal Services postmark or Express Mail time and date. The necessary forms for applications may be obtained by writing OJJDP. Questions regarding the solicitation may be directed to John E. Dawson, Jr., (202)724–5914, or at the above address.

IX. Civil Rights Compliance

A. All recipients of OJJDP assistance including any contractors, must comply with the non-discrimination requirements of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended: Title VI of the Civil Rights Act of 1964; section 504 of the Rehabilitation Act of 1973 as amended; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; and the Department of Justice Non-Discrimination Regulations (28 CFR Part 42, Subparts C, D, E, and G).

B. In the event of a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office of Civil Rights Compliance (OCRC) of the Office of Justice Programs.

C. Applicants shall maintain such records and submit to the OJJDP upon request timely, complete and accurate data establishing the fact that no person or persons will be or have denied or prohibited from participation in benefit of, or denied or prohibited from obtaining employment in connection with any program activity funded in whole or part with funds made available under this program because of their race, national origin, sex, religion, handicap or age. In the case of any program under which a primary recipient of Federal funds extends financial assistance to any other recipient or contracts with any other persons or groups, such other recipient, persons or groups shall also submit compliance reports to the primary recipient as may be necessary to enable the primary recipient to assure its civil rights compliance obligations under any grant award.

Verne L. Speirs,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

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Thursday
August 20, 1987

Part III

Department of Transportation

Research and Special Programs Administration

49 CFR Part 172

Emergency Response Communication Standards; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 172

[Docket No. HM-126C; Notice 87-10]

Emergency Response Communication Standards

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: In this notice, RSPA solicits comments on proposed requirements for additional emergency response information on shipping papers and placement of response action information in all places, including vehicles, where hazardous materials are transported in commerce. This action is necessary because RSPA believes there is a need to improve the communication of accurate information concerning hazardous materials when they are involved in incidents during transportation. This proposal is intended to improve emergency response communication and the availability of information concerning the handling of hazardous materials during incidents.

DATE: Comments must be received on or before September 21, 1987.

ADDRESSES: Comments: Address comments to Dockets Branch (DHM-33), Office of Hazardous Materials Transportation, RSPA, U.S. Department of Transportation, Washington, DC 20590. Comments should be submitted, when possible, in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard. The Dockets Branch is located in Room 8426 of the Nassif Building, 400 Seventh Street SW., Washington, DC. Dockets may be reviewed between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Lee Jackson (202) 366-4488, Office of Hazardous Materials Transportation, RSPA, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background

On March 16, 1984, RSPA published an advance notice of proposed rulemaking [ANPRM; Notice No. 84-2] and a notice of public hearing under Docket No. HM-126C [49 FR 10048]. This ANPRM, entitled "Required Use of Emergency Response Guidebooks and Material Safety Data Sheets" requested comments on the benefits and consequences of requiring the use of the Emergency Response Guidebook (ERG) or Material Safety Data Sheets (MSDS) to communicate information on the hazards of materials while they are moving in commerce. The ANPRM was intended to address communication needs during emergencies which involve the release off hazardous materials as well as what must be known about hazardous materials when they are in transport vehicles or in-transit storage facilities. The ANPRM was prepared as a result of a safety recommendation issued by the National Transportation Safety Board (NTSB) and a petition RSPA received from the American Trucking Association (ATA). Based on an accident involving hazardous materials which occurred near Odessa, Delaware on October 13, 1982, the NTSB recommended that DOT

". . . Determine, by mode of transportation, the feasibility of requiring comprehensive product-specific emergency response information such as Material Safety Data Sheets, to be appended to shipping documents for hazardous materials transported in bulk quantities, giving particular attention to the early emergency response problems posed by n.o.s. commodities in transit." The acronym "n.o.s." is an abbreviation for "not otherwise specified". If the hazardous materials tables, i.e., 49 CFR 172.101 or 172.102, do not specifically list the name of a material and the material satisfies the definition of a hazardous material under the Hazardous Materials Regulations (HMR), the shipper is required to select an appropriate proper shipping name from the general descriptions which appear in those tables. A detailed discussion of the background and conclusions of the NTSB recommendation is contained in the ANPRM.

Prior to NTSB's issuance of the Safety Recommendation, RSPA received a petition from the ATA which requested ". . . DOT to require, by rule, motor carriers involved in the transportation of hazardous materials maintain a copy of the Emergency Response Guidebook (Guidebook), DOT P 5800.3, at each motor carrier facility where hazardous materials shipments are loaded or unloaded from vehicles." The ATA petition (P-822), appeared in its entirety in the ANPRM.

Since the Odessa, Delaware incident, there have been other incidents where emergency response personnel have encountered problems identifying the hazards and composition of the hazardous materials involved. In 1984, the NTSB investigated an incident in Orange County, Florida, where ". . . vapors escaping from a cargo tank containing waste acids caused the evacuation of a 3-square-mile area and the injury of 12 persons." The shipper of this material had used the shipping name "Waste, acid liquid, n.o.s." for the waste material. During this incident, emergency response personnel experienced problems obtaining specific information about the composition of the waste acids being transported. As a result of its investigation of this incident, the NTSB issued Safety Recommendation I-85-10 to RSPA on May 16, 1985:

> Determine the adequacy of general shipping names on shipping papers for hazardous wastes and the need for additional information, such as technical and chemical group names, to better inform emergency response personnel about the composition and the hazards of the material being shipped.

In 1985, a similar incident occurred in Fairfax County, Virginia when a leak was discovered in a cargo tank that was transporting corrosive hazardous waste on the Washington, DC beltway. As a result of this leak, a large section of the beltway was closed for nine hours to all traffic, several thousand vehicles were stranded for hours and an estimated thirty-four thousands vehicles were rerouted. As a precaution, the fire department evacuated about 600 people who were located within a half-mile radius of the leaking vehicle. In response to this incident, the NTSB made some technical recommendations and also reiterated Safety Recommendation I-85-10 which was issued for the Orange County, Florida incident.

The purpose of the ANPRM (Docket No. HM-126C) was to not only solicit comments on the benefits and consequences of requiring the use of the ERG or MSDS to communicate information on the hazards of materials while they are moving in commerce, ". . . but also to ascertain what must be known about them when they are present in transport vehicles (including vessels and aircraft), and facilities associated with transportation such as terminals, piers, warehouses and other places where hazardous materials may be kept during the course of transportation." In addition to requesting comments on these matters, RSPA requested that commenters respond to several questions which are repeated as follows:

1. What material specific information is provided by a MSDS that would mitigate the potential consequences of a discharge beyond the type of information provided by the ERG and CHEMTREC, and how quickly would that information be needed? In

commenting, please take into account that the information on file at CHEMTREC is based on MSDS's provided by manufacturers and that CHEMTREC can provide information that is not contained in the ERG e.g., flash-point, boiling point, flammable limits, and vapor density. Also, CHEMTREC has access to shippers and the CIS for more detailed information on hazardous materials. If comments are presented concerning the value of TLV (threshold limit value) data, it is requested that supporting information be provided in support of how such data (TWA—time weighted average; STEL—short-term-exposure limit; C—ceiling) can be effectively applied in the transportation environment. For example, what type of monitoring equipment could be reliably used to make an assessment of a spill area? Should MTP imply that confidence may be placed in use of such equipment? Up to the present time, it has been MTB's opinion that this approach would not be appropriate; therefore, current ERG guidance for any cargo (not only regulated hazardous materials) is "Move And Keep People Away From Incident Scene; Do Not Walk Into Or Touch Any Spilled Material; Avoid Inhaling Fumes, Smoke and Vapors Even If No Hazardous Materials Are Involved; Do Not Assume That Gases Or vapors Are Harmless Because Of Lack Of Smell".

2. (a) Should DOT consider discontinuing distribution of the ERG in favor of MSDS's accompanying shipments of hazardous materials? (b) Should consideration of MSDS's be limited to bulk shipments as suggested by NTSB? In commenting, please consider the possibilty of undesirable results in applying both systems to transportation, e.g., the different language contained in basic health threat information as well as differing response information. In preparing for issuance of this notice, MTB reviewed 29 CFR 1915.97 relative to preparation of U.S. Department of Labor Form OSHA 20 and the Occupational Safety and Health Administration's (OSHA) final rule amending 29 CFR Part 1910 [48 FR 53280; November 25, 1983]. The information specified for inclusion in MSDS's (§ 1910.1200(g)) does not require manufacturers and importers to use standard language for either the communication of risk or the mitigation of risk. To a significant degree this is overcome by training (§ 1910.1200(h)) required to be given by employers in Standard Industrial Classification Codes 20 through 39. (c) To what extent could and should DOT rely on training of emergency response and transportation personnel in use of MSDS information rather than the ERG, taking into account that more than 180,000,000 shipments of hazardous materials are made annually in the United States?

3. If, following review of the comments on this notice, MTB decides to propose a mandatory placement of ERG's in transportation facilities: (a) How should MTB describe (define) those facilities in the regulations? (b) Should ERG's be required in vehicles used to transport hazardous materials, as suggested by IBT? (c) What would be the means of acquisition of the ERG's? (d) How much time should be provided for acquisition and implementation? (e) Could such a requirement be implemented without having an effect on necessary revisions and updates of the ERG? (f) In order for MTB to assess the cost of such a program in a regulatory analysis, how many vehicles (including rail), vessels, aircraft, and terminal facilities would be subject to such a requirement (taking into account the last quoted paragraph of IBT's comments above)?

4. (a) Is there another way to deal with ". . . emergency response problems posed by n.o.s. commodities . . . " as discussed by NTSB in Recommendation I-83-2? On May 22, 1980 MTB published a final rule under Docket HM-126B (preamble page—45 FR 34565) setting forth requirements for more specific identification of poisons, including those covered by n.o.s. entries in § 172.101. The purpose of the rule, which is set forth in § 172.203(k), is to make identification of poisons more specific for immediate response purposes. (b) Should MTB consider expanding the requirements to hazardous materials of all classes? Commenters should note that the present rule does not require the technical names of compounds or principal constituents if the entry on a shipping paper (in association with the n.o.s. entry coming from § 172.101) is a name in the NIOSH Registry (RTECS—Registry of Toxic Effects of Chemical Substances) which contains more than 59,000 substance entries. The reason for providing this option is the problem emergency response personnel could have in dealing with long and complex chemical names (with dozens of letters and numbers in some cases) and the fact that RTECS is a component of the NIH/EPA CIS computer system that may be accessed by CHEMTREC at any time specific identification of a material is necessary. At the time the rule was promulgated, MTB had determined that it was only essential for materials meeting the defintion of a Class B poison (regardless of class precedence). Also, a different rule for identification of hazardous substances in mixtures was issued at the same time under Docket HM-145B. (c) What would be the burden of such a requirement? and (d), Can or should such a requirement be construed as deriving the same benefit as possession of a MSDS during transportation?

Comments Made to the ANPRM

RSPA received more than seventy comments to the advance notice of Docket HM-126C. Comments were received from all segments of the transportation and chemical industries as well as from some Federal and State agencies. Several fire departments and three emergency response organizations also submitted comments. Of the comments received, only two commenters supported the NTSB recommendation that an MSDS accompany every bulk shipment of hazardous materials. Several commenters stated that some of the information contained on a MSDS might be useful; however, they believed that the ERG should be maintained as the primary reference. It was stated that n.o.s. descriptions frequently pose particular problems to emergency response efforts during hazardous materials incidents because difficulties occur in identifying the specific properties of the hazardous materials involved. Discussion of these points, as well as RSPA's response to the comments, follows.

There was widespread support expressed in the comments for use of the ERG. Most of the commenters stated that the ERG is a very effective way of communicating fundamental hazard information to emergency response personnel. Because of this, many commenters thought the ERG should be required in transportation facilities. One commenter pointed out that if RSPA does require the placement of the ERG in transportation facilities, these facilities should be narrowly defined so that copies of the ERG are only required in motor carrier facilities where freight is processed through the terminal as part of the delivery function and in terminals of bulk and package carriers.

RSPA received comments concerning the MSDS from the Occupational Safety and Health Administration (OSHA) of the U.S. Department of Labor. In their comments to the ANPRM, OSHA made the following statement about the MSDS:

. . . while material safety data sheets are frequently available, practices are not uniform, and the quality of the information on the MSDS varies significantly.

The ATA supported use of the ERG rather than the MSDS. In a statement presented a public hearing held on HM-126C, ATA stated:

. . . In the normal course of transportation services, our terminal people are not exposed directly to hazardous materials being transported. Their contact is at most indirect and for many materials occurs infrequently and sporadically. Their situation is significantly distinct, therefore, from workers in most other industries who, in using such commodities in the performance of their occupational tasks, come into actual contact with the hazardous materials. Because of this, the routine informational needs of the respective worker groups regarding hazardous materials are also distinct.

The International Brotherhood of Teamsters has submitted a letter to DOT, dated January 12, 1984, which was made a part of this Advance Notice of Proposed Rulemaking. In their letter, the Teamsters extended their support of ATA's petition, for which we are most grateful. However, the Teamsters have called upon DOT to refrain from preempting state and local requirements which call for Material Safety Data Sheets, or similar documents, to be made available to terminal workers who handle hazardous materials as part of a transportation movement. While the Teamsters expressly acknowledge that acute health hazard

information is provided in the Emergency Response Guidebook, they state that unlike the DOT Guidebook, "MSDS provide information on chronic and long latency health effects from exposure to a hazardous material." Several comments in response are warranted here.

First, it should be understood that our terminal workers are not, as some would believe, involved in the business of emergency response. Whenever an incident involving hazardous materials does occur, our workers have been instructed to secure the accident scene, to identify the material involved, to notify the appropriate emergency response personnel and, most importantly, to avoid all direct contact with the materials.

Direct contact does, however, occasionally occur. In such instances, information concerning the acute hazards posed by the materials is what is required. The Emergency Response Guidebook provides this information in a format which is much more effective and efficient than any Material Safety Data Sheet, and this is what is critical to the facilitation of prompt and effective first-aid . . .

. . . The question posed by our petition is not whether the worker is entitled to receive such information—our industry agrees that such information should be available—but whether it should be provided routinely with every shipment. For exposure to spills, only acute hazard information needs to be immediately available. Subsequent contact directly with the shipper or with any of the several support services of industry and government will generate information regarding the chronic health effects, which can then be provided to the worker in the form of a Material Safety Data Sheet or any other means the shipper elects to make it available. This can occur today. Thus to suggest that Material Safety Data Sheets be present at each motor carrier terminal for any hazardous materials that may pass through in the course of a year is costly, burdensome and completely unnecessary.

Additionally, the Teamsters have asked DOT to require motor carriers to provide an Emergency Response Guidebook on board each vehicle transporting hazardous materials. Aside from the excessive costs this would impose upon motor carriers, we do not believe that the availability of an Emergency Response Guidebook on board each vehicle is conducive to safety. Our drivers receive the same instructions governing accidents as do our terminal workers: secure the accident scene; identify the hazardous materials being transported; notify the emergency response personnel; and avoid contact with the materials. By making the Guidebook readily available, a driver may be encouraged to initiate some sort of direct emergency response rather than wait for the trained experts.

With respect to Safety Recommendation I–83–2, issued November 29, 1983 by the National Transportation Safety Board, we do not see any justification for it.

We agree with DOT that the acute health hazard information contained in the Emergency Response Guidebook and the Materials Safety Data Sheet are virtually the same. Therefore, we cannot see how the presence of the Materials Safety Data Sheet would be of any greater assistance than the Emergency Response Guidebook for dealing with this accident. If any fault can be attributed to the handling of the onscene response in Odessa, Delaware, it must be directed at the emergency responders rather than a failing of the DOT system or the lack of a Material Safety Data Sheet.

Each guide in the Emergency Response Guidebook directs attention to the Chemical Transportation Emergency Response Center—CHEMTREC. This service of the Chemical Manufacturers Association provides emergency response information developed by the chemical industry and also establishes a direct link between the responders at the accident scene and the manufacturer of the product involved in the accident. This approach is far more effective than depending on the presence of Material Safety Data Sheets . . .

In their comments to Docket No. HM–126C, the Chemical Manufacturers Association stated:

. . . The use of an MSDS as an emergency response guide is inappropriate for four reasons. First, the MSDS was not developed for that purpose and does not contain all the information necessary for the first responder. (The hazard communication standard recently promulgated by the Occupational Safety and Health Administration specifies the information manufacturers must provide on the MSDS—29 CFR 1910.1200(g), 48 Federal Register 53343). For example, recommendations to cool containers or knock down vapors are rarely found on an MSDS. Second, much of the information on a typical MSDS is not used in emergency response. It would complicate the responder's job at the scene if he had to determine which part of an MSDS to use. Third, the MSDS requires knowledgeable interpretation of technical data, which could increase the possibility of misinterpretation under stress conditions—such as during an incident. Fourth, the probability of using the wrong MSDS in an emergency is high because there may be a number of them in the cab (perhaps from previous loads or from a multiproduct load), and because the MSDS uses a trade or chemical name for the product instead of the Department of Transportation (DOT) shipping description.

We acknowledge that in some cases personnel at the scene of an incident need more information than is provided in the ERG. That is precisely why CHEMTREC was established and why DOT recommends a call to CHEMTREC for detailed information and assistance. The information provided by CHEMTREC to the caller includes the essential information extracted from the MSDS, put in consistent terminology and language. Since CHEMTREC synthesizes the best information from a number of similar MSDS's it may receive from several producers of the same product, the responder obtains the best combined information from the individual sheets by calling CHEMTREC. Since CHEMTREC provides detailed, synthesized information, the use of this service should be encouraged rather than seeking to establish a new system that would require the transporter or first responder to cull the information from the MSDS's (which sometimes do not contain sufficient response advice).

In summary, we do not believe that an MSDS is a good or efficient substitute for the ERG. We do believe that the ERG, used in conjunction with the CHEMTREC system, can provide properly trained personnel with necessary information to handle an emergency. CMA is committed to that approach and is actively working to improve the understanding of the emergency response community about the CHEMTREC service.

Comments received in response to the question of whether RSPA should require mandatory placement of the ERG in transportation facilities were mixed. Some commenters expressed support for requiring the ERG in vehicles as well as in transportation facilities. A few commenters thought it was unnecessary to require copies of the ERG in vehicles (see ATA comments quoted herein) or in facilities that handle hazardous materials. These commenters stated that proper utilization of CHEMTREC and well trained emergency response personnel should suffice when responding to emergency situations involving hazardous materials. Some commenters stated that the ERG should only be required in facilities and that requiring the placement of the ERG in each vehicle would be cost-prohibitive and contrary to safety. One of these commenters stated that unless advance instruction on use of the ERG was provided to each driver, the possibility exists that a driver may take improper actions during a hazardous material incident. RSPA intends to address the training of transportation workers in a separate rulemaking.

Most of the comments received regarding the source of acquisition for the ERG stated that the ERG should be available through Government Printing Office Bookstores and commercial suppliers. These commenters also stated that if use of the ERG was required by RSPA, it would take approximately twelve months to acquire ERG's and comply with this requirement.

Most commenters believed that RSPA could require use of the ERG without affecting the necessary revisions which have to be made continually to the guide to keep it current. Two commenters stated that if the ERG becomes a regulatory document, problems may occur revising it because all revisions would have to be accomplished under the purview of the Administrative Procedure Act. This might hamper RSPA's current ability to make timely revisions and amendments to the ERG. Another commenter suggested that

RSPA consider establishing a two-volume ERG. The first volume of the ERG would contain a cross-reference of ID numbers, shipping names and guide numbers, and the second volume would contain the detailed procedures which should be followed during emergencies.

Concerning the number of facilities that would require copies of the ERG if such a requirement were implemented, the ATA stated in their comments that ". . . It would be impossible to identify the exact costs of compliance with a requirement for maintaining ERGs at each transportation facility. The Bureau of Motor Carrier Safety estimates that there are approximately 190,000 motor carriers . . .". ATA estimates that if a copy of the ERG were required in each facility involved in hazardous materials transportation, half of the carriers and many of their terminals would have to purchase the ERG. They stated that the cost to comply with such a requirement could approach one million dollars. ATA opposed RSPA requiring a copy of the ERG in each vehicle.

Several comments were received concerning the NTSB recommendation that particular attention be given to the emergency response problems posed by n.o.s. commodities in transit. For those commodities, more than half of the comments received to this question supported RSPA requiring that the technical name of a material be shown in parentheses on the shipping paper in association with the proper shipping name. Many commenters thought that showing the technical name on shipping papers was better than an MSDS accompanying the shipment. One commenter, who opposed RSPA requiring the technical name be shown on the shipping paper for n.o.s. commodities, stated that imposing such a requirement would result in a significant increase in paperwork burdens and that taking such action could actually decrease the level of safety because it may increase the number of errors and omissions on shipping papers.

II. Proposed Rule

Based on RSPA's review of the comments received to the ANPRM of Docket No. HM–126C and its own initiative, RSPA proposes improved emergency response communication requirements in three general areas. First, RSPA proposes to require that certain emergency response information be available concerning hazardous materials during their transportation. This information must be provided to all persons involved with the hazardous materials during their transportation. As a minimum, a copy of the ERG, or other appropriate guidance, must be maintained which communicates what immediate emergency action should be taken in the event of an incident. RSPA believes that providing this information should increase the level of safety of persons involved in hazardous materials transportation and will enhance emergency response efforts during hazardous material incidents. Second, RSPA is proposing to require that shipping papers for hazardous materials include display of a 24-hour emergency response telephone number. The number provided could be the number of an individual or an organization that is fully cognizant of the hazards of the particular hazardous materials being transported. Under certain conditions, displaying the CHEMTREC number on the shipping paper may satisfy this requirement. Third, RSPA is also proposing that "n.o.s." discriptions on shipping papers for hazardous materials include the technical name of the material in parentheses immediately following the proper shipping name. Currently, a technical name must be shown on the shipping paper immediately following the proper shipping name if (1) the material is being offered for transportation by vessel to any country outside the United States (see § 172.203(i)(2)), (2) the material is a hazardous substance (see § 172.203(c)) or, (3) the material is a poison (see § 172.203(k)). In addition, corresponding markings would be required on all non-bulk packagings.

RSPA believes that each of the proposals for improved identification of materials will enhance emergency response efforts during hazardous material incidents. A discussion of each proposal follows.

A. Emergency Response Information

RSPA proposes to establish a new Subpart G in Part 172. The rules in this Subpart will be entitled "EMERGENCY RESPONSE INFORMATION" and will specify who is required to maintain emergency response information and what type of emergency response information will be required.

Based on the comments RSPA received to the ANPRM, which emphasized how important it is to have first-hand, up-to-date, technical and emergency response information during hazardous material incidents, RSPA is proposing that written emergency response information be maintained in vehicles and facilities by all carriers and other businesses that handle hazardous materials during the course of transportation. During the first few minutes following a hazardous material accident or incident, the presence of information on the hazards of the material and the immediate precautions and actions to be taken could make the difference between a minor and a major event.

B. Telephone Contact for Emergency Response Information

RSPA proposes to include in the new Subpart G to Part 172 a requirement that the person offering hazardous material for transportation provide a twenty-four hour telephone number of a person having detailed knowledge, or having immediate access to a person with detailed knowledge, of the hazardous characteristics of the hazardous material being shipped. This person must have the knowledge and ability to communicate and assist in mitigation of an incident to a much greater degree than could be expected of the immediate information carried in a vehicle or placed in a facility. As proposed, a telephone number such as that of CHEMTREC could be used on the shipping paper to satisfy this requirement if the shipper has previously provided CHEMTREC with information on the properties and hazards of the hazardous materials being shipped. RSPA believes that allowing the use of an alternate telephone number to satisfy the requirement should not detract from the intended purpose of this proposed requirement, since the alternate number provided must also be manned at all times by an individual with detailed knowledge, or having immediate access to a person with detailed knowledge, of the hazard characteristics of the hazardous material being offered for transportation.

C. N.O.S. Descriptions/Generic Descriptions

RSPA also proposes to require that shipping papers for hazardous materials which are described under n.o.s. descriptions include the technical name of the material in parentheses immediately following the proper shipping name. For mixtures which are described under n.o.s. descriptions and which contain two or more hazardous materials, it is proposed to require that shipping papers display the technical names of the two components most predominantly contributing to the hazard or hazards of the mixture. These technical names would have to be shown in parentheses immediately following the proper shipping name. RSPA believes that requiring identification of no more than two components on the shipping paper for materials described under n.o.s.

descriptions will be effective in virtually all transportation incidents and will not be a substantial burden on shippers when compared with the recommendation that each constituent and its percentage of concentration be shown on the shipping paper.

It should be noted that RSPA published an NPRM under Docket HM-181 on May 5, 1987 [52 FR 16482]. In Docket HM-181, RSPA also proposes to require that shipping papers contain the name of the constituent or constituents of the material when an n.o.s. description is used. Readers should note the similarity between what is proposed in this rulemaking regarding display of technical names for materials described under n.o.s. descriptions and what is being proposed for these materials in Docket HM-181. RSPA intends to take action via this rulemaking, due to the subject matter specifically addressed herein.

The hazardous materials tables in §§ 172.101 and 172.102 do not contain the specific names of all hazardous materials. Therefore, many hazardous materials are described on shipping papers under generic or n.o.s. descriptions. Although use of a generic or an n.o.s. description is necessary, for practical reasons, RSPA recognizes that there may be problems during emergencies identifying the composition and special hazards of materials which are shown on the shipping paper under these descriptions. Recognizing this, RSPA believes that requiring the technical name of the material to be shown on the shipping paper for a hazardous material described under an n.o.s. description will improve emergency response communication when a hazardous material incident occurs. RSPA also proposes to require that the technical name of the material be marked on non-bulk packagings which contain hazardous material described under n.o.s. descriptions. Currently, this marking is required on packages of hazardous materials which are offered for transportation by vessel.

III. Relationship to SARA

Relationship to SARA

RSPA believes that use of the emergency response information proposed in this NPRM, in association with shipping paper information presently required, will provide a means for compliance in part with Titles I and III of the Superfund Amendments and Reauthorization Act (SARA) of 1986.

There is no doubt that large numbers of persons in the transportation industry are, or will be, involved in activities subject to section 126 of SARA (Title I) and OSHA implementing regulations found in 29 CFR, Part 1910. Section 1910.1200 of the OSHA interim final rule (51 FR 45654; December 19, 1986) states, inter alia, "This section covers employers and employees engaged in the following operations . . . (v) Emergency response operations for releases of or substantial threats of releases of hazardous substances and post-emergency response operations for such releases." Included in the definition of hazardous substance in the same section is ". . . any substance listed by the U.S. Department of Transportation and regulated as hazardous materials under 49 CFR 172.101 and appendices . . ." It should be noted that OSHA refers to the ERG and CMA's CHEMTREC as resources for the development of emergency response plans in Appendix C to § 1910.120.

The emergency notification requirements of section 304 of SARA Title III apply to transportation, and storage incident to such transportation (e.g. at terminals, warehouses, pier facilities, railyards and sidings, and airport terminals), as well as fixed or stationary facilities that are not (all or in part) transportation facilities. Since the listing of materials subject to section 304 notification requirements is going to be amended to include all hazardous substances presently (and in the future) subject to the HMR, RSPA is not providing a detailed discussion of the materials subject to the notification requirements. Interested persons should review the final rule issued by EPA on April 22, 1987 (52 FR 13391) for this information.

Concerning transportation, and storage incident to transportation, EPA's rule implementing section 304 of SARA for all facilities (transportation and non-transportation) is quoted from 40 CFR 355.40 (52 FR 13396) in part as follows:

(b) *Notice requirements.* (1) The owner or operator of a facility subject to this section shall immediately notify the community emergency coordinator for the local emergency planning committee of any area likely to be affected by the release and the State emergency response commission of any State likely to be affected by the release. If there is no local emergency planning committee, notification shall be provided under this section to relevant local emergency response personnel.

(2) The notice required under this section shall include the following to the extent known at the time of notice and so long as no delay in notice or emergency response results:

(i) The chemical name or identity of any substance involved in the release.

(ii) An indication of whether the substance is an extremely hazardous substance.

(iii) An estimate of the quantity of any such substance that was released into the environment.

(iv) The time and duration of the release.

(v) The medium or media into which the release occurred.

(vi) Any known or anticipated acute or chronic health risks associated with the emergency and, where appropriate, advice regarding medical attention necessary for exposed individuals.

(vii) Proper precautions to take as a result of the release, including evacuation (unless such information is readily available to the community emergency coordination (sic) pursuant to the emergency plan).

(viii) The name and telephone number of the person or persons to be contacted for further information.

(3) As soon as practicable after a release which requires notice under (b)(1) of this section, such owner or operator shall provide a written follow-up emergency notice (or notices, as more information becomes available) setting forth and updating the information required under paragraph (b)(2) of this section, and including additional information with respect to:

(i) Actions taken to respond to and contain the release.

(ii) Any known or anticipated acute or chronic health risks associated with the release, and,

(iii) Where appropriate, advice regarding medical attention necessary for exposed individuals.

(4) Exceptions. (i) Until April 30, 1988, in lieu of the notice specified in paragraph (b)(2) of this section, any owner or operator of a facility subject to this section from which there is a release of a CERCLA hazardous substance which is not an extremely hazardous substance and has a statutory reportable quantity may provide the same notice required under CERCLA section 103(a) to the local emergency planning committee.

(ii) An owner or operator of a facility from which there is a transportation-related release may meet the requirements of this section by providing the information indicated in paragraph (b)(2) to the 911 operator, or in the absence of a 911 emergency telephone number, to the operator. For purposes of this paragraph, a "transportation-related release" means a release during transportation, or storage incident to transportation if the stored substance is moving under active shipping papers and has not reached the ultimate consignee. [RSPA Note: the 40 CFR 355.20 definition of facility states "For purpose of emergency release notification, the term includes motor vehicles, rolling stock and aircraft." pursuant to SARA Section 329.]

The rules proposed in this NPRM will, if adopted, greatly assist carriers in complying with the notification requirements of section 304 of SARA. While the various information elements proposed herein are not identical to those in section 304 of SARA and the EPA rule quoted above, for all practicable purposes compliance can be achieved taking into account that

several of the SARA reporting elements are qualified to require information based on a person's knowledge at the time of, and following, a release. Some knowledge is required to accomplish the intent of section 304 of SARA (e.g. the chemical name or identity of any substance involved in the release, the names and telephone numbers of persons to be contacted for further information) and some will only be acquired during the notification process (e.g. the time and duration of the release).

Since section 304 of SARA requires notification be made to the "community emergency coordinator", RSPA firmly believes that the approach it is taking in this NPRM will be effective in carrying out the intent of the requirement as it relates to transportation. An alternative would be to require carriage of Material Safety Data Sheets (MSDS) with all shipments, thereby removing the flexibility provided in this proposal. Considering the complex and dynamic nature of our transportation system, such a requirement would not only be extremely burdensome but would likely fail in accomplishing the main purpose of this rulemaking action (i.e., providing immediate emergency response information and quick access to more detailed information), and the main purpose of section 304 of SARA (i.e., reporting). The basis for this view is (1) the divergence of information that may be presented in a MSDS for the same material, which may mislead or confuse transportation workers when they handle the same material for different consignors, (2) the resulting generation of millions of MSDS copies that would be necessary for an estimated 200 million hazardous materials shipments per year raising serious doubt as to their utility in individual cases when really needed, and (3) the fact that MSDS are primarily intended for use in fixed facilities (in association with required training as required by OSHA; 29 CFR 1910.1200(h)). In a fixed facility, an employer may exercise some discretion as to the appropriate MSDS to use when more than one is available for the same material. In addition, while RSPA is not in a position to comment on the difficulties some employers at fixed facilities have experience in providing material-specific training pertaining to the materials consumed, produced or processed in their facilities, it is inconceivable that equivalent training could be provided to transportation workers since it is estimated that more than 30,000 different hazardous materials are offered in commercial quantities for transportation in commerce. For these reasons, in addition to those presented in the CMA comments quoted earlier in this preamble, RSPA is not proposing adoption of the MSDS as the mechanism for immediate emergency response communication.

IV. Burden of Proposal

RSPA is aware of the potential burdens of this proposal and believes there are a number of opportunities available to offset those burdens. For example, primary producers of hazardous materials (and their trade associations) could provide significant assistance to their customers (e.g., distributors) in providing them with the appropriate emergency response information, including identification of a 24-hour telephone number of an organization that has detailed information on a particular material. Carrier associations could assist their members by making the information available in the form of DOT's Emergency Response Guidebook or in any other form suitable for compliance with the proposed requirements.

Another aspect relates to the thousands of small entities that transport single products such as gasoline, propane, ammonia, refrigerant gas, ammonium nitrate fertilizer, and explosives in private motor vehicle transportation. Several years ago, RSPA advised a trade association that a permanent (plastic coated) shipping paper may be carried in propane delivery vehicles to satisfy the requirement for having a shipping paper. RSPA intends to follow this same policy for the emergency response information proposed in this notice (§ 172.602). For example, rather than requiring carriage of DOT's Emergency Response Guidebook, you could satisfy this requirement by displaying a reprint of Guide 22 from DOT's Emergency Response Guidebook on the reverse side of a shipping paper for propane to accomplish compliance with the proposed rule. However, reference to this method of compliance assumes conformance with the requirement to provide telephone numbers, as proposed in § 172.604.

V. Review by Sections

Section 172.203. It is proposed to revise this section by removing paragraph (i)(2) and redesignating paragraph (i)(3) as paragraph (i)(2). Paragraph (i)(3) of this section would be reserved. The requirements of paragraph (i)(2) would be incorporated into a revised paragraph (k) which would require that n.o.s. descriptions and generic descriptions for certain poisonous materials, show the technical name of the hazardous material in parentheses on shipping papers. A new paragraph (m) would be added to this section, incorporating some of the requirements for poisonous materials which previsously appeared in paragraph (k) of this section.

Section 172.301. It is proposed to revise this section by redesignating paragraph (c) as paragraph (d). A new paragraph (c) would be added to this section to require the marking of the technical name of the hazardous material on non-bulk packages which contain hazardous materials described under n.o.s. descriptions and on non-bulk packages of certain poisonous materials described under generic descriptions. In both cases, the technical name would be shown in parentheses, immediately following the proper shipping name.

Section 172.302 This section would be rendered obsolete by the changes proposed for § 172.301. Therefore, this section would be removed and reserved.

Subpart G to Part 172. It is proposed to establish a new Subpart G in Part 172. This Subpart would be entitled "Emergency Response Information" and would contain the following three sections:

Section 172.600. This section would set forth the applicabililty and general requirements for emergency response information. Paragraph (a) contains the applicability of the requirement to provide and maintain emergency response information. Paragraph (b) specifies that emergency response information must be available whenever hazardous materials are present and specifies to whom this information must be provided. Paragraph (c) states that the requirement to have emergency response information does not apply to materials which are excepted from the requirements which pertain to shipping papers.

Section 172.602. Paragraph (a) of this section states the type of emergency response information that must be provided. Paragraph (b) of this section specifies the form of this information and where it must appear. Paragraph (c) of this section specifies who must maintain the emergency response information required by paragraph (a) and where this information must be maintained.

Section 172.604. Paragraph (a) of this section states that an emergency response telephone number must be provided when offering a hazardous material for transportation. This paragraph also specifies the qualifications required of the persons

monitoring the telephone and contains certain exceptions to the requirements of entering a telephone number on the shipping paper. Paragraph (b) of this section states that the telephone number provided in accordance with paragraph (a) of this section must be the number of the person offering the hazardous materials for transportation or the number of an agency or organization capable of, and accepting responsibility for, accomplishing the requirements of this section.

VI. Administrative Notices

A. Paperwork Reduction Act

The information collection requirements contained in this proposal will be submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction. Act of 1980 (Pub. L. 96-511).

B. Executive Order 12291

RSPA has determined that this proposed rule does not meet the criteria specified in section 1(b) of the Executive Order 12291 and is therefore, not a major rule or considered to be a "significant" rule under DOT Regulatory Policies and Procedures [44 FR 11034; February 26, 1979]. This proposal does not require a Regulatory Impact Analysis or an environmental impact statement under the National Environmental Policy Act (42 U.S.C. 4321 et seq.). A regulatory evaluation is available for review in the Docket.

C. Impact on Small Entities

Based on limited information concerning size and nature of entities likely affected by this proposed rule, I certify this proposal will not, if promulgated, have a significant economic impact on a substantial number of small entities. This certification is subject to modification after review of comments received in response to this proposal.

List of Subjects in 49 CFR Part 172

Hazardous materials transportation, Shipping papers, Emergency response information.

In consideration of the foregoing, it is proposed to amend Part 172 of Title 49 of the Code of Federal Regulations as follows:

1. The authority citation for Part 172 would be revised to read as follows:

Authority: 49 U.S.C. App. 1803, 1804, 1808, 1808; 49 CFR 1.53(e), 1.53, App. A to Part 1.

2. The title of Part 172 would be revised to read as follows:

PART 172—HAZARDOUS MATERIALS TABLES, HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS AND EMERGENCY RESPONSE INFORMATION REQUIREMENTS

3. In § 172.203, paragraph (i)(2) would be deleted and paragraph (i)(3) would be redesignated as paragraph (i)(2).

4. In § 172.203, paragraph (k) would be revised and paragraph (m) would be added to read as follows:

§ 172.203 Additional description requirements.

* * * * *

(k) *Technical names for n.o.s. descriptions.* If a material is described on the shipping paper by an n.o.s. description in § 172.101 or § 172.102 of this subchapter, the technical name of the hazardous material must be entered in parentheses immediately following the proper shipping name. For example, "Corrosive liquid, n.o.s. (Caprylyl chloride), UN 1760." In addition to n.o.s. descriptions, the requirements of this section apply to generic entries for poisonous materials which are subject to the requirements of paragraph (m) of the section, and for which the shipping name does not specifically identify the poisonous constituent by technical name. For example: "Motor fuel antiknock compound (tetra-ethyl-lead), Poison B, UN 1649". If the hazardous material is a mixture of two or more hazardous materials, the names of at least two components most predominantly contributing to the hazard or hazards of the mixture most be entered in parentheses. For example, "Flammable liquid, corrosive, n.o.s. (Methanol, Potassium hydroxide), UN 2924." The provisions of this paragraph do not apply—

(1) If the n.o.s. description for the hazardous material (other than a mixture of hazardous materials of different classes meeting the definition of more than one hazard class) contains the name of the chemical element or group which is primarily responsible for the hazardous material being included in the hazard class indicated. For example: "Mercury compound, solid, n.o.s., Poison B, UN 2025"; or

(2) If the n.o.s. description for the hazardous material (which is a mixture of hazardous materials of different classes meeting the definition of more than one hazard class) contains the name of the chemical element or group responsible for the material meeting the definition of one of these classes. In such cases, only the technical name of the component that is not appropriately identified in the n.o.s. description must be entered in parentheses. For example: "Carbamate pesticide, liquid, n.o.s. (contains Xylene), Poison B, UN 2757".

* * * * *

(m) *Poisonous materials.* Notwithstanding the class to which a materials is assigned—

(1) If a liquid or solid material in a package meets the definition of a poison according to this subchapter, and the fact that it is a poison is not disclosed in the shipping name or class entry, the word "Poison" shall be entered on the shipping paper in association with the shipping description.

(2) If the technical name of the compound or principal constituent that causes a material to meet the definition of a poison (according to this subchapter) is not included in the proper shipping name for the material, the technical name shall be entered on the shipping paper in the manner prescribed in paragraph (k) of this section.

(3) If the inhalation toxicity of any material falls within the criteria specified in § 173.3a(b)(2) of this subchapter (subject to definitions and implementation conditions of (c) and (d) of the same section), the words "Poison—Inhalation Hazard" shall be entered on the shipping paper in association with the shipping description. However, the word "Poison" need not be repeated if it is entered as part of the basic description or in conformance with paragraph (m)(1) of this section. This paragraph does not apply to packagings having primary containment units of one liter capacity or less.

5. In § 172.301, paragraph (c) would be redesignated as paragraph (d) and paragraph (c) would be added to this section to read as follows:

§ 172.301 General marking requirements.

* * * * *

(c) *Technical names.* In addition to the marking required by paragraph (a) of this section, for a non-bulk package that contains a hazardous material described under an n.o.s description in § 172.101 or § 172.102 of this subchapter, the technical name of the hazardous material shall be marked in parentheses on the package immediately following the proper shipping name. For example: "Corrosive liquid, n.o.s. (Caprylyl chloride)". In addition to n.o.s. descriptions, the requirements of this section also apply to generic entries for posionous materials when the shipping name does not specifically identify the poisonous constituent by technical name. For example: "Motor fuel antiknock compound (tetra-ethyl-lead)"

If the hazardous material is a mixture of two or more hazardous materials, the technical name of at least two or more hazardous materials, the technical name of at least two components most predominantly contributing to the hazard or hazards of the mixture must be marked in parentheses immediately following the proper shipping name. For example: "Flammable liquid, corrosive, n.o.s. (Methanol, Potassium hydroxide)." The provisions of this paragraph do not apply:

(1) If the "n.o.s." description for the hazardous material (other than a mixture of hazardous materials of different classes meeting the definition of more than one hazard class) contains the name of the chemical element or group which is primarily responsible for the hazardous material being included in the hazard class indicated. For example: "Mercury compound, solid, n.o.s., Poison B."

(2) If the "n.o.s." description for the hazardous material (which is a mixture of hazardous material of different classes meeting the definition of more than one hazard class) contains the name of the chemical element or group responsible for the material meeting the definition of one of these classes. In such cases, only the technical name of the component that is not appropriately identified in the "n.o.s." description must be entered in parentheses. For example: "Carbamate pesticide, liquid, n.o.s. (contains Xylene), Poision B, UN 2757."

* * * * *

§ 172.302 [Removed and Reserved]

6. Section 172.302 would be removed and reserved.

7. A new Subpart G would be added to Part 172 to read as follows:

Subpart G—Emergency Response Information

Sec.

172.600 Applicability and general requirements.
172.602 Immediate emergency response information.
172.604 Emergency response telephone number.

Subpart G—Emergency Response Information

§ 172.600 Applicability and general requirements.

(a) *Applicability.* This subpart prescribes requirements for providing and maintaining emergency response information—

(1) In transport vehicles, aircraft and vessels used for the carriage of hazardous materials; and

(2) In facilities where hazardous materials are loaded for transportation, stored incidental to transportation or otherwise handled during any phase of transportation.

(b) *General.* A person performing any function subject to the provisions of this subchapter—

(1) May not offer, transport, or transfer (or otherwise handle during transportation), a hazardous material unless emergency response information conforming to this subpart is immediately available for use at all times the hazardous material is present; and

(2) Shall make emergency response information required by this subpart immediately available to any person who, in an official capacity, responds to anincident involving the hazarsous material or is conducting an inspection investigation which involves the hazardous material.

(c) *Exceptions.* the requirements of this subpart do not apply to hazardous materials which are excepted from the requirements of this subchapter which pertain to shipping papers.

§ 172.602 Immediate emergency response information.

(a) *Information required.* Emergency response information for a hazardous material must, as a minimum, contain the following information:

(1) The description of the hazardous material required by § 172.202 and 172.203;

(2) Immediate hazards to health;

(3) Risks of fire or explosion;

(4) Immediate precautions to be taken in the event of an accident or incident;

(5) Immediate methods for handling small or large fires;

(6) Initial methods for handling spills or leaks in the absence of fire; and

(7) Preliminary first aid measures.

(b) *Form of information.* The information required for a hazardous material by paragraph (a) of this section must be printed legibly in English, available for use away from the package containing the hazardous material, and—

(1) Presented in a document that includes the basic description of the hazardous material as specified in § 172.101; or

(2) Presented in a document in a manner that permits association of that information with the basic description for the hazardous material on the shipping paper as required by § 172.202, and the shipping paper must be present at all times as part of the emergency response information required by this subpart. The DOT Emergency Response Guidebook may be used in association with the shipping paper to satisfy the requirements of this paragraph.

(c) *Maintenance of information.* Emergency response information shall be maintained as follows:

(1) *Carriers.* Each carrier who transports a hazardous material shall maintain the information specified in paragraph (a) of this section on the transport vehicle, aircraft or vessel in which the hazardous material is loaded. This information must be in a location that is immediately accessible to the vehicle operator or crew in the event of an accident or incident involving the hazardous material.

(2) *Facility operators.* Each operator of a facility where a hazardous material is received, stored or handled during transportation, shall maintain the information required by paragraph (a) of this section whenever the hazardous material is present. This information must be in a location that is immediately accessible to facility personnel in the event of an accident or incident involving the hazardous material.

(d) *Aircraft exception.* ICAO Document 9481–AN/928 entitled "Emergency Response Guidance For Aircraft Incidents Involving Dangerous Goods" (March 1987) may be carried aboard an aircraft in place of the information specified in this section.

§ 172.604 Emergency response telephone number.

(a) A person who offers a hazardous material for transportation must provide a telephone number (including the area code), for use in the event of an emergency involving the hazardous material, as follows:

(1) The telephone number provided must be the number of a telephone which is monitored at all times by a person who has knowledge, or has immediate access to a person with knowledge, of the hazards of the material and the detailed emergency response and accident mitigation information for that material.

(2) The telephone number must be entered on a shipping paper in association with the description of the hazardous material required by Subpart C of this part, except as follows:

(i) If more than one hazardous material is described on a shipping paper and only one emergency response telephone number is used, the telephone number may be entered once on the shipping paper, if it is clearly indicated that the number is for emergency response information (for example: "EMERGENCY CONTACT: ***").

(ii) For a package having a gross weight of 30 kilograms or less, the

telephone number may be displayed on the outside of a package in association with the proper shipping name rather than on the shipping paper.

(b) The telephone number required by paragraph (a) of this section must be the number of the person offering the hazardous material for transportation or the number of an agency or organization capable of, and accepting responsibility for, providing detailed information concerning the hazardous material.

Issued in Washington, DC. on August 14, 1987 under authority delegated in 49 CFR Part 106, Appendix A.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 87-19042 Filed 8-19-87; 8:45 am]

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Part IV

Department of Commerce

National Telecommunications and Information Administration

15 CFR Part 2301

Public Telecommunications Facilities Program; Final Rules

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

15 CFR Part 2301

[Docket No. 6084-7100]

Public Telecommunications Facilities Program

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Final rules.

SUMMARY: This rule revises and amends the regulations of the Public Telecommunications Facilities Program (PTFP) to simplify the application process. The National Telecommunications and Information Administration (NTIA) also restates its policies with regard to local matching requirements. In 51 FR 43804 published on December 4, 1986, NTIA announced proposed revisions of the rules which govern the PTFP and requested public comment on those revisions. NTIA has reviewed the comments submitted as a result of the Notice and is now responding to the comments and issuing Final Rules.

EFFECTIVE DATE: October 1, 1987.

FOR FURTHER INFORMATION CONTACT: Dennis R. Connors, Acting Director, or Burnham S. Morse, Telecommunications Policy Analyst, (202) 377-1835.

SUPPLEMENTARY INFORMATION: In response to the Notice of Proposed Rulemaking (51 FR 43804, December 4, 1986), NTIA received comments from 12 different organizations.[1] In the Notice, NTIA proposed revisions of the PTFP rules to reduce the burden of application preparation and to clarify the requirements of the application process. The Notice announced a policy to encourage greater Federal/local partnership in the funding of equipment replacement. It expressed also NTIA's opinion that public broadcasters should be encouraged to reduce their dependence on the program in the future. Comments with regard to simplification of the rules and the application process were generally favorable.

Policy Initiatives to Reduce Reliance on PTFP

There were less favorable comments regarding NTIA's announced intention to encourage noncommercial telecommunications entities to reduce their reliance on PTFP funding in future years and some of the specific rules and policies proposed to carry out that intent. The National Association of Public Television Stations and Rocky Mountain Public Radio, in particular, expressed concern that the overall thrust of the Rulemaking would serve to eliminate PTFP or change its purpose.[2] These and other parties stated their view that NTIA was attempting to establish policies in conflict with Congressional mandates. They specifically took issue with NTIA's position that replacement of equipment should be considered an operational expense to be handled at the local level. Several commenting parties cited recent Authorization and Appropriation Report language which noted the need for increased funding for replacement of equipment.[3]

The first PTFP priority remains provision of service to unserved audiences as emphasized by the authorizing legislation.[4] The most recent changes to that legislation emphasized increasing NTIA's flexibility to administer the program by removing the previous directive to expend a specific amount only for extending coverage.[5] That change, however, did not affect the Declaration of Purpose stated in the Communications Act which lists PTFP's purposes as extension of service, increasing the participation of minorities and women, and strengthening the capabilities of existing stations.

The Notice identified some measures which NTIA believed would allow stations to gradually become less dependent on Federal equipment funding. Dependence by any organization on the Federal government for major capital replacement is not desirable because it places the organization in competition with hundreds of other applicants for the ability to carry out what should be a planned and orderly operational process. NTIA had hoped to influence public broadcasters to institute new practices for raising capital, but the comments submitted in response to the Notice indicated that there was potential for unfairness to organizations prohibited by law or regulation from adopting some capital formation methods NTIA might favor. Taken together, we expect the capital formation and matching policies for replacement applications in the Notice of Proposed Rulemaking actually would have allowed a stronger Federal/local partnership to address a greater number of equipment replacement requests in the short-term. NTIA believes the policy encouraging greater levels of match will still help toward that end, but has reconsidered the proposed regulations on capital replacement plans.

Funding of Future Replacements

A number of commenting parties asserted that NTIA's proposed requirement that applicants describe what methods they would use to replace equipment without reliance on PTFP funds was actually a requirement for depreciation accounting.[6] Many of these same comments pointed out the imbalance which could result if some applicant organizations could fully qualify for preference by adopting a depreciation plan and others were prohibited from such measures. Even if those prohibited from using specific depreciation accounting measures were to devise other types of plans, some commenting parties stated the opinion that any plans proposed for implementation more than ten years into the future would be little more than wishful thinking and unreliable for PTFP to use as a criterion for funding decisions.[7]

NTIA does not intend to disadvantage any group of applicants by enacting a specific funding criterion. Accordingly, the Final Rules do not include the language proposed in the Notice which asked applicants to describe the methods which would be used in the future to replace requested equipment without reliance on PTFP funding (§ 2301.5 (d)(2)(viii), now ending at "if less than three years"). The parallel provision in § 2301.13(b) is also eliminated.

NTIA continues to believe that public broadcasters should establish business-like operational methods and should be responsible for capital replacement as a part of normal operations. There is a trend on the part of public and non-

[1] Comments were submitted by the following organizations: Corporation for Public Broadcasting; National Association of Public Television Stations; National Public Radio; National Federation of Community Broadcasters; Southern Educational Communications Association; Rocky Mountain Public Radio; Rocky Mountain Corporation for Public Broadcasting; Kansas Audio-Reader Network; Kentucky Educational Television; South Dakota Public Broadcasting; WBGU-TV, Bowling Green, Ohio; KLVX-TV, Las Vegas, Nevada.

[2] Comments of Rocky Mountain Public Radio, pg. 4; National Association of Public Television Stations, pg. 1.

[3] Comments of National Public Radio, pg. 4; National Association of Public Television Stations, pg. 3; Rocky Mountain Corporation for Public Broadcasting, pp. 4-5; Southern Educational Communications Association, pp. 3-4.

[4] 47 U.S.C. sections 390, 393(b).

[5] Consolidated Omnibus Budget Reconciliation Act of 1985, section 5001, Pub. L. 99-272.

[6] Comments of Southern Educational Communications Association, pg. 5.

[7] Comments of Rocky Mountain Corporation for Public Broadcasting, pg. 3.

profit institutions to recognize that planning for major capital replacement is necessary. NTIA hopes that more flexibility will be allowed to the institutional and state agency-based public broadcasting entities in the future to properly plan for the predictable obsolescence of major equipment.[8]

Policy on Matching Requirements

In the Notice, NTIA announced a policy which does not require any rule change, but which is intended to encourage stations reporting substantial non-Federal revenues to increase the matching percentage in their proposals for replacement of equipment from 25% to 50%. NTIA will then be able to distribute Federal funds more widely and to fund a larger number of applications.

The Notice emphasized that applicants proposing to provide first service to a geographic area encounter considerable ineligible costs, including construction or renovation of buildings or other similar expenses. NTIA, therefore, expects to continue funding projects to extend service at up to 75% of the total project cost. Applicants from small community-licensed stations, or those who can show that a station licensed to a large institution cannot obtain direct or in-kind support from the larger institution, also will not be subject to this preference. Otherwise, a showing of extraordinary need or emergency situation will be taken into consideration as justification for grants of up to 75% of the project cost, but the presumption of 50% funding will be the general rule for replacement applications.

A number of commenting parties were opposed to this policy on the grounds that states with depressed economies or other stations with financial problems would be disadvantaged. South Dakota Public Broadcasting commented that rural broadcasting systems have greater expenses imposed by the need to cover audiences in sparsely populated areas. They stated their belief that NTIA's desire to see higher matching percentages from systems such as state networks would increase the divergence between the well-funded urban systems and the rural systems.[9]

NTIA has clearly stated that the agency will accept showings of extraordinary need (such as regional economic problems in agriculture or other industries) or emergency situations as justification for submission of a replacement funding application with less than a 50% match. Applications for funding up to 75% of a construction project total will be eligible under the PTFP rules.

Some commentors expressed an opinion that this policy contradicts recent Congressional emphasis on funding replacement of equipment at existing stations. NTIA expects that, far from limiting replacement funding or contradicting Congress, the policy will allow NTIA to participate in a greater number of replacement projects. In fiscal year 1986, this policy was applied on an experimental basis in negotiations with possible grantees. The savings experienced from funding some projects at less than 75% of their total cost allowed an additional $6 million to be distributed to other projects. NTIA believes that encouraging greater Federal/local partnership in this way, along with an allowance for hardships and special circumstances as previously announced, is an efficient means of administering the PTFP.

PTFP Priorities

NTIA proposed very limited changes for PTFP's Priorities in the Notice. Some editing for clarification was done and the category of "Other Cases" was changed to "Special Applications."

A number of commenting parties suggested, however, that extensive changes should have been proposed to increase the priority ranking for applications to replace equipment at existing stations. The Corporation for Public Broadcasting (CPB) suggested adoption of different priorities for public TV and public radio stations. For radio, CPB suggested the service to unserved areas should continue as the highest priority, but for television, they suggested that the first priority should be replacement of existing obsolete and worn-out equipment.[10] Other parties objected to the differentiation between essential public broadcasting stations (Priority II) and stations in markets served by several stations (Priority IV).[11]

As long as NTIA continues to receive applications asking for more funds than are appropriated, there will need to be a system to rank, categorize and otherwise differentiate among applications. NTIA believes that the Priorities in the Notice still reflect the basic goals of the legislation authorizing the PTFP.[12] Urgent replacement applications in both Priorities II and IV are funded in every grant cycle, along with requests from most of the other Priorities.

Some parties thought that the language of the "Special Applications" priority did not make clear whether this was a substantial policy change and/or whether greater amounts of funds would now be earmarked for innovative projects.[13] The "Special Applications" category will be used by NTIA to encourage public telecommunications projects which propose innovative methods to provide service effectively and cost-efficiently. This priority will continue to encompass applications which do not fall into the other PTFP Priorities. Contrary to the interpretation given the "Special Applications" description by the comments of KLVX-TV,[14] NTIA does not intend to set aside any funds restricted to use for this priority nor is it expected that any appropriated funds would be either held back or granted more quickly for this priority in comparison with the other priorities. NTIA expects to administer the "Special Applications" in the context of the other established priorities and Congress' stated policy of providing new service.

New Administrative Requirements

The additions to the rules required by the Department of Commerce (DOC) Departmental Administrative Order regarding grant administration (DAO 203-26) were of concern to commenting parties, particularly the Corporation for Public Broadcasting and National Federation of Community Broadcasters. Both those organizations expressed a concern that the Name Check and Credit Check rules could result in undue governmental intrusion on the public broadcasting stations.[15]

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[8] As a corollary to the concern over future funding of replacement both Rocky Mountain Public Radio, Inc., and the Rocky Mountain Corporation for Public Broadcasting requested a revision of the definition of "operational costs" in the PTFP rules at § 2301.1 to exclude both capital outlay and debt service from the definition. NTIA did not make any change in the definition of "operational costs" as part of the Notice. The definition is identical to the wording in effect since 1984. The use of this definition historically has been to clarify the portion of the rules which lists costs ineligible for Federal funding and specifically denotes as ineligible: "Salaries of personnel employed by an operating public telecommunications entity and other operational costs . . ." 15 CFR 2301.24(b)(3) (1986). No new meaning is intended by NTIA.

[9] Comments of South Dakota Public Broadcasting, pg. 1.

[10] Comments of the Corporation for Public Broadcasting, pp. 2-5.

[11] Comments of National Association of Public Television Stations, pg. 4.

[12] 47 U.S.C. 390, 393(b).

[13] Comments of National Public Radio, pg. 7; KLVX-TV, Las Vegas, Nevada, pg. 2.

[14] Comments of KLVX-TV, Las Vegas, NV, pg. 2.

[15] Comments of the Corporation for Public Broadcasting, pp. 5-6; National Federation of Community Broadcasters, pg. 3.

Much of the concern centered on which individuals would be the subject of Name Check investigations. NTIA wishes to clarify that the only categories of PTFP applicants to whom the Name Check and Credit Check rules apply are non-profit organizations and private colleges.

They are not required of State and local governmental officials, state university officials, members of Indian tribal governments, and municipal officials.[16] Within an organization, the Name Checks apply to those who could exercise control over the expenditure of PTFP funds or the local funds used to match the grant. These individuals are usually the officers, the executive director/general manager and/or station manager (project manager), and the chief financial officer.[17] The returned forms are handled with the utmost confidentiality by the DOC. The DOC believes that it is important to safeguard the Federal funds granted by obtaining background information on any individuals who may directly handle those funds. No intrusion into the operations of the station is contemplated or expected under Departmental rules.

Several commenting parties, including National Public Radio and Rocky Mountain Public Radio, asked for clarification of the DOC rule whereby organizations with outstanding debts to any agency of the Department of Commerce will not be able to receive PTFP grants until the debt is paid or arrangements to repay, which are satisfactory to the Department, are made, even if some other sub-unit of the organization is responsible for the debt and the debt is to a program other than the PTFP.[18] Some questioned whether grants could be offered, but funds not released, while an outstanding debt is cleared up.

To clarify, the rule means that no grant will be offered to a PTFP applicant while there is an unresolved debt situation, even one with another sub-unit of the institution.[19] NTIA will endeavor to notify any applicants whose institutions appear on the DOC Accounts Receivable list early in the grant cycle. Those applicants should investigate the debt situation within their own organization. NTIA cannot become involved with the resolution of the problem within DOC if it is not related to a PTFP grant, but the applicant may have recourse within its organization. NTIA processing of the application will continue in the normal manner, however, it is possible that an organization could be placed on the list a week or even a few days before grant award decisions are finalized. In such situations, NTIA would be unable to make a grant offer to the affected institution, even if prior notice was not given to the applicant. Because the list is out of the control of NTIA, applicants must realize that NTIA's ability to provide any assistance is extremely limited. If the applicant sub-unit is not able to persuade its institution to settle the matter before PTFP is ready to award grants, PTFP will be unable to make a grant offer to the applicant.

[16] DAO 203-26, Section 6.04c.

[17] DAO 203-26, Section 6.04(c).

[18] Comments of National Public Radio, pp. 6-8; Rocky Mountain Public Radio, pg. 2; Rocky Mountain Corporation for Public Broadcasting, pg. 2.

[19] DAO 203-26, Section 7.99d.2.

Editing and Reorganization of the Rules

The general reaction to NTIA's editing of the rules for simplification was positive. The idea of flexibility in determining the specifics of the ineligible equipment list from year to year was viewed as appropriate given the rapidly changing nature of broadcast technology. National Public Radio, however, commented that removing both the ineligible equipment list and the administrative procedures from the rules deprived applicants of a convenient method to obtain all information about the program, and recommended that the sections be retained.[20] Both Rocky Mountain Public Radio and the Rocky Mountain Corporation for Public Broadcasting suggested that NTIA set up specific consultation mechanisms in the development of the list or independent evaluation of the list.[21]

NTIA regularly consults with the national public broadcasting organizations about many aspects of the program. PTFP management and engineering personnel attend both public broadcasting engineering meetings and meetings of a variety of professional societies and technical organizations to stay abreast of the changes in technology. The agency always welcomes suggestions to improve the program and will fully discuss any ideas presented with those making the suggestion. However, NTIA does not feel the limited changes which are expected to be made in the ineligible equipment list from one year to the next warrant a complex or permanent advisory or review structure.

The portion of the Notice which explained that eligibility for replacement funding was limited to "existing broadcast stations" brought a response which noted that many stations combine broadcast and non-broadcast operations together to perform their service to the community.[22] The Kansas Audio-Reader Network noted that they and other radio reading services have traditionally received PTFP grants for both SCA receivers and broadcast equipment.[23] NTIA intends to continue to provide radio reading services with the types of funding they have received in the past. This is consistent with precedents established since 1981 and will not result in an expansion of the applicant pool.

[20] Comments of National Public Radio, pg. 7.

[21] Comments of Rocky Mountain Public Radio, pp. 2-3; Rocky Mountain Corporation for Public Broadcasting, pg. 2.

[22] Comments of Rocky Mountain Corporation for Public Broadcasting, pg. 3.

[23] Comments of Kansas Audio-Reader Network, pg. 2.

Public Notice Requirement

Most commenting organizations applauded the removal of a separate PTFP public notice requirement as part of the general simplification of the application process, but the National Federation of Community Broadcasters recommended the retention of the public notice. They were concerned that the local population would otherwise not know what was being proposed for their area and they asserted that the FCC is lax in their enforcement of FCC public notice requirements.[24]

The final rules continue to rely on the Notice of Acceptance for Filing published by NTIA as legally sufficient notice. The reduction of burden on individual applicants was a principal aim of this rulemaking and this was one concrete proposal enabling that reduction.

Under Executive Order (E.O.) 12291, the Department must determine whether a regulation is a "major" rule within the meaning of section 1 of E.O. 12291 and therefore subject to the requirement that a Regulatory Impact Analysis be performed. This regulation is not a major rule because it is not "likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries . . .; or (3) significant adverse effects on competition, employment, investment, productivity or innovation. . . ." Therefore, preparation of a Regulatory Impact Analysis is not required.

The Regulatory Flexibility Act (5 U.S.C. 601-611) does not apply to these rules, because, as explained above, the rules were not required to be

[24] Comments of National Federation of Community Broadcasters, pg. 2.

promulgated as proposed rules before issuance as final rules by section 553 of the Administrative Procedures Act (5 U.S.C. 553) or by any other law. Neither an initial nor final Regulatory Flexibility Analysis was prepared.

This rule contains a collection of information requirement subject to the Paperwork Reduction Act. A request to collect this information has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3504(h)). Comments from the public on the collection of information requirement contained in this rule should be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20530, Attention Desk Officer for NTIA.

List of Subjects in 15 CFR Part 2301

Administrative procedure, Grant programs—communications, telecommunications.

(Catalog of Federal Domestic Assistance Number: 11.550)

Alfred C. Sikes,

Administrator.

For the reasons set out in the preamble, Title 15, Chapter XXIII, Part 2301 of the Code of Federal Regulations is revised as set forth below:

PART 2301—PUBLIC TELECOMMUNICATIONS FACILITIES PROGRAM

Subpart A—Definitions, Program Purposes and Special Consideration

Sec.

2301.1 Definitions.
2301.2 Program purposes.
2301.3 Special consideration.

Subpart B—Eligibility and Application Procedures

2301.4 Eligible organizations and projects.
2301.5 Application procedures.
2301.6 Amendments to applications.
2301.7 Service of applications.
2301.8 Federal Communications Commission authorization.
2301.9 Acceptance for filing.
2301.10 Appeals.
2301.11 Public comments.
2301.12 Coordination with interested agencies and organizations.
2301.13 Funding criteria for construction applications.
2301.14 Funding criteria for planning applications.
2301.15 Action on all applications.

Subpart C—Federal Financial Participation

2301.16 Amount of the Federal grant.
2301.17 Items and costs ineligible for Federal funding.
2301.18 Waiver.

Subparts D–F—[Reserved]

Appendix to Part 2301—Priorities

Authority: Public Telecommunications Financing Act of 1978, Pub. L. 95–567, 92 Stat. 2405, codified at 47 U.S.C. 390–394, 397–399b; and the Public Broadcasting Amendments Act of 1981, Pub. L. 97–35, 95 Stat. 725, and the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, section 5001, 100 Stat. 82, 117 (1986).

Subpart A—Definitions, Program Purposes and Special Consideration

§ 2301.1 Definitions.

"Act" means Part IV of Title III of the Communications Act of 1934, 47 U.S.C. 390–394 and 397–399b, as amended.

"Administrator" means the Assistant Secretary for Communications and Information of the United States Department of Commerce.

"Agency" means the National Telecommunications and Information Administration of the United States Department of Commerce.

"Broadcast" means the distribution of electronic signals to the public at large using television (VHF or UHF) or radio (AM or FM) technologies.

"Construction" (as applied to public telecommunications facilities) means acquisition (including acquisition by lease), installation, and improvement of public telecommunications facilities and preparatory steps incidental to any such acquisition, installation or improvement.

"FCC" means the Federal Communications Commission.

"Federal interest period" means the period of time during which the Federal Government retains a reversionary interest in all facilities constructed with Federal grant funds. This period begins with the purchase of the facilities and continues for ten (10) years after the official completion date of the project.

"Nonbroadcast" means the distribution of electronic signals by a means other than broadcast technologies. Examples of nonbroadcast are ITFS, teletext, and cable.

"Noncommercial educational broadcast station" or a "public broadcast station" means a television or radio broadcast station which is eligible to be licensed by the FCC as a noncommercial educational radio or television broadcast station and which is owned (controlled) and operated by a state, a political or special purpose subdivision of a state, public agency or nonprofit private foundation, corporation, institution, or association, or owned (controlled) and operated by a municipality and transmits only noncommercial educational, cultural or instructional programs.

"Noncommercial telecommunications entity" means any enterprise which is owned (controlled) and operated by a state, a political or special purpose subdivision of a state, a public agency, or a nonprofit private foundation, corporation, institution, or association; and which has been organized primarily for the purpose of disseminating audio or video noncommercial educational, cultural or instructional programs to the public by means other than a primary television or radio broadcast station, including, but not limited to, coaxial cable, optical fiber, broadcast translators, cassettes, discs, satellite, microwave or laser transmission.

"Non-Federal financial support" means the total value of cash and the fair market value of property and services received—

(a) As gifts, grants, bequests, donations, or other contributions for the construction or operation of noncommercial educational broadcast stations, or for the production, acquisition, distribution, or dissemination of educational, cultural or instructional television or radio programs, and related activities, from any source other than (1) the United States or any agency or instrumentality of the United States; or (2) any public broadcasting entity; or

(b) As gifts, grants, donations, contributions, or payments from any State, or any educational institution, for the construction or operation of noncommercial educational broadcast stations or for the production, acquisition, distribution, or dissemination of educational, cultural or instructional television or radio programs, or payments in exchange for services or materials with respect to the provision of educational, cultural or instructional television or radio programs.

"Nonprofit" (as applied to any foundation, corporation, institution or association) means a foundation, corporation, institution, or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

"Operational cost" means those approved costs incurred in the operation of an entity or station such as overhead labor, material, contracted services (such as building or equipment maintenance), including capital outlay and debt service.

"Preoperational expenses" means all nonconstruction costs incurred by new public telecommunications entities before the date on which they began providing service to the public, and all

nonconstruction costs associated with the expansion of existing stations before the date on which such expanded capacity is activated, except that such expenses shall not include any portion of the salaries of any personnel employed by an operating public telecommunications entity.

"PTFP" means the Public Telecommunications Facilities Program, which is administered by the Agency.

"PTFP Director" means the Agency employee who recommends final action on public telecommunications facilities applications and grants to the Administrator.

"Public telecommunications facilities" means apparatus necessary for production, interconnection, captioning, broadcast, or other distribution of programming, including but not limited to studio equipment, cameras, microphones, audio and video storage or processors and switchers, terminal equipment, towers, antennas, transmitters, remote control equipment, transmission line, translators, microwave equipment, mobile equipment, satellite communications equipment, instructional television fixed service equipment, subsidiary communications authorization transmitting and receiving equipment, cable television equipment, optical fiber communications equipment and other means of transmitting, emitting, storing, and receiving images and sounds or information, except that such term does not include the buildings to house such apparatus (other than small equipment shelters which are part of satellite earth stations, translators, microwave interconnection facilities, and similar facilities).

"Public telecommunications services" means noncommercial educational and cultural radio and television programs, and related noncommercial instructional or informational material that may be transmitted by means of electronic communications. It does not include essentially sectarian programming.

"Sectarian" means that which has the purpose or function of advancing or propagating a religious belief.

"State" includes each of the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

"System of public telecommunications entities" means any combination of public telecommunications entities acting cooperatively to produce, acquire or distribute programs, or to undertake related activities.

§ 2301.2 Program purposes.

(a) The Agency's determination to fund an application and the amount of the grant awarded shall be governed by whether the application will, in the following order of priority, result in:

(1) The establishment of new public telecommunications facilities to extend services to areas not currently receiving such services;

(2) The expansion of the service areas of existing public telecommunications entities; or,

(3) The improvement of the capabilities of existing licensed public broadcasting stations to provide public telecommunications services.

(b) Notwithstanding paragraph (a) of this section, the Agency may award a grant to an applicant which is otherwise eligible for funding, but whose proposal does not specifically meet any of the purposes enumerated above. Such grant, however, must fulfill the overall objectives of the Act.

§ 2301.3 Special consideration.

In accordance with section 392(f) of the Act, the Agency will give special consideration to applications which foster ownership or control of, operation of, and participation in public telecommunications entities by minorities and women. The Agency interprets "ownership" and "owned" as meaning control of an entity through the possession or exercise of the normal incidents of ownership, such as participation on the governing board or holding corporate offices. The Agency will accord special consideration only where women and/or minorities hold more than fifty (50) percent control of the applicant. The Agency will consider the composition of the applicant's governing body, management levels, or policy-making positions.

Subpart B—Eligibility and Application Procedures

§ 2301.4 Eligible organizations and projects.

(a) *Eligible applicants (Construction Grants).* In order to apply for and receive a PTFP Construction Grant, an applicant must be:

(1) A public or noncommercial educational broadcast station;

(2) A noncommercial telecommunications entity;

(3) A system of public telecommunications entities;

(4) A nonprofit foundation, corporation, institution, or association organized primarily for educational or cultural purposes; or,

(5) A state or local government or agency, or a political or special purpose subdivision of a state.

(b) *Eligible applicants (Planning Grants).* In order to apply for and receive a PTFP Planning Grant, an applicant must be:

(1) Any of the organizations described in paragraph (a) of this section; or,

(2) A nonprofit foundation, corporation, institution, or association organized for any purpose except primarily religious.

(c) *Eligible projects.* An applicant which is eligible under paragraph (a) or (b) of this section may file an application with the Agency for a planning or construction grant to achieve the following:

(1) The provision of new public telecommunications facilities to extend service to areas currently not receiving public telecommunications services;

(2) The expansion of the service areas of existing public telecommunications entities;

(3) The establishment of new public telecommunications entities serving areas currently receiving public telecommunications services; or,

(4) The improvement of the capabilities of existing licensed public broadcast stations to provide public telecommunications services.

(d) An applicant with outstanding accounts receivable with any agency of the Department of Commerce will not receive a PTFP grant until the debt is paid or arrangements to repay, which are satisfactory to the Department, are made. This includes debts incurred by sub-units of an organization other than the sub-unit which is applying to the PTFP, and includes debts owed to any agency of the Department of Commerce, not just the PTFP.

(e) An applicant whose proposal requires an authorization from the FCC must be eligible to receive such authorization.

(f) *Preliminary determination of eligibility.* In order to obtain a preliminary determination of applicant or proposal eligibility, a prospective applicant must send a letter requesting such determination to the Agency.

(1) The request letter should be addressed to: PTFP Director, NTIA/DOC, 14th and Constitution Avenue, NW., Room 4625, Washington, DC 20230.

(2) In the request letter the prospective applicant must:

(i) Describe the proposed project;

(ii) Include a copy of the organization's articles of incorporation and by-laws, or other similar documentation, which specifies the nature and powers of the prospective

applicant (unless the prospective applicant has received a PTFP grant within the last ten (10) years, in which case only a copy of the most recent Annual Report or Quarterly Progress Report and any changes in the articles of incorporation and by-laws since the last grant must be provided); and,

(iii) If the prospective applicant is a nonprofit foundation, corporation, institution, or association which has not received a PTFP grant within the previous ten (10) years, provide a copy of a letter from the Internal Revenue Service granting the prospective applicant tax exempt status under section 501(c)(3) of the Internal Revenue Code, or other legal documentation of nonprofit status.

(3) A favorable preliminary determination of eligibility does not guarantee that the Agency will accept a future application for filing or award a subsequent grant.

(4) A prospective applicant may appeal an unfavorable preliminary determination of eligibility to the Administrator under § 2301.10.

§ 2301.5 Application procedures.

(a) *Address.* The following address should be used for all communications with the Agency: Public Telecommunications Facilities Program, NTIA/DOC, 14th and Constitution Avenue, NW., Room 4625, Washington, DC 20230.

(b) Application materials may be obtained from the address listed in paragraph (a) of this section.

(c) *Closing date.* The Administrator shall select and publish in the Federal Register a date by which applications for funding in a current fiscal year are to be filed.

(d) *New applications.* (1) All applications, whether mailed or hand delivered, must be received by the Agency at the address listed in paragraph (a) of this section at or before 5:00 p.m. by

(2) A complete application must include an original and one copy of the Agency application form with the signature of an officer of the applicant, who is legally authorized to sign for the applicant, and all the information required by the Agency application materials, which shall include:

(i) A brief narrative statement (of not more than four (4) pages) describing the proposed project with particular attention to satisfying the funding criteria listed in §§ 2301.13 and 2301.14 of these rules;

(ii) If the applicant has not received a PTFP grant within the past ten (10) years, a copy of the applicant's articles of incorporation, by-laws, board of directors, and other similar documentation specifying the nature and powers of the applicant, except that state or local government entities need only provide a reference to the statutory or other authority under which they operate;

(iii) If the applicant is a nonprofit foundation, corporation, institution or association which has not received a PTFP grant within the previous ten (10) years, a copy of a letter from the Internal Revenue Service granting the applicant tax exempt status under section 501(c)(3) of the Internal Revenue Code, or other legal documentation of nonprofit status.

(iv) If the applicant received a PTFP grant within the previous ten (10) years, then it must reference the number of the previous grant, provide a copy of the most recent Annual Report or Quarterly Progress Report submitted to the PTFP, and submit a copy of any changes in the applicant's articles of incorporation or by-laws which have taken effect since the last grant was awarded;

(v) If the applicant applied for a preliminary determination of eligibility and received a positive determination, it may submit a copy of the official notification from the PTFP in lieu of the eligibility requirements of this section;

(vi) Documentation that the applicant will have, when needed, the funds to match any grant the Agency may provide;

(vii) Documentation that the applicant will have the funds necessary to operate and maintain those facilities once constructed.

(viii) Documentation of the amount of Federal and non-Federal financial support received by the applicant organization during each of the preceding three fiscal years or for the length of time the organization has been in existence if less than three years;

(ix) An opinion letter from the applicant's attorney stating that the applicant will have free simple title or a long-term lease (*e.g.*, a ten-year lease) or an option to obtain the same to any real or personal property necessary for the installation of major fixed equipment (such as a broadcast transmitter or tower);

(x) An inventory of all equipment (if any) currently owned by the applicant which corresponds to the type of equipment requested in the current application or which would be closely associated with the proposed project. The inventory should include manufacturers' names, model numbers, production years, and the dates of acquisition;

(xi) Within the narrative or as an optional exhibit no longer than two pages, a five-year plan outlining the applicant's projected facilities requirements and the projected costs of such requirements;

(xii) If special consideration is requested under § 2301.3, information detailing the basis for the request on the exhibit form provided by the Agency;

(xiii) Copies of letters transmitting a copy of the application to each of the entities required under § 2301.7;

(xiv) Significant documentation supporting the applicant's request for equipment, including as necessary the proper FCC authorization(s) cited in §§ 2301.8 and 2301.9, and if applicable, documentation indicating high incidence of repair or periods of inoperability;

(xv) Evidence that the applicant has participated (or, in the case of a planning grant, will participate) in comprehensive planning for the proposed project, including community involvement, an evaluation of alternate technologies and coordination with state telecommunications agencies, if any;

(xvi) Assurance that during the period in which the applicant possesses or uses the Federally funded facilities (whether or not this period extends beyond the Federal interest period), the applicant will not use or allow the use of the Federally funded equipment for essentially sectarian purposes;

(xvii) A detailed explanation of any complaints of discrimination currently pending or decided against the applicant before any court or governmental agency; and,

(xviii) A copy of any Environmental Impact Statement or other environmental assessment document prepared in conjunction with the proposed project as may be required by any Federal, state, or local law or regulation.

(xix) Assurance of compliance with all applicable Federal laws, rules or regulations relating to the project, as described on the application form provided by the Agency.

(e) *Deferred applicant.* (1) An applicant may reactivate an application deferred by the Agency during the prior year under § 2301.15, if the applicant has not substantially changed the stated purpose of the application.

(2) To reactivate a deferred application, the applicant must file the information described below, whether mailed or hand delivered, at or before 5:00 p.m. by the closing date.

(3) To file a complete reactivation request, the applicant must submit an original and one copy of the following:

(i) Sections I, II, and IV of Part I of the approved Agency application form with the original signature of an officer of the

applicant, who is legally authorized to sign for the applicant, with a notation of the file number of the earlier application;

(ii) A brief narrative statement (not more than four (4) pages) describing the project proposed in the current application;

(iii) An update of availability of operating funds and the necessary non-Federal share of the project;

(iv) An update of the financial information required by paragraph (d)(viii) of this section;

(v) A revised listing of current eligible project costs, if necessary;

(vi) A revised inventory as described in paragraph (d)(x) of this section. Applicants having previously submitted an inventory need only submit updated information;

(vii) A revised five-year plan as described in paragraph (d)(xi) of this section outlining the applicant's projected facilities requirements and the projected costs of such requirements;

(viii) If special consideration is requested under § 2301.3, current information detailing the basis for the request on the exhibit form provided by the Agency;

(ix) Copies of letters transmitting a copy of the current application to each of the entities required under § 2301.7;

(x) An updated explanation of any complaints of discrimination currently pending or decided against the applicant before any court or governmental agency; and,

(xi) Assurance of compliance with all applicable Federal laws, rules or regulations relating to the project, as described on the application form provided by the Agency.

(f) Deferred applications which are resubmitted under paragraph (e) of this section and contain substantial changes will be considered as new applications and must comply with the requirements of § 2301.5(d). All deferred applications may be subject to a second determination of eligibility.

(g) *Additional information.* (1) The Agency may request from the applicant any additional information which the Agency deems necessary or pertinent.

(2) Potential grant recipients may be subject to the following Department of Commerce Pre-Award Administrative Requirements and Policies:

(i) Name Check forms (Form CD–346) may be used to ascertain background information on key individuals associated with potential grantees. The Name Check requests information to determine if any key individuals in the organization have been convicted of, or are under indictment or have been charged with criminal offenses such as fraud, theft, perjury, or other matters pertinent to management honesty or financial integrity;

(ii) Potential grantee organizations may also be subject to reviews of Dun and Bradstreet data or other similar credit checks.

(3) Applicants must promptly provide any additional information which the Agency requests as being necessary or pertinent.

§ 2301.6 Amendments to applications.

(a) An applicant which has filed a timely and complete application or a request seeking reactivation of a deferred application may submit minor changes to its application or submit additional information at any time up to 45 calendar days after the closing date.

(b) To make minor changes to its application, an applicant must submit an original and one copy of the following to the address listed in § 2301.5(a):

(1) A letter describing in detail the information or documentation which the applicant is changing or adding to its application;

(2) Any new material or altered material; and,

(3) A certification that it has filed a copy of the change(s) with each of the entities required under § 2301.7.

(c) Applicants may not submit substantial amendments to their applications after the closing date. Substantial amendments are any which change the applicant or substantially alter the nature or scope of the proposed project.

§ 2301.7 Service of applications.

(a) On or before the closing date all new or deferred applicants must serve a copy of the application on the following agencies:

(1) In the case of an application for a construction grant for which FCC authorization is necessary, the Secretary, Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554;

(2) The state or local agency(-ies), if any, having jurisdiction over the development of broadcast and/or nonbroadcast telecommunications in the state(s) and the community(-ies) to be served by the proposed project; and,

(3) The state office established to review applications under Executive Order 12372 as amended by Executive Order 12416, if the state has established such an office and wishes to review these applications.

(b) Those amending applications under § 2301.6 must serve a copy of the amendment on all relevant agencies as listed in paragraph (a) of this section.

§ 2301.8 Federal Communications Commission authorization.

(a) Each applicant whose project requires FCC authorization must file an application for that authorization on or before the closing date. Recommended submission date for applications to the FCC is at least 60 days prior to the closing date. The applicant should clearly identify itself as a PTFP applicant.

(b) Any FCC authorization required for the project must be in the name of the applicant for the PTFP grant.

(c) If the project is to be associated with an existing station, FCC operating authority for that station must be current and valid.

(d) For any project requiring new authorization(s) from the FCC, the applicant must file a copy of each FCC application and any amendments with the Agency.

(e) If the applicant fails to file the required FCC application(s) by the closing date, or if the FCC returns, dismisses, or denies an application required for the project or any part thereof, or for the operation of the station with which the project is associated, the Agency may return the application.

(f) No grant will be awarded until confirmation has been received from the FCC that any necessary authorization will be issued.

§ 2301.9 Acceptance for filing.

After the closing date, the Agency will examine each application for timeliness, completeness, eligibility, and FCC authorization.

(a) The Agency will publish a notice in the Federal Register listing all applications accepted for filing. Acceptance of an application for filing does not preclude subsequent return or disapproval of the application, nor does it assure that the application will be funded. Publication merely operates to qualify the application to compete for funding with other applications accepted for filing.

(b) The notice of acceptance for filing will also include a request for comments on the applications from any interested party. The procedural requirements of § 2301.11 will be set forth in the notice.

(c) Incomplete applications will be returned by the Agency.

(d) Any application, substantial amendment to an application, or request to reactivate a deferred application which is filed after the closing date will be returned by the Agency.

(e) When the Agency finds that either the applicant or the project is ineligible under the Act and/or these Rules, it will

return the application and inform the applicant of the denial of eligibility.

(f) If the Agency finds that a proposed project requires authorization from the FCC and that the applicant did not tender its application for such authorization, the Agency will return the application.

§ 2301.10 Appeals.

(a) Within 15 calendar days after the date on which the Agency sends a written notice to an applicant denying the eligibility of the applicant or the proposed project, or notifying an applicant that its application is incomplete, the applicant may file a written notice of appeal with the Administrator at the address listed in § 2301.5(a). Applicants may not appeal the return of applications filed after the closing date.

(b) The notice of appeal must show that the denial of eligibility or determination of incompleteness is factually or legally incorrect. If the applicant relies on any written documents or other materials to dispute the Agency's action, the applicant should list and attach a copy of each item or indicate that the Agency has a copy of the item in its possession.

(c) Upon receipt of the notice of appeal, the Administrator will review the appeal in consultation with the Chief Counsel and the PTFP Director and will render a written decision within 30 calendar days.

(d) If the Administrator sustains the denial of eligibility or the determination of incompleteness, the Agency will return the application to the applicant.

(e) All decisions of the Administrator made under paragraph (c) of this section are final.

§ 2301.11 Public comments.

(a) Any interested party may file comments with the Agency supporting or opposing an application and setting forth the grounds for support or opposition. Such comments must contain a certification that a copy of the comments has been delivered to the applicant. Comments must be sent to the address listed in § 2301.5(a).

(b) The Agency will incorporate all comments from the public and any replies from the applicant in the applicant's official file.

§ 2301.12 Coordination with interested agencies and organizations.

In acting on applications and carrying out other responsibilities under the Act, the Agency shall consult with:

(a) The FCC, with respect to functions which are of interest to, or affect other functions of the FCC;

(b) The Corporation for Public Broadcasting, public broadcasting agencies, organizations, other agencies, and institutions administering programs which may be coordinated effectively with Federal assistance provided under the Act; and,

(c) The state office established to review applications under Executive Order 12372 as amended by Executive Order 12416, if the state has established such an office and wishes to review these applications.

§ 2301.13 Funding criteria for construction applications.

In determining whether to approve or defer a construction grant application, in whole or in part, and the amount of such grant, the Agency will evaluate all the information in the application file and consider, in no order of priority, the following factors:

(a) The extent to which the project meets the program purposes set forth in § 2301.2 as well as the specific program priorities set forth in the Appendix of these Rules;

(b) The adequacy and continuity of financial resources for long-term operational support;

(c) The extent to which non-Federal funds will be used to meet the total cost of the project;

(d) The extent to which the applicant has:

(1) Assessed specific educational, informational, and cultural needs of the community(-ies) to be served, and the extent to which the proposed service will not duplicate service already available;

(2) Evaluated alternative technologies and the bases upon which the technology was selected;

(3) Provided significant documentation of its equipment requirements, and the urgency of acquisition or replacement;

(4) Provided documentation of an increasing pattern of substantial non-Federal financial support;

(5) Provided other evidence of community support, such as letters from elected or appointed policy-making officials, and from agencies for whom the applicant produces or will produce programs or other materials;

(e) The extent to which the evidence supplied in the application reasonably assures an increase in public telecommunications services and facilities available to, operated by, and owned or controlled by minorities and women;

(f) The extent to which various items of eligible apparatus proposed are necessary to, and capable of, achieving the objectives of the project and will permit the most efficient use of the grant funds;

(g) The extent to which the eligible equipment requested meets current broadcast industry performance standards;

(h) The extent to which the applicant will have available sufficient qualified staff to operate and maintain the facility and provide services of professional quality;

(i) The extent to which the applicant has planned and coordinated the proposed services with other telecommunications entities in the service area;

(j) The extent to which the project implements local, statewide or regional public telecommunications systems plans, if any; and,

(k) The readiness of the FCC to grant any necessary authorization.

§ 2301.14 Funding criteria for planning applications.

In determining whether to approve or defer a planning grant application, in whole or in part, and the amount of such grant, the Agency will evaluate all the information in the application file and consider, in no order of priority, the following factors:

(a) The extent to which the applicant's interests and purposes are consistent with the purposes of the Act and the priorities of the Agency;

(b) The qualifications of the proposed project planner;

(c) The extent to which the project's proposed procedural design assures that the applicant would adequately:

(1) Obtain financial, human and support resources necessary to conduct the plan;

(2) Coordinate with other telecommunications entities at the local, state, regional and national levels;

(3) Evaluate alternative technologies and existing services; and

(4) Receive participation by the public to be served (and by minorities and women in particular) in the project planning;

(d) Any pre-planning studies conducted by the applicant showing the technical feasibility of the proposed planning project (such as the availability of a frequency assignment, if necessary, for the project); and,

(e) The feasibility of the proposed procedure and timetable for achieving the expected results.

§ 2301.15 Action on all applications.

(a) After consideration of an application which the Agency has accepted for filing, any comments filed by interested parties and replies thereto,

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and any other relevant information, the Agency will take one of the following actions:

(1) Select the application for funding, in whole or in part;

(2) Defer the application for subsequent consideration; or,

(3) Return the application as ineligible pursuant to § 2301.9 with a notice of the grounds and reasons.

(b) Upon the approval or deferral, in whole or in part, of an application, the Agency will inform:

(1) The applicant;

(2) Each state educational television, radio, or telecommunications agency, if any, in any state any part of which lies within the service area of the applicant's facility;

(3) The FCC; and,

(4) The Corporation for Public Broadcasting and, as appropriate, other public telecommunications entities.

(c) If the Agency decides to fund an application, the award documents will include grant terms and conditions and whatever other provisions are required by Federal law or regulations, or which may be deemed necessary or desirable for the achievement of program purposes.

(d) An applicant or an objecting party may not appeal to the Administrator the Agency's determination to fund or not fund a particular application.

(e) Information about grant terms and conditions or other applicable laws and regulations is available from PTFP at the address listed in § 2301.5(a).

Subpart C—Federal Financial Participation

§ 2301.16 Amount of the Federal grant.

(a) *Construction grants.* (1) A Federal grant for the construction of a public telecommunications facility shall be in an amount determined by the Agency and set forth in the award document. Such amount may not exceed seventy-five (75) percent of the amount determined by the Agency to be the reasonable and necessary cost of such project.

(2) No part of the grantee's matching share of the eligible project costs may be met with funds paid by the Federal government, except where the use of such funds to meet a Federal matching requirement is specifically and expressly authorized by the relevant Federal statute.

(3) After the filing of its application, the applicant may, at its own risk, obligate non-Federal matching funds for the acquisition of proposed equipment. Should the applicant exceed the non-Federal share as established in the final award agreement, the Federal share of the total project cost will be reduced by a corresponding amount.

(4) Funds supplied to an applicant by the Corporation for Public Broadcasting may not be used for the required non-Federal matching purposes, except upon a clear compelling showing of need.

(b) *Planning grants.* A Federal grant for the planning of a public telecommunications facility shall be in an amount determined by the Agency and set forth in the award document and the attachments thereto. The Agency may provide up to one hundred (100) percent of the funds necessary for the planning of a public telecommunications construction project.

(c) Project costs do not include the value of eligible apparatus owned or acquired by the applicant prior to the closing date.

§ 2301.17 Items and costs ineligible for Federal funding.

The following items and costs are ineligible for funding under the Act:

(a) *Equipment and supplies.* Each year, the Agency will review its list of ineligible equipment and supplies. A copy of the currently applicable list of ineligible equipment will be provided with every application package for PTFP grants.

(b) *Other expenses ineligible for funding.* (1) Buildings and modifications to buildings to house eligible equipment and fences surrounding them are not themselves eligible for funding under this program, except that small equipment shelters which are part of satellite earth stations, translators, microwave interconnection facilities, and similar facilities are eligible for funding;

(2) Land and land improvements;

(3) Salaries of personnel employed by an operating public telecommunications entity and other operational costs (except for planning projects under section 392(c) of the Act);

(4) Moving costs required by relocations;

(5) Such other expenses as the Agency may determine prior to the award of a grant.

§ 2301.18 Waiver.

For good cause shown, the Administrator may waive the regulations adopted pursuant to section 392(e) of the Act.

Subparts D–F—[Reserved]

Appendix to Part 2301—Priorities

Priority I—Provision of Public Telecommunications Facilities for First Radio and Television Signals to a Geographic Area

Within this category, NTIA establishes two subcategories:

A. *Projects which include local origination capacity.* This subcategory includes the planning or construction of new facilities which can provide a full range of radio and/or television programs including material that is locally produced. Eligible projects include new radio or television broadcast stations, new cable systems, or first public telecommunications service to existing cable systems, provided that such projects include local origination capacity.

B. *Projects which do not include local origination capacity.* This subcategory includes projects such as increases in tower height and/or power of existing stations and construction of translators, cable networks and repeater transmitters which will result in providing public telecommunications services to previously unserved areas.

Priority I and its subcategories only apply to grant applicants proposing to plan or construct new facilities to bring public telecommunications services to geographic areas which are presently unserved, *i.e.*, areas which do not receive any public telecommunications services whatsoever. (It should be noted that television and radio are considered seperately for the purposes of determining coverage.)

Under Priority IB, NTIA will consider an area served when it receives a public television signal from a distant source through a cable system which has a penetration rate of fifty (50) percent. (An applicant proposing to plan or construct a facility to serve a geographical area which is presently unserved, should indicate the number of persons who would receive a first public telecommunications signal as a result of the proposed project.)

Priority II—Replacement of Basic Equipment of Existing Essential Broadcast Stations. Projects eligible for consideration under this category include the replacement of obsolete or worn out equipment in existing broadcast stations which provide either the only public telecommunications signal or the only locally originated public telecommunications signal to a geographical area.

In order to show that the replacement of equipment is necessary, applicants must provide documentation indicating excessive downtime, or a high incidence of repair (*i.e.*, copies of repair records, or letters documenting non-availability of parts.) Additionally, applicants must show that the station is the only public telecommunications station providing a signal to a geographical area or the only station with local origination capacity in a geographical area.

The distinction between Priority II and Priority IV is that Priority II is for the replacement of basic equipment for essential stations. Where an applicant seeks to "improve" basic equipment in its station (*i.e.*, where the equipment is not "worn out"), or where the applicant is not an essential station, NTIA would consider the applicant's project under Priority IV.

Priority III—Establishment of a First Local Origination Capacity in a Geographical Area. Projects in this category include the

planning or construction of facilities to bring the first local origination capacity to an area already receiving public telecommunications services from distant sources through translators, repeaters or cable systems.

Applicants seeking funds to bring the first local origination capacity to an area already receiving some public telecommunications services may do so, either by establishing a new (and additional) public telecommunications facility, or by adding local origination capacity to an existing facility. (A source of a public telecommunications signal is distant when the geographical area to which the source is brought is beyond the grade B contour of the origination facility.)

Priority IV—Replacement and Improvement of Basic Equipment for Existing Broadcast Stations. Projects eligible for consideration under this category include the replacement of obsolete or worn out equipment and the upgrading of existing origination or delivery capacity to current industry performance standards (*e.g.*, improvements to signal quality, and significant improvements in equipment flexibility or reliability). As under Priority II, applicants seeking to replace or improve basic equipment under Priority IV should show that the replacement of the equipment is necessary by including in their applications data indicating excessive downtime, or a high incidence of repair (such as documented in repair records).

Priority V—Augmentation of Existing Broadcast Stations. Projects in this category would equip an existing station beyond a basic capacity to broadcast programming from distant sources and to originate local programming.

A. *Projects to equip auxiliary studios at remote locations, or to provide mobile origination facilities.* An applicant must demonstrate that significant expansion in public participation in programming will result. This subcategory includes mobile units, neighborhood production studios or facilities in other locations within a station's service area which would make participation in local programming accessible to additional segments of the population.

B. *Projects to augment production capacity beyond basic level in order to provide programming or related materials for other than local distribution.* This subcategory would provide equipment for the production of programming for regional or national use. Need beyond existing capacity must be justified.

Special Applications.—NTIA possesses the discretionary authority to award grants to eligible applicants whose proposals are so unique or innovative that they do not clearly fall within the listed priorities. Innovative projects submitted under this category must address demonstrated and substantial community needs (*e.g.*, service to identifiable ethnic or linguistic minority audiences, services to the blind or deaf, instructional services or electronic text).

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Part V

Department of Energy

Civilian Radioactive Waste Management; Calculating Nuclear Waste Fund Disposal Fees for Department of Energy Defense Program Waste; Notice

DEPARTMENT OF ENERGY

Civilian Radioactive Waste Management; Calculating Nuclear Waste Fund Disposal Fees for Department of Energy Defense Program Waste

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The Department of Energy (DOE), Office of Civilian Radioactive Waste Management (OCRWM) gives public notice of its approach to interpreting the requirement under the Nuclear Waste Policy Act of 1982 for allocating the costs of developing, constructing, and operating repositories under that Act between atomic energy defense wastes and commercial high-level spent fuel (42 U.S.C. 10107(b)(2)). The costs resulting from permanent disposal of high-level radioactive wastes from atomic energy defense activities are to be paid by the Department into the Nuclear Waste Fund. This notice presents the Department's method for calculating the appropriate allocation of costs for the disposal of Defense High-Level Waste (DHLW). Actual monies to pay such costs into the Nuclear Waste Fund must be appropriated by the Congress. The Department intends to incorporate the method adopted here in the DHLW disposal agreement between OCRWM and the Department's Office of Defense Programs, and to use this method to formulate future requests for appropriations for funds to pay into the Nuclear Waste Fund to cover the costs of disposal of wastes from atomic energy defense activities. This notice also includes the Department's response to comments received on the Notice of Inquiry published in the Federal Register on December 2, 1986, "Calculating Nuclear Waste Fund Disposal Fees for DOE Defense Program Waste; Inquiry and Request for Public Comment" (41 FR 43566). Sample calculations of DHLW cost shares using the new method are included. The Department will refine these calculations as the program matures.

DATE: August 20, 1987.

FOR FURTHER INFORMATION CONTACT: Ronald A. Milner, Director, Financial Management and Analytical Services Division, Office of Civilian Radioactive Waste Management, Department of Energy, Room GB-270, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9173.

SUPPLEMENTARY INFORMATION: The Department of Energy (DOE), Office of Civilian Radioactive Waste Management (OCRWM), today gives public notice of its approach to interpreting the requirement under the Nuclear Waste Policy Act of 1982 (NWPA) (Pub. L. 97-425) to allocate the costs of developing, constructing, and operating repositories under the Act between disposal of high-level radioactive waste from atomic energy defense activities and disposal of high-level radioactive waste and spent fuel from civilian nuclear activities. The purpose of this notice is to set forth the methodology that the Department intends to implement for such allocation of costs to permit calculation of defense high-level waste (DHLW) disposal fees that are to be paid by the Department from appropriations from general revenues to the Nuclear Waste Fund (NWF) established under the NWPA. Sample DHLW cost share calculations using this methodology are included in this notice. This notice also responds to public comments provided on the Federal Register notice of December 2, 1986, "Calculating Nuclear Waste Fund Disposal Fees for DOE Defense Program Waste; Inquiry and Request for Public Comment." A schedule for payment of fees by the Department is not set forth in this notice. A Memorandum of Agreement between the Department's Office of Defense Programs (DP) and OCRWM is currently under preparation. This agreement will provide the basis for the amount of funds to be requested in DP's budget requests, as well as other details related to the DHLW fee. Funds to pay fees for disposal of DHLW must be appropriated by Congress.

I. Background

Just prior to the passage of the NWPA in 1983, Congress directed the President to prepare a report which would describe plans for the permanent disposal of high-level and transuranic wastes (TRU) resulting from atomic energy defense activities. The report (The Defense Waste Management Plan, DOE/DP-0015) was submitted to Congress in June 1983. This report communicated the Department's strong commitment to the objective of ending interim storage and achieving permanent disposal by immobilizing and preparing DHLW and TRU for disposal in a geologic repository. Since FY 1983, Congress has provided approximately $1.5 billion for these DP activities. Construction of waste immobilization facilities is now under way at the Defense Waste Processing Facility located at the Department's Savannah River site. Construction is also under way of the Waste Isolation Pilot Plant in New Mexico for the demonstration of the disposal of TRU.

The NWPA establishes a schedule for the siting, construction, and operation of repositories to permanently dispose of high-level radioactive waste and spent nuclear fuel (SNF). As required by section 8(b)(2) of the NWPA, the use of disposal capacity of the facilities to be developed under the NWPA for the disposal of high-level radioactive wastes from atomic energy defense activities was evaluated. Based upon this evaluation and the Department's recommendation, the President found no basis for the establishment of a separate repository for the permanent disposal of DHLW. Upon notification of this determination on April 30, 1985, the Secretary of Energy became obligated under section 8(b)(2) of the NWPA to "proceed promptly with arrangement for the use of one or more of the repositories to be developed under subtitle A of title I for the disposal of such waste. Such arrangements shall include the allocation of costs of developing, constructing, and operating this repository or repositories." The costs resulting from permanent disposal of DHLW are to be paid by the Federal Government into the NWF established under section 302 of the NWPA.

Although Congress directed that payments for the disposal of DHLW be made by the Federal Government into the NWF, it did not provide for a specific fee such as the 1 mill/kilowatt-hour mandated for civilian spent fuel nor did it appropriate money for payment into the NWF. From 1983 to the end of FY 1986, utilities under contract with the Department have paid over $1.2 billion in ongoing fees into the NWF for SNF disposal. In addition, more than $1.4 billion has been paid as a one-time fee for SNF that had been generated prior to April 7, 1983.

On December 2, 1986, the Department published in the Federal Register a Notice of Inquiry and Request for Public Comment entitled "Calculating Nuclear Waste Fund Disposal Fees for DOE Defense Program Waste." In this Notice of Inquiry (NOI), the Department analyzed the following options for calculating the DHLW disposal fee: (1) Option I, a fee that equals the total cost of disposing of DHLW by OCRWM ("full cost recovery using sharing formulas"), (2) Option II, a fee based upon 1 mill per kilowatt-hour electric-generation equivalent for the defense reactor operations that produce these wastes ("1-mill electric-generation equivalent fee"), and (3) Option III, under which defense and civilian fees equal a fraction of the combined-repository program costs which is the same as that sector's fraction of the sum

of the evaluated costs for separate repository programs ("cost shares proportional to avoided costs"). The Department identified as a preferred approach Option I, "full cost recovery using sharing formulas," since it would provide the best assurance that both civilian and defense waste generators would pay their full fair shares of costs for the OCRWM disposal system, thereby avoiding subsidies from one group of waste generators to another. Members of the public were requested to submit written comments, including suggestions for modification of the preferred approach, to assist the Department in developing a sound approach to interpreting provisions of the NWPA applicable to calculating fees for disposal of DHLW.

In summary, the purpose of this notice is to satisfy the requirement in section 8(b)(2) of the NWPA to establish a method for allocating costs for disposal of DHLW. The Department intends to apply this method in the future when concluding the intra-agency arrangements and when formulating appropriations requests for funds to cover the costs of disposal of DHLW. The Department concluded that public participation in its formulation of the method was desirable and incorporated public involvement into this process by:

1. Publishing a Notice of Inquiry in the Federal Register soliciting public comments;
2. Considering the comments submitted on the NOI;
3. Publishing a Notice describing a revised method in the Federal Register together with responses to comments received on the NOI; and
4. Committing to public notice and solicitation of public comments on any significant discretionary changes to the methodology.

II. Reponse to Comments on the Federal Register Notice of December 2, 1986

In response to the Department's Notice of Inquiry and Request for Comments, twenty-six letters were received from individual electric utilities, utility groups, Governmental agencies, and members of the public. All comments received have been carefully reviewed. These comments can be summarized under five general issues. The following sections contain summaries of the comments related to each of the five issuers and the Department's responses to these comments.

A. Fairness Issues: Equity and Potential Cross-subsidization

Many of the commenters expressed concern about equity in the sharing of costs between defense and civilian waste disposers, given the potential for cross-subsidization between the civilian and defense waste generators. The Department is also concerned with this potential. The method the Department intends to use to calculate the cost share for DHLW is designed to assure that each class of waste generator bears the full cost of disposal of its wastes so that there is no cross-subsidization between civilian and defense waste generators. The Department is responsible for protecting the interests of both the ratepayer paying for disposal of civilian high-level radioactive waste and spent nuclear fuel and the taxpayer paying for DHLW disposal. The Department believes that the general approach embodied in the full-cost recovery method (Option I proposed in the earlier notice) does allocate the cost of the OCRWM program between civilian and defense high-level waste generators so that these generators pay only for their respective estimated shares of total program costs. Option I, as modified and presented in this notice, allocates total OCRWM cost on the basis of direct costs for each waste type and estimates of the fair shares of common costs as explained in Section III of this notice. The Department has examined the cost elements and has identified factors that reflect appropriate shares of each cost element for each waste type requiring disposal. The Department believes that this approach is the best way to ensure that costs are shared fairly.

B. Procedural Issues

1. *Lack of Substantive Rulemaking.* Many of those who responded to the NOI argued that the Department should initiate a substantive rulemaking to establish the DHLW fee calculation method by a procedure which would comply with the Administrative Procedure Act (5 U.S.C. 553). The comments also urged the Department to go beyond the fee calculation methodology and cover a variety of issues related to formulation of the intra-agency agreement between OCRWM and DP.

The preference of some who responded with a call for substantive rulemaking is partly attributable to the omission by the Department of an explicit commitment in the NOI to respond to the comments and to explain refinements to the calculation methodology. Today's notice does respond to relevant comments and clearly sets forth the method that the Department intends to use in fulfilling the statutory requirement to allocate the costs resulting from the disposal of DHLW. Although the method is subject to further development, the Department will not make significant discretionary changes without seeking and responding to relevant public comments. The NOI, the comments, and today's notice from a record of the development of the Department's interpretation.

In issuing an NOI and responding to public comment in the Federal Register the Department has gone beyond what is legally required. The procedures that the Department has followed are generally consistent with its previously expressed belief that rulemaking-type procedures are the best method of involving the public in the development of program policies (48 FR 16597, April 18, 1983). However, they were devised to take account of the fact that, under section 8(b)(2), the Department is not engaged in an activity which has a direct, binding, regulatory impact on the public and there is no need for the more involved procedures of substantive rulemaking under 5 U.S.C. 553 which are time-consuming and constrain communication with the public. Like interagency agreements, agreements between offices of the same agency are ordinarily concluded without soliciting public comment or substantive rulemaking under 5 U.S.C. 553.

Some reviewers felt that the Department failed to furnish sufficient information on the proposed method to permit a determination that an equitable sharing of costs can take place. In the NOI, an address and phone number were provided for those members of the public that wanted additional information. Additional information, including cost estimates more detailed than those published in the NOI, was put on file in the Public Documents room of the Department's Headquarters (Forrestal) building. This notice is structured to include a significantly higher level of detail, especially on the method for determining the DHLW cost share, than was available at the time of publication of the referenced NOI. The Department intends to incorporate future estimates of the DHLW cost share in future issues of the annual fee adequacy report, *Nuclear Waste Fund Fee Adequacy: An Assessment*, and total systems life cycle cost studies, *Analysis of the Total System Life Cycle Cost for the Civilian Radioactive Waste Management Program.*

2. *Use of an Independent Contractor.* Several respondents suggested the use of an independent contractor, i.e., a contractor agreeable to both the Department and the affected utilities, to develop the cost estimates and calculation method to be used in DHLW fee payment determinations. Congress

assigned the responsibility for allocating costs of repositories to the Department in the NWPA. The Department has elected to involve the public in determining a methodology for allocating such cost. This public involvement is similar to that of the rulemaking process (see discussion under B.1., above). The Department has fully considered public comments in the preparation of this notice and feels that the substantial delay in establishing the fee that would result if an independent contractor were involved is not justified. The contractor would only be able to develop basic information on options for calculating and paying the fee with which the Department is already familiar. The remaining activities of implementing the fee and recommending the appropriation of funds can only be performed by the Department.

C. Fee Payment Issues

1. *Timing.* Some commenters were concerned with the fact that no DHLW disposal fee payment has been made to the NWF and that no payment schedule, with attendant penalties, was included in the NOI. Funding of the costs of disposal of DHLW by payment into the NWF must be addressed by Congress during the normal budgetary and appropriation process. An intra-agency agreement (e.g., a Memorandum of Agreement) between DP and OCRWM is in preparation. This agreement will provide the basis for the amount of funds to be requested in the future DP budget requests, as well as other details related to the DHLW fee. The Department recognizes that the process of establishing the DHLW cost share and payments is lengthy. The Department intends that the time value of money will be included in calculating budget requests for the DHLW fee payments to compensate for delays in DHLW fee payments beyond the time when OCRWM incurs costs, shared or direct, for DHLW disposal. It is recognized that OCRWM has already made substantial outlays for development and evaluation (D&E) activities for which DP has a proportional obligation. The Department intends to consider the adequacy of the civilian and defense fees independently so the delay in defense waste disposal payments will have absolutely no impact on the civilian fee.

Several commenters recommended that the timing of DHLW payments should closely parallel civilian payments, thereby closely tying the payment of the DHLW fee to the generation of fission products. It is believed that strict parallelism between the terms of the civilian waste disposal contracts and the payments made for disposal of DHLW is unnecessary because of the NWPA requirement that the Federal Government pay the full cost of DHLW disposal. The purpose of assessing a fee based on nuclear electric generation was to ensure that the beneficiaries of nuclear electricity would pay for any resulting waste disposal. This fee was also easily included in a consistent manner in the existing rate structures of utilities. As stated, the Department intends to calculate the cost of DHLW disposal by the full-cost recovery method. The timing of payment of DHLW fees will have no effect on the civilian fee since the adequacy of the two fees is determined independently. If, for example, the cost for civilian waste disposal were shown to be greater than (or less than) expected civilian fee revenues plus the earnings on the resulting funds, the civilian fee would be increased (or decreased) regardless of the balance in the NWF for the disposal of DHLW.

2. *Potential Premium of Disposal Fees Over Fees Required to Cover Waste Generators' Costs.* Some respondents expressed the opinion that, since the current civilian waste disposal fee may provide a margin of fee collections in excess of those required to cover civilian waste disposal costs over the life of the program, such a margin should be collected for the disposal of DHLW.

In view of the current preconceptual design phase of OCRWM planning, uncertainty over the locations and design of the major OCRWM facilities, and the resulting large range of uncertainty in the resulting cost projections, it is by no means clear that such a premium exists in the current civilian fee structure. In addition, there is a major difference between the terms under which civilian and defense waste disposal costs are to be financed. The standard contract for spent nuclear fuel disposal contains a provision that, once the fee is paid for specific spent fuel, the utility paying the fee has no further financial responsibility for the disposal of this fuel. Ultimate costs of the potentially century-long OCRWM program are currently unknown, and significantly better cost estimates may be unavailable until the actual locations of the repositories are known—which may be late in the life of many of the current nuclear electric generating units. Under the NWPA, the Department is to pay the full costs of DHLW disposal into the NWF. This is interpreted to mean that retroactive charges can be used, if required, to fully cover the costs of DHLW disposal. The charging of a premium in excess of the amount now estimated to be required to cover potential escalating costs of DHLW disposal is not necessary since the full costs of DHLW disposal must eventually be paid into the NWF by the Federal Government.

In summary, the terms of the standard contract for disposal of spent fuel could potentially shift significant financial risk to OCRWM and/or future nuclear powerplant operators if large cost overruns occur after much of the existing nuclear generating capacity is retired. This is not the case for DHLW because it is clear that financial responsibility for DHLW disposal rests with the Department.

D. Waste Quantity and Delivery Schedule Issues

1. *Waste Quantities.* Some reviewers expressed concern that the forecast assumptions used for spent fuel bias the calculation toward a lower DHLW fee. Reviewers suggested that the Department should use a lower projection of spent fuel generation in estimating DHLW costs since the Energy Information Administration upper reference case generation forecast may be high and DHLW estimates may be low. Lower SNF projections would result in a larger DHLW cost share.

OCRWM has historically used the upper reference case (mid-case) SNF forecast because of its effect on the design of facilities and on operational logistics. The Department will continue to use these estimates for design purposes, but it has and will continue to evaluate the effects of other forecasts on fee adequacy. The ultimate DP cost share will be based upon the actual quantities emplaced. Current estimates of quantities are for planning purposes only. The method that the Department intends to use for determining the defense and civilian cost shares incorporates the effects of varying civilian waste and DHLW quantities and delivery schedules. (The effects of alternative SNF forecasts are illustrated in section III of this notice.) OCRWM will continue to conduct waste volume studies and will recommend adjustments during the annual fee adequacy assessment when necessary. The Department intends to make retroactive charges or rebates to reflect any resulting changes in the DP cost share.

The Department recognizes that there are also uncertainties in the DHLW forecast. The base case, described in "A Perspective on Methods to Calculate A Fee for Disposal of Defense High-Level Waste in Combined (Civilian/Defense)

Repositories," DOE/RL-86-10, is used for the cost estimates included in this notice. (The base case includes: Savannah River DHLW in 7,000 canisters; Hanford DHLW (without single-shell-tank waste) in 1,500 canisters; Idaho DHLW (with extra volume reduction) in 6,000 canisters; and non-site-specific DHLW from future production in 1,500 canisters.) Two documents currently in preparation will provide an improved basis for future forecasts. These documents are the "Hanford Defense Waste—Environmental Impact Statement" and "Idaho Chemical Processing Plant High-Level Waste Management Strategy Plan," both scheduled for completion in 1987. Using these and other documents, the Department will update the DHLW estimate in Integrated Data Base, DOE/RW-0006.

This update will be the formal reference for the DHLW quantity used in OCRWM's 1988 total system life cycle cost and fee adequacy reports. All three documents will be updated annually. Because the waste volume forecasts and DHLW fee calculations will be updated annually, and estimates of retroactive charges will be included as a basis for the request for appropriations, if needed, the DHLW cost share will reflect its full fair share of OCRWM costs.

2. *Delivery Schedule for DHLW.* A few reviewers were concerned that there was no DHLW delivery schedule included in the NOI. For planning purposes, OCRWM publishes illustrative delivery schedules in the OCRWM Mission Plan and amendments. The most recent one is an illustrative waste acceptance schedule contained in the OCRWM Mission Plan Amendment, DOE/RW-0128, published in June 1987. This schedule shows DHLW deliveries starting at 400 metric tons of uranium equivalent per year in 2006.

E. Fee Calculation Method Issues

1. *Options in the Previous Notice of Inquiry.* As noted above, the NOI published by the Department in the Federal Register on December 2, 1986, "Calculating Nuclear Waste Fund Disposal Fees for DOE Defense Program Waste; Notice of Inquiry and Request for Public Comment," DOE presented three alternative approaches to determining the DHLW disposal fee: (I) a fee that equals the total cost of disposing of DHLW by OCRWM ("full cost recovery using sharing formulas"), (II) a fee based upon 1 mill per kilowatt-hour electric-generation equivalent for the defense reactor operations that produce these wastes ("1-mill electric-generation equivalent fee"), and (III) defense and civilian fees equal to a fraction of the combined-repository program costs which is the same as each sector's fraction of the sum of the estimated costs for separate repository programs ("cost shares proportional to avoided costs").

The Department proposed using Option I because it seemed most consistent with the intent of the NWPA that both civilian and defense waste generators would pay their full shares of actual costs for the OCRWM disposal system so that there would be no subsidy from or to the waste generators that use OCRWM facilities. In addition, it was expected that this method of fee assessment would provide an additional incentive for overall nuclear waste disposal efficiency since DP would consider the likely impacts of DHLW preparation and handling on OCRWM costs and, therefore, on the costs of disposing of DHLW. Many reviewers supported the selection of Option I or a modification thereof.

Option II was rejected by the Department as likely to produce revenues that would be insufficient to cover DHLW disposal costs. Most reviewers agreed that Option II was not appropriate. Option III was rejected by the Department because it would allocate costs on the basis of the estimated costs of facilities that would not be constructed and might lead to a systematic overassessment of fees on a waste generator that is responsible for smaller amounts of high-level nuclear wastes. A few reviewers indicated a preference for Option III or for an incorporation of its principle of avoided costs into Option I.

2. *Alternative Method.* A number of respondents, including the Edison Electric Institute, suggested a method that is similar to Option I, but uses different cost sharing factors. This method of cost allocation would assign costs to three categories: (1) Direct costs, those specific to either DHLW or SNF, (2) common costs that are shared using physical factors such as piece count or mined volume, and (3) common fixed costs that are shared on the basis of the number of separate repositories avoided, that is, charged ⅓ to DHLW and ⅔ to SNF. This split of fixed costs is based on the assumption that if separate repositories were constructed, one of them would accommodate DHLW and two would handle civilian high-level waste and SNF.

The principal differences between this proposal and the proposal favored in the NOI are in the method for sharing common fixed costs (which are mostly D&E costs) and in the classification of some repository costs as common costs to be shared in the same manner as D&E costs. However, the proposal for a three-way classification of costs has considerable merit. The Department believes that cost elements which cannot be shown to be direct costs should be allocated to the extent possible, based upon the physical parameters that cause the cost variation. However, there are certain cost items, primarily D&E items, for which no such relationship to physical parameters has been identified. The Department believes that these costs, referred to as "common unassigned costs," should be allocated on the same basis as the relative shares of assignable costs. To assign such costs based upon any one physical parameter would require an arbitrary selection of one of those parameters. To assign such costs on the basis of the number of avoided repositories would ignore information that more accurately reflects the relative levels of activity supported by the facilities and activities that are paid for with common fixed costs. By using the ratio of assignable costs for one class of waste generator to total assignable costs as a basis for cost sharing, the allocation of this major portion of costs is really "cost based" since assignable costs already reflect sharing on the basis of direct costs and several physical parameters that are related to costs. This method is further discussed in Section III of this notice.

3. *Other Issues.* A few reviewers were concerned about the provisions for credits that might be made for work done by DP. The issue of credits was first addressed in 10 CFR Part 961, which describes the standard contract for civilian fee. Relative to the civilian fee, the Department stated that it will "recognize that other types of credits may become appropriate" and will consider them in the future. To parallel the civilian fee, the NOI noted that "If appropriate, the DHLW fee will reflect credit for activities carried out or contributions made by the Department's Office of Defense Programs (DP) to the extent that they reduce the cost of OCRWM activities." Potential credits may be discussed in more detail in the Memorandum of Agreement between OCRWM and DP that is now in preparation. The Department is willing to consider credits for both civilian and defense activities, where appropriate, under a fair and equitable arrangement.

A few reviewers stated that repository-specific allocation factors should be used in determining cost shares. The Department agrees with this comment and has used this suggestion in

the modified method described in Section III of this notice and in its estimates of DHLW cost shares for the different disposal program scenarios that are presented as examples in this notice. In addition, the cost estimates used in this notice are based on the assumption that the total quantities of civilian wastes and DHLW are split proportionally between the first and second repositories. For example, if 60 percent of the civilian wastes is disposed of in the first repository, then 60 percent of DHLW is also disposed of in the first repository. This assumption assures that neither waste generator is penalized with a larger common unassigned cost share due to disproportionate waste splits between the two repositories. All the allocation factors will be examined during future fee adequacy assessments for any changes.

A few respondents expressed the opinion that DHLW should be allocated a higher share of costs at the basalt site because of the possibility of rising marginal costs for disposal at this potential repository site. Unless there is evidence otherwise, it seems apparent that, if a repository site were subject to marginal costs that increase as waste quantities increase, the rising marginal costs would be present regardless of the type of waste added to the repository. If DHLW were not placed in the basalt repository, an equivalent amount of civilian waste would replace it. Since it would be impossible to assign higher marginal costs solely to either class of waste, there is no reason that either DHLW or SNF should be charged a differentially higher cost share.

Some reviewers expressed concern that the repository pairs used in the NOI were indicative of the preselection of these sites as final choices for the OCRWN repositories. As noted on p. 43567 in the NOI, the pairs of repositories used in the cost estimates were chosen for illustrative purposes only. In particular, the second repository cost estimates for crystalline rock repositories were not used in the NOI because they were not considered to be as accurate as the estimates for a salt repository. Thus, the examples used in the NOI were selected because they made use of the cost estimates that were believed to be the most reliable at the time of the preparation of the NOI. They reflect no prejudgment as to site selection. To avoid this misconception in this notice, examples have been selected based on modifications to cases taken from the 1987 Total System Life Cycle Cost report. These examples represent the high-cost and low-cost repository pair.

III. Cost Allocation Method

This section describes the Department's planned method for allocating the life-cycle costs of the radioactive waste management system to civilian and defense waste generators. This method is a revision of the preferred alternative (Option I) outlined in the **Federal Register** notice of December 2, 1986.

This revision incorporates changes made to the TSLCC accounting structure and changes made as a result of public comments in response to the NOI. The following changes in the cost accounting structure were required to utilize the TSLCC cost estimates:

1. The latest estimates of program repository costs are much more detailed than estimates used in the NOI. The cost allocation scheme is applied to the detailed accounts, rather than to summary accounts considered earlier. This change increases the precision of the cost allocation.

2. The latest estimates of program D&E costs were divided into several categories to more precisely predict the defense cost share. Different formulae are used to allocate the Monitored Retrievable Storage Facility D&E, waste package D&E, transportation D&E, Government administration, and all other D&E costs. The previous method, in the NOI, allocated the difference of the total D&E cost less the MRS D&E cost.

Similarly, other revisions in the method were adopted in response to comments received from NOI reviewers:

1. There is a choice of three cost account designations now as opposed to two in the NOI. The three categories are direct costs, common variable costs, and common unassigned costs, thus permitting a more equitable cost allocation.

2. The current method utilizes the program MRS facility cost estimate, which, in total, is a civilian cost, as a part of the civilian assigned costs used to compute the cost factor for sharing unassigned Government administration D&E costs.

The cost allocation methodology uses a combination of directly assignable costs and cost-sharing formulae applied to cost accounts contained in OCRWM's annual analysis of total system life-cycle costs. Each life-cycle cost account is grouped in one of three cost categories: direct costs (assignable), common variable costs (assignable), and common unassigned costs. Within each of these categories, costs are allocated to DHLW and civilian wastes on different bases.

Total cost is partitioned into assignable cost and unassigned cost. The total assignable cost is the sum of the direct costs and common variable costs.

The direct costs are incurred solely for the disposal of either DHLW or civilian wastes and are allocated in total to defense or civilian waste generators. For example, DHLW transportation and DHLW waste package fabrication are allocated to defense waste generators as direct costs, while costs for facilities and activities attributed solely to civilian waste disposal are also allocated as direct costs to the civilian waste generators.

For the repository cost components of the TSLCC, common variable costs are allocated to both DHLW and civilian waste generators on the basis of cost sharing factors developed from relevant physical parameters, such as repository excavation required and number of waste packages for each type of waste.

The following cost sharing factors are used for allocation of common variable repository costs:

Piece count: The ratio of the number of DHLW disposal packages in the repository to the total number of disposal packages in the repository.

WHB#1 piece count: The ratio of the number of DHLW disposal packages processed in waste handling building #1 to the total number of disposal packages processed in waste handling building #1.

WHB#2 piece count: The ratio of the number of DHLW disposal packages processed in waste handling building #2 to the total number of disposal packages processed in waste handling building #2.

Areal Dispersion: The ratio of the repository disposal area required for DHLW disposal to the total disposal area. This may be measured by the proportion of the mined volume in the disposal areas that is attributed to DHLW.

The above fractions represent the DHLW portion of the cost in a common variable cost account, while the remaining cost in the account represents the civilian waste portion. Each repository has its own unique set of physical parameters, which will vary depending on its capacity and waste characteristics. Therefore, cost sharing factors must be developed for each of the two repositories in any case considered.

The common unassigned costs are the remaining components of the life-cycle cost which cannot be directly allocated or cannot be allocated based on cost sharing factors developed from relevant physical parameters. These costs are unassigned because there is no reason to believe that they are a function of any readily determined system parameter. The costs in a common unassigned account are allocated to both defense and civilian waste generators in proportion to their respective shares of the appropriate assignable cost

categories. As the program progresses, it may be possible to allocate some of the unassigned costs either directly or by some physical parameter.

The following table summarizes the Department's planned classification of cost accounts for cost sharing:

COST ALLOCATION BASIS

Cost account	Allocation basis
Development and Evaluation:	
D&E for MRS	Direct cost (civilian).
Civilian Waste Package D&E.	Direct cost (civilian).
Transportation and System Integration D&E.	Common unassigned, based on assignable transportation costs.
Other Repository D&E.	Common unassigned cost, based on assignable cost of repositories 1 & 2.
Government Administration.	Common unassigned cost, based on total assignable cost.
Repositories #1 and #2:	
Management and Integration.	Common unassigned cost, based on assignable repository cost.
Site Preparation	Common unassigned cost, based on assignable repository cost.
Waste Handling Building #1.	Common variable, WHB#1 piece count.
Waste Handling Building #2.	Common variable, WHB#2 piece count.
Other Waste Handling.	Common variable, piece count.
Balance of Plant:	
Facilities for Change House, Explosives, Compressed Air and Steam, Cooling, Excavated Material and Backfill.	Common variable, areal dispersion.
Packing Facility	Common variable, piece count.
All other	Common unassigned cost based on assignable repository cost.
Surface Shaft Facilities:	
Waste Facility	Common variable, piece count.
All Other	Common variable, areal dispersion.
Shaft/Ramps—Underground	
Waste Handling	Common variable, piece count.
All Other	Common variable, areal dispersion.
Subsurface Excavations:	
Development and Emplacement/ Retrieval Operations, Spent Fuel Facility.	Direct cost (civilian).
Transport, and Emplacement DHLW Facility.	Direct cost (DHLW).
Transport, and Emplacement Other Waste Facility.	Direct cost (Civilian).
Transport, and Emplacement:	
Boreholes	Common variable, piece count.
Waste Removal	Common variable, piece count.
Backfill:	
Waste Handling	Common variable, piece count.
All Other	Common variable, areal dispersion.
Underground Service Systems.	Common variable, areal dispersion.
Waste Package Fabrication:	
Spent Fuel, Spent Fuel Hardware, WVHLW* and CHLW*.	Direct cost (civilian).
DHLW	Direct cost (DHLW).
All Other	Common variable, piece count.
Transportation	Direct cost (civilian and DHLW portions).
MRS	Direct cost (civilian).

* WVHLW = West Valley high-level waste.
* CHLW = civilian high-level waste.

The cost allocation methodology proceeds in a stepwise fashion following designation of cost accounts into the categories as shown above. First, direct costs are allocated for all cost accounts. Second, cost sharing factors for common variable costs are computed. Third, common variable cost allocation is performed. Fourth, common unassigned costs are calculated for each repository and the common unassigned costs for D&E based on the proportions of previously calculated assigned costs.

The allocation of costs is complete when the civilian and DHLW share totals are computed as the sum of their respective direct, common variable, and common unassigned costs.

Several cases were chosen to demonstrate the cost allocation method summarized above. These cases are used for illustrative purposes and do not reflect any prejudgment of site selection. The cases consider two combinations of repository sites and two projections of SNF.

The life-cycle cost estimates used in the sample cases are modified estimates prepared for OCRWM's 1987 TSLCC analysis. The estimates were modified to reflect a change in the assumption that assigns the quantity of DHLW between the first and second repositories. The TSLCC analysis estimates were based on the assumption that 4,000 metric ton uranium (MTU) equivalent of DHLW is emplaced in each repository for all cases. In contrast, the following results are based on a DHLW assignment of 4,876 MTU-equivalent and 3,124 MTU-equivalent to the first and second repositories, respectively, in the upper reference case as well as 6,350 MTU equivalent and 1,650 MTU equivalent to the first and second repositories, respectively, in the no new orders case. This approach provides for a consistent proportion of defense waste in both repositories. The cost changes are minor in the upper reference case, while cost changes in the no new orders case show savings due to more efficient use of the first repository facilities. The final determination of cost shares will be based on the actual amounts of each type of waste emplaced in each repository.

The following table summarizes the total system costs and DHLW cost shares in the improved performance system scenario for the high cost (basalt/hard rock) and low cost (tuff/salt) repository combinations in the high SNF generation (upper reference with increased burnup) and low SNF generation (no new orders with increased burnup) projection cases. The table provides a comparison of the adjusted system costs with system costs estimated for the 1987 TSLCC analysis. Cost differences are due to the DHLW quantity assignment assumptions to each repository.

SUMMARY OF IMPROVED PERFORMANCE SYSTEM COST ALLOCATION

[Billions of 1986 Dollars]

Case	Total system cost			DHLW share (percent)
	'87-TSLCC	Adjusted*	DHLW cost	
EIA No New Orders (with increased burnup):				
Basalt/Hard Rock	36.07	35.76	6.10	17.1
Tuff-Salt	29.87	29.52	5.74	19.4
EIA Upper Reference (with increased burnup):				
Basalt/Hard Rock	38.22	38.25	5.51	14.4
Tuff/Salt	32.07	32.03	5.17	16.1

*1987 TSLCC estimates were adjusted to account for different assignment of DHLW to each repository.

A breakdown of the costs allocated to civilian wastes and DHLW for the upper reference case with increased burnup, high cost repository pair (basalt/hard rock) is contained in the Appendix.

IV. Future Actions Relating to the Cost Allocation Methodology

As noted above, information on the determination of the DHLW cost share based on this methodology will be included in future issues of the annual OCRWM fee adequacy report and the TSLCC analysis. Actual appropriation of funds to cover these costs will be requested through the budget and appropriation procedures.

A Memorandum of Agreement between OCRWM and DP is in preparation. This Memorandum is intended to include both the agreed cost-sharing methodology and more detail on intended DHLW disposal fee payment calculations. It is the Department's intention to publish this Agreement, for information purposes, in the Federal Register.

Issued in Washington, DC, August 13, 1987.

Ben C. Rusche,

Director, Office of Civilian Radioactive Waste Management.

Appendix—Defense High-Level Waste Disposal: Sample DHLW Cost-Share Calculations

This Appendix contains summaries of the calculations for the defense waste disposal cost share for the four cases shown in section III of the body of the text. Also included is a detailed spreadsheet that shows costs at the most detailed level that was used in making cost allocations for the projection case using the no new orders nuclear electric (and spent fuel) generation scenario with an Improved Performance System (i.e., including an MRS facility) for the high-cost repository pair (a basalt first repository and hard rock (crystalline) second repository).

Summary Tables. Summary tables are included for the following cases: no new orders case with basalt and hard rock (crystalline) repositories (Table A1); upper reference ("reference") case with basalt and hard rock repositories (Table A2); no new orders case with tuff and salt repositories (Table A3); and reference case with tuff and salt repositories (Table A4).

In the upper portions of these tables, the allocations of costs for transportation, repositories, D&E, and MRS are given, together with the defense shares (as percentages) of the common assignable (direct plus common variable) costs, common unassigned costs, and total costs. The defense shares of these cost elements reflect the sharing arrangement given in the body of the text. Transportation is a direct cost. Repository unassigned cost is allocated in proportion to repository assignable cost shares for each repository. Within D&E, MRS and waste package costs are direct civilian costs. Transportation and systems integration D&E costs are allocated in accordance with shares of transportation costs. Other repository D&E is shared on the basis of the total assignable cost share for repositories 1 and 2 combined. Government administration is shared on the basis of the defense share of the total assigned costs. MRS is a direct civilian cost.

The lower portion of the summary tables show the total repository cost allocation to defense and civilian waste generators by repository cost sharing factor. For common assignable costs, the total repository cost allocated by the four sharing factors shown for each repository is multiplied by the respective defense sharing factor ("percentage") to yield the respective total defense repository cost allocations given in the last three columns. Defense wastes' total assignable (common assignable plus direct) repository cost share is used as the sharing factor for allocating common unassigned repository costs.

Detailed Repository Breakdown. The detailed repository cost breakdown is shown in Table A5 for the basalt (Hanford) and representative hard rock (crystalline) repository pair. Column headings indicate the bases for allocating assignable costs as well as the total cost for each element in the cost accounting structure (the cost elements are shown as the row titles) and total assignable cost ("subtotal") for these elements.

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Table A1
No New Orders, Basalt and Hard Rock
DEFENSE WASTE COST ALLOCATION CALCULATION
(MILLIONS OF 1986 DOLLARS)

CASE:NNO-EXTENDED, IMPROVED
REP.:BASALT/HARD ROCK

TSLCC COST COMPONENT	TOTAL COST	ASSIGNABLE COSTS TOTAL	ASSIGNABLE COSTS CIVILIAN	ASSIGNABLE COSTS DEFENSE	ASSIGNABLE COSTS DEF %	COMMON UNASSIGNED COSTS TOTAL	COMMON UNASSIGNED COSTS CIVILIAN	COMMON UNASSIGNED COSTS DEFENSE	COMMON UNASSIGNED COSTS DEF %	** TOTAL COST ALLOCATION ** CIVILIAN	** TOTAL COST ALLOCATION ** DEFENSE	** TOTAL COST ALLOCATION ** DEF %
TRANSPORTATION	$1,779	$1,779	$1,474	$304	17.11%	$0	$0	$0	0.00%	$1,474	$304	17.11%
REPOSITORY 1	$10,583	$8,828	$7,090	$1,737	19.68%	$1,756	$1,410	$345	19.68%	$8,500	$2,083	19.68%
REPOSITORY 2	$6,132	$4,734	$3,854	$880	18.60%	$1,398	$1,138	$260	18.60%	$4,992	$1,140	18.60%
SUBTOTAL REPOSITORY	$16,715	$13,562	$10,944	$2,618	19.30%	$3,153	$2,548	$605	19.20%	$13,492	$3,223	19.28%
D&E:												
MRS	$125	$125	$125	$0	0.00%	$0	$0	$0	0.00%	$125	$0	0.00%
Waste Pkg.-1	$396	$396	$396	$0	0.00%	$0	$0	$0	0.00%	$396	$0	0.00%
Waste Pkg.-2	$234	$234	$234	$0	0.00%	$0	$0	$0	0.00%	$234	$0	0.00%
Trans/Syst Int	$1,080	$0	$0	$0	0.00%	$1,080	$895	$185	17.11%	$895	$185	17.11%
Other Repository	$10,373	$0	$0	$0	0.00%	$10,373	$8,370	$2,002	19.30%	$8,370	$2,002	19.30%
Government Admin	$2,452	$0	$0	$0	0.00%	$2,452	$2,069	$383	15.63%	$2,069	$383	15.63%
	$14,659	$755	$755	$0	0.00%	$13,905	$11,335	$2,570	18.48%	$12,089	$2,570	17.53%
SUBTOTAL	$33,153	$16,095	$13,173	$2,922	18.15%	$17,058	$13,883	$3,176	18.62%	$27,056	$6,097	18.39%
MRS	$2,602	$2,602	$2,602	$0	0.00%	$0	$0	$0	0.00%	$2,602	$0	0.00%
TOTAL	$35,755	$18,697	$15,775	$2,922	15.63%	$17,058	$13,883	$3,176	18.62%	$29,658	$6,097	17.05%

REPOSITORY COST BREAKDOWN	TOTAL COSTS REPOS. 1	TOTAL COSTS REPOS. 2	TOTAL COSTS TOTAL	** REPOSITORY 1 COST FACTORS ** DHLW	TOTAL	FACTOR	** REPOSITORY 2 COST FACTORS ** DHLW	TOTAL	FACTOR	DEFENSE COSTS REPOS. 1	DEFENSE COSTS REPOS. 2	DEFENSE COSTS TOTAL
				(Waste Packages or Thous. Tons)			(Waste Packages or Thous. Tons)					
COMMON VARIABLE:												
PIECE COUNT:												
TOTAL PIECE COUNT	$1,217	$506	$1,723	12,700	56,055	22.66%	3,300	11,412	28.92%	$276	$146	$422
WHB#1 PIECE COUNT	$0	$0	$0	0	0	0.00%	0	0	0.00%	$0	$0	$0
WHB#2 PIECE COUNT	$744	$842	$1,586	12,700	56,055	22.66%	3,300	11,412	28.92%	$169	$243	$412
AREAL DISPERSION	$3,400	$2,529	$5,930	2,477	16,342	15.16%	644	5,305	12.14%	$515	$307	$822
DIRECT:												
CIVILIAN	$2,689	$673	$3,362			0.00%			0.00%	$0	$0	$0
DEFENSE	$778	$184	$961			100.00%			100.00%	$778	$184	$961
SUBTOTAL ASSIGNABLE	$8,828	$4,734	$13,562			19.68%			18.60%	$1,737	$880	$2,618
COMMON UNASSIGNED	$1,756	$1,398	$3,153							$345	$260	$605
TOTAL	$10,583	$6,132	$16,715							$2,083	$1,140	$3,223

Table A2
Reference, Basalt and Hard Rock
DEFENSE WASTE COST ALLOCATION CALCULATION
(MILLIONS OF 1986 DOLLARS)

CASE:UP.REF., EXTENDED, IMPROVED
REP.:BASALT/HARD ROCK

TSLCC COST COMPONENT	TOTAL COST	ASSIGNABLE COSTS TOTAL	ASSIGNABLE COSTS CIVILIAN	ASSIGNABLE COSTS DEFENSE	ASSIGNABLE COSTS DEF %	COMMON UNASSIGNED COSTS TOTAL	COMMON UNASSIGNED COSTS CIVILIAN	COMMON UNASSIGNED COSTS DEFENSE	COMMON UNASSIGNED COSTS DEF %	** TOTAL COST ALLOCATION ** CIVILIAN	** TOTAL COST ALLOCATION ** DEFENSE	** TOTAL COST ALLOCATION ** DEF %
TRANSPORTATION	$2,099	$2,099	$1,781	$318	15.13%	$0	$0	$0	0.00%	$1,781	$318	15.13%
REPOSITORY 1	$10,531	$8,751	$7,382	$1,369	15.64%	$1,779	$1,501	$278	15.64%	$8,883	$1,647	15.64%
REPOSITORY 2	$8,151	$6,503	$5,411	$1,092	16.79%	$1,648	$1,371	$277	16.79%	$6,782	$1,368	16.79%
SUBTOTAL REPOSITORY	$18,681	$15,254	$12,794	$2,461	16.13%	$3,427	$2,872	$555	16.19%	$15,666	$3,016	16.14%
D&D:												
MRS	$125	$125	$125	$0	0.00%	$0	$0	$0	0.00%	$125	$0	0.00%
Waste Pkg.-1	$396	$396	$396	$0	0.00%	$0	$0	$0	0.00%	$396	$0	0.00%
Waste Pkg.-2	$234	$234	$234	$0	0.00%	$0	$0	$0	0.00%	$234	$0	0.00%
Trans/Syst Int	$1,080	$0	$0	$0	0.00%	$1,080	$917	$163	15.13%	$917	$163	15.13%
Other Repository	$10,373	$0	$0	$0	0.00%	$10,373	$8,699	$1,673	16.13%	$8,699	$1,673	16.13%
Government Admin	$2,532	$0	$0	$0	0.00%	$2,532	$2,195	$338	13.33%	$2,195	$338	13.33%
	$14,739	$755	$755	$0	0.00%	$13,985	$11,811	$2,174	15.55%	$12,565	$2,174	14.75%
SUBTOTAL	$35,520	$18,108	$15,330	$2,778	15.34%	$17,412	$14,683	$2,729	15.68%	$30,012	$5,508	15.51%
MRS	$2,729	$2,729	$2,729	$0	0.00%	$0	$0	$0	0.00%	$2,729	$0	0.00%
TOTAL	$38,249	$20,837	$18,059	$2,778	13.33%	$17,412	$14,683	$2,729	15.68%	$32,742	$5,508	14.40%

REPOSITORY COST BREAKDOWN	TOTAL COSTS REPOS. 1	TOTAL COSTS REPOS. 2	TOTAL COSTS TOTAL	** REPOSITORY 1 COST FACTORS ** DELW / TOTAL	= FACTOR	** REPOSITORY 2 COST FACTORS ** DELW / TOTAL	= FACTOR	DEFENSE COSTS REPOS. 1	DEFENSE COSTS REPOS. 2	DEFENSE COSTS TOTAL
				(Waste Packages or Thous. Tons)		(Waste Packages or Thous. Tons)				
COMMON VARIABLE:										
PIECE COUNT:										
TOTAL PIECE COUNT	$1,192	$724	$1,916	9,752 / 54,031	18.05%	6,348 / 25,737	24.29%	$215	$176	$391
WRB#1 PIECE COUNT	$0	$0	$0	0 / 0	0.00%	0 / 0	0.00%	$0	$0	$0
WRB#2 PIECE COUNT	$757	$1,020	$1,777	9,752 / 54,031	18.05%	6,348 / 25,737	24.29%	$137	$248	$384
AREAL DISPERSION	$3,428	$2,810	$6,238	1,902 / 16,413	11.59%	1,218 / 10,760	11.32%	$397	$318	$715
DIRECT:										
CIVILIAN	$2,755	$1,599	$4,354		0.00%		0.00%	$0	$0	$0
DEFENSE	$620	$350	$970		100.00%		100.00%	$620	$350	$970
SUBTOTAL ASSIGNABLE	$8,751	$6,503	$15,254		15.64%		16.79%	$1,369	$1,092	$2,461
COMMON UNASSIGNED	$1,779	$1,648	$3,427					$278	$277	$555
TOTAL	$10,531	$8,151	$18,681					$1,647	$1,368	$3,016

Table A3
No New Orders, Tuff and Salt
DEFENSE WASTE COST ALLOCATION CALCULATION
(MILLIONS OF 1986 DOLLARS)

CASE:NNO-EXTENDED, IMPROVED
REP.:TUFF/SALT

TALCC COST COMPONENT	TOTAL COST	ASSIGNABLE COSTS TOTAL	ASSIGNABLE COSTS CIVILIAN	ASSIGNABLE COSTS DEFENSE	ASSIGNABLE COSTS DEF %	COMMON UNASSIGNED COSTS TOTAL	COMMON UNASSIGNED COSTS CIVILIAN	COMMON UNASSIGNED COSTS DEFENSE	COMMON UNASSIGNED COSTS DEF %	** TOTAL COST ALLOCATION ** CIVILIAN	** TOTAL COST ALLOCATION ** DEFENSE	** TOTAL COST ALLOCATION ** DEF %
TRANSPORTATION	$1,810	$1,810	$1,508	$302	16.67%	$0	$0	$0	0.00%	$1,508	$302	16.67%
REPOSITORY 1	$5,471	$3,847	$2,952	$895	23.28%	$1,624	$1,246	$378	23.28%	$4,198	$1,274	23.28%
REPOSITORY 2	$5,048	$3,565	$2,731	$834	23.41%	$1,483	$1,136	$347	23.41%	$3,867	$1,182	23.41%
SUBTOTAL REPOSITORY	$10,520	$7,412	$5,682	$1,730	23.34%	$3,107	$2,382	$725	23.34%	$8,064	$2,455	23.34%
D&E:												
MRS	$125	$125	$125	$0	0.00%	$0	$0	$0	0.00%	$125	$0	0.00%
Waste Pkg.-1	$396	$396	$396	$0	0.00%	$0	$0	$0	0.00%	$396	$0	0.00%
Waste Pkg.-2	$234	$234	$234	$0	0.00%	$0	$0	$0	0.00%	$234	$0	0.00%
Trans/Syst Int	$1,080	$0	$0	$0	0.00%	$1,080	$900	$180	16.67%	$900	$180	16.67%
Other Repository	$10,373	$0	$0	$0	0.00%	$10,373	$7,952	$2,421	23.34%	$7,952	$2,421	23.34%
Governmnt Admin	$2,347	$0	$0	$0	0.00%	$2,347	$1,970	$378	16.09%	$1,970	$378	16.09%
	$14,554	$755	$755	$0	0.00%	$13,800	$10,821	$2,979	21.58%	$11,576	$2,979	20.46%
SUBTOTAL	$26,884	$9,977	$7,945	$3,032	20.36%	$16,907	$13,203	$3,704	21.91%	$21,149	$5,735	21.33%
MRS	$2,638	$2,651	$2,651	$0	0.00%	($12)	$0	$0	0.00%	$2,651	$0	0.00%
TOTAL	$29,522	$12,627	$10,596	$2,032	16.09%	$16,895	$13,203	$3,704	21.92%	$23,799	$5,735	19.43%

REPOSITORY COST BREAKDOWN	TOTAL COSTS REPOS. 1	TOTAL COSTS REPOS. 2	TOTAL	** REPOSITORY 1 COST FACTORS ** DHLW	/ TOTAL	= FACTOR	** REPOSITORY 2 COST FACTORS ** DHLW	/ TOTAL	= FACTOR	DEFENSE COSTS REPOS. 1	DEFENSE COSTS REPOS. 2	DEFENSE COSTS TOTAL
				(Waste Packages or Thous. Tons)			(Waste Packages or Thous. Tons)					
COMMON VARIABLE:												
PIECE COUNT:												
TOTAL PIECE COUNT	$658	$221	$879	12,700	49,192	25.82%	3,300	9,555	34.54%	$170	$76	$246
WEB#1 PIECE COUNT	$0	$0	$0	0	0	0.00%	0	0	0.00%	$0	$0	$0
WEB#2 PIECE COUNT	$706	$1,361	$2,067	12,700	49,192	25.82%	3,300	9,555	34.54%	$182	$470	$652
AREAL DISPERSION	$1,785	$1,298	$3,083	3,862	14,869	19.25%	974	9,897	9.84%	$343	$128	$471
DIRECT:												
CIVILIAN	$499	$525	$1,024			0.00%			0.00%	$0	$0	$0
DEFENSE	$200	$160	$360			100.00%			100.00%	$200	$160	$360
SUBTOTAL ASSIGNABLE	$3,847	$3,565	$7,412			23.28%			23.41%	$895	$834	$1,730
										$378	$347	$725
COMMON UNASSIGNED	$1,624	$1,483	$3,107									
TOTAL	$5,471	$5,048	$10,520							$1,274	$1,182	$2,455

Table A4
Reference, Tuff and Salt
DEFENSE WASTE COST ALLOCATION CALCULATION
(MILLIONS OF 1986 DOLLARS)

CASE:UP.REF., EXTENDED, IMPROVED
REP.:TUFF/SALT

TSLCC COST COMPONENT	TOTAL COST	ASSIGNABLE COSTS				COMMON UNASSIGNED COSTS				** TOTAL COST ALLOCATION **		
		TOTAL	CIVILIAN	DEFENSE	DEF %	TOTAL	CIVILIAN	DEFENSE	DEF %	CIVILIAN	DEFENSE	DEF %
TRANSPORTATION	$2,172	$2,172	$1,866	$306	14.08%	$0	$0	$0	0.00%	$1,866	$306	14.08%
REPOSITORY 1	$5,508	$3,854	$3,149	$705	18.28%	$1,654	$1,352	$302	18.28%	$4,501	$1,007	18.28%
REPOSITORY 2	$7,011	$5,239	$4,205	$1,035	19.75%	$1,772	$1,422	$350	19.75%	$5,626	$1,384	19.75%
SUBTOTAL REPOSITORY	$12,519	$9,093	$7,354	$1,739	19.13%	$3,426	$2,773	$652	19.04%	$10,127	$2,391	19.10%
D&E:												
MRS	$125	$125	$125	$0	0.00%	$0	$0	$0	0.00%	$125	$0	0.00%
Waste Pkg.-1	$396	$396	$396	$0	0.00%	$0	$0	$0	0.00%	$396	$0	0.00%
Waste Pkg.-2	$234	$234	$234	$0	0.00%	$0	$0	$0	0.00%	$234	$0	0.00%
Trans/Syst Int	$1,080	$0	$0	$0	0.00%	$1,080	$928	$152	14.08%	$928	$152	14.08%
Other Repository	$10,373	$0	$0	$0	0.00%	$10,373	$8,389	$1,984	19.13%	$8,389	$1,984	19.13%
Government Admin	$2,427	$0	$0	$0	0.00%	$2,427	$2,090	$337	13.88%	$2,090	$337	13.88%
	$14,634	$755	$755	$0	0.00%	$13,880	$11,407	$2,473	17.82%	$12,161	$2,473	16.90%
SUBTOTAL	$29,325	$12,019	$9,574	$2,045	17.01%	$17,306	$14,180	$3,125	18.06%	$26,155	$5,170	17.63%
MRS	$2,708	$2,708	$2,708	$0	0.00%	$0	$0	$0	0.00%	$2,708	$0	0.00%
TOTAL	$32,033	$14,728	$12,683	$2,045	13.88%	$17,306	$14,180	$3,125	18.06%	$26,863	$5,170	16.14%

REPOSITORY COST BREAKDOWN	TOTAL COSTS			REPOSITORY 1 COST FACTORS			REPOSITORY 2 COST FACTORS			DEFENSE COSTS		
	REPOS. 1	REPOS. 2	TOTAL	DELW / TOTAL		= FACTOR	DELW / TOTAL		= FACTOR	REPOS. 1	REPOS. 2	TOTAL
				(Waste Packages or Thous. Tons)			(Waste Packages or Thous. Tons)					
COMMON VARIABLE:												
PIECE COUNT:												
TOTAL PIECE COUNT	$645	$236	$881	9,752	47,108	20.70%	5,248	21,586	28.94%	$133	$68	$202
WHB#1 PIECE COUNT	$0	$0	$0	0	0	0.00%	0	0	0.00%	$0	$0	$0
WHB#2 PIECE COUNT	$724	$1,752	$2,475	9,752	47,108	20.70%	5,248	21,586	28.94%	$150	$507	$657
AREAL DISPERSION	$1,815	$1,683	$3,498	2,198	15,299	14.37%	1,843	21,127	8.72%	$261	$147	$408
DIRECT:												
CIVILIAN	$510	$1,256	$1,767			0.00%			0.00%	$0	$0	$0
DEFENSE	$161	$312	$473			100.00%			100.00%	$161	$312	$473
SUBTOTAL ASSIGNABLE	$3,854	$5,239	$9,093			18.28%			19.75%	$705	$1,035	$1,739
COMMON UNASSIGNED	$1,654	$1,772	$3,426							$302	$350	$652
TOTAL	$5,508	$7,011	$12,519							$1,007	$1,384	$2,391

Table A5
Repository Cost Breakdown, Basalt and Hard Rock Repositories

Page 1 of 6

CASE: UP.REF. NEW OHLW, IMPROVED, FIRST
SITE: HANFORD
17-Jul-87

ACCOUNT	COST ACCOUNT TITLE	TOTAL	OHLW FACTOR DESIGNATION (INPUT DATA) TOTAL PIECE	UNDB1 PIECE	UNDB2 PIECE	AREAL DISP.	DEDICATED TO CIVIL.	OHLW	SHARED	ASSIGNABLE TOTAL PIECE	UNDB1 PIECE	UNDB2 PIECE	AREAL DISPER.	DIRECT CIVILIAN	DIRECT DEFENSE	SUBTOTAL	UNASSIGNED TOTAL
01000	SUPPORT CONTRACTOR	$111.86								$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$111.86
01010	License Application	$33.56	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$33.56
01020	Other	$78.30	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$78.30
02000	ARCHITECT-ENGINEER	$438.62								$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$438.62
02010	License Application	$261.97	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$261.97
02020	Final Procurement and Construction	$152.82	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$152.82
02030	Title III	$23.83	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$23.83
03000	CONSTRUCTION MANAGEMENT	$416.01	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$416.01
04000	CONSULTANTS	$5.07	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$5.07
05000	PERFORMANCE CONFIRMATION PROGRAM	$45.00	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$45.00
07000	REPOSITORY LAND ACQUISITION	$0.00	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
00000	MANAGEMENT AND INTEGRATION	$918.56								$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$918.56
11000	EMPLOYEE TRANSPORTATION	$0.00	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
12000	ON-SITE	$128.64								$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$128.64
12010	Roads	$10.35	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$10.35
12020	Rail	$5.99	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$5.99
12030	Communications	$11.28	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$11.28
12040	Clearing	$0.92	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.92
12050	Grading	$7.60	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$7.60
12060	Landscaping	$0.37	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.37
12070	Drainage Control	$1.13	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$1.13
12080	Fencing	$1.47	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$1.47
12090	Utilities	$81.34	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$81.34
12100	Other	$7.78	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$7.78
13000	OFF-SITE	$27.19								$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$27.19
13010	Roads	$1.96	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$1.96
13020	Rail	$5.04	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$5.04
13030	Communications	$0.00	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
13040	Drainage	$0.00	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
13050	Utilities	$20.19	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$20.19
13060	Other	$0.00	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
14000	MONUMENTS	$17.77	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$17.77
10000	SITE PREPARATION	$173.60								$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$173.60
21000	WASTE HANDLING FACILITY	$796.49								$41.82	$0.05	$756.67	$0.00	$0.00	$0.00	$796.49	$0.00
21100	Waste Handling Building 1:	$0.00								$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
21102	Building/Structures	$0.00	0	1	0	0	0	0	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
21103	Hot Cell	$0.00	0	1	0	0	0	0	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
21104	Utilities	$0.00	0	1	0	0	0	0	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
21105	HVAC	$0.00	0	1	0	0	0	0	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
21106	Handling/Packaging Equipment	$0.00	0	1	0	0	0	0	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
21107	Support Facilities	$0.00	0	1	0	0	0	0	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
21200	Waste Handling Building 2:	$756.67								$0.00	$0.00	$756.67	$0.00	$0.00	$0.00	$756.67	$0.00
21202	Building/Structures	$390.57	0	0	1	0	0	0	0	$0.00	$0.00	$390.57	$0.00	$0.00	$0.00	$390.57	$0.00
21203	Hot Cell	$116.98	0	0	1	0	0	0	0	$0.00	$0.00	$116.98	$0.00	$0.00	$0.00	$116.98	$0.00
21204	Utilities	$44.19	0	0	1	0	0	0	0	$0.00	$0.00	$44.19	$0.00	$0.00	$0.00	$44.19	$0.00
21205	HVAC	$44.53	0	0	1	0	0	0	0	$0.00	$0.00	$44.53	$0.00	$0.00	$0.00	$44.53	$0.00
21206	Handling/Packaging Equipment	$40.85	0	0	1	0	0	0	0	$0.00	$0.00	$40.85	$0.00	$0.00	$0.00	$40.85	$0.00
21207	Support Facilities	$13.54	0	0	1	0	0	0	0	$0.00	$0.00	$13.54	$0.00	$0.00	$0.00	$13.54	$0.00
21500	Other	$41.82								$41.82	$0.05	$0.00	$0.00	$0.00	$0.00	$41.82	$0.00
21501	Site-Generated Radwaste Treatment	$0.00	1	0	0	0	0	0	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
21502	Vehicle Wash Facility	$0.00	1	0	0	0	0	0	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
21503	Decontamination Building	$0.00	1	0	0	0	0	0	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
21504	Performance Confirmation Facility	$0.00	1	0	0	0	0	0	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00

Table A5

CASE: WP.REF. NEW DHLW, IMPROVED, FIRST
SITE: HANFORD
17-Jul-87

ACCOUNT	COST ACCOUNT TITLE	TOTAL	DHLW FACTOR DESIGNATION (INPUT DATA) TOTAL PIECE	UNB01 PIECE	UNB02 PIECE	AREAL DISP.	DEDICATED TO CIVIL.	DHLW	SHARED	ASSIGNABLE TOTAL PIECE	UNB01 PIECE	UNB02 PIECE	AREAL DISPER.	DIRECT CIVILIAN	DIRECT DEFENSE	SUBTOTAL	UNASSIGNED TOTAL
21505	Radwaste Storage	$30.16	1	0	0	0	0	0	0	$30.16	$0.00	$0.00	$0.00	$0.00	$0.00	$30.16	$0.00
21506	Transfer Corridors	$6.38	1	0	0	0	0	0	0	$6.38	$0.00	$0.00	$0.00	$0.00	$0.00	$6.38	$0.00
21507	Turntable	$1.75	1	0	0	0	0	0	0	$1.75	$0.00	$0.00	$0.00	$0.00	$0.00	$1.75	$0.00
21508	Waste Shaft Staging Facility	$3.54	1	0	0	0	0	0	0	$3.54	$0.00	$0.00	$0.00	$0.00	$0.00	$3.54	$0.00
22000	BALANCE OF PLANT	$1,445.27								$105.01	$0.00	$0.00	$357.59	$0.00	$0.00	$462.60	$982.67
22010	Health/Medical Facilities	$45.96	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$45.96
22020	Fire Protection Facilities	$53.70	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$53.70
22030	Security Facilites	$207.44	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$207.44
22040	Maintenance Facilities	$100.59	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$100.59
22050	Administration/Personnel Facilities	$387.94	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$387.94
22060	Training/Mockup Facility	$18.95	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$18.95
22070	Warehouse and Receiving	$25.07	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$25.07
22080	Visitors Center Facility	$11.50	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$11.50
22090	Backup Power Generation Facility	$45.07	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$45.07
22100	Change Room Facility	$6.15	0	0	0	1	0	0	0	$6.15	$0.00	$0.00	$6.15	$0.00	$0.00	$6.15	$0.00
22110	Explosive Storage Facility	$0.13	0	0	0	1	0	0	0	$0.13	$0.00	$0.00	$0.13	$0.00	$0.00	$0.13	$0.00
22120	Compressed Air and Steam Facility	$5.00	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
22130	Cooling Tower and Chilled Water Facility	$216.43	0	0	0	1	0	0	0	$216.43	$0.00	$0.00	$216.43	$0.00	$0.00	$216.43	$0.00
22140	Excavated Material Storage and Handling	$68.74								$0.00	$0.00	$0.00	$68.74	$0.00	$0.00	$68.74	$0.00
22141	Surface Exc.Mat. Storage and Handling	$68.74	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$68.74	$0.00	$0.00	$68.74	$0.00
22142	Offsite Excavated Material Disposal	$0.00	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
22150	Fuel Storage Facility	$0.00	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
22160	Chemical Storage Facility	$0.00	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
22170	Lab and Testing Facilities	$64.91	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$64.91
22180	Potable Water Facility	$12.77	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$12.77
22190	Sewage Treatment Facility	$10.47	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$10.47
22200	Backfill Facility	$42.14	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$42.14	$0.00	$0.00	$42.14	$0.00
22210	Packing Facility	$105.01	1	0	0	0	0	0	0	$105.01	$0.00	$0.00	$0.00	$0.00	$0.00	$105.01	$0.00
22220	Control and Monitoring Facility	$18.17	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$18.17
22230	Standard Equipment	$9.37	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$9.37
22240	Other	$0.00	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
23000	SURFACE SHAFT FACILITIES	$451.20								$44.78	$0.00	$0.00	$406.42	$0.00	$0.00	$451.20	$0.00
23010	Men and Materials Facility	$180.39	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$180.39	$0.00	$0.00	$180.39	$0.00
23020	Waste Facility	$44.78	1	0	0	0	0	0	0	$44.78	$0.00	$0.00	$0.00	$0.00	$0.00	$44.78	$0.00
23030	Excavated Material Handling Facility	$50.55	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$50.55	$0.00	$0.00	$50.55	$0.00
23040	Development Intake Facilities	$27.61	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$27.61	$0.00	$0.00	$27.61	$0.00
23050	Confinement Intake Facilities	$16.10	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$16.10	$0.00	$0.00	$16.10	$0.00
23070	Development Exhaust Facilities	$10.14	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$10.14	$0.00	$0.00	$10.14	$0.00
23080	Confinement Exhaust Facilities	$193.09	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$193.09	$0.00	$0.00	$193.09	$0.00
23100	Exploratory Shaft Facility - 1	$5.79	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$5.79	$0.00	$0.00	$5.79	$0.00
23110	Exploratory Shaft Facility - 2	$4.73	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$4.73	$0.00	$0.00	$4.73	$0.00
23120	Other Facility	$0.00	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
20000	SURFACE FACILITIES	$2,696.96								$191.62	$0.00	$756.47	$764.00	$0.00	$0.00	$1,712.29	$982.67
30010	Men and Materials Access (Shaft)	$179.49	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$179.49	$0.00	$0.00	$179.49	$0.00
30020	Waste Handling Access (Shaft or Ramp)	$251.19	1	0	0	0	0	0	0	$251.19	$0.00	$0.00	$0.00	$0.00	$0.00	$251.19	$0.00
30030	Exc.Mat. Handling Access (Shaft or Ramp)	$185.40	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$185.40	$0.00	$0.00	$185.40	$0.00
30040	Development Intake Access (Shafts)	$229.40	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$229.40	$0.00	$0.00	$229.40	$0.00
30050	Confinement Intake Access (Shafts)	$335.11	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$335.11	$0.00	$0.00	$335.11	$0.00
30070	Development Exhaust Access (Shafts)	$232.29	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$232.29	$0.00	$0.00	$232.29	$0.00
30080	Confinement Exhaust Access (Shafts)	$322.20	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$322.20	$0.00	$0.00	$322.20	$0.00
30100	Exploratory Shaft - 1	$0.00	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
30110	Exploratory Shaft - 2	$0.00	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
30120	Other	$0.00	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
30000	SHAFTS/RAMPS - UNDERGROUND	$1,735.07								$251.19	$0.00	$0.00	$1,483.89	$0.00	$0.00	$1,735.07	$0.00

Table A5

CASE: REF. NEW DWLW, IMPROVED, FIRST
SITE: HANFORD
17-Jul-87

ACCOUNT	COST ACCOUNT TITLE	TOTAL	DWLW FACTOR DESIGNATION (INPUT DATA)							ASSIGNABLE							UNASSIGNED
			TOTAL PIECE	DWD1 PIECE	DWD2 PIECE	AREAL DISP.	DEDICATED TO CIVIL.	DEDICATED TO DWLW	SHARED	TOTAL PIECE	DWD1 PIECE	DWD2 PIECE	AREAL DISPER.	DIRECT CIVILIAN	DIRECT DEFENSE	SUBTOTAL	TOTAL
41000	DEVELOPMENT	$1,500.06								$663.32	$0.00	$0.00	$336.07	$400.18	$180.47	$1,500.06	$0.00
41010	Canon Facility (Shaft Pillar) Excavation	$62.99	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$62.99	$0.00	$0.00	$62.99	$0.00
41020	Spent Fuel Facility Excavation	$400.18	0	0	0	0	1	0	0	$0.00	$0.00	$0.00	$0.00	$400.18	$0.00	$400.18	$0.00
41030	DWLW Facility Excavation	$180.47	0	0	0	0	0	1	0	$0.00	$0.00	$0.00	$0.00	$0.00	$180.47	$180.47	$0.00
41040	Other Waste Facility (Boreholes)	$663.32	1	0	0	0	0	0	0	$663.32	$0.00	$0.00	$0.00	$0.00	$0.00	$663.32	$0.00
41060	Excavated Material Handling	$134.25	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$134.25	$0.00	$0.00	$134.25	$0.00
41070	General Maintenance	$120.83	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$120.83	$0.00	$0.00	$120.83	$0.00
42000	EMPLACEMENT/RETRIEVAL OPERATIONS	$531.33								$20.25	$0.00	$0.00	$0.00	$366.09	$144.99	$531.33	$0.00
42010	Spent Fuel Waste Transport and Emplacement	$366.09	0	0	0	0	1	0	0	$0.00	$0.00	$0.00	$0.00	$366.09	$0.00	$366.09	$0.00
42020	DWLW Transport and Emplacement	$144.99	0	0	0	0	0	1	0	$0.00	$0.00	$0.00	$0.00	$0.00	$144.99	$144.99	$0.00
42030	Other Waste Transport and Emplacement	$0.00	0	0	0	0	1	0	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
42040	Waste Removal	$20.25	1	0	0	0	0	0	0	$20.25	$0.00	$0.00	$0.00	$0.00	$0.00	$20.25	$0.00
43000	BACKFILL	$165.26								$16.50	$0.00	$0.00	$148.76	$0.00	$0.00	$165.26	$0.00
43010	Men and Materials Access (Shafts)	$9.23	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$9.23	$0.00	$0.00	$9.23	$0.00
43020	Waste Handling Access (Shaft or Ramp)	$16.50	1	0	0	0	0	0	0	$16.50	$0.00	$0.00	$0.00	$0.00	$0.00	$16.50	$0.00
43030	Muck Handling Access (Shaft or Ramp)	$9.00	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$9.00	$0.00	$0.00	$9.00	$0.00
43040	Development Intake Access (Shafts)	$12.53	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$12.53	$0.00	$0.00	$12.53	$0.00
43050	Confinement Intake Access (Shafts)	$17.96	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$17.96	$0.00	$0.00	$17.96	$0.00
43070	Development Exhaust Access (Shafts)	$13.02	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$13.02	$0.00	$0.00	$13.02	$0.00
43080	Confinement Exhaust Access (Shafts)	$18.18	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$18.18	$0.00	$0.00	$18.18	$0.00
43100	Exploratory Shaft - 1	$2.31	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$2.31	$0.00	$0.00	$2.31	$0.00
43110	Exploratory Shaft - 2	$6.43	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$6.43	$0.00	$0.00	$6.43	$0.00
43120	Other Shaft	$0.00	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
43300	Development Areas	$60.07	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$60.07	$0.00	$0.00	$60.07	$0.00
45000	SUBSURFACE EXCAVATIONS	$2,196.61								$700.07	$0.00	$0.00	$476.81	$776.20	$265.46	$2,196.61	$0.00
51000	SUPPORT SYSTEM FACILITIES	$407.63	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$407.63	$0.00	$0.00	$407.63	$0.00
52000	UTILITIES	$96.78	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$96.78	$0.00	$0.00	$96.78	$0.00
53000	MONITORING	$200.79	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$200.79	$0.00	$0.00	$200.79	$0.00
50000	UNDERGROUND SERVICE SYSTEMS	$703.19								$0.00	$0.00	$0.00	$703.19	$0.00	$0.00	$703.19	$0.00
61000	SPENT FUEL	$1,632.65								$0.00	$0.00	$0.00	$0.00	$1,632.65	$0.00	$1,632.65	$0.00
61010	Intact PWR	$342.31	0	0	0	0	1	0	0	$0.00	$0.00	$0.00	$0.00	$342.31	$0.00	$342.31	$0.00
61020	Intact BWR	$116.67	0	0	0	0	1	0	0	$0.00	$0.00	$0.00	$0.00	$116.67	$0.00	$116.67	$0.00
61030	Consolidated PWR	$782.80	0	0	0	0	1	0	0	$0.00	$0.00	$0.00	$0.00	$782.80	$0.00	$782.80	$0.00
61040	Consolidated BWR	$472.86	0	0	0	0	1	0	0	$0.00	$0.00	$0.00	$0.00	$472.86	$0.00	$472.86	$0.00
62000	DWLW	$374.77	0	0	0	0	0	1	0	$0.00	$0.00	$0.00	$0.00	$0.00	$374.77	$374.77	$0.00
63000	OTHER WASTE	$396.77								$48.73	$0.00	$0.00	$0.00	$348.04	$0.00	$396.77	$0.00
63010	Spent Fuel Hardware	$336.51	0	0	0	0	1	0	0	$0.00	$0.00	$0.00	$0.00	$336.51	$0.00	$336.51	$0.00
63020	Performance Confirmation	$48.73	1	0	0	0	0	0	0	$48.73	$0.00	$0.00	$0.00	$0.00	$0.00	$48.73	$0.00
63030	DWHLW and CHLW	$11.53	0	0	0	0	1	0	0	$0.00	$0.00	$0.00	$0.00	$11.53	$0.00	$11.53	$0.00
63040	Contact-Handled	$0.00	1	0	0	0	0	0	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
66000	WASTE PACKAGE FABRICATION	$2,406.19								$48.73	$0.00	$0.00	$0.00	$1,980.69	$376.77	$2,406.19	$0.00
99999	TOTAL REPOSITORY	$10,826.19								$1,191.60	$0.00	$756.67	$3,427.89	$2,756.96	$620.23	$8,751.36	$2,074.83
	TOTAL REPOSITORY LESS L.A.D MANAGEMENT AND INT.	$10,538.66								$1,191.60	$0.00	$756.67	$3,427.89	$2,756.96	$620.23	$8,751.36	$1,779.31
										DEFENSE SHARE:	18.09%	8.99%	18.83%	11.59%	0.00%	100.00%	15.64%	15.64%
										DWLW COST:	$213.07	$0.00	$136.57	$397.24	$0.00	$620.23	$1,369.11	$278.36

Table A5

CASE: UP.REF., NEW DALW, IMPROVED, SECOND
SITE: HARD ROCK

17-Jul-87

ACCOUNT	COST ACCOUNT TITLE	TOTAL	DALW FACTOR DESIGNATION (INPUT DATA) TOTAL PIECE	NMBR1 PIECE	NMBR2 PIECE	AREAL DISP.	DEDICATED TO CIVIL.	DALW	SHARED	ASSIGNABLE TOTAL PIECE	ASSIGNABLE NMBR1 PIECE	ASSIGNABLE NMBR2 PIECE	ASSIGNABLE AREAL DISPER.	ASSIGNABLE DIRECT CIVILIAN	ASSIGNABLE DIRECT DEFENSE	ASSIGNABLE SUBTOTAL	UNASSIGNED TOTAL
01000	SUPPORT CONTRACTOR	$111.86								$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$111.86
01010	License Application	$34.42	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$34.42
01020	Other	$77.44	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$77.44
02000	ARCHITECT-ENGINEER	$470.04								$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$470.04
02010	License Application	$285.63	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$285.63
02020	Final Procurement and Construction	$166.62	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$166.62
02030	Title III	$25.80	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$25.80
03000	CONSTRUCTION MANAGEMENT	$381.40	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$381.40
04000	CONSULTANTS	$3.90	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$3.90
05000	PERFORMANCE CONFIRMATION PROGRAM	$45.00	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$45.00
07000	REPOSITORY LAND ACQUISITION	$23.40	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$23.40
00000	MANAGEMENT AND INTEGRATION	$1,043.81								$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$1,043.81
11000	EMPLOYEE TRANSPORTATION	$0.00	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
12000	ON-SITE	$98.55								$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$98.55
12010	Roads	$7.85	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$7.85
12020	Rail	$4.60	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$4.60
12030	Communications	$7.95	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$7.95
12040	Clearing	$0.84	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.84
12050	Grading	$7.18	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$7.18
12060	Landscaping	$0.36	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.36
12070	Drainage Control	$1.04	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$1.04
12080	Fencing	$1.38	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$1.38
12090	Utilities	$60.33	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$60.33
12100	Other	$6.79	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$6.79
13000	OFF-SITE	$60.65								$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$60.65
13010	Roads	$2.27	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$2.27
13020	Rail	$21.39	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$21.39
13030	Communications	$0.00	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
13040	Drainage	$0.00	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
13050	Utilities	$17.19	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$17.19
13060	Other	$0.00	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
14000	[illegible]ENTS	$17.77	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$17.77
10000	SITE PREPARATION	$157.17								$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$157.17
21000	WASTE HANDLING FACILITY	$1,043.96								$13.51	$0.00	$1,030.45	$0.00	$0.00	$0.00	$1,043.96	$0.00
21100	Waste Handling Building 1:	$0.00								$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
21102	Building/Structures	$0.00	0	1	0	0	0	0	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
21103	Hot Cell	$0.00	0	1	0	0	0	0	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
21104	Utilities	$0.00	0	1	0	0	0	0	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
21105	HVAC	$0.00	0	1	0	0	0	0	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
21106	Handling/Packaging Equipment	$0.00	0	1	0	0	0	0	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
21107	Support Facilities	$0.00	0	1	0	0	0	0	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
21200	Waste Handling Building 2:	$1,030.45								$0.00	$0.00	$1,030.45	$0.00	$0.00	$0.00	$1,030.45	$0.00
21202	Building/Structures	$742.97	0	0	1	0	0	0	0	$0.00	$0.00	$742.97	$0.00	$0.00	$0.00	$742.97	$0.00
21203	Hot Cell	$328.61	0	0	1	0	0	0	0	$0.00	$0.00	$328.61	$0.00	$0.00	$0.00	$328.61	$0.00
21204	Utilities	$256.84	0	0	1	0	0	0	0	$0.00	$0.00	$256.84	$0.00	$0.00	$0.00	$256.84	$0.00
21205	HVAC	$175.67	0	0	1	0	0	0	0	$0.00	$0.00	$175.67	$0.00	$0.00	$0.00	$175.67	$0.00
21206	Handling/Packaging Equipment	$91.59	0	0	1	0	0	0	0	$0.00	$0.00	$91.59	$0.00	$0.00	$0.00	$91.59	$0.00
21207	Support Facilities	$26.57	0	0	1	0	0	0	0	$0.00	$0.00	$26.57	$0.00	$0.00	$0.00	$26.57	$0.00
21500	Other	$23.51								$13.51	$10.00	$0.00	$0.00	$0.00	$0.00	$23.51	$0.00
21501	Site-Generated Radwaste Treatment	$0.00	1	0	0	0	0	0	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
21502	Vehicle Wash Facility	$0.00	1	0	0	0	0	0	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
21503	Decontamination Building	$0.00	1	0	0	0	0	0	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
21504	Performance Confirmation Facility	$0.00	1	0	0	0	0	0	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00

BEST COPY AVAILABLE

Table A5

CASE: UP.REF., NEW DHLW, IMPROVED, SECOND
SITE: HARD ROCK

17-Jul-87

ACCOUNT	COST ACCOUNT TITLE	TOTAL	DHLW FACTOR DESIGNATION (INPUT DATA)							ASSIGNABLE							UNASSIGNED
		TOTAL	TOTAL PIECE	WW01 PIECE	WW02 PIECE	AREAL DISP.	DEDICATED TO CIVIL.	DEDICATED TO DHLW	SHARED	TOTAL PIECE	WW01 PIECE	WW02 PIECE	AREAL DISPER.	DIRECT CIVILIAN	DIRECT DEFENSE	SUBTOTAL	TOTAL
21505	Radwaste Storage	$13.32	1	0	0	0	0	0	0	$13.32	$0.00	$0.00	$0.00	$0.00	$0.00	$13.32	$0.00
21506	Transfer Corridors	$5.82	1	0	0	0	0	0	0	$5.82	$0.00	$0.00	$0.00	$0.00	$0.00	$5.82	$0.00
21507	Turntable	$1.12	1	0	0	0	0	0	0	$1.12	$0.00	$0.00	$0.00	$0.00	$0.00	$1.12	$0.00
21508	Waste Shaft Staging Facility	$3.26	1	0	0	0	0	0	0	$3.26	$0.00	$0.00	$0.00	$0.00	$0.00	$3.26	$0.00
22000	BALANCE OF PLANT	$1,117.06								$54.71	$0.00	$0.00	$293.44	$0.00	$0.00	$438.16	$798.00
22010	Health/Medical Facilities	$34.34	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$34.34
22020	Fire Protection Facilities	$42.27	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$42.27
22030	Security Facilites	$162.93	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$162.93
22040	Maintenance Facilities	$72.02	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$72.02
22050	Administration/Personnel Facilities	$292.33	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$292.33
22060	Training/Mockup Facility	$14.78	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$14.78
22070	Warehouse and Receiving	$28.12	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$28.12
22080	Visitors Center Facility	$6.44	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$6.44
22090	Backup Power Generation Facility	$43.02	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$43.02
22100	Change Room Facility	$7.66	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$7.66	$0.00	$0.00	$7.66	$0.00
22110	Explosive Storage Facility	$0.12	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$0.12	$0.00	$0.00	$0.12	$0.00
22120	Compressed Air and Steam Facility	$0.00	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
22130	Cooling Tower and Chilled Water Facility	$197.86	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$197.86	$0.00	$0.00	$197.86	$0.00
22140	Excavated Material Storage and Handling	$57.16	0	0	0		0	0	0	$0.00	$0.00	$0.00	$57.16	$0.00	$0.00	$57.16	$0.00
22141	Surface Exc.Mat. Storage and Handling	$57.16	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$57.16	$0.00	$0.00	$57.16	$0.00
22142	Offsite Excavated Material Disposal	$0.00	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
22150	Fuel Storage Facility	$0.00	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
22160	Chemical Storage Facility	$0.00	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
22170	Lab and Testing Facilities	$38.82	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$38.82
22180	Potable Water Facility	$9.49	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$9.49
22190	Sewage Treatment Facility	$5.57	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$5.57
22200	Backfill Facility	$30.65	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$30.65	$0.00	$0.00	$30.65	$0.00
22210	Packing Facility	$56.71	1	0	0	0	0	0	0	$56.71	$0.00	$0.00	$0.00	$0.00	$0.00	$56.71	$0.00
22220	Control and Monitoring Facility	$17.73	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$17.73
22230	Standard Equipment	$7.04	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$7.04
22240	Other	$0.00	0	0	0	0	0	0	1	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
23000	SURFACE SHAFT FACILITIES	$387.48								$32.39	$0.00	$0.00	$155.09	$0.00	$0.00	$187.48	$0.00
23010	Men and Materials Facility	$74.97	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$74.97	$0.00	$0.00	$74.97	$0.00
23020	Waste Facility	$32.39	1	0	0	0	0	0	0	$32.39	$0.00	$0.00	$0.00	$0.00	$0.00	$32.39	$0.00
23030	Excavated Material Handling Facility	$32.46	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$32.46	$0.00	$0.00	$32.46	$0.00
23040	Development Intake Facilities	$27.56	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$27.56	$0.00	$0.00	$27.56	$0.00
23050	Confinement Intake Facilities	$17.75	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$17.75	$0.00	$0.00	$17.75	$0.00
23070	Development Exhaust Facilities	$9.56	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$9.56	$0.00	$0.00	$9.56	$0.00
23080	Confinement Exhaust Facilities	$185.01	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$185.01	$0.00	$0.00	$185.01	$0.00
23100	Exploratory Shaft Facility - 1	$3.44	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$3.44	$0.00	$0.00	$3.44	$0.00
23110	Exploratory Shaft Facility - 2	$4.37	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$4.37	$0.00	$0.00	$4.37	$0.00
23120	Other Facility	$0.00	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
20000	SURFACE FACILITIES	$2,346.48								$113.61	$0.00	$1,020.45	$648.53	$0.00	$0.00	$1,781.60	$766.88
30010	Men and Materials Access (Shaft)	$154.84	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$154.84	$0.00	$0.00	$154.84	$0.00
30020	Waste Handling Access (Shaft or Ramp)	$216.50	1	0	0	0	0	0	0	$216.50	$0.00	$0.00	$0.00	$0.00	$0.00	$216.50	$0.00
30030	Exc.Mat. Handling Access (Shaft or Ramp)	$159.95	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$159.95	$0.00	$0.00	$159.95	$0.00
30040	Development Intake Access (Shafts)	$198.15	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$198.15	$0.00	$0.00	$198.15	$0.00
30050	Confinement_Intake Access (Shafts)	$288.64	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$288.64	$0.00	$0.00	$288.64	$0.00
30070	Development Exhaust Access (Shafts)	$200.62	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$200.62	$0.00	$0.00	$200.62	$0.00
30080	Confinement Exhaust Access (Shafts)	$277.56	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$277.56	$0.00	$0.00	$277.56	$0.00
30100	Exploratory Shaft - 1	$0.00	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
30110	Exploratory Shaft - 2	$0.00	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
30120	Other	$0.00	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
30000	SHAFTS/RAMPS - UNDERGROUND	$1,496.30								$216.50	$0.00	$0.00	$1,279.80	$0.00	$0.00	$1,496.30	$0.00

CASE: UP.REF., REM OWLW, IMPROVED, SECOND
SITE: HARD ROCK

17-Jul-87

ACCOUNT	COST ACCOUNT TITLE	TOTAL	OWLW FACTOR DESIGNATION (INPUT DATA)							ASSIGNABLE							UNASSIGNED
		TOTAL	TOTAL PIECE	OWB1 PIECE	OWB2 PIECE	AREAL DISP.	DEDICATED TO CIVIL. OWLW		SHARED	TOTAL PIECE	OWB1 PIECE	OWB2 PIECE	AREAL DISPER.	DIRECT CIVILIAN	DIRECT DEFENSE	SUBTOTAL	TOTAL
41000	DEVELOPMENT	$948.64								$314.99	$0.00	$0.00	$290.84	$290.47	$44.94	$948.64	$0.00
41010	Common Facility (Shaft Pillar) Excavation	$86.94	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$86.94	$0.00	$0.00	$86.94	$0.00
41020	Spent Fuel Facility Excavation	$290.47	0	0	0	0	1	0	0	$0.00	$0.00	$0.00	$0.00	$290.47	$0.00	$290.47	$0.00
41030	OWLW Facility Excavation	$44.94	0	0	0	0	0	1	0	$0.00	$0.00	$0.00	$0.00	$0.00	$44.94	$44.94	$0.00
41040	Other Waste Facility (Borehole)	$314.99	1	0	0	0	0	0	0	$314.99	$0.00	$0.00	$0.00	$0.00	$0.00	$314.99	$0.00
41060	Excavated Material Handling	$107.06	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$107.06	$0.00	$0.00	$107.06	$0.00
41070	General Maintenance	$96.05	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$96.05	$0.00	$0.00	$96.05	$0.00
42000	EMPLACEMENT/RETRIEVAL OPERATIONS	$260.26								$34.68	$0.00	$0.00	$0.00	$178.51	$44.90	$260.26	$0.00
42010	Spent Fuel Waste Transport and Emplacement	$178.51	0	0	0	0	1	0	0	$0.00	$0.00	$0.00	$0.00	$178.51	$0.00	$178.51	$0.00
42020	OWLW Transport and Emplacement	$44.90	0	0	0	0	0	1	0	$0.00	$0.00	$0.00	$0.00	$0.00	$44.90	$44.90	$0.00
42030	Other Waste Transport and Emplacement	$0.00	0	0	0	0	1	0	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
42040	Waste Removal	$16.83	1	0	0	0	0	0	0	$16.83	$0.00	$0.00	$0.00	$0.00	$0.00	$16.83	$0.00
43000	BACKFILL	$132.35								$14.41	$0.00	$0.00	$117.94	$0.00	$0.00	$132.35	$0.00
43010	Men and Materials Access (Shaft)	$0.00	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
43020	Waste Handling Access (Shaft or Ramp)	$14.41	1	0	0	0	0	0	0	$14.41	$0.00	$0.00	$0.00	$0.00	$0.00	$14.41	$0.00
43030	Rock Handling Access (Shaft or Ramp)	$87.86	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$87.86	$0.00	$0.00	$87.86	$0.00
43040	Development Intake Access (Shafts)	$10.97	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$10.97	$0.00	$0.00	$10.97	$0.00
43050	Confinement Intake Access (Shafts)	$15.66	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$15.66	$0.00	$0.00	$15.66	$0.00
43070	Development Exhaust Access (Shafts)	$11.39	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$11.39	$0.00	$0.00	$11.39	$0.00
43080	Confinement Exhaust Access (Shafts)	$15.87	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$15.87	$0.00	$0.00	$15.87	$0.00
43100	Exploratory Shaft - 1	$2.31	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$2.31	$0.00	$0.00	$2.31	$0.00
43110	Exploratory Shaft - 2	$6.43	0	0	0	1	0	0	0	$6.36	$0.00	$0.00	$6.43	$0.00	$0.00	$6.43	$0.00
43120	Other Shaft	$0.00	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
43300	Development Areas	$39.36	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$39.36	$0.00	$0.00	$39.36	$0.00
40000	SUBSURFACE EXCAVATIONS	$1,333.03								$366.25	$0.00	$0.00	$487.98	$468.98	$189.84	$1,333.03	$0.00
51000	SUPPORT SYSTEM FACILITIES	$267.93	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$267.93	$0.00	$0.00	$267.93	$0.00
52000	UTILITIES	$79.05	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$79.05	$0.00	$0.00	$79.05	$0.00
53000	MONITORING	$126.42	0	0	0	1	0	0	0	$0.00	$0.00	$0.00	$126.42	$0.00	$0.00	$126.42	$0.00
50000	UNDERGROUND SERVICE SYSTEMS	$473.40								$0.00	$0.00	$0.00	$473.40	$0.00	$0.00	$473.40	$0.00
61000	SPENT FUEL	$1,091.22								$0.00	$0.00	$0.00	$0.00	$1,091.22	$0.00	$1,091.22	$0.00
61010	Intact PWR	$165.29	0	0	0	0	1	0	0	$0.00	$0.00	$0.00	$0.00	$165.29	$0.00	$165.29	$0.00
61020	Intact BWR	$376.44	0	0	0	0	1	0	0	$0.00	$0.00	$0.00	$0.00	$376.44	$0.00	$376.44	$0.00
61030	Consolidated PWR	$391.55	0	0	0	0	1	0	0	$0.00	$0.00	$0.00	$0.00	$391.55	$0.00	$391.55	$0.00
61040	Consolidated BWR	$277.92	0	0	0	0	1	0	0	$0.00	$0.00	$0.00	$0.00	$277.92	$0.00	$277.92	$0.00
62000	OWLW	$260.12	0	0	0	0	0	1	0	$0.00	$0.00	$0.00	$0.00	$0.00	$260.12	$260.12	$0.00
63000	OTHER WASTE	$487.32								$48.73	$0.00	$0.00	$0.00	$338.59	$0.00	$387.32	$0.00
63010	Spent Fuel Hardware	$338.59	0	0	0	0	1	0	0	$0.00	$0.00	$0.00	$0.00	$338.59	$0.00	$338.59	$0.00
63020	Performance Confirmation	$48.73	1	0	0	0	0	0	0	$48.73	$0.00	$0.00	$0.00	$0.00	$0.00	$48.73	$0.00
63030	MWWLW and CWLW	$0.00	0	0	0	0	1	0	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
63040	Contact-Handled	$0.00	1	0	0	0	0	0	0	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
60000	WASTE PACKAGE FABRICATION	$1,418.66								$48.73	$0.00	$0.00	$0.00	$1,129.81	$240.12	$1,418.66	$0.00
99999	TOTAL REPOSITORY	$6,470.86								$726.07	$0.00	$1,020.65	$2,809.72	$1,598.79	$349.96	$6,502.98	$1,967.86
	TOTAL REPOSITORY LESS L.A.D. MANAGEMENT AND ENT.	$6,150.79								$721.07	$0.00	$1,020.65	$2,809.72	$1,598.79	$349.96	$6,502.98	$1,647.81
									DEFENSE SHARE:	24.29%	0.00%	24.29%	11.33%	0.00%	100.00%	16.79%	16.79%
									OWLW COST:	$175.05	$0.00	$247.82	$318.05	$0.00	$349.96	$1,091.48	$276.62

[FR Doc. 87-19065 Filed 8-19-87; 8:45 am]
BILLING CODE 6450-01-C

federal register

Thursday
August 20, 1987

Part VI

Small Business Administration

13 CFR Part 144

Disaster Home Loans; Debt Collection; Final Rulemaking

SMALL BUSINESS ADMINISTRATION

13 CFR Part 144

Disaster Home Loans; Debt Collection

AGENCY: Small Business Administration.

ACTION: Final rulemaking.

SUMMARY: The Small Business Administration is amending the debt collection regulations for certain Disaster Home Loans. These regulations govern a one-time program to permit the prepayment at a discount of certain outstanding disaster home loans. The regulations also provide for a methodology for computing the discounted value of the loan to be paid.

EFFECTIVE DATE: August 20, 1987.

FOR FURTHER INFORMATION CONTACT: James W. Hammersley, Financial Analyst, (202–653–5954) Small Business Administration, Room 800C, 1441 L St. NW., Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The Disaster Home Loan (DHL) Program provides long term loans at favorable interest rates to repair or replace property lost or damaged as a result of such physical disasters as floods, hurricanes, tornados, and other catastrophes. Further discussion and the regulations governing the operation of the DHL program can be found at 13 CFR 123.1—123.29.

The President's Budget for FY 1988 requires the Small Business Administration to conduct asset sales as part of Federal credit reform. The Administrator has determined that allowing disaster home loan borrowers to prepay their loans at a discount may provide a favorable rate of return to the government.

Under the regulation, a written offer will be made during the summer of 1987 by mail to each DHL borrower whose loan had an original approval amount of $5,000 or less and is in current status. Current status as defined by this regulation will include all loans that are paying according to schedule and those loans in which the borrower is late on one payment (loan is no more than 31 days past due). The offer will only be made to borrowers with current loans as defined in the rule. Borrowers who are not current are precluded from this offer of prepayment so as not to receive any benefit from their delinquency. The SBA does not have the unilateral authority and cannot offer prepayment to those borrowers whose loans are in litigation status. Loans which have been disbursed less than one year will not be included in the program. Borrowers with 12 or fewer payments remaining will not receive offers because the amount of the discount over the remaining term of the loan is insignificant. Loans of $5,000 and less were selected because these loans are generally unsecured.

Borrowers will have a specified period of time to respond to the offer. The deadline for response for all eligible borrowers will be a date certain specified in the offer. The response will be made by sending a check for the amount of the offer to the SBA. If SBA receives payment within the time frame identified in the offer, the borrower's loan will be considered paid in full. SBA will take any steps necessary to release all encumbrances for any collateral on the loan and to assign all notes back to the borrowers. Checks received by SBA after the closing date of the offer will be credited to the borrower's account as extraordinary payments of principal, but will not be considered as a response to the discounted prepayment offer. Borrowers claiming that they did not receive the offer and borrowers whose checks are returned for a lack of funds will be permitted the opportunity to discuss their loan with the SBA Disaster Loan Servicing office [1–800–654–2071 for all states except Alabama, the number for Alabama residents is 1–800–237–8431]. The disposition of these situations will be handled on a case by case basis.

The prepayment amount necessary to discharge the indebtedness in each instance will be calculated by determining the present value of the remaining payments on the loan at an interest rate that would provide a potential investor a yield to maturity required by market conditions. The SBA financial advisor will provide input into the establishment of the discount rate, however, the decision will be made by SBA. The factors considered in the discount rate decision, which may change from time to time, will include, but will not be limited to, the following: (1) The current market yield on outstanding obligations of similar maturity and quality, (2) the current interest rates charged by private financial institutions that make loans of comparable quality and maturity to the DHLs, (3) current and anticipated administrative costs for servicing the DHLs, and (4) the current net proceeds to the government if the prepaid loans had been sold without recourse by the government.

SBA received one comment letter which was from an SBA field attorney. The comments were technical in nature and were considered when preparing the final regulations.

Reason for Action

In the proposed regulation published July 10, 1987 (52 FR 26019), the Small Business Administration proposed this prepayment of disaster home loans in keeping with the budgetary initiative of this Administration. It is believed that a favorable monetary return can be obtained from these loans by prepayment at a discount.

Regulatory Flexibility Statement

These regulations will not have a significant economic impact on a substantial number of small entities because DHL borrowers are not considered "small entities" under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*

Executive Order 12291

These regulations are, however, classified as a major rule within the meaning of the Executive Order because the discount prepayment program could affect disaster home loans with a current outstanding balance in excess of $100,000,000.

The amendments to the regulations are beneficial to the disaster home loan borrowers. Applications for discounted prepayment are voluntary and the borrowers accepting the proposal will be the only entities affected by the proposed regulation.

There is little or no potential cost to the borrower in accepting the prepayment offer. If the funds used to make the prepayment are borrowed, there may be an application charge or other fees by the lender. The SBA feels that such charges would be negligible.

The benefits to the borrower include the elimination of a debt, and the opportunity to prepay a loan at less than the balance outstanding.

The only available alternative would be to sell these loans to private investors. The sale back to the borrower was chosen first because (1) there are fewer sale expenses involved in selling a loan to the borrower than in running an underwritten sale to private investors, and (2) buyers do not have to consider the various factors that investors do (default rate, prepayment rate, collateral value, cost of collection, cost of monthly payment processing) when deciding whether to make the investment. It is felt that offering the loans to the borrowers first has the lowest cost.

Paperwork Reduction Act of 1980

SBA certifies that this regulation imposes no reporting or recordkeeping requirements subject to the Paperwork Reduction Act. The offer will be

prepared by SBA. The borrower may respond to it or discard it. Response to the offer is, therefore, considered "consent" and is specifically excluded from the requirements of the Act by 5 CFR 1320.7(k)(l).

List of Subjects in 13 CFR Part 144

Loan programs—disaster home loans: Reporting and recordkeeping requirements.

Accordingly, purusuant to section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)), Part 144 is added to read as follows:

PART 144—DISCOUNTED PREPAYMENT OF DISASTER HOME LOANS

Sec.
144.1 General information.
144.3 Applicability and eligibility.
144.5 Proposal for prepayment.
144.7 Acceptance of proposal.
144.9 Calculation of discount.
144.11 Tax implication.

Authority: Sec. 5(b)(6) of the Small Business Act, 15 U.S.C. 634(b)(6).

§ 144.1 General information.

Under this one-time program for Fiscal Year 1987, the SBA may provide a discount for prepayment in full of an outstanding disaster home loan to those borrowers that meet the conditions established in this subpart.

§ 144.3 Applicability and eligibility.

This discount program is applicable to all disaster home loans (see 13 CFR § 123.1 through 123.29 for details) which have been fully disbursed and outstanding for a period of 12 months at the time of offer have at least 12 months remaining, and which are in a current status. A loan in "Current Status" as defined for this regulation is one which is paying according to the current payment schedule or the borrower is late on one payment. In no case will the offer be made to a borrower whose loan is more than 31 days past due.

§ 144.5 Proposal for prepayment.

(a) The SBA will calculate the appropriate discount and make a written offer to each eligible disaster home loan borrower. The offer will be mailed by the SBA to the address now used for the monthly billing of the loan.

(b) Upon issuance by SBA of the proposal for discounted prepayment, the borrower will have a specified period of time to respond to the offer. A timely acceptance will be signified by payment of the amount identified in the offer by the deadline stated in the offer. Late payment or nonresponse will be considered a decline of the offer.

(c) The issue date will be the date on which SBA mails the offer to the borrower. The deadline will be a date specified in the offer.

(d) A borrower who feels he/she should have been contacted but did not receive an offer will have a fair opportunity to discuss their loan with SBA. Such presentation will be made to the SBA office servicing the loan.

§ 144.7 Acceptance of proposal.

(a) A borrower accepting the proposal to prepay his/her loan at a discount shall forward the payment coupon provided with the proposal and submit payment for the discounted amount to be received by the Small Business Administration, Denver, Colorado 80259–0001 not later than the deadline specified in the offer.

(b) The receipt of the offer for discounted prepayment does not relieve the disaster home loan borrower from the requirement for the periodic payment under the loan until such time as the offer is accepted by the borrower and payment made to SBA. Rejection of the offer by the borrower does not affect the payment terms of the loan.

(c) Upon receipt of the acceptance and payment in full of the discounted amount, SBA will return the promissory note stamped paid-in-full and take any appropriate action necessary to release all encumbrances for any collateral on the loan and to make proper recordation releasing the note back to the borrower.

§ 144.9 Calculation of discount.

The SBA will establish a present value of the remaining payments required under a disaster home loan by calculating a price on that loan which would, if the loan were purchased and held to maturity, produce a yield or return to the purchaser equal to the market interest rate determined by the Administrator. A standard net present value calculation will used. The discount rate will be determined by the Administrator after consultation with the financial advisor and consideration of other factors relevant to this program.

§ 144.11 Tax implication.

SBA will advise borrowers that the discounted amount may be considered taxable income and will advise the Internal Revenue Service of the amount of discount applicable to each loan which is prepaid.

James Abdnor,

Administrator.

August 12, 1987.

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federal register

Thursday
August 20, 1987

Part VII

Office of Management and Budget

Congressional Budget Office

Sequestration Report for Fiscal Year 1988—A Joint Report to the Temporary Joint Committee on Deficit Reduction

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OFFICE OF MANAGEMENT AND BUDGET

CONGRESSIONAL BUDGET OFFICE

Sequestration Report for Fiscal Year 1988–A Joint Report to the Temporary Joint Committee on Deficit Reduction

AGENCY: Office of Management and Budget, Congressional Budget Office.

ACTION: Report transmittal.

SUMMARY: This notice transmits the initial Sequestration Report for Fiscal Year 1988 to the Temporary Joint Committee on Deficit Reduction in accordance with the alternative procedures of the Balanced Budget and Emergency Deficit Control Act of 1985, Public Law 99–177.

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Congressional Budget Office
Congress of the United States

Office of Management and Budget
Executive Office of the President

August 20, 1987

Honorable George Bush
President of the Senate
Washington, D.C. 20510

Dear Mr. President:

In accordance with the alternative procedures of the Balanced Budget and Emergency Deficit Control Act of 1985, Public Law 99-177, the Director of the Office of Management and Budget and the Director of the Congressional Budget Office do hereby submit to you our initial Sequestration Report for Fiscal Year 1988.

This joint report estimates budget levels for 1988 following the specifications set forth in the Act. The budget estimates are based on laws and regulations in effect on August 15, 1987, and on appropriations for fiscal year 1987, because no appropriations for 1988 have been enacted. Since the projected deficit exceeds the maximum deficit amount by more than $10 billion, the report also calculates the amounts and percentages by which various budgetary resources must be sequestered to eliminate the deficit excess.

The report is in two parts: a summary and an appendix that provides a detailed listing of all sequestration reductions by agency and budget account. The summary section includes our economic assumptions, our projected budget base levels, and a discussion of the sequestration calculations. The report does not contain a listing of sequestration reductions for defense programs, projects, and activities because no defense appropriations bills for 1988 have been enacted.

With best wishes,

Sincerely yours,

Edward M. Gramlich
Acting Director
Congressional Budget Office

James C. Miller III
Director
Office of Management and Budget

IDENTICAL LETTERS SENT TO HONORABLE JAMES C. WRIGHT, JR., HONORABLE LAWTON CHILES, HONORABLE WILLIAM H. GRAY III

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SEQUESTRATION REPORT FOR FISCAL YEAR 1988
A JOINT REPORT TO THE TEMPORARY JOINT COMMITTEE
ON DEFICIT REDUCTION

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GENERAL NOTES

1. All years referred to are fiscal years unless otherwise noted.

2. Details in the tables and text may not add to totals because of rounding.

3. The sources for all data in this report are the Congressional Budget Office and the Office of Management and Budget, unless otherwise noted.

INTRODUCTION

The Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99-177) stipulates that budget deficits must be decreased annually and specifies measures that must be taken to achieve this result. The maximum deficit amounts specified by the Act are:

Fiscal Year	Maximum Deficit (in billions of dollars)
1988.....	108.0
1989.....	72.0
1990.....	36.0
1991.....	zero

The Act provides that a deficit estimate that exceeds the maximum level by more than $10 billion in 1988-1990, or by any amount in 1991, triggers a spending reduction procedure to eliminate the excess deficit through the "sequestration" of budgetary resources. Except for special and trust funds, sequestration is the permanent cancellation of new budget authority and other authority to obligate and expend funds. (Amounts sequestered in special and trust funds remain in such funds.)

The Supreme Court ruled last year that the original procedure by which the sequestration was to occur is unconstitutional because the Act violated the principle of separation of powers by granting the Comptroller General final authority to determine the size and composition of the sequestration the President must order. The Act contains a "fallback" mechanism (described below) that was implemented after the Supreme Court's decision that the Comptroller General's role was unconstitutional.

Under the fallback mechanism, the first step in the sequestration process for 1988 is the submission of this joint report by the Director of the Office of Management and Budget (OMB) and the Director of the Congressional Budget Office (CBO) to Congress. The report is to be referred to the Temporary Joint Committee on Deficit Reduction, composed of the entire membership of the House and Senate Budget Committees. The report:

-- estimates budget baseline levels, including the amount by which the projected deficit exceeds the maximum deficit amount for the fiscal year covered by the report;

-- provides OMB and CBO economic assumptions, including the estimated rate of real economic growth; and

-- calculates the amounts and percentages by which various budgetary resources must be sequestered in order to eliminate any deficit excess.

The Congress is currently considering legislation to revise the deficit targets, reestablish automatic spending reduction procedures and make other changes in the Balanced Budget and Emergency Deficit Control Act of 1985. Although House and Senate conferees were unable to reach agreement prior to the August recess, the conference committee is expected to resume deliberations when the Congress returns on September 9. The revisions to the Balanced Budget and Emergency Deficit Control Act are being considered in conjunction with revised limits in the debt subject to limit that expire on September 23, 1987. Until the Act is amended, however, the fallback procedure is still in effect.1/

This document is the Directors' initial report for 1988. It does not reflect any of the changes to the original Act currently under consideration by Congress. The budget estimates reflect laws and regulations in effect on August 15, 1987. Under current law, a revised report will be submitted on October 5. That report will reflect laws enacted and regulations promulgated after August 15 that affect the 1988 budget. If either report estimates a 1988 deficit in excess of $118 billion, the Directors must calculate the sequester needed to reduce the deficit to $108 billion -- the maximum deficit amount. After receiving the report the Temporary Joint Committee must, within five calendar days, report to the House and Senate a joint resolution "setting forth the contents of the report." Within the next five days that the Congress is in session, both Houses are required to vote on the joint resolution. If the resolution becomes law, the President must follow its terms in issuing his sequester order.

This procedure applies to both the initial and the revised reports of the Directors. A sequester order based on the August 20 report would become effective October 1. A sequester order based on the October 5 report would become effective on October 15 or on the date the President signs the order, whichever is later.

1/ Under the version that passed the Senate on July 24, the sequester order would be triggered by an OMB report. OMB's preliminary estimate is that the budget baseline deficit under the Senate bill would be between $160 and $170 billion.

BUDGET BASELINE TOTALS

This report deals only with fiscal year 1988. The OMB and CBO estimates of total revenues, outlays, and the deficit for 1988 are shown in Table 1. These estimates are made in accordance with the specifications set forth in the Act, as amended by subsequent legislation. The budget baseline totals are generally referred to as the "Gradison base" estimates, which differ from other measures of current services or baseline projections used by OMB and CBO -- primarily in the treatment of annual appropriations. The budget baseline estimates used in this report assume that current law for revenues and spending authority (including most entitlements) will continue unchanged, except that expiring provisions of law providing revenues and spending authority will terminate as scheduled. 2/

As provided by the Act, the OMB and CBO estimates for spending accounts that require appropriations are based on the appropriations enacted for fiscal year 1987, without any adjustments for inflation or other factors because no appropriations have yet been enacted for fiscal year 1988. As required by the Act, the budget estimates include the receipts and outlays of the social security trust funds, even though they are legally off-budget and the benefits are exempt from sequestration.

OMB and CBO continue to disagree about whether certain programs should be treated as entitlements or controlled by 1987 appropriations for the budget baseline estimates. They also continue to disagree about amounts to be included for federal pay raises in the budget baseline totals. These conceptual issues were discussed in detail in the initial OMB-CBO sequestration report for fiscal year 1987, and may be resolved by the pending amendments to the Balanced Budget Act. 3/

2/ The Act permits an exception to the expiring-provision assumption for excise taxes dedicated to a trust fund (but not for spending authority in that trust fund) and for Commodity Credit Corporation price support programs. In these cases, the budget baseline levels are to assume extension of the provisions and programs at current rates.

3/ See the discussion of conceptual issues on appropriated entitlements and pay raises on pages 29851 - 29853 of the Federal Register for Wednesday, August 20, 1986 (Vol. 51, No. 161).

Table 1.--BASELINE TOTALS FOR 1988
(in billions of dollars)

Budget Aggregates	OMB Estimates	CBO Estimates	Average
Revenues	903.0	897.0	900.0
Outlays	1039.8	1066.9	1053.4
Deficit	136.8	169.9	153.4

This year, several new disagreements have arisen. In the 1987 report, OMB and CBO disagreed as to whether advanced deficiency farm payments should be assumed or not. That disagreement persists, along with a new, similar disagreement about the paid land diversion program. In addition, OMB and CBO disagree about the legal authority underlying the Administration's plan to restructure loans under the foreign military sales credit program. Finally, OMB and CBO also disagree about how the new Federal Employees' Thrift Savings Fund should be handled for Federal budget accounting.

OMB's deficit estimate for 1988 is $136.8 billion, and CBO's deficit estimate is $169.9 billion. The average of the two deficit estimates is $153.4 billion, which exceeds the maximum deficit amount of $108.0 billion by $45.4 billion. Since the average deficit excess of $45.4 billion is greater than $10.0 billion, sequestration calculations are required in this report. They are discussed in a separate section below.

The major factors accounting for the $33.1 billion difference between the OMB and CBO budget baseline deficits are shown in Table 2. Conceptual differences regarding the budget baseline for appropriated entitlements, Federal pay raises, the appropriate budgetary treatment for the new Federal Employees Thrift Savings Fund, and whether the budget baseline should include funds for certain programs account for $16.3 billion of the difference. Economic assumptions account for another $13.5 billion of the difference in the deficits.

Technical estimating differences and debt service account for the remaining $3.3 billion difference. CBO's estimate for Commodity Credit Corporation (CCC) farm price supports for fiscal year 1988 is $5.1 billion higher than OMB's estimate due to CBO's assumption of advance deficiency payments and a paid land diversion program for the 1988 crop year ($5.6 billion) partly offset by technical estimating differences ($-0.5 billion). OMB estimates assume neither advance deficiency payments nor a paid land diversion program.4/

Both OMB and CBO included the transactions of the new Federal Employees' Thrift Savings Fund in their budget estimates published in January. Having included the transactions of the Fund in the budget base, OMB does not believe it is appropriate to change treatment in the middle of the budget cycle. OMB recognizes that there are reasonable arguments on both sides of this issue and will review the matter in its preparation of the FY 1989 Budget. On the basis of a recent opinion by the General Accounting Office, CBO has concluded that investments in Federal securities held by the Fund should not be included within the Federal budget and should be shown instead as Federal borrowing. Therefore, CBO does not now include any amounts for the Fund in its budget baseline estimates.

The Administration has announced its plan to restructure certain loans under the foreign military sales credit program. Since the Administration is currently implementing this program under existing law, OMB's base level outlay estimates include the loan restructuring program. CBO has not included an estimate for the budgetary effect of this restructuring because of the Comptroller General's opinion that it should not be implemented without specific Congressional approval.

4/ Because of provisions of the Food Security Act of 1985 (P.L. 99-198), it is not clear whether a current law estimate or an appropriation amount should be included in the budget baseline for the Conservation Reserve Program of the Department of Agriculture. Under the terms of the Food Security Act, the program is to be financed by funds available to the Commodity Credit Corporation (CCC) in 1986 and 1987, and by annual appropriation from the general fund beginning in 1988. The resources of the CCC fund are classified as spending authority. This presents a dilemma: If the Directors conclude that the program is financed by spending authority, the estimate for 1988 would be zero, because the program would cease to exist as a program financed by spending authority under current law; on the other hand, if the Directors conclude that the program is an annually appropriated program, the estimate for 1988 would also be zero since there was no appropriation in 1987. To prevent this peculiar result, the Directors agreed to consider the program to be funded by annual appropriation and use the 1987 program level in the CCC as a proxy for a 1987 appropriated amount.

Table 2.--DIFFERENCES BETWEEN OMB AND CBO BASELINE DEFICITS
(in billions of dollars)

OMB deficit	136.8
Differences:	
Conceptual a/:	
Appropriated entitlements:	
Defense	0.1
Nondefense	3.2
Pay raises:	
Defense	2.5
Nondefense	0.3
Farm price supports:	
Advanced deficiency payments	4.6
Land diversion payments	1.0
Federal Employees Thrift Savings Fund (FERS)	3.3
Foreign military sales -- debt restructuring	1.3
Subtotal, conceptual	16.3
Economic b/:	
Receipts	8.2
Outlays (excluding debt service)	5.3
Subtotal, economic	13.5
Technical b/:	
Medicare	4.1
Other outlays	0.4
Receipts	-2.2
Subtotal, technical	2.3
Debt service	1.0
Total differences	33.1
CBO deficit	169.9

a/ OMB estimates of adopting the concepts used by CBO. Differences between the CBO and OMB estimates for items such as current law funding of appropriated entitlements or the costs of land diversion payments are classified as technical differences. CBO's estimate of the conceptual difference is $16.9 billion.

b/ OMB estimates of the differences in the deficits attributable to economic and technical factors. CBO attributes $11.0 billion to differences in economic assumptions. CBO's estimate of the difference due to technical differences is $4.2 billion. Most of the variation between the OMB and CBO estimates is for receipts.

ECONOMIC ASSUMPTIONS

The principal economic assumptions underlying the OMB and CBO budget baseline estimates for fiscal year 1988 are shown in Table 3.

The Act requires the OMB and CBO Directors to estimate the rate of real economic growth for the fiscal year covered by their report, for each quarter of the fiscal year, and for the last two quarters of the preceding fiscal year. If either OMB or CBO projects real economic growth to be less than zero for any two consecutive quarters, or if the Department of Commerce reports actual real growth to have been less than 1 percent for two consecutive quarters, many of the provisions of the Act can be suspended by the Congress. The OMB and CBO estimates for the rate of real economic growth for fiscal year 1988 are included in Table 3 and the quarterly estimates are shown in Table 4. Neither office projects real economic growth to be less than zero in any quarter during fiscal year 1987 or fiscal year 1988.

Table 3.--ECONOMIC ASSUMPTIONS
(Fiscal Year 1988)

Economic Variable	OMB	CBO
Gross National Product:		
Current dollars (in billions of dollars)	4,742	4,718
Percent change, year over year	7.5	7.0
Constant (1982) dollars (in billions of dollars)	3,902	3,886
Percent change, year over year	3.2	2.8
GNP Implicit Price Deflator (percent change, year over year)	4.2	4.1
CPI-W (percent change, year over year)	4.5	5.1
Civilian Unemployment Rate (percent, fiscal year average)	6.1	6.1
Interest Rates (fiscal year average):		
91-day Treasury bills	5.6	6.6
10-year Treasury notes	7.8	8.5

Table 4.--REAL ECONOMIC GROWTH RATES BY QUARTER
(in percents, annual rates)

	FY 1987			FY 1988 Estimates			
	Actual		Estimate				
	Jan-Mar 1987 a/	Apr-Jun 1987 a/	Jul-Sep 1987	Oct-Dec 1987	Jan-Mar 1988	Apr-Jun 1988	Jul-Sep 1988
OMB	4.4	2.6	2.7	3.2	3.5	3.5	3.5
CBO	4.4	2.6	2.5	2.9	3.1	2.3	2.4

a/ As reported by the Department of Commerce (July 24, 1987).

SEQUESTERABLE RESOURCES

The required reductions in outlays are not made directly; rather, they are to be achieved by the permanent cancellation -- referred to under the Act as "sequestration" -- of budget authority and other authority to obligate and expend funds. For defense programs, sequesterable budgetary resources are new budget authority provided for 1988 and unobligated balances of budget authority provided in previous years. For nondefense programs, the sequesterable budgetary resources are new budget authority, new direct loan obligations, new guaranteed loan commitments, obligation limitations, and spending authority as defined in Section 401(c)(2) of the Congressional Budget Act of 1974. This definition of spending authority includes various permanent appropriations as well as Federal payments financed by offsetting collections that are credited to budget accounts.

Not all budgetary resources are subject to sequestration. The Act exempts a number of programs and activities of the Federal Government from the sequestration process. As shown in Table 6, the largest are social security benefits, net interest, certain low-income programs, most Federal retirement and disability benefits, veterans compensation and pensions, and regular State unemployment insurance benefits. Also exempt from sequestration are prior legal obligations of the Government in certain specified budget accounts, as well as the program bases for certain programs whose automatic spending increases are subject to sequester. Federal administrative expenses for most otherwise exempt programs and activities, however, are sequesterable, including programs that are self-supporting. Outlays from obligated balances for defense programs and outlays from obligated and unobligated balances of prior-year appropriations for nondefense programs are generally not subject to sequestration. Defense contracts can be modified or terminated to achieve outlay savings, but the President has until September 5 to choose whether or not to do so for fiscal year 1988. As discussed below, legislation enacted subsequent to the Act has exempted additional programs and activities.

Certain programs and activities, while not exempt, are subject to special rules that have the effect of limiting the amount of the spending reduction. For example, the sequestration of budgetary resources for medicare, veterans medical care, and certain health programs (but not for the administrative expenses of these programs) is limited to 2 percent annually. In addition, the total amount of the automatic spending increases in three programs specified in the Act is sequesterable.

For credit programs, the measures governing sequesterable budgetary resources are direct loan obligations and guaranteed loan commitments. In the event of a sequester, the Act requires that credit limitations enacted in annual appropriation acts be reduced, and that de facto limitations be imposed on both types of new credit activity where there is no enacted limitation.

Although for most accounts CBO and OMB agree or are close to each other on the levels of budgetary resources and outlays subject to sequester, there are some exceptions. The most notable exception concerns the sequestration of the administrative expenses of the Postal Service. Both CBO and OMB agree that more than $1 billion of budgetary resources are sequesterable. CBO believes that there is no evidence that the Postal Service took any steps to reduce

spending in response to the President's sequestration order of March 1986 (as reaffirmed by Public Law 99-366). Moreover, the Administration appears to have no mechanism for enforcing a sequestration order with regard to the Postal Service, because the statute that established the United States Postal Service removed it from budgetary control by the President. CBO assumes that, as in 1986, a 1988 sequester order would not cause the Postal Service to make any specific spending reductions. CBO therefore shows no outlay savings resulting from the sequestration of budgetary resources for the Postal Service. Both CBO and OMB believe that the Postal Service is covered by the Balanced Budget and Emergency Deficit Control Act and should be held accountable to comply with the Act to reduce its outlays, consistent with the across-the-board percentage sequestration applied to the functions and programs of the executive, legislative, and judicial branches -- despite the fact that the Postal Service's budgetary resources are not subject to the OMB apportionment process, and despite questions concerning the amount of savings achieved in 1986. Otherwise, the sequestration order would exempt that which Congress did not intend to exempt.

In the 1986 sequestration report, the Directors of CBO and OMB disagreed about whether provisions of the Balanced Budget and Emergency Deficit Control Act required sequestering interest payments made to the Washington Metropolitan Area Transit Authority (WMATA). The 1987 report added two interest payment accounts and Veterans Administration (VA) policy loans to this WMATA issue. The issue on VA policy loans was resolved by legislation exempting the accounts from sequestration. The issue with respect to remaining accounts persists.

LEGISLATION ENACTED SUBSEQUENT TO THE ACT

Since the enactment of the Balanced Budget and Emergency Deficit Control Act of 1985, a number of laws have been enacted to exempt additional programs from sequestration.

Certain payments to, and for the administration of, the trust territories, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands were exempted by amendments to the various organic acts (P.L. 99-396). The Veterans Benefits Improvement and Health Care Authorization Act (P.L. 99-576) exempts certain Veterans Administration programs. Payments under the Compact of Free Association were exempted under the Compact Treaty (PL 99-658). As stated in last year's report, the Panama Canal Commission was exempted under the Panama Canal Commission Authorization Act (P.L. 99-368). As was explained in last year's report, in the case of the Panama Canal Commission, the provisions of law providing exemptions for these programs do not change the instructions given to the Directors in the Balanced Budget Act that these programs be included in their Joint report; they only make any sequestration order unenforceable for these programs. However, as in the case last year, the Directors have decided to show no sequesterable resources for these programs. If such legal ambiguities are to be avoided, exempting these and other programs from sequestration should be accomplished by amending the list of exempt accounts in section 255(g)(1) of the Act, so that the specifications for the sequestration report and other provisions contained in the Balanced Budget Act will apply to them.

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Two other laws amended the Balanced Budget Act by adding programs to the listing of exempt accounts in section 255(g)(1) of the Act. The Omnibus Reconciliation Act of 1986 (P.L. 99-509) exempted the Dual benefits payments account of the Railroad Retirement Board. The same law also exempted the automatic spending increases for programs listed in section 257(1)(a) of the Balanced Budget Act. (Benefits paid from these programs were already exempt under the Act.) The Competitive Equality Banking Act (P.L. 100-86) exempted the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board and the Federal Savings and Loan Insurance Corporation, and the National Credit Union Administration. That law also exempted these organizations from the administrative expense provision of the Balanced Budget Act that generally subjects to sequestration the administrative expenses of otherwise exempt accounts.

Table 5 provides a summary of the newly exempted programs and the associated amounts exempted for 1988.

Table 5.--PROGRAMS EXEMPTED FROM SEQUESTRATION SINCE 1985
(in billions of dollars)

	1988 Outlays a/
Cost-of-living increases:	
Civil service retirement	0.8
Military retirement	0.6
Other retirement programs	0.1
Total, cost-of-living increases	1.5
Other programs:	
Deposit insurance and regulation b/	0.9
Panama Canal operations	0.4
Payments to Territories and Puerto Rico	0.4
Compact of Free Association	0.1
Veterans Canteen fund	0.2
Veterans life insurance and other veterans benefits	0.1
Dual Benefits, Railroad Retirement	0.4
Total, other programs	2.5
Total, new exemptions	3.9

a/ Average of OMB and CBO estimates.
b/ Includes the Federal Home Loan Bank Board, the Federal Deposit Insurance Corporation, the National Credit Union Administration, and the Comptroller of the Currency.

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COMPOSITION OF BASELINE OUTLAYS

Table 6 provides further detail on the OMB and CBO baseline outlay estimates for 1988. An estimated average of $175.8 billion of 1988 outlays for defense programs, or 62 percent of total defense outlays, are associated with budgetary resources subject to an across-the-board percentage reduction. The CBO estimate is $4.1 billion higher than the OMB estimate due to CBO's inclusion of $2.5 billion for pay raises, $1.5 billion for higher spendout rates, and $0.1 billion due to conceptual differences in appropriated entitlements. In addition, CBO's estimates for exempt outlays is $0.6 billion less due to lower spendout rates.

An estimated average of $198.6 billion, or about one-fourth, of estimated outlays for nondefense programs are associated with sequesterable budgetary resources. About $99.8 billion of these outlays are associated with certain special rule programs, the largest of which is medicare. The Act also limits the extent of spending reductions for these programs.

Of the total estimated 1988 nondefense outlays of $768.9 billion, an estimated $98.8 billion -- about 13 percent of nondefense outlays -- are associated with budgetary resources subject to an across-the-board percentage reduction. 5/ An estimated $570.3 billion, or three-fourths of total estimated outlays for nondefense programs, are exempt from sequestration by the Act.

For defense and nondefense programs combined, an estimated $679.1 billion in outlays, or 64 percent of total outlays, are associated with budgetary resources exempt from sequestration.

5/ The estimated $98.8 billion nondefense total subject to across-the-board reduction shown in Table 6 does not include $10.2 billion of 1989 outlays for CCC or $2.5 billion in outlays from offsetting collections in 1988. The sum of these figures is $111.5 billion, the estimated nondefense outlays associated with across-the-board sequesterable budgetary resources shown in Table 7.

Table 6.--COMPOSITION OF BASELINE OUTLAY ESTIMATES FOR 1988
(dollar amounts in billions)

Category	Estimate		Average	
	OMB	CBO	Estimate	Percent of Total
Defense Programs a/:				
Subject to across-the-board reduction	173.7	177.8	175.8	16.7
Exempt from sequestration b/	109.1	108.5	108.8	10.3
Subtotal, defense programs	282.8	286.2	284.5	27.0
Nondefense Programs:				
Subject to sequestration:				
Certain programs with automatic spending increases c/	*	*	*	**
Certain special rule programs d/	97.8	101.7	99.8	9.5
Subject to across-the-board reduction e/	97.5	100.0	98.8	9.4
Subtotal, subject to sequestration	195.4	201.8	198.6	18.9
Exempt from sequestration:				
Social security	218.2	218.8	218.5	20.7
Federal retirement, disability, and workers compensation	51.2	51.6	51.4	4.9
Earned income tax credit	2.9	3.0	2.9	0.3
Low-income programs f/	67.1	70.9	69.0	6.5
Veterans compensation and pensions	14.2	14.1	14.1	1.3
State unemployment benefits	14.9	15.4	15.1	1.4
Offsetting receipts	-63.0	-55.9	-59.5	-5.6
Net interest	145.3	149.7	147.5	14.0
Other g/	110.8	111.5	111.2	10.6
Subtotal, exempt from sequestration	561.6	579.0	570.3	54.1
Subtotal, nondefense programs	757.0	780.7	768.9	73.0
Total	1,039.8	1,066.9	1,053.4	100.0

a/ Budget function 050 excluding FEMA programs.
b/ Largely outlays from obligated balances.
c/ National Wool Act, special milk, and vocational rehabilitation programs.
d/ Guaranteed student loans, foster care and adoption assistance, medicare, veterans medical care, and other health programs.
e/ Excludes outlays from offsetting collections and 1989 outlays for the Commodity Credit Corporation (CCC), both of which enter the sequestration calculation in Table 7 below.
f/ Family support payments, child nutrition, medicaid, food stamps, SSI, and WIC.
g/ Outlays from prior-year appropriations, certain prior legal obligations, and other exempt programs.
* $50 million or less.

SEQUESTRATION CALCULATIONS

The Act establishes the following steps for the sequestration calculations, which are shown in Table 7.

First, the deficit excess is calculated by subtracting the maximum deficit amount from the estimated deficit in the budget baseline. One-half of the excess is assigned to defense programs (budget accounts in the national defense function, 050, excluding the Federal Emergency Management Agency) and the other half to nondefense programs.

All savings from eliminating automatic spending increases in three specific programs -- the National Wool Act, the special milk program, and vocational rehabilitation -- are applied to the required reduction in outlays for nondefense programs. (Originally, the Act required that one-half of the savings from eliminating automatic spending increases in Federal retirement and disability programs be applied toward the required reduction amount for defense programs and the other half to non-defense programs, but Federal retirement and disability programs were exempted by subsequently enacted legislation.)

Third, the amount of outlay savings to be obtained by applying four special rules is calculated. These special rules are for guaranteed student loans, foster care and adoption assistance, medicare, and certain health programs, and are described in a later section of this report. 6/ The estimated savings from these four special rules are applied toward the required spending reductions in nondefense programs.

The reductions in defense programs and remaining reductions in nondefense programs must be taken on a uniform percentage basis, computed separately for each category. The uniform reduction percentages are computed from outlay estimates. The remaining outlay savings to be achieved in defense and nondefense spending are divided by the estimated outlays with sequesterable budgetary resources in each category. The resulting uniform reduction percentages are then applied to all of the remaining sequesterable budgetary resources (budget authority, credit authority, and other spending authority) for defense and nondefense programs.

In the event that the Directors of OMB and CBO are unable to agree on any of these calculations, the Act requires that their estimates be averaged to the extent necessary to produce a single, consistent set of data that achieves the required deficit reduction.

6/ A number of special rules apply to other programs, such as the Commodity Credit Corporation, but they do not enter into the sequester calculations at this step.

Table 7.--SEQUESTRATION CALCULATIONS FOR 1988
(outlays; in millions of dollars)

Category	OMB	CBO	Average
Defense Programs:			
Total required reductions	14,421	30,966	22,694
Estimated outlays associated with across-the-board sequesterable budget resources	173,745	177,770	175,757
Uniform reduction percentage	8.3	17.4	12.9
Nondefense Programs:			
Total required reductions	14,421	30,966	22,694
Estimated savings from automatic spending increases	4	4	4
Estimated savings from the application of special rules:			
Guaranteed student loans	23	25	24
Foster care and adoption assistance	9	9	9
Medicare	1,190	1,390	1,290
Other health programs	176	170	173
Amount remaining to be obtained from uniform percentage reductions of budget resources	13,020	29,368	21,194
Estimated outlays associated with across-the-board sequesterable budget resources a/	112,998	110,028	111,513
Uniform reduction percentage	11.5	26.7	19.0

a/ Includes estimated 1989 outlays for the Commodity Credit Corporation (CCC) that can be affected by a 1988 sequester (see discussion of special rule for the CCC). The OMB estimate is $12,934 million, the CBO estimate is $7,490 million, and the average is $10,212 million. Also includes outlays from offsetting collections. The OMB estimate for this category is $2,523 million, the CBO estimate is $2,505 million, and the average is $2,514 million.

Table 7 shows the OMB and CBO calculations and the averaged amounts for each of the steps described above. The total required outlay reduction for 1988 is $45.4 billion, one-half of which -- $22.7 billion -- must be obtained from defense programs and the other half from nondefense programs. An estimated $4 million in savings can be obtained by eliminating the automatic spending increase for the National Wool Act. The special milk program is also an indexed program, but in 1988 the change in the price index is projected to be below the threshold needed to trigger an increase. The vocational rehabilitation program has not received an appropriation for 1988 and is

carried at the 1987 level in the baseline. Thus, it does not yet have a sequestrable automatic spending increase. The outlay savings for programs where the spending reductions are limited by special rules (guaranteed student loans, foster care and adoption assistance, medicare, and several other health programs) are estimated to be $1.5 billion.

The outlay reductions of $22.7 billion in the national defense function in 1988 must be obtained by reducing new budget authority and unobligated balances by a uniform percentage. The 1988 outlays associated with sequesterable budgetary resources for defense programs are estimated to be $173.7 billion by OMB and $177.8 billion by CBO. The average of these amounts is $175.8 billion. Thus, the uniform percentage to be applied to sequesterable defense budgetary resources is 12.9 percent. The uniform percentage to be applied to nondefense programs, after deducting the savings from automatic spending increases and from the special rule calculations, is 19.0 percent.

The OMB and CBO calculations generally assume that all nonexempt budgetary resources can be sequestered so as to produce outlay savings, including entitlement programs and other mandatory spending programs where the spending authority is not controlled through the annual appropriations process. In a few instances, where the uniform percentage reduction of budgetary resources would not produce any outlay savings (for example, for credit programs where new direct loan limits are higher than expected program levels or for intragovernmental payments to revolving funds -- such as government payments for anniutants, employee health benefits), no outlays were included in the sequester base used for calculating the reduction percentages.

AUTOMATIC SPENDING INCREASES

The three programs with automatic spending increases currently subject to sequestration by the Balanced Budget and Emergency Deficit Control Act are listed in Table 8. (Automatic spending increases in Federal retirement and disability programs were subject to sequestration under the Act, but have been exempted by subsequently enacted legislation.) The scheduled percentage increases are shown as well as the amount of estimated outlay savings to be gained by eliminating these increases. Table 8 shows the OMB and CBO estimates of the sequesterable increases for each program, and the average outlay savings from a 100 percent reduction as a result of sequestration.

Table 8.--AUTOMATIC SPENDING INCREASES FOR 1988 SUBJECT TO SEQUESTRATION
(outlay estimates in millions of dollars)

Program	Scheduled Increase (percent)		Sequestration Outlay Reductions		
	OMB	CBO	OMB	CBO	Average
National Wool Act a/	3.5	3.5	4	4	4
Special milk programs b/	---	---	---	---	---
Vocational rehabilitation c/	---	---	---	---	---
Total			4	4	4

a/ Payment increases are based on changes in the wool parity price.
b/ Benefits are indexed to the Producer Price Index for Fresh Processed Milk. This index is not projected to increase between May 1987 and May 1988.
c/ This program is maintained at the 1987 appropriated level for the budget baseline, allowing for no sequesterable automatic spending increase in the calculations for this report.

SPECIAL RULES

The Act provides special rules for the sequestration of budgetary resources for certain Federal programs. This section describes these special rules and their application to the 1988 sequestration calculations. The estimated outlay savings derived from the first four rules are shown separately in Table 7. Any outlay savings resulting from the remaining special rules are included in the amount to be obtained from the uniform percentage reductions.

Guaranteed Student Loan Program

The Act requires two changes in the guaranteed student loan (GSL) program to occur automatically under sequestration. First, the statutory factor for calculating the quarterly special allowance payments to lenders will be reduced by the lesser of 0.40 percentage points or the amount by which the statutory factor exceeds 3 percent for the first four quarters after the loan is made. Under the current program, the reduction will be 0.25 percentage points. Second, a student's origination fee will increase by 0.50 percentage points. In both cases, sequestration affects only GSL loans disbursed during the applicable fiscal year, but after the order is issued. For 1988, these changes are estimated to reduce outlays by $24 million.

Foster Care and Adoption Assistance Programs

The Act limits the amount to be sequestered in the foster care and adoption assistance programs to increases in foster care maintenance payment rates or adoption assistance payment rates taking effect during the current fiscal year. Moreover, they are limited to the extent that the reductions can be made by reducing Federal matching payments by a uniform percentage across States. The increases in payment rates for these programs are made by the States and localities. Any increases planned by the States for fiscal year 1988 were included in the OMB and CBO calculations for sequestration reductions. The estimated outlay savings in 1988 from sequestration are $9 million.

Medicare

The sequestration reductions in the medicare program are to be achieved by reducing payment amounts for covered services. No changes in co-insurance or deductible obligations are to be made, and covered services are unaffected under a sequestration order. Under such an order, each payment amount for services provided during fiscal year 1988 would be reduced by a maximum of 2 percent relative to whatever level of payment would otherwise be made under medicare law and regulation. The reduction would be proportionately reduced in any year in which the excess deficit is small enough to permit a smaller reduction. Based on the need for a $45.4 billion sequestration in 1988, a reduction of 2 percent is required. The estimated outlay savings to be achieved in 1988 by applying this special rule are $1.3 billion.

Veterans Medical Care and Other Health Programs

The Act limits reductions in budget authority for the non-administrative expenditures for veterans medical care, community and migrant health centers, and Indian health services and facilities to 2 percent in 1988 and any subsequent year. The estimated outlay savings to be achieved in 1988 by applying this special rule in these programs are $173 million.

Child Support Enforcement Program

In the child support enforcement (CSE) program, the Act provides that sequestration of entitlement payments to States, including grants to States for interstate projects from the Family Support Administration's program administration account, is to be accomplished by reducing the Federal matching rates for State administrative expenses. For 1988, the Federal matching rate on most expenditures would be reduced from 68 percent to 51.6 percent, and the rate for computer-related expenditures would be reduced from 90 percent to 68.3 percent. This reflects a reduction in the matching rates to achieve the same 19.0 percent reduction applied to other nondefense programs, adjusted to allow also for the sequestration of spending on interstate grants.

If States increase their share of CSE spending to maintain total program spending at the expected 1988 level, this reduction in the Federal matching rate will lower Federal outlays by the same percentage as other nondefense

programs. If States do not increase their 1988 budgeted amounts to compensate for lower matching rates, however, the lower Federal matching rate would result in a larger percentage reduction in Federal spending than the Act requires. The estimated outlay savings to be achieved in 1988 by applying this special rule are $187 million.

Unemployment Compensation Programs

The Act provides that the following items are not to be sequestered: regular State unemployment benefits, the State share of extended unemployment benefits, benefits paid to former Federal employees and former members of the armed services, and loans and advances to the State and Federal unemployment accounts. The Federal share of extended benefits, unemployment insurance for railroad employees, other federally paid benefits, and State and Federal administrative expenses are to be sequestered.

Both the Federal and State shares of extended unemployment benefits are paid from the unemployment trust fund -- the Federal share from a Federal account and the State share from each State's account. The amount of each weekly extended benefit is set by State law. The Act permits any State to reduce the weekly extended benefit amount by a percentage equal to the percentage reduction in the Federal share. If States do not change their laws to provide for such a reduction, weekly benefit payments will not be reduced, the State share will increase by the amount of the decrease in the Federal share, and total budget outlays, which include both Federal and State benefits, will not be changed by the sequestration. The only State expected to be paying extended benefits in 1988 (Alaska) has not taken action to reduce its weekly benefit amount in the event of a sequestration.

Commodity Credit Corporation

The Act requires that payments and loan eligibility under any contract entered into by the Commodity Credit Corporation (CCC) after a sequestration order has been issued for a fiscal year be subject to a percentage reduction. The Act requires that reductions for all farm commodities supported by the CCC be made in a uniform manner, including all noncontract programs, projects, and activities within CCC's jurisdiction. The Act further stipulates that outlay reductions in the post-sequester year that are the result of contract adjustments in the sequester year should be credited to the overall outlay reduction required in the sequester year. The amount of outlay savings to be achieved by applying this special rule is estimated to be $1.1 billion in 1988, and $1.9 billion in 1989. The actual amount of savings realized in each year will depend upon how the sequester is implemented for the various CCC programs. In accordance with the Act, however, all $3.1 billion of these estimated outlay savings are credited toward the $22.7 billion nondefense spending reduction required for 1988.

Federal Pay

The Act provides that rates of pay for civilian employees (and rates of basic pay, basic subsistence allowances, and basic quarter allowances for members of the uniformed services), or any scheduled pay increases, may not be reduced

pursuant to a sequestration order. Budgetary resources available for Federal pay, however, will be subject to sequestration as part of the reduction of administrative expenses. The total amount of Government-wide savings to be achieved in 1988 from reducing available funds for employee compensation cannot be estimated because program managers are urged not to resort to personnel furloughs and reductions-in-force until other methods of achieving savings such as reducing spending for travel, printing, supplies, and other services prove insufficient.

Defense Contracts

Existing contracts in defense programs can be terminated or modified to achieve outlay savings if such action would neither result in a net loss to the Government nor violate the legal obligations of the Government, and if the President notifies the Comptroller General and the Congress of proposed contract terminations and modifications by September 5.

SEQUESTRATION REDUCTIONS

A summary of the sequestration of budgetary resources and the estimated outlay savings for 1988 is provided for national defense programs in Table 9 and for nondefense programs by function in Table 10. Table 11 provides a summary of the 1988 sequestration reductions by agency. In most instances additional outlay savings would be gained in 1989 and later years as a result of the cancellation of 1988 budget authority. The 1989 savings have not been estimated for this report.

A detailed listing of the sequestration reductions by agency and budget account is provided as an appendix to this report. The report does not contain a listing of sequestration reductions for defense programs, projects, and activities because no defense appropriations bills for 1988 have been enacted.

Table 9.--DEFENSE PROGRAM SEQUESTRATIONS FOR 1988
(in billions of dollars)

Function 050	Spending Authority a/	Estimated Outlays
Department of Defense-Military:		
Military personnel	9.5	9.0
Operation and maintenance	10.3	7.7
Procurement	16.1	2.2
Research, development, test, and evaluation	5.0	2.6
Military construction	1.1	0.2
Family housing	0.5	0.2
Pay raises	0.2	0.2
Other	0.1	*
Subtotal, DOD	42.7	22.0
Atomic energy defense activities	1.0	0.6
Other defense-related activities b/	0.1	0.1
Total	43.9	22.7

a/ Includes new budget authority for 1988 and unobligated balances from budget authority provided in previous years.

B/ Includes the function 050 portion of Federal Emergency Management Agency budget accounts, which are reduced at the same rate as nondefense programs.

* $50 million or less.

TABLE 10.--NONDEFENSE PROGRAM SEQUESTRATIONS FOR 1988 BY FUNCTION
(in billions of dollars)

Function	Spending Authority a/	Direct Loan Obligations	Loan Guarantees	Estimated Outlays
International affairs.....	3.8	1.1	2.2	2.0
General science, space and technology.....	2.4	---	---	1.3
Energy.....	1.0	0.2	0.4	0.6
Natural resources and environment.....	3.6	*	---	2.1
Agriculture.....	3.6	3.3	1.5	3.8
Commerce and housing credit.	0.8	0.5	48.4	0.8
Transportation.....	7.6	*	*	1.8
Community and regional development.....	1.1	0.2	0.1	0.3
Education, training, employment, and social services..	5.6	*	---	1.9
Health.....	2.4	*	---	1.2
Medicare.....	1.7	---	---	1.6
Income security.....	3.2	*	---	1.4
Social security.....	0.4	---	---	0.3
Veterans benefits and services.....	0.8	*	6.4	0.6
Administration of justice...	1.7	---	---	1.4
General government.....	1.5	---	---	1.3
General purpose fiscal assistance.....	0.3	---	---	0.3
Allowances.....	*	---	---	*
Total.....	41.5	5.4	59.1	22.6

a/ Includes new budget authority, obligation limitations, and other spending authority for 1988.
b/ Includes $1.9 billion in estimated 1989 outlay savings for Commodity Credit Corporation (CCC) programs (see discussion of special rule for CCC).
* $50 million or less.

Table 11.--SEQUESTRATIONS FOR 1988 BY AGENCY
(in billions of dollars)

Department or Other Unit	Spending Authority a/	Direct Loan Obligations	Loan Guarantees	Estimated Outlays
Legislative Branch	0.3	---	---	0.3
The Judiciary	0.2	---	---	0.2
Executive Office of the President	*	---	---	*
Funds appropriated to the President	2.5	0.8	0.1	1.2
Agriculture	5.2	4.2	1.9	5.1
Commerce	0.5	---	0.1	0.3
Defense-Military	42.7	---	---	22.0
Defense-Civil	0.7	---	---	0.5
Education	3.0	*	---	0.6
Energy	2.0	---	---	1.2
Health and Human Services, except Social Security	5.8	*	---	4.2
Health and Human Services, Social Security	0.4	---	---	0.3
Housing and Urban Development	2.6	0.1	47.5	0.4
Interior	1.2	*	*	0.9
Justice	1.1	---	---	0.8
Labor	1.6	---	---	0.7
State	0.6	*	---	0.4
Transportation	7.5	*	*	1.6
Treasury	1.3	---	---	1.1
Environmental Protection Agency	1.1	*	---	0.3
General Services Administration	0.2	---	---	0.1
National Aeronautics and Space Administration	2.1	---	---	1.1
Office of Personnel Management	0.3	---	---	*
Small Business Administration	0.1	0.1	0.9	0.1
Veterans Administration	0.8	*	6.4	0.6
Other independent agencies	1.7	0.1	2.2	1.2
Allowances	*	---	---	*
Total	80.9	5.4	59.1	45.4

a/ Includes new budget authority for 1988 (except for expiring authority), unobligated balances from budget authority provided in previous years (Defense-Military and other function 050 programs), obligation limitations and other spending authority for 1988.

b/ Includes $1.9 billion in estimated 1989 outlay savings for Commodity Credit Corporation (CCC) programs (see discussion of special rule for CCC).

* $50 million or less.

APPENDIX: SEQUESTRATION REDUCTIONS BY

AGENCY AND BUDGET ACCOUNT

(fiscal year 1988; in thousands of dollars)

Percentages Used: Non-Defense, 19.0%; Defense, 12.9%

Account Title	OMB	CBO	Average	Sequester
Legislative Branch				
Senate				
Mileage of the Vice President and Senators		(01-05-0101	-X-1-801-A;	00-0101)
Budget Authority	60	60	60	11
Outlays	60	48	54	10
Expense allowances of the Vice President, Pres Pro Tem		(01-05-0107	-X-1-801-A;	00-0107)
Budget Authority	56	56	56	11
Outlays	56	56	56	11
Representation allowances for the Majority and Minorit		(01-05-0108	-X-1-801-A;	00-0108)
Budget Authority	20	20	20	4
Outlays	20	20	20	4
Salaries, officers and employees		(01-05-0110	-X-1-801-A;	00-0110)
Budget Authority	190,265	190,265	190,265	36,150
Outlays	190,265	179,274	184,770	35,106
Payments to widows and heirs of deceased members of Co		(01-05-0115	-X-1-801-A;	00-0115)
Budget Authority	165	165	165	31
Outlays	165	165	165	31
Miscellaneous items		(01-05-0123	-X-1-801-A;	00-0123)
Budget Authority	11,614	11,614	11,614	2,207
Outlays	11,614	11,614	11,614	2,207
Secretary of the Senate		(01-05-0126	-X-1-801-A;	00-0126)
Budget Authority	666	666	666	127
Outlays	666	660	663	126
Sergeant at Arms and Doorkeeper of the Senate		(01-05-0127	-X-1-801-A;	00-0127)
Budget Authority	64,620	64,620	64,620	12,278
Outlays	64,620	58,158	61,389	11,664
Inquiries and investigations		(01-05-0128	-X-1-801-A;	00-0128)
Budget Authority	55,141	55,141	55,141	10,477
Outlays	55,141	52,476	53,808	10,224
Expenses of U.S. International Narcotics Control Commi		(01-05-0129	-X-1-801-A;	00-0129)
Budget Authority	325	325	325	62
Outlays	325	293	309	59
Stationery (revolving fund)		(01-05-0140	-X-1-801-A;	00-0140)
Budget Authority	13	13	13	2
Outlays	13	13	13	2
Office of Senate Legal Counsel		(01-05-0171	-X-1-801-A;	00-0171)
Budget Authority	593	593	593	113
Outlays	593	445	519	99
Expense allowance for the Secretary of the Senate, etc		(01-05-0172	-X-1-801-A;	00-0172)
Budget Authority	12	12	12	2
Outlays	12	7	10	2
Senate policy committees		(01-05-0182	-X-1-801-A;	00-0182)
Budget Authority	2,081	2,081	2,081	395
Outlays	2,081	1,789	1,935	368
Office of the Legislative Counsel of the Senate		(01-05-0185	-X-1-801-A;	00-0185)
Budget Authority	1,561	1,561	1,561	297
Outlays	1,561	1,486	1,524	290
House of Representatives				
Mileage of Members		(01-10-0208	-X-1-801-A;	00-0208)
Budget Authority	210	210	210	40
Outlays	210	105	158	30
Payments to widows and heirs of deceased members of Co		(01-10-0215	-X-1-801-A;	00-0215)
Budget Authority	303	303	303	58
Outlays	303	303	303	58
House leadership offices		(01-10-0408	-X-1-801-A;	00-0408)
Budget Authority	3,396	3,396	3,396	645
Outlays	3,396	3,053	3,224	613
Salaries, officers and employees		(01-10-0410	-X-1-801-A;	00-0410)
Budget Authority	52,125	52,125	52,125	9,904
Outlays	52,125	50,510	51,318	9,750
Members' clerk hire		(01-10-0415	-X-1-801-A;	00-0415)
Budget Authority	172,770	172,770	172,770	32,826
Outlays	172,770	170,165	171,468	32,579
Committee employees		(01-10-0416	-X-1-801-A;	00-0416)
Budget Authority	48,720	48,720	48,720	9,257
Outlays	48,720	46,233	48,476	9,210
Committee on Appropriations (Studies and Investigation		(01-10-0418	-X-1-801-A;	00-0418)
Budget Authority	4,300	4,300	4,300	817
Outlays	4,300	4,085	4,192	796
Committee on the Budget (Studies)		(01-10-0419	-X-1-801-A;	00-0419)
Budget Authority	329	329	329	63
Outlays	329	286	312	59
Special and select committees		(01-10-0433	-X-1-801-A;	00-0433)
Budget Authority	50,707	50,707	50,707	9,634
Outlays	50,707	48,679	49,693	9,442
Allowances and expenses		(01-10-0438	-X-1-801-A;	00-0438)
Budget Authority	183,724	183,724	183,724	34,908
Outlays	183,724	160,094	171,909	32,663

Account Title	OMB	CBO	Average	Sequester
Congressional use of foreign currency, House of Repres		(01-10-0488	-X-1-801-A;	00-0488)
401(C) Authority	3,360	2,779	3,070	583
Outlays	3,360	2,779	3,070	583
Page residence hall and meal plan		(01-10-4011	-X-3-801-A;	00-4011)
Outlays	-126	0	-53	-12
Joint Items				
Capitol Guide Service		(01-12-0170	-X-1-801-A;	00-0170)
Budget Authority	1,021	1,021	1,021	194
Outlays	1,021	922	972	185
Joint Committee on Printing		(01-12-0180	-X-1-801-A;	00-0180)
Budget Authority	963	963	963	183
Outlays	963	867	915	174
Joint Economic Committee		(01-12-0181	-X-1-801-A;	00-0181)
Budget Authority	2,966	2,966	2,966	564
Outlays	2,966	2,825	2,896	550
Office of the Attending Physician		(01-12-0425	-X-1-801-A;	00-0425)
Budget Authority	1,298	1,298	1,298	247
Outlays	1,298	518	908	173
Joint Committee on Taxation		(01-12-0460	-X-1-801-A;	00-0460)
Budget Authority	4,159	4,159	4,159	790
Outlays	4,159	3,951	4,055	770
General expenses, Capitol police		(01-12-0476	-X-1-801-A;	00-0476)
Budget Authority	1,881	1,881	1,881	357
Outlays	1,881	1,598	1,740	331
Statements of appropriations, House of Representatives		(01-12-0499	-X-1-801-A;	00-0499)
Budget Authority	20	20	20	4
Official mail costs		(01-12-0825	-X-1-801-A;	00-0825)
Budget Authority	91,423	91,423	91,423	17,370
Outlays	91,423	91,423	91,423	17,370
Congressional Budget Office				
Salaries and expenses		(01-14-0100	-X-1-801-A;	08-0100)
Budget Authority	17,783	17,783	17,783	3,379
Outlays	16,005	16,005	16,005	3,041
Architect of the Capitol				
Office of the Architect of the Capitol: Salaries		(01-15-0100	-X-1-801-A;	01-0100)
Budget Authority	5,478	5,478	5,478	1,041
Outlays	5,478	4,992	5,235	995
Contingent expenses		(01-15-0102	-X-1-801-A;	01-0102)
Budget Authority	50	50	50	10
Outlays	50	50	50	10
Capitol buildings		(01-15-0105	-X-1-801-A;	01-0105)
Budget Authority	12,325	12,325	12,325	2,342
Outlays	12,325	11,030	11,678	2,219
Capitol grounds		(01-15-0106	-X-1-801-A;	01-0106)
Budget Authority	3,290	3,290	3,290	625
Outlays	2,877	2,905	2,941	559
Senate office buildings		(01-15-0123	-X-1-801-A;	01-0123)
Budget Authority	25,903	25,903	25,903	4,922
Outlays	24,384	24,847	24,615	4,677
House office buildings		(01-15-0127	-X-1-801-A;	01-0127)
Budget Authority	26,138	26,138	26,138	4,966
Outlays	24,092	23,409	23,750	4,512
Capitol Power Plant		(01-15-0133	-X-1-801-A;	01-0133)
Budget Authority	24,716	24,716	24,716	4,696
401(C) Authority--Off. Coll.	123	135	129	25
Outlays	21,496	21,398	21,447	4,075
Structural and mechanical care, Library buildings and		(01-15-0155	-X-1-801-A;	01-0155)
Budget Authority	6,260	6,260	6,260	1,189
Outlays	6,260	5,807	6,034	1,146
Library of Congress				
Salaries and expenses		(01-25-0101	-X-1-503-A;	03-0101)
Budget Authority	134,850	134,850	134,850	25,622
401(C) Authority--Off. Coll.	4,828	5,000	4,914	934
Outlays	107,819	115,902	111,860	21,253
Copyright Office: Salaries and expenses		(01-25-0102	-X-1-376-A;	03-0102)
Budget Authority	10,306	10,306	10,306	1,958
401(C) Authority--Off. Coll.	6,992	6,992	6,992	1,328
Outlays	16,361	16,437	16,399	3,116
Congressional Research Service: Salaries and expenses		(01-25-0127	-X-1-801-A;	03-0127)
Budget Authority	40,434	40,434	40,434	7,682
Outlays	36,433	36,590	36,512	6,937
Books for the blind and physically handicapped: Salari		(01-25-0141	-X-1-503-A;	03-0141)
Budget Authority	36,089	36,089	36,089	6,859
Outlays	16,804	18,085	17,450	3,316
Collection & distribution of library materials (sp. fo		(01-25-0144	-X-1-503-A;	03-0144)
Budget Authority	390	390	390	74
Outlays	0	20	10	2

Account Title	OMB	CBO	Average	Sequester
Furniture and furnishings		(01-25-0146	-X-1-503-A;	03-0146)
Budget Authority	5,070	5,070	5,070	863
Outlays	1,268	1,267	1,268	241
Gift and trust fund accounts		(01-25-9871	-X-7-503-A;	03-9871)
401(C) Other--incl. ob. limit	346	346	346	66
Outlays	0	346	173	33
Government Printing Office				
Office of Superintendent of Documents: Salaries and ex		(01-30-0201	-X-1-806-A;	04-0201)
Budget Authority	22,385	22,385	22,385	4,253
Outlays	15,978	14,815	15,396	2,925
Printing and binding		(01-30-0202	-X-1-801-A;	04-0202)
Budget Authority	10,700	10,700	10,700	2,033
Outlays	0	6,955	3,478	661
Congressional printing and binding		(01-30-0203	-X-1-801-A;	04-0203)
Budget Authority	62,000	62,000	62,000	11,780
Outlays	51,274	47,120	49,197	9,347
Government Printing Office revolving fund		(01-30-4505	-X-4-806-A;	04-4505)
401(C) Authority--Off. Coll.	29,000	29,000	29,000	5,510
Outlays	29,000	29,000	29,000	5,510
General Accounting Office				
Salaries and expenses		(01-35-0107	-X-1-801-A;	05-0107)
Budget Authority	310,898	310,898	310,898	59,071
Outlays	283,918	286,181	285,050	54,160
United States Tax Court				
Salaries and expenses		(01-40-0100	-X-1-752-A;	23-0100)
Budget Authority	25,613	25,613	25,613	4,866
Outlays	23,359	20,502	21,930	4,167
Other Legislative Branch Agencies				
Commission on Security & Cooperation in Europe: Salari		(01-45-0110	-X-1-801-A;	09-0110)
Budget Authority	526	526	526	100
Outlays	505	473	489	93
Botanic Garden: Salaries and expenses		(01-45-0200	-X-1-801-A;	09-0200)
Budget Authority	2,135	2,135	2,135	406
Outlays	1,918	1,925	1,922	365
Copyright Royalty Tribunal: Salaries and expenses		(01-45-0310	-X-1-376-A;	09-0310)
Budget Authority	125	125	125	24
Outlays	82	112	97	18
Biomedical Ethics: Salaries and expenses		(01-45-0400	-X-1-801-A;	09-0400)
Budget Authority	150	150	150	28
Outlays	150	150	150	28
Office of Technology Assessment: Salaries and expenses		(01-45-0700	-X-1-801-A;	09-0700)
Budget Authority	16,636	16,636	16,636	3,161
Outlays	13,202	12,713	12,958	2,462
Railroad Accounting Principles Board: Salaries and exp		(01-45-0800	-X-1-801-A;	09-0800)
Budget Authority	600	600	600	114
Dwight David Eisenhower Centennial Commission: Expense		(01-45-1700	-X-1-801-A;	76-1700)
Budget Authority	50	0	25	5
Outlays	48	0	24	5
Dwight David Eisenhower Centennial Commission: Expense		(01-45-1700	-X-1-801-A;	76-8881)
Budget Authority	0	50	25	5
Outlays	0	48	24	5
Legislative Branch		Total		
Budget Authority	1,748,417	1,748,417	1,748,417	332,202
401(C) Authority	3,360	2,779	3,070	583
401(C) Authority--Off. Coll.	40,943	41,127	41,035	7,797
401(C) Other--incl. ob. limit	346	346	346	66
Outlays	1,661,807	1,616,106	1,638,961	311,405
The Judiciary				
Supreme Court of the United States				
Salaries and expenses		(02-05-0100	-X-1-752-A;	10-0100)
Budget Authority	14,428	14,428	14,428	2,741
Outlays	9,873	11,429	10,651	2,024
Care of the building and grounds		(02-05-0103	-X-1-752-A;	10-0103)
Budget Authority	2,336	2,336	2,336	444
Outlays	2,122	2,151	2,136	406
United States Court of Appeals for Federal Circuit				
Salaries and expenses		(02-07-0510	-X-1-752-A;	10-0510)
Budget Authority	5,750	5,750	5,750	1,092
Outlays	5,301	5,189	5,245	997
United States Court of International Trade				
Salaries and expenses		(02-15-0400	-X-1-752-A;	10-0400)
Budget Authority	6,288	6,288	6,288	1,195
Outlays	6,039	5,977	6,008	1,142
Courts of Appeals, District Courts and other Svcs				
Salaries and expenses		(02-25-0920	-X-1-752-A;	10-0200)
Budget Authority	912,081	912,081	912,081	173,295
Outlays	848,329	843,852	846,090	160,757

Account Title	OMB	CBO	Average	Sequester
Defender services		(02-25-0923	-X-1-752-A;	10-0923)
Budget Authority	87,858	87,858	87,858	16,693
Outlays	45,278	53,284	49,281	9,363
Fees of jurors and commissioners		(02-25-0925	-X-1-752-A;	10-0925)
Budget Authority	52,135	52,135	52,135	9,906
Outlays	46,918	48,486	47,702	9,063
Court security		(02-25-0930	-X-1-752-A;	10-0930)
Budget Authority	36,000	36,000	36,000	6,840
Outlays	21,960	25,740	23,850	4,532
Administrative Office of the United States Courts				
Salaries and expenses		(02-26-0927	-X-1-752-A;	10-0927)
Budget Authority	30,184	30,184	30,184	5,735
Outlays	26,367	26,831	26,599	5,054
Federal Judicial Center				
Salaries and expenses		(02-30-0928	-X-1-752-A;	10-0928)
Budget Authority	10,824	10,824	10,824	2,057
Outlays	8,920	8,669	8,794	1,671
Bicentennial Expenses, The Judiciary				
Bicentennial activities		(02-34-0933	-X-1-806-A;	10-0933)
Budget Authority	1,000	1,000	1,000	190
The Judiciary		Total		
Budget Authority	1,158,884	1,158,884	1,158,884	220,188
Outlays	1,021,107	1,031,608	1,026,356	195,009
Executive Office of the President				
The White House Office				
Salaries and expenses		(03-10-0110	-X-1-802-A;	11-0110)
Budget Authority	24,824	24,824	24,824	4,717
Outlays	21,864	22,354	22,109	4,201
Executive Residence at the White House				
Operating expenses		(03-20-0210	-X-1-802-A;	11-0210)
Budget Authority	4,753	4,753	4,753	903
401(C) Authority--Off. Coll.	729	729	729	139
Outlays	5,312	5,244	5,278	1,003
Official Residence of the Vice President				
Operating expenses		(03-21-0211	-X-1-802-A;	11-0211)
Budget Authority	211	211	211	40
Outlays	47	47	47	9
Special Assistance to the President				
Salaries and expenses		(03-22-1454	-X-1-802-A;	11-1454)
Budget Authority	1,897	1,897	1,897	360
Outlays	1,652	1,679	1,666	317
Council of Economic Advisers				
Salaries and expenses		(03-28-1900	-X-1-802-A;	11-1900)
Budget Authority	2,370	2,370	2,370	450
Outlays	2,065	2,068	2,066	393
Council/Office on Environmental Quality				
Council on Environmental Quality & Off. of Environment		(03-31-1453	-X-1-802-A;	11-1453)
Budget Authority	803	803	803	153
Outlays	763	763	763	145
Office of Policy Development				
Salaries and expenses		(03-35-2200	-X-1-802-A;	11-2200)
Budget Authority	2,689	2,689	2,689	511
Outlays	2,618	2,345	2,482	472
National Security Council				
Salaries and expenses		(03-40-2000	-X-1-802-A;	11-2000)
Budget Authority	4,612	4,612	4,612	876
Outlays	3,849	3,690	3,770	716
National Critical Materials Council				
Salaries and expenses		(03-41-0111	-X-1-802-A;	11-0111)
Budget Authority	175	175	175	33
Outlays	158	158	158	30
Office of Administration				
Salaries and expenses		(03-42-0038	-X-1-802-A;	11-0038)
Budget Authority	15,914	15,914	15,914	3,024
Outlays	11,382	11,512	11,447	2,175
Office of Management and Budget				
Office of Federal Procurement Policy: Salaries and exp		(03-48-0201	-X-1-802-A;	11-0201)
Budget Authority	1,620	1,620	1,620	308
Outlays	1,505	1,460	1,482	282
Salaries and expenses		(03-48-0300	-X-1-802-A;	11-0300)
Budget Authority	37,413	37,413	37,413	7,108
Outlays	34,465	33,239	33,852	6,432
Office of Science and Technology Policy				
Salaries and expenses		(03-49-2600	-X-1-802-A;	11-2600)
Budget Authority	1,923	1,923	1,923	365
Outlays	1,538	1,161	1,350	256
Office of the United States Trade Representative				
Salaries and expenses		(03-50-0400	-X-1-802-A;	11-0400)
Budget Authority	13,545	13,545	13,545	2,574
Outlays	12,069	11,513	11,791	2,240

Account Title	OMB	CBO	Average	Sequester
White House Conference on Drug Abuse and Control				
Salaries and expenses		(03-55-0212	-X-1-551-A;	11-0212)
Budget Authority	5,000	5,000	5,000	950
Outlays	4,100	4,100	4,100	779
Executive Office of the President		Total		
Budget Authority	117,749	117,749	117,749	22,372
401(C) Authority--Off. Cell.	729	729	729	139
Outlays	103,387	101,333	102,360	19,450
Funds Appropriated to the President				
Disaster Relief				
Disaster relief		(04-03-0039	-X-1-453-A;	11-0039)
Budget Authority	120,000	120,000	120,000	22,800
Outlays	50,000	72,000	61,000	11,590
Unanticipated Needs				
Unanticipated needs		(04-06-0037	-X-1-802-A;	11-0037)
Budget Authority	1,000	1,000	1,000	190
Outlays	962	962	962	183
International Security Assistance				
Peacekeeping operations		(04-09-1032	-X-1-152-A;	11-1032)
Budget Authority	31,689	31,689	31,689	6,021
Outlays	15,965	13,563	14,759	2,804
Economic support fund		(04-09-1037	-X-1-152-A;	11-1037)
Budget Authority	3,563,500	3,563,500	3,563,500	677,065
Direct Loan Limitation	175,581	175,581	175,581	33,360
Outlays	2,500,342	2,175,719	2,338,030	444,226
Military assistance		(04-09-1080	-X-1-152-A;	11-1080)
Budget Authority	950,000	950,000	950,000	180,500
Outlays	180,500	247,000	213,750	40,612
International military education and training		(04-09-1081	-X-1-152-A;	11-1081)
Budget Authority	56,000	56,000	56,000	10,640
Outlays	28,000	25,200	26,600	5,054
Foreign military sales credit		(04-09-1082	-X-1-152-A;	11-1082)
Budget Authority	4,053,441	4,053,441	4,053,441	770,154
Direct Loan Limitation	4,053,441	4,053,441	4,053,441	770,154
Outlays	2,942,232	1,905,912	2,424,072	460,574
Multilateral Assistance				
Contribution to the Inter-American Development Bank		(04-12-0072	-X-1-151-A;	11-0072)
Budget Authority	33,680	33,680	33,680	6,399
Outlays	0	345	172	33
Contribution to the International Development Associat		(04-12-0073	-X-1-151-A;	11-0073)
Budget Authority	830,100	830,100	830,100	157,719
Outlays	0	83,010	41,505	7,886
Contribution to the Asian Development Bank		(04-12-0076	-X-1-151-A;	11-0076)
Budget Authority	104,639	104,639	104,639	19,881
Outlays	5,293	5,293	5,293	1,006
Contribution to the International Bank for Reconstruct		(04-12-0077	-X-1-151-A;	11-0077)
Budget Authority	55,805	55,805	55,805	10,603
Outlays	5,581	5,581	5,581	1,060
Contribution to the International Finance Corporation		(04-12-0078	-X-1-151-A;	11-0078)
Budget Authority	7,206	7,206	7,206	1,369
Outlays	7,206	7,206	7,206	1,369
Contribution to the African Development Fund		(04-12-0079	-X-1-151-A;	11-0079)
Budget Authority	90,427	90,427	90,427	17,181
Contribution to the African Development Bank		(04-12-0082	-X-1-151-A;	11-0082)
Budget Authority	20,480	20,480	20,480	3,891
Outlays	20,480	20,480	20,480	3,891
Contribution to the special facility for Sub-Saharan A		(04-12-0086	-X-1-151-A;	11-0086)
Budget Authority	64,805	64,805	64,805	12,313
Outlays	21,386	12,961	17,174	3,263
International organizations and programs		(04-12-1005	-X-1-151-A;	11-1005)
Budget Authority	237,264	237,264	237,264	45,080
Outlays	150,967	156,416	153,692	29,201
Agency for International Development				
Operating expenses, Agency for International Developme		(04-14-1000	-X-1-151-A;	11-1000)
Budget Authority	348,263	348,263	348,263	66,170
Outlays	261,197	261,197	261,197	49,627
Operating expenses of the AID Office of Inspector Gene		(04-14-1007	-X-1-151-A;	11-1007)
Budget Authority	21,321	21,321	21,321	4,051
Outlays	15,991	15,991	15,991	3,038
Sahel development program		(04-14-1012	-X-1-151-A;	11-1012)
Budget Authority	70,000	70,000	70,000	13,300
Outlays	5,600	8,610	7,105	1,350
American schools and hospitals abroad		(04-14-1013	-X-1-151-A;	11-1013)
Budget Authority	35,000	35,000	35,000	6,650
Outlays	5,450	8,925	9,188	1,746
Functional development assistance program		(04-14-1021	-X-1-151-A;	11-1021)
Budget Authority	1,473,491	1,473,491	1,473,491	279,963
Direct Loan Limitation	150,000	150,000	150,000	28,500
Outlays	133,959	181,240	157,600	29,944

Account Title	DMB	CBO	Average	Sequester
International disaster assistance		(04-14-1035	-X-1-151-A;	11-1035)
Budget Authority	70,000	70,000	70,000	13,300
Outlays	17,360	17,360	17,360	3,298
Housing and other credit guaranty programs		(04-14-4340	-X-3-151-A;	72-4340)
401(C) Authority--Off. Coll.	6,500	6,500	6,500	1,235
Guaranteed Loan Limitation	145,464	145,464	145,464	27,638
Outlays	6,175	6,351	6,263	1,190
Private sector revolving fund		(04-14-4341	-X-3-151-A;	72-4341)
Budget Authority	13,000	13,000	13,000	2,470
Direct Loan Limitation	15,553	15,553	15,553	2,955
Outlays	0	1,501	750	142
Trade and Development Program				
Trade and development program		(04-16-1001	-X-1-151-A;	11-1001)
Budget Authority	20,000	20,000	20,000	3,800
Outlays	2,500	4,140	3,320	631
Peace Corps				
Peace Corps operating expenses		(04-18-0100	-X-1-151-A;	11-0100)
Budget Authority	137,960	137,960	137,960	26,212
401(C) Authority--Off. Coll.	102	102	102	19
Outlays	111,850	113,348	112,599	21,394
Overseas Private Investment Corporation				
Overseas Private Investment Corporation		(04-20-4030	-X-3-151-A;	71-4030)
401(C) Authority--Off. Coll.	10,600	10,600	10,600	2,014
Direct Loan Limitation	23,000	23,000	23,000	4,370
Guaranteed Loan Limitation	200,000	200,000	200,000	38,000
Outlays	12,600	12,500	12,550	2,384
Inter-American Foundation				
Inter-American Foundation		(04-22-4031	-X-3-151-A;	11-4031)
Budget Authority	11,800	11,800	11,800	2,242
401(C) Authority--Off. Coll.	14,888	14,888	14,888	2,829
Outlays	11,510	9,736	10,623	2,018
African Development Foundation				
African Development Foundation		(04-24-0700	-X-1-151-A;	11-0700)
Budget Authority	6,614	6,614	6,614	1,257
Outlays	2,513	3,968	3,240	616
Military Sales Programs				
Special defense acquisition fund		(04-37-4116	-X-3-155-A;	11-4116)
Obligation Limitation	315,820	315,820	315,820	60,006
Outlays	0	3,158	1,579	300
Foreign military sales trust fund		(04-37-8242	-X-7-155-A;	11-8242)
401(C) Authority--Off. Coll.	340,000	340,000	340,000	64,600
Outlays	340,000	316,200	328,100	62,339
Funds Appropriated to the President		Total		
Budget Authority	12,427,485	12,427,485	12,427,485	2,361,221
401(C) Authority--Off. Coll.	372,090	372,090	372,090	70,697
Direct Loan Limitation	4,417,575	4,417,575	4,417,575	839,339
Guaranteed Loan Limitation	345,464	345,464	345,464	65,638
Obligation Limitation	315,820	315,820	315,820	60,006
Outlays	6,859,609	5,695,873	6,277,741	1,192,769
Department of Agriculture				
Office of the Secretary				
Office of the Secretary		(05-03-0115	-X-1-352-A;	12-0115)
Budget Authority	15,266	15,266	15,266	2,901
Outlays	12,923	6,281	9,602	1,824
Departmental Administration				
Rental payments and building operations		(05-05-0117	-X-1-352-A;	12-0117)
Budget Authority	66,967	66,967	66,967	12,724
Outlays	65,295	62,686	63,990	12,158
Advisory committees		(05-05-0118	-X-1-352-A;	12-0118)
Budget Authority	1,408	1,508	1,458	277
Outlays	1,303	902	1,102	209
Departmental administration		(05-05-0120	-X-1-352-A;	12-0120)
Budget Authority	21,996	21,996	21,996	4,179
Outlays	21,996	19,618	20,807	3,953
Working capital fund		(05-05-4609	-X-4-352-A;	12-4609)
Budget Authority	5,708	5,708	5,708	1,085
Outlays	5,708	5,634	5,671	1,077
Office of Governmental and Public Affairs				
Office of Governmental and Public Affairs		(05-06-0130	-X-1-352-A;	12-0130)
Budget Authority	8,386	8,386	8,386	1,593
Outlays	7,330	6,659	6,994	1,329
Office of the Inspector General				
Office of the Inspector General		(05-08-0900	-X-1-352-A;	12-0900)
Budget Authority	45,483	45,483	45,483	8,642
Outlays	40,189	39,065	39,627	7,529
Office of the General Counsel				
Office of the General Counsel		(05-10-2300	-X-1-352-A;	12-2300)
Budget Authority	17,670	17,670	17,670	3,357
Outlays	16,910	17,516	17,213	3,270

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Account Title	OMB	CBO	Average	Sequester
Agricultural Research Service				
Agricultural Research Service		(05-16-1400	-X-1-352-A;	12-1400)
Budget Authority	518,237	518,237	518,237	96,465
401(C) Authority--Off. Coll.	3,427	3,427	3,427	651
Outlays	418,523	412,004	415,764	78,995
Buildings and facilities		(05-16-1401	-X-1-352-A;	12-1401)
Budget Authority	1,000	1,000	1,000	190
Outlays	0	193	95	18
Cooperative State Research Service				
Cooperative State Research Service		(05-24-1500	-X-1-352-A;	12-1500)
Budget Authority	376,673	370,673	373,673	70,998
401(C) Authority	2,800	5,800	5,800	1,102
Outlays	178,715	206,727	192,721	36,617
Extension Service				
Extension Service		(05-27-0502	-X-1-352-A;	12-0502)
Budget Authority	338,972	338,972	338,972	64,405
401(C) Authority--Off. Coll.	495	495	495	94
Outlays	284,895	238,184	261,538	49,692
National Agricultural Library				
National Agricultural Library		(05-30-0300	-X-1-352-A;	12-0300)
Budget Authority	11,098	11,098	11,098	2,108
Outlays	8,080	8,085	8,082	1,536
National Agricultural Statistics Service				
Salaries and expenses		(05-33-1801	-X-1-352-A;	12-1801)
Budget Authority	57,889	57,889	57,889	10,999
401(C) Authority--Off. Coll.	1,075	1,075	1,075	204
Outlays	50,860	48,338	48,599	9,424
Economic Research Service				
Salaries and expenses		(05-36-1701	-X-1-352-A;	12-1701)
Budget Authority	44,977	44,977	44,977	8,546
Outlays	39,130	37,925	38,528	7,320
World Agricultural Outlook Board				
World agricultural outlook board		(05-50-2100	-X-1-352-A;	12-2100)
Budget Authority	1,644	1,644	1,644	312
Outlays	1,364	1,259	1,312	249
Foreign Agricultural Service				
Foreign Agricultural Service		(05-51-2900	-X-1-352-A;	12-2900)
Budget Authority	83,783	83,783	83,783	15,919
Outlays	46,081	46,090	46,086	8,756
Office of International Cooperation & Development				
Scientific activities overseas		(05-53-1404	-X-1-352-A;	12-1404)
Budget Authority	2,500	2,500	2,500	475
Outlays	2,500	1,250	1,875	356
Salaries and expenses		(05-53-3200	-X-1-352-A;	12-3200)
Budget Authority	5,149	5,149	5,149	978
Outlays	5,149	4,247	4,698	893
Foreign Assistance Programs				
Expenses, PL 480, foreign assistance programs, Agricul		(05-57-2274	-X-1-151-A;	12-2274)
Budget Authority	1,083,071	1,083,071	1,083,071	205,783
Direct Loan Limitation	828,700	819,200	823,950	156,550
Obligation Limitation	1,463,071	1,463,071	1,463,071	277,983
Outlays	1,083,071	1,331,395	1,207,233	229,374
Agricultural Stabilization & Conservation Service				
Salaries and expenses		(05-60-3300	-X-1-351-A;	12-3300)
401(C) Authority--Off. Coll.	18,235	18,235	18,235	3,465
Outlays	18,235	18,235	18,235	3,465
Dairy indemnity program		(05-60-3314	-X-1-351-A;	12-3314)
Budget Authority	648	648	648	123
Outlays	648	648	648	123
Agricultural conservation program		(05-60-3315	-X-1-302-A;	12-3315)
Budget Authority	176,935	176,935	176,935	33,618
Outlays	81,213	81,390	81,302	15,447
Emergency conservation program		(05-60-3316	-X-1-453-A;	12-3316)
Budget Authority	10,000	10,000	10,000	1,900
Outlays	7,500	2,550	5,025	955
Colorado river basin salinity control progra		(05-60-3318	-X-1-304-A;	12-3318)
Budget Authority	3,804	3,804	3,804	723
Outlays	1,902	1,902	1,902	361
Conservation reserve program		(05-60-3319	-X-1-302-A;	12-3319)
Budget Authority	645,000	560,700	602,850	114,542
Outlays	645,000	560,700	602,850	114,542
Water Bank program		(05-60-3320	-X-1-302-A;	12-3320)
Budget Authority	8,371	8,371	8,371	1,590
Outlays	1,088	1,248	1,168	222
Forestry incentives program		(05-60-3336	-X-1-302-A;	12-3336)
Budget Authority	11,891	11,891	11,891	2,259
Outlays	4,162	4,589	4,376	831

Account Title	OMB	CBO	Average	Sequester
Federal Crop Insurance Corporation				
Administrative and operating expenses		(05-63-2707	-X-1-351-A;	12-2707)
Budget Authority	209,568	209,568	209,568	39,818
Outlays	116,544	118,634	117,589	22,342
Commodity Credit Corporation				
Temp. stor. & distr. of CCC emgcy. food		(05-64-3635	-X-1-351-A;	12-3635)
Budget Authority	50,000	50,000	50,000	9,500
Outlays	35,580	34,200	34,890	6,629
Commodity Credit Corporation Fund		(05-66-4336	-X-3-351-A;	12-4336)
401(C) Authority	16,086,064	16,362,188	16,229,126	3,083,534
Direct Loan Limitation	15,500,000	15,500,000	15,500,000	2,945,000
Guaranteed Loan Limitation	5,500,000	5,500,000	5,500,000	1,045,000
Outlays	16,086,064	16,362,188	16,229,126	3,083,534
National Wool Act ASI (G-R-H)		(05-66-4336	-X-3-351-G;	12-4336)
401(C) Authority--ASI	4,100	4,100	4,100	4,100
Outlays	4,100	4,100	4,100	4,100
Rural Electrification Administration				
Salaries and expenses		(05-72-3100	-X-1-271-A;	12-3100)
Budget Authority	29,447	29,447	29,447	5,595
Outlays	27,975	26,826	27,400	5,206
Reimbursement to the Rural elec. & tel. revolv. fund f		(05-72-3101	-X-1-271-A;	12-3101)
Budget Authority	20,000	20,000	20,000	3,800
Purchase of Rural Telephone Bank capital stock		(05-72-3102	-X-1-452-A;	12-3102)
Budget Authority	28,710	28,710	28,710	5,455
Outlays	28,710	28,710	28,710	5,455
Rural electrification and telephone revolving fund		(05-72-4230	-X-3-271-A;	12-4230)
Direct Loan Limitation	1,244,100	1,244,100	1,244,100	236,379
Direct Loan Floor	861,300	861,300	861,300	163,647
Guaranteed Loan Limitation	2,100,615	2,100,615	2,100,615	399,117
Guaranteed Loan Floor	933,075	933,075	933,075	177,284
Outlays	209,210	107,663	158,436	30,103
Rural telephone bank		(05-72-4231	-X-3-452-A;	12-4231)
Direct Loan Limitation	210,540	210,540	210,540	40,003
Direct Loan Floor	177,045	177,045	177,045	33,639
Outlays	11,058	0	5,529	1,051
Farmers Home Administration				
Salaries and expenses		(05-75-2001	-X-1-452-A;	12-2001)
Budget Authority	394,545	394,545	394,545	74,964
Outlays	359,624	359,421	359,522	68,309
Rural housing for domestic farm labor		(05-75-2004	-X-1-604-A;	12-2004)
Budget Authority	9,513	9,513	9,513	1,807
Outlays	380	380	380	72
Mutual and self-help housing		(05-75-2006	-X-1-604-A;	12-2006)
Budget Authority	8,000	8,000	8,000	1,520
Outlays	640	640	640	122
Very low income housing repair grants		(05-75-2064	-X-1-604-A;	12-2064)
Budget Authority	12,500	12,500	12,500	2,375
Outlays	11,875	11,875	11,875	2,256
Rural water and waste disposal grants		(05-75-2066	-X-1-452-A;	12-2066)
Budget Authority	109,395	109,395	109,395	20,785
Outlays	2,188	2,188	2,188	416
Rural community fire protection grants		(05-75-2067	-X-1-452-A;	12-2067)
Budget Authority	3,091	3,091	3,091	587
Outlays	1,391	1,391	1,391	264
Rural housing preservation grants		(05-75-2070	-X-1-604-A;	12-2070)
Budget Authority	19,140	19,140	19,140	3,637
Outlays	4,785	4,785	4,785	909
Compensation for construction defects		(05-75-2071	-X-1-371-A;	12-2071)
Budget Authority	713	713	713	135
Outlays	713	713	713	135
Agricultural credit insurance fund		(05-75-4140	-X-3-351-A;	12-4140)
401(C) Authority--Off. Coll.	248,596	248,596	248,596	47,233
Direct Loan Limitation	1,817,156	1,817,156	1,817,156	345,260
Guaranteed Loan Limitation	2,496,000	2,496,000	2,498,000	474,620
Outlays	1,797,085	1,520,571	1,658,834	315,178
Rural housing insurance fund		(05-75-4141	-X-3-371-A;	12-4141)
401(C) Authority--Off. Coll.	53,500	53,500	53,500	10,165
Direct Loan Limitation	1,918,093	1,918,113	1,918,103	364,440
Obligation Limitation	275,310	275,310	275,310	52,309
Outlays	1,077,742	964,270	1,021,306	194,048
Rural development insurance fund		(05-75-4155	-X-3-452-A;	12-4155)
401(C) Authority--Off. Coll.	1,175	1,175	1,175	223
Direct Loan Limitation	426,080	426,080	426,080	80,955
Guaranteed Loan Limitation	114,840	114,840	114,840	21,820
Outlays	12,782	15,339	14,060	2,671
Self-help housing land development fund		(05-75-4222	-X-3-371-A;	12-4222)
Direct Loan Limitation	500	500	500	95
Outlays	0	340	170	32

Account Title	DMB	CBO	Average	Sequester
Rural development loan fund		(05-75-4233	-X-3-452-A;	12-4233)
401(C) Authority--Off. Coll.	3,500	0	1,750	332
Direct Loan Limitation	0	3,000	1,500	285
Outlays	-3,500	3,000	-250	-48
Miscellaneous expiring appropriations		(05-75-9912	-X-1-452-A;	12-9912)
Budget Authority	3,000	3,000	3,000	570
Outlays	2,000	750	1,375	261
Soil Conservation Service				
Conservation operations		(05-78-1000	-X-1-302-A;	12-1000)
Budget Authority	399,671	399,671	399,671	75,937
401(C) Authority--Off. Coll.	11,173	11,173	11,173	2,123
Outlays	378,871	379,556	379,214	72,051
Resource conservation and development		(05-78-1010	-X-1-302-A;	12-1010)
Budget Authority	25,020	25,020	25,020	4,754
401(C) Authority--Off. Coll.	1,937	1,937	1,937	368
Outlays	21,578	16,899	15,238	3,655
Watershed planning		(05-78-1066	-X-1-301-A;	12-1066)
Budget Authority	8,651	8,651	8,651	1,644
401(C) Authority--Off. Coll.	600	600	600	114
Outlays	8,732	8,092	8,412	1,598
River basin surveys and investigations		(05-78-1069	-X-1-301-A;	12-1069)
Budget Authority	12,051	12,051	12,051	2,290
401(C) Authority--Off. Coll.	198	198	198	38
Outlays	11,526	11,477	11,502	2,185
Watershed and flood prevention operations		(05-78-1072	-X-1-301-A;	12-1072)
Budget Authority	177,128	177,128	177,128	33,654
401(C) Authority--Off. Coll.	17,595	17,595	17,595	3,343
Outlays	127,078	130,035	128,556	24,426
Great plains conservation program		(05-78-2268	-X-1-302-A;	12-2268)
Budget Authority	20,474	20,474	20,474	3,890
Outlays	10,105	9,275	9,690	1,841
Miscellaneous contributed funds (Water resources)		(05-78-8210	-X-7-301-A;	12-8210)
401(C) Other--incl. ob. limit	450	489	474	90
Outlays	520	489	504	96
Miscellaneous contributed funds (Conservation and land		(05-78-8210	-X-7-302-A;	12-8210)
401(C) Other--incl. ob. limit	100	110	105	20
Outlays	90	0	15	3
Animal and Plant Health Inspection Service				
Salaries and expenses		(05-79-1600	-X-1-352-A;	12-1600)
Budget Authority	311,467	311,467	311,467	59,179
401(C) Authority--Off. Coll.	9,568	9,568	9,568	1,818
Outlays	229,755	270,766	250,260	47,549
Buildings and facilities		(05-79-1601	-X-1-352-A;	12-1601)
Budget Authority	2,246	2,246	2,246	427
Miscellaneous trust funds		(05-79-9971	-X-7-352-A;	12-9971)
401(C) Other--incl. ob. limit	4,735	4,735	4,735	900
Outlays	1,607	3,089	2,348	446
Federal Grain Inspection Service				
Salaries and expenses		(05-80-2400	-X-1-352-A;	12-2400)
Budget Authority	6,826	6,826	6,826	1,297
Outlays	6,826	5,721	6,274	1,192
Inspection and weighing services		(05-80-4050	-X-3-352-A;	12-4050)
401(C) Authority--Off. Coll.	36,829	36,829	36,829	6,998
Outlays	36,829	36,829	36,829	6,998
Agricultural Marketing Service				
Marketing services		(05-81-2500	-X-1-352-A;	12-2500)
Budget Authority	31,435	31,435	31,435	5,973
401(C) Authority--Off. Coll.	30,742	30,742	30,742	5,841
Outlays	53,044	47,422	50,233	9,544
Payments to States and possessions		(05-81-2501	-X-1-352-A;	12-2501)
Budget Authority	942	942	942	179
Outlays	942	26	484	92
Perishable Agricultural Commodities Act fund		(05-81-5070	-X-2-352-A;	12-5070)
401(C) Authority	4,240	4,262	4,251	808
Outlays	3,596	3,192	3,394	645
Funds for strengthening markets, income, and supply (s		(05-81-5209	-X-2-605-A;	12-5209)
401(C) Authority	361,988	390,000	375,994	71,439
Outlays	136,288	150,000	143,494	27,264
Milk market orders assessment fund		(05-81-8412	-X-8-351-A;	12-8412)
401(C) Authority--Off. Coll.	35,110	35,110	35,110	6,671
Outlays	35,110	35,110	35,110	6,671
Miscellaneous trust funds		(05-81-9972	-X-7-352-A;	12-9972)
401(C) Authority	85,979	85,979	85,979	16,336
Outlays	85,979	85,979	85,979	16,336
Office of Transportation				
Office of Transportation		(05-82-2800	-X-1-352-A;	12-2800)
Budget Authority	2,397	2,397	2,397	455
Outlays	1,719	1,870	1,844	350

Account Title	OMB	CBO	Average	Sequester
Food Safety and Inspection Service				
Salaries and expenses		(05-83-3700	-X-1-554-A;	12-3700)
Budget Authority	372,973	372,973	372,973	70,865
401(C) Authority--Off. Coll.	42,050	42,050	42,050	7,990
Outlays	382,319	390,571	386,445	73,425
Exp. & refunds, insp. & grading		(05-83-8137	-X-7-352-A;	12-8137)
401(C) Authority	825	878	852	162
Outlays	825	826	826	157
Food and Nutrition Service				
Food donations program		(05-84-3503	-X-1-605-A;	12-3503)
Budget Authority	193,589	193,589	193,589	36,782
Outlays	176,166	155,807	166,486	31,632
Food stamp program		(05-84-3505	-X-1-605-A;	12-3505)
Budget Authority	61,647	61,647	61,647	11,713
Outlays	40,866	40,866	40,866	7,765
Food program administration		(05-84-3508	-X-1-605-A;	12-3508)
Budget Authority	84,794	84,794	84,794	16,111
Outlays	77,585	78,011	77,798	14,782
Special supplemental food prog. for women, infants and		(05-84-3510	-X-1-605-A;	12-3510)
Budget Authority	2,000	2,000	2,000	380
Outlays	2,000	2,000	2,000	380
Child nutrition programs		(05-84-3539	-X-1-605-A;	12-3539)
Budget Authority	3,418	0	1,709	325
401(C) Authority	0	3,418	1,709	325
Outlays	3,418	3,418	3,418	649
Human Nutrition Information Service				
Salaries and Expenses		(05-86-3501	-X-1-352-A;	12-3501)
Budget Authority	6,985	6,985	6,985	1,327
Outlays	3,428	3,069	3,254	618
Packers and Stockyards Administration				
Packers and Stockyards Administration		(05-80-2600	-X-1-352-A;	12-2600)
Budget Authority	9,081	9,081	9,081	1,725
Outlays	8,067	8,161	8,114	1,542
Agricultural Cooperative Service				
Salaries and expenses		(05-82-3000	-X-1-352-A;	12-3000)
Budget Authority	4,547	4,547	4,547	864
Outlays	1,841	2,651	2,246	427
Forest Service				
Construction		(05-96-1103	-X-1-302-A;	12-1103)
Budget Authority	267,195	267,195	267,195	50,767
401(C) Authority--Off. Coll.	2,061	2,061	2,061	392
Outlays	179,811	159,083	169,447	32,195
Forest research		(05-96-1104	-X-1-302-A;	12-1104)
Budget Authority	126,721	126,721	126,721	24,077
401(C) Authority--Off. Coll.	929	929	929	177
Outlays	106,975	96,940	101,958	19,372
State and private forestry		(05-96-1105	-X-1-302-A;	12-1105)
Budget Authority	66,554	66,554	66,554	12,645
401(C) Authority--Off. Coll.	135	135	135	26
Outlays	49,484	45,426	47,640	9,052
National forest system		(05-96-1106	-X-1-302-A;	12-1106)
Budget Authority	1,185,968	1,185,968	1,185,168	225,182
Outlays	1,079,623	1,046,665	1,068,144	203,047
Land acquisition		(05-96-5004	-X-2-303-A;	12-5004)
Budget Authority	52,236	52,236	52,236	9,925
Outlays	23,424	20,895	22,160	4,210
Range betterment fund		(05-96-5207	-X-2-302-A;	12-5207)
Budget Authority	3,644	3,750	3,697	702
Outlays	2,915	3,021	2,968	564
Acquisition of lands for nat'l forests		(05-96-5208	-X-2-302-A;	12-5208)
Budget Authority	966	966	966	184
Outlays	966	915	940	179
Acq. of lands to complete land exchanges		(05-96-5216	-X-2-302-A;	12-5216)
Budget Authority	895	895	895	170
Outlays	796	795	796	151
Operations and maintenance of quarters		(05-96-5219	-X-2-302-A;	12-5219)
401(C) Other--incl. ob. limit	5,812	5,545	5,678	1,079
Outlays	4,015	4,453	4,234	804
Cooperative work trust fund		(05-96-8028	-X-7-302-A;	12-8028)
401(C) Other--incl. ob. limit	250,369	250,369	250,369	47,570
Outlays	213,314	213,314	213,314	40,530
Highway Construction: Mount St. Helens National Monume		(05-96-8029	-X-7-401-A;	12-8029)
Budget Authority	9,915	9,915	9,915	1,884
Outlays	5,592	0	2,796	531
Gifts, donations, bequests for forest and rangeland re		(05-96-8034	-X-7-302-A;	12-8034)
Budget Authority	90	90	90	17
Outlays	90	90	90	17

Account Title	OMB	CBO	Average	Sequester
Reforestation trust fund		(05-96-8046	-X-7-302-A;	20-8046)
401(C) Other--incl. ob. limit	30,000	30,000	30,000	5,700
Outlays	30,000	24,000	27,000	5,130
Forest Service permanent appropriations		(05-96-9921	-X-2-852-A;	12-9921)
401(C) Other--incl. ob. limit	296,145	260,787	278,466	52,909
Outlays	222,102	257,462	239,782	45,559
Forest Service permanent appropriations		(05-96-9922	-X-2-302-A;	12-9922)
401(C) Other--incl. ob limit	143,660	139,689	141,674	26,918
Outlays	107,606	108,285	107,946	20,510
Miscellaneous trust funds		(05-96-9973	-X-7-302-A;	12-9973)
401(C) Authority--Off. Coll.	0	1	0	0
Outlays	0	1	0	0
Department of Agriculture		Total		
Budget Authority	7,912,674	7,819,962	7,866,118	1,494,564
401(C) Authority	16,551,696	16,855,525	16,703,711	3,173,706
401(C) Authority--Off. Coll.	518,930	515,431	517,180	98,266
401(C) Other--incl. ob. limit	731,281	691,724	711,501	135,186
401(C) Authority--ASI	4,100	4,100	4,100	4,100
Direct Loan Limitation	21,945,169	21,938,689	21,941,929	4,168,967
Direct Loan Floor	1,038,345	1,038,345	1,038,345	197,286
Guaranteed Loan Limitation	10,213,455	10,213,455	10,213,455	1,940,557
Guaranteed Loan Floor	933,075	933,075	933,075	177,284
Obligation Limitation	1,738,381	1,738,381	1,738,381	330,292
Outlays	26,721,807	26,597,456	26,659,631	5,068,645
Department of Commerce				
General Administration				
Salaries and expenses		(06-05-0120	-X-1-376-A;	13-0120)
Budget Authority	36,049	36,049	36,049	6,849
Outlays	32,905	34,537	33,721	6,407
Grants and loans administration		(06-05-0125	-X-1-452-A;	13-0125)
Budget Authority	25,000	25,000	25,000	4,750
Outlays	22,765	21,950	22,358	4,248
Economic development assistance programs		(06-05-2050	-X-1-452-A;	13-2050)
Budget Authority	191,539	191,539	191,539	36,392
Guaranteed Loan Limitation	187,500	187,500	187,500	35,625
Outlays	19,154	19,154	19,154	3,639
Bureau of the Census				
Salaries and expenses		(06-07-0401	-X-1-376-A;	13-0401)
Budget Authority	92,331	92,331	92,331	17,543
401(C) Authority--Off. Coll.	8,000	8,000	8,000	1,520
Outlays	90,275	90,275	90,275	17,152
Periodic censuses and programs		(06-07-0450	-X-1-376-A;	13-0450)
Budget Authority	174,806	174,806	174,806	33,213
Outlays	138,747	119,655	129,201	24,548
Economic and Statistical Analysis				
Salaries and expenses		(06-08-1500	-X-1-376-A;	13-1500)
Budget Authority	30,487	30,487	30,487	5,793
401(C) Authority--Off. Coll.	462	462	462	88
Outlays	27,014	27,627	27,320	5,191
Information products and services		(06-08-8546	-X-7-376-A;	13-8546)
401(C) Other--incl. ob. limit	36,980	38,214	37,597	7,143
Outlays	25,603	24,839	25,221	4,792
International Trade Administration				
Operations and administration		(06-25-1250	-X-1-376-A;	13-1250)
Budget Authority	201,755	201,755	201,755	38,333
401(C) Authority--Off. Coll.	9,000	8,004	8,502	1,615
Outlays	151,626	150,831	151,328	28,752
Minority Business Development Agency				
Minority business development		(06-40-0201	-X-1-376-A;	13-0201)
Budget Authority	39,855	39,855	39,855	7,572
Outlays	14,746	12,632	13,689	2,601
United States Travel and Tourism Administration				
Salaries and expenses		(06-44-0700	-X-1-376-A;	13-0700)
Budget Authority	11,549	11,549	11,549	2,194
401(C) Authority--Off. Coll.	1,475	2,239	1,857	353
Outlays	8,597	10,910	9,954	1,891
National Oceanic and Atmospheric Administration				
Operations, research, and facilities		(06-48-1450	-X-1-306-A;	13-1450)
Budget Authority	1,091,341	1,091,341	1,091,341	207,355
401(C) Authority--Off. Coll.	14,952	14,952	14,952	2,841
Outlays	735,237	765,294	750,266	142,551
Coastal energy impact fund		(06-48-4315	-X-3-452-A;	13-4315)
401(C) Authority--Off. Coll.	7,300	7,300	7,300	1,387
Outlays	7,300	7,300	7,300	1,387
Federal ship financing fund, fishing vessels		(06-48-4417	-X-3-376-A;	13-4417)
401(C) Authority--Off. Coll.	1,160	1,160	1,160	220
Guaranteed Loan Limitation	80,000	80,000	80,000	15,200
Outlays	2,320	1,160	1,740	331

Account Title	OMB	CBO	Average	Sequester
Fishermen's contingency fund		(06-48-5120	-X-2-376-A;	13-5120)
Budget Authority	750	750	750	142
Outlays	690	713	703	133
Foreign fishing observer fund		(06-48-5122	-X-2-376-A;	13-5122)
Budget Authority	2,000	2,000	2,000	380
Outlays	1,966	1,922	1,944	369
Fisheries Promotional Fund		(06-48-5124	-X-2-376-A;	13-5124)
Budget Authority	0	750	375	71
401(C) Authority	750	0	375	71
Outlays	467	413	440	84
Promote and develop fishery products and research		(06-48-5139	-X-2-376-A;	13-5139)
401(C) Other--incl. ob. limit	4,876	4,850	4,863	824
Outlays	3,032	2,667	2,850	542
Aviation weather services program		(06-48-8105	-X-7-306-A;	13-8105)
Budget Authority	29,000	29,000	29,000	5,510
Outlays	29,000	29,000	29,000	5,510
Patent and Trademark Office				
Salaries and expenses		(06-51-1006	-X-1-376-A;	13-1006)
Budget Authority	98,000	98,000	98,000	18,620
401(C) Authority--Off. Coll.	145,075	147,204	146,140	27,767
Outlays	205,040	215,706	210,523	39,999
National Bureau of Standards				
Scientific and technical research and services		(06-52-0500	-X-1-376-A;	13-0500)
Budget Authority	121,249	121,249	121,249	23,037
Outlays	93,867	93,867	93,867	17,835
Working capital fund		(06-52-4650	-X-4-376-A;	13-4650)
Budget Authority	2,119	2,119	2,119	403
Outlays	1,060	1,060	1,060	201
National Telecommunications and Information Admin.				
Salaries and expenses		(06-60-0550	-X-1-376-A;	13-0550)
Budget Authority	13,213	13,213	13,213	2,510
Outlays	11,490	10,607	11,048	2,099
Public telecommunications facilities, planning and con		(06-60-0551	-X-1-503-A;	13-0551)
Budget Authority	20,500	20,500	20,500	3,895
Outlays	2,371	2,378	2,374	451
Department of Commerce		Total		
Budget Authority	2,181,543	2,182,293	2,181,918	414,562
401(C) Authority	750	0	375	71
401(C) Authority--Off. Coll.	187,424	189,321	188,373	35,791
401(C) Other--incl. ob. limit	41,856	43,064	42,460	8,067
Guaranteed Loan Limitation	267,500	267,500	267,500	50,825
Outlays	1,626,172	1,644,497	1,635,335	310,713
Department of Defense--Military				
Military Personnel				
Military personnel, Marine Corps		(07-05-1105	-X-1-051-A;	17-1105)
Budget Authority	5,407,053	5,407,053	5,407,053	697,510
Outlays	5,091,822	4,977,693	5,034,758	649,484
Reserve personnel, Marine Corps		(07-05-1108	-X-1-051-A;	17-1108)
Budget Authority	277,947	277,947	277,947	35,855
Outlays	243,565	232,086	237,826	30,680
Reserve personnel, Navy		(07-05-1405	-X-1-051-A;	17-1405)
Budget Authority	1,394,892	1,394,892	1,394,892	179,941
Outlays	1,251,218	1,199,047	1,225,132	158,042
Military personnel, Navy		(07-05-1453	-X-1-051-A;	17-1453)
Budget Authority	17,550,397	17,550,397	17,550,397	2,264,001
Outlays	16,451,742	16,754,807	16,603,274	2,141,822
Military personnel, Army		(07-05-2010	-X-1-051-A;	21-2010)
Budget Authority	22,950,853	22,950,853	22,950,853	2,960,660
Outlays	21,690,851	21,912,861	21,801,856	2,812,439
National Guard personnel, Army		(07-05-2060	-X-1-051-A;	21-2060)
Budget Authority	3,076,997	3,076,997	3,076,997	396,933
Outlays	2,780,374	2,666,659	2,723,516	351,334
Reserve personnel, Army		(07-05-2070	-X-1-051-A;	21-2070)
Budget Authority	2,134,539	2,134,539	2,134,539	275,356
Outlays	1,918,951	1,914,101	1,916,526	247,232
Military personnel, Air Force		(07-05-3500	-X-1-051-A;	57-3500)
Budget Authority	19,457,758	19,457,758	19,457,758	2,510,051
Outlays	18,488,762	18,577,826	18,533,294	2,390,795
Reserve personnel, Air Force		(07-05-3700	-X-1-051-A;	57-3700)
Budget Authority	563,899	563,899	563,899	72,743
Outlays	511,908	484,759	498,334	64,285
National Guard personnel, Air Force		(07-05-3850	-X-1-051-A;	57-3850)
Budget Authority	947,243	947,243	947,243	122,194
Outlays	887,283	881,727	884,505	114,101
Operation and Maintenance				
Operation and maintenance, Defense agencies		(07-10-0100	-X-1-051-A;	97-0100)
Budget Authority	8,599,714	8,599,714	8,599,714	1,109,363
Outlays	7,199,681	7,395,736	7,297,708	941,404

Account Title	OMB	CBO	Average	Sequester (97-0801)
Court of Military Appeals, Defense		(07-10-0104	-X-1-051-A;	
Budget Authority	3,237	3,237	3,237	478
Outlays	2,800	2,775	2,788	360
Foreign currency fluctuations, Defense		(07-10-0801	-X-1-051-A;	97-0801)
Unobligated Balances--Defense	173,291	173,291	173,291	22,355
Environmental restoration, Defense		(07-10-0810	-X-1-051-A;	97-0810)
Budget Authority	990	990	990	128
Outlays	0	297	148	19
Tenth International Pan American games		(07-10-0812	-X-1-051-A;	97-0812)
Budget Authority	15,000	15,000	15,000	1,935
Outlays	6,750	13,548	10,149	1,309
Humanitarian Assistance		(07-10-0819	-X-1-051-A;	97-0819)
Budget Authority	7,500	7,500	7,500	968
Outlays	3,750	4,417	4,084	527
Operation and maintenance, Marine Corps		(07-10-1106	-X-1-051-A;	17-1106)
Budget Authority	1,809,640	1,809,640	1,809,640	233,444
Outlays	1,246,118	1,471,997	1,359,058	175,318
Operation and maintenance, Marine Corps Reserve		(07-10-1107	-X-1-051-A;	17-1107)
Budget Authority	64,167	64,167	64,167	8,278
Outlays	44,153	41,237	42,695	5,508
National Board for the Promotion of Rifle Practice, Ar		(07-10-1705	-X-1-051-A;	21-1705)
Budget Authority	4,332	4,332	4,332	559
Outlays	2,824	4,236	3,530	455
Operation and maintenance, Navy		(07-10-1804	-X-1-051-A;	17-1804)
Budget Authority	23,368,065	23,368,065	23,368,065	3,014,480
Outlays	15,871,580	16,357,636	16,114,613	2,078,785
Operation and maintenance, Navy Reserve		(07-10-1806	-X-1-051-A;	17-1806)
Budget Authority	889,261	889,261	889,261	114,715
Outlays	531,867	634,735	583,301	75,246
Operation and maintenance, Army		(07-10-2020	-X-1-051-A;	21-2020)
Budget Authority	20,495,001	20,495,001	20,495,001	2,643,855
Outlays	15,244,182	15,371,155	15,307,668	1,974,689
Operation and maintenance, Army National Guard		(07-10-2065	-X-1-051-A;	21-2065)
Budget Authority	1,764,258	1,764,258	1,764,258	227,589
Outlays	1,365,536	1,561,525	1,463,530	188,795
Operation and maintenance, Army Reserve		(07-10-2080	-X-1-051-A;	21-2080)
Budget Authority	787,621	787,621	787,621	101,603
Outlays	589,928	693,498	641,713	82,781
Operation and maintenance, Air Force		(07-10-3400	-X-1-051-A;	57-3400)
Budget Authority	18,947,388	18,947,388	18,947,388	2,444,213
Outlays	14,293,910	14,210,493	14,252,202	1,838,534
Operation and maintenance, Air Force Reserve		(07-10-3740	-X-1-051-A;	57-3740)
Budget Authority	930,367	930,367	930,367	120,017
Outlays	781,136	821,580	801,358	103,375
Operation and maintenance, Air National Guard		(07-10-3840	-X-1-051-A;	57-3840)
Budget Authority	1,795,528	1,795,528	1,795,528	231,623
Outlays	1,484,722	1,655,508	1,570,115	202,545
Procurement				
Procurement, Defense agencies		(07-15-0300	-X-1-051-A;	97-0300)
Budget Authority	1,522,175	1,522,175	1,522,175	196,361
Unobligated Balances--Defense	500,268	500,268	500,268	64,535
Outlays	525,836	414,584	470,210	60,657
National Guard and Reserve Equipment		(07-15-0350	-X-1-051-A;	97-0350)
Budget Authority	557,000	557,000	557,000	71,853
Unobligated Balances--Defense	414,279	414,279	414,279	53,442
Outlays	29,138	54,257	41,698	5,379
Defense Production Act purchases		(07-15-0360	-X-1-051-A;	97-0360)
Budget Authority	13,000	13,000	13,000	1,677
Unobligated Balances--Defense	24,792	24,792	24,792	3,198
NATO cooperative defense programs		(07-15-0370	-X-1-051-A;	97-0370)
Unobligated Balances--Defense	5,706	5,706	5,706	736
Outlays	0	742	371	48
Coastal defense augmentation		(07-15-0380	-X-1-051-A;	17-0380)
Budget Authority	200,000	200,000	200,000	25,800
Unobligated Balances--Defense	331,121	331,121	331,121	42,715
Outlays	55,768	51,529	53,648	6,921
Chemical agents and munitions destruction, Defense		(07-15-0390	-X-1-051-A;	97-0390)
Budget Authority	118,700	118,700	118,700	15,312
Unobligated Balances--Defense	10,802	10,802	10,802	1,393
Outlays	25,292	67,754	46,523	6,001
Procurement, Marine Corps		(07-15-1109	-X-1-051-A;	17-1109)
Budget Authority	1,465,215	1,465,215	1,465,215	189,013
Unobligated Balances--Defense	476,953	476,953	476,953	61,527
Outlays	359,801	124,227	241,764	31,188
Aircraft procurement, Navy		(07-15-1506	-X-1-051-A;	17-1506)
Budget Authority	9,977,262	9,977,262	9,977,262	1,287,067
Unobligated Balances--Defense	2,900,683	2,900,683	2,900,683	374,188
Outlays	1,412,711	1,081,798	1,247,254	160,896

Account Title	OMB	CBO	Average	Sequester
Weapons procurement, Navy		(07-15-1507	-X-1-051-A;	17-1507)
Budget Authority	5,290,847	5,290,847	5,290,847	682,519
Unobligated Balances--Defense	2,422,876	2,422,876	2,422,876	312,551
Outlays	539,960	794,449	667,204	86,069
Shipbuilding and conversion, Navy		(07-15-1611	-X-1-051-A;	17-1611)
Budget Authority	10,210,989	10,210,989	10,210,989	1,317,218
Unobligated Balances--Defense	11,380,409	11,380,409	11,380,409	1,468,073
Outlays	1,295,484	1,057,990	1,176,737	151,799
Other procurement, Navy		(07-15-1810	-X-1-051-A;	17-1810)
Budget Authority	6,035,871	6,035,871	6,035,871	778,627
Unobligated Balances--Defense	2,100,104	2,100,104	2,100,104	270,913
Outlays	854,277	772,858	813,572	104,951
Aircraft procurement, Army		(07-15-2031	-X-1-051-A;	21-2031)
Budget Authority	2,780,750	2,780,750	2,780,750	358,717
Unobligated Balances--Defense	779,397	779,397	779,397	100,542
Outlays	567,844	509,067	538,456	69,461
Missile procurement, Army		(07-15-2032	-X-1-051-A;	21-2032)
Budget Authority	2,206,800	2,206,800	2,206,800	284,677
Unobligated Balances--Defense	787,315	787,315	787,315	101,564
Outlays	303,004	212,582	257,793	33,255
Procurement of weapons and tracked combat vehicles, Ar		(07-15-2033	-X-1-051-A;	21-2033)
Budget Authority	3,804,843	3,804,843	3,804,843	490,825
Unobligated Balances--Defense	1,257,398	1,257,398	1,257,398	162,204
Outlays	137,693	217,663	177,678	22,920
Procurement of ammunition, Army		(07-15-2034	-X-1-051-A;	21-2034)
Budget Authority	2,087,277	2,087,277	2,087,277	269,259
Unobligated Balances--Defense	389,565	389,565	389,565	50,254
Outlays	786,397	579,675	683,036	88,112
Other procurement, Army		(07-15-2035	-X-1-051-A;	21-2035)
Budget Authority	5,106,715	5,106,715	5,106,715	658,766
Unobligated Balances--Defense	2,068,782	2,068,782	2,068,782	266,873
Outlays	574,040	387,494	480,767	62,019
Aircraft procurement, Air Force		(07-15-3010	-X-1-051-A;	57-3010)
Budget Authority	17,255,881	17,255,881	17,255,881	2,226,009
Unobligated Balances--Defense	7,971,967	7,971,967	7,971,967	1,028,384
Outlays	1,657,469	1,519,113	1,588,291	204,890
Missile procurement, Air Force		(07-15-3020	-X-1-051-A;	57-3020)
Budget Authority	7,448,218	7,448,218	7,448,218	960,820
Unobligated Balances--Defense	3,376,605	3,376,605	3,376,605	435,582
Outlays	2,754,917	2,522,157	2,638,537	340,371
Other procurement, Air Force		(07-15-3080	-X-1-051-A;	57-3080)
Budget Authority	9,327,126	9,327,126	9,327,126	1,203,199
Unobligated Balances--Defense	2,571,477	2,571,477	2,571,477	331,721
Outlays	6,037,351	5,830,256	5,933,804	765,461
Research, Development, Test, and Evaluation				
Research, development, test, and evaluation, Defense a	(07-20-0400	-X-1-051-A;	97-0400)	
Budget Authority	6,764,371	6,764,371	6,764,371	872,604
Unobligated Balances--Defense	524,904	524,904	524,904	67,713
Outlays	3,462,405	3,717,557	3,589,981	463,108
Director of test and evaluation, Defense	(07-20-0450	-X-1-051-A;	97-0450)	
Budget Authority	119,906	119,906	119,906	15,468
Unobligated Balances--Defense	29,976	29,976	29,976	3,867
Outlays	42,716	44,977	43,846	5,656
Director of operational test and evaluation, Defense	(07-20-0460	-X-1-051-A;	97-0460)	
Budget Authority	11,300	11,300	11,300	1,458
Unobligated Balances--Defense	1,130	1,130	1,130	146
Outlays	3,543	5,419	4,481	578
Research, development, test, and evaluation, Navy	(07-20-1319	-X-1-051-A;	17-1319)	
Budget Authority	9,334,928	9,334,928	9,334,928	1,204,206
Unobligated Balances--Defense	477,908	477,908	477,908	61,650
Outlays	5,298,931	5,102,598	5,200,764	670,899
Research, development, test, and evaluation, Army	(07-20-2040	-X-1-051-A;	21-2040)	
Budget Authority	4,574,962	4,574,962	4,574,962	590,170
Unobligated Balances--Defense	423,193	423,193	423,193	54,592
Outlays	2,399,115	2,649,042	2,524,078	325,606
Research, development, test, and evaluation, Air Force	(07-20-3600	-X-1-051-A;	57-3600)	
Budget Authority	15,079,398	15,079,398	15,079,398	1,945,242
Unobligated Balances--Defense	1,725,192	1,725,192	1,725,192	222,550
Outlays	8,738,387	8,906,483	8,822,435	1,138,094
Military Construction				
Military construction, Defense agencies	(07-25-0500	-X-1-051-A;	97-0500)	
Budget Authority	530,070	530,070	530,070	68,379
Unobligated Balances--Defense	326,662	326,662	326,662	42,139
Outlays	56,887	68,557	62,722	8,091
North Atlantic Treaty Organization infrastructure	(07-25-0804	-X-1-051-A;	97-0804)	
Budget Authority	232,000	232,000	232,000	29,928
Unobligated Balances--Defense	62,182	62,182	62,182	8,021
Outlays	2,942	2,938	2,940	379

Account Title	OMB	CBO	Average	Sequester
Military construction, Navy		(07-25-1205	-X-1-051-A;	17-1205),
Budget Authority	1,378,451	1,378,451	1,378,451	177,820
Unobligated Balances--Defense	860,936	860,936	860,936	111,061
Outlays	436,661	403,208	419,944	54,173
Military construction, Naval Reserve		(07-25-1235	-X-1-051-A;	17-1235),
Budget Authority	44,500	44,500	44,500	5,740
Unobligated Balances--Defense	22,239	22,239	22,239	2,869
Outlays	10,011	5,212	7,612	982
Military construction, Army		(07-25-2050	-X-1-051-A;	21-2050)
Budget Authority	1,268,346	1,268,346	1,268,346	163,617
401(C) Authority	0	221,000	110,500	14,254
Unobligated Balances--Defense	834,953	834,953	834,953	107,709
Outlays	420,660	371,771	396,216	51,112
Military construction, Army National Guard		(07-25-2085	-X-1-051-A;	21-2085),
Budget Authority	140,879	140,879	140,879	18,173
Unobligated Balances--Defense	15,729	15,729	15,729	2,029
Outlays	18,797	9,433	14,112	1,820
Military construction, Army Reserve		(07-25-2086	-X-1-051-A;	21-2086),
Budget Authority	86,753	86,753	86,753	11,191
Unobligated Balances--Defense	17,246	17,246	17,246	2,225
Outlays	25,000	5,188	15,594	2,012
Military construction, Air Force		(07-25-3300	-X-1-051-A;	57-3300),
Budget Authority	1,242,530	1,242,530	1,242,530	160,286
Unobligated Balances--Defense	768,103	768,103	768,103	99,214
Outlays	261,512	321,804	291,658	37,624
Military construction, Air Force Reserve		(07-25-3730	-X-1-051-A;	57-3730))
Budget Authority	58,900	58,900	58,900	7,598
Unobligated Balances--Defense	20,504	20,504	20,504	2,645
Outlays	8,734	8,958	8,851	1,142
Military construction, Air National Guard		(07-25-3830	-X-1-051-A;	57-3830),
Budget Authority	148,925	148,925	148,925	19,211
Unobligated Balances--Defense	36,097	36,097	36,097	4,657
Outlays	18,503	11,144	14,824	1,912
Family Housing				
Family housing, Army		(07-30-0702	-X-1-051-A;	21-0702),
Budget Authority	1,590,446	1,590,446	1,590,446	205,168
Unobligated Balances--Defense	166,854	166,854	166,854	21,524
Outlays	827,404	918,176	872,790	112,590
Family housing, Navy and Marine Corps		(07-30-0703	-X-1-051-A;	17-0703),
Budget Authority	700,080	700,080	700,080	90,310
Unobligated Balances--Defense	73,942	73,942	73,942	9,539
Outlays	351,569	407,483	379,526	48,959
Family housing, Air Force		(07-30-0704	-X-1-051-A;	57-0704),
Budget Authority	808,511	808,511	808,511	104,298
Unobligated Balances--Defense	163,360	163,360	163,360	21,073
Outlays	482,519	509,676	496,098	63,997
Family housing, Defense agencies		(07-30-0706	-X-1-051-A;	97-0706)
Budget Authority	16,643	16,643	16,643	2,147
Unobligated Balances--Defense	1,739	1,739	1,739	224
Outlays	11,018	9,563	10,290	1,327
Special Foreign Currency Program				
Special foreign currency program		(07-37-0800	-X-1-051-A;	97-0800),
Budget Authority	3,500	3,500	3,500	452
Unobligated Balances--Defense	1,925	1,925	1,925	248
Outlays	597	753	675	87
Revolving and Management Funds				
ADP equipment management fund		(07-40-3910	-X-4-051-A;	97-3910)
Unobligated Balances--Defense	75,145	75,145	75,145	9,694
Outlays	0	12,173	6,086	785
Navy stock fund		(07-40-4911	-X-4-051-A;	17-4911)
Budget Authority	352,570	352,570	352,570	45,482
Outlays	116,348	267,780	192,064	24,776
Marine Corps stock fund		(07-40-4913	-X-4-051-A;	17-4913)
Budget Authority	822	822	822	105
Outlays	271	548	410	53
Air Force stock fund		(07-40-4921	-X-4-051-A;	57-4921),
Budget Authority	139,980	139,980	139,980	18,057
Outlays	46,193	106,408	76,300	9,843
Defense stock fund		(07-40-4961	-X-4-051-A;	97-4961)
Budget Authority	47,200	47,200	47,200	6,089
Outlays	15,576	35,907	25,742	3,321
Army stock fund		(07-40-4991	-X-4-051-A;	21-4991)
Budget Authority	110,100	110,100	110,100	14,203
Outlays	36,333	83,757	60,045	7,746
Allowances				
Civilian pay raise		(07-45-9813	-X-1-051-A;	97-9813)
Budget Authority	0	504,620	252,310	32,548
Outlays	0	496,000	248,000	31,992

Account Title	[illegible]	CBO	Average	Sequester
Military pay raise		(07-45-9916	-X-1-051-A;	97-9916)
Budget Authority	0	2,008,500	1,004,250	129,548
Outlays	0	1,979,300	989,650	127,665
Department of Defense--Military		Total		
Budget Authority	283,438,387	285,951,507	284,694,947	36,725,650
401(C) Authority	0	221,000	110,500	14,254
Unobligated Balances--Defense	46,574,709	46,574,709	46,574,709	6,008,139
Outlays	168,995,552	172,501,969	170,748,758	22,026,591
Department of Defense--Civil				
Cemeterial Expenses, Army				
Salaries and expenses		(08-05-1805	-X-1-705-A;	21-1805)
Budget Authority	15,823	15,823	15,823	3,006
Outlays	6,152	4,884	5,518	1,048
Corps of Engineers--Civil				
Flood control, Mississippi River and tributaries		(08-10-3112	-X-1-301-A;	96-3112)
Budget Authority	310,797	310,797	310,797	59,051
401(C) Authority--Off. Coll.	1,000	1,000	1,000	190
Outlays	272,000	255,854	263,927	50,146
General investigations		(08-10-3121	-X-1-301-A;	96-3121)
Budget Authority	136,162	136,162	136,162	25,871
401(C) Authority--Off. Coll.	18	18	18	3
Outlays	107,503	94,514	101,008	19,192
Construction, general		(08-10-3122	-X-1-301-A;	96-3122)
Budget Authority	1,122,918	1,122,918	1,122,918	213,354
401(C) Authority--Off. Coll.	225	225	225	43
Outlays	855,000	741,092	798,046	151,629
Operation and maintenance, general		(08-10-3123	-X-1-301-A;	96-3123)
Budget Authority	1,228,271	1,226,471	1,227,371	233,200
401(C) Authority--Off. Coll.	3,803	3,803	3,803	723
Outlays	1,044,332	896,026	1,020,179	193,834
Operation and maintenance, general		(08-10-3123	-X-1-303-A;	96-3123)
Budget Authority	12,500	12,500	12,500	2,375
Outlays	12,500	9,750	11,125	2,114
General expenses		(08-10-3124	-X-1-301-A;	96-3124)
Budget Authority	118,232	118,232	118,232	22,464
Outlays	100,256	84,607	97,432	18,512
Flood control and coastal emergencies		(08-10-3125	-X-1-301-A;	96-3125)
Budget Authority	10,000	10,000	10,000	1,900
Revolving fund		(08-10-4902	-X-4-301-A;	96-4902)
Budget Authority	*2,000	12,000	12,000	2,280
Outlays	10,000	2,000	6,000	1,140
Inland waterways trust fund		(08-10-8861	-X-7-301-A;	20-8861)
Budget Authority	26,000	26,000	26,000	4,940
Outlays	26,000	17,056	21,528	4,090
Rivers and harbors contributed funds		(08-10-8862	-X-7-301-A;	96-8862)
401(C) Other--incl. ob. limit	237,000	209,780	223,390	42,444
Outlays	150,493	120,000	135,246	25,697
Harbor maintenance trust fund		(08-10-8867	-X-7-301-A;	96-8867)
Budget Authority	149,200	151,000	150,100	28,519
Outlays	149,200	125,330	137,265	26,080
Permanent appropriations (Water resources)		(08-10-9921	-X-2-301-A;	96-9921)
401(C) Other--incl. ob. limit	3,000	3,148	3,074	584
Outlays	48	2,027	1,038	197
Permanent appropriations (Other general purpose fiscal		(08-10-9921	-X-2-852-A;	96-9921)
401(C) Other--incl. ob. limit	6,000	6,000	6,000	1,140
Education Benefits				
Payment to the Henry M. Jackson Foundation		(08-19-0825	-X-1-502-A;	97-0825)
Budget Authority	10,000	10,000	10,000	1,900
Soldiers' and Airmen's Home				
Operation and maintenance		(08-20-8931	-X-7-705-A;	84-8931)
Budget Authority	35,154	35,154	35,154	6,679
401(C) Authority--Off. Coll.	144	144	144	27
Outlays	27,353	30,959	29,156	5,540
Capital outlay		(08-20-8932	-X-7-705-A;	84-8932)
Budget Authority	15,109	15,109	15,109	2,871
Outlays	1,829	325	1,077	205
Forest & Wildlife Conservation, Mil. Reservations				
Wildlife conservation		(08-30-5095	-X-2-303-A;	97-5095)
401(C) Other--incl. ob. limit	2,020	2,020	2,020	384
Outlays	2,020	2,020	2,020	384
Forest products program		(08-30-5285	-X-2-302-A;	21-5285)
401(C) Authority	1,500	1,500	1,500	285
Outlays	1,500	1,500	1,500	285
Department of Defense--Civil		Total		
Budget Authority	3,202,166	3,202,166	3,202,166	608,410
401(C) Authority	1,500	1,500	1,500	285
401(C) Authority--Off. Coll.	5,190	5,190	5,190	986
401(C) Other--incl. ob. limit	248,020	220,948	234,484	44,552
Outlays	2,766,186	2,497,944	2,632,065	500,093

Account Title	OMB	CBO	Average	Sequester
Department of Education				
Office of Elementary and Secondary Education				
Indian education		(18-10-0101	-X-1-501-A;	91-0101)
Budget Authority	64,036	64,036	64,036	12,167
Outlays	28,442	28,176	28,309	5,379
Impact aid		(18-10-0102	-X-1-501-A;	91-0102)
Budget Authority	717,500	717,500	717,500	136,325
Outlays	557,850	557,750	557,800	105,982
Chicago litigation settlement		(18-10-0220	-X-1-501-A;	91-0220)
Budget Authority	83,000	83,000	83,000	15,770
Compensatory education for the disadvantaged		(18-10-0900	-X-1-501-A;	91-0900)
Budget Authority	3,951,663	3,951,663	3,951,663	750,816
Outlays	277,141	197,583	237,362	45,099
Special programs		(18-10-1000	-X-1-501-A;	91-1000)
Budget Authority	939,490	939,490	939,490	178,503
Outlays	131,914	89,089	110,502	20,995
Off. of Bilingual Ed. & Minority Languages Affairs				
Bilingual education		(18-15-1300	-X-1-501-A;	91-1300)
Budget Authority	143,095	173,095	158,095	30,038
Outlays	5,724	6,058	5,891	1,119
Immigrant and refugee education		(18-15-1600	-X-1-501-A;	91-1600)
Budget Authority	45,886	15,886	30,886	5,868
Outlays	918	10,167	5,542	1,053
Office of Special Education & Rehabilitative Svcs.				
Education for the handicapped		(18-20-0300	-X-1-501-A;	91-0300)
Budget Authority	1,741,900	1,741,900	1,741,900	330,961
Outlays	78,342	81,869	80,106	15,220
Vocational rehabilitation		(18-20-0301	-X-1-506-A;	91-0301)
Budget Authority	203,758	203,758	203,758	38,714
Outlays	156,894	156,895	156,894	29,810
Special institutions for the handicapped (APHB)		(18-20-0604	-X-1-501-D;	91-0600)
Budget Authority	5,500	5,500	5,500	1,045
Outlays	5,500	5,500	5,500	1,045
Special institutions for the handicapped (NTID)		(18-20-0604	-X-1-502-B;	91-0601)
Budget Authority	32,000	32,000	32,000	6,080
Outlays	32,000	32,000	32,000	6,080
Special institutions for the handicapped (Gallaudet)		(18-20-0604	-X-1-502-C;	91-0602)
Budget Authority	62,000	62,000	62,000	11,780
Outlays	58,279	62,000	60,140	11,427
Promotion of education for the blind		(18-20-8893	-X-7-501-A;	91-8893)
401(C) Authority	10	10	10	2
Outlays	5	0	2	0
Office of Vocational and Adult Education				
Vocational and adult education		(18-30-0400	-X-1-501-A;	91-0400)
Budget Authority	987,700	987,700	987,700	187,663
401(C) Authority	7,148	7,148	7,148	1,358
Outlays	119,982	19,897	69,640	13,232
Office of Postsecondary Education				
Student financial assistance		(18-40-0200	-X-1-502-A;	91-0200)
Budget Authority	5,483,000	5,483,000	5,483,000	1,041,770
Outlays	1,017,200	1,017,200	1,017,200	193,268
Higher education		(18-40-0201	-X-1-502-A;	91-0201)
Budget Authority	482,428	482,428	482,428	91,661
Outlays	57,816	84,442	71,129	13,515
Guaranteed student loans		(18-40-0230	-X-1-502-A;	91-0230)
Budget Authority--Spec. Rules	35,516	0	17,758	17,758
401(C) Authority--Spec. Rules	0	39,230	19,615	19,615
Outlays	22,556	24,910	23,733	23,733
Higher education facilities loans and insurance		(18-40-0240	-X-1-502-A;	91-0240)
Budget Authority	19,205	1,076	10,140	1,927
Outlays	1,074	1,074	1,074	204
Howard University		(18-40-0603	-X-1-502-A;	91-0603)
Budget Authority	170,230	170,230	170,230	32,344
Outlays	162,101	163,421	162,761	30,925
College housing loans		(18-40-4250	-X-3-502-A;	91-4250)
401(C) Authority--Off. Coll.	1,926	1,926	1,926	366
Direct Loan Limitation	60,000	60,000	60,000	11,400
Outlays	1,922	1,922	1,922	365
Office of Educational Research and Improvement				
Libraries		(18-50-0104	-X-1-503-A;	91-0104)
Budget Authority	132,500	132,500	132,500	25,175
Outlays	69,270	32,475	50,872	9,666
Education research and statistics		(18-50-1100	-X-1-503-A;	91-1100)
Budget Authority	63,578	63,578	63,578	12,080
Outlays	39,418	35,604	37,511	7,127
Departmental Management				
Salaries and expenses (Research and general education		(18-80-0800	-X-1-503-A;	91-0800)
Budget Authority	234,692	234,692	234,692	44,591
Outlays	194,794	194,794	194,794	37,011

Account Title	OMB	CBO	Average	Sequester
Salaries and expenses (Federal law enforcement activit		(18-80-0800	-X-1-751-A;	91-0800)
Budget Authority	59,378	59,378	59,378	11,282
Outlays	49,284	48,212	48,748	9,262
Department of Education		Total		
Budget Authority	15,622,539	15,604,410	15,613,474	2,966,560
Budget Authority--Spec. Rules	35,516	0	17,758	17,758
401(C) Authority	7,158	7,158	7,158	1,360
401(C) Authority--Off. Coll.	1,926	1,926	1,926	366
401(C) Authority--Spec. Rules	0	39,230	19,615	19,615
Direct Loan Limitation	60,000	60,000	60,000	11,400
Outlays	3,067,826	2,851,038	2,959,432	581,517
Department of Energy				
Atomic Energy Defense Activities				
Atomic energy defense activities		(19-10-0220	-X-1-053-A;	89-0220)
Budget Authority	7,477,750	7,477,750	7,477,750	964,630
Unobligated Balances--Defense	45,000	500,000	272,500	35,152
Outlays	4,664,105	5,177,854	4,920,980	634,806
Energy Programs				
Geothermal resources development fund		(19-20-0206	-X-1-271-A;	89-0206)
Budget Authority	72	72	72	14
Outlays	72	72	72	14
Federal Energy Regulatory Commission		(19-20-0212	-X-1-276-A;	89-0212)
Budget Authority	99,079	99,079	99,079	18,825
Outlays	95,329	84,464	89,896	17,080
Fossil energy research and development		(19-20-0213	-X-1-271-A;	89-0213)
Budget Authority	295,866	295,866	295,866	56,215
Outlays	88,760	118,347	103,554	19,675
Energy conservation (Energy conservation)		(19-20-0215	-X-1-272-A;	89-0215)
Budget Authority	233,612	233,612	233,612	44,386
Outlays	92,976	46,722	69,849	13,271
Energy information administration		(19-20-0216	-X-1-276-A;	89-0216)
Budget Authority	60,301	60,301	60,301	11,457
Outlays	40,100	45,225	42,662	8,106
Economic regulation		(19-20-0217	-X-1-276-A;	89-0217)
Budget Authority	23,400	23,400	23,400	4,446
Outlays	14,747	14,747	14,747	2,802
Strategic petroleum reserve		(19-20-0218	-X-1-274-A;	89-0218)
Budget Authority	147,433	147,433	147,433	28,012
Outlays	129,991	81,088	105,540	20,053
Naval petroleum and shale reserves		(19-20-0219	-X-1-271-A;	89-0219)
Budget Authority	122,177	122,177	122,177	23,214
Outlays	64,659	67,197	65,928	12,526
General science and research activities		(19-20-0222	-X-1-251-A;	89-0222)
Budget Authority	708,400	708,400	708,400	134,596
Outlays	482,420	528,467	505,444	96,034
Energy supply, R&D activities		(19-20-0224	-X-1-271-A;	89-0224)
Budget Authority	1,347,048	1,347,048	1,347,048	255,939
Outlays	700,464	673,574	687,019	130,534
Uranium supply and enrichment activities		(19-20-0226	-X-1-271-A;	89-0226)
Budget Authority	1,210,400	1,210,400	1,210,400	229,976
Outlays	935,536	821,943	878,740	166,961
Emergency preparedness		(19-20-0234	-X-1-274-A;	89-0234)
Budget Authority	6,044	6,044	6,044	1,148
Outlays	3,898	4,835	4,366	830
Payments to states under Federal Power Act		(19-20-5105	-X-2-852-A;	89-5105)
401(C) Other--incl. ob. limit	0	727	364	69
Outlays	0	727	364	69
Nuclear waste disposal fund		(19-20-5227	-X-2-271-A;	89-5227)
Budget Authority	499,000	499,000	499,000	94,810
Outlays	249,518	249,500	249,509	47,407
Power Marketing Administration				
Operation and maintenance, Southeastern Power Administ		(19-50-0302	-X-1-271-A;	89-0302)
Budget Authority	901	901	901	171
Outlays	793	793	793	151
Operation and maintenance, Southwestern Power Administ		(19-50-0303	-X-1-271-A;	89-0303)
Budget Authority	3,585	3,585	3,585	681
Outlays	3,155	3,155	3,155	599
Operation and maintenance, Alaska Power Administration		(19-50-0304	-X-1-271-A;	89-0304)
Budget Authority	776	776	776	147
Outlays	683	683	683	130
Bonneville Power Administration fund		(19-50-4045	-X-3-271-A;	89-4045)
401(C) Authority--Off. Coll.	47,600	47,600	47,600	9,044
Outlays	45,200	41,900	43,550	8,274
Colorado river basins power marketing fund, WAPA		(19-50-4452	-X-3-271-A;	89-4452)
401(C) Authority--Off. Coll.	8,434	8,434	8,434	1,602
Outlays	7,422	7,422	7,422	1,410
Construction, rehabilitation, operation and maintenanc		(19-50-5068	-X-2-271-A;	89-5068)
Budget Authority	35,856	35,856	35,856	6,813
Outlays	31,553	31,553	31,553	5,995

Account Title	OMB	CBO	Average	Sequester
Departmental Administration				
Departmental administration (Energy information, polic		(19-60-0228	-X-1-276-A;	89-0228)
Budget Authority	395,558	395,558	395,558	75,156
Outlays	217,557	237,334	227,446	43,215
Department of Energy		Total		
Budget Authority	12,667,258	12,667,258	12,667,258	1,950,636
401(C) Authority--Off. Coll.	56,034	56,034	56,034	10,646
401(C) Other--incl. ob. limit	0	727	364	69
Unobligated Balances--Defense	45,000	500,000	272,500	35,152
Outlays	7,868,938	8,237,602	8,053,272	1,229,942
Department of Health and Human Services				
Food and Drug Administration				
Program expenses		(09-10-0600	-X-1-554-A;	75-0600)
Budget Authority	448,430	448,430	448,430	85,202
Outlays	390,134	390,934	390,534	74,201
Buildings and facilities		(09-10-0603	-X-1-554-A;	75-0603)
Budget Authority	1,879	1,879	1,879	357
Outlays	868	588	728	138
Revolving fund for certification and other services		(09-10-4309	-X-3-554-A;	75-4309)
401(C) Authority--Off. Coll.	2,799	2,799	2,799	532
Outlays	2,799	2,799	2,799	532
Health Resources and Services				
Health resources and services (health care services)		(09-15-0350	-X-1-551-A;	75-0350)
Budget Authority	882,458	882,458	882,458	167,667
401(C) Authority--Off. Coll.	375	375	375	71
Direct Loan Limitation	1,000	1,000	1,000	190
Outlays	758,160	495,551	626,856	119,103
Health resources and services (2% G-R-H)		(09-15-0350	-X-1-551-G;	75-0350)
Budget Authority--Spec. Rules	8,908	8,908	8,908	8,908
Outlays	7,644	4,988	6,316	6,316
Health resources and services (education and training)		(09-15-0350	-X-1-553-A;	75-0350)
Budget Authority	202,210	202,210	202,210	38,420
Outlays	68,751	60,663	64,707	12,294
Indian health services		(09-15-0390	-X-1-551-A;	75-0390)
Budget Authority	71,390	71,390	71,390	13,564
Outlays	58,158	57,670	57,914	11,004
Indian health services 2% split (G-R-H)		(09-15-0390	-X-1-551-G;	75-0390)
Budget Authority--Spec. Rules	16,026	16,026	16,026	16,026
401(C) Authority--Spec. Rules	689	689	689	689
Outlays	13,962	13,178	13,570	13,570
Indian health facilities 2% split (G-R-H)		(09-15-0391	-X-1-551-G;	75-0391)
Budget Authority--Spec. Rules	1,421	1,421	1,421	1,421
Outlays	411	355	383	383
Medical facilities guarantee and loan fund		(09-15-4430	-X-3-551-A;	75-4430)
Budget Authority	20,000	0	10,000	1,900
Outlays	15,789	0	7,894	1,500
Centers for Disease Control				
Disease control (Health care services)		(09-20-0943	-X-1-551-A;	75-0943)
Budget Authority	517,368	517,368	517,368	98,300
401(C) Authority--Off. Coll.	767	767	767	146
Outlays	321,958	328,157	325,058	61,761
Disease control (Health research)		(09-20-0943	-X-1-552-A;	75-0943)
Budget Authority	69,936	69,936	69,936	13,286
Outlays	43,710	46,158	44,934	8,537
National Institutes of Health				
National Library of Medicine (Health research)		(09-25-0807	-X-1-552-A;	75-0807)
Budget Authority	19,228	19,228	19,228	3,653
Outlays	12,305	12,306	12,306	2,338
National Library of Medicine (Education and training)		(09-25-0807	-X-1-553-A;	75-0807)
Budget Authority	42,610	42,610	42,610	8,096
Outlays	27,320	27,270	27,295	5,186
John E. Fogarty International Center		(09-25-0819	-X-1-552-A;	75-0819)
Budget Authority	11,420	11,420	11,420	2,170
Outlays	7,309	6,509	6,909	1,313
Buildings and facilities		(09-25-0838	-X-1-552-A;	75-0838)
Budget Authority	31,900	31,900	31,900	6,061
Outlays	18,379	8,932	13,656	2,595
National Institute on Aging (Health research)		(09-25-0843	-X-1-552-A;	75-0843)
Budget Authority	170,139	170,139	170,139	32,326
Outlays	59,548	79,965	69,756	13,254
National Institute on Aging (Education and training)		(09-25-0843	-X-1-553-A;	75-0843)
Budget Authority	7,542	7,542	7,542	1,433
Outlays	2,640	3,545	3,092	587
Nat. Inst. Child Health and Human Development (Health		(09-25-0844	-X-1-552-A;	75-0844)
Budget Authority	351,175	351,175	351,175	66,723
Outlays	123,244	154,517	138,880	26,387
Nat. Inst. Child Health and Human Development (Ed. & t		(09-25-0844	-X-1-553-A;	75-0844)
Budget Authority	15,605	15,605	15,605	2,965
Outlays	1,950	1,561	1,756	334

Account Title	OMB	CBO	Average	Sequester
Office of the Director (Health research)		(09-25-0846	-X-1-552-A;	75-0846)
Budget Authority	54,846	54,846	54,846	10,421
Outlays	26,540	41,803	34,172	6,493
Office of the Director (Education and training)		(09-25-0846	-X-1-553-A;	75-0846)
Budget Authority	2,362	2,362	2,362	449
Outlays	2,029	2,244	2,136	406
Research resources (Health research)		(09-25-0848	-X-1-552-A;	75-0848)
Budget Authority	321,590	321,590	321,590	61,102
Outlays	178,317	176,875	177,596	33,743
Research resources (Education and training)		(09-25-0848	-X-1-553-A;	75-0848)
Budget Authority	1,270	1,270	1,270	241
Outlays	70	64	67	13
National Cancer Institute (Health research)		(09-25-0849	-X-1-552-A;	75-0849)
Budget Authority	1,369,746	1,368,746	1,369,746	260,252
401(C) Authority--Off. Coll.	10	10	10	2
Outlays	617,691	686,883	652,287	123,935
National Cancer Institute (Education and training)		(09-25-0849	-X-1-553-A;	75-0849)
Budget Authority	33,091	33,091	33,091	6,287
Outlays	662	662	662	126
National Institute of General Medical Sciences (Health		(09-25-0851	-X-1-552-A;	75-0851)
Budget Authority	504,841	504,841	504,841	95,920
Outlays	250,321	247,372	248,846	47,281
National Institute of General Medical Sciences (Ed. &		(09-25-0851	-X-1-553-A;	75-0851)
Budget Authority	66,075	66,075	66,075	12,554
Outlays	7,447	7,268	7,358	1,398
National Institute of Environmental Health Sciences (R		(09-25-0862	-X-1-552-A;	75-0862)
Budget Authority	200,026	200,026	200,026	38,005
Outlays	117,602	114,015	115,808	22,004
National Institute of Environmental Health Sciences (E		(09-25-0862	-X-1-553-A;	75-0862)
Budget Authority	9,268	9,268	9,268	1,761
Outlays	5,458	2,224	3,841	730
National Heart, Lung and Blood Institute (Health resea		(09-25-0872	-X-1-552-A;	75-0872)
Budget Authority	889,141	889,141	889,141	168,937
Outlays	370,136	382,331	376,234	71,484
National Heart, Lung and Blood Institute (Education &		(09-25-0872	-X-1-553-A;	75-0872)
Budget Authority	40,860	40,860	40,860	7,763
Outlays	1,634	1,634	1,634	310
National Institute of Dental Research (Health research		(09-25-0873	-X-1-552-A;	75-0873)
Budget Authority	112,419	112,419	112,419	21,360
Outlays	52,494	61,830	57,162	10,861
National Institute of Dental Research (Education and t		(09-25-0873	-X-1-553-A;	75-0873)
Budget Authority	5,526	5,526	5,526	1,050
Outlays	3,214	3,039	3,126	594
National Insti. of Diabetes, and Digestive and Kidney		(09-25-0884	-X-1-552-A;	75-0884)
Budget Authority	489,351	489,351	489,351	92,977
Outlays	87,220	215,314	151,267	28,741
National Insti. of Diabetes, and Digestive and Kidney		(09-25-0884	-X-1-553-A;	75-0884)
Budget Authority	21,773	21,773	21,773	4,137
Outlays	5,437	4,355	4,896	930
National Institute of Allergy & Infectious Diseases (R		(09-25-0885	-X-1-552-A;	75-0885)
Budget Authority	534,987	534,987	534,987	101,648
Outlays	212,966	256,794	234,880	44,627
National Institute of Allergy & Infectious Diseases (E		(09-25-0885	-X-1-553-A;	75-0885)
Budget Authority	10,536	10,536	10,536	2,002
Outlays	1,581	1,475	1,528	290
National Institute of Neurological & Communicative Dis		(09-25-0886	-X-1-552-A;	75-0886)
Budget Authority	475,646	475,646	475,646	90,373
401(C) Authority--Off. Coll.	12	12	12	2
Outlays	182,385	199,763	191,074	36,304
National Institute of Neurological & Communicative Dis		(09-25-0886	-X-1-553-A;	75-0886)
Budget Authority	14,587	14,587	14,587	2,772
Outlays	4,149	4,230	4,190	796
National Eye Institute (Health research)		(09-25-0887	-X-1-552-A;	75-0887)
Budget Authority	210,703	210,703	210,703	40,034
Outlays	75,735	92,709	84,222	16,002
National Eye Institute (Education and training)		(09-25-0887	-X-1-553-A;	75-0887)
Budget Authority	5,934	5,934	5,934	1,127
Outlays	529	1,484	1,056	201
National Ins. of Arthritis and Musculoskeletal and Ski		(09-25-0888	-X-1-552-A;	75-0888)
Budget Authority	132,100	132,100	132,100	25,099
Outlays	124,584	58,124	91,354	17,357
National Ins. of Arthritis and Musculoskeletal and Ski		(09-25-0888	-X-1-553-A;	75-0888)
Budget Authority	6,613	6,613	6,613	1,256
Outlays	6,030	1,322	3,676	698
National Center for Nursing Research		(09-25-0889	-X-1-552-A;	75-0889)
Budget Authority	17,919	17,919	17,919	3,405
Outlays	8,134	8,064	8,099	1,539

Account Title	OMB	CBO	Average	Sequester
National Center for Nursing Research		(09-25-0889	-X-1-553-A;	75-0889)
Budget Authority	2,081	2,081	2,081	395
Outlays	953	936	944	179
Alcohol,Drug Abuse, & Mental Health Administration				
Federal subsidy for St. Elizabeths Hospital		(09-30-1300	-X-1-551-A;	75-1300)
Budget Authority	40,781	40,781	40,781	7,748
401(C) Authority--Off. Coll.	49,189	49,189	49,189	9,346
Outlays	89,970	89,970	89,970	17,094
Alcohol, drug abuse, and mental health (Health care se		(09-30-1361	-X-1-551-A;	75-1361)
Budget Authority	747,915	747,915	747,915	142,104
Outlays	616,280	598,332	607,286	115,384
Alcohol, drug abuse, and mental health (Health researc		(09-30-1361	-X-1-552-A;	75-1361)
Budget Authority	578,005	578,005	578,005	109,821
Outlays	369,568	369,923	369,740	70,251
Alcohol, drug abuse, and mental health (Education and		(09-30-1361	-X-1-553-A;	75-1361)
Budget Authority	38,750	38,750	38,750	7,362
Outlays	15,115	10,463	12,789	2,430
Office of Assistant Secretary for Health				
Retirement pay and medical benefits for commissioned o		(09-37-0379	-X-1-551-A;	75-0379)
Budget Authority	10,328	0	5,164	981
401(C) Authority	0	10,858	5,429	1,032
Outlays	6,920	7,166	7,043	1,338
Public health service management (Health care services		(09-37-1101	-X-1-551-A;	75-1101)
Budget Authority	46,151	46,151	46,151	8,769
401(C) Authority--Off. Coll.	25	25	25	5
Outlays	19,421	24,024	21,722	4,127
Public health service management (Health research)		(09-37-1101	-X-1-552-A;	75-1101)
Budget Authority	70,915	70,915	70,915	13,474
Outlays	50,620	38,294	44,457	8,447
Public health emergency fund		(09-37-1104	-X-1-551-A;	75-1104)
Budget Authority	30,000	30,000	30,000	5,700
Outlays	6,000	16,800	11,400	2,166
Health Care Financing Administration				
Program management (Health care services)		(09-38-0511	-X-1-551-A;	75-0511)
Budget Authority	80,901	80,901	80,901	15,371
Outlays	73,591	68,766	71,178	13,524
Program management (Health research)		(09-38-0511	-X-1-552-A;	75-0511)
Budget Authority	10,000	10,000	10,000	1,900
Outlays	10,000	8,000	9,000	1,710
Federal supplementary medical insurance trust fund		(09-38-8004	-X-7-571-A;	20-8004)
401(C) Other--incl. ob. limit	0	72,627	36,314	6,900
Obligation Limitation	1,053,089	974,524	1,013,806	192,623
Outlays	870,251	906,948	888,600	168,834
FSMI 2% split (G-R-H)		(09-38-8004	-X-7-571-S;	20-8004)
401(C) Authority--Spec. Rules	310,000	410,000	360,000	360,000
Outlays	310,000	410,000	360,000	360,000
Federal hospital insurance trust fund		(09-38-8005	-X-7-571-A;	20-8005)
401(C) Other--incl. ob. limit	0	343,276	171,638	32,611
Obligation Limitation	1,138,928	800,819	969,874	184,276
Outlays	765,149	746,790	755,970	143,634
FHI 2% split (G-R-H)		(09-38-8005	-X-7-571-S;	20-8005)
401(C) Authority--Spec. Rules	880,000	980,000	930,000	930,000
Outlays	880,000	980,000	930,000	930,000
Social Security Administration				
Supplemental security income program		(09-60-0406	-X-1-609-A;	75-0406)
Budget Authority	823,283	0	411,642	78,212
401(C) Authority	0	823,283	411,642	78,212
Outlays	586,181	591,965	589,073	111,924
Special benefits for disabled coal miners		(09-60-0409	-X-1-601-A;	75-0409)
Budget Authority	6,437	0	3,218	611
401(C) Authority	0	6,437	3,218	611
Outlays	6,437	6,437	6,437	1,223
Family Support Administration				
Program administration **		(09-70-1500	-X-1-609-A;	75-1500)
Budget Authority	93,142	93,142	93,142	17,697
401(C) Authority--Off. Coll.	95	95	95	18
Outlays	72,611	72,746	72,678	13,809
Family support payments to States **		(09-70-1501	-X-1-609-A;	75-1501)
Budget Authority	943,250	0	471,625	89,609
401(C) Authority	0	990,000	495,000	94,050
Outlays	943,250	990,000	966,625	183,659
Low income home energy assistance		(09-70-1502	-X-1-609-A;	75-0420)
Budget Authority	1,822,265	1,822,265	1,822,265	346,230
Outlays	1,658,261	1,640,039	1,649,150	313,338
Refugee and Entrant Assistance		(09-70-1503	-X-1-609-A;	75-0473)
Budget Authority	339,597	339,597	339,597	64,523
Outlays	210,579	216,569	213,574	40,579

** $2,850 thousand of sequester shown under Program administration (09-70-1500) is to be applied against child support enforcement under Family support payments to States (09-70-1501) due to the application of a special rule under the Act.

Account Title	DMB	CBO	Average	Sequester
Community services block grant		(09-70-1504	-X-1-506-A;	75-1635)
Budget Authority	405,036	405,036	405,036	76,957
Outlays	278,250	278,665	278,458	52,907
Work incentives		(09-70-1505	-X-1-504-A;	75-1639)
Budget Authority	126,000	126,000	126,000	23,940
Outlays	112,009	112,009	112,009	21,282
Interim assistance to States for legalization		(09-70-1508	-X-1-506-A;	75-1508)
401(C) Authority	930,000	930,000	930,000	176,700
401(C) Other--incl. ob. limit	300,000	121,000	210,500	39,995
Outlays	300,000	121,000	210,500	39,995
Payments to States from receipts for child support		(09-70-5734	-X-2-609-A;	75-5734)
401(C) Other--incl. ob. limit	450	450	450	86
Outlays	337	337	337	64
Human Development Services				
Social services block grant		(09-80-1634	-X-1-506-A;	75-1634)
Budget Authority	2,700,000	0	1,350,000	256,500
401(C) Authority	0	2,700,000	1,350,000	256,500
Outlays	2,637,227	2,590,380	2,613,804	496,623
Human development services		(09-80-1636	-X-1-506-A;	75-1636)
Budget Authority	2,100,335	2,100,335	2,100,335	399,064
Outlays	1,233,278	1,176,708	1,204,993	228,949
Family social services		(09-80-1645	-X-1-506-A;	75-1645)
Budget Authority	287,663	242,663	265,163	50,381
Budget Authority--Spec. Rules	11,611	0	5,806	5,806
401(C) Authority	0	45,000	22,500	4,275
401(C) Authority--Spec. Rules	0	11,611	5,806	5,806
Outlays	228,765	210,317	219,541	48,902
Departmental Management				
General Departmental management		(09-90-0120	-X-1-609-A;	75-0120)
Budget Authority	124,019	124,019	124,019	23,564
Outlays	105,417	113,056	109,236	20,755
Policy research		(09-90-0122	-X-1-609-A;	75-0122)
Budget Authority	8,200	8,200	8,200	1,558
Outlays	4,920	3,772	4,346	826
Office of the Inspector General		(09-90-0128	-X-1-609-A;	75-0128)
Budget Authority	30,516	30,516	30,516	5,798
Outlays	24,413	26,314	25,364	4,819
Office for Civil Rights		(09-90-0135	-X-1-751-A;	75-0135)
Budget Authority	15,285	15,285	15,285	2,904
Outlays	13,909	13,451	13,680	2,599
Office of Consumer Affairs		(09-90-0137	-X-1-506-A;	75-0137)
Budget Authority	1,768	1,768	1,768	336
Outlays	1,645	1,645	1,645	313
Department of Health and Human Services		Total		
Budget Authority	19,877,124	15,328,825	17,602,974	3,344,566
Budget Authority--Spec. Rules	37,966	26,355	32,161	32,161
401(C) Authority	930,000	5,505,578	3,217,789	611,380
401(C) Authority--Off. Coll.	53,272	53,272	53,272	10,122
401(C) Other--incl. ob. limit	300,450	537,353	418,902	79,592
401(C) Authority--Spec. Rules	1,190,689	1,402,300	1,296,495	1,296,495
Direct Loan Limitation	1,000	1,000	1,000	190
Obligation Limitation	2,192,017	1,775,343	1,983,680	376,899
Outlays	16,778,781	16,709,347	16,744,063	4,249,880
Health and Human Services - Social Security				
Social Security				
Federal old-age and survivors insurance trust fund		(16-05-8006	-X-7-651-A;	20-8006)
Obligation Limitation	1,357,449	1,562,483	1,459,966	277,394
Outlays	1,384,843	1,286,420	1,335,632	253,770
Federal disability insurance trust fund		(16-05-8007	-X-7-651-A;	20-8007)
Obligation Limitation	473,024	502,739	487,882	92,698
Outlays	389,067	375,608	382,338	72,644
Health and Human Services - Social Security		Total		
Obligation Limitation	1,830,473	2,065,222	1,947,848	370,092
Outlays	1,773,910	1,662,028	1,717,970	326,414
Department of Housing and Urban Development				
Housing Programs				
Housing counseling assistance		(25-02-0156	-X-1-506-A;	86-0156)
Budget Authority	3,500	3,500	3,500	665
Subsidized housing programs (Community development)		(25-02-0164	-X-1-451-A;	86-0164)
Budget Authority	319,550	319,550	319,550	60,714
Outlays	20,000	42,000	31,000	5,890
Subsidized housing programs (Housing assistance)		(25-02-0164	-X-1-604-A;	86-0164)
Budget Authority	7,541,118	7,541,118	7,541,118	1,432,812
Outlays	12,278	11,390	15,334	2,913
Congregate services program		(25-02-0178	-X-1-604-A;	86-0178)
Budget Authority	3,400	3,400	3,400	646
Shelter programs		(25-02-0181	-X-1-604-A;	86-0181)
Budget Authority	160,000	160,000	160,000	30,400
Outlays	49,000	57,950	53,475	10,160

Account Title	DMB	CBO	Average	Sequester
Rental housing assistance fund		(25-02-4041	-X-3-604-A;	86-4041)
401(C) Authority--Off. Coll.	60,000	51,000	55,500	10,545
Outlays	60,000	51,000	55,500	10,545
Nonprofit sponsor assistance		(25-02-4042	-X-3-604-A;	86-4042)
Direct Loan Limitation	1,000	1,000	1,000	190
Outlays	0	236	118	22
Federal Housing Administration fund		(25-02-4070	-X-3-371-A;	86-4070)
401(C) Authority--Off. Coll.	360,616	382,896	371,756	70,634
Direct Loan Limitation	73,800	73,800	73,800	14,022
Guaranteed Loan Limitation	100,000,000	100,000,000	100,000,000	19,000,000
Obligation Limitation	306,962	306,962	306,962	58,323
Outlays	667,578	698,197	682,888	129,749
Housing for the elderly or handicapped fund		(25-02-4115	-X-3-371-A;	86-4115)
Budget Authority	3,907	3,907	3,907	742
Direct Loan Limitation	592,661	592,661	592,661	112,606
Outlays	3,907	3,907	3,907	742
Interstate land sales		(25-02-5270	-X-2-376-A;	86-5270)
401(C) Authority	800	814	807	153
Outlays	800	749	774	147
Manufactured home inspection and monitoring		(25-02-5271	-X-2-376-A;	86-5271)
401(C) Authority	5,760	5,967	5,864	1,114
Outlays	4,452	2,984	3,718	706
Public and Indian Housing Programs				
Payments for operation of low income housing projects		(25-03-0163	-X-1-604-A;	86-0163)
Budget Authority	1,350,000	1,350,000	1,350,000	255,500
Outlays	567,000	675,000	621,000	117,990
Government National Mortgage Association				
Payment of participation sales insufficiencies		(25-04-0145	-X-1-371-A;	86-0145)
Budget Authority	1,079	1,079	1,079	205
Guarantees of mortgage-backed securities		(25-04-4238	-X-3-371-A;	86-4238)
401(C) Authority--Off. Coll.	39,084	18,785	28,934	5,497
Guaranteed Loan Limitation	150,000,000	150,000,000	150,000,000	28,500,000
Outlays	39,084	16,363	27,724	5,268
Solar Energy and Energy Conservation Bank				
Assistance for solar and conservation improvements		(25-05-0179	-X-1-272-A;	86-0179)
Budget Authority	600	600	600	114
Outlays	0	500	250	48
Community Planning and Development				
Community development grants		(25-06-0162	-X-1-451-A;	86-0162)
Budget Authority	3,000,000	3,000,000	3,000,000	570,000
Guaranteed Loan Limitation	150,000	150,000	150,000	28,500
Outlays	60,000	60,000	60,000	11,400
Urban development action grants		(25-06-0170	-X-1-451-A;	86-0170)
Budget Authority	225,000	225,000	225,000	42,750
Outlays	11,250	11,250	11,250	2,138
Urban homesteading		(25-06-0171	-X-1-451-A;	86-0171)
Budget Authority	12,000	12,000	12,000	2,280
Outlays	10,000	8,400	9,200	1,748
Rehabilitation loan fund		(25-06-4036	-X-3-451-A;	86-4036)
401(C) Authority--Off. Coll.	23,044	23,791	23,418	4,449
Direct Loan Limitation	85,000	80,000	82,500	15,675
Outlays	65,559	63,791	64,675	12,288
Policy Development and Research				
Research and technology		(25-28-0108	-X-1-451-A;	86-0108)
Budget Authority	17,000	17,000	17,000	3,230
Outlays	5,100	5,100	5,100	969
Fair Housing and Equal Opportunity				
Fair housing assistance		(25-29-0144	-X-1-751-A;	86-0144)
Budget Authority	6,341	6,341	6,341	1,205
Outlays	1,300	0	650	124
Management and Administration				
Salaries & expenses, incl. transfer of funds (Communit		(25-35-0143	-X-1-451-A;	86-0143)
Budget Authority	168,850	168,850	168,850	32,082
Outlays	140,990	140,990	140,990	26,788
Salaries & expenses, incl. transfer of funds (Public a		(25-35-0143	-X-1-604-A;	86-0143)
Budget Authority	157,616	157,616	157,616	29,947
Outlays	131,620	131,620	131,620	25,008
Salaries & expenses, incl. transfer of funds (Federal		(25-35-0143	-X-1-751-A;	86-0143)
Budget Authority	13,957	13,957	13,957	2,652
Outlays	11,654	11,654	11,654	2,214
Department of Housing and Urban Development		Total		
Budget Authority	12,983,918	12,983,918	12,983,918	2,466,944
401(C) Authority	6,560	6,781	6,671	1,267
401(C) Authority--Off. Coll.	482,744	476,472	479,608	91,125
Direct Loan Limitation	752,461	747,461	749,961	142,493
Guaranteed Loan Limitation	250,150,000	250,150,000	250,150,000	47,528,500
Obligation Limitation	306,962	306,962	306,962	58,323
Outlays	1,868,572	1,993,081	1,930,827	366,857

Account Title	DMS	CBO	Average	Sequester
Department of the Interior				
Bureau of Land Management				
Management of lands and resources		(10-04-1109	-X-1-302-A;	14-1109)
Budget Authority	495,138	495,138	495,138	94,076
401(C) Authority--Off. Coll.	2,000	2,000	2,000	380
Outlays	413,807	434,999	424,403	80,637
Construction and access		(10-04-1110	-X-1-302-A;	14-1110)
Budget Authority	2,800	2,800	2,600	532
Outlays	2,800	700	1,750	332
Payments in lieu of taxes		(10-04-1114	-X-1-852-A;	14-1114)
Budget Authority	105,000	105,000	105,000	19,950
Outlays	105,000	105,000	105,000	19,950
Oregon and California grant lands		(10-04-1116	-X-1-302-A;	14-1116)
Budget Authority	55,818	55,818	55,818	10,605
Outlays	41,864	41,590	41,727	7,928
Special acquisition of lands and minerals		(10-04-1117	-X-1-302-A;	14-1117)
401(C) Authority	1,300	1,300	1,300	247
Service charges, deposits, and forfeitures		(10-04-5017	-X-2-302-A;	14-5017)
Budget Authority	7,195	7,195	7,195	1,367
Outlays	5,095	5,095	5,095	968
Land acquisition		(10-04-5033	-X-2-302-A;	14-5033)
Budget Authority	6,220	6,220	6,220	1,182
Outlays	1,426	3,066	2,256	428
Operation and maintenance of quarters		(10-04-5048	-X-2-302-A;	14-5048)
401(C) Authority	250	266	258	49
Outlays	210	221	216	41
Range improvements		(10-04-5132	-X-2-302-A;	14-5132)
Budget Authority	9,253	9,253	9,253	1,758
Outlays	5,446	5,848	5,647	1,073
Miscellaneous permanent appropriations		(10-04-9921	-X-2-302-A;	14-9921)
401(C) Other--incl. ob. limit	5,600	6,071	5,836	1,109
Outlays	4,100	5,852	4,976	945
Misc. permanent appropriations (Otr. gen. pur. fiscal		(10-04-9921	-X-2-852-A;	14-9921)
401(C) Other--incl. ob. limit	78,456	80,287	79,372	15,081
Miscellaneous trust funds		(10-04-9971	-X-7-302-A;	14-9971)
401(C) Other--incl. ob. limit	0	764	382	73
Outlays	0	385	192	36
Minerals Management Service				
Minerals and royalty management		(10-06-1917	-X-1-302-A;	14-1917)
Budget Authority	161,497	161,497	161,497	30,684
Outlays	109,818	105,053	107,436	20,413
Payments to states from receipts under Mineral Leasing		(10-06-5003	-X-2-852-A;	14-5003)
401(C) Other--incl. ob. limit	439,035	435,528	437,282	83,084
Outlays	439,035	431,664	435,350	82,716
Office of Surface Mining Reclamation & Enforcement				
Regulation and technology		(10-08-1801	-X-1-302-A;	14-1801)
Budget Authority	100,003	100,003	100,003	19,001
Outlays	67,443	58,252	62,848	11,941
Abandoned mine reclamation fund		(10-08-5015	-X-2-302-A;	14-5015)
Budget Authority	203,720	203,720	203,720	38,707
Outlays	66,280	56,430	61,355	11,657
Bureau of Reclamation				
Loan program		(10-10-0667	-X-1-301-A;	14-0667)
Budget Authority	37,480	37,480	37,480	7,121
Direct Loan Limitation	43,806	43,806	43,806	8,323
Outlays	37,480	18,020	27,750	5,272
Construction program		(10-10-0684	-X-1-301-A;	14-0684)
Budget Authority	607,542	607,542	607,542	115,433
Outlays	533,543	511,962	522,752	99,323
Lower Colorado River basin development fund		(10-10-4079	-X-3-301-A;	14-4079)
401(C) Authority--Off. Coll.	100,798	100,798	100,798	19,152
Outlays	100,798	100,798	100,798	19,152
Upper Colorado River basin fund		(10-10-4081	-X-3-301-A;	14-4081)
401(C) Authority--Off. Coll.	41,485	41,485	41,485	7,882
Outlays	41,485	41,485	41,485	7,882
Working capital fund		(10-10-4524	-X-4-301-A;	14-4524)
Budget Authority	6,400	6,400	6,400	1,216
Outlays	730	4,480	2,605	495
Emergency fund		(10-10-5043	-X-2-301-A;	14-5043)
Budget Authority	1,000	1,000	1,000	190
Outlays	723	605	664	126
General investigations		(10-10-5060	-X-2-301-A;	14-5060)
Budget Authority	29,409	29,409	29,409	5,588
401(C) Authority--Off. Coll.	50	50	50	10
Outlays	21,345	18,988	20,167	3,832
Operation and maintenance		(10-10-5064	-X-2-301-A;	14-5064)
Budget Authority	143,375	143,375	143,375	27,241
401(C) Authority--Off. Coll.	8,000	8,000	8,000	1,520
Outlays	131,206	88,800	110,003	20,901

Account Title	OMB	CBO	Average	Sequester
General administrative expenses		(10-10-5065	-X-2-301-A;	14-5065)
Budget Authority	51,200	51,200	51,200	9,728
Outlays	47,299	46,080	46,690	8,871
Colorado River Dam Fund, Boulder Canyon Project		(10-10-5656	-X-2-301-A;	14-5656)
401(C) Other--incl. ob. limit	55,814	55,814	55,814	10,605
Outlays	44,983	40,970	42,976	8,165
Reclamation trust funds		(10-10-8070	-X-7-301-A;	14-8070)
401(C) Other--incl. ob. limit	48,000	32,085	40,042	7,608
Outlays	45,140	30,288	37,714	7,166
Miscellaneous permanent appropriations		(10-10-9922	-X-2-852-A;	14-9922)
401(C) Other--incl. ob. limit	287	379	333	63
Outlays	287	170	228	43
Geological Survey				
Surveys, investigations and research		(10-12-0804	-X-1-306-A;	14-0804)
Budget Authority	431,540	431,540	431,540	81,993
401(C) Authority--Off. Coll.	73,333	73,333	73,333	13,933
Outlays	489,727	483,408	486,568	92,448
Bureau of Mines				
Mines and minerals		(10-14-0959	-X-1-306-A;	14-0959)
Budget Authority	140,412	140,412	140,412	26,678
Outlays	93,514	96,113	94,814	18,015
Helium fund		(10-14-4053	-X-3-306-A;	14-4053)
401(C) Authority--Off. Coll.	3,674	3,674	3,674	698
Outlays	3,674	3,674	3,674	698
United States Fish and Wildlife Service				
Resource management		(10-18-1611	-X-1-303-A;	14-1611)
Budget Authority	323,638	323,638	323,638	61,491
401(C) Authority--Off. Coll.	2,392	2,392	2,392	454
Outlays	236,970	262,864	249,917	47,484
Construction		(10-18-1612	-X-1-303-A;	14-1612)
Budget Authority	41,513	41,513	41,513	7,887
Outlays	8,718	6,053	7,386	1,403
Land acquisition		(10-18-5020	-X-2-303-A;	14-5020)
Budget Authority	48,240	48,240	48,240	9,166
Outlays	9,220	24,906	17,063	3,242
Operations and maintenance of quarters		(10-18-5050	-X-2-303-A;	14-5050)
401(C) Other--incl. ob. limit	1,662	1,662	1,662	316
Outlays	363	1,163	763	145
National wildlife refuge fund		(10-18-5091	-X-2-852-A;	14-5091)
Budget Authority	5,645	5,645	5,645	1,073
401(C) Other--incl. ob. limit	7,040	7,040	7,040	1,338
Outlays	7,609	7,841	7,725	1,468
Migratory bird conservation account		(10-18-5137	-X-2-303-A;	14-5137)
Budget Authority	7,000	7,000	7,000	1,330
401(C) Other--incl. ob. limit	31,878	31,878	31,878	6,057
Outlays	26,408	29,315	27,862	5,294
Sport fish restoration		(10-18-8151	-X-7-303-A;	14-8151)
401(C) Other--incl. ob. limit	174,000	174,000	174,000	33,060
Outlays	50,359	69,600	59,980	11,396
Contributed funds		(10-18-8216	-X-7-303-A;	14-8216)
401(C) Other--incl. ob. limit	140	140	140	27
Outlays	140	140	140	27
Miscellaneous permanent appropriations		(10-18-9923	-X-2-303-A;	14-9923)
401(C) Other--incl. ob. limit	114,200	114,200	114,200	21,698
Outlays	98,972	57,100	48,036	9,127
National Park Service				
Operation of the national park system		(10-24-1036	-X-1-303-A;	14-1036)
Budget Authority	705,981	705,981	705,981	134,136
401(C) Authority--Off. Coll.	2,214	2,214	2,214	421
Outlays	567,199	572,892	570,046	108,309
John F. Kennedy Center for the Performing Arts		(10-24-1038	-X-1-303-A;	14-1038)
Budget Authority	4,771	4,771	4,771	906
Outlays	3,340	3,578	3,459	657
Construction		(10-24-1039	-X-1-303-A;	14-1039)
Budget Authority	88,095	88,095	88,095	16,738
401(C) Authority--Off. Coll.	8,500	8,500	8,500	1,615
Outlays	22,900	21,714	22,307	4,238
National recreation and preservation		(10-24-1042	-X-1-303-A;	14-1042)
Budget Authority	10,928	10,928	10,928	2,076
Outlays	6,742	9,853	9,298	1,767
Illinois & Michigan Canal National Heritage Corridor C		(10-24-1043	-X-1-303-A;	14-1043)
Budget Authority	250	250	250	48
Outlays	125	125	125	24
Jefferson National Expansion Memorial Commission		(10-24-1044	-X-1-303-A;	14-1044)
Budget Authority	75	75	75	14
Outlays	75	29	52	10
Land acquisition		(10-24-5035	-X-2-303-A;	14-5035)
Budget Authority	110,130	110,130	110,130	20,925
401(C) Authority	30,000	30,000	30,000	5,700
401(C) Authority--Off. Coll.	1,000	500	750	142
Outlays	55,646	53,937	54,792	10,410

Account Title	OMB	CBO	Average	Sequester
Operations and maintenance of quarters		(10-24-5049	-X-2-303-A;	14-5049)
401(C) Other--incl. ob. limit	8,722	8,722	8,722	1,657
Outlays	7,400	5,844	6,622	1,258
Historic preservation fund		(10-24-5140	-X-2-303-A;	14-5140)
Budget Authority	24,250	24,250	24,250	4,608
Outlays	9,479	12,489	10,984	2,087
Miscellaneous permanent appropriations		(10-24-9924	-X-2-303-A;	14-9924)
401(C) Other--incl. ob. limit	1,045	1,045	1,045	199
Outlays	263	418	340	65
Bureau of Indian Affairs				
Operation of Indian programs (Conservation and land ma		(10-76-2100	-X-1-302-A;	14-2100)
Budget Authority	144,428	144,428	144,428	27,441
Outlays	122,904	124,217	123,560	23,476
Operation of Indian programs (Area and regional develo		(10-76-2100	-X-1-452-A;	14-2100)
Budget Authority	516,389	516,389	516,389	98,114
401(C) Authority--Off. Coll.	3,000	3,000	3,000	570
Outlays	444,022	422,052	433,037	82,277
Operation of Indian programs (Elementary, secondary, &		(10-76-2100	-X-1-501-A;	14-2100)
Budget Authority	277,783	277,783	277,783	52,779
Outlays	240,585	226,278	233,432	44,352
Payment to the White Earth econ. dev. and tribal gover		(10-76-2204	-X-1-452-A;	14-2364)
Budget Authority	6,600	6,600	6,600	1,254
Outlays	6,600	6,600	6,600	1,254
Construction		(10-76-2301	-X-1-452-A;	14-2301)
Budget Authority	88,601	88,601	88,601	16,834
Outlays	23,721	20,380	22,050	4,190
Road construction		(10-76-2364	-X-1-452-A;	14-2364)
401(C) Authority--Off. Coll.	1,000	1,000	1,000	190
Outlays	1,000	1,000	1,000	190
Revolving fund for loans		(10-76-4409	-X-3-452-A;	14-4409)
Direct Loan Limitation	16,320	16,320	16,320	3,101
Outlays	13,000	12,500	12,750	2,422
Indian loan guaranty and insurance fund		(10-76-4410	-X-3-452-A;	14-4410)
Budget Authority	2,452	2,452	2,452	466
Direct Loan Limitation	100	100	100	19
Guaranteed Loan Limitation	33,500	33,500	33,500	6,365
Outlays	1,382	1,250	1,316	250
Operations and maintenance of quarters		(10-76-5051	-X-2-452-A;	14-5051)
401(C) Other--incl. ob. limit	8,000	8,636	8,318	1,580
Outlays	2,800	1,848	2,324	442
Miscellaneous permanent appropriations (Area and regio		(10-76-9925	-X-2-452-A;	14-9925)
401(C) Other--incl. ob. limit	47,001	64,000	55,500	10,545
Outlays	13,932	36,608	25,270	4,801
Miscellaneous permanent appropriations (Other general		(10-76-9925	-X-2-806-A;	14-9925)
401(C) Authority	2,000	2,000	2,000	380
Outlays	1,975	1,976	1,976	375
Office of Territorial Affairs				
Administration of territories		(10-82-0412	-X-1-806-A;	14-0412)
Budget Authority	43,864	43,864	43,864	8,334
Outlays	43,000	32,898	37,949	7,210
Trust Territory of the Pacific Islands		(10-82-0414	-X-1-806-A;	14-0414)
Budget Authority	67,387	67,387	67,387	12,804
Outlays	45,470	60,000	52,735	10,020
Compact of free association		(10-82-0415	-X-1-806-A;	14-0415)
401(C) Authority	0	27,920	13,960	2,652
Outlays	0	27,920	13,960	2,652
Office of the Secretary				
Salaries and Expenses		(10-84-0102	-X-1-306-A;	14-0102)
Budget Authority	43,191	43,191	43,191	8,206
Outlays	40,210	36,755	38,482	7,312
Construction management		(10-84-0103	-X-1-306-A;	14-0103)
Budget Authority	684	684	684	130
Outlays	647	616	632	120
Office of the Solicitor				
Office of the Solicitor		(10-86-0107	-X-1-306-A;	14-0107)
Budget Authority	21,280	21,280	21,280	4,043
Outlays	20,429	19,177	19,803	3,763
Office of Inspector General				
Office of Inspector General		(10-88-0104	-X-1-306-A;	14-0104)
Budget Authority	16,725	16,725	16,725	3,178
Outlays	14,852	15,078	14,965	2,843
Operation and maintenance of quarters		(10-88-5052	-X-2-306-A;	14-5052)
401(C) Authority	52	74	63	12
Outlays	36	66	51	10
Department of the Interior		Total		
Budget Authority	5,194,902	5,194,902	5,194,902	987,031
401(C) Authority	33,602	61,560	47,581	9,040
401(C) Authority--Off. Coll.	247,446	246,946	247,196	46,967
401(C) Other--incl. ob. limit	1,020,880	1,022,251	1,021,566	194,100
Direct Loan Limitation	60,226	60,226	60,226	11,443
Guaranteed Loan Limitation	33,500	33,500	33,500	6,365
Outlays	4,944,751	4,927,097	4,935,928	937,825

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Account Title	OMB	CBO	Average	Sequester
Department of Justice				
General Administration				
Salaries and expenses		(11-03-0129	-X-1-751-A;	15-0129)
Budget Authority	75,953	75,953	75,953	14,431
Outlays	56,509	68,358	62,434	11,862
United States Parole Commission				
Salaries and expenses		(11-04-1061	-X-1-751-A;	15-1061)
Budget Authority	10,539	10,539	10,539	2,002
Outlays	10,053	9,086	9,574	1,819
Legal Activities				
Salaries and expenses, Foreign Claims Settlement Commi		(11-05-0100	-X-1-153-A;	15-0100)
Budget Authority	564	564	564	107
Outlays	512	408	460	87
Salaries and expenses, General legal activities		(11-05-0128	-X-1-752-A;	15-0128)
Budget Authority	220,893	220,893	220,893	41,970
Outlays	173,459	189,429	181,444	34,474
Fees and expenses of witnesses		(11-05-0311	-X-1-752-A;	15-0311)
Budget Authority	52,187	52,187	52,187	9,916
Outlays	50,047	36,607	43,327	8,232
Salaries and expenses, Antitrust Division		(11-05-0319	-X-1-752-A;	15-0319)
Budget Authority	43,945	43,945	43,945	8,350
Outlays	30,698	36,122	33,410	6,348
Salaries and expenses, United States Attorneys		(11-05-0322	-X-1-752-A;	15-0322)
Budget Authority	357,328	357,325	357,328	67,892
Outlays	309,089	313,453	311,271	59,141
Salaries and expenses, United States Marshals Service		(11-05-0324	-X-1-752-A;	15-0324)
Budget Authority	164,445	164,445	164,445	31,245
401(C) Authority--Off. Coll.	660	660	660	125
Outlays	142,740	148,932	145,836	27,709
Salaries and expenses, Community Relations Service		(11-05-0500	-X-1-752-A;	15-0500)
Budget Authority	29,786	29,786	29,786	5,659
Outlays	20,403	25,334	22,868	4,345
Support of United States prisoners		(11-05-1020	-X-1-752-A;	15-1020)
Budget Authority	69,630	69,630	69,630	13,230
Outlays	37,600	41,778	39,689	7,541
Assets forfeiture fund		(11-05-5042	-X-2-752-A;	15-5042)
Budget Authority	128,000	112,000	120,000	22,800
Outlays	5,504	44,800	25,152	4,779
United States trustees system fund		(11-05-5073	-X-2-752-A;	15-5073)
Budget Authority	23,743	23,743	23,743	4,511
Outlays	22,555	22,555	22,555	4,285
Federal Bureau of Investigation				
Salaries and expenses		(11-10-0200	-X-1-751-A;	15-0200)
Budget Authority	1,298,303	1,298,303	1,298,303	246,678
401(C) Authority--Off. Coll.	45,311	45,311	45,311	8,609
Outlays	1,019,088	1,083,953	1,051,496	199,784
Drug Enforcement Administration				
Salaries and expenses		(11-12-1100	-X-1-751-A;	15-1100)
Budget Authority	490,193	490,193	490,193	93,137
401(C) Authority--Off. Coll.	850	850	850	162
Outlays	388,192	424,521	406,312	77,199
Immigration and Naturalization Service				
Salaries and expenses		(11-15-1217	-X-1-751-A;	15-1217)
Budget Authority	745,990	745,990	745,990	141,738
401(C) Authority--Off. Coll.	183,686	183,686	183,686	34,900
Outlays	695,435	840,157	767,796	145,881
Immigration legalization		(11-15-5086	-X-2-751-A;	15-1217)
401(C) Authority	180,692	180,692	180,692	34,331
Outlays	168,668	168,668	168,668	32,047
Immigration user fee		(11-15-5087	-X-2-751-A;	15-1217)
401(C) Authority	74,000	74,000	74,000	14,060
Outlays	74,000	74,000	74,000	14,060
Federal Prison System				
Buildings and facilities		(11-20-1003	-X-1-753-A;	15-1003)
Budget Authority	219,249	219,249	219,249	41,657
Outlays	42,670	43,210	42,940	8,159
National Institute of Corrections		(11-20-1004	-X-1-754-A;	15-1004)
Budget Authority	9,149	9,149	9,149	1,738
Outlays	2,304	3,747	3,026	575
Salaries and expenses		(11-20-1060	-X-1-753-A;	15-1060)
Budget Authority	647,792	647,792	647,792	123,080
401(C) Authority--Off. Coll.	12,671	12,671	12,671	2,407
Outlays	565,626	613,654	589,640	112,032
Federal Prison Industries, Incorporated		(11-20-4500	-X-4-753-A;	15-4500)
Obligation Limitation	2,535	2,535	2,535	482
Outlays	2,535	2,535	2,535	482
Office of Justice Programs				
Justice assistance		(11-21-0401	-X-1-754-A;	15-0401)
Budget Authority	416,032	416,032	416,032	79,046
Outlays	62,405	114,677	88,541	16,823

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Account Title	OMB	CBO	Average	Sequester
Crime Victims Fund		(11-21-5041	-X-2-754-A;	15-5041)
401(C) Other--incl. ob. limit	80,000	70,000	75,000	14,250
Obligation Limitation	64,000	64,000	64,000	12,160
Outlays	2,180	19,200	10,690	2,031
Department of Justice		Total		
Budget Authority	5,003,721	4,987,721	4,995,721	949,187
401(C) Authority	254,692	254,692	254,692	48,391
401(C) Authority--Off. Coll.	243,178	243,178	243,178	46,203
401(C) Other--incl. ob. limit	80,000	70,000	75,000	14,250
Obligation Limitation	66,535	66,535	66,535	12,642
Outlays	3,882,142	4,325,184	4,103,664	779,695
Department of Labor				
Employment and Training Administration				
Program administration		(12-05-0172	-X-1-504-A;	16-0172)
Budget Authority	67,363	67,363	67,363	12,799
Outlays	57,609	57,609	57,609	10,946
Training and employment services		(12-05-0174	-X-1-504-A;	16-0174)
Budget Authority	3,705,913	3,705,913	3,705,913	704,123
Outlays	98,111	98,105	98,108	18,641
Community service employment for older Americans		(12-05-0175	-X-1-504-A;	16-0175)
Budget Authority	336,000	336,000	336,000	63,840
Outlays	67,200	67,200	67,200	12,768
State unemployment insurance and employment services		(12-05-0179	-X-1-504-A;	16-0179)
Budget Authority	23,400	23,400	23,400	4,446
Outlays	5,240	5,240	5,240	996
Federal unemployment benefits and allowances		(12-05-0326	-X-1-603-A;	16-0326)
Budget Authority	118,000	0	59,000	11,210
401(C) Authority	0	137,000	68,500	13,015
Outlays	117,000	137,000	127,000	24,130
Unemployment trust fund (Training and employment)		(12-05-8042	-X-7-504-A;	20-8042)
401(C) Authority	0	950,356	475,178	90,284
Obligation Limitation	950,356	0	475,178	90,284
Outlays	351,718	351,718	351,718	66,826
Unemployment trust fund (Unemployment compensation)		(12-05-8043	-X-7-603-A;	20-8042)
401(C) Other--incl. ob. limit	191,200	191,000	191,100	36,309
Obligation Limitation	1,699,935	1,699,935	1,699,935	322,888
Outlays	1,891,135	1,890,935	1,891,035	359,297
Labor-Management Services				
Salaries and expenses		(12-10-0104	-X-1-505-A;	16-0104)
Budget Authority	62,275	62,275	62,275	11,832
Outlays	54,218	54,218	54,218	10,301
Pension Benefit Guaranty Corporation				
Pension Benefit Guaranty Corporation fund		(12-12-4204	-X-3-601-A;	16-4204)
Obligation Limitation	36,874	36,874	36,874	7,006
Outlays	31,822	36,874	34,348	6,526
Employment Standards Administration				
Salaries and expenses		(12-15-0105	-X-1-505-A;	16-0105)
Budget Authority	191,050	191,050	191,050	36,300
401(C) Authority--Off. Coll.	1,000	0	500	95
Outlays	165,406	164,617	165,012	31,352
Special benefits (Federal employee retirement and disa		(12-15-1521	-X-1-602-A;	16-1521)
Budget Authority	210,000	0	105,000	19,950
401(C) Authority	0	227,000	113,500	21,565
Outlays	178,910	227,000	202,955	38,561
Black lung disability trust fund		(12-15-8144	-X-7-601-A;	20-8144)
Budget Authority	158,309	0	79,154	15,039
401(C) Authority	0	162,535	81,268	15,441
Outlays	158,309	162,535	160,422	30,480
Special workers' compensation expenses		(12-15-9971	-X-7-601-A;	16-9971)
401(C) Authority	0	2,920	1,460	277
401(C) Other--incl. ob. limit	2,000	0	1,000	190
Obligation Limitation	441	441	441	84
Outlays	2,441	3,361	2,901	551
Occupational Safety and Health Administration				
Salaries and expenses		(12-18-0400	-X-1-554-A;	16-0400)
Budget Authority	225,811	225,811	225,811	42,904
Outlays	203,889	200,358	202,124	38,404
Mine Safety and Health Administration				
Salaries and expenses		(12-19-1200	-X-1-554-A;	16-1200)
Budget Authority	156,480	156,480	156,480	29,731
Outlays	143,620	141,552	142,586	27,091
Bureau of Labor Statistics				
Salaries and expenses		(12-20-0200	-X-1-505-A;	16-0200)
Budget Authority	167,925	167,925	167,925	31,906
401(C) Authority--Off. Coll.	626	626	626	119
Outlays	150,509	150,509	150,509	28,597
Departmental Management				
Inspector General salaries and expenses		(12-25-0106	-X-1-505-A;	16-0106)
Budget Authority	35,389	35,389	35,389	6,724
Outlays	27,314	27,314	27,314	5,190

Account Title	OMB	CBO	Average	Sequester
Special foreign currency program		(12-25-0151	-X-1-505-A;	16-0151)
Budget Authority	47	47	47	9
Outlays	47	47	47	9
Salaries and expenses		(12-25-0165	-X-1-505-A;	16-0165)
Budget Authority	109.455	109.455	109.455	20.796
Outlays	95.540	100.037	97.790	18.580
Department of Labor		Total		
Budget Authority	5,567.417	5,081.108	5,324.262	1,011.609
401(C) Authority	0	1,479.811	738.906	140.582
401(C) Authority--Off. Coll.	1,625	626	1,126	214
401(C) Other--incl. ob. limit	193.200	191.000	192.100	36.499
Obligation Limitation	2,687.605	1,737.250	2,212.428	420.362
Outlays	3,800.041	3,876.229	3,838.136	729.246
Department of State				
Administration of Foreign Affairs				
Salaries and expenses		(14-05-0113	-X-1-153-A;	19-0113)
Budget Authority	1,612.384	1,612.384	1,612.384	306.353
Outlays	1,431.797	1,273.784	1,352.790	257.030
Protection of foreign missions and officials		(14-05-0520	-X-1-153-A;	19-0520)
Budget Authority	9.100	9.100	9.100	1.729
Outlays	6.719	3.640	5.178	984
Emergencies in the diplomatic and consular service		(14-05-0522	-X-1-153-A;	19-0522)
Budget Authority	4.000	4.000	4.000	760
Direct Loan Limitation	700	700	700	133
Outlays	4.000	2.744	3.372	641
Payment to the American Institute in Taiwan		(14-05-0523	-X-1-153-A;	19-0523)
Budget Authority	9.379	9.379	9.379	1.782
Outlays	7.822	7.897	7.860	1.493
Acquisition and maintenance of buildings abroad		(14-05-0535	-X-1-153-A;	19-0535)
Budget Authority	449.480	449.480	449.480	85.401
401(C) Authority--Off. Coll.	4.000	4.000	4.000	760
Outlays	38.160	86.604	62.382	11.853
Representation allowances		(14-05-0545	-X-1-153-A;	19-0545)
Budget Authority	4.460	4.460	4.460	847
Outlays	3.840	3.831	3.836	729
International Organizations and Conferences				
Contributions for international peacekeeping activitie		(14-10-1124	-X-1-153-A;	19-1124)
Budget Authority	29.400	29.400	29.400	5.586
Outlays	29.165	26.460	27.812	5.284
International conferences and contingencies		(14-10-1125	-X-1-153-A;	19-1125)
Budget Authority	5.460	5.460	5.460	1.037
Outlays	3.112	3.713	3.412	648
Contributions to international organizations		(14-10-1126	-X-1-153-A;	19-1126)
Budget Authority	385.269	385.269	385.269	73.201
401(C) Authority--Off. Coll.	3.950	3.950	3.950	750
Outlays	396.924	369.956	383.440	72.854
International Commissions				
Salaries and expenses, IBWC		(14-15-1069	-X-1-301-A;	19-1069)
Budget Authority	10.800	10.800	10.800	2.052
401(C) Authority--Off. Coll.	72	72	72	14
Outlays	9.252	9.360	9.306	1.768
Construction, IBWC		(14-15-1078	-X-1-301-A;	19-1078)
Budget Authority	3.900	3.900	3.900	741
Outlays	780	780	780	148
American sections, international commissions		(14-15-1082	-X-1-301-A;	19-1082)
Budget Authority	4.174	4.174	4.174	793
Outlays	3.069	2.822	2.946	560
International fisheries commissions		(14-15-1087	-X-1-302-A;	19-1087)
Budget Authority	10.800	10.800	10.800	2.052
Outlays	9.979	10.790	10.384	1.973
Other				
United States emergency refugee and migration assistan		(14-25-0040	-X-1-151-A;	11-0040)
Budget Authority	14.000	14.000	14.000	2.660
Anti-terrorism assistance		(14-25-0114	-X-1-152-A;	19-0114)
Budget Authority	9.840	9.840	9.840	1.870
Outlays	6.336	4.428	5.382	1.023
Soviet-East European research and training		(14-25-0118	-X-1-153-A;	19-0118)
Budget Authority	4.600	4.600	4.600	874
Outlays	2.368	2.760	2.564	487
Payment to the Asia Foundation		(14-25-0525	-X-1-153-A;	19-0525)
Budget Authority	8.800	8.800	8.800	1.672
Outlays	8.800	7.480	8.140	1.547
International narcotics control		(14-25-1022	-X-1-151-A;	11-1022)
Budget Authority	118.445	118.445	118.445	22.505
Outlays	23.689	41.456	32.572	6.189
Migration and refugee assistance		(14-25-1143	-X-1-151-A;	19-1143)
Budget Authority	346.856	346.856	346.856	65.903
Outlays	225.456	232.394	228.925	43.496

Account Title	OMB	CBO	Average	Sequester
U.S. bilateral science and technology agreements		(14-25-1151	-X-1-153-A;	19-1151)
Budget Authority	1,900	1,900	1,900	361
Outlays	1,900	1,900	1,900	361
Fisherman's guaranty fund		(14-25-5121	-X-2-376-A;	19-5121)
Budget Authority	1,800	1,800	1,800	342
Outlays	1,800	1,350	1,575	299
International Center, Washington, D.C.		(14-25-5151	-X-2-153-A;	19-5151)
401(C) Authority	945	945	945	180
Outlays	945	945	945	180
Department of State		Total		
Budget Authority	3,044,847	3,044,847	3,044,847	578,521
401(C) Authority	945	945	945	180
401(C) Authority--Off. Coll.	8,022	8,022	8,022	1,524
Direct Loan Limitation	700	700	700	133
Outlays	2,215,909	2,095,094	2,155,501	409,547
Department of Transportation				
Federal Highway Administration				
Access highways to public recreation areas on certain		(21-05-0503	-X-1-401-A;	69-0503)
Budget Authority	5,000	5,000	5,000	950
Outlays	1,000	840	920	175
Motor carrier safety		(21-05-0552	-X-1-401-A;	69-0552)
Budget Authority	19,515	19,515	19,515	3,708
Outlays	16,966	16,588	16,777	3,188
Railroad-highway crossings demonstration projects		(21-05-0557	-X-1-401-A;	69-0557)
Budget Authority	3,917	3,917	3,917	744
Outlays	783	392	588	112
Waste isolation pilot projects roads		(21-05-0562	-X-1-401-A;	69-0562)
Budget Authority	10,000	10,000	10,000	1,900
Outlays	2,000	1,690	1,845	351
Expressway gap closing demonstration project		(21-05-0563	-X-1-401-A;	69-0563)
Budget Authority	6,200	6,200	6,200	1,178
Outlays	1,240	1,048	1,144	217
Trust fund share of other highway programs		(21-05-8009	-X-7-401-A;	69-8009)
Budget Authority	7,833	7,833	7,833	1,488
Outlays	1,567	783	1,175	223
Baltimore-Washington Parkway		(21-05-8014	-X-7-401-A;	69-8014)
Budget Authority	10,000	10,000	10,000	1,900
Outlays	2,000	1,452	1,726	328
Highway safety research and development		(21-05-8017	-X-7-401-A;	69-8017)
Budget Authority	7,000	7,000	7,000	1,330
Outlays	1,400	1,190	1,295	246
Highway-related safety grants		(21-05-8019	-X-7-401-A;	69-8019)
401(C) Authority	10,000	10,000	10,000	1,900
Obligation Limitation	10,000	10,000	10,000	1,900
Outlays	2,000	2,000	2,000	380
Motor carrier safety grants		(21-05-8027	-X-7-401-A;	69-8027)
Budget Authority	50,000	269	25,134	4,775
401(C) Authority	0	50,000	25,000	4,750
Outlays	12,791	17,594	15,192	2,886
Federal-aid highways		(21-05-8083	-X-7-401-A;	20-8102)
401(C) Authority	13,702,429	13,704,000	13,703,214	2,603,611
401(C) Authority--Off. Coll.	20,213	20,213	20,213	3,840
Obligation Limitation	12,350,000	12,350,000	12,350,000	2,346,500
Outlays	2,236,713	2,253,213	2,244,963	426,543
Right-of-way revolving fund (trust revolving fund)		(21-05-8402	-X-8-401-A;	69-8402)
Direct Loan Limitation	47,850	47,850	47,850	9,092
Outlays	47,850	47,850	47,850	9,092
Miscellaneous appropriations		(21-05-9911	-X-1-401-A;	69-9911)
Budget Authority	1,887	1,887	1,887	359
Outlays	377	321	349	66
Miscellaneous trust funds--Highway		(21-05-9972	-X-7-401-A;	69-9972)
Budget Authority	50,800	50,800	50,800	9,652
Outlays	10,160	8,636	9,398	1,786
National Highway Traffic Safety Administration				
Operations and research		(21-10-0650	-X-1-401-A;	69-0650)
Budget Authority	55,767	55,767	55,767	10,596
Outlays	39,152	36,464	37,808	7,184
Trust fund share of operations and research		(21-10-8016	-X-7-401-A;	69-8016)
Budget Authority	34,172	34,172	34,172	6,493
Outlays	20,479	22,212	21,346	4,056
State and community highway safety grants		(21-10-8020	-X-7-401-A;	69-8020)
401(C) Authority	126,000	126,000	126,000	23,940
Obligation Limitation	142,150	142,150	142,150	27,008
Outlays	61,664	56,860	59,262	11,260
Federal Railroad Administration				
Northeast corridor improvement program		(21-16-0123	-X-1-401-A;	69-0123)
Budget Authority	16,962	16,962	16,962	3,223
Outlays	1,018	1,696	1,357	258

Account Title	OMB	CBO	Average	Sequester
Office of the Administrator		(21-16-0700	-X-1-401-A;	69-0700)
Budget Authority	23,375	23,375	23,375	4,441
Outlays	16,213	16,706	16,460	3,127
Railroad safety		(21-16-0702	-X-1-401-A;	69-0702)
Budget Authority	36,746	36,746	36,746	6,982
Outlays	29,075	27,498	28,286	5,374
Grants to National Railroad Passenger Corporation		(21-16-0704	-X-1-401-A;	69-0704)
Budget Authority	594,791	594,791	594,791	113,010
Outlays	594,791	594,791	594,791	113,010
Settlements of railroad litigation		(21-16-0708	-X-1-401-A;	69-0708)
401(C) Authority	5,214	5,214	5,214	991
Commuter rail service		(21-16-0747	-X-1-401-A;	69-0747)
Budget Authority	5,000	5,000	5,000	950
Outlays	5,000	1,000	3,000	570
Railroad rehabilitation and improvement financing fund		(21-16-4411	-X-3-401-A;	69-4411)
Budget Authority	7,993	7,993	7,993	1,519
Direct Loan Limitation	6,500	6,500	6,500	1,235
Outlays	325	325	325	62
Urban Mass Transportation Administration				
Urban mass transportation fund, administrative expense		(21-20-1120	-X-1-401-A;	69-1120)
Budget Authority	31,000	31,000	31,000	5,890
Outlays	27,701	27,900	27,800	5,282
Research, training and human resources		(21-20-1121	-X-1-401-A;	69-1121)
Budget Authority	17,400	17,400	17,400	3,306
Outlays	7,830	5,220	6,525	1,240
Interstate transfer grants		(21-20-1127	-X-1-401-A;	69-1127)
Budget Authority	200,000	200,000	200,000	38,000
Outlays	30,000	10,000	20,000	3,800
Washington metro		(21-20-1128	-X-1-401-A;	69-1128)
Budget Authority	201,120	201,120	201,120	38,213
Outlays	10,056	10,056	10,056	1,911
Formula grants		(21-20-1129	-X-1-401-A;	69-1129)
Budget Authority	2,000,000	2,000,000	2,000,000	380,000
Outlays	745,438	626,456	685,945	130,330
Discretionary grants		(21-20-8191	-X-7-401-A;	69-8191)
401(C) Authority	1,200,000	1,200,000	1,200,000	228,000
Obligation Limitation	1,002,500	1,002,500	1,002,500	190,475
Outlays	100,250	91,375	95,812	18,204
Federal Aviation Administration				
Operations		(21-25-1301	-X-1-402-A;	69-1301)
Budget Authority	2,302,832	2,302,832	2,302,832	437,538
401(C) Authority--Off. Coll.	9,100	9,100	9,100	1,729
Outlays	2,013,684	2,077,629	2,045,656	388,675
Headquarters administration		(21-25-1302	-X-1-402-A;	69-1302)
Budget Authority	35,121	35,121	35,121	6,673
Outlays	27,339	29,904	28,622	5,438
Operation and maintenance, Metropolitan Washington Air		(21-25-1332	-X-1-402-A;	69-1332)
Budget Authority	22,760	22,760	22,760	4,324
Outlays	19,347	19,347	19,347	3,676
Aircraft purchase loan guarantee program		(21-25-1399	-X-1-402-A;	69-1399)
Budget Authority	729	1,727	1,225	233
Outlays	729	0	362	69
Trust fund share of FAA Operations		(21-25-8104	-X-7-402-A;	69-8104)
Budget Authority	621,168	621,168	621,168	118,022
Outlays	621,168	621,168	621,168	118,022
Grants-in-aid for airports (Airport and airway trust f		(21-25-8106	-X-7-402-A;	69-8106)
Obligation Limitation	1,025,000	1,025,000	1,025,000	194,750
Facilities and equipment (Airport and airway trust fun		(21-25-8107	-X-7-402-A;	69-8107)
Budget Authority	804,584	804,584	804,584	152,871
401(C) Authority--Off. Coll.	3,600	3,600	3,600	684
Outlays	91,300	67,967	79,634	15,130
Research, engineering & development (Airport & airway		(21-25-8108	-X-7-402-A;	69-8108)
Budget Authority	141,700	141,700	141,700	26,923
401(C) Authority--Off. Coll.	600	600	600	114
Outlays	89,425	92,705	91,065	17,302
Coast Guard				
Operating expenses		(21-30-0201	-X-1-403-A;	69-0201)
Budget Authority	1,802,275	1,802,275	1,802,275	342,432
401(C) Authority--Off. Coll.	4,000	4,000	4,000	760
Outlays	1,379,500	1,521,985	1,450,742	275,641
Acquisition, construction, and improvements		(21-30-0240	-X-1-403-A;	69-0240)
Budget Authority	298,000	298,000	298,000	56,620
Outlays	52,000	40,255	46,128	8,764
Retired pay (Coast Guard)		(21-30-0241	-X-1-403-A;	69-0241)
Budget Authority	33,000	0	16,500	3,135
401(C) Authority	0	34,980	17,490	3,323
Outlays	33,000	34,980	33,990	6,458

Account Title	OMB	CBO	Average	Sequester
Reserve training		(21-30-0242	-X-1-403-A;	69-0242)
Budget Authority	64,400	64,400	64,400	12,236
Outlays	57,867	55,770	56,818	10,795
Research, development, test, and evaluation		(21-30-0243	-X-1-403-A;	69-0243)
Budget Authority	20,000	20,000	20,000	3,800
Outlays	9,889	6,720	8,304	1,578
Offshore oil pollution compensation fund		(21-30-5167	-X-2-304-A;	69-5167)
Budget Authority	1,000	1,000	1,000	190
Obligation Limitation	60,000	60,000	60,000	11,400
Outlays	0	100	50	10
Pollution fund		(21-30-5168	-X-2-304-A;	69-5168)
401(C) Authority	5,300	5,300	5,300	1,007
Outlays	35	2,099	1,067	203
Deepwater port liability fund		(21-30-5170	-X-2-304-A;	69-5170)
Budget Authority	1,000	1,000	1,000	190
Obligation Limitation	50,000	50,000	50,000	9,500
Boat safety		(21-30-8149	-X-7-403-A;	69-8149)
Budget Authority	48,000	18,000	33,000	6,270
401(C) Authority	0	15,973	7,986	1,517
Obligation Limitation	30,000	30,000	30,000	5,700
Outlays	36,402	33,000	34,701	6,593
Maritime Administration				
Research and development		(21-35-1716	-X-1-403-A;	69-1716)
Budget Authority	3,500	3,500	3,500	665
Outlays	1,050	2,100	1,575	299
Operations and training		(21-35-1750	-X-1-403-A;	69-1750)
Budget Authority	64,000	64,000	64,000	12,160
Outlays	56,320	57,600	56,960	10,822
Federal ship financing fund		(21-35-4301	-X-3-403-A;	69-4301)
401(C) Authority--Off. Coll.	3,000	3,000	3,000	570
Guaranteed Loan Limitation	70,000	0	35,000	6,650
Outlays	3,000	3,000	3,000	570
Saint Lawrence Seaway Development Corporation				
Saint Lawrence Seaway Development Corporation		(21-40-4089	-X-3-403-A;	69-4089)
Budget Authority	2,000	2,000	2,000	380
401(C) Authority--Off. Coll.	800	800	800	152
Obligation Limitation	1,985	1,985	1,985	377
Outlays	2,700	4,708	3,704	704
Operations and maintenance		(21-40-8003	-X-7-403-A;	69-8003)
Budget Authority	4,000	4,000	4,000	760
Outlays	3,800	0	1,900	361
Office of the Inspector General				
Salaries and expenses		(21-45-0130	-X-1-407-A;	69-0130)
Budget Authority	27,200	27,200	27,200	5,168
Outlays	22,591	23,501	23,046	4,379
Research and Special Programs Administration				
Research and special programs		(21-50-0104	-X-1-407-A;	69-0104)
Budget Authority	19,950	19,950	19,950	3,790
Outlays	13,780	13,169	13,474	2,560
Office of the Secretary				
Salaries and expenses		(21-55-0102	-X-1-407-A;	69-0102)
Budget Authority	51,000	51,000	51,000	9,690
Outlays	51,000	45,900	48,450	9,206
Transportation planning, research, and development		(21-55-0142	-X-1-407-A;	69-0142)
Budget Authority	3,349	3,349	3,349	636
Outlays	1,829	1,328	1,578	300
Payments to air carriers, DOT		(21-55-0150	-X-1-402-A;	69-0150)
Budget Authority	30,000	30,000	30,000	5,700
Outlays	24,304	24,000	24,152	4,589
Department of Transportation		Total		
Budget Authority	9,798,040	9,686,313	9,742,176	1,851,013
401(C) Authority	15,048,943	15,151,467	15,100,204	2,869,039
401(C) Authority--Off. Coll.	41,313	41,313	41,313	7,849
Direct Loan Limitation	54,350	54,350	54,350	10,327
Guaranteed Loan Limitation	70,000	0	35,000	6,650
Obligation Limitation	14,671,635	14,671,635	14,671,635	2,787,610
Outlays	8,637,888	8,661,091	8,649,488	1,643,405
Department of the Treasury				
Departmental Offices				
Salaries and expenses		(15-05-0101	-X-1-803-A;	20-0101)
Budget Authority	80,947	80,947	80,947	15,380
401(C) Authority--Off. Coll.	4,342	4,342	4,342	825
Outlays	66,929	62,466	64,698	12,293
Office of Revenue Sharing				
Salaries and expenses		(15-07-0107	-X-1-851-A;	20-0107)
Budget Authority	5,560	5,560	5,560	1,056
Outlays	5,332	5,560	5,446	1,035

Account Title	OMB	CBO	Average	Sequester
Federal Law Enforcement Training Center				
Salaries and expenses		(15-08-0104	-X-1-751-A;	20-0104)
Budget Authority	29,666	29,666	29,666	5,637
Outlays	25,311	26,710	26,010	4,942
Financial Management Service				
Salaries and expenses		(15-10-1801	-X-1-803-A;	20-1801)
Budget Authority	243,181	243,181	243,181	46,204
Outlays	206,229	211,545	208,887	39,689
Saint Lawrence Seaway toll rebate program		(15-10-8865	-X-1-806-A;	20-8865)
Budget Authority	6,250	6,250	6,250	1,188
Outlays	6,250	6,250	6,250	1,188
Federal Financing Bank Activities				
Federal Financing Bank		(15-11-4521	-X-4-803-A;	20-4521)
401(C) Authority--Off. Coll.	2,000	2,000	2,000	380
Outlays	2,000	2,000	2,000	380
Bureau of Alcohol, Tobacco and Firearms				
Salaries and expenses		(15-13-1000	-X-1-751-A;	20-1000)
Budget Authority	198,463	198,463	198,463	37,708
Outlays	177,551	178,617	178,084	33,836
United States Customs Service				
Salaries and expenses		(15-15-0602	-X-1-751-A;	20-0602)
Budget Authority	840,186	840,186	840,186	159,635
401(C) Authority	79,400	72,950	76,175	14,473
Outlays	955,872	833,891	894,882	170,028
Operation and maintenance, air interdiction program		(15-15-0604	-X-1-751-A;	20-0604)
Budget Authority	166,830	166,830	166,830	31,698
Outlays	132,640	75,074	103,857	19,733
Payments to the Government of Puerto Rico		(15-15-0606	-X-1-751-A;	20-0606)
Budget Authority	7,800	7,800	7,800	1,482
Outlays	7,800	7,800	7,800	1,482
Customs forfeiture fund		(15-15-5693	-X-2-803-A;	20-5693)
Budget Authority	18,000	18,000	18,000	3,420
Outlays	18,000	18,000	18,000	3,420
Customs services at small airports		(15-15-5694	-X-2-806-A;	20-5694)
Budget Authority	0	396	198	38
401(C) Authority	487	0	244	46
Outlays	365	396	380	72
Refunds, transfers and expenses, unclaimed and seized		(15-15-8789	-X-7-803-A;	20-8789)
401(C) Authority	7,537	7,861	7,699	1,463
Outlays	7,537	7,861	7,699	1,463
Bureau of Engraving and Printing				
Bureau of Engraving and Printing fund		(15-20-4502	-X-4-803-A;	20-4502)
401(C) Authority--Off. Coll.	11,086	36,491	23,788	4,520
Outlays	11,086	36,491	23,788	4,520
United States Mint				
Salaries and expenses		(15-25-1616	-X-1-803-A;	20-1616)
Budget Authority	42,930	42,930	42,930	8,157
401(C) Authority--Off. Coll.	111,793	111,793	111,793	21,241
Outlays	151,005	148,331	149,668	28,437
Expansion and improvements		(15-25-9911	-X-1-803-A;	20-9911)
Budget Authority	694	694	694	132
Bureau of the Public Debt				
Administering the public debt		(15-35-0560	-X-1-803-A;	20-0560)
Budget Authority	199,622	199,622	199,622	37,928
Outlays	153,850	159,869	156,860	29,803
Internal Revenue Service				
Salaries and expenses		(15-45-0911	-X-1-803-A;	20-0911)
Budget Authority	88,785	88,785	88,785	16,869
Outlays	62,295	69,253	65,774	12,497
Processing tax returns and executive direction		(15-45-0912	-X-1-803-A;	20-0912)
Budget Authority	1,470,248	1,470,248	1,470,248	279,347
Outlays	1,202,421	1,202,505	1,202,463	228,468
Examinations and appeals		(15-45-0913	-X-1-803-A;	20-0913)
Budget Authority	1,668,104	1,668,104	1,668,104	316,940
Outlays	1,503,898	1,536,980	1,520,439	288,883
Investigation, collection, and taxpayer service		(15-45-0914	-X-1-803-A;	20-0914)
Budget Authority	1,217,545	1,217,545	1,217,545	231,334
Outlays	1,073,731	1,098,297	1,086,014	206,343
Federal tax lien revolving fund		(15-45-4413	-X-3-803-A;	20-4413)
401(C) Authority--Off. Coll.	6,780	6,780	6,780	1,288
Outlays	6,780	6,780	6,780	1,288
United States Secret Service				
Contribution for annuity benefits		(15-55-1407	-X-1-751-A;	20-1407)
401(C) Authority	15,000	15,000	15,000	2,850
Outlays	15,000	15,000	15,000	2,850
Salaries and expenses		(15-55-1408	-X-1-751-A;	20-1408)
Budget Authority	334,109	334,109	334,109	63,481
Outlays	257,042	268,160	262,601	49,894

Account Title	OMB	CBO	Average	Sequester
Department of the Treasury		Total		
Budget Authority	6,618,920	6,619,316	6,619,118	1,257,634
401(C) Authority	102,424	95,811	99,118	18,832
401(C) Authority--Off. Coll.	136,001	161,406	148,703	28,254
Outlays	6,048,925	5,977,836	6,013,380	1,142,544
Environmental Protection Agency				
Environmental Protection Agency				
Construction grants		(20-00-0103	-X-1-304-A;	68-0103)
Budget Authority	2,361,000	2,361,000	2,361,000	448,590
Outlays	24,000	15,060	19,530	3,711
Research and development (Energy supply)		(20-00-C107	-X-1-271-A;	68-0107)
Budget Authority	54,152	54,152	54,152	10,289
Outlays	14,350	21,661	18,006	3,421
Research and development (Pollution control and abatem		(20-00-0107	-X-1-304-A;	68-0107)
Budget Authority	143,348	143,348	143,348	27,236
Outlays	37,987	38,021	38,004	7,221
Abatement, control, and compliance		(20-00-0108	-X-1-304-A;	68-0108)
Budget Authority	609,685	609,685	609,685	115,840
Direct Loan Limitation	35,851	35,851	35,851	6,812
Outlays	274,597	269,478	272,038	51,687
Buildings and facilities		(20-00-0110	-X-1-304-A;	68-0110)
Budget Authority	7,500	7,500	7,500	1,425
Outlays	1,731	1,950	1,840	350
Salaries and expenses		(20-00-0200	-X-1-304-A;	68-0200)
Budget Authority	727,107	727,107	727,107	138,150
401(C) Authority--Off. Coll.	1,800	1,800	1,800	342
Outlays	627,512	619,781	623,646	118,493
Advances to the hazardous substance superfund		(20-00-0250	-X-1-304-A;	68-0250)
Budget Authority	148,500	148,500	148,500	28,215
Revolving fund for certification and other services		(20-00-4311	-X-3-304-A;	68-4311)
401(C) Authority--Off. Coll.	1,500	1,500	1,500	285
Outlays	1,500	1,500	1,500	285
Hazardous substance superfund		(20-00-8145	-X-7-304-A;	20-8145)
Budget Authority	1,411,300	1,411,300	1,411,300	268,147
401(C) Authority--Off. Coll.	40,000	40,000	40,000	7,600
Obligation Limitation	135,000	135,000	135,000	25,650
Outlays	364,000	322,260	343,130	65,195
Leaking underground storage tank trust fund		(20-00-8153	-X-7-304-A;	20-8153)
Budget Authority	50,000	50,000	50,000	9,500
Outlays	7,500	7,500	7,500	1,425
Environmental Protection Agency		Total		
Budget Authority	5,512,592	5,512,592	5,512,592	1,047,392
401(C) Authority--Off. Coll.	43,300	43,300	43,300	8,227
Direct Loan Limitation	35,851	35,851	35,851	6,812
Obligation Limitation	135,000	135,000	135,000	25,650
Outlays	1,353,177	1,297,211	1,325,194	251,788
General Services Administration				
Real Property Activities				
Federal buildings fund		(23-05-4542	-X-4-804-A;	47-4542)
401(C) Authority--Off. Coll.	12,994	12,994	12,994	2,469
Outlays	16,660	18,615	17,638	3,351
Personal Property Activities				
Federal supply service		(23-10-0116	-X-1-804-A;	47-0116)
Budget Authority	164,485	164,485	164,485	31,252
Outlays	148,517	159,538	154,528	29,360
Expenses of transportation audit contracts		(23-10-5246	-X-2-804-A;	47-5246)
401(C) Other--incl. ob. limit	10,929	13,040	11,984	2,277
Outlays	10,929	8,252	9,590	1,822
Information Resources Management Service				
Operating expenses, information resources management s		(23-15-0900	-X-1-804-A;	47-0900)
Budget Authority	29,128	29,128	29,128	5,534
Outlays	21,409	24,796	23,102	4,389
Federal Property Resources Activities				
Operating expenses, federal property resources service		(23-25-0533	-X-1-054-A;	47-0533)
Budget Authority	28,317	28,317	28,317	3,653
Outlays	25,174	24,688	24,931	3,216
Operating expenses, federal property resources service		(23-25-0533	-X-1-804-A;	47-0533)
Budget Authority	11,081	11,081	11,081	2,105
Outlays	11,081	7,059	9,070	1,723
National defense stockpile transaction fund		(23-25-4550	-X-3-054-A;	47-4550)
Budget Authority	10,000	10,000	10,000	1,290
Unobligated Balances--Defense	598,660	598,660	598,660	77,227
Outlays	23,829	23,857	23,843	3,076
Expenses, disposal of surplus real and related persona		(23-25-5254	-X-2-804-A;	47-5254)
401(C) Other--incl. ob. limit	3,819	3,800	3,810	724
Outlays	2,540	2,280	2,410	458
General Activities				
Allowances and office staff for former Presidents		(23-30-0105	-X-1-802-A;	47-0105)
Budget Authority	888	888	888	169
Outlays	803	795	799	152

Account Title	OMB	CBO	Average	Sequester
Office of Inspector General		(23-30-0108	-X-1-804-A;	47-0108)
Budget Authority	21,681	21,681	21,681	4,119
Outlays	18,732	19,749	19,240	3,656
General management and administration, salaries and ex		(23-30-0110	-X-1-804-A;	47-0110)
Budget Authority	119,513	119,573	119,573	22,719
Outlays	92,430	95,855	94,142	17,887
Consumer information center fund		(23-30-4549	-X-3-376-A;	47-4549)
Budget Authority	1,286	1,286	1,286	244
401(C) Authority--Off. Coll.	392	392	387	74
Obligation Limitation	0	1,678	839	159
Outlays	-612	1,058	223	42
General Services Administration		Total		
Budget Authority	386,439	386,439	386,439	71,085
401(C) Authority--Off. Coll.	13,316	13,386	13,381	2,543
401(C) Other--incl. ob. limit	14,748	16,840	15,794	3,001
Obligation Limitation	0	1,678	839	159
Unobligated Balances--Defense	598,660	598,660	598,660	77,227
Outlays	372,492	386,542	379,516	69,132
National Aeronautics and Space Administration				
National Aeronautics and Space Administration				
Research and program management		(26-00-0103	-X-1-250-A;	80-0103)
401(C) Authority--Off. Coll.	5,378	5,378	5,378	1,022
Outlays	5,378	5,378	5,378	1,022
Research and program management (Space flight)		(26-00-0103	-X-1-253-A;	80-0103)
Budget Authority	661,779	661,779	661,779	125,738
Outlays	624,779	608,175	616,447	117,125
Research & program management (Space science, applicat		(26-00-0103	-X-1-254-A;	80-0103)
Budget Authority	466,292	466,292	466,292	88,595
Outlays	406,940	424,326	415,633	78,970
Research & program management (Supporting space activi		(26-00-0103	-X-1-255-A;	80-0103)
Budget Authority	56,619	56,619	56,619	10,758
Outlays	50,708	50,957	50,832	9,658
Research and program management (Air transportation)		(26-00-0103	-X-1-402-A;	80-0103)
Budget Authority	269,294	269,294	269,294	51,166
Outlays	245,913	244,249	245,111	46,571
Space Flight, Control, and Data Comm.		(26-00-0105	-X-1-250-A;	80-0105)
401(C) Authority--Off. Coll.	123,977	123,977	123,977	23,556
Outlays	123,977	123,977	123,977	23,556
Space Flight, Control, and Data Comm. (space flight)		(26-00-0105	-X-1-253-A;	80-0105)
Budget Authority	5,254,200	5,254,200	5,254,200	998,298
Outlays	2,883,000	2,130,960	2,506,980	476,326
Space Flight, Control, and Data Comm. (supporting act.		(26-00-0105	-X-1-255-A;	80-0105)
Budget Authority	845,300	845,300	845,300	160,607
Outlays	387,147	511,406	449,276	85,362
Construction of facilities (Space flight)		(26-00-0107	-X-1-253-A;	80-0107)
Budget Authority	16,300	16,300	16,300	3,097
Outlays	1,141	1,141	1,141	217
Construction of facilities (Space science, application		(26-00-0107	-X-1-254-A;	80-0107)
Budget Authority	9,400	9,400	9,400	1,786
Outlays	658	658	658	125
Construction of facilities (Supporting space activitie		(26-00-0107	-X-1-255-A;	80-0107)
Budget Authority	111,400	111,400	111,400	21,166
Outlays	7,799	7,798	7,798	1,482
Construction of facilities (Air transportation)		(26-00-0107	-X-1-402-A;	80-0107)
Budget Authority	32,200	32,200	32,200	6,118
Outlays	2,254	2,254	2,254	428
Research and development		(26-00-0108	-X-1-250-A;	80-0108)
401(C) Authority--Off. Coll.	17,249	17,249	17,249	3,277
Outlays	17,249	17,249	17,249	3,277
Research and development (Space flight)		(26-00-0108	-X-1-253-A;	80-0108)
Budget Authority	910,600	910,600	910,600	173,014
Outlays	439,820	488,084	463,952	88,151
Research and development (Space science, applications,		(26-00-0108	-X-1-254-A;	80-0108)
Budget Authority	1,827,516	1,827,516	1,827,516	347,228
Outlays	871,725	852,216	911,970	173,274
Research and development (Supporting space activities)		(26-00-0108	-X-1-255-A;	80-0108)
Budget Authority	17,100	17,100	17,100	3,249
Outlays	10,346	10,346	10,346	1,966
Research and development (Air transportation)		(26-00-0108	-X-1-402-A;	80-0108)
Budget Authority	397,000	397,000	397,000	75,430
Outlays	201,510	240,185	220,848	41,961
National Aeronautics and Space Administration		Total		
Budget Authority	10,875,000	10,875,000	10,875,000	2,066,250
401(C) Authority--Off. Coll.	146,604	146,604	146,604	27,855
Outlays	6,280,344	5,819,359	6,049,850	1,149,471
Office of Personnel Management				
Office of Personnel Management				
Salaries and expenses		(27-00-0100	-X-1-805-A;	24-0100)
Budget Authority	100,129	100,129	100,129	19,025
Outlays	95,104	85,236	90,170	17,132

Account Title	OMB	CBO	Average	Sequester
Government payment for annuitants, employees health be		(27-00-0206	-X-1-551-A;	24-0206)
Budget Authority	1,459,000	1,459,000	1,459,000	277,210
Revolving fund		(27-00-4571	-X-4-805-A;	24-4571)
401(C) Authority--Off. Coll.	1,319	1,051	1,185	225
Outlays	1,319	1,051	1,185	225
Civil service retirement and disability fund		(27-00-8135	-X-7-602-A;	24-8135)
Obligation Limitation	52,651	51,969	52,310	9,939
Outlays	52,606	48,924	50,765	9,645
Employees life insurance fund		(27-00-8424	-X-8-602-A;	24-8424)
Obligation Limitation	1,117	1,117	1,117	212
Outlays	1,117	1,117	1,117	212
Employees health benefits fund		(27-00-8440	-X-8-551-A;	24-8440)
Obligation Limitation	8,880	8,880	8,880	1,687
Outlays	8,880	8,880	8,880	1,687
Retired employees health benefits fund		(27-00-8445	-X-8-551-A;	24-8445)
Obligation Limitation	134	134	134	25
Outlays	134	134	134	25
Office of Personnel Management		Total		
Budget Authority	1,559,129	1,559,129	1,559,129	296,235
401(C) Authority--Off. Coll.	1,319	1,051	1,185	225
Obligation Limitation	62,782	62,100	62,441	11,863
Outlays	159,160	145,342	152,251	28,926
Small Business Administration				
Small Business Administration				
Salaries and expenses		(28-00-0100	-X-1-376-A;	73-0100)
Budget Authority	201,800	201,800	201,800	38,342
Outlays	145,648	164,087	154,868	29,425
Pollution control equipment contract guarantee revolvi		(28-00-4147	-X-3-376-A;	73-4147)
Guaranteed Loan Limitation	50,000	50,000	50,000	9,500
Disaster loan fund		(28-00-4153	-X-3-453-A;	73-4153)
Direct Loan Limitation	300,000	364,000	332,000	63,080
Outlays	135,000	189,000	162,000	30,780
Business loan and investment fund		(28-00-4154	-X-3-376-A;	73-4154)
Budget Authority	109,200	109,200	109,200	20,748
Direct Loan Limitation	97,000	97,000	97,000	18,430
Guaranteed Loan Limitation	3,741,000	3,741,000	3,741,000	710,790
Outlays	74,400	74,400	74,400	14,136
Surety bond guarantees revolving fund		(28-00-4156	-X-3-376-A;	73-4156)
Guaranteed Loan Limitation	1,096,000	1,096,000	1,096,000	208,240
Small Business Administration		Total		
Budget Authority	311,000	311,000	311,000	59,090
Direct Loan Limitation	397,000	461,000	429,000	81,510
Guaranteed Loan Limitation	4,887,000	4,887,000	4,887,000	928,530
Outlays	355,048	427,487	391,268	74,341
Veterans Administration				
Veterans Administration				
Veterans job training		(29-00-0103	-X-1-702-A;	36-0103)
Budget Authority	30,000	30,000	30,000	5,700
Outlays	5,500	1,763	3,632	690
Construction, major projects		(29-00-0110	-X-1-703-A;	36-0110)
Budget Authority	382,708	382,708	382,708	72,715
Outlays	11,481	12,247	11,864	2,254
Construction, minor projects		(29-00-0111	-X-1-703-A;	36-0111)
Budget Authority	80,000	80,000	80,000	15,200
Outlays	40,521	37,362	38,942	7,399
Readjustment benefits		(29-00-0137	-X-1-702-A;	36-0137)
Budget Authority	712,938	0	356,469	67,729
401(C) Authority	0	587,432	293,716	55,806
Outlays	576,732	559,483	568,108	107,941
Grants to the Republic of the Philippines		(29-00-0144	-X-1-703-A;	36-0144)
Budget Authority	500	500	500	95
Outlays	79	79	79	15
General operating expenses		(29-00-0151	-X-1-705-A;	36-0151)
Budget Authority	770,500	770,500	770,500	146,395
Outlays	712,713	709,230	710,972	135,085
Medical administration and miscellaneous operating exp		(29-00-0152	-X-1-703-A;	36-0152)
Budget Authority	41,769	41,769	41,769	7,936
Outlays	29,405	31,412	30,408	5,778
Burial benefits and miscellaneous assistance		(29-00-0155	-X-1-701-A;	36-0155)
Budget Authority	115,319	0	57,660	10,955
401(C) Authority	0	121,400	60,700	11,533
Outlays	115,157	121,220	118,188	22,456
Medical care		(29-00-0160	-X-1-703-A;	36-0160)
Budget Authority	741,259	749,010	745,134	141,575
Outlays	696,783	703,776	700,280	133,053
VA medical care 2% split (G-R-H)		(29-00-0160	-X-1-703-G;	36-0160)
Budget Authority--Spec. Rules	179,739	179,484	179,612	179,612
401(C) Authority--Spec. Rules	618	618	618	618
Outlays	154,025	151,393	152,709	152,709

Account Title	OMB	CBO	Average	Sequester
Medical and prosthetic research		(29-00-0161	-X-1-703-A;	36-0161)
Budget Authority	212,798	212,798	212,798	40,432
Outlays	184,709	173,864	179,286	34,064
Grants for construction of state extended care facilit		(29-00-0181	-X-1-703-A;	36-0181)
Budget Authority	42,400	42,400	42,400	8,056
Direct loan revolving fund		(29-00-4024	-X-3-704-A;	36-4024)
Direct Loan Limitation	1,000	1,000	1,000	190
Outlays	0	230	115	22
Loan guaranty revolving fund		(29-00-4025	-X-3-704-A;	36-4025)
Guaranteed Loan Limitation	35,000,000	32,600,000	33,800,000	6,422,000
Outlays	-264,300	-234,000	-249,150	-47,338
Vocational rehabilitation revolving fund		(29-00-4114	-X-3-702-A;	36-4114)
Direct Loan Limitation	900	900	900	171
Outlays	900	884	892	169
Education loan fund		(29-00-4118	-X-3-702-A;	36-4118)
Direct Loan Limitation	35	40	38	7
Outlays	35	40	38	7
Parking garage revolving fund		(29-00-4538	-X-3-703-A;	36-4538)
Budget Authority	26,000	26,000	26,000	4,940
401(C) Authority--Off. Coll.	200	200	200	38
Outlays	893	893	893	170
Veterans Administration		Total		
Budget Authority	3,156,191	2,335,685	2,745,938	521,728
Budget Authority--Spec. Rules	179,739	179,484	179,612	179,612
401(C) Authority	0	708,832	354,416	67,339
401(C) Authority--Off. Coll.	200	200	200	38
401(C) Authority--Spec. Rules	618	618	618	618
Direct Loan Limitation	1,935	1,940	1,938	368
Guaranteed Loan Limitation	35,000,000	32,600,000	33,800,000	6,422,000
Outlays	2,264,633	2,269,876	2,267,256	554,474
Other Independent Agencies				
ACTION				
Operating expenses		(30-01-0103	-X-1-506-A;	44-0103)
Budget Authority	156,287	156,287	156,287	29,695
Outlays	94,663	94,663	94,663	17,986
Administrative Conference of the United States				
Salaries and expenses		(30-02-1700	-X-1-751-A;	95-1700)
Budget Authority	1,483	1,483	1,483	282
Outlays	1,283	1,189	1,236	235
Advisory Committee on Federal Pay				
Salaries and expenses		(30-05-1800	-X-1-805-A;	95-1800)
Budget Authority	206	203	204	39
Outlays	203	163	183	35
Advisory Council on Historic Preservation				
Salaries and expenses		(30-10-2300	-X-1-303-A;	95-2300)
Budget Authority	1,533	1,533	1,533	291
Outlays	1,472	1,257	1,364	259
American Battle Monuments Commission				
Salaries and expenses		(30-12-0100	-X-1-705-A;	74-0100)
Budget Authority	14,813	14,813	14,813	2,814
Outlays	11,169	10,039	10,604	2,015
Architectural & Transportation Barriers Compliance				
Salaries and expenses		(30-14-3200	-X-1-751-A;	95-3200)
Budget Authority	1,890	1,890	1,890	359
Outlays	1,395	1,372	1,386	263
Arms Control and Disarmament Agency				
Arms control and disarmament activities		(30-17-0100	-X-1-153-A;	84-0100)
Budget Authority	29,300	29,300	29,300	5,567
Outlays	24,905	19,426	22,166	4,212
Barry Goldwater Scholarship Foundation				
Payment to the Barry Goldwater Scholarship and Exc.	in	(30-18-0500	-X-1-502-A;	95-0500)
Budget Authority	40,000	40,000	40,000	7,600
Barry Goldwater Scholarship and Excellence in Educ. Fo		(30-18-8281	-X-7-502-A;	95-8281)
401(C) Authority	2,397	0	1,198	228
401(C) Other--incl. ob. limit	0	1,085	542	103
Outlays	987	987	987	188
Board for International Broadcasting				
Grants and expenses		(30-19-1145	-X-1-154-A;	95-1145)
Budget Authority	173,195	173,195	173,195	32,907
Outlays	148,255	155,876	152,066	28,893
Commission of Fine Arts				
Salaries and expenses		(30-32-2600	-X-1-451-A;	95-2600)
Budget Authority	450	450	450	86
Outlays	440	413	426	81
Commission on Civil Rights				
Salaries and expenses		(30-35-1900	-X-1-751-A;	95-1900)
Budget Authority	7,519	7,519	7,519	1,429
Outlays	5,737	6,394	6,066	1,153

Account Title	OMB	CBO	Average	Sequester
Committee for Purchase from the Blind & others				
Salaries and expenses		(30-37-2000	-X-1-505-A;	95-2000)
Budget Authority	778	778	778	148
Outlays	739	739	739	140
Commodity Futures Trading Commission				
Commodity Futures Trading Commission		(30-38-1400	-X-1-376-A;	95-1400)
Budget Authority	29,761	29,761	29,761	5,655
Outlays	25,896	25,892	25,894	4,920
Consumer Product Safety Commission				
Product safety		(30-41-0100	-X-1-554-A;	61-0100)
Budget Authority	34,600	34,600	34,600	6,574
401(C) Authority--Off. Coll.	5	5	5	1
Outlays	29,415	29,475	29,445	5,595
Corporation for Public Broadcasting				
Public broadcasting fund		(30-42-0151	-X-1-503-A;	20-0151)
401(C) Authority	214,000	214,000	214,000	40,660
Outlays	214,000	214,000	214,000	40,660
District of Columbia				
Federal payment to the District of Columbia		(30-43-1700	-X-1-852-A;	20-1700)
Budget Authority	444,500	444,500	444,500	84,455
Outlays	444,500	444,500	444,500	84,455
Federal payment to D.C. (water and sewer services)		(30-43-1700	-X-1-852-B;	20-1700)
Budget Authority	28,810	28,810	28,810	5,474
Outlays	28,810	28,810	28,810	5,474
Federal payment to D.C. (federal pension contribution)		(30-43-1700	-X-1-852-C;	20-1700)
Budget Authority	52,070	52,070	52,070	9,893
Outlays	52,070	52,070	52,070	9,893
Federal payment to D.C. (St. Elizabeth's Hospital)		(30-43-1700	-X-1-852-D;	20-1700)
Budget Authority	35,000	35,000	35,000	6,650
Outlays	35,000	35,000	35,000	6,650
Federal payment to D.C. (D.C. prison)		(30-43-1700	-X-1-852-F;	20-1700)
Budget Authority	20,000	20,000	20,000	3,800
Outlays	0	20,000	10,000	1,900
Equal Employment Opportunity Commission				
Salaries and expenses		(30-46-0100	-X-1-751-A;	45-0100)
Budget Authority	169,529	169,529	169,529	32,211
Outlays	151,071	147,905	149,488	28,403
Export-Import Bank of the United States				
Export-Import Bank of the United States		(30-48-4027	-X-3-155-A;	83-4027)
Budget Authority	100,000	100,000	100,000	19,000
Direct Loan Limitation	680,000	680,000	680,000	129,200
Guaranteed Loan Limitation	11,355,000	11,355,000	11,355,000	2,157,450
Obligation Limitation	18,756	18,756	18,756	3,564
Outlays	13,600	120,887	67,244	12,776
Farm Credit Administration				
Revolving fund for administrative expenses		(30-52-4131	-X-3-351-A;	78-4131)
Obligation Limitation	39,420	39,420	39,420	7,490
Outlays	0	39,420	19,710	3,745
Federal Communications Commission				
Salaries and expenses		(30-60-0100	-X-1-376-A;	27-0100)
Budget Authority	96,954	96,954	96,954	18,421
401(C) Authority--Off. Coll.	75	50	63	12
Outlays	95,570	90,768	93,169	17,702
Federal Election Commission				
Salaries and expenses		(30-65-1600	-X-1-806-A;	95-1600)
Budget Authority	12,883	12,883	12,883	2,448
Outlays	11,585	11,595	11,590	2,202
Federal Emergency Management Agency				
Salaries and expenses (Defense-related activities)		(30-67-0100	-X-1-054-A;	58-0100)
Budget Authority	69,989	69,889	69,989	13,298
Outlays	62,990	66,229	64,610	12,276
Salaries and expenses (Disaster relief and insurance)		(30-67-0100	-X-1-453-A;	58-0100)
Budget Authority	54,011	54,011	54,011	10,262
Outlays	48,610	46,990	47,800	9,082
Emergency planning and assistance (Defense-related act		(30-67-0101	-X-1-054-A;	58-0101)
Budget Authority	236,216	236,216	236,216	44,881
Outlays	106,297	180,941	143,619	27,288
Emergency planning and assistance (Community developme		(30-67-0101	-X-1-453-A;	58-0101)
Budget Authority	25,784	25,784	25,784	4,899
Outlays	11,603	14,181	12,892	2,449
Emergency food and shelter		(30-67-0103	-X-1-605-A;	58-0103)
Budget Authority	125,000	125,000	125,000	23,750
Outlays	125,000	125,000	125,000	23,750
National insurance development fund		(30-67-4235	-X-3-451-A;	58-4235)
401(C) Authority	220	220	220	42
Outlays	220	220	220	42
Federal Labor Relations Authority				
Salaries and expenses		(30-70-0100	-X-1-805-A;	54-0100)
Budget Authority	16,550	16,550	16,550	3,144
Outlays	15,236	15,236	15,236	2,895

Account Title	DMB	CBO	Average	Sequester
Federal Maritime Commission		(30-72-0100	-X-1-403-A;	65-0100)
Salaries and expenses				
Budget Authority	11,947	11,947	11,947	2,270
Outlays	10,747	10,765	10,753	2,043
Federal Mediation and Conciliation Service		(30-76-0100	-X-1-505-A;	93-0100)
Salaries and expenses				
Budget Authority	23,892	23,892	23,892	4,539
Outlays	21,906	21,906	21,906	4,162
Federal Mine Safety and Health Review Commission		(30-79-2800	-X-1-554-A;	95-2800)
Salaries and expenses				
Budget Authority	3,785	3,785	3,785	719
Outlays	3,527	3,547	3,534	671
Federal Retirement Thrift Investment Board		(30-81-0100	-X-1-602-A;	26-0200)
Salaries and expenses				
Budget Authority	5,250	5,250	5,250	998
Outlays	0	5,250	2,625	498
Federal retirement thrift investment fund		(30-81-8141	-X-7-602-A;	26-8141)
Obligation Limitation	11,695	0	5,848	1,111
Outlays	11,695	0	5,848	1,111
Federal Trade Commission		(30-84-0100	-X-1-376-A;	29-0100)
Salaries and expenses				
Budget Authority	65,000	65,000	65,000	12,350
Outlays	59,809	59,475	59,642	11,332
Harry S Truman Scholarship Foundation		(31-01-8296	-X-7-502-A;	95-8296)
Harry S Truman memorial scholarship trust fund				
401(C) Other--incl. ob. limit	2,113	2,113	2,113	401
Outlays	2,113	2,113	2,113	401
Christopher Columbus Quincentennary Jubilee Commis		(31-03-0800	-X-1-376-A;	76-0800)
Salaries and expenses				
Budget Authority	220	220	220	42
Outlays	220	198	209	40
Commission on the Bicentennial of the U.S. Constit		(31-04-0054	-X-1-806-A;	76-0054)
Salaries and expenses				
Budget Authority	13,200	13,200	13,200	2,508
Franklin Delano Roosevelt Memorial Commissio		(31-05-0700	-X-1-806-A;	76-0700)
Salaries and expenses				
Budget Authority	5	5	5	1
Outlays	5	5	5	1
Intelligence Community Staff		(31-07-0400	-X-1-054-A;	95-0400)
Intelligence community staff				
Budget Autnority	21,893	21,893	21,893	2,824
Outlays	17,059	19,738	18,398	2,373
Advisory Commission on Intergovernmental Relations		(31-08-0100	-X-1-806-A;	55-0100)
Salaries and expenses				
Budget Authority	1,750	1,750	1,750	332
Outlays	1,474	1,488	1,481	281
Appalachian Regional Commission		(31-09-0200	-X-1-452-A;	46-0200)
Appalachian regional development programs				
Budget Authority	105,000	105,000	105,000	19,950
Outlays	9,159	7,316	8,236	1,565
Delaware River Basin Commission		(31-10-0100	-X-1-301-A;	46-0100)
Salaries and expenses				
Budget Authority	185	185	185	35
Outlays	185	172	178	34
Contribution to Delaware River Basin Commission		(31-10-0102	-X-1-301-A;	46-0102)
Budget Authority	200	200	200	38
Outlays	200	200	200	38
Interstate Commission on the Potomac River Basin				
Contribution to Interstate Commission on the Potomac R		(31-11-0446	-X-1-304-A;	46-0446)
Budget Authority	79	79	79	15
Outlays	79	79	79	15
Susquehanna River Basin Commission		(31-12-0500	-X-1-301-A;	46-0500)
Salaries and expenses				
Budget Authority	179	179	179	34
Outlays	179	169	174	33
Contribution to Susquehanna River Basin Commission		(31-12-0501	-X-1-301-A;	46-0501)
Budget Authority	240	240	240	46
Outlays	240	240	240	46
Washington Metropolitan Area Transit Authority		(31-14-0300	-X-1-401-A;	46-0300)
Interest payments				
Budget Authority	51,664	0	25,832	4,908
Outlays	51,664	0	25,832	4,908
International Trade Commission		(31-17-0100	-X-1-153-A;	34-0100)
Salaries and expenses				
Budget Authority	33,900	33,900	33,900	6,441
Outlays	30,425	29,187	29,806	5,663
Interstate Commerce Commission		(31-19-0100	-X-1-401-A;	30-0100)
Salaries and expenses				
Budget Authority	46,802	46,802	46,802	8,892
Outlays	43,575	42,121	42,848	8,141

Account Title	OMB	CBO	Average	Sequester
James Madison Memorial Fellowship Foundation		(31-20-0200	-X-1-502-A;	95-0200)
James Madison Memorial Fellowship Foundation				
401(C) Authority	13,200	13,200	13,200	2,508
Outlays	13,200	13,200	13,200	2,508
James Madison Memorial Fellowship Trust Fund		(31-20-8282	-X-7-502-A;	95-8282)
401(C) Other--incl. ob. limit	0	450	225	43
Obligation Limitation	450	0	225	43
Outlays	405	405	405	77
Japan-United States Friendship Commission		(31-21-8025	-X-7-154-A;	95-8025)
Japan-United States friendship trust fund				
Budget Authority	1,408	1,408	1,408	268
Outlays	1,408	1,408	1,408	268
Legal Services Corporation		(31-22-0501	-X-1-752-A;	20-0501)
Payment to the Legal Services Corporation				
Budget Authority	305,500	305,500	305,500	58,045
Outlays	268,900	266,090	267,495	50,824
Marine Mammal Commission		(31-23-2200	-X-1-302-A;	95-2200)
Salaries and expenses				
Budget Authority	910	910	910	173
Outlays	774	809	792	150
Merit Systems Protection Board		(31-24-0100	-X-1-805-A;	41-0100)
Salaries and expenses				
Budget Authority	19,412	19,412	19,412	3,688
Outlays	16,857	16,523	16,690	3,171
Office of the Special Counsel		(31-24-0101	-X-1-805-A;	41-0101)
Budget Authority	4,475	4,475	4,475	850
Outlays	4,098	4,119	4,109	781
National Archives and Records Administration		(31-26-0300	-Y-1-804-A;	88-0300)
Operating expenses				
Budget Authority	101,658	101,659	101,659	19,315
Outlays	80,899	81,215	81,057	15,401
National archives trust fund		(31-26-8436	-X-8-804-A;	88-8436)
401(C) Authority--Off. Coll.	4,343	4,343	4,343	825
Outlays	-245	4,343	2,049	389
National Capital Planning Commission		(31-28-2500	-X-1-451-A;	95-2500)
Salaries and expenses				
Budget Authority	2,684	2,684	2,684	510
Outlays	2,485	2,469	2,477	471
National Commission on Agricultural Finance				
National Center for the Study of Afro-American Hist. a		(31-29-3800	-X-1-503-A;	85-3800)
Budget Authority	139	139	139	26
Outlays	90	90	90	17
National Commission on Libraries & Info. Science		(31-30-2700	-X-1-503-A;	85-2700)
Salaries and expenses				
Budget Authority	683	683	683	130
Outlays	615	615	615	117
National Council on the Handicapped		(31-32-3500	-X-1-506-A;	95-3500)
Salaries and expenses				
Budget Authority	860	860	860	163
Outlays	688	622	655	124
National Endowment for the Arts				
National Endowment for the Arts: Grants and administra		(31-35-0100	-X-1-503-A;	59-0100)
Budget Authority	165,281	165,281	165,281	31,403
Outlays	58,523	52,522	55,522	10,549
National Endowment for the Humanities				
National Endowment for the Humanities: Grants and admi		(31-36-0200	-X-1-503-A;	59-0200)
Budget Authority	142,890	142,890	142,890	27,149
Outlays	71,367	71,629	71,498	13,585
Institute of Museum Services		(31-37-0300	-X-1-503-A;	59-0300)
Institute of Museum Services				
Budget Authority	21,250	21,250	21,250	4,038
Outlays	5,277	5,333	5,305	1,008
National Institute of Building Sciences		(31-38-8222	-X-7-376-A;	95-8222)
National Institute of Building Sciences trust fund				
401(C) Other--incl. ob. limit	522	500	511	97
Outlays	500	500	500	95
National Labor Relations Board		(31-39-0100	-X-1-505-A;	63-0100)
Salaries and expenses				
Budget Authority	132,247	132,247	132,247	25,127
Outlays	124,484	124,484	124,484	23,652
National Mediation Board		(31-40-2400	-X-1-505-A;	95-2400)
Salaries and expenses				
Budget Authority	6,505	6,505	6,505	1,236
Outlays	5,175	5,175	5,175	983
National Science Foundation		(31-45-0100	-X-1-251-A;	49-0100)
Research and related activities				
Budget Authority	1,406,150	1,406,150	1,406,150	267,168
Outlays	639,200	700,263	669,732	127,249

Account Title	OMB	CBO	Average	Sequester
Scientific activities overseas (special foreign curren		(31-45-0102	-X-1-251-A;	49-0102)
Budget Authority	700	700	700	133
Outlays	0	105	52	10
Science and engineering education activities		(31-45-0106	-X-1-251-A;	49-0106)
Budget Authority	99,000	99,000	99,000	18,810
Outlays	11,250	14,751	13,000	2,470
U.S. Antarctic program		(31-45-0200	-X-1-251-A;	49-0200)
Budget Authority	117,000	117,000	117,000	22,230
Outlays	48,789	43,641	46,215	8,781
National Transportation Safety Board				
Salaries and expenses		(31-47-0310	-X-1-407-A;	95-0310)
Budget Authority	22,240	22,240	22,240	4,226
Outlays	20,005	20,016	20,012	3,802
Neighborhood Reinvestment Corporation				
Payment to the Neighborhood Reinvestment Corporation		(31-49-1300	-X-1-451-A;	82-1300)
Budget Authority	19,000	19,000	19,000	3,610
Outlays	19,000	19,000	19,000	3,610
Nuclear Regulatory Commission				
Salaries and expenses (NRC)		(31-50-0200	-X-1-276-A;	31-0200)
Budget Authority	401,000	401,000	401,000	76,190
Outlays	300,020	300,750	300,385	57,073
Occupational Safety and Health Review Commission				
Salaries and expenses		(32-02-2100	-X-1-554-A;	95-2100)
Budget Authority	5,750	5,750	5,750	1,092
Outlays	5,251	5,354	5,302	1,007
Pennsylvania Avenue Development Corporation				
Salaries and expenses		(32-06-0100	-X-1-451-A;	42-0100)
Budget Authority	2,397	2,397	2,397	455
Outlays	1,585	1,942	1,766	336
Public development		(32-06-0102	-X-1-451-A;	42-0102)
Budget Authority	3,924	3,924	3,924	746
Outlays	459	2,943	1,701	323
Land acquisition and development fund		(32-06-4084	-X-3-451-A;	42-4084)
401(C) Authority--Off. Coll.	14,000	14,000	14,000	2,660
Outlays	14,000	14,000	14,000	2,660
Postal Service				
Payment to the Postal Service fund		(32-10-1001	-X-1-372-A;	18-1001)
Budget Authority	650,000	650,000	650,000	123,500
Outlays	650,000	650,000	650,000	123,500
Postal Service		(32-10-4020	-X-3-372-A;	18-4020)
401(C) Authority	1,059,426	1,059,426	1,059,426	201,291
Outlays	1,140,000	0	570,000	108,300
Railroad Retirement Board				
Railroad social security equivalent benefit account		(32-20-8010	-X-7-601-A;	60-8010)
Obligation Limitation	28,000	28,000	28,000	5,320
Outlays	28,000	28,000	28,000	5,320
Rail Industry Pension Fund		(32-20-8011	-X-7-601-A;	60-8011)
Obligation Limitation	30,023	30,023	30,023	5,704
Outlays	29,523	29,523	29,523	5,609
Supplemental Annuity Pension Fund		(32-20-8012	-X-7-601-A;	60-8012)
Obligation Limitation	2,000	2,000	2,000	380
Outlays	2,000	2,000	2,000	380
Securities and Exchange Commission				
Salaries and expenses		(32-35-0100	-X-1-376-A;	50-0100)
Budget Authority	114,500	114,500	114,500	21,755
Outlays	105,942	104,269	105,106	19,970
Selective Service System				
Salaries and expenses		(32-40-0400	-X-1-054-A;	90-0400)
Budget Authority	26,128	26,128	26,128	3,371
Outlays	19,455	21,589	20,522	2,647
Smithsonian Institution				
Salaries and expenses		(32-50-0100	-X-1-503-A;	33-0100)
Budget Authority	188,974	188,974	188,974	35,905
Outlays	167,142	166,760	166,951	31,721
Construction and improvements, National Zoological Par		(32-50-0129	-X-1-503-A;	33-0129)
Budget Authority	2,500	2,500	2,500	475
Outlays	1,125	1,125	1,125	214
Restoration and renovation of buildings		(32-50-0132	-X-1-503-A;	33-0132)
Budget Authority	12,975	12,975	12,975	2,465
Outlays	4,264	5,190	4,727	898
Construction		(32-50-0133	-X-1-503-A;	33-0133)
Budget Authority	6,095	6,095	6,095	1,158
Outlays	2,491	2,438	2,464	468
Salaries and expenses, National Gallery of Art		(32-50-0200	-X-1-503-A;	33-0200)
Budget Authority	35,427	35,427	35,427	6,731
Outlays	30,494	30,446	30,470	5,789
Repair, restoration, and renovation of buildings		(32-50-0201	-X-1-503-A;	33-0201)
Budget Authority	2,400	2,400	2,400	456
Outlays	500	0	250	48

Account Title	OMB	CBO	Average	Sequester
Salaries and expenses, Woodrow Wilson International Ce		(32-50-0400	-X-1-503-A;	33-0400)
Budget Authority	3,362	3,362	3,362	539
Outlays	2,080	2,078	2,079	395
Endowment challenge fund		(32-50-8188	-X-7-503-A;	33-8188)
401(C) Authority	175	175	175	33
Outlays	150	150	150	28
Canal Zone biological area fund		(32-50-8190	-X-7-503-A;	33-8190)
401(C) Authority	125	125	125	24
Outlays	120	120	120	23
Other Temporary Commissions				
State Justice Institute		(33-02-0052	-X-1-752-A;	48-0052)
Budget Authority	7,200	7,200	7,200	1,368
Outlays	5,200	6,480	6,340	1,205
Aviation Safety Commission: Salaries and expenses		(33-02-0053	-X-1-402-A;	48-0053)
Budget Authority	2,000	2,000	2,000	380
Outlays	0	1,300	650	124
Commission on Education of the Deaf: Salaries and Expe		(33-02-0200	-X-1-503-A;	48-0200)
Budget Authority	750	750	750	142
Outlays	407	350	378	72
Navajo and Hopi Indian Relocation Commission		(33-02-1100	-X-1-806-A;	48-1100)
Budget Authority	22,335	22,335	22,335	4,244
Outlays	14,973	14,071	14,522	2,759
Comm. for the Study of Int. Mig. and Coop. Econ. Dev:		(33-02-1400	-X-1-153-A;	48-1400)
Budget Authority	217	217	217	41
Outlays	170	208	189	36
National Commission to Prevent Infant Mortality		(33-02-1500	-X-1-806-A;	48-1500)
Budget Authority	700	700	700	133
Outlays	600	175	388	74
National Council on Public Works Improvement		(33-02-1900	-X-1-806-A;	48-1900)
Budget Authority	1,750	1,750	1,750	332
Outlays	1,400	0	700	133
Tennessee Valley Authority				
TVA fund (Energy supply)		(33-16-4110	-X-3-271-A;	64-4110)
401(C) Authority--Off. Coll.	94,900	94,900	94,900	18,031
Outlays	94,900	83,512	89,206	16,949
TVA fund (Area and regional development)		(33-16-4110	-X-3-452-A;	64-4110)
Budget Authority	100,000	100,000	100,000	19,000
Outlays	45,007	24,599	34,803	6,613
United States Holocaust Memorial Council				
Holocaust Memorial Council		(33-19-3300	-X-1-806-A;	95-3300)
Budget Authority	2,075	2,075	2,075	394
Outlays	2,075	1,647	1,861	354
United States Information Agency				
Salaries and expenses		(33-22-0201	-X-1-154-A;	67-0201)
Budget Authority	588,232	588,232	588,232	111,764
Outlays	480,583	464,116	472,350	89,746
East West Center		(33-22-0202	-X-1-154-A;	67-0202)
Budget Authority	20,000	20,000	20,000	3,800
Outlays	19,811	18,910	19,360	3,678
Radio construction		(33-22-0204	-X-1-154-A;	67-0204)
Budget Authority	66,000	46,000	56,000	10,640
Outlays	28,908	7,360	18,134	3,445
Radio broadcasting to Cuba		(33-22-0208	-X-1-154-A;	67-0208)
Budget Authority	12,759	12,759	12,759	2,424
Outlays	10,016	10,207	10,112	1,921
Educational and cultural exchange program		(33-22-0209	-X-1-154-A;	67-0209)
Budget Authority	145,000	145,000	145,000	27,550
Outlays	71,522	65,975	68,748	13,062
National Endowment for Democracy		(33-22-0210	-X-1-154-A;	67-0210)
Budget Authority	15,000	15,000	15,000	2,850
Outlays	9,000	7,500	8,250	1,568
United States Institute of Peace				
United States Institute of Peace		(33-24-1300	-X-1-153-A;	95-1300)
Budget Authority	625	625	625	119
Outlays	625	375	500	95
United States Sentencing Commission				
Salaries and expenses		(33-31-0938	-X-1-752-A;	10-0938)
Budget Authority	5,800	5,800	5,800	1,102
Outlays	5,552	5,214	5,383	1,023
Other Independent Agencies		Total		
Budget Authority	7,380,170	7,308,503	7,344,336	1,392,493
401(C) Authority	1,289,543	1,287,146	1,288,344	244,786
401(C) Authority--Off. Coll.	113,323	113,298	113,310	21,529
401(C) Other--incl. ob. limit	2,635	4,148	3,391	644
Direct Loan Limitation	680,000	680,000	680,000	129,200
Guaranteed Loan Limitation	11,355,000	11,355,000	11,355,000	2,157,450
Obligation Limitation	130,344	118,199	124,272	23,612
Outlays	6,717,073	5,735,609	6,226,342	1,180,632

Account Title	OMB	CBO	Average	Sequester
Allowances				
Allowances				
Civilian agency pay raises		(51-05-6005	-X-1-921-A;	99-6005)
Budget Authority	0	275,000	137,500	26,125
Outlays	0	264,000	132,000	25,080
Coast Guard pay raises		(51-05-6006	-X-1-921-A;	99-6006)
Budget Authority	0	48,000	24,000	4,560
Outlays	0	48,000	24,000	4,560
Allowances		Total		
Budget Authority	0	323,000	161,500	30,685
Outlays	0	312,000	156,000	29,640
REPORT TOTAL				
Budget Authority	437,746,712	434,417,829	436,082,268	85,027,828
Budget Authority--Spec. Rules	253,221	205,839	229,531	229,531
401(C) Authority	34,231,373	41,640,585	37,935,980	7,201,095
401(C) Authority--Off. Coll.	2,714,990	2,730,922	2,722,955	517,363
401(C) Other--incl. ob. limit	2,633,416	2,798,401	2,715,908	516,026
401(C) Authority--ASI	4,100	4,100	4,100	4,100
401(C) Authority--Spec. Rules	1,191,307	1,442,148	1,316,728	1,316,728
Direct Loan Limitation	28,406,267	28,458,792	28,432,530	5,402,182
Direct Loan Floor	1,038,345	1,038,345	1,038,345	197,286
Guaranteed Loan Limitation	312,321,919	309,851,919	311,086,919	59,106,515
Guaranteed Loan Floor	933,075	933,075	933,075	177,284
Obligation Limitation	24,137,555	22,994,125	23,565,841	4,477,510
Unobligated Balances--Defense	47,218,369	47,673,369	47,445,869	6,120,518
Outlays	288,145,237	289,395,839	288,770,546	85,359,951

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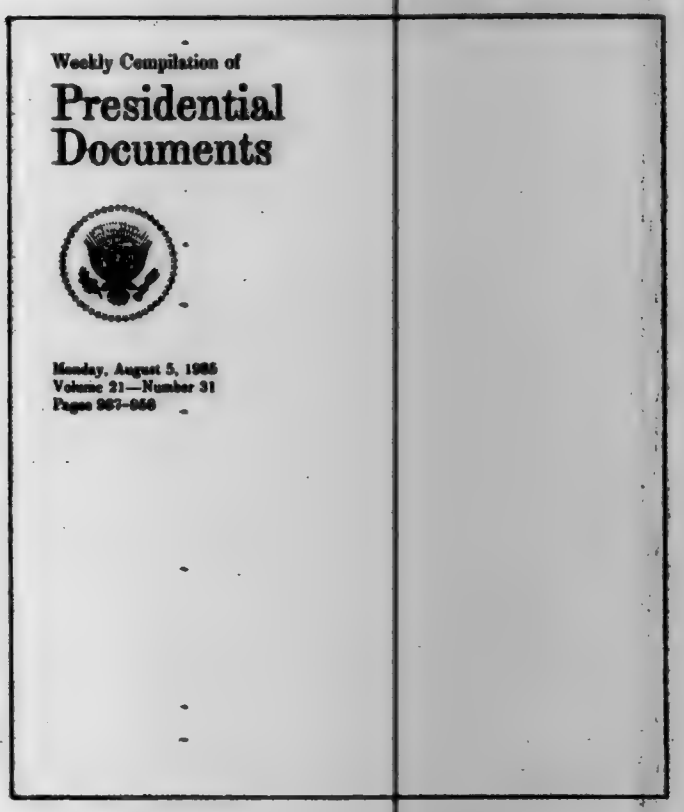

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Friday
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WHO: The Office of the Federal Register.

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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

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WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: Janice Booker, 202-523-5239

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Rules and Regulations

Federal Register
Vol. 52, No. 162
Friday, August 21, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 575]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final Rule.

SUMMARY: Regulation 575 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 351,774 cartons during the period August 23 through August 29, 1987. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 575 (§ 910.875) is effective for the period August 23 through August 29, 1987.

FOR FURTHER INFORMATION CONTACT: James M. Scanlon, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250–0200, telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act", 7 U.S.C. 601–674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1987–88. The committee met publicly on August 18, 1987, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended by an 11 to 1 vote (with one abstention) a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the market is good.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the Act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.875 is added to read as follows:

§ 910.875 Lemon Regulation 575.

The quantity of lemons grown in California and Arizona which may be handled during the period August 23 through August 29, 1987, is established at 351,774 cartons.

Dated: August 19, 1987.

Ronald L. Cioffi,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 87–19351 Filed 8–20–87; 8:45 am]
BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 0, 1, 2, 7, 9, 10, 11, 15, 19, 20, 21, 25, 30, 35, 40, 50, 51, 60, 61, 70, 71, 72, 73, 74, 75, 95, 150, and 170

Statement of Organization and General Information

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is revising its regulations pertaining to its statement of organization and general information. The revision is necessary to reflect the completion of a major reorganization. The revision is also necessary to fulfill the NRC's obligation under the Freedom of Information Act (5 U.S.C. 552(a)(1)(A)) to publish in the Federal Register descriptions of its headquarters and field organizations and to inform industry and the interested public of these organizational changes.

EFFECTIVE DATE: August 19, 1987.

FOR FURTHER INFORMATION CONTACT: Donnie H. Grimsley, Director, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–492–7211.

SUPPLEMENTARY INFORMATION: On July 18, 1977, 10 CFR Part 1, "Statement of Organization and General Information," was promulgated (42 FR 36797). During the past 10 years, Part 1 has been amended over 20 times; but the entire part has never been completely revised. Until the April 12, 1987 reorganization, past reorganizations had a real, yet small, impact on the content of Part 1. The new reorganization has altered virtually the entire part, with the creation of entirely new offices, the consolidation of other offices, and the elimination of still others.

In its revision of Part 1, the NRC has revamped the text of the older version in order to present the information in plain English, a departure from the more formal style of the old text. As a model, the NRC patterned the revision on the office-level functional descriptions found in NUREG–0325 (Revision 10), "NRC Functional Organization Charts," published on February 6, 1987, which contains more detailed descriptions of the functional responsibilities of NRC's offices.[1] NUREG–0325 is revised annually to reflect changes in the functions of NRC offices. Should changes in NUREG–0325 impact the descriptions contained in Part 1, a corresponding revision will be made in Part 1.

Conforming amendments are being made to other affected parts where current information permits. In the future, as the NRC moves toward completion of its consolidation to a new location, other changes will be made to reflect address changes.

Because these amendments deal solely with agency organization and procedure, the notice and comment provisions of the Administrative Procedure Act do not apply under 5 U.S.C. 553(b)(A). The amendments are effective upon publication in the **Federal Register**. Good cause exists to dispense with the usual 30-day delay in the effective date, because the amendments are of a minor and administrative nature dealing with the agency's organization.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.)

Regulatory Analysis

Because this final rule has no economic impact on the public and only a modest economic impact on the NRC for resources to prepare the final rule, no regulatory analysis has been prepared.

Backfit Analysis

This final rule pertains solely to the organization of the NRC; therefore, no backfit analysis has been prepared.

List of Subjects in 10 CFR Parts 0, 1, 2, 9, 15, 21, 150, and 170

Organization and functions (Government agencies).

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting the following revision of 10 CFR Part 1 and conforming amendments to 10 CFR Parts 0, 2, 7, 9, 10, 11, 15, 19, 20, 21, 25, 30, 31, 34, 35, 40, 50, 51, 60, 61, 70, 71, 72, 73, 74, 75, 95, 150, and 170.

1. 10 CFR Part 1 is revised to read as follows:

PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

Subpart A—Introduction

Sec.

1.1 Creation and authority.
1.3 Sources of additional information.
1.5 Location of principal offices and Regional Offices.

Subpart B—Headquarters

1.11 The Commission.

Panels, Boards, and Committees

1.13 Advisory Committee on Reactor Safeguards.
1.15 Atomic Safety and Licensing Board Panel.
1.17 Atomic Safety and Licensing Appeal Panel.
1.19 Other committees, boards, and panels.

Commission Staff

1.21 Office of Inspector and Auditor.
1.23 Office of the General Counsel.
1.25 Office of the Secretary of the Commission.
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Executive Director for Operations

1.31 Office of the Executive Director for Operations.

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1.33 Office of Administration and Resources Management.
1.35 Office for Analysis and Evaluation of Operational Data.
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Subpart C—NRC Seal and Flag

1.51 Description and custody of NRC seal.
1.53 Use of NRC seal or replicas.
1.55 Establishment of official NRC flag.
1.57 Use of NRC flag.
1.59 Report of violations.

Authority: Sec. 23, 161, 68 Stat. 925, 948, as amended (42 U.S.C. 2033, 2201); sec. 29, Pub. L. 85–256, 71 Stat. 579, Pub. L. 95–209, 91 Stat. 1483 (42 U.S.C. 2039); sec. 191, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); secs. 201, 203, 204, 205, 209, 88 Stat. 1242, 1244, 1245, 1246, 1248, as amended (42 U.S.C. 5841, 5843, 5844, 5845, 5849); 5 U.S.C. 552, 553; Reorganization Plan No. 1 of 1980, 45 FR 40561, June 16, 1980.

Subpart A—Introduction

§ 1.1 Creation and authority.

(a) The Nuclear Regulatory Commission was established by the Energy Reorganization Act of 1974, as amended, Pub. L. 93–438, 88 Stat. 1233 (42 U.S.C. 5801 et seq.). This Act abolished the Atomic Energy Commission and, by section 201, transferred to the Nuclear Regulatory Commission all the licensing and related regulatory functions assigned to the Atomic Energy Commission by the Atomic Energy Act of 1954, as amended, Pub. L. 83–703, 68 Stat. 919 (42 U.S.C. 2011 et seq.). These functions included those of the Atomic Safety and Licensing Board Panel and the Atomic Safety and Licensing Appeal Panel. The Energy Reorganization Act became effective January 19, 1975 (E.O. 11834).

(b) As used in this part:

"Commission" means the five members of the Nuclear Regulatory Commission or a quorum thereof sitting as a body, as provided by section 201 of the Energy Reorganization Act of 1974, as amended.

"NRC" means the Nuclear Regulatory Commission, the agency established by Title II of the Energy Reorganization Act of 1974, as amended, comprising the members of the Commission and all

[1] NUREG–0325 is available for inspection and copying for a fee at the NRC Public Document Room 1717 H Street NW., Washington DC 20555. NUREG–0325 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082; or the National Technical Information Service, 5285 Port Royal Road, Springfield VA 22161.

offices, employees, and representatives authorized to act in any case or matter.

§ 1.3 Sources of additional information.

(a) A statement of the NRC's organization, policies, procedures, assignments of responsibility, and delegations of authority is in the Nuclear Regulatory Commission Manual and other elements of the NRC's Management Directives System, including local directives issued by Regional Offices. Letters/memoranda delegations of authority are also issued from time to time that have not yet been incorporated into the Manual, parts of which are republished periodically. Copies of the Manual and other delegations of authority are available for public inspection and copying for a fee at the NRC Public Document Room, 1717 H Street, NW., Washington, DC, and at each of NRC's Regional Offices. Information may also be obtained from the Office of Governmental and Public Affairs or from Public Affairs Officers at the Regional Offices. In addition, "NRC Functional Organization Charts" (NUREG–0325) contains detailed descriptions of the functional responsibilities of NRC's offices. It is revised annually and is available for public inspection at the NRC Public Document Room or for purchase from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082; or from the National Technical Information Service, Springfield, VA 22161.

(b) Commission meetings are open to the public, as provided by the Government in the Sunshine Act, unless they fall within an exemption to the Act's openness requirement and the Commission also has determined that the public interest requires that those particular meetings be closed. Information concerning Commission meetings may be obtained from the Office of the Secretary.

(c) Information regarding the availability of NRC records under the Freedom of Information Act and the Privacy Act of 1974 may be obtained from the Division of Rules and Records, Office of Administration and Resources Management. NRC's regulations are published in the **Federal Register** and codified in Title 10, Chapter I, of the Code of Federal Regulations. They are also published in looseleaf form as "NRC Rules and Regulations," and available on a subscription basis from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Final opinions made in the adjudication of cases are published in "Nuclear Regulatory Commission Issuances," and available on a subscription basis from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

§ 1.5 Location of principal offices and Regional Offices.

(a) The principal NRC offices are located in the Washington, DC, area. Facilities for the service of process and papers are maintained within the District of Columbia at 1717 H Street, NW. The mailing address for all NRC Headquarters offices is Washington, DC 20555. The locations of NRC offices in the Washington, DC, area are as follows:

(1) Air Rights III Building, 4550 Montgomery Avenue, Bethesda, Maryland.

(2) East West/South Towers Building, 4340 East West Highway, Bethesda, Maryland.

(3) East West/West Towers Building, 4350 East West Highway, Bethesda, Maryland.

(4) Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland.

(5) Matomic Building, 1717 H Street, NW, Washington, DC.

(6) Nicholson Lane Building, 5650 Nicholson Lane, Rockville, Maryland.

(7) Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland.

(8) Willste Building, 7915 Eastern Avenue, Silver Spring, Maryland.

(9) Woodmont Building, 8120 Woodmont Avenue, Bethesda, Maryland.

(b) The addresses of the NRC Regional Offices are as follows:

Region I, USNRC, 631 Park Avenue, King of Prussia, PA 19406.

Region II, USNRC, 101 Marietta Street, NW, Suite 2900, Atlanta, GA 30323.

Region III, USNRC, 799 Roosevelt Road, Glen Ellyn, IL 60137.

Region IV, USNRC, 611 Ryan Plaza Drive, Suite 1000, Arlington, TX 76011.

USNRC, Region IV Uranium Recovery Field Office, 730 Simms Street, P.O. Box 25325, Denver, CO 80225.

Region V, USNRC, 1450 Maria Lane, Suite 210, Walnut Creek, CA 94596.

Subpart B—Headquarters

§ 1.11 The Commission.

(a) The Nuclear Regulatory Commission, composed of five members, one of whom is designated by the President as Chairman, is established pursuant to section 201 of the Energy Reorganization Act of 1974, as amended. The Chairman is the principal executive officer of the Commission, and is responsible for the executive and administrative functions with respect to appointment and supervision of personnel, except as otherwise provided by the Energy Reorganization Act of 1974, as amended, and Reorganizaton Plan No. 1 of 1980 (45 FR 40561); distribution of business; use and expenditures of funds (except that the function of revising budget estimates and purposes is reserved to the Commission); and appointment, subject to approval of the Commission, of heads of major administrative units under the Commission. The Chairman is the official spokesman, as mandated by the Reorganization Plan No. 1 of 1980. The Chairman has ultimate authority for all NRC functions pertaining to an emergency involving an NRC Licensee. The Chairman's actions are governed by the general policies of the Commission.

(b) The Commission is responsible for licensing and regulating nuclear facilities and materials and for conducting research in support of the licensing and regulatory process, as mandated by the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and the Nuclear Nonproliferation Act of 1978; and in accordance with the National Environmental Policy Act of 1969, as amended, and other applicable statutes. These responsibilities include protecting public health and safety, protecting the environment, protecting and safeguarding nuclear materials and nuclear power plants in the interest of national security, and assuring conformity with antitrust laws. Agency functions are performed through standards setting and rulemaking; technical reviews and studies; conduct of public hearings; issuance of authorizations, permits, and licenses; inspection, investigation, and enforcement; evaluation of operating experience; and confirmatory research. The Commission is composed of five members, appointed by the President and confirmed by the Senate.

(c) The following staff units and officials report directly to the Commission: Atomic Safety and Licensing Board Panel, Atomic Safety and Licensing Appeal Panel, Office of Inspector and Auditor, Office of Investigation, Office of the General Counsel, Office of the Secretary, and other committees and boards which are authorized or established specifically by the Act. The Advisory Committee on Reactor Safeguards also reports directly to the Commission.

(d)(1) For matters pertaining to Public and Congressional Affairs, the Office of Governmental and Public Affairs reports directly to the Chairman.

(2) For matters pertaining to International and State, Local, and Indian Tribe Programs, the Office of Governmental and Public Affairs reports directly to the Commission.

Panels, Boards, and Committees

§ 1.13 Advisory Committee on Reactor Safeguards.

The Advisory Committee on Reactor Safeguards (ACRS) was established by section 29 of the Atomic Energy Act of 1954, as amended. Consisting of a maximum of 15 members, it reviews and reports on safety studies and applications for construction permits and facility operating licenses; advises the Commission with regard to hazards of proposed or existing reactor facilities and the adequacy of proposed reactor safety standards; upon request of the Department of Energy (DOE), reviews and advises with regard to the hazards of DOE nuclear activities and facilities; reviews any generic issues or other matters referred to it by the Commission for advice. The Committee, on its own initiative, may conduct reviews of specific generic matters or nuclear facility safety-related items. The ACRS conducts studies of reactor safety research and submits reports thereon to the U.S. Congress and the NRC as appropriate.

§ 1.15 Atomic Safety and Licensing Board Panel.

The Atomic Safety and Licensing Board Panel, established pursuant to section 191 of the Atomic Energy Act of 1954, as amended, conducts hearings for the Commission and such other regulatory functions as the Commission authorizes. The Panel is comprised of any number of Administrative Judges (full-time and part-time), who may be lawyers, physicists, engineers, and environmental scientists; and Administrative Law Judges, who hear antitrust, civil penalty, and other cases and serve as Atomic Safety and Licensing Board Chairmen. The Chief Administrative Judge develops and applies procedures governing the activities of Boards, Administrative Judges, and Administrative Law Judges and makes appropriate recommendations to the Commission concerning the rules governing the conduct of hearings. The Panel conducts all licensing and other hearings as directed by the Commission primarily through individual Atomic Safety and Licensing Boards composed of one or three Administrative Judges. Those boards are appointed by either the Commission or the Chief Administrative Judge.

§ 1.17 Atomic Safety and Licensing Appeal Panel.

The Atomic Safety and Licensing Appeal Panel is the organizational body from which are drawn Atomic Safety and Licensing Appeal Boards for particular proceedings. These three-member Appeal Boards exercise the authority and perform the review functions that would otherwise be exercised and performed by the Commission in facility licensing proceedings under 10 CFR Part 50 and such other licensing and enforcement proceedings as the Commission may specify, reviewing initial decisions and other issuances of Atomic Safety and Licensing Boards and other presiding officers. Appeal Boards perform such other regulatory functions as may be delegated to them by the Commission. The Panel is comprised of a Chief Administrative Judge, who serves as Chairman, and other Administrative Judges as may be appointed.

§ 1.19 Other committees, boards, and panels.

Under section 161a. of the Atomic Energy Act of 1954, as amended, the Commission may establish advisory bodies to make recommendations to it. Currently, two advisory committees are in existence.

(a) The Advisory Committee on Medical Uses of Isotopes (ACMUI) was established by the Atomic Energy Commission in July 1958. The ACMUI, composed of physicians and scientists, considers medical questions referred to it by the NRC staff and renders expert opinions regarding medical uses of radioisotopes. The ACMUI also advises the NRC staff, as requested, on matters of policy regarding licensing of medical uses of radioisotopes.

(b) The Advisory Committee for the Decontamination of Three Mile Island, Unit 2, was established by the NRC in October 1980. Its purpose is to obtain input and views from the residents of the Three Mile Island area and afford Pennsylvania government officials an opportunity to participate in the Commission's decisional process regarding cleanup for Three Mile Island, Unit 2.

Commission Staff

§ 1.21 Office of Inspector and Auditor.

The Office of Inspector and Auditor—

(a) Conducts investigations and inquiries to ascertain and verify the integrity of NRC programs and operations;

(b) Investigates allegations of NRC employee misconduct, wrongdoing by NRC contractors, claims for personal property loss or damage, tort claims against the United States and fraud, waste, and mismanagement;

(c) Develops policies and standards governing the Commission's financial and management audit program and administers the Commission's day-to-day audit activities;

(d) Reports to the Commission as necessary to keep the Commission fully informed of its financial management responsibilities and of the results of investigations, inspections, and audits;

(e) Hears individual employee concerns regarding NRC operations and activities;

(f) Refers suspected or alleged criminal matters regarding NRC employees and contractors to the Department of Justice; and

(g) Maintains liaison with Inspector General organizations and other law enforcement agencies.

§ 1.23 Office of the General Counsel.

The Office of the General Counsel, established pursuant to section 25 of the Atomic Energy Act of 1954, as amended—

(a) Directs matters of law and legal policy, providing opinions, advice, and assistance to the agency with respect to all of its activities;

(b) Reviews and prepares appropriate draft Commission decisions on Atomic Safety and Licensing Appeal Board decisions and rulings, public petitions seeking direct Commission action, and rulemaking proceedings involving hearings;

(c) Provides interpretation of laws, regulations, and other sources of authority;

(d) Reviews the legal form and content of proposed official actions;

(e) Prepares or concurs in all contractual documents, interagency agreements, delegations of authority, regulations, orders, licenses, and other legal documents and prepares legal interpretations thereof;

(f) Reviews and directs intellectual property (patent) work;

(g) Represents and protects the interests of the NRC in legal matters and in court proceedings, and in relation to other government agencies, administrative bodies, committees of Congress, foreign governments, and members of the public; and

(h) Represents the NRC staff as a party in NRC administrative hearings.

§ 1.25 Office of the Secretary of the Commission.

The Office of the Secretary of the Commission—

(a) Provides general management services to support the Commission and to implement Commission decisions; and advises and assists the Commission and staff on the planning, scheduling, and conduct of Commission business including preparation of internal procedures;

(b) Prepares the Commission's meeting agenda;

(c) Manages the Commission Staff Paper and COMSECY systems;

(d) Receives, processes, and controls Commission mail, communications, and correspondence;

(e) Maintains the Commission's official records and acts as Freedom of Information administrative coordinator for Commission records;

(f) Codifies Commission decisions in memoranda directing staff action and monitors compliance;

(g) Receives, processes, and controls motions and pleadings filed with the Commission; issues and serves adjudicatory orders on behalf of the Commission; receives and distributes public comments in rulemaking proceedings, issues proposed and final rules on behalf of the Commission; maintains the official adjudicatory and rulemaking dockets of the Commission; and exercises responsibilities delegated to the Secretary in 10 CFR 2.702 and 2.772;

(h) Directs and administers the Headquarters NRC Public Document Room;

(i) Administers the NRC Historical Program;

(j) Integrates office automation initiatives into the Commission's administrative system;

(k) Functions as the NRC Federal Advisory Committee Management Officer; and

(l) Provides guidance and direction on the use of the NRC seal and flag.

§ 1.27 Office of Investigations.

The Office of Investigations—

(a) Develops policy, procedures, and quality control standards for the conduct of all NRC investigations of licensees, permittees, applicants, and their contractors and vendors;

(b) Conducts and supervises investigations within the scope of NRC authority, except those concerning NRC employees and NRC contractors;

(c) Assures the quality of investigations;

(d) Maintains current awareness of inquiries and inspection by other NRC offices to identify the need for formal investigations;

(e) Makes appropriate referrals to the Department of Justice;

(f) Keeps Commission and involved NRC offices currently apprised of matters under investigation as they affect public health and safety, the common defense and security, environmental quality, or the antitrust laws;

(g) Issues subpoenas where necessary or appropriate for the conduct of investigations; and

(h) Maintains liaison with other agencies and organizations to ensure the timely exchange of information of mutual interest.

§ 1.29 Office of Governmental and Public Affairs.

The Office of Governmental and Public Affairs—

(a) Establishes and maintains good communications and working relationships between the NRC and other Governmental and public constituents;

(b) Provides advice and assistance to the Chairman, Commission, and NRC staff on all NRC relations with Congress, State and local Governments, Indian Tribe Organizations, the State Department, the international nuclear community, the news media, and the public;

(c) Serves as primary contact for policy matters between the NRC and these external groups, developing policies for Commission consideration on how NRC should effectively interact with these groups;

(d) Keeps the agency apprised of these groups' activities as they may affect NRC and conveys to NRC management these groups' views toward NRC policies, plans, and activities;

(e) Issues export and import licenses and participates in formulation of policies on nonproliferation issues, international safeguards, and physical security; and

(f) Administers State Agreements program by—

(1) Providing training and technical assistance to Agreement States;

(2) Integrating State/Federal regulatory activities; and

(3) Maintaining the information exchange and analysis program on State activities.

Executive Director for Operations

§ 1.31 Office of the Executive Director for Operations.

(a)(1) The Executive Director for Operations (EDO) reports for all matters to the Chairman, and is subject to the supervision and direction of the Chairman as provided in Reorganization Plan No. 1 of 1980.

(2) Supervises and coordinates policy development and operational activities in the following line offices: The Office of Nuclear Reactor Regulation, the Office of Nuclear Material Safety and Safeguards, the Office of Nuclear Regulatory Research, and the NRC Regional Offices; and the following staff offices: The Office of Enforcement, the Office of Administration and Resources Management, the Office for Analysis and Evaluation of Operational Data, the Office of Small and Disadvantaged Business Utilization and Civil Rights, the Office of Personnel, and other organizational units as shall be assigned by the Commission. The EDO is also responsible for implementation of the Commission's policy directives pertaining to these offices; and

(3) Exercises powers and functions delegated to the EDO under the Reorganization Plan No. 1 of 1980, this chapter, or otherwise by the Commssion or Chairman, as appropriate. The EDO has the authority to perform any function that may be performed by an office director reporting to the EDO.

(b) The Office of Enforcement—

(1) Develops policies and programs for enforcement of NRC requirements; and

(2) Manages major enforcement actions and assesses effectiveness and uniformity of Regional enforcement actions.

(c) The Office of Special Projects—

(1) Implements regulations, issues orders, takes other action associated with licensing and enforcement, and develops and implements policies, programs, and procedures for all aspects of licensing and inspection for the Tennessee Valley Authority (TVA) and Comanche Peak projects, except for actual issuance or revocation of construction permits or operating licenses;

(2) Performs all safety and environmental reviews and evaluations for the assigned nuclear reactor facilities; and

(3) Performs other functions required for implementation of the reactor licensing and inspection programs for TVA and Comanche Peak projects.

(d) The Office of Consolidation—

(1) Assures coordinated planning, budgeting, and execution of tasks required to consolidate the NRC headquarters staff at White Flint North;

(2) Provides a single focus for management review, decision making, and direction for activities undertaken to accomplish the consolidation of the NRC headquarters staff; and

(3) Keeps NRC management and employees as fully and accurately informed as possible about all aspects of the consolidation, especially those aspects which could affect individual

and collective performance of agency missions and tasks.

Staff Offices

§ 1.33 Office of Administration and Resources Management.

The Office of Administration and Resources Management—

(a) Prepares the agency's budget for submission to the EDO;

(b) Performs all accounting and financial systems management functions, including payroll, travel, and license fees, and provides centralized administrative service, such as managing rules and records, facilities, and operations support, publications services, security, and contracts;

(c) Manages centralized information resources of the agency including computer and telecommunications services, the document control system, records managment and services, and the library; and

(d) Provides, to the extent feasible, all necessary administrative, financial, and information support services to other NRC offices.

§ 1.35 Office for Analysis and Evaluation of Operational Data.

The Office for Analysis and Evaluation of Operational Data—

(a) Analyzes and evaluates operational safety data associated with NRC-licensed activities to identify safety issues that require NRC or industry action;

(b) Provides timely feedback of findings and evaluations to NRC staff, licensees, Congress, the public, and organizations, as appropriate;

(c) Identifies NRC needs for operational data and related technical information and provides the NRC focal point for coordination of generic operational safety data and systems with the industry and other agencies;

(d) Develops and manages the NRC program for response to incidents and emergencies, including the timely notification of events to NRR, NMSS, and the Regions, as appropriate;

(e) Develops and provides appropriate technical training for NRC staff;

(f) Develops and manages the agency program for reactor performance indicators;

(g) Develops and directs the agency program for diagnostic evaluations and for investigation of significant operational incidents;

(h) Manages and conducts the support functions for the Committee to Review Generic Requirements (CRGR) in a manner that is consistent with CRGR charter; and

(i) Ensures the administrative processes and functions specified in the CRGR charter are implemented in a thorough and timely manner.

§ 1.37 Office of Small and Disadvantaged Business Utilization and Civil Rights.

The Office of Small and Disadvantaged Business Utilization and Civil Rights—

(a) Develops and implements an effective small and disadvantaged business program in accordance with the Small Business Act, as amended, and plans and implements NRC policies and programs relating to equal employment opportunity and civil rights matters as required by the Equal Employment Opportunity Commission (EEOC) and the Office of Personnel Management (OPM);

(b) Ensures that appropriate consideration is given to Labor Surplus Area firms and Women Business Enterprises, and conducts an outreach program aimed at contractors desiring to do business with NRC;

(c) Maintains liaison with other Government agencies and trade associations;

(d) Coordinates efforts with the Director, Division of Contracts, and Directors of other affected offices;

(e) Develops and recommends for approval by the Executive Director for Operations, NRC policy providing for equal employment opportunity in all aspects of Federal personnel practice;

(f) Develops, monitors, and evaluates the agency's equal employment opportunity efforts and affirmative action programs to ensure compliance with NRC policy;

(g) Serves as the principal contract with local and national public and private organizations to facilitate the NRC equal opportunity program; and

(h) Coordinates all efforts pertaining to small and disadvantaged business utilization and equal employment opportunity with Office Directors and Regional Administrators.

§ 1.39 Office of Personnel.

The Office of Personnel—

(a) Plans and implement NRC policies, programs, and services to provide for the effective organization, utilization, and development of the agency's human resources;

(b) Provides labor relations and personnel policy guidance and supporting services to NRC managers and employees;

(c) Provides training, benefits administration, and counseling services for NRC employees;

(d) Collects, analyzes, and provides data on the characteristics, allocation, utilization, and retention of NRC's workforce;

(e) Provides staffing advice and services to NRC managers and employees; and

(f) Provides executive resources management and organizational and managerial development services to the NRC.

Program Offices

§ 1.41 Office of Nuclear Material Safety and Safeguards.

(a) The Office of Nuclear Material Safety and Safeguards is responsible for protecting the public health and safety, the common defense and security, and the environment by licensing, inspection, and environmental impact assessment for all nuclear facilities and activities, and for the import and export of special nuclear material.

(b) The Office responsibilities include—

(1) Development and implementation of NRC policy for the regulation of activities involving safety, quality, approval, and inspection of the use and handling of nuclear and other radioactive materials, such as uranium activities;

(2) Fuel fabrication and fuel development;

(3) Medical, industrial, academic, and commercial uses of radioactive isotopes;

(4) Safeguards activities;

(5) Transportation of nuclear materials, including certification of transport containers;

(6) Out-of-reactor spent fuel storage;

(7) Safe management and disposal of low-level and high-level radioactive wastes;

(8) Planning and direction of program for financial assurance of NMSS licensees; and

(9) Management of the decommissioning of facilities and sites when their licensed functions are over.

(c) Safeguards responsibilities include—

(1) Development of overall agency policy;

(2) Monitoring and assessment of the threat environment, including liaison with intelligence agencies, as appropriate; and

(3) Those licensing and review activities appropriate to deter and protect against threats of radiological sabotage and threats of theft or diversion of special nuclear material at fuel facilities and during transport.

(d) The Office identifies and takes action to control safety and safeguards issues for activities under its responsibility, including consulting and coordinating with international Federal, State, and local agencies, as appropriate.

§ 1.43 Office of Nuclear Reactor Regulation.

The Office of Nuclear Reactor Regulation—

(a) Implements regulations and develops and implements policies, programs, and procedures for all aspects of licensing, inspection, and safeguarding of—

(1) Manufacturing, production, and utilization facilities, except for those concerning fuel reprocessing plants and isotopic enrichment plants;

(2) Receipt, possession, and ownership of source, byproduct, and special nuclear material used or produced at facilities licensed under 10 CFR Part 50;

(3) Operators of such facilities;

(4) Emergency preparedness at such facilities; and

(5) Contractors and suppliers of such facilities.

(b) Identifies and takes action regarding conditions and licensee performance that may adversely affect public health and safety, the environment, or the safeguarding of nuclear reactor facilities;

(c) Assesses and recommends or takes action regarding incidents or accidents;

(d) Provides special assistance as required in matters involving reactor facilities exempt from licensing;

(e) Provides guidance and implementation direction to Regional Offices on reactor licensing, inspection, and safeguards programs assigned to the Region, and appraises Regional program performance in terms of effectiveness and uniformity;

(f) Performs other functions required for implementation of the reactor licensing, inspection, and safeguards programs;

(g) Performs management of the NRC allegation program; and

(h) Performs review and evaluation related to regulated facilities insurance, indemnity, and antitrust matters.

§ 1.45 Office of Nuclear Regulatory Research.

The Office of Nuclear Regulatory Research—

(a) Plans, recommends, and implements programs of nuclear regulatory research, standards development, and resolution of generic safety issues for nuclear power plants and other facilities regulated by the NRC;

(b) Develops and promulgates all technical regulations;

(c) Coordinates research activities within and outside the agency including appointment of staff to committees and conferences; and

(d) Coordinates NRC participation in international standards-related activities and national volunteer standards efforts, including appointment of staff to committees.

§ 1.47 NRC Regional Offices.

Each Regional Administrator executes established NRC policies and assigned programs relating to inspection, enforcement, licensing, State agreements, State liaison, and emergency response within Regional boundaries set out in § 1.5(b) of this part.

Subpart C—NRC Seal and Flag

§ 1.51 Description and custody of NRC seal.

(a) Pursuant to section 201(a) of the Energy Reorganization Act of 1974, the Nuclear Regulatory Commission, has adopted an official seal. Its description is as follows: An American bald eagle (similar to that on the Great Seal of the United States of America) of brown and tan with claws and beak of yellow, behind a shield of red, white, and blue, clutching a cluster of thirteen arrows in its left claw and a green olive branch in its right claw, positioned on a field of white, with the words "United States Nuclear Regulatory Commission" in dark blue encircling the eagle. The eagle represents the United States of America and its interests.

(b) The Official Seal of the Nuclear Regulatory Commission is illustrated as follows:

(c) The Secretary of the Commission is responsible for custody of the impression seals and of replica (plaque) seals.

§ 1.53 Use of NRC seal or replicas.

(a) The use of the seal or replicas is restricted to the following:

(1) NRC letterhead stationery;

(2) NRC award certificates and medals;

(3) Security credentials and employee identification cards;

(4) NRC documents, including agreements with States, interagency or governmental agreements, foreign patent applications, certifications, special reports to the President and Congress and, at the discretion of the Secretary of the Commission, such other documents as the Secretary finds appropriate;

(5) Plaques—the design of the seal may be incorporated in plaques for display at NRC facilities in locations such as auditoriums, presentation rooms, lobbies, offices of senior officials, on the fronts of buildings, and other places designated by the Secretary;

(6) The NRC flag (which incorporates the design of the seal);

(7) Official films prepared by or for the NRC, if deemed appropriate by the Director of Governmental and Public Affairs;

(8) Official NRC publications that represent an achievement or mission of NRC as a whole, or that are cosponsored by NRC and other Government departments or agencies; and

(9) Any other uses as the Secretary of the Commission finds appropriate.

(b) Any person who uses the official seal in a manner other than as permitted by this section shall be subject to the provisions of 18 U.S.C. 1017, which provides penalties for the fraudulent or wrongful use of an official seal, and to other provisions of law as applicable.

§ 1.55 Establishment of official NRC flag.

The official flag is based on the design of the NRC seal. It is 50 inches by 66 inches in size with a 38-inch diameter seal incorporated in the center of a dark blue field with a gold fringe.

§ 1.57 Use of NRC flag.

(a) The use of the flag is restrictd to the following:

(1) On or in front of NRC installations;

(2) At NRC ceremonies;

(3) At conferences involving official NRC participation (including permanent display in NRC conference rooms);

(4) At Governmental or public appearances of NRC executives;

(5) In private offices of senior officials; or

(6) As the Secretary of the Commission otherwise authorizes.

(b) The NRC flag must only be displayed together with the U.S. flag. When they are both displayed on a speaker's platform, the U.S. flag must occupy the position of honor and be placed at the speaker's right as he or she faces the audience, and the NRC flag must be placed at the speaker's left.

§ 1.8a Report of violations.

In order to ensure adherence to the authorized uses of the NRC seal and flag as provided in this subpart, a report of each suspected violation of this subpart, or any questionable use of the NRC seal or flag, should be submitted to the Secretary of the Commission.

The following amendments are also being made to other parts of the regulations in this chapter.

PART 0—CONDUCT OF EMPLOYEES

2. The authority citation for Part 0 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

3. in § 0.735–3, the introductory text of paragraph (e) and paragraphs (e)(1) and (f) are revised to read as follows:

§ 0.735–3 Responsibilities and authorities.

* * * * *

(e) The Director, Office of Personnel—

(1) Provides a copy of this part to each employee and special Government employee, and to each new employee at the time of his or her entrance on duty.

* * * * *

(f) The Director, Office of Personnel, assumes the responsibilities assigned in §§ 0.735–28(b) and 0.735–49.

* * * * *

§ 0.735–28 [Amended]

4. In § 0.735–28, paragraph (a)(2), after the words "Office of Administration" add the words "and Resources Management", and in paragraph (b), remove the words "Office of Administration" and add in their place the words "Office of Personnel".

§ 0.735–49 [Amended]

5. In § 0.735–49, paragraph (a), remove the words "The Director, Office of Administration," and add in their place the words "The Director, Office of Personnel".

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

6. The authority citation for Part 2 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 2.101 [Amended]

7. In § 2.101, paragraphs (c)(3) and (e)(1), remove the words "Antitrust and Economic Anlysis Branch," and add in their place the words "Policy Development and Technical Support Branch".

§ 2.201 [Amended]

8. In § 2.201, in paragraph (a), remove the words "Director, Office of Inspection and Enforcement" and add in their place the words "Deputy Executive Director for Regional Operations"; and in paragraphs (b) and (c), remove the words "Director, Office of Inspection and Enforcement" and add in their place the words "Deputy Executive Director for Regional Operations or the Deputy's designee".

§ 2.202 [Amended]

9. In § 2.202, paragraph (a) introductory text, remove the words, "Director, Office of Inspection and Enforcement" and add in their place the words "Deputy Executive Director for Regional Operations, or the Deputy's designee"; and add to the words "Office of Administration" the words "and Resources Management"; and in paragraph (f), remove the words "Director, Office and Inspection and Enforcement" and add in their place the words "Deputy Executive Director for Regional Operations or the Deputy's designee".

10. In § 2.205, paragraphs (a), (c), (d), (g), (h), and (i) are revised to read as follows:

§ 2.205 Civil penalties.

(a) Before instituting any proceeding to impose a civil penalty under section 234 of the Act, the Deputy Executive Director for Regional Operations, or the Deputy's designee, as appropriate, shall serve a written notice of violation upon the person charged. This notice may be included in a notice issued pursuant to § 2.201. The notice of violation shall specify the date or dates, facts, and the nature of the alleged act or omission with which the person is charged, and shall indentify specifically the particular provision or provisions of the law, rule, regulation, license, permit, or cease an desist order involved in the alleged violation and must state the amount of each proposed penalty. The notice of violation shall also advise the person charged that the civil penalty may be paid in the amount specified therein, or the proposed imposition of the civil penalty may be protested in its entirety or in part, by a written answer, either denying the violation or showing extenuating circumstances. The notice of violation shall advise the person charged that upon failure to pay a civil penalty subsequently determined by the Commission, if any, unless compromised, remitted, or mitigated, be collected by civil action, pursuant to section 234c of the Act.

* * * * *

(c) If the person charged with violation fails to answer within the time specified in paragraph (b) of this section, an order may be issued imposing the civil penalty in the amount set forth in the notice of violation described in paragraph (a) of this section.

(d) If the person charged with violation files an answer to the notice of violation, the Deputy Executive Director for Regional Operations, or the Deputy's designee, upon consideration of the answer, will issue an order dismissing the proceeding or imposing, mitigating, or remitting the civil penalty. The person charged may, within twenty (20) days of the date of the order or other time specified in the order, request a hearing.

* * * * *

(g) The Deputy Executive Director for Regional Operations, or the Deputy's designee, as appropriate may compromise any civil penalty, subject to the provisions of § 2.203.

(h) If the civil penalty is not compromised, or is not remitted by the Deputy Executive Director for Regional Operations, or the Deputy's designee, as appropriate, the presiding officer, or the Commission, and if payment is not made within ten (10) days following either the service of the order described in paragraph (c) or (f) of this section, or the expiration of the time for requesting a hearing described in paragraph (d) of this section, the Deputy Executive Director for Regional Operations, or the Deputy's designee, as appropriate, may refer the matter to the Attorney General for collection.

(i) Except when payment is made after compromise or mitigation by the Department of Justice or as ordered by a court of the United States, following reference of the matter to the Attorney General for collection, payment of civil penalties imposed under section 234 of the Act shall be made by check, draft, or money order payable to the Treasurer of the United States, and mailed to the Director, Office of Enforcement.

11. In § 2.206, paragraphs (a) and (b) are revised to read as follows:

§ 2.206 Requests for action under this subpart.

(a) Any person may file a request to institute a proceeding pursuant to § 2.202 to modify, suspend, or revoke a license, or for such other action as may be proper. Such a request shall be addressed to the Executive Director for Operations and shall be filed either (1) by delivery to the Public Document Room at 1717 H Street, NW., Washington, DC, or (2) by mail or telegram addessed to the Executive

Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555. The requests shall specify the action requested and set forth the facts that constitute the basis for the request. The Executive Director for Operations will refer the request to the Director of the NRC Office with responsibility for the subject matter of the request for appropriate action in accordance with paragraph (b) of this section.

(b) Within a reasonable time after a request pursuant to paragraph (a) of this section has been received, the Director of the NRC office with responsibility for the subject matter of the request shall either institute the requested proceeding in accordance with this subpart or shall advise the person who made the request in writing that no proceeding will be instituted in whole or in part, with respect to the request, and the reasons for the decision.

* * * * *

12. In § 2.802, paragraphs (b) and (g) are revised to read as follows:

§ 2.802 Petition for rulemaking.

* * * * *

(b) A prospective petitioner is encouraged to confer with the staff prior to the filing of a petition for rulemaking. Questions regarding applicable NRC regulations sought to be amended, the procedures for filing a petition for rulemaking, or requests for a meeting with the appropriate NRC staff to discuss a petition should be addressed to the Director, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Chief, Rules and Procedures Branch. A prospective petitioner may also telephone the Division of Rules and Records on 301–492–7086 or Toll Free on 800–368–5642.

* * * * *

(g) The Director, Division of Rules and Records, Office of Administration and Resources Management, will prepare on a quarterly basis a summary of petitions for rulemaking before the Commission, including the status of each petition. A copy of the report will be available for public inspection and copying for a fee in the Commission's Public Document Room, 1717 H Street, NW., Washington, DC.

PART 7—ADVISORY COMMITTEES

13. The authority citation for Part 7 is revised to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 92–463 86 Stat. 770 (5 U.S.C. App. I).

§ 7.19 [Amended]

14. In § 7.19, paragraph (b), after the words "Office of Administration" add the words "and Resources Management".

PART 9—PUBLIC RECORDS

15. The authority citation for Part 9 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 9.53 [Amended]

16. In § 9.53, paragraphs (a) and (b), after the words "Director, Office of Administration" add the words "and Resources Management".

§ 9.54 [Amended]

17. In § 9.54, paragraph (b), after the words "Director, Office of Administration," add the words "and Resources Management".

§ 9.65 [Amended]

18. In § 9.65, paragraph (a) introductory text, after the words "Director, Office of Administration," add the words "and Resources Management".

§ 9.66 [Amended]

19. In § 9.66, paragraphs (a)(1) introductory text, (a)(2), (a)(3), and (c)(2), after the words "Director, Office of Administration," add the words "and Resources Management".

§ 9.69 [Amended]

20. In § 9.69, paragraph (a), after the words "Director, Office of Administration," add the words "and Resources Management".

21. Section 9.85 is revised to read as follows:

§ 9.85 Fees.

The NRC shall charge fees for search for or review of records requested pursuant to this subpart or for making copies or extracts of records in order to make them available for review. The NRC shall charge fees established pursuant to 5 U.S.C. 552a(f)(5) according to the schedule contained in § 9.14 of this part for actual copies of records requested by individuals pursuant to the Privacy Act of 1974, unless the Director, Office of Administration and Resources Management, waives the fees because of the inability of the individual to pay or because making the records available without cost, or at a reduction in cost, is otherwise in the public interest.

PART 10—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO RESTRICTED DATA OR NATIONAL SECURITY INFORMATION OR AN EMPLOYMENT CLEARANCE

22. The authority citation for Part 10 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 10.5 [Amended]

23. In § 10.5, paragraph (b), after the words "Director, Office of Administration", add the words "and Resources Management".

§ 10.12 [Amended]

24. In § 10.12, paragraph (a), after the words "Director, Office of Administration", add the words "and Resources Management".

§ 10.21 [Amended]

25. In § 10.21, after the words "Director, Office of Administration," add the words "and Resources Management".

§ 10.22 [Amended]

26. In § 10.22, in the introductory paragraph and in paragraphs (c), (d), and (e), after the words "Director, Office of Administration", add the words "and Resources Management".

§ 10.23 [Amended]

27. In § 10.23, paragraphs (a) and (b), after the words "Director, Office of Administration", add the words "and Resources Management".

§ 10.24 [Amended]

28. In § 10.24, paragraphs (a) and (b), after the words "Director, Office of Administration", add the words "and Resources Management".

§ 10.27 [Amended]

29. In § 10.27, paragraph (c), after the words "Director, Office of Administration", add the words "and Resources Management".

§ 10.28 [Amended]

30. In § 10.28, paragraph (m), after the words "Director, Office of Administration", add the words "and Resources Management".

§ 10.29 [Amended]

31. In § 10.29, paragraph (d), after the words "Director, Office of Administration", add the words "and Resources Management".

§ 10.29 [Amended]

32. In § 10.30, after the words "Director, Office of Administration", add the words "and Resources Management".

§ 10.31 [Amended]

33. In § 10.31, paragraph (a), after the words "Director, Office of Administration", add the words "and Resources Management".

§ 10.32 [Amended]

34. In § 10.32, paragraph (b), after the words "Director, Office of Administration", add the words "and Resources Management".

§ 10.33 [Amended]

35. In § 10.33, paragraphs (c) and (d), after the words "Director, Office of Administration", add the words "and Resources Management".

§ 10.34 [Amended]

36. In § 10.34, paragraph (b), after the words "Director, Office of Administration", add the words "and Resources Management".

§ 10.35 [Amended]

37. In § 10.35, paragraph (b), after the words "Director, Office of Administration", add the words "Resources Management".

§ 10.37 [Amended]

38. In § 10.37, after the words "Director, Office of Administration", add the words "and Resources Management".

PART 11—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO OR CONTROL OVER SPECIAL NUCLEAR MATERIAL

39. The authority citation for Part 11 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 11.16 [Amended]

40. In § 11.16, after the word "Chief," remove the words "Facilities and" and leave the words "Personnel Security Branch".

PART 15—DEBT COLLECTION PROCEDURES

41. The authority citation for Part 15 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 15.3 [Amended]

42. In § 15.3, remove the word "Controller" and add in its place the words "Director, Office of Administration and Resources Management".

43. In § 15.35, the introductory text of paragraph (c) is revised to read as follows:

§ 15.35 Payments.

* * * * *

(c) To whom payment is made. Payment of a debt is made by check, electronic transfer, draft, or money order payable to the United States Nuclear Regulatory Commission and mailed or delivered to the Division of Accounting and Finance, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, unless payment is—

* * * * *

PART 19—NOTICES, INSTRUCTIONS, AND REPORTS TO WORKERS; INSPECTIONS

44. The authority citation for Part 19 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

45. Section 19.5 is revised to read as follows:

§ 19.5 Communications.

Except where otherwise specified in this part, all communications and reports concerning the regulations in this part should be addressed to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in Appendix D of Part 20 of this chapter. Communications, reports, and applications may be delivered in person at the Commission's office at 1717 H Street, NW., Washington, DC; or at 7920 Norfolk Avenue, Bethesda, Maryland.

46. In § 19.11, paragraph (c), Note is revised to read as follows:

§ 19.11 Posting of notices to workers.

* * * * *

(c) * * *

Note: Copies of Form NRC–3 may be obtained by writing to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in Appendix D of Part 20 of this chapter.

* * * * *

§ 19.16 [Amended]

47. In § 19.16, in paragraph (a), remove the words "Director of Inspection and Enforcement, to the" and "Director of Inspection and Enforcement,"; and in paragraph (b), remove the words "Director of Inspection and Enforcement or".

§ 19.17 [Amended]

48. In § 19.17, paragraphs (a) and (b), remove the words "Director of the Office of Inspection and Enforcement or the".

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

49. The authority citation for Part 20 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 20.103 [Amended]

50–51. In § 20.103, paragraphs (a)(1) footnote 5, remove the words "Standards Development" and add in their place the words "Nuclear Regulatory Research"; and in paragraph (g), remove the words "Inspection and Enforcement" from the words "Nuclear Regulatory Commission Inspection and Enforcement Regional Office".

PART 21—REPORTING OF DEFECTS AND NONCOMPLIANCE

52. The authority citation for Part 21 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

53. Section 21.5 is revised to read as follows:

§ 21.5 Communications.

Except where otherwise specified in this part, all communications and reports concerning the regulations in this part should be addressed to the Director, Office of Nuclear Reactor Regulation, or Director, Office of Nuclear Material Safety and Safeguards, as appropriate, U.S. Nuclear Regulatory Commission, Washington, DC 20555, or to the Administrator of a Regional Office at the address specified in Appendix D of Part 20 of this chapter. Communications and reports also may be delivered in person at the Commission's offices at 1717 H Street, NW., Washington, DC; at 7920 Norfolk Avenue, Bethesda, MD; or at a Regional Office at the location specified in Appendix D of Part 20 of this chapter.

54. In § 21.21, paragraph (b) (2) is revised to read as follows:

§ 21.21 Notification of failure to comply or existence of a defect.

* * * * *

(b) * * *

(2) Initial notification required by this paragraph must be made within 2 days following receipt of the information. Notification must be made to the Director, Office of Nuclear Reactor Regulation, or Director, Office of Nuclear Material Safety and Safeguards, as appropriate, U.S. Nuclear Regulatory Commission, Washington, DC 20555, or to the Administrator of a Regional Office. If initial notification is by means other than written communication, a written report must be submitted to the appropriate Office within 5 days after the information is obtained. Three copies of each report must be submitted to the Director, Office of Nuclear Reactor Regulation, or Director, Office of Nuclear Material Safety and Safeguards, as appropriate.

* * * * *

PART 25—ACCESS AUTHORIZATION FOR LICENSEE PERSONNEL

55. The authority citation for Part 25 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 25.33 [Amended]

56. In § 25.33, paragraph (c), after the words "Office of Administration" add the words "and Resources Management".

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

57. The authority citation for Part 30 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 30.7 [Amended]

58. In § 30.7, paragraph (e) Note, place a period after the word "chapter" and remove the words "or the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555".

§ 30.55 [Amended]

59–63. In § 30.55, paragraph (c), remove the words "Director of Inspection and Enforcement", and add in their place the words "Director, Office of Nuclear Material Safety and Safeguards" and remove the words "Inspection and Enforcement" from the words "Office of Inspection and Enforcement" and add in their place the words "Nuclear Material Safety and Safeguards".

PART 35—MEDICAL USES OF BYPRODUCT MATERIAL

64. The authority citation for Part 35 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 35.59 [Amended]

65. In § 35.59, paragraph (e)(2), remove the words "Director of Inspection and Enforcement" and add in their place the words "Director, Office of Nuclear Material Safety and Safeguards".

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

66. The authority citation for Part 40 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 40.7 [Amended]

67. In § 40.7, paragraph (e) Note, place a period after the word "chapter" and remove the words "or the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555."

§ 40.25 [Amended]

68. In § 40.25, in paragraph (c)(1), remove the words "Director of Inspection and Enforcement", and add in their place the words "Director, Division of Nuclear Material Safety" and add after the zip code "20555" the words "with a copy to the appropriate NRC Regional Administrator"; in paragraphs (c)(2) and (d)(4), remove the words "Director of Inspection and Enforcement" and add in their place the words "Director, Division of Nuclear Material Safety, with a copy to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in Appendix D of Part 20 of this chapter".

§ 40.26 [Amended]

69. In § 40.26, paragraph (c)(2), remove the words "Director, Office of Inspection and Enforcement" and add in their place the words "Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards".

§ 40.35 [Amended]

70. In § 40.35, paragraph (e)(1), remove the words "Director of Inspection and Enforcement" and add in their place the words "Director, Office of Nuclear Material Safety and Safeguards".

§ 40.64 [Amended]

71. In § 40.64, paragraphs (a) and (b), add after the words "Division of Safeguards" the words "and Transportation", and paragraph (c), remove the words "Director of Inspection and Enforcement" and add in their place the words "Director, Office of Nuclear Material Safety and Safeguards".

§ 40.65 [Amended]

72. In § 40.65, paragraph (a)(1), remove the title "Director of Inspection and Enforcement" and add in their place the words "Director, Office of Nuclear Material Safety and Safeguards".

Appendix A [Amended]

73. In Appendix A, Criteria 8A, the words "regional office" should be capitalized to read "Regional Office" and remove the words "Inspection and Enforcement" from the address and add in their place the words "Nuclear Material Safety and Safeguards".

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

74. The authority citation for Part 50 continues to reads as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 50.4 [Amended]

75. In § 50.4, paragraphs (c) and (f), remove the words "Division of Technical Information and Document Control" and add in their place the words "Division of Information Support Services", and remove the telephone number "492–8585" and add in its place "492–8304".

§ 50.7 [Amended]

76. In § 50.7, paragraph (e) Note, place a period after the words "chapter" and remove the word "or the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555."

77. In § 50.49, paragraph (b)(3), footnote 4 is revised to read as follows:

§ 50.49 Environmental qualification of electric equipment important to safety for nuclear power plants.

* * * * *

(b) * * *

(3) * * *

[4] Specific guidance concerning the types of variables to be monitored is provided in Revision 2 of Regulatory Guide 1.97, "Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident." Copies of the Regulatory Guide

BEST COPY AVAILABLE

may be purchased through the U.S. Government Printing Office by calling 202–275–2060 or by writing to the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082.

* * * * *

§ 50.70 [Amended]

78. In § 50.70, paragraphs (b)(1) and (b)(2), remove the words "Inspection and Enforcement" from the words "Director, Office of Inspection and Enforcement", and add in their place the words "Nuclear Reactor Regulation".

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

79. The authority citation for Part 51 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242 (42 U.S.C. 5841).

§ 51.4 [Amended]

80. In § 51.4, under the definition of "NRC staff director", remove the words "Office of Inspection and Enforcement," and remove the words "Office of State Programs" and add in their place the words "Office of Governmental and Public Affairs".

§ 51.122 [Amended]

81. In § 51.122, after the words "NRC Office of Administration" add the words "and Resources Management".

§ 51.123 [Amended]

82. In § 51.123, paragraph (b), remove the words "Division of Technical Information and Document Control" and add in their place the words "Division of Information Support Services".

PART 60—DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTES IN GEOLOGIC REPOSITORIES

83. The authority citation for Part 60 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 60.9 [Amended]

84. In § 60.9, paragraph (e) Note, place a period after the word "chapter" and remove the words "or the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555."

§ 60.44 [Amended]

85. In § 60.44, paragraph (b), remove the words "Director of Inspection and Enforcement" and add in their place the words "Director, Office of Nuclear Material Safety and Safeguards".

§ 60.75 [Amended]

86. In § 60.75, paragraphs (c)(1) and (c)(2), remove the words "Inspection and Enforcement" from the words "Director, Office of Inspection and Enforcement" and add in their place the words "Nuclear Material Safety and Safeguards".

PART 61—LICENSING REQUIREMENTS FOR LAND DISPOSAL OF RADIOACTIVE WASTES

87. The authority citation for Part 61 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 61.9 [Amended]

88. In § 61.9, paragraph (e) Note, place a period after the word "chapter" and remove the words "or the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555."

§ 61.80 [Amended]

89. In § 61.80, paragraph (i)(1), remove the words "Director of the Office of Inspection and Enforcement and the Director of the Division of Waste Management" and add the words "Director, Division of High-Level Waste Management, Office of Nuclear Material Safety and Safeguards"; and remove the letters "USNRC" in the same address and add in their place the words "U.S. Nuclear Regulatory Commission".

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

90. The authority citation for Part 70 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 70.7 [Amended]

91. In § 70.7, paragraph (e) Note, place a period after the word "chapter" and remove the words "or the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555."

§ 70.55 [Amended]

92. In § 70.55, paragraphs (c)(1) and (c)(2), remove the words "Inspection and Enforcement" from the words "Director, Office of Inspection and Enforcement" and add in their place the words "Nuclear Material Safety and Safeguards or the appropriate NRC Regional Administrator".

§ 70.59 [Amended]

93. In 70.59, paragraph (a)(1), remove the words "Director of Inspection and Enforcement" and add in their place the words "Director, Office of Nuclear Material Safety and Safeguards".

PART 71—PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL

94. The authority citation for Part 71 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§71.93 [Amended]

95. In § 71.93, paragraph (c), remove the word "Director" and add in its place the words "Regional Administrator".

§71.97 [Amended]

96. In § 71.97, paragraph (c)(1), remove the word "Director" and add in its place the words "Regional Administrator"; and in paragraph (c)(3)(iii), remove the words "Office of State Programs" and add in their place the words "Office of Governmental and Public Affairs"; and in paragraph (f), remove the word "Director" and add in its place the words "Regional Administrator".

PART 72—LICENSING REQUIREMENTS FOR THE STORAGE OF SPENT FUELS IN AN INDEPENDENT SPENT FUEL STORAGE INSTALLATION (ISFSI)

97. The authority citation for Part 72 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§72.10 [Amended]

98. In § 72.10, paragraph (e) Note, place a period after the word "chapter" and remove the words "or the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555."

§72.11 [Amended]

99. In § 72.11, paragraph (a), remove the words "Division of Fuel Cycle and Material Safety" and add in their place the words "Division of Nuclear Material Safety".

§72.56 [Amended]

100. In § 72.56, paragraphs (c)(1) and (c)(2), remove the words "Inspection and Enforcement" from the words "Director, Office of Inspection and Enforcement" and add in their place "Nuclear Material Safety and Safeguards or the appropriate NRC Regional Administrator"; and in paragraph (c)(3), remove the word "Director" from the words "Regional Director" and add in its place the word "Administrator"; and in paragraph (e), the words "regional

office" should be capitalized to read "Regional Office".

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

101. The authority citation for Part 73 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§73.37 [Amended]

102. In § 73.37, paragraph (f)(1), remove the words "Office of State Programs" and add in their place the words "Office of Governmental and Public Affairs".

Appendix A [Amended]

103. In Appendix A, under the first entry for the NRC Operations Center, in the second column, remove the words "of Inspection and Enforcement" from the entry that reads "USNRC, Office of Inspection and Enforcement" and add in their place the words "for Analysis and Evaluation of Operational Data".

PART 74—MATERIAL CONTROL AND ACCOUNTING OF SPECIAL NUCLEAR MATERIAL

104. The authority citation for Part 74 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 State. 1242, as amended (42 U.S.C. 5841).

§ 74.13 [Amended]

105. In § 74.13, paragraph (b) introductory text, remove the words "Director of Inspection and Enforcement" and add in their place the words "Director, Office of Nuclear Material Safety and Safeguards".

§ 74.81 [Amended]

106. In § 74.81, paragraphs (c)(1) and (c)(2), remove the words "Inspection and Enforcement" from the words "Director, Office of Inspection and Enforcement" and add in their place the words "Nuclear Material Safety and Safeguards or the appropriate NRC Regional Administrator".

PART 75—SAFEGUARDS ON NUCLEAR MATERIAL—IMPLEMENTATION OF US/IAEA AGREEMENT

107. The authority citation for Part 75 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 75.6 [Amended]

108. In § 75.6, paragraphs (a) Table and (d), remove the words "Office of Inspection and Enforcement".

PART 95—SECURITY FACILITY APPROVAL AND SAFEGUARDING OF NATIONAL SECURITY INFORMATION AND RESTRICTED DATA

109. The authority citation for Part 95 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 95.18 [Amended]

110. In § 95.18, paragraph (a) introductory text, after the words "Office of Administration" add the words "and Resources Management".

§ 95.45 [Amended]

111. In § 95.45, paragraph (a), after the words "Office of Administration" add the words "and Resources Management".

PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274

112. The authority citation for Part 150 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

113. In § 150.16, paragraph (b) is revised to read as follows:

§ 150.16 Submission to Commission of nuclear material transfer reports.

* * * * *

(b)(1) Each person who, pursuant to an Agreement State License, possesses 1 gram or more of contained uranium-235, uranium-233, or plutonium shall report immediately to the Regional Administrator of the appropriate NRC Regional Office listed in Appendix A of Part 73 of this chapter, by telephone, any theft or other unlawful diversion of special nuclear material which the licensee is licensed to possess or any incident in which an attempt has been made, or is believed to have been made, to commit a theft or unlawful diversion of special nuclear material.

(2) The licensee shall follow the initial report within a period of 15 days with a written report submitted to the appropriate NRC Regional Office, shown in Appendix A of Part 73 of this chapter, which sets forth the details of the incident. The licensee shall send copies of this report to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

(3) Subsequent to the submission of the written report required by this paragraph, each licensee shall promptly inform the Regional Administrator of the appropriate NRC Regional Office by means of a written report of any substantive additional information which becomes available to the licensee concerning an attempted or apparent theft or unlawful diversion of special nuclear material.

§ 150.17 [Amended]

114. In § 150.17, paragraphs (a) and (b), add after the words "Division of Safeguards" the words "and Transportation,"; and paragraph (c), remove the words "Director Of Inspection and Enforcement", and add after the words "U.S. Nuclear Regulatory Commission" the words "Division of Safeguards and Transportation".

§ 150.19 [Amended]

115. In § 150.19, paragraph (c), remove the words "Director of Inspection and Enforcement" and add in their place the words "Director, Office of Nuclear Material Safety and Safeguards".

§ 150.20 [Amended]

116. In § 150.20, paragraph (b)(1), remove the word "Director" and add in its place the words "Regional Administrator".

PART 170—FEES FOR FACILITIES AND MATERIALS LICENSES AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

117. The authority citation for Part 170 continues to read as follows:

Authority: 31 U.S.C. 9701, 96 Stat. 1051; sec. 301, Pub. L. 92–314, 86 Stat. 222 (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 170.12 [Amended]

118. In § 170.12, paragraph (g), remove the words "Enforcement staff,"; "Inspection and" from the words "Office of Inspection and Enforcement"; and the "," after the word "Enforcement".

119. In § 170.20, paragraph (b) is revised to read as follows:

§ 170.20 Average cost per professional staff-hour.

* * * * *

(b) Fees for inspections based on full cost under §§ 170.21 and 170.32 will be calculated using the hourly rates for NRR and NMSS, respectively, set out in paragraph (a) of this section.

Dated at Washington, DC, this 13th day of August 1987.

For the Nuclear Regulatory Commission.

[redacted]

Secretary of the Commission.

[FR Doc. 87-19290 Filed 8-20-87; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87-ANM-8]

Revision to Hailey, ID, Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises the Hailey, Idaho, transition area by adding 700 foot controlled airspace to accommodate a Microwave Landing System (MLS) special instrument approach procedure for Horizon Airlines at Hailey, Idaho.

EFFECTIVE DATE: 0901 UTC, September 30, 1987.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM-535, Federal Aviation Administration, Docket No. 87-ANM-8, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, Telephone: (206) 431-2535.

SUPPLEMENTARY INFORMATION:

History

On June 11, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Hailey, Idaho, transition area (52 FR 22332).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations establishes 700 foot transition airspace at Hailey, Idaho, to accommodate arrival and departure procedures to the Hailey Municipal Airport. This action will also reduce the size of the existing 1,200 foot transition area.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Hailey, Idaho, Transition Area (Revised)

That airspace extending upward from 700 feet above the surface within 2 miles each side of the M-SUN MLS (lat. 43°30'31.00" N, long. 114°17'52.93" W), 328° azimuth, from 8.5 miles northwest to 5 miles southeast of the M-SUN MLS; and that airspace extending upward from 1,200 feet above the surface, within 4 miles each side of the M-SUN 328° azimuth, from 18 miles northwest to the M-SUN MLS, and that airspace from lat. 43°36'00" N, long. 114°27'00" W, thence eastbound to lat. 43°36'00" N, long. 114°00'00" W, thence southbound to lat. 43°17'30" N, long. 114°00'00" W, thence westbound to lat. 43°17'30" N, long. 114°27'00" W, thence northbound to point of beginning excluding that airspace overlying V-231 on the east side and V-500 on the south side.

Issued in Seattle, Washington, on August 3, 1987.

Temple H. Johnson,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 87-19107 Filed 8-20-87; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 48 and 602

[T.D. 8152]

Excise Taxes on Gasohol and Other Alcohol Mixture Fuels, Tread Rubber and Inner Tubes

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the excise tax on gasohol and other alcohol mixture fuels. This document also contains final regulations relating to the rate of excise tax on tires, tread rubber, and inner tubes. Changes to the laws relating to gasohol and other alcohol mixture fuels and tires were made by the Highway Revenue Act of 1982 and the Tax Reform Act of 1984. These regulations provide necessary guidance to Internal Revenue Service personnel who administer the Internal Revenue code and members of the public who are subject to these laws.

DATES: The amendments made to §§ 48.4041-18, 48.4041-19, 48.4041-20, 48.4061-2, 48.6420-4 and 48.6427-1 of the regulations, relating to alcohol fuels, are effective for sale or uses made on and after April 1, 1983. The amendments made to §§ 48.4071-1 and 48.4071-2 of the regulations, relating to tires, are effective for sales or uses made on and after January 1, 1984.

FOR FURTHER INFORMATION CONTACT: Margaret M. O'Connor of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention:CC:LR:T) 202-566-3287, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

On August 22, 1985, the Federal Register (50 FR 33977) published proposed amendments to the Manufacturers and Retailers Excise Tax Regulations (26 CFR Part 48) under sections 4041, 4071, 4081, 6420 and 6427 of the Internal Revenue Code of 1954 (Code). The amendments were proposed to conform the regulations to sections 511 (b), (d), (e), (f) and 514 of the Highway Revenue Act of 1982 (Pub. L. 97-424; 96 Stat. 2171) and sections 732 (a), 912 (a), (b), (d), (f) and 913 of the Tax Reform Act of 1984 (Pub. L. 98-369; 98 Stat. 976, 1007). A public hearing regarding the proposed regulations was

held on January 14, 1986. After consideration of comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision.

Summary of Public Comments

Temperature Adjustment Requirements

Under sections 4041 and 4081 of the Code certain alcohol mixture fuels are taxed at a reduced rate if the mixture contains at least 10 percent alcohol. Certain other alcohol mixtures are either fully exempt from taxation or partially exempt under section 4041 if they consist of at least 85% alcohol. The proposed regulations required that in order to determine whether an alcohol mixture fuel contains the appropriate percentage of alcohol, the volume of each component is adjusted to its appropriate volume at 60 degrees Fahrenheit, known as its net volume.

Many commenters objected to this requirement. Most of the commenters instead favored determination of the applicable percentage based upon the actual volume of the mixture without any adjustment for temperature, known as its gross volume. In response to these comments, the final regulations have been revised to provide that the determination of whether a mixture contains the required percentage of alcohol will be based on the actual volume of each component at the time the fuel is blended. Several points raised in the comments led to this revised rule.

Most commenters stated that the actual volume of a alcohol mixture is not usually converted to its net volume by the blender. In order to make the conversion to net volume it would be necessary to make burdensome and complicated calculations. Several commenters objected that it would be necessary to purchase new metering equipment in order to make the conversions and that the cost of such equipment would be prohibitive.

Commenters also described conflicts between the temperature adjustment requirements and state laws. The commenters believed that it would be extremely difficult to meet both state and federal requirements.

Several commenters also indicated that the temperature adjustment requirement is not necessary. According to these commenters, the components of the alcohol fuel mixtures expand and contract at similar rates. As a result, even without temperature correction there would be no significant difference in the mixture ratio of fuel unless the temperatures of the components were very different when the mixture was blended.

Determination of a Fuel's Mixture Ratio

The proposed regulations required that an alcohol mixture fuel shall contain at least 10% alcohol, for purposes of taxation at the rates set out in section 4041(k) or section 4081(c), or at least 85% alcohol for purposes of section 4041(b)(2) or 4041(m). The proposed regulations did not provide guidance as to how strictly these percentage requirements would be enforced. However, The Senate Finance Committee Report to the Technical Corrections Act of 1982 (S. Rep. No. 97–592, 48) indicated that the 10 percent requirement for qualification of a mixture as gasohol should be enforced in a reasonable manner which recognizes commercial and operational practicalities.

At the January hearing, several individuals testified about the need for tolerance in determining whether a fuel contains the required percentage of alcohol. According to these individuals, deviation from the applicable percentages is due to meter inaccuracies, blender error and evaporation loss of the alcohol portion of a mixture following blending.

In response to these comments and Congressional correspondence received, the final regulations provide guidance for application of the percentage requirements. Generally, a mixture must contain at least 10% alcohol in order to qualify for a reduced rate of tax under section 4041(k) or section 4081(c), or 85% alcohol in order to qualify under section 4041(b)(2) or section 4041(m). However, a mixture which does not contain precisely the applicable percentage may qualify under these sections if the blender demonstrates to the satisfaction of the District Director the existence of facts and circumstances that establish that but for the commercial and operational realities of the blending process, the percentage requirement would have been met. However, in order to qualify under section 4041(k) or section 4081(c) the percentage of alcohol contained in a 10 percent alcohol mixture may not be less than 9.802 percent regardless of the circumstances. This percentage is based upon a tolerance of .22% in measuring the percentage of nonalcohol fuel in the mixture, as determined from tolerances specified for wholesale measuring devices in National Bureau of Standards Handbook 44, *Specifications, Tolerances and Other Technical Requirements for Weighing and Measuring Devices* (1986). The tolerance is determined based on the measurement of the nonalcohol portion of a mixture because, typically, industry's practice is to blend these mixtures by first putting the appropriate amount of nonalcohol fuel in a tank and then topping off the tank with alcohol. This percentage cap does not apply for purposes of qualification as an 85 percent alcohol mixture under section 4041(b)(2) or section 4041(m) because these mixtures are not generally blended in the same manner as mixtures containing 10 percent alcohol. In addition, the regulations clarify that the determination of whether a mixture contains the appropriate amount of alcohol is made at the time the mixture is blended, before any evaporation can occur. Announcement to be published shortly in the Internal Revenue Bulletin will contain guidance for blenders of alcohol mixtures to obtain a credit or refund if they paid tax at the rate applicable to nonqualified fuel mixtures with respect to a mixture which would be eligible for the reduced rate under the rules of this Treasury decision.

One individual testifying at the hearing suggested that whether a taxpayer has blended qualifying mixtures should be determined based upon the average percentage of alcohol contained in mixtures blended by the taxpayer during a three-month period. If the average percentage of alcohol contained in the mixtures met the statutory standard, then all such mixtures blended during the period would be taxed at the applicable reduced rate of tax. However, if the average percentage of alcohol contained in the mixture did not meet the statutory requirement then all mixtures blended would be taxed at the higher rate. This rule was not adopted in the Treasury decision because it can lead to unfair results. For example, all mixtures blended in a period may be disqualified if one mixture fails to meet the statutory requirement by a large amount, even if all other mixtures blended meet the statutory requirements precisely.

Failure to Qualify as an Alcohol Mixture

The proposed regulations did not specify the tax treatment of a fuel which fails to qualify as an alcohol mixture under either section 4041 or section 4081. One commenter expressed the view that if a fuel fails to qualify as an alcohol mixture fuel, only the excess nonalcohol fuel should be taxed at the higher rate. The rest of the mixture would be taxed at the reduced rate applicable for qualifying mixtures. For example, if a mixture contains 100 gallons of gasoline and 10 gallons of alcohol, 100 gallons of the mixture would be taxed at a rate of 3 cents per gallon under section 4081(c)

and 10 gallons of excess gasoline would be taxed at a rate of 9 cents per gallon under section 4081(a). The Treasury decision clarifies that if a mixture does not contain the required percentage of alcohol, none of the fuel is taxed as a qualifying mixture, but rather all of the fuel is taxed as a special motor fuel under section 4041(a)(2) or gasoline under section 4081(a). Thus, in the above example, all 110 gallons of mixture would be taxed at a rate of 9 cents per gallon.

Non-Applicability of Executive Order 12291

The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Regulatory Flexibility Analysis

Although a notice of proposed rulemaking that solicited public comment was issued, the Internal Revenue Service concluded when the notice was issued that the regulations are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 did not apply. Accordingly, the final regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Paperwork Reduction Act

The collection of information requirements contained in these regulations have been submitted to the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB under control number 1545-0023.

Drafting Information

The principal author of these proposed regulations is Margaret M. O'Connor of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

List of Subjects

26 CFR Part 48

Agriculture, Arms and munitions, Coal, Excise taxes, Gasohol, Gasoline, Motor vehicles, Petroleum, Sporting goods and Tires.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 48 and 602 are amended as follows:

PART 48—[AMENDED]

Paragraph 1. The authority for Part 48 continues to read in part:

Authority: 26 U.S.C. 7805. * * * Section 48.4041-18 also issued under 26 U.S.C. 4041(k)(1); § 48.4041-2 also issued under 26 U.S.C. 4081(c)(1). * * *

Par. 2. Section 48.4041-18 is revised to read as set forth below.

§ 48.4041-18 Fuels containing alcohol.

(a) *In general*—(1) *Sale or use after December 31, 1984 and before January 1, 1993.* Under section 4041(k) the rate of tax applicable to the sale or use after December 31, 1984 and before January 1, 1993, of any liquid fuel described in section 4041(a) (1) or (2) which consists of at least 10% alcohol by volume is:

(i) 9 cents for each gallon of alcohol mixture sold or used in the case of mixtures described in section 4041(a)(1); or

(ii) 3 cents for each gallon of alcohol mixture sold or used in the case of mixtures described in section 4041(a)(2). The amount of tax is based upon the total volume of fuel and not merely upon the volume of the nonalcohol components of such fuel. However, see section 4041(b)(2) and § 48.4041-19 for rules relating to the complete exemption from taxes imposed by section 4041(a) where at least 85% of the fuel consists of alcohol produced from certain sources.

(2) *Sale or use after March 31, 1983, and before January 1, 1985.* For rules relating to the rate of tax imposed on the sale or use after March 31, 1983, and before January 1, 1985 of any liquid fuel described in section 4041(a) (1) or (2) which consists of at least 10% alcohol by volume, see section 4041(k) prior to the enactment of the Tax Reform Act of 1984 (Pub. L. 98-369, 98 Stat. 1007).

(3) *Sale or use before April 1, 1983.* No tax is imposed upon the sale or use of any liquid fuel described in section 4041(a) (1) or (a) (2) which consists of at least 10% alcohol if the sale or use occurs after December 31, 1978 and before April 1, 1983.

(4) *Rate of tax for mixtures which fail to qualify.* If an alcohol mixture fuel fails to qualify under this section, the entire mixture is taxed at the rate of tax specified under section 4041(a)(1) if the mixture contains diesel fuel, or section 4041(a)(2) if the mixture contains special motor fuel.

(b) *Alcohol mixture fuels qualifying for special tax treatment.* In order to qualify for the reduced rates of tax described in paragraphs (a)(1) and (a)(2) of this section or the exemption from tax described in paragraph (a)(3) of this section, at least 10% of an alcohol mixture fuel must consist of alcohol as defined in section 4081(c) and § 48.4081—2(a)(4) of the regulations. The actual gallonage of each component of the mixture (without adjustment for temperature) shall be used in determining whether the 10 percent alcohol requirement has been met. Further, in determining whether a particular mixture containing less than 10 percent alcohol satisfies this percentage requirement, the District Director shall take into account the existence of any facts and circumstances that establish that but for the commercial and operational realities of the blending process, it may reasonably be concluded that the mixture would have contained at least 10 percent alcohol. A circumstance from which it might be concluded that the mixture would have contained 10 percent alcohol but for its existence is malfunctioning of the meter measuring the amount of a component pumped into a mixture. However, the necessary facts and circumstances will not be found to exist if over a period of time the mixtures blended by a blender show a consistent pattern of failing to contain 10 percent alcohol. In no case will any mixture containing less than 9.802 percent alcohol qualify for the reduced rates set forth in this section. See paragraph (f) of this section for rules relating to information required to be attached to the taxpayer's return of the tax imposed by chapter 31 relating to the alcohol content of the mixture for which tax is paid.

(c) *Later separation.* If a person separates out the alcohol from a mixture which has been taxed under the rates of section 4041(k), such separation will be treated as a sale of the liquid on the date separated and is subject to tax at the rates set forth under section 4041(a)(1) or (2). The tax liability incurred upon the separation is reduced by the amount of any tax previously imposed under section 4041. Thus, if Y buys 1000 gallons of alcohol mixture fuel taxed at the rate of 3 cents per gallon under section 4041(k) and later separates the fuel into 900 gallons of special motor fuel and 100 gallons of alcohol, the separation is treated as a sale of 900 gallons of special motor fuel, taxed at the rate of 9 cents per gallon under section 4041(a), and a sale of 100 gallons of alcohol, exempt from tax under section 4041(b)(2). The tax of $81 on the deemed sale of special motor fuel is reduced by the tax of $30 previously

paid on the sale of the alcohol mixture fuel.

(d) *Exemption from tax for alcohol mixture fuels sold or used in an aircraft in noncommercial aviation*—(1) *In general.* No tax is imposed upon the sale or use of any liquid fuel described in section 4041 (a)(1) or (a)(2) which consists of at least 10% alcohol if such fuel is sold to or used by an owner, lessee or other operator of an aircraft as fuel in such aircraft in noncommercial aviation. See section 4041(c)(4) and the regulations thereunder for the definition of noncommercial aviation.

(2) *Failure to use alcohol mixture fuel in an aircraft in noncommercial aviation.* If fuel which is exempt from tax under paragraph (d)(1) of this section is not used as fuel in an aircraft in noncommercial aviation, any other use or sale of such fuel will be considered the use or sale of an alcohol mixture fuel subject to tax according to the rules of this section.

(e) *Refunds relating to diesel, special motor and noncommercial aviation fuels.* See section 6427 for rules which relate to the allowance of a refund or credit to a person who uses tax-paid diesel, special motor or noncommercial aviation fuels to produce an alcohol mixture fuel.

(f) *Records required to be furnished by the taxpayer.* A taxpayer making a return of the tax imposed by chapter 31 indicating payment of the tax under section 4041(k) and § 48.4041–18 at the reduced rate must attach a statement to the return indicating the total number of gallons of alcohol mixture fuels containing at least 10 percent alcohol and the total number of gallons of alcohol mixture fuels containing less than 10 percent alcohol but more than 9.802 percent alcohol. However, the taxpayer does not have to specify the precise mixture ratio for every mixture blended for which tax is being paid. For example, the taxpayer pays tax for 10,000 gallons of alcohol mixture fuels. Of these mixtures, 1,000 gallons contain 9.9 percent alcohol, 1,500 gallons contain 9.91 percent alcohol and 7,500 gallons contain 10 percent alcohol. The taxpayer seeks to have all of the mixtures described above qualify for taxation at the reduced rate under the rules of paragraph (b) of this section. The blender must attach a statement to the return of tax filed for these mixtures indicating that of the 10,000 gallons, 7,500 gallons contain at least 10 percent alcohol and 2,500 gallons contain less than 10 percent alcohol.

(g) *Alcohol mixture fuel within the tank of a vehicle*—(1) *Mixtures within the tank of a vehicle before April 1, 1983.* If an alcohol mixture fuel is put into the tank of a vehicle prior to April 1, 1983, the fuel is considered used prior to that date. Thus, such fuel will not be subject to the tax described in paragraph (a)(2) of this section and will be exempt from tax according to the provision of paragraph (a)(3) of this section.

(2) *Mixture within the tank of a vehicle before January 1, 1985.* If an alcohol mixture is put into the tank of a vehicle prior to January 1, 1985, the fuel is considered used prior to that date. Thus, such fuel is subject to the tax described in paragraph (a)(2) of this section.

Par. 3. A new § 48.4041–19 is added to read as set forth below.

§ 48.4041–19 Exemption for qualified methanol and ethanol fuel.

(a) *In general.* Under section 4041(b)(2), the tax imposed upon the sale or use of motor fuels under section 4041(a) does not apply to the sale or use of qualified methanol or ethanol fuel.

(b) *Qualified methanol or ethanol fuel defined.* For purposes of section 4041(b)(2) and this section, qualified methanol or ethanol fuel is liquid motor fuel, 85% of the volume of which consists of alcohol, as defined in section 4081(c) and § 48.4081–2(a)(4) of the regulations as modified by the following sentence. For purposes of section 4041(b)(2) and this section, the alcohol contained in a qualified methanol or ethanol fuel may be produced from coal. The actual gallonage of each component of the mixture (without adjustment for temperature) shall be used in determining whether the 85 percent alcohol has been met. Further, in determining whether a particular mixture containing less than 85 percent alcohol satisfies this percentage requirement, the District Director shall take into account the existence of any facts and circumstances, that establish that but for the commercial and operational realities of the blending process, it may reasonably be concluded that the mixture would have contained at least 85 percent alcohol. The necessary facts and circumstances will not be found to exist if over a period of time the mixtures blended by a blender show a consistent pattern of failing to contain 85 percent alcohol.

(c) *Mixtures which do not qualify as qualified methanol or ethanol fuel.* If a methanol or ethanol fuel does not qualify as qualified methanol or ethanol fuel under this section, the entire mixture is taxed at the rate of tax applicable to sales of special motor fuels under section 4041(a)(2) of the Code.

(d) *Refunds relating to fuels used to produce qualified fuels.* See section 6427 for rules which relate to the allowance of a refund or credit to a person who uses tax-paid diesel, special motor or noncommercial aviation fuels to produce a qualified methanol or ethanol fuel and section 6416 for rules which relate to the allowance of a refund or credit to a person who uses tax-paid gasoline to produce a qualified methanol or ethanol fuel.

(e) *Later blending.* If a qualified methanol or ethanol fuel is blended with other motor fuel in a mixture less than 85 percent of which consists of alcohol, the subsequent sale or use of such alcohol mixture fuel is taxable under the provisions of section 4041 or section 4081 subject to the requirements, limitations and exemptions of those sections. Thus, if the alcohol mixture fuel is at least 10% alcohol by volume, sale or use of the fuel is taxed at the rates provided in section 4041(k) or section 4081(c), but if the fuel is less than 10% alcohol, sale or use of the fuel is taxed at the rates provided in section 4041(a) or section 4081(a).

(f) *Effective date.* Section 4041(b)(2) applies to sales or uses after March 31, 1983, and before October 1, 1988.

Par. 4. A new § 48.4041–20 is added to read as set forth below.

§ 48.4041–20 Partially exempt methanol and ethanol fuel.

(a) *In general.* Under section 4041(m), the sale or use of partially exempt methanol or ethanol fuel is taxed at the rate of 4½ cents per gallon of fuel sold or used. The amount of tax is based upon the total volume of fuel and not merely upon the nonalcohol portion of the fuel.

(b) *Partially exempt methanol or ethanol fuel defined.* For purposes of section 4041(m) and this section, partially exempt methanol or ethanol fuel is liquid motor fuel, 85% of which by volume consists of alcohol, as defined in section 4081 and § 48.4081–2(a)(4) of the regulations, as modified by the following sentence. For purposes of section 4041(m) and this section, the alcohol contained in partially exempt methanol or ethanol fuel must be produced from natural gas. The actual gallonage of each component of the mixture (without adjustment for temperature) shall be used in determining whether the 85 percent alcohol requirement has been met. Further, in determining whether a particular mixture containing less than 85 percent alcohol satisfies this percentage requirement, the District Director shall take into account the existence of any facts and circumstances that establish that but for the commercial and operational realities

of the blending process, it may reasonably be concluded that the mixture would have contained at least 85 percent alcohol. The necessary facts and circumstances will not be found to exist if over a period of time the mixtures blended by a blender show a consistent pattern of failing to contain 85 percent alcohol. See paragraph (f) of this section for rules relating to information required to be attached to the taxpayer's return of the tax imposed by chapter 31 relating to the alcohol content of the partially exempt methanol or ethanol fuel for which tax is paid.

(c) *Mixtures which do not qualify as partially exempt methanol or ethanol fuel.* If methanol or ethanol fuel does not qualify as partially exempt methanol or ethanol fuel under this section, the entire mixture is taxed at the rate of tax applicable under section 4041(a)(2) of the Code.

(d) *Refunds relating to fuels.* See section 6427 for rules which relate to the allowance of a refund or credit to a person who uses tax-paid diesel, special motor or noncommercial aviation fuel to produce a partially exempt methanol or ethanol fuel and section 6416 for rules which relate to the allowance of a refund or credit to a person who uses tax-paid gasoline to produce a partially exempt methanol or ethanol fuel.

(e) *Later blending.* If a partially exempt methanol or ethanol fuel is blended with other motor fuel in a mixture less than 85 percent of which consists of alcohol, the subsequent sale or use of such blended motor fuel is taxable under the provisions of section 4041(a) or section 4081(a), subject to the requirements, limitations and exemptions of those sections.

(f) *Records required to be furnished by the taxpayer.* A taxpayer making a return of the tax imposed by chapter 31 indicating payment of the tax under section 4041(m) and § 48.4041–20 at the reduced rate must attach a statement to the return indicating the total number of gallons of partially exempt methanol or ethanol fuel containing at least 85 percent alcohol and the total number of gallons of partially exempt methanol or ethanol fuel containing less than 85 percent alcohol, but qualifying for taxation at the reduced rate under the rules of paragraph (b) of this section. However, the taxpayer does not have to specify the precise mixture ratio of every mixture blended for which tax is being paid.

(g) *Effective date.* Section 4041(m) applies to sales and uses after July 31, 1984. If methanol or ethanol fuel meeting the requirements of paragraph (b) of this section was put into the tank of a vehicle prior to August 1, 1984, the fuel is considered used prior to that date and is subject to the tax described in paragraph (a) of section 4041.

Par. 5. Section 48.4071–1 is amended as follows:

(a) Paragraph (a) is revised to read as set forth below.

(b) Paragraph (b)(1) is revised to read as set forth below.

(c) Paragraph (b)(2) is redesignated paragraph (b)(3).

(d) A new paragraph (b)(2) is added to read as set forth below.

§ 48.4071–1 Imposition and rate of tax.

(a) *Imposition of tax*—(1) *Imposition of tax before January 1, 1984.* Section 4071 imposes a tax at the rates set forth in paragraph (b)(1) of this section on tires made wholly or in part of rubber, inner tubes (for tires) made wholly or in part of rubber and tread rubber which are sold by the manufacturer thereof before January 1, 1984.

(2) *Imposition of tax after December 31, 1983.* Section 4071 imposes a tax at the rates set forth in paragraph (b)(2) of this section on tires of the type used on highway vehicles and made wholly or in part of rubber which are sold by the manufacturer thereof after December 31, 1983.

(3) *Definitions.* For definitions of the terms "tires," "inner tubes," "tread rubber," "rubber" and "manufacturer," see § 48.4072–1 of the regulations.

(b) *Rates and computation of tax*—(1) *Rates of tax before January 1, 1984.*

(i) *Tires:*

(A) Of the type used on highway vehicles:

(*1*) For the period July 1, 1965 to December 31, 1980, inclusive—10 cents per pound.

(*2*) For the period January 1, 1981 to December 31, 1983, inclusive—9.75 cents per pound.

(B) Of the type used on other than highway vehicles:

(*1*) For the period July 1, 1965, to December 31, 1980, inclusive—5 cents per pound.

(*2*) For the period January 1, 1981 to December 31, 1983, inclusive—4.875 cents per pound.

(C) Laminated tires for the period July 1, 1965 to December 31, 1983, inclusive—1 cent per pound.

(ii) *Inner tubes:*

For the period July 1, 1965 to December 31, 1983, inclusive—10 cents per pound.

(iii) *Tread Rubber:*

For the period July 1, 1965 to December 31, 1983, inclusive—5 cents per pound.

(2) *Rates of tax on or after January 1, 1984.* Tires of the type used on highway vehicles:

(i) Tires weighing not more than 40 pounds—0 cents.

(ii) Tires weighing more than 40 pounds but not more than 70 pounds—15 cents for each pound in excess of 40 pounds.

(iii) Tires weighing more than 70 pounds but not more than 90 pounds—$4.50 plus 30 cents for each pound in excess of 70 pounds.

(iv) Tires weighing more than 90 pounds—$10.50 plus 50 cents for each pound in excess of 90 pounds.

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§ 48.4071–2 [Amended]

Par. 6. Paragraph (b) of § 48.4071–2 is retitled *"Alternative method of determining the weight of tires after December 31, 1983"* and is amended by removing "and inner tubes" wherever it appears and by removing in the first sentence the phrase "shown in schedules published by the tire industry".

Par. 7. Section 48.4081–2 is amended as follows:

(a) Paragraph (a) is revised to read as set forth below.

(b) Paragraph (b) is revised to read as set forth below.

(c) The heading of paragraph (c) is revised to read as set forth below.

(d) Paragraph (c)(1) is amended by removing the first sentence of the paragraph and inserting in lieu thereof the sentence set forth below and by removing the word "exempt" in the fifth sentence.

(e) Paragraph (c)(2) is amended by removing "tax free" wherever it appears and inserting in lieu thereof "at the reduced rate (or tax free for sales before April 1, 1983)".

(f) Paragraph (e)(1) is revised to read as set forth below.

(g) Paragraph (e)(2) is retitled to read as set forth below and is amended by removing the last sentence of the paragraph and inserting in lieu thereof the two sentences set forth below.

(h) A new paragraph (e)(3) is added to read as set forth below.

(i) Paragraph (f)(1) is retitled and is revised to read as set forth below.

(j) The heading and text of paragraph (f)(2) are amended by inserting "and less than 85 percent alcohol" after "40 percent alcohol" whenever it appears.

(k) A new paragraph (f)(3) is added to read as set forth below.

(l) Paragraph (g) is revised to read as set forth below.

(m) Paragraph (h) is amended by removing "tax free" wherever it appears and inserting in lieu thereof "at the reduced rate (or tax free for sales before April 1, 1983)".

(n) A new paragraph (h)(4) is added to read as set forth below.

(o) Paragraph (i) is removed.

§ 48.4081-2 Gasoline mixed with alcohol.

(a) *In general*—(1) *Sale after March 31, 1983, and before October 1, 1988.* Under section 4081(c), the rate of tax applicable to the sale of qualifying gasohol (as defined in paragraph (a)(5) of this section) and on the sale of gasoline for the purpose of producing qualifying gasohol is:

(i) For sales occurring after December 31, 1984, and before October 1, 1988, 3 cents per gallon of fuel in the case of the sale of qualifying gasohol and 3⅓ cents per gallon of fuel in the case of the sale of gasoline purchased for the purpose of producing qualifying gasohol.

(ii) For sales occurring after March 31, 1983, and before January 1, 1985, 4 cents per gallon of fuel in the case of the sale of qualifying gasohol and 4⅔ cents per gallon of fuel in the case of the sale of gasoline purchased for the purpose of producing qualifying gasohol.

(2) *Sale before April 1, 1983.* For sales before April 1, 1983 no tax is imposed upon the sale of qualifying gasohol or on the sale of gasoline to produce qualifying gasohol.

(3) *Mixtures which do not qualify as gasohol.* If a mixture of gasoline and alcohol does not qualify as gasohol under this section, the entire mixture is taxed at the rate of tax applicable to sales of gasoline under section 4081(a) of the Code.

(4) *Alcohol defined.* For purposes of this section and section 4081(c), the term "alcohol" generally includes methanol, ethanol, and any other alcohol, whether produced domestically or imported, which is not produced from petroleum, natural gas, or coal. In the case of alcohol mixture fuels sold after December 31, 1984, alcohol produced from peat is considered alcohol produced from coal. The term alcohol, for purposes of this section and section 4081(c), does not include alcohol with a proof of less than 190° of proof (determined without regard to added denaturants). Thus, in determining what percentage of any mixture consists of alcohol, the volume of alcohol includes the volume of any impurities that reduce the purity of the alcohol to not less than 95% (190 degrees of proof), determined without regard to denaturants, unless such impurities consist of gasoline or the other non-alcohol fuel with which the alcohol is mixed. In addition, the volume of alcohol includes the volume of any denaturants (including gasoline or other non-alcohol fuel denaturants) which are added under any formula approved by the Secretary to the extent that the volume of such denaturants does not exceed 5% of the volume of the alcohol (including the denaturants). If the volume of such denaturants exceeds 5% of the volume of the alcohol, the excess over 5% is considered part of the non-alcohol content of the fuel. For certain requirements imposed on producers of alcohol (ethanol) under chapter 51 of the Code relating to distilled spirits, see 27 CFR Part 201. For certain requirements imposed on purchasers of specially denatured alcohol (ethanol), see 27 CFR Part 211.

(5) *Qualifying gasohol*—(i) *Qualifying gasohol defined.* Qualifying gasohol (hereinafter referred to as gasohol) is a blend of gasoline and alcohol in a mixture at least 10 percent of which is alcohol immediately after the mixture is blended. The actual gallonage of each component of the gasohol (without adjustment for temperature) shall be used in determining whether the 10 percent alcohol requirement has been met. Further, in determining whether a particular mixture containing less than 10 percent alcohol satisfies this percentage requirement, the District Director shall take into account the existence of any facts and circumstances that establish that but for the commercial and operational realities of the blending process, it may reasonably be concluded that the mixture would have contained at least 10 percent alcohol. A circumstance from which it might be concluded that the mixture would have contained 10 percent alcohol but for its existence is malfunctioning of the meter measuring the amount of a component pumped into a mixture. However, the necessary facts and circumstances will not be found to exist if over a period of time the mixtures blended by a blender show a consistent pattern of failing to contain 10 percent alcohol. In no case will any mixture containing less than 9.802 percent alcohol qualify as gasohol. See paragraph (h)(4) of this section for rules relating to information required to be attached to the taxpayer's return of the tax imposed by chapter 32 relating to the alcohol content of gasohol for which tax is paid.

(ii) *Examples.* The provisions of this paragraph are illustrated by the following examples.

Example (1). A gasohol blender blends 100 tanks of gasohol during a period from January 1, 1985, to March 31, 1985. Each tank holds 1,000 gallons of mixture. The mixture is blended by first pumping 900 gallons of gasoline into the empty tank, and then filling the tank with alcohol. Thus, the resulting blend should contain 90 percent gasoline and 10 percent alcohol. According to the pump meter readings, 99 of the 100 tanks contain 900 gallons gasoline and 100 gallons of alcohol. However, in the case of one tank, 901 gallons of gasoline are mistakenly pumped into the tank, and only 99 gallons of alcohol are added. Thus, the mixture consists of 90.1 percent gasoline and 9.9 percent alcohol. The District Director determines that there are facts and circumstances reflecting that but for the realities of the blending process, it may reasonably be concluded that the one tank containing 99 gallons of alcohol would have also contained 10 percent alcohol. As a result, all 100 tanks of gasohol are taxed at a rate of 3 cents per gallon of mixture blended.

Example (2). Assume the same facts as in example (1) except that one of the 100 tanks contains 910 gallons of gasoline and 90 gallons of alcohol so that the mixture contains 91 percent gasoline and 9 percent alcohol. The 99 tanks containing 10 percent alcohol will be taxed at a rate of 3 cents per gallon or $30 per tank. Since the one tank contains less than 9.802 percent alcohol, this mixture cannot qualify for taxation at the reduced rate and is taxed at a rate of 9 cents per gallon.

Example (3). Assume the same facts as in example (1) except that all 100 tanks blended contain 9.802 percent alcohol. In this case the District Director determines that there are no facts and circumstances reflecting that but for the realities of the blending process, it may reasonably be concluded that all of the tanks would have contained mixtures consisting of 10 percent alcohol. As a result, all 100 tanks are taxed at a rate of 9 cents per gallon or $90 per tank.

(b) *Sale of gasoline to produce gasohol.* The sale of gasoline for use in producing gasohol is subject to the provisions of section 4081(c) rather than section 4081(a) only if the sale is in bulk quantities for delivery into a bulk storage tank of a gasohol producer as defined in this paragraph (b). For purposes of this section, the term "gasohol producer" means any person who, in the ordinary course of his or her trade or business, regularly buys gasoline and alcohol in bulk quantities for blending into gasohol for the use in the trade or business or for resale. Thus, an isolated purchase of gasoline for blending into gasohol does not qualify the seller of such gasoline for taxation under section 4081(c) and this section. A person who qualifies as a gasohol producer for purposes of this section will also qualify as a "producer" for purposes of section 4082. Accordingly, the sale of gasoline to a gasohol producer, whether or not for use in producing gasohol, may be exempt from tax under section 4083 (relating to certain exempt sales to producers). If the sale of gasoline for use in producing gasohol is taxed at the rate provided in section 4081(c), no tax will be imposed upon the sale of the gasohol produced with such gasoline. In addition, if the sale of gasoline for use in producing

gasohol is taxed at the rate provided in section 4081(c) applicable to sales before January 1, 1985, and such gasoline is blended into gasohol after December 31, 1984, no refund or credit is allowed for the difference between the tax imposed and the lower tax which would have been imposed if such gasoline had been taxed at the rate applicable to sales after December 31, 1984.

(c) *Requirements for gasohol producers purchasing at lower rates or tax free*—(1) *Certificate of Registry.* A person qualifying as a gasohol producer under paragraph (b) of this section who wishes to purchase gasoline taxed at a reduced rate (or exempt from tax in the case of sales prior to April 1, 1983) under section 4081(c)(1)(B) must be registered with the district director for the district in which his principal place of business is located, unless the person is exempt from registration requirements under section 4222(b). * * *

* * * * *

(e) *Special rules*—(1) *Limitation on sales taxed at lower rates.* The reduced rate of tax (or the exemption from tax in the case of sales prior to April 1, 1983) under section 4061(c)(1)(B) only applies to the sale of gasoline for use in producing gasohol. Therefore, unless the sale is exempt from tax or is taxed at a reduced rate under another provision of the Code, the producer of the gasoline may sell at the reduced rate of tax provided in section 4081(c), only that portion of the gasoline that is intended for use in producing gasohol.

(2) *Sales to exempt users.* * * * Therefore, where the ultimate vendor sells both tax-paid gasoline and tax-paid gasohol and the sales of the two types of fuel are not clearly distinguished, the producer of the gasoline and gasohol will not be entitled to a full credit or refund with respect to these fuels, if the amounts of each type sold by the ultimate vendor to tax-exempt users cannot be established. If the producer cannot distinguish the amount of each type sold, the credit allowed will be equal to the credit that would have been allowed if all the fuel sold had been tax-paid gasohol.

(3) *Later blending.* If gasohol is blended with other motor fuel, the subsequent sale or use of such blended motor fuel is taxable under the provisions of section 4041(a) or 4081(a) if the resulting blend is less than 10% alcohol by volume.

(f) *Refunds and credits*—(1) *Tax-paid gasoline under section 4081(a) used to produce gasohol.* See section 6427(f) for rules which relate to the allowance of a refund or credit to a blender of gasohol where the blender uses tax-paid gasoline to produce the gasohol.

* * * * *

(3) *Mixture of gasoline and alcohol containing at least 85% alcohol.* If a person uses tax-paid gasoline in blending a mixture of gasoline and alcohol containing at least 85% alcohol by volume that qualifies for the exemption from tax under section 4041(b)(2) for qualified methanol or ethanol fuels, the refund provisions under section 6416 apply.

(g) *Later separation and failure to blend*—(1) *In general.* Any person who fails to use gasoline which was taxed at a reduced rate (or was exempt from tax in the case of sales prior to April 1, 1983) under section 4081(c) to make gasohol or who separates gasoline from gasohol which was taxed, if at all, under section 4081(c), is treated as a producer of gasoline (as defined under section 4082), and is subject to tax upon the subsequent sale of such gasoline. If gasoline is purchased under section 4081(c) for use in producing gasohol, and the amount purchased is in excess of the amount of gasohol that the purchaser is able to establish has actually been used to produce gasohol by the records required under paragraph (h)(3) of this section, then the purchaser is treated as having failed to use the excess gasoline to produce gasohol. In such a case, any of the excess gasoline that is not in the purchaser's possession is treated as having been disposed of by sale or by a use considered a sale. See section 7201 for criminal penalties relating to a willful attempt to evade or defeat tax, and section 6651 for additions to tax for failure to file a return or pay tax.

(2) *Rates of tax.* If gasoline or gasohol described in the preceding paragraph was purchased tax free prior to April 1, 1983, the person who is treated as separating the gasohol or failing to use the gasoline to produce gasohol is taxed as a producer at the applicable rate of tax in effect under section 4081(a) at the time of the sale of the gasoline by such person. If the gasoline or gasohol was purchased at the rate of tax applicable to sales after March 31, 1983, and before January 1, 1985, the rate of tax imposed upon the person treated as separating the gasohol or failing to use the gasoline to produce gasohol is 4⅝ cents per gallon. If the gasoline or gasohol was purchased at the reduced rate of tax applicable to sales after December 31, 1984, the rate of tax imposed upon the person treated as separating the gasohol or failing to use the gasoline to produce gasohol is 5⅜ cents per gallon.

(3) *Examples.* The requirements of this paragraph are illustrated by the following examples.

Example (1). A gasohol blender *X* produces 10,000 gallons of gasohol using 9,000 gallons of gasoline and 1,000 gallons of alcohol. Because of a lack of demand for the gasohol, *X* separates the gasoline and sells it. *X* will be treated as the producer of the gasoline.

(i) If the gasoline was previously subject to a 9 cents per gallon tax under section 4081(a), or $810, the sale of the separated gasoline is not subject to any additional tax.

(ii) If the gasoline was previously subject to a 4⅝ cents per gallon tax under section 4081(c), or $400, X will be subject to a 4⅝ cents per gallon tax upon the sale of gasoline, or $510.

(iii) If the gasoline was previously subject to a 3⅛ cents per gallon tax under section 4081(c), or $300, X will be subject to a 5⅜ cents per gallon tax upon the sale of gasoline, or $510.

(iv) Assume that X never blended the 9,000 gallons into gasohol but instead sold the gasoline. X will be treated as the producer of the gasoline. If the gasoline had been subject to a 9 cents per gallon tax, X will not be subject to any additional tax. If the gasoline had been taxed at a rate of 4⅝ cents per gallon, or $400, X will be subject to a 4⅝ cents per gallon tax upon the sale of the gasoline, or $410. If the gasoline had been taxed at a rate of 3⅛ cents per gallon, or $300, X will be subject to a 5⅜ cents per gallon tax upon the sale of the gasoline, or $510.

* * * * *

(h) * * *

(4) *Records required to be furnished by the taxpayer.*

A taxpayer making a return of the tax imposed by chapter 32 indicating payment of the tax under section 4081(c) and § 48.4081–2 at the reduced rate must attach a statement to the return indicating the total number of gallons of gasohol containing less than 10 percent alcohol but not less than 9.802 percent alcohol. However, the taxpayer does not have to specify the precise mixture ratio of every mixture blended for which tax is being paid. For example, a gasohol blender pays tax for 10,000 gallons of gasohol. Of this gasohol, 1,000 gallons contain 9.98 percent alcohol and 1,500 gallons contain 9.9 percent alcohol. The blender seeks to have all of the mixtures described above qualify for taxation at the reduced rate under the rules of paragraph (a)(2) of this section. The blender must attach a statement to the return of tax filed for these mixtures indicating that of the 10,000 gallons, 7,500 gallons contain at least 10 percent alcohol, and 2,500 gallons contain less than 10 percent alcohol.

§ 48.6420–4 [Amended]

Par. 8. Section 48.6420–4(l) is amended by inserting "or other applicator" after "an aerial applicator" wherever it appears.

§ 48.6427–1 [Amended]

Par. 9. Section 48.6427–1(a)(2)(iv) is amended by inserting "or other applicator" after "an aerial applicator" wherever it appears.

PART 602—[AMENDED]

Par. 10. The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 11. Section 602.101(c) is amended by inserting in the appropriate place in the table.

§ 48.4041–18	1545–0023
§ 48.4041–19	1545–0023
§ 48.4041–20	1545–0023

James I. Owens,
Acting Commissioner of Internal Revenue.

Approved: July 30, 1987.

J. Roger Mentz,
Assistant Secretary of the Treasury.

[FR Doc. 87–18851 Filed 8–20–87; 8:45 am]
BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 750

Surface Coal Mining and Reclamation Operations; Federal Program for Indian Lands; Compliance With Settlement Agreement

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of suspension.

SUMMARY: The Secretary of the Interior (the Secretary) is suspending the regulation that unilaterally amends all leases of coal on Indian lands to require compliance with the Surface Mining Control and Reclamation Act of 1977 to the extent the regulation requires amendment of existing leases prior to lease renewal, renegotiation, or readjustment. The Secretary is taking this action as a result of a settlement agreement reached in United States District Court in response to litigation on the final rules establishing the regulatory requirements for surface coal mining and reclamation operations under the Federal program for Indian lands. This action will not affect the requirement that, at the time of future lease issuance, renewal, renegotiation, or readjustment, all such leases must include such a provision. By separate rulemaking, the Secretary intends to propose an amendment to the regulation to require that the lease provision will be added only at the time of lease issuance, renewal, renegotiation, or readjustment, as applicable.

EFFECTIVE DATE: September 21, 1987.

FOR FURTHER INFORMATION CONTACT: Ms. Suzanne Hudak, Division of Regulatory Programs, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: (202) 343–4540 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Rule Suspended
III. Procedural Matters

I. Background

The Surface Mining Control and Reclamation Act of 1977 (SMCRA), Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*, provides statutory authority for the development of regulations for surface coal mining operations. Section 710(d) requires compliance "[O]n and after thirty months from the enactment of this Act", with requirements at least as stringent as those imposed by sections 507, 508, 509, 510, 515, 516, 517, and 519 of SMCRA, for all surface coal mining operations on Indian lands. It also requires the Secretary to incorporate the requirements of such provisions in all existing and new leases issued for coal on Indian lands. Section 710(e) further requires the Secretary to include and enforce in all post-SMCRA leases of coal on Indian lands, such terms and conditions as may be requested by the Indian tribe in such leases.

On September 28, 1984, the Secretary issued the final rules implementing the requirements of sections 710(d) and 710(e) of SMCRA (49 FR 38462). A new subchapter, Subchapter E—Indian Lands Program, was added to 30 CFR Chapter VII, and included Part 750—*Requirements For Surface Coal Mining And Reclamation Operations On Indian Lands*, and Part 755—*Tribal-Federal Intergovernmental Agreements*.

The final Indian lands rules were subsequently challenged by the National, Coal Association/American Mining Congress (NCA/AMC) in *NCA* v. *U.S.*, No. 84–3586 (D.D.C.). One of the provisions to which NCA/AMC objected was the requirement for unilateral amendment of existing leases issued for coal on Indian lands.

The NCA/AMC challenge was settled in July 1985 in United States District Court by an agreement in which, among other actions, the Secretary consented to suspend § 750.20(a) and propose a new rule providing for alternative measures to satisfy the obligation under section 710(d) of SMCRA to include in all existing and new leases for coal on Indian lands, the required provisions of SMCRA. By separate rulemaking, the Secretary intends to propose a revision to the suspended rule, as necessary, consistent with SMCRA.

An explanation of the regulation to be suspended and the effect of the suspension is provided below.

II. Discussion of Rule Suspended

Section 750.20—Adoption of Indian Coal Lease Terms

Section 750.20(a). The rule at 30 CFR 750.20(a) is intended to satisfy the Secretary's obligation, under section 710(d) of SMCRA, to incorporate in all existing and new leases issued for coal on Indian lands, the applicable provisions of SMCRA. The Secretary is suspending the final rule at 30 CFR 750.20(a) as required by the NCA/AMC settlement agreement. The effect of the suspension is that the Secretary will use alternative measures to satisfy the obligation under section 710(d) of SMCRA to include in all existing and new leases issued for coal on Indian lands, the required provisions of SMCRA.

The suspension eliminates the requirement for automatic, unilateral inclusion of the provision in existing leases. The regulation remains in effect to the extent it requires the provision to be incorporated at the time of future lease issuance, renewal, renegotiation, or readjustment, as applicable.

The Secretary's legal authority to require compliance with SMCRA is not affected by this suspension. Regardless of the inclusion of a specific provision in existing or future leases, all persons conducting surface coal mining operations on Indian lands are subject to the requirements of 30 CFR Part 750 as a matter of law.

III. Procedural Matters

Federal Paperwork Reduction Act

The rule suspension does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3507.

Executive Order 12291 and Regulatory Flexibility Act

The Department of the Interior (DOI) has determined that this notice is not a major rule under the criteria of Executive Order 12291 (February 17, 1981) and certifies that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The rule suspension would affect a relatively small number of surface coal mining operations. The rule suspension does not distinguish between small and large entities. The economic effects of the rule suspension are estimated to be minor and no incremental economic effects are anticipated as a result of the suspension.

National Environmental Policy Act

The Office of Surface Mining Reclamation and Enforcement (OSMRE) has prepared an environmental assessment (EA), and has made a finding that this suspension would not have a significant impact on the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The EA and finding of no significant impact are on file in the OSMRE Administrative Record at the Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1100 L Street, NW., Room 5131, Washington, DC 20240.

List of Subjects in 30 CFR Part 750

Indians—lands, Reporting and recordkeeping requirements, Surface mining.

Accordingly, 30 CFR Part 750 is amended as set forth below.

Dated: August 10, 1987.

James E. Cason,

Deputy Assistant Secretary-Land and Minerals Management.

PART 750—REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS ON INDIAN LANDS

1. The authority citation for Part 750 is revised to read as follows:

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*; and Pub. L. 100–34.

§ 750.20 [Amended]

2. Paragraph (a) of § 750.20 is suspended insofar as it requires unilateral amendment of existing leases prior to renewal, renegotiation, or readjustment of such leases, as applicable.

[FR Doc. 87–18998 Filed 8–20–87; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–87–058]

Special Local Regulations; Hampton Bay Days—1987, Hampton River, Hampton, VA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Hampton Bay Days—1987 Festival. This event will be held in the Hampton River on September 11, 12 and 13, 1987, in and around downtown Hampton, Virginia. These special local regulations are considered necessary to control vessel traffic due to the confined nature of the waterway and the expected congestion at the time of the event.

EFFECTIVE DATES: These regulations are effective as follows:

a. 4:00 p.m. to 8:00 p.m., September 11, 1987

b. 9:30 a.m. to 10:30 p.m., September 12, 1987

c. 12:30 p.m. to 2:30 p.m., September 13, 1987

FOR FURTHER INFORMATION CONTACT: Mr. Billy J. Stephenson, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23705–5004 (804–398–6204).

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rule making has not been published for these regulations. Adherence to normal rule making procedures would not have been possible. The sponsor's application to hold the event was not received until July 30, 1987 leaving insufficient time to publish a notice of proposed rule making, receive comments, and then publish a final rule.

Drafting Information

The drafters of this notice are Mr. Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Fifth Coast Guard District, and Commander Robert J. Reining, project attorney, Fifth Coast Guard District Legal Office.

Discussion of Regulation

Bay Days, Inc. is the sponsor of the festival. The event will consist of a parade of sails and blessing of the fleet, executive boat race, water ski shows, raft race, Coast Guard air sea rescue demonstration, and fireworks display. Closure of the waterway for any extended period is not anticipated, and marine traffic should not be severely disrupted at any given time.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulation

In consideration of the foregoing, the Coast Guard amends Part 100 of Title 33, Code of Federal Regulations as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Section 100.35–05060 is added to read as follows:

§ 100.35–05060 Hampton Roads, Norfolk, Virginia.

(a) *Definitions*— (1) *Regulated area.* The waters of Sunset Creek and Hampton River shore to shore bounded to the north by a line drawn from the western shore at latitude 37°01'48.0" North, longitude 76°20'22.0" West across the river to the eastern shore at latitude 37°01'44.0" North, longitude 76°20'13.0" West and to the south by a line drawn from Hampton River Channel Light 16 (LL 5715) located at latitude 37°01'03.0" North, longitude 76°20'28.0" West and the finger pier across the river at Fisherman's Wharf located at latitude 37°01'01.5" North, longitude 76°20'32.0" West.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a Coast Guard commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, U.S. Coast Guard Group, Hampton Roads.

(3) *Spectator Vessel Anchorage Areas*— (i) *Anchorage Area A.* Located in the upper reaches of the Hampton River, bounded to the south by a line drawn from the western shore at latitude 37°01'48.0" North, longitude 76°20'22.0" West across the river to the eastern shore at latitude 37°01'44.0" North, longitude 76°20'13.0" West, and to the north by the C & O Railroad Bridge located at latitude 37°01'48.0" North, longitude 76°20'15.0" West. The anchorage area will be marked by orange buoys.

(ii) *Anchorage Area B.* Located on the eastern side of the channel, in the Hampton River, south of the Queen Street Bridge, near the Bayberry Psychiatric Hospital. Bounded by the shoreline and a line drawn between the following points: Latitude 37°01'28.0" North, longitude 76°20'24.0" West,

latitude 37°01'22.0" North, longitude 76°20'26.0" West, and latitude 37°01'22.0" North, longitude 76°20'23.0" West. 76°16'57.0" West, latitude 36°57'39.0" North, longitude 76°16'30.0" West, latitude 36°57'27.0" North, longitude 76°16'34.0" West, latitude 36°57'36.0" North, longitude 76°17'02.0" West. The anchorage area will be marked by orange buoys.

(b) *Special local regulations.* (1) Except for vessels operated by the Bay Days Inc., participants in the Hampton Bay Days Festival, and as provided in paragraph (b)(2) of this section; no person or vessel may enter or remain in the regulated area without the permission of the Coast Guard Patrol Commander.

(2) Spectator vessels may enter and anchor in the designated anchorage areas if they:

(i) Proceed at a slow no wake speed while in the regulated area.

(ii) Anchor where directed by a Coast Guard commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(3) The operator of any vessel in the immediate vicinity of the regulated area shall:

(i) Stop his vessel immediately when directed to do so by any Coast Guard commissioned, warrant or petty officer on board a vessel displaying a Coast Guard ensign, and

(ii) Proceed as directed by any Coast Guard commissioned, warrant, or petty officer.

(c) *Effective Dates.* These regulations are effective as follows:

a. 4:00 p.m. to 8:00 p.m., September 11, 1987

b. 9:30 a.m. to 10:30 p.m., September 12, 1987

c. 12:30 p.m. to 2:30 p.m., September 13, 1987

Dated: August 12, 1987.

R.M. Polant,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 87-19076 Filed 8-20-87; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6655

[AK-932-07-4220-10; A-025744]

Public Land Order No. 6651, Correction; Partial Revocation of Public Land Order No. 1231 for Selection of Lands by the State of Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order will correct an error in the land description in Public Land Order No. 6651 of June 23, 1987.

EFFECTIVE DATE: August 21, 1987.

FOR FURTHER INFORMATION CONTACT: Sandra Thomas, BLM Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, 907-271-5477.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

The land description in Public Land Order No. 6651 of June 23, 1987, in FR Doc. 87-14773, published on pages 24293 and 24294 in the issue of Tuesday, June 30, 1987, is hereby corrected as follows:

In the land description on page 24294, first column, line 21, which reads "SW¼, E½SE¼" is hereby corrected to read "W½E½NW¼, SW¼, E½SE¼."

J. Steven Griles,

Secretary of the Interior.

August 12, 1987.

[FR Doc. 87-19158 Filed 8-20-87; 8:45 am]

BILLING CODE 4310-JA-M

43 CFR Public Land Order 6656

[AK-932-07-4220-10; AA-855]

Partial Revocation of Executive Order 6039 for Selection of Land by the State of Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes an executive order insofar as it affects 0.93 acre of public land withdrawn for the Alaska Communications System at Kodiak. This action will also classify the land as suitable for selection by the State of Alaska, if such land is otherwise available. The land will remain closed to all other forms of appropriation and disposition under the public land laws, including the mining and mineral leasing laws, pursuant to Public Land Order No. 5187, as amended.

EFFECTIVE DATE: August 21, 1987.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, 907-271-5477.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, and by section 17(d)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 85 Stat. 708 and 709; 43 U.S.C. 1616(d)(1), it is ordered as follows:

1. Executive Order 6039 of February 20, 1933, which withdrew land on Kodiak Island for the Alaska Communications System, is hereby revoked as to the following described lands:

Kodiak, AK

Lot 6A, U.S. Survey No. 2538-A, Alaska

The area described contains 0.93 acre.

2. Subject to valid existing rights, the land described above is hereby classified as suitable for and opened to selection by the State of Alaska under either the Alaska Statehood Act of July 7, 1958, 72 Stat. 339, *et seq.*; 48 U.S.C. prec. 21, or section 906(b) of the Alaska National Interest Lands Conservation Act of December 2, 1980, 94 Stat. 2437-2438; 43 U.S.C. 1635.

3. As provided by section 6(g) of the Alaska Statehood Act, the State of Alaska is provided a preference right of selection for the land described above for a period of ninety-one (91) days from the date of publication of this order, if the land is otherwise available. Any of the land described herein that is not selected by the State of Alaska will continue to be subject to the terms and conditions of Public Land Order No. 5187, as amended, and other withdrawals of record.

August 12, 1987.

J. Steven Griles,

Assistant Secretary of the Interior.

[FR Doc. 87-19155 Filed 8-20-87; 8:45 am]

BILLING CODE 4310-JA-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 54, 111, 150 and 154

[CGD 77-069]

Safety Standards for Existing Self-Propelled Vessels Carrying Bulk Liquefied Gases

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule revises U.S. regulations for existing gas ships carrying bulk liquefied gases in U.S. waters by adopting certain standards of the International Maritime Organization (IMO) Code for Existing Ships Carrying Liquefied Gases in Bulk (also called the IMO Existing Gas Ship Code) that are not currently in U.S. regulations. The

rule makes U.S. regulations for existing gas ships compatible with the internationally accepted standard. The rule will make the transportation of liquefied gases safer than its current level and streamline the certification procedures by reducing plan review for vessels carrying these cargoes.

EFFECTIVE DATE: This regulation is effective November 1, 1987. The incorporation by reference of certain publications listed in the regulations is approved by Director of the Federal Register as of November 1, 1987.

ADDRESSES: The final evaluation and environmental assessment may be inspected or copied at the Marine Safety Council (G–CMC), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, between the hours of 7:30 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR. R.H. Fitch, Office of Marine Safety, Security and Environmental Protection (G–MTH–1), Room 1214, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001 (202–267–1217) between 7:30 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: In the March 14, 1985 issue of the **Federal Register** (50 FR 10284), the Coast Guard published in CGD 77–069 a Notice of Proposed Rulemaking (NPRM) that would incorporate certain standards of the IMO Existing Gas Ship Code into 46 CFR Part 154. The NPRM proposed consolidating regulations for new and existing gas ships under Part 154. Four commenters responded, and their comments are discussed in Discussion of Comments below.

In the April 2, 1987 issue of the **Federal Register** (52 FR 10698), the Coast Guard published in CGD 77–069 a Notice of Availability of the Finding of No Significant Impact (FONSI). A draft environmental evaluation was made available and placed in the docket for comments. No comments were received.

The Coast Guard is in the process of drafting a future NPRM that would add requirements for new gas ships carrying bulk liquefied gases in U.S. waters by incorporating Amendments 1 through 4 of the Code for Construction and Equipment of Ships Carrying Liquefied Gases in Bulk (also called the IMO Gas Code), done in London, 1975 by the Inter-Governmental Maritime Consultative Organization, which was subsequently renamed the International Maritime Organization, and making corrections to the present regulations in Part 154 that are inconsistent with the IMO Gas Code. Several comments on the NPRM for CGD 77–069 that concerned Subpart C of Part 154 will be addressed in the future NPRM.

In the March 5, 1985 issue of the **Federal Register** (50 FR 8730), the Coast Guard published a final rule which revised the regulations for self-propelled foreign flag vessels carrying bulk hazardous liquids and liquefied gases. In order to meet the mandate of 46 U.S.C. 3711, the amendment changed the name of the document authorizing a foreign flag vessel to carry Subchapter O cargo in U.S. waters from "Letter of Compliance" to "Certificate of Compliance." That change is maintained in this final rule. Further rulemaking is unnecessary because the change is merely editorial.

Additionally, the Coast Guard has identified several cross references in Parts 54, 111, and 150 to "§ 154.3", which are made incorrect by amendments in this document. This document has corrections to those cross references, which are also editorial changes.

Drafting Information

The principal persons involved in drafting this rule are: Ms. K.A. Barylski, Project Manager, Office of Marine Safety, Security and Environmental Protection, and Mr. Stanley Colby, Project Attorney, Office of Chief Counsel.

Miscellaneous Changes

The following non-substantive changes are made:

The information concerning the OMB approval numbers assigned pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*) in proposed § 154.2 is moved to § 150.105(b) which is the repository for this information. The OMB approval number has been consolidated to cover all of Part 154.

The proposed definitions of "Flammable range", "Permeability of a space", and "Public spaces" in § 154.7 are omitted because they are not used in the text of any regulation in Part 154.

The cross references to § 154.215 in proposed §§ 154.15(b)(1) and 154.24(a)(1)(iii) are corrected. Section 154.215 was removed from Part 154 (see 48 FR 51000) in 1983. The stability requirements are now contained in Subchapter S of Chapter I and § 172.175 now contains the requirements that were formerly in § 154.215, necessitating the correction of the cross references.

Proposed § 154.24(a) is reorganized to comply with **Federal Register** requirements.

Many sections in Part 154 refer to publications which are now included in the "Incorporation by Reference" section (§ 154.1). Several of these existing sections were inadvertently not updated in the NPRM, although it was obvious that the editions in § 154.1 were meant to be used throughout Part 154. To correct the discrepancy and clarify the regulations, publication dates of the items referenced in § 154.1 and in the text are updated in the text. This is merely an editorial change and does not affect the intent of the regulations.

Discussion of Comments

General

One commenter requested that the IMO Certificate of Fitness issued by the Coast Guard be valid for five years, to correspond with the limit of validity for IMO Certificates of Fitness issued by other countries. The validity of the Certificate of Fitness issued by the Coast Guard is contingent upon the validity of the Certificate of Inspection, which is two years. If the period of validity for the Certificate of Fitness is five years, there could be times during the Certificate's period of validity when the Certificate of Inspection is invalid. The Coast Guard considers it inappropriate to allow the Certificate of Fitness to be valid when the basis for its validity, the Certificate of Inspection, is invalid. The two-year limit of validity prevents this situation, and the Coast Guard rejects this comment.

Section 154.7

One commenter suggested that the definition for "Accommodation spaces" in proposed § 154.7 should be a generic description rather than a "list of labels." This definition is very similar to the definitions of "accommodation spaces" provided by the IMO Gas Code, and by 46 CFR 30.10–2 and 153.2. It is the Coast Guard opinion that in providing examples which are considered accommodation spaces, a generic definition is provided. Therefore, the comment is not accepted.

One commenter requested that a note be added to indicate that the definition for "Boiling point" in proposed § 154.7 is only applicable for single component cargoes. The comment is not accepted. The term "boiling point" is used only in § 154.903(b) in referring to inert gases. The definition as proposed is technically correct for all pure materials and for mixtures, but the Coast Guard substitutes the word "substance" for the word "cargo" for clarification.

One commenter stated that the definition in proposed § 154.7 of "Cargo area" should exclude all ballast tanks, not just those fore and aft. A similar comment was addressed in the

preamble to the NPRM. The proposed definition is the same as the definition in the IMO Existing Gas Ship Code. To maintain consistency and avoid confusion and compliance problems, the comment is not accepted.

One commenter requested that the definition in paragraph (a) under "Gas-dangerous space" in proposed § 154.7 be clarified or removed. The commenter stated that the proposed definition is not meaningful and may be open to a wide variety of interpretations. The Coast Guard rejects this comment. The proposed definition is a paraphrase from the definition of gas-dangerous space provided by the IMO Gas Code and IMO Existing Gas Ship Code. That definition was clarified in the paraphrasing to the extent possible without completely changing its effect.

Another commenter stated that paragraph (b) under "Gas-dangerous space" should clarify that ballast tanks and voids are excepted from paragraph (b). A similar comment was addressed in the preamble to the NPRM. Contrary to the assertions made by the commenter, ballast tanks and voids are clearly within paragraph (b) of the definition of "gas-dangerous space." Specific approval of these spaces as gas-safe could be given only after a detailed review of the specific containment system design and a finding of equivalence made under "Equivalents" in proposed § 154.32. Accordingly, this comment is not accepted.

One commenter suggested that paragraph (i) under "Gas-dangerous space" in proposed § 154.7 should not encompass existing gas ships because it represents a substantial increase in the gas-dangerous area for existing ships. The Coast Guard agrees with the commenter. The Coast Guard did not intend to increase the boundaries of a gas-dangerous space for existing gas vessels by its definition in paragraph (i), which would be obviously impractical. In addition, existing gas vessels already plan reviewed by the Coast Guard are excepted from paragraph (i) of the definition of gas-dangerous space in § 154.7. Therefore, this paragraph is clarified by adding the words, "Except for existing gas ships, * * *."

One commenter recommended that the definition of "interbarrier space" in proposed § 154.7 be modified to indicate that an interbarrier space exists only when there is a *complete* secondary barrier. A similar comment was addressed in the preamble to the NPRM. The Coast Guard under its "Concept Approval" review procedure has examined containment system designs with partial secondary barriers extending to the top of the cargo tank. In these designs, interbarrier spaces did exist even though secondary barriers were not complete. Therefore, the Coast Guard does not accept the comment.

One commenter suggested rewording the definition of "Remote group alarm" in proposed § 154.7. The comment did not provide any reason as to why the present definition is unsatisfactory or why the rewording is better. The rewording requested does not provide any additional clarity to the definition, and the Coast Guard rejects the comment. One commenter suggested that the term "vapor density" that is defined in proposed § 154.7 be changed to "design specific gravity". A similar comment was addressed in the preamble to the NPRM. Since publication of the NPRM, it was noted that the term "vapor density" does not appear in the text of Part 154, except as a definition. Therefore, the definition is omitted.

Section 154.12

One commenter suggested re-wording § 154.12(e) to clarify the intent that the listed cross references have to be met when the vessel's Certificate of Inspection or Certificate of Compliance is renewed, which could be up to 2 years after the publication of the final rule. The Coast Guard agrees with the commenter that the unwary could find the introductory wording in proposed paragraph (e) confusing in relation to the requirements of proposed paragraphs (b), (c), and (d) of § 154.12 and could misinterpret these paragraphs as requiring immediate compliance. Section 154.12(e) is reworded to clarify the intent that the requirements in paragraph (e) have to be met when a document is reissued or a different endorsement is needed on an existing document after the effective date of the final rule.

Section 154.32

One commenter requested that existing installations on board ships be considered equivalent to the corresponding standards of the IMO Existing Gas Ship Code. A similar comment was addressed in the preamble to the NPRM. Equivalence is determined on a case-by-case basis. The procedures to be followed and standards to be met for equivalence are contained in § 154.32. A general equivalence or "grandfathering" of existing installations is not deemed appropriate for this rule, so this comment is rejected.

Section 154.1350

One commenter mentioned that LNG ships with membrane tanks have been permitted to operate with gas concentrations in the interbarrier spaces far in excess of the lower flammable limit (LFL). These vessels have been given special approval. Subpart C, in which § 154.1350(e) is published, is not being revised by this rulemaking, but is being considered for a future regulatory project.

Regulatory Evaluation

These regulations are considered to be non-major under Executive Order 12291 and non-significant under "Department of Transportation Policies and Procedures for Simplification, Analysis, and Review of Regulations", (DOT Order 2100.5 of May 22, 1980).

The final evaluation estimates a cost of approximately $681,000 to completely upgrade an affected vessel, assuming that none of the design features required by these standards have been previously installed. A review of the plans of 10 affected U.S. vessels which are of similar design indicates that actual costs for each of these vessels should be under $20,000. For the remaining two affected U.S. vessels, it is assumed that the cost would not exceed 50% of the cost of complete conversion, or $340,500 per vessel. Therefore, the total estimated cost for upgrading U.S. vessels is $881,000.

There are 202 foreign flag liquefied gas vessels that have been in correspondence with the Coast Guard in the last five years. Of these, 163 have submitted IMO Certificates of Fitness. We expect the remaining 39 vessels are in various stages of compliance with the standards of this rulemaking. We have assumed that these 39 vessels would incur approximately 50% of the total cost of modification, or $340,500 per vessel. The actual costs could be considerably less, depending on the degree to which these vessels already meet these standards.

The results of the final evaluation differ considerably from the draft evaluation due to major changes in the foreign flag fleet over the four years since the draft evaluation was done. Foreign flag vessels trading in the U.S. presently are considerably newer than those trading four years ago. Also, far fewer vessels are active in liquefied gas trade due to world-wide economic conditions.

The economic evaluation for this rule shows that over a 10 year period the rule would result in the following:

1. A decreased expenditure of approximately $32,200 per year by the federal government, and no significant impact on State and local governments.

2. An expenditure of up to $13.3 million in the two years following the effective date of the regulations by the maritime industry, resulting from the need for ship modifications to meet the internationally accepted safety standards. These costs would be amortized over the remaining useful life of the vessels and would be eventually passed on to the consumer.

3. No significant impact on energy consumption, important materials, or employment.

The environmental evaluation for this rule shows that it will not significantly impact the environment.

The benefits to the public by this rule include:

1. A consolidation in one part of the design and equipment standards for all liquefied gas ships.

2. The implementation of internationally agreed upon design and equipment safety standards for existing gas ships, which will facilitate vessel movement. Without these regulations, U.S. flag liquefied gas vessels may be denied entry into ports of nations that have implemented the IMO Existing Gas Ship Code.

3. A consolidation into one part of the certification procedures for all liquefied gas ships.

4. Improved safety of existing liquefied gas ships.

Regulatory Flexibility Evaluation

The liquefied gas shipping industry is characterized by single ship companies, with no dominant companies in the field. The Coast Guard found that the smallest U.S. flag liquefied gas vessel has a crew of at least 15 and has an annual revenue of approximately $17 million.

Therefore, the Coast Guard determined that there are no small entities affected by these rules. In accordance with section 605(b) of the Regulatory Flexibility Act (94 Stat. 1164), it is certified that these rules will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rulemaking contains information collection and recordkeeping requirements. These items have been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act (Pub. L. 96–511, 44 U.S.C. 3501 *et seq*) and have been approved by OMB. The section numbers and the corresponding OMB approval number are as follows: Section Numbers—§§ 154.15, 154.22, and 154.34; OMB Approval Number—2115–0113.

List of Subjects

46 CFR Part 54

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 111

Vessels.

46 CFR Part 150

Hazardous material transportation, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 154

Cargo vessels, Gases, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements, Incorporation by reference.

In accordance with the preceding, Chapter I of Title 46, Code of Federal Regulations is amended as follows:

PART 54—[AMENDED]

1. The authority citation for Part 54 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 CFR 1.46 (b).

§ 54.25–10 [Amended]

2. Section 54.25–10(a)(1) is amended by changing the reference that reads "§ 154.3" to "§ 154.7."

PART 111—[AMENDED]

3. The authority citation for Part 111 is revised to read as follows:

Authority: 46 U.S.C. 3306, 3703, 4104; 49 CFR 1.46(b) and (n).

§ 111.105–32 [Amended]

4. Section 111.105–32(b)(1) is amended by changing the reference that reads "§ 154.3" to "§ 154.7."

PART 150—CERTAIN BULK DANGEROUS CARGOES

5. The authority citation for Part 150 is revised to read as follows and all other authority citations in the part are removed:

Authority: 46 U.S.C. 3703; 49 CFR 1.46, except § 150.360 which is issued under 46 U.S.C. 3306; 49 CFR 1.46.

6. Section 150.105(b) is amended by adding the following entries to follow the last entries in the table:

§ 150.105 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) Display.

46 CFR part or section where identified or described	Current OMB control No.
* * * * *	
Part 154	2115-0113

PART 154—[AMENDED]

7. The authority citation for Part 154 is revised to read as follows:

Authority: 46 U.S.C. 3703; E.O. 12234, 3 CFR, 1980 Comp. p. 277, 49 CFR 1.46 (b) and (n)(4).

8. Subpart A is revised to read as follows:

Subpart A—General

Sec.
154.1 Incorporation by reference.
154.3 Purpose.
154.5 Applicability.
154.7 Definitions, acronyms, and terms.
154.9 Issuance of documents.
154.12 Existing gas vessel: Endorsements and requirements.
154.15 U.S. flag vessel: Endorsement application.
154.17 U.S. flag vessel: Certificate of Inspection endorsement.
154.19 U.S. flag vessel: IMO certificate issuance.
154.22 Foreign flag vessel: Certificate of Compliance endorsement application.
154.24 Foreign flag vessel: IMO Certificate.
154.30 Liquefied gases not included in Table 4.
154.32 Equivalents.
154.34 Special approval: Requests.
154.36 Correspondence and vessel information: Submission.

Subpart A—General

§ 154.1 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). The Office of the Federal Register publishes a list "Material Approved for Incorporation by Reference," which appears in the Finding Aids section of this volume. To enforce any edition other than the one listed in paragraph (b) of this section, notice of change must be published in the **Federal Register** and the material made available. All approved material is on file at the Office of the Federal Register, Washington, DC 20408, and at the U.S Coast Guard, Marine Technical and Hazardous Materials Division, Washington, DC 20593–0001.

(b) The materials approved for incorporation by reference in this part are:

American Bureau of Shipping

45 Eisenhower Drive, Paramus, NJ 07652
Rules for Building and Classing Steel Vessels, 1981

American National Standards Institute

1430 Broadway, New York, NY, 10018
ANSI Z89.1–69 Safety Requirements for Industrial Head Protection, 1969
ANSI Z87.1–79 Practice for Occupational and Educational Eye and Face Protection, 1979

American Society for Testing and Materials

1916 Race Street, Philadelphia, PA, 19103
ASTM A20–78 General Requirements for Steel Plates for Pressure Vessels, 1978

International Maritime Organization

4 Albert Embankment, London SE1 75R, U.K.
Resolution A.328(IX), Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk, 1976
Code For Existing Ships Carrying Liquefied Gases in Bulk, 1976
Medical First Aid Guide for Use in Accidents Involving Dangerous Goods

Underwriters Laboratories, Inc.

333 Pfingsten Rd., Northbrook, IL, 60062
UL No. 783–79 Standard for Safety, Electric Flashlights for Use in Hazardous Locations, Class 1, Groups C and D, 1979

§ 154.3 Purpose.

The purpose of this part is to prescribe rules for new and existing gas vessels.

§ 154.5 Applicability.

This part applies to each self-propelled vessel that has on board bulk liquefied gases as cargo, cargo residue or vapor, except Subpart C does not apply if the vessel meets § 154.12 (b), (c), or (d).

§ 154.7 Definitions, acronyms, and terms.

As used in this part:

"'A' Class Division" means a division as defined in Regulation 3 of Chapter II–2 of the 1974 Safety Convention.

"Accommodation spaces" means public spaces, corridors, lavatories, cabins, offices, hospitals, cinemas, game and hobby rooms, pantries containing no cooking appliances, and spaces used in a similar fashion.

"Boiling point" means the temperature at which a substance's vapor pressure is equal to the atmospheric barometric pressure.

"Breadth" (B) means the maximum width of the vessel in meters measured amidships to the moulded line of the frame in a ship with a metal shell and to the outer surface of the hull in a ship with a shell of any other material.

"Cargo area" means that part of the vessel that contains the cargo containment system, cargo pump rooms, cargo compressor rooms, and the deck areas over the full beam and the length of the vessel above them, but does not include the cofferdams, ballast spaces, or void spaces at the after end of the aftermost hold space or the forward end of the forwardmost hold space.

"Cargo containment system" means the arrangement for containment of the cargo including a primary and secondary barrier, associated insulation and any intervening spaces, and adjacent structure that is necessary for the support of these elements.

"Cargo service space" means space within the cargo area that is more than 2 m^2 (21.5 $ft.^2$) in deck area and used for work shops, lockers, or store rooms.

"Cargo tank" means the liquid tight shell that is the primary container of the cargo.

"Certificate of Compliance" means a certificate issued by the Coast Guard to a foreign flag vessel after it is examined and found to comply with regulations in this chapter.

"Cofferdam" means the isolating space between two adjacent steel bulkheads or decks, which could be a void space or a ballast space.

"Contiguous hull structure" includes the inner deck, the inner bottom plating, longitudinal bulkhead plating, transverse bulkhead plating, floors, webs, stringers, and attached stiffeners.

"Control space" means those spaces in which the vessel's radio, main navigating equipment, or the emergency source of power is located or in which the fire control equipment, other than firefighting control equipment under § 154.1140 to § 154.1170, is centralized.

"Design temperature" means the minimum cargo temperature the Coast Guard allows for loading, unloading, or carriage.

"Design vapor pressure" (P_o) means the maximum gauge pressure at the top of the cargo tank for the design of the cargo tank.

"Document" means a Certificate of Inspection for a U.S. flag vessel or a Certificate of Compliance for a foreign flag vessel.

"Existing gas vessel" means a self-propelled vessel that—

(a) Is delivered on or before October 31, 1976; or

(b) Is delivered between October 31, 1976 and June 30, 1980, and is not a new gas vessel.

"Flammable cargoes" includes the following liquefied gases from Table 4 (follows § 154.1872):

Acetaldehyde
Butadiene
Butane
Butylene
Dimethylamine
Ethane
Ethylamine
Ethyl chloride
Ethylene
Ethylene oxide
Methane (LNG)
Methyl acetylene-propadiene mixture
Methyl bromide
Methyl chloride
Propane
Propylene
Vinyl chloride

"Gas-dangerous space" includes the following spaces:

(a) A space in the cargo area without arrangements to provide a safe atmosphere at all times.

(b) An enclosed space outside the cargo area through which any piping that may contain liquid or gaseous cargo passes, or within which that piping terminates, without arrangements to prevent gas from escaping into the space.

(c) A cargo containment system and cargo piping.

(d) A hold space where cargo is carried in a cargo containment system:

(1) With a secondary barrier; or

(2) Without a secondary barrier.

(e) A space separated from a hold space under paragraph (d)(1) of this definition by a single gastight boundary.

(f) A cargo pumproom and a cargo compressor room.

(g) A zone on the weather deck or a semi-enclosed space on the weather deck within 3.05 m (10 ft) of any cargo tank outlet, gas or vapor outlet, cargo pipe flange, cargo valve, or of entrances and ventilation openings to a cargo pump room or a cargo compressor room.

(h) Except for existing gas vessels, the weather deck over the cargo area and 3.05 m (10 ft) forward and aft of the cargo area on the weather deck to 2.4 m (8 ft) above the weather deck.

(i) A zone within 2.4 m (8 ft) of the outer surface of a cargo containment system where the surface is exposed to the weather.

(j) An enclosed or semi-enclosed space in which there is piping containing cargo, except those—

(1) With gas sampling lines for gas detection equipment under § 154.1350(n); or

(2) In which boil-off gas is used as fuel under § 154.703.

(k) A space for storage of cargo hoses.

(l) An enclosed or semi-enclosed space having an opening into any gas-dangerous space or zone.

"Gas-safe space" means a space that is not a gas-dangerous space.

"Hold space" means the space enclosed by the vessel's structure in which there is a cargo containment system.

"IMO" stands for the International Maritime Organization.

"IMO Certificate" means a Certificate of Fitness for the Carriage of Liquefied Gases in Bulk issued under the IMO—

(a) "Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk", adopted November 12, 1975 by Assembly Resolution A.328(IX), as amended;

(b) "Code for Existing Ships Carrying Liquefied Gases in Bulk", adopted November 12, 1975, as amended; or

(c) "Recommendations Concerning Ships Not Covered by the Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk", (Resolution A.328(IX)), adopted November 12, 1975 by Assembly Resolution A.329(IX).

"Independent tank" is a cargo tank that is permanently affixed to the vessel, is self-supporting, and is not part of the hull or essential to the strength or integrity of the hull.

"Independent tank type A" is an independent cargo tank designed primarily using classification society classical ship structural analysis procedures.

"Independent tank type B" is an independent cargo tank designed from model tests, refined analytical tools, and analysis methods to determine stress levels, fatigue life, and crack propagation characteristics.

"Independent tank type C" (pressure tank) is an independent cargo tank meeting pressure vessel criteria where the dominant stress producing load is design vapor pressure.

"Insulation space" means a space, that could be an interbarrier space, occupied wholly or in part by insulation.

"Integral tank" means a cargo tank that is a structural part of the vessel's hull and is influenced in the same manner and by the same loads that stress the adjacent hull structure.

"Interbarrier space" means the space between a primary and a secondary barrier, with or without insulation or other material.

"Length (L)" is ninety-six percent of the total length in meters on a waterline at eighty-five percent of the least molded depth measured from the top of the keel or the length from the foreside of the stem to the axis of the rudder stock on the waterline, whichever is greater. In vessels having a rake of keel, the waterline is parallel to the design waterline.

"Liquefied gas" means a cargo having a vapor pressure of 172 kPa (25 psia) or more at 37.8 °C (100 °F).

"MARVS" stands for the Maximum Allowable Relief Valve Setting.

"Membrane tank" is a cargo tank that is not self-supporting and consists of a thin layer (membrane) supported through insulation by the adjacent hull structure.

"New gas vessel" means a self-propelled vessel that—

(a) Is constructed under a building contract awarded after October 31, 1976;

(b) In the absence of a building contract, has a keel laid or is at a similar stage of construction after December 31, 1976;

(c) Is delivered after June 30, 1980; or

(d) Has undergone a major conversion for which—

(1) The building contract is awarded after October 31, 1976;

(2) In the absence of a building contract, conversion is begun after December 31, 1976; or

(3) Conversion is completed after June 30, 1980.

"Primary barrier" means the inner boundary that contains the cargo when the cargo containment system includes two boundaries.

"Process pressure vessel" means a pressure vessel that is used in a reliquefaction, cargo heating, or other system that processes cargo.

"Remote group alarm" means an audible and visual alarm that alerts when an alarm condition exists but does not identify that condition.

"Secondary barrier" means the liquid resisting outer boundary of a cargo containment system when the cargo containment system includes two boundaries.

"Semi-membrane tank" is a cargo tank that is not self-supporting and that can expand and contract due to thermal, hydrostatic, and pressure loadings. It consists of flat surfaces, supported through insulation by the adjacent hull structure, and shaped corners that connect the flat surfaces.

"Service space" means a space outside the cargo area that is used for a galley, pantry containing cooking appliances, locker or store room, workshop except those in machinery spaces, and similar spaces and trunks to those spaces.

"Shut-off valve" is a valve that closes a pipeline and provides nominal metal to metal contact between the valve operating parts, including the disc and gate, and the valve body.

"Specific gravity" (p) means the ratio of the density of the cargo at the design temperature to the density of water at 4 °C (39 °F).

"Tank cover" is the structure protecting those parts of the cargo containment system that protrude through the weather deck and providing continuity to the deck structure.

"Tank dome" means the uppermost portion of the cargo tank. For below deck cargo containment systems, it means the uppermost portion of the cargo tank that protrudes through the weather deck or through the tank cover.

"Toxic cargoes" includes the following liquefied gases from Table 4 (follows § 154.1872):

Acetaldehyde
Ammonia, anhydrous
Dimethylamine
Ethylamine
Ethyl chloride
Ethylene oxide
Methyl bromide
Methyl chloride
Sulfur dioxide
Vinyl chloride

"Vapor pressure" means the absolute equilibrium pressure of the saturated vapor above the liquid, expressed in kPa (psia), at a specific temperature.

"Void space" means an enclosed space in the cargo area outside of the cargo containment system, except a hold space, ballast space, fuel oil tank, cargo pump or compressor room, or any space used by personnel.

"1974 Safety Convention" stands for the International Convention on Safety of Life at Sea, 1974, done at London, November 1, 1974.

§ 154.9 Issuance of documents.

The Coast Guard issues an endorsed Certificate of Inspection to a U.S. flag vessel or an endorsed Certificate of Compliance to a foreign flag vessel that meets this part.

§ 154.12 Existing gas vessel: Endorsements and requirements.

(a) Except an existing gas vessel under paragraph (b), (c), or (d) of this section, an existing gas vessel must meet Subpart C of this part if the owner desires a document endorsed for the carriage of a cargo listed in Table 4 (follows § 154.1872).

(b) If an existing gas vessel is issued a document by the Coast Guard before November 1, 1987 that is endorsed for the carriage of a cargo listed in Table 4 (follows § 154.1872), and the owner desires the same endorsement on a reissued document, the vessel must—

(1) Continue to meet the same design and construction standards under which the Coast Guard issued the original document; and

(2) Meet paragraph (e) of this section.

(c) If an existing gas vessel is issued a document by the Coast Guard before November 1, 1987 that is endorsed for the carriage of a cargo listed in Table 4 (follows § 154.1872), and the owner desires an endorsement for a different cargo listed in that table, the vessel must—

(1) Continue to meet the same design and construction standards under which

the Coast Guard issued the original document;

(2) Meet paragraph (e) of this section;

(3) Meet Subpart D for the different cargo; and

(4) Meet any additional requirements of this part that the Commandant (G–MTH) determines to be necessary for safety.

(d) If an existing gas vessel does not meet paragraph (b) or (c) of this section and the owner desires a document endorsed for the carriage of a cargo listed in Table 4 (follows § 154.1872), the vessel must—

(1) Have a letter from the Coast Guard dated before November 1, 1987 stating that—

(i) Review of the vessel's plans for the carriage of that cargo is completed; or

(ii) The vessel's IMO Certificate endorsed for the carriage of that cargo is accepted;

(2) Meet the plans that were reviewed and marked "Examined" or "Approved" by the Coast Guard, or meet the standards under which the IMO Certificate was issued;

(3) Meet paragraph (e) of this section; and

(4) Meet any additional requirements of this part that the Commandant (G–MTH) determines to be necessary for safety.

(e) If the owner of a vessel desires any document endorsement described in paragraph (b), (c), or (d) of this section, the existing gas vessel must meet the requirements in each of the following:

(1) Section 154.310 (d) and (e).

(2) Section 154.320 (b) and (c).

(3) Section 154.330 (a) through (e).

(4) Section 154.340(d).

(5) Section 154.345 (a), (b)(1) through (b)(5), (b)(7) and (c).

(6) Section 154.476(a).

(7) Section 154.519(a)(2).

(8) Section 154.534.

(9) Section 154.538.

(10) Section 154.540 (c) and (d).

(11) Section 154.556.

(12) Section 154.558.

(13) Section 154.560.

(14) Section 154.562.

(15) Section 154.703.

(16) Section 154.705.

(17) Section 154.706.

(18) Section 154.707.

(19) Section 154.708.

(20) Section 154.709.

(21) Section 154.904.

(22) Section 154.906.

(23) Section 154.908(a), unless the space is separated from the accommodation, service, or control space by a steel door that—

(i) Is watertight when tested with a firehose at not less than 207 kPa gauge (30 psig);

(ii) Has a means to self-close and does not have latches or other devices designed to hold it open; and

(iii) Has an audible and visual alarm on both sides of the door which is actuated when the door is open.

(24) Section 154.910.

(25) Section 154.912.

(26) Sections 154.1110 through 154.1130, except §§ 154.1115(b), 154.1120(b) , and 154.1125 (c) and (f).

(27) Section 154.1145, except an existing gas vessel with a cargo carrying capacity of less than 2500 m^3 (88,200 ft^3) may have only one self-contained dry chemical storage unit if that unit—

(i) is installed before November 1, 1987; and

(ii) Has the capacity to meet § 154.1145 (d) and (e), and § 154.1170(e).

(28) Section 154.1150 (a) and (b).

(29) Section 154.1155.

(30) Section 154.1160.

(31) Section 154.1165 (a), (b), (d), and (f).

(32) Section 154.1170 (b) through (f).

(33) Section 154.1200 (a), (b)(1), and (b)(2).

(34) Section 154.1205(f).

(35) Section 154.1325.

(36) Section 154.1335(e).

(37) Section 154.1350 (e), (f), (i), (o), and (u).

§ 154.15 U.S. flag vessel: Endorsement application.

(a) A person who desires the endorsement required under § 154.1801 for a U.S. flag vessel must submit an application for an endorsement of the vessel's Subchapter D Certificate of Inspection under the procedures in § 91.55–15 of this chapter.

(b) The person requesting an endorsement under paragraph (a) of this section must submit to the Coast Guard, if requested—

(1) Calculations for hull design required by § 172.175 of this chapter;

(2) The plans and information listed in §§ 54.01–16, 56.01–10, 91.55–5 (a), (b), (d), (g), and (h), and 110.25–1 of this chapter;

(3) Plans for the dry chemical supply and distribution systems, including the controls; and

(4) Any other vessel information, including, but not limited to plans, design calculations, test results, certificates, and manufacturer's data, needed to determine whether or not the vessel meets the standards of this part.

§ 154.17 U.S. flag vessel: Certificate of inspection endorsement.

The Certificate of Inspection for a U.S. flag vessel allowed to carry a liquefied gas listed in Table 4 has the following endorsement for each cargo, with the corresponding carriage requirement data inserted:

Inspected and approved for the carriage of _____ at a maximum allowable relief valve setting of _____ kPa gauge (_____ psig) with an F factor of _____, a maximum external pressure of _____ kPa gauge (_____ psig), a minimum service temperature of _____ °C (_____ °F), and a maximum specific gravity of _____. Hull type _____.

§ 154.19 U.S. flag vessel: IMO certificate issuance.

(a) The Coast Guard Officer in Charge, Marine Inspection, issues an IMO Certificate to a U.S. flag vessel when requested by the owner or representative, if—

(1) The vessel meets the requirements of this part; and

(2) It is a new gas vessel, it meets the IMO Resolution A.328(IX), "Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk, 1975"; or

(3) It is an existing gas vessel, it meets the IMO "Code for Existing Ships Carrying Liquefied Gases in Bulk, 1975".

(b) The IMO Certificate expires on the same date that the vessel's Certificate of Inspection expires.

§ 154.22 Foreign flag vessel: Certificate of Compliance endorsement application.

(a) A person who desires an endorsed Certificate of Compliance to meet § 154.1802(a) for a foreign flag vessel, whose flag administration issues IMO Certificates, must submit to the Commandant (G–MTH), U.S. Coast Guard, Washington, DC 20593–0001, an application that includes the following:

(1) The vessel's valid IMO Certificate.

(2) A description of the vessel.

(3) Specifications for the cargo containment system.

(4) A general arrangement plan of the vessel.

(5) A midship section plan of the vessel.

(6) Schematic plans of the liquid and vapor cargo piping.

(7) A firefighting and safety plan.

(8) If the applicant is requesting an endorsement for the carriage of ethylene oxide, a classification society certification that the vessel meets § 154.1725(a) (4), (5), and (7).

(9) If the vessel is a new gas vessel, or an existing vessel that does not meet § 154.12 (b), (c), or (d)—

(i) A certification from a classification society that the vessel—

(A) Has enhanced grades of steel meeting § 154.170 (b)(1) and (b)(2) for crack arresting purposes in the deck stringer, sheer strake, and bilge strake; and

(B) Meets § 154.701, or if the vessel carries methane, meets § 154.703, by having the capability of cargo tank

pressure and temperature control without venting; and

(ii) The vessel's valid SOLAS Cargo Ship Safety Construction Certificate and Cargo Ship Safety Equipment Certificate.

(10) Any additional plans, certificates, and information needed by the Commandant (G–MTH) to determine whether or not the vessel meets this part.

(b) A person who desires an endorsed Certificate of Compliance to meet § 154.1802(b) for a foreign flag vessel, whose flag administration does not issue IMO Certificates, must submit to the Commandant (G–MTH) the plans, calculations, and information under § 154.15(b).

§ 154.24 Foreign flag vessel: IMO Certificate.

(a) An IMO Certificate issued under the IMO Resolution A.328(IX),"Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk, 1975" is usually sufficient evidence of compliance with this part for the Coast Guard to endorse a foreign flag vessel's Certificate of Compliance with the name of each cargo in Table 4 (follows § 154.1872) that is listed on the IMO Certificate, if the information listed in item 3 of the IMO Certificate shows that—

(1) The design ambient temperatures meet § 154.174 and § 154.176;

(2) The cargo tank design stress factors and resulting MARVS of independent tanks type B or C meet § 154.447 or § 154.450; and

(3) The cargo tank MARVS of a type IIPG ship meets § 172.175(c) of this chapter.

(b) If a foreign flag existing gas vessel meets § 154.12 (b), (c), or (d), the vessel's IMO Certificate issued under the IMO "Code for Existing Ships Carrying Liquefied Gases in Bulk, 1975" is usually sufficient evidence of compliance with the requirements of § 154.12(e) for the Coast Guard to endorse the Certificate of Compliance with the name of each cargo in Table 4 (follows § 154.1872) that is listed on the IMO Certificate; however if a foreign flag existing gas vessel does not meet § 154.12 (b), (c), or (d), an IMO Certificate issued under the IMO "Code for Existing Ships Carrying Liquefied Gases in Bulk, 1975" is not acceptable evidence of compliance with the requirements of this part for the endorsement of a Certificate of Compliance.

§ 154.30 Liquefied gases not included in Table 4.

(a) A liquefied gas not appearing in Table 4 (follows § 154.1872) must be specially approved by the Commandant (G–MTH) to be carried in bulk in U.S. waters.

(b) A person who desires to ship a liquefied gas in bulk that is not listed in Table 4 must submit to the Commandant (G–MTH) a completed form CG–4355. This form may be obtained from the Commandant (G–MTH) or any Officer in Charge, Marine Inspection (OCMI).

(c) The Commandant (G–MTH) notifies the submitter by letter whether or not the liquefied gas is specially approved for carriage in bulk in U.S. waters and the minimum requirements for that carriage. If the liquefied gas is not specially approved, the reasons why the special approval is not granted are included.

§ 154.32 Equivalents.

(a) A vessel that fails to meet the standards in this part for an endorsement on a Certificate of Inspection or a Certificate of Compliance may meet an alternate standard if the Commandant (G–MTH) finds that the alternate standard provides an equivalent or greater level of protection for the purpose of safety.

(b) The Commandant (G–MTH) considers issuance of a finding of equivalence to the standard required by this part if the person requesting the finding submits a written application to the Commandant (G–MTH) that includes—

(1) A detailed explanation of the vessel's characteristics that do not meet the requirements in this part; and

(2) An explanation of how each substituted standard would enable the vessel to meet a level of safety that would be equivalent to or greater than the standard in this part.

(c) Operational methods or procedures may not be substituted for a particular fitting, material, appliance, apparatus, item, or type of equipment required in this part.

§ 154.34 Special approval: Requests.

Each request for special approval must be in writing and submitted to the Commandant (G–MTH), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001.

§ 154.36 Correspondence and vessel information: Submission.

Correspondence to the Coast Guard and all vessel information submitted to the Coast Guard must be in English, except—

(a) IMO Certificates may be in French; and

(b) SOLAS Certificates may be in the official language of the flag administration.

§ 154.151 [Amended]

9. Section 154.151(a) is amended by changing the reference that reads "§ 154.5" to "§ 154.22".

§§ 154.170, 154.172, 154.174, 154.176, 154.188, 154.195, 154.420, 154.421, 154.439, and 154.440 [Amended]

10. In the following sections, change the date "1976" following the words "Rules for Building and Classing Steel Vessels" to the date "1981:"

(a) Section 154.170(a).

(b) Table 1 and Footnote 1 of Table 1 of Section 154.172.

(c) Section 154.174(a).

(d) Section 154.176(a).

(e) Section 154.188.

(f) Section 154.195(b).

(g) Section 154.420(a).

(h) Section 154.421.

(i) Section 154.439.

(j) Section 154.440(c).

11. The introductory text of § 154.340(b) is revised to read as follows:

§ 154.340 Access to tanks and spaces in the cargo area.

* * * * *

(b) Each access into and through a void space or other gas-dangerous space in the cargo area, except spaces described in paragraph (e) of the definition for "gas-dangerous space" in § 154.7, must—

* * * * *

12. The introductory text of § 154.530(a) is revised to read as follows:

§ 154.530 Valves: Cargo tank MARVS 69 kPa gauge (10 psig) or lower.

(a) Except those connections for tank safety relief valves and for liquid level gauging devices other than those under §§ 154.536 and 154.1310, liquid and vapor connections on a cargo tank with a MARVS of 69 kPa gauge (10 psig) or lower must have shut-off valves that—

* * * * *

13. Section 154.544(a) is revised to read as follows:

§ 154.544 Quick closing shut-off valves.

* * * * *

(a) Be a shut-off valve;

* * * * *

§ 154.1400 [Amended]

14. In the following section, change the date "(1968)" which follows ANSI standard Z–87.1 to the date "(1979):"

(a) Section 154.1400(a)(6).

(b) Section 154.1400(b)(6).

(c) Section 154.1400(c)(7).

15. Sections 154.1802 (a)(2) and (b)(2) are revised to read as follows:

§ 154.1802 Certificates, letters, and endorsements: Foreign flag vessels.

(a) * * *

(2) Special approval under § 154.30.

(b) * * *

(2) Special approval under § 154.30.

* * * * * *

J.W. Kime,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

July 8, 1987.

[FR Doc. 87-19075 Filed 8-20-87; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 662

[Docket No. 70749-7167]

Northern Anchovy Fishery; Foreign Fishing

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of final harvest quotas.

SUMMARY: NOAA issues this notice announcing the final determination of estimated spawning biomass and harvest quotas for the northern anchovy fishery in the exclusive economic zone (EEZ) for the 1987–88 fishing season. The harvest quotas have been determined by application of the formulas in the Northern Anchovy Fishery Management Plan (FMP) and its implementing regulations. This action is intended to notify users of the final harvest quotas and to promote the orderly management of the fishery.

EFFECTIVE DATE: This notice is effective August 18, 1987.

FOR FURTHER INFORMATION CONTACT: William L. Craig, Fishery Biologist, Southwest Region, NMFS, 300 South Ferry Street, Terminal Island, CA 90731, 213–514–6662.

SUPPLEMENTARY INFORMATION: In consultation with the California Department of Fish and Game and the Southwest Fisheries Center, NMFS, the Director, Southwest Region, NMFS (Regional Director), has estimated the spawning biomass of the central subpopulation of the northern anchovy (*Engraulis mordax*). From this estimate, the Regional Director calculated preliminary determinations of harvest quotas and special allocations for the 1987–88 anchovy fishing season by applying formulas in the FMP. These preliminary determinations were announced in the **Federal Register** on July 27, 1987 (52 FR 28027). Regulations at § 662.20 require the publication of final determinations of harvest quotas by notice in the **Federal Register** on or about August 1 of each year. Regulations at 50 CFR 611.20(c) require that the estimated total allowable level of foreign fishing (TALFF) for this fishery also be published at the beginning of the fishing year.

The preliminary determinations were discussed and agreed to at a public meeting of the Pacific Fishery Management Council on July 8, 1987 in Millbrae, California. Public comments were invited in the announcement and at the Council meeting; no public comments were received.

By applying the formulas in the FMP and in § 662.20, the Regional Director has made the following final determinations of harvest quotas, special allocations, and expected processing levels based upon an estimated spawning biomass of 1,212,000 metric tons (mt).

1. The total U.S. harvest quota is 144,900 mt plus an unspecified amount for use as live bait.

2. The total U.S. harvest quota for reduction purposes is 140,000 mt.

a. Of the total reduction harvest quota, 9,072 mt is reserved for the reduction fishery in subarea A (north of Pt. Buchon).

b. The reduction quota for subarea B (south of Pt. Buchon) is 130,928 mt.

3. The U.S. harvest allocation for non-reduction fishing (i.e., fishing for anchovy for use as deadbait and direct human consumption) is 4,900 mt. However, non-reduction fishing is not limited until the total catch in the reduction and non-reduction fisheries reaches the total harvest quota of 144,900 mt.

4. There is no U.S. harvest limit for the live bait fishery.

5. The domestic annual processing (DAP) capacity for the reduction and non-reduction industry is 2,950 mt.

6. The domestic annual harvest (DAH) capacity for the reduction fishery is 2,950 mt.

7. The amount allocated to joint venture processing is zero because there is no history of, nor are there applications for, joint ventures.

8. The total allowable level of foreign fishing (TALFF) is 67,050 mt. The FMP states the TALFF in the EEZ will be based upon the U.S. portion of the optimum yield minus the DAH and minus that amount of expected harvest in the Mexican fishery zone which is in excess of that allocated by the FMP. The excess Mexican harvest in 1987–88 is expected to be 74,900 mt. Applying the formula in the FMP results in this TALFF.

Other Matters

This action is taken under the authority of 50 CFR Parts 662 and 611.20 and complies with Executive Order 12291.

List of Subjects in 50 CFR Parts 611 and 662

Fisheries.

(16 U.S.C. 1801 *et seq.*)

Dated: August 17, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

[FR Doc. 87-19135 Filed 8-18-87; 11:30 am]

BILLING CODE 3510-22-M

BEST COPY AVAILABLE

Proposed Rules

Federal Register
Vol. 52, No. 162
Friday, August 21, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Parts 193 and 561

[FAP 7H5542/P429; FRL-3250-9]

Proposed Food and Feed Additive Regulations; Triforine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes establishing food and feed additive regulations to permit residues of the fungicide triforine in or on certain food and feed items. The proposed regulations, to establish maximum permissible levels for residues of triforine in or on commodities was requested in a petition by EM Industries, Inc.

DATE: Comments, identified by the document control number [FAP7H5542/P429], should be received on or before September 21, 1987.

ADDRESS: By mail, submit written comments to:

Information Services Section, Program Management and Support Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

In person, bring comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Room 236 at the address given above, for 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Lois A. Rossi, Product Manager (PM) 21, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460

Office location and telephone number: Rm. 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–1900).

SUPPLEMENTARY INFORMATION: EM Industries, Inc., 5 Skyline drive, Hawthorne, New York 10532, has submitted food/feed additive petition 7H5542 to EPA requesting that the Administrator, pursuant to section 409 of the Federal Food, Drug, and Cosmetic Act, propose establishing food/feed additive regulations to permit residues of the fungicide triforine, (*N,N*–[1,4–piperazinediyl]bis (2,2,2–trichloroethylidene)]bis[formamide] in or on the food commodity dried hops at 60 parts per million (ppm) (21 CFR Part 193) and in or on the feed commodity spent hops at 60 ppm (21 CFR Part 561).

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the regulations are sought. The toxicological data considered in support of the proposed regulations include:

1. A 2-year dog feeding study with a no-observed-effect level (NOEL) of 2.5 milligrams (mg)/kilogram (kg) bodyweight (bw)/day. Systemic effects (siderosis of Kepffer cells and bone marrow) were observed at the 25.0 mg/kg bw/day dose level.

2. A 2-year rat oncogenicity/chronic feeding study with a NOEL of 31.25 mg/kg bw/day. The systemic effect (anemia) was observed at the 156.25 mg/kg bw/day dose level. The chemical was not considered to be oncogenic at any of the doses tested (0, 1.25, 6.25, 31.25, and 156.25 mg/kg bw/day) under the conditions of the study.

3. An 18-month mouse oncogenicity study indicated that the chemical was not considered to be oncogenic at any of the doses tested (0, 4.3, 21.4, and 107 mg/kg bw/day).

4. A rat teratology study that indicated no teratogenic effects up to 1,600 mg/kg bw (highest dose tested). The NOEL for fetotoxic effects was at 800 mg/kg bw under the conditions of the study.

5. A rabbit teratology study that indicated no teratogenic effects up to 125 mg/kg bw (highest dose tested). The NOEL for fetotoxic effects was 5 mg/kg bw under the conditions of the study.

6. A three-generation rat reproduction study indicated no reproductive effects up to 125 mg/kg bw/day dose level under the conditions of the study.

7. A two-rat metabolism studies that adequately identified the major metabolites.

The acceptable daily intake (ADI) based on the 2-year dog feeding study (NOEL of 2.5 mg/kg bw/day) and using a 100-fold safety factor, is calculated to be 0.025 mg/kg bw/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 1.5 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg daily diet and a 60-kg person is calculated to be 0.1852 mg/day, the current action will increase the TMRC by 0.0225 mg/kg/day or 12.1 percent. Published tolerances utilize 12.3 percent of the ADI and the current action will utilize an additional 1.5 percent of the ADI.

The nature of the residues is adequately understood and an adequate analytical method, gas chromatography using an electron capture detector, is available in Pesticide Analytical Manual, Volume II (PAM–II) for enforcement purposes. There are presently no actions pending against the continued registration fo triforine.

Based on the information considered by the Agency, the Agency concludes that the pesticide can be safely used in the prescribed manner when such use is in accordance with the label and labeling registered pursuant the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (86 Stat. 973, 7 U.S.C. 136a *et seq.*) Therefore, it is proposed that the regulations be established as set forth below.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [FAP 7H5542/P429]. Written comments filed in response to these proposed rules will be available in the Information Services Section, at the address given above from 8 a.m. to 4

p.m., Monday through Friday, except except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determind that regulations proposing the establishment of new food and feed additive levels, or conditions for safe use of additives, or raising such food and feed additive levels do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24945).

List of Subjects in 21 CFR Parts 193 and 561

Food additives, Animal feeds, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 14, 1987.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 21 CFR Chapter I be amended as follows:

PART 193—[AMENDED]

1. In Part 193:

a. The authority citation for Part 193 continues to read as follows:

Authority: 21 U.S.C. 348.

b. By adding § 193.476, to read as follows:

§ 193.476 Triforine.

A food additive regulation is established to permit residues of the fungicide triforine, [*N, N*–[1,4-piperazinediylbis (2,2,2–trichloroethylidene)] bis[formamide]], in or on the following processed foods when present therin as a result of application to growing hops:

Foods	Parts per million
Hops, dried	60

PART 561—[AMENDED]

2. In Part 561:

a. The authority citation for Part 561 continues to read as follows:

Authority: 21 U.S.C. 348.

b. By adding § 561.442, to read as follows:

§ 561.442 Triforine.

A feed additive regulation is established to permit residues of the fungicide triforine, [*N,N*–[1,4-piperazinediylbis (2,2,2-trichloroethylidene)]bis[formamide]] in or on processed feeds when present therein as a result of application to growing hops:

Feeds	Parts per million
Hops, spent	60

[FR Doc. 87–19195 Filed 8–20–87; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 60

[AD–FRL–3250–2]

Proposed Extension to Innovative Technology Waiver for New Source Performance Standards for Kraft Pulp Mills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: The EPA proposes to amend the standards of performance for kraft pulp mills by extending the time period granted for an innovative technology waiver for operation of a new batch digester at the OI Valdosta and Timber STS, Inc. (OI) kraft pulp mill in Valdosta, Georgia, pursuant to section 111(j) of the Clean Air Act, as amended, 42 U.S.C. 7411(j).

This waiver extension would provide an opportunity to demonstrate the capability of a batch digesting displacement heating system to achieve equal or greater emission reductions than required by the existing standards of performance for digester systems at kraft pulp mills at lower costs. Considerable energy and environmental benefits would also be achieved with this technology.

The purpose of this notice is to invite public comments and to offer an opportunity to request a public hearing on the proposed extension to the innovative technology waiver.

DATES: *Comments.* Comments must be received on or before September 21, 1987.

Public Hearing. If anyone requests to speak at a public hearing by September 8, 1987, a public hearing will be held on September 21, 1987 beginning at 10:00 a.m. Persons interested in attending the hearing should call Ms. Karen Sleeth at (919) 541–5422 to verify that a hearing will be held.

Request to Speak at Hearing. Persons wishing to present oral testimony must request to speak at the public hearing by September 8, 1987.

ADDRESSES: *Comments.* Under section 307(d)(2), 42 U.S.C. 7607(d)(2), the Administrator is required to establish two separate rulemaking dockets for each rule that would apply only within the boundaries of one State. One copy of the docket is located in Washington, DC, and a second copy is located at the EPA Regional Office in Atlanta, Georgia. Therefore, copies of all comments on the waiver extension should be submitted to both the Washington, DC, and the Atlanta, Georgia, dockets.

One copy of each comment should be sent to: Central Docket Section, South Conference Center, Room 4, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, Attention: Docket No. A–84–16.

A second copy of each comment on the waiver should be sent to: U.S. Environmental Protection Agency, Region IV, Attention: Mr. Brian Beals, Docket No. A–84–16, 345 Courtland Street, Atlanta, Georgia 30365.

The docket may be inspected at the listed addresses between 8:00 a.m. and 4:00 p.m. on weekdays. A reasonable fee may be charged for copying.

Public Hearing. If anyone requests a public hearing, it will be held at EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons wishing to present oral testimony should notify Ms. Karen Sleeth, Industrial Studies Branch, Emission Standards and Engineering Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5422.

FOR FURTHER INFORMATION CONTACT: Mr. James Eddinger, Industrial Studies Branch, Emission Standards and Engineering Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5426.

SUPPLEMENTARY INFORMATION:

Background

Current Waiver. On September 6, 1984, an innovative technology waiver was proposed for operation of a new batch digester at the OI kraft pulp mill in Valdosta, Georgia (49 FR 35156). The waiver was granted on February 14, 1985 (50 FR 6316), to continue to December 31, 1986, or until the displacement heating system achieved the standard specified in 40 CFR 60.283,

whichever came first. The waiver expired on December 31, 1986.

The waiver granted to OI limited total reduced sulfur (TRS) emissions from the No. 10 digester to 0.02 ob TRS/ton of air dried pulp during the period the waiver is in effect. The waiver also limited TRS emissions from the multiple-effect-evaporator system (MEE) to the TRS level existing prior to installation of the No. 10 digester.

The limitation on the MEE system was achieved by installation of a new MEE system, which is subject to the new source performance standard (NSPS) and started operation in 1986. The TRS emissions from the new MEE system are eliminated by incineration in the lime kiln.

The NSPS TRS limitation of 0.01 lb TRS/ton of air dried pulp has not been achieved on the No. 10 digester. The TRS emissions have averaged 0.07 lb TRS/ton of air dried pulp on 31 tests as compared to the required interim standard of 0.02 lb TRS/ton of air dried pulp.

Waiver Extension Request. On March 25, 1987, OI submitted a request for an extension of the innovative technology waiver for the batch digester at its kraft pulp mill in Valdosta, Georgia. The OI indicates that both OI and the vendor (Beloit Corporation) feel further improvements are feasible and OI is willing to invest additional venture money toward that end. Additionally, OI indicated that an extension until December 31, 1987, would provide the necessary time to carry out the corrective actions already started. In support of their request, OI submitted a report which describes problems that have occurred and actions they have taken to reduce emissions from the displacment heating system (DHS).

Analysis of Information and Data. The report indicates that in scaling up the design and retrofitting it to the operating digester system, many problems were encountered which were not anticipated. These problems had to be identified and corrected before proceeding further. As a result, the installation and startup of the DHS have been delayed past the scheduled data. Even now, OI continues to identify and correct problems, such as severe corrosion, which were not experienced during operation of the pilot unit.

The TRS testing and optimization schedules were in turn delayed by the late startup and extended shakedown period. In addition, the TRS test results were much higher and more variable than expected based on the pilot study results. Additional testing was done, and OI learned that some variables which were expected to impact TRS emissions, such as displacement volume and temperature, do not correlate with emission rates. The OI has identified a potential mechanism involving the creation of a vortex, which causes air stripping of the TRS and results in higher than anticipated TRS emissions. The OI and the vendor have initiated activities to investigate and resolve the TRS issue.

Conclusion. Based on an analysis of the information contained in the OI report, the Administrator judges that an extension to the waiver is warranted. The extension will cover a period until December 31, 1987. The OI has indicated that this is sufficient time to optimize the displacement heating system to achieve the NSPS.

Under section 111(j) of the Clean Air Act, the Administrator is authorized to grant a waiver for a period up to 4 years from the date of startup of the source. Since the expiration date of the waiver was less than 2 years from startup of the source, the Administrator has authority to grant an extension to the waiver.

The Administrator believes that the criterion for issuing a waiver, under section 111(j)(1)(A), is still met. That is, there is a substantial likelihood that the DHS will achieve greater continuous emission reduction than that required to be achieved under the standard of performance which would otherwise apply, or that at least an equivalent reduction will be achieved at lower costs in terms of energy, economic, or nonair quality environmental impacts. Moreover, this emission reduction will be achieved at a significantly lower cost than that of the conventional batch digester, considering both energy and economic impacts.

Proposed Extension. The extension to the waiver is proposed to be granted for the No. 10 batch digester at the OI kraft pulp mill in Valdosta, Georgia. The extension would be effective until December 31, 1987. Failure to comply with the conditions of the waiver, as promulgated on February 14, 1985, would be subject to enforcement under section 113 of the Clean Air Act.

Docket

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can intelligently and effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated waiver and EPA responses to significant comments, the contents of the docket will serve as the record in case of judicial review except for interagency review material [section 307(d)(A)].

Miscellaneous

The Paperwork Reduction Act of 1980 (Pub. L. 96–511) requires EPA to submit to the Office of Management and Budget (OMB) certain public reporting/record keeping requirements before proposal. This rulemaking does not involve a "collection of information."

The Administrator certifies that a regulatory flexibility analysis under 5 U.S.C. 601 et seq. is not required for this rulemaking because the rulemaking would not have a significant impact on a substantial number of small entities. The rulemaking would not impose any new requirements and, therefore, no additional costs would be imposed. It is, therefore, classified as nonmajor under Executive Order 12291.

List of Subjects in 40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Asphalt, Cement industry, Coal, Copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metals, Metallic minerals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel, Sulfuric acid plants, Waste treatment and disposal, Zinc, Tires, Incorporation by reference, Can surface coating, Industrial organic chemicals, Organic solvent cleaners, Fossil fuel-fired steam generators.

Date: August 14, 1987.

Lee M. Thomas,

Administrator.

Title 40 Part 60, Subpart BB of the Code of Federal Regulations is proposed to be amended to read as follows:

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

1. The authority citation for Part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, 7601.

2. Section 60.286 is amended by revising paragraph (a)(2) introductory text, to read as follows:

§ 60.286 Innovative technology waiver.

(a) * * *

(2) Commencing on February 14, 1985, and continuing to December 31, 1987, or until the displacement heating system that can achieve the standard specified

in 40 CFR 60.283 (February 23, 1987), is demonstrated to the Administrator's satisfaction, whichever comes first, OI Valdosta and Timber STS Inc. shall limit the discharge of TRS emission to the atmosphere:

* * * * *

[FR Doc. 87-19188 Filed 8-20-87; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 160

[OPP-250078; FRL-325-4]

Notification to Secretary of Agriculture of Proposed Revision to the Federal Insecticide, Fungicide and Rodenticide Act; Good Laboratory Practice Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notication to the Secretary of Agriculture.

SUMMARY: Notice is given that the Administrator of EPA has forwarded to the Secretary of Agriculture a proposed regulation that amends the Federal Insecticide, Fungicide and Rodenticide (FIFRA) Good Laboratory Practice Standards. This action is required by section 25(a)(2)(A) of FIFRA, as amended.

FOR FURTHER INFORMATION CONTACT: Dan Helfgott, Office of Compliance Monitoring (EN-342), Environmental Protection Agency, Room E-707B, 401 M Street, SW., Washington, DC 20460, (202) 382-7825.

SUPPLEMENTARY INFORMATION: Section 25(a)(2)(A) of FIFRA provides that the Administrator shall provide the Secretary of Agriculture with a copy of any proposed regulation at least 60 days prior to signing it for publication in the **Federal Register.** If the Secretary comments in writing regarding the proposed regulation within 30 days after receiving it, the Administrator shall issue for publication in the **Federal Register**, with the proposed regulation, the comments of the Secretary, if requested by the Secretary, and the response of the Administrator concerning the Secretary's comments. If the Secretary does not comment in writing within the 30 days after receiving the proposed regulation, the Administrator may sign the proposed regulation for publication in the **Federal Register** anytime after the 30-day period.

As required by FIFRA section 25(a)(3), a copy of this proposed regulation has been forwarded to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

As required by FIFRA 25(d), a copy of this proposed regulation has been forwarded to the Scientific Advisory Panel.

Authority: 7 U.S.C. 130 et seq.

Dated: August 14, 1987.

A. E. Conroy II,
Director, Office of Compliance Monitoring.

[FR Doc. 87-19194 Filed 8-20-87; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 180

[OPP-300172; FRL-3250-8]

Dimethylformamide; Proposed Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that dimethylformamide be exempted from the requirement of a tolerance when used in accordance with good agricultural practice in formulations with the fungicide triforine in or on the raw agricultural commodity hops. This regulation was requested by EM Industries, Inc. Also, elsewhere in this issue of the **Federal Register**, a food and a feed additive regulations are proposed to permit residues of triforine in or on dried and spent hops.

DATE: Comments, identified by the document control number [OPP-300172], should be received on or before September 21, 1987.

ADDRESS: By mail, submit written comments to:

Information Services Section, Program Management and Support Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460

In person, bring comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidentinl may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Room 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:
By mail:

Lois A. Rossi, Product Manager (PM) 21, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460,

Office location and telephone number: Room 237, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1900).

SUPPLEMENTARY INFORMATION: At the request of EM Industries, Inc., The Administrator proposes to amend 40 CFR 180.1046 by establishing an exemption from the requirement of a tolerance for residues of dimethylformamide when used in formulations with the fungicide triforine (*N,N*-[1,4-piperazinediylbis (2,2,2-trichloroethylidene)]bis[formamide]), in or on the raw agricultural commodity hops.

Inert ingredients are ingredients which are not active ingredients as defined in 40 CFR 162.3(c), and include but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as water; baits such as sugar, starches, and meat scraps; dust carriers such as talc and clay; fillers; wetting and spreading agents; propellants in aerosol dispensers; and emulsifiers. The term inert is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

Preambles to proposed rulemaking documents of this nature include the common or chemical name of the substance under consideration, the name and address of the firm making the request for the exemption, and toxicological and other scientific bases used in arriving at a conclusion of safety in support of the exemption.

Name of inert ingredient: Dimethylformamide.

Name and address of requestor: EM Industries, Inc., 5 Skyline drive, Hawthorne, NY 10532.

Bases for approval:

1. Dimethylformamide is already exempt from the requirement of a tolerance for residues in or on the following raw agricultrual commodities when used in formulations with the fungicide triforine: almonds, apples, apricots, bell peppers, blueberries, cantaloupes, cherries, cranberries, cucumbers, eggplants, nectarines,

peaches, plums, prunes (fresh), strawberries, and watermelons.

2. The toxicological data considered in support of the exemption include several teratology studies by different routes of exposure and a subchronic feeding study in the dog with a no-observed-effect level (NOEL) of 1.0 milligram (mg)/kilogram (kg)/day.

Data submitted with this request indicated that dimethylformamide residues to beer from triforine applications to German hops range from 2.58 to 4.27 parts per million (ppm). The allowable levels based on a NOEL of 1 mg/kg/day, using a safety factor of 1000 and a food factor of 0.03 percent, are up to 133 ppm. Therefore, based on a worst case estimate of residues of dimethylformamide in beer and a calculation of the safe level of residues, it can be concluded that this use of dimethylformamide toxicologically permissible.

Based on the above information, it has been found that, when used in accordance with good agricultural practices, this ingredient is useful and does not pose a hazard to humans or the environment. It is concluded, therefore, that the proposed amendment to 40 CFR 180.1046 will protect the public health, and it is proposed that the regulation be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains the ingredient listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments should bear a notation indicating the document control number, [OPP–300172]. Written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601 through 612), the Administrator has determined that regulations establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: August 14, 1987.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.1046(a) is amended by adding, and alphabetically inserting, the raw agricultural commodity hops to read as follows:

§ 180.1046 Dimethylformamide; exemption from the requirement of a tolerance.

(a) * * *

Commodities

*	*	*	*	*

Hops

*	*	*	*	*

[FR Doc. 87–19196 Filed 8–20–87; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 228

[FRL–3250–1]

Ocean Dumping; Proposed Designation of Site

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to designate a dredged material disposal site located offshore of Virginia Beach, Virginia for the disposal of dredged material removed from the mouth of the Chesapeake Bay including Thimble Shoal Channel, Cape Henry Channel, and the Atlantic Ocean Channel. This action is necessary to provide an acceptable ocean dumping site for the current and future disposal of this material. This proposed site designation is for an indefinite period of time, but the site is subject to continued monitoring to insure that unacceptable adverse environmental impacts do not occur.

DATE: Comments must be received on or before October 5, 1987.

ADDRESSES: Send comments to: Mr. William C. Muir, Environmental Impact and Marine Policy Branch, Environmental Services Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Telephone: (215) 597–2541.

The file supporting this proposed designation is available for public inspection at the following locations:

EPA Public Information Reference Unit (PIRU) Room 2904 (rear), 401 M Street, SW, Washington, D.C.

EPA Region III, 841 Chestnut Bldg., Philadelphia, PA 19107

FOR FURTHER INFORMATION CONTACT: William C. Muir, 215/597–2541.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 et seq. ("the Act") gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On October 1, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. This proposed site designation is within Region III and is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR Chapter 1, Subchapter H, § 228.4) state that ocean dumping sites will be designated by publication in Part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 et. seq.) and was last extended on August 19, 1985 (50 FR 33338). That list established this site. Interested persons may participate in this proposed rulemaking by submitting written comments within 45 days of the date of this publication to the adress given above.

B. EIS Development

Section 102(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et. seq. ("NEPA") requires that Federal agencies prepare an Environmental Impact Statement (EIS) on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment. The object of NEPA is to build into the Agency decision-making process careful consideration of all environmental aspects of proposed actions. While NEPA does not apply to

EPA activities of this type, EPA has voluntarily committed to prepare EIS's in connection with ocean dumping site designations such as this. [See 39 FR 16186 (May 7, 1974).]

The Corps of Engineers prepared a draft and final supplement to the Final Environmental Impact Statement (EIS) entitled "Final Supplement 1 to the Final Environmental Impact Statement and Appendix: Dam Neck Ocean Disposal Site and Site Evaluation Study, Norfolk Harbor and Channels, Virginia, Deepening and Disposal." On April 3, 1981, the Final EIS for the Norfolk Harbor and Channels, Virginia, Deepening and Disposal was filed with EPA. A Draft Supplement to the Final EIS, which documents the use and proposed final designation of the expanded DNODS, was filed with EPA on December 14, 1984. The closing date for comments on the Draft EIS was January 28, 1985.

The Final Supplement was filed with EPA on June 7, 1985. A copy of these documents may be obtained from U.S. Army Engineer District, Norfolk, 803 Front Street, Norfolk, Virginia 23510–1096. Substantive comments were received on the Final Supplement to the EIS relating to endangered species, sediment transport, the potential for change in wave amplitude and last, possible water quality degradation. Subsequent to the Final Supplement, the Corps completed a number of multi-year studies of the site. In conjunction with EPA, an active monitoring program has been established to address the major issues which will be discussed in detail in Section E.

Pursuant to Section 7 of the Endangered Species Act (16 U.S.C. 1531) the National Marine Fisheries Service identified four species of sea turtles which may occur at or near the DNODS (Letter from Thomas Bigford, NMFS to Colonel Claude Boyd, III, District Engineer, COE, dated January 28, 1984). A preliminary determination has been made that the activity under consideration will not affect those species or their critical habitat. (See Section D for further details.) Based upon review of the latest published version of the National Register of Historical Places, there were no known sites eligible for or included in the Register within the DNODS. Wrecks are known to exist in the vicinity of DNODS. Reconfiguration of the site has eliminated known wrecks within the site. Therefore, disposal of dredged material would not adversely disturb or otherwise impact marine archaeological resources in the area. The State of Virginia does not have a Coastal Zone Management Plan.

The action discussed in the FEIS is designation for continuing use of the ocean dredged material disposal site identified as DNODS for dredged material. The purpose of the designation is to provide an environmentally acceptable location for ocean disposal of dredged materials. The appropriateness of ocean disposal is determined on a case-by-case basis as part of the process of issuing permits for ocean disposal.

The EIS discusses the need for the action and examines ocean disposal sites and alternatives to the proposed action. Land based disposal and other alternatives were examined in a previously published EIS titled "Feasibility Study and Final Environmental Impact Statement, Norfolk Harbor and Channels, Virginia, Deepening and Disposal" (April 3, 1981). The two primary disposal options with the least environmental impacts were fill of a 6,000 acre site in the Dismal Swamp and ocean dumping. The Dismal Swamp site was eliminated due to impacts to the fresh water swamp, and the loss of recharge for the aquifer. The original study proposal was for use of an ocean site located approximately 12 nautical miles due east of the Chesaspeake Bay. This site, while still a potential future disposal area, was not selected by the Corps of Engineers primarily due to the long haul distance for the deepening project.

The Final Supplement to the EIS presented the information needed to evaluate the suitability of ocean disposal areas for final designation and was based on a disposal site environmental study. The study and final designation process are being conducted in accordance with the Act, the Ocean Dumping Regulations, and other applicable Federal environmental legislation.

C. Proposed Site Designation

The proposed Dam Neck Ocean Disposal Site is the primary disposal site for three Federal navigation channels; the Atlantic Ocean Channel, the Cape Henry Channel, and the Thimble Shoal Channel. These channels provide entrance to the ports of th Hampton Roads and Baltimore. Combined, these ports provide the largest export tonnage in the country. Maintenance of these ports for navigation is vital to the economy of the United States. Further, the channels provide entrance to the largest naval port in the world, the Naval Shipyard, which is vital to national defense.

The proposed site has been in use since 1967 when the Corps deepened Thimble Shoal Channel to its present depth of 45 feet. Since that time all new work and maintenance dredged material from Cape Henry Channel and Thimble Shoal Channel, with limited exceptions, have been disposed at DNODS. These deposits included a variety of naturally occurring marine sediments, ranging from silts and clays to fine, medium, and coarse sands. To date, approximately 20.4 million cubic yards of dredged materials have been placed at DNODS.

The deepening of the Chesaspeake Channels, Cape Henry Channel to 50 ft MLW, Thimble Shoal Channel to 55 ft MLW, and construction of the Atlantic Ocean Channel to 57 ft MLW will require ocean disposal for as much as 36 million cubic yards of new work dredged material. In addition, future maintenance of these deepened channels will require ocean disposal for about 32 million cubic yards of maintenance dredged material during a 50-year period. To accommodate the estimated future new work and maintenance dredged material ocean disposal requirements and enable effective sediment management, the EIS included expansion and reconfiguration from a total bottom area of 4 square miles to 10 square miles.

The new reconfigured disposal site being proposed for fianl designation is located approximately 3 nm due east of the Dam Neck/Virginia Beach section of the Virginia coast and is approximately 7 nm south of the mouth of Chesapeake Bay. The boundary coordinates for the DNODS are as follows:

36° 51′ 20″ N., 75° 54′ 43″ W.;
36° 51′ 20″ N., 75° 53′ 31″ W.;
36° 50′ 52″ N., 75° 52′ 49″ W.;
36° 46′ 28″ N., 75° 51′ 51″ W.;
36° 46′ 28″ N., 75° 54′ 19″ W.;
36° 50′ 05″ N., 75° 54′ 19″ W.

If at any time disposal operations at the site cause unacceptable adverse impacts, further use of the site will be restricted or terminated as per 40 CFR Part 228.7–10.

D. Regulatory Requirements

Five general criteria are used in the selection and approval of ocean disposal sites for continuing use. Sites are selected so as to minimize interference with other marine activities, to keep any temporary perturbations from the dumping from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at any early stage. Where feasible, locations off the Continental Shelf are preferred. If at any time disposal operations at an interim

site cause unacceptable adverse impacts, the use of that site will be terminated as soon as suitable alternate disposal sites can be designated. The general criteria are given in Section 228.5 of the EPA Ocean Dumping Regulations, and Section 228.6 lists 11 specific factors used in evaluating a proposed disposal site to assure that the general criteria are met.

The proposed site conforms to the five general criteria. However, there are no existing historically used sites beyond the edge of the Continental Shelf in this area. EPA has determined, based on the information presented in the FS–EIS that a site off the Continental Shelf is not feasible and that no environmental benefit would be obtained by selecting such a site instead of that proposed in this action. Further, historical use at the existing site has not resulted in substantial adverse effects to living resources of the ocean or to other uses of the marine environment.

The characteristics of the proposed site are reviewed below in terms of the 11 specific criteria for site selection.

1. Geographical position, depth of water, bottom topography and distance from coast [40 CFR 228.6(a)(2)]

The boundary coordinates of the site are given above. The landward boundary of the Dam Neck Site is about 3 nm from the coastline and parallel to Virginia Beach, Virginia. Water depths in the area are generally between 9.5 and 15 meters and an area of 10 square nm. A small portion of the site is characterized by a disposal impression which is the result of the COE depositing dredged material. With the exception of this impression, the bottom near the DNODS has no significant features. Topography is typical of the inner Continental Shelf, with a smoothe bottom and a gradual seaward slope.

2. Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases. [40 CFR 228.6(a)(2)]

The DNODS is situated on the near shore Continental Shelf, surrounded by productive marine waters usually associated with shallow coastal areas. The dominant factor influencing the biological makeup of the study area is its position adjacent to the mouth of the Chesapeake Bay. The Bay "plume" contributes nutrients and detrital materials, resulting in enhanced primary production compared to areas farther from the Bay mouth.

Breeding, spawning, nursery, and passage activities of commercially important finfish and shellfish occur on a seasonal basis in the vicinity of the dump site. However, the most extensive breeding, spawning, and nursery activities occur either in offshore waters or in the adjacent Chesapeake Bay estuarine waters that is offshore or inshore of the dredged material disposal site. In addition, the total area of the disposal site represents only a small portion of the total breeding, spawning, and nursery areas along the mid-Atlantic coast for these species. The disposal site is within passage areas for anadromous adult fish and larval finfish and shellfish migrating from the ocean to the Cheaspeake Bay. However, these passage areas are not confined or geographically limited to areas coinciding with the DNODS. The intensity of passage activities varies seasonally with peaks in spring and early fall for most important finfish and shellfish species.

The most important shellfish species to the lower Cheaspeake Bay and to the DNODS is the blue crab *Callinectes sapidus*. Studies by EPA, the COE and others identified in the FS EIS showed that during larvael development a significant fraction of the blue crab reside in the Chesapeake Bay plume, only a fraction of which includes the DNODS. Therefore, the potential impacts would be very small, especially since the crab larvae are primarily in the surface waters.

The DNODS supports a productive benthic faunal population which is typical of the mid-Atlantic inner Continental Shelf. However, no commercial quantities of any shellfish were identified in the DNODS. A small conch fishery (*Busycon* sp. and *Strombus* sp.) occur inshore of the site and the surf clam (*Spisula solidissima*) and sea scallop (Placopecten magillanicus) are found offshore of the site.

The impact of dumping on breeding, spawning, nursery, and passage activities is therefore likely to be minimal for the reasons stated above. In addition, due to the mobility of adult finfish, it is unlikely that dumping will have a significant impact on either anadromous or pelagic species. In general, increases in suspended sediment concentrations following dumping are localized and are not expected to cause adverse long-term impacts. Consequently, interference of suspended sediments on the respiratory structures of fish are minimal. Some entrainment of larvel fish and crabs within the disposal plume way occur, causing a minor detrimental effect within the disposal site. However, the population will not be adversely affected.

Studies indicate the migration of thousands of the loggerhead and ridley turtles into the Chesapeake Bay. However, there is little evidence that a significant number of turtles would in fact traverse the dump site during the migratory April-June period. During EPA's surveys over a four-year period, no turtles were sighted nor were any recovered from extensive benthic trawls at the site. This may be due to the colder water, 8 to 10 °C at the dump site during the period of May through June as opposed to the near shore waters where temperatures reach 20 °C, the temperature at which the turtles begin to migrate. Further, in conjunction with EPA, the COE has developed a site management plan which segments the site, thereby, only a two-square mile area would be impacted at any time. In view of the above, any impacts to the sea turtles would be infrequent and localized and, therefore, not a significant threat especially given the mobility of the turtles and the short-term water column effects. The impact on benthic communities will be localized to an area which is only a small portion of the total bottom area over which the migrating turtles pass. The turtles, being opportunistic feeders, should have no difficulty in finding adequate adjacent food resources to sustain their winter migration. The jellyfish, which both the loggerhead and ridley forage on near the Bay mouth, should in on way be adversely impacted by disposal at Dam Neck Disposal Site, 10 miles away.

3. Location in relation to beaches and other amenity areas. [40 CFR 228.6(a)(3)]

The DNODS is located offshore of Virginia Beach. The 3.3 nm of coastline between Rudee Inlet and 49th Street in Virginia Beach are highly developed ocean resort areas—the largest in Virginia. It includes an extensive tourist and resort trade. The dunes have been removed and developed. South of Rudee Inlet the shoreline is backed by sand dunes with residential development, a military installation and further south, a National Wildlife Refuge.

The DNODS is within 3 nm of the adjacent beach. Longshore, tidal, and storm generated currents may disperse the dredged materials dumped at the site. The center of the site is approximately 2 nm seaward of the active littoral drift zone with respect to the nearshore bottom profile. The mean annual current vectors for bottom circulation are toward shore along Virginia Beach. However, the vectors were of weak magnitude and the FS EIS predicted minimal material movement

from the site by wave induced and tidal currents.

Sediment transport at the DNODS, while minimal, would become part of the littoral drift zone and incorporated into the natural beach process with minimal adverse environmental impacts. The majority of the sediments released would be expected to sink to the bottom and remain in place.

In addition, after 20 years of use, no apparent adverse impacts to beaches have been associated with the previous dredged material disposal at this site. Thus, use of the site should not adversely affect recreation, coastal development or other uses of the shoreline. Further, there are public amenities in the vicinity of the DNODS which are incompatible with continuing use of the disposal site.

4. Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packing the waste, if any. [40 CFR 228.6(a)(4)]

All dredged material dumped in ocean disposal sites must satisfy the criteria for ocean dumping permits specified in EPA's Ocean Dumping Regulations [40 CFR Part 227].

The types of dredged material to be dumped at DNODS and method of release will be typical of previous dredging operations in the lower Chesapeake Bay channels that involved ocean disposal since 1967. The dredged materials will consist of uncontaminated sediments removed from the existing Thimble Shoal and Cape Henry Channels and the planned Atlantic Ocean Channel.

Thimble Shoal Channel is approximately 12 nm long and is maintained 45 feet deep and 1,000 feet wide. The channel extends between deep water just to the east of Hampton Roads and deep water at the Chesapeake Bay mouth. West of the Chesapeake Bay Bridge Tunnel the channel sediments are clays and silts (50–75%), but fine to medium sands are present (75–90%), within the eastern end of the channel. The planned deepening to 55 feet would result in approximately 23.5 million cubic yards for disposal with maintenance expected to average about 900,000 cubic yards every 5 years. The project is projected to be phased with approximately 3.6 million cubic yards to be disposed from the outboard Thimble Shoal Channel to 50 feet for 1987 and 1988.

Cape Henry Channel is about 2.5 nm long and is maintained to 42 feet deep and 1,000 feet wide. The channel is at the Chesapeake Bay mouth and is the start of the route north to Baltimore. The channel sediments are predominantly fine sand (80–90%) with some silt, clay, and shell. The planned deepening will require approximately 3.2 million cubic yards to be disposed with maintenance expected to average about 1,000,000 cubic yards every 4 years.

The Atlantic Ocean Channel is in the vicinity of the present southeast sea lanes. The planned deepening to 57 feet and 1,000 feet wide will involve dredging of about 10 million cubic yards of fine sand (80–90%) with silt, some clay, and some gravel. Maintenance dredging is predicted to average about 1,000,000 cubic yards of material every 5 years.

The dredging and release of dredged material will be removed from the channels by self-propelled trailing suction hopper dredges and transported to the DNODS by these same seagoing vessels. The materials will be released at the site by bottom dumping. Split hull hopper dredges accomplish this by opening the hull.

The dredged material from the Hampton Roads is a finer grained material which often contains contaminants. As a result, all inner harbor dredge disposal will occur in the Craney Island contained disposal area.

Chemical and biochemical studies conducted on the channels proposed for ocean disposal at DNODS were shown to meet EPA criteria. Further, suspended solid phase bioassays conducted on sediments from the Thimble Shoals and Cape Henry Channels indicated that sediments exhibited low levels of acute toxicity for the grass shrimp, *Palaemonetes pugio* and the blue mussel, *Mytilus edulis*. In all cases, the mortalities of text organisms exposed to the various elutriate concentrations was not significantly different from that exhibited by the controls. The solid phase bioassay experiments also indicated a low degree of toxicity for sediments from Thimble Shoals and Cape Henry Channels. Osmoregulation studies on suspended solid phase bioassays indicated that materials did not produce significant sublethal effects. Elutriates of sediments did not affect the ability of *P. pugio* to hyperregulate at low salinities or hyporegulate at high salinities.

5. Feasibility of surveillance and monitoring. (40 CFR 228.6(a)(5))

The Dam Neck Site does not currently have surveillance by the U.S. Coast Guard. Instead, the COE employs qualified personnel for contractor surveillance on the dredge. To assist in assurance that all disposal takes place in the proper location, the U.S. Coast Guard has placed special buoys to mark the location of dumping. Due to the proximity of the site to shore, less than 3 nm, surveillance using shipriders or aircraft overflights would not be difficult. Monitoring is not a problem because the site is readily accessible from Hampton Roads, Little Creek, Lynnhaven Inlet, and Rudee Inlet, and has conditions suitable for typical survey and oceanographic vessels.

The Corps of Engineers conducts bathymetric survey monitoring of the channels and dumpsite. Surveys are conducted on a minimum annual basis and more frequently as needed during the channel construction phase, pre- and post-dump surveys for each major segment of the project. Also included in the monitoring of transport, the EPA with the assistance of the Corps has placed sediment traps around the site to assure no significant transport toward the beach. Traps will be monitored semiannually.

EPA has a continuing monitoring program at the site for annual assessment of benthic communities, chemical characterization and biological changes near the site. This program will continue through the construction phase of the project. In addition, in conjunction with the National Marine Fisheries Service, EPA will conduct a two-year study to assess the actual sea turtle migration through the site during the spring migration.

Water quality monitoring will continue by both the EPA and Corps to assure no changes in water quality due to ocean disposal during the critical summer periods.

Last, bioassays and bioaccumulation analyses and appropriate monitoring of the site sediments and dredged materials will be determined on a case-by-case basis by EPA and the Corps as necessary. Should evidence of significant adverse environmental effects occur, EPA will take appropriate steps as provided in 40 CFR Part 228.

6. Dispersal, horizontal transport and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any. (40 CFR 228.6(a)(6))

The physical oceanographic characteristics of the DNODS are typical of the inner continental shelf circulation seaward of the littoral zone. The inner shelf circulation seaward of the 10 meter contour is generally aligned with the bathymetric contours, with a negligible onshore-offshore component. The dispersal, horizontal transport, and vertical mixing characteristics of the DNODS are influenced by a net southward oceanic circulation rather than the nearshore littoral forces.

Near surface currents in the vicinity of the site range from 5 to 9 cm/s during the summer, and 4 to 6 cm/s during the fall. Bottom currents during those periods averaged 0 to 2 cm/s during summer and between 1 to 3 cm/s during the fall. Bottom currents are oriented north-south at 3 to 12 cm/s during the presence of moderate wave action. The threshold for transport of medium grained sand is taken at 20 cm/s and it is therefore concluded that wave induced sediment movement is oscillatory and should produce no net translation of sediment. However, as noted in the previous section, monitoring will be conducted to assure no impacts to amenities due to sediment transport.

Immediate dispersal and horizontal transport of the dredged material are influenced primarily by the method of placement, type of dredged material, and depth of water at the disposal site. The material is expected to be released by bottom dumping hopper dredges at depths of 6 to 9 meters below the water surface and rapidly descend to the bottom at depths of about 10 to 15 meters. Non-cohesive materials such as sand and shell would descend as high density flow, whereas cohesive sediments would descend as a cohesive mass of material. The sediments that are proposed for disposal vary from cohesive to non-cohesive material. The length of the bottom impact zone depends on the speed of the dredge and time required to release the load and is typically less than 1,500 feet for a split hull dredge and less than 3,000 feet for a conventional bottom door dredge. Deposition of the dredged material typically occurs no more than 500 feet laterally from the path of the hopper dredge. Field studies show losses at the site as less than one percent.

Long-term disposal and horizontal transport of dredged material should not be significant at the DNODS due to currents which are insufficient to transport significant amounts of dredged materials. Numerous pre- and post-dump bathymetric surveys indicate optimal retention at the site.

7. Existence and effects of current and previous discharges and dumping in the area (including cumulative effects). (40 CFR 228.6(a)(7))

The DNODS has been used for over 20 years with approximately 19 million cubic yards of dredged material being disposed at the site. Based upon studies by EPA, the COE and the Hampton Roads Sanitary District, there appears to be no significant difference in benthos, fisheries, water quality, and sediment quality between the disposal site and adjacent areas which have not been disposed on. Dredging records indicate that most of the materials dumped at the site came from Cape Henry and Thimble Shoal Channel. The lack of any statistically significant difference between the disposal site and adjacent areas tends to indicate that there have been little long-term adverse impacts associated with disposal.

The only detected long-term effects from previous dredged material disposed at the site were limited to physical effects. The materials dumped at the site have been varying mixtures of uncontaminated fine sand, silts, and clays. The immediate effects of disposing of these materials have been restricted to minor short-term increases in water column suspended solids, and the burial of limited bottom areas with a thin layer of dredged material.

Investigations by the U.S. Army Corps of Engineers Waterways Experiment Station have indicated the suspended solids levels typically return to ambient levels shortly after open water disposal operations are completed. Studies have also indicated that bottom areas buried by dredged material are typically repopulated within several months.

The cumulative effects of disposal at this DNODS are limited to bathymetric changes. Operational control of previous disposal and the relatively stable environment have resulted in a measurable buildup of dredged material deposits in the northern end of the DNODS. Studies by EPA have, however, indicated that during the 20-year period of dumping, there may have been some dumping outside the site as evidenced by REMOTS camera photographs. Except for these changes, there were no biological, or chemical effects from previous disposal at the site.

Motile finfish and shell fish generally are capable of escaping from released sediments. No existence of any significant adverse impacts were identified. No fish kills were identified to occur in the vicinity of the site during the 20-year period. No shellfish beds, existing or relic were found in the area. No evidence of any significant adverse impacts on macrofauna or microfauna abundance due to previous dredged material disposal was apparent during site surveys.

The results of bioassay and sediment quality of the Thimble Shoal Channel indicate a relatively uncontaminated sediment and it is unlikely that previous disposal either directly was toxic to marine organisms or contributed significant amounts of contaminants to the ecosystem.

8. Interference with shipping fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance and other legitimate uses of the ocean. (40 CFR 228.6(a)(8))

The mouth of the Chesapeake Bay and near shore waters are heavily utilized for shipping, fishing and recreational boating. However, the DNODS is ideally located south and inshore of the shipping lanes and offshore of the primary near shore fishery and inshore of the major sport fishery.

Conch, blue crabs, and menhaden as well as croaker, spot and sea trout are caught in the area. Further, an extensive summer flounder fishery occurs inshore of the site. However, there are restrictions to use of the area as it is near a Navy firing range. While this would not restrict disposal, it does limit commercial trawling operations.

The prime recreational fishing areas are near the mouth of the bay and further off shore, 10 to 15 nm, according to published fishing records. Since dredge material disposal will be fairly frequent over the next five years, it would restrict any fishing activity within the site. Further, due to the mounding that will occur, the trawling would be difficult within the site.

Use of the DNODS should not affect the traffic into the Chesapeake Bay or along the coast. Deep draft shipping to and from the ports of Baltimore or Hampton Roads must comply with the Chesapeake Bay Traffic Separation Scheme. The DNODS is located south of these channels. The DNODS is inshore of the deep draft coastal shipping routes. Further, shallow draft commercial fishing and sport boats will not be affected since their drafts are typically 15 feet or less.

All considerations for mineral extraction in Virginia waters are in the exploratory stages. The DNODS is not expected to interfere with these uses as it is well inshore of the proposed oil and natural gas drilling lease areas.

Presently there are no desalination plants within the study area. EPA is, however, currently investigating the use of reverse osmosis for desalination in the Norfolk area. The location for the pilot facility has not been chosen. It is doubtful that the intake would be in the ocean rather than the bay where salinities are much lower.

Concerning areas of special scientific importance, the area does not contain any unique physical or biological features. However, the area has been studied as part of the Hampton Roads Sanitary District ocean outfall located one mile from the site. Use of the site for disposal should not interfere with the operation of the ocean outfall. A separate monitoring program was established between the U.S. Corps of

Engineers and the EPA to assure there are no synergistic effects of dredge material disposal and the ocean outfall.

There are no fish and shellfish mariculture activities in or around the site. Last, the only other known use of the area is by the U.S. Navy military firing range. Since the firing area encompasses the DNODS, the COE and its contractor coordinate with the Navy to schedule disposal operations. The Navy also conducts underwater explosive ordnance in the area which must also be coordinated with the disposal schedule.

9. The existing quality and ecology of the site as determined by available data or by trend assessment or baseline surveys. (40 CFR 228.6(a)(9))

This existing water quality of the DNODS area has been classified by the State of Virginia as non-degraded, suitable for public water supplies, primary contact recreation, propagation of fish and other beneficial uses. The surface dissolved oxygen concentrations in the area are generally at or near saturation. However, backgound levels of dissolved oxygen in the bottom waters of the area are periodically below 5 mg/1. Nitrogen and phosphorus levels are moderate, exhibiting mean concentrations of 0.3 mg N/1 and 0.08 mgP/1. During summer to early fall, a strong thermal-salinity density stratification appears with minimal stratification during winter to spring with significant vertical mixing.

The water quality of the site is primarily affected by discharges from the Hampton Roads Sanitary District which discharges effluent from secondary treatment and filtration facilities and by the DNODS which has been used for the past 20 years. The near coastal waters of the site are also affected by the outflow from Chesapeake Bay which constitutes over 50% of the freshwater inflow to the Continental Shelf of the Mid-Atlantic Bight.

The ecology of the DNODS is greatly influenced by its position adjacent to the mouth of the Chesapeake Bay. The outflow from the Bay enhances primary production by contributing nutrients and detrital material to the inner continental shelf region. Phytoplankton cell concentrations in the Bay plume are significantly higher than in shelf water outside the plume. Seasonal changes in phytoplankton composition is related to the Bay plume changes in composition, quantity of flow, temperature, and salinity.

The meroplankton in the DNODS area is dominated by the blue crab, bay anchovy, and sand shrimp larvae. The blue crab megalope were found in the center of the area but the zoea were found in greatest numbers offshore and to the north of the site. The DNODS does not appear to represent a major larval transport route for any commerically significant species except for the blue crab. Commercial and sport fishes were found to use the area during migration but no important spawning occurs.

The benthos of the area supports a productive benthic faunal population which is typical of benthos of the mid-Atlantic inner continental shelf. Commercial benthos abundances were found to be low and only species of marginal commercial importance were collected with none in significant numbers. The non-commercial benthic macroinfaunal community was found to be a typical sandy substrate assemblage.

Dumping of dredged material over 20 years has not significantly affected water quality. Therefore, use of the site is not expected to have significant water quality or ecology impacts. The benthic community would have short-term changes due to increased sediment loading. However, due to natrual recolonization of the benthos, these impacts are not expected to be significant.

10. Potentiality for the development or recruitment of nuisance species in the disposal site. (40 CFR 228.6(a)(10))

Dredged material has been placed in the DNODS since the mid-1960's. Monitoring in this area has not detected the development or recruitment of nuisance species. Further, the sediments placed in the site and which will be disposed in the future, meets ocean disposal criteria as specified by the COE and EPA.

Benthic organisms in the disposal area are typical of benthic faunal populations of the inner continental shelf. The open ocean conditions at the DNODS including low bottom temperatures, high salinities, and coarse grained dredged materials with low organic content should not favor microbial activity or proliferation and are not expected to develop as nuisance species. In addition, annual monitoring for potential nuisance species will be conducted by EPA.

11. Existence at or in proximity to the site of any significant natural or cultural features of historical importance. (40 CFR 228.6(a)(11))

The area extending from Assateague Island to Fisherman's Island and offshore for 10 nm is on the National Oceanographic and Atmospheric Administration's site evaluation list for consideration as a marine sanctuary. Most of Fisherman's Island, located on the north side of the Bay mouth, is a National Wildlife Refuge known for having a wide variety of birds which are particularly abundant during seasonal migratory periods. The Back Bay National Wildlife Refuge and False Cape State Park are located south of the study area. Neither of these areas would be affected by long-term disposal at the DNODS.

There are 17 known historic vessels that have been lost in the vicinity of the disposal area. Within the site boundaries of the DNODS there are no known wrecks, obstruction, or other significant natural or cultural features. The nearest known wreck is located about ¼ nm east of the proposed eastern boundary and has been tentatively identified as a 500-ton vessel called Kingston Celonite which sank in June 1942. A second obstruction has been located about ¾ nm north-northwest of the proposed northwest corner of the site and is listed as wreck, unknown. The disposal of dredged material at the DNODS is not likely to adversely disturb or otherwise impact marine archaeological resources.

E. Proposed Action

Dredged material disposal has occurred at this site for approximately 20 years. Recent monitoring associated with the site designation process has not detected any persistent or cumulative changes in the water quality or ecology at the site. Impacts from dumping have been found to be temporary and restricted to within the site boundary. The location of the proposed site facilitates surveillance and monitoring and decreases the impact of sediment changes resulting from disposal of dissimilar sediments.

The EIS concludes that the proposed site may appropriately be designated for use. The proposed site is compatible with the general criteria and specific factors used for site evaluation.

The designation of the Dam Neck Ocean Disposal Site as an EPA approved Ocean Dumping Site is being published as proposed rulemaking. Management of this site will be delegated to the Regional Administrator of EPA Region III.

It should be emphasized that, if an ocean dumping site is designated, such a site designation does not constitute or imply EPA's approval of actual disposal of materials at sea. Before ocean dumping of dredged material at the site may commence, other than that already approved under Section 103 of the Marine Protection, Research, and Santuaries Act, the Corps of Engineers must evaluate a permit application

according to EPA's ocean dumping criteria. EPA has the right to disapprove the actual dumping, if it determines that environmental concerns under the Act have not been met.

F. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this rule does not necessitate preparation of a Regulatory Impact Analysis.

This Proposed Rule does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et. seq.

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: August 11, 1987.

James M. Seif,

Regional Administrotor for Region III.

In consideration of the foregoing, Subchapter H of Chapter I of Title 40 is proposed to be amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.12 is amended by removing the "Dam Neck" entry in paragraph (a)(3) and by adding paragraph (b)(41) to read as follows:

§ 228.12 Delegation of management authority for ocean dumping sites.

* * * * *

(b) * * *

(41) Dam Neck, Virginia, Dredged Material Disposal Site—Region III. Location:

36°51'20" N.;	75°54'43" W.;
36°51'20" N.;	75°53'31" W.;
36°50'52" N.;	75°52'49" W.;
36°46'28" N.;	75°51'51" W.;
36°46'28" N.;	75°54'10" W.;
36°50'05" N.;	75°54'10" W.;

Size: 10 square nautical miles
Depth: Averages 11 meters
Primary Use: Dredged material
Period of Use: Continuing use
Restriction: Disposal shall be limited to dredged material from the mouth of the Chesapeake Bay.

[FR Doc. 87-19189 Filed 8-20-87; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 105-55

Collection of Claims Owed the United States

AGENCY: Office of the Comptroller, GSA.

ACTION: Proposed rule.

SUMMARY: The General Services Administration proposes to amend 41 CFR Part 105-55, Collection of Claims Owed the United States. The proposed regulations establish the right of the General Services Administration (GSA) to collect claims owed to the United States (U.S.) utilizing the provisions of the Debt Collection Act of 1982 (DCA), except that the application of administrative offset procedures in the DCA will not be applied to claims arising under contracts subject to the Contract Disputes Act of 1978, 41 U.S.C. 601 *et seq.* (CDA). This amendment based upon the Department of Justice's position that DCA procedures are applicable to claims arising under contracts subject to the CDA except where, as in the administrative offset area, another statute or regulation preempts the application of DCA procedures.

The right of GSA to collect claims owed to the U.S. is also being established by these proposed regulations pursuant to the Governments' right under common law. This is based upon the position taken by the Department of Justice that the Debt Collection Act does not apply to the collection of Government claims by administrative offset.

DATE: All comments must be in writing and received on or before September 21, 1987.

ADDRESS: Written comments should be sent to Mr. LeRoy Boucher, Deputy Comptroller for Finance (BC), General Services Administration, 18th & F Streets NW., Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald J. Dobranski, Office of Finance, Financial Information Control Division (BCD) 202-535-7620.

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the purposes of E.O. 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. Therefore, a Regulatory Impact Analysis has not been prepared. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and the consequence of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

PART 105-55—COLLECTION OF CLAIMS OWED THE UNITED STATES

1. The authority citation for Part 105-55 continues to read as follows:

Authority: 31 U.S.C. 3701-3719; Pub. L. 97-365, 96 Stat. 1754.

2. Section 105-55.003 is amended by revising paragraph (a) to read as follows:

§ 105-55.003 Applicability.

(a) This part applies to all claims due the United States under the Federal Claims Collection Act, as amended by the Debt Collection Act, arising from activities under the jurisdiction of the General Services Administration, except for the collection by administrative offset, of those claims arising out of contracts subject to the Contracts Disputes Act of 1982, 41 U.S.C. 601 *et. seq.* The word claims includes but is not limited to amounts due the United States from fees, overpayments, fines, civil penalties, damages, interest and other sources.

* * * * *

3. Section 105-55.007 is amended by revising paragraphs (a) and (d) to read as follows:

§ 105-55.007 Collection by offset.

(a) Whenever feasible, after a debtor fails to pay the claim, request a review of the claim, or make an arrangement for payment, the Comptroller or his appropriate regional designee will collect claims under this part by means of administrative offset against obligations of the United States to the debtor, pursuant to 31 U.S.C. 3716, except offset of Federal salaries and claims arising out of contracts subject to

the Contract Disputes Act of 1978, 41 U.S.C. 601 *et. seq.*

* * * * *

(d) The offset of claims arising out of contracts subject to the Contract Disputes Act of 1978, 41 U.S.C. 601 *et. seq.* will be made pursuant to the Government common law right of offset.

* * * * *

Dated: July 13, 1987.

Raymond A. Fontaine,

Comptroller.

[FR Doc. 87-19172 Filed 8-20-87; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3560

[AA-650-07-4133-02-3410]

Hardrock Minerals; Proposed Action To Correct Latent Ambiguity

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed Action to Correct Latent Ambiguity.

SUMMARY: The Bureau of Land Management has become aware of the existence of a latent ambiguity in the renewal terms applicable to a limited number of hardrock leases issued by the Bureau after October 9, 1964, on Lease Form 4–1100 (dated September 1962). In an effort to resolve the problems caused by this ambiguity, the Bureau proposes to give the holders of the affected hardrock leases an opportunity to elect to obtain a one-time renewal of the lease term identical to that of the term granted in the lease, 20 years, with all subsequent renewals to be for a term of ten years. This will be in lieu of a renewal for a term of 10 years for all other hardrock leases (43 CFR 3561.3). The public is hereby requested to give its comments on this proposed action.

DATE: Comments should be submitted by September 21, 1987. Any comments received or postmarked after the above date may not be considered in the decisionmaking process on any final action that might be taken.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, Room 5555, Main Interior Bldg., 1800 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Mary Linda Ponticelli, (202) 343–3258.

SUPPLEMENTARY INFORMATION: For hardrock leases issued by the Bureau of Land Management prior to October 9, 1964, the then current regulations provided for a lease term of 5 or 10 years with a right to renew the lease "for successive periods of like duration." (43 CFR 20.37(f)) The language providing for renewal "for successive periods of like duration" was included in Lease Form 4–1100 (dated September 1962). In 1963, 43 CFR 200.37(f) was rewritten and renumbered as 43 CFR 3221.4(f). In October 1964, 43 CFR 3221.4(f) was amended to provide for an initial lease term not to exceed 20 years for hardrock leases, with renewals to be for a term not to exceed 10 years.

An ambiguity arose when the Bureau of Land Management issued approximately 7 hardrock leases after the effective date of the October 1964 amendment to 43 CFR 3221.4(f) using Lease Form 4–1100 (dated September 1962), which form continued to use for renewal purposes the language "for successive periods of like duration in accordance with regulation 43 CFR 200.37(f)." This language appeared to grant a lessee the right to renew a lease for a period of 20 years, the initial term of leases granted after the October 1964 revision of the hardrock leasing regulations. Later versions of Lease Form 4–1100 corrected the language relating to the renewal term to bring it into compliance with the provisions of 43 CFR 3221.4(f), as amended, making it clear that the renewal of a hardrock lease could be for a term not to exceed 10 years. Currently, the renewal limitation is contained in 43 CFR 3561.3

The Bureau of Land Management proposes that the seven or so leases that are affected by this ambiguity will not be required to be renewed for a period of 10 years as required by § 3561.3 of the existing regulations, but, instead proposes to grant said lessees an opportunity to request a one-time renewal of 20 years, with any subsequent renewal to be for the term required by existing regulations. The public is requested to give its comments on this proposal.

The principal author of this proposal is Mary Linda Ponticelli, Division of Solid Mineral Leasing, Bureau of Land Management, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management, and the staff of the Office of the Solicitor, Department of the Interior.

It is hereby determined that this document does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The proposal will directly affect only about seven leases of hardrock minerals on the public lands. The proposal's effect will be equally applicable to all of the affected leases, regardless of the size of the entity holding them.

There are no information collection requirements contained in this proposal requiring the approval of the Office of Management and Budget under 43 U.S.C. 3507.

List of Subjects 43 CFR Part 3560

Government contracts, Mineral royalities, Public lands—mineral resources, Surety bonds.

This proposed action is made under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), including the Act of February 7, 1927 (30 U.S.C. 281–287); the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359); section 402, Reorganization Plan No. 3 of 1946 (5 U.S.C. Appendix) as it relates to the Act of March 4, 1917 (16 U.S.C. 520), Title II of the National Industrial Recovery Act of June 16, 1933 (40 U.S.C. 401, 403(a) and 408), the 1935 Emergency Relief Appropriations Act of April 8, 1935 (48 Stat. 115, 118), section 55 Title I of the Act of August 24, 1935 (49 Stat. 750, 781), the Act of July 22, 1937 (50 Stat. 522, 525, 530), as amended July 28, 1942 (7 U.S.C. 1011(c) and 1018) and section 3 of the Act of June 28, 1952 (66 Stat. 285); section 3 of the Act of September 1, 1949 (30 U.S.C. 192c); the Act of June 30, 1950 (16 U.S.C. 508(b)); the Act of June 8, 1926 (30 U.S.C. 291–293); the Act of March 3, 1933 (47 Stat. 1487), as amended by the Act of June 5, 1936 (49 Stat. 1482) and the Act of June 29, 1936 (49 Stat. 2026; section 10 of the Act of August 4, 1939 (43 U.S.C. 387) as it relates to the Act of October 8, 1964 (16 U.S.C. 460n et seq.), the Act of November 8, 1965 (16 U.S.C. 460q et seq.), the Act of October 1, 1968 (16

U.S.C. 90c et seq.) and the Act of October 17, 1972 (16 U.S.C. 460dd et seq); section 6 of the Act of November 8, 1965 (16 U.S.C. 460q et seq) as it relates to the section 3 of the Act of September 1, 1949 (30 U.S.C. 192(c); sections 403, 404 and 1312 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 460mm–4) as it relates to section 10 of the Act of August 4, 1939, as amended (43 U.S.C. 387); the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.); and the Independent Offices Apropriations Act (31 U.S.C. 9701).

James E. Cason,

Acting Assistant Secretary of the Interior.

July 10, 1987.

[FR Doc. 87–19060 Filed 8–20–87; 8:45 am]

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Notices

Federal Register
Vol. 52, No. 162
Friday, August 21, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

National Foundation on the Arts and the Humanities

Institute of Museum Services, National Endowment for the Arts; Enforcement of Nondiscrimination on the Basis of Handicap in Federally Conducted Program

AGENCIES: Advisory Council on Historic Preservation, Institute of Museum Services, National Endowment for the Arts.

ACTION: Notice of Request for comments.

SUMMARY: Each of the above-referenced agencies has participated in a Department of Justice sponsored joint publication of final rules (51 FR 22880) implementing section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794). Section 504, as amended, prohibits discrimination on the basis of handicap in programs or activities conducted by Federal executive agencies.

Each agency's regulations requires it to conduct a self-evaluation of its compliance with section 504. Since these agencies share a common facility, they have determined it useful to conduct certain parts of their separate self-evaluation processes jointly, including sharing the services of five outside consultants with disabilities. As part of these evaluations, the agencies now request comments from interested persons on the accessibility of the way they conduct their separate programs and common facility to disabled persons.

DATE: Comments must be submitted on or before September 21, 1987.

ADDRESS: Comments on the accessibility operation of the programs of the Advisory Council for Historic Preservation may be submitted to: Frank Suman, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Comments on the accessibility operation of the programs of the Institute of Museum Services may be submitted to: James Wieber, Institute of Museum Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Comments on the accessibility operation of the programs of the National Endowment for the Arts may be submitted to: Paula Terry, National Endowment for the Arts, Office for Special Constituencies, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 682–5532 or TDD 682–5496.

Comments on the facility in which all these agencies are located, the Nancy Hanks Center at the Old Post Office building, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 may be submitted to any of the agencies.

FOR FURTHER INFORMATION CONTACT:

Advisory Council on Historic Preservation: See comment section.

Institute of Museum Services: See comment section.

National Endowment for the Arts: See comment section.

SUPPLEMENTARY INFORMATION: Each agency's regulations are based on a prototype developed by the Department of Justice and contain comparable requirements. The regulations of the Advisory Council on Historic Preservation are codified at 36 CFR Part 812; the Institute of Museum Services at 45 CFR Part 1181; and the National Endowment for the Arts at 48 CFR Part 1153. Section ____.110 of each agency's regulations requires that it evaluate its policies and practices in light of section 504 and provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the self-evaluation process by submitting oral or written comments on the accessibility of the agency's programs and facility. All comments will be considered as part of the self-evaluation process. Following the completion of the self-evaluation process, each agency's self-evaluation will be on file and available for public inspection, with each agency's description of areas examined, any problems identified, and any modifications made. See ____.110(c). Access to these files may be obtained by contacting the person listed under the comment section of this preamble.

Robert D. Bush,
Executive Director, Advisory Council on Historic Preservation.
Lois Burke Shepard,
Director, Institute of Museum Services.
Keith Stephens,
Assistant Director for Administration, National Endowment for the Arts.
August 18, 1987.

[FR Doc. 87–19110 Filed 8–20–87; 8:45 am]
BILLING CODE 7537–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Feed Grain Donation for the Tohono O'odham (Formerly Papago) Indian Nation in Arizona

Pursuant to the authority set forth in section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1427) and Executive Order 11336, I have determined that:

1. The chronic economic distress of the needy members of the Tohono O'odham Indian Nation of the Tohono O'odham Indian Reservation in Arizona has been materially increased and become acute because of severe and prolonged drought, thereby creating a serious shortage of feed and causing increased economic distress. This reservation is designated for Indian use and is utilized by members of the Tohono O'odham Indian Nation for grazing purposes.

2. The use of feed grain or products thereof made available by the Commodity Credit Corporation for livestock feed for such needy members of the tribes will not displace or interfere with normal marketing of agricultural commodities.

Based on the above determinations, I hereby declare the reservation and grazing lands of the Nation to be acute distress areas and authorize the donation of feed grain owned by the Commodity Credit Corporation to livestock owners who are determined by the Bureau of Indian Affairs, Department of the Interior, to be needy members of the Nation utilizing such lands. These donations by the Commodity Credit Corporation may commence upon signature of this notice

and shall be made available through October 20, 1987, or such other date as may be stated in a notice issued by the Department of Agriculture.

Signed at Washington, DC, on August 17, 1987.

Milton Hertz,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 87-19147 Filed 8-20-87; 8:45 am]

BILLING CODE 3410-05-M

Commodity Credit Corporation

1987 Crop Soybeans

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of determinations with respect to 1987 crop soybeans.

SUMMARY: The purpose of this notice is to set forth the preliminary announcement that the level of price support for the 1987 soybean crop is $4.77 per bushel. This preliminary announcement is made pursuant to section 201(i) of the Agricultural Act of 1949, as amended (the "1949 Act"). In accordance with section 1009 of the Food Security Act of 1985, as amended, any determinations with respect to implementation of cost reduction options will be made at a later date.

EFFECTIVE DATE: August 3, 1987.

FOR FURTHER INFORMATION CONTACT: Orville I. Overboe, Agricultural Economist, Commodity Analysis Division, ASCS-USDA, P.O. Box 2415, Washington, DC 20013, Telephone (202)447-4417.

DATE: August 3, 1987.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under Department of Agriculture procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512-1 and has been designated as "major". It has been determined that these program provisions will result in an annual effect on the economy of $100 million or more.

The title and number of the federal assistance program to which this notice applies are: Title—Commodity Loans and Purchases; Number—10.051 as found in the Catalog of Federal Domestic Assistance.

Section 1017 of the Food Security Act of 1985 provides that the Secretary of Agriculture shall determine the rate of loans, payments and purchases under a program established under the Agricultural Act of 1949 (the "1949 Act") for any of the 1986 through 1990 crops without regard to the requriements for notice and public participation. Accordingly, public comments are not requested with respect to the level of loans and purchases under the price support program for the 1987 crops of soybeans.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Commodity Credit Corporation is not requried by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice. A preliminary impact analysis has been prepared and is available from the above named individual.

Section 201(i)(1)(A) of the 1949 Act provides that the price of soybeans for each of the 1986 through 1990 marketing years shall be supported through loans and purchases. Section 201(i)(1)(B) provides that the support price for the 1986 and 1987 crops of soybeans shall be $5.02 per bushel. However, if the Secretary of Agriculture determines in accordance with section 201(i)(2) that the level of loans or purchases determined for a marketing year would discourage the exportation of soybeans and cause excessive stocks of soybeans in the United States, the Secretary may reduce the loan and purchase level for soybeans by the amount the Secretary determines necessary to maintain domestic and export markets for soybeans, except that the price support level cannot be reduced by more than 5 percent in any year nor below $4.50 per bushel. Any reduction made in accordance with section 201(i)(2) in the loan and purchase level for soybeans shall not be considered in determining the loan and purchase level for soybeans for subsequent years.

Section 201(i)(5) of the 1949 Act provides that the Secretary shall make a preliminary announcement of the level of price support for a crop of soybeans not earlier than 30 days prior to September 1, the beginning of the soybean marketing year, based upon the latest information and statistics then available. The Secretary must make a final announcement of such level as soon as full information and statistics are available. The final level of price support must be announced no later than October 1 of the marketing year to which the announcement is applicable. The final level of support cannot be less than that of the preliminary announcement.

Ending stocks of soybeans for the 1986-87 marketing year are expected to be approximately 580 million bushels, an amount considered to be excessive. Maintaining the price support level for the 1987 crop of soybeans at $5.02 per bushel would likely result in ending stocks of approximately 525 million bushels for the 1987-1988 marketing year since such a level would discourage the exportation of soybeans and, to a lesser degree, result in lower domestic use of soybeans. Based upon 1987 estimated production of soybeans, it is estimated that a $4.77 per bushel price support level would result in ending stocks of approximately 495 million bushels for the 1987-1988 marketing year. As compared to a $5.02 per bushel price support level, a $4.77 per bushel price support level would increase the export of soybeans about 3 percent and also increase slightly the domestic use of soybeans. The price support level for the 1987 crop of corn has been established at $1.82 per bushel. Establishing a 1987 soybean price support level of $5.02 per bushel, with a $1.82 per bushel price support level for corn, would result in an adverse distortion of the historical corn/soybean price relationship and result in an adverse impact on the use of soybeans. However, a 1987 soybean price support level of $4.77 per bushel would better maintain this normal corn/soybean price relationship. Accordingly, the preliminary announcement with respect to the 1987-crop soybean price support level is that it will be reduced to $4.77 per bushel, the same as the price support level for the 1986 crop.

Section 201(i)(3) of the 1949 Act provides that, if the Secretary determines that such action will assist in maintaining the competitive relationship of soybeans in domestic and export markets after taking into consideration the cost of producing soybeans, supply and demand conditions, and world prices for soybeans, the Secretary may permit a producer to repay a loan for a crop at a level that is the lesser of (1) the announced loan level for such crop or (2) the prevailing world market price for soybeans, as determined by the Secretary. If the Secretary permits a producer to repay a loan as described above, the Secretary shall prescribe by regulation (1) a formula to define the prevailing world market price for soybeans and (2) a mechanism by which the Secretary shall announce periodically the prevailing world market price for soybeans.

Section 1009(a) the Food Security Act of 1985 provides that whenever the Secretary determines that an action authorized by section 1009 (c), (d) or (e) will reduce the total of the direct and indirect costs to the Federal Government of a commodity program administered by the Secretary without adversely affecting income to small and

medium sized producers participating in such program, the Secretary shall take such action with respect to that commodity program. These actions include: (1) The commercial purchases of commodities by the Secretary; (2) the settlement of nonrecourse loans at an amount less than the total of the principal loan amount and accumulated interest, but not less than the principal amount, if such action will result in: (A) Receipt of a portion rather than none of the accumulated interest, (B) avoidance of default of the loan, and (C) elimination of storage, handling and carrying charges on the forfeited loan collateral; and (3) the reopening of a production control or loan program established for a crop at any time prior to harvest of such crop for the purpose of accepting bids from producers for the conversion of acreage planted to a program crop to diverted acreage in return for in-kind payments if the Secretary has determined that: (1) Changes in domestic or world supply or demand conditions have substantially changed after announcement of the program for that crop and (2) without action to further adjust production, the Federal Government and producers will be faced with a burdensome and costly surplus. Such payments are not subject to the maximum payment limitation provision of section 1001 of the Food Security Act of 1985 but are limited to $20,000 per year per producer for any one commodity.

Accordingly, the following determinations have been made.

Determinations

A. Loan and Purchase Level

The preliminary announcement with respect to the price support level for the 1987 crop of soybeans is that it shall be $4.77 per bushel.

B. Cost Reduction Options

The decision to implement any cost reduction option will be made at a later date.

Sec. 201 of the Agricultural Act of 1949, as amended, 63 Stat. 1052, as amended (7 U.S.C. 1446(i)).

Signed at Washington, DC, on August 10, 1987.

Richard E. Lyng,

Secretary.

[FR Doc. 87-19219 Filed 8-20-87; 8:45 am]

BILLING CODE 3410-05-M

Office of International Cooperation and Development

Cooperative Agreements; American Soybean Association et al.

AGENCY: Office of International Cooperation and Development (OICD), USDA.

ACTION: Notice of intent.

Activity: OICD intend to enter into Cooperative Agreements with several, nonprofit agribusiness organizations in carrying out technical training courses and study tours for agriculturalists from middle income countries under the auspices of the Cochran Middle Income Country Training Program. Agreements may be established with, but are not limited to, the following organizations; American Soybean Association, American Seed Trade Association, Brown Swiss Cattle Breeders Association, Holstein Association, Maine Potato Board, National Forest Products Association, National Renderers Association, Rice Council for Market Development, Tobacco Associates, U.S. Feed Grains Council, U.S. Meat Export Federation, and U.S. Wheat Associates.

Authority: Sec. 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3291), and the Food Security Act of 1985 (Pub. L. 99-198).

OICD anticipates the availability of funds for fiscal year 1987 (FY1987) to enter into agreements with several of the above-noted organizations to collaborate in carrying out technical courses and study tours for agriculturalists from middle income countries. Technical courses will take place at universities and private industries. The study tours will take place on farms and at industries. Assistance will be provided only to organizations who will be involved in participant identification, selection, and program development.

Based on the above, this is not a formal request for application. An estimated $150,000 will be available in FY 1987 to support this work. It is anticipated that the agreements will be initially funded over a budget period of 12 months, with possible extension for an additional four years.

Information on these proposed agreements may be obtained from: Nancy J. Croft, Contracting Officer, USDA/OICD/Management Services Branch, Washington, DC 20250-4300.

Allen Wilder,

Contracting Officer.

Date: August 18, 1987.

[FR Doc. 87-19180 Filed 8-20-87; 8:45 am]

BILLING CODE 3410-DF-M

Cooperative Agreements; Colorado State University

AGENCY: Office of International Cooperation and Development (OICD), USDA.

ACTION: Notice of intent.

Activity: OICD intends to enter into a Cooperative Agreement with Colorado State University to continue Technical Assistance for Manufacturing Nutritious, Low-Cost Weaning Foods.

Authority: Sec. 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3291), and the Food Security Act of 1985 (Pub. L. 99-198).

OICD anticipates the availability of funds in fiscal year 1988 (FY 1988) to enter into a cooperative agreement with Colorado State University (CSU). This agreement is an extension of work currently being conducted by the Colorado State University Research Foundation (CSURF). As technical personnel and resources currently at CSURF will be available to CSU, this proposed agreement will allow the work to continue efficiently with no interruptions. Assistance will be provided only to CSU which will utilize funds provided for research and development in the field of low-cost extrusion cooking (LEC) for production of low-cost nutritious foods. CSU will also provide short-term technical assistance to development countries based on requests made by USAID Missions, voluntary agencies, and host governments, on projects related to the manufacturing of centrally processed weaning foods, adapting technologies to conditions existing in the country from which the request originates.

Based on the above, this is not a formal request for application. An estimated $195,000 will be available in FY 1988 to support this work. It is anticipated that the agreement will be initially funded over a budget period of 12 months, with possible yearly extensions based on fund availability.

Information on proposed Agreement #58-319R-8-002 may be obtained from: Nancy J. Croft, Contracting Officer,

USDA/OICD/Management Services Branch, Washington, DC 20250–4300.

Allen Wilder,

Contracting Officer.

Dated: August 18, 1987.

[FR Doc. 87–19181 Filed 8–20–87; 8:45 am]

BILLING CODE 3410-OP-M

Forest Service

Intent To Prepare a Supplemental Environmental Impact Statement; Land and Resource Management Plan; Ouachita National Forest

The Department of Agriculture, Forest Service will prepare a Draft and Final Supplement to the Final EIS on the Ouachita National Forest Land and Resource Management Plan which was filed in April 1986.

The supplement will address the use and effects of uneven-aged management on the Ouachita National Forest (Garland, Hot Spring, Howard, Logan, Montgomery, Perry, Pike, Polk, Saline, Scott, Sebastian and Yell Counties in Arkansas; LeFlore and McCurtain Counties in Oklahoma). The effects on other resources and programs as they relate to this issue will also be analyzed. This will include recreation, wildlife, soil and water, roads and timber. Other significant issues that surface during the scoping process will also be addressed. Additional alternatives, including one which analyzes the use of uneven-aged management on all suitable lands will be fully considered. Other alternatives and modifications to existing alternatives will also be considered in order to analyze additional issues raised during scoping.

Scoping began in July 1987 with a letter of invitation for public comment on the issues and scope of analysis. This letter of invitation is being sent to interested and potentially affected agencies, organizations and individuals, including those who commented on the Draft Environmental Impact Statement for the Forest Land and Resource Management Plan. Subsequent public participation activities may include requests for written comments, meetings, conferences, and similar events designed to foster public participation. The first set of public meetings is being scheduled for this fall. Tentative dates for public meetings scheduled during this process include September to define issues, November to define alternatives to address significant issues, and April, 1988 to review tentative findings.

The supplemental analysis is expected to take about 10 months. Filing of the Draft Supplement to the Final Environmental Impact Statement for the Ouachita National Forest Land and Resource Management Plan is scheduled for June 1988, with filing of the Final Supplement in February 1989.

John E. Alcock, Regional Forester, Southern Region, 1720 Peachtree Rd., NW., Atlanta, Georgia 30367 is the responsible official.

For further information contact R. Gary Pierson, Planning Team Leader, P.O. Box 255, Mount Ida, Arkansas 71957.

Date: August 5, 1987.

John E. Alcock,

Regional Forester.

[FR Doc. 87–19173 Filed 8–20–87; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committee Meetings

In the matter of public meeting of the Census Advisory Committee (CAC) of the American Economic Association (AEA), the CAC of the American Marketing Association (AMA), the CAC of the American Statistical Association (ASA), and the CAC on Population Statistics.

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463 as amended by Pub. L. 94–409), we are giving notice of a joint meeting followed by separate and jointly held (described below) meetings of the CAC of the AEA, CAC of the AMA, CAC of the ASA, and CAC on Population Statistics. The joint meeting will convene on October 8, 1987 at the Ramada Hotel, 6400 Oxon Hill Road, Oxon Hill, Maryland 20745.

The CAC of the AEA is composed of nine members appointed by the President of the AEA. It advises the Director, Bureau of the Census, on technical matters, accuracy levels, and conceptual problems concerning economic surveys and censuses; reviews major aspects of the Census Bureau's programs; and advises on the role of analysis within the Census Bureau.

The CAC of the AMA is composed of nine members appointed by the President of the AMA. It advises the Director, Bureau of the Census, regarding the statistics that will help in marketing the Nation's products and services and on ways to make the statistics the most useful to users.

The CAC of the ASA is composed of 12 members appointed by the President of the ASA. It advises the Director, Bureau of the Census, on the Census Bureau's programs as a whole and on their various parts, considers priority issues in the planning of censuses and surveys, examines guiding principles, advises on questions of policy and procedures, and responds to Census Bureau requests for opinions concerning its operations.

The CAC on Population Statistics is composed of four members appointed by the Secretary of Commerce and five members appointed by the President of the Population Association of America from the membership of that Association. The CAC on Population Statistics advises the Director, Bureau of the Census, on current programs and on plans for the decennial census of population.

The agenda for the October 8 combined meeting that will begin at 8:45 a.m. and end at 11:15 a.m. is: (1) Introductory remarks by the Director, Bureau of the Census; (2) 1990 census planning update; (3) 1987 Economic and Agricultural Censuses update; (4) committees' review of Census Bureau programs and products; and (5) visual display of quantitative information.

The agendas for the four committees in their separate and jointly held meetings that will begin at 11:15 a.m. and adjourn at 5:45 p.m. on October 8 are as follows:

The CAC of the AEA

(1) Census Bureau response to recommendations and activities of special interest to the CAC of the AEA, (2) quality of economic statistics (joint with CAC of the AMA, (3) five-year plan on services (joint with CAC of the AMA), (4) research on residential construction price indexes, and (5) report on recent developments in foreign trade statistics.

The CAC of the AMA

(1) Census Bureau response to recommendations and activities of special interest to the CAC of the AMA, (2) quality of economic statistics (joint with CAC of the AEA), (3) five-year plan on services (joint with CAC of the AEA), (4) discussion of economic census data products, and (5) discussion of data user news.

The CAC of the ASA

(1) Census Bureau response to recommendations and activities of special interest to the CAC of the ASA, (2) adjustment issues for the 1990 census (joint with CAC on Population Statistics), (3) confidentiality techniques for the 1990 census (joint with CAC on Population Statistics), and (4) 1990 Research, Evaluation, and Experimental (REX) Program (joint with CAC on Population Statistics).

The CAC on Population Statistics

(1) Census Bureau response to recommendations and activities of special interest to the CAC on Population Statistics, (2) adjustment issues for the 1990 census (joint with CAC of the ASA), (3) confidentiality techniques for the 1990 census (joint with CAC of the ASA), and (4) 1990 Research, Evaluation, an Experimental (REX) Program (joint with CAC of the ASA).

The agendas for the October 9 meetings that will begin at 8:45 a.m. and adjourn at 1 p.m. are:

The CAC of the AEA

(1) Update on two phase CPS research project (joint with CAC of the AMA, ASA, and Population Statistics), (2) M–3—Manufacturers', Shipments, Inventories, and Orders Survey (joint with CAC of the AMA and ASA), (3) development and discussion of recommendations, and (4) closing session including (a) continued committee and staff discussions, (b) plans and suggested agenda for the next meeting, and (c) comments by outside observers.

The CAC of the AMA

(1) Update on two phase CPS research project (joint with CAC of the AEA, ASA, and Population Statistics), (2) M–3—Manufacturers', Shipments, Inventories, and Orders Survey (joint with CAC of the AEA and ASA), (3) development and discussion of recommendations, and (4) closing session including (a) continued committee and staff discussions, (b) plans and suggested agenda for the next meeting, and (c) comments by outside observers.

The CAC of the ASA

(1) Update on two phase CPS research project (joint with CAC of the AEA, AMA, and Population Statistics), (2) M–3—Manufacturers', Shipments, Inventories, and Orders Survey (joint with CAC of the AEA and AMA), (3) development and discussion of recommendations, and (4) closing session including (a) continued committee and staff discussions, (b) plans and suggested agenda for the next meeting, and (c) comments by outside observers.

The CAC of Population Statistics

(1) Update on two phase CPS research project (joint with CAC of the AEA, AMA, and ASA), (2) updates and reports, (3) development and discussion of recommendations, and (4) closing session including (a) continued committee and staff discussions, (b) plans and suggested agenda for the next meeting, and (c) comments by outside observers.

All meetings are open to the public, and a brief period is set aside on October 9 for public comment and questions. Those persons with extensive questions or statements must submit them in writing to the Census Bureau Committee Liaison Officer at least 3 days before the meeting.

Persons wishing additional information concerning these meetings or who wish to submit written statements may contact the Committee Liaison Officer, Mrs. Phyllis Van Tassel, Room 2428, Federal Building 3, Suitland, Maryland. (Mailing address: Washington, DC 20233). Telephone: (301) 763–5410.

Dated: August 17, 1987.

John G. Keane,
Director, Bureau of the Census.

[FR Doc. 87–19176 Filed 8–20–87; 8:45 am]
BILLING CODE 3510–07–M

International Trade Administration

[A–475–701]

Initiation of Antidumping Duty Investigation; Certain Granite Products From Italy

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of certain granite products (hereafter referred to as granite) from Italy are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of granite materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before September 11, 1987. If that determination is affirmative, we will make a preliminary determination on or before January 4, 1988.

EFFECTIVE DATE: August 12, 1987.

FOR FURTHER INFORMATION CONTACT: Charles E. Wilson, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377–5288.

SUPPLEMENTARY INFORMATION:

The Petition

On July 28, 1987, we received a petition filed in proper form from the Ad Hoc Granite Trade Group filed on behalf of the U.S. industry producing granite. The members of this group are the Cold Spring Granite Company of Cold Spring, Minnesota, the North Carolina Granite Corporation of Mt. Airy, North Carolina, and the Capitol Marble and Granite Company of Marble Falls, Texas. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), petitioner alleges that imports of granite from Italy are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

Petitioner based United States price on bids by Italian producers, c. & f. delivered duty paid. Petitioner deducted, where appropriate, ocean freight, U.S. Customs duties, and brokerage. Petitioner based foreign market value on constructed value. Based on this method of comparison, petitioner alleges dumping margins ranging from 114 to 231 percent.

After analysis of petitioner's allegations and supporting data, we conclude that a formal investigation is warranted.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on granite from Italy and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of granite from Italy are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by January 4, 1988.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of

customs nomenclature. The U.S. Congress is considering legislation to convert the United States to this Harmonized System (HS) by January 1, 1988. In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item numbers and the appropriate HS item numbers with our product descriptions on a test basis pending congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioner to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies and petitioner may contact the Import Specialist at their local Customs office to consult the Schedule.

The products covered by this investigation are certain granite products. Certain granite products are ⅜ inch (1cm) to 2½ inches (6.34cm) in thickness and include the following: Rough sawed granite slabs; face finished granite slabs; and finished dimensional granite including, but not limited to, building facing, flooring, wall and floor tiles, paving, and crypt fronts. Certain granite products do not include monumental stones, crushed granite, or curbing. Certain granite products are provided for under TSUSA item number 513.74 and under HS item numbers 2516.12.00, 6802.23.00 and 6802.93.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by September 11, 1987, whether there is a reasonable indication that imports of granite from Italy materially inure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

Dated: August 17, 1987

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 87-19208 Filed 8-20-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-469-701]

Initiation of Antidumping Duty Investigation; Certain Granite Products From Spain

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of certain granite products (hereafter referred to as granite) from Spain are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of granite materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before September 11, 1987. If that determination is affirmative, we will make a preliminary determination on or before January 4, 1988.

EFFECTIVE DATE: August 21, 1987.

FOR FURTHER INFORMATION CONTACT: Charles E. Wilson, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-5288.

SUPPLEMENTARY INFORMATION:

The Petition

On July 28, 1987, we received a petition filed in proper form from the Ad Hoc Granite Trade Group on behalf of the U.S. industry producing granite. The members of this group are the Cold Spring Granite Company of Cold Spring, Minnesota, the North Carolina Granite Corporation of Mt. Airy, North Carolina, and the Capitol Marble and Granite Company of Marble Falls, Texas. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), petitioner alleges that imports of granite from Spain are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

Petitioner based United States price on bids by Spanish producers, c. & f. delivered, duty paid. Petitioner deducted, where appropriate, ocean freight, U.S. Customs duties, and brokerage. Petitioner based foreign market value on constructed value. Based on this method of comparison, petitioner alleges dumping margins ranging from 120 to 135 percent.

After analysis of petitioner's allegations and supporting data, we conclude that a formal investigation is warranted.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on granite from Spain and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of granite from Spain are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by January 4, 1988.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. The U.S. Congress is considering legislation to convert the United States to this Harmonized System (HS) by January 1, 1988. In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item numbers and the appropriate HS item numbers with our product descriptions on a test basis pending congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioner to include the appropriate HS item

number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Additionally, all Customs offices have reference copies and petitioner may contact the Import Specialist at their local Customs office to consult the Schedule.

The products covered by this investigation are certain granite products. Certain granite products are ⅜ inch (1 cm) to 2½ inches (6.34 cm) in thickness and include the following: Rough sawed granite slabs; face finished granite slabs; and finished dimensional granite including, but not limited to, building facing, flooring, wall and floor tiles, paving, and crypt fronts. Certain granite products do not include monumental stones, crushed granite, or curbing. Certain granite products are provided for under TSUSA item number 513.7400 and under HS item numbers 2516.12.0[illegible]6802.23.00 and 6802.93.00.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprovileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by September 11, 1987, whether there is a reasonable indication that imports of granite from Spain materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

August 17, 1987.

[FR Doc. 87-19209 Filed 8-20-87; 8:45 am]

BILLING CODE 3510-DS-M

[C-475-702]

Initiation of Countervailing Duty Investigation; Certain Granite Products From Italy

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Italy of certain granite products (hereafter referred to as "granite"), as described in the "Scope of Investigation" section of this notice, receive benefits which costitute subsidies within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) of this action, so that it may determine whether imports of granite from Italy materially injure, or threaten material injury to, a U.S. industry. The ITC will make its preliminary determination on or before September 11, 1987. If our investigation proceeds normally, we will make a preliminary determination on or before October 21, 1987.

EFFECTIVE DATE: August 21, 1987.

FOR FURTHER INFORMATION CONTACT: Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-2438.

SUPPLEMENTARY INFORMATION:

The Petition

On July 28, 1987, we received a petition in proper form from the Ad Hoc Granite Trade Group filed on behalf of the U.S. industry producing granite. The members of this group are the Cold Spring Granite Company of Cold Spring, Minnesota, the North Carolina Granite Corporation of Mt. Airy, North Carolina, and the Capital Marble and Granite Company of Marble Falls, Texas. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), petitioner alleges that manufactuers, producers, and exporters in Italy of granite receive subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended ("the Act"). In addition, petitioner alleges that such imports materially injure, or threaten material injury to, a U.S. industry.

Since Italy is a "country under the Agreement" within the meaning of section 701(b) of the Act, Title VII of the Act applies to this investigation, and the ITC is required to determine whether imports of granite from Italy materially injure, or threaten material injury to, a U.S. industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petitioner sets forth the allegations necessary for the initiation of a countervailing duty investigation and whether the petition contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on granite and have found that it meets the requirements of section 703(b) of the Act. Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Italy of granite, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the Act. If our investigation proceeds normally, we will make a preliminary determination on or before October 21, 1987.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS") by January 1, 1988. In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated (TSUSA)* item numbers and the appropriate HS item numbers with our product descriptions on a test basis pending Congressional approval. As with the *TSUSA*, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the *TSUSA* item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their

BEST COPY AVAILABLE

local Customs office to consult the schedule.

The products covered by this investigation are certain granite products. Certain granite products are ⅜ inch (1 cm) to 2½ inches (6.34 cm) in thickness and include the following: Rough sawed granite slabs; face-finished granite slabs; and finished dimensional granite including, but not limited to, building facing, flooring, wall and floor tiles, paving, and crypt fronts. Certain granite products do not include monumental stones, crushed granite, or curbing. Certain granite products currently are classified under *TSUSA* item number 513.7400 and under HS item numbers 2516.12.00, 6802.23.00, 6802.93.00.

Allegations of Subsidies

Petitioner lists a number of practices by the Government of Italy which allegedly confer subsidies on manufacturers, producers, and exporters in Italy of granite. We are initiating an investigation on the following allegations:

- Rebates of Indirect Taxes
- Export Credit Financing
- Preferential Transportation Rates
- Regional Assistance Programs—Mezzogiorno Region

—National Corporate Tax Exemption
—Local Corporate Income Tax Exemptions
—Reductions in Social Security Payments
—Capital Grants

- Regional Assistance Program—Southern Region

—Interest Rate Reduction Program

- Regional Assistance Programs—Northern and Central Italy

—Loan Programs

Although not specifically alleged by petitioner, we are also investigating whether the Italian granite industry receives countervailable benefits under the following program, which we found to be countervailable in *Final Negative Countervailing Duty Determination: Pads for Woodwind Instrument Keys* (49 FR 17793, April 24, 1984).

- Local Tax Concession Under Italian Law 614

Notification of the ITC

Section 702(d) of the Act requires us to notify the ITC of this action, and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information in our files. We also will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by September 11, 1987, whether there is a reasonable indication that imports of granite from Italy materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, this investigation will terminate; otherwise, it will continue according to the statutory and regulatory procedures.

This notice is published pursuant to section 702(c)(2) of the Act.

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

August 17, 1987.

[FR Doc. 87-19210 Filed 8-20-87; 8:45 am]

BILLING CODE 3510-DS-M

[C-469-702]

Initiation of Countervailing Duty Investigation; Certain Granite Products From Spain

AGENCY: Import Administration, International Trade Administration, Commerce

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Spain of certain granite products (hereafter referred to as "granite"), as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of granite from Spain materially injure, or threaten material injury to, a U.S. industry. The ITC will make its preliminary determination on or before September 11, 1987. If our investigation proceeds normally, we will make a preliminary determination onor before October 21, 1987.

EFFECTIVE DATE: August 21, 1987.

FOR FURTHER INFORMATION CONTACT: Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-2438.

SUPPLEMENTARY INFORMATION:

The Petition

On July 28, 1987, we received a petition in proper form from the Ad Hoc Granite Trade Group filed on behalf of the U.S. industry producing granite. The members of this group are the Cold Spring Granite Company of Cold Spring, Minnesota, the North Carolina Granite Corporation of Mt. Airy, North Carolina, and the Capitol Marble and Granite Company of Marble Falls, Texas. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, and exporter in Spain of granite receive subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended ("the Act"). In addition, the petition alleges that such imports materially injure, or threaten material injury to, a U.S. industry.

Since Spain is a "country under the Agreement" within the meaning of section 701(b) of the Act, Title VII of the Act applies to this investigation, and the ITC is required to determine whether imports of granite from Spain materially injure, or threaten material injury to, a U.S. industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of a countervailing duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on granite and have found that it meets the requirements of section 702(b) of the Act. Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Spain of granite, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the Act. If our investigation proceeds normally, we will make a preliminary determination on or before October 21, 1987.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. Congress is

considering legislation to convert the United States to this Harmonized System ("HS") by January 1, 1988. In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* (*TSUSA*) item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the *TSUSA*, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the *TSUSA* item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are certain granite products. Certain granite products are ⅜ inch (1 cm) to 2½ inches (6.34 cm) in thickness and include the following: Rough sawed granite slabs; face-finished granite slabs; and finished dimensional granite including, but not limited to, building facing, flooring, wall and floor tiles, paving, and crypt fronts. Certain granite products do not include monumental stones, crushed granite, or curbing. Certain granite products currently are classified under *TSUSA* item number 513.7400 and under HS item numbers 2516.12.00, 6802.23.00, and 6802.93.00

Allegations of Subsidies

The petition lists a number of practices by the Government of Spain which allegedly confer subsidies on manufacturers, producers, and exporters in Spain of granite. We are initiating an investigation on the following allegations:

- Privileged Circuit Export Credits.
- Warehouse Construction Loans.
- Medium- and Long-Term Loans on Terms Inconsistent with Commercial Consideration.
- Regional Investment Incentives-Basque Region—grants for the purchase of energy conservation equipment and the installation of pollution control equipment.

Although not specifically alleged by petitioner, we are also investigating whether the Spanish granite industry receives countervailable benefits under the following programs:

- *Loans and Loan Guarantees from the Instituto Nacional de Industria (INI).* Certain INI loan guarantees were found countervailable in *Carbon Steel Wire Rod from Spain: Final Affirmative Countervailing Duty Determination (Wire Rod)* (49 FR 19551, May 8, 1984). In *Preliminary Negative Countervailing Duty Determination: Porcelain-on-Steel Cooking Ware from Spain* (51 FR 34480, September 29, 1986), we determined that loans and loan guarantees from INI were not used.
- *Other Regional Investment Incentives.* The Government of Spain as well as regional and municipal authorities, including the Regional Board of the Province of Alava, provide a wide variety of investment incentive programs which vary according to the region of the country.

They include reduction in taxes, reduced import duties on imported tools and equipment, cash grants, preferential access to official credit, and free or inexpensive land. These incentives were found not to be used in *Wire Rod* and in *Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Products from Spain* (47 FR 51453, November 15, 1982). Grants from the Regional Board of the Province of Alava were found to be countervailable in *Carbon Steel Wire Rod from Spain: Preliminary Results of Countervailing Duty Administrative Review* (51 FR 36579, October 14, 1986).

Notification of the ITC

Section 702(d) of the Act requires us to notify the ITC of this action, and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information in our files. We will also allow the ITC access to all privileged and business proprietary information in our files, provided it confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by September 11, 1987, whether there is a reasonable indication that imports of granite from Spain materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, this investigation will terminate; otherwise, it will continue according to the statutory and regulatory procedures.

This notice is published pursuant to section 702(c)(2) of the Act.

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

August 17, 1987.

[FR Doc. 87-19211 Filed 8-20-87; 8:45 am]

BILLING CODE 3510-DS-M

[C-408-006]

Sodium Gluconate From the European Communities; Intention To Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination To Terminate Suspended Investigation

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of Intention To Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination To Terminate Suspended Investigation.

SUMMARY: The Department of Commerce has received information which shows changed circumstances sufficient to warrant an administrative review of the suspended countervailing duty investigation on sodium gluconate from the European Communities. Because the petitioner has notified the Department that it is withdrawing its petition, we tentatively determine to terminate this investigation. We invite interested parties to comment on these prelimintary results and tentative determination to terminate.

EFFECTIVE DATE: January 1, 1988.

FOR FURTHER INFORMATION CONTACT: Al Jemmott or Bernard Carreau, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On September 11, 1986, the petitioner, Pfizer Inc., informed the Department of Commerce ("the Department") that it was withdrawing its petition in the suspended investigation on sodium gluconate from the European Communities ("the EC") (46 FR 58132, November 30, 1981) and requested that the Department terminate the investigation. On December 4, 1986, the Belzak Corporation, a domestic manufacturer of sodium glucoheptonate, requested instead that the Department terminate the suspension agreement and resume the investigation. The Belzak Corporation asserts that it is qualified to

make such a request because sodium glucoheptonate and sodium gluconate are like products.

Scope of Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS") by January 1, 1988. In view of this, we will be providing both the appropriate Tariff Schedules of the United States Annotated ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are shipments of the chemical sodium gluconate from the EC. Such merchandise is currently classifiable under item 437.5250 of the TSUSA. This product is currently classifiable under HS item number 2918.16.50. We invite comments from all interested parties on this HS classification. The review covers the period from September 11, 1986.

Preliminary Results of Review and Tentative Determination

We invited interested parties to comment on the similarities and differences between sodium gluconate and sodium glucoheptonate in order to determine whether the Belzak Corporation is an "interested party" (as defined in section 771(9) of the Tariff Act of 1930) to this proceeding. After reviewing all of the comments received, we preliminarily determine that sodium gluconate ("SG") and sodium glucoheptonate ("SGH") are not like products.

Although SGH can be substituted for SG in many applications, there are a number of important differences between the two products. The composition and production processes are not the same: SGH is produced by a chemical reaction involving the synthesis of glucose and sodium cyanide, whereas SG is produced by the biological process of fermenting glucose. The molecular structures, molecular weights and chemical properties of the two products are different, resulting in different levels of solubility, microbial stability, and optical rotation. Both products are used principally as a sequestering agent in industrial cleaning compounds, derusting and finishing compounds, bottle washing compounds, paint strippers, textile processing, and set retarding of cement. Even so, end users tend to have a strong preference for one or the other because of the products' different physical and chemical properties. Belzak claims that SGH has superior sequestering properties in high alkaline, high temperature baths. In addition, SG may be used as a food additive, whereas SGH may not. Furthermore, the International Trade Commission reported in its preliminary investigation of sodium gluconate from the European Communities (46 FR 40639; August 12, 1981) that sodium gluconate and sodium glucoheptonate are not like products.

For these reasons, we preliminarily determine that SG and SGH are not like products and, therefore, that the Belzak Corporation is not an "interested party" to this proceeding and it is unnecessary to consider its request. We also preliminarily determine that Pfizer's withdrawal of its petition provides a reasonable basis for termination of the suspended investigation. Therefore, we tentatively determine to terminate the suspended investigation on sodium gluconate from the EC effective January 1, 1986.

Interested parties may submit written comments on these preliminary results and tentative determination to terminate within 20 days of the date of publication of this notice, and may request a hearing within five days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication, or the first workday following. The Department will publish the final results of the review and its decision on termination, including its analysis of issues raised in any such written comments or at a hearing.

This intention to review, administrative review, tentative determination to terminate, and notice are in accordance with section 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675(b) and (c)) and §§ 355.41 and 355.42 of the Commerce Regulations (19 CFR 355.41 and 355.42).

Joseph A. Spetrini,
Acting Deputy Assistant Secretary Import Administration.

Date: August 17, 1987.

[FR Doc. 87-19212 Filed 8-20-87; 8:45 am]
BILLING CODE 3510-DS-M

[C-201-405]

Certain Textile Mill Products From Mexico; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on certain textile mill products from Mexico. We preliminarily determine the total bounty or grant to be zero or *de minimis* for nine firms and 5.69 percent *ad valorem* for all other firms during the period January 3, 1985 through December 31, 1985. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: August 21, 1987.

FOR FURTHER INFORMATION CONTACT: Jean Carroll or Bernard Carreau, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On March 18, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 10824) the final affirmative determination and countervailing duty order on certain textile mill products from Mexico. On March 24, 1986, the Government of Mexico requested in accordance with 19 CFR 355.10 an administrative review of the order. We published the initiation of the administrative review on April 18, 1986 (51 FR 13274). The Department has now conducted this administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by this review are shipments of Mexican textile mill products. For a complete description of these products, see Appendix A of this

notice. The review covers the period January 3, 1985 through December 31, 1985 and 18 programs.

Analysis of Programs

(1) FOMEX

The Fund for the Promotion of Exports of Mexican Manufactured Products ("FOMEX") is a trust of the Mexican Treasury Department, with the National Bank of Foreign Trade acting as trustee for the program. The National Bank of Foreign Trade, through financial institutions, makes FOMEX loans available at preferential rates to Mexican exporters and U.S. importers for two purposes: Pre-export financing and export financing. We consider both pre-export and export FOMEX loans to confer export bounties or grants since these loans are given only on merchandise destined for export. We treat benefits to U.S. importers as benefits to their corresponding Mexican exporters. We found that the annual interest rate that financial institutions charged borrowers for peso-denominated FOMEX pre-export financing outstanding during the period of review ranged from 17.50 to 39.60 percent. The annual interest rate for dollar-denominated FOMEX financing outstanding during the period of review ranged from 6.00 to 6.90 percent.

We consider the benefit from loans to occur when the interest is paid. Interest on FOMEX pre-export loans is paid at maturity, and those that matured during the period of review were obtained between July 1984 and November 1985. since interest on FOMEX export loans is pre-paid, we calculated benefits from all FOMEX export loans received during the period of review.

We have sufficient information to measure effective interest rates for peso-denominated loans and for 1985 dollar-denominated loans. (*See* final results of administrative review on fabricated automotive glass from Mexico (51 FR 44652, December 11, 1986).) To determine the effective interest rate benchmark for peso loans obtained in 1984, we calculated an average annual effective rate from data reported by the Banco de Mexico in its monthly publication, *Indicadores Economicos* (I.E.). In 1985, the Banco de Mexico stopped publishing data on nominal and effective interest rates. Therefore, we calculated the average spread between the Costo Porcentual Promedio (CPP) rates, *i.e.*, the average cost of short-term funds to banks, and the I.E. effective rates for the period 1982 through 1984, the only period for which we have I.E. rates. The effective interest rate benchmark for 1985 is the sum of this average spread and the average CPP rate for 1985. In this way, we calculated a benchmark of 73.78 percent for pre-export peso loans obtained in 1984, and 86.31 percent for pre-export peso loans obtained in 1985.

To determine the effective interest rate benchmark for dollar loans, we used the quarterly weighted-average effective interest rates published in the *Federal Reserve Bulletin*, which was 12.85 percent in 1985. For our 1984 dollar benchmark (used for dollar-denominated pre-export loans to one exporter), there was no comparable data on effective rates published in the *Federal Reserve Bulletin*.

Therefore, we used a nominal interest rate benchmark (13.97 percent in 1984) from the same publication and compared it to the nominal preferential interest rate.

Fifteen of the 29 known exporters of this merchandise used this program during the period of review. Because we found that the exporters were able to tie both types of FOMEX loans to exports to specific countries, we measured the benefit only from FOMEX loans tied to U.S. shipments. We allocated the FOMEX benefits over U.S. shipments, excluding those firms with *de minimis* aggregate benefits. We preliminarily determine the benefit from FOMEX to be 4.86 percent *ad valorem* during the period of review.

In February 1987, the Banco de Mexico changed the interest rates on FOMEX peso loans to 95.00 percent and on FOMEX dollar loans to 6.40 percent. To calculate the FOMEX benefit for cash deposit purposes, we followed the same methodology used in calculating the assessment rates. For peso loans we used as our benchmark the sum of the most recent CPP rate, *i.e.*, February 1987, and the average 1982–1984 spread between the CPP and the I.E. effective rates. For dollar loans we used as our benchmark the February 1987 weighted-average effective interest rate from the *Federal Reserve Bulletin*. On this basis, we preliminarily find, for purposes of cash deposits of estimated countervailing duties, a FOMEX benefit of 2.69 percent *ad valorem*.

(2) Article 15

Article 15 of the General Law of Credit Institutions and Auxiliary Organizations ("the Banking Law") established that up to seven percent of a bank's total deposits must be funneled as loans into specially designated sectors of economic activity. The Banco de Mexico established eight industrial categories that are eligible to obtain financing under Article 15. One category consists only of exports of manufactured products. Loans granted under Article 15 are obtained at an interest rate of the CPP minus 5 percentage points. The interest on these loans is paid at maturity. One firm had interest payments due from loans under this program during the period of review.

We consider such financing to constitute an export bounty or grant because it is given at below market rates only on merchandise destined for export. To calculate the benefit, we used the same benchmark as for the FOMEX peso-denominated pre-export loans. Since these Article 15 loans are based on exports to all countries, we allocated the company's benefit over the value of its total exports during the period of review. We then weight-averaged the resulting benefit by that company's proportion of exports to the United States during the period of review, excluding those companies with *de minimis* aggregate benefits. On this bases, we preliminarily determine the benefit from this program to be 0.78 percent *ad valorem* for the review period.

(3) CEPROFI

Certificates of Fiscal Promotion ("CEPROFI") are tax certificates used to promote the goals of the National Development Plan ("NDP"). They are granted in conjunction with investments in designated industrial activities or geographic regions and can be used to pay a variety of federal tax liabilities. Article 25 of the decree that established the authority for issuing CEPROFI's, published in the *Diario Oficial* on March 6, 1979, requires each recipient to pay a four percent supervision fee. The four percent supervision fee is "paid in order to qualify for, or to receive," the CEPROFI's. Therefore, it is an allowable offset, as defined in section 771(6)(A) of the TARIFF Act, from the gross bounty or grant.

Textile firms in Mexico can receive CEPROFI benefits under three provisions: "Category I," which makes CEPROFI certificates available for the manufacture and processing of construction and capital goods; "Category II," which makes CEPROFI certificates available for particular industrial activities; and a third provision, which makes CEPROFI certificates available for the purchase of Mexican-made equipment.

The Department held in the final affirmative countervailing duty determination on bricks from Mexico (49 FR 19564, May 8, 1984) that CEPROFI certificates granted for the purchase of Mexican-made equipment are not countervailable because such

certificates are available to any company that purchases Mexican-made equipment. We consider the other two types of CEPROFI certificates to be domestic bounties or grants because they are available only to certain industries. For the six companies that received tax certificates from the Category I and Category II CEPROFI provisions, we allocated each firm's benefits, less the four percent supervision fee, over the value of its sales to all markets during the period of review. We then weight-averaged the resulting benefits by each company's proportion of the exports to the United States during the review period, excluding those firms with *de minimis* aggregate benefits. We preliminarily determine the benefit from this program to be 0.05 percent *ad valorem* during the period of review.

(4) FONEI

The Fund for Industrial Development ("FONEI"), administered by the Banco de Mexico, is a specialized financial development fund that provides long-term loans at below-market rates. FONEI loans are available under various provisions with different eligibility requirements. The plant expansion provision is designed for the creation, expansion, or modernization of enterprises in order to promote the efficient production of goods capable of competing in the international market or to meet the objectives of the NDP, which include industrial decentralization. We consider this FONEI loan provision to confer a bounty or grant because it restricts loan benefits to those enterprises located outside of Zone IIIA. Four firms had variable rate peso-denominated FONEI loans for plant expansion or modernization outstanding during the period of review.

We treated these variable-rate loans as a series of short-term loans. To calculate the benefit, we used the same benchmarks as for the FOMEX peso-dominated pre-export loans and compared them to the preferential interest rates in effect for each FONEI loan payment made during the period of review. We allocated the benefits over each company's total sales to all markets. One of these firms had *de minimus* aggregate benefits. For the remaining firms that made interest payments on FONEI loans, we weight-averaged the resulting benefits by each company's proportion of exports to the United States during the period of review, excluding those firms with *de minimis* aggregate benefits. We preliminarily determine the benefit from this program to be 0.0004 percent *ad valorem* during the period of review.

(5) FOGAIN

The Guarantee and Development Fund for Medium and Small Industries ("FOGAIN") is a program that provides long-term loans to all small and medium-size firms in Mexico. The interest rates available under the program vary depending on whether a small or medium-size business has been granted priority status, and whether a business is located in a zone targeted for industrial growth. Although FOGAIN loans are available to all small and medium-size firms in Mexico, regardless of the type of industry or location, some companies get more beneficial rates than others. Therefore, to the extent that this program provides financing at rates below the least beneficial rate available under FOGAIN, we consider it to be countervailable.

Three firms had FOGAIN loans on which interest payments were due during the period of review. Because the interest rates are variable, we treated each loan as a series of short-term loans. To determine the benefit, we used as our benchmarks the least beneficial interest rates in effect for each FOGAIN loan payment made during the period of review.

We allocated the benefits from each loan over each company's total sales to all markets. One of these firms had *de minimis* aggregate benefits. For the remaining firms that made interest payments on FOGAIN loans, we weight-averaged the resulting benefits by each company's proportion of exports to the United States during the period of review, excluding those firms with *de minimis* aggregate benefits. We preliminarily determine the benefit from this program to be 0.0021 percent *ad valorem* during the period of review.

(6) Other Programs

We also examined the following programs and preliminarily find that exporters of textile mill products did not use them during the review period:

(A) State tax incentives;

(B) National Industrial Development Fund ("FOMIN");

(C) NDP preferential discounts;

(E) Trust Fund for the Study and Development of Industrial Parks ("FIDEIN");

(F) Bancomext loans;

(G) Delay of payments on loans;

(H) Delay of payments to PEMEX of fuel charges;

(I) PROFIDE loans;

(J) Export credit insurance;

(K) Tax Rebate Certificate ("CEDI");

(L) Accelerated depreciation;

(M) Article 94 loans;

(N) Preferential state investment incentives; and

(O) Import duty reductions and exemptions.

Firms Not Receiving Benefits

We preliminarily determine that the following nine firms received zero or *de minimis* benefits during the period of review:

(1) Bemis Craftil, S.A. de C.V.

(2) Celanese Mexicana, S.A.

(3) Crisol Textil, S.A. de C.V.

(4) Hilados y Tejidos de Tepeji del Rio, S.A.

(5) Hilados y Tejidos de San Jorge, S.A.

(6) Hilaturas Maya, S.A.

(7) Ryltex, S.A.

(8) Tamacani, S.A.

(9) Tauro Textil, S.A. de C.V.

Preliminary Results of Review

As a result of our review, we preliminarily determine the local bounty or grant during the period January 3, 1985 through December 31, 1985 to be zero or *de minimis* for nine firms and 5.69 percent *ad valorem* for all other firms.

The Department intends to instruct the Customs Service to liquidate, without regard to countervailing duties, shipments of this merchandise from the nine firms listed above and to assess countervailing duties of 5.69 percent of the f.o.b. invoice price on shipments from all other firms entered, or withdrawn from warehouse, for consumption on or after January 3, 1985 and exported on or before December 31, 1985.

The Department intends to instruct the Customs Service to waive cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on shipments of this merchandise from the nine firms listed above and, due to the change in the FOMEX interest rates, to collect a cash deposit of estimated countervailing duties of 3.51 percent of the f.o.b. invoice price on shipments from all other firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. This deposit requirement and waiver shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the Date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30

days after the date of publication or the first workday following.

Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.10 of the Commerce Regulations (19 CFR 355.10).

Joseph A. Spetrini,

Acting Deputy Assistant Secretary, Import Administration.

Date: August 17, 1987.

APPENDIX A.—CERTAIN TEXTILE MILL PRODUCTS TSUSA CODES FOR 1985

Yarns

300.6020	300.6024	300.6028	301.0000	301.1000
301.2600	301.3000	302.0004	302.1004	302.1020
302.2020	302.2024	302.2026	302.2028	302.2034
302.3026	302.3028	302.4026	303.2040	303.2042
307.6610	310.0106	310.0109	310.0110	310.0114
310.0130	310.0140	310.0150	310.0206	310.0209
310.0230	310.0249	310.0250	310.0270	310.0510
310.1015	310.1070	310.1109	310.1150	310.1170
310.2150	310.4027	310.4047	310.4050	310.5045
310.5047	310.5049	310.5054	310.9000	310.9120
310.9140				

Cordage

316.5500	316.5509	316.7000	316.8300	316.8700

Fabric

320.0009	320.0021	320.0022	320.0031	320.0034
320.0036	320.0042	320.0045	320.0049	320.0054
320.0057	320.0063	320.0066	320.0071	320.0072
320.0077	320.0080	320.0088	321.1034	321.1045
321.1063	321.1071	321.1077	321.0034	321.1071
321.1077	322.0052	322.0063	322.1006	322.1015
322.1025	322.1029	322.1030	322.1034	322.1036
322.1037	322.1040	322.1041	322.1045	322.1047
322.1048	322.1050	322.1051	322.1052	322.1053
322.1055	322.1056	322.1065	322.1066	322.1066
322.1071	322.1075	322.1077	322.1078	322.1081
322.1084	322.1085	322.1088	322.1088	322.1089
322.1090	322.1091	322.1095	322.1097	322.3016
322.2023	322.2069	322.2073	322.4003	322.4021
322.4022	322.4036	322.4042	322.4049	322.4054
322.4057	322.4066	322.4072	322.4080	322.4088
322.5014	322.5023	322.5012	322.5013	322.5014
322.5015	322.5016	322.5017	322.5018	322.5019
322.5069	322.5073	322.8016	322.8023	322.8069
322.9073	322.9003	322.9021	322.9022	322.9036
322.9042	322.9049	322.9054	322.9057	322.9066
322.9072	322.9080	322.9088	324.2022	324.2024
324.2031	324.2038	324.2042	324.2049	324.2054
324.2057	324.2066	324.2072	324.2080	324.2088
324.9066	324.9072	324.9074	324.9086	324.9088
325.1051	325.1052	325.1085	325.1088	325.1091
325.1095	325.8022	325.8024	325.8031	327.2021
327.2022	327.2031	327.2038	327.2042	327.2049
327.2054	327.2057	327.3003	327.3021	327.3052
327.3036	327.3042	327.3049	327.3054	327.3057
327.3066	339.1000	328.2003	328.2021	328.2022
328.2031	328.2038	328.2042	328.2049	328.2054
328.2057	328.2066	328.2072	328.2080	328.2088
331.2022	331.2024	331.2031	331.2038	331.2042
331.2045	331.2054	331.2057	331.2045	331.2072

APPENDIX A.—CERTAIN TEXTILE MILL PRODUCTS TSUSA CODES FOR 1985—Continued

331.2074	331.2080	331.8008	336.1640	336.6251
336.6253	336.6257	336.4004	336.6077	336.5009
336.5010	336.5013	336.5021	336.5024	336.5030
336.5031	336.5036	336.5041	336.5045	336.5048
336.5049	336.5064	336.5065	336.5069	336.1000

Special Construction Fabric

345.5052	345.5055	345.5057	345.5073	345.5075
345.5077	346.6050	346.6065	346.7000	347.6040
347.6800	348.0065	351.3000	351.5010	351.5060
351.6010	351.7060	351.8060	351.9060	352.2060
352.8010	352.8060	353.1000	353.5012	353.5052
355.1610	355.1620	355.1630	355.2500	355.4530
355.6100	356.2510	357.4508	357.7010	357.8060
358.0260	358.0660	358.1400	358.3600	358.5040
359.1010	359.1030			

Textile Furnishings

360.0600	360.1515	360.2500	360.4225	360.4305
360.4825	360.4835	360.7000	360.7600	360.7900
360.8300	360.8400	361.0530	361.0540	361.2410
361.4200	361.4500	361.4560	361.4660	361.5420
361.5424	361.5610	361.5650	363.0510	363.0515
363.1020	363.1040	363.2000	363.2562	363.2564
363.2575	363.2580	363.2590	363.4500	363.8030
363.6540	363.6508	363.5508	363.8516	363.8525
363.8545	363.8550	363.8556	364.0500	364.1300
364.1800	364.2000	364.2200	364.2500	364.2600
365.5080	365.7815	365.7825	365.7845	365.8400
365.8610	365.8620	365.8640	365.8660	365.8670
365.8680	366.1020	366.2460	366.2480	366.4200
366.4600	366.4700	366.5100	366.7700	366.7825
366.7830	366.8400	367.3424	367.3428	367.8025
367.8040	367.8080			

[FR Doc. 87-19213 Filed 8-20-87; 8:45 am]

BILLING CODE 3510-DS-M

Proposed Conversion of Tariff Schedules of the United States Classifications Into the Harmonized System of Tariff Classifications

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of proposed use of harmonized system of tariff classification numbers.

SUMMARY: Congress is considering legislation to convert the United States to use of an internationally harmonized system of tariff classification on January 1, 1988. The Department of Commerce has been providing appropriate Tariff Schedules of the United States and Harmonized System numbers with product descriptions in its antidumping and countervailing duty actions and requiring all new petitions to include both sets of item numbers pending Congressional approval. In anticipation of this change the Department is presenting a list of all active antidumping and countervailing duty cases and the applicable Tariff Schedules and Harmonized System classification numbers believed appropriate. Interested parties are invited to comment on these classification designations.

EFFECTIVE DATE: January 1, 1988.

FOR FURTHER INFORMATION CONTACT: Anne D'Alauro or Al Jemmott, Office of Compliance, or Mary Martin, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 377-2923-2786-5497.

The Harmonized System Tariff

The United States, under the auspices of the Customs Cooperation Council, has developed a system of tariff classification, based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to use of the Harmonized System by January 1, 1988. In view of this the Department of Commerce has prepared a listing of *Tariff Schedules of the United States* item numbers and appropriate Harmonized System item numbers for active antidumping and countervailing duty cases. Cases involving textile materials and wearing apparel made of textiles are not included; these numbers will be made available at a later date.

We invite interested parties to review and comment on these Harmonized System designations which are available at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. All comments must be in writing (10 copies), addressed to the attention of the Office of Compliance, at the above address and must be received within three weeks after the date of publication of this notice.

A reference copy of the proposed Harmonized System Tariff Schedule is available for consultation at the Central Records Unit. Additionally, all U.S. Customs offices have reference copies, and interested parties may contact the Import Specialist at their local Customs office to consult the schedule.

Date: August 17, 1987.

Joseph A. Spetrini,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 87-19214 Filed 8-20-87; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in the People's Republic of China

August 18, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on August 24, 1987. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 566–6828. For information on embargoes and quota re-openings, please call (202) 377–3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase the previously established 1987 restraint limits for Categories 334, 338 and 369–L. The limits for Categories 334 and 369–L will re-open.

Background

A CITA directive dated December 23, 1986 was published in the **Federal Register** (51 FR 47041) which established import restraint limits for certain cotton, wool and man-made fiber textile products, including Categories 333, 334, 338, 359–V and 369–L, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

In accordance with the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, as amended, and at the request of the Government of the People's Republic of China, the limits for Categories 334, 338 and 369–L are being increased for swing. The limits for Categories 333 and 359–V are being reduced to account for the swing applied to Categories 334, 338 and 369–L. As a result, the limits for Catergories 334 and 369–L, which have been filled, will re-open.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

The letter published below and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register**.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

August 18, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

This directive amends, but does not cancel, the directive issued to you on December 23, 1986 concerning certain cotton, wool and man-made fiber textile products, produced or manufactured in China and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Effective on August 24, 1987, the directive of December 23, 1986 is hereby amended to include adjustments to the previously established restraint limits for cotton textile products in the following categories, as provided under the terms of the bilateral agreement of August 19, 1983, as amended: [1]

Category	Adjusted 12-mos. limit [1]
333	56,115 dozen.
334	246,043 dozen.
338	925,326 dozen.
359–V [2]	324,074 pounds.
369–L [3]	4,283,213 pounds.

[1] The agreement provides, in part, that (1) with the exception of Category 315, any specific limit may be exceeded by not more than 5 percent of its square yards equivalent total, provided that the amount of the increase is compensated for by an equivalent square yard decrease in one or more other specific limit in that agreement year; (2) the specific limits for certain categories may be increased for carryforward; (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1986.

[2] In Category 359–V, only TSUSA numbers 381.0258, 381.0554, 381.3949, 381.5800, 381.5920, 384.0451, 384.0648, 384.0650, 384.0651, 384.3449, 384.3450, 384.4300, 384.4421 and 384.4422.

[3] In Category 369–L, only TSUSA numbers 706.3210, 706.3650 and 706.4111.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–19192 Filed 8–20–87; 8:45 am]

BILLING CODE 3510–DR–M

Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in Czechoslovakia

August 18, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on August 24, 1987. For further information contact Chris Lozano, Assistant International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377–3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase the current import restraint limits for wool textile products in Categories 435 and 443, produced or manufactured in Czechoslovakia.

Background

On June 25, 1987 a notice was published in the **Federal Register** (52 FR 23881), which announced import restraint limits for wool textile products, produced or manufactured in

Czechoslovakia and exported during the current agreement year which began on June 1, 1987 and extends through May 31, 1988. The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement on June 25, 1986 and July 22, 1986 between the Governments of the United States and the Czechoslovak Socialist Republic, under the terms of which these limits were established, also includes provisions for the carryover of shortfalls from the previous year in certain categories (carryover).

Under the foregoing provisions of the bilateral agreement and at the request of the Government of Czechoslovak Socialist Republic, these limits established for Categories 435 are being increased by carryover.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register**.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

August 18, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on June 22, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain wool textile products, produced or manufactured in the Czechoslovak Socialist Republic and exported during the period which began on June 1, 1987 and extends through May 31, 1988.

Effective on August 24, 1987, the directive of June 22, 1987 is hereby amended to adjust the previously established limits for wool textile products in the following categories, as provided under the terms of the bilateral agreement of June 25, 1986 and July 22, 1986: [1]

Category	Adjusted limit [1]
435	7,848 dozen.
443	6,727 dozen.

[1] The limits have not been adjusted to account for any imports exported after May 31, 1987.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-19193 Filed 8-20-87; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1987 Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1987 commodities to be produced by workshops for the blind or other severely handicapped.

DATES: Comments must be received on or before September 21, 1987.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities to Procurement List 1987, November 3, 1986 (51 FR 39945).

Commodities

Adapter Kit, Top Sling

1005-00-406-1570

Strap, Quick Release

1670-01-0074-1210

C.W. Fletcher,

Executive Director.

[FR Doc. 87-19178 Filed 8-20-87; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1987; Additions and Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to and deletions from procurement list.

SUMMARY: This action adds to and deletes from Procurement List 1987 commodities produced by and services provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: September 21, 1987.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION:

On April 20 and June 26, 1987, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (52 FR 12958, 24049) of additions to and deletions from Procurement List 1987, November 3, 1986 (51 FR 39945).

Additions

After consideration of the relevant matter presented, the Committee has determined that the commodity and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered were:

[1] The provisions of the agreement provide, in part, that: (1) The restraint limits may be exceeded by not more than 5 percent, provided that a corresponding reduction in equivalent square yards is made in another specific limit during the same agreement year; (2) the restraint limits may be increased for carryover and carryforward up to 11 percent of the applicable category limit except that no carryforward shall be available in the final agreement year; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the bilateral agreement.

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the commodity and service listed.

c. The action will result in authorizing small entities to produce the commodity and provide the service procured by the Government.

Accordingly, the following commodity and service are hereby added to Procurement List 1987:

Commodity

Arming Wire

1350-00-089-8165

Service

Grounds Maintenance
Wheeler National Wildlife Refuge
Decatur, Alabama

Deletions

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77 and 41 CFR 51–2.6.

Commodities

Iodine Ampoules, NF

6505-00-664-1408

Thimerosal Tincture, NF

6505-00-664-6911

Women's Scrub Dress

6532-00-261-9005
6532-00-290-1887

Mat, Floor

7720-00-457-6057
7720-00-457-6063
7720-00-151-6519
7720-00-477-3083
7720-00-194-1609

Box, Wood

8115-00-935-6518

C.W. Fletcher,
Executive Director.
[FR Doc. 87-19179 Filed 8-20-87; 8:45 am]
BILLING CODE 6820-33-M

DEPARTMENT OF EDUCATION

Grants Availability; Extension of Closing Date for Transmittal of Applications for New Awards Strengthening Historically Black Colleges and Universities Program;

AGENCY: Department of Education.

ACTION: Extension of Closing Date for Transmittal of Applications for New Awards Under the Strengthening Historically Black Colleges and Universities Undergraduate Program.

The Secretary extends to September 4, 1987, the closing date by which an eligible institution may submit an application for a grant under the Historically Black Colleges and Universities Undergraduate Program. The previous closing date of August 4, 1987 has been extended because the Secretary has identified additional eligible institutions and therefore is extending the closing date notice to all institutions.

On June 22, 1987 the Secretary published a Notice establishing the closing date for transmittal of applications for fiscal year 1987 under the Strengthening Historically Black Colleges and Universities Undergraduate Program (52 FR 23491). The purpose of this notice is to extend the closing date for transmittal of applications.

FOR FURTHER INFORMATION CONTACT: Dr. Caroline J. Gillin, Director, Division of Institutional Development, U.S. Department of Education, Room 3042, Regional Office Building, 3, 400 Maryland Avenue SW., Washington, DC 20202. Telephone (202) 732–3326.

(20 U.S.C. 1060–1063a, 1063c and 1069c)

(Catalog of Federal Domestic Assistance Number 84.031B—Strengthening Historically Black Colleges and Universities Undergraduate Program).

Dated: August 18, 1987.

C. Ronald Kimberling,
Assistant Secretary for Postsecondary Education.
[FR Doc. 87-19184 Filed 8-20-87; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP87-489-000 et al.]

Natural Gas Certificate Filings; Gas Gathering Corp., et al.

August 14, 1987.

Take notice that the following filings have been made with the Commission:

1. Gas Gathering Corp.

[Docket No. CP87-489-000]

Take notice that on August 10, 1987, Gas Gathering Corporation (Gas Gathering), P.O. Box 519, Hammond, Louisiana 70404, filed in Docket No. CP87-489-000 a request pursuant to §§ 157.205 and 284.223 of the Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to transport natural gas on behalf of Cities Service Oil and Gas Corporation (Cities Service) under the certificate issued in Docket No. CP86-129-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Gas Gathering proposes to transport up to 800 MMBtu of natural gas per day and up to 146,000 MMBtu of natural gas per year on behalf of Cities Service. Gas Gathering states it would receive the natural gas at an existing measurement station owned and operated by Gas Gathering in Iberville Parish, Louisiana. Gas Gathering further states it would redeliver the natural gas to Monterey Pipe Line Company (Monterey) at the inlet of an existing measurement station owned and operated by Monterey in Pointe Coupee Parish, Louisiana.

Gas Gathering states that the transportation would be performed under the FERC Rate Schedule IT-1 at the currently effective rate of 10.1 cents for MMBtu. It is indicated that no new facilities would be required in order to initiate the transportation service for Cities Service.

Comment date: September 28, 1987, in accordance with Standard Paragraph G at the end of this notice.

2. Southern Natural Gas Co.

[Docket No. CP87-468-000]

Take notice that on July 30, 1987, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP87-468-000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing the transportation of natural gas for the City of Vicksburg, Mississippi (Vicksburg), all as set forth in the application which is on file with the Commission and open to public inspection.

Southern requests a limited-term certificate of public convenience and necessity authorizing it to transport up to 18,000 MMBtu on an interruptible basis for Vicksburg for a term extending through October 31, 1988, in accordance with the terms and conditions of a transportation agreement (Agreement) between Vicksburg and Southern dated July 21, 1987. It is stated that Vicksburg purchases the gas from SNG Trading Inc., People-Service, Inc., Sonat Exploration Company, Hadson Gulf, Inc., Enron Gas Marketing, Inc., Arco Oil & Gas Company and Entrade Corporation.

It is indicated that Vicksburg would have gas delivered to Southern for transportation at the various existing points on Southern's contiguous pipeline system specified in Exhibit A to the Agreement. It is stated that Southern would redeliver to Vicksburg at the City of Vicksburg meter station located in Warren County, Mississippi, an equivalent quantity of gas less 3.25 percent of such amount which would be deemed to be used for compressor fuel and company-use gas (including system unaccounted-for gas losses), less any and all shrinkage, fuel or loss resulting from or consumed in the processing of gas; and less Vicksburg's pro-rata share of any gas delivered for Vicksburg's account which would be lost or vented for any reason.

Southern states that Vicksburg would pay Southern the following transportation rate for the services proposed herein:

(a) Where the aggregate of the volumes transported and redelivered by Southern on any day to Vicksburg under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's OCD Rate Schedule on such day to Vicksburg does not exceed the daily Contract Demand of Vicksburg, the transportation rate would be 25.0 cents per MMBtu; and

(b) Where the aggregate of the volumes transported and redelivered by Southern on any day to Vicksburg under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's OCD Rate Schedule on such day to Vicksburg exceeds the daily Contract Demand of Vicksburg, the transportation rate for the excess volumes would be 34.8 cents per MMBtu.

Southern states that it would collect from Vicksburg the GRI surcharge of 1.52 cents per Mcf or any such other GRI funding unit or surcharge as hereafter prescribed by the Commission or any other governmental authority.

Southern states that the transportation arrangement would enable Vicksburg to diversify its natural gas supply sources and to obtain gas at competitive prices. In additon, Southern states that it would obtain take-or-pay relief on gas that Vicksburg may obtain from its suppliers.

Comment date: September 4, 1987, in accordance with Standard Paragraph F at the end of this notice.

3. Trunkline Gas Co.

[Docket No. CP87–475–000]

Take notice that on July 31, 1987, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251, filed in Docket No. CP87–475–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation service for Texas Eastern Transmission Corporation (TETCO), all as more fully set forth in the application on file with the Commission and open to public inspection.

Trunkline explains that the transportation service to be abandoned includes gas that TETCO initially receives at West Cameron Block 522 offshore Lousiana. TETCO transports the gas to other natural gas pipelines for ultimate redelivery onshore to TETCO in Allen Parish, Louisiana. Gas is being transported pursuant to authority granted in Docket No. CP76–310 and in accordance with the terms of two transportation agreements dated March 22, 1976, which provide for a quantity of up to 11,000 Mcf per day on a firm basis and up to 4,000 Mcf per day on a best efforts basis, it is asserted. Trunkline concludes that the authorization to abandon include specifically Rate Schedule T–7 and Rate Schedule T–8. TETCO and Trunkline have executed a letter agreement dated February 25, 1986, which provides for the termination of the two transportation agreeements effective July 1, 1987, it is noted.

No abandonment of facilities is proposed in the application.

Comment date: September 4, 1987, in accordance with Standard Paragraph F at the end of this notice.

4. Mississippi River Transmission Corp.

[Docket No. CP87–493–000]

Take notice that on August 12, 1987, Mississippi River, Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP87–493–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to add a delivery point to its existing firm sales customer, Arkansas Louisiana Gas Company (ALG), under the certificate issued in Docket No. CP82–489–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

MRT proposes to establish the new delivery point by installing a tap and appurtenant minor facilities to be located on MRT's mainline system near Mile Pole No. 240 in Lawrence County, Arkansas. It is stated that ALG requires the delivery of gas at the proposed location to serve the City of Minturn, Arkansas. MRT states that it would supply no more than 100 Mcf of natural gas on a peak day and an estimated 8,000 Mcf of natural gas on an annual basis at the proposed delivery point. It is estimated that the total for all costs associated with the installation of the proposed facilities will be $6,000. MRT states that ALG would reimburse it for all costs associated with the installation of these facilities.

MRT states that its FERC Gas Tariff does not prohibit the addition of new delivery points and that it has sufficient capacity to accomplish the deliveries proposed herein without detriment or disadvantage to its other customers. MRT states that it does not propose to increase or decrease the total daily and/or annual quantities it is authorized to deliver to ALG.

Comment date: September 28, 1987, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs.

F. Any person desiring to be heard or make any protect with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed wtihin the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided, for, unless otherwise advised, it will be

unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,
Secretary

[FR Doc. 87-19139 Filed 8-20-87; 8:45 am]
BILLING CODE 6717-01-M

[Project Nos. 9189-002, et al.]

Surrender of Preliminary Permits; JDJ Energy Co. et al.

August 14, 1987.

Take notice that the following preliminary permits have been surrendered effective as described in Standard Paragraph I at the end of this notice.

1. JDJ Energy Co.

[Project No. 9189-002]

Take notice that JDJ Energy Company, permittee for the proposed Dale Hollow Project No. 9189, has requested that its preliminary permit be terminated. The permit was issued on September 27, 1985, and would have expired on August 31, 1988. The project would have been located on Dale Hollow Lake, in Clay County, Tennessee.

The permittee filed the request on July 20, 1987.

2. JDJ Energy Co.

[Project No. 9190-002]

Take notice that JDJ Energy Company, permittee for the proposed Wolf Creek Project No. 9190, has requested that its preliminary permit be terminated. The permit was issued on September 27, 1985, and would have expired on August 31, 1988. The project would have been located on Lake Cumberland, in Russell County, Kentucky.

The permittee filed the request on July 20, 1987.

3. JDJ Energy Co.

[Project No. 9020-002]

Take notice that JDJ Energy Company, permittee for the proposed Norfork Fish Hatchery Conduit Project No. 9020, has requested that its preliminary permit be terminated. The permit was issued on September 27, 1985, and would have expired on August 31, 1988. The project would have been located on Norfork Lake, in Baxter County, Arkansas.

The permittee filed the request on July 20, 1987.

Standard Paragraph

I. The preliminary permit shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007 in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,
Secretary.

[FR Doc. 87-19140 Filed 8-20-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. QF87-563-000 et al.]

Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.; E.F. Miramar, Inc. et al.

August 14, 1987.

Comment date: September 21, 1987, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. E.F. Miramar, Inc.

[Docket No. QF87-563-000]

On July 31, 1987, E.F. Miramar, Inc. (Applicant), of 401 B Street, Suite 1000, San Diego, California 92101, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at Miramar Naval Air Station, in San Diego, California. The facility will consist of two combustion turbine generating units, two heat recovery steam generators, and a condensing steam turbine generating unit. Steam produced from the facility will be sold to the United States Navy for space and water heating, and for galley operations. The primary energy sources will be a mixture of landfill gas and natural gas. The net electric power production capacity of the facility will be 46.3 MW. Installation of the facility is expected to begin in February 1990.

2. Applied Energy, Inc. (Noris Project)

[Docket No. QF87-562-000]

On July 31, 1987, Applied Energy, Inc. (Applicant), of 401 B Street, Suite 1000, San Diego, California 92101, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at North Island Naval Air Station, in San Diego, California. The facility will consist of a combustion turbine generating unit, a heat recovery steam generator, and an existing condensing steam turbine generating unit. Steam produced from the facility will be sold to the United States Navy for space and water heating, and for steam blanketing. The primary energy source will be natural gas. The net electric power production capacity of the facility will be 37.8 MW. Installation of the facility is expected to begin in September 1988.

3. EFFR, Inc., Energy Factors, Inc., Feather River Project

[Docket No. QF87-565-000]

On August 5, 1987, EFFR, Inc. (Applicant), a subsidiary of Energy Factors, Incorporated, of 401 B Street, Suite 1000, San Diego, California 92101 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility is located at 3712 Feather River Boulevard, Marysville, California 95901. The facility consists of a circulating fluidized bed combustion boiler, an extraction/condensing steam turbine generator, and related auxiliary equipment. The primary energy source of the facility is biomass in the form of wood waste materials. The net electric power production capacity of the facility is 16.5 megawatts. Construction of the facility began in September 1985.

4. Milesburg Energy, Inc., Environmental Power Corp.

[Docket No. QF87-578-000]

On August 4, 1987, Milesburg Energy, Inc. (Applicant), a subsidiary of Environmental Power Corporation, of 53 State Street, Exchange Place, 30th Floor, Boston, Massachusetts 02109 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility will be located in the Borough of Milesburg, Centre County, Pennsylvania at the site of the existing Milesburg Power station. The Milesburg Power Station after being renovated and refurbished will consist of an atmospheric circulating fluidized bed combustion boiler and two existing steam turbine generators. Applicant states that the primary energy source of the facility will be "waste" in the form of bituminous coal refuse. The net electric power production capacity of the facility will be 43 megawatts.

5. Applied Energy, Inc. (NTC/MCRD Project)

[Docket No. QF87-561-000]

On July 31, 1987, Applied Energy, Inc. (Applicant), of 401 B Street, Suite 1000, San Diego, California 92101, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle congeneration facility will be located at Naval Training Center and Marine Corps Recruitment Depot, in San Diego, California. The facility will consist of a combustion turbine generating unit, a heat recovery steam generator, and an existing condensing steam turbine generating unit. Steam produced from the facility will be sold to the United States Navy for space and water heating. The primary energy source will be natural gas. The net electric power production capacity of the facility will be 23.7 MW. Installation of the facility is expected to begin in October 1988.

Standard Paragraph:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-19141 Filed 8-20-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP86-169-007, RP86-169-006 and RP86-105-005]

Compliance Filing; ANR Pipeline Co.

August 18, 1987.

Take notice that on August 6, 1987, ANR Pipeline Company (ANR) tendered for filing the tariff sheets listed below in compliance with the Commission's Order issued July 22, 1987 in the above referenced proceeding.

Original Volume No. 1
- Eleventh Revised Sheet No. 18

Original Volume No. 1-A
- Second Revised Sheet No. 18
- Second Revised Sheet No. 5
- First Revised Sheet No. 7
- First Revised Sheet No. 8

ANR states that the revised tariff sheets reflect the removal of the cost of facilities that were not placed in service at the end of the test period in this case, February 28, 1987.

ANR has requested a waiver of the 30-day notice period so that these tariff sheets may be accepted for filing and made effective August 1, 1987.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.241). All such motions or protests should be filed on or before August 25, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any party wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-19142 Filed 8-20-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-1-37-010]

Compliance Filing; Northwest Pipeline Corp.

August 18, 1987.

Take notice that on July 30, 1987, Northwest Pipeline Corporation (Northwest) filed a computation to support the amount of Canadian gas costs includable in Northwest's demand charges. Northwest states that the filing was made pursuant to paragraph (D) of the Commission's order of December 12, 1986, in the above-captioned proceeding. No tariff sheets were submitted with the above-referenced computational filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 25, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person not previously granted intervention in this proceeding and wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-19143 Filed 8-20-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP77-478-005]

Proposed Changes in FERC Gas Tariff; Panhandle Eastern Pipe Line Co.

August 18, 1987.

A notice of proposed changes in Panhandle Eastern Pipe Line Company's FERC Gas Tariff was issued on August 12, 1987, in Docket No. RP87-15-017. That notice should have been issued in Docket No. CP77-478-005, and therefore this corrected notice is being reissued in the proper docket.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on August 6, 1987 tendered for filing the following sheets to its FERC Gas Tariff, Original Volume No. 2:

- First Revised Sheet Nos. 1621, 1931 and 2432
- Second Revised Sheet No. 2707
- Fourth Revised Sheet Nos. 1557, 1558, 1610, 1920, 1995, 2489, 2524 and 2672
- Fifth Revised Sheet No. 2731

Sixth Revised Sheet No. 2242
Twelfth Revised Sheet Nos. 694 and 695

Panhandle states that such changes are made to amend certain Rate Schedules for the transportation of natural gas on behalf of various Panhandle transport customers to reflect Trunkline Gas Company's current transportation rates as approved in Docket No. RP87-67-000 by Commission Order issued May 29, 1987 and ERRATUM Notice dated June 9, 1987 to be effective May 1, 1987. Panhandle proposes that these tariff sheets be given an effective date of May 1, 1987.

A copy of this filing has been served on the various transport customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before August 25, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 87-19144 Filed 8-20-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP85-141-009]

Proposed Changes in FERC Gas Tariff Sheets; Texas Gas Transmission Corp.

August 18, 1987.

Take notice that on August 13, 1987, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

First Revised Sheet No. 22
First Revised Sheet No. 22A
First Revised Sheet No. 22B
First Revised Sheet No. 29

Texas Gas states that the revised tariff sheets are being filed to reflect a change in the minimum bill provisions of its Rate Schedules CD and DCL pursuant to Article VII of the Stipulation and Agreement approved by the "Order Approving Contested Offer of Settlement Subject to Modifications" issued January 22, 1988, in Docket Nos. RP85-141-006 and RP85-141-002 (34 FERC ¶ 61,058). Article VII states in part that, effective on the later of (a) the date a final Commission order is issued in *Tennessee Gas Pipeline Company*, Docket Nos. RP81-54-004 and RP82-12-002 (Initial Decision reported at 27 FERC ¶ 63,690 (1984)) or (b) November 1, 1988, Texas Gas would agree to modify (1) the "Minimum Annual Commodity Charge" appearing in section 4.2(a) of Rate Schedule CD and (2) the "Minimum Monthly Bill" appearing in section 4.1 of the CD Rate Schedule and section 4 of Rate Schedule CDL to reflect a 50% minimum monthly and annual bill.

Copies of the filing were served on all parties in Docket No. RP85-141, as well as non-intervening customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before August 25, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 87-19145 Filed 8-20-87; 8:45 am]
BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3250-5]

Availability of Environmental Impact Statements; Filed August 10, 1987 Through August 14, 1987

Responsible agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements; Filed August 10, 1987 through August 14, 1987 Pursuant to 40 CFR 1506.9

EIS No. 870279, Draft, AFS, UT, Escalante Known Geological Structure (KGS), Oil and Gas Leasing and Development, Dixie National Forest, Garfield County, Due: October 20, 1987, Contact: Calvin Bird (801) 586-2421.

EIS No. 870280, Draft, BLM, AFS, WY, Sohare Creek Unit Exploratory Oil Well Number 1-35, Lease and Permit, Bridger-Teton National Forest, Teton County, Due: October 12, 1987, Contact: Alfred Reuter (307) 733-4755.

EIS No. 870281, Final, BLM, ID, Cascade Resource Area, Resource Management Plan, Wilderness Recommendations, Due: September 21, 1987, Contact: Richard Geier (208) 334-1582.

EIS No. 870282, Final, FHW, WA, Monroe-Lincoln Couplet, Maine Avenue to Wall and Monroe Streets, City and County of Spokane, Due: September 21, 1987, Contact: P.C. Gregson (206) 753-2120.

EIS No. 870283, Draft, FHW, CA, Ventura County Routes 23 and 118 Freeway Gap Closure, Route 23 Freeway at New Los Angeles Avenue to Route 118 Freeway at College View Avenue, Ventura County, Due: October 5, 1987, Contact: Glenn Clinton (916) 551-1310.

Amended Notices

EIS No. 870275, Adoption, Final, FHA, ME, Jonesport Harbor Navigation Improvement Project, Contact: Frederick Jagels (207) 581-3400, Published FR 8-14-87—New contact person and phone number.

EIS No. 870278, Draft, AFS, OR, Malheur National Forest, Land and Resource Management Plan, Published FR 8-14-87—Typographical error in bureau.

Dated: August 18, 1987.

Richard E. Sanderson,
Director, Office of Federal Activities.

[FR Doc. 87-19216 Filed 8-20-87; 8:45 am]
BILLING CODE 6560-50-M

[ER-FRL-3250-6]

Environmental Impact Statements and Regulations; Availability of EPA Comments Prepared August 3, 1987 Through August 7, 1987

Availability of EPA comments prepared August 3, 1987 through August 7, 1987 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act (CAA) and section 102(2)(c) of the National Environmental Policy Act (NEPA) as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076/73. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 24, 1987 (52 FR 13749).

Draft EISs

ERP No. D–UAF–K02004–CA, Rating EC2, Vandenberg Air Force Base Mineral Resource Mgmt. Plan, Exploration, Development, and Production of Oil and Gas Resources, CA. SUMMARY: EPA expressed environmental concerns because of potential impacts to surface water, ground water, and air quality. EPA requested further discussion of such impacts and mitigation measures to reduce potential impacts. EPA also requested that the the US Air Force contact the COE regarding Clean Water Act, Section 404 dredge, and fill permit requirements for the proposed project.

Final EISs

ERP No. F–BIA–K64012–CA, Hoopa Valley Indian Reservation Fishing Regulations Modification, Klamath River Drainage, CA. SUMMARY: EPA made no formal comments. EPA reviewed the final EIS and had no comments to offer based on earlier lack of comments on the draft EIS.

ERP No. F–BLM–J02011–00, Hickey Mountain-Table Mountain Oil and Gas Field Development, Lease, Sect. 10 and 404 Permits, WY and UT. SUMMARY: EPA is concerned with modifications made in the final EIS to water quality mitigation monitoring methodology and frequency, as described in the draft EIS. For consideration in the conditioning of Applications for Permits to Drill, Right-of-Way, and other Special Use Permits, EPA recommended the Mitigation Plan be revised to include the original draft EIS mitigation monitoring methodology and frequency.

ERP No. F1–BLM–L65069–ID, Monument Planning Area, Wilderness Study Areas, Wilderness Recommendations, ID. SUMMARY: EPA made no formal comments. EPA reviewed the final EIS and has no objections to the recommended actions as described.

ERP No. FS–COE–F32033–MI, Clinton River Federal Navigation Channel, Confined Disposal Facility Construction for Maintenance Dredging, Updated Information, MI. SUMMARY: EPA expressed concern regarding groundwater monitoring and liner testing. EPA suggested that further site integrity testing be performed to fully determine the suitability of liner material at the disposal facility. If it is determined by EPA and the COE that a liner is necessary, EPA is willing to work jointly with the COE to ensure that established procedures are used in testing and liner construction. EPA also provided information on suggested locations of groundwater monitoring wells at the proposed disposal facility.

ERP No. FS–NOA–A64045–00, Green, Loggerhead, and the Pacific Ridley Sea Turtles, Listing and Protection Under the 1973 Endangered Species Act, Incidental Capture and Mortality Reduction, Use of Turtle Excluder Devices by Shrimp Fishermen. SUMMARY: EPA made no formal comment. EPA's review of the final supplemental EIS did not identify any potential environmental impacts which may result from the proposed action.

Dated: August 18, 1987.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 87–19215 Filed 8–20–87; 8:45 am]

BILLING CODE 6560–50–M

[FRL 3249–9]

Science Advisory Board; Research Strategies Committee; Open Meeting

Under Public Law 92–463, notice is hereby given of a meeting of the Research Strategies Committee of the Science Advisory Board on September 10 and 11, 1987. The meeting will be held at the Guest Quarters Hotel, 7335 Wisconsin Avenue, Bethesda, Maryland in the Montgomery Conference Rooms I and II. The meeting will begin at 9:00 a.m. on September 10th and will adjourn at approximately 3:00 p.m. on September 11th.

This is the first meeting of the Committee. The Committee's purpose is to advise the Administrator of the Environmental Protection Agency on the development of research strategies needed to enhance the Agency's ability to acquire scientific and technical information to support regulatory decisionmaking, and to identify emerging environmental problems. To accomplish this task the Committee has been organized into five working groups. These include: Sources, Transport and Fate; Exposure Assessment; Health Effects; Ecological Effects; and Risk Reduction.

The meeting is open to the public. Any member of the public wishing to attend, obtain information, or submit written comments should contact Dr. Terry F. Yosie, Director, Science Advisory Board or Mrs. Joanna Foellmer located at 401 M Street SW., Washington, DC 20460 or call (202) 382–4126 by close of business September 4, 1987.

Date: August 14, 1987.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 87–19187 Filed 8–20–87; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL RESERVE SYSTEM

Application To Retain Shares of a Company Engaged in General Insurance Activities; Trustcorp, Inc.

The organization listed in this notice has applied under § 225.23(f) of the Board's Regulation Y (12 CFR 225.23(f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(C)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Boad of Governors. Interested persons may express their views in writing on the question whether consumation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 4, 1987.

A. Federal Reserve Bank of Cleveland (Martin E. Abrams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Trustcorp, Inc.*, Toledo, Ohio, to retain, pursuant to section 4(c)(8)(D) of the Bank Holding Company Act, to retain direct or indirect ownership, control, or power to vote all of the shares of St. Joseph Insurance Agency, Inc., South Bend, Indiana, through merger of Trustcorp of Indiana, Inc., with and into St. Joseph Bancorporation, Inc., both of South Bend, Indiana, thereby permitting St. Joseph's Insurance Agency, Inc., to continue engaging in grandfathered general insurance agency activities.

These insurance activities include the issuance and sale throughout the state of Indiana and adjacent states of all types of property and casualty insurance but excluding life insurance.

Board of Governors of the Federal Reserve System, August 17, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-19129 Filed 8-20-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (4 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on August 14, 1987.

Social Security Administration

(Call Reports Clearance Office on 301-594-5708 for copies of package)

1. Supplemental Security Income Referral Notice—0960-0324—The information collected by use of Form SSA-L8050-U3 identifies SSI applicants/recipients potentially eligible for other benefits so that they may file for and receive such benefits. The affected public is comprised of SSI applicants and recipients, State disability determination services agencies and organizations which pay benefits. Respondents: Individuals or households, State or local governments, non-profit institutions. Number of Respondents: 10,000; Frequency of Response: Occasionally; Estimated Annual Burden: 1,667 hours.

OMB Desk Officer: Elana Norden.

Health Care Financing Administration

(Call Reports Clearance Officer on 301-594-8650 for copies of package)

1. State MEQC Sampling Plans—0938-0146—The Medicaid Eligibility Quality Control (BEQC) Sampling Plan is necessary for DCFA to monitor the States' operation of the MEQC system. Respondents: State or local governments. Number of Respondents: 55; Frequency of Response: Occasionally; Estimated Annual Burden: 2,640 hours.

OMB Desk Officer: Allison Herron.

Family Support Administration

(Call Reports Clearance Officer on 202-245-0652 for copies of package)

1. Referral for WIN Registration—0970-0067—This form relates to the mandated need to collect information on (AFDC) registration for manpower services training and employment. Respondents: Individuals or households, State or local governments. Number of Respondents: 4,675; Frequency of Response: Quarterly; Estimated Annual Burden: 1,365 hours.

2. Financial Status Report (SF-269)—0970-0069—This form is used by the State Welfare Agency for their quarterly statements of their annual limit of entitlement. The categories reflect Federal concern for unit cost and staff productivity. Respondents: State or local governments. Number of Respondents: 25; Frequency of Response: Quarterly; Estimated Annual Burden: 151 hours.

3. State Plan for Child Support Collection and Establishment of Paternity Under Title IV-D.—0970-0017—This form serves as a "Contract with OCSE" outlining the activities the State will perform as required by law for States to receive Federal monies for costs incurred. Respondents: State or local governments. Number of Respondents: 54; Frequency of Response: Occasionally; Estimated Annual Burden: 271 hours.

OMB Desk Officer: Elana Norden.

Public Health Service

(Call Reports Clearance Officer on 202-245-2100 for copies of package)

Centers For Disease Control

1. Diabetes Control Program Evaluation Reports—NEW—To assure that persons at high risk for specific complications of diabetes are identified, entered into the health care system, and receive appropriate state-of-the-art preventive care and treatment, State diabetes programs report quarterly on activities and program accomplishments. Respondents: State or local governments. Number of Respondents: 30; Frequency of Response: Quarterly; Estimated Annual Burden: 1,030 hours.

2. A Study of Pneumoconiosis in Surface Coal Miners—0920-0161—This study will assess the risk of pneumoconiosis among workers in anthracite mines and preparation plants and among highwall drillers in bituminous strip mines. The data will be used to make recommendations for dust standards which will prevent pneumoconiosis. The participants will be coal miners and preparation plant workers. Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations. Number of Respondents: 1,072; Frequency of Response: One-time; Estimated Annual Burden: 560 hours.

OMB Desk Officer: Shanna Koss-McCallum.

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

PHS: 202-245-2100
HCFA: 301-594-8650
SSA: 301-594-5706
FSA: 202-245-0652

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503. Attn: (name of OMB Desk Officer).

Date: August 17, 1987.

Raffie Shahriglan,

Acting Deputy Assistant Secretary, Office of Administrative and Management Services.

[FR Doc. 87-19162 Filed 8-20-87; 8:45 am]

BILLING CODE 4150-04-M

Centers for Disease Control

Cooperative Agreement To Develop and Maintain Capacity To Provide Public Health Laboratory Information and To Utilize Management Systems; Availability of Funds for Fiscal Year 1987

The Centers for Disease Control (CDC) announces the availability of funds for Fiscal Year 1987 for a cooperative agreement with the Association of State and Territorial Public Health Laboratory Directors (hereafter referred to as the Association) to assist the Association in establishing the capacity to accept transfer of health laboratory information and management technology. This developed technology will be maintained by the Association and provided to State public health laboratories in support of national public health laboratory information systems and national public health laboratory management systems.

Authority

This project is authorized under section 301 of the Public Health Service Act (U.S.C. 8905). The Catalog of Federal Domestic Assistance Number is 13.283.

Program Background and Objectives

Since 1962, the Association and the CDC have collaborated to identify and solve programmatic information and management problems found in State, county, city, and local health laboratories. This collaboration has resulted in the development of innovative and constructive laboratory information and management systems that provide laboratory based data from which health information is generated.

This information is then used by the nation's public health community to plan health intervention strategies and to measure programmatic progress in health. Historically, CDC has been the source for the development and transfer of laboratory management and information system technology for the national laboratory community.

Management and information systems developed by CDC are standard operating procedures in many Association laboratories. The transfer of this technology to the Association is the next logical step. The Association would be responsible for developing the expertise for maintaining and providing to the public health laboratory community: work measurement standards, standard cost accounting methodology, consolidated annual reports of State and territorial public health laboratory activities, annual laboratory work force profiles, personnel classification guides, data processing systems and for monitoring emerging management and information technology. The Association would also be responsible for the continued operation and maintenance of developed management and information systems and for monitoring evolving technology and new systems for introduction to the health laboratory community that will impact national health.

Eligible Applicants

Because the purpose of this project is to assist, for public purpose, the Association in developing and maintaining technical expertise in providing public health laboratories information and management systems, assistance will be provided only to the Association of State and Territorial Public Health Laboratory Directors.

Availability of Funds

It is expected that up to $200,000 will be available during Fiscal Year 1987 to support this cooperative agreement. It is anticipated that this cooperative agreement will be funded initially for a 12-month budget period. Estimated cost of the remaining years of this 5-year project will be $175,000 each. Continuation awards, after the first year and within the 5-year project period, will be made on the basis of satisfactory progress in meeting project objectives and subject to the availability of funds. The funding estimate outlined above may vary and is subject to change.

Additional Information

For additional information contact: Luther DeWeese, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, Atlanta, Georgia 30333, Telephone (404) 262-6575.

Technical assistance may be obtained from: Herbert L. Lawton, Management Systems Branch, Division of Assessment and Management Consultation, Training and Laboratory Program Office, 24 Executive Park, Centers for Disease Control, Atlanta, Georgia 30333, Telephone (404) 329-1936.

Dated: August 17, 1987.

Glenda S. Cowart,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 87-19106 Filed 8-20-87; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 87A-0237]

Nutrient Fortification of Juice Beverages; Availability of Advisory Opinion

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of an advisory opinion concerning the nutrient fortification of juice beverages, particularly standardized juice products. This advisory opinion issued June 12, 1987, in response to an inquiry from the Florida Department of Citrus. The advisory opinion is of interest to all manufacturers of fortified juice products.

ADDRESS: Requests for single copies of the advisory opinion may be submitted to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. (Send a self-addressed adhesive label to assist the Branch in processing your request.)

FOR FURTHER INFORMATION CONTACT: Terry C. Troxel, Center for Food Safety and Applied Nutrition (HFF-312), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0175.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of an advisory opinion that the agency issued to the State of Florida, Department of Citrus (FDC), on June 12, 1987. FDA issued this advisory opinion in response to FDC's inquiry as to whether a standardized fruit juice, i.e., grapefruit or orange juice, that has been fortified or enriched in a manner not provided for in the standard of identity, can be marketed if the resulting product is accurately described on the label, and nutrition labeling is properly made. In the advisory opinion, the agency addresses the need to assure: (1) That the fortification of the product complies with 21 CFR 104.20, (2) that the labeling complies with all relevant labeling requirements (including nutritional labeling), and (3) that the unfortified juice to which the nutrients are added meets any applicable definitions or standards of identity. The agency further states that if the guidelines for fortification are not followed when fortifying a juice product, such fortified product and its labeling may be misleading and subject to regulatory action.

This advisory opinion is available for review at the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 14, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-19134 Filed 8-20-87; 8:45 am]

BILLING CODE 416-01-M

[Docket No. 87F-0240]

Filing of Food Additive Petition; Foodways National, Inc., and NutraSweet Co.

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Foodways National, Inc., and the NutraSweet Co. have filed a petition proposing that the food additive regulations be amended to provide for the use of aspartame as a sweetener in frozen dairy and nondairy frostings, and fillings.

FOR FURTHER INFORMATION: Carl L. Giannetta, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-5487.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21

U.S.C. 348(b)(5))), notice is given that a petition (FAP 7A4014) has been filed by the Foodways National, P.O. Box 10, Ontario, OR 97914; and the NutraSweet Co., 4711 Golf Rd., Skokie, IL 60076, proposing that § 172.804 *Aspartame* (21 CFR 172.804) be amended to provide for the use of aspartame as a sweetener in frozen dairy and nondairy frostings, toppings, and fillings.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: August 13, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-19133 Filed 8-20-87; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

John E. Fogarty International Center Advisory Board

Notice of Meeting of the Fogarty International Center Advisory Board Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Fogarty International Center (FIC) Advisory Board, September 29 and 30, 1987, in the Stone House (Building 16), at the National Institutes of Health.

The meeting will be open to the public on September 29 from 8:30 a.m. to 5 p.m., and on September 30, from 8:30 a.m. to 12 noon. On September 29, the agenda will include an Overview Report by Dr. Craig K. Wallace, Director of the FIC and presentations and discussions of FIC functions in support of NIH-wide international activities. The afternoon agenda will also include a report on the last meeting of the Advisory Committee to the NIH Director; and from the Advanced Studies, Research Awards, and Resources Working Groups of the FIC Advisory Board. On September 30, the agenda will include an update on FIC's evaluation activities, a presentation, "International Collaboration in Health Research in the Region of the Americas," and a concluding review of FIC functions, plans for the Advisory Board's biennial report to the Congress, and discussion of future program directions.

In accordance with the provisions of sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, the meeting will be closed to the public on September 29, from 5 p.m. to adjournment for the review, discussion, and evaluation of individual research fellowship applications. These applications contain information of a proprietary nature, including detailed research protocols, designs, and other technical information; and personal information about individuals associated with the applications.

Myra Halem, Committee Management Officer, Fogarty International Center, Building 38A, Room 609, National Institutes of Health, Bethesda, Maryland 20892 (301-496-1491), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Caralie Farlee, Assistant Director for Planning and Evaluation, Fogarty International Center (Executive Secretary) Building 38A, Room 609, telephone 301-496-1491, will provide substantive program information.

Dated: August 11, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87-19120 Filed 8-20-87; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; National Cholesterol Education Program Coordinating Committee, Meeting

Notice is hereby given of the meeting of the National Cholesterol Education Program Coordinating Committee, sponsored by the National Heart, Lung, and Blood Institute, on October 5, 1987, from 9 a.m. to 3 p.m., at the Sheraton Carlton Hotel, 16th & K Streets, NW., Washington, DC 20006, (202) 638-2626.

The meeting is open to the public. The Coordinating Committee is meeting to define the priorities, activities, and needs of the participating groups in the National Cholesterol Education Program. Attendance by the public will be limited to space available.

For the agenda, list of participants, and meeting summary, contact: Dr. James I. Cleeman, Coordinator, National Cholesterol Education Program, Office of Prevention, Education, and Control, National Heart, Lung, and Blood Institute, National Institutes of Health, C-200, Bethesda, Maryland 20892, (301) 496-0554.

Dated: August 13, 1987.

James B. Wyngaarden,

Director, NIH.

[FR Doc. 87-19121 Filed 8-20-87; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; National High Blood Pressure Education Program Coordinating Committee; Meeting

Notice is hereby given of the meeting of the National High Blood Pressure Education Program Coordinating Committee, sponsored by the National Heart, Lung, and Blood Institute, on September 21, 1987, from 8:30 a.m. to 1 p.m., at the American Red Cross, National Headquarters, 1730 E Street, NW., Washington, DC 20036, (202) 728-0500.

The meeting is open to the public. The Coordinating Committee is meeting to define the priorities, activities, and needs of the participating groups in the National High Blood Pressure Education Program. Attendance by the public will be limited to space available.

For the detailed program information, agenda, list of participants, and meeting summary, contact: Dr. Edward J. Roccella, Coordinator, National High Blood Pressure Education Program, Office of Prevention, Education, and Control, National Heart, Lung, and Blood Institute, National Institutes of Health, Building 31, Room 4A05, Bethesda, Maryland 20892, (301) 496-0554.

Dated: August 13, 1987.

James B. Wyngaarden,

Director, NIH.

[FR Doc. 87-19122 Filed 8-20-87; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Arthritis and Musculoskeletal and Skin Diseases, National Arthritis and Musculoskeletal and Skin Diseases Advisory Council; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council to provide advice to the National Institute of Arthritis and Musculoskeletal and Skin Diseases on September 10 and 11, 1987, Wilson Hall, Building 1, National Institutes of Health, Bethesda, Maryland. The meeting will be open to the public September 10 from 8:30 a.m. to 12 noon to discuss administrative details relating to Council business and special reports. Attendance by the public will be limited to space available.

The meeting of the Advisory Council will be closed to the public on September 10 from 1 p.m. to adjournment and again on September 11 from 8:30 a.m. to adjournment at approximately 12 noon in accordance with provisions set forth in sections

552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. These deliberations could reveal confidential trade secrets or commercial property, such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Further information concerning the Council meeting may be obtained from Dr. Steven J. Hausman, Executive Secretary, National Arthritis and Musculoskeletal and Skin Diseases Advisory Council, NIAMS, Westwood Building, Room 403, Bethesda, Maryland 20892, (301) 496–7495.

A summary of the meeting and roster of the members may be obtained from the Committee Management Office, NIAMS, Building 31, Room 1E10, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–6053.

(Catalog of Federal Domestic Assistance Program No. 13.846, Arthritis, Bone and Skin Diseases, National Institutes of Health)

Dated: August 11, 1987.

Betty J. Beveridge,

NIH, Committee Management Officer.

[FR Doc. 87–19123 Filed 8–20–87; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases, National Diabetes and Digestive and Kidney Diseases Advisory Council and Its Subcommittees; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the National Diabetes and Digestive and Kidney Diseases Advisory Council and its subcommittees, National Institute of Diabetes and Digestive and Kidney Diseases, on September 16 and 17, 1987, Conference Room 10, Building 31, National Institutes of Health, Bethesda, Maryland. The meeting will be open to the public September 16 from 8:30 a.m. to 12 noon and again on September 17 from 1 p.m. to adjournment to discuss administrative details relating to Council business and special reports. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the subcommittee and full Council meetings will be closed to the public for the review, discussion and evaluation of individual grant applications. The following subcommittees will be closed to the public on September 16 from 1 p.m. to recess: Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney, Urologic and Hematologic Diseases. The full Council meeting will be closed on September 17 from 8:30 a.m. to approximately 12 noon.

These deliberations could reveal confidential trade secrets or commercial property, such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Further information concerning the Council meeting may be obtained from Dr. Walter Stolz, Executive Secretary, National Diabetes and Digestive and Kidney Diseases Advisory Council, NIDDK, Westwood Building, Room 657, Bethesda, Maryland 20892, (301) 496–7277.

A summary of the meeting and roster of the members may be obtained from the Committee Management Office, NIDDK, Building 31, Room 9A19, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–6917.

(Catalog of Federal Domestic Assistance Program No. 13.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: August 11, 1987.

Betty J. Beveridge,

NIH, Committee Management Officer.

[FR Doc. 87–19124 Filed 8–20–87; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Environmental Health Sciences, National Advisory Environmental Health Sciences Council; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Environmental Health Sciences Council, September 14–15, 1987, at the National Institute of Environmental Health Sciences, Building 101 Conference Room, South Campus, Research Triangle Park, North Carolina.

This meeting will be open to the public on September 14 from 9 a.m. to approximately 12 noon for the report of the Director, NIEHS, and for discussion of the NIEHS budget, program policies and issues, recent legislation, and other items of interest. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public September 14, from approximately 1 p.m. to adjournment on September 15, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Winona Herrell, Committee Management Officer, NIEHS, Bldg. 31, Rm. 2B55, NIH, Bethesda, Md. 20892 (301) 496–3511, will provide summaries of the meeting and rosters of council members.

Dr. Anne Sassaman, Associate Director, Division of Extramural Research and Training, NIEHS, P.O. Box 12233, Research Triangle Park, North Carolina 27709, (919) 541–7723, FTS 629–7723, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos 13.112, Characterization of Environmental Health Hazards; 13.113, Biological Response to Environmental Health Hazards; 13.114, Applied Toxicological Research and Testing; 13.115, Biometry and Risk Estimation; 13.894, Resource and Manpower Development, National Institutes of Health)

Dated: August 11, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–19125 Filed 8–20–87; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Meetings of the Board of Regents, the Extramural Programs and Pricing Subcommittees

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Regents of the National Library of Medicine on September 30 and October 1, 1987, in the Board Room of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland, and the meetings of the following subcommittees:

Pricing Subcommittee, Conference Room A, Mezzanine, National Library of Medicine, from 1 to 2 p.m.

Extramural Programs Subcommittee, 5th-floor Conference Room, Lister Hill Center Building, 2 to 3 p.m.

Lister Hill Center Subcommittee, 7th-floor Conference Room, Lister Hill Center Building, 3 to 4 p.m.

The meeting of the Board will be open to the public from 9 a.m. to approximately 5:00 p.m. on September 30 and from 9 a.m. to approximately 11:30 a.m. on October 1 for administrative reports and program

discussions. The entire meetings of the Pricing and Lister Hill Center Subcommittees will be open to the public. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4), 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the entire meeting of the Extramural Programs Subcommittee on September 29 will be closed to the public, and the regular Board meeting on October 1 will be closed from approximately 11:30 a.m. to adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Robert B. Mehnert, Chief, Office of Inquiries and Publications Management, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, Telephone Number: 301–496–6308, will furnish a summary of the meeting, rosters of Board members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 13.879—Medical Library Assistance, National Institutes of Health)

Dated: August 11, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–19126 Filed 8–20–87; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the meetings of the following study sections for September 1987, and the individuals from whom summaries of meetings and rosters of committee members may be obtained.

These meetings will be open to the public to discuss administrative details relating to study section business for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available. These meetings will be closed thereafter in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Grants Inquiries Office, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–496–7441 will furnish summaries of the meetings and rosters of committee members. Substantive program information may be obtained from each executive secretary whose name, room number, and telephone number are listed below each study section. Since it is necessary to schedule study section meetings months in advance, it is suggested that anyone planning to attend a meeting contact the executive secretary to confirm the exact date, time and location. All times are A.M. unless otherwise specified.

Study Section	September 1987 Meetings	Time	Location
Behavioral and Neurosciences–1, Ms. Janet Cuca, Rm. A13, Tel. 301–496–5352	Sept. 28–29	8:30	Wellington Hotel, Washington, DC.
Behavioral and Neurosciences–2, Mrs. Janet Cuca, Rm. A13, Tel. 301–496–5352	Sept. 21	8:30	Wellington Hotel, Washington, DC.
Biomedical Sciences–1, Dr. Daniel Eskinazi, Rm. A10, Tel. 301–496–1067	Sept. 17	8:30	Holiday Inn, Chevy Chase, MD.
Biomedical Sciences–2, Dr. Charles Baker, Rm. A10, Tel. 301–496–7150	Sept. 22–23	8:30	Holiday Inn, Georgetown, DC.
Biomedical Sciences–3, Mr. Gene Headly, Rm. A25, Tel. 301–496–7267	Sept. 21–22	8:30	Room 7, Bldg. 31C, Bethesda, MD.
Biomedical Sciences–4, Dr. Charles Baker, Rm. A10, Tel. 301–496–7150	Sept. 29–30	8:30	Holiday Inn, Bethesda, MD.
Biomedical Sciences–5, Dr. Bert Wilson, Rm. A25, Tel. 301–496–7600	Sept. 17–18	8:30	Holiday Inn, Chevy Chase, MD.
Biomedical Sciences–6, Dr. Hugh Stamper, Rm. A10, Tel. 301–496–3117	Sept. 16–18	8:30	Holiday Inn, Chevy Chase, MD.
Clinical Sciences–1, Dr. Lynwood Jones, Jr., Rm. A19, Tel. 301–496–7510	Sept. 17–18	8:30	Cloverie Plaza, Rockville, MD.
Clinical Sciences–2, Dr. Bernice Lipkin, Rm. A19, Tel. 301–496–7477	Sept. 14–15	8:30	Cloverie Plaza, Rockville, MD.
Clinical Sciences–3, Dr. Nicholas Mazzarella, Rm. A27, Tel. 301–496–1069	Sept. 10–11	8:30	Cloverie Plaza, Rockville, MD.
Clinical Sciences–4, Dr. Bernice Lipkin, Rm. A19, Tel. 301–496–7477	Sept. 16–17	8:30	Cloverie Plaza, Rockville, MD.

(Catalog of Federal Domestic Assistance Program Nos. 13.306, 13.333, 13.337, 13.393–13.396, 13.837–13.844, 13.846–13.878, 13.892, 13.893, National Institutes of Health, HHS)

Dated: August 11, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–19127 Filed 8–20–87; 8:45 am]

BILLING CODE 4140–01–M

National Advisory Research Resources Council; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Research Resources Council (NARRC), Division of Research Resources (DRR), September 14–15, 1987, 9 a.m., Building 31C; Conference Room 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on September 14 from 9 a.m. until recess and from 8:30 a.m. until approximately 11 a.m. on September 15 during which time there will be discussions on administrative matters such as previous meeting minutes; the Report of the Director, DRR; and review of budget and legislative updates. There will be a presentation on the Minority Biomedical Research Support Program led by Dr. Ciriaco Q. Gonzales, which will include several guest speakers. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 522b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on September 15 from approximately 11 a.m. until adjournment for the review, discussion and evaluation of individual grant applications.

The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Information Officer, DRR, Building 31, Room 5B10, National Institutes of Health, Bethesda, Maryland 20892, 301/496–5545, will provide a summary of the meeting and a roster of the Council members upon request. Dr. James F. O'Donnell, Deputy Director, DRR, Building 31, Room 5B03, National Institutes of Health, Bethesda, Maryland 20892, 301/496–6023, will furnish substantive program information upon request, and will receive any

comments pertaining to this announcement.

(Catalog of Federal Domestic Assistance Program Nos. 13.306, Laboratory Animal Sciences and Primate Research; 13.333, Clinical Research; 13.337, Biomedical Research Support; 13.371, Biomedical Research Technology; 13.375, Minority Biomedical Research Support, Research Centers in Minority Institutions; 13.389, National Institutes of Health.)

Dated: August 11, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87-19128 Filed 8-20-87; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Facilities Improvement and Repair Priority List of Fiscal Year 1988

AGENCY: Department of the Interior, Policy, Budget and Administration, Office of Construction Management.

ACTION: Notice of Facilities Improvement and Repair Priority List for Fiscal Year 1988.

The Facility Improvement and Repair list has been prepared for Fiscal Year 1988 in accordance with House Report Number 98-886, page 52. "To avoid some of the problems experienced in the past, the Committee directs the Bureau to revise the FI&R Priority System by publishing in the **Federal Register** by October 1 of each fiscal year, the national list of projects expected to be accomplished that year within the available funds."

The notice for FY 1988 provides the approved list of FI&R projects. Construction of these projects is subject to the availability of funds. The list is based upon the Bureau's criteria for ranking projects as published in the **Federal Register**/Vol. 51, No. 30/ Thursday, February 13, 1986/Page 5415.

The projects for FY 1988 are:

Aberdeen Area-Wide Code Compliance
Navajo Area-Wide In-ground Gas Line Replacement
A School For Me
Chilchinbeto School
Wingate High School
Pine Hill School
Haskell Indian Junior College
Santa Rosa Ranch School
Choctaw Central High School.

FOR FURTHER INFORMATION CONTACT: U.S. Department of the Interior, Arthur M. Love, Jr., Director, Office of Construction Management, Mail Stop 2415 (202) 343-3403, Washington, DC 20240.

Joseph W. Gorrell,

Principal Deputy Assistant Secretary, Policy, Budget and Administration.

August 14, 1987.

[FR Doc. 87-19161 Filed 8-20-87; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[NV-030-07-4212-24; N-43905]

Realty Action; Airport Lease; Lyon County, NV

Davada Development Corporation has filed an airport lease application pursuant to the Act of May 24, 1928 (45 Stat. 728; 49 U.S.C. 211 through 214), as amended, on the following described land:

Mount Diablo Meridian, NV

T. 16 N., R. 22 E.,

Sec. 20, Lots 2-4.

The area described comprises 127.58 acres.

The application was filed on March 21, 1986, and on that date, the land was segregated from all forms of appropriation under the public land laws, and location under the mining laws, pursuant to the regulations in existence. The segregative effect will terminate upon issuance of the lease or one year from the date of this publication in the **Federal Register** in accordance with the new regulations that became effective on December 10, 1986.

The land is suitable for the proposed use. The proposal is consistent with Bureau and County planning and the airport will benefit both Lyon County and the community of Dayton.

Detailed information concerning the action is available for review at the Bureau of Land Management Carson City District Office.

For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, Carson City District Office, 1535 Hot Springs Road, Suite 300, Carson City, NV 89706.

James W. Elliott,

District Manager, Carson City District.

Dated this 7th day of August 1987.

[FR Doc. 87-19153 Filed 8-20-87; 8:45 am]

BILLING CODE 4310-HC-M

[M 57797 (SD); (MT-020-08-4212-13)]

Realty Action; Exchange; Montana

AGENCY: Bureau of Land Management, Miles City District, South Dakota Resource Area.

ACTION: Notice of realty action—exchange of public lands in Lawrence County, South Dakota.

SUMMARY: The following described public lands (surface and mineral estate) have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Black Hills Meridian

T. 4 N., R. 3 E.,
Sec. 3, Lots 1-3, 6-10;
Sec. 4, Lots 1-3, 5, 6, 8-10, 12-16;
Sec. 9, Lots 1-6, 11-13, 15-17;
Sec. 9, MS1557;
Sec. 10, Lots 1-5, 7-17;
Sec. 15, Lots 1, 3, 4, 6, & Tracts 72, 73;
T. 5 N., R. 3 E.,
Sec. 28, Lots 1-14;
Sec. 29, Lots 1-6, 9-12;
Sec. 29, MS1544;
Sec. 30, Lot 9;
Sec. 32, Lots 1, 4-9, 11, 12, 15-21, Tract 41;
Sec. 33, Lots 1-13, 15-30;
Sec. 34, Lots 3-7, 12-14, 18, 22;
Sec. 34, MS1796.

Containing 253.374 acres.

In exchange for these lands, the United States Government will acquire the surface estate in the following described lands from Homestake Mining Company:

Black Hills Meridian

T. 4 N., R. 3 E.,
Sec. 8, MS1927;
Sec. 9, MS1318;
Sec. 9, MS1874;
Sec. 9, MS1927;
Sec. 16, MS1138;
Sec. 16, MS1874;
Sec. 17, MS1138.

Containing 248.946 acres.

Exchange of these lands will be subject to reservations of Homestake Mining Company for valid existing rights.

DATES: For a period of up to and including October 5, 1987, interested parties may submit comments to the Bureau of Land Management at the address shown below. Any adverse comments will be evaluated by the BLM, Montana State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of Interior.

BEST COPY AVAILABLE

FOR FURTHER INFORMATION CONTACT: Information related to the exchange, including the evironmental assessment and land report is available for review at the Miles City District Office, P.O. Box 940, Miles City, Montana 59301.

SUPPLEMENTARY INFORMATION: The publication of this notice segregates the surface estate described above from sale, exploration and entry under the public land laws, including the mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976 for a period of 2 years from the date of first publication. The exchange will be made subject to:

1. A reservation to the United States of a right-of-way for ditches or canals in accordance with 43 U.S.C. 945.
2. All valid existing rights (e.g., rights-of-way, easements, and leases of record).
3. Value equalization by cash payments or acreage adjustments.
4. The exchange must meet the requirements of 43 CFR 4110.4–2(b).

This exchange is consistent with the Bureau of Land Management policies and planning and has been discussed with State and local officials. The estimated intented time of the exchange is October 1987. The public interest will best be served by completion of this exchange as it will enable the Bureau of Land Management to acquire lands with recreational opportunity, abate some unauthorized uses, provide good legal access and increase management efficiency of public lands in the area.

Date: August 11, 1987.

Arnold E. Dougan,

Acting District Manager.

[FR Doc. 87–19156 Filed 8–20–87; 8:45 am]

BILLING CODE 4310-DN-M

[M–74197 [MT–020–07–4212–13)]

Realty Action Montana; Exchange in Carter County

AGENCY: Bureau of Land Management, Miles City District Office, Interior.

ACTION: Notice of realty action M74197, Exchange of public and private lands in Carter County.

SUMMARY: The following described lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716.

Principal Meridian

T. 5 S., R. 62 E.,
Sec. 32, SW¼SW¼.
T. 6 S., R. 62 E.,
Sec. 1, SW¼NE¼;
Sec. 2, Lot 4;
Sec. 4, Lot 1;
Sec. 10, E½NE¼, SW¼NE¼.

Containing 280.40 acres of public land.

In exchange for these lands, the United States will acquire the following described lands from Charles and Ella Oleson.

Principal Meridian

T. 5 S., R. 61 E.,
Sec. 33, SE¼NE¼, E½SE¼;
Sec. 34, SW¼NW¼, NW¼SW¼.
T. 6 S., R. 61 E.,
Sec. 1, Lots 1, 2.

Containing 280.46 acres of private land.

DATES: For a period of up to and including October 5, 1987, interested parties may submit comments to the Bureau of Land Management, at the address shown below. Any adverse comments will be evaluated by the BLM, Montana State Director, who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of Interior.

FOR FURTHER INFORMATION CONTACT: Information related to the exchange, including the environmental assessment and land report, is available for review at the Miles City District Office, P.O. Box 940, Miles City, Montana 59301.

SUPPLEMENTARY INFORMATION: The publication of this notice segregates the public lands described above from settlement, sale, location, and entry under the public land laws, including the mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976 for a period of 2 years from the date of first publication. The exchange will be made subject to:

1. A reservation to the United States of a right-of-way for ditches or canals in accordance with 43 U.S.C. 945.
2. The reservation to the United States of all minerals in the Federal lands being transferred.
3. All valid existing rights (e.g., rights-of-way, easements, and leases of record).
4. Value equalization by cash payments or acreage adjustments.
5. The exchange must meet the requirements of 43 CFR 4110.4–2(b).

This exchange is consistent with the Bureau of Land Management policies and planning and has been discussed with State and local officials. The estimated time of the exchange is October of 1987. The public interest will be served by completion of this exchange as it will enhance legal access and increase management efficiency of public lands in the area.

Dated: August 12, 1987.

Arnold E. Dougan,

Acting District Manager.

[FR Doc. 87–19157 Filed 8–20–87; 8:45 am]

BILLING CODE 4310-HC-M

[NV–030–07–4830–02]

Carson City District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the Carson City District Advisory Council.

DATE: October 22, 1987.

ADDRESS: 1535 Hot Springs Road, Suite 300, Carson City, Nevada.

SUMMARY: The Council will meet at 9:00 a.m. The agenda will include update on current issues, District recreation program, District Fire program and comments from the public (11:00 a.m.). Anyone may attend the meeting.

FOR FURTHER INFORMATION CONTACT: Brian Hatoff, BLM Public Affairs Officer, 1535 Hot Springs Road, Suite 300, Carson City, NV. (702) 882–1631.

James W. Elliott,

District Manager.

[FR Doc. 87–19158 Filed 8–20–87; 8:45 am]

BILLING CODE 4310-HC-M

[CO–940–07–4220–11; C–28273]

Proposed Continuation of Withdrawal; Colorado

August 11, 1987.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Forest Service, U.S. Department of Agriculture, proposes that the order which withdrew lands for an indefinite period of time for use as ranger stations, be modified and the withdrawal be continued for 20 years insofar as it affects approximately 35 acres of National Forest System land. The land will remain closed to surface entry and mining, but not to mineral leasing.

DATE: Comments should be received by November 19, 1987.

ADDRESS: Comments should be addressed to State Director, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, (303) 236–1768.

The Forest Service, U.S. Department of Agriculture, proposes that the existing withdrawal made by Secretarial Order of December 11, 1906, for an indefinite period of time, be modified to expire in 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, insofar as it affects the following described lands:

New Mexico Principal Meridian

Rio Grande National Forest

T. 36 N., R. 4 E.,
Sec. 23, SW¼NW¼, exclusive of Patent Nos. 19265 and 19266

The area described aggregates approximately 35 acres in Conejos County.

The purpose of this withdrawal is for the administration and protection of Ranger Station No. 23. No change is proposed in the purpose or segregative effect of the withdrawal. The land will continue to be withdrawn from surface entry and mining, but not from mineral leasing.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with this proposed action may present their views in writing to this office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be modified and continued and, if so, for how long. Notice of the final determination will be published in the Federal Register. The existing withdrawal will continue until such determination is made.

James D. Crisp,
Chief, Branch of Land and Minerals Operations.

[FR Doc. 87-19159 Filed 8-20-87; 8:45 am]
BILLING CODE 4310-JB-M

Bureau of Reclamation

Quarterly Status Tabulation of Water Service and Repayment Contract Negotiations; Proposed Contractual Actions Pending Through September 1987

Pursuant to section 226 of the Reclamation Reform Act of 1982 (96 Stat. 1273), and to § 426.20 of the rules and regulation published in the Federal Register December 8, 1983, Vol. 48, page 54785, the Bureau of Reclamation will publish notice of proposed or amendatory repayment contract actions or any contract for the delivery of irrigation water in newspapers of general circulation in the affected area at least 60 days prior to contract execution. The Bureau of Reclamation announcements of irrigation contract actions will be published in newspapers of general circulation in the areas determined by the Bureau of Reclamation to be affected by the proposed action. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation requirements do not apply to proposed contracts for the sale of surplus or interin irrigation water for a term of 1 year or less. The Secretary or the district may invite the public to observe any contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act if the Bureau determines that the contract action may or will have "significant" environmental effects.

Pursuant to the "Final Revised Public Participation Procedures" for water service and repayment contract negotiations, published in the Federal Register February 22, 1982, Vol. 47, page 7763, a tabulation is provided below of all proposed contractual actions in each of the six Reclamation regions. Each proposed action listed is, or is expected to be, in some stage of the contract negotiation process during July, August, or September of 1987. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the Regional Directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved. The identity of the approving officer, and other information pertaining to a specific contract proposal, may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region.

This notice is one of a variety of means being used to inform the public about proposed contractual actions. Individual notices of intent to negotiate, and other appropriate announcements, are made in the Federal Register for those actions found to have widespread public interest. When this is the case, the date of publication is given.

Acronym Definitions Used Herein

(FR) Federal Register
(ID) Irrigation District
(IDD) Irrigation and Drainage District
(M&I) Municipal and Industrial
(D&MC) Drainage and Minor Construction
(R&B) Rehabilitation and Betterment
(O&M) Operation and Maintenance
(CAP) Central Arizona Project
(CUP) Central Utah Project
(CVP) Central Valley Project
(P-SMBP) Pick-Sloan Missouri Basin Program
(CRSP) Colorado River Storage Project
(SRPA) Small Reclamation Projects Act

Pacific Northwest Region

Bureau of Reclamation, 550 West Fort Street, Box 043, Boise, ID 83724, telephone (208) 554-1160.

1. Cascade Reservoir Water Users, Boise Project, Idaho: Repayment contracts for irrigation and municipal and industrial water; 59,721 acre-feet of stored water in Cascade Reservoir.

2. Brewster Flat ID, Chief Joseph Dam Project, Washington: Amendatory repayment contract; land reclassification of approximately 380 acres to irrigable; repayment obligation to increase accordingly.

3. Individaul Irrigators, M&I, and Miscellaneous Water Users, Pacific Northwest Region, Idaho, Oregon, and Washington: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; Long-term contracts for similar service for up to 1,000 acre-feet of water annually.

4. Rogue River Basin water users, Rogue River Basin Project, Oregon: Water service contracts; $5 per acre-foot or $50 minimum per annum, terms up to 40 years.

5. Willamette Basin water users, Willamette Basin Project, Oregon: Water service contracts; $1.50 per acre-foot or $50 minimum per annum, terms up to 40 years.

6. Irrigation Districts and Similar Water User Entities; Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97-293).

7. Fifty-three Palisades Reservoir Spaceholders, Minidoka Project, Idaho-Wyoming: Contract amendments to extend term for which contract water may be subleased to other parties.

8. South Columbia Basin Irrigation District, Columbia Basin Project, Washington: Supplemetal repayment

contract for Irrigation Block 24; 1,892 irrigable acres.

9. City of Cle Elum, Yakima Project, Washington: Amendatory or replacement M&I water service contract; 2,200 acre-feet (1,350 gallons per minute) annually for a term of up to 40 years.

10. Three irrigation districts, Flathead Indian Irrigation Project: Repayment of costs associated with rehabilitation or irrigation facilities.

11. Baker Vally Irrigation District, Baker Project, Oregon: Irrigation water service contracts on a surplus interruptible basis to serve up to 13,000 acres; sale of excess capacity in Mason Reservoir (Phillips Lake) for a term of up to 40 years.

12. Crooked River Project, Oregon: Repayment or water service contracts with several indivduals for a total of approximately 1,100 acre-feet or project water; contract terms up to 40 years for the purpose of supplying water under the project water right held by the United States.

13. Various Projects PN Rgion: R&B contracts for replacement of needle valves at storage dams.

14. Palisades Water Users Inc., Minidoka-Palisades Projects: Repayment contract for an additional 500 acre-feet of storage in Palisades Reservoir.

Mid-Pacific Region

Bureau of Reclamation (Federal Office Building), 2800 Cottage Way, Sacramento, CA 95825, telephone (916) 460–5000.

1. Colusa Drain Mutual Water Company, CVP, California: Water right settlement contract; FR notice published July 25, 1979, Vol. 44, Page 43535.

2. Tuolumne Regional Water District, CVP, California: Water service contract, up to 9,000 acre-feet from New Melones Reservoir.

3. Calaveras County Water District, CVP, California: Water service contract; 400 acre-feet from New Melones Reservoir; FR notice published February 5, 1982, Vol. 47, page 5473.

4. Individual irrigators, M&I, and miscellaneous water users, Mid-Pacific Region, California, Oregon, and Nevada: Temporary (interim) water service contracts for available project water for irrigation, M&I or fish and wildlife purposes providing up to 10,000 acre-feet of water annually for terms up to 5 years; Temporary Warren Act contracts to wheel nonproject water through project facilities for terms up to 1 year; Long-term contracts for similar service for up to 1,000 acre-feet of water annually.

5. Friant-Kern Canal Contractors, Friant-Kern Unit, CVP, California: Renewal of existing long-term water service contracts with numerous contractors on the Friant-Kern Canal whose contracts expire 1989–1995. Water quantities in existing contracts range from 1,200 to 175,440 acre-feet.

6. South San Joaquin ID and Oakdale ID, CVP, California: Operating agreement for conjunctive operation of New Melones Dam and Reservoir on the Stanislaus River; FR notice published June 6, 1979, Vol. 44, page 32483.

7. San Luis Water District, CVP, California: Amendatory water service contract providing for a change in point of delivery from Delta-Mendota Canal to the San Luis Canal.

8. ID's and similar water user entities: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

9. State of Hawaii, Molokai Project, SRPA: Contract amendment to provide for use of facilities for M&I purposes.

10. State of California, CVP, California: Contract(s) for, (1) sale of interim water to the Department of Water Resources for use by the State Water Project Contractors, and (2) acquisition of conveyance capacity in the California Aqueduct for use by the CVP, as contemplated in the Coordinated Operations Agreement.

11. Madera ID, Madera Canal, CVP, California: Warren Act contract to convey and/or store nonproject Soquel water through project facilities.

12. County of Tulare, CVP, California: Amendatory water service contract, to provide an additional 1,908 acre-feet and reallocate 400 acre-feet of water from the Ducor ID for a total increase of 2,308 acre-feet.

13. Panoche Water District, CVP, California: Amendatory water service contract providing for change in point of delivery from Delta-Mendota Canal to the San Luis Canal.

14. Shasta Dam Area Public Utilities District, CVP, California: Renewal of M&I water supply contract. Less than 6,000 acre-feet.

15. U.S. Fish and Wildlife Service, CVP, California: Long-term contract for water supply for Federal refuge in Grasslands area of California.

16. City of Redding, CVP, California: Amendatory M&I water supply contract.

17. Washoe County Water Conservation District, Truckee Storage Project, Nevada: Repayment contract for the replacement of two needle valves at Boca Dam.

18. Truckee-Carson ID, Newlands Project, Nevada: Repayment contract for local users 15 percent contribution for the Safety of Dams Program, Tahoe Dam.

(a) The Benevolent and Protective Order of the Elks, Lodge No. 1747, Farmington, New Mexico: Navajo Reservoir water service contract; 20 acre-feet per year for municipal use; contract term for 40 years from execution.

(b) Sunterra Gas Processing Company (formerly Southern Union Gas Company): Navajo Reservoir water service contract; 50 acre-feet per year for industrial use; contract term for 40 years from execution.

* * * * *

2. Revised Hydrological Determination: A hydrologic determination was last made for the Upper Colorado River in December 1984 with the principal conclusion that the Upper Basin could support a depletion level of at least 5.8 million acre-feet. Upon the request of the Secretary of the New Mexico Interstate Stream Commission, a review of water availability in the Upper Basin has been undertaken with regard to the water supply available for use in New Mexico.

3. Animas-La Plata Conservancy District, Animas-La Plata Project, Colorado: Repayment contract; 9,200 acre-feet per year for M&I use; 53,200 acre-feet per year for irrigation in Phase One and 71,200 acre-feet in Phase Two. Contract terms will be consistent with binding cost sharing agreement dated June 30, 1986.

4. La Plata Conservancy District, Animas-La Plata Project, New Mexico: Repayment contract; 9,900 acre-feet per year for irrigation. Contract terms consistent with binding cost sharing agreement, dated June 30, 1986.

5. San Juan Water Commission, Animas-La Plata Project, New Mexico: M&I repayment contract; 30,800 acre-feet per year. Contract terms consistent with binding cost sharing agreement, dated June 30, 1986.

6. Southern Ute Indian Tribe, Animas-La Plata Project, Colorado: Repayment contract for 26,500 acre-feet per year for M&I use and 2,600 acre-feet per year for irrigation use in Phase One and 3,300 acre-feet in Phase Two. Contract terms to be consistent with binding cost sharing agreement and water rights settlement agreement, in principle.

7. Ute Mountain Ute Tribe, Animas-La Plata Project, Colorado and New Mexico: Repayment contract; 6,000 acre-feet per year for M&I use in Colorado; 26,400 acre-feet per year for irrigation use in Colorado; 900 acre-feet per year for irrigation use in New Mexico. Contract terms to be consistent with binding cost sharing agreement and water rights settlement agreement.

8. Navajo Indian Tribe, Animas-La Plata Project, New Mexico: Repayment contract; 7,800 acre-feet per year for M&I use.

9. Grand Valley Water Users Association, Orchard Mesa ID, Grand Valley Project, Colorado: Contract to continue O&M of Grand Valley powerplant.

10. Upper Yampa Water Conservancy District, Colorado: Repayment contract to repay a loan of $4,478,000 for the construction of Stagecoach Dam and Reservoir pursuant to the SRPA of 1956, Pub. L. 84–984, as amended.

11. Ute Mountain Ute Indian Tribe, Dolores Project, Colorado: Agreement for 1,000 acre-feet per year for M&I use and 22,900 acre-feet per year for irrigation.

12. Emery County Water Conservancy District, Utah Power and Light, Emery County Project Utah: New repayment contract with Utah Power and Light for the purchase of approximately 2,600 acre-feet of project water; amendatory contract with Emery County Water Conservancy District relieving them of their repayment obligation for the 2,600 acre-feet of project water.

13. Currant Creek Irrigation Company, Central Utah Water Conservancy District, Bonneville Unit, CUP, Utah: Option, Operation, Maintenance and Exchange Agreement, which will allow the United States a perpetual use of Mona Dam and Reservoir, the right to exchange the irrigation company's water with project water, and to modify the company's existing canal.

14. Three separate contracts with (1) Tri-County Water Conservancy District, (2) Menoken Water Company and (3) Chipeta Water Company, Lower Gunnison Basin Unit, Colorado: Provides for funding, construction, modification, O&M of each entity's domestic water system.

15. Unita Water Conservation District, Jensen Unit, CUP, Utah: Amendatory repayment contract to reduce M&I water supply and corresponding repayment obligation.

Lower Colorado Region

Bureau of Reclamation, P.O. Box 427 (Nevada Highway and Park Street), Boulder City, NV 89005, telephone (702) 588–5435.

1. Amendment to Contract No. 176r–696 between the Bureau of Reclamation and the Department of the Army to increase the maximum amount of water delivered to the Yuma Proving Grounds from 55 acre-feet to 975 acre-feet, pursuant to the recommendation of the Arizona Department of Water Resources.

2. Agricultural and M&I water users, CAP, Arizona: Water service subcontracts; a certain percent of available supply for irrigation entities and up to 640,000 acre-feet per year for M&I use.

3. Southern Arizona Water Rights Settlement Act; sale of up to 28,200 acre-feet per year of municipal effluent to the city of Tucson, Arizona.

4. Contracts with five agricultural entities located near the Colorado River in Arizona, Boulder Canyon Project (BCP): Water service contracts for up to 1,920 acre-feet per year total.

5. Gila River Indian Community, CAP, Arizona: Water service contract; contract for delivery of up to 173,000 acre-feet per year.

6. Sunset Mobile Home Park, Boulder Canyon Project, Arizona: M&I water service contract for delivery of 30 acre-feet of water per year, pursuant to the recommendation of Arizona Department of Water Resources.

7. ID's and similar water user entities: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

8. Indian and non-Indian agricultural and M&I water users, CAP, Arizona: Contracts for repayment of Federal expenditures for construction of distribution systems.

9. Water delivery contracts with the State of Arizona, the Bureau of Land Management, and several private entities which are in the process of being organized for a yet undetermined amount of Colorado River water for M&I use. The purpose of these contracts is to afford legal status to various noncontractual water users within the State of Arizona.

10. Contract with the State of Arizona for a yet undetermined amount of Colorado River water for agricultural use and related purposes on State-owned land.

11. Contract with 16 individual holders of miscellaneous present perfected rights to Colorado River water totalling 66 acre-feet, pursuant to the January 9, 1979, Supplemental Decree of the United States Supreme Court in *Arizona* v. *California* (439 U.S. 419).

12. AK-Chin Indian Community, Maricopa, Arizona: Repayment contract; $1.6 million SRPA escalation loan.

13. Contracts for delivery of surplus water from the Colorado River, when available, with Emilio Soto and Sons, for 1,836 acre-feet per year; Kennedy Livestock, for 480 acre-feet per year; and the Metropolitan Water District of Southern California, for 180,000 acre-feet per year.

14. Ramona Municipal Water District, Ramona, California: Repayment contract; $6.8 million SRPA escalation loan.

15. Central Arizona Water Conservation District, CAP, Arizona: Amendatory contract; to increase the district's CAP repayment ceiling and to update other provisions of the contract.

16. Maricopa-Stanfield and Central Arizona IDDs, CAP, Arizona: To establish a Santa Rosa Canal administrative committee and to transfer O&M of the canal to Maricopa-Stanfield, CAP, Arizona.

17. Imperial Irrigation District and/or the Coachella Valley Water District, BCP, California: Providing for exchange of up to 10,000 acre-feet of water per year from a well field to be constructed adjacent to the All-American Canal (AAC) for an equivalent amount of Colorado River water and for O&M of the well field, Lower Colorado Water Supply Project (LCWSP), California.

18. Lower Colorado Water Supply Project, LCWSP California: Water service and repayment contracts with nonagricultural users in California for consumptive use of up to 10,000 acre-feet of Colorado River water per year in exchange for an equivalent amount of water to be pumped into the AAC from a well field to be constructed adjacent to the canal.

Southwest Region

Bureau of Reclamation, Commerce Building, Suite 201, 714 South Tyler, Amarillo, TX 79101, telephone (806) 735–5430.

1. Foss Reservoir Master Conservancy District, Washita Basin Project, Oklahoma: Amendatory repayment contract for remedial work.

2. Vermejo Conservancy District, Vermejo Project, New Mexico: Amendatory contract to relieve the district of further repayment obligation, presently exceeding $2 million, pursuant to Pub. L. 96–550.

3. Hidalgo County Irrigation District No. 1, Lower Rio Grande Valley, Texas: Supplemental SRPA loan contract for approximately $13,205,000. The contracting process is dependent upon final approval of the supplemental loan report.

4. ID's and similar water user entities: Amendatory repayment and water service contracts; Purpose is to conform with the Reclamation Reform Act of 1982 (Pub. L. 97–293).

5. Rio Grande Water Conservation District, Alamosa, Colorado: Contract for the district to be the vender of the Closed Basin Division, San Luis Valley Project, surplus water if available.

6. Carlsbad ID, Carlsbad Project, New Mexico; Repayment contract for the costs incurred by the United States for replacing the needle valves at Fort Sumner Dam.

7. Conejos Water Conservancy District, San Luis Valley Project, Colorado: Amendatory contract to place OM&R costs on a variable basis commensurate with the availability of project water.

8. Arbuckle Master Conservancy District, Arbuckle Project, Oklahoma: Contract for the repayment of costs incurred by the United States for the construction of the Sulphur, Oklahoma, pipeline and pumping plant (if constructed).

9. Town of Bernalillo, New Mexico, San Juan-Chama Project, Colorado-New Mexico—Negotiate a repayment contract with the town of Bernalillo for a municipal water supply of 400 acre-feet of water from the San Juan-Chama Project in New Mexico.

10. Department of Energy, San Juan-Chama Project, Colorado-New Mexico: Amendatory contract to increase the ceiling on the operation, maintenance, and replacement charges that may be paid by the Department of Energy in any one year.

Missouri Basin Region

Bureau of Reclamation, P.O. Box 36900, Federal Building, 316 North 26th Street, Billings, MT 59107–6900, Telephone (406) 585–6413.

1. Individual irrigators, M&I, and miscellaneous water users, Missouri Basin Region, Montana, Wyoming, North Dakota, South Dakota, Colorado, Kansas, and Nebraska: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

2. Nokota Company, Lake Sakakawea, P-SMBP, North Dakota: Industrial water service contract; up to 16,800 acre-feet of water annually; FR notice published May 5, 1982, Vol. 47, Page 19472.

3. Fort Shaw ID, Sun River Project, Montana: R&B loan repayment contract; up to $1.5 million.

4. ID's and similar water user entities: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

5. Oahe Unit, P-SMBP, South Dakota: Cancellation of master contract and participating and security contracts in accordance with Pub. L. 97–293 with South Dakota Board of Water and Natural Resources and Spink County and West Brown ID.

6. Owl Creek ID, Owl Creek Unit, P-SMBP, Wyoming; Amendatory water service contract to reflect water supply benefits being received from Anchor Reservoir.

7. Almena ID No. 5, Almena Unit, P-SMBP, Kansas; Deferment of repayment obligation for 1986.

8. Webster ID No. 4, Webster Unit, P-SMBP, Kansas: Deferment of repayment obligation for 1986.

9. Green Mountain Reservoir, Colorado-Big Thompson Project: Water service contract; proposed contract negotiations for sale of water from the marketable yield to water users within the Colorado River Basin of Western Colorado.

10. Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado: Water service contract; second proposed contract negotiations for sale of water from the regulatory capacity of Ruedi Reservoir.

11. Lower South Platte Water Conservancy District, Central Colorado Water Conservancy District, and the Colorado Water Resources and Power Development Authority, Narrows Unit, P-SMBP, Colorado; Water service contracts for repayment of costs and cost sharing agreement.

12. Fryingpan-Arkansas Project, Colorado; East Slope Storage system consisting of Pueblo, Twin Lakes, and Turquoise Reservoir; Contract negotiations for temporary and long-term storage and exchange contracts.

13. Cedar Bluff ID No. 6 and the State of Kansas, Cedar Bluff Unit, P–SMBP, Kansas: Repayment contract: Negotiate contract with the State of Kansas for use of all or part of the conservation pool of Cedar Bluff Reservoir for recreation, and fish and wildlife purposes for payment of the irrigation district's cost obligation. Amend the Cedar Bluff ID's contract to relieve it of all contract obligations.

14. Department of Natural Resources and Conservation, SRPA, Montana grant and loan contract for rehabilitation of Middle Creek Dam to meet required safety criteria and to increase reservoir storage capacity by 2,334 acre-feet which will be utilized for irrigation and municipal purposes.

15. Garrison Diversion Unit, P–SMBP, North Dakota: Repayment contract: Renegotiation of the master repayment contract with Garrison Diversion Conservancy District to bring the terms in line with the Garrison Diversion Unit Reformulation Act of 1986. Negotiation of repayment contracts with irrigators and M&I users.

16. Southeastern Colorado Water Conservancy District: Amendatory contract to conform to the contract repayment provision to revised State statutes concerning the District's tax levy authority.

Opportunity for public participation and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

(1) Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

(2) Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of the Bureau of Reclamation.

(3) All written correspondence regarding proprosed contracts will be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

(4) Written comments on a proposed contract or contract action must be submitted to the appropriate Bureau of Reclamation officials at locations and within the time limits set forth in the advance public notices.

(5) All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

(6) Copies of specific proposed contracts may be obtained from the appropriate Regional Director or his designated public contact as they become available for review and comment.

(7) In the event modifications are made in the form of proposed contract, the appropriate Regional Director shall determine whether republication of the notice and/or extension of the 60–day comment period is necessary.

Factors which shall be considered in making such a determination shall include, but are not limited to: (i) The significance of the impact(s) of the modification and (ii) the public interest which has been expressed over the course of the negotiations. As a minimum, the Regional Director shall furnish revised contracts to all parties who requested the contract, in response to the initial public notice.

Date: August 17, 1987.

J. Austin Burke,

Commissioner of Reclamation.

[FR Doc. 87–19146 filed 8–20–87; 8:45 am]

BILLING CODE 4310–09–M

National Park Service

Cape Cod National Seashore; Second Supplement to the Analysis of Management Alternatives for Three Sisters Lighthouses Relocation With Environmental Assessment

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability of a Second Supplement to the Analysis of Management Alternatives: For Three Sisters Lighthouses Relocation with Environmental Assessment.

SUMMARY: The National Park Service has prepared a Second Supplement to the Analysis of Management Alternatives for the Three Sisters Lighthouses relocation at Cape Cod National Seashore. The Environmental Assessment includes a detailed description of each supplemental alternative, and describes the mitigating actions for the proposed relocation. These additional alternatives are being considered in response to comments received on the initial alternatives evaluated for relocation of the Three Sisters Lighthouses.

With this Notice of Availability, the National Park Service is seeking comments on the Second Supplement to the Analysis of Management Alternatives. These comments will supplement those received on the initial alternatives to assist the National Park Service in selecting an alternative for furture relocation of the Three Sisters Lighthouses.

DATE: Written comments will be accepted until September 28, 1987.

ADDRESSES: Comments should be directed to: Superintendent, Cape Cod National Seashore, South Wellfleet, Massachusetts 02663.

Copies of the Second Supplement to the Analysis of Management Alternatives are available at the Cape Cod National Seashore Headquarters Office in South Wellfleet, Massachusetts 02663.

Date: August 13, 1987.

Herbert Olsen,

Superintendent, Cape Cod National Seashore.

[FR Doc. 87-19132 Filed 8-20-87; 8:45 am]

BILLING CODE 4310-70-M

Upper Delaware Citizens Advisory Council; Meeting

AGENCY: National Park Service; Upper Delaware Citizens Advisory Council, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Upper Delaware Citizens Advisory Council. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: August 28, 1987, 7:00 p.m. Inclement weather reschedule date: September 11, 1987. Announcements of cancellation due to inclement weather will be made by radio stations WDNH, WDLC, WSUL, and WVOS.

ADDRESS: Town of Tusten Hall, Narrowsburg, New York.

FOR FURTHER INFORMATION CONTACT: John T. Hutzky, Superintendent, Upper Delaware Scenic and Recreational River, P.O. Box C, Narrowsburg, NY 12764-0159, 717-729-8251.

SUPPLEMENTARY INFORMATION: The Advisory Council was established under section 704 (f) of the National Parks and Recreation Act of 1978, Pub. L. 95-625, 16 U.S.C. 1724 note, to encourage maximum public involvement in the development and implementation of the plans and programs authorized by the Act. The Council is to meet and report to the Delaware River Basin Commission, the Secretary of the Interior, and the Governors of New York and Pennsylvania in the preparation and implementation of the management plan, and on programs which relate to land and water use in the Upper Delaware region. The agenda for the meeting will surround discussion of the background and implementation of definition of flood plains, and applicability of the flood insurance programs concerning the Upper Delaware valley.

The meeting will be open to the public.

Any member of the public may file with the Council a written statement concerning agenda items. The statement should be addressed to the Upper Delaware Citizens Advisory Council, P.O. Box 84, Narrowsburg, NY 12764. Minutes of the meeting will be available for inspection four weeks after the meeting, at the permanent headquarters of the Upper Delaware Scenic and Recreational River; River Road, 1¾ miles north of Narrowsburg, New York; Damascus Township, Pennsylvania.

Dated: August 12, 1987.

Anthony M. Corbisiero,

Acting Regional Director, Mid-Atlantic Region.

[FR Doc. 87-19131 Filed 8-20-87; 8:45 am]

BILLING CODE 4310-70-M

Intention To Negotiate Concession Contract; Las Vegas Wash Site

Pursuant to the provisions of Section 5 of the Act of October 9, 1965, (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with Las Vegas Boat Harbor, Inc. authorizing it to continue to provide food and beverage, marina, merchandising and related facilities and services for the public at the Las Vegas Wash Site of Lake Mead National Recreation Area, Nevada for a period of fifteen (15) years from November 1, 1987 through October 31, 2002.

This proposed contract requires a construction and improvement program which was previously described in the Environmental Impact Statement (September 11, 1986 FES-86-27) for the General Management Plan for Lake Mead National Recreation Area.

The foregoing concessioner has performed its obligation to the satisfaction of the Secretary under an existing contract which expires by limitation of time on October 31, 1987, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR, Part 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, Western Regional Office, 450 Golden Gate Avenue, San Francisco, California 94102, for information as to the requirements of the proposed contract.

Dated: July 20, 1987.

W. Lowell White,

Acting Regional Director, Western Region.

[FR Doc. 87-19130 Filed 8-20-87; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31069]

Railroad Operation, Acquisition; Exemption George C. Betke, Jr., and J.P.R., and Farmrail System, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission under 49 U.S.C. 10505 exempts from prior

approval under 49 U.S.C. 11343, *et seq.*, the continuance in control of Farmrail Corporation and Grainbelt Corporation by Farmrail System, Inc., and in turn by the persons controlling Farmrail System, Inc., George C. Betke, Jr. and J.P.R., a partnership controlled by Richard A. Peters and Robert D. Johnson.

DATES: This decision is effective on August 31, 1987. Petitions to reopen must be filed by September 10, 1987.

ADDRESSES: Send petitions referring to Finance Docket No. 31069 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
(2) Petitioner's representative: William P. Quinn, 1800 Penn Mutual Tower, 510 Walnut Street, Philadelphia, PA 19106.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. (TDD for hearing impaired: (202) 275-1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423 or call (202) 289-4357 (assistance for the hearing impaired is available through TDD services (202) 275-1721) or by pickup from TSI in Room 2229 at Commission headquarters.

Decided: August 10, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Vice Chairman Lamboley concurred in the separate expression of Commissioner Simmons. Commissioner Simmons dissented with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 87-19174 Filed 8-20-87; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-18 (Sub-102X)]

Railroad Services; Exemption; The Chesapeake & Ohio Railway Co.; Abandonment in Marion County, WV

The Chesapeake & Ohio Railway Company (C&O) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 4.03-mile line of railroad consisting of its Palatine Branch between milepost 0.04 and milepost 2.57 and its Hickman Run Branch between milepost 0.00 and milepost 1.50, near Fairmont, in Marion County, WV.

C&O has certified that (1) no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

Applicant has filed an environmental report which shows that no significant environmental or engergy impacts are likely to result from this abandonment.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).[1]

The exemption will be effective on September 20, 1987 (unless stayed pending reconsideration). Petitions to stay must be filed by August 31, 1987, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by September 10, 1987 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representatives:

Patricia Vail, 500 Water Street, Jacksonville, FL 32202

and

Lawrence H. Richmond, 100 North Charles Street, Baltimore, MD 21201.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: August 13, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-19175 Filed 8-20-87; 8:45 am]

BILLING CODE 7035-01-M

[1] The Railway Labor Executives' Association filed a request for labor protection. Since this transaction involves an exemption from 49 U.S.C. 10903, whereby the imposition of labor protective conditions is mandatory, those conditions have been routinely imposed.

[Docket No. AB-18; Sub-No. 100X]

The Chesapeake and Ohio Railway Company Notice of Exemption

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments, to abandon its 21.2-mile line of railroad between milepost 136.71, v.s. 7213+44 at Red Diamond, and milepost 157.93, v.s. 8335+53 at Athens, in Athens and Vinton Counties, OH.

Applicant has certified that: (1) no local traffic has moved over the line for at least 2 years and that the line does not handle overhead traffic; and (2) no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

Applicant has filed an environmental report which shows that no significant environmental or energy impacts are likely to result from this abandonment.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979).[1]

The exemption will be effective on September 19, 1987 (unless stayed pending reconsideration). Petitions to stay must be filed by August 31, 1987, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by September 10, 1987, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representatives: Lawrence H. Richmond, Peter J. Shudtz, 100 North Charles St., Baltimore, MD 21201.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

[1] The Railway Labor Executives' Association filed a request for labor protection. Since this transaction involves an exemption from 49 U.S.C. 10903, whereby the imposition of labor protective conditions is mandatory, those conditions have been routinely imposed.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-19359 Filed 8-20-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration; Applied Science Laboratories

By Notice dated December 4, 1986, and published in the Federal Register on December 11, 1986; (51 FR 44697), Applied Science Laboratories, Divisions of Alltech Associates, Inc., 2701 Carolean Industrial Drive, P.O. Box 440, State College, Pennsylvania 16801, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of control substances listed below:

Drug	Schedule
Lysergic acid diethylamide (7315)	I
Dihydromorphine (9145)	I
D-iso-lysergic acid diethylamide (7307)	I
D-lysergic acid Methylpropylamide (7326)	I
3, 4 Methylenedioxyamphetamine HCL (7402)	I
Mescaline HCL (7387)	I
Cyclohexamine (PCE) HCL (7456)	I
3, 4 Methylenedioxymethamphetamine HCL (7406).	I
1-phenylcyclohexylpyrrolidine HDL (7461)	I
Thiophene Analog of PCP (HCL salt) (7488)	I
Normorphine HCL (9360)	I
1-phenylcyclohexylamine (7460)	II
1-piperidinocyclohexanecarbonitrile (PCC) [9507]	II
Morphine (9300)	II
Dihydrocodeine (9120)	II
Phencyclidine HCL (7472)	II
Codeine-6-glucuronide (9069)	II
Norcodeine HCL (9115)	II
Ecgonine methyl ester (9165)	II
Ecgonine HCL (9189)	II
6-Monoacetylmorphine (9316)	II
Benzoylecgonine (9187)	II

Mallinckrodt, Inc., Mallinckrodt and Second Street, St. Louis, Missouri 63147, filed a comment, dated January 9, 1987, with the Deputy Assistant Administrator, Office of Diversion Control, in response to the application of Applied Science Laboratories. Mallinckrodt took exception to the registration of Applied Science Laboratories as a bulk manufacturer of morphine and dihydrocodeine. Mallinckrodt indicated that there are two bulk manufacturers of morphine and one bulk manufacturer of dihydrocodeine in addition to itself in the United States, and that these manufacturers produced sufficient quantities of these materials to cover the needs of Applied Science Laboratories. Mallinckrodt also indicated that it would provide these substances to Applied Science Laboratories. In the alternative, Mallinckrodt requested assurances that Applied Science be restricted to production of only those quantities needed to meet the requirements for research and testing. Mallinckrodt did not request a hearing.

Applied Science Laboratories produces small quantities of controlled substances to be used in research and analytical testing as standards. They have been previously registered as a bulk manufacturer of morphine and dihydrocodeine. There has been no substantial increase in the quota because of this registration.

The Deputy Assistant Administrator therefore finds that the registration of Applied Science Laboratories as a bulk manufacturer of morphine and dihydrocodeine is consistent with the public interest because Applied Science Laboratories manufactures these controlled substances for research and analytical purposes in small quantities, and this activity does not affect the commercial market of these cotrolled substances.

The Deputy Assistant Administrator hereby orders that the application submitted by Applied Science Laboratories for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: August 14, 1987.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 87-19105 Filed 8-20-87; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of recordkeeping/reporting requirements under review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract descibing the need for and uses of the information collection.

Comments and questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Office, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, D.C. 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Revision

Bureau of Labor Statistics

Pricing Collective Bargaining Settlements—Public Sector 1220-0048; BLS 3116B, BLS 3116C

Annually, biennially, or other (usually every 2 or 3 years)

State or local governments

250 responses, 150 hours, 2 forms

The Bureau of Labor Statistics series on State and local government collective bargaining agreements provides data on the size of negotiated changes in wages and compensation. This series covers about half of the unionized non-Federal public sector work force. The data are

used by Federal policymakers, State and local government officials, and labor groups.

Employment and Training Administration

Request for Additional UI Contingency Staff years for the Quarter 1205–0160; ETA 2103
Quarterly
State or local governments
53 respondents; 212 burden hours; 1 form
The ETA 2103 serves as a worksheet to develop the data needed for the UI–3 to provide SESAs with administrative resources to perform duties relating to processing unemployment insurance workload.

Extension

Bureau of Labor Statistics

Hours at Work Survey
OMB No. 1220–0076; BLS 2000N, 2000P
Annual
Business or other for-profit; small businesses or organizations
2925 responses; 15 minutes; 2 forms (1 per establishment)
Hours at work information is vitally needed in order to construct labor input measures for purposes of measuring productivity. Presently, labor input is measured using hours paid. The collection of information of hours at work began in March 1982 and must be collected annually. Ratios of hours at work to hours paid are calculated as adjustment factors for concurrently published measures.

Employment and Training Administration

Interstate Claims Bypass Data Exchange
1205–0109; ETA RC 40
Weekly; Monthly
State or local governments
53 respondents; 782 hours; no forms
The Interstate Claims Bypass Data Exchange provides for the exchange of interstate claims counts and claimants characteristics among the States. This data is necessary to the operation of the Interstate Benefit Program and is needed for a number of ETA reports. No new data is involved, only the method of collection change.

Employment and Training Administration

Governor's Requests for Advances from the Federal Unemployment Account or request for Voluntary Repayment of Such Advances
1205–0159
As needed
State or local governments
4 respondents; 36 hours; no forms
When State unemployment funds become insolvent funds needed to continue unemployment benefits without interruption can be borrowed from the Federal Unemployment Account. To trigger a request for advances or a voluntary repayment the Governor or the person so delegated by the Governor must forward a formal letter to the Secretary of Labor.

Employment and Training Administration

Unemployment Compensation for Ex-Servicepersons (UCX) Handbook
1205–0176; ETA 841, 842, 843
As Needed
Individuals or households; State or local governments
103,333 respondents; 2,669 burden hours; 3 forms
Federal Law (5 U.S.C. 8521 et. seq.) provides unemployment insurance protection, to former members of the Armed Forces (ex-servicepersons) and is referred to in abbreviated form as "UCX." The forms in Chapter V through VIII of the *UCX Handbook* are used in connection with the provisions of this benefit assistance.

Employment and Training Administration

Benefits Appeals
1205–0172; ETA 5130
Monthly
State or local governments
53 respondents; 2,544 burden hours; 1 form
This report is used to monitor the benefit appeals process, to evaluate compliance with appeals promptness standards and to develop plans for remedial action. The report is also needed for budgeting and for workload figures.

Employment and Training Administration

Annual State WIN Plans
1205–0214; ETA 8480, 8484, 8485, 8479
Annually
State or local governments
25 respondents; 1,925 burden hours; 4 forms
The State WIN Plan is the basic planning and management tool utilized by the national and regional offices to ensure State compliance with legislation, regulations and national office goals. It is the vehicle for providing allocation levels to State agencies. Respondents are State staff.

Reinstatement

Occupational Safety and Health Administration

Maritime Employment Regulations
1218–0003; OSHA 70, 71 and 72
Annually
Businesses or other for profit; Small businesses or organizations
10,040 responses; 35,754; 3 forms
OSHA needs this information to accredit companies to inspect and provide certification for cranes, derricks and accessory gear used in longshoring and shipyard industries and marine terminals. Use of the OSHA forms 70, 71 and 72 has proven successful, and their use has served as an aid to the agency and the industry in tracking conditions germane to employee safety and health.

Signed at Washington, DC, this 18th day of August, 1987.

Paul E. Larson,
Departmental Clearance Officer.

[FR Doc. 87–19206 Filed 8–20–87; 8:45 am]
BILLING CODE 4510-30-M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Ames Oil and Gas Corp. et al.

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 31, 1987.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to

the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 31, 1987.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 10th day of August 1987.

Glenn M. Zech,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or firm	Location	Date received	Date of petition	Petition No.	Articles produced
Ames Oil & Gas Corp. (Workers)	Pawnee, OK	8/10/87	7/24/87	19,987	Oil and gas.
Ames Oil & Gas Corp. (Workers)	Houston, TX	8/10/87	7/24/87	19,988	Oil and gas.
AneMag, Inc. (IUE)	Shelbyville, IN	8/7/87	7/16/87	19,989	Wire.
Armstrong Tire (URW)	Des Moines, IA	8/7/87	7/28/87	19,990	Tires.
Barad & Company (Workers)	Thayer, MO	8/7/87	8/28/87	19,991	Gowns and robes.
Bryant Electric (UE)	Bridgeport, CT	8/10/87	7/30/87	19,992	Circuit devices.
Cedar Coal Company (UMWA)	S. Charleston, WV	8/10/87	8/3/87	19,993	Electricity.
Daco, Inc. & Plemons (Workers)	Borger, TX	8/7/87	7/28/87	19,994	Oil and gas.
EDCO Drilling & Producing (Workers)	Mt. Gilead, OH	8/7/87	7/28/87	19,995	Oil and gas.
General Housewares Corporation (USAW)	Terre Haute, IN	8/10/87	7/28/87	19,996	Cookware.
George Seelman & Sons Co. (Company)	Milwaukee, WI	8/7/87	7/25/87	19,997	Stationary products.
Phoenix Abrasive & Mfg., Inc. (Workers)	Jamaica, NY	8/7/87	7/28/87	19,998	Chemicals.
Raymond Schall Coal Co. (UMW)	Kittanning, PA	8/7/87	7/24/87	19,999	Coal.
Tejas Gas Corporation (Workers)	Corpus Christi, TX	8/7/87	7/30/87	20,000	Gas.
W.R. Grace & Co. (Workers)	Tulsa, OK	8/7/87	7/8/87	20,001	Fertilizer.

[FR Doc. 87-19204 Filed 8-20-87; 8:45 am]
BILLING CODE 4510-30

[TA-W-19, 610]

Negative Determination Regarding Application for Reconsideration; Vickers, Inc., Joplin, MO

By an application dated June 29, 1987, the Allied Industrial Workers of America (AIW) requested administrative reconsideration of the Department's negative determination on the subject petition for trade adjustment assistance for workers at the Joplin, Missouri plant of Vickers, Inc. The denial notice was signed on June 1, 1987 and published in the **Federal Register** on June 16, 1987 (52 FR 22861).

Pursuant to CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union claims that a Vickers' contract made with China in 1983 shows a transfer of knowledge with intent to build similar products in China as that produced in Joplin. The union also claims that Vickes has two plants in India producing identical products as that produced in Joplin and that a five gallon gear produced in America was being transferred to Germany.

Workers at the Joplin plant produce several hundred different types of pumps and motors. Investigation findings show that the basis for the Department's denial was that the "contributed importantly" test of the increased import criterion of Section 222 of the Trade Act of 1974 was not met. The planned closure in early 1988 of the Joplin, Missouri plant of Vickers was the result of a major reorganization and consolidation of operations. Joplin's production will be transferred to other domestic facilities of Vickers. Corporate domestic production of hydraulic pumps and motors increased in 1986 compared to 1985 and in the first quarter of 1987 compared to the same period in 1986.

The Chinese contract is for a piston pump and motor technology transfer between the Chian National Machinery and Equipment Import and Export Corporation and Vickers, Inc. The products produced as a result of the contract are for the Chinese market. Although some motors and pumps entered the U.S. they were for testing and not the domestic market.

With respect to the two Indian plants producing identical products to those produced at Joplin, none of these have entered the U.S. The Indian production is for the Indian market only.

The Department sees no basis for certification of workers producing the 5 gallon gear pump. Until 1983, this pump was produced at a Vickers' plant in Germany. In 1983, the Joplin plant began proto-type production of this pump; however, difficulties developed and most of the production on the components for the 5 gallon gear pump remained in Germany. However, the Joplin plant succeeded in obtained the assembly of this pump. The transfer back of prototype component production on this pump to Germany occurred in 1983 (b)(1) of the Trade Act does not permit the certification of workers prior to one year of the date of the petition, which is April 15, 1987. When the Joplin plant closes in early 1988, the assembly of the 5 gallon gear pump is scheduled to return to Germany. However, this pump production accounts for less than 3 percent of total 1986 pump production at Joplin. The workers are not separately identificable by product.

The Trade Adjustment Assistance program addresses the needs of workers who lose their jobs because of increased imports. Worker separation because of lost export sales and production would not form a basis for certification under the Trade Act.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 10th day of August 1987.

Barbara Ann Farmer,

Acting Director, Office of Program Management, UIS.

[FR Doc. 87-19205 Filed 8-20-87; 8:45 am]
BILLING CODE 4510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination; Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S-3504, Washington, DC 20210.

New General Wage Determination Decisions

the numbers of the decisions being added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page number(s).

Volume III

Idaho:
ID87-5—pp. 164a-164b

Withdrawn General Wage Determination Decision.

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, General Wage Determination No. NY87-16 dated January 2, 1987 and Modification No. 5 dated August 21, 1987, Bingham, Bonneville, Butte and Jefferson Counties, Idaho from General Wage Determination No. ID87-4 dated January 2, 1987.

Agencies with construction projects pending to which this wage decision would have been applicable should utilize General Wage Determination No. NY87-5 and ID87-5. See Regulations Part 1 (29 CFR), Section 1.5. Contracts for which bids have been opened shall not be affected by this notice. Also consistent with 29 CFR 1.6 (c)(2)(i)(A), the incorporation of the withdrawal decision in contract specifications, the opening of bids is within ten (10) days of this notice, need not be affected.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

New Jersey:
NJ87-2 (Jan. 2, 1987)—p. 616, pp. 620-621, p. 631
NJ87-4 (Jan. 2, 1987)—p. 660
New York:
NY87-5 (Jan. 2, 1987)—pp. 719-726b
NY87-13 (Jan. 2, 1987)—pp. 800-803
Tennessee:
TN87-1 (Jan. 2, 1987)—p. 1078
TN87-4 (Jan. 2, 1987)—p. 1090
West Virginia:
WV87-2 (Jan. 2, 1987)—pp. 1194, p. 1197-1210
Listing by Location (index)—p. xxxvii
Listing by Decision (index)—p. lvii

Volume II

Iowa:
IA87-5 (Jan. 2, 1987)—p. 42
Illinois:
IL87-12 (Jan. 2, 1987)—pp. 164-167
Kansas:
KS87-6 (Jan. 2, 1987)—p. 348
KS87-7 (Jan. 2, 1987)—p. 354
KS87-8 (Jan. 2, 1987)—p. 356
Missouri:
MO87-5 (Jan. 2, 1987)—p. 622
MO87-7 (Jan. 2, 1987)— p. 634
MO87-10 (Jan. 2, 1987)—pp. 652-654
Ohio:
OH87-1 (Jan. 2, 1987)—pp. 720-721, p. 723
OH87-2 (Jan. 2, 1987)—pp. 734-738, pp. 740-742
OH87-3 (Jan. 2, 1987)—p. 756
OH87-28 (Jan. 2, 1987)—pp. 812-813
OH87-29 (Jan. 2, 1987)—pp. 817a-858a
Oklahoma:
OK87-20 (Jan. 2, 1987)—p. 912n

Volume III

Idaho:
ID87-4 (Jan. 2, 1987)—pp. 161, 163
ID87-5 (Jan. 2, 1987)—pp. 164a-164b
Utah:
UT87-3 (Jan. 2, 1987)—p. 318
Listing by Location (index)—pp. xxv-xxvi
Listing by Decision (index)—pp. xxxiii-xxxiv

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the Country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 14th day of August 1987.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 87–19003 Filed 8–20–87; 8:45 am]

BILLING CODE 4510–27–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–6]

Proposed Issuance of Order Terminating Facility License; Battelle Columbus Division

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an Order to Battelle Columbus Division (the licensee), terminating Facility License No. R–4, in accordance with the licensee's March 6, 1987 application to amend Materials License SNM–7 and the resulting Amendment No. 2 to Materials License SNM–7 dated June 2, 1987.

The Order would be issued following completion of the staff's review of the licensee's application. Prior to issuance of an Order, the Commission will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By September 21, 1987, the licensee may file a request for a hearing with respect to issuance of the subject Order and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the action under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Section, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Herbert N. Berkow: Petitioner's name and telephone number; date petition was mailed; Battelle Columbus Division; and publication date an page number of the **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee, Mr. Jerome R. Bahlmann, Vice President and General Counsel for Battelle Columbus Laboratories, Battelle Columbus Division, 505 King Avenue, Columbus, Ohio 43201.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1) (i) through (v) and 2.714(d).

For further details with respect to this action, see the licensee's application dated March 6, 1987, and Amendment No. 2 to Materials License SNM–7, dated June 2, 1987, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC.

Dated at Bethesda, Maryland, this 14th day of August 1987.

For the Nuclear Regulatory Commission.
Herbert N. Berkow,
Director, Standardization and Non-Power Reactor Project Directorate, Division of Reactor Projects III, IV, V an Special Projects, Office of Nuclear Reactor Regulation.
[FR Doc. 87-19202 Filed 8-20-87; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-412]

Issuance of Facility Operating License; Duquesne Light Co. et al.

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has issued Facility Operating License No. NPF-73 to Duquesne Light Company, Ohio Edison Company, the Cleveland Electric Illuminating Company, and The Toledo Edison Company (the licensees) which authorizes operation of the Beaver Valley Power Station, Unit 2, at reactor core power levels not in excess of 2652 megawatts thermal in accordance with the provisions of the license, the Technical Specifications, and the Environmental Protection Plan.

On May 28, 1987, the Commission issued Facility Operating License No. NPF-64 to the licensees which authorized operation of Beaver Valley Power Station, Unit 2, to five percent of reactor core power (133 megawatts thermal). License No. NPF-73 supersedes NPF-64.

Beaver Valley Power Station, Unit 2, is a pressurized water reactor located on the southern shore of the Ohio River in Beaver County, Pennsylvania, approximately 22 miles northwest of Pittsburgh and 5 miles east of East Liverpool, Ohio.

The application for the license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter 1, which are set forth in the license. Prior public notice of the overall action involving the proposed issuance of an operating license was published in the Federal Register on June 1, 1983 (48 FR 24488). The power level authorized by this license and the conditions therein are encompassed by that prior notice.

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of relief and issuance of the exemptions included in this license will have no significant impact on the environment. These determinations were published in the Federal Register on March 27, 1987 (52 FR 9979) and May 11, 1987 (52 FR 17651).

For further details with respect to this action, see (1) Facility Operating License No. NPF-73; (2) the Commission's Safety Evaluation Report, dated October 1985 (NUREG-1057), and Supplements 1 through 6; (3) the Final Safety Analysis Report and Amendments thereto; (4) the Environmental Report and supplements thereto; and (5) the Final Environmental Statement, dated November 1985.

These items are available at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001. A copy of the Facility Operating License NPF-73 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II. Copies of the Safety Evaluation Report and its supplements (NUREG-1057) and the Final Environmental Statement (NUREG-1094) may be purchased at current rates from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161 or by calling (202) 275-2060 or (202) 275-2171 or by writing to the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082. All orders should clearly identify the NRC publication number and the requester's GPO deposit account, or VISA or Mastercard number and expiration date.

Dated at Bethesda, Maryland, this 14th day of August 1987.

For The Nuclear Regulatory Commission.
Peter S. Tam,
Project Manager, Project Directorate I-4, Division of Reactor Projects I/II.
[FR Doc. 87-19201 Filed 8-20-87; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 030-19025, License No. 04-19644-01, EA 87-28]

Order Imposing Civil Monetary Penalty; Radiation Sterilizers, Inc.

I

Radiation Sterilizers, Incorporated (Licensee) is the holder of Byproduct Materials License No. 04-19644-01 (License) issued by the Nuclear Regulatory Commission (Commission or NRC) on July 2, 1981. The License is currently under timely renewal. The License authorizes the Licensee to irradiate materials other than explosives or highly flammable products in accordance with the conditions specified therein.

II

Inspections of the Licensee's activities at its facilities in Schaumburg, Illinois, and Westerville, Ohio, were conducted on January 14 and 27, 1987, respectively. The results of those inspections indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated March 17, 1987. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations. The Licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalty by letters dated April 29 and 30, 1987.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the Deputy Executive Director for Regional Operations has determined, as set forth in the Appendix to this Order, that six of the eight violations occurred as stated in the Notice and that the penalty proposed for the violations designated in the Notice should be reduced by 25 percent and imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, It is hereby ordered that:

The Licensee pay a civil penalty in the amount of Seven Thousand Five Hundred Dollars ($7,500) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

The Licensee may request a hearing within 30 days of the date of this Order. A request for hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be

addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with a copy to the Assistant General Counsel for Enforcement at the same address and to the Regional Administrator, Region III.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the Licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty referenced in Section II above and modified by this Order, and

(b) Whether, on the basis of such violations, this Order should be sustained.

Dated at Bethesda, Maryland this 18th day of August 1987.

For the Nuclear Regulatory Commission.

James M. Taylor,

Deputy Executive Director for Regional Operations.

[FR Doc. 87-19200 Filed 8-20-87; 8:45 am]

BILLING CODE 7590-01-M

Meeting of the Advisory Committee on Reactor Safeguards Extreme External Phenomena

The ACRS Subcommittee on Extreme External Phenomena will hold a meeting on September 17, 1987, Room 1046, 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, September 17, 1987—9:00 A.M. until the conclusion of business

The Subcommittee will discuss the NRC Staff's Seismic Design Margins Program and the application of the methodology to Maine Yankee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Dr. Richard Savio (telephone 202/634-3267) between 8:15 A.M. and 5:00 P.M. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: August 17, 1987.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 87-19217 Filed 8-20-87; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon written request, copy available from Securities and Exchange Commission, Office of Consumer Affairs, 450 Fifth Street NW., Washington, DC 20549.

Approval

Form N-1A
File No. 270-21

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for OMB approval proposed amendments to Form N-1A under the Investment Company Act of 1940 and the Securities Act of 1933. Form N-1A is the registration statement for use by open-end management investment companies, except small business investment companies and insurance separate accounts. There are approximately 2300 registrants using Form N-1A, with an estimated compliance time of 1055 hours per registrant. The proposed amendments would add one additional hour to the time necessary for each registrant to comply with the form's requirements.

Comments should be submitted to OMB Desk Officer: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503.

Jonathan G. Katz,

Secretary.

August 18, 1987.

[FR Doc. 87-19170 Filed 8-20-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24436]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

August 6, 1987.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 8, 1987, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if orderd, and will receive a copy of any notice or other issued in the matter: After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

New England Energy Inc., et al. (70–7405)

New England Energy Incorporated ("NEEI"), and its parent, New England Electric System ("NEES"), a registered holding company, both located at 25 Research Drive, Westborough, Massachusetts 01582, have filed an application-declaration pursuant to sections 6, 7, 9, 10 and 12 of the Act and Rules 43 and 45 thereunder.

NEES and NEEI seek Commission authorization (i) for NEEI to make loans of up to $25 million to New England Collier Company ("NECCO"), a joint venture for NEEI and Keystone Shipping Co., which owns a self-unloading, coal-fired collier ("Vessel"), such loans to provide funds for redemption by NECCO of outstanding high interest bonds, pursuant to the optional redemption provisions thereof; and (ii) for NEES and NEEI to enter into an equity funding agreement under which NEES may provide an amount not exceeding $15 million to NEEI through noninterest-bearing loans, advances, capital contributions, purchases of NEEI's common stock, or any combination of the above, the proceeds to be used by NEEI to make loans to NECCO for redemption purposes, and under which NEEI may issue common stock or noninterest bearing notes to be purchased by NEES. The bonds to be redeemed by NECCO were issued in two series as part of the permanent financing of the Vessel and are guaranteed by the United States Government under Title XI of the Merchant Marine Act 1936 ("MARAD Bonds"; "A Bonds"; "C Bonds") (HCAR Nos. 22526 and 22991, June 4, 1982 and June 30, 1983, respectively).

As of March 31, there were outstanding $24.4 million principal amount of A Bonds 14.4%, with an annual interest cost to NECCO of $3.5 million; and $25.6 million of C Bonds 11.9%, with an annual interest cost of $3 million. Thus, NECCO is currently paying a total of $6.5 million of annual interest charges on its outstanding MARAD Bonds. An annual guaranty fee is also payable on the MARAD Bonds in the amount of 0.5% of the outstanding principal amount.

Both the A Bonds and the C Bonds are subject to optional redemption by NECCO, in whole or in part, at any time or from time to time upon at least 30 (but not more than 60) days' prior notice to bondholders, at a declining optional redemption price, provided that they cannot be redeemed prior to July 15, 1992 (A Bonds) or 1993 (C Bonds) using borrowed funds at an effective interest cost of less than the rate of interest payable on each series of bonds. Therefore, in order to comply with these no-call provisions, NECCO will redeem the MARAD Bonds using funds borrowed from NEEI at a rate equal to the applicable interest rate, plus a .5% guarantee fee for an effective interest cost in excess of that interest rate.

General Public Utilities Corp. (70–7407)

General Public Utilities Corporation ("GPU"), 100 Interpace Parkway, Parshippany, New Jersey 07054, a registered holding company, has filed a declaration with this Commission pursuant to Section 12(b) under the Act and Rule 45 thereunder.

GPU Service Corporation ("GPUSC") and GPU Nuclear Corporation ("GPUNC") (collectively, "Employers"), two subsidiaries of GPU, have adopted employee benefit plans, which plans provide benefits for all or certain of their officers and employees. These plans are the GPUSC and GPUNC Elected Officers Deferred Compensation Plan and Short-Term and Long-Term Disability Plans, and the GPUSC Senior Officers Deferred Compensation Plan. In addition, the Employers maintain other non-qualified deferred compensation plans pursuant to which excess benefits under the GPUSC and GPUNC Employees Pension Plans are payable on a non-funded basis. The Employers anticipate adopting additional employee benefit plans in the future. In order to avoid constructive receipt of income for Federal income tax purposes, certain amounts payable pursuant to these plans are not or will not be funded.

To provide for greater assurance of payment of these non-funded benefits to the participants under such present and future plans ("Plans"), GPU proposes to make appropriate provision for it to make any payment of such non-funded benefits due under such Plans and not made by the Employer liable for such payment, as GPU may from time to time determine. Additionally, GPU proposes to guarantee those portions of the Plans that provide that upon the failure of any Employer to make a payment to any participant under any of the Plans, the full amount of all deferred compensation then owed by each of the Employers and the present value of any or all benefits accured under the Plans will each become immediately due and payable.

Appalachian Power Co. (70–7421)

Appalachian Power Company ("APCo"), 40 Franklin Road, S.W., Roanoke, Virginia 24011, a subsidiary of American Electric Power Company, Inc., a registered holding company, has filed a declaration with this Commission pursuant to sections 6(a) and 7 of the Act and Rules 50 and 50(a)(5) thereunder.

APCo purposes to issue and sell, in one or more transactions from time to time through December 31, 1988, up to $180 million aggregate principal amount of its First Mortgage Bonds ("Bonds"), in one or more new series, each with a maturity of not less than 5 years and not more than 30 years. As an alternative to the issuance of an equal principal amount of Bonds, APCo also purposes to issue and sell one or more new series of its Cumulative Preferred Stock ("Preferred"), from time to time through December 31, 1988, with an aggregate involuntary liquidation price of up to $60 million. A cumulative sinking fund may be provided for one or more of the series of Preferred to be sold. If market conditions should not be propitious for the sale of the Bonds and/or the Preferred on a competitive bidding basis, APCo proposes, subject to further authorization, to either place the Bonds and/or Preferred privately or to negotiate with underwriters for the sales of the Bonds and/or Preferred.

As an alternative to the issuance of an equal principal amount of the Bonds, APCo proposes, subject to receipt of appropriate authorization, to issue from time to time through December 31, 1988, up to $180 million principal amount of its unsecured notes with a maturity in excess of twelve months ("Notes") to one or more commercial banks pursuant to a proposed term loan agreement. The proposed term loan agreement would provide that the Notes would bear interest at a rate per annum not in excess of 250 basis points above the yield to maturity of U.S. Treasury obligations of comparable maturity at the time of the issuance of the Notes.

APCo has requested an exception to the competitive bidding rules pursuant to Rule 50(a)(5) with respect to a possible placement fee under the term loan agreement with respect to the issuance of the Notes, not to exceed .5% of the principal amount borrowed.

The Connecticut Light and Power Co., et al. (70–7422)

The Connecticut Light and Power Company ("CL&P"), 107 Selden Street, Berlin, Connecticut 06037, and Western Massachusetts Electric Company ("WMECO"), 170 Brush Hill Avenue, West Springfield, Massachusetts 01089, subsidiaries of Northeast Utilities, a registered holding company, have filed a declaration pursuant to sections 6 and 7 of the Act.

CL&P and WMECO propose to enter into a credit agreement ("Credit Agreement") under the terms of which

CL&P and WMECO may borrow and reborrow, at any time and from time to time, up to an aggregate of $350 million for both declarants from a syndicate of commercial banks, with $350 million available to CL&P and $105 million to WMECO.

The Credit Agreement will replace a 1982 revolving credit/term facility of up to $200 million and a 1984 revolving revolving credit/term loan facility of up to $150 million (HCAR Nos. 22682 and 23540, November 2, 1982, and December 5, 1984, respectively).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-19171 Filed 8-20-87; 8:45am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 1023]

Public Information Collection Requirements Submitted to OMB for Review

AGENCY: Department of State.

ACTION: The Department of State has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

SUMMARY: The following summarizes the information collection proposals submitted to OMB:

1. Title of information collection—Application for Passport.
Originating office—Bureau of Consular Affairs.
Form number—DSP-11.
Type of request—Revision.
Frequency—On occasion.
Respondents—Passport applicants.
Estimated number of responses—4,000,000.
Estimated number of hours needed to respond—466,666.

2. Title of information collection—Application for Passport by Mail.
Form number—DSP-82.
Originating office—Bureau of Consular Affairs.
Type of request—Revision.
Frequency—On occasion.
Respondents—Passport applicants.
Estimated number of responses—1,500,000.
Estimated number of hours needed to respond—125,000.

Section 3504(h) of Pub. L. 96-511 does not apply.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed form and supporting documents may be obtained from Gail J. Cook (202) 647-4086. Comments and questions should be directed to (OMB) Francine Picoult (202) 395-7340.

Date: August 5, 1987.

Donald J. Bouchard,

Assistant Secretary for Administration.

[FR Doc. 87-19149 Filed 8-20-87; 8:45 am]

BILLING CODE 4710-24-M

[Public Notice 1024]

Public Information Collection Requirements Submitted to OMB for Review

AGENCY: Department of State.

ACTION: The Department of State has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

SUMMARY: The following summarizes the information collection proposal submitted to OMB:

Title of information collection—Application for Employment as a Foreign Service National.
Originating office—Bureau of Personnel, Office of Foreign Service National Personnel.
Form number—OF-174.
Type of request—Extension.
Frequency—On occasion.
Respondents—Foreign nationals and Americans seeking employment with Foreign Service posts.
Estimated number of responses—5,000.
Estimated number of hours needed to respond—2,500.

Section 3504(h) of Pub. L. 96-511 does not apply.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed form and supporting documents may be obtained from Gail J. Cook (202) 647-4086. Comments and questions should be directed to (OMB) Francine Picoult (202) 395-7340.

Date: August 5, 1987.

Donald J. Bouchard,

Assistant Secretary for Administration.

[FR Doc. 87-19150 Filed 8-20-87; 8:45 am]

BILLING CODE 4710-24-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA) Special Committee 151, Airborne Microwave Landing Systems (MLS) Area Navigation Equipment; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 151 on Airborne Microwave Landing Systems (MLS) Area Navigation Equipment to be held on September 10-11, 1987, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., SUite 500, Washington, DC commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of the Third Meeting held on June 16-17, 1987; (3) Report on Radio Technical Commission for Marine Services Special Committee 106 Activities; (4) Review of Draft Material for Sections 1, 2 and 3 of Committee Report; (5) Assignment of Tasks; and (6) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 10, 1987.

Martin T. Pozsky,

Deputy Associate Administrator for NAS Programs.

[FR Doc. 87-19108 Filed 8-20-87; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA) Executive Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the RTCA Executive Committee to be held on September 18, 1987, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Remarks and Introductions; (2) Approval of Minutes of the Meeting Held on July 17, 1987; (3) Executive Director's Report; (4) Special Committee Activities Report for July/August 1987; (5) Approval of RTCA Operations and Special Budgets for 1988; (6) Consideration of Proposals to Establish New Special Committees; (7) Consideration of FAA Proposal for Editorial Change to MOPS Drafting Guide; and (8) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 17, 1987.

Wendie F. Chapman,

Designated Officer.

[FR Doc. 87-19109 Filed 8-20-87; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

[FHWA Docket No. 87-12]

Rail-Highway Crossing Study; Opening of Docket

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: This notice requests comments from interested persons and organizations regarding national highway-railroad crossing improvement and maintenance needs and how these crossing needs can be addressed in a cost-effective manner. Section 159 of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Pub. L. 100-17, 101 Stat. 132) directs the Department of Transportation to conduct a study of these needs and report to the Congress by April 1989, on the results and recommendations.

DATE: Comments are requested on or before October 15, 1987.

ADDRESS: Submit signed, written comments, preferably in triplicate, to FHWA Docket No. 87-12, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street SW., Washington, DC 20590. All comments and suggestions received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., ET, Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Howard C. Hanna, Program Development Division, Office of Highway Safety, (202) 366-2131; or Ms. Julie A. White, Office of the Chief Counsel, (202) 366-1353, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except legal holidays.

SUPPLEMETARY INFORMATION:

Study Mandate

Pursuant to section 159 of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA) (Pub. L. 100-17, 101 Stat. 132, 211), the FHWA is preparing a study and recommendations to the Congress regarding national highway-railroad crossing improvement and maintenance needs and how these crossing needs can be addressed in a cost-effective manner. A final report is to be submitted to the Congress by April 2, 1989.

Section 159 requires that the issues to be addressed by the study shall include, but not be limited to the following:

1. An examination of any correlation which may exist between existing conditions at highway-railroad crossings and accident data at such crossings.

2. An examination of existing hazards to motorists and railroad personnel and community impacts resulting from mobility and capacity constraints at such crossings, including delays of police, fire, and emergency medical services.

3. An analysis of the most cost-effective methods of protecting the public at crossings including a review of the impact of Federal funds expended at crossings; division of cost of improvements and maintenance between Federal, State and local government and railroads; cost effectiveness of the railroad relocation demonstration program conducted under Section 163 of the Federal-Aid Highway Act of 1973 (Pub. L. 93-87, 87 Stat. 250, 280) as compared to the railroad-highway crossing program conducted under section 130 of Title 23, United States Code; and the cost of upgrading existing equipment at crossings to the latest technology.

4. An examination of driver behavior at such crossings and what technologies are most effective in changing behavior and preventing accidents.

5. An examination of what effect the shift in rail traffic patterns, including abandonments, mergers, and increased demand in certain corridors, has on railroad-highway crossing needs.

6. A review of any other potential costs associated with such crossings, including accident liability, increased truck size and weight, and maintenance responsibilities.

7. An examination of railroad and highway needs relating to crossing safety, capacity, and mobility and the needs of communities affected by railroad-highway crossings.

8. An examination of the feasibility of addressing these needs on a corridor or system basis.

9. An examination of the responsibility of rail and highway authorities in addressing these needs.

Background

A previous nationwide assessment of rail-highway crossing needs was conducted in the early 1970's by the FHWA and the Federal Railroad Administration, and reported to the Congress at that time.[1] Section 203 of the Federal-Aid Highway Act of 1973 subsequently initiated special funding for a program to eliminate hazards at rail-highway crossings. Since its passage, $1.94 billion of these special Federal funds have been authorized to improve rail-highway crossing safety. In section 106(a)(13) of the STURAA, the Congress recently authorized added funding for this program, now under section 130 of Title 23, United States Code, at $160 million annually at least through fiscal year 1991. In addition, a substantial amount of other Federal-aid highway, State, local and railroad funds continues to be invested in improving and maintaining traffic safety and mobility at rail-highway crossings.

In section 159, the Congress has provided for a new study to be undertaken of developments since the earlier report, including an evaluation of the present programs and current conditions affecting rail-highway crossing safety. In addition, the study will examine other concerns such as mobility, community effects, financial responsibilities, and other costs associated with rail-highway crossing improvement and maintenance needs.

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[1] U.S. Department of Transportation, Federal Highway Administration and Federal Railroad Administration, "Railroad-Highway Safety, Part I: A Comprehensive Statement of the Problem," November 1971, and "Railroad-Highway Safety, Part II: Recommendations for Resolving the Problem," August 1972.

Study Procedures

The Federal Railroad Administration currently is custodian of a completed inventory of all rail-highway crossings in the United States, updated periodically by information voluntarily supplied by the State highway agencies and railroads.[2] The FHWA intends to use this national rail-highway crossing inventory as a base for collecting and summarizing condition and needs information on a national basis, and encourages the States and railroads to review and update where necessary the information concerning crossings under their jurisdictions or responsibility. In addition, the FHWA intends to examine historic trends, past research and reports, and conduct additional studies as required to adequately respond to the issues raised.

So that all concerned parties have an opportunity to express their views and concerns, the FHWA is soliciting comments at this time on the overall scope and conduct of the study. Comments may address any or all of the above issues, or recommend other issues considered pertinent. Supplementary information such as the availability of data, pertinent research or studies that address any of the above issues, or other information believed significant in assessing needs and trends would be very helpful to the FHWA in implementing this study. As the study progresses, the FHWA expects to provide additional opportunities for comment at various phases of study completion.

In addition to soliciting written comments, the FHWA is considering holding public meetings for the purpose of obtaining information and the viewpoints of interested persons and organizations and, at at a later stage, to review the preliminary findings prior to completion of the study. Additional notifications will be issued prior to the dates of any public meetings.

As required by section 159 of the STURAA, the FHWA will consult with the State highway administrations, the Association of American Railroads, highway safety groups and other appropriate entities in carrying out the study.

Individuals or organizations who wish to be advised of additional information, issuances or consultations regarding this study may request that their names and addresses be added to a mailing list being developed for this purpose.

All comments and related information should be submitted to FHWA Docket 87–12 at the address provided above.

Issued on: August 14, 1987.

Robert E. Farris,

Deputy Administrator.

[FR Doc. 87–19163 Filed 8–20–87; 8:45 am]

BILLING CODE 4910-22-M

Federal Railroad Administration

Petitions for Exemption or Waiver; Algers, Winslow & Western Railway et al.

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that six railroads have petitioned the Federal Railroad Administration (FRA) for a waiver of compliance with the provisions of the Hours of Service Act (83 Stat. 464, Pub. L. 91–169, 45 U.S.C. 64a(e)).

The Hours of Service Act currently makes it unlawful for a railroad to require specified employees to remain on duty for a period of in excess of 12 hours. However, the Hours of Service Act contains a provision that permits a railroad which employs not more than 15 employees who are subject to the statute to seek an exemption from the 12 hour limitation.

Algers, Winslow & Western Railway (AW&W)

FRA Waiver Petition Docket No. HS–87–5

The AW&W seeks a continuation of a previously issued exemption so that it can permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The AW&W states that it is not their intention to employ a train crew over 12 hours per day under normal operating conditions, but that this exemption if granted, would help their operation if they encountered unusual operating conditions or circumstances. The AW&W provides service over approximately sixteen miles of track in southern Indiana. The function of this railroad is to serve two coal mines, both of which are located in Pike County, Indiana.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Louisiana and Delta Railroad (L&D)

FRA Waiver Petition Docket No. HS–87–6

The L&D seeks this exemption so that it can permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The L&D provides service over 94 miles of track in the State of Louisiana, serving industries on six former branch lines of the Southern Pacific Transportation Company.

The L&D states that it is not their intention to employ a train crew over 12 hours per day under normal operating conditions, but that this exemption, if granted, would help their operation if they encountered unusual operating conditions or circumstances.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Kankakee, Beaverville & Southern Railroad (KB&S)

FRA Waiver Petition Docket No. HS–87–7

The KB&S seeks a continuation of a previously issued exemption to that it can permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The KB&S states that it is not their intention to employ a train crew over 12 hours per day under normal operating conditions, but that this exemption, if granted, would help their operation if they encountered unusual operating conditions or circumstances. The KB&S provides switching service to six grain elevators and stores empty cars for two private railcar owners. The railroad extends from Iroquois Junction, Illinois, to Kankakee, Illinois, and from Iroquois Junction, Illinois, to Danville, Illinois, for a total of 78 miles of main track.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

AT&L Railroad Co. (AT&L)

FRA Waiver Petition Docket No. HS–87–8

The AT&L seeks a continuation of a previously issued exemption so that it can permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The AT&L states that it is not their intention to employ a train

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[2] U.S. Department of Transportation, Federal Railroad Administration, "Rail-Highway Crossing Accident/Incident and Inventory Bulletin," 1978 to present.

crew over 12 hours per day under normal operating conditions, but that this exemption, if granted, would help their operation if they encountered unusual operating conditions or circumstances. The AT&L provides switching service between Watonga, Oklahoma, and El Reno, Oklahoma, a distance of 39.7 miles.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety.

Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Huron and Eastern Railway (H&E)

FRA Waiver Petition Docket No. HS–87–9

The H&E seeks this exemption so that it can permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The H&E provides service on an 82-mile system extending from Bad Axe, Michigan, to Crosswell, Michigan, and on several small branch lines.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Dixie River Railroad Company (DR)

FRA Waiver Petition Docket No. HS–87–10

The DR seeks this exemption so that it can permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The DR expects to commence operation on July 1, 1987, on two lines it is in the process of purchasing from the Missouri Pacific Railroad. One line runs from Huttig, Arkansas, to Sterlington, Louisiana, a distance of 30 miles. The second line runs from McGehee, Arkansas, to Vidalia, Louisiana, a distance of 168 miles.

The petitioner asserts that it employs not more than fifteen employees and had demonstrated good cause for granting this exemption.

Interested persons are invited to participate in these proceedings by submitting written views and comments. FRA has not scheduled an opportunity for oral comment since the facts do not appear to warrant it. Communications concerning the proceeding should identify the docket number and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 29590.

Communications received before October 7, 1987, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All comment received will be available for examination both before and after the closing date for comments during regular business hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Issued in Washington, DC, on August 17, 1987.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 87–19166 Filed 8–20–87; 8:45 am]

BILLING CODE 4910-06-M

Petition for Exemption or Waiver of Compliance; Ganz-Mavag Locomotive and Carriage Manufacturers

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for an exemption from or waiver of compliance with a requirement of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provision involved, and the nature of the relief being requested.

Interested parties are invited to participate in this proceeding by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with this proceeding since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning this proceeding should identify the appropriate docket number (e.g., Waiver Petition Docket Number RST–84–21) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Communications received before October 7, 1987, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning this proceeding are available for examination during regular business hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

The individual petition seeking an exemption or waiver of compliance are as follows:

Ganz-Mavag Locomotive and Railway Carriage Manufacturers

Waiver Petition Docket Number LI–86–6

Ganz-Mavag Locomotive and Railway Carriage Manufacturers, Mechanical Engineers (Ganz-Mavag) seeks a permanent waiver of compliance with a provision of the Locomotive Safety Standards (49 CFR Part 229) for a railbus that they hope to introduce and sell to commuter railroad systems in the United States. Ganz-Mavag has designed the underframe to meet the parameters of the total vehicle load and power plant. This has resulted in a structure that does not meet the requirements of 49 CFR 229.141(b)(1), which requires that a body structure resist a minimum static end load of 400,000 pounds at the rear draft stops ahead of the bolster on the centerline of draft, without developing any permanent deformation in any member of the body structure when operated in trains having a total empty weight of less than 600,000 pounds. Ganz-Mavag tested and documented that the railbus underframe will withstand a static end load of 220,000 pounds without deformation.

Issued in Washington, DC, on August 17, 1987.

J. W. Walsh,

Associate Administrator for Safety.

[FR Doc. 87–19167 Filed 8–20–87; 8:45 am]

BILLING CODE 4910-06-M

Petition for Exemption or Waiver of Compliance; Terminal Railroad Association of St. Louis

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for an exemption from or waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver

Petition Docket Number RST–84–21) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Communications received before October 7, 1987, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

The individual petition seeking an exemption or waiver of compliance is as follows:

Terminal Railroad Association of St. Louis

Waiver Petition Docket Number PB–87–8

Terminal Railroad Association of St. Louis (TRRA) seeks a permanent waiver of compliance with the provisions of the Railraod Power Brakes Regulation, 49 CFR 232.13(a)(1), "Transfer train and yard train movements not exceeding 20 miles."

The waiver sought by the TRRA would permit train movements between the north end of Madison Yard and the Hook Yard at Granite City, Illinois, without the benefit of a train air brake test.

The movements in question are normally made during daylight hours, consisting of industry cars being taken to the Hook Yard for classification purposes to spot at industries in the Granite City area.

The petitioner states that the safety of the crew and public is not in any way impinged by the move with or without air brakes. The maximum speed is 10 mph. The only public crossing is protected by gates and flashes, and degree of grade is not a factor as the area is relatively flat.

The petitioner also states that the efficiency of the industrial assignment is decreased by the necessity of working up the air brake system and testing it when leaving for a trip distance of 5,630 feet.

Issued in Washington, DC, on August 17, 1987.

J. W. Walsh,

Associate Administrator for Safety.

[FR Doc. 87–19166 Filed 8–20–87; 8:45 am]

BILLING CODE 4910-06-M

National Highway Traffic Safety Administration

[Docket No. IP–87–02; Notice 2]

Grant of Petition for Determination of Inconsequential Noncompliance; The Uniroyal Tire Co.

This notice grants the petition by the Uniroyal Goodrich Tire Company of Akron, Ohio to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.119, Motor Vehicle Safety Standard No. 119, *New Pneumatic Tires for Vehicles Other Than Passenger Cars.* The basis of the grant is that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on April 8, 1987 and an opportunity afforded for comment (52 FR 11391).

Paragraph S6.5(d) of Standard No. 119 requires that the tires be marked on both sidewalls with the maximum load rating and corresponding inflation pressure of the tire. Uniroyal Goodrich Tire Company manufactured and shipped 3,922 31 X 10.50R15 All-Terrain Radial tires that have the incorrect load range stamped on the serial number side of the tire.

From August 31, 1986 to December 12, 1986, Uniroyal Goodrich stamped the following load range on tires:

Load Range G—Max. Load 2,250 Lbs. at 50 PSI Cold.

The correct load range is Load Range C—Max. Load 2,250 Lbs. at 50 PSI Cold.

Uniroyal Goodrich believes this noncompliance is inconsequential to motor vehicle safety because all identification located above the bead on both sides of the tire correctly states the maximum load in terms of pounds and pressure and the highest load range available in the family of flotation tire sizes is load range "C". Also the correct load range identification appears on the opposite serial number sidewall and is imprinted on each paper label adhered to the tread of the tire.

No comments were received on the petition.

The petitioner has indicated that the following safeguards are present to inform consumers of the correct load range: proper information on one of the two sidewalls and paper tread labels, load pounds and pressure indicated above the bead on both sides of the tire. The agency concurs with the petitioner that this compensates for the mistake in indicating Load Range G when Load Range C was meant.

Accordingly, in consideration of the foregoing, it is hereby found that petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety and its petition is hereby granted.

(Sec. 102, Pub. L. 93–492, 88 Stat. 1479 (15 U.S.C. 1417); delegation of authority at 49 CFR 501.8)

Issued on August 17, 1987.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 87–19164 Filed 8–20–87; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 79–17; Notice 34]

New Car Assessment Program; Optional Testing by Manufacturers

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Establishment of criteria for optional New Car Assessment Program (NCAP) testing by manufacturers.

SUMMARY: This notice establishes criteria for an optional NCAP test program for motor vehicle manufacturers. This program will provide the manufacturers with an opportunity to retest any of their vehicles that have been tested in the NCAP program and subsequently modified with production changes to improve occupant protection. This optional testing will be conducted at the manufacturers' expense, but under the criteria established in this notice. These criteria require that the testing be conducted at the same testing facilities and according to the same controls and procedures used for the agency's NCAP testing. The test results obtained under this optional program will be published by the agency in its NCAP press releases.

EFFECTIVE DATE: These criteria become effective August 21, 1987.

FOR FURTHER INFORMATION CONTACT: Charles L. Gauthier, Office of Market Incentives, NHTSA, 400 Seventh Street, SW., Washington, DC 20590 (202–366–4805).

SUPPLEMENTARY INFORMATION: Title II of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1941 *et seq.*) requires the development and dissemination of comparative information on the crashworthiness, damage susceptibility, and ease of diagnosis and repair of motor vehicles. The foundation of Title II is the belief that, if consumers have valid comparative information on important motor vehicle characteristics, they will

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use that information in their vehicle purchase decisions, thereby encouraging motor vehicle manufacturers to improve the safety and reliability of their products.

The experimental New Car Assessment Program (NCAP) addresses the crashworthiness ratings aspect of Title II by providing comparative safety performance information, in the form of dummy injury measurements, on selected vehicles that are crashed head-on into a fixed barrier at 35 mph. Consumers are informed of this crashworthiness information through news releases, the NHTSA Hotline, and media coverage of NCAP test results.

For the experimental NCAP program, the agency generally selects 30 vehicle models at the start of each model year. These vehicles are tested at several independent testing facilities, and the results of these tests are disseminated by the agency through its own facilities and the media.

On several occasions in the past, manufacturers whose vehicles had not done as well as the manufacturers expected in the NCAP testing have made small but significant production line changes to those vehicles. After these changes were incorporated into the vehicles, subsequent NCAP retests showed noticeable improvements in the dummy injury measurements.

The agency concluded that it would be helpful both to consumers and the vehicle manufacturers if the information about improved NCAP test results for the modified vehicles were made public as soon as possible. However, this is frequently not possible, because the agency's limited resources preclude an immediate retest of every redesigned vehicle. Since retesting is not generally conducted, the public is provided with outdated NCAP test results for these vehicles.

To remedy these shortcomings, the agency published a notice on November 19, 1986 (51 FR 41888) seeking comments on eight specific criteria that would form the basis for an optional NCAP retest program. Under this optional retest program, manufacturers that had made production line changes to NCAP tested vehicles would be allowed to arrange for a retest of the "improved" vehicle at their own expense. The eight criteria proposed by the agency were intended to ensure that any vehicle retests were conducted as identically as possible to the original NCAP test. Thus, random purchase of test vehicles, independent laboratory testing, and publication of all retest results must be assured. All retests that satisfied the proposed criteria would be disseminated by the agency, along with its own NCAP test results. NHTSA stated in the notice its belief that the benefits of this optional retesting program would include up-to-date crashworthiness information for consumers, fairness to manufacturers that have made vehicle safety improvements, and minimum expense to taxpayers.

The agency received comments from 15 groups in response to this notice. All of these comments were considered in developing these final criteria and the most significant are discussed below.

The NCAP Program in General

A number of commenters objected to the notice's statement that NCAP test results provide comparative safety performance information on the selected vehicles. These commenters argued that a 35 mph frontal barrier crash is not representative of most accidents, that the NCAP results do not represent real world accident performance of the selected vehicles, that the test results show an unacceptably high level of variability, and that the public misunderstands and misuses NCAP test results. Comments to this effect were submitted by Ford, Chrysler, Volkswagen, AMC, Volvo, the Automobile Importers of America, Inc. (AIA), General Motors (GM), Renault, Mazda, BMW, Austin Rover, the Motor Vehicle Manufacturers Association (MVMA), and Mercedes Benz.

These commenters have repeatedly made these points in connection with the NCAP program. The notice requesting comments on an optional retesting program was not seeking comments on any changes to the basic NCAP program, so these comments are not responsive to the issues raised in the notice. To briefly reiterate the agency's position, NHTSA has always characterized NCAP as an experimental program. The agency has been evaluating and will continue to evaluate the NCAP program for possible improvements. NHTSA agrees that a frontal barrier crash does not represent all types of accidents. However, it does provide information on an accident type and severity that accounts for a significant number of occupant fatalities and serious injuries. The agency believes that the inability to correlate NCAP results with real world accident injuries is due to insufficient data, and not any unrepresentativeness of the NCAP tests. The agency believes that more data for restrained occupants in 35 mph frontal crashes will become available in the near future, as a result of mandatory belt use laws and the phase-in of automatic restraints. When these data are available, NHTSA will undertake a rigorous correlation of NCAP results with accident injury data. The variability issue is addressed at length in the Standard No. 208 final rule (49 FR 28962, at 29004–29006; July 17, 1984), and will not be repeated here. Finally, agency research has indicated that there is strong consumer interest in NCAP data. The agency has continually made improvements to the formats and methods of dissemination to minimize the likelihood that the information will be misunderstood or misused by consumers.

The Retesting Program in General

The Center for Auto Safety (CFAS) commented that it supported the optional retesting program, if the program were modified in one significant respect. CFAS admitted that the agency's budget will not allow it to significantly expand its own NCAP testing and that fact means that the NCAP program does not always provide consumers with up-to-date information. However, CFAS was concerned with the agency's proposal to have the manufacturers themselves bear the expenses of retesting, stating that this procedure would call into question the integrity of the program and its results.

The agency disagrees with this statement. NHTSA will not take any actions to undermine public confidence in the continuing integrity of the NCAP program, and has not proposed to do so. This optional NCAP testing program has been structured so that it will adhere strictly to the NCAP procedures in all respects. Whether the testing is funded by the agency or a manufacture, the vehicle to be tested will be randomly purchased by the testing facility, all testing will be done by an independent facility, and all results that follow the testing protocol will be made public. Manufacturers will not be allowed any greater access to the vehicles to be tested under this program than they are to the vehicles to be tested under the initial NCAP series. The agency concludes that this optional program has been structured carefully so that there will be no legitimate basis for questioning the impartiality of its test results.

Vehicles Eligible to be Included in this Optional Retesting Program

VW, Renault, Nissan, Mazda, BMW, Austin Rover, and Subaru commented that retesting should be permitted without any changes to the vehicles. Such testing would, in the words of VW, "legitimately expose and amend one of the weaknesses of the current program." These commenters believe that the test variability is so high that an unchanged

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vehicle might show significantly different dummy injury results if retested according to the NCAP procedures. Volvo suggested that manufacturers be allowed to retest unchanged vehicles twice, and the average of the original NCAP tests and the two retests should be published for the vehicle. As explained above, the agency disagrees with the assertions of overly high variability. More to the point, however, any manufacturer that wishes to undertake testing to conclusively demonstrate this alleged variability in test results is free to do so, and the agency would carefully examine the data. The agency will *not*, however, disseminate such variability test data in a piecemeal fashion to consumers as a part of the NCAP data.

In its comments, Ford asked that the agency allow, in two specific instances, optional testing of vehicles not tested in the NCAP program. The first situation described by Ford was when a model with certain optional equipment was tested as a part of the initial NCAP tests and the manufacturer had reason to believe that the same or other models of that car line, with different options, would produce lower NCAP results. Nissan raised a similar point in its comments, when it asserted that changes in the "quality of seat cloth, floor carpeting, or surface material of the instrument panel" might influence NCAP test results.

As stated above, the agency is not going to disseminate information about essentially repetitive testing of unchanged models. Thus, to the extent that these commenters are seeking to have the optional testing program extended to include models with different non-safety options, whether engine, transmissions, seat cloth, or carpeting, NHTSA sees no reason to disseminate such information as a part of its NCAP testing.

However, to the extent that the manufacturers were urging the agency to extend the optional testing program to include vehicles equipped with features that could be shown to significantly improve the crashworthiness of the vehicles, the agency believes there is merit to the comments. The purpose of the NCAP program is to encourage manufacturers to improve the crashworthiness of their vehicles. If the optional testing program were extended to allow manufacturers to conduct testing on vehicles that were not tested under the NCAP, but that incorporate safety options and innovative restraint system designs that significantly improve frontal crashworthiness, the optional testing program could serve to promote the installation of these designs in other vehicles, either as an optional feature or as standard equipment. Thus, such an extension would further the purposes of the NCAP program. The agency has therefore amended these final criteria to allow optional testing of models not tested in the initial NCAP testing if the model to be tested incorporates optional safety equipment or innovative restraint system designs (e.g., air bags, webbing clamps, a different type of energy-aborbing webbing, and so forth). Such models would still have to satisfy all of the other criteria for this optional testing program, including the requirement that the manufacturer provide reasons why the optional or innovative safety equipment is likely to significantly improve NCAP test results.

Ford's other suggestion in this area concerned a situation where a manufacturer had added or deleted options to a vehicle line that was tested in the initial NCAP series, so that the line no longer includes the identical model and equipment tested in the initial series. In such a case, Ford urged that the manfacturer should be allowed to sponsor a retest of a vehicle chosen at random by the manufacturer from the models currently in production for that vehicle line. As the agency understands this comment, Ford was not suggesting that a vehicle be retested simply because of the addition of an option to or deletion of one from the tested model. Instead, Ford is suggesting the retesting of the model because it satisfies the criterion that changes have been made that are likely to significantly improve the NCAP test results. However, it would be impossible to retest the exact model that was previously tested. NHTSA agrees that some modification of the proposed optional testing is necessary to address such a situation. If a manufacturer had made production changes likely to significantly improve the frontal crashworthiness of a model and if the identical model were no longer in production, the agency would allow a different model in that line to be retested. However, the *agency*, not the manufacturer, would select the particular, model that would be retested under this program.

Manufacturers Must Explain Why NCAP Results are Likely to Significantly Improve for All Vehicles Selected for This Program

With respect to vehicles that are eligible for this optional testing program, the manufacturer must provide the agency with technical data describing the production design changes made to the vehicle *or* the optional safety equipment or innovative restraint system used in the vehicle, the reasons why the manufacturer believes these changes, optional equipment or innovative restraint system are likely to *significantly* improve NCAP results, and the manufacturer's estimate of the expected NCAP results for the vehicle. This criterion is very similar to the proposed criterion 1. It is intended to ensure that the results of this optional testing, which will be publisehd with the agency's imprimateur, will be useful and timel for consumers, not simply repetitious of previous testing.

The previous notice sought comments on establishing some minimum level of improvement in a retest, if the results were to be published under this program. GM, Ford, Mazda, and Austin Rover commented that there was no need to establish any minimum level of improvement for this program. Ford commented that manufacturers would be reluctant to pay for a retest unless an improvement of greater than ten percent was expected. Ford asserted that, because of the inherent variability of the test procedure, any lesser improvement would expose the manufacturer to a "substantial possibility" that the retest would be worse than the initial test. GM made the same point. CFAS, on the other hand, commented that retest results should be published only if the retest data showed improvements of 35 percent for the HIC, 20 percent for the chest accleration, and 40 percent for the femur loads. CFAS explained this comment by stating that its adoption would ensure that only those vehicles showing meaningful improvement in their test scores would be given new NCAP listings.

After considering this issue further, the agency has concluded that no minimum level of improvement should be specified for publication under this program. A manufacturer must explain and demonstrate why it believes that changes made to a vehicle will *significantly* improve NCAP results, or the test results will *not* be published by the agency. Hence, only vehicles that have been demonstrated as likely to significantly improve will be covered in this program. Once a manufacturer has satsified that burden, the notice proposed that the test results "will be made publicly available regardless of their magnitude." NHTSA sees no reason to make the results publicly available regardless of magnitude, yet publish those results only if they were of a certain magnitude.

The approach suggested by CFAS would be overly rigid. Under it, HIC improvements of 30 percent would not

be published, for instance. The agency believes that many consumers would find such information significant. Moreover, CFAS did not explain how it arrived at the conclusion that HIC improvements of less than 35 percent were not significant, nor did it explain what benefit it believes would result from withholding such information from the public. Accordingly, no such provision is included in these final criteria.

CFAB further commented that the agency ought to provide the public with notice and opportunity to comment on any manufacturer's request for optional retesting of a vehicle. CFAS suggested that it was appropriate to allow public comment on whether a vehicle should be retested, just as the agency seeks comments on petitions for defect investigations and petition for inconsequentiality

The agency agrees that it is sound policy to seek public input whenever possible, and has often done so even when public comment is not required by law. However, the agency is not persuaded that it would be wise policy to seek public comment before this retesting program. First, a public comment period before permitting retesting would introduce delay into any retesting efforts. This delay would hinder the chances of providing the public with more timely crashworthiness information for the vehicle model in question, thereby undercutting a reason for allowing retests. Additionally, once a model has been determined to be eligible for inclusion in this optional testing program, the only real issue will be whether the manufacturer has demonstrated that the NCAP results for the model are likely to be significantly improved. The agency anticipates that most, if not all, of the technical information submitted to substantiate the manufacturer's belief that the NCAP test results are likely to be significantly improved would not be available to the public, because it would be accorded confidential treatment. Thus, the public would have little opportunity to offer meaningful comments.

In evaluating petitions submitted under 49 CFR Part 543, which relates to exemption from the marking requirements of the motor vehicle theft prevention standard if a line is equipped with an antitheft device, the agency also confronted a situation where most of the technical details of the petition would be confidential and where delay in responding to the petition would be contrary to the public interest. The agency decided *not* to provide a comment period in connection with such petitions, and has reached the same conclusion in connection with this program. The agency will make available to the public in the docket section notice of *all* manufacturer requests for optional testing under this program, together with all publicly available portions of such requests.

Optional Testing Must Be Conducted at an Independent Testing Facility That has Proven its Capability to Conduct Tests in Accordance With the NCAP Procedures

The second proposed criterion was that the test be conducted at an independent test facility that has the capability of conducting crash tests in conformance with NCAP test procedures. The agency sought comments on establishing objective standards for assessing the NCAP capability of a test facility. GM supported this proposed criterion, stating that "if manufacturers are permitted to select laboratories other than those used by NHTSA for NCAP testing, the program may be criticized as being controlled by the manufacturers." To stave off any such criticism, GM recommended that only the laboratories used by NHTSA for its NCAP testing should be allowed to conduct any retesting. Ford commented that the agency should ask the National Bureau of Standards, which has experience in certifying test laboratories, to develop some objective criteria.

NHTSA has concluded that these criteria should not include a process for objectively evaluating the capabilities of independent testing facilities. Even assuming that such criteria could be developed, this process would necessarily force the agency to assess the capabilities of any new or different independent test facility suggested by the manufacturers before permitting the retesting. Such a process would necessarily force the agency to devote significant amounts of staff time to a task that would not enhance vehicle safety or consumer awareness thereof. In addition, such a process would delay the start of optional NCAP testing, whenever a manufacturer suggested a test facility that had not been previously approved. This delay would deny the public the benefits of more timely crashworthiness information for the vehicles in question. Accordingly, NHTSA has concluded that it would be inappropriate to require the agency to make such assessments on a continual basis.

The NCAP test procedures were updated in 1985. Since that time, the agency has entered into contracts for NCAP testing with three different independent testing facilities. Each of those facilities has already been determined by the agency to be capable of conducting testing in conformance with the NCAP procedures. To expedite the process under this optional program, the final criteria limit the facilities that can be used for testing to those facilities that have conducted NCAP testing for the agency since 1985. This limitation will ensure that any optional testing is conducted by facilities that have been adjudged capable of conducting NCAP testing, without introducing any time delays.

Mazda alleged that any requirements that testing be conducted at testing facilities in the United States would raise the issue of unfair trade practices. This commneter alleged that, if the manufacturer is required to pay for any retesting, the manufacturer should be allowed to benefit from the efficient and maximum use of its engineering resources and the lower costs if such retesting is conducted near its headquarters. The implicit argument here is that if the U.S. manufacturers enjoy this efficiency, foreign manufacturers should be permitted the same benefits.

NHTSA disagrees with Mazda's assertion that requiring testing under this program to be done in the United States represents and unfair trade practice. Section 402 of the Trade Agreements Act of 1979 (19 U.S.C. 2532) specifies that each Federal agency shall ensure that, in applying standards-related activity to any imported product, such product is treated no less favorable than are like domestic or imported products in a number of areas, including the siting of test facilities. Even if NCAP were to be regarded as a "standards-related acitivity," section 401 of that Act (19 U.S.C. 2531) makes clear that no standard-related activity shall be deemed to constitute an unecessary obstacle to imported products if the demonstrable purpose of the standardf-related activity is to achieve the protection of legitimate safety or consumer interests. The legislative history of these sections includes the following language:

> With respect to product testing and related administrative procedures, Parties are to accept foreign products for testing under nondiscrininatory conditions. Moreover, they are to ensure that central governmental bodies accept, whenever possible, foreign test results or certificates or marks of conformity, *but only if they are satisfied with the technical competence and methods employed by foreign entities.* [Emphasis added; S. Rep. No. 249, 96th Cong., 1st Sess., at 150 (1979)].

In the case of this optional retesting program, NHTSA could not be assured that the test results obtained by domestic facilities other than those that have been selected for NCAP testing would be impartial or accurate. This difficulty would be compounded in the case of foreign facilities. If a vehicle to be tested were transported from a dealership in the U.S. to the country of manufacturer and then to the test facility, NHTSA would have to practical way of ensuring that the vehicle had not been specically selected or modified prior to the test. Further, the agency has no obvious means of assessing the extent to which the foreign test facilities are independent of the manufacturers or assessing the capability of foreign testing facilities to conduct NCAP testing. Hence, the reason for permitting optional testing only at facilities that have conducted NCAP testing for NHTSA since 1985 is to ensure the continuing integrity of the NCAP program and to ensure that optional tests are conducted as identically as possible to the original NCAP tests sponsored by NHTSA. Since these purposes are fully consistent with and permitted by the Trade Agreements Act of 1979, NHTSA rejects Mazda's assertion that this constitutes an unfair trade practice.

CFAS commented that the agency should set guidelines for examining the financial connections of potential test facilities as part of its assessment of the facilitiy's qualifications for handling NCAP testing. NHTSA agrees with this commenter's point that the test facilities used by the agency must not be under the control of a member of the auto industry. If the agency learned of such a relationship, it could not allow the facility to conduct further testing for the agency. However, NHTSA has for many years use independent testing facilities not just for NCAP testing, but for compliance testing as well. In all that time, no one has even alleged that one of these facilities is somehow under the control of the auto industry. In fact, the fact that they are not controlled by an interested group is central to the business of these facilities. Therefore, the agency does not believe there is any need to revise the NCAP procedure along the lines suggested in this comment.

Current NCAP Test Procedures Must be Strictly Adhered to in any Optional Testing

The notice proposed that the current NCAP test procedures as specified in Docket No. 79–17 must be used in any optional testing. The only commenter that addressed this issue was GM and it agreed that those procedures should be followed. Accordingly, to ensure that any test results obtained under this program are comparable to other NCAP results, such a criterion is included in this notice.

NHTSA Must be Notified of the Day and Time of the Test and any Test Preparation Activities and Have a Representative Present for the Test and any Vehicle/Dummy Preparation

This criterion was proposed to further ensure that any optional testing results would be fully comparable to the initial series of NCAP tests. The presence of the agency representative will serve as a double check that the NCAP procedures are strictly followed.

GM stated that it concurred with the purpose of this proposed criterion. However, GM suggested that the proposed criterion be modified to allow testing to proceed without a NHTSA representative present under the following conditions:

1. A test date has already been scheduled and approved by NHTSA; and

2. A NHTSA representative is uanble to witness the test because of circumstances beyond the control of the manufacturer and the testing facility.

GM commented that a delay in testing in these circumstances would cause additional expenses for the manufacturer conducting the test. GM asserted that since only experienced NCAP test facilities would be conducting any retests, the absence of a double check in the unusual situation described above should not call into question the integrity of the test results.

NHTSA understands the concern expressed in this comment and agrees that it would increase the manufacturer's costs for optional NCAP testing through no fault of the manufacturer or the testing facility. However, this optional testing program has been carefully structured to ensure that there is no legitimate basis for questioning the impartiality or objectivity of the test results obtained thereunder. In order to maintain public confidence in the testing conducted under this optional program, the agency believes it is necessary that all optional testing be conducted with an agency representative present. Further, since the test results will be published under the agency's aegis, it is important that the agency itself be assured that the testing complied with all of the criteria set forth in this notice. Therefore, GM's suggested revision has not been incorporated in these final criteria.

CFAS commented that the criterion should be modified to provide for a minimum of two, and preferably three, NHTSA representatives present at each optional test "to guarantee the integrity of the NCAP." The agency agrees with the commenter's point that the impartiality and accuracy of the published NCAP results must be beyond question in order to maintain public confidence in the program. However, the agency has successfully monitored NCAP testing with a single representative for the past eight years. CFAS did not explain why, nor does the agency know of any reason why, more than one representative would be needed to monitor testing by the same test facilities following the same procedures. Hence, this optional program will continue the agency's practice of having a single representative present at every NCAP test.

The Test Vehicle Must Be Purchased at Random by the Testing Facility

The notice requesting comments noted that promoting public confidence in the NCAP program and the published test results requires that there be no possibility that a manufacturer could preselect the individual vehicle to be tested. Accordingly, the test vehicle would be purchased at random by the testing facility from a dealer. Since the only changes for which optional testing would be permitted must be production changes, the test vehicle would have to be available at any dealership.

GM commented that it supported this proposed criterion. Ford commented that a vehicle that was truly purchased "at random" might not contain the production changes that were the basis for the retest. Ford explained this comment further, by stating that some of its dealers stock large numbers of each model, and those dealers might still have vehicles of the earlier design in stock for several months after the change has gone into production. If the test facility purchased a vehicle manufactured before the production change, it would be a needless waste of time and money. To address this situation, Ford suggested that the manufacturer whose vehicle is being retested be required to inform NHTSA and the test facility of the month during which the production change was made. The test facility could then be sure that the vehicle it purchased actually incorporated the production change. The agency concludes that Ford has raised a valid point. The final criteria specify that the manufacturer must inform both this agency and the test facility of the month and year in which the subject production change was made.

Electronic Test Data, Test Films, and Test Report Must Be Completed in Accordance with Current NCAP Procedures and Copies Must Be Provided Directly to NHTSA for Analysis and Validation

This criterion was proposed to allow the agency a final opportunity to ascertain that the testing was conducted in conformance with the NCAP procedures before publicizing the results. GM commented that it supported this proposal, but recommended that it be expanded so as to provide the manufacturer that is paying for the retesting with the test information at the same time as the agency. Since the manufacturer is paying for the testing in question, the agency believes it should give the manufacturer the same opportunity to examine the date to ensure that the test was conducted in accordance with the NCAP procedures. Accordingly, the final criteria provide that the test data will be provided to both NHTSA and the sponsoring manufacturer.

After Validation, the Test Results Will Be Published as Part of NCAP Results

The notice proposed that, after validation by the agency, the test results would be published as part of the NCAP results, along with a summary of the production changes made to the retested vehicle. CFAS supported the proposal to include a summary of production changes, and suggested the agency use abbreviations to identify changes in general categories. For instance, SB would indicate a change to the shoulder belt, SC would indicate a change to the steering column, and so forth.

Other commenters opposed the proposal to publish a summary of the production changes made to the vehicle. GM commented that it opposed this proposal for two reasons. First, the production changes were likely to be proprietary information. Thus, the agency could not disclose the particular production changes in most cases, anyway. Second, GM argued that the information "is of no value to prospective purchasers". Ford and Nissan elaborated on this second point in their comments. Ford stated that the information would not be meaningful to consumers, because NCAP test results "are affected by many kinds of vehicle changes, and test score improvements typically result from a complex interaction of several changes." Nissan stated that publication of a summary of production changes would mislead consumers into believing that there exists proof of some casual relationship between certain changes and NCAP test results. In fact, according to Nissan, it is very difficult to isolate the effects of design changes that may influence NCAP test results from the numerous minor design changes that are routinely implemented in response to consumer demand. Nissan listed as examples of changes that might influence NCAP test results changes in the quality of seat cloth, carpeting or instrument panel surface.

After considering these comments, NHTSA has decided not to publish a summary of production changes along with the retest results. First, the agency believes that GM was correct when it observed that the production change information was very likely to be proprietary information. NHTSA is prohibited by Title II of the Cost Savings Act from disclosing proprietary information to the public; 15 U.S.C. 1944(f). Thus, the information would almost never be available for publication, regardless of the criteria for this optional retesting program.

Even assuming that the information was not eligible for confidential treatment, it would give rise to the potential for misrepresenting a cause and effect relationship between the identified changes and NCAP results. The complex interrelationships among the various systems in the vehicle mean that design changes that improve NCAP test results for one model would not necessarily have any effect on the NCAP test results of any other models on which the change might be implemented. However, if consumers were to see that some simple design change, such as an improved steering column, had yielded better NCAP test results for one model, those consumers could mistakenly conclude that this same design change would improve NCAP test results for all comparable models. The purpose of this optional testing program is to provide consumers with more accurate and timely NCAP information, not to potentially mislead them. Accordingly, the proposal to provide a summary of production changes for vehicles tested under this optional program is not included in these final criteria.

CFAS commented that the published information for vehicles tested under this optional program should include the date after which the production change was made to the vehicles. Since these final criteria specify that the manufacturer inform the agency and the test facility of the date when the subject production changes were made to ensure that a "changed" vehicle is purchased for testing, it is appropriate to ensure that consumers can also be certain of purchasing a "changed" vehicle. Accordingly, these criteria include this change suggested by CFAS.

The notice also proposed to annotate the NCAP press releases in some manner to indicate which test data were obtained from optional testing sponsored by the vehicle manufacturers, and sought public comment on how to best identify optional test data in the press releases. Ford commented that the agency itself has conducted retesting on its own in the past, yet has not routinely provided any special annotation of that fact in the press releases. An implicit point of this comment is that since tests under this optional program will strictly adhere to the same NCAP procedures as agency-sponsored retesting, there is no reason to treat them any differently than the agency-sponsored retesting. The agency believes this point is persuasive.

However, the primary purpose for proposing this special annotation was to ensure that consumers would know to which vehicles the retest results applied. Ford acknowledged this purpose in its comments, but stated that the retest results could achieve this purpose by identifying the retest results by model year, month of production, restraint system, etc. GM commented that, "The model year itself would provide sufficient distinction for customer use." NHTSA believes that the underlying premise of the Ford and GM references to the model year allowing consumers to distinguish vehicles to which NCAP results apply is that it is highly unlikely that all of the following events would be completed within the timeframe of a single model year:

1. A vehicle would be selected for testing by NHTSA in the NCAP program.
2. Testing would be completed by the facility and validated by NHTSA.
3. NCAP test results would be published.
4. The manufacturer would analyze the NCAP results and make certain design changes to improve the NCAP test results of the vehicle.
5. The design changes would be incorporated into production.
6. The manufacturer would request retesting of the changed vehicle and NHTSA would approve the request.
7. The retesting would be conducted, and the results validated by this agency.
8. The retest results would be published.

NHTSA agrees that it is highly improbable that all 8 of these steps could be completed in the space of a single model year. In almost all cases, the vehicle model for which the initial NCAP results were published would have an earlier model year designation

than the model for which the retest results were published. Accordingly, the consumer would be able to readily distinguish the vehicles to which the initial NCAP results apply from the vehicles to which the retest results apply simply by the model year of the vehicles, so there would be no need for any additional annotation. Therefore, the agency sees no reason to provide any special annotation with retest results.

All Retest Results Must be Made Publicly Available, Regardless of Their Magnitude, Unless There is a Violation of Test Protocol or an Equipment Failure

The proposed criteria specified that all retest results would be made publicly available, regardless of the magnitude of the difference in dummy injury results, unless there was a violation of test protocol or an equipment failure during the retest. This is the policy to which the agency has adhered since the inception of the NCAP program. It is essential that this optional testing program follow all of the procedures of the NCAP program, since the results obtained under it will be disseminated by the agency as NCAP testing.

GM was the only commenter that directly addressed this proposed criterion. GM supported the proposal, stating, "Without this requirement, the program could be criticized as being under the control of the manufacturer." Such a provision is included in these final criteria.

Criteria for Optional NCAP Testing

NHTSA will publish test results that are obtained in accordance with the following criteria as part of an NCAP press release.

1. The following vehicles are eligible for testing under this program:

a. Any model that has previously been tested under the NCAP program, and, at some time after the NCAP test results were released, the manufacturer has made production design changes to the model that are likely to significantly improve its NCAP test results.

b. A model selected by NHTSA that is in the same line as a model that was previously tested under the NCAP program, but the tested model is no longer in production, and, at some time after the NCAP test results were released, the manufacturer has made production design changes to the line of vehicles that are likely to significantly improve the NCAP test results.

c. Any model, whether or not previously tested under NCAP, that incorporates optional safety equipment or an innovative restraint system design (e.g., air bags, webbing clamps, a different type of energy-absorbing webbing, etc.).

2. The manufacturer must provide technical data to the agency describing the production design changes or the optional safety equipment or innovative restraint system, the reasons why the manufacturer believes that such design changes, safety equipment, or restraint system are likely to significantly improve the NCAP results for the vehicle, and the estimated or actual test results anticipated by the manufacturer if the vehicle were tested. The agency will analyze the submitted data and justification to decide if it indicates the vehicle is likely to show significantly improved NCAP results, and inform the manufacturer whether the vehicle is approved for testing under this program.

3. All approved testing must be conducted at an independent test facility that has conducted NCAP testing for NHTSA at any time in 1985 or later.

4. The NCAP procedures, as specified in Docket No. 79–17 and current as of the date of testing, must be followed.

5. NHTSA shall be notified of the day and time of the test and any prior test preparation activities, and shall have a representative present for the actual crash test and any vehicle/dummy preparation.

6. To ensure that the sponsoring manufacturer cannot preselect the vehicle to be tested, the test vehicle must be purchased at random by the test facility from a retail dealer. To ensure that the vehicle purchased for testing incorporates the changes or options that are the basis for the testing, the manufacturer shall notify the test facility and the NHTSA of the production date on and after which the change or options were incorporated into the vehicle. The test vehicle should be available through any dealership.

7. The electronic test data, test films, and test report must be completed according to the current NCAP test procedures. Copies of the electronic test data, test films, and test report are provided to the sponsoring manufacturer, and directly to NHTSA for analysis and validation in accordance with current agency procedures.

8. After validation, the test results would be published as part of NCAP results. If the tested model bears the same model year designation as a model tested under the initial series of NCAP testing, or if the changes that were the basis for retesting are not incorporated in all vehicles of that model type for the model year, the published NCAP results will indicate the production date on and after which the test results apply.

9. Absent violations in the test protocol or an equipment failure, all test results obtained under this program will be made public, regardless of their magnitude.

The agency will implement these criteria for optional testing on the day this notice is published in the Federal Register. Thus, any manufacturer that wishes to have one or more of its models tested under these criteria may submit its justification under criteria 2 at any time after the date this notice is published.

Issued on August 18, 1987.

Diane K. Steed,

Administrator.

[FR Doc. 87–19165 Filed 8–20–87; 8:45 am]

BILLING CODE 4910-59-M

Saint Lawrence Seaway Development Corporation

Advisory Board; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation, to be held at 2:00 p.m., September 17, 1987, at the Corporation's Operations Headquarters, Massena, NY. The agenda for this meeting will be a brief business meeting and a tour of the facilities.

Attendance at the meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact not later than September 14, 1987, Joan C. Hall, Advisory Board Liaison, Saint Lawrence Seaway Development Corporation, 400 Seventh Street SW., Washington, DC 20590; 202/366–0118.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC, on August 14, 1987.

Joan C. Hall

Advisory Board Liaison.

[FR Doc. 87–19160 Filed 8–20–87; 8:45 am]

BILLING CODE 4910-61-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: August 13, 1987.

The Department of the Treasury has

submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB number: New
Form number: 33
Type of review: New Collection
Title: Affidavit of Individual Surety on Bond
Description: Form 33 is required under Regulations section 301.7101–1(b)(3)(v) to provide information on the adequacy of security of individual surety given when posting a bond. This form is attached to Form 928, Gasoline Bond
Respondents: Individuals or households
Estimated burden: 25 hours

OMB number: 1545–0219
Form number: 5884
Type of review: Revision
Title: Jobs Credit
Description: Internal Revenue Code section 38(b)(2) allows a credit against income tax to employers hiring individuals from certain targeted groups (such as welfare recipients, etc.). The employer uses Form 5884 to figure this jobs credit. IRS uses the information on the form to verify that the correct amount of credit was claimed
Respondents: Farms, Businesses or other for-profit, Small businesses or organizations
Estimated burden: 55,913 hours

OMB number: 1545–0725
Form number: 928
Type of review: Revision
Title: Gasoline Bond
Description: Certain sellers of gasoline are required under sections 4101 to post bond before they incur liability for the gasoline excise tax imposed by section 4081. This form is used by taxpayers to give bond and provide other information required by Regulations section 48.4101–1
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations
Estimated burden: 172,975 hours
Clearance officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,
Departmental Reports, Management Officer.
[FR Doc. 87–19136 Filed 8–20–87; 8:45 am]
BILLING CODE 4810-25-M

VETERANS ADMINISTRATION

Veterans' Advisory Committee on Rehabilitation; Notice of Meeting

The Veterans Administration gives notice that a meeting of the Veterans' Advisory Committee on Rehabilitation, authorized by 38 U.S.C. 1521, will be held in Room 1010, Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC 20420, September 1–2, 1987. The sessions will begin at 8:30 a.m. The purpose of the meeting will be to review the administration of veterans' rehabilitation programs and provide recommendations to the Administrator.

The meeting will be open to the public up to the seating capacity of the conference room. Because of the limited seating capacity, it will be necessary for those wishing to attend to contact Dr. Carole J. Westerman, Executive Secretary, Veterans' Advisory Committee on Rehabilitation (phone 202–233–2886) prior to August 31, 1987.

Interested persons may attend, appear before, or file statements with the Committee. Statements, if in written form, may be filed before or within 10 days after the meeting. Oral statements will be heard at 9:30 a.m. on September 2, 1987. Administrative concerns delayed the timely publication of this notice.

Dated: August 17, 1987.
By direction of the Administrator.

Rosa Maria Fontanez,
Committee Management Officer.
[FR Doc. 87–19117 Filed 8–20–87; 8:45 am]
BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 162
Friday, August 21, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b) notice is hereby given that at 4:05 p.m. on Monday, August 17, 1987, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider matters relating to the possible failure of certain insured banks: Names and locations of banks authorized to be exempt from disclosure pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

At that same meeting, the Board also considered requests for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B).

Dated: August 19, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87-19336 Filed 8-19-87; 8:45 am]

BILLING CODE 6714-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 52 FR 30765, August 17, 1987.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Thursday, August 20, 1987.

CHANGES IN THE MEETING: Addition of the following open item(s) to the meeting:

Proposed Board statement regarding report required under the Competitive Equality Banking Act of 1987 of certain companies owning nonbank banks.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

William W. Wiles,

Secretary of the Board.

Dated: August 18, 1987.

[FR Doc. 87-19220 Filed 8-18-87; 4:44 pm]

BILLING CODE 6210-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, August 26, 1987.

PLACE Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW, Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed Federal Reserve Bank salary structure adjustments.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

William W. Wiles,

Secretary of the Board.

Date: August 18, 1987.

[FR Doc. 87-19227 Filed 8-18-87; 4:44 pm]

BILLING CODE 6210-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 9:30 a.m., Wednesday, August 19, 1987. The business of the Board required that this meeting be held with less than one week's advance notice to the public, and no earlier announcement of the meeting was practicable.

PLACE: 20th Street and Constitution Avenue, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS CONSIDERED: Preliminary consideration of testimony on banking issues.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Date: August 19, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-19283 Filed 8-19-87; 12:48 pm]

BILLING CODE 6210-01-M

LEGAL SERVICES CORPORATION

Audit and Appropriations Committee Meeting; Amendment of Agenda

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Published August 19, 1987, 52 FR 31121.

PREVIOUS ANNOUNCED TIME AND DATE OF MEETING: The meeting is to be held on Friday, Augsut 28, 1987. It will commence at 9:00 a.m. and continue until all official business is completed.

EXPLANATION OF CHANGE: Item number two will be added in between item numbers one and three under Matters To be Considered. It will read as follows:

2. Approval of the Minutes—Meeting of June 26, 1987.

CONTACT PERSON FOR MORE INFORMATION: Maureen R. Bozell, Executive Office (202) 863-1839.

DATE ISSUED: August 19, 1987.

Maureen R. Bozell,

Acting Secretary.

[FR Doc. 87-19338 Filed 8-19-87; 4:03 pm]

BILLING CODE 6820-35-M

LEGAL SERVICES CORPORATION

Board of Directors Meeting; Amendment of Agenda

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Published August 19, 1987 (52 FR 31121).

PREVIOUS ANNOUNCED TIME AND DATE OF MEETING: Board of Directors meeting will commence at 8:00 p.m. on Thursday, August 27, 1987, with a closed Executive Session, which will be held in the Board Room, 4th Floor. The public meeting of the Board will commence at 10:30 a.m.

on Friday, August 28, 1987, and reconvene at 3:15 p.m. until all official business is completed.

EXPLANATION OF CHANGE: Item number nine will be added to Page Two under Matters to Be Considered and will read as follows:

EXPLANATION OF CHANGE: Item number nine will be added to Page Two under Matters To Be Considered and will read as follows:

9. Update on National Commission for Legal Services
—Discussion
—Public Comment

CONTACT PERSON FOR MORE INFORMATION: Maureen R. Bozell, Executive Office (202) 863–1839.

DATE ISSUED: August 19, 1987.

Maureen R. Bozell,

Acting Secretary.

[FR Doc. 87–19255 Filed 8–19–87; 12:56 pm]

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Corrections

Federal Register
Vol. 52, No. 162
Friday, August 21, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 50

[AD-FRL-3244-2]

National Ambient Air Quality Standards for Particulate Matter

Correction

In rule document 87-17983 beginning on page 29382 in the issue of Friday, August 7, 1987, make the following corrections:

1. On page 29383, in the first column, in paragraph 20, under formula (4), in the second line of text, "x_i" should read "$\bar{x}_i$".

2. In the second column, in the first line, insert a closed parenthesis after "63.2".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51681; FRL-3225-1]

Certain Chemicals Premanufacture Notices

Correction

In notice document 87-14914 beginning on page 24525 in the issue of Wednesday, July 1, 1987, make the following correction:

On page 24526, in the first column, insert the following entries between the 18th and 19th lines:

"P 87-1286, 87-1287, 87-1288 and 87-1289—August 15, 1987."

BILLING CODE 1505-01-D

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August 21, 1987

Part II

Department of Energy

Office of the General Counsel

Second Plan of Action To Implement the International Energy Program; Notice

DEPARTMENT OF ENERGY

Office of the General Counsel

Second Plan of Action To Implement the International Energy Program

AGENCY: Department of Energy.

ACTION: Public hearing and request for comments on the draft "Second Plan of Action to Implement the International Energy Program."

SUMMARY: The Department of Energy will hold a public hearing on a draft "Second Plan of Action To Implement the International Energy Program" and invites oral and written public comment on whether this plan of action should be approved by the Secretary of Energy and the Attorney General. The document describes the types of substantive actions which the U.S. oil companies participating in the existing Voluntary Agreement and Plan of Action To Implement the International Energy Program, which was adopted in 1976, may take during implementation of emergency international oil sharing as provided in the Agreement on an International Energy Program (IEP). The IEP emergency oil sharing system, operated by the International Energy Agency (IEA), can be activated only when the IEA group of countries as a whole or an individual IEA country experiences an oil supply emergency involving at least a seven percent supply shortfall.

Section 252 of the Energy Policy and Conservation Act makes available a limited antitrust defense with respect to actions taken by U.S. oil companies to implement the information and allocation provisions of the IEP, provided that such actions are described in a voluntary agreement or plan of action. A plan of action is required to be as specific in its description of proposed substantive actions as is reasonable in light of known circumstances.

The draft "Second Plan of Action To Implement the International Energy Program," which we publish today as an appendix to this notice, is the product of extensive interchanges over a period of years involving representatives of U.S. oil companies participating in the Voluntary Agreement, the IEA's Secretariat, and staffs of the Department of Energy, the Department of Justice, the Department of State and the Federal Trade Commission. The document also reflects public comments on earlier drafts solicited by the Department of Energy on May 8, 1981, and again on October 28, 1983. The draft Second Plan of Action was considered by U.S. oil companies participating in the Voluntary Agreement at a meeting of the IEA's Group of Reporting Companies held at the Department of State on July 29, 1987. At the conclusion of that meeting, the IEA Secretariat advised the U.S. Government that the Group of Reporting Companies favored proceeding with adoption of this Plan of Action.

Approval of the Secretary of Energy, and of the Attorney General after he has consulted with the Federal Trade Commission, is required before a plan of action may be carried out. Comments submitted in response to this Notice will be considered in reviewing the Plan of Action, prior to its consideration by the Secretary of Energy, the Attorney General, and the Federal Trade Commission.

If approved by the Secretary of Energy and by the Attorney General, after consultation with the Federal Trade Commission, the "Second Plan of Action To Implement the International Energy Program" would go into effect only if the President finds that an "international energy supply emergency" exists.

DATES:

Written comments by: September 21, 1987.

Hearing: 9:30 a.m.; September 22, 1987.

Requests to speak by: September 16, 1987.

ADDRESSES: Written comments and requests to speak to: Samuel M. Bradley, Deputy Assistant General Counsel for International Affairs (GC–41), Department of Energy, Forrestal Building, Room 6A–167, 1000 Independence Avenue SW., Washington, DC 20585, Telephone: (202) 586–2900. Hearing: Room 6E–069, U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Craig S. Bamberger, Assistant General Counsel for International Affairs, Department of Energy, Forrestal Building, Room 6A–167, 1000 Independence Avenue SW., Washington, DC 20585, Telephone: (202) 586–2900.

James R. Weiss, Chief, Transportation, Energy & Agricultural Section, Antitrust Division, Department of Justice, Judiciary Center, 555 4th Street NW., Room 9824, Washington, DC 20044, Telephone: (202) 724–6526.

Ronald B. Rowe, Assistant Director, Bureau of Competition, Federal Trade Commission, 601 Pennsylvania Avenue NW., Room 3303, Washington, DC 20580, Telephone: (202) 326–2622.

David H. Small, Assistant Legal Adviser for Economic, Business and Communications Affairs, Office of the Legal Advisor, Department of State, 2201 C Street NW., Room 6420, Washington, DC 20520, Telephone: (202) 647–5242.

SUPPLEMENTARY INFORMATION:

I. Background
II. Agenda for the Hearing
III. Discussion of the Plan of Action
1. Coverage of the Plan of Action
2. Exclusions From the Plan of Action
3. Recordkeeping, Reporting and Monitoring
IV. U.S. Government Approval of the Plan of Action
V. Comment Procedures

Appendices

Appendix 1: Second Plan of Action To Implement the International Energy Program
Appendix 2: Amendments to the Voluntary Agreement and Plan of Action To Implement the International Energy Program

I. Background

Following the oil embargo of 1973, the United States and certain other members of the Organization for Economic Cooperation and Development (OECD) entered into the Agreement on an International Energy Program (IEP), TIAS 8278, which provided for creation of the International Energy Agency (IEA), headquartered in Paris, France, as an autonomous agency of the OECD. The IEP's main purposes include reducing the Free World oil consuming nations' vulnerability to supply disruptions by encouraging self-sufficiency in oil supplies; avoiding competition for short supplies of available oil during a disruption through an Emergency Sharing System for equitably allocating those supplies among the signatory countries; establishing a comprehensive international information system; and creating a forum for cooperation with governments and consultation with oil companies. There are now 21 IEA member countries, consisting of all OECD members except France, Finland and Iceland. The IEP provides that the IEA's Emergency Sharing System (ESS) may be activated only when the IEA group of twenty-one member countries as a whole or an individual IEA country experiences a seven percent or greater shortfall of available petroleum supplies, measured against a specified base period.

The oil companies of the U.S. and the other IEA countries would play a vital role in the implementation of the Emergency Sharing System, providing essential information, advising the IEA on supply and logistical matters, and

actually effectuating international oil allocation. It has been recognized from the outset that the performance of these functions at the behest of governments could expose companies to antitrust and breach of contract risks under U.S. law. To facilitate U.S. company participation in the IEA, the Congress in 1975 enacted section 252 of the Energy Policy and Conservation Act (EPCA), 42 U.S.C. 6272, which authorizes the development of voluntary agreements and plans of action to implement the allocation and information provisions of the IEP, and makes available a limited antitrust defense and a breach of contract defense with respect to actions taken to develop or carry out voluntary agreements and plans of action.

A Voluntary Agreement and Plan of Action to Implement the International Energy Program (Voluntary Agreement) was agreed to in 1976 by a number of U.S. oil companies. *See* 41 FR 13998 (April 1, 1976) and 2 CCH Federal Energy Guidelines, para. 15,845. At the present time the following seventeen companies, which have agreed to be IEA Reporting Companies, are participants in the Voluntary Agreement:

Amerada Hess Corporation
Amoco Corporation
ARCO
Ashland Oil, Inc.
Caltex Petroleum Corporation
Chevron Corporation
CONOCO, Inc.
Exxon Corporation
Mobil Oil Corporation
Occidental Petroleum Corporation
Phillips Petroleum Company
Shell Oil Company
The Standard Oil Company
Sun Company, Inc.
Texaco Inc.
Union Pacific Resources Company
Unocal Corporation

Section 6(c)(1) of the Voluntary Agreement provides for the development of plans of action elaborating and applying IEA allocation principles and measures, and describing the types of substantive actions which may be taken under the plan, in the event that the Emergency Sharing System is triggered by an oil supply emergency.

Section 252 of the EPCA, and the existing Voluntary Agreement, contemplate that the oil companies which participate in the Voluntary Agreement will play a role in developing plans of action. Before a plan of action can be made effective, it must be approved by the U.S. Government: EPCA section 252(d) requires approval by the Attorney General, after he has consulted with the Federal Trade Commission, and the Voluntary Agreement itself calls for approval of plans of actions by the Secretary of Energy. The existing Voluntary Agreement contains a plan of action describing company actions which may be taken when IEP oil sharing has been triggered. However, the provisions of that plan of action understandably are very broad and general, since it was adopted in 1976 while the IEP Emergency Sharing System was in an early stage of development, whereas EPCA section 252(d)(3) requires that a plan of action describe the "types of substantive actions" which may be taken under the plan, and calls for a plan of action "as specific in its description of proposed substantive actions as is reasonable in light of known circumstances." For that reason, efforts have been under way for a period of years to prepare a new draft plan of action setting out in much more precise detail those activities in which industry would engage while implementing IEP emergency oil sharing, and to which the limited antitrust and breach of contract defenses would apply.

The oil company participants in the Voluntary Agreement several years ago indicated their desire that the Executive Branch take the lead in drafting a new plan of action. Accordingly, staff of the Department of Energy (DOE), in cooperation with staff of the Departments of Justice and State and the Federal Trade Commission, initially performed this function, preparing draft texts for consideration by the participating companies; the first two such drafts were published in the **Federal Register** on May 8, 1981 (46 FR 26026), and October 28, 1983 (48 FR 49906), respectively, to solicit public comments. Subsequently, the companies elected to play a greater role in drafting the proposed plan of action, and the Plan of Action published below is the product of an extensive interchange at meetings of Subcommittee C of the IEA's Industry Advisory Board (IAB) involving representatives of U.S. Reporting Companies, the IEA's Secretariat, and staffs of the concerned U.S. Government agencies.

The Plan of Action was essentially finalized at a meeting of Subcommittee C, held in White Plains, New York, on April 2, 1987, and at a subsequent meeting of the IAB in Paris on June 9, 1987. The final draft of the Plan of Action was considered by U.S. Voluntary Agreement participants at a meeting of the IEA Group of Reporting Companies held at the Department of State on July 29, 1987. At that meeting some concerns were voiced that the Plan of Action was less flexible than might be desired in order to facilitate oil company implementation; in particular, the recordmaking and recordkeeping provisions were perceived as burdensome, and questions were raised as to the operational effects of omitting Plan of Action coverage for so-called "Type 1 activities" (discussed below). Nonetheless, at the conclusion of the meeting the IEA Secretariat advised the Department of Energy that, on balance, the Group of Reporting Companies favored proceeding with adoption of this Plan of Action.

II. Agenda for the Hearing

A DOE official will be designated to preside at the hearing, and representatives of the Departments of Justice and State and the Federal Trade Commission also will serve on the hearing panel. The following is the agenda for the hearing:

1. Description of the Plan of Action.
2. Responses to questions from attendees.
3. Oral presentations by attendees.

For more details concerning the hearing procedures, see Section V of this Notice.

III. Discussion of the Plan of Action

Section 6(a) of the existing Voluntary Agreement authorizes the participating oil companies, during an "international energy supply emergency," to "take such actions as may be necessary or appropriate to implement emergency allocation programs of the IEA," including certain specified actions. The Plan of Action which appears below at Appendix 1, if adopted, would replace paragraph (B) of section 6(a), which specifies as one type of action the participating companies are authorized to engage in, "Arrangements among the participants for the purchase, loan, sale, or exchange of petroleum by and among themselves, or with other persons or entities."

Because of the length and complexity of the Plan of Action, it would be placed in an appendix (Appendix B) to the Voluntary Agreement, and incorporated by reference into the Voluntary Agreement. All of the remaining provisions of the Voluntary Agreement would apply to the Plan of Action as though its full text physically were within the Voluntary Agreement, including the Voluntary Agreement's section 6 provisions for carrying out the Plan of Action only following a Presidential determination that there exists an "international energy supply emergency."

The Plan of Action consists of ten sections and two annexes; in addition to the Plan of Action *per se*, there are several implementing amendments to the Voluntary Agreement. Much of the Plan of Action is devoted to describing the IEA Emergency Sharing System which the participating oil companies would help carry out, in the event that the Sharing System were active during an emergency; certain other provisions deal with administrative arrangements.

There are three key sections of the Plan of Action. In terms of conveying legal protection to the companies for their participation in the IEA System, the most significant provisions are in Section 5, "Specification of Substantive Actions," and Section 6, "Confidential or Proprietary Information Which May Be Communicated by or to Voluntary Agreement Participants and Their Employees," each as limited by a provision in Section 2.2 which excludes from the Plan of Action all so-called "Type 1 activities" (explained below). The third key section is Section 8, "Requirements for Recordkeeping, Reporting and Monitoring."

1. Coverage of the Plan of Action

Section 252(f) of the EPCA makes available a limited defense to a legal action brought under the antitrust laws, in respect to actions taken to carry out a properly approved plan of action, unless such actions to carry out the plan of action were taken "for the purpose of injuring competition."[1] However, this defense is available "only if the person asserting the defense demonstrates that the actions were specified in, or within the reasonable contemplation of, an approved plan of action." And as noted above, section 252(d)(3) conditions the Government's approval of any plan of action on its describing with specificity the substantive actions which may be taken under it. The function of Section 5, therefore, is to specify the substantive actions which may be taken under the Plan of Action by participating U.S. Reporting Companies and those of their affiliates which participate in the Voluntary Agreement, inclusive of activities undertaken through the IAB or in the Industry Supply Advisory Group (ISAG), which is comprised of industry technical experts who would advise the IEA Secretariat in Paris on oil allocation during an emergency.

The function of Section 6 is to specify what types of confidential or proprietary information or data may be communicated, either in writing or orally, when the Voluntary Agreement participants take substantive actions that are covered by the Plan of Action. This section is based on similar provisions that have been used in U.S. Government approval letters for IEA Allocation Systems Tests. *See, e.g.*, 50 FR 41383 (October 10, 1985).

2. Exclusions From the Plan of Action

The coverage provided by Sections 5 and 6 is, however, subject to certain express exclusions. A question which has received considerable attention in the development of the new Plan of Action is whether there should be antitrust protection for the communication by participating U.S. oil companies to the IEA's Emergency Management Organization (EMO), consisting of the ISAG and the Secretariat, of transactional oil price information. Section 5.5 specifically excludes such oil price communications from the Plan of Action, with certain very narrow exceptions for special functions of the IEA Secretariat. In addition, Section 6.15 excludes from Plan of Action coverage, the communication of confidential or proprietary information or data concerning company oil costs, market shares, or long-term programs for investment, divestment, refining, operating, transportation or marketing.

Another important exclusion from the Plan of Action, alluded to above, is contained in Section 2.2: "Notwithstanding any other provision of this Plan of Action, specifically excluded from this Plan of Action are all Type 1 activities." Simply stated, "Type 1 activities" are those oil supply transactions and related activities which oil companies would undertake voluntarily and independently of the EMO and of the IEP Emergency Sharing System procedures for EMO approval of proposed oil transactions ("voluntary offers"). "Type 2 activities," in contrast, involve the submission of proposed "voluntary offers" to the EMO for review by the ISAG and IEA Secretariat, and Type 2 supply transactions are not to be implemented unless and until they have been approved by the EMO.[2] And until the recent adoption by the IEA Governing Board of a proposal described below, the Emergency Sharing System was structured so that the "voluntary offers" could not be submitted to the EMO by participating oil companies until roughly mid-way through each monthly allocation cycle, when each IEA member country's exact oil allocation right or allocation obligation under the Sharing System formula would be known.

The question of antitrust and breach of contract protection for Type 1 activities has been the most controversial issue raised during preparation of the Plan of Action. The issue gained prominence after the IEA's Second Allocation Systems Test (AST-2) in 1978, as the participating U.S. oil companies observed increasing EMO emphasis on the use of Type 1 transactions within the IEP Emergency Sharing System, and in that connection on the role of the IEA Secretariat and the ISAG in exhorting Reporting Companies to redirect oil to countries thought likely to have rights to receive it under the IEP Sharing System's formula. Over time, the U.S. Reporting Companies became more worried that efforts of the Secretariat or the ISAG to influence their Type 1 transactions could expose the companies to antitrust risks like those arising from their Type 2 transactions, which it is generally recognized need antitrust protection. Because the IEP Emergency Sharing System depends upon the voluntary participation of oil companies, which was being thrown into doubt by Type 1 legal risks, in 1984 the Department of Energy, with the concurrence of the Department of Justice, began to explore with the IEA Secretariat and the U.S. Reporting Companies whether it was possible to develop some selective form of Type 1 coverage; that is, whether a narrowly constructed, carefully monitored Type 1 coverage could be developed in the Plan of Action which would allay the concerns of the companies and facilitate the operation of the Sharing System, without overextending antitrust and breach of contract protections to normal commercial transactions that might have occurred without regard to IEA oil allocation.

In 1985, however, while these efforts were under way, apprehension developed on the part of the General Accounting Office and in the Congress that overly broad Type 1 Plan of Action coverage might ultimately be allowed. As a result, in the course of enacting legislation to extend the EPCA, the Congress added a new subsection (m) to section 252. Under this provision, any Plan of Action which made the section 252 defenses available to Type 1 activities would have to be submitted to Congress under a prescribed Congressional review procedure, in order for the Type 1 coverage to be

[1] The contract breach defense under section 252(j) applies where the breach was caused "predominantly by action . . . to carry out" a plan of action.

[2] There also is a category of "Type 3 activities," involving government-mandated supply actions, as a last resort if the voluntary system fails.

valid. Pub. L. No. 99–58, section 105 (July 2, 1985).

Although consideration of proposals for Type 1 coverage in the Plan of Action subsequently resumed, what now has made possible the completion of a Plan of Action which excludes Type 1 coverage, is a significant innovation in the IEP Emergency Sharing System with respect to *Type 2* activities. On November 6, 1986, the IEA Governing Board adopted a proposal of the IEA Secretariat which was designed to enhance the operational effectiveness of the IEP Emergency Sharing System, and which had corollary benefits for the potential development of a Plan of Action satisfactory to the U.S. Government, the IEA Secretariat, and the U.S. oil companies participating in the Voluntary Agreement.

The operational problem with which the proposal was meant to deal, was that the current oil allocation system as well as the voluntary offer procedure were established more than ten years previous, at a time when a relatively small number of large, integrated oil companies accounted for a greater share of the world oil market than today and when long-haul crude oils traded via long-term contracts were still the main element in the markets. At that time, it was believed that decisions to eliminate or reduce supply imbalances among IEA member countries through redirection of floating crude oil cargoes could be made without undue haste in view of the long travelling times and the small number of main players. But the increased importance since then of short-haul oil cargoes and of spot crude oil and refined product transactions has changed this situation, and now necessitates a faster responding decision process. Furthermore, technical improvements (*e.g.*, current computing capabilities) permit a more flexible EMO operating approach than was considered possible ten years before.

The Secretariat's proposal, known as the "Wider Window" concept, dealt exclusively with the so-called "closed-loop" form of Type 2 voluntary offers—*i.e.*, with proposed international supply transactions that already have been worked out with a prospective trading partner, either within the same international oil company or with an independent company. This is in contradistinction to an "open-loop" type of voluntary offer, which is a firm's proposal to either supply oil to or receive oil from another country, without predesignation of a trading partner, so that its offer may be matched up with a proposed trading partner by the EMO. Under the "Wider Window" proposal, as adopted by the Governing Board, "closed-loop voluntary offers" could be submitted to the ISAG or the IEA Secretariat at any time during an allocation cycle, not just at specified times, as in the case of "open-loop" voluntary offers. Moreover, the Secretariat and the ISAG, on an expedited basis (within a period of no more than 48 hours after receipt of the "closed-loop" voluntary offer), are to process each proposed Type 2 transaction and notify the proposing company or companies of the EMO's approval, disapproval, or determination that there is insufficient information to act upon a voluntary offer.

In adopting the IEA Secretariat's proposal, the IEA Governing Board requested the Secretariat to prepare draft implementing amendments to the IEA Emergency Management Manual (EMM), an IEA-classified document which codifies Governing Board decisions on the operation of the IEP Emergency Sharing System. In the interim, the Governing Board agreed to apply these Emergency Sharing System modifications on a provisional basis, in order to enable the U.S. Government to proceed with a Plan of Action which takes them into account.

The Plan of Action which appears below reflects the IEA's adoption of the "Wider Window" concept. By allowing Type 2 activities to occur at any time during a monthly allocation cycle, it gives the participating companies a means to avoid the antitrust risks previously associated with Type 1 activities.

At the July 29 meeting of the Group of Reporting Companies, some concern was expressed that disallowance of coverage for Type 1 activities, combined with adoption of the "Wider Window" approach, could result in overloading the Emergency Sharing System with "closed-loop voluntary offers," beyond the capacity of the EMO to process them. We are not convinced that this is a serious risk, but would give consideration to further comments on the issue.

3. Recordkeeping, Reporting and Monitoring

In order to enjoy the benefits of the legal defenses contained in Section 252, a participating oil company must comply with the conditions of this Plan of Action applicable to it. Section 8 of the Plan of Action, "Requirements for Recordkeeping, Reporting and Monitoring," imposes such conditions. It is basically through this section that there is to be established and maintained the "full and complete record of any meeting held," and of "any communication (other than in a meeting) made, between or among participants or potential participants," which is required by EPCA section 252(c)(3), and by regulations of the Departments of Energy and Justice at 10 CFR Parts 209 and 28 CFR Part 56, respectively.

Provisions for recordkeeping, reporting and monitoring have been included in the U.S. Government's approval letters for each of the IEA's five Allocation Systems Tests (ASTs). *See e.g.*, 50 FR 41383 (October 10, 1985). These AST approval letters, which gradually have been improved and clarified over the years, were used as a starting point in the preparation of Section 8. As Section 8 was developed, all parties concerned were conscious of the desirability of simplifying and clarifying its provisions, and of removing burdens on industry to the maximum extent possible consistent with the Government's antitrust responsibilities. Extensive drafting efforts repeatedly have been made toward that end.

Nonetheless, it is recognized that the recordmaking and recordkeeping provisions of the Plan of Action are complex. While most of the issues raised by these requirements already have been the subject of substantial discussion, the Government will remain receptive, following adoption of a new Plan of Action, to any suggestions for lightening or simplifying them in a manner consistent with the Government's responsibilities under the EPCA and the antitrust laws. It should be noted that the provisions at Annex I to the draft Plan of Action, for the disposition and retention of "computer documents", are of more recent origin and are considered to be tentative in nature. As the Annex explains, it is intended that these provisions be tested in the IEA's next Allocation Systems Test, AST–6, presently scheduled for late 1988, in order to evaluate whether companies are capable of complying with these requirements without undue burden.

IV. U.S. Government Approval of the Plan of Action

Section 252(d) of the Energy Policy and Conservation Act provides that before a plan of action which has been approved by the U.S. Voluntary Agreement participants can be made effective, it must be approved by the Attorney General, after consultation with the Federal Trade Commission, which is required to publish in the **Federal Register** its views as to whether the plan of action should be approved. Section 6(c)(1) of the existing Voluntary

Agreement further requires that the Secretary of Energy approve a plan of action, before it may be carried out. After considering public comments received in response to this Notice, the staffs of the concerned government agencies will then be prepared to address the question of recommending, in accordance with these procedures, official Government approval of the Plan of Action.

As indicated above, section 252(m)(1) of the EPCA, added in 1985, provides with respect to a new plan of action that only after the Congressional review prescribed in that subsection shall the section 252 antitrust and breach of contract defenses be applicable to Type 1 activities. Even though the Plan of Action which we publish today at Appendix 1 to this notice does not provide for the kind of so-called "Type 1" coverage which as a legal matter would necessitate submission to Congress, under prescribed procedures for Congressional review, we nonetheless would expect to transmit a copy of the Plan of Action to Congress.

Following approval by the Secretary of Energy and the Attorney General, after he has consulted with the Federal Trade Commission, the "Second Plan of Action to Implement the International Energy Program" would go into effect only if the President finds that an "international energy supply emergency" exists. EPCA section 252(k)(1) defines this term as meaning a period when the President determines that oil allocation to IEA countries is required by the IEP.

V. Comment Procedures

A. Written Comments

You are invited to submit your comments on the draft Plan of Action set forth in the appendix to this Notice and, in addition, your views on whether it should be approved by the U.S. Government. Comments should be in writing, identified on the outside envelope and on the documents submitted with the designation "Second Plan of Action to Implement the International Energy Program." Comments should be submitted by the date indicated in the "DATES" section of this Notice and to the address indicated in the "ADDRESSES" section. Ten copies should be submitted. Any information or data submitted and which you consider to be confidential must be so identified and submitted in writing, one copy only. We reserve the right to determine the confidential status of such information or data and to treat it according to our determination. We will consider all comments received by September 21, 1987.

B. Public Hearing

The time and place for the public hearing are indicated in the "DATES" section of this Notice. You may make an oral or written request to make an oral presentation at the hearing. Such requests must be submitted to the individual whose name appears in the "ADDRESSES" section by the date indicated in the "DATES" section. Persons scheduled to speak at the hearing must bring 25 copies of their statement to the hearing room on the date of the hearing.

We reserve the right to schedule the oral presentations, to assure that proposed presentations are sufficiently relevant to the subject of the hearing, and to establish the procedures governing the conduct of the hearing. The length of each presentation may be limited, based on the number of persons requesting to be heard.

A DOE official will be designated to preside at the hearing. Each person who has made an oral statement will be given the opportunity, if he or she desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

You may ask questions of any U.S. Government official participating in the hearing or of any person making a statement at the hearing. Although oral questions will be permitted, we request that questions be submitted in writing to the presiding officer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made, and we will retain the entire record of the hearing, including the transcript, which will be made available for inspection at the DOE Freedom of Information Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. You may purchase a copy of the transcript of the hearing from the reporter.

Issued in Washington, DC, August 14, 1987.

J. Michael Farrell,
General Counsel.

Appendix 1—Second Plan of Action to Implement the International Energy Program

1.0 Definitions

For purposes of this Plan of Action:

"Allocation site" means that space in IEA headquarters or elsewhere designated by the Allocation Coordinator as the area in which the Emergency Management Organization shall conduct its operations.

"Communication" means any written or unwritten disclosure, provision or exchange of information or data relating to the carrying out of this Plan of Action.

"Confidential or proprietary information or data" means information or data relating to an oil company or group of oil companies that: (A) May tend to cause harm to competition or to the competitive position of that company or group if disclosed and (B) customarily (i) is not disclosed by that company or group to other persons or (ii) is disclosed to other persons pursuant to a restriction on further disclosure of such information or data.

"Document" means any material substance containing information or data relating to the carrying out of this Plan of Action, including "computer documents" (as defined in Annex I hereto) but excluding voice recordings.

"Emergency Management Organization" means any or all of the functional offices or groups at the allocation site which will supervise IEA oil allocation, and includes the Standing Group on Emergency Questions, the Standing Group on Emergency Questions Emergency Group, the Allocation Coordinator and his team, various task forces of the IEA Secretariat, the Industry Advisory Board, including its subcommittees, and the Industry Supply Advisory Group.

"EMM" means the Emergency Management Manual approved by the IEA Governing Board and issued by the IEA, as in effect during an international energy supply emergency.

"Employee" means any employee or director of a Voluntary Agreement participant. A person serving on the Industry Supply Advisory Group who is an employee or director of an affiliate of a Voluntary Agreement participant shall be deemed an employee of such participant without regard to whether such affiliate is covered pursuant to section 9(b)(3) of the Voluntary Agreement.

"IEA oil allocation" means international allocation of petroleum activated and taking place in accordance with Chapters III, IV and the Special Section of Chapter V of the IEP, as in effect during an international energy supply emergency.

"ISOM" means the Industry Supply Advisory Group/IEA Secretariat Operations Manual describing activities of the Industry Supply Advisory Group

and the IEA Secretariat during a period when the IEA Secretariat and the Industry Supply Advisory Group are assisting the Allocation Coordinator in IEA oil allocation.

"Questionnaire A" means the monthly data submission by a Reporting Company to the IEA Secretariat, which provides for the current month, the two prior months and the two following months, specified data on imports by country of origin, exports by country of destination, indigenous production, bunkers, stocks at sea and inventories to, from or in the IEA countries as prescribed in the EMM and denominated therein as "Questionnaire A".

"Questionnaire B" means the monthly data submission by the National Emergency Sharing Organization ("NESO") or other governmental agency of an IEA country to the IEA Secretariat which provides for the current month, the two prior months and the two following months, specified data on imports by country of origin, exports by country of destination, indigenous production, bunkers, stocks at sea and inventories for all oil companies engaged in such activities in the country concerned, as prescribed in the EMM and denominated therein as "Questionnaire B".

"Type 1 activities" means those communications and other actions of Reporting Companies and their affiliates, and of Non-Reporting Companies, defined or described as "Type 1" activities in the EMM. They include activities of such companies to rearrange their supply systems in response to the emergency situation, including sale or exchange transactions with or by affiliated or non-affiliated companies, undertaken voluntarily and independently of the Emergency Management Organization and of the voluntary offer procedures set forth in the EMM. In undertaking these activities, such companies may take into account information on IEA countries' allocation rights and allocation obligations.

"Type 2 activities" means those communications and other actions of Reporting Companies and their affiliates, and of Non-Reporting Companies, defined or described as "Type 2" activities in the EMM. They also include submission of data to NESOs or other governmental agencies of IEA countries and to the IEA Secretariat; communication with NESOs, the Emergency Management Organization, or other Reporting or Non-Reporting Companies in connection with the making of voluntary offers to reallocate or redirect oil supplies in accordance with the procedures set forth in the EMM; and implementation of voluntary offers which have been approved by the Allocation Coordinator ("Type 2 transactions"). Type 2 activities do not include the implementation of oil supply arrangements other than those for which voluntary offers have been approved by the Allocation Coordinator.

"Type 3 activities" means those communications and other actions of Reporting Companies and their affiliates, and of Non-Reporting Companies, defined or described as "Type 3" activities in the EMM. Generally, these will include all actions to implement IEA oil allocation mandated by governments of IEA countries ("Type 3 transactions").

"Voluntary Agreement" means the "Voluntary Agreement and Plan of Action to Implement the International Energy Program" as amended or modified (to which this Plan of Action is Appendix B).

"Voluntary Agreement participant" means an oil company whose participation in the Voluntary Agreement has been approved pursuant to section 9(b)(1) thereof, and also any affiliate of that oil company covered, pursuant to section 9(b)(3) of the Voluntary Agreement, through the approval of that oil company.

See section 3 of the Voluntary Agreement for additional definitions.

2.0 Scope of This Plan of Action

2.1 This Plan of Action describes and specifies substantive actions of Voluntary Agreement participants and their employees in advising and assisting the IEA in implementing oil allocation during an international energy supply emergency. Actions taken to carry out this Plan of Action are entitled to the antitrust defense accorded under section 252(f) of EPCA provided that the person taking them has complied with the applicable requirements of section 252 of EPCA, the regulations implementing section 252 of EPCA, the Voluntary Agreement, and the conditions of this Plan of Action applicable to such person.

2.2 *Exclusion.* Notwithstanding any other provision of this Plan of Action, specifically excluded from this Plan of Action are all Type 1 activities.

3.0 Description of Entities Involved

This section describes the entities presently expected to participate in IEA oil allocation during an international energy supply emergency.

3.1 The Standing Group on Emergency Questions ("SEQ"), composed of representatives of IEA countries, carries out functions assigned to it in the IEP, and any other function delegated to it by the IEA Governing Board. The SEQ Emergency Group ("SEQ–EG") is an IEA body reporting to the IEA Governing Board, composed of representatives from each IEA country, which is convened during the period of IEA oil allocation. The SEQ–EG is responsible for ensuring intergovernmental agreement or consensus as regards decisions taken in implementation of the IEP during an emergency; it also is responsible for maintaining communications between the IEA and IEA countries on matters of emergency policy or problems.

3.2 The Allocation Coordinator is the Executive Director of the IEA. The Allocation Coordinator is assisted by a small team and may designate one or more members of this team to act on his behalf on particular matters. The Allocation Coordinator and his team will be responsible to the SEQ–EG for the supervision and direction of IEA oil allocation. This responsibility will include reviewing and approving proposed allocation actions, coordinating with the SEQ–EG on policy guidance and on problems, and ensuring that the implementation of allocation is consistent with the principles and objectives of the IEP and the EMM. The Allocation Coordinator is responsible for approving for implementation those voluntary offers he deems most suitable in the circumstances.

3.3 The IEA Secretariat, consisting of the Executive Director and the staff, will be organized as appropriate to deal with various aspects of IEA oil allocation.

3.4 NESOs are governmental organizations in each IEA country which will be responsible for national oil reallocation, other national energy emergency measures, and liaison with the IEA on matters of international oil allocation in an emergency. They may at times include oil company personnel.

3.5 The Industry Supply Advisory Group ("ISAG") is an *ad hoc* group of the Industry Advisory Board made up of employees of Reporting Companies or their affiliates (including Voluntary Agreement participants), which is responsible to the IEA. The ISAG will serve as an advisory group to the Allocation Coordinator during IEA oil allocation. It is composed of oil company supply, logistics, maritime and other experts and includes an ISAG Manager, a Deputy Manager and the heads and members of the following subgroups:

(A) The Supply Coordination Group, each of whose members is assigned to communicate with and process the

material received from a specified number of Reporting Companies. A Supply Coordination Group member will not serve as liaison with his own Voluntary Agreement participant employer unless the Allocation Coordinator determines otherwise for reasons of efficiency.

(B) The Country Supply Group, each of whose members is assigned, together with a member of one of the Secretariat's task forces, to communicate with and process the material received from a specified number of IEA country NESOs.

(C) The Supply Analysis Group, which assists the analytical efforts of the Supply Coordination Group and the Country Supply Group as assigned, and is responsible for all other ISAG analytical work on supply reallocation problems or potential problems identified in the course of the supply emergency.

3.6 The Reporting Companies are a group of oil companies which have consented to be so designated by the IEA, including all oil companies whose participation in the Voluntary Agreement has been approved pursuant to section 9(b)(1) thereof (but excluding their affiliates). During each monthly cycle the Reporting Companies are responsible for the submission of appropriate Questionnaires A to the IEA Secretariat, and they carry out Type 1, Type 2 and Type 3 activities.

3.7 The Non-Reporting Companies are firms which are not Voluntary Agreement participants or other Reporting Companies, or affiliates thereof, which may submit data comparable to that reported on Questionnaire A, and may make voluntary offers to redirect petroleum supplies. These submissions and offers are made to NESOs but not to the IEA Secretariat directly.

3.8 The Industry Advisory Board together with its subcommittees ("IAB"), whose members are drawn from the group of Reporting Companies, has been established by the IEA to provide advice and consultation on emergency oil sharing and related questions. When IEA oil allocation is activated the IAB may be consulted on specific oil sharing and related questions by the Allocation Coordinator and his team and by the ISAG, as described in section 4.9. It also may be consulted from time to time by the ISAG Manager on ISAG organizational, administrative and personnel matters.

4.0 Description of IEA Oil Allocation

IEA oil allocation generally is governed by a cycle of scheduled activities set by the Allocation Coordinator, based principally upon the calculation of IEA countries' allocation rights and allocation obligations monthly or at changed intervals as necessary. While normal commercial activities of the Reporting Companies and Non-Reporting Companies, both within countries and in international trading, will go forward and change throughout the allocation cycle in response to changing circumstances, the actions of Reporting Companies and of the ISAG which are described in this Plan of Action are guided by this cycle as to both timing and type of activity undertaken. Unless circumstances require modification by the Allocation Coordinator, the timetable governing operations typically would be in accordance with sections 4.1 through 4.10. However, in the case of IEA oil allocation carried out pursuant to Article 17 of the IEP (a "selective trigger"), the SEQ–EG would be convened to discuss with the Allocation Coordinator, in consultation with the IAB, the most suitable means to fulfill IEA countries' allocation rights and allocation obligations and in this context whether a partial or full application of the general procedures for allocation implementation is required; thus some modifications in the activities described in this Plan of Action may be necessary in connection with a selective trigger.

4.1 As soon as a trigger finding to activate IEA oil allocation has been made, the IEA Secretariat or the ISAG or both will notify Reporting Companies of the finding and of the need to consider rearranging supply programs. The IEA Secretariat or the ISAG also may provide preliminary calculations of IEA countries' supply rights and advice as to the general direction of reallocation likely to be required. Based on this information, the Reporting Companies, their affiliates, and Non-Reporting Companies will ascertain whether their supplies can be reallocated in order to assist in the reallocation process, through "closed-loop" voluntary offers (*i.e.*, proposed transactions with affiliates or with other oil companies or NESOs) to divert quantities of oil from a specified country to another specified country. Commencing with the finding, and possibly prior to the submission and processing of Questionnaires A and B described in sections 4.2 and 4.3, and continuing throughout each allocation cycle, Reporting Companies and Non-Reporting Companies, on their own initiative or upon the request of the Emergency Management Organization, may submit to the IEA Secretariat or to the ISAG "closed-loop" voluntary offers. The IEA Secretariat or the ISAG, on an expedited basis (within a period of no more than forty-eight hours after receipt of the offer), will process "closed-loop" voluntary offers as described in sections 4.6 and 4.7, and the IEA Secretariat or the ISAG will notify the appropriate Reporting Companies and NESOs of the Allocation Coordinator's approval or disapproval, or determination of insufficient information to act upon, such voluntary offers.

4.2 Reporting Companies will submit Questionnaires A to the IEA Secretariat after the beginning of each allocation cycle; Questionnaire A submissions may be made before the trigger finding upon the request of the Executive Director of the IEA and, in the case of a Voluntary Agreement participant, pursuant to approval under section 5 of the Voluntary Agreement. At the same time, they or their affiliates in IEA countries will submit to their NESOs or other governmental agencies similar information or data on operations in those countries. These data will be incorporated, along with aggregate information with respect to domestic Non-Reporting Companies, in Questionnaires B which will be submitted to the IEA Secretariat by IEA countries.

4.3 The ISAG, but mainly the Supply Coordination Group, with its counterparts from the IEA Secretariat, will analyze Questionnaires A for errors, and ISAG, but mainly the Country Supply Group, with its counterparts from the IEA Secretariat, will do the same with Questionnaires B. Possible errors in the questionnaires, as well as discrepancies between Questionnaires A and B, then will be discussed with the appropriate Reporting Companies and NESOs.

4.4 The questionnaire data will be processed by the IEA Secretariat to obtain the supply right, and the allocation right or allocation obligation, of each IEA country for the allocation cycle, taking into account adjustments provided for in the EMM. The resulting allocation rights and allocation obligations together with the total supplies of crude oils and crude oil equivalents, by country of origin, for each IEA country are available to the Allocation Coordinator, the IEA Secretariat, the SEQ–EG and the ISAG, and are transmitted to NESOs and Reporting Companies and through NESOs to Non-Reporting Companies. The ISAG or the IEA Secretariat or both also may provide to Reporting Companies and NESOs, preliminary indications of the effect of the supply disruption on individual IEA countries,

and other general comments and calculations as to the general type and direction of voluntary offers needed to balance allocation rights and allocation obligations.

4.5 Based on the information or data received from the ISAG or the IEA Secretariat as described in Sections 4.1 and 4.4, each Reporting Company, each of its affiliates, and each Non-Reporting Company may ascertain whether its supplies can be reallocated or further reallocated in order to assist in balancing allocation rights and allocation obligations. Each of them may further explore with non-affiliated companies whether this result can be accomplished through sale or exchange with those companies. A Reporting Company may notify the ISAG of its potential voluntarily to meet IEA countries' allocation rights or allocation obligations, and may submit to the ISAG a number of voluntary offers to reallocate supplies. These may be "open-loop" voluntary offers ("open-supply" voluntary offers to supply a quantity of petroleum to any destination recommended by ISAG or chosen by the Allocation Coordinator or "open-receive" voluntary offers to receive oil from any available source). They also may be additional "closed-loop" voluntary offers, as described in Section 4.1. ISAG may solicit such "open-loop" voluntary offers and additional "closed-loop" voluntary offers, and NESOs will seek to develop such voluntary offers from Non-Reporting Companies in their jurisdiction and submit them to the ISAG.

4.6 The ISAG, but mainly the Supply Coordination Group, or the IEA Secretariat, or both, will analyze all of the voluntary offers received from Reporting Companies, and may contact the Reporting Companies for clarification of details, to suggest possible modifications, or to explore the possibility of additional voluntary offers. The ISAG and its Country Supply Group and its IEA Secretariat counterparts will do the same for voluntary offers to be submitted by NESOs.

4.7 In accordance with criteria set forth in Sections 5.3(I) and 5.3(J), ISAG and IEA Secretariat personnel will undertake a balancing of allocation rights and allocation obligations, including a matching of "open-supply" and "open-receive" voluntary offers and an examination of "closed-loop" voluntary offers for suitability, for the periods covered under the current allocation cycle, for future allocation cycles where applicable, and to fulfill unsatisfied allocation rights or allocation obligations from prior allocation cycles.

4.8 In addition to notifying the appropriate Reporting Companies and NESOs of the Allocation Coordinator's action with respect to "closed-loop" voluntary offers, as described in Section 4.1, ISAG and the IEA Secretariat also will notify the appropriate Reporting Companies and NESOs of all "open-loop" voluntary offers matched or approved by the Allocation Coordinator. The notified entities will advise whether they are implementing approved "open-loop" and "closed-loop" Type 2 transactions. If appropriate, the Reporting Companies and NESOs also will confirm whether they have been able to develop any additional voluntary offers previously suggested to them by ISAG or the IEA Secretariat. All these results are to be reported by ISAG to the Allocation Coordinator, who in turn may report the information to the SEQ–EG.

4.9 If substantial unfulfilled allocation rights and allocation obligations remain among IEA countries, the SEQ–EG may request the ISAG and Allocation Coordinator to consult with the IAB, and with others, on ways to elicit further voluntary offers to balance these allocation rights and allocation obligations. If the imbalances remain after subsequent efforts by ISAG to implement the advice agreed on by the Allocation Coordinator and the IAB, and cannot be resolved on a voluntary basis, the Allocation Coordinator will so inform the SEQ–EG.

4.10 The SEQ–EG then will undertake intergovernmental consultation and, after contacts by the Allocation Coordinator or his team with the Reporting Companies concerned, will determine whether corrective measures should be taken under the IEP by IEA country governments. As a last resort IEA countries having jurisdiction over the Reporting Companies and Non-Reporting Companies may order them to carry out Type 3 activities.

5.0 Specification of Substantive Action

5.1 *Voluntary Agreement Participants.* Except as otherwise provided in this Plan of Action, the following substantive actions of a Voluntary Agreement participant and its employees are specified in this Plan of Action:

(A) Preliminary communications with the Emergency Management Organization to ensure that communication channels are working and to discuss schedules for submission of Questionnaires A and of other information required for IEA oil allocation.

(B) Preparation and submission to the IEA Secretariat of Questionnaires A, and subsequent discussion with ISAG or the IEA Secretariat of these and of other relevant information reasonably required to confirm Questionnaire A data, including provision of amplifying or collateral information.

(C) The receipt of preliminary calculations of IEA countries' supply rights and allocation rights and allocation obligations, of final supply rights and allocation rights and allocation obligations, of comments originated by the ISAG or the IEA Secretariat on the general type and direction of voluntary offers needed to balance preliminary or final allocation rights and allocation obligations, and of other information, data or suggestions regarding the development or modification of voluntary offers as described in Sections 4.1, 4.4, 4.5, 4.6 and 4.8; communications and other actions to develop voluntary offers to supply or receive petroleum; and the submission, to the ISAG or the IEA Secretariat, at any time during an allocation cycle, of "closed-loop" voluntary offers and, at specified times, of "open-loop" voluntary offers. The voluntary offers may consist of sales or exchanges with other companies as well as intracompany and interaffiliate movements.

(D) Communications with other Reporting Companies or their affiliates or with Non-Reporting Companies, or with the ISAG, the IEA Secretariat, or NESOs, following receipt of preliminary or final allocation rights and allocation obligations or of other information or data as described in Sections 4.1 and 4.4, and other actions to develop or modify voluntary offers for the current allocation cycle, or for a future cycle where applicable, even if a voluntary offer cannot be agreed on by the parties or subsequently is not approved by the Allocation Coordinator.

(E) Discussion with ISAG or the IEA Secretariat to clarify aspects of a voluntary offer submitted, to consider possible modification of a voluntary offer which is seen as needed by ISAG to balance supplies among IEA countries more effectively, or to explore and identify possible additional voluntary offers.

(F) The receipt of notification by ISAG or the IEA Secretariat regarding the Allocation Coordinator's approval, disapproval, or determination of insufficient information to act upon, "closed-loop" voluntary offers, and matching or approval of certain "open-loop" voluntary offers, and any

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communications and other actions to implement any Type 2 transaction.

(G) Communications with ISAG or the IEA Secretariat to report that Type 2 transactions are or are not being implemented and to confirm whether it has been possible to develop any additional voluntary offers previously suggested by ISAG or the IEA Secretariat.

(H) Any other communications or other actions taken to develop or implement Type 2 activities.

(I) Consultations with the SEQ–EG, interested NESOs and Reporting Companies about possible or actual mandatory shipments of petroleum to implement IEA oil allocation, and communications and other actions regarding the development or implementation of Type 3 activities.

(J) Communications with ISAG or the IEA Secretariat dealing with study or appraisal of the allocation cycle.

(K) Communications with the Allocation Coordinator in connection with his giving advice in a price dispute arising out of a Type 2 or Type 3 transaction specified in this Section 5.1.

(L) Any other communications or other actions as may be necessary or appropriate to the carrying out of international emergency allocation as described in Section 4, elsewhere in this Section 5.1, and Sections 5.2 and 5.3.

(M) The unsolicited receipt of any information or data not specified in this Plan of Action. However, if the information or data is confidential or proprietary, prompt written notice of such receipt must be given to the Department of Justice and the Federal Trade Commission, and the recipient of such information or data shall not provide it to his company or to any other person, except as necessary in connection with providing written notice of such receipt to the Department of Justice and the Federal Trade Commission.

5.2 *IAB Members.* Except as otherwise provided in this Plan of Action, the following substantive actions of a Voluntary Agreement participant member of the IAB and its employees are specified in this Plan of Action:

(A) Participation in meetings of the IAB or in communications with the SEQ–EG or other bodies of the IEA, the Allocation Coordinator, ISAG representatives or the IEA Secretariat, to develop and transmit advice on the substantive issues set forth in Section 4.9 or on other issues on which the IAB may be consulted pursuant to Article 19.7 of the IEP.

(B) Participation in communications with the ISAG concerning ISAG organizational, administrative or personnel matters.

(C) The unsolicited receipt of any information or data not specified in this Plan of Action. However, if the information or data is confidential or proprietary, prompt written notice of such receipt must be given to the Department of Justice and the Federal Trade Commission, and the recipient of such information or data shall not provide it to his company or to any other person, except as necessary in connection with providing written notice of such receipt to the Department of Justice and the Federal Trade Commission.

It is understood that during the course of an international energy supply emergency, other meetings of the IAB, or of other industry bodies created by the IEA, may be scheduled, possibly to advise on matters unrelated to, or only marginally related to, the emergency. Such meetings are not specified in this Plan of Action. The provisions of Section 5 of the Voluntary Agreement continue to apply to them as if no emergency had occurred.

5.3 *ISAG Members.* Except as otherwise provided in this Plan of Action, the following substantive actions of a Voluntary Agreement participant's employees serving on the ISAG, and of a Voluntary Agreement participant, to the extent carried out through such employees, are specified in this Plan of Action:

(A) Communications with other offices or groups of the Emergency Management Organization, Reporting Companies and NESOs, to ensure that communication channels are working and to discuss schedules for submission of Questionnaires A or B and of other information required for IEA oil allocation, and with NESOs with respect to domestic policies, practices or issues which may affect IEA oil allocation.

(B) Receipt and analysis of Reporting Company Questionnaires A to assist in IEA oil allocation, including detection of possible errors, and subsequent communications with Reporting Companies and with NESOs to resolve them.

(C) Receipt and analysis of NESO Questionnaires B to assist in IEA oil allocation, including detection of possible errors, and subsequent communications with NESOs and Reporting Companies to resolve them.

(D) Receipt of preliminary and final allocation rights and allocation obligations and other allocation right/allocation obligation information from the IEA Secretariat, the transmission to Reporting Companies of preliminary and final allocation rights and allocation obligations and preliminary assessments of the impact of the crisis in terms of available supplies and supply rights and other information as described in Sections 4.1 and 4.4; and analytical discussions within ISAG and with Reporting Companies or NESOs, as well as study of ISAG work formats as required, in order to identify the types of actions which may be needed to correct the imbalances in available supplies among IEA countries.

(E) Communications with Reporting Companies or NESOs and with the IEA Secretariat on formulations of voluntary offers; the receipt and analysis of voluntary offers, and discussion of them within ISAG; and follow-up communications with Reporting Companies or NESOs to clarify aspects of voluntary offers submitted, to consider possible modification of a voluntary offer which is seen as needed by ISAG to balance supplies among IEA countries more effectively, or to explore and identify possible additional voluntary offers.

(F) Analytical work to develop a country supply/demand profile for any IEA country and to study general product imbalance problems within any IEA country in order to advise the IEA Secretariat or a NESO on possible resolution of these problems. To assist this study of product imbalance problems within a country, Voluntary Agreement participant employees serving on the ISAG may receive from the government of that IEA country, or from the IEA Secretariat, data on historical supply patterns for that country, including indigenous production, imports of crude and products by country of origin, exports of crude and products to country of destination, stocks at sea and crude and product inventory profiles. Data or information with respect to regions of a country may be provided as required.

(G) Other analytical work on country or company supply plans as requested by the Allocation Coordinator, including with respect to such plans, following, analyzing and forecasting shipping tonnage availability and requirements, during the course of an emergency, in addition to communications within ISAG or with outside persons in order to develop necessary information for such shipping analyses.

(H) Coordination, under the guidance of the Allocation Coordinator, of the voluntary offers of Reporting and Non-Reporting Companies, including independent efforts to encourage the development of voluntary offers in order better to direct supplies to meet IEA calculated supply rights. Participation in

the ISAG/IEA Secretariat process of balancing allocation rights and allocation obligations of IEA countries for the periods covered in an allocation cycle, or for a future cycle where applicable, including matching available "open-supply" and "open-receive" voluntary offers and examining "closed-loop" voluntary offers for suitability.

(I) The ISAG in consultation with the IEA Secretariat will evaluate the voluntary offers by Reporting Companies and by NESOs for Non-Reporting Companies. In making its evaluation and recommendations to the Allocation Coordinator, it may be guided by technical factors including the following, in addition to specific guidance from the Allocation Coordinator:

(i) The volumes of petroleum required to balance the allocation rights and allocation obligations of individual IEA countries;

(ii) The petroleum logistics system of each country, including port facilities, storage capacity, and barge/pipeline facilities;

(iii) The specifications of the crude oil being delivered in relation to the refining capability within the country to process that oil;

(iv) Product imbalance problems in IEA countries as compared with the supply mix scheduled for these countries;

(v) Insofar as possible and consistent with Section 5.3(J), maintenance of normal supply patterns for various IEA countries and normal supply proportions between crude oil and products and among different categories of crude oil and products;

(vi) Minimization of transportation costs, for example, by avoidance to the greatest possible extent of logistical disadvantages arising from unduly long voyages; and by utilization of backhaul voyages for vessels; and

(vii) The need for priorities in considering offers, as among such voluntary offers.

If, after such an evaluation process, there remain alternative allocation possibilities for an IEA country or too many voluntary offers so that a selection must be made, such alternatives may be discussed with the relevant NESO and Reporting Companies as well as with the IEA Secretariat for the purpose of exchanging views on the choices to be made.

(J) In evaluating potential alternative actions to balance allocation rights and allocation obligations, ISAG is not to take into account the economic benefit or penalty to any Reporting Company or IEA country (but see Section 5.3(I)(vi)), or the market share of any Reporting or Non-Reporting Company in any country. National oil reallocation of available supply is solely a matter for decision by each IEA country.

(K) Notification of appropriate Reporting Companies and NESOs of the Allocation Coordinator's approval, disapproval, or determination of insufficient information to act upon, specified voluntary offers, and communications with regard to the implementation of Type 2 transactions and, if appropriate, with regard to any additional voluntary offers previously suggested to them by the ISAG or the IEA Secretariat.

(L) Participation in consultations and meetings with the IAB on specific oil sharing and related questions, as described in Section 4.9, and on ISAG organizational, administrative and personnel matters.

(M) Consultations with the SEQ–EG, interested NESOs and Reporting Companies about possible or actual mandatory shipments of petroleum to implement IEA oil allocation, and communications and other actions regarding the development or implementation of Type 3 activities.

(N) Participation in development of an ISAG appraisal of the allocation cycle.

(O) Participation in meetings of ISAG, of the ISAG Manager and Deputy Manager with subgroup heads, and of ISAG subgroups, as well as joint work sessions.

(P) Communications and other actions as contemplated in the ISOM.

(Q) Any other communications or other actions as may be necessary or appropriate to the carrying out of international emergency allocation as described in Sections 4, 5.1, 5.2 and elsewhere in this Section 5.3.

(R) The unsolicited receipt of any information or data not specified in this Plan of Action. However, if the information or data is confidential or proprietary, prompt written notice of such receipt must be given to representatives of the Department of Justice and the Federal Trade Commission at the allocation site, and such information or data shall be considered to be confidential or proprietary information or data for purposes of Section 7.1.

5.4 *Other Actions.* Such additional communications or other actions as may be needed to meet specific problems as they arise in implementing IEA oil allocation, provided that such actions are approved by the U.S. Government representatives at the allocation site or in such other manner as may be provided for pursuant to Section 10.

5.5 *Exclusion.* Except as otherwise provided in Sections 5.1 (K) and (M), 5.2(C), and 5.3(R), specifically excluded from this Plan of Action are the communication by any Voluntary Agreement participant or its employees to ISAG or the IEA Secretariat, and the communication by any Voluntary Agreement participant employee serving on ISAG to any person, of prices, credit terms, or other information effectively disclosing prices or credit terms, relating to any proposed or actual transaction.

6.0 Confidential or Proprietary Information or Data Which May Be Communicated by or to Voluntary Agreement Participants and Their Employees

The following types of information or data which may be or may reveal confidential or proprietary information or data may be communicated by or to Voluntary Agreement participants or their employees in carrying out the substantive actions specified in this Plan of Action:

6.1 Disaggregated Questionnaire A or B data submitted by Reporting Companies or NESOs, *i.e.*, data as required by the Questionnaire A and B reporting instructions specified in the EMM, and ISAG work formats derived from such data, including:

(A) indigenous production of crude oil, natural gas liquids (NGLs) and feedstock;

(B) imports and exports of crude oil, NGLs and feedstock;

(C) petroleum product imports and exports (in crude oil equivalents);

(D) international marine bunkers;

(E) Inventory levels and changes; and

(F) Stocks at sea.

6.2 Capability of a refinery to process crude oil or specific crude oils, and the capability of a pipeline, dock or terminal or other storage or transit facility to receive, store, or throughput crude oil or specific crude oils or petroleum products or specific petroleum products.

6.3 Capability of a port, installation, or waterway to receive or move vessels of various sizes and configurations.

6.4 The availability of tankers and barges, including their location, routing, size, specifications and operating characteristics.

6.5 Main characteristics of crude grades and product specifications.

6.6 Actual and estimated historical production data on crude oils and NGLs for individual countries.

6.7 Historical country supply patterns for crude oil, NGLs and petroleum products, *e.g.*, imports by

country of origin, exports to country of destination, and inventory profiles.

6.8 Specific refinery considerations that prevent acceptance or release of certain crudes, *e.g.*, the inability of a refinery to process specific types of crude oil or to make certain specialty products for which the crude oil is particularly suited; the inability of a type of crude oil to meet certain product specifications; hazards to refinery operations which processing of a particular type of crude oil might cause; or the need for a refinery to operate at a minimum throughput level.

6.9 Identification of supply logistics problems relating to certain countries or regions of countries.

6.10 Identification, without disclosure of specific costs, prices or financial information, or other underlying facts, of the existence of certain individual company considerations which would preclude or make impracticable a proposed movement of oil, involving:

(A) Commercial policy;

(B) Supply or transportation factors;

(C) Affiliate, third-party, concessional or other contractual arrangements; or

(D) Constraints relating to actions or policies of governments.

6.11 Identification of differences between the crude oil and petroleum product supply mix and demand for products in certain countries or regions of countries.

6.12 Information or data, including (as limited by Section 5.5) petroleum prices and other commercial terms, concerning: voluntary offers made by Reporting Companies or Non-Reporting Companies; or the implementation of Type 2 or Type 3 transactions.

6.13 Clarification, amplification, correction, explanation or supplementation of the types of information or data specified in Sections 6.1–6.12, provided that this Section 6.13 does not supersede any specific exclusion contained in this Plan of Action.

6.14 Such additional types of confidential or proprietary information or data as may be needed in implementing IEA oil allocation as guided by the EMM and the ISOM, (i) if a communication of such types of information or data is approved in advance by a representative of the Department of Energy, after consultations with the Departments of Justice and State and the Federal Trade Commission or (ii) if communication of such types of information or data is needed on a timely basis and receipt of such advance approval is not practicable, provided, in the latter case, that prompt written notice of such communication together with a description of the circumstances necessitating such communication without such advance approval must be given to representatives of the Departments of Energy and Justice and the Federal Trade Commission. Approval for the continued communication of such types of information or data can be terminated prospectively by a representative of the Department of Energy, after consultations with the Departments of Justice and State and the Federal Trade Commission.

6.15 *Exclusion.* Notwithstanding any other provision of this Plan of Action, specifically excluded from this Plan of Action is the communication (but see Sections 5.1(M), 5.2(C) and 5.3(R) concerning unsolicited receipt of information or data) of the following types of information or data to the extent that they are or reveal confidential or proprietary information or data:

(A) Company costs or market shares of crude oil or petroleum products (other than those which can be derived from Questionnaire A or B data); or

(B) Individual company information or data regarding overall long-term programs for investment, divestment, refining, operating, transportation or marketing.

7.0 Disposition of and Access to Confidential or Proprietary Information or Data

7.1 In no case shall an employee of a Voluntary Agreement participant provide to his company or to any other person, any confidential or proprietary information or data obtained as a consequence of his membership in the ISAG, except such information or data as is necessary to be supplied in the course of carrying out IEA oil allocation. No Voluntary Agreement participant employee serving on the ISAG may remove any documents from the IEA premises, except (when otherwise permitted by the IEA Secretariat) as authorized by the U.S. Government representatives at the allocation site or in such other manner as may be provided for pursuant to Section 10.

7.2 Each Voluntary Agreement participant shall provide to the U.S. Government one copy of its Questionnaire A submitted to the IEA Secretariat in Questionnaire A format, as distinguished from telex format, in accordance with Section 8.6(A), or in such other manner as may be provided pursuant to Section 10.

8.0 Requirements for Recordkeeping, Reporting and Monitoring

8.1. *Introduction.* Section 252 of EPCA provides that a U.S. Government representative shall be present at all meetings to carry out a plan of action and that a full and complete record (where practicable, a verbatim transcript) of such meetings shall be made. For purposes of this Plan of Action, meetings of the IAB herein specified and allocation meetings will be subject to the foregoing requirement. Section 252 also requires that a full and complete record be made of communications, including face-to-face communications other than in the context of a meeting. The following sections implement the existing U.S. recordkeeping, reporting and monitoring requirements in section 252 of EPCA, 10 CFR Part 209, and 28 CFR Part 56, and apply such requirements to meetings, communications and other actions to carry out this Plan of Action. In addition, Annex I hereto contains special rules governing disposition and retention of computer documents which apply in lieu of certain specified provisions of this Section 8, as indicated at the appropriate places herein. These requirements apply, *inter alia,* to Voluntary Agreement participants and to their employees serving on the ISAG who will be participating in the allocation activities at the allocation site. These requirements apply to actions of Covered Foreign Affiliates to the extent provided in Sections 8.6, 8.7 and 8.8, except under the circumstances described in Annex II hereto, which concern the prevention of compliance by a foreign law prohibition, in which event the alternative requirements specified in Annex II will apply. Questions concerning the removal of records from the allocation site are outside of the scope of the following sections. If experience indicates the need, the U.S. Government observers at the allocation site will have discretion to allow alternative operating procedures and recordkeeping requirements consistent with section 252 of EPCA and existing regulations thereunder.

8.2 *Definitions.* For purposes of these requirements the following additional definitions apply:

(A) "Communication" and "document" exclude:

(i) The communication or documentation of administrative, procedural, or ministerial information or data such as scheduling of meetings, personnel assignments, arranging for support services, testing of communications links, and merely

routine implementation of previously-agreed petroleum sale or exchange transactions (*e.g.*, supply and vessel slating, cargo inspection and oil loss reports, insurance, third-party financing, and the like) (but see Sections 8.8(C) (1) and (2));

(ii) Communications or documents which are subject to the attorney-client or attorney work product privileges (but see Section 8.8(C)(3)); and

(iii) Communications with or the documentation of communications with U.S. Government observers at the allocation site.

(B) "Allocation site communication" means any unwritten face-to-face communication occurring on, or telephonic communication received at or sent from, the allocation site, other than in an allocation meeting.

(C) "Off-site communication" means any unwritten face-to-face communication which does not occur on, or any telephonic communication which is neither received at nor sent from, the allocation site.

(D) "Allocation meeting" means the following group meetings held at the allocation site (with or without IEA Secretariat participation):

(i) Meetings of the entire ISAG;

(ii) Meetings of the ISAG's Country Supply, Supply Coordination or Supply Analysis subgroups; and

(iii) Meetings of the ISAG Manager or Deputy Manager and ISAG subgroup heads.

(E) "U.S. Voluntary Agreement participant" means any oil company whose participation in the Voluntary Agreement has been approved pursuant to section 9(b)(1) of the Voluntary Agreement, and also any affiliate (other than a Covered Foreign Affiliate) of that oil company that is covered pursuant to section 9(b)(3) of the Voluntary Agreement.

(F) "Covered Foreign Affiliate" means any affiliate of a U.S. Voluntary Agreement participant that has its principal place of business outside the United States, that conducts the substantial majority of its activities outside the United States, and that is covered pursuant to section 9(b)(3) of the Voluntary Agreement. A Covered Foreign Affiliate's "parent company" means the oil company approved as a Voluntary Agreement participant under section 9(b)(1) thereof, which has designated the Covered Foreign Affiliate for coverage under section 9(b)(1) thereof.

(G) "Affiliate" means: (i) Any other company that receives Voluntary Agreement coverage through the approval of the participation of the same oil company pursuant to section 9(b)(1) of the Voluntary Agreement; and (ii) except as otherwise provided below in this paragraph, any other company that is eligible to be designated for coverage by the approved oil company pursuant to section 9(b)(3). Excluded from (ii) above is any company that is eligible to be designated for coverage pursuant to Section 9(b)(3)(ii), and any company (other than a company described in section 9(b)(3)(i)) that is eligible to be designated for coverage pursuant to section 9(b)(3)(iii), which, independently of the said Voluntary Agreement participant, is an oil company as defined in section 3(a) of the Voluntary Agreement; provided, however, that this exclusion shall not apply if such oil company has its principal place of business within the United States and there is 100% ownership under section 9(b)(3)(ii). Upon the request of a Voluntary Agreement participant, the Department of Energy, with the approval of the Department of Justice, for purposes of section 8, at any time may stipulate that a company is or is not an oil company for purposes of the above exclusion, or may designate any company as an affiliate.

8.3 U.S. Government Monitoring and Recordkeeping at the Allocation Site

(A) To the extent practicable, allocation activities of ISAG members shall be conducted at the allocation site, while a U.S. Government observer is in attendance at the allocation site. A U.S. Government observer must be present throughout all allocation meetings in which a Voluntary Agreement participant employee serving on the ISAG participates, and may elect to be present during any other allocation activities in which a Voluntary Agreement participant employee serving on the ISAG participates, including communications (except communications between an individual Voluntary Agreement participant employee and his legal counsel). It is intended that U.S. Government observers will be in attendance continuously at the allocation site to monitor allocation meetings and communications by Voluntary Agreement participant employees serving on the ISAG during such regular hours as ISAG adopts, and at any extraordinary hours if given reasonable notice. Voluntary Agreement participant employees serving on the ISAG shall provide advance notice whenever they anticipate that allocation meetings or allocation site communications will occur during extraordinary hours, or that communications (other than telephonic communications during extraordinary hours) will occur outside of the allocation site.

(B) A U.S. Government observer shall be responsible for keeping a written record of each allocation meeting, and of each communication held in the presence of such observer, in which a Voluntary Agreement participant employee serving on the ISAG participates, or for ensuring that a verbatim transcript of such meeting or communication is made. Failure of the U.S. Government to maintain a full and complete written record shall not vitiate the antitrust defense accorded by section 252 of EPCA for a Voluntary Agreement participant or its employees unless such failure is due to the willful act of the Voluntary Agreement participant employee serving on the ISAG or of the Voluntary Agreement participant.

(C) Unwritten communications of Voluntary Agreement participant employees serving on the ISAG which relate to allocation activities may occur outside of the allocation site only when circumstances make an off-site communication necessary, *i.e.*, when a need for an immediate communication arises unexpectedly or after normal working hours or otherwise makes a return to the allocation site impracticable or unreasonable, or when time zone differences involved in necessary communications otherwise would require early morning arrival or late night stay at the allocation site.

8.4 Unwritten Communications, Outside of Allocation Meetings, Involving Voluntary Agreement Participant Employees Serving on the ISAG

(A) These recordkeeping requirements for unwritten communications apply to allocation site communications and off-site communications by or to Voluntary Agreement participant employees serving on the ISAG, including communications with the IAB, but excluding communications with members of the SEQ–EG, official observers from the European Communities, IEA Participating Country representatives authorized by the IEA to be at the allocation site, or the U.S. and other NESOs. They apply to such communications with the IEA Secretariat only when those communications relate to activities specified in Section 5.1(K).

(B) Except when a U.S. Government observer is present, a Voluntary Agreement participant employee serving on the ISAG shall make a full and complete record of any allocation site communication or off-site

communication, by means of: (1) entering in a standardized log, the date, approximate time, identity of the parties (by name and organization) and a description of the communication in sufficient detail to convey adequately its substance, or (2) reporting at a subsequent meeting held no later than the next working day at which a verbatim transcript is kept, information sufficient to identify the parties and a description of the communication in sufficient detail to convey adequately its substance. The log entry also shall state the special circumstances which necessitated an off-site communication, or an allocation site communication despite the absence of a U.S. Government observer from the allocation site, if such absence was known to such employee at the time of such communication.

(C) When more than one Voluntary Agreement participant employee serving on the ISAG is involved in a communication, the employees may designate who shall make and supply the record.

Non-Voluntary Agreement participant employees serving on the ISAG may furnish the required records of communications with Voluntary Agreement participants and with Voluntary Agreement participant employees serving on the ISAG.

8.5 Disposition of Records by Voluntary Agreement Participant Employees Serving on the ISAG

(A) Each Voluntary Agreement participant employee serving on the ISAG shall provide to the U.S. Government observers at the allocation site, within three working days of the first day it covers, a copy of any log kept pursuant to Section 8.4(B), and within one working day of the occurrence, a copy of any other written communication which such employee prepares or receives that relates to allocation activities, except that any written communication which is prepared or received by such employee and which is expected to undergo one or more revisions (including incorporation in any other written communication), and each revision of any such communication, may be provided to the U.S. observers within one day of the close of the allocation cycle in which such communication is prepared or received by such employee. (With respect to computer documents, Annex I shall govern in lieu of the requirements contained in this Section 8.5(A).)

(B) The requirement imposed by paragraph (A) of this Section may be waived by the U.S. Government observers at the allocation site, to the extent that the IEA Secretariat will provide copies of such communications to the U.S. Government observers.

8.6 U.S. Government Monitoring at Voluntary Agreement Participant Offices

(A)(1) U.S. Government observers shall be permitted to interview, for a period of five years after the termination of an international energy supply emergency, all U.S. Voluntary Agreement participant employees who are or have been engaged in carrying out this Plan of Action, by telephone, and at the offices of, and upon reasonable advance notice to, the U.S. Voluntary Agreement participant involved. Any interviewed employee may have counsel present.

(2) U.S. Government observers shall be permitted to interview, for a period of five years after the termination of an international energy supply emergency, all Covered Foreign Affiliate employees who are or have been engaged in carrying out this Plan of Action, by telephone, and at the offices of the parent company U.S. Voluntary Agreement participant of such Covered Foreign Affiliate, or at the election of such Covered Foreign Affiliate and such parent company, at the offices of such Covered Foreign Affiliate, upon reasonable advance notice to such parent company and to such Covered Foreign Affiliate. Any interviewed employee may have counsel present.

(B) U.S. Government observers shall be permitted to examine and copy, at U.S. Voluntary Agreement participant headquarters during normal business hours and upon reasonable notice to the U.S. Voluntary Agreement participant involved, any document or other information source which relates to carrying out this Plan of Action which is not subject to the attorney-client or attorney work product privileges, and which is in the possession or custody of such U.S. Voluntary Agreement participant, including any Covered Foreign Affiliate records forwarded to such U.S. Voluntary Agreement participant pursuant to Section 8.8(C)(2).

8.7 Recordmaking Requirements for Voluntary Agreement Participants Other Than Employees Serving on the ISAG

(A)(1) Except as provided in Section 8.7(B), each U.S. Voluntary Agreement participant and each Covered Foreign Affiliate promptly shall make a full and complete record of all of the following unwritten communications:

(i) Communications with individuals serving on the ISAG (including any of its own employees serving on the ISAG);

(ii) Communications with another company (not including any of its affiliates); and

(iii) Communications with the IEA Allocation Coordinator or IEA Secretariat which relate to activities specified by Section 5.1(K).

(2) Records of such unwritten communications of a U.S. Voluntary Agreement participant should be made by the U.S. Voluntary Agreement participant by means of entering in a standardized log, the date, the approximate time, identity of the parties (by name and organization), and a description of the communication in sufficient detail to convey adequately its substance.

(3) Records of such unwritten communications of a Covered Foreign Affiliate may be made in the manner described in Section 8.7(A)(2) or, at the election of the Covered Foreign Affiliate, may consist of a bi-weekly summary:

(i) Identifying (a) each individual serving on the ISAG with whom the Covered Foreign Affiliate has had an unwritten communication, (b) each nonaffiliated company with which the Covered Foreign Affiliate has had an unwritten communication, (c) each Secretariat official with whom the Covered Foreign Affiliate has had an unwritten communication that is required to be recorded pursuant to Section 8.7(A)(1)(iii), and (d) each affiliate with which the Covered Foreign Affiliate has had an unwritten communication;

(ii) Describing with particularity each agreement entered into with any nonaffiliated company, and each agreement or other arrangement entered into with an affiliate, and each transaction performed, to carry out this Plan of Action, setting forth all significant terms, including volume, crude or product type, origin, destination, time of delivery and price; and

(iii) Describing in summary terms, for each category of unwritten communications listed in subparagraph (i) of this subsection, the substance thereof, to the extent not already disclosed pursuant to subparagraph (ii) of this subsection.

A bi-weekly summary may be made by the Covered Foreign Affiliate or, at the election of the Covered Foreign Affiliate and its parent company, by such parent company on behalf of the Covered Foreign Affiliate.

(B)(1) A Voluntary Agreement participant need not make a record pursuant to this Section 8.7 of any communication with any individual serving on the ISAG, when such

Voluntary Agreement participant has agreed with such individual that the record of the communication will be made by and provided to the U.S. Government by such individual in accordance with Section 8.5(A), or provided by the IEA Secretariat in accordance with Section 8.5(B).

(2) A Voluntary Agreement participant need not make a record pursuant to Section 8.7 of a communication with any other Voluntary Agreement participant if the latter makes a record of the communication and provides it to the U.S. Government in accordance with Section 8.8(B).

(C) To the extent that any information required to be set forth pursuant to Section 8.7(A) can be derived readily from a document deposited pursuant to Section 8.8, a specific cross-reference to such document shall suffice.

8.8 Disposition of Records by Voluntary Agreement Participants

(A)(1) Each U.S. Voluntary Agreement participant shall deposit with the U.S. Government, in accordance with this Section and with any further instructions that may be provided pursuant to Section 10, a copy of each record required to be made by it under Section 8.7(A)(1), and of:

(i) Each written communication with the ISAG (including any employee of the U.S. Voluntary Agreement participant serving on the ISAG);

(ii) each written communication with another company (not including any of the U.S. Voluntary Agreement participant's affiliates), and each document setting forth any agreement between the U.S. Voluntary Agreement participant and any such nonaffiliated company with respect to any Type 2 transaction (with the voluntary offer number and the date of the voluntary offer shown on the first page thereof) or Type 3 transaction; and

(iii) Each written communication with the IEA Allocation Coordinator or IEA Secretariat which relates to activities specified in Section 5.1(K).

Any portions of such records which are believed not to be subject to public disclosure should be specified.

(2) Each Covered Foreign Affiliate (or, at the election of the Covered Foreign Affiliate and of its parent company, such parent company) shall deposit with the U.S. Government, in accordance with this Section and with any further instructions that may be provided pursuant to Section 10, a copy of each record required to be made by the Covered Foreign Affiliate under Section 8.7(A)(1), and of:

(i) Each written communication with another company (not including any of the Covered Foreign Affiliate's affiliates), and each document setting forth any agreement between the Covered Foreign Affiliate and any such nonaffiliated company with respect to any Type 2 transaction (with the voluntary offer number and the date of the voluntary offer shown on the first page thereof) or Type 3 transaction; and

(ii) Each written communication with the IEA Allocation Coordinator or IEA Secretariat which relates to activities specified in Section 5.1(K).

Any portions of such records which are believed not to be subject to public disclosure should be specified.

(B) Records of unwritten communications, and copies of written communications or documents, of U.S. Voluntary Agreement participants shall be deposited with the U.S. Government within seven days after the close of the week (ending Saturday) in which they occur. In the case of communications or documents of Covered Foreign Affiliates, this period shall be extended to fourteen days. Computer documents shall be deposited in hard copy (paper) form. If possible, copies of written communications of a U.S. Voluntary Agreement participant shall be sent to the U.S. Government by the U.S. Voluntary Agreement participant simultaneously with and by the same means of transmission used to send the original.

(C)(1) Each U.S. Voluntary Agreement participant shall maintain in retrievable form, for a period of five years after the date of its preparation, a copy of each record required to be deposited pursuant to Section 8.8(A)(1) and copies of all other documents (including intracorporate documents). (With respect to computer documents, Annex I shall govern in lieu of the requirements contained in the preceding sentence.) If so requested by the U.S. Government observers in connection with an examination pursuant to Section 8.6(B), such U.S. Voluntary Agreement participant, within two weeks of such request, shall forward a copy of each requested document to an appropriate office at company headquarters, where the documents shall be maintained separately from other company records until completion of such examination; notwithstanding Section 8.2(A)(i), the U.S. Voluntary Agreement participant shall include among the documents forwarded to the appropriate company office pursuant to this section, a copy of each document which involves administrative, procedural or ministerial information or data and which is in the possession or custody of the U.S. Voluntary Agreement participant at the time of a U.S. Government examination request.

(2) Each Covered Foreign Affiliate shall maintain in retrievable form, for a period of five years after the date of its preparation, a copy of each record required to be deposited pursuant to Section 8.8(A)(2) and copies of all other documents (including intracorporate documents). (With respect to computer documents, Annex I shall govern in lieu of the requirements contained in the preceding sentence.) If so requested by the U.S. Government observers in connection with an examination pursuant to Section 8.6(B), such Covered Foreign Affiliate, within four weeks of such request, shall forward a copy of each requested document to an appropriate office at the headquarters of such Covered Foreign Affiliate's parent company, where the documents shall be maintained until completion of such examination; notwithstanding Section 8.2(A)(i), the Covered Foreign Affiliate shall include among the documents forwarded to the appropriate company office pursuant to this section, a copy of each document which involves administrative, procedural or ministerial information or data and which is in the possession or custody of the Covered Foreign Affiliate at the time of a U.S. Government examination request.

(3) Notwithstanding Section 8.2(A)(ii), copies of all Voluntary Agreement participant documents which are subject to the attorney-client or attorney work product privileges shall be included among the documents forwarded to the appropriate company office pursuant to Section 8.8(C) (1) and (2). Upon request, the Voluntary Agreement participant shall submit to the U.S. Government a list of the documents which the Voluntary Agreement participant claims are subject to the attorney-client or attorney work product privileges. The list shall specify for each document, the applicable privilege and all facts relied on in support thereof, the type of document (letter, telex, etc.), its date, author, addressee, title (unless the title vitiates the applicable privilege), a statement of the subject matter (but not including information that would vitiate the applicable privilege), and all recipients of the original and of any copies. Those documents which are not subject to the attorney-client or attorney work product privileges will be subject to U.S. Government examination during and after the allocation process, if so requested by U.S. Government observers, as provided elsewhere in this Section 8.

9.0 Meetings—Notice Requirements

9.1 Pursuant to the notice requirements of Section 5 of the Voluntary Agreement, the ISAG emergency activities at the allocation site will be conducted as a single ISAG meeting. Because it will be impracticable to notice all allocation meetings, or meetings of the IAB pursuant to Section 5.2(A), during the course of a supply emergency, there may be only one **Federal Register** notice at the beginning of an international energy supply emergency.

9.2 U.S. Government observers shall be notified in advance of the time and place of each allocation meeting, or meeting of the IAB pursuant to Section 5.2(A). If all or a portion of the allocation site is to be in a place other than IEA headquarters, the Allocation Coordinator and/or the ISAG Manager shall so notify the U.S. Government observers assigned to monitor activities of Voluntary Agreement participant employees serving on the ISAG during the allocation period, as much in advance as possible.

10.0 U.S. Government Monitoring

This Plan of Action shall be governed by monitoring guidelines that may be issued by the Secretary of Energy pursuant to the provisions of section 252 of EPCA, 10 CFR Part 209, and 28 CFR Part 56. Such monitoring guidelines may establish procedures for the approvals described in Sections 5.4, and 6.14 or 7.1, for notice to or from U.S. Government observers, or for other matters pertaining to implementation of this Plan of Action, and also may modify the requirements contained in Annex I hereto applicable to computer documents. Subject to further guidance from the Secretary of Energy, where in this Plan of Action a record or a copy of a record or document is required to be deposited with the U.S. Government, such copy shall be sent to the following address: The General Counsel, U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

Annex I to Second Plan of Action to Implement the International Energy Program: Requirements for the Disposition and Retention of Computer Documents

Requirements for the disposition and retention of computer documents are set out in this Annex in order to facilitate any modifications therein which may be indicated by experience with computer capabilities or changes in computer technology. The Departments of Energy, State and Justice and the Federal Trade Commission intend, in the context of the next IEA allocation systems test, to evaluate whether companies are capable of complying with these requirements without undue burden. Based on experience in the test, the Government will consider whether these requirements, including the provisions of paragraphs 3 and 4 of this Annex, should be modified.

1. "Computer document" means information or data relating to the carrying out of this Plan of Action in non-transitory storage on magnetic, optical, or other media or devices used by computers, including but not limited to computer diskettes, disks, and tapes, but excluding voice recordings and information or data on hard copy (paper) form. A communication by means of a computer document is considered to be a written communication. The exclusions in Section 8.2(A) (i)–(iii) applicable to "communication" and "documents" are applicable to computer documents.

2. Subject to Section 8.5(B), the following requirements apply to the disposition of computer documents by Voluntary Agreement participant employees serving on the ISAG, in lieu of the requirements contained in Section 8.5(A):

Each Voluntary Agreement participant employee serving on the ISAG shall (subject to the cooperation of the IEA Secretariat) provide to the U.S. Government observers at the allocation site, within one working day of its preparation, in hard copy (paper) form, a copy of any computer document requested specifically or by category by the observers.

3. Subject to paragraph 4 of this Annex, the following requirements apply to the retention of computer documents by Voluntary Agreement participants, in lieu of the requirements contained in the first sentences of Sections 8.8(C) (1) and (2):

a. Each U.S. Voluntary Agreement participant and each Covered Foreign Affiliate shall maintain in retrievable form, for a period of five years after the date of its preparation, a copy of each of the following computer documents:

i. in the case of a computer database or other ongoing computer document that is expected to be revised periodically in the ordinary course of business to update its contents, (A) the portions thereof relating to the carrying out of this Plan of Action that reflect the situation (1) at a time as close as practicable to the onset of the international energy supply emergency; and (2) at the end of each allocation cycle, and (B) the last version of such portions of the document;

ii. in the case of a computer document that is sent to or received by a person other than its listed author(s) (other than a computer document maintained pursuant to (i)), each version that is sent to or received by a person other than the listed author(s); and

iii. in the case of a computer document other than those described in (i) or (ii), the last version of the document.

b. The obligation to maintain a computer document may be satisfied by maintaining it in any retrievable form, including hard copy (paper) form.

4. In the event that, following the onset of an international energy supply emergency, a Voluntary Agreement participant ascertains that compliance with the requirements of paragraph 3 of this Annex by it or by any of its covered affiliates would be unreasonably burdensome, the Voluntary Agreement participant, promptly after ascertaining that such burden would affect the ability of the Voluntary Agreement participant or (as applicable) the covered affiliate thereof to comply with said requirements, shall so notify the Department of Justice and the Federal Trade Commission in writing. The notification shall specify the requirements in question, the extent and nature of the burden, and the types of computer documents that it would be unreasonably burdensome to retain, and shall propose alternative requirements that will achieve to the maximum extent practicable the purposes of the recordkeeping requirements contained in paragraph 3 of this Annex. If such notification is promptly made, and if the Voluntary Agreement participant or (as applicable) the covered affiliate thereof, for the period prior to the notification and for the ten-day period thereafter, either (1) complies with the proposed alternative requirements or (2) complies with the requirements of paragraph 3 of this Annex to the maximum extent practicable, the availability to them of the defenses accorded under section 252 of EPCA shall be unaffected by the lack of full compliance with the requirements of paragraph 3 of this Annex, for the period preceding the notification and for the ten-day period thereafter. To the extent that, after the ten-day period from such notification, the Voluntary Agreement participant or (as applicable) the covered affiliate thereof does not comply with the requirements of paragraph 3 of this Annex, the Voluntary Agreement participant or (as applicable) the covered affiliate thereof will not be entitled to the defenses accorded under section 252 of EPCA for

actions taken thereafter to carry out the Plan of Action, and may elect not to take such actions, unless the Voluntary Agreement participant has received and accepted, and there remains in effect, approval from the Department of Justice for compliance with alternative requirements.

Annex II to Second Plan of Action to Implement the International Energy Program: Suspension of Coverage Under Section 252 in the Event of Foreign Law Prohibition

In the event that a Covered Foreign Affiliate is prevented, as a result of a foreign law prohibition, from complying with any of the requirements of Section 8, the following alternative requirements will apply for so long as such foreign law prohibition remains in effect:

1. The Covered Foreign Affiliate will not be entitled to the defenses accorded under section 252 of EPCA for any actions taken by it after first learning of the foreign law prohibition that prevents compliance with the provisions of Section 8 relating to such actions.

2. The Covered Foreign Affiliate will be entitled to the defenses accorded under section 252 for actions taken by it before first learning of the foreign law prohibition, provided that the following alternative requirements are met:

a. The Covered Foreign Affiliate will comply in timely fashion with all Section 8 requirements not affected by the foreign law prohibition. Promptly upon termination of the foreign law prohibition, the Covered Foreign Affiliate must comply with all other requirements of Section 8 relating to the period prior to suspension of section 252 coverage pursuant to paragraph 1 of this Annex, to the extent not previously met, and with any supplemental U.S. Government request for production of documents (including intracorporate documents) relating to such period.

b. The Covered Foreign Affiliate or its parent company will inform the Department of Justice and the Federal Trade Commission of the existence of the foreign law prohibition as soon as possible or, in any event, on or before the due date for the first submission, following suspension of coverage pursuant to paragraph 1 of this Annex, that otherwise would have been required to be made to the U.S. Government by or on behalf of the Covered Foreign Affiliate pursuant to Section 8.7.

c. No later than twenty-one days following suspension of coverage pursuant to paragraph 1 of this Annex, the parent company will submit to the Department of Justice and the Federal Trade Commission:

i. a report of the nature of the foreign law prohibition, giving full particulars, including a description of the efforts being made to obtain a waiver from the competent foreign authorities, a statement that the Covered Foreign Affiliate made no attempt to have the foreign law prohibition invoked, and, to the extent permissible under applicable law, a detailed account of all oral communications with any foreign government authority concerning the requirements of the foreign law prohibition and compliance or noncompliance with them (including a copy of each document consisting of or relating to such communications);

ii. a report setting forth all of the information listed in Section 8.7(A)(3), to the extent known to such parent company, and describing in detail the efforts made by it to obtain any such information not set forth in such report;

iii. a report of all transactions to carry out the Plan of Action entered into by the Covered Foreign Affiliate during the period beginning as of the end of the period covered by the last report filed by or on behalf of the Covered Foreign Affiliate pursuant to Section 8.7 and ending as of the date of suspension of coverage pursuant to paragraph 1 of this Annex (the "covered period");

iv. a report describing such parent company's unwritten communications with the Covered Foreign Affiliate during such covered period; and

v. a copy of each written communication between such parent company and the Covered Foreign Affiliate during such covered period.

d. Within fourteen days following receipt of a request from the Department of Justice or the Federal Trade Commission, the parent company shall forward to the Department of Justice and the Federal Trade Commission copies of any documents requested by them (other than documents subject to the attorney-client or attorney work product privilege, but including intracorporate documents) in the possession of the parent company relating to the period prior to suspension of coverage pursuant to paragraph 1 of this Annex.

e. The Covered Foreign Affiliate and its parent company shall make good faith efforts to obtain the information necessary for the preparation of the reports pursuant to subparagraph 2.c.

f. The Covered Foreign Affiliate shall, until termination of the foreign law prohibition, continue to make good faith efforts to obtain a waiver of such prohibition and the parent company shall keep the Department of Justice and the Federal Trade Commission informed in a timely fashion of such efforts.

3. The provisions of paragraph 2 will not apply in the event that the Department of Justice, bearing the burden of proof, shows that the Covered Foreign Affiliate knowingly encouraged or facilitated the creation of the foreign law prohibition or that the reports submitted by the parent company pursuant to subparagraphs 2.c or 2.f of this Annex were materially incomplete in light of the information that was available to, or could lawfully be obtained by, such parent company at the time of their submission.

4. The provisions of paragraph 2 will not apply unless, at least thirty days prior to suspension of coverage pursuant to paragraph 1 of this Annex (or contemporaneously with the onset of the international energy supply emergency, whichever is later), the Covered Foreign Affiliate shall have been instructed by its parent company:

a. To forward to such parent company a copy of all written communications, and of all written reports of oral communications, with other oil companies (not including any of the Covered Foreign Affiliate's affiliates);

b. To keep such parent company continuously informed, at least in general terms, of its unwritten communications with other oil companies (not including the Covered Foreign Affiliate's affiliates); and

c. To forward to such parent company, at intervals of no more than three months, copies of the Covered Foreign Affiliate's other documents.

5. For purposes of this Annex, a "foreign law prohibition" shall be deemed to exist whenever compliance with any provision of Section 8 would, to the extent such provision would otherwise be applicable to the Covered Foreign Affiliate, contravene (or, in the opinion of the competent foreign government authority, would contravene) the laws of any foreign country or political subdivision thereof having jurisdiction over such Covered Foreign Affiliate.

Appendix 2.—Amendments to the Voluntary Agreement and Plan of Action to Implement the International Energy Program

Section 6(a)(1)(B) is amended to read: "The carrying out of the Second Plan of Action to Implement the International Energy Program, which is set out in Appendix B."

The second sentence of Section 6(e)(1) is amended to read: "Except where an approved plan of action contains other provisions for recordkeeping and reporting to the U.S. Government with respect to actions taken to carry out the

plan of action, each participant taking any joint or agreed action or agreeing to take any action pursuant to this subsection shall notify the Administrator and the Attorney General within 72 hours, or longer period as may be determined by the Administrator, after the end of the week in which such action is taken or agreed upon."

Section 9(b)(3) is amended to read: "Approval of any oil company's participation in this Agreement shall extend to actions of other companies which (i) are more than 50% owned, directly or indirectly, by the company to which approval is granted, (ii) own, directly or indirectly, more than 50% of the company to which approval is granted, or (iii) are more than 50% owned, directly or indirectly, by a person described in (ii), provided that the company to which approval is granted notifies the Administrator and the Attorney General of each affiliate to be covered by this subsection, including the reasons for its inclusion and the nature of the company's ownership; and provided that neither the Administrator nor the Attorney General notifies the participant that he disapproves the coverage of such affiliate by this subsection."

[FR Doc. 87-19044 Filed 8-20-87; 8:45 am]

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federal register

Friday
August 21, 1987

Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 47 and 52
Federal Acquisition Regulation (FAR); Guaranteed Maximum Shipping Weights and Dimensions; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 47 and 52

Federal Acquisition Regulation (FAR); Guaranteed Maximum Shipping Weights and Dimensions

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council propose to amend FAR subsection 47.305–16, Shipping weights and dimensions, and the corresponding clause at 52.247–60 to more specifically describe the information concerning shipping characteristics required from the offeror, to provide that offers submitted without the requested information will be evaluated on the basis of shipping characteristics submitted with any offer that produces the highest transportation costs, and to provide that, if the actual item shipping costs exceed the item shipping costs used for evaluation purposes, the contract price of the successful offer will be reduced by an amount equal to the difference between the transportation costs actually incurred and the costs which would have been incurred had the evaluated shipping characteristics been accurate.

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before October 20, 1987, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 87–25 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Telephone (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Background

On June 5, 1985, the Defense Acquisition Regulatory Council granted the Department of the Army authority to deviate from the provisions of FAR 47.305–16(b) and the clause at 52.247–60 to the extent necessary to request additional information regarding shipping characteristics from offerors and to provide that offers submitted without shipping characteristics would be evaluated on the basis of the shipping characteristics submitted with any offer that produces the highest transportation costs. The Army deviation has ensured that the contract administration office receives the information in the contract necessary to establish the liability of the successful offeror for any increased transportation costs incurred by the Government as a result of misinformation furnished by the offeror. This proposed rule will extend the advantages of the Army deviation to all Government agencies and departments, and will revise existing coverage to reflect the Government's intent that contract price reduction be on the basis of actual costs incurred, not costs computed when the offer was evaluated.

B. Regulatory Flexibility Act

The proposed revisions to FAR section 47.305–16 and the corresponding clause at 52.247–60 do not constitute significant FAR revisions within the meaning of FAR 1.501 and Pub. L. 98–577, and publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected FAR coverage will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite FAR Case 87–610 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because the proposed rule does not impose any additional recordkeeping or information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 47 and 52

Government procurement.

Dated: August 11, 1987.

Lawrence J. Rizzi,

Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Parts 47 and 52 be amended as set forth below:

1. The authority citation for Parts 47 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 47—TRANSPORTATION

2. Section 47.305–16 is amended by revising the section title and by revising paragraph (b) to read as follows:

47.305–16 Shipping characteristics.

* * * * *

(b) *Guaranteed shipping characteristics.* (1) The contracting officer shall insert in solicitations and contracts, excluding those awarded under the small purchase procedures of Part 13, the clause at 52.247–60, Guaranteed Shipping Characteristics, when shipping and other characteristics are required to evaluate offers as to transportation costs.

(2) The award document shall show the shipping characteristics used in the evaluation.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 52.247–60 is revised to read as follows:

52.247–60 Guaranteed shipping characteristics.

As prescribed in 47.305–16(b)(1), insert the following clause:

Guaranteed Maximum Shipping Characteristics (July 1987)

(a) The offeror is requested to complete paragraph (a)(1) of this clause, for each part or component which is packed or packaged separately. This information will be used to determine transportation costs for evaluation purposes. If the offeror does not furnish sufficient data in paragraph (a)(1) of this clause, to permit determination by the Government of the item shipping costs, evaluation will be based on the shipping characteristics submitted by the offeror whose offer produces the highest transportation costs or in the absence thereof, by the Contracting Officer's best estimate of the actual transportation costs. If the item shipping costs, based on the actual shipping characteristics, exceeds the item shipping costs used for evaluation purposes, the Contractor agrees that the contract price shall be reduced by an amount equal to the difference between the transportation costs actually incurred, and the costs which would have been incurred if the evaluated shipping characteristics had been accurate.

(1) To be completed by the offeror:
(i) Type of container: Wood Box _____, Fiber Box _____, Barrel _____, Reel _____, Drum _____, Other (Specify) _____;
(ii) Shipping configuration: Knocked-down _____, Set-up _____, Nested _____, Other (specify) _____;
(iii) Size of container: _____" (Length), x_____" (Width), x_____" (Height) =_____ Cubic FT;

(iv) Number of items per container _____ Each;
(v) Gross weight of container and contents _____ LBS;
(vi) Palletized/skidded _____ Yes _____ No;
(vii) Number of containers per pallet/skid _____;
(viii) Weight of empty pallet bottom/skid and sides _____ LBS;
(ix) Size of pallet/skid and contents _____ LBS Cube _____;
(x) Number of containers or pallets/skids per railcar _____ [1]
Size of railcar _____
Type of railcar _____
(xi) Number of containers or pallets/skids per trailer _____ [1]
Size of trailer _____ FT
Type of trailer _____
[1] Number of complete units (contract line item) to be shipped in carrier's equipment.

(2) To be completed by the Government after evaluation but before contract award:
(i) Rate used in evaluation _____;
(ii) Tender/Tariff _____;
(iii) Item _____;

(b) Offerors are cautioned that the guaranteed shipping characteristics requested above will be used solely for the purpose of evaluation of offers and establishing the liability of the successful offeror for increased transportation costs resulting from actual shipping characteristics which differ from those submitted by the offeror or that may have been used for evaluation of its offer in accordance with the terms of the guaranteed shipping characteristics provision. Specifically, offerors are required to comply with all other provisions of this solicitation, including packing and packaging requirements, and the submission of guaranteed shipping characteristics that may be at variance with such requirements will not excuse the offeror from its obligation to comply in all respects with all contract requirements.

(End of clause)

[FR Doc. 87-19151 Filed 8-20-87; 8:45 am]
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Friday
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Part IV

Department of Education

Office of Postsecondary Education

Perkins Loan College Work-Study, and Supplemental Educational Opportunity Grant Programs; Notice

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DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Perkins Loan (Formerly the National Direct Student Loan), College Work-Study, and Supplemental Educational Opportunity Grant Programs

AGENCY: Department of Education.
ACTION: Notice of Closing Date for Filing the Fiscal Operations Report and Application to Participate in the Perkins Loan, College Work-Study (CWS), and Supplemental Educational Opportunity Grant (SEOG) Programs.

SUMMARY: The Secretary gives notice to institutions of higher education of the deadline for an institution to apply for fiscal year 1988 funds—for use in the 1988–89 award year—under the Perkins Loan, CWS and SEOG programs. Under these programs, the Secretary allocates funds to institutions for students who need financial aid to meet the costs of postsecondary education. An institution is not required to establish eligibility prior to applying for funds. Institutions will be notified of the closing date for establishing institutional eligibility to participate in the Perkins Loan, CWS and SEOG programs through a separate notice in the **Federal Register**.

The Secretary further gives notice that an institution that had a Perkins Loan fund or expended CWS or SEOG funds during the 1986–87 award year is required to report its program expenditures as of June 30, 1987, to the Secretary.

The Perkins Loan, CWS, and SEOG programs are authorized by Parts E, C, and Part A Subpart 2, respectively, of title IV of the Higher Education Act of 1965, as amended. (20 U.S.C. 1087aa–1087ii; 42 U.S.C. 2751–2756b; and 20 U.S.C. 1070b–1070b–3.)

Closing Date: To ensure consideration for 1988–89 funds, an institution must submit the 1986–87 Fiscal-Operations Report and the 1988–89 Application to Participate in the Perkins Loan Supplemental Educational Opportunity Grant, and College Work-Study Programs (FISAP–OMB No. 1840–0073) by September 25, 1987.

Submitting FISAP Data: An institution may choose to submit its FISAP data by—

(1) Submitting the completed data cells on the paper form (Form 646–1);

(2) Submitting the completed data cells on a data diskette;

(3) Creating a tape from data stored on a mainframe computer, and submitting the tape; or

(4) Transmitting the data from a personal or mainframe computer through a modem.

FISAPs Delivered by Mail: A FISAP (Form 646–1) sent by mail must be addressed to the Department of Education. Office of Student Financial Assistance, Division of Program Operations. Campus-Based Programs Branch, 400 Maryland Avenue SW. (Room 4621, Regional Office Building 3), Washington, DC 20202.

A diskette or tape containing FISAP data must be addressed to Electronic FISAP, c/o Data Transformation Corporation, 8121 Georgia Avenue—Suite 300, Silver Spring, Maryland 20910.

An institution must show proof of mailing its FISAP. Proof of mailing consists of one of the following: (1) a legible mail receipt with the date of mailing stamped by the U.S. Postal Service, (2) a legibly dated U.S. Postal Service postmark, (3) a dated shipping label, invoice, or receipt from a commercial carrier, or (4) any other proof of mailing acceptable to the U.S. Secretary of Education.

If a FISAP is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service. An institution should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an institution should check with its local post office. An institution is encouraged to use certified or at least first-class mail.

FISAPs Delivered by Hand: A FISAP that is hand-deliverd must be taken to the Department of Education, Office of Student Financial Assistance, Division of Program Operations, Campus-Based Programs Branch, 7th and D Streets, SW., Room 4621, Regional Office Building 3, Washington, DC.

A diskette or tape containing FISAP data must be taken to electronic FISAP, c/o Data Transformation Corporation, 8121 Georgia Avenue—Suite 300, Silver Spring, Maryland 20910. Hand-delivered FISAPs, diskettes, or tapes will be accepted between 8:00 a.m. and 4:30 p.m. daily [Washington, D.C. time], except Saturdays, Sundays and Federal holidays. A FISAP that is hand delivered will not be accepted after 4:30 p.m. on the closing date.

FISAPs Delivered Electronically: A FISAP that is delivered electronically must be transmitted by either a personal or mainframe computer to the host ED computer using a modem. In addition, a completed signature page from Form 646–1 must be submitted under separate cover to the Department.

FISAP Information: FISAPs were mailed by the program office in mid-July. An institution must prepare and submit its FISAP in accordance with the instructions included in the package.

The program information package is intended to aid applicants in applying for assistance under these programs. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirement beyond those specifically inposed under the statute and regulations governing the programs.

Applicable Regulations: The following regulations are applicable to these programs.

National Direct Student Loan—34 CFR Parts 674 and 666.

College Work-Study—34 CFR Parts 675 and 668.

Supplemental Educational Opportunity Grant—34 CFR Parts 676 and 668.

Further Information: For further information or to request a FISAP contact Ms. Gloria Easter, Chief, Financial Management Section, Division of Program Operations, Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue, SW., (Room 4621, ROB–3), Washington, DC 20202. Telephone (202) 732–3758.

(Catalog of Federal Domestic Assistance Nos. 84–038, National Direct Student Loan Program; 84–033, College Work-Study Program; and 84–007, Supplemental Educational Opportunity Grant Program) (20 U.S.C. 1087aa *et seq.*; 42 U.S.C. 2751 *et seq.*; and 20 U.S.C. 1070b *et seq.*)

Dated: August 14, 1987.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 87–19102 Filed 8–20–87; 8:45 am]

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Part V

Department of Education

National Institute on Disability and Rehabilitation Research; Notice of Proposed Funding Priorities for Fiscal Year 1988

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research

AGENCY: Department of Education.

ACTION: Notice of proposed funding priorities for fiscal year 1988.

SUMMARY: The Secretary of Education proposes funding priorities for the Rehabilitation Engineering Center (REC) program of the National Institute on Disability and Rehabilitation Research (NIDRR) in fiscal year 1988.

DATE: Interested persons are invited to submit comments or suggestions regarding the proposed priorities on or before September 21, 1987.

ADDRESSES: All written comments and suggestions should be sent to Betty Jo Berland, National Institute on Disability and Rehabilitation Research, Department of Education, 400 Maryland Avenue SW., Room 3070, Switzer Building, Mailstop 2305, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Betty Jo Berland, National Institute on Disability and Rehabilitation Research (Telephone: (202) 732-1139). Deaf and hearing impaired individuals may call (202) 732-1198 for TTY services.

SUPPLEMENTARY INFORMATION: Authority for the Rehabilitation Engineering Center program of NIDRR is contained in section 204(b)(2) of the Rehabilitation Act of 1973, as amended. Under this program, awards are made to public and private agencies and organizations including institutions of higher education, Indian tribes, and tribal organizations. NIDRR can make awards for up to sixty months.

The purpose of the awards is to support the development of innovative methods of applying advanced medical technology and scientific achievements to solve problems of rehabilitation, improvements in the distribution of technological devices and equipment to individuals with disabilities, and the development of systems to facilitate and coordinate the exchange of technical and engineering information related to disability.

NIDRR regulations authorize the Secretary to establish research priorities by reserving funds to support particular research activities (see 34 CFR 353.32). NIDRR will conduct, not later than three years after the establishment of any REC, one or more reviews of the activities and achievements of the Center, to include review by peers. Continued funding depends at all times on satisfactory performance and accomplishment, and is subject to the standards in 34 CFR 75.253 concerning the continuation of a multi-year project after the first budget period.

NIDRR invites public comment on the merits of the proposed priorities both individually and collectively, including suggested modifications to the proposed priorities. Interested respondents also are invited to suggest the types of expertise which would be needed for independent experts to review and evaluate applications under these proposed priorities.

The final priorities will be established on the basis of public comment, the availability of funds, and any other relevant Departmental considerations. These final priorities will be announced in a notice in the **Federal Register**. The publication of these proposed priorities does not bind the Federal Government to fund REC's in any of these areas. Funding of particular REC's depends on the final priorities, the availability of funds, and on the quality of the applications that NIDRR receives.

NIDRR supports a program of Rehabilitation Engineering Centers (REC's) that conduct coordinated programs of advanced research of an engineering or technological nature. REC's develop systems for the exchange of technical and engineering information and work to improve the distribution of technological devices and equipment to individuals with handicaps. Each REC must be located in a clinical rehabilitation setting and is encouraged to collaborate with institutions of higher education.

Each REC conducts a program of research, scientific evaluation, and training that advances the state of the art in technology or its application; contributes substantially to the solution of rehabilitation problems; and becomes an acknowledged center of excellence in a given subject area. REC's are encouraged to develop practical applications for their research through scientific evaluation activities that validate their findings as well as related findings of other centers. Each REC is expected to provide for the development of research expertise in its area through exchange of engineers and scientists with other Centers, other agencies such as the National Science Foundation, National Aeronautics and Space Administration, National Institutes of Health, service delivery agencies, and appropriate private industries. REC's are expected to disseminate and encourage utilization of new rehabilitation engineering knowledge through such means as development of undergraduate and graduate texts and curricula, in-service training, continuing education, and the distribution of information and appropriate technology. All training and information materials developed by the Center must be presented in several formats that will be accessible to individuals with various types of sensory and mobility impairments.

Proposed Priorities (12)

Improved Wheelchair and Seating Design

Nearly one million Americans with handicaps use wheelchairs as their primary means of mobility. There is a need for wheelchairs that are safer, more reliable, more durable, more versatile, and adaptable to personal requirements if individuals with disabilities are to achieve their full potentials for independent and productive lives. Current wheelchair frames are often unstable or fragile. Existing wheelchairs are not suitable for different terrains or for all vocational, education, recreational, or independent living settings. Available wheelchair power systems are short-term, and practical backup power systems are needed. Disabled individuals need control systems for powered wheelchairs that are durable and reliable, and can be adapted for easy use by persons with different types of functional limitations.

Wheelchair seating systems are critical for the sustained use of wheelchairs. Many disabled individuals are able to return to work, school, or community living in wheelchairs, if they have customized seating that provides appropriate support for soft tissues and for posture.

A critical element of any Center to be supported under this priority will be the involvement of disabled individuals and their families in the planning, implementation, and evaluation of the Center's activities. An REC in wheelchair development must provide for cooperation with industry in the various stages of product development, testing, and marketing, and must establish linkages with NIDRR funded Centers in Independent Living, spinal cord injury, and traumatic brain injury to conduct needs assessments and evaluations of its products. The Center must be a repository of information in the subject area, and provide technical assistance to rehabilitation counselors, clinicians, and other service providers.

An absolute priority is proposed for an REC in this area to:

- Conduct a survey of wheelchair sale/repair establishments to assess, from a technical and engineering perspective, the frequency and type of malfunctions of commercially marketed

electric wheelchairs and establish a research program that focuses on developing wheelchairs that do not exhibit the defects found in the survey;

- Develop new designs for powered wheelchairs to improve safety and reliability, taking into account the needs of disabled individuals of all ages;
- Design powered wheelchairs that are suitable for a variety of environments to allow wheelchair users to function independently in employment and independent living activities;
- Develop new wheelchair power systems to provide longer-lasting and more reliable power, and backup power, sources;
- Develop new wheelchair controls with appropriate back-up systems to improve reliability, manageability, and adaptability;
- Design and develop cost-effective customized seating systems to provide appropriate individual support, and also develop modular seating systems that can be used in wheelchairs as well as on other suitable bases to increase the mobility options for disabled individuals;
- Develop training materials and provide training for rehabilitation clinicians, wheelchair users, family members, and personal attendants to improve the appropriate prescription and use of wheelchairs and seating; and
- Conduct a state-of-the-art study on electric wheelchairs, to lead to improvements in the equality and relevance of research on wheelchairs.

Prosthetics and Orthotics

Several million individuals have impaired limb or spinal functions that can be ameliorated by appropriate use of technological devices and systems. Existing devices and systems are often cumbersome, uncomfortable, expensive, of limited capacity, or insufficiently versatile for use in the necessary range of educational, vocational, and independent living settings. However, the state-of-the-art in such fields as electronics, materials development, computer-assisted design, and computer-assisted manufacture is sufficiently advanced to support the development of prosthetic and orthotic devices that are more reliable, adaptable, comfortable, affordable, and provide greater enhancement of function. These devices are needed for disabled persons of all ages.

A critical element of any Center to be supported under this priority will be the involvement of disabled individuals and their families in the planning, development, and review of the work of the Center. A Center in this area must serve as a national resource for information on prosthetics and orthotics, maintain a database on the results of research in this area, and cooperate with private sector manufacturers and distributors in the assessment of needs and the distribution of information and research results.

An absolute priority is proposed for an REC in this area to:

- Conduct a program of research and development in the application of computer-aided design and computer-aided manufacture to produce improved prosthetic and orthotic devices of all types;
- Develop applications for new and improved materials (stronger, lightweight, more durable, tissue compatible) to fabricate prostheses and orthoses;
- Develop design criteria for prosthetic and orthotic devices intended to improve functioning in all joints;
- Develop standard procedures, based on principles of biomechanics and functional requirements for the devices, to evaluate current techniques for prescribing and fitting prostheses and orthoses and the accompanying control mechanisms;
- Develop materials and provide training to clinicians, disabled consumers, rehabilitation practitioners, prosthetists and orthotists, and other relevant parties to improve the prescription, use, maintenance, and assessment of these aids and devices;
- Develop linkages with manufacturers and distributors to assure that the most appropriate devices are prescribed, used, and evaluated; and
- Conduct at least one state-of-the-art study on prosthetics and orthotics to focus attention on current research findings and to provide guidance for future research.

Transportation Systems for Persons with Disabilities

Individuals with disabilities are often further handicapped by the less than optimal accessibility of public transportation and the inadequacy of adaptations for personal licensed vehicles. Many persons with disabilities could live independently in the community, increase their vocational and earning potential, and participate in a full-range of educational and recreational activities if they could travel more easily.

There are no commonly accepted standards for the adaptation of personal vehicles to accommodate disabled individuals as drivers or passengers. Adaptations may compromise the structural stability and safety of the vehicles, may not provide easy boarding or safe and rapid exit from the vehicle, and may include unsafe or ineffective control devices. Seating systems and systems for securing wheelchairs in the vehicles are often unsafe and ineffective. Individuals with hearing deficits need alerting systems to facilitate safer driving.

Mass transit systems may be less than optimally safe or accessible for those with mobility, cognitive, and sensory impairments. Again, safe and secure seating and wheelchair anchoring systems, emergency exit systems, and signal systems to promote the mobility of sensory impaired individuals are needed to make public transportation more accessible to persons with disabilities.

Any Center to be supported under this priority must provide for the substantial involvement of disabled persons and their families in the planning, implementation, and assessment of Center activities, especially in the assessment of needs, the nomination of products to be tested, and the evaluation of devices and systems. An REC in this area must provide for linkages with other appropriate agencies involved in the provision or regulation of public and private transportation and with private sector sources to promote the manufacture, distribution, and testing of new devices and systems. The Center must serve as a national resource for information on vehicular adaptations and modifications of mass transit systems.

An absolute priority is proposed for an REC to:

- Evaluate existing devices to provide safe seating and secure tie-downs for wheelchairs in both automobiles and mass transit vehicles, and develop and test new devices and systems;
- Design, develop, and test methods to provide access to and exit from personal vehicles while maintaining the structural integrity of the vehicle;
- Design, develop, and test control systems to enable persons with disabilities to drive automobiles, assuring that the control systems do not compromise the vehicle's compliance with standards set by the Society of Automotive Engineers and the United States Department of Transportation;
- Design, develop, and test safety devices such as emergency systems for use in exiting vehicles after accidents or power failures; alerting devices for hearing impaired drivers; and guidance systems to enable individuals with visual, hearing, or cognitive deficits to safely use mass transit;
- Develop materials and provide training to engineers, disabled drivers,

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personal attendants, rehabilitation counselors, operators of public transportation, taxicabs, and livery services in the proper use of these devices; and

• Conduct at least one state-of-the-art study each in the areas of mass transit and personal licensed vehicles to increase the knowledge base in this area and to provide recommendations for future research.

Evaluation of Rehabilitation Technology

Many assistive devices and other rehabilitation technologies are rarely prescribed by clinicians and are even less frequently used by persons with disabilities. Often, these devices have not been adequately tested, nor have professional and consumer responses to them been assessed. Inventors, designers, developers, or manufacturers may not have the capability to design or conduct adequate product testing. In some instances, the techniques for measurement and testing are themselves inadequate and the development and refinement of assessment methods is a prerequisite to product evaluation.

The appropriate evaluation of rehabilitation technology is necessary to ensure the safety, utility, practicality, and appropriateness of devices for persons with disabilities. Adequate assessment will also increase the frequency with which clinicians make appropriate prescriptions and consumers make effective use of new technologies.

A critical element of any Center to be funded in response to this priority will be the involvement of disabled individuals in the planning, implementation, and review of the Center's activities, and specifically in the process of selecting technologies to be tested and specifying certain consumer-oriented performance criteria. A Center in this area must serve as a national resource for information on establishing evaluation standards and the results of evaluation studies, and must cooperate with the private sector in developing and distributing evaluation standards and results.

An absolute priority is proposed for an REC to:

• Design, assess, and refine performance criteria and protocols for testing rehabilitation devices in order to evaluate the efficacy of those devices in restoring, replacing or supplementing function;

• Provide a resource for technical assistance on the adaptation and implementation of evaluation protocols for product developers and manufacturers in both the private and public sectors to increase the frequency and improve the quality of product evaluation;

• Conduct direct evaluations of selected new or untested rehabilitation technologies to assess the effectiveness of the device;

• Develop and disseminate information on both methods of evaluation and the results of tests performed by or in conjunction with the Center, to service providers and disabled persons, assuring that all information packages are accessible to individuals with various types of disabilities;

• Conduct at least one comprehensive study of the state-of-the-art in an important area of product evaluation to improve the quality and quantity of resources for evaluation of rehabilitation technology.

Quantification of Human Physical Performance

Effective rehabilitation depends on the reliable and valid measurement of changes in physical performance at various stages of the rehabilitation process. Failure to assess physical capacities accurately can lead to years of ineffective treatment.

Technological capability exists to support the development of accurate diagnostic instruments. Measurement of change in physical performance permits the assessment of rehabilitation outcomes and the redirection of treatment regimens when necessary. These assessments are important to all aspects of physical restoration, vocational rehabilitation, and preparation for independent living. An REC in this area shall develop precise instrumentation to measure physical capability prior to rehabilitation and to track changes in performance subsequent to therapeutic interventions.

A critical element of any Center to be established under this priority will be the involvement of disabled individuals and family members in the planning and conduct of the Center's activities, particularly in reviewing the acceptability to the consumer of the various instruments and tests.

An absolute priority is proposed for an REC to:

• Design and develop safe, reliable, easy-to-use, accurate, and affordable instruments to improve the measurement of active and passive range of motion and strength in the extremities and trunk;

• Design and develop instruments to test the effects of treatment interventions, such as surgery, orthoses, exercise, functional electrical stimulation (FES), and others, on neuromuscular performance and restoration of function;

• Develop and test complete assessment systems to improve the accuracy of evaluations of the full range of physical performance at various stages of the rehabilitation process;

• Prepare and disseminate instructional packages in the use of new measurement instruments to improve direct and indirect training for rehabilitation clinicians in the use of these instruments; and

• Provide for the advancement of knowledge in this area by conducting at least one state-of-the-art study in quantification of human performance and participating in time-limited professional exchange programs with NSF, National Institute's of Health (NIH), other REC's, or other appropriate agencies.

Augmentative Communication Devices

The inability to communicate in easily understood language isolates an individual and renders education, employment, or social interaction extremely difficult. Recent developments in systems for synthetic speech and speech recognition indicate a potential to assist communication through technology. However, existing systems are slow and difficult to operate, yield unrealistic speech, and cannot produce print output with speed or accuracy.

An REC in this area must extend the current state of technology and serve as a natural resource for information on communication devices. A critical element of any Center to be supported in this priority area will be the involvement of disabled individuals and their families in the planning, conduct, and review of all activities of the Center.

An absolute priority is proposed for an REC to:

• Develop communication devices that improve the speed and accuracy of voice or print outputs;

• Develop methods to enable individuals with a wide range of speech deficiencies and related functional impairments to use these vocal augmentative communication systems;

• Develop appropriate materials for dissemination of information about augmentative communications technology to clinicians, educators, counselors, and persons with disabilities, assuring that the materials are accessible in appropriate media for individuals with various types of functional limitations;

• Provide training and technical assistance to individuals with disabilities, their family members and

attendants, rehabilitation practitioners, and educators to improve the selection, use, and maintenance of systems that augment communication;

• Develop and implement appropriate strategies to involve manufacturers and distributors in making useful devices available to disabled persons; and

• Conduct at least one state-of-the-art study on a significant aspect of augmentative communication devices to provide a review of current research and to make recommendations for future research.

Technologies to Promote "Hearing" in Deaf and Hearing-Impaired Individuals

Individuals who are hearing-impaired due to conductive, sensorineural, mixed, or central hearing deficits will benefit from the use of comfortable and effective hearing aids. Hearing aid technology has advanced sufficiently in recent years to allow substantial further improvements in amplification, filtering, and frequency responses to enhance the quality of the sound perceived by the user.

Deaf individuals can benefit from technologies that convert sound into tactile or visual signals. These technologies include vibrotactile devices, alarm lights, and other instrumental alerts. Improved hearing aids and other devices must be developed for all age groups, and for persons with multiple handicaps, in order to facilitate education, employment, and independent living.

An REC to further develop these technologies must include deaf and hearing-impaired individuals and their family members in planning and conducting its activities, must maintain an information resource in the subject, and must coordinate with manufacturers and distributors to promote widespread dissemination of the latest technologies. The Center must serve as a national resource for information on technologies for hearing-impaired individuals.

An absolute priority is proposed for an REC to:

• Develop performance standards and evaluate selected hearing aid systems for the quality of amplification, frequency response, and filtration systems in clinical as well as laboratory environments;

• Design and develop new hearing aid systems that are reliable, affordable, attractive, and produce an improved quality of sound;

• Design and develop new technologies to improve recognition and reproduction of sounds from various sources, using alternative sensory signals such as light, vibration, or tactile stimuli;

• Design and develop new, reliable alerting systems to provide deaf and hearing-impaired individuals with warnings of emergencies or hazardous conditions;

• Design and develop diagnostic and prescriptive instruments and criteria to facilitate the appropriate use of these new technologies by deaf and hearing-impaired individuals;

• Design information and training materials in various media that are accessible to people with many types of disabilities, and provide training to disabled individuals and family members, third-party payers, service providers, and industry in the selection, use and maintenance of optimum technologies for "hearing"; and

• Conduct at least one state-of-the-art study on hearing aid technology and one on alternate technologies for deaf persons.

Functional Electrical Stimulation

Electrical stimulation is commonly used as a rehabilitation tool with people who have neurological impairments, spinal cord injuries, scoliosis, and other medical problems. Functional Electrical Stimulation (FES) is probably best known to the public for the work that has been done over the past twenty-five years to restore limited standing and ambulation to spinal cord injured patients. However, FES has a much broader application in treating people experiencing a variety of neuromuscular, musculoskeletal, and other medical problems. Potential beneficiaries of FES include individuals with neuromuscular or idiopathic spinal deformities; persons with prosthetic joints; individuals with cerebral lesions due to stroke or head injury; and persons with urinary incontinence, as well as those with spinal cord injuries.

The current challenge is to develop and refine technology to extend the application of FES to other types of impairments, to improve electrodes and implantation to make FES devices more practical to use, to increase the value of FES in spinal cord injury, and to evaluate and disseminate the technology.

A critical element of any Center to be funded in response to this priority must be the involvement of disabled individuals in the planning, conduct, and evaluation of Center activities. The Center must participate in the exchange of engineers and scientists with other research and development institutions. The Center must emphasize the development of practical products, and cooperate with industry to promote manufacture, distribution, and evaluation of FES systems.

An absolute priority is proposed for an REC to:

• Develop and maintain a comprehensive information base on FES, disseminate materials in accessible format to persons with disabilities, clinicians, Independent Living programs, counselors, third-party payers, and others, and coordinate the collation of research data and product information from other Centers or projects studying FES;

• Design, develop, and evaluate FES devices and systems, including personal controls for activation and feedback, to promote standing and walking for individuals with lower extremity neuromuscular impairments;

• Design, develop and evaluate devices and intervention systems to increase hand and arm function in individuals with upper extremity impairments;

• Design, develop, and test external orthotic devices to be used in combination with FES to improve the function, safety, and reliability of FES systems for both upper and lower extremities;

• Design and develop FES and combined FES/orthotic systems to stabilize trunk musculature or correct trunk deformities; and

• Conduct comprehensive state-of-the-art studies in several significant aspects of functional electrical stimulation to improve the knowledge base and make recommendations for future research in this area.

Modifications to Worksites and Educational Settings

Disabled individuals can have significantly more employment options and educational opportunities if worksites and classrooms are modified and tasks are restructured to accommodate functional limitations and thus enable students and employees to remain in their occupations. Current technology can support effective modifications to work stations, work equipment, classrooms, laboratories, and auxiliary locations (such as cafeterias, lockers, or recreation areas), and improve access to all areas of schools or workplaces. Modifications may include changing the sequence of tasks, automating parts of some tasks, converting signals from light to sound or vice-versa, or modifying tasks to utilize new tools or other technological developments.

A critical element of any Center to be supported under this priority will be the involvement of disabled individuals in the planning, conduct, and assessment of Center activities, including but not

limited to, the clinical testing of proposed modifications. An REC in this area must be a national resource of information on the subject and see that its findings are incoporated in other relevant databases; and must also develop appropriate linkages with employers of disabled individuals and manufacturers of adaptive equipment, to ensure that adaptations are available and used.

An absolute priority is proposed for an REC to:

- Develop standards for modifying school and worksites, and assess the most effective means for adapting different types of environments;
- Develop innovative engineering applications for modifying worksites to improve the range of employment options for persons with disabilities;
- Design and develop technologies to mechanize and automate parts of production systems to enable disabled persons to perform additional job or educational tasks, and develop systems to reorganize tasks;
- Develop programs to provide information and training to disabled individuals, employers, educators, independent living programs, rehabilitation counselors, and other engineers or scientists on the use of these modifications; and
- Conduct one or more state-of-the-art studies on modifications to jobs, worksites, and educational settings to improve the knowledge base and to provide suggestions for future research in this area.

Access to Computers and Electronic Equipment

Persons with disabilities constitute a significant potential market for computers, peripherals, and other electronic devices. Disabled persons have at minimum the same needs to use computers and other electronic equipment for work, education, or independent living, as do persons without disabilities. In addition, disabled persons may have specialized uses for computers and electronic equipment to replace or extend functional abilities. However, such equipment (both hardware and software) is often inaccessible to individuals with various types of functional impairments. Computer inaccessibility may result from software reliance on visual, sound, or spoken commands, color coding, or performing two or more functions simultaneously. Hardware switches or operating keys may be physically or visually inaccessible to individuals with disabilities.

There is evidence that manufacturers are interested in making equipment accessible, but they often do not find it cost-effective to develop the necessary adaptations to accommodate the complete range of functional impairments that may be present in potential users. NIDRR proposes to support a Center to design and develop alternative access systems for standard computers and electronic devices. A critical element of such a Center will be the involvement of disabled individuals in planning, conducting, and reviewing the activities of the Center, including assessing needs and evaluating Center products. The Center must serve as a national source of information on access to computers and electronic equipment.

An absolute priority is proposed for an REC to:

- Design and develop performance criteria for accessible computer hardware and software and other electronic devices;
- Investigate the feasibility of a standard keyboard transfer function to enable disabled persons to access standard computers with personal interface devices;
- Design, develop, and test new computer interface aids to improve functional capacity of persons with brain injury, language disorders, upper extremity disorders, spinal injuries, sensory deficits, and other disabling conditions;
- Establish effective linkages with manufacturers and distributors of standard computers to assure testing, acceptance, and incorporation of design modifications;
- Develop and disseminate accessible informational materials and training programs to make manufacturers, distributors, disabled persons, educators, rehabilitation counselors, and others, aware of the availability of and able to use computer access systems; and
- Conduct at least one state-of-the-art study on access to computers and electronic equipment.

Low Back Pain

Low back pain is a comon disabling condition, leading to lost work time and costly health care, and seriously impairing the quality of the lives of affected individuals. Diagnosed low back pain accounts for ten percent of all reported chronic conditions and is the most frequent cause of limitations in the activities of persons under age sixty-four. There are over one million adults disabled by low back pain, and one million persons are temporarily disabled each year. Low back injuries account for as much as one-fifth of workers' compensation awards, and are among the most costly claims.

A critical element of any Center to be funded under this priority is the involvement of disabled individuals in planning, conducting, and reviewing all Center activities. Such a Center must become a national repository of information on the topic area; and must coordinate with other NIDRR research endeavors in spinal cord injury, prosthetics and orthotics, custom seating designs, and worksite modification.

An absolute priority is proposed for an REC to:

- Identify risk factors for low back pain and develop intervention strategies which reduce the incidence of low back pain;
- Develop accurate measurement tools to assess the factors that contribute to low back pain;
- Study the use and effectiveness of currently available orthotic devices in the treatment of low back pain, and design and evaluate new orthotic devices;
- Evaluate the effectiveness of current interventions (movement, manipulation, and exercise) to reduce or eliminate low back pain;
- Assess persons not effectively treated by current intervention techniques to identify those characteristics related to positive therapeutic outcomes;
- Develop worksite modifications to reduce or eliminate low back injury, pain from injury, and lost work time;
- Develop accessible information and training materials on the latest technologies for amelioration of low back pain for disabled persons, clinicians, third-party payers, vocational counselors, and employers; and
- Conduct at least one state-of-the-art study on low back pain.

Rehabilitation Technology Transfer

A major effort is required to ensure that disabled individuals receive and use the appropriate technological devices. Advances in the development of rehabilitation technology frequently are not reflected in the manufacture, distribution, prescription, purchase, and use of appropriate technology.

Barriers to optimum use may result from lack of market knowledge, concerns of consumers and manufacturers about product safety and liability for malfunctions, lack of incentives for production, lack of qualified technology service providers, or lack of awareness of resources to finance rehabilitation technology purchases. NIDRR proposes to initiate a

major effort to stimulate the production and marketing of technologies, enhance rehabilitation technology service delivery networks, elevate the qualifications of technology service providers, and assist in making new research knowledge available for incorporation into existing technology databases used by consumers and professionals.

A critical element of any Center to be funded under this priority is the involvement of disabled individuals in planning, conducting, and reviewing all Center activities. The Center must become a national repository of information on techniques of technology transfer and training technologists.

This Center must coordinate with other NIDRR research endeavors in technology, and assist in the provision of knowledge derived from technology research to existing information systems used by consumers. This Center must work closely with private industry, and with the Regional Rehabilitation Continuing Education Program (RRCEP) and other training resources to promote the adoption of improved training for rehabilitation technologists. This Center must propose and develop productive linkages with the proposed REC on Technology Evaluation and also with the two REC's that NIDRR is establishing pursuant to the Rehabilitation Act Amendments of 1986 to disseminate rehabilitation technology.

An absolute priority is proposed for an REC in this area to:

- Investigate the extent to which concerns about product safety and manufacturer liability are possible barriers to the development and production of rehabilitation technology;
- Conduct market studies to assess the needs and characteristics of potential user populations and identify resources to finance purchase of technological devices by individuals with disabilities, in order to stimulate production and distribution of products;
- Identify and disseminate exemplary models for providing expertise in rehabilitation technology in order to improve the delivery of rehabilitation engineering services;
- Develop and test training materials that are accessible to persons with a variety of disabilities, arrange for the adoption of new training programs, and develop criteria to assess qualifications of rehabilitation technologists, in order to increase the number of qualified rehabilitation engineers and other technologists involved in the provision of services to individuals with handicaps; and
- Conduct at least one state-of-the-art study in the area of technology distribution and one on the training of technologists.

Invitation to Comment

Interested parties are invited to submit comments and recommendations regarding these priorities. All comments submitted in response to these proposed priorities will be available for public inspection during and after the comment period in Room 3070, Mary E. Switzer Building, 330 C Street SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

(20 U.S.C. 761a, 762)

(Catalog of Federal Domestic Assistance No. 84.133E, National Institute on Disability and Rehabilitation Research)

Dated: July 23, 1987.

William J. Bennett,

Secretary of Education.

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Part VI

Environmental Protection Agency

40 CFR Part 761

Polychlorinated Biphenyls in Electrical Transformers; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[OPTS-62035F; FRL 3217-1]

Polychlorinated Biphenyls in Electrical Transformers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA issued a Final Rule, published in the **Federal Register** of July 17, 1985 (50 FR 29170) (hereafter, PCB Transformer Fires Rule), which required measures to reduce and eliminate the fire-related risks posed by the use of electrical transformers containing 500 parts per million (ppm) or greater of polychlorinated biphenyls (PCBs) (electrical transformers containing 500 ppm PCBs are referred to as PCB Transformers). Mississippi Power Company filed a petition for review, in District Court, of the PCB Transformer Fires Rule and in the context of settlement negotiations with EPA, Mississippi Power Company raised certain issues for consideration by the Agency. EPA evaluated these issues and agreed to take further action as specified in a settlement agreement executed on October 30, 1986. EPA issued a notice published in the **Federal Register** of December 31, 1986 (51 FR 47241) containing responses to specific questions regarding the PCB Transformer Fires Rule. In addition, EPA proposes amendments to the final PCB Transformer Fires Rule relating to, among other things; (1) The installation of PCB Transformers; (2) the use of an alternative label on PCB Transformer locations; (3) the existing enhanced electrical protection requirement on low secondary voltage network transformers; and (4) the prohibition on the use of certain PCB Transformers located in sidewalk vaults.

DATES: An informal hearing, if requested, will be held in Washington, DC, October 20, 1987. For the exact time and location of the hearing, telephone EPA's TSCA Assistance Office listed under "**FOR FURTHER INFORMATION CONTACT.**" Comments on this proposed rule and requests to participate in an informal hearing must be submitted by October 5, 1987. All requests to participate must include an outline of the topics to be addressed, the amount of time requested for the opening statement, and the names of participants. The informal hearing is meant to provide an opportunity for interested persons to present additional information or to discuss new issues, not to repeat information already presented in written comments. Reply comments made in response to issues raised at the hearing must be submitted no later than one week after the date of that hearing.

ADDRESS: Since some comments may contain confidential business information, all comments should be sent in triplicate to: Document Processing Center (TS-790), Rm. L-100, Office of Toxic Substances, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Comments should include the docket number OPTS-62035F. Any comments claimed to be confidential information must be marked "CONFIDENTIAL", be accompanied by a nonconfidential version of the confidential copy, and sent via certified mail. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. Information not marked "CONFIDENTIAL" will be placed in the public record and may be disclosed publicly by EPA without prior notice.

Non-confidential versions of comments received on this proposed rule will be available for reviewing and copying from 8 a.m. to 4 p.m. Monday through Friday, excluding holidays, in Rm. NE-G004 at the address given above.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M Street SW., Washington, DC 20460, (202-554-1404).

Copies of this proposed rule can be obtained from the TSCA Assistance Office. Copies of the support documents for this rule can be obtained through the OTS Document Control Officer listed above.

SUPPLEMENTARY INFORMATION: This document proposes to amend the PCB Transformer Fires Rule by:

a. Substituting the words "rupture" and "ruptures" for the words "failure" and "failures",

b. Allowing the installation of PCB Transformers beyond October 1, 1985, in emergency situations and in situations where the transformer has been retrofilled and is being placed into service for reclassification purposes,

c. Allowing the limited use of an alternative label on certain PCB Transformer locations,

d. Establishing an alternative to the existing electrical protection requirement for owners of lower secondary voltage network PCB Transformers in or near commercial buildings, and

e. Prohibiting the use, as of October 1, 1993, of all lower secondary voltage network PCB Transformers in sidewalk vaults near commercial buildings.

f. Requiring that in the event a mineral oil transformer assumed to be PCB-Contaminated is subsequently tested and found to contain 500 ppm or greater PCB, a specific schedule be followed to bring the transformer into compliance with all applicable regulations.

I. Background

Section 6(e) of the Toxic Substances Control Act (TSCA) generally prohibits the use of PCBs after January 1, 1978. The statute does, however, set forth two exceptions under which EPA may, by rule, allow a particular use of PCBs to continue. Under section 6(e)(2) of TSCA, EPA may allow PCBs to be used in a totally enclosed manner. TSCA also allows EPA to authorize the use of PCBs in a manner other than a totally enclosed manner if the Agency finds that the use "will not present an unreasonable risk of injury to health or the environment."

EPA promulgated a rule, which was published in the **Federal Register** of May 31, 1979 (44 FR 31514), to implement section 6(e)(2) and (3) of TSCA under 40 CFR Part 761. The rule, among other things, designated all intact, nonleaking capacitors, electromagnets, and transformers, other than railroad transformers, as "totally enclosed," thus permitting their use without specific authorizations or conditions. The Environmental Defense Fund (EDF) petitioned the U.S. Court of Appeals for the District of Columbia Circuit to review a number of provisions of the rule, including the portion of the rule that designated all intact and nonleaking capacitors, electromagnets, and transformers as "totally enclosed" (*Environmental Defense Fund, Inc.* v. *Environmental Protection Agency*, 636 F.2d 1267).

On October 30, 1980, the court, among other things, decided that there was insufficient evidence in the record to support the Agency's classification of transformers, capacitors, and electromagnets as totally enclosed. The court invalidated this portion of the rule and remanded the rule to EPA for further action.

As a consequence to the October 1980 decision, EPA undertook a number of rulemaking actions. One such rule was published in the **Federal Register** of August 25, 1982 (47 FR 37324) (hereafter, "PCB Electrical Use Rule"). This rule authorized, among other things, the continued use, until October 1, 1985, of

PCB Transformers (electrical transformers containing greater than 500 ppm PCBs) in facilities involved in the handling of food or feed items, and authorized for the remainder of their useful life, the use of all other categories of non-rail electrical transformers containing or contaminated with PCBs. In the PCB Electrical Use Rule, EPA made a determination that authorizing the use of these transformers for the remainder of their useful life (subject to certain conditions) did not present an unreasonable risk to public health or the environment. EPA's August 1982 decision to allow the continued use of electrical transformers containing PCBs was based on the reported low frequency of leaks and spills of PCBs from this equipment compared to the high costs associated with replacing this equipment with substitute transformers or requiring secondary containment to limit the spread of spilled materials. EPA determined that the most cost-effective means for reducing the risks posed by leaks and spills of PCBs from these transformers was to require routine inspections, repairs, and cleanup.

After promulgation of the PCB Electrical Use Rule, additional information came to EPA's attention that indicated that fires involving transformers that contain PCBs may occur more frequently than previously expected. Thus, EPA subsequently undertook an evaluation of the fire-related risks posed by the continued use of transformers that contain PCBs, and the costs and benefits of measures designed to reduce those risks. EPA issued a Proposed Rule, published in the **Federal Register** of October 11, 1984 (49 FR 39966), which contained EPA's determination that PCB Transformer fires (fires involving transformers containing greater than 500 ppm PCBs), particularly fires which occur in or near commercial buildings, do present risks to human health and the environment. EPA reached this determination after considering the toxicity of materials which can be formed and released during fires involving this equipment, as well as the potential for human environmental exposures to these compounds from a single incident, and the expected frequency of incidents over the remaining useful life of this equipment.

The Agency issued a final rule, published in the **Federal Register** of July 17, 1985 (50 FR 29170) (hereafter, the PCB Transformer Fires Rule) that amended the PCB Electrical Use Rule. The PCB Transformer Fires Rule placed additional restrictions and conditions on the use of PCB Transformers, particularly PCB Transformers located in or near commercial buildings. Among other provisions, EPA banned the further installation of PCB Transformers in or near commercial buildings, required the removal of PCB Transformers that posed particularly high fire-related risks, and required the installation of enhanced electrical protection on all other PCB Transformers located in or near commercial buildings.

After the promulgation of the PCB Transformer Fires Rule, Mississippi Power Company (hereafter, "Mississippi Power") filed a petition for review of the rule. In the context of settlement negotiations, EPA agreed to publish a clarification notice and propose to amend portions of the PCB Transformer Fires Rule.

EPA issued a Notice of Interpretation of the PCB Transformer Fires Rule published in the **Federal Register** of December 31, 1986 (51 FR 47241) that clarified several provisions of the EPA's regulations governing the use of electrical transformers containing PCBs. The questions concerned: (1) The PCB Transformer registration requirements; (2) the requirement for the removal of stored combustibles near PCB Transformers; (3) the requirement for the reporting of fire-related incidents to the National Response Center; (4) the definition of commercial building; (5) the status of mineral oil transformers which are found to contain over 500 ppm PCBs; (6) the ban on the installation of PCB Transformers in or near commercial buildings; and (7) the requirement for the labeling of the exterior of PCB Transformer locations.

Mississippi Power also raised additional, more substantive issues regarding EPA's ban on the installation of PCB Transformers, the requirements for enhanced electrical protection of low secondary voltage network PCB Transformers, and the requirement for the labeling of the exterior of PCB Transformer locations. First, Mississippi Power questioned whether EPA had intended to ban the installation of PCB Transformers in emergency situations (where no other non-PCB substitute is available) and the installation of retrofilled PCB Transformers when installed for purposes of reclassification. Further, Mississippi Power asked EPA to reconsider the requirement for enhanced electrical protection of low secondary voltage network PCB Transformers because of space constraints in sidewalk vaults, lack of suitable (i.e., waterproof) fuse enclosures, and Mississippi Power's belief that the cost of fuse installation is 2 to 4 times higher than EPA originally estimated. Finally, Mississippi Power asked that EPA allow the use of alternative labels on PCB Transformer locations, when such labeling occurred voluntarily prior to the effective date of the PCB Transformer Fires Rule.

EPA evaluated the additional information submitted by Mississippi Power in the context of settlement negotiations and decided that the new information warranted a reconsideration of certain of the Agency's previous determinations. This notice presents the results of the Agency's further evaluations and proposes some modification to the requirements of the PCB Transformer Fires Rule.

II. Summary of Proposed Rule

Under section 6(e)(2)(B) of TSCA, EPA can authorize a use of PCBs provided that the use "will not present an unreasonable risk of injury to health or the environment." Although the use of PCB Transformers were authorized until October 1, 1985 in facilities involved in the handling of food and feed items and the use of all other categories of non-railroad electrical transformers containing or contaminated with PCBs were authorized for the remainder of their useful lives, EPA later determined that PCB Transformer fires (fires involving transformers containing greater than 500 ppm PCB), particularly fires which occur in or near commercial buildings, do pose risks to humans and the environment. EPA determined that the continued use of PCB Transformers without additional regulatory control measures would present an unreasonable risk of injury to health and the environment and thus, in the PCB Transformer Fires Rule, imposed further restrictions and conditions on the use of PCB Transformers.

The final PCB Transformer Fires Rule required the marking of the exterior of PCB Transformer locations with the PCB identification label, and prohibited, among other things, the further installation of PCB Transformers (electrical transformers containing 500 ppm or greater PCBs) in or near commercial buildings. The PCB Transformer Fires Rule also placed conditions on the continued use of lower secondary voltage network PCB Transformers in or near commercial buildings by requiring that these transformers be equipped with enhanced electrical protection as of October 1, 1990. Enhanced electrical protection was required by EPA to avoid electrical failures leading to fire-related incidents.

Following promulgation of the final PCB Transformer Fires Rule, EPA received several comments from the regulated community concerning the above prohibition and the conditions EPA placed on the continued use of PCB Transformers. In comments submitted following the promulgation of the PCB Transformer Fires Rule, Mississippi Power asked EPA to consider: (1) Clarifying the current language of the requirements for enhanced electrical protection by substituting the word "rupture" for "failure"; (2) modifying the requirement for enhanced electrical protection of lower secondary voltage network transformers because of space constraints in existing sidewalk vault locations; (3) allowing the installation of PCB Transformers in certain circumstances, such as in emergency situations and for purposes of retrofill and reclassification; (4) allowing the use of alternative labels in situations where such labeling was voluntarily initiated prior to the effective date of the PCB Transformer Fires Rule; and (5) establishing a specific schedule for bringing mineral oil transformers, which are tested and found to contain 500 ppm or greater PCBs, into compliance with applicable requirements.

EPA reviewed the new information submitted by Mississippi Power, and others, and considered their requests for modifications to the PCB Transformer Fires Rule. EPA has determined that the issues raised by Mississippi Power, and others, warrant further Agency consideration and is, therefore, proposing certain amendments to the PCB Transformer Fires Rule. Thus, in this document, EPA is proposing to revise, among other things, the ban on the further installation of PCB Transformers in or near commercial buildings and the requirement of enhanced electrical protection, as of October 1, 1990, on lower secondary voltage network PCB Transformers.

EPA is proposing to allow: (a) The installation of PCB Transformers in emergency situations (when no other non-PCB substitute is available); (b) the installation of retrofilled PCB Transformers for purposes of reclassification; and (c) the use of an alternative label to mark the exterior of certain PCB Transformer locations provided the labeling program was initiated voluntarily prior to the effective date of the PCB Transformer Fires Rule. EPA is also proposing to offer owners of lower secondary voltage network PCB Transformers located in or near commercial buildings the option of enhanced electrical protection by October 1, 1990 (as is currently required), or removal by October 1, 1993. Further, EPA is proposing to prohibit the use of low secondary voltage network PCB Transformers located in sidewalk vaults near commercial buildings as of October 1, 1993.

Finally, EPA is proposing to amend the language in 40 CFR 761.30(a)(1)(iv) and (v), respectively, by deleting the words "failure" and "failures" and substituting the words "rupture" and "ruptures" to avoid ambiguity in the language, and is proposing a specific schedule for bringing mineral oil transformers, found to contain 500 ppm or greater PCBs, into compliance with the applicable regulations.

III. Discussion of Proposed Amendments

A. Installation of PCB Transformers

The PCB Transformer Fires Rule banned the installation of PCB Transformers in or near commercial buildings after October 1, 1985. However, EPA is proposing to allow the installation of PCB Transformers in or near commercial buildings in two situations that EPA believes warrant special consideration. First, in emergency situations, where neither a non-PCB Transformer nor PCB-Contaminated transformer is currently available to replace a failed PCB Transformer and immediate replacement is necessary to continue electric service to the entity or entities served by the transformer. Second, for purposes of reclassification, so that a retrofilled transformer may accrue the necessary in-service time to allow reclassification of the unit. EPA, therefore, proposes to allow installation in emergency situations and in situations where installation of a retrofilled PCB Transformer is necessary for reclassification purposes.

1. *Emergency installation.* The PCB Transformer Fires Rule prohibited the further installation of PCB Transformers in or near commercial buildings. This meant that PCB Transformers which were placed into storage for reuse could not be taken out of storage for reuse and placed in use in or near a commercial building. EPA has received comments from utilities that are currently in a situation where the only spare transformers available for use in an emergency situation are PCB Transformers. EPA, in its original assessment of the impact of the prohibition on the installation of PCB Transformers in or near commercial buildings, assumed that non-PCB Transformers would be available for installation in such instances. EPA did not realize that one potential impact of the prohibition would be the denial of electric service to utility customers following the failure of a transformer in the system.

EPA's decision to prohibit the further installation of PCB Transformers in or near commercial buildings was based on a determination that this activity would present an unreasonable risk. This determination was made after balancing the risks posed by installing PCB Transformers in or near commercial buildings against the benefits of further installation. EPA's analysis of the benefits of further installation included an assessment of the availability of substitutes and the economic impact of not allowing further installation of PCB Transformers in or near commercial buildings. In prohibiting the further installation of PCB Transformers in or near commercial buildings, EPA believed that: (1) The benefits of placing a PCB Transformer into a newly constructed building did not outweigh the risks posed; (2) the benefits of replacing a non-PCB Transformer or PCB-Contaminated transformer with a PCB Transformer did not outweigh the risks posed; and, (3) the benefits of installing a PCB Transformer in or near a commercial building to replace a removed PCB Transformer did not outweigh the risks posed. EPA determined that, for all of these cases, the economic impact of a ban on further installation would be negligible because EPA assumed that other adequate non-PCB substitute transformers were available for installation and use in or near commercial buildings.

After the promulgation of the final PCB Transformer Fires Rule, the Electric Power Board of Chattanooga (EPBC) and Kansas City Power and Light Company (KCPL) contacted EPA and supplied information that indicates that, for certain transformers currently in use, EPBC and KCPL currently have only PCB Transformers available for use as replacements in emergency situations. Both utilities have, however, initiated action either to obtain new non-PCB Transformers or to retrofill/reclassify their in-storage PCB Transformers.

This additional information has led EPA to question its belief about the availability of substitutes for this equipment in an emergency situation. The information shows that some transformer owners or users need additional time to acquire non-PCB or PCB-Contaminated transformers. EPA did not intend to prohibit the installation of PCB Transformers in emergency situations where neither a non-PCB Transformer nor a PCB-Contaminated transformer is available for installation and use. EPA is soliciting comments on

the availability of non-PCB Transformers for use in emergency situations. In addition, EPA is soliciting information on the ability to quickly purchase and receive non-PCB Transformers for use in emergency situations.

The impact of being unable to install a PCB Transformer in this type of situation could be large, because electric service could not be provided to certain utility customers. Business shutdowns and even more serious effects, such as loss of life, could result from the denial of electric service to facilities such as nursing homes and hospitals. Clearly, EPA did not consider that the ban on the further installation of PCB Transformers could potentially have such serious economic and human health impacts.

EPA did not foresee these impacts when the PCB Transformer Rule was promulgated. The Agency, in its determination of unreasonable risk, did not consider that its immediate ban on the further installation of PCB Transformers could cause serious human health impacts. Thus, EPA is reconsidering its determination to ban further installation as of October 1, 1985 and is proposing to extend the effective date to allow the emergency installation of PCB Transformers until October 1, 1990. However, EPA is proposing to restrict to 1 year the time that such a transformer may be used, once it has been installed on an emergency basis.

The highest frequency of fire-related incidents occur in high secondary voltage network PCB Transformers. EPA estimated that the fire-related incidence rate for these transformers was .03% per year. EPA expects that for the total transformer population, less than .012% of the transformers (less than 13) will have to be installed from 1987 through 1990. Thus, even if all were high risk, emergency replacement units, EPA would expect less than one fire-related incident involving a newly installed PCB Transformer during this period. Further, since EPA proposes to allow those transformers installed on an emergency basis to be used for only 1 year from the date of installation, the incremental risk of allowing a 1 year maximum use after installation would not create an unreasonable risk to public health and the environment. EPA considered the benefits of allowing the installation in an emergency situation compared to the frequency of incidents during the period of use and determined that this installation would not present an unreasonable risk.

Although EPA believes that the probability is low for a newly installed PCB Transformer failing and causing a fire-related incident, there are certain risks posed by the installation of PCB Transformers, even in emergency situations. EPA knows of at least one documented instance where a PCB Transformer involved in a fire-related incident was replaced with a second PCB Transformer which then also failed. However, EPA believes that it has mitigated these risks by prohibiting further installation after October 1, 1990 (even in emergency situations), and by placing a time restriction on the continued use of these PCB Transformers after emergency installation. Finally, these transformers are required to be operated in accordance with all other restrictions and conditions of the PCB Transformer Fires Rule and the PCB Electrical Use Rule, including registration with Fire Departments and building owners, exterior labeling, and inspections for leaks and spills. EPA has concluded that the installation of PCB Transformers on an emergency basis until October 1, 1990 and compliance with these restrictions and conditions will not present an unreasonable risk of injury to public health or the environment.

2. *Installation for reclassification purposes.* In the final PCB Transformer Fires Rule, EPA prohibited the further installation of PCB Transformers in or near commercial buildings after October 1, 1985 to decrease the risk of commercial building contamination in the event of a PCB Transformer fire. However, since promulgation of the final rule, EPA has determined that there are instances that warrant special consideration where it may be necessary (see Unit III.A.1 above regarding emergency situations) and/or beneficial to allow limited installation of a PCB Transformer.

Based on comments received after promulgation of the final PCB Transformer Fires Rule, EPA was informed that in most instances the spare transformers in storage for reuse are specifically paired with transformers in use. Thus, in the event of a failed PCB Transformer in the system, the utility is placed in a position of replacing a failed PCB Transformer with another PCB Transformer because the only spares available for use are PCB Transformers. Although the regulation prohibits the replacement of failed PCB Transformers with non-PCB Transformers, EPA believes that retrofilling and reclassification should be available as a viable option for this equipment. EPA has typically encouraged retrofilling and reclassification and believes that the benefits of reclassification in certain situations approach the benefits of PCB Transformer replacement.

An amendment to the PCB regulation (40 CFR 761.30 (a)(2)(v)), published in the **Federal Register** of August 25, 1982 (47 FR 37358), declared that the PCB concentration in transformers may be reduced for purposes of reclassifying the transformer to a non-PCB Transformer or PCB-Contaminated transformer. PCB Transformers and PCB-Contaminated transformers may be reclassified by draining, refilling and/or otherwise servicing the transformers. In order to be reclassified after this servicing, the transformer's dielectric fluid must be tested and found to contain less than 500 ppm PCBs (for conversion to PCB-Contaminated transformer) or less than 50 ppm (for conversion to a non-PCB Transformer) after a minimum of 3 months in-service use subsequent to the last servicing conducted for the purpose of reducing the PCB concentration in the transformer. Three months is the minimum amount of time necessary to ensure that the PCBs trapped in the interior parts of the transformer leach out into the dielectric fluid. A transformer is treated as if it contained the original concentration of PCBs until it is reclassified; therefore, a PCB Transformer cannot be converted to a PCB-Contaminated transformer of non-PCB Transformer unless the transformer has been reclassified pursuant to 40 CFR 761.30(a)(2)(v). That is, a transformer cannot be reclassified after retrofilling until it has accrued a minimum of a 3 months of inservice use and been subsequently tested and found to contain less than 500 ppm PCB (for conversion to a PCB-Contaminated transformer) or less than 50 ppm PCB (for conversion to a non-PCB Transformer).

EPA wants to encourage the conversion of PCB Transformers that are currently in storage for reuse to PCB-Contaminated or non-PCB status. Allowing the installation of a retrofilled PCB Transformer for reclassification purposes would give utilities and others similiarly situated an opportunity to convert their spare PCB Transformers to PCB-Contaminated or non-PCB status pursuant to § 761.30(a)(2)(v). Thus, EPA is reconsidering its determination to ban further installation of PCB Transformers as of October 1, 1985 and is proposing to extend the effective date to allow the installation until October 1, 1990 of retrofilled PCB Transformers so that these units may accrue the necessary inservice use time to allow for reclassification. However, once a retrofilled PCB Transformer is installed for reclassification purposes, it must be tested 3 months after installation to ascertain the concentration of PCBs. If

the PCB concentration is below 50 ppm, the transformer can be reclassified as a non-PCB Transformer. If the PCB concentration is between 50 and 500 ppm, the transformer can be reclassified to a PCB-Contaminated transformer. If the PCB concentration remains at 500 ppm or greater, the entire process must either be repeated until the transformer has been reclassified to a non-PCB or PCB-Contaminated transformer in accordance with § 761.30(a)(2)(v) or the transformer must be removed from service.

Comments received since promulgation of the rule suggest that if a PCB Transformer is installed for purposes of reclassification, there should be a limited time to achieve reclassification. EPA has received information that reclassification to a non-PCB or PCB-Contaminated transformer can take approximately 18 months; However, EPA solicits comments regarding the length of time needed to reclassify a PCB Transformer to a non-PCB Transformer or PCB-Contaminated transformer.

There are two categories of PCB Transformers that can be reclassified: (1) Transformers originally designed to contain PCB dielectric fluid ("askarel" transformers); and (2) mineral oil transformers that have become contaminated with 500 ppm or greater PCBs as a result of past servicing activities. Retrofilling and reclassification of "askarel" PCB Transformers to PCB-Contaminated or non-PCB status require more effort, as a single retrofill of an "askarel" PCB Transformer typically leaves 60,000 ppm PCBs still in the transformer. Thus, reclassification of an "askarel" PCB Transformer to PCB-Contaminated or non-PCB status typically requires several retrofills. Reclassifying mineral oil PCB Transformers to PCB-Contaminated or non-PCB status can be accomplished more easily, because the typical PCB concentration in these mineral oil transformers is less than 1,000 ppm. In many cases, a single retrofill will allow subsequent reclassification of mineral oil PCB Transformers to PCB-Contaminated status.

In recognition of this fundamental difference between the risks posed by the installation for reclassification purposes of an "askarel" PCB Transformer versus a mineral oil PCB Transformer, EPA is proposing to allow an indefinite installation period for retrofilled mineral oil PCB Transformers that will be installed for reclassification purposes. However, for "askarel" PCB Transformers, EPA is prohibiting installation even for reclassification purposes after October 1, 1990.

EPA recognizes that the installation of retrofilled PCB Transformers for reclassification purposes presents some level of risk. Comments received suggest there are on the average 3,000 transformers in storage for reuse. Assuming that all of these transformers will be installed for reclassification purposes (comments suggest that, due to the age of some of these transformers in storage for reuse, it would not be economically justifiable to retrofill and reclassify all of these units), EPA believes the risks to human health and the environment from PCB exposure are substantially lower because retrofilled units will replace paired pure PCB units. However, EPA believes that it should make available retrofill and reclassification as an alternative to transformer replacement. Since most utilities, according to comments received after the rule was promulgated, maintain they have to replace all of their PCB Transformers that are in storage for reuse under the existing requirement that bans the installation of PCB Transformers, this would allow utilities that have PCB Transformers in storage for reuse (which are specially paired to transformers in use) to place these retrofilled transformers in service for reclassification purposes. Allowing installation of these retrofilled PCB Transformers for reclassification purposes allows the utility to continue service to their customers while accruing the in-service use time needed to reclassify the PCB Transformer to a PCB-Contaminated transformer or non-PCB Transformer.

B. Failure vs. Rupture

In this document, EPA proposes to amend the language in 40 CFR 761.30(a)(1)(iv) and (v), respectively, by deleting the words "failure" and "failures", and substituting the words "rupture" and "ruptures".

Questions and comments received by EPA necessitate a change in the language to avoid confusion and give a clear understanding of the Agency's intent in regulating PCBs, which is to reduce the release of PCBs and thereby reduce exposure to humans and the environment. Fires and fire-related incidents involving transformers containing PCBs have been found to be responsible for the release of PCBs (and other materials more toxic than PCBs). Thus, in the **Federal Register** of July 17, 1985 (50 FR 29170), EPA issued final amendments to the rule governing the use of PCBs by placing additional restrictions and conditions on the use of PCB Transformers. These amendments include use authorizations for PCB Transformers with certain conditions to reduce risk of injury to health or the environment sometimes caused by transformer "ruptures". EPA, in this proposed amendment, takes notice that electrical "failure", when used to describe the actual electrical fault condition, cannot be prevented. The intent of the regulation to provide enhanced electrical protection is not to avoid failure (a condition that cannot be prevented), but to avoid the likelihood of rupture of a PCB Transformer from electrical failure. EPA believes that comments received after promulgation of the final PCB Transformer Fires Rule merit a change in the language; therefore, EPA is proposing an amendment to avoid ambiguity in the language of the regulation by substituting the word "rupture" or "ruptures" for "failure" or "failures" when they appear in § 761.30(a)(1)(iv) and (v).

C. Alternative Labeling

In this document EPA is also proposing to allow the use of an alternative label (other than that required under the current regulation). Under the existing regulations EPA requires that the vault door, machinery room door, fence, hallway, or means of access, other than grates and manhole covers, to a PCB Transformer be marked, as of December 1, 1985, with the mark M_L (the PCB label). EPA believed that a labeling requirement on transformer locations, in addition to the requirement for transformer registration, would provide increased assurance that emergency response personnel arriving at the scene of a fire would know that the fire involves a transformer that contains PCBs. Thus, in the final PCB Transformer Fires Rule, EPA instituted a labeling requirement, specifically requiring the mark M_L on the exterior of PCB Transformer locations.

EPA required the use of one type of label to provide consistence and to facilitate compliance monitoring efforts. The PCB identification label was required because EPA assumed that most PCB Transformer owners already had these labels in their possession since, prior to this labeling requirement, the mark M_L was already required on the PCB Transformers themselves. Therefore, owners of PCB Transformers would not have to make special purchases of a new type of label in order to be in compliance with this new labeling requirement. However, after promulgation of the final PCB Transformer Fires Rule, EPA received comments indicating that a few utilities

had already coordinated with fire departments and voluntarily labeled the exterior of PCB Transformer locations with a mark other than M_L. While EPA is interested in a consistent nationwide labeling system, EPA believes that those who voluntarily initiated labeling programs after consultation with local emergency response organizations should not be required to incur the additional expense associated with relabeling.

EPA sees little benefit in achieving the stated goal of labeling by requiring the re-marking of these locations. Allowing an alternative label satisfies the intent of the requirement, as stated in the PCB Transformer Fires Rule at 50 FR 29189, and avoids the additional economic burden of implementing new labeling programs. Thus, EPA is proposing to allow an alternative label, other than the mark M_L, when a label is already being used on the exterior of PCB Transformer locations to insure that emergency response personnel arriving at the scene of a fire will know that a fire involves a PCB Transformer, and the labeling program was initiated and coordinated between the emergency response personnel and the transformer owner, prior to August 15, 1985 (the effective date of the PCB Transformer Fires Rule). However, EPA would require those who voluntarily established a labeling program before August 15, 1985, to do the following: (1) Inform the Regional Administrator in the appropriate region of the use of the alternative label, (2) provide documentation that the program was initiated before August 15, 1985, and (3) provide documentation that the appropriate emergency response organizations know and recognize the meaning of the mark.

D. Electrical Protection

In the final PCB Transformer Fires Rule, EPA prohibited, as of October 1, 1990, the use of all network PCB Transformers with higher secondary voltages (secondary voltages at or above 480 volts) in or near commercial buildings and required the installation, by October 1, 1990, of enhanced electical protection on the remaining commercial PCB Transformers, including all radial and lower secondry voltage network transformers (network transformers with secondary voltages below 480 volts).

In this document, EPA is proposing an amendment to the electrical protection requirements of the final PCB Transformer Fires Rule. Currently, the regulation has no provision for the phaseout of lower secondary voltage network PCB Transformers located in or near commercial buildings. However, the PCB Transformer Fires Rule does require the installation of enhanced electrical protection on these transformers by October 1, 1990. EPA is proposing to amend the October 1, 1990 date for enhanced electrical protection of lower secondary voltage network PCB Transformers. For low secondary voltage network PCB Transformers located in sidewalk vaults near commercial buildings, EPA is proposing to require the removal of these transformers by October 1, 1993 (see Unit III.E.). For all other low secondary voltage network PCB Transformers in or near commerical buildings, EPA is offering owners of this equipment an alternative to the current requirement for enhanced electrical protection by October 1, 1990. This alternative is the removal of this equipment by October 1, 1993, provided that EPA is notified of the pending removal by no later than October 1, 1990. In short, EPA proposed to allow owners of lower secondary voltage network PCB Transformers located in commercial buildings or near commercial buildings (in other than sidewalk vault locations) the option of implementing risk reduction measures on a shorter schedule, by implementing the current requirement which requires installing enhanced electrical protection by October 1, 1990, or removing the PCB Transformers by October 1, 1993. EPA is also proposing that those owners who choose to remove this equipment, register those transformers with the EPA Regional Administrator in the appropriate region. This provides the Regional Administrator with information that would facilitate compliance monitoring efforts. Information to be provided to the Regional Administrtor, when registering the transformer, includes the PCB Transformers location, including the address of the building and the physical location of the PCB Transformer on the building site, along with the identification number of the PCB Transformer.

EPA is proposing this alternative to the existing requirements in part because comments received following promulgation of the PCB Transformer Fires Rule indicated that EPA may have underestimated the costs associated with installation of enhanced electrical protection on these transformers. These comments suggest that many owners are in fact considering the removal/retrofill of these transformers. Commentors argue that EPA did not consider this potential result in its original assessment in support of the PCB Transformer Fires Rule.

According to available data, EPA expects that there are fewer than 3,000 low secondary voltage network PCB Transformers in or near commercial buildings (in other than sidewalk vault locations). Based on available information, the vast majority of low secondary voltage network PCB Transformers (over 10,000 units) appear to be located in sidewalk vaults.

EPA acknowledges that in July 1985 it did not expect owners of these transformers to remove/retrofill these transformers by October 1, 1990, rather than install enhanced electrical protection. Had EPA recognized this potential impact of requiring enhanced electrical protection of these transformers, EPA may have extended the date for compliance with he enhanced electrical protection requirements. An extension would have been a reasonable action in light of the Agency's determination that lower secondary voltage network PCB Transformers pose less of a fire-related risk than higher secondary voltage network PCB Transformers (which EPA required to be removed by October 1, 1990). That is, EPA did not intend to place these two types of transformers, which pose different levels of fire-related risks, on essentially the same schedule for removal.

EPA recognizes that modifying the PCB Transformer Fires Rule to provide owners the option of removal by October 1, 1993 or enhanced electrical protection by October 1, 1990 will most likely have the effect of allowing the continued use of many of these transformers for an additional 3 years (without enhanced electrical protection). However, EPA believes that it should encourage utilities and other owners of high secondary voltage network transformers located in or near commercial buildings to direct all available resources to the imediate removal of these higher fire risk units. EPA expects that staggering regulatory requirements for these different systems will, albeit indirectly, help achieve this goal.

Finally, while EPA continues to expect enhanced electrical protection to be an effective risk reduction mechanism for these transformers, EPA prefers the regulatory option of transformer removal because it completely eliminates PCB Transformer fire-related risks (as well as the risks posed by leaks and spills of PCBs from these transformers). EPA also recognizes, however, that PCB Transformer removal is costly. In providing transformer owners the option of risk reduction in the short term or removal on a slightly

longer schedule, EPA has attempted to create an incentive for removal.

E. Phaseout of Lower Secondary Voltage Network PCB Transformers in Sidewalk Vaults

In the final PCB Transformer Fires Rule, EPA prohibited, as of October 1, 1990, the use of all network PCB Transformers with higher secondary voltages, while requiring enhanced electrical protection on the remaining commercial PCB Transformers, including all radial and lower secondary voltage network PCB Transformers.

In this document, EPA is proposing to amend the current requirement that electrical protection be installed as of October 1, 1990, on all lower secondary voltage network PCB Transformers in or near commercial buildings. EPA is proposing to require that lower secondary voltage network PCB Transformers located in sidewalk vaults near commercial buildings be removed from service by October 1, 1993. Unlike owners of low secondary network PCB Transformers located outside of a sidewalk vault, who have an option of removing these transformers from service or installing enhanced electrical protection, owners of this equipment will not have the choice of electrical protection or removal. The Proposed Rule will require these transformers located in sidewalk vaults to be removed as of October 1, 1993.

In the PCB Transformer Fires Rule, EPA determinined that requiring enhanced electrical protection of these transformers would significantly reduce the fire-related risks posed by the use of this equipment. However, after promulgation, EPA received comments that indicated that it was neither practical nor feasible to install additional protective devices on lower secondary network PCB Transformers in sidewalk vaults, citing cost and physical constraints as major factors. The most frequent explanation given by utilities, according to an inventory taken by the Resource Planning Corporation (RPC), as to why current-limiting fuses were neither practical nor feasible, was space limitations within sidewalk vaults and lack of suitable fuse enclosures (i.e., waterproof and with extended service life) for the underground environment.

As is the case for low secondary voltage network PCB Transformers located in other than sidewalk vaults (see Unit III.D.), comments received after the rule was promulgated indicate a strong desire to replace these transformers located in sidewalk vaults rather than install current-limiting fuses, resulting in many more transformers potentially being removed from service than EPA originally expected. In contrast to the situation for low secondary voltage network transformers in other than sidewalk vaults (where enhanced electrical protection is still an option), according to comments, space constraints and lack of suitable fuse enclosures make enhanced electrical protection of those units in sidewalk vaults impractical. The most effective option for reducing fire-related risks is removal of these transformers. Thus, EPA is proposing to require owners of transformers located in sidewalk vaults to remove them from service as of October 1, 1993.

As previously noted, according to comments, owners of low secondary voltage netowrk PCB Transformers located in sidewalk vaults would rather remove these transformers from service than install enhanced electrical protection due to, among other things, space constraints within these sidewalk vaults. Thus, economically, these owners have no choice and would have to remove these transformers from service, as of October 1, 1990, rather than install enhanced electrical protection. This would have the effect of EPA requiring the removal, as October 1, 1990, of not only the high secondary voltage network PCB Transformers, but the lower secondary voltage network transformers as well. EPA did not intend to place two types of transformers, which pose different levels of risks, on essentially the same schedule for removal. Therefore, EPA believes that allowing owners to remove, as of October 1, 1993, the low secondary voltage network PCB Transformers located in sidewalk vaults, would allow the owners to first concentrate their resources on removal of the high fire-related risk transformers (which they are required to remove as of October 1, 1990), and then address the lower risk units.

Finally, since the promulgation of the final PCB Transformer Fires Rule, EPA has received comments suggesting that EPA's cost estimates of installing current-limiting fuses are understated. These comments indicate that the average cost estimates are 2 to 4 times higher than the EPA estimates. EPA estimated the cost of installing current-limiting fuses on lower secondary voltage network PCB Transformers to be about $4,000 per transformer and, based on this estimate, EPA calculated that owners of 208/120 network equipment would spend appromixately $37 million to install current-limiting fueses by 1990. EPA received additional comments suggesting that EPA did not take into account sidewalk vault installations requiring substantial redesign or rebuilding, thus raising the cost to $12,000 to $30,000 or more per transformer.

Therefore, EPA is proposing, based on comments received from the regulated community since promulgation of the final PCB Transformer Fires Rule, to require the removal of lower secondary voltage network PCB Transformers in sidewalk vaults by October 1, 1993, instead of requiring enhanced electrical protection on these transformers by October 1, 1990.

While EPA recognizes that allowing the use of this equipment until October 1, 1993 (an additional 3 years), without installing enhanced electrical protection poses some risk, EPA believes that phaseout of an additional class of transformers above those currently required to be phased out, further minimizes the risk of fire-related events involving PCB Transformers. EPA continues to prefer the regulatory option of transformer removal because it completely eliminates PCB Transformer fire-related risk, as well as the risks posed by leaks and spills of PCBs from these transformers. Thus, although there is some risk in allowing additional time to phase out this equipment, EPA believes the benefits of removing these PCB containing transformers from service, thus eliminating any potential risk of PCB exposure, outweighs the risks incurred by allowing the use of these transformers for an additional 3 years. Further, EPA has determined that requiring phaseout of those transformers in sidewalk vaults would be practical since owners of this equipment express an interest in removing rather than installing enhanced electrical protection and EPA has already determined that for this type of equipment some risk reduction measure must be implemented.

F. Discovery of PCB Transformer

In this document, EPA is proposing that in the event a mineral oil transformer assumed to contain less than 500 ppm of PCBs pursuant to § 761.3 is determined through testing to be contaminated at 500 ppm or greater, efforts must be initiated immediately to bring the transformer into compliance. Section 761.3 allows owners of untested mineral oil transformers (that in fact may contain 500 ppm or greater PCBs) to assume they are less than 500 ppm. EPA does not intend to penalize owners who, upon testing, later discover that the transformer actually contains 500 ppm or greater PCBs. However, when such a transformer is discovered to be a PCB Transformer, EPA believes that it should be brought into compliance as quickly

as possible. EPA proposes a schedule for achieving such compliance if a mineral oil transformer is discovered later to be a PCB Transformer. EPA proposes to require that after discovering that a mineral oil transformer is a PCB Transformer (any transformer that contains 500 ppm PCB or greater) the owner of the transformer comply with the following schedule:

1. Report any fire-related incidents.

2. Mark the transformer, the vault door, machinery room door, fence, hallway or other means of access to the PCB Transformer with the appropriate label, immediately after discovery. Comments received after the promulgation of the PCB Transformer Fires Rule state that owners should be given 48 hours to mark their transformers. EPA solicits comments regarding the length of time needed to comply with the marking requirements once a transformer is found to contain concentrations of 500 ppm or greater PCBs.

3. Register the PCB Transformer with fire response personnel and the building owner within 30 days of discovery.

Comments received after the rule was promulgated suggest that 48 hours (or probably 72 to 96 hours to account for weekends and/or holidays) would be more reasonable in this instance. However, EPA solicits comments regarding the length of time needed to comply with the registration requirement once a mineral oil transformer is found to contain 500 ppm PCB or greater.

4. Install electrical protective equipment on radial PCB Transformers and non-sidewalk vault, lower secondary voltage network PCB Transformers in commercial buildings within 18 months of discovery or by October 1, 1990, whichever is later.

5. Remove non-sidewalk vault, lower secondary voltage network PCB Transformers in commercial buildings if electrical protective equipment is not installed, within 18 months of discovery or by October 1, 1993, whichever is later.

6. Remove lower secondary voltage network PCB Transformers located in sidewalk vaults near commercial buildings, within 18 months of discovery or by Ocotber 1, 1993, whichever is later.

EPA proposes to provide options in lieu of the enhanced electrical protection and removal requirements for mineral oil transformers, upon discovering a mineral oil transformer (assumed to contain less than 500 ppm of PCBs) is later tested and found to have concentrations of PCBs at 500 ppm or greater. EPA proposes to allow:

1. Retrofill and reclassification of a radial PCB Transformer or a lower or higher secondary voltage network PCB Transformer, located in other than sidewalk vaults, in or near a commercial building, within 18 months or by October 1, 1990, whichever is later.

2. Retrofill and reclassification of a lower secondary voltage network PCB Transformer located in sidewalk vaults near commercial buildings, within 18 months or by October 1, 1993, whichever is later.

3. Retrofill and reclassification of higher secondary voltage network PCB Transformers, located in sidewalk vaults near commercial buildings, within 18 months or by October 1, 1990, whichever is later.

IV. Previous Rulemaking Record

1. Official rulemaking record from "Polychlorinated Biphenyls in Electrical Transformers" Final Rule, published in the Federal Register of July 17, 1985, (50 FR 29170).

2. Official Record from "Notice of Interpretation of Transformer Fires Regulations", published in the Federal Register of December 31, 1986, (51 FR 47241).

V. Support Documents

1. USEPA, OPTS, EED, Putnam, Hayes and Bartlett, Inc. "Evaluation of the Sufficiency of Current and Projected PCB Disposal Capacity To Meet Demand Requirements", July 1986.

2. Letters received from:

a. Kansas City Power and Light dated September 11, 1985.

b. Electric Power Board of Chattanooga dated October 3, 1985.

3. Reports from Resource Planning Corporation submitted to Utility Solid Waste Activities Group, dated January 6, 6, and April 23, 1986.

VI. Executive Order 12291

Under Executive Order 12291, issued February 17, 1981, EPA must judge whether a rule is a "major rule" and, therefore, subject to the requirement that a regulatory impact analysis be prepared. EPA has determined that this amendment to the PCB Rule would not be a "major rule" as that term is defined in section 1(b) of the Executive Order and therefore is not subject to the requirement that a regulatory impact analysis be prepared.

While the rule would place some additional restrictions and conditions on the use of PCB Transformers, it is worth noting that this regulation would allow the continued use of PCBs in electrical transformers that would otherwise be prohibited by section 6(e) of TSCA. This rule would avoid the severe disruption of electric service to the public and industry that would occur if the use of this equipment were immediately prohibited. It also would avoid the economic impact that would result from a requirement to replace the equipment as soon as possible.

This rule was submitted to the Office of Management and Budget (OMB), as required by Executive Order 12291.

VII. Regulatory Flexibility Act

Under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator may certify that a rule will not, if promulgated have a significant impact on a substantial number of small entities and, therefore, does not require a regulatory flexibility analysis.

In general, this rule will reduce the burden on small businesses that would otherwise be encountered if an immediate ban on PCB-containing transformers were to take effect. If an immediate ban on the use of PCBs in transformers were imposed, large costs would be incurred by all producers and users of electricity, including small businesses.

EPA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

VIII. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. 3501 et seq., authorizes the Director of the Office of Management and Budget to review certain information collection requests by Federal agencies. EPA's original request to collect information for this rulemaking was approved under OMB Control Number 2070-0073. EPA has determined that the recordkeeping and reporting requirements of this proposed rule constitute a "collection of information" as defined in 44 U.S.C. 3502(4). Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB, marked ATTENTION: Desk Officer for EPA. The final rule package will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Part 761

Hazardous substances, Labeling, Polychlorinated biphenyls, Reporting and recordkeeping requirements, Environmental protection.

Dated: August 13, 1987.

Lee M. Thomas,

Administrator.

Therefore it is proposed that 40 CFR Part 761 be amended as follows:

PART 761—[AMENDED]

1. The authority citation for Part 761 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2611.

2. In § 761.3 by adding the definitions of "emergency situation", "mineral oil PCB Transformer" and "non-PCB Transformer", alphabetically to read as follows:

§ 761.3 Definitions.

* * * * *

"Emergency Situation" for continuing use of "PCB Transformers" exists when:

(1) Neither a non-PCB Transformer or a PCB-Contaminated transformer is currently in storage for reuse or readily available (i.e., available within 24 hours) for installation; and

(2) Immediate replacement is necessary to continue service to utility customers; and

(3) Documentation to support paragraph (1) and (2) of this definition must include, but is not limited to:

(i) The type of transformer that requires replacement.

(ii) The type(s) of transformers that must be used for replacement.

(iii) The date of transformer failure.

(iv) The date of subsequent replacement.

(v) The type of transformer installed as a replacement.

(vi) A statement describing actions taken to locate a non-PCB or PCB-contaminated transformer replacement.

* * * * *

"Mineral oil PCB Transformer" means any transformer orginally designed to contain mineral oil as the dielectric fluid and which has been tested and found to contain 500 ppm or greater PCBs.

* * * * *

"Non-PCB Transformer" means any transformer that contains less than 50 ppm PCB; except that any transformer that has been converted from a PCB Transformer or a PCB-Contaminated transformer cannot be classified as a non-PCB Transformer until reclassification has occured, in accordance with the requirements of § 761.30(a)(2)(v).

* * * * *

3. In § 761.30 by revising paragraphs (a)(1)(iii), and (iv) and adding paragrah (a)(1)(xv) to read as follows:

§ 761.30 Authorizations.

* * * * *

(a) * * *

(1) * * *

(iii) Except as otherwise provided, as of October 1, 1985, the installation of PCB Transformers, which have been placed into storage for reuse or which have been removed from another location, in or near commercial buildings is prohibited. The installation of PCB Transformers on or after the effective date of this regulation, however, and their use thereafter, is permitted either in "emergency situations", as defined in 40 CFR 761.3, or in situations where the transformer has been retrofilled and is being placed into service in order to qualify for reclassification under paragraph (a)(2)(v) of this section. Such emergency installation is permitted until October 1, 1990, and the use of any PCB Transformer installed on such an emergency basis is permitted for one year from the date of installation or until October 1, 1990, whichever is earlier. For purposes of this paragraph, the installation of retrofilled PCB Transformers for purposes of reclassification under paragraph (a)(2)(v) of this section is permitted until October 1, 1990. Retrofilled "mineral oil PCB Transformers" may be installed for reclassification purposes after October 1, 1990. However, once a retrofilled transformer has been installed for reclassification purposes, it must be tested three months after installation to ascertain the concentration of PCBs. If the PCB concentration is below 50 ppm, the transformer can be reclassified as a non-PCB Transformer. If the PCB concentration is between 50 and 500 ppm, the transformer can be reclassified as a PCB-Contaminated transformer. If the PCB concentration remains at 500 ppm or greater, the entire process must either be repeated until the transformer has been reclassified to a non-PCB or PCB-Contaminated transformer in accordance with paragraph (a)(2)(v) of this section or the transformer must be removed from service. All PCB Transformers installed in an emergency situation or installed for retrofill/reclassification purposes are subject to the requirements of Part 761.

(iv)(A) As of October 1, 1990, all radial PCB Transformers, in use in or near commercial buildings, and lower secondary voltage network PCB Transformers not located in sidewalk vaults in or near commercial buildings (network transformers with secondary voltages below 480 volts) that have not been removed from service as provided in paragraph (a)(l)(v) of this section, must be equipped with electrical protection to avoid transformer ruptures caused by high current faults. Current-limiting fuses or other equivalent technology must be used to detect sustained high current faults and provide for complete deenergization of the transformer (within several hundredths of a second in the case of radial PCB Transformers and within tenths of a second in the case of lower secondary voltage network PCB Transformers), before transformer rupture occurs. The installation, setting, and maintenance of current-limiting fuses or other equivalent technology to avoid PCB Transformers ruptures from sustained high current faults must be completed in accordance with good engineering practices.

(B) All lower secondary voltage network PCB Transformers not located in sidewalk vaults (network transformers with secondary voltages below 480 volts), in use in or near commercial buildings, which have not been protected as specified in paragraph (a)(l)(iv)(A) of this section by October 1, 1990, must be removed from service by October 1, 1993.

(C) As of October 1, 1990, owners of lower secondary voltage network PCB Transformers not located in sidewalk vaults which have not been protected as specified in paragraph (a)(1)(iv)(A) of this section must register those transformers with the EPA Regional Administrator in the appropriate region. Information required to be provided to the Regional Administrator in writing shall be:

(*1*) The specific location of the PCB Transformer(s).

(*2*) The address(es) of the building(s) and the physical location of the PCB Transformer(s) on the building site(s).

(*3*) The identification number(s) of the PCB Transformer(s).

(D) As of October 1, 1993, all lower secondary voltage network PCB Transformers located in sidewalk vaults (network transformers with secondary voltages below 480 volts) in use near commercial buildings must be removed from service.

* * * * *

(xv) In the event a mineral oil transformer assumed to contain less than 500 ppm of PCBs pursuant to § 761.3 is tested and found to be contaminated at 500 ppm or greater PCBs, efforts must be initiated immediately to bring the transformer into compliance in accordance with the following schedule:

(A) Reporting fire-related incident, effective immediately after discovery.

(B) Marking of the transformer, effective immediately after discovery.

(C) Marking the vault door, machinery room door, fence, hallway or other means of access to the PCB Transformer: effective immediately after discovery.

(D) Registering the PCB Transformer with fire response personnel with primary jurisdiction and with the

building owner, within 30 days of discovery.

(E) Installation of electrical protective equipment on radial PCB Transformers and non-sidewalk vault, lower secondary voltage network transformers in or near commercial buildings: within 18 months of discovery or by October 1, 1990, whichever is later.

(F) Removal of non-sidewalk vault, lower secondary voltage network transformers in or near commercial buildings if electrical protective equipment is not installed, within 18 months of discovery or by October 1, 1993, whichever is later.

(G) Removal of lower secondary voltage network PCB Transformers (located in sidewalk vaults) in or near commercial buildings, within 18 months of discovery or by October 1, 1993, whichever is later.

(H) Retrofill and reclassification of a radial PCB Transformer or a lower or higher secondary voltage network PCB Transformer, located in other than sidewalk vaults in or near a commercial building, within 18 months or by October 1, 1990, whichever is later (this is an option in lieu of installing electrical protective equipment on the radial or the lower secondary voltage network PCB Transformers located in other than sidewalk vaults or removing the higher secondary voltage network PCB Transformers or the lower secondary voltage network PCB Transformers, located in sidewalk vaults, from service).

(I) Retrofill and reclassification of a lower secondary voltage network PCB Transformer, located in sidewalk vaults, in or near a commercial building: Within 18 months or by October 1, 1993, whichever is later (this is an option in lieu of installing electrical protective equipment or removing these transformers from service).

(J) Retrofill and reclassification of higher secondary voltage network PCB Transformers (located in sidewalk vaults) in or near a commercial building: within 18 months or by October 1, 1990, whichever is later (this is an option in lieu of other requirements).

* * * * *

§ 761.40 [Amended]

4. In § 761.40 by revising paragraph (j) to read as follows:

§ 761.40 Marking Requirements.

* * * * *

(j)(1) Except as provided in paragraph (j)(2) of this section, as of December 1, 1985, the vault door, machinery room door, fence, hallway, or means of access, other than grates and manhole covers, to a PCB Transformer must be marked with the mark M_L.

(2) A mark other than M_L label can be used provided all of the following conditions are met:

(i) The program using such an alternative label was initiated prior to August 15, 1985, and can be substantiated.

(ii) Prior to August 15, 1985, coordination between the transformer owner and the emergency response personnel occurred and appropriate emergency response personnel know and recognize what the alternative mark means.

(iii) The EPA Regional Administrator in the appropriate region is informed of the use of the alternative label within 30 days of (insert the effective date of this amendment), and is provided with documentation that the program began before August 15, 1985, and that prior to that date the appropriate emergency response organizations knew and recognized the meaning of the mark.

(3) Any mark placed pursuant to this section must be placed so that it can be easily read by firemen fighting a fire involving this equipment.

[FR Doc. 87-19198 Filed 8-20-87; 8:45 am]

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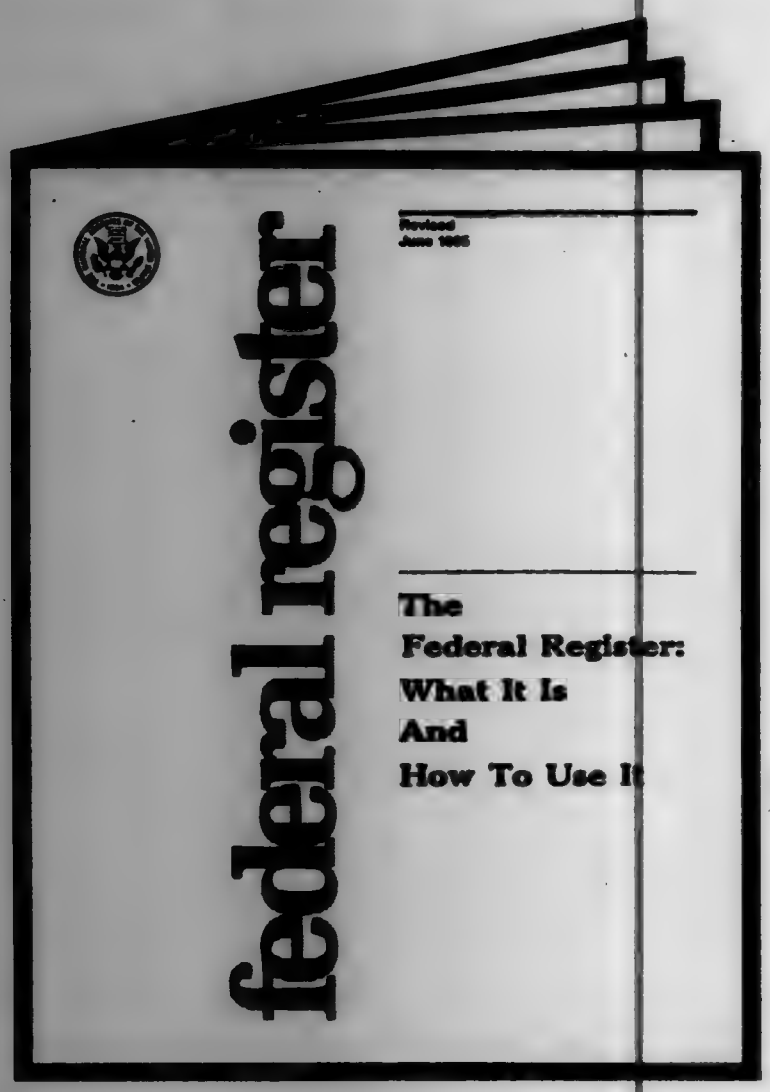

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Monday
August 24, 1987

Briefings on How To Use the Federal Register—
For information on briefings in Washington, DC, see announcement on the inside cover of this issue.

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THE FEDERAL REGISTER

WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: September 29, at 9 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: Janice Booker, 202-523-5239

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Presidential Documents

Title 3—

The President

Presidential Determination No. 87-19 of August 5, 1987

Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as amended

Memorandum for the Secretary of State

I hereby determine, pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as amended (22 U.S.C. 2601(c)(1)) ("the Act"), that it is important to the national interest that there shall be made available from the United States Emergency Refugee and Migration Assistance Fund up to $4.25 million for contributions to the United Nations Relief and Works Agency for Palestine Refugees in the Near East and the International Committee of the Red Cross (ICRC) to meet the unexpected urgent needs for assistance to Palestinian refugees and other civilians affected by the conflict in Lebanon. I further determine also pursuant to Section 2(c)(1) of the Act that it is important to the national interest that there shall be made available from the Emergency Refugee and Migration Assistance Fund up to $4.25 million for contributions to the United Nations High Commissioner for Refugees and to the ICRC to meet unexpected urgent needs of refugees and persons affected by strife in Africa.

The Secretary of State is requested to inform the appropriate committees of the Congress of this Determination and to arrange for the prompt publication of this Determination in the Federal Register.

Ronald Reagan

THE WHITE HOUSE,
Washington, August 5, 1987.

[FR Doc. 87-19516
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Rules and Regulations

Federal Register
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Monday, August 24, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 68

United States Standards for Beans

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Confirmation of existing rules.

SUMMARY: According to the requirements for the periodic review of existing regulations, the Federal Grain Inspection Service (FGIS or Service) has reviewed the U.S. Standards for Beans. Pursuant to this review, the Service has determined that no change will be made to the bean standards.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., USDA/FGIS/ Resources Management Division/IRS, Room 1661–S, P.O. Box 96454, Washington, DC 20090–6454; telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION: A Notice of Intent requesting public comment on the U.S. Standards for Beans was published in the **Federal Register** on December 8, 1986 (51 FR 44072). Views and comments were solicited to help in the evaluation of the current bean standards and in the development of any recommendations for change.

Within the 60-day comment period that ended on February 6, 1987, two written comments were received. One comment, submitted by a State Department of Agriculture, suggested that certain sections of the standards be clarified. For example, these suggestions included listing classes of beans in the order found in the grading charts, adding "detached hulls of beans" in the definition of splits, limiting the definition of "badly damaged beans" to apply only to classes of Pea beans, Large Lima beans, Small Lima beans and Miscellaneous Lima beans, and limiting the definition of "broken beans," "blistered beans" and "wrinkled beans" to apply only to the classes of lima beans. The Service has reviewed these suggestions and has determined that such changes to the standards are not necessary. Several of the concerns raised are addressed in the grade charts in the standards while others are addressed in the dry Bean Inspection Handbook. In addition, FGIS is not aware of any problems associated with applying the standards in the areas commented upon.

It was also suggested that the standards be changed by revising the definition of weevily beans to "beans that are infested with live weevils or other insects injurious to stored beans or that contain, in any combination, two or more of the following: weevil bored beans, visible window damaged beans, clean cut weevil bored beans, beans containing insect webbing or filth, or dead insects." The Service believes that this suggestion requires further study and analysis. Therefore, this suggested change to the standards will not be proposed at this time.

A State bean dealers association offered suggestions directed at updating the Dry Bean Inspection Handbook. The Service is reviewing the Handbook and based upon final evaluation of the concerns expressed by the Association, revisions to the Handbook will be made as deemed appropriate.

Accordingly, based on the information available, including the comments received from the industry, the Service has determined that the U.S. Standards for Beans which appear at 7 CFR 68.101–68.142 are meeting the needs of the industry and no changes are necessary at this time.

Dated: August 14, 1987.

W. Kirk Miller,
Administrator.

[FR Doc. 87–19256 Filed 8–21–87; 8:45 am]
BILLING CODE 3410–EN–M

Agricultural Marketing Service

7 CFR Part 1079

Milk in the Iowa Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action increases for the months of September, October and November 1987 the limits on the quantity of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the Iowa order. The suspension was requested by a cooperative association in order to maintain pool status for the milk of its member producers without incurring costs for hauling and handling milk that would otherwise be unnecessary.

EFFECTIVE DATE: August 24, 1987.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–4829.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued July 15, 1987; published July 20, 1987 (52 FR 27217).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accure from such pricing.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under the criteria contained therein.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and of the order regulating the handling of milk in the Iowa marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on July 20, 1987 (52 FR 27217) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon. No comments were received.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that for the months of September through November 1987 the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1079.13 (d)(2) and (3) the words "50 percent in the months of September through November and ", and the words "in other months," as they appear in each paragraph.

Statement of Consideration

This action makes inoperative for September through November 1987 the seasonal reduction (from 70 percent to 50 percent) of the limit on the proportion of a handler's milk that may be moved directly from the farm to a nonpool manufacturing plant and still be pooled. Associated Milk Producers, Inc. (AMPI), an association of producers had requested the suspension. The cooperative asked that the diversion provisions be relaxed in order to avoid the costs associated with receiving and transferring milk merely to keep it pooled.

AMPI stated that the market's milk production in the first five months of 1987 was up one percent from a year earlier. At the same time, Class I use is essentially unchanged from a year earlier. AMPI expects that increased production relative to Class I demand will continue into the fall months because the whole-herd buyout program has been completed. Thus, the cooperative expects that it would have to move even more milk to nonpool manufacturing plants than it did last fall, when the Class I utilization percentage was about 30 percent for the months of September through November.

Market data indicate that producer receipts increased slightly more than 1.0 percent for the period of January through June 1987 when compared to the same period of 1986. However, for the last three months of this six-month period, producer receipts increased approximately 4.0 percent. Class I utilization as a percentage of producer receipts has been substantially below 30 percent for the last five months.

The 50-percent limit on diversions to nonpool plants is inadequate to permit efficient handling of milk that is not needed for fluid uses in cases where nonpool plants are the only outlet used for disposing of reserve milk. For example, a supply plant must ship at least 35 percent of its milk supply to other plants to qualify as a pool plant. However, with diversions limited to 50 percent, the other 15 percent must be received at the supply plant and then transferred to a nonpool plant. AMPI contends that the extra handling involved adversely affects milk quality (more pumping than if diverted), and is an uneconomic means of pooling its reserve milk supplies. Suspending the 50-percent diversion limit will alleviate these concerns and allow improved handling efficiencies.

Under the conditions cited by AMPI and an analysis of market data, a suspension of the 50-percent limitation in the diversion provisions is appropriate so that producer milk receipts not needed for fluid use may be moved directly from farms to manufacturing plants and still be priced under the order. A suspension of the 50-percent limitation will tend to improve efficiencies in disposing of AMPI's reserve milk supplies.

Pool plant handlers should be aware that suspension of the 50-percent limitation does not mean that the diversion limit is now 70 percent. The effective diversion limit is the reciprocal of the pool performance standards. A supply plant, for example, would still have to ship 35 percent of its receipts; thus, for such plant operators the effective diversion limit is 65 percent rather than 70 percent. Distributing plant operators would be able to divert up to 60 percent of their producer milk.

Interested parties were given an opportunity to submit written data, views, and arguments concerning the proposed suspension. No comments were received.

The suspension should not result in any change in the proportion of a supply plant's receipts that are shipped to fluid milk outlets. What the suspension will do is permit milk that otherwise would have to be received at the supply plant and then shipped to a manufacturing plant to be moved directly from the farm to the manufacturing plant and still be pooled. This should provide additional economies for AMPI by eliminating milk hauling and handling, which also adversely affects milk quality. Moreover, such benefits of this action will be available to other handlers who may have more reserve milk to dispose of this fall.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that uneconomic movements of milk would be made solely for the purpose of pooling the milk of producers who have regularly been associated with the Iowa market;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. No comments were filed in opposition to this action.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register.**

List of Subjects in 7 CFR Part 1079

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the following provisions in § 1079.13(d) (2) and (3) of the Iowa order are hereby suspended for September through November 1987.

PART 1079—MILK IN THE IOWA MARKETING AREA

1. The authority citation for 7 CFR Part 1079 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1079.13 [Amended]

2. In § 1079.13(d) (2) and (3) the words "50 percent in the months of September through November and", and the words "in other months," as they appear in each paragraph are suspended during the months of September through November 1987.

Signed at Washington, DC, on: August 17, 1987.

Kenneth A. Gilles,

Assistant Secretary for Marketing and Inspection Services.

[FR Doc. 87–19254 Filed 8–21–87; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 97

[Docket No. 87–023]

Overtime Services Relating to Imports and Exports; Commuted Traveltime Allowances

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations in 9 CFR Part 97, which prescribe commuted traveltime allowances, by adding commuted

traveltime periods in Georgia. Commuted traveltime periods reflect the time spent in reporting to, and returning from, the place at which an employee of Veterinary Services performs Sunday, holiday, or unscheduled overtime duty. This action is necessary to inform the public where VS employees are available to perform Sunday, holiday, or unscheduled ovetime duty and to inform the public of the commuted traveltime periods for this travel.

EFFECTIVE DATE: August 24, 1987.

FOR FURTHER INFORMATION CONTACT: Louise Rakestraw Lothery, Assistant Director, Resource Management Staff, VS, APHIS, USDA, Room 857, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8511.

SUPPLEMENTARY INFORMATION:

Background

We are amending the regulations in 9 CFR Part 97, entitled "Overtime Services Relating to Imports and Exports" (referred to below as the regulations), which set forth provisions for obtaining inspection, laboratory testing, certification, or quarantine services pertaining to the importation and exportation of animals, animal byproducts, or other commodities during Sundays, holidays, or other times outside the regular tour of duty of Veterinary Services (VS) employees who perform these services.

The regulations provide that, under certain circumstances, the charges for services of a VS employee shall include charge for a commuted traveltime period. Section 97.2 of the regulations contains administrative instructions prescribing commuted traveltime periods which reflect, as nearly as is practicable, the time required for a VS employee to travel to, and return from, the place where he or she performs the Sunday, holiday, or unscheduled overtime duty.

We are amending § 97.2 of the regulations by adding commuted traveltime periods in Georgia. (The amendments are set forth in the rule portion of this document.) This action is necessary to inform the public where VS employees are available to perform Sunday, holiday, or unscheduled overtime duty and to inform the public of the commuted traveltime periods for this travel.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

The number of animals, animal byproducts, or other commodities requiring inspection and other services of a VS employee on a Sunday, holiday, or unscheduled overtime basis at the affected locations represents an insignificant portion of the total number that requires these services at locations in the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Effective Date

The commuted traveltime periods appropriate for employees performing services at ports of entry, and the features of the reimbursement plan for recovering the cost of furnishing port of entry services, depend upon facts within the knowledge of the Department of Agriculture. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find for good cause that prior notice and other public procedure with respect to this rule are impracticable and unnecessary; we also find for good cause that this rule be made effective less than 30 days after publication of this document in the Federal Register.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which require intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 97

Exports, Government employees, Imports, Livestock, livestock products, Poultry and poultry products, Transportation.

Under the circumstances described above, 9 CFR Part 97 is amended as follows:

PART 97—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

1. The authority citation for Part 97 continues to read as follows:

Authority: 7 U.S.C. 2260; 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 97.2 is amended by adding, in alphabetical order, the information as shown below:

§ 97.2 Administrative instructions prescribing commuted traveltime.

* * * * *

COMMUTED TRAVELTIME ALLOWANCES

[In hours]

Location covered	Served from	Metropolitan Area	
		Within	Outside
Add:			
Georgia:			
Atlanta International Airport.	Ellijay		6

Done in Washington, DC, this 10th day of August, 1987.

B.G. Johnson,

Acting Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 87–19353 Filed 8–21–87; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 368, 370, 371, and 386

[Docket No. 70633–7133]

Abolishment of Foreign Excess Property Disposal Programs

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Export Administration Regulations (15 CFR Parts 368–399) are amended to remove provisions regarding foreign excess property disposal programs. These programs were established pursuant to sec.

402(a)(1) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 512(a)(1)), which required that imports of foreign excess property be authorized by the Secretary of Commerce or Agriculture. This requirement is repealed by Pub. L. 99–627, a law that otherwise deals primarily with transportation audits. The requirement was imposed at a time when overseas surplus stocks constituted a credible threat to the domestic economy, and it is now obsolete. The repeal of the requirement and the removal of the implementing regulations will result in the elimination of unnecessary regulatory and paperwork burdens on businesses dealing in surplus merchandise. In addition, there will be reduced administrative costs for the Department of Commerce.

EFFECTIVE DATE: August 24, 1987.

FOR FURTHER INFORMATION CONTACT: Joan Maguire, Regulations Branch, Export Administration, Department of Commerce, Washington, DC 20230 (Telephone: (202) 377–4479).

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule reduces the regulatory burden on exporters because it eliminates Form ITA–302P, which was approved by the Office of Management and Budget under control number 0625–0028.

List of Subjects

15 CFR Part 368

Imports, Penalties, Reporting and recordkeeping requirements.

15 CFR Part 370

Administrative practice and procedure, Exports.

15 CFR Part 371 and 386

Exports, Reporting and recordkeeping requirements.

Accordingly, Parts 368, 370, 371, and 386 of the Export Administration Regulations (15 CFR Parts 368–399) are amended as follows:

1. The authority citations for Parts 368 and 370 continue to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. App. 2401 et seq., as amended by Pub. L. 97–145 of December 29, 1981, and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

2. The authority citations for 15 CFR Parts 371 and 386 continue to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. App. 2401 et seq., as amended by Pub. L. 97–145 of December 29, 1981, and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223, 50 U.S.C. 1701 et seq.; E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985), as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 (October 29, 1986); E.O. 12571, October 27, 1986 (51 FR 39505, October 29, 1986).

PARTS 368, 370, 371, AND 386—[AMENDED]

§§ 368.2, 370.6, 371.4 and 386.3 [Amended]

3. The paragraphs of sections listed below are removed and reserved.

Sections 368.2(a)(4), 370.6(d), 371.4(b)(2) and 386.3(1).

4. In § 371.17, paragraph (a)(2)(i) is revised to read as follows:

§ 371.17 General license GLR; return or replacement of certain commodities.

* * * * *

§§ 368.2, 370.6, 371.4 and 386.3 [Amended]

(a) * * *

(2) * * *

(i) Any commodity sent to the United States from Country Group T or V for servicing may be exported under this general license to the country from which it was sent, provided that the use of this general license is not precluded by the general prohibitions that apply to all general licenses as listed in § 371.2(c).

* * * * *

Dated: July 31, 1987.

Dan Hoydysh,

Acting Deputy Assistant Secretary for Export Administration.

[FR Doc. 87–19329 Filed 8–21–87; 8:45 am]

BILLING CODE 3510–DT–M

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15 CFR Parts 370 and 374

[Docket No. 70607–7107]

Status Information on Export Applications and Reexport Requests; Update and Clarification of Procedures

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Export Administration Regulations (15 CFR Parts 368–399) are amended to update and clarify procedures for requesting status information on pending export applications, amendments, and reexport requests. The mail-in request form is replaced by telephone request procedures, which provide immediate status information. Also, procedures involving the submission of reexport cases to COCOM and for inquiring about the status of such submissions are clarified to more appropriately reflect COCOM agreements.

EFFECTIVE DATE: August 24, 1987.

FOR FURTHER INFORMATION CONTACT: John Black or Patricia Muldonian, Regulations Branch, Export Administration, Department of Commerce, Washington, DC 20230 (Telephone: (202) 377–2440).

SUPPLEMENTARY INFORMATION:

Status Information Provided by Telephone

The Export Administration Regulations currently direct applicants for export licenses, reexport authorizations, and amendments to submit a mail-in form to the Office of Export Licensing (OEL) when inquiring

about the status of their applications. Since this procedure was first enacted, the processing times have been reduced to the extent that status information, mailed to the applicant, often is not current when received by the applicant. This procedure has been replace by procedures whereby immediate status is provided by telephone to the requester.

Export Administration has recently implemented the System for Tracking Export License Applications ("STELA"), which is an advanced computer generated voice unit that upon request via any standard touch-tone telephone provides up to the minute status on individual validated license applications, amendments, or reexport requests.

STELA is to be used for status information on an application or request of that type when the case number is known. Otherwise, applicants should contact OEL's Exporter Assistance Staff, which can provide immediate status on individual validated export licenses, reexport requests or amendments from computer processing output. Status information on special licenses is available from the Licensing Branch, Special Licensing Division, OEL, at (202) 377–3287. This rule revises the Export Administration Regulations by eliminating the mail-in request form and replacing it with the telephone request procedures.

Reexport Cases Submitted to COCOM

The Coordinating Committee (COCOM) is a multilateral export control organization whose members include Belgium, Canada, Denmark, France, the Federal Republic of Germany, Greece, Italy, Japan, Luxembourg, the Netherlands, Norway, Portugal, Spain, Turkey, the United States, and the United Kingdom. Under 15 CFR 374.3(e), certain commodities that are exported to COCOM countries may be permissively reexported to Country Groups Q, W, or Y, or the People's Republic of China, if the reexport has received unanimous approval from COCOM. This Rule amends those provisions of § 374.3 regarding COCOM participating country reexport submissions to more appropriately reflect COCOM agreements.

Regulations are clarified as to the availability of information about the status of COCOM submissions. This Rule makes it clear that only information on U.S. submissions will be made available. Information on the status of submissions made by other countries is not available from the U.S. Government. The regulations are also amended to remove a provision relating to direct submissions of data to the U.S. Government on other government COCOM submissions that involve reexports of U.S. items.

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Written comments (six copies) should be submitted to: Joan Maguire, Regulations Branch, Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule involves collections of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). The collections of information have been approved by the Office of Management and Budget under control numbers 0625–0001, 0625–0003, and 0625–0009. This rule also reduces the regulatory burden on exporters because it eliminates Form ITA–6019P, which was approved by the Office of Management and Budget under control number 0625–0050.

List of Subjects

15 CFR Part 370

Administrative practice and procedure, Exports.

15 CFR Part 374

Exports, Reporting and recordkeeping requirements.

Accordingly, Parts 370 and 374 of the Export Administration Regulations (15 CFR Parts 368–399) are amended as follows:

PARTS 370 AND 374—[AMENDED]

1. The authority citations for Parts 370 and 374 continue to read as folows:

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 97–145 of December 29, 1981, and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

2. In § 370.11, paragraph (a)(2) heading and (a)(2)(i) are revised and a sentence is added to the end of paragraph (c), reading as follows:

§ 370.11 Information to exporters.

(a) * * *

(2) *How to request status information.* (i)(A) Applicants for individual validated export licenses, amendments, or reexport privileges who have received case numbers should contact the System for Tracking Export License Applications ("STELA") at (202) 377–2752 to request status information. STELA is an advanced computer generated voice unit that, upon request via any standard touch-tone telephone, provides up to the minute status on license applications, amendments, or reexport requests. STELA is in operation Monday through Friday from 7:15 a.m. to 11:15 p.m. and on Saturday from 8 a.m. to 4 p.m., Eastern time. After calling STELA on push button telephone keys, the caller will be prompted to enter a case number. The case number entered must use the number "1" to represent the letter "A", the number "2" to represent the letter "B", and the asterisk symbol "*" to represent the hyphen "-" that appears in a case number assigned to an amendment application. The "#" symbol must be used after each case number, and its use is equivalent to an enter command. For example, (*1*) case number A123456, which is assigned to a license application or reexport request, must be entered as "1123456#", and (*2*) case number B123456–1, which is assigned to the first amendment to a license application with assigned case number B123456, must be entered as "2123456*1#".

(B) Applicants for individual validated export licenses, amendments, or reexport privileges who do not have case numbers or who experience

difficulty in using STELA may call the Exporter Assistance Staff of the Office of Export Licensing for status information. Calls will be answered Monday through Thursday from 8:00 a.m. to 8:00 p.m. and on Friday from 8:00 a.m. to 5:00 p.m., Eastern time at (202) 377–2753. Status information on special licenses is not available from STELA, but can be obtained from the Licensing Branch, Special Licensing Division, Office of Export Licensing, at (202) 377–3287. Requests for status information may be made only by the applicant or applicant's agent. Callers will identify themselves with information contained on the applicant's file copy of the application.

* * * * *

(c) * * * A party to the transaction who wishes to know the status of cases submitted by the United States to COCOM may contact the Office of East-West Trade, Security Export Controls Division, Room 3817A, Department of State, 2201 C St., NW., Washington, DC 20520, telephone (202) 647–2885.

§ 374.3 [Amended]

2. Section 374.3 is amended by removing the last sentence in paragraph (e)(3) and by revising the reference to "a COCOM submission" contained in paragraph (e)(4) to read "cases submitted by the United States to COCOM".

Dated: July 31, 1987.

Dan Hoydysh,

Acting Deputy Assistant Secretary for Export Administration.

[FR Doc. 87–19319 Filed 8–21–87; 8:45 am]

BILLING CODE 3510-DT-M

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15 CFR Part 399

[Docket No. 70748–7148]

Hydraulic Fluids; Revision of ECCN 1702A

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: Export Administration maintains the Commodity Control List (CCL), which contains those items controlled for export by the Department of Commerce. This rule revises entry 1702A on the CCL covering certain types of hydraulic fluids. This revision is based on the review of the system of strategic export controls maintained by the United States and certain allied countries through the Coordinating Committee (COCOM).

EFFECTIVE DATE: This rule is effective August 24, 1987.

FOR FURTHER INFORMATION CONTACT: John Black or Patricia Muldonian, Regulations Branch, Office of Technology and Policy Analysis, Export Administration, Telephone: (202) 377–2440. For Technical questions on hydraulic fluids, call Jeffrey Tripp, Capital Goods Technical Center, Office of Technology and Policy Analysis, Export Administration, Telephone: (202) 377–1309.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule also is exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to Vincent Greenwald, Office of Technology and Policy Analysis, Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule involves a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection of information has been approved by the Office of Management and Budget under control number 0625–0001.

List of Subjects in 15 CFR Part 399

Exports, Reporting and recordkeeping requirements.

Accordingly, the Export Administration Regulations (15 CFR Parts 368–399) are amended as follows:

PART 399—[AMENDED]

1. The authority citation for 15 CFR Part 399 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223, 50 U.S.C. 1701 *et seq.*, E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub L. 99–440 (October 2, 1986); E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

§ 399.1 [Amended]

2. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), ECCN 1702A is amended by revising paragraphs (a) and (b) of the List of Hydraulic Fluids Controlled by ECCN 1702A, adding paragraphs (c) an (d), and adding two Technical Notes, as follows:

1702A Hydraulic fluids that contain as the principal ingredient(s) petroleum (mineral) oils, synthetic hydrocarbon oils, non-fluorinated silicones or fluorocarbons as described in this entry.

Controls for ECCN 1702A

* * * * *

List of Hydraulic Fluids Controlled by ECCN 1702A Hydraulic fluids that contain as the principal ingredient(s) petroleum (mineral) oils, synthetic hydrocarbon oils, non-fluorinated silicones or fluorocarbons that have all of the following characteristics:

(a) A flash point of greater than 477 K (204 °C, 400 °F);

(b) A pour point of 239 K (−34 °C, −30 °F) or lower;

(c) A viscosity index of 75 or greater; and

(d) Are thermally stable at 616 K (343 °C, 650 °F).

Technical Notes

1. For the purpose of this ECCN, "flash point" is determined using the "Cleveland open cup method" as shown in ASTM D–92 or national equivalents.

2. The following is the test procedure for determining thermal stability:

Twenty cc of the fluid under test shall be placed in a 46 cc type 317 stainless steel chamber containing one each of .5 inch (nominal) diameter balls of M–10 tool steel, 52100 steel and naval bronze (60 percent Cu, 39 percent Zn, 0.75 percent Sn). The chamber shall be purged with nitrogen, sealed at atmospheric pressure and the temperature raised to 644 plus 6 K (371± 6 °C, 700±10 °F) and maintained at this temperature for six hours.

The specimen will be considered thermally stable if at the completion of the above procedure all of the following conditions are met:

(1) The loss in weight of each ball is less than 0.1 mg/sq. cm. of ball surface (0.65 mg/sq. inch);

(2) The change in original viscosity as determined at 38°C is less than 25 % when measured in the centistokes system of units;

(3) The total acid or base number is less than .40.

Note: * * *

Dated: July 31, 1987.

Dan Hoydysh,

Acting Deputy Assistant Secretary for Export Administration.

[FR Doc. 87–18318 Filed 8–21–87; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulations No. 16]

Supplemental Security Income for the Aged, Blind, and Disabled; Resource Limits for Conditional SSI Payments

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: Prior regulations for the Supplemental Security Income (SSI) program provided for conditional SSI payments to individuals who met all eligibility criteria except that they had nonliquid resources in excess of the statutory limits. The presumption which still applies under the new regulations is that, since these individuals have little or no income or liquid resources with which to meet basic needs for food, clothing, or shelter, they need SSI while they dispose of their excess nonliquid resource(s). The prior regulations provided special limits on the total and liquid resources an individual can own and receive conditional payments. The prior regulations also required that any conditional payments made be repaid from the proceeds of the sale of the excess resource(s).

These final regulations eliminate the special limit on total resources but retain the special limit on liquid resources. The regulations also retain the requirement that any conditional payments made be repaid from the proceeds of the sale of the excess resource(s). The regulations also provide that the original estimate of the property's market value remains operative for purposes of determining eligibility for SSI unless the individual submits evidence which establishes a lower value. There will no longer be a presumption that property which no one has offered to buy within the conditional payment disposition period has no market value at all.

EFFECTIVE DATE: These regulations are effective August 24, 1987.

FOR FURTHER INFORMATION CONTACT: Henry D. Lerner, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594–7463.

SUPPLEMENTARY INFORMATION:

We published a notice of proposed rulemaking (NPRM) on November 13, 1985 (50 FR 46778) and provided a 60-day comment period. The comments are discussed later in this preamble.

Section 1613(b) of the Social Security Act (the Act) grants the Secretary of Health and Human Services (the Secretary) the discretion to determine the period or periods of time within which, and the manner in which, various kinds of property must be disposed of in order not to be included in determining an individual's eligibility for SSI payments. The Secretary also prescribes the requirements for the payment of benefits conditioned upon the disposal of such property.

The prior regulations provided for conditional payments if total resources (liquid plus nonliquid) did not exceed $3,000 for an individual and $4,500 for a couple. Additionally, the liquid resources owned must not have exceeded one-fourth of the applicable dollar amount referenced in section 1611(b)(1) of the Act in the case of an individual, and the amount referenced in section 1611(b)(2) in the case of an individual and spouse, i.e., the annual Federal benefit rates. The current annual Federal benefit rates are $4,080 for an individual and $6,120 for a couple. Thus, the current limit on liquid resources for conditional payments is $1,020 for an individual and $1,530 for a couple.

Subsequent to the publication of the NPRM, we determined that there was a need to clarify 20 CFR 416.1240(a)(1) of this regulation with respect to these benefit amounts. 20 CFR 416.1240(a)(1) of the NPRM indicated that the applicable benefit rates were specified in section 1611 of the Act. However, section 1611 does not contain the current Federal SSI benefit rate but instead refers the reader to section 1617 of the Act. It is section 1617 which explains the calculation of the current benefit rate and states that these rates are published in the **Federal Register** pursuant to section 215(i)(2)(D) of the Act. The current benefit amounts reflecting the cost-of-living adjustments for both titles II and XVI are published in the **Federal Register** under the terms of section 215(i)(2)(D). In order to assist the public in locating the current dollar amount of the benefit, we have inserted a clause in 20 CFR 416.1240(a)(1) of this regulation which references sections 1617 and 215(i)(2)(D) of the Act and notes that the publication of the current benefit rates is in the **Federal Register**. Furthermore, field office personnel will know the current benefit rates and will inform claimants of these rates upon the filing of an application for conditional payments. Therefore, we believe that even though the applicable dollar amounts are not specified in section 1611 of the Act, this information is available to the claimants when they apply for conditional payments.

Conditional SSI payments are made to an individual, who is ineligible because he or she owns excess nonliquid resources, to meet his or her basic needs for food, clothing and shelter while disposing of the excess nonliquid resources (real property within 6 months and other property within 3 months). Since recipients of conditional payments do not meet all the SSI eligibility requirements (i.e., they have excess resources) during the conditional payment period, the payments made are overpayments. Therefore, recipients must agree to repay these payments from the proceeds of the disposition. Similarly, recipients are also liable for repayment if the resource is not sold and no new current market value which would permit eligibility for benefits has been established.

These regulations eliminate the limit on total resources but retain the limit on liquid resources. The effect will be to allow some additional individuals who have little or no income but who own nonliquid resources (e.g., an inherited house) that are difficulty to sell, to receive conditional payments while they dispose of the resource. The increase in

the number of individuals eligible for conditional payments as a result of this change will be small, since current income requirements and the current limit on liquid resources will remain. In addition, most of these conditional payments should subsequently be recouped from these individuals from the proceeds of their resource dispositions.

These regulations also eliminate an assumption, heretofore provided for in SSA's internal operating guidelines, that property has no value at all if its owner has been unable to sell it during the period allowed for disposition. This change conforms the operating guidelines for valuing property in conditional payment situations to the operating guidelines for valuing property in normal eligibility situations and makes them consistent with SSA policy on valuing resources as reflected in Social Security Ruling (SSR) 83–30a. SSR 83–30a holds that neither the Act nor the regulations provide for excluding property from consideration as a resource because its owner cannot sell it at a desired price. (Note that property is not a resource for SSI purposes if there is a legal bar to its sale. Legal bars may vary from country to country and, within the United States, from state to state, but, in general, are circumstances of law which preclude a sale.)

The effect of this change is as follows. When an individual requests conditional SSI payments while disposing of an excess resource, the individual signs an agreement to sell the excess resource and repay the conditional SSI payments with the proceeds. However, under prior conditional payment procedures, if an individual made a "bona fide effort to sell" the resource and was unable to sell it as its estimated value during the period provided for disposition, we treated the resource as if it had no value. Thus, the individual was not overpaid during the period he or she was attempting to dispose of the resource, and the individual was eligible for SSI payments. Although the "bona fide effort to sell" test was reevaluated at the time of redetermination, individuals could continue to receive SSI indefinitely.

Experience has demonstrated that often individuals cannot dispose of the excess resource(s) at the originally estimated value. It is possible, however, that the excess resource(s) can be disposed of for cash at a lesser amount but well in excess of the SSI resource limit ($1,800 for an individual, $2,700 for a couple effective January 1, 1987). Thus, the prior procedure allowed individuals to retain valuable property in excess of the resource limits and still receive SSI for extended periods. Under the new rules, when the time period for attempting to sell an excess resource expires (generally 6 months, or 9 months if good cause applies) and the resource has not been sold, the resource will be counted at market value. The market value originally estimated will be used unless the individual (at any time within the constraints of administrative finality) submits evidence (e.g., an estimate from a disinterested knowledgeable source) of a lesser current market value. If a lesser value is established, this could lead to a determination that the individual had no excess resources for the period and, thus, has not been overpaid. Individuals will be advised of this and of their right to submit additional evidence as to the value of the resource at the start and prior to the expiration of the conditional payment period. This procedure recognizes that adverse market conditions may drive down the value of the excess resource (in extreme situations possibly to zero), without presuming that property is valueless because it does not sell at a certain price within a certain period of time.

Comments Received Following Publication of the NPRM on Resource Limits for Conditional SSI Payments Published November 13, 1985 (50 FR 46778)

General

The subject NPRM generated comments from seven sources, primarily legal services organizations and several States. None of these sources opposes removing the limit on total resources for conditional payment eligibility (four make no mention of it). All oppose doing away with the presumption that property has no current market value (CMV) if its owner receives no offer to purchase it while trying to sell it as its estimated CMV. Several express concern about existing aspects of the conditional payment provision and/or about matters related to implementation of the regulations.

Many of the comments reflect what appears to be a misunderstanding of the nature and purpose of the conditional payment provision. Others reflect the belief that, in going away with the zero-CMV presumption, we will attach to property an arbitrary value that it does not have. We therefore wish to preface our specific responses to the comments with a general discussion of: (1) The relationship between SSI resources policy and conditional payments, and (2) the effect the regulations will have on determining the CMV of property which someone has tried unsuccessfully to sell at its estimated CMV.

SSI Resources Policy and Conditional Payments

Section 1611(a) of the Act establishes the SSI resources limit. The Act also specifies, at section 1613(a), those resources which are excluded from consideration in determining whether an individual's resources exceed the limit. The regulations, at 20 CFR 416.1201, include the definition of resources any nonliquid asset that an individual owns and has the "right, authority, or power" to liquidate. They require that nonexcluded resources be counted toward the SSI resources limit in the amount of their equity value; i.e., the amount they can reasonably be expected to sell for minus encumbrances.

The statutory limits on resources (as well as on income) reflect congressional intent that the SSI program be means-tested, providing benefits only to those who have limited resources (and income) to meet their current basic needs. Implicit in those limits is the requirement that individuals whose resources exceed the resource limits must rely on the excess, rather than on SSI benefits, to provide for themselves.

Congress realized, however, that individuals may not be able to make immediate use of the excess when it consists of the value of nonliquid assets, which can take time to convert to cash. Section 1613(b) of the Act, therefore, directs the Secretary to set conditions, including time limits, under which individuals can receive refundable SSI payments while liquidating such excess assets. It stipulates, in addition, that the payments are conditioned upon actual liquidation of the assets.

An individual whose nonliquid resources make him or her ineligible for SSI, and who chooses to sell those resources in order to obtain needed cash, can receive conditional SSI payments if he or she agrees to sell the resources within a specified number of months and make appropriate repayment. The conditional payment provision does not purport to assure eventual eligibility for SSI. However, we fully recognize the importance, following an unsuccessful attempt to sell resources at their estimated CMV, of not finding ineligibility for SSI based on a value the resources do not have.

Effect of the Regulation on Determining CMV of Property Which Someone Has Tried Unsuccessfully to Sell at Its Estimated CMV

If the Act does not exclude a resource from consideration, its value must be counted toward the SSI resources limit. And, as Social Security Ruling (SSR) 83–30a points out, neither the Act nor the regulations authorize an exclusion of property from consideration as a resource because its owner cannot convert it to the amount of cash he or she desires for it. The CMV (i.e., any amount for which such property can reasonably be expected to sell on the open market) must be considered in determining whether the owner's resources exceed the SSI limit.

The Social Security Administration's (SSA's) internal operating guidelines, however, have permitted a presumption that property has no value if its owner, having tried for 6 months to sell it at its estimated CMV, received no offer to buy it. Since a lack of interest in property at its originally estimated CMV rarely means that it could not sell at any price, this presumption often results in SSI eligibility without regard to any lesser value the property may have.

The regulation does not do away with the principle that property has no value if it cannot be sold at any price; it only does away with the presumption that property has no value simply because it does not sell at a certain price within a certain time frame. It requires, instead, a case-by-case evaluation.

Evidence of the CMV of property usually consists of, but is not limited to, a tax assessment notice and/or estimates from knowledgeable sources. Such evidence is not infallible, but it provides the most generally acceptable and reliable CMV information available, short of an actual sale, and the individual has the right to rebut the estimated CMV with additional evidence either before or after trying to sell the property.

The responsibility for obtaining evidence of the CMV of property has always rested with the individual and must continue to do so. Thus, when an attempt to sell property at its originally estimated CMV fails, and the individual wishes to establish that the property has a lower CMV (or no CMV at all), it is up to the individual to obtain and submit evidence which supports that conclusion. If the individual does not submit such evidence, we will consider the original estimate of the property's CMV, based on the evidence originally submitted by the individual, to have been accurate.

If the individual does submit new evidence, we will consider such evidence in making a current estimate of the property's CMV. Operating guidelines will also provide for consideration of: (1) The fact that the individual tried unsuccessfully to sell the property at its originally estimated CMV, and (2) any other evidence available to SSA about the property or about market conditions where it is located.

We believe that this procedure will provide ample opportunity for individuals to establish that property they own, despite the original evidence and estimate of its CMV, either has no CMV or has one sufficiently low to permit SSI eligibility. We therefore do not believe that it will result in determinations of ineligibility where such determinations are not warranted.

At the same time, we believe that this procedure will permit determinations of ineligibility where they are warranted; i.e., where property, although it does not sell at its originally estimated CMV, still has a CMV sufficiently high to cause its owner's resources to exceed the SSI limit. The ability to make such determinations becomes critical to the integrity of the SSI program now that there will be no limit on the value of nonliquid resources an individual can own and qualify for conditional payments.

Comments and Responses

Comment: One commenter indicated that the NPRM "Summary" is misleading because it makes no mention of eliminating the zero-CMV presumption.

Response: We agree and have revised the "Summary" appropriately. The "Supplementary Information" section, which follows the "Summary," continues to discuss elimination of the zero-CMV presumption in detail.

Comment: One commenter stated that the regulations should specifically eliminate the risk of an individual being penalized under the transfer of assets provision when he or she sells a resource for less than its (estimated) CMV in order to sell it within the conditional payment time limit.

Response: The transfer of assets provision appears in section 1613(c) of the Act. The regulations, at 20 CFR 416.1246, make it clear that this provision applies only when an individual gives property away, or sells it for less than the CMV (i.e., as much as he or she could reasonably be expected to sell the property for at the time of the sale), in order to establish eligibility for SSI or Medicaid. We believe it is clear that the provision does not apply when an individual sells property for as much as he or she can within the time allowed under a conditional payment agreement which we will consider the CMV. Therefore, we have not revised the regulation.

Comment: One commenter pointed out that SSR 83–30a held that a deed of trust was a countable resource when its owner had rejected an offer to buy it for less than its face value, and that a discounted price often represents the fair market value (FMV) of such an asset. The commenter stated that the proposed regulations would go far beyond requiring an individual to sell a resource at FMV, and would require an individual to dispose of a resource even if there were no buyer. The commenter concluded that the proposed regulations should not be represented as an effort at compliance with SSR 83–30a.

Response: We believe the regulation does comply with SSR 83–30a since it is consistent with the notion that a discounted price often represents the FMV of a deed of trust, i.e., the most it can be expected to sell for. The regulations, at 20 CFR 416.1201, provide that property which an individual owns and could convert to cash is a resource in the amount of its CMV less encumbrances. If an individual can sell property, no matter at what price, such property has a CMV of more than zero. SSR 83–30a held that neither the Act nor the regulations provide for excluding property from consideration as a resource because the individual cannot sell it at a desired price. Thus, any amount for which property can reasonably be expected to sell must be considered in determining the CMV of an individual's resources.

Evidence may emerge, in the course of an attempt to sell property, which warrants a determination that the property has no CMV; i.e., that it cannot be expected to sell at any price. In and of itself, however, the fact that no one offers to buy property when an individual asks a certain price for it does not establish that the property has no CMV at all. The regulations do not require that an individual dispose of property which has no CMV. Rather the regulations require that a zero-CMV determination be based on evaluation of the circumstances in each case rather than on a presumption that the property has no CMV because no one offered to buy it within a limited period of time while the seller was asking a certain price for it.

Comment: Five commenters stated or implied that the zero-CMV presumption reflects market realities—that property, in fact, has no CMV if its owner receives no offer to buy it within the conditional payment period. One of the five stated

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that the regulations presently do not, but should, permit SSA staff to assign a zero value to property which simply cannot be sold.

Two of the five indicated that elimination of the zero-CMV presumption would result in property being considered available as a resource when, in fact, it is not. One of these two stated that the proposed regulations are, therefore, contrary to existing law and regulations.

Response: Current regulations, at 20 CFR 416.1201, tie the value an asset has as a resource to the amount it can reasonably be expected to sell for on the open market. They, therefore, do recognize the possibility that a zero value could be established for property that cannot be sold at any price.

When someone tries to sell property at its estimated CMV, the fact that no one offers to buy it within the conditional payment period suggests that it has a lower CMV than estimated. In some instances, it may have no CMV at all. But a blanket presumption that such property has no CMV usually ignores, rather than reflects, market realities.

It is the zero-CMV presumption itself, to the extent that it disregards any lesser amount for which such property could reasonably be expected to sell, which is contrary to existing law and regulations. The regulations would not result in property being considered as a resource when, in fact, it is not; they would eliminate the presumption that property is not a resource when, in fact, it may be.

Comment: Five commenters stated either (1) that the present conditional payment time limits do not reflect the amount of time it takes to effect a sale of property, or (2) that the present limits, coupled with elimination of the zero-CMV presumption, would force people to sell their property at far below market value. Two of the five recommended a conditional payment agreement without time limits.

Response: We realize that property might sell for more, if left on the market longer. But the conditional payment provision is not designed to ensure that property can remain on the market for as long as it takes to reach its highest potential value. It is designed to provide, for a limited period of time, funds that individuals can use for their current basic needs while converting their own assets to cash.

Were there no SSI program, individuals who could provide for themselves only by selling their assets would have to do so, sometimes quickly, at whatever price the market would currently bear. The SSI program does not eliminate that need unless the Act excludes those assets from consideration or their value falls within certain limits. But neither does the SSI program in general, or the conditional payment provision in particular, create or contribute toward that need. The SSI resources exclusions provide substantial relief from it. Conditional payments provide funds that individuals otherwise might not have available to them while selling assets they would have to sell in any event.

Moreover, the conditional payment provision does not pressure individuals to sell their property in order to remain or become eligible for SSI. Individuals are advised that they are ineligible for SSI, due to the value of their resources, before they are presented with the conditional payment option. Those who opt to receive conditional payments do so with the understanding that such payments are limited and must be refunded whether the property is sold or not.

The pressure on individuals to sell certain property stems from their having to obtain cash to provide for their own needs. Conditional payments afford such individuals more time than they otherwise might have, within which to sell the property. But conditional payments are not intended to finance a deferral of the sale until such time as an individual can obtain a desired price for the property and/or establish eligibility for SSI. In the context of that view of the conditional payment provision, we believe that its present time limits suffice for their intended purpose.

Comment: One commenter stated that the proposed regulations are short-sighted; that many recipients would give up SSI before selling family property, thus losing health care coverage and risking eviction or foreclosure. The commenter stated that the resulting costs of increased medical care (due to a lack of preventive care, poor nutrition, and depression) would far exceed the costs of continued SSI.

Response: The SSI resources limits are set by statute. Individuals whose resources exceed the applicable limit cannot rely on the SSI program rather than their excess resources to provide for their needs. This, rather than the conditional payment regulations, is why such individuals may have to sell property they own. We know that individuals can become attached to property they have owned for some time, but we cannot selectively disregard the statutory resources limits on that basis. If an individual's resources exceed the applicable limit and he or she must sell certain property in order to obtain cash, conditional payments provide an interim source of cash, on a refundable basis and for a limited number of months, while he or she is selling the property.

Comment: One commenter, noting that an individual often could borrow money using the excess nonliquid resource as collateral, stated that the consequences of receiving conditional payments might be worse than receiving no benefit at all, particularly if the individual receives substantial Medicaid benefits based on receipt of the conditional SSI payments. The commenter expressed concern that we would make such individuals believe they were eligible for SSI by making conditional payments to them, then find them retroactively ineligible for both SSI and Medicaid, leaving them with a surprise debt that could not be repaid by any public program or from the eventual sale of the property.

Response: The receipt of conditional SSI payments does not lead to an overpayment of Medicaid benefits. Currently, 14 States do not extend Medicaid coverage to individuals based on their receipt of SSI payments. The question of Medicaid overpayments related to conditional SSI payments therefore does not pertain to individuals who live in these States. The remaining 36 States and the District of Columbia currently must, by law, provide Medicaid coverage to all individuals ". . . with respect to whom supplemental security income benefits *are being paid* under title XVI" (emphasis added). Eligibility for Medicaid in these States derives from the actual receipt of SSI payments and is unaffected by subsequent, retrospective determinations concerning eligibility for such payments. This includes conditional payments.

The receipt of conditional payments does not lead to a surprise overpayment of the conditional payments themselves. SSA staff inform individuals while discussing conditional payments that such payments must be refunded. The conditional payment agreement, which individuals sign and receive a copy of, also specifies that the conditional payments must be refunded.

Comment: One commenter stated that the regulations should specifically require detailed conditional payment notices, spelling out: the importance of complying with the rule; the right to seek amendment of the CMV and not be considered to have violated the transfer of assets provision; exclusions from the rule; all time frames; and whom to call with questions. The commenter states that follow-up notices should be sent at the end of 2 months and then monthly after that, emphasizing both the

importance of acting and what steps to take.

Response: Operating instructions already require that SSA staff provide a detailed oral explanation of the conditions for payment, and their implications, before an individual makes a decision to receive or not to receive conditional payments. The conditional payment agreement itself then stipulates, in writing: the agreement to sell specified property; the time limit for selling it; and the agreement to refund, whether the property is sold or not. It also tells the individuals whom to contact if problems arise. The individual receives a copy of this agreement.

The conditional payment agreement requires that individuals sell the specified resources at CMV within the specified time limit. Individuals who do this have sold their resources at FMV as defined in the regulations at 20 CFR 416.1246(b), and are protected against application of the transfer of assets provision. A notice to this effect seems unnecessary. However, revised operating instructions, to be released to SSA field offices upon issuance of these final regulations, will require that SSA staff alert individuals to the transfer of assets provision in conditional payment cases.

Operating instructions already require that SSA staff make personal contact with the individual every 60 days during a 6-month conditional payment period and every 30 days during a 3-month period. They must remind the individual of the applicable time limit and obtain a statement from the individual as to what steps he or she has taken or is taking to sell the property. We believe that these procedures ensure that individuals understand the agreement.

Comment: One commenter stated that installment payment agreements which are entered into in order to dispose of nonliquid assets under a conditional payment agreement should not be the basis later for a finding of ineligibility.

Response: An installment agreement, provided that its owner has the right, authority, or power to convert it to cash, constitutes a resource. Unless such an agreement were to fall under one of the existing resource exclusions, we would have to consider it, as well as any other countable resources, in determining eligibility.

Comment: One commenter stated that, where a person enters into an installment payment contract in order to sell property under a conditional payment agreement, and where the contract itself then causes the person's resources to exceed the SSI limit, the regulations should state that the person is entitled to a second period of conditional payments while attempting to sell the contract.

Response: Since the transaction satisfies the requirement of the original conditional payment agreement that the individual sell the property, the original agreement would have no bearing on whether the individual could include the installment payment contract in a second conditional payment agreement. However, the individual could not retain any of the proceeds of the original sale, including installment payments, until the refund requirement of the original agreement had been satisfied.

Ownership of the contract would not automatically entitle the individual to a second period of conditional payments. Rather, it would require that SSA make a new determination of eligibility for regular and/or conditional SSI payments, considering the contract and using those guidelines and criteria that apply to it. We will ensure that the operating instructions to be released upon issuance of these final regulations make this clear.

Comment: One commenter stated that the regulations should set forth and define "legal bars" to the sale of property.

Response: The term legal bar has been used in the preamble, but does not appear in the statute or in the regulations, so there is no need to define it in the regulations. We have, however, added clarifying language in the preamble.

Comment: One commenter stated that SSA should be required to state fully and in detail the basis of the figure used as market value.

Response: SSA staff do not make independent estimates of CMV; the figure they use, and which they enter on the face of the conditional payment agreement, comes from evidence provided by the individual. The individual, therefore, knows the figure used and the basis for it. Operating instructions do require that SSA staff prepare a written explanation of the estimate to be used if an individual originally submits conflicting evidence, or later submits additional evidence in rebuttal of the original evidence. An individual who disagrees with the resource determination can appeal it.

Comment: One commenter stated that, when an individual has a fractional ownership interest in property, the CMV estimate should reflect the fact that the fractional value of the whole is worth less than a fee simple interest in the same amount. For example, one-eighth of $12,000 is $1,500, but an individual is much more likely to get $1,500 for property he or she owns alone that is valued at $1,500 than for a one-eighth interest in property that is valued at $12,000.

Response: It is the individual's responsibility to obtain and submit evidence which establishes the value of property he or she owns. In general, SSA staff are not—and are not expected to become—expert in the area of valuing property. Nor is there a formula available which they can use to discount fractional ownership interest in property where such discounting would be appropriate. When an individual feels that a fractional ownership interest is worth less than the share it mathematically represents of the property's whole value, it is up to the individual to provide evidence to that effect. If satisfactory evidence is provided, the value will be discounted accordingly.

Comments: One commenter stated that the regulations should permit individuals to set aside $1,500 for burial expenses before using the proceeds of a sale of property to refund conditional payments.

Response: At the beginning of the period for which conditional payments are to be made, eligibility for them derives from an interim resources determination. The interim determination provisionally disregards the value of those nonliquid resources to be sold which, if counted, would cause total countable resources to exceed the SSI limit. At the time of a sale, the disregard becomes null and void, the value of the resources (in the form of the net proceeds of the sale) is added to other countable resources at the beginning of the period for which conditional payments were made, and the interim determination is revised retroactively. The amount by which the revised determination then shows total countable resources to have exceeded the SSI limit at the beginning of the period for which conditional payments were made determines the extent to which such payments are recoverable. An individual who wishes to receive conditional payments must, as a condition of receiving them, agree to refund them to that extent.

The burial fund exclusion can be applied to liquid resources and/or to the value of a nonliquid resource which an individual intends and designates for burial expenses. It can be applied for months preceding a formal designation, but not for months preceding the existence of the intent. SSA staff, in making the interim determination at the beginning of the period for which conditional payments are to be made, must explore the possibility of and, as appropriate, apply the burial fund and

other exclusions before finding that remaining countable resources would exceed the SSI limit. If, at that time, the individual indicates that he or she intends certain resources for burial expenses, the burial fund exclusion could be applied, subject to the provisions of 20 CFR 416.1231, in subsequently determining the amount by which total countable resources exceeded the SSI limit at the beginning of the conditional payment period. If such intent is found not to exist at the beginning of the conditional payment period, the burial fund exclusion could not affect the amount by which total countable resources exceeded the SSI limit at that time, and cannot otherwise be used, at the time of a sale, to circumvent the agreement to refund.

Comment: One commenter stated that elimination of the zero-CMV presumption should affect only new applicants for SSI.

Response: Elimination of the zero-CMV presumption must apply to all eligibility determinations, whether they pertain to new applicants for or current recipients of SSI. Current recipients cannot continue to receive SSI benefits indefinitely, without regard to the value of property they own. If, under the new rules, property previously presumed to have no CMV is found to have a value which causes an individual's resource to exceed the SSI limit, the individual will have the option of entering into a current conditional payment agreement, provided that he or she otherwise qualifies.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because these regulations will not result in any program or administrative cost, or otherwise meet any of the threshold criteria for a major rule. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because these rules affect only individuals and States. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

These regulations impose no additional reporting or recordkeeping requirements requiring Office of Management and Budget clearance.

(Catalog of Federal Domestic Assistance Program No. 13.807, Supplemental Security Income program)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income.

Dated: June 1, 1987.

Dorcas R. Hardy,

Commissioner of Social Security.

Approved: July 8, 1987.

Otis R. Bowen,

Secretary of Health and Human Services.

Subpart L of Part 416 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

PART 416—[AMENDED]

1. The authority citation for Subpart L of Part 416 is revised to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1383; and 1383; Sec. 211 of Pub. L. 93-66; 87 Stat. 154.

2. Section 416.1240 is revised to read as follows:

§ 416.1240 Disposition of resources.

(a) Where the resources of an individual (and spouse, if any) are determined to exceed the limitations prescribed in § 416.1205, such individual (and spouse, if any) shall not be eligible for payment except under the conditions provided in this section. Payment will be made to an individual (and spouse, if any) if:

(1) Total includable liquid resources (as defined in § 416.1201(b)) do not exceed one-fourth of the applicable dollar amount referenced in section 1611(b)(1) of the Act in the case of an individual and in section 1611(b)(2) in the case of an individual and spouse (as increased pursuant to section 1617 of the Act and published in the **Federal Register** pursuant to section 215(i)(2)(D)); and

(2) The individual agrees in writing to:

(i) Dispose, at current market value, of the nonliquid resources (as defined in § 416.1201(c)) in excess of the limitations prescribed in § 416.1205 within the time period specified in § 416.1242; and

(ii) Repay any overpayments (as defined in § 416.1244) with the proceeds of such disposition.

(b) Payment made for the period during which the resources are being disposed of will be conditioned upon the disposition of those resources as prescribed in paragraph (a)(2) of this section. Any payments so made are (at the time of disposition) considered overpayments to the extent they would not have been paid had the disposition occurred at the beginning of the period for which such payments were made.

(c) If an individual fails to dispose of the resources prescribed in paragraph (a)(2) of this section, regardless of the efforts he or she makes to dispose of them, the resources will be counted at their current market value and the individual will be ineligible due to excess resources. The original estimate of current market value will be used unless the individual submits evidence establishing a lower value (e.g., an estimate from a disinterested knowledgeable source.)

[FR Doc. 87-19253 Filed 8-21-87; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD7-87-07]

Safety Zone; Tampa Bay, Hillsborough Bay and Approaches

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard has established a rule to amend 33 CFR 165.703 by establishing a requirement for applicable vessels to provide certain information twenty-four hours prior to their arrival or departure. This twenty-four hour notification is essential to coordinate implementation of the required safety zone and provide adequate notification to all affected maritime interests. This notification requirement would have no major economic impact on affected parties as this requirement was previously mandated by Captain of the Port orders over the past five years and all applicable parties are currently voluntarily providing a twenty-four hour advance notification of arrival or departure.

EFFECTIVE DATE: September 23, 1987.

FOR FURTHER INFORMATION CONTACT: Lieutenant Michael E. Maes Telephone, (813) 228 2194.

SUPPLEMENTARY INFORMATION: On 7 May 1987, the Coast Guard published a notice of proposed rule making in the **Federal Register** for these regulations (Vol. 52 No. 88 FR 17305). Interested persons were requested to submit comments and no comments were received.

Drafting Information

The drafters of this notice are Lieutenant Michael E. Maes, project officer, Marine Safety Office Tampa, Florida and LCDR F.T. Fuger, Jr. project attorney, Seventh Coast Guard District Legal Office.

Discussion of Comments

During the allotted comment period, no comments were received regarding the proposed amendment to the existing regulations. This reflects the current voluntary compliance with the provisions of the proposed amendment by affected maritime parties.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that full regulatory evaluation is unnecessary. During the past five years all anhydrous ammonia carriers have provided the twenty-four hour advance arrival notification either voluntarily or by direction of the Captain of the Port Orders. This amendment would simply make current voluntary standards mandatory.

Since the impact of these regulations is expected to be minimal the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Vessels, Waterways.

Final Regulations

In consideration of the foregoing, Part 165 of Title 33 Code of Federal Regulations is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191.49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5.

2. A new § 165.703(i) is added to read as follows:

§ 165.703 Tampa Bay, Florida Safety Zone.

* * * * *

(i) The owner, master, agent or person in charge of a vessel or barge, loaded with anhydrous ammonia shall report the following information to the Captain of the Port, Tampa at least twenty-four hours before entering Tampa Bay or its approaches or departing from Tampa Bay:

(1) Name and country of registry of the vessel or barge;

(2) The name of the port or place of departure;

(3) The name of the port or place of destination:

(4) The estimated time that the vessel is expected to begin its transit of Tampa Bay and the time it is expected to commence its transit of the safety zone.

(5) The cargo carried and amount.

Dated: July 23, 1987.

T.W. Boerger,

Captain, U.S. Coast Guard, Captain of the Port Tampa, FL.

[FR Doc. 87–19345 Filed 8–21–87; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[COTP Philadelphia, PA Regulation 87-01]

Safety Zone Regulations; Marcus Hook Range Ship Channel and Anchorages 6, 7, and 9, Delaware River

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone in the Delaware River to include Marcus Hook Range ship channel, Anchorage 6 off Deepwater Point, Anchorage 7 off Marcus Hook, and Anchorage 9 near the entrance to Mantua Creek, Delaware River. The zone is needed to protect vessels from a potential safety hazard associated with dredging operations in the Marcus Hook Range ship channel and to minimize temporary port congestion.

The Marcus Hook Range ship channel in the vicinity of the dredging operation is closed to vessel traffic. Anchorage 7 off Marcus Hook is closed to anchoring so that vessel traffic may transit the anchorage in lieu of the Marcus Hook Range ship channel. Vessels over 700 feet in length are subject to anchorage restrictions in Anchorage 6 off Deepwater Point and Anchorage 9 near the entrance to Mantua Creek.

EFFECTIVE DATES: This regulation becomes effective on 14 August, 1987. It terminates on 1 October, 1987, or upon completion of dredging operations whichever first occurs, unless sooner terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: LTJG James Weakley at the Captain of the Port, Philadelphia, (215) 923–4320.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest, since immediate action is needed to respond to potential hazards to vessel traffic.

Drafting Information

The drafters of this regulation are LTJG James Weakley, project officer for the Captain of the Port, and LT. Wayne Patrick, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of the Regulation

The potential hazards requiring this regulation result from maintenance dredging of the Marcus Hook Range ship channel. The Marcus Hook Range ship channel must be closed and traffic diverted through Anchorage 7 off Marcus Hook to reduce the hazards associated with dredging in the ship channel. Anchorage restrictions in Anchorages 6 and 9 are being imposed to accommodate those vessels which may have been prevented from anchoring in Anchorage 7 off Marcus Hook.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of Part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, Subpart C of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 U.S.C. 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A new § 165.T05–76 is added to read as follows:

§ 165.T05–76 Safety Zone: Marcus Hook Range Ship Channel and Anchorage 6 off Deepwater Port, Anchorage 7 off Marcus Hook, and Anchorage 9 near the entrance to Mantua Creek Anchorage, Delaware River.

(a) *Location.* The following areas are a safety zone: The Marcus Hook Range ship channel in the vicinity of dredging operations, Anchorage 6 off Deepwater Point, Anchorage 7 off Marcus Hook, and Anchorage 9 off Mantua Creek, Delaware River.

(b) *Effective date.* This regulation becomes effective 14 August, 1987. It terminates on 1 October, 1987, or upon completion of dredging operations whichever first occurs, unless sooner terminated by the Captain of the Port.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, the following restrictions are in effect:

(i) Entry into the Marcus Hook Range ship channel in the vicinity of dredging operations is prohibited. Vessels transiting the area shall make passage through Anchorage 7 off Marcus Hook.

(ii) Anchoring at Anchorage 7 off Marcus Hook is prohibited.

(iii) Vessels over 700 feet in length must obtain permission from the Captain of the Port to anchor in Anchorage 6 off Deepwater Point or Anchorage 9 near the entrance to Mantua Creek. Vessels granted permission are subject to the General Regulations (33 CFR 110.157(b)) and the following additional conditions:

(A) Vessels between 700 to 750 feet in length shall have one tug alongside while anchored in either Anchorage 6 or 9.

(B) Vessels greater than 750 feet in length shall have two tugs alongside while anchored in either Anchorage 6 or 9.

(C) Each tug alongside must have a minimum rating of 1000 shaft horsepower.

Dated: August 12, 1987.

C.A. Huber,

Commander, U.S. Coast Guard.

Alternate Captain of the Port, Philadelphia.

[FR Doc. 87-19344 Filed 8-21-87; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

Springfield Armory National Historic Site, MA; Closure to Public

AGENCY: National Park Service, Interior.

ACTION: Interim Rule with Request for Comments.

SUMMARY: The National Park Service is closing the Springfield Armory Museum, the Historic Site's primary visitor attraction, to all public use from September 8, 1987 through April 3, 1989. This action is necessary because of serious health and safety hazards that will exist during the complete renovation of the interior of the Main Arsenal which houses the museum and research facilities. The closure will have minimal economic impact.

DATES: This rule will become effective on September 8, 1987 and will expire on April 4, 1989. Written comments regarding the closure will be accepted until September 23, 1987.

ADDRESSES: Comments should be addressed to: W. Douglas Lindsay, Jr., Superintendent, Springfield Armory National Historic Site, One Armory Square, Springfield, Massachusetts 01105.

FOR FURTHER INFORMATION CONTACT: W. Douglas Lindsay, Jr., or Larry Lowenthal; 413-734-6477; address above.

SUPPLEMENTARY INFORMATION:

Background

Springfield Armory National Historic Site consists of 55 acres near downtown Springfield, Massachusetts and commemorates the important role this armory played in the nation's military and industrial history. From its inception in 1777 through its deactivation in 1968, the armory was a center for small arms storage, research, development, and manufacture. Most experimental models produced at the armory, as well as thousands of pieces collected from around the world for research and development were retained as a museum and arms library. The national historic site was established by Congress in 1974 (Pub. L. 93-486).

In 1978 the National Park Service assumed administration of that portion of the site containing the Main Arsenal which houses the museum, and the Commanding Officer's House, which is used for park support functions. The remainder of the Site serves as the campus of Springfield Technical Community College and is administered by the Commonwealth of Massachusetts.

The Fiscal Year 1987 Appropriation to the National Park Service provides funds to redesign and renovate the public exhibit spaces and museum support facilities within the Main Arsenal. The work will extend to all three floors and the basement and will provide for a 50 seat theater, new exhibits, a combined information/sales facility, new restrooms, expanded office and research spaces and environmental controls for artifact and archival strorage areas. Minor rehabilitation of exterior components of the building will also occur.

The engineer/architects' estimate for completion time is 18 months. Serious health and safety hazards that will be present during the construction period preclude allowing exhibit spaces and exhibits to remain open to the visiting public. There is no alternative to closing the museum as there is no other suitable exhibit space available on site. The museum has averaged 15,000-20,000 visitors annually since 1978.

Drafting Information

The following persons participated in the writing of this regulation: Douglas Lindsay, Superintendent, Springfield Armory NHS; Larry Lowenthal, Park Historian, Springfield Armory NHS.

Public Participation

The policy of the National Park Service is to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this rulemaking to the address noted above.

Paperwork Reduction Act

This rule contains no information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With Other Laws

The Department of the Interior has determined that this rulemaking is not a "major rule" within the meaning of Executive Order 12291. The Department has also determined that this rulemaking will not have significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This finding is based on the fact that the total economic effect of this rulemaking will impose no significant costs on any class or group of small entities.

The National Park Service has determined that this rulemaking will not have an effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, this rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental policy in 516 DM 6, (49 FR 21438). As such, neither an Environmental Assessment nor an

Environmental Impact Statement has been prepared.

List of Subjects in 36 CFR Part 7

National Parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, 36 CFR Chapter I is amended to read as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for Part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k); § 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

2. By adding a new § 7.23 to read as follows:

§ 7.23 Springfield Armory National Historic Site

Closure. The Springfield Armory Museum is closed to all public use and access from September 8, 1987 through April 3, 1989.

Dated: July 7, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–19239 Filed 8–21–87; 8:45 am]

BILLING CODE 4310-70-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6761]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The third date ("Susp.") listed in the fourth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646–2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding.

Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et seq.). Accordingly, the communities will be suspended on the effective date in the fourth column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public procedure under 5 U.S.C. 553 (b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in Section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of the future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance—floodplains.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127).

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region III: Minimal Conversions				
Virginia:				
Amelia County, unincorporated areas	510314	Mar. 22, 1976, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.	Sept. 1, 1987	Sept. 1, 1987.
Nottoway County, unincorporated areas	510307	May 7, 1975, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.	Sept. 1, 1987	Do.
West Virginia: Franklin, town of, Pendleton County	540154	July 2, 1975, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.	Sept. 1, 1987	Do.
Region IV				
Alabama: Louisville, town of, Barbour County	010225	Nov. 25, 1975, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.	Sept. 1, 1987	Do.
Georgia: Hart County, Unincorporated Area	130467	Sept. 26, 1978, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.	Sept. 1, 1987	Do.
North Carolina: Trenton, town of, Jones County	370141	May 27, 1975, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.	Sept. 1, 1987	Do.
Tennessee: White Pine, city of, Jefferson County	470332	Jan. 13, 1978, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.	Sept. 1, 1987	Do.
Mississippi:				
Montgomery County, unincorporated areas	280212	Apr. 11, 1974, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.	Sept. 1, 1987	Do.
Perry County, unincorporated areas	280233	Apr. 11, 1974, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.	Sept. 1, 1987	Do.
Scott County, unincorporated areas	280280	Apr. 23, 1979, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.	Sept. 1, 1987	Do.
Stone County, unincorporated areas	280300	Apr. 23, 1980, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.	Sept. 1, 1987	Do.
North Carolina: Fairmont, town of, Robeson County	370205	May 6, 1975, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.	Sept. 1, 1987	Do.
South Carolina:				
Hartsville, city of, Darlington County	450082	June 20, 1975, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.	Sept. 1, 1987	Do.
Kingstree, town of, Williamsburg County	450190	Dec. 20, 1974, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.	Sept. 1, 1987	Do.
Oconee County, unincorporated areas	450157	May 16, 1975, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.	Sept. 1, 1987	Do.
Tennessee: Rives, city of, Obion County	470235	Oct. 26, 1984, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.	Sept. 1, 1987	Do.
Region V				
Illinois: Sublette, village of, Lee County	170421	Sept. 30, 1976, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.	Sept. 1, 1987	Do.
Indiana: Ripley County, unincorporated areas	180221	Feb. 11, 1976, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.	Sept. 1, 1987	Do.
Minnesota:				
Fisher, city of, Polk County	270356	Apr. 21, 1982, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.	Sept. 1, 1987	Do.
Stevens County, unincorporated areas	270640	May 9, 1974, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.	Sept. 1, 1987	Do.
Ohio:				
Corning, village of, Perry County	390440	July 18, 1975, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.	Sept. 1, 1987	Do.
Fredericksburg, village of, Wayne County	390576	June 11, 1975, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.	Sept. 1, 1987	Do.
Hanoverton, village of, Columbiana County	390062	Oct. 6, 1975, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.	Sept. 1, 1987	Do.
Orrville, city of, Wayne County	390577	July 22, 1975, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.	Sept. 1, 1987	Do.
Malta, village of, Morgan County	390421	Apr. 22, 1975, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.	Sept. 1, 1987	Do.
Sunbury, village of, Delaware County	390152	June 18, 1975, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.	Sept. 1, 1987	Do.
Warsaw, village of, Coshocton County	390733	Aug. 26, 1977, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.	Sept. 1, 1987	Do.
Crescent City, city of, Iroquois County	170291	Dec. 26, 1974, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.	Sept. 1, 1987	Do.
Steward, village of, Lee County	170420	Oct. 10, 1975, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.	Sept. 1, 1987	Do.
Lakeview, village of, Logan County	390341	Feb. 10, 1975, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.	Sept. 1, 1987	Do.
Shawnee, village of, Perry County	390710	Sept. 7, 1976, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.	Sept. 7, 1987	Do.
Van Wert County, unincorporated areas	390784	May 24, 1977, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.	Sept. 1, 1987	Do.
Region VI				
Arkansas: Newark, city of, Independence County	050092	Aug. 8, 1975, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.	Sept. 1, 1987	Do.
Louisiana: Roseland, town of, Tangipahoa Parish	220212	Mar. 23, 1977, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.	Sept. 1, 1987	Do.
New Mexico: Los Alamos County, unincorporated areas	350035	Nov. 25, 1975, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.	Sept. 1, 1987	Do.
Oklahoma:				
Canadian County, unincorporated areas	400485	Feb. 11, 1985, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.	Sept. 1, 1987	Do.
Chelsea, City of, Rogers County	400187	Mar. 18, 1986, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.	Sept. 1, 1987	Do.
Jefferson, town of, Grant County	400065	Feb. 13, 1975, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.	Sept. 1, 1987	Do.
Texas:				
Asherton, city of, Dimmit County	480790	Sept. 30, 1981, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.	Sept. 1, 1987	Do.
Bartonville, town of, Denton County	481501	Oct. 1, 1985, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.	Sept. 1, 1987	Do.
Boyd, city of, Wise County	480676	May 18, 1977, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.	Sept. 1, 1987	Do.
Brownsboro, city of, Henderson County	480325	Jan. 15, 1982, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.	Sept. 1, 1987	Do.
Crystal City, city of, Zavala County	480688	Nov. 29, 1974, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, Susp.	Sept. 1, 1987	Do.
Giddings, city of, Lee County	480435	Oct. 8, 1982, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.	Sept. 1, 1987	Do.
Lavaca County, unincorporated areas	481178	Oct. 8, 1981, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.	Sept. 1, 1987	Do.
Premont, city of, Jim Wells County	480396	July 18, 1975, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.	Sept. 1, 1987	Do.
San Jacinto County, unincorporated areas County	480553	Mar. 23, 1982, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.	Sept. 1, 1987	Do.
Terrell County, unincorporated areas	480619	July 22, 1975, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.	Sept. 1, 1987	Do.
Yoakum, city of, Lavaca County	480434	Oct. 8, 1981, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.	Sept. 1, 1987	Do.
Oklahoma: Wapanucka, town of, Johnson County	400337	June 7, 1979, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.	Sept. 1, 1987	Do.
Region VII				
Iowa:				
Ainsworth, city of, Washington County	190525	July 23, 1984, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.	Sept. 1, 1987	Do.
Calumet, city of, Washington County	190712	Sept. 23, 1984, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.	Sept. 1, 1987	Do.
Lake Park, city of, Dickinson County	190367	Aug. 17, 1977, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.	Sept. 1, 1987	Do.
LeGrand, city of, Marshall County	190606	Dec. 5, 1977, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.	Sept. 1, 1987	Do.
Lime Springs, town of, Howard County	190417	Jan. 24, 1977, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.	Sept. 1, 1987	Do.
Lytton, city of, Calhoun and Sac Counties	190769	Oct. 6, 1976, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.	Sept. 1, 1987	Do.
Nora Springs, city of, Floyd County	190384	Apr. 25, 1980, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.	Sept. 1, 1987	Do.
Rockford, city of, Floyd County	190129	July 28, 1975, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.	Sept. 1, 1987	Do.
Spirit Lake, city of, Dickinson County	190116	Sept. 4, 1975, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.	Sept. 1, 1987	Do.
Titonka, city of, Kossuth County	190640	Apr. 30, 1975, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.	Sept. 1, 1987	Do.
Region V: Minimal Conversions				
Illinois:				
Deland, village of, Platt County	170547	Nov. 20, 1975, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Sept. 4, 1987.
Towanda, village of, McLean County	170504	May 12, 1975, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Do.
Indiana:				
Lewisville, town of, Henry County	180091	Oct. 28, 1976, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Do.
Springport, town of, Henry County	180347	Feb. 23, 1976, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Do.
Ohio County, unincorporated areas	180408	Jan. 20, 1975, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Do.
Minnesota:				
Dumont, city of, Traverse County	270481	Sept. 3, 1974, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Do.
Hinckley, city of, Pine County	270347	Sept. 20, 1974, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Do.
Keewatin, city of, Itasca County	270205	Jan. 21 1977, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Do.
Lester Prairie, city of, McLeod County	270265	May 8, 1975, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Do.
White Bear Lake, city of, Ramsey County	270366	Apr. 28, 1975, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Do.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Ohio:				
Orangeville, village of, Trumbull County	390751	May 26, 1976, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Do.
Sherrodsville, village of, Carroll County	390054	Dec. 20, 1976, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Do.
Zoar, village of, Tuscarawas County	390752	Apr. 7, 1977, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Do.
Caldwell, village of, Noble County	390430	Aug. 1, 1975, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Do.
East Palestine, city of, Columbiana County	390079	Aug. 1, 1975, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Do.
Galena, village of, Delaware County	390149	Jan. 23, 1975, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Do.
Ravenna, city of, Portage County	390456	Oct. 15, 1976, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Do.
Region VII				
Nebraska:				
Meadow Grove, village of, Madison County	310146	Oct. 3, 1974, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Do.
Tilden, city of, Antelope and Madison Counties	310401	Dec. 4, 1974, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Do.
Lindsay, village of, Platte County	310177	Dec. 13, 1976, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Do.
Region I: Regular Conversions				
Maine:				
Greenbush, town of, Penobscot County	230107	May 10, 1976, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Do.
Hampden, Town of, Penobscot County	230186	Nov. 24, 1975, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Do.
Region III				
Pennsylvania:				
Carroll, township of, Perry County	421948	Feb. 18, 1976, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Do.
East Earl, township of, Lancaster County	421770	Oct. 18, 1974, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Do.
Glade, township of, Warren County	422122	Mar. 19, 1976, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Do.
Windham, township of, Wyoming County	422208	Dec. 30, 1975, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Do.
West Virginia:				
Hamlin, town of, Lincoln County	540089	May 27, 1975, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Do.
West Hamlin, town of, Lincoln County	540090	June 26, 1975, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Do.
Region IV				
Mississippi: Moss Point, city of, Jackson County	280258	Sept. 11, 1970, Emerg.; Sept. 18, 1970, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Do.
Region V				
Indiana:				
Bedford, city of, Lawrence County	180146	Apr. 17, 1975, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Do.
New Castle, city of, Henry County	180092	Apr 14, 1975, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Do.
Region VI				
New Mexico: Zuni, pueblo of, McKinley County	350143	Dec. 21, 1976, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Do.
Region IX				
Arizona:				
Greenlee County, unincorporated areas	040110	Dec. 28, 1976, Emerg.; July 16, 1985, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Do.
Marana, town of, Pima County	040118	Apr. 17, 1980, Emerg.; Aug. 1, 1984, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Do.
California:				
Antioch, city of, Contra Costa County	060026	May 1, 1975, Emerg.; Dec. 2, 1980, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Do.
Lassen County, unincorporated areas	060092	June 28, 1996, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Do.
Region X				
Oregon:				
Bend, city of, Deschutes County	410056	Mar. 12, 1975, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Do.
Vale, city of, Malheur County	410158	Jan. 15, 1975, Emerg.; Aug. 28, 1977, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Do.

Code for reading fourth column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Harold T. Duryee,
Administrator, Federal Insurance Administration.

[FR Doc. 87-19245 Filed 8-21-87; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF TRANSPORATION

Coast Guard

46 CFR Part 67

[CGD 87-041]

Documentation of Vessels

AGENCY: Coast Guard, DOT.

ACTION: Notice that International Tonnage Convention dimensions and tonnages may be endorsed on vessel certificates of documentation.

SUMMARY: The Coast Guard is publishing notice that the International Convention of Tonnage Measurement of Ships, 1969, may be used to determine a vessel's dimensions and tonnages for Certificate of Documentation endorsement purposes. In the past, the Coast Guard has consistently endorsed tonnages and dimensions based on the Standard System of Measurement. However, since 1983, when the United States ratified the International Convention on Tonnage Measurement of Ships, 1969, many vessel owners have been required to have their vessels additionally measured under this system.

DATE: August 24, 1987.

FOR FURTHER INFORMATION CONTACT: Lieutenant Gregory L. Oxley, Vessel Documention Branch, Merchant Vessel Inspection and Documentation Division, Office of Marine Safety, Security, and Environmental Protection, U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593-0001, (202) 267-1492. Normal office hours are between 8:30 a.m. and 5:00 p.m. Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: The International Convention on Tonnage Measurement of Ships, 1969, (Tonnage Convention) became effective in the United States on February 10, 1983. Since then, many owners of U.S. vessels have begun having their vessels measured under this system in addition to measurement under the Standard System of Measurement. The result has been an increasing number of vessels which have a International Tonnage Certificate (1969) showing international tonnages and a Certificate of Documentation showing domestic tonnages.

On October 21, 1986, the President signed into law the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509) which, among other things, directed the Secretary of the Department of Transportation to establish the 1969 Tonnage Convention system of measurement as the primary system for measuring U.S. vessels of 79 feet and

longer in length. In addition to being measured under the 1969 Tonnage Convention vessel owners will be allowed to have their vessels measured for a regulatory tonnage under the Standard System of Measurement. However, measurement regulations implementing this legislation are not yet in place.

The Coast Guard was recently asked by the owner of a number of vessles whether the tonnages and dimensions yielded by the 1969 Tonnage Convention could be endorsed on their vessels' Certificates of Documentation. The vessel owner pointed out that, on an international basis, applicability of many regulations and fees is based not on the tonnage and dimensions shown on a measurement certificate, but on the dimensions and tonnages shown on the vessel's documentation certificate. In accordance with this notice, the Coast Guard will recognize and allow use of either the 1969 Tonnage Convention or the Standard System of Measurement in determining a vessel's dimensions and tonnages for Certificate of Documentation endorsement purposes.

By allowing endorsement of a vessel's dimensions and tonnages under either system of measurement on the Certificate of Documentation, vessel owners will have greater flexibility and certainty in determining their vessel's expenses and operating requirements. This notice is being published so that as many vessel owners as possible may take advantage of this practice.

The current regulations (46 CFR Subpart 67.11) require that the tonnage and dimensions of a vessel be determined for initial documentation, whenever there is a change in the tonnage or dimensions of a documented vessel, or when the tonnage or dimensions of a vessel returning to documentation have changed since the vessel's last documentation. Upon the occurrence of one of these events (at the time of application for documentation) a vessel owner will be given an opportunity to elect which tonnage measurement system dimensions and tonnages shall be endorsed. Where a vessel is currently documented and the owner elects to have the 1969 Tonnage Convention values endorsed, the Certificate of Documentation should be surrendered at the vessel's home port with a request for issuance of a new Certificate of Documentation. In either case, the owner will need to submit the appropriate measurment certificate issued by the proper authority.

Date: August 19, 1987.

P.C. Lauridsen,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 87-19343 Filed 8-21-87; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. 1

[FCC 87-266]

Syracuse Peace Council v. Television Station WTVH, Syracuse, NY; Fairness Doctrine

AGENCY: Federal Communications Commission.

ACTION: Adjudication ruling.

SUMMARY: By this action, the Federal Communications Commission determined that the enforcement of the set of obligations known as the "fairness doctrine" violated the First Amendment rights of broadcasters and, therefore, was no longer in the public interest.

EFFECTIVE DATE: August 7, 1987.

ADDRESS: 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Richard J. Bozzelli, Special Assistant to the General Counsel, (202) 632-7020.

SUPPLEMENTARY INFORMATION:

The Federal Communications Commission ruled on August 4, 1987, that the set of obligations known as the "fairness doctrine" violated the First Amendment rights of broadcasters. It determined that enforcement of the doctrine "chilled" the speech of broadcasters and could no longer be considered "narrowly tailored to achieve a substantial government interest." It, therefore, vacated a 1984 Order in which it had determined that the Meredith Corporation, licensee of station WTVH(TV), Syracuse, NY, had violated the doctrine.

The Commission specifically noted that its ruling did not apply to "equal access" and "equal time" requirements imposed by the Communications Act. It also found that nothing in its decision will limit the ability to license stations and regulate them in the public interest.

The agency's action came in response to a January 1987 remand order of the U.S. Court of Appeals for the District of Columbia Circuit. *Meredith Corp.* v. *FCC*, 809 F.2d 863 (D.C. Cir. 1987). The court ruled that the Commission, in enforcing the doctrine against Meredith, had acted arbitrarily and capriciously in not responding to the licensee's arguments that the doctrine violated its First Amendment rights. The court instructed the Commission to resolve that issue.

In its action on August 4, 1987, the FCC determined that, although the doctrine was adopted to promote robust discussion of controversial issues, the enforcement of the doctrine has actually had the net effect of reducing, rather than enhancing, the discussion of controversial issues of public importance and, therefore, violated the constitutional principles announced by the Supreme Court in *Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. 367 (1969). Consequently, while the doctrine was intended to enhance First Amendment principles, the FCC determined that, in fact, it had the exact opposite result.

It also concluded that the doctrine resulted in "excessive and unnecessary government intervention into the editorial processes of broadcast journalists," thereby violating the constitutional standard announced in a 1984 Supreme Court ruling in *FCC* v. *League of Women Voters of California*, 468 U.S. 364 (1984), that the regulation of broadcasters' speech be narrowly tailored to achieve a substantial government interest.

In reaching these determinations, the Commission relied on the record developed in this case from comments received after the Court of Appeals' remand and in its *1985 Fairness Report*, 102 FCC 2d 145 (1985), a comprehensive study of the administration and effects of the doctrine on broadcast journalists.

In the *1985 Fairness Report*, the FCC concluded that the doctrine no longer serves its intended purpose and, therefore, no longer furthers the public interest. It also found the constitutionality of the doctrine suspect. Because of intense congressional interest and some doubt as to whether the doctrine had been codified, however, the Commission did not act except to certify the record to Congress and terminate the proceeding.

The Syracuse Peace Council filed a complaint with the FCC alleging that Meredith had violated the doctrine in 1982 by broadcasting editorial advertisements over WTVH favoring the construction of a local nuclear power plant without presenting opposing points of view. The FCC found that Meredith had violated the doctrine. *Syracuse Peace Council* v. *Television Station WTVH, Syracuse, New York*, 99 FCC 2d 1389 (1984). Meredith argued that the doctrine violated its First Amendment right and, therefore, the FCC's enforcement of the doctrine was

unconstitutional. The Commission declined to consider Meredith's constitutional challenge, citing its decision in the *1985 Fairness Report* that this question was better dealt with by Congress and the courts. *Syracuse Peace Council* v. *Television Station WTVH, Syracuse, New York*, 59 RR 2d 179 (1985).

On review, the appellate court, while affirming the Commission's determination that the station had, in fact, violated the doctrine, ordered the agency to consider Meredith's constitutional arguments in its defense. The court ruled that the only way for the Commission to avoid that issue was if it determined that the doctrine was no longer in the public interest.

In its action on August 4, 1987, the Commission determined that it could not avoid the constitutional arguments raised by Meredith, because the constitutional and policy issues regarding the doctrine were "inextricably intertwined." It further ruled that there was nothing unique about its enforcement of the doctrine against WTVH that would justify a conclusion that the doctrine was unconstitutional only as applied in this case. Rather, the FCC stated that "the doctrine's infirmity of impermissibly chilling and reducing the discussion of controversial issues of public importance is not an infirmity resulting from the enforcement of the doctrine in this case or in particular markets, but is an infirmity that goes to the very heart of the enforcement of the fairness doctrine as a general matter."

The FCC found that in order to administer and enforce the doctrine, it is necessarily required to intervene in the editorial process and second-guess the judgment of broadcasters. Sanctions for noncompliance range from requiring the broadcaster to air contrasting viewpoints, to requiring the broadcaster to give free air time in certain circumstances, to revoking a license in the extreme case.

Citing the dramatic growth in the number and types of information outlets since the Supreme Court's 1969 *Red Lion* decision, the Commission also urged the Court to reconsider the First Amendment standards applicable to the broadcast media as announced in that case. The Court suggested in *League of Women Voters v. FCC* that it might revisit this standard if presented with an appropriate signal from Congress or the Commission.

The FCC argued that the scarcity rationale on which the *Red Lion* decision was based does not justify the current difference in First Amendment treatment between the print and broadcast media. Instead, the Commission urged the Court to apply a traditional First Amendment analysis to broadcasters.

Specifically, the Commission determined that there is no longer scarcity in the number of broadcast media outlets available to the public that could justify a difference in treatment between the printed and electronic press. In fact, the Commission noted that the number of broadcast outlets is far in excess of the number of daily newspapers.

It also determined that the notion of spectrum scarcity could not justify the difference in First Amendment treatment between the two media, because, as the Court of Appeals noted in *TRAC v. FCC*, all goods are scarce, and such a universal fact cannot be used to justify content regulation in one context and not another.

Furthermore, the FCC said that the fact that government allocates the spectrum through licensing does not justify its regulation of the content of broadcasters' speech. The Commission said that, because of the large number of broadcast licenses acquired through the purchase and transfer of stations on the open market, the relevant barrier to entry in both the broadcast and print markets is economic.

Arguing that a First Amendment analysis should not focus on the physical difference between the broadcast and print media, but on their functional similarities, the agency urged the Supreme Court to apply the same First Amendment principles now applicable to the printed press to the electronic press. It stated that the two media play a similar role in a free, democratic society and that the First Amendment "gives the people the right to receive ideas that are unfettered by government interference."

The FCC concluded: "This is the method set forth in our Constitution for maximizing the public interest; and furthering the public interest is likewise our mandate under the Communications Act."

Copies of the Commission's Memorandum Opinion and Order (FCC 87-266, released August 6, 1987) in this case may be obtained from International Transcription Service, (202) 857-3800. The Memorandum Opinion and Order will also be published in the Federal Communications Commission Record.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-19257 Filed 8-21-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 1

[CC Docket No. 86-212]

Attachment of Cable Television Hardware to Utility Poles

AGENCY: Federal Communications Commission (FCC).

ACTION: Final rule.

SUMMARY: This action disposes of a Notice of Proposed Rulemaking which was issued to examine the issues raised in *Alabama Power* v. *FCC*, 773 F.2d 362 (1985) 51 FR 21774, June 16, 1986. The rulemaking examined the questions raised by the court since they affected the method traditionally used to determine the operating expenses and capital costs of poles in the Commission's maximum rate formula. This Report and Order modifies the method for calculating pole attachment rates and adopts amendments to the procedural rules for filing pole attachment complaints. This action is taken as a result of the examination of the issues addressed in the Notice of Proposed Rulemaking.

EFFECTIVE DATE: The effective date of this rule is contingent upon OMB approval of any new or modified information collection requirement. The effective date will be announced in the **Federal Register** at a later date.

FOR FURTHER INFORMATION CONTACT: Lenworth Smith or Margaret Wood, tele: 202-632-4887.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* in CC Docket 86-212, Adopted June 10, 1987, and Released July 23, 1987.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Memorandum Opinion and Order

1. The Commission has modified the method for calculating pole attachment rates. In adopting a formula that results in a rate approaching the statutory maximum just and reasonable rate, the Commission adopted a different non-pole-related appurtenance ratio for electric companies and telephone companies, the ratio of total administrative and general expenses to

total plant investment to determine the administrative expenses component of the carrying charges, and the use of normalized taxes for the tax component of the carrying charges. The Commission also adopted amendments to the procedural rules for filing pole attachment complaints.

2. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that the adopted policy and rule changes will not have a significant economic impact on a substantial number of small entities because they will continue to utilize a formula which relies on publicly available data and no additional recording or recordkeeping will be required by the items adopted in the Report and Order.

3. The decisions contained in the Report and Order have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

Ordering Clauses

4. Accordingly, it is ordered that, pursuant to sections 4(i), 4(j), 201–205, 218, 220, 403, and 404 of the Communications Act of 1934, 47 U.S.C. 154(i), 154(j), 201–205, 218, 220, 403 and 404, the policies and requirements set forth herein are adopted.

5. It is further ordered that, pursuant to the authority contained in sections 4(i) and 224 of the Communications Act, 47 U.S.C. 154(i), 224, Subpart J of Part 1 of the Commission's Rules and Regulations are amended, as set forth below.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Rule Changes

Subpart J of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 1—[AMENDED]

1. The authority citation from Part 1 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552, unless otherwise noted.

2. In § 1.1402, paragraphs (d) and (e) are revised to read as follows:

§ 1.1402 Definitions.

* * * * *

(d) The term "complaint" means a filing by a cable television system operator, a cable television system association, a utility, or an association of utilities alleging that a rate, term, or condition for a pole attachment is not just and reasonable.

(e) The term "complainant" means a cable television system operator, a cable television system association, a utility, or an association of utilities who files a complaint.

3. In § 1.1404, paragraphs (a), (d) (1) and (2), (g) (2), (4), (5), (9) and (10), (h) and (i) are revised to read as follows:

§ 1.1404 Complaint.

(a) The complaint shall contain the name and address of the complainant, name and address of the respondent, and shall contain a verification (in the form in § 1.721(b)), signed by the complainant or officer thereof if complainant is a corporation, showing complainant's direct interest in the matter complained of. Counsel for the complainant may sign the complaint. Complainants may join together to file a joint complaint. Complaints filed by associations shall specifically identify each utility or cable television company who is a party to the complaint and shall be accompanied by a document from each identified member certifying that the complaint is being filed on its behalf.

* * * * *

(d) * * *

(1) A statement that the utility uses or controls poles, ducts, or conduits used or designated, in whole or in part, for wire communication; and

(2) A statement that the cable television operator currently has attachments on the poles.

* * * * *

(g) * * *

(2) The investment in crossarms and other items which do not reflect the cost of owning and maintaining poles, if available;

* * * * *

(4) The depreciation reserve from the investment in crossarms and other items which do not reflect the cost of owning and maintaining poles, if available;

(5) The total number of poles: (i) Owned; and (ii) controlled or used by the utility.

If any of these poles are jointly owned, the complaint shall specify the number of such jointly owned poles and the percentage of each joint pole or the number of equivalent poles owned by the subject utility;

* * * * *

(9) The annual carrying charges attributable to the cost of owning a pole. These charges may be expressed as a percentage of the net pole investment. With its pleading, the utility shall file a copy of the latest decision of the state regulatory body or state court which determines the treatment of accumulated deferred taxes if it is at issue in the proceeding and shall note the section which specifically determines the treatment and amount of accumulated deferred taxes.

(10) The rate of return authorized for the utility for intrastate service. With its pleading, the utility shall file a copy of the latest decision of the state regulatory body or state court which establishes this authorized rate of return if the rate of return is at issue in the proceeding and shall note the section which specifically establishes this authorized rate and whether the decision is subject to further proceedings before the state regulatory body or a court;

* * * * *

(h) If any of the information required in (g) of this section is not provided to the cable television operator by the utility upon reasonable request, the cable television operator shall include a statement indicating the steps taken to obtain information from the utility, including the dates of all requests. No complaint filed by a cable television operator shall be dismissed where the utility has failed to provide the information in (g) of this section after such reasonable request. A utility should supply a cable television system operator the information required in paragraph (g) of this section, along with the supporting pages from its FERC Form 1, FCC Form M, or other report to a regulatory body, within 30 days of the request by the cable operator. (The cable operator, in turn, shall submit these pages with its complaint). If the utility did not supply these pages to the cable operator in response to the information request, it shall supply this information in its response to the complaint.

(i) The complaint shall include a brief summary of all steps taken to resolve the problem prior to filing. If no such steps were taken, the complaint shall state the reason(s) why it believed such steps were fruitless.

* * * * *

4. In § 1.1409, paragraph (b) is revised to read as follows:

§ 1.1409 Commission consideration of the complaint.

* * * * *

(b) The complainant shall have the burden of establishing a prima facie case that the rate, term, or condition is not just and reasonable. If, however, a utility argues that the proposed rate is lower than its incremental costs, the

utility has the burden of establishing that such rate is below the statutory minimum just and reasonable rate.

* * * * *

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-19277 Filed 8-21-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-138; RM-5204, RM-5379, and RM-5481]

Radio Broadcasting Services; Brooksville, Homosassa, and Ocala, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 225C2 for Channel 224A at Ocala, Florida, and modifies the Class A license for Station WMFQ(FM) to specify the Class C2 channel, in response to a counterproposal filed by the licensee, Greater Ocala Broadcasting Corp. A site restriction 5.6 miles southeast is imposed on Channel 225C2 at Ocala. The request of Radio Development Laboratories to allot Channel 225A to Brooksville, Florida, as proposed by the *Notice* is denied. Additionally, a counterproposal filed by Central Radio Communications, Inc. proposing to allot Channel 225A to Homosassa, Florida, is dismissed at the request of the petitioner. With this action, this proceeding is terminated.

EFFECTIVE DATE: October 2, 1987.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-138, adopted July 24, 1987, and released August 18, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended under Florida, by removing Channel 224A and adding Channel 225C2 for Ocala.

Federal Communications Commission,

Bradley P. Holmes,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-19275 Filed 8-21-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85-309; RM-4959]

Radio Broadcasting Services; Manhattan and Ogden, KS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 284C2 to Manhattan, Kansas as that community's second FM channel at the request of William Gaines, et al. It denies the request of Manhattan Broadcasting Company to substitute Channel 284C2 for Channel 269A and to modify the license of Station KMKF, Manhattan, Kansas. It also reallocates Channel 280A from Manhattan, Kansas to Ogden, Kansas to reflect its actual usage in that community. With this action this proceeding is terminated.

EFFECTIVE DATE: October 2, 1987. The window period for filing applications will open on October 5, 1987, and close on November 4, 1987.

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 85-309, adopted July 27, 1987, and released August 18, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended by adding the entry of Channel 284C2 to Manhattan, Kansas; removing the entry of Channel 280A to Manhattan, Kansas; and adding the entry of Channel 280A to Ogden, Kansas.

Federal Communications Commission.

Bradley P. Holmes,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-19274 Filed 8-21-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-357; RM-5418]

Radio Broadcasting Services; Ankeny, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 223C2 for Channel 292A at Ankeny, Iowa and modifies the license of Station KJJY(FM), Ankeny to specify the new channel at the request of Fuller-Jeffrey Broadcasting Corporation of Greater Des Moines. Channel 292A is retained at Ankeny, Iowa in response to an expression of interest filed by Harold A. Jahnke. With this action, this proceeding is terminated.

DATES: Modification effective October 2, 1987; The window period for filing applications for Channel 292A will open on October 5, 1987, and close on November 4, 1987.

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-357, adopted July 27, 1987, and released August 18, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended by adding Channel 223C2 at the entry for Ankeny, Iowa.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-19276 Filed 8-21-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-59; RM-5062]

Radio Broadcasting Services; Lincoln, NE

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates Channel 287A to Lincoln, Nebraska, as the community's sixth local FM service, at the request of Dan Norton. Channel 287A can be allocated to Lincoln in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. With this action, this proceeding is terminated.

DATES: Effective date: September 28, 1987. The window period for filing applications will open on September 29, 1987, and close on October 29, 1987.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-59, adopted July 24, 1987, and released August 14, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Lincoln, Nebraska, is amended by adding Channels 287A and 297C1 and removing Channel 297.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-19265 Filed 8-21-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-514; RM-5571]

Radio Broadcasting Services; Jackson, NH

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, at the request of Michael J. Osborne, allocates Channel 256A to Jackson, NH, as the community's first local FM service. Channel 256A can be allocated to Jackson in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. Canadian concurrence has been received since Jackson is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective Date: September 28, 1987. The window period for filing applications will open on September 29, 1987, and close on October 29, 1987.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-514, adopted July 24, 1987, and released August 14, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended by adding Jackson, New Hampshire, Channel 256A.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-19266 Filed 8-21-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-515; RM-5539]

Radio Broadcasting Services, Perry, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, at the request of The Andover Corporation, allocates Channel 286A to Perry, Oklahoma, as the community's first local FM service. Channel 286A can be allocated to Perry in compliance with the Commission's minimum distance separation requirements without a site restriction of 5.5 kilometers (2.2 miles) southwest to avoid a short-spacing to Station KXLK, Channel 287, Haysville, Kansas. With this action, this proceeding is terminated.

EFFECTIVE DATES: September 28, 1987; The window period for filing applications will open on September 29, 1987, and close on October 29, 1987.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-515, adopted July 24, 1987, and released August 14, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended by adding Perry, Oklahoma, Channel 288A.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-19267 Filed 8-21-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-433; RM-5477]

Radio Broadcasting Services; Hormigueros, PR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, at the request of Occidental Broadcasting Corporation, allocates Channel 291A to Hormigueros, Puerto Rico, as the community's second local FM service. Channel 291A can be allocated to Hormigueros in compliance with the Commission's minimum distance separation requirements with a site restriction of 6 kilometers (3.7 miles) south to avoid a short-spacing to Station WRFE, Aguada, Puerto Rico. The request of Aurio Matos, licensee of Station WRFE, that the Commission allocate Channel 300A to Hormigueros, rather than 291A, is denied since it conflicts with the construction permit of Station WCMN(FM), Channel 297, Arecibo, Puerto Rico. With this action, this proceeding is terminated.

DATES: Effective Date: September 28, 1987; the window period for filing applications will open on September 29, 1987, and close on October 29, 1987.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-433, adopted July 24, 1987, and released August 14, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Hormigueros, Puerto Rico, is amended by adding Channel 291A.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-19268 Filed 8-21-87; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1002

[Ex Parte No. MC-5 (Sub-No. 6)]

Property Broker Security for Protection of the Public; Decision

AGENCY: Interstate Commerce Commisison.

ACTION: Interim rule.

SUMMARY: At 52 FR 27351, July 21, 1987, the Commission issued interim rules for adopting procedures, for brokers to file other evidence of security as an alternative to filing a surety bond. Through this notice we are modifying the description of our Fee Item (78) to provide for a filing fee for such filings. We find that good cause under 5 U.S.C. 533(b) exists to waive notice and public comment and to have this modification effective upon publication of this notice because delay in implementing the fee change would be contrary to the public interest.

DATES: This interim rule is effective on August 24, 1987.

FOR FURTHER INFORMATION CONTACT: Kathleen M. King, 202-275-7428.

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission decision. To purchase a copy of the full decision write to T.S. InfoSystems, Room 2229, 12th & Constitution Avenue NW., Washington, DC 20423 or call (202) 289-4357, or TDD for hearing impaired (202) 275-1721.

This action will not significantly affect the quality of the human environment or the conservation of energy resources. The Commission certifies that the adoption of this interim rule will not have a significant impact on a substantial number of small entities because we are only applying the fee normally paid for surety bonds filings.

List of Subjects in 49 CFR Part 1002

Administrative practice and procedure.

Decided: August 14, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

Appendix

Title 49 of the Code of Federal Regulations, Part 1002 is amended as follows:

PART 1002—FEES

1. The authority citation for Part 1002 continues to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A), 5 U.S.C. 553, 31 U.S.C. 9701, and 49 U.S.C. 10321.

2. Section 1002.2 is amended by revising paragraph (f)(78) to read as follows:

§ 1002.2 Filing fees.

* * * * *

(f) * * *

(78) A service fee for insurer, surety or self-insurer accepted certificate of surety bond, or other instrument submitted in lieu of a broker surety bond. The fee is based on a formula of $10 per accepted certificate of insurance or surety bond or instrument in lieu of a broker surety bond as indication of ICC insurance activity. (There is a $50 annual minimum; but the minimum does not apply to an instrument submitted in lieu of a surety bond), $10 per accepted cetificate or other instrument in lieu of a broker surety bond.

* * * * *

[FR Doc. 87-19302 Filed 8-21-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Early Seasons, Bag Limits and Possession of Certain Migratory Game Birds in the Contiguous United States, Alaska, Hawaii, Puerto Rico and the Virgin Islands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes the hunting seasons, hours, areas, and daily

bag and possession limits of mourning doves, white-winged and white-tipped doves, band-tailed pigeons, rails, woodcock, common snipe, common moorhens and purple gallinules; teal in September, in the contiguous United States; sea ducks in certain defined areas of the Atlantic Flyway; ducks in September in Florida, Iowa, Kentucky and Tennessee; Canada geese in September in parts of Illinois, Michigan and Minnesota; sandhill cranes in the Central and Pacific Flyways; sandhill cranes and Canada geese in southwestern Wyoming; migratory game birds in Alaska, Puerto Rico and the Virgin Islands; and extended falconry seasons during 1987–88. The taking of these migratory birds is prohibited unless hunting seasons are specifically provided. The rules will permit the hunting of these species within specified periods of time beginning as early as September 1, as has been the case in past years.

DATE: Effective on August 24, 1987.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Room 536, Matomic Building, 1717 H Street NW, Washington, DC, telephone 202–254–3207.

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act of July 3, 1918, (40 Stat. 755, 16 U.S.C. 703 et seq.), as amended, authorizes and directs the Secretary of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds to determine when, to what extent, and by what means such birds or any part, nest, or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported or transported.

On March 13, 1987, the U.S. Fish and Wildlife Service (hereinafter the Service) published for public comment in the **Federal Register** (52 FR 7900) a proposal to amend 50 CFR Part 20, with comment periods ending June 18, July 14, and August 25, 1987, respectively, for the 1987–88 hunting season frameworks proposed for Alaska, Hawaii, Puerto Rico and the Virgin Islands; other early seasons; and late seasons. That document dealt with the establishment of hunting seasons, hours, areas and limits for migratory game birds under §§ 20.101 through 20.107 and 20.109 of Subpart K. On June 3, 1987, the service published in the **Federal Register** (52 FR 20757) a second document consisting of a supplemental proposed rulemaking dealing with both the early and late-season frameworks. On July 2, 1987, the Service published for public comment in the **Federal Register** (52 FR 25170) a third document consisting of a proposed rulemaking dealing specifically with frameworks for early-season migratory bird hunting regulations. On August 3, 1987, the Service published in the **Federal Register** (52 FR 28717) a fourth document consisting of final frameworks for Alaska, Puerto Rico and the Virgin Islands. On August 6, 1986, the Service published a fifth document (52 FR 29187) consisting of a final rulemaking for the early-season frameworks for migratory game bird hunting regulations from which state wildlife conservation agency officials selected early-season hunting dates, hours, areas and limits for the 1987–88 season. On August 14, 1987, the Service published a sixth document in the **Federal Register** (52 FR 30395) consisting of a proposed rulemaking dealing specifically with frameworks for late-season migratory bird hunting regulations. The final rule described here is the seventh in a series of proposed, supplemental and final rulemaking documents for migratory game bird hunting regulations and deals specifically with amending Subpart K of 50 CFR Part 20 to set hunting seasons, hours, areas and limits for mourning doves, white-winged and white-tipped doves, band-tailed pigeons, rails, woodcock, snipe, and common moorhens ne purple gallinules; September teal seasons; sea ducks in certain defined areas of the Atlantic Flyway; ducks in September in Florida, Iowa, Kentucky and Tennessee; Canada geese in September in parts of Illinois, Michigan and Minnesota; sandhill cranes in the Central and Pacific Flyways; sandhill cranes and Canada geese in southwestern Wyoming; migratory game birds in Alaska; Puerto Rico and the Virgin Islands; and extended falconry seasons.

Nontoxic Shot Regulations

In the July 21, 1987, **Federal Register** (52 FR 27352), the Service published a final rule describing zones in which use of lead shot would be prohibited for hunting waterfowl, coots and certain other species in the 1987–88 hunting season. Waterfowl hunters are advised to become familiar with State and local regulations regarding the use of nontoxic shot for waterfowl hunting.

NEPA Consideration

The "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES–75–74)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975 (40 FR 24241). In addition, several environmental assessments have been prepared on specific matters which serve to supplement the material in the Final Environmental Statement. Copies of the environmental assessment are available from the Service at the address indicated under the caption ADDRESS. As noted in the March 13, 1987, **Federal Register** (52 FR 7905), the Service is preparing a Supplemental Environmental Impact Statement (SEIS) on the FES. The Service indicated a mid-July publication date for a draft SEIS to be followed by public meetings prior to preparation of the final SEIS was anticipated; however, it is now unlikely that the draft SEIS will be available before early September.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" [and shall] "insure that any action authorized, funded or carried out . . . is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or modification of [critical] habitat . . ."

Subsequently, the Service initiated section 7 consultation under the Endangered Species Act for the proposed hunting season frameworks.

On June 15, 1987, the Office of Endangered Species, gave a biological opinion that the proposed actions were not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats.

As in the past, hunting regulations this year are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species.

The Service's biological opinion resulting from its consultation under Section 7 is considered a public document and is available for inspection in the Office of Endangered Species and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240.

Regulatory Flexibility Act, Executive Order 12291 and the Paperwork Reduction Act

In the **Federal Register** dated March 13, 1987, (52 FR 7900), the Service

reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publication of a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. This determination is detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240. These regulations contain no information collections subject to Office of Management and Budget under the Paperwork Reduction Act of 1980.

Memorandum of Law

The Service published its Memorandum of Law, required by section 4 of Executive Order 12291, in the Federal Register dated August 3, 1987, (52 FR 28717).

Authorship

The primary author of this rule is Morton M. Smith, Office of Migratory Bird Management, working under the direction of Rollin D. Sparrowe, Chief.

Regulations Promulgation

After analysis of migratory game bird survey data obtained through investigations conducted by the Service, State conservation agencies, and other sources, and consideration of all comments received on the early proposals (52 FR 7900, March 13, 1987; 52 FR 20757, June 3, 1987; and 52 FR 25170, July 2, 1987), the Service published in the Federal Register on August 3, 1987, (52 FR 28717) final early-season frameworks for Alaska, Puerto Rico, and the Virgin Islands; and on August 6, 1987, (52 FR 29187) those for the contiguous United States and Hawaii. Copies of the final frameworks were sent to the officials of the State conservation agencies and to conservation agency officials in Puerto Rico and the Virgin Islands who were invited to submit recommendations for hunting seasons which complied with the season times and lengths, hours, areas and limits specified in the frameworks.

The taking of the designated species of migratory birds is prohibited unless open hunting seasons are specifically provided. The following amendments will permit taking of the designated species within specified time periods beginning as early as September 1, as has been the case in past years.

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, the Service intends that the public be given the greatest possible opportunity to comment on the regulations. Thus, when proposed rulemakings were published on March 13, June 3, and July 2, 1986, the Service established what it believed were the longest periods possible for public comment. In doing this the Service recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the States would have insufficient time to select their season dates, shooting hours, hunting areas and limits; to communicate those selections to the Service; and to establish and publicize the necessary regulations and procedures to implement their decisions. The Service therefore finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) (Administrative Procedure Act), and these regulations will, therefore, take effect immediately upon publication.

Accordingly, with each State conservation agency having had an opportunity to participate in selecting the hunting seasons desired for its State on those species of migratory birds for which open seasons are now to be prescribed, and consideration having been given to all other relevant matters presented, certain sections of Title 50, Chapter I, Subchapter B, Part 20, Subpart K, are amended as set forth below.

List of Subjects in 50 CFR Part 20

Exports, Hunting imports, Transportation, Wildlife.

PART 20—[AMENDED]

For these reasons set out in the preamble, Title 50, Chapter I, Subchapter B, Part 20, Subpart K, is amended as follows.

1. The authority citation for Part 20 continues to read as follows:

Authority: Migratory Bird Treaty Act, sec. 3, Pub. L. 65–186, 40 Stat. 755 (16 U.S.C. 701–708h); sec. 3(h), Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712); Alaska Game Act of 1925, 43 Stat. 739, as amended, 54 Stat. 1103–04.

(Note.—The following annual hunting regulations provided for by §§ 20.101 through 20.106 and 20.109 of 50 CFR Part 20 will not appear in the Code of Federal Regulations because of their seasonal nature)

2. Section 20.101 is revised to read as follows:

§ 20.101 Seasons, limits and shooting hours for Puerto Rico and the Virgin Islands.

1. Subject to the applicable provisions of the preceding sections of this part, the open seasons (dates inclusive), the shooting and hawking hours, and the daily bag and possession limits, and areas for hunting the species designated in this section are prescribed as follows:

(a) *Puerto Rico*

	Doves	Pigeons
Daily bag limit	10 singly or in the aggregate of all permitted species.	5
Possession limit	10 singly or in the aggregate of all permitted species.	5
Season dates	September 5 to November 2, 1987.	
Shooting hours	One-half hour before sunrise to sunset daily.	

Restrictions: Only the following species of doves and pigeons may be hunted during the open season: Zenaida dove (*Tortola cardosantera*); white-winged dove (*Tortola aliblanca o cubanita*); mourning dove (*Tortola rabilarga o rabiche*); and scaly-naped pigeon (*Paloma turca o torcaz*).

Closed Areas

No season is prescribed for doves and pigeons on Mona Island in order to give the reduced population of white-crowned pigeon (*Columba leucocephala*), known locally as *Paloma cabeciblanca*, a chance to recover.

No season is prescribed for doves and pigeons in the Municipality of Culebra and on Desecheo Island.

No season is prescribed in the El Verde Closure Area consisting of those areas of the municipalities of Rio Grande and Loiza delineated as follows. (1) All lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of Routes 956 and 186 (Km 13.2) in the south; (2) all lands between Routes 186 and 966 from the juncture of 186 and 966 on the north, to the Caribbean National Forest Boundary on the south; (3) all lands lying west of Route 186 for one (1) kilometer from the juncture of Routes 186 and 956 south to Km 6 on Route 186; (4) all lands within Km 14 and Km 6 on the west and the Caribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National Forest Boundary whether private or public.

No season is prescribed for doves and pigeons of any species in all of Cidra Municipality and in portions of Aguas Buenas, Caguas, Cayey, and Comerio

Municipalities as encompassed within the following boundary: Beginning on Highway 172 as it leaves the Municipality of Cidra on the west edge, north to Highway 156, east on Highway 156 to Highway 1, south on Highway 1 to Highway 765, south on Highway 765 to Highway 763, south on Highway 763 to the Rio Guavata, west along the Rio Guavata to Highway 1, southwest on Highway 1 to Highway 14, west on Highway 14 to Highway 729, north on Highway 729 to Cidra Municipality, and westerly, northerly, and easterly along the Cidra Municipality boundary to the point of beginning.

Check Commonwealth Regulations for Additional Restrictions

(b) *Puerto Rico*

	Ducks	Coots	Common Moorhens (Gallinules)	Common Snipe
Daily bag limits	4	Closed	8	8
Possession limits	8	Closed	12	12
Season dates	November 7 to December 7, 1987 & February 6 to February 28, 1988.			
Shooting hours	One-half hour before sunrise until sunset daily.			

Restrictions: No season is prescribed for waterfowl in the Municipality of Culebra and on Desecheo Island. The season is closed on the ruddy duck (*Oxyura jamaicensis*); Bahama pintail (*Anas bahamensis*); West Indian whistling (tree) duck (*Dendrocygna arborea*); fulvous whistling (tree) duck (*Dendrocygna bicolor*); masked duck (*Oxyura dominica*); purple gallinule (*Porphyrula martinica*); common coot (*Fulica americana*); and Caribbean coot (*Fulica caribaea*).

Check Commonwealth Regulations for Additional Restrictions

Note.—Local names for game birds: Ruddy duck (*Oxyura jamaicensis*)—Pato rojo (protected); purple gallinule (*Porphyrula martinica*)—Gallareta azul (protected); and Puerto Rican plain pigeon (*Columba inornata wetmorei*)—Paloma sabanera (protected).

(c) *Virgin Islands*

	Zenaida Dove	Scaly-naped Pigeon	Ducks
Daily bag limits	10	5	4
Possession limits	10	5	8
Season dates:			
Zenaida dove and scaly-naped pigeon.	September 1 through October 30, 1987.		
Ducks only	December 8, 1987, through January 31, 1988.		
Shooting hours	One half-hour before sunrise until sunset.		

Restrictions: Seasons are closed for ground or quail doves and pigeons (except scaly-naped pigeon) in the Virgin Islands. The season is closed on the ruddy duck (*Oxyura jamaicensis*); White-cheeked pintail (*Anas bahamensis*); West Indian whistling (tree) duck (*Dendrocygna arborea*); fulvous whistling (tree) duck (*Dendrocygna bicolor*); masked duck (*Oxyura dominica*), and purple gallinule (*Porphyrula martinica*).

Note.—Local names for game birds: Zenaida dove—mountain dove; Bridled quail dove—Barbary dove, partridge (protected); Ground dove—stone dove, tobacco dove, rola, tortolita (protected); Scaly-naped pigeon—red-necked pigeon, scaled pigeon.

Check Commonwealth Regulations for Additional Restrictions

3. Section 20.102 is revised to read as follows:

§ 20.102 Seasons, limits, and shooting hours for Alaska.

Subject to the applicable provisions of the preceding sections of this part, the areas open to hunting, the respective open seasons (dates inclusive), the shooting and hawking hours, and the daily bag and possession limits on the species designated in this section are prescribed as follows:

Shooting and hawking hours: One-half hour before sunrise to sunset daily.

Check State Regulations for Additional Restrictions, Including Area Descriptions

Open seasons	Ducks, geese, cranes, and snipe	Brant
Area:		
State Game Mgmt. Units: 11–13 and 17–26	Sept. 1–Dec. 16	Sept. 1–Oct. 20.
State Game Mgmt. Units: 5–7, 9, 14–16 & 10 (Unimak Island only)	Sept. 1–Dec. 16	Sept. 12–Oct. 31.
State Game Mgmt. Units: 1–4	Sept. 1–Dec. 16	Sept. 12–Oct. 31.
State Game Mgmt. Unit 10 (except Unimak Island)	Oct. 8–Jan. 22	Oct. 8–Nov. 26.
State Game Mgmt. Unit 8	Oct. 8–Jan. 22	Oct. 8–Nov. 26.

DAILY BAG AND POSSESSION LIMITS

Area	Ducks [1]	Geese [2]	Emperor geese	Brant	Common sandhill	
					Snipe	Cranes
Units 11–13 and 17–26	10–30	6–12	Closed	2–4	8–16	2–4 in Unit 17; 3–6 in Units 11–13 and 18–26
Units 5–7, 9, 14–16 and 10 (Unimak Island only)	8–24	6–12	Closed	2–4	8–16	2–4
Units 1–4	7–21	6–12	Closed	2–4	8–16	2–4
Unit 10 (except Unimak Island)	7–21	6–12	Closed	2–4	8–16	2–4
Unit 8	7–21	6–12	Closed	2–4	8–16	2–4

[1] In Units 1–26 (Statewide) the basic daily bag and possession limits may include not more than 3 and 9 pintails, respectively. In addition to the basic daily bag and possession limits, a daily bag limit of 15 and a possession limit of 30 is permitted singly or in the aggregate of the following species: scoter, eider, oldsquaw, harlequin, and American and red-breasted mergansers.

[2] No more than 4 daily, or 8 in possession may be any combination of Canada and/or white-fronted geese, provided that: in Units 1–9 and 14–16, no more than 2 daily, or 4 in possession, may be white-fronted geese. In Units 5 and 6, the taking of Canada geese is only permitted from September 21 through December 16. In Units 8, 9(E), 10 (except Unimak Island) and 18, the taking of Canada geese is prohibited. In Unit 1(C), the taking of snow geese is prohibited. In Units 1–26 (Statewide) the taking of Aleutian and cackling Canada geese and emperor geese is prohibited.

4. Section 20.103 is revised to read as follows:

§ 20.103 Seasons, limits, and shooting hours for mourning and white-winged doves and wild pigeons.

Subject to the applicable provisions of the preceding sections of this part, the areas open to hunting, the respective open seasons (dates inclusive), the shooting and hawking hours and the daily bag and possession limits on the species designated in this section are prescribed as follows:

(a) *Mourning Doves—Eastern Management Unit.*

In all States except Alabama, Illinois, Mississippi and Tennessee:	
Daily bag limit	12
Possession limit	24
In Illinois, Mississippi and Tennessee:	
Daily bag limit	15
Possession limit	30
In Alabama:	
North Zone:	
Daily bag limit	15
Possession limit	15
South Zone:	
Daily bag limit	12
Possession limit	12

Shooting and hawking hours: One-half hour before sunrise to sunset except as noted otherwise.

Check State regulations for additional restrictions, including area descriptions

Seasons in:	
Alabama:	
North Zone (1):	
12 noon to sunset	Sept. 5.
½ hour before sunrise to sunset.	Sept. 6–Sept. 14 and Sept. 19–Oct. 14 and Dec. 23–Jan. 15.
South Zone (1):	
½ hour before sunrise to sunset.	Sept. 26–Sept. 27 and Oct. 10–Nov.29
12 noon to sunset	Dec. 23–Jan. 8.
Connecticut	Closed.
Delaware (12 noon to sunset).	Sept. 5–Sept. 26 and Oct. 12–Oct. 24 and Dec. 7–Jan. 9.
Florida (2):	
12 noon to sunset	Oct. 3–Oct. 25.
½ hour before sunrise to sunset.	Nov. 14–Nov. 29 and Dec. 12–Jan. 10.
Georgia:	
North Zone (3):	
12 noon to sunset	Sept. 5.
½ hour before sunrise to sunset.	Sept. 6–Oct. 4 and Nov. 26–Nov. 29 and Dec. 11–Jan. 15.
South Zone (3):	
12 noon to sunset	Sept. 26.
½ hour before sunrise to sunset.	Sept. 27–Oct. 25 and Nov. 26–Nov. 29 and Dec. 11–Jan. 15.
Illinois (12 noon to sunset).	Sept. 1–Oct. 30.
Indiana:	
12 noon to sunset	Sept. 1–Oct. 15.
½ hour before sunrise to sunset.	Nov. 6–Nov. 30.
Kentucky:	
11 a.m. to sunset	Sept. 1–Oct. 31.
Sunrise to sunset	Nov. 28–Dec. 6.
Louisiana:	
12 noon to sunset	Sept. 5–Sept. 6 and Oct. 24–Oct. 25 and Dec. 12–Dec. 13.
½ hour before sunrise to sunset.	Sept. 7–Sept. 13 and Oct. 26–Nov. 29 and Dec. 14–Jan. 4
Maine	Closed.
Maryland:	
12 noon to sunset	Sept. 1–Oct. 24.
½ hour before sunrise to sunset.	Nov. 14–Nov. 21 and Dec. 19–Dec. 26.
Massachusetts	Closed.
Michigan	Closed.
Mississippi (½ hour before sunrise to sunset).	Dept. 5–Sept. 20 and Oct. 17–Nov. 14 and Dec. 19–Jan. 2.
New Hampshire	Closed.
New Jersey	Closed.
New York	Closed.
North Carolina:	
½ hour before sunrise to sunset.	Sept. 5–Oct. 15 and Nov. 23–Nov. 28 and Dec. 18–Jan. 9.
Ohio	Closed.
Pennsylvania:	
12 noon to sunset	Sept. 1–Oct. 17.
½ hour before sunrise to sunset.	Oct. 31–Nov. 21.
Rhode Island:	
12 noon to sunset	Sept. 14–Oct. 4.
sunrise to sunset	Oct. 17–Dec. 4.
South Carolina (½ hour before sunrise to sunset).	Sept. 5–Oct. 10 and Nov. 21–Nov. 28 and Dec. 19–Jan. 13.
Tennessee	
½ hour before sunrise to sunset.	Sept. 1–Sept. 29 and Oct. 10–Oct. 24 and Dec. 12–Dec. 27.
Vermont	Closed.
Virginia:	
12 noon to sunset	Sept. 5–Nov. 7.
½ hour before sunrise to sunset.	Dec. 24–Dec. 26 and Dec. 31–Jan. 2.
West Virginia:	
12 noon to sunset	Sept. 1–Oct. 31.
½ hour before sunrise to sunset.	Dec. 25–Jan. 2.
Wisconsin	Closed.

(1) In Alabama, the South Zone is defined as: Mobile, Baldwin, Escambia, Covington, Coffee, Geneva, Dale, Houston and Henry Counties. North Zone: remainder of the State.

(2) In Florida, the daily bag limit is 12 mourning and white-winged doves in the aggregate, of which not more than 4 may be white-winged doves. The possession limit is 24 mourning and white-winged doves in the aggregate, of which not more than 8 may be white-winged doves.

(3) In Georgia, the North Zone is defined as that area lying north of a division line as follows: U.S. Highway 280 from Columbus to Wilcox County, thence southward along the western border of Wilcox County, thence east along the southern border of Wilcox County to the Ocmulgee River, thence north along the Ocmulgee River to Highway 280, thence east along Highway 280 to the Little Ocmulgee River; thence southward along the Little Ocmulgee River to the Ocmulgee River; thence southwesterly along the Ocmulgee River to the western border of Jeff Davis County, south along the western border of Jeff Davis County, east along the southern border of Jeff Davis and Appling Counties, north along the eastern border of Appling County to the Altamaha River, east to the eastern border of Tattnall County; north along the eastern boundary of Tattnall County, north along the western border of Evans County to Candler County, east along the northern border of Evans County to Bulloch County, north along the western border of Bulloch County to Highway 301, then northeast along Highway 301 to the South Carolina line.

(b) *Mourning Doves—Central Management Unit.*

In Missouri:	
Daily bag limit	10
Possession limit	20
In Texas:	
Daily bag limit	12(3)
Possession limit	24(3)
In Arkansas, Colorado, Kansas, Nebraska, North Dakota, New Mexico, Oklahoma, South Dakota, Wyoming and Montana:	
Daily bag limit	15(1)
Possession limit	30(1)

Shooting and hawking hours: One-half hour before sunrise until sunset except as noted otherwise.

Check State Regulations For Additional Restrictions, Including Area Descriptions

Seasons in:	
Arkansas	Sept. 5–Sept. 27 & Oct. 10–Oct. 25 & Dec. 19–Jan. 8.
Colorado	Sept. 1–Oct. 30.
Iowa	Closed.
Kansas	Sept. 1–Oct. 30.
Minnesota	Closed.
Missouri	Sept. 1–Nov. 9.

Montana	Sept. 5–Oct. 12.
Nebraska	Sept. 1–Oct. 30.
New Mexico (1).	Sept. 1–Sept. 30 & Dec. 1–Dec. 30.
North Dakota.	Sept. 1–Oct. 30.
Oklahoma	Sept. 1–Oct. 30.
South Dakota.	Sept. 1–Oct. 16.
Texas: (2)(3)	
North Zone.	Sept. 1–Nov. 9.
Central Zone.	Sept. 1–Oct. 30 & Jan. 2–Jan. 11.
South Zone (4).	Sept. 20–Nov. 18 & Jan. 2–Jan. 11.
Wyoming	Sept. 1–Oct. 15.

(1) In New Mexico, the daily bag limit is 15 and the possession limit is 30 whitewinged and mourning doves, singly or in the aggregate of these species.

(2) In Texas, the three zones are North, South and Central as follows:

NORTH ZONE—That portion of the State north of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Interstate Highway 20; northeast along Interstate Highway 20 to Interstate Highway 30 at Fort Worth; northeast along Interstate Highway 30 to the Texas-Arkansas State line.

SOUTH ZONE—That portion of the State south and west of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Van Horn, south and east on U.S. 90 to San Antonio; then east on Interstate 10 to Orange, Texas.

CENTRAL ZONE—That portion of the State lying between the North and South Zones.

(3) In Texas, the daily bag limit is 12 mourning, white-winged and white-tipped doves in the aggregate, of which no more than 2 can be white-winged doves and two can be white-tipped doves; and the possession limit is 24, of which no more than 4 may be whitewings, and 4 may be whitetips.

(4) In Texas, the mourning dove season in the Special White-winged Dove Area of the South Zone is Sept. 20–Nov. 14 and Jan. 2–Jan. 11.

(c) *Mourning Doves—Western Management Unit.*

In Arizona, California, Idaho, Nevada, Oregon, Washington and Utah:

Daily bag limit.....10 (1)(2)
Possession limit.....20 (1)(2)

Shooting and hawking hours: One-half hour before sunrise until sunset.

Check State Regulations For Additional Restrictions, Including Area Descriptions

Seasons in:	
Arizona (1)	Sept. 1–Sept. 13 & Nov. 27–Dec. 28.
California (2).	Sept. 1–Sept. 30.
Idaho	Sept. 1–Sept. 30.
Nevada (2)	Sept. 1–Sept. 30.
Oregon	Sept. 1–Sept. 30.
Utah	Sept. 1–Sept. 30.
Washington	Sept. 1–Sept. 15.

(1) In Arizona, during September 1 through 13 the daily bag limit is 10 mourning and white-winged doves in the aggregate of which no more than 6 may be white-winged doves. The possession limit after opening day is 20 mourning and white-winged doves in the aggregate of which no more than 12 may be white-winged doves. During November 27 through December 28, the bag and possession limits are 10 and 20 mourning doves, respectively.

(2) In those counties of California (Imperial, Riverside, and San Bernardino) and Nevada (Clark and Nye) having a season on white-winged doves, the daily bag limit is 10 and the possession limit is 20 mourning and white-winged doves, singly or in the aggregate of these species.

Notice:—Hawaii—Subject to the applicable provisions of the preceding selections of this part, mourning doves may be taken in accordance with the State regulations.

(d) *White-winged Doves.*

Shooting and hawking hours: One-half hour before sunrise until sunset except as noted otherwise.

Check State Regulations For Additional Restrictions, Including Area Descriptions

	Season dates	Limits	
		Bag	Poss.
Seasons in:			
Arizona (Statewide).	Sept. 1–Sept. 13	6(1)	12(1)
California:			
Counties of Imperial, Riverside, and San Bernardino.	Sept. 1–Sept 30	10(2)	20(2)
Remainder of State.	Closed		
Florida:	See Mourning dove regulations.		
Nevada:			
Counties of Clark and Nye.	Sept. 1–Sept. 30	10(2)	20(2)
Remainder of State.	Closed		
New Mexico	Sept. 1–Sept. 30 & Dec. 1–Dec. 30.	15(3)	30(3)
Texas: (4) (5)			
Area in South Zone.	Sept. 5, 6, 12 and 13.	10(5)	20(5)
Remainder of State.	See Mourning Dove regulations.		

(1) In Arizona during September 1 through 13 the daily bag limit is 10 mourning and white-winged doves in the aggregate of which no more than 6 may be white-winged doves. The possession limit after opening day is 20 mourning and white-winged doves in the aggregate of which no more than 12 may be white-winged doves.

(2) In designated counties of California and Nevada, the daily bag limit is 10 and the possession limit is 20 white-winged and mourning doves, singly or in the aggregate of both species.

(3) In New Mexico the daily bag limit is 15 and the possession limit is 30 white-winged and mourning doves, singly or in the aggregate of both species.

(4) SPECIAL WHITE-WINGED DOVE AREA IN THE SOUTH ZONE—That portion of State south and west of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Van Horn, south and east on U.S. Highway 90 to Uvalde, south on U.S. Highway 83 to State Highway 44; east along State Highway 44 to State Highway 16 at Freer; south along State Highway 16 to State Highway 285 at Hebbronville; east along State Highway 285 to FM 1017; southeast along FM 1017 to State Highway 186 at Linn; east along State Highway 186 to Mansfield Channel at Port Mansfield; east along the Mansfield Channel to the Gulf of Mexico.

(5) In Texas, the daily bag limit in the Special White-winged Dove Area is 10 white-winged, mourning and white-tipped doves in the aggregate of which no more than 2 may be mourning doves and 2 may be white-tipped doves. Possession limit is twice the daily bag limit.

(e) *Band-tailed Pigeons.*

Shooting and hawking hours: one-half hour before sunrise until sunset.

Check State Regulations For Additional Restrictions, Including Area Descriptions

	Season dates	Limits	
		Bag	Poss.
Seasons in:			
Seasons in:			
Arizona (1)	Oct. 9–Nov. 7	5	10
California:			
Counties of Alpine, Butte, Del Norte, Glen, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama, and Trinity.	Sept. 26–Oct 11	4	4
Remainder of State.	Dec. 12–Dec. 27	4	4
Colorado: In all lands west of U.S. Interstate 25 and Small Game Management Units 128, 129, 133–136 and 140–142.	Sept. 1–Sept. 30	5	10

	Season dates	Limits	
		Bag	Poss.
Nevada: Carson City, Douglas, Lyon, Washoe, Humboldt, Pershing, Churchill, Mineral, and Storey Counties only.	Sept. 7–Sept. 22	4	4
New Mexico:			
North Zone (2)	Sept. 1–Sept. 20	5	10
South Zone (2)	Oct. 1–Oct. 20	5	10
Oregon	Sept. 7–Sept. 22	4	4
Utah	Sept. 1–Sept. 30	5	10
Washington	Sept. 7–Sept. 22	4	4

(1) Each hunter must have for Arizona a special bird permit stamp issued by the State.

(2) In New Mexico, the *North Zone* is defined as that area lying north and east of a line following U.S. Highway 60 from the Arizona State line east to Interstate Highway 25 at Socorro and then south along Interstate Highway 25 to the Texas State line. The *South Zone* is that area lying south and west of the North Zone.

5. Section 20.104 is revised to read as follows:

§ 20.104 Seasons, limits, and shooting hours for rails, woodcock, and common snipe.

Subject to the applicable provisions of the preceding sections of this part, the areas open to hunting, the respective open seasons (dates inclusive), the shooting and hawking hours, and the daily bag and possession limits on the species designated in this section are as follows:

	Rails (Sora & Virginia)	Rails (Clapper & King)	Woodcock	Common Snipe
Daily bag limit	25 (1)	See footnote (2).	5 (3)	8
Possession limit	25 (1)	See footnote (2).	10 (3)	16
Shooting Hours: One-half hour before sunrise until sunset daily on all species, except as noted otherwise.				
CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS, INCLUDING AREA DESCRIPTIONS				
Seasons in the Atlantic flyway:				
Connecticut	Sept. 1–Nov. 7	Sept. 1–Nov. 7.	Oct. 17–Nov. 30.	Oct. 17–Dec.5.
Delaware	Sept. 1–Nov. 9.	Sept. 1–Nov. 9.	Nov. 16–Dec. 30.	Nov. 16–Jan. 31.
Florida	Sept. 1–Nov. 9.	Sept. 1–Nov. 9	Dec. 12–Jan. 25.	Nov. 1–Feb. 15.
Georgia	Sept. 5–Nov. 13.	Sept. 5–Nov. 13.	Nov. 28–Jan. 11.	Nov. 20–Feb. 29.
Maine	Sept. 1–Nov. 9.	Closed	Oct. 1–Nov. 14.	Sept. 1–Dec. 16.
Maryland	Sept. 1–Nov. 9.	Sept. 1–Nov. 9.	Oct. 14–Nov. 27.	Oct. 1–Jan. 15.
Massachusetts	Sept. 1–Nov. 8.	Closed.	Deferred.	Sept. 1–Dec. 13.
New Hampshire	Closed.	Closed.	Oct. 1–Nov. 14	Oct. 1–Nov. 30.
New Jersey (4):				
North Zone	Sept. 1–Nov. 9.	Sept. 1–Nov. 9.	Oct. 10–Nov. 13.	Oct. 2–Jan. 16.
South Zone	Sept. 1–Nov. 9.	Sept. 1–Nov. 9.	Nov. 7–Dec. 5 & Dec. 19–Dec. 24.	Oct. 2–Jan. 16.
New York:				
Long Island	Closed.	Closed.	Oct. 1–Nov. 14.	Closed.
Remainder of State	Sept. 1–Nov. 9.	Closed.	Oct. 1–Nov. 14.	Sept. 1–Dec. 16.
North Carolina	Sept. 7–Nov. 14.	Sept. 7–Nov. 14.	Nov. 21–Jan. 4.	Nov. 13–Feb. 27.
Pennsylvania	Sept. 1–Nov. 7.	Closed.	Oct. 17–Nov. 7.	Oct. 17–Dec. 12.
Rhode Island	Sept. 14–Nov. 22.	Sept. 14–Nov. 22.	Oct. 17–Nov. 30.	Sept. 14–Dec. 4 & Dec. 14–Jan. 7.
South Carolina	Sept. 4–Oct. 10 & Oct. 23–Nov. 24.	Sept. 4–Oct. 10 & Oct. 23–Nov. 24.	Nov. 26–Jan. 9.	Nov. 14–Feb. 28.
Vermont	Sept. 26–Dec. 4.	Closed.	Oct. 1–Nov. 14.	Sept. 26–Dec. 4.
Virginia	Sept. 1–Nov. 9.	Sept. 1–Nov. 9.	Nov. 2–Nov. 26 & Dec. 21–Jan. 9.	Oct. 16–Jan. 30.
West Virginia	Sept. 1–Nov. 7.	Closed	Oct. 17–Nov. 30.	Sept. 1–Dec. 16.
Seasons in the Mississippi Flyway:				
Alabama (10)	Nov. 12–Jan. 20.	Nov. 12–Jan. 20.	Nov. 28–Jan. 31.	Nov. 14–Feb. 28.
Arkansas	Sept. 1–Nov. 9.	Closed.	Nov. 7–Dec. 13 & Jan. 9–Feb. 5.	Sept. 12–Sept. 20 & Nov. 21–Feb. 28.
Illinois	Sept. 1–Nov. 9.	Closed.	Oct. 1–Dec. 4.	Sept. 12–Dec. 29.
Indiana	Sept. 1–Nov. 9.	Closed.	Sept. 19–Sept. 25 & Oct. 3–Nov. 29.	Sept. 1–Dec. 16.
Iowa (5)	Sept. 5–Nov. 13.	Closed.	Sept. 19–Nov. 22.	Sept. 5–Dec. 20.
Kentucky	Deferred.	Closed.	Oct. 1.Dec. 4.	Oct. 1–Dec. 4.
Louisiana	Sept. 19–Sept. 27 & Nov. 7–Jan. 6.	Sept. 19–Sept. 27 & Nov. 7–Jan. 6.	Dec. 5–Feb. 7.	Nov. 7–Feb. 21.
Michigan (6)	Sept. 15–Nov. 14.	Closed.	Sept. 15–Nov. 14.	Sept. 15–Nov. 14.
Minnesota	Sept. 1–Nov. 4.	Closed.	Sept. 1–Nov. 4.	Sept. 1–Nov. 4.
Mississippi	Oct. 17–Dec. 25.	Oct. 17–Dec. 25.	Dec. 26–Feb. 28.	Nov. 14–Feb. 28.
Missouri	Sept. 1–Nov. 9.	Closed.	October 15–Dec. 18.	Sept. 1–Dec. 16.
Ohio	Sept. 1–Nov. 9.	Closed.	Sept. 25–Nov. 28.	Sept. 1–Nov. 28 & Dec. 7–Dec. 24.
Tennessee	Deferred.	Closed.	Oct. 24–Nov. 29 & Feb. 1–Feb. 28.	Nov. 14–Feb. 28.
Wisconsin	Deferred.	Closed.	Sept. 12–Nov. 15.	Deferred[7]
Seasons in the Central Flyway:				
Colorado (7)	Sept. 1–Nov. 9.	Closed.	Closed.	Sept. 1–Dec. 2.
Kansas	Sept. 12–Nov. 20.	Closed.	Oct. 3–Dec. 6.	Sept. 12–Dec. 27.
Montana (7)	Closed.	Closed.	Closed.	Oct. 3–Dec. 1.
Nebraska (8)	Sept. 1–Nov. 9.	Closed.	Sept. 15–Nov. 18.	Sept. 1–Dec. 15.
New Mexico (7)(11)	Sept. 1–Oct. 31.	Closed.	Closed.	Sept. 1–Nov. 30.
North Dakota	Closed.	Closed.	Closed.	Oct. 3–Nov. 22.
Oklahoma	Sept. 1–Nov. 9.	Closed.	Oct. 24–Dec. 27.	Oct. 1–Jan. 15.
South Dakota (9)	Closed.	Closed.	Closed.	Sept. 1–Oct. 31.
Texas	Sept.–Nov. 9.	Sept. 1–Nov. 9.	Deferred.	Deferred.
Wyoming (7)	Sept. 19.–Nov. 27.	Closed.	Closed.	Sept. 19–Jan. 3.
Seasons in the Pacific Flyway:				
Colorado (7)	Sept. 1–Nov. 9.	Closed.	Closed.	Sept. 1–Dec. 2.
Montana (7)	Closed.	Closed.	Closed.	Oct. 3–Dec. 29.
New Mexico (7)(11)	Sept. 1–Oct. 31.	Closed.	Closed.	Sept. 1–Nov. 30.
Wyoming (7)	Sept. 19–Nov. 27.	Closed.	Closed.	Sept. 19–Dec. 20.

NOTE: No seasons are prescribed for woodcock. Snipe seasons have been deferred by all other States in the Pacific Flyway.

(1) The bag and possession limits for sora and Virginia rails apply singly or in the aggregate of these two species.

(2) In addition to the limits on sora and Virginia rails, in Connecticut, Delaware, Maryland, New Jersey, and Rhode Island, there is a daily bag limit of 10 and possession limit of 20 clapper and king rails, singly or in the aggregate of these two species, except that the season is closed on king rails in New Jersey by State regulation. In Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Texas, and Virginia, there is a daily bag limit of 15 and possession limit of 30 clapper and king rails, singly or in the aggregate of these two species.

(3) In States of the Atlantic Flyway, the woodcock bag limit is 3 daily and 6 in possession.

(4) For description of zones or management units within a State, see State regulations.

(5) In Iowa, rail limits are 15 daily and 25 in possession.

(6) See State regulations for listing of certain Great Lakes waters where the season is to open concurrently with the duck season.

(7) The Central Flyway portion consists of: *Colorado* and *Wyoming*—the area lying east of the Continental Divide; *Montana*—the area lying east of Hill, Chouteau, Cascade, Meagher, and Park Counties; *New Mexico*—the area lying east of the Continental Divide but outside the Jicarilla Apache Indian Reservation. The remaining portions of these States are in the Pacific flyway.

(8) In Nebraska, the rail limits are 10 daily and 20 in possession.

(9) In South Dakota, the snipe limits are 5 daily and 15 in possession.

(10) In Alabama, the rail limits are 15 daily and 15 in possession.

(11) In New Mexico, the rail limits are 10 daily and 10 in possession.

Note: Some States may select rail, woodcock, and snipe seasons at the time they select their duck seasons in August. Consult waterfowl regulations to be published later for information concerning these seasons.

6. Section 20.105 is amended by revising paragraphs (a) through (c) and by amending paragraph (d) to read as follows:

§ 20.105 Seasons, limits, and shooting hours for waterfowl, coots, and common moorhens and purple gallinules.

Subject to the applicable provisions of the preceding sections of this part, the areas open to hunting, the respective open seasons (dates inclusive), the shooting and hawking hours, and the daily bag and possession limits on the species designated in this section are prescribed as follows:

(a) *Sea Ducks.*

(1) An open season for taking scoter, eider and oldsquaw ducks is prescribed according to the following table during the period between September 15, 1987, and January 20, 1988, in all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut and New York; in any waters of the Atlantic Ocean and, in addition, in any tidal waters of any bay which are separated by at least one mile of open water from any shore, island and emergent vegetation in New Jersey, South Carolina and Georgia; and in any waters of the Atlantic Ocean and/or in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island and emergent vegetation in Delaware, Maryland, North Carolina and Virginia; and provided that any such areas have been described, delineated as special duck hunting areas under the hunting regulations adopted by the respective States. In all other areas of these States and in all other States in the Atlantic Flyway, sea ducks may be taken only during the regular open season for ducks and they must be included in the regular duck season conventional or point-system daily bag and possession limits.

(2) The daily bag limit is 7 and the possession limit is 14, singly or in the aggregate of these species. Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may set, in addition to the regular season limits, a daily bag limit of 7 and a possession limit of 14 scoter, eider and oldsquaw ducks, singly or in the aggregate of these species.

(3) Shooting hours are one-half hour before sunrise until sunset daily.

Check State Regulations for Additional Restrictions

Seasons in:	
Connecticut	Deferred.
Delaware	Sept. 26–Jan. 9.
Georgia	Deferred.
Maine	Deferred.
Maryland	Oct. 6–Jan. 20.
Massachusetts	Deferred.
New Hampshire	Sept. 15–Dec. 30.
New Jersey	Oct. 2–Jan. 16.
New York (Long Island only)	Sept. 26–Jan. 11.
North Carolina	Deferred.
Rhode Island	Deferred.
South Carolina	Deferred.
Virginia	Deferred.

(4) Notwithstanding the provisions of this Part 20, the shooting of *crippled* waterfowl from a motorboat under power will be permitted in Maine, Massachusetts, New Hampshire, Rhode Island, Connecticut, New York, Delaware, Virginia and Maryland in those areas described, delineated and designated in their respective hunting regulations as being open to sea duck hunting.

Note.—States with deferred seasons may select sea duck seasons at the time they select their waterfowl seasons in August. Consult waterfowl regulations to be published later for information concerning these later seasons.

(b) *Teal.* September season: An open season for teal ducks (blue-winged, green-winged, and cinnamon) is prescribed according to the following table in those areas which are described, delineated, and designated in the hunting regulations of the following States:

Daily bag limit.....4
Possession limit.....8
Shooting and hawking hours: Sunrise until sunset daily.

Check State Regulations for Additional Restrictions

Seasons in the Mississippi Flyway:	
Alabama (1)	Sept. 12–Sept. 20.
Arkansas	Sept. 12–Sept. 20.
Illinois (2)	Sept. 5–Sept. 13.
Indiana (3)	Sept. 5–Sept. 13.
Louisiana	Sept. 19–Sept. 27.
Mississippi	Sept. 12–Sept. 20.
Missouri	Sept. 12–Sept. 20.
Ohio	Sept. 11–Sept. 19.
Seasons in the Central Flyway:	
Colorado (4)	Sept. 5–Sept. 13.
Kansas	Sept. 12–Sept. 20.
New Mexico (5)	Sept. 5–Sept. 13.
Oklahoma	Sept. 5–Sept. 13.
Texas	Sept. 19–Sept. 27.

(1) In Alabama, hunting hours in the Mobile Delta north of the causeway and south of the L&N Railroad are sunrise to 12 noon.

(2) In Illinois, shooting hours are from 7 a.m. to 4 p.m. local time by State Regulation.

(3) In Indiana, the Kankakee fish and wildlife area, and portions of Atterbury, Hovey Lake, Jasper-Pulaski, and Pigeon River

fish and wildlife areas are closed to teal hunting by State regulations.

(4) Only in Lake and Chaffee Counties, and that portion of Colorado east of U.S. Highway-Colorado State Highway 85 from the Wyoming State line to its intersection with U.S. Interstate Highway 25 to the New Mexico State line.

(5) Central Flyway portion only.

(c) *Common Moorhens and Purple Gallinules.*

Daily bag limit	15 singly or in the aggregate of the two species.
Possession limit	30 singly or in the aggregate of the two species.

Shooting hours: One-half hour before sunrise to sunset.

Check State Regulations for Additional Restrictions

Seasons in the Atlantic Flyway:	
Connecticut	Sept. 1–Nov. 7.
Delaware	Sept. 1–Nov. 9.
Florida (1)	Sept. 1–Nov. 9.
Georgia	Deferred
Maine	Sept. 1–Nov. 9.
Maryland	Closed.
Massachusetts	Closed.
New Hampshire	Closed.
New Jersey (2)	Sept. 1–Nov. 8.
New York:	
Long Island	Closed.
Remainder of State.	Sept. 1–Nov. 9.
North Carolina	Sept. 7–Nov. 14.
Pennsylvania	Sept. 1–Nov. 7.
Rhode Island	Sept. 14–Nov. 22.
South Carolina	Sept. 4–Oct. 10 & Oct. 23–Nov. 24.
Vermont	Sept. 26–Dec. 4.
Virginia	Deferred.
West Virginia	Deferred.
Seasons in the Mississippi Flyway:	
Alabama (3)	Nov. 12–Jan. 20.
Arkansas	Sept. 1–Nov. 9.
Illinois	Closed.
Indiana	Sept. 1–Nov. 9.
Iowa	Closed.
Kentucky	Deferred.
Louisiana	Sept. 19–Sept. 27 & Nov. 7–Jan. 6.
Michigan	Deferred.
Minnesota	Deferred.
Mississippi	Oct. 17–Dec. 25.
Missouri	Closed.
Ohio	Sept. 1–Nov. 9.
Tennessee	Deferred.
Wisconsin	Deferred.
Seasons in the Central Flyway:	
Colorado (4)	Closed.
Kansas	Closed.
Montana (4)	Closed.
Nebraska	Closed.
New Mexico (4)(5)	Oct. 10–Dec. 19.
North Dakota	Closed.
Oklahoma	Sept. 1–Nov. 9.
South Dakota	Closed.
Texas	Sept. 1–Nov. 9.
Wyoming (4)	Closed.
Seasons in the Pacific Flyway:	
All States and portions thereof.	Deferred.

(1) The season in Florida applies to the common moorhen only. There is no open season on the purple gallinule in Florida.

(2) In New Jersey, the bag limit is 10 daily and 20 in possession.

(3) In Alabama, the bag limit is 15 daily and 15 in possession.

(4) Seasons apply to Central Flyway portion of State only.

(5) In New Mexico, the bag limit is 5 common moorhens daily and 10 in possession; there is no open season on the purple gallinule in New Mexico.

Note.—States with deferred seasons may select gallinule seasons at the time they select their waterfowl seasons in August. Consult waterfowl regulations to be published later for information concerning these later seasons.

(d) *Waterfowl and coots in Atlantic, Mississippi, Central and Pacific Flyways.*

Atlantic Flyway

Flywaywide Restrictions. Shooting (including hawking) hours: One half hour before sunrise to sunset daily except as otherwise restricted.

* * * * *

	Season dates	Limits: Bag	Limits: Possession
* * *			
Florida:			
Ducks, no more than 1 of which may be a species other than teal or wood duck, and the possession limit will be double the daily bag limit.	Sept. 26–Sept. 30.	4	8
* * *			

Mississippi Flyway

Shooting (including hawking) hours: One-half hour before sunrise to sunset daily except as otherwise restricted.

* * * * *

	Season Dates	Limits: Bag	Limits: Possession
* * *			
Illinois: [1]			
Geese			
Canada	Sept. 1–Sept. 10.	5	10
* * *			
Iowa:			
Ducks			
North Zone [2]	Sept. 19–Sept. 23..	(3)	(3)
South Zone [2] (2).	Sept. 19–Sept. 21..	.....	

	Season Dates	Limits	
		Bag	Possession
* * * * *			
Kentucky:			
Ducks, no more than 2 of which may be wood ducks, and no more than 1 of which may be a species other than teal or wood duck, and the possession limit will be double the daily bag limit.	Sept. 9–Sept. 13..	4	8
* * * * *			
Michigan:[1]			
Geese			
Canada	Sept. 1–Sept. 10.	3	6
* * * * *			
Minnesota:[1]			
Geese			
Canada	Sept. 1–Sept. 10.	4	8
* * * * *			
Tennessee:			
Ducks, no more than 2 of which may be wood ducks, and no more than 1 of which may be a species other than teal or wood duck, and the possession limit will be double the daily bag limit.	Sept. 12–Sept. 16..	4	8

* * * * *

[1] Check State regulations for areas open to the hunting of Canada geese.

[2] North Zone—that portion of Iowa north of a line running west from the Illinois border along I–80 to U.S. 59, north along U.S. 59 to State Highway 37, northwest along State Highway 37 to State Highway 175, then west along State Highway 175 to the Nebraska border. South Zone—the remainder of the State.

[3] [Limits to conform to those set for the regular season.]

* * * * *

7. Section 20.106 is revised to read as follows:

§ 20.106 Season, limits, and shooting hours for sandhill cranes.

Central Flyway: Subject to the applicable provisions of the preceding sections of this part, open seasons are prescribed for taking sandhill cranes with a daily bag limit of 3 and a possession limit of 6 cranes (unless otherwise noted), and with shooting hours from one-half hour before sunrise until sunset (unless otherwise noted) in the following areas for the dates indicated:

(a) In Colorado (the Central Flyway portion except the San Luis Valley and North Park) the inclusive dates are October 3 through November 29, 1987.

(b) In New Mexico (a) in the counties of Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt, the inclusive dates for the regular season are October 24, 1987, through January 24, 1988; (b) in the Middle Rio Grande Valley Hunt Area (described in State regulations) the inclusive dates for the two experimental seasons are October 17 through October 24, 1987, and October 25 through October 31, 1987. Hunting in the experimental seasons is by State permit only, the daily bag limit is 3 sandhill cranes and the seasonal bag limit is 9, and shooting hours are sunrise to sunset.

(c) In Oklahoma (that portion west of I–35) the inclusive dates are October 10 through November 20, 1987, and November 28, 1987 through January 17, 1988.

(d) In Texas that portion west of a line from Brownsville along U.S. 77 to Victoria; U.S. 87 to Placedo; Farm Road 616 to Blessing; State 35 to Alvin; State 6 to U.S. 290; U.S. 290 to Sonora; U.S. 277 to Abilene; Texas 351 to Albany; U.S. 283 to Vernon; and U.S. 183 to the Texas-Oklahoma boundary the season has been deferred.

(e) In North Dakota, in Zone 1 (the area east of a line starting on the east shore of Lake Oahe at the South Dakota border, then north on this shore to Bismarck, then north on U.S. Highway 83 to the north shore of Lake Sakakawea, then west along the north shore of Lake Sakakawea to ND No. 23, then east on ND No. 23 to ND No. 8, then north on ND No. 8 to the Canadian line; and west of a line starting where ND No. 14 enters Canada, then south on ND No. 14 to U.S. Highway 83, then south on U.S. Highway 83 to South Dakota) the inclusive dates are September 5 through November 1, 1987, in Zone 2 (that area east of Zone 1 and west of U.S. Highway 281) the inclusive dates are September 5 through October 2, 1987.

(f) In South Dakota, the inclusive season dates are September 26 through November 1, 1987.

(g) In Montana (the Central Flyway portion except that area south of I–90 and west of the Bighorn River), the inclusive dates are October 3 through November 29, 1987.

(h) In Wyoming, in Campbell, Converse, Crook, Goshen, Laramie, Niobrara, Platte, and Weston Counties, the inclusive dates are September 19 through November 15, 1987.

Each hunter participating in the regular sandhill crane hunting season must obtain and carry in his possession while hunting sandhill cranes a valid Federal sandhill crane hunting permit available without cost from conservation agencies in the States where crane hunting seasons are allowed. The permit must be displayed to any authorized law enforcement official upon request.

Pacific Flyway

(a) In Arizona (within Game Management Units 30A, 30B, 31, and 32), the season selection has been deferred.

(b) In Wyoming's sandhill crane—Canada goose hunt areas: Hunting is by State permit only.

Bear River area in Lincoln County—the season dates are September 5 through September 7, 1987. Season limits are 2 sandhill cranes per hunter.

Riverton Boysen Unit in Fremont County—the season dates are September 12 through September 13, 1987, and September 19 through September 20, 1987. Season limits are 2 sandhill cranes per hunter.

Salt River (Star Valley) area in Lincoln County—the season dates are September 1 through September 7, 1987. Season limits are 2 sandhill cranes and 2 Canada geese per hunter.

Eden-Farson Agricultural Project in Sweetwater and Sublette Counties—the season dates are September 5 through September 7, 1987. Season limits are 3 sandhill cranes and 1 Canada goose per hunter.

8. Section 20.109 is revised to read as follows:

§ 20.109 Extended seasons, limits, and hours for taking migratory game birds by falconry.

Subject to the applicable provisions of this part, the areas open to hunting, the respective open seasons (dates inclusive), the hawking hours, and the daily bag and possession limits on the

species designated in this section are prescribed as follows:

Daily bag limit	3 singly or in the aggregate.
Possession limit	6 singly or in the aggregate.

These limits apply during both regular hunting seasons and extended falconry seasons.

Hawking hours: One-half hour before sunrise until sunset daily.

Check State Regulations for Additional Restrictions

Atlantic Flyway	
Florida:	
Mourning doves and white-winged doves.	Sept. 26–Dec. 4.
Woodcock	Oct. 24–Dec. 6.
Snipe	Nov. 1–Feb. 15.
Ducks and coots	Oct. 4–Nov. 21.
Common moorhens and rails.	Sept. 26–Dec. 4.
Maryland:	
Mourning doves	Sept. 1–Oct. 24 & Nov. 4–Dec. 26.
Rails	Sept. 1–Dec. 16.
Woodcock	Oct. 5–Jan. 18.
Snipe	Oct. 1–Jan. 15.
Pennsylvania:	
Mourning doves	Sept. 1–Dec. 12.
Ducks and geese	Oct. 7–Jan. 16.
Virginia:	
Woodcock and snipe.	Oct. 16–Jan. 30.
Mourning doves and rails.	Sept. 1–Nov. 30 & Dec. 19–Jan. 3.
Mississippi Flyway	
Illinois:	
Mourning doves, woodcock and rails.	Sept. 1–Dec. 16.
Snipe	Sept. 12–Dec. 29.
Teal	Sept. 5–Sept. 13.
Ducks, mergansers and coots.	Oct. 3–Jan. 6.
Indiana:	
Mourning doves	Oct. 16–Nov. 5.
Woodcock	Sept. 1–Sept. 18.
Iowa:	
Rails and snipe	Sept. 5–Dec. 5.
Woodcock	Sept. 19–Jan. 3.
Geese	Oct. 3–Jan. 17.
Ducks and coots	Sept. 19–Sept. 30 & Oct. 3–Jan. 5.
Michigan:	
Snipe, rails and moorhens.	Sept. 1–Dec. 16.
Ducks, mergansers, coots and geese.	Oct. 4–Jan. 17.
Minnesota:	
Woodcock, snipe, and rails.	Sept. 1–Dec. 16.
Ducks, mergansers, coots and geese.	Oct. 3–Jan. 17.
Mississippi:	
Ducks, mergansers and coots.	Oct. 31–Dec. 12.
Mourning doves	Sept. 26–Oct. 1 & Nov. 20–Dec. 13.
Missouri:	
Mourning doves	Sept. 1–Dec. 16.
Wisconsin:	
Rails, woodcocks, snipe, and gallinules.	Sept. 1–Dec. 16.
Ducks, mergansers, and coots.	Oct. 1–Jan. 15.
Central Flyway	
Colorado:	
Ducks, mergansers, coots and geese.	Oct. 16–Oct. 30.
Montana:	
Mourning doves	Sept. 1–Oct. 12.
Snipe	Oct. 3–Jan. 10.
Ducks and geese	Oct. 3–Jan. 10.
Nebraska:	
Ducks, mergansers, coots and geese.	Oct. 3–Jan. 17.
New Mexico: (1)	
Mourning doves	Sept. 1–Nov. 6 & Nov. 22–Dec. 30.
Band-tailed pigeons	Sept. 1–Nov. 30.
Sandhill cranes only in Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt Counties.	Oct. 10–Jan. 24.
Ducks, coots and common moorhens.	Oct. 10–Jan. 15.
Canada and white-fronted geese.	Oct. 10–Jan. 17.
Snow, blue, and Ross' geese.	Nov. 14–Feb. 28.
Oklahoma:	
Duck, coots and mergansers.	Oct. 10–Nov. 29 & Dec. 2–Jan. 17.
Texas:	
Mourning doves (statewide).	Sept. 1–Nov. 30 & Jan. 2–Jan. 17.
Rails and gallinules	Sept. 1–Dec. 16.
White-winged doves.	Sept. 1–Nov. 30 & Jan. 2–Jan. 17.
Wyoming:	
Mourning doves	Sept 1–Oct. 15.
Snipe and rails	Sept. 19–Nov. 27.
Pacific Flyway	
Colorado:	
Ducks, mergansers, coots and geese.	Oct. 17–Nov. 6.
Idaho:	
Mourning doves	Sept. 1–Dec. 16.
Montana:	See Central Flyway
New Mexico: (1)	
Mourning doves	Sept. 1–Nov. 6 & Nov. 22–Dec. 30.
Band-tailed pigeons	Sept. 1–Nov. 30.
Ducks, coots and common moorhens.	Oct. 10–Jan. 10.
Canada and white-fronted geese.	Oct. 10–Jan. 17.
Snow, blue and Ross' geese.	Oct. 7–Jan. 11.
Oregon:	
Mourning doves	Sept. 1–Dec. 16.
Band-tailed pigeons	Sept. 7–Dec. 16.
Wyoming:	
Mourning doves	Sept. 1–Oct. 15.
Snipe and rails	Sept. 19–Nov. 27.

Note. See waterfowl season footnotes for descriptions of zones. For some States, the extended falconry season dates also include general season dates.

Date: August 19, 1987.

William P. Horn,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–19329 Filed 8–21–87; 8:45 am]

BILLING CODE 4310–55–M

Proposed Rules

Federal Register
Vol. 52, No. 163
Monday, August 24, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

Special Supplemental Food Program for Women, Infants and Children; Funding Formula

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule: Notice of extension of public comment period.

SUMMARY: A proposed rule that would amend 7 CFR Part 246, by prescribing a revised funding formula for the Special Supplemental Food Program for Women, Infants and Children (WIC), was published in the **Federal Register** on July 17, 1987 (52 FR 27005). A 45-day comment period, ending August 31, 1987, was announced. This notice extends that public comment period to September 30, 1987. The Department anticipates that the quality of the comments received will be enhanced if commentors are provided an additional 30 days in which to respond. The comments will thus be of greater value to the Department in developing the final rule.

DATE: Comments on the proposed rule must be received on or before September 30, 1987 to be assured of consideration in the final rulemaking.

ADDRESS: Comments may be mailed to Patrick J. Clerkin, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302. All written submissions will be available for public inspection at the same address during regular business hours (8:30 am to 5:00 pm) Monday through Friday

FOR FURTHER INFORMATION CONTACT: Patrick J. Clerkin, (703) 756–3746 at the address above.

SUPPLEMENTARY INFORMATION: A number of considerations have led the Department to conlude that an extension of the 45-day comment period is appropriate. A number of commentors, including the National Association of WIC Director (NAWD), have indicated that the complexity of the proposal requires additional time to complete their analysis and provide substantive written comments. Although consultations with the NAWD preceded the publication of the proposed rule, the Department recognizes the merit of the requests for an extended comment period. The WIC Program would best be served by obtaining carefully formulated comments. Such comments will be very valuable to the Department in developing the final rule.

In addition, while State-level WIC managers significantly influenced the substance of the proposed formula, a larger universe of local-level managers has not had the same opportunity for input. Since the proposed rule would affect their functions as well as those conducted at the State level, providing them more time to formulate their comments is appropriate.

Accordingly, the Department will accept comments postmarked on or before September 30, 1987. Commentors who have already submitted comments are welcome to submit additional recommendations if they wish to address new subjects or revise previous remarks. Otherwise, the comments previously submitted will be considered in the comment analysis.

Since the extended comment period ends September 30, 1987 it is intended that the final rule implementing the formula will specify that the new formula will be in effect beginning in the second quarter of Fiscal Year 1988.

Dated: August 19, 1987.

Anna Kondratas,

Administrator.

[FR Doc. 87–19377 Filed 8–20–87; 9:28 am]
BILLING CODE 3410-30-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 245a

[INS Number: 1038–87]

Temporary Disqualification of Certain Newly Legalized Aliens From Receiving Benefits From Federal Programs of Financial Assistance

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule implements section 245A(h) of the Immigration and Nationality Act ("Act"), as amended by section 201 of the Immigration Reform and Control Act of 1986, Pub. L. 99-603 ("IRCA"). Section 245A(h) of the Act provides that, with certain exceptions, aliens granted lawful temporary resident status pursuant to section 245A(a) are not eligible for a period of five years after such grant to receive benefits from programs of financial assistance furnished under Federal law on the basis of financial need. The Attorney General is required by section 245A(h)(1)(A)(i) of the Act to identify such programs after consultation with other appropriate heads of the various departments and agencies of government. This proposed rule implements such provision.

DATE: Comment must be received no later than September 23, 1987.

ADDRESS: Send written comments in triplicate, to Immigration and Naturalization Service Policy, Directives and Instructions, Room 2011, 425 I Street NW., Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT: Paul W. Virtue, Associate General Counsel, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, (202) 633–2656.

SUPPLEMENTARY INFORMATION: Section 245A(a) of the Immigration and Nationality Act, as amended, Pub. L. 99–603 ("Act") provides for the legalization of status of certain individuals who have been residing illegally in the United States since before January 1, 1982. Section 245A(h) of the Act provides that,

with certain exceptions, aliens legalized under section 245A will be ineligible for five years for "any program of financial assistance furnished under Federal law (whether through grant, loan, guarantee, or otherwise) on the basis of financial need, as such programs are identified by the Attorney General in consultation with other appropriate heads of the various departments and agencies of Government (but in any event including the program of aid to families with dependent children under part A of Title IV of the Social Security Act)." Section 245A(h)(2) of the Act provides that such temporary ineligibility does not apply (A) to a Cuban or Haitian entrant (as defined in paragraph (1) or (2)(A) of section 510(e) of Pub. L. 96–422, as in effect on April 1, 1983), or (B) in the case of assistance (other than aid to families with dependent children) which is furnished to an alien who is an aged, blind, or disabled individual (as defined in section 1614(a)(1) of the Social Security Act, 49 Stat. 620). The five-year period of ineligibility begins on the date an alien is granted lawful temporary resident status under section 245A(a) of the Act.

Section 245A(h) of the Act also provides that, subject to the same exceptions, aliens legalized under section 245A of the Act will be temporarily ineligible for medical assistance under a State plan approved under Title XIX of the Social Security Act, 49 Stat. 620 (Medicaid) (except certain emergency services and services to pregnant women or aliens who are under 18 years of age), and for benefits financed by the Food Stamp Act of 1977, as amended, Pub. L. 95–400 (which includes, but is not limited to, Section 19 therein, the Puerto Rico Block Grant).

It is also noted that a different provision, section 210(f) of the Act, provides that, with certain exceptions, aliens granted lawful temporary resident status under section 210 of the Act (Lawful Residence for Certain Special Agricultural Workers) are temporarily ineligible for aid under a State plan approved under part A of Title IV of the Social Security Act, 49 Stat. 620 (aid to families with dependent children), or for Medicaid. It is further noted that section 210A(d)(6) of the Act provides in effect that an alien granted lawful temporary resident status under section 210A of the Act (Determinations of Agricultural Labor Shortages and Admission of Additional Special Agricultural Workers) shall be subject to the same ineligibility rules as aliens legalized under section 245A of the Act except that the provision in section 245A(h) relating to assistance under the Food Stamp Act of 1977, Pub. L. 95–400, shall not apply, and assistance furnished under the Legal Services Corporation Act, Pub. L. 88–452, or Title V of the Housing Act of 1949, 63 Stat. 413, shall not be construed to be financial assistance for which such aliens are temporarily ineligible.

No such temporary ineligibility is in effect for aliens granted the status of an alien lawfully admitted for permanent residence pursuant to section 249 of the Act (Record of Admission for Permanent Residence in the Case of Certain Aliens Who Entered the United States Prior to July 1, 1924 or January 1, 1972).

The Department of Justice, after consulting with representatives of various appropriate departments and agencies of the Federal Government, has developed a list of programs of financial assistance furnished under Federal law on the basis of financial need for which newly legalized aliens are ineligible for a period of five years. The criteria used to identify such programs are as follows:

1. Federal financial assistance is furnished for the benefit of individuals in financial need.

(A) Financial assistance in the form of grants, wages, loans, loan guarantees, or otherwise, is furnished by the Federal Government directly, or indirectly through a State or local government or a private entity, to eligible individuals or to private suppliers of goods or services to such individuals, or is furnished to a State or local government that provides to such individuals goods or services of a kind that is offered by private suppliers.

(B) Benefits under the program are targeted to individuals in financial need. Either (i) in order to be eligible individuals must establish that their income or wealth is below some maximum level, or, with respect to certain loan or loan guarantee programs, that they are unable to obtain financing from alternative sources, or at prevailing interest rates, or at rates that would permit the achievement of program goals, or (ii) distribution of assistance is directed, geographically or otherwise, in a way that is intended to primarily benefit persons in financial need, as evidenced by references to such intent in the authorizing legislation.

2. The financial assistance is not furnished under a Federal disaster relief program.

3. Eligibility does not require United States citizenship.

4. Assistance under the program is not expressly precluded from being construed as financial assistance by section 245A(h)(4) of the Act. This paragraph provides that assistance furnished under the following assistance:

(A) The National School Lunch Act, 60 Stat. 230.

(B) The Child Nutrition Act of 1966, Pub. L. 89–642.

(C) The Vocational Education Act of 1963, Pub. L. 88–210.

(D) Chapter 1 of the Education Consolidation and Improvement Act of 1981, Pub. L. 97–35.

(E) The Headstart-Follow Through Act, Pub. L. 88–452.

(F) The Job Training Partnership Act, Pub. L. 97–300.

(G) Title IV of the Higher Education Act of 1965, Pub. L. 89–329.

(H) The Public Health Service Act, 37 Stat. 309.

(I) Titles V, XVI, and XX, and parts B, D, and E of Title IV, of the Social Security Act, 49 Stat. 620 (and Titles I, X, XIV, and XVI of such Act as in effect without regard to the amendment made by section 301 of the Social Security Amendments of 1972).

Some of the programs that are listed in § 245a.4(c) of the proposed rule provide for Federal financial assistance to intermediate State or local government agencies or private entities. In several programs of this kind, the intermediate government agency or private entity uses the funds for many different programs of its own. Only some of these private or State or local government programs provide benefits for which aliens legalized under section 245A or 210A of the Act are, with certain exceptions, temporarily ineligible, specifically those programs having both of the following characteristics: (A) The distribution of financial assistance directly or indirectly to eligible individuals or to private suppliers of goods or services to such individuals, or the distribution to such individuals of goods or services of a kind that is offered by private supliers, and (B) targeting to individuals in financial need.

In addition State and local governments may, at their discretion, provide that aliens legalized under section 245A or 210A of the Act are ineligible for certain other programs. Section 245(h)(1)(B) of the Act states that a State or political subdivision therein may, to the extent consistent with sections 245A(h)(1)(A), (2), and (3) of the Act, provide that such legalized aliens are ineligible for a period of five years, for the programs of financial assistance or for cetain medical assistance which are furnished under the law of that State or political subdivision therein.

In accordance with 5 U.S.C. 605(b), the Commissioner certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities.

This is not a "major rule" within the meaning of section 1(b) of Executive Order 12291.

List of Subjects in 8 CFR Part 245a

Aliens, Temporary resident status and permanent resident status.

Accordingly, Chapter I of Title 8, Code of Federal Regulations, is amended as follows:

PART 245a—[AMENDED]

1. The authority for Part 245a continues to read as follows:

Authority: Pub. L. 99-603, 100 Stat 3359; 8 U.S.C. 1101 note.

2. Part 245a is amended by adding the following section:

§ 245a.4 Temporary disqualification of certain newly legalized aliens from receiving benefits from Federal programs of financial assistance.

(a) Except as provided in § 245a.4(b), any alien who has obtained the status of an alien lawfully admitted for temporary residence pursuant to section 245A of the Act (Adjustment of Status of Certain Entrants Before January 1, 1982, to that of Person Admitted for Lawful Residence) or 210A of the Act (Determinations of Agricultural Labor Shortages and Admission of Additional Special Agricultural Workers) is ineligible, for a period of five years from the date such status was obtained, for benefits financed directly or indirectly, in whole or in part, through the programs identified in § 245a.4(c) of this chapter.

(b)(1) § 245a.4(a) shall not apply to a Cuban or Haitian entrant (as defined in paragraph (1) or (2)(A) of section 501(e) of Pub. L. 96-422, as in effect on April 1, 1983), or in the case of assistance (other than aid to families with dependent children) which is furnished to an alien who is an aged, blind, or disabled individual (as defined in section 1614(a)(1) of the Social Security Act).

(2) With respect to any alien who has obtained the status of an alien lawfully admitted for temporary residence pursuant to section 210A of the Act only, assistance furnished under the Legal Services Corporation Act (42 U.S.C. 2996 et seq.) or Title V of the Housing Act of 1949 (42 U.S.C. 1471 et seq.) shall not be construed to be financial assistance referred to in § 245a.4(a).

(3) Section 245a.4 shall not apply to benefits financed through the programs identified in § 245a.4(c), which are marked with an asterisk(*), except to the extent that such benefits:

(i) Consist of, or are the result of, financial assistance in the form of grants, wages, loans, loan guarantees, or otherwise, which is furnished by the Federal Government directly, or indirectly through a State or local government or a private entity, to eligible individuals or to private suppliers of goods or services to such individuals, or is furnished to a State or local government that provides to such individuals goods or services of a kind that is offered by private suppliers, and

(ii) Are targeted to individuals in financial need, in the sense that either (A) in order to be eligible individuals must establish that their income or wealth is below some maximum level, or, with respect to certain loan or loan guarantee programs, that they are unable to obtain financing from alternative sources, or at prevailing interest rates, or at rates that would permit the achievement of program goals, or (B) distribution of assistance is directed, geographically or otherwise, in a way that is intended to primarily benefit persons in financial need, as evidenced by references to such intent in the authorizing legislation.

(c) The programs of Federal financial assistance referred to in § 245a.4(a) are those identified in the list set forth below. The General Services Administration (GSA) Program Numbers set forth in the right column of the program list refer to the program identification numbers used in the Catalog of Federal Domestic Assistance, published by the United States General Services Administration, as updated through December, 1986.

	GSA program Nos.
Department of Agriculture:	
Farm labor housing loans and grants (labor housing)	10.405
Farm operating loans	10.406
Farm ownership loans	10.407
Very low and low income housing loans (Section 502, Rural Housing Loans)	10.410
Rural rental housing loans	10.415
Very low-income housing repair loans and grants (Section 504, Rural Housing Loans and Grants)	10.417
Rural rental assistance payments (rental assistance)	10.427
Rural housing preservation grants	10.433
Department of Health and Human Services:	
Assistance payments—maintenance assistance (maintenance assistance; State aid; Aid to Families with Dependent Children)	13.780
Low-income home energy assitance	13.788
*Community services block grant	13.792
*Community services block grant—discretionary awards	13.793
Department of Housing and Urban Development	
Interest reduction payments—rental and cooperative housing for lower income families (236)	14.103
Mortgage insurance—housing in older, declining areas (223(e))	14.123
Mortgage insurance—special credit risks (237)	14.140
Rent supplements—rental housing for lower income families (rent supplement program)	14.149
Lower income housing assistance program (Section 8—Housing Assistance Payments Program for Very Low Income Families-Existing Housing/Moderate Rehabilitation)	14.156
Operating assistance for troubled multifamily housing projects (troubled projects (flexible subsidy) program)	14.164
Housing development grants (lower income units only)	14.174
Housing voucher program	14.177
*Community development block grants/entitlement grants	14.218
*Community development block grants/small cities program (small cities)	14.219
Section 312 rehabilitation loans (312)	14.220
Urban development action grants	14.221
*Community development block grants/State's program	14.228
Rental housing rehabilitation (rental rehabilitation)	14.230
Public and Indian housing	14.850
Low income housing—homeownership opportunities for low income families (Turnkey III)	14.851
Section 8—New construction/substantial rehabilitation	
Section 221(d)(3) mortgage insurance for multifamily rental housing for low and moderate income families (below market interest rate)	
Section 235—interest supplement on home mortgages	
Department of Labor:	
Senior Community Service Employment Program (SCSEP)	17.235
Office of Personnel Management:	
Federal Employment for Disadvantaged Youth—Part-Time (Stay-in-School program)	27.003
Federal Employment for Disadvantaged Youth—Summer (Summer Aide)	27.004
Small Business Administration:	
Loans for small businesses (business loans 7(a)(11))	59.003
Small business loans (regular business loans—7(a) loans)	59.01
Department of Energy:	
Weatherization Assistance for low-income persons	81.042
Minority honors vocational training (minority honors program)	81.084
Department of Education:	
Patricia Roberts Harris fellowships (graduate and professional study; graduate and professional study opportunity fellowships; public service education fellowships)	84.094
Legal training for the disadvantaged (The American Bar Association Fund for Public Education)	84.136
Allen J. Ellender fellowship program (Ellender fellowship)	84.148
National Graduate Fellowship Program/Jacob Javits fellows	84.173
Legal Services Corporation:	
Payments to Legal Services Corporation	

Dated: August 4, 1987.

Mark W. Everson,

Deputy Commissioner, Immigration and Naturalization Service.

[FR Doc. 87-19342 Filed 8-21-87; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Ch. I

46 CFR Ch. I and III

[CGD 87-031]

Paperwork Reduction Act of 1980

AGENCY: Coast Guard, DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Paperwork Reduction Act of 1980 requires federal agencies to seek ways to reduce the burden placed on various individuals or entities for the providing of information to one or more federal agencies. The Coast Guard is currently soliciting comments from vessel owners and operators in the marine industry concerning requirements placed by the Coast Guard and the Federal Regulations regarding the providing of information, maintenance and posting of documents, etc, which they feel are unduly burdensome or duplicative of information requirements placed by other agencies.

DATE: Comments must be received on or before November 23, 1987.

ADDRESSES: Comments should be submitted to the Commandant (G–CMC/21) [CGD 87–031], U.S. Coast Guard, 2100 Second St. SW., Washington, DC 20593–0001. Comments will be made available for examination or copying between the hours of 8:00 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays, at the Marine Safety Council (G–CMC/21), Room 2110, Coast Guard Headquarters Building, 2100 Second Street SW., Washington, DC. Phone (202) 267–1477. Comments may also be delivered to this address.

FOR FURTHER INFORMATION CONTACT: LCDR William J. Morani Jr., the Office of Marine Safety, Security and Environmental Protection, Standards Development Branch (G–MVI–2), telephone (202) 267–1055 from 7:00 a.m. until 3:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1980 (found in Title 44 U.S.C. Chapter 35) implemented by the Office of Management and Budget in Title 5 of the Code of Federal Regulations, Part 1320 was enacted by the Federal government for the purposes, among other things, of (1) minimizing the Federal paperwork burden for individuals, small businesses, State and local governments, and other persons; (2) minimizing the cost to the Federal government of collecting, maintaining, using, and disseminating information; (3) maximizing the usefulness of information collected by the Federal government; and (4) coordinating, integrating, and, to the extent possible, making uniform federal information policies and practices.

The term collection of information is generally defined as the obtaining or soliciting of information by an agency from ten or more persons by means of identical questions, whether such collection of information is mandatory, voluntary, or required to obtain a governmental benefit. The obtaining or soliciting of information includes any requirement or request for persons to obtain, maintain, retain, report, or publicly disclose information. It includes the use of written report forms, application forms, schedules, questionnaires, reporting or recordkeeping requirements, or similar methods. Similar methods may include contracts, agreements, policy statements, plans, rules, regulations, planning requirements, circulars, directives, instructions, bulletins, requests for proposal or other procurement requirements, labeling requirements, and standard questionnaires used to monitor compliance with agency requirements.

Information means any statement of fact or opinion, including numerical data, whether oral or maintained on paper, magnetic tapes, or other media.

Burden means the total time, effort, or financial resources required to respond to a collection of information: Including that to read or hear instructions; to develop, modify, construct, or assemble any materials or equipment; to conduct tests, inspections, polls, observations, or the like necessary to obtain the information; to organize information into the requested format; and to review, disclose, or report the information.

The Act places control of the implementation of the paperwork reduction program under the Office of Management and Budget (OMB) and requires OMB to develop and implement Federal information policies, principles, standards, and guidelines, and to review and approve information collection requests. Under 5 CFR Part 1320, before a collection of information is approved the agency must show that it has taken every reasonable step to ensure that: (1) The collection of information is the least burdensome necessary to comply with legal requirements and achieve program objectives; (2) the collection of information is not duplicative of information otherwise accessible to the agency; and (3) the collection of information has practical utility.

The Coast Guard imposes certain requirements on vessel owners and operators in the marine industry regarding the maintenance, collection, and providing of information and the maintenance, posting, and availability of certain certificates and other documents. These requirements are principally set out in various subchapters of Titles 33 and 46, CFR. These requirements include, but are not limited to, vessel plan review and approval, recordkeeping for hazardous materials, certain certificates of inspection, and other requirements of the marine inspection program. The Coast Guard is reviewing the information collection requirements that have been placed on vessel owners and operators in the marine industry to identify those areas in which the burden may be reduced, without compromise to the missions of the Coast Guard, and to comply with both the letter and spirit of the Paperwork Reduction Act, as well as to reduce the information collection budget of the Coast Guard.

The Coast Guard is particularly soliciting comments regarding any posting requirements which may be modified or eliminated. A list of specific posting requirements is included in this notice.

Drafting Information

The principal persons involved in the drafting of this notice are LCDR William J. Morani Jr., Project Manager, and LT John Astley, Project Counsel, Office of Chief Counsel.

Discussion

In accordance with this effort, the Coast Guard is inviting members of the marine industry and other interested persons to comment on the information requirements imposed upon them by the Coast Guard. Persons commenting should indicate which requirements they consider most burdensome, which requirements they feel should be eliminated (and why), and which could be altered to minimize the "burden" (and how). Comments are further solicited regarding any information collection requirements that are duplicative of requirements imposed by other agencies. Additionally, the marine industry is invited to suggest alternative methods of communicating information to the Marine Inspection Program.

Information Desired

The following questions were developed by the Coast Guard to obtain information and views that it believes will be helpful in reducing the paperwork burden on the marine industry. While general comments are of value, comments specifically addressed to particular requirements will be of greatest help in the Coast Guard's efforts to reduce the information collection burden and may establish the priority of regulatory action.

1. What are the number of burden hours (i.e. the number of man-hours you are required to expend) placed on your operation to maintain records and provide information pursuant to the requirements of the Coast Guard?

2. What forms are you required to complete because of these requirements?

3. What impact does the collection and recording of any required information, the completion of forms, or the providing of information have on your overall costs?

4. Are there any forms or information collection requirements that you feel are unnecessary and could be deleted, and/or in which the information contained could be found elsewhere in the Federal government? Which requirements and why?

5. Are there any forms or documents required by the Coast Guard that are not accepted by foreign countries in satisfaction of their similar requirements? Are there any foreign documents which U.S. flag vessels must maintain that contain information that duplicates information required to be maintained separately by the Coast Guard?

6. Below is a listing of required "postings" with their applicable regulatory citations. This list includes certificates, licenses, permits, plans, operating instructions, warnings, and crew employment lists. Some deal with emergency response, operating instructions, and warnings which should continue to be posted. However, the posting of certificates, licenses, and crew employment lists may not be necessary.

(a) Could any of the forms listed below simply be maintained by the master and be available for inspection and still accomplish the purpose of the document? Which ones and why?

(b) Are there any forms not listed below which are required to be posted? What are they and could they also simply be maintained by the master and be available for inspection and still accomplish the purpose of the document?

Document name	CFR Cite
Atomic Attack Instructions for Merchant Vessles, Merchant Vessels in port (CG-3256)	33 CFR 122.10
CO_2 Operating Instructions	46 CFR 34.15-10(h) 76.15-10(h) 95.15-10(h) 181.20-15(d) 193.15-10(h)
Cargo Hold Lighting Circuits—Re-Energizing Warning Notice	46 CFR 78.70-5(a) 97.55-5(a)
Certificates of Inspection	46 CFR 31.05-5 71.01-5 91.01-5(a) 167.60-10 176.01-60(a) 189.01-5(a)
Certification Expiration Sticker	46 CFR 176.10-45(a)
Deck Foam System Operating Instructions	46 CFR 34.20-10(c)
"Discharge of Oil Prohibited" Placard	33 CFR 155.450
Display of Plans	46 CFR 35.10-3(a) 78.45-1(a) 97.36-1(a) 186.36-1(a)
Electric Fire Detecting System Operating Instructions	46 CFR 76.27-15(f)
Emergency Checkoff List	46 CFR 185.25-1(a)
Exhibition of Licenses	46 CFR 78.65-1(a) 97.53-1(a) 186.53-1(a)
Fire Detection System Operating Instructions	46 CFR 108.405(c)(9)
Fixed Fire Extinguishing System Operating Instructions	46 CFR 108.631(b)
Fixed Foam Extinguishing System Operating Instructions	46 CFR 34.17-10(c) 76.17-10(c) 95.17-10(c)
Liferaft Launching & Inflating Instructions	46 CFR 78.49-1(a) 97.36-1(a) 167.85-55(a) 185.25-7(a) 196.39-1(a)
Lifesaving Signals and Breeches Buoy Instructions (CG-811)	46 CFR 35.12-5 76.53-5 97.43-5 108.659 167.85-50(a) 196.43-5
Manual Alarm System	46 CFR 76.35-15(e)
Manning Information	33 CFR 164.35(g) 46 CFR 35.20-40(a) 78.21-1(a) 97.19-1(a) 109.564(a) 196.19-1(a)
Marine Sanitation Device Placard	33 CFR 159.59
Muster Lists	46 CFR 35.10-1(a) 78.13-1(a) 97.13-5(a) 167.85-1(a) 196.13-5(a)
Permit to Engage in Excursions	46 CFR 71.10-15(a)
Permit to Proceed	46 CFR 31.10-35(d) 71.05-15(a) 91.05-15(a) 176.01-27(d) 189.05-15(a)
Pneumatic Fire Detecting System Operating Instructions	46 CFR 76.30-15(f)
Shipping Articles	46 CFR 14.05-2(a)
SOLAS Certificates	46 CFR 31.40-35(a) 71.75-15(a) 91.60-35(a) 176.35-25(a) 189.60-35(a)
Smoke Detecting System Operating Instructions	46 CFR 76.30-30(g) 46 CFR 35.05-30(g) 78.12-1 97.11-1 185.12-1(a) 196.12-1
Stability Letter	46 CFR 78.47-47(a)
Stateroom Notices	46 CFR 35.10-1(a) 78.17-55(a) 97.15-35(a)
Station Bills, Drills, and Reports of Master (CG-)	46 CFR 167.85-1(a)
Station Bills	46 CFR 35.40-30 78.47-55(a) 97.37-33(a) 108.641 167.85-5(h) 196.37-33(a)
Steering Gear Change Instructions	46 CFR 71.01-15(a) 91.01-15(a) 189.01-15(a)
Temporary Certificates of Inspection	

7. Are there any required documents which could be issued with a longer period of validity, and still accomplish the purpose of the document? Which documents?

8. Are the benefits of holding U.S. documents in foreign ports [i.e. SOLAS Certificates, International Oil Pollution Prevention Certificates, etc.) outweighed by the burdens of compiling information and maintaining these documents? Why or why not?

The Coast Guard will carefully evaluate all comments received and, where appropriate, will initiate regulatory changes to reduce the information collection burden.

P.C. Lauridsen,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

August 18, 1987.

[FR Doc. 87-19348 Filed 8-21-87; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

Upper Delaware Scenic and Recreational River, Pennsylvania and New York; Fishing Regulations

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: This rulemaking pertains to a proposed special regulation concerning fishing within Upper Delaware Scenic and Recreational River, Pennsylvania and New York. The proposed special regulation would allow fishing methods which are authorized under applicable State law. National Park Service General Regulations, effective April 1984, prohibit fishing in fresh water in any manner other than by hook and line, with the rod or line being closely attended. That regulation is in conflict with Pennsylvania and New York fishing regulations, which have been in effect since before Upper Delaware Scenic and Recreational River was authorized in 1978. This proposed rule would serve to resolve that conflict.

DATE: Written comments will be accepted through September 23, 1987.

ADDRESS: Comments should be addressed to: Superintendent, Upper Delaware Scenic and Recreational River, P.O. Box C, Narrowsburg, NY 12764-0159.

FOR FURTHER INFORMATION CONTACT: Glenn H. Voss, Chief Ranger, Upper Delaware Scenic and Recreational River, P.O. Box C, Narrowsburg, NY 12764 0159, Telephone: 717/729-7134.

SUPPLEMENTARY INFORMATION:

Background

National Park Service General Regulations (36 CFR 2.3(d)(1)), which became effective on April 30, 1984, prohibit "Fishing in fresh water in any manner other than by hook and line, with the rod or line being closely attended." This regulation is in conflict with PA and NY fishing regulations which have been in effect since Upper Delaware Scenic and Recreational River was authorized in 1978 and for many years prior to its authorization. Examples of conflicts include:

1. PA permits the use of spears or gigs to take carp, gar, suckers and eels. NY regulations allow for the use of spears and long bows for the taking of bowfin, eels, carp, suckers, catfish, gar, turbot, redhorse, sheepshead, herring, and bullheads.

2. Both States permit the use of seines for getting bait, digging of lampreys, and a maximum of (5) tip-ups or five (5) give devices (tip-ups, rods, handlines) for ice fishing.

Congress's stated intent in the enabling legislation for Upper Delaware Scenic and Recreational River was for the National Park Service to manage recreational fishing in a manner consistent with state fishing laws, to the extent compatible with proper management of park resources. The National Park Service has determined that allowing recreational fishing at Upper Delaware Scenic and Recreational River in accordance with methods permitted by the States of Pennsylvania and New York would be advantageous both to visitor use, as well as to the management of the park resources. The species of fish to be taken under Example 1 above consist of exotics as well as native species that cannot be taken effectively by traditional rod and reel methods. The use of seines for bait collection, digging of lamprey eels, and the use of tip-ups for ice fishing, as in Example 2 above, are all traditional uses by the Delaware River anglers. In addition, the regulations of both the NY Department of Environmental Conservation, and the PA Fish Commission allow these methods of capture. Many years of using these traditional fishing methods have not been detrimental to the area, and the National Park Service anticipates no detrimental effects from continuing these methods. If these methods should cause harm to the fishery or other resources in the future, they can be prohibited by designating areas closed to certain fishing methods.

Public Participation

The policy of the National Park Service is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed regulation to the address noted at the beginning of this rulemaking.

Drafting Information

The principal author of this rulemaking is Glenn H. Voss, Chief Park Ranger, Upper Delaware Scenic and Recreational River.

Paperwork Reduction Act

This rulemaking does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With Other Laws

The Department of the Interior has determined that this rulemaking is not a "major rule" within the meaning of E.O. 12291, and certifies that this document will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) These determinations are based on the fact that this rule will contribute in some part to the local tourism of communities in the vicinity of the park by assuring the continued availability of the range of recreational activities that have been available to park users in the past. An Environmental Assessment has been prepared with a finding of No Significant Impact for this rulemaking. These documents are available for review at the address noted at the beginning of this rulemaking.

List of Subjects in 36 CFR Part 7

National parks, Reporting and recordkeeping requirements. In consideration of the foregoing, it is proposed to amend 36 CFR Chapter I as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citiation continues to read as follows:

Authority: 16 U.S.C.1, 3, 9a, 462(k). § 7.96 also issued under DC Code 8-137 (1981) and DC Code 40-721 (1981).

2. By adding a new § 7.24, to read as follows:

§ 7.24 Upper Delaware Scenic and Recreational River.

Fishing. Fishing in any manner authorized under applicable State law is allowed.

Dated: July 29, 1987.

William P. Horn,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87-19372 Filed 8-21-87; 8:45 am]

BILLING CODE 4310-70-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 52

[A-4-FRL-3251-6; FL-022]

Approval and Promulgation of Implementation Plans Florida; Approval of Plan Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this action, EPA is proposing to approve revisions to the Florida State Implementation Plan (SIP) which were submitted by the Florida Department of Environmental Regulation (FDER) on November 4, 1986. This submittal amends the open burning rules contained in the Florida Administrative Code (FAC), Chapter 17-5 (Open Burning and Frost Protection Fires). These revisions include:

renumbering all of Chapter 17–5 to conform to the rulemaking requirements of Chapter IS–1; the addition of several new definitions and minor revisions to others; a ruling that the Florida Division of Forestry (FDOF) or any authorized fire control agency may extinguish or cause to be extinguished any unauthorized fire, and that the responsible party shall bear the costs for extinguishment; a ruling that the generator of land clearing debris may transport this debris offsite to property owned or leased by the generator for burning in an air curtain incinerator (other provisions apply); a ruling that prohibits open burning in particular and ozone nonattainment areas when the ambient air concentration of these pollutants may approach or exceed the ambient air standard, and prohibits open burning during an air stagnation advisory, an air pollution episode, or unfavorable weather condition as determined by the FDOF; updating portions of the land clearing provisions; a ruling that open burning of yard trash generated by a hurricane, tornado, fire or other disaster using an air curtain incinerator is allowed when open burning is determined by the Department to be the only feasible method of disposal; and additional open burning requirements. These regulation changes are minor in nature and serve merely to update the Florida regulations.

DATE: To be considered, comments must be received on or before September 23, 1987.

ADDRESS: Written comments should be addressed to Stuart Perry of EPA Region IV (address below). Copies of the material submitted by Florida may be examined during normal business hours at the following locations.

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365

Florida Department of Environmental Regulation, Bureau of Air Quality Management, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32301

FOR FURTHER INFORMATION CONTACT: Stuart Perry of the EPA Region IV Air Programs Branch at the address given above, telephone (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: On November 4, 1986, the FDER submitted to EPA for approval revisions to the Florida SIP, and EPA is today proposing to approve them. This submittal contained certification that the revisions were preceded by adequate notice and public hearing.

Background

In 1981, the FDER delegated the authority and responsibility to enforce all of the rules in FAC Chapter 17–5 (except those related to frost protection, commercial, industrial, and municipal open burning) to the FDOF through an interagency agreement. The FDER also retained the authority to enforce Chapter 17–5 in six urban counties (Broward, Dade, Duval, Hillsborough, Sarasota, and Pinellas).

The FDOF has exercised primary regulatory control over all open burning for the purposes of land clearing as well as other allowed open burning the State. Since the signing of the agreement, the FDOF has experienced certain difficulties with the enforcement and interpretation of the rules. As a result, the FDOF asked FDER to amend the rules in Chapter 17–5 to address the problems they encountered. A discussion of these revisions now follows:

• Each section in Chapter 17–5 (Open Burning and Frost Protection Fires) of the Florida Administrative Code (FAC) has been renumbered to conform to the requirements of FAC Chapter 1S–1. The rules now are numbered according to the following table:

Chapter 17–5	
Before (rule)	After (rule)
17–5.01	17–5.010
17–5.02	17–5.020
17–5.03	17–5.030
17–5.04	17–5.040
17–5.05	17–5.050
17–5.06	17–5.060
17–5.07	17–5.070
17–5.08	17–5.080
17–5.09	17–5.090
17–5.10	17–5.100

• Rule 17–5.020 (Definitions) was amended by adding the following definitions: Air Pollution Episode, Department, Air Stagnation Advisory, Extinguished, Land Clearing Debris, National Weather Service Air Stagnation Advisory, Non-rural Land Clearing, Air Curtain Incinerator, and Residential Land Clearing. With the addition of the new definitions, the rule's definitions were again put in alphabetical order and subsequently renumbered.

The definition of "garbage" was amended to include any waste that is attendant with or results from packaging of food materials. The definition of "open burning" was amended and is now defined as follows: the burning of any matter in such a manner that the products of combustion resulting from the burning are emitted directly into the outdoor atmosphere without passing through a stack or chimney.

• Rule 17–5.030 (Prohibitions) was amended to recognize that the FDOF or any authorized fire control agency has the authority to extinguish or cause to be extinguished any unauthorized fire. In addition, the person responsible for the unauthorized open burning will be responsible for any applicable costs involved in extinguishing the fire. Further amendments to this section allow the generator of land clearing debris to transport the debris offsite to property owned or leased by the generator for burning in an air curtain incinerator owned and operated by the generator. The provisions require a setback distance of 300 feet from occupied buildings for air curtain incinerators with refractory lined walls and forced underdraft air. A setback distance of 1000 feet is required for all other air curtain incinerators. Open burning within 1000 feet of any Department of Transportation approved active runway is prohibited, and the FDOF or any other authorized fire control agency can extinguish or cause to be extinguished any fire that reduces visibility at an airport.

Further amendments to this section prohibit open burning in particulate and ozone nonattainment areas when the ambient air concentrations of total suspended particulate or ozone approach or exceed the state primary or secondary ambient air standards for these pollutants (the state ambient air quality standards are listed in FAC Rule 17–2.300.), prohibit open burning during a national weather service or department air stagnation advisory, or during an air pollution episode, or if weather conditions are determined by the FDOF to be unfavorable for safe burning. Open burning which reduces visibility on public roadways to less than 1000 feet is also prohibited.

• Rule 17–5.040 (Limitations) was amended by transferring the provisions of this rule to Rule 17–5.030 (Prohibitions). This rule is now reserved.

• Rule 17–5.070 (Land Clearing) was amended to increase the setback requirements for non-rural land clearing open burning. The setback requirement for residential land clearing operations has been increased from 200 feet to 300 feet from any occupied building. Setback requirements are being established for the open burning of wooden material or vegetation generated by a land clearing operation (other than residential land clearing) or by the demolition of a structure and are as follows:

The open burning shall be conducted 300 feet or more away from any occupied building when an air curtain incinerator is used for the open burning.

and 1000 feet or more from any occupied building when an air curtain incinerator is not used. A setback distance of 100 feet from any public highway or road is required for all types of open burning, and a new provision is added that requires that the prevailing winds be such that they direct the smoke away from the public highway or road. The open burning provisions previously provided that fires will be ignited after 9:00 a.m. and extinguished one hour before sunset. Provisions have been added which require the open burning to be attended at all times, and to be authorized by the FDOF or appropriate fire control authority. In addition, provisions have been added which restrict the pile size, moisture content, and composition of the material to be burned, and require the removal of excessive smoke producing or potentially toxic materials prior to the authorized open burning for the demolition of a structure.

The amendments exempt portable air curtain incinerators from FDER's permitting requirements if the air curtain incinerator does not operate on any one site for more than six months of the year, and prior authorization to use a portable air curtain incinerator is obtained from the FDOF and local fire authority where necessary. In addition, provisions have been added which restrict the air curtain incinerator's pit width, length, side wall construction, and the loading of and types of materials to be burned. The provisions prohibit excessive visible emissions except for up to 30 minutes during startups, shutdowns and temporary malfunctions (terms defined in Chapter 17–2 FAC).

The amendments require air curtain incinerators that are intended to be operated as stationary units or that operate at FDER permitted landfill sites to obtain a FDER permit. The amendments further allow the FDER to suspend or defer open burning if it creates a nuisance or if weather or atmospheric conditions create a real or potential fire, safety, or air pollution problem. FDER may also grant exceptions to the setback requirements if any affected resident within the setback area waives his objections in writing.

A special provision has been added which applies to refractory lined air curtain incinerators with forced underdraft air which states that these incinerators are allowed to commence burning at sunrise and charge until sunset provided they comply with a setback distance of 1000 feet from offsite occupied buildings, do not create a nuisance, and public access is restricted.

- Rule 17–5.080 (Industrial, Commercial, Municipal, and Research Open Burning) was amended to allow open burning of yard trash generated by a hurricane, tornado, fire or other disaster using an air curtain incinerator, when the open burning is determined by the FDER to be the only feasible method of disposal.
- Rule 17–5.090 (Open Burning Allowed) was amended to provide for open burning of yard trash and household paper products (generated on occupied residential premises of not more than two family units) in ozone attainment areas (subject to adherence to specific conditions specified in the rule) without FDER authorization, and to provide for open burning of yard trash and household paper products (as above) in ozone nonattainment and maintenance areas (with prior authorization from FDER or the authorized local fire control agency) only if a municipal, county or commercial solid waste collection service is not available on a periodic basis of at least once a week.

Further amendments to rule 17–5.090 provide additional ozone attainment area open burning limitations (specific conditions must be met in order to be able to open burn) which include a requirement that open burning be conducted at least 300 feet (previously 200 feet) from any occupied building other than one owned or leased by the individual doing the burning and 50 feet from any residence on the property where the open burning is being conducted. Also provisions have been added which require the open burning to be attended, adequate fire control equipment to be available, the material (yard trash, etc.) to be favorable for good combustion, and the open burning to be enclosed in a noncombustible container or ground excavation covered by a metal mesh or grill and setback at least 25 feet from any woodlands, forest or brush. Also, open burning in ozone nonattainment areas must meet the same requirements as those specified for burning in ozone attainment areas. The amendments further allow bonfires, and open burning for the sole purpose of fire suppression training (limited to non-hazardous liquid fires such as gasoline and jet fuel, and structural fires.)

Prior to these amendments, the rule provided for open burning of yard trash and household paper products only in areas where a collection service was not available on a periodic basis of at least once a week, and no distinction was made between nonattainment and attainment areas for ozone or for any other pollutants. It would appear that this action could impact the attainment status in the counties where open burning is allowed.

The State contends that the open burning amendments to Rule 17–5.090 Section (1) which allow open burning of yard trash in ozone attainment areas will not impact the attainment status in the Florida TSP and ozone attainment areas since additional open burning requirements are being established with these amendments (See TSD for additional discussion). EPA agrees with this interpretation.

Further details pertaining to these regulation changes are contained in the Technical Support Document, which is available for public inspection at EPA's Regional Office in Atlanta, Georgia.

Proposed Action

EPA proposes to approve the above regulation changes which were submitted to EPA on November 4, 1986.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Ozone, Particulate matter.

Authority. 42 U.S.C. 7401–7642.

Date: June 8,1987.

Lee A. DeHihns, III,

Acting Regional Administrator.

[FR Doc. 87–19315 Filed 8–21–87; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[A–4–FRL–3251–5; KY–046]

Approval and Promulgation of Implementation Plans, Kentucky; Opacity Variance for Boiler Units 1 and 2 at TVA's Paradise Steam Plant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is today proposing to approve an opacity variance for Units 1 and 2 at Tennessee Valley Authority's (TVA's) Paradise Steam Plant, submitted by the Kentucky Natural Resources and Environmental Protection Cabinet (NREPC) on August 6, 1986. The

proposed opacity limitations for Units 1 and 2 are 61 percent and 50 percent, respectively. This opacity variance is being proposed for approval because testing procedures agreed to by EPA and the Commonwealth of Kentucky have confirmed that both units can demonstrate compliance with the 0.11 pounds per million BTU (lbs/mmBTU) particulate emission limitation when the current 20 percent opacity standard (Regulation 401 KAR 61.015, Section 4(2)) is exceeded. The authority for this opacity variance is provided in Regulation 401 KAR 50:055, Section 2(6).

DATES: Comments must be received on or before September 23, 1987.

ADDRESSES: Comments may be mailed to Pamela E. Adams, U.S. Environmental Protection Agency Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365. Copies of the documents relevant to this proposed action are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365

Kentucky Natural Resources and Environmental Protection Cabinet, Department of Environmental Protection, 18 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601

FOR FURTHER INFORMATION CONTACT: Ms. Pamela E. Adams, U.S. Environmental Protection Agency, Region IV, Air Programs Branch at the above listed address or at (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: On August 6, 1986, Kentucky submitted to EPA a request for an opacity variance for Units 1 and 2 at TVA's Paradise Steam Plant in Muhlenberg County, Kentucky. The Kentucky Division for Air Quality is processing this request as a State Implementation Plan (SIP) revision so that it will be federally enforceable, and EPA will not enforce the limitations contained in Regulation 401 KAR 61:015. Opportunity for public participation and input relevant to this request was provided through a public hearing conducted on May 13, 1985, at the Capital Plaza Tower in Frankfort, Kentucky. Kentucky is requesting this opacity variance in accordance with the provisions of Regulation 401 KAR 50:055, Section 2(6).

TVA's Paradise Steam Plant is capable of complying with the 0.11 lbs/mmBTU particulate emission limitation but incapable of complying with the 20 percent opacity limitation of Regulation 401 KAR 61:015, Section 4(2), using EPA's Method 9 when boiler Units 1 and 2 are operated at normal full load with all associated emission control equipment optimized. The TVA attributes the high opacity readings from Units 1 and 2 to NO_2 formation associated with the boiler units rather than to particulate emissions.

Paradise Units 1 and 2 are identical crushed coal, cyclone-fired boilers. Due to the higher temperatures in the cyclones, these boilers produce twice as much NO_x as conventional pulverized coal-fired boilers. Approximately 95 percent of this NO_x is in the NO form, and 5 percent is in the NO_2 form. The conversion of NO to NO_2 increases with decreasing temperature and increasing O_2 concentration (at constant NO concentrations). Units 1 and 2 are each equipped with an electrostatic precipitator and a wet limestone scrubber for emission control. The temperature of the flue gas leaving the scrubbers is reduced by approximately 125 degrees. In addition, more O_2 is available within the scrubber units due to leakage and the addition of oxidizing air. These factors would be expected to result in more rapid conversion of NO to NO_2. Since NO_2 is a visible, brownish colored gas, TVA attributes high opacity readings from Units 1 and 2 to this NO_2. In support of this claim, TVA explains that Paradise Unit 3, which operates without a scrubber, does not produce high opacity emissions as do Units 1 and 2. Kentucky's Regulation 401 KAR 50:055, Section 2(6), requires that a facility requesting an opacity variance demonstrate ". . . that the affected facility and associated air pollution control equipment were incapable of being adjusted or operated to meet the applicable opacity standard." In order to meet the requirements of 401 KAR 50:055, Section 2(6), and establish the basis for an alternate opacity standard for Units 1 and 2, testing procedures were conducted that were established in a "Compliance Test Protocol" mutually agreed upon by EPA and the Commonwealth of Kentucky.

On October 30 and 31, 1984, particulate stack tests were conducted on Unit 1 at the Paradise Steam Plant. Similar tests were conducted on Unit 2 at the plant on November 7, and 9, 1984. The units were operated at normal full load with all associated emission control equipment optimized in accordance with the Compliance Test Protocol. This manner of operation was designed to minimize the opacity of emissions. Test procedures used for these tests were those described in Method 17 in the *Code of Federal Regulations*, Title 40, Part 60, Appendix A, revised July 1, 1978. These procedures determined the particulate emissions, visual opacity, and in-stack monitor opacity of boiler Units 1 and 2. Testing was performed by the Test and Performance Section of TVA. The tests were observed by representatives of the Kentucky Division of Air Pollution Control (KDAPC). Representatives of the Environmental Protection Agency observed the Unit 1 test.

During each test run, a time- and area-integrated flue gas sample was taken for oxygen content analysis. The first sample was analyzed with a chemical Orsat analyzer and with a Teledyne brand electronic oxygen analyzer to verify the accuracy of the electronic analyzer. The electronic analyzer was then used for subsequent analyses. This verification procedure was employed each test day. During testing, all flue gas samples were extracted from the flue gas flow at the stack test planes. The diameter of each 600-foot stack at the test plane is 30.4 feet. The stack breeching, which is 250-feet or 8.2 diameters away, is the nearest downstream disturbance to each test plane. The top of each stack is the nearest upstream disturbance and is 298 feet or 9.8 diameters from the respective test planes. In accordance with Section 4.1.2 of Method 17, these location parameters require gas to be sampled from 12 points positioned according to EPA Method 1.

In order to ensure the accuracy of the visual opacity data obtained during the testing procedures, the unit not being tested was removed from service to eliminate the possibility of interference from the adjacent unit's plume. Furthermore, no tests were performed unless an acceptable background conducive to accurate visual opacity data was available. The visual opacity data was taken by the Kentucky Division of Air Pollution Control.

The testing procedures were performed acceptably by TVA personnel, and the isokinetics for all 6 runs were within the acceptable range of 0.90 to 1.10. Furthermore, the test report submitted was complete and acceptable. The results of the stack tests reveal that the actual particulate emission rate for both units was 0.04 lbs/mmBTU during testing. Identical mass particulate emissions from independent but identical units operated identically (optimized for maximum particulate emission control) show that the particulate emissions from Paradise Units 1 and 2 cannot be reduced below the measured 0.04 lb/mmBTU. These particulate emissions comply with the 0.11 lb/mmBTU standard. The Unit 1 average visual opacity reading value was 55 percent. The maximum reading

observed during the stack test was 61 percent. The in-stack monitor values corresponding to the times of the visual readings averaged 35 percent. The Unit 2 average visual opacity reading set value was 40 percent. The maximum opacity reading observed during the stack tests was 50 percent. The in-stack monitor values corresponding to the times of the visual set readings averaged 38 percent. For all test runs, the opacities (visual and monitor) exceeded the current 20-percent standard as the units operated under normal full load with all emission control equipment optimized.

The proposed opacity limitations for Units 1 and 2 of TVA's Paradise Steam Plant are 61 percent and 50 percent, respectively. These proposed opacity limitations were the highest recorded for each unit during emission testing procedures mutually agreed to by Kentucky and EPA. While EPA is proposing approval of these revised opacity limitations, EPA is uncomfortable with opacity variances since many factors can contribute to the cause of high opacities in each situation (e.g., NO_x, SO_2, H_2SO_4, particulate, other sulfates). EPA is currently undertaking a study of high opacity situations and may recommend solutions other than opacity variances in the future.

Proposed Action: EPA is today proposing to approve an opacity variance for TVA's Paradise Steam Plant boiler Units 1 and 2. This variance will allow 61 percent opacity according to EPA Method 9 for Unit 1 and 50 percent opacity for Unit 2. These proposed opacity limitations were the highest recorded for each unit during emission testing procedures conducted with units operating under normal full load with all emission control equipment optimized.

Under 5 U.S.C. Section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Particulate matter.

Authority: 42 U.S.C. 7401–7642.

Dated: June 26, 1987.

Lee A. DeHihns III,

Acting Regional Administrator.

[FR Doc. 87–19316 Filed 8–26–87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[Common Carrier Docket No. 87–215]

Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers

AGENCY: Federal Communications Commission (FCC).

ACTION: Proposed Rule; Extension of Comment/Reply Comment Period.

SUMMARY: This Order extends the time for filing comments and reply comments in this proceeding concerning enhanced service providers. This extension of time is taken in response to two motions for extension of time.

DATES: Comments in this proceeding are now due on or before September 24, 1987, and reply comments are due on or before October 26, 1987.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Ruth Milkman, tele: (202) 632–4047.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Bureau's *Order* in Common Carrier Docket No. 87–215, DA 87–1070, Adopted August 4, 1987, and Released August 5, 1987. The Notice of Proposed Rulemaking was published in the **Federal Register** on July 29, 1987, 52 FR 28317.

The full text of this Bureau Order is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Order

1. This order extends the time for filing comments and reply comments in response to the Commission's Notice of Proposed Rulemaking in Common Carrier Docket No. 87–215. Thirty seven companies and trade associations filed a motion requesting that the Commission extend the time for filing comments to September 24, 1987 and the time for filing reply comments to October 26, 1987. The Public Interest Computer Association (PICA) requested that the Commission extend the time for filing reply comments to September 28, 1987.

2. The parties contend that the length of the pleading cycle established for the Notice of Proposed Rulemaking is insufficient to allow commenters to gather the detailed information requested by the Commission.

3. We believe that the public interest would be served by the development of as complete a record as possible in this proceeding. Therefore we extend the time for filing comments and the time for filing reply comments as requested by the 37 companies and associations. We accordingly dismiss PICA's motion as moot.

Federal Communications Commission.

Gerald P. Vaughan,

Deputy Chief, Common Carrier Bureau.

[FR Doc. 87–19269 Filed 8–21–87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87–292, RM–5771]

Radio Broadcasting Services; Buffalo, WY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Communications Systems III, licensee of Station KLGT(FM), Channel 224A, Buffalo, Wyoming, proposing the substitution of Class C Channel 225 for 224A at Buffalo and modification of its license to specify the higher class frequency, as that community's first wide coverage area station.

DATES: Comments must be filed on or before October 5, 1987, and reply comments on or before October 20, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Rober J. Metzler, Esquire, Farrand, Cooper, Metzler & Bruiniers, P.O. Box 7329, San Francisco, CA 94120 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–292, adopted July 24, 1987, and released August 14, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete test of this decision may also be purchased from the Commission's copy contractors, International

Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-19284 Filed 8-21-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-293, RM-5786]

Radio Broadcasting Services; Canaan, VT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Timothy D. Martz proposing the allotment of Channel 231A to Canaan, Vermont, as that community's first FM service. Concurrence by the Canadian government must be obtained.

DATES: Comments must be filed on or before October 5, 1987, and reply comments on or before October 20, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: James R. Bayes, Esquire, Jerry V. Haines, Esquire, Wiley, Rein & Fielding, 1776 K Street, NW., Washington, DC 20006 (Counsels for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-293, adopted July 24, 1987, and released August 14, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-19283 Filed 8-21-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-297, RM-5868]

Radio Broadcasting Services; Franklin, PA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Northwestern Pennsylvania Broadcasting Co., Inc. seeking the substitution of Channel 257B1 for Channel 257A at Franklin, PA, and the modification of its license for Station WVRN(FM) to specify operation on the higher powered channel. Channel 257B1 can be allocated in compliance with the Commission's minimum distance separation requirements, to all domestic allotments, and used at petitioner's preferred site 7.5 kilometers (4.7 miles) west. The allotment would be short-spaced by 14.8 kilometers to Station CJBC-4 at London, Ontario. However, the Commission has determined that any interference would fall entirely over Lake Erie. Thus, we shall request Canadian concurrence as a "specially negotiated short-spaced allotment." Canadian concurrence is required since Franklin is located within 320 kilometers of the U.S.-Canadian border. In accordance with § 1.420(g) of the Commission's rules, we shall not accept the filing of competing interests in use of this channel at Franklin nor require petitioner to demonstrate the availability of an additional channel for use by other interested parties.

DATES: Comments must be filed on or before October 5, 1987, and reply comments on or before October 20, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Dennis F. Begley, Esq., Reddy, Begley & Martin, 2033 M Street NW., Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No.———, adopted July 23, 1987, and released August 10, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such at this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Bradley P. Holmes,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-19273 Filed 8-21-87; 8:45 am]

BILLING CODE 6713-01-M

47 CFR Part 73

[MM Docket No. 87-309, RM-5807]

Radio Broadcasting Services; Montrose and Scranton, PA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: At the request of Christian Discerner, Inc., this document requests comments on its petition to reallocate UHF TV Channel 64 from Scranton, PA. to Montrose, PA as the community's first local television service. A construction permit (BPCT–830310KG), issued to Scranton Family Television, Ltd. to operate on Channel 64 at Scranton, was cancelled by letter of February 17, 1987. Channel 64 can be allocated to Montrose in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.8 kilometers (2.3 miles) southeast to avoid a short-spacing to unused and unapplied for Channel *65 at Ithaca, New York. Canadian concurrence in the allocation is required since Montrose and Scranton are located within 400 kilometers (250 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before October 9, 1987, and reply comments on or before October 26, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: James L. Oyster, Esq., 8315 Robin Road, Annandale, Virginia 22003–1101 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–309, adopted July 21, 1987, and released August 18, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission considered or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–19272 Filed 8–21–87; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 87–310, RM–5851]

Radio Broadcasting Services; Chippewa Falls, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Bushland Radio Specialties, licensee of Station WCFW(FM), Channel 288A, Chippewa Falls, Wisconsin, proposing the substitution of Channel 291C2 at Chippewa Falls and modification of its license to specify the higher class frequency, as that community's first wide coverage area station.

DATES: Comments must be filed on or before October 9, 1987, and reply comments on or before October 26, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554 In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Irving Gastfreund, Esquire, Barry J. Fleishman, Finley, Kumble, Wagner, Heine, Underberg, Manley, Myerson & Casey, 1120 Connecticut Avenue NW., Washington, DC 20036 (Counsels for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary for the Commission's Notice of Proposed Rule Making, MM Docket No. 87–310, adopted July 27, 1987, and released August 18, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–19271 Filed 8–21–87; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket 87–267; FCC 87–345]

Review of Technical Assignment Criteria for the AM Broadcast Service

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry.

SUMMARY: The Commission initiated an inquiry to provide a comprehensive review of the technical principles pertaining to AM broadcast assignment criteria and related issues. The Commission's goal in taking this action is to identify any needed changes to its technical rules that would permit AM stations to improve their service to the public. The Commission noted that significant growth of the AM and FM radio services has occurred and that many changes in the listening habits of the public have taken place since these technical rules were first adopted. The rules being reviewed are those that prescribe the degree interference protection provided to AM stations during daytime and nighttime hours; that establish the areas of AM service entitled to protection from interference; and that establish the standards and procedures used in applying the technical assignment principles.

DATES: Comments must be filed on or before December 17, 1987 and reply comments on or before February 17, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Wilson A. La Follette, Policy and Rules Division, Mass Media Bureau, (202) 632-5414.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Inquiry* MM Docket 87-267, adopted July 16, 1987, and released August 17, 1987.

The full text of this Commission action is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, Northwest, Washington, DC. The complete text of this action may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, Northwest, Suite 140, Washington, DC 20037.

Summary of Memorandum Opinion and Order and Notice of Inquiry

1. The Commission has initiated this *Notice of Inquiry* (Inquiry) for the purpose of providing a comprehensive review of the technical principles pertaining to AM broadcast assignment criteria and related issues. The goal of the FCC in taking this action is to identify any needed changes to its technical rules which would permit AM stations to improve their service to the public and enhance their ability to compete in the market place.

2. This *Inquiry* is an outgrowth of the Mass Media Bureau's *Report on the status of the AM Broadcast Rules*, RM-5532, (Report) released April 3, 1986. The *Report* addressed a large number of technical, legal, and policy issues, and sought to identify opportunities to modify existing rules in order to allow AM broadcasters to meet the competitive challenges facing them and thereby to enhance their service to the public. It is the intent of the Commission to initiate subsequent rule making actions where the record developed supports such action.

3. The AM broadcast service is the oldest broadcasting service, but it still remains today one of the most technically complex to administer. The technical AM broadcast assignment principles currently set out in the FCC rules evolved over many decades during which AM broadcasting was undergoing considerable growth. Section 307(b) of the Communications Act of 1934 has provided a foundation for development of these principles, by requiring that there be a fair, efficient and equitable distribution of radio services to the States and communities. To accomplish this, the 107 AM channels were subdivided into three classes of channels, clear channels, regional channels, and local channels. Four basic classes of stations evolved: Class I and Class II on clear channels, Class III on regional channels, and Class IV on local channels. Assignment principles and technical criteria were developed to regulate the manner in which assignments are made to ensure appropriate levels of protection from interference for each class of station.

4. The AM broadcasting service has significantly matured since those earlier years of rapid growth and there are approximately 4,900 AM stations currently authorized. Opportunities for new stations are not limited, except in the more remote areas of the United States. Moroyer, there are not approximately 5,200 FM stations authorized in the United States which have significantly added to the availability and choices of aural broadcast service available to the public. Television has also become an important source of information and entertainment, particularly during evening hours. These developments have dramatically altered the listening habits of the public over the past two decades, generally resulting in significant changes in the market place in which AM stations operate. The burden and responsibility to provide a national aural broadcast service once placed solely upon the AM service is now shared with the FM radio service.

5. In view of these significant changes that have occurred, the Commission concluded that it is not appropriate to reassess the policies and technical criteria related to AM station assignments and interference protection that have been applied through the years. The technical assignment rules that are reviewed in the *Inquiry* are those that (1) prescribe the degree of interference protection provided to AM stations during daytime and nighttime hours; that (2) establish the areas of service AM stations are entitled to under their particular circumstances; and that (3) establish the standards and procedures used in applying the technical assignment principles.

6. The AM technical assignment principles are interrelated to a large extent, and there are many permutations in the technical changes that are possible. This makes it necessary to assess these interrelationships and the overall effect upon AM service resulting from any single technical change or combination of changes that may be under consideration. For this reason, the various issues have been grouped together in an omnibus Notice of Inquiry.

Comments

7. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before December 17, 1987, and reply comments on or before February 17, 1988. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

Ex Parte Language

8. *Nonrestricted rule making:* This is a nonrestricted notice and comment rule making proceeding. *See* 1.1231, of the Commission's Rules, 47 CFR 1.231, for rules governing permissable *ex parte* contracts.

Ordering Clauses

9. Accordingly, the Commission adopts this *Notice of Inquiry* pursuant to the authority contained in sections 4(i), 303(r) and 403 of the Communications Act of 1934, as amended.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.
William J. Tricarico,
Secretary.

[FR Doc. 87-19282 Filed 8-21-87; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 90

[PR Docket No. 87-213]

Trunking in the Private Land Mobile Services

AGENCY: Federal Communications Commission.

ACTION: Notice of Inquiry; extension of time.

SUMMARY: The FCC released a Notice of Inquiry concerning trunking in the private land mobile services which was summarized in the Federal Register on July 6, 1987 (52 FR 25285). The Land Mobile Radio Section of the Electronic Industries Association's Information and Telecommunications Technologies Group (EIA) requested an extension of time until October 21, 1987. By this Order, the Commission is extending the comment and reply dates.

DATES: Comments are now due on or before October 21, 1987. Reply comments are due on or before November 20, 1987.

FOR FURTHER INFORMATION CONTACT: Herb Zeiler, Land Mobile and Microwave Division, Private Radio Bureau, (202) 634–2443.

In the matter of Trunking in the Private Land Mobile Radio Services for more effective and efficient use of the spectrum; Docket 87–213.

Order Extending Time for Filing Comments

Adopted: August 10, 1987.
Released: August 11, 1987.

By the Acting Chief, Private Radio Bureau:

1. On June 10, 1987, the Commission adopted a *Notice of Inquiry* (NOI) in the above captioned matter, 2 FCC Red 3820 (1987). Comments on the NOI are due by August 21, 1987 and reply comments are due on or before September 21, 1987.

2. The Land Mobile Radio Section of the Electronic Industries Association's Information and Telecommunications Technologies Group (EIA) requested an extension of time until October 21, 1987, within which to file comments in this proceeding. It also requested that the date for filing reply comments be extended to November 20, 1987.

3. In support of its request EIA states that the proceeding raises a number of complex issues. It contends that categorizing and organizing all of the relevant issues in a form that is suitable for the necessary analysis will take considerable time. Further, EIA argues that the matters contained in the NOI will require the development of major policy positions that must be ratified by senior officials. It states that the appropriate forum for such decisions will be at its fall conference October 5–8, 1987.

4. It appears that good cause has been shown and that the public interest would be served by granting the additional period in order to afford the petitioner and other interested parties a full opportunity for the preparation and presentation of their views in this proceeding.

5. Accordingly, it is ordered, pursuant to the authority set forth in Section 0.331 of the Commission's Rules and Regulations, that interested parties have until October 21, 1987 to file comments and until November 20, 1987 to file reply comments in this proceeding.

Federal Communications Commission.
Richard J. Shiben,
Acting Chief, Private Radio Bureau.

[FR Doc. 87–19270 Filed 8–21–87; 8:45 am]
BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 52, No. 163
Monday, August 24, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AVIATION SAFETY COMMISSION

Meeting

ACTION: Notice of meeting.

TIME AND DATES: 10 a.m. to 1 p.m., August 28, 1987.

PLACE: Room SD–538, Dirksen Senate Office Building, Washington, DC 20510–0075.

STATUS: Meeting is completely open to the public as required under section 10(a)(2) of the Federal Advisory Committee Act of 1972.

MATTERS TO BE CONSIDERED: Selected witnesses are invited to provide statements to the Aviation Safety Commission.

FOR FURTHER INFORMATION CONTACT: Richard K. Pemberton, Administrative Officer, Aviation Safety Commission, Premier Building, Room 1006, 1725 I Street NW., Washington, DC 20006, (202) 634–4677 or (202) 634–4860.

John M. Albertine,

Chairman.

[FR Doc. 87–19418 Filed 8–21–87; 8:45 am]

BILLING CODE 6820–AG–M

CHRISTOPHER COLUMBUS QUINCENTENARY JUBILEE COMMISSION

Meeting

AGENCY: Christopher Columbus Quincentenary Jubilee Commission.

ACTION: Notice of meeting.

SUMMARY: This notice announces a forthcoming meeting of the Christopher Columbus Quincentenary Jubilee Commission, a presidential commission established in 1984 (Pub. L. 98–375). The meeting will be held in Washington, DC and will be chaired by the Commission's Chairman, John N. Goudie.

DATES: Thursday, September 10, 1987 at 10:30 a.m., 2:00 p.m. and 3:45 p.m. (Closed). Friday, September 11, 1987 at 8:30 a.m. and 2:30 p.m. (Open).

ADDRESSES: On September 10, from 10:30 a.m. to 12:00 p.m., in the Research Services Conference Room and Special Collections Conference Room, 116 Jefferson Building, The Library of Congress; from 2:00 p.m. to 3:30 p.m., in the Research Services Conference Room, 116 Jefferson Building, The Library of Congress; and from 3:45 p.m. to 5:30 p.m., in the Whittal Pavillion, the Library of Congress. On September 11, from 8:30 a.m. to 12:30 p.m., in the Farragut/Lafeyette Room at The Grand Hyatt, 1000 H Street NW.; and from 2:30 p.m. to 5:30 p.m. in the Loy Henderson Room at the Department of State, 2201 C Street NW.

FOR FURTHER INFORMATION CONTACT: Dr. John Alexander Williams, (202) 632–1992.

SUPPLEMENTARY INFORMATION: On September 10, the meetings will be executive sessions and closed to the public. On September 11, the meetings will be open to the public. The agenda for the Commission meeting is as follows:

Executive Sessions

Evaluations of proposed projects, examination of Commission budgets, appropriations and personnel structure, status of negotiations on potential projects.

Open Sessions

Progress reports on commemorative plans and programs, announcement of project recognition decisions, discussion of international projects.

Dr. John Alexander Williams,

Director.

[FR Doc. 87–19323 Filed 8–21–87; 8:45 am]

BILLING CODE 6820–RB–M

DEPARTMENT OF COMMERCE

International Trade Administration

[C–507–701]

Initiation of Countervailing Duty Investigation; Certain Circular Welded Carbon Steel Pipes and Tubes From Iran

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Iran of certain circular welded carbon steel pipes and tubes (hereinafter referred to as "standard pipe"), as described in the "Scope of Investigation" section of this notice, receive benefits which constitute bounties or grants within the meaning of the U.S. countervailing duty law. If our investigation proceeds normally, we will make our preliminary determination on or before October 22, 1987.

EFFECTIVE DATE: August 24, 1987.

FOR FURTHER INFORMATION CONTACT: Mary Martin or Jessica Wasserman, Office of Investigation, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377–2830 or 377–1442.

SUPPLEMENTARY INFORMATION:

The Petition

On July 29, 1987, we received a petition filed in proper form by the Subcommittee on Standard Pipe of the Committee on Pipe and Tube Imports and by each of the individual manufacturers of standard pipe that are members of this subcommittee, on behalf of the U.S. industry producing standard pipe. In compliance with the filing requirements of 19 CFR 355.26, the petition alleges that manufacturers, producers, or exporters in Iran of standard pipe receive bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act).

Iran is not a "country under the Agreement" within the meaning of section 701(b) of the Act, and the merchandise being investigated is dutiable. Therefore, sections 303 (a)(1) and (b) of the Act apply to this investigation. Accordingly, petitioners are not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of the subject merchandise materially injure, or threaten material injury to, a U.S. industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of a countervailing duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on standard pipe and have found that it meets these requirements. Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Iran of standard pipe, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute bounties or grants. If our investigation proceeds normally, we will make our preliminary determination on or before October 22, 1987.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS") by January 1, 1988. In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* ("*TSUSA*") item numbers and the appropriate HS item numbers with our product description on a test basis, pending Congressional approval. As with the *TSUSA*, the HS item numbers are provided for convenience and Customs purposes. The written descriptions remain dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the *TSUSA* item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System Schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs Offices have reference copies and petitioners may contact the Import Specialist at the local Customs office to consult the schedule.

The products covered by this investigation are certain circular welded carbon steel pipes and tubes, 0.375 inch or more, but not over 16 inches, in outside diameter as currently classifiable in the *Tariff Schedules of the United States Annotated* (*TSUSA*) under item numbers 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, and 610.4925. These products, commonly referred to in the industry as standard pipe or structural tubing, are produced to various ASTM specifications, most notably A-120, A-53, and A-135. These products are currently classifiable under HS item numbers 7306.30.1000, 7306.30.5025, 7306.30.5030, 7306.30.5040, 7306.30.5045, 7306.30.5050, 7306.30.5060, 7306.30.5065, 7306.30.5070, and 7306.30.5075.

Allegations of Bounties or Grants

The petition alleges that manufacturers, producers, or exporters in Iran of standard pipe receive benefits under one program which constitutes a bounty or grant. We are initiating an investigation on the following program:

- Foreign Exchange Benefit for Exporters (Wariznameh) Program.

This notice is published pursuant to section 702(c)(2) of the Act.

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

August 18, 1987.

[FR Doc. 87-19341 Filed 8-21-87; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Marine Mammals; Issuance of Permit; Dr. Kenneth S. Norris et al., (P20H)

On April 15, 1987, notice was published in the **Federal Register** (52 FR 12228) that an application has been filed by Dr. Kenneth S. Norris, Dr. Randall S. Wells, Mr. Jan S. Ostman, and Dr. William T. Doyle to incidentally harass spinner dolphins (*Stenella longirostris*) and to take dead dolphins found floating or beached for examination, measurement and specimen materials.

Notice is hereby given that on August 17, 1987, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 through 1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Rm. 805, Washington, DC; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415.

Dated: August 17, 1987.

Dr. Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 87-19284 Filed 8-21-87; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of the Import Limits for Certain Wool Textile Products Produced or Manufactured in the Polish People's Republic

August 19, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on August 25, 1987. For further information contact Chris Lozano, Assistant International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377-3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase the 1987 import restraint limits for wool textile products in Categories 410 and 433, produced or manufactured in Poland.

Background

A CITA directive dated December 24, 1986 (52 FR 854) established import limits for cotton, wool and man-made fiber textile products, including Categories 410 and 433, produced or manufactured in Poland and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 5 and 31, 1984 between the Governments of the United States and the Polish People's Republic provides, among other things, for designated percentage increases in certain categories. At the request of the Government of the Polish People's Republic, increases for swing and

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carryover are being applied to the restraint limits previously established for wool textile products in Categories 410 and 433, produced or manufactured in Poland and exported during the agreement year which began on January 1, 1987 and extends through December 31, 1987.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26822), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register**.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

August 19, 1987

Committee For The Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 24, 1986 from the Chairman of the Committee for the Implementation of Textile Agreements, concerning imports of cotton, wool and man-made fiber textile products, produced or manufactured in the Polish People's Republic and exported during the period which began on January 1, 1987 and extends through December 31, 1987.

Effective on August 25, 1987, the directive of December 24, 1986 is hereby amended to include adjusted restraint limits for the following categories, in accordance with the bilateral agreement of December 5 and 31, 1984:[1]

Category	Adjusted 12-mo. restraint limit [1]
410	2,825,766 sq. yds
433	8,810 doz

[1] The restraint limits have not been adjusted to reflect any imports exported after December 31, 1986.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-19321 Filed 8-21-87; 8:45 am]

BILLING CODE 3510-DR-M

Continuation of an Import Restraint Limit and Cancellation of Staged Entry for Certain Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

August 19, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on August 25, 1987. For further information contact Diana Solkoff, International Trade Specialist (202) 377-4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 566-8828. For information on embargoes and quota re-openings, please call (202) 377-3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to renew the import restraint limit for man-made fiber textile products in Category 642, produced or manufactured in the People's Republic of China and exported during the period which began on July 24, 1987 and extends through July 23, 1988. Staged entry for goods in Category 642 exported in excess of the previous restraint limit is being cancelled.

Background

On July 23, 1986 a notice was published in the **Federal Register** (51 FR 26459) which announced the establishment of import restraint limits for certain man-made fiber textile products, including Category 642, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on July 24, 1986 and extended through July 23, 1987.

A further notice was published on July 22, 1987 (52 FR 27573) which announced the establishment of staged entry for certain man-made fiber textile products, including Category 642, produced or manufactured in the People's Republic of China and exported in excess of the restraint limit established in the directive of July 18, 1986 (51 FR 26459).

To avoid continued risk of market disruption, the Committee for the Implementation of Textile Agreements, in accordance with section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles, done at Geneva on December 20, 1973 and extended by protocols on December 14, 1977, December 22, 1981 and July 31, 1986; and the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated August 19, 1983, as amended, between the Governments of the United States and the People's Republic of China, has decided to renew the restraint limit for the twelve-month period which began on July 24, 1987 and extends through July 23, 1988.

The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of the People's Republic of China, further notice will be published in the **Federal Register**.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 28822), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 20768) and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits

[1] The terms of the bilateral agreement provide, in part, that: (1) within the aggregate and applicable group limits of the agreement, specific limits may be exceeded by designated percentages; (2) the aggregate and group limits may be increased for carryover and carryforward; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

affected by adoption of the HCC will be published in the **Federal Register**.

Ronald L. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

August 19, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury,

Washington, DC 20229.

Dear Mr. Commissioner: To facilitate implementation of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated August 19, 1983, as amended, between the Governments of the United States and the People's Republic of China, I request that, effective on August 25, 1987, you cancel the staged entry periods established in the directive of July 20, 1987 for man-made fiber textile products in Category 642, produced or manufactured in the People's Republic of China and exported in excess of the import restraint limit established for the twelve-month period which began on July 24, 1986 and extended through July 23, 1987.

Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated August 19, 1983, as amended, between the Governments of the United States and the People's Republic of China; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on August 25, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in Category 642, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on July 24, 1987 and extends through July 23, 1988, in excess of 148,585 dozen.[1]

Goods shipped in excess of the previous twelve-month period established in the directive of July 18, 1986, which began on July 24, 1986 and extended through July 23, 1987 shall be subject to the level set forth in this letter.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

[1] The limit has not been adjusted to account for any imports exported after July 23, 1987.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-19373 Filed 8-21-87; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Military Personnel Testing; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given that a meeting of the Defense Advisory Committee on Military Personnel Testing is scheduled to be held from 8:30 AM to 5:00 PM on 18-19 September 1987. The meeting will be held at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, Virginia 22202. The purpose of the meeting is to review the Department of Defense's computer adaptive testing efforts, and equating plans for the Armed Services Vocational Aptitude Battery Forms 15, 16 and 17. Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. A. R. Lancaster, Executive Secretary, Defense Advisory Committee on Military Personnel Testing, Office of the Assistant Secretary of Defense (Force Management and Personnel), Room 2B271, the Pentagon, Washington, DC 20301-4000, telephone (202) 697-9271, no later than 1 September 1987.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

August 17, 1987.

[FR Doc. 87-19282 Filed 8-21-87; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Military Traffic Management Command, Military Personal Property Symposium; Open Meeting

Announcement is made of meeting of the Military Personal Property Symposium. This meeting will be held on 17 September 1987 at the Clarion Hotel, Crystal City, Arlington, Virginia, and will convene at 0830 hours and adjourn at approximately 1500 hours.

Proposed Agenda: The purpose of the symposium is to provide and open discussion and free exchange of ideas with the public on procedural changes to Personal Property Traffic Management Regulation (DOD 4500.34R), and the handling of other matters of mutual interest concerning the Department of Defense Personal Property Shipment and Storage Program.

All interested persons desiring to submit topics to be discussed should contact the Commander, Military Traffic Management Command, *Attn:* MT-PPM, at telephone number 756-1600, between 0800-1530 hours. Topics to be discussed should be received on or before 28 August 1987.

Date: August 10, 1987.

John O. Roach, II,

Army Liaison Officer with the Federal Register.

[FR Doc. 87-19227 Filed 8-21-87; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Office of Vocational and Adult Education

Intent To Repay to the Indiana State Board of Vocational and Technical Education Funds Recovered as a Result of a Final Audit Audit Determination

AGENCY: Department of Education.

ACTION: Intent to Award Grantback Funds.

SUMMARY: Under section 456 of the General Education Provisions Act (GEPA), as amended, (20 U.S.C. 1234e), the Secretary of Education (Secretary) intends to repay to the Indiana State Board of Vocational and Technical Education (State Board) under a grantback arrangement an amount equal to 67 percent of funds recovered by the Department of Education as a result of a final audit determination. This notice describes the State Board's plans for the use of funds which the Secretary intends to repay and the terms and conditions under which the Secretary intends to make these funds available and invites comments on the proposed grantback.

DATE: All written comments should be received on or before September 23, 1987.

ADDRESS: All written comments should be submitted to Dr. Thomas L. Johns, Acting Director, Policy Analysis Staff, Office of Vocational and Adult Education, U.S. Department of Education, (Room 620, Reporters Building), 400 Maryland Avenue, SW., Washington, DC 20202-5609.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas L. Johns, (202) 732-2237.

SUPPLEMENTARY INFORMATION:

A. Background

In August, 1985, the Department of Education recovered $46,479 from the

State Board in satisfaction of an audit, covering the period from July 1, 1976 to June 30, 1979. The auditors examined the accounting procedures, procurement practices, and system of internal controls of the State Board in expending funds under the Vocational Education Act of 1963 (VEA), as amended, 20 U.S.C. 2301 *et seq.* (1976).

The auditors issued, among other findings, the following monetary findings under which funds were recovered:

(1) The subcontractor (the Indiana Department of Public Instruction) improperly charged the vocational education program for services rendered to other programs because it did not have an indirect cost allocation plan or procedure for distributing joint costs;

(2) Three local educational agencies were improperly reimbursed with Federal funds for which there were not supporting documents such as payroll records, invoices, travel vouchers, or work papers at the local level; and

(3) One local educational agency failed to maintain daily time records to support the payment of wages for its work-study program.

B. Authority for Awarding a Grantback

Section 456(a) of GEPA provides that whenever the Secretary has recovered funds following a final audit determination with respect to an applicable program, the Secretary may consider those funds to be additional funds available for the program and may arrange to repay to the State agency affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this so-called "grantback" arrangement if the Secretary determines that—

(1) The practices and procedures of the State Board that resulted in the audit determination have been corrected, and that the State Board, in all other respects, is in compliance with the requirements of the applicable program;

(2) The State Board has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement which meets the requirements of the program, and, to the extent possible, benefits the population that was affected by the failure to comply or by the misexpenditures that resulted in the audit exception; and

(3) The use of the funds to be awarded under the grantback arrangement in accordance with the State Board's plan would serve to achieve the purposes of the program under which funds were originally granted.

C. Plan for Use of Funds Awarded Under a Grantback Agreement

Pursuant to section 456(a)(2) of GEPA, the State Board has applied for a grantback of $31,018 and has submitted a plan to use the proposed grantback funds consistently with section 111 of the Carl D. Perkins Vocational Education Act (Perkins Act), 20 U.S.C. 2301 *et seq.* (1984). The audit findings against the State Board resulted from improper expenditures of VEA funds. However, since the Perkins Act has superseded the VEA, the State Board's proposal reflects the requirements of the Perkins Act.

The State Board proposes to use grantback funds to hire two people on a part-time basis (total of 1948 hours) to analyze four recently completed studies of vocational education in Indiana, undertake any addtional research needed, and create and implement a new management information system using the information learned form these sources. The State Board's plan is available on request from the Department of Education contact person listed above.

D. The Secretary's Determination

The Secretary has carefully reviewed the request for repayment of funds, the plan, and other information submitted by the State Board. Based upon that review, the Secretary has determined that the conditions under section 456 of GEPA have been met.

These determinations are based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action.

E. Notice of the Secretary's Intent to Enter into a Grantback Arrangement

Section 456(d) of GEPA requires that, at least thirty days before entering into an arrangement to award funds under a grantback, the Secretary must publish in the **Federal Register** a notice of intent to do so, and the terms and conditions under which the payment will be made.

In accordance with the requirement of section 456(d) of GEPA, notice is hereby given that the Secretary intends to make funds available to the Indiana State Board of Vocational and Technical Education under a grantback arrangement. The grantback award would in the amount of $31,018, which is 75 percent of the $41,357 recovered by the Department as a result of the first finding described above, or 67 percent—less than the maximum 75 percent authorized by the statute—of the total $46,479 recovered.

F. Terms and Conditions Under Which Payments Under a Grantback Arrangement Will Be Made

The State Board agrees to comply with the following terms and conditions under which payments under a grantback arrangement would be made:

(1) The funds awarded under the grantback must be spent in accordance with—

(a) All applicable statutory and regulatory requirements; and

(b) The plan that was submitted in conjunction with the grantback request dated April 17, 1986, as amended on October 10, 1986, and any other amendments to that plan that are approved in advance by the Secretary.

(2) All funds received under the grantback arrangement must be expended not later than September 30, 1988, in accordance with section 456(c) of GEPA and the State Board's plan.

(3) The State Board must, not later than December 30, 1988, submit a report to the Secretary which—

(a) Indicates how the funds awarded under the grantback have been used;

(b) Shows that the funds awarded under the grantback have been liquidated; and

(c) Describes the results and effectiveness of the project for which the funds were spent.

(4) Separate accounting records must be maintained documenting the expenditures of funds awarded under the grantback arrangement.

(Catalog of Federal Domestic Assistance Number 84.048, Basic State Grants for Vocational Education)

Dated: August 18, 1987.

William J. Bennett,

Secretary of Education.

[FR Doc. 87-19287 Filed 8-21-87; 8:45 am]

BILLING CODE 4000-01-M

Intent to Repay to the West Virginia Department of Education Funds Recovered as a Result of a Final Audit Determination

AGENCY: Department of Education.

ACTION: Intent to Award Grantback Funds.

SUMMARY: Under section 456 of the General Education Provisions Act (GEPA), the Secretary of Education (Secretary) intends to repay to the West Virginia Department of Education (State Department) an amount equal to 64 percent of the funds recovered by the Department of Education as a result of a

final audit determination. This notice describes the State Department's plans for the use of repaid funds and the terms and conditions under which the Secretary intends to make these funds available, and invites comments on the proposed grantback.

DATE: All written comments should be received on or before September 23, 1987.

ADDRESS: All written comments should be submitted to Dr. Thomas L. Johns, Acting Director, Policy Analysis Staff, Office of Vocational and Adult Education, U.S. Department of Education, (Room 620, Reporters Building), 400 Maryland Avenue, SW., Washington, DC 20202–5609.

FOR FURTHER INFORMATION CONTACT: Mrs. Sharon A. Jones, (292) 732–2470.

SUPPLEMENTARY INFORMATION:

A. Background

In November 1984 and June 1986, the Department of Education recovered $103,134 from the State Department in satisfaction of an audit, covering the period from July 1, 1977 to June 30, 1982. The auditors found that the State Department failed to maintain appropriate time distribution records to support employees' salaries paid from funds awarded under the Vocational Education Act of 1963 (VEA), as amended, 20 U.S.C. 2301 *et seq.* (1976). Additionally, the auditors found (1) an inadequate accounting for the proper application of VEA funds and (2) a failure of a local agency to maintain fiscal effort.

B. Authority for Awarding a Grantback

Section 456(a) of GEPA, 20 U.S.C. 1234e(a), provides that whenever the Secretary has recovered funds allowing a final audit determination with respect to an applicable program, the Secretary may consider those funds to be additional funds available for the program and may arrange to repay to the State agency affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this so-called "grantback" arrangement if the Secretary determines that the—

(1) Practices and procedures of the State Department that resulted in the audit determination have been corrected, and that the State Department is, in all other respects, in compliance with the requirements of the applicable program;

(2) State Department has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement which meets the requirements of the program, and, to the extent possible, benefits the population that was affected by the failure to comply or by the misexpenditures that resulted in the audit exception; and

(3) Use of the funds to be awarded under the grantback arrangement in accordance with the State Department's plan would serve to achieve the purposes of the program under which funds were originally granted.

C. Plan for Use of Funds Awarded Under a Grantback Agreement

Pursuant to section 456(a)(2) of GEPA, the State Department has applied for a grantback of $65,629 and has submitted a plan to use the grantback funds consistent with section 251 of the Carl D. Perkins Vocational Education Act (Perkins Act), 20 U.S.C. 2301 *et seq.* (1984). The audit findings against the State Department resulted from improper expenditures of VEA funds. However, since the Perkins Act has superseded the VEA, the State Department's proposal reflects the requirements of the Perkins Act, which—like the VEA—provides for grants to States for vocational education.

The State Department proposes to use the grantback funds to equip and operate a video production laboratory for training education and industry personnel. The laboratory activities would include curriculum development, production of videotaped instructional modules, and training in videotape production processes. The State Department's plan is available on request from the U.S. Department of Education contact person listed above.

D. The Secretary's Determination

The Secretary has carefully reviewed the plan and other information submitted by the State Department. Based upon that review, the Secretary has determined that the conditions under section 456 of GEPA have been met.

These determinations are based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action.

E. Notice of the Secretary's Intent to Enter into a Grantback Arrangement

Section 456(d) of GEPA requires that, at least thirty days before entering into an arrangement to award funds under a grantback, the Secretary must publish in the **Federal Register** a notice of intent to do so, and the terms and conditions under which the payment will be made.

In accordance with section 456(d) of GEPA, notice is hereby given that the Secretary intends to make funds available to the West Virginia Department of Education under a grantback arrangement. The grantback award would be in the amount of $65,629, which is 64 percent—less than the maximum of 75 percent authorized by the statute—of the funds recovered by the Department as a result of the audit.

F. Terms and Conditions Under Which Payments Under a Grantback Arrangement Will Be Made

The State Department agrees to comply with the following terms and conditions under which payments under a grantback arrangement would be made:

(1) The funds awarded under the grantback must be spent in accordance with—

(a) All applicable statutory and regulatory requirements, and

(b) The plan that was submitted in conjunction with the request dated July 10, 1986, as amended as September 26, 1986, and any other amendments to that plan that are approved in advance by the Secretary.

(2) All funds received under the grantback arrangement must be expended not later than September 30, 1989, in accordance with section 456(c) of GEPA and the State Department's plan.

(3) The State Department must, not later than December 30, 1989, submit a report to the Secretary which—

(a) Indicates how the funds awarded under the grantback have been used;

(b) Shows that the funds awarded under the grantback have been liquidated; and

(c) Describes the results and effectiveness of the project for which the funds were spent.

(4) Separate accounting records must be maintained documenting the expenditures of funds awarded under the grantback arrangement.

(Catalog of Federal Domestic Assistance Number 84.048, Basic State Grants for Vocational Education)

Dated: August 19, 1987.

William J. Bennett,

Secretary of Education.

[FR Doc. 87–19288 Filed 8–21–87; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No. 84.133E]

Invitation to Apply for New Awards Under the National Institute on Disability and Rehabilitation Research (NIDRR) Program of Rehabilitation, Engineering Centers

Purpose: Provides funding through grants or cooperative agreements to public or private agencies or organizations, including institutions of higher education, Indian tribes or tribal organizations, to conduct programs that meet the specifications in the proposed priorities published in this issue of the Federal Register.

Deadline for Transmittal of Applications: October 30, 1987.

Applications available: August 24, 1987.

Available funds: $7,000,000.

Estimated range of awards: $400,000–700,000.

Estimated average award: $575,000.

Project period: Up to 60 months.

Applicable regulations: (a) Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, and 78, (b) NIDRR regulations at 34 CFR Parts 350 and 353, and (c) the final funding priorities for this program when they become effective. Applicants should assume there will be no changes to the priorities as proposed. If there are significant changes in the final priorities, applicants will be given an opportunity to amend or resubmit their applications.

For applications information contact: Joseph Traub, National Institute on Disability and Rehabilitation Research, U.S. Department of Education, 400 Maryland Avenue, SW., Switzer Building, Room 3070, Washington, DC, 20202. Telephone: (202) 732–1189, or (202) 732–1198 for TDD service.

Program authority: 29 U.S.C. 762(b)(2).

Madaleine Will,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 87–19292 Filed 8–21–87; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

[PRDA No. DE–PR07–87ID12708]

Research and Development Announcement for Development of Enhanced Heat Transfer; Idaho Operations Office

August 11, 1987.

AGENCY: Department of Energy.

ACTION: Program Research and Development Announcement (PRDA) for Development of Enhanced Heat Transfer.

SUMMARY: The U.S. Department of Energy (DOE), Idaho Operations Office, is seeking proposals for development of enhanced heat transfer techniqus in heat exchangers for application in energy-intensive industrial processes. The enhancement techniques should be able to increase overall heat transfer rate leading to greater heat exchanger effectiveness, and, when applied, should reduce industrial energy consumption. The scope of this work encompasses research and development of unique, innovative and economical heat transfer techniques applied to industrial heat exchangers. Proposals must address the development of an advanced technique from the previously esatablished point of basic identification and theoretical understanding to the point where interested companies would be willing to complete the development of the techniuqe and commercialize the end product. Results of the proposed investigations should verify the industrial applicability and cost effectiveness of the proposed concept. All the adverse effects of the enhancement technique, such as increased pressure drop and cost, should be addressed. Proposals must document collaboration with an industrial partner who has an interest in manufacturing and/or commercializing the concept. The proposed enhancement technique may be applicable to situation involving single or multi-phase fluids, phase change, convection and/or radiation heat transfer.—It is anticipated that two or three awards will be initiated from a total available DOE funding of $200,000. However, DOE reserves the right to make no award, a single award, or multiple awards as determined to be in the best interest of the Government. Subject to the availability of funds, it is anticipated that a total of approximately $300,000 of additional funds will be provided in fiscal year 1988 for completion of this work. Duration of this effort is expected to be approximately two years. — DEAR 917.73 will govern if a procurement contract is entered into and the DOE Financial Assistance Rules (10 CFR 600) will govern if a financial assistance instrument is utilized. However, DOE reserves the right to make any or all awards and contracts subject to the Federal Acquisition Regulations (48 CFR, Chapter 1) and the DOE Acquisition Regulations (48 CFR, Chapter 9). Educational institutions, nonprofit organizations, individuals, or other private organizations are invited to respond to this announcement. Proposals from Federal agencies and/or laboratories owned, operated, or under the cognizance of the Federal Government will not be considered for selection and should not respond.

Dates: This PRDA is expected to be available to interested parties by early September 1987 and proposals will be due approximately 45 days thereafter.

Contacts: Potential proposers desiring to receive a copy of the PRDA should povide a written request to the following address: U.S. Department of Energy, Idaho Operations Office, ATTN: T. Wade Hillebrant, Contracts Management Division, 785 DOE Place, Idaho Falls, ID 83402.

H. Brent Clark,

Director,

Contracts Management Division.

[FR Doc. 87–19332 Filed 8–21–87; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 87–27–NG]

Order Granting Blanket Authorization To Import Natural Gas From Canada; American Natural Gas Corp.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of order granting blanket authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting American Natural Gas Corporation (American Natural) blanket authorization to import natural gas from Canada. The order issued in ERA Docket No. 87–27–NG authorizes American Natural to import up to 146 Bcf over a two-year period for sale in the domestic spot market.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA–076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 14, 1987.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87–19333 Filed 8–21–87; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 87-29-NG]

Application to Extend Authorization to Import Natural Gas from Canada; Natural Gas Clearinghouse Inc.

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of application to extend blanket authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on July 17, 1987, of an application filed by Natural Gas Clearinghouse Inc. (NGC) to extend for two years its existing two-year blanket authorization to import up to 730 Bcf of Canadian natural gas granted by the ERA in DOE/ERA and Order No. 86 (Order No. 86) issued July 5, 1985 (1 ERA Para. 70,602). NGC, formerly The U.S. Natural Gas Clearinghouse, Ltd., is a nationwide marketer of imported and domestic natural gas. The authorization will expire on October 31, 1987. NGC requests approval to continue importing gas for short-term or spot market sales for an additional two years to October 31, 1989. NGC proposes to import a daily maximum quantity of 1 Bcf, for a total of 730 Bcf of gas during the two-year extended term.

The gas to be imported would be purchased from a variety of Canadian suppliers and resold at competitive prices to U.S. pipelines, electric utilities, distribution companies, industrial end-users, and others on NGC's own behalf or as agent for others. All sales would be fully interruptible. Moreover, NGC contemplates that many of the arrangements would not require the purchase of a minimum quantity of gas. The price for the gas would be a negotiated contract price varying from sale to sale based on competition in the market. The specific location where the gas would enter the U.S. would also vary for different transactions with delivery points to be established during sales contract negotiations. The proposed imports would be accomplished using existing pipeline capacity and no new construction would be involved.

NGC proposes to continue to file reports with the ERA within 30 days after the end of each calendar quarter giving the details of the individual transactions. NGC's prior quarterly reports filed with the ERA indicate that approximately 7.4 Bcf of natural gas was imported under Order No. 86 through June 30, 1987.

The application is filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than September 23, 1987.

FOR FURTHER INFORMATION:

P.J. Fleming, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA-070, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-4819

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

All parties should be aware that if the ERA approves NGC's application to extend its blanket import authority, the ERA may, as it did in Order No. 86, approve only a total volume over the authorized term rather than a daily or annual limit, in order to provide the applicant with maximum flexibility of operation.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076, RG-23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. They must be filed no later than 4:30 p.m. e.d.t., September 23, 1987.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR Sec. 590.316.

A copy of NGC's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076-A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 17, 1987.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-19331 Filed 8-21-87; 8:45 am]

BILLING CODE 6450-01

[ERA Docket No. 87-32-NG]

Applications To Import Natural Gas From Canada; Pacific Interstate Transmission Co.

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of application for authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on June 26, 1987, of an application filed by Pacific Interstate Transmission Company (PIT), an interstate pipeline, for authority to import from Canada total daily quantities of up to 640,000 Mcf of natural gas for a period of two years, beginning on the date when initial deliveries commence. PIT requests that approval be granted on a self-implementing basis, characterized by PIT as a blanket import authorization. The gas would be purchased from its current suppliers, Pan-Alberta Gas Ltd. (Pan-Alberta) and Westcoast Transmission Company Limited (Westcoast), on a best-efforts, interruptible basis and resold to PIT's distributor affiliate and only customer, Southern California Gas Company (SoCal), for consumption within California. PIT furnished copies of signed letters of intent with Pan-Alberta and Westcoast to enter into contracts for the purchase of up to 640,000 Mcf per day and 440,000 Mcf per day, of natural gas, respectively, as a potential supply for its proposed import arrangement. PIT will receive the gas at points on the international boundary near Kingsgate and Huntingdon, British Columbia. Transportation and delivery of the gas to SoCal is expected to be performed for PIT by Pacific Gas Transmission Company, Northwest Pipeline Corporation, and El Paso Natural Gas Company using their existing pipeline facilities. No new construction would be involved.

The application proposes an interruptible supply arrangement, involving no take-or-pay requirements. The purchase price SoCal will pay PIT will be determined in response to market forces and will reflect the price of competing natural gas supplies available to SoCal. The price paid to the Canadian suppliers by PIT will be a "net-back" price determined by SoCal's price, less PIT's tariff charges which include domestic transportation and fuel costs and a fee of 1 cent per Mcf to cover administrative and general expenses. This net-back price would be adjusted each month to reflect any difference in the competitive prices of natural gas in southern California.

Under the proposed service agreement between PIT and SoCal, sales would be arranged on a monthly basis. PIT would notify SoCal of the price of the Canadian gas available for sale and SoCal, in turn, would nominate the volumes of gas it desires to purchase, up to a daily maximum of 640,000 Mcf. There will be no minimum bill to recover fixed or commodity costs. The service agreement also provides that at SoCal's request, PIT will purchase and sell competitively priced domestic gas.

PIT proposes to submit quarterly reports to the ERA showing the volumes imported, points of entry, transporters, and purchase and sales prices.

PIT has filed an application with the Federal Energy Regulatory Commission for certificate authority to sell this imported gas or gas purchased from domestic suppliers to SoCal under a new rate schedule (CP87-411-000)

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, and written comments are to be filed no later than 4:30 p.m., on September 23, 1987.

FOR FURTHER INFORMATION CONTACT:

P.J. Fleming, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, U.S. Department of Energy, Forrestal Building, Room GA-076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4819

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., (202) 586-6667

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076, RG-23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. They must be filed no later than 4:30 p.m., e.d.t., September 23, 1987.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the

official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.319.

A copy of PIT's application is available for inspection and copying in the Natural Gas Docket Room, GA-076, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on August 18, 1987.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-19330 Filed 8-21-87; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER87-332-000 et al.]

Electric Rate and Corporate Regulation Filings; Florida Power & Light Co. et al.

August 14, 1987.

Take notice that the following filings have been made with the commission:

1. Florida Power & Light Company

[Docket No. ER87-332-000]

Take notice that on August 11, 1987, Florida Power & Light Company (FPL) tendered pursuant to the Commission's order dated June 19, 1987 a compliance filing. FPL states that it is filing to adjust the rates applicable to service provided under the Agreement to reflect the 34% federal marginal income tax rate.

The resulting transmission service rates are:

Schedule TA—Emergency Transmission Service: $2.52 per MWh of Scheduled Delivery
Schedule TB—Short Term Firm Transmission Service: $60.50 per MW-day of Scheduled Delivery
Schedule TC—Economy Energy Transmission Service: $2.52 per MWh of Scheduled Delivery
Schedule TD—Firm Transmission Service: $22,081.05 per MW of Contracted Demand per year ($1,840.09 per MW of Contracted Demand per month for periods of less than entire years)
Schedule TF—Assured Capacity and Energy Transmission Service: $2.52 per MWh of Scheduled Delivery
Schedule TX—Extended Economy Energy Transmission Service: $2.52 per MWh of Scheduled Delivery

FPL requests that waiver of Section 35.3 of the Commission Regulations be granted and that the proposed Amendment No. 1 be made effective July 1, 1987.

A copy of this filing has been served upon all affected parties.

Comment date: August 31, 1987, in accordance with Standard Paragraph E at the end of this document.

2. Mississippi Power Company

[Docket No. ER87-573-000]

Take notice that on August 10, 1987, Mississippi Power Company (Mississippi) tendered for filing revised sheets of Mississippi Power Company FERC Electric Tariff Original Volume No. 1:

(1) Fourteenth Revised Sheet No. 3, superseding Thirteenth Revised Sheet No. 3
(2) Fifteenth Revised Sheet No. 4, superseding Fourteenth revised Sheet No. 4
(3) First Revised Sheet No. 4.01 superseding Original Sheet No. 4.01

all relating to wholesale Electric Service to Cooperative Electric Power Association, and designated "Rate Schedule MRA-16C"

(4) Fourteenth Revised Sheet No. 3, Supplement No. 1 superseding Thirteenth Revised Sheet No. 3
(5) Fifteenth Revised Sheet No. 4, Supplement No. 1 superseding Original Sheet No. 4.01
(6) First Revised Sheet No. 4.01, Supplement No. 1 superseding Original Sheet No. 4.01

all relating to Wholesale Electric Service to City of Collins, and designated "Rate Schedule MRA-16C".

Mississippi states that the revisions relate solely to the Fuel Cost Adjustment Clause applicable to wholesale of electric energy to the three Electric Power Associations which are wholesale customers of Mississippi and to the City of Collins, which is a wholesale municipal customer of Mississippi.

Mississippi also states that the purpose of this filing is to provide a method by which the benefits of lower total fuel costs (including the costs of the buy-outs) and tax benefits can be immediately passed on to wholesale customers through the Fuel Cost Adjustment Clause.

Comment date: August 27, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-19325 Filed 8-21-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-14-29-000]

Proposed Changes in FERC Gas Tariff; Algonquin Gas Transmission Co.

August 19, 1987.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on August 14, 1987, submitted for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, six (6) copies of the following tariff sheets:

Twentieth Revised Sheet No. 203
Alternate Twentieth Revised Sheet No. 203

Algonquin states such tariff sheets are being filed pursuant to the provisions of its Rate Schedule F-2 for the purpose of revising Algonquin's rates to reflect the effect of Consolidated Gas Transmission Corporation's ("Consolidated") PGA filing dated July 31, 1987 in Docket No. TA87-3-23-000.

Algonquin requests that the Commission accept that tariff sheet which synchronizes its rates with the underlying approved rates of Consolidated and to grant any waiver of the Regulations as may be necessary by the Commission to permit such accepted tariff sheet to become effective September 1, 1987.

Algonquin notes that a copy of this filing is being served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 26, 1987. Protests will be considered by the Commission in determining the

appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-19324 Filed 8-21-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-94-000]

Tariff Filing; El Paso Natural Gas Co.

August 19, 1987.

Take notice that on August 7, 1987, El Paso Natural Gas Company (El Paso) filed, pursuant to section 4 of the Natural Gas Act and Part 154 of the Regulations issued thereunder by the Federal Energy Regulatory Commission (Commission), Original Sheet Nos. 100-C and 100-D, First Revised Sheet No. 300 and Original Sheet Nos. 366 through 399 to First Revised Volume No. 1 of its FERC Gas Tariff.

El Paso states that the tendered tariff sheets, when accepted by the Commission and permitted to become effective, will establish procedures for (i) determining the costs related to gas prepayment liabilities incurred by El Paso on and after January 1, 1988 in maintaining gas supply to serve the firm sales entitlements of its customers, and (ii) reimbursement of an allocated portion of such costs by Southern California Gas Company, Pacific Gas and Electric Company, Gas Company of New Mexico, Southern Union Gas Company and Southwest Gas Corporation to El Paso through a Gas Inventory Charge to be applied to the quantity by which the customer's actual purchases (including transported released gas for which El Paso receives take-or-pay relief) is less than that customer's specified Annual Exemption Quantity. El Paso states that it has offered to enter into negotiations with the affected customers to establish Annual Exemption Quantities based on firm sales entitlements and load factors reflective of the customers' appraisal of the quantities of natural gas they will look at El Paso to supply and maintain in the future.

El Paso is proposing to implement the Gas Inventory Charge commencing January 1, 1988. However, since certain steps necessary to the determination of each customer's allocable portion of such costs must occur prior to the date on which the Gas Inventory Charge is implemented, El Paso requests that the tendered tariff sheets be accepted by the Commission and permitted to become effective thirty (30) days after the date of filing.

El Paso is proposing that the Gas Inventory Charge rate be equal to the weighted average cost of prepayment multiplied by a time value factor equal to the present value of the estimated Commission-prescribed interest rate to be in effect during a five-year prepayment recovery period, such charge to be implemented on a prospective basis for prepayment liabilities incurred on and after January 1, 1988. El Paso states that, depending upon the future purchasing decisions of its customers, some of the prepayments incurred by El Paso on and after January 1, 1988 may later be found to be non-recoupable. El Paso therefore requests that the Commission set for hearing the issue of including in the Gas Inventory Charge calculation prepayments incurred on and after January 1, 1988 which are later found to be non-recoupable (as set forth on the *pro forma* tariff sheet included in the filing) for prospective application following issuance of a final order approving such inclusion.

El Paso states that copies of the filing have been served upon all of its interstate pipeline system customers and all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the regulations. All such motions or protests should be filed on or before August 26, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-19326 Filed 8-21-87; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Issuance of Proposed Decisions and Orders; Period of June 29 Through August 7, 1987

During the period of June 29 through August 7, 1987, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

Dated: August 14, 1987.

Thomas O. Mann,

Acting Director, Office of Hearings and Appeals.

Deaton Oil Company, Murfreesboro, AR, KEE-0142, Reporting Req'mts

Deaton Oil Company filed an Application for Exception from the requirement to file Form EIA-821, entitled "Annual Fuel Oil and Kerosene Sales Report." On August 4, 1987, the Department of Energy issued a Proposed Decision and Order which determined that the exception request should be denied.

Site Oil Company, St. Louis, MO, KEE-0145, Reporting Req'mts

Site Oil Company filed an Application for Exception from the requirement to file Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." On August 6, 1987, the Department of Energy issued a Proposed Decision and Order which determined that the exception request should be denied.

[FR Doc. 87-19334 Filed 8-21-87; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL COMMUNICATIONS COMMISSION

[MM Docket No. 87-316, File Nos. BPH-850711MY et al.]

Applications for Consolidated Hearing; Cynthia Escajeda Cart et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City and State	File No.	MM Docket No.
A. Cynthia Escajeda Cart, Reno, NV.	BPH-850711MY	87-316
B. Reno 93-FM Broadcasters, a California limited partnership Reno, NV.	BPH-850711OE	
C. Dennis L. Martin, Reno, NV	BPH-850712ON	
D. Washoe Wireless Associates, Reno, NV.	BPH-850712OO	
E. Reno Radio, Ltd., Reno, NV.	BPH-850712OP	
F. Reno FM Services Partners Limited, Reno, NV.	BPH-850712OQ	
G. David L. Metts and Debbie Raborn d/b/a/ High Sierra Communications Co., Reno, NV.	BPH-850712OV	
H. Condor & Associates, Inc., Reno, NV.	BPH-850712OZ	
I. L. C Broadcasting, Inc., Reno, NV.	BPH-850712PA	
J. Susan Lundborg, Reno, NV	BPH-850712TU	
K. Tropic-Air, Ltd., Reno, NV	BPH-850712TV	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Misrepresentation, H
2. Comparative, A–K
3. Ultimate, A–K

3. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Service, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87–19278 Filed 8–21–87; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 87-330; File Nos. BPCT-861216IQ and BPCT-870112KE]

Applications for Consolidated Hearing; Melvin Jones and G & D Communications, Inc.

1. The Commission has before it the following mutually exclusive applications for a new TV station:

Applicant, City, and State	File No.	MM Docket No.
A. Melvin Jones, Enid, OK	BPCT-861216IQ	87-330
B. G&D Communications, Inc., Enid, OK.	BPCT-870112KE	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading Applicant(s)

Misrepresentation, A
Air Hazard, A, B
Comparative, A, B
Ultimate, A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

Stephen F. Sewell,

Assistant Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 87–19279 Filed 8–21–87; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 87-317; File Nos. BPH-860505MI et al.]

Applications for Consolidated Hearing; Massanutten Broadcasting Co., Inc. et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City, and State	File No.	MM Docket No.
A. Massanutten Broadcasting Company, Inc., Broadway, VA.	BPH-860505MI	87-317
B. Gloria A. Benns, Broadway, VA.	BPH-860507MB	
C. Nanette Markunas, Broadway, VA.	BPH-860507MC	
D. Massanutten Radio Limited Partnership, Broadway, VA.	BPH-860507ME	

2. Pursuant to 47 U.S.C. 309(e), the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of theses issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19,347 (May 29, 1986). The letter shown before each applicant's name, above, is useds below to signify whether the issue in question applies to that particular applicant.

Issue Heading, Applicants

1. Comparative, A, B, C, D
2. Ultimate, A, B, C, D

3. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, N.W., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87–19280 Filed 8–21–87; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 87-315; File Nos. BPH-860707NP and BPH-860707OG]

Applications for Consolidated Hearing; William M. Morris and Caballero Spanish Media, Inc.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City, and State	File No.	MM Docket No.
A. William M. Morris, McFarland, Ca.	BPH-860707NP	87-315
B. Caballero Spanish Media, Inc., McFarland, Ca.	BPH-860707OG	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have

been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading, Applicant(s)

1. Comparative, A, B
2. Ultimate, A, B

3. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87–19261 Filed 8–21–87; 8:45 am]

BILLING CODE 6712–01–M

Travel Reimbursement Program Report

AGENCY: Federal Communications Commission.

ACTION: Publishing of Report on Travel Reimbursement Program.

SUMMARY: In Pub. L. 97–259 the Congress authorized the Federal Communications Commission to accept reimbursement from non-government organizations for travel of employees of the Commission. The Federal Communications Commission must keep records of reimbursable travel by event and prepare a report of all reimbursements allowed. Copies of each report will be provided to the Senate Committee on Appropriations, House Committee on Appropriations, Senate Committee on Commerce, Science and Transportation, and the House Committee on Energy and Commerce. In addition, the Federal Communications Commission must publish each report in the Federal Register.

DATE: This report is for the period April 1, 1987 through June 30, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Robert Myers, Office of the Managing Director, (202) 632–0900.

SUPPLEMENTARY INFORMATION: The report for the period April 1, 1987 through June 30, 1987 is as follows:

Federal Communications Commission, Travel Reimbursement Program, April 1, 1987—June 30, 1987, Summary Report

Total number of sponsored events	31
Total number of sponsoring organizations	24
Total number of commissioners/employees attending	52
Total number of reimbursement expected:	
Transportation	$12,068.11
Subsistence	10,386.90
Other expenses	1,553.31
Total	$24,008.32

Federal Communications Commission, Travel Reimbursement Program, Individual Event Report

Sponsoring Organization: American Bar Association of Science & Technology, 7500 North Lake Shore Drive, Chicago, Illinois 60611.

Date of the Event: May 15–17, 1987.

Description of the Event: To participate in meeting on International Telecommunications facilities in Easton, Maryland.

Commissioners Attending: N/A.

Other Employee(s) Attending: William Kirsch, Attorney-Advisor—Common Carrier Bureau.

Amount of reimbursement:	
Transportation	$32.39
Subsistence	128.00
Other expenses	20.00
Total	180.39

Federal Communications Commission, Travel Reimbursement Program, Individual Event Report

Sponsoring Organization: Ameritech, 1050 Connecticut Avenue, N.W., Washington, D.C. 20036.

Date of the Event: May 5, 1987.

Description of the Event: To participate in Ameritech's 1987 Spring President's Conference in Scottsdale, Arizona.

Commissioners Attending: N/A.

Other Employee(s) Attending: James Schlichting, Attorney—Advisor Office of Commissioner.

Amount of reimbursement:	
Transportation	$360.00
Subsistence	75.00
Other expenses	20.00
Total	455.00

Sponsoring Organization: Bell Atlantic, 1133 20th Street, N.W., Suite 810, Washington, D.C. 20036.

Date of the Event: March 30, 1987.

Description of the Event: To participate in the Bell Atlantic Companies Regional External Affairs Conference held in Baltimore, Md.

Commissioners Attending: N/A.

Other Employee(s) Attending: John Cimko, Chief, Tariff Division-Common Carrier Bureau.

Amount of reimbursement:	
Transportation	$20.50
Subsistence	
Other expenses	
Total	20.50

Sponsoring Organization: Bell Atlantic, 1133 20th Street, N.W., Suite 810, Washington, D.C. 20036.

Date of the Event: April 21, 1987.

Description of the Event: To attend Separations Settlements and Access Charge Seminar in Baltimore, Md.

Commissioners Attending: N/A.

Other Employee(s) Attending: Cynthia Work, Supervisory Attorney-Advisor-Common Carrier Bureau.

Amount of reimbursement:	
Transportation	$74.00
Subsistence	
Other expenses	$25.00
Total	99.00

Sponsoring Organization: Bell Communications Research, 2101 L Street, N.W., Washington, D.C. 20037.

Date of the Event: April 29—May 1, 1987.

Description of the Event: To participate in the 1987 National Forecasting Conference in New Orleans, Louisiana.

Commissioners Attending: N/A.

Other Employee(s) Attending: Alexander Belinfante, Industry Economist-Common Carrier Bureau.

Amount of reimbursement:	
Transportation	$318.00
Subsistence	170.00
Other expenses	185.00
Total	673.00

Sponsoring Organization: Bell Communications Research, 2101 L Street, N.W., Washington, D.C. 20037.

Date of the Event: May 6, 1987.

Description of the Event: To participate in the Eastern Communications Forum in Stamford, Connecticut.

Commissioners Attending: N/A.

Other Employee(s) Attending: Thomas C. Spavins, Deputy Chief-Office of Plans & Policy.

Amount of reimbursement:	
Transportation	$158.00
Subsistence	128.00

Other expenses	
Total	284.00

Sponsoring Organization: Bell Communication Research, 290 W Mt. Pleasant Avenue, Livingston, NJ. 07039.
Date of the Event: May 13 & 14, 1987.
Description of the Event: To participate in the Bellcore Executive Briefing Session on Third-Party Marketing in Dallas, Texas.
Commissioners Attending: N/A.
Other Employee(s) Attending: Thomas Sugrue, Chief, Policy & Program Plan—Common Carrier Bureau.

Amount of reimbursement:

Transportation	$270.00
Subsistence	107.00
Other expenses	30.00
Total	407.00

Sponsoring Organization: Bell Communications Research, 2101 L Street, NW., Washington, DC 20037.
Date of the Event: June 9, 1987.
Description of the Event: To participate in the National Security Emergency Preparedness Committee meeting in Chicago, Illinois.
Commissioners Attending: N/A.
Other Employee(s) Attending: Edward J. Minkel, Managing Director—Office of Managing Director.

Amount of reimbursement:

Transportation	$391.00
Subsistence	429.00
Other expenses	10.00
Total	830.00

Sponsoring Organization: Bell South Corporation, Suite 900—1133 21st Street, NW., Washington, DC. 20036.
Date of the Event: May 27, 1987.
Description of the Event: To discuss recent separations changes and future plans for separations changes with carriers in Atlanta, Georgia.
Commissioners Attending: N/A.
Other Employee(s) Attending: Michael E. Wilson, Supervisory Auditor—Common Carrier Bureau.

Amount of reimbursement:

Transportation	$200.00
Subsistence	12.50
Other expenses	42.80
Total	255.30

Sponsoring Organization: Centel, O'Hare Plaza, 5725 N. East River Road, Chicago, Illinois 60631.
Date of the Event: May 7, 1987.
Description of the Event: To participate in a training session on filing tariffs pursuant to Part 61 of the Commission's rules in Chicago, Illinois.
Commissioners Attending: N/A.
Other Employee(s) Attending: James W. Lichford, Public Utilities Specialist—Common Carrier Bureau.

Amount of reimbursement:

Transportation	$311.00
Subsistence	203.64
Other expenses	13.80
Total	528.44

Sponsoring Organization: Harvard University Graduate School of Business Administration, Soldiers Field, Boston, Massachusetts 02163.
Date of the Event: May 28–29, 1987.
Description of the Event: To participate in Colloquium on Future Competition in Telecommunications in Boston, Massachusetts.
Commissioners Attending: N/A.
Other Employee(s) Attending: Thomas C. Spavins, Deputy Chief—Office of Plans and Policy.

Amount of reimbursement:

Transportation	$119.00
Subsistence	324.00
Other expenses	0
Total	443.00

Sponsoring Organization: Kentucky Broadcasters Association, Post Office Box 680, Lebanon, KY 40033.
Date of the Event: May 15, 1987.
Description of the Event: To address the annual convention of the Kentucky Broadcasters Association in Louisville, Kentucky.
Commissioners Attending: Commissioner Patricia Diaz Dennis.
Other Employee(s) Attending: N/A.

Amount of reimbursement:

Transportation	$202.00
Subsistence	16.50
Other expenses	28.20
Total	246.70

Sponsoring Organization: Law Offices Keller and Heckman, 1150 17th Street NW., Suite 1000, Washington, D.C. 20036.
Date of the Event: June 16–18, 1987.
Description of the Event: Attend and participate at the Utilities Telecommunications Counsel (UTC) Annual Meeting in Portland, Oregon.
Commissioners Attending: N/A.
Other Employee(s) Attending: Michael T.N. Fitch, Chief—Private Radio Bureau.

Amount of reimbursement:

Transportation	$478.00
Subsistence	300.00
Other expenses	25.00
Total	803.00

Sponsoring Organization: Md./DC/Del. Broadcasters' Association, Incorporate, Robert B. Cochrane Executive Director, Route 1—Box 559, St. Michaels, Maryland 21663.
Date of the Event: June 18–20, 1987.
Description of the Event: To participate in the Md/DC/Del. Broadcasters' meeting in Ocean City, Maryland.
Commissioners Attending: N/A.
Other Employee(s) Attending: James C. McKinney, Chief—Mass Media Bureau, Charles W. Kelley, Chief—Enforcement Division—Mass Media Bureau.

Amount of reimbursement:

Transportation	$139.40
Subsistence	297.00
Other expenses	40.00
Total	476.40

Sponsoring Organization: Mississippi Broadcaster Association, Post Office Box 4561, Jackson, Mississippi 39216.
Date of the Event: June 13, 1987.
Description of the Event: To participate in the Mississippi Broadcasters Association Annual Convention in Biloxi, Mississippi.
Commissioners Attending: N/A.
Other Employee(s) Attending: Larry P. Eads, Chief, Audio Services Division—Mass Media Bureau.

Amount of reimbursement:

Transportation	$372.00
Subsistence	128.00
Other expenses	25.00
Total	525.00

Sponsoring Organization: National Cable Television Association, 1724 Massachusetts Avenue, N.W., Washington, D.C. 20036.
Date of the Event: May 17–20, 1987.
Description of the Event: To participate in the National Cable TV Association Convention and Exposition in Las Vegas, Nevada.
Commissioners Attending: Commissioner Dennis R. Patrick.
Other Employee(s) Attending:
James C. McKinney, Chief-Mass Media Bureau
Diane S. Killory, General Counsel
Sydney P. Bradfield, Supervisory Electronics Engineer-Mass Media Bureau
Bradley P. Holmes, Supervisory Attorney-Advisor-Mass Media Bureau
Roy J. Stewart, Chief Video Services-Mass Media Bureau
Stephen R. Ross, Supervisory General Attorney-Mass Media Bureau
Gregory Vogt, Supervisory General Attorney-Common Carrier Bureau
Brian F. Fontes, Special Assistant-Office of the Commissioner

Amount of reimbursement

Transportation	$3,336.00
Subsistence	3,000.66
Other expenses	263.65
Total	6,600.31

Sponsoring Organization: National Translator Association, Fernand Bibeau, 4

Broadcast Plaza, S.W., Albuquerque, New Mexico 87104.
Date of the Event: April 30, May 2, 1987.
Description of the Event: To participate in the TV & FM Translator Annual Technical Seminar in Albuquerque, New Mexico.
Commissioners Attending: N/A.
Other Employee(s) Attending: Keith Larson, Supervisory Electronics Engineer-Mass Media Bureau.

Amount of reimbursement:	
Transportation	$332.00
Subsistence	336.00
Other expenses	
Total	668.00

Sponsoring Organization: Nebraska Telephone Association, 645 South 14th Street, Suite 300, Lincoln, Nebraska 68508.
Date of the Event: May 19, 1987.
Description of the Event: Speak at annual meeting of the Nebraska Telephone Association in Lincoln, Nebraska.
Commissioners Attending: N/A.
Other Employee(s) Attending: Stephen L. Goodman, Supervisory Attorney—Common Carrier Bureau.

Amount of reimbursement:	
Transportation	$604.00
Subsistence	64.00
Other expenses	10.00
Total	678.00

Sponsoring Organization: North American Philips Corporation, 100 East 42nd Street, New York, New York 10017.
Date of the Event: April 23–24, 1987.
Description of the Event: To attend demonstrations at North American Philips Corporation laboratories in Briarcliff Manor, N.Y.
Commissioners Attending: N/A.
Other Employee(s) Attending: Bruce A. Franca, Supervisory Electronics Engineer—Office of Engineering & Technology.
James C. McKinney, Chief—Mass Media Bureau.
Victor Tawil, Electronics Engineer—Office of Engineering and Technology.
William Hassinger, Electronics Engineer—Office of Engineering and Technology.

Amount of reimbursement:	
Transportation	$592.00
Subsistence	66.00
Other expenses	80.00
Total	738.00

Sponsoring Organization: Northern Telecom Incorporate, Post Office Box 13010, Research Triangle Park, North Carolina 27709.
Date of the Event: April 5–8, 1987.
Description of the Event: To speak at Northern Telecom symposium held in Sarasota, Florida.
Commissioners Attending: N/A.
Other Employee(s) Attending: Karl W. Brimmer, Chief, Management Planning & Program Evaluation Staff—Office of Managing Director.

Amount of reimbursement:	
Transportation	$319.00
Subsistence	205.00
Other expenses	40.00
Total	565.00

Sponsoring Organization: Phoenix Telocator Network of America, 2000 M Street, N.W., Washington, D.C. 20036.
Date of the Event: April 29–May 1, 1987.
Description of the Event: To participate in Telocator Network of America 1987 Semi-Annual meeting held in Phoenix, Arizona.
Commissioners Attending: N/A.
Other Employee(s) Attending: Richard J. Shiben, Chief—Land Mobile & Microwave Division; Kevin J. Kelley, Supervisor Attorney Advisor—Common Carrier Bureau.

Amount of reimbursement:	
Transportation	$498.00
Subsistence	450.00
Other expenses	110.00
Total	1,058.00

Sponsoring Organization: Pierson, Ball and Dowd, 1200 18th Street, N.W., Washington, D.C. 20036.
Date of the Event: April 28, 1987.
Description of the Event: To participate in a conference held in Scottsdale, Arizona.
Commissioners Attending: N/A.
Other Employee(s) Attending: Gerald Vaughan, Deputy Bureau Chief Common Carrier—Bureau.

Amount of reimbursement:	
Transportation	$310.00
Subsistence	325.00
Other expenses	25.10
Total	660.10

Sponsoring Organization: Southeastern Association of Regulatory Utility Commissioners, Post Office Box 991, Montgomery, Alabama 36102.
Date of the Event: June 1, 1987.
Description of the Event: To participate in the 1987 SEARUC Conference in Birmingham, AL.
Commissioners Attending: N/A.
Other Employee(s) Attending: Cynthia Work, Supervisory Attorney-Advisor—Common Carrier Bureau.

Amount of reimbursement:	
Transportation	$243.00
Subsistence	75.00
Other expenses	30.00
Total	348.00

Sponsoring Organization: Tharring, Smith & Hargrove, Post Office Box 1151, Raleigh, North Carolina 27602.
Date of the Event: May 5–6, 1987.
Description of the Event: To participate in North Carolina Association of Broadcaster's EEO Seminar held in Raleigh, North Carolina.
Commissioners Attending: N/A.
Other Employee(s) Attending: Larry D. Eads, Chief, Audio Services—Mass Media Bureau; James Shook, Supervisory Attorney-Advisor—Mass Media Bureau.

Amount of reimbursement:	
Transportation	$546.00
Subsistence	316.00
Other expenses	22.00
Total	884.00

Sponsoring Organization: The Illinois Telephone Association, 300 East Monroe Street, Springfield, Illinois 62705.
Date of the Event: June 7–9, 1987.
Description of the Event: To participate in the annual meeting of the Illinois Telephone Association in Chicago, Illinois.
Commissioners Attending: N/A.
Other Employee(s) Attending: Barbara J. Lynch, Attorney-Advisor (PU)—Common Carrier Bureau.

Amount of reimbursement:	
Transportation	$355.00
Subsistence	105.00
Other expenses	20.00
Total	480.00

Sponsoring Organization: United States Telephone Association, 900 19th Street, N.W., Suite 800, Washington, DC 20006–2102.
Date of the Event: April 14–16, 1987.
Description of the Event: To participate and speak at a Western Telecommunications Showcase Seminar.
Commissioners Attending: N/A.
Other Employee(s) Attending: Colleen Boothby, Attorney-Advisor—Common Carrier Bureau.

Amount of reimbursement:	
Transportation	$289.50
Subsistence	306.00
Other expenses	60.00
Total	655.50

Sponsoring Organization: United States Telephone Association, 900 19th Street, N.W., Suite 800, Washington, DC 20006–2102.
Date of the Event: June 9–10, 1987.
Description of the Event: To participate in depreciation rate conference with General Telephone Company in Raleigh, North Carolina.
Commissioners Attending: N/A.
Other Employee(s) Attending: Richard G. Kirkman, Supervisory Electronics Engineer—Common Carrier Bureau.

Amount of reimbursement:	
Transportation	$162.00
Subsistence	237.00
Other expenses	100.00

Total	[illegible]

Sponsoring Organization: United States Telephone Association, 900 19th Street, N.W., Suite 800, Washington, DC 20006–2102.
Date of the Event: June 22–23, 1987.
Description of the Event: To participate in depreciation rate conference with General Telephone Company and the Ohio Public Utilities Commission in Indianapolis, Indiana.
Commissioners Attending: N/A.
Other Employee(s) Attending: Richard G. Kirkman, Supervisory Electronics Engineer—Common Carrier Bureau.

Amount of reimbursement:

Transportation	$234.52
Subsistence	75.00
Other expenses	30.00
Total	339.52

Sponsoring Organization: United States Telephone Association, 900 19th Street, N.W., Suite 800, Washington, D.C. 20006–2102.
Date of the Event: July 6–8, 1987.
Description of the Event: To participate in depreciation rate conferences with Pacific NW Bell in Seattle, Washington.
Commissioners Attending: N/A.
Other Employee(s) Attending: Richard G. Kirkman, Supervisory Electronics Engineer—Common Carrier Bureau.

Amount of reimbursement:

Transportation	$604.00
Subsistence	973.50
Other expenses	150.00
Total	1,727.50

Sponsoring Organization: Virginia Association of Broadcasters (VAB), 620 Stagecoach Road, Charlottesville, Virginia 22901.
Date of the Event: June 26, 1987.
Description of the Event: To attend VAB Convention in Virginia Beach, Virginia.
Commissioners Attending: N/A.
Other Employee(s) Attending: Glenn A. Wolfe, Equal Opportunity Officer—Mass Media Bureau.

Amount of reimbursement:

Transportation	$40.00
Subsistence	320.00
Other expenses	10.00
Total	370.00

Sponsoring Organization: Wiley, Rein & Fielding, 1776 K Street, N.W., Washington, D.C. 20006.
Date of the Event: April 24–26, 1987.
Description of the Event: FCC Bar Association Annual Seminar held in Wintergreen, VA.
Commissioners Attending: Commissioner James H. Quello.
Other Employee(s) Attending: Lauren J. Belvin, Senior Advisor to Commissioner Dawson; Stuart Z. Chiron, Attorney-Advisor—Office of the Commissioner; Diane S. Killory, General Counsel; Peter Pitsch, Chief—Office of Plans and Policy; Jerald N. Fritz, Chief of Staff—Office of the Chairman; Sharon B. Kelley, Attorney-Advisor—Office of General Counsel; David L. Donovan, Attorney—Advisor-Office of Commissioner Quello.

Amount of reimbursement:

Transportation	$157.80
Subsistence	1,215.10
Other expenses	137.75
Total	1,710.65

Federal Communications Commission.

William J. Tricarico,
Secretary.

[FR Doc. 87–19259 Filed 8–21–87; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067–0176
Title: Statewide Radiological Instrument inventory

Abstract: Maintenance of a statewide civil defense radiological instrument inventory is required to assist Federal and State Government to maintain the existing FEMA radiological instrument inventory of 4.3 million instruments, granted and dispersed to Federal, State, and local users. The inventory is maintained and calibrated by FEMA supported State Radiological Instrument Maintenance and Calibration (RIM&C) facilities.

Type of Respondents: State or local governments
Number of Respondents: 50
Burden Hours: 100
Frequency of Recording or Reporting: Annually

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646–2624, 500 C Street, SW., Washington, DC 20472.

Comments should be directed to Francine Picoult, (202) 395–7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Wesley C. Moore,
Director, Office of Administrative Support.

[FR Doc. 87–19244 Filed 8–21–87; 8:45 am]
BILLING CODE 6718–01–M

FEDERAL RESERVE SYSTEM

Acquisition of Company Engaged in Permissible Nonbanking Activities; The Chase Manhattan Corp.

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the officers of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 9, 1987.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Chase Manhattan Corporation,* New York, New York; to acquire through

its wholly-owned subsidiary, Chase Home Mortgage Corporation, selected assets and liabilities of Lyons Mortgage Corp, Rolling Meadows, Illinois, and thereby engage in the servicing of loans and the origination of residential mortgages pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 18, 1987.

William W. Wiles,
Secretary of the Board.

[FR Doc. 87-19235 Filed 8-21-87; 8:45 am]
BILLING CODE 6210-01-M

Acquisitions of Companies Engaged in Permissible Nonbanking Activities; Fleet Financial Group, Inc.; et al.; Correction

This notice corrects a previous Federal Register notice (FR Doc. 87-17929) published at page 29436 of the issue for Friday, August 7, 1987.

Under the Federal Reserve Bank of Boston, the entry for Fleet Financial Group, Inc. is revised to read as follows:

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

3. *Fleet Financial Group, Inc.*, Providence, Rhode Island; to acquire Norstar Investment Advisory Services, Inc.; Rochester, New York; and thereby engage in portfolio management and investment advice and consumer financial counseling pursuant to § 225.25(b)(4) and (b)(20) of the Board's Regulation Y.

8. *Fleet Financial Group, Inc.*, Providence, Rhode Island; to acquire Adams, McEntee & Company, Inc., New York, New York; and thereby engage in the sale and underwriting of state and municipal securities and brokerage of certain mutual fund shares pursuant to § 225.25(b)(16) and (b)(15) of the Board's Regulation Y.

9. *Fleet Financial Group, Inc.*, Providence, Rhode Island; to acquire Altman, Brown & Everett Inc., Albany, New York; and thereby engage in actuarial and employee benefits consulting services pursuant to Board Orders dated June 19, 1985 and August 19, 1986.

Comments on this application must be received by August 31, 1987.

Board of Governors of the Federal Reserve System, August 18, 1987.

William W. Wiles,
Secretary of the Board.

[FR Doc. 87-19233 Filed 8-21-87; 8:45 am]
BILLING CODE 6210-01-M

Application To Engage de novo in Permissible Nonbanking Activities; FNB Rochester Corp.

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any question of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 9, 1987.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *FNB Rochester Corp.*, Rochester, New York; to engage *de novo* through its subsidiary, First National Mortgage Inc., Rochester, New York, in making, procuring or acquiring loans and other extensions of credit pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 18, 1987.

William W. Wiles,
Secretary of the Board.

[FR Doc. 87-19236 Filed 8-21-87; 8:45 am]
BILLING CODE 6210-01-M

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Horizon Bancorp et al.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 14, 1987.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Horizon Bancorp*, Morristown, New Jersey; to acquire 100 percent of the voting shares of Princeton Bank of Pennsylvania, Philadelphia, Pennsylvania, a *de novo* bank.

B. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Security Bonco, Inc.*, Adams, North Dakota; to become a bank holding company be acquiring 100 percent of the voting shares of Security State Bank, Adams, North Dakota.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *United Community Corporation*, Oklahoma City, Oklahoma; to merge

with Arbuckle Bancorp, Inc., Sulphur, Oklahoma, and thereby indirectly acquire First Oklahoma Bank and Trust Company, Sulphur, Oklahoma; First Madill Bancorporation, Inc., Madill, Oklahoma, and thereby indirectly acquire First National Bank of Marshall County, Madill, Oklahoma; First Prague Bancorporation, Inc., Prague, Oklahoma, and thereby indirectly acquire First National Bank, Prague, Oklahoma; and Kiamichi Bancshares, Inc., Hugo, Oklahoma, and thereby indirectly acquire The Citizens State Bank, Hugo, Oklahoma. Comments on this application must be received by September 4, 1987.

D. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Western Community Bancorp*, Corona, California; to become a bank holding company by acquiring 100 percent of the voting shares of Western Community Bank of Corona, Corona, California.

Board of Governors of the Federal Reserve System, August 18, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-19237 Filed 8-21-87; 8:45 am]

BILLING CODE 6210-01-M

Formation of, Acquisition by, or Merger of Bank Holding Companies and Acquisition of Nonbanking Company; Marshall & Ilsley Corp.

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 11, 1987.

A. Federal Reserve Bank of Chicago (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Marshall & Ilsley Corporation*, Milwaukee, Wisconsin; to acquire 100 percent of the voting shares of Central Wisconsin Bankshares, Inc., Wausau, Wisconsin, and thereby indirectly acquire First American National Bank; Eagle River State Bank; Community State Bank; Mosinee Commercial Bank; Tri-County State Bank of Marshfield; The First National Bank of Neillsville; Community First Bank; Northern National Bank; Union National Bank of Ashland; Wisconsin Valley Trust Company; CWB Holdings—Onalaska, Inc.; Central National Bank of Wausau; Valley View Bank; and Bank of Plover.

In connection with this application, Applicant also proposes to acquire First American Investment, Inc., Wausau, Wisconsin, and thereby act as a broker or dealer retailing corporate securities over the counter; mutual funds retailer; put and call broker or dealer or option writer; underwriter or selling group participant; broker or dealer selling tax shelters or limited partnerships; broker or dealer selling oil and gas interest pursuant to § 225.25(b)(15) of the Board's Regulation Y; and Wisconsin Valley Trust Company, Wausau, Wisconsin, and thereby engage in trust services to individuals, corporations, and charitable institutions pursuant to § 225.25(b)(3) of the Board's Regulation Y. Tri-County State Bank of Marshfield engages in general insurance activities through its subsidiary, Greater Wisconsin Insurance Agency, Inc.

Board of Governors of the Federal Reserve System, August 18, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-19238 Filed 8-21-87; 8:45 am]

BILLING CODE 6210-01-M

Acquisition of Shares of Banks or Bank Holding Companies; Ronald J. Sanders

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 4, 1987.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Ronald V. Sanders, Higginsville, Missouri, to acquire 18.2 percent; Ryan Galli, Springfield, Missouri, 4.55 percent; Robert G. Russell, Sedalia, Missouri, 4.55 percent; Stephen L. Abney, 12.73 percent; Alfonso Sicat, 18.2 percent; Charles Alan Cavaness, 9.1 percent; Arthur. F. McClure, 9.1 percent; Densil Allen, 5.45 percent; Forrest Yankee, 4.55 percent; A.L. Folkner, 4.55 percent; Russell W. Lotspeich, 2.73 percent; Robert A. Lotspeich, 1.82 percent; Charles M. Lederer, 1.82 percent; and Irwin L. Graves, 2.73 percent; all of Warrensburg, Missouri; to acquire voting shares of Warrensburg Bancshares, Inc., Warrensburg, Missouri, and thereby indirectly acquire Community Bank of Warrensburg, Warrensburg, Missouri.

Board of Governors of the Federal Reserve System, August 18, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-19234 Filed 8-21-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Notice of Public Meeting Between the Centers for Disease Control (CDC) and the Cruise Ship Industry, Private Sanitation Consultants, and other Interested Parties

Time and Date: 9:00 a.m., Wednesday, September 23, 1987.

Place: Miami Port Authority Passenger Terminal No. 10, 1007 North American Way, Miami, Florida.

Status: Open to the Public for participation, comment, and observation, limited only by the space available.

SUPPLEMENTARY INFORMATION: A notice of two public meetings with the cruise ship industry, private sanitation consultants, and other interested parties to be convened by CDC was published in the **Federal Register**, Vol. 52, No. 115, pages 22848–22849, Tuesday, June 16, 1987.

The first of the two meetings was held in Miami, Florida, on Wednesday, June 24, 1987. Matters discussed at the meeting included the consideration of contracting, by CDC, the inspection portion of the Vessel Sanitation Program; the proposal to establish an advisory committee with representation from the cruise ship industry, private sanitation consultants, local health departments, and other interested parties; the minimum qualifications to be required of the Contractor's inspectors; and CDC's intent to begin charging fees, to conduct sanitation inspections of cruise ships as part of the Vessel Sanitation Program.

Matters To Be Considered. Experience to date with the operation of the Vessel Sanitation Program. CDC's decision on the matter of contracting, by CDC, the inspection portion of the Vessel Sanitation Program. Analysis of data relating to diarrheal illness occurring on board passenger cruise ships during the period 1975–1985.

For a period of 30 days following the meeting, through October 23, 1987, the official record of the meeting will remain open so that additional material or comments may be submitted to be made part of the record of the meeting.

Contact Person for More Information: Vernon N. Houk, M.D., Director, Center for Environmental Health, CDC, Atlantic, Georgia 30333. Telephone: FTS: 236–4111; Commercial: (404) 452–4111.

Dated: August 18, 1987.

Glenda S. Cowart,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 87–19223 Filed 8–19–87; 8:45 am]

BILLING CODE 4160-18-M

Open Meeting on Temporal Factors Influencing Carcinogenicity of Industrial Chemicals

The following meeting will be convened by the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) and will be open to the public for observation and participation, limited only by the space available:

Date: September 23, 1987.

Time: 9 a.m.–4 p.m.

Place: Room B–21, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Purpose: To review and discuss a project protocol which will compare tumorigenic, cytogenetic, and DNA adduct formation following inhalation of ethylene oxide at differing dose-rates. Viewpoints and suggestions from industry, organized labor, academic, other government agencies, and the public are invited.

Additional information may be obtained from: Mr. William J. Moorman, Division of Biomedical and Behavioral Sciences, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephone: FTS:648–8275. Commercial: 513/533–8275.

Dated: August 18, 1987.

Glenda S. Cowart,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 87–19224 Filed 8–21–87; 8:45 am]

BILLING CODE 4160-18-M

Health Care Financing Administration

[BERC–420–N]

Changes to Rural Referral Center Discharge Standards; Medicare Program

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: We are changing the way we determine the regional median urban number of discharges for hospitals to qualify as rural referral centers. The median urban discharge standards are to be determined based on the most current data available.

EFFECTIVE DATE: This notice is effective on August 24, 1987.

FOR FURTHER INFORMATION, CONTACT: Linda Magno, (301) 594–9343.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 1886(d) of the Social Security Act (the Act), hospitals generally are paid by the Medicare program for inpatient hospital services covered by Medicare in accordance with the prospective payment system. Certain hospitals, however, receive special treatment under that system. Section 1886(d)(5)(C)(i) of the Act specifically provides for exceptions and adjustments to prospective payment amounts, as the Secretary deems appropriate, to take into account the special needs of regional (including rural) and national referral centers. As one of the ways that a hospital may qualify as a rural referral center, a hospital must meet two mandatory criteria (specifying a minimum case-mix index and a minimum number of discharges) and at least one of three optional criteria (relating to specialty composition of medical staff, source of inpatients, or volume of referrals), in addition to being located in a rural area. These criteria are described in detail in 42 CFR 412.96(c).

In an August 31, 1984 final rule, we amended § 412.96 to provide that, with respect to the mandatory discharge criterion, a hospital's number of discharges for the specified cost reporting year must be at least equal to the national discharge criterion or to the regional discharge criteria (49 CFR 34762). Section 412.96 goes on to state that HCFA announces the number of discharges for each criterion, to be effective with cost reporting periods beginning during the next Federal fiscal year (FY), in the annual notice of prospective payment rates required by § 412.8(b).

In a final rule published on September 3, 1986 to update the inpatient hospital prospective payment system for FY 1987, we provided that, in order to qualify for rural referral center status for cost reporting periods beginning during FY 1987, a hospital's number of discharges for its cost reporting period beginning during Federal FY 1985 would have to be at least 5,369 or the applicable number of discharges for the census region in which the hospital is located, whichever is lower. We published a list (set forth below) of regional discharge values to be effective with cost reporting periods beginning on or after October 1, 1986. The values were derived from the 1981

median number of discharges from urban hospitals, which had applied previously. However, in recognition of the fact that total discharges had declined nationally and that rural hospitals had experienced a greater than average decline in discharges, we established the national and regional discharge values by adjusting the regional median urban discharge values from 1981 by the national decline (10.51 percent) in the number of discharges from rural hospitals from their 1981 levels through cost reporting periods beginning in Federal FY 1984.

REGIONAL MEDIAN URBAN DISCHARGE LEVELS PUBLISHED IN THE SEPTEMBER 3, 1986 FINAL RULE (51 FR 31471)

Region	Discharges
1	6,682
2	7,897
3	6,957
4	8,331
5	7,455
6	7,620
7	6,269
8	6,695
9	4,979

On October 21, 1986, the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509) was enacted. Section 9302(d)(1) of Pub. L. 99–509 amended section 1886(d)(5)(C)(i) of the Act to specify that the criterion for the number of discharges must be 5,000 discharges per year, or the median number of discharges for urban hospitals in the region in which the hospital is located, whichever is lower.

To implement the provisions of Pub. L. 99–509 concerning the prospective payment system update that had been published on September 3, 1986, we published a final rule with comment period on November 24, 1986 (51 FR 42231). In that final rule, we implemented section 9302(d)(1) of Pub. L. 99–509 by specifically stating in regulations text (§ 412.96(c)(2)(i)(B)) that, for cost reporting periods beginning on or after October 1, 1986, a hospital applying for rural referral center status must have discharges of at least 5,000 or the median number of discharges for urban hospitals located in its region, whichever is lower. No changes were made to the regional discharge values at that time.

II. Changes Concerning the Method of Establishing the Regional Median Numbers of Discharges

In publishing the November 24, 1986 final rule, we stated that the changes to the regulations that we promulgated under section 9302 of Pub. L. 99–509 (including the changes to § 412.96(c)(2)(i)(B) concerning rural referral center discharge criteria) were mandated by statute and required little interpretation. Nonetheless, the decision announced in the final rule concerning the definition of approved teaching programs, necessary for purposes of establishing rural referral center case-mix index criteria, did require interpretation, and we provided a period for public comment about the provision. Several commenters, however, took the opportunity to submit comments concerning the method we used to establish the regional median urban number of discharges, as announced in the September 3, 1986 and the November 24, 1986 final rules. The commenters made the following suggestions:

- It would be more equitable to determine the "actual" median urban discharges by census region rather than by adjusting the original regional discharge criteria by the national average decrease in discharges for rural hospitals from 1981 through 1984.
- The median number of discharges should be adjusted to reflect the greater decline in discharges for rural hospitals as compared to urban hospitals.

In light of the importance attached by Congress to the discharge criteria, we carefully considered these suggestions. We agree with the first suggestion that it is more appropriate to determine actual median urban discharge levels by census region. Therefore, we have recalculated the discharge standards to reflect the decline in the number of discharges using the most current data available, that is, total discharges from hospitals for cost reporting periods beginning in Federal FY 1984, the first year of the inpatient hospital prospective payment system. The revised values are listed below.

REVISED REGIONAL MEDIAN URBAN DISCHARGE LEVELS EFFECTIVE WITH COST REPORTING PERIODS OCCURRING DURING THE PERIOD OCTOBER 1, 1986–SEPTEMBER 30, 1987

Region	Discharges
1	7,366
2	8,436
3	7,415
4	8,337
5	6,647
6	6,557
7	5,216
8	8,773
9	4,491

We note that the regional discharge values are higher in some regions and lower in other regions than the standards published in the September 3, 1986 final rule (51 FR 31471). However, only hospitals in Census Region 9 are affected by the revised value since it is the only region in which the regional median urban discharge standard is lower than the national standard of 5,000 discharges, as provided in section 1886(d)(5)(C)(i) of the Act. For hospitals in Census Region 9 that qualify based on the lower (regional) discharge standard, we are allowing 60 days from the date of publication of this final notice to file an application for referral center status. As with other hospitals that submitted timely applications to qualify as rural referral centers pursuant to section 9302(d)(1)(B)(ii) of Pub. L. 99–509, for hospitals in Census Region 9 that submit to the HCFA regional office a timely application that is subsequently approved, payment to the hospitals as referral centers will be effective with discharges occurring on or after October 1, 1986.

We do not agree with the second suggestion that the regional number of discharges should be adjusted by the greater percentage decline in the number of discharges for rural hospitals versus urban hospitals. Section 1886(d)(5)(C)(i) of the Act requires that the regional number of discharges standard be based on the ". . . median number of discharges in *urban* hospitals in the region in which the hospital is located . . ." (Emphasis added.) Thus, we do not believe that we have authority to adjust these urban median discharge values.

III. Regulatory Impact Statement

Executive Order (E.O.) 12291 requires us to prepare and publish a regulatory impact analysis for any notice such as this that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in: an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a notice such as this will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat all hospitals as small entities.

This notice will affect only those few hospitals in Census Region 9 that had fewer than 4,979 discharges and more than 4,491 discharges. However, it is unlikely that this change in the

methodology for determining discharge standards would affect hospitals in other regions, with the possible exception of Census Region 7 in the foreseeable future. Thus, although payment as a rural referral center is certainly a significant financial advantage for an affected hospital, this change would affect only a few hospitals.

For these reasons, we have determined that a regulatory impact analysis is not required. Further, we have determined, and the Secretary certifies, that this notice will not have a significant economic impact on a substantial number of small entities. We have therefore not prepared a regulatory flexibility analysis.

IV. Other Required Information

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511) requires that any information collection requirements included in a document such as this must be submitted to and approved by the Executive Office of Management and Budget (EOMB). The requirements of this final notice do not impose any information collection requirements that must be approved under the Paperwork Reduction Act. Therefore, the notice need not be reviewed by EOMB for that purpose.

B. Waiver of 30-day Delay in Effective Date

We customarily provide a 30-day delay in the effective date. However, we may waive the delay if we find it to be impractical, unnecessary, or contrary to the public interest. We are applying the revised regional median urban discharge levels to hospital discharges occurring on or after October 1, 1986, as authorized under section 1886(d)(5)(C)(i) of the Act. We believe that the change we have adopted represents a better interpretation of the statutory provision. Furthermore, the change benefits hospitals in Census Region 9 applying for referral center status (in that it lowers the criterion) without disadvantaging any other hospitals. Accordingly, we believe that the revised discharge levels are in the best interest of the public and that they should be made retroactive to cost reporting periods occurring on or after October 1, 1986. For these reasons, we believe that a delay in the effective date is unnecessary and contrary to the public interest, and we find good cause to waive the delay.

(Section 1886(d)(5)(C)(i) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(C)(i)), 42 CFR 412.80)

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance Program)

Dated: June 26, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: July 28, 1987.

Otis R. Bowen,

Secretary.

[FR Doc 87–19248 Filed 8–21–87; 8:45 am]

BILLING CODE 4120-01-M

[IOA–012–N]

Task Force on Technology-Dependent Children; Meeting

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), this notice announces a meeting of the Task Force on Technology-Dependent Children.

DATE: The meeting will be held on September 22, 1987 from 9:00 a.m. to 6:00 p.m., C.D.T., and on September 23, 1987 from 9:00 a.m. to 2:00 p.m., C.D.T. The meeting will be open to the public.

ADDRESS: The meeting will be held in the Ramada Executive House, 71 East Wacker Drive, Chicago, IL 60601.

FOR FURTHER INFORMATION CONTACT: Bill Pickens, Executive Director, Task Force on Technology-Dependent Children, Department of Health and Human Services, Room 4414, HHS North Building, 330 Independence Avenue SW., Washington, DC 20201, (202) 245–0070.

SUPPLEMENTARY INFORMATION:

Purpose

The Task Force on Technology-Dependent Children, established under section 9520 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272), investigates alternatives to institutional care for technology-dependent children. Technology-dependent children are those with chronic conditions requiring continuing use of medical technology.

The Task Force must report to the Secretary of Health and Human Services, the Administrator of the Health Care Financing Administration (HCFA), and to the Congress concerning alternatives to institutional care for technology-dependent children. The Task Force must develop recommendations designed to—

(1) Identify barriers that prevent the provision of appropriate care in a home or community setting to meet the special needs of technology/dependent children; and

(2) Recommend changes in the provision and financing of health care in private and public health care programs (including appropriate joint public-private initiatives) so as to provide home an community-based alternatives to the institutionalization of technology-dependent children.

The Task Force will address fully the two specified goals before it takes up any other question. To the extent that time and resources permit, the Task Force may develop recommendations that would address additional concerns regarding technology-dependent children. The Task Force recommendations are intended to be use only at the option of the Department of Health and Human Services and the Congress.

Agenda

The Task Force will conduct a business meeting to evaluate and review testimony, data, and information that has been received to date. It will consider barriers, recommendations, and possible solutions for technology-dependent children.

The public is invited to present testimony to the Task Force. We request those wishing to testify to contact the Task Force by September 11, 1987.

Agenda items are subject to change as priorities dictate.

(Sec. 10(a)(2) of Pub. L. 92–463, as amended (5 U.S.C. App. 1, Sec. 1–15) and Sec. 9520 of Pub. L. 99–272 (42 U.S.C. 1395a note); 45 CFR Part 11)

Dated: August 7, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 87–19339 filed 8–21–87; 8:45 am]

BILLING CODE 4120-01-M

Statement of Organization, Functions and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA) Federal Register Vol. 52, No. 91, pp. 17832–17833, dated Tuesday, May 12, 1987) is amended to reflect a reorganization within the Office of the Associate Administrator for Management and Support Services. The reorganization within the Office of Statistics and Data Management, Bureau of Data Management and Strategy, will centralize part of the effort needed to

carry out the Project to Redesign Information Systems Management (PRISM).

The specific changes to Part F. are as follows:

• Section FH.20.D.4.b., Division of Statistical Analysis (FHE72) is deleted in its entirety and replaced by an updated functional statement to read as follows:

b. Division of Statistical Analysis (FHE76)

Performs planning, organization, and coordination activities required to build and control HCFA's program data needs. Formulates and administers policy necessary for developing strategies to identify, organize, store (inventory), and maintain security over the Agency's program data resources. Performs strategic data resource planning to develop long-range plans to meet future data requirements. Coordinates requirements definitions for data base and non-data base systems design and implementation, ensuring consistency with long-term Agency goals. Establishes and maintains a data dictionary system to store documentation on all systems, programs, and databases. Assists operational components in the development and design of databases to ensure that informational needs are adequately addressed. Plans, organizes, coordinates, and controls activities required to assure the timely, accurate, cost-effective, and successful development and implementation of new and revised decision support systems to support Medicare statistical policy and program management information development. Plans and conducts comprehensive analyses of complex and diversified areas such as systems analysis and design methodologies, computer programming methods and techniques, software testing, validation and systems acceptance, configuration of HCFA automated data processing (ADP) and data communications resources, and data base security and integrity. Formulates contracting strategies and prepares procurement packages for major contractual agreements concerning Office workload. Provides highly technical data analysis and processing support needed to analyze current and proposed health care delivery systems, the implications of experimental financing methods on providers and physicians, the quality and accessibility of care being received by beneficiaries, the monetary effects of new legislation on alternative reimbursement methodologies, and related research studies of concern to policymakers and program managers. Develops data bases and computer software for addressing research initiatives; ad hoc data request; statistical, legislative, and policy issues; and computer-based simulations in support of studies by HCFA's researchers and program managers. Manages the Hospital Cost Report Information System which is the national data base of all Medicare hospital cost reports. Collects, validates, and processes automated and hard copy cost reports; generates routine and user-specific research, actuarial, and budgetary reports; and incorporates modifications to the systems that will handle revised user requirements and changes in cost reports. Prepares documentation for and participates in the preparation of fiscal intermediary manual instructions. Coordinates program support to Office staff in such areas as disk space requirements, ADP equipment acquisition, and tape handling. Provides Office focus for ADP systems standards and documentation.

• Section FH.20.D.4.d., Division of Data Administration (FHE74) is deleted in its entirety and replaced by a new division whose functional statement reads as follows:

d. Division of Coding and Standardization Policy (FHE75)

Develops policy by which the quality of data is to be measured to improve the efficiency and effectiveness of information management in HCFA. Develops and implements procedures to ensure the integrity and proper usage of data and provides counsel on data collection policy and procedures, forms design, and forms clearance. Participates in the development and establishment of data standards used for areas such as uniform billing, uniform reporting, and uniform coding systems. Develops, maintains, and coordinates the publication and dissemination of manuals such as the Statistical Files Manual and HCFA Data Profiles to inform other government agencies and non-government organizations of the data maintained in the HCFA statistical files. Provides advice, consultation, and coordination on the availability and use of HCFA's data files. Develops and implements data release policies and costing methodologies to be used when releasing information to the public. Works with components of the health care industry in the development of medical coding policies to improve the efficiency and effectiveness of information management in HCFA. Serves as the Agency focal point, and provides staff support for the Director, BDMS, for data policy task forces and advisory groups such as the National Committee on Vital and Health Statistics, the Interagency Task Force on the Uniform Ambulatory Medical Care Minimum Data Set, the Task Force on Long-Term Care Policies, the Health Information Policy Council, and the Washington Business Group on Health. Formulates HCFA policy for the development and maintenance of new and revised codes for the International Classification of Diseases—Ninth Revision—Clinical Modification (ICD-9-CM) function. Serves as the Bureau's focal point for the development of HCFA's Common Procedure Coding System. Coordinates changes in medical codes and coding policy with Federal and non-Federal organizations. Develops and analyzes profiles of diagnostic and procedural information reported by providers (institutional and non-institutional), intermediaries, and carriers. Participates in the development of medical coding related training materials. Advises other Federal agencies regarding medical coding and policy. Assists user groups in defining medical coding requirements.

Date: August 4, 1987.

Bartlett S. Fleming,

Associate Administrator for Management and Support Services.

[FR Doc. 87-19249 Filed 8-21-87; 8:45 am]

BILLING CODE 4120-03-M

National Institutes of Health

National Heart, Lung, and Blood Institute; Arteriosclerosis, Hypertension and Lipid Metabolism Advisory Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Arteriosclerosis, Hypertension and Lipid Metabolism Advisory Committee, National Heart, Lung, and Blood Institute, October 29-30, 1987, Federal Building, Conference Room B119, 7550 Wisconsin Avenue, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 8:30 a.m. to approximately 5:00 p.m. on Thursday, October 29, and from 8:30 a.m. to adjournment on Friday, October 30, to evaluate program support in Arteriosclerosis, Hypertension and Lipid Metabolism. Attendance by the public will be limited on a space available basis.

Ms. Terry Bellicha, Chief, Communication and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda,

BEST COPY AVAILABLE

Maryland 20892, (301) 496-4236, will provide a summary of the meeting and a roster of the committee members.

Dr. G.C. McMillan, Associate Director, Arteriosclerosis, Hypertension and Lipid Metabolism Program, NHLBI, Room 4C12, Federal Building, National Institutes of Health, Bethesda, MD 20892, (301) 496-1613, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research, National Institutes of Health)

Dated: August 17, 1987.

Betty J. Beveridge,
NIH Committee Management Officer.

[FR Doc. 87-19350 Filed 8-21-87; 8:45 am]
BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Blood Diseases and Resources Advisory Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Blood Diseases and Resources Advisory Committee, National Heart, Lung, and Blood Institute, October 26-27, 1987, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. The Committee will meet in Building 31, Conference Room 8, C Wing.

The entire meeting will be open to the public from 9 a.m. to recess on October 26, and from 9 a.m. to adjournment on October 27 to discuss the status of the Blood Diseases and Resources program needs and opportunities. Attendance by the public will be limited to space available.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496-4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. Fann Harding, Assistant to the Director, Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, Federal Building, Room 5A-08, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496-1817, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: August 17, 1987.

Betty J. Beveridge,
Committee Management Officer, NIH.

[FR Doc. 87-19348 Filed 8-21-87; 8:45 am]
BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Cardiology Advisory Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Cardiology Advisory Committee, National Heart, Lung, and Blood Institute, October 26-27, 1987, Building 31C, Conference Room 8, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 8:00 a.m. on October 26 to adjournment on October 27. Attendance by the public will be limited to space available. Topics for discussion will include a review of the research programs relevant to the Cardiology area and consideration of future needs and opportunities.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Room 4A21, Building 31, National Institutes of Health, Bethesda, Maryland 20892, telephone (301) 496-4236, will provide a summary of the meeting and a roster of the Committee members.

Eugene R. Passamani, M.D., Acting Associate Director for Cardiology, Division of Heart and Vascular Diseases, National Heart, Lung, and Blood Institute, Room 320, Federal Building, Bethesda, Maryland 20892, telephone (301) 496-5421, will furnish substantive program information upon request.

Dated: August 17, 1987.

Betty J. Beveridge,
NIH Committee Management Officer.

[FR Doc. 87-19349 Filed 8-21-87; 8:45 am]
BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Clinical Applications and Prevention Advisory Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Clinical Applications and Prevention Advisory Committee, Division of Epidemiology and Clinical Applications, National Heart, Lung, and Blood Institute, National Institutes of Health, on October 5-6, 1987, in Building 31, Conference Room 9, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on October 5 from 9 a.m. to recess and from 8:30 a.m. to adjournment on October 6 to discuss new initiatives, program policies, and issues. Attendance by the public will be limited to space available.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-4236, will provide a summary of the meeting and a roster of committee members upon request.

Dr. Lawrence Friedman, Acting Director, Division of Epidemiology and Clinical Applications, Federal Building, Room 212, Bethesda, Maryland 20892, (301) 496-2533, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research, National Institutes of Health.)

Dated: August 17, 1987.

Betty J. Beveridge,
Committee Management Officer, NIH

[FR Doc. 87-19347 Filed 8-21-87; 8:45 am]
BILLING CODE 4140-01-M

Public Health Service

Meeting of the National Committee on Vital and Health Statistics, Subcommittee on Long Term Care Statistics

Pursuant to the Federal Advisory Act (Pub. L. 92-463), notice is hereby given that the National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Long Term Care Statistics established pursuant to 42 USC 242k, section 306(k)(2) of the Public Health Service Act, as amended, will meet on Monday, September 28, 1987 from 1:00 p.m. to 5:00 p.m. and Tuesday, September 29, 1987 from 9:00 a.m. to 3:00 p.m. in Room 303A of the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

The Subcommittee will conduct a Board and Care Survey review and begin the direct service and the classification review.

Further information regarding the Subcommittee may be obtained by contacting Richard Havlik, National Center for Health Statistics, Room 2-12, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, telephone (301) 436-7050.

BEST COPY AVAILABLE

Date: August 12, 1987.

Robert A. Israel,

Deputy Director, National Center for Health Statistics.

[FR Doc. 87-19250 Filed 8-21-87; 8:45 am]

BILLING CODE 4160-17-M

Meeting of the National Committee on Vital and Health Statistics, Subcommittee on Medical Classification Systems

Pursuant to the Federal Advisory Act (Pub. L. 92-463), notice is hereby given that the National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Medical Classification Systems established pursuant to 42 U.S.C. 242k, section 306(k)(2) of the Public Health Service Act, as amended, will meet on Wednesday, September 16, 1987 from 8:45 a.m. to 5:00 p.m. and Thursday, September 17, 1987 from 8:45 a.m. to 1:30 p.m. in Room 303A of the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

The Subcommittee will review the current and future plans for the International Classification of Diseases.

Further information regarding this meeting of the Subcommittee may be obtained by contacting Richard Havlik, National Center for Health Statistics, Room 2-12, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, telephone (301) 436-7050.

Dated: August 12, 1987.

Robert A. Israel,

Deputy Director, National Center for Health Statistics.

[FR Doc. 87-19251 Filed 8-21-87; 8:45 am]

BILLING CODE 4160-17-M

Statement of Organization, Functions and Delegations of Authority; Office of the Assistant Secretary for Health

Part H, Public Health Service (PHS), Chapter HA (Office of the Assistant Secretary for Health), of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (DHHS) (42 FR 61318, December 2, 1977, as amended most recently at 52 FR 23502, June 22, 1987), is amended to reflect the establishment of a National Vaccine Program Office in the Office of the Assistant Secretary for Health reporting directly to the Assistant Secretary for Health who also serves as the Director of the National Vaccine Program. The Office will provide support to the activities of the National Vaccine Program as described in subtitle 1 of Title III, Pub. L. 99-660.

Office of the Assistant Secretary for Health

Under Part H, Chapter HA, Office of the Assistant Secretary for Health (OASH), Section HA-10, Organization, add to the list of organizations, item 20, National Vaccine Program Office (HA2).

Under Section HA-20, Functions, after the statement for the *National Aids Program Office (HAA),* add the following title and statement:

National Vaccine Program Office (HA2)

The National Vaccine Coordinator serves as the head of the Office and reports directly to the Director of the National Vaccine Program for activities regarding the National Vaccine Program (NVP). The Office: (1) Serves as PHS focus in coordinating a national vaccine program including governmental and nongovernmental vaccine activities; (2) identifies issues, and makes recommendations to the Director, NVP, concerning vaccine activities; (3) develops the NVP Implementation Plan for approval by the Director; (4) develops and maintains a directory of organizations and calendar of events involved in vaccine activities; (5) coordinates PHS public education activities related to vaccines; (6) monitors Federal spending for vaccine activities; (7) provides executive secretary and administrative support to the National Vaccine Advisory Committee; and (8) prepares the National Vaccine Report for the Director, NVP to submit to Congress.

Date: August 13, 1987.

Robert E. Windom,

Assistant Secretary for Health.

[FR Doc. 87-19252 Filed 8-21-87; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. D-87-857]

Office of the Manager, Milwaukee Office; Designation of Succession

AGENCY: Department of Housing & Urban Development.

ACTION: Designation of Succession.

SUMMARY: The Manager is designating officials who may serve as the Acting Manager during the absence, disability or vacancy in the position of the Manager.

EFFECTIVE DATE: The designation is effective August 4, 1987.

FOR FURTHER INFORMATION CONTACT: Lewis M. Nixon, Regional Counsel, Chicago Regional Office, Department of Housing & Urban Development, 300 South Wacker Drive, Chicago, Illinois 60606-6765, 312-353-4681. (This is not a toll-free number.)

Designation:

Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence, disability, or vacancy in the position of the Manager, with all the powers, functions, and duties redelegated or assigned to the Manager: Provided, that no official is authorized to serve as Acting Manager unless all preceding listed officials in this designation are unavailable to act by reason of absence, disability or vacancy in the position.

1. Deputy Manager
2. Chief Counsel
3. Director, Housing Development
4. Director, Housing Management
5. Director, CPD Division
6. Director FHEO Division
7. Chief, Valuation

This designation supersedes the designation published at Docket No. D-86-0822, **Federal Register** Vol. 51, No. 174, dated Tuesday, September 9, 1986.

Authority: Delegation of Authority, 27 FR 4319 (1962); Sec. 9(c), Department of Housing and Urban Development Act, 42 U.S.C. 3531 note; and Interim Order 11, 31 FR 615 (1966).

Delbert F. Reynolds,

Manager, Milwaukee Office.

Gertrude W. Jordan,

Regional Administrator—Regional Housing Commissioner, Region No. 5.

FR Doc. 87-19370 Filed 8-21-87; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-060-87-4333-10]

Meeting of the California Desert District Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting notice for California Desert District Advisory Council and agenda item additions for the meeting.

SUMMARY: The September 3, 1987, scheduled meeting of the California Desert District Advisory Council will begin at 1:00 p.m. instead of 2:00 p.m. due to an agenda item addition. The meeting will be held in the Victoria Room, Park Inn, 1150 University Avenue, Riverside, California and will be divided

into two sessions: 1:00 p.m. to 5:00 p.m. and 7:00 p.m. to 9:00 p.m.

SUPPLEMENTARY INFORMATION: The regular meeting for the California Desert District Advisory Council, scheduled for September 3, 1987, at the Park Inn, 1150 University Avenue, Riverside, California, was originally scheduled with only one agenda item: final public meeting to receive public comment on the East Mojave National Scenic Area Draft Management Plan and Environmental Assessment.

The meeting agenda has now been expanded to include one additional item: the presentation of a preliminary recommendation of future recreation use at Windy Point near Palm Springs in Riverside County. The meeting will now open at 1:00 p.m., instead of 2:00 p.m., with presentation of this preliminary recommendation followed by discussion and public comment.

The remainder of the meeting, from 2:00 p.m to 5:00 p.m. and from 7:00 p.m. to 9:00 p.m., will be devoted to receiving public comment on the East Mojave National Scenic Area Draft Management Plan and Environmental Assessment. This will be the last of 10 public meetings and informal workshops on the Draft Plan. The public review and comment period is scheduled to close September 11, 1987.

Written comments should be sent to the Bureau of Land Management, Needles Resource Area, 101 West Spike's Road, P.O. Box 888, Needles, California 92363. Copies of the Draft Plan and Assessment are available at Bureau of Land Management offices throughout Southern California.

FOR FURTHER INFORMATION, CONTACT: Bureau of Land Management Public Affairs Office, California Desert District, 1695 Spruce Street, Riverside, California 92507, (714) 351–6383.

Dated: August 17, 1987.

Gerald E. Hillier,

District Manager.

[FR Doc. 87–19222 Filed 8–21–87; 8:45 am]

BILLING CODE 4310–40–M

Minerals Management Service

Development Operations Coordination Document; ARCO Oil and Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that ARCO Oil and Gas Company has submitted a DOCD describing the activities its proposes to conduct on Lease OSC–G 3386, Block 601, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Sabine Pass, Texas.

DATE: The subject DOCD was deemed submitted on August 13, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: August 14, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87–19229 Filed 8–21–87; 8:45 am]

BILLING CODE 4310–MR–M

Development Operations Coordination Document; ODECO Oil & Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that ODECO Oil & Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 074, Block 20, South Pelto Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from onshore bases located at Dulac and Houma, Louisiana.

DATE: The subject DOCD was deemed submitted on August 13, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: August 14, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87–19230 Filed 8–21–87; 8:45 am]

BILLING CODE 4310–MR–M

Development Operations Coordination Document; Samedan Oil Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Samedan Oil Corporation has submitted a DOCD describing the activities it porposes to conduct on Lease OCS–G 2896, Block 242, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on August 17, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: August 17, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87–19231 Filed 8–21–87; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Samedan Oil Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Samedan Oil Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 5537, Block 80, Ship Shoal Area, offshore Louisiana. Proposed plan for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on August 13, 1987. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also avaiable for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: August 14, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87–19232 Filed 8–21–87; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf; Availability of Proposed Notice of Sale for Beaufort Sea Oil and Gas Lease Sale 97

The proposed Notice of Sale for Sale 97, Beaufort Sea, may be obtained by written request to the Alaska Outer Continental Shelf (OCS) Region, Minerals Management Service, Room 544, 949 East 36th Avenue, Anchorage, Alaska 99508–4302, or by telephone (907) 261–4081.

The final Notice of Sale will be published in the **Federal Register** at least 30 days prior to the date of bid opening. Bid opening is scheduled for January 1988.

With regard to oil and gas leasing on the OCS, the Secretary of the Interior, pursuant to section 19 of the OCS Land Act, as amended, has provided the affected States the opportunity to review the proposed Notice of Sale.

Comments should be submitted to the Minerals Management Service, 18th and C Streets NW., Room 4230 (MS–645), Washington, DC 20240, within 60 days of this Notice.

This notice of Availability is hereby published pursuant to 30 CFR 256.29, as amended (51 FR 37177 on October 20, 1986), as a matter of information to the public.

Dated: August 20, 1987.

David W. Crow,

Acting Director, Minerals Management Service.

[FR Doc. 87–19478 Filed 8–21–87; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Availability of an Environmental Assessment; Big Cypress National Preserve, FL

SUMMARY: Notice is hereby given pursuant to § 9.52(b) of Title 36, Part 9, Subpart B of the Code of Federal Regulations of the availability for review of and comment on an environmental assessment for an oil and gas Plan of Operations submitted by Shell Western E & P Inc., for the purpose of conducting geophysical seismic exploration surveys in the Big Cypress National Preserve.

DATE: Comments received on or before October 23, 1987, will be entered into the official records.

ADDRESSES: Copies of the environmental assessment are available for review at:

Big Cypress National Preserve, S.R. Box 110, Satinwood Drive, Ochopee, Florida 33943, Telephone (813) 695–2000

Office of Science and Natural Resources, Southeast Regional Office, National Park Service, 75 Spring Street SW., Atlanta, Georgia 30303, Telephone (404) 331–4916

Miami-Dade Public Library, 101 West Flagler, Miami, Florida 33130

Collier County Public Library, 650 Central Avenue, Naples, Florida 33940

FOR FURTHER INFORMATION CONTACT: Mr. Fred Fagergren, Superintendent, Big Cypress National Preserve.

Date: August 6, 1987.

C. W. Ogle,

Regional Director, Southeast Region.

[FR Doc. 87-19243 Filed 8-21-87; 8:45 am]

BILLING CODE 4310-70-M

Cape Cod National Seashore Advisory Commission, South Wellfleet, Meeting;

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770, 5 U.S.C. App. 1 s 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held Friday, September 11, 1987.

The Commission was reestablished pursuant to Pub. L. 99-349, Amendment 24. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of the Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The meeting will convene at Park Headquarters, Marconi Station, South Wellfleet, Massachusetts at 1:00 p.m. for the following reasons:

1. Commission Business
   (a) Adoption of Rules of Procedure
   (b) Election of Permanent Officers
2. Three Sisters Relocation
3. Parkwide Bicycle Trail Study

The meeting is open to the public. It is expected that 50 persons will be able to attend the session in addition to the Commission members.

Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the official listed below at least seven days prior to the meeting. Further information concerning this meeting may be obtained from the Superintendent, Cape Cod National Seashore, So. Wellfleet, MA 02663.

Herbert S. Cables, Jr.,

Regional Director.

August 12, 1987

[FR Doc. 87-19242 Filed 8-21-87; 8:45 am]

BILLING CODE 4310-70-M

Illinois and Michigan Canal National Heritage Corridor Commission; Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, 86 Stat. 770, 5 U.S.C. App. 1, as amended by the Act of September 13, 1976, 90 Stat. 1247, that a meeting of the Illinois and Michigan Canal National Heritage Corridor Commission will be held September 3, 1987, beginning at 1:30 p.m. at the Illinois Waterway Visitor Center, Rural Route 1, Dee Bennet Road, Ottawa, Illinois.

The Commission was originally established on August 24, 1984, pursuant to provisions of the Illinois and Michigan Canal National Heritage Corridor Act of 1984, 98 Stat. 1456, 16 U.S.C. sec. 461 note, to implement and support the conceptual plan.

Matters to be discussed at the meeting will include the budget for fiscal year 1988 and the revolving loan fund.

The meeting will be open to the public. Interested persons may submit written statements to the official listed below prior to the meeting. Further information concerning the meeting may be obtained from Alan M. Hutchings, Chief, Division of External Affairs, Midwest Region, National Park Service, 1709 Jackson Street, Omaha, Nebraska 68102, telephone 402-221-3481 (FTS 864-3481). Minutes of the meeting will be available for public inspection at the Midwest Regional Office 3 weeks after the meeting.

William W. Schenk,

Acting Regional Director, Midwest Region.

[FR Doc. 87-19240 Filed 8-21-87; 8:45 am]

BILLING CODE 4160-70-M

Receipt of Mining Plans of Operations; Wrangell-St. Elias National Park and Preserve; Alaska Region

AGENCY: National Park Service, Alaska region, Interior.

SUMMARY: The Wrangell-St. Elias National Park and Preserve in the Alaska Region of the National Park Service has received mining Plans of Operation from Mr. James R. Moody and Mr. Donald E. Dippel, operators on the Bonanza Creek Claims and the Big Eldorado Creek Claims respectively, in the Gold Hill area of the Chisana Mining District within the National Preserve. Engineering Analyses and Environmental Assessments for these Plans have been prepared and are being processed. The Plans of Operations and related agency prepared documents are on file at Headquarters, Wrangell-St. Elias NP/P, mile 105.2, Richardson Highway, Glennallen, Alaska, or at the Alaska Regional Office, 2525 Gambell, Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Richard H. Martin, Superintendent, Wrangell-St. Elias NP/P, P.O. Box 29, Glennallen, Alaska 99588.

Dated: August 11, 1987.

Richard J. Stenmark,

Acting Regional Director, Alaska Region.

[FR Doc. 87-19241 Filed 8-21-87; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 466]

Railroad Cost of Capital—1986

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision.

SUMMARY: On August 21, 1987, the Commission served a decision to update its estimate of the railroad industry's cost of capital for 1986. The composite cost of capital rate for 1986 is found to be 11.7 percent, based on a current cost of debt of 8.9 percent, a cost of preferred equity capital of 8.7 percent, a cost of common equity capital of 13.4 percent, and a 34.8 percent debt/1.6 percent preferred equity/63.6 percent common equity capital structure mix. The cost of capital finding made in this proceeding will enable the Commission to make its annual determination of railroad revenue adequacy for 1986.

FOR FURTHER INFORMATION CONTACT: Ward L. Ginn, Jr., (202) 275-7489.

SUPPLEMENTARY INFORMATION: The cost of capital finding in this decision should be utilized to evaluate the adequacy of railroad revenues for 1986 under the standards and procedures promulgated in Ex Parte No. 393 (Sub-No. 1), *Standards for Railroad Revenue Adequacy*, served December 31, 1986. This finding may also be utilized in proceedings involving the prescription of maximum reasonable rate levels.

To purchase a copy of the full decision write to: T.S. Infosystems, Inc., Room 2229, Interstate Commerce Commission Building, 12th & Constitution Avenue NW., Washington, DC 20423 (202) 289-4357 (DC Metropolitan Area) (202) 275-1721 TDD for hearing impaired.

Decided: August 12, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Commissioner Simmons dissented in part with a separate expression. Vice Chairman Lamboley dissented with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 87-19383 Filed 8-21-87; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 472]

Railroad Revenue Adequacy; 1986 Determination

AGENCY: Interstate Commerce Commission.

ACTION: Notice of 1986 determination of rail revenue adequacy.

SUMMARY: In Ex Parte No. 393, *Standards for Railroad Revenue Adequacy*, 364 I.C.C. 803 (1981), as modified in Ex Parte No. 393 (Sub. No. 1), *Standards for Railroad Revenue Adequacy*, served December 31, 1986, the Commission determined that a railroad would be considered revenue adequate under 49 U.S.C. 10704(a) if the railroad achieved a rate of return at least equal to the current cost of capital. This decision applies the rate of return standard to data for the year 1986. Using these data, the Commission has now determined that none of the 18 Class I freight carriers are revenue adequate.

FOR FURTHER INFORMATION CONTACT: Ward L. Ginn, Jr., (202) 275-7489.

SUPPLEMENTARY INFORMATION: To purchase a copy of the full decision write to: T.S. Infosystems, Inc., Room 2229, Interstate Commerce Commission Building, 12th & Constitution Avenue NW., Washington, DC 20423 (202) 289-4357 (DC Metropolitan Area) TDD for hearing impaired: (202) 275-1721.

Decided: August 12, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Vice Chairman Lamboley dissented with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 87-19364 Filed 8-21-87; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31024]

The Durango & Silverton Narrow Gauge Railroad Company; Petition for Declaratory Order or Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Commission exempts the Durango & Silverton Narrow Gauge Railroad Company from the requirements of 49 U.S.C. Subtitle IV with respect to operation of its 49.35-mile line, known as the Silverton Branch, between Durango and Silverton, CO, subject to the condition that it consult with the Colorado State Historic Preservation Officer for compliance with section 106 of the National Preservation Act, 16 U.S.C. 470.

DATES: The exemption is effective on September 23, 1987. Petitions for stay must be filed by September 3, 1987. Petitions for reconsideration must be filed by September 14, 1987.

ADDRESSES: Send pleadings, referring to Finance Docket No. 31024 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Edward T. Lyons, Jr., 1600 Lincoln Center, Lincoln Street, Denver, CO 80264

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423 or call (202) 275-4357. For hearing impaired, call (202) 275-1721.

Decided: August 14, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Commissioner Andre commented with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 87-19365 Filed 8-21-87; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31067]

Dissolution of Lake Superior Terminal and Transfer Railway Co.; Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts under 49 U.S.C. 10505 from the requirements of 49 U.S.C. 11343(a)(1), the dissolution of Lake Superior Terminal and Tranfer Railway Company, which in effect merges it into its rail carrier owners Burlington Northern Railroad Company, Chicago and North Western Transportation Company, and Soo Line Railroad Company. The exemption is subject to standard labor protective conditions.

DATES: The exemption will be effective on September 23, 1987. Petitions for stay must be filed by September 3, 1987, and petitions for reconsideration must be filed by September 14, 1987.

ADDRESSES: Send pleadings, referring to Finance Docket No. 31067, to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Petitioner's representative: Peter M. Lee, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 87102

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275-7245. (TDD for hearing impaired: (202) 275-1721.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357 (assistance for the hearing impaired is available through TDD services (202) 275-1721) or by pickup from TSI in Room 2229 at Commission headquarters.

Decided: August 14, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87-19366 Filed 8-21-87; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31063]

Midsouth Corp.; Control Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of 49 U.S.C. 11343 the continuance of control of MidLouisiana Rail Corporation by MidSouth Corporation, which already controls MidSouth Rail Corporation, subject to employee protective conditions.

DATES: This exemption will be effective on September 3, 1987. Petitions for reconsideration must be filed by September 14, 1987.

ADDRESSES: Send pleadings referring to Finance Docket No. 31063 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
Petitioner's representative: Mark M. Levin, Weiner, McCaffrey, Brodsky & Kaplan, P.C., Suite 800, 1350 New York Avenue NW., Washington, DC 20005-4797

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. (TDD for hearing impaired: (202) 275-1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase

a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289–4357 (assistance for the hearing impaired is available through TDD services (202) 275–1721) or by pickup from TSI in Room 2229 at Commission headquarters.

Decided: August 17, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87–19367 Filed 8–21–87; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31069]

Montana Rail Link, Inc.; Exemption Acquisition and Operation

Montana Rail Link, Inc. (MRL) has filed a notice of exemption to acquire and operate certain properties of Burlington Northern Railroad Company (BN).[1] The properties consist of 544.30 miles of non-contiguous BN main rail line (which MRL will lease and have an option to purchase) extending: From Huntley, MT (milepost 209.91) to west of Helena, MT at mainline number one (milepost 2.95) and mainline number two (milepost 5.02); from Laurel, MT (milepost 15.15) to south of Laurel, MT (milepost 514.47); from Moss Main MT (milepost 0.00) to a point north of Moss Main, MT (milepost 0.50); and from Phosphate, MT (milepost 52.94) to Sand Point, ID (milepost 2.79). The transaction will also include MRL's acquisition and operation of 286.32 miles of BN branch rail lines extending: From De Smet, MT (milepost 0.00) to Paradise, MT (milepost 64.27); from Missoula, MT (milepost 0.02) to Darby, MT (milepost 64.66); from Dixon, MT (milepost 0.46) to Polson, MT (milepost 33.40); from Sappington, MT (milepost 0.00) to Harrison, MT (milepost 9.48); from Whitehall, MT (milepost 0.00) to Alder, MT (milepost 45.58); from Helena, MT (milepost 218.05) to Montana City, MT (milepost 222.76); from Logan, MT (milepost 0.28) to Whitehall, MT (milepost 39.00); and from Drummond, MT (milepost 0.00) to Philipsburg, MT (milepost 25.96).

MRL will also operate pursuant to bridge-only trackage rights over BN's rail line upon lease of the property from BN, from Sand Point, ID (milepost 2.79) to Spokane, WA (milepost 88.17); from mainline number one west of Helena, MT (milepost 2.95) to Phosphate, MT (milepost 52.94); and from mainline number two west of Helena, MT (milepost 5.02) to Phosphate, MT (milepost 52.94). BN will retain bridge-only trackage rights from Huntley, MT (milepost 209.91) to Moss Main, MT (milepost 0.50) and to the yard at Laurel, MT, and between Moss Main, MT (milepost 0.50) and south of Laurel, MT (milepost 514.47).

Any comments must be filed with the Commission and served on R. Lawrence McCaffery, Jr., Weiner, McCaffrey, Brodsky & Kaplan, P.C. Suite 800, 1350 New York Avenue, NW., Washington, DC 20005–4797, (202) 628–2000, and Douglas J. Babb, Burlington Northern Railroad Company, Continental Plaza, 777 Main Street, Fort Worth TX 76102, (817) 878–2000. This transaction will also involve the issuance of securities by MRL which will be Class II carrier. The issuance of these securities is exempt under 49 CFR 1175.1.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: August 13, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87–19368 Filed 8–21–87; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31033]

Valley Forge Railways, Ltd.; Acquisition and Operation Exemption; Certain Lines of Consolidated Rail Corp.

Valley Forge Railways, Ltd. (VFR) has filed a notice of exemption to acquire and operate certain properties of Consolidated Rail Corporation (Conrail). The properties consist of 7.27 miles of rail line extending: (1) From Oaks, PA (milepost 28.90) to Cromby, PA (milepost 29.20); (2) from Perkiomen Junction, PA (milepost 0.12) to Oaks, PA (milepost 1.71); and (3) in Phoenixville Borough, PA (milepost 0.00 to milepost 0.38). Any comments must be filed with the Commission and served on Kimberly A. Madigan, Weiner, McCaffrey, Brodsky & Kaplan, P.C., Suite 800, 1350 New Avenue, NW., Washington, DC 20005–4797, (202) 628–2000; and Charles Mecham, Consolidated Rail Corporation, 6 Penn Center Plaza, Philadelphia, PA. 19103, (215) 977–5017. This transaction may also involve the issuance of securities by VFR which will be a Class III carrier. The issuance of these securities, if any, is exempt under 49 CFR 1175.1.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: August 14, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87–19369 Filed 8–21–87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

[Civil Action No. 87–1089D]

Pollution Control; Lodging of Consent Decree Pursuant to the Clean Water Act; City of Anacortes, WA

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on August 10, 1987, a proposed consent decree in *United States of America and the State of Washington v. City of Anacortes, Washington*, Civil Action No. 87–1089D, was lodged with the United States District Court for the Western District of Washington. The complaint sought the imposition of injunctive relief and civil penalties under the Clean Water Act against the City of Anacortes for violations of the secondary treatment standards of the Clean Water Act in the operation of its wastewater treatment facility.

The consent decree provides that the City of Anacortes will construct a wastewater treatment facility capable of achieving secondary treatment levels, attain compliance with its National Pollutant Discharge Elimination System permit, maintain compliance with interim effluent limitations during construction of the new facility, and pay a civil penalty of $5,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments

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[1] By decision served July 31, 1987, the Commission denied petitions filed by the Montana Public Service Commission and the Transportation Division of the Department of Commerce, State of Montana, requesting a stay of the effective date of this exemption (July 31, 1987). A petition to stay was also filed jointly by Citizens Alliance to Save the Southline, United Transportation Union, Brotherhood of Locomotive Engineers, and Brotherhood of Maintenance of Way Employees, but the Commission did not have the opportunity to consider it prior to reaching its decision served on the effective date of the exemption.

relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States and the State of Washington v. City of Anacortes, Washington*, D.J. Ref. 90–5–1–1–2670.

The proposed consent decree may be examined at the office of the United States Attorney, 3600 Seafirst 5th Avenue Plaza, 800 5th Avenue, Seattle, Washington 98104, or the Environmental Protection Agency, 1200 6th Avenue, Seattle, Washington 98101. Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. Copies of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

In requesting a copy, please enclose a check in the amount of $1.40 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87–19300 Filed 8–21–87; 8:45 am]

BILLING CODE 4410–01–M

[Civil Action No. 87–1088C]

Pollution Control; Lodging of Consent Degree Pursuant to the Clean Water Act; City of Lynnwood, WA

In accordance with Department policy, 28 C.F.R. § 50.7, notice is hereby given that on August 10, 1987, a proposed consent decree in *United States of America and the State of Washington v. City of Lynnwood, Washington*, Civil Action No. 87–1088C, was lodged with the United States District Court for the Western District of Washington. The complaint sought the imposition of injunctive relief and civil penalties under the Clean Water Act against the City of Lynnwood for violations of the secondary treatment standards of the Clean Water Act in the operation of its wastewater treatment facility.

The consent decree provides that the City of Lynnwood will constuct a wastewater treatment facility capable of achieving secondary treatment levels, attain compliance with its National Pollutant Discharge Elimination System permit, maintain compliance with interim effluent limitations during constuction of the new facility, and pay a civil penalty of $12,500.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States and the State of Washington v. City of Lynnwood, Washington*, D.J. Ref. 90–5–1–1–2673.

The proposed consent decree may be examined at the office of the United States Attorney, 3600 Seafirst 5th Avenue Plaza, 800 5th Avenue, Seattle, Washington 98104, or the Environmental Protection Agency, 1200 6th Avenue, Seattle, Washington 98101. Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. Copies of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

In requesting a copy, please enclose a check in the amount of $1.40 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87–19201 Filed 8–21–87; 8:45 am]

BILLING CODE 4410–01–M

[Civil Action No. 87–1087R]

Pollution Control; Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on August 10, 1987, a proposed consent decree in *United States of America and the State of Washington v. City of Port Angeles, Washington*, Civil Action No. 87–1087R, was lodged with the United States District Court for the Western District of Washington. The complaint sought the imposition of injunctive relief and civil penalties under the Clean Water Act against the City of Port Angeles for violations of the secondary treatment standards of the Clean Water Act in the operation of its wastewater treatment facility.

The consent decree provides that the City of Port Angeles will construct a wastewater treatment facility capable of achieving secondary treatment levels, attain compliance with its National Pollutant Discharge Elimination System permit, maintain compliance with interim effluent limitations during construction of the new facility, and pay a civil penalty of $8,500.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States and the State of Washington v. City of Port Angeles, Washington*, D.J. Ref. 90–5–1–1–787.

The proposed consent decree may be examined at the office of the United States Attorney, 3600 Seafirst 5th Avenue Plaza, 800 5th Avenue, Seattle, Washington 98104, or the Environmental Protection Agency, 1200 6th Avenue, Seattle, Washington 98101. Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. Copies of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

In requesting a copy, please enclose a check in the amount of $1.30 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87–19302 Filed 8–21–87; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Ad Hoc Advisory Committee on Arts Education Study; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Ad Hoc Advisory Committee on Arts Education Study (1987) to the National Council on the Arts will be held on September 19, 1987 from 12:00 p.m.—5:30 p.m. and on September 20, 1987 from 9:00 a.m.—5:30 p.m. in room MO–9 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The

topic of discussion will be a Draft of Arts Education Study to be submitted to Congress by December 20, 1987 by the National Endowment for the Arts.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

August 18, 1987.

[FR Doc. 87–19303 Filed 8–21–87; 8:45 am]

BILLING CODE 7537-01-M

Music Advisory Panel (Music Festival Section); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Music Festivals Section) to the National Council on the Arts will be held on September 9, 1987 from 9:00 a.m.–6:30 p.m. and on September 10, 1987 from 9:00 a.m.–6:00 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on September 10, 1987 from 1.00 p.m.–3:00 p.m. The topics for discussion will be guidelines and policy issues.

The remaining sessions of this meeting on September 9, 1987 from 9:00 a.m.–6:30 p.m. and September 10, 1987 from 9:00 a.m.–1:00 p.m. are for the purpose of application review. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9) (B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

August 18, 1987.

[FR Doc. 87–19304 Filed 8–21–87; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee on Future LWR Designs; Meeting; Change of Date

The ACRS Future LWR Designs Subcommittee meeting scheduled for September 8, 1987 has been rescheduled for 8:30 a.m., Wednesday, September 9, 1987. All other items pertaining to this meeting remain the same as previously published in the Federal Register dated Friday, August 14, 1987 (52 FR 30473).

Date: August 18, 1987.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 87–19360 Filed 8–21–87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–270]

Confirmatory Order Modifying License (Effective Immediately); Duke Power Co., (Oconee Nuclear Station, Unit 2)

I.

Duke Power Company (DPC or the licensee) is the holder of Facility Operating License No. DPR–47, which authorizes the operation of Oconee Nuclear Station, Unit 2 (the facility) at a power level not to exceed 2568 megawatts thermal. The facility consists of a pressurized water reactor plant located at the licensee's site in Oconee County, South Carolina.

II.

For Oconee Unit 2, the reactor building cooling units (RBCUs) provide decay heat removal after the design-basis accident, which is the loss-of-coolant accident (LOCA). In a post-accident situation, all three coolers operate continuously circulating the steam-air mixture past the cooling tubes of the RBCU to transfer heat from the containment atmosphere to the low-pressure service water (LPSW) system. Also, the low-pressure injection (LPI) system (in the recirculation mode) cools the water from the reactor building sump. For long-term cooling, the LPI pumps recirculate injected water from the reactor building sump to the core. Heat is transferred through the LPI coolers to the LPSW system.

By telephone on April 3, 1987, and by letter dated April 6, 1987, the licensee informed the NRC staff that recent fouling in the LPSW system (lake water) side of the RBCUs and LPI coolers had resulted in an inability to transfer the total LOCA heat loads. Consequently, the licensee has reduced power level in Unit 2 to a maximum of 81.7% to match LOCA heat transfer requirements with the capability of the degraded heat exchangers.

In its letter of April 6, 1987, the licensee committed (1) to establish new interim maximum allowable power levels, (2) to change the reactor protection system (RPS) high-flux trip setpoints for Unit 2, and (3) to specify that the third non-engineered safeguards LPI pump for Unit 2 must be operable.

On April 10, 1987, the NRC issued an immediately effective Order confirming the licensee's commitments and establishing new interim maximum allowable power levels and corresponding changes to the RPS high-flux trip setpoint for Unit 2 while the LPI system coolers and the RBCUs are in a degraded mode.

By letters dated July 24, 28, 29, 31, and August 13, 1987, the licensee informed the NRC of the effects for Unit 2 of elevated water temperatures of Lake Keowee. In the letter dated July 24, 1987, the licensee stated that the lake water temperature was increasing and was expected to exceed the design-basis water temperature (75°F) used in the accident analysis documented in the Final Safety Analysis Report (FSAR) for the plant. The licensee stated that the lake temperature has exceeded 75°F in 9 of the past 11 years. Oconee Unit 2 will have to reduce power when the lake water temperature reaches 80°F.

To determine the impact of higher lake water temperatures on station systems and components, the licensee evaluated the effects of temperatures of 80 °F and 85 °F. The results of the evaluation indicated that under elevated lake water temperature conditions, there is a need to reduce the maximum allowable power level below that specified by the Order of April 10, 1987. The licensee has committed to reduce power level until all the Unit 2 heat exchangers have been fully cleaned and tested. The commitment is confirmed by this Order which will be in place until the unit shuts down for refueling at the end of Cycle 8, which is currently scheduled for January 1988. In accordance with the April 10, 1987 Order, the LPI coolers were cleaned, tested, evaluated for full-power operation, and approved for full-power operation by the Region II Regional

Administrator before they were returned to service following a brief shutdown before April 22, 1987. The RPS high flux trip setpoint has to be reduced to account for the higher lake water temperatures and the fouling of the RBCU coolers. The RPS high flux trip setpoint will be reduced to correspond to the appropriate maximum allowable power level to ensure that the power level will be maintained below the allowed maximum power level.

III.

In the July 24, 29, and August 13, 1987 letters, the licensee stated that the calculational methods used in determining the heat exchanger performance at the higher lake temperatures were the same as those used and documented in the April 6, 1987 submittal on heat exchanger fouling. The staff had reviewed these methods and found them acceptable before issuing the Confirmatory Order dated April 10, 1987. Using this same calculational technique, the licensee has determined that for Unit 2, power level reduction to 93% is appropriate when the lake water temperature is between 80°F and 85°F. These restrictions apply only until the end of Cycle 9 for Unit 2, when the RBCU heat exchangers will be cleaned and tested.

The licensee provided a conservative calculation that compared the LOCA heat removal requirements with the current degraded heat exchanger capacity to ensure (1) that the post-LOCA equipment qualification temperature limits will not be exceeded and (2) that required decay heat removal requirements can be satisfied. This calculation indicated that a scram from the power level set out above will produce decay heat levels within the heat exchanger capabilities. Actual heat transfer and flow rates through the degraded heat exchangers have been confirmed by testing. The licensee has committed to reduce the RPS high-flux trip setpoint to 93% of rated power for lake water temperatures between 80°F and 85°F. The setpoint reduction will ensure that this power level is not exceeded until the heat exchanger fouling is corrected. If lake temperatures exceed 85°F, Unit 2 will be shutdown.

The staff has reviewed the licensee's heat transfer calculational method and assumptions and has reviewed the overpower trip setpoint. On the basis of these reviews, the staff concurs that, with this setpoint, adequate accident heart removal capacity will be maintained with the current degraded heat exchangers and the projected elevated lake water temperatures.

The licensee has also evaluated the effects of the higher lake water temperature on other equipment and has concluded that the accident analysis is not affected. In the submittals dated July 29 and August 13, 1987, the licensee stated that all of the equipment served by the service water system was purchased with a design inlet water temperature specification of 85°F, except for the turbine-driven emergency feedwater pump lube oil cooler. This cooler has a design inlet temperature of 78°F and is designed to control the lube oil temperature to between 130°F and 160°F. With the 78°F inlet temperature, the lube oil cooler has been tested to verify its capability to maintain an oil temperature of 130°F. Thus a 7°F increase in inlet water temperature will result in an oil temperature of approximately 137°F, which is within the 130°F–160°F temperature range for acceptable turbine operation. The staff concurs with the licensee's assessment.

In the July 28 and August 13, 1987 submittals, the licensee also stated that there are 18 temperature sensors that monitor lake water temperature, with the results printed hourly by the plant computer system. The temperature monitoring instrumentation is calibrated during every refueling outage. The peak lake water temperature is also recorded daily. The licensee committed to reduce the power level setpoint to the values indicated above when the lake temperature reaches 79.5°F, as appropriate, to provide assurance that the plant will be operated in accordance with its design basis and within the requirements of the Order.

In the July 28, 29, and August 13, 1987 submittals, the licensee further stated that all of the design-basis accidents identified in the FSAR for Oconee Unit 2, and their attending single active failures, have been reviewed. This review confimed that, with an assumed 85°F lake water temperature and appropriate reduction in power level, there will be no adverse impact on the public health and safety beyond that identified in the FSAR.

On the basis of the staff's previous approval of the licensee's calculational methodology, the verification of the operability of the components with an increased lake water temperature of 85°F based upon reduced power level, and the licensee's assurance that the lake water temperature is being appropriately monitored with action taken to reduce power level and the high-flux reactor trip setpoint as required, I conclude that there is reasonable assurance for safe plant operation until the end of Cycle 9. I further conclude that the heat removal capability provided at the reduced power level is adequate to ensure that no adverse consequences to the health and safety of the public will result beyond those identified in the FSAR.

I find the licensee's commitments acceptable and conclude that the plant's safety can be maintained until the fouling can be corrected and lake water temperatures decrease, and the unit returns to full power. I have determined that these commitments are required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective Order.

IV.

Accordingly, pursuant to sections 103, 161b, and 161i, of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and Part 50, it is hereby ordered, effective immediately, that license DPR–47, is amended as follows:

1. If the lake water temperature exceeds 79.5°F, Oconee Unit 2 operation will be at reduced power levels and the RPS high flux trip setpoint will be reduced, as follows:

a. If the lake water temperature is greater than 79.5°F but equal to or less than 85°F, the RPS high flux trip setpoint shall be set so that the maximum allowable power level shall not exceed 93% rated power; and

b. If lake water temperature exceeds 85°F, Unit 2 shall proceed to shut down in accordance with Technical Specification 3.0.

2. The peak lake water temperature shall be recorded daily.

3. Oconee Unit 2 shall not operate at any power level after the end of Cycle 9 unless the Regional Administrator, Region II, has approved the LPI and RBCU coolers for full power operation.

The Regional Administrator, Region II may relax or rescind any of the above conditions upon a showing by the licensee of good cause.

The licensee or any other person who has an interest adversely affected by this Order may request a hearing on this Order within 20 days of the date of its issuance. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A copy shall be sent to the Office of the General Counsel, Assistant General Counsel for Enforcement, at the same address, and the Regional Administrator, Region II, at 101 Marietta Street, NW., Suite 2900, Atlanta, Georgia 30303. If a person other than the licensee requests a hearing,

that person shall set forth with particularity the manner in which the petitioner's interest is adversely affected by this Order and should address the criteria set forth in 10 CFR 2.714(d). A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing. If a hearing is held, the issue to be considered at the hearing shall be whether this Order should be sustained.

Dated at Bethesda, Maryland, this 19th day of August 1987.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 87-19335 Filed 8-21-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-289 (CH)]

Atomic Safety and Licensing Appeal Board Hearing; Oral Argument; General Public Utilities Nuclear (Three Mile Island Nuclear Station, Unit No. 1)

Notice is hereby given that, in accordance with the Appeal Board's order of August 11, 1987, oral argument on the appeal of Charles Husted from the April 2, 1987 initial decision of the Administrative Law Judge will be heard at *10:00 a.m. on Wednesday, September 9, 1987, in the NRC Public Hearing Room, Fifth Floor, East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland.*

For The Appeal Board.

C. Jean Shoemaker,

Secretary to the Appeal Board.

Dated: August 18, 1987.

[FR Doc. 87-19361 Filed 8-21-87; 8:45 am]

BILLING CODE 7590-01-M

PENSION BENEFIT GUARANTY CORPORATION

Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Pension Benefit Guaranty Corporation

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of self-evaluation; request for comments.

SUMMARY: Notice is hereby given that the Pension Benefit Guaranty Corporation is evaluating its current policies and practices to determine if discrimination against handicapped persons is present in its programs and activities. This notice also requests public comment from interested parties on the PBGC's policies and practices with respect to handicapped persons. The effect of this notice is to comply with the PBGC's regulation on Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Pension Benefit Guaranty Corporation, 29 CFR Part 2608, which requires the PBGC to conduct this self-evaluation and to permit interested parties to participate in the project.

DATES: Comments must be received on or before September 24, 1987.

ADDRESSES: Written comments should be addressed to the General Counsel, Office of the General Counsel (Code 22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006. Comments will be available for public inspection in the PBGC Communications and Public Affairs Department, Suite 7100, at the above address, between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Renae R. Hubbard, Special Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202-778-8851, or Peggy Anne Hansen, Equal Opportunity Manager, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Room 3700A, Washington, DC 20006, 202-778-8808 (202-778-8859 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The regulation of the Pension Benefit Guaranty Corporation (PBGC) on Enforcement of Nondiscrimination on the Basis of Handicap in Federally Conducted Programs, 29 CFR Part 2608, which was issued pursuant to 29 U.S.C. 794, prohibits discrimination on the basis of handicap in its programs and activities.

Section 2608.110(a) of that regulation requires the PBGC to evaluate, by August 24, 1987, its current policies and practices, and the effects thereof, in order to determine if they result in discrimination against handicapped persons in employment, program accessibility, communication, or otherwise. Section 2608.110(b) requires that the PBGC "provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in this self-evaluation process by submitting comments (both oral and written)."

Four hundred forty-one questionnaires were distributed to 100 percent of all full-time and part-time permanent PBGC employees occupying all or part of five floors of the PBGC's sole facility at 2020 K Street, NW., Washington, DC, with provision for both written and oral responses. The questionnaire was designed to determine whether an employee is physically or mentally handicapped by a mobility, hearing, visual, speech, mental, emotional, or other impairment and, if so, to find out whether the employee has been adversely affected by the PBGC's action or inaction, by the absence of aids, or by structural impediments at the work site.

Employees also were asked to describe any complaints received in the past two years from applicants, participants, beneficiaries, or other persons on non-accessibility of sites where PBGC activities have been held.

Finally, employees were encouraged to advise the PBGC of anything that might give handicapped persons an equal opportunity to participate in all PBGC programs and activities.

Forty-four written and two oral responses were received, representing 10.8 percent of the PBGC employees. Six responders identified themselves as either mobility, hearing, visually, or speech impaired. Four employees said that they had been adversely affected—two by PBGC action or inaction, one by absence of aids, and one by structural impediments.

Two employees indicated that they had received complaints from persons who are not PBGC employees. One complaint was that the water fountains are too high for persons in wheel chairs; the other was that maneuvering wheel chairs is a problem in corridors where boxes or "other debris" are placed temporarily.

Suggestions for facilitating equal participation of handicapped persons in PBGC programs and activities included placing braille markers in elevators and stairways and providing awareness training, suitable space within the facility for all-employee gatherings, and appropriate chairs for individuals with back problems.

The PBGC has examined its work site facilities for impediments, and has requested that building modifications, such as elevator markings and water fountain heights, be made wherever possible. Complementary valet parking and retrieval is offered to employees and visitors in wheel chairs by the building's parking operator, and the PBGC is working toward impediment-

free corridors. The international handicap symbol is used to mark accessible rest rooms. The PBGC also has provided special chairs and computer accommodations as needed by impaired employees.

The PBGC has published its TTY/TDD telephone number in the International Telephone Directory of the Deaf and on forms and stationery mailed to the public. All hearing-impaired and speech-impaired employees and employees with impaired family members have access to the device. Interpreters and telephone amplifiers are provided on request.

Although there is insufficient space on the work site for activities involving large numbers of employees, it is the PBGC's policy to schedule off-site activities in barrier-free facilities whenever possible.

Comments on the PBGC's programs and policies as they affect handicapped persons or on the PBGC's self-evaluation, a summary of which is set forth above, are invited. Please send written comments to the General Counsel, Office of the General Counsel (Code 22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006. Oral comments may be submitted to Peggy Anne Hansen, Equal Opportunity Manager, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Room 3700A, Washington, DC 20006, 202–778–8808 (202–778–8859 for TTY and TDD). These are not toll-free numbers.

Upon completion of this self-evaluation and comment period, the PBGC will carefully review all comments and will take appropriate steps to collect deficiencies in its programs or activities. In addition, the PBGC will maintain on file a description of areas examined and any problems identified, and a description of any modifications made. This file will be maintained for a period of three years following the completion of this self-evaluation, and will be made available for public inspection upon request.

Issued in Washington, DC, this 5th day of August, 1987.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 87–19322 Filed 8–21–87; 8:45 am]

BILLING CODE 7708-01-M

PRESIDENTIAL COMMISSION ON THE HUMAN IMMUNODEFICIENCY VIRUS EPIDEMIC

Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), and at the request of W. Eugene Mayberry, M.D., Chairman, announcement is made of the following national advisory body scheduled to meet during the month of September 1987:

Name: Presidential Commission on the Human Immunodeficiency Virus Epidemic.

Date, Time, and Place: September 9, 1987; 9:00 a.m.; National Press Club-National Press Building, 14th & F Streets, NW., 13th Floor, Washington, DC

September 10, 1987; 9:00 a.m.—3:00 p.m.; Department of Commerce Auditorium, 14th Street and Constitution Avenue, NW., Washington, DC

Purpose: The Commission was formed as the result of Executive Order 12601 to advise the President, the Secretary of Health and Human Services, and other relevant Cabinet heads on the public health dangers including the medical, legal, ethical, social, and economic impact from the spread of the HIV and resulting illnesses including AIDS, AIDS-related complex, and other related conditions. The primary focus of the Commission shall be to recommend measures that Federal, State, and local officials can take to: (1) Protect the public from contracting the HIV; (2) assist in finding a cure for AIDS: and (3) care for those who already have the disease.

The Commission is required to: (1) Evaluate efforts by educational institutions and other public and private entities to provide education and information concerning AIDS; (2) analyze the efforts currently underway by Federal, State, and local authorities to combat AIDS; (3) examine long-term impact of AIDS treatment needs on the health care delivery system, including the effect on non-AIDS patients in need of medical care; (4) review the United States history of dealing with communicable disease epidemics; (5) evaluate research activities relating to the prevention and treatment of AIDS; (6) identify future areas of research that might be needed to address the AIDS epidemic; (7) examine policies for development and release of drugs and vaccines to combat AIDS; (8) assess the progression of AIDS among the general population and among specific risk groups; (9) study legal and ethical issues relating to AIDS; and (10) review the role of the United States in the international AIDS pandemic.

The Commission is required to make a preliminary report to the President no later than 90 days after the date the members of the Commission are first appointed or designated. The Commission shall submit its final report no later than one year from the date the Executive Order was signed.

Agenda: Overview of Federal activities relating to the spread of the HIV and AIDS in the United States. Invited speakers will discuss activities relevant to their agency mission. Other knowledgeable individuals from the private sector will discuss activities underway within the private sector. Commission members are expected to report on any site visits that were held prior to the first meeting of the Commission.

Public comment will begin at 4:30 p.m. on September 9. Anyone wishing to make a statement should notify the Executive Assistant to the Chairman, so that appropriate arrangements can be made.

Anyone wishing to obtain a roster of members should notify the Executive Assistant to the Chairman, Presidential Commission on the HIV Epidemic, Room 13C–26, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (202) 245–2437.

Agenda items are subject to change as priorities dictate.

Dated: August 14, 1987.

Robert E. Windom,

Assistant Secretary for Health.

[FR Doc. 87–19340 Filed 8–21–87; 8:45 am]

BILLING CODE 4160-15-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-24812; File No. SR-CBOE-87-37]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc.; RAES Pilot Program in Equity Options

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 5, 1987, the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Text of the Proposed Rule Change

The Exchange's pilot program for its Retail Automatic Execution System ("RAES") in equity options has been in operation since October 27, 1986,

pursuant to SR–CBOE–85–16.[1] RAES automatically executes, at the prevailing disseminated inside quote, certain size market and marketable limit orders submitted by public customers. The CBOE has filed a proposed rule change, File No. SR–CBOE–87–35, with the Commission to make this a permanent program allowing for RAES' use in such option classes as the Exchange deems appropriate.[2] Pursant to the current proposed rule change, the pilot program in RAES in equity options will be extended through November 30, 1987 or approval of SR–CBOE–87–35. During the extension of the pilot program, the Exchange has proposed to allow the use of RAES, as it deems appropriate, in up to an additional 75 equity option classes.

The pilot program will continue as described in SR–CBOE–85–16.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

This is a four month extension of the pilot program for RAES in equity options, pending Commission approval of SR–CBOE–87–35, the proposed rule change to make this a permanent program and allowing its use in such option classes as the Exchange deems appropriate. The extension of this pilot will enable the Exchange to continue the RAES pilot without interruption and to extend the use of RAES pilot with interruption and to extend the use of RAES to up to an additional 75 option classes.

The Exchange believes that the continuation and expansion of the RAES program in equity options is appropriate and in the public interest. The Exchange further believes that the proposed rule change is consistent with the provisions of the Securities Exchange Act of 1934, and, in particular, section 6(b)(5) thereof in that the proposal is designed to improve market efficiency and enhance the market functioning of the Exchange's automatic execution system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Chicago Board Options Exchange, Inc., has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act, because the Exchange would like to continue and expand the use of RAES in equity options while a proposed rule change to make RAES in equity options a permanent program is under consideration. *See* SR–CBOE–87–35.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder. The Commission believes that the proposed rule change will benefit public customers by affording them a more efficient means than was previously available at CBOE to execute small orders in a select group of equity options. In addition, the Commission notes that the proposed expansion of RAES will not negatively affect public customer limit orders in that these orders will not be bypassed by the operation of RAES, but rather will receive the customary limit order protection afforded public customer orders placed on the book.

The Commission finds good cause for approving the proposed change prior to the thirtieth day after the date of publication of notice of filing thereof in that the Exchange previously has demonstrated the operational efficiencies of RAES for an extended period. Moreover the Commission previously has solicited comments on RAES on several occasions. Finally, the Commission's approval is limited to a fourth month pilot program while the Commission considers the CBOE's proposed rule change to make RAES a permanent program. The expanded use of RAES should provide more data in evaluating the program.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, DC. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 14, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 18, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–19354 Filed 8–21–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–24811; File No. SR–CBOE–87–36]

Self-Regulatory Organizations; Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc.; RAES Eligibility in Equity Options Pilot Program

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 5, 1987, the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Text of the Proposed Rule Change

The Exchange's pilot program for Retail Automatic Execution Service ("RAES") Eligibility in Equity Options has been in operation since October 27, 1986, pursuant to SR–CBOE–86–22. By

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[1] *See* Securities Exchange Act Release No. 23490 (August 1, 1986), 51 FR 28788.

[2] A copy of File No. SR–CBOE–87–35 may be obtained in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

this rule change, this pilot program in RASE in Equity Options will be extended for a ninety-day period.

The pilot program will continue as described in SR-CBOE-86-22.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

This is a ninety day extension of a pilot program for RAES eligibility in equity options. RAES is designed to accept and execute automatically, at the best prevailing quotes, small market and marketable public limit orders in six equity options as well as two index options. The extension of the equity options pilot program will enable the Exchange to gather additional information before deciding whether to modify or extend the program.

The Exchange believes that continuation of the pilot program without interruption will assure the least disruption while RAES eligibility in equity options continues to be evaluated by the Exchange. The CBOE believes the proposed rule change is consistent with the provisions of the Securities Exchange Act of 1934, and, in particular, section 6(b)(5) thereof in that the proposal is designed to improve market efficiency and enhance the market functioning of the Exchange's automatic execution system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

[1] SR-CBOE-86-22 was noticed in Securities Exchange Act Release No. 23474 (July 29, 1986), 51 FR 28148 and approved in Securities Exchange Act Release No. 23591 (September 4, 1986), 51 FR 32710.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested accelerated effectiveness of this proposed rule change pursuant to section 19(b)(2) of the Act. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a securities exchange, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the day of publication of notice of filing thereof in that the proposed rule change extends an existing pilot program which has been the subject of a solicitation for comments, and no comments thereon were received. Accelerated approval will also allow uninterrupted continuation of the pilot, which is designed to increase the ease and efficiency of small public order execution.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 14, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 18, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-19355 Filed 8-21-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24818; File No. SR-DTC-87-10]

Self-Regulatory Organizations; Depository Trust Co.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("the Act"), 15 U.S.C. 78(b)(1), notice is hereby given that on July 15, 1987, the Depository Trust Company ("DTC") filed the proposed rule change described below. The proposal describes DTC's operational arrangements necessary for an issue settling in next-day funds to become eligible for DTC services. The Commission is publishing this notice to solicit comment on the rule change.

DTC's proposed rule change is a memorandum, attached as *Exhibit A*, that sets out DTC's current and new operational arrangements and requirements.[1] The new arrangements concern redemptions. DTC's proposed redemption standards generally require that: notice of municipal bond redemptions should contain certain items of information including CUSIP numbers; redemption notices should be sent in a secure fashion; redemption notices should provide 30 days from publication date to redemption date; redemption notices should be sent to registered securities depositories in advance of publication date; and CUSIP number identification should accompany all redemption payments. These operational arrangements apply to issues sought to be made eligible on or after August 1, 1987.

The memorandum's purpose is to inform participants, underwriters, agents, trustees, bond counsel, and others of what is necessary to make new issues eligible for DTC services. DTC expects that these operational arrangements will be considered when participants and others structure, distribute, and administer new issues.

DTC believes that the proposed rule change is consistent with the requirements of the Act in that it promotes maximization of the number of securities issues that can be made depository-eligible while maintaining orderly processing and permitting timely dividend, interest and principal payments. The redemptions requirements generally are the same as the voluntary minimum standards for

[1] Current operational arrangements described in the memorandum address such issues as the time frame for providing underwriting information for municipal bonds, transfer turnaround time, use of CUSIP numbers, and timeliness of payments and funds availability, among other things.

processing redemption of debt securities endorsed by the Commission and industry groups.[3] The voluntary standards were promulgated based on industry consensus developed at a meeting of representatives of industry organizations, self-regulatory organizations, and Federal regulatory agencies to discuss problems associated with municipal bond call processing.

The rule change has become effective pursuant to section 19(b)(3)(A) of the Act. The Commission may summarily abrogate the rule change at any time within 60 days of its filing if it appears to the Commission that abrogation is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

You may submit written comment within 21 days after notice is published im the Federal Register. Please file six copies of your comment with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, with accompanying exhibits, and all written comments, except for material that may be withheld from the public under 5 U.S.C. 552, are available at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. Copies of the filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR-DTC-87-10.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: August 19, 1987.

Jonathan G. Katz,

Secretary.

Exhibit A—The Depository Trust Company

Memorandum

June 29, 1987.

To: Participants, Underwriters, Agents, Trustees, Bond Counsel, and Others Affected.

From: DTC Underwriting Department.

Subject: Operational arrangements necessary for an issue settling in next-day funds to become eligible for DTC services.

Introduction

Several years ago DTC established operational arrangements which must be met before a security issue can be made DTC-eligible. The purpose of these arrangements was to maximize the number of issues that can be made depository-eligible while maintaining orderly processing and permitting timely dividend, interest and principal payments.

With the support of Participants and the cooperation of other affected organizations, these arrangements gradually have been expanded. They are reported in this document to aid Participants, issuers, agents, trustees, and bond counsel seeking depository eligibility for new issues in structuring those issues.

These arrangements are sufficiently broad to be met by the vast majority of issues brought to market or already outstanding. Some unusual issues (e.g., variable coupon renewable notes, optional and mandatory repayment issues) may contain features which DTC must review on a case-by-case basis prior to eligibility approval, and for which certain representations may have to be made by issuers, underwriters, and/or agents.

The arrangements which follow are a revision—principally to deal with redemption notices and payments—to those published in DTC's Operational Arrangements memorandum of September 11, 1986. These arrangements will become effective on August 1, 1987.

Operational arrangements

For Issues Which Settle in Next-Day Funds

The operational arrangements are:

(1) *Standard Time Frames For Providing Underwriting Information For Municipal Bonds.*—In the latter part of 1985, DTC implemented standard time frames (specified in in Exhibit A) endorsed by the Municipal Securities Rulemaking Board (MDRB) for the submission of information to DTC by underwriters of new registered municipal bond issues so that DTC could pass this information on the Participants in a timely fashion. Underwriters should adhere to the standard time frames. Although compliance is voluntary, it is at a very high level. DTC will continue to monitor such compliance and will consider assessing strong disincentive fees if compliance is not maintained.

(2) *Certificate Format*—The certificate format for registered certificates (excluding those for book-entry-only issues) must comply with general American National Standards Institute (ANSI) standards. The certificate must have a standard assignment area.

(3) Timeliness of Payments and Funds Availability:

(a) *Dividend and Interest Payments*—DTC has acted in accordance with industry practice to seek receipt of *corporate* dividend and interest payments on payable date in *same-day* funds, (or the equivalent in accordance with existing arrangements between the paying agent and DTC) and receipt of *registered municipal* bond interest payments on payable date in *next day* funds. The agent must meet these standards for payment to DTC in all of the issues for which it acts if DTC is to make eligible a new issue for which the agent is acting as paying agent.

(b) *Maturity and Redemption Payments*—DTC requires receipt of maturity and redemption payments on the payable date in *next-day* funds, or in *same-day* funds if other holders receive those payments in *same-day* funds. An exception to the above are issues which pay principal and interest periodically throughout the life of the issue (e.g. CMOs) instead of only at maturity. For those issues, DTC requires receipt of principal and interest payments on the payable date in *same-day* funds.

(c) *Other Payments*—DTC requires receipt of all other payments resulting from corporate actions (e.g. tender offers, merger) on the first payable date in *same-day* funds.

(4) *Short Term Maturities*—Bond underwritings may include securities scheduled to mature shortly after the closing date. DTC programmatically forecasts upcoming maturities according to predetermined timetables so that processing will begin in sufficient time to ensure efficient physical securities handling and timeliness of payments. Therefore, to assure that Participants continue to benefit from these efficiencies, DTC will not make eligible a security which will mature within three months of the closing date (short term maturities in BEO form are not subject to this provision).

(5) *Transfer Turnaround Time*—DTC requires written assurances from agents not registered with the SEC that they comply with the SEC's transfer turnaround rules (which generally require completion of normal transfers within 72 hours). DTC plans to monitor transfer turnaround for all agents and *may refuse to make eligible certain issues where the agent has a clear-cut record of failure to comply.*

(6) *Notification of Redemptions and Calls*—DTC requires that trustees and agents agree to meet the following standards for calls for all new issues to be made DTC-eligible.

(a) Notices of redemption must contain, at minimum: CUSIP number, and for partial calls certificate numbers and called amounts of each certificate; publication date; redemption date;

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[3] *See* Securities Exchange Act Release No. 34-23656 (December 3, 1986) 51 FR 44288 (December 8, 1986).

redemption price; redemption agent name and address; interest rate; maturity date; and other descriptive information that accurately identifies the called security.

(b) All redemption notices must be sent to DTC in a secure fashion (e.g., *legible* facsimile transmission, registered or certified mail or overnight delivery service). The agent or issuer sending such notice shall have a method to verify subsequently the use of such means and timeliness of notice by forwarding each notice (for each CUSIP number) in a separate secure transmission to DTC, or forwarding multiple notices (or one notice for multiple CUSIPs) in a secure transmission to DTC which includes a manifest or list of each CUSIP submitted in that transmission. Agents choosing to use DTC's Redemption Call Notice Manifest (copy attached) may acquire a supply by contracting DTC's Call Notification Department at (516) 227–4070.

Redemption notices should be sent to:

The Depository Trust Company, 711 Stewart Avenue, Garden City, New York 11530, Attention: Call Notification Department, Fax (516) 227–4039 or 4190

(c) The publication date for redemption notices must be at least 30 days prior to redemption date.

(d) Redemption notices must be received by DTC during the *business day* prior to publication date or, if possible, two business days in advance of publication date.

(e) CUSIP number identification must accompany all redemption payments to DTC. DTC requires that agents which wire funds to DTC use its Redemption Payment Summary (RPS) from to identify all redemption payments. DTC will consider accepting this information through various appropriate means.

Agencts should facsimile transmit complete RPS forms to DTC at: Telecopier Number: (212) 709–1706/1707.

(7) *Use of CUSIP Numbers:*

(a) *CUSIP Number Assignment*—A unique CUSIP number must be assigned to each serial and term issue and be imprinted on each certificate.

(b) *CUSIP Identification on Payments*—DTC requires that for new issues to be made depository-eligible, paying agents will provide the CUSIP number on the payment advice accompanying *all* payments (dividend, interest and principal) to DTC for such issues.

(c) *Multiple-Purpose Municipal Issues*—For multiple-purpose municipal issues carrying a single CUSIP number to be made eligible, DTC must receive assurance from the agent that the agent will accept transfer instructions from DTC for multiple purposes and treat them without regard to purpose distinctions within a single CUSIP. Also the agent must assign separate and non-duplicate certificate numbers within a single CUSIP. The agent must assure DTC that interest and principal payments to DTC will be made by CUSIP and not by purpose.

(8) *Record Dates and Payable Dates for Certificated Issues*—The Dividend/Interest record date must not be less than 5 business days prior to the payable date. For new registered municipal issues, the first payable date must not be less than 30 days from the closing date.

If the Indenture provides for the solicitation of consents from and voting by holders of the issue under certain circumstances, DTC requires that the Trustee or Issuer shall establish a record date for such purposes and shall give DTC notice of such record date not less than 15 calendar days in advance of such record date to the extent possible.

(9) *Securities with Put Features*—For new issues of put securities DTC requires that agents supply letters of representations wherein the agent agrees that DTC can use its Repayment Option Procedure to submit tenders of the security to the agent. The letter of representations must be provided prior to the issue being made eligible.

Closely spaced partial call and put dates for an issue may force Participants to submit instructions to put securities before they can determine whether the securities have been called, increasing the possibility that the Participants' securities account at DTC will be driven into a short position. (DTC has experienced several instances in which agents have called securities and accepted puts on them concurrently.) DTC requires that at least two weeks separate the end of a put period and the start of a call (publication date) or vice versa.

(10) *Book-Entry-Only (BEO) Issues and Certificates of Deposit (CDs)*—For BEO issues and CDs DTC requires that it receive a letter of representations prior to the issue being made eligible.

(11) *Issues with Monthly Optional Redemptions*—DTC will consider for eligibility a new issue of registered securities containing provisions for monthly optional redemptions, by the issuer, only if the issue is brought to market in BEO form and DTC is in receipt of a letter of representations prior to the closing.

(12) *Issues Which Pay Principal and Interest Periodically*—Collateralized Mortgage Obligations (CMOs) and other issues which pay principal and interest periodically present a unique problem in that DTC has not been able to obtain the current interest rate and principal pay down amount from published or other sources to effect timely crediting of such payments to Participants. DTC therefore requires that it receive from the paying agent in writing this information, calculated on the *original principal amount of $1,000 per bond* preferably 5 business days, but no less than 2 business days, prior to the payable date. DTC will accept this information via telephone, provided that it receives written confirmation prior to the payable date.

(13) *Foreign Currency-Denominated Issues*—DTC requires that all payments to DTC be in U.S. dollars, and that notification of the payment rate expressed in U.S. dollars (per 1,000 units of principal amount or share) be received by DTC at least 2 business days before the corresponding payment date.

Such Notices regarding interest or dividend rates shall be sent by telephone or facsimile transmission to:

Manager, Announcements, Dividend Department, The Depository Trust Company, 7 Hanover Square—22nd Floor, New York, New York 10004

Telephone Number: (212) 709–1284
Telecopier Number: (212) 709–1270

Any telephone communication shall be followed-up by hard copy confirmation.

(14) *Uniquely Denominated Issues*—Certain issues provide that certificates are available in specified minimum denominations (e.g., $100,000) and integral multiples of a specified denomination (e.g., $1,000) in excess thereof. For such issues DTC is unable to maintain reasonably sufficient certificate inventory in denominations to satisfy Participant urgent COD withdrawal requests. DTC will make such issues eligible only with the stipulation that DTC will not process COD requests in such issues but will effect withdrawals-by-transfer (W/Ts) only. DTC will continue to make such issues eligible so long as such restriction will not impose an undue hardship on Participants. The Underwriter must agree to have the "withdrawal by WT-only" reference made in DTC's Important Notice of the underwriting. DTC must review uniquely denominated issues on a case by basis particularly where those issues may be callable.

(15) *Unusual Issue Types*—These issues (e.g., variable coupon renewable notes, optional and mandatory repayment issues) often contain features

which DTC must review on a case-by-case basis as it considers the issue for eligibility. In addition to meeting DTC's standard operational arrangements, DTC may require of underwriters, trustees and agents for such issues that special representations be made to DTC to protect it and its Participants from excessive risks.

(16) *Special Operational Arrangements*—

(a) *Possession and Inspection*—DTC requests that it receive possession of securities for inspection by noon on the day prior to an issue's distribution. DTC cannot assure an issue's distribution on closing date if this condition is not met.

(b) *Legal Opinions*—DTC requests that any legal opinion required be printed on the certificate.

(c) *Issuance Date on Transfers*—DTC requires transfer agents to provide the authentication date (the date transfer is effected) on all credit certificates returned to DTC. In some cases payable dates rather than authentication dates appear on bonds, complicating record date accounting.

(17) *Fast Automated Securities Transfer (FAST)*—DTC will not accept into the FAST program any municipal bonds except under certain circumstances such as extraordinary issue size. Muni issues generally must be in book-entry-only form or in fully certificated (non-FAST) form. Transfer agents wishing to include a *corporate* issue in FAST must adopt current DTC FAST procedures.

Participants and others wishing to discuss these arrangements are encouraged to contact their Participant Services representative or Vincent A. Mauro, Vice President, at (212) 559–8702.

[FR Doc. 87–19268 Filed 8–21–87; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34–24799; File No. SR–NASD–87–27]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

The National Association of Securities Dealers, Inc. ("NASD") submitted on June 24, 1987, a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder to amend Schedule A to the NASD By-Laws to allow a New York Stock Exchange examination development fee of $10.00 to be charged against each person taking a Series 7 examination for registration as a general securities representative.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 24685, July 8, 1987) and by publication in the *Federal Register* (52 FR 26617, July 15, 1987). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A and the rules and regulations thereunder.

It Is Therefore, Ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: August 14, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–19294 Filed 8–21–87; 8:45 am]
BILLING CODE 8010-01-M

[File Nos. 7–0346 et al.]

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

August 18, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

American Real Estate Partners, L.P.
Depository Receipts, No Par Value (File No. 7–0346)
Amre Inc.
Common Stock, $.01 Par Value (File No. 7–0347)
Global Government Plus Fund Inc.
Common Stock, $.01 Par Value (File No. 7–0348)
Goldome
Common Stock, $1.00 Par Value (File No. 7–0349)
Harcourt Brace Jovanovich
$12 Preferred Stock, $1.00 Par Value (File No. 7–0350)
Carnival Cruise Lines, Inc.
Class A Common Stock, $.01 Par Value (File No. 7–0351)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 9, 1987 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–19295 Filed 8–21–87; 8:45 am]
BILLING CODE 8010-01-M

[File No. 7–0359 et al.]

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

August 18, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Bet Public Limited Co.
American Depositary Shares, each representing four ordinary shares of 25 P each (File No. 7–0358)
Stepan Company
Common Stock, $1.00 Par Value (File No. 7–0360)
Beverly Enterprises, Inc. (Del.)
Common Stock, $.10 Par Value (File No. 7–0361)
McKesson Corporation (Del.)
Common Stock, $2.00 Par Value (File No. 7–0362)
JWP Inc. (Del.)
Common Stock, $.10 Par Value (File No. 7–363)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to sumbit on or before September 9, 1987 written data, views and arguments

concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-19286 Filed 8-21-87; 8:45 am]

BILLING CODE 8010-01-M

[File Nos. 7-0352 et al.]

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

August 18, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Amax Gold, Inc.
Common Stock, $.01 Par Value (File No. 7-0352)
Banco De Santander Sociedad Anonima De Credito
American Depositary Shares Representing Capital Stock (File No. 7-0353)
United Kingdom Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-0354)
The Quick & Reilly Group, Inc.
Common Stock, $.10 Par Value (File No. 7-0355)
Sprague Technologies, Inc.
Common Stock, $1.00 Par Value (File No. 7-0356)
The Union Corporation (Delaware)
Common Stock, $.50 Par Value (File No. 7-0357)
Banctexas Group Inc.
Common Stock, $.10 Par Value (File No. 7-0358)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 9, 1987 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Security and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-19287 Filed 8-21-87; 8:45 am]

BILLING CODE 8010-01-M

[File No. 7-0345]

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

August 18, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stock:

AMAX Gold Inc.
Common Stock, $.01 Par Value (File No. 7-0345

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 9, 1987 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-19298 Filed 8-21-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15336; File No. 812-6723]

Self-Regulatory Organizations; Application for Exemption, Pacific Mutual Life Insurance Co.

August 18, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption and approval under the Investment Company Act of 1940 (the "1940 Act").

Applicants: The Pacific Mutual Life Insurance Company ("Pacific Mutual"), the Pacific Select Separate Account of Pacific Mutual Life Insurance Company (the "Separate Account") and the Pacific Select Fund (the "Fund").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from the provisions of sections 2(a)(32), 2(a)(41), 9(a), 13(a), 15(a), 15(b), 22(c), 27(c)(1), and 27(d) and Rules 2a-4 and 22c-1 and Paragraphs (b)(12), (b)(13) and (b)(15) of Rule 6e-3(T).

Summary of Application: Applicants seek an order granting exemptive relief to the extent necessary to permit unrecovered state and local premium tax charges to be deducted upon lapse or surrender of a policy, to allow the securities in the Money Market Series portfolio to be valued using the amortized cost method of valuation without maintenance of a constant net asset value per share, and to allow for shares of the Series of the Fund to be sold to Separate Accounts of other affiliated or unaffiliated insurance companies ("shared funding").

Filing Date: The application was filed on May 15, 1987 and was amended on August 11, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on September 14, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for

lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Allan S. Mostoff, Esq., 1730 Pennsylvania Avenue, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: David S. Goldstein, Staff Attorney (202) 272–2622 or Lewis B. Reich, Special Counsel (202) 272–2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier which may be contacted at (800) 231–3282 (in Maryland (301) 252–4300).

Applicants' Representations

1. Pacific Mutual is a mutual life insurance company organized under the laws of the State of California; Separate Account is a separate account of Pacific Mutual established under California law and is divided into eight subaccounts called "Variable Accounts" and will be registered as a unit investment trust under the 1940 Act. The Fund is a diversified, open-end management investment company of the series type which will be registered on Form N–1A. The Fund currently has eight separate portfolios ("Series"), each of which will sell shares to a corresponding Variable Account.

2. Shares of the Series may in the future be offered to other separate accounts including separate accounts of Pacific Mutual or other affiliated or unaffiliated insurance companies offering variable annuities or other variable life insurance policies.

3. Pacific Mutual serves as Investment Adviser to each Series of the Fund, and various sub-advisers will be used for several Series of the Fund.

4. Pacific Mutual intends to issue a flexible premium variable life insurance policy (the "Policy" or "Policies") providing lifetime insurance protection on an Insured through the Policy's Maturity Date so long as the Policy is not surrendered or in default beyond the Grace Period. The Policy also provides for a cash surrender during the lifetime of the Insured, and Policy Owners may obtain loans secured by Accumulated Value. The Policy can be purchased for a minimum initial premium payment of the greater of $10,000 or 50% of the Guideline Single Premium.

5. The death benefit under the Policy will be the greater of the Face Amount under the Policy or the Accumulated Value multiplied by a specified percentage.

6. The total Accumulated Value will be the amount that a Policy provides for investment at any time. It equals the sum of the amounts under the Policy held in each Variable Account of the Separate Account and the Fixed Account, as well as the amount set aside in Pacific Mutual's Loan Account to secure any Policy Indebtedness. A Policy Owner may allocate premium payments among the various Variable Accounts.

7. The Cash Surrender Value of the Policy equals the Accumulated Value less any unrecovered deferred load. Once all deferred load has been recovered, the Accumulated Value will equal the Cash Surrender Value. Net Cash Surrender Value equals Cash Surrender Value minus any outstanding Policy Indebtedness.

8. A sales charge equal to 4.15% of the initial premium, a deduction for premium taxes equal to 2.35% of initial premium and an administrative charge of between 3.00% and .5% of initial premium are deferred and deducted from Accumulated Value in equal monthly deductions from the first monthly policy anniversary to the eleventh.

9. The same level of charges is deducted directly from premium payments subsequent to the initial premium payment.

10. A monthly cost of insurance charge as well as a monthly administrative charge of $5.00 is deducted from Accumulated Value.

11. Pacific Mutual makes a daily charge (equal to. 70% on an annual basis) against the Variable Accounts to compensate Pacific Mutual for mortality and expense risks assumed. Investment advisory fees and operating expenses of the Fund are paid by the Fund.

12. Imposition of the charge for premium taxes in this manner is more favorable to Policy Owners than a charge that is deducted entirely from the initial premium.

13. Pacific Mutual will not make a profit on the deferred premium tax charge. The amount of the charge is the same as it would have been if it were designed as a front-end charge and, in particular, does not take into account the time value of money and the consequential cost to Pacific Mutual for deferring the charge.

14. The Money Market Series will not maintain a constant net asset value for its shares. This will save administrative costs associated with valuing such instruments at market value on a daily basis. Dividends will be paid quarterly, therefore a constant per share net asset value is not required.

15. There is no necessary relationship between the use of the amortized cost method of valuation and the maintenance of a constant net asset value for each share of an investment company.

16. Conditions contained in this application will provide participants in the Money Market Series with no less protection against dilution than is provided to investors in conventional money market funds and will, in fact, protect participants in the Series against dilution.

17. In the event that monitoring reveals a deviation of more than .5 percent in the value of the obligations held in the Money Market Series using the alternative valuation methods, the same range of steps open to the directors of a conventional money market fund could be taken by the Trustees of Pacific Select Fund, but the Trustees could find it simpler to abandon the amortized cost method of pricing of all securities or only of those which have a maturity of 60 days or more (depending on circumstances) until such time as interest rates stabilize.

18. Shared funding does not create any issues not already existing where a single insurance company offers its product in several states.

19. Shared funding by unaffiliated insurers is no different than the use of the same investment company as the funding vehicle by affiliated insurers because affiliation does not reduce the risk, if any exists, of differences in state regulatory requirements.

20. The Fund will not, as a result of shared funding, be managed with the intent to favor or adversely affect one insurance company over another.

21. The exemptions requested are appropriate in the public interest, and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Applicants' Conditions

If the requested order is granted the Applicants agree to the following conditions:

1. The Board of Trustees will establish procedures to minimize the deviation between the Money Market Series' net asset value per share as computed through use of the amortized cost method of valuation and through use of available market quotations.

2. The Board of Trustees will adopt procedures to determine and monitor the extent of deviation of the Series' current net asset value per share calculated by

using available market quotations from the Series' current net asset value per share as computed through use of the amortized cost method of valuation at such intervals as the Board deems appropriate in light of current market conditions; to periodically review the amount of deviation; and, to maintain records of the determinations of the deviation. In the event such deviation from the Series' amortized cost price per share exceeds 0.5%, the Board will promptly consider what action, if any, it should initiate.

3. Where the Board believes the extent of any deviation may result in material dilution or other unfair results to policy owners, it shall take such action as it deems appropriate to eliminate or reduce, to the extent reasonably practicable, such dilution or unfair results, which may include selling portfolio instruments prior to maturity to realize capital gains or losses or to shorten the Series average maturity; withholding the crediting of additional shares in lieu of dividends; or using market quotations to calculate net asset value.

4. The Money Market Series will maintain a dollar-weighted average portfolio maturity appropriate to its objective of minimizing the deviation from its net asset value per share as determined through use of the amortized cost method of valuation from its net asset value per share as determined through use of available market quotations. The Series will not (A) purchase any instrument with a remaining maturity of greater than one year or (B) maintain a dollar-weighted average portfolio maturity which exceeds 120 days. The maturity of portfolio securities held by the Series shall be calculated as set forth in Rule 2a–7 under the Act.

5. The Series will limit its portfolio investments, including puts and repurchase agreements, to those United States dollar-denominated instruments which the Board of Trustees determines present minimal credit risks and which are of "high quality" as determined by recognized statistical rating organizations or of comparable quality as determined by the Board of Trustees.

6. The Fund will record, maintain, and preserve permanently in an easily accessible place a written copy of the procedures described in condition 1 and will record, maintain, and preserve for a period of not less than six years a written record of the Board of Trustees' considerations and actions taken in connection with the discharge of its responsibilities.

7. The Fund will report any action taken pursuant to conditions 2 and 3 on Form N-SAR covering the period in which the action was taken and will attach a statement to the Form describing with specificity the nature and circumstances of such action.

8. A majority of the Board of Trustees of the Fund shall consist of persons who are not "interested persons" of the Fund, as defined by section 2(a)(19) of the Act.

9. The Board will monitor the Fund for the existence of any material irreconcilable conflict between the interests of contractowners (including variable annuity contractowners and variable life contractowners) of all separate accounts investing in the Fund.

10. The life insurers whose separate accounts invest in the Fund and the Fund's adviser shall report any potential or existing conflicts to the Fund's Board of Trustees. Participating insurance companies and the Fund's adviser will be responsible for assisting the Board in carrying out its responsibilities under these conditions, by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This responsibility will be a contractual obligation of all insurers investing in the Fund under their participation agreements.

11. If a majority of the Board of the Fund or a majority of its disinterested Trustees determines that a material irreconcilable conflict exists, the relevent insurance companies shall, to the extent reasonably practicable, take whatever steps are necessary to eliminate the irreconcilable material conflict. If a material irreconcilable conflict arises because of an insurer's decision to disregard contractowner voting instructions and that decision represents a minority position or would preclude a majority vote, the insurer may be required, at the Fund's election, to withdraw its separate account's investment in the Fund and no charge or penalty will be imposed as a result of such withdrawals.

12. The Board shall prompty make known its determination of the existence of an irreconcilable material conflict and the implications thereof in writing to all participating insurance companies and the Fund's adviser.

13. Participating insurance companies will provide pass-through voting privileges to all contractowners so long as the Commission continues to interpret the Act to require pass-through voting in such cases. Participating insurance companies will vote Fund shares owned by the respective companies that are not attributable to contractowners in the same proportion as instructions received in a timely fashion from contractowners.

14. Participating insurance companies will assure that each of their separate accounts participating in the Fund calculates voting privileges in a manner consistent with the participation of separate accounts of other insurance companies. This obligation shall be a contractual obligation of all participating insurance companies under their participation agreements with the Fund.

15. If and when applicable, the Fund shall disclose in its prospectus that: (a) Shares of the Fund are offered to affiliated or unaffiliated insurance company separate accounts which fund both annuity and life insurance contracts; (b) due to differences in tax treatment or other considerations, the interests of various contractowners participating in the Fund or a Series might at some time be in conflict; and (c) the Board will monitor for any material conflicts and determine what action, if any, should be taken.

16. If and to the extent Rule 6e–3(T) is amended or Rule 6e–3 is adopted in final form, the Fund and/or the participating insurance companies, as appropriate, shall take such steps as may be necessary to comply with the Rule as amended or adopted in final form.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–19299 Filed 8–21–87; 8:45 am]

BILLING CODE 8010–01–M

[File No. 22–16849]

Application and Opportunity for Hearing; Mobil Corp.

August 17, 1987.

Notice is hereby given that Mobil Corporation, a Delaware corporation (the "Applicant"), has filed an application pursuant to clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding that the trusteeships of Manufacturers Hanover Trust Company (the "Indenture Trusted") under four indentures, all heretofore qualified under the Act, are not so likely to involve a material conflict of interest under the Act as to make it necessary in the public interest or for the protection of investors to disqualify the Indenture Trustee from acting as trustee under any of such indentures.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest it shall,

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within ninety days after ascertaining the conflicting interest, either eliminate such conflicting interest or resign as trustee. Subsection (1) of section 310(b) provides, with certain exceptions, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which other securities of an obligor upon the indenture securities are outstanding. However, under clause (ii) of subsection (1), there may be excluded from the operation of the subsection other indentures under which other securities of the same obligor are outstanding, if the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under both the qualified indenture and such other indentures is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under more than one of such indentures.

The Applicant alleges that:

(1) Socony Mobil Oil Company, Inc. (now known as Mobil Oil Corporation), a New York corporation (the "Company"), has issued and outstanding as of the close of business on February 27, 1987, $60,512,000 principal amount held by the public and $20,738,000 principal amount held by the Company of its thirty year 4¼% Debentures due 1993 (the "1963 Debentures") under an Indenture, dated April 1, 1963 (the "1963 Indenture"), between the Company and First National City Bank, Trustee. The 1963 Indenture was filed as Exhibit 4–C to Registration Statement No. 2–21145 of the Company under the Securities Act of 1933 and has been qualified under the Trust Indenture Act of 1939.

(2) On May 18, 1966 the Company changed its name to Mobil Oil Corporation.

(3) First National City Bank, on September 22, 1982, gave written notice of its intention to resign as Trustee under the 1963 Indenture because of a conflict arising under section 708(c) of the 1963 Indenture. On December 15, 1982 Bankers Trust accepted appointment as Successor Trustee. Bankers Trust on August 14, 1985 gave written notice of its intention to resign as Trustee under the 1963 Indenture because of a conflict arising under section 708(c) of the 1963 Indenture. The Company requested Manufacturers Hanover Trust Company to accept appointment as Successor Trustee under the 1963 Indenture. As of July 15, 1985 Manufacturers Hanover Trust Company accepted appointment as Successor Trustee under the 1963 Indenture.

(4) The Company has issued and outstanding as of the close of business on February 27, 1987, $73,240,000 principal amount held by the public and $86,560,000 principal amount held by the Company of its thirty year 7⅜% Debentures Due 2001 (the "1971 Debentures") under an Indenture dated as of October 1, 1971 (the "1971 Indenture"), between the Company and Bankers Trust Company, Trustee. The 1971 Indenture was filed as Exhibit 2 to the Registration Statement No. 2–41596 of the Company under the Securities Act of 1933 and has been qualified under the Trust Indenture Act of 1939. Bankers Trust on August 14, 1985 gave written notice of its intention to resign as Trustee under the 1971 Indenture because of a conflict arising under section § 7.08(c) of the 1971 Indenture. The Company requested Manufacturers Hanover Trust Company to accept appointment as Successor Trustee under the 1971 Indenture. As of July 15, 1985, Manufacturers Hanover Trust Company accepted appointment as Successor Trustee under the 1971 Indenture.

(5) Mobil, a Delaware corporation, entered into an Indenture dated as of June 15, 1984 with Manufacturers Hanover Trust Company, Trustee, to provide for the issuance of securities in series (the "1984 Indenture"). Mobil issued and there is presently outstanding as of the close of buisness on February 27, 1987, $899,776,800 principal amount of Mobil's 14.40% Debentures due June 15, 2004 and there is presently issued and outstanding as of the close of business on February 27, 1987, $1,099,872,500 principal amount of Mobil's 13.765% Debentures due September 15, 2004 (2d Series) (collectively, the "1984 Debentures"). The 1984 Indenture was filed as Exhibit 4(a) to the Registration Statement No. 2–90288 of the Company under the Securities Act of 1933 and has been qualified under the Trust Indenture Act of 1939.

(6) Mobil entered into an Indenture dated as of October 1, 1986 (the "1986 Indenture") with Manufacturers Hanover Trust Company, Trustee, to provide for the issuance of securities in series. Mobil has issued and there is presently outstanding as of the close of business on February 27, 1987, $95,400,000 principal amount of Mobil's 7⅝% Notes due December 15, 1993 (the "1986 Notes") under a Supplemental Indenture No. 1 dated as of December 15, 1986 between Mobil and Manufacturers Hanover Trust Company, Trustee. Mobil also has issued and there is presently outstanding as of February 27, 1987, $200,000,000 principal amount of Mobil's 7⅛% Notes due March 1, 1992 (the "1987 Notes") under a Supplemental Indenture No. 2 dated as of March 2, 1987 between Mobil and Manufacturers Hanover Trust Company, Trustee. The Indenture as supplemented by the above-referenced Supplemental Indentures will hereinafter be referred to as the "1986 Indenture." The Indenture was filed as Exhibit 4(a) to the Registration Statement No. 33–9619 of the Company under the Securities Act of 1933 and has been qualified under the Trust Indenture Act of 1939.

(7) As of March 15, 1987 Mobil agreed to guarantee Mobil Oil's obligations under the 1963 Indenture and the 1971 Indenture with respect to the due and punctual payment of principal of and premium, if any, and interest on the 1963 Debentures and the 1971 Debentures, respectively. The Company has requested Manufacturers Hanover Trust Company, as Trustee, to join in the execution and delivery of the First Supplemental Indenture dated as of March 15, 1987 to the 1963 Indenture and the First Supplemental Indenture dated as of March 15, 1987 to the 1971 Indenture (collectively the "Supplemental Indentures") to incorporate the terms of Mobil's guarantee.

(8) As required by section 310(b) of the Trust Indenture Act of 1939, § 7.08 of each of the 1963 Indenture and the 1971 Indenture provides in applicable part (with the bracketed material containing language from the 1971 Indenture not found in the 1963 Indenture) as follows:

(a) If the Trustee has or shall acquire any conflicting interest, as defined in this Section, it shall, within 90 days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign in the manner and with the effect specified in Section 7.10.

(b) In the event that the Trustee shall fail to comply with the provisions of § 7.08(a), the Trustee shall, within 10 days after the expiration of such 90-day period, transmit notice of such failure to the Debentureholders (as the names and addresses of such holders may appear upon the registration books of the Company) in the manner and to the extent provided in § 3.04(c) with respect to reports pursuant to § 3.04(a).

(c) For the purposes of this § 7.08 the Trustee shall be deemed to have a conflicting interest if

(1) the Trustee is trustee under another indenture under which any other securities, or certificates of interest or participation in any other securities, of the Company, are outstanding, unless such other indenture is a collateral trust indenture under which the only collateral consists of Debentures issued under this Indenture, provided that there shall be excluded from the operation of this

paragraph (the Indenture Due June 1, 1946 under which the Company's Thirty Year 2½% Debentures Due June 1, 1976 are outstanding and provided, further, that there shall be excluded from the operation of this paragraph) any indenture or indentures under which other securities, or certificates of interest or participation in other securities of the Company are outstanding if (i) this Indenture and such other indenture or indentures are wholly unsecured and such other indenture or indentures are hereafter qualified under the Trust Indentures Act of 1939, unless the Securities and Exchange Commission shall have found and declared by order pursuant to section 305(b) or section 307(c) of the Trust Indenture Act of 1939 that differences exist between the provisions of such other indentures which are so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Trustee from acting as such under this Indenture or such other indenture or indentures, or (ii) the Company shall have sustained the burden of proving, on application to the Securities and Exchange Commission and after opportunity for hearing thereon, that the Trusteeship under this Indenture and such other indenture or indentures is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Trustee from acting as such under one of such indentures.

Section 7.10 of the 1984 Indenture and the 1986 Indenture incorporates the provisions of Section 310(b) of the Trust Indenture Act of 1939.

(9) Manufacturers Hanover Trust Company believes that if it executes and delivers the Supplemental Indentures, it may have a conflict of interest within the meaning of § 7.08 of the 1963 and 1971 Indentures and § 7.10 of the 1984 Indenture and the 1986 Indenture because the 1984 Indenture and the 1986 Indenture do not explicitly exclude from the operation of § 7.10 thereof the 1963 Debenture and the 1971 Indenture.

(10) The 1963 Debentures, the 1971 Debentures, the 1984 Debentures, the 1986 Notes and the 1987 Notes are all wholly unsecured and are *pari passu* with respect to the obligations of Mobil. The trusteeships of Manufacturers Hanover Trust Company under the 1963 Indenture and the 1971 Indenture, the 1984 Indenture and the 1986 Indenture are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors that Manufacturers Hanover Trust Company be disqualified from acting as trustee under the 1963 Indenture, the 1971 Indenture, the 1984 Indenture or the 1986 Indenture.

(11) The Applicant has waived notice of hearing and hearing.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application, File No. 22–16849, which is a public document on file in the office of the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

Notice is Further Given that any interested person may, not later than September 9, 1987 request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of law or fact raised by said application which he desires to controvert or may request that he be notified if the Commission should order a hearing thereon.

Any such request should be addressed to: Secretary, Securities and Exchange Commission, Washington, DC 20549. At any time after said date, the Commission may issue an order granting the application upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan Katz,

Secretary.

[FR Doc. 87–19357 Filed 8–21–87; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Region V Advisory Council Executive Board Public Meeting

The U.S. Small Business Administration Region V Advisory Council Executive Board will hold a public meeting from 6:00 p.m. Thursday, September 10 to 3:00 p.m. Friday, September 11, 1987 at the Pheasant Run Hotel, St. Charles, Illinois to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call James N. Thomson, Regional Administrator, U.S. Small Business Administration, 230 S. Dearborn Street, Room 510, Chicago, Illinois 60604–1593, (312) 353–0357.

Jean M. Nowak,

Director, Office of Advisory Councils.

August 13, 1987.

[FR Doc. 87–19225 Filed 8–21–87; 8:45 am]

BILLING CODE 8025-01-M

Region IX Advisory Council Executive Board Public Meeting

The U.S. Small Business Administration Region IX Advisory Council Executive Board will hold a public meeting at 10:00 a.m., on Friday, September 4, 1987, at the Federal Building, 450 Golden Gate Avenue, Room 15018 (15th Floor), San Francisco, California, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Thomas Topuzes, Regional Administrator, U.S. Small Business Administration, 450 Golden Gate Avenue, Box 36044, San Francisco, California 94102—(415) 556–7487.

Jean M. Nowak,

Director, Office of Advisory Councils.

August 13, 1987.

[FR Doc. 87–19226 Filed 8–21–87; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[CM–8/1101]

Meeting of the National Committee of the U.S. Organization for the International Radio Consultative Committee

The Department of State announces that the National Committee of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on September 10, 1987, at 9:00 a.m. in Room 1207, Department of State, 2201 C Street NW., Washington, DC.

The National Committee assists in the resolution of administrative/procedural problems pertaining to U.S. CCIR activities; provides advice on matters of policy and positions in preparation for CCIR Plenary Assemblies and meetings of the international Study Groups; and recommends the disposition of proposed U.S. contributions to the international CCIR which are submitted to the Committee for consideration.

The main purposes of the meeting will be:

1. Report on preparations for the Block A Interim Study Group meetings, October-December, 1987 (Study Groups 2, 3, 4, 9, 10, 11, and CMTT).

2. Committee preparations for the International Telecommunication Union's Plenipotentiary Conference, Nice, 1989.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Admittance of public

members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled. All persons wishing to attend the meeting should contact the office of Richard Shrum, Department of State, Washington, DC; telephone (202) 647–5841. All attendees must use the C Street entrance to the building.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

August 11, 1987.

[FR Doc. 87–19305 Filed 8–21–87; 8:45 am]

BILLING CODE 4710–07–M

[CM–8/1100]

Meeting of the Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea; Working Group on Standards of Training and Watchkeeping

The Working Group on Standards of Training and Watchkeeping of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on September 23, 1987 at 10:00 A.M. in Room 6319 at Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593.

The purpose of the meeting will be a general review of the agenda items for the 20th Session of the International Maritime Organization (IMO) Subcommittee on Standards of Training and Watchkeeping, scheduled for January 11–15, 1988 in London.

Members of the public may attend up to the seating capacity of the room.

For further information contact: Captain F. J. Grady, U.S. Coast Guard Headquarters (G–MVP/12) 2100 Second Street S.W., Washington, DC 20593 or by calling: (202) 267–0214.

Date: August 12, 1987.

Richard C. Sciaroni,

Chairman, Shipping Coordinating Committee.

[FR Doc. 87–19306 Filed 8–21–87; 8:45 am]

BILLING CODE 4710–07–M

Partially Closed Meeting of the Reform Observation Panel for UNESCO

The Reform Observation Panel for UNESCO will meet on September 11, 1987 in Room 1406 of the Department of State, 2101 C Street, NW., Washington, D.C. The meeting will begin at 11:00 a.m.

The principal agenda items will be:

—A report by the U.S. Observer to UNESCO on the status of reform of UNESCO and on the election campaign for the post of Director General.

—Discussion of the agendas of the 127th Session of the UNESCO Executive Board and the 24th Session of the General Conference.

The purpose of the meeting will be to discuss the progress of reform at UNESCO and the possibilities of continued reform of the Organization, particularly at the 127th Session of the Executive Board and the 24th Session of the General Conference. Because the meeting will include a classified briefing by the U.S. Observer to UNESCO and Department of State officers and discussion of documents classified pursuant to Executive Order 12356, a determination has been made that the meeting be closed in part to the public pursuant to Section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b (c)(1) and (c)(9)(B). The initial portion of the meeting will be open to the public until approximately 12:00 p.m.

Access to the Department of State is controlled for security reasons. Members of the public who wish to attend the open portion of the meeting or who have requests for further information on the meeting should be directed to the Panel's Executive Secretary, Mr. Raymond E. Wanner, Room 5331, Department of State, 2101 C Street, NW., Washington, DC 20520 (202) 647–6878.

Dated: August 12, 1987.

Raymond E. Wanner,

Executive Secretary, Reform Observation Panel.

[FR Doc. 87–19307 Filed 8–21–87; 8:45 am]

BILLING CODE 4710–19–M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended August 14, 1987

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 45076.

Date Filed: August 12, 1987.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 9, 1987.

Description: Application of United Air Lines, Inc., pursuant to Section 401 of the Act and Subpart Q of the Regulations, requests renewal of an experimental certificate of public convenience and necessity to engage in foreign air transportation of persons, property, and mail as follows: Between the terminal points Los Angeles, California, New York, New York, San Francisco, California, and Honolulu, Hawaii; the intermediate point Tokyo or another intermediate point in Japan; and the coterminal points Beijing and Shanghai, the People's Republic of China.

Docket No. 45098.

Date Filed: August 14, 1987.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: September 11, 1987.

Description: Application of Air New Zealand Limited, pursuant to Section 402 of the Act and Subpart Q of the Regulations, requests an amendment to its foreign air carrier permit authorizing it to engage in charter foreign air transportation of persons and/or property, separately or in combination, as follows: Between a point or points in New Zealand, intermediate points, any point or points in the United States, and beyond points.

Docket No. 42131.

Date Filed: August 14, 1987.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: September 11, 1987.

Description: Application of The Flying Tiger Line Inc. pursuant to Section 401 of the Act and Subpart Q of the Regulations requests that the authority to serve Japan contained in its certificate of public convenience and necessity for Route 205F be renewed for a period of at least five years.

Docket No. 41868.

Date Filed: August 12, 1987.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: September 9, 1987.

Description: Amendment No. 1 to the Application of Liat (1974) Limited, for renewal of its Foreign Air Carrier Permit, pursuant to section 402 of the Act.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 87–19328 Filed 8–21–87; 8:45 am]

BILLING CODE 4910–62–M

Federal Highway Administration

Environmental Impact Statement; Howard County, MD

AGENCY: Federal Highway Administration (FHWA) DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement is being prepared for the proposed construction of a 6-lane expressway on new location in Howard County, Maryland.

FOR FURTHER INFORMATION CONTACT: Mr. Edward A. Terry, Jr., Field Operations Engineer, Federal Highway Administration, The Rotunda, Suite 220, 711 W. 40th Street, Baltimore, Maryland 21211, telephone 301/962–4010, and/or Mr. Louis Ege, Jr., Deputy Director, Project Development Division, Maryland State Highway Administration, 707 North Calvert Street, Room 310, Baltimore, Maryland 21202, telephone 301/333–1130.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Maryland State Highway Administration, is preparing an environmental impact statement to study a five (5) mile extension of Maryland Route 100 between Interstate I–95 and U.S. Route 29 in Howard County.

Between I–95 and MD Route 104, the six-lane divided facility would be on new location. Between MD Route 104 and U.S. 29, the build alternative would follow the alignment of the two-lane roadway which is currently being built by developers west of MD Route 104. The proposed U.S. Route 29/MD Route 103 interchange would be designed to connect into MD Route 100 instead of MD Route 103. A connector from MD Route 100 to MD Route 103 would be provided. Of particular concern will be the impacts on the wetlands and flood plains of Red Hill Branch and Deep Run Creek, and impacts to Brampton Hills Park.

A public meeting to discuss the preliminary alternatives has been held. A public hearing will be held after circulation of the DEIS. A public notice will give the time and place of the public hearing, and individual notices will be sent to those agencies, groups, and individuals on the mailing list. The DEIS will be available for public and agency review and comment prior to the public hearing. To ensure that the full range of issues relating to this proposal are addressed and all significant issues identified, comments and suggestions are invited from all interested parties.

(Catalog of Federal Domestic Assistance Program Number 20.025, Highway Research, Planning and Construction. The provisions of Executive Order 12372 regarding State and Local review of Federal and Federally assisted programs and projects apply to this program.)

Emil Elinsky,

Division Administrator, Baltimore, Maryland.

[FR Doc. 87–19308 Filed 8–21–87; 8:45 am]

BILLING CODE 4910-22-M

Federal Railroad Administration

[Docket No. PB–87–7]

Petition for Exemption or Waiver of Compliance; Longview Switching Co.

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for an exemption from or waiver of compliance with a requirement of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provision involved, and the nature of the relief being requested.

Interested parties are invited to participate in this proceeding by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with this proceeding since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FDA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning this proceeding should identify the appropriate docket number (e.g., Waiver Petition Docket Number RST–84–21) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Communications received before October 8, 1987, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning this proceeding are available for examination during regular business hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

The individual petition seeking an exemption or waiver of compliance is as follows:

Longview Switching Company

(Waiver Petition Docket Number PB–87–7)

The Longview Switching Company (LSC) seeks a permanent waiver of compliance with certain provisions of the Power Brakes Regulations, as set forth in 49 CFR 232.12, "Initial terminal and road train air brake tests," and 49 CFR 232.13(e)(1), "Transfer train and yard train movements not exceeding 20 miles."

LSC is a wholly owned subsidiary of Union Pacific Railroad Company (UP) and Burlington Northern Railroad Company (BN). LSC performs switching service between Longview Junction and Longview. LSC is not a main line railroad, and its operations are confined exclusively to yard limits over approximately 40 miles of trackage, 37.5 miles of which are dedicated to industry and yard switching tracks.

At present time, air tests and walking inspection are performed in compliance with Federal safety regulations before each transfer train movement is undertaken. Six to eight such movements are made each day at speeds not to exceed 10 mph. The trackage between Longview Junction and Longview Yard is reported as flat and with one slight curve. It is built with 115 pound rail on tock ballast and is rated as Class 1, under FRA standards.

There is one public highway crossing involved, which is known as Duke Road, which provides entrance to an industrial area and is not considered as a major thoroughfare. This crossing is protected by cantilevered flashing lights and gongs, and each transfer train comes to a complete stop before proceeding over Duke Road. The petitioner states that there have been no accidents at this crossing over the past 10 years.

The transfer train traverse a 1,690 foot drawbridge en route, which is held in a locked position for rail traffic and cannot be opened without a 24-hour notice.

The petitioner states that granting of this petition would not create safety hazards and would result in savings of approximately $385 per day, which will enable LSC and its parent lines to operate more efficiently and price their services more competitively.

Issued in Washington, DC, August 18, 1987

J.W. Walsh,

Associate Administrator for Safety

[FR Doc. 87–19358 Filed 8–21–87; 8:45 am]

BILLING CODE 4910-06-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 163
Monday, August 24, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

August 18, 1987.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 52, No. ——, August ——, 1987.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., Thursday, August 20, 1987.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Closed [Pursuant to 5 U.S.C. & 552(c)(10)].

CHANGES: The meeting originally scheduled for August 20 has been changed to August 27, 1987. The Commission will consider and act upon the following:

1. White County Coal Corporation, Docket No. LAKE 86-58-R, etc. (Issues include consideration of requirements for taking enforcement action under Section 104(d) of the Mine Act, 30 U.S.C. § 814(c)).

2. Greenwich Collieries, Docket No. PENN 85-188-R, etc. (Issues are the same as above).

It was determined by a unanimous vote of Commissioners that these items be determined in closed session.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5629.

Jean Ellen,
Clerk.

[FR Doc. 87-19466 Filed 8-20-87; 8:45 am]
BILLING CODE 6735-01-M

TENNESSEE VALLEY AUTHORITY

(Meeting No. 1391)

TIME AND DATE: 10:00 a.m. (EDT), Wednesday, August 26, 1987.

PLACE: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

Agenda

Approval of minutes of meeting held on July 24, 1987.

Action Items

Old Business

1. Final Rate Review.

New Business

A—Budget and Financing

A1. Fiscal Year 1988 Capital Budget Financed from Power Proceeds and Borrowings, Comprising Expenditures for Ongoing and New Projects During the Fiscal Year and the Estimated Total Project Cost for those Projects.

A2. Fiscal Year 1988 Operating Budget Financed from Power Revenues.

A3. Adoption of Supplemental Resolution Authorizing 1987 Series D Power Bonds.

A4. Resolution Authorizing the Chairman and Other Executive Officers To Take Further Action Relating to Issuance and Sale of 1987 Series D Power Bonds.

A5. Payments from New Power Proceeds for Fiscal Year 1987 to the Treasury of the United States.

C—Power Items

C1. Supplement to Contract No. TV-62311A Between Tennessee Emergency Management Agency and TVA for Cooperation in the Development and Implementation of Radiological Emergency Plans as Required by the Nuclear Regulatory Commission and the Federal Emergency Management Agency.

C2. Subagreement to Contract No. TV-50942A with Electric Power Research Institute Covering Arrangemetns for Participation in a Project for Operational Testing of the 10-MW Spray Dryer/Electrostatic Precipitator Facility at Shawnee Steam Plant.

C3. Revision of TVA's General Guidelines for Use in Developing Facility Ownership Arrangements with the Distributors of TVA Power.

C4. Arrangements for an Alternative Seasonal Service Rate Schedule which Distributors Would have the Option of Making Available to Customers that Take Power on a Seasonal Basis.

D—Personnel Items

D1. Retroactive Implementation of an Increase in the Reactor Operator License Incentive Payment for Certain Trades and Labor Annual Employees.

D2. Consulting Contract with Virgil C. Summer, of West Columbia, South Carolina, for Advice and Assistance in Connection with Various Power Program Activities, Requested by the Office of Power.

D3. Personal Services Contract with McCann-Erickson, Inc., of Atlanta, Georgia, for Advertising Services Relating to Conservation and Wise Energy Use Programs, Requested by Office of Power.

D4. Supplement to Personal Services Contract No. TV-71448A with Enercon Services, Inc., of Atlanta, Georgia, for Engineering Services Related to Nuclear Plant Licensing Activities, Requested by Office of Nuclear Power.

D5. Personal Services Contract No. TV-73027A with M. H. Sturdivant & Associates, Inc., of Chattanooga, Tennessee, for Nuclear Procedures Support, Requested by the Office of Nuclear Power.

D6. Personal Services Contract with Sargent & Lundy of Chicago, Illinois, for Integration Effort at Browns Ferry Nuclear Plant, Requested by the Office of Nuclear Power.

D7. Personal Services Contracts for General and Specialized Tasks Related to the TVA Nuclear Program, requested by the Office of Nuclear Power.

E—Real Property Transactions

E1. Abandonment of Transmission Line Easements to the City of Johnson City, Tennessee, Affecting Portions of the Northeast Johnson City-Bluff City District 69-kV Transmission Line, Located in Washington County, Tennessee.

E2. Sale of Permanent Easement to the City of DeKalb, Mississippi, Affecting a .13-acre Portion of TVA's DeKalb, Mississippi, Substation Property.

E3. Sale of Permanent Railroad Easement to the Metropolitan Government of Nashville and Davidson County, Affecting 2.4 Acreas of TVA's Cockrill Bend Property in Nashville, Tennessee—Tract No. XNTPSC-2RR.

E4. Public Auction Sale of the Eads Mine Property in South Central Illinois.

E5. Abandonment of Flowage Easement Rights Affecting 0.84 Acre of Nickajack Reservoir Land in Marion County, Tennessee.

E6. Grant of Term Easement to the Commonwealth of Kentucky for Public Recreation and Outdoor Education Affecting Approximately 304 Acres of Kentucky Reservoir Land in Marshall County, Kentucky.

E7. Conveyance to TVA of Rights of Access over TVA Shoreline Land Fronting Chickamauga Reservoir in Rhea County, Tennessee, in Order to Accommodate the Development of a Proposed Waterfowl Habitat Project—Tract NO. XCR-199.

E8. Filing of Condemnation Cases.

F—Unclassified

[1] F1. Cooperative Agreement No. TV-72591A with Tennessee Center for Research and Development Providing for Support of the Power Electronics Applications Center.

F2. Supplement to Cooperative Agreement No. TV-65181A Between the American Welding Institute and TVA Covering Arrangements for TVA to Provide AWI with Certain Welding and Testing Equipment, Workspace, Office Space, Secretarial Services, and Office Equipment and Supplies for a Two-year Period in Exchange for a 15-year Membership.

F3. Supplement to Contract No. TV-69733A Between Parkway Services and TVA Covering Arrangements for Assistance in Connection with Modern Technology

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[1] Item approved by individual Board members. This would give formal ratification to the Board's action.

Development which Would Expand and Generate New Employment Opportunities for Residents in the Tennessee Valley Region.

F4. Supplement to Agreement No. TV-69085A with Olin Chemicals Covering Arrangements for Stream Gate Monitoring Activities for Olin at Huntsville Spring Branch and Indian Creek Tributaries of the Tennessee River on the Redstone Arsenal.

F5. Supplement to Subagreement No. 23 to Memorandum of Agreement No. TV-23928A between TVA and the U.S. Department of the Army, Corps of Engineers, Covering Arrangements for Engineering Analysis of Widening Navigation Channel below Pickwick Lock.

F6. Revised TVA Code Relating to Cost Allocation.

F7. Proposed Amendments to the Rules and Regulations of the TVA Retirement System and of the Provisions of the TVA Savings and Deferral Retirement Plan.

F8. Procedures Providing for Drug and Alcohol Testing of Persons in Certain Critical Positions Related to TVA's Nuclear Program.

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245-0101.

Dated: August 19, 1987.

W.F. Willis,

General Manager.

[FR Doc. 87-19414 Filed 8-20-87; 12:27 pm]

BILLING CODE 8120-01-M

Corrections

Federal Register
Vol. 52, No. 163
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This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 193

[FAP 5H5470/R893; FRL-3242-4]

Pesticide Tolerances for Cyano(4-Fluoro-3-Phenoxyphenyl)Methyl-3-(2,2-Dichloroethenyl)-2,2-Dimethyl-Cyclopropanecarboxylate

Correction

In rule document 87-17737 beginning on page 29008 in the issue of Wednesday, August 5, 1987, make the following correction:

§ 193.98 [Corrected]

On page 29009, in the second column, in § 193.98(b), in the last two lines, the permit number should read "3125-EUP-194".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[PP 6G3445/T547; FRL-3226-2]

Ethephon; Establishment of Temporary Tolerances

Correction

In notice document 87-14913 appearing on page 24524 in the issue of Wednesday, July 1, 1987, make the following correction:

In the third column, in the fourth complete paragraph, in the third line, insert "5" before "U.S.C. 610-612".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPP-50670; FRL-3218-4]

Issuance of Experimental Use Permits

Correction

In notice document 87-13480 beginning on page 23078 in the issue of Wednesday, June 17, 1987, make the following correction:

On page 23079, in the first column, in the sixth line from the bottom, "1989" should read "1988".

BILLING CODE 1505-01-D

PANAMA CANAL COMMISSION

Privacy Act of 1974; Systems of Records

Correction

In the correction to notice document 87-17297 appearing on page 30766 in the issue of Monday, August 17, 1987, make the following correction:

In the third column, following amendatory instruction 3, at the beginning of the quoted material, a portion of the omitted text was not included in the correction. The two captions and data elements are republished in full as follows:

"RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedure, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10."

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87-AWA-31; SFAR 51]

Alteration of the Los Angeles Terminal Control Area; California

Correction

In rule document 87-18795 beginning on page 30914 in the issue of Tuesday, August 18, 1987, make the following correction:

On page 30916, in the second column, under the heading **The Amendment**, in the 10th line, "August 18, 1987" should read "August 19, 1987".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87-AWA-31]

Proposed Alteration of the Los Angeles Terminal Control Area; California

Correction

In proposed rule document 87-18117 beginning on page 29612 in the issue of Monday, August 10, 1987, make the following correction:

On page 29612, in the first column, in the **SUMMARY**, in the 19th line, "dual" should read "visual".

BILLING CODE 1505-01-D

federal register

Monday
August 24, 1987

Part II

Department of Health and Human Services

National Institutes of Health

Recombinant DNA Research; Actions Under Guidelines; Notices

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Research; Action Under Guidelines

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice of Action under NIH Guidelines for Research Involving Recombinant DNA Molecules.

SUMMARY: This notice sets forth an action to be taken by the Director, National Institutes of Health (NIH), under the May 7, 1986, NIH Guidelines for Research Involving Recombinant DNA Molecules (51 FR 16958).

EFFECTIVE DATE: August 24, 1987.

FOR FURTHER INFORMATION CONTACT: Additional information can be obtained from Dr. William J. Gartland, Office of Recombinant DNA Activities, 12441 Parklawn Drive, Suite 58, Rockville, Maryland 20852, (301) 770-0131.

SUPPLEMENTARY INFORMATION: Today an action is being promulgated under the NIH Guidelines for Research Involving Recombinant DNA Molecules.

This proposed action was published for comment in the **Federal Register** of August 15, 1986 (51 FR 29423), and reviewed and recommended for approval by the NIH Recombinant DNA Advisory Committee (RAC) at its meeting on September 29, 1986. Minutes of that meeting are available from the Office of Recombinant DNA Activities at the address given above.

In accordance with Section IV–C–1–b of the NIH Guidelines this action has been found to comply with the NIH Guidelines, and to present no significant risk to health or the environment.

I. Decision on Action Under NIH Guidelines

Proposal to Add Bacillus Sphaericus to Appendix C–V of the NIH Guidelines

Dr. William F. Burke, Jr., of Arizona State University, Tempe, Arizona, in a letter dated July 28, 1986, requested that *Bacillus sphaericus* be added to the list of Gram positive bacteria in Appendix C–V of the NIH Guidelines. References to published articles providing relevant data were included in his submission.

This proposal was published in the August 15, 1986, **Federal Register** (51 FR 29423) for public comment. No comments on the proposal were received.

The RAC considered this proposal at the September 29, 1986, meeting. By a vote of nineteen in favor, none opposed, and no abstentions, RAC recommended approval of the proposal.

I accept this recommendation and Appendix C–V has been modified accordingly.

II. Summary of Actions

Revision of Appendix C–V

Appendix C–V, *Extrachromosomal Elements of Gram Positive Organisms*, is modified by the addition of *Bacillus sphaericus* to the list of organisms.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.

Dated: August 12, 1987.

James B. Wyngaarden,

Director, National Institutes of Health.

[FR Doc. 87-19116 Filed 8-21-87; 8:45 am]

BILLING CODE 4140-01-M

Recombinant DNA Research; Actions Under Guidelines

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice of Actions under NIH Guidelines for Research Involving Recombinant DNA Molecules.

SUMMARY: This notice sets forth two actions to be taken by the Director, National Institutes of Health (NIH), under the May 7, 1986, NIH Guidelines for Research Involving Recombinant DNA Molecules (51 FR 16958).

EFFECTIVE DATE: August 24, 1987.

FOR FURTHER INFORMATION CONTACT: Additional information can be obtained from Dr. William J. Gartland, Office of Recombinant DNA Activities, 12441 Parklawn Drive, Suite 58, Rockville, Maryland 20852, (301) 770-0131.

SUPPLEMENTARY INFORMATION: Today two actions are being promulgated under the NIH Guidelines for Research Involving Recombinant DNA Molecules. These two proposed actions were published for comment in the **Federal Register** of December 19, 1986 (51 FR 45650), and reviewed and recommended for approval by the NIH Recombinant DNA Advisory Committee (RAC) at its meeting on February 2, 1987. A transcript of that meeting is available from the Office of Recombinant DNA Activities at the address given above.

In accordance with Section IV–C–1–b of the NIH Guidelines, these actions have been found to comply with the NIH Guidelines and to present no significant risk to health or the environment.

I. Decisions on Actions Under NIH Guidelines

A. Proposed Amendments of Sections I–A and III–A of the NIH Guidelines

Dr. Bernard Talbot, then Deputy Director, National Institute of Allergy and Infectious Diseases, requested in a memorandum dated December 1, 1986, that the following proposed amendments of the NIH Guidelines and rationale be published for comment and considered by the RAC:

The current NIH Guidelines for Research Involving Recombinant DNA Molecules (Guidelines) contain the following text in Section III–A of the Guidelines.

If the experiments in this category are submitted for review to another Federal agency, the submitter shall notify ORDA; ORDA may then determine that such review serves the same purpose, and based on that determination, notify the submitter that no RAC review will take place, no NIH approval is necessary, and the experiment may proceed upon approval from the other Federal agency.

This text appears in Section III–A of the Guidelines and is applicable only to experiments covered by Section III–A.

It requires that: (1) An investigator who has submitted a proposal to another Federal agency notify the NIH Office of Recombinant DNA Activities (ORDA); (2) ORDA determine if the review serves the same purpose (as NIH review); (3) and, if so, ORDA notify the submitter that the experiment may proceed upon approval from the other Federal agency.

On June 26, 1986, the Office of Science and Technology Policy published in the **Federal Register** (51 FR 23302) a "Coordinated Framework for Regulation of Biotechnology." It contains a Preamble, followed by Statements of Policy from the Food and Drug Administration, Environmental Protection Agency, U.S. Department of Agriculture, Occupational Safety and Health Administration, and the National Institutes of

Health. The Preamble states that, ". . . for contained federally funded research for biomedical and agricultural purposes, research approval will be granted by the funding agency . . . . Jurisdiction for release may be under S&E, NSF, APHIS, or EPA."

There is no mention in the June 26 **Federal Register** document of any requirement, once approval for a recombinant DNA experiment is obtained from a Federal agency other than NIH, for communication with the NIH Office of Recombinant DNA Activities. And indeed, I believe that the absence of such a requirement should be the case; not only for experiments covered by Section III–A of the Guidelines, but for all recombinant DNA experiments.

Therefore, I propose the following changes in the NIH Guidelines for Research Involving Recombinant DNA Molecules.

1. Delete from Section III–A of the Guidelines the following paragraph:

If the experiments in this category are submitted for review to another Federal agency, the submitter shall notify ORDA; ORDA may then determine that such review serves the same purpose, and based on that determination, notify the submitter that no RAC review will take place, no NIH approval is necessary, and the experiment may proceed upon approval from the other Federal agency.

2. Add at the end of Section I–A of the Guidelines the following paragraph:

Any recombinant DNA experiment which according to these Guidelines requires approval by the National Institutes of Health (NIH), may be sent by the submitter to the NIH or to another Federal agency that has jurisdiction for review and approval. Once approval for a recombinant DNA experiment has been given by a Federal agency other than the NIH (whether referred to that agency by the NIH or sent directly there by the submitter), the experiment may proceed without the necessity for NIH review or approval.

This proposal was published for comment in the **Federal Register** of December 19, 1986 (51 FR 45650).

Eleven letters were received with comments on this proposal. Ten of the letters provided unqualified support for the proposal. One letter suggested an alternative mechanism in which NIH and another agency would confer and decide which agency would conduct the review.

The RAC considered this proposal at the February 2, 1987, meeting. The RAC supported the proposal and recommended the incorporation of amendments proposed at the meeting. One RAC member moved that the following sentence be added at the end of proposed revised Section I–A:

However, any experiment that involves the administration of gene therapy to human subjects (see Section III–A–4 of the Guidelines) may not proceed without prior review by the NIH Recombinant DNA Advisory Committee and NIH approval.

Dr. Talbot supported the amendment. By a vote of 12 in favor, 1 opposed, and 3 abstentions, the RAC accepted the amendment.

Another RAC member proposed that the second sentence of proposed revised Section I–A be amended to read as follows:

Once approval, or other applicable clearances, have been obtained from a Federal agency other than the NIH (whether the experiment is referred to that agency by the NIH, or sent directly there by the submitter), the experiment may proceed without the necessity for NIH review or approval.

The RAC then voted 17 in favor, none opposed, and no abstentions to recommend approval of the proposal as amended.

I accept this recommendation and Sections I–A and III–A have been modified accordingly.

B. Proposed Revisions of Appendices C–II, C–III, and C–IV

Dr. Frank E. Young, Commissioner of Food and Drugs, submitted in a letter dated December 4, 1986, the following proposed revisions of Appendices C–II, C–III, and C–IV, and rationale:

On June 26, 1986, a major statement of federal policy, the "Coordinated Framework for Regulation of Biotechnology," was published (51 FR 23301–93). We believe that important clarifications of regulatory policy are to be found there, but that some minor changes in the NIH Guidelines are required for consistency and clarity.

As noted on page 23304 of the June 26 document, Appendices C–II, C–III, and C–IV of the NIH Guidelines contain the statement that:

For large scale (LS) fermentation experiments BL1–LS physical containment conditions are recommended. However, following review by the IBC of appropriate data for a particular host-vector system, some latitude in the application of BL1–LS requirements as outlined in Appendices K–II–A through K–II–F is permitted.

The document continues:

The appropriate large-scale containment requirements of many low-risk [r]DNA derived industral microorganisms will be no greater than those appropriate for the unmodified parental organisms.

Together, these statements imply that the actions of IBCs should ensure that requirements for physical containment of low-risk microorganisms should be appropriately minimal, i.e., only those that are employed routinely for organisms such as *E. coli* K–12, *B. subtilis*, or *Saccharomyces cerevisiae*. It should be noted that industrial fermentation has a long and distinguished history and currently accounts for products valued at more than $2 billion annually. . . . All but a minuscule proportion of this production employs non-pathogenic organisms and is carried out safely under conditions significantly less restrictive than the NIH Guidelines' BL1–LS, which requires that recombinant organisms be handled in a closed system, that culture fluids containing viable organisms not be removed from a closed system, that exhaust gases removed from a closed system be treated by filters equivalent to HEPA filters, etc.

To ensure compliance with the NIH Guidelines, the *E. coli* and *Saccharomyces cerevisiae* production organisms used to manufacture the five DNA-derived pharmaceuticals approved by FDA (human insulin, human growth hormone, two alpha-interferons, and hepatitis B vaccine), are indeed grown under containment conditions at least BL1–LS. This degree of containment is expensive, unwieldy and unnecessary.

Despite the interpretation discussed above of the language in the June 26 document, FDA has received numerous inquiries and requests from academics, industrial representatives, and others who have found the language in the June 26 document and the NIH Guidelines not explicit enough for purposes of strategic planning. Therefore, we propose the following amendment to the NIH Guidelines:

In Appendices C–II, C–III, and C–IV, delete the following language:

For these exempt laboratory experiments, BL1 physical containment conditions are recommended.

For large-scale (LS) fermentation experiments BL1–LS physical containment conditions are recommended. However, following review by the IBC of appropriate data for a particular host-vector system, some latitude in the application of BL1–LS requirements as outlined in Appendices K–II–A through K–II–F is permitted.

And substitute: For these exempt laboratory experiments, the appropriate physical containment conditions need be no greater than those for the host organism unmodified by recombinant DNA techniques.

For large-scale (LS) fermentation experiments, the appropriate physical containment conditions need be no greater than those for the host organism unmodified by recombinant DNA techniques.

This proposal was published for comment in the **Federal Register** of December 19, 1986 (51 FR 45650).

Eighteen letters were received with comments on this proposal. Comments in sixteen letters supported adoption of the proposal. One letter questioned why BL1 containment should be relaxed for laboratory experiments covered by Appendices C–II, C–III, and C–IV, and suggested that "unwieldy, expensive, and unnecessary" requirements for large-scale containment could be replaced by less stringent requirements. One letter opposed the lessening of BL1–LS containment for large-scale experiments.

The RAC considered this proposal at the February 2, 1987, meeting. It was noted that there are two aspects to the proposal. One deals with containment recommended for exempt laboratory

experiments, the other deals with containment recommended for large-scale fermentation. One *ad hoc* consultant said that the proposed language was not an improvement and recommended not changing the current wording regarding laboratory experiments. A RAC member felt that the proposal clarifies the wording of this section, noting that the "latitude" allowed in the application of BL1–LS requirements is somewhat subjective. Another RAC member said that the part of the proposal dealing with laboratory experiments is not necessary, but that some version of the wording regarding large-scale fermentation should be adopted. It was agreed that the laboratory-scale and large-scale aspects should be considered separately.

The RAC then moved that in Appendices C–II, C–III, and C–IV, the paragraph regarding containment for laboratory experiments should be retained as currently worded in the NIH Guidelines, and the proposed paragraph regarding large-scale fermentation should be accepted with the addition of the word "generally" after "conditions," as follows:

> For large-scale (LS) fermentation experiments, the appropriate physical containment conditions generally need be no greater than those for the host organism unmodified by recombinant DNA techniques.

The RAC voted to accept this motion by a vote of 13 in favor, none opposed, and 2 abstentions.

In reviewing this recommendation and in agreement with the intent of the RAC, I conclude that it would be appropriate for clarity to remove the word "generally" and include a statement that the Institutional Biosafety Committee (IBC) may choose to specify a higher level of containment. Accordingly, I accept the RAC's recommendation as modified as follows:

> For large-scale (LS) fermentation experiments, the appropriate physical containment conditions need be no greater than those for the host organism unmodified by recombinant DNA techniques; the IBC can specify higher containment if it deems it necessary.

Appendices C–II, C–III, and C–IV are modified accordingly.

II. Summary of Actions

A. Revisions of Sections I–A and III–A of the NIH Guidelines

The following paragraph is added as the second paragraph to Section I–A of the NIH Guidelines:

> Any recombinant DNA experiment which according to these Guidelines requires approval by the National Institutes of Health (NIH), may be sent by the submitter to the NIH or to another Federal agency that has jurisdiction for review and approval. Once approval, or other applicable clearances, has been obtained from a Federal agency other than the NIH (whether the experiment is referred to that agency by the NIH, or sent directly there by the submitter), the experiment may proceed without the necessity for NIH review or approval. However, any experiment that involves the administration of gene therapy to human subjects (see Section III–A–4 of the Guidelines) may not proceed without prior review by the NIH Recombinant DNA Advisory Committee and NIH approval.

The following paragraph is deleted from Section III–A:

> If the experiments in this category are submitted for review to another Federal agency, the submitter shall notify ORDA; ORDA may then determine that such review serves the same purpose, and based on that determination, notify the submitter that no RAC review will take place, no NIH approval is necessary, and the experiment may proceed upon approval from the other Federal agency.

B. Revisions of Appendices C–II, C–III, and C–IV

The third paragraph of Appendix C–II, the fourth paragraph of Appendix C–III, and the third paragraph of Appendix C–IV are modified to read as follows:

> For large-scale (LS) fermentation experiments, the appropriate physical containment conditions need be no greater than those for the host organism unmodified by recombinant DNA techniques; the IBC can specify higher containment if it deems it necessary.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual Programs listed in the *Catalog of Federal Domestic Assistance* are affected.

Dated: August 12, 1987.

James B. Wyngaarden,

Director, National Institutes of Health.

[FR Doc. 87–19119 Filed 8–21–87; 8:45 am]

BILLING CODE 4140–01–M

federal register

Monday
August 24, 1987

Part III

Department of Labor

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, 1917, 1918, 1926, and 1928

Hazard Communication; Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, 1917, 1918, 1926, and 1928

[Docket No. H-022D]

Hazard Communication

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Final rule.

SUMMARY: OSHA is revising its Hazard Communication Standard (HCS) (29 CFR 1910.1200), which currently applies to the manufacturing sector, to cover all employers with employees exposed to hazardous chemicals in their workplaces. Expansion of the scope of the HCS requires non-manufacturing employers to establish hazard communication programs to transmit information on the hazards of chemicals to their employees by means of labels on containers, material safety data sheets, and training programs. This action will reduce the incidence of chemically-related occupational illnesses and injuries in non-manufacturing workplaces.

DATES: Effective September 23, 1987. The revised standard published today requires that chemical manufacturers, importers, and distributors ensure that material safety data sheets are provided with the next shipment of hazardous chemicals to non-manufacturing employers or distributors after September 23, 1987. All employers in the non-manufacturing sector are to be in compliance with all provisions of the standard by May 23, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Room N3637, Washington, DC, 20210; telephone (202)523-8151.

SUPPLEMENTARY INFORMATION: References to the rulemaking record are made in the text of this preamble, and the following abbreviations have been used:

H-022, Ex.: Exhibit number in Docket H-022, which includes Dockets H-022A and H-022B.

Ex.: Exhibit number in Docket H-022D for exhibits collected since the 1985 Court remand.

Tr.: Public hearing transcript page number.

Copies of the official list of entries in the record, as well as the exhibits themselves, are available from the OSHA Docket Office, Dockets H-022 and H-022D, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Room N3670, Washington, DC, 20210; telephone (202)523-7894.

I. Background

A. History of OSHA's Hazard Communication Standard

When Congress passed the Occupational Safety and Health Act of 1970, 29 U.S.C. 651 *et seq.* (the Act), it included language in section 6(b)(7) stating that any occupational safety or health standard promulgated by the Secretary of Labor under section 6(b) rulemaking authority "shall prescribe the use of labels or other appropriate forms of warning as are necessary to insure that employees are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure." Whenever OSHA has promulgated a substance-specific rule to address the hazards of a particular chemical, this Congressional directive has been followed. However, given the universe of chemicals present in American workplaces (as many as 575,000 hazardous chemical products), and the time-consuming nature of OSHA's rulemaking process, it soon became clear that little information would be available to employees if this substance-by-substance approach were the only one pursued. The Agency thus decided to address the issue of hazard information transmittal on a generic basis. OSHA's experience, as well as our rulemaking record to date, supports the view that when employees have access to, and understand, the nature of the chemical hazards they are exposed to during the course of their employment, they are better able to participate in their employers' protective programs, and take steps to protect themselves. In addition, providing employers with complete chemical hazard information enables them to better design and implement protective programs. Together these actions will result in more effective worker protection and the occurrence of fewer illnesses and injuries due to exposure to chemicals. *See, e.g.*, 48 FR 53282-84, 53321, 53323-24, 53327-29 (Nov. 25, 1983); 47 FR 12093-12101 (Mar. 19, 1982).

In 1974, OSHA established a Standards Advisory Committee on Hazardous Materials Labeling under section 7(b) of the Act to develop guidelines for the implementation of section 6(b)(7). On June 6, 1975, the Committee submitted its final report to the Assistant Secretary for Occupational Safety and Health which recommended categorization and ranking of chemical hazards, as well as provisions for labels, material safety data sheets, and training programs for all workers.

The National Institute for Occupational Safety and Health (NIOSH) published a criteria document in 1974 which also recommended a standard to OSHA. The document, entitled "A Recommended Standard . . . An Identification System for Occupationally Hazardous Materials," included provisions for labels and material safety data sheets.

In 1976, Congressman Andrew Maguire from New Jersey and the Health Research Group petitioned OSHA to issue a standard to require the labeling of all workplace chemicals. The House of Representatives' Committee on Government Operations (1976 and 1977) recommended that OSHA enforce the health provisions of the Act by requiring manufacturers to disclose any toxic ingredients in their products, and by requiring all employers to disclose this information to workers.

On January 26, 1977, OSHA initiated the public participation phase of the rulemaking process on these issues by publishing an advance notice of proposed rulemaking (ANPR) on chemical labeling in the **Federal Register** (42 FR 5372). The ANPR requested comments and information on the need for such a standard, and the particular provisions that should be included. The Agency received eighty-one comments. Most supported the need for the rule, but opinions as to the specific approaches to be pursued varied significantly.

On January 16, 1981, OSHA published a notice of proposed rulemaking (NPRM) entitled "Hazards Identification" (46 FR 4412). The rule would have required manufacturing employers to assess the hazards in their workplaces using specified procedures, and to label containers. The requirements were quite different from the comprehensive approach previously recommended by the Standards Advisory Committee and NIOSH as they did not include provisions for material safety data sheet development or training.

OSHA withdrew the NPRM on February 12, 1981 (46 FR 12214) for further consideration of regulatory alternatives. A new NPRM was published on March 19, 1982, and was entitled "Hazard Communication" (47 FR 12092). It proposed to require producers of chemicals to evaluate them to determine their hazards, label

containers, and provide material safety data sheets to manufacturing purchasers of their products. The standard also proposed that all employers in the manufacturing sector have a hazard communication program, label in-plant containers, maintain and provide access to material safety data sheets, and train workers. The proposal also invited comments on whether non-manufacturing employers should be subject to the rule.

Following a period for written comments, informal public hearings, and a post-hearing comment period, OSHA published the final Hazard Communication Standard on November 25, 1983 (48 FR 53280). The provisions of the final rule are very similar to those described above for the proposal, *i.e.*, chemical manufacturers and importers are required to evaluate the hazards of the chemicals they produce or import, and all manufacturers are required to have hazard communication programs for their employees exposed to hazardous chemicals. This comprehensive standard was designed to reduce the hazards faced by manufacturing workers when they handle chemicals without adequate information on, among other things, the physical and health hazards of the chemicals, safe handling precautions, and emergency and first aid procedures. *See, e.g.*, 48 FR 53321. OSHA found that inadequate communication regarding chemical hazards presents a significant risk to workers. *See, e.g.*, 48 FR 53321. *Accord United Steelworkers of America v. Auchter*, 763 F.2d 728, 735 (3d cir. 1985) (*United Steelworkers I*) ("[I]nadequate communication is itself a hazard, which the standard can eliminate or mitigate.").

OSHA decided to limit the scope of coverage of the HCS to the manufacturing sector based on an analysis of the chemical source illnesses and injuries occurring in each industrial sector. (*See* discussion at 48 FR 53284–86.) In particular, since the purpose of the standard is to reduce the occurrence of such incidents, OSHA determined that the rule should focus on those industrial sectors where they are recorded most frequently. The Agency found that over half of these incidents occur in manufacturing, although manufacturing accounts for only about 30 percent of total employment. Thus OSHA decided that the greatest need for transmittal of chemical hazard information is in the manufacturing sector. The Agency further recognized that since chemicals are developed and produced in the manufacturing sector, the hazard information would have to be developed in the manufacturing sector first, regardless of the eventual coverage of the rule. OSHA believed that requiring the development of the chemical hazard information in manufacturing would lead to its increased availability in the other sectors without the standard specifically requiring the transmittal of hazard information to those sectors. The Agency acknowledged that hazardous chemicals are pervasive throughout industry and that chemical source injuries and illnesses have been recorded in all industry sectors. *See, e.g.*, 48 FR 53282–87. *See also United Steelworkers I*, 763 F.2d at 737. The Agency planned to make a decision regarding the explicit coverage of the non-manufacturing sectors once the HCS was in effect, and a determination could be made as to whether the other industries were, in fact, obtaining the information they needed. OSHA believed that the Act gives the Secretary of Labor and the Agency the authority to regulate the most hazardous industry first under section 6(g), 29 U.S.C. 655(g), which states in part:

> In determining the priority for establishing standards under this section, the Secretary shall give due regard to the urgency of the need for mandatory safety and health standards for particular industries, trades, crafts, occupations, businesses, workplaces or work environments.

B. Court Challenges

The HCS was challenged in the U.S. Court of Appeals for the Third Circuit (hereinafter referred to as "the Court" or "the Third Circuit") on several grounds. The Court issued its decision on May 24, 1985 (*United Steelworkers I*, 763 F.2d 728 (3d Cir. 1985)). The standard was upheld in most respects, but three issues were remanded to the Agency for reconsideration. The decision was not appealed.

First, the Court concluded that the definition of trade secrets incorporated by OSHA included chemical identity information that was readily discoverable through reverse engineering and, therefore, was "broader than the protection afforded trade secrets by state law." The Court directed the Secretary of Labor to reconsider a trade secret definition which would not include chemical identity information that is readily discoverable through reverse engineering. Second, the Court held the trade secret access rule in the standard invalid insofar as it limited access to health professionals, but found the access rule otherwise valid. The Secretary was directed to adopt a rule permitting access by employees and their collective bargaining representatives to trade secret chemical identities. OSHA complied with the Court orders regarding the two trade secret issues in a separate rule, published in final form on September 30, 1986 (51 FR 34590).

The third issue remanded to OSHA involved the scope of the standard's coverage. As noted, the HCS currently applies to employers and employees in the manufacturing sector. The Court rejected the Secretary's contention that section 6(g) gave him the flexibility to regulate the most hazardous sector first before commencing rulemaking for other sectors in which workers are exposed, to a lesser extent, to the same hazards. The Court agreed that section 6(g) "clearly permits the Secretary to set priorities for the use of the Agency's resources, and to promulgate standards sequentially." 763 F.2d at 738. The Court also acknowledged that "there is substantial evidence in the record that the manufacturing sector has the highest incidence rate of chemical exposures which the Agency has authority to regulate." *Id.* at 737. However, the Court held that it is not enough merely to establish that the sector selected for coverage presents greater hazards than those that have been left for later rulemaking. Given the record evidence of high levels of exposure to hazardous chemicals in several job settings outside the manufacturing sector, the Secretary was required to explain "why coverage of workers outside the manufacturing sector would have seriously impeded the rulemaking process" or "why it is not feasible for the same standard to be applied in other sectors where workers are exposed to similar hazards." *Id.* at 738.

The Court was not persuaded that the HCS would provide protection to uncovered workers because chemical hazard warnings would be found on container labels and detailed information on material safety data sheets would become increasingly available in the unregulated sectors as a result of being required in manufacturing. *Id.* There was considerable record evidence that indicated that workers in the non-manufacturing industries are exposed to chemical hazards. The Court concluded that the Secretary had not stated why it would not be feasible to require employers in non-manufacturing industries to give workers material safety data sheets and training as required in the manufacturing sector. *Id.* The Court maintained that the Act required an explanation why the same information, that is, labels, material

safety data sheets, and training, is not needed for workers in other sectors similarly exposed to hazardous chemicals. *Id.* at 738–39. Therefore, as previously indicated, OSHA was directed by the Court to reconsider the application of the standard to employees in the non-manufacturing industries and to order its application to these other sectors unless the Secretary can state reasons why this application would not be feasible. It should be noted that in previous OSHA litigation, the Courts have defined "feasibility" in terms of OSHA rules as meaning "capable of being done." *American Textile Manufacturers Institute v. Donovan*, 452 U.S. 490, 508–509 (1980)(ATMI).

OSHA decided not to appeal this decision. As stated in the preamble to the final rule (48 FR 53286):

> It should be emphasized that the Agency does not believe that employees in other industries are not exposed to hazardous chemicals, or that they should not be informed of those hazards. OSHA has merely exercised its discretion to establish rulemaking priorities, and chosen to first regulate those industries with the greatest demonstrated need.

OSHA was prepared to evaluate the HCS' effectiveness in getting information to downstream employers, and to extend the standard if necessary. In fact, the Agency initiated the process on March 4, 1985, prior to the Court decision, when the Assistant Secretary asked the National Advisory Committee on Occupational Safety and Health (NACOSH) to give OSHA its recommendation on the need and feasibility of expanding the scope of the HCS to other industries. On June 21, 1985, NACOSH adopted the following recommendation:

> [NACOSH] strongly endorses the OSHA effort to promulgate a Hazard Communication Standard and selection of the manufacturing sector for its initial scope of coverage. It is the consensus recommendation of the Committee that the scope of the current Hazard Communication Standard should be expanded to cover all employees in all industries at as early a time as possible. Complete implementation may require phasing in gradually. The BLS [Bureau of Labor Statistics] incidence rates of occupational illnesses, and other appropriate factors, should be primary considerations in expanding the coverage. The Committee further recommends that OSHA establish a task force to address these issues.

Meanwhile, OSHA's review of the rulemaking record showed that while there was considerable evidence concerning the need for hazard communication in other industries, and general support for a finding that the HCS would be feasible for non-manufacturing, there was a need for more direct evidence of the feasibility of expanded coverage, particularly in the area of economic feasibility. Accordingly, OSHA believed it was necessary and appropriate to initiate further rulemaking. OSHA commissioned a study of the economic impact of extending the HCS to the fifty major non-manufacturing industry groups within its jurisdiction, and issued an Advance Notice of Proposed Rulemaking (ANPR) seeking public comment on present hazard communication practices outside manufacturing, and the likely impact of extending the HCS to industries significantly different from the prototypical manufacturing worksites on which the original standard was based. 50 FR 48794 (Nov. 27, 1985). Over two hundred responses were received. Based on this newly acquired evidence and on the previous rulemaking record, OSHA was in the process of drafting a proposed rule which it expected to publish for notice and comment, followed by promulgation of a final rule in early 1988.

On January 27, 1987, however, the United Steelworkers of America, AFL–CIO–CLC and Public Citizen, Inc., petitioners in the 1985 challenge, filed a Motion For An Order Enforcing The Court's Judgment and Holding Respondent In Civil Contempt. Petitioners claimed that the Court's 1985 order had not authorized OSHA to embark on further fact gathering; that OSHA should have made a feasibility determination on the 1985 rulemaking record. Petitioners also argued that even if further fact gathering had been allowed by the Court's order, OSHA's pace was unduly slow.

In response, OSHA noted that the Court's 1985 order did not specify that OSHA should act on the then-existing record. OSHA believed that seeking further evidence on feasibility in non-manufacturing was appropriate in light of its statutory obligation to issue rules that are well grounded in a factual record. OSHA also asserted that, consistent with Supreme Court precedent, the Agency should be permitted to exercise its discretion in determining the appropriate rulemaking procedures for complying with the Court's remand order. Lastly, the Agency argued that its schedule to complete the rulemaking was reasonable and did not constitute undue delay.

On May 29, 1987, the Court issued a decision holding that the Court's 1985 remand order required consideration of the feasibility of an expanded standard without further rulemaking. *United Steelworkers of America, AFL–CIO–CLC v. Pendergrass*, No. 83–3554 (3d Cir.) (*United Steelworkers II*). The Court declared that adequate notice had been provided to non-manufacturers during the original rulemaking that they might be covered by the HCS, *id.* slip op. at 7–10, 16–17, that the answers to the remaining questions OSHA may have had regarding feasibility were "self-evident" or "readily ascertainable" from the original record, *id.* at 15, 17, and that further fact finding was "unnecessary", *id.* at 15. The Court ordered the Agency to issue, within 60 days of its order, "a hazard communication standard applicable to all workers covered by the OSHA Act, including those which have not been covered in the hazard communication standard as presently written, or a statement of reasons why, on the basis of the present administrative record, a hazard communication standard is not feasible." *Id.* at 19. OSHA is responding to the Court order by issuing this final rule expanding the scope of the HCS' coverage to all workers within OSHA's jurisdiction.

OSHA continues to believe that it should have been permitted to follow the rulemaking procedures in the Act by issuing a notice of proposed rulemaking and developing a public record prior to promulgating a final rule. However, as discussed in the following section regarding feasibility, the Agency does not have sufficient evidence in the current record to indicate that the rule would be infeasible for any part of the non-manufacturing sector. OSHA recognizes that information submitted during a normal rulemaking process might have resulted in further changes to the provisions to better address feasibility or practicality concerns.

In light of the fact that there may be additional information regarding the feasibility or practicality of the rule as it applies to some non-manufacturing sectors, the Agency invites persons to provide such information and any recommendations for further rulemaking within sixty days of the date of publication of this final rule. OSHA will then evaluate these submissions and determine whether any additional rulemaking is required. Data or evidence related to feasibility should be addressed to: Directorate of Health Standards Programs, Occupational Safety and Health Administration, Attention: Hazard Communication, 200 Constitution Avenue, NW., Room N3718, Washington, DC, 20210.

C. Feasibility of the Standard

In the context of OSHA standard setting, feasibility constraints limit the extent to which standards can address health and safety concerns within the workplace. Section 6(b)(5) of the Act, 29 U.S.C 655(b)(5). Feasibility analysis involves an inquiry to determine whether a standard is both technologically and economically capable of being done. *ATMI,* 452 U.S. at 512–13 and 513 n.31 (1980). As the Third Circuit has indicated, "the Secretary was able to determine that the hazard communication standard could feasibly be applied in the manufacturing sector." *United Steelworkers II,* slip op. at 16. The Court further noted that OSHA had concluded in the final rule that importers and distributors could feasibly comply with the HCS based on the evidence in the record and that "this is equally true of all non-manufacturer user employers. Plainly, the ease with which the same information can be utilized by those employers can be easily determined from the information already in the record." *Id.* at 18. The Third Circuit has ordered expansion of the HCS to all workers *unless* OSHA can give reasons why the HCS is infeasible for particular industries, and has forbidden OSHA from gathering further evidence.

OSHA concludes that the original HCS rulemaking record (Docket H–022), does not contain credible evidence indicating the standard would be infeasible for any industrial sector. In fact, OSHA believes that the original record on the whole supports a finding that the performance-oriented HCS is feasible for all industries. In addition, the Agency's experience under the present HCS and other pertinent OSHA standards, the promulgation and implementation of State and local right-to-know laws, and evidence and data gathered by the Agency since the 1985 Court order (Docket H–022D), further supports OSHA's conclusion that non-manufacturing employers are "capable" of implementing the HCS for their employees potentially exposed to hazardous chemicals.

OSHA found that the HCS is technologically feasible for manufacturers, and believes it is clearly technologically feasible for non-manufacturers as well. Twelve of the OSHA-approved State plan States have already extended the rule to cover the non-manufacturing sector, and the requirements are being enforced in those States as workplace standards. This experience provides practical evidence of the technological feasibility of the requirements of the rule. The more technical aspects of the standard—scientific evaluation of chemicals to determine their hazards and creation of material safety data sheets and warning labels—remain a burden on those producing or importing hazardous chemicals. The technical expertise needed to develop the chemical hazard information, and its associated costs, is subsumed within the current rule covering manufacturers, and it has been found feasible. All other requirements in the HCS, such as maintaining material safety data sheets, developing a written hazard communication program, and designing and implementing chemical hazard training, are conventional and common business practices that are administrative in nature, and no technological barriers prevent their development and implementation. OSHA has mandated such practices for some non-manufacturing workplaces since the early 1970's. *See, e.g.,* 29 CFR 1915.97 (requiring material safety data sheets and chemical hazard training for shipyard workers); 1917.22 (requiring marine terminal workers be instructed as to the chemical hazards presented by cargo); 1918.86 (requiring chemical hazard instruction for longshore workers); 1926.21 (requiring chemical hazard training for construction workers). *See, also,* H–022, Ex. 99 (journal article regarding usefulness of material safety data sheets, written by Dow Chemical Company representatives and published in December 1957).

OSHA also believes that the economic feasibility of extending the current HCS to the non-manufacturing sector is supported by the record. Simply put, economic feasibility is established by evidence that the standard will not threaten the regulated industry's "long-term profitability." *ATMI,* 452 U.S. at 531 n.55. Costs associated with expanding the standard to cover non-manufacturing workplaces will stem from the initial start-up costs and the less substantial recurring program implementation and upkeep costs for: maintaining material safety data sheets received from manufacturers, importers, distributors, and other employers; creating labels for in-house containers of hazardous chemicals; developing a written hazard communication program, including a list of hazardous chemicals present in the workplace; and developing and implementing chemical hazard training.

After careful analysis of the original HCS rulemaking record, OSHA concludes that, as a whole, it supports a finding that non-manufacturers are economically capable of providing employees chemical hazard information in the manner prescribed by the HCS. As noted previously, development of the evidentiary record for the HCS began as early as 1974. In that year, NIOSH recommended that OSHA adopt a standard requiring *all* employers to implement a system of labels, placards and material safety data sheets in their workplaces to inform employees about the chemical hazards to which they may be exposed. (H–022, Ex. 4). The NIOSH recommended standard, like the HCS, included requirements that employers ensure that chemicals in the workplace are marked with hazard warnings and that material safety data sheets are "filed in the establishment" where they are "readily available for examination by workers". *Id.* at 3. This hazard identification and warning system was designed to additionally "help in the education of employees and provide the data necessary for employers to take proper action to safeguard their employees." *Id.* at 1. NIOSH concluded that such a chemical hazard communication program was appropriate for all employers. *See, also* comments of the Air Transport Association, H–022, Ex. 5–3 ("[T]he airlines have no general objection to the [NIOSH] Criteria . . . [except that it] should clearly delineate the responsibility of the manufacturer supplying the necessary data on the Material Safety Data Sheets.").

The 1975 report of the Standards Advisory Committee on Hazardous Materials Labeling (H–022, Ex. 3), recommended a "total system" approach to chemical hazard communication not unlike the comprehensive approach of the current HCS. The Advisory Committee, which included representatives of non-manufacturers, recommended labeling and placarding systems, the creation and availability of material safety data sheets, and employee education and training programs for all workers potentially exposed to hazardous chemicals. The Committee recognized that these practices "are not new and novel concepts" but "well established in many industries and professional associations as well as regulated by various governmental agencies and international agreements." *Id.* at 3. The Advisory Committee made "no distinction among employees in different sectors of the economy." *United Steelworkers II,* at 7.

As the Court has stated, *id.* at 8, the 1977 ANPR requested public comment from all interested persons on whether a chemical hazard communication standard should be promulgated by

OSHA. Comments on the Standards Advisory Committee's recommended standard were specifically requested. Although OSHA did not receive comment from employers in every industrial sector, those non-manufacturers that did respond supported a comprehensive hazard communication system for their workplaces. For example, Sea-Land Service, Inc. (H–022, Ex. 2A–6), supported requirements for container labels (consistent with transportation labels already in place), the availability of material safety data sheets to persons in the workplace, and individual training programs. Panhandle Eastern Pipe Line Company (H–022, Ex. 2A–7) and Truckline Gas Company (H–022, Ex. 2A–9) both "agree[d] that employees need information about the product with which they work" and that this could be accomplished by requiring suppliers of hazardous chemicals to label containers with the "degree and nature of the hazard" and by requiring user employers to "inform employees of the hazard." Those companies had already developed "a special manual of data for all chemicals, solvents and cleaners used in [their] operations and maintenance."

Wisconsin Electric Power Company (H–022, Ex. 2A–30), stated that given adequate labels and material safety data sheets from chemical manufacturers and suppliers, chemical users such as they "would be in a position to prepare their own Material Safety Data Sheets, hazard placard systems, proper labeling of auxiliary and secondary containers and training of personnel who may use or otherwise contact this material." Recognizing the need for "proper labeling, storage, handling and instructions in the use of hazardous materials," Wisconsin Electric Power Company had already "developed and put into effect a Hazardous Materials Control Program." Southern Gas Association (SGA) (H–022, Ex. 2A–75) also believed that suppliers and manufacturers of hazardous materials should be required to provide proper labeling, warnings and other hazard information to all employers using these materials. SGA further suggested that OSHA promulgate a standard directing all employers "to establish required training for employees that may handle or otherwise be exposed to any hazardous materials." These comments and others filed in response to OSHA's 1977 ANPR indicate that many non-manufacturers consider maintaining labels received on chemical containers, making material safety data sheets received from suppliers available to employees, and providing information and training to employees regarding the chemical hazards present in the workplace to be economically feasible. *See, also* H–022, Exs. 2A–2 (Schirmer Engineering Corporation); 2A–31 (Union Electric Company); 2A–32 (Texaco); 2A–36 (American Trucking Association, Inc.).

Moreover, comments received from non-manufacturers at later stages of the original rulemaking also indicate they are capable of implementing the performance-oriented HCS. In fact, there are comments which indicate that many of these requirements were already being implemented in the non-manufacturing sector.

For example, the Western Agricultural Chemicals Association indicated that its members provide material safety data sheets to anyone who requests them, including customers in the non-manufacturing sector (Tr. 2873). Their representative further stated that "[i]n the agricultural field, I would say most technical products have material safety data sheets. I would say maybe 75% to 80% of the inerts have them . . ." (Tr. 2881).

There was also testimony from employee representatives, including those in the non-manufacturing sector such as airline mechanics, that they requested and were able to obtain material safety data sheets from manufacturers for products in use in their facilities. Tr. 2819–21, 3131, 3828. One union testified that a joint employee-employer safety committee received every material safety data sheet it requested, and that the union then trained workers to be able to use the information. Tr. 2824–A.

Another non-manufacturing union representative, the International Brotherhood of Painters and Allied Trades, indicated that it shared collected material safety data sheets with employers who needed such information. "[T]o contractors who make requests of us for information, we do provide them material safety data sheets, write-ups on the chemicals and the products . . . We do everything—our union does everything they can as a service to our contractor members to provide them with the information they need to operate safely. . . ." Tr. 2101–2.

Other large companies with manufacturing as well as non-manufacturing establishments testified that information was made available throughout their corporations, and they provide information to all customers regardless of industry. For example, Atlantic Richfield Company testified that they have a company-wide material safety data sheet policy and program. "[U]nder this program, a material safety data sheet is recognized as a basic source of information for practical health, safety and environmental information. The MSDS whether generated internally or obtained from a supplier is used to communicate relevant data within the company and to outside customers. It is the responsibility of our various operating companies to distribute copies of each MSDS to customers and company facilities for employee instruction and/or information." Tr. 2439. Their company facilities include such non-manufacturing operations as petroleum production.

Similarly, Exxon, Inc. testified that it too provides material safety data sheets to all customers: "[W]e consider a material safety data sheet a matter of public information that's part of our literature, regularly available to anyone who requests it." Tr. 1708–09. *See, also,* Shell testimony at Tr. 1712 and 2500, and Uniroyal Chemicals at Tr. 1464.

Therefore, based on the recommendations of NIOSH, the Standards Advisory Committee and the comments received from non-manufacturers and their representatives participating in the lengthy rulemaking, OSHA concludes that the original record as a whole indicates that non-manufacturers are capable of complying with the HCS. As long as chemical suppliers provide adequate chemical hazard information in the form of labels and material safety data sheets to non-manufacturers using the chemicals, those user employers, like the manufacturers who use hazardous chemicals which they themselves did not manufacture or import, can develop hazard communication programs and provide employees information and training on the chemical hazards in the workplace.

In light of the evidence in the original rulemaking record, OSHA concludes that non-manufacturers can incorporate the HCS' administrative practices and provide chemical hazard information to their employees. OSHA believes all employers can ensure that containers of chemicals are maintained with proper hazard warnings just as an employer would maintain labels or marks on containers to ensure that employees comprehend their contents and intended uses. Likewise, all employers are able to acquire and maintain up-to-date material safety data sheets for hazardous chemicals just as they are able to acquire and maintain up-to-date cost information and performance specifications on those very same

chemicals. OSHA also concludes that it is feasible for employers to inform and train their workers regarding the chemical hazards present in the workplace just as employers are capable of training their workers to perform their jobs in an efficient and speedy manner. These conclusions are further supported by the experience and evidence gathered by the Agency since promulgation of the HCS for manufacturers in 1983.

At this time, OSHA has no evidence indicating that the profitability of manufacturers generally, or even chemical manufacturers in SIC 28 (by far the most economically burdened by the HCS, *see* 48 FR 53333), has been threatened by complying with the HCS. Manufacturers have had the considerable costs of evaluating, collectively, hundreds of thousands of chemicals for their hazards and creating corresponding labels and material safety data sheets since November 1985, as well as the costs of implementing an in-plant program by May 1986. After thorough analysis, OSHA determined that the current HCS would not impose a substantial burden on manufacturers and that the HCS was economically feasible for them. *See* 48 FR 53333. Experience to date in implementation of the rule supports that finding. For example, if manufacturers were experiencing significant feasibility problems in complying with the rule, OSHA would have expected to receive numerous substantive comments regarding those problems in response to the 1985 ANPR questions addressing feasibility concerns. However, although some manufacturing employers objected to some requirements, substantive comments demonstrating infeasibility were not received, which appears to support OSHA's conclusion that compliance with the HCS was, and continues to be, economically feasible for manufacturers and indicates the standard is also feasible for non-manufacturers. In fact, some manufacturers took the opportunity to state their continuing support for the rule and its requirements. *See, e.g.*, H-022D, Ex. 2-14, (The Chemical Manufacturers Association "strongly believes that the substantive provisions of the Hazard Communication Standard are sound as a matter of science and policy."); Ex. 2-67 (Economics Laboratory, Inc. "considers hazard communication worth the effort.")

Generally, the HCS costs to non-manufacturers would be a function of the number of hazardous chemicals in the workplace, and the number of employees exposed to hazardous chemicals. If employees are not potentially exposed to hazardous chemicals in a particular work operation, the proposed standard does not apply. Also, to the extent that employers are voluntarily providing information, or providing information in order to comply with other regulations or laws, this should significantly reduce the burden of compliance with this rule. Approximately 32 States and several localities already have hazard communication/right-to-know laws covering non-manufacturing industries indicating that many others seeking to protect the safety and health of workers have concluded that industry can comply with these types of requirements. In fact, as evidenced in the original rulemaking record, many companies involved in interstate commerce would benefit from promulgation of a uniform Federal standard as it would preempt different and potentially conflicting State and local laws and lessen overall compliance burdens. 48 FR 53283. *See also, e.g.*, H-022D, Ex. 2-83 (The American Gas Association "believes that a Federal Standard, rather than a variety of differing state regulations, would best serve the needs of the natural gas industry, the employees in our industry, and the general public as well."); Ex. 2-106 (The National Constructors Association has found that "[i]t has been nearly impossible to establish uniform interstate policy" and "can clearly see the wisdom of having one workable/cost-effective government regulation that addresses hazard communication.")

Although the original HCS record contained no evidence to indicate the HCS would be economically infeasible for non-manufacturing, OSHA recognized that potential feasibility concerns could arise, for example, with small businesses, businesses with large employee turnover (such as retail stores and construction companies), and businesses with rapid turnover of hazardous chemicals in the workplace (such as warehouses and marine cargo operations). However, based on the original HCS rulemaking record, and additionally based on: (1) The apparent successful implementation of the present HCS by manufacturers; (2) the implementation of other Federal communication standards and of State plan States' laws by non-manfacturers; and, (3) on regulatory impact and regulatory flexibility analyses prepared by the Agency since the 1985 Court order and summarized in Section III of this document, OSHA concludes that the provisions in the current Hazard Communication Standard are economically feasible for all of the non-manufacturing industries.

OSHA is also aware that many employers in the manufacturing sector have been able to satisfy some of their responsibilities under the HCS by using compliance materials obtained from various sources. Trade associations, for example, have frequently been instrumental in assisting their members in developing programs suitable for their type of industrial facility. This is particularly appropriate given the performance orientation of the HCS, and the flexibility employers are permitted to design appropriate compliance programs. Sample written programs and other written materials, as well as training programs regarding the requirements of the rule, have been developed and provided to association members and have facilitated compliance efforts. The ability of associations to accomplish this successfully demonstrates technical feasibility and enhances economic feasibility. Trade associations in states covering non-manufacturing workplaces under their right-to-know rules have also been able to develop materials to assist their members to comply. Materials developed for these State laws or for the manufacturing sector under the current HCS could be adapted for the non-manufacturing workplaces newly covered by the HCS.

There have also been a number of services provided by consultants in the private sector. These range from very specific items, such as computer programs to manage information, to a comprehensive compliance strategy, where a consultant will devise an entire program to enable a facility to comply. Such services will often minimize the burden of compliance by minimizing the time the facility staff must spend to develop and implement a program. The availability of such programs also provides support for the conclusion that the rule is feasible.

For large companies, the burden per facility will often be minimized by corporate development of a standardized program. It can be expected that most corporations with multiple facilities will use this approach (this has occurred in the manufacturing sector as well).

Therefore, OSHA concludes that similar resources will be available to employers in the non-manufacturing sectors, which further demonstrates that the rule is feasible for implementation in all sectors. In fact, given the pre-existing coverage of non-manufacturing under various state rules, and the extent of the

materials developed in response to the current HCS which would also be applicable in non-manufacturing, additional development of such materials should require considerably less effort and be easier for non-manufacturers to obtain.

Nevertheless, OSHA recognizes that the unique characteristics of some businesses render certain provisions of the current standard unnecessary or ineffective in communicating the hazards of chemicals to workers. The Agency has thus made some modifications to the standard to ensure that its provisions are practical and effective in communicating hazards to all workers. *Cf. ATMI*, 452 U.S. at 531 n.32 (OSHA may use cost-effectiveness analyses and choose the less costly of two equally effective standards). The inclusion of these "tailoring" provisions is consistent with the Agency's action in tailoring the original HCS to make it practical and cost-effective for all manufacturers. *See* 29 CFR 1910.1200(b)(3)–(5). Now that the coverage of the standard is being expanded to non-manufacturing employers as well, it is necessary to tailor the standard to the unique characteristics of these non-manufacturing employers. The tailoring provisions, explained in Section II of this preamble, are based on the original record in the HCS rulemaking, and also on Agency experience in implementing the current rule; State plan State experience in implementing expanded versions of the current rule; and comments submitted to the Agency in response to the ANPR published in November 1985. OSHA believes that the knowledge and experience gained during the past few years of implementation and enforcement of the current rule must be taken into consideration when crafting a rule to appropriately apply to the non-manufacturing sector.

The Agency's position is that all employees are entitled to information regarding the chemical hazards they are exposed to in the workplace, and that a uniform Federal hazard communication standard is the best method to ensure that information is provided. This position is consistent with the Act (protecting all employees to the extent feasible), as well as with the Court's decision upon review of the rule. Therefore, this final rule addresses communicating chemical hazards to all exposed employees.

It should be emphasized that in preparing a detailed regulatory impact analysis for the expansion of the scope of the HCS, OSHA has accumulated evidence to indicate that some employees in every SIC code designation are exposed to hazardous chemicals, and that it is therefore not appropriate to exempt any particular industry sector. For example, OSHA has received suggestions that retail establishments be exempted since employee exposure to chemicals is believed to be unlikely in these types of facilities. However, there is testimony in the original rulemaking record from the United Food and Commercial Workers International Union (Tr. 3088–97) that demonstrates that workers in such facilities are exposed to hazardous chemicals, and therefore do need the protections afforded by coverage under the HCS:

> While supermarkets don't use hundreds of hazardous chemicals like some manufacturing industries, a large number of workers are exposed to the dozen or so they do use. Chemicals used include caustic and acid cleaning compounds, solvents, waxes, paints and disinfectants . . . Let me relate to you one case within our union where workers were overexposed to an unidentified substance. A group of supermarket workers began experiencing dizziness, upper respiratory tract irritation and headaches . . . Not until workers started to talk with one another did they start to suspect a possible link between their illness and a certain solvent that was used to remove old price labels from merchandise called Garvey XC–36.

See Tr. 3089–89. *See also* Tr. 414 and Tr. 1840–43. The testimony further relates other incidents, as well as the various activities the union had to pursue to obtain information for exposed workers—including chemical analysis of products to determine their contents. This illustrates the need for application of the standard in industries such as retail stores, as well as those industries where chemical exposures are more obvious. For additional testimony regarding the extent of chemical exposures in the non-manufacturing sector, *see, e.g.*, hospital workers: Tr. 411–14, 2733–41, and 3036 (". . . hospital workers are exposed to formaldehyde, ethylene oxide, cleaning agents which are often very caustic . . .") (Tr. 411); barbers and beauticians: Tr. 415–16 (". . . work around hair dyes . . . known to cause cancer . . ."); longshore workers: Tr. 3143; utility workers: Tr. 417, 3078, 3130; workers in dry cleaners and laundries: Tr. 416, 4084–90 (" . . . [B]eyond the chlorinated solvents that your dry cleaners use, some cleaners and laundries also use dyes . . ."); farmworkers: Tr. 2280.

D. Construction Advisory Committee Recommendations

On June 23, 1987, the Construction Advisory Committee on Occupational Safety and Health met to discuss a draft proposed standard prepared by OSHA to expand the scope of the HCS to the non-manufacturing industries. The draft proposed rule was very similar to the final standard being promulgated herein. OSHA has reviewed the recommendations of the Construction Advisory Committee, and incorporated a number of the suggested revisions into this document to tailor the rule for the construction industry, and for other industries which have similar concerns due to similar differences in work operations from the typical manufacturing establishment. Other recommendations called for more substantive changes to the HCS, affecting the obligations of chemical manufacturers and others, and OSHA does not believe they are supported by the record or appropriate to incorporate into this final rule without further opportunity for notice and comment from those affected. It is important to note, however, that despite the recommended changes there were no indications that members of the Construction Advisory Committee believe that it is infeasible to implement hazard communication programs in the construction industry. In fact, as OSHA has noted previously, the construction industry has been subject to training requirements concerning chemical hazards for many years (*see* 29 CFR 1926.21).

In preparing the draft proposed rule, and subsequently this final rule, OSHA did review the *Report on Occupational Health Standards for the Construction Industry* which was submitted by the Construction Advisory Committee to the Assistant Secretary on May 16, 1980. In that report, the Committee addressed recommendations for labels, material safety data sheets, and training—all of the major components of the HCS.

Of particular concern to the Committee at that time was that construction employers do not have access to the necessary information upon which to develop appropriate signs and labels or material safety data sheets, and therefore must depend upon suppliers for such information. "[C]onstruction employers may not always be aware of the hazard associated with a particular product or device if the items are not accompanied upon purchase by appropriate labels and data sheets. . . ." OSHA agrees that this lack of information has been a problem for all downstream users of chemicals, and thus developed the approach incorporated into the HCS—producers or importers of chemicals are responsible for evaluating the hazards

and transmitting that information to downstream employers or users of the materials. Under the expanded rule, construction employers would be the recipients in this downstream flow of information.

The HCS did not exist at the time of the report, and the Committee thus recommended that a solution to the problem of lack of information "would be to modify and extend the existing OSHA standard for material safety data sheets which now applies only to ship repairing, shipbuilding, and ship breaking (29 CFR 1915, 1916 and 1917). The modified standard would require manufacturers or formulators of harmful materials or agents to supply material safety data sheets along with their products in such a fashion that they reach construction employers." Shipbuilding and ship repairing are in the manufacturing sector, and covered by the requirements of the 1983 final rule—ship breaking will be covered by these expanded provisions. Therefore, OSHA is doing what was recommended in 1980, *i.e.*, extending the existing OSHA standard for material safety data sheets to construction. The Advisory Committee concluded that although the hazard information may have been difficult for construction employers to acquire in the past, "such information was fundamental to the preparation of warning signs, labels, training programs, and other important job safety and health activities."

The Construction Advisory Committee is now recommending that the construction industry be regulated under a separate standard for Hazard Communication, rather than being treated as any other downstream employer who uses chemicals. The rationale is that construction sites are unique among industrial workplaces and should be addressed in a vertical standard specific to the industry. Although OSHA has found this argument persuasive for a few health standards, where there are fundamental differences in control strategies to achieve permissible exposures for a chemical in a fixed site facility versus the construction site, it does not appear to be appropriate in this situation which simply involves transmittal of information, that can be accomplished on any type of site. Arguments regarding transient workers, mobile work sites, etc. can appropriately be made for other non-manufacturing users of chemicals as well. The problems raised can be dealt with more effectively by modifying the provisions of the current rule to address them, rather than preparing completely separate standards for each industry.

It was interesting to note that although the Construction Advisory Committee was essentially maintaining that hazard communication in construction could be treated as a separate issue, many of the changes the members were recommending would often have required substantive changes in the requirements for the manufacturing sector. As noted above, the Committee expects to receive lables on containers and material safety data sheets from its suppliers. This is certainly consistent with OSHA's approach in the rule. But the Committee is also recommending that the labels on containers being shipped to construction contain additional information, and that the requirements for material safety data sheets be slightly different as well. They also recommended changes in the hazard determination provisions, while maintaining that hazard determinations must be accomplished in the manufacturing sector. These recommendations serve to support OSHA's view that in an approach which requires a downstream flow of information, the relationship between the requirements for producers and downstream users are so inter-dependent that separation of them into two separate standards would be logically inconsistent. And furthermore, since the requirements for hazard determinations, labels, and material safety data sheets were based on an extensive rulemaking record, and are not industry-specific, it would not be appropriate to modify those requirements at this point.

Two separate standards would also require cross-referencing provisions from one rule to another to ensure proper information transmittal, a regulatory format which would be unnecessarily confusing to the regulated community. OSHA believes it is more effective to list, in one standard, the obligations of chemical producers, importers, and suppliers with those of the users so that employers using hazardous chemicals will be aware of the content and quality of the hazard information they are entitled to receive from their suppliers. Furthermore, it would not be appropriate to indicate requirements for chemical manufacturers and importers in a standard which purports to cover solely the construction industry, as would have to be done to accommodate all of the recommendations of the Committee. Therefore, construction employers are included with all other employers in this standard. However, OSHA will print the rule in full in 29 CFR Part 1926 (in § 1926.59) for ease of reference for construction employers and employees. In addition, it will also be printed in 29 CFR Parts 1915, 1917, and 1918, for the use of maritime employers and employees (at new § 1915.99, 1917.28, and 1918.90, respectively), and will be referenced in Part 1928 covering agricultural employments.

E. Federal Community Right-to-Know Law

Expansion of OSHA's HCS will also have an impact on employers' obligations under another Federal law to inform State and local communities of the hazardous chemicals present in the workplace. On October 17, 1986, the President signed into law the Supefund Amendments and Reauthorization Act of 1986 ("SARA"). Part of the new law, Title III, the Emergency Planning and Community Right-to-Know Act of 1986, encourages and supports emergency planning efforts at the State and local level and provides citizens and local governments with information concerning potential chemical hazards present in their communities.

Two provisions in the new law, sections 311 and 312, mandate that employers required under the Occupational Safety and Health Act of 1970 and regulations under that Act to prepare or have available material safety data sheets for hazardous chemicals in their workplaces, must also submit chemical hazard information to State and local governments. Specifically, employers required by the OSHA HCS to create or maintain material safety data sheets for employees must also submit to the State emergency response commissions, the local emergency planning committee and the local fire department: (1) A material safety data sheet for each hazardous chemical for which a data sheet is available (section 311); and (2) an emergency and hazardous chemical inventory form (section 312). The public may request material safety data sheets and inventory information from the local planning committee.

Because all manufacturing employers are currently subject to the OSHA HCS and required to create or maintain data sheets for the hazardous chemicals present in their workplaces, they must also comply with the community reporting requirements of the Emergency Planning and Community Right-to-Know Act. An expanded HCS covering non-manufacturers will require non-manufacturers to provide chemical hazard information not only to their employees but also to the surrounding communities.

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On January 27, 1987, EPA proposed regulations to implement the community data sheet and inventory reporting requirements. A detailed explanation of the EPA proposal can be found at 52 FR 2836 (January 27, 1987). A final rule is expected to be published in the near future. OSHA has prepared a preliminary estimate of the costs of expansion of the EPA requirements into the non-manufacturing sector. This estimate is addressed further in the section of this preamble dealing with the regulatory impact analysis for the final rule.

EPA has established a toll-free hotline to answer questions concerning the requirements: Chemical Emergency Preparedness Program Hotline, 1-800/535-0202; in Washington, DC at 1-202/479-2449.

II. Summary and Explanation of the Issues and the Provisions of the Final Standard

This final rule is both an expansion and revision of the current HCS. The regulatory text presented herein includes the unchanged provisions of the present rule, as well as those which OSHA is changing. This was done to ensure that readers can clearly follow where these changes would appear in the standard. As explained below, the substantive changes were found to be necessary and appropriate for a hazard communication standard covering all workers exposed to hazardous chemicals. OSHA is also making several corrections and minor technical amendments to the standard. OSHA finds prior public notice and comment for these minor amendments to the unnecessary because of their non-substantive nature. 5 U.S.C. 553(b); 29 CFR 1911.5.

The discussion which follows will address the changed provisions of the rule, as well as the issues related to these changes. A detailed summary and explanation of the current rule's provisions is only provided when necessary for the discussion of the modification. For a complete explanation of the existing provisions, please see the preamble to the current HCS (48 FR 53334–40). The current rule is codified at 29 CFR 1910.1200, and was published at 48 FR 53340–48. The modified trade secret provisions are discussed at 51 FR 34590.

This discussion is organized by paragraph of the standard, and is presented in the order these paragraphs appear in the HCS.

For ease of reference, OSHA will be printing the same rule in full in 29 CFR Part 1910 (in § 1910.1200) for general industry, 29 CFR Part 1926 (in § 1926.59) for construction, and in 29 CFR Parts 1915, 1917, and 1918, for the use of the maritime industry (at new §§ 1915.99, 1917.28, and 1918.90, respectively).

(a) Purpose

All references to the manufacturing sector, SIC Codes 20 to 39, have been deleted to reflect the expansion of the scope to all employers and employees. It should be noted that these changes have been made throughout the provisions of the rule, wherever the HCS currently addresses employers and employees in the manufacturing sector rather than employers and employees in general. Despite the expansion of covered employers from manufacturers to all employers, however, OSHA retains in this final rule the distinction between chemical manufacturers and importers who produce or import hazardous chemicals, and downstream employers who merely use the chemicals. Only the former are to prepare the technical hazard information for labels and materials safety data sheets accompanying hazardous chemicals, whereas all employers are to pass this information on to their workers potentially exposed to the chemicals through a comprehensive hazard communication program which includes individual training.

The original Hazard Communication Standard included, at 29 CFR 1910.1200(a)(2), a generally-worded statement concerning the Agency's position regarding the preemptive effect of the standard. This paragraph has been revised to more explicitly state the Agency's position regarding preemption based on the provisions of the Act and related legal actions. This final rule significantly expands the number of industrial groups to which the Federal standard applies, and thus it significantly expands the area in which state and local laws will be preempted.

Section 18(a) of the Act, 29 U.S.C. 667(a), provides that a state may assert jurisdiction through any court or agency over "any occupational safety or health issue with respect to which no standard is in effect under section 6." Conversely, where OSHA has issued a standard, section 18 expressly preempts states from asserting jurisdiction through any court or agency over the issue addressed by that standard, unless a Federally-approved State plan is in effect. 29 U.S.C. 667(a) and (b); 29 CFR 1901.2.

The express preemption provisions of the Act apply to all state or local laws which relate to an issue covered by a Federal standard, without regard to whether the state law would conflict with, complement, or supplement the Federal standard, and without regard to whether the state law appears to be "at least as effective as" the Federal standard. The "at least as effective as" test applies only to state standards adopted under an approved State plan. 29 U.S.C. 667(c)(2). In enacting OSHA, Congress rejected provisions which would have permitted states to enforce laws which were "not in conflict with" or "at least as effective as" Federal OSHA standards. *See* Senate Comm. on Labor and Public Welfare, 92d Cong., 1st Sess., Legislative History of the Occupational Safety and Health Act of 1970, at 58, 706 (Comm. Print 1971). Instead, Congress enacted section 18 providing that Federally-approved State plans are the exclusive alternative to preemption.

Since the promulgation of OSHA's original Hazard Communication Standard, a number of court decisions have dealt with the effect of express and implied Federal preemption upon state and local hazard communication or "right-to-know" laws. *United Steelworkers of America* v. *Auchter*, 763 F.2d 728, 733–36 (3d Cir. 1985) (Federal Hazard Communication Standard expressly preempts state hazard disclosure laws in manufacturing sector); *New Jersey State Chamber of Commerce* v. *Hughey*, 774 F.2d 587 (3d Cir. 1985) (provisions of New Jersey right-to-know law which pertain primarily to community or environmental safety and health are not expressly preempted; right-to-know laws subject to implied preemption if they make it impossible to comply with Federal law or pose an obstacle to objectives of the Federal Act); *Manufacturers Association of Tri-County* v. *Knepper*, 801 F.2d 130 (3d Cir. 1986) (similar holding in connection with Pennsylvania right-to-know law).

The revised paragraph (a)(2) specifically provides that both state and local laws pertaining to occupational hazard communication are preempted by the Federal standard. In the one court decision which has addressed the question, the United States Court of Appeals for the Sixth Circuit ruled that the Federal Hazard Communication Standard preempts local as well as state laws. *Ohio Manufacturers Association* v. *City of Akron*, 801 F.2d 824 (1986). The court noted that the text of § 1910.1200(a)(2) did not mention localities and referred only to preemption of "state" laws. *Id.* at 827, 831–832. Nevertheless, relying upon references to local as well as state laws in the preamble to the 1983 standard, the court correctly inferred that OSHA had intended to preempt all non-Federal occupational hazard communication

laws. *Id.* at 892. Therefore, in accordance with the Court decision, OSHA is making a technical amendment to paragraph (a)(2) so that it explicitly states that the HCS preempts local worker right-to-know laws.

The revised § 1910.1200(a)(2) not only defines hazard communication as an "issue" under the terms of the Act, but also enumerates the generic areas addressed by the standard for purposes of establishing the parameters of preemption. Thus any State or local government provision requiring the preparation of material safety data sheets, labeling of chemicals and identification of their hazards, development of written hazard communication programs including lists of hazardous chemicals present in the workplace, and development and implementation of worker chemical hazard training for the primary purpose of assuring worker safety and health, would be preempted by the HCS unless it was established under the authority of an OSHA-approved State plan.

(b) Scope and Application

Laboratories. With regard to the coverage of laboratories, specifically addressed in paragraph (b)(3), OSHA concludes that the current rule's provisions, requiring only that labels and material safety data sheets received with incoming chemicals be maintained and that the general training of paragraph (h) be provided, are feasible for non-manufacturing laboratories as well. *See, e.g.,* comments of the Massachusetts Institute of Technology, H–022D, Ex. 2–120 ("We agree that the Hazard Communication Standard's requirements for labs are adequate. . . . We expect our compliance costs to remain at the current level of spending because the majority of these are start-up costs and some activities have been absorbed and integrated within existing programs.") OSHA believes that these somewhat limited hazard communication requirements for manufacturing laboratories are also appropriate for non-manufacturing laboratories because both share the operating conditions that distinguish them from the typical industrial workplace: they commonly use small quantities of many different hazardous chemicals for short periods of time; the conditions and purposes of the use of the chemicals frequently change, often unpredictably; many substances are of unknown toxicity; and many workers are highly trained. *Compare* 48 FR 53287–89, *with* 51 FR 26663–64. OSHA concludes that the same HCS provisions tailored for manufacturing laboratories are appropriate for the protection of all laboratory workers within OSHA's jurisdiction.

It should also be noted that OSHA is currently proceeding with a specific rulemaking to directly address "Occupational Exposure to Toxic Substances in Laboratories" (51 FR 26660; July 24, 1986). When that rule becomes final, its provisions may supplement the information transmittal requirements of the HCS by directly reducing hazardous chemical exposures in laboratories by requiring, among other things, safe work practices. As noted in that proposal, the final rule might modify the general information and training requirements in the HCS to incorporate other aspects of that standard. Any changes in the application of the HCS provisions to laboratories will be addressed in detail in the final rule for laboratories and will be based on that rulemaking record (Docket H–150).

Coverage determined by "exposure." The HCS covers situations where employees "may be exposed" to hazardous chemicals (paragraph (b)(2)), and such exposure is defined to include potential exposure as well as actual exposure. This is to ensure that employees receive information about all chemical hazards in their work areas, and that they are prepared to deal with any unexpected releases or emergency situations, as well as exposures during the normal course of employment. OSHA concluded that employees are entitled to information regarding the chemicals to which they are exposed in their work areas. It should be noted, however, that individual facilities and workplaces may have some employees who are covered since their work involves exposure to hazardous chemicals, and others who are not covered because their work does not. For example, in a retail department store, maintenance workers or workers in a graphic arts department may be covered since their jobs involve exposure to chemicals, but an accountant in the billing department would not be likely to experience exposure that would require coverage by the HCS.

There are a number of work situations where employees only handle sealed containers of chemicals, and under normal conditions of use would not open the containers and would not expect to experience any measurable exposure to the chemicals. Such work operations include, for example, warehousing, retail sales, marine cargo handling, and trucking terminals. It is reasonable to assume, however, that all such containers are subject to leakage and breakage, and these employees are in fact potentially exposed by virtue of the presence of these hazardous chemicals in their workplaces. Because of this potential exposure, they need information to protect themselves from the hazards of these chemicals in the event such an emergency situation occurs.

However, OSHA has considered the extent of information necessary or appropriate in this type of operation, and the practicality of requiring such work operations to be subject to all of the provisions of the rule. The primary need is to ensure that these employees know how to acquire and use the hazard information available to them, and to handle an emergency exposure situation. As in laboratory operations, maintaining lists of chemicals where the chemicals present may change on short notice, sometimes on a daily basis, is not a useful requirement. Similarly, obtaining material safety data sheets for every chemical in a sealed container that passes through a facility—even if it is there less than a day in some situations—would result in a considerable amount of paperwork, with little discernable benefit for the employees involved. Therefore, OSHA has added a provision, paragraph (b)(4), to limit the duties of employers for those work operations where employees only handle sealed containers that are not intended to be opened under normal conditions of use. (Some States which have adopted right-to-know laws have also recognized the practical problems of coverage in this area, and have included provisions limiting coverage of workplaces where chemicals are handled in sealed containers. *See, e.g.,* Tennessee Hazardous Chemical Right to Know Law, Tennessee Code Annotated, 50–3–2001 through 50–3–2001g.) In these situations, employers must not remove labels affixed to incoming containers of hazardous chemicals; must maintain and provide access to material safety data sheets that are received for hazardous chemicals while the chemicals are in the workplace, and obtain material safety data sheets when they are not received but an employee requests one; and must train employees in accordance with the provisions of the rule to ensure they are protected in the event of a spill or leak.

The employees in these operations will always have access to the label information, which will provide appropriate hazard warnings and be a visual reminder of the potential hazards if exposure occurs. Employees will also be trained regarding the general classes of chemical hazards faced and the means by which they can protect

themselves from these hazards when there is a spill or leak. The training must also address the availability and use of substance-specific information found on labels and material safety data sheets, where available. These requirements should provide employees handling only sealed containers of chemicals with the information they need.

This limited provision also addresses some of the concerns raised by representatives of industries with these types of workplaces. (*See, e.g.* Exs. 2–53, 2–75, 2–201, and 2–214). Although they generally were arguing that this type of operation warrants exclusion from the rule, OSHA does not agree that no protection under the HCS is required in these situations. As already described, a potential for exposure does exist, and therefore such employees must be appropriately covered. OSHA believes the limited coverage described will effectively protect employees while recognizing the constraints of the particular work operations involved with regard to the applicability of the current rule to these types of work.

Labeling exemptions. The HCS includes a number of labeling exemptions to ensure that OSHA does not provide duplicative coverage for products which are already labeled under the rules of another Federal agency. It should be reemphasized that these exemptions (in paragraph (b)(4) of the original rule; paragraph (b)(5) in this final rule) are only from the container labeling requirements under paragraph (f)—all other provisions of the rule are still in effect. A minor correction is being made, however, to these exemptions to indicate that when medical or veterinary devices are labeled in accordance with the labeling requirements of the Food and Drug Administration (FDA) under authority of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*), those items are exempted from HCS labeling requirements. All other items regulated by FDA under that Act were listed in the HCS labeling exemption. Medical and veterinary devices were inadvertently omitted from the list of items that might be subject to FDA labeling requirements under the Federal Food, Drug, and Cosmetic Act, and they are exempted from HCS labels for the same reasons that the other items are exempt when subject to labeling under FDA. *See* 48 FR 53289. To ensure that all these FDA regulated items are treated in the same manner and that devices are exempted from HCS labeling if subject to FDA labeling, paragraph (b)(5)(ii) is amended by adding medical and veterinary devices.

Other exemptions. The HCS includes a number of specific, total exemptions from the requirements of the rule for certain types of chemicals. This rule adds three categories of exemptions: food, drugs, cosmetics, or alcoholic beverages in a retail establishment packaged for retail sale (paragraph (b)(6)(vi); consumer products (paragraph (b)(6)(vii)); and certain pharmaceuticals (paragraph (b)(6)(viii)).

Food, drugs, cosmetics, alcoholic beverages. The current HCS includes an exemption for food, drugs, or cosmetics brought into the workplace for employee consumption. These types of exposures are not related to an employee's work, and therefore do not need to be covered under the HCS.

The expansion of the HCS into the non-manufacturing sector will result in many of these types of products being present in workplaces (*e.g.*, liquor stores) where they are not intended for employee consumption, and where they normally would not result in employee exposure because they are packaged for sale to consumers. Although some of these products may meet the definition of a "hazardous chemical" (*e.g.*, vinegar is acetic acid), when packaged for retail sale they do not pose a hazard to workers that is any different than the hazards of such products in their homes. The label information required by other Federal agencies for foods, drugs, cosmetics, and alcoholic beverages should thus provide sufficient protection for workers, and OSHA has exempted these products from coverage under the rule. It should be noted that this is not an exemption for facilities of any particular industry, as all facilities may have other chemicals in use that would be covered by the HCS. In addition, since these products are exempted, employers which package them for retail sale would not have to furnish material safety data sheets to distributors receiving the products.

Consumer products. The current rule provides a labeling exemption for consumer products when they are labeled in accordance with the requirements of the Consumer Product Safety Commission (CPSC). CPSC requires consumer products which contain hazardous substances to be appropriately labeled. Examples of consumer products would include such items as oven cleaner, paint stripper, and adhesive, which may be found in various types of workplaces. In addition to the specific labeling exemption, OSHA has been interpreting the rule as not being applicable to consumer products when used as a consumer would use them. OSHA is now adding this interpretation to the rule itself, paragraph (b)(6)(vi), stating that where such consumer products are used in the workplace in a manner comparable to normal conditions of consumer use, resulting in a duration and frequency of exposure to employees which is no greater than exposures experienced by ordinary consumers, under such conditions the chemical would not have to be included in the employer's hazard communication program. This position is consistent with OSHA's reason for orginally limiting the exemption for hazardous consumer products used in the course of employment to only an exemption from HCS labeling, and not material safety data sheet and training requirments. "OSHA recognizes . . . that there may be situations where worker exposure is significantly greater than that of consumers, and that under these circumstances, substances which are safe for contemplated consumer use may pose unique hazards in the workplace." 48 FR 53289. However, to the extent that workers are exposed to the substances in a manner similar to that of the general public, there is no need for any HCS requirements.

One example of such a differentiation in exposure situations involves the use of abrasive cleaners in the workplace. Where these are used intermittently to clean a sink, much as they would be used at home, the cleaners would not be covered under the standard. But if they are used to clean out reactor vessels, thus resulting in a much greater level of exposure, they would be covered. Or if an employee cleans sinks all day long, thus resulting in more frequent exposures, the abrasive would also be included in the hazard communication program. Thus workplaces which only have chemicals which are consumer products used in the same way and as frequently as the general public would normally use them, would not have to have a hazard communication program.

It should be noted that OSHA intends to read this exemption narrowly. Where an employer is uncertain whether the duration and frequency of exposure to these products is comparable to consumer use, an employer should obtain or develop the material safety data sheet and make it available to employees.

In response to questions raised in the 1985 ANPR, OSHA received a few comments on the use of consumer products in the non-manufacturing sector. A number indicated that overexposure may occur from the use of such products, or that the frequency and duration of workplace exposure is typically greater than that experienced

by consumers (Exs. 2–59, 2–83, 2–100, 2–120, and 2–164). Others stated that the exposure was comparable to consumer use (Exs. 2–46 and 2–63). There were several that felt the label provided enough information, and no additional requirements were needed to protect employees (Exs. 2–75, 2–79, 2–99, 2–107, and 2–116), while others felt the employer should be required to request material safety data sheets because employees are not getting enough information (Exs. 2–109, 2–128, and 2–169). One suggested that the label note that a material safety data sheet is available on request (Ex. 2–100), while another contended that when a product is used by a professional, it is no longer a consumer product (Ex. 2–199). OSHA believes that the consumer product exemption in this final rule takes all of these concerns into consideration, and strikes a balance between the practical considerations of acquiring and maintaining material safety data sheets on CPSC regulated products which employees are exposed to at home as well as at work, and the worker's need for more hazard information than a CPSC label when exposures are greater or more frequent than typical public use of the chemical would generate.

A number of States adopting right-to-work laws have also developed consumer product exemptions. (*See, e.g.*, Wisconsin "Employees' Right to Know Law"; Illinois "Toxic Substances Disclosure to Employees Act.") However, most of these rules have taken a broader approach to the consumer product exemption, generally eliminating coverage of such products unless exposure is "significantly greater" than consumer exposure during the "principal consumer use." OSHA considered and rejected such language for the consumer product exemption. It would be very difficult from an enforcement perspective to determine when exposure to a consumer product is "significantly greater" than consumer exposure. The key elements of concern to OSHA are as stated in the consumer product exemption included in this rule—that the consumer product be used in the same manner as a consumer would use it (and therefore as intended by the manufacturer when preparing the label information), and that the duration and frequency of exposure be essentially the same as would be experienced by a consumer (and thus the label warnings would provide adequate protection.) A broader exemption than this would not be appropriate to protect workers from occupational exposures that were not anticipated by the manufacturer when the labels, and thus the protective measures, were developed.

Application to Office Products. A number of questions have been raised about the application of the rule to office products that may contain hazardous chemicals. It is OSHA's determination that office products such as pencils, pens, typewriter ribbons, and the like, are "articles" under the rule and therefore exempted, paragraph (b)(6)(iv). Employers are not therefore required to implement a program for such products. OSHA has also determined that intermittent, occasional use of a copying machine to make copies is not covered by the rule. The copying machine would also be considered an article for purposes of this standard. However, if a firm has a copying machine operator who is responsible for handling the chemicals associated with its use, or who operates the machine frequently, that individual would be entitled to information under the rule.

Medicine. The rule, paragraph (b)(6)(vii), also includes an exemption for drugs when they are solid, and are in final form for direct administration to the patient (*i.e.*, pills or tablets). Employees handling such finished drug products would not be exposed to the chemicals involved, and would not need information other than that supplied on the container label under FDA requirements. (The State of North Carolina adopted a similar exemption in their Hazard Communication Standard, 13 NCAC s7C.101(a)(99)).

Wood dust. As OSHA has received a number of questions regarding the application of the wood and wood products exemption to wood dust, OSHA would like to reiterate its interpretation regarding the wood and wood product exemption in paragraph (b)(6)(iii) of this final rule. The wood and wood products exemption was included in the HCS for two reasons. First, the presence and identity of wood and wood products in the workplace is "unmistakable" and second, their hazards (*i.e.*, flammability or combustibility) are well-known to workers. 48 FR 53289. Because wood and wood products, characteristic hazards are self-evident, regulations requiring formal notification were not thought to be necessary. Wood and wood products "are not expected to be hazardous for purposes of this standard." *Id.* at 53335. OSHA never intended, however, that wood dust be excluded from the standard's coverage under the wood and wood products exemption. Wood dust is not generally a wood "product," but is created as a byproduct during manufacturing operations involving sawing, sanding, and shaping of wood. Wood dust does not share solid wood products' "self-evident" hazard characteristics that supported the exemption of wood products from the HCS' coverage. Except for the chemical additives present in the wood, products such as lumber, plywood, and paper are easily recognizable in the workplace and pose a risk of fire that is obvious and well-known to the employees working with them. The potential for exposure to wood dust within the workplace, especially with regard to respirable particles, is not self-evident, nor are its hazards through inhalation so well-known that hazard communication programs are unnecessary.

"Wood dust" is a recognized health hazard, with exposure limits recommended by the American Conference of Governmental Industrial Hygienists (ACGIH) to control employee exposures to the substance. Under the provisions of the HCS, this means that wood dust is to be considered a hazardous chemical (paragraph (d)(3)(ii)), and therefore subject to the requirements of the rule including material safety data sheets and training.

(c) Definitions

The only changes to the definitions in the current HCS are those that need to be made to accomplish the expansion of the HCS.

The reference to SIC Codes 20 through 39 is being deleted from the definition of "chemical manufacturer" to be consistent with the extent scope of the rule. Any employer who produces a hazardous chemical for "use or distribution" is considered a "chemical manufacturer" under the HCS, and must prepare and provide the appropriate hazard information.

OSHA has modified the definition of "container" to exempt "engines, fuel tanks, or other operating systems in a vehicle." The Agency has received some questions regarding the need for labeling such parts of a vehicle in applying the rule to the manufacturing sector. Expansion into non-manufacturing will greatly increase the number of vehicles involved in work operations, and thus OSHA determined that this clarification will ensure that the Agency's position regarding this issue is clear—vehicles do not have to bear labels regarding hazardous chemicals used to operate them. This does not exempt such chemicals from coverage by the rule—it simply eliminates the need to label once they are placed into the vehicle.

The definition of "distributor" has also been changed to reflect the

extended scope of the rule. A "distributor" means "a business, other than a chemical manufacturer or importer, which supplies hazardous chemicals to other distributors or to employers." Among other things, distributors must transmit hazard information they receive from chemical manufacturers and importers to all their employer customers.

Under the current rule, OSHA defined "employee" as someone working in the manufacturing sector, and stated that those employees in manufacturing whose jobs did not involve routine potential exposure to hazardous chemicals would not generally be covered by the rule. Examples related to the manufacturing sector were provided. This was intended to limit the coverage primarily to those employees in the industry who were actually involved in production operations. However, since the scope of the entire standard is being expanded to cover employees in all types of work operations, the definition has been modified to clarify that workers who are exposed to hazardous chemicals as part of their assigned jobs would generally be covered under the rule, except for those who only encounter hazardous chemicals in non-routine, isolated instances. OSHA believes most office workers, and many other workers, are not exposed to the hazardous chemicals covered by the HCS in such a way that the rule would apply to those types of work operations. The rule, therefore, simply defines a covered "employee" as any "worker who is exposed to hazardous chemicals under normal operating conditions or in forseeable emergencies" and further states that "workers such as office workers or bank tellers who encounter hazardous chemicals only in non-routine, isolated instances are not covered." "Normal operating conditions" are those which employees encounter in performing their job duties in their assigned work areas. For example, if the receptionist in a facility receives and delivers a telephone message for someone in a different work area where hazardous chemicals are present, this does not mean that the receptionist would be covered under the rule by virtue of the one potential exposure from delivering the message. However, if performance of the receptionist's job entails walking through the production area every day, and thus being potentially exposed during the performance of regular duties, that job would be covered under the rule.

The definitions of "employer" and "importer" are also amended to indicate that all employers are covered by the standard. In addition, the definition of "employer" is amended to indicate that the term includes contractors and subcontractors. This reflects the definition of employer used in OSHA's construction standards. Similarly, the definition of "workplace" has been modified to specifically include job sites and projects.

Hazard warning. While OSHA is not modifying the definition of "hazard warning" contained in the current rule, the Agency wishes to reiterate the intent to help employers better understand and comply with the requirements. "Hazard warning" means "any words, pictures, symbols, or combination thereof which convey the hazard(s) of the chemical(s) in the container(s)." "Appropriate hazard warnings" are to be put on container labels. (*See* final rule paragraphs (f)(1)(ii) and (f)(5)(ii)). Since the rule covers "physical" and "health" *hazards*, specific information regarding these would be required on a label to comply.

Many labels at the time the HCS was promulgated includes only precautionary statements, rather than providing necessary information about the specific hazards of the chemicals. Thus employees encountered statements such as "avoid inhalation" on virtually every chemical container, but were not provided with statements regarding what type or severity of effect inhalation could be expected to produce.

Therefore, OSHA's standard requires identity and hazard information on labels. Although employers can choose to provide additional statements, OSHA's requirements are limited to that required to convey the hazards to the workers. Under the OSHA scheme, other data regarding protective measures, first aid, etc., are to be included on the material safety data sheet or in training, rather than appearing on the label itself. This approach is in keeping with the Agency's evaluation of available data on effectiveness of labels which indicates that the more detail there is on a label, the less likely it is that employees will read and act on the information. The purpose of the label is to serve as an immediate visual warning of the chemical hazards in the workplace. (*See generally*, 48 FR 53300–03).

There have been misinterpretations of the requirements made based on statements in the preamble to the current rule concerning various labeling systems (*see* 48 FR 53301). This preamble discussion involves format of labels, and is not an unqualified endorsement of any particular labeling system. It simply states that any format may be used as long as the label includes the information regarding the chemical hazards required by the standard. It should be noted that it can be expected that some labels prepared in accordance with any of the available labeling systems can be expected to be found to be deficient. Again, the preamble discussion cited merely reemphasized that employers are not constrained to use any particular format or wording, but are constrained by the necessity to comply with the requirements of the rule concerning the information to be provided—the identity, the hazards, and for containers leaving the workplace, the name and address of the responsible party.

The terms "physical" and "health" hazards are already defined in the rule, and these are the specific hazards that are to be "conveyed" in an "appropriate" hazard warning. There are some situations where the specific target organ effect is not known. Where this is the case, a more general warning statement would be permitted. For example, if the only information available is an LC_{50} test result, "harmful if inhaled" may be the only type of statement supported by the data and thus may be appropriate.

It will not necessarily be "appropriate" to warn on the label about every hazard listed in the MSDS. The data sheet is to address essentially everything that is known about the chemical. The selection of hazards to be highlighted on the label will involve some assessment of the weight of the evidence regarding each hazard reported on the data sheet. This does not mean, however, that only acute hazards are to be covered on the label, or that well-substantiated hazards can be omitted from the label because they appear on the data sheet.

It may be "appropriate" to provide less detailed information on the chemical hazards in an in-plant labeling system, where MSDSs and training are readily available, than on a label placed on a container leaving the workplace, where it may provide the only hazard information in certain situations and where there is no guarantee that the downstream employees handling or using the chemical will fully understand the less detailed label. This difference in appropriateness allows employers to establish standardized in-plant labeling systems, as long as training regarding the use of these systems is conducted, and MSDSs provide the required, detailed information.

Article. OSHA is not modifying the definition of "article" but would like to provide some clarification regarding the Agency's interpretation. Releases of very small quantities of chemicals are not considered to be covered by the rule. So if a few molecules or a trace amount are released, the item is still an article and therefore exempted. In an earlier discussion in this preamble, application of the rule to office products was discussed and it was stated that items such as pens or pencils are to be considered articles. Other examples would be: emissions from tires when in use; emissions from toner on pieces of paper; or emissions from newly varnished furniture.

Furthermore, it should be reiterated that the HCS is limited to hazardous chemicals "known to be present" (paragraph (b)(2)), and does not require any chemical analysis or testing to determine or verify such presence. *See* 48 FR 53334–35. Thus although one may assume that molecules are being emitted from an item, under the standard one does not "know" that a particular hazardous chemical is "present."

The article exemption applies solely to the ultimate end use—intermediate users which result in exposure are covered and require hazard information to be provided. The following are examples of items which would require information for intermediate use prior to being finally installed: encapsulated asbestos insulation where the normal installation involves hammering the material into openings, thus releasing the asbestos; tiles to be placed on a ship's hull which contain lead that is released during installation; and glass mercury switches to be installed in equipment, a percentage of which are expected to break during this installation process. In these cases, installation is the "normal condition of use" for the employees installing the items, and thus hazard information is required for these intermediate uses. Once installed, these items would be articles and thus exempted.

Although installation of an item may render the exemption temporarily void (until the item is installed, information must still be provided if there is a potential for exposure), OSHA does not believe that the possibility that exposure could occur when the item is repaired or worked on need be considered in the determination of when information must be transmitted downstream. Employers of employees performing repairs must provide the best information they have concerning the potential exposures. There would be no way to ensure, for example, that a material safety data sheet prepared for a lead pipe would be available to a worker repairing the pipe some years following installation. The employer would provide the employees with general information concerning the hazards of the operations they were performing in lieu of specific information on the pipe itself.

(d) Hazard Determination

OSHA is not modifying the current rule's hazard determination requirements. The burden of evaluating chemicals to determine whether they are hazardous remains on the chemical manufacturers and importers who produce or import them and on those user employers who choose not to rely on the evaluations made by their suppliers and instead evaluate the chemicals themselves. A detailed explanation of these provisions can be found at 48 FR 53296–99, 53335–36.

(e) Written Hazard Communication Program

Under the current rule, a written hazard communication program must be developed and implemented for each workplace. Since the current rule covers fixed manufacturing sites, it did not appear to be necessary to specifically state that the written program be available at the site. With expansion to non-manufacturing, however, particularly in the construction industry where a firm may have multiple sites, the standard must be tailored to specifically state that the intent is to maintain the written program at each site. Employees will then be able to access the information as required.

The current written hazard communication program requirements include a provision that requires manufacturing employers to provide hazard information to on-site contractor employers who have employees who may be exposed to the hazards generated by the manufacturer (current paragraph (e)(1)(iii)). The current standard does not address the reverse situation, *i.e.*, where a contractor employer brings hazardous materials on-site, and exposes the manufacturer's employees to them. Since the expanded rule will affect more worksites with work arrangements of this type (*e.g.*, construction), and the need for an exchange of hazard information is obvious, OSHA has revised the requirements to tailor it to address the multi-employer workplace. (This was suggested in comments submitted in response to the ANPR. *See* Ex. 2–225, comments from the National Constructors Association. In addition, this situation has also been addressed in existing State right-to-know laws. *See, e.g.*, Alabama Act 85–658; Tennessee "Hazardous Chemical Right to Know Law.")

Under these provisions (paragraph (e)(2)), the employers must exchange material safety data sheets, as well as information about precautionary measures necessary to protect employees and an indication of the type of labeling system in use, where exposures may occur to another employer's employees. Each employer will then have the information necessary to inform and train their employees. This will help ensure that all employees have sufficient information to protect themselves in the workplace, regardless of which employer uses the hazardous chemical.

Consistent with the performance-orientation of the rule, the provisions do not specify how this coordination is to be accomplished. This is best left to the discretion of the parties involved. In many cases, it would probably be most efficient for the general contractor to coordinate the function. For example, the general contractor could keep and make available material safety data sheets in the office on the site.

It should be emphasized that the exchange of information is limited to those situations where exposures of other employers' employees may occur. Given the nature of multi-employer work sites in construction, there would be many situations where subcontractors responsible for various phases of the building project would not have employees present during other phases and thus no such exchange would be required. For example, if the electricians are not working near, or at the same time as, the paving contractor, then no interchange is required. But if a painting contractor's workers are using flammable solvents in an area where another subcontractor is welding pipes, this information exchange is vital to ensure proper protection of employees.

(f) Labels and Other Forms of Warning

A tailoring provision has been added concerning shipments which consist of solid metal. OSHA considers this change to be necessary since the problem addressed will occur more frequently in shipments to the nonmanufacturing sector than has been the case in the manufacturing sector. (Paragraph (f)(2)). Solid metal is often considered to be an "article" under the rule, and thus exempt. Where the metal is not an "article" since its downstream use results in hazardous chemical exposure to employees working with it, a provision has been added which allows shippers of this type of material

to send the label information once, similar to material safety data sheet transmittal, as long as the material is the same and it is being shipped to the same customer. In these situations, there should be no hazard to anyone handling the metal from the time it is produced in solid form, until the time someone works on it in a way that releases a chemical hazard. Since the label information transmitted would only reflect the chemical hazards released when it is later worked on, the label would not provide any hazard information that is needed by those handling the material in transit. It must be emphasized that this exception is only for the solid metal itself—any hazardous chemicals present in conjunction with the metal in such a form that employees may be exposed when handling the material (*e.g.*, cutting fluids, lubricants, and greases), require labels with each shipment. This tailoring provision, therefore, does not diminish worker protection—workers get the hazard information they need.

(g) Material Safety Data Sheets

Under the hazard determination provisions, a requirement is included which indicates that there are situations where the percentage cut-off for mixtures would not apply—when the released chemical is particularly hazardous, or when it could exceed an established permissible exposure limit or Threshold Limit Value when released (paragraph (d)(5)(iv)). Although this is clearly a requirement of the rule, *see also* 48 FR 53338, the material safety data sheet provisions for disclosure of hazardous ingredient identities did not address that particular situation. Clearly it was OSHA's intent to have all hazardous ingredients of mixtures listed on a material safety data sheet, even those in very small concentrations, when the hazard determination provisions of paragraph (d) mandate that they are to be considered hazardous for purposes of the HCS. As noted in the HCS preamble discussion of the material safety data sheet provisions: "Employers must also list ingredients present in concentrations of less than one percent if there is evidence that the permissible exposure limit may be exceeded or if it could present a health hazard in those concentrations." *Id.* at 53337. This obvious oversight has been corrected by a minor amendment to the rule. Paragraph (g)(2)(i)(C)(*2*).

Another situation which raises practicality concerns because of the expansion of the scope of the rule involves employers who purchase hazardous chemicals from local retail distributors, rather than directly from the chemical manufacturer or importer, or from wholesale distributors as is more commonly done in the manufacturing sector. Under the current HCS, distributors of hazardous chemicals must automatically provide commercial customers material safety data sheets (paragraph (g)(7)). Retail distributors, however, often sell to businesses and the general public and frequently have no way of knowing who a particular purchaser is. Under the current rule, retail distributors might have to give material safety data sheets to each customer to ensure that commercial customers get the information they need under the HCS. A specific statement regarding retail distributors is, therefore, included in paragraph (g)(7) to address this practical problem. Those retail distributors who sell hazardous chemicals to employers must provide a material safety data sheet upon request, and must post a sign or otherwise inform the employers that an MSDS is available. According to Schneider Hardware of Banksville, Inc., this is a reasonable approach (Ex. 2–179):

> If OSHA does require commercial customers to get information through a retail outlet, I do not foresee any problems with that arrangement. The manufacturers could supply us with the information, as they are required to now for shipments to manufacturing plants, and we could make it available to customers upon request. We would merely keep the sheets in a file drawer and post a sign informing customers of their availability. We have less than 100 chemicals that would probably be affected, and keeping information on those would require at most, one file drawer. It would not be burdensome.

The retail distributors likely affected are those selling building supplies, hardware, etc. Retail distributors will have to assess their product lines, and whether or not they have commercial accounts, to determine whether they must comply with this provision. It is clear that most other types of retail establishments (*e.g.*, grocery stores, clothing stores, etc.) would not.

With regard to the maintenance of material safety data sheets so that they are readily available to employees, whereas manufacturing facilities are generally fixed work sites with fixed locations for these materials, in some types of nonmanufacturing work operations, employees must travel between work areas during a workshift. For example, employees involved in servicing oil and gas wells may have a central office location, but then travel by truck to the wells to perform their work. These remote locations may not have any staff, or may not have an office facility. OSHA has added a provision to the MSDS requirements to allow MSDSs to be kept at a central location in this type of situation, as along as the employer ensures that the employees can immediately obtain the information in an emergency, paragraph (g)(9). OSHA believes that this provision tailors the HCS so that it remains practical, yet effective, in getting workers the hazard information they need. This was also supported by a number of ANPR commenters (*see, e.g.*, Exs. 2–83, 2–107, 2–114, 2–116, and 2–117).

The current rule, as well as the expanded standard, allows downstream employers to rely on upstream chemical manufacturers and importers to provide MSDSs. However, there is a duty for downstream users to request an MSDS when they don't receive one at the time of the first shipment. There have been some questions regarding how the downstream user will know a data sheet is required without doing a hazard evaluation. Such an evaluation is not necessary. If the label indicates a hazard, the employer will know he needs a data sheet and must request one if it is not received. If there are no hazards on the label, the downstream user can assume the product is not hazardous and a data sheet is not required.

(h) Employee Information and Training

OSHA is not making any modifications to the current rule's information and training provisions. These requirements remain performance-oriented and designed so that each employer will adequately address the hazards posed by chemicals in the workplace. An explanation of these provisions can be found at 48 FR 53310–12, 53337–38.

One question that does arise regarding training is whether it needs to be done specifically on each chemical, or whether employers can train regarding categories of hazards. Either method would be acceptable. *See* 48 FR 53312, 53338. If employees are exposed to a small number of chemicals, the employer may wish to discuss the particular hazards of each one. Where there are large numbers of chemicals, the training regarding hazards could be done on categories (*e.g.*, flammable liquids; carcinogens), with employees being referred to substance-specific information on the labels and MSDSs. Similarly, the re-training occurs when the hazard changes, not just when a new chemical is introduced into the workplace. If the new chemical has hazards which employees have been trained about, no re-training occurs. If the chemical has a hazard they have not

been trained about, re-training would be limited to that hazard.

(i) Trade Secrets

Paragraph (i)(11) of the current rule states that "[i]f, following the issuance of a citation and any protective orders, the chemical manufacturer, importer, or employer continues to withhold the information, the matter is referrable to the Occupational Safety and Health Review Commission for enforcement of the citation. . . ." This provision was worded in such a manner that it left the impression that OSHA could refer the matter to the Review Commission. This is incorrect as a matter of law. An enforcement proceeding is referred to the Review Commission when a citation is issued by OSHA, and is subsequently contested by the employer receiving the citation. Therefore, OSHA has made a technical amendment to paragraph (i)(11) to reflect the applicable procedural law.

(j) Effective Dates

The expansion of the rule to cover all employers becomes effective nine months from the date of promulgation of the final standard. Since the chemical hazard information for labels and material safety data sheets has already been generated in the manufacturing sector, and in many cases has also been distributed in non-manufacturing due to State law requirements and voluntary transmittal by suppliers, one month should be sufficient time for chemical manufacturers, importers, and distributors to initiate provision of material safety data sheets to other distributors and to customers in the non-manufacturing sector. An additional eight months is being provided for non-manufacturers to complete preparation of a written hazard communication program for each facility and to conduct employee training. It should be noted that this eight month period for compliance only applies to those employers which are newly covered under the expanded provisions—employers in SIC Codes 20 through 39 are covered under the current HCS and are already required to be in compliance with the provisions of that rule. Those tailoring provisions that apply to manufacturing workplaces, such as the consumer product exemption, go into effect immediately for those facilities.

Appendices A and B

OSHA is not amending Appendix A's discussion of the health hazards posed by chemicals, or Appendix B's discussion of hazard determination. They remain applicable to all chemical manufacturers, importers, and employers performing hazard determinations.

Appendix C

The reference sources listed in this non-mandatory appendix have been updated to reflect currently available sources.

Appendix D

The recent rulemaking on trade secrets added a new Appendix D regarding the evaluation of the validity of trade secret claims. 51 FR 34590. The full text of this appendix has been reprinted in this document as well.

III. Analyses of Regulatory Impact, Regulatory Flexibility, and Environmental Impact

The following is a summary of the regulatory impact and regulatory flexibility analysis prepared by OSHA for the revision of the Hazard Communication Standard which extends the scope of the existing standard to the nonmanufacturing sector. The full text of the document may be examined and copied in OSHA's Docket Office, 200 Constitution Avenue, NW., Room N3670, Washington, DC 20210; telephone (202) 523–7894.

Economic Analysis

As part of OSHA's efforts to gather information concerning the economic feasibility of extending the coverage of the HCS to include workplaces in the nonmanufacturing sector, the JACA Corporation performed a study examining the benefits, costs, and overall economic impact of such a revision. This report was used as the basis for the regulatory impact analysis prepared by OSHA.

The analysis reflects the extent to which employers in the nonmanufacturing sector are currently subject to state right-to-know laws and are voluntarily implementing their own hazard communication programs. The analysis also takes into account OSHA's existing policy regarding the use of consumer products and training requirements already imposed on employers by other OSHA standards. With respect to consumer products covered by the HCS, OSHA Instruction CPL 2–2.38A ("Inspection Procedures for the Hazard Communication Standard, 29 CFR 1910.1200") states:

> A common sense approach must be employed whenever a product is used in a manner similar to which it could be used by a consumer, thus resulting in levels of exposure comparable to consumer exposure. The frequency and duration of use should be considered. For example, it may not be necessary to have a data sheet for a can of cleanser used to clean the sink in an employee restroom. However, if such cleanser is used in large quantities to clean process equipment, it should be addressed in the Hazard Communication Program.

This policy has been incorporated into the revisions to the HCS, and was taken into account when evaluating data describing the number of hazardous chemicals in the various two-digit SIC groups that could be affected by extension of the HCS to the nonmanufacturing sector.

Assessing the net impact of the training provisions required identifying and deducting the costs of existing OSHA standards which already require employers to provide the types of information and training activities prescribed in the HCS. This was done for construction (§ 1926.21), shipbreaking (§ 1915.97), marine terminals (§ 1917.22), and longshoring (§ 1918.86). However, it was not possible to separately identify and deduct the existing training costs for substance-specific standards that currently apply to the nonmanufacturing sector. Thus, the compliance costs presented in this analysis are somewhat overstated.

In extending the rule for manufacturing to the nonmanufacturing sector, OSHA has made revisions to reflect unique aspects of some work operations. For example, the standard allows MSDSs to be maintained at central locations in circumstances where employees must travel between work operations during a workshift, provided that the information can be obtained immediately in an emergency. This provision is expected to lower costs in SIC groups 07, 08, 09, 13, 46, 49, and 73. (*See* Table 1 for a description of the SICs.)

The standard also allows for limited coverage in those work situations where employees handle chemicals in sealed containers that are not opened under normal conditions of use, and thus have little potential for measurable exposures. Employers would be required to leave warning labels on containers, and make available any MSDSs received with the containers. Employers would also have to be trained in accordance with the standard, with particular emphasis on procedures to follow if there is a spill or leak of the hazardous chemicals in the normally sealed containers. Affected establishments would not have to make special efforts to obtain and keep MSDSs that are not received with the chemicals, and no written plan for complying with the HCS would be required. This provision is expected to

result in lower costs in SIC groups 42, 44, 45, 47, 51, and 52.

Thus the changes made to establish more appropriate provisions for unique work situations should result in lower costs than would be experienced if the HCS for manufacturing were extended to the nonmanufacturing sector without revision.

Table 1.—SIC Groups Covered in the OSHA Analysis

Division A. Agriculture, Forestry, and Fishing

Major Group 01. Agricultural production—crops
Major Group 02. Agricultural production—livestock
Major Group 07. Agricultural services
Major Group 08. Forestry
Major Group 09. Fishing, hunting, and trapping

Division B. Mining

Major Group 13. Oil and gas extraction

Division C. Construction

Major Group 15. Building construction—general contractors and operative builders
Major Group 16. Construction other than building construction—general contractors
Major Group 17. Construction—special trade contractors

Division E. Transportation, Communication, Electric, Gas, and Sanitary Services

Major Group 40. Railroad transportation
Major Group 41. Local and suburban transmit and interurban highway passenger transportation
Major Group 42. Motor freight transportation and warehousing
Major Group 44. Water transportation
Major Group 45. Transportation by air
Major Group 46. Pipe lines, except natural gas
Major Group 47. Transportation services
Major Group 48. Communication
Major Group 49. Electric, gas, and sanitary services

Division F. Wholesale Trade

Major Group 50. Wholesale trade—durable goods
Major Group 51. Wholesale trade—nondurable goods

Division G. Retail Trade

Major Group 52. Building materials, hardware, garden supply, and mobile home dealers
Major Group 53. General merchandise stores
Major Group 54. Food stores
Major Group 55. Automotive dealers and gasoline service stations
Major Group 56. Apparel and accessory stores
Major Group 57. Furniture, home furnishing, and equipment stores
Major Group 58. Eating and drinking places
Major Group 59. Miscellaneous retail

Division H. Finance, Insurance, and Real Estate

Major Group 60. Banking
Major Group 61. Credit agencies other than banks
Major Group 62. Security and commodity brokers, dealers, exchanges, and services
Major Group 63. Insurance
Major Group 64. Insurance agents, brokers, and service
Major Group 65. Real estate
Major Group 66. Combinations of real estate, insurance, loans, law office
Major Group 67. Holding and other investment offices

Division I. Services

Major Group 70. Hotels, rooming houses, camps, and other lodging places
Major Group 72. Personal services
Major Group 73. Business services
Major Group 75. Automotive repair, services, and garages
Major Group 76. Miscellaneous repair services
Major Group 78. Motion pictures
Major Group 79. Amusement and recreation services, except motion pictures
Major Group 80. Health Services
Major Group 81. Legal Services
Major Group 82. Education Services
Major Group 83. Social Services
Major Group 84. Museums, art galleries, botanical and zoological gardens
Major Group 86. Membership organizations
Major Group 89. Miscellaneous services

The analysis of the benefits, costs, and economic impacts of extending the HCS to the nonmanufacturing sector are projected for 40 years. As indicated, the analysis reflects requirements of state right-to-know laws and voluntarily implemented hazard communication programs.

Risk Evaluation/Benefits Analysis

For this analysis OSHA estimated the percentage of workers exposed to hazardous chemicals. The percentage and numbers of exposed workers are shown in Table 2 [1] by SIC group. The analysis of risks and benefits proceeds from the current annual incidence of chemical-related injuries and illnesses in the nonmanufacturing sector. For workers in this sector, measures of acute chemical source injuries and illnesses included nonlost workday (NLWD) injuries (13,671) and LWD illnesses (39,249); and fatalities (102). Measures for chronic illnesses include: chronic illness cases (17,153), cancer cases (25,369), and cancer deaths (12,890). The cancer cases category includes cancer deaths. (Note that tables used in the computer models for this analysis may vary slightly from these figures due to rounding.)

The benefits of the standard result from its expected reduction of occupational injuries and illnesses that are chemically related. Specifically, OSHA projects that the standard will avert 20 percent of these injuries and illnesses. (Five percent of all cancer cases are assumed to be occupationally related; the 20 percent reduction is applied to this 5 percent of all cases among occupationally exposed workers in the nonmanufacturing sector.) However, the full reduction of chronic illnesses and cancers will not occur immediately; rather, the reduction for these cases is phased in over time. For chronic illnesses, the standard is expected to reduce 1 percent of the cases in the first year, 2 percent in the second year, and so on, until it reaches the full reduction of 20 percent. For cancer cases and cancer deaths, the standard is expected not to have an effect for the first 10 years, then it is expected to reduce 2 percent of the cases in the eleventh year, 4 percent in the twelfth year, and so on until it reaches the full reduction of 20 percent.

Benefits were monetized using two independent approaches. The first took into account medical costs and lost earnings incurred by each victim. This "human capital" approach resulted in first-year benefits of $50.3 million, and a 40 year present value of $0.68 billion (summarized in Table 3).

A second estimate of benefits was made using the "willingness-to-pay" approach. This approach resulted in first-year benefits of $588.7 million, and a 40 year present value of $54.0 billion (Table 3).

To provide comparability with the estimates of compliance costs, benefits were attributed to the states with right-to-know laws in proportion to the share of hazard communication costs projected for firms in those states. Under the "human capital" approach the present value of the 40 year stream of benefits from the extension of the HCS, after deducting states with right-to-know-laws, is $3.80 billion (1985 dollars). Under the willingness-to-pay approach, the present value of the 40-year stream of benefits from extension of the HCS is $37.0 billion, after deducting the amount attributable to states with right-to-know laws.

The monetized benefits of hazard communication in the nonmanufacturing sector, whether monetized in terms of human capital or willingness to pay, are presented after discounting (at 10 percent). Such discounting does not convey the magnitude of the expected number of injuries, illnesses and deaths that should be averted by the extension of hazard communication to the nonmanufacturing sector. The actual number of NLWD cases, LWD cases, chronic illness cases, cancer cases, cancer deaths, and other fatalities that are expected to be averted in the first,

[1] Tables 2 to 10 appear at the end of this article.

twentieth, and fortieth years are presented in Table 4.

The numbers of cases presented in Table 4 are projections of cases that will be averted by the state right-to-know laws and the extension of the HCS. Approximately 43 percent of these cases will be averted as a result of the hazard communication (*i.e.*, right-to-know) laws of the states. The remaining 57 percent uniquely relate to the extension of HCS and translate into the following: 148,400 cancer cases and 74,200 cancer deaths, 119,200 chronic disabling illnesses, 448,500 lost work day cases, 702,000 non-lost work day cases, and about 653 non-cancer fatalities avoided over the next 40 years. This estimate is believed to be conservative since OSHA assumed that only 5 percent of all cancers are occupationally related.

The original Regulatory Impact Analysis (RIA) for the HCS in manufacturing included estimates of benefits arising from the reduction of the incidence of chemical fires in the manufacturing sector. Using the RIA's methodology and newer data obtained from the U.S. Fire Administration's National Fire Incidence Reporting System, OSHA has determined that extension of the HCS to the nonmannfacturing sector would yield first-year benefits (*i.e.*, the value of property damages and losses avoided) of $1.6 million (1985 dollars). For the twentieth and fortieth years, the estimates are $2.2 and $2.9 million, respectively. The present value of the 40-year stream of benefits is $20.3 million (using a 10 percent discount rate).

Extending the HCS to the nonmanufacturing sector will also yield benefits by eliminating the need for employers to comply with multiple state and local right-to-know laws with differing requirements. The estimated benefits for the first year amount to $39.6 million (1985 dollars). For the twentieth and fortieth years, the benefits are $69.5 and $125.5 million, respectively. The present value of the 40-year stream of benefits is $578 million (using a 10 percent discount rate).

Compliance Costs

Compliance costs were estimated for five items: preparation of a written hazard communication program; container labeling; provision of MSDSs; maintenance of MSDSs; and information and training.

Table 5 provides a summary of total regulatory costs, the costs attributable to state right-to-know laws and the costs attributable to the extension of the OSHA standard. Costs are presented for the first, twentieth, and fortieth year of the standard, as well as in terms of total present value over forty years. Present values were calculated using a 10 percent discount rate. Table 6 presents the costs by provision.

The total cost attributable to hazard communication laws during the first year the expanded HCS is effective is $1.28 billion (1985 dollars). The first year cost associated with compliance with state right-to-know laws is $597.3 million and $687.3 million with the Federal HCS. The present value of the total HCS-related compliance costs over the 40 year period is $1.57 billion.

Recordkeeping activities are required in the maintenance of MSDSs. As shown in Table 6, the Year 1 costs for this function amount to $44.9 million (1985 dollars). The costs for the twentieth and fortieth years are $6.0 and $13.3 million. The present value of the costs over 40 years is $84.8 million.

Economic Impacts

In order to assess the potential economic impacts of expanding the hazard communication standard, OSHA studied the impact of the first year costs on typical establishments that have not implemented any of the provisions. No allowance was made for partial compliance. If establishments can pass through or absorb first year costs, it is assumed that they can afford the minimal recurring costs related to training new employees and the introduction of new hazards. Table 7 presents the average compliance costs, assuming no current compliance, for typical establishments in each SIC Code. Typical establishments in the preponderance for SICs (over 80 percent) would incur compliance costs of less than $700 in the first year.

In only one of the SICs does the average total first year cost exceed $800 per establishment. The average first year cost per exposed employee in all SICs is less than $250, or less than $5.00 per worker per week.

Table 8 presents a comparison of the post-tax compliance costs to a typical firm's revenues and profits. A typical establishment's pre-tax compliance cost will be a negligible percentage (less than one-half of one percent) of the establishment's average annual revenue in over 96 percent of the SICs. The only exceptions, SIC 83 (Social Service) and SIC 86 (Membership Organizations), are primarily composed of nonprofit establishments that are characterized by relatively inelastic demand for their services. Given the magnitude of the compliance costs in relation to revenue, and the fact that the affected industry sectors are predominantly service providers, which are necessarily characterized by localized markets, it appears likely that most firms will pass the compliance costs on to their customers. The post-tax compliance cost as a percent of profits is less than two percent in most (over 80 percent) of the SICs. Typical firms in these SICs should be able to absorb the costs even if they cannot pass them on to their customers. Given the small absolute magnitude of the compliance costs, and the fact that the analysis was conducted using first year compliance costs which are significantly higher than the recurring compliance costs for subsequent years, the expansion of the hazard communication standard should have little or no economic impact on typical firms.

Community Right-to-Know

The cost of extending the Superfund Amendments and Reauthorization Act (SARA) requirements for community right-to-know to the non-manufacturing sector was also estimated. Under Title III of SARA, establishments holding a given hazardous chemical in amounts greater than specified threshold quantities must report these chemicals and their quantities to State and local emergency planning committees and the local fire department. Cost estimates were based on EPA's projected phase-in threshold quantities of 10,000 pounds of hazardous chemicals in the first two years, and 500 pounds in the third and subsequent years that the requirements apply to the non-manufacturing sector. The estimated costs for the first and second years are $8,614,300 and $3,524,000, respectively. Third and fourth year costs were estimated to be $63,492,800 and $32,736,300.

The economic impact of extending SARA to nonmanufacturing was also estimated by OSHA. The third year average total cost of SARA was combined with OSHA's recurring average total costs of the Hazard Communication Standard to estimate the impact. The analysis indicated that the economic impact per facility of extending SARA to nonmanufacturing is minor, and that costs incurred by affected establishments could be passed on to the consumer. OSHA believes that the extension of SARA to nonmanufacturing will not affect the feasibility of the Hazard Communication Standard.

Regulatory Flexibility

As is shown in Table 9, a majority of establishments in all of the potentially impacted SICs are small businesses with fewer than 20 employees. Thus, the average compliance costs for small firms

are very similar to those for typical firms. No disproportionate economic impact is foreseen for small firms.

Most establishments in the potentially affected SICs are service providers, which typically compete on the basis of many factors (*e.g.*, location, specialized service, customer relations, etc.) in addition to price. Assuming all firms try to pass their compliance cost on to their customers, minor price differentials of less than one-half of one percent, shown in Table 10, are unlikely to adversely affect the overall competitive position of small entities.

As can be seen from Table 10, the cost differential between small and large firms in over 80 percent of the SICs is anticipated to be less than 0.2 percent of revenue. In SICs 83 and 86 the difference is about 2 percent. However, these SICs are dominated by non-profit firms which are less likely to be subject to price competition.

Environmental Impacts

At the time the current HCS was promulgated in the **Federal Register** (48 FR 53280), OSHA stated that the standard was unlikely to result in the occurrence of significant health or environmental impacts outside of the workplace. The extension of the HCS does not entail any change from the current HCS in terms of impacts outside the workplace. As concluded previously, the labeling of containers will not have a direct or significant impact on air or water quality, land or energy use, or solid waste disposal outside of the workplace. Similarly, the requirements for preparation of a written compliance plan, provision and maintenance of MSDSs, and provision of information and training should have no adverse environmental impact.

IV. Clearance of Information Collection Requirements

On March 31, 1983, the Office of Management and Budget (OMB) published a new 5 CFR Part 1320, implementing the information collection provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* (48 FR 13666). Part 1320, which became effective on April 30, 1983, sets forth procedures for agencies to follow in obtaining OMB clearance for information collection requirements. The sections of the Hazard Communication Standard which may create recordkeeping requirements are paragraphs (d) hazard determination; (e) written hazard communication program; (f) labels and other appropriate forms of warning; (g) material safety data sheets; (h) information and training; and (i) trade secrets.

In accordance with the provisions of the Paperwork Reduction Act and the regulations issued pursuant thereto, OSHA certifies that it has submitted the information collection requirements contained in its rule on hazard communication to OMB for review under section 3504(h) of that Act.

V. State Plan Applicability

The 25 States with their own OSHA-approved occupational safety and health plans must adopt a comparable standard within six months of the publication date of a final standard. These States include: Alaska, Arizona, California, Connecticut (for State and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York (for State and local government employees only), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming. Until such time as a State standard is promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate. (Thirteen (13) of these States (Alaska, California, Iowa, Maryland, Michigan, Minnesota, New Mexico, North Carolina, Oregon, Tennessee, Vermont, Washington, and Wyoming) have already expanded the scope of their hazard communication standard/right-to-know law to cover private sector, non-manufacturing workplaces.)

Although a State HCS becomes effective in accordance with State promulgation provisions, and is enforceable upon promulgation, OSHA must also review and approve the standard to assure that it is "at least as effective" as the Federal standard. OSHA intends to closely scrutinize State standards submitted under current or future State plans to assure not only equal or greater effectiveness, but also that any additional requirements do not conflict with, or adversely affect, the effectiveness of the national application of OSHA's standard. Because the HCS is "appliable to products" in that it permits the distribution and use of hazardous chemicals in commerce only if they are in labeled containers accompanied by material safety data sheets, OSHA must determine in its review whether any State plan standard provisions which differ from the Federal are "required by compelling local conditions and do not unduly burden interstate commerce." Section 18(c) of the Act, 29 U.S.C. 667(c).

VI. Authority, Signature, and the Final Rule

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

For the reasons set out in the preamble, and under the authority of section 41 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941), section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333), sections 4, 6 and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 9–83 (48 FR 35736) and 29 CFR Part 1911, and 5 U.S.C. 553, the Occupational Safety and Health Administration hereby amends Parts 1910, 1915, 1917, 1918, 1926, and 1928 of Title 29 of the Code of Federal Regulations, as set forth below.

List of Subjects in 29 CFR Parts 1910, 1915, 1917, 1918, 1926, and 1928

Hazard communication, Occupational safety and health, Right-to-know, Labeling, Material safety data sheets; Employee training.

Signed at Washington, DC, this 18th day of August 1987.

John A. Pendergrass,

Assistant Secretary for Occupational Safety and Health.

TABLE 2.—WORKER EXPOSURE TO HAZARDOUS CHEMICALS

Industry	Total number of establishment	Total employment	Percent of workers exposed to hazardous chemicals	Number of exposed employees
SIC 01	31,739	504,025	70	352,818
SIC 02	10,994	126,039	70	88,227

TABLE 2.—WORKER EXPOSURE TO HAZARDOUS CHEMICALS—Continued

Industry	Total number of establishment	Total employment	Percent of workers exposed to hazardous chemicals	Number of exposed employees
SIC 07	65,704	459,479	70	321,635
SIC 08	2,117	20,223	70	14,156
SIC 09	3,886	13,549	20	2,710
SIC 13	31,572	591,714	70	414,200
SIC 15	166,012	1,137,853	70	796,497
SIC 16	44,702	791,892	70	554,324
SIC 17	320,206	2,406,916	70	1,684,841
SIC 40	18,539	324,206	40	129,682
SIC 41	15,539	285,578	20	57,116
SIC 42	99,805	1,323,495	20	264,699
SIC 44	8,346	178,013	70	124,609
SIC 45	8,691	490,395	40	196,158
SIC 46	959	18,405	60	11,043
SIC 47	30,783	267,113	40	106,845
SIC 48	22,910	1,321,116	5	66,056
SIC 49	15,571	890,586	40	356,234
SIC 50	300,972	3,357,168	10	335,717
SIC 51	191,745	2,295,451	25	573,863
SIC 52	66,756	662,051	50	331,026
SIC 53	29,818	2,230,449	5	111,522
SIC 54	137,393	2,696,639	20	539,328
SIC 55	173,902	1,850,359	60	1,110,215
SIC 56	99,022	1,004,666	5	50,233
SIC 57	93,338	714,264	5	35,713
SIC 58	309,650	5,479,633	25	1,369,908
SIC 59	261,694	2,133,614	20	426,723
SIC 60	24,949	1,681,406	5	84,070
SIC 61	43,406	733,201	5	36,660
SIC 62	17,995	346,214	5	17,311
SIC 63	30,139	1,190,103	5	59,505
SIC 64	96,706	536,223	5	26,811
SIC 65	191,400	1,077,550	5	53,878
SIC 66	2,937	13,752	5	688
SIC 67	15,792	138,488	5	6,924
SIC 70	44,697	1,273,343	25	318,336
SIC 72	158,272	1,068,670	50	534,335
SIC 73	284,684	4,092,820	50	2,046,410
SIC 75	121,431	713,798	50	356,899
SIC 76	57,900	316,365	60	189,819
SIC 78	15,338	216,806	30	65,042
SIC 79	58,064	757,287	20	151,457
SIC 80	365,758	9,167,906	60	3,700,745
SIC 81	119,861	670,317	5	33,516
SIC 82	23,280	1,174,052	10	117,405
SIC 83	66,380	1,182,651	5	59,133
SIC 84	1,592	39,021	25	9,755
SIC 86	83,774	724,283	5	36,214
SIC 89	117,155	1,200,885	5	60,044
Totals	4,503,879	58,690,236		18,391,096

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis.

TABLE 3.—ESTIMATED BENEFITS OF HAZARD COMMUNICATION

[Millions of 1985 dollars]

Type of injury/illness	Benefits—Year			
	1	20	40	TPV
HUMAN CAPITAL APPROACH				
NLWD:				
Lost earnings	0.7	1.3	2.5	9.3
Medical costs	1.7	4.6	13.4	30.3
LWD:				
Lost earnings	15.2	28.3	57.1	209.3

TABLE 3.—ESTIMATED BENEFITS OF HAZARD COMMUNICATION—Continued

[Millions of 1985 dollars]

Type of injury/illness	Benefits—Year			
	1	20	40	TPV
Medical costs	10.9	29.2	86.5	192.2
Chronic:				
Lost earnings	20.5	722.8	1,365.8	2,967.5
Medical costs	2.8	143.4	404.1	582.8
Cancer:				
Lost earnings	0	651.6	1,309.6	1,735.2
Medical costs	0	298.9	806.4	875.8
Fatalities: Lost earnings	4.4	7.3	13.0	55.6
Total	56.3	1,887.3	4,158.3	6,659.1
WILLINGNESS-TO-PAY APPROACH				
NLWD	59.6	107.8	211.9	804.5
LWD	374.4	686.4	1,371.1	5,099.8
Chronic	61.7	2,173.7	4,121.6	8,924.3
Cancer	0	14,529.0	29,651.2	39,812.0
Fatalities	72.9	123.4	255.3	946.9
Total	568.7	17,620.7	35,581.2	54,587.4

Source: JACA Corporation Report.

TABLE 4.—INJURIES, ILLNESSES, AND FATALITIES AVERTED BY HAZARD COMMUNICATION IN THE NONMANUFACTURING SECTOR

Year	1	20	40	Commu-lative total
FEDERAL AND STATE STANDARDS COMBINED				
NLWD	17,000	30,800	60,600	1,354,500
LWD	10,700	19,800	39,200	865,800
Chronic	150	6,200	11,800	230,100
Cancer cases	0	8,200	17,000	288,500
Cancer deaths	0	4,100	8,500	143,300
Noncancer deaths	0	20	60	1,260
IMPACT OF FEDERAL STANDARD ALONE				
NLWD	8,800	16,000	31,400	702,000
LWD	5,500	10,200	20,300	448,500
Chronic	78	3,200	6,100	119,200
Cancer cases	0	4,248	8,806	148,400
Cancer deaths	0	2,100	4,400	74,200
Noncancer deaths	0	10	41	653

Source: U.S. Department of Labor, OHSA, Office of Regulatory Analysis.

TABLE 5.—SUMMARY OF HAZARD COMMUNICATION COSTS

[Millions of 1985 dollars]

Year	Total	State	OHSA
1	1,284.5	597.3	687.2
20	214.5	101.3	113.2
40	384.0	184.0	200.0

TABLE 5.—SUMMARY OF HAZARD COMMUNICATION COSTS—Continued

[Millions of 1985 dollars]

Year	Total	State	OHSA
Total present value	2,926.4	1,356.3	1,570.1

Source: U.S. Department of Labor, OHSA, Office of Regulatory Analysis.

TABLE 6.—SUMMARY OF FEDERAL HCS COSTS BY PROVISION

[Millions of 1985 dollars]

Year	Maintain MSDS's	Labeling	Written	Training	Provide MSDS's	Totals
1	44.9	12.8	137.4	472.9	19.3	687.2
20	6.0	20.3	5.7	78.7	2.5	113.2
40	13.3	35.2	9.4	136.5	5.6	200.0
TPV	84.8	170.9	170.9	1054.6	88.9	1570.1

Source: U.S. Department of Labor, OHSA, Office of Regulatory Analysis.

TABLE 7.—SUMMARY OF HCS COSTS PER ESTABLISHMENT NOT IN COMPLIANCE WITH HCS

[1985 dollars]

Industry	First year		Second year	
	Average costs per establishment	Average costs per exposed employee	Average costs per establishment	Average costs per exposed employee
SIC 01	502	45	32	3
SIC 02	475	59	23	3
SIC 07	490	100	28	6
SIC 08	358	54	26	4
SIC 09	304	242	8	5
SIC 13	497	36	72	5
SIC 15	150	31	12	3
SIC 16	225	18	34	3
SIC 17	169	32	14	3
SIC 40	603	86	51	7
SIC 41	285	76	11	3
SIC 42	273	98	12	4
SIC 44	442	30	55	4
SIC 45	892	40	72	3
SIC 46	461	40	55	5
SIC 47	398	115	15	4
SIC 48	319	50	15	2
SIC 49	790	35	64	3
SIC 50	472	238	14	7
SIC 51	700	234	32	11
SIC 52	335	66	20	4
SIC 53	372	50	27	4
SIC 54	323	82	18	5
SIC 55	437	68	31	5
SIC 56	265	149	6	3
SIC 57	288	190	6	4
SIC 58	337	76	17	4
SIC 59	321	184	7	4
SIC 60	410	61	21	3
SIC 61	217	76	9	3
SIC 62	312	79	18	5
SIC 63	250	46	16	3
SIC 64	236	155	5	3
SIC 65	306	186	8	5
SIC 66	238	181	5	4
SIC 67	415	167	12	5
SIC 70	408	57	37	5
SIC 72	500	148	16	5
SIC 73	444	62	43	6
SIC 75	361	130	14	5
SIC 76	325	99	15	5
SIC 78	351	83	26	6
SIC 79	346	117	20	7
SIC 80	581	57	57	6
SIC 81	242	153	7	5
SIC 82	287	46	10	2
SIC 83	337	132	11	4
SIC 84	608	99	39	6
SIC 86	273	149	6	3

TABLE 7.—SUMMARY OF HCS COSTS PER ESTABLISHMENT NOT IN COMPLIANCE WITH HCS—Continued

[1985 dollars]

Industry	First year		Second year	
	Average costs per establishment	Average costs per exposed employee	Average costs per establishment	Average costs per exposed employee
SIC 89	312	146	10	5

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis.

TABLE 8.—ANALYSIS OF POST-TAX FIRST-YEAR COMPLIANCE COSTS

[1985 dollars]

Industry	Average annual revenue per establishment	Average cost as a percent of revenue per establishment	Average net income per establishment	Average post-tax cost per establishment	Post tax cost as a percent of net income per establishment
SIC 01	2,794,100	0.018	103,382	377	0.36
SIC 02	11,275,400	0.004	417,190	356	0.09
SIC 07	286,600	0.171	7,165	368	5.13
SIC 08	1,689,100	0.021	42,228	255	0.64
SIC 09	797,500	0.038	19,938	226	1.14
SIC 13	6,185,800	0.008	346,405	373	0.11
SIC 15	816,700	0.018	19,601	113	0.57
SIC 16	1,419,700	0.016	56,788	189	0.30
SIC 17	372,400	0.045	10,800	127	1.17
SIC 40	2,584,100	0.023	111,116	453	0.41
SIC 41	411,400	0.069	13,165	214	1.62
SIC 42	730,100	0.037	21,903	205	0.94
SIC 44	2,214,300	0.020	141,715	331	0.23
SIC 45	5,900,000	0.015	70,800	669	0.94
SIC 46	20,569,600	0.002	1,069,619	346	0.03
SIC 47	831,900	0.048	14,974	299	1.99
SIC 48	5,347,900	0.006	390,397	239	0.06
SIC 49	16,269,000	0.005	732,105	599	0.08
SIC 50	1,866,900	0.025	26,004	354	1.26
SIC 51	3,371,500	0.021	57,316	525	0.92
SIC 52	793,800	0.042	20,639	251	1.22
SIC 53	5,702,000	0.007	136,848	279	0.20
SIC 54	2,089,700	0.015	25,076	242	0.96
SIC 55	2,016,100	0.022	16,129	327	2.03
SIC 56	507,600	0.052	19,796	199	1.00
SIC 57	371,400	0.078	11,513	216	1.88
SIC 58	383,500	0.066	11,122	252	2.27
SIC 59	829,100	0.039	20,728	241	1.16
SIC 60	14,970,800	0.003	509,007	307	0.06
SIC 61	2,585,300	0.008	41,365	163	0.39
SIC 62	1,856,900	0.017	135,554	234	0.17
SIC 63	12,911,400	0.002	438,988	187	0.04
SIC 64	220,400	0.107	15,869	177	1.11
SIC 65	338,400	0.090	27,749	230	0.83
SIC 66	661,600	0.036	54,251	176	0.33
SIC 67	798,300	0.052	167,643	311	0.19
SIC 70	607,000	0.067	34,599	306	0.88
SIC 72	228,500	0.219	10,283	375	3.64
SIC 73	531,600	0.084	21,264	333	1.57
SIC 75	351,800	0.108	8,795	286	3.25
SIC 76	187,100	0.174	7,671	244	3.18
SIC 78	815,900	0.043	31,820	263	0.83
SIC 79	782,100	0.044	51,619	260	0.50
SIC 80	198,200	0.293	6,342	436	6.87
SIC 81	456,000	0.053	10,032	182	1.81
SIC 82	NA	0.168	NA	215	NA
SIC 83	NA	1.763	NA	252	NA
SIC 83	NA	1.763	NA	252	NA
SIC 84	NA	0.094	NA	456	NA
SIC 86	NA	1.007	NA	205	NA

TABLE 8.—ANALYSIS OF POST-TAX FIRST-YEAR COMPLIANCE COSTS—Continued

[1985 dollars]

Industry	Average annual revenue per establishment	Average cost as a percent of revenue per establishment	Average net income per establishment	Average post-tax cost per establishment	Post tax cost as a percent of net income per establishment
SIC 89	290,500	0.107	11,039	234	2.12

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis.

TABLE 9.—ESTABLISHMENTS WITH FEWER THAN TWENTY EMPLOYEES

SIC code	Total number of establishments	Number of establishments with 1 to 19 employees	Percent of establishments with 1 to 19 employees
01	31,739	27,440	86
02	10,994	9,574	87
07	65,704	61,928	94
08	2,117	1,852	87
09	2,160	2,088	97
13	31,572	26,037	82
15	166,012	154,819	93
16	44,702	37,484	84
17	320,206	294,650	92
40	18,539	15,756	85
41	15,267	11,998	79
42	94,561	80,822	85
44	8,346	6,917	83
45	8,691	6,514	75
46	959	724	75
47	30,783	28,420	92
48	10,319	6,612	64
49	15,571	10,922	70
50	169,451	133,233	79
51	191,745	166,562	87
52	66,756	60,097	90
53	14,809	8,963	60
54	137,393	114,738	84
55	173,902	152,920	88
56	28,161	23,874	85
57	23,582	20,474	87
58	309,850	241,282	78
59	244,849	227,803	93
60	12,475	6,318	51
61	12,912	9,561	74
62	4,380	3,079	70
63	10,998	7,263	66
64	17,577	15,606	89
65	32,714	28,099	86
66	524	488	93
67	2,790	2,239	80
70	44,987	34,693	78
72	158,272	149,812	95
73	264,684	249,553	94
75	121,431	116,344	96
76	57,900	55,543	96
78	15,336	13,314	87
79	50,981	42,916	84
80	365,758	338,396	93
81	21,210	18,659	88
82	18,661	11,197	60
83	23,148	17,068	74
84	1,582	1,250	79
86	19,757	16,416	83
89	28,103	23,179	82

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis.

[a] From Chapter 5 of the JACA Report [4].

[b] Column 2 divided by Column 1.

TABLE 10.—ANALYSIS OF IMPACT ON SMALLEST VERSUS LARGEST ESTABLISHMENTS

[Comparing average costs as a percent of revenue]

SIC code	Average cost as a percent of revenue per establishment 250+ employees	Average cost as a percent of revenue per establishment 1–19 employees	Difference in cost as a percent of revenue due to size of establishments
01	0.003	0.044	0.040
02	0.001	0.009	0.008
07	0.038	0.189	0.151
08	0.007	0.018	0.011
09	0.002	0.021	0.019
13	0.002	0.035	0.033
15	0.003	0.044	0.042
16	0.007	0.064	0.057
17	0.017	0.065	0.048
40	0.006	0.082	0.075
41	0.007	0.248	0.240
42	0.007	0.103	0.096
44	0.007	0.060	0.053
45	0.009	0.105	0.096
46	0.000	0.174	0.174
47	0.003	0.101	0.098
48	0.002	0.041	0.039

TABLE 10.—ANALYSIS OF IMPACT ON SMALLEST VERSUS LARGEST ESTABLISHMENTS—Continued

[Comparing average costs as a percent of revenue]

SIC code	Average cost as a percent of revenue per establishment 250+ employees	Average cost as a percent of revenue per establishment 1–19 employees	Difference in cost as a percent of revenue due to size of establishments
49	0.002	0.049	0.047
50	0.003	0.037	0.034
51	0.006	0.038	0.032
52	0.008	0.046	0.038
53	0.003	0.029	0.025
54	0.002	0.054	0.052
55	0.006	0.044	0.038
56	0.002	0.104	0.102
57	0.003	0.117	0.114
58	0.000	0.150	0.150
59	0.003	0.055	0.051
60	0.001	0.012	0.011
61	0.000	0.038	0.038
62	0.003	0.028	0.025
63	0.000	0.069	0.069
64	0.002	0.179	0.177
65	0.005	0.124	0.119
66	0.001	0.054	0.053
67	0.003	0.096	0.093
70	0.021	0.283	0.262
72	0.007	0.346	0.339
73	0.029	0.204	0.175
75	0.004	0.151	0.148
76	0.099	0.205	0.106
78	0.007	0.113	0.106
79	0.016	0.071	0.055
80	0.269	0.370	0.101
81	0.118	0.077	−0.041
82	0.025	0.915	0.890
83	0.429	2.293	1.865
84	0.033	0.259	0.226
86	0.035	2.109	2.074
89	0.008	0.210	0.202

Source: U.S. Department of Labor, OHSA, Office of Regulatory Analysis.

OSHA is amending Parts 1910, 1915, 1917, 1918, 1926, and 1928 of Title 29 of the Code of Federal Regulations as follows:

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

1. The authority citation for Subpart Z of Part 1910 continues to read as follows:

Authority: Secs. 6, 8, Occupational Safety and Health Act (29 U.S.C. 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754); 8–76 (41 FR 2509); or 9–83 (48 FR 35736) as applicable; and 29 CFR Part 1911.

Section 1910.1000 Tables Z–1, Z–2, Z–3 also issued under 5 U.S.C. 553.

Section 1910.1000 not issued under 29 CFR Part 1911, except for "Arsenic" and "Cotton Dust" listings in Table Z–1.

Section 1910.1001 not issued under Sec. 107 of Contract Work Hours and Safety Standards Act, 40 U.S.C. 333.

Section 1910.1002 not issued under 29 U.S.C. 655 or 29 CFR Part 1911; also issued under 5 U.S.C. 553.

Sections 1910.1003 through 1910.1018 also issued under 29 U.S.C. 653.

Section 1910.1025 also issued under 29 U.S.C. 653 and 5 U.S.C. 553.

Section 1910.1043 also issued under 5 U.S.C. 551 *et seq.*

Sections 1910.1045 and 1910.1047 also issued under 29 U.S.C. 653.

Sections 1910.1200, 1910.1499 and 1910.1500 also issued under 5 U.S.C. 553.

PART 1915—OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR SHIPYARD EMPLOYMENT

2. The authority citation for Part 1915 is revised to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable; 29 CFR Part 1911.

Section 1915.99 also issued under 5 U.S.C. 553.

PART 1917—MARINE TERMINALS

3. The authority citation for Part 1917 is revised to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable; 29 CFR Part 1911.

Section 1917.28 also issued under 5 U.S.C. 553.

PART 1918—SAFETY AND HEALTH REGULATIONS FOR LONGSHORING

4. The authority citation for Part 1918 is revised to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941);

secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable.

Section 1918.90 also issued under 5 U.S.C. 553 and 29 CFR Part 1911.

PART 1926—SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION

5. The authority citation for Subpart D of Part 1926 is revised to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable.

Section 1926.59 also issued under 5 U.S.C. 553 and 29 CFR Part 1911.

PART 1928—OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR AGRICULTURE

6. The authority citation for Part 1928 is revised to read as follows:

Authority: Secs. 6 and 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 657); Secretary of Labor's Orders 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable; 29 CFR Part 1911.

Section 1928.21 also issued under 5 U.S.C. 553.

PARTS 1910, 1915, 1917, 1918, 1926 and 1928—[AMENDED]

7. Parts 1910, 1915, 1917, 1918, and 1926 are amended by revising § 1910.1200 as set forth below, and by adding §§ 1915.99, 1917.28, 1918.90, and 1926.59 to contain the identical text of the revised § 1910.1200, including Apendices A, B, C, and D of 1910.1200:

§ ——— Hazard communication.

(a) *Purpose.* (1) The purpose of this section is to ensure that the hazards of all chemicals produced or imported are evaluated, and that information concerning their hazards is transmitted to employers and employees. This transmittal of information is to be accomplished by means of comprehensive hazard communication programs, which are to include container labeling and other forms of warning, material safety data sheets and employee training.

(2) This occupational safety and health standard is intended to address comprehensively the issue of evaluating the potential hazards of chemicals, and communicating information concerning hazards and appropriate protective measures to employees, and to preempt any legal requirements of a state, or political subdivision of a state, pertaining to the subject. Evaluating the potential hazards of chemicals, and communicating information concerning hazards and appropriate protective measures to employees, may include, for example, but is not limited to, provisions for: developing and maintaining a written hazard communication program for the workplace, including lists of hazardous chemicals present; labeling of containers of chemicals in the workplace, as well as of containers of chemicals being shipped to other workplaces; preparation and distribution of material safety data sheets to employees and downstream employers; and development and implementation of employee training programs regarding hazards of chemicals and protective measures. Under section 18 of the Act, no state or political subdivision of a state may adopt or enforce, through any court or agency, any requirement relating to the issue addressed by this Federal standard, except pursuant to a Federally-approved state plan.

(b) *Scope and application.* (1) This section requires chemical manufacturers or importers to assess the hazards of chemicals which they produce or import, and all employers to provide information to their employees about the hazardous chemicals to which they are exposed, by means of a hazard communication program, labels and other forms of warning, material safety data sheets, and information and training. In addition, this section requires distributors to transmit the required information to employers.

(2) This section applies to any chemical which is known to be present in the workplace in such a manner that employees may be exposed under normal conditions of use or in a foreseeable emergency.

(3) This section applies to laboratories only as follows:

(i) Employers shall ensure that labels on incoming containers of hazardous chemicals are not removed or defaced;

(ii) Employers shall maintain any material safety data sheets that are received with incoming shipments of hazardous chemicals, and ensure that they are readily accessible to laboratory employees; and,

(iii) Employers shall ensure that laboratory employees are apprised of the hazards of the chemicals in their workplaces in accordance with paragraph (h) of this section.

(4) In work operations where employees only handle chemicals in sealed containers which are not opened under normal conditions of use (such as are found in marine cargo handling, warehousing, or retail sales), this section applies to these operations only as follows:

(i) Employers shall ensure that labels on incoming containers of hazardous chemicals are not removed or defaced;

(ii) Employers shall maintain copies of any material safety data sheets that are received with incoming shipments of the sealed containers of hazardous chemicals, shall obtain a material safety data sheet for sealed containers of hazardous chemicals received without a material safety data sheet if an employee requests the material safety data sheet, and shall ensure that the material safety data sheets are readily accessible during each work shift to employees when they are in their work area(s); and,

(iii) Employers shall ensure that employees are provided with information and training in accordance with paragraph (h) of this section (except for the location and availability of the written hazard communication program under paragraph (h)(1)(iii)), to the extent necessary to protect them in the event of a spill or leak of a hazardous chemical from a sealed container.

(5) This section does not require labeling of the following chemicals:

(i) Any pesticide as such term is defined in the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.), when subject to the labeling requirements of that Act and labeling regulations issued under that Act by the Environmental Protection Agency;

(ii) Any food, food additive, color additive, drug, cosmetic, or medical or veterinary device, including materials intended for use as ingredients in such products (e.g. flavors and fragrances), as such terms are defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*) and regulations issued under that Act, when they are subject to the labeling requirements under that Act by the Food and Drug Administration;

(iii) Any distilled spirits (beverage alcohols), wine, or malt beverage intended for nonindustrial use, as such terms are defined in the Federal Alcohol Administration Act (27 U.S.C. 201 *et seq.*) and regulations issued under that Act, when subject to the labeling requirements of that Act and labeling regulations issued under that Act by the Bureau of Alcohol Tobacco, and Firearms; and,

(iv) Any consumer product or hazardous substance as those terms are defined in the Consumer Product Safety Act (15 U.S.C. 2051 et seq.) and Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.) respectively, when subject to a consumer product safety standard or labeling requirement of those Acts, or regulations issued under those Acts by

the Consumer Product Safety Commission.

(6) This section does not apply to:

(i) Any hazardous waste as such term is defined by the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6901 et seq.), when subject to regulations issued under that Act by the Environmental Protection Agency;

(ii) Tobacco or tobacco products;

(iii) Wood or wood products;

(iv) Articles;

(v) Food, drugs, cosmetics, or alcoholic beverages in a retail establishment which are packaged for sale to consumers;

(vi) Foods, drugs, or cosmetics intended for personal consumption by employees while in the workplace;

(vii) Any consumer product or hazardous substance, as those terms are defined in the Consumer Product Safety Act (15 U.S.C. 2051 *et seq.*) and Federal Hazardous Substances Act (15 U.S.C. 1261 *et seq.*) respectively, where the employer can demonstrate it is used in the workplace in the same manner as normal consumer use, and which use results in a duration and frequency of exposure which is not greater than exposures experienced by consumers; and,

(viii) Any drug, as that term is defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*), when it is in solid, final form for direct administration to the patient (i.e. tablets or pills).

(c) *Definitions.*

"Article" means a manufactured item: (i) Which is formed to a specific shape or design during manufacture; (ii) which has end use function(s) dependent in whole or in part upon its shape or design during end use; and (iii) which does not release, or otherwise result in exposure to, a hazardous chemical, under normal conditions of use.

"Assistant Secretary" means the Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, or designee.

"Chemical" means any element, chemical compound or mixture of elements and/or compounds.

"Chemical manufacturer" means an employer with a workplace where chemical(s) are produced for use or distribution.

"Chemical name" means the scientific designation of a chemical in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry (IUPAC) or the Chemical Abstracts Service (CAS) rules of nomenclature, or a name which will clearly identify the chemical for the purpose of conducting a hazard evaluation.

"Combustible liquid" means any liquid having a flashpoint at or above 100 °F (37.8 °C), but below 200 ° F (93.3 ° C), except any mixture having components with flashpoints of 200 °F (93.3 °C), or higher, the total volume of which make up 99 percent or more of the total volume of the mixture.

"Common name" means any designation or identification such as code name, code number, trade name, brand name or generic name used to identify a chemical other than by its chemical name.

"Compressed gas" means:

(i) A gas or mixture of gases having, in a container, an absolute pressure exceeding 40 psi at 70 °F (21.1 °C); or

(ii) a gas or mixture of gases having, in a container, an absolute pressure exceeding 104 psi at 130 °F (54.4 °C) regardless of the pressure at 70 °F (21.1 °C); or

(iii) A liquid having a vapor pressure exceeding 40 psi at 100 °F (37.8 °C) as determined by ASTM D–323–72.

"Container" means any bag, barrel, bottle, box, can, cylinder, drum, reaction vessel, storage tank, or the like that contains a hazardous chemical. For purposes of this section, pipes or piping systems, and engines, fuel tanks, or other operating systems in a vehicle, are not considered to be containers.

"Designated representative" means any individual or organization to whom an employee gives written authorization to exercise such employee's rights under this section. A recognized or certified collective bargaining agent shall be treated automatically as a designated representative without regard to written employee authorization.

"Director" means the Director, National Institute for Occupational Safety and Health, U.S. Department of Health and Human Services, or designee.

"Distributor" means a business, other than a chemical manufacturer or importer, which supplies hazardous chemicals to other distributors or to employers.

"Employee" means a worker who may be exposed to hazardous chemicals under normal operating conditions or in foreseeable emergencies. Workers such as office workers or bank tellers who encounter hazardous chemicals only in non-routine, isolated instances are not covered.

"Employer" means a person engaged in a business where chemicals are either used, distributed, or are produced for use or distribution, including a contractor or subcontractor.

"Explosive" means a chemical that causes a sudden, almost instantaneous release of pressure, gas, and heat when subjected to sudden shock, pressure, or high temperature.

"Exposure" or "exposed" means that an employee is subjected to a hazardous chemical in the course of employment through any route of entry (inhalation, ingestion, skin contact or absorption, etc.), and includes potential (e.g. accidental or possible) exposure.

"Flammable" means a chemical that falls into one of the following categories:

(i) "Aerosol, flammable" means an aerosol that, when tested by the method described in 16 CFR 1500.45, yields a flame projection exceeding 18 inches at full valve opening, or a flashback (a flame extending back to the valve) at any degree of valve opening;

(ii) "Gas, flammable" means:

(A) A gas that, at ambient temperature and pressure, forms a flammable mixture with air at a concentration of thirteen (13) percent by volume or less; or

(B) A gas that, at ambient temperature and pressure, forms a range of flammable mixtures with air wider than twelve (12) percent by volume, regardless of the lower limit;

(iii) "Liquid, flammable" means any liquid having a flashpoint below 100 °F (37.8 °C), except any mixture having components with flashpoints of 100 °F (37.8 °C) or higher, the total of which make up 99 percent or more of the total volume of the mixture;

(iv) "Solid, flammable" means a solid, other than a blasting agent or explosive as defined in § 190.109(a), that is liable to cause fire through friction, absorption of moisture, spontaneous chemical change, or retained heat from manufacturing or processing, or which can be ignited readily and when ignited burns so vigorously and persistently as to create a serious hazard. A chemical shall be considered to be a flammable solid if, when tested by the method described in 16 CFR 1500.44, it ignites and burns with a self-sustained flame at a rate greater than one-tenth of an inch per second along its major axis.

"Flashpoint" means the minimum temperature at which a liquid gives off a vapor in sufficient concentration to ignite when tested as follows:

(i) Tagliabue Closed Tester (See American National Standard Method of Test for Flash Point by Tag Closed Tester, Z11.24–1979 (ASTM D 56–79)) for liquids with a viscosity of less than 45 Saybolt University Seconds (SUS) at 100 °F (37.8 °C), that do not contain suspended solids and do not have a

tendency to form a surface film under test; or

(ii) Pensky-Martens Closed Tester (See American National Standard Method of Test for Flash Point by Pensky-Martens Closed Tester, Z11.7–1979 (ASTM D 93–79)) for liquids with a viscosity equal to or greater than 45 SUS at 100 °F (37.8 °C), or that contain suspended solids, or that have a tendency to form a surface film under test; or

(iii) Setaflash Closed Tester (see American National Standard Method of Test for Flash Point by Setaflash Closed Tester (ASTMD 3278–78))

Organic peroxides, which undergo autoaccelerating thermal decomposition, are excluded from any of the flashpoint determination methods specified above.

"Foreseeable emergency" means any potential occurrence such as, but not limited to, equipment failure, rupture of containers, or failure of control equipment which could result in an uncontrolled release of a hazardous chemical into the workplace.

"Hazardous chemical" means any chemical which is a physical hazard or a health hazard.

"Hazard warning" means any words, pictures, symbols, or combination thereof appearing on a label or other appropriate form of warning which convey the hazard(s) of the chemical(s) in the container(s).

"Health hazard" means a chemical for which there is statistically significant evidence based on at least one study conducted in accordance with established scientific principles that acute or chronic health effects may occur in exposed employees. The term "health hazard" includes chemicals which are carcinogens, toxic or highly toxic agents, reproductive toxins, irritants, corrosives, sensitizers, hepatotoxins, nephrotoxins, neurotoxins, agents which act on the hematopoietic system, and agents which damage the lungs, skin, eyes, or mucous membranes. Appendix A provides further definitions and explanations of the scope of health hazards covered by this section, and Appendix B describes the criteria to be used to determine whether or not a chemical is to be considered hazardous for purposes of this standard.

"Identity" means any chemical or common name which is indicated on the material safety data sheet (MSDS) for the chemical. The identity used shall permit cross-references to be made among the required list of hazardous chemicals, the label and the MSDS.

"Immediate use" means that the hazardous chemical will be under the control of and used only by the person who transfers it from a labeled container and only within the work shift in which it is transferred.

"Importer" means the first business with employees within the Customs Territory of the United States which receives hazardous chemicals produced in other countries for the purpose of supplying them to distributors or employers within the United States.

"Label" means any written, printed, or graphic material, displayed on or affixed to containers of hazardous chemicals.

"Material safety data sheet (MSDS)" means written or printed material concerning a hazardous chemical which is prepared in accordance with paragraph (g) of this section.

"Mixture" means any combination of two or more chemicals if the combination is not, in whole or in part, the result of a chemical reaction.

"Organic peroxide" means an organic compound that contains the bivalent -O-O-structure and which may be considered to be a structural derivative of hydrogen peroxide where one or both of the hydrogen atoms has been replaced by an organic radical.

"Oxidizer" means a chemical other than a blasting agent or explosive as defined in § 1910.109(a), that initiates or promotes combustion in other materials, thereby causing fire either of itself or through the release of oxygen or other gases.

"Physical hazard" means a chemical for which there is scientifically valid evidence that it is a combustible liquid, a compressed gas, explosive, flammable, an organic peroxide, an oxidizer, pyrophoric, unstable (reactive) or water-reactive.

"Produce" means to manufacture, process, formulate, or repackage.

"Pyrophoric" means a chemical that will ignite spontaneously in air at a temperature of 130 °F (54.4 °C) or below.

"Responsible party" means someone who can provide additional information on the hazardous chemical and appropriate emergency procedures, if necessary.

"Specific chemical identity" means the chemical name, Chemical Abstracts Service (CAS) Registry Number, or any other information that reveals the precise chemical designation of the substance.

"Trade secret" means any confidential formula, pattern, process, device, information or compilation of information that is used in an employer's business, and that gives the employer an opportunity to obtain an advantage over competitors who do not know or use it. Appendix D sets out the criteria to be used in evaluating trade secrets.

"Unstable (reactive)" means a chemical which in the pure state, or as produced or transported, will vigorously polymerize, decompose, condense, or will become self-reactive under conditions of shocks, pressure or temperature.

"Use" means to package, handle, react, or transfer.

"Water-reactive" means a chemical that reacts with water to release a gas that is either flammable or presents a health hazard.

"Work area" means a room or defined space in a workplace where hazardous chemicals are produced or used, and where employees are present.

"Workplace" means an establishment, job site, or project, at one geographical location containing one or more work areas.

(d) *Hazard determination.* (1) Chemical manufacturers and importers shall evaluate chemicals produced in their workplaces or imported by them to determine if they are hazardous. Employers are not required to evaluate chemicals unless they choose not to rely on the evaluation performed by the chemical manufacturer or importer for the chemical to satisfy this requirement.

(2) Chemical manufacturers, importers or employers evaluating chemicals shall identify and consider the available scientific evidence concerning such hazards. For health hazards, evidence which is statistically significant and which is based on at least one positive study conducted in accordance with established scientific principles is considered to be sufficient to establish a hazardous effect if the results of the study meet the definitions of health hazards in this section. Appendix A shall be consulted for the scope of health hazards covered, and Appendix B shall be consulted for the criteria to be followed with respect to the completeness of the evaluation, and the data to be reported.

(3) The chemical manufacturer, importer or employer evaluating chemicals shall treat the following sources as establishing that the chemicals listed in them are hazardous:

(i) 29 CFR Part 1910, Subpart Z, Toxic and Hazardous Substances, Occupational Safety and Health Administration (OSHA); or,

(ii) *Threshold Limit Values for Chemical Substances and Physical Agents in the Work Environment,* American Conference of Governmental Industrial Hygienists (ACGIH) (latest edition).

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The chemical manufacturer, importer, or employer is still responsible for evaluating the hazards associated with the chemicals in these source lists in accordance with the requirements of this standard.

(4) Chemical manufacturers, importers and employers evaluating chemicals shall treat the following sources as establishing that a chemical is a carcinogen or potential carcinogen for hazard communication purposes:

(i) National Toxicology Program (NTP), *Annual Report on Carcinogens* (latest edition);

(ii) International Agency for Research on Cancer (IARC) *Monographs* (latest editions); or

(iii) 29 CFR Part 1910, Subpart Z, Toxic and Hazardous Substances, Occupational Safety and Health Administration.

Note.—The *Registry of Toxic Effects of Chemical Substances* published by the National Institute for Occupational Safety and Health indicates whether a chemical has been found by NTP or IARC to be a potential carcinogen.

(5) The chemical manufacturer, importer or employer shall determine the hazards of mixtures of chemicals as follows:

(i) If a mixture has been tested as a whole to determine its hazards, the results of such testing shall be used to determine whether the mixture is hazardous;

(ii) If a mixture has not been tested as a whole to determine whether the mixture is a health hazard, the mixture shall be assumed to present the same health hazards as do the components which comprise one percent (by weight or volume) or greater of the mixture, except that the mixture shall be assumed to present a carcinogenic hazard if it contains a component in concentrations of 0.1 percent or greater which is considered to be a carcinogen under paragraph (d)(4) of this section;

(iii) If a mixture has not been tested as a whole to determine whether the mixture is a physical hazard, the chemical manufacturer, importer, or employer may use whatever scientifically valid data is available to evaluate the physical hazard potential of the mixture; and,

(iv) If the chemical manufacturer, importer, or employer has evidence to indicate that a component present in the mixture in concentrations of less than one percent (or in the case of carcinogens, less than 0.1 percent) could be released in concentrations which would exceed an established OSHA permissible exposure limit or ACGIH Threshold Limit Value, or could present a health hazard to employees in those concentrations, the mixture shall be assumed to present the same hazard.

(6) Chemical manufacturers, importers, or employers evaluating chemicals shall describe in writing the procedures they use to determine the hazards of the chemical they evaluate. The written procedures are to be made available, upon request, to employees, their designated representatives, the Assistant Secretary and the Director. The written description may be incorporated into the written hazard communication program required under paragraph (e) of this section.

(e) *Written hazard communication program.* (1) Employers shall develop, implement, and maintain at the workplace, a written hazard communication program for their workplaces which at least describes how the criteria specified in paragraphs (f), (g), and (h) of this section for labels and other forms of warning, material safety data sheets, and employee information and training will be met, and which also includes the following:

(i) A list of the hazardous chemicals known to be present using an identity that is referenced on the appropriate material safety data sheet (the list may be compiled for the workplace as a whole or for individual work areas); and,

(ii) The methods the employer will use to inform employees of the hazards of non-routine tasks (for example, the cleaning of reactor vessels), and the hazards associated with chemicals contained in unlabeled pipes in their work areas.

(2) *Multi-employer workplaces.* Employers who produce, use, or store hazardous chemicals at a workplace in such a way that the employees of other employer(s) may be exposed (for example, employees of a construction contractor working on-site) shall additionally ensure that the hazard communication programs developed and implemented under this paragraph (e) include the following:

(i) The methods the employer will use to provide the other employer(s) with a copy of the material safety data sheet, or to make it available at a central location in the workplace, for each hazardous chemical the other employer(s)' employees may be exposed to while working;

(ii) The methods the employer will use to inform the other employer(s) of any precautionary measures that need to be taken to protect employees during the workplace's normal operating conditions and in foreseeable emergencies; and,

(iii) The methods the employer will use to inform the other employer(s) of the labeling system used in the workplace.

(3) The employer may rely on an existing hazard communication program to comply with these requirements, provided that it meets the criteria established in this paragraph (e).

(4) The employer shall make the written hazard communication program available, upon request, to employees, their designated representatives, the Assistant Secretary and the Director, in accordance with the requirements of 29 CFR 1910.20(e).

(f) *Labels and other forms of warning.* (1) The chemical manufacturer, importer, or distributor shall ensure that each container of hazardous chemicals leaving the workplace is labeled, tagged or marked with the following information:

(i) Identity of the hazardous chemical(s);

(ii) Appropriate hazard warnings; and

(iii) Name and address of the chemical manufacturer, importer, or other responsible party.

(2) For solid metal (such as a steel beam or a metal casting) that is not exempted as an article due to its downstream use, the required label may be transmitted to the customer at the time of the initial shipment, and need not be included with subsequent shipments to the same employer unless the information on the label changes. The label may be transmitted with the initial shipment itself, or with the material safety data sheet that is to be provided prior to or at the time of the first shipment. This exception to requiring labels on every container of hazardous chemicals is only for the solid metal itself and does not apply to hazardous chemicals used in conjunction with, or known to be present with, the metal and to which employees handling the metal may be exposed (for example, cutting fluids or lubricants).

(3) Chemical manufacturers, importers, or distributors shall ensure that each container of hazardous chemicals leaving the workplace is labeled, tagged, or marked in accordance with this section in a manner which does not conflict with the requirements of the Hazardous Materials Transportation Act (49 U.S.C. 1801 *et seq.*) and regulations issued under that Act by the Department of Transportation.

(4) If the hazardous chemical is regulated by OSHA in a substance-specific health standard, the chemical manufacturer, importer, distributor or employer shall ensure that the labels or

other forms of warning used are in accordance with the requirements of that standard.

(5) Except as provided in paragraphs (f)(6) and (f)(7) the employer shall ensure that each container of hazardous chemicals in the workplace is labeled, tagged or marked with the following information:

(i) Identity of the hazardous chemical(s) contained therein; and

(ii) Appropriate hazard warnings.

(6) The employer may use signs, placards, process sheets, batch tickets, operating procedures, or other such written materials in lieu of affixing labels to individual stationary process containers, as long as the alternative method identifies the containers to which it is applicable and conveys the information required by paragraph (f)(5) of this section to be on a label. The written materials shall be readily accessible to the employees in their work area throughout each work shift.

(7) The employer is not required to label portable containers into which hazardous chemicals are transferred from labeled containers, and which are intended only for the immediate use of the employee who performs the transfer.

(8) The employer shall not remove or deface existing labels on incoming containers of hazardous chemicals, unless the container is immediately marked with the required information.

(9) The employer shall ensure that labels or other forms of warning are legible, in English, and prominently displayed on the container, or readily available in the work area throughout each work shift. Employers having employees who speak other languages may add the information in their language to the material presented, as long as the information is presented in English as well.

(10) The chemical manufacturer, importer, distributor or employer need not affix new labels to comply with this section if existing labels already convey the required information.

(g) *Material safety data sheets.* (1) Chemical manufacturers and importers shall obtain or develop a material safety data sheet for each hazardous chemical they produce or import. Employers shall have a material safety data sheet for each hazardous chemical which they use.

(2) Each material safety data sheet shall be in English and shall contain at least the following information:

(i) The identity used on the label, and, except as provided for in paragraph (i) of this section on trade secrets:

(A) If the hazardous chemical is a single substance, its chemical and common name(s);

(B) If the hazardous chemical is a mixture which has been tested as a whole to determine its hazards, the chemical and common name(s) of the ingredients which contribute to these known hazards, and the common name(s) of the mixture itself; or,

(C) If the hazardous chemical is a mixture which has not been tested as a whole:

(*1*) The chemical and common name(s) of all ingredients which have been determined to be health hazards, and which comprise 1% or greater of the composition, except that chemicals identified as carcinogens under paragraph (d)(4) of this section shall be listed if the concentrations are 0.1% or greater; and,

(*2*) The chemical and common name(s) of all ingredients which have been determined to be health hazards, and which comprise less than 1% (0.1% for carcinogens) of the mixture, if there is evidence that the ingredient(s) could be released from the mixture in concentrations which would exceed an established OSHA permissible exposure limit or ACGIH Threshold Limit Value, or could present a health hazard to employees; and,

(*3*) The chemical and common name(s) of all ingredients which have been determined to present a physical hazard when present in the mixture;

(ii) Physical and chemical characteristics of the hazardous chemical (such as vapor pressure, flash point);

(iii) The physical hazards of the hazardous chemical, including the potential for fire, explosion, and reactivity;

(iv) The health hazards of the hazardous chemical, including signs and symptoms of exposure, and any medical conditions which are generally recognized as being aggravated by exposure to the chemical;

(v) The primary route(s) of entry;

(vi) The OSHA permissible exposure limit, ACGIH Threshold Limit Value, and any other exposure limit used or recommended by the chemical manufacturer, importer, or employer preparing the material safety data sheet, where available;

(vii) Whether the hazardous chemical is listed in the National Toxicology Program (NTP) *Annual Report on Carcinogens* (latest edition) or has been found to be a potential carcinogen in the International Agency for Research on Cancer (IARC) *Monographs* (latest editions), or by OSHA;

(viii) Any generally applicable precautions for safe handling and use which are known to the chemical manufacturer, importer or employer preparing the material safety data sheet, including appropriate hygienic practices, protective measures during repair and maintenance of contaminated equipment, and procedures for clean-up of spills and leaks;

(ix) Any generally applicable control measures which are known to the chemical manufacturer, importer or employer preparing the material safety data sheet, such as appropriate engineering controls, work practices, or personal protective equipment;

(x) Emergency and first aid procedures;

(xi) The date of preparation of the material safety data sheet or the last change to it; and,

(xii) The name, address and telephone number of the chemical manufacturer, importer, employer or other responsible party preparing or distributing the material safety data sheet, who can provide additional information on the hazardous chemical and appropriate emergency procedures, if necessary.

(3) If not relevant information is found for any given category on the material safety data sheet, the chemical manufacturer, importer or employer preparing the material safety data sheet shall mark it to indicate that no applicable information was found.

(4) Where complex mixtures have similar hazards and contents (i.e. the chemical ingredients are essentially the same, but the specific composition varies from mixture to mixture), the chemical manufacturer, importer or employer may prepare one material safety data sheet to apply to all of these similar mixtures.

(5) The chemical manufacturer, importer or employer preparing the material safety data sheet shall ensure that the information recorded accurately reflects the scientific evidence used in making the hazard determination. If the chemical manufacturer, importer or employer preparing the material safety data sheet becomes newly aware of any significant information regarding the hazards of a chemical, or ways to protect against the hazards, this new information shall be added to the material safety data sheet within three months. If the chemical is not currently being produced or imported the chemical manufacturer or importer shall add the information to the material safety data sheet before the chemical is introduced into the workplace again.

(6) Chemical manufacturers or importers shall ensure that distributors and employers are provided an appropriate material safety data sheet with their intitial shipment, and with the first shipment after a material safety

data sheet is updated. The chemical manufacturer or importer shall either provide material safety data sheets with the shipped containers or send them to the employer prior to or at the time of the shipment. If the material safety data sheet is not provided with a shipment that has been labeled as a hazardous chemical, the employer shall obtain one from the chemical manufacturer, importer, or distributor as soon as possible.

(7) Distributors shall ensure that material safety data sheets, and updated information, are provided to other distributors and employers. Retail distributors which sell hazardous chemicals to commercial customers shall provide a material safety data sheet to such employers upon request, and shall post a sign or otherwise inform them that a material safety data sheet is available. Chemical manufacturers, importers, and distributors need not provide material safety data sheets to retail distributors which have informed them that the retail distributor does not sell the product to commercial customers or open the sealed container to use it in their own workplaces.

(8) The employer shall maintain copies of the required material safety data sheets for each hazardous chemical in the workplace, and shall ensure that they are readily accessible during each work shift to employees when they are in their work area(s).

(9) Where employees must travel between workplaces during a workshift, *i.e.*, their work is carried out at more than one geographical location, the material safety data sheets may be kept at a central location at the primary workplace facility. In this situation, the employer shall ensure that employees can immediately obtain the required information in an emergency.

(10) Material safety data sheets may be kept in any form, including operating procedures, and may be designed to cover groups of hazardous chemicals in a work area where it may be more appropriate to address the hazards of a process rather than individual hazardous chemicals. However, the employer shall ensure that in all cases the required information is provided for each hazardous chemical, and is readily accessible during each work shift to employees when they are in in their work areas(s).

(11) Material safety data sheets shall also be made readily available, upon request, to designated representatives and to the Assistant Secretary, in accordance with the requirements of 29 CFR 1910.20 (e). The Director shall also be given access to material safety data sheets in the same manner.

(h) *Employee information and training.* Employers shall provide employees with information and training on hazardous chemicals in their work area at the time of their initial assignment, and whenever a new hazard is introduced into their work area.

(1) *Information.* Employees shall be informed of:

(i) The requirements of this section;

(ii) Any operations in their work area where hazardous chemicals are present; and,

(iii) The location and availability of the written hazard communication program, including the required list(s) of hazardous chemicals, and material safety data sheets required by this section.

(2) *Training.* Employee training shall include at least:

(i) Methods and observations that may be used to detect the presence or release of a hazardous chemical in the work area (such as monitoring conducted by the employer, continuous monitoring devices, visual appearance or odor of hazardous chemicals when being released, etc.);

(ii) The physical and health hazards of the chemicals in the work area;

(iii) The measures employees can take to protect themselves from these hazards, including specific procedures the employer has implemented to protect employees from exposure to hazardous chemicals, such as appropriate work practices, emergency procedures, and personal protective equipment to be used; and,

(iv) The details of the hazard communication program developed by the employer, including an explanation of the labeling system and the material safety data sheet, and how employees can obtain and use the appropriate hazard information.

(i) *Trade secrets.* (1) The chemical manufacturer, importer, or employer may withhold the specific chemical identity, including the chemical name and other specific identification of a hazardous chemical, from the material safety data sheet, provided that:

(i) The claim that the information withheld is a trade secret can be supported;

(ii) Information contained in the material safety data sheet concerning the properties and effects of the hazardous chemical is disclosed;

(iii) The material safety data sheet indicates that the specific chemical identity is being withheld as a trade secret; and,

(iv) The specific chemical identity is made available to health professionals, employees, and designated representatives in accordance with the applicable provisions of this paragraph.

(2) Where a treating physician or nurse determines that a medical emergency exists and the specific chemical identity of a hazardous chemical is necessary for emergency or first-aid treatment, the chemical manufacturer, importer, or employer shall immediately disclose the specific chemical identity of a trade secret chemical to that treating physician or nurse, regardless of the existence of a written statement of need of a confidentiality agreement. The chemical manufacturer, importer, or employer may require a written statement of need and confidentiality agreement, in accordance with the provisions of paragraphs (i)(3) and (4) of this section, as soon as circumstances permit.

(3) In non-emergency situations, a chemical manufacturer, importer, or employer shall, upon request, disclose a specific chemical identity, otherwise permitted to be withheld under paragraph (i)(1) of this section, to a health professional (i.e. physician, industrial hygienist, toxicologist, epidemiologist, or occupational health nurse) providing medical or other occupational health services to exposed employee(s), and to employees or designated representatives, if:

(i) The request is in writing;

(ii) The request describes with reasonable detail one or more of the following occupational health needs for the information:

(A) To assess the hazards of the chemicals to which employees will be exposed;

(B) To conduct or assess sampling of the workplace atmosphere to determine employee exposure levels;

(C) To conduct pre-assignment or periodic medical surveillance of exposed employees;

(D) To provide medical treatment to exposed employees;

(E) To select or assess appropriate personal protective equipment for exposed employees;

(F) To design or assess engineering controls or other protective measures for exposed employees; and,

(G) To conduct studies to determine the health effects of exposure.

(iii) The request explains in detail why the disclosure of the specific chemical identity is essential and that, in lieu thereof, the disclosure of the following information to the health professional, employee, or designated representative, would not satisfy the purposes described in paragraph (i)(3)(ii) of this section:

(A) The properties and effects of the chemical;

(B) Measures for controlling workers' exposure to the chemical;

(C) Methods of monitoring and analyzing worker exposure to the chemical; and,

(D) Methods of diagnosing and treating harmful exposures to the chemical;

(iv) The request includes a description of the procedures to be used to maintain the confidentiality of the disclosed information; and,

(v) The health professional, and the employer or contractor of the services of the health professional (i.e. downstream employer, labor organization, or individual employee), employee, or designated representative, agree in a written confidentiality agreement that the health professional, employee, or designated representative, will not use the trade secret information for any purpose other than the health need(s) asserted and agree not to release the information under any circumstances other than to OSHA, as provided in paragraph (i)(6) of this section, except as authorized by the terms of the agreement or by the chemical manufacturer, importer, or employer.

(4) The confidentiality agreement authorized by paragraph (i)(3)(iv) of this section:

(i) May restrict the use of the information to the health purposes indicated in the written statement of need;

(ii) May provide for appropriate legal remedies in the event of a breach of the agreement, including stipulation of a reasonable pre-estimate of likely damages; and,

(iii) May not include requirements for the posting of a penalty bond.

(5) Nothing in this standard is meant to preclude the parties from pursuing non-contractual remedies to the extent permitted by law.

(6) If the health professional, employee, or designated representative receiving the trade secret information decides that there is a need to disclose it to OSHA, the chemical manufacturer, importer, or employer who provided the information shall be informed by the health professional, employee, or designated representative prior to, or at the same time as, such disclosure.

(7) If the chemical manufacturer, importer, or employer denies a written request for disclosure of a specific chemical identity, the denial must:

(i) Be provided to the health professional, employee, or designated representative, within thirty days of the request;

(ii) Be in writing;

(iii) Include evidence to support the claim that the specific chemical identity is a trade secret;

(iv) State the specific reasons why the request is being denied; and,

(v) Explain in detail how alternative information may satisfy the specific medical or occupational health need without revealing the specific chemical identity.

(8) The health professional, employee, or designated representative whose request for information is denied under paragraph (i)(3) of this section may refer the request and the written denial of the request to OSHA for consideration.

(9) When a health professional, employee, or designated representative refers the denial to OSHA under paragraph (i)(8) of this section, OSHA shall consider the evidence to determine if:

(i) The chemical manufacturer, importer, or employer has supported the claim that the specific chemical identity is a trade secret;

(ii) The health professional, employee, or designated representative has supported the claim that there is a medical or occupational health need for the information; and,

(iii) The health professional, employee, or designated representative has demonstrated adequate means to protect the confidentiality.

(10)(i) If OSHA determines that the specific chemical identity requested under paragraph (i)(3) of this section is not a *bona fide* trade secret, or that it is a trade secret, but the requesting health professional, employee, or designated representative has a legitimate medical or occupational health need for the information, has executed a written confidentiality agreement, and has shown adequate means to protect the confidentiality of the information, the chemical manufacturer, importer, or employer will be subject to citation by OSHA.

(ii) If a chemical manufacturer, importer, or employer demonstrates to OSHA that the execution of a confidentiality agreement would not provide sufficient protection against the potential harm from the unauthorized disclosure of a trade secret specific chemical identity, the Assistant Secretary may issue such orders or impose such additional limitations or conditions upon the disclosure of the requested chemical information as may be appropriate to assure that the occupational health services are provided without an undue risk of harm to the chemical manufacturer, importer, or employer.

(11) If a citation for a failure to release specific chemical identity information is contested by the chemical manufacturer, importer, or employer, the matter will be adjudicated before the Occupational Safety and Health Review Commission in accordance with the Act's enforcement scheme and the applicable Commission rules of procedure. In accordance with the Commission rules, when a chemical manufacturer, importer, or employer continues to withhold the information during the contest, the Administrative Law Judge may review the citation and supporting documentation *in camera* or issue appropriate orders to protect the confidentiality or such matters.

(12) Notwithstanding the existence of a trade secret claim, a chemical manufacturer, importer, or employer shall, upon request, disclose to the Assistant Secretary any information which this section requires the chemical manufacturer, importer, or employer to make available. Where there is a trade secret claim, such claim shall be made no later than at the time the information is provided to the Assistant Secretary so that suitable determinations of trade secret status can be made and the necessary protections can be implemented.

(13) Nothing in this paragraph shall be construed as requiring the disclosure under any circumstances of process or percentage of mixture information which is a trade secret.

(j) *Effective dates.* (1) Chemical manufacturers, importers, and distributors shall ensure that material safety data sheets are provided with the next shipment of hazardous chemicals to employers after September 23, 1987.

(2) Employers in the non-manufacturing sector shall be in compliance with all provisions of this section by May 23, 1988. (Note: Employers in the manufacturing sector (SIC Codes 20 through 39) are already required to be in compliance with this section.)

Appendix A to § ——— Health Hazard Definitions (*Mandatory*)

Although safety hazards related to the physical characteristics of a chemical can be objectively defined in terms of testing requirements (e.g. flammability), health hazard definitions are less precise and more subjective. Health hazards may cause measurable changes in the body—such as decreased pulmonary function. These changes are generally indicated by the occurrence of signs and symptoms in the exposed employees—such as shortness of breath, a non-measurable, subjective feeling. Employees exposed to such hazards must be apprised of both the change in body function and the signs and symptoms that may occur to signal that change.

The determination of occupational health hazards is complicated by the fact that many of the effects or signs and symptoms occur commonly in non-occupationally exposed populations, so that effects of exposure are difficult to separate from normally occurring illnesses. Occasionally, a substance causes an effect that is rarely seen in the population at large, such as angiosarcomas caused by vinyl chloride exposure, thus making it easier to ascertain that the occupational exposure was the primary causative factor. More often, however, the effects are common, such as lung cancer. The situation is further complicated by the fact that most chemicals have not been adequately tested to determine their health hazard potential, and data do not exist to substantiate these effects.

There have been many attempts to categorize effects and to define them in various ways. Generally, the terms "acute" and "chronic" are used to delineate between effects on the basis of severity or duration. "Acute" effects usually occur rapidly as a result of short-term exposures, and are of short duration. "Chronic" effects generally occur as a result of long-term exposure, and are of long duration.

The acute effects referred to most frequently are those defined by the American National Standards Institute (ANSI) standard for Precautionary Labeling of Hazardous Industrial Chemicals (Z129.1–1982)—irritation, corrosivity, sensitization and lethal dose. Although these are important health effects, they do not adequately cover the considerable range of acute effects which may occur as a result of occupational exposure, such as, for example, narcosis.

Similarly, the term chronic effect is often used to cover only carcinogenicity, teratogenicity, and mutagenicity. These effects are obviously a concern in the workplace, but again, do not adequately cover the area of chronic effects, excluding, for example, blood dyscrasias (such as anemia), chronic bronchitis and liver atrophy.

The goal of defining precisely, in measurable terms, every possible health effect that may occur in the workplace as a result of chemical exposures cannot realistically be accomplished. This does not negate the need for employees to be informed of such effects and protected from them. Appendix B, which is also mandatory, outlines the principles and procedures of hazardous assessment.

For purposes of this section, any chemicals which meet any of the following definitions, as determined by the criteria set forth in Appendix B are health hazards:

1. *Carcinogen:* A chemical is considered to be a carcinogen if:

(a) It has been evaluated by the International Agency for Research on Cancer (IARC), and found to be a carcinogen or potential carcinogen; or

(b) It is listed as a carcinogen or potential carcinogen in the *Annual Report on Carcinogens* published by the National Toxicology Program (NTP) (latest edition); or,

(c) It is regulated by OSHA as a carcinogen.

2. *Corrosive:* A chemical that causes visible destruction of, or irreversible alterations in, living tissue by chemical action at the site of contact. For example, a chemical is considered to be corrosive if, when tested on the intact skin of albino rabbits by the method described by the U.S. Department of Transportation in Appendix A to 49 CFR Part 173, it destroys or changes irreversibly the structure of the tissue at the site of contact following an exposure period of four hours. This term shall not refer to action on inanimate surfaces.

3. *Highly toxic:* A chemical falling within any of the following categories:

(a) A chemical that has a median lethal dose (LD_{50}) of 50 milligrams or less per kilogram of body weight when administered orally to albino rats weighing between 200 and 300 grams each.

(b) A chemical that has a median lethal dose (LD_{50}) of 200 milligrams or less per kilogram of body weight when administered by continuous contact for 24 hours (or less if death occurs within 24 hours) with the bare skin of albino rabbits weighing between two and three kilograms each.

(c) A chemical that has a median lethal concentration (LC_{50}) in air of 200 parts per million by volume or less of gas or vapor, or 2 milligrams per liter or less of mist, fume, or dust, when administered by continuous inhalation for one hour (or less if death occurs within one hour) to albino rats weighing between 200 and 300 grams each.

4. *Irritant:* A chemical, which is not corrosive, but which causes a reversible inflammatory effect on living tissue by chemical action at the site of contact. A chemical is a skin irritant if, when tested on the intact skin of albino rabbits by the methods of 16 CFR 1500.41 for four hours exposure or by other appropriate techniques, it results in an empirical score of five or more. A chemical is an eye irritant if so determined under the procedure listed in 16 CFR 1500.42 or other appropriate techniques.

5. *Sensitizer:* A chemical that causes a substantial proportion of exposed people or animals to develop an allergic reaction in normal tissue after repeated exposure to the chemical.

6. *Toxic.* A chemical falling within any of the following categories:

(a) A chemical that has a median lethal dose (LD_{50}) of more than 50 milligrams per kilogram but not more than 500 milligrams per kilogram of body weight when administered orally to albino rats weighing between 200 and 300 grams each.

(b) A chemical that has a median lethal dose (LD_{50}) of more than 200 milligrams per kilogram but not more than 1,000 milligrams per kilogram of body weight when administered by continuous contact for 24 hours (or less if death occurs within 24 hours) with the bare skin of albino rabbits weighing between two and three kilograms each.

(c) A chemical that has a median lethal concentration (LC_{50}) in air of more than 200 parts per million but not more than 2,000 parts per million by volume of gas or vapor, or more than two milligrams per liter but not more than 20 milligrams per liter of mist, fume, or dust, when administered by continuous inhalation for one hour (or less if death occurs within one hour) to albino rats weighing between 200 and 300 grams each.

7. *Target organ effects.* The following is a target organ categorization of effects which may occur, including examples of signs and symptoms and chemicals which have been found to cause such effects. These examples are presented to illustrate the range and diversity of effects and hazards found in the workplace, and the broad scope employers must consider in this area, but are not intended to be all-inclusive.

a. Hepatotoxins: Chemicals which produce liver damage
   Signs & Symptoms: Jaundice; liver enlargement
   Chemicals: Carbon tetrachloride; nitrosamines
b. Nephrotoxins: Chemicals which produce kidney damage
   Signs & Symptoms: Edema; proteinuria
   Chemicals: Halogenated hydrocarbons; uranium
c. Neurotoxins: Chemicals which produce their primary toxic effects on the nervous system
   Signs & Symptoms: Narcosis; behavioral changes; decrease in motor functions
   Chemicals: Mercury; carbon disulfide
d. Agents which act on the blood or hematopoietic system: Decrease hemoglobin function; deprive the body tissues of oxygen
   Signs & Symptoms: Cyanosis; loss of consciousness
   Chemicals: Carbon monoxide; cyanides
e. Agents which damage the lung: Chemicals which irritate or damage the pulmonary tissue
   Signs & Symptoms: Cough; tightness in chest; shortness of breath
   Chemicals: Silica; asbestos
f. Reproductive toxins: Chemicals which affect the reproductive capabilities including chromosomal damage (mutations) and effects on fetuses (teratogenesis)
   Signs & Symptoms: Birth defects; sterility
   Chemicals: Lead; DBCP
g. Cutaneous hazards: Chemicals which affect the dermal layer of the body
   Signs & Symptoms: Defatting of the skin; rashes; irritation
   Chemicals: Ketones; chlorinated compounds
h. Eye hazards: Chemicals which affect the eye or visual capacity
   Signs & Symptoms: Conjunctivitis; corneal damage
   Chemicals: Organic solvents; acids

Appendix B to §———, Hazard Determination (Mandatory)

The quality of a hazard communication program is largely dependent upon the adequacy and accuracy of the hazard determination. The hazard determination requirement of this standard is performance-oriented. Chemical manufacturers, importers, and employers evaluating chemicals are not required to follow any specific methods for

determining hazards, but they must be able to demonstrate that they have adequately ascertained the hazards of the chemicals produced or imported in accordance with the criteria set forth in this Appendix.

Hazard evaluation is a process which relies heavily on the professional judgment of the evaluator, particularly in the area of chronic hazards. The performance-orientation of the hazard determination does not diminish the duty of the chemical manufacturer, importer or employer to conduct a thorough evaluation, examining all relevant data and producing a scientifically defensible evaluation. For purposes of this standard, the following criteria shall be used in making hazard determinations that meet the requirements of this standard.

1. *Carcinogenicity*: As described in paragraph (d)(4) and Appendix A of this section, a determination by the National Toxicology Program, the International Agency for Research on Cancer, or OSHA that a chemical is a carcinogen or potential carcinogen will be considered conclusive evidence for purposes of this section.

2. *Human data*: Where available, epidemiological studies and case reports of adverse health effects shall be considered in the evaluation.

3. *Animal data*: Human evidence of health effects in exposed populations is generally not available for the majority of chemicals produced or used in the workplace. Therefore, the available results of toxicological testing in animal populations shall be used to predict the health effects that may be experienced by exposed workers. In particular, the definitions of certain acute hazards refer to specific animal testing results (see Appendix A).

4. *Adequacy and reporting of data*. The results of any studies which are designed and conducted according to established scientific principles, and which report statistically significant conclusions regarding the health effects of a chemical, shall be a sufficient basis for a hazard determination and reported on any material safety data sheet. The chemical manufacturer, importer, or employer may also report the results of other scientifically valid studies which tend to refute the findings of hazard.

Appendix C to §— Information Sources (Advisory)

The following is a list of available data sources which the chemical manufacturer, importer, distributor, or employer may wish to consult to evaluate the hazards of chemicals they produce or import:

—Any information in their own company files, such as toxicity testing results or illness experience of company employees.

—Any information obtained from the supplier of the chemical, such as material safety data sheets or product safety bulletins.

—Any pertinent information obtained from the following source list (latest editions should be used):

Condensed Chemical Dictionary
Van Nostrand Reinhold Co., 135 West 50th Street, New York, NY 10020.

The Merck Index: An Encyclopedia of Chemicals and Drugs
Merck and Company, Inc., 126 E. Lincoln Ave., Rahway, NJ 07065.

IARC Monographs on the Evaluation of the Carcinogenic Risk of Chemicals to Man
Geneva: World Health Organization, International Agency for Research on Cancer, 1972–Present. (Multivolume work). Summaries are available in supplement volumes. 49 Sheridan Street, Albany, NY 12210.

Industrial Hygiene and Toxicology, by F.A. Patty
John Wiley & Sons, Inc., New York, NY (Multivolume work).

Clinical Toxicology of Commercial Products
Gleason, Gosselin, and Hodge

Casarett and Doull's Toxicology: The Basic Science of Poisons
Doull, Klaassen, and Amdur, Macmillan Publishing Co., Inc., New York, NY.

Industrial Toxicology, by Alice Hamilton and Harriet L. Hardy
Publishing Sciences Group, Inc., Acton, MA.

Toxicology of the Eye, by W. Morton Grant
Charles C. Thomas, 301–327 East Lawrence Avenue, Springfield, IL.

Recognition of Health Hazards in Industry
William A. Burgess, John Wiley and Sons, 605 Third Avenue, New York, NY 10158.

Chemical Hazards of the Workplace
Nick H. Proctor and James P. Hughes, J.P. Lipincott Company, 6 Winchester Terrace, New York, NY 10022.

Handbook of Chemistry and Physics
Chemical Rubber Company, 18901 Cranwood Parkway, Cleveland, OH 44128.

Threshold Limit Values for Chemical Substances and Physical Agents in the Work Environment and Biological Exposure Indices with Intended Changes
American Conference of Governmental Industrial Hygienists (ACGIH). 6500 Glenway Avenue, Bldg. D–5, Cincinnati, OH 45211.

Information on the physical hazards of chemicals may be found in publications of the National Fire Protection Association, Boston, MA.

Note.—The following documents may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

Occupational Health Guidelines
NIOSH/OSHA (NIOSH Pub. No. 81–123)

NIOSH Pocket Guide to Chemical Hazards
NIOSH Pub. No. 85–114

Registry of Toxic Effects of Chemical Substances
NIOSH Pub. No. 80–102

Miscellaneous Documents published by the National Institute for Occupational Safety and Health:
Criteria documents.
Special Hazard Reviews.
Occupational Hazard Assessments.
Current Intelligence Bulletins.

OSHA's General Industry Standards (29 CFR Part 1910)

NTP Annual Report on Carcinogens and *Summary of the Annual Report on Carcinogens.*
National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161; (703) 487–4650.

BIBLIOGRAPHIC DATA BASES

Service provider	File name
Bibliographic Retrieval Services (BRS), 1200 Route 7, Latham, NY 12110.	Biosis Previews CA Search Medlars NTIS Pascaline American Chemical Society Journal Excerpta Medica IRCS Medical Science Journal Pre-Med Intl Pharmaceutical Abstracts Paper Chem
Lockheed—DIALOG Information Service, Inc., 3460 Hillview Avenue, Palo Alto, CA 94304.	Biosis Prev. Files CA Search Files CAB Abstracts Chemical Exposure Chemname Chemsis Files Chemzero Embase Files Environmental Bibliographies Enviroline Federal Research in Progress IRL Life Science Collection NTIS Occupational Safety and Health (NIOSH) Paper Chem CAS Files Chemdex, 2, 3 NTIS
SDC—Orbit, SDC Information Service, 2500 Colorado Avenue, Santa Monica, CA 90406.	Hazardous Substances Data Bank (NSDB) Medline files Toxline Files Cancerlit RTECS Chemline Laboratory Hazard Bulletin
National Library of Medicine, Department of Health and Human Services, Public Health Service, National Institutes of Health, Bethesda, MD 20209.	CIS/ILO Cancernet
Pergamon International Information Corp., 1340 Old Chain Bridge Rd., McLean, VA 22101.	Structure and Nomenclature Search System (SANSS) Acute Toxicity (RTECS)
Questel, Inc., 1625 Eye Street, NW., Suite 818, Washington, DC 20005.	Clinical Toxicology of Commercial Products
Chemical Information System ICI (CIS), Bureau of National Affairs, 1133 15th Street, NW., Suite 300, Washington, DC 20005.	Oil and Hazardous Materials Technical Assistance Data System CCRIS CESARS MSDS Hazardline
Occupational Health Services, 400 Plaza Drive, Secaucus, NJ 07094.	

Appendix D to §_____ Definition of "Trade Secret" (Mandatory)

The following is a reprint of the *Restatement of Torts* section 757, comment *b* (1939):

b. Definition of trade secret. A trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business (see § 759 of the *Restatement of Torts* which is not included in this Appendix) in that it is not simply information as to single or ephemeral events in the conduct of the business, as, for example, the amount or

other terms of a secret bid for a contract or the salary of certain employees, or the security investments made or contemplated, or the date fixed for the announcement of a new policy or for bringing out a new model or the like. A trade secret is a process or device for continuous use in the operations of the business. Generally it relates to the production of goods, as, for example, a machine or formula for the production of an article. It may, however, relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

Secrecy. The subject matter of a trade secret must be secret. Matters of public knowledge or of general knowledge in an industry cannot be appropriated by one as his secret. Matters which are completely disclosed by the goods which one markets cannot be his secret. Substantially, a trade secret is known only in the particular business in which it is used. It is not requisite that only the proprietor of the business know it. He may, without losing his protection, communicate it to employees involved in its use. He may likewise communicate it to others pledged to secrecy. Others may also know of it independently, as, for example, when they have discovered the process or formula by independent invention and are keeping it secret. Nevertheless, a substantial element of secrecy must exist, so that, except by the use of improper means, there would be difficulty in acquiring the information. An exact definition of a trade secret is not possible. Some factors to be considered in determining whether given information is one's trade secret are: (1) The extent to which the information is known outside of his business; (2) the extent to which it is known by employees and others involved in his business; (3) the extent of measures taken by him to guard the secrecy of the information; (4) the value of the information to him and his competitors; (5) the amount of effort or money expended by him in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

Novelty and prior art. A trade secret may be a device or process which is patentable; but it need not be that. It may be a device or process which is clearly anticipated in the prior art or one which is merely a mechanical improvement that a good mechanic can make. Novelty and invention are not requisite for a trade secret as they are for patentability. These requirements are essential to patentability because a patent protects against unlicensed use of the patented device or process even by one who discovers it properly through independent research. The patent monopoly is a reward to the inventor. But such is not the case with a trade secret. Its protection is not based on a policy of rewarding or otherwise encouraging the development of secret processes or devices. The protection is merely against breach of faith and reprehensible means of learning another's secret. For this limited protection it is not appropriate to require also the kind of novelty and invention which is a requisite of patentability. The nature of the secret is, however, an important factor in determining the kind of relief that is appropriate against one who is subject to liability under the rule stated in this section. Thus, if the secret consists of a device or process which is a novel invention, one who acquires the secret wrongfully is ordinarily enjoined from further use of it and is required to account for the profits derived from his past use. If, on the other hand, the secret consists of mechanical improvements that a good mechanic can make without resort to the secret, the wrongdoer's liability may be limited to damages, and an injunction against future use of the improvements made with the aid of the secret may be inappropriate.

8. Section 1915.97 would be revised to read as follows:

§ 1915.97 Health and sanitation.

The provisions of this section shall apply to ship repairing, shipbuilding and shipbreaking, except where indicated otherwise.

(a) The employer shall provide all necessary controls, and the employees shall be protected by suitable personal protective equipment against the hazards identified under § 1915.99 of this part and those hazards for which specific precautions are required in Subparts B, C, and D of this part.

(b) The employer shall provide adequate washing facilities for employees engaged in the application of paints or coatings or in other operations where contaminants can, by ingestion or absorption, be detrimental to the health of the employees. The employer shall encourage good personal hygiene practices by informing the employees of the need for removing surface contaminants by thorough washing or hands and face prior to eating or smoking.

(c) The employer shall not permit employees to eat or smoke in areas undergoing surface preparation or preservation or where shipbreaking operations produce atmospheric contaminants.

(d) The employer shall not permit employees engaged in ship repair work on a vessel to work in the immediate vicinity of uncovered garbage and shall ensure that employees working beneath or on the outboard side of a vessel are not subject to contamination by drainage or waste from overboard discharges.

(e) No minor under 18 years of age shall be employed in shipbreaking or related employments.

9. Section 1928.21 would be amended by adding paragraph (a)(5) as follows:

§ 1928.21 Applicable standards in 29 CFR Part 1910.

(a) * * *

(5) Hazard communication—§ 1910.1200.

* * * * *

[FR Doc. 87-19137 Filed 8-19-87; 8:45 am]

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Monday
August 24, 1987

Part IV

Department of Education

Perkins Loan, College Work-Study, Supplemental Educational Opportunity Grant and Guaranteed Student Loan Programs; Notice of Revision of the Need Analysis System for the 1988–89 Academic Year

DEPARTMENT OF EDUCATION

Perkins Loan (Formerly the National Direct Student Loan), College Work-Study, Supplemental Educational Opportunity Grant and Guaranteed Student Loan Programs; Revision of the Need Analysis System for the 1988–89 Academic Year

AGENCY: Department of Education.

ACTION: Notice of revision of the need analysis system for the Perkins Loan, College Work-Study, Supplemental Educational Opportunity Grant and Guaranteed Student Loan Programs for the 1988–89 academic year.

SUMMARY: The Secretary of Education announces the need analysis system that an institution of higher education must use in calculating an expected family contribution for the 1988–89 academic year under the Perkins Loan, College Work-Study, Supplemental Educational Opportunity Grant and Guaranteed Student Loan Programs. The first three programs are known collectively as the campus-based programs. The Secretary takes this action under the authority of Part F of Title IV of the Higher Education Act of 1965 as amended (HEA).

FOR FURTHER INFORMATION CONTACT: Margaret O. Henry or Kathy S. Gause, Division of Policy and Program Development, Office of Student Financial Assistance, Department of Education, 400 Maryland Avenue SW., Room 4018, ROB–3, Washington, DC 20202, Telephone (202) 732–4490.

SUPPLEMENTARY INFORMATION:

Program Information

The campus-based and Guaranteed Student Loan Programs are "need-based" student financial aid programs. Under each program an institution must determine whether a student has financial need. It determines a student's financial need by subtracting, from the student's educational cost, his or her expected family contribution, i.e., the amount the student and his or her parents may reasonably be expected to contribute toward his or her educational costs.

Part F of Title IV of the HEA specifies the criteria, data elements and tables for a schedule of expected family contributions for these programs. In addition, Part F requires that, for award years after the 1987–88 award year, four of the tables set forth in that part (i.e., the Standard Maintenance Allowance, the Adjusted Net Worth of a Business or Farm, the Asset Protection Allowance and the Assessment Schedules and Rates) be increased to take into account inflation that has taken place after December 31, 1986, based, in general, upon increases in the Consumer Price Index.

Part F also requires the Secretary to increase the maximum value for the Employment Expense Allowance to account for inflation based upon increases in the Bureau of Labor Statistics budget of the marginal costs for meals away from home, apparel and upkeep, transportation and housekeeping services for a two-worker versus one-worker family. However, the Secretary has determined that significantly decreased employment-related costs, particularly in the transportation component of the Bureau of Labor Statistics budget, preclude increasing the maximum value for this allowance for the 1988–89 award year.

For award year 1988–89, the Secretary is charged with updating the indicated tables in Part F to account for inflation that took place between December 1986 and December 1987. However, since the Secretary must increase and publish these tables before December 1987, the increases in the tables must be based upon an estimate of the increase in the Consumer Price Index for 1987.

The Secretary estimates, based upon the actual and projected rates of inflation for 1986 and 1987, that the increase in the Consumer Price Index for the period December 1986, through December 1987, will be 2.4 percent. Therefore, for the 1988–89 award year for the campus-based and Guaranteed Student Loan Programs, the following tables set forth in Part F have been updated in accordance with that estimate and the other relevant provisions of Part F.

1. Employment Expense Allowance

This allowance for employment-related expenses recognizes additional expenses incurred by working spouses and single-parent households. The allowance is based upon the marginal differences in costs for meals away from home, housekeeping services, clothing and transportation for a two-earner family compared to a one-earner family.

The Secretary is not increasing this allowance for the 1988–89 award year for the reasons stated above. The employment expense allowance for dependent students and independent students with dependents remains the lesser of $2,100 or 35 percent of earned income.

2. Standard Maintenance Allowance

This allowance is an offset against income for the family's basic living expenses and it varies by family size. The standard maintenance allowances for dependent students and independent students with dependents are:

Family size (including student)	Number in college				
	1	2	3	4	5
2	$8,580	$7,120			
3	10,890	9,220	$7,760		
4	13,200	11,730	10,270	$8,810	
5	15,570	14,110	12,650	11,180	$9,690
6	18,220	16,750	15,290	13,820	12,360

For each additional family member add $2,060.
For each additional college student subtract $1,460.

3. Adjusted Net Worth (NW) of a Business or Farm

Since business and farm assets are income-producing, a portion of the full net value is excluded from the calculation of the expected contribution. The portion of these assets included in the contribution calculation is computed according to the following schedule. This schedule is used for dependent students, independent students without dependents and independent students with dependents.

If the net worth of a business or farm is—	Then the adjusted net worth is—
Less than $1	$0.
$1 to $60,000	$0 plus 40% of NW.
$60,001 to $165,000	$24,000 plus 50% of NW over $60,000.
$165,001 to $305,000	$86,500 plus 60% of NW over $165,000.
$305,001 or more	$158,500 plus 100% of NW over $305,000.

4. Asset Protection Allowance

This allowance protects a portion of the net worth (assets less debts) from being considered available for postsecondary education expenses. There are three asset protection allowance tables, one each for parents of dependent students, independent students without dependents and independent students with dependents.

DEPENDENT STUDENTS

If the age of the older parent is—	And there are	
	Two parents	One parent
		Then the asset protection allowance is—
25 or less	0	0
26	2,150	1,600
27	4,250	3,200
28	6,200	4,800
29	8,300	6,300
30	10,400	7,900
31	12,500	9,500
32	14,600	11,100
33	16,600	12,700
34	18,700	14,300
35	20,800	15,900
36	22,900	17,500

DEPENDENT STUDENTS—Continued

If the age of the older parent is—	And there are: Two parents	And there are: One parent — Then the asset protection allowance is—
37	25,000	19,000
38	27,000	20,600
39	29,100	22,200
40	31,200	23,800
41	32,100	24,400
42	32,900	24,900
43	33,800	25,500
44	34,700	26,200
45	35,600	26,800
46	36,800	27,300
47	37,900	28,000
48	38,800	28,700
49	39,800	29,400
50	40,900	30,200
51	42,000	30,900
52	43,400	31,700
53	44,800	32,500
54	46,000	33,500
55	47,500	34,300
56	49,100	35,200
57	51,000	36,200
58	52,700	37,400
59	54,400	38,300
60	56,500	39,400
61	58,600	40,600
62	60,500	41,900
63	62,700	43,300
64	65,100	44,600
65 or more	67,500	46,000

INDEPENDENT STUDENTS WITHOUT DEPENDENTS

If the age of the student is—	Then the asset protection allowance is—
25 or less	0
26	1,800
27	3,200
28	4,600
29	6,300
30	7,900
31	9,500
32	11,100
33	12,700
34	14,300
35	15,900
36	17,500
37	19,000
38	20,600
39	22,200
40	23,800
41	24,400
42	24,900
43	25,500
44	26,200
45	26,800
46	27,300
47	28,000
48	28,700
49	29,400
50	30,200
51	30,900
52	31,700
53	32,500
54	33,500
55	34,300
56	35,200
57	36,200
58	37,400
59	38,300
60	39,400
61	40,600
62	41,900
63	43,300
64	44,600
65 or more	46,000

INDEPENDENT STUDENTS WITHOUT DEPENDENTS—Continued

If the age of the student is—	Then the asset protection allowance is—
53	43,300
64	44,600
65 or more	46,000

INDEPENDENT STUDENTS WITH DEPENDENTS

If the age of the student is—	And the student is: Married	And the student is: Unmarried — Then the asset protection allowance is—
25 or less	0	0
26	2,100	1,800
27	4,200	3,200
28	6,200	4,600
29	8,300	6,300
30	10,400	7,900
31	12,500	9,500
32	14,600	11,100
33	16,600	12,700
34	18,700	14,300
35	20,800	15,900
36	22,900	17,500
37	25,000	19,000
38	27,000	20,600
39	29,100	22,200
40	31,200	23,800
41	32,100	24,400
42	32,900	24,900
43	33,800	25,500
44	34,700	26,200
45	35,600	26,800
46	36,800	27,300
47	37,900	28,000
48	38,800	28,700
49	39,800	29,400
50	40,900	30,200
51	42,000	30,900
52	43,400	31,700
53	44,800	32,500
54	46,000	33,500
55	47,500	34,300
56	49,100	35,200
57	51,000	36,200
58	52,700	37,400
59	54,400	38,300
60	56,500	39,400
61	58,600	40,600
62	60,500	41,900
63	62,700	43,300
64	65,100	44,600
65 or more	67,500	46,000

5. Assessment Schedules and Rates

Three schedules, one each for dependent students, independent students without dependents and independent students with dependents, are used to determine the expected contribution toward educational expenses from family financial resources.

For dependent students, the expected parental contribution is derived from the parents' adjusted available income (AAI). AAI represents a measure of a family's financial strength which considers both income and assets. The parents' contribution for a dependent student is computed according to the following schedule:

If AAI is—	Then the contribution is—
Less than −$3,409	−$750.
−$3,409 to $7,700	22% of AAI.
$7,701 to $9,900	$1,694 plus 25% of AAI over $7,700.
$9,901 to $11,800	$2,244 plus 29% of AAI over $9,900.
$11,801 to $13,800	$2,795 plus 34% of AAI over $11,800.
$13,801 to $15,500	$3,475 plus 40% of AAI over $13,800.
$15,501 or more	$4,155 plus 47% of AAI over $15,500.

For independent students without dependents, an increasing percentage of their available taxable income (ATI) is included in the expected contribution. ATI is adjusted gross income minus allowances for Federal, State and local income taxes and social security taxes. The contribution from ATI for an independent student without dependents is computed according to the following schedule:

If ATI is—	Then the contribution is—
Less than $9,800	70% of ATI.
$9,801 or more	$6,160 plus 90% of ATI over $9,800.

For independent students with dependents, the expected contribution is derived from the adjusted available income (AAI). AAI represents a measure of a family's financial strength which considers both income and assets. The contribution for an independent student with dependents is computed according to the following schedule:

If AAI is—	Then the contribution is—
Less than −$3,409	−$750.
−$3,409 to $7,700	22% of AAI.
$7,701 to $9,900	$1,694 plus 25% of AAI over $7,700.
$9,901 to $11,800	$2,244 plus 29% of AAI over $9,900.
$11,801 to $13,800	$2,795 plus 34% of AAI over $11,800.
$13,801 to $15,500	$3,475 plus 40% of AAI over $13,800.
$15,501 or more	$4,155 plus 47% of AAI over $15,500.

(20 U.S.C. 1087kk–1087vv)

(Catalog of Federal Domestic Assistance No. 84.038, National Direct Student Loan Program; 84.033, College Work-Study Program; 84.007, Supplemental Educational Opportunity Grant Program; and 84.032, Guaranteed Student Loan Program)

Dated: August 18, 1987.

William J. Bennett,

Secretary of Education.

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Part V

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 201, 310, 341 and 369

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Tenative Final Monograph for OTC Antihistamine Drug Products; Notice of Proposed Rulemaking

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 201, 310, 341, and 369

[Docket No. 76N-052H]

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Tentative Final Monograph for OTC Antihistamine Drug Products

AGENCY: Food and Drug Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking that amends the tentative final monograph (proposed rule) for over-the-counter (OTC) antihistamine drug products (drug products used for the relief of the symptoms of hay fever and upper respiratory allergies (allergic rhinitis) and the symptoms of sneezing and runny nose associated with the common cold) to include chlorcyclizine hydrochloride and doxylamine succinate and to revise the proposed dosage for triprolidine hydrochloride. FDA is issuing this notice of proposed rulemaking after considering the report and recommendations of the Advisory Review Panel on OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products, public comments on an advance notice of proposed rulemaking that was based on those recommendations, and several comments submitted in response to the previous tentative final monograph for OTC antihistamine drug products that was published in the Federal Register of January 15, 1985 (50 FR 2200). This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments, objections, or requests for oral hearing on the proposed regulation before the Commissioner of Food and Drugs by October 23, 1987. New data by August 24, 1988. Comments on the new data by October 25, 1988. Written comments on the agency's economic impact determination by December 22, 1987.

ADDRESS: Written comments, objections, new data, or requests for oral hearing to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drugs and Biologics (HFN–210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8000.

SUPPLEMENTARY INFORMATION: In the Federal Register of September 9, 1976 (41 FR 38312), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC cold, cough, allergy, bronchodilator, and antiasthmatic drug products, together with the recommendations of the Advisory Review Panel on OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products (Cough-Cold Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in these drug classes. Interested persons were invited to submit comments by December 8, 1976. Reply comments in response to comments filed in the initial comment period could be submitted by January 7, 1977.

In accordance with § 330.10(a)(10), the data and information considered by the Panel were put on public display in the Dockets Management Branch (HFA–305), Food and Drug Administration (address above), after deletion of a small amount of trade secret information. Data and information received after the administrative record was reopened have also been put on display in the Dockets Management Branch.

In the advance notice of proposed rulemaking, the Cough-Cold Panel recommended that doxylamine succinate be generally recognized as safe and effective as an OTC antihistamine (41 FR 38419). After the Panel's report was published, controversy arose concerning whether or not there is an association of a prescription drug product containing doxylamine succinate with birth defects. This drug product was prescribed as an antinauseant for use during pregnancy. The scientific and medical communities were actively discussing and debating whether doxylamine succinate, in fact, plays a causal role in reported birth defects.

In the Federal Register of January 15, 1985 (50 FR 2200), FDA published a tentative final monograph (proposed rule) on OTC antihistamine drug products. Because of the unresolved issues concerning doxylamine succinate and birth defects, when this tentative final monograph was published in the Federal Register, the agency reserved detailed discussion and acknowledged the need to evaluate new data and information concerning the relationship between doxylamine succinate and birth defects (50 FR 2202). After reviewing and evaluating extensive data concerning the safety of doxylamine succinate, the agency is proposing in this document that this ingredient be Category I. (See comment 1 below.)

The agency is also proposing in this amendment that chlorcyolizine hydrochloride, an ingredient that was not reviewed by the Cough-Cold Panel, be generally recognized as safe and effective as an OTC antihistamine drug product. (See Part II. below—the Agency's proposals concerning Chlorcyclizine Hydrochloride.) In addition, the agency is revising the dosage for the ingredient triprolidine hydrochloride. (See comment 7 below.)

In response to the advance notice of proposed rulemaking, nine professionals, two manufacturers, two professional societies, and one individual submitted comments concerning doxylamine succinate. These comments are addressed in this document. In response to the tentative final monograph, one law firm and two manufacturers submitted comments that are also addressed in this document. Copies of the comments received are on public display in the Dockets Management Branch.

This proposed rule amends the previous tentative final monograph on antihistamine drug products that was published in the Federal Register of January 15, 1985 (50 FR 2200) in Subpart B, by adding the ingredients chlorcyolizine hydrochloride and doxylamine succinate in § 341.12; and in Subpart C, by adding warnings and directions for chlorcyolizine hydrochloride and doxylamine succinate and revised directions for triprolidine hydrochloride in §§ 341.72 and 341.90. In addition, parts of §§ 341.12, 341.72, and 341.90 have been redesignated to reflect the addition of these two additional antihistamine ingredients. This amendment constitutes FDA's tentative adoption of the Panel's conclusions and recommendations on OTC antihistamine drug products, as modified on the basis of the comments received and the agency's independent evaluation of the Panel's report. Modifications have been made for clarity and regulatory accuracy and to reflect new information. Such new information has been placed on file in the Dockets Management Branch (address above). These modifications are reflected in the following summary of the comments and FDA's responses to them.

All "OTC Volumes" cited throughout this document refer to the submissions made by interested persons pursuant to the call-for-data notice published in the Federal Register of August 9, 1972 (37 FR 16029) or to additional information that has come to the agency's attention since

publication of the advance notice of proposed rulemaking. The volumes are on public display in the Dockets Management Branch.

I. The Agency's Tentative Conclusions on the Comments

A. Comments on Doxylamine Succinate

1. One comment, submitted in response to the tentative final monograph, provided data to support the Category I status of doxylamine succinate as an OTC antihistamine active ingredient. The comment contended that the results of available animal and human studies amply support the position that doxylamine succinate is safe for use during pregnancy. The comment discussed the results of two studies by Eskenazi and Bracken (Ref. 1) and Aselton et al. (Ref. 2), cited in the antihistamine tentative final monograph (50 FR 2201 to 2202). These studies found an association between a prescription drug product containing doxylamine succinate and the occurrence of pyloric stenosis in infants. The comment cited the following flaws in the Eskenazi and Bracken study (Ref. 1): (1) the "very small" numbers of subjects in the study, i.e., 1,747 pregnancies in which six cases of pyloric stenosis occurred in drug-exposed infants; (2) the lack of evaluation of other causative factors for pyloric stenosis such as a family history (particularly for the mother) of the occurrence of pyloric stenosis, psychological stress during pregnancy, low levels of the hormone gastrin in the mother, and the nausea and vomiting of pregnancy per se; (3) the patient selection for the study; and (4) the method of categorizing congenital defects in the study. The comment also stated that, although the findings of the second study by Aselton et al. (Ref. 2) were consistent with the Eskenazi and Bracken study (Ref. 1), the number of cases studied in the second study were also "very small." The comment also noted that the authors of the second study stated that the disorder could result from the underlying nausea and vomiting of pregnancy or some other cause.

The comment noted that the authors of both of these "small" studies (Refs. 1 and 2) warned against any interpretations of a causal relationship between maternal drug exposure and the occurrence of pyloric stenosis based upon their data. Aselton et al. (Ref. 2) stated in their study that "in view of the conflicting results and the absence of any apparent biologic basis for a connection between [the prescription drug containing doxylamine succinate] and pyloric stenosis, explanations for the current findings other than a causal relation must be considered and given substantial weight." Other explanations cited by the comment for the findings in the Eskenazi and Bracken and the Aselton et al. studies (Refs. 1 and 2) include Eskenazi and Bracken's recognition that pyloric stenosis may in fact result from a genetic predisposition, in which case a manifestation of the disease would then be precipitated by environmental factors. Also, mothers who themselves had had pyloric stenosis or were predisposed toward it may have been more nauseated and therefore more likely to have taken the prescription drug containing doxylamine succinate during pregnancy. The comment noted that this explanation of the cause of pyloric stenosis has also been recognized in a study (Ref. 3) whose authors include some of the authors in the Aselton et al. study (Ref. 2).

The comment discussed another much larger case-control study by Mitchell et al. (Ref. 4), also cited by the agency in the tentative final monograph, that compared the incidence of pyloric stenosis in infants exposed to the prescription drug containing doxylamine succinate with infants who were not exposed to the drug. According to the comment, the findings in this study, involving 325 infants with pyloric stenosis, showed there was no increase in the occurrence of pyloric stenosis among infants whose mothers took the prescription drug containing doxylamine succinate.

The comment also discussed a prospective study by Rosa et al. (Ref. 5), cited by the agency in the tentative final monograph that used Medicaid data from Michigan. According to the comment, this study also did not support an association between maternal exposure to the prescription drug containing doxylamine succinate and the occurrence of pyloric stenosis in infants. The comment noted that this study, like that of Mitchell et al. (Ref. 4), has a much higher statistical power than the Eskenazi and Bracken study (Ref. 1) and the Aselton et al. study (Ref. 2).

In addition, the comment cited a letter to the editor of the *American Journal of Obstetrics and Gynecology* (Ref. 6) that reviewed the experience of the Royal College of General Practitioners in England and concluded that pyloric stenosis is associated with nausea and vomiting in pregnancy rather than with any specific drug. The comment cited a personal communication from Michaelis (Ref. 7) containing a review of the extensive data of the German Research Society and concluding that there was no association between maternal exposure to the prescription drug containing doxylamine succinate and the occurrence of pyloric stenosis in infants. According to the comment, another study by Milkovich and Van Den Berg (Ref. 8) did not support an association between maternal exposure to the prescription drug and the occurrence of pyloric stenosis.

The comment also discussed expert testimony in a trial that focused on the sole question of whether the prescription antinauseant containing doxylamine succinate causes birth defects. The comment stated that this culminated on March 12, 1985 with a verdict firmly answering that question in the negative (*In re: Richardson-Merrell "Bendectin" Products Liability Litigation*, MDL No. 486 (S.D. Ohio 1985)). The comment explained that, in this trial, the alleged association between the prescription drug containing doxylamine succinate and pyloric stenosis was addressed by expert witnesses. One expert, who had published several papers concerning pyloric stenosis in scientific journals, testified that pyloric stenosis is not actually a birth defect but is triggered by something in the environment after birth and has nothing to do with doxylamine succinate. He also testified that the evidence from both case control and cohort studies on the prescription antinauseant containing doxylamine succinate indicates that the drug does not cause birth defects in children exposed to the drug in utero. Another expert was coauthor of the hypothesis generating study concerning exposure to the prescription drug containing doxylamine succinate and pyloric stenosis (Ref. 1). He testified that, based upon the epidemiologic data from his own study (Ref. 1), the Aselton et al. study (Ref. 2), and the Mitchell et al. study (Ref. 4), no association between the drug and pyloric stenosis has been established. He added that it cannot possibly be said that this drug has any causal relationship to pyloric stenosis, which results from a genetic predisposition to this condition. The comment concluded "that pyloric stenosis in newborns is not due to exposure to [the prescription drug product containing doxylamine succinate], but to the mother's predisposition toward both pyloric stenosis and nausea which caused the mothers to be prescribed [the drug product containing doxylamine succinate]."

The comment cited a large double-blind primate study, designed

specifically to examine a possible association between maternal exposure to the prescription drug containing doxylamine succinate and ventricular septal defects (Ref. 9). According to the comment, this study found no evidence in monkeys of an association between exposure to the prescription drug and birth defects of any kind, including the occurrence of pyloric stenosis.

The comment cited major reviews in the literature concerning possible teratogenicity of the prescription drug containing doxylamine succinate (Refs. 11 and 12). The comment stated that neither of these reviews found evidence of such a relationship. The comment submitted citations for several editorials in scientific journals that support the safety of the prescription drug (Refs. 13, 14, and 15). The comment also included additional citations for the published human experience with the drug (Refs. 16 through 39).

The comment concluded that the existing data support the safety of doxylamine succinate for OTC use and stated that an additional warning regarding the use of drug products containing doxylamine succinate during pregnancy is unwarranted. Therefore, according to the comment, the ingredient doxylamine succinate should not be eliminated from the tentative final monograph for OTC antihistamine drug products.

The agency has reviewed the extensive body of data available concerning the safety of doxylamine succinate and concludes that this ingredient is safe for use as an OTC antihistamine drug product. Based on the data, the agency is proposing a Category I classification for doxylamine succinate in this tentative final monograph.

Pyloric Stenosis

A major concern was identified in the previous tentative final monograph (50 FR 2200) regarding the safety of doxylamine succinate in OTC antihistamine drug products used during pregnancy. The concern related to a possible link between the use of antinauseant drugs containing doxylamine succinate and the occurrence of pyloric stenosis in infants. As noted above, Eskenazi and Bracken (Ref. 1) observed a significant association (odds ratio=1.40) between the occurrence of pyloric stenosis in infants and in utero exposure to an antinauseant drug containing doxylamine succinate. The investigators did not find other significantly increased risks for congenital malformations, except for a possible association of exposure to this drug in utero with heart valve anomalies (odds ratio=2.99). The case subjects were mothers of congenitally malformed infants, newborn or stillborn, at five urban hospitals in central Connecticut between May 1974, and November 1976, and mothers of malformed infants who were referred to one of the five hospitals before the child was 1 year of age. Control subjects were mothers of healthy newborn infants born in the five hospitals between November 1974, and November 1976. Case and control mothers were interviewed in the hospital or at home by trained interviewers using a standardized questionnaire. Data collected included demographic variables, smoking history, pregnancy history, drug use, and exposure to other possible risk factors. Data were analyzed from 1,369 cases and 2,968 controls. In 6.3 percent of the cases, mothers of malformed infants reported using the antinauseant drug containing doxylamine succinate. Also, 4.6 percent of control mothers (normal infants) reported using the drug. Therefore, mothers of malformed infants had a 40-percent overall increased chance of being exposed to the antinauseant drug in the first trimester of pregnancy (odds ratio=1.40 with 95 percent confidence limits of 0.96 and 2.05, $p=0.08$). The investigators found some evidence that there was a synergistic relationship between smoking and use of the antinauseant drug to case-control status, i.e., women who used the antinauseant drug and were smokers had increased odds ratios for the occurrence of birth defects of 2.36 (light smokers) and 6.39 (heavy smokers). However, the synergistic relationships were statistically significant only for the combined group of smokers, i.e., both light and heavy smokers (odds ratio=2.91 with 95 percent confidence limits of 1.14 and 7.46). The investigators also found that infants with pyloric stenosis were more than four times likely to have mothers who reported using the antinauseant drug (odds ratio=4.33 with 95 percent confidence of 1.75 and 10.75, $p<0.001$). Antinauseant drug use was also associated with a threefold increased risk for defective heart valves in the offspring (odds ratio=2.99 with 95 percent confidence limits of 1.02 and 8.74, $p<0.04$). No other associations between antinauseant drug use during the first trimester of pregnancy and the occurrence of specific birth defects were statistically significant. When additional statistical procedures were applied to the data to account for the number of associations evaluated in the study (16), it was found that $p=0.003$ was equivalent to the usual $p<0.05$ level for statistical significance. By this criterion, only the association between antinauseant drug use and pyloric stenosis was significantly larger than might be expected. Analysis for possible confounding variables for the association between antinauseant drug use and pyloric stenosis did not yield any statistically significant differences between case and control mothers. The investigators discussed other findings in the literature concerning associations between the use of the antinauseant drug containing doxylamine succinate and the occurrence of gastrointestinal malformations. The investigators stated that "because gastrointestinal atresias, like pyloric stenosis, are constrictions of the digestive tract, it is plausible that a similar mechanism, such as the faulty innervation of the abdominal visera either by the vagus or the parasympathetic ganglia, may be involved in the etiology of these malformations." The investigators concluded that "more than 1 in 10 cases of pyloric stenosis may be due to maternal use of [the antinauseant drug containing doxylamine succinate]." As the comment above pointed out, the investigators in this study also discussed possible confounding factors for the association between antinauseant drug use and the occurrence of pyloric stenosis. These factors included a genetic predisposition to pyloric stenosis that could be precipitated by environmental factors, the possibility that mothers who themselves had pyloric stenosis or were predisposed to it may be more likely to be nauseated during pregnancy and therefore more likely to use antinauseant drugs during pregnancy, and a strong sex differential observed among pyloric stenosis cases with 7.8 male cases per every female case. The investigators also stated that whether the association between use of the antinauseant drug and the occurrence of pyloric stenosis is a direct causal relationship is unclear.

In another study discussed by the comment above, Aselton et al. (Ref. 2) studied long-term follow up of structural disorders present at birth or shortly thereafter in infants born at the Group Health Cooperative of Puget Sound. Out of 13,346 births, the investigators identified all infants with a diagnosis of pyloric stenosis, confirmed by surgery, born between July 1, 1977, and June 30, 1982. Automated pharmacy profiles were examined for maternal use in the first trimester of pregnancy of an antinauseant drug containing doxylamine succinate. This examination was to determine if an association

existed between maternal use of the drug and the occurrence of pyloric stenosis in infants. Among the 3,835 mothers obtaining prescriptions for the antinauseant drug containing doxylamine succinate, 13 (3.4/1,000) delivered infants who developed pyloric stenosis. Among the 9,511 mothers who did not obtain the drug, 13 (1.4/1,000) delivered infants who developed pyloric stenosis. The resulting risk-ratio estimate for drug-exposed infants compared to nonexposed infants was 2.5 with a 95 percent confidence interval of 1.2 to 5.2. When the mothers were divided according to the number of prescriptions filled during pregnancy, risk ratio estimates increased with increased numbers of prescriptions filled. A case-control approach was used to analyze the data. Twenty-five infants out of a cohort of 26 infants with pyloric stenosis and no other serious defect were matched with 4 control infants per case. Factors matched included maternal age, race, season and year of birth, and the sex of the infant. The investigators found no difference in maternal age for users and nonusers of the prescription drug containing doxylamine succinate, that the incidence of pyloric stenosis was six times greater for male infants than for female infants, that there was no material association between drug use and the sex or race of the infant, and that the risk ratio estimate was 2.3 for drug-exposed infants when they controlled for calendar time of birth by stratifying the data into 2-year periods. The investigators concluded that maternal age and calendar time of birth were not important confounding factors in the cohort analysis. Matched analysis for case-control comparisons yielded a risk ratio estimate of 2.3 for infants born to mothers who had obtained the prescription drug. Stratification for birth weight, length of gestation, and birth order had little effect on this risk ratio estimate. The odds ratios for drug ingestion during the 8th, 9th, and 10th weeks of gestation were higher than for other weeks of gestation. However, the investigators stated that "these results should be interpreted with caution due to the imprecision in estimating gestational ages in the study and the fact that data for individual weeks are not independent of one another." The investigators concluded that the study provides additional evidence supporting a connection between the use of the prescription drug containing doxylamine succinate and the occurrence of pyloric stenosis in infants or between the occurrence of severe nausea during pregnancy and the occurrence of pyloric stenosis in infants. The authors state that "in the absence of a biologic explanation for this finding and in view of conflicting results from other studies, a causal interpretation for this association [between drug use and the occurrence of pyloric stenosis] is not yet warranted."

In a large case-control study, Mitchell et al. (Ref. 4) evaluated the hypothesis suggested by another study (Ref. 1) that maternal use during pregnancy of an antinauseant drug containing doxylamine succinate increases the risk of the occurrence of pyloric stenosis in infants. The investigators did not find evidence to support this hypothesis. The data were obtained through an ongoing surveillence program designed to detect previously unsuspected human teratogens and to evaluate existing hypotheses concerning the risks and safety of antenatal exposures to drugs. Three hundred twenty-five infants with pyloric stenosis, 3,153 control infants with other conditions, and a subset of 724 control infants, with defects that may have originated at any time in the pregnancy, were identified through a review of information obtained from hospital lists, surgical logs, and clinic or office records of hospitals, clinics, and physicians in participating centers in the surveillance program. Within 6 months of the birth of their child, mothers were interviewed by trained pediatric nurse interviewers, who used a structured questionnaire that elicits information on parental age, occupation, income, maternal medical history, and previous pregnancies. This study evaluated infants of mothers who were interviewed between March 1976 and October 1982. For analysis, the data were stratified by maternal decade of age and geographic region and were controlled for a large number of potentially confounding factors such as variables concerning family history of malformations, maternal characteristics, obstetric history, maternal disease, complications of pregnancy, exposures during pregnancy, infant characteristics, and maternal use during pregnancy of a three-component antinauseant drug (dioyolomine hydrochloride, doxylamine succinate, and pyridoxine hydrochloride) or a two-component antinauseant drug (doxylamine succinate and pyridoxine hydrochloride). Among the 325 infants with pyloric stenosis, 56 (17 percent) were exposed in utero to one of the antinauseant drugs containing doxylamine succinate, while among the 3,153 infants with other malformations, 616 (20 percent) were exposed. Analysis of these data yielded a relative risk estimate of 0.9 with a 95 percent confidence interval of 0.6 to 1.2 for the occurrence of pyloric stenosis in infants exposed to one of the antinauseant drugs. The corresponding data analysis for the 325 infants with pyloric stenosis and the 724 infants with defects that may have had their origins at any time in pregnancy yielded a relative risk estimate of 1.0 with a 95 percent confidence interval of 0.7 to 1.4. Because inguinal hernia, like pyloric stenosis, may develop late in pregnancy or soon after birth, the investigators compared the in utero rate of exposure to one of the antinauseant drugs containing doxylamine succinate for the 325 infants with pyloric stenosis and for 606 control infants with inguinal hernia. They found a relative risk estimate of 0.8 with a 95 percent confidence interval of 0.6 to 1.2. The investigators concluded that "the present findings suggest that exposure to [an antinauseant drug containing doxylamine succinate] during pregnancy, whether early or late, does not increase the risk of pyloric stenosis."

Cleft Lip and Cleft Palate

Several studies specifically evaluated a possible causal relationship between maternal use during pregnancy of antinauseant drugs containing doxylamine succinate and the occurrence of cleft lip and/or palate in infants. A case-control study involved mothers interviewed between March 1976 and June 1980, in 22 participating centers in three regions (Boston, Philadelphia, and Toronto). In this study, Mitchell et al. (Ref. 16) did not find an appreciable increase in the risk of the occurrence of cleft lip and/or cleft palate or of the occurrence of heart defects for infants exposed in utero early in pregnancy to an antinauseant drug containing doxylamine succinate. Infants with birth defects were identified through the review of records of participating hospitals, clinics, and physicians. Mothers of infants with birth defects were interviewed by trained pediatric nurse interviewers. They used a questionnaire to elicit information concerning a great number of factors that could influence the occurrence of birth defects, including possible confounding factors for the specific factors studied (e.g., drug exposure). The interviews included mothers of 98 infants with isolated cleft palate, mothers of 221 infants with cleft lip with or without cleft palate, mothers of 122 infants with selected heart defects (ventricular septal defect, patent ductus arteriosus, atrial septal defect, and coarctation of the aorta), and mothers of 970 infants with malformations other

than those studied that served as controls for the study. The investigators found the following relative risk estimates for infants exposed to the antinauseant drug containing doxylamine succinate in utero: for isolated cleft palate, a relative risk estimate of 0.9 with a 95 percent confidence interval of 0.5 to 1.5; for cleft lip with or without cleft palate, a relative risk estimate of 0.6 with a 95 percent confidence interval of 0.4 to 0.8; and for the selected heart defects, a relative risk estimate of 1.0 with a 95 percent confidence interval of 0.6 to 1.6. The investigators' evaluation of possible confounding factors did not demonstrate that any of these factors materially influenced the relative risk estimates found for drug-exposed infants with the birth defects studied.

In England, Golding et al. (Ref. 17) studied 196 index women, i.e., women who had infants with clefts of the lip or palate, and 407 control women (2 controls per index case) that were matched with the index women for age, parity, social class, and year of delivery. The study covered births between 1965 and 1974 and included approximately 14,000 births per year. The investigators found a significant excess ($p<0.02$) of women who had been prescribed a three-component antinauseant drug containing doxylamine succinate, dicyclomine hydrochloride, and pyridoxine hydrochloride in early pregnancy in the index group when compared to the control group. Cases of clefts of lip or palate were ascertained through examination of diagnostic information on home and hospital deliveries, diagnostic details on records of stillbirths and death certificates, details from hospital admission records (usually for cleft repair), details from the malformation register kept by the Oxford Record Linkage study, and case records kept by the M. R. C. Population Genetics Research Unit. Data concerning maternal drug use in early pregnancy were obtained from the notes of attending physicians. The investigators confined their analysis to women presenting with nausea within 69 days of their last menstrual period, because any pathological event that influences the development of cleft lip or palate must take place by the end of the first 9 weeks of gestation. They found no significant differences between index and control women with respect to presenting with nausea during pregnancy, but found a statistically significant excess of index women who were prescribed the three-component antinauseant in comparison to all control women who were not prescribed the drug ($p<0.02$). The investigators also found a statistically significant excess of index women who had been prescribed the drug in comparison to all other women who had presented with nausea during pregnancy ($p<0.025$). A matched analysis of the index and control cases yielded a statistically significant excess of index women who had been prescribed the three-component antinauseant drug ($p<0.025$). Analysis of the significant excess of index women who had been prescribed the drug produced a relative risk of 2.88 for the occurrence of cleft lip or cleft palate for infants of mothers who had taken the drug. The investigators found that the mean of the times during gestation at which index women were first prescribed the three-component antinauseant drug (7.46±0.37 weeks) was statistically different ($p<0.025$) from the mean of the times during gestation at which control women were first prescribed the drug (9.29±0.62 weeks). Only 3 of the 12 index women had been prescribed other drugs in addition to the antinauseant drug. The investigators concluded that, in view of the lack of consistent agreement in the literature, and in spite of several case reports, the findings of this study alone do not prove the case against the three-component antinauseant drug. However, the investigators stated that it is worth questioning whether prescribing the drug for pregnant women with mild nausea and vomiting is advisable.

Heart Defects

Rothman et al. (Ref. 18) evaluated the effect of hormonal exposure before or during pregnancy on the risk of congenital heart disease. A case-control study of 390 mothers of infants with congenital heart disease and 1,254 mothers of normal infants was employed. This study also assessed the cardiovascular teratogenicity of other drugs taken during early pregnancy, including an antinauseant drug containing doxylamine succinate, dicyclomine hydrochloride, and pyridoxine hydrochloride. The cases of congenital heart disease studied occurred during the period 1973 to 1975 in Massachusetts. The normal controls were randomly selected from the roster of all Massachusetts births for the same 3-year period of time. Most cases were obtained from the roster of the New England Regional Infant Cardiac Program (NERICP). Other cases were identified by examining death certificate files. Mothers of cases identified through death certificates were interviewed by telephone. Mothers of cases identified through NERICP and controls were mailed questionnaires which inquired about maternal age, education, reproductive history, contraceptive history, and exposure to tobacco, alcohol, and drugs prior to and during early pregnancy. The proportion of cases with a history of drug exposure was compared with the proportion of controls with a similar history. Based on these data, prevalence ratios were calculated, i.e., the prevalence of heart defects in exposed infants was divided by the prevalence of heart defects in unexposed infants. The data were analyzed for possible confounding variables for factors that strongly correlate with congenital heart disease, i.e., parity, maternal age, educational background, and insulin use. The data were found to be free of confounding by these factors. Accordingly, it was unnecessary to stratify the data for analysis to account for any of these factors. In the case of the antinauseant drug containing doxylamine succinate, 24 case mothers reported that they had used the drug, 386 case mothers reported that they had not used the drug, 46 control mothers reported that they had used the drug, and 1,208 control mothers reported that they had not used the drug. Analysis of these data to compare the prevalence of heart defects in drug exposed infants and unexposed infants yielded a prevalence ratio estimate of 1.8 with a 90 percent confidence interval of 1.2 to 2.7 at the $p<0.01$ level. The investigators described the possible association between the antinauseant drug, among other drugs, as "weak." The investigators cautioned that drug exposure information for such drugs was obtained from an open-ended question that would likely be subject to recall bias. In discussing possible associations between hormonal exposure and cardiac defects, the investigators noted that heterogeneity of diagnoses for specific heart defects in exposed cases of defects could be considered to be evidence against an association between exposure and the occurrence of defects. In the case of exposure to the antinauseant drug containing doxylamine succinate, the investigators reported five different types of cardiac defects. The numbers of the cases reported for each specific type of defect were evenly distributed over all five types of defects. The investigators also discussed inconsistencies between the results in this study and the results found in other published studies. The investigators concluded that resolution of these discrepancies would require considerably larger studies than those that were published at that time.

Limb Deformities

Other studies investigated the hypothesis that maternal use of an antinauseant drug containing doxylamine succinate is related to the occurrence of limb deformities in infants. Correy and Newman (Ref. 19) analyzed data concerning the occurrence of limb reduction deformities in Tasmania, Australia, during the period 1975 to 1980. Data included forms completed by nurses before mothers were discharged from the hospital that required information concerning congenital abnormalities of the infants. Details concerning maternal use of an antinauseant drug containing doxylamine succinate, dicyclomine hydrochloride, and pyridoxine hydrochloride during pregnancy were obtained from attending physicians of mothers who gave birth to children with congenital anomalies, including limb reduction defects. Data were presented concerning the number of births each year, the number of reported congenital abnormalities, the specifics of 15 cases of limb reduction defects including a history of maternal antinauseant drug use, and the amount of the antinauseant drug distributed each year in Tasmania. The investigators discussed other published studies concerning maternal antinauseant drug use in relation to congenital anomalies and stated that the incidence of limb reduction deformities in Tasmania was 0.03 percent for the time period studied. Based on the evidence presented in this study and a review of the literature, the investigators concluded that ingestion of the antinauseant drug containing doxylamine succinate during pregnancy does not cause limb reduction deformities.

Aselton et al. (Ref. 20) examined drug use during pregnancy and its relationship to serious limb disorders in infants born between January 1980, and December 1981. This study was part of a long-term follow up study of pregnant women and their infants at the Group Health Cooperative of Puget Sound in Seattle. In the cohort of 5,255 women studied, 1,364 (26 percent) obtained one or more prescriptions for an antinauseant drug containing doxylamine succinate. Of these 1,364 women, 556 (41 percent) had two to four prescriptions filled for the antinauseant and 167 (12 percent) had five or more prescriptions filled for the antinauseant. Of the six infants who were born with serious limb disorders, two had syndromes with multiple defects, and the other four had either polydactyly or syndactyly. The mothers of the two infants with multiple defects had prescriptions filled for the antinauseant drug containing doxylamine succinate; the mothers of the other four infants with limb defects alone had not had prescriptions filled for the drug. The estimate of relative risk for the occurrence of limb defects in infants comparing mothers who had used the drug with mothers who had not used the drug was 1.4 with a 95 percent confidence interval between 0.26 and 7.71. None of the 167 mothers who had obtained five or more prescriptions of the drug containing doxylamine succinate gave birth to infants with limb defects. Using data from a study done by Jick et al. (Ref. 21) (discussed below) for the Group Health Cooperative of Puget Sound, the investigators identified eight infants with serious limb disorders from the offspring of the 6,837 pregnant women in that study that were born between July 1977, and December 1979. Among 2,255 mothers who had prescriptions filled for the antinauseant drug containing doxylamine succinate, 2 (0.9/1,000) had infants with limb disorders; among the 4,582 mothers who did not have prescriptions filled for the drug, 6 (1.3/1,000) had infants with limb disorders. The combined results of the Jick et al. study (Ref. 21) and this study (Ref. 20) yield a relative risk estimate of 0.9 with a 95 percent confidence interval between 0.29 and 2.98 for limb disorders when the antinauseant drug users are compared with nonusers. The investigators concluded that the combined results of these two studies provide evidence against a strong association between the use of the antinauseant drug containing doxylamine succinate in the first trimester of pregnancy and the occurrence of serious limb disorders in infants.

McCredie et al. (Ref. 22) investigated an alleged association between use during pregnancy of an antinauseant drug containing doxylamine succinate, dicyclomine hydrochloride, and pyridoxine hydrochloride and congenital limb defects. The study included 155 mothers with limb-deficient children born during the years 1970 to 1981 and 274 mothers of matched normal children in Australia. Two controls were sought that matched each limb-deficient case for birthdate of the child within 2 months and for equivalent geographical area where mothers lived during the first trimester of their pregnancies. In 119 case-control sets, 2 control children per case were found, and in 36 case-control sets, 1 control child per case was found. Three team doctors interviewed all women studied and recorded data on a standardized questionnaire form concerning pregnancy history that included details of morning sickness and antinauseant drug use. Morning sickness was reported by 69 percent of the case mothers and 72 percent of the control mothers. Twenty-six percent (429) of all the women studied used the antinauseant drug containing doxylamine succinate in the first trimester of pregnancy. The estimate of relative risk for limb defects in children born to women who had used the antinauseant drug was 1.1 (95 percent confidence limit of 0.8 to 1.5), compared to the estimate of relative risk of 1.0 in children born to women who had not used the drug. In addition, the investigators did not find statistically significant differences in the relative risk estimates reported for analyses to determine if any risk is associated with commencement of use of the drug early in pregnancy or with duration of drug use during pregnancy. The investigators concluded that this study "provides no evidence that [the antinauseant drug containing doxylamine succinate] is implicated in the aetiology of congenital limit defects."

David (Ref. 23) studied the Poland anomaly in infants (a rare unilateral absence of the pectoralis major muscle with an ipsilateral hand defect at birth), and cases of the isolated absence of the pectoralis major muscle in infants at birth, which may be a malformation related to the Poland anomaly. This study was designed to determine whether a causal relationship exists between the occurrence of these malformations in infants and the use during pregnancy of a three-component antinauseant drug containing doxylamine succinate, dicyclomine hydrochloride, and pyridoxine hydrochloride. David examined 46 cases of Poland anomaly and 32 case of the related abnormality which occurred between 1891 and 1977. The investigator noted that a drawback to the study is that it is retrospective, with no control group. He explained that it would be extremely difficult to obtain a control group for cases that spanned 90 years and that the rarity of the defects studied would make a prospective study of a large number of cases impossible. Data concerning maternal use of drugs during pregnancy were obtained from the mothers' hospital antenatal records and by obtaining details of drug prescription from the family doctor. Details of drug ingestion could not be obtained in six cases that occurred before 1924. The three-component antinauseant drug had been prescribed in 2 of the remaining 72 cases. Twenty-six (14 Poland anomaly and 12 isolated pectoralis absence)

cases were conceived before 1958, the year in which the three-component antinauseant drug was introduced into the United Kingdom, and the investigator concluded that these cases could not have a causal relationship to the drug. In addition, the critical period of embryogenesis for the Poland anomaly, and presumably for the absence of the pectoralis major muscle, has been estimated to be 44 to 48 days or 43 to 46 days after conception. In the two cases of birth defects studied where the mother had been prescribed the three-component drug, maternal use of the drug in one case was before the critical period of embryogenesis for the defect. The maternal use of the drug in the other case was after the critical period of embryogenesis for the defect. The investigator concluded that, despite theoretical disadvantages, "in none of the 46 cases of the Poland anomaly or 32 cases of isolated pectoralis absence was there any evidence that [the three-component antinauseant drug] could have caused the defect."

Spina Bifida and Anencephaly

In a case-control study, Hearey et al. (Ref. 24) investigated a five-fold increase in the incidence of the neural tube defects spina bifida and anencephaly during the years 1979 to 1980 in the Antioch-Pittsburg, CA area. The study included 9 cases of neural tube defects and 27 control mothers as well as 8 other cases of neural tube defects and 17 control fathers. The mothers and fathers were evaluated for factors such as place of residence, occupation, drug use, illnesses, and pesticide or chemical exposure. None of the factors evaluated in this study, except fathers' smoking ($p<0.05$), were associated with the occurrance of neural tube defects. The data evaluated included hospital records, birth and fetal death records, and interviews with parents of neural tube defect cases and the control mothers and fathers. Between March 1979, and November 1980, the investigators identified 10 cases of neural tube defects in an estimated 2,000 births in the Antioch-Pittsburg area during the study period, an incidence of approximately 0.005. Based on a reported annual incidence of approximately 0.001 for California, only two cases of neural tube defects would have been expected in the study population. Three control parents per each case of neural tube defect were randomly selected from patients in the Kaiser-Permanente Medical Care Program. These controls were matched with cases of neural tube defect for the sex of the child, the county of residence for the mother, and for the date of birth occurring within 1 year of the case child. The investigators evaluated the data in both matched and unmatched statistical analyses. The results of the unmatched analysis were presented for several exposure factors including maternal use during pregnancy of an antinauseant drug containing doxylamine succinate. Two of nine cases (22 percent) of neural tube defects occurred in infants who were exposed to this antinauseant drug in utero during the first trimester of pregnancy, while five of seven controls (15 percent) were exposed to the drug in utero during the first trimester of pregnancy. The difference between drug exposure (22 percent for cases and 15 percent for controls) in the cases and controls was not found to be statistically significant at the $p<0.05$ level. The investigators noted that the small sample size resulted in problems of low statistical power, i.e., only large odds ratios could be detected at the $p<0.05$ level. Therefore, the absence of statistically significant results in this study may have been due to a lack of statistical power as well as a lack of association with the factors studied. The investigators concluded that, "whereas it remains necessary to define the possible part that subtle environmental as well as genetic factors may have in the etiology of neural tube defects, it appears possible that the Antioch-Pittsburg cluster occurred by chance."

Absence of Anal, Genital, and Urinary Orifices

Robinson and Tross (Ref. 25) reported five cases of preterm infants (one male and four females) born without anal, genital, and urinary orifices that were identified among 8,241 total births from three counties in northeastern Ohio within a 7.5-month period. The infants were either stillborn or died within hours of delivery. None of the infants displayed any vestige of structures derived from either the embryonic anogenital folds or anal tubercles. The investigators searched for a possible explanation for the occurrence of the malformations studied. Based on cytogenetic and pedigree analysis, the investigators could not identify a genetic mechanism to explain the malformations. However, the malformations studied met the following criteria for the identification of a teratogen: (1) An abrupt increase in the incidence of the anomaly, (2) coincidence of the increased incidence with an environmental change, (3) exposure to the environmental change early in pregnancy yielding infants with the anomaly, and (4) absence of other factors common to all pregnancies yielding an infant with the anomaly. The investigators suspected the environmental agents doxylamine succinate, dextromethorphan, and acetaminophen as teratogens. Of these agents, only doxylamine succinate was common to all five cases. For this reason, doxylamine succinate was considered the most probable suspected teratogen. In four of the five cases, the mothers took OTC drugs containing doxylamine to treat symptoms of an upper respiratory infection within the first 8 weeks of pregnancy. In the fifth case, the mother took a prescription drug containing doxylamine succinate for nausea and vomiting. The investigators stated that in all five cases, the exposure to doxylamine succinate was within the first 50 days of pregnancy, which is the critical period for initiating the birth defects studied. The authors stated that "with data from only five cases, we are reluctant to make categorical statements about etiology, but the scant number of previous reports of the syndrome [seven reports in the previous 54-year period between 1926 and 1980] and the circumstances of its occurrence in our community warrant further evaluation."

Other Studies

Many studies have evaluated the relationship between maternal use of antinauseant drugs during pregnancy and the occurrence of birth defects in general and the occurrence of a variety of specific birth defects. Cordero et al. (Ref. 26) studied maternal exposure to an antinauseant drug containing doxylamine succinate for possible associations with several major categories of birth defects. However, no associations were found with any of these major categories. Data were obtained from the Metropolitan Atlanta Congenital Defects Program for births between January 1, 1970, and December 31, 1978. Birth defects that were diagnosed in the first year of life were ascertained by staff members of Metropolitan Atlanta Congenital Defects Program through regular visits to obstetric and pediatric wards of hospitals and to secondary and tertiary pediatric units in five central counties of the Atlanta metropolitan area. Data were analysed from 1,231 interviews of parents with infants who had selected defects. Between 1970 and 1978, the selected defects included the neural tube defects anencephaly, spina bifida, encephalocele; cleft lip and/or cleft palate; esophageal atresia; small-bowel atresia; rectal and anal atresia; diaphragmatic hernia; gastroschisis and omphalocele; and Down's syndrome. Between 1973 and 1978, interviews also

included parents of infants with limb reduction defects. Of the mothers interviewed, 117 (9.5 percent) had taken the antinauseant drug containing doxylamine succinate in the first trimester of pregnancy. There were not statistically significant differences in exposure to the antinauseant drug among any of the 12 birth defect categories analyzed. The rate of first trimester exposure to the antinauseant drug containing doxylamine succinate for each birth defect was compared with the rate of such drug exposure for a control group composed of infants with birth defects other than the birth defect being evaluated. Odds ratios for the occurrence of birth defects in infants whose mothers had taken the antinauseant drug containing doxylamine succinate in the first trimester of pregnancy were tested for statistical significance for each defect category. The authors stated that among the subgroups of limb defects, only the amniotic bands complex had a significantly increased first trimester exposure to the antinauseant drug (odds ratio 3.88, p=0.015). However, when the data were stratified by two time periods of drug exposure, the amniotic bands complex did not show a statistical association with drug exposure. The authors concluded that the data were insufficient to demonstrate a causal effect between drug exposure and the occurrence of the amniotic band complex, but that further studies are indicated to determine if there is a causal relationship. Stratification by two time periods of drug exposure yielded a statistically significant association between the occurrence of encephalocele and exposure to a two-component antinauseant drug product containing doxylamine succinate and pyridoxine hydrochloride (p=0.038). Also, there was a statistically significant association between esophogeal atresia and exposure to a three-component antinauseant drug containing doxylamine succinate, dicyclomine hydrochloride, and pyridoxine hydrochloride (p=0.044). The authors concluded, however, that it seems unlikely that a causal relationship exists between first trimester exposure to these prescription drugs and the occurrence of encephalocele for the following reasons: (1) No other reports suggest such an association, (2) the association was found only for the two-component drug and not for the three-component drug, and (3) although a significant increase in the population rate of encephalocele should have been observed following the introduction of the two-component drug and discontinued use of the three-component drug in 1977, the data did not show such an increase in the rate of occurrence of encephalocele. The authors stated that the association between the three-component drug and the occurrence of esophogeal atresia is weak, but that they did not find, however, any confounding factors that would explain the association. The authors concluded that further studies would be required to evaluate this finding. In conclusion, the authors stated that "in our opinion, these data do not suggest that [either one of the antinauseant drugs studied that contain doxylamine succinate] is causally associated with the occurrence of the birth defect categories that we studied. If any causal association does exist between first trimester exposure to [the antinauseant drugs studied that contain doxylamine succinate] and the three particular defects amniotic bands, encephalocele, and esophageal atresia, the actual risks seem to be extremely small. Since it is impossible to prove any agent safe, our study should remind physicians that the potentia1 risk of drugs during pregnancy should be weighed against the potential benefits that they may have."

Cordero and Oakley (Ref. 27) discussed epidemiologic methodologies and their application to studies concerning relationships between the occurrence of birth defects and exposure to drugs during pregnancy. They reviewed several studies concerning use during pregnancy of an antinauseant drug containing doxylamine succinate. Based on the results of several cohort studies (refs. 6, 8, 21, 28, 29, 31, and 32) concerning possible associations between the antinauseant drug and the occurrence of birth defects, they concluded that it is possible to exclude a risk of birth defects of over 1.2 per 1,000, and stated that "if there is a risk in the use of that drug, it should be less than 0.12 percent, which is significantly less than the 2–3 percent risk that any pregnancy has just by chance for serious malformations." The authors also presented a preliminary unpublished analysis by Martinez-Frias et al. (Ref. 40) in a case-control analysis of the Spanish Collaborative Study of Congenital Malformations that showed a group of 53 cases of diaphragmatic hernias. Five cases (9.4 percent) in this group had been exposed in utero to an antinauseant drug containing doxylamine succinate, dicyclomine hydrochloride, and pyridoxine hydrochloride. Of the 4,965 infants in the control group who were not born with diaphragmatic hernias, 633 infants (12.7 percent) had been exposed in utero to the drug. The difference between the two groups with respect to the proportion of infants who had been exposed to the antinauseant drug was not statistically significant.

Jick et al. (Ref. 21) found no strong associations between any of the drugs commonly used during pregnancy, including an antinauseant drug product containing doxylamine succinate, and the congenital disorders studied. The investigators evaluated computerized data that included all prescriptions the mothers had filled during the first trimester of pregnancy and congenital disorders diagnosed at birth, excluding those that were subsequently diagnosed as normal. The subjects were women and their infants in the Group Health Cooperative of Puget Sound in Seattle. The study covered births between July 1, 1977, and December 31, 1979. The data analyzed included 6,837 pregnancies that produced live births, 80 (1.2 percent) of which resulted in infants with the following congenital disorders: limb reduction deformity (4), other limb deformities (4), cleft lip/palate (5), rectal atresia (5), esophageal atresia (1), congenital heart disease (15), central nervous system disorders (3), undescended testicle (22), chromosome disorders (8), congenital cataract (1), choanal atresia (2), thyroglossal sinus (1), congenital ureteral obstruction (2), Potter's syndrome (1), familial Saethre-Chotzes syndrome (1), congenital eperlides (1), medulloblastoma (1), insulin-secreting tumor (1), and hypospadias (2). Disorders, such as pyloric stenosis, that were diagnosed subsequent to the hospital admission for childbirth were excluded from analysis in this study. Infants of mothers were considered exposed to a drug if the mother had one or more prescriptions for the drug filled. Prescriptions for a drug product containing doxylamine succinate and pyridoxine hydrochloride were filled for 33 percent of the 6,837 women studied. The prevalence of all disorders among drug exposed infants was found to be 24 per 2,255 live births (1.1 percent), which was closely similar to the prevalence of all disorders among infants who were not exposed to this drug, i.e., 56 disorders per 4,582 live births (1.2 percent). The investigators also evaluated the prevalence of particular disorders in infants exposed to the drug containing doxylamine succinate and pyridoxine hydrochloride. Only in the case of gastrointestinal atresia was the prevalence high for drug exposed infants. However, the 95 percent lower confidence bound (limit) found for this association was below unity, and there was little association

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with the time of drug exposure during pregnancy and the occurrence of the disorder. Also, there was no positive correlation between increasing numbers of prescriptions filled for the drug and the occurrence of the disorder.

Aselton et al. (Ref. 33) updated the study by Jick et al. (Ref. 21, discussed above) concerning possible associations between any of the drugs commonly used during pregnancy and the major congenital disorders studied. This study included all live births of 6,509 mothers in the Group Health Cooperative of Puget Sound in Seattle between January 1, 1980, and June 30, 1982. The same study methods reported in the Jick et al. study (Ref. 21) were used in this study. Of the 6,509 women studied, 105 (1.6 percent) delivered infants with congenital disorders, and 1,580 (23 percent) had at least one prescription filled for an antinauseant drug containing doxylamine succinate. The investigators stated that the prevalence of any disorder among infants whose mothers had at least one prescription filled for the antinauseant drug containing doxylamine succinate (30 infants with disorders among 1,580 infants; 1.9 percent) was slightly higher than that of infants whose mothers had not had a prescription filled for the drug (75 infants with disorders among 4,929 infants; 1.5 percent). This factor resulted in an estimated risk ratio of 1.25, with a 95 percent confidence interval of 0.8 to 1.9, for infants whose mothers had at least one prescription filled for the drug. The investigators found no difference in the prevalence of disorders when they evaluated the gestational time when mothers had prescriptions filled for the antinauseant drug or when they evaluated how many prescriptions were filled. They found no strong positive association of the occurrence of the congenital disorders studied with maternal use of any of the drugs studied. When they evaluated the combined data from this study and the Jick et al. study (Ref. 21) covering experience over a 5-year period, they found that the rate of congenital disorders diagnosed at birth among infants born to mothers who had had at least one prescription filled for the antinauseant drug containing doxylamine succinate (14 per 1,000 births) was identical to that of infants born to mothers who had not had prescriptions filled for the drug (14 per 1,000 births). The investigators concluded that "although the data presented on most of the drugs in this study are insufficient to rule out a modest association, they do rule out a strong association with many commonly used drugs and the generally serious congenital defects included in this evaluation."

Michaelis et al. (Ref. 7) did a cohort study in West Germany that included 13,643 pregnancies occurring between 1964 and 1976. This study looked for the possible influence on pregnancy and child development of various factors, including the use of antiemetic drugs and sex hormones in early pregnancy. The investigators found no evidence of increased risk for major malformations in infants following the use of the antiemetic drugs studied or with the use of progesterone during early pregnancy. Data concerning drug use were collected in the form of diaries kept by almost 15,000 pregnant women recruited for the study and from medical records kept by the attending physicians. The diary information included exposure to drugs and other chemical agents such as detergents, insecticides, and fertilizers. Other factors considered were the daily work load of the women and the occurrence during pregnancy of diseases, accidents, or surgical operations. At each visit by the women, the attending physicians checked the diary information, particularly with respect to what drugs were prescribed for and ingested by the women. Data were also collected from detailed medical records concerning the course of the delivery of the infants. Data concerning aborted fetuses were collected when possible and included histological and chromosomal examinations of the fetus. Data concerning the children born consisted of information collected during examinations of the children immediately after birth; within 3 to 5 days of birth; at the ages: 6 weeks, 40 weeks, 18 months, 36 months; and for some children at 6 years. Detailed information was collected concerning the occurrence of diseases in the children and diaries were kept by the mothers regarding the physical and intellectual development of their children. All congenital malformations that occurred in the infants studied were judged by an expert committee (of pediatricians) on human genetics who classified the malformations as major, minor, or other abnormalities. The investigators used computers to analyze an average of 4,500 different data items per pregnancy for 13,643 pregnancies. They evaluated the frequency of the occurrence of malformations in infants of mothers who had taken specific drugs during the first trimester of pregnancy. That frequency was compared to the frequency of the occurrence of malformations in infants in a matched control group selected from the total cohort of women and infants studied that had not been exposed to the drug. The control women were matched with the drug exposed group for maternal age, parity, and marital status. An antinauseant drug containing doxylamine succinate, dicyclonine hydrochloride, and pyridoxine hydrochloride was taken by 1,001 women in the study group. Of these 1,001 pregnancies, 50 (5 percent) resulted in abortions and 20 (2 percent) resulted in the birth of an infant with major congenital malformations. Of the 1,001 pregnancies, including 18 that resulted in infants with major malformations, 874 could be matched with control pregnancies for analysis. Nineteen infants with major malformations were born to mothers in the control group. Analysis of the data resulted in an odds ratio of 0.95 with 90 percent confidence limits of 0.52 to 1.73 for the occurrence of major malformations in infants born to mothers who had taken the antinauseant drug containing doxylamine succinate during the first trimester of pregnancy. The malformations that occurred in infants exposed to this specific drug showed no common characteristics. An analysis was done of the impact of other factors for which data were collected in order to detect possible systematic selection factors that might have been introduced by selecting the matched controls. This analysis showed both groups to be comparable with respect to the factors which could not be controlled by matching. The only differences found were that women who used the drug containing doxylamine succinate practiced contraception prior to becoming pregnant and women in the control group who had not taken this particular drug smoked cigarettes more frequently.

In a study conducted in England, Smithells and Sheppard (Ref. 28) found no evidence to suggest that a three-component antinauseant drug containing doxylamine succinate, dicyclonine hydrochloride, and pyridoxine hydrochloride is teratogenic. The study included 2,298 pregnant women from either the Leeds area during the period between August 1974, and July 1975, or the Liverpool area during the period between June 1974 to July 1975. Data were obtained from the Prescription Pricing Authority, birth notification records, and hospital maternity records or midwives' records. Of the 2,298 pregnancies studied, there were 2,261 live infants (including 19 sets of live twins), 23 stillbirths and 1 stillborn twin (24 infants that did not survive birth), 21 spontaneous abortions, 1 therapeutic

abortion, and 1 maternal death. The investigators evaluated the estimated gestational age of the fetus at the time it was first exposed in utero to the antinauseant drug. They compared the incidence of the occurrence of major defects in infants first exposed to the drug at different estimated gestational ages. They found, for major defects, an incidence of 1.8 percent in 990 infants first exposed to the drug at approximately 1 to 8 weeks gestation, an incidence of 1.5 percent in 1,374 infants exposed at approximately 1 to 10 weeks gestation, and an incidence of 1.7 percent in 1,622 infants exposed at approximately 1 to 12 weeks gestation. For infants exposed after approximately 10 weeks gestation, the incidence of major defects was 1.5 percent; for infants exposed after approximately 12 weeks gestation, the incidence of major defects was 1.2 percent; and for infants exposed after approximately 14 weeks gestation, the incidence of major defects was 1.2 percent. When the investigators compared the incidence of major defects for births to mothers who had a prescription filled for the three-component drug with the incidence of major defects for all births in the study, they found (1) in Liverpool, an incidence of 2.2 percent for all births and an incidence of 2.1 percent for drug-exposed births; (2) in Leeds, an incidence of 1.5 percent for all births and an incidence of 1.3 percent for drug-exposed births; and (3) an overall incidence of 1.8 percent for all births studied and an incidence of 1.5 percent for all drug-exposed births studied. The incidence of major defects found for infants of mothers who had prescriptions filled for the three-component drug during approximately the first 10 weeks of gestation was the same as that found for infants of mothers who had prescriptions filled for the drug after the first 10 weeks of gestation, i.e., 1.5 percent for both groups. The investigators found a wide spread of common anomalies, rather than a characteristic malformation or group of malformations in infants of mothers who had filled prescriptions for the three-component drug. The investigators concluded that "this study provides substantial evidence that [the antinauseant drug containing doxylamine succinate] is not teratogenic in man."

In a prospective study to investigate maternal characteristics and habits during pregnancy and their impact on fetal development, Morelock et al. (Ref. 34) studied 1,690 mother/infant pairs, between February 1977, and October 1979, at the Boston City Hospital. The study group included 375 mothers who had indicated in interviews that they had used a prescription drug containing doxylamine succinate for nausea during pregnancy. In multivariate analyses that examined infant birth weight, birth length, head circumference at birth, gestational age at birth, and congenital malformations as dependent variables, the investigators found no associations between maternal use of the prescription antinauseant drug containing doxylamine succinate and adverse fetal outcome. Shortly after delivery, 1,962 mothers were interviewed about a variety of health behaviors associated with infant outcome within the medical literature. The infants of 272 of the women who were interviewed were not examined for the purposes of this study. Infants of 1,690 of the interviewed mothers were examined to assess growth, neurologic, and morphologic parameters by one of four pediatricians. These infants were classified according to birth weight, length, head circumference, gestational age, and the number of major or minor congenital malformations they exhibited. Infants were classified in two groups, i.e., (1) infants with three or more minor abnormalities and those with one or more major abnormalities that are life-threatening or that require surgery or (2) infants with abnormalities, such as skeletal abnormalities, limb deformities, cleft lip or palate, and cardiac defects, that had been attributed in the literature to the use during pregnancy of the antinauseant drug. Eight hundred twenty-four infants whose mothers were not interviewed were also examined and classified as described above. The infants of mothers interviewed and of mothers not interviewed did not differ in birth weight, length, gestational age, head circumference, or proportion exhibiting any congenital abnormalities or abnormalities associated in the literature with use of the antinauseant drug. Of the 1,690 mothers who were interviewed and whose infants were examined, 375 (22.2 percent) reported taking the antinauseant drug during pregnancy, and 21.2 percent of the 272 women who were interviewed but whose infants were not examined reported taking the drug during pregnancy. The investigators used discriminate analysis to explore whether mothers who reported using the antinauseant drug during pregnancy disproportionately exhibited behaviors or characteristics (e.g., complications and characteristics of pregnancy, environmental exposures, demographic, or reproductive characteristics) that would subsequently put their infants at risk. The investigators found that women who reported using the drug during pregnancy tended to be older, to consume more alcohol during pregnancy, to be more frequently x-rayed, and to smoke fewer cigarettes than women who did not report using the drug. The investigators stated that these factors have been associated with elevated malformation rates and lower birth weights for infants. They added that smoking and alcohol use during pregnancy had been reported to relate to shorter gestational age of the infant at birth. The investigators accounted for these confounders in their analysis of the data. Univariate comparisons showed that the mean birth weight of infants whose mothers had used the antinauseant drug during pregnancy was higher than the mean birth weight of infants whose mothers had not used the drug. Univariate comparisons did not show differences between infants whose mothers had used the drug and infants whose mothers had not used the drug with respect to birth length, head circumference, gestational age, 1- or 5-minute Apgar scores; infant medical illnesses at birth; distribution of male and female infants; or distribution of malformations in the infants. Because the investigators did not find sufficient numbers of cases of cleft lip or palate and limb deformities, these two categories of malformations were not analysed separately, but were included in the overall analysis of all abnormalities in infants attributed in the literature to maternal use of the antinauseant drug during pregnancy. The investigators concluded that the converging evidence from this and other studies strongly suggests that the use of the antinauseant drug containing doxylamine succinate during pregnancy does not adversely affect infant outcome.

In Northern Ireland, Harron, Griffiths, and Shank (Ref. 35) investigated the alleged association between fetal abnormalities and the use during pregnancy of an antinauseant drug containing doxylamine succinate, dicyclomine hydrochloride, and pyridoxine hydrochloride. During the study period, the total number of births in Northern Ireland fell from 33,778 births per year in 1966 to 25,747 births per year in 1977 and then increased to 26,483 in 1978. The incidence of infants born with cleft lip, cleft palate, limb reduction deformities, and defects of the heart and great vessels also fell during the period 1966 to 1976 and increased in 1977 and 1978. During the same time period, the number of prescriptions for

the antinauseant drug increased more than four-fold from 3,841 prescriptions in 1966 to 15,964 prescriptions in 1978. When the overall incidence of specific congenital malformations was compared with use of the antinauseant drug during pregnancy, the incidence of these malformations over the years studied did not appear to change while the number of prescriptions for the drug per 100 births rose more than five-fold from 11.4 in 1966 to 60.2 in 1978. Data concerning all births (live and stillborn) and the number of tablets of the antinauseant drug prescribed were obtained from governmental records. The investigators stated that the results of the study suggest that there is no relationship between congenital malformations and the use of the antinauseant drug containing doxylamine succinate during pregnancy.

During the mid-1960's, Fleming, Knox, and Crombie (Ref. 6) followed prospectively 22,977 pregnant women in Scotland and England for the incidence of malformations in the infants born to these women. The investigators analyzed data collected in two studies, an English study covering 8,293 pregnancies and a Scottish study covering 14,684 pregnancies. Of the 22,977 pregnancies, 620 women were prescribed an antinauseant drug containing doxylamine succinate, dicyclomine hydrochloride, and pyridoxine hydrochloride during the first 13 weeks of pregnancy. The investigators defined malformation as "a malformation evident at birth or within 6 weeks in either a live or stillborn infant, which could be diagnosed unequivocally excluding skin malformation." Of the 620 women who were prescribed the drug, 589 (95 percent) delivered normal infants, 8 (1.3 percent) delivered malformed infants, and 23 (3.7 percent) had other pregnancy outcomes. Of the 22,357 women who were not prescribed the drug, 445 (2.0 percent) delivered malformed infants. For all abnormal birth outcomes, 5.0 percent involved maternal use of the antinauseant drug and 5.4 percent did not involve maternal use of the drug. The investigators stated that "in these studies there was neither a concentration of specific abnormalities nor any particular concentration of exposure period [for the antinauseant drug containing doxylamine succinate] among the women with abnormal outcomes" and concluded that the antinauseant drug was not specifically incriminated as a cause of malformations in infants exposed to the drug during pregnancy.

In a large, prospective, observational study, Milkovich and Van Den Berg (Ref. 8) evaluated the teratogenic potential of several antinauseant drugs, including a drug that contains doxylamine succinate, prescribed during the first 84 days of pregnancy. They found no association between maternal use of the drug containing doxylamine succinate and teratogenicity. Data concerning pregnancy, drug prescription, delivery, and child health and development were obtained for almost 100 percent of the pregnant women who reported for prenatal care at the Kaiser Health Plan's East San Francisco Bay Area medical facilities during the years of late 1959 to 1966. The study included 11,461 single pregnancies. Fifty-eight percent (6,693) of the women studied complained of nausea and vomiting during pregnancy. For 16.5 percent of the women (1,900), the physician stated in the records that the women did not suffer from nausea and vomiting. For 25 percent of the women (2,868), no indication of the presence or absence of nausea or vomiting could be found in the records. For women who were prescribed drugs for nausea and vomiting and those who were not prescribed drugs for these conditions, the distributions of maternal age, race, parity, and the proportion of primigravidas, among other variables, were almost identical. Only severe congenital anomalies (i.e., anomalies that are hazardous or, if not corrected, would impare the child's development or well being, or both) of the infants born were considered in the analysis. In addition, perinatal mortality rates, defined as fetal deaths at 20 or more weeks' gestation, and neonatal deaths were analyzed. The investigators found that for the children of women who had been prescribed the antinauseant drug containing doxylamine succinate, the severe congenital anomaly rates were (1) 0.8 percent at 1 month of age compared to a rate of 1.5 percent for children of mothers who were not prescribed any drugs, (2) 1.6 percent at 1 year of age compared to a rate of 2.2 percent for children of mothers who were not prescribed any drugs, and (3) 2.2 percent at 5 years of age compared to a rate of 3.2 percent for children of mothers who were not prescribed any drugs. The perinatal mortality rates for infants of mothers who had been prescribed antinauseant drugs, including the drug containing doxylamine succinate, and the perinatal mortality rates for infants of mothers who had not been prescribed antinauseant drugs were quite similar, i.e., 27.8 and 32.1 per 1,000 births respectively. None of the mortality rates for specific drugs studied differed significantly from the no-drug-prescribed group at the $p < 0.05$ level. A comparison of the combined rates for severe congenital anomalies and perinatal death found practically identical rates for the group of infants whose mothers had been prescribed antinauseant drugs and the group of infants whose mothers had not been prescribed such drugs, i.e., 60.1 and 60.2 per 1,000 births, respectively. The investigators stated that this study, supported by other independent studies, leads to the conclusion that, among other drugs, the antinauseant drug containing doxylamine succinate when taken in doses recommended for pregnant women is not teratogenic.

In a prospective study of 50,282 pregnant women and their offspring, Shapiro et al. (Ref. 36) compared the mean birth weight, perinatal mortality rates, and congenital malformation rates for infants of women who used antinauseant drugs containing doxylamine succinate and/or dicyclomine hydrochloride during the first 4 lunar months of pregnancy and the mean birth weight, perinatal mortality rates, and congenital malformation rates for infants of women who had not used antinauseant drugs containing the above ingredients. The investigators also obtained data concerning the intelligence quotient scores at 4 years of age for 28,353 of the children in the study group and compared the scores of children who were exposed to the antinauseant drugs in utero and those who were not exposed in utero to the drugs. Data were obtained from the Collaborative Perinatal Project. Extensive information on drugs taken during pregnancy, maternal illnesses, complications of pregnancy, and other factors were collected prior to the birth of the child. Drug use information was recorded at each mother's antenatal visit to her physician. Heavy exposure to the antinauseant drugs studied was defined as a drug taken by the mother for at least 8 days during one or more of the first 4 lunar months of pregnancy. The statistical analyses of the data collected were controlled for many possibly confounding factors such as maternal age, maternal illnesses such as diabetes, complications of pregnancy, genetic factors, race, socioeconomic status, marital status, birth order, and educational status of the mother. The analysis of congenital malformations showed no statistically significant differences in the relative risk for the occurrence of congenital malformations in general or for the occurrence of the specific congenital malformations

studied for 509 children "heavily exposed" in utero to the drugs studied, 660 children "intermediately exposed" in utero to the drugs studied, and for 49,113 children who were not exposed in utero to the drugs studied. The investigators found no statistically significant differences in the perinatal mortality rates for 1,403 infants who were exposed in utero to doxylamine succinate and for 39,934 infants who were not exposed in utero to doxylamine succinate. Likewise, no statistically significant differences in mean birth weight were found among drug-exposed and unexposed infants when the data were analyzed to take ethnic group and socioeconomic status into consideration. An analysis of the intelligence quotient scores of many of the children studied at 4 years of age found no statistically significant differences among one group of 80 children "heavily exposed" in utero to doxylamine succinate, another group of 837 children "intermediately exposed" to this drug, and another group of 27,441 children who were not exposed to the drug in utero. The investigators concluded that, although it is rarely possible in studies of this type to completely rule out some teratogenic effect, they found no evidence that the antinauseant drugs studied, including doxylamine succinate, are harmful to the fetus.

Using information from the same data base (Collaborative Perinatal Project) used in the Shapiro et al. study (Ref. 36) described above, Heinonen, Slone, and Shapiro (Ref. 29) presented data concerning the occurrence of birth defects in relation to exposure during the first 4 months of pregnancy to antinauseant, antihistamine, and phenothiazine drug products for 50,282 mother-child pairs that included 3,248 malformed children. Relative risks for the occurrence of malformations were presented as crude values, values standardized for hospital variability, and values standardized for the mother's ethnic group and for survival of the child. For mothers who ingested doxylamine succinate during the first 4 lunar months of pregnancy, the investigators found, for the occurrence of malformed infants, a crude relative risk of 1.05, a hospital-standardized relative risk of 0.96, and a relative risk standardized for survival of the child and race of the mother of 1.06. Standardized relative risks (SRR) with 95 percent confidence limits that took into account potential confounding variables were presented for classes of malformations showing uniform rates by hospital in relation to doxylamine succinate used in the first 4 lunar months by 1,169 pregnant women. For all malformations, the SRR was 1.07 with a 95 percent confidence interval of 0.83 to 1.37; for major malformations, the SRR was 1.06 with a 95 percent confidence interval of 0.76 to 1.45; and for minor malformations, the SRR was 1.37 with a 95 percent confidence interval of 0.98 to 1.93. The highest SRR was 1.68 (95 percent confidence interval of 0.73 to 3.28) for polydactyly in Blacks based on drugs used by 386 Blacks included in the study. No association was found between the ingestion of doxylamine succinate during the first 4 lunar months of pregnancy either with major malformations or with the overall group of malformations. The investigators concluded that, "on the basis of substantial numbers, there was no evidence to suggest that exposure to antihistamines, antinauseants, or to phenothiazines was related to malformations overall, or to large categories of major or minor malformations."

Gibson et al. (Ref. 37) conducted a prospective study of pregnant women attending the Queen Victoria Hospital (6,476 women) and the Obstetric Department of the Queen Victoria Hospital (1,180 women) in Adelaide, Australia. This study evaluated the outcome of pregnancy against exposure to an antinauseant drug containing doxylamine succinate, dicyclomine hydrochloride, and pyridoxine hydrochloride. Each woman was interviewed after birth and at her first antenatal visit to her physician. A wide range of information was collected using a questionnaire that included maternal age; parity; residential area; personal and family medical history; occupation; diet; consumption of alochol, tobacco, cannabis; other nontherapeutic drugs and therapeutic drugs; exposure to chemicals; and other behavioral and environmental factors. The study population included 5,771 (76.1 percent) women who did not use the antinauseant drug during pregnancy, 1,685 (22.2 percent) women who used the drug during the first trimester of pregnancy, and 132 (1.7 percent) women who used the antinauseant drug after the first trimester of pregnancy. Data analyses compared pregnancy outcomes for the 5,771 women who did not use the antinauseant drug and the 1,685 women who used the drug during the first trimester of pregnancy. Other than anomalies of the male genital tract, analyses for differences in the risk for the occurrence of congenital anomalies that were uncontrolled for possible confounding factors and analyses that were controlled for possible confounding factors showed no significant differences between children whose mothers had used the antinauseant drug during the first trimester of pregnancy and children whose mothers had not used the drug during pregnancy. The investigators concluded that the study provided no evidence that the use of the antinauseant drug containing doxylamine succinate during the first trimester of pregnancy increases the risk of congenital anomalies either of the cardiovascular system or of the limbs. The multivareate analyses indicated a possible real effect of maternal use of the antinauseant drug in increasing the risks of the occurrence of genital tract anomalies. However, the investigators stressed that a data analysis of the kind performed for this study entails, many different comparisons, thereby increasing the probability that some apparently "significant" differences will emerge as a result of chance alone. The investigators stated that routine statistical significance testing should therefore not be used as a primary criterion in drawing conclusions.

In England, Greenberg et al. (Ref. 38) studied drug use during the first trimester of pregnancy in 836 mothers of congenitally malformed infants and in an equal number of control mothers of normal babies. The study considered possible associations between drug use and subsequent birth of a malformed infant. Cases of infants born with neural tube defects, oral clefts, limb deformities, or other malformations were identified from reports to the Office of Population Censuses and Surveys. The children's general practitioners were contacted. If willing, the physicians were interviewed by a medical field officer to obtain data concerning antenatal, personal, and family history as well as drugs prescribed during the first trimester of pregnancy. For each abnormal "case" baby, similar information was obtained from a mother of a normal "control" baby born within 3 months of the date of birth of the abnormal "case" baby. This study included 836 case-control pairs born in 1969, 1972, or 1973. An antiemetic drug had been prescribed for 178 mothers of control babies and for 157 mothers of case babies; this difference was not significant. Doxylamine succinate was prescribed for both case and control mothers for 13 case-control pairs, for the case mother only for 63 case-control pairs, for the control mother only for 75 case-control pairs, and for neither the case mother nor the control mother for 685 case-

control pairs. The investigators found no evidence that drugs dontaining doxylamine succinate are teratogenic for the congenital malformations studied.

In a retrospective analysis of drugs ingested in the first trimester of pregnancy in 7,933 consecutive deliveries between 1953 and 1975 in patients in a private practice, Newman, Correy, and Dudgeon (Ref. 30) found no associations between particular congenital abnormalities and particular drugs or groups of drugs studied. However, the investigators did find a twofold increase in congenital abnormalities in patients who had taken drugs of one kind or another during the first trimester of pregnancy. Data were obtained from the records of patients with pregnancies of at least 20 weeks' duration. Data collected included information concerning minor and major anomalies apparent at birth and drugs ingested during the first trimester. Data were analyzed to determine the number and type of congenital anomalies and their relation to drug usage as well as to determine the number of drugs used and their relation to the type and number of congenital anomalies present. Mothers who had a positive history of some type of drug use during the first trimester of pregnancy gave birth to 2,516 babies including 35 infants with malformations, 24 with major anomalies, and 11 with minor anomalies. Mothers who had a negative history for drug use of any kind gave birth to 5,417 babies including 41 infants with malformations, 32 with major anomalies, and 9 with minor anomalies. The observed incidence of anomalies in infants of mothers who used at least one drug was 1.39 percent and the observed incidence of anomalies in infants of mothers who did not use drugs was 0.76 percent. The difference in the observed incidences of anomalies for these two groups was significant at the $p < 0.01$ level. However, analysis of the data did not demonstrate a constant relationship between any particular abnormality and maternal ingestion of any particular drug (including the antinauseant drug containing doxylamine succinate) or between any drug or pharmacologic group of drugs (including antiemetics) and any particular abnormality. The investigators concluded that, while no particular drug was implicated as a teratogen in this study, it is significant that twice the incidence of congenital abnormalities occurred in infants of mothers with a positive history of the use of one or more drugs during the first trimester of pregnancy compared to the incidence of abnormalities in infants of mothers with a negative history of any drug use during the first trimester of pregnancy.

In Germany, Michaelis et al. (Ref. 31) evaluated the possible teratogenic effects of maternal use of an antinauseant drug containing doxylamine succinate, dicyclomine hydrochloride, and pyridoxine hydrochloride during the first 12 weeks of pregnancy in a prospective study of 13,845 pregnancies. Data were obtained from a prospective study series on the course of pregnancy and child development. The study included 13,645 pregnancies. The mothers were seen by a physician every 4 weeks during pregnancy and these mothers filled out daily diary cards that covered a wide range of factors that could exert an effect on the course of pregnancy and child development, including information concerning maternal drug usage. Maternal drug use was also documented by the attending physician. Of the 13,645 pregnancies, the antinauseant drug containing doxylamine succinate was used by the mother in 1,001 cases during the first 12 weeks of pregnancy and 20 severe malformations (2 percent) occurred in infants born to these mothers. In comparison, 175 severe malformations (1.4 percent) occurred in infants of the 12,644 mothers who did not use the drug during the first 12 weeks of pregnancy. The difference, i.e., 2 percent compared to 1.4 percent, in the incidence of severe malformations in these two groups of infants was not statistically significant. Further analysis of the data yielded a risk ratio of 1.37 with a 90 percent confidence interval of 0.89 to 2.06 for the incidence of severe malformations in infants of mothers who had used the antinauseant drug compared to infants of mothers who had not used the drug. In addition, the malformations observed were very heterogeneous, so that specific types of abnormalities could not be defined for the two groups of infants evaluated. The investigators found no significant differences between the incidence of malformations for groups of infants whose mothers had ingested other antinauseant drugs during pregnancy and for groups of infants whose mothers had not ingested the drugs. A matched-pairs analysis was done of the data where mothers who had used the antinauseant drug containing doxylamine succinate were matched with mothers who had not used the drug with respect to maternal age, parity, number of previous abortions, and the clinic that provided maternal care. The investigators reevaluated the risk ratio for the incidence of severe malformations in infants whose mothers had used the antinauseant drug containing doxylamine succinate during the first 12 weeks of pregnancy. The study population was divided into two subgroups, one group of 7,870 pregnancies that had been evaluated in an earlier interim publication and another group of 5,775 additional pregnancies evaluated in this study. . Matching of pregnancies in the two subgroups resulted in 406 pairs in one group and 468 pairs in the other group. A combined analysis of these two sets of matched pairs yielded a risk ratio of 0.95 with a 90 percent confidence interval of 0.52 to 1.73. The investigators stated that evaluation of the 13,645 pregnancies studied prospectively yielded no grounds for concluding that ingestion of the antinauseant drug containing doxylamine succinate during pregnancy led to an elevated background risk of malformations in infants.

In a case-control study, Bunde and Bowles (Ref. 32) compared the incidence of congenital anomalies in infants who were exposed in utero to an antinauseant drug containing doxylamine succinate with the incidence of congenital anomalies in infants who were not exposed in utero to the drug. The investigators did not find a significant difference in the incidence of abnormalities between drug exposed and unexposed infants. Mothers who had used the antinauseant drug during pregnancy were matched with mothers who had not used the drug with respect to the time of pregnancy, the same physician, and the same hospital. The study involved 21 physicians known to prescribe the antinauseant drug for pregnant patients. Data were obtained from report forms filled out by the physicians that contained information concerning the time and amount of antinauseant drug use by the patient, other drug use during pregnancy, maternal age, length of gestation, maternal illnesses during pregnancy, and condition of the infant at birth. The report form also contained the same information concerning the matched control patient, i.e., "the next previous delivery not taking [the antinauseant drug]." Over approximately 6 years, data concerning 2,218 matched pairs of mothers were reported by the physicians. Of the 32 congenital abnormalities reported for infants of all mothers studied, 21 abnormalities occurred in infants of control mothers and 11 occurred in infants of mothers who had used the antinauseant drug. This difference in the occurrence of abnormalities for drug

exposed and unexposed infants was not significant ($p < 0.10$).

Clark and Clayton (Ref. 39) found no significant differences in maternal use of an antinauseant drug containing doxylamine succinate, dicyclomine hydrochloride, and pyridoxine hydrochloride between 788 cases of perinatal death and 788 controls consisting of the first live births that immediately followed the occurrence of the perinatal death at the same obstetric unit. The study included perinatal deaths and live births in Leicestershire, England, during the period 1976 to 1979. Maternal drug use was ascertained through interviews of the mothers. Of the mothers of infants who died, 9.9 percent reported use of the antinauseant drug. Of the mothers of infants who lived, 9.4 percent reported use of the drug.

At the 1986 Teratology Society meeting, Rosa (Ref. 41) discussed a study that examined estimated relative risks for spontaneous abortions and live born defects in pregnancy cohorts for each of 510 generically identified drugs, which included doxylamine succinate. The data were obtained from a computerized data base (Michigan Medicaid) on approximately 35,000 annual pregnancies since 1980 and included 104,339 women. A total of 6,564 children ages 0 to 4 years with suspected birth defect diagnoses were linked to the women. Suspected birth defects occurred in 457 of the children born to 5,995 of the mothers who received an antinauseant drug containing doxylamine succinate 300 to 180 days before delivery (i.e., in the first trimester). A relative risk estimate of 1.2, with 95 percent confidence limits of 1.1 to 1.4, was found for all birth defects for children whose mothers had received the antinauseant drug. Elevated relative risks were found for congenital hip deformity (relative risk estimate of 1.4, with 95 percent confidence limits of 1.1 to 1.8), congenital hip dislocation (relative risk estimate of 1.7, with 95 percent confidence limits of 1.2 to 2.4), female genital anomalies (relative risk of 16.4, with 95 percent confidence limits of 3.5 to 78), intestinal fixation anomalies (relative risk of 3.6, with 95 percent confidence limits of 1.2 to 9.9), and iris/ciliary body defects (relative risk estimate of 7.5, with 95 percent confidence limits of 2.3 to 23). The investigator stated that associations should be considered screening signals that require further study and confirmation in other studies. The investigator concluded that this unadjusted profile of 457 suspected birth defect outcomes with 5,995 first trimester exposures to the antinauseant drug containing doxylamine generally supports lack of teratogenicity for the birth defects studied. He added that further study of female genital organ anomalies (relative risk estimate of 16.4) is desirable because nausea in pregnancy relates to maternal sex hormone levels.

The agency has reviewed extensive data concerning the possible teratogenicity of doxylamine succinate and concludes that it is unlikely that this ingredient is a teratogen. The agency recognizes that even the large number of pregnancies evaluated in the numerous studies discussed above cannot rule out the possibility that doxylamine succinate has a weak teratogenic potential. However, the agency believes that this ingredient can be safely marketed OTC as an antihistamine when labeled with the pregnancy/nursing warning required in 21 CFR 201.63. (See comment 2 below.) Therefore, doxylamine succinate is being included in the tentative final monograph.

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2. Two comments urged that doxylamine succinate not be made available as an OTC antihistamine drug product. These comments stated that doxylamine succinate is used primarily in a prescription drug product that is marketed as an antinauseant to be taken during pregnancy. The comments expressed the concern that pregnant women might take OTC antihistamine drug products containing doxylamine succinate to self-medicate for nausea during the critical first trimester of pregnancy.

A reply comment advocated OTC status for doxylamine succinate because it has been sold OTC as an antihistamine at a dosage of 7.5 milligrams (mg) since the 1950's. The comment stated that doxylamine succinate in OTC drug products is labeled for use as an antihistamine, not as an antinauseant for use during pregnancy. The comment added that there did not seem to be any information suggesting that pregnant women had used antihistamine drug products containing doxylamine succinate as an antinauseant during the long period of time that they have been marketed OTC. The comment also stated that the prescription drug product containing doxylamine succinate that is used as an antinauseant during pregnancy has been shown to be safe by many studies. The comment cited six of these studies (Refs. 1 through 6). (Note: In June 1983, the marketing of the above mentioned prescription drug product was discontinued voluntarily by the manufacturer.)

The agency agrees with the reply comment. Doxylamine succinate can be generally recognized as safe and effective as an antihistamine in OTC drug products for the temporary relief of symptoms of allergic rhinitis and the common cold. (See comment 1 above.) Doxylamine succinate at the 7.5-mg dosage level has been sold as an OTC antihistamine in cough-cold products for many years. The comments that objected to the OTC marketing of this drug did not present any data and the agency is not aware of any data, indicating that pregnant women have used OTC cough-cold drug products containing doxylamine succinate to self-medicate for nausea during pregnancy. The OTC antihistamine drug products will be labeled only for use to relieve symptoms of allergic rhinitis and the common cold.

In addition, in the Federal Register of December 3, 1982 (47 FR 54750), the agency published a final rule requiring the following pregnancy warning in the labeling of all OTC drug products that are intended for systemic absorption into the body: "As with any drug, if you are pregnant or nursing a baby, seek the advice of a health professional before using this product." The agency believes that the proposed labeling for doxylamine succinate in this amendment to the tentative final monograph and the required warning concerning the use of OTC drug products during pregnancy are adequate to prevent misuse during pregnancy and to allow for general recognition of doxylamine succinate as safe and effective for OTC use as an antihistamine.

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3. Several comments disagreed with the Panel's recommendation to allow the OTC marketing of doxylamine succinate at dosage levels greater than 7.5 mg. Such dosage strengths had previously been available by prescription only. In

general, the comments expressed opinions, without supporting data, that the benefits obtained from allowing higher dosage levels of this ingredient in OTC drug products would not outweigh the risks to which consumers would be exposed. Among the risks mentioned were a pronounced tendency to produce drowsiness and other adverse reactions. The comments also expressed concern that asthmatics with severe bronchitis would suffer from a thickening of secretions due to the anticholinergic effect of antihistamines.

In the preamble to the Panel's report at 41 FR 38313, the agency disagreed with the Panel's Category I classification of doxylamine succinate at dosage levels greater than 7.5 mg, i.e., adult dosages of 7.5 to 12.5 mg every 4 to 6 hours. The agency's objection to the OTC marketing of doxylamine succinate at dosages greater than 7.5 mg was based on the drowsiness that may result when this ingredient is used at higher doses. Subsequently, in a final decision concerning the marketing of diphenhydramine hydrochloride as an OTC antitussive drug product, published in the **Federal Register** of August 31, 1979 (44 FR 51512), the Commissioner found that the risk of drowsiness in itself does not justify restricting a drug to prescription use if "the manufacturer provides essential information in the labeling." Therefore, the dosages for doxylamine succinate recommended by the Panel are being adopted.

The following directions for use are being included in the tentative final monograph: Adults and children 12 years of age and over: oral dosage is 7.5 to 12.5 milligrams every 4 to 6 hours, not to exceed 75 milligrams in 24 hours, or as directed by a doctor. Children 6 to under 12 years of age: oral dosage is 3.75 to 6.25 milligrams every 4 to 6 hours, not to exceed 37.5 milligrams in 24 hours, or as directed by a doctor. Children under 6 years of age: consult a doctor. Also, the following directions for use are being included in proposed § 341.90 *Professional labeling:* Children 2 to under 6 years of age: oral dosage is 1.9 to 3.125 milligrams every 4 to 6 hours, not to exceed 18.75 milligrams in 24 hours.

The warnings proposed in §§ 341.72(c)(1) and (2), which are general warnings for all OTC antihistamine drug products and which include a warning to persons with asthma and chronic pulmonary disease not to take this drug unless directed by a doctor, are also proposed for doxylamine succinate. These warnings are in addition to the warning in proposed § 341.72(c)(4) that concerns drowsiness. The agency is proposing that this warning be revised to advise consumers that, in addition to alcohol, sedative and tranquilizer drug products intensify the drowsiness effect of antihistamines. The warning is revised to read, "May cause marked drowsiness; alcohol, sedatives, and tranquilizers may increase the drowsiness effect. Avoid alcohol while taking this product. Do not take this product if you are taking sedatives or tranquilizers, without first consulting your doctor. Use caution when driving a motor vehicle or operating machinery."

4. One comment questioned the dosage of doxylamine succinate when used as an antihistamine. The comment stated that, in comparing doxylamine succinate with promethazine, the Panel stated that "Doxylamine has also been described as being slightly 'less potent' than promethazine but having a longer duration of action" (41 FR 38386). However, the Panel recommended a dosage for doxylamine of "every 4 to 6 hours" and for promethazine of "every 8 to 12 hours." The comment concluded that the Panel, in effect, recommended that an ingredient having a longer duration of action be taken more frequently, and requested clarification of this apparent discrepancy.

The agency has reviewed the reference cited in the Panel's report that describes the duration of action for doxylamine and promethazine (Ref. 1). The agency has determined that the reference was misquoted. Promethazine is actually the active ingredient described as having a "longer duration of action" rather than doxylamine as stated in the Panel's report. Therefore, a more frequent dosage schedule for doxylamine is appropriate.

Reference

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5. One comment noted an apparent oversight in the Panel's conclusion on the dosage for doxylamine succinate and suggested that the words "for adults" be added to clarify the Panel's conclusion (41 FR 38386). As changed, the statement would read: "The Panel concludes that doxylamine succinate 7.5 mg is the minimum effective OTC dosage for adults for the relief of the symptoms of allergic rhinitis."

The agency agrees with this change. The Panel stated in its dosage discussion of doxylamine succinate and in § 341.12(d) of its recommended monograph that the adult oral dosage of this drug is 7.5 to 12.5 mg every 4 to 6 hours, not to exceed 75 mg in 24 hours.

6. One comment stated that it was unaware of any clinical evidence that doxylamine succinate causes excitability in children. The comment added that the existing evidence demonstrates that doxylamine succinate does not cause excitability in children 6 years of age and over, citing attachments 17 (Ref. 1) and 18 (Ref. 2) in OTC Volume 040264 to support its contention. The comment recommended that the label warning recommended by the panel in § 341.72(b)(1), which states "May cause excitability especially in children," not be required for doxylamine succinate.

The agency does not agree with the comment's recommendation. The agency has reviewed the references cited above. These articles primarily report the results of studies in children conducted to determine the effectiveness of doxylamine succinate in various conditions. The evaluation of side effects, such as excitability, was not the primary purpose of the studies. The authors, in fact, did not mention whether excitability did or did not occur. The fact that excitability was not discussed or measured in the studies is not a sufficient basis to conclude that excitability does not occur, and that the warning recommended in § 341.72(b)(1) is not needed.

The Panel's report at 41 FR 38380 recognizes that "among the antihistamines, there are minor differences in the nature and frequency of side effects and toxicity which are related to chemical class." The incidence and severity of adverse effects, and the dose that causes these effects, vary with each drug and each individual. It should be noted that antihistamines as a class have both depressant and stimulant effects on the central nervous system (Ref. 3). Central nervous system depression manifested by drowsiness is the most common side effect. However, patients given conventional doses may occasionally become restless, nervous, and unable to sleep (Ref. 4).

In children, antihistamines can have a stimulating effect instead of the usual sedative effect which commonly occurs in adults (Ref. 5). Because antihistamines, as a pharmacologic group, can cause excitability, especially in children, and this effect cannot be predicted for an individual or for a specific antihistamine, the agency concludes that the warning is applicable to all antihistamines. Until data are presented that clearly show that doxylamine succinate or any other Category I antihistamine does not cause excitability in children, the agency believes that the consumer should be warned of this possible side effect.

Therefore, the agency proposes that the warning "May cause excitability especially in children," be required for all antihistamine active ingredients.

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(5) "Evaluation of Drug Interactions," 2d Ed., American Pharmaceutical Association, Washington, pp. 377–380, 1970.

B. Comments on Dosages for Triprolidine Hydrochloride.

7. Two comments requested that the agency's proposed dosage of 2.5 mg every 6 to 8 hours for triprolidine hydrochloride (50 FR 2217) be changed to a dosage of 2.5 mg every 4 to 6 hours, with the 24-hour maximum dose to remain 10 mg. Both comments stated that a dosing frequency of every 6 to 8 hours, as proposed in the tentative final monograph, is inconsistent with the dosing frequency of every 4 to 6 hours that had been approved by the agency, under the new drug approval procedures, for several currently marketed OTC antihistamine drug products at the same adult dosage levels of 2.5 mg triprolidine hydrochloride.

One comment, from a manufacturer that currently markets OTC triprolidine hydrochloride drug products under approved supplemental new drug applications (NDA's), stated that the safety and efficacy data in support of a dosing frequency of 2.5 mg every 4 to 6 hours are contained in its NDA's and, if necessary, could also be submitted to the agency's docket for the OTC antihistamine rulemaking. The other comment contended that the agency's proposed dosing frequency of 2.5 mg every 6 to 8 hours would preclude combining triprolidine hydrochloride as an antihistamine with any nasal decongestant active ingredient. The comment explained that the dosing frequencies proposed by the agency in the nasal decongestant tentative final monograph (50 FR 2239) of every 4 hours for phenylephrine hydrochloride and every 4 to 6 hours for pseudoephedrine hydrochloride and pseudoephedrine sulfate are inconsistent with the 6 to 8 hour dosing frequency for triprolidine hydrochloride. The comment argued that the preclusion of combination drug products containing triprolidine hydrochloride and a nasal decongestant would contradict the Panel's Category I recommendation for combinations of an antihistamine and a nasal decongestant.

The dosing frequency for triprolidine hydrochloride of 2.5 mg every 6 to 8 hours, initially proposed by the agency in the tentative final monograph, was based on the labeling in approved NDA's for prescription drug products containing this ingredient. This labeling stated that the adult dosage is 2.5 mg "3–4 times a day" (Ref. 1). Three to four times a day was construed to be one dose every 6 to 8 hours over a 24-hour period of time.

The agency has reviewed several published studies cited by one comment in its approved supplemental NDA's and agrees that the studies support a dosing frequency of 2.5 mg every 4 to 6 hours for triprolidine hydrochloride (Refs. 2, 3, and 4). One double-blind study involving 184 adults with a history of ragweed allergy compared the effectiveness of triprolidine hydrochloride alone, pseudoephedrine hydrochloride alone, triprolidine hydrochloride and pseudoephedrine hydrochloride in combination, and a placebo in reducing symptoms of allergic rhinitis (Ref. 2). A symptom complex score comprised of "nose blows, sneezing, rhinorrhea and nasal itch, lacrimation and itching of the eyes, ears and oral cavity" was used to measure the effectiveness of the different medications in treating symptoms of allergic rhinitis. On the first treatment day, 47 test subjects received 2.5 mg triprolidine hydrochloride at 11:30 a.m., 5:30 p.m., and 11:30 p.m. The mean of the square root of the allergic rhinitis symptom complex score for the 47 patients reached a minimum, i.e., the symptoms monitored were reduced to the greatest extent, when measured at 2:30 p.m. (3 hours after the initial dose at 11:30 a.m.). The mean began to increase after 2:30 p.m., indicating an increase in symptoms. Symptom complex scores were not measured after the 5:30 p.m. and 11:30 p.m. doses. On the second day the same 47 test subjects received 2.5 mg triprolidine hydrochloride at 8:30 a.m. and 2:30 p.m. The mean of the square root of the allergic rhinitis symptom complex score for the 47 patients taking triprolidine hydrochloride reached a minimum at 12:30 p.m. (4 hours after the 8:30 a.m. dose) and began to increase after 12:30 p.m. These data suggest that the effectiveness of triprolidine hydrochloride in treating symptoms of allergic rhinitis begins to decrease 3 to 4 hours after a dose has been taken. In addition, the mean of the square root of the allergic rhinitis symptom complex score for the triprolidine hydrochloride test group at 8:30 a.m. on the second day of the study, 9 hours after the 11:30 p.m. dose taken on the first day, was equivalent to the baseline mean of the square root of the symptom complex score for this group measured at the time the initial dose was given at 11:30 a.m. on the first day of the study. These data suggest that after 9 hours a dose of 2.5 mg triprolidine is no longer effective in reducing symptoms of allergic rhinitis.

A double-blind crossover study involving eight healthy male volunteers aged 21 to 50 years studied the effects of triprolidine hydrochloride and cyclizine hydrochloride in inhibiting the skin response to injected histamine. Subjects were studied on four occasions at weekly intervals. Each of the eight subjects received all of the following four treatments, one treatment each week: lactose placebo, 2.5 mg triprolidine hydrochloride, 50 mg cyclizine hydrochloride, and 100 mg cyclizine hydrochloride (Ref. 3). Inhibition of flare and weal responses to intradermal injections of histamine were assessed following these dosages of triprolidine hydrochloride, cyclizine hydrochloride, or lactose. At 1, 2, and 4 hours after the dose was given, three intradermal injections of histamine (0.1, 0.4, and 1.6 micrograms) were made into the back of the test subjects. Twenty minutes after injecting the histamine each flare and weal was measured. Significant displacement of dose-response curves, indicating the inhibition of a skin response to histamine, occurred at 1, 2, and 4 hours after 2.5 mg doses of triprolidine hydrochloride. However, the magnitude of the displacement of the dose-response curves decreased from 5.95 at 2 hours to 3.96 at 4 hours indicating that the effectiveness of 2.5 mg triprolidine hydrochloride to inhibit a skin response to histamine began to decrease between 2 and 4 hours after the drug had been given.

A double-blind crossover placebo-controlled bioavailability study in 18 healthy volunteers examined blood plasma levels of triprolidine hydrochloride in subjects taking a combination drug containing triprolidine hydrochloride and pseudoephedrine hydrochloride in an immediate release

dosage form. The study compared this group to subjects taking the same combination drug in a sustained release dosage form (Ref. 4). The test drugs included (1) sustained release capsules containing 5 mg triprolidine hydrochloride and 120 mg pseudoephedrine hydrochloride, (2) immediate release tablets containing 2.5 mg triprolidine hydrochloride and 60 mg pseudoephedrine hydrochloride, and (3) placebo tablets and capsules. The volunteers took the test drugs over a 5-day period. Sustained release capsules containing the combination of active drugs were given alternately with placebo capsules each day according to the following dosage in order to parallel the immediate release dosage schedule: an active drug combination capsule at 8 a.m., a placebo capsule at 2 p.m., an active drug combination capsule at 8 p.m., and a placebo capsule at 2 p.m. Immediate release capsules containing the combination of active drugs were given each day according to the following schedule: one tablet every 6 hours at 8 a.m., 2 p.m., 8 p.m., and 2 a.m. On the fifth day, blood samples were drawn at 8 a.m., 9 a.m., 10 a.m., 12 p.m., 2 p.m., 3 p.m., 4 p.m., 6 p.m., 8 p.m., and 10 p.m. These samples were measured to determine steady-state blood plasma levels for triprolidine hydrochloride and pseudoephedrine hydrochloride following the administration of the sustained release dosage form and following the administration of the immediate release dosage form. The mean triprolidine plasma levels measured for the immediate release dosage form on the fifth day reached an averaged maximum level at 1.6 hours with a range of 1 to 4 hours after the 8 a.m. and 2 p.m. doses. Six hours after each of these immediate release doses, the triprolidine hydrochloride plasma levels decreased to approximately 55 percent of the maximum levels measured. In addition, DeAngelis, et al. (Ref. 5) found a half-life of 5 hours for triprolidine hydrochloride.

Based on a review of the above published studies and on currently approved labeling of OTC drug products containing triprolidine hydrochloride (Ref. 6), the agency concludes that a dosing frequency of every 4 to 6 hours for both adults and children is appropriate for triprolidine hydrochloride and has revised the proposed directions for OTC use (§ 341.72(d)(10), redesignated as § 341.72(d)(12)) and the proposed directions for professional use of this drug [§ 341.90(k), redesignated § 341.90(m)], to read as follows:

* * * * *

(12) *For products containing triprolidine hydrochloride identified in 341.12(1).* Adults and children 12 years of age and over: oral dosage is 2.5 milligrams every 4 to 6 hours, not to exceed 10 milligrams in 24 hours, or as directed by a doctor. Children 6 to under 12 years of age: oral dosage is 1.25 milligrams every 4 to 6 hours, not to exceed 5 milligrams in 24 hours, or as directed by a doctor. Children under 6 years of age: consult a doctor.

* * * * *

(m) *For products containing triprolidine hydrochloride identified in § 341.12(1).* Children 4 to under 6 years of age: oral dosage is 0.938 milligram every 4 to 6 hours, not to exceed 3.744 milligrams in 24 hours. Children 2 to under 4 years of age: oral dosage is 0.625 milligram every 4 to 6 hours, not to exceed 2.5 milligrams in 24 hours. Infants 4 months to under 2 years of age: oral dosage is 0.313 milligram every 4 to 6 hours, not to exceed 1.252 milligrams in 24 hours.

References

(1) Copies of FDA-approved labeling from NDA 11–110 and NDA 11–496, OTC Volume 04HTFM, Docket No. 76N–052H, Dockets Management Branch.

(2) Connell, J.T., et al., "A Double-Blind Controlled Evaluation of Actifed and its Individual Constituents in Allergic Rhinitis," *Journal of International Medical Research*, 10:341–347, 1982.

(3) Hamilton, M., et al., "A Comparison of Triprolidine and Cyclizine on Histamine (H_1) Antagonism, Subjective Effects and Performance Tests in Man," *British Journal of Clinical Pharmacology*, 13:441–444, 1982.

(4) Perkins, J.G., et al., "A Bioavailability and Safety Study Comparing Actifed Sustained-Action (SA) Capsules to Actifed Immediate-Release (IR) Tablets," *Current Therapeutic Research*, 28(5):650–668, 1980.

(5) DeAnglelis, R.L., M.F. Kearney, and R.M. Welch, "Determination of Triprolidine in Human Plasma by Quantitative TLC," *Journal of Pharmaceutical Science*, 66:841–843, 1977.

(6) Copies of FDA-approved labeling from NDA 11–110 and NDA 11–496, OTC Volume 04HFM, Docket No. 76N–052H, Dockets Management Branch.

II. The Agency's Proposals Concerning Chlorcyclizine Hydrochloride

Chlorcyclizine hydrochloride, as a single ingredient antihistamine at a 50-mg oral dose, was first marketed under an approved NDA in 1949 (Ref. 1). It was approved for OTC marketing at a 25-mg dose in 1959 and at this dose has been exempted from the prescription dispensing requirements of section 503(b)(1)(C) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(b)(1)(*c*)) since August 21, 1959 (24 FR 6905). [See 21 CFR 310.201(a)(25).] Chlorcyclizine hydrochloride (25 mg) in combination with pseudoephedrine hydrochloride (30 mg) at a dosage of one tablet three times a day has been marketed OTC under an approved NDA since 1959 (Ref. 2).

Drug products containing chlorcyclizine hydrochloride as a single ingredient and in combination with pseudoephedrine were reviewed under the agency's Drug Efficacy Study Implementation (DESI) Program. In DESI notices published in the Federal Register of July 27, 1972 (37 FR 15030) and July 29, 1976 (41 FR 31592), FDA stated its conclusion that chlorcyclizine hydrochloride (25 and 50 mg) is effective for relieving seasonal and perennial allergic rhinitis and vasomotor rhinitis. The latter notice noted that the manufacturer had discontinued marketing the 50-mg product in 1968. In a July 8, 1972 DESI notice (37 FR 13494), the Panel on Drugs Used in Allergy of the DESI Group stated that chlorcyclizine hydrochloride (25 mg) in combination with pseudoephedrine hydrochloride (30 mg) was effective in relieving hay fever, but was ineffective as a fixed combination in relieving nasal congestion because the dose of pseudoephedrine was less than optimal. The July 8, 1972 notice, which pertained to the review of OTC drugs by the DESI group, also deferred implementation of the Drug Efficacy Study pending the results of the OTC drug review. The OTC dose of pseudoephedrine was discussed in the advance notice of proposed rulemaking for OTC cold, cough, allergy, bronchodilator, and antiasthmatic drug products (September 9, 1976; 41 FR 38402) and in the tentative final monograph for OTC nasal decongestant drug products (January 15, 1985; 50 FR 2229).

No data on chlorcyclizine hydrochloride were submitted to the Cough-Cold Panel, and the ingredient was not reviewed as part of the OTC drug review. At this time, chlorcyclizine hydrochloride is being included in this amendment to resolve administrative questions that may have arisen concerning its status.

A review of FDA adverse reaction reports since 1969 indicates that only one adverse reaction, i.e., a report of "no drug effect," has been reported for a chlorcyclizine hydrochloride-containing drug product (Ref. 3). Based on the DESI reviews mentioned above that support the effectiveness of the drug as an antihistamine, and the long history of safe marketing as an OTC antihistamine, the agency concludes that

chlorcyclizine hydrochloride (25 mg) can be generally recognized as safe and effective for OTC use. The agency therefore is proposing Category I for this ingredient.

The labeling requirements for OTC antihistamine drug products in § 341.72 are also applicable to drug products containing chlorcyclizine hydrochlorides. Based on the NDA labeling for chlorcyclizine hydrochloride products, the dosage recommended in § 310.201(a)(25), and other data (Ref. 4), the agency proposes the following dosage for chlorcyclizine hydrochloride: Adults and children 12 years of age and over: 25 milligrams every 6 to 8 hours, not to exceed 75 milligrams in 24 hours, or as directed by a doctor. Children under 12 years of age: Consult a doctor. Additionally, based on the pediatric dosage recommendations in § 310.201(a)(25)(vi), and the general guidelines used by the Cough-Cold Panel for determining pediatric dosages (41 FR 38333), the following dosages for chlorcyclizine hydrochloride for pediatric use are included in professional labeling in § 341.90: *For products containing chlorcyclizine hydrochloride identified in § 341.12(b).* Children 6 to under 12 years of age: Oral dosage is 12.5 milligrams every 6 to 8 hours, not to exceed 37.5 milligrams in 24 hours. Children 2 to under 6 years of age: Oral dosage is 6.25 milligrams every 6 to 8 hours, not to exceed 18.75 milligrams in 24 hours.

In 1966, acting on the recommendation of an Ad Hoc Advisory Committee on the Teratogenic Effect of Certain Drugs, FDA required relabeling, through NDA supplements, of drug products containing chlorcyclizine hydrochloride, cyclizine hydrochloride, and meclizine hydrochloride to include the following specific warning: "Warning—Not for use by women who are pregnant or who may possibly become pregnant, unless directed by a physician, since this drug may have the potentiality of injuring the unborn child." This labeling warning was prompted by concern that the drugs may have teratogenic or embryolethal potential. This required labeling statement (and others which are covered by this rulemaking) is included in 21 CFR 201.307, 310.201(a)(25), 369.20, and 369.21. [Chlorcyclizine hydrochloride, cyclizine hydrochloride, and meclizine hydrochloride are members of the piperazine class of antihistamines. Cyclizine hydrochloride and meclizine hydrochloride are primarily used as antiemetics, i.e., for the prevention and treatment of nausea and vomiting associated with motion sickness.]

Subsequently, in the **Federal Register** of March 13, 1975 (40 FR 12935), the Advisory Review Panel on OTC Laxative, Antidiarrheal, Emetic, and Antiemetic Drug Products concluded that the available data do not warrant a restriction in the use of meclizine hydrochloride or cyclizine hydrochloride or the need for a pregnancy warning (40 FR 12935). The Panel based its conclusion on a review of the report of the FDA Ad Hoc Advisory Committee in light of more recent epidemiological data, taking into consideration the position of the American Teratology Society regarding the limitations of extrapolating animal data to man (Ref. 5). Epidemiological data on 50,282 pregnant women, 1,014 of whom had used meclizine hydrochloride during the early stages of pregnancy, indicate that the incidence of malformation of the offspring of the 1,014 women was not statistically greater than that of the control group (who had taken other drugs during pregnancy). Further, there is indirect evidence that meclizine hydrochloride is not toxic to the embryo and that the incidence of specific teratogenicity, e.g., cleft palate, was lower in the human pregnancy data than might have been expected from the results of the animal teratogenicity studies that led to the pregnancy warning (Ref. 6). The Panel concluded that the data do not support a restriction in the use of meclizine hydrochloride or cyclizine hydrochloride or a pregnancy warning. FDA agreed with the Panel on this issue in the tentative final monograph for OTC antiemetic drug products (44 FR 41068). The agency also believes that the data concerning teratology associated with meclizine hydrochloride and cyclizine hydrochloride are equally applicable to chlorcyclizine hydrochloride.

The agency also has reexamined its policy with respect to pregnancy warnings on OTC drugs. On December 5, 1983, the following general pregnancy-nursing warning for all OTC drug products intended for systemic absorption became effective (21 CFR 201.63): "As with any drug, if you are pregnant or nursing a baby, seek the advice of a health professional before using this product." The agency has also evaluated additional human epidemiological data (Ref. 7) and has determined that chlorcyclizine hydrochloride, as well as cyclizine hydrochloride and meclizine hydrochloride, has not been established to be a human teratogen. The agency concludes that the general pregnancy warning required by § 201.63 is sufficient for OTC drug products containing these ingredients. The prescription drug labeling pregnancy precautions required by § 201.57(f)(6) are sufficient for prescription drug products containing these ingredients. Therefore, the specific pregnancy warning that has been required for chlorcyclizine, cyclizine, and meclizine or their salts in § 201.307 should be removed. In the final rule for OTC antiemetic drug products (April 30, 1987; 52 FR 15866), the agency stated that because the requirements of § 201.307 with respect to cyclizine hydrochloride and meclizine hydrochloride are superseded by the requirements of the antiemetic final rule, the agency would address removal of § 201.307 in a future **Federal Register** publication. In this document, the agency is proposing to remove §§ 201.307 and 310.201(a)(25)(vii)(*c*) as well as the warnings in § 369.20 and § 369.21 that pertain to the specific pregnancy warning for chlorcyclizine. This action will result in the complete removal of § 201.307 from the CFR.

In addition, the agency is proposing to remove all other portions of § 310.201(a)(25), because the provisions of that regulation will be superseded by the requirements of the final monograph for OTC antihistamine drug products (Part 341). For this same reason, those portions of § 369.20 and § 369.21 applicable to chlorcyclizine are also proposed to be removed.

Chlorcyclizine hydrochloride was not considered by an OTC advisory review panel and, therefore, does not meet the terms of the enforcement policy in § 330.13. However, NDA's that allow the OTC marketing of products containing chlorcyclizine hydrochloride have been approved by the FDA, and the drug has been marketed OTC for many years. Thus, FDA does not believe it is necessary to prohibit OTC marketing of chlorcyclizine hydrochloride under this proposal while public comments to its proposed monograph status are being evaluated. OTC marketing may be initiated subject to the terms and conditions specified in this amendment and in § 341.72 of the tentative final monograph for OTC antihistamine drug products (50 FR 2216) and subject to the risk that FDA may adopt a different position in the final monograph that may require relabeling, recall, or other regulatory action.

References

(1) Letter from E.E. Nelson, FDA, to Burroughs Wellcome and Co., Inc., OTC Volume 04HATFM, Docket No. 76N–052H, Dockets Management Branch,

(2) Letter from F.J. Talbot, FDA, to Burroughs Wellcome and Co., OTC Volume 04HATFM, Docket No. 76N–052H, Dockets Management Branch.

(3) Department of Health and Human Services, Food and Drug Administration, Adverse Reaction Summary Listings, pertinent pages for the years 1969–1986, OTC Volume 04HATFM, Docket No. 76N–052H, Dockets Management Branch.

(4) Brown, E.A., et al., "A Clinical Evaluation of Chlorcyclizine (Perazil)," *Annals of Allergy*, 8:32–43, 1950.

(5) Staples, R. E., "Teratogens and the Delaney Clause," Science? 185:813–814, 1974.

(6) Shapiro, S., Boston Children's Medical Center, Testimony Before OTC Laxative, Antidiarrheal, Emetic, and Antiemetic Panel, October 11, 1974, in OTC Volume 080PA2, Dockets Management Branch.

(7) Rosa, F., "Benzhydrylpiperazine (Cyclizines) Terato-Epidemiology," unpublished draft, June 25, 1985, in OTC Volume 04HATFM, Docket No. 76N–052H, Dockets Management Branch.

III. The Agency's Tentative Adoption of the Panel's Recommendations and the Agency's Amendments to the Tentative Final Monograph

A. Summary of Ingredient Categories

The agency has reviewed the active ingredient doxylamine succinate that was submitted to the Panel, as well as other data and information available at this time, and agrees with the Panel's recommendation that this ingredient be Category I. In addition, the agency is proposing that the active ingredient chlorcyclizine hydrochloride, which was not reviewed by the Panel, be Category I. Also, the agency is proposing a revised dosage schedule for the active ingredient triprolidine hydrochloride, which was previously proposed as Category I.

B. Summary of the Agency's Changes in the Tentative Final Monograph

1. Although not reviewed by the Cough-Cold Panel, the agency is proposing that chlorcyclizine hydrochloride be included in this tentative final monograph based on its exemption from the prescription dispensing requirements of the act since 1959 and on previous DESI findings that the drug is effective as an antihistamine. (See Part II. above—the agency's proposals concerning chlorcyclizine hydrochloride.)

2. The agency is proposing that doxylamine succinate be generally recognized as safe and effective at OTC oral dosages for adults and children 12 years of age and over of 7.5 to 12.5 mg every 4 to 6 hours, for children 6 to under 12 years of age of 3.75 to 6.25 mg every 4 to 6 hours, and professional labeling dosages for children 2 to under 6 years of age of 1.9 to 3.125 mg every 4 to 6 hours. (See comments 1 and 3 above.)

3. The agency has revised the letter designations in § 341.12 *Antihistamine active ingredients* to include the addition of the ingredients chlorcyclizine hydrochloride and doxylamine succinate in this section. The agency has revised the letter designations of active ingredients identified in §§ 341.72 (c) and (d) and 341.90 to reflect the revisions in § 341.12. The agency has also revised the number designations of the paragraphs in § 341.72(d) and the letter designations of the paragraphs in § 341.90 to reflect the addition of directions in § 341.72(d) and of professional labeling in § 341.90 for the ingredients chlorcyolizine hydrochloride and doxylamine succinate.

4. The agency is proposing to revise the warnings concerning the drowsiness effect of antihistamine drug products to also include sedatives and tranquilizers as other drugs that may intensify the drowsiness effect of antihistamines. In addition to alcohol, sedative and tranquilizer drugs are known to have additive effects to the drowsiness effect of antihistamine drug products (Refs. 1 and 2). The proposed warning for adults concerning drowsiness is revised to read as follows: "May cause (marked) drowsiness; alcohol, sedatives, and tranquilizers may increase the drowsiness effect. Avoid alcoholic beverages while taking this product. Do not take this product if you are taking sedatives or tranquilizers, without first consulting your doctor. Use caution when driving a motor vehicle or operating machinery." Because children may take prescription drug products that contain sedatives or tranquilizers, the agency is also proposing to revise the warning concerning drowsiness that is required for products labeled for pediatric use only to read as follows: "May cause (marked) drowsiness. Sedatives and tranquilizers may increase the drowsiness effect. Do not give this product to children who are taking sedatives or tranquilizers, without first consulting the child's doctor."

References

(1) Douglas, W. W., "Histamine and 5-Hydroxytryptamine (Serotonin) and Their Agonists," *in* "The Pharmacological Basis of Therapeutics," 7th Ed., edited by A. G. Gilman et al., MacMillan Publishing Co., New York, p. 621, 1985.

(2) "Histamine and Antihistamines," *in* "Remington's Pharmaceutical Sciences," 17th Ed., edited by A. R. Gennero, Mack Publishing Co., Easton, PA, pp. 1125–1128, 1985.

5. The agency has revised the proposed directions in § 341.72(d) for all antihistamine active ingredients to read "Adults and children 12 years of age and over: . . ." rather than "Adults: . . ." to provide more informative labeling for the consumer.

6. The agency has revised the proposed directions for OTC use (§ 341.72(d)(10), redesignated as § 341.72(d)(12)) and professional use (§ 341.90(k), redesignated as § 341.90(m)) of triprolidine hydrochloride to include a dosage schedule of every 4 to 6 hours, based on a review of published literature and on current FDA-approved labeling of OTC drug products containing triprolidine hydrochloride under supplemental NDA's. (See comment 7 above.)

The agency has examined the economic consequences of this proposed rulemaking in conjunction with other rules resulting from the OTC drug review. In a notice published in the Federal Register of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this proposed rule for OTC antihistamine drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. 96–354. That assessment included a discretionary Regulatory Flexibility Analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC antihistamine drug products is not expected to pose such an impact on small businesses. Therefore, the agency certifies that this proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities.

The agency invites public comment regarding any substantial or significant economic impact that this amendment would have on OTC antihistamine drug

products. Types of impact may include, but are not limited to, costs associated with relabeling, repackaging, or reformulating. Comments regarding the impact of this amendment on OTC antihistamine drug products should be accompanied by appropriate documentation. Because the agency has not previously invited specific comment on the economic impact of the OTC drug review on matters discussed in this amendment regarding OTC antihistamine drug products, a period of 120 days from the date of publication of this proposed rulemaking in the **Federal Register** will be provided for comments on this subject to be developed and submitted. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this amendment in the preamble to the final rule.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact, and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch, Food and Drug Administration (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

The agency is proposing to remove § 201.307 *Chlorcyclizine, cyclizine, meclizine; warnings; labeling requirements* in its entirety, § 310.201(a)(25), and portions of § 369.20 (under the heading "ANTIHISTAMINICS, ORAL") and § 369.21 (under the heading "ANTIHISTAMINICS, ORAL [PHENYLTOLOXAMINE DIHYDROGEN CITRATE, MECLIZINE HYDROCHLORIDE, DOXYLAMINE SUCCINATE, CHLOROTHEN CITRATE, CYCLIZINE HYDROCHLORIDE, AND CHLORCYCLIZINE HYDROCHLORIDE PREPARATIONS")) because the requirements of § 201.307 with respect to cyclizine hydrochloride and meclizine hydrochloride are superseded by the antiemetic final rule (21 CFR Part 336), published in the **Federal Register** of April 30, 1987 (52 FR 15886), and the requirements of § 201.307, § 310.201(a)(25), and the portions of § 369.20 and § 369.21 specified above with respect to chlorcyclizine hydrochloride and/or doxylamine succinate will be superseded by the antihistamine final monograph (21 CFR Part 341). The portions of §§ 201.307 and 310.20(a)(25) as well as the portions of §§ 369.20 and 369.21 specified above that will be removed and that pertain to the specific pregnancy warning for meclizine, cyclizine, and/or chlorcyclizine preparations are no longer needed because the OTC drug general pregnancy warning required by 21 CFR 201.63 and the prescription drug labeling pregnancy precautions required by 21 CFR 201.57(f)(6) are applicable to these ingredients.

Interested persons may, on or before October 23, 1987, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments, objections, or requests for oral hearing before the Commissioner on the proposed regulation. A request for an oral hearing must specify points to be covered and time requested. Written comments on the agency's economic impact determination may be submitted on or before December 22, 1987. Three copies of all comments, objections, and requests are to be submitted, except that individuals may submit one copy. Comments, objections, and requests are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments, objections, and requests may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Any scheduled oral hearing will be announced in the **Federal Register**.

Interested persons, on or before August 24, 1988, may also submit in writing new data demonstrating the safety and effectiveness of those conditions not classified in Category I. Written comments on the new data may be submitted on or before October 25, 1988. These dates are consistent with the time periods specified in the agency's final rule revising the procedural regulations for reviewing and classifying OTC drugs, published in the **Federal Register** of September 29, 1981 (46 FR 47730). Three copies of all data and comments on the data are to be submitted, except that individuals may submit one copy, and all data and comments are to identified with the docket number found in brackets in the heading of this document. Data and comments should be addressed to the Dockets Management Branch (HFA–305) (address above). Received data and comments may also be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

In establishing a final monograph, the agency will ordinarily consider only data submitted prior to the closing of the administrative record on October 25, 1988. Data submitted after the closing of the administrative record will be reviewed by the agency only after a final monograph is published in the **Federal Register**, unless the Commissioner finds good cause has been shown that warrants earlier consideration.

List of Subjects

21 CFR Part 201

Labeling, Drugs.

21 CFR Part 310

Administrative practice and procedure, Drugs, Reporting and recordkeeping requirements.

21 CFR Part 341

Labeling, Over-the-counter drugs, Antihistamine drug products.

21 CFR Part 369

Labeling, Medical devices, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Administrative Procedure Act, it is proposed that Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations be amended as follows:

PART 201—LABELING

1. The authority citation for 21 CFR Part 201 is revised to read as follows:

Authority: Secs. 201, 502, 505, 701, 52 Stat. 1040–1042 as amended, 1050–1056 as amended, 21 U.S.C. 321, 352, 355, 371; 21 CFR 5.10 and 5.11.

§ 201.307 [Removed]

2. In Subpart C, Part 201 is amended by removing § 201.307 *Chlorcyclizine, cyclizine, meclizine; warnings; labeling requirements.*

PART 310—NEW DRUGS

3. The authority citation for 21 CFR Part 310 is revised to read as follows:

Authority: Secs. 502, 503, 505, 701, 52 Stat. 1051, 1052, 1053, 1055 as amended (21 U.S.C. 352, 353, 355, 371); 5 U.S.C. 553; 21 CFR 5.10 and 5.11.

§ 310.201 [Amended]

4. In Subpart C, § 310.201 *Exemption for certain drugs limited by new-drug applications to prescription sale* is amended by removing paragraph (a)(25) and reserving it.

PART 341—COLD, COUGH, ALLERGY, BRONCHODILATOR, AND ANTIASTHMATIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

5. The authority citation for 21 CFR Part 341 (established in the Federal Register of October 2, 1986; 51 FR 35326) is revised to read as follows:

Authority: Secs. 201(p), 502, 505, 701, 52 Stat. 1041–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371); 5 U.S.C. 553; 21 CFR 5.10 and 5.11.

6. In Subpart B, § 341.12 (proposed in the Federal Register of January 15, 1985; 50 FR 2200) is revised to read as follows:

§ 341.12 Antihistamine active ingredients.

The active ingredients of the product consist of any of the following when used within the dosage limits established for each ingredient:

(a) Brompheniramine maleate.
(b) Chlorcyclizine hydrochloride.
(c) Chlorpheniramine maleate.
(d) Dexbrompheniramine maleate.
(e) Dexchlorpheniramine maleate.
(f) Diphenhydramine hydrochloride.
(g) Doxylamine succinate.
(h) Phenindamine tartrate.
(i) Pheniramine maleate.
(j) Pyrilamine maleate.
(k) Thonzylamine hydrochloride.
(l) Triprolidine hydrochloride.

7. In Subpart C, § 341.72 (proposed in the Federal Register of January 15, 1985; 50 FR 2200) is amended by revising paragraphs (c) (3), (4), (5), (6), and (d)(1); by redesignating paragraphs (d) (2), (3), (4), (5), (6), (7), (8), (9), and (10) as paragraphs (d) (3), (4), (5), (6), (8), (9), (10), (11), and (12), respectively, and revising them; and by adding new paragraphs (d) (2) and (7), and (e) to read as follows:

§ 341.72 Labeling of antihistamine drug products.

* * * * *

(c) * * *

* * * * *

(3) *For products containing brompheniramine maleate, chlorcyclizine hydrochloride, chlorpheniramine maleate, dexbrompheniramine maleate, dexchlor-pheniramine maleate, phenindamine tartrate, pheniramine maleate, pyrilamine maleate, thonzylamine hydrochloride, or triprolidine hydrochloride identified in § 341.12 (a), (b), (c), (d), (e), (h), (i), (j), (k), and (l).* "May cause drowsiness; alcohol, sedatives, and tranquilizers may increase the drowsiness effect. Avoid alcoholic beverages while taking this product. Do not take this product if you are taking sedatives or tranquilizers, without first consulting your doctor. Use caution when driving a motor vehicle or operating machinery."

(4) *For products containing diphenhydramine hydrochloride or doxylamine succinate identified in § 341.12 (f) and (g).* "May cause marked drowsiness; alcohol, sedatives, and tranquilizers may increase the drowsiness effect. Avoid alcoholic beverages while taking this product. Do not take this product if you are taking sedatives or tranquilizers, without first consulting your doctor. Use caution when driving a motor vehicle or operating machinery."

(5) *For products containing phenindamine tartrate identified in § 341.12(h).* "May cause nervousness and insomnia in some individuals."

(6) *For products that are labeled only for use by children under 12 years of age.* The labeling of the product contains only the warnings identified in paragraphs (c) (1) and (5) of this section as well as the following:

(i) "Do not give this product to children who have asthma or glaucoma unless directed by a doctor."

(ii) *For products containing brompheniramine maleate, chlorpheniramine maleate, dexbrompheniramine maleate, dexchlorpheniramine maleate, phenindamine tartrate, pheniramine maleate, pyrilamine maleate, thonzylamine hydrochloride, or triprolidine hydrochloride identified in § 341.12 (a), (c), (d), (e), (h), (i), (j), (k), and (l).* "May cause drowsiness. Sedatives and tranquilizers may increase the drowsiness effect. Do not give this product to children who are taking sedatives or tranquilizers, without first consulting the child's doctor."

(iii) *For products containing diphenhydramine hydrochloride or doxylamine succinate identified in § 341.12 (f) and (g).* "May cause marked drowsiness. Sedatives and tranquilizers may increase the drowsiness effect. Do not give this product to children who are taking sedatives or tranquilizers, without first consulting the child's doctor."

(d) * * *

(1) *For products containing brompheniramine maleate identified in § 341.12(a).* Adults and children 12 years of age and over: oral dosage is 4 milligrams every 4 to 6 hours, not to exceed 24 milligrams in 24 hours, or as directed by a doctor. Children 6 to under 12 years of age: oral dosage is 2 milligrams every 4 to 6 hours, not to exceed 12 milligrams in 24 hours, or as directed by a doctor. Children under 6 years of age: consult a doctor.

(2) *For products containing chlorcyclizine hydrochloride identified in § 341.12(b).* Adults and children 12 years of age and over: oral dosage is 25 milligrams every 6 to 8 hours, not to exceed 75 milligrams in 24 hours, or as directed by a doctor. Children under 12 years of age: consult a doctor.

(3) *For products containing chlorpheniramine maleate identified in § 341.12(c).* Adults and children 12 years of age and over: oral dosage is 4 milligrams every 4 to 6 hours, not to exceed 24 milligrams in 24 hours, or as directed by a doctor. Children 6 to under 12 years of age: oral dosage is 2 milligrams every 4 to 6 hours, not to exceed 12 milligrams in 24 hours, or as directed by a doctor. Children under 6 years of age: consult a doctor.

(4) *For products containing dexbrompheniramine maleate identified in § 341.12(d).* Adults and children 12 years of age and over: oral dosage is 2 milligrams every 4 to 6 hours, not to exceed 12 milligrams in 24 hours, or as directed by a doctor. Children 6 to under 12 years of age: oral dosage is 1 milligram every 4 to 6 hours, not to exceed 6 milligrams in 24 hours, or as directed by a doctor. Children under 6 years of age: consult a doctor.

(5) *For products containing dexchlorpheniramine maleate identified in § 341.12(e).* Adults and children 12 years of age and over: oral dosage is 2 milligrams every 4 to 6 hours, not to exceed 12 milligrams in 24 hours, or as directed by a doctor. Children 6 to under 12 years of age: oral dosage is 1 milligram every 4 to 6 hours, not to exceed 6 milligrams in 24 hours, or as directed by a doctor. Children under 6 years of age: consult a doctor.

(6) *For products containing diphenhydramine hydrochloride identified in § 341.12(f).* Adults and children 12 years of age and over: oral dosage is 25 to 50 milligrams every 4 to 6 hours, not to exceed 300 milligrams in 24 hours, or as directed by a doctor. Children 6 to under 12 years of age: oral dosage is 12.5 to 25 milligrams every 4 to 6 hours, not to exceed 150 milligrams in 24 hours, or as directed by a doctor. Children under 6 years of age: consult a doctor.

(7) *For products containing doxylamine succinate identified in § 341.12(g).* Adults and children 12 years of age and over: oral dosage is 7.5 to 12.5 milligrams every 4 to 6 hours, not to exceed 75 milligrams in 24 hours, or as directed by a doctor. Children 6 to under 12 years of age: oral dosage is 3.75 to 6.25 milligrams every 4 to 6 hours, not to

exceed 37.5 milligrams in 24 hours, or as directed by a doctor. Children under 6 years of age: consult a doctor.

(8) *For products containing phenindamine tartrate identified in § 341.12(h).* Adults and children 12 years of age and over: oral dosage is 25 milligrams every 4 to 6 hours, not to exceed 150 milligrams in 24 hours, or as directed by a doctor. Children 6 to under 12 years of age: oral dosage is 12.5 milligrams every 4 to 6 hours, not to exceed 75 milligrams in 24 hours, or as directed by a doctor. Children under 6 years of age: consult a doctor.

(9) *For products containing pheniramine maleate identified in § 341.12(i).* Adults and children 12 years of age and over: oral dosage is 12.5 to 25 milligrams every 4 to 6 hours, not to exceed 150 milligrams in 24 hours, or as directed by a doctor. Children 6 to under 12 years of age: oral dosage is 6.25 to 12.5 milligrams every 4 to 6 hours, not to exceed 75 milligrams in 24 hours, or as directed by a doctor. Children under 6 years of age: consult a doctor.

(10) *For products containing pyrilamine maleate identified in § 341.12(j).* Adults and children 12 years of age and over: oral dosage is 25 to 50 milligrams every 6 to 8 hours, not to exceed 200 milligrams in 24 hours, or as directed by a doctor. Children 6 to under 12 years of age: oral dosage is 12.5 to 25 milligrams every 6 to 8 hours, not to exceed 100 milligrams in 24 hours, or as directed by a doctor. Children under 6 years of age: consult a doctor.

(11) *For products containing thonzylamine hydrochloride identified in § 341.12(k).* Adults and children 12 years of age and over: oral dosage is 50 to 100 milligrams every 4 to 6 hours, not to exceed 600 milligrams in 24 hours, or as directed by a doctor. Children 6 to under 12 years of age: oral dosage is 25 to 50 milligrams every 4 to 6 hours, not to exceed 300 milligrams in 24 hours, or as directed by a doctor. Children under 6 years of age: consult a doctor.

(12) *For products containing triprolidine hydrochloride identified in § 341.12(l).* Adults and children 12 years of age and over: oral dosage is 2.5 milligrams every 4 to 6 hours, not to exceed 10 milligrams in 24 hours, or as directed by a doctor. Children 6 to under 12 years of age: oral dosage is 1.25 milligrams every 4 to 6 hours, not to exceed 5 milligrams in 24 hours, or as directed by a doctor. Children under 6 years of age: consult a doctor.

(e) The word "physician" may be substituted for the word "doctor" in any of the labeling statements in this section.

8. In Subpart C, § 341.90 (proposed in the **Federal Register** of January 15, 1985; 50 FR 2200) is amended by redesignating paragraphs (c), (d), (e), (f), (g), (h), (i), (j), and (k) as paragraphs (d), (e), (f), (g), (i), (j), (k), (l), and (m), and revising them; and by adding new paragraphs (c) and (h) to read as follows:

§ 341.90 Professional labeling.

* * * * *

(c) *For products containing chlorcyclizine hydrochloride identified in § 341.12(b).* Children 6 to under 12 years of age: oral dosage is 12.5 milligrams every 6 to 8 hours, not to exceed 37.5 milligrams in 24 hours. Children 2 to under 6 years of age: oral dosage is 6.25 milligrams every 6 to 8 hours, not to exceed 18.75 milligrams in 24 hours.

(d) *For products containing chlorpheniramine maleate identified in § 341.12(c).* Children 2 to under 6 years of age: oral dosage is 1 milligram every 4 to 6 hours, not to exceed 6 milligrams in 24 hours.

(e) *For products containing dexbrompheniramine maleate identified in § 341.12(d).* Children 2 to under 6 years of age: oral dosage is 0.5 milligram every 4 to 6 hours, not to exceed 3 milligrams in 24 hours.

(f) *For products containing dexchlorpheniramine maleate identified in § 341.12(e).* Children 2 to under 6 years: oral dosage is 0.5 milligram every 4 to 6 hours, not to exceed 3 milligrams in 24 hours.

(g) *For products containing diphenhydramine hydrochloride identified in § 341.12(f).* Children 2 to under 6 years of age: oral dosage is 6.25 milligrams every 4 to 6 hours, not to exceed 37.5 mg in 24 hours.

(h) *For products containing doxylamine succinate identified in § 341.12(g).* Children 2 to under 6 years of age: oral dosage is 1.9 to 3.125 milligrams every 4 to 6 hours, not to exceed 18.75 milligrams in 24 hours.

(i) *For products containing phenindamine tartrate identified in § 341.12(i).* Children 2 to under 6 years of age: oral dosage is 6.25 milligrams every 4 to 6 hours, not to exceed 37.5 milligrams in 24 hours.

(j) *For products containing pheniramine maleate identified in § 341.12(i).* Children 2 to under 6 years of age: oral dose is 3.125 to 6.25 milligrams every 4 to 6 hours, not to exceed 37.5 milligrams in 24 hours.

(k) *For products containing pyrilamine maleate identified in § 341.12(j).* Children 2 to under 6 years of age: oral dosage is 6.25 to 12.5 milligrams every 6 to 8 hours, not to exceed 50 milligrams in 24 hours.

(l) *For products containing thonzylamine hydrochloride identified in § 341.12(k).* Children 2 to under 6 years of age: oral dosage is 12.5 to 25 milligrams every 4 to 6 hours, not to exceed 150 milligrams in 24 hours.

(m) *For products containing triprolidine hydrochloride identified in § 341.12(l).* Children 4 to under 6 years of age: oral dosage is 0.938 milligram every 4 to 6 hours, not to exceed 3.744 milligrams in 24 hours. Children 2 to under 4 years of age: oral dosage is 0.625 milligram every 4 to 6 hours, not to exceed 2.5 milligrams in 24 hours. Infants 4 months to under 2 years of age: oral dosage is 0.313 milligram every 4 to 6 hours, not to exceed 1.252 milligrams in 24 hours.

PART 369—INTERPRETATIVE STATEMENTS RE WARNINGS ON DRUGS AND DEVICES FOR OVER-THE-COUNTER SALE

9. The authority citation for 21 CFR Part 369 is revised to read as follows:

Authority: Secs. 502, 503, 506, 507, 701, 52 Stat. 1050–1052 as amended, 1055–1056 as amended, 55 Stat. 851, 59 Stat. 463 as amended (21 U.S.C. 352, 353, 356, 357, 371); 21 CFR 5.10 and 5.11.

§ 369.20 [Amended]

10. In Subpart B, § 369.20 *Drugs; recommended warning and caution statements* is amended by removing the reference to paragraph (a)(25) of § 310.201 from the entry "ANTIHISTAMINICS, ORAL," and by removing the paragraph "Cyclizine-containing preparations should include the following:" and the "Warning" statement following that paragraph.

§ 369.21 [Amended]

11. In Subpart B, § 369.21 *Drugs; warning and caution statements required by regulations* is amended by removing the reference to paragraph (a)(25) of § 310.201 and by removing "DOXYLAMINE SUCCINATE" and "CHLORCYCLIZINE HYDROCHLORIDE" from the entry "ANTIHISTAMINICS, ORAL (PHENYLTOLOXAMINE DIHYDROGEN CITRATE, MECLIZINE HYDROCHLORIDE, DOXYLAMINE SUCCINATE, CHLOROTHEN CITRATE, CYCLIZINE HYDROCHLORIDE, AND CHLORCYCLIZINE HYDROCHLORIDE," and by removing the paragraph "For chlorcyclizine-, cyclizine-, or meclizine-containing preparations, the statement:" and the "Warning" statement following that paragraph.

Dated: May 31, 1987.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 87–19082 Filed 8–21–87; 8:45 am]

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Monday
August 24, 1987

Part VI

Department of the Interior

Bureau of Indian Affairs

25 CFR Parts 211, 212, and 225

Contracts for Prospecting and Mining on Indian Lands; Oil and Gas and Geothermal Contracts; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Parts 211, 212, and 225

Contracts for Prospecting and Mining on Indian Lands; Oil and Gas and Geothermal Contracts

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: This final rulemaking adopts rules and regulations implementing the Indian Mineral Development Act of 1982. In addition, the rulemaking revises existing rules and regulations in 25 CFR Part 211 governing mining on tribal lands, and removes 25 CFR Part 212 which governs mining on allotted Indian lands. A new Part 225 is added to govern oil and gas development contracts and leases from other mineral development. The regulations in existing Part 212 governing mineral development on allotted Indian lands are subsumed in the regulations in Parts 211 and 225.

EFFECTIVE DATE: This document is effective September 23, 1987.

ADDRESS: Joseph Johnston, Chief, Division of Energy and Mineral Resources, Bureau of Indian Affairs, 1951 Constitution Avenue NW., Room 4529, Washington, DC 20245.

FOR FURTHER INFORMATION CONTACT: Don Aubertin or Dick Cramer Bornemann (303) 236–2860, Lakewood, Colorado, or Joseph Johnston (202) 343–3722, or Thornton Field, Office of the Solicitor (202) 343–8331, Washington, DC.

SUPPLEMENTARY INFORMATION: The principal authors of this final rulemaking are Don Jones and Dick Cramer-Bornemann of the Division of Energy and Minerals Resources, Bureau of Indian Affairs.

Pursuant to the mandate in section 8 of the Indian Mineral Development Act (Act) (96 Stat. 1940; 25 U.S.C. 2107), the Bureau of Indian Affairs (BIA) published a Notice of proposed rulemaking in the **Federal Register** on July 12, 1983 (48 FR 31978) intended to implement the 1982 Act. In addition to implementing the Act, the proposed rulemaking included a revision and reorganization of regulations governing mining and oil and gas leases adopted pursuant to the Act of May 11, 1938 (52 Stat 347, 25 U.S.C. 396a-g), which governs the leasing of tribally-owned minerals, and the Act of March 3, 1909, as amended (35 Stat. 783, 25 U.S.C. 396), which governs the leasing of individually-owned minerals on allotted lands. The proposed rules, governing leasing under the 1938 and 1909 Acts, incorporated many changes suggested by interested parties in response to proposed rules published in 45 FR 53164 on August 11, 1980, which were not adopted as final rules. In the July 12th document, the comment period was set for 60 days, ending September 12, 1983. However, on September 11, 1983, the comment period was extended for 30 additional days. A total of 67 separate comments was received from a variety of sources, including Indian tribes and organizations, mining and oil and gas companies, trade organizations and Federal agencies.

General Comments

The majority of the commentators were of the opinion that the proposal provided a workable regulatory scheme for implementing the purposes of the 1982 Act. Most commentators offered recommendations for technical corrections or editorial changes, and in some cases, proposed substantive changes. However, some commentators offered strong objections to two aspects of the proposal which are discussed herein.

Several industry commentators expressed concern that, as proposed, the regulations would subject mining leases, entered into pursuant to the 1938 Act, to requirements which rightfully should only be applicable to minerals agreements under the 1982 Act, thereby diminishing rights which lessees currently possess. They contended that the 1982 Act is intended to give Indian mineral owners greater flexibility in negotiating mineral contracts, while at the same time allowing the procedures for negotiating leases pursuant to the 1938 Act to remain intact. They cited in support of this, section 6 of the 1982 Act, which provides that "(n)othing in this Act shall affect the Act of May 11, 1938". They argued that the proposed regulations failed to distinguish between negotiated leases under the 1938 Act and those used as a part of a business arrangement sanctioned under the 1982 Act. The contention was made, for example, that some provisions of the regulations would subject existing 1938 Act leases to review of the entire lease, using the criteria established for the approval of mineral agreements under the 1982 Act, and urged that such provisions be deleted. Other examples were given which will be discussed below. The commentators ask that the BIA clearly explain its understanding of the relationship between leasing of minerals under the 1938 Act and negotiated leases under the 1982 Act.

The 1938 Act authorizes development of tribal mineral resources through a formalized lease conditioned upon competitive bidding for oil and gas development, royalty and rental provisions, limitations on acreage and a term of not more than ten (10) years and so long thereafter as minerals are produced in paying quantities.

Enactment of the 1982 Act removed the restriction which required competitive bidding for oil and gas agreements, thereby giving tribes full discretion on how their mineral resources will be marketed. In addition, and very importantly, the restriction as to form of agreement (lease) was removed. As a result, tribes may enter into any joint venture, operating, production sharing, service, managerial, lease or other agreement. Finally, the acreage limitation was removed and the term is not limited. Therefore, the 1982 Act gives full discretion for mineral development on tribal lands to the governing body of that tribe, subject to any limitation or provision contained in its constitution or charter, and a determination by the Secretary that the agreement is in the best interest of the tribe.

Common to both Acts is the requirement of Secretarial approval of a lease, in the instance of the 1938 Act; or other form of contractual agreement, in the instance of the 1982 Act. Tribes have the option to elect either act in conjunction with contemplated development.

It should be noted that, while tribes have the option to proceed under either Act, there are distinct differences between the two Acts. For example, oil and gas leases issued pursuant to the requirements of the 1938 Act are generally standardized leases executed on standard BIA forms. Such leases are subject to all of the requirements contained in regulations issued by the BIA, the Bureau of Land Management (BLM) and the Minerals Management Service (MMS). Similarly, any lease negotiated pursuant to the 1938 Act will be standardized to the extent that the lease must conform to the lease offer made in the sale notice, *i.e.*, it must be for a term of not more than 10 years, absent production in paying quantities; it must provide for a fixed royalty and a specified rental; and the acreage leased must not exceed limitations imposed by regulations.

However, mineral agreements, including leases, approved under the 1982 Act, need not be subject to the same constraints as leases negotiated under the 1938 Act. For example, 1982 Act agreements are not limited to a maximum 10-year term, absent production in paying quantities. Also, there are no regulatory acreage

limitations applicable to agreements under the 1982 Act.

In summary, it is clear that the provisions of the 1982 Act give tribes much more latitude and flexibility in the types of development agreements into which they may enter.

The authority under existing law for allottees or owners of undivided interests in Indian allotted lands to lease their lands for mining purposes is somewhat different than that granted Indian tribes. The 1909 Act authorizes the Secretary to require competitive bidding in instances where the original allottee is deceased and the heirs either have not been determined or, if determined, cannot be located. As a matter of policy, since 1957, the Secretary has, by regulation, required that the competitive lease sale procedure be followed for all oil and gas leasing on allotted lands. However, on some limited occasions, the requirement has been waived upon request and allottees have been authorized to negotiate mining leases without competitive sales when the BIA has determined that, under the circumstances, a waiver of this requirement was in the best interest of the Indian owners.

Congress could have authorized allottees to negotiate mineral agreements when it passed the 1982 Act, but it did not. Instead, the 1982 Act only authorizes allottees to include their interest in a tribal mineral agreement, with the consent of the parties to the agreement, and with approval of the Secretary of the Interior.

In summary, the BIA understands the differences between leasing under the 1938 Act and the 1982 Act to be as follows:

(a) Tribes may lease minerals other than oil and gas, under either Act, except that leases issued under the 1982 Act are to be subject to the procedures for review and approval by the Secretary set forth in section 4 of the Act as implemented by the rules in Subpart A of 25 CFR Part 211.

(b) Tribes may enter into oil and gas leases or agreements under either Act. Leases or agreements executed pursuant to the 1938 Act must first be offered for sale by competitive bidding. After the receipt of bids and their rejection, tribes may enter into negotiated leases or agreements with the approval of the Secretary.

If the agreement is negotiated under the 1938 Act, all provisions of that Act shall apply.

(c) Individually-owned Indian trust lands may be included in the 1982 Act tribal agreements with the consent of the parties and the approval of the Secretary, but allotted lands may not be included in such agreements which do not provide for participation of tribal lands.

(d) Allotted lands may continue to be leased pursuant to the 1909 Act.

(e) Oil and gas leases of allotted lands under the 1909 Act will continue to be made by competitive bidding, unless this requirement is waived by the Secretary of the Interior on a case-by-case basis to allow leasing by negotiations.

In response to the concern expressed by some industry commentators (i.e., that the BIA appears to be proposing that the requirements of the regulations intended to implement the 1982 Act, as set forth in Supbart A of Parts 211 and 225, apply to existing leases executed prior to the effective date of the new regulations), the BIA wishes to make clear its position that the procedures and requirements in the regulations pertaining to mineral agreements apply prospectively and only in those instances where the parties have elected to proceed under the 1982 Act. The basis of this conclusion is the absence in the statute or in the legislative history of the 1982 Act of any indication that Congress intended to retroactively impose the procedures for the Secretarial review and approval of mineral agreements on existing leases executed under the 1938 Act, or that such procedures should apply to new leases executed under the 1938 Act or the 1909 Act. Consequently, the proposed rules are revised to eliminate or modify any provisions which may be ambiguous in this respect. These changes are discussed below in the analyses of comments received on each section of the proposed rules.

A number of industry commentators questioned the propriety of combining in one set of regulations rules governing mineral operations under the 1982 Act and revisions to existing rules governing operations under the 1938 Act and the 1909 Act. These commenters complain that the BIA failed to explain the reason for the changes affecting the leasing regulations under the 1938 Act. They recommended that the proposed rules be withdrawn and new proposed rules implementing the 1938 Act be promulgated separately.

The BIA acknowledges that the preamble to the proposed rules did not explain in detail the reasons for changes to the existing rules, and such explanations are provided herein in the section-by-section analysis of the rules. The BIA should have pointed out that these changes are based upon extensive comments received on proposed rules published in the Federal Register on August 11, 1980 (45 FR 53165). That proposal, in turn, constituted a republication of an April 5, 1977 proposal, (published in 42 FR 18063), with substantive revisions. As noted in the preamble to the April 1977 proposal, the initial impetus for revision of the regulatory scheme then in existence was provided by the Secretary of the Interior in a June 1974 decision on a petition by an Indian tribe to rescind certain leases on tribal lands. The Secretary concluded the decision with a directive to the Solicitor to rewrite the regulations then in effect "to correct their present ambiguities" in order "to better fulfill my responsiblity to assure the protection of Indian culture and environmental interests as well as to allow the maximum development of Indian natural resources." Thus, the effort to revise the BIA's mining regulations is of long duration and further delay is unwarranted. The BIA has determined not to republish the revisions for a fourth time. It is believed the revisions made in the final rules will eliminate the commentators' objections to the proposed rules.

Another general comment was that the proposed rules did not set forth rules governing mineral agreements for the development of geothermal resources on Indian lands. They noted also that it was unclear from reading the proposal which of the two parts governed geothermal operations, since both Parts 211 and 225 contained reference to geothermal. The BIA agrees with this criticism and in response has corrected Part 211 to make it clear that Part 211 governs minerals other than oil and gas and geothermal. In addition, Part 225 is revised to make it clear that geothermal operations are governed by its provisions. A description of a regulatory scheme for geothermal operations is set forth in the discussion of Part 225.

As a result of changes made in response to comments received, a number of sections have been moved to other locations in the parts and the subsequent sections have been redesignated. In addition, some new sections have been added. Finally, minor editorial changes have been made to correct grammatical errors and/or omissions. For the purposes of discussion, reference will be made to section designations in the proposed rules.

DISCUSSION

A. Part 211—Contracts for Prospecting and Mining on Indian Lands (Except Oil and Gas and Geothermal)

Sec. 211.1 Purpose and scope.

Two industry commentators objected to the statement in paragraph (a) of this section that the regulations are intended

to ensure that Indian owners desiring to have their minerals developed receive "at least fair market value" for their resources. They content that the concept of fair market value is highly subjective and its inclusion in the regulations could serve as a basis for later attempting to unjustifiably reform the terms of a contract, especially if the economic benefits from the contract are not as expected due to events or conditions which none of the parties to the agreement were aware of at the time of contracting. They contend that the function that might have been intended by this clause is covered by § 211.6(b) which provided that a proposed agreement must be reviewed to determine if it is in the best interest of the tribe, and that this review includes an analysis of the potential economic return to the tribe. They ask that this entire clause be deleted. While the commentors may be correct that the uniqueness of these agreements and the difficulties with finding comparables for comparison purposes may make a fair market valuation difficult to perform, such a review is still desirable and essential for the approving official to make to assure the agreement is a prudent one. The difficulty in performing such an analysis is not sufficient justification for not trying. The Act itself envisions the reviewing official will perform an economic analysis when it is appropriate and feasible. Fair market value is a well established, and appropriate yardstick for determining whether the Indians involved in a minerals agreement are receiving adequate compensation for the disposal of their non-renewable resource.

A number of industry commentators strongly objected to paragraph (c) which they contend unilaterally gives the BIA the right to require revisions to the provisions of any agreement (except the terms, royalties, rentals, and acreage) executed prior to the effective date of the new regulations. One commentor stated that once a contract has been approved, *no* terms can be amended except by agreement of all parties, and that the provision lacks any statutory authority and may be unconstitutional.

It is important to note that the economic bargain struck by the parties is not subject to unilateral change by rulemaking. The intent this section is to permit the Department the needed flexibility to change the operational aspects of administering and supervising these contracts, over time, to conform with changing circumstances. For example, as experience gained with the bonding requirement, it may be appropriate to set minimums. Likewise, information collection requirements may change as experience dictates. This type of operational flexibility is essential.

The commentators also appear to have overlooked the fact that language in paragraph (c) has been included in the BIA's regulations since December 1957, if not earlier, and also has been a provision in the BIA's standard lease forms for a number of years. (See 25 CFR 211.18). Yet no instance is cited by the commentators wherein the BIA has revised the terms of a mineral contract to the detriment of a party to the contract through the process of promulgation of new or revised regulations. As to statutory authority for such a provision, Section 8 of the 1982 Act directs the Secretary of the Interior to promulgate rules and regulations to implement the Act and to consult with national and regional organizations and tribes "* * * both in the intitial formulation of rules and regulations and any future revision or amendment of such rules and regulations." Had the Congress desired to exempt existing agreement from the application of revisions or amendments to the regulations, it could have done so in this section. The BIA interprets the absence of any such limitation as meaning that the Congress acquiesces in the long-standing practice of including such a provision in its rules and in standard lease forms. Therefore, the recommendation that this provision be deleted or modified to state that no regulations shall affect the terms of a contract without the agreement of all the parties is not accepted.

At the suggestion of the Office of Surface Mining Reclamation and Enforcement (OSMRE), a new paragraph (d) is added to indicate that mining operations for coal are governed by applicable regulations of that office.

A new paragraph (e) has been added at the request of some tribes who criticized the regulations for failing to include a provision recognizing that Congress has granted tribes the authority to regulate mining operations on Indian lands under the Indian Reorganization Act and other acts.

Sec. 211.3 Definitions.

The BIA has accepted the suggestion by several commentators that all applicable definitions should be set forth in one location. All of the definitions located in Section 211.33 in the proposed rules are now found in § 211.3. In addition, the definitions of "oil" and "gas" and "geothermal" which were included in § 211.3 have been moved. A number of comments were received pertaining to the definition of "minerals agreement." Industry commentators urged that the definition be amended to make it clear that it does not apply to amendments of leases entered into pursuant to the 1938 and 1909 Acts. The proposed definition is patterned after the language in section 3(a) of the 1982 Act. That language, of course, does not contain the phrase "(other than a lease entered pursuant to the Act of May 11, 1938, and the Act of March 3, 1909)" after the word "leases." This phrase is added to make it clear that leases entered into pursuant to the 1982 Act are included in the definition of mineral agreements, and leases entered pursuant to the 1938 Act and the 1909 Act are excluded from the definition.

The industry commentators urge that the definition be amended to read "* * * lease (other than a lease, *or* amendment thereto, entered into pursuant to the Act of May 11, 1938, and the Act of March 3, 1909) * * *." As discussed *ante* under General Comments, the BIA believes that Congress intended the 1938 Act to remain as an alternative means whereby Indian mineral owners could dispose of their mineral resources, but there is nothing in the legislative history of the 1982 Act to indicate that Congress intended retroactively to apply the procedures for Secretarial review and approval in the 1982 Act to leases issued pursuant to the 1938 Act. The BIA believes the same reasoning applies to an amendment of a lease issued under the 1938 Act. In other words, the BIA agrees with one comment that "the 1982 Act does not transform 1938 Act leases into minerals agreements and there is no statutory basis to do so in the proposed regulations." Consequently, this recommended change has been accepted. Several commentators pointed out that although the term "contract" was used throughout the proposed regulations, the term was not defined. They suggested that "contract" should either not be used or a definition of the term should be included in the regulations.

It should be noted that "contract" is used in the text exclusively in Subpart C of the two parts which contain provisions applicable to mineral agreements under the 1982 Act, and competitive leases under the 1938 and the 1909 Acts. The term "contract" was chosen because of the need to find a commonly understood term which encompasses a mineral agreement (which includes "leases"), and competitive leases under the other Acts. The BIA believes that defining "contracts" is unnecessary if the public understands that it is simply a general term covering any type of document

pertaining to the development of Indian mineral resources under any one of the three acts.

Subpart A—Minerals Agreements

Sec. 211.4 Authority to contract. (renumbered as § 211.5)

Two comments were received indicating that it will be detrimental to individual Indians owning allotted lands not to be able to enter into a lease or agreement pursuant to the 1982 Act without joining in tribal agreements. They suggest that many times these lands are not adjacent to tribal lands and the allottee does not have a right to negotiate under the proposed rules. The commentators ask that additional provisions be added to this section to cover this situation. While the BIA sympathizes with this comment, it is nevertheless precluded from doing so in section 3(b) of the 1982 Act, which states that individual Indian owners of mineral interests "* * * may include such resources in a tribal Minerals Agreement * * *." The legislative history of the Act supports this position. Earlier versions of the bill which became the 1982 Act provide that tribes *and* individual Indians could enter into such agreements. However, the final bill was amended to delete this authorization as to allottees. Consequently, the requested amendment cannot be made.

An editorial change was made to paragraph (a).

Sec. 211.5 Negotiation procedures. (renumbered as § 211.6)

Comments on paragraph (b) were received from both Indian representatives and industry. The Indian commentators made suggestions for additional provisions. On the other hand, industry commentators recommended that the section be amended to provide only that no particular form of agreement is prescribed. They contend that a list of factors to be considered is unnecessary and that the likely effect will be a requirement that such factors be included in all agreements. The industry commentators misconstrue the purpose of this paragraph. This provision is included at the request of Indian representatives who reviewed a preliminary draft of the regulations and felt that some guidance should be provided tribes who were not familiar with these types of agreements and may wish to know the factors which need to be taken into consideration in the negotiating process. The provisions listed are those in a typical mining contract. It is not intended that these provisions should be construed as constituting a "model agreement," nor should they be regarded in any way as criteria which must be included in the agreement in order to obtain Secretarial approval. The criteria for approval of agreements is set forth in Section 211.6. Consequently, the BIA rejects this argument and this paragraph is not deleted. Two new subsections, (15) and (16), pertaining to a schedule of activities and descriptions of proposed abandonment and reclamation activities, which were suggested by commentators, have been added.

Paragraph (c) has been revised to change "should" to "may" in order to make it clear that consultation with representatives of the Secretary prior to formal execution of an agreement is recommended, but such consultation is not a requirement for obtaining Secretarial review. Also, in response to a comment that § 211.5 contains no "requirements," this sentence is revised to read "requirements of the regulations in this part." Paragraph (d) is revised to change "should" to "shall" inasmuch as the agreement must be forwarded to a representative of the Secretary for review.

Sec. 211.6 Approval of agreements. (renumbered as § 211.7)

Some commentators raised questions concerning the time limit of 180 days after submission, or 60 days after meeting National Environmental Protection Act (NEPA) requirements in paragraph (a), within which a proposed agreement must be approved or disapproved. They expressed concern that 180 days was too short a period within which to conduct the necessary technical review. They also asked whether these time frames include review by the tribe or does "after submission" refer only to receipt of the proposed review by the Secretary.

These time limits are prescribed by section 4(a) of the 1982 Act. The BIA interprets the phrase "after submission" in section 4(a) of the Act to mean after formal submission of an executed agreement to the Secretary for approval or disapproval. There is nothing in the legislative history to support a contrary intention on the part of Congress. Consequently, no change in paragraph (a) is being made.

Several commentators pointed out that paragraph (c) was inconsistent with § 211.37, in that it required that the written findings "shall" include an economic assessment, whereas § 211.37(a) states that an economic assessment, "where required," shall include the findings set forth. It is the BIA's intention that an economic assessment shall always be made of a proposed new minerals agreement. However, in many instances, amendments, supplements, and modifications of existing agreements may be proposed with very little, if any, effect on the economic aspects of the agreement and shall not require preparation of an economic assessment. Otherwise, the qualifying phrase, "where required," in § 211.37(a) would have no meaning. Accordingly, in order to correct any misunderstanding, the qualifier, "if needed," is used in § 211.7(c).

Numerous unfavorable comments were received from both tribal and industry commentators on the concept of "fair and reasonable remuneration" as set forth in paragraphs (d) and (f). The principal objection to the concept is that it is unworkable and unrealistic. The commentators argue that the definition of "fair and reasonable remuneration" is too inflexible in that it requires the Secretary to find that the return to the Indians is not less than that received by non-Indians or the Federal Government in similar situations. Objectors felt there may not be similar contemporary mining ventures or federal projects which are truly comparable to the types of agreements likely to be developed for Indian lands, and in the absence of such agreements, the Secretary would be placed in an impossible situation.

Some commentators recommended that paragraphs (d) and (f) be deleted in their entirety and that paragraph (e) be amended to provide that the Secretary's determination of whether to approve or disapprove an agreement would be based soley on the written findings required by paragraph (c). Another commentator suggested that paragraphs (d), (e), and (f) were inconsistent with the objectives of the Act and should be revised to provide that the Secretary should take into consideration the factors set forth in paragraph (d), rather than make a determination that such conditions exist. The rationale is that the "determinations" required by section 4(b) of the Act should be based upon the environmental assessment and the economic assessment, if made, and that the Secretary's written findings shall be based upon such determinations.

The BIA has determined that the concept of "fair and reasonable remuneration" should be retained because it is an essential element in determining whether an agreement is in the best interest of the Indian owners, but the regulations setting forth the

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concept have been revised so that "fair and reasonable remuneration" is not another required written finding in addition to the environmental assessment and the economic assessment. Accordingly, appropriate revisions to paragraphs (d) and (f) have been made.

Paragraph (g) has been revised to require that a copy of the required written statement of the reasons why an agreement should be approved, or not approved, be sent to the Indian mineral owners, as required by the Act.

Subpart B—Mining Lease

The title of this subpart is changed to "Procedures for Competitive Leases," for clarity.

Sec. 211.20 Scope.

A number of commentators expressed some confusion as to what is meant to be covered by this subpart. They note that the phrase "through a competitive bidding procedure" under the 1938 Act implies that the competitive bidding procedures must be followed and that direct negotiation is not allowed. They asked whether or not the BIA intends that 1938 Act leases will continue to be issued via competitive bidding and also through negotiations. They also asked whether the BIA believes that any new lease that is negotiated falls automatically under the 1982 Act, inasmuch as the second sentence of this section states that leases may be negotiated "under the procedures in Subpart A," which are the procedures governing leasing under the 1982 Act.

The existing regulations of the BIA have provided, since 1957, in § 211.2, that leases for minerals other than oil and gas shall be advertised for sale by competitive bidding procedures unless written permission is granted to the Indian owners to directly negotiate for a lease. The BIA believes that this is a sound policy and should be continued. However, a provision setting forth this requirement was omitted from the proposed rules. Section 211.21(a) has been revised to make it clear that tribes may make leases under the 1938 Act, by direct negotiations with the written permission of the Secretary. In addition, the phrase "through competitive bidding procedure" has been deleted.

As explained, *ante*, it is the BIA's position that in enacting Section 6, Congress intended that the requirements of the 1982 Act should apply only to mineral agreements entered into under that Act, and that leasing authorities under the 1938 Act and the 1909 Act are not affected by the 1982 Act. Consequently, to avoid any misunderstanding, the second sentence in § 211.20 has been deleted.

Sec. 211.21 Procedures for awarding leases.

A number of commentators pointed out that the phrase "prospecting and mining leases," which appears twice in paragraph (b), is confusing, as "prospecting leases" is not a term used elsewhere in the rules. This term has been eliminated in the final rules.

The advertising procedure in paragraph (c)(2) would have required that the text of the advertisement include a complete description of the specific tracts to be offered. Upon further consideration, the BIA has concluded that because in many instances a large number of tracts are included in a lease sale, this requirement would result in an unnecessary monetary burden on the public in the light of the high cost of publishing multiple descriptions of individual tracts in local newspapers. Printing costs in one known lease sale were in excess of $6,000. Consequently, the BIA has elected the alternative, whereby specific descriptions of the tracts to be offered for sale will be available at the office of the Superintendent and will be sent to any person listed on the agency's list of persons who have asked to be informed of future lease sales.

Paragraph (c)(5), as proposed, requires a successful bidder to submit the balance of the bonus, the first year's rental, a $25 filing fee, her/his share of the advertising costs, all bonds, and the executed leases, within 30 days after notification of the bid award. The rule authorizes the Superintendent to grant an extension of up to 30 days within which to file the executed lease. Some commentators recommended that the 30-day time limit be deleted and "a reasonable time specified by the Superintendent" be substituted for the 30-day limit. One industry commentator justified this proposed change on the grounds that, while the time limit is reasonable, if there are no terms to be negotiated under the bidding procedure, it is inappropriate for the bidder to face potential loss of her/his deposit if the inability to come to terms could be based on the action of the Government or the Indian mineral owner. This argument seems to be reasonable. However, it overlooks the fact that the time for submission only begins to run after it has been determined that the bid is satisfactory and the bidder is apprised of this fact. Thus, it is assumed that a notice to the bidder will not be given unless the proposed terms of the bid have been thoroughly examined and that no further adjustments will be required. However, even in the event that further negotiations may be required, the BIA believes a 30-day extension is sufficient. Consequently, the proposed deletion of any time limit has not been made.

Objections were voiced to the provision in paragraph (c)(5) which would give an Indian mineral owner the option to readvertise a forfeited lease, with a defaulting bidder required to pay the difference between her/his high bid and the high bid received at the sale, plus the cost of advertising for the subsequent sale. The objections were that this provision would be unfair, since it could result in an enormous and unpredictable expense for a bidder where the failure to submit the executed lease and other items was not her/his fault. The suggestion was made that this penalty provision was not practical, inasmuch as subsequent bids in the second sale would likely be lower, not higher.

The BIA has concluded that the objections to this provision, particularly the comment that its effect might be lower bids, are legitimate, and accordingly the provision has been deleted. Defaulting bidders will be required to pay 25 percent of their bonus bid for the use and benefit of the Indian mineral owner.

Some industry commentators suggested that the provision in paragraph (d) that the Secretary shall not award a lease to any bidder until the consent of the Indian owner has been obtained should be deleted. They contend that this requirement is inconsistent with 25 CFR 211.21(c)(5) which requires that the successful bidder must file the completed lease within 30 days, which means the consent of the owner has been obtained. The commentators misconstrue the purpose of this requirement. As the courts have held on many occasions, although the Secretary's approval is required in order to lease Indian land, the Secretary is not the lessor and cannot grant a lease on her/his own authority. See: *Poafpybitty* v. *Shelly Oil Co.*, 390 U.S. 365 (1968). This provision is intended to enforce that holding. Consequently, even though an Indian mineral owner has consented to put her/his interest up for sale, the owner retains the right to decline to accept the highest bid. Similarly, even in the situation where an Indian owner has signed a lease of her/his interest, the owner has the right to withdraw consent to the lease at any time prior to the moment it is approved by the Secretary.

For this reason, the suggested deletion is not accepted.

Sec. 211.22 Duration of leases.

One commentator questioned the implication in this section that the term of a lease entered into by means of the exercise of an option is to be measured from the date of the exercise of the option, and contended that the term should not begin to run until a lease has been fully approved. The argument is that, based upon the commentator's experience, it could take years after exercising an option before a lease is approved, and it is unfair to have the lease's term begin before all approvals have been obtained. This argument is persuasive and the section has been revised accordingly.

Numerous comments were received objecting to the proposed definition of the term "paying quantities" in paragraph (b). Sixteen commentators opposed use of the definition, for a variety of reasons, and urged that it be deleted. First, they pointed out that the definition is predicated on the proposition that "paying quantities" means that in order for a mining venture to have production in paying quantities, there must be a showing that every year of operations results in a profit to the lessee. They argue that this is unrealistic and impractical when applied to the mining of minerals other than oil and gas. Because of the nature of such operations, they contend, it is not uncommon for mines to operate for several years without a profit during the early development period, yet, during those years, the mine continues to be a worthwhile project. In addition, it is not uncommon to suspend production to permit a reduction in stockpiles of materials to an acceptable level. Strikes, delays, and disputes can operate to cause suspension of operations, resulting in a loss of profits in a given year. The objectors contend that given these factors, use of the proposed definition would force most mining companies to abandon any further development on Indian lands, since they would be unwilling to risk their investment in developing a mine, if they knew that one year of depressed prices or unprofitable operations might result in forfeiture of the mine.

One comment was that profitability to the operator is of no concern to the Indian lessor as long as royalties are paid. As long as any minimum royalties specified in the lease are paid the lessor, this commentator felt an operator should be deemed to be producing in "paying quantities." The suggestion was that if the lease failed to specify a minimum rental, it could be negotiated pursuant to § 211.22(d).

Finally, one commentator felt that strict adherence to the proposed definition would work to the detriment of Indian lessors, since it would prevent them from having the flexibility to agree that the lease should remain in effect during unprofitable years, with the expectation that it would be profitable within the foreseeable future.

After considering all the comments opposing the proposed definition, the BIA has concluded that the arguments presented against defining "paying quantities" are persuasive. Consequently, the proposed paragraph (b) has been deleted.

It was also decided that the requirement in paragraph (e) that written evidence showing that minerals are being produced in paying quantities must be filed at the end of each fiscal year is an excessive burden on the public, especially since it is usually evident that production in paying quantities is occurring from other required reports and written proof of that fact is deemed unnecessary. Consequently, proposed paragraph (e) has been deleted.

Paragraphs (c) and (d) of this section which dealt with suspension of operations have been incorporated into a new section numbered 211.47 entitled, Suspension of Operations; Remedial Operations, and are further discussed there.

Sec. 211.23 Forms. (New)

The proposed rules failed to include the existing rules in 25 CFR 211.30 and 212.32 which require that leases, assignments, and other instruments shall be executed on forms prescribed by the Secretary. The BIA has concluded that, inasmuch as competitive leases will continue to be issued under the 1938 and the 1909 Acts, there is a need to include this requirement in the regulations. Consequently, until further notice, competitive leases, assignments, bonds, and permits should be executed on the appropriate form listed below:

Subject matter	Form No.
Assignments	BIA-5429.
Bonds:	
(1) Nationwide	BIA-5436.
(2) Statewide	BIA-5430.
(3) Lease Bond	BIA-5427.
(4) Assignee Bond	BIA-5435.
(5) Lessee Bond Supported by Government Securities.	BIA-5426.
Evidence of Authority of Officers to Execute Papers.	BIA-5428.
Modification of Lease	BIA-5443.
Mineral Prospecting Permits:	
(1) Oil and Gas (Non-exclusive and without option to lease).	BIA-5424.
(2) Mineral (Non-exclusive and non-optional).	BIA-5436.
(3) Mineral (Exclusive and option to lease).	BIA-5437.
Leases	Lease forms may vary between Area and Agency offices.
Sand, gravel, pumice and building stone permits:	
(1) Short-term (6-months)	BIA-5434.
(2) Long-term	BIA-5433.

Subpart C—General

Sec. 211.30 Scope.

There were no comments on this section.

Sec. 211.31 Authority and responsibility of the Authorized Officer.

This section has been rewritten for clarity, and the title changed to—Authority and responsibility of the Bureau of Land Management.

Sec. 211.32 Authority and responsibility of the Minerals Management

Service (MMS). (Refer to 48 FR 134, Page 31982.)

The BIA has accepted the suggestion of several commentators that the word "inspection" be substituted for "obtaining" in the second sentence of this section. The comments were that this change would more adequately preserve the confidentiality of the documents, while permitting their use by MMS to ensure accurate royalty payments. The BIA agrees that this is a reasonable modification and the section has been rewritten.

Sec. 211.33 Definitions.

The definitions in this section have been consolidated in § 211.3. A new section defining the responsibilities of the Director, Office of Surface Mining Reclamation and Enforcement (OSMRE) has been added.

Sec. 211.34 Approval of amendments.

A number of commentators expressed concern that in drafting paragraph (a), the BIA intends that the criteria for approval of an amendment, modification or supplement to an agreement entered into pursuant to the 1982 Act, are also applicable to leases under the 1938 Act. The BIA recognizes that, as proposed, paragraph (a) seemed to imply that amendments, modifications, or supplements must meet the 1982 Act criteria, inasmuch as it stated that the contract, as modified, must meet "* * *

the criteria for approval set forth in § 211.6 or § 211.21." The purpose of this provision is to assure that amendments to contracts, whether leases entered into pursuant to the 1938 Act, or contracts (including leases) entered into under the 1982 Act, do not alter an approved contract to such a degree that it would no longer be in the Indian owner's best interests. This is what is meant by the references to "the criteria for approval." The provision has been amended to make it clear that 1982 Act contracts shall be reviewed under the criteria in § 211.6 and competitive leases are to be reviewed under the criteria in § 211.21.

The same objection was voiced with respect to paragraph (b), which the commentators felt could require substantial re-formation of a contract previously entered into, since it would subject such contracts to the requirements of § 211.6. The commentators overlooked the fact that section 8 of the 1982 Act provides that approval of mineral agreements pending before the Secretary, which were submitted prior to the effective date of the Act, shall not be delayed on the grounds that rules and regulations have not been promulgated. There were a number of mineral agreements pending on the date of enactment, which subsequently have been approved. Consequently, the reference to "criteria set forth in § 211.6" was intended to apply to these agreements. However, a reference was erroneously made to the entire "lease" meeting the criteria of § 211.6. This reference has been corrected to insert "contract" in place of "lease." The requirement that the amendment of the contract meet the criteria for approval in § 211.21 applies to amendments to 1938 Act leases.

Several commentators objected to the requirement that the exercise of options to lease Indian lands be approved by the Secretary pursuant to § 211.21, which governs the competitive bidding process. Upon further consideration, the BIA has determined that enforcement of this rule might infringe upon vested legal rights, and has deleted this requirement. However, it should be noted that the regulations require that in order to perfect a preference right to a lease in a prospecting permit, the permit must comply with all the laws and regulations applicable to mineral leases.

Sec. 211.35 Removal of restrictions.

No changes were made to this section.

Sec. 211.36 Geological and geophysical permits.

A number of commentators objected to paragraph (a)(2) which would prohibit provisions granting an option or preference right to a lease or other development contract in exploration permits. They point out that the current rules in § 211.27(a) allow such preference rights if they are specifically granted in the permit. They also felt a strict prohibition against preference rights in such permits would not be in the Indian mineral owners' best interests since it might deter companies from conducting exploration operations on Indian lands. The BIA agrees and has revised this paragraph to authorize Indian mineral agreements to specify preference rights in a prospecting permit when explicitly provided for in writing and with the approval of the Secretary and Indian mineral owner.

After considering the many objections to the proposed procedures for settlement of damages with surface owners, set forth in paragraphs (a)(3) (i) through (iv), the BIA has concluded that these provisions, which were taken from oil and gas regulations governing operations on the Osage Reservation in Oklahoma, should not be included in the regulations because the circumstances which prevail on lands within the Osage Reservation are unique to that reservation and may not apply nationally. Consequently, three proposed procedures have been deleted.

The requirement in paragraph (a)(4), that a copy of all data collected by a permittee shall be forwarded to the Secretary and the Indian mineral owner, drew a negative reaction from industry commentators. The comments ranged from the suggestion that such data should not be forwarded to the Secretary or the Indian mineral owner until after the bidding process is completed, to a suggestion that data should never be forwarded to the Indian owner unless provided for in the permit. On the other hand, one Indian tribe suggested that the provision was inadequate because it did not specify that the permittee's interpretations of the raw data, as well as the data itself, should be forwarded to the Indian mineral owner.

The BIA appreciates industry concerns that the confidentiality of data which a permittee has collected should be protected to ensure her/his investment in the collection of such data. However, the BIA believes that the Indian owners of the mineral to be developed are entitled to have access to data which is essential in order for them to know the nature, extent and value of the mineral resource. Consequently, the suggestion that the regulations provide that only the Secretary is to receive copies of data resulting from permit operations is not acceptable. On the other hand, the BIA agrees with one commentator that requiring that a copy of the data must be forwarded to the Indian owner could have undesirable effects in that it could discourage companies from conducting exploration on Indian lands if the confidentiality of the data is compromised. Also, numerous people would receive copies of data for which they have no practical use. Accordingly, the BIA has concluded that this provision should be modified to require that copies of data be made available to the Indian mineral owner if the permit so requires. The intention is that the Indian owners and permittees negotiate as to what data shall be made available, and what procedures will be followed with respect to protecting its confidentiality.

Paragraph (a)(5), as proposed, required the permittee to obtain rights of ingress and egress from the surface owner. This provision would apply in situations where the Indian mineral owner may or may not be the surface owner. One industry commentator noted that her/his company had experienced difficulties in securing rights of ingress and egress because of the great number and diversity of surface ownerships—especially where there is a mixture of reservation and allotted lands. The commentator proposed alternative language which differentiates between instances where the Indian mineral owner is or is not the surface owner. Under this alternative, which the BIA has adopted, where the Indian mineral owner is the surface owner, such owner shall obtain any additional necessary permits or rights of ingress or egress from any other surface user, permittee, lessees, etc., on her/his land, to allow the geological permittee to enter the land and conduct operations. Where the Indian mineral owner is not the surface owner, such owner shall assist the geological permittee to obtain any additional permits to the best of her/his ability.

Paragraph (b) provides that no permit is required to conduct geophysical or geological operations "on Indian lands" included in a contract entered into pursuant to Part 211, unless the contract *per se* requires a permit. The public should be aware that this provision does not apply in situations where the United States is the owner of the surface of the lands involved. In all such situations, a permit to conduct exploratory operations must be obtained from the Authorized Officer.

Sec. 211.37 Economic assessments.

This section contains the elements to be included in an economic assessment of a proposed minerals agreement. As

proposed, these elements were to be mandatory "findings." One commentator stated that it was unclear whether or not each of the elements or criteria must be determined affirmatively in order for an agreement to be approved, or whether the Secretary must simply state whether or not each exists and then make a balanced overall assessment. The commentator urged the latter because, while an agreement might fail to meet one or more of the criteria, taken in its entirety, the agreement could be very advantageous to the Indian mineral owner.

One industry commentator urged that this section be deleted entirely because the 1982 Act does not anticipate anything as specific or detailed as the requirements of this section. He pointed out that the Act merely requires the Secretary to "consider the potential economic return to the tribe." The BIA's reaction to this criticism is the same as the reaction to similar criticism of § 211.6, i.e., the proper approach to a proposed agreement should be to determine whether each element is present, and then make an overall determination whether the agreement is in the Indian owner's best interest. Accordingly, § 211.37(a) has been revised to provide that an economic assessment shall take into consideration the elements as set forth, and the requirement of written findings on each element has been deleted.

Several commentators objected to the requirements in § 211.37(d), that, in reviewing a negotiated contract, a finding must be made as to whether or not the negotiated contract "clearly" provides the Indian mineral owner with a "greater" share of the return on the production of her/his mineral than would be obtained through competitive bidding. They contend that this provision is unreasonable and impractical, and that such a determination cannot be made. The BIA agrees with this assessment. Accordingly, in line with the changes in paragraph (a) discussed above, "is likely to" is substituted for "clearly," and "equal to" is added to "greater than" in paragraph (d).

Section 211.37(a)(6) has been deleted inasmuch as this provision is not appropriate to mining operations involving hard rock minerals.

Paragraph (b), which defined the term "geological and geophysical permit" has been deleted. This definition is now defined in § 211.3(o).

Sec. 211.38 Environmental assessments.

Minor editorial corrections and additions have been made to paragraph (a).

Industry commentators recommended that paragraph (b) be deleted on the grounds that it is superfluous, since the type of cultural/historical study required under the 1982 Act is directly tied to NEPA, which is referenced in paragraph (a). The BIA does not agree. Paragraph (b) implements the requirement in section 4(b) of the 1982 Act which provides that in approving or disapproving mineral agreements, the Secretary shall consider, among other things, the potential social and cultural effects of the agreement, as well as the potential effects on the environment. Acts of Congress such as the National Historic Preservation Act, the Archeological and Historic Preservation Act, and the Archeological Resources Protection Act of 1979, require all federal agencies to take affirmative steps to preserve and protect districts, sites, buildings, structures, and objects significant in American history, architecture, archeology and culture. The requirements of the 1982 Act are thus in addition to those in earlier Acts, and are not a substitute for them. Consequently, paragraph (b) has been retained. Some editorial changes have been made.

Sec. 211.39 Persons signing in a representative capacity.

One commentator asked whether paragraph (b) is intended to require that each time a corporation proposes to acquire an interest in Indian minerals, it must file a statement containing all of the information required by the regulations; and commented that if this was the intent, the regulation would impose an unnecessary burden on industry. The BIA agrees that unless there is a significant change in the corporate structure, a corporation should not be required to file the same information repeatedly. Accordingly, paragraph (a) has been revised to require that corporations have on file a statement which complies with the regulation at the agency in which the Indian lands are located.

Industry commentators recommended that paragraph (c) be deleted on the grounds that it is arbitrary and capricious, since it would authorize the Secretary to require meaningless information to be submitted and subject a lessee to disapproval or cancellation for failure to furnish it. Furthermore, they add, the Secretary has other enforcement mechanisms short of something as harsh as cancellation.

The BIA has concluded that the information requirements of this section are repetitious in that both paragraphs (b)(3) and (c) would have authorized the Secretary to require additional information as necessary. Accordingly, paragraph (b)(3) has been deleted. In addition, it is concluded that the last sentence of paragraph (c), which states that failure to furnish requested information will be grounds for cancellation or disapproval of a document, is unnecessary since the Secretary has the discretionary authority to decline to approve an instrument for failure of an applicant to comply with the Department's rules.

Sec. 211.40 Bonds.

Commentators felt that this section should identify the purpose of the bonds. Additional language has been added to paragraph (b) in response to this concern.

Commentators asked who would be the "approving official" referred to paragraph (b). The answer is either the Agency Superintendent or an Area Director.

Two industry commentators recommended that this section be deleted in its entirety. They contended that the requirement and manner of bonding should be left as a matter of negotiation between the parties with a review by the Secretary of the mechanism employed to insure that the interests of the Indian mineral owner are protected. They also suggested that a provision for self-bonding should be added.

The BIA recognizes that a contract or prospecting permit entered into through negotiations under the 1982 Act could contain bonding provisions agreed to by the parties. Similarly, the parties to the contract could agree to self-bonding in lieu of the bonding requirements of this section, provided the Secretary determines that the proposed bonding is in the Indian owner's best interest. However, this section also applies to leases entered into pursuant to the 1909 and the 1938 Acts, and the BIA believes that the rules must provide for bonding covering such leases. With respect to self-bonding, the BIA does not have sufficient information on which to base a determination that such bonding will adequately protect Indian mineral interests or to develop criteria for determining when such bonding is appropriate. Thus, self-bonding is not included in the regulations at the present time.

Sec. 211.41 Manner of payments.

No changes were made to this section. One commentator suggested that the phrase "or as provided by tribal constitution or by-laws" be added at the end. This suggested change was not accepted because, as set forth in § 211.1(e), discussed *ante*, a tribe organized pursuant to the Indian Reorganization Act of 1934 (and other acts) may adopt rules which supersede any of the regulations in this part, provided such rules are not in violation of Federal laws.

Sec. 211.42 Permission to start operations. (New)

This is a new section and the section designations following it have been redesignated accordingly.

This section is a revision of existing 25 CFR 211.20. Paragraph (a) has been revised to provide that no operations on contracted areas may begin before the effective date of the mineral contract, and to make it clear that the effective date of the contract is the date it is officially approved by the Secretary, or a designated representative. This provision should be construed as prohibiting any surface disturbance on the land prior to official approval of a contract.

Paragraph (b) of the existing rule has been amended to provide that approval of applications for permission to start operations is to be secured from the Authorized Officer in the Bureau of Land Management since that agency now performs this function.

Sec. 211.43 Recordkeeping. (Old § 211.42)

No changes were made to paragraph (a).

Industry commentators strenuously objected to the requirement in paragraph (b) that all records, including records regarding the financial structure of the prospector or operator, be made available for examination and reproduction by the Secretary, the Authorized Officer and tribal mineral owner. They contend that as long as the regulations provide that the Secretary may require an audit, there is no need to reproduce the records, and that such a requirement would greatly increase the risk that proprietary, competitive and financial information would be leaked to third parties. They argue that disclosure of such information would adversely affect an operator's contracts and competitive edge.

The BIA has concluded that the arguments against making all records available for reproduction are persuasive. Accordingly, paragraph (b) has been modified to provide that all records shall be made available to the Secretary upon request and has dropped the requirement that they be reproduced. Under this rule, an Indian mineral owner may request the Secretary to conduct an audit or cause an independent audit to be made. The audit will then be made available to the Indian mineral owner.

Sec. 211.44 Mining contracts—individually-owned Indian lands. (Old § 211.43)

Industry commentators recommended deletion of paragraph (b) requiring allotted lands of a deceased allottee to be offered for sale by competitive bidding. One commentator argued that although the 1909 Act, which requires competitive sales whenever heirs and devisees cannot be located or have not been determined, was not repealed, nevertheless an agreement approved pursuant to the 1982 Act should not be subject to the earlier statute's requirement for competitive bidding. We agree, and have changed the regulations accordingly.

Paragraph (c) has been changed to improve technical accuracy.

As proposed, paragraph (d) of this section provided that the Secretary may approve a contract, where less than 100 percent of the undivided mineral interest is to be committed to the contract, if 51 percent or more of the mineral interest is committed. Upon further consideration, the BIA has concluded that a 51 percent margin is too small. Accordingly, the margin has been raised to 66⅔ percent.

Sec. 211.45 Assignments; overriding royalties and operating agreements. (Old § 211.44)

Industry comments on paragraph (a) of this section strongly urged that it be modified to delete language to the effect that an assignment or sublease of an interest in a contract is not effective without the approval of the Indian owner. They contend that the existence of multiple owners of undivided interests in allotted lands should preclude this requirement on practical basis. One commentator expressed a concern that such open-ended approval authority on the part of Indian mineral owners could be abused and could be utilized to seek additional consideration as a condition to approving an assignment. Another commentator objected to the requirement that assignments be subject to the criteria of § 211.6 on the grounds that there is no justification for requiring a complex review process for an assignment, because the assignment will not affect the rights and obligations of the operator/lessee or the Indian mineral owner, or alter the economic or environmental aspects of the project.

The BIA has concluded that the requirement of Secretarial approval of all assignments or subleases will provide an adequate safeguard against interests in contracts being assigned or sublet to unqualified persons or companies without the necessity of requiring approval of the Indian mineral owners in every instance. At the same time, the BIA does not desire to preclude Indian mineral owners and lessees from including a requirement for lessor consent in the contract, should the parties agree to do so. Accordingly, this section has been revised to delete the mandatory requirement for approval by Indian owners. The BIA also agrees, as some commentators argued, that the review process set forth in § 211.6 is unnecessarily burdensome with respect to assignments. In addition, the requirement would be inconsistent with the position the BIA has taken that the requirements of the 1982 Act will not apply to contracts entered into pursuant to the 1909 and 1938 Acts. Consequently, paragraph (a) has been revised to delete this requirement.

The BIA generally does not require lessees to attain approval of farmout or overriding royalty agreements. However, such agreements should be filed with the appropriate BIA agency office. Should such an agreement in reality be an assignment of interests changing the terms of the lease or minerals agreement, the burden is on the lessee to acquire the requisite consent of the mineral owners and the subsequent approval of the Secretary.

The BIA has concluded that paragraph (b) should be amended to require that a copy of any agreement creating overriding royalties or payments out of production be filed with the Secretary except in instances where the agreement is incorporated in an assignment which is required to be approved under paragraph (a), as provided in existing regulations in 25 CFR 211.26(d).

The BIA also has concluded that assignments of operating rights need not and will not be approved by the Secretary. However, in order to keep the Secretary apprised of the identity of the operator, the rule requires that such designations be filed with the Secretary.

Sec. 211.46 Legal review. (Old)

One commentator suggested that this section should be clarified to assure that submission of a proposed contract to a Field or Regional Solicitor's office for legal review will not result in any extension of the time currently

established in the regulations for final Secretarial approval or disapproval. Inasmuch as the statutory time limits for review and approval or disapproval of a proposed minerals agreement are established by the 1982 Act, it is clear that the Department lacks any authority to extend the time frame through regulations, and no such extension should be implied by this section. The policy of the Department is that reviews of proposed mineral agreements for legal sufficiency will be bound by the statutory time limits in the 1982 Act. Upon reconsideration, the BIA has concluded that this section is unnecessary inasmuch as existing internal BIA guidelines will require legal review of mineral contracts. Therefore, this section is removed.

Sec. 211.46 Termination and Cancellation; Enforcement of orders. (New)

Industry commentators recommend that this section be deleted in its entirety. They contend, first, that the handling of contract defaults should be matters for negotiation by the parties to the minerals agreement; that the parties should be free to utilize specified arbitration or judicial procedures as a means of resolving disputes, and that the mechanisms to accomplish this can be provided for in the agreement. One industry commentator suggested that the regulations must be rewritten (a) to limit the Secretary's enforcement powers to violations of Federal laws, regulations, and approved mining plans, and (b) to limit the Secretary's trustee duty to assisting Indian mineral owners, when necessary, to enforce their contract rights and remedies in the manner provided for in a mineral agreement. Finally, industry commentators assert that there is no statutory authority for the regulations in § 211.45 and § 211.47.

The answer to the first contention is that section 4(b) of the 1982 Act specifically directs the Secretary, in approving and disapproving a proposed agreement, to consider, among other things,"* * * provisions for resolving disputes that may arise between the parties to the agreement."

Presumably, such provisions could include a proposed scheme for the inspection of operations and the resolution of disputes, and if the Secretary determines that the contract proposal would adequately protect the Indian mineral owners and did not violate applicable laws, such a scheme could be approved. Under those circumstances, provisions for enforcement and arbitration of disputes in the minerals agreement would supersede the BIA's regulations. However, the BIA cannot agree that §§ 221.45 and 221.47 should be deleted from the regulations for a number of reasons. These sections apply to operations on leases under the 1938 Act and the 1909 Act, as well as to mineral agreement under the 1982 Act. Deletion of these sections would leave the Secretary without any regulatory procedure for enforcement of the terms of such leases. In addition, deletion of these provisions would mean that each time a proposed agreement is presented to the Secretary which either contained no provisions of enforcement or contained unacceptable provisions, approval of the agreement would have to be withheld until acceptable provisions were agreed to by the parties.

In regard to the statutory authority for the regulations, the BIA believes that there are several sources of such authority. For example, section 4(e) of the 1982 Act states that whereas the United States shall not be liable for losses sustained by a tribe or individual Indian under an approved minerals agreement, "* * * the Secretary shall continue to have a trust obligation to ensure that the rights of a tribe or individual Indian are protected in the event of a violation of the terms of any Minerals Agreement by any other party to such agreement." Section 8 of 1982 Act requires the Secretary to promulgate rules and regulations "to facilitate implementation of the Act." Similar provisions authorizing the Secretary to promulgate rules and regulations are found in the 1938 Act (25 U.S.C. 396d) and the 1909 Act (25 U.S.C. 396).

The existing rules of the BIA contain procedures for the enforcement of rules and regulations, orders of supervisory personnel, or the terms and conditions of contracts to conduct mining operations on Indian lands. The regulatory scheme set forth in this section is intended to strengthen these procedures.

In response to public comment, this section has been revised extensively to correct numerous objections and to include suggestions for improvement. The major change from the proposed regulations is the deletion of the opportunity for a hearing before the Superintendent. The BIA believes the 25 CFR Part 2 appeal procedures, now being revised, are adequate to safeguard the interests of affected parties without the delay that could occur by adding an additional 30-day hearing process. All parties will still have the opportunity to appeal and argue their position in writing under the Part 2 procedures. The Bureau also believes that immediately effective cessation orders are appropriate where there is an immediate and serious threat of damage to the environment or resources, and has thus retained this provision.

Sec. 211.47 Suspension of Operations; Remedial Operations.

(This is a new section which has been added for the purpose of separating the provisions for suspension of operations from other provisions contained in § 211.22 Duration of Leases.)

A number of commentators suggested that the provision of § 211.22 Duration of Leases, paragraph (c), limiting the period of suspension of operations to 60 days, was unsatisfactory. They suggested that this provision is unrealistic, since other situations, such as labor strikes, inability of a customer to receive the mineral, delays in obtaining permits, as well as economic considerations, could justify a suspension of operations for more than 60 days. Their suggestion was that this paragraph should be deleted altogether, although one industry commentator suggested the maximum be increased to 180 days. On the other hand, a tribal attorney suggested that, based upon his experience, the 60-day limit is workable and commendable. He suggested that while an operator should not be penalized when diligently resuming work to correct damage from natural or accidental disasters, the operator should not be entitled to hold the leasehold indefinitely simply because it is seriously inconvenient to obtain production in paying quantities.

Industry commentators also asked that § 211.22 paragraph (d), providing for a minimum rental, be deleted for the reason that it imposes an economic burden on a lessee. The BIA does not accept this argument. A suspension of mining operations during the extended term of the lease means that the Indian mineral owners receive no royalty during the period of the suspension. The loss of the income provided by royalties clearly constitutes an economic burden on the Indian owner for which she/he should be compensated.

After considering these comments, it is obvious that suspensions of operations fall into two distinct categories—remedial and economic. It has been determined that in cases of short-term shut-down of operations for remedial workover or repair of mechanical failure purposes, after expiration of the primary term of the contract, the consent of the Indian mineral owner shall not be required unless so stated in the contract, and the request for suspension, if approved by the Secretary, will be pursuant to the procedures of the Bureau of Land

Management in 43 CFR 3473.4, 3483.3, and 3503.3–2 as applicable. In cases where a suspension of operating and producing requirements is requested after expiration of the primary term of the contract for economic or marketing reasons, it has been determined that the request or application for suspension shall be accompanied by the written consent of the Indian mineral owner along with an agreement executed by the parties to the contract which sets forth the terms pertaining to the suspension of operations.

It has also been decided that the requirement for permission to suspend operating and producing requirements in the primary term of a contract, as proposed in § 211.22 paragraph (b), should be eliminated in light of the many objections raised in the comments. Consequently this entire section has been rewritten to indicate the procedures to be followed in each of the types of suspensions cited above.

Sec. 211.47 Penalties. (Redesignated § 211.48)

A number of commentators suggested that this section be revised to provide that, to the extent the Indian mineral owner and the operator have created private rights and liabilities, the $1,000 per day penalty and the other enforcement provisions of this section are not applicable. The BIA has accepted this proposal and has modified the section accordingly. The basis for this change is that, as proposed, this section would have established a regulatory maximum fine of $1,000 per day. The BIA agrees that the parties should not be constrained by such a limitation if they wish to agree to a penalty in excess of $1,000 per day or to some other penalty provision.

Sec. 211.48 Appeals. (Redesignated § 211.49)

The commentators on this section suggested that the appeal provisions should be modified to provide for an expedited system of appeals, and suggest a procedure whereby an appeal would be made directly from a decision of an Area Director to the Interior Board of Indian Appeals or to the Interior Board of Land Appeals. The comments did not include any arguments in support of this suggestion. However, the BIA has received numerous complaints from a variety of sources that the existing system of appeals is cumbersome. Also, others have complained that the existing rules and regulations in 25 CFR Part 2 neither adequately explain an appellant's rights to appeal nor do they set forth the procedural steps which must be followed to perfect the appeal in an easily understood manner. BIA is in the process of revising the Part 2 regulations to address these and other concerns.

Sec. 211.49 Fees. (Redesignated § 211.50)

No comments were received on this section and no changes have been made.

Sec. 211.50 No mineral agreements made with government employees. (Redesignated § 211.51)

This section prohibits employees or agents of the BIA or Indian Health Service (IHS) from entering into, or being a party to, any mineral agreement involving an Indian-owned mineral interest. Such holding is barred by Federal law. See 18 U.S.C. 437.

B. Part 225—Oil and Gas and Geothermal Contracts—General Discussion

As mentioned *ante* Part 225 has been revised to include specific references to geothermal operations. The BIA has decided that contracts for geothermal development shall be processed as mineral agreements under the requirements of Subpart A, for the reason that this type of contract does not lend itself to processing under standard forms used by the BIA for competitive oil and gas leasing. Accordingly, Subparts A and C have been revised to add appropriate references to geothermal.

Sec. 225.1 Purpose and Scope.

Minor changes were made to paragraph (b) of this section and a new paragraph (e) was added to make the section conform to a similar addition in § 211.1.

A new § 225.3, *Definitions,* has been added to incorporate all of the definitions in this part in one section, and §§ 225.21 and 225.43 have been eliminated. A new definition of the term "geothermal resources" has been added and definitions of the terms "minerals agreement," "operator," and "geological and geophysical permit" have been revised to include the term "geothermal" or "geothermal resources." In addition, the term "Indian mineral owner" has been deleted and a definition of "Indian owner" substitued in lieu thereof. This term is defined to include Indian tribes and individuals who own land or interests in oil and gas or geothermal resources.

Subpart A—Fluid Minerals Agreements

Sec. 225.20 Scope.

The second sentence in this section has been deleted.

Sec. 225.21 Authority to contract.

This section has been revised to conform to § 211.5. Refer to the discussion of comments on § 211.5.

Sec. 225.22 Negotiation procedures.

This section is identical to § 211.6. For a discussion of the comments and the changes made, refer to that section.

Sec. 225.23 Approval of agreements.

This section is identical to § 211.7. Refer to that section for a discussion of the comments.

Subpart B—Procedures for Competitive Oil and Gas Leases.

Sec. 225.30 Scope.

A minor editorial change was made to this section.

Sec. 225.31 Procedures for awarding leases.

For a discussion of the changes made to this section refer to § 211.21.

Sec. 225.32 Duration of leases.

A large number of commentators objected to the proposed definition in paragraph (b) of "paying quantities" which was fundamentally the same as the definition of this term in § 211.22. The basis for the objections was essentially the same, namely, that the definition is unnecessarily complex and includes expenses which should not be considered. The commentators urged that the BIA either revise this provision to eliminate a definition of "paying quantities," or adopt the definition used in federal oil and gas leases on public lands. The BIA has decided to include the definition found in the regulations for federal lands which has been in effect for several years.

The provisions for suspension of operations are addressed at § 225.54.

Sec. 225.33 Rentals; minimum royalty; production royalty on leases.

Some commentators recommended changes in the procedure for determining "value" set forth in paragraph (d). However, because the Secretary has decided that rules and regulations governing how the value of the production of oil and gas on Indian land is to be determined, shall be prepared by the MMS and located in 30 CFR Chapter II, proposed paragraph (d) relating to the methods of determining value of production has been amended. Accordingly, a discussion of the comments on the proposed rule has been omitted.

Most of the comments received on this section were objections to paragraph (e).

Industry commentators were concerned that the lessor's right to take excess gas could impair long-term gas sales contracts entered into by the lessee, and requested that the regulation be amended to prevent such an occurrence. The BIA agrees that this right should be available in the event that the gas taken is in excess of the lessee's requirements for lease operation and contracts. Accordingly, the *proviso* has been modified to require that the Superintendent must determine that the gas is available in sufficient quantities and is not subject to any pre-existing sales contract, or that its disposition is not otherwise provided for in the lease.

Two Indian commentators complained that paragraph (d) relating to excess gas is a change to the existing regulation in 25 CFR 211.13(b), in that it would require payment for the excess gas, while the existing rule requires no payment. The commentators overlook the fact that the old rule limited use of such gas to schools or other tribally-owned buildings, whereas the new rule extends the right to any Indian mineral owner and puts no limitation on how the gas is to be used. The BIA believes these extensions justify the changes imposed by the regulation.

Sec. 225.34 Contracts for subsurface storage of oil and gas.

There were no comments on this section and no changes made.

Sec. 225.36 Forms.

Refer to § 211.23.

Subpart C—General

Sec. 225.40 Scope.

No changes were made to this section.

Sec. 225.41 Authority and responsibility of the authorized officer.

Some editorial changes have been made to more clearly state the responsibilities assigned to the Authorized Officer resulting from Departmental reorganization, and the title changed to Authority and Responsibility of the Bureau of Land Management (BLM).

Sec. 225.42 Authority and responsibility of the Minerals Management Service (MMS)

The BIA has accepted the suggestion of several commentators that the word "inspection" be substituted for "obtaining" in the second sentence of this section. The comments were that this change would more adequately preserve the confidentiality of the documents while permitting their use by MMS to ensure accurate royalty payments. The BIA agrees that this is a reasonable modification and the section has been rewritten.

Sec. 225.43 Definitions. (Old)

As previously noted, the definitions in this section have been designated as a new § 225.3 and the subsequent sections are redesignated.

Sec. 225.43 Approval of amendments to contracts. (New)

Some reference errors were corrected. Refer to § 211.34 for a discussion of the comments on this section.

Sec. 225.44 Geological and geophysical permits.

The changes made to this section follow changes made to § 211.36.

Sec. 225.45 Removal of restrictions.

No substantive changes were made to this section. Refer to § 211.35.

Sec. 225.46 Oil and gas and geothermal contracts on individually-owned Indian lands.

This section parallels § 211.44. Refer to that section for a discussion of substantive comments.

Sec. 225.47 Persons signing in a representative capacity.

Refer to § 211.39.

Sec. 225.48 Economic assessments.

Refer to § 211.37.

Sec. 225.49 Environmental assessments.

Refer to § 211.38.

Sec. 225.50 Bonds.

Refer to § 211.40. The "approving official" referred to in paragraph (b) is the Deputy to the Assistant Secretary—Indian Affairs (Trust and Economic Development), and those persons designated to act for him during his absence (10 BIAM 5.5).

Sec. 225.51 Manner of payments.

Refer to § 211.41.

Sec. 225.53 Assignments and overriding royalties.

Refer also to § 211.45. A number of industry commentators noted that it is unclear from the language of paragraph (a) whether the BIA intends to prohibit the assignment of operating rights, or merely that approval of such assignments by the Secretary is not required. They contend that assignments of operating rights serve an essential purpose in getting wells drilled, and that industry would strongly object to any prohibition of such assignments.

Indian commentators contend that the regulations should provide that the assignment of any interest in Indian oil and gas resources, including an assignment of operating rights, should be deemed invalid unless it has been approved by the Secretary with the consent of the Indian mineral owner.

After considering the issue, the BIA has concluded that designation of operators should be filed with the Secretary, but approval by the Secretary will not be required because there is no transfer of any leasehold interest.

Sec. 225.54 Suspension of Production; Remedial Workover/Shut-In.

This section, which authorized suspension of producing requirements under certain circumstances, has been extensively revised in response to critical comments and added as § 211.47 to the non-oil and gas and geothermal regulations, using principally the same language.

Several Indian commentators objected that paragraph (b) would require the consent of the Indian mineral owners to suspension of producing requirements for economic and marketing reasons only if such consent is specifically required in the contract. They contend that suspensions should never be granted without the consent of the Indian mineral owner, regardless of whether or not a consent provision is included in the contract. They also complained that paragraph (b) appears to provide that any lease, even a lease for a one year primary term, could be extended to ten years on the basis of a shut-in application based upon a lack of adequate marketing facilities or unsatisfactory marketing conditions. This assumption appears to be based upon the commentators' interpretation of the language in paragraph (b) to the effect that "such suspensions shall not exceed beyond the ten-year primary term of tribal leases approved pursuant to the Act of May 11, 1938 * * * or leases on allotted lands approved pursuant to the Act of March 3, 1909 * * *."

Also, a number of Indian commentators objected to a $2.50 per acre shut-in royalty, which they characterized as "inadequate and insignificant." One commentator suggested that the royalty should be no less than $10.00 per acre. Industry commentators either objected to any payment of a shut-in royalty or contend that such royalty should be paid as an alternative to rentals, not in addition to rent. Several commentators noted that a regulatory requirement to pay any specified shut-in royalty could be at

variance with provisions that an Indian mineral owner and an operator might agree upon in a mineral agreement. They point out that such a situation would be contrary to the intent of the 1982 Act, which was to grant Indian mineral owners and operators greater flexibility in reaching agreements.

After considering these comments, it is obvious that suspensions of production fall into two distinct categories—remedial and economic. It has been determined that in cases of short-term shut-down of production for remedial workover or repair of mechanical failure purposes, after expiration of the primary term of the contract, the consent of the Indian mineral owner shall not be required unless so stated in the contract, and the request for suspension, if approved by the Secretary, will be pursuant to the procedures of the Bureau of Land Management in 43 CFR 3162.3–2. In cases where a suspension of producing requirements is requested after expiration of the primary term of the contract for economic or marketing reasons, it has been determined that the request or application for suspension shall be accompanied by the written consent of the Indian mineral owner, along with an agreement executed by the parties to the contract which sets forth the terms pertaining to the suspension of production.

It has also been decided that the requirement for permission to suspend producing requirements in the primary term of a contract as proposed in paragraph (b), should be eliminated in light of the many objections raised in the comments. Consequently, this entire section has been rewritten to indicate the procedures to be followed in each of the types of suspensions cited above.

Sec. 225.55 Unitization, communitization and well spacing agreements.

Paragraph (a) has been amended to include the term "cooperative unit plan."

The BIA has concluded that requiring preparation of a written economic report as a part of the review process would impose an unnecessary administrative burden, inasmuch as the interests of the Indian oil and gas owner are considered in detail at the time a proposed contract is presented. Consequently, this requirement has been removed.

The purpose for pooling mineral interests is to promote conservation and efficient development of the resources. However, during the early 1980's, when speculation for oil and gas properties caused bidders to offer extremely high bonuses, many Indian mineral owners put pressure on BIA officials to either not act on, or disapprove, cooperative agreements for the sole purpose of causing the primary terms of leases to expire so the lands could be released and new bonuses received. The Department believes that the review process should be limited to the technical aspects of whether or not the proposed agreement provides for proper operational concerns. Paragraph (7) has been added to reduce the likelihood that officials will consider provisions other than the engineering and technical aspects of the agreement. It provides that approval of the agreement shall be retroactive to the date of submittal to the Department, or the date of first production within the proposed unit, whichever is earlier, should the approval review process of a favorable technical finding extend beyond the primary term of the lease. However, paragraph (5) continues the policy that such agreements be submitted ninety (90) days prior to the earliest expiration date of any Indian contract in the unit.

In response to comments, a new paragraph (8) has been added segregating leases at the time of communitization into participating and non-participating areas, depending on the terms in the agreement. From experience, the BIA does not believe that this will happen often, when surface area is the only item being considered. However, the BIA has, in more recent practice, required that communitization agreements be restricted to the specific strata or formations to be diligently developed, thus not holding the remaining nonproductive formations beyond the primary term of the lease by production from only one or two producing formations. This new provision incorporates that practice into the regulations.

A number of commentators pointed out the requirement in proposed paragraph (d) that an affidavit certifying that all Indian mineral owners "have been given notice" that approval of an agreement is being sought might be impossible to fulfill insofar as allotted Indian lands are concerned. The BIA has concluded this comment is valid and has modified the provision to require that the affidavit certify that reasonable efforts were made to secure the consent of the Indian oil and gas owners who have not given prior consent, by mailing them an invitation to join the unit. The invitation shall be sent to their last known mailing address.

The BIA has concluded that the existing practice of filing proposed unit agreements with the Superintendent should be formalized. Accordingly, this section has been amended. In addition, a new paragraph has been added providing that the Superintendent shall obtain the recommendations of the Authorized Officer for approval or disapproval of a proposed agreement, based upon the engineering and technical aspects of the agreement before taking action on the agreement. This addition also formalizes an existing procedure.

In response to comments, a new paragraph has been added requiring that each well within a cooperative unit must be drilled in conformity with an acceptable well spacing program at a surveyed well location approved by the Authorized Officer. The provision also defines an acceptable program.

Sec. 225.56 Inspection of premises; books and accounts.

See also comments on § 211.43.

One Indian commentator recommended this section be amended to provide that individual Indian mineral owners, tribes, or their representatives shall have the right to request any and all data, and/or make an inspection of the records of the Minerals Management Service or the operator's records, in order to make an evaluation of the correctness of royalty accounting. One industry commentator contends that inspection of the contracted premises, books and accounts is controlled by the Federal Oil and Gas Royalty Management Act of January 12, 1982 (FOGRMA) (96 Stat. 2447; 30 U.S.C. 1701 *et seq.*).

It is the intention of the BIA that Indian mineral owners shall have the right to examine an operator's books and records pertaining to operations involving their mineral interest at any time during regular business hours, and agreement by a proposed operator to honor this right shall be a condition of approval of a contract by the Secretary. In this regard, section 103 of the Federal Oil and Gas Royalty Management Act specifically provides that any reports, records or information required by the Secretary for the purpose of implementing that Act or determining compliance with rules or orders issued pursuant to that Act, shall be made available for inspection and duplication upon request by an Indian tribe conducting and audit investigation.

Sec. 225.57 Termination and cancellation; enforcement of orders.

Refer to § 211.46.

Sec. 225.58 Penalties.

Refer also to § 211.47.

Several commentators contended that this section, as proposed, is inconsistent

with civil penalty provisions in section 109 of FOGRMA and urged that the section be revised to conform to that Act. The thrust of their contention appears to be that section 109 sets the standards and procedures for the imposition of penalties involving oil and gas operations on Indian and Federal lands. The BIA believes this is an incorrect interpretation of FOGRMA, inasmuch as section 304 of that Act states unequivocally that the penalties and authorities in the Act are "supplemental to, and not in derogation of any penalties or authorities contained in any other provision of law." The BIA construes this provision to mean that any authority previously granted by Congress under other mineral development Acts is unaffected by the enactment of FOGRMA and that the penalty provisions of that Act supplement, but do not replace, rules and regulations governing penalties promulgated under prior Acts. A new paragraph (d) has been added to make this point clear. Some commentators pointed out that the provision in this section to the effect that violators may be subject to a penalty of "not less than $1,000 per violation per day" is inconsistent with the penalty in § 211.47 of "not more than $1,000 per violation per day" and asked for clarification. It is the BIA's intention to set a maximum penalty of $1,000 per violation per day, and this correction has been made. The BIA agrees with commentators who contend that a minimum penalty of $1,000 per violation per day could be excessive in instances where minor violations were involved, whereas a maximum $1,000 penalty will permit the Secretary to tailor the amount of the penalty to fit the seriousness of the violation.

Another comment was that the section should make it clear that, to the extent the parties create private specific liabilities in the contract itself, the terms of the contract should control the penalties to be imposed. The BIA agrees with this contention and has revised the section to provide that penalty provisions in an oil and gas contract approved by the Secretary, where inconsistent with the penalties provided for in this section, supersede the provisions on this section. It should be noted, however, that this should not be construed to mean that the Secretary will approve a contract which purports to exempt the parties from compliance with any specific penalties provided by Congress, such as FOGRMA.

Sec. 225.59 Appeals.

This section is identical to § 211.48. For a discussion of the comments and the changes made, refer to that section.

Sec. 225.60 Fees.

No changes have been made to this section.

Sec. 225.61 Legal review.

(Old) Refer to § 211.46 (Old).

Sec. 225.61 No oil and gas agreements made with Government employees (New).

This section prohibits employees or agents of the BIA or Indian Health Service (IHS) from entering into, or being a party to, any mineral agreement involving an Indian-owned mineral interest. Such holding is prohibited by federal law. See 18 U.S.C. 437.

Sec. 225.62 Sales contracts, division orders and other division of interest documents.

No changes have been made to this section.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291, Federal Regulation, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States based enterprises to compete with foreign-based enterprises in domestic or export markets; and will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.)*.

This final rulemaking will have equal impact on anyone desiring to engage in prospecting for or developing Indian-owned minerals, including oil and gas and geothermal resources. The changes made by the final rulemaking reduce the regulatory burden imposed on such persons in several instances. The final rulemaking does increase the filing fee which must accompany each permit, lease, sublease or other contract, or an assignment or surrender thereof from $10 to $25. This increase is necessary to partially compensate the United States for its costs of processing those documents, but is not an amount that should discourage or prevent any small business from contracting to engage in mineral development on Indian lands.

The changes made by the final rulemaking are for the purpose of streamlining and updating existing leasing procedures, and clarifying the meaning and intent of those procedures. These changes constitute an administrative action and do not impact on the physical environment. The approval of contracts will require compliance with the provisions of the National Environmental Policy Act of 1969, including public participation in compliance with the regulations of the Council on Environmental Quality. In analyzing the alternatives to the changes in the proposed rulemaking which were made in the final rulemaking, the BIA considered the changes to be of such minor variation and degree that the impacts were deemed equal to or less than the changes made by the proposed rulemaking. The Department of the Interior has determined therefore that there will be no significant impact to the human environment.

The Office of Management and Budget (OMB) has informed the Department of the Interior that the information collections contained in 25 CFR Parts 211 and 225 need not be reviewed by them under the Paperwork Reduction Act, Pub. L. 95-511 (44 U.S.C. 3501 *et seq.)*

This final rule is published in exercise of the authority delegated by the Secretary of the Department of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

List of Subjects

25 CFR Part 211

Indians—lands, Mineral resources, Mines, Exploration.

25 CFR Part 212

Indians—lands, Mineral resources, Mines, Oil and gas exploration, Reporting and recordkeeping requirements.

25 CFR Part 225

Indians—lands, Oil and gas exploration.

1. Part 211 is revised to read as follows:

PART 211—CONTRACTS FOR PROSPECTING AND MINING ON INDIAN LANDS (EXCEPT OIL AND GAS AND GEOTHERMAL)

Sec.

211.1 Purpose and scope.
211.2 Information collection.
211.3 Definitions.

Subpart A—Minerals Agreements

211.4 Scope.

211.5 Authority to contract.
211.6 Negotiation procedures.
211.7 Approval of agreements.

Subpart B—Procedures for Competitive Leases

211.20 Scope.
211.21 Procedures for awarding leases.
211.22 Duration of leases.
211.23 Forms.

Subpart C—General

211.30 Scope.
211.31 Authority and responsibility of the Bureau of Land Management.
211.32 Authority and responsibility of the Minerals Management Service (MMS).
211.33 Authority and responsibility of the Director, Office of Surface Mining Reclamation and Enforcement (OSMRE).
211.34 Approval of amendments.
211.35 Removal of restrictions.
211.36 Geological and geophysical permits.
211.37 Economic assessments.
211.38 Environmental assessments.
211.39 Persons signing in a representative capacity.
211.40 Bonds.
211.41 Manner of payments.
211.42 Permission to start operations.
211.43 Recordkeeping.
211.44 Mining contracts—individually-owned Indian lands.
211.45 Assignments; overriding royalties and operating agreements.
211.46 Termination and cancellation; enforcement of orders.
211.47 Suspension of operations; remedial operations.
211.48 Penalties.
211.49 Appeals.
211.50 Fees.
211.51 No mineral agreements made with Government employees.

Authority: Sec. 4, Act of May 11, 1938 (52 Stat. 348, 25 U.S.C. 396a–g, 476, 477, 509); Act of March 3, 1909, as amended (35 Stat. 783, 25 U.S.C. 396); Sec. 1, Act of August 9, 1955, as amended (69 Stat. 539, 25 U.S.C. 415), Act of July 8, 1940 (54 Stat. 745, 25 U.S.C. 880); Secs. 16 and 17, Act of June 18, 1934 (48 Stat. 987, 988, 25 U.S.C. 476 and 477); Act of August 11, 1978 (92 Stat. 469, 42 U.S.C. 1996); Sec. 102, Act of January 1, 1970 (83 Stat. 852, 42 Stat. 4332); Act of December 22, 1982 (96 Stat. 1938; 25 U.S.C. 2101 thru 2108).

§ 211.1 Purpose and scope.

(a) The regulations in this part govern contracts for prospecting and mining of Indian-owned minerals, other than oil and gas and geothermal. Subpart A—Minerals Agreements establishes the procedures for the approval of minerals agreements entered into pursuant to the Indian Mineral Development Act of 1982 (96 Stat. 1938; 25 U.S.C. 2101 through 2108). Subpart B—Procedures for Competitive Leases contains regulations governing procedures for the issuance of competitive mining leases on tribal and allotted lands pursuant to the Act of May 11, 1938 (52 Stat. 348; 25 U.S.C. 396a–g) and the Act of March 3, 1909, as amended (35 Stat. 783, 25 U.S.C. 396). Subpart C—General contains miscellaneous provisions which apply to the issuance of contracts for prospecting and mining under both Subparts A and B. These regulations are intended to ensure that Indian owners desiring to have their minerals developed receive at least fair and reasonable remuneration for the disposition of their mineral resources; to ensure that any adverse environmental and cultural impacts resulting from such development are minimized, and to permit Indian mineral owners to enter into contracts which allow them more responsibility in overseeing and greater flexibility in the development of their mineral resources.

(b) The regulations in this part do not affect leasing and mining governed by the regulations in 25 CFR Parts 213, 214, 215, and 30 CFR Chapter VII for coal operations.

(c) No regulations which become effective after the approval of any contract shall operate to affect the term of the contract, the royalty rate, rental, or acreage unless agreed to be all parties to the contract.

(d) Exploration and mining operations for minerals (except coal) on Indian lands are subject to the regulations in 43 CFR Group 3500 and 25 CFR 216 Subpart A. Exploration and mining operations for coal on Indian lands are subject to the regulations in 25 CFR Part 216 Subparts A and B, and applicable regulations in 43 CFR Group 3400 and 30 CFR Part 740.

(e) The regulations in this part may be superseded by the provisions of any tribal constitution, bylaw or charter issued pursuant to the Indian Reorganization Act of June 18, 1934 (48 Stat. 987; 25 U.S.C. 461 through 479), the Alaska Act of May 1, 1936 (49 Stat. 1250; 48 U.S.C. 352, 258a), or the Oklahoma Indian Welfare Act of June 26, 1936 (49 Stat. 1967; 25 U.S.C., and Sup., 501 through 509), or by ordinance, resolution or other action authorized under such constitution, bylaw or charter where not inconsistent with Federal law. The regulations in this part, insofar as they are not so superseded, shall apply to leases made by organized tribes if the validity of the lease depends upon the approval of the Secretary of the Interior.

§ 211.2 Information collection.

The Office of Management and Budget has informed the Department of the Interior that the Information Collection Requirements contained in section 211 need not be reviewed by them under the Paperwork Reduction Act, (44 U.S.C. 3501 *et seq.*).

§ 211.3 Definitions.

As used in this part, the following terms have the specified meaning except where otherwise indicated—

(a) "Act" means the Indian Mineral Development Act of 1982 (Pub. L. 97–382).

(b) "Minerals agreement" means any joint venture, operating, production sharing, service, managerial lease (other than a lease, or amendment thereto, entered into pursuant to the Act of May 11, 1938 and the Act of March 3, 1909), or other agreement, or amendment, supplement, or other modification of such agreement, providing for the exploration, or extraction, processing, or other development of minerals, or providing for the sale or disposition of the production or products of such mineral resources.

(c) "Secretary" means the Secretary of the Interior or an authorized representative.

(d) "Area Director" means the Bureau of Indian Affairs official in charge of an Area Office.

(e) "Superintendent" means a Bureau of Indian Affairs Superintendent or the authorized Bureau representative having immediate jurisdiction over the minerals covered by a contract under this part, except at the Navajo Area Office where it shall mean the Bureau Area Director or an authorized representative.

(f) "Bureau" means the Bureau of Indian Affairs.

(g) "Indian mineral owner" means:

(1) Any individual Indian or Alaska Native who owns land or interests in land, the title to which is held in trust by the United States, or is subject to restriction against alienation imposed by the United States;

(2) Any Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group which owns land or interests in land, the title to which is held in trust by the United States or is subject to restriction against alienation imposed by the United States.

(h) "Minerals" includes both metalliferous and nonmetalliferous minerals, except oil and gas and geothermal, and includes but is not limited to, sand, gravel, pumice, cinders, granite, building stone, limestone, clay, silt, or any energy or other non-energy mineral.

(i) "Mining" means the science, technique, and business of mineral development, including opencast, underground work, and in situ leaching, directed to severance and treatment of minerals; however, when sand, gravel, pumice, cinders, granite, building stone, limestone, clay or silt is the subject mineral, an enterprise is considered

"mining" only if the sale and removal of such mineral exceeds 5,000 cubic yards in any given year.

(j) "Authorized Officer" means any employee of the Bureau of Land Management authorized by law or by lawful delegation of authority to perform the duties described.

(k) "Minerals Management Service (MMS) Official" means any employee of the Minerals Management Service authorized by law or by lawful delegation of authority to perform the duties described.

(l) "Director" means the Director, Office of Surface Mining Reclamation and Enforcement; or the Director's representative.

(m) "Operator" means a person, proprietorship, partnership, corporation, or other business entity which has made application for, is negotiating with an Indian mineral owner with respect to, or has entered into a minerals agreement to mine for Indian-owned minerals.

(n) "Prospector" means a person, proprietorship, partnership, corporation, or other business association which has made application for, is negotiating with an Indian mineral owner with respect to, or has entered into, a mineral agreement to prospect or explore for Indian-owned minerals.

(o) "Surface owner" means any individual who owns land or an Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group, which owns land.

(p) "Geological and geophysical permit" means a written authorization to conduct onsite surveys to locate potential deposits of minerals on the lands.

Subpart A—Minerals Agreements

§ 211.4 Scope.

The regulations in this subpart govern the procedures for obtaining approval of minerals agreement for the exploration, development and sale of minerals (other than oil and gas or geothermal) on Indian lands under the Indian Mineral Development Act of 1982 (Pub. L. 97–382).

§ 211.5 Authority to contract.

(a) Any Indian tribe, subject to the approval of the Secretary and any limitation or provision contained in its constitution or charter, may enter into a minerals agreement or any amendment, supplement or other modification or such agreement.

(b) Any individual Indian mineral owner owning a beneficial or restricted interest in mineral resources may include such resources in a tribal minerals agreement subject to the concurrence of the parties and a finding by the Secretary that such participation is in the best interest of the Indian.

§ 211.6 Negotiation procedures.

(a) A tribe or individual Indian mineral owner that wishes to enter into a minerals agreement may ask the Secretary for advice, assistance, and information during the negotiation process and such advice, assistance and information shall be provided to the extent of available resources.

(b) No particular form of agreement is prescribed. In preparing the agreement, consideration should be given to the inclusion of the following:

(1) A general statement identifying the parties to the agreement, a specific legal description of the lands involved, and the purposes of the agreement;

(2) A statement setting forth the duration of the agreement;

(3) Provisions setting forth the obligations of the contracting parties;

(4) Provisions describing the methods of disposition of production;

(5) Provisions outlining the amount and method of compensation to be paid;

(6) Provisions establishing the accounting procedures to be followed by the operator;

(7) Provisions establishing the operating and management procedures to be followed;

(8) Provisions establishing the operator's rights of assignment;

(9) Bond requirements;

(10) Insurance requirements;

(11) Provisions establishing audit procedures;

(12) Provisions setting forth arbitration procedures;

(13) A force majeure provision;

(14) Provisions describing the rights of the parties to terminate or suspend the agreement, and the procedures to be followed in the event of termination of the agreement;

(15) Provisions explicitly describing to the best of the operator's knowledge, the nature and schedule of the activities to be conducted; and

(16) Provisions clearly describing future abandonment, post mining land use, reclamation and restoration activities.

(c) In order to avoid delays in obtaining approval, the tribe may confer with the Secretary prior to formally executing the agreement and seek advice as to whether the agreement appears to meet the requirements of § 211.7, or whether modifications, additions, or corrections shall be required in order to obtain Secretarial approval.

(d) The executed agreement, together with a copy of a tribal resolution authorizing tribal officers to enter into an agreement, shall be forwarded to the Secretary for approval.

§ 211.7 Approval of agreements.

(a) A minerals agreement submitted for approval shall be approved or disapproved within one hundred and eighty (180) days after submission, or sixty (60) days after compliance, if required, with section 102(2)(C) of the National Environmental Policy Act of 1969 [42 U.S.C. 4332 (2)(C)] or any other requirement of Federal law, whichever is later.

(b) In approving or disapproving a minerals agreement, a determination shall be made whether the agreement is in the best interest of the Indian tribe or of any individual Indian who may be party to such agreement and shall consider, among other things, the potential economic return to the tribe; the potential environmental, social and cultural effects on the tribe; and provisions for resolving disputes that may arise between the parties to the agreement. The Secretary is not required to prepare any study regarding environmental, socioeconomic, or cultural effects of the implementation of a minerals agreement apart from that which may be required under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

(c) At least thirty (30) days prior to formal approval or disapproval of any minerals agreement, the affected tribe shall be provided with written findings forming the basis of the Secretary's intent to approve or disapprove such agreement. The written findings shall include an environmental assessment which meets the requirements of § 211.38 and an economic assessment as described in § 211.37, if needed. The Secretary may include in the written findings, recommendations for changes to the agreement needed to qualify it for approval. The 30-day period shall commence to run as of the date the notice is received by the tribe. Notwithstanding any other law, such findings and all projections, studies, data or other information (other than the environmental assessment required by § 211.38) possessed by the Department of the Interior regarding the terms and conditions of the minerals agreement, the financial return to the Indian parties thereto, or the extent, nature, value, or disposition of the Indian mineral resources, or the production, products or proceeds thereof, shall be held by the Department of the Interior as privileged proprietary information of the affected Indian or Indian tribe. The letter

containing the written findings should be headed with:

Privileged Proprietary Information of the [Name of tribe or Indian].

(d) A minerals agreement shall be approved by the Secretary if it is determined in the written findings that the following conditions are met:

(1) The minerals agreement provides a fair and reasonable remuneration to the Indian mineral owner;

(2) The minerals agreement does not have adverse cultural, social, or environmental impact on the Indian lands and community affected, sufficient to outweight its expected benefits to the Indian mineral owner;

(3) The minerals agreement complies with the requirements of this part, all other applicable regulations, the provisions of applicable Federal law, and applicable tribal law where not inconsistent with Federal law.

(e) The determinations required by paragraphs (b) and (d) of this section shall be based on the written findings required by paragraph (c) of this section.

(f) The question of "fair and reasonable remuneration" within the meaning of a paragraph (d)(1) of this section shall be determined by the Secretary based on information submitted by the parties, and any other information considered relevant by the Secretary, including a review of comparable contemporary contractual arrangements or offers for the development of similar mineral resources received by Indian mineral owners, by non-Indian mineral owners, or by the Federal Government, insofar as that information is readily available

(g) If any representative of the Secretary to whom authority to review proposed minerals agreements has been delegated believes that an agreement should not be approved, that person shall prepare a written statement of the reasons why the agreement should not be approved an forward this statement—together with the agreement, the written findings required by paragraph (c) of this section, and all other pertinent documents—to the Assistant Secretary—Indian Affairs for decision, with a copy to the affected Indian owner

(h) The Assistant Secretary—Indian Affairs shall review any agreement received containing a recommendation that it be disapproved, and make the final decision for the Department.

Subpart B—Procedures for Competitive Leases

The regulations in this Subpart set forth the procedures to be followed where a tribe or individual Indian mineral owner elects to enter into a mining lease under the Act of May 11, 1938 (25 U.S.C. 396a–g), which governs the leasing of tribal lands, or the Act of March 3, 1909 (25 U.S.C. 396), which governs the leasing of allotted lands. A lease may be entered into through competitive bidding under the procedures in this Subpart, or by negotiation under the procedures in Subpart A, or through a combination of both competitive bidding and negotiation. This section is not meant to preclude the use of competitive bidding when a tribe is using the 1982 Act as the contracting authority.

§ 211.21 Procedures for awarding leases.

(a) Competitive mining leases by tribal mineral owners shall be entered into in accordance with the procedures of paragraph (c) of this section. However, if no satisfactory bid is received, or if the accepted bidder fails to complete the lease, or if the Secretary determines that it is not in the best interest of the tribal mineral owner to accept the highest bid, the secretary may readvertise the lease for sale, subject to the consent of the tribal mineral owner, or the lease may be let through private negotiations in accordance with Subpart A of this part.

(b) Indian mineral owners may request the Secretary to prepare, advertise, negotiate, and/or award mining leases on their behalf. If so requested, the Secretary shall undertake such responsibility in accordance with the procedures of paragraph (c) of this section and, where applicable, the provisions of paragraph (a) of this section. (If requested by a potential operator interested in acquiring rights to Indian-owned minerals, the Secretary shall promptly notify the Indian mineral owner thereof, and advise the owner in writing of the alternatives open to her/him, and that the owner may decline to permit any prospecting, mining, exploration or production.

(c) When the Secretary exercises authority to enter into contracts on behalf of individual Indian mineral owners, or when by the Indian mineral owners under paragraph (b) of this section to assume the responsibility of awarding the contract, the Secretary shall offer leases to the highest responsible qualified bidder subject to the following procedures, unless it is determined, in accordance with paragraph (a) of this section that the highest return can be obtained by other methods of contracting (such as negotiation):

(1) Leases shall be advertised for a bonus consideration under sealed bid, oral auction, or a combination of both, and a notice of such advertisement shall be published in at least one local newspaper at least 30 days in advance of sale or such longer time as is necessary to achieve optimum competition. If applicable, such notice must identify the reservation within which the tracts to be leased are found. No specific description of the tracts to be leased need be published. Specific descriptions of such tracts shall be available at the office of the Superintendent upon request. The complete text of the advertisement including a specific description will be mailed to each person listed on the appropriate agency mailing list.

(2) The advertisement shall specify any terms requested by the Indian mineral owner and may, where sufficient information exists and after consultation with the Authorized Officer, permit bidders to compete on such terms as rental and royalty rates as well as upon bonus payment; and it shall provide that the Secretary reserves the right to reject any or all bids, and that acceptance of the lease bid by or on behalf of the Indian mineral owner is required.

(3) Each bid must be accompanied by a cashier's check, certified check or postal money order, or any combination thereof, payable to the payee designated in the advertisement, in an amount not less than 25 percent of the bonus bid, which shall be returned if that bid is unsuccessful;

(4) A successful bidder must, within 30 days after notification of the bid award, remit to the Secretary the balance of the bonus, the first year's rental, a $25 filing fee, her/his share of the advertising costs, and file with the Secretary all required bonds. The successful bidder shall also file the lease in completed form at that time. However, for good and explicit reasons, the Secretary may grant an extension of up to 30 days for filing of the lease. Failure on the part of the bidder to comply with the foregoing shall result in forfeiture of the required payment of 25 percent of any bonus bid for the use and benefit of the Indian mineral owner.

(d) When the Indian mineral owner has requested the Secretary to offer a lease to the highest responsible qualified bidder in accordance with paragraph (c) of this section, the Secretary shall advise the Indian mineral owner of the results of the bidding, and shall not award the lease to any bidder until the consent of the Indian mineral owner has been obtained.

§ 211.22 Duration of leases.

(a) No competitive mining lease with an Indian mineral owner shall exceed a primary term of ten (10) years and shall continue as long thereafter as minerals are produced in paying quantities. For the purpose of this provision, the term of a mining lease entered into by means of the exercise of an option shall be measured from the effective date of Secretarial approval of the lease. All provisions in leases governing their duration shall be measured from the date of the approval, unless otherwise provided in the lease.

§ 211.23 Forms.

Leases, bonds, permits, assignments, and other instruments relating to competitive mineral leasing shall be on forms prescribed by the Secretary which may be obtained from the Superintendent or other officer having jurisdiction over the lands.

Subpart C—General

§ 211.30 Scope.

This subpart sets forth general requirements which are applicable to any contract for the development of Indian minerals entered into pursuant to this part.

§ 211.31 Authority and responsibility of the Bureau of Land Management.

The functions of the Bureau of Land Management are defined by 43 CFR Part 3160—Onshore Oil and Gas Operations, and 43 CFR Part 3260—Geothermal Resources Operations, and currently include resource evaluation, approval of drilling permits and mining or production plans, and inspection. More detailed responsibilities are contained in prevailing Memorandums of Understanding between Bureaus assigned responsibility for lease administration and in the Code of Federal Regulations.

§ 211.32 Authority and responsibility of the Minerals Management Service (MMS).

Functions of the Minerals Management Service are defined under regulations contained in 30 CFR Part 200—Royalty Management. The Minerals Management Service is assigned the responsibility for all accounting work necessary for the proper computation and recording of royalties accruing to the benefit of Indians. Specific duties and responsibilities of the Minerals Management Service are further delineated in an existing Memorandum of Understanding between the Bureau of Indian Affairs and the Minerals Management Service and in the Code of Federal Regulations.

§ 211.33 Authority and responsibility of the Director, Office of Surface Mining Reclamation and Enforcement (OSMRE).

The OSMRE is the regulatory authority for surface coal mining and reclamation operations on Indian lands pursuant to the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 7201 *et seq.*). These responsibilities are found in 30 CFR, Chapter VII.

§ 211.34 Approval of amendments.

(a) An amendment, modification or supplement to a contract entered into pursuant to the regulations in this part must be approved by the Secretary. The Secretary may approve an amendment, modification, or supplement if it is determined that the contract, as modified, meets the criteria for approval set forth in § 211.6 or the competitive lease meets the criteria for approval in § 211.21.

(b) An amendment to or modifications of a contract for the prospecting for or mining of Indian-owned minerals, which was approved prior to the effective date of these regulations, shall be approved by the Secretary if the entire contract meets the criteria set forth in § 211.6 or § 211.21 of this part. When appropriate, the Secretary shall prepare a written economic assessment of the amendment or modification and an environmetal and cultural assessment pursuant to § 211.38 of this part.

§ 211.35 Removal of restrictions.

(a) Notwithstanding the provisions of any mining contract to the contrary, the removal of all restrictions against alienation shall operate to divest the Secretary of all supervisory authority and responsibility with respect to the contract. Thereafter all payments required to be made under the contract shall be made directly to the Indian mineral owner(s).

(b) In the event restrictions are removed from a part of the land included in any contract to which this part applies, the entire contract shall continue to be subject to the supervision of the Secretary until such time as the holder of the contract and the unrestricted minerals owner shall furnish to the Secretary satisfactory evidence that adequate arrangements have been made to account for the mineral resources of the restricted land separately from those of the unrestricted. Thereafter, the unrestricted portion shall be relieved from supervision of the Secretary, and the restricted portion shall continue to be subject to such supervision as is provided by the Secretary, the contract, the regulations of this part, and all other applicable laws and regulations.

(c) Should restrictions be removed from only part of the acreage covered by a contract agreement which provides that payments to the mineral owners shall thereafter be paid to each owner in the proportion which her/his acreage bears to the entire acreage covered by the contract, the operator on any unrestricted portion shall continue to be required to make the reports required by the regulations in this part with respect to the beginning of operations, completion of operations, and production, as if no restrictions had been removed. In the event the unrestricted portion of the contracted premises is producing, the operator will also be required to pay the portion of the royalties or other revenue due the Indian mineral owner at the time and in the manner specified by the regulations in this part.

§ 211.36 Geological and geophysical permits.

(a) Permits to conduct geological and geophysical operations on Indian land which are not included in a contract entered into pursuant to this part may be approved by the Secretary with the consent of the Indian owner under the following conditions:

(1) The permit must describe the area to be explored, the duration of the permit, and the consideration to be paid the Indian owner;

(2)l The permit will not grant the permittee any option or preference rights to a lease or other development contract, or authorize the production or removal of minerals unless specifically so stated in the permit;

(3) The permittee or an authorized representative shall pay for all damages to growing crops, or improvements on the lands, and all other surface damage resulting from operations conducted on the permitted lands;

(4) A copy of all data collected pursuant to operations conducted under the permit shall be forwarded to the Secretary and made available to the Indian mineral owner when so provided for in the permit. Data collected under a permit shall be held by the Secretary as privileged and proprietary information for the time prescribed in the permit. Where no time period is prescribed, the Secretary may release the information upon requests.

(5) In instances where the Indian mineral owner is also the surface land owner, the Indian mineral owner will obtain any additional necessary permits or rights of ingress or egress from any other surface user, permittee, lessee, or allotee on her/his land needed for the geological permittee to enter onto the

land to conduct exploratory operations. In instances where the Indian mineral owner is not the surface owner, the Indian mineral owner shall lend all possible assistance to the geological permittee in obtaining any such additional necessary permits or right of ingress or egress; and

(6) A permit may be granted by the Secretary without the consent of the individual Indian owners if:

(i) The land is owned by more than one person, and the owners of a majority of the interests therein consent to the permit; or

(ii) The whereabouts of the owner of the land or an interest therein is unknown, and the owners of any interests therein whose whereabouts is known, or a majority thereof, consent to the permit; or

(iii) The heirs or devisees of a deceased owner of the land or an interest therein have not been determined and the Secretary finds that the permit activity will cause no substantial injury to the land or any owner thereof; or

(iv) The owners of interests in the land are so numerous that the Secretary finds it would be impracticable to obtain their consent and also finds that the permit activity will cause no substantial injury to the land or any owner thereof.

(b) A permit to conduct geological and geophysical operations on Indian lands included in a contract entered into pursuant to this part will not be required of the operator in the absence of provisions in the contract requiring that a permit be obtained. If a permit is to be required, the contract shall state the procedures for obtaining approval of a permit.

§ 211.37 Economic assessments.

An economic assessment, where required, shall be prepared by the Secretary and shall take into consideration the following where applicable:

(a) Whether there are assurances in the contract that prospecting and mining operations will be conducted with appropriate diligence;

(b) Whether water in the amount needed for purposes of operations under the contract is available;

(c) Whether production royalties or other form of return on the minerals or other valuable resources removed from the leased premises is adequate; and

(d) When a method of contracting other than by the competitive bidding procedures is used, whether that method is likely to provide the Indian mineral owner with a share of the return on the production of her/his mineral equal to what she/he might otherwise obtain through competitive bidding where such a comparison can readily be made.

§ 211.38 Environmental assessments.

(a) An environmental assessment shall be prepared by the Secretary in accordance with regulations promulgated by the Council on Environmental Quality, 40 CFR 1508.9, 30 BIAM Supplement 1, and 516 DM 1–7. When it is determined prior to the preparation of the assessment that a complete environmental impact statement needs to be prepared prior to approval of the contract, preparation of that environmental impact statement may be regarded as satisfying the requirements of this section. Prior to contract approval, the environmental assessment shall be made available to the Indian mineral owner and to the governing body of the affected Indian tribe, and shall also be made available for public review at the Bureau office having jurisdiction over the proposed mineral agreement.

(b) In order to make a determination of the effect of a contract on prehistoric, historic, architectural, archeological, cultural, and scientific resources, in compliance with the National Historic Preservation Act, 16 U.S.C. 470 *et seq.*, Executive Order 11593 (May 1971), and regulations promulgated thereunder, 36 CFR Parts 60, 63, and 800, and the Archeological and Historic Preservation Act, 16 U.S.C. 469a–1 *et seq.*, and the American Indian Religious Freedom Act of August 8, 1978 (Pub. L. 95–341), the Secretary shall, prior to approval of a contract, perform surveys or cause surveys to be made to determine the effect of the exploration and mining activities on properties which are listed in the National Register of Historic Places, 16 U.S.C. 470a, or are eligible for listing in the National Register. If the surveys indicate that properties listed in or eligible for listing in the National Register will be affected, the Secretary shall seek the comments of the Advisory Council on Historic Preservation pursuant to 36 CFR Part 800. If the mineral development will have an adverse effect on such properties, the Secretary shall ensure that the properties will either be avoided, the effects mitigated, or the data describing the historic property is preserved.

§ 211.39 Persons signing in a representative capacity.

(a) The signing in a representative capacity and delivery of bids, geological and geophysical permits, minerals agreements, leases, or assignments, bonds, or other instruments required by these regulations constitutes certification that the individual signing (except a surety agent) is authorized to act in such capacity. An agent for a surety shall furnish a satisfactory power of attorney.

(b) A corporation proposing to acquire an interest in a permit or a contracted real property interest in Indian-owned minerals shall have on file with the Superintendent a statement showing:

(1) The State(s) is which the corporation is incorporated, and that the corporation is authorized to hold such interests in the State where the land described in the instrument is situated;

(2) That it has power to conduct all business and operations as described in the instrument.

(c) The Secretary may, either before or after the approval of a permit, minerals agreement, assignment, or bond, call for any reasonable additional information necessary to carry out the regulations in this part, other applicable laws and regulations, and her/his trust responsibility to the Indian mineral owner.

§ 211.40 Bonds.

(a) The Secretary shall require a prospector or operator to furnish a surety bond in such amount as is deemed appropriate.

(b) Before beginning mining operations, the operator shall furnish a bond in an amount to be determined by the Secretary and the approving officer to assure compliance with the terms of the contract.

(c) Bonding shall be by corporate surety bonds.

(d) The Secretary reserves the discretionary right to require a change in the amount of bonds. The bonds shall be in an amount at least sufficient to satisfy the reclamation requirements established pursuant to an approved exploration or mining plan, or an approved partial or supplemental plan.

(e) In lieu of the bonds required by this section, an irrevocable letter of credit may be submitted for the same amount as a bond.

§ 211.41 Manner of payments.

Unless otherwise provided for in an approved contract, all payments shall be made to the Secretary or such other party as may be designated and shall be made at such time as provided for in the contract or by regulation.

§ 211.42 Permission to start operations.

(a) No exploration or mining operations are permitted on any contract premises before the effective date of the contract. The effective date of the contract shall be the date the contract is officially approved by the

Secretary pursuant to the regulations in this part.

(b) Written permission must be secured from the Secretary before any operations are started on the contract premises in accordance with applicable rules and regulations. After such permission is secured, operations must be conducted in accordnce with all applicable operating regulations promulgated by the Secretary of the Interior. Copies of applicable operating regulations may be secured from either the Authorized Officer or the Superintendent, and no operations should be undertaken without a study of such regulations.

§ 211.43 Recordkeeping.

(a) The prospector or operator shall maintain records of all prospecting and mining operations conducted pursuant to a contract, including information on the type, grade or quality, and weight of all minerals mined, sold, used on the premises, or otherwise disposed of, and all minerals in storage (remaining in inventory), and all information on the sale or disposition of the minerals. Such records shall be kept so that they may be readily inspected.

(b) All maps and records maintained under paragraph (a) of this section, all records regarding the financial structure of the prospector or operator, and any other records which are pertinent or related to operations done under a contract shall be available for examination by the Secretary, upon request. Such records shall at all times be available for the purpose of an independent audit upon the request of the Secretary.

(c) All maps and records maintained under paragraphs (a) and (b) of this section will be furnished MMS in accordance with MMS regulations and guidelines. Such records will be safeguarded by MMS in accordance with appropriate laws, regulations, and guidelines.

(d) Records will be provided to the Authorized Officer in accordance with BLM regulations and guidelines. Such records will be safeguarded by BLM in accordance with appropriate laws, regulations and guidelines.

§ 211.44 Mining contracts—individually-owned Indian lands.

(a) The Secretary may execute mining contracts on behalf of unknown owners of future contingent interests, and on behalf of minors without a legal guardian, and on behalf of persons who are legally incompetent.

(b) If the allottee is deceased and the heirs to or devisees of any interest in the allotment have not been determined, or some or all of them cannot be located, mining contracts involving such interests may be executed by the Secretary, provided that the mineral interest shall have been offered for sale under provisions of § 211.21 of Subpart H.

(c) If an owner is a life tenant, and the division of rents and royalties is not clearly expressed in the document creating the life estate, the contract shall be accompanied by an agreement between the life tenant and the remainderman providing for the division of rents and royalties. The agreement is subject to the approval of the Secretary.

(d) The Secretary may approve a minerals contract where less than 100 percent of the undivided mineral interest is committed to the contract, and the Secretary has determined it to be in the best interest of the Indian mineral owners, provided that:

(1) A contract approved by the Secretary pursuant to this paragraph shall include only the mineral interests of the consenting Indian owners.

(2) Sixty-six and two thirds percent or more of the undivided mineral interest is committed to the contract;

(3) The operator is required to submit a certified statement containing evidence that the non-consenting Indian mineral owners have been contacted and have refused to consent to the contract; and

(4) The operator is required to submit to, and obtain the approval of the Secretary for a plan describing how the operator will account to the non-consenting mineral interest owners for all income attributable to their undivided interest.

(e) The Secretary shall provide all known non-consenting mineral owners with a certified notice that a contract affecting their undivided interest has been approved without their consent, along with a copy of the operator's plan for accounting for their interests.

§ 211.45 Assignments; overriding royalties and operating agreements.

(a) *Assignments.* An assignment or sublease of any interest in a contract entered into pursuant to this part shall not be valid without the approval of the Secretary and the Indian mineral owner, if approval by the Indian owner is required in the contract. The assignee must be qualified to hold such contract and shall furnish a satisfactory bond conditioned on the faithful performance of the terms and conditions thereof. Approval shall not relieve the assignor of obligations under the original contract, unless the Secretary, with the consent of the Indian mineral owner when required, releases the assignor of obligations under said contract. The Secretary may permit the release of any bonds executed by the assignor upon execution of satisfactory bonds by the assignee.

(b) *Overriding royalties and operating agreements.* Agreements creating overriding royalties or payments out of production and agreements designating operators shall not be considered assignments, and the approval of the Department of the Interior or any agency thereof is not required. Such agreements shall be construed as not modifying any of the obligations of the operator with the Indian mineral owner under the contract, the regulations in this part, and Part 216 of this title, including requirements for Departmental approval before abandonment. All such obligations are to remain in full force and effect, the same as if free of any such overriding royalties or payments. Such agreements shall be filed with the Secretary unless incorporated in assignments or instruments required to be filed pursuant to paragraph (a) of this section.

§ 211.46 Termination and cancellation; enforcement of orders.

(a) If the Secretary determines that a prospector or operator has failed to comply with the regulations in this part, other applicable laws or regulations, the terms of the permit or contract, the requirements of an approved exploration or mining plan, Secretarial orders or the order of the Authorized Officer, and such noncompliance does not threaten immediate and serious damage to the environment, the mine or the deposit being mined, or other valuable mineral deposits or other resources, the Secretary shall serve a notice of noncompliance upon the prospector or operator by delivery in person or by certified mail to her/him at her/his last known address. Failure of the prospector or operator to take action in accordance with the notice of noncompliance within the time limits specified by the Secretary, shall be grounds for suspension of operations subject to such notice by the Superintendent, or grounds for the Secretary's recommendations for the initiation of action for cancellation of the lease, permit, license, or contract and forfeiture of any compliance bonds.

(b) The notice of noncompliance shall specify in what respect the prospector or operator has failed to comply with the provisions of applicable laws, regulations, terms of the permit or contract, or the orders of the Secretary or the Authorized Officer, and shall specify the action which must be taken

to correct such noncompliance and the time limits within which such action shall be taken. A written report shall be submitted by the prospector or operator to the Secretary within 10 days of the time such noncompliance has been corrected.

(c) If, in the judgment of the Secretary, a prospector or operator is conducting activities on lands subject to the provisions of this part:

(1) Which fail to comply with the provisions of this part, other applicable laws or regulations, the terms of the minerals agreement, the requirements of an approved exploration or drilling plan, her/his orders or the orders of the Authorized Officer, and

(2) Which threaten immediate and serious damage to the environment, the resource or the deposit being developed, or other valuable mineral deposits or other resources; the Secretary shall order the immediate cessation of such activities without prior notice of noncompliance. The Secretary shall, however, as soon after issuance of the cessation order as possible, serve on the prospector or operator a statement of the reasons for the cessation order and the actions needed to be taken before the order will be lifted.

(3) Such orders shall be immediately effective.

(d) If a prospector or operator fails to take action in accordance with the notice of noncompliance served upon her/him pursuant to paragraph (a) of this section, or if a prospector or operator fails to take action in accordance with the cessation order statement served upon her/him pursuant to paragraph (c) of this section, the Secretary may issue a notice of intent to cancel the minerals agreement specifying the basis for notice. The prospector or operator shall have 30 days from receipt of the notice to present evidence as to why the minerals agreement should not be cancelled.

(e) No provision in this section shall be interpreted as replacing or superseding any other remedies of the Indian mineral owner as set forth in the minerals agreement or otherwise available at law.

(f) Nothing in this section is intended to supersede the independent authority of the Authorized Officer and/or the MMS official. However, the Authorized Officer, the MMS official, and the Secretary should consult with one another, when feasible, before taking any enforcement actions.

(g) All notices of non-compliance or orders of cessation or contract cancellation may be appealed pursuant to 25 CFR Part 2. *Provided*, appeals of cessation orders under this part shall not relieve the prospector or operator from the obligation to immediately comply therewith.

§ 211.47 Suspension of operations; remedial operations.

(a) The Secretary may, under such terms and conditions be prescribed, authorize suspension of operating and producing requirements in the extended contract term whenever it is determined that remedial operations are in the best interest of the Indian mineral owner. *Provided*, that such remedial operations are conducted with reasonable diligence during the period of nonproduction according to the provisions in 43 CFR 3473.4, 3483.3, or 3503.3–2 as applicable. Any suspension under this paragraph shall not relieve the operator from liability for the payment of rental and minimum royalty or other payments due under the terms of the contract.

(b) An application for permission to suspend operating or producing requirements for economic or marketing reasons on a mining operation capable of commercial production which is submitted to the Secretary after the expiration of the primary term of the contract must be accompanied by the written consent of the Indian mineral owner and a written agreement executed by the parties setting forth the terms pertaining to the suspension of operations.

(c) No approval shall be required for a suspension of operations which occurs within the primary term of the contract.

§ 211.48 Penalties.

(a) Violations of the terms and conditions of any contract, or the regulations in this part, or failure to comply with a notice of noncompliance or a cessation order issued pursuant to § 211.46, may subject a prospector or operator to a penalty of not more than $1,000 per day for each day that such violation or noncompliance continues beyond the time limits prescribed for corrective action.

(B) A notice of a proposed penalty shall be served on the prospector or operator either personally or by certified mail. The notice shall specify the nature of the violation and the proposed penalty, and shall advise the prospector or operator of her/his right to either request a hearing within 30 days from receipt of the notice or pay the proposed penalty. Hearings shall be held before the Superintendent whose findings shall be conclusive, unless an appeal is taken pursuant to § 211.49 of this part. A request for a hearing does not stop the running of penalties for continuing non-compliance.

(c) Payment in full of penalties more than 10 days after final notice that a penalty has been imposed, shall subject the prospector or operator to late payment charges. Late payment charges shall be calculated on the basis of a percentage assessment rate of the amount unpaid per month for each month or fraction thereof until payment is received by the BIA. In the absence of a specific contract provision prescribing a different rate, the interest rate on late payments and underpayments shall be a rate applicable under section 6621 of the Internal Revenue Code of 1954. Interest shall be charged only on the amount of payment not received and only for the number of days the payment is late.

(d) Prospectors or operators also may be subject to penalties under other applicable rules and regulations, or under the terms of an approved contract. None of the provisions of this section shall be interpreted as:

(1) Replacing or superseding the independent authority of the Authorized Officer, the Director, or the MMS official to impose penalties for violations of applicable regulations pursuant to authority granted under 43 CFR Groups 3400 and 3500.

(2) Replacing or superseding any penalty provision in the terms and conditions of a contract approved by the Secretary pursuant to this part.

§ 211.49 Appeals.

(a) Appeals from decisions of the Departmental officers under this part may be taken pursuant to Part 2 of this title.

(b) Cessation orders issued pursuant to § 211.46 of this part shall not be suspended as a result of the taking of an appeal, unless such suspension is ordered in writing by the official before whom such an appeal is pending, and then only upon a written determination by such official that such suspenion will not be detrimental to the Indian mineral owner, or upon submission of a bond deemed adequate by both the Indian mineral owner and the Secretary to indemnify the Indian mineral owner from any resulting loss or damage.

§ 211.50 Fees.

Unless otherwise authorized by the Secretary, each permit, lease, sublease, or other contract, or assignment or surrender thereof, shall be accompanied by a filing fee of $25. All fees collected pursuant to this section shall be deposited in the General Treasury Fund pursuant to the requirements of 25 U.S.C. 413.

§ 211.51 No mineral agreements made with Government employees.

No employee of the BIA or Indian Health Service (IHS) shall enter into or be a party to any mineral agreement, assignment thereof, or interest therein involving trust or restricted Indian-owned mineral interests. See 18 U.S.C. 437.

PART 212—REMOVED

2. Part 212—Leasing of Allotted Lands for Mining, is hereby removed.

3. Chapter I of Title 25, Code of Federal Regulations is amended by adding a new part numbered Part 225 to read as follows:

PART 225—OIL AND GAS AND GEOTHERMAL CONTRACTS

Sec.

225.1 Purpose and scope.
225.2 Information collection.
225.3 Definitions.

Subpart A—Fluid Minerals Agreements

225.20 Scope.
225.21 Authority to contract.
225.22 Negotiation procedures.
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Subpart B—Procedures for Competitive Oil and Gas and Geothermal Leases

225.30 Scope.
225.31 Procedures for awarding leases.
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225.55 Unitization and communitization agreements and well spacing requirements.
225.56 Inspection of premises; books and accounts.
225.57 Termination and cancellation; enforcement of orders.
225.58 Penalties.
225.59 Appeals.
225.60 Fees.
225.61 No oil and gas or geothermal agreements made with Government employees.
225.62 Sales contracts, division orders and other division of interest documents.

Authority: Sec. 4, Act of May 11, 1938 (52 Stat. 348, 25 U.S.C. 396a–g), Act of March 3, 1909, as amended (35 Stat. 783, 25 U.S.C. 396); sec. 1, Act of August 9, 1955, as amended (69 Stat. 539, 25 U.S.C. 415), secs. 16 and 17, Act of June 18, 1934 (48 Stat. 987, 25 U.S.C. 476 and 477); sec. 102, Act of January 1, 1970 (83 Stat. 42 U.S.C. 4332); Act of December 22, 1982 (96 Stat. 1938, 25 U.S.C. 2101–2108); Act of August 11, 1978 (92 Stat. 469; 42 U.S.C. 1966); Act of January 12, 1983 (96 Stat. 2447, 30 U.S.C. 1701).

§ 225.1 Purpose and scope.

(a) The regulations in this part govern contracts for the development of Indian-owned oil and gas and geothermal resources. Subpart A—Mineral Agreements, establishes the procedures for the approval of oil and gas or geothermal mineral agreements entered into pursuant to the Indian Mineral Development Act of 1982 (Pub. L. 97–382). Subpart B—Procedures for Competitive Oil and Gas and Geothermal Leases contains regulations governing the procedures for the issuance of oil and gas and geothermal leases on tribal or allotted lands pursuant to the Act of May 11, 1938 (52 Stat. 348; 25 U.S.C. 396a–g) and the Act of March 3, 1909, as amended (35 Stat. 783, 25 U.S.C. 396). Subpart C—General contains miscellaneous provisions which apply to contracts for oil and gas or geothermal agreements. These regulations are intended to ensure that Indian owners desiring to have their oil and gas or geothermal resources developed receive at least fair and reasonable remuneration for the disposition of their resources; to ensure at the same time that any adverse environmental or cultural impact on Indians, resulting from such development, is minimized; and to permit Indian oil and gas or geothermal owners to enter into contracts which allow them more responsibility in overseeing and greater flexibility in disposing of their resources.

(b) No regulations which become effective after the approval of any contract shall operate to affect the term of the contract, rate of royalty, rental, or acreage unless agreed to by all parties to the contract.

(c) The regulations in this part do not apply to leasing and development governed by regulations in 25 CFR Parts 213, 226, and 227.

(d) The regulations in this part may be superseded by the provisions of any tribal constitution, bylaw or charter issued pursuant to the Indian Reorganization Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 461 through 479), the Alaska Act of May 1, 1936 (49 Stat. 1250; 48 U.S.C. 362, 258a), or the Oklahoma Indian Welfare Act of June 26, 1936 (49 Stat. 1967; 25 U.S.C., and Sup., 501 through 509), or by ordinance, resolution or other action authorized under such constitution, bylaw or charter where not inconsistent with Federal law. The regulations in this part, insofar as they are not so superseded, shall apply to leases made by organized tribes if the validity of the lease depends upon the approval of the Secretary of the Interior.

§ 225.2 Information collection

The Office of Management and Budget has informed the Department of the Interior that the Information Collection Requirements contained in section 225 need not be reviewed by them under the Paperwork Reduction Act, (44 U.S.C. 3501 *et seq*).

§ 225.3 Definitions.

As used in this part, the following terms have the specified meaning except where otherwise indicated—

(a) "Secretary" means the Secretary of the Interior or an authorized representative.

(b) "Area Director" means the Bureau of Indian Affairs official in charge of an Area Office.

(c) "Superintendent" means the Bureau Agency Superintendent or an authorized representative having immediate jurisdiction over the oil and gas or geothermal resources covered by a contract under this part, except at the Navajo Area Office where it shall mean the Bureau Area Director or an authorized representative.

(d) "Bureau" means the Bureau of Indian Affairs.

(e) "Authorized Officer" means any employee of the Bureau of Land Management authorized by law or by lawful delegation of authority to perform the duties described herein and in 43 CFR Parts 3160 and 3260.

(f) "Minerals Management Service (MMS) Official" means any employee of the Minerals Management Service authorized by law or by lawful delegation of authority to perform the duties described.

(g) "Indian owner" means:

(1) Any individual Indian or Alaska Native who owns land or interests in oil and gas or geothermal resources, the title to which is held in trust by the United States, or is subject to restriction against alienation imposed by the United States;

(2) Any Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group which owns land or interests in oil and gas or geothermal resources, the title to which is held in trust by the United States, or is subject to a restriction against alienation imposed by the United States.

(h) "Oil" means any nongaseous hydrocarbon substance other than those substances leasable as coal, oil shale, or gilsonite (including all vein-type solid hydrocarbons). Oil includes liquefiable hydrocarbon substances such as drip gasoline and other natural condensates recovered or recoverable in a liquid state from produced gas without resorting to a manufacturing process. For royalty rate consideration in special tar sand areas, any hydrocarbon substance with a gas-free viscosity, at original reservoir temperature, greater than 10,000 centipoise is termed tar sand.

(i) "Gas" means any fluid, either combustible or noncombustible, which is extracted from a reservoir and which has neither independent shape nor volume, but tends to expand indefinitely; a substance that exists in a gaseous or rarefield state under standard temperature and pressure conditions.

(j) "Geothermal resources" means:

(1) All products of geothermal processes, embracing indigenous steam, hot water, and hot brines;

(2) Steam and other gases, hot water, and hot brines, resulting from water, gas, or other fluids artificially introduced into geothermal formations;

(3) Heat or other associated energy found in geothermal formations; and

(4) Any byproduct derived therefrom.

(k) "Minerals agreement" means any joint venture, operating, production sharing, service, managerial lease (other than a lease, or amendment thereto, entered pursuant to the Act of May 11, 1938 and the Act of March 3, 1909), contract, or other agreement, or any amendment, supplement or other modification of such agreement, providing for the exploration for, or extraction, processing or other development of oil and gas or geothermal resources, or providing for the sale or disposition of production or products of oil and gas or geothermal resources.

(l) "Operator" means a person, proprietorship, partnership, corporation, or other business entity which has made application for, or is negotiating with an Indian owner with respect to, or has entered into an oil and gas or geothermal contract.

(m) "Surface owner" means any individual who owns land or an Indian tribe, band, nation, pueblo community, rancheria, or colony that owns land.

(n) "Geological and geophysical permit" means a written authorization to conduct onsite surveys to locate potential deposits of oil and gas or geothermal resources on the lands.

Subpart A—Fluid Minerals Agreements

§ 225.20 Scope.

The regulations in this subpart govern the procedures for obtaining approval of mineral agreement for the exploration, development and sale of oil and gas reserves or geothermal resources on Indian lands under the Indian Mineral Development Act of 1982 (Pub. L. 97–382).

§ 225.21 Authority to contract.

(a) Any Indian tribe, subject to the approval of the Secretary and any limitation or provision contained in its constitution or charter, may enter into a minerals agreement with respect to oil and gas or geothermal resources in which such Indian tribe owns a beneficial or restricted interest.

(b) Any individual Indian owning a beneficial or restricted interest in oil and gas or geothermal resources, may include such resources in a tribal mineral agreement subject to the concurrence of the parties and a finding by the Secretary that such participation is in the best interest of the Indian.

§ 225.22 Negotiation procedures.

(a) A tribe or individual Indian mineral owner that wishes to enter into a minerals agreement may ask the Secretary for advice, assistance and information during the negotiation process, and such advice, assistance and information shall be provided to the extent of available resources.

(b) No particular form of agreement is prescribed. In preparing the agreement, consideration should be given to the inclusion of the following provisions:

(1) A general statement identifying the parties to the agreement, a specific legal description of the lands involved, and the purposes of the agreement;

(2) A statement setting forth the duration of the agreement;

(3) Provisions setting forth the obligations of the contracting parties;

(4) Provisions describing the methods of disposition of production;

(5) Provisions outlining the amount and method of compensation to be paid;

(6) Provisions establishing the accounting procedures to be followed by the operator;

(7) Provisions establishing the operating and management procedures to be followed;

(8) Provisions establishing the operator's rights of assignment;

(9) Bond requirements;

(10) Insurance requirements;

(11) Provisions establishing audit procedures;

(12) Provisions setting forth arbitration procedures;

(13) A *force majeure* provision;

(14) Provisions describing the rights of the parties to terminate or suspend the agreement, and the procedures to be followed in the event of termination of suspension;

(15) Provisions explicitly describing to the best of the operator's knowledge, the nature and schedule of the activities to be conducted;

(16) Provisions clearly describing to the best of the operator's knowledge, future abandonment, reclamation and restoration activities;

(c) In order to avoid delays in obtaining approval, the tribe may confer with the secretary prior to formally executing the agreement, and seek advice as to whether the agreement appears to meet the requirement of § 225.23, or whether modifications, additions or corrections will be required in order to obtain Secretarial approval.

(d) The executed agreement, together with a copy of a tribal resolution authorizing tribal officers to enter into the agreement, shall be forwarded to the Secretary for approval.

§ 225.23 Approval of agreements.

(a) A minerals agreement submitted for approval shall be approved or disapproved within: one hundred and eighty (180) days after submission, or sixty (60) days after compliance, if required, with section 102(2)(C) of the National Environmental Policy Act of 1969 [42 U.S.C. 4332(2)(C)] or any other requirement of Federal law, whichever is later.

(b) In approving or disapproving a minerals agreement, a determination shall be made as to whether the agreement is in the best interest of the Indian tribe or of any individual Indian who may be party to such agreement, and shall consider, among other things: The potential economic return to the Indian owner; the potential environmental, social, and cultural effects; and provisions for resolving disputes that may arise between the parties to the agreement. The Secretary is not required to prepare any study regarding environmental, socioeconomic, or cultural effects of the implementation of a minerals agreement apart from that which may be required under section 102(2)(C), of the National

Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

(c) At least thirty (30) days prior to formal approval or disapproval of any minerals agreement, the affected tribe shall be provided with written findings forming the basis of the Secretary's intent to approve or disapprove such agreement. The written findings shall include an environmental assessment which meets the requirements of § 225.49 and an economic assessment as described in § 225.48, if needed. The Secretary may include in the written findings recommendations for changes to the agreement needed to qualify it for approval. The 30-day period shall commence to run as of the date the notice is received by the tribe. Notwithstanding any other law, such findings and all projections, studies, data or other information (other than the environmental assessment required by § 225.49) possessed by the Department of the Interior regarding the terms and conditions of the minerals agreement, the financial return to the Indian parties thereto, or the extent, nature, value or disposition of the Indian mineral resources, or the production, products or proceeds thereof, shall be held by the Department of the Interior as privileged and proprietary information of the affected Indian or Indian tribe. The letter containing the written findings should be headed with:

Privileged Proprietary Information of the (name of tribe or Indian).

(d) A mineral agreement shall be approved by the Secretary if it is determined that the following conditions are met:

(1) The minerals agreement provides a fair and reasonable remuneration, to the Indian mineral owner;

(2) The mineral agreement does not have adverse cultural, social, or environmental impact on the Indian lands and community affected, sufficient to outweigh its expected benefits to the Indian mineral owner;

(3) The minerals agreement complies with the requirements of this part, all other applicable regulations, the provisions of applicable Federal law, and applicable tribal law where not inconsistent with Federal law.

(e) The determinations required by paragraphs (b) and (d) of this section shall be based on the written findings required by paragraph (c) of this section.

(f) The question of "fair and reasonable remuneration" within the meaning of paragraph (d)(1) of this section shall be determined by the Secretary based on information obtained from the parties, and any other information considered relevant by the Secretary, including a review of comparable contemporary contractual arrangements or offers for the development of similar mineral resources received by Indian mineral owners, by non-Indian mineral owners, or by the Federal Government, insofar as that information is readily available.

(g) If a representative of the Secretary to whom authority to review proposed minerals agreements has been delegated believes that an agreement should not be approved, a written statement of the reasons why the agreement should not be approved shall be prepared and forwarded, together with the agreement, the written findings required by paragraph (c) of this section, and all other pertinent documents, to the Assistant Secretary—Indian Affairs for decision with a copy to the affected Indian mineral owner.

(h) The Assistant Secretary—Indian Affairs shall review any agreement referred contained a recommendation that it be disapproved, and shall make the final decision for the Department.

Subpart B—Procedures for Competitive Oil and Gas and Geothermal Leases

§ 225.30 Scope.

The regulations in this subpart set forth the procedures to be followed where a tribe or individual Indian mineral owner elects to enter into an oil and gas or geothermal lease through competitive bidding pursuant to the Act of May 11, 1938 (25 U.S.C. 396a-g), which governs the leasing of tribal lands, or the Act of March 3, 1909 (25 U.S.C. 396), which governs leasing of allotted lands. A lease may be entered into through competitive bidding under the procedures in this Subpart, or by negotiation under the procedures in Subpart A, or through a combination of both competitive bidding and negotiation. This section is not meant to preclude the use of competitive bidding when a tribe is using the 1982 Act as the contracting authority.

§ 225.31 Procedures for awarding leases.

(a) Competitive oil and gas and geothermal leases by tribal mineral owners shall be entered into in accordance with the procedures of paragraph (c) of this section. However, if no satisfactory bid is received, or if the accepted bidder fails to complete the lease, or if the Secretary determines that it is not in the best interest of the Indian mineral owner to accept the highest bid, the Secretary may readvertise the lease for sale, subject to the consent of the Indian mineral owner, or the lease may be let through private negotiations.

(b) Indian mineral owners may also request the Secretary to prepare, advertise, negotiate, and/or award an oil and gas or geothermal lease on their behalf. If so requested, the Secretary shall undertake such responsibility in accordance with the procedures of paragraph (c) of this section and, where applicable, the provisions of paragraph (a) of this section. If requested by a potential prospector or operator interested in acquiring lease rights to Indian-owned oil and gas or geothermal resources, the Secretary shall promptly notify the Indian mineral owner thereof, and advise the owner in writing of the alternatives available, and that the owner may decline to permit leasing, exploration or production.

(c) When the Secretary exercises the authority to enter into leases on behalf of individual Indian mineral owners, or when requested by the Indian mineral owner under paragraph (b) of this section to assume the responsibility of awarding the contract, the Secretary shall offer a lease to the highest responsible qualified bidder subject to the following procedures, unless it is determined in accordance with paragraph (a) of this section that the highest return can be obtained by other methods of contracting (such as negotiation):

(1) Leases shall be advertised for a bonus consideration under sealed bid, oral auction, or a combination of both, and a notice of such advertisement shall be published in at least one local newspaper at least 30 days in advance of sale or such longer time as is necessary to achieve optimum competition. If applicable, such notice must identify the reservation within which the tracts to be leased are found. No specific description of the tracts to be leased need be published. Specific descriptions of such tracts shall be available at the office of the Superintendent upon request. The complete text of the advertisement including a specific description of the tracts, will be mailed to each person listed on the agency mailing list.

(2) The advertisement shall specify any terms requested by the Indian mineral owner and may, where sufficient information exists, and after consultation with the Authorized Officer, permit bidders to compete on such terms as rental and royalty rates as well as upon bonus payment; and it shall provide that the Secretary reserves the right to reject any or all bids, and that acceptance of the lease bid by or on

behalf of the Indian mineral owner is required.

(3) Each bid must be accompanied by a cashier's check, certified check, or postal money order or any combination thereof, payable to the payee designated in the advertisement, in an amount not less than 25 percent of the bonus bid, which will be returned if that bid is unsuccessful.

(4) A successful bidder must, within 30 days after notification of the bid award, remit to the Secretary the balance of the bonus, the first year's rental, a $25 filing fee, her/his share of the advertising costs, and file with the Secretary all required bonds. The successful bidder shall also file the lease in completed form at that time. However, for good and explicit reasons, the Secretary may grant an extension of up to 30 days for filing of the lease. Failure on the part of the bidder to comply with the foregoing will result in forfeiture of the required payment of 25 percent of any bonus bid for the use and benefit of the Indian oil and gas owner.

(d) When the Indian mineral owner has requested the Secretary to offer a lease to the highest responsible qualified bidder in accordance with paragraph (c) of this section, the Secretary shall advise the Indian mineral owner of the results of the bidding, and shall not award the lease contract to any bidder until the consent of the Indian mineral owner has been obtained.

§ 225.32 Duration of leases.

(a) No competitive oil and gas or geothermal lease with an Indian mineral owner shall exceed a term of ten (10) years and as long thereafter as oil and gas or geothermal resources are produced in paying quantities.

(b) Where an oil and gas or geothermal lease specifies a term of years and "as long thereafter as oil and gas or geothermal resources are produced in paying quantities" or similar phrase, the term "paying quantities" shall generally mean: Lease production of oil and/or gas or geothermal resources of sufficient value to exceed direct operation costs plus the cost of lease rentals or minimum royalty.

(c) A lease which provides that it shall continue in force and effect beyond the expiration of the primary term if drilling operations have been commenced during the primary term, shall continue in force and effect beyond the expiration date of the primary term if the lessee has commenced actual drilling with a rig designed to reach the total proposed depth by midnight of the last day of the primary term and such drilling is continued with reasonable diligence until the well is completed to production or abandoned.

§ 225.33 Rentals; minimum royalty; production royalty on oil and gas leases.

(a) An oil and gas lessee shall pay, in advance, beginning with the effective date of the lease, an annual rental of such rate authorized by the Secretary. This rental shall not be credited on production royalty or prorated or refunded because of surrender or cancellation or for any other reason.

(b) If the royalty on oil and gas production paid during any year aggregates less than $2.50 per acre, the lessee must pay the difference at the end of the lease year. On communitized and unitized leases, the minimum royalty shall be payable only on participating acreage.

(c) Unless otherwise authorized by the Secretary, a royalty of not less than 16⅔ percent shall be paid on the value of all oil and gas, and products extracted therefrom from the land leased.

(d) During the period of supervision, "value" for the purpose of the lease shall be calculated in accordance with applicable rules and regulations in 30 CFR.

(e) If the leased premises produce gas in excess of the lessee's requirements for the development, and operation of said premises, gas shall, if requested by the lessor, be furnished by the lessee to the Indian oil and gas owner. Such gas furnished shall be received by the Indian oil and gas owner and title shall pass at the wellhead or at the alternate point of transfer designated by the lessee, and the Indian mineral owner shall pay a price therefor equal to the current wellhead price, less royalty, or if gas is not being sold, the price to be paid by the Indian oil and gas owner shall equal the highest price that could be obtained from another gas purchaser, less royalty. In addition to the above payments, the Indian oil and gas owner shall pay for the gas transfer installation and a reasonable fee to the lessee for meter maintenance, gas volume determination, accounting and other operational costs incurred as a result of any such purchase by the Indian oil and gas owner. The acquisition and use of any such gas purchased by the Indian oil and gas owner shall be at the Indian oil and gas owner's sole risk at all times. *Provided,* that this requirement shall be subject to the determination by the Superintendent, that gas in sufficient quantities is available above that needed for lease operation, and that waste would not result, and the gas is not subject to any pre-existing sales contracts, or disposition of such gas is not otherwise provided for in the lease. Where an arrangement is made to furnish gas to the Indian oil and gas owner pursuant to this section, it may be terminated only with the approval of the Secretary.

§ 225.34 Contracts for subsurface storage of oil and gas.

(a) The Secretary may approve, subject to obtaining the prior consent of the Indian oil and gas owners, storage contracts or modifications, amendments or extensions of oil and gas leases or other contracts, on tribal lands subject to lease or contract under the Act of May 11, 1938 (52 Stat. 347; 25 U.S.C. 396a), and on allotted lands subject to lease or contract under the Act of March 3, 1909 (35 Stat. 783; 25 U.S.C. 396), to provide for subsurface storage of oil or gas, irrespective of the lands from which production is initially obtained. The storage contract or modification, amendment, or extension, shall provide for the payment of such fee or rental, or in lieu thereof, for a royalty or percentage payment. All such fees, rentals, royalty or percentage payments shall be in addition to any royalties or rentals required by any lease committed to such a storage agreement.

(b) The Secretary may approve, subject to obtaining the prior consent of the Indian oil and gas owners, a provision in an oil and gas contract under which storage of oil or gas is authorized for continuance of the contract at least for the period of such storage use and so long thereafter as oil or gas not previously produced, is produced in paying quantities.

(c) Applications for subsurface storage of oil or gas shall be filed in triplicate with the Secretary and shall disclose the ownership of the lands involved, the parties in interest, the storage fee, rental, or royalty offered to be paid for such storage, and all essential information showing the necessity for such project.

§ 225.35 Surrender of leases.

A lessee may, with the approval of the Secretary, surrender a lease or any part of it, on the following conditions:

(1) The lessee shall requested the Secretary to terminate the lease and pay a $25 filing fee.

(2) All royalties and rentals due on the date the request for termination is made must be paid.

(3) The Superintendent, after consultation with the Authorized Officer, must be satisfied that proper provisions have been made for the conservation and protection of the property, and that all wells drilled on the portion of the lease surrendered

have been properly abandoned or conditioned, whichever is required.

(4) If a lease has been recorded, the lessee must submit a recorded release of the acreage covered by the request.

(5) If a lessee requests termination of an entire lease or an entire undivided portion of a lease, she/he must surrender the lease; provided that where the request is made by an assignee to whom no copy of the lease was delivered, the assignee must surrender only her/his copy of the assignment.

(6) If the lease, or a portion thereof, being terminated is owned in undivided interests by more than one party, all parties owning undivided interests in the lease must join in the request for termination.

(7) No part of any advance rental shall be refunded to the lessee, nor shall the lessee be relieved of the obligation to pay advance rental when it becomes due, by reason of any other subsequent surrender or termination of a lease or a portion thereof.

(8) If oil and gas is being drained from the leased premises by a well or wells located on lands not included in an Indian oil and gas lease, the Secretary reserves the right to impose reasonable and equitable terms and conditions on the termination of the lease to protect the interests of the Indian oil and gas owners of the lands surrendered, such as payment of compensatory royalty for any drainage.

§ 225.36 Forms.

Leases, bonds, permits, assignments, and other instruments relating to competitive oil and gas or geothermal leasing shall be on forms prescribed by the Secretary which may be obtained from the Superintendent or other officer having jurisdiction over the land.

Subpart C—General

§ 225.40 Scope.

This subpart sets forth general requirements which are applicable to any contract for the development of Indian oil and gas or geothermal resources entered into pursuant to this part.

§ 225.41 Authority and responsibility of the Bureau of Land Management.

The functions of the Bureau of Land Management are defined by 43 CFR Part 3160—Onshore Oil and Gas Operations, and 43 CFR Part 3260—Geothermal Resources Operations and currently include resource evaluation, approval of drilling permits and mining or production plans, and inspection. More detailed responsibilities are provided for in prevailing Memorandums of Understanding between Bureaus assigned responsibility for lease administration.

§ 225.42 Authority and responsibility of the Minerals Management Service (MMS).

Functions of the Minerals Management Service are defined under regulations contained in 30 CFR Part 200—Royalty Management. The Minerals Management Service is assigned the responsibility for all accounting work necessary for the proper computation and recording of royalties accruing to the benefit of Indians. Specific duties and responsibilities of the Minerals Management Service are further delineated in an existing Memorandum of Understanding between the Bureau of Indian Affairs and the Minerals Management Service.

§ 225.43 Approval of amendments to contracts.

(a) An amendment, modification or supplement to a contract entered into pursuant to the regulations in this part, must be approved by the Secretary. The Secretary may approved and amendment, modification, or supplement if it is determined that the contract, as modified, meets the criteria for approval set forth in § 225.23, or of the competitive lease meets the criteria for approval in § 225.31.

(b) An amendment to or modification of a contract for the exploration, development and production of Indian-owned oil and gas or geothermal resources, which was approved prior to the effective date of these regulations, shall be approved by the Secretary if the entire lease meets the criteria set forth in § 225.23 or § 225.31 of this part. When appropriate, the Secretary shall prepare a written economic assessment of the amendment or modification pursuant to paragraph (a) of § 225.48 of this part, and an environmental and cultural assessment pursuant to § 225.49 of this part.

§ 225.44 Geological and geophysical permits.

(a) Permits to conduct geological and geophysical operations on Indian lands which are not included in an oil and gas or geothermal contract entered into pursuant to this part, may be approved by the Secretary with the consent of the Indian owner under the following conditions:

(1) The permit must describe the area to be explored, the duration and consideration to be paid the Indian owner;

(2) The permit will not grant the permittee any option or preference rights to a lease or other development contract, or authorize the production of or removal of oil and gas or geothermal unless specifically so stated in the permit;

(3) The permittee shall pay for all damages to growing crops, any improvements on the lands, and all other surface damages resulting from operations conducted on the permitted lands;

(4) A copy of all data collected pursuant to operations conducted under the permit shall be forwarded to the Secretary and made available to the Indian owner, when so provided in the permit. Data collected under a permit shall be held by the Secretary as privileged and proprietary information for the time prescribed in the permit. Where no time period is prescribed in the permit, the Secretary may release such information upon request.

(5) In instances where the Indian owner is also the surface land owner, the Indian owner shall obtain any additional necessary permits or rights of ingress or egress from any other surface user, permittee, lessee, or allottee on her/his land needed for the geological permittee to enter onto the land to conduct exploratory operations. In instances where the Indian owner is not the surface owner, the Indian owner shall lend all possible assistance to the geological permittee in obtaining any such additional necessary permits or rights of ingress or egress; and

(6) A permit may be granted by the Secretary without the consent of the individual Indian owners if:

(i) The land is owned by more than one person, and the owners of a majority of the interests therein consent to the permit;

(ii) The whereabouts of the owner of the land or an interest therein is unknown, and the owner or owners of any interests therein whose whereabouts is known, or a majority thereof, consent to the permit; or

(iii) The heirs or devisees of a deceased owner of the land or an interest therein have not been determined, and the Secretary finds that the permit activity will cause no substantial injury to the land or any owner thereof; or

(iv) The owners of interests in the land are so numerous that the Secretary finds it would be impractical to obtain their consent, and also finds that the permit activity will cause no substantial injury to the land or any owner thereof.

(b) A permit to conduct geological and geophysical operations on Indian lands

included in an oil and gas or geothermal contract entered into pursuant to this part, will not be required of the operator in the absence of provisions in the contract requiring that a permit be obtained. If a permit is to be required, the contract shall state the procedures for obtaining approval of the permit.

§ 225.45 Removal of restrictions.

(a) Notwithstanding the provisions of any oil and gas or geothermal contract to the contrary, the removal of all restrictions against alienation shall operate to divest the Secretary of all supervisory authority and responsibility with respect to the contract. Thereafter, all payments required to be made under the contract shall be made directly to the oil and gas or geothermal owner(s).

(b) In the event restrictions are removed from a part of the land included in any contract to which this part applies, the entire contract shall continue to be subject to the supervision of the Secretary until such times as the holder of the contract and the unrestricted Indian owner, shall furnish to the Secretary satisfactory evidence that adequate arrangements have been made to account for the oil and gas or geothermal resources of the restricted land separately from those of the unrestricted. Thereafter, the unrestricted portion shall be relieved from supervision of the Secretary, and the restricted portion shall continue subject to such supervision as is provided by the Secretary, the contract, the regulations of this part, and all other applicable laws and regulations.

(c) Should restrictions be removed from only part of the acreage covered by a contract agreement, which provides that payments to the oil and gas or geothermal owners shall thereafter be paid to each owner in the proportion which her/his acreage bears to the entire acreage covered by the contract, the operator on any unrestricted portion shall continue to be required to make the reports required by the regulations in this part with respect to the beginning of drilling operations, completion of wells, and production, the same as if no restrictions had been removed. In the event the unrestricted portion of the contracted premises is producing, the operator will also be required to pay the portion of the royalties or other revenue due the Indian owner at the time and in the manner specified by the regulations in this part.

§ 225.46 Oil and gas and geothermal contracts of undivided inherited lands.

(a) The Secretary may execute oil and gas or geothermal contracts on behalf of unknown owners of future contingent interests, and on behalf of minors without a legal guardian, and on behalf of persons who are legally incompetent.

(b) If the allottee is deceased and the heirs to or devisees of any interest in the allotment have not been determined, or some or all of them cannot be located, contracts for the development of such interests may be executed by the Secretary, provided that such interests have been offered for sale under provision of § 225.31.

(c) If an owner is a life tenant, and the division of rents and royalties is not clearly expressed in the document creating the life estate, the contract shall be accompanied by an agreement between the life tenant and the remainderman providing for the division of rents and royalties. The agreement is subject to the approval of the Secretary.

(d) The Secretary may approve a contract where less than 100 percent of the undivided mineral interest is committed to the contract and the Secretary has determined it to be in the best interest of the Indian owners, provided that:

(1) A contract approved by the Secretary pursuant to this paragraph shall include only the oil and gas or geothermal interests of the consenting Indian owners.

(2) Sixty-six and two thirds percent or more of the undivided oil and gas or geothermal interest is committed to the lease;

(3) The operator is required to submit a certified statement containing evidence that the non-consenting Indian owners have been contacted and have refused to consent to the lease; and

(4) The operator is required to submit, and obtain the approval of the Secretary to, a plan describing how the operator will account to the non-consenting Indian owners for all income attributable to their undivided interest.

(e) The Secretary shall provide all known non-consenting Indian owners with a certified written notice that a contract has been approved without their consent, that affects their undivided interest along with a copy of the operator's plan for accounting for their interest.

§ 225.47 Persons signing in a representative capacity.

(a) The signing in a representative capacity and delivery of bids, geological and geophysical permits, oil and gas or geothermal agreements or assignments, bonds, or other instruments required by these regulations, constitutes certification that the individual signing (except a surety agent) is authorized to act in such capacity. An agent for a surety shall furnish a satisfactory power of attorney.

(b) A corporation proposing to acquire an interest in a permit or a contracted real property interest in Indian-owned oil and gas or geothermal resources, shall have on file with the Superintendent a statement showing:

(1) The State(s) in which the corporation is incorporated, and that the corporation is authorized to hold such interests in the State where the land described in the instrument is situated;

(2) That it has power to conduct all business and operations as described in the instrument.

(c) The Secretary may, either before or after the approval of a permit, contract, assignment, or bond, call for any reasonable additional information necessary to carry out the regulations in this part, other applicable laws and regulations, and the trust responsibility to the Indian owner.

§ 225.48 Economic assessments.

An economic assessment, where required, shall be prepared by the Secretary and shall take into consideration the following where applicable:

(a) Whether there are assurances in the oil and gas or geothermal contract that operations shall be conducted with appropriate diligence;

(b) Whether the production royalties or other form of return on oil and gas or geothermal resources is adequate; and

(c) When a method of contracting for development of oil and gas other than by the competitive bidding procedures is used, whether that method is likely to provide the Indian oil and gas owner with a share of the return on the production of her/his oil and gas equal to what the owner might otherwise obtain through competitive bidding, when such a comparison can readily be made.

§ 225.49 Environmental assessments.

(a) An environmental assessment shall be prepared or caused to be prepared by the Secretary in accordance with regulations promulgated by the Council for Environmental Quality, 40 CFR 1508.9, and 30 BIAM Supplement 1 and 516 DM 1–7. When it is determined prior to the preparation of the assessment that an environmental impact statement needs to be prepared prior to approval of the contract, preparation of that environmental impact statement may be regarded as satisfying the requirements of this section. Prior to contract approval, the environmental assessment shall be made available to the Indian owner and

to the governing body of the affected Indian tribe, and shall also be made available for public review at the Bureau office having jurisdiction over the proposed contract.

(b) In order to make a determination of the effect of the contract on prehistoric, historic, architectural, archeological, cultural, and scientific resources, in compliance with the National Historic Preservation Act, 16 U.S.C. 470 *et seq.*, Executive Order 11593 (May 1971), and regulations promulgated thereunder, 36 CFR Parts 60, 63, and 800, and the Archeological and Historic Preservation Act, 16 U.S.C. 469a–1 *et seq.*, the Secretary shall, prior to approval of a contract, perform surveys or cause surveys to be made to determine the effect of the exploration and production activities on properties which are listed in the National Register of Historic Places, 16 U.S.C. 470a, or are eligible for listing in the National Register. If the surveys indicate that properties listed in or eligible for listing in the National Register will be affected, the Secretary shall seek the comments of the Advisory Council on Historic Preservation pursuant to 36 CFR Part 800. If the oil and gas or geothermal development will have an adverse effect on such properties, the Secretary shall ensure that the properties will either be avoided, the effects mitigated, or the data describing the historic property preserved.

§ 225.50 Bonds.

(a) The Secretary may require a geological or geophysical permittee or operator to furnish surety bonds in such amount deemed appropriate.

(b) Before beginning drilling operations, the operator shall furnish a bond in an amount to be determined by the Secretary and the approving official, but in no event less than $10,000.

(c) In lieu of the drilling bond required under paragraph (b) of this section, the operator may file one bond of $50,000 for all oil and gas or geothermal contracts in any one State, or such lesser jurisdiction as determined by the Secretary, including contracts on that part of an Indian reservation extending into States contiguous thereto, to which the operator may become a party. The total acreage covered by such bond shall not exceed 10,240 acres.

(d) In lieu of the bonds required under paragraphs (a), (b), and (c) of this section, an operator or permittee may file with the Secretary a bond in the sum of $150,000 for full nationwide coverage for all contracts and permits without geographic or acreage limitations.

(e) Bonding shall be by corporate surety bonds.

(f) In lieu of a bond required by this section, an irrevocable letter of credit may be submitted for the same amount as a bond.

(g) The right is specifically reserved to the Secretary to increase or decrease the amount of bonds or letters of credit at her/his discretion.

§ 225.51 Manner of payments.

Unless otherwise provided in an approved contract, all payments shall be paid to the Secretary or such other party as she/he may designate, and shall be made at such time as provided in the advertisement, permit, or mineral agreement.

§ 225.52 Permission to start operations.

(a) No exploration or drilling operations are permitted on any contract area before the effective date of the oil and gas or geothermal contract. The effective date of the contract shall be the date the contract is officially approved by the Secretary pursuant to the regulations in this part.

(b) Written permission must be secured from the Secretary before any operations are started on the contract premises, in accordance with applicable rules and regulations in Title 43 CFR, Parts 3160 and 3260, and Orders or Notice to Lessees (NTL) issued thereunder. After such permission is secured, operations must be in accordance with all applicable operating rules and regulations promulgated by the Secretary of the Interior. Copies of applicable regulations may be secured from either the Authorized Officer or the Superintendent and no operations should be undertaken without a study of such regulations.

§ 225.53 Assignments and overriding royalties and operating agreements.

(a) Assignments. An assignment of oil and gas or geothermal contracts or any interest therein, shall not be valid without the approval of the Secretary and the Indian owner, if approval of the Indian owner is required in the contract. The assignee must be qualified to hold such contract under existing rules and regulations and shall furnish a satisfactory bond conditioned on the faithful performance of the convenants and conditions thereof. An operator must assign either her/his entire interest in a contracted area or a legal subdivision [which may be a separate horizon] thereof, or an undivided interest in the whole lease or contracted area:

Provided, that when an assignment covers only a legal subdivision of a contract area or covers interests in separate horizons, such assignment shall be subject to both the consent of the Secretary and the Indian owner. If a contract area is divided by the assignment of an entire interest in any part, each part shall be considered a separate contract, and the assignee shall be bound to comply with all terms and conditions of the original contract. A fully executed copy of the assignment shall be filed with the Secretary within 30 days after the date of the execution by all parties. The Secretary may permit the release of any bonds executed by the assignor upon execution of satisfactory bonds by the assignee.

(b) Overriding royalties and operating agreements. Agreements creating overriding royalties or payments out of production and agreements designating operators shall not be considered assignments, and the approval of the Department of the Interior or any agency thereof shall not be required with respect thereto. Such agreements shall be construed as not modifying any of the obligations of the operator with the Indian owner under her/his contract and the regulations in this part, including requirements for Departmental approval before abandonment. All such obligations are to remain in full force and effect, the same as if free of any such royalties or payments. Such agreements shall be filed with the Secretary unless incorporated in assignments or instruments required to be filed pursuant to paragraph (a) of this section.

§ 225.54 Suspension of production; remedial workover/shut-in.

(a) The Secretary may under such terms and conditions as she/he may prescribe, authorize suspension of producing requirements in the extended contract term whenever it is determined that remedial operations are in the best interest of the Indian mineral owner. *Provided*, that such remedial operations are conducted with reasonable diligence during the period of nonproduction according to the provisions in 43 CFR 3162.3–2. Any suspension under this paragraph shall not relieve the operator from liability for the payment of rental and minimum royalty or other payments due under the terms of the contract.

(b) An application for permission to suspend producing requirements for economic or marketing reasons on an oil and/or gas or geothermal well capable of commercial production which is submitted to the Secretary after the expiration of the primary term of the contract must be accompanied by the written consent of the Indian mineral owner and a written agreement executed by the parties setting forth the

terms pertaining to the suspension of production.

(c) No approval shall be required for a suspension of production which occurs within the primary term of the contract.

§ 225.55 Unitization and communitization agreements; and well spacing requirements.

(a) *Unitization and communitization agreements.* (1) For the purpose of promoting conservation and efficient utilization of natural resources, the Secretary, with the consent of the Indian mineral owner, may approve a cooperative unit, drilling or other development plan on any contracted area upon a determination that approval is advisable and in the best interest of the Indian owner. For the purposes of this section, a cooperative or other plan means an agreement for the development or operation of a specifically designated area as a single unit without regard to separate ownership of the land included in the agreement. Such agreements include unit agreements and other types of agreements which allocate costs and benefits.

(2) Where individual or tribal Indian owners have consented in an oil and gas or geothermal contract to include their lands in a cooperative or other development plan, further consent of such owners shall not be required to obtain the approval of a proposed agreement by the Secretary.

(3) A request for approval of a cooperative plan shall be filed with the Superintendent which must comply with the requirements of all applicable rules and regulations.

(4) All Indian owners of any right, title or interest in the oil and gas or geothermal resources to be unitized are proper parties to the proposed agreement, and must be invited to join the agreement unless prior consent to unitization has been given. If any Indian oil and gas or geothermal owner refuses to join in an agreement, the request for approval shall include: an affidavit certifying that reasonable efforts were made to obtain her/his consent, and a copy of a return receipt showing that an invitation to join the unit was mailed to the Indian owner by certified mail at her/his last known mailing address.

(5) A request for approval of a proposed agreement, and documents incident to such agreements, should be filed with the Superintendent ninety (90) days prior to the expiration date of the first Indian oil and gas or geothermal contract to expire in the unit.

(6) Prior to approving or disapproving a proposed agreement, the Superintendent shall obtain the recommendation of the Authorized Officer for approval or disapproval, based upon the engineering and technical aspects of the agreement.

(7) Approval shall be retroactive to the date the proposed agreement was submitted to the Department or the date that first production occurred within the unit, whichever is earlier. Review of the agreement shall be primarily concerned with engineering and technical aspects of the agreement and shall generally not consider the other terms and conditions of affected leases (e.g., royalty rate and bonuses).

(8) Any oil and gas or geothermal contract committed in part to any such agreement shall be segregated into separate minerals contracts or leases as to the lands committed and lands not committed to the agreement. Such segregation shall be effective the date the agreement is approved by the Secretary.

(b) Well spacing requirements: Each well within a cooperative unit shall be drilled in conformity with an acceptable well spacing program at a surveyed well location approved or prescribed by the Authorized Officer after appropriate environmental and technical reviews. An acceptable well spacing program may be,

(1) A program which conforms to a spacing order or field rule which is acceptable to the Authorized Officer;

(2) A program which proposes drilling a well on lands committed to an agreement at a location approved by the Authorized Officer, or

(3) Any other well spacing approved by the Authorized Officer.

§ 225.56 Inspection of premises; books and accounts.

(a) Operators shall allow Indian owners, their representatives or any authorized representative of the Secretary to enter all parts of the contracted premises for the purpose of inspection only at their own risk. Books and records shall be available only during business hours. Operators shall keep a full and correct account of all operations and make reports thereof, as required by the contract and applicable regulations.

(b) Records will be provided to the Minerals Management Service (MMS) in accordance with MMS regulations and guidelines. Such records will be safeguarded by MMS in accordance with appropriate laws, regulations, and guidelines.

(c) Records will be provided to the Authorized Officer in accordance with BLM regulations and guidelines. Such records will be safeguarded by BLM in accordance with appropriate laws, regulations and guidelines.

§ 225.57 Termination and cancellation; enforcement of orders.

(a) If the Secretary determines that a permittee or operator has failed to comply with the regulations in this part, other applicable laws or regulations, the terms of the permit or contract, her/his orders, or the orders of the Authorized Officer and such noncompliance does not threaten immediate and serious damage to the environment, the well or the oil and gas or geothermal resources being developed, or other valuable mineral deposits or other resources, the Secretary shall serve a notice of noncompliance upon the permittee or operator by delivery in person or by certified mail to the permittee or operator at her or his last known address. Failure of the permittee or operator to take action in accordance with the notice of noncompliance, within the time limits specified by the Secretary, shall be grounds for suspension of operations subject to such notice by the Superintendent, or grounds for the Superintendent's recommendations for the initiation of action for cancellation of the lease, permit, license, or contract and forfeiture of any compliance bonds.

(b) The notice of noncompliance shall specify in what respect the permittee or operator has failed to comply with the provisions of applicable laws, regulations, terms of the permit or contract, or the orders of the Secretary or the Authorized Officer, and shall specify the action which must be taken to correct such noncompliance and the time limits within which such action shall be taken. A written report shall be submitted by the permittee or operator to the Secretary within 10 days of the time such noncompliance has been corrected.

(c) If, in the judgment of the Secretary, a permittee or operator is conducting activities on lands subject to the provisions of this part:

(1) Which fail to comply with the provisions of this part, other applicable laws or regulations, the terms of the minerals agreement, the requirements of an approved exploration or drilling plan, her/his orders or the orders of the Authorized Officer, and

(2) Which threaten immediate and serious damage to the environment, the well or the oil and gas or geothermal resources being developed, or other valuable mineral deposits or other resources; the Secretary shall order the immediate cessation of such activities without prior notice of noncompliance.

The Secretary shall, however, as soon after issuance of the cessation order as possible, serve on the permittee or operator a statement of the reasons for the cessation order and the actions needed to be taken before the order will be lifted.

(3) Such orders shall be immediately effective.

(d) If a permittee or operator fails to take action in accordance with the notice of noncompliance served upon her/him pursuant to paragraph (a) of this section, or if a permittee or operator fails to take action in accordance with the cessation order statement served upon her/him pursuant to paragraph (c) of this section, the Secretary may issue a notice of intent to cancel the minerals agreement specifying the basis for notice. The permittee or operator shall have 30 days from receipt of the notice to present evidence as to why the minerals agreement should not be cancelled.

(e) No provision in this section shall be interpreted as replacing or superseding any other remedies of the Indian mineral owner as set forth in the minerals agreement or otherwise available at law.

(f) Nothing in this section is intended to supersede the independent authority of the Authorized Officer and/or the MMS official. However, the Authorized Officer, the MMS official, and the Secretary should consult with one another, when feasible, before taking any enforcement actions.

(g) All notices of non-compliance or orders of cessation or contract cancellation may be appealed pursuant to 25 CFR Part 2. *Provided,* appeals of cessation orders under this part shall not relieve the permittee or operator from the obligation to immediately comply therewith.

§ 225.58 Penalties.

(a) Violations of the terms and conditions of any permit, or the regulations in this part, or failure to comply with a notice of noncompliance or a cessation order issued pursuant to § 225.57, may subject a permittee to a penalty of not more than $1,000 per violation per day for each day that such violation or noncompliance continues beyond the time limits prescribed for corrective action. Similarly, violations of the terms and conditions of any contract, other than those relating to operational or royalty management matters, the regulations in this part, or failure to comply with a notice of noncompliance or cessation order issued in that regard pursuant to § 225.57, may subject the operator to a penalty of not more than $1,000 per day for each day that such violation or noncompliance continues beyond the time limits prescribed for corrective action.

(b) A notice of proposed penalty shall be served on the permittee or operator either personally or by certified mail. The notice shall specify the nature of the violation and the proposed penalty, and shall advise the permittee or operator of the right to either request a hearing within 30 days from receipt of the notice, or pay the proposed penalty. Hearings shall be held before the Superintendent, whose findings shall be conclusive, unless an appeal is taken pursuant to § 225.59 of this part. A request for a hearing does not stop the running of penalties for continuing non-compliance.

(c) Payment in full of penalties more than 10 days after final notice that a penalty has been imposed, shall subject the permittee or operator to late payment charges. Late payment charges shall be calculated on the basis of a percentage assessment rate of the amount unpaid per month for each month or fraction thereof until payment is received by the Secretary. In the absence of a specific permit or contract provision prescribing a different rate, the interest rate on late payments and under payments shall be a rate applicable under section 6621 of the Internal Revenue Code of 1954. Interest will be charged only on the amount of payment not received and only for the number of days the payment is late.

(d) Permittees and operators also may be subject to penalties under other applicable rules and regulations, or under the terms of an approved contract. None of the provisions of this section shall be interpreted as:

(1) Replacing or superseding the independent authority of the Authorized Officer and/or the MMS Official to issue notices of violations or to impose assessments and/or penalties for violations of applicable regulations pursuant to the authority granted under 43 CFR Parts 3160 and 3260 or 30 CFR Chapter II; or

(2) Replacing or superseding any penalty provision in the terms and conditions of a permit or contract approved by the Secretary pursuant to this part.

§ 225.59 Appeals.

(a) Appeals from decisions of Bureau of Indian Affairs officers under this part may be taken pursuant to Part 2 of this title.

(b) Notices of violations, cessation orders, assessments, or proposed penalties issued pursuant to this part, 43 CFR Parts 3160 and 3260 or 30 CFR Chapter II shall not be suspended as a result of an administrative review, hearing on the record, or the taking of an appeal, unless such suspension is ordered in writing by the official before whom such an administrative review, hearing on the record, or appeal is pending, and then only upon a written determination by such official that such suspension will not be detrimental to the Indian owner, or upon submission of a bond deemed adequate by both the Indian owner and the Secretary to indemnify the Indian owner from any resulting loss or damage.

§ 225.60 Fees.

Unless otherwise authorized by the Secretary, each permit, lease, sublease, or other contract, or assignment or surrender thereof, shall be accompanied by a filing fee of not less than $25. All fees collected pursuant to this section, shall be deposited in the General Treasury Fund pursuant to the requirements of 25 U.S.C. 413.

§ 225.61 No oil and gas or geothermal agreements made with Government employees.

No employee of the BIA or Indian Health Service (IHS) shall enter into or be a party to any oil and gas or geothermal contract, assignment thereof, or interest therein involving trust or restricted Indian-owned mineral interests. See 18 U.S.C. 437.

§ 225.62 Sales contracts, division orders and other division of interest documents.

Sales contracts, division orders and other division of interest documents necessary under this part shall be regulated by 30 CFR Parts 207 and 210.

Ross O. Swimmer,

Assistant Secretary, Indian Affairs.

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Part VII

Environmental Protection Agency

40 CFR Part 264

Statistical Methods for Evaluating Ground-Water Monitoring Data From Hazardous Waste Facilities; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 264

[FRL-3213-1]

Statistical Methods for Evaluating Ground-Water Monitoring Data From Hazardous Waste Facilities

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA promulgated regulations for detecting contamination of ground water at hazardous waste land disposal facilities under the Resource Conservation and Recovery Act of 1976 (RCRA). The statistical procedures used to evaluate the presence of contamination have been subject to criticism and require improvement. Therefore, EPA today proposes to revise these statistical procedures and requests comments from the public to assist in the regulatory development process.

DATE: Written comments should be submitted on or before October 23, 1987.

ADDRESSES: The original and two copies of comments on this proposal should be mailed to the Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket is open from 9:00 to 4:00 Monday through Friday, except for Federal holidays. The docket number for this rule is F-87-SGWP-FFFFF. The public must make an appointment to review docket materials. Call (202) 475-9327 for appointments. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost $.20/page.

The official docket for this regulation, including comments received by the Agency, is located in Room MLG 100, U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: For general information contact: RCRA/Superfund Hotline, Office of Solid Waste (WH-563C), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, telephone (800) 424-9346, or (202) 382-3000. For technical information contact James Brown, (202) 382-4658.

SUPPLEMENTARY INFORMATION:

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I. Authority

These regulations are issued under the authority of sections 1006, 2002(a), 3004, and 3005 of the Solid Waste Disposal Act (SWDA), as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended (42 U.S.C. 6905, 6912(a), 6924, and 6925).

II. Background

Subtitle C of the Resource Conservation and Recovery Act of 1976 (RCRA) creates a comprehensive program for the safe management of hazardous waste. Section 3004 of RCRA requires owners and operators of facilities that treat, store, or dispose of hazardous waste to comply with standards established by EPA that are "necessary to protect human health and the environment." Section 3005 provides for implementation of these standards under permits issued to owners and operators by EPA or authorized States. Section 3005 also provides that owners and operators of existing facilities that apply for a permit and comply with applicable notice requirements may operate until a permit determination is made. These facilities are commonly known as "interim status" facilities. Owners and operators of interim status facilities also must comply with standards set under section 3004.

EPA promulgated ground-water monitoring and response standards for permitted facilities in 1982 (47 FR 32274, July 26, 1982), codified in 40 CFR Part 264, Subpart F. These standards establish programs for protecting ground water from releases of hazardous wastes from treatment, storage, and disposal units. Facility owners and operators are required to sample ground water at specified intervals and to use a statistical procedure to determine whether or not hazardous wastes or constituents from the facility are contaminating ground water. As explained in more detail below, the Subpart F regulations EPA promulgated in 1982 have generated criticism. EPA is today proposing to amend these regulations to respond to these concerns.

A. Concerns About Existing Standards

The current Part 264 regulations provide that the Cochran's Approximation to the Behrens Fisher Student's t-test (CABF) or an alternative statistical procedure approved by EPA be used to determine whether there is a statistically significant exceedance of background levels, or other allowable levels, of specified hazardous waste constituents. Although the existing 40 CFR Part 264 regulations have always provided latitude for the use of an alternate statistical procedure, concerns have been raised that the CABF statistical procedure in the current regulations may not be appropriate. It has been pointed out that: (1) The replicate sampling method is not appropriate for the CABF procedure, (2) the CABF procedure does not adequately consider the number of comparisons that must be made, and (3) the CABF does not control for seasonal variation. Specifically, the concerns are that the CABF procedure could result in "false positives" (Type I error), thus requiring an owner or operator unnecessarily to collect additional ground-water samples, to further characterize ground-water quality, and to apply for a permit modification, which is then subject to EPA review. In addition, there is concern that the CABF may result in "false negatives" (Type II error), i.e. instances where actual contamination goes undetected. This may occur when the background data, which are used as the basis of the statistical comparisons, are highly variable due to temporal, spatial, analytical, and sampling effects.

B. Suggested Changes Published in ANPRM

As a result of these concerns, EPA is proposing to change both the statistical procedure and the sampling requirements of the regulations, by requiring that owners or operators more completely characterize the hydrogeology at the facility, and including in the regulations performance standards which the statistical procedures and the sampling methods must meet. Statistical procedures and sampling methods meeting these performance standards would have a low probability of indicating contamination when it is not present and of failing to detect contamination that actually is present. The facility owner or operator would have to demonstrate that a procedure is appropriate for the conditions at that facility and ensure that it meets the performance standard outlined below.

In addition EPA has outlined several sampling methods and types of statistical procedures that the Agency believes will meet the performance standards.

EPA recognizes that the selection of appropriate monitoring parameters is also an essential part of a reliable statistical evaluation. The Agency addressed this issue in a previous Federal Register notice (51 FR 28632; July 24, 1986).

In an advance notice of proposed rulemaking (ANPRM) issued August 20, 1986 (51 FR 29182), EPA solicited information that would help evaluate approaches to determining if a facility is contaminating the ground water. The Agency requested comments on the following performance standards that it was considering:

1. The procedure(s) and sampling requirements must be protective of human health and the environment.

2. The owner or operator must determine the statistical distribution of each parameter or constituent listed in the facility permit. The statistical procedure(s) must be appropriate for the distribution. The owner or operator could demonstrate that the distributions of constituents differ and, thus, more than one procedure is needed at a facility.

3. The procedure(s) should have a low probability of indicating contamination when it is not present and of failing to detect contamination that is actually there. The owner or operator should consider different numbers of sample points for different constituents or procedures.

4. The procedure(s) should be appropriate for the hydrogeologic setting and the physical layout of the ground-water monitoring system.

5. The owner or operator should describe how observations below the detection limit will be handled in the procedure(s).

6. The owner or operator should consider, or control for, seasonal and spatial variability and temporal correlation in developing the procedure(s).

In addition, EPA identified certain statistical procedures that were expected to meet these performance standards and asked for available data on the following:

1. How will the statistical procedures meeting the performance standards perform in actual practice?

2. How sensitive will the procedures be to different distributions?

3. Are data available for EPA to use to determine Type II error levels for the procedures in light of the fact that Type I error (indicating contamination when it is not present) is closely related to Type II error (missing existing contamination).

4. Are there other statistical procedures or sampling requirements that minimize both Type I and Type II errors? Are there data showing the number of Type II errors expected under any alternate statistical procedure or sampling scheme?

5. Are there modeling or measurement techniques that make it possible to determine the flow path of the ground water from an upgradient well to a particular downgradient well, or to several adjacent downgradient wells?

6. Does transforming data to its logarithm or square root improve conformance to assumptions of a statistical procedure or are there appropriate procedures for untransformed data?

7. If EPA uses a simple comparison of mean concentrations rather than a statistical procedure, would this have acceptable Type I and Type II error levels?

8. What Type I and Type II error levels result for the identified procedures when concentrations of constituents are below the detection limit? What error levels would result for other procedures?

9. Ground-water monitoring data may be autocorrelated (i.e., variation in monitoring parameters may be correlated). Is there information on the degree of autocorrelation at facilities and appropriate corrections such as adjusting the degrees of freedom of statistical tests or procedures that might be more appropriate for autocorrelated data?

10. Are intra-well comparisons appropriate for new facilities?

11. Is there available information that could be used to evaluate the frequency control comparison and to determine an acceptable range for them?

C. Public Comments on ANPRM

No new data or information were supplied by commenters in response to these 11 specific questions. However, commenters expressed several concerns with the six proposed performance standards. One concern was that some of the items in the ANPRM may not really be performance standards for statistical procedures. For example, numbers 1 and 4 are goals appropriate to the entire ground-water monitoring effort, not just to determine the appropriateness of the statistical procedures. Numbers 2 and 5 were thought to be specific requirements that the owner/operator must meet to develop an acceptable procedure, rather than broad performance standards. Finally, the two items that would usually be construed as specifying performance of a statistical procedure, numbers 3 and 6, were thought to be too general for a procedure to meet. One commenter suggested that the section on performance standards be changed to evaluation criteria for determining the acceptability of a statistical test or procedure.

A consensus of respondents said that performance standards should be specific, yet flexible. Further, they should be site-specific to allow for the unique character of a site to be considered in defining the standard.

Another area of consensus was that performance standards should provide a "systems" approach to ground-water monitoring. That is, the performance standards should address the adequacy of the site characterization, the number and siting of monitoring wells, the sampling frequency and technique, the laboratory analytical methods, and the statistical analysis of the data. All of these components interact to determine the adequacy of a ground-water monitoring methodology to protect human health and the environment. Several commenters felt that the last performance standard, pertaining to seasonal and spatial variability, should be considered in developing the statistical procedures and not just during the data analysis. Consequently, EPA feels that a performance standard must incorporate aspects of ground-water monitoring in addition to the statistical techniques.

While some respondents called for the performance standards to specify requirements, few suggested what those specific requirements should be. The only specific suggestion made was that the Type I error should be set at 0.01. However, the context of that comment made it clear that 0.01 was merely in preference to 0.05, and that selection was based on the desire to keep the false positive rate as low as possible.

One suggestion was that risk be considered in setting performance standards and that the cost of meeting the performance requirements should be taken into account. It was also suggested that the level of performance to be required was a matter for policy decision by EPA. The required level of performance should be based on what is perceived as technically achievable, and which would result in an acceptable risk level. The achievement of zero risk was thought to be an unattainable, idealized goal.

In general, the respondents endorsed the concept of a performance standard, but they provided little in the way of concrete suggestions as to what the

performance standards should be. They raised many concerns, but suggested few answers. Some of the requests contradict others, making it evident that no single standard can satisfy all of the comments.

III. Today's Proposal

In today's proposal, EPA has elected to retain the idea of general performance requirements that the regulated community must meet. This proposal allows for flexibility in designing statistical procedures to site-specific considerations.

EPA has tried to bring a measure of certainty to today's regulations while accommodating the unique nature of many of the regulated units in question. Consistent with this general strategy, the Agency is establishing several options for the sampling schemes and statistical tests to be used in detection monitoring and, where appropriate, in compliance monitoring.

The Regional Administrator will specify for each of the hazardous constituents one or more of the statistical tests and sampling schemes described in today's regulations. In deciding which statistical test is appropriate, he will consider the theoretical properties of the test, the data available, and the hydrogeology of the site.

The Agency recognizes that there may be situations where the statistical tests and sampling schemes specified may not be appropriate. In such cases, it is necessary to develop procedures that are tailored to the specific performance standards that every procedure must meet. Thus, today's regulations establish performance standards for use by the Regional Administrator in determining whether an alternative procedure or scheme will be sufficiently protective of human health and the environment.

A. General Performance Standards

EPA's basic concern in establishing today's performance standards for statistical procedures is to achieve a proper balance between the risk that the procedures will falsely indicate that a regulated unit is causing background values or concentration limits to be exceeded (false positives) and the risk that the procedures will fail to indicate that background values or concentration limits are being exceeded (false negatives). Today's proposal is designed to address that concern directly. Thus, any statistical test or sampling scheme, whether specified in today's regulations or an alternative to those specified, should meet the following performance standards:

1. If the distributions differ among constituents, more than one procedure may be needed. The owner or operator must show that the normal distribution is not appropriate if using a statistical procedure which assumes the data are not normally distributed. A "goodness of fit" test should be used to demonstrate that the distribution assumptions are not violated.

2. The statistical test is to be conducted separately for each hazardous constituent. At each time that a test is done, the test for individual constituents shall be done at a Type I error level no less than 0.01. A multiple comparisons procedure may be used to control the experimentwise error rate at a level no less than 0.05. However, the individual well comparisons must have a Type I error no less than 0.01, which may make the experimentwise error rate greater than 0.05. The owner or operator must evaluate the power and may be required to increase the sample size to achieve an acceptable power level. The sample size and sampling procedure shall be appropriate to the level of the Type I and Type II errors and the decision criteria.

3. The monitoring well system should be in accordance with the natural features of the site. The owner or operator must ensure that the number, locations, and depths of wells will detect hazardous waste constituents that migrate from the waste management area to the uppermost aquifer at the first sampling period after such migration occurs.

4. The statistical procedure should be appropriate for the behavior of the parameters involved. It should include methods for handling data below the limit of detection. In cases where there is a high proportion of values below limits of detection, the owner or operator may demonstrate that an alternative procedure is more appropriate.

5. The statistical procedure should consider, and if necessary control or correct for, seasonal and spatial variability and temporal correlation in the data.

In referring to "statistical procedures", EPA means to emphasize that the concept of "statistical significance" must be reflected in several aspects of the monitoring program. This involves not only the choice of a level of significance, but also the choice of a statistical test, the sampling requirements, the number of samples, and the frequency of sampling. Since all of these interact to determine the ability of the procedure to detect contamination, the statistical procedures must be evaluated in their entirety, not by individual components.

A set of specific numerical performance standards that would achieve the proper balance between false positives and false negatives is not possible due to site specific differences. The probability of correctly deciding that a regulated unit is contaminating ground water (often expressed as the power of a statistical test) cannot easily be summarized by a single number because the power of a test is related to the magnitude of the difference between two populations. Today's regulations do not attempt to express the idea of "exceeding background values or concentration limits" in terms of any minimum magnitude. This is because any statistically significant increase is a cause for concern. A performance standard related to the power of a statistical test would have to be specified for every possible minimum magnitude that might be of concern. This is not feasible given the current state of knowledge about ground-water contamination.

An alternative would be for EPA to decide what magnitude of increase it is concerned about and to specify how powerful the test would be for that magnitude of difference. However, the Agency does not believe it is appropriate to determine an amount of contamination that is acceptable for each contaminant at each site. Also, there would remain the problem of having to specify how powerful the test should be for values above the minimum difference of concern. EPA invites comment on this issue.

B. Basic Statistical Procedures and Sampling Schemes

Today's proposed regulations specify four types of statistical procedures to detect contamination in ground water. EPA believes that at least one of these types of procedures will be appropriate for a wide variety of situations. To address situations where these procedures may not be appropriate, EPA has placed a provision in today's proposed regulations for the Regional Administrator to select an alternate procedure. The suggested procedures are based in part on suggestions received in public comments.

1. A parametric analysis of variance (ANOVA) followed by multiple comparison procedures to identify specific sources of difference. The procedures will include estimation and testing of the contrasts between the mean of each downgradient well and the upgradient mean for each constituent.

2. An analysis of variance (ANOVA) based on ranks followed by multiple comparison procedures to identify specific sources of difference. The procedure will include estimation and testing of the contrasts between the median of each downgradient well and the median upgradient levels for each constituent.

3. A procedure in which a tolerance or prediction interval is established from the background (upgradient well) data, and the level of each constituent in each downgradient well is compared to its upper tolerance or prediction limit.

4. A control chart approach which would give control limits for each constituent. If any downgradient well has a value outside the control limits for that constituent, that would constitute statistically significant evidence of contamination.

5. Another statistical test procedure specified by the Regional Administrator, provided that it is protective of human health and the environment and meets the performance standards specified.

EPA has specified multiple statistical and sampling procedures and has allowed for alternatives because no one procedure is appropriate for all circumstances. EPA believes that the suggested procedures are appropriate for the site-specific design and analysis of data from ground-water monitoring systems, and they can account for more of the site-specific factors than Cochran's Approximation to the Behrens Fisher Student's t-test (CABF) and the accompanying sampling procedures in the current regulation. The statistical procedures specified in today's regulations address the multiple comparison problems and provide for documenting and accounting for sources of natural variation.

EPA believes that the specified tests consider and control for natural temporal and spatial variation. Technical details and examples for each specified procedure will be included in a draft guidance document which is anticipated to be available by September, 1987. The decision on the number of wells needed in a monitoring system will be made on a site-specific basis by the Regional Administrator and will consider the statistical method being used, the natural hydrogeology, and the sampling scheme. The number of wells must be sufficient to ensure a high probability of detecting contamination when it is present. To determine which sampling scheme should be used, the Regional Administrator should consider existing data and site characteristics including the possibility of trends and seasonality. The regulations establish three sampling schemes and a provision for an alternative for use in detection and compliance monitoring systems. These sampling schemes are:

1. Obtain a sequence of daily (or nearly daily) observations at least twice a year unless it is found that this frequency of sampling results in autocorrelation of the observations.

2. Obtain a sequence of weekly observations at least twice a year, provided that weekly observations are not autocorrelated and that no seasonal effects are present in the data.

3. Obtain monthly observations provided the data exhibit no seasonal effects.

4. Use another sampling schedule appropriate to an alternative statistical procedure specified by the Regional Administrator. The alternative procedure must be protective of human health and the environment.

EPA believes that the above sampling schemes will allow the use of statistical procedures that will accurately detect contamination. These different sampling scenarios were chosen to allow for the unique nature of the ground-water systems beneath hazardous waste sites. These sampling schemes will give proper consideration to the temporal variation of and correlation among the ground-water constituents. The specified procedures require sampling data from upgradient wells, at the compliance point, and according to a specific test protocol. The owner or operator should use a background value determined from data collected under one of these scenarios if a test specified by the Regional Administrator requires it, or if a concentration limit in compliance monitoring is to be based upon background data. A guidance document under development includes scenarios for which each sampling scheme would be appropriate

If the owner or operator uses a statistical method based on a distribution other than the normal, he must show the normal distribution is not appropriate. The same applies to transformations of the data. If the owner or operator desires to use a transformation, it must first be shown that the untransformed data are inappropriate for a normal theory test. There are several procedures for doing this, some of which will be detailed in the draft guidance document. If contamination is detected by one of these tests and the owner or operator suspects that the detection is an artifact caused by some feature of the data other than contamination, the Regional Administrator may specify that statistical tests of trend, seasonal variation, autocorrelation, or other interfering aspects of the data be performed in order to establish whether the result indicates genuine contamination or whether the result arose from natural variation.

EPA recognizes that even where the distribution of a constituent is expected to be normally distributed, there may be situations where the owner or operator can devise sampling procedures that are more appropriate to the facility and which will provide reliable results. Therefore, today's regulations allow the Regional Administrator to approve such procedures if he finds that the procedures balance the risk of false positives and false negatives in a manner comparable to that provided by the above specified tests and that they meet the specified performance standards. In examining the comparability of the suggested procedure, the Regional Administrator will examine the ability of the procedure to provide a reasonable balance between the risk of false positives and false negatives. The Regional Administrator will specify in the permit such things as the sampling frequency and the sample size for the alternative statistical procedure.

The regulations indicate that the procedure must provide reasonable confidence that the migration of hazardous constituents from a regulated unit into and through the aquifer will be detected. (The reference to hazardous constituents does not mean that this option applies only to compliance monitoring; the test also applies to monitoring parameters and constituents in the detection monitoring program since they are surrogates indicating the presence of hazardous constituents.) The protocols for the specific tests, however, will be used as a general benchmark to define "reasonable confidence" in the proposed procedure. If the owner or operator shows that his suggested test is comparable in its results to one of the specified tests, then it is likely to be acceptable under the "reasonable confidence" test. There may be situations, however, where it will be difficult to directly compare the performance of an alternative test to the protocols for the specified tests. In such cases the alternative test will have to be evaluated on its own merits.

A situation that will probably require the crafting of a specialized procedure is the one in which the background level of a constituent either is below the detection limit of the analytical methods used or is recorded as a trace level of the constituent. EPA believes that appropriate statistical procedures can be developed in such cases. EPA seeks

comments from the public on what methods are available that rely on facility-specific data and properly applied statistical methodologies.

C. Effects of Proposed Changes on Existing Monitoring Programs

1. Detection Monitoring

The detection monitoring program relies on the finding of increases over background levels to define when a regulated unit is leaking. In addition, in many situations, the concentration limit for a particular hazardous constituent may be set at the background concentration. Today's proposed regulations are designed to ensure that reasonable methods are available for the analysis of background ground water quality and for determining if a specific ground water standard is exceeded.

The concentration of chemical constituents in ground water may fluctuate substantially over time. During different times of the year the recharge rates to ground water will vary, reflecting the differences in climate, rainfall, and other factors. Differing recharge rates or other factors may cause seasonal variation in the concentrations of chemical constituents in ground water.

EPA believes that such variation in background concentrations should be documented and considered in the statistical test if it occurs. If such natural variation in background concentrations can be documented, a statistical technique that accounts for such variation should be used, provided that this can be done without compromising other regulatory objectives.

For detection monitoring, and, where appropriate, for compliance monitoring, today's regulations provide three different sampling schemes for gathering ground water data. The Regional Administrator will specify which sampling scheme is to be used after considering the data, the statistical test to be used, the presence of trends, and natural temporal variation. The sampling scheme should be designed so that the major components of temporal variability can be characterized.

The different sampling procedures included in today's regulations enable the Regional Administrator to specify a sampling scheme that will allow for documentation of and adjustment for natural temporal variabilities. In the past, the tendency has been to abandon the sampling scheme and to use an alternate statistical approach when data exhibited temporal variability. EPA believes that in most cases one of the listed sampling schemes will still be appropriate in this situation if a correction factor or data transformation is applied.

It is possible that hazardous constituents could already be migrating downgradient before a facility has received a permit. EPA does not believe it is generally appropriate to allow such contamination to continue to migrate while the owner or operator collects background data for one year. Therefore, EPA will, whenever possible, rely on whatever reliable background data is available to establish background values for the compliance monitoring program. Our concern is that data collection should not cause a delay in characterizing background. Possible methods which would avoid delays in characterizing the site would be sampling schemes 1 or 2.

Occasionally, additional background sampling and analysis over time may be appropriate even where compliance point concentrations exceed upgradient concentrations, at a given point in time, if the Regional Administrator believes it reasonably possible that this difference is due to seasonal or spatial variation in ground water quality. In this case, the Regional Administrator would consider whether the rate of ground water flow (and any contamination) was sufficiently slow that additional time for collection of ground water quality data would not jeopardize the potential for successful corrective action if it is determined to be necessary. The Regional Administrator would not, however, allow time for additional data gathering in cases where the initial difference in compliance point and upgradient constituent concentration is above potential seasonal variation.

The owner or operator who wants to account for seasonal variations in the background values has at least three additional options. One, he can anticipate the need for such data by collecting upgradient data on Appendix IX constituents likely to be in leachate before the detection monitoring program indicates that leakage has occurred. Two, he may continue to collect background data after the compliance monitoring program permit is issued. Three, he may use that data in making a demonstration that an apparent increase over concentration limits in the ground water protection standard was caused by contamination from other sources. He may also use the data in seeking a permit modification to change the background values contained in the compliance monitoring program.

Another issue in the establishment of background for a constituent is the question of which wells should be used in the data base. In evaluating temporal variability, the frequency of sampling and the statistical method used to analyze the sampling data should be designed and considered simultaneously.

One option, which EPA is considering for detection monitoring programs at new facilities and possibly also at facilities where it is known that ground water is not contaminated, is to collect background data by monitoring downgradient wells. In each downgradient well, ground-water concentration levels would be monitored and the resulting data would be used to establish a background limit that would be unique to each downgradient well. The advantages of this approach are that first, the influence of spatial variability would be removed; second, a control chart class of statistical thresholds could be developed for each downgradient well; and third, upgradient wells may not be required. The disadvantages are that first, there must be assurance that contamination from the unit is not being factored into establishment of the background data base, and; second, if this method is used and contamination unrelated to the regulated unit flows under the downgradient side of the unit after establishment of the background limits, a false positive may result.

EPA believes that this method best applies to newer units that have had no opportunity to contaminate the ground water and that are located in areas with little potential to be influenced from external sources unrelated to the unit. It is also clear that this method can only be applied the first time a facility is in detection monitoring. A facility which begins compliance monitoring and subsequently returns to detection monitoring will not be allowed to establish or reestablish background limits based on data collected in the downgradient wells. EPA seeks comment on the utility of allowing downgradient wells to serve as background in these situations.

A second option, which EPA believes is preferable in most situations, and which corresponds to the current regulatory approach, is to base background data on upgradient wells. Assuming these wells are properly placed and unaffected by the unit, they should produce data that are not biased by contamination from the unit.

2. Compliance Monitoring

The statistical procedure(s) that will be used in compliance monitoring will be contingent upon the type of concentration limit used. If the concentration limit is based upon the

background values, then one of the statistical procedures specified in the regulations may be used. If the concentration limit is based upon a maximum concentration limit or an alternate concentration limit, then the Regional Administrator will require an appropriate test. In many cases this is the tolerance interval procedure specified in the proposed regulations.

IV. Regulatory Analysis

A. State Authority

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce their State hazardous waste management programs in lieu of EPA operating the Federal program in those States. Authorization, either interim or final, may be granted to State programs that regulate the identification, generation, transportation, or operation of facilities that treat, store, or dispose of hazardous waste. Upon authorization of the State program, EPA suspends operation within the States of those parts to the ground-water monitoring requirements for land-based hazardous waste management facilities applying for and operating under permits. Since the ground-water monitoring requirements are not imposed under any of the amendments made by the Hazardous and Solid Waste Amendments of 1984, final rules modifying the statistical procedures would not take effect directly in all States under section 3006(g). Rather, if EPA promulgates this proposal, States that have been granted final authorization will have to revise their programs to cover the additional requirements in today's announcement. Generally, these authorized State programs must be revised within one year of the date of promulgation of such standards, or within two years if the State must amend or enact a statute in order to make the required revision. See 40 CFR 271.21. However, States may always impose requirements which are more stringent or have greater coverage than EPA's programs.

Regulations which are broader in scope, however, may not be enforced as part of the federally-authorized RCRA program.

B. Regulatory Impact Analysis

Executive Order 12291 (46 FR 13191, February 9, 1981) requires that a regulatory agency determine whether a new regulation will be "major" and if so, that a Regulatory Impact Analysis be conducted. A major rule is defined as a regulation that is likely to result in:

1. An annual effect on the economy of $100 million or more;

2. A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or

3. Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Therefore, the Agency has determined that today's proposal is not a major rule. Today's action should produce a net decrease in the cost of ground-water monitoring at each facility. This proposal has been submitted to the Office of Management and Budget (OMB) for review in accordance with Executive Order 12291.

C. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities. As stated above, this proposal will have no adverse impacts on businesses of any size. Accordingly, I hereby certify that this proposed regulation will not have a significant economic impact on a substantial number of small entities. This regulation therefore does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 264

Hazardous material, Reporting and recordkeeping requirements, Waste treatment and disposal, Ground water, Environmental monitoring.

Date: August 14, 1987.

Lee M. Thomas,

Administrator.

Therefore, it is proposed that 40 CFR Chapter I be amended as follows:

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for Part 264 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3004, and 3005 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as Amended (42 U.S.C. 6905, 6912(a), 6924, and 6925).

2. In § 264.91 by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 264.91 Required programs.

(a) * * *

(1) Whenever hazardous constituents under § 264.93 from a regulated unit are detected at the compliance point under § 264.95, the owner or operator must institute a compliance monitoring program under § 264.99. Detected is defined as statistically significant evidence of contamination as described in § 264.98(e);

(2) Whenever the ground-water protection standard under § 264.92 is exceeded, the owner or operator must institute a corrective action program under § 264.100. Exceeded is defined as statistically significant evidence of increased contamination as described in § 264.99(d);

* * * * *

3. Section 264.92 is revised to read as follows:

§ 264.92 Ground-water protection standard.

The owner or operator must comply with conditions specified in the facility permit that are designed to ensure that hazardous constituents under § 264.93 detected in the ground water from a regulated unit do not exceed the concentration limits under § 264.94 in the uppermost aquifer underlying the waste management area beyond the point of compliance under § 264.95 during the compliance period under § 264.96. The Regional Administrator will establish this ground-water protection standard in the facility permit when hazardous constituents have been detected in the ground water.

4. In § 264.97 by removing the word "and" from the end of (a)(1), adding (a)(1)(i) and (a)(3), revising paragraphs (g) and (h), and adding (i), (j), and (k) to read as follows:

§ 264.97 General ground-water monitoring requirements.

(a) * *

(1) * * *

(i) A determination of background quality may include sampling of wells that are not upgradient from the waste management area where:

(*A*) Hydrologic conditions do not allow the owner or operator to determine what wells are upgradient; and

(B) Sampling at other wells will provide an indication of background ground-water quality that is representative or more representative

than that provided by the upgradient wells; and

* * * * *

(3) Provide statistically significant evidence that hazardous waste or hazardous constituents that migrate from the waste management area to the uppermost aquifer will be detected.

* * * * *

(g) In detection monitoring or where appropriate in compliance monitoring, data on each hazardous constituent specified in the permit will be collected from background wells and wells at the compliance point(s). The sampling procedures and frequency must be protective of human health and the environment. The sampling requirements must ensure that the statistical procedure has an acceptably low probability of failing to detect contamination. The Regional Administrator will specify one or more of the following requirements in the permit for each hazardous constituent to be monitored for:

(1) Obtain a sequence of daily (or near daily) samples at least twice a year, unless it is found that this frequency of sampling results in autocorrelation of the observations that cannot be corrected by the statistical procedure used.

(2) Obtain a sequence of weekly samples at least twice a year, provided that weekly observations are not autocorrelated and that no seasonal effects are present in the data used in each periodic comparison.

(3) Obtain monthly samples provided the data exhibit no seasonal effects.

(4) Use an alternate sampling procedure specified by the Regional Administrator under paragraph (i) of this section.

(h) Based on the factors in § 264.97(i), the Regional Administrator will specify one of the following statistical procedures to be used in combination with the sampling requirements for each hazardous constituent:

(1) A parametric analysis of variance (ANOVA) followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The procedure must include estimation and testing of the contrasts between each downgradient well's mean and the upgradient mean levels for each constituent.

(2) An analysis of variance (ANOVA) based on ranks followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The procedure must include estimation and testing of the contrasts between each downgradient well's median and the background median levels for each constituent.

(3) A tolerance or prediction interval procedure in which a tolerance interval for each constituent is established from the distribution of the background data, and the level of each constituent in each downgradient well is compared to the upper tolerance or prediction limit.

(4) A control chart approach that gives control limits for each constituent.

(5) Another statistical test procedure that is protective of human health and the environment and meets the performance standards specified in § 264.97(i).

(i) The Regional Administrator can establish an alternative sampling procedure and statistical test for hazardous constituents that he finds will be protective of human health and the environment. In establishing that procedure, the Regional Administrator will consider the following factors:

(1) If the distributions for different constituents differ, more than one procedure may be needed. The owner or operator must show that the normal distribution is not appropriate if using a nonparametric or other methodology not requiring an assumption of normality. For any statistic not based on a normal distribution, a goodness of fit test shall be conducted to demonstrate that the normal distribution is not appropriate. Other tests shall be conducted to demonstrate that the assumptions of the statistic or distribution are not grossly violated.

(2) Each hazardous constituent is to be tested for separately. At each time that a test is done, the test for individual constituents shall be done at a Type I error level no less than 0.01. A multiple comparisons procedure may be used at a Type I experimentwise error rate no less than 0.05. The owner or operator must evaluate the ability of the method to detect contamination that is actually present and may be required to increase the sample size to achieve an acceptable power level.

(3) The monitoring well system should be consistent with § 264.97(a). The owner or operator must ensure that the number, locations, and depths of monitoring wells will detect hazardous constituents that migrate from the waste management area to the uppermost aquifer.

(4) The statistical procedure should be appropriate for the behavior of the parameters involved. It should include methods for handling data below the limit of detection. The owner or operator should evaluate different ways of dealing with values below the limit of detection and choose the one that is most protective of human health and the environment. In cases where there is a high proportion of values below limits of detection, the owner or operator may demonstrate that an alternative procedure is more appropriate.

(5) The statistical procedure used should control for seasonal and spatial variability and temporal correlation.

(j) Ground-water monitoring data collected in accordance with paragraph (g) of this section including actual levels of constituents must be maintained in the facility operating record. The Regional Administrator will specify in the permit when the data must be submitted for review.

(k) If contamination is detected by any of the statistical tests, and the Regional Administrator or the owner or operator suspects that the detection is an artifact caused by some feature of the data other than contamination, the Regional Administrator may specify that statistical tests of trend, seasonal variation, autocorrelation, or other interfering aspects of the data be done to establish whether the significant result is indicative of detection of contamination or resulted from natural variation.

(5). In § 264.98 by removing paragraphs (i), (j) and (k), and by revising paragraphs (c), (d), (f), (g), and (h) to read as follows:

§ 264.98 Detection monitoring program.

* * * * *

(c) The owner or operator must conduct a ground-water monitoring program for each parameter or constituent in accordance with § 264.97(g). The owner or operator must maintain a record of ground-water analytical data as measured and in a form necessary for the determination of statistical significance under § 264.97(h) for the active life and post-closure care period of the facility.

(d) The Regional Administrator will specify how often the owner or operator must collect samples and conduct statistical tests to detect contamination. The frequencies for both will be at least semi-annually and will be consistent with § 264.97(g) considering the size of the Type I or Type II errors. Where appropriate, the comparison will be made between background wells and wells at the point(s) of compliance.

* * * * *

(f) The owner or operator must determine whether there is statistically significant evidence of contamination for any parameter or constituent specified in the permit pursuant to paragraph (a) of this section at a

frequency specified under paragraph (d) of this section.

(1) In determining whether statistically significant evidence of contamination exists, the owner or operator must use the procedure(s) specified in the permit under § 264.97(h). This procedure(s) must compare data collected at the compliance point(s) to the background water quality data.

(2) The owner or operator must determine whether there is statistically significant evidence of contamination at each monitoring well at the compliance point within a reasonable period of time after completion of sampling. The Regional Administrator will specify in the facility permit what period of time is reasonable, after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of ground-water samples.

(g) If the owner or operator determines pursuant to paragraph (f) of this section that there is statistically significant evidence of contamination for parameters or constituents specified pursuant to paragraph (a) of this section at any monitoring well at the compliance point, he must:

(1) Notify the Regional Administrator of this finding in writing within seven days. The notification must indicate what parameters or constituents have shown statistically significant evidence of contamination.

(2) Immediately sample the ground-water in all monitoring wells at the waste management area of concern and determine if there is a statistically significant difference between the compliance and background levels for concentration of all constituents identified in Appendix IX of Part 264.

(3) For any Appendix IX compounds for which there is a significant difference, the owner or operator may resample within one month and repeat the Appendix IX analysis for those compounds detected. If the results of the second analysis confirm the initial results then these constituents will form the basis for compliance monitoring. If they do not resample, the hazardous constituents found during the initial Appendix IX analysis will form the basis for compliance monitoring.

(4) Within 90 days, submit to the Regional Administrator an application for a permit modification to establish a compliance monitoring program meeting the requirements of § 264.99. The application must include the following information:

(i) An identification of the concentration of any Appendix IX constituent detected in the ground water at each monitoring well at the compliance point;

(ii) Any proposed changes to the ground-water monitoring system at the facility necessary to meet the requirements of § 264.99;

(iii) Any proposed additions or changes to the monitoring frequency, sampling and analysis procedures or methods, or statistical procedures used at the facility necessary to meet the requirements of § 264.99;

(iv) For each hazardous constituent detected at the compliance point, a proposed concentration limit under § 264.94(a) (1) or (2), or a notice of intent to seek a variance under § 264.94(b); and

(5) Within 180 days, submit to the Regional Administrator:

(i) All data necessary to justify any variance sought under § 264.94(b); and

(ii) An engineering feasibility plan for a corrective action program necessary to meet the requirements of § 264.100, unless:

(A) All hazardous constituents identified under paragraph (g)(2) of this section are listed in Table 1 of § 264.94 and their concentrations do not exceed the respective values given in that Table; or

(B) The owner or operator has sought a variance under § 264.94(b) for every hazardous constituent identified under paragraph (g)(2) of this section.

(6) If the owner or operator determines, pursuant to paragraph (f) of this section, that there is a statistically significant difference for parameters or constituents specified pursuant to paragraph (a) of this section at any monitoring well at the compliance point, he may demonstrate that a source other than a regulated unit caused the contamination or that the contamination resulted from error in sampling, analysis, or evaluation. While the owner or operator may make a demonstration under this paragraph in addition to, or in lieu of, submitting a permit modification application under paragraph (g)(3) of this section, he is not relieved of the requirement to submit a permit modification application within the time specified in paragraph (g)(3) of this section unless the demonstration made under this paragraph successfully shows that a source other than a regulated unit caused the increase, or that the increase resulted from error in sampling, analysis, or evaluation. In making a demonstration under this paragraph, the owner or operator must:

(i) Notify the Regional Administrator in writing within seven days of determining statistically significant evidence of contamination at the compliance point that he intends to make a demonstration under this paragraph;

(ii) Within 90 days, submit a report to the Regional Administrator which demonstrates that a source other than a regulated unit caused the contamination or that the contamination resulted from error in sampling, analysis or evaluation;

(iii) Within 90 days, submit to the Regional Administrator an application for a permit modification to make any appropriate changes to the detection monitoring program at the facility; and

(iv) Continue to monitor in accordance with the detection monitoring program established under this section.

(h) If the owner or operator determines that the detection monitoring program no longer satisfies the requirements of this section, he must, within 90 days, submit an application for a permit modification to make any appropriate changes to the program.

6. In § 264.99 by revising paragraph (c), revising paragraphs (d), (f), and (g), removing paragraph (h), redesignating paragraph (i) as (h), (j) as (i), and (k) as (j), revising the redesignated paragraphs (h) introductory text and (i) introductory text, and removing paragraph (l) to read as follows:

§ 264.99 Compliance monitoring program.

* * * * *

(c) The Regional Administrator will specify the sampling requirements and statistical procedures appropriate for the constituents and site, consistent with § 264.97 (g) and (h).

(1) The owner or operator must conduct a sampling program for each parameter or constituent in accordance with § 264.97(h).

(2) The owner or operator must record ground-water analytical data as measured and in a form necessary for the determination of statistical significance under § 264.97(h) for the active life and post-closure care period of the facility.

(d) The owner or operator must determine whether there is statistically significant evidence of increased contamination for any parameter or constituent specified in the permit, pursuant to paragraph (a) of this section, at a frequency specified under paragraph (f) of this section.

(1) In determining whether statistically significant evidence of increased contamination exists, the owner or operator must use the procedure(s) specified in the permit under § 264.97(h). This procedure must compare data collected at the compliance point(s) to a concentration

limit developed in accordance with § 264.94.

(2) The owner or operator must determine whether there is statistically significant evidence of increased contamination at each monitoring well at the compliance point within a reasonable time period after completion of sampling. The Regional Administrator will specify that time period in the facility permit, after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of ground-water samples.

* * * * *

(f) The Regional Administrator will specify the frequencies for conducting statistical tests to determine statistically significant evidence of increased contamination. The frequencies will be at least semi-annually and will be consistent with § 264.97(g) considering the size of the Type I and Type II errors.

(g) The owner or operator must analyze samples from all wells at the compliance point of a regulated unit for all constituents contained in Appendix IX of Part 264 at least annually to determine whether additional hazardous constituents are present in the uppermost aquifer, pursuant to procedures in § 264.98(f). If the owner or operator finds Appendix IX constituents in the ground-water that are not identified in the permit, the owner or operator may resample within one month and repeat the Appendix IX analysis.

If the second analysis confirms the presence of new constituents, the owner or operator must report the concentration of these additional constituents to the Regional Administrator within seven days after completion of the second analysis and add them to the monitoring list.

(h) If the owner or operator determines pursuant to paragraph (d) of this section that any concentration limits under § 264.94 are being exceeded at any monitoring well at the point of compliance, he must:

* * * * *

(i) If the owner or operator determines, pursuant to paragraph (d) of this section that the ground-water concentration limits under this section are being exceeded at any monitoring well at the point of compliance, he may demonstrate that a source other than a regulated unit caused the contamination or that the contamination resulted from error in sampling, analysis, or evaluation. In making a demonstration under this paragraph, the owner or operator must:

* * * * *

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federal register

Monday
August 24, 1987

Part VIII

Department of Education

34 CFR Part 315

Program for Severely Handicapped Children; Notice of Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 315

Program for Severely Handicapped Children

AGENCY: Department of Education.

ACTION: Notice of final regulations.

SUMMARY: The Secretary amends the regulations under the former Auxiliary Activities program to conform to the changes made in section 624 of the Education of the Handicapped Act (EHA) by Pub. L. 99-457. As a result of these changes, the program now only applies to severely handicapped children and youth and no longer applies to all handicapped children covered under Part C of the Act. In addition, new weighted criteria have been added for use in evaluation of applications.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: R. Paul Thompson, Division of Educational Services, Office of Special Education Programs, Department of Education, 400 Maryland Avenue SW. (Switzer Building, Room 3511-M/S 2312), Washington, DC 20202. Telephone: (202) 732-1161.

SUPPLEMENTARY INFORMATION: Previously, section 624 contained the general research, development or demonstration, training, and dissemination authority for all programs covered by Part C of the EHA. Programs covered under Part C include Regional Resource Centers, Services for Deaf-Blind Children and Youth, Early Education for Handicapped Children, Postsecondary Education Programs, and Secondary Education and Transitional Services for Handicapped Youth. Pub. L. 99-457 limits the authority under section 624 solely to programs for severely handicapped children. The regulations have been amended to reflect this change.

On May 11, 1987 the Secretary published a notice of proposed rulemaking for the Program for Severely Handicapped Children (52 FR 17744). The comments received in response to that notice and the Secretary's responses are summarized below:

Comment: One commenter recommended that the distinctions, if any, between trainees and participants trained in projects funded under § 315.13 be clarified, and that these terms be defined.

Response: No change has been made. For the purposes of § 315.13, the Secretary considers the terms "trainees" and "participants" to be synonymous. The current regulations at § 315.13(b) define those considered to be participants of projects funded under § 315.13.

Comment: The same commenter expressed concern that the proposed regulations which authorize the Secretary, on a case-by-case basis, to provide stipends for personnel trained under the provisions of § 315.13, would place an unnecessary burden on the Secretary. The commenter further suggested that specific guidance to applicants and recipients would be appropriate.

Response: No change has been made. Since it is contemplated that no more than ten awards would be made annually under this authority and because conditions of need for payment vary considerably across the nation, the Secretary believes that determination on a case-by-case basis would not be an undue burden but rather would provide the Secretary with the flexibility needed to administer this program activity effectively.

Comment: The same commenter also expressed concern that by adding a new paragraph (c) to § 315.13, the current paragraph (c) which requires a needs assessment and impact analysis from applicants, would be eliminated.

Response: No change has been made. As stated in Amendment No. 8 of the proposed regulations, the current paragraph (c) in § 315.13 will not be removed, but will be redesignated as paragraph (d).

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 315

Education, Education of handicapped, Education—research, Grants program—education, Teachers.

(Catalog of Federal Domestic Assistance Number 84.086, Program for Severely Handicapped Children)

Dated: July 28, 1987.

William J. Bennett,

Secretary of Education.

The Secretary amends Part 315 of Title 34 of the Code of Federal Regulations as follows:

The authority citation for Part 315 is revised to read as follows:

Authority: 20 U.S.C. 1424.

1. The title of Part 315 is revised to read as follows:

PART 315—PROGRAM FOR SEVERELY HANDICAPPED CHILDREN

2. The heading for § 315.1 is revised to read as follows:

§ 315.1 What is the Program for Severely Handicapped Children?

* * * * *

3. Section 315.1 is further amended by removing "including those who are severely handicapped".

§§ 315.1, 315.10, 315.11, 315.12 and 315.13 [Amended]

4. In §§ 315.1, 315.10, 315.11, 315.12, and 315.13, the word "severely" is added preceding the words "handicapped children and youth".

5. Section 315.12(a) is amended by adding "to meet the needs of severely handicapped children and youth" following the word "activities".

6. In § 315.12(a)(4), "particiate" is corrected to read "participate".

7. In § 315.12(b)(2), "excepted" is corrected to read "expected".

8. Section 315.13 is amended by revising paragraph (a), redesignating paragraph (c) as paragraph (d), and by adding a new paragraph (c), to read as follows:

§ 315.13 What types of training activities are considered for support by the Secretary under this part?

* * * * *

(a) *Training.* Training of professional and allied personnel may include staff meetings, seminars, workshops, demonstrations, and related activities.

* * * * *

(c) *Stipends.* The Secretary, on a case-by-case basis, may authorize the payment of stipends for inservice training in an amount the Secretary

determines appropriate for a particular training activity.

* * * * *

§ 315.14 [Amended]

9. In § 315.14, the word "severely" is added preceding the word "handicapped".

§ 315.30 [Amended]

10. Section § 315.30(a) is amended by removing "in conjunction with one of the authorities in Part C".

11. Section 315.31 is redesignated as § 315.32 and revised, and a new § 315.31 is added to read as follows:

§ 315.31 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in §§ 315.32 or 315.33.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 1424)

§ 315.32 What are the selection criteria used to award a research grant?

The Secretary uses the following criteria to evaluate an application for a research project described in § 315.11:

(a) *Importance and expected impact of the research.* (20 points) The Secretary reviews each application to determine the extent to which the project will develop new knowledge in understanding and effectively meeting the needs of severely handicapped children and youth, including the extent to which—

(1) The programmatic research areas proposed by the applicant represent critical areas of investigation, or problems whose solution would have greatest impact on improving services to severely handicapped children and youth; and

(2) The specific questions to be addressed in the project are likely to generate knowledge needed for bringing about a major change in understanding of the topical area.'

(b) *Technical soundness of the project.* (15 points)

(1) The Secretary reviews each application to determine the technical soundness of the research plan, including—

(i) The design;

(ii) The proposed sample;

(iii) Instrumentation; and

(iv) Data analysis procedures.

(2) The Secretary also reviews each application for the relevance of its proposed training efforts, including—

(i) Strategies for provision of training; and

(ii) Relationships between the applicant, other organizations or agencies providing training in coordination with the applicant, and trainees receiving training from the applicant.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(2) How the objectives of the project relate to the purpose of the program;

(3) The quality of the applicant's plans to use its resources and personnel to achieve each objective; and

(4) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(d) *Quality of key personnel.* (20 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director or principal investigator;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications under paragraphs (d)(1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in conducting, documenting, and applying research pertaining to severely handicapped children and youth;

(ii) Awareness of relevant research findings and demonstration project results pertaining to other handicapped children and youth and the potential for use of the findings and results with severely handicapped children and youth; and

(iii) Experience in communicating research findings to service providers of severely handicapped children and youth and in assisting these providers with effective application of the findings.

(e) *Budget and cost-effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (10 Points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and

(2) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the grantee.)

(g) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(h) *Dissemination plan.* (5 points) The Secretary reviews each application to determine the quality of the dissemination plan for the project, including the extent to which the applicant's plan—

(1) Ensures proper and efficient dissemination of project information within the State in which the project is located and throughout the Nation; and

(2) Provides a clear description of the content, intended audiences, and timelines for production of all project documents and other products that the applicant will disseminate.

(Authority: 20 U.S.C. 1424)

12. A new § 315.33 is added to read as follows:

§ 315.33 What are the selection criteria used to award a grant for a demonstration, training, or dissemination project?

The Secretary uses the following criteria to evaluate an application for a demonstration project under § 315.12 and a training project under § 315.13. The Secretary also uses these criteria to evaluate a dissemination project under § 315.14, except that a maximum of 30 points may be given for criterion (b) (plan of operation) and no points are provided for criterion (g) (dissemination plan).

(a) *Extent of need and expected impact of the project.* (25 points) The Secretary reviews each application to determine the extent to which the project is consistent with national needs in the provision of innovative services to severely handicapped children and youth, including consideration of—

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(1) The needs addressed by the project;

(2) The impact and benefits to be gained by meeting the educational and related service needs of severely handicapped children and youth served by the project, their parents and service providers; and

(3) The national significance of the project in terms of potential benefits to severely handicapped children and youth who are not directly involved in the project.

(b) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective;

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(c) *Quality of key personnel.* (15 points).

(1) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (c)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its non-discriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications under paragraph (c)(1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(d) *Budget and cost-effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(e) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and

(2) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the grantee)

(f) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(g) *Dissemination plan.* (5 points) The Secretary reviews each application to determine the quality of the dissemination plan for the project, including the extent to which the applicant's plan—

(1) Ensures proper and efficient dissemination of project information within the State in which the project is located and throughout the Nation; and

(2) Adequately includes the content, intended audiences, and timeliness for production of all project documents and other products which the applicant will disseminate.

(Authority: 20 U.S.C. 1424)

13. A new § 315.34 is added to read as follows:

§ 315.34 What other factors are considered by the Secretary in making a grant?

To the extent feasible, the Secretary supports activities that are geographically dispersed throughout the Nation in urban and rural areas.

(Authority: 20 U.S.C. 1424)

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federal register

Monday
August 24, 1987

Part IX

Environmental Protection Agency

40 CFR Part 799

Oleylamine; Testing Requirements and Proposed Test Standards; Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPTS-42061A; FRL-3130-8(a)]

Oleylamine; Testing Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: EPA is issuing a final rule under section 4(a) of the Toxic Substances Control Act (TSCA) requiring manufacturers and processors of oleylamine (9-octadecenylamine or ODA, CAS Number 112-90-3) to test this chemical for developmental toxicity, and for mutagenicity using a two-tiered scheme. The need for third-tier mutagenicity and for oncogenicity testing will be determined by EPA following a public program review of data. EPA is terminating rulemaking for the proposed 90-day dermal subchronic testing which was to include neurobehavioral observations, emphasis on reproductive system histopathology, and a dermal absorption determination. The substance, 9-octadecenylamine, will be referred to in this document as "ODA", and the term "oleylamine" will refer to commercial fatty amine mixtures containing 65 to 76 percent ODA. Proposed standards for testing ODA appear elsewhere in this issue of the **Federal Register**.

DATES: In accordance with 40 CFR 23.5, this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern ["daylight" or "standard" as appropriate] time on September 8, 1987. This rule shall become effective on October 7, 1987.

FOR FURTHER INFORMATION CONTACT: Edward Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Rm. E-543, 401 M St., SW., Washington, DC 20460, (202-554-1404).

SUPPLEMENTARY INFORMATION: The EPA is promulgating a final rule to require the testing of ODA for developmental toxicity, mutagenicity, and oncogenicity if certain mutagenicity test results are positive. EPA will conduct a public program review before requiring initiation of the top-tier mutagenicity tests or oncogenicity test.

I. Introduction

This document is part of the overall implementation of section 4 of the Toxic Substances Control Act (TSCA, Pub. L. 94-469, 90 Stat. 2003 *et seq.*, 15 U.S.C. 2601 *et seq.*), which contains authority for EPA to require development of data relevant to assessing the risks to health and the environment posed by exposure to particular chemical substances or mixtures.

Under section 4(a)(1) of TSCA, EPA must require testing of a chemical substance to develop health or environmental data if the Agency finds that:

(A)(i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment.

(ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or

(B)(i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture.

(ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data.

For a more complete understanding of the statutory section 4 findings, the reader is directed to the Agency's first proposed testing rule package (chloromethane and chlorinated benzenes, published in the **Federal Register** of July 18, 1980 (45 FR 48510)) and to the second package (dichloromethane, nitrobenzene, and 1,1,1-trichloroethane, published in the **Federal Register** of June 5, 1981 (46 FR 30300)) for in-depth discussions of the general issues applicable to this section.

II. Background

A. Profile

ODA (CAS Number 112-90-3) is a yellow liquid with an ammoniacal odor. Typical fatty amine mixtures (67 percent ODA) have a boiling range of 275-334 °C at 760 mm Hg and a specific gravity of 0.819 at 38 °C. ODA's solubility in water is estimated to be 0.5×10^{-3} mg/l or less at 20 °C, its estimated vapor pressure is $0.5 \times^{-4}$ mm Hg at 10 °C and its esimated log P (octanol-water partition coefficient) ranges from 7.5 to 8.1 (Ref. 1). The formula of 9-octa-decenylamine is as follows:

$CH_3(CH_2)_7CH=CH(CH_2)_7CH_2NH_2$

The U.S. International Trade Commission (USITC) reported 1982 ODA production to be 4.952 million pounds (Ref. 2). This production figure is for fatty amine mixtures called oleylamine by the producers. EPA estimated that the ODA contained in all the fatty amine mixtures produced in 1982 amounted to between 18 and 29 million pounds (Ref. 21). In 1984, the USITC reported ODA production to be 6.643 million pounds (Ref. 3). ODA is produced at nine sites by six firms: Akzo Chemie America; Witco Chemical Corp.; Jetco Chemicals, Inc.; Sherex Chemical Company, Inc.; Borg-Warner Corp.; and Tomah Products, Inc. Akzo uses a continuous reaction process and the others use closed-batch reactors. Akzo produces over 50 percent of the total U.S. production. ODA's major use in which human exposure is probable is as an additive to petroleum lubricants or as an intermediate for such additives. It is also used in a collector agent in ore flotation, in asphalt preparation, in a concrete mold release agent, and in the manufacture of paper, paperboard, and glues. For a more detailed discussion of properties, production, uses, and exposure of oleylamine and other ODA-containing mixtures, see the oleylamine support document available from the TSCA Assistance Office (Ref. 1).

B. ITC Recommendations

In the Thirteenth Report of the Interagency Testing Committee (ITC), published in the **Federal Register** of December 14, 1983, the ITC designated ODA for priority consideration for a staged testing program, beginning with toxicokinetics and then testing for mutagenicity and teratogenicity if percutaneous absorption is demonstrated.

C. Proposed Rule

EPA issued a proposed rule published in the **Federal Register** of November 19, 1984 (49 FR 45610), requiring, for ODA, oral developmental toxicity testing, a tiered mutagenicity testing scheme with capacity to trigger oncogenicity testing, and a 90-day dermal subchronic test which would include neurobehavioral observations, emphasis on reproductive system histopathology, and a dermal absorption determination.

The test requirements based on the authority of section 4(a)(1)(A) and (B) of TSCA were proposed in 40 CFR 799.3300 and are being recodified as 40 CFR 799.3175.

Under the authority of section 4(a)(1)(A), EPA made a proposed finding that the use of ODA may present an unreasonable risk to human health from developmental toxicity. This was based on available animal studies (Refs. 4 through 9) suggesting that oleylamine may cause such effects and on the potential exposure of approximately 2.8 million mechanics and others in related trades (Ref. 10).

Under the authority of section 4(a)(1)(B), EPA made the proposed findings that oleylamine is produced in substantial quantitites (EPA estimate of 18 to 29 million pounds per year), and that there is substantial exposure to this substance (approximately 2.8 million workers) (Ref. 10).

EPA found that there were insufficient data available to resonably determine or predict the effects of this exposure in the above-mentioned areas and that testing of ODA was necessary to develop such data.

The analysis and findings on which the above determinations were based are presented in the Oleylamine Support Document (Ref. 1), which is available from the Office of Toxic Substances' TSCA Assistance Office and in the public record for this rulemaking.

EPA did not propose an oncogenicity bioassay based on the section 4(a)(1)(B) finding because EPA considered the required mutagenicity tests an appropriate first tier for oncogenicity for this substance. However, EPA found that if certain of the required mutagenicity tests produced positive results, this would be sufficient to indicate that ODA may present an unreasonable risk of oncogenic effects. In such circumstances, EPA found that without data from a 2-year bioassay there would be insufficient data to predict oncogenicity, and testing would be necessary to develop oncogenicity data.

III. Public Comments

The Agency received comments from one source, the Oleylamine Program Panel of the Chemical Manufacturers Association (CMA). The comments addressed the proposed health effects testing requirements, data interpretation, human exposure, test substance concentration, and economics.

A. Health Effects Testing

The Panel commented that a 28-day dermal toxicity test is adequate to screen for potential subchronic effects. The Panel also believes that associated neurobehavioral and reproductive system testing is not needed. EPA is no longer requiring these tests (see Unit IV.).

The Panel commented that there is no need for a developmental toxicity study because exposure is not as high as EPA initially indicated, only 2,000 mechanics are women (Ref. 10), and because animal studies by Eifinger and Koehler and Bio/dynamics (Refs. 4 through 9) do not support it. Although EPA has adjusted the ODA human exposure figure downward (some potential exposure groups were double counted) to approximately 2 milion (Ref. 10), mechanics and people in related trades, of whom approximately 27,000 are women, are still potentially exposed. EPA still believes that there is sufficient information to indicate that oleylamine may produce developmentally toxic effects (see Unit V.A). However, the data are insufficient to adequately characterize this potential, and appropriate testing is needed to do so.

The Panel commented that should EPA require a development toxicity study of ODA, the dermal rather than oral route should be used because human contact is expected to be dermal, however, if the oral route is required, ODA should be incorporated in the feed rather than given by gavage. The Panel maintained that a feeding study would decrease the effect of bolus administration by gavage and would also eliminate the additional stress factor which gavage introduces. EPA believes the oral route is the most appropriate because there is a sufficient data base by which to evaluate the results of oral developmental toxicity study and insufficient dermal data. Also, the corrosive effect of the dermal application of ODA may cause developmental toxicity because of stress thereby produced. The oral route via diet such as in the feed will be an acceptable means of exposure provided the test sponsor can accurately document the amount of ODA consumed daily.

The Panel commented that the National Institute for Occupational Safety and Health conducted a Health Hazard Evaluation in 1979 (Ref. 11) of one of Akzo's plants which showed no excessive number of deaths due to cance or heart disease. EPA does not agree with the Panel that the study alleviates concern for ODA's effects, but instead agrees with the author of the survey that serious limitations in the data, including few deaths and incompleness of personnel records, preclude any definitive conclusions.

The Panel commented that any question of oncogenicity testing should be deferred until after the results of the mutagenicity tests have been reviewed and discussed. EPA agrees that the decision to initiate the oncogenicity study (if triggered by positive results in one or more of the specified mutagenicity tests) should await the outcome of all of the second tier mutagenicity testing and a program review; EPA has included this step in the final rule.

The Panel commented that the developmental toxicity study should be conducted on only one species because some developmental effects data are available. EPA has reviewed the data referred to by the Panel and concludes they indicate the possibility of developmental effects as a result of exposure to oleylamine but are not adequate to characterize ODA's developmental toxicity in the species tested. The TSCA test guidelines require that the developmental toxicity study be performed on at least two mammalian species.

The Panel commented that a negative *in vitro* cytogenetics assay need not be followed by an *in vivo* mammalian bone marrow cytogenetics test to determine chromosomal aberration. This judgment is based on a review of the literature which the Panel contends shows that no chemical testing negatively in an *in vitro* mammalian cytogenetics assay has been found positive in *in vivo* cytogenetics tests. EPA has in past section 4 test rules included both *in vitro* and *in vivo* cytogenetics testing in its first tier of testing to maximize detection of potentially clastogenic agents, e.g., for cresols (51 FR 15771; April 28, 1986) and C_9 aromatic hydrocarbons (50 FR 20662; May 7, 1985). The Agency believes that the *in vitro* assay is subject to sufficient limitations, particularly in the use of *in vitro* metabolic activation systems, that a negative response, especially in cases of technical difficulties with the metabolic activation system or of erratic or narrowly-defined toxicity curves, should be confirmed in an *in vivo* test. The information presented by the Panel or otherwise available to the Agency is not sufficient to warrant a change in this view at this time.

The Panel commented that mouth rinse and toothpaste studies (Refs. 12 through 14) support their belief that ODA causes no long-term health effects. EPA believes that these human clinical trials, conducted to determine if mixtures of hydrofluorides of oleylamine and other amines could prevent the formation of caries and plaque, can not be used to determine ODA's toxic

potential. In general, toothpaste and/or mouthwash is in the mouth for relatively short periods of time whereupon the mouth is rinsed. The level of human exposure to oleylamine hydrofluoride in these clinical trials was possibly very low and in any case is unknown. Thus, even if these clinical trials were otherwise adequate, because of a lack of exposure data they can not be used to determine the toxicity that oleylamine may present.

The Panel commented that EPA did not use all available data in arriving at its testing decisions for ODA, was inconsistent in drawing conclusions, and used data in a biased way which leads to more testing. EPA did review all available data and found that, in all but the Eifinger and Koehler study (Ref. 4), the test substances were other than oleylamine, although some of these tests substances were closely related to ODA. Indeed, the Panel was especially critical of EPA's use of data on ODA analogs (Refs. 5 through 9, 27, and 28). However, EPA has been careful to distinguish between the use of analog data to suggest a potential concern and their use to determine that data are adequate. For example, dodecyldimethylamine oxide (DDAO), which can be considered analogous to ODA only for the purpose of qualitatively estimating its skin penetrating potential, has undergone rather extensive pharmacokinetic studies (Ref. 17). As part of the absorption profile, topical, radiolabeled doses of DDAO were applied to humans, rats, mice, and rabbits. The results indicate a fair degree of absorbtion in the lower mammal skins and an extremely poor degree of absorption in the human skin. The study is flawed, however, since the human exposure periods were only 11 percent of the total exposure periods for the rats, mice and rabbits. Nevertheless, the study did demonstrate the ability of DDAO to penetrate the human skin albeit very poorly. This is particularly significant since, by virtue of its polar nature, DDAO is less likely than oleylamine to penetrate human skin. Data on DDAO are not adequate to make quantitative inferences about ODA. For a quantitative analysis, specific skin penetration testing of ODA would be necessary.

The Panel commented that EPA incorrectly used the dermal absorption method of Scheuplein and Blank (Ref. 15) to estimate ODA's potential skin absorption by mechanics because: (1) Decanol rather than octanol should have been used as the model compound; (2) an alcohol rather than a water vehicle should have been assumed; and (3) hydrated abdominal skin as used in this method overstates absorption conditions for mechanics. EPA believes that the dermal absorption rate of ODA cannot be conclusively determined by the use of octanol or decanol as a model. For example, their use ignores the contribution of ODA's amine group to the skin penetration properties. A reliable absorption rate for ODA can be determined only by the use of ODA as the test substance. In any case, EPA is withdrawing the requirement of a dermal absorption test. The Agency plans to propose that a comparative oral-dermal absorption, distribution, metabolism, excretion assay be carried out for ODA. This proposal will be finalized if the developmental toxicity test required in this notice is positive.

The Panel commented that a skin-irritation test on rats conducted with ODA produced perceptible well-defined erythema with 0.3 percent ODA concentrations and severe sloughing with 1.5 percent ODA (Ref. 16). Because ODA concentrations in petroleum lubricants are approximately 0.3 to 1.0 percent (49 FR 45610; November 19, 1984), the Panel believes that the expected irritation would constitute an "early warning system" which would cause a mechanic to wash his hands at intervals or take other precautions precluding long-term exposure. EPA disagrees. In the 14-day test, the application sites were covered by gauze dressings which could have accentuated the erythema of the rats. Also, rat skin has been considered to be more permeable than human skin and, therefore, more readily irritated (Refs. 20 and 22). The Panel has not demonstrated that automotive mechanics and others exposed to petroleum lubricants experience erythema or sloughing and find it necessary to take precautionary measures. Even though humans may absorb less ODA and experience no erythema at the doses tested in the 14-day study, it is impossible to determine the potential toxic effects of does to which humans are exposed without further testing. However, EPA does believe that the 14-day study results do indicate the need to change the route of ODA administration in the oncogenicity test from dermal, as proposed in the Federal Register of November 19, 1984 (49 FR 45610), to oral to eliminate skin irritation as a complicating factor.

B. Test Substance Concentration

The Panel commented that EPA's belief that 97 percent ODA was available was in error, and that the test substance should be 90 percent ODA because the attainment of a higher ODA concentration is extremely difficult given the similarity of boiling points of the C_{18} alkylamines of which ODA is a member. EPA accepts the comment and agrees that not only would further concentration of ODA be extremely difficult, but 90 percent ODA is of sufficient purity to adequately test its properties. The Agency has thus modified this requirement in this final rule.

C. Economics

The Panel commented that total and annualized testing costs were incorrect. EPA based these costs on quotes by various testing laboratories. Cost ranges were given rather than specific costs because of uncertainty of the specific details of the testing protocols at the time of publication of the notice of proposed rulemaking (Ref. 18).

The Panel commented that EPA's belief that demand for ODA was sufficiently inelastic so that manufacturers could pass test costs to purchasers was incorrect. EPA based its belief on the following:

1. ODA is used as a component in many alkylamine products, thereby dispersing its demand over numerous end markets.

2. The alkylamine products which contain ODA tend to have relatively secure and specialized applications that are dictated by performance advantages/considerations in their markets.

3. Cationic surfactants, such as the alkylamines, normally are used in small amounts (e.g., between less than 1 and 10 percent) in relation to the weight of final products, thereby suggesting that they compose a minor share of actual end-product cost (Ref. 18).

The Agency believes this analysis is still correct, and therefore disagrees with the comment.

The Panel commented that EPA's estimated test costs are given in terms of 1983 dollars and are out of date. EPA considers this point to be well taken and has developed more recent figures which are found in Unit VI.

IV. Decision to Terminate Rulemaking Process for Subchronic Toxicity, Dermal Absorption, Neurobehavioral and Reproductive System Testing for ODA

In the proposed test rule for ODA (47 FR 45610; November 19, 1984), EPA included a 90-day dermal subchronic toxicity test. This test, in addition to the usual subchronic measurements, was to include dermal absorption, neurobehavioral observations, and emphasis on reproductive histopathology. Since this test was proposed, a 14-day dermal range-finding

rat study has been done with ODA by the Panel. The test showed erythema and sloughing at dosages of 12.5 to 61.5 mg/kg/day (Ref. 16). To produce systemic effects at levels below this, the material would have to be very potent. However, existing chronic data on mixtures containing ODA do not suggest such potency. Two-year studies on dogs and rats with oral administration of salts of ODA and an analog produced only minimal toxic effects and no specific organ effects (Refs. 27 and 28). Also, review of structural analog data by EPA does not suggest that oleylamine would be toxic at very low doses in repeated exposures for 90 days (Refs. 29 and 30). EPA believes that these data can be used to reasonably predict the systemic toxicity of ODA at levels to which humans are exposed. For these reasons, the Agency will no longer require the 90-day subchronic, dermal absorption, neurobehavioral, and reproductive tests and is hereby notifying the public of this decision. However, EPA remains concerned about the developmental, mutagenic, and oncogenic hazard potentials ODA may pose to human health and is requiring this testing as described below (see Unit V.).

V. Final Test Rule for ODA

A. Findings

EPA is basing the final testing requirements for ODA on the authority of section 4(a)(1) (A) and (B) of TSCA.

The section 4(a)(1)(A) findings for developmental toxicity are as follows:

EPA finds that the use of ODA may present an unreasonable risk of injury to human health from developmental toxicity because: (1) The available animal studies suggest that ODA has a developmental toxicity potential; and (2) approximately 2 million individuals in 1985 were potentially exposed to ODA as a result of its manufacture, processing, and use (Ref. 19).

EPA also finds that there are insufficient animal and human data to reasonably determine or predict the developmental toxicity of ODA and that testing is necessary to develop such data (49 FR 45610). The 4(a)(1)(A) finding of "may present an unreasonable risk" of developmental toxicity is based on available animal studies (Refs. 4 through 9) which suggest that oleylamine may cause such effects.

The section 4(a)(1)(B) findings, for developmental toxicity and a tiered mutagenicity testing scheme which may indicate the need for oncogenicity testing, are as follows:

ODA is produced in substantial quantities. The most recent production figure for oleylamine was reported by the USITC to be 6.643 million pounds in 1984 (Ref. 3). Production estimates by EPA for ODA, however, range from 18 to 29 million pounds for 1982 when the ODA portion of captive production as well as production of all commercial ODA-containing substances are taken into account. The estimated exposure of 2 million people in 1985 as a result of manufacture, processing, and use is clearly substantial (Ref. 19). EPA finds that there are insufficient animal and human data to reasonably determine or predict the developmental, mutagenic, or oncogenic effects of ODA and that testing is necessary to develop such data.

B. Required Testing

The Agency believes that an oral developmental toxicity study, a tiered oral (where applicable) mutagenicity testing scheme, and possibly oncogenicity testing should be conducted for ODA. The Oleylamine Program Panel of the Chemical Manufacturers Associations has voluntarily conducted mutagenicity tests consisting of the following: Ames assay, chromosomal aberration assay in Chinese hamster ovary cells, and CHO/HGRPT mutation assay in the presence of exogenous metabolic activation (Refs. 24 through 26). The Ames and chromosomal aberration assays are negative and satisfy these portions of the Agency's current first-tier mutagenicity test battery. The CHO/HGPRT mutation assay results are equivocal and a retest will be required in a different cell line (see Oleylamine: Proposed Test Standards elsewhere in today's **Federal Register**.) The assay provides some indication of genotoxicity, both without and with metabolic activation. Apparently because of the high toxicity of the chemical in this test system, the activity demonstrated was variable over different doses and over repeat tests, and even within repeats for replicate (parallel) cultures of the same dose point. No dose response was observed. This may be due to difficulties in precise dose application in nanoliter per milliliter concentrations. The mammalian cell gene mutation retest in a different cell line and the *in vivo* mammalian bone marrow cytogenetics test will complete the first tier of the mutagenicity battery. If indicated by first-tier results, second-tier mutagenicity, consisting of a rodent dominant lethal assay for chromosomal aberrations, and/or a sex-linked recessive lethal assay in *Drosophila melanogaster* for gene mutations, must be conducted. The third tier of mutagenicity testing is conditional upon positive second-tier mutagenicity test results. The oncogenicity bioassay is conditional upon positive results in one or more of the following mutagenicity tests: *in vivo* mammalian bone marrow cytogenetics, detection of gene mutation in somatic cells in culture, and sex linked recessive test in *Drosophila melanogaster*. However, EPA will not require initiation of the third-tier mutagenicity test(s) or oncogenicity test until all second-tier mutagenicity tests have been completed and a public review of the data is held by EPA. Test sponsors will be notified by **Federal Register** notice or certified letter of third-tier mutagenicity and oncogenicity testing decisions. The route of administration of ODA in the oncogenicity test, if required, shall be oral as explained in Unit III.A. EPA is proposing test standards for these tests elsewhere in today's **Federal Register**. The tests are to be conducted in accordance with EPA's TSCA Good Laboratory Practices standards under 40 CFR Part 792.

Although the anticipated route of human exposure to ODA is dermal, the route required for testing is oral, for the reasons stated in Unit III.A. In such cases, EPA uses pharmacokinetic data to extrapolate between routes of exposure for risk assessment purposes. As these data are not available for ODA, the Agency intends to propose a comparative oral/dermal pharmacokinetics study for ODA after publication of this final rule.

C. Test Substance

EPA is requiring that ODA of at least 90.0 percent purity be used as the test substance. The vehicle should be one such as mineral oil for which there are historical toxicological data and which will not interfere with test results.

D. Persons Required To Test

Section 4(b)(3)(B) specifies that the activities for which the Agency makes section 4(a) findings (manufacturing, processing, distribution, use and/or disposal) determine who bears the responsibility for testing. Manufacturers are required to test if the findings are based on manufacturing ("manufacture" is defined in section 3(7) of TSCA to include "import"). Processors are required to test if the findings are based on processing. (Section 3(10) of TSCA, defines "process" as the preparation of a chemical substance or mixture, after its manufacture, for distribution in commerce.) Both manufacturers and processors are required to test if the exposures giving rise to the potential

risk occur during use, distribution, or disposal.

Because EPA has found that existing data are inadequate to assess health risks from the manufacture, processing and use of ODA, EPA is requiring that persons who manufacture or process, or who intend to manufacture or process ODA at any time from the effective date of this test rule to the end of the reimbursement period are subject to the testing requirements of this rule. The end of the reimbursement period will be 5 years after the submission of the final report required under the test rule. As discussed in the Agency's Test Rule Development and Exemption Procedures (40 CFR Part 790), EPA expects that manufacturers will conduct testing and that processors will ordinarily be exempted from testing.

Because TSCA contains provisions to avoid duplicative testing, not every person subject to this rule must individually conduct testing. Section 4(b)(3)(A) of TSCA provides that EPA may permit two or more manufacturers or processors who are subject to the rule to designate one such person or a qualified third person to conduct the tests and submit data on their behalf. Section 4(c) provides that any persons required to test may apply to EPA for an exemption from that requirement. The Agency expects that the current manufacturers of ODA will form the reimbursement pool and sponsor the testing required. Manufacturers and processors who are subject to the testing requirements of this rule must comply with the test rules and exemption procedures in 40 CFR Part 790.

Manufacturers (including importers) subject to this rule are required to submit either a letter or intent to perform testing or an exemption application within 30 days after the effective date of the final test rule. The required procedures for submitting such letters and applications are described in 40 CFR Part 790.

Processors subject to this rule, unless they are also manufacturers, will not be required to submit letters of intent or exemption applications, or to conduct testing, unless manufacturers fail to submit notices of intent to test or later fail to sponsor the required tests. The Agency expects that the manufacturers will pass an appropriate portion of the costs of testing on to processors through the pricing of their products or reimbursement mechanisms. If manufacturers perform all the required tests, processors will be granted exemptions automatically. If manufacturers fail to submit notices of intent to test or fail to sponsor all the required tests, the Agency will publish a separate notice in the **Federal Register** to notify processors to respond; this procedure is described in 40 CFR Part 790.

E. Test Rule Development and Exemptions

Elsewhere in this issue of the **Federal Register**, the Agency is proposing in a related document [OPTS–42061B] that TSCA test guidelines be utilized as the test standards for the development of data under this rule for ODA. As discussed in that document and in the **Federal Register** of May 17, 1985 (50 FR 20652), EPA has reviewed the method for the development of test rules and has decided that for most section 4 rulemakings, the Agency will utilize single-phase rulemaking. In light of this decision, EPA has reevaluated the process for developing test standards for section 4 rulemakings initiated under a two-phase process and has determined that for certain of these two-phase rules, TSCA test guidelines are available for promulgation as relevant test standards. EPA has decided that where TSCA or other appropriate test guidelines are available, the Agency in most cases will propose the relevant guidelines as the test standards for those rules.

EPA believes that, in line with its commitment to expedite the section 4 rulemaking process, it is appropriate to propose the applicable TSCA test guidelines as test standards at the same time as a Phase I final test rule is issued. With regard to the rulemaking for ODA, TSCA test guidelines are available for the testing requirements included in this Phase I final rule. Thus, in the accompanying document the Agency is proposing these TSCA test guidelines as test standards.

The public, including the manufacturers and processors subject to the Phase I rule, will have an opportunity to comment on the use of the TSCA test guidelines. The Agency will review the submitted comments and will modify the TSCA guidelines, where appropriate, when the test standards are promulgated.

During the development of the test rule under the two-phase process, persons subject to the Phase I final rule are normally required to submit proposed study plans (see 40 CFR 790.50(a)(2)). However, because EPA is proposing applicable TSCA test guidelines as the test standards for the studies required by this Phase I final rule, persons subject to the rule, i.e., manufacturers and processors of ODA, are not required to submit proposed study plans for the required testing. Persons subject to this rule, however, are still required to submit notices of intent to test or exemption applications in accordance with 40 CFR 790.45. Moreover, once the test standards are promulgated, persons who have notified EPA of their intent to test must submit study plans (which adhere to the promulgated test standards) no later than 45 days before the initiation of each required test. (See 40 CFR 790.50 (a)(1)).

Processors of ODA subject to this rule, unless they are also manufacturers, will not be required to submit letters of intent, exemption applications, or study plans (before testing is initiated) unless manufacturers fail to sponsor the required tests. The basis for this decision is that manufacturers are expected to pass an appropriate portion of the test costs on to processors through the pricing of products containing ODA.

EPA's final regulations for the issuance of exemptions from testing requirements are in 40 CFR Part 790. In accordance with those regulations, any manufacturer or processor subject to this Phase I test rule may submit an application to EPA for an exemption from conducting any or all of the tests required under this rule. If manufacturers perform all the required testing, processors will be granted exemptions automatically without having to file applications.

In the related **Federal Register** document, cited in the first paragraph of Unit V.E. and appearing elsewhere in this issue of the **Federal Register**, EPA is proposing deadlines for the submission of test data.

F. Reporting Requirements

EPA is requiring that all data developed under this rule be reported in accordance with the EPA Good Laboratory Practice (GLP) standards pursuant to 40 CFR Part 792.

EPA is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. The Agency is proposing these deadlines in the related document appearing elsewhere in this issue of the **Federal Register**.

TSCA section 12(b) requires that persons who export or intend to export to a foreign country any substance subject to testing requirements under TSCA section 4 notify EPA of such exportation or intent to export. While the results of required testing may not be available for some time, a notice to the foreign government about the export of such substances subject to test rules serves to alert them to the Agency's concern about the substances. It gives these governments the opportunity to

request such data that the Agency may currently possess plus whatever data may become available as a result of testing activities. Thus, upon the effective date of this rule, persons who export or intend to export ODA must submit notices to the Agency pursuant to TSCA section 12(b)(1) and 40 CFR Part 707 (see 45 FR 82844; December 16, 1980).

TSCA section 14(b) governs Agency disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by this rule, the Agency will announce the receipt within 15 days in the **Federal Register** as required by section 4(d). Test data received pursuant to this rule will be made available for public inspection by any person except in those cases where the Agency determines that confidential treatment must be accorded pursuant to section 14(b) of TSCA.

G. Enforcement Provisions

The Agency considers failure to comply with any aspect of a section 4 rule to be a violation of section 15 of TSCA. Section 15(1) of TSCA makes it unlawful for any person to fail or refuse to comply with any rule or order issued under section 4. Section 15(3) of TSCA makes it unlawful for any person to fail or refuse to: (1) Establish or maintain records; or (2) submit reports, notices, or other records required by the Act or any regulations issued under TSCA.

Additionally, TSCA section 15(4) makes it unlawful for any person to fail or refuse to permit entry or inspection as required by section 11. Section 11 applies to any "establishment, facility, or other premises in which chemical substances or mixtures are manufactured, processed, stored, or held before or after their distribution in commerce . . ." The Agency considers a testing facility to be a place where the chemical is held or stored and, therefore, subject to inspection. Laboratory audits and/or inspections will be conducted periodically in accordance wiht the procedures outlined in TSCA section 11 by designated representatives of the EPA for the purpose of determining compliance with the final rule for ODA. These inspections may be conducted for purposes which include verification that testing has begun, that schedules are being met, that reports accurately reflect the underlying raw data and interpretations and evaluations thereof, and that the studies are being conducted according to EPA GLP standards and the test standards established in the second phase of this rulemaking.

EPA's authority to inspect a testing facility also derives from section 4(b)(1) of TSCA, which directs EPA to promulgate standards for the development of test data. These standards are defined in section 3(2)(B) of TSCA to include those requirements necessary to assure that data developed under testing rules are reliable and adequate, and such other requirements as are necessary to provide such assurance. The Agency maintains that laboratory inspections are necessary to provide this assurance.

Violators of TSCA are subject to criminal and civil liability. Persons who submit materially misleading or false information in connection with the requirement of any provision of this rule may be subject to penalties calculated as if they had never submitted their data. Under the penalty provisions of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to $25,000 per day for each violation. This provision would be applicable primarily to manufacturers or processors who will fail to submit a letter of intent or an exemption request and who continue manufacturing or processing after the deadlines for such submissions. This provision would also apply to processors that fail to submit a letter of intent or an exemption application and continue processing after the Agency has notified them of their obligation to submit such documents (see 40 CFR 790.48(b)). Intentional violations could lead to the imposition of criminal penalties up to $25,000 for each day of violation and imprisonment for up to 1 year. Other remedies are available to EPA under sections 7 to 17 of TSCA, such as seeking an injunction to restrain violations of TSCA section 4.

Individuals as well as corporations could be subject to enforcement actions. Sections 15 and 16 of TSCA apply to "any person" who violates various provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies themselves. In particular, this includes individuals who report false information or who cause it to be reported. In addition, the submission of false, fictitious, or fraudulent statements is a violation under 18 U.S.C. 1001.

VI. Economic Analysis of Final Test Rule

To assess the economic impact of this rule, EPA has prepared an economic analysis that evaluates the potential for significant economic impacts on the industry as a result of the required testing. The economic analysis estimates the costs of conducting the required testing and evaluates the potential for significant adverse economic impact as a result of these test costs by examining four market characteristics of ODA: (1) Price sensitivity of demand, (2) industry cost characteristics, (3) industry structure, and (4) market expectations.

Total testing costs for the final rule for ODA are estimated to range from $775,290 to $1,020,200. This estimate includes the costs for both the required minimum series of tests and the conditional ones. The annualized test costs (using a cost of capital of 25 percent over a period of 15 years) range from $200,908 to $264,375.

Because of the extensive occurrence of ODA in numerous mixed alkylamine products, total production of this chemical is not represented by the data published for oleylamine by the USITC (Ref. 3). EPA estimated total ODA production in 1984, contained in alkylamine products, to be 17 to 28 million pounds. Using the lower-bound production figure of 17 million pounds, the average unit test costs for all products would then range from 1.2 to 1.6 cents per pound of the ODA contained in the amine products. EPA estimates that under worst-case assumptions this cost is one percent of total 1984 product value of the major alkylamines which contain ODA.

Based on these costs and the market characteristics of ODA, the economic analysis indicates that the potential for significant adverse economic impact as a result of this test rule is low. This conclusion is based on the following observations: (1) The estimated unit test costs are small, and (2) the demand for ODA manufacture is inelastic (Ref. 23).

VII. Availability of Test Facilities and Personnel

Section 4(b)(1) of TSCA requires EPA to consider "the reasonably forseeable availability of the facilities and personnel needed to perform the testing required under the rule." Therefore, EPA conducted a study to assess the availability of test facilities and personnel to handle the additional demand for testing services created by section 4 test rules. Copies of the study, "Chemical Testing Industry: Profile of Toxicological Testing", October 1981, can be obtained through the NTIS Under publication number PB 82-140773.

On the basis of this study, the Agency believes that there will be available test facilities and personnel to perform the testing required in this test rule.

VIII. Rulemaking Record

EPA has established a public record for this rulemaking (docket number OPTS-42061A). This record includes the basic information the Agency

considered in developing this rule, and appropriate Federal Register notices.

This record includes the following information:

A. Supporting Documentation

(1) Federal Register notices pertaining to this action consisting of:

(a) Notice containing the Thirteenth ITC Report designating oleylamine to the Priority List (48 FR 55674, Dec. 14, 1983), and comments received in response thereto.

(b) Notice of the proposed test rule on oleylamine and comments received in response (49 FR 45610, Nov. 19, 1984).

(c) Notice announcing the final decision to require testing of oleylamine.

(d) Notice adding oleylamine to the list of chemicals subject to the preliminary assessment information rule (48 FR 55685, Dec. 14, 1983).

(e) Notice of final rule on EPA's TSCA Good Laboratory Practice Standards (48 FR 53922, Nov. 29, 1983).

(f) Notice of final rule on test rule development and exemption procedures (49 FR 39774, Oct. 10, 1984).

(g) Notice of final rule concerning data reimbursement (48 FR 41786, Sept. 19, 1983).

(h) Notice of interim final rule on test rule development and exemption procedures (50 FR 20652, May 17, 1985).

(i) Notice of extension of comment period of proposed test rule for oleylamine (50 FR 3808, Jan. 28, 1985).

(j) Toxic Substance Control Act Guidelines; Final Rule (50 FR 39252, Sept. 27, 1985).

(2) Support documents consisting of:

(a) Oleylamine technical support document for proposed rule.

(b) Economic impact analysis of notice of proposed rulemaking for oleylamine.

(c) Economic impact analysis of final test rule for oleylamine.

(3) Communications consisting of:

(a) Written public and intraagency or interagency memoranda and comments.

(b) Summaries of telephone conversations.

(c) Summaries of meetings.

(4) Reports—published and unpublished factual materials, including contractors' reports.

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(23) USEPA. U.S. Environmental Protection Agency. Economic Impact Analyses of Final Test Rule for 9-Octadecenylamine (Oleylamine). Washington, DC, Office of Toxic Substances. (1986)

(24) CMA. Chemical Manufacturers Association, 2510 M Street, NW., Washington, DC 20037. *Salmonella*/Mammalian-Microsome Plate Incorporation Mutagenicity Assay (Ames Test). (1985).

(25) CMA. Chemical Manufacturers Association, 2510 M Street, NW., Washington, DC 20037. Chromosome Aberration Assay in Chinese Hamster Ovary (CHO) Cells. (1985)

(26) CMA. Chemical Manufacturers Association, 2510 M Street, NW., Washington, DC 20037. CHO/HGPRT Mutation Assay in the Presence and Absence of Exogenous Metabolic Activation. (1985)

(27) Bio/dynamics Inc. A Two Year Oral Toxicity Study of Amine Fluorides 335/242 in Rats. Project No. 72R–816. Philadelphia, PA: Menley & James Laboratories. (1975)

(28) Bio/dynamics Inc. A Chronic Oral Toxicity Study of Amine Fluorides 335/242 in Dogs. Project No. 72R–815. Philadelphia, PA: Menley & James Laboratory. (1975)

(29) Deichmann W. et al. "The chronic toxicity of octadecylamine". *AMA Archives of Industrial Health* 18:483–487. (1958)

(30) McDonald W., *et al.* "The chronic toxicity of octadecylamine in the rat—a supplemental report". *Toxicology and Applied Pharmacology* 4:610–612. (1961)

Confidential Business Information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in Rm. NE–G004, 401 M St., SW., Washington, DC.

IX. Other Regulatory Requirements

A. Classification of Rule

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. EPA has determined that this test rule is not major because it does not meet any of the criteria set forth in section 1(b) of the Order; i.e., it will not have an annual effect on the economy of at least $100 million, will not cause a major increase in prices, and will not

have a significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA, and any EPA response to those comments, are included in the rulemaking record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (15 U.S.C. 601 *et seq.*, Pub. L. 96–354, September 19, 1980), EPA certifies that this test rule will not have a significant impact on a substantial number of small businesses for the following reasons:

1. There are no small manufacturers of oleylamine known to EPA.

2. Small processors are not likely to perform testing themselves, or to participate in the organization of the testing effort.

3. Small processors will experience only minor costs in securing exemption from testing requirements.

4. Small processors are unlikely to be affected by reimbursement requirements.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this final rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2070–0033.

List of Subjects in 40 CFR Part 799

Testing, Environmental protection, Hazardous substances, Chemicals, Recordkeeping and reporting requirements.

Dated: August 7, 1987.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, Part 799 is amended as follows:

PART 799—[AMENDED]

1. The authority citation for Part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. New § 799.3175 is added to read as follows:

§ 799.3175 Oleylamine.

(a) *Identification of test substance.* (1) 9-Octadecenylamine (hereafter ODA) (CAS Number 112–90–3) shall be tested in accordance with this section.

(2) The ODA test substance shall be at least 90 percent ODA. The vehicle shall be one such as mineral oil for which there are adequate historical toxicological data and which will not interfere in the test results.

(b) *Persons required to submit study plans, conduct tests, and submit data.* (1) All persons who manufacture or process ODA (other than as an impurity) from October 7, 1987 to the end of the reimbursement period shall submit letters of intent to conduct testing or exemption applications, study plans, and/or shall conduct tests in accordance with Part 792 of this chapter, and submit data as specified in this section, Subpart A and Part 790 of this chapter.

(2) Persons subject to this section are not subject to the requirements § 790.50(a)(2), (5), and (6) and (b) and § 790.87(a)(1)(ii) of this chapter.

(3) Persons who notify EPA of their intent to conduct tests in compliance with the requirements of this section must submit plans for those tests no later than 45 days before the initiation of each of those tests.

(4) In addition to the requirements of § 790.87 (a)(2) and (3) of this chapter, EPA will conditionally approve exemption applications for this rule if EPA has received a letter of intent to conduct the testing from which exemption is sought and EPA has adopted test standards and schedules in a final Phase II test rule.

(c) *Health effects testing*—(1) *Developmental toxicity—(i) Required testing.* An oral developmental toxicity study shall be conducted with ODA in two mammalian species, rat and rabbit.

(ii) [Reserved]

(2) *Mutagenic effects—chromosomal aberrations*—(i) *Required testing.* (A) An oral *in vivo* mammalian bone marrow cytogenetics test: Chromosomal analysis shall be conducted for ODA.

(B) An oral rodent dominant lethal assay shall be conducted for ODA if it produces a positive result in the *in vivo* mammalian bone marrow cytogenetics test conducted pursuant to paragraph (c)(2)(i)(A) of this section.

(C) An oral rodent heritable translocation assay shall be conducted for ODA if it produces a positive result in the rodent dominant lethal assay conducted pursuant to paragraph (c)(2)(i)(B) of this section and if so required in a **Federal Register** notice or certified letter sent to test sponsors.

(ii) [Reserved]

(3) *Mutagenic effects—gene mutations*—(i) *Required testing.* (A) A detection of gene mutation in somatic cells in culture assay shall be conducted with ODA.

(B) An oral sex linked recessive lethal test in *Drosophila melanogaster* shall be conducted for ODA if it produces a positive result in the detection of gene mutation assay in somatic cells in culture conducted pursuant to paragraph (c)(3)(i)(A) of this section.

(C) An oral mouse visible specific locus test shall be conducted for ODA if it produces a positive result in the sex linked recessive lethal test in *Drosophila melanogaster* conducted pursuant to paragraph (c)(3)(i)(B) of this section and if so required in a **Federal Register** notice or certified letter sent to test sponsors.

(ii) [Reserved]

(4) *Oncogenicity*—(i) *Required testing.* An oncogenicity bioassay shall be conducted orally for ODA if positive results occur in any of the following tests and if so required in a **Federal Register** notice or certified letter sent to test sponsors.

(A) *In vivo* mammalian bone marrow cytogenetics tests conducted pursuant to paragraph (c)(2)(i)(A) of this section.

(B) Detection of gene mutation in somatic cells in culture assay conducted pursuant to paragraph (c)(3)(i)(A) of this section.

(C) Sex linked recessive lethal test in *Drosophila melanogaster*, conducted pursuant to paragraph (c)(3)(i)(B) of this section.

(ii) [Reserved]

(Information collection requirements approved by the Office of Management and Budget under control number 2070–0033.)

[FR Doc. 87–19309 Filed 8–21–87; 8:45 am]
BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPTS-42061B; FRL 3139-9(b)]

Oleylamine; Proposed Test Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: This document proposes that the Toxic Substances Control Act (TSCA) test guidelines be used as the test standards by manufacturers and processors to test oleylamine (9-octadecenylamine or ODA, CAS Number 112-90-3) for developmental toxicity, and to conduct two-tiered mutagenicity testing of ODA which may indicate the need for third-tier mutagenicity and oncogenicity testing following public program review. This notice also proposes deadlines for the submission of such test data. Elsewhere in this issue of the Federal Register, a final rule to require ODA testing in accordance with section 4(a) of TSCA is also published.

DATES: Submit written comments on or before October 8, 1987. If persons request time for oral comment by September 23, 1987, EPA will hold a public meeting on this proposed rule in Washington, DC. For further information on arranging to speak at the meeting, see Unit VI. of this preamble.

ADDRESS: Submit written comments, identified by the document control number (OPTS-42061B) in triplicate to: TSCA Public Information Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. NE-G004, 401 M St., SW. Washington, DC 20460.

A public version of the administrative record supporting this action (with any confidential business information deleted) is available for inspection at the above address from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Rm. E-543, 401 M St., SW., Washington, DC 20460, (202-554-1404).

SUPPLEMENTARY INFORMATION: Elsewhere in this issue of the Federal Register, EPA is issuing a final test rule under section 4(a) of TSCA to require certain toxicity testing of ODA. The Agency is now proposing test standards to be used and deadlines for submission of the required test data.

I. Background

Elsewhere in this issue of the Federal Register, EPA is issuing a Phase I final rule pursuant to TSCA section 4 that established testing requirements for manufacturers and processors of ODA. This Phase I rule specifies the following testing requirements for ODA: Oral developmental toxicity, and a two-tiered mutagenicity scheme which may indicate the need for third-tier mutagenicity and oncogenicity testing following public program review.

Once this Phase I test rule becomes effective, manufacturers and processors of ODA would normally be required (under the two-phase process) to submit proposed study plans for each of the studies required, and proposed schedules for both the initiation of testing and the submission of study data (see 40 CFR 790.50). EPA would review the submitted study plans and schedules and would subsequently issue them (with any necessary modifications) in a Phase II test rule proposal. This proposal would request public comment on the suitability of the proposed study plans for purposes of ensuring that the resulting data would be reliable and adequate. After evaluating and responding to public comment, EPA would adopt the study plans, including the reporting schedules, in a Phase II final rule as the required test standards and data submission deadlines (see 40 CFR 790.52).

However, in the case of the ODA test rule, which was initiated under the two-phase process, EPA has decided to propose relevant TSCA test guidelines as the test standards (see Unit III. below). In addition, EPA is proposing that the data from the required studies be submitted within certain time periods. These time periods will serve as the data submission deadlines required by TSCA section 4(b)(1) (see Unit IV. below). The reasons for this deviation from the standard test rule process are discussed below.

II. Change in the Test Rule Development Process

A. Test Standards and Data Submission Deadlines

TSCA section 4(b)(1) specifies that test rules shall include standards for the development of test data ("test standards") and deadlines for submission of test data. Under a two-phase process utilized by EPA since 1982 (47 FR 13012; March 26, 1982) and formally adopted in the fall of 1984 (49 FR 39744; Oct. 10, 1984), test standards and data submission deadlines were to be adopted during the second phase of the rulemaking process. Upon issuance of the Phase I final rule, which established the effects and characteristics for which a given chemical substance must be tested, persons subject to the rule would be required by a specified date to submit study plans detailing the methodologies and protocols they intended to use to perform the required tests. Such study plans were to include proposed schedules for the initiation and completion of testing and submission of test data (see 40 CFR 790.50(a) and (c)). In the second phase, after consideration of public comment, the Agency would promulgate the Phase II final rule adopting the study plans (with any necessary modifications) as the test standards for the development of test data and deadlines for submission of test data.

In December 1983, the Natural Resources Defense Council and the Industrial Union Department of the American Federation of Labor-Congress of Industrial Organizations filed an action under TSCA section 20 which challenged, among other things, the use of the two-phase process. In an August 23, 1984 Opinion and Order, the Court found that utilization of the two-phase rulemaking process was permissible. However, the Court also held that the Agency was subject to a standard of promulgating test rules within a reasonable time. *NRCD* v. *EPA*, 595 F. Supp. 1255 (S.D.N.Y. 1984)

After that Opinion, the Agency decided to expedite test rules by using a single-phase rulemaking process for most test rules. In the document announcing this decision (50 FR 20652, 20653; May 17, 1985), EPA stated that the single-phase approach offers a number of advantages over the two-phase process. In the single-phase approach, the Agency proposes (in one document) not only the effects for which testing will be required but also proposes pertinent TSCA or other appropriate guidelines as the test standards and deadlines for the submission of test data. After receiving and evaluating public comment on the proposed testing requirements, test guidelines, and data submission deadlines, EPA promulgates a final test rule.

This single-phase approach shortens the rulemaking period and expedites the initiation of required testing that would usually result from use of the two-phase rulemaking process. The single-phase process also eliminates the requirements under the two-phase approach for industry to submit test protocols for approval. Moreover, by allowing the submission of alternative testing methodologies, the single-phase

approach preserves the flexibility of the two-phase process.

These same advantages, i.e., expediting testing and eliminating study plan submission requirements for persons subject to a Phase I rule, are factors considered by EPA in deciding to modify the rulemaking process for ODA. By proposing both pertinent TSCA test guidelines as the test standards and data submission deadlines at the time of issuance of the Phase I final rule, EPA expects that the Phase II final rule will be issued 6 months sooner than would occur if the usual two-phase process were followed. Thus, required testing will be initiated sooner. In addition, for the required tests for ODA, appropriate TSCA test guidelines are available (see Unit III. below).

B. Modifications to Requirements Under a Phase I Final Rule for ODA

Persons subject to the ODA Phase I final rule who have notified EPA of their intent to test would normally be required to submit study plans and proposed data submission deadlines within a specified time from the final rule's effective date (see 40 CFR 790.50(a) and (c)). Because EPA is proposing certain TSCA guidelines as the test standards and data submission deadlines, persons subject to the Phase I final rule are not required to submit study plans for the required testing or to propose dates for the initiation and completion of that testing. Manufacturers and processors of ODA are invited to comment on the proposed data submission deadlines. The Agency will consider these comments in issuing the Phase II final rule.

Persons subject to the Phase I final rule for ODA are still required to submit notices of intent to test or exemption applications in accordance with 40 CFR 790.55. Moreover, once the test standard is promulgated in the Phase II final rule, those persons who have notified EPA of their intent to test must submit study plans (which adhere to the promulgated test standards) no later than 45 days before the initiation of each required test (see 40 CFR 790.50(a)(1)).

III. Proposed Test Standards

The Phase I rule specifies the following testing requirements for ODA: Developmental toxicity, and a two-tiered mutagenicity scheme which may indicate the need for third-tier mutagenicity and oncogenicity testing following public program review.

The mutagenicity testing includes tests for both chromosomal aberration and gene mutation. The *in vitro* cytogenetics and Ames assays of the first tier will not be required because they have been completed by the Oleylamine Program Panel of the Chemical Manufacturers Association and have been found negative.

The testing required in the phase one rule for ODA is in stages. First-stage tests consist of developmental toxicity and the remaining first-tier mutagenicity tests: *in vivo* mammalian bone marrow cytogenetics test and a detection of gene mutation in somatic cells in culture. If the results of either of the first-tier mutagenicity tests are positive, the second tier of mutagenicity tests, consisting of a rodent dominant lethal assay and/or a sex linked recessive lethal test in *Drosophila melanogaster*, must be conducted. The Agency will review these data as received together with other relevant data and hold a public meeting before requiring initiation of the second-stage testing, which includes third-tier mutagenicity, consisting of the rodent heritable translocation assays and/or the mouse visible specific locus test, plus oncogenicity. Test sponsors will be notified by **Federal Register** notice or certified letter of second-stage testing decisions.

The Agency is now proposing that testing of ODA for developmental toxicity, mutagenicity, and oncogenicity be conducted using as test standards the TSCA test guidelines specified under 40 CFR Parts 798, 797, 798 and modified as specified in the **Federal Register** of May 20, 1987 (52 FR 19056). The specific test standards being proposed are as follows:

1. *Specific Organ/Tissue Toxicity:* Developmental Toxicity Study which appears at 40 CFR 798.4900.

2. *Genetic Toxicity:* Chromosomal Effects.

i. First Tier: *In Vivo* Mammalian Bone Marrow Cytogenetics Test: Chromosomal Analysis which appears at 40 CFR 798.5385.

ii. Second Tier: Rodent Dominant Lethal Assay which appears at 40 CFR 798.5450.

iii. Third Tier: Rodent Heritable Translocation Assay which appears at 40 CFR 798.5460.

3. *Genetic Toxicity:* Gene Mutations.

i. First Tier: Detection of Gene Mutation in Somatic Cells in Culture which appears at 50 CFR 798.5300.

ii. Second Tier: Sex-Linked Recessive Lethal Test in *Drosophila melanogaster* which appears at 40 CFR 798.5275.

iii. Third Tier: Mouse Visible Specific Locus Test which appears at 40 CFR 798.5200.

4. *Chronic Exposure:* Oncogenicity which appears at 40 CFR 798.3300.

EPA believes that the TSCA Health Effects Test Guidelines cited above, if properly followed, should produce adequate and reliable data.

Certain modifications to the test guidelines which the Agency feels are necessary for testing of ODA are summarized below:

1. *Developmental toxicity study.* Two test species are required by EPA, since it is well documented that multiple-species testing is more effective in detecting developmental toxicants than is single-species testing. Although the expected route of human contact is dermal, EPA is requiring the oral route of administration for developmental toxicity testing of ODA. The data base of background information on developmental toxicity studies conducted via the dermal route is very limited, while the data base for the oral route is much more extensive. Moreover, dermal application of the corrosive ODA could stress the test animals, which may itself produce developmental toxicity. Most importantly, a developmental toxicity study is designed to ensure that the agent being tested is administered at a sufficient dose to penetrate to the target system. One thus determines if the agent, under the conditions of exposure with consideration of maternal effects, has the potential to produce an adverse effect. A dermal study may not allow this determination, especially when skin corrosion occurs.

2. i. *In vivo mammalian bone marrow cytogenetics test.* Mice are selected as the species of choice to allow species consistency among the tests in this sequence. The oral route shall be used to maintain consistency among the tests for ODA, and to avoid corrosiveness associated with dermal application.

ii. *Rodent dominant lethal assay.* Mice are selected as the species of choice to maintain species consistency among the tests in this sequence. The oral route shall be used to maintain consistency among the tests for ODA and to avoid corrosiveness associated with dermal application.

iii. *Rodent heritable translocation assays.* Mice are selected as the species of choice to maintain consistency among the tests in this sequence. The oral route shall be used to maintain consistency among the tests for ODA and to avoid corrosiveness associated with dermal application.

3.i. *Detection of gene mutation in somatic cells in culture.* The gene mutation in somatic cells in culture assay (CHO/HGPRT) has already been done and the results are equivocal. Under the assumption that a repeat of the gene mutation assay in the same cell line would result in similar toxicity problems, it is now proposed that the

assay be conducted in a different cell line, mouse lymphoma L5178Y. Aroclor 1254-induced rat liver S–9 is the chosen source of metabolic activation because of its historical data base and generally accepted use in this assay. Alternative dosing procedures shall be used which consist of the use of suspension cultures or roller-bottle incubation.

ii. *Sex-linked recessive lethal test in Drosophila melanogaster.* The oral route of administration shall be used to maintain consistency among the tests for ODA.

iii. *The mouse visible specific locus test.* Mice are selected as the species of choice to allow species consistency between the tests in this sequence: strains $(C_3H \times 101)F_1$ or $(101 \times C_3H)F_1$ hybrids are chosen because of the historical data base available for these strains. Two dose levels shall be used because dose-responses are essential for risk determination. The oral route of administration shall be used to maintain consistency among the tests for ODA and to avoid corrosiveness associated with dermal application.

4. *Oncogenicity bioassay.* Rats and mice are the species of choice because of their relatively short life spans, the limited cost of their maintenance, their widespread use in pharmacological and toxicological studies, their susceptibility to tumor induction, and the availability of inbred or sufficiently characterized strains. Although the expected route of human contact is dermal, the oral route of administration is required, because the long-term administration of ODA via the dermal route is too stressful for the test species because of the chemical's corrosiveness.

IV. Reporting Requirements

EPA is proposing that all data developed under this rule be reported in accordance with its TSCA Good Laboratory Practice (GLP) standards which appear at 40 CFR Part 792.

Test sponsors are required to submit individual study plans at least 45 days prior to the initiation of each study.

EPA is required by section 4(b)(1)(c) of TSCA to specify the time period during which persons subject to a test rule must submit test data. Studies shall be conducted and interim progress reports shall be provided at 6-month intervals beginning 6 months after the effective date of the final test rule or notification that testing should be initiated. The Agency is proposing specific reporting requirements for each of the proposed test standards as follows:

The developmental toxicity study shall be conducted and the final results submitted to the Agency within 12 months of the effective date of the final test rule.

The mutagenicity studies shall be conducted, and the final results submitted to the Agency as follows:

1. *In vivo* mammalian bone marrow cytogenetics test and detection of gene mutations in somatic cells in culture within 8 months of the effective date of the final rule.

2. Rodent dominant lethal assay and sex linked recessive lethal test in *Drosophilia melanogaster* within 17 months of the effective date of the final rule.

3. Rodent heritable translocation assays within 24 months and mouse visible specific locus test within 48 months of EPA's notification of the test sponsor by certified letter or **Federal Register** notice that testing should be initiated.

Oncogenicity testing shall be conducted and the final results submitted within 53 months of EPA's notification of the test sponsor by certified letter or **Federal Register** notice that testing should be initiated.

As required by TSCA section 4(d), the Agency plans to publish in the **Federal Register** a notice of the receipt of any test data submitted under this test rule within 15 days of receipt of that data. Except as otherwise provided in TSCA section 14, such data will be made available for examination by any person.

V. Issues for Comment

EPA invites comment on the use of the proposed TSCA test guidelines as the test standards for the required testing of ODA. EPA also invites comment on the proposed schedules for the required testing.

VI. Public Meetings

If persons indicate to EPA that they wish to present oral comments on this proposed rule to EPAofficials who are directly responsible for developing the rule and supporting analyses, EPA will hold a public meeting subsequent to the close of the public comment period in Washington, DC. Persons who wish to attend or to present comments at the meeting should call the TSCA Assistance Office (TAO): (202–554–1404), by September 23, 1987. A meeting will not be held if members of the public do not indicate that they wish to make oral presentations. While the meeting will be open to the public, active participation will be limited to those persons who arranged to present comments and to designated EPA participants. Attendees should call the TAO before making travel plans to verify whether a meeting will be held.

Should a meeting be held, the Agency will transcribe the meeting and include the written transcript in the public record. Participants are invited, but not required, to submit copies of their statements prior to or on the day of the meeting. All such written materials will become part of EPA's record for this rulemaking.

VII. Public Record

EPA has established a record for this rulemaking [docket number (OPTS–42061B)]. This record includes basic information considered by the Agency in developing this proposal, and appropriate **Federal Register** notices. The Agency will supplement the record with additional information as it is received.

This record includes the following information:

(1) **Federal Register** notices pertaining to this proposed test standard consisting of: Final Phase I rule on ODA.

(2) TSCA Health Effects Test Guidelines for Developmental Toxicity, Genetic Toxicity, and Oncogenicity.

Confidential Business Information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in Rm. NE–G004 401 M St., SW., Washington, DC 20460.

VIII. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. This test rule is not major because it does not meet any of the criteria set forth in section 1(b) of the Order. The economic analysis of the testing of ODA is discussed in the Phase I test rule which appears elsewhere in this issue of the **Federal Register.**

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, (15 U.S.C. 601 *et seq.*, Pub. L. 96–354, September 19, 1980), EPA is certifying that this test rule, if promulgated, will not have a significant impact on a substantial number of small businesses for the following reasons:

1. There are no small businesses known to EPA that are manufacturing ODA.

2. Small processors will not perform testing themselves, or participate in the organization of the testing effort.

3. Small processors will experience only very minor costs, if any, in securing exemption from testing requirements.

4. Small processors are unlikely to be affected by reimbursement requirements, and any testing costs passed on to small processors through price increases will be small.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in the proposed rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2070–0033. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs: OMB; 726 Jackson Place NW.; Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule package will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Part 799

Testing, Environmental protection, Hazardous substances, Chemicals, Recordkeeping and reporting requirements.

Dated: August 7, 1987.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, it is proposed that Part 799 be amended as follows:

PART 799—[AMENDED]

a. The authority citation for Part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

b. By amending § 799.3175 by adding new paragraphs (c)(1) (ii) and (iii); (2) (ii) and (iii); (3) (ii) and (iii); and (4) (ii) and (iii) to read as follows:

§ 799.3175 Oleylamine.

* * * * *

(c) * * *

(1) * * *

(ii) *Test standard.* (A) The developmental toxicity study shall be conducted with ODA in accordance with § 798.4900 of this chapter except the provisions of paragraphs (e)(1)(i) and (5).

(B) For purposes of this section, the following provisions also apply.

(*1*) *Animal selection.* The rat and rabbit are the required test species.

(*2*) *Exposure route.* The route of exposure shall be oral.

(iii) *Reporting requirements.* (A) The developmental toxicity testing shall be completed and the final results submitted to the Agency within 12 months of the effective date of the final test rule.

(B) Interim progress reports shall be provided at 6-month intervals beginning 6 months after the effective date of the final test rule.

(2) * * *

(ii) *Test standard.* (A)(*1*) The *in vivo* mammalian bone marrow cytogenetics tests: Chromosomal analysis shall be conducted with ODA in accordance with § 798.5385 of this chapter except the provisions of paragraphs (d)(3)(i) and (5)(iii).

(*2*) For purposes of this section, the following provisions also apply.

(*i*) *Animal selection.* The mouse is the required test species.

(*ii*) *Exposure route.* The route of exposure shall be oral.

(B)(*1*) The rodent dominant lethal assay shall be conducted with ODA in accordance with § 798.5450 of this chapter except the provisions of paragraphs (d)(3)(i) and (5)(iii) if a positive result occurs in the *in vivo* mammalian bone marrow cytogenetics tests: Chromosomal analysis conducted pursuant to paragraph (c)(2)(ii)(A) (*1*) and (*2*) of this section.

(*2*) For purposes of this section, the following provisions also apply.

(*i*) *Animal selection.* The mouse is the required test species.

(*ii*) *Exposure route.* The route of exposure shall be oral.

(C)(*1*) The rodent heritable translocation assays shall be conducted with ODA in accordance with § 798.5460 of this chapter except the provisions of paragraphs (d)(3)(i) and 5(iii) if a positive result occurs in the rodent dominant lethal assay conducted pursuant to paragraph (c)(2)(ii)(B) of this section if required following a public program review.

(*2*) For purposes of this section, the following provisions also apply.

(*i*) *Animal selection.* The mouse is the required test species.

(*ii*) *Exposure route.* The route of exposure shall be oral.

(iii) *Reporting requirements.* (A) The chromosomal aberration tests shall be completed and the final results submitted to the Agency as follows:

(*1*) The *in vivo* mammalian bone marrow cytogenetics test within 8 months of the effective date of the final test rule.

(*2*) The rodent dominant lethal assay (if required) within 17 months of the effective date of the final test rule.

(*3*) The rodent heritable translocation assays (if required) within 24 months of EPA's notification of the test sponsor by certified letter or **Federal Register** notice that testing should be initiated.

(B) Interim progress reports shall be provided at 6-month intervals beginning 6 months after the effective date of the final test rule or notification that testing should be initiated.

(3) * * *

(ii) *Test Standard.* (A)(*1*). The detection of gene mutations in somatic cells in culture shall be conducted with ODA in accordance with § 798.5300 of this chapter except the provisions of paragraphs (d)(3)(i) and (4).

(*2*) For purposes of this section, the following provisions also apply.

(*i*) *Cells.* ODA shall be tested in L5178Y mouse lymphoma cells.

(*ii*) *Metabolic activation.* The metabolic activation system shall be derived from the postmitochondrial fraction (S–9) of livers from rats pretreated with Aroclor 1254.

(*iii*) *Dosing procedures.* Alternative dosing procedures consisting of suspension cultures or roller-bottle incubation shall be used.

(B)(*1*) The sex-linked recessive lethal test in *Drosophila melanogaster* shall be conducted with ODA in accordance with § 798.5275 of this chapter except the provisions of paragraph (d)(5)(iii), should a positive result occur in the detection of gene mutations in somatic cells in culture conducted pursuant to paragraph (c)(3)(ii)(A) of this section.

(*2*) *Exposure route.* The route of exposure shall be oral.

(C)(*1*) The mouse visible specific locus test shall be conducted with ODA in accordance with § 798.5200 of this chapter except the provisions for paragraphs (d)(3)(i), (5)(ii), and (iii), should a positive result occur in the sex-linked recessive lethal test in *Drosophila melanogaster* conducted pursuant to paragraph (c)(3)(ii)(B) of this section, if required following a public program review.

(*2*) For purposes of this section, the following provisions also apply.

(*i*) *Animal selection.* The mouse shall be used as the test species.

(*ii*) *Dosing.* A minimum of two dose levels shall be tested.

(*iii*) *Exposure route.* The route of exposure shall be oral.

(iii) *Reporting requirements.* (A) Gene mutation tests shall be completed and final results submitted to the Agency as follows:

(*1*) The detection of gene mutations in somatic cells in culture within 8 months of the effective date of the final test rule.

(*2*) The sex-linked recessive lethal test in *Drosophila melanogaster* (if required) within 17 months of the effective date of the final test rule.

(*3*) The mouse visible specific locus test (if required) within 48 months of

EPA's notification of the test sponsor by certified letter or **Federal Register** notice that testing should be initiated.

(B) Interim progress reports shall be provided at 6-month intervals beginning 6 months after the effective date of the final test rule or notification that testing should be initiated.

(4) * * *

(ii) *Test standard.* (A)(*1*) An oncogenicity bioassay, if required following a public program review, shall be conducted with ODA in accordance with § 798.3300 of this chapter except the provisions of paragraphs (b)(1)(i) and (6)(i).

(*2*) For purposes of this section, the following provisions also apply.

(*i*) *Animal selection.* ODA shall be tested in both rats and mice.

(*ii*) *Exposure route.* The route of exposure shall be oral.

(iii) *Reporting requirements.* (A) The oncogenicity tests shall be completed and final results submitted to the Agency within 53 months of EPA's notification of the test sponsor by certified letter or **Federal Register** notice that testing should be initiated.

(B) Interim progress reports shall be provided at 6-months intervals beginning 6 months after the submission of the study for this test.

[FR Doc. 87-19310 Filed 8-21-87; 8:45 am]

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1987. The CFR volume issued as of Apr. 1, 1980, should be retained.

[3] No amendments to this volume were promulgated during the period July 1, 1984 to June 30, 1986. The CFR volume issued as of July 1, 1984, should be retained.

[4] No amendments to this volume were promulgated during the period July 1, 1985 to June 30, 1986. The CFR volume issued as of July 1, 1985 should be retained.

[5] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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The President

Proclamation 5895 of August 21, 1987

National P.O.W./M.I.A. Recognition Day, 1987

By the President of the United States of America

A Proclamation

Perhaps no American could cherish our country's liberty more dearly than those who have defended it and in doing so have paid the price of capture and imprisonment. We take solemn inspiration and resolve from the sacrifices of brave Americans who have endured captivity for their allegiance to our beloved land and our ideals. Their dignity, faith, and valor remind us of the allegiance we owe our Nation and its defenders.

We also take inspiration from the courage of the families of those who remain missing or unaccounted for. The fortitude they display in the face of uncertainty is heroic, like the acts of those whose fates they seek to learn. We as a Nation will not rest in our efforts to secure the release of any U.S. personnel who may still be held against their will, to obtain the fullest possible accounting of those still missing, to repatriate all recoverable American remains, and to relieve the suffering of the families.

The P.O.W./M.I.A. issue will continue to be a matter of the highest national priority until it is resolved. To symbolize our national commitment, the P.O.W./M.I.A. Flag will fly over the White House, the Departments of State and Defense, the Veterans Administration, and the Vietnam Veterans Memorial on September 18, 1987. It will also fly over the Vietnam Veterans Memorial on Memorial Day and Veterans Day.

To recognize the special debt of gratitude all Americans owe to those who sacrificed their freedom in the service of our country and to reaffirm our commitment to their courageous families, the Congress, by Senate Joint Resolution 49, has designated September 18, 1987, as "National POW/MIA Recognition Day" and authorized and requested the President to issue a proclamation in observance of this occasion.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim Friday, September 18, 1987, as National P.O.W./M.I.A. Recognition Day. I call upon all Americans to join in honoring all former American prisoners of war, those still missing, and their families who have made extraordinary sacrifices on behalf of our country. I also call upon State and local officials and private organizations to observe this day with every appropriate ceremony and activity.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of August, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 87-19616
Filed 8-24-87; 10:46 am]
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Rules and Regulations

Federal Register
Vol. 52, No. 164
Tuesday, August 25, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 926 and 944

Tokay Grapes Grown in San Joaquin County, CA, and Imported Tokay Grapes; Handling Requirements for 1988 and Subsequent Seasons

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting with modifications as a final rule the provisions of an interim final rule which established handling requirements in effect for Tokay grapes. This action is intended to ensure that only good quality Tokay grapes will be available for fresh market shipment during each season.

EFFECTIVE DATE: September 24, 1987.

FOR FURTHER INFORMATION CONTACT: James M. Scanlon, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250–0200, telephone (202) 475–3914.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Departmental Regulation 1512–1 and Executive Order 12291 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities on their own behalf. Thus, both statutes have small entity orientation and compatibility.

The production area of Marketing Order No. 926 consists of San Joaquin County which is located in central California. Production for the 1985 season totaled 7,993 tons or approximately 651,000 lugs of Tokay grapes. Fresh shipments of Tokay grapes accounted for 4.87 percent of the total crop. Tokay grapes crushed for wine accounted for 95.13 percent of the total crop. For 1985 bearing acres of all grapes increased from 675,000 acres to 681,857 acres. Table grapes increased from 77,400 acres to 77,725 acres, wine grapes from 317,000 acres to 320,782 acres, and raisin varieties from 280,600 to 283,450 acres. Based upon the most current available information, production for the 1986 season totaled approximately 423,000 lugs of Tokay grapes. Fresh shipments of Tokay grapes accounted for approximately 3 percent of the total crop. Tokay grapes crushed for wine accounted for approximately 97 percent of the total crop.

Approximately 14 handlers of California Tokay grapes under the marketing order for fresh Tokay grapes grown in San Joaquin County, California, will be subject to regulation during the 1988 season. In addition, there are 380 growers of California Tokay grapes. There are no importers of record of Tokay grapes. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $100,000, and agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of Tokay grapes may be classified as small entities.

The Administrator of the Agricultural Marketing Service (AMS) has considered the impact of this action on small entities. The regulatory action in this instance is a final rule which will become effective for the 1988 season and continue in effect during subsequent seasons for California and imported Tokay grapes.

Handling regulations implemented in this action are the same as those in effect for several past seasons. The regulations have resulted in shipments into fresh markets of quality fruit and have served to promote buyer confidence and consumer satisfaction. Based upon available information, it is the agency's view that the impact of this action will be beneficial to the handlers and producers.

The handling requirements applicable to Tokay grapes grown in San Joaquin County, California (California Tokay grapes) are issued under the marketing agreement, as amended, and Order No. 926, as amended (7 CFR Part 926), regulating the handling of fresh Tokay grapes grown in San Joaquin County, California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (the Act, 7 U.S.C. 601–674). The California Tokay grape regulation is based upon the recommendations and information submitted by the Industry Committee, established under the order, and upon other available information.

This rule finalizes the rulemaking begun with the publication of an interim final rule in the Federal Register at 51 FR 29446. That rule was effective August 14, 1986, through November 15, 1986, for California Tokay grapes. The interim final rule also provided that for subsequent years, the same requirements would apply for the period August 12, the customary beginning of the shipping season, through November 15 for domestic grapes.

The handling requirements applicable to imported Tokay grapes are issued under section 8e (7 U.S.C. 608e–1) of the Act. Section 8e of the Act requires that when certain domestically produced commodities, including table grapes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements. The interim final rule provided that for imported Tokay grapes these requirements would be in effect during the 1987 season for the period August 16 through November 15. This final rule changes that period to August 12 through November 15 for 1988 and each season thereafter.

Section 8e also provides that whenever two marketing orders regulating an agricultural commodity produced in different areas of the United States are concurrently in effect, the Secretary shall determine which of the

areas produces the commodity in most direct competition with the imported commodity. Currently, under Marketing Order No. 925, desert grapes grown in a designated area of southeastern California which would include Tokay grapes are regulated during the period April 20 through August 15 each season (California Desert Grape Regulation 6, 7 CFR 925.304; 52 FR 8870). This final rule regulates the handling of Tokay grapes grown in San Joaquin County, California, during the period August 12 through November 15 of each season, and this area is the dominant source of Tokay grapes during this period. Thus, it is found that shipments of grapes under Marketing Order No. 926 would be in most direct competition with any imported Tokay grapes during the period August 12 through November 15 each season. This final rule does not affect the regulation of any other imported varieties of table grapes under Table Grape Import Regulation 4. Accordingly, this final rule modified the interim final rule to change the effective period of the Tokay Grape Import Regulation 5 to the period August 12 through November 15 of each year and the Table Grape Import Regulation from April 20 through August 11 for Tokay grapes under M.O. 925.

This final rule also clarifies the intended effect of § 944.605(d) of the interim final rule which is that any failed lot of Tokay grapes either may be exported or reconditioned. The provision was not intended to require that all failed lots be disposed of pursuant to that section.

This action finalizes the interim final rule which was recommended by the Tokay Industry Committee at its July 11, 1986, organizational meeting to issue quality requirements for fresh market shipments of Tokay grapes and imported Tokay grapes. In making its recommendation, the committee considered supply and market conditions and other factors affecting the need for and type of regulations suitable for the 1986 California Tokay grape crop. On the basis of these considerations the committee recommended establishing for California Tokay grapes the minimum grade and size requirements specified in the U.S. No. 1 Table grade of the U.S. Standards for Grades of Table Grapes (European or Vinifera type), except that at least 30 percent, by count, of each bunch shall show characteristic color. This rule also requires that each container of California Tokay grapes bear a Federal-State Inspection Service lot stamp number in plain letters and figures on one outside end. The minimum grade and container marking requirements for grapes are necessary to prevent the shipment of immature, poor quality, and excessively small fruit in fresh commercial marketing outlets. Shipment of low quality fruit would tend to depress prices of all grapes since low quality fruit undermines consumer confidence in the quality of all fruit sold in the market and discourages repeat purchases. The specified grade requirements are consistent with the quality and size composition of the available crop and are designed to provide ample supplies of good quality fruit consistent with the declared policy of the Act. California Tokay grapes not meeting these requirements may be sold in local markets within San Joaquin County, or in the processing outlet where a major portion of the crop is utilized.

The interim final rule was issued August 13, 1986, and published in the Federal Register on August 18, 1986 (51 FR 29448). Interested persons were given until September 17, 1986, to submit comments. No comments were received.

Handling requirements contained in this final rule will continue in effect from marketing season to marketing season indefinitely unless modified, suspended, or terminated by the Secretary, upon the recommendation and information submitted by the committee, or upon other information available to the Secretary. Heretofore, regulations issued under Marketing Order 926 were effective for a single marketing season. However, over the past several years the same handling requirements have been imposed each season without revision. It is expected that the quality and handling requirements will continue unchanged from season to season. Therefore, it is unnecessary to issue regulations for only a single season. In addition, this change could result in a reduction in operational costs.

Although the handling regulations will automatically apply each year, the committee will continue to meet prior to or during each season to consider recommendations for modification, suspension, or termination of the regulation. Prior to making any such recommendations, the committee would submit to the Secretary a marketing policy for the season including an analysis of supply and demand factors having a bearing on the marketing of the crop. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate committee recommendations and information submitted by the committee, comments filed, and other available information, and determine whether modification, suspension, or termination of the regulations on shipments of Tokay grapes would tend to effectuate the declared policy of the Act.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other available information, it is found that this final rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Parts 926 and 944

Marketing agreements and orders, Grapes, California, Fruits, Import regulations.

For the reasons set forth in the preamble, 7 CFR Parts 926 and 944 are amended as follows:

1. The authority citation for 7 CFR Parts 926 and 944 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 926—TOKAY GRAPES GROWN IN SAN JOAQUIN COUNTY, CALIFORNIA

2. Section 926.324 is revised to read as follows:

§ 926.324 California Tokay Grape Regulation 23.

(a) During the period August 12 through November 15 of each year, no handler shall ship:

(1) Any Tokay grapes grown in the production area which do not meet the grade and size specifications of U.S. No. 1 Table grade, and the following additional requirement: Of the 25 percent, by count, of the berries of each bunch which are attached to the lower part of the main stem, including laterals, at least 30 percent, by count, shall show characteristic color; and

(2) Any container of Tokay grapes grown in the production area, unless such container bears, in plain letters and figures on one outside end, a Federal-State Inspection Service lot stamp number showing that such grapes have been inspected in accordance with the established grade set forth in this section.

(b) *Definitions.* "U.S. No. 1 Table grade" and "characteristic color" shall mean the same as in the United States Standards for Grades of Table Grapes (European or Vinifera type) (7 CFR 51.880–51.912).

PART 944—FRUITS; IMPORT REGULATIONS

3. Section 944.505 is revised to read as follows:

§ 944.505 Tokay Grape Import Regulation 5.

(a) *Applicability to imports.* Pursuant to section 8e of the Act and Part 944—Fruits; Import Regulations, during the period August 12 through November 15 of each year the importation into the United States of Tokay variety grapes is prohibited unless such grapes meet the grade and size specifications of U.S. No. 1 Table Grade, as set forth in the United States Standards for Grades of Table Grapes (European or Vinifera type) (7 CFR 51.880–51.912), and the following additional requirement: Of the 25 percent, by count, of the berries of each bunch which are attached to the lower part of the main stem, including laterals, at least 30 percent, by count, shall show characteristic color.

(b) The Federal or Federal-State Inspection Service, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, is designated as the governmental inspection service for certifying the grade, size, and quality of Tokay grapes that are imported into the United States. Inspection by the Federal or Federal-State Inspection Service with evidence thereof in the form of an official inspection certificate, issued by the respective service, applicable to the particular shipment of Tokay grapes, is required on all imports. The inspection and certification services will be available upon application in accordance with the rules and regulations governing inspection and certification of fresh fruits, vegetables, and other products (7 CFR Part 51) and in accordance with the Procedure for Requesting Inspection and Designating the Agencies to Perform Required Inspection and Certification (7 CFR 944.400).

(c) The term "importation" means release from custody of the United States Customs Service.

(d) Any lot or portion thereof which fails to meet the import requirements may be reconditioned or exported. Any failed lot which is not reconditioned or exported shall be disposed of under the supervision of the Federal or Federal-State Inspection Service with the costs of certifying the disposal of said lot borne by the importer.

(e) *Minimum quantity exemption.* Any person may import up to 250 pounds of grapes in any one shipment exempt from the requirements of this section.

(f) It is determined that imports of Tokay grapes, during the effective time of this regulation, are in most direct competition with Tokay grapes grown in the San Joaquin County of California, under 7 CFR Part 926, and that the grade, size, and quality requirements specified in this section shall be the same as those established under § 926.324 for California Tokay grapes.

4. Section 944.503 is amended by revising (a)(3) and adding (e) to read as follows:

§ 944.503 Table Grape Import Regulation 4.

(a) * * *

(3) All regulated varieties of grapes offered for importation shall be subject to the grape import requirements contained in this section effective April 20 through August 15, 1988, and April 20 through August 15 of each year thereafter, except for the Tokay variety of grapes which shall be subject to the grape import requirements contained in this section for the period April 20 through August 11 of each year.

* * * * *

(e) It is determined that imports of Tokay grapes, during the period April 20 through August 11 of each season are in most direct competition with Tokay grapes grown in a designated area of southeastern California under 7 CFR Part 925, and the grade, size, maturity, and quality requirements specified in this section shall be the same as those established under § 925.304 for California desert grapes.

Dated: August 17, 1987.

Ronald L. Cioffi,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Service.

[FR Doc. 87–19352 Filed 8–24–87; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87–ANE–9; Amdt. 39–5688]

Airworthiness Directives; Avco Lycoming Textron ALF502R Series Turbofan Engines Installed on British Aerospace BAe146 Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective as to all persons and amendment adopting an airworthiness directive (AD) which amends Telegraphic Airworthiness Directive (TAD) T87–06–52 which was previously made effective as to all known U.S. owners and operators of Avco Lycoming Textron ALF502R series turbofan engines installed on British Aerospace BAe146 aircraft by individual telegrams. The TAD required initial and repetitive inspections of the oil system chip detector(s) and oil filter bypass valve to ensure the integrity of the reduction gear system and overspeed protection system. The TAD was needed to prevent engine power turbine (PT) overspeed and uncontained PT blade failure resulting from reduction gear system decouple and inaccurate PT overspeed signal generation. This AD amends the TAD by adding an alternate requirement which replaces the oil filter bypass valve with an improved oil filter bypass valve and deletes the oil filter bypass valve spring force check requirement for this improved valve.

DATES: Effective August 28, 1987, as to all persons except those persons to whom paragraphs (a), (b), (c), (d), (e), and (f)(1) were made immediately effective by TAD T87–06–52, issued March 24, 1987, which contained this amendment.

Compliance Schedule: As prescribed in the body of the AD.

Incorporation by Reference: Approved by the Director of the Federal Register as of August 28, 1987.

ADDRESSES: The applicable service bulletins (SB's) may be obtained from Avco Lycoming Textron, 550 South Main Street, Stratford, Connecticut 06497.

A copy of the SB's is contained in Rules Docket Number 87–ANE–9, in the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Diane Kirk, Engine Certification Branch, ANE–142, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273–7082.

SUPPLEMENTARY INFORMATION: On March 24, 1987, TAD T87–06–52 was issued and made effective immediately as to all known U.S. owners and operators of ALF502R series turbofan engines, installed on British Aerospace BAe146 aircraft. The TAD required initial and repetitive inspections of the oil system chip detector(s) and oil filter bypass valve to ensure the integrity of the reduction gear system and

overspeed protection system. The FAA has determined that engine PT overspeed and uncontained PT blade failure can result from progressive deterioration of lubricated components in conjunction with improper operation of the oil filter bypass valve. The combined effect of these anomalies can cause a reduction gear system failure and induce generation of an inaccurate PT speed signal, thereby inhibiting the overspeed protection system. One uncontained failure of this type has occurred, resulting in substantial aircraft damage. AD action was then necessary to prevent failure of the reduction gear system and PT overspeed signal generation system.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual telegrams, issued March 24, 1987, to all known U.S. owners and operators of ALF502R series turbofan engines installed on British Aerospace BAe146 aircraft. These conditions still exist, and this AD with the alternate requirement established below is hereby published in the **Federal Register** as an amendment to § 39.13 of Part 39 in the Federal Aviation Regulations (FAR's) to make it effective as to all persons.

Additional data gathered by the FAA since issuance of TAD T87-06-52 has shown the following:

(a) Inspection results from the oil filter bypass valve spring force check required by TAD T87-06-52 indicated a high rejection rate for the valve. Oil filter bypass valves tested at Avco Lycoming Textron were rejected at a rate of 53 percent (71 out of 134 were rejected).

(b) The oil filter bypass valve spring which regulates the pressure required to open the valve lost its spring rate through increasing cyclic operation.

(c) A redesigned oil filter bypass valve which incorporates a more durable spring to meet the operational requirements of the valve is available.

As a result of the additional data, the FAA has determined that the improved oil filter bypass valve provides an alternate means to ensure the integrity of the reduction gear system and overspeed protection system. Therefore, this AD amends TAD 87-06-52 by adding an alternate requirement which replaces the oil filter bypass valve with an improved oil filter bypass and deletes the oil filter bypass valve spring force check requirement for this improved valve.

Conclusion

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule, since the rule must be issued immediately to correct an unsafe condition in the aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

A copy of it, when filed, may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT".

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD).

Avco Lycoming Textron: Applies to Avco Lycoming Textron ALF502R series turbofan engines installed on British Aerospace BAe146 aircraft.

Compliance is required as indicated, unless already accomplished.

To prevent failure of the reduction gear system and power turbine (PT) overspeed signal generation system which could result in uncontained PT blade failure and aircraft damage, accomplish the following:

(a) Visually inspect the engine chip detector(s) for metal contamination condition within the next 25 engine hours or 25 flights in service, whichever occurs first, from the effective date of this AD, in accordance with Avco Lycoming Textron Service Bulletin (SB) Number ALF 502R-72-0160, Revision 1, dated March 20, 1987, as follows, depending on engine chip detector configuration:

(1) Inspect the full flow chip detector, for engines installed with a full flow chip detector.

(2) Inspect the chip detectors located in the accessory gearbox, Number 2 bearing scavenge line, and Number 4/5 bearing scavenge line, for engines without a full flow chip detector installed.

Note.—Chip detector(s) conditions are described in Avco Lycoming Textron SB Number ALF 502R-72-0160, Revision 1, dated March 20, 1987, Figures 1, 2, and 3.

(b) Remove from service, engines inspected per paragraph (a) above, which exhibit chip detector Condition 2 or 3 in accordance with the following:

(1) Engines exhibiting chip detector Condition 3, prior to further flight.

(2) Engines exhibiting chip detector Condition 2, within 25 engine hours or 25 flights in service since last inspection, whichever occurs first.

(c) Visually reinspect engine chip detector(s) which exhibited chip detector Condition 1 or less, at intervals not to exceed 50 engine hours or 50 flights in service since last inspection, whichever occurs first, in accordance with the procedures specified in paragraph (a) above. Remove engines from service which exhibit the following conditions:

(1) Engines which exhibit chip detector Condition 2 or 3, in accordance with paragraph (b) above.

(2) Engines which have exhibited chip detector Condition 1 for 4 consecutive chip detector inspections, within 25 engine hours or 25 flights in service since last inspection, whichever occurs first.

(d) Inspect the engine oil filter bypass valve for leakage within the next 25 engine hours or 25 flights in service, whichever occurs first, from the effective date of this AD, in accordance with Avco Lycoming Textron SB Number ALF 502R-79-0162, dated March 23, 1987, or SB Number ALF 502R-79-0162, Revision 1, dated May 26, 1987. Oil filter bypass valves exhibiting leakage must be removed and replaced with a serviceable part, prior to further flight.

(e) Reinspect the oil filter bypass valve for leakage in accordance with Avco Lycoming Textron SB Number ALF 502R-79-0162, dated March 23, 1987, or SB Number ALF 502R-79-0162, Revision 1, dated May 26, 1987, as follows:

(1) Prior to further flight, whenever inspection of the engine oil chip detector(s) exhibits Condition 2 or 3. Oil filter bypass valves exhibiting leakage must be removed and replaced with a serviceable part, prior to further flight.

(2) Prior to further flight, whenever oil filter is in impending bypass (filter bypass indicator extended) and chip detector Condition 1 exists. Oil filter bypass valves exhibiting leakage must be removed and replaced with a serviceable part, prior to further flight.

(f) For oil filter bypass valve P/N 2-303-432-01, at the next shop visit of engine or oil pump assembly, accomplish the following:

(1) Conduct the oil filter bypass valve spring compression force check, in accordance with Avco Lycoming Textron SB

Number ALF 502R–79–0162, dated March 23, 1987. Oil filter bypass valves which do not comply with the spring compression force limits must be removed and replaced with serviceable parts, prior to further flight; or

(2) Remove and replace with oil filter bypass valve P/N 2–303–432–02 in accordance with ALF 502R–79–0162, Revision 1, dated May 26, 1987. Compliance with paragraph (f)(1) above is not required for oil filter bypass value P/N 2–303–432–02.

Notes.—(1) Engines removed from service, in accordance with paragraph (b) or (c) above, may be returned to service following corrective action performed in accordance with the Avco Lycoming Textron engine maintenance manual.

(2) Engine shop visit is defined as the input of an engine to a repair shop where subseqent engine maintenance entails any of the following:

(i) Separation of a major engine flange (lettered or numbered) other than flanges mating with major sections of the nacelle reverser. Separation of flanges purely for purposes of shipment, without subsequent internal maintenance, is not a "shop visit".

(ii) Removal of a disk, hub, or spool.

(iii) Removal of the fuel nozzles.

(3) Oil pump assembly shop visit is defined as the input of the subject component to a repair shop where subsequent maintenance entails any of the following:

(i) Disassembly, cleaning, flushing of the pump.

(ii) Readjustment of oil pump pressure.

Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

Upon submission of substantiating data by an owner or operator, through an FAA maintenance inspector, the Manager, Engine Certification Office, New England Region, may adjust the compliance time specified in this AD.

Avco Lycoming Textron SB Numbers ALF 502R–72–0160, Revision 1, dated March 20, 1987; ALF 502R–79–0162, dated March 23, 1987; and ALF 502R–79–0162, Revision 1, dated May 26, 1987, identified and described in this document are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies, upon request, from Avco Lycoming Textron, 550 South Main Street, Stratford, Connecticut 06497. These documents also may be examined at the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, Rules Docket Number 87–ANE–9, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Paragraphs (a), (b), (c), (d), (e), and (f)(1) become effective August 28, 1987, as to all persons except those persons to whom paragraphs (a), (b), (c), (d), (e), and (f)(1) of this amendment were made immediately effective by TAD T87–06–52, issued March 24, 1987. Paragraph (f)(2) of this amendment becomes effective August 28, 1987, as to all persons.

Issued in Burlington, Massachusetts, on July 17, 1987.

Jack A. Sain,

Acting Director, New England Region.

[FR Doc. 87–19380 Filed 8–24–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket Number 86–ANE–24; Amdt. 39–5589]

Airworthiness Directives; Rolls-Royce plc (R-R) (formerly Rolls-Royce Limited) Spey 506–14, 506–14A, 506–14D, 511–5W, 511–14, 511–14W, 511–8, 511–8/Mod. 2970, 512–14E, 512–14DW, 512–5, 512–5W, 555–15, 555–15H, 555–15N, and 555–15P Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that would require inspection for cracks, and repair or replacement as necessary, of the primary airscoops in the combustion section on certain R-R Spey turbofan engines. The AD is needed to prevent uncontained engine failure due to hot gas impingement on the combustion case inner wall and subsequent burnthrough.

DATES: Effective—September 28, 1987.

Compliance Schedule—As prescribed in the body of the AD.

NOTE.—Incorporation by Reference—Approved by the Director of the Federal Register as of September 28, 1987.

ADDRESSES: The applicable service bulletin (SB) may be obtained from the Service Manager, Spey Engine, Rolls-Royce plc, East Kilbride, Glasgow G74, 4PY, Scotland.

A copy of the SB is contained in Rules Docket Number 86–ANE–24, in the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Chung C. Hsieh, Engine Certification Branch, ANE–141, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273–7091.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations (FAR) to include a new AD requiring inspection for cracks, and repair or replacement as necessary, of the primary airscoops in the combustion section on certain R-R Spey turbofan engines was published in the **Federal Register** on December 11, 1986 (51 FR 44632). The proposal was prompted by two instances of combustor case burnthrough in service resulting from the primary airscoop failures. The failure of the primary airscoop due to cracks has resulted in burner stem (fuel nozzle) frettage, fuel leakage, and flame penetration of the engine casings and subsequent casing burnthrough. Since this condition is likely to exist or develop on other engines of the same type design, the AD requires inspection for cracks, and repair or replacement as necessary, of the primary airscoops on certain R-R spey engines in accordance with R-R SB Number SP72–997, dated October 1985.

Interested persons have been afforded the opportunity to participate in the making of this amendment, and due consideration has been given to all relevant data and comments received. Eighteen responses were received concerning the proposed rule. Following consideration of those comments, it was determined that the compliance requirements of the AD would be changed by modifying the shop visit definition note.

Discussion of Comments

One commenter requested that the inspection of the primary airscoops should not be required when the combustors are changed in the field in accordance with the R-R SB SP72–1001 even though the airscoops are accessible. The FAA agrees. It is FAA's intention to have the inspection performed in the repair shop. Such adjustment to the proposed compliance requirements would not compromise safe operation of the engine.

All commenters stated that the compliance requirements of the primary airscoop inspection schedule defined by

the shop visit note of the proposed rule was more restrictive than that required in the R-R SB SP72-697. The FAA agrees and has adjusted the definition of shop visit as described below.

Six commenters proposed that the shop visit compliance defined in the R-R SB be used. The FAA disagrees because the wording in the compliance section of the SB is not specific and subject to interpretation.

Twelve commenters requested removal of items (c) and (d) from the shop visit definition note (i.e. removal of the main gearbox and the fuel nozzle). Three of those commenters also requested that item (a) and (b) of the shop visit definition note (i.e. separation of a major engine flange and removal of a disk, hub, or spool) be modified. Four commenters were concerned about the compliance cost which would be higher than the FAA's estimate if the shop visit was as defined in the proposed AD.

The FAA has re-evaluated the engine service experience data and agrees that the compliance requirement of the proposed AD based on the shop visit definition was more restrictive than had been intended. The wording in the AD has been changed to establish a shop visit definition without compromising safe operation of the engine. Shop visit is redefined as the input of an engine to a repair shop where the subsequent engine maintenance entails the separation of front and rear flanges of the outer combustion case assembly. Since this change results in a more relaxed compliance requirement for the AD, no further notice is necessary. The estimated total cost for the AD will remain unchanged based on the revised shop visit definition.

Conclusion

The FAA has determined that this regulation involves approximately 970 Spey engines (domestic fleet) at an approximate total cost of $155,000. It has also been determined that less than one-third of the operators affected by this rule are small entities. Therefore, I certify that this action (1) is a not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT".

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [AMENDED]

2. By adding to § 39.13 the following new airworthiness directive (AD):

Rolls-Royce plc (formerly Rolls-Royce Limited): Applies to Rolls-Royce (R-R) Spey 506-14, 506-14A, 506-14D, 511-5W, 511-14, 511-14W, 511-8, 511-8/Mod. 2970, 512-14E, 512-14DW, 512-5, 512-5W, 555-15, 555-15H, 555-15N, and 555-15P turbofan engines.

Compliance is required as indicated, unless already accomplished.

To prevent failure of the primary airscoop and subsequent burnthrough of the engine case, inspect for cracks, and repair or replace as necessary, the primary airscoops in accordance with R-R Service Bulletin (SB) Number SP72-697, dated October 1985, at the next engine shop visit after the effective date of this AD.

Note.—For the purpose of this AD, engine shop visit is defined as the input of an engine to a repair shop where combustion section system overhaul facilities exist and the subsequent engine maintenance entails the separation of front and rear flanges of the outer combustion case assembly.

Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Engine Certification Office, New England Region, may adjust the compliance time specified in this AD.

R-R SB Number SP72-697, dated October 1985, identified and described in this document, is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received this document from the manufacturer may obtain copies upon request to Service Manager, Spey Engine, Rolls-Royce plc, East Kilbride, Glasgow G74 4PY, Scotland. This document may also be examined at the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, Rules Docket Number 86-ANE-24, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

This amendment becomes effective on September 28, 1987.

Issued in Burlington, Massachusetts, on July 17, 1987.

Jack A. Sain,

Acting Director, New England Region.

[FR Doc. 87-19381 Filed 8-24-87; 8:45 a.m.]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-AGL-16]

Alteration to the Marion, IL Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to alter the published description for the Marion, IL control zone. Due to the addition of a DME capability to an existing VOR facility; and, because the existing VOR facility is identified in the existing description, the published description needs modification.

EFFECTIVE DATE: 0901 UTC, November 19, 1987.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION: Docket 87-AGL-10 addressed modifying the published descriptions for Manitowoc, WI; Marion, IL; Marion, IN; and Mattoon, IL by changing the acronyms VOR to VOR/DME, but no specific effective date for charting was mentioned. Distribution of the docket was made to aviation interest groups and Airport Managers who are located in the above mentioned areas.

The purpose of this docket is to supplement information to Docket Number 87-AGL-10 for Marion, IL. The supplemental information includes an effective date and expands on the fact that the only modification being made will be to the legal description and to charting changes showing VOR/DME instead of VOR for the facility. Once an effective date has been determined for

commissioning the VOR/DME facility for Marion, IN docket action will be taken to include supplemental information for this location.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations modifies the published description for Marion, IL by changing the acronym VOR to VOR/DME.

There will be no change to the existing designated airspace area or designated altitudes for the associated control zone. The only effects will be a charting change to depict VOR/DME facility in lieu of VOR facility.

I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor amendment in which the public would not be particularly interested. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

In all instances where the acronym "VOR" appears, remove and replace with "VOR/DME" for the control zone listed below.

Marion, IL [Revised]

Issued in Des Plaines, Illinois, on August 12, 1987.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 87-19383 Filed 8-24-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-AGL-11]

Alteration to Control Zone, Muncie, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to alter the Muncie, IN, control zone by removing Reese Airport, Muncie, IN, from the control zone area and accommodating existing instrument approach procedures to the airport. The intended effect of this action is to eliminate the southeast extension of the control zone to permit traffic pattern operations at Reese Airport to be conducted clear of the control zone area.

EFFECTIVE DATE: 0901 UTC, November 19, 1987.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION:

History

On Monday, July 6, 1987, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the Muncie, IN, control zone area (52 FR 25240).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the Muncie, IN, control zone and removes Reese Airport from the area.

By adding a step down fix to the VOR RWY 32 Standard Instrument Approach Procedure (SIAP) at Delaware County-Johnson Field Airport we can eliminate the southeast extension to the control zone which eliminates Reese Airport from the area. This control zone modification will permit traffic pattern operations at Reese Airport to be conducted outside the control zone. This, in turn, will eliminate requirements for Muncie Air Traffic Control Tower to approve traffic pattern operations when the control zone is IFR with visibility between one (1) and three (3) miles, and will allow operations based on weather requirements of uncontrolled airspace below 700 feet above ground level.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, Control zones.

Adoption of The Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E. O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Muncie, IN [Revised]

Within a 5-mile radius of Delaware County-Johnson Field (lat. 40°14'31"N, long. 85°23'47"W); within 3 miles each side of the Muncie VOR/DME 014 radial, extending from the 5-mile radius zone to 8.5 miles north of the VOR/DME; and within 3 miles each side

of the Muncie VOR/DME 321 radial, extending from the 5-mile radius zone to 8.5 miles northwest of the VOR/DME. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in Des Plaines, Illinois, on August 14, 1987.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 87-19384 Filed 8-24-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-ASW-11]

Removal of Control Zone; Killeen, TX, Designation of Control Zone; Robert Gray Army Airfield (AAF), TX, Designation of Control Zone; Hood Army Airfield (AAF), TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will designate a control zone at Robert Gray AAF and designate a part-time control zone at Hood AAF. The intended effect of the amendment is to remove the Killeen, TX, control zone and define that airspace as two distinctly named control zones. The Robert Gray AAF Control Zone will encompass the Robert Gray AAF, Hood AAF, and Killeen Municipal Airports. The Hood AAF Part-time Control Zone, when in effect, will encompass the Hood AAF and Killeen Municipal Airports. This amendment is necessary to provide a more accurate, real-time, official control zone weather reporting service for the Hood AAF and Killeen Municipal Airports. Official control zone weather observations for both Hood AAF and Killeen Municipal Airports will be taken during the hours that the Hood AAF control zone is in effect by United States Air Force (USAF) personnel located at Hood AAF. This action will enhance usage of both Hood AAF and Killeen Municipal Airports. Additionally, the control zone airspace located north of Hood AAF will be established at 3 miles since the primary use of the Hood AAF Airport is by military helicopter traffic.

EFFECTIVE DATE: 0901 UTC, November 19, 1987.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch (ASW-534), Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193-0530, telephone (817) 624-5561.

SUPPLEMENTARY INFORMATION:

History

On April 16, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to remove the control zone at Killeen, TX., designate a control zone at Robert Gray AAF, TX., and designate a part-time control zone at Hood AAF, TX (52 FR 16855).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Two letters of objection were received as a result of this invitation. The city of Killeen and Central Texas College responded as follows:

- The source and type of services and weather information to be provided to pilots by Hood AAF are not clear.
- The possibility of creating a confusing situation exists when the Hood Control Zone is closed and the Gray Control Zone assumes the airspace.
- The proximity of the Hood Control Zone to Restricted Areas R-6302B, R-6302D, and a portion of R-6302E may be confusing to pilots operating in the Hood Control Zone.

Air traffic service being provided to pilots using the Killeen Municipal Airport will still originate from Gray Approach Control. There will be no change in the air traffic procedures used, whether the Hood Control Zone is in effect or not. However, the official control zone weather for the Killeen Municipal Airport will now come from Hood AAF, thus enhancing the use of the Killeen Municipal Airport by providing more accurate/real-time weather.

The relationship between the new Hood Control Zone and the restricted areas located north of Hood AAF will be the same as the relationship which now exists between the present control zone and the restricted areas. The proximity of the new Hood Control Zone to these restricted areas will, in fact, be less than the present control zone.

Except for editorial changes, this amendment is that proposed in the notice. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations establishes control zones at the Robert Gray AAF and Hood AAF Airports, and removes the control zone at Killeen, TX. The Hood Control Zone will encompass the Killeen Municipal Airport with no reduction in airspace. The control zone airspace located north of Hood AAF will be established at 3 miles since the primary use of the airport is by military helicopter traffic.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Ex. O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Killeen, TX [Removed]

Robert Gray Army Airfield (AAF), TX [New]

Within a 5-mile radius of Robert Gray AAF (Lat. 31°04'04" N., Long. 97°49'45" W.); within 1.5 miles each side of the north localizer course extending from the 5-mile radius area to 7 miles north of the airfield; within 2 miles each of the 160° bearing from the Robert Gray AAF extending from the 5-mile radius area to 11 miles south of the airport; within a 3-mile radius of the Hood AAF (Lat. 31°8'13" N., Long. 97°42'49" W.); within a 5-mile radius of the Killeen Municipal Airport (Lat. 31°05'09" N., Long. 97°41'10" W.), excluding the portion within the Hood AAF, TX Control Zone when it is effective.

Hood Army Airfield (AAF), TX [New]

Within a 3-mile radius of the Hood AAF (Lat. 31°06'13" N., Long. 97°42'49" W.) and within a 5-mile radius of the Killeen Municipal Airport (Lat. 31°05'09" N., Long. 97°41'10" W.); excluding the portion subtended by a chord drawn between the

points of intersection of the 5-mile radius of the Hood AAF and the 6-mile radius of the Robert Gray AAF, TX, Control Zones south to the intersection of the 5-mile radius of the Killeen Municipal Airport and the 5-mile radius of the Robert Gray AAF Control Zones. This control zone is effective 2300, local time, Sunday to 0700, local time, Saturday and other times by notice to airmen.

Issued in Forth Worth, TX, on August 4, 1987.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 87-19362 Filed 8-24-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-AGL-9]

Alteration to the Hamilton, OH Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to alter the Hamilton, OH, transition area to accommodate a new NDB-A Standard Instrument Approach Procedure (SIAP) to Hamilton-Fairfield Airport, Hamilton, OH. The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

EFFECTIVE DATE: 0901 UTC, November 19, 1987.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION:

History

On Friday, June 26, 1987, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the Hamilton, OH, transition area (52 FR 24017).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the Hamilton, OH, transition area to accommodate aircraft utilizing a new NDB-A SIAP to Hamilton-Fairfield Airport, Hamilton, OH.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Hamilton, OH [Revised]

That airspace extending upward from 700 feet above the surface within a 6.5 mile radius of the Hamilton-Fairfield Airport (lat. 39°22'00"N.; long. 84°32'00"W), within 3.25 miles either side of the 283° bearing from the Hamilton NDB, extending from the 6.5 mile radius area to 11.5 miles west; excluding the portions within the Cincinnati, OH and Middletown, OH transition areas.

Issued in Des Plaines, Illinois, on August 14, 1987.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 87-19385 Filed 8-24-87; 8:45 am]

BILLING CODE 4910-13-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1201

Statement of Organization and General Information

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: NASA is amending 14 CFR Part 1201, "Statement of Organization and General Information," to reflect the current organizational structure, including the Inspector General responsibilities. This regulation sets forth NASA's policy and functions as established by the National Aeronautics and Space Act of 1958, as amended.

EFFECTIVE DATE: August 25, 1987.

ADDRESS: Personnel and General Management, Code NPN-1, NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Margaret M. Herring, 202-453-2922.

SUPPLEMENTARY INFORMATION: NASA is revising § 1201.200 to correct NASA's organizational structure and to set forth the Inspector General responsibilities and guidance for reporting fraud, waste, and mismanagement. Paragraphs (a)(3) and (c)(3) of § 1201.300 are revised to delete reference to the Index/Digest of Decisions and to indicate where the decisions of the Board of Contract Appeals and the Inventions and Contributions Board are maintained. Added as § 1201.402(b) is the NASA-developed computer software contact, COSMIC. This has caused the renumbering of preceding paragraphs in § 1201.402

This regulation does not constitute a major rule for the purposes of Executive Order 12291 and it will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 1201

Organization and functions (Government agencies).

For reasons set forth in the Preamble, 14 CFR Part 1201 is amended as follows:

PART 1201—[AMENDED]

1. The authority citation for 14 CFR Part 1201 continues to read as follows:

Authority: 5 U.S.C. 552, as amended.

2. Section § 1201.200 is revised to read as follows:

§ 1201.200 General.

(a) Responsibility for overall planning, coordination, and control of NASA programs is vested in NASA Headquarters located in Washington, DC. NASA Headquarters is comprised of:

(1) The Office of the Administrator which includes the Administrator, Deputy Administrator, Associate Deputy Administrator (Policy), Associate Deputy Administrator (Institution), Assistant Deputy Administrator, and the Executive Officer;

(2) Five Program Offices which are responsible for planning and directing agencywide research and development programs, and management and administrative processes;

(3) Fourteen Headquarters Offices which provide agencywide leadership in certain administrative and specialized areas.

All of these offices report directly to the Administrator.

(b) Directors of NASA Field Installations and other component installations are responsible for execution of NASA's programs, largely through contracts with research, development, and manufacturing enterprises. Certain types of research and development activities are conducted at NASA field installations and other component installations by Government-employed scientists, engineers, and technicians. NASA's basic organization consists of the Headquarters, eight field installations, the Jet Propulsion Laboratory (a Government-owned, contractor-operated facility), and several component installations which report to Directors of Field Installations. NASA's eight field installations have different and broad capabilities. Although these field installations have a primary program responsibility to the program office to which they report, they also conduct work for the other program offices (NASA Management Instruction 1101.2).

(c) The NASA field installations are as follows:

(1) Ames Research Center, Moffett Field, CA 94035.

(2) Goddard Space Flight Center, Greenbelt, MD 20771.

(3) John F. Kennedy Space Center, Kennedy Space Center, FL 32899.

(4) Langley Research Center, Langley Station, Hampton, VA 23665.

(5) Lewis Research Center, Cleveland, OH 44135.

(6) Lyndon B. Johnson Space Center, Houston, TX 77058.

(7) George C. Marshall Space Flight Center, Marshall Space Flight Center, AL 35812.

(8) National Space Technology Laboratories, NSTL Station, MS 39520.

(d) The NASA Office of Inspector General is established pursuant to Act of Congress, Pub. L. 95–452, as amended, 5 U.S.C. App. III. The Inspector General is appointed by the President, by and with the advice and consent of the Senate, without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations. The Inspector General appoints an Assistant Inspector General for Auditing, who is responsible for supervising the performance of auditing activities relating to NASA's programs and operations, and an Assistant Inspector General for Investigations, who is responsible for supervising the performance of NASA's investigative activities. It is the duty and responsibility of the Inspector General to provide policy direction, to conduct, supervise and coordiante audits and investigations related to NASA's programs and operations in order to promote economy and efficiency, and to prevent and detect fraud and abuse in these programs and operations. The Inspector General must report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law. The Inspector General is responsible for keeping the Administrator and Congress fully and currently informed, by reports concerning fraud and other serious problems, abuses, and deficiencies related to NASA's programs and operations, for recommending corrective actions, and for reporting on the progress in implementing such corrective actions. The Inspector General reports to the Administrator, but neither the Administrator nor the Deputy Administrator can prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena under authority of the Inspector General Act. In carrying out these responsibilities the Inspector General shall comply with standards established by the Comptroller General of the United States for audits of governmental organizations, programs, activities, and functions. The Inspector General reports to Congress on a semiannual basis, summarizing the activities of the office. These reports are available to the public upon request within 60 days of their transmission to the Congress. Anyone wishing to report instances of fraud, waste, or mismanagement in NASA's programs and operations, can call the Inspector General Hotline at 755–3402 in the Washington, DC area or toll free (800) 424–9183 for all other areas. The office maintains a 24-hour answering service. Identities of complainants can be kept confidential. Written complaints can be sent to the NASA Inspector General, P.O. Box 23089, L'Enfant Plaza Station, Washingotn, DC 20026.

(e) For more detailed description of the organization and functions of the Headquarters and field installations, see the "U.S. Government Manual."

3. Section 1201.300 paragraphs (a)(3) and (c)(3) are revised to read as follows:

§ 1201.300 [Amended]

* * * * *

(a) * * *

(3) The texts of decisions of the Board are published by Commerce Clearing House, Inc., in Board of Contract Appeals Decisions, and are hereby incorporated by reference. All decisions and orders are available for inspection and for purchase from the Recorder of the Board of NASA Headquarters, Washington, DC. Decisions and orders issued after July 4, 1967 are available for inspection and for purchase at NASA Information Centers.

* * * * *

(c) * * *

(3) The decisions of the Board on requests for waiver are available for inspection at NASA Headquarters, Office of Inventions and Contributions Board.

4. Section 1201.402 is revised to read as follows:

§ 1201.402 NASA Industrial Applications Centers.

(a) As part of its Technology Utilization Program—a program designed to transfer new aerospace knowledge and innovative technology to nonaerospace sectors of the economy—NASA operates a network of Industrial Applications Centers. These centers serve U.S. industrial clients on a fee paying basis by providing access to literally millions of scientific and technical documents published by NASA and by other research and development organizations. Using computers, the NASA Industrial

Applications Centers conduct retrospective and current awareness searches of available literature in accordance with client interests and assist in interpretation and adaption of retrieved information to specified needs. Such services may be obtained by contacting one of the following:

(1) Aerospace Research Applications Center (ARAC), Indianapolis Center for Advanced Research, 611 N. Capital Avenue, Indianapolis, IN 46204.

(2) NASA Florida State Technology Applications Center, State University System of Florida, 307 Weil Hall, Gainesville, FL 32611.

(3) NASA/UK Technology Applications Program, University of Kentucky, 109 Kinkead Hall, Lexington, KY 40506–0057.

(4) NASA Industrial Applications Center, 823 William Pitt Union, University of Pittsburgh, Pittsburgh, PA 15260.

(5) New England Research Application Center (NERAC), Mansfield Professional Park, Storrs, CT 06268.

(6) North Carolina Science and Technology Research Center (NC/STRC), P.O. Box 12235, Research Triangle Park, NC 27709.

(7) Technology Application Center (TAC), University of New Mexico, Albuquerque, NM 87131.

(8) Kerr Industrial Applications Center (KIAC), Southeastern Oklahoma State University, Station A, Box 2584, Durant, OK 74701.

(9) NASA Industrial Applications Center (WESRAC), University of Southern California, Research Annex, 3716 South Hope Street, Room 200, Los Angeles, CA 90007.

(b) To obtain access to NASA-developed computer software, contact: Computer Software Management and Information Center (COSMIC), University of Georgia, Athens, GA 30602.

James C. Fletcher,

Administrator.

[FR Doc. 87–19285 Filed 8–24–87; 8:45 am]

BILLING CODE 7510-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Dkt. C–3212]

C&D Electronics, Inc., et al; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, a Jenison, Mich. manufacturer and marketer of cable television decoders to cease selling or distributing the decoders to any unauthorized purchasers. Additionally, respondents are required to cease representing that: (1) Consumers can lawfully own or use decoders; (2) the use of decoders is legal without authorization from a cable company; or (3) ownership or use of a cable decoder is similar to the ownership or use of a telephone. Further, respondents are required to make an affirmative disclosure with the sale of any of their cable television decoders.

DATE: Complaint and Order issued March 6, 1987.[1]

FOR FURTHER INFORMATION CONTACT: Alan E. Krause, Esq., Chicago, Regional Office, Federal Trade Commission, 55 East Monroe St., Suite 1437, Chicago, IL 60603, (312) 353–4423.

SUPPLEMENTARY INFORMATION: On Wednesday, February 26, 1986, there was published in the **Federal Register**, 51 FR 6745, a proposed consent agreement with analysis In the Matter of C&D Electronics, Inc., a corporation, and David Barwacz and Larry Bostelaar, individually and as officers of the corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: Section 13:10 Advertising falsely or misleadingly; § 13.235–50 Maker or seller, etc. Subpart—Aiding, Assisting, and Abetting Unfair or Unlawful Act or Practice: § 13.290 Aiding, assisting, and abetting unfair or unlawful act or practice. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533–20 Disclosures. Subpart—Misrepresenting Oneself & Goods-Goods: § 13.1745–60 Maker or seller.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

List of Subjects in 16 CFR Part 13

Cable television decoders, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 87–19409 Filed 8–24–87; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 154

[Docket No. RM85–71–040, 041; Order No. 380–F]

Elimination of Variable Costs From Certain Natural Gas Pipeline Minimum Commodity Bill Provisions

Issued August 19, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order denying rehearing and clarifying Order No. 380–E.

SUMMARY: On rehearing of Order No. 380–E (51 FR 23530; June 30, 1986), 35 FERC ¶ 61,384 (1986), the Federal Energy Regulatory Commission (Commission) denies the requests for rehearing of Midwestern Gas Transmission Company and Indiana Gas Company, Inc. (Indiana Gas). The Commission also clarifies that Order No. 380–E did not prejudge factual issues in pending litigation respecting whether certain costs are fixed or variable costs for purposes of the Commission's rule, § 154.111, eliminating variable costs from interstate pipeline minimum commodity bill tariff provisions, 18 CFR 154.111 (1987). Order No. 380–E explained and affirmed the Commission's interpretation that § 154.111 bars a "downstream pipeline" (one that purchases natural gas from another, *i.e.*, "upstream", pipeline) from using its own minimum commodity bill to pass through the cost of minimum commodity bill charges it pays to its upstream pipeline supplier.

DATE: This order was issued on August 19, 1987.

FOR FURTHER INFORMATION CONTACT: Scott E. Koves, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, (202) 357–8492.

BEST COPY AVAILABLE

SUPPLEMENTARY INFORMATION:

Before Commissioners Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

Order Denying Rehearing and Clarifying Order No. 380–E

In Order No. 380–E,[1] on remand from the Court of Appeals' decision in *Wisconsin Gas Co.* v. *FERC* (Wisconsin Gas),[2] the Federal Energy Regulatory Commission (Commission) explained the reasons for its policy of requiring a "downstream pipeline" to pass through "upstream pipeline" minimum commodity bill charges in the downstream pipeline's purchased gas adjustment (PGA). In so doing, the Commission upheld the position underlying Order No. 380–A[3] that section 154.111 of its regulations (which was promulgated by Order No. 380) [4] bars downstream pipelines from using their own minimum commodity bill tariff provisions to pass through such upstream pipeline minimum commodity bill charges. Midwestern Gas Transmission Company (Midwestern), a downstream pipeline, and Indiana Gas Company, Inc. (Indiana Gas), a customer of a downstream pipeline, each filed requests for rehearing of Order No. 380–E. As discussed below, we shall deny rehearing but shall also clarify Order No. 380–E.

Background

Order No. 380 promulgated § 154.111 which, in paragraph (a)(2), provides:

> No rate schedule or tariff governing the sale of natural gas and filed on or after July 31, 1984 may provide for recovery of variable costs associated with gas not taken by the buyer.[5]

Under the Commission's own definitions, variable costs (which are barred from minimum commodity bill pass through) are those costs that vary with the pipeline's throughput; fixed costs do not vary with throughput. In response to Order No. 380, Midwestern requested that the Commission clarify that only the variable cost portion of the upstream commodity charge would be considered variable for purposes of the downstream pipeline's own commodity charges. Midwestern sought to begin passing through its upstream pipeline supplier's fixed cost minimum commodity bill charges in its own minimum commodity bills. In Order No. 380–A, the Commission rejected the requested clarification on the basis that such upstream commodity charges are variable costs of gas that are barred from minimum commodity bills by section 154.111. The Commission clarified that Midwestern and other downstream pipelines are guaranteed recovery of such charges in their PGA's.

Following an appeal by Midwestern and a remand by the Court in *Wisconsin Gas* to address certain questions posed by the Court, the Commission issued Order No. 380–E. There the Commission addressed the Court's questions, explained the Commission's previous orders, and stood by its earlier interpretation of section 154.111 and its PGA passthrough policy.

In Order No. 380–E the Commission focused on the nature of the minimum commodity bill charges to Midwestern and found that because they vary with the amount of gas Midwestern buys, they were, by the Commission's long-standing definition, "variable costs." Accordingly, the Commission held that § 154.111 applies to such charges and bars their passthrough in the downstream pipeline's minimum commodity bill.

In the meantime, following issuance of Order No. 380–E, the Commission issued Opinion No. 249 [6] which, among things, found Tennessee's minimum commodity bill to be unjust and unreasonable and ordered it removed. We have denied rehearing on this issue in Opinion No. 249–A. However, because that Opinion is not final as it is subject to judicial appeal, we will address Midwestern's request for rehearing filed before Opinion No. 249 issued.

Midwestern's Request for Rehearing

Upon review of Midwestern's request for rehearing of Order No. 380–E, we find that, for the most part, Midwestern simply has repeated arguments previously addressed in detail and rejected by that order. It does, however, add a few new arguments that we will address.

Midwestern restates its claim that because the upstream pipeline's fixed cost minimum commodity bill recovers only fixed costs, they are not purchased gas costs "in" the upstream pipeline's rates and therefore should not be treated as purchased gas costs in the downstream pipeline's rates. As we observed in Order No. 380–E, this ignores the fact that these costs are commodity purchased gas costs *to* Midwestern. Further, this type of argument completely misses the mark. The issue is: do the upstream charges vary with the amount of gas that the downstream pipeline buys? The answer clearly is yes. The more gas Midwestern buys (up to its minimum bill level), the less of a minimum commodity bill charge it pays, and vice versa. That is a variable cost to Midwestern and covered by § 154.111.[7]

Midwestern reiterates its claims that PGA passthrough, as opposed to minimum commodity bill passthrough of such upstream charges violates the Commission's "as-billed" principle of *Northwest Alaskan Pipeline Co.*, 11 FERC ¶ 61,088 at 61,182–3 (1980). It asserts, without further explanation, that the Commission has ignored the difference between what it calls "simple" upstream commodity charges and upstream minimum commodity bills. We previously explained in Order No. 380–E that, as variable commodity gas costs, PGA treatment of upstream pipeline minimum commodity bill charges is fully consistent with the as-billed principle. Midwestern's unexplained distinction of minimum commodity bill charges from "simple" commodity charges is not persuasive and is rejected.

Midwestern reiterates its previously rejected claim that the Commission's PGA passthrough policy causes an inequitable allocation of upstream minimum commodity bill costs to those customers who take the most gas, instead of to those who reduce their purchases by swinging off the system. However, it now argues that Order No. 380–E was flawed because it required "mathematical precision" to show a nexus between the actions of a downstream pipeline's customers and its own incurrence of upstream pipeline minimum commodity bill charges.

We disagree. What the Commission demonstrated in Order No. 380–E was that there is no *per se* connection between a given reduction in takes by any given customer and the incurrence of upstream minimum commodity bill charges. The Commission thus rejected what Midwestern superficially

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[1] 35 FERC ¶ 61,384 (1986).

[2] 770 F.2d 1144 (D.C. Cir. 1985).

[3] FERC Stat. & Reg. [Reg. Preambles 1982–1985] ¶ 30,584 at 31,043 (1985).

[4] FERC Stat. & Reg. [Reg. Preambles 1982–1985] ¶ 30,571 [1984].

[5] 18 CFR 154.111 (1987).

[6] Tennessee Gas Pipeline Co., a Division of Tenneco, Inc., 36 FERC ¶ 61,071 (1986), *reh'g denied* Opinion No. 249–A, 40 FERC ¶ 61,141 (1987).

[7] Midwestern agrees that such costs vary with the quantity of gas purchased. However, because the variance is inverse to the quantity purchased, instead of direct, it argues that these charges turn into "fixed" costs. We disagree. A variance is nonetheless a variance whether inverse or direct. We note that Midwestern's own FERC Gas Tariff, First Revised Volume No. 1 at Substitute First Revised Sheet No. 21 (effective January 1, 1986) expresses its rate schedule minimum commodity rates on a cents per dth basis. For example, the CD–1 minimum commodity bill rate is 17.42 cents per dth which is multiplied by the difference between the dekatherms that buyer actually took in a given month and the lesser of two minimum quantity limitations.

presented as an attempt to protect its small volume customers. The Commission observed that Midwestern's proposal actually could result in a disproportionate burden on its minimum-billed customers. The Commission concluded by noting that if inequities arise in an individual case, customers who believe they are harmed may raise specific claims in the downstream pipeline's next PGA or section 4 rate case or may initiate a separate complaint proceeding. Midwestern has offered no reason why that protection to its customers is insufficient.

Finally, Midwestern attempts to rebut the Commission's observation in Order No. 380–E that, if these upstream charges are fixed costs, then they could not be "caused" by a downstream pipeline customer's failure to take gas since, by definition, fixed costs do not vary with throughput. Midwestern now concedes that the upstream pipeline's *fixed costs* were not caused by any downstream pipeline customer's act of failing to take gas. However, Midwestern contends that fact misses the point, *i.e.*, that upstream minimum commodity bill *charges* are caused by such a failure to take and so should be allocated to customers that fail to take gas. Not only, as discussed above, is there no basis for Midwestern's claimed causation, but also the claim is wholly inconsistent with Midwestern's basic position. Midwestern's entire case for minimum commodity bill recovery (rather than PGA recovery) of such charges has been premised on its argument that the costs at issue (upstream pipeline minimum commodity charges) are fixed, not variable, costs *to Midwestern*. Midwestern cannot simultaneously claim that upstream minimum bill charges are: (a) Fixed costs eligible for pass through in its own commodity bill and (b) variable costs that are caused by (and can be allocated to) customers who fail to take Midwestern's gas.

Indiana Gas' Request for Rehearing

Indiana Gas' principal contention on rehearing is that Order No. 380–E prejudges issues concerning the types of costs that are "fixed costs" and how they should be recovered which were fully litigated in *Panhandle Eastern Pipe Line Company (Panhandle)*, Docket No. RP82–58–000. Indiana Gas argues that this alleged prejudgment conflicts with Order Nos. 380 and 380–B [8] as these issues were to be resolved on a case-by-case basis. It asks us to modify Order No. 380–E to clarify that "the types of fixed costs and the manner in which upstream pipeline fixed costs are to be treated in the downstream purchasing pipeline's rates are to be considered in individual rate cases." [9]

We generally concur that questions of whether a particular cost is or is not a variable cost and whether PGA recovery will cause inequities are factual questions that should be considered in individual rate cases. Further, our general conclusion that minimum commodity bills are variable costs was premised on the assumption that, like Midwestern's minimum commodity bill, minimum commodity bills in general are variable costs to the entity that pays them. However, any litigant is free to show that a given charge is not incurred by the purchaser as a variable cost. The definitional test is quite simple and straight forward: if the charge varies with the purchaser's throughput, then it is a variable cost, if not, then it is a fixed cost. Indiana Gas has had the opportunity in *Panhandle* to argue that the types of upstream costs involved there were fixed costs.[10]

E and argues that the Commission ignored substantial record evidence in the rulemaking docket that quantified "the substantial fixed costs that would inevitably be shifted to Panhandle's full-requirements customers if the Commission were to allow fixed costs of the downstream pipeline to be treated as variable and recovered through the pipeline's PGA clause."[11] It asserts that this evidence is contained in an affidavit attached to its application for rehearing of Order No. 380–A.

The Commission has not ignored Indiana Gas' Order No. 380–A rehearing request or the affidavit attached to it; we just disagree that it is persuasive. In Order No. 380–B, the Commission addressed Indiana Gas' allegation that partial requirements customers could evade "their fixed cost responsibility" by simply discontinuing their gas purchases. The result, Indiana Gas asserted, would be that the partial requirements customers would avoid "paying" the fixed costs embedded in the upstream minimum commodity bills and that such costs would be shifted to full requirements customers. The Commission responded by noting that Indiana Gas could raise such cost shifting issues in its pipeline supplier's next PGA or section 4 rate proceeding. The Commission did not attempt to decide that factual issue based on the affidavit attached to Indiana Gas' rehearing request.[12] We will not do so here either, inasmuch as the proper forum to address its claims was the section 4 *Panhandle* proceeding in Docket No. RP82–58–011, *et al.*, in which it had the opportunity to make its case for minimum bill passthrough. In our rehearing order issued today in that proceeding we considered Indiana Gas' arguments and evidence and found them to be unpersuasive.

Indiana Gas makes a number of other arguments that warrant a brief response. It argues that the Commission has focused on the labels of costs (as demand or commodity) rather than on their nature (as fixed or variable). That claim is incorrect. Order No. 380–E is replete with references to the variable nature of these costs *to* the downstream pipeline. Indiana Gas, like Midwestern, focuses on how the cost is incurred by the upstream pipeline (as a fixed cost) instead of on how the billing to and payment by the downstream pipeline are accomplished (as a variable charge). It is the latter variable charge that is at issue, not the former.

Indiana Gas also argues that Order No. 380–E is arbitrary, capricious and an abuse of discretion because it precludes recovery of Trunkline LNG Company's (TLC) minimum bill costs (which the Commission has previously determined to be fixed costs) in downstream pipeline minimum bills. In Order No. 380–A, the Commission stated that TLC's situation was an unusual one insofar as its certificate for its LNG facilities included special authorization to treat its Algerian LNG supplier's minimum bills as fixed costs so as to not jeopardize debt service for TLC's LNG import project in the event of supply interruptions.[13] That special circumstance does not constitute any form of general rule that upstream supplier minimum commodity bills are fixed costs to the downstream pipeline that pays them.

Finally, with respect to its arguments regarding TLC, Indiana Gas asserts that it was an error if the Commission intended in Order No. 380–E to pretermit any consideration in individual rate

[8] 29 FERC ¶ 61,076 (1984).

[9] Indiana Gas Request for Rehearing at 14.

[10] In a companion order in Opinion No. 265–A, *Panhandle Eastern Pipe Line Co.*, Docket No. RP82–58–011–017, —— FERC ¶ —— (1987), we denied rehearing of Opinion No. 265 which affirmed the presiding administrative law judge's finding that eight types of costs cited by Indiana Gas were variable gas costs. 38 FERC ¶ 61,164 (1987).

[11] Indiana Gas Request for Rehearing at 10.

[12] We note that Indiana Gas did not appeal Order No. 380–E.

[13] FERC Stat. & Reg. [Reg. Preambles 1982–1985] ¶ 30,584 at 31,082–83 (1984).

cases of "the downstream pipeline's partial requirements customer's responsibility for shouldering any of the downstream pipeline's minimum bill payments to the upstream pipeline." That was not our intent and, indeed, is contrary to our policy expressed in Order Nos. 380–A and 380–E that all customers should bear responsibility for such variable charges in accordance with the amount of gas that they buy from the downstream pipeline. As we emphasized earlier in this order and in Order Nos. 380–B and 380–E, the issue of cost responsibility can be raised in a PGA or section 4 proceeding.

For the reasons set forth above and in Order No. 380–E, the Commission finds that Midwestern and Indiana Gas have raised no new facts or principles of law that warrant a modification of Order No. 380–E. To the extent not specifically discussed herein, all other arguments are rejected.

The Commission orders:

Except to the extent clarified above, the requests for rehearing of Order No. 380–E are denied.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–19421 Filed 8–24–87; 8:45 am]

BILLING CODE 6717–01–M

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18 CFR Part 389

[Docket No. RM87–31–000 et al; Order No. 479]

Procedures for Determining High-Cost Natural Gas Produced From Tight Formations

August 20, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; notice of OMB Control Number.

SUMMARY: On July 29, 1987, the Federal Energy Regulatory Commission issued a final rule (Order No. 479) in Docket No. RM87–31–000, 52 FR 29,003 (Aug. 5, 1987), changing the procedures for qualifying gas as high cost natural gas produced from tight formations eligible for incentive prices pursuant to section 107(c)(5) of the Natural Gas Policy Act of 1978. The information collection provisions in the rule were submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act. OMB has provided an OMB control number.

EFFECTIVE DATE: August 20, 1987.

FOR FURTHER INFORMATION CONTACT: Julia Lake White, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357–8530.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act, 44 U.S.C. 3501–3520 (1982), and the Office of Management and Budget's (OMB) regulations, 5 CFR Part 1320 (1987) require that OMB approve information collection requirements imposed by agency rule. OMB has approved the information collection requirements of the tight formation designation procedures in Order No. 479. OMB issued Control Number 1902–0112 for § 271.703(c) of the Commission's regulations. The control number is effective August 20, 1987.

Accordingly, Part 389, Chapter I, Title 18, Code of Federal Regulations is amended as set forth below.

Kenneth F. Plumb,

Secretary.

List of Subjects in 18 CFR Part 389

Reporting and recordkeeping requirements.

PART 389—OMB CONTROL NUMBERS FOR COMMISSION INFORMATION COLLECTION REQUIRMENTS

1. The authority citation for Part 389 continues to read as follows:

Authority: Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) (1982).

§ 389.101 [Amended]

2. The table of OMB control numbers in § 389.101(b) is amended by inserting "271.703(c)" in numerical order in the "section" column and "0112" in the corresponding position in the "OMB control number" column.

[FR Doc. 87–19420 Filed 8–24–87; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 74

[Docket No. 86C–0192]

Confirmation of Effective Date for FD&C Yellow No. 6

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of July 9, 1987, for the final rule that amended the color additive regulations to modify the manufacturing process for FD&C yellow No. 6.

EFFECTIVE DATE: Effective date confirmed: July 9, 1987.

FOR FURTHER INFORMATION CONTACT: Blondell Anderson, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In the Federal Register of June 8, 1987 (52 FR 21505), FDA amended § 74.706(a)(1) (21 CFR 74.706(a)(1)) to provide for the use of sulfuric acid in the diazotization step of the manufacturing process for FD&C Yellow No. 6.

FDA gave interested persons until July 8, 1987, to file objections or requests for a hearing on this amendment. The agency received no objections or requests for a hearing. Therefore, FDA concludes that the final rule published in the Federal Register of June 8, 1987, should be confirmed.

List of Subjects in 21 CFR Part 74

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701, 706, 52 Stat. 1055–1058 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376)) and under authority delegated to the Commissioner of Food and Drug (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the June 8, 1987, final rule. Accordingly, the amendment promulgated thereby become effective July 9, 1987.

Dated: August 19, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87–19395 Filed 8–24–87; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 207 and 255

[Docket No. R–87–1390; FR–2224]

Section 223(f) Mortgage Insurance; Inspection Fees for Repairs

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule revises current regulations governing the section 223(f) mortgage insurance programs to authorize the charging of an inspection fee where the application for mortgage insurance (or coinsurance) covering an existing multifamily project involves the carrying out of repairs and improvements.

EFFECTIVE DATE: October 12, 1987.

FOR FURTHER INFORMATION CONTACT: James Hamernick, Director, Office of Insured Multifamily Housing Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 755-6500. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The current regulation for the full insurance of existing multifamily projects pursuant to section 223(f) expressly states that "No inspection fee will be required" in connection with the transaction (*see* 24 CFR 207.32a(a)(4)). Under similar Part 255 coinsurance, there is a provision in the current regulation authorizing the coinsuring lender to collect an inspection fee "if applicable" (*see* 24 CFR 255.206(a)). To date, HUD has limited the charging of inspection fees in coinsurance to cases where the project is also receiving assistance under the Rental Rehabilitation (24 CFR Part 511) or Housing Development Grant (24 CFR Part 850) program. This rule revises both § 207.32a(a)(4) and § 255.206(a) to permit, in cases where an application provides for the completion of repairs and improvements, an inspection fee to be charged by the FHA Commissioner (or, in the case of the coinsurance rule, by the lender). The fee for projects involving repairs may be up to one percent of the cost of repairs and improvements.

This revision is needed if the section 223(f) programs are to be effectively administered. Under both the full insurance and the coinsurance programs, allowable repairs are for up to $6500 per unit (adjusted by any high-cost factor for the area), and if the project is assisted under the Part 511 Rental Rehabilitation or the Part 850 Housing Development Grant program, allowable costs may go up to $25,000 per dwelling unit. Program experience has demonstrated that most section 223(f) projects involve repairs and inprovements and that a uniform procedure for inspection of these repairs is essential.

On October 8, 1986, the Department published a proposed rule in the **Federal Register** (51 FR 36021) revising the section 223(f) mortgage insurance program regulations to authorize the charging of an inspection fee where the application for mortgage insurance (or coinsurance) involves repairs and improvements. The rule proposed a two-tier fee structure to cover inspection costs, with repair and improvement costs of $3000 serving as the dividing point.

Four public comments were received. Three comments were favorable, with one also providing specific recommendations for improving the rule. The fourth commenter objected to the inspection fee, contending that charging an inspection fee would have an adverse impact on the Federal budget. We disagree, since we believe that the charging of inspection fees will lessen budgetary impact. The Department must use staff to make necessary inspections and is justified in charging the mortgagor for this service. In the case of coinsured projects, the coinsuring lender must see to the performance of the inspection and should be compensated. Inspection fees have consistently been charged under HUD's other multifamily mortgage insurance programs.

Of the three favorable comments, one commenter specifically recommended that the fee apply only to repair not completed at the time of endorsement. We do not agree with this suggestion. It would not provide compensation for inspections before endorsement, and providing adequate compensation for inspections is a primary reason for this regulation change.

The same commenter suggested that a single one percent fee structure would be simpler than the proposed two-tier system, and would facilitate bookkeeping. The proposed rule's two-tier structure was based on the cost of repairs; *i.e.*, a fee of one percent of the repair cost for repairs over $3000 per unit, and a flat fee of $30 per unit in cases where the cost of repairs was under $3000 per unit. The flat rate ($30 per unit for repairs under $3000 per unit) was intended to ensure a minimal fee amount for cases where the cost of repairs was so minor that the one percent factor would not cover the actual costs of inspection. The higher one percent fee would apply where repairs are extensive, inspection visits more frequent, and more complex repair items are usually involved. While a single, one percent fee structure would be more simple to administer, we believe the two tier structure proposed is more equitable in that it reflects more accurately actual inspection costs. This final rule therefore, retains the two tier structure as it was originally set forth in the proposed rule.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The inspection fee is reasonably related to the cost of inspection services and, for small projects, the fee is very modest. Similar fees, charged in other FHA multifamily programs, have not been a burden on small entities.

This rule was listed under the Office of Housing, item H-20-86 (sequence number 960) in the Department's Semiannual Agenda of Regulations published on April 27, 1987 (52 FR 14362, 14387) under Executive Order 12291 and the Regulatory Flexibility Act.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 1229 on Federal Regulation issued by the President on February 17, 1981. Analysis of the proposed rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The catalog of Federal Domestic Assistance program numbers are 14.135 and 14.173.

List of Subjects

24 CFR Part 207

Mortgage insurance, Rental housing.

24 CFR Part 255

Mortgage insurance, Coinsurance of multifamily mortgages.

Accordingly, 24 CFR Parts 207 and 255 are amended as follows:

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

1. The authority citation for Part 207 continues to read as follows:

Authority: Secs. 207, 211, National Housing Act, (12 U.S.C. 1713, 1715b); sec. 7(d), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)).

2. Section 207.32a(a)(4) is revised to read as follows:

§ 207.32a Eligibility of mortgages on existing projects.

* * * * *

(4) *Inspection fee.* Where an application provides for the completion of repairs and improvements, an inspection fee may be charged by the Commission. A fee of $30 per dwelling unit will be charged where the project involves repairs of $3000 or less per unit. The fee for projects involving repairs in excess of $3000 per dwelling unit may not exceed one percent of the cost of the repairs.

* * * * *

PART 255—COINSURANCE FOR THE PURCHASE OR REFINANCING OR FINANCING OF EXISTING MULTIFAMILY HOUSING PROJECTS

3. The authority citation for Part 255 continues to read as follows:

Authority: Secs. 211, 244, National Housing Act, 12 U.S.C. 1715b, 1715z(9); sec. 7(d), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)).

4. Paragraph (a) of § 255.206 is revised to read as follows:

§ 255.206 Lender's fees and premium.

(a) The lender may collect from the Mortgagor, and include in the Mortgage, an application fee, financing fee, permanent placement fee, and where an application provides for the completion of repair and improvements, an inspection fee. These fees may not exceed maximums approved by the Commissioner. In the case of inspection fees, a fee of up to $30 per dwelling unit may be charged where the project involves repairs of $3000 or less per unit. The fee for projects involving repairs in excess of $3000 per dwelling unit may not exceed one percent of the cost of repairs. The lender may collect other reasonable fees approved by the Commissioner that are paid from sources other than Mortgage proceeds and are disclosed at endorsement. In no event will the fees allowed under this paragraph be permitted to exceed comparable fees allowed in the full insurance program under § 207.32a of this chapter.

* * * * *

Date: August 20, 1987.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 87-19460 Filed 8-24-87; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8153]

Income Taxes; Recapture of Overall Foreign Losses

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the recapture of overall foreign losses. Changes to the applicable tax law were made by the Tax Reform Act of 1976. These regulations provide the public with the guidance needed to comply with that Act and may affect taxpayers receiving income from foreign sources. The regulations do not reflect changes made to section 904(f) by the Tax Reform Act of 1986 and therefore for taxable years beginning after December 31, 1986, some provisions of these regulations may not apply.

DATES: The amendments are effective for taxable years beginning after December 31, 1975 except for the amendments under § 1.1502–9, which are effective for taxable years for which the due date (without extensions) for filing returns is after September 24, 1987.

FOR FURTHER INFORMATION CONTACT: Carolyn DuPuy of the Office of the Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Attention: CC:LR:T (INTL–47–86), (202) 566–3289, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR Part 1) under section 904(f) of the Internal Revenue Code of 1954. These amendments are made to conform the regulations to section 1032 of the Tax Reform Act of 1976 (90 Stat. 1624) and are issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917, 26 U.S.C. 7805). The amendments under paragraph 3 are also issued under the authority contained in section 1502 of the Internal Revenue Code (68A Stat. 637, 26 U.S.C. 1502).

On January 24, 1986, the Federal Register published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 904 and 1502 of the Internal Revenue Code of 1954 (51 FR 3193). On April 2, 1986, the Federal Register published corrections to the proposed regulations (51 FR 11324). The amendments provide rules for determining a taxpayer's overall foreign losses in a taxable year and for determining how and when such losses will be recaptured. In addition, the amendments provide rules for determining overall foreign losses on a consolidated basis.

Numerous written comments were received with respect to the proposed regulations. A public hearing was held on June 5, 1986. The significant points raised by the comments and the changes made to the proposed amendments are discussed in the remainder of the preamble. After consideration of the comments regarding the proposed amendments, the amendments are adopted as modified by this Treasury decision.

Discussion of Major Comments and Revised Amendments

Section 1.904 (f)–1 Overall foreign loss and overall foreign loss accounts.

Paragraphs (a) and (c) of § 1.904 (f)–1 have been revised to provide that for taxable years beginning prior to January 1, 1983, a taxpayer will be allowed to net losses and income subject to the separate limitations in former section 904(d)(1)(A) (passive interest limitations), (B) (DISC dividend limitation), and (C) (general limitation) (prior to amendment by the Tax Reform Acts of 1984 and 1986) in determining whether the taxpayer incurred an overall foreign loss. This alternative is available to a taxpayer only if the taxpayer filed its pre-1983 return using this method of computing overall foreign losses.

The proposed amendments required all taxpayers to determine whether they had overall foreign losses on a separate limitation basis for all years beginning after December 31, 1975. Many commenters criticized this position in the proposed regulations. Nevertheless, for taxable years beginning after December 31, 1982 and before January 1, 1987, the final regulations retain the requirement that overall foreign losses must be determined on a separate limitation basis. The determination of overall foreign losses on a separate

limitation basis, while not clearly required by the statute, is consistent with Congressional intent as expressed in section 904(d) to prevent United States tax on separate limitation items from being reduced by foreign tax credits attributable to other types of income. If this intent is to be effectuated, the separate limitations approach should apply when there is a loss under a separate limitation as well as when there is income. However, because this requirement is not clear on the face of the statute and taxpayers could, in the absence of regulations, reasonably have computed their foreign losses on an overall basis, the requirement that overall foreign losses be determined on a separate limitation basis will only be applied to the extent all taxpayers would have had open years at the time the proposed regulations were issued.

Section 1.904 (f)–2 Recapture of overall foreign losses.

In response to comments, paragraph (b) has been modified to delete the requirement that section 904(a) apply before recapture under section 904(f). Therefore, under the final regulations, recapture will apply before the application of section 904(a).

Paragraph (c) has been revised to provide for recapture in years in which taxpayers deduct and do not credit foreign taxes. A number of taxpayers objected to the fact that, under the proposed regulations, recapture was limited to cases in which there was a reduction in a taxpayer's foreign tax credit limitation. This provision was changed because, to the extent a taxpayer deducts its foreign taxes and its foreign taxable income minus foreign taxes paid is subject to United States tax, the double benefit that section 904 (f) is intended to prevent is not present. In cases in which the amount of recapture (foreign taxable income minus foreign taxes paid) in a deduction year exceeds fifty percent of the foreign source taxable income subject to recapture, taxpayers will be deemed to have elected under section 904(f)(1)((B) to recapture such larger percentage that the recapture amount represents.

In addition, in response to comments, paragraph (c) has been clarified with respect to the treatment of the overall foreign losses of a section 936 corporation that was a member of a consolidated group. The final regulations provide that in the case of a section 936 corporation that was previously part of a consolidated group, the possession source income, including qualified possession source investment income, shall be used to recapture the portion of any overall foreign loss that was allocated to the section 936 corporation under § 1.1502–9.

Paragraph (c) has also been revised to provide a rule for recapturing from post-1982 income pre-1983 overall foreign losses incurred when taxpayers computed their pre-1983 overall foreign losses on a combined basis. That rule provides that overall foreign loss accounts created in taxable years beginning before January 1, 1983 and computed on a combined basis shall be recaptured solely out of foreign source income subject to the general limitation. A similar transition rule for overall foreign losses that are part of net operating losses is added in § 1.904 (f)–3 (c).

Paragraph (d)(4)(iv) provides an ordering rule for dispositions in which gain is deemed to be recognized. That paragraph was changed to add a rule that provides for recapture on a pro rata basis when there is a simultaneous transfer of more than one asset in a disposition subject to the rules in section (d)(4).

Paragraph (d)(5)(i) has been revised to provide two additional exceptions to the definition of dispositions for section 904(f)(3) purposes. Several commenters argued that the proposed regulation's definition of "disposition" was too broad and that, in light of the purpose of section 904(f)(3), the disposition rule should only apply to situations in which the disposition is of a type such that the taxpayer would escape application of the recapture rule. It was, therefore, suggested that the regulations be amended to include an exception to the disposition rule for any transaction in which after the transaction a taxpayer is as likely to recapture the balance of its overall foreign loss account as before the transaction. It was decided that such an exception to the disposition rule was inappropriate both because it is contrary to the statutory definition of a disposition in section 904(f)(3)(B)(i) and because an exception based on a subjective judgment as to whether or not the overall foreign loss is likely to be recaptured would not be administrable. However, paragraph (d)(5)(i) has been revised to except from the definition of disposition two specific situations: (1) Transactions in which gross income is not realized (such as farmouts); and (2) the entering into of certain unitization or pooling agreements in which gain from any subsequent disposition would be entirely foreign source. The exception for non-realization events is a clarifying change. The exception for pooling and unitization agreements was made because such arrangements are essentially financing transactions. The pooling exception is limited to cases in which the subsequent disposition would generate all foreign source income in order to eliminate the potential for avoidance of overall foreign loss recapture.

In response to one commenter's suggestion, paragraph (d)(5)(ii) has been revised to provide that, for purposes of section 904(f)(3), stock of a corporation will not be considered property used in a trade or business if a substantial investment motive exists for acquiring and holding the stock. This change was made to conform these rules to the standard developed in *Corn Products Refining Co.* v. *Commissioner*, 350 U.S. 46 (1955), as applied by the Service in Rev. Rul. 78–94, 1978–1 CB 58.

Paragraph (d)(5)(ii) has also been revised to provide that a partnership interest will be property used in a trade or business if the underlying assets of the partnership would be property used in a trade or business. Without such a rule, recapture of overall foreign losses incurred by a partner could be avoided by structuring a disposition of partnership assets as the disposition of a partnership interest.

Section 1.904(f)–3 Net operating loss carrybacks and carryovers.

Paragraph (a) has been clarified to provide that an overall foreign loss that is part of a net operating loss first offsets foreign source taxable income in the carryback or carryover year that is subject to the same limitation as the loss, next offsets United States source taxable income in the carryback or carryover year and then offsets foreign source taxable income subject to other limitations.

Paragraph (c) has been added to provide a rule for the treatment of loss carryovers when a loss is incurred in a pre-1983 year and carried forward to a post-1982 year or when a loss is incurred in a post-1982 year and is carried back to a pre-1983 year. The rule provides that a post-1982 loss that is carried back to a pre-1983 year and creates an overall foreign loss in that year is treated as if the loss arose in the post-1982 year. The rule also provides that a pre-1983 loss that is carried forward and creates an overall foreign loss in a post-1982 year is treated as if it arose in a post-1982 year. This ensures, to the maximum extent possible, that an overall foreign loss will be recaptured on a separate limitation basis, regardless of the method used by the taxpayer to compute overall foreign losses for pre-1983 years.

Section 1.904 (f)–6 Transition rules.

Paragraph (a) provides transition rules for recapture of pre-1983 foreign oil related income (FORI) limitation and general limitation losses from post-1982 income subject to the general limitation. This paragraph has been revised to account for the revision to § 1.904 (f)–1 (a) and (c) which allows pre-1983 overall foreign losses to be computed on a combined basis, if the taxpayer computed overall foreign losses in that manner on returns previously filed.

Section 1.1502–9 Consolidated overall foreign loss accounts.

In response to suggestions by several commenters, paragraph (b)(1)(iii) has been revised to limit the recapture of an overall foreign loss from a separate return limitation year (SRLY) to 50% of the consolidated foreign source taxable income minus 50% of such income recomputed by excluding the items of income and deduction of the SRLY member.

A suggestion that paragraph (b) be revised to provide that an overall foreign loss that a part of a net operating loss carryover be classified as a SRLY loss only if the loss reduced United States income in a SRLY year was not adopted because it was considered to be inconsistent with the rules for allocating consolidated overall foreign losses to departing members of the group. It was decided that, in both cases, the appropriate focus was on the year in which the loss arose rather than the carryover year.

In response to one comment, paragraph (e) has been revised to provide that dispositions between members of an affiliated group will not automatically trigger 904(f)(3) recapture. However, gain will be recognized (and a loss recaptured) to the extent of the balance in the selling member's SRLY overall foreign loss account unless the selling member adds the balance in its SRLY overall foreign loss account to the applicable consolidated overall foreign loss account. The effect of this requirement is to recharacterize SRLY overall foreign losses as overall foreign losses arising in a consolidated year. This new rule, which permits a taxpayer to defer intercompany profit notwithstanding SRLY overall foreign losses, has been adopted because it more closely follows the consolidated group provisions on intercompany dispositions. Recharacterization is required so that the recapture rule cannot be circumvented. Without such recharacterization as a consolidated overall foreign loss, income derived from such transferred property could avoid recapture. The selling member might have no subsequent foreign source income and if the overall foreign loss remained a SRLY overall foreign loss, it could only be recaptured to the extent of the selling member's foreign source income.

Special Analyses

It has been determined that this regulation will not have a significant economic impact on a substantial number of small entities. The number of small entities affected is minimal. Accordingly, these final regulations are not subject to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. Chapter 6).

It has also been determined that this regulation is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis is therefore not required.

Paperwork Reduction Act

The collection of information requirements contained in this regulation have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved under OMB number 1545–0121.

Drafting Information

The principal author of these final regulations is Carolyn M. DuPuy of the Office of Associate Chief Counsel (International), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects

26 CFR 1.861–1 through 1.997–1

Income taxes, Aliens, Exports, DISC, Foreign investments in U.S., Foreign tax credit, FSC, Sources of income, United States investment abroad.

26 CFR 1.1501–1 through 1.1564–1

Income taxes, Controlled group of corporations, Consolidated returns.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Parts 1 and 602 are amended as follows:

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Sections 1.904(f)–(2) and 1.1502–9 are also issued under 26 U.S.C. 904 (f)(3)(b) and 26 U.S.C. 1502. * * *

Par. 2. The following new §§ 1.904(f)–1 through 1.904(f)–6 are added immediately following § 1.904(b)–4 to read as set forth below:

§ 1.904(f)–1 Overall foreign loss and the overall foreign loss account.

(a) *Overview of regulations.* In general, section 904(f) and these regulations apply to any taxpayer that sustains an overall foreign loss (as defined in paragraph (c)(1) of this section) in a taxable year beginning after December 31, 1975. For taxable years ending after December 31, 1984, and beginning before January 1, 1987, there can be five types of overall foreign losses: a loss under each of the five separate limitations contained in former section 904(d)(1)(A) (passive interest limitation), (d)(1)(B) (DISC dividend limitation), (d)(1)(C) (foreign trade income limitation), (d)(1)(D) (foreign sales corporation (FSC) distributions limitation), and (d)(1)(E) (general limitation). For taxable years beginning after December 31, 1982, and ending before January 1, 1985, there can be three types of overall foreign losses under former section 904(d)(1)(A) (passive interest limitation), former section 904(d)(1)(B) (DISC dividend limitation) and former section 904(d)(1)(C) (general limitation). For taxpayers subject to section 907, the post-1982 general limitation overall foreign loss account may be further subdivided, as provided in § 1.904(f)–6. For taxable years beginning after December 31, 1975, and before January 1, 1983, taxpayers should have computed overall foreign losses separately under the passive interest limitation, the DISC dividend limitation, the general limitation, and the section 907(b) (FORI) limitation. However, for taxable years beginning after December 31, 1975, and before January 1, 1983, taxpayers may have computed only two types of overall foreign losses: A foreign oil related loss under the FORI limitation and an overall foreign loss computed on a combined basis for the passive interest limitation, the DISC dividend limitation, and the general limitation. A taxpayer that computed overall foreign losses for these years on a combined basis will not be required to amend its return to recompute such losses on a separate

basis. If a taxpayer computed its overall foreign losses for these years separately under the passive interest limitation, the DISC dividend limitation, and the general limitation, on returns previously filed, a taxpayer may not amend those returns to compute such overall foreign losses on a combined basis. Section 1.904(f)–1 provides rules for determining a taxpayer's overall foreign losses, for establishing overall foreign loss accounts, and for making additions to and reductions of such accounts for purposes of section 904(f). Section 1.904(f)–2 provides rules for recapturing the balance in any overall foreign loss account under the general recapture rule of section 904(f)(1) and under the special recapture rule of section 904(f)(3) when the taxpayer disposes of property used predominantly outside the United States in a trade or business. Section 1.904(f)–3 provides rules for allocating overall foreign losses that are part of net operating losses or net capital losses to foreign source income in years to which such losses are carried. In addition, § 1.904(f)–3 provides transition rules for the treatment of net operating losses incurred in taxable years beginning after December 31, 1982, and carried back to taxable years beginning before January 1, 1983, and of net operating losses incurred in taxable years beginning before January 1, 1983, and carried forward to taxable years beginning after December 31, 1982. Section 1.904(f)–4 provides rules for recapture out of an accumulation distribution of a foreign trust. Section 1.904(f)–5 provides rules for recapture of overall foreign losses of domestic trusts. Section 1.904(f)–6 provides a transition rule for recapturing a taxpayer's pre-1983 overall foreign losses under the general limitation and the FORI limitation out of taxable income subject to the general limitation in taxable years beginning after December 31, 1982. Section § 1.1502–9 provides rules concerning the application of these regulations to corporations filing consolidated returns.

(b) *Overall foreign loss accounts.* Any taxpayer that sustains an overall foreign loss under paragraph (c) of this section must establish an account for such loss. Separate types of overall foreign losses must be kept in separate accounts. For taxable years beginning prior to January 1, 1983, taxpayers that computed losses on a combined basis in accordance with § 1.904(f)–1(c)(1) will keep one overall foreign loss account for such overall foreign loss. The balance in each overall foreign loss account represents the amount of such overall foreign loss subject to recapture by the taxpayer in a given year. From year to year, amounts may be added to or subtracted from the balances in such accounts as provided in paragraphs (d) and (e) of this section. The taxpayer must report the balances (if any) in its overall foreign loss accounts annually on a Form 1116 or 1118. Such forms must be filed for each taxable year ending after September 24, 1987. The balance in each account does not have to be attributed to the year or years in which the loss was incurred.

(c) *Determination of a taxpayer's overall foreign loss*—(1) *Overall foreign loss defined.* For taxable years beginning after December 31, 1982, and before January 1, 1987, a taxpayer sustains an overall foreign loss in any taxable year in which its gross income from sources without the United States subject to a separate limitation (as defined in paragraph (c)(2) of this section) is exceeded by the sum of the deductions properly allocated and apportioned thereto. Such losses are to be determined separately in accordance with the principles of the separate limitations. Accordingly, income and deductions subject to a separate limitation are not to be netted with income and deductions subject to another separate limitation for purposes of determining the amount of an overall foreign loss. A taxpayer may, for example, have an overall foreign loss under the general limitation in the same taxable year in which it has taxable income under the DISC dividend limitation. The same principles of calculating overall foreign losses on a separate limitation basis apply for taxable years beginning before January 1, 1983, except that a taxpayer shall determine its overall foreign losses on a combined basis, except for income subject to the FORI limitation, if the taxpayer filed its pre-1983 returns on such basis. Thus, for taxable years beginning prior to January 1, 1983, a taxpayer can net income and losses among the passive interest limitation, the DISC dividend limitation, and the general limitation if the taxpayer calculated its overall foreign losses that way at the time. Taxpayers that computed overall foreign losses separately under each of the separate limitations on their returns filed for taxable years beginning prior to January 1, 1983, may not amend such returns to compute their overall foreign losses for pre-1983 years on a combined basis.

(2) *Separate limitation defined.* For purposes of paragraph (c)(1) of this section and these regulations, the term separate limitation means any of the separate limitations under former section 904(d)(1)(A) (passive interest limitation), (B) (DISC dividend limitation), (C) (foreign trade income limitation), (D) (FSC distributions limitation), and (E) (general limitation) and the separate limitation under section 907(b) (FORI limitation) (for taxable years ending after December 31, 1975, and beginning before January 1, 1983).

(3) *Method of allocation and apportionment of deductions.* In determining its overall foreign loss, a taxpayer shall allocate and apportion expenses, losses, and other deductions to the appropriate category of gross income in accordance with section 862(b) and § 1.861–8 of the regulations. However, the following deductions shall not be taken into account:

(i) The amount of any net operating loss deduction for such year under section 172(a); and

(ii) To the extent such losses are not compensated for by insurance or otherwise, the amount of any—

(A) Expropriation losses for such year (as defined in section 172(h)), or

(B) Losses for such year which arise from fire, storm, shipwreck, or other casualty, or from theft.

(d) *Additions to the overall foreign loss account*—(1) *General rule.* A taxpayer's overall foreign loss as determined under paragraph (c) of this section shall be added to the applicable overall foreign loss account at the end of its taxable year to the extent that the overall foreign loss has reduced United States source income during the taxable year or during a year to which the loss has been carried back. For rules with respect to carryovers see paragraph (d)(4) of this section and § 1.904(f)–3.

(2) *Overall foreign net capital loss.* An overall foreign net capital loss shall be added to the applicable overall foreign loss account at the end of the taxable year to the extent that the foreign source capital loss has reduced United States source capital gain net income during the taxable year or during a year to which the loss has been carried back, subject to the adjustments in paragraph (d)(5) of this section. For rules with respect to carryovers, see paragraph (d)(4) of this section and § 1.904(f)–3. As provided under section 1211(b), to the extent that a foreign source net capital loss has reduced United States source income other than United States source capital gain net income, this additional amount would be added to the taxpayer's overall foreign loss account as if the United States source income had been offset by a foreign net operating loss that is not a capital loss.

(3) *Overall foreign losses of another taxpayer.* If any portion of any overall foreign loss of another taxpayer is

allocated to the taxpayer in accordance with § 1.904(f)–5 (relating to overall foreign losses of domestic trusts) or § 1.1502–9 (relating to consolidated overall foreign losses), the taxpayer shall add such amount to its applicable overall foreign loss account.

(4) *Additions to overall foreign loss account created by loss carryovers.* Subject to the adjustments under § 1.904(f)–1(d)(5), the taxpayer shall add to each overall foreign loss account—

(i) All net operating loss carryovers to the current taxable year attributable to the same limitation to the extent that overall foreign losses included in the net operating loss carryovers reduced United States source income for the taxable year, and

(ii) All capital loss carryovers to the current taxable year attributable to the same limitation to the extent that foreign source capital loss carryovers reduced United States source capital gain net income for the taxable year.

(5) *Adjustments.* The amount of overall foreign loss determined in paragraph (d)(1) of this section and the amount of overall foreign net capital loss determined in paragraph (d)(2) of this section which shall be added to a taxpayer's overall foreign loss account shall be adjusted as follows prior to being added to an account.

(i) *Adjustment due to reduction in foreign source income under section 904(b).* A taxpayer's overall foreign loss account shall not include any net capital loss from sources without the United States to the extent that the application of section 904(b) would result in a reduction of foreign source taxable income (but not below zero) for purposes of the numerator of the foreign tax credit limitation fraction.

(ii) *Adjustment to account for rate differential between ordinary income rate and capital gain rate.* Subject to the provisions of paragraph (d)(5)(i) of this section, if an overall foreign loss for a taxable year includes an overall foreign net capital loss, such amount shall be reduced as follows, in accordance with the provisions of section 904(b), before being added to the overall foreign loss account:

(A) In the case of a corporate taxpayer, to the extent that the United States source capital gain net income reduced by the foreign source net capital loss consists of United States source net capital gain, by an amount equal to the rate differential portion (as defined in section 904(b)(3)(D) of the Code and the regulations thereunder) of the United States source net capital gain; or

(B) In the case of a taxpayer other than a corporate taxpayer, for taxable years beginning prior to January 1, 1979, an amount equal to the taxpayer's United States source net capital gain that is offset by such foreign source net capital loss reduced by 50 percent of such gain, and for taxable years beginning after December 31, 1978, and before January 1, 1987, reduced by an amount equal to 60 percent of such gain.

(e) *Reductions of overall foreign loss accounts.* The taxpayer shall subtract the following amounts from its overall foreign loss accounts at the end of its taxable year in the following order, if applicable:

(1) *Pre-recapture reduction for amounts allocated to other taxpayers.* An overall foreign loss account is reduced by the amount of any overall foreign loss which is allocated to another taxpayer in accordance with § 1.904(f)–5 (relating to overall foreign losses of domestic trusts) or § 1.1502–9 (relating to consolidated overall foreign losses).

(2) *Reduction for amounts recaptured.* An overall foreign loss account is reduced by the amount of any foreign source income that is subject to the same limitation as the loss that resulted in the account and that is recaptured in accordance with § 1.904(f)–2 (c) (relating to recapture under section 904(f)(1)); 1.904(f)–2 (d) (relating to recapture when the taxpayer disposes of certain properties under section 904(f)(3)); and 1.904(f)–4 (relating to recapture when the taxpayer receives an accumulation distribution from a foreign trust under section 904(f)(4)).

(f) *Illustrations.* The rules of this section are illustrated by the following examples.

Example (1). X Corporation is a domestic corporation with foreign branch operations in country C. X's taxable income and losses for its taxable year 1983 are as follows:

U.S. Source taxable income.....$1,000
Foreign source taxable income (loss) subject to the general limitation.....($500)
Foreign source taxable income subject to the passive interest limitation..... $200

X has a general limitation overall foreign loss of $500 for 1983 in accordance with paragraph (c)(1) of this section. Since the general limitation overall foreign loss is not considered to offset income under the separate limitation for passive interest income, it therefore offsets $500 of United States source taxable income. This amount is added to X's general limitation overall foreign loss account at the end of 1983 in accordance with paragraphs (c) (1) and (d) (1) of this section.

Example (2). Y Corporation is a domestic corporation with foreign branch operations in Country C. Y's taxable income and losses for its taxable year 1982 are as follows:

U.S. source taxable income.....$1,000
Foreign source taxable income subject to the general limitation.....($500)
Foreign source taxable income subject to the passive interest limitation..... $250

For its pre-1983 taxable years, Y filed its returns determining its overall foreign losses on a combined basis. In accordance with paragraphs (a) and (c) (1) of this section, Y may net the foreign source income and loss before offsetting the United States source income. Y therefore has a section 904(d)(1)(A–C) overall foreign loss account of $250 at the end of 1982.

Example (3). X Corporation is a domestic corporation with foreign branch operations in country C. For its taxable year 1985, X has taxable income (loss) determined as follows:

U.S. source taxable income.....$200
Foreign source taxable income (loss) subject to the general limitation.....($1,000)
Foreign source taxable income (loss) subject to the passive limitation..... $1,800

X has a general limitation overall foreign loss of $1,000 in accordance with paragraph (c)(1) of this section. The overall foreign loss offsets $200 of United States source taxable income in 1985 and, therefore, X has a $200 general limitation overall foreign loss account at the end of 1985. The remaining $800 general limitation loss is offset by the passive interest limitation income 1985 so that X has no net operating loss carryover that is attributable to the general limitation loss and no additional amount attributable to that loss will be added to the overall foreign loss account in 1985 or in any other year.

Example (4). In 1986, V Corporation has $1000 of general limitation foreign source taxable income and $500 of general limitation foreign source net capital loss which has reduced $500 of United States source capital gain net income ("short term gain") (none of which is net capital gain). Under section 904(b), the numerator of V's foreign tax credit limitation fraction for income subject to the general limitation is reduced by $500 (see § 1.904 (b)–1 (a)(3)). Under paragraph (d)(5)(i) of this section, none of that $500 goes into its general limitation overall foreign loss account.

Example (5). Z Corporation is a domestic corporation with foreign branch operations. For the taxable year 1984, Z's taxable income and (losses) are as follows:

U.S. source taxable ordinary income.....$1,000
U.S. source net capital gain.....$460
Foreign source taxable ordinary income subject to the general limitation.....$200
Foreign source net capital loss subject to the general limitation.....($600)

Z had no capital gain net income in any prior taxable year. Under paragraph (d)(2) and (5) of this section, the amount to be added to Z's general limitation overall foreign loss account is the excess of the amount which has reduced United States source capital gain net income for the taxable year ($460), adjusted for the rate differential because it has reduced United States source net capital gain ($460 x 28/46 = $280), over the amount which has reduced the numerator of Z's foreign tax credit limitation fraction under section 904(b)(2), which is $200. (The $200 amount is foreign source net capital loss that has reduced United States source net

capital gain in the denominator of the fraction, but not exceeding the amount of foreign source income in the numerator before the section 904(b)(2) adjustment.) Thus, Z must add $80 (the excess of the $280 over $200) to its general limitation overall foreign loss account in 1984.

§ 1.904(f)–2 Recapture of overall foreign losses.

(a) *In general.* A taxpayer shall be required to recapture an overall foreign loss as provided in this section. Recapture is accomplished by treating as United States source income a portion of the taxpayer's foreign source taxable income of the same limitation as the foreign source loss that resulted in an overall foreign loss account. As a result, if the taxpayer elects the benefits of section 901 or section 936, the taxpayer's foreign tax credit limitation with respect to such income is decreased. As provided in § 1.904 (f)–1(e)(2), the balance in a taxpayer's overall foreign loss account is reduced by the amount of loss recaptured. Recapture continues until such time as the amount of foreign source taxable income recharacterized as United States source income equals the amount in the overall foreign loss account. As provided in § 1.904 (f)–1(e)(2), the balance in a overall foreign loss account is reduced at the end of each taxable year by the amount of the loss recaptured during that taxable year. Regardless of whether recapture occurs in a year in which a taxpayer elects the benefits of section 901 or in a year in which a taxpayer deducts its foreign taxes under section 164, the overall foreign loss account is recaptured only to the extent of foreign source taxable income remaining after applying the appropriate section 904(b) adjustments, if any, as provided in paragraph (b) of this section.

(b) *Determination of taxable income from sources without the United States for purposes of recapture*—(1) *In general.* For purposes of determining the amount of an overall foreign loss subject to recapture, the taxpayer's taxable income from sources without the United States shall be computed with respect to each of the separate limitations described in § 1.904 (f)–1(c)(2) in accordance with the rules set forth in § 1.904 (f)–1(c) (1) and (3). This computation is made without taking into account foreign source taxable income (and deductions properly allocated and apportioned thereto) subject to other separate limitations. Before applying the recapture rules to foreign source taxable income, the following provisions shall be applied to such income in the following order:

(i) Former section 904(b)(3)(C) (prior to its removal by the Tax Reform Act of 1986) and the regulations thereunder shall be applied to treat certain foreign source gain as United States source gain; and

(ii) Section 904(b)(2) and the regulations thereunder shall be applied to make adjustments in the foreign tax credit limitation fraction for certain capital gains and losses.

(c) *Section 904(f)(1) recapture*—(1) *In general.* In a year in which a taxpayer elects the benefits of sections 901 or 936, the amount of any foreign source taxable income subject to recapture in a taxable year in which paragraph (a) of this section is applicable is the lesser of the balance in the applicable overall foreign loss account (after reduction of such account in accordance with § 1.904 (f)–1(e)) or fifty percent of the taxpayer's foreign source taxable income of the same limitation as the loss that resulted in the overall foreign loss account (as determined under paragraph (b) of this section). If, in any year, in accordance with sections 164(a) and section 275(a)(4)(A), a taxpayer deducts rather than credits its foreign taxes, recapture is applied to the extent of the lesser of (i) the balance in the applicable overall foreign loss account or (ii) foreign source taxable income of the same limitation type that resulted in the overall foreign loss minus foreign taxes imposed on such income.

(2) *Election to recapture more of the overall foreign loss than is required under paragraph (c)(1).* In a year in which a taxpayer elects the benefits of sections 901 or 936, a taxpayer may make an annual revocable election to recapture a greater portion of the balance in an overall foreign loss account than is required to be recaptured under paragraph (c)(1) of this section. A taxpayer may make such an election or amend a prior election by attaching a statement to its annual Form 1116 or 1118. If an amendment is made to a prior year's election, an amended tax return should be filed. The statement attached to the Form 1116 or 1118 must indicate the percentage and dollar amount of the taxpayer's foreign source taxable income that is being recharacterized as United States source income and the percentage and dollar amount of the balance (both before and after recapture) in the overall foreign loss account that is being recaptured. Except for the special recapture rules for section 936 corporations and for recapture of pre-1983 overall foreign losses determined on a combined basis, the taxpayer that elects to credit its foreign taxes may not elect to recapture an amount in excess of the taxpayer's foreign source taxable income subject to the same limitation as the loss that resulted in the overall foreign loss account.

(3) *Special rule for recapture of losses incurred prior to section 936 election.* If a corporation elects the application of section 936 and at the time of the election has a balance in any overall foreign loss account, such losses will be recaptured from the possessions source income of the electing section 936 corporation that qualifies for the section 936 credit, including qualified possession source investment income as defined in section 936(d)(2), even though the overall foreign loss to be recaptured may not be attributable to a loss in an income category of a type that would meet the definition of qualified possession source investment income. For purposes of recapturing an overall foreign loss incurred by a consolidated group including a corporation that subsequently elects to use section 936, the electing section 936 corporation's possession source income that qualifies for the section 936 credit, including qualified possession source investment income, shall be used to recapture the section 936 corporation's share of previously incurred overall foreign loss accounts. Rules for determining the section 936 corporation's share of the consolidated groups overall foreign loss accounts are provided in § 1.1502–9(c).

(4) *Recapture of pre-1983 overall foreign losses determined on a combined basis.* If a taxpayer computed its overall foreign losses on a combined basis in accordance with § 1.904(f)–1(c)(1) for taxable years beginning before January 1, 1983, any losses recaptured in taxable years beginning after December 31, 1982, shall be recaptured from income subject to the general limitation, subject to the rules in § 1.904(f)–6 (a) and (b). Ordering rules for recapture of these losses are provided in § 1.904(f)–6(c).

(5) *Illustrations.* The rules of this paragraph (c) are illustrated by the following examples, all of which assume a United States corporate tax rate of 50 percent unless otherwise stated.

Example (1) X Corporation is a domestic corporation that does business in the United States and abroad. On December 31, 1983, the balance in X's general limitation overall foreign loss account is $600, all of which is attributable to a loss incurred in 1983. For 1984, X has United States source taxable income of $500 and foreign source taxable income subject to the general limitation of $500. For 1984, X pays $200 in foreign taxes and elects section 901. Under paragraph (c)(1) of this section, X is required to recapture $250 (the lesser of $600 or 50 percent of $500) of its overall foreign loss. As a consequence, X's

foreign tax credit limitation under the general limitation is $250/$1,000×$500, or $125, instead of $500/$1,000×$500, or $250. The balance in X's general limitation overall foreign loss account is reduced by $250 in accordance with § 1.904(f)–1(e)(2).

Example (2). The facts are the same as in example (1) except that X makes an election to recapture its overall foreign loss to the extent of 60 percent of its foreign source taxable income subject to the general limitation (or $400) in accordance with paragraph (c)(2) of this section. As a result of recapture, X's 1984 foreign tax credit limitation for income subject to the general limitation is $100/$1,000×$500, or $50, instead of $500/$1,000×$500, or $250. X's general limitation overall foreign loss account is reduced by $400 in accordance with § 1.904(f)–1(e)(2).

Example (3). The facts are the same as in example (1) except that X does not elect the benefits of section 901 in 1984 and instead deducts its foreign taxes paid. In 1984, X recaptures $300 of its overall foreign loss, the difference between X's foreign source taxable income of $500 and $200 of foreign taxes paid. The balance in X's general limitation overall foreign loss account is reduced by $300 in accordance with § 1.904(f)–1(e)(2).

Example (4). The facts are the same as in example (1) except that in 1984, X also has $1,000 of foreign source DISC dividend income subject to the separate limitation for DISC dividends which carries a foreign tax of $50. Under paragraph (c)(1) of this section the amount of X's general limitation overall foreign loss subject to recapture is $250 (the lesser of the balance in the overall foreign loss account or 50 percent of the foreign source taxable income subject to the general limitation). There is no recapture with respect to the DISC dividend income. X's separate limitation for DISC dividend income is $1,000/$2,000×$1,000, or $500. Its general limitation is $250/$2,000×$1,000, or $125, instead of $500/$2,000×$1,000, or $250. The balance in X's general limitation overall foreign loss account is reduced by $250 in accordance with § 1.904(f)–1(e)(2).

Example (5). On December 31, 1980, V, a domestic corporation that does business in the United States and abroad, has a balance in its section 904(d)(1)(A–C) overall foreign loss account of $600. V also has a balance in its FORI limitation overall foreign loss account of $900. For 1981, V has foreign source taxable income subject to the general limitation of $500 and $500 of United States source income. V also has foreign source taxable income subject to the FORI limitation of $800. V is required to recapture $250 of its section 904(d)(1)(A–C) overall foreign loss account (the lesser of $600 or 50% of $500) and its general limitation foreign tax credit limitation is $250/$1,800×$900, or $125 instead of $500/$1,800×$900, or $250. V is also required to recapture $400 of its FORI limitation overall foreign loss account (the lesser of $900 or 50% of $800). V's foreign tax credit limitation for FORI is $400/$1,800×$900, or $200, instead of $800/$1,600×$200, or $400. The balance in V's FORI limitation overall foreign loss account is reduced to $500 and the balance in V's section 904(d)(1)(A–C) account is reduced to $350, in accordance with § 1.904(f)–1(e)(2).

Example (6). This example assumes a United States corporate tax rate of 46 percent (under section 11(b)) and an alternative rate of tax under section 1201(a) of 28 percent. W is a domestic corporation that does business in the United States and abroad. On December 31, 1984, W has $350 in its general limitation overall foreign loss account. For 1985, W has $500 of United States source taxable income, and has foreign source income subject to the general limitation as follows:

Foreign source taxable income other than net capital gain	$720
Foreign source net capital gain	$460

Under paragraph (b)(2) of this section, foreign source taxable income for purposes of recapture includes foreign source capital gain net income, reduced, under section 904(b)(2), by the rate differential portion of foreign source net capital gain, which adjusts for the reduced tax rate for net capital gain under section 1201(a):

Foreign source capital gain net income	$460
Rate differential portion of foreign source net capital gain (18/46 of $460)	−180
Foreign source capital gain included in foreign source taxable income	$280

The total foreign source taxable income of W for purposes of recapture in 1985 in $1,000 ($720+$280). Under paragraph (c)(1) of this section, W is required to recapture $350 (the lesser of $350 or 50 percent of $1,000), and W's general limitation overall foreign loss account is reduced to zero. W's foreign tax credit limitation for income subject to the general limitation is $650/$1,500×$890 ((.46) (500+720)+(.28) (460)), or $299, instead of $1,000/$1,500×$890, or $460.

(d) *Recapture of overall foreign losses from dispositions under section 904(f)(3)*—(1) *In general.* If a taxpayer disposes of property used or held for use predominantly without the United States in a trade or business during a taxable year and that property generates foreign source taxable income subject to a separate limitation to which paragraph (a) of this section is applicable, (i) gain will be recognized on the disposition of such property, (ii) such gain will be treated as foreign source income subject to the same limitation as the income the property generated, and (iii) the applicable overall foreign loss account shall be recaptured as provided in paragraphs (d)(2), (d)(3), and (d)(4) of this section. See paragraph (d)(5) of this section for definitions.

(2) *Treatment of net capital gain.* If the gain from a disposition of property to which this paragraph (d) applies is treated as net capital gain, all references to such gain in paragraphs (d)(3) and (d)(4) of this section shall mean such gain as adjusted under paragraph (b) of this section. The amount by which the overall foreign loss account shall be reduced shall be determined from such adjusted gain.

(3) *Dispositions where gain is recognized irrespective of section 904(f)(3).* If a taxpayer recognizes foreign source gain subject to a separate limitation on the disposition of property described in paragraph (d)(1) of this section, and there is a balance in a taxpayer's overall foreign loss account that is attributable to a loss under such limitation after applying paragraph (c) of this section, an additional portion of such balance shall be recaptured in accordance with paragraphs (a) and (b) of this section. The amount recaptured shall be the lesser of such balance or 100 percent of the foreign source gain recognized on the disposition that was not previously recharacterized.

(4) *Dispositions in which gain would not otherwise be recognized*—(i) *Recognition of gain to the extent of the overall foreign loss account.* If a taxpayer makes a disposition of property described in paragraph (d)(1) of this section in which any amount of gain otherwise would not be recognized in the year of the disposition, and such property was used or held for use to generate foreign source taxable income subject to a separate limitation under which the taxpayer had a balance in its overall foreign loss account (including a balance that arose in the year of the disposition), the taxpayer shall recognize foreign source taxable income in an amount equal to the lesser of:

(A) The sum of the balance in the applicable overall foreign loss account (but only after such balance has been increased by amounts added to the account for the year of the disposition or has been reduced by amounts recaptured for the year of the disposition under paragraph (c) and paragraph (d)(3) of this section) plus the amount of any overall foreign loss that would be part of a net operating loss for the year of the disposition if gain from the disposition were not recognized under section 904(f)(3), plus the amount of any overall foreign loss that is part of a net operating loss carryover from a prior year, or

(B) The excess of the fair market value of such property over the taxpayer's adjusted basis in such property.

The excess of the fair market value of such property over its adjusted basis shall be determined on an asset by asset basis. Losses from the disposition of an asset shall not be recognized. Any foreign source taxable income deemed received and recognized under this

paragraph (d)(4)(i) will have the same character as if the property had been sold or exchanged in a taxable transaction and will constitute gain for all purposes.

(ii) *Basis adjustment.* The basis of the property received in an exchange to which this paragraph (d)(4) applies shall be increased by the amount of gain deemed recognized, in accordance with applicable sections of subchapters C (relating to corporate distributions and adjustments), K (relating to partners and partnerships), O (relating to gain or loss on the disposition of property), and P (relating to capital gains and losses). If the property to which this paragraph (d)(4) applies was transferred by gift, the basis of such property in the hands of the donor immediately preceding such gift shall be increased by the amount of the gain deemed recognized.

(iii) *Recapture of overall foreign loss to the extent of amount recognized.* The provisions of paragraphs (a) and (b) of this section shall be applied to the extent of 100 percent of the foreign source taxable income which is recognized under paragraph (d)(4)(i) of this section. However, amounts of foreign source gain that would not be recognized except by application of section 904(f)(3) and paragraph (d)(4)(i) of this section, and which are treated as United States source gain by application of section 904(b)(3)(C) (prior to its removal by the Tax Reform Act of 1986) and paragraph (b)(1) of this section, shall reduce the overall foreign loss account (subject to the adjustments described in paragraph (d)(2) of this section) if such gain is net capital gain, notwithstanding the fact that such amounts would otherwise not be recaptured under the ordering rules in paragraph (b) of this section.

(iv) *Priorities among dispositions in which gain is deemed to be recognized.* If, in a single taxable year, a taxpayer makes more than one disposition to which this paragraph (d)(4) is applicable, the rules of this paragraph (d)(4) shall be applied to each disposition in succession starting with the disposition which occurred earliest, until the balance in the applicable overall foreign loss account is reduced to zero. If the taxpayer simultaneously makes more than one disposition to which this paragraph (d)(4) is applicable, the rules of paragraph (d)(4) shall be applied so that the balance in the applicable overall foreign loss account to be recaptured will be allocated pro rata among the assets in proportion to the excess of the fair market value of each asset over the adjusted basis of each asset.

(5) *Definitions*—(i) *Disposition.* A disposition to which this paragraph (d) applies includes a sale; exchange; distribution; gift; transfer upon the foreclosure of a security interest (but not a mere transfer of title to a creditor upon creation of a security interest or to a debtor upon termination of a security interest); involuntary conversion; contribution to a partnership, trust, or corporation; transfer at death; or any other transfer of property whether or not gain or loss is recognized under other provisions of the Code. However, a disposition to which this paragraph (d) applies does not include:

(A) A distribution or transfer of property to a domestic corporation described in section 381 (a) (provided that paragraph (d)(6) of this section (d)(5)(iv) of this section);

(B) A disposition of property which is not a material factor in the realization of income by the taxpayer (as defined in paragraph (d)(5)(iv) of this section);

(C) A transaction in which gross income is not realized; or

(D) The entering into of a unitization or pooling agreement (as defined in § 1.614–8(b)(6) of the regulations) containing a valid election under section 761(a)(2), and in which the source of the entire gain from any disposition of the interest created by the agreement would be determined to be foreign source under section 862(a)(5) if the disposition occurred presently.

(ii) *Property used in a trade or business.* Property is used in a trade or business if it is held for the principal purpose of promoting the present or future conduct of the trade or business. This generally includes property acquired and held in the ordinary course of a trade or business or otherwise held in a direct relationship to a trade or business. In determining whether an asset is held in a direct relationship to a trade or business, principal consideration shall be given to whether the asset is used in the trade or business. Property will be treated as held in a direct relationship to a trade or business if the property was acquired with funds generated by that trade or business or if income generated from the asset is available for use in that trade or business. Property used in a trade or business may be tangible or intangible, real or personal property. It includes property, such as equipment, which is subject to an allowance for depreciation under section 167 or cost recovery under section 168. Property may be considered used in a trade or business even if it is a capital asset in the hands of the taxpayer. However, stock of another corporation shall not be considered property used in a trade or business if a substantial investment motive exists for acquiring and holding the stock. On the other hand, stock acquired or held to assure a source of supply for a trade or business shall be considered property used in that trade or business. Inventory is generally not considered property used in a trade or business. However, when disposed of in a manner not in the ordinary course of a trade or business, inventory will be considered property used in the trade or business. A partnership interest will be treated as property used in a trade or business if the underlying assets of the partnership would be property used in a trade or business. For purposes of section 904(f)(3) and § 1.904(f)–2 (d) (1) and (5), a disposition of a partnership interest to which this section applies will be treated as a disposition of a proportionate share of each of the assets of the partnership. For purposes of allocating the purchase price of the interest and the seller's basis in the interest to those assets, the principles of § 1.751–1(a) will apply.

(iii) *Property used predominantly outside the United States.* Property will be considered used predominantly outside the United States if for a 3-year period ending on the date of the disposition (or, if shorter, the period during which the property has been used in the trade or business) such property was located outside the United States more than 50 percent of the time. An aircraft, railroad rolling stock, vessel, motor vehicle, container, or other property used for transportation purposes is deemed to be used predominantly outside the United States if, during the 3-year (or shorter) period, either such property is located outside the United States more than 50 percent of the time or more than 50 percent of the miles traversed in the use of such property are traversed outside the United States.

(iv) *Property which is a material factor in the realization of income.* For purposes of this section, property used in a trade or business will be considered a material factor in the realization of income unless the taxpayer establishes that it is not (or, if the taxpayer did not realize income from the trade or business in the taxable year, would not be expected to be) necessary to the realization of income by the taxpayer.

(6) *Carryover of overall foreign loss accounts in a corporate acquisition to which section 381(a) applies.* In the case of a distribution or transfer described in section 381(a), an overall foreign loss account of the distributing or transferor corporation shall be treated as an

overall foreign loss account of the acquiring or transferee corporation as of the close of the date of the distribution or transfer. If the transferee corporation had an overall foreign loss account under the same separate limitation prior to the distribution or transfer, the balance in the transferor's account must be added to the transferee's account. If not, the transferee must adopt the transferor's overall foreign loss account. An overall foreign loss of the transferor will be treated as incurred by the transferee in the year prior to the year of the transfer.

(7) *Illustrations.* The rules of this paragraph (d) are illustrated by the following examples which assume that the United States corporate tax rate is 50 percent (unless otherwise stated). For purposes of these examples, none of the foreign source gains are treated as net capital gains (unless so stated).

Example (1). X Corporation has a balance in its general limitation overall foreign loss account of $600 at the close of its taxable year ending December 31, 1984. In 1985, X sells assets used predominantly outside the United States in a trade or business and recognizes $1,000 of gain on the sale under section 1001. This gain is subject to the general limitation. This sale is a disposition within the meaning of paragraph (d)(5)(i) of this section, and to which this paragraph (d) applies. X has no other foreign source taxable income in 1985 and has $1,000 of United States source taxable income. Under paragraph (c), X is required to recapture $500 (the lesser of the balance in X's general limitation overall foreign loss account ($600) or 50 percent of $1,000) of its overall foreign loss account. The balance in X's general limitation overall foreign loss account is reduced to $100 in accordance with § 1.904(f)–1(e)(2). In addition, under paragraph (d)(3) of this section, X is required to recapture $100 (the lesser of the remaining balance in its general limitation overall foreign loss account ($100) or 100 percent of its foreign source taxable income recognized on such disposition that has not been previously recharacterized ($500)). The total amount recaptured is $600. X's foreign tax credit limitation for income subject to the general limitation in 1985 is $200 ($400/$2,000 x $1,000) instead of $500 ($1,000/$2,000 x $1,000). The balance in X's general limitation overall foreign loss account is reduced to zero in accordance with § 1.904(f)–1(e)(2).

Example (2). On December 31, 1984, Y Corporation has a balance in its general limitation overall foreign loss account of $1,500. In 1985, Y has $500 of United States source taxable income and $200 of foreign source taxable income subject to the general limitation. Y's foreign source taxable income is from the sale of property used predominantly outside of the United States in a trade or business. This sale is a disposition to which this paragraph (d) is applicable. In 1985, Y also transferred property used predominantly outside of the United States in a trade or business to another corporation. Under section 351, no gain was recognized on this transfer. Such property had been used to generate foreign source taxable income subject to the general limitation. The excess of the fair market value of the property transferred over Y's adjusted basis in such property was $2,000. In accordance with paragraph (c) of this section, Y is required to recapture $100 (the lesser of $1,500, the amount in Y's general limitation overall foreign loss account, or 50 percent of $200, the amount of general limitation foreign source taxable income for the current year) of its general limitation overall foreign loss. Y is then required to recapture an additional $100 of its general limitation overall foreign loss account under paragraph (d)(3) of this section out of the remaining gain recognized on the sale of assets, because 100 percent of such gain is subject to recapture. The balance in Y's general limitation overall foreign loss account is reduced to $1,300 in accordance with § 1.904(f)–1(e)(2). Y corporation is then required to recognize $1,300 of foreign source taxable income on its section 351 transfer under paragraph (d)(4) of this section. The remaining $700 of potential gain associated with the section 351 transfer is not recognized. Under paragraph (d)(4), 100 percent of the $1,300 is recharacterized as United States source taxable income, and Y's general limitation overall foreign loss account is reduced to zero. Y's entire taxable income for 1985 is:

U.S. source taxable income	$500
Foreign source taxable income subject to the general limitation that is recharacterized as U.S. source income by paragraphs (c) and (d)(3) of this section	200
Gain recognized under section 904(f)(3) and paragraph (d)(4) of this section, and recharacterized as U.S. source income	1,300
Total	$2,000

Y's foreign tax credit limitation for 1985 for income subject to the general limitation is $0 ($0/$2,000 x $1,000) instead of $100 ($200/$700 x $350).

Example (3). W Corporation is a calendar year domestic corporation with foreign branch operations in country C. As of December 31, 1984, W has no overall foreign loss accounts and has no net operating loss carryovers. W's entire taxable income in 1985 is:

U.S. source taxable income	$500
Foreign source taxable income (loss) subject to the general limitation	[$1,000]

W cannot carry back its 1985 NOL to any earlier year. As of December 31, 1985, W therefore has $800 in its general limitation overall foreign loss account. In 1986, W earns $400 United States source taxable income and has an additional $1,000 loss from the operations of the foreign branch. Income in the loss category would be subject to the general limitation. Also in 1986, W disposes of property used predominately outside the United States in a trade or business. Such property generated income subject to the general limitation. The excess of the property's fair market value over its adjusted basis is $3,000. The disposition is of a type described in § 1.904 (f)–2(d)(4)(i). W has no other income in 1986. Under § 1.904 (f)–2(d)(4)(i), W is required to recognize foreign source taxable income on the disposition in an amount equal to the lesser of $2,000 ($800 (the balance in the general limitation overall foreign loss account as of 1985) + $400 (the increase in the general limitation overall foreign loss account attributable to the disposition year) + $800 (the general limitation overall foreign loss that is part of the NOL from 1986) + $200 (the general limitation overall foreign loss that is part of the NOL from 1985)) or $3,000. The $2,000 foreign source income required to be recognized under section 904(f)(3) is reduced to $1,200 by the remaining $800 loss in 1986 and the $200 net operating loss carried forward from 1985. This $1,200 of income is subject to the general limitation. In computing foreign tax credit limitation for general limitation income, the $1,200 of foreign source income is treated as United States source income and, therefore, W's foreign tax credit limitation for income subject to the general limitation is zero. W's overall foreign loss account is reduced to zero.

Example (4). Z Corporation has a balance in its FORI overall foreign loss account of $1,500 at the end of its taxable year 1980. In 1981, Z has $1,000 of foreign oil related income subject to the separate limitation for FORI income and no United States source income. In addition, in 1981, Z makes two dispositions of property used predominantly outside the United States in a trade or business on which no gain was recognized. Such property generated foreign oil related income. The excess of the fair market value of the property transferred in the first disposition over Z's adjusted basis in such property is $575. The excess of the fair market value of the property transferred in the second disposition over Z's adjusted basis in such property is $1,000. Under paragraph (c) of this section, Z is required to recapture $800 (the lesser of 50 percent of its foreign oil related income of $1,600 or the balance ($1,500) in its FORI overall foreign loss account) of its foreign oil related loss. In accordance with paragraphs (d)(4) (i) and (iv) of this section, Z is required to recognize foreign oil related income in the amount of $575 on the first disposition and, since the foreign oil related loss account is now reduced by $1,375 (the $800 and $575 amounts previously recaptured), Z is required to recognize foreign oil related income in the amount of $125 on the second disposition. In accordance with paragraph (d)(4)(iii) of this section, the entire amount recognized is treated as United States source income and the balance in the FORI overall foreign loss account is reduced to zero under § 1.904 (f)–1 (e)(2). Z's foreign tax credit limitation for FORI is $400 ($800/$2,300×$1,150) instead of $800 ($1,600/$1,600×$800).

Example (5). The facts are the same as in example (4), except that the gain from the two dispositions of property is treated as net capital gain and the United States corporate tax rate is assumed to be 46 percent. As in example (4), Z is required to recapture $800 of its foreign oil related loss from its 1981

ordinary foreign oil related income. In accordance with paragraph (d)(4) (i) and (iv) of this section, Z is first required to recognize foreign oil related income (which is net capital gain) on the first disposition in the amount of $575. Under paragraphs (b) and (d)(2) of this section, this net capital gain is adjusted by subtracting the rate differential portion of such gain from the total amount of such gain to determine the amount by which the foreign oil related loss account is reduced, which is $350 ($575 − ($575×18/46)). The balance remaining in Z's foreign oil related loss account after this step is $350. Therefore, this process will be repeated, in accordance with paragraph (d)(4)(iv) of this section, to recapture that remaining balance out of the gain deemed recognized on the second disposition, resulting in reduction of the foreign oil related loss account to zero and net capital gain required to be recognized from the second dispostion in the amount of $575, which must also be adjusted by subtracting the rate differential portion to determine the amount by which the foreign oil related loss account is reduced (which is $350). The $575 of net capital gain from each disposition is recharacterized as United States source net capital gain. Z's section 907(b) foreign tax credit limitation is the same as in example (4), and Z has $1,150 ($575+$575) of United States source net capital gain.

§ 1.904 (f)–3 Allocation of net operating losses and net capital losses.

(a) *Allocation of net operating loss carrybacks and carryovers that include overall foreign losses.* If a taxpayer sustains an overall foreign loss that is part of a net operating loss for the year, then, in carrying such net operating loss back to an earlier year or forward to a later year in accordance with section 172 (or §§ 1.1502–21(b) and 1.1502–79(a)), the portion, if any, of the net operating loss attributable to a United States source loss shall be allocated first to United States source income and the portion of the net operating loss attributable to an overall foreign loss shall be allocated first to foreign source taxable income subject to the same separate limitation in the carryback or carryover year. To the extent that the overall foreign loss component of the net operating loss exceeds foreign source taxable income subject to the same separate limitation in the year to which it is carried, it shall be allocated next to the taxpayer's United States source income for such year and then to foreign source taxable income subject to another separate limitation. See paragraph § 1.904 (f)–1(d) of this section for additions to the applicable overall foreign loss account to the extent that the United States source taxable income is reduced in the taxable year to which the loss is carried.

(b) *Allocation of net capital loss carrybacks and carryovers that include overall foreign losses.* If a taxpayer sustains an overall foreign loss that is part of a new capital loss for the year, then in carrying the net capital loss back to an earlier year or forward to a later year in accordance with section 1212 (or §§ 1.1502–22 and 1.1502–79(b)), the portion of the net capital loss that is attributable to a foreign source capital loss shall be allocated first to foreign source capital gain net income subject to the same separate limitation in the carryback or carryover year. To the extent that such foreign source capital loss exceeds foreign source capital gain net income subject to the same separate limitation in the year to which it is carried, it shall be allocated first to United States source capital gain net income in such year and then to foreign source capital gain net income subject to another separate limitation. An overall foreign source net capital loss carried over to a later year in accordance with this paragraph (b) shall be taken into consideration in determining the taxpayer's overall foreign loss in the year to which it is carried and shall be added to the applicable overall foreign loss account for such year in accordance with paragraph (c) of this section. An overall foreign source net capital loss carried back to an earlier year in accordance with this paragraph (b) shall be added to the applicable overall foreign loss account in the year in which the loss occurred.

(c) *Transitional rule.* When a taxpayer incurs a net operating loss in a post-1982 taxable year that is carried back to a pre-1983 taxable year and creates an overall foreign loss in the pre-1983 year, for purposes of this section, § 1.904(f)–1(c)(1), and § 1.904(f)–2(b), that loss will be treated as if it arose in the post-1982 year; thus the loss will first offset United States source income before it offsets foreign source income subject to another limitation. When a taxpayer incurs a net operating loss in a pre-1983 taxable year that is carried forward to a post-1982 taxable year and creates an overall foreign loss in the carryover year, for purposes of this section, § 1.904(f)–1(c)(1), and § 1.904(f)–2(b), that loss is treated as if it arose in the post-1982 taxable year; thus the loss will first offset United States source income before it offsets foreign source income subject to another limitation.

(d) *Illustrations.* The following examples illustrate the application of this section.

Example (1). X Corporation is a domestic corporation with foreign branch operations in Country C. For its taxable year 1985, X has a net operating loss of ($1250), determined as follows:

U.S. source taxable income (loss).....($250)
Foreign source taxable income (loss) subject to the general limitation.....($1,000)

The only prior year to which the net operating loss can be carried under section 172 is 1983. For its taxable year 1983, X had the following taxable income:

U.S. source taxable income.....$1,900
Foreign source taxable income subject to the general limitation.....$400

X has a general limitation overall foreign loss for 1985 of $1,000. X's overall foreign loss is part of a net operating loss of $1,250 for 1985. In accordance with § 1.904(f)–3(a), the foreign loss carried back to 1983 is first allocated to X's foreign source taxable income subject to the limitation under which the loss arose, the general limitation. This amount is not added to X's overall foreign loss account under paragraph (c)(1)(i). The remaining $600 of 1985 foreign source loss is allocated to and thus reduces 1983 United States source income, and this amount is added to X's general limitation overall foreign loss account in 1985.

Example (2). The facts are the same as in example (1), except that in 1983, X's United States source taxable income was zero. No amount is added to X's overall foreign loss account at the end of 1985. X's income and deductions for 1986 are as follows:

U.S. source taxable income.....$1,250
Foreign source taxable income subject to the general limitation.....$300

X has a net operating loss carryover to 1986 of $850 ($1,250–$400). The $850 net operating loss carryover is comprised of $600 of foreign losses ($1,000 of 1985 loss, minus $400 offset by foreign source income in the carryback year) and $250 of United States source loss. The $600 foreign source component of the net operating loss is first allocated to X's foreign source taxable income subject to the general limitation in 1986, in accordance with § 1.904(f)–3(a), prior to reducing United States source income. The $250 United States source component of the net operating loss component is also allocated first to United States income in the carryover year before reducing any foreign source income. Thus, $300 of the remaining $600 of foreign source net operating loss carryover is first applied to eliminate foreign source income in the carryover year, leaving $300 of foreign source net operating loss. The $250 United States source component of the net operating loss reduces United States source taxable income to $1,000 in 1986. This $1,000 of United States source income is then further reduced by the remaining $300 of foreign source net operating loss. Therefore, in 1986, X has $700 of United States source income and $300 is added to X's general limitation overall foreign loss account in accordance with § 1.904(f)–1(d)(4) of this section.

Example (3). Z is a domestic corporation that does business in the United States and abroad. For taxable years prior to 1983, Z computed its overall foreign losses on a separate limitation basis. In 1980, Z had $100 of United States source income and ($100) of foreign source loss subject to the general limitation. On December 31, 1980, the balance in Z's general limitation overall foreign loss account was $100. In 1981, Z had $50 of United States source income and $100 of

general limitation foreign source income. In 1982, Z also had $50 United States source income and $100 foreign source general limitation income. Therefore, in both 1981 and 1982, Z recaptured $50 and at the end of 1982, Z's general limitation overall foreign loss account was reduced to zero. In 1983, Z had no income. In 1984, Z had a ($150) United States source loss and a ($150) general limitation foreign source loss. The 1984 net operating loss is carried back first to 1981 and then to 1982. Because of the overall foreign loss recapture that occurred in those years, Z is considered to have $100 of United States source income and $50 of foreign source income in each year. Thus, in 1981, ($50) of the ($150) foreign source component of the carryback eliminated the $50 foreign source income in that year and ($100) of the ($150) domestic source component of the carryback eliminated the United States source income in that year. In 1982, ($50) of the remaining domestic source component of the net operating loss reduced the United States source income to $50. The remaining ($100) of the foreign source component of the loss first reduced the foreign source income to zero and then reduced the remaining United States source income to zero, thus creating a $50 overall foreign loss. Therefore, at the end of 1984, Z has $50 in its general limitation overall foreign loss account.

Example (4). In 1985, V Corporation has a general limitation loss of <$1,000> and other income or loss in that year. The 1985 loss is carried back to 1982. For taxable years prior to 1983, V computed its overall foreign losses on a combined basis for income subject to the passive interest limitation, the DISC dividend limitation, and the general limitation. In 1982, V had $400 of passive interest limitation income and $200 of general limitation income and $1,000 of United States source taxable income. Under paragraph (d) of this section, the $1,000 NOL attributable to the 1985 loss is first offset by the general limitation income in 1982 and then the United States source passive interest limitation income in that year. V therefore adds $600 to its general limitation overall foreign loss account in 1985.

Example (5). In 1982, W Corporation has a general limitation loss of <$500> and $200 of passive interest limitation income. For taxable years prior to 1983, W computed its overall foreign losses on a combined basis. W has no other taxable income or loss. W cannot carry back the $300 NOL and so it carries it forward to 1983, a year in which it has $600 passive interest limitation income and $500 of United States source income and no general limitation income. Under paragraph (d) of this section, the NOL is not offset by the foreign source income in 1984 but first is applied against United States source income. Thus, $300 is added to W's general limitation overall foreign loss account in 1984.

§ 1.904(f)–4 Recapture of foreign losses out of accumulation distributions from a foreign trust.

(a) *In general.* If a taxpayer receives a distribution of foreign source taxable income subject to a separate limitation in which the taxpayer had a balance in an overall foreign loss account and that income is treated under section 666 as having been distributed by a foreign trust in a preceding taxable year, a portion of the balance in the taxpayer's applicable overall foreign loss account shall be subject to recapture under this section. The amount subject to recapture shall be the lesser of the balance in the taxpayer's overall foreign loss account (after applying §§ 1.904(f)–1, 1.904(f)–2, 1.904(f)–3, and 1.904(f)–6 to the taxpayer's other income or loss in the current taxable year) or the entire amount of foreign source taxable income deemed distributed in a preceding year or years under section 666.

(b) *Effect of recapture on foreign tax credit limitation under section 667(d).* If paragraph (a) of this section is applicable, then in applying the separate limitation (in accordance with section 667(d)(1) (A) and (C)) to determine the amount of foreign taxes deemed distributed under section 666 (b) and (c) that can be credited against the increase in tax in a computation year, a portion of the foreign source taxable income deemed distributed in such computation year shall be treated as United States source income. Such portion shall be determined by multiplying the amount of foreign source taxable income deemed distributed in the computation year by a fraction. The numerator of this fraction is the balance in the taxpayer's overall foreign loss account (after application of §§ 1.904(f)–1, 1.904(f)–2, 1.904(f)–3, and 1.904(f)–6), and the denominator of the fraction is the entire amount of foreign source taxable income deemed distributed under section 666. However, the numerator of this fraction shall not exceed the denominator of the fraction.

(c) *Recapture if taxpayer deducts foreign taxes deemed distributed.* If paragaph (a) of this section is applicable and if, in accordance with section 667(d)(1)(B), the beneficiary deducted rather than credited its taxes in the computation year, the beneficiary shall reduce its overall foreign loss account (but not below zero) by an amount equal to the lesser of the balance in the applicable overall foreign loss account or the amount of the actual distribution deemed distributed in the computation year (without regard to the foreign taxes deemed distributed).

(d) *Illustrations.* The provisions of this section are illustrated by the following examples:

Example (1). X Corporation is a domestic corporation that has a balance of $10,000 in its general limitation overall foreign loss account on December 31, 1980. For its taxable year beginning January 1, 1981, X's only income is an accumulation distribution from a foreign trust of $20,000 of general limitation foreign source taxable income. Under section 666, the amount distributed and the foreign taxes paid on such amount ($4,000) are deemed distributed in two prior taxable years. In determining the partial tax on such distribution under section 667(b), the amount added to each computation year is $12,000 (the sum of the actual distribution plus the taxes deemed distributed ($24,000) divided by the number of accumulation years (2)). Of that amount, $5,000 [$10,000/$24,000×$12,000] is treated as United States source taxable income in accordance with paragraph (b) of this section. Assuming the United States tax rate is 50 percent, X's separate foreign tax credit limitation against the increase in tax in each computation year is $3,500 [$7,000/$12,000×$6,000] instead of $6,000 ($12,000/$12,000×$6,000). X's overall foreign loss account is reduced to zero in accordance with paragraph (a) of this section.

Example (2). Assume the same facts as in Example (1), except that X deducted rather than credited its foreign taxes in the computation years. In 1979, the amount added to X's income is $12,000 under section 667(b), $2,000 of which is deductible under section 667(d)(1)(B). X must reduce its overall foreign loss account by $10,000, the amount of the actual distribution that is deemed distributed in 1979 (without regard to the $2,000 foreign taxes also deemed distributed). The entire overall foreign loss account is therefore reduced to $0 in 1979.

§ 1.904(f)–5 Special rules for recapture of overall foreign losses of a domestic trust.

(a) *In general.* Except as provided in this section, the rules contained in §§ 1.904(f)–1, 1.904(f)–2, 1.904(f)–3, 1.904(f)–4, and 1.904(f)–s6 apply to domestic trusts.

(b) *Recapture of trust's overall foreign loss.* In taxable years in which a trust has foreign source taxable income subject to a separate limitation in which the trust has a balance in its overall foreign loss account, the balance in the trust's overall foreign loss account shall be recaptured as follows:

(1) *Trust accumulates income.* If the trust accumulates all of its foreign source taxable income subject to the same limitation as the loss that created the balance in the overall foreign loss account, its overall foreign loss shall be recaptured out of such income in accordance with §§ 1.904(f)–1, 1.904(f)–2, 1.904(f)–3, 1.904(f)–4, and 1.904(f)–6.

(2) *Trust distributes income.* If the trust distributes all of its foreign source taxable income subject to the same limitation as the loss that created the overall foreign loss account, the amount of the overall foreign loss that would be subject to recapture by the trust under paragraph (b)(1) of this section shall be allocated to the beneficiaries in proportion to the amount of such income which is distributed to each beneficiary in that year.

(3) *Trust accumulates and distributes income.* If the trust accumulates part of its foreign source taxable income subject to the same limitation as the loss that created the overall foreign loss account and distributes part of such income, the portion of the overall foreign loss that would be subject to recapture by the trust under paragraph (b)(1) of this section if the distributed income were accumulated shall be allocated to the beneficiaries receiving income distributions. The amount of overall foreign loss to be allocated to such beneficiaries shall be the same portion of the total amount of such overall foreign loss that would be recaptured as the amount of such income which is distributed to each beneficiary bears to the total amount of such income of the trust for such year. That portion of the overall foreign loss subject to recapture in such year that is not allocated to the beneficiaries in accordance with this paragraph (b)(3) shall be recaptured by the trust in accordance with paragraph (b)(1).

(c) *Amounts allocated to beneficiaries.* Amounts of a trust's overall foreign loss allocated to any beneficiary in accordance with paragraph (b)(2) or (3) of this section shall be added to the beneficiary's applicable overall foreign loss account and treated as an overall foreign loss of the beneficiary incurred in the taxable year preceding the year of such allocation. Such amounts shall be recaptured in accordance with §§ 1.904(f)-1, 1.904(f)-2, 1.904(f)-3, 1.904(f)-4, and 1.904(f)-6 out of foreign source taxable income distributed by the trust which is subject to the same separate limitation.

(d) *Section 904(f)(3) dispositions to which § 1.904(f)-2(d)(4)(i) is applicable.* Foreign source taxable income recognized by a trust under § 1.904(f)-2(d)(4) on a disposition of property used in a trade or business outside the United States shall be deemed to be accumulated by the trust. All such income shall be used to recapture the trust's overall foreign loss in accordance with § 1.904(f)-2(d)(4).

(e) *Illustrations.* The provisions of this section are illustrated by the following examples:

Example (1). T, a domestic trust, has a balance of $2,000 in a general limitation overall foreign loss account on December 31, 1983. For its taxable year ending on December 31, 1984, T has foreign source taxable income subject to the general limitation of $1,600, all of which it accumulates. Under paragraph (b)(1) of this section, T is required to recapture $800 in 1984 (the lesser of the overall foreign loss or 50 percent of the foreign source taxable income). This amount is treated as United States source income for purposes of taxing T in 1984 and upon subsequent distribution to T's beneficiaries. At the end of its 1984 taxable year, T has a balance of $1,200 in its overall foreign loss account.

Example (2). The facts are the same as in example (1). In 1985, T has general limitation foreign source taxable income of $1,000, which it distributes to its beneficiaries as follows: $500 to A, $250 to B, and $250 to C. Under paragraph (b)(1) of this section, T would have been required to recapture $500 of its overall foreign loss if it had accumulated all of such income. Therefore, under paragraph (b)(2) of this section, T must allocate $500 of its overall foreign loss to A, B, and C as follows: $250 to A ($500×$500/$1,000), $125 to B ($500×$250/$1,000), and $125 to C ($500×$250/$1,000). Under paragraph (c) of this section and § 1.904(f)-1(d)(4), A, B, and C must add the amounts of general limitation overall foreign loss allocated to them from T to their overall foreign loss accounts and treat such amounts as overall foreign losses incurred in 1984. A, B, and C must then apply the rules of §§ 1.904(f)-1, 1.904(f)-2, 1.904(f)-3, 1.904(f)-4, and 1.904(f)-6 to recapture their overall foreign losses. T's overall foreign loss account is reduced in accordance with § 1.904(f)-1(e)(1) by the $500 that is allocated to A, B, and C. At the end of 1985, T's general limitation overall foreign loss account has a balance of $700.

Example (3). The facts are the same as in example (2), including an overall foreign loss account at the end of 1984 of $1,200, except that in 1985 T's general limitation foreign source taxable income is $1,500 instead of $1,000, and T accumulates the additional $500. Under paragraph (b)(1) of this section, T would be required to recapture $750 of its overall foreign loss if it accumulated all of the $1,500. Under paragraph (b)(3) of this section, T must allocate $500 of its overall foreign loss to A, B, and C as follows: $250 to A ($750×$500/$1,500) and $125 each to B and C (750×$250/$1,500). T must also recapture $250 of its overall foreign loss, which is the amount subject to recapture in 1985 that is not allocated to the beneficiaries ($750−$500=$250). Under § 1.904(f)-1(e)(1), T reduces its general limitation overall foreign loss account by $500. Under § 1.904(f)-1(e)(2), T reduces its general limitation overall foreign loss account by $250. At the end of 1985 there is a balance in the general limitation overall foreign loss account of $450 (($1,200−$500)−$250).

§ 1.904(f)-6 Transitional rule for recapture of FORI and general limitation overall foreign losses incurred in taxable years beginning before January 1, 1983, from foreign source taxable income subject to the general limitation in taxable years beginning after December 31, 1982.

(a) *General rule.* For taxable years beginning after December 31, 1982, foreign source taxable income subject to the general limitation includes foreign oil related income (as defined in section 907(c)(2) prior to its amendment by section 211 of the Tax Equity and Fiscal Responsibility Act of 1982). However, for purposes of recapturing general limitation overall foreign losses incurred in taxable years beginning before January 1, 1983 (pre-1983) out of foreign source taxable income subject to the general limitation in taxable years beginning after December 31, 1982 (post-1982), the taxpayer shall make separate determinations of foreign oil related income and other general limitation income (as if the FORI limitation under "old section 907(b)" (prior to its amendment by section 211 of the Tax Equity and Fiscal Responsibility Act of 1982) were still in effect), and shall apply the rules set forth in this section. The taxpayer shall maintain separate accounts for its pre-1983 FORI limitation overall foreign losses, its pre-1983 general limitation overall foreign losses (or its pre-1983 section 904(d)(1)(A–C) overall foreign losses if such losses were computed on a combined basis), and its post-1982 general limitation overall foreign losses. The taxpayer shall continue to maintain such separate accounts, make such separate determinations, and apply the rules of this section separately to each account until the earlier of—

(1) Such time as the taxpayer's entire pre-1983 FORI limitation overall foreign loss account and pre-1983 general limitation overall foreign loss account (or, if the taxpayer determined pre-1983 overall foreign losses on a combined basis, the section 904(d)(1)(A–C) account) have been recaptured, or

(2) The end of the taxpayer's 8th post-1982 taxable year, at which time the taxpayer shall add any remaining balance in its pre-1983 FORI limitation account and pre-1983 general limitation overall foreign loss account (or the section 904(d)(1)(A-C) account) to its post-1982 general limitation overall foreign loss account.

(b) *Recapture of pre-1983 FORI and general limitation overall foreign losses from post-1982 income.* A taxpayer having a balance in its pre-1983 FORI limitation overall foreign loss account or its pre-1983 general limitation overall foreign loss account (or its pre-1983 section 904(d)(1)(A–C) account) in a post-1982 taxable year shall recapture such overall foreign loss as follows:

(1) *Recapture from income subject to the same limitation.* The taxpayer shall first apply the rules of §§ 1.904(f)–1 through 1.904(f)–5 to the taxpayer's separately determined foreign oil related income to recapture the pre-1983 FORI limitation overall foreign loss account, and shall apply such rules to the taxpayer's separately determined general limitation income (exclusive of

foreign oil related income) to recapture the pre-1983 general limitation overall foreign loss account (or the section 904(d)(1)(A–C) overall foreign loss account. Rules for determining the recapture of the pre-1983 section 904 (d)(1)(A–C) losses are contained in § 1.904(f)–2(c)(4).

(2) *Recapture from income subject to the other limitation.* The taxpayer shall next apply the rules of § 1.904(f)–1 through –5 to the taxpayer's separately determined foreign oil related income to recapture the pre-1983 general limitation overall foreign loss account (or the section 904(d)(1)(A–C) overall foreign loss account) and shall apply such rules to the taxpayer's separately determined general limitation income to recapture foreign oil related losses to the extent that—

(i) The amount recaptured from such separately determined income under paragraph (b)(1) of this section is less than 50 percent (or such larger percentage as the taxpayer elects) of such separately determined income, and

(ii) The amount recaptured from such separately determined income under this paragraph (b)(2) does not exceed an amount equal to 12½ percent of the balance in the taxpayer's pre-1983 FORI limitation overall foreign loss account or the pre-1983 general limitation overall foreign loss account (or the section 904(d)(1)(A-C) overall foreign loss account) at the beginning of the taxpayer's first post-1982 taxable year, multiplied by the number of post-1982 taxable years (including the year to which this rule is being applied) which have elapsed, less the amount (if any) recaptured in prior post-1982 taxable years under this paragraph (b)(2) from such separately determined income.

The taxpayer may elect to recapture a pre-1983 overall foreign loss from post-1982 income subject to the general limitation at a faster rate than is required by this paragraph (b)(2). This election shall be made in the same manner as an election to recapture more than 50 percent of the income subject to recapture under section 904(f)(1), as provided in § 1.904(f)–2(c)(2).

(c) *Coordination of recapture of pre-1983 and post-1982 overall foreign losses.* A taxpayer incurring a general limitation overall foreign loss in any post-1982 taxable year in which the taxpayer has a balance in a pre-1983 FORI limitation or its pre-1983 general limitation overall foreign loss account (or the section 904(d)(1)(A-C) overall foreign loss account) shall establish a separate overall foreign loss account for such loss. The taxpayer shall recapture its overall foreign losses in succeeding taxable years by first applying the rules of this section to recapture its pre-1983 overall foreign losses, and then applying the rules of §§ 1.904(f)–1 through 1.904(f)–5 to recapture its post-1982 general limitation overall foreign loss. A post-1982 general limitation overall foreign loss is required to be recaptured only to the extent that the amount of foreign source taxable income recharacterized under paragraph (b) of this section is less than 50 percent of the taxpayer's total general limitation foreign source taxable income (including foreign oil related income)) for such taxable year (except as required by section 904(f)(3)). However, a taxpayer may elect to recapture at a faster rate.

(d) *Illustrations.* The provisions of this section are illustrated by the following examples:

Example (1). X Corporation is a domestic corporation which has the calendar year as its taxable year. On December 31, 1982, X has a balance of $1,000 in its section 904(d)(1)(A-C) overall foreign loss account. X does not have a balance in a FORI limitation overall foreign loss account. For 1983, X has income of $1,200, which was subject to the general limitation and includes foreign oil related income of $1,000 and other general limitation income of $200. In 1983, X is required to recapture $225 of its pre-1983 section 904(d)(1)(A-C) overall foreign loss account computed as follows:

Amount recaptured under paragraph (b)(1) of this section.....$100

The amount recaptured from general limitation income exclusive of foreign oil related income is the lesser of $1,000 (the pre-1983 loss reflected in the section 904(d)(1)(A-C) overall foreign loss account) or 50 pecent of $200 (the separately determined general limitation income (exclusive of foreign oil related income).

Amount recaptured under paragraph (b)(2) of this section.....$125

The amount recaptured from foreign oil related income is the lesser of $900 (the remaining pre-1983 section 904(d)(1)(A-C) overall foreign loss account after recapture under paragraph (b)(1) of this section) or 50 percent of $1,000 (the separately determined foreign oil related income), but as limited by paragraph (b)(2)(ii) of this section to (12½ percent of $1,000 x 1)—$0, which is $125.

Total amount recaptured in 1983.....$225

Example (2). The facts are the same as in example (1), except that X has general limitation income of $50 for 1984 and $600 for 1985, all of which is foreign oil related income. X is required to recapture $25 in 1984 and $225 in 1985 of its pre-1983 section 904(d)(1)(A-C) overall foreign loss account computed as follows:

Amount recaptured under paragraph (b)(2) of this section in 1984.....$25

The amount recaptured from foreign oil related income is the lesser of $775 (the remaining pre-1983 section 904(d)(1)(A-C) overall foreign loss account or 50 percent of $50 (the separately determined foreign oil related income).This amount is within the limitation of paragraph (b)(2)(ii) of this section, (12½ percent of $1,000 x 2)—$125, which is $125.

Amount recaptured under paragraph (b)(2) of this section in 1985.....$225

The amount recaptured from foreign oil related income is the lesser of $750 (the remaining pre-1983 section 904(d)(1)(A-C) overall foreign loss account) or 50 percent of $600 (the separately determined foreign oil related income), but as limited by paragraph (b)(2)(ii) of this section to (12½ percent of $1,000×3)–($125+$25), which is $225. ($125 is the amount recaptured in 1983 under paragraph (b)(2) of this section, and $25 is the amount recaptured in 1984 under paragraph (b)(2) of this section.)

Example (3). Y Corporation is a domestic corporation which has the calendar year as its taxable year. On December 31, 1982, Y has a balance of $400 in its section 904(d)(1)(A–C) overall foreign loss account. Y does not have a balance in a FORI overall foreign loss account. For 1983, Y has a general limitation overall foreign loss of $200. For 1984, Y has general limitation income of $1,200, all of which is foreign oil related income. In 1984, Y is required to recapture a total of $300 computed as follows:

Amount of pre-1983 overall foreign loss recaptured under paragraph (b)(2) of this section.....$100

The amount of the pre-1983 section 904(d)(1)(A–C) overall foreign loss account attributable to a general limitation loss recaptured from foreign oil related income is the lesser of $400 (the loss) or 50 percent of $1,200 (the separately determined foreign oil related income), but as limited by paragraph (b)(2)(ii) of this section to (12½ percent of $400×2) — $0, which is $100.

Amount of post-1982 overall foreign loss recaptured under paragraph (c) of this section.....$200

The amount of post-1982 general limitation overall foreign loss recaptured is the amount computed under § 1.904 (f)—2(c)(1), which is the lesser of $200 (the post-1982 loss) or 50 percent of $1,200 (the income), but only to the extent that the amount of pre-1983 loss recaptured under paragraph (b) of this section is less than 50 percent of such income ((50 percent of $1,200)—$100 recaptured under paragraph (b) = $500).

Total amount recaptured in 1984.....$300

At the end of 1984, Y has a balance in its pre-1983 section 904(d)(1)(A–C) overall foreign loss account of $300, and has reduced its post-1982 general limitation overall foreign loss account to zero.

Example (4). Z is a domestic corporation which has the calendar year as its taxable year. On December 31, 1982, Z has a balance of $400 in its section 904 (d)(1)(A–C) overall foreign loss account, and a balance of $1,000 in its FORI limitation overall foreign loss account. For 1983, Z has general limitation income of $2,000, which includes foreign oil related income of $1,000 and other general limitation income of $1,000. Keeping these amounts separate for purposes of this section, Z is required to recapture a total of $1,000 in 1983, computed as follows:

Amount recaptured under paragraph (b)(1) of this section.....$900

The amount of pre-1983 section 904(d)(1)(A–C) overall foreign loss account recaptured from general limitation income exclusive of foreign oil related income, in accordance with §1.904 (f)—2(c)(1), is the lesser of $400 (the section 904(d)(1)(A–C) overall foreign loss) or 50 percent of $1,000, the general limitation income exclusive of foreign oil related income), which is $400.

The amount of pre-1983 FORI overall foreign loss recaptured from foreign oil related income, in accordance with § 1.904(f)–2(c)(1), is the lesser of $1,000 (the FORI overall foreign loss) or 50 percent of $1,000 (the foreign oil related income), which is $500.

Amount recaptured under paragraph (b)(2) of this section.....$100

The amount of pre-1983 FORI 907(b) overall foreign loss recaptured from section general limitation income exclusive of foreign oil related income is the lesser of $500 (the remaining balance in that loss account) or 50 percent of $1,000 (the general limitation income exclusive of foreign oil related income), but only to the extent that the amount recaptured from such income under paragraph (b)(1) of this section is less than 50 percent of such income, or $100 (50 percent of $1,000)—$400 recaptured due to section 904(d)(1)(A–C) overall foreign loss account, and only up to the amount permitted by paragraph (b)(2)(ii) of this section, which is (12½ percent of $1,000 x 1)—$0, or $125.

Total amount recaptured in 1983.....$1,000

At the end of 1983, Z has reduced its pre-1983 section 904(d)(1)(A–C) overall foreign loss account to zero, and has a balance in its pre-1983 FORI overall foreign loss account of $400.

Par. 3. A new § 1.1502–9 is added immediately following § 1.1502–7 to read as set forth below:

§ 1.1502–9 Application of overall foreign loss recapture rules to corporations filing consolidated returns.

(a) *In general.* An affiliated group of corporations filing a consolidated return sustains an overall foreign loss (a consolidated overall foreign loss) in any taxable year in which its gross income from sources without the United States subject to a separate limitation (as defined in § 1.904(f)–1(c)(2)) is exceeded by the sum of the deductions properly allocated and apportioned thereto. However, for taxable years prior to 1983, affiliated groups may have determined their overall foreign losses for income subject to the passive interest limitation, DISC dividend limitation, and general limitation on a combined basis in accordance with the rules in § 1.904(f)–1(c)(1). The rules contained in §§ 1.904(f)–1 through 1.904(f)–6 are applicable to affiliated groups filing consolidated returns. This section provides special rules for applying those sections to such groups. Paragraph (b) provides rules for additions and subtractions of a portion of overall foreign losses to and from consolidated overall foreign loss accounts. Paragraph (c) requires that separate notional overall foreign loss accounts be kept for each member of the group that contributes to a consolidated overall foreign loss account and provides for allocation of a portion of the group's overall foreign loss account to a member when the member leaves the group prior to recapture of the entire amount of the loss account. These rules are similar to the rules provided in § 1.1502–79 concerning the apportionment of consolidated net operating losses to a member who leaves the group. However, the rules differ somewhat because the absorption rule of § 1.1502–79 is applied year-by-year, consistently with the sequence rules of section 172(b), and recapture of overall foreign losses is based on overall foreign loss accounts that may consist of losses in more than one year. Paragraph (d) provides rules for recapture of amounts in consolidated overall foreign loss accounts. Paragraph (e) provides special rules pertaining to section 904(f)(3) dispositions between members of a group. Paragraphs (b), (c), and (e) also contain special rules that apply to overall foreign losses that arise in separate return limitation years; the principles therein also apply to overall foreign losses when there has been a consolidated return change of ownership (as defined in § 1.1502–1(g)).

(b) *Consolidated overall foreign loss accounts.* Any group that sustains an overall foreign loss (or acquires a member with a balance in an overall foreign loss account) must establish a consolidated overall foreign loss account for such loss, and amounts shall be added to and subtracted from such account as provided in §§ 1.904(f)–1 through 1.904(f)–6 and this section.

(1) *Additions to the consolidated overall foreign loss accounts*—(i) *Consolidated overall foreign losses.* Any consolidated overall foreign loss shall be added to the applicable consolidated overall foreign loss account for such separate limitation, to the extent that the overall foreign loss has reduced United States source income, in accordance with the rules of §§ 1.904(f)–1 and 1.904(f)–3.

(ii) *Overall foreign losses from separate return years.* If a corporation joins in the filing of a consolidated return in a taxable year in which such corporation has a balance in an overall foreign loss account from a prior separate return year that is not a separate return limitation year, such balance shall be added to the applicable consolidated overall foreign loss account in such year and treated as a consolidated overall foreign loss incurred in the previous year (and shall therefore be subject to recapture, in accordance with paragraph (d) of this section, beginning in the same year in which it is added to the consolidated overall foreign loss account).

(iii) *Overall foreign losses from separate return limitation years.* If a corporation joins in the filing of a consolidated return in a taxable year in which such corporation has a balance in an overall foreign loss account from a prior separate return limitation year, such balance shall be added to the applicable consolidated overall foreign loss account in such consolidated return year to the extent of the lesser of the balance in the overall foreign loss account from the separate return limitation year or 50 percent (or such larger percentage as the taxpayer may elect) of the difference between the consolidated foreign source taxable income subject to the same separate limitation (computed in accordance with §§ 1.904(f)–2(b) and 1.1502–4(d)(1)) minus such consolidated foreign source taxable income recomputed by excluding the items of income and deduction of such corporation (but not less than zero). The amount added to a consolidated overall foreign loss account in any taxable year under this paragraph (b)(1)(iii) shall be treated as a consolidated overall foreign loss in the previous year (and shall therefore be subject to recapture, in accordance with paragraph (d) of this section, beginning in the same year in which it is added to the consolidated overall foreign loss account).

(iv) *Overall foreign losses that are part of a net operating loss or net capital loss carried over from a separate return limitation year.* Overall foreign losses that are part of a net operating loss or net capital loss carryover from a separate return limitation year of a member that is absorbed in a consolidated return year shall be treated as though they were added to an overall foreign loss account in a separate return limitation year of such member and will be subject to the limitation on recapture of SRLY losses contained in paragraph (b)(1)(iii) of this section. See paragraph (c)(2) of this section for rules regarding the addition of such losses to the applicable overall foreign loss account of such member.

(2) *Reductions of the consolidated overall foreign loss accounts*—(i) *Amounts allocated to members leaving the group.* When a member leaves the group, each applicable consolidated overall foreign loss account shall be

reduced by the amount allocated from such account to such member in accordance with paragraph (c)(3)(i) of this section.

(ii) *Amounts recaptured.* A consolidated overall foreign loss account shall be reduced by the amount of any overall foreign loss under the same separate limitation that is recaptured from consolidated income in accordance with § 1.904(f)–2.

(c) *Allocation of overall foreign losses among members of an affiliated group*—(1) *Notional overall foreign loss accounts.* Separate notional overall foreign loss accounts shall be established for each member of a group that contributes to a consolidated overall foreign loss account. Additions to and reductions of such notional accounts shall be made when additions or reductions are made to consolidated overall foreign loss accounts in accordance with paragraph (b) of this section and § 1.904(f)–1.

(i) *Additions to notional accounts*—(A) *Consolidated overall foreign losses.* When a consolidated overall foreign loss is added to a consolidated overall foreign loss account, each member shall add its pro rata share of the amount of such loss to the member's notional overall foreign loss account. A member's pro rata share of a consolidated overall foreign loss for any taxable year is determined by multiplying the consolidated loss by a fraction.The numerator of this fraction is the amount by which the member's separate gross income for the taxable year from sources without the United States subject to the applicable separate limitation is exceeded by the sum of the deductions properly allocated and apportioned thereto (including such member's share of any consolidated net operating loss deduction and consolidated net capital loss carryovers and carrybacks to the taxable year), for each member with such deductions in excess of such income. The denominator of this fraction is the sum of the numerators of this fraction for all such members of the group.

(B) *Overall foreign losses from separate return years and separate return limitation years.* When an amount from a member's overall foreign loss account from a separate return year or separate return limitation year is added to a consolidated overall foreign loss account in accordance with paragraph (b)(1) (ii) or (iii) of this section, such amount shall also be added to that member's notional overall foreign loss account for such separate limitation.

(ii) *Reductions of notional accounts.* When a consolidated overall foreign loss account is reduced by recapture, in accordance with paragraph (b)(2)(ii) of this section, each member of the group shall reduce its notional overall foreign loss account for that separate limitation by its pro rata share of the amount by which the consolidated overall foreign loss account is reduced. A member's pro rata share of the amount by which a consolidated overall foreign loss account is reduced and determined by multiplying the amount recaptured by a fraction, the numerator of which is the amount in such member's notional account under such separate limitation, and the denominator of which is the amount in the consolidated overall foreign loss account under such separate limitation before reduction for the amount recaptured for that taxable year.

(2) *Overall foreign losses that are part of a net operating loss or net capital loss from a separate return limitation year.* An overall foreign loss that is part of a net operating loss or net capital loss carryover from a separate return limitation year of a member that is absorbed in a consolidated return year shall be treated as an overall foreign loss of such member (rather than the group) and shall be added to such member's separate overall foreign loss account to the extent it reduces United States source income, in accordance with § 1.904(f)–1(d)(5). Such overall foreign losses shall be added to the appropriate consolidated overall foreign loss account in later years in accordance with paragraph (b)(1)(iii) of this section.

(3) *Allocation of a portion of overall foreign loss accounts to a member leaving the group*—(i) *Consolidated overall foreign losses.* When a corporation ceases to be a member of an affiliated group filing consolidated returns, a portion of the balance in each applicable consolidated overall foreign loss account shall be allocated to such corporation. The amount allocated to such corporation shall be equal to the amount, if any, in such member's notional overall foreign loss account under the same separate limitation.

(ii) *Overall foreign losses from separate return limitation years.* When a corporation ceases to be a member of an affiliated group filing consolidated returns, it shall take with it the remaining portion of each separate overall foreign loss account for overall foreign losses from separate return limitation years (including amounts added to such accounts under paragraph (c)(2) of this section).

(d) *Recapture of consolidated overall foreign losses.* The amount in any consolidated overall foreign loss account shall be recaptured under §§ 1.904(f)–1 through 1.904(f)–6 by recharacterizing consolidated foreign source taxable income subject to the separate limitation under which the loss arose as United States source taxable income. For purposes of recapture, consolidated foreign source taxable income subject to the separate limitation under which the loss arose shall be determined in accordance with §§ 1.904(f)–2 and 1.1502–4. Amounts in a member's excess loss account that are included in income under § 1.1502–19 shall be subject to recapture to the extent that they are included in consolidated foreign source taxable income subject to the separate limitation under which the loss arose.

(e) *Dispositions of property between members of the same affiliated group during a consolidated return year*—(1) *In general.* Except as provided in paragraph (2) with respect to overall foreign losses of a selling member from a separate return limitation year, the rules of § 1.1502–13 with respect to intercompany transactions will apply to dispositions of property to which section 904(f)(3)(A) applies.

(2) *Recapture of overall foreign loss from a separate return limitation year.* Paragraph (1) will not apply and gain will be recognized to the extent that the selling member has a balance in its overall foreign loss account from a separate return limitation year unless the selling member adds the entire amount of its overall foreign loss account from separate return limitation years to the applicable consolidated overall foreign loss account and treats such amount as an overall foreign loss incurred in the previous year. Such loss shall be subject to recapture, in accordance with paragraph (d) of § 1.1502–9, beginning in the same year in which it is added to the consolidated overall foreign loss account.

(f) *Illustrations.* The provisions of this section are illustrated by the following examples. All foreign source income or loss in these examples is subject to the general limitation.

Example (1). A, B, and C are the members of an affiliated group of corporations (as defined in section 1504), and all use the calendar year as their taxable year. For 1983, A, B, and C file a consolidated return. ABC has United States source income of $1,000 and foreign source losses (overall foreign loss) of $400. In accordance with paragraph (b)(1)(i) of this section, ABC adds $400 to its consolidated overall foreign loss account at the end of 1983. For 1983, the separate foreign source taxable income (or loss) of A is $400, of B is ($200), and of C is ($600). Under paragraph (c)(1) of this section, B and C must establish separate notional overall foreign loss accounts. Under paragraph (c)(1)(i)(A) of

this section, the amount added to each notional account is the pro rata share of the consolidated overall foreign loss of each member contributing to such loss. The pro rata share is determined by multiplying the consolidated loss by the member's proportionate share of the total foreign source losses of all members having such losses. B's foreign source loss if $200 and C's foreign source loss is $600, totaling $800. B must add $400x200/800, or $100, to its notional overall foreign loss account. C must add $400x600/800, or $300, to its notional overall foreign loss account.

Example (2). The facts are the same as in example (1). In 1984, ABC has consolidated foreign source taxable income of $200. Under paragraph (d) of this section and § 1.904(f)–2, ABC is required to recapture $100 of the amount in its consolidated overall foreign loss account, which reduces that account by $100 under paragraph (b)(2)(ii) of this section. In accordance with paragraph (c)(1)(ii) of this section, B reduces its notional account by $100x100/400, or $25, and C reduces it notional account by $100x300/400, or $75. At the end of 1984 ABC has $300 in its consolidated overall foreign loss account, B has $75 in its notional account, and C has $225 in its notional account.

Example (3). D and E are members of an affiliated group and file separate returns using the calendar year as their taxable year for 1980. In 1980, D has an overall foreign loss of $200, which it adds to its overall foreign loss account, and E has no overall foreign losses. For 1981, D and E file a consolidated return, and DE must establish a consolidated overall foreign loss account, to which D's overall foreign loss from 1980 is added under paragraph (b)(1)(ii) of this section. D also adds the same amount $200 to its notional account under paragraph (c)(1)(i)(B) of this section. In 1981, DE has consolidated foreign source taxable income of $300. Since the amount added to the consolidated overall foreign loss account in 1981 is treated as a consolidated overall foreign loss from 1980, DE must recapture $150 in 1981 under paragraph (d) of this section and § 1.904(f)–2. DE's consolidated overall foreign loss account is reduced by $150 under paragraph (b)(2)(ii) of this section, and D's notional account is reduced by $150 under paragraph (c)(1)(ii) of this section, leaving balances of $50 in each of those accounts at the end of 1981.

Example (4). F and G are not members of an affiliated group in 1980, and G has an overall foreign loss of $200, which it adds to its overall foreign loss account. F has no overall foreign loss. On January 1, 1981, F acquires G, and FG files a consolidated return for the calendar year 1981. In 1981, F has no foreign source taxable income or loss, and G has $100 of foreign source taxable income. FG's consolidated foreign source taxable income, $100, minus such income without G's items of income and deduction, $0, is $100. Therefore 50% of that amount, $50, of G's overall foreign loss from its 1980 separate return limitation year is added to FG's consolidated overall foreign loss account under paragraph (b)(1)(iii) of this section, and the same amount is added to G's notional account under paragraph (c)(1)(i)(B) of this section. In accordance with paragraph (d) of this section and § 1.904(f)–2, FG must recapture the $50 balance in its consolidated overall foreign loss account in 1981 because the amount added from G's separate return limitation year is treated as a 1980 consolidated overall foreign loss. At the end of 1981, FG has a balance of $0 in its consolidated overall foreign loss account, G has $0 in its notional account, and G also has $150 remaining from its 1980 overall foreign loss that has not yet been added to the consolidated overall foreign loss account.

On January 1, 1982, F sells G and G leaves the affiliated group. Under paragraph (c)(3)(i) of this section, G takes with it the balance in its overall foreign loss account from 1980 (its prior separate return limitation year) that has not been added to the consolidated account. G has $150 of overall foreign loss in its overall foreign loss account. Because the amount in the consolidated overall foreign loss account is zero, no amount from that account is allocated to G.

Example (5). (i) In 1982 corporation H has United States source income of $300 and foreign source losses of $500, resulting in a net operating loss of $200 and a balance in H's overall foreign loss account at the end of 1982 of $300.

(ii) On January 1, 1983, H is acquired by J, and for the calendar year 1983 JH files a consolidated return. JH has consolidated taxable income of $700 in 1983, including a consolidated net operating loss deduction of $100. This net operating loss deduction is $100 of H's $200 net operating loss from 1982 (a separate return limitation year), which is limited by § 1.1502–21(c). For 1983, H has separate taxable income of $100, comprised of $100 of United States source taxable income and zero foreign source taxable income, and J has separate taxable income of $700, comprised of $700 of United States source taxable income and zero foreign source taxable income. Under paragraph (c)(2) of this section, H adds $100 to its separate overall foreign loss account, since that amount of its net operating loss has reduced United States source income. H has $400 in its separate overall foreign loss account at the end of 1983, none of which has been added to a consolidated overall foreign loss account.

(iii) In 1984, H has separate taxable income of $400, comprised of $100 of United States source taxable income and $300 of foreign source taxable income. J has separate taxable income of $900, comprised of $700 of United States source taxable income and $200 of foreign source taxable income. JH has consolidated taxable income of $1200, which includes $100 of consolidated net operating loss deduction from H's 1982 net operating loss. Since this net operating loss deduction is allocated to foreign source income, it does not reduce United States source income and will not be added to an overall foreign loss account. Under paragraph (b)(1)(iii) of this section, $100, from H's overall foreign loss is added to the consolidated overall foreign loss account computed as follows:

Consolidated foreign source taxable income	$400
Consolidated foreign source taxable income recomputed by excluding H's foreign source income and deduction	−200
$200	
× 50%	$100
Amount from H's separate return limitation year overall foreign loss account added to the consolidated overall foreign loss account	$100

This amount is subject to recapture beginning in the same taxable year, as it is treated as a consolidated overall foreign loss incurred in a previous year. Therefore, under paragraph (d) of this section and § 1.904(f)–2 JH also recaptures this $100, reducing the consolidated overall foreign loss account to $0. H has $300 remaining in its separate overall foreign loss account at the end of 1984.

(iv) In 1985, H has separate taxable income of $400, comprised of $100 of United States source taxable income and $300 of foreign source taxable income. J has separate taxable income of $300 comprised of $800 of United States source taxable income and $300 of foreign source losses. JH has consolidated taxable income of $700, all of which is United States source. Under paragraph (b)(1)(iii) of this section an additional $150 from H's separate overall foreign loss is added to the consolidated overall foreign loss account, computed as follows:

Consolidated foreign source taxable income	$0
Consolidated foreign source taxable income recomputed by excluding H's foreign source income and deductions	=(300)
300	
× 50%	$150
Amount from H's separate return limitation year overall foreign loss account added to the consolidated overall foreign loss account	$150

Thus, an additional $150 of H's separate overall foreign loss is added to the consolidated overall foreign loss account, and, under paragraph (c)(1)(i)(B) of this section, the same amount is added to J's notional account. While this amount is subject to recapture beginning in the same taxable year, JH has no consolidated foreign source taxable income on 1985, so no overall foreign loss is recaptured. H has a remaining balance of $150 in its separate return limitation year overall foreign loss account and HJ has $150 in its consolidated overall foreign loss account.

Example (6). A, B, and C are members of an affiliated group of corporations (as defined in section 1504), and all use the calendar year as their taxable year. For 1986, A, B, and C file a consolidated return. A has an overall foreign loss account which arose in a separate return limitation year. The amount in the overall foreign loss account is $2,000. A makes a disposition of all its assets to B on January 1, 1986. The gain on the transfer is $1,500, all of which would be recognized under section 904(f)(3). However,

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if A adds the total amount of its overall foreign loss from separate return limitation years to ABC's consolidated overall foreign loss account, no gain will be recognized on the transfer until a restoration event under section 1.1502-13(f) occurs. In the interim, any foreign source gain of the purchasing member (or any other member of the consolidated group) may be used to recapture on a consolidated basis the amount in ABC's consolidated overall foreign loss account.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 5. Section 602.101 (c) is amended by inserting in the appropriate place in the table "§ 1.904(f)-1 . . . 1545-0121", "§ 1.904(f)-2 . . . 1545-0121", "§ 1.904(f)-3 . . . 1545-0121", "§ 1.904(f)-4 . . . 1545-0121", "§ 1.904(f)-5 . . . 1545-0121", "§ 1.904(f)-6 . . . 1545-0121", and "§ 1.1502-9 . . . 1545-0121".

Lawrence B. Gibbs,
Commissioner of Internal Revenue.

Approved:

J. Roger Mentz
Assistant Secretary of the Treasury.

July 30, 1987.

[FR Doc. 87-19337 Filed 8-21-87; 8:45 am]
BILLING CODE 4830-01-M

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26 CFR Parts 48 and 602

[T.D. 8154]

Excise Taxes; Sales of Diesel and Special Motor Fuel From Unattended Locations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to sales of liquid fuel from unattended locations. The regulations affect retailers of diesel fuel, special motor fuel, and fuel used in noncommercial aviation and provide them with the guidance needed to comply with the law.

DATE: The regulations are effective on or after January 2, 1986.

FOR FURTHER INFORMATION CONTACT: William A. Jackson of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T), (202) 566-4336, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations amending the Excise Tax Regulations (26 CFR Part 48) under section 4041 of the Internal Revenue Code of 1986 (Code). These regulations are intended to clarify treatment of sales of liquid fuel from unattended locations.

In General

Under section 4041(a)(1) of the Code, excise taxes are imposed on the sale of any liquid sold for use as fuel in a diesel-powered highway vehicle. The taxes are imposed when the liquid is sold to an owner, lessee, or other operator of a diesel powered highway vehicle for use as fuel in such vehicle.

Sales From Unattended Locations

Section 48.4041-5(a)(1) of the regulations provides that the sale of diesel fuel, special motor fuel, or fuel used in noncommercial aviation is considered a taxable sale if the seller delivers the fuel into the fuel supply tank of a vehicle, motorboat, or aircraft. Section 48.4041-5(a)(1) further provides that for this purpose, fuel sold at a location unattended by the seller is considered to be delivered into the fuel supply tank by the seller. This provision regarding sales from unattended locations was added to the regulations by T.D. 8066, published on January 2, 1986 (51 FR 11).

The regulations clarify that the rule in §48.4041-5(a)(1) regarding sales from unattended locations only applies to sales on or after January 2, 1986. In addition, § 48.4041-5(a)(1)(ii) of the regulations provides that sales of fuel for nontaxable uses from unattended locations will not be considered taxable if the seller maintains special devices to accurately account for sales to customers who regularly purchase fuel for nontaxable uses. The regulations further provide that the seller must maintain accurate records of such nontaxable sales.

This amendment to the regulations is effective for sales of fuel on or after January 2, 1986.

Need for Temporary Regulations

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it was found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Special Analysis

Executive Order 12291

The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required.

Regulatory Flexibility Analysis

No notice of proposed rulemaking is required by 5 U.S.C 553 (b) for temporary regulations. Accordingly, the Regulatory Flexibility Act does not apply and no Regulatory Flexibility Analysis is required for this rule.

Paperwork Reduction Act

The collection of information requirements contained in these temporary regulations have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. These regulations have been approved by OMB.

Drafting Information

The principal author of these temporary regulations is William A. Jackson of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel fom other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

List of Subjects in 26 CFR Part 48

Agriculture, Arms and munitions, Coal, Excise taxes, Gasohol, Gasoline, Motor vehicles, Petroleum, Sporting goods, Tires.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Parts 48 and 602 are amended as follows:

PART 48—[AMENDED]

Paragraph 1. The authority for Part 48 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 2. Section 48.4041-5 is amended as follows:

1. The text of paragraph (a) (1) is redesignated as paragraph (a) (1) (i).

2. The second sentence of newly designated paragraph (a) (1) (i) is revised to read as set forth below.

3. A new paragraph (a) (1) (ii) is added to read as set forth below.

§ 48.4041–5 Sales of diesel and special motor fuels and fuel for use in aircraft; rules of general application.

(a) *Taxability of liquid fuel delivered into purchaser's tanks*—(1) *Fuel supply tanks*—(i) * * * For purpose of this paragraph (a), liquid fuel sold at a location unattended by the seller (such as under a cardlock or meter system) on or after January 2, 1988, is considered to be delivered into the fuel supply tank by the seller except as provided in paragraph (a) (1) (ii) of this section. * * *

(ii) If the seller maintains special devices at the unattended location to account accurately for sales of liquid fuel for nontaxable uses (such as assigning a separate "nontaxable" meter or, in a cardlock system, issuing a special "nontaxable" card to a customer who regularly purchases fuel for nontaxable uses), then such sales of liquid fuel shall be considered nontaxable. The seller must maintain sufficient records of such nontaxable sales and include in these records the name of the purchaser, the date of the purchase, and the quantity of fuel purchased in each sale.

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PART 602—[AMENDED]

Par. 3. The authority for 26 CFR Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 4. Section 602.101 (c) is amended by inserting the following items in the appropriate place in the table:

"§ 48.4041–5 (a) (1) (ii).....1545–0877"

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: August 13, 1987.

O. Donaldson Chapoton,

Acting Assistant Secretary of the Treasury.

[FR Doc. 87–19437 Filed 8–24–87; 8:45 am]

BILLING CODE 4830–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–10–FRL–3251–3]

Approval and Promulgation of State Implementation Plans; Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: By this notice EPA is approving in part, and disapproving in part, the State of Oregon rules for conflict of interest of state boards. These rules were submitted to EPA on May 31, 1988 as revisions to the Oregon State implementation plan (SIP). The submitted rules satisfy the requirements of section 128 (State Boards) of the Clean Air Act (hereinafter the Act) with respect to the Department of Environmental Quality (DEQ) and the Environmental Quality Commission (EQC), but fail to satisfy the requirements with respect to the Lane Regional Air Pollution Authority (LRAPA) which issues permits and enforcement orders under the Act.

EFFECTIVE DATE: October 26, 1987.

ADDRESSES: Copies of materials submitted to EPA may be examined during normal business hours at the following addresses:

Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Air Programs Branch (10A–88–9), Environmental Protection Agency, 1200 Sixth Avenue AT–092, Seattle, Washington 98101

State of Oregon Department of Environmental Quality, Executive Building, 811 S.W. Sixth Avenue, Portland, Oregon 97204.

FOR FURTHER INFORMATION CONTACT: David C. Bray, Air Programs Branch, Environmental Protection Agency, 1200 Sixth Avenue AT–092, Seattle, Washington 98101, Telephone: (206) 442–4253, FTS: 399–4253.

SUPPLEMENTARY INFORMATION:

I. Background

The August 7, 1977, amendments to the Clean Air Act included a new section 128 "STATE BOARDS," which required each SIP to contain certain provisions by August 7, 1978. These provisions must require that (1) any board or body which approves permits or enforcement orders under the Act shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders under the Act, and (2) any potential conflicts of interest by members of such board or body, or the head of executive agency with similar powers, be adequately disclosed.

On October 24, 1978, the Oregon Department of Environmental Quality (DEQ) submitted new rules, specifically, Oregon Administrative Rules (OAR) Division 20, sections 200 through 215, as a revision of the Oregon SIP in order to satisfy the requirements of section 128 of the Act. These rules were subsequently returned to the DEQ without action by EPA because of inadequate public notice for the DEQ's public hearing.

On February 5, 1986, the Oregon Environmental Council (OEC) notified the administrator of EPA of their intent to commence a civil action for failure to comply with an alleged non-discretionary duty under the Act. On May 8, 1986, the OEC and Kathy Williams, a private citizen, filed suit in the United States District Court for the District of Oregon, alleging that EPA failed to approve or disapprove the 1978 SIP submittal within 4 months, and that EPA failed to promulgate federal rules to implement section 128 of the Act in Oregon.

On April 25, 1986, the Environmental Quality Commission (EQC) adopted a complete consolidated SIP which included conflict of interest rules for state boards. On May 30, 1986, the DEQ submitted these rules (along with the consolidated SIP) to EPA as a revision to the Oregon SIP.

On September 15, 1986, EPA entered into a settlement agreement and consent decree with the OEC et al., for resolution of the civil suit. Specifically, EPA agreed to take expeditious action on the May 30, 1986, SIP submittal by proposing approval, disapproval or other final action on the submittal on or before February 1, 1987, and by taking final action on or before August 15, 1987.

II. Discussion

The "Conflict of Interest" rules submitted by the DEQ on May 30, 1986, specifically OAR 340–20–200 through 215, apply only to the EQC and the Director of the DEQ. EPA has found that these rules satisfy the requirements of section 128 of the Act for the EQC and the Director of the DEQ, and is therefore approving this submittal as a revision to the Oregon SIP, as they apply to the EQC and DEQ.

In order to determine whether there were any other boards or bodies in Oregon which issued permits or enforcement orders under the Act, EPA requested the State of Oregon Attorney General to review the state's air pollution program and identify each board or body which implemented any provision of the SIP. The Oregon Attorney General's opinion is included in the docket for this rulemaking and is available for review at the locations listed in the ADDRESSES sections.

Based on the Oregon Attorney General's opinion, EPA finds that there is one other board or body in Oregon which issues permits and enforcement orders under the Act, as contemplated by section 128. Specifically, the Lane Regional Air Pollution Authority

(LRAPA) and its Board of Directors, have been approved by EPA to run an air pollution program in Lane County, Oregon. This program includes issuing permits to sources and enforcing emission limitations under the Act. Since neither the current SIP nor the May 30, 1986, SIP submittal, contains section 128 provisions for the LRAPA and its Board of Directors, EPA finds the SIP to be deficient with respect to LRAPA and its Board of Directors. Hence, EPA is disapproving the Oregon SIP for failing to contain provisions satisfying section 128 for the LRAPA and its Board of Directors.

There are also other boards and bodies in Oregon which carry out portions of the approved SIP. However, these boards or bodies do not issue permits or enforcement orders as contemplated by section 128. The Act, and thus section 128, specifically mentions enforcement orders issued under section 113(d), section 119, and section 167. Enforcement orders other than these are not affected by the requirements of section 128. The boards and bodies, other than the DEQ, EQC and LRAPA, do not issue enforcement orders under sections 113(d), 119, or 167 of the Act. Also, the Act, under section 110(a)(2)(D), contemplates certain programs explicitly intended to be implemented through permits, namely the new source review, the prevention of significant deterioration, and the stationary source permits programs. The boards or bodies, other than the DEQ, EQC, and LRAPA, do not issue permits under these programs. These other boards may issue what they refer to as "permits," but they are simply mechanisms for implementing certain SIP control programs. These so-called "permits" are still federally enforceable since they are derived from the SIP, but they are not permits as explicitly set forth in the Act, and consequently as envisioned by section 128. Therefore, EPA finds that the SIP is not required to contain section 128 provisions for these boards and bodies. EPA's review of these boards and bodies, and its analysis of each, is included in the docket of this rulemaking and available for review at the locations listed in the ADDRESSES section.

Finally, a specific concern was raised with respect to the Oregon Board of Forestry and the control of prescribed burning of forestry residues (or slash burning). EPA finds that slash burning permits are not the type of permit contemplated in the Act as being affected by section 128. They may be referred to as "permits" but do not fall into any of the specific categories described earlier as set forth in the Act. Instead, the slash burning program is basically a control measure which the state has chosen to implement through a permit system. Furthermore, the Oregon Attorney General found that the Board of Forestry has no involvement in the state's air pollution regulations for prescribed forestry burning. Rather, the Oregon Department of Forestry and the State Forester have jurisdiction over this activity. There appears to be some uncertainty on this issue but, in light of EPA's decision that slash burning permits are not affected by section 128, EPA finds that section 128 provisions are not required for the Board of Forestry.

III. Response to Comments

On February 5, 1987 (52 FR 3670), EPA published in the **Federal Register** a notice of proposed rulemaking soliciting comments on the proposed approval in part, and disapproval in part, of the State of Oregon rules for conflict of interest of state boards. Comments were received from two environmental organizations during the 30-day public comment period. The following is a summary of the commenters' concern and EPA's responses.

1. The commenters contend that section 128 should apply to all air pollution permits and enforcement orders issued by state boards or bodies, not just those specifically mentioned or required by the Clean Air Act.

It is EPA's position that, in section 128, Congress only meant to address those permit programs that are specifically discussed and required under the Act. Congress could not have meant to require the restructuring of all boards that had or could have anything to do with controlling air pollution, since that would include many boards and would involve federal intervention at the lowest level of state activity. It is EPA's position that Congress did not intend for section 128 to apply to something as limited and narrow as a board which grants carpool parking permits, for example. Since Congress could not have envisioned such extensive federal intervention, EPA looks to the other parts of the Act to see what has been specifically referred to as "permits or enforcement orders under this Act." Section 110 of the Act lists the requirements of a SIP and refers to permits specifically in the context of certain programs, namely the new source review, the prevention of significant deterioration, and the stationary source permit programs. The Act refers to enforcement orders specifically in the context of section 113(d), 119, and 167 orders. EPA's interpretation of the statute is that Congress intended section 128 to apply to the permits and enforcement orders that were specifically mentioned and required by the Act. The Administrative Agency's interpretation of a statute which it is required to administer is given substantial deference by the courts.

2. The commenters contend that section 128 should apply to all agencies and bodies that are given a role in carrying out a portion of the state air pollution control program.

Section 128 applies only to boards and bodies that issue permits and enforcement orders under the Act. Section 128 does not cover boards and bodies that adopt or promulgate rules and regulations, or simply implement provisions of the SIP not specified in the Act as a permit or enforcement order. Congress was concerned about administrative actions which did not require EPA approval as SIP revisions and was not concerned about rulemaking actions or other SIP revisions which EPA would review to determine if they were consistent with all the Act's requirements.

3. The commenters contend that since slash burning is regulated as a source of air pollution, the boards or bodies which regulate it must be covered by section 128.

Congress required that all sources of air pollution be regulated as necessary to achieve the goals of the Act. Furthermore, states may choose to regulate sources beyond that required by the Act. However, the fact that a source is regulated does not mean that section 128 must apply to the boards or bodies which do the regulating. Only boards and bodies which issue permits or enforcement orders as specifically required by the Act need be covered by section 128 provisions.

4. The commenters urge that slash burning be regulated as a "stationary source"; i.e., that EPA should use the "bubble" concept and its administrative authority to revise its definition of "stationary source" so that permits for slash burning are considered to be permits under section 110(a)(2)(D) of the Act.

EPA will take the comment under advisement but has no intention at this time to revise its definition of "stationary source" to include sources which are considered to be "area sources" under the current EPA regulations (40 CFR Parts 51 and 52).

5. The commenters indicate that, because most slash burns emit more than 100 tons of pollutants, each should be regulated as a "major stationary

source" under the PSD program, including having to obtain a PSD permit. PSD permits are required by the Act and therefore, the commenters argue, section 128 must apply to the Board of Forestry. The commenters note that the State of Oregon has included controls on slash burning as part of its program for PSD and refer to the recently revised Smoke Management Plan for new requirements relating to PSD and slash burning.

Congress defined the term "major stationary source" for purposes of PSD permitting in such a manner that sources of fugitive emissions are excluded unless specifically regulated by EPA. In the case of a slash burn, the PSD permitting process, which takes at least a year to complete (preapplication monitoring, modeling, public participating, etc.), would not be reasonable for a source which has a lifetime of no more than a few days. Congress could not have wanted to require such a burdensome permitting process for this type of fugitive source. EPA will however, take the comment under advisement but has no intention at this time to revise its definition of "major stationary source" to include fugitive emissions from slash burning.

6. The commenters indicated that since slash burning permits are required by the Oregon SIP, which is in turn required by the Act, then section 128 must apply to slash burning permits.

It is EPA's position that Congress chose to limit the scope of section 128 to just permits and enforcement orders specified under the Act. Congress could have broadened the applicability of section 128 to all emission limitations and other measures used to meet the requirements of the Act. Contrast section 110(a)(2)(B) with section 110(a)(2)(D), section 161 with section 165, section 169A(b)(2) with section 165(d), and section 172(b)(6) with section 172(b)(6) to note Congress' approach in requiring certain permits but also requiring the development of adequate control measures. Congress could not have envisioned the form of all possible control measures, nor could it have wished to require section 128 provisions for "permit" programs developed by states as control measures to meet the Act's requirements.

7. The commenters content that the Clean Air Act specifically requires slash burning permits.

The Act requires that there be emission limitations and control measures as necessary to meet the requirements of the Act. There are a number of approaches for regulating slash burning other than requiring permits for individual burns. Rather than setting emission limitations, the State of Oregon has chosen to adopt a permit program as the control measure for ensuring that slash burns do not adversely impact ambient air quality.

8. The commenters disagree with EPA's interpretation of the role of the Board of Forestry under state law in regulating slash burning.

EPA does not have a formal "interpretations" of the role of the Board of Forestry under state law. In this case, EPA is relying on a legal opinion from the Oregon Attorney General's Office regarding the workings of state law. EPA does have an interpretation of the role of the Board of Forestry under the EPA-approved SIP, which represents that portion of the state's air pollution control program which has been submitted to EPA and approved by EPA as meeting the requirements of the Clean Air Act. Air pollution control measures and provisions other than those in the EPA-approved SIP are not legally recognized under the Act.

9. The commenters contend that the Board of Forestry has ultimate authority over slash burning activities and must therefore be covered by section 128 provisions.

The Board of Forestry has not been granted authority by EPA to carry out any provisions of the approved SIP. There are no statutes, rules or procedures in the EPA-approved SIP for the Board of Forestry to entertain appeals of permits issued or enforcement actions taken by the State Forester or the Department of Forestry. Any such action by the Board of Forestry would be in violation of the SIP. Since the Board of Forestry has no role in implementing any air pollution control measures under the SIP, there is no need for section 128 provisions to apply to the Board. Also, the opinion of the Oregon State Attorney General is that slash burning permits are not appealable to the Board of Forestry.

10. The commenters disagree with EPA's reliance upon a State Attorney General's opinion on the above matters of state law. They want EPA to formulate its own opinion.

EPA routinely relies upon the State Attorney Generals for matter of state legal authority and state law (e.g., see 40 CFR Part 51, Subpart L). In the absence of information to the contrary (e.g., court rulings, historical practice), EPA will not generally question a state's intent nor its interpretation of its own statutes, rules and regulations. There is evidence of a path of appeal on certain matters from the State Forester to the Board of Forestry. The commenters argue that such a procedure is outlined at ORS 477.580(6) and at ORS 527.700. However, we do not need to determine whether sufficient uncertainty exists on this issue to require clarification from the State Attorney General since, as we stated earlier, the slash burning permits are not the type envisioned in the Act as being affected by section 128.

IV. Final Action

EPA is today approving OAR 340–20–200 through 215, as it applies to the Department of Environmental Quality and Environmental Quality Commission, as revisions to the Oregon SIP satisfying the requirements of section 128 of the Act. However, EPA is disapproving the Oregon SIP for failure to meet the requirements of section 128 with respect to (and only with respect to) the Lane Regional Air Pollution Authority and its Board of Directors.

V. Administrative Review

Under 5 U.S.C. 605(b), I certify that SIP approvals do not have a significant economic impact on a substantial number of small entities (see 46 FR 8709). The proposed disapproval involves only administrative procedures and will not have a significant economic impact on a substantial number of small entities.

Under Executive Order 12291, this action is not "Major." It has been submitted to the Office of Management and Budget (OMB) for review.

Under section 307(b)(1) of the Act, petition for judicial review of this action may be filed in the United States Court of Appeals for the appropriate circuit by September 24, 1987. This action may not be challenged later in proceeding to ensure its requirements are met (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Dated: August 17, 1987.

A. James Barnes,

Acting Administrator.

Note: Incorporation by Reference of the Implementation Plan for the State of Oregon was approved by the Director of the Office of Federal Register on July 1, 1982.

Title 40, Subpart MM, Part 52 of the Code of Federal Regulation is amended as follows:

PART 52—[AMENDED]

Subpart MM—Oregon

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1970 is amended by adding paragraph (c)(81) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(81) Oregon Administrative Rules (OAR) Chapter 340, Division 20, Sections 200 through 215 (Conflict of Interest) submitted by the Director of the Department of Environmental Quality on May 30, 1986. These rules apply only to the Department of Environmental Quality and the Environmental Quality Commission, and not to the Lane Regional Air Pollution Authority and its Board of Directors.

(i) Incorporation by reference. (A) Letter dated May 20, 1986, from the State of Oregon Department of Environmental Quality to EPA Region 10. Oregon Administrative Rules, Chapter 340, Division 20, Sections 200, 205, 210, and 215 (Conflict of Interest) which was adopted by the Environmental Quality Commission on April 25, 1986.

3. Section 52.1985 is amended by adding paragraph (b) to read as follows:

§ 52.1985 Rules and regulations.

* * * * *

(b) *Section 128—State Boards.* EPA approval of OAR 340–20–200 through 215 is only for its application to the Department of Environmental Quality and the Environmental Quality Commission. The Oregon SIP is disapproved for failing to satisfy the requirements of section 128 of the Act with respect to (and only with respect to) the Lane Regional Air Pollution Authority and its Board of Directors.

[FR Doc. 87–19312 Filed 8–24–87; 8:45 am]

BILLING CODE 6560-50-M

VETERANS ADMINISTRATION

48 CFR Part 825

Buy American Act—Supplies

AGENCY: Veterans Administration.

ACTION: Final rule.

SUMMARY: The Veterans Administration (VA) is changing VA Acquisition Regulation (VAAR) 825.108 to add human insulin to the Buy American Act list of excepted articles, materials and supplies contained in Federal Acquisition Regulation (FAR) 25.108(d). The purpose of the exception is to offer manufacturers in this limited market the opportunity to offer foreign end products which will be treated as domestic and, in turn, ensure competitive bidding.

EFFECTIVE DATE: September 24, 1987.

FOR FURTHER INFORMATION CONTACT: Marsha J. Grogan, Policy and Interagency Service, Office of Procurement and Supply (91A), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–2334.

SUPPLEMENTARY INFORMATION: On March 6, 1987, there was published on page 6993 of the **Federal Register** a notice of proposed rulemaking to add human insulin to the Buy American Act list of excepted articles because of indications that all but one major world supplier of human insulin manufacture and package their preparation in Europe. Applying the Buy American Act differential to these insulin suppliers virtually eliminates competition and in turn increases prices.

Interested persons were given 30 days to comment upon the proposal. The VA received no comments in response to the notice of proposed rulemaking, therefore the regulation is adopted as proposed.

I. Executive Order 12291

Pursuant to the memorandum from the Director, Office of Management and Budget, to the Administrator, Office of Information and Regulatory Affairs, dated December 13, 1984, this final rule is exempt from sections 3 and 4 of Executive Order 12291.

II. Regulatory Flexibility Act (RFA)

Because this final rule does not come within the term "rule" as defined in the RFA (5 U.S.C. 601(2)), it is not subject to the requirements of that Act. In any case, this change, in itself, will not have a significant economic impact on a substantial number of small entities because the VAAR subpart will primarily implement the regulations set forth in FAR Subpart 8.4.

III. Paperwork Reduction Act

This final rule requires no additional information collection or recordkeeping requirement upon the public.

List of Subjects in 48 CFR Part 825

Government procurement.

Approved: August 18, 1987.

Thomas K. Turnage,

Administrator.

Part 825 of Title 48 of the Code of Federal Regulations is amended as follows:

PART 825—FOREIGN ACQUISITION

1. The authority citation for Part 825 continues to read as follows:

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

2. Section 825.108 is revised to read as follows:

825.108 Excepted articles, materials and supplies.

The following items are added to the list of exceptions contained in FAR 25.108(d):

Glass, Wire
Glass, Lead
Insulin, Human

825.202–70 [Amended]

3. In 48 CFR 825.202–70(c) remove the word "Construction" and add, in its place, the word "Facilities".

825.203 [Amended]

4. In 48 CFR 825.203 remove the word "Construction" and add, in its place, the word "Facilities".

[FR Doc. 87–19457 Filed 8–24–87; 8:45 am]

BILLING CODE 6320-01-M

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48 CFR Parts 833 and 852

Acquisition Regulations Concerning the Competition in Contracting Act

AGENCY: Veterans Administration.

ACTION: Final regulation; correction.

SUMMARY: In the **Federal Register** of Friday, July 31, 1987, (52 FR 28558–28561) the Veterans Administration (VA) adopted a rule concerning the Competition in Contracting Act (48 CFR Parts 801, 802, 805, 806, 808, 813, 814, 815, 819, 833, 836, 842 and 852). This notice is to correct three errors in that rule.

EFFECTIVE DATE: July 31, 1987.

FOR FURTHER INFORMATION CONTACT: Chris A. Figg, Chief, Policy Divison, Office of Procurement and Supply (91), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–2334.

SUPPLEMENTARY INFORMATION: In FR Doc. 87–17207, in the issue of Friday, July 31, 1987, the VA published a final rule on the Competition in Contracting Act.

In sections 833.106 and 852.233–70, the date of the Protest Content provision is corrected to reflect the approval date of the final rule.

In section 852.236–88, the approval dates in the headings of the supplements to the Changes clauses were inadvertently omitted from the final rule. The VA is correcting this error by publishing the dates at this time.

List of Subjects in 48 CFR Parts 833 and 852

Government procurement.

Dated: August 19, 1987.

C.G. Verenes,

Acting Chief, Directives Management Division.

FR Document 87 17207, published in the Federal Register of July 31, 1987, pages 28558 through 28561, is corrected as follows:

833.106 [Corrected]

1. On page 28561 in section 833.106, first column, fifth line, change the words "(March 1987)" to "(June 1987)."

2. In section 852.236–88, the clause to paragraph (a) and the clause to paragraph (b) are amended by revising the headings to read as follows:

852.236–88 Contract changes.

(a) * * *

Changes—Supplement (For Changes Costing Over $500,000) (June 1987)

* * * * *

(b) * * *

Changes—Supplement (For Changes Costing Over $500,000 or Less) (June 1987)

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[FR Doc. 87–19456 Filed 8–24–87; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Zones in Which Lead Shot Will Be Prohibited for the Taking of Waterfowl, Coots and Certain Other Species in the 1987–88 Hunting Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule amendment.

SUMMARY: This final rule amendment describes zones, in which the use of lead shot is prohibited for hunting waterfowl, coots and certain other species in the 1987–88 season, that were omitted from the rulemaking dated Tuesday, July 21, 1987 (52 FR 27352). The zones described below consist of (1) the same areas that were already identified as nontoxic shot zones for waterfowl and coot hunting in § 20.108 of Title 50 of the Code of Federal Regulations (50 CFR) for the 1986–87 hunting season, (2) the added counties identified for 1987–88 in Appendix N of the Final Supplemental Environmental Impact Statement on the Use of Lead Shot for Hunting Migratory Birds in the United States (see Table 1 in 52 FR 27352 Supplementary Information), and (3) those additional areas identified by the States where acceleration of the nontoxic shot phase-in schedule is considered appropriate because of potential administrative, enforcement and/or lead poisoning problems.

EFFECTIVE DATE: August 25, 1987.

FOR FURTHER INFORMATION CONTACT: Dr. Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. and Wildlife Service, Room 536, Matomic Building, Washington, DC 20240 (202/254–3207).

SUPPLEMENTARY INFORMATION: Since 1978, the Fish and Wildlife Service (FWS) has not been able to implement or enforce nontoxic shot zones in a State without approval of the appropriate State authorities. This restriction on use of funds by the FWS has been contained in the appropriations act for the Department of the Interior each year since 1978 (see, e.g., Pub.L. 98–473, Sec. 305; Pub. L. 99–190, Sec. 313; Pub. L. 99–591, Sec. 317). As a consequence of this restriction, the FWS can only implement and enforce nontoxic shot zones for waterfowl and coot hunting with the approval of State authorities. If States do not approve nontoxic shot zones when current FWS guidelines and criteria indicate that such zones are necessary to protect migratory birds, the FWS will not open the areas to waterfowl and coot hunting. This action is taken pursuant to the FWS' responsibilities under the Migratory Bird Treaty Act, as amended (16 U.S.C. 703 *et seq.*; 40 Stat. 755) and, in the case of zones established for bald eagle protection, the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543; 87 Stat. 884), the Bald and Golden Eagle Protection Act of 1940, as amended (16 U.S.C. 668–668d; 54 Stat. 250).

At the time that the parent rule for this amendment was published (referenced above) the State of Illinois had not yet responded positively to the proposed rulemaking published Thursday, January 15, 1987 (52 FR 1636). This proposed rulemaking requested consent for the Service to implement and enforce nontoxic shot zones in Illinois. (The background for this issue is given at 52 FR 27359.) Thus, in compliance with the Stevens amendment requirements and the Migratory Bird Treaty Act, the FWS advised the State of Illinois in the July 21, 1987, final rule that ". . . Illinois nontoxic shot zone . . . will not be opened to waterfowl hunting in the 1987–88 waterfowl hunting season barring timely consent to implement and enforce steel shot regulations." Subsequently, through State statutory changes, the Illinois Department of Conservation was able to provide the required consent and the FWS is in this rulemaking, publishing the descriptions of Illinois nontoxic shot zones. This action allows the FWS to proceed with opening those nontoxic shot areas to waterfowl and coot hunting in the 1987–88 season. Indeed, the FWS has taken action in a separate rulemaking to open these areas to hunting in the 1987–88 season (the final early season frameworks for hunting migratory birds to Thursday, August 6, 1987; 52 FR 29187). This current rulemaking completes the steps necessary to allow waterfowl seasons in Illinois nontoxic shot zones. The FWS inadvertently omitted Calhoun County from Illinois zones described in the proposed rule—it has greater than 22 birds harvested/mi ^{2}—and that addition is made in the final rule.

Since the July 21, 1987, rulemaking, the State of Maine has reassessed nontoxic shot zone requirements in that State and requested that the FWS expand the areas covered by nontoxic shot restrictions in the 1987–88 waterfowl season in this amended rulemaking. State Wildlife Management Units 7 and 8 and the Brownfield Bog State Wildlife Management Unit areas have been added, and the previously published description of areas has been reorganized.

Economic Effect

Executive Order 12291, "Federal Regulation," of February 17, 1981, requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which includes small businesses, organizations and/or governmental jurisdictions.

In accordance with Executive Order 12291, a determination has been made that this rule is not a major rule. In accordance with the Regulatory Flexibility Act, a determination has been made that this rule, if implemented without adequate notice, could result in lead shot ammunition supplies for which

there would be no local demand. Conversely, nontoxic shot zones could conceivably be established where little or no nontoxic shot ammunition would be available to hunters. The Service believes, however, that adequate notice has been provided and that sufficient supplies of nontoxic shot ammunition will be available to hunters. Therefore, this rule would not have a significant economic effect on a substantial number of small entities.

Paperwork Reduction Act

This rule will not result in the collection of information from, or place recordkeeping requirements on, the public under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Environmental Considerations

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), a Final Environmental Statement (FES) on the use of steel shot for hunting waterfowl in the United States was published in 1976. As stated above, a supplement to the FES was completed in June 1986. In this supplement, pursuant to the Endangered Species Act, a section 7 consultation was done on the potential impacts of the provisions of this rule on bald eagles. The section 7 opinion concluded that implementation of the preferred alternative would not be likely to jeopardize the continued existence of the bald eagle.

Authorship

The primary author of this rule is Keith A. Morehouse, Office of Migratory Bird Management, working under the direction of Rollin D. Sparrowe, Chief.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

Accordingly, Part 20, Subchapter B, Chapter I of Title 50 of the Code of Federal Regulations is amended as follows:

PART 20—[AMENDED]

1. The authority citation for Part 20 continues to read as follows:

Authority: Migratory Bird Treaty Act, sec. 3, Pub.L. 65–186, 40 Stat. 755 (16 U.S.C. 701–708h); sec. 3(h), Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712); Alaska Game Act of 1925, 43 Stat. 739, as amended, 54 Stat. 1103–04, unless otherwise noted.

2. Section 20.108 is amended by revising the Maine description and adding the Illinois description to read as follows (the introductory paragraph is being republished):

§ 20.108 Nontoxic shot zones.

The areas described within the States indicated below are designated for the purpose of § 20.21(j) as nontoxic shot zones for hunting waterfowl, coots and certain other species.

Atlantic Flyway

* * * * *

Maine

1. South Zone: Wildlife Management Unit 6, 7 and 8.

2. That portion of Washington County located in the southeast section of Wildlife Management Unit 5 bounded as follows: Commencing at the junction of State Highway #6 and the Canadian Border at Vanceboro, continuing west on State Highway #6 to the junction of US Highway #1 at Topsfield, thence south on US Highway #1 where it enters Wildlife Management Unit 6 at the Baileyville-Baring town lines.

3. That portion of Brownfield Bog located in Wildlife Management Unit 4 bounded as follows: Commencing at the junction of State Highway #113, #5 and #160 in East Brownfield, following State Highway #113 and #5 northerly to the junction of US Highway #302 in Fryeburg, then easterly to the junction of US Highway #302 and the Stanley Hill Road, Fryeburg, then southerly on the Stanley Hill Road to the junction of the Harnden Road, Fryeburg, then easterly on the Harnden Road to the junction of the Smith Road, Denmark, and then southerly on the Smith Road to the West Denmark Road in West Denmark. Then easterly on the West Denmark Road to the junction of the Lord Hill Road in East Brownfield, then southerly on the Lord Hill Road to the junction of State Highway #160 and then southerly on State Highway #160 to the point of beginning.

* * * * *

Mississippi Flyway

* * * * *

Illinois

1. Alexander, Calhoun, Clinton, Jackson, Jefferson, Lake, Union and Williamson Counties.

2. Carroll County, that portion east of IL–84.

3. Cass County, that portion east and/or south of IL–78, Federal-Aid Secondary Route 577 and IL–100.

4. Franklin County, that portion of Rend Lake and related subimpoundments, and all adjacent lands managed by the U.S. Army Corps of Engineers and the Illinois Department of Conservation.

5. Henderson County, that portion east and/or south of Federal-Aid Secondary Route 216, IL–164, Federal-Aid Secondary Route 416 and IL–96.

6. Mason County, that portion east and/or south of Federal Aid Secondary Route 461, US 136 and IL–78.

7. Putnam County, those portions west of IL–29 and east and/or south of IL–8, IL–71 and IL–26.

8. That portion of the Mississippi River and adjacent areas as bordered on the north by the Wisconsin State line and bordered on the east and south by IL–35 from the Wisconsin State line southwest to East Dubuque, US–20 from East Dubuque southeast to IL–84, IL–84 south to IL–136 near Fulton, Federal-Aid Secondary Route 1101 (Chase Road and Sand Road) south to IL–5, IL–5 southwest to I–80, I–80 south to I–280, west to IL–92, and IL–92 west to the bridge over the Mississippi River.

9. That portion of the Mississippi River and adjacent areas as bordered on the north by the railroad bridge at Keithsburg and bordered on the east and south by Federal-Aid Secondary Route 216 from Keithsburg south to IL–164, IL–164 west to Oquawka and south to US–34, US–34 southwest to Federal-Aid Secondary Route 418 south through Carman to Lomax, IL–96 from Lomax southwest to Niota then southward through Nauvoo and Hamilton to Lima. Federal-Aid Secondary Route 2337 from Lima west to County Highway 7, County Highway 7 south to County Highway 8 and County Highway 8 west to Meyer at Lock and Dam 20.

10. That portion of the Mississippi River and adjacent areas as bordered on the north by US–36 and bordered on the east (or inland) by IL–96 from US–36 south to Mozier, Federal-Aid Secondary Route 755 from Mozier south through Hamburg, Gilead, Batchtown and Beechville to Federal-Aid Secondary Route 764 approximately 1 mile west of Golden Eagle, Federal-Aid Secondary Route 764 east to Golden Eagle and north to Federal-Aid Secondary Route 754 (County Highway 1), Federal-Aid Secondary Route 754 east of the Brussels Ferry on the Illinois River, and IL–100 from the Brussels Ferry east to Grafton.

11. That portion of the Illinois River and adjacent areas as borderd on the north and west by IL–29 from Spring Valley west to DePue and south to Peoria, US–24 from Peoria southwest to Fulton County, all of Fulton County, IL–100 from Fulton County southwest to US–67, IL–103 from US–67 west to Sugar Grove, Federal-Aid Secondary Route 582 from Sugar Grove south through LaGrange to IL–99, and IL–99 southeast to Meredosia, and bordered on the east and south by IL–89 from Spring Valley south to IL–71, IL–71 west to IL–26, IL–26 south to East Peoria, IL–29 from East Peoria south to Powerton, Federal-Aid Secondary Route 461 from Powerton west and south through Manito and Forest City to US–136, US–136 west to Havana, IL–78 from Havana south to Chandlerville, Federal-Aid Secondary Route 577 from Chandlerville west to Beardstown, IL–100 from Beardstown south to IL–104, and IL–104 west to Meredosia.

12. That portion of the Illinois River and adjacent areas as bordered on the west by IL–100 from the ferry at Kampsville south to Hardin, Federal-Aid Secondary Route 754 (County Highway 1) from Hardin south to Brussels and east to the Brussels Ferry, and bordered on the north and east by IL–108 from the ferry at Kampsville east to Eldred, Federal-Aid Primary Route 155 from Eldred south to IL–100, and IL–100 south to the Brussels Ferry.

13. Adams County, the Bear Creek Unit of Mark Twain National Wildlife Refuge.

14. Upper Mississippi River Wildlife and Fish Refuge.

* * * * *

Dated: August 13, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87-19428 Filed 8-24-87; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 70845-7095]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Services (NMFS), NOAA, Commerce.

ACTION: Notice of closure and request for comments.

SUMMARY: NOAA announces the closure of recreational salmon fisheries in the exclusive economic zone (EEZ) from Cape Falcon, Oregon, to the U.S.-Canada border, at noon, August 20, 1987, to ensure that the chinook salmon quota is not exceeded. The Director, Northwest Region, NMFS (Regional Director), has determined in consultation with representatives of the Pacific Fishery Management Council (Council), the Washington Department of Fisheries (WDF) and the Oregon Department of Fish and Wildlife (ODFW), that the overall commercial-recreational fishery quota of chinook salmon for the area will be reached by that time. The closure is necessary to conform to the preseason announcement of 1987 management measures. This action is intended to ensure conservation of chinook salmon.

EFFECTIVE DATE: Closure of the EEZ from Cape Falcon, Oregon, to the U.S.-Canada border to recreational salmon fishing is effective at 1200 hours local time, August 20, 1987. Comments on this closure will be received until September 4, 1987.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, NMFS, BIN C15700, 7600 Sand Point Way NE., Seattle, WA 98115-0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the same address.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten (Regional Director) at 206-526-6150.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR Part 661 specify at § 661.21(a)(1) that "When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by publishing a notice in the **Federal Register** under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

Management measures for 1987 were effective on May 1, 1987 (52 FR 17264, May 6, 1987). The 1987 recreational fishery for all salmon species from Cape Falcon, Oregon, to the U.S.-Canada border was partitioned into three subareas, each with separate subarea chinook and coho quotas. The season in each subarea began on June 28 and will extend through the earliest of the following (1) September 24, (2) the attainment of a subarea quota, or (3) the attainment of an overall commercial-recreational chinook quota north of Cape Falcon of 106,000 fish.

The commercial fishery north of Cape Falcon was closed on July 29, 1987, and did not reopen for a scheduled all-species season, because it was projected that the commercial quota of 61,400 chinook salmon had been reached (52 FR 28721, August 3, 1987; 52 FR 29860, August 12, 1987). Subsequent landing data show that the commercial fishery actually harvested 62,230 chinook, 830 chinook over its preseason quota.

Based on the best available information, commercial and recreational landings in the area are projected to reach the overall 106,000 chinook quota by midnight, August 19, 1987. The soonest a federal notice closing the fishery could be implemented, however, is noon, August 20, 1987.

Therefore, NOAA issues this notice to close the recreational salmon fishery in the EEZ from Cape Falcon, Oregon, to the U.S.-Canada border effective 1200 hours, local time, August 20, 1987. This notice does not apply to treaty Indian fisheries or to other fisheries which may be operating in this or other areas.

The Regional Director consulted with the Chairman of the Council and representatives of WDF and ODFW regarding a closure of the recreational fisheries between Cape Falcon, Oregon, and the U.S.-Canada border. The WDF and ODFW representatives confirmed that Washington and Oregon will close the recreational fisheries in state waters adjacent to this area of the EEZ as soon as possible.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

(16 U.S.C. 1801 *et seq.*)

Dated: August 20, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

[FR Doc. 87-19419 Filed 8-20-87; 12:02 pm]

BILLING CODE 3510-22-M

50 CFR Part 685

[Docket No. 60934-7028]

Pelagic Fisheries of the Western Pacific Region; Correction

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule; correction.

SUMMARY: This document corrects an error in a definition in the regulatory text of the final rule to implement the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region. This rule was published February 27, 1987 (52 FR 5983).

EFFECTIVE DATE: March 23, 1987.

FOR FURTHER INFORMATION CONTACT: Doyle E. Gates (Administrator, Western Pacific Program Office, Southwest Region, Honolulu, HI), 808-955-8831; or Svein Fougner (Chief, Fisheries Management and Analysis Branch, Southwest Region, Terminal Island, CA), 213-514-6660.

In rule document 87-4119 beginning on page 5983 in the issue of February 27, 1987, make the following correction:

§ 685.2 [Corrected]

In § 685.2, under the definition for "Vessel of the United States", paragraph (d), on page 5988, in the first column, fifth line, the word "not" is removed.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 18, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 87-19286 Filed 8-24-87; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 52, No. 164
Tuesday, August 25, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

Almonds Grown in California; Proposed Salable, Reserve, and Export Percentages for the 1987–88 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This action gives notice of a proposal to establish salable, reserve, and export percentages of 82 percent, 18 percent, and 0 percent, respectively, for marketable California almonds delivered to handlers during the 1987–88 crop year, which began July 1, 1987. This action is taken under the marketing order for almonds grown in California and is intended to avoid unreasonable fluctuations in supplies and prices in view of projected record large 1987 almond crop.

DATE: Comments must be received by September 9, 1987.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, Room 2085, South Building, P.O. Box 96456, Washington, DC 20090–6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: James M. Scanlon, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20250–6456; telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1521–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (REA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601–674), as amended, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 105 handlers of almonds who are subject to regulation under the marketing order for California almonds during the current season. There are approximately 7,500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2 (1985)) as those having average annual gross revenues for the last three years of less than $100,000, and agricultural service firms, which would include handlers, have been defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California almonds may be classified as small entities. This proposal would require handlers of California almonds to withhold, as a reserve, from normal domestic and export markets 18 percent of merchantable almonds received from growers during the 1987–88 crop year. The remaining 82 percent of the crop could be sold by handlers in any market. Total 1987 crop marketable production is expected to be 570 million kernel weight pounds-the largest crop in history. This compares with a 359 million kernel weight pound average annual production for the last five years (1982 through 1986). Worldwide production for 1987 is also expected to be a record high. Domestic and export trade demand for 1987–88 is estimated at 480 million kernel weight pounds.

Reserve almonds could be released to salable at a later date if it is found that the salable percentage is insufficient to satisfy 1987–88 trade demand, including desirable carryover requirements for use during the 1988–89 crop year (if it appears that the 1988 crop will be insufficient to meet 1988–89 trade demand needs). Otherwise, reserve almonds would be diverted to secondary outlets such as almond oil or animal feed.

While this rule may restrict the amount of almonds which handlers may sell in normal domestic and export markets, the proposed salable and reserve percentages are needed to lessen the impact of the oversupply situation facing the industry and to promote stronger marketing conditions, thus avoiding unreasonable fluctuations in prices and supplies and improving grower returns. Further, this proposed action could provide market stability during the 1988–89 crop year in the event that 1988 production is below trade demand. Given the cyclical tendency of almond production, this is a likely possibility.

Based on the above, the Administrator of the AMS had determined that this proposed rule would not have a significant economic impact on a substantial number of small entities.

The authority to establish salable, reserve, and export percentages is pursuant to § 981.47 of the marketing agreement and Order No. 981, both as amended (7 CFR Part 981), regulating the handling of almonds grown in California and hereinafter referred to collectively as the "order". The order is effective under the Act. The proposal is based on a unanimous recommendation of the Almond Board of California, hereinafter referred to as the "Board," which was established under the order for the purpose of administering the program.

Pursuant to §§ 981.47 and 981.49 of the order, the Board based its recommendation for salable, reserve, and export percentages of 82 percent, 18 percent, and 0 percent, respectively, on estimates of marketable supply and combined domestic and export trade demand for the 1987–88 crop year. The Board's 1987 marketable production estimate of 570 million kernel weight pounds is based on its 1987 crop estimate of 600 million kernel weight pounds, minus an estimated weight loss of 30 million kernel weight pounds resulting from the removal of inedible kernels by handlers and losses during manufacturing.

Trade demand is estimated at 480 million kernel weight pounds—160 million pounds for domestic needs and 320 million kernel weight pounds for

export needs. An inventory adjustment is made to account for supplies of almonds carried in from the 1986–87 marketing year and for supplies deemed desirable to be carried out on June 30, 1988, for early season shipment during the 1988–89 crop year until the 1988 crop is available for market. After adjusting for inventory, the trade demand is calculated at 467.4 million kernel weight pounds, the quantity of almonds from the estimated 1987 marketable production necessary for trade demand needs. The proposed salable percentage of 82 percent would meet those needs.

The remaining 18 percent (102.6 million kernel weight pounds) of the 1987 crop marketable production would be withheld by handlers to meet their reserve obligations. All or part of these almonds could be released to salable if it is found that the salable supply made available by the 82 percent salable percentage is insufficient to satisfy 1987–88 trade demand, including desirable carryover requirements for use during the 1988–89 crop year. The Board is required to make any recommendation to the Secretary to increase the salable percentage prior to May 15, 1988. Alternatively, reserve almonds would be sold by the Board, or by handlers under agreement with the Board, to governmental agencies or charitable institutions or for diversion into almond oil, almond butter, animal feed, or other outlets which the Board finds are noncompetitive with existing normal markets for almonds.

The order permits the Board to include normal export requirements with domestic requirements in its estimate of trade demand when recommending the establishment of salable, reserve, and export percentages for any crop year. For the 1987–88 crop year, estimated exports are included in trade demand, thereby making export a salable outlet rather than a reserve outlet. Because of this action, no portion of the reserve would be eligible for export to normal export outlets. Thus, an export percentage of 0 percent is proposed.

A tabulation of the estimates and calculations used by the Board in arriving at its recommendation is as follows:

MARKETING POLICY ESTIMATES—1987 CROP

[Kernel Weight Basis]

	Million lbs.	Percent
Estimated Production:		
1. 1987 Production	600.0	
2. Loss and Exempt—5.0 percent	30.0	
3. Marketable Production	570.0	
Estimated Trade Demand:		
4. Domestic	160.0	
5. Export	320.0	
6. Total	480.0	
Inventory Adjustment:		
7. Carryin 7/1/87	76.8	
8. Desirable Carryover 6/30/88	83.6	
9. Adjustment	(12.8)	
Salable/Reserve:		
10. Adjusted Trade Demand (item 6 plus item 9)	467.4	
11. Reserve (item 3 minus item 10)	102.6	
12. Salable percent (item 10 ÷ item 3 x 100)		82
13. Reserve percent (100% minus item 12)		18

This proposed action would help avoid unreasonable fluctuations in supplies and prices as the industry faces its largest crop in history. The projected 1987 crop of 570 million marketable kernel weight pounds would be 141.8 percent larger than last year's 235.7 million kernel weight pound crop and 1.1 percent larger than the 1984 previous record crop of 563.8 million kernel weight pounds. World production if forcast by the Board at 819.1 million kernel weight pounds—7.0 percent larger than the 1984 previous record of 765.4 million kernel weight pounds.

This proposed action would provide an estimated 543.6 million kernel weight pounds of California almonds for unrestricted sales (1987 crop salable production plus carryin from the 1986 crop) to meet increasing domestic and world almond consumption. This amount exceeds the actual 1984–85 record for delivered sales of California almonds by 12.7 percent.

Interested persons are invited to submit their views and comments on this proposal. A 15-day comment period is considered adequate because the current crop year to which the proposed percentages would be applicable began on July 1, 1987. Late summer and early fall are usually active times for almond sales. Handlers and buyers should know as soon as possible the extent to which volume regulation will be put into effect this crop year.

List of Subjects in 7 CFR Part 981

Marketing agreements and orders, Almonds, California.

For the reasons set forth in the preamble, 7 CFR Part 981 is proposed to be amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 981 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674

Subpart—Salable, Reserve, and Export Percentages

2. Add a new subpart consisting of § 981.235 to read as follows:

§ 981.235 Salable, reserve, and export percentages for almonds during the crop year beginning July 1, 1987.

The salable, reserve, and export percentages during the crop year beginning July 1, 1987, shall be 82 percent, 18 percent, and 0 percent, respectively.

Dated: August 20, 1987.

Ronald L. Cioffi,

Acting Deputy, Director, Fruit and Vegetable Division.

[FR Doc. 87–19497 Filed 8–21–87; 10:25 am]

BILLING CODE 3410-02-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 125

Procurement Automated Source System

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: By this action, the Small Business Administration (SBA) is proposing to redesignate a subsection of Part 125 relating to the Procurement Automated Source System (PASS) as a separate section and to establish a schedule of fees for services provided in conjunction with PASS.

DATES: Comments must be submitted on or before September 24, 1987.

ADDRESSES: Comments should be submitted to John H. Barnett, Special Assistant to the Associate Administrator for Procurement Assistance, 1441 L Street, NW., Room 600, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: John H. Barnett, (202) 653–6635.

SUPPLEMENTARY INFORMATION: Under current procedures, the Small Business Administration maintains a Procurement Automated Source System (PASS) through a private contractor and allows small and large businesses and Government agencies direct access to the system. Presently SBA charges direct access users only $24 an hour for on-line time.

Because direct access PASS users receive a valuable benefit and the System is expensive to operate, the SBA is proposing to establish a schedule of fees that is more reflective of the cost and value of on-line PASS use in § 125.18(b). If published as a final rule,

the schedule would charge non-SBA PASS users $50 per hour. The rate of $50 per hour is supported by a recent cost analyses of PASS time. There would also be a charge for extraneous copies of the PASS User Guide and other specific sources.

With implementation of a fee schedule, the private contractor would be responsible for billing direct access users monthly. Direct access users included commercial firms and Government agencies (excluding SBA offices).

Compliance With Executive Order 12291, The Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), and The Paperwork Reduction Act (44 U.S.C. ch. 35)

Executive Order 12291

For the purposes of E.O. 12291, SBA has determined that this proposed rule is not a major rule because, if promulgated in final form, it will not have an annual effect on the economy of $100 million or more; or cause a major increase in costs for consumers, individuals, industries, Federal, State, or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based businesses to compete with foreign-based businesses in domestic or export markets.

Regulatory Flexibility Act

For purposes of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), SBA certifies that this proposed rule will will not, if promulgated in final form, have a significant economic impact on a substantial number of small entities The vast majority of entities potentially affected by this proposed rule would not be considered small for purposes of the Regulatory Flexibility Act.

Paperwork Reduction Act

This proposed rule, if adopted in final form, would not impose any reporting or recordkeeping requirements which would be subject to the Paperwork Reduction Act, 44 U.S.C. ch. 35.

List of Subjects in 13 CFR Part 125

Government procurement, Small business, Technical assistance.

For the reasons set forth above, Title 13, Part 125 of the Code of Federal Regulations, is amended as follows:

PART 125—[AMENDED]

1. The authority citation for Part 125 is revised to read as follows:

Authority: Secs. 5(b)(6), 8 and 15 of the Small Business Act, 72 Stat. 384, as amended (15 U.S.C. 631, *et seq.*); 31 U.S.C. 9701, 9702, 96 Stat. 1051).

§ 125.10 [Redesignated as § 125.11]

2. Section 125.10 is redesignated as § 125.11.

§ 125.10 [Redesignated from § 125.9(i) and Amended]

3. Section § 125.9(i) is redesignated as § 125.10, *Procurement Automated Source System (PASS)* and amended by redesignating the third through ninth sentences as paragraph (a) "*Inclusion in PASS.*" and by adding a new paragraph (b) to read as follows:

(b) *Access to PASS.*

Large commercial firms and Government agencies that provide substantial prime contracting and/or subcontracting opportunities to small business firms may be provided direct access to PASS if they so desire. All those with direct access to PASS (PASS users) will receive an identification number and will be charged a minimum of one hour of usage each month ($50). Additional hours of use and fractions thereof will cost $50 per hour. All users will be billed monthly, and all fees will be paid directly to the private contractor selected by SBA to operate PASS. The contractor will bill SBA on a monthly basis for operation of PASS in accordance with the current contract provisions minus any fees it collects from non-SBA users. Each PASS ID number entitles a direct access user to two PASS User Guides to no charge. Additional copies of the User Guides and copies for anyone without an ID can be purchased from SBA or the contractor for $25 each. The on-line usage fee, User Guide fee and any other related fee may be changed by SBA from time to time as required to reflect increased costs. Any fee change will be effective upon publication of a notice in the **Federal Register**.

Dated: July 28, 1987.

James Abdnor,

Administrator.

[FR Doc. 87-19374 Filed 8-24-87; 8:45 am]

BILLING CODE 8025-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 239 and 274

[Release Nos. 33-6730; IC-15932; File No. S7-30-87]

Consolidated Disclosure of Mutual Fund Expenses

AGENCY: Securities and Exchange Commission.

ACTION: Proposed form amendments.

SUMMARY: The Commission is reproposing for comment revisions to the expense-related disclosure requirements of the registration form used by open-end management investment companies under the Investment Company Act of 1940 and the Securities Act of 1933, and is publishing revisions to the staff guidelines accompanying the form. The proposed amendments would consolidate the expense data in a tabular presentation near the front of the prospectus. The Commission is proposing these amendments to improve the quality of expense disclosures in mutual fund prospectuses.

DATE: Comments on the proposed amendments should be received on or before October 8, 1987.

ADDRESS: Three copies of all comments should be submitted to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comment letters should refer to File No. S7-30-87. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: John McGuire, Attorney, or Robert E. Plaze, Special Counsel, (202) 272-2107, Office of Disclosure and Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today is publishing for comment proposed revisions to Form N-1A (17 CFR 239.15A), the registration form under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*) (the "1940 Act") and the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) for open-end management investment companies ("funds"), and the guidelines that accompany the form. Under this proposal ("Reproposal"),[1] a tabular presentation of expenses ("fee table") would be presented as part of the synopsis at the beginning of the prospectus. The fee table would reflect both the one-time fees paid directly by the shareholder, such as an initial or deferred sales load, and the recurring expenses paid from fund assets or deducted from shareholder accounts.

[1] The Commission initially proposed similar revisions to Form N-1A in Investment Company Act Rel. No. 14230 (Nov. 9, 1984) (49 FR 45171 (Nov. 15, 1984)) ("Release No. 14230").

The table would also show the effect of these fees on a hypothetical investment. In addition, the Commission is proposing amendments to Form N–1A to improve the narrative disclosure of the fees deducted under, and the nature of, distribution plans.[2]

Finally, the Commission is publishing proposed revisions to Guide 29 and Guide 33 of the guidelines to Form N–1A. Guide 29 provides guidance as to the requirements for full disclosure of distribution expenses, and Guide 33 provides guidance in preparing the synopsis. Although notice and comment are not required for staff guidelines, comments received regarding the revisions will be considered in developing final guidelines.

I. Background

On November 9, 1984, the Commission published for comment proposed revisions to Form N–1A ("Proposal").[3] The Proposal was designed to consolidate all of the narrative information in the prospectus concerning significant fund expenses and add a fee table. The Proposal was prompted by the Commission's concern that the wide variety of sales loads and other fund distribution arrangements could, unless uniformly presented, confuse investors. The fee table was intended to present fund investors with expense disclosure that could be understood easily and would facilitate comparison of expenses among funds.

The Commission received a number of highly critical comments from representatives of the mutual fund industry in response to the Proposal. Several commenters argued that the Proposal required a level of detail regarding expenses that conflicted with the objectives of simplicity and clarity sought by the Commission when it adopted Form N–1A. These commenters further claimed that a uniform table setting out expense-related data would suggest a degree of comparability that was inherently misleading.[4] Since then, however, representatives of the mutual fund industry have reconsidered their opposition to the fee table concept and now acknowledge the usefulness of such expense disclosure.[5] Also, the Commission received over 1,000 letters from investors who urged the Commission to adopt a fee table because it would be useful in making investment decisions. To facilitate full disclosure of mutual fund expenses, the Commission is reproposing the fee table in a revised form that addresses many of the commenters's concerns.

II. Discussion

A. The Fee Table

As originally proposed, the fee table would have consisted of three defined expense categories (advisory fees, distribution expenses, and shareholder servicing expenses) and two other expense categories (other expenses and total expenses), each expressed as a percentage of average net assets held by the fund during the prior fiscal year, and would have included the names of the principal payees. Commenters, however, expressed concern that the categories in the proposed table were too rigid, inappropriate for certain funds, and could potentially mislead investors.

After considering these comments, the Commission is reproposing an extensively revised fee table. The fee table would separately reflect both recurring and nonrecurring expenses, would demonstrate the effect of these expenses on a hypothetical investment, and would include a brief narrative explaining the table and providing cross-references. Under the Reproposal, the expense categories would better reflect the types of expenses common to most funds, thus facilitating the comparison of fund expenses. The categories are intended, however, to be flexible enough so that the table is adaptable to each fund's unique types of expenses.[6]

The Proposal would have permitted the fee table to be placed anywhere in the prospectus. The Reproposal, however, would require the fee table to be located near the front of the prospectus, as part of the synopsis if there is one.[7] This is an appropriate location for the fee table because it provides, in a tabular form, a synopsis of the expenses of a fund. This would also place the fee table close to the Condensed Financial Information ("per share table"), thus displaying most of the essential comparative data together.

1. Nonrecurring Expenses

The first portion of the table would list nonrecurring shareholder expenses. These expenses include the maximum sales load that could be imposed at the time of purchase or redemption (including any contingent deferred sales load ("CDSL")), any redemption fee, and any exchange fee.[8] If the fund has scheduled variations in any deferred sales loads or exchange fees, the fund, in addition to listing the maximum charge, may include the range of charges in the table. The Reproposal would not permit funds to include in the fee table the scheduled variations of the sales load imposed at the time of purchase ("front-end load"), although such variations could be discussed in the brief narrative following the table. Comment is requested as to whether the table itself should also permit disclosure of the scheduled variations of any front-end load.[9]

2. Recurring Expenses

The second portion of the table would list all recurring expenses incurred by the fund or its shareholders. These expenses would be presented in three different categories: (1) Management fees, (2) 12b–1 fees,[10] and (3) all other

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[2] A "distribution plan" is a plan adopted pursuant to Rule 12b–1 (17 CFR 270.12b–1) under the 1940 Act to provide for the use of fund assets to finance activities intended primarily to result in the sale and distribution of fund shares ("Rule 12b–1 plan"). Rule 12b–1 imposes various procedural and substantive requirements on funds adopting a Rule 12b–1 plan including: (1) the plan must be in writing and must describe all material aspects of the proposed financing of distribution; (2) the plan must be initially approved by a majority of the outstanding voting securities, directors, and directors who are not interested persons of the fund ("disinterested directors"); (3) the plan cannot continue for more than one year unless re-approved by the directors and disinterested directors; and (4) the plan must be terminable at any time, without penalty, by a vote of the disinterested directors or of the shareholders on not more than sixty days written notice.

[3] Release No. 14238, *supra* note 1.

[4] *See* Letter from the Investment Company Institute to John Wheeler, Secretary, Securities and Exchange Commission (Jan. 14, 1985) ("[T]his entire item is redundant . . . and . . . would infer a degree of comparability that would be inherently misleading.") included in File No. S7–34–84.

[5] *See* Statement of the Investment Company Institute Regarding the Operation of Rule 12b–1 Plans, at 37 (Aug. 8, 1986) ("[T]he Institute agrees with the Division that a unified format for disclosure of the costs of mutual fund investments would be useful to investors.") included in File No. S7–34–84.

[6] As noted supra, the Proposal would also have consolidated narrative disclosure. Because the fee table would consolidate fund expense data and provide cross-references to further narrative disclosures in the text of the prospectus, the Commission is not reproposing the consolidation of all narrative expense disclosure at one location within the prospectus.

[7] The inclusion of a synopsis is currently dependent upon the length and complexity of the prospectus. The Reproposal would require that the fee table be included in all fund prospectuses.

[8] Because these expenses may be based on a dollar amount or on a percentage of the purchase or redemption price, the proposed amendments to Form N–1A would require that the basis of each expense (e.g., Maximum Sales Load as a percentage of purchase price) be set out in the captions of the table.

[9] Item 7(b)(iii) of Form N–1A requires disclosure of any scheduled variations of front-end loads in the text of the prospectus.

[10] The Proposal would have required funds to group all distribution expenses together, including those incurred under a Rule 12b–1 plan, paid from CDSLs, or paid from a sales load deducted from payments. *See* Release No. 14238, *supra* note 1.

expenses, and the total of all recurring expenses, each listed as a percentage of average net assets during the fund's most recent fiscal year. Management fees include investment advisory fees as well as any other recurring management or administrative fees paid to the adviser or its affiliates.[11] The "12b–1 fees" category includes only those distribution and other expenses incurred under a Rule 12b–1 plan.[12]

(a) *Other Expenses.* The "Other Expenses" category of the fee table would list the total of all recurring expenses not included in the other two categories.[13] Recurring expenses listed in this category include expenses deducted from fund assets as well as those deducted from all shareholder accounts.[14] The inclusion of all expenses in the table would enable investors to compare expenses associated with investing in funds regardless of how they are deducted.[15] This category could, under the Reproposal, be divided into as may as three subcategories captioned in any manner the fund chooses, as long as the three subcategories equal the total "Other Expenses."

By proposing to permit the "Other Expenses" category to be divided into three subcategories, each fund would have the flexibility to disclose expenses in the manner most appropriate for it, while keeping the fee table relatively concise. Comment is requested as to whether subdividing "Other Expenses" into subcategories would enhance disclosure of these expenses or would, instead, complicate the fee table, and whether there should be a three-subcategory limitation.

(b) *Subtotal.* One commenter proposed that the fee table include a subtotal of all recurring expenses except 12b–1 fees, suggesting that this number would facilitate comparisons of non-distribution expenses between funds having Rule 12b–1 plans and funds without such plans. The Commission has not included such a subtotal in the Reproposal, believing that disclosure of the separate expense items is sufficient, but requests comment specifically as to whether the fee table should incude a subtotal of management fees and other fees.

(c) *Restated Expenses.* The Proposal would have required a footnote to the table explaining that the expense information would not be indicative of future expenses if the fund knew that a change had occurred in fund expenses that would diminish the comparative value of the table's expense information. Under the reproposal, funds would be required to restate the historical expense information, in a separate column, using the current fees that would have been applicable had they been in effect during the previous fiscal year. A fund would have to restate its expenses only if the fee table was affected materially by a change in a fee.[16] The narrative following the table would explain that information in the second column reflects current fees and provide cross-references to further explanation in the text of the prospectus. The Commission is proposing to require a restatement of expense information because it would provide more effective disclosure and permit more meaningful comparisons of expenses that investors will likely bear.

The Commission also is considering and seeks comment on two alternative ways of disclosing changes in fees. The first would require a fund to restate its historical expense information to reflect current fees, but omit the historical expense information based on fees charged during the previous fiscal year. This would have the benefit of making the table more concise by eliminating a column of expense information of mostly historical rather than comparative value. The second alternative would require a fund to disclose in the narrative that there has been a change in the fees and provide cross-references to further explanation in the prospectus, but would not require any expense information to be restated. This alternative would maintain absolute uniformity of historical fee disclosure among different funds, but may not provide the most useful comparative information. Comment is invited as to the costs and benefits of the proposed amendment and each of the two alternatives.

3. Effect on Expenses on Hypothetical Investment

The Commission in proposing a third section of the fee table to illustrate the effect of fund expenses on a hypothetical $1,000 investment over one, three, five, and ten year periods.[17] The table is intended to, among other things discussed below, provide a relatively simple means for investors to compare expense levels of different funds in a manner that reflects all expenses, both recurring and non-recurring, regardless of the method of calculating the expenses.[18]

This part of the table would contain three columns of information each of which is intended to convey different information. The Commission requests comment on the usefulness of the information in each column, the competitive effects of the assumptions each column requires, and whether any additional columns of information might be warranted.

The first column assumes a zero percent return and is intended to inform investors of the amount their investment must grow to recoup sales loads and fund expenses so as to provide investors with a greater understanding of the effect of expenses on an investment in the fund. One weakness of the zero growth assumption, however, is that it may understate the effect of asset-based charges (such as advisory fees and Rule 12b–1 fees) that increase (in dollar amounts) as the value of an investment increases. Therefore, the Commission is proposing a second column that demonstrates the effect of expenses assuming a five percent return on fund assets. This column will reflect the

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[11] Under the Reproposal, a fund may alternatively list the administrative portion of those fees separately under "Other Expenses."

[12] If a fund deducts distribution expenses from fund assets other than under a Rule 12b–1 plan, *i.e.*, under a Commission exemptive order, it may list these expenses under an appropriately re-captioned item for 12b–1 fees, or it may list the expense as a subcategory of "Other Expenses," described *infra*.

[13] The instructions to the table would preclude any single fee from being included in more than one expense category listed in the table.

[14] Expenses that are not deducted from all accounts would be excluded. These include expense charges applicable to only some shareholders (*e.g.*, Individual Retirement Account trustee fees).

[15] This is the approach the Commission has taken with respect to the deduction of fund expenses in the calculation of fund performance. *See* Instruction 1(b) of Item 3(c) of Form N–1A (calculation of money market fund yield). *See also* Instruction 6 to proposed Item 22(b)(i)(a) (calculation of income fund yield) and Instruction 4 to proposed Item 22(b)(ii) (calculation of total return). Investment Company Act Rel. No. 15315 (Sept. 17, 1986) [15 FR 34384 (Sept. 28, 1986)].

[16] Proposed instruction 4 to the fee table would require a restatement of expenses only if the fee table would be materially changed, not if a particular fee was increased or decreased materially with no material effect on the table. For example, if the annual transfer agent servicing fee was increased from $5 to $7 per account, such an increase would be a material change, but it may not materially affect the table. If any information is restated, the "Total Expenses" category would have to be restated since it must equal the total of recurring expenses.

[17] Prospectuses for variable life insurance contracts include tables showing how contract values can change over time at the hypothetical gross investment rates of 0%, 4%, and 8%; or 0%, 6%, and 12%.

[18] While all recurring expenses can be shown as a percentage of the average net assets, non-recurring expenses are often based on a fixed dollar amount or on a percentage of purchase price or redemption proceeds, which makes them difficult to compare. More importantly, it is difficult for investors to compare expenses levels of funds that deduct certain expenses (*e.g.*, distribution expenses) through a non-recurring charge (*e.g.*, sales load) with those that deduct the same expense through a recurring charge (*e.g.*, 12b–1 fee).

effect of increasing asset-based fees but, unlike the first column, it would not be itself isolate the amount of growth on an investment necessary to compensate for fund expenses. Furthermore, it uses an arbitrary growth rate assumption that may suggest a projected return to some investors. [19]The five percent rate was chosen as a rate sufficiently conservative to discourage its use as a table of projections, but as a rate sufficiently high to demonstrate the impact of fund growth on asset-based changes. Comment is requested as to whether the assumed rates of return are appropriate and the basis for selecting any positive rate of return.

The third column demonstrates what the investment would be worth, assuming a five percent return, if there were no expenses. Columns two and three, when compared, demonstrate the cost of an investment and the amount of growth necessary to recoup expenses in a manner similar to that of column one. Comment is requested as to whether this column of information is necessary in light of the information provided in the first column, or whether the first column is necessary in light of this third column of information. [20]

4. Explanation of the Table

The Reproposal would also require a brief narrative immediately following the table explaining the purpose of the fee table and providing cross-references to additional textual disclosure in the prospectus. The narrative should include any other information necessary for an investor's understanding of the disclosures in the table.

B. Narrative Distribution Expense Disclosures

Since the adoption of Rule 12b–1, both the number of funds adopting Rule 12b–1 plans and the variety of methods of financing distribution through Rule 12b–1 plans have increased.[21]For example, under some plans a fund pays its distributor a fee based on the fund's daily average net assets, regardless of the distribution expenses actually incurred. Under other plans a fund reimburses its distributor for all distribution expenses actually incurred up to a certain amount. Under the latter type of plan, if the amount spent by the distributor in any one plan year exceeds the plan's annual ceiling on such expenses, that excess amount of expense is carried over by the fund to be reimbursed in the future. Some plans provide for joint distribution arrangements among affiliated funds having Rule 12b–1 plans. In these cases, funds agree to share in certain distribution activities and allocate the expense between the participants. In response to requests by the staff, funds currently disclose in their prospectuses these and other aspects of their Rule 12b–1 plans. The Commission is now proposing amendments to Form N–1A to clarify the minimum disclosure obligations of funds regarding Rule 12b–1 plans.

1. Prospectus

Funds adopting Rule 12b–1 plans are currently required to disclose in the prospectus the existence of the plan and list the various activities for which payments are made under the plan.[22] The Reproposal would expand the required disclosure beyond the listing of expenses by amending Item 7 to require a brief description of the plan, including whether the plan would permit, and whether there exists, an amount of distribution expenses carried over from one plan year to another ("carryover amount"). If there is any carryover amount, the amount and the ratio of the carryover amount to net assets on the last day of the previous plan year must be disclosed. The latter figure will allow investors to assess the relative size of any unreimbursed amounts. [23] In addition, the Reproposal would require the prospectus to disclose whether the amount of distribution payments, when combined with any sales load, could exceed the amount of sales load allowed to be deducted under applicable NASD limitations.[24]

If the fund participates in any joint distribution activities paid from amounts deducted from fund assets under a Rule 12b–1 plan, the Reproposal would require disclosure of the participation and that 12b–1 fees paid by one fund or series might be used to pay for the distribution expenses of another fund or series. Disclosure would also be required from the methods by which the participants in the joint distribution activities allocate the cost of such activities (*e.g.*, by the number of investor accounts).[25]

Item 7 of Form N–1A currently requires disclosure of any sales load reallowed to a dealer to notify investors of my potential conflict of interest the dealer recommending the shares may have. The Reproposal would amend Item 7 to similarly require disclosure of any continuing fees ("trail fees") received by a dealer or any person advising investors that are paid out of fund assets. These fees are usually funded by 12b–1 fees and would not otherwise be required to be disclosed by Item 7.

Guide 29 of the Staff Guidelines would be amended to provide additional clarification of those aspects of a Rule 12b–1 plan that should be disclosed to fulfill the disclosure requirements of Item 7. These disclosures include such matters as a discussion of the relationships between amounts paid to an underwriter and expenses actually incurred by the underwriter (*e.g.*, whether the plan reinburses the distributor only for actual expenses incurred or whether the distributor's compensation is based on the fund's average daily net assets or some other factor, regardless of the amount of expenses incurred); whether the fund is or can be charged for interest, carrying, or any other financing charges on any unreimbursed distribution expense incurred in a prior plan year; whether the fund considers itself under a legal obligation to pay all or part of any amount carried over; and the estimated amount of time it will take for the fund to pay all carryover expenses.

2. Statement of Additional Information

Under the Reproposal, the distribution plan disclosures in the Statement of Additional Information ("SAI") would also be expanded and clarified. Currently, Item 16 of the SAI requires a summary of the material aspects of any

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[19] To avoid the possibility that these hypothetical numbers might be viewed as projections of fund growth and that investors might be misled, the Reproposal would require that prominent disclosure accompany the table stating that the rate of return is only hypothetical and that the actual rate of return could be higher or lower.

[20] To complete the table, proposed instruction 10 sets out certain assumptions and guidelines. Comment is requested as to whether this instruction is sufficient to allow funds to compute the data required by the table, and what additional assumptions might be necessary to reflect fund operating expenses that will vary from year-to-year and are not measured as a percentage of net assets and that, in the case of new funds, may be subsidized by the fund's adviser for a period of time.

[21] Approximately 925 of 2200 funds have adopted Rule 12b–1 plans.

[22] *See* Item 7 of Form N–1A.

[23] Disclosure of the carried-over distribution expenses as a ratio to net assets is similar to the fee table, which would disclose Rule 12b–1 fees and other recurring expenses as a percentage of average net assets.

[24] Art. III, sec. 26 of the NASD Rules of Fair Practice (adopted pursuant to authority under section 22(d) of the 1940 Act (15 U.S.C. 80a–22(d))).

[25] In proposing to require disclosure of joint distribution arrangements, the Commission makes no statement as to the legality of such arrangements under section 17(d) of the 1940 Act (15 U.S.C. 80a–17(d)) and Rule 17d–1 thereunder (17 CFR 270.13d–1) without a Commission order.

distribution plan and the manner in which distribution fees are spent. The Reproposal would clarify that, in Addition to disclosing the manner in which distribution fees are spent for different activities, the SAI must disclose the dollar amount spent in the last fiscal year for each of these different activities. In addition, this item would be expanded to list carryover financing charges as among those Rule 12b–1 plan expenses required to be disclosed. In recognition of the expanded disclosure required, Item 16(a) would be revised to require a "detailed description" of the distribution plan.

III. Cost/Benefit Analysis

The Commission believes that the changes proposed today would significantly improve the quality of prospectus disclosure without adding appreciably to the cost or burden of the disclosure. Investors would be able to determine quickly and easily the costs associated with an investment and thus would be able to make more informed investment decisions. Funds would only be required to disclose information that is already available to them. To minimize burdens, the Commission proposes to permit funds to delay amending their registration statements until they file their next post-effective amendment.

The Commission invites specific comments on its assessments of the costs and benefits associated with the Reproposal, including estimates of any costs and benefits perceived by commenters.

IV. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding the proposed amendments. The Analysis notes that the objectives of the proposed amendments are to present fund investors with expense disclosure that can be more easily understood, will facilitate comparison of expenses among funds, and clarify the nature of expenses associated with Rule 12b–1 plans. The Analysis indicates that if adopted no substantial additional burden should be imposed on funds constituting small entities because the information needed to complete the fee table and required to be disclosed is readily available to funds. The Analysis also notes that the burden placed upon small entities as a result of requiring funds to show the effect of expenses on a hypothetical investment will be minor because it requires relatively simple calculations. Other appropriate cost-benefit information reflected in the section of this release titled "Cost/Benefit Analysis" is also reflected in the Analysis.

A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting John McGuire, Mail, Stop 5–2, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

List of Subjects in 17 CFR Parts 239 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed Form Changes

The Commission is proposing to amend Chapter II, Title 17 of the Code of Federal Regulations as set forth below:

PART 239—[AMENDED]

PART 274—[AMENDED]

1. The authority citation for Part 239 continues to read, in part, as follows:

Authority: The Securities Act of 1933, 15 U.S.C. 77a, *et seq.*, * * *

2. The authority citation for Part 274 continues to read, in part, as follows:

Authority: The Investment Company Act of 1940, 15 U.S.C. 80a–1, *et seq.*, * * *

3. By amending General Instructions of Parts A and B, 1(b) and 4(a), of General Instruction G of Form N–1A described in §§ 239.15A and 274.11A to read as follows:

General Instructions for Parts A and B.

* * * * *

1(b). Item 3 of part A, "Condensed Financial Information," should not be further back in the prospectus than the fifth page thereof.

* * * * *

4(a). A Registration Statement on this Form may include any chart, graph, or table that is not misleading; however, with the exception of the fee table and the table of contents (required by Rule 481(c) [17 CFR 230.481(c)] under the 1933 Act), no chart graph, or table should precede the condensed financial information specified in Item 3.

* * * * *

4. By proposing to redesignate current paragraphs (a) and (b) of Item 2 as (b) and (c), add a new paragraph (a) to Item 2, and revise redesignated paragraph (b) as follows:

Item 2. *Synopsis.*

(a) Include a table, located within two pages of the cover page, furnishing the following information, using the captions provided, in the format illustrated below:

Nonrecurring Shareholder Expenses

1. Maximum Sales Load Imposed on Purchases (as a percentage of offering price)
2. Deferred Sales Load (as percentage of original purchase price or redemption proceeds, as applicable)
3. Redemption Fees (as a percentage of amount redeemed, if applicable)
4. Exchange Fee

Recurring Fund Expenses During The Past Fiscal Year

(as a percentage of average net assets)

1. Management Fees
2. 12b–1 Fees
3. Other Expenses
4. Total Expenses

Effect of Expenses on a Hypothetical Investment

If you redeem at the end of:	And the annual rate of return on the assets of the fund is 0%, the redeemable value of your investment would be:	And if the annual rate of return is 5%	
		The redeemable value of your investment would be:	But if there were no (sales load or) fund expenses, the redeemable value would be:
1 year	$	$	$1,050.00
3 years	$	$	$1,157.63
5 years	$	$	$1,276.28
10 years	$	$	$1,628.89

Instructions:

1. Immediately after the table, provide a brief narrative explaining that the purpose of the table is to assist the investor in understanding the various costs and expenses that an investor in the fund will bear directly or indirectly. Include, where appropriate, cross-references to the relevant sections of the prospectus for more complete descriptions of the various costs and expenses.

2. If a particular caption is not applicable to the Registrant, omit the caption from the table.

3. If the Registrant has been in existance for a full fiscal year, the percentages in the table should be based on amounts spent in the most recent fiscal year. If the Registrant has not been in operation for a full fiscal year, briefly describe the basis on which payments will be made.

4. If there have been any changes in the fees that would materially affect the information disclosed in the table: (a) Restate

the expense information, in a separate column, using the current fees that would have been applicable had they been in effect during the previous fiscal year; and (b) disclose in the narrative following the table, that the expense information has been restated in the second column to reflect current fees.

5. "Deferred Sales Load" includes the maximum contingent deferred sales load, expressed as a percentage of the original purchase price, and may include a tabular presentation, within the larger table, of the range of contingent deferred sales loads.

6. "Exchange Fee" includes the maximum fee charged for any exchange or transfer of interest from the Registrant to another investment company or from one series of the Registrant to another, and may include a tabular presentation, within the larger table, of the range of exchange fees.

7. "Management Fees" include investment advisory fees, any other management fees payable to the investment adviser or its affiliates, and administrative fees payable to the investment adviser or its affiliates not included as "other expenses."

8. "Rule 12b–1 Fees" include all distribution or other expenses incurred under a plan adopted pursuant to Rule 12b–1 under the 1940 Act. Disclose the amount of any distribution or other expenses deducted from assets other than under a Rule 12b–1 plan under an appropriate caption or under a subheading of the general caption "Other Expenses."

9. "Other Expenses" include all fees (except nonrecurring account fees, sales loads, management fees, or Rule 12b–1 fees) that are deducted from fund assets or are charged to all shareholder accounts. The Registrant may subdivide this heading into no more than three subcategories of the Registrant's choosing, but must include a total of all "other expenses."

10. For purposes of completing the portion of the table demonstrating the effect of expenses on a hypothetical investment:

(a) Assume a rate of return on the assets of the Registrant before expenses (but not before brokerage and other capital items);

(b) For the purpose of any breakpoint in any fee, assume that the amount of Registrant's assets remains constant at the level at the end of the most recently completed fiscal year;

(c) Assume reinvestment of all dividends and distributions;

(d) Reflect recurring and nonrecurring fees charged to all investors (Registrants that charge a sales load on the reinvestment of dividends should not reflect these fees in thetable, but should explain in the brief narrative following the table that the table does not reflect these amounts and that the hypothetical amounts would be reduced if they were reflected.) and assume no exchanges;

(e) Reflect any contingent deferred sales load by assuming redemption on the last day of the year; and

(f) Prominently disclose that the hypothetical investment rate of return is illustrative only and should not be considered a representation of past or future investment rates of return and that actual rates of return may be more or less than the rate shown.

11. If the Registrant is a series company, list separately the data for each series or class.

(b) The Registrant should include a synopsis of the information contained in the prospectus where the length or complexity of the prospectus makes such a synopsis appropriate. (If the prospectus without a synopsis would be twelve pages or less when printed in the manner in which it is to be delivered to investors, a synopsis, with the exception of the table required in paragraph (a) above, should not normally be necessary).

* * * * *

5. By proposing to amend paragraph (d) by deleting the word "and" after the semicolon and revising paragraph (e) and adding new paragraph (f) to Item 7 as follows:

Item 7. *Purchase of Securities Being Offered.*

* * * * *

(e) the amount or rate of any continuing fee paid out of fund assets to any dealer or any persons who may be advising shareholders regarding the purchase, sale, or retention of fund shares ("trail fee"); and

(f) if the Registrant directly or indirectly pays distribution or other expenses pursuant to a plan adopted under Rule 12b–1 under the 1940 Act [17 CFR 270.12b–1] (i) a brief description of the plan; (ii) a listing of the principal types of activities for which payments are or will be made; (iii) a statement of the amount of any unreimbursed expenses incurred in a previous plan year and carried over to future plan years, in terms of dollars and as a percentage of average net assets of the Fund on the last day of the previous plan year; (iv) an explanation of whether or not, based on current level of payments, the total payments for distribution, including any contingent deferred sales charge, over the life of an investment could exceed the maximum amount (8½%) that could have been charged as a sales load deducted from payments. If the Registrant participates in any joint distribution activities with another fund, or if a series of the Registrant participates in joint distribution activities with other series, disclose that a 12b–1 fee paid by one series or fund may be used to finance distribution of the shares of another series or fund and the method by which distribution costs will be allocated.

* * * * *

6. By proposing to revise paragraphs (f) and (f)(i), redesignate current subparagraph (f)(i)(F) as (f)(i)(G) of Item 16 and add a new paragraph (f)(i)(F) as follows:

Item 16. *Investment Advisory and Other Services.*

* * * * *

(f) Furnish a detailed description of the material aspects of any plan pursuant to which the Registrant incurs expenses related to the distribution of its shares, and of any agreements related to the implementation of such a plan. The description should include, among other information, the following:

(i) The dollar amount and the manner in which amounts paid by the Registrant under the plan during the last fiscal year were spent on:

(A) * * *

(F) interest, carrying, or other financing charges, and

* * * * *

7. By revising Guide 29 of the Guidelines as follows:

Guide 29. *Distribution Expenses.*

Item 7 requires a Registrant that bears distribution or other expenses in accordance with Rule 12b–1 to briefly describe the plan in the prospectus. To comply with this item, the brief description of the Rule 12b–1 plan should include: A discussion of the relationships between amounts paid to an underwriter and expenses actually incurred by the underwriter (*e.g.*, whether the plan reimburses the distributor only for actual expenses incurred or whether the distributor's compensation is based on the fund's average daily net assets or some other factor, regardless of the amount of expenses incurred); whether the fund is or can be charged for interest, carrying, or any other financing charges on any unreimbursed distribution or other expense incurred in a prior plan year; whether the fund considers itself under a legal obligation to pay all or part of the amount carried over; and the estimated amount of time it will take, based on the fund's current asset size, for the fund to pay all carryover expenses.

When special arrangements will be made to sell shares of the fund to customers of depository institutions, possible applicability of the Glass-Steagall Act should be discussed in the prospectus. The legal issues raised by payments to depository institutions for their services in this connection should be identified, and the consequences for the fund, if these issues are resolved adversely, should also be discussed.

8. By amending the first paragraph of Guide 33 of the Guidelines by revising the first sentence and adding a footnote at the end of the first sentence as follows:

Guide 33. *The Synopsis.*

If the registrant determines that inclusion of a synopsis is appropriate because of the length or complexity of the prospectus, that synopsis should be a clear and concise description of the key features of the offering and the registrant.[44] * * *

August 18, 1987.

By the Commisson.

Jonathan G.Katz,

Secretary.

[FR Doc. 87–19293 Filed 8–24–87; 8:45 am]

BILLING CODE 8010–01–M

[44] The table required by item 2(a0 should, in all cases, be included in the prospectus.

DELAWARE RIVER BASIN COMMISSION

18 CFR Part 410

Proposed Amendment to Comprehensive Plan and Water Code of the Delaware River Basin; Proposed Rule and Public Hearing

AGENCY: Delaware River Basin Commission.

ACTION: Proposed rule and public hearing.

SUMMARY: Notice is hereby given that the Delaware River Basin Commission will hold a public hearing to receive comments on a proposed amendment to its Comprehensive Plan and Water Code in relation to water conservation performance standards for plumbing fixtures and fittings. The hearing will be part of the Commission's regular business meeting which is open to the public.

DATES: The public hearing is scheduled for Wednesday, October 28, 1987 beginning at 1:30 p.m. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing. The comment closing date will be determined at the hearing.

ADDRESSES: Written comments should be submitted to Susan M. Weisman, Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628. The public hearing will be held in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey.

FOR FURTHER INFORMATION CONTACT: Susan M. Weisman, Commission Secretary, Delaware River Basin Commission: Telephone (609) 883–9500.

SUPPLEMENTARY INFORMATION

Background and Rationale

The installation of water-saving fixtures and fittings can save substantial quantities of water. About two-thirds of the interior residential use of water is for water closet (toilet) flushing and bathing and, in many cases, use of water-saving fixtures and fittings can cut this use in half. Of particular significance, use of such devices entails no change in personal habits.

A number of national associations have endorsed the use of water-saving fixtures and fittings. Both the Building Officials and Code Administrators International (BOCA) and the National Association of Plumbing-Heating-Cooling Contractors incorporate water conservation principles in their model plumbing codes.

Recognizing the benefits associated with the use of water-saving fixtures and fittings, the Commission's Water Conservation Advisory Committee recommended on April 10, 1987 that the Commission adopt a set of water conservation performance standards for plumbing fixtures and fittings that would apply in the Delaware River Basin.

The proposed amendment would require that all water conservation performance standards for plumbing fixtures and fittings adopted by the four Basin States or political subdivisions within the Basin comply with specified minimum standards for sink and lavatory faucets, shower heads, water closets, urinals and associated flushing mechanisms. Compliance dates are specified as are certain specialized fixtures and fittings not covered by the proposed regulation. The proposal also requires certification by manufacturers that their plumbing fixtures and fittings comply with the water conservation performance standards. Periodic review of the performance standards would also be required to allow for incorporation of more stringent water conservation performance standards as technology advances. Finally, Pennsylvania political subdivisions or their agencies seeking Commission permit approval or renewal must document that water conservation performance regulations consistent with standards proposed herein have been adopted within their area of jurisdiction.

The subject of the hearing will be as follows:

Amendment to the Comprehensive Plan and Water Code of the Delaware River Basin Relating to Water Conservation Performance Standards for Plumbing Fixtures and Fittings.

List of Subjects in 18 CFR Part 410

Water pollution control.

PART 410—[AMENDED]

Article 2 of the *Water Code of the Delaware River Basin* includes Commission policy relating to conservation, development and utilization of Basin water resources. It is proposed to:

Amend the Comprehensive Plan and Article 2 of the *Water Code of the Delaware River Basin*, which are referenced in 18 CFR Part 410, by the addition of a new subsection 2.1.5 to read as follows:

2.1.5 Water conservation performance standards for plumbing fixtures and fittings

(1)(a) All water conservation performance standards for plumbing fixtures and fittings adopted by any signatory state or political subdivision within the Delaware River Basin shall comply with the following minimum standards:

(i) for sink and lavatory faucets, maximum flow shall not exceed three gallons of water per minute when tested in accordance with American National Standards Institute (ANSI) A112.18.1M; and

(ii) for shower heads, maximum flow shall not exceed three gallons of water per minute when tested in accordance with ANSI A112.18.1M; and

(iii) for water closets and associated flushing mechanism, maximum volume shall not exceed an average of three and one-half gallons of water, but no more than four gallons, per flushing cycle when tested in accordance with the hydraulic performance requirements of ANSI A112.19.2M or ANSI A112.19.6M;

(iv) for urinals and associated flushing mechanism, maximum flow shall not exceed one and one-half gallons of water per flush when tested in accordance with the hydraulic performance requirements of ANSI A112.19.6M.

(b) Any water conservation performance standards adopted prior to the effective date of this regulation that are not in compliance with the provisions of (a) shall be amended or revised to comply with the provisions of (a) by January 1, 1990.

(c) The Commonwealth of Pennsylvania shall adopt water conservation performance standards for plumbing fixtures and fittings that comply with the provisions of (a) by January 1, 1989. In the absence of such regulations, political subdivisions within the Pennsylvania portion of the Basin that have not adopted regulations to enforce water conservation performance standards for plumbing fixtures and fittings shall be required to adopt regulations that comply with the provisions of (a) by January 1, 1990.

(2) The provisions of this regulation shall not apply to fixtures and fittings such as emergency showers, aspirator faucets, and blowout fixtures that, in order to perform a specialized function, cannot meet the standards specified in subsection (1).

(3) Manufacturers shall certify that their plumbing fixtures and fittings comply with the water conservation performance standards specified in subsection (1). Such certification shall be based on independent test results.

(4) The Executive Director shall periodically review the performance standards set forth in subsection (1) to determine their adequacy in light of advances in technology for water conservation fixtures and fittings. The results of such reviews, including any recommendations for more stringent water conservation performance standards, shall be presented to the Commission. An initial review shall be completed within one year of the effective date of this regulation. This initial review shall consider the revision of subsection (1)(a)(iii) to require that effective January 1, 1990, maximum volume for water closets shall not exceed one and six-tenths gallons (six liters) per flushing cycle when tested in accordance with the hydraulic performance requirements of ANSI A112.19.2M or ANSI A112.19.6M.

(5) Individual political subdivisions of the Commonwealth of Pennsylvania or agencies

of those individual political subdivisions seeking permit approval or renewal under Section 3.8 of the Compact for water supply or wastewater discharge projects shall document that regulations consistent with subsection (1) have been adopted within their area of jurisdiction. Such documentation shall be a condition for permit approval or renewal.

(6) This regulation shall be effective immediately.

Delaware River Basin Compact, 75 Stat. 688.

Susan M. Weisman,

Secretary

August 17, 1987.

[FR Doc. 87-19403 Filed 8-24-87; 8:45 am]

BILLING CODE 6360-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

Proposed Customs Regulations Amendment Relating to the Customs Field Organization; Port Manatee, FL

AGENCY: Customs Service, Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations by establishing a new Customs port of entry to be known as Port Manatee in the Tampa, Florida, Customs District of the Southeast Region. The change is being proposed as part of Customs continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public.

DATE: Comments must be received on or before October 26, 1987.

ADDRESS: Comments (preferably in triplicate) should be submitted to and may be inspected at the Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue NW., Room 2324, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Bernie Harris, Office of Inspection and Control, (202-566-9425).

SUPPLEMENTARY INFORMATION:

Background

The Customs Service field organization currently consists of seven geographical regions further divided into districts with ports within each district. Costoms ports of entry are locations (seaports, airports, or land border ports) where Customs officers or employees are assigned to accept entries of merchandise, collect duties, clear passengers, vehicles, vessels, and aircraft, examine baggage, and enforce the Customs, and related laws.

The Manatee County Port Authority filed an application with Customs requesting the establishment of a new Customs port of entry at Port Manatee, Florida. A review of that application has confirmed that the proposed port meets the minimum Customs criteria for establishing ports of entry. The applicable standards, published as T.D. 82-37 in the **Federal Register** on March 9, 1982 (47 FR 10137), list 350 cargo vessel arrivals, or 2,500 formal entries per year, as the minimum potential Customs workload for establishing a port. Of the 1,485 vessels utilizing Port Manatee in 1986, the Tampa District reports that well over the 350 minimun were international cargo vessels.

By T.D. 86-14, published in the **Federal Register** on February 5, 1986 (51 FR 4559), the criteria used in evaluating applications to establish ports of entry were modified. The criteria, as further modified by T.D. 87-65 published in the **Federal Register** on May 4, 1987 (52 FR 16328), now require a commitment, by any applicant seeking port status by satisfying the cargo workload standard, to make optimal use of electronic data transfer capability to permit intergration with Customs Automated Commercial System (ACS). The Manatee County Port Authority has made this commitment.

The geographical limits of the proposed port of entry of Port Manatee would be that portion of Manatee County bounded on the north by the Manatee -Hillsborough County line, on the east by U.S. Interstate Highway (I-75, on the south by State Highway 64, but excluding the western off-shore island communities of Anna Maria, Bradenton Beach, Holmes Beach, and Longboat Key.

The Secretary of the Treasury is advised by the Commissioner of Customs in matters affecting the establishment, abolishment, or other change in ports of entry. Customs ports of entry are established under the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegeted to the Secretary of the Treasury by Executive Order No. 10289, September 17, 1951 (3 CFR 1949-1953 Comp., Ch. II), and pursuant to authority provided by Treasury Department Order No. 101-5, dated February 17, 1987 (52 FR 6282).

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4 and § 103.11(b) Customs Regulations (19 CFR 103.11b)), on regular business days between the hours of 9:00 a.m. to 4:30 p.m. at the Regulations Control Branch, Room 2324, Headquarters, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229.

Executive Order 12291 and Regulatory Flexibility Act

Because this document relates to agency organization it is not subject to E.O. 12291. Accordingly, a regulatory impact analysis and the review prescribed by that E.O are not required. For the same reason, this document is not subject to the Regulatory Flexibility act (5 U.S.C. 601 *et seq.*).

Customs routinely establishes and expands Customs ports of entry throughout the U.S. to accommodate the volume of Customs-related activity in various parts of the country. Although the proposal may have a limited effect upon some small entities in the area affected, it is not expected to be significant because establishing and expanding port limits at Customs ports of entry in other areas has not had a significant economic impact upon a substantial number of small entities to the extent contemplated by the Act. Nor is it expected to impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Drafting Information

The principal author of this document was John Doyle, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Exports, Imports, Organization and functions (Government agencies).

Proposed Amendment

It is proposed to amend § 101.3, Customs Regulations (19 CFR 101.3), as follows:

PART 101—[AMENDED]

1. The authority citation for Part 101 would continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1, 66, 1202 (Gen. Hdnote. 11), 1624; Reorganization Plan 1 of 1965; 3 CFR 1965 Supp.

§ 101.3 [Amended]

2. It is proposed to amend § 101.3(b) by inserting, "Port Manatee, Fla. including the territory described in T.D. 87– ." in appropriate alphabetical order in the column headed, "Ports of entry" in the Tampa, Florida, District of the Southeast Region.

R. Kusstis,

Acting Commissioner of Customs.

Approved: August 5, 1987.

Francis A. Keating, II,

Assistant Secretary of the Treasury.

[FR Doc. 87–19472 Filed 8–24–87; 8:45 am]

BILLING CODE [illegible]

DEPARTMENT OF STATE

22 CFR Part 41 and 42

[SD–210]

Visas; Documentation of Immigrants and Nonimmigrants, Under the Immigration and Nationality Act, as Amended; Correction

AGENCY: Bureau of Consular Affairs, Department of State.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document corrects errors contained in the regulatory text of a proposed rulemaking which appeared in the **Federal Register** of August 10, 1987 (52 FR 29542).

DATE: Comments must be received on or before September 11, 1987.

ADDRESS: Stephen K. Fischel, Chief, Legislation and Regulations Division, Visa Services, Washington, DC 20520, (202) 663–1204.

FOR FURTHER INFORMATION CONTACT: Stephen K. Fischel or Guida Evans-Magher, Legislation and Regulations Division, Visa Services, Washington, DC 20520, (202) 663–1204; 663–1206.

SUPPLEMENTARY INFORMATION: The proposed rulemaking would implement numerous amendments to the Immigration and Nationality Act which were enacted by the 99th Congress.

Accordingly, the errors contained in the Department of State's publication SD–210 at 52 FR 29542, August 10, 1987, are corrected as follows:

§ 42.12 [Corrected]

1. On page 29544, the table in paragraph (a) of § 42.12 is corrected by changing the references in lines 3 an 4 of the column designated "Class", from "G–1" and "101(a)(15)(G)(i)" to "G–4" and "101(a)(15)(G)(iv), respectively.

2. On page 29545 the table in paragraph (c) of § 42.12 is corrected by changing the reference in line 8 of the column designated "Class", from "C–1 or C–2" to read "C2–1 or C2–2", and by adding the language "(conditional status)" after the reference "C4–1" in line 17.

§ 41.91 [Corrected]

3. In § 41.91(a), on page 29544, second column, before the five asterisks (*) at the end of the paragraph designated (23) add the following:

(24) [Reserved]

§ 42.91 [Corrected]

4. In § 42.91 on page 29545, third column, before the five asterisks (*) at the end of the paragraph designated (23) add the following:

(24) [Reserved]

Date: August 19, 1987.

Cornelius D. Scully, III,

Director, Office of Legislation, Regulations, and Advisory Assistance, Visa Office.

Editorial Note: Additional corrections to this document are published in the Corrections Section of this issue of the **Federal Register.**

[FR Doc. 87–19327 Filed 8–24–87; 8:45 am]

BILLING CODE [illegible]

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD–FRL–[illegible]2517]

Standards of Performance for New Stationary Sources; Reference Methods; Amendments § 60.106 of Subpart J; Addition of Method 10B for the Determination of Carbon Monoxide Emissions from Stationary Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing .

SUMMARY: The purpose of this proposed rule is to amend Method 10 of Appendix A of 40 CFR Part 60 by adding an alternative interference trap and by making other minor amendments which are editorial in nature, and to add an alternative method, Method 10B, which uses a gas chromatographic procedure for the analysis of carbon monoxide (CO). Section 60.106(b) of Subpart J is also being amended to add Method 10B as an alternative method to Method 10. Method 10 is also being proposed as an acceptable alternative to Method 10A in the relative accuracy (RA) testing of CO continuous emission monitoring systems (CEMS's). The intended effect is to increase the flexibility in choosing testing procedures for CO performance standards and RA testing of CEMS's.

A public hearing will be held, if requested, to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed rule .

DATES: *Comments.* Comments must be received on or before November 9, 1987.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by September 15, 1987, a public hearing will be held October 9, 1987, beginning at 10:00 a.m. Persons interested in attending the hearing should call the contact mentioned under ADDRESSES to verify that a meeting will be held.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by September 15, 1987.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (LE–131), Attention: Docket Number A–87–07, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Public Hearing. If anyone contacts EPA requesting a public hearing, it will be held at EPA's Emission Measurement Laboratory, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Foston Curtis, Emission Measurement Branch (MD–19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–2237.

Docket. Docket No. A–87–07, containing materials relevant to this rulemaking, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Foston Curtis or Roger Shigehara, Emission Measurement Branch, Emission Standards and Engineering Division (MD–19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–2237.

SUPPLEMENTARY INFORMATION: .

I. The Rulemaking

An alternative Method 10 scrubber using an alkaline potassium permanganate solution in place of the current silica gel-ascarite scrubber is being proposed for removing interferences. An EPA study which

compared Methods 10, 10A, and 10B has shown that, when using this scrubber, potential interferences are completely removed and equivalent results are obtained by Methods 10, 10A, and 10B.

Based on the data from this study, Method 10 is also being proposed as an acceptable alternative to Method 10A for the RA testing of nondispersive infrared CO CEMS's when the alternative scrubber is used. Method 10B will allow the use of the Method 25 gas chromatographic system and is being proposed as an acceptable alternative method for standards of performance testing and for the RA testing of CO CEMS's

This rulemaking does not impose emission measurement requirements beyond those specified in the current regulations, nor does it change any emission standard. Rather, the rulemaking would simply revise and add test procedures associated with emission measurement requirements that would apply irrespective of this rulemaking. The other amendments are editorial in nature.

II. Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to discuss the proposed rulemaking in accordance with section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentations should contact EPA at the address given in the **ADDRESSES** section of this preamble.Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement with EPA before, during, or within 30 days after the hearing. Written statement should be addressed to the Central Docket Section address given in the **ADDRESSES** section of this preamble.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Central Docket Section in Washington, DC (see **ADDRESSES** section of this preamble).

B. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To all interested parties to identify and locate documents so that they can effectively participate in the rulemaking process and (2) to serve as the record in case of judicial review except for interagency review materials (section 307(d)(7)(A)).

C. Office of Management and Budget Review

Executive Order 12291 Review. Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a regulatory impact analysis. This rulemaking is not major because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices; and there will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rulemaking was not submitted to the Office of Management and Budget (OMB) for review because it amends a regulation already in place and does not contain cost implications nor impose additional burdens.

D. Regulatory Flexibility Act Compliance

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this attached rule, if promulgated, will not have an economic impact on small entities because no additional costs will be incurred.

This rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 60

Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Petroleum refineries.

Date: August 14, 1987.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation.

It is proposed that 40 CFR Part 60, § 60.106, Appendix A, and Appendix B be amended as follows:

PART 60—[AMENDED]

1. The authority for 40 CFR Part 60 continues to read:

Authority: Secs. 101, 111, 114, 116, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601).

§ 60.106 [Amended]

2. In § 60.106(b), by adding after the first sentence the following sentence to read as follows: "Method 10A or 10B may be used as an alternative method to Method 10."

Appendix A—[Amended]

3. In Appendix A, by amending Method 10 as follows:

a. In sections 5.3.3 and 7.2, by removing the word "paragraph" and adding, in its place, the word "Section."

b. In section 7.1.1, by removing the symbol "¶" and adding, in its place, the word "Sections."

c. In sections 7.1.1 and 7.1.2, by deleting the reference "(36 FR 24886)."

d. By redesignation section 10 as section 11, and redesignating the citation numbers 10.1 through 10.6 as 1 through 6, and by adding a new section 10 to read as follows:

10. Alternative Procedures

10.1 *Interference Trap.* The sample conditioning system described in Method 10A, Sections 2.1.2 and 4.2, may be used as an alternative to the silica gel and ascarite traps.

Appendix B—[Amended]

4. In Appendix B, by revising section 3.2 of Performance Specification 4 to read as follows:

3.2 *Reference Methods.* Unless otherwise specified in an applicable subpart of the regulation, Method 10 is the RM for this PS. When used for nondispersive infrared analyzers, Method 10 shall use the alternative interference trap specified in Section 10.1 of the method. Method 10A or 10B is an acceptable alternative to Method 10.

5. By adding Method 10B to Appendix A as follows:

Appendix A—Reference Methods

* * * * *

Method 10B—Determination of Carbon Monoxide Emission From Stationary Sources

1. Applicability and Principle

1.1 *Applicability.* This method applies to the measurement of carbon monoxide (CO) emissions at petroleum refineries and from other sources when specified in an applicable subpart of the regulations.

1.2 *Principle.* An integrated gas sample is extracted from the sampling point and analyzed for CO. After the sample is passed through a conditioning system to remove interferences, it is collected in a Tedlar bag. The CO is catalytically reduced to methane (CH_4) prior to analysis by FID. The analytical portion of this method is identical to applicable sections in Method 25 detailing CO measurement. The oxidation catalyst required in Method 25 is not needed for sample analysis. Complete Method 25 analytical systems are acceptable alternatives when calibrated for CO and operated by the Method 25 analytical procedures.

Note.—Mention of trade names or commercial products in this method does not

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constitute the endorsement or recommendation for use by the Environmental Protection Agency.

1.3 *Interferences.* Carbon dioxide (CO_2), moisture, and organics interfere with the analysis. The CO_2 and moisture are removed from the sample by the alkaline permanganate conditioning system, and organics are not expected to be present at applicable source.

2. Apparatus

2.1 *Sampling.* Same as in Method 10A, Section 2.1.

2.2 Analysis

2.2.1 *Gas Chromatographic Analyzer.* A semicontinuous GC/FID analyzer capable of quantifying CO in the sample and containing at least the following major components.

2.2.1.1 *Reduction Catalyst.* Same as in Method 25, Section 2.3.2.

2.2.1.2 *Sample Injection System.* Same as in Method 25, Section 2.3.4, equipped to accept a sample line from the Tedlar bag.

2.2.1.3 *Flame Ionization Detector.* Linearity meeting the specifications in Section 2.3.5.1 of Method 25 where the linearity check is carried out using standard gases containing 20-, 200-, and 1,000-ppm CO. The minimal instrument range shall span, 10 to 1,000 ppm CO.

2.2.1.4 *Date Recording System.* Same as in Method 25, Section 2.3.6.

3. Reagents

3.1 *Sampling.* Same as in Method 10A, Section 3.1.

3.2 *Analysis.*

3.2.1 *Carrier, Fuel, and Combustion Gases.* Same as in Method 25, Sections 3.2.1, 3.2.2, and 3.2.3.

3.2.2 *Linearity and Calibration Gases.* Three standard gases with nominal CO concentrations of 20-, 200-, and 1,000-ppm CO in nitrogen.

3.2.3 *Reduction Catalyst Efficiency Check Calibration Gas.* Standard CH_4 gas with a concentration of 1,000 ppm in air.

4. Procedure

4.1 *Sample Bag Leak-checks, Sampling, and CO_2 Measurement.* Same as in Method 10A, Sections 4.1, 4.2, and 4.3.

4.2 *Preparation for Analysis.* Before putting the GC analyzer into routine operation, conduct the calibration procedures listed in Section 5. Establish an appropriate carrier flow rate and detector temperature for the specific instrument used.

4.3 *Sample Analysis.* Purge the sample loop with sample, and then inject the sample. Analyze each sample in triplicate, and calculate the average sample area (A). Determine the bag CO concentration according to Section 6.2.

5. Calibration

5.1 *Carrier Gas Blank Check.* Analyze each new tank of carrier gas with the GC analyzer according to Section 4.3 to check for contamination. The corresponding concentration must be less than 5 ppm for the tank to be acceptable for use.

5.2 *Reduction Catalyst Efficiency Check.* Prior to initial use, the reduction catalyst shall be tested for reduction efficiency. With the heated reduction catalyst bypassed, make triplicate injections of the 1,000-ppm CH_4 gas (Section 3.2.3) to calibrate the analyzer. Repeat the procedure using 1,000-ppm CO (Section 3.2.2) with the catalyst in operation. The reduction catalyst operation is acceptable if the CO response is within 5 percent of the certified gas value.

5.3 *Analyzer Linearity Check and Calibration.* Perform this test before the system is first placed into operation. With the reduction catalyst in operation, conduct a linearity check of the analyzer using the standards specified in Section 3.2.2. Make triplicate injections of each calibration gas, and then calculate the average response factor (area/ppm) for each gas, as well as the overall mean of the response factor values. The instrument linearity is acceptable if the average response factor of each calibration gas is within 2.5 percent of the overall mean value and if the relative standard deviation (calculated in Section 6.9 of Method 25) for each set of triplicate injections is less than 2 percent. Record the overall mean of the response factor values as the calibration response factor (R).

6. Calculations.

Carry out calculations retaining at least one extra decimal figure beyond that of the acquired data. Round off results only after the final calculation.

6.1 *Nomenclature.*

A = Average sample area.
B_w = Moisture content in the bag sample.
C = CO concentration in the stack gas, dry basis, ppm.
C_b = CO concentration in the bag sample, dry basis, ppm.
F = Volume fraction of CO_2 in the stack.
P_{bar} = Barometric pressure, mm Hg.
P_w = Vapor pressure of H_2O in the bag (from Table 10–2, Method 10A), mm Hg.
R = Mean calibration resonse factor, area/ppm.

6.2 *CO Concentration in the Bag.* Calculate C_b using Equations 10B–1 and 10B–2. If condensate is visible in the Tedlar bag, calculate B_w using Table 10A–1 of Method 10A and the temperature and barometric pressure in the analysis room. If condensate is not visable, calculate B_w using the temperature and barometric pressure at the sampling site.

$$B_w = \frac{P_w}{P_{bar}} \qquad \text{Eq. 10B–1}$$

$$C_b = P\,\frac{A}{R\,(1-B_w)} \qquad \text{Eq. 10B–2}$$

6.3 *CO Concentration in the Stack.*

$$C = C_b(1 - F) \qquad \text{Eq. 10B–3}$$

7. Bibliography

1. Butler, F.E., J.E. Knoll, and M.R. Midgett. Development and Evaluation of Methods for Determining Carbon Monoxide Emissions. Quality Assurance Division, Environmental Monitoring Systems Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, NC. 27711. June 1985. 33p.

2. Salo, A.E., S. Witz, and R.D. MacPhee. Determination of Solvent Vapor Concentrations by Total Combustion Analysis: A Comparison of Infrared with Flame Ionization Detectors. Paper No. 75–33.2. (Presented at the 68th Annual Meeting of the Air Pollution Control Association. Boston, Massachusetts. June 15, 1975.) 14 p.

3. Salo, A.E., W.L. Oaks, and R.D. MacPhee. Measuring the Organic Carbon Content of Source Emissions for Air Pollution Control. Paper No. 74–190. (Presented at the 67th Annual Meeting of the Air Pollution Control Association. Denver, Colorado. June 9, 1974.) 25 p.

[FR Doc. 87–19314 Filed 8–24–87; 8:45 am]
BILLING CODE 6560-50-M

Notices

Federal Register
Vol. 52, No. 164
Tuesday, August 25, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Economic Analysis
Title: Annual Survey of Construction, Engineering, Architectural, and Mining Services Provided by U.S. Firms to Unaffiliated Foreign Persons
Form Number: Agency—BE-47; OMB—0608-0015
Type of Request: Revision of a currently approved collection
Burden: 130 respondents; 650 reporting hours
Needs and Uses: This collection will be used to obtain statistical data on U.S. sales to unaffiliated foreign persons of construction, engineering, architectural, and mining services. The information is needed to support U.S. trade policy initiatives and will also be used in compiling the U.S. balance of payments accounts.
Affected Public: Businesses or other for-profit institutions
Frequency: Annually
Respondent's Obligation: Mandatory
OMB Desk Officer: Francine Picoult, 395-7340

Agency: Bureau of Economic Analysis
Title: Annual Survey of Reinsurance and other Insurance Transactions by U.S. Insurance Companies with Foreign Persons
Form Number: Agency—BE-48; OMB—0608-0016
Type of Request: Revision of a currently approved collection
Burden: 200 respondents; 800 reporting hours
Needs and Uses: This collection will be used to obtain statistical data on transactions between U.S. insurance companies and foreign persons. The information gathered is needed to support trade policy initiatives and will also be used in compiling the U.S. balance of payments accounts.
Affected Public: Businesses or other for-profit institutions
Frequency: Annually
Respondent's Obligation: Mandatory
OMB Desk Officer: Francine Picoult, 395-7340

Agency: Bureau of Economic Analysis
Title: Annual Survey of Royalties, License Fees, and other Receipts and Payments for Intangible Rights between U.S. and Unaffiliated Foreign Persons
Form Number: Agency—BE-93; OMB—0608—0016
Type of Request: Revision of a currently approved collection
Burden: 500 respondents; 2,000 reporting hours
Needs and Uses: This collection will be used to obtain statistical data on royalties, license fees, and other receipts and payments for intangible rights between U.S. and unaffiliated foreign persons. The information is needed to support U.S. trade policy initiatives and will also be used in compiling the U.S. balance of payments accounts.
Affected Public: Businesses or other for-profit institutions
Frequency: Annually
Respondent's Obligation: Mandatory
OMB Desk Officer: Francine Picoult, 395-7340

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Francine Picoult, Room 3228 New Executive Office Building, Washington, DC 20503.

Dated: August 20, 1987.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87-19462 Filed 8-24-87; 8:45 am]

BILLING CODE 3510-CW-M

Senior Executive Service; Performance Review Board

Below is a listing of individuals who are eligible to serve on the Performance Review Board in accordance with the Economic and Statistical Affairs Senior Executive Service (SES) Performance Appraisal System:

Barbara A. Bailar
Joseph F. Caponio
Carol S. Carson
John E. Cremeans
Robert B. Ellert
Lucy A. Falcone
C.L. Kincannon
Frederick T. Knickerbocker
Daniel B. Levine
Martin Marimont
Jerome A. Mark
Harry A. Scarr
Charles A. Waite
Katherine K. Wallman
Allan H. Young

Edward A. McCaw,

Executive Secretary, Economic and Statistical Affairs, Performance Review Board.

[FR Doc. 87-19475 Filed 8-24-87; 8:45 am]

BILLING CODE 3510-DR-M

Economic Development Administration

Senior Executive Service; Performance Review Board

Below is a listing of individuals who are eligible to serve on the Performance Review Board in accordance with the Economic Development Administration Senior Executive Service (SES) Performance Appraisal System:

Steven R. Brennen
John E. Corrigan
David Farber
Edward G. Jeep
Beverly L. Milkman
George Muller
Charles E. Oxley
Craig M. Smith

Edward A. McCaw,

Executive Secretary, Economic Development Administration, Performance Review Board.

[FR Doc. 87-19476 Filed 8-24-87; 8:45 am]

BILLING CODE 3510-DS-M

VOL 52 ISS 164 AG 25 1987 UMI

International Trade Administration

[A-[illegible]]

Antidumping Duty Order; Acetylsalicylic Acid From Turkey

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: In separate investigations concerning acetylsalicylic acid from Turkey, the United States Department of Commerce (the Department) and the United States International Trade Commission (the ITC) have determined that acetylsalicylic acid from Turkey is being sold at less than fair value and that sales of acetylsalicylic acid from Turkey are materially injuring a United States industry.

Therefore, based on these findings, all unliquidated entries, or warehouse withdrawals, for consumption of acetylsalicylic acid from Turkey made on or after April 15, 1987, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register**, will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping order in the **Federal Register**.

EFFECTIVE DATE: August 25, 1987.

FOR FURTHER INFORMATION CONTACT: John J. Kenkel or John R. Brinkman, Office of Investigations, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377–3530 or 377–3965, respectively.

SUPPLEMENTARY INFORMATION: The product covered by this investigation is acetylsalicylic acid containing no additives, other than inactive substances (such as starch, lactose, cellulose, or coloring material), and/or active substances in concentrations less than that specified for particular non-prescription drug combinations of aspirin and active substances as published in the *Handbook of Non-Prescription Drugs*, 8th edition, American Pharmacuetical Association, and is not in tablet, capsule or similar forms for direct human consumption. This product is currently classified under item 410.72 of the *Tariff Schedules of the United States* (TSUS).

In accordance with section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673(b), on April 9, 1987, the Department made its preliminary determination that there was reason to believe or suspect that acetylsalicylic acid from Turkey was being sold at less than fair value (52 FR 1222, April 15, 1987). On June 23, 1987, the Department made its final determination that these imports were being sold at less than fair value (52 FR 24492 July 1, 1987).

On August 11, 1987, in accordance with section 735(d) of the Act (19 U.S.C. 1673d(d)), the ITC notified the Department that such imports materially injure a United States industry.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department directs United States Customs Officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of acetylsalicylic acid from Turkey. These antidumping duties will be assessed on all unliquidated entires of acetylsalicylic acid from Turkey subject to this order entered, or withdrawn from warehouse, for consumption on or after April 15, 1987, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register**.

On and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below:

Manufacturers/producers/exporters	Weighted-average margin percentage
Atabay Kimya Sanayi ve Ticaret	27.35
Proses Kimya Sanayi ve Ticaret	38.60
All Others	32.90

This determination constitutes an antidumping order with respect to acetylsalicylic acid from Turkey pursuant to section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations, (19 U.S.C. 353.48). We have deleted from the Commerce Regulations Annex I of 19 CFR Part 353, which listed antidumping findings and orders currently in effect. Instead, interested parties may contact the Central Records Unit, Room B–099, Information Services, Import Administration, for copies of the upgraded list of orders currently in effect.

This notice is published in accordance with section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48).

Joseph A. Spetrini,
Acting Deputy Assistant Secretary for Import Administration.

August 19, 1987.

[FR Doc. 87-19463 Filed 8-24-87; 8:45 am]
BILLING CODE 3510-DS-M

[C-223-601]

Final Affirmative Countervailing Duty Determination; Certain Fresh Cut Flowers From Costa Rica

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to producers or exporters in Costa Rica of certain fresh cut flowers as described in the "Scope of Investigation" section of this notice. The estimated net bounty or grant is 17.70 percent *ad valorem*. However, consistent with our stated policy of taking into account program-wide changes that occur before our preliminary determination, we are adjusting the duty deposit rate to 17.03 percent *ad valorem* to reflect changes in the Exporter Exemption for Taxes, Surcharges and Duties on Imports program. The Department of Commerce and producers and exporters of certain fresh cut flowers entered into a suspension agreement on January 5, 1987. However, we continued the investigation at the request of petitioner. The suspension agreement will remain in force, and we shall not issue a countervailing duty order as long as the conditions of the suspension agreement are met.

EFFECTIVE DATE: AUGUST 25, 1987.

FOR FURTHER INFORMATION CONTACT: Steven Morrison, Office of Investigations, or Richard Moreland, Office of Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW. Washington, DC 20230; telephone (202) 377–0189 or 377–2786.

SUPPLEMENTARY INFORMATION

Final Determination

Based upon our investigation, we determine that certain benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to producers or exporters in

Costa Rica of certain fresh cut flowers. For purposes of this investigation, the following programs are found to confer bounties or grants:

- Exporters' Exemption from Taxes, Surcharges, and Duties on Imports.
- Exporters' Credit for Sales and Selective Excise Taxes on Domestic Product Purchases.
- Tax Credit Certificates (CAT).

We determine the estimated net bounty or grant to be 17.70 percent *ad valorem*. However, we are adjusting the duty deposit rate to reflect program-wide changes in the Exporters' Exemption from Taxes, Surcharges and Duties on Imports program that occurred before the preliminary determination. Therefore, the duty deposit rate is 17.03 percent *ad valorem*.

Case History

Since the last **Federal Register** publication pertaining to this case, (*Suspension of Countervailing Duty Investigation: Certain Fresh Cut Flowers from Costa Rica* (52 FR 01356, January 13, 1987)) the following event has occurred: On January 15, 1987, the petitioner requested that this investigation be continued under section 704(g) of the Act. Therefore, we are required to issue a final determination in this investigation.

Scope of Investigation

The products covered by this investigation are miniature (spray) carnations, currently provided for in item 192.17 of the *Tariff Schedules of the United States* (TSUS) and standard carnations and pompom chrysanthemums, currently provided for in item 192.21 of the TSUS.

Analysis of Programs

Throughout this notice we refer to certain general principles applied to the facts of the current investigation. These general principles are described in the "Subsidies Appendix" attached to the notice of *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order* (49 FR 18006, April 26, 1984).

For purposes of this determination, the period for which we are measuring bounties or grants (the review period) is fiscal year 1985, October 1, 1984 through September 30, 1985. Based upon our analysis of the petition, responses to our questionnaire, verification, and comments received from interested parties, we determine the following:

I. Programs Determined to Confer Bounties or Grants

We determine that bounties or grants are being provided to producers or exporters of certain fresh cut flowers from Costa Rica under the following programs:

A. Certain Benefits Provided to Holders of Export Contracts

During the review period, American Flower had an export contract with the Government of Costa Rica under the Economic Emergency Law (Ley para el Equilibrio Finaciero del Sector Publico). The export contract is a document which itemizes benefits that an exporter is eligible to apply for and receive. It is not itself a program; it only conveys eligibility for benefits, not actual benefits. Export contract benefits, which were verified as used, are described below:

1. *Exporter Exemptions for Taxes, Surcharges and Duties on Imports.* Businesses with export contracts may be exempted from paying six out of seven separately calculated duties and taxes normally levied on imported raw materials, intermediate products and capital goods used to produce exported finished products. Import tax exemptions on inputs not physically incorporated in an exported product, such as building materials, electrical sockets and plastic trays, when the exemptions are limited to exporters, are countervailable export subsidies. We verified that American Flower received these exemptions under its export contract during the review period and have included them in our subsidy calculations.

Certain of the exemptions of customs duties and indirect taxes are for inputs that are physically incorporated in an exported product. American Flower received exemptions for imported plastic sleeves used to export flowers in bunches and for imported fertilizers used in growing exported plants. We determined that these items were physically incorporated in the exported product and have not included these exemptions in our subsidy calculation. However, because part of the tax exemptions received were attributable to imported fertilizers which were used to produce cut flowers for the domestic market, we allocated the exemption from import taxes applied to fertilizers between export and domestic sales, and countervailed the exemption attributable to domestic sales. This was done because these benefits were available only to holders of export contracts.

A ten percent recapture tax was imposed on the amount a company saves when it is exempt from paying import duties and taxes. It was levied against only some imports which benefit from the exemptions. We determined, from government import duty collection records, the actual amount of recapture tax American Flower paid. In accordance with section 771(6)(A) of the Act, we reduced the subsidy rate by the amount of this tax paid because it was tied to the duty and tax exemption and it reduced the net exemption received.

During the review period, some materials imported by American Flower, *e.g.*, greenhouse building materials used for flower production, were re-exported to its wholly-owned cut flower farm in Panama which supplies that domestic market. For items partially used in Costa Rica and partially re-exported to Panama, we reduced the amount of the subsidy calculated by the portion attributable to shipments to Panama. After making these adjustments, we divided the net savings under this program by total export sales and calculated an estimated net bounty or grant of 4.37 percent *ad valorem*.

In cases in which program-wide changes have occurred prior to a preliminary determination and where the changes are verifiable, the Department's practice is to adjust the duty deposit rate to correspond more closely to the eventual duty liability. We verified that three taxes, *i.e.*, the specific duty, the economic stabilization tax and the recapture tax, were eliminated after January 1, 1986. No entries of imports have been subject to, or exempted from, these taxes since January 1, 1986. Therefore, we have adjusted the duty deposit rate to reflect this change. The duty deposit rate for this program is 3.71 percent ad valorem.

2. *Exporters' Credit for Sales Tax and Selective Excise Tax on Certain Domestic Products Purchases.* We verified that during the review period those exporters eligible for benefits under export contracts were also eligible for credit for sales taxes and selective excise taxes paid for domestic purchases of certain articles such as irrigation and sprinkling system equipment. An eligible purchaser must apply to the appropriate ministry, receive approval and get credit for the amount of taxes paid. This credit may then be used on subsequent purchases.

American Flower received tax credits for domestic purchases, according to provisions of the export contract, for fiscal year 1985. The domestic purchase tax credits included credits for sales taxes on box tops and bottoms used to

export the flowers under investigation to the United States. Since these credits are equal to the amount of tax paid, they are a non-excessive exemption of prior stage indirect taxes on an item physically incorporated into the exported product, and are not countervailable under U.S. law. We excluded these credits in calculating the benefits under this program.

We determine that American Flower's credits for sales tax and selective excise tax on items other than boxes sent to the United States are countervailable as an export subsidy because the benefit is contingent upon export. To calculate the benefit from this program, we divided the value of tax credits received (excluding credits for boxes used for exports to the United States) by export sales. This results in an estimated net bounty or grant of 0.97 percent *ad valorem*.

B. Tax Credit Certificates (CAT)

These are government tax credit certificates (CAT) issued to eligible exporters based on the value of export sales. For sales to the United States, the face value of the certificate was 15 percent of the F.O.B. export value in fiscal year 1985.

After receiving payment for exported products and exchanging the foreign currency received at the Central Bank, an exporter may apply to the Central Bank to receive a CAT. If the Central Bank approves the application, it issues a CAT which is good for the payment of direct and indirect taxes starting one year after the date of issue. CAT expire two years after the date of issue. They are freely negotiable on the stock market from their date of issue until they expire. Since receipt of a CAT is contingent on export, we determine that the program is countervailable as an export subsidy.

American Flower sold all its CAT at a discount within a few months of their receipt. To calculate the benefits under this program, we divided the cash received by American Flower Corporation in fiscal year 1985 for its sales of CAT attributable to exports to the United States, by its export sales to the United States in the same period. We calculated the benefit as the discounted cash value received rather than the face value of the certificates. The discounted value is the net subsidy as defined by section 771(6)(B) of the Act, because deferral of receipt of the face value of the certificate was mandated by the government. On this basis, we calculated an estimated net subsidy of 12.35 percent ad valorem.

II. Programs Determined Not To Be Used

We determine that the producers or exporters of certain fresh cut flowers from Costa Rica did not use the following programs:

A. Accelerated Depreciation

Companies which have an export contract under the Economic Emergency Law No. 9655 (Ley para el Equilibrio Financiero del Sector Publico (February 24, 1984)), which amends the Income Tax Law, No. 837 (December 20, 1946), may use accelerated depreciation for new equipment if (1) they are approved for that benefit by the specific provisions of their export contract and (2) if they export over 50 percent of their sales (by value).

The Ministry of Finance issues a schedule for depreciation of assets which is available to any business in Costa Rica, whether or not it exports. Those with export contracts, who qualify for accelerated depreciation, can take assets which are normally depreciable according to the schedule in up to ten years and depreciate them in five years and take assets depreciable according to the schedule in more than ten years and depreciate them in ten years.

We found that the accelerated depreciation law was first made available to exporters in fiscal year 1986. We saw the income tax returns for American Flower Corporaton for fiscal years 1984 and 1985 and observed that the depreciation schedules attached did not utilize accelerated depreciation.

B. Certificates for Increasing Exports (CIEX)

This program is intended to benefit the agricultural and agro-industrial sector of the economy by providing grants to producers who increase exports from one year to the next. Qualifying exporters must apply to the Central Bank to receive this benefit.

The program ran out of funds in 1984 (before the review period). Additional partial funding for the 1984 distribution recently was appropriated, which the Central Bank intends to pay in fiscal year 1987, based on chronological order of application in 1984, until the funds run out. American Flower is on the list of contingent beneficiaries for this distribution but received no pay-out for CIEX in the review period or the following fiscal year. Therefore, we determine the CIEX program was not used.

C. Loan Programs—Small Farmer Loan Program

This program provides low interest loans to farmers whose gross annual income does not exceed approximately $15,000. We confirmed from business records that American Flower was not eligible for, and consequently did not use, this loan program.

D. Income Tax Exemptions for Export Earnings

Businesses making application with the appropriate government agency may have been eligible for a tax exemption for export earnings for fiscal year 1984. We examined the tax returns of American Flower Corporation for fiscal year 1984 and fiscal year 1985 and observed that they did not use this income tax exemption for export earnings.

E. Loan Program—Fund for Financing Exports

The FOPEX program provides loans for financing exports of non-traditional products, including cut flowers. FOPEX received its working capital primarily from the World Bank and the Bank for International Development. A small percent of total FOPEX working capital is derived from money provided by a consortium of central banks and private banks, all domiciled in Central America, and from interest received from prior loans. We verified that American Flower did not receive any loans under this program.

IV. Program Determined Not To Exist

Loan Program—Export Credit

In its response, the Government of Costa Rica stated that it operated no export credit program and granted no export credits during the review period. We specifically inquired about this during verification at the Ministry of Exports and Investments and at the FOPEX and CAT program offices of the Central Bank, which had general knowledge about export financing programs. We were told that there was no such program.

We examined the financial statements and loan records of American Flower Corporation and found no evidence of use of such a program. Therefore, we determine that an export credit program does not exist.

Petitioner's Comment

Petitioner argues that the information on the recapture tax was submitted too late to be considered.

DOC Position: We disagree. During verification, we received copies of six

import entry documents (Polizas) from American Flower. A single page was missing from one of these Polizas which had information about the amount of recapture tax paid on that importation. The government of Costa Rica subsequently submitted the omitted page. This submission, based on official Costa Rican government records, simply completed an otherwise unchanged verification exhibit. As such, we have accepted the information contained in that document for purposes of making our final determination.

Respondents' Comments

Comment 1: American Flower claims that the Department understated the tax credit on boxes exported to the United States containing the cut flowers under investigation. They argue that the amount of the subsidy resulting from these tax credits must be reduced by the full amount of the tax credit attributable to boxes exported to the United States.

DOC Position: We agree. We have determined that an eligible company can be exempted from 100 percent of the applicable taxes rather than 50 percent. Using verified information, we have adjusted the calculations for our final determination accordingly.

Comment 2: The Government of Costa Rica and American Flower request that we adjust our calculations to reflect the elimination of the specific duty and economic stabilization tax. Alternatively, they argue that we should deduct the recapture tax paid from the gross subsidy.

DOC Position: The specific duty, the economic stabilization tax and the recapture tax, in effect during the review period, were terminated on January 1, 1986. To calculate the fiscal year 1985 subsidy rate, we included the specific duty and economic stabilization tax exemption benefit and offset the subsidy by the amount of recapture tax payments on the exemptions received. Allowance of the recapture tax offset was made in accordance with section 771(6)(A) of the Act which allows reduction of the gross subsidy by a payment made in order to receive a subsidy.

To calculate the bonding rate when, as here, verifiable program wide changes occurred prior to the preliminary determination, we adjusted the duty deposit rate to correspond to the eventual liability. Since all three taxes were eliminated on January 1, 1986, we computed the bonding rate as it would be with these taxes set at zero.

Comment 3: The Government of Costa Rica and American Flower state that there was an Agrochemical Law passed in January 1986 which exempts most agricultural sector imports from import duties. These imports include many of the products we found were subject to import tax exemptions for exporters. Since these products may be imported duty-free by a wide variety of industries in the agricultural sector, the Agrochemical Law does not provide a domestic subsidy. Consequently, they request that the benefits attributed to tax exemptions for these products not be used in computing the bonding rate.

DOC Position: The Department has made no determination whether the benefits of the Agrochemical Law confer a subsidy. Since this law was enacted after our review period, its use was not examined. The status of the Agrochemical Law will be examined in any administrative review of the Suspension Agreement that may be requested.

Comments From Other Interested Parties

Comment 1: The Association of Costa Rican Flower Growers (Acoflor) objects to the Department limiting its investigation to one exporter which accounted for more than 60 percent of the cut flowers exported to the United States during the review period. They contend that the flower exporters which were not questioned have a different incidence of use of programs than the company investigated, and argue that the statute requires the Department to investigate an industry, not just one company, even if that company accounts for over 60 percent of the exports.

DOC Position: We disagree. Nothing in the statute requires the Department to examine any particular percentage of exports or companies in a countervailing duty investigation. The purpose of an investigation is to derive an estimate of the amount of the net subsidy; more precise calculations of subsidies are done in the context of section 751 Administrative Reviews. In limiting its investigation to 60 percent of the value of exports to the United States, we have followed precedent set by other cases. See, for example, the *Final Negative Countervailing Duty Determinations; Certain Textile Mill Products and Apparel for Malaysia,* (50 FR 9852, 9854, March 12, 1985). Moreover, Departmental flexibility to manage investigations in such a way as to effectively conserve administrative resources is consistent with the statutory scheme of the Act, which sets strict deadlines for completing investigations.

Verification

In accordance with section 776(a) of the Act, we verified the information used in making our final determination. During verification, we followed standard verification procedures, including meeting with the government and company officials and tracing information in the responses to source documents including accounting ledgers, financial statements, and annual reports.

Administrative Procedures

We afforded interested parties an opportunity to present information and written views in accordance with Commerce regulations (19 CFR 355.34(a)). A public hearing was held on December 3, 1986. Written views have been received and considered in reaching this final determination.

In the event the January 5, 1987, suspension agreement is violated or no longer meets the statutory requirements of section 704(d) of the Act, the Department, in accordance with section 704(i)(1)(A) of the Act, will direct the U.S. Customs Service to suspend liquidation of all entries or withdrawals from warehouse, for consumption of certain fresh cut flowers and will issue a final countervailing duty order as required by section 704(i)(1)(C) of the Act.

This notice is published pursuant to sections 303 and 705(d) of Act (19 U.S.C. 1303, 1671d(d)).

August 17, 1987.

Lee W. Mercer,

Acting Assistant Secretary for Trade Administration.

[FR Doc. 87-19465 Filed 8-24-87; 8:45 am]

BILLING CODE 3510-DS-M

[C-301-601]

Final Affirmative Countervailing Duty Determination; Miniature Carnations From Colombia

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to producers or exporters in Colombia of miniature carnations as described in the "Scope of Investigation" section of this notice. The estimated net bounty or grant is 2.17 percent *ad valorem.* However, consistent with our stated policy of taking into account program-wide changes that occur before our preliminary determination, we are adjusting the duty deposit rate to 1.04

percent *ad valorem* to reflect changes in the Tax Reimbursement Certificate Program. The Department of Commerce and producers and exporters of miniature carnations entered into a suspension agreement on January 5, 1987. However, we continued the investigation at the request of the petitioner and the Government of Colombia. The suspension agreement will remain in force, and we shall not issue a countervailing duty order, as long as the conditions of the suspension agreement are met.

EFFECTIVE DATE: August 25, 1987.

FOR FURTHER INFORMATION CONTACT: Jessica Wasserman, Office of Investigations, or Richard Moreland, Office of Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377–1442 or 377–2786.

SUPPLEMENTARY INFORMATION:

Final Determination

Based upon our investigation, we determine that certain benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to producers or exporters in Colombia of miniature carnations. For purposes of this investigation, the following programs are found to confer bounties or grants:

- Tax Reimbursement Certificate Program (CERT).
- PROEXPO Working Capital Loans Under Resolutions 59 and 22.
- PROEXPO Capital Investment Loans under Decree 2366.
- Duty and Tax Exemptions under Plan Vallejo.

We determine the estimated net bounty or grant to be 2.17 percent *ad valorem*. However, we are adjusting the duty deposit rate to reflect a program-wide change in the Tax Reimbursement Certificate Program that occurred before the preliminary determination. Therefore, the duty deposit rate is 1.04 percent *ad valorem*.

Case History

Since the last **Federal Register** publication pertaining to this case [the *Suspension of Countervailing Duty Investigation: Miniature Carnations from Colombia*, (52 FR 1353, January 13, 1987)] the following events have occurred: On January 15, 1987, the petitioner and on January 28, 1987, the Government of Colombia requested that this investigation be continued under section 704(g) of the Act. Therefore, we are required to issue a final determination in this investigation.

Scope of Investigation

The product covered by this investigation is miniature (spray) carnations, currently provided for in item 192.17 the *Tariff Schedules of the United States* (TSUS).

Analysis of Programs

Throughout this notice we refer to certain general principles applied to the facts of the current investigation. These general principles are described in the "Subsidies Appendix" attached to the notice of *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Counvervailing Duty Order* (49 FR 18006, April 26, 1984).

For purposes of this determination, the period for which we are measuring bounties or grants (the review period) is calendar year 1985. Based upon our analysis of the petition, responses to our questionnaire, verification, and comments received from interested parties, we determine the following:

I. Programs Determined to Confer Bounties or Grants

We determine that bounties or grants are being provided to producers or exporters in Colombia of miniature carnations under the following programs:

A. Tax Reimbursement Certificate Program (CERT)

The petitioner alleges that the Government of Colombia provides tax certificates to exporters which may exceed indirect taxes paid. The CERT, which the Government of Colombia claims is intended to rebate all or part of the indirect taxes paid by exporters, is freely negotiable on the stock market and can be used for paying a variety of taxes. Decree 637 of March 15, 1984, established a CERT of one percent as of April 1, 1984, on exports of all cut flowers to the United States, including miniature carnations. We found at verification that, as stated in the government response, the CERT was eliminated on October 29, 1985, for exports of all fresh-cut flowers, including miniature carnations, to the United States.

In order to determine whether export payments, purportedly operating as a rebate of indirect taxes, are in fact a bona fide rebate of indirect taxes, the Department examines whether: (1) The program operates for the purpose of rebating indirect taxes; (2) there is a link between eligibility for export payments and indirect taxes paid; and (3) the government has reasonably calculated and documented the actual indirect tax incidence borne by the product concerned and has demonstrated a clear link between such tax incidence and the rebate amount paid on export.

Where these condutions are met, the Department considers that the rebate system does not confer a subsidy to the extent that it rebates prior stage indirect taxes on inputs that are physically incorporated in the exported products and indirect taxes levied at the final stage. To the extent that the rebates exceed the payment of such indirect taxes, we would find that a countervailable benefit is being provided.

In this case, however, the questionnaire responses did not provide, nor were we able to verify, any studies detailing the relationship between indirect taxes paid on physically incorporated inputs used in the production of flowers and the level of the CERT rebate. Therefore, we determine that the full rebate under the CERT program is an excessive remission of indirect taxes.

To determine the benefit provided under this program, we took the value of CERTs received by the three companies under investigation during the review period on exports of miniature carnations to the United States and divided by the total exports to the United States of miniature carnations by the three companies. On this basis, we calculate an estimated net bounty or grant of 1.13 percent *ad valorem*.

In cases in which a program-wide change occurs prior to a preliminary determination and where the change is verified, the Department's practice is to adjust the duty deposit rate to correspond to the eventual duty liability. We verified that the CERT rebate on exports of miniature carnations to the United States was eliminated on October 29, 1985. Exports of the subject merchandise to the United States ceased receiving benefits under this program before our preliminary determination. Therefore, we have adjusted the duty deposit rate to zero percent *ad valorem* to reflect this change.

B. Export Promotion Fund (PROEXPO) Working Capital Loans under Resolutions 59 and 22

The petitioner alleges that producers and exporters of miniature carnations may obtain short-term working capital financing at preferential rates from PROEXPO, Colombia's principal export development fund.

We verified that exporters of miniature carnations receive short-term

loans for working capital financing under Resolution 59 and Resolution 22. The resolutions authorize the financing of the working capital needs of exporting companies which produce, store or sell merchandise other than coffee, petroleum and its by-products. The financing is in pesos and is channeled through commercial banks and finance corporations. Resoluprogram 59 loans are for 180 days and the interest is paid quarterly in advance. Resolution 22 loans are for periods up to one year, with interest paid quarterly in advance. The loans are made to the companies by the commercial banks and rediscounted through PROEXPO. We verified that the nominal interest rate on such loans from January 1 to March 15, 1985, was 18 percent, and that the nominal interest rate on such loans from March 15 to December 31, 1985, was 22 percent. The companies under investigation made interest payments on Resolution 59 and Resolution 22 loans during the review period.

Because only exporters are eligible for these loans, we determine that they are countervailable to the extent that they are provided at preferential rates. In order to determine whether short-term export financing under Resolution 59 and Resolution 22 was provided at preferential rates, we compared the rates charged to the appropriate benchmark. In this case, we have determined that the appropriate benchmark is the short-term interest rate available under the Fund for Agricultural Financing ("FFA") and the Agrarian Fund, the major sources of short-term financing available to agriculture in Colombia. The average interest rate charged under these funds in 1985 was 22.5 percent. Comparing this benchmark to the interest rates charged on the Resolution 59 and Resolution 22 loans, we determine that these loans were provided at preferential rates.

To determine the benefit, we based our calculations on the total value of all loans received by the three companies because they could not segregate specific loans for either miniature carnations or for exports to the United States. We changed the nominal interest rates to effective interest rates on the loans received, and we changed the benchmark rate to an effective rate. We then calculated the total amount of interest the three companies would have paid under the benchmark, and subtracted from that the amount of interest actually paid. We then allocated the difference over total exports to derive an estimated net bounty or grant of 0.43 percent *ad valorem*.

C. PROEXPO Capital Investment Loans Under Decree 2366

The petitioner alleges that under Decree 2366, PROEXPO provides preferential long-term financing for capital investment to exporters. The Resolution, which authorizes the financing of the acquisition of fixed assets used for the production of goods that are exported, is available to exporters which produce, store or sell merchandise other than coffee, petroleum and its by-products. The amount of the loan cannot exceed 100 million pesos and the maximum term is five years. The loans are administered through commercial banks by PROEXPO. We verified that Colombian exporters and producers of miniature carnations received long-term financing under Decree 2366 and that the companies under investigation had long-term PROEXPO financing outstanding during the review period.

Because only exporters are eligible for these loans, we determine that these loans are countervailable to the extent that they are provided at preferential rates. We verified that the nominal annual interest rate charged on such loans from January 1 to March 15, 1985, was 14 percent. We also verified that PROEXPO increased the interest rate to 18 percent on March 15, 1985. Since no long-term commercial loans are made by the commercial banking system in Colombia, we used as our benchmark the long-term interest rates available from the FFA, the major source of long-term financing to agriculture in Colombia. In each of the years in which the PROEXPO loans were taken out, the FFA interest rate was 21 percent. Based on this comparison, we determine these loans were provided at preferential rates and are, hence, countervailable.

To caluclate the benefit from these loans, we changed mominal interest rates to effective interest rates on the loans received, and we changed the benchmark rate to an effective rate. Applying the long-term loan methodology, we calculate an estimated net bounty or grant of 0.22 percent *ad valorem*.

D. Duty and Tax Exemptions under Plan Vallejo

The petitioner alleges that under Plan Vallejo Colombian firms may contract with the Ministry of Development to import machinery and raw materials for use in export production without paying import duties and sales taxes.

Plan Vallejo exempts exporters from paying import duties on imported raw materials, intermediate products and capital goods utilized to produce exported finished products. The duty exemptions are: (1) The customs duty applicable to the type of product imported; (2) PROEXPO contribution equal to five percent of the CIF value of the imports; (3) a Common Fund Contribution equal to two percent of the CIF value of the import; (4) are indirect tax pursuant to law 50 of 1984 which is equivalent to eight percent of the CIF value of the import; and (5) stamp taxes equal to 3.15 percent of the FOB value of the import.

Exemptions of customs duties and indirect taxes on imports of physically incorporated inputs, such as certain agrochemicals, are not countervailable. However, exemptions on non-physically incorporated inputs, such as imported capital goods, are countervailable export subsidies when the exemption is conditioned upon exportation. We verified that one of the companies under investigation received exemptions on machinery designed to be used to sort miniature carnations.

To calculate the benefit from this program, we allocated the amount of exemptions received by the company under investigation on imports not physically incorporated into the exported product over the value of total exports of miniature carnations by all companies under investigation during the review period. We calculate an estimated net bounty or grant of 0.39 percent *ad valorem*.

II. Program Determined Not to Confer a Bounty or Grant

We determine that the following program does not confer a bounty or grant to producers or exporters in Colombia of miniature carnations.

Air Freight Rates

The Colombian Administrative Department of Civil Aeronautics (DAAC), through Resolution No. 5833, established minimum and maximum air freight rates for shipments of cut flowers to the United States. The petitioner alleges that the regulated rates may be preferential and, as such, may provide countervailable benefits to exporters of miniature carnations.

According to the government response, air freight rates in Colombia are set by Resolution 8336 and updated by Resolutions 5776 and 9415. DAAC is empowered to establish the freight rates that airlines can charge for their freight services in Colombia both for domestic and international flights. Pursuant to Resolution 5833, updated by Resolution 6333, the minimum and maximum air freight rates in effect during the review period for miniature carnations were

$0.45 and $0.60 per kilogram for flowers transported from Colombia to the United States. In *Roses and Other Cut Flowers from Colombia: Final Results of Countervailing Duty Administrative Review and Revised Suspension Agreement*, (51 FR 44930, December 15, 1986 (*Other Cut Flowers*)), we determined that rates negotiated by the companies under investigation with private carriers were substantially below the maximum rate established by the DAAC and were, therefore, freely negotiated rates.

In this investigation, we verified that many of the rates charged from Bogota to Miami were lower than the maximum regulated rate. Although there were shipments made above the maximum regulated rate these were shipments of flowers by private charter planes which are chartered when regularly scheduled cargo planes are full. In these instances the exporter must pay for the round trip. Even though we found instances when the charter rates were above the government-regulated maximum rate, the fact that many of the rates charged on regularly scheduled cargo planes were below the maximum rate leads us to conclude that the rates charged are a function of competition in the air freight market and not the result of government suppression of rates. Therefore, we determine that the regulated rates are not preferential rates and do not confer a bounty or grant upon the exportation of miniature carnations.

III. Programs Determined Not to be Used

We determine that producers or exporters in Colombia of miniature carnations did not use the following programs:

A. Research and Development (R & D) Program

The petitioner alleges that a portion of the CERT export credits bestowed on exports (to countries other than the United States) are withheld from growers and are applied to a fund for research and development. At verification we learned that PROEXPO does not have a research and development program. Following the original suspension agreement negotiated with the United States in *Other Cut Flowers*, PROEXPO retained the funds that would otherwise have been disbursed to flower exporters. At the time of the suspension agreement, there was discussion of using these funds for generic advertising and for research and development to be carried out in the United States. However, neither the advertising nor the research and development programs were carried out. Therefore, we determine that this program was not used.

B. Preferential Export Insurance

The petitioner alleges that export insurance may be provided on preferential terms to producers or exporters of the subject merchandise. The government response states that export insurance is available through a privately-owned company under a contract with PROEXPO. At verification, we learned that producers or exporters of miniature carnations had no export insurance coverage.

C. Regional Funding to Promote Flower Production

The petitioner alleges that the Colombian government established a line of credit, which may be perferential, to promote flower production in the Department of Cauca (a region in northwest Colombia). At verification we learned that government assistance has been provided in Cauca for reconstruction following an earthquake, and that the alleged preferential line of credit was not used by producers or exporters of miniature carnations.

D. Preferential Export Credit through PROEXPO

In our initiation, we stated that we would investigate the following PROEXPO programs: (a) Credits to export trading firms; (b) short-term credits for expansion; (c) credits for export promotion; and (d) credits to purchase raw materials, to see if they provided benefits to producers or exporters of miniature carnations in Colombia. At verification, we learned that Resolution 22, Resolution 59, and Decree 2366 were the only lines of credit used by flower producers or exporters.

E. Benefits to Free Industrial Zones

The Colombian government has established Free Industrial Zones (FIZs) dedicated to export production. Producers located in a FIZ may receive certificates equal to 15 percent of the FOB value of Colombian value added on their exported products. These certificates may be sold on the stock market, cashed in at face value after one year, or redeemed to pay income taxes. In addition, capital equipment used in the production of exported merchandise may be imported duty free. At verification, we learned that the benefits available to companies located in FIZs are available to industrial companies only. We verified that none of the flower producers or exporters is located in a FIZ and that none has received benefits under this program.

F. Export Tax Benefits

Law 67 of 1979 may provide special incentives, preferential tariffs, and import/export systems for companies that trade Colombian products abroad. According to the government response, law 67 of 1979 was enacted to promote exports of small- and medium-sized companies through trading companies. Trading companies operate according to rules established in Decree 1519. At verification, we learned that none of the companies under investigation received any assistance under Law 67 of 1979 or under Decree 1519.

Petitioner's Comments

Comment 1: Petitioner argues that the DOC incorrectly adjusted the duty deposit rate for the CERT program to zero percent because benefits continue to be conferred under the CERT program on exports to countries other than the United States, including Canada. Petitioner contends that, the DOC must investigate the transhipment of the subject merchandise through third countries and take into account the CERTs received on shipments of flowers to Canada or other third countries which are finally sold in the United States.

DOC Position: At verification, we found no evidence that miniature carnations are transhipped to the United States through Canada or any other third country. It is not the Department's practice to investigate alleged subsidies to third countries absent evidence of transhipment. Moreover, we believe that any bounties or grants provided specifically on exports to countries other than the United States do not constitute countervailable subsidies under the Act.

Comment 2: Petitioner contends that, whatever the merit of the Department's refusal to countervail export benefits conferred on exports to third countries in other cases, there is no justification in the case of the CERT program, since the Department is aware that the rebate amount was increased to exports to third countries at the same time that rebates were eliminated on exports to the United States.

DOC Position: We disagree. An increase in the rebate on exports to third countries simultaneous with elimination of rebates on exports to the United States does not show that a subsidy is conferred on exports to the United States. Absent evidence that there are subsidized shipments of the subject merchandise to third countries *and* evidence that the exports are transhipped to the United States, the Department does not countervail benefits on exports to third countries.

See also *DOC Position* on Petitioner's Comment 1.

Comment 3: Petitioner contends that, for both PROEXPO working capital loans and long-term loans, the Department should have used commercial interest rates as the basis for its benchmarks rather than the FFA interest rate. Petitioner argues that to compare the cost of one government loan to another misses the intrinsic purpose of using a benchmark in the first place and results in a severe undervaluation of the subsidy conferred by preferential financing. Moreover they contend that applying the rationale apparently followed by the Department leads to the absurd result that a country could avoid the imposition of countervailing duties by aligning all of its loan program rates to the same level. In addition, petitioner contends that the selection of the FFA interest rate as the benchmark is inconsistent with the Department's past practice regarding preferential loan programs in Colombia. In *Certain Textile Mill Products and Apparel from Colombia: Suspension of Countervailing Duty Investigations* (50 FR 9832, March 12, 1985) (*Certain Textile Mill Products*), the Department based its benchmark at least partly on commercial rates. Petitioner argues therefore that the Department should include commercial interest rates in the calculation of the benchmark in this case.

DOC Position: We disagree. To determine whether loans are countervailable, we examine the terms and conditions of loans to which firms would otherwise have had access. In this case, over 90 percent of total financing available to the agricultural sector in Colombia is from government sources. Such loans are not limited to a specific enterprise or industry, or group of enterprises or industries, since they are available to the entire agricultural sector. They, therefore, serve as an appropriate benchmark.

As for petitioner's argument about the benchmark used in *Certain Textile Mile Products,* we found that there was no predominant alternative source of financing for the textile industry in the Colombian economy taken as a whole. For that case, therefore, we weight-averaged commercial financing and other financing to arrive at our benchmark. In this case, commercial financing accounts for less than 10 percent of the financing available to the agricultural sector. Therefore, we derived our benchmark from the predominant source of funds available to the agricultural sector in arriving at our benchmark, *i.e.,* the FFA interest rate for long-term loans and an average of the FFA and the Agrarian Fund for short-term loans.

Comment 4: Petitioner argues that the change in the interest rate from 18 percent to 22 percent on PROEXPO loans does not warrant a program-wide change.

DOC Position: In general, when there is a verifiable program-wide change prior to our preliminary determination, it is the Department's policy to adjust the cash deposit rate to reflect this change. In this case, however, we do not have sufficient verified information to measure the effect of the change on the level of benefits provided under this program. Therefore, we have calculated a cash deposit rate based on the benefit provided under this program during the review period.

Comment 5: Petitioner argues that, notwithstanding any questions regarding the correctness of the Department's position vis-a-vis agriculture's status as a group of industries, it now appears that the Department has gone one step further and expanded the reach of its "generally available" test into the domain of export subsidies. Petitioner contends that although the Department does not argue the PROEXPO subsidies are too widely available to be countervailable, it achieves substantially the same result by measuring the actual benefit of PROEXPO financing using a benchmark derived from another government program, and justifying that comparison by pointing to the wide availability of the benchmark program.

DOC Position: We chose as our benchmark rate the predominant alternative non-countervailable source of financing for the industry under investigation. The benchmark interest rate chosen is part of a program (FFA) which is available to all companies in the agricultural sector. We have consistently stated that the agricultural sector constitutes more than a specific enterprise or industry or group of enterprises or industries. Since the FFA is not countervailable, it is appropriate to consider the rates charged under this program as possible benchmarks. In this case, the industry under investigation is a part of the agricultural sector and the government programs from which the benchmark rate was derived provide more than 90 percent of the financing used by the agricultural sector. See also *DOC Position* to Petitioner's Comment 3.

Comment 6: Petitioner contends that the Department should have used commercial medium-term interest rates charged by finance companies in Colombia as the benchmark for PROEXPO capital investment loans under Decree 2366. Petitioner argues that these finance companies are the major source of financing for loans with terms greater than one year and that, although the maximum rates for long-term loans made by the finance companies are controlled by the government, they are the nearest equivalent to long-term commercial interest rates in Colombia.

DOC Position: We disagree. Under our long-term loan methodology, we first examine whether the companies under investigation have long-term commercial loans with comparable terms and conditions. We verified that none of the companies had any comparable long-term commercial loans outstanding during the review period. Furthermore, we found that the agricultural sector does not use the commercial finance companies to any significant extent. Therefore, we used the FFA fund as our benchmark for long-term loans. See also *DOC Position* to Petitioner's Comment 3.

Comment 7: Petitioner claims that the Department's rationale for considering agriculture to be so large a group that benefits provided to it do not constitute a countervailable subsidy has been rejected by the Court of International Trade (CIT). Petitioner cites *Bethlehem Steel Corp. v. United States,* 7 CIT 339, 590 F. Supp. 1237 (1980); *Agrexco Agricultural Export Co. v. United States,* 9 CIT _____, 604 F. Supp. 1238 (1985); *Cabot Corporation v. United States,* 9 CIT _____, 620 F Supp. 722 (1985).

DOC Position: Upon rexamination, we have concluded that these cases do not prevent the Department from determining that a benefit which is available to all of the agricultural sector is not countervailable on the grounds that it is provided to more than a specific enterprise or industry or group of enterprises or industries. The Department considers programs, available to the entire agricultural sector not to be limited to a specific enterprise or industry, or group of enterprises or industries. *See Fnal Affirmative Countervailing Duty Determination: Live Swine and Fresh, Chilled, and Frozen Pork Products from Canada* (50 FR 25097, June 17, 1985); and *Final Results of Countervailing Duty Administrative Review and Revised Suspension Agreement: Roses and Other Cut Flowers from Colombia* (51 FR 44930, December 15, 1986). To the extent that *Bethlehem, Agrexco,* and *Cabot* stand for the proposition that generally available subsidies may be countervailable, we disagree with those decisions of the court. Furthermore, petitioner has cited only those decisions

which it believes support its position on general availability. Petitioner has omitted any reference to those decisions of the Court of International Trade such as *PPG Industries, Inc. v. United States*, 13 CIT _____, Slip Op. 87–57 (1987), and *Carlisle Tire and Rubber Co. v. United States*, 5 CIT 229 (1983), which clearly support the government's position on specificity.

Comment 8: Petitioner argues that government-controlled air freight rates provided a benefit measured by the difference between the market price, *i.e.*, the charter freight rates, and the regulated rate. Petitioner argues that whether or not there is a cost to the donor, *i.e.* the airline, is not relevant to the determination of whether there is a subsidy. Furthermore, petitioner argues that the Department did not verify that the rate schedule permits recovery of full costs.

DOC Position: We disagree. First, the charter freight rates apparently include a premium to cover the cost of round trip flights. Therefore, charter rates that are higher than the maximum regulated rate do not indicate that the regulated rate is preferential. Moreover, as discussed in section II, since we found that the freight rates charged on many regular cargo flights are below the maximum rate, we consider that the rates being charged are the function of competition and not government suppression of the maximum freight rate that can be charged. Since we have found that the rates are not preferential, the cost issues raised by petitioner need not be addressed.

Comment 9: Petitioner contends that it did not receive the questionnaire response of Agricola Los Arboles and that the questionnaire response is not in the public record. Petitioner argues that the Department should reject the response and use best information otherwise available since the response was submitted after the preliminary determination and thus was not timely.

DOC Position: We disagree. Due to the fact that the company in question was in financial difficulty, there was a delay in preparing the response. The Department, therefore, agreed to accept the response late. The response was, however, received prior to the preliminary determination. The response was received and verified and a copy was served on petitioner.

Comment 10: Petitioner argues that revised export data submitted by the companies under investigation after verification should not be used.

DOC Position: We agree. The issue of using revised sales data did not arise until verification, and the data were not submitted to the Department until after verification. Furthermore, the data submitted were not complete. Therefore, we have used the export data that were verified.

Comment 11: Petitioner argues that, since respondents had the capability to misrepresent the volume of their export sales, any information they submit with respect to that section of the questionnaire becomes automatically suspect. Under these circumstances, petitioner submits that the agency should use the best information otherwise available when making its determination. The best information otherwise available is contained in the Bureau of Census, U.S. Import Statistics for the subject merchandise.

DOC Position: We disagree. The export statistics used in the final determination were verified by the Department at the companies under investigation using standard verification methods. We believe these figures more accurately reflect exports of the subject merchandise from Colombia to the United States than the aggregate data reported by the Bureau of Census, U.S. Import Statistics for the subject merchandise.

Comment 12: Petitioner argues that benefits under Plan Vallejo are countervailable because they were received in the review period. Petitioner contends that respondents' argument that the entitlement to the benefit is not legally certain and that therefore the benefits are not countervailable is not supported by Department practice.

DOC Position: We agree. One respondent was exampted from paying duties on capital equipment during the review period. Although the company could become liable for the duties on some future date if the company failed to meet its export goals, it had not failed to meet its export goals in the past and we found no evidence that the company was likely to fail to meet its export goals. A cash-flow analysis dictates that the benefit was received in the review period since, without the exemption, the company would have had to pay the duty.

Respondents' Comments

Comment 1: Respondents argue that in determining the benefit on PROEXPO financing, the ratio that should have been used to calculate any alleged preference was the ratio between the nominal interest rates rather than the ratio between the effective rates.

DOC Position: When possible, the Department uses effective rather than nominal interest rates since this results in a more accurate measure of the subsidy.

Comment 2: Respondents contend that in the preliminary determination a calculation error was made in computation of the benefit derived from the Plan Vallejo exemption. The dollar value of exports of one company under investigation was misconstrued as representing the peso value of the company's exports.

DOC Position: We agree and have used the appropriate denominator for the final determination.

Comment 3: Respondents argue that, with regard to the CERT program, tax rebates on sales to third-country markets cannot legally be considered countervailable subsidies under the U.S. countervailing duty law. The U.S. countervailing duty law refers to bounties or grants bestowed on "merchandise imported into the United States" (19 U.S.C. 1671).

DOC Position: Subsidies on exports to third countries may, under certain circumstances, be considered countervailable under the U.S. countervailing duty law. For example, merchandise imported into the United States through a third country meets the statutory definition of "merchandise imported into the United States." However, subsidies which are received exclusively based on exports to countries other than the United States are attributable exclusively to those exports. Likewise, subsidies received solely because of exports to the United States are wholly attributable to exports to the United States. In this case, however, we found no transhipment of the subject merchandise through third countries, nor did we find any subsidies provided solely on exports to the United States.

Comment 4: Respondents argue that an action under section 301 of the Trade Act of 1974 (19 U.S.C. 2411) is the proper vehicle for seeking redress in third country market matters. If the petitioner is concerned about alleged subsidies in third markets where the petitioner competes, then the petitioner's appropriate remedy is section 301 and not the U.S. countervailing duty law.

DOC Position: As we stated in *DOC Position* on Petitioner's Comment 1, we believe that export subsidies provided exclusively to markets other than the United States do not constitute a countervailable subsidy under U.S. law; therefore, we need not comment on matters pertaining solely to third country markets.

Comment 5: Respondends argue that flowers are not transhipped through Canada to the United States. All flowers are shipped to Miami, and no CERT is received on the flower shipments.

DOC Position: At verification we found no evidence of transhipment of the subject merchandise to the United States through Canada. See *DOC Position* on Petitioner's Comment 1.

Comment 6: Respondents argue that if the Department takes into account the increase in interest rates under PROEXPO's short- and long-term loan programs, the benefits will be *de minimis*.

DOC Position: See *DOC Position* on Petitioner's Comment 4.

Verification

In accordance with section 776(a) of the Act, we verified the information used in making our final determination. During verification we followed standard verification procedures, including meeting with government and company officials and tracing information in the responses to source documents, including accounting ledgers, financial statements, and annual reports.

Administrative Procedures

We afforded interested parties an opportunity to present information and written views in accordance with Commerce regulations (19 CFR 355.34(a)). A public hearing was held on December 3, 1986. Written views have been received and considered in reaching this final determination.

In the event the January 5, 1987, suspension agreement is violated, or no longer meets the statutory requirements of section 704(d) of the Act, the Department, in accordance with section 704(i)(1)(A) of the Act, will direct the U.S. Customs Service to suspend liquidation of all entries, or withdrawals from warehouse, for consumption of the subject merchandise and will issue a final countervailing duty order as required by section 704(i)(1)(C) of the Act.

This notice is published pursuant to sections 303 and 705(d) of the Act (19 U.S.C. 1303, 1671d(d)).

Lee W. Mercer,

Acting Assistant Secretary for Trade Administration.

August 20, 1987.

[FR Doc. 87-19464 Filed 8-24-87; 8:45 am]

BILLING CODE 3510-DS-M

Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee will be held September 15, 1987 at (9:30 a.m., Herbert C. Hoover Building, Room B-841, 14th Street and Constitution Avenue NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to computer peripherals and related test equipment or technology.

Agenda:

General Session:

1. Introduction of Members and Visitors.
2. Presentation of Papers or Comments by the Public.
3. Election of Chairman.
4. Discussion of Latest Changes in the Regulations.
5. Discussion of the Annual Report for 1987.
6. Discussion of the Annual Plan for 1988.

Executive Session:

7. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on December 30, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government in The Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: (202) 377-4217. For further information or copies of the minutes call Ruth D. Fitts, 202-377-4959.

Date: August 19, 1987.

Margaret A. Cornejo,

Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 87-19461 Filed 8-24-87; 8:45 am]

BILLING CODE 3510-DT-M

Minority Business Development Agency

Business Development Center Program Applications; New York

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate a MBDC for a three (3) year period, subject to available funds. The cost of performance for the first *twelve* months is estimated at *$347,000* for the project performance of *January 1, 1988* to *December 31, 1988*. The Upstate New York MBDC will operate in the Upstate New York Standard Metropolitan Statistical Areas (SMSA) including but not limited to Rochester, Buffalo, and Syracuse, New York. The first year cost for the MBDC will consist of *$347,000* in Federal funds and minimum of *$81,235* in Non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian Tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: Coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduct of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and

technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the georgraphic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing date: The closing date for applications is September 25, 1987.

Applications must be postmarked on or before September 25, 1987.

ADDRESS: New York Regional Office, Minority Business Development Agency, Jacobs K. Javits Federal Building, Room 3702, New York, New York 10278, (212) 264–3262.

FOR FURTHER INFORMATION CONTACT: Gina A. Sanchez, Regional Director New York Regional Office at (212) 264–3262.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

Dated: August 10, 1987.

William R. Fuller,

Deputy Regional Director, New York Regional Office.

[FR Doc. 87–19436 Filed 8–24–87; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by A. Paul King From an Objection by the New Jersey Department of Environmental Protection

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of appeal.

On June 30, 1987, the Department of Commerce received a letter from A. Paul King (Appellant) filing a Notice of Appeal under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, 16 U.S.C. 1456(c)(3)(A), and the Department of Commerce's implementing regulations, 15 CFR Part 930, Subpart H (1987). The appeal is taken from an objection by the New Jersey Department of Environmental Protection to Appellant's consistency certification for U.S. Army Corps of Engineers Permit Application No. 86–1580–12, under section 10 of the River and Harbor Act of 1899, for filling of wetlands to construct a single-family home in Waretown, New Jersey.

If the Appellant perfects his appeal by filing the supporting data and information required by the Department's implementing regulations, public comments will be solicited by a notice in the Federal Register and a local newspaper.

FOR ADDITIONAL INFORMATION CONTACT: Sydney Anne Minnerly, Attorney/Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC 20235, (202) 673–5200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Dated: August 19, 1987.

Daniel W. McGovern,

General Counsel.

[FR Doc. 87–19411 Filed 8–24–87; 8:45 am]

BILLING CODE 3510-08-M

Coastal Zone Management; Federal Consistency Appeal by Nicholas Carlisi and Seymour Herman From an Objection by the New York Department of State

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of appeal.

On June 23, 1987, the Department of Commerce received a letter from Roy L. Haje on behalf of Nicholas Carlisi and Seymour Herman (Appellants) filing a Notice of Appeal under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, 16 U.S.C. 1456(c)(3)(A), and the Department of Commerce's implementing regulations, 15 CFR Part 930, Subpart H (1987). The appeal is taken from an objection by the New York Department of State to the Appellants' consistency certification for U.S. Army Corps of Engineers Permit Application No. 87–0102–L3, under section 10 of the River and Harbor Act of 1899, for closing off and back-filling an indented boat slip in Island Park, Nassau County, New York.

If the Appellants perfect the appeal by filing the supporting data and information required by the Department's implementing regulations, public comments will be solicited by a notice of the Federal Register and a local newspaper.

FOR ADDITIONAL INFORMATION CONTACT: Sydney Anne Minnerly, Attorney/Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC 20235, (202) 673–5200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Dated: August 19, 1987.

Daniel W. McGovern,

General Counsel.

[FR Doc. 87–19412 Filed 8–24–87; 8:45 am]

BILLING CODE 3510-08-M

Coastal Zone Management; Federal Consistency Appeal by the City of Ponce, Puerto Rico From an Objection by the Puerto Rico Department of Natural Resources

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of appeal.

On July 13, 1987, the City of Ponce, Puerto Rico (Appellant) filed with the Secretary of Commerce a Notice of Appeal under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, 16 U.S.C. 1456(c)(3)(A), and the Department of Commerce's implementing regulations, 15 CFR Part 930, Subpart H (1987). The appeal is taken from an objection by the Puerto Rico Department of Natural Resources to the Appellant's consistency certification for U.S. Army Corps of Engineers Application No. 87IPM–20069, under section 10 of the River and Harbor Act of 1899, for an after-the-fact permit to fill wetlands for construction of an industrial park in Ponce.

If the Appellant perfects the appeal by filing the supporting data and information required by the Department's implementing regulations, public comments will be solicited by a notice in the Federal Register and a local newspaper.

FOR ADDITIONAL INFORMATION CONTACT: Sydney Anne Minnerly, Attorney/Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC. 20235, (202) 673–5200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Date: August 19, 1987.
Daniel W. McGovern,
General Counsel.
[FR Doc. 87-19413 Filed 8-24-87; 8:45 am]
BILLING CODE 3510-22-M

[P342B]

Marine Mammals; Issuance of Permit; Cascadia Research Collective

On May 5, 1987, notice was published in the **Federal Register** (52 FR 16428) that an application had been filed by the Cascadia Research Collective, 2181/2 West Fourth Avenue, Waterstreet Building, Suite 291, Olympia, Washington 98501, to take blue whales (*Balaenoptera musculus*), humpback whales (*Megaptera novaeangliae*), sei whales (*Balaenoptera borealis*), minke whales (*Balaenoptera acutorostrata*), harbor porpoises (*Phocoena phocoena*), and Dall's porpoises (*Phocoenoides dalli*) by harassment.

Notice is hereby given that on August 19, 1986 as authorized by the provisions of the Marine Mammal Protection Act (16 U.S.C. 1361-1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Issuance of this Permit as required by the Endangered Species Act of 1973 is based on a finding that such Permit: (1) was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this Permit; (3) and will be consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This Permit was also issued in accordance with and is subject to Parts 220-222 of Title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

The Permit is available for review by interested persons in the following offices:

Director, Permit Division, National Marine Fisheries Services, 1825 Connecticut Avenue NW., Room 805, Washington, DC; and

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115.

Dated: August 19, 1987.
Nancy Foster,
Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.
[FR Doc. 87-19486 Filed 8-24-87; 8:45 am]
BILLING CODE 3510-22-M

[P77-2B]

Marine Mammals; Issuance of Permit; Southwest Fisheries Center, National Marine Fisheries Service

On July 7, 1987, notice was published in the **Federal Register** (52 FR 25456) that an application had been filed by the Southwest Fisheries Center, National Marine Fisheries Service, P.O. Box 271, La Jolla, California 92038, for a permit to take California sea lions and harbor seals by harassment for scientific research on the effects of aerial survey activities on pinniped haulouts.

Notice is hereby given that on August 19, 1987 as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm. 805, Washington, DC; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415.

Dated: August 19, 1987.
Nancy Foster,
Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.
[FR Doc. 87-19487 Filed 8-24-87; 8:45 am]
BILLING CODE 3510-22-M

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council will convene a public meeting on September 1-2, 1987, of its Mississippi/Louisiana Habitat Protection Advisory Panel, which will review marsh management issues; permit application LMNOD-SP (Bayou Rigaud) 67; a National Marine Fisheries Service/Corps of Engineers Memorandum of Understanding; the status of the Gulf initiative, and the revised habitat policy and proposed operational guidelines of the Gulf of Mexico Fishery Management Council. The public meeting will be held at the Baton Rouge Hilton, 550 Hilton Avenue, Baton Rouge, LA.

For further information contact Wayne E. Swingle, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Tampa, FL 33609; telephone: (813) 228-2815.

Dated: August 20, 1987.
Bill A. Powell,
Executive Director, National Marine Fisheries Service.
[FR Doc. 87-19484 Filed 8-24-87; 8:45 am]
BILLING CODE 3510-22-M

North Pacific Fishery Management Council; Amended Meeting Notice

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The agenda as published in the **Federal Register** (52 FR 30422, August 14, 1987) for the public meeting of the North Pacific Fishery Management Council's Policy and Planning Committee and public teleconference has been amended to include the following:

(1) Council members will review sablefish catches in the Gulf of Alaska and make recommendations to the National Marine Fisheries Service on whether or not the season should be reopened in the Southeast and West Yakutat Districts.

(2) In addition to the four locations listed in the original **Federal Register** notice for the public teleconference, the public may also listen in at the State Legislative Information Office, 101 Gjoa, Petersburg, Alaska, and at the State Legislative Information Office, 210 Lake Street, Sitka, Alaska.

All other information as published in the original agenda remains unchanged.

For further information contact Clarence Pautzke, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 274-4563.

Date: August 14, 1987.
Bill A. Powell,
Executive Director, National Marine Fisheries Service.
[FR Doc. 87-19485 Filed 8-24-87; 8:45 am]
BILLING CODE 3510-22-M

National Telecommunications and Information Administration

Senior Executive Service; Performance Review Board

Below is a listing of individuals who are eligible to serve on the Performance Review Board in accordance with the National Telecommunications and Information Administration Senior Executive Service (SES) performance Appraisal System:

Richard C. Beaird
Dennis R. Connors

Larry Eads
David Farber
William D. Gamble
Harold G. Kimball
Robert J. Mayher
Richard D. Parlow
Charles M. Rush
Roger K. Salaman
Neal B. Seitz
Linda A. Townsend
Francis S. Urbany
William F. Utlaut
Edward A. McCaw,

Executive Secretary, National Telecommunications and Information Administration, Performance Review Board.

[FR Doc. 87-19477 Filed 8-24-87; 8:45 am]

BILLING CODE 3510-60-M

National Technical Information Service

Intent to Grant Exclusive Patent License; Cancer Prognostics, Inc.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Cancer Prognostics, Inc. having a place of business at 1250 Broadway, New York, NY 1000, an exclusive right in the United States and foreign countries to practice the invention embodied in U.S. Patent Application S.N. 6-911,863, "Laminin Receptor Gene and Use in Tumor Diagnosis and Management." The patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Robert P. Auber, Director, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 87-19417 Filed 8-24-87; 8:45 am]

BILLING CODE 3510-04-M

DEPARTMENT OF DEFENSE

Department of the Army

Military Traffic Management Command; Directorate of Personal Property; Mobile Home One-Time-Only (MOTO) Rate Program; Proposed Changes

AGENT: Military Traffic Management Command (MTMC), Department of the Army, Department of Defense.

ACTION: To announce the proposed change to the mobile home rate program.

SUMMARY: Movement solicitations will be issued daily as required, allowing all DOD-approved mobile home carriers to submit offers. Carriers may respond to only those moves desired. Offers will be all-inclusive, containing linehaul, tolls, escort service, anti-sway, over-dimension charges, permits, licenses and other services as designated by the service member. Origin/destination services may or may not be included. A revised Rate Solicitation, effective November 1, 1987, will be issued during August 1987. The solicitation will contain the rules and provisions to be used as a basis for one-time-only rates covering the movement of privately-owned mobile homes.

Comments should be returned no later than September 30, 1987.

FOR FURTHER INFORMATION CONTACT: Mrs. Sheila Alexis or Miss Betty Yanowsky, HQ Military Traffic Management Command, Attn: MT-PPC-D (Room 406), Falls Church, Virginia 22041-5050, Telephone: (202) 756-1190.

Joseph R. Manotta,

Colonel, GS, Directorate of Personal Property.

[FR Doc. 87-19402 Filed 8-24-87; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

Intent to Waive Certain Requirements under Chapter 1 of the Education Consolidation and Improvement Act of 1981 for the Republic of the Marshall Islands

AGENCY: Department of Education.

ACTION: Notice of intent.

SUMMARY: Notice is given that, under section 1003(a) of the Elementary and Secondary Education Act, the Secretary intends to waive certain requirements under Chapter 1 of the Education Consolidation and Improvement Act of 1981 for the Department of Education of the Republic of the Marshall Islands (formerly part of the Trust Territory of the Pacific Islands) beginning July 1, 1987. This notice sets forth the terms and conditions under which the Secretary intends to grant the waiver, and invites public comments.

DATES: Comments must be received on or before September 24, 1987.

ADDRESSES: All comments concerning this notice should be addressed to Mr. James Ogura, Chief, Program Policy Support Branch, Compensatory Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 2018, FOB-6), Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mr. James Ogura. Telephone: (202) 732-4701.

SUPPLEMENTARY INFORMATION:

A. Background

Title V of the Omnibus Territories Act, 48 U.S.C. 1469a, authorizes the Secretary to consolidate Federal education programs for which an Insular Area is eligible to apply. Programs that the Secretary has consolidated include, for example, Chapter 1 and Chapter 2 of the Education Consolidation and Improvement Act of 1981 (ECIA). From the list of consolidated programs, an Insular Area may apply annually for a consolidated grant for two or more of those programs. The Insular Area may then use its consolidated grant funds to carry out one or more of the programs included in its consolidated grant application. The Insular Area must comply with the statutory and regulatory requirements that apply to each program under which it expends its consolidated grant funds. The Department of Education (DOE) of the Republic of the Marshall Islands (formerly part of the Trust Territory of the Pacific Islands) has applied to receive consolidated grant funds for the 1987-88 school year.

B. Authority for Granting a Waiver

Under section 1003(a) of the Elementary and Secondary Education Act of 1965 (ESEA), 20 U.S.C. 3383(a), the Secretary is authorized to waive, upon request, any requirements of the ESEA or the ECIA for an Insular Area if the Secretary determines that compliance with those requirements is "impractical or inappropriate because of conditions or circumstances particular to any of such jurisdictions. . . ." Any waiver under section 1003(a) is subject to the terms and conditions that the Secretary deems necessary to carry out

the purposes of the program whose requirements are being waived.

C. Waiver Request

The DOE has indicated in its consolidated grant application that it intends to spend a portion of its consolidated grant funds on activities under Chapter 1 of the ECIA. Accordingly, the DOE has requested the Secretary to waive the applicability of three Chapter 1 requirements because those requirements are impractical or inappropriate due to conditions of circumstances particular to the Marshall Islands.

First, the DOE has requested a waiver of section 556(b)(2), 20 U.S.C. 3805(b)(2), which requires an annual assessment of educational needs and, among the educationally deprived children selected, the inclusion of those children who have the greatest need for special assistance. According to the DOE, all children in all schools are educationally deprived and eligible for Chapter 1 services. Moreover, the educational needs of those children are very basic. As a result, selecting children who are in greatest need when all children have great needs is inappropriate. In addition, the requirement to perform an annual needs assessment is impractical. The testing instrument available in the Marshall Islands (which assesses achievement in English and mathematics in grades 3 through 8) does not address the needs of children at all age levels. Moreover, due to limited funds and staff, only one-half of the students can be tested each year. Further, transportation to the outlying islands makes completing an annual needs assessment within an appropriate timeframe impossible.

Second, the DOE has requested a waiver of section 557, 20 U.S.C. 3806, which requires that eligible students in private schools receive equitable Chapter 1 services. In Aquilar v. Felton, the United States Supreme Court held that it was unconstitutional for public school personnel to provide Chapter 1 instructional services on the premises of religiously affiliated private schools. As a resulted, Chapter 1 benefits must be provided through instructional services at a neutral site or by certain other means. In the Marshall Islands, however, neutral facilities are not available near the private schools to provide Chapter 1 services; public school sites are already overcrowded; and educational radio, television, mobile vans, and computer-assisted instruction are impractical or unavailable. Under its plan, the DOE would use the consolidated grant funds it would be required to expend on services for eligible private school children under Chapter 1 to provide additional services for those children under Chapter 2.

Finally, the DOE has requested a waiver of section 558(c), 20 U.S.C. 3807(c), which requires, in part, that a school district in which all school attendance areas are project areas provide services with State and local funds that are substantially comparable in each area. Comparability is determined by factors such as districtwide salary schedule, pupil/staff ratios, and expenditures/pupil ratios. According to the DOE, pupil/teacher ratios for schools with enrollments over 100 vary from 43.5/1 to 14/1. Most teachers are assigned to their home island, because problems of transportation, communication, distances between islands, and cost make relocating teachers and their families difficult. Moreover, budget limits preclude hiring additional teachers, and overcrowded conditions already require split sessions. For similar reasons, it is also impractical to reassign students to schools away from their homes to achieve comparability.

D. Management Plan

Section 1003(a)(2) of the ESEA provides that any waiver is subject to the terms and conditions that the Secretary deems necessary, including submission of a plan for management of the funds in a manner designed to achieve the purposes of the program whose requirements are being waived. The Secretary has determined that the description in the DOE's consolidated grant application of the Chapter 1 activities the DOE plans to conduct in 1987–88 is sufficient for purposes of section 1003(a)(2). Under that application, the DOE plans to expend approximately $1 million for Chapter 1 activities. Of that amount, approximately $500,000 would be used for construction of school facilities for the Marshall Island's educationally deprived school population and $500,000 would be used for teachers, aides, and supplies in basic skills. The DOE also plans, in accordance with its waiver request, to use the consolidated grant funds it would be required to expend on services for eligible private school children under Chapter 1 to provide additional services to those children under Chapter 2. For each subsequent year that the DOE submits a consolidated grant application that includes Chapter 1 activities, the Secretary will evaluate those activities to ensure that they are consistent with all applicable requirements, the waiver, and the purposes of Chapter 1.

E. Notice of the Secretary's Intent to Grant a Waiver

Section 1003(a)(1) of the ESEA requires that, at least 30 days before approving a request for a waiver, the Secretary must publish in the **Federal Register** a notice of his intent to do so and the terms and conditions under which the waiver will be granted. In accordance with this requirement, notice is hereby given that, subject to the terms and conditions described below, the Secretary intends to waive the applicability of the requirements in sections 556(b)(2), and 557, and 558(c) of Chapter 1 to the DOE.

F. Terms and Conditions Under Which a Waiver Would Be Granted

Under Section 1003(a)(2), the DOE agrees to comply with the following terms and conditions:

(1) All consolidated grant funds that are expended for Chapter 1 activities by the DOE during the period covered by the waiver will be spent in accordance with—

(a) All applicable statutory and regulatory requirements, except those Chapter 1 requirements that are specifically identified in the waiver;

(b) The Chapter 1 activities described in the DOE's annual consolidated grant application or amendments to the application;

(c) The budget contained in the DOE's annual consolidated grant application; and

(d) These terms and conditions.

(2) Consolidated grant funds that the DOE would be required to expend on Chapter 1 services for students in private schools will be used to provide additional services for those students under Chapter 2.

(3) The waiver remains in effect until the DOE is able to comply with the waived requirements and/or until the DOE ceases to operate Chapter 1 activities; and

(4) If the conditions or circumstances that justified the waiver change, the DOE will notify the Department and the terms of the waiver will be adjusted accordingly.

(Catalog of Federal Domestic Assistance No. 84.010, Educationally Deprived Children—Local Educational Agencies)

[FR Doc. 87-19434 Filed 8-24-87; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Financial Assistance; Restriction of Eligibility for Cooperative Agreements

AGENCY: Department of Energy.

ACTION: Notice of Award for the following Cooperative Agreements:

DE–FC01–87EI20466 with the State of Minnesota
DE–FC01–87EI20467 with the State of Wisconsin
DE–FC01–87EI20468 with the State of Ohio
DE–FC01–87EI20469 with the State of Connecticut
DE–FC01–87EI20470 with the State of Maine
DE–FC01–87EI20471 with the Commonwealth of Massachusetts
DE–FC01–87EI20472 with the State of Michigan
DE–FC01–87EI20473 with the State of Vermont
DE–FC01–87EI20474 with the State of New Hampshire
DE–FC01–87EI20475 with the State of Rhode Island
DE–FC01–87EI20476 with the Commonwealth of Pennsylvania
DE–FC01–87EI20477 with the State of New Jersey
DE–FC01–87EI20478 with the State of New York
DE–FC01–87EI20479 with the State of Delaware

SUMMARY: The U.S. Department of Energy, Office of Planning, Manangement, and Information Services, announces that pursuant to 10 CFR 600.7(b), it is restricting eligibility for the award of the above listed Cooperative Agreements. These Cooperative Agreements will permit the involved states to conduct Surveys of No. 2 heating oil residential and wholesale price data, as well as determine the level of primary heating oil inventories in these states. This data will be a valuable mechanism which will allow states to monitor both price and inventory trends, and respond to inquiries about heating oil prices from consumers, consumer groups, business/trade associations, and local and other state governmental agencies. The data will also permit development of a vital data base for policy analysis, planning, and energy demand forecasting.

Eligibility: Award of these Cooperative Agreements has been limited to the above listed states because of their unique qualifications and capabilities to provide the necessary information, based on participation in this program in prior heating oil seasons. In addition, since these states use their authorities to collect this information and have established data collection relationships with heating oil distributors and refiners, they are the only organizations which can conduct these surveys.

Term: The term of these Cooperative Agreements shall be twelve months.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, ATTN: Neil D. Weiss, MA–453.2, 1000 Independence Avenue SW., Washington, DC 20585.

Stephen J. Michelsen,

Acting Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 87–19387 Filed 8–24–87; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

[RW–859]

Nuclear Fuel Data Form

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Notice of request for comments on proposed revisions to DOE Form RW–859, "Nuclear Fuel Data".

SUMMARY: The U.S. Department of Energy (DOE) is currently considering revisions to the Form RW–859, "Nuclear Fuel Data," and is soliciting comments on the proposed revisions. In accordance with the Paperwork Reduction Act of 1980, the EIA, in cooperation with the DOE's Office of Civilian Radioactive Waste Management (OCRWM), is providing the general public with an opportunity to comment on the proposed revisions. The revisions are intended to ensure that there are clear instructions on completing the forms, respondent burden is minimized to the extent possible, and survey questions are designed in the proper format for ease in reporting.

DATE: Written comments must be submitted no later than September 24, 1987.

ADDRESS: Comments should be submitted to Kathy Gibbard, Survey Manager, Energy Information Administration, EI–531, Mail Stop 2G–090, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Copies of Form RW–859 and instructions can be obtained from Kathy Gibbard at the above address or by calling (202) 586–1718.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

Pursuant to section 205(a)(2) of the DOE Organization Act (Pub. L. 95–91, 42 U.S.C. 71132(a)(2)), the Energy Information Administration is responsible for carrying out a central, comprehensive, and unified energy data and information program. The program collects, evaluates, assembles, analyzes, and disseminates data and information in support of the DOE's OCRWM.

II. Current Action

A. Several revisions to the Form RW–859 have been proposed. These proposed revisions are made subject to the conditions that all inaccurate historical data are corrected and all incomplete historical data are completed by the respondents. Until these conditions are satisfactorily met by the respondents and approved by the DOE, the current Form RW–859 will remain in place. The DOE intends to revise the form in the future to increase the amount of detail collected on canistered fuel and on fuel requiring special handling. In order to avoid undue reporting burden, however, the DOE believes that additional discussions and study are needed on both topics before appropriate questions can be framed. Respondents are asked to consider these two subject areas in light of their operating experience and to be prepared to provide comments on them to the DOE at a later date. The proposed revisions are as follows:

1. Data on individual assemblies are no longer required (respondents may, however, continue to report by assembly, if they desire). Instead, all information is provided on groups of assemblies, with only the I.D.'s of the individual assemblies being reported to identify which belong to the group. A group is defined as those assemblies having the same initial enrichment, cycle/reactor history, current location, and fuel/vendor types.

2. The data on each group of assemblies will be provided when the group is permanently discharged. However, assemblies temporarily discharged at the end of the cycle and assemblies that are freshly inserted or reinserted at the start of a cycle will be individually identified, by I.D. number.

3. The utility certification of "data correctness" will be modified so that a "Corporate Officer's" signature is no longer required.

4. The reporting schedule would be modified to allow the Form RW–859 to be submitted either:

a. Ninety days after a cycle start up; or

b. Once each year, by February 15, with data that reflect the status as of December 31 of the preceding year.

A respondent may choose either reporting option, but, once chosen, any change in reporting schedule would require DOE concurrence. Also, data for any reactors that have shut down and/or restarted during calendar year 1987 must be submitted on the revised Form RW–859 by February 15, 1988. For those respondents choosing option "a," data on those reactors in shut down status for one year would be required to submit the form once, 365 days after shut down, and, thereafter, only if a fuel status change occurs (as in discharging fuel from the core). When the reactor restarts, another Form RW–859 must be submitted in 90 days. The regular schedule is then resumed.

B. Several deletions to the Form RW–859 have been proposed. They are as follows:

1. Section 1.0: Parent company mailing address.

2. Section 2.0: Reactor location, power, core, status.

3. Section 3.0: Pool crane data, additional storage data, reserve storage planning information, shipping cask and cask handling data, and rail transportation information.

Much of these data are already on file in the Form RW–859 data base, and will not be lost when the deletions are made to the form.

For the data collection using the revised Form RW–859, it is estimated that the average time required to complete the form will be 30 hours per reactor. This amounts to a 50 percent reduction in reporting burden from last year's figure of 60 hours per reactor when respondents were required to submit and verify a considerable amount of historical data.

III. Request for Comments

Copies of the revised Form RW–859 are being sent for comment to the respondents and the Edison Electric Institute concurrently with publication of this notice. Other interested persons or organizations are also invited to participate by submitting information, views, or proposed changes. Comments should be submitted no later than September 24, 1987, to the address indicated above in the "For Further Information Contact" section. Comments should be identified on the outside envelope and on the document with the designation: "Proposed Revision To The Data Collection Form: RW–859."

The following general guidelines are provided to assist in the preparation of responses:

As a potential respondent:

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can the data be submitted using the definitions included in the instructions?

C. Can data be submitted in accordance with the response time specified in the instructions?

D. How many hours, including time for preparation and administrative review, would you require to complete and submit the required form?

E. What is the estimated cost of completing the form, including the direct and indirect costs associated with the data collection? Direct cost should include all costs, such as administrative costs, directly attributable to providing this information.

F. How can the form be improved?

G. Do you know of other Federal, State, or local agencies that collect similar data? If you do, specify the agency, the data elements, and the means of collection.

H. Do you know of any publicly available data that are similar to data collected on the Form RW-859 as revised? If yes, please provide details.

As a potential data user:

A. Can you use data at the levels of detail indicated on the form?

B. For what purposes would you use the data? Be specific.

C. How could the form be improved to better meet your specific needs?

D. Are there alternate sources of data and do you use them? What are their deficiencies and/or strengths?

The EIA is also interested in receiving comments from persons regarding their views on the need for the collection of this information.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of these data surveys; they also will become a matter of public record.

Statutory Authority: Federal Energy Administration Act of 1974 (15 U.S.C. 761 et seq.), section 170B of the Atomic Energy Act of 1954 (42 U.S.C. 2210b), and the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101 et seq.).

Issued in Washington, DC, on August 19, 1987.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 87–19481 Filed 8–24–87; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER87–577–000 et al.]

Public Service Company of Colorado et al.; Electric Rate and Corporate Regulation Filings

August 20, 1987.

Take notice that the following filings have been made with the Commission:

1. Public Service Company of Colorado

[Docket No. ER87–577–000]

Take notice that on August 14, 1987, Public Service Company of Colorado (Public Service), tendered for filing a proposed changed in its Non-firm Energy Agreement (Agreement) between Public Service and the City of Colorado Springs, Colorado (Colorado Springs). Public Service states that the proposed change is an Amendment to Public Service's Agreement with Colorado Springs dated May 15, 1986, on file with the Commission under Public Service's FERC Rate Schedule No. 42.

Public Service states that the Amendment to the Agreement with Colorado Springs provides for a one year extension of the initial agreement between Public Service and Colorado Springs.

Public Service states that copies of the filings were served upon all parties to the Agreement and affected state commissions.

Comment date: September 3, 1987, in accordance with Standard Paragraph E at the end of this document.

2. Northern Indiana Public Service Company

[Docket No. ER87–576–000]

Take notice that on August 14, 1987, Northern Indiana Public Service Company (NIPSCO), tendered for filing pursuant to an Interconnection Agreement between NIPSCO and Wabash Valley Power Association, Inc. (Wabash Valley), a Second Supplemental Agreement dated November 5, 1986.

Said Second Supplemental Agreement amends Article VII, Section 7.7.1, Control of Unscheduled Capacity and Energy, to clarify the accounting for overscheduling or underscheduling of energy by Wabash Valley during the April 1, 1985 through December 31, 1987 period.

NIPSCO respectfully requests waiver of the Commission's filing requirements, and requests this filing to be made effective January 1, 1985.

Copies of the filing were served upon Wabash Valley and the Indiana Utility Regulatory Commission.

Comment date: September 3, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-19461 Filed 8-24-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER87-574-000 et al.]

Upper Peninsula Power Co. et al.; Electric Rate and Corporate Regulation Filings

August 19, 1987.

Take notice that the following filings have been made with the Commission:

1. Upper Peninsula Power Company

[Docket No. ER87-574-000]

Take notice that on August 11, 1987 Upper Peninsula Power Company (UPPCO) tendered for filing pursuant to the Commission's Rules and Regulations Part 35 under the Federal Power Act an Agreement For Wholesale Electric Power Service between Upper Peninsula Power Company and the City of Gladstone dated August 4, 1987. UPPCO states that this agreement replaces the existing agreement between UPPCO and the City of Gladstone dated July 1, 1987. UPPCO requests an effective date of November 1, 1987 for this Agreement.

Comment Date: September 2, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. Gulf States Utilities Company

[Docket No. ER85-538-003]

Take notice that on August 12, 1987 Gulf States Utilities Company tendered for filing a revised compliance report on refunds made to customers under the settlement agreement previously filed in this docket. The tender was made in compliance with a letter order from the Director of the Division of Electric Power, dated July 13, 1987.

Copies of the filing were served upon each person designated on the official service list in this proceeding.

Comment Date: September 2, 1987, in accordance with Standard Paragraph E at the end of this notice.

3. New York State Electric & Gas Corporation

[Docket No. ER87-506-000]

Take notice that on August 13, 1987, New York State Electric & Gas Corporation (NYSEG), tendered for filing Supplement No. 3 to its Agreement with Consolidated Edison Company of New York, Inc. (Con Edison), designated Rate Schedule FERC No. 87. The proposed changes would increase revenues by $10,753 based on the twelve month period ending March 31, 1988.

This rate filing, Supplement No. 3, is made pursuant to Sections 1(e) and (f) and 2(e), (f) and (g) of Article III of the August 23, 1983 Facilities Agreement—Rate Schedule FERC No. 87. The annual charges for routine operation and maintenance and general expenses, as well as revenue and property taxes are revised based on data taken from NYSEG's Annual Report to the Federal Energy Regulatory Commission (FERC Form 1) for the twelve months ended December 31, 1986. In addition, Con Edison's pro rated share of the total annual carrying charges associated with the firm supply system is calculated based on the rate of Con Edison's one hour demand at Mohansic plus estimated NYSEG and Con Edison one hour peak input at Wood Street. The levelized annual carrying charges included in the calculation continue to reflect a 15.50 percent return on equity which was approved by the New York State Public Service Commission's Opinion 85-8 in Case 28824, effective April 15, 1985.

NYSEG requests an effective date of April 1, 1987, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing were served upon Consolidated Edison Company of New York and on the Public Service Commission of the State of New York.

Comment Date: September 2, 1987, in accordance with Standard Paragraph E at the end of this notice.

4. Western Area Power Administration

[Docket No. EF87-5171-000]

Take notice that on August 4, 1987, the Under Secretary of the Department of Energy, by Rate Order No. WAPA-33, did confirm and approve, on an interim basis, to be effective beginning on the first day of the October 1987 billing period, a new Rate Schedule SLIP-F1 for the Salt Lake City Area Integrated Projects (SLCA/IP) firm capacity and energy marketed by the Western Area Power Administration (Western). The SLCA/IP is comprised of the Colorado River Storage Project (CRSP), the Rio Grande Project, and the Collbran Project.

The new rate will be in effect pending the Commission's approval of it or substitute rate on a final basis. The FY 1985 SLCA/IP Power Repayment Study, on which the power rate is based, indicates that a firm composite rate of 9.92 mills/kWh, comprised of a demand charge of $25.08/kW-year and an energy charge of 5.0 mills/kWh, is necessary for repayment of the projects. The new rate is a decrease of 27.80 mills/kW-year (73 percent) to current Rio Grande Project customers, a decrease of 11.88 mills/kWh (54 percent) to the current Collbran Project customer and no change to current CRSP customers. No change in average annual revenues is expected. The new rate reflects the integration of the CRSP, the Rio Grande Project, and the Collbran Project into the SLCA/IP. The benefits of integration are (1) an increase in marketable resources, (2) simplification of contract development and administration, (3) one rate adjustment process instead of three, and (4) timely repayment of the Collbran and Rio Grande Projects. The Administrator of Western certifies that the rate is consistent with applicable laws and that it is the lowest possible rate consistent with sound business principles.

The Under Secretary states that the rate schedule is submitted for confirmation and approval on a final basis for a 5-year period, pursuant to authority vested in the Commission by Delegation Order No. 0204-108.

Comment Date: September 2, 1987, in accordance with Standard Paragraph E at the end of this notice.

5. Nantahala Power and Light Company

[Docket No. EL82-20-003]

Take notice that on July 29, 1987, Nantahala Power and Light Company tendered for filing pursuant to a letter from Mr. Jerry R. Milbourn dated June 26, 1987 the revised PL-(COSAC) tariff rates reflecting restated data for the calendar years 1979 through 1985 in

compliance with Commission Opinion Nos. 255 and 255–A.

Comment date: September 2, 1987, in accordance with Standard Paragraph E at the end of this notice.

6. Pacific Power & Light Company, an assumed business name of PacifiCorp

[Docket No. ER87–522–000]

Take notice that on August 11, 1987 Pacific Power & Light Company (Pacific), an assumed business name of PacifiCorp, tendered for filing, a Letter Agreement dated August 6, 1987 between Pacific and Cheyenne Light, Fuel and Power Company (Cheyenne).

Copies of the filing were served upon all parties hereto and the Wyoming Public Service Commission.

Comment date: September 2, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–19442 Filed 8–24–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP87–131–001 and CP87–132–000]

Ocean State Power Project; Intent To Prepare a Draft Environmental Impact Statement and Request For Comments on its Scope; Tennessee Gas Pipeline Co.

August 19, 1987.

Introduction

On December 19, 1986, Tennessee Gas Pipeline Company (Tennessee) filed applications before the Federal Energy Regulatory Commission (FERC) in the above-referenced dockets, under section 7 of the Natural Gas Act, for authorization to transport up to 50,000 Mcfd (thousands of cubic feet per day) of natural gas and to construct interstate natural gas pipeline facilities. As proposed, compressor facilities, 28.7 miles of pipeline looping in six segments in New York, and 4.4 miles in one segment in Massachusetts would be constructed. The facilities are necessary to deliver gas from the Canadian/United States border at Niagara, New York, to the site of a new electric power generating plant proposed by Ocean State Power (OSP) in Burrillville, Rhode Island. Docket No. CP87–131–000 was amended on August 5, 1987, and is now Docket No. CP87–131–001.

OSP proposes to construct, in two phases, a total 470 megawatt (two units, each 235 MW) combined-cycle power plant using turbines that exhaust into a heat recovery steam generator. Natural gas to be delivered by Tennessee would be the primary fuel for power generation. The 50,000 Mcfd would fuel Unit 1; another 50,000 Mcfd would be needed in the future when Unit 2 is constructed. Number 2 fuel oil, to be supplied via a spur from an existing Mobil Oil Company pipeline would be used during emergency disruptions of gas flow. In addition, OSP proposes to take up to 4 million gallons of water per day from the Blackstone River for plant process and cooling purposes. The water withdrawal would require the construction of an intake structure on the Blackstone River at Woonsocket, Rhode Island, and a 10-mile-long water pipeline from there to the power plant site. OSP proposes to use the city of Woonsocket's water supply and the Providence Water Supply Department's Scituate Reservoir as backup sources.

The Ocean State Power Project would supply electricity to several utility companies in the New England Power Pool. OSP estimates that each phase of the power plant construction would employ about 150 workers for 30 months. Once operational the facility would provide permanent employment for about 75 persons.

OSP must obtain authorization from the Rhode Island Energy Facility Siting Board (EFSB). Authorization for construction and operation of the power plant is not within the FERC's jurisdiction.

Tennessee proposes to charge, and OSP has agreed to pay, a 100-percent demand rate for Tennessee's proposed transportation service based upon the incremental cost of the facilities which would be constructed to perform the service. In effect, OSP would pay for the natural gas pipeline facilities.

Notice of Intent

Notice is hereby given that approval of the projects proposed by Tennessee, and specifically, in consideration of their relation to the construction and operation of the Ocean State Power Plant, would constitute a major Federal action significantly affecting the quality of the human environment. Therefore, pursuant to § 2.82(b) of the Commission's Rules of Practice and Procedure, 18 CFR 2.82(b), and at the request of the State of Rhode Island, an environmental impact statement (EIS) will be prepared.

The FERC will be the lead Federal agency and will produce an EIS satisfying the requirements of the National Environmental Policy Act (NEPA). The Rhode Island Office of Intergovernmental Relations, acting at the request of the EFSB, on behalf of relevant state and local agencies, will be a cooperating agency, to ensure that state and local environmental requirements are satisfied. The draft EIS (DEIS) will be prepared by an environmental consultant under contract to OSP. The consultant will be selected and supervised by the FERC staff throughout the NEPA compliance process, and will be required to certify that it has no financial interest in the outcome of the project. The FERC staff will prepare a work statement and will have final approval over the contents of the DEIS.

Outline of Current Environmental Issues

The DEIS will address the environmental concerns that have been identified by the FERC staff, interveners and other Federal and State agencies, and individuals which have already written in response to earlier notices on the projects. These issues include, but are not limited to:

Power plant, water and oil pipelines:

—Design, process and construction details, and impact mitigation measures
—Impact of withdrawals on the Blackstone River and other potential water sources
—Facilities for backup water sources
—Need for oil pipeline
—Noise quality impact and mitigation measures
—Cooling tower plume effects on roads and Black Hut Management Area
—Solid waste disposal and emergency water disposal
—Effect on National Register of Historic Places listed and eligible sites
—Impact on wetlands and mitigation measures

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—Effect on nearby seismographic station.

Gas pipeline:

—Effects of routing on sand and gravel resources and future development
—Impact on wetlands and rare plants
—Effects of excavation and blasting on groundwater resources
—Effects on National Register of Historic Places listed and eligible sites
—Coastal zone consistency
—Compressor station noise impact

Alternative sites and processes, route modifications, and specific mitigating measures will also be considered in the DEIS. After comments from this notice are received and analyzed and the various issues are investigated, the staff will publish a DEIS entitled "Ocean State Power Project."

Comment and Scoping Procedure

A public scoping meeting will be held on September 3, 1987, at 7:30 p.m. in the City Council Chambers, Woonsocket City Hall, 169 Main Street, Woonsocket, Rhode Island. Interested groups and individuals are encouraged to attend and present oral comments on the environmental impacts which need to be addressed in the EIS. Anyone who would like to make an oral presentation at the meeting should contact the project manager identified below to have their name placed on the speakers list. A second speakers list will be available at the public meeting. A transcript will be made of the meeting and comments will be used to help set the scope of the DEIS.

A copy of this notice has been distributed to Federal, state, and local agencies, public interest groups, libraries, newspapers, parties in this proceeding, and the public. Additional information about the projcet, including maps, was also mailed to everyone on the environmental document mailing list. This information is available upon request. Written comments are also welcome to help identify significant issues or concerns related to the proposed action, to determine the scope of issues, including alternatives, that need to be analyzed, and to identify and eliminate from detailed study the issues which are not significant. All comments on specific environmental issues should contain supporting documentation and rationale. Written comments must be filed on or before September 21, 1987, reference Docket No. CP87–132–000, and should be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. A copy of the comments should also be sent to the project manager identified below.

The DEIS will be mailed to Federal, state, and local agencies, public interest groups, interested individuals, newspapers, libraries, and parties in this proceeding. A 45-day comment period will be allotted for review and comment on the DEIS. Any person may file a motion to intervene on the basis of the staff's DEIS (18 CFR 2.82(c)). After these comments are reviewed, any new issues are investigated, and modifications are made to the DEIS, a final EIS (FEIS) will then be published by the staff and distributed. The FEIS will contain the staff's responses to comments received on the DEIS.

Additional information about the proposal is available from Mr. Lonnie Lister, Project Manager, Environmental Evaluation Branch, Office of Pipeline and Producer Regulation, Room 7102, 825 North Capitol Street NE., Washington, DC 20426, or call (202) 357–0883 or FTS 357–0883.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–19427 Filed 8–24–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. QF86–171–001, et al.]

Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.; Hydro Corp. of Pennsylvania, et al.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

August 20, 1987.

Take notice that the following filings have been made with the Commission.

1. Hydro Corporation of Pennsylvania

[Docket No. QF86–171–001]

On August 5, 1987, Hydro Corporation of Pennsylvania (Applicant), of 28650 Grand River Avenue, Farmington Hills, Michigan 48024 submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 2.6 MW run-of-the-river hydroelectric facility (FERC P. 3292) will be located on the East Branch of the Clarion River in Elk County, Pennsylvania. The facility will consist of a powerhouse, two turbine generators and appurtenant structures.

By order issued January 9, 1986, the Director of Office of Electric Power Regulation granted certification of the facility as a small power production facility under Docket No. QF86–171–000.

The recertification is requested due to plans to amend the project by installing a 1,000 KW piston engine in the same powerhouse with hydroelectric equipment, connecting it and the 1,000 KW turbine to the 1,000 KW generator by a common shaft. The engine can utilize either diesel fuel or natural gas. Applicant states that use of such fossil fuels will not exceed 25 percent of the facility's total energy input during any calendar year period. All other facility's characteristics remain unchanged.

2. Lehi Cogeneration Associates

[Docket No. QF86–1010–002]

On August 7, 1987, Lehi Cogeneration Associates (Applicant), of P.O. Box 557, Springville, Utah 84663 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle, cogeneration facility will be located in Lehi, Utah County, Utah. The facility will consist of three dual-fuel diesel engines and three heat recovery steam generators. Steam produced by the facility will be used to operate the thermal screw to produce the base growth media for mushroom, to sterilize the mushroom facilities, and to produce chilled water. The net electric power production capacity of the facility will be 16.95 MW. The primary energy source will be natural gas. Installation of the facility will begin in mid 1987.

3. First Energy Associates

[Docket No. QF87–585–000]

On August 7, 1987, First Energy Associates (Applicant), of 72 Spit Brook Road, Nashua, New Hampshire 03060 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Batavia, New York. The facility will consist of two combustion turbine generators, a heat recovery steam generator and an extraction/condensing steam turbine generator. Thermal energy recovered by the facility will be used by O–AT–KA Milk Products Cooperative, Inc., for process heating in the pasteurization and drying of milk, and via an absorption chiller for product chilling and refrigerated storage. The primary energy source for the facility will be natural gas, with No. 2 fuel oil as back-up. The net electric power production

capacity of the facility will be 65.4 MW. Installation is expected to begin in August 1988.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-19443 Filed 8-24-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-809-000]

Application for Certificate of Public Convenience and Necessity and for Pre-Granted Abandonment; Amalgamated Pipeline Co.

August 19, 1987

Take Notice that on August 5, 1987, Amalgamated Pipeline Company (Amalgamated), pursuant to section 7 of the Natural Gas Act (NGA), and Part 157 of the Commission's regulations, applied for a blanket certificate of public convenience and necessity to permit the sale, and pre-granted abandonment of the sale, of natural gas which remains subject to the Commission's jurisdiction under the NGA for which producers and/or suppliers receive abandonment authority under section 7(b) of the NGA.

Amalgamated states that it is seeking authority to resell and to abandon sales of natural gas subject to the Commission's recent orders allowing producers and suppliers to abandon sales of natural gas subject to the NGA. Amalgamated is not seeking such authority with regard to any gas not previously abandoned by Commission order, nor is it seeking any transportation authority.

Amalgamated states that a grant of certificate and pre-granted abandonment authority will promote competition by enabling Amalgamated to offer a complete range of gas supplies to its customers. Amalgamated submits that, in view of the benefits of competition, the authority sought in its application is consistent with the public convenience and necessity.

Amalgamated further requests expedited consideration of its application and, accordingly, requests omission of any intermediate decision procedure and waives its right to an oral hearing and its opportunity to file exceptions to the Commission's decision, if the Commission utilizes the expedited procedures under Rule 802 of the Rules of Practice and Procedure.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 2, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Amalgamated to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-19423 Filed 8-24-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-683-000]

Application for Limited-Term Abandonment With Pregranted Abandonment for Sales Under Small Producer Certificate; Lewis B. Burleson

August 20, 1987.

Take notice that on June 5, 1987, Lewis B. Burleson (Burleson) filed an application pursuant to section 7(b) of the Natural Gas Act and § 2.77 of the Commission's rules for a three-year limited-term abandonment of his sale of gas to El Paso Natural Gas Company (El Paso) from the Farney A-5 Well, E/2 Section 5-T23S-R36E from the surface to a depth of 4,000 feet, Lea County, New Mexico. Burleson also requests three-year pregranted abandonment for sales of such gas under his small producer certificate in Docket No. CS69-36.

In support of his application Burleson states that the subject lease did not produce gas during 1986, and there are no current sales. Burleson further states that El Paso will not buy his gas and is not paying for gas not taken.[1] Burleson proposes to sell the gas on the spot market. The lease was purchased from Conoco Inc. The gas is NGPA section 108 gas.

Since Burleson indicated his well is shut-in without payment and has requested that his application be considered on an expedited basis, all as more fully described in the application which is on file with the Commission and open to public inspection, any person desiring to be heard or to make any protest with reference to said application should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Burleson to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-19425 Filed 8-24-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-811-000]

Application for Blanket Certificate of Public Convenience and Necessity and for an Order Permitting Pre-Granted Abandonment and for Expedited Consideration

August 19, 1987

Take notice that on August 6, 1987, CNG Trading Company (CNGT) pursuant to section 4 and 7 of the Natural Gas Act, and Part 157 of the regulations of the Federal Energy Regulatory Commission, filed for a

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[1] The United States Court of Appeals for the District of Columbia vacated the Commission's Order No. 436 on June 23, 1987. In vacating Order No. 436, the Court rejected challenges to the Commission's statement of policy in § 2.77 of its Regulations. Section 2.77 states that the Commission will consider on an expedited basis applications for certificate and abandonment authority where the producers assert they are subject to substantially reduced takes without payment.

blanket certificate of public convenience and necessity (1) authorizing sales for resale of natural gas in interstate commerce by CNGT (2) authorizing sales for resale of natural gas by the producer suppliers from which CNGT purchases natural gas, and (3) authorizing blanket pre-granted abandonment of such sales, all as more fully set forth in the application which is on file with the Commission and open for public inspection. The applicant requests a primary term of one year without prejudice to a possible extension. CNGT states that the authority requested in its application is consistent with the Commission's recent holding in *Citizens Energy Corp. et al.*, 39 FERC paragraph 61,106 (1987).

Any person desiring to be heard or to make any protest with reference to said application should on or before September 2, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rule.

Under the procedure herein provided for, unless otherwise advised it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-19424 Filed 8-24-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-30-008]

Filing of Motion to Place Tariff Sheets into Effect, and Compliance Filing; Colorado Interstate Gas Company

August 20, 1987.

Take notice that on August 11, 1987, Colorado Interstate Gas Company (CIG) filed a motion to place transportation tariff sheets into effect and to reduce sales standby charges effective July 14, 1987, and tendered for filing the following sheets to its FERC Gas Tariff:

VOLUME NO. 1:

Substitute Thirtieth Revised Sheet No. 7.

FIRST REVISED VOLUME NO. 1-A:

Original Sheet Nos. 1 through 3; Substitute Original Sheet No. 4; Replacement Original Sheet No. 5; Original Sheet Nos. 6 through 8; Replacement Original Sheet No. 9; Original Sheet Nos. 10 through 17; Replacement Original Sheet Nos. 18 and 19; and Original Sheet Nos. 20 through 56.

VOLUME NO. 2:

First Revised Sheet Nos. 885, 911, 912, 934, 964, 995, 1021, 1046, 1077, 1100, 1101, 1125, 1148, 1182, 1216, 1248, 1264, 1335, 1347, 1370, and 1421;
Second Revised Sheet Nos. 517A, 593A, 697, 774, 801A, 828, and 862;
Third Revised Sheet Nos. 221, 625, 662, and 674;
Fourth Revised Sheet Nos. 463 and 544;
Fifth Revised Sheet No. 187

CIG states that the Volume No. 1-A sheets revise earlier tariff sheets to comply with the Commission's February 13, 1987 order in Docket No. RP-87-30. The Volume No. 2 sheets reflect changes made as a result of the revision to the transportation rates set forth in Volume No. 1-A. The Volume No. 1 sheet reflects the result of CIG's July 14, 1987 compliance filing in Docket No. RP87-30.

CIG states that these tariff sheets embody an overall rate decrease, and requests that the tariff sheets be made effective July 14, 1987.

Copies of the filing were served upon CIG's jurisdictional customers and affected state agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed in or before August 27, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are availale for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-19490 Filed 8-24-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-30-009]

Filing of Motion to Place Tariff Sheets into Effect, and Compliance Filing; Colorado Interstate Gas Co.

August 20, 1987.

Take notice that on August 14, 1987, Colorado Interstate Gas Company (CIG) filed a motion to place tariff sheets into effect and tendered for filing the following sheets to its FERC Gas Tariff.

VOLUME NO. 1:

Substitute Thirtieth Revised Sheet No. 7
Substitute Thirtieth Revised Sheet No. 8

FIRST REVISED VOLUME NO. 1-A:

Substitute Original Sheet No. 4

VOLUME NO. 2:

First Revised Sheet Nos. 885, 911, 912, 934, 964, 995, 1021, 1046, 1077, 1100, 1101, 1125, 1148, 1182, 1216, 1248, 1264, 1335, 1347, 1370, and 1421;
Second Revised Sheet Nos. 517A, 593A, 697, 774, 801A, 828, and 862;
Third Revised Sheet Nos. 212, 625, 662, and 674;
Fourth Revised Sheet Nos. 463 and 544;
Fifth Revised Sheet No. 187

CIG states that this filing replaces its two earlier filings of July 14, 1987 in Docket No. RP87-30-007, and August 11, 1987 in Docket No. RP87-30-008. The filing does not reflect any rate changes from those shown in the earlier filings, but is being filed as a matter of administrative convenience. It combines the two prior filings, since the prior filings are interrelated, and therefore more appropriately considered together in one docket. CIG states that it is withdrawing its July 14 and August 11 filings on condition that the Commission allow the rates shown in this filing to be made effective July 14, 1987.

Copies of the filing were served upon CIG's jurisdictional customers and affected state agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 27, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-19491 Filed 8-24-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-82-000]

Restatement of Base Tariff Rates; Equitable Gas Co.

August 19, 1987

Take notice that on July 31, 1987, Equitable Gas Company (Equitable) tendered for filing the following tariff sheet to its FERC Gas Tariff, First Revised Volume No. 1:

Tenth Revised Sheet No. 6f

Equitable sells natural gas in interstate commerce under its current FERC Gas Tariff, First Revised Volume No. 1 to one customer, Revere Natural Gas Company (Revere), under Rate Schedule GS-1. The currently effective base tariff rate applicable to Revere is set forth in Equitable's Ninth Revised Sheet No. 6f to its FERC Gas Tariff, First Revised Volume No. 1.

Equitable states that the purpose of this filing is to establish a new base tariff rate upon the expiration of 36 months after the effective date of equitable's last restatement of base tariff rates, in accordance with 18 CFR 154.38 of the Commissions regulations.

Based on the cost of service study included with the filing Equitable avers that the present rate under Rate Schedule GS-1 is justified. Equitable states that a comparison of the present rate, including the Gas Cost Adjustment, with the base rate indicated by the included cost of service study shows that on a total revenue basis Equitable will experience an underrecovery of costs by $39,430 annually. Equitable does not propose an increase at this time. The new tariff sheet Equitable filed in this docket is to establish the current level of purchased gas costs in the base rates for Rate Schedule GS-1.

Equitable requests that the tariff sheets be given an effective date of September 5, 1987.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed in or before August 26, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-19422 Filed 8-24-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-754-000]

Application for Retroactive Amendment of Certificate of Public Convenience and Necessity and Abandonment Authorization; Mobil Producing Texas & New Mexico Inc.

August 20, 1987.

Take notice that on July 9, 1987, Mobile Producing Texas & New Mexico Inc. (MPTM) of Nine Greenway Plaza, Suite 2700, Houston, Texas 77046, filed an application pursuant to section 7(c) of the Natural Gas Act of 1938 (NGA), 15 U.S.C.A. section 717f(c), and § 157.23 of the Federal Energy Regulatory Commission's Regulations thereunder, 18 CFR 157.23 (1986), for a certificate of public convenience and necessity to authorize retroactively certain past sales of natural gas by MPTM to ANR Pipeline Company (ANR). MPTM further requests such waivers of the Commission's Regulations as may be necessary to permit the effectiveness of such certificate authorization as requested. MPTM further applies for abandonment authorization for certain sales pursuant to section 7(b) of the NGA, 15 U.S.C.A. section 717f(b), and § 157.30 of the Commission's Regulations thereunder, 18 CFR 157.30 (1986).

MPTM requests that its certificate of public convenience and necessity be issued effective retroactively to authorize MPTM's sales of its interests in gas produced from the north half of High Island Block 596, Offshore Texas, below the base of the MP-6 Sand to ANR, commencing May 1, 1984. MPTM also requests that the terms authorized in that certificate for the sales of this gas be substantially identical to the terms of MPTM's certificate of public convenience and necessity issued in Docket No. CI84-168-000.

MPTM requests that it be authorized retroactively to abandon its sales to ANR from the north half of High Island Block A-596, Offshore Texas, below the MP-6 Sand, effective as of the dates that such sales ceased, respectively. MPTM states that it has attempted to negotiate a written agreement with ANR for the continued purchase of the subject production but to date no such document has been executed.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 4, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-19426 Filed 8-24-87; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed; Week of July 24 Through July 31, 1987

During the Week of July 24 through July 31, 1987, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of services of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

August 18, 1987.

Thomas L. Wieker,

Acting Director, Office of Hearings and Appeals.

List of Cases Received by the Office of Hearings and Appeals

[Week of July 24 through July 31, 1987]

Date	Name and location of applicant	Case No.	Type of submission
July 24, 1987	Columbia Lighting, Inc., Washington, DC	RR270-8	Request for Modification/Rescission in the Stripper Well Litigation Proceeding. *If granted:* The June 24, 1987 Decision and Order (Case No. RF270-566) issued to Columbia Lighting, Inc., would be modified regarding the firm's Application for Refund submitted as a surface transporter in the Stripper Well Litigation proceeding.
July 24, 1987	Gulf/H&J, Inc., Washington, DC	RR40-4	Request for Modification/Rescission in the Gulf Refund Proceeding. *If granted:* The November 5, 1986 Decision and Order (Case No. RF40-0997) issued to H&J, Inc., would be modified regarding the firm's Application for Refund submitted in the Gulf Oil Company special refund proceeding.
July 24, 1987	Mobil Oil Corporation, Fairfax, Virginia	KFA-0111	Appeal of Freedom of Information Request Denial. *If granted:* Transfer pricing data for Mobil Oil Company for the period 1978 to 1981 would not be released to the law firm of Steptoe & Johnson pursuant to a July 24, 1987 Decision and Order (Case No. KFA-0103).
July 24, 1987	Wagner Division Cooper Industries, Inc., Washington, DC.	RR270-9	Request for Modification/Rescission in the Stripper Well Litigation Proceeding. *If granted:* The June 24, 1987 Decision and Order (Case No. RF270-550) would be modified regarding Wagner Division's Application for Refund submitted as a surface transporter in the Stripper Well Litigation proceeding.
July 27, 1987	American Cyanamid Company, Washington, DC.	RR270-10	Request for Modification/Rescission in the Stripper Well Litigation Proceeding. *If granted:* A June 25, 1987 Decision and Order (Case Nos. RF270-751 and RF270-1119) would be modified regarding American Cyanamid's Application for Refund submitted as a surface transporter in the Stripper Well Litigation proceeding.
July 27, 1987	Kent Oil & Trading Company, Hardin, Kentucky.	RR245-1	Request for Modification/Rescission in the Howell Refund Proceeding. *If granted:* The June 4, 1987 Decision and Order (Case No. RF245-15) would be modified regarding the Kent Oil & Trading Company's Application for Refund submitted in the Howell Refund Proceeding.
July 27, 1987	Montana, Helena, Montana	KEG-0015	Petition for Special Redress. *If Granted:* The Office of Hearings and Appeals would review the proposed expenditures for Stripper Well funds which were disapproved by the Assistant Secretary for Conservation and Renewable Energy for the statge of Montana.
July 30, 1987	Coble Oil Company, Treece, Kansas	KEE-0146	Exception to the Reporting Requirements. *If granted:* Coble Oil Company would not be required to file Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Products Sales Report".

Refund Applications Received

[Week of July 24 to July 31, 1987]

Date received	Name of refund proceeding/ name of refund applicant	Case No.
7/28/87	Amoco I & II/Swinomish-Washington Sioux Tribe	RQ21-367 RQ251-388
7/24/87 thru 7/31/87	Crude Oil Refund Applications Received	RF272-2531 thru RF272-3081
7/27/87	Sylvia Smith	RF265-2473
7/27/87	Sylvia Smith	RF265-2474
7/27/87	Eldred Bowne	RF265-2475
7/27/87	Eldred Bowne	RF265-2476
7/27/87	Tuck Industries, Inc.	RF277-76
7/27/87	Sioux Lands Service Station	RF265-2477
7/28/87	Farmland Industries, Inc.	RF253-26
7/28/87	J and F Service Center	RF265-2478
7/28/87	Ken's Skelly Service	RF265-2479

Refund Applications Received—Continued

[Week of July 24 to July 31, 1987]

Date received	Name of refund proceeding/ name of refund applicant	Case No.
7/28/87	Chambersburg Area School District	RF297-4
2/17/87	Linney Oil Company, Inc	RF225-10871
2/17/87	Linney Oil Company, Inc	RF225-10872
2/17/87	Linney Oil Company, Inc	RF225-10873
2/17/87	Linney Oil Company, Inc	RF225-10874
12/2/87	Linney Oil Company,	RF225-10875
7/28/87	A. T. Edwards, Inc.	RF265-2480
7/28/87	A. T. Edwards, Inc.	RF265-2481
7/28/87	A. T. Edwards, Inc.	RF265-2482
7/29/87	Wyoming Gas & Oil Company.	RF265-2483
7/29/87	Wyoming Gas & Oil Company.	RF265-2484
7/29/87	Wyoming Gas & Oil Company.	RF265-2485

Refund Applications Received—Continued

[Week of July 24 to July 31, 1987]

Date received	Name of refund proceeding/ name of refund applicant	Case No.
7/30/87	Ronnie Black's Auto Parts	RF265-2486
7/30/87	Dick's Skelly	RF265-2487
7/30/87	High Forest Truck Stop	RF265-2488
7/30/87	High Forest Truck Stop	RF265-2489
7/30/87	Ellendale Truck Plaza	RF265-2490
7/30/87	Johnson's Skelly Station	RF265-2491
7/30/87	Hiawatha Land Truck Plaza	RF265-2492
7/30/87	Kelly's Skelly Service	RF265-2493
7/30/87	Parrett's Skelly	RF265-2494

[FR Doc. 87-19389 Filed 8-24-87; 8:45 am]

BILLING CODE 6450-01

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-140065; FRL-3252-1]

Access to Confidential Business Information by General Science Corporation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, General Science Corporation (GSC) of Laurel, MD for access to information which has been submitted to EPA under sections 4, 5, 6, and 8 and of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATE: Access to the confidential data submitted to EPA will occur no sooner than September 9, 1987.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Officer of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M Street SW., Washington, DC 20460, (202-554-1404).

SUPPLEMENTARY INFORMATION: Under TSCA, EPA must determine whether the manufacture, processing, distribution in commerce, use, or disposal of certain chemical substances or mixtures may present an unreasonable risk of injury to human health or the environment. New chemical substances, i.e., those not listed on the TSCA Chemical Substances Inventory, are evaluated by EPA under section 5 of TSCA. Existing chemical substances, i.e., those listed on the TSCA Inventory, are evaluated by the Agency under sections 4, 6, 7, and 8 of TSCA.

Under contract no. 68-02-4281, EPA's contractor GSC, 6100 Chevy Chase Drive, Suite 200, Laurel, Maryland will assist the Office of Toxic Substances' Exposure and Evaluation Division in using computerized procedures and models to estimate physicochemical properties of chemicals, to assess the fate of chemicals in receiving environments, and to estimate human and environmental exposure.

In previous notices published in the **Federal Register** of January 31, 1985 (50 FR 4591) and October 24, 1986 (51 FR 37786), EPA announced, under contract no. 68-02-3970, authorization by GSC for access to TSCA CBI to perform functions similar to those under this contract.

In accordance with 40 CFR 2.306(j), EPA has determined that under contract no. 68-02-4281, GSC will require access to CBI submitted to EPA under TSCA to successfully perform the duties specified under the contract. GSC personnel will be given access to information submitted under sections 4, 5, 6, and 8 of TSCA. Some of the information may be claimed or determined to to be CBI.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, and 8 of TSCA that EPA may provide GSC assess to these CBI materials on a need-to-know basis. All access to TSCA CBI under this contract will take place at EPA Headquarters facilities.

Clearance for access to TSCA CBI under this contract is scheduled to expire on June 15, 1990.

GSC personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: August 17, 1987.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 87-19432 Filed 8-24-87; 8:45 am]

BILLING CODE [illegible]

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-010880-001.
Title: Georgia Port Authority Terminal Agreement.
Parties:

Georgia Ports Authority (GPA)
Hanjin Container Lines, Ltd.

Synopsis: The proposed agreement would permit GPA to consolidate all rent and certain service charges into a single unit rate.

Agreement No.: 224-004165-003.
Title: Georgia Port Authority Terminal Agreement.
Parties:

Georgia Ports Authority (GPA)
Hapag-Lloyd, A.G.
Gulf Container Line B.V.
Compagnie Generale Maritime

Synopsis: The proposed agreement substitutes Gulf Container Line as a party to the agreement in place of Intercontinental Transport B.V.

Agreement No.: 224-200021.
Title: Port of Houston Terminal Agreement.
Parties:

Port of Houston Authority
Biehl & Company (Assignee)

Synopsis: The proposed agreement provides for Assignee, an independent contractor, to perform or have performed freight handling services at the Port's Wharves and Transit Sheds Number 27 through 29 subject to the charges, rates, rules and regulations in the Port's Tariff No. 8. The term of the agreement ends December 31, 1988.

Agreement No.: 224-200022
Title: Port of Houston Terminal Agreement.
Parties:

Port of Houston Authority Lykes Bros. Steamship Company, Inc.

Synopsis: The proposed agreement provides for freight handling services at Transit Sheds Number 30 through 35, for loading cargo onto or unloading cargo from railroad cars and motor vehicles, allocating space within Facility to accommodate cargo of ships assigned to berth and incidental services necessary to expedite the movement of cargo between vessels and land carriers.

Agreement No.: 224-200023.
Title: Port of Houston Terminal Agreement.
Parties:

Port of Houston Authority
Provident Warehouse Company (Assignee)

Synopsis: The proposed agreement provides for Assignee, an independent contractor, to perform or have performed freight handling services at the Port's Manchester Wharf and Transit Shed Number 2 subject to the charges, rates, rules and regulations in the Port's Tariff No. 8. The term of the agreement ends December 31, 1988.

Agreement No.: 224-200024.
Title: Port of Houston Terminal Agreement.
Parties:

Port of Houston Authority
Strachan Shipping Company of Texas

Synopsis: The proposed agreement provides for freight handling services at

Wharves and Transit Sheds Number 1 through 3 and 24 through 26, for loading cargo onto or unloading cargo from railroad cars and motor vehicles, allocating space to accommodate cargo of ships assigned to berth and facility, and other incidental services to expedite the movement of cargo between vessels and land carriers.

Agreement No.: 224–200020.
Title: Port of Portland Terminal Lease Agreement.
Parties:
Port of Portland (Port)
Stevedoring Services of America, Inc. (SSA)

Synopsis: The proposed agreement provides that the Port will lease to SSA the Premises (approximately 6,000) known as the Terminal 2 gearlock storage shed for storage of SSA's owned or leased stevedoring equipment only. The term of the agreement shall commence on the date designated by FMC and shall continue until July 10, 1990 or any extension therefore, as provided in the original Agreement.

By Order of the Federal Maritime Commission
Dated: August 20, 1987.

Joseph C. Polking,
Secretary.

[FR Doc. 87–19459 Filed 8–24–87; 8:45 am]
BILLING CODE 6730-01-M

Item Submitted for OMB Review

The Federal Maritime Commission hereby gives notice that the following item has been submitted to OMB for review pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3601, et. seq.). Requests for information, including copies of the collection of information, and supporting documentation, may be obtained from John Robert Ewers, Director, Bureau of Administration, Federal Maritime Commission, 1100 L Street, NW., Room 12211, Washington, DC 20573, telephone number (202) 523–5866. Comments may be submitted to the agency and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Federal Maritime Commission, within 15 days after the date of the **Federal Register** in which this notice appears.

Summary of Item Submitted for OMB Review

46 CFR Part 580

FMC requests extension of clearance for the Commission's regulation to enforce the tariff filing provisions of section 8 of the Shipping Act of 1984. The rule requires common carriers and conferences of such common carriers to file with the Commission and keep open to public inspection, tariffs showing all rates, fares, and charges for transportation between U.S. and foreign ports and between points on any through route which is established.

For approximately 2,105 respondents, the Commission estimates 593,899 annual responses and 214,787 annual manhours. Total estimated annual cost to the Government is $1,030,000; estimated annual cost to the public is $3,850,269.

Joseph C. Polking,
Secretary.

[FR Doc. 87–19460 Filed 8–24–87; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Acquisitions of Companies Engaged in Permissible Nonbanking Activities; Amsouth Bancorp., et al.

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than September 14, 1987.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *AmSouth Bancorporation,* Birmingham, Alabama; to acquire Gulf Coast Realty Group, Inc., Pensacola, Florida, and thereby engage in the business of appraising commercial and residential properties pursuant to § 225.25(b)(13) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Illinois Corporation,* Evanston, Illinois; to acquire Multi-Family Resources, Inc., New York, New York, and thereby engage in mortgage banking activities pursuant to § 225.25(b)(1) and in arranging commercial real estate equity financing pursuant to § 225.25(b)(14) of the Board's Regulation Y.

2. *Marshall & Ilsley Corporation,* Milwaukee, Wisconsin; to engage in data processing activities of Century Bank, Phoenix, Arizona, through M&I Data Services, Inc., pursuant to § 225.25(b)(7) of the Board's Regulation Y. Comments on this application must be received by September 9, 1987.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation,* Minneapolis, Minnesota; to acquire Norwest Mortgage, Inc., Des Moines, Iowa, and thereby engage in general mortgage banking activities pursuant to § 225.25(b)(1) and underwriting and dealing in bank-eligible securities pursuant to § 225.25(b)(16) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 19, 1987.
William W. Wiles,
Secretary of the Board.

[FR Doc. 87–19389 Filed 8–24–87; 8:45 am]
BILLING CODE 6210-01-M

Applications To Engage de Novo in Permissible Nonbanking Activities; Bank of New England Corp., et al.

The companies listed in this notice have filed an application under

§ 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 14, 1987.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Bank of New England Corporation*, Boston, Massachusetts; to engage *de novo* through its subsidiary, BNE Capital Corporation, Boston, Massachusetts, in the leasing of personal or real property by investing in special purpose leasing partnerships pursuant to § 225.25(b)(5) of the Board's Regulation Y. Comments on this application must be received by September 11, 1987.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Sunshine Bankshares Corporation*, Fort Walton Beach, Florida; to engage *de novo* in consumer financial counseling services, specifically financial management including money management, budgeting, tax planning, retirement, insurance, debt structuring, and general investment management, pursuant to § 225.25(b)(20) of the Board's Regulation Y. These activities will be conducted throughout the states of Alabama, Florida, and Georgia. Comments on this application must be received by September 17, 1987.

C. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Central Banking Systems, Inc.*, San Francisco, California; to engage *de novo* through it subsidiary, CB Insurance Agency, Inc., Walnut Creek, California, in general insurance agency and brokerage activities for the sale of all types of personal and commercial insurance to the general public pursuant to § 225.25(b)(8)(vii) of the Board's Regulation Y and to expand the geographic area served by its subsidiary to include the United States.

Board of Governors of the Federal Reserve System, August 19, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-19390 Filed 8-24-87; 8:45 am]

BILLING CODE 6210-01-M

Formations of; Acquisitions by; and Mergers of Bank Holding Companies; Keycorp, et al.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors tht are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 14, 1987.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Keycorp*, Albany, New York; to acquire 100 percent of the voting shares of Commercial Security Bancorporation, Salt Lake City, Utah, and thereby indirectly acquire Commercial Security Bank, Ogden, Utah, which engages, through a wholly-owned subsidiary, in the activities of an insurance agency for the sale of insurance, such as credit life, and disability in connection with loans made by bank.

In connection with this application, Key Bancshares of Utah, Inc., Salt Lake City, Utah, has applied to become a bank holding company by acquiring Commercial Security Bancorporation.

B. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *First Pennsylvania Corporation*, Philadelphia, Pennsylvania; to acquire 100 percent of the voting shares of First Pennsylvania Bank (NJ), National Association, Evesham Township, New Jersey, a *de novo* bank. Comments on this application must be received by September 17, 1987.

C. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Sovran Financial Corporation*, Norfolk, Virginia, and Commerce Union Corporation, Nashville, Tennessee; to acquire 100 percent of the voting shares of Security Bank and Trust Company, Centerville, Tennessee. Comments on this application must be received by September 17, 1987.

D. Federal Reserve Bank of Chicago (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Marine Corporation*, Springfield, Illinois; to acquire 100 percent of the voting shares of Commercial Bancshares, Inc., Champaign, Illinois, and thereby indirectly acquire The Commercial Bank of Champaign, Champaign, Illinois. Comments on this application must be received by September 17, 1987.

E. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Colonial Bancshares, Inc.*, Des Peres, Missouri; to acquire 10 percent of

the voting shares of The Village Bank of St. Louis County, St. Louis County, Missouri, a *de novo* bank.

F. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation*, Minneapolis, Minnesota, and Norwest Financial Services, Inc., Des Moines, Iowa; to acquire 100 percent of the voting shares of Dial National Bank, Des Moines, Iowa.

Board of Governors of the Federal Reserve System, August 19, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-19391 Filed 8-24-87; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies; McNeill Trading and Investments, Ltd.

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 9, 1987.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *McNeill Trading and Investments, Ltd.*, Thomas, Oklahoma; to acquire 24.99 percent of the voting shares of Thomas Bancshares, Inc., Thomas, Oklahoma, and thereby indirectly acquire Bank of Thomas, Thomas, Oklahoma.

Board of Governors of the Federal Reserve System, August 19, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-19392 Filed 8-24-87; 8:45 am]

BILLING CODE 6210-01-M

Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Companies; Old Kent Financial Corp.

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." And request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 14, 1987.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South SaSalle Street, Chicago, Illinois 60690:

1. *Old Kent Financial Corporation*, Grand Rapids, Michigan; to acquire 100 percent of the voting shares of Illinois Regional Bancorp, Inc., Elmhust, Illinois, and Plum Grove Bancorporation, Inc., Rolling Meadows, Illinois, and thereby indirectly acquire Illinois Regional Bank N.A., Elmhurst, Illinois; Illinois Regional Bank, Naperville, Illinois; Illinois Regional Bank N.A., St Charles, Illinois; Colonial Trust and Savings Bank, Peru, Illinois; Illinois Regional Bank Bureau County, Princeton, Illinois; and First Commercial Bank of Rolling Meadows, Rolling Meadows, Illinois.

In connection with this application, Applicant also proposes to acquire Illinois Regional Mortgage Corporation, Oakbrook, Illinois, and thereby engage in mortgage brokering activities pursuant to § 225.25(b)(14) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 19, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-19393 Filed 8-24-87; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

Transactions Granted Early Termination Between: 072987 and 081787

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Forbo SA	87-1846	07/29/87
Day International Corp.		
L.E. Carpenter and Co.		
APL Corporation	87-1880	07/29/87
Fischbach Corp.		
Fischbach Corp.		
Westinghouse Electric Corp.	87-1891	07/29/87
Beneficial Corp.		
Beneficial Corp.		
Weyerhaeuser Company	87-1706	07/30/87
The Mead Corp.		
6 Mead paper board plants.		
Brierley Investments Limited	87-1884	07/30/87
Molins PLC.		
Molins PLC.		
Gulf & Western Inc.	87-1950	07/30/87
Regensteiner Publishing Enterprises, Inc.		
Regensteiner Publishing Enterprises, Inc.		
MS/S&H Holdings, Inc.	87-1979	07/30/87
Monsanto Co.		
Monsanto Co.		
Michaels Stores, Inc.	87-2017	07/30/87
Moskatel's, Inc.		
Moskatel's, Inc.		
Household International, Inc.	87-2029	07/30/87
TSO Financial Corp.		
Colonial National Bank.		
Valmont Industries, Inc.	87-2035	07/30/87
General Electric Co.		
Ballast Products Section.		
Kellwood Company	87-1892	07/31/87
Robert E. Madden.		
Robert Scott Ltd. and voting securities of David Brooks.		
Courtaulds PLC	87-1895	07/31/87
Martin Processing, Inc.		
Martin Processing, Inc.		
Minstar, Inc.	87-1912	07/31/87
Hugh Halff, Jr.		
Glastron Boat Co., Glastron-Convoy, Ltd, Halff Land Co.		
Continental Gummi-Werk, Aktiengesellschaft	87-1956	07/31/87
GenCorp., Inc.		
General Tire, Inc. and GenCorp Realty Co.		
George Soros	87-1996	07/31/87
Fairchild Industries, Inc.		
Fairchild Industries, Inc.		
John Hancock Mutual Life Insurance Co.	87-2026	07/31/87
Westvaco Corp.		
Westvaco Corporation Sutherland.		
Texas Air Corp.	87-2054	07/31/87
Southwest Airlines Co.		
Southwest Airlines Co.		
Dixons Group plc	87-2001	08/01/87
Sylvan Kaplan and Doris Kaplan.		
Tipton Centers, Inc.		
Pacific Telesis Group	87-1943	08/03/87
Unified Partnership.		
Unified Partnership.		
Pacific Telesis Group	87-1944	08/03/87
Detroit Cellular Telephone Co.		
Detroit Cellular Telephone Co.		
Bausch & Lomb, Inc.	87-1949	08/03/87
Asaad Sleiman.		
Pharmafair, Inc.		
Barris Industries, Inc.	87-1961	08/03/87
Reeves Communications Corp.		
Reeves Communications Corp.		
MS/S&H Holdings, Inc.	87-1964	08/03/87
Nestle S.A.		
Nestle S.A.		
Delchamps, Inc.	87-1993	08/03/87
Imos Heard.		
Western Super Markets Management Co.		
RFS Equity Partners	87-2010	08/03/87
Foods Co. Markets, Inc.		
Foods Co. Markets, Inc.		
Georgetown Industries, Inc.	87-2038	08/03/87
Waccamaw Corp.		
Waccamaw Corp.		
Halliburton Company	87-2044	08/03/87
Pioneer Savings Bank.		
Enterprise Building Corp.		
Xerox Corp.	87-2045	08/03/87
Furman Selz Holding Corp.		
Furman Selz Holding Corp.		
Chrysler Corporation	87-1719	08/04/87
American Motors Corp.		
American Motors Corp.		
Chrysler Corporation	87-1720	08/04/87
American Motors Corp.		
American Motors Financial Corp.		
Chrysler Corporation	87-1722	08/04/87
American Motors Corp.		
American Motors Corp.		
Danaher Corporation	87-1920	08/04/87
Ammco Tools, Inc.		
Ammco Tools, Inc.		
SCI Associates, L.P.	87-1945	08/04/87
SCI Television, Inc.		
SCI Television, Inc.		
Siemens Aktiengesellschaft	87-1948	08/04/87
Sybron Corporation.		
Haige Company-Midwest Division.		
SCI Associates, L.P.	87-1963	08/04/87
SCI Associates, L.P.		
SCI Associates, L.P.		
George N. Gillett, Jr.	87-1964	08/04/87
SCI Associates, L.P.		
SCI Associates, L.P.		
George N. Gillett, Jr.	87-1965	08/04/87
SCI Television, Inc.		
SCI Television, Inc.		
Lydia Kaimanovitz	87-1974	08/04/87
Falstaff Brewing Corp.		
Falstaff Brewing Corp.		
Bon Secours Health System, Inc.	87-1975	08/04/87
St. Joseph Healthcare Group, Inc.		
St. Joseph Healthcare Group, Inc.		
Compagnie de Saint-Gobain	87-2002	08/04/87
Sisy Mills Limited.		
Sisy Mills Limited.		
Ferranti plc	87-1895	08/05/87
Alleghany International, Inc.		
Sciaky Bros., Inc.		
The Miller Group Ltd.	87-2025	08/05/87
Alloy Partners.		
Alloy Rods Corp.		
Powder Mill Corp.	87-2039	08/05/87
Gerard P. Joyce.		
Patrick Media Group.		
Donald H. Gates	87-2040	08/05/87
L.B. Foster Co.		
Foster Acquisition Corp.		
Ashland Oil, Inc.	87-1905	08/06/87
Tanner Southwest, Inc.		
Tanner Southwest, Inc.		
Landmark Land Company, Inc.	87-2041	08/06/87
Olympia & York Developments Limited.		
First Canadian Development Co.		
MOET-HENNESSY	87-2042	08/06/87
Louis Vuitton.		
Louis Vuitton.		
Hawker Siddeley Group Public Limited Company	87-2046	08/06/87
Aerospace Avionics, Inc.		
Aerospace Avionics, Inc.		
J.B. Poindexter c/o J.B. Poindexter & Co.	87-2050	08/06/87
John M. Collins.		
Leer Holdings, Inc.		
Masco Corporation	87-2071	08/06/87
Dixie Furniture Company, Inc.		
Dixie Furniture Company, Inc.		
John Winthrop	87-2073	08/06/87
Citicorp.		
Citicorp.		
Mr. John Winthrop	87-2074	08/06/87
MaceRich Regional Centers Associates.		
MaceRich Regional Centers Associates.		
Masco Corporation	87-2076	08/06/87
Link-Taylor Corp.		
Link-Taylor Corp.		
Masco Corporation	87-2077	08/06/87
Young-Hinkle Corp.		
Young-Hinkle Corp.		
Smith Investment Company	87-2057	08/06/87
Craig H. Tuber.		
Berlin Industries, Inc.		
General Cinema Corporation	87-2094	08/06/87
Carter Hawley Hale Stores, Inc.		
The Nieman-Marcus Group, Inc.		
National Property Analysts, Inc.	87-2022	08/07/87
Macerich Community Centers Associates.		
Macerich Community Centers Associates.		
General Development Corp.	87-2027	08/07/87
Burton A. Bines.		
Florida Residential Communities, Inc.		
Health Care Property Investors, Inc.	87-2103	08/07/87
Genesis Health Ventures, Inc.		
Genesis Health Ventures, Inc.		
Thompson Capital Partners, L.P.	87-2133	08/07/87
J.T. Acquisition Corp.		
J.T. Acquisition Corp.		
Curtis G. Anderson	87-2036	08/10/87
Ceco Industries, Inc.		
The Joist Company, Inc.		
American Financial Corporation	87-2050	08/10/87
Robert L. White.		
Mr. B's Oil Co., Inc.		
FKI Electricals PLC	87-2061	08/10/87
Babcock International plc.		
Babcock International plc.		
Universal Furniture Limited	87-2062	08/10/87
Bench Craft, Inc.		
Bench Craft, Inc.		
KaiserTech Limited	87-2066	08/10/87
Chemron Corp.		
Hanshew Chemical Co.		
TW Services, Inc.	87-2069	08/10/87
DHI Corp.		
DHI Corp.		
Pratt Family Holdings Trust	87-2079	08/10/87
Temple-Inland Inc.		
Georgia Kraft Co.		
Pratt Family Holdings Trust	87-2080	08/10/87
The Mead Corp.		
Georgia Kraft Co.		
Georgia-Pacific Corporation	87-2089	08/10/87
Pratt Family Holdings Trust.		
Vlay Board, Inc.		
Lawrence A. Busse, c/o Busse Broadcasting Corporation	87-1990	08/11/87
George N. Gillett, Jr.		
6 subsidiaries.		
PDA, Inc.	87-1992	08/11/87
BTR plc.		
D.L. Saslow Co., Inc.		
Dana Corporation	87-2049	08/11/87
Deluxe Check Printers, Incorp.		
DLX Finance, Inc.		
The Mutual Life Insurance Company of New York	87-2015	08/12/87
Gerald J. Kamins.		
Community Cablesystems, Inc./ Arrizk Cable of Texas Inc.		
Elders IXL Limited	87-2029	08/12/87
George A. & Olivia G. Lincoln.		
Lincoln Grain, Inc. and Fremont & Western, Inc.		
Warburg, Pincus Capital Company, L.P.	87-2052	08/12/87
Samuel A. Horvitz Testamentary Trust.		
The Mansfield Journal Co.		
Ralph M. Ingersoll II	87-2053	08/12/87
Samuel A. Horvitz Testamentary Trust.		
The Mansfield Journal Co.		
Phillips-Van Heusen Corporation	87-2060	08/12/87
Unilever PLC/Unilever NV.		
5 subsidiaries.		
Xerox Corporation	87-1989	08/13/87
Katun Corp.		
Katun Corp.		
Herbert H. Halff	87-2031	08/13/87
Dayton Hudson Corp.		
Dayton Hudson Corp.		
Hawaiian Electric Industries, Inc.	87-2061	08/13/87
Forvine Associates Limited Partnership.		
Forvine Associates Limited Partnership.		
Hawaiian Electric Industries, Inc.	87-2062	08/13/87
Dalcin Associates Limited Partnership.		
Dalcin Associates Limited Partnership.		
The Prudential Insurance Company of America	87-2068	08/13/87

Name of acquiring person, name of acquired person, name of acquired entity	FMN No.	Date terminated
Phillips-Van Heusen Corp. Phillips-Van Heusen Corp. Jerrico, Inc.	87-2110	06/13/87
Donald K. Poole. Silver's Enterprises.		
Royal Dutch Petroleum Company	87-2117	06/13/87
Occidental Petroleum Co. Occidental Petroleum Co.		
Gefinor S.A.	87-2121	06/13/87
Textron, Inc. Sheaffer-Eaton Division.		
The Merchant Navy Officers Pension Fund	87-1941	06/14/87
Tiffany & Co. Tiffany & Co.		
National Realty, L.P.	87-2032	06/14/87
University High Equity Real Estate Fund II. University High Equity Real Estate Fund II.		
Litton Industries, Inc.	87-2076	06/14/87
Harvey E. Wagner. Integrated Automation, Inc.		
Lomas & Nettleton Financial Corporation	87-2113	06/14/87
First Continental Life Group, Inc. First Continental Life Group, Inc.		
E.I. du Pont de Nemours and Company	87-2130	06/14/87
Mobil Corp. Mobil Oil Corp.		
Philip D. Kaltenbacher	87-2137	06/14/87
S Acquisition Corp. S Acquisition Corp.		
Philip D. Kaltenbacher	87-2139	06/14/87
Seton Corp. Seton Corp.		
Dover Corporation	87-2146	06/14/87
The Rymer Company. Duncan Industries Parking Control Systems Inc.		
Ryobi Limited	87-2097	06/15/87
Inertia Dynamics Corp. Inertia Dynamics Corp.		
Agip S.p.A.	87-1995	06/16/87
Mr. Edwin L. Cox, Sr. Cox Oil and Gas.		
Contel Corporation	87-1999	06/16/87
Communications Satellite Corporation (COMSAT). COMSAT Intl. Communication/ COMSAT Technology Products.		
Brierley Investments Limited	87-2037	06/17/87
Del E. Webb Corp. Del E. Webb Corp.		
South Timbers Ltd. Partnership-West-Timbers Ltd. Part.	87-2116	06/17/87
Royal Dutch Petroleum Co. Royal Dutch Petroleum Co.		
Hellig-Meyers Company	87-2124	06/17/87
Possible Stores, Inc. Possible Stores, Inc.		
THORN EMI plc	87-2160	06/17/87
Rent-A-Center, Inc. Rent-A-Center, Inc.		
THORN EMI plc	87-2170	06/17/87
Rent-A-Center, Inc. Rent-A-Center, Inc.		

FOR FURTHER INFORMATION CONTACT:
Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580, (202) 326–3100.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 87–19410 Filed 8–24–87; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Grant with the State of Missouri Department of Health; Availability of Funds for Fiscal Year 1987

Introduction

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of funds in Fiscal Year 1987 to continue a project with the State of Missouri Department of Health, to assist in maintaining their central listing of persons exposed to TCDD (dioxin) as part of the National Registry. This is not a formal request for applications. Assistance will be provided only to the State of Missouri Department of Health for the continued support of this project. No other applications are solicited or will be accepted.

Authority

Section 104(i)(1–A) and (8) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) authorizes this grant. The Catalog of Federal Domestic Assistance Number has been requested.

Background

In 1971, sludge wastes containing 2,3,7,8-tetrachlorodibenzon-p-dioxin (TCDD) were mixed with oils and sprayed for dust control on various residential, recreational, and commercial areas in the state of Missouri. As of October 1986, 43 sites in Missouri confirmed as having at least 1 part per billion of TCDD in soil were related to disposal of waste from a hexachlorophene production facility in Verona, Missouri. To investigate these TCDD contaminations, investigators have undertaken several studies. Results of a pilot epidemiological study indicated that additional studies should be carried out to examine possible effects on the urinary tract, liver, and the neurological and immunological systems. In April 1986, results reported from the larger Quail Run, Missouri study showed that persons exposed to TCDD in a residential setting did not have any statistically significant increased prevalence of clinical illness diagnosed by a physician; had no significant pattern of differences on medical history, physical examination, serum and urinary chemistry studies, or on neurologic tests; showed some differences on liver function test results that may serve as a biological marker of exposure or as a sign of subclinical effects; and had an increased prevalence of energy and relative energy on immune tests, compared with person who were not known to have been exposed to TCDD. Repeat studies of persons with energy and relative energy approximately a year later have shown no evidence of increased illness, persisting energy or relative energy, or in vitro immunologic abnormalities. These findings suggest that additional studies are needed to develop a more complete understanding of the risks to an appropriate public health interventions for, communities exposed to environmental dioxins.

Concurrent with the medical epidemiological studies a central listing of potentially exposed persons to TCDD was initiated. This listing will enable public health agencies to keep in touch with and locate potentially exposed persons to notify them of health effects, preventive measures and therapeutic advances; facilitate health surveillance programs; and facilitate epidemiologic or health studies.

Reasons for proposing the State of Missouri Department of Health as Recipient of This Grant Program

The Centers for Disease Control provided assistance to the State of Missouri starting in 1983 to determine the population exposed to TCDD's and the effects on their health. As a part of that project the State of Missouri began compilation of a central listing of persons potentially exposed to TCDD's. ATSDR intends to continue to support this unique compilation of individuals and the process that the State of Missouri has employed to ensure its ongoing availability. The individuals now on the listing and those eligibles recruited onto it will enable the Missouri Department of Health to notify participants of advances concerning the health effects of TCDD, provide an easily accessible group if future studies are necessary, and by serving as an example, provide an exposure registry which may be applicable to other States and other contaminated sites.

Availability of Funds

Approximately $175,000 will be available in Fiscal Year 1987 to fund this grant. It is expected that the grant will began on or about September 30, 1987, and depending upon the availability of funds, will be funded in 12 month budget periods within a total 5-year project period. Continuation awards will be made on the basis of satisfactory progress in meeting project objectives

and on the availability of funds. The funding estimate outlined above may vary and is subject to change.

Submission Requirements

The application will not be subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Information

Information may be obtained from Mr. Luther DeWeese, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 E. Paces Ferry Rd. NE., Atlanta, GA 30305, telephone (404) 262-6575. Technical assistance may be obtained from E. David Evans, Project Officer, Extramural Program Branch, Office of External Affairs, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, Atlanta, GA 30333, telephone (404) 454-4630.

Dated: August 19, 1987.

Donald R. Hopkins,

Acting Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 87-19378 Filed 8-24-87; 8:45 am]

BILLING CODE 4160-70-M

Food and Drug Administration

[Docket No. 87F-0252]

NutraSweet Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that NutraSweet Co. has filed a petition proposing that the food additive regulations be amended to provide for the use of aspartame as a sweetener and flavor enhancer in hard candies and cough drops.

FOR FURTHER INFORMATION CONTACT: Carl L. Giannetta, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-5487.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5)), notice is given that a petition (FAP 7A4015) has been filed by NutraSweet Co., 4711 Golf Rd., Skokie, IL 60076, proposing that § 172.804 *Aspartame* (21 CFR 172.804) be amended to provide for the use of aspartame as a sweetener and flavor enhancer in hard candies and cough drops.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: August 13, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-19397 Filed 8-24-87; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Program Announcement for Grants for Faculty Development in Family Medicine; Fiscal Year 1988

The Health Resources and Services Administration announces that applications for Fiscal Year 1988 Grants for Faculty Development in Family Medicine are being accepted under the authority of section 786(a), Title VII, of the Public Health Service Act, as amended by Pub. L. 99-129.

Section 786(a) of the Public Health Service Act authorizes the award of grants to public or nonprofit private hospitals, schools of medicine or osteopathy, or other public or private nonprofit entities to assist in meeting the cost of planning, developing and operating programs for the training of physicians who plan to teach in family medicine training programs. In addition, section 786(a) authorizes assistance in meeting the cost of supporting physicians who are trainees in such programs and who plan to teach in a family medicine training program.

The Administration's budget request for Fiscal Year 1988 does not include funding for this program. This notice regarding applications does not reflect any change in this policy. However, should funds become available unexpectedly for this purpose, this contingency action will assure that grants can be awarded in a timely fashion consistent with the needs of the programs as well as to provide for even distribution of funds throughout the fiscal year.

To receive support, programs must meet the requirements of regulations at 42 CFR Part 57, Subpart Q.

Funding Preferences

As specified in the regulations for this program, 42 CFR 57.1605(b)(2)(iii), a funding preference will be accorded approved applications for projects which emphasize increasing the number of new faculty who will be teaching on a full-time basis in family medicine.

Additional funding preferences will be given to applicants who provide directly or through affiliated medical schools, incentives for minority persons to enter academic medicine; and, for applicants whose projects are designed to develop faculty competence for teaching geriatric content and/or develop educational materials for teaching geriatric content to family medicine students, residents and practitioners.

The deadline date for receipt of applications is November 20, 1987.

Applications shall be considered as meeting the deadline if they are either:

1. *Received* on or before the deadline date, or

2. *Postmarked* on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Requests for application materials and questions regarding grants policy should be directed to: Grants Management Officer (D15), Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C-22, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443-6880.

The standard application form PHS 6025-1, HRSA Competing Training Grant Application, general instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915-0060.

Should additional programmatic information be required, please contact: Multidisciplinary Resources Development Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 4C-16, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443-3614.

This program is listed at 13.895 in the *Catalog of Federal Domestic Assistance*. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, or 45 CFR Part 100.

Dated: August 19, 1987.
John H. Kelso,
Deputy Administrator.
[FR Doc. 87-19398 Filed 8-24-87; 8:45 am]
BILLING CODE 4160-15-M

Program Announcement; Funding Preferences and Grant Orientation Conferences for the Health Careers Opportunity Program

The Health Resources and Services Administration announces that applications for Fiscal Year 1988 Health Careers Opportunity Program (HCOP) grants are now being accepted under the authority of section 787 of the Public Health Service Act, as amended by Pub. L. 99-129.

Section 787 authorizes the Secretary to make grants to schools of medicine, osteopathy, public health, dentistry, veterinary medicine, optometry, pharmacy, allied health, chiropractic, and podiatry, public and nonprofit private schools which offer graduate programs in clinical psychology, and other public or private nonprofit health or educational entities to carry out programs which assist individuals from disadvantaged backgrounds to enter and graduate from health professions schools. The assistance authorized by this section includes: recruitment, preliminary education, retention in health and allied health professions schools, counseling and advice on financial aid.

The Administration's budget request for Fiscal Year 1988 does not include funding for this program. This notice regarding applications does not reflect any change in this policy. However, should funds become available unexpectedly for this purpose, this contingency action will assure that grants can be awarded in a timely fashion consistent with the needs of the programs as well as to provide for even distribution of funds throughout the fiscal year.

The statute requires that not less than 80 percent of the funds appropriated in any fiscal year must be obligated for grants or contracts to institutions of higher education. Also, not more than five percent of such funds may be obligated for grants and contracts having the primary purpose of informing individuals about the existence and general nature of health careers.

To receive support, applicants must meet the requirements of the program regulations which are located at 42 CFR Part 57, Subpart S.

Requests for grant application materials and questions regarding grants policy should be directed to: Grants Management Officer (D18), Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C-22, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443-6857.

The standard application form PHS 6025-1, HRSA Competing Training Grant Application, general instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915-0060.

The application deadline date is November 6, 1987. Applications shall be considered as meeting the deadline if they are either:

(1) *Received* on or before the deadline date, or

(2) *Postmarked* on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

This program is listed at 13.822 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs or 45 CFR Part 100.

Funding Preferences

The following funding preferences will govern the distribution of grant awards to approved HCOP grant applicants for Fiscal Year 1988. These preferences were published in a **Federal Register** notice dated September 12, 1983 (48 FR 40958).

An applicant may request consideration in one of the following five funding preferences:

(1) Health professions school which has Educational Assistance Agreement(s) (EAA) with no more than five undergraduate institutions that separately or collectively satisfy the definition of a feeder institution and who are requesting HCOP support only for:

a. The feeder institution(s) or equivalent to provide individuals from disadvantaged backgrounds with preliminary education; and

b. Either the health professions school or the feeder institution to facilitate the entry of individuals from disadvantaged backgrounds into health professions schools; and

c. The health professions school to provide individuals from disadvantaged backgrounds who are enrolled in their institution(s) with counseling or other retention services.

(2) A feeder institution requesting HCOP support only for:

a. Providing individuals from disadvantaged backgrounds with preliminary education; and

b. Facilitating the entry of individuals from disadvantaged backgrounds into health professions schools.

(3) A health professions school requesting HCOP support only for:

a. Facilitating the entry of individuals from disadvantaged backgrounds into its health professions school; and

b. Providing the students who are individuals from disadvantaged backgrounds with counseling or other retention services.

(4) A joint application from two to five institutions of higher education, which, as a group: (1) Has a student body more than 20 percent of which are individuals from disadvantaged backgrounds; (2) has 20 or more graduates annually (as averaged over the last three years) who are disadvantaged individuals and who are accepted into health professions schools; and (3) is requesting HCOP support only for:

a. Providing individuals from disadvantaged backgrounds with preliminary education; and

b. Facilitating the entry of individuals from disadvantaged backgrounds into health professions schools.

(5) A training center for allied health professions requesting HCOP support only for:

a. Facilitating the entry of individuals from disadvantaged backgrounds into allied health training centers; and

b. Providing its students who are individuals from disadvantaged backgrounds with counseling or other retention services.

Greatest weight will be given to applicants in funding preference Number 1 decreasing, respectively, to funding preference Number 5.

The five preferences do not preclude funding of other eligible approved applications. Accordingly, entities which do not qualify for the preferences are encouraged to submit applications.

The applicant *must indicate on the upper right-hand corner of page one of the application* the funding preference in which the applicant wishes consideration. However, the final determination of the category of funding preference will be based on a staff assessment of the contents of the proposal. An applicant may apply for consideration under only one preference. A feeder institution which is identified in an EAA may not apply as a primary grantee to support the same type of HCOP activities. Consideration will be given to assure that funded

projects represent a reasonable proportion of the health professions specified in the legislation. However, full consideration will also be given to ensure that final funding decisions include appropriate support of proposals and students representative of the targeted populations served by HCOP.

Definitions

As used in this notice: "Educational Assistance Agreement (EAA)" means a formal agreement between the grantee and another school or entity to assure continuity of training through health or allied health professions schools. This agreement must provide for financial or other support (excluding direct student aid) for this purpose and support may include funds from the grant awarded under this program, also joint use of facilities, staff, and faculties. An EAA must:

a. Contain the names of the participating institutions;

b. Identify the prime grantee, subcontractors, and other participating institutions;

c. State the HCOP purposes addressed by each participating institution;

d. Identify the specific activities to be performed by the grantee, including a description of program activities and administrative responsibilities;

e. Identify the specific activities to be performed by all collaborating institutions, including a description of program activities;

f. Contain a detailed description of proposed expenditures for each participating institution;

g. Contain a description of how facilities, faculty, and staff will be shared, including times, places, and dates;

h. State the duration of the EAA;

i. Contain the terms for amending the EAA; and

j. Be signed by the President, Chancellor, Dean, or equivalent official from each participating institution or health or educational entity.

"Feeder institution" means an institution of higher education meeting the requirements of section 435 of the Higher Education Act, (20 U.S.C. 1085(b)), which:

a. Has a student body more than 20 percent of which are individuals from disadvantaged backgrounds; and

b. Had ten or more graduates annually (as averaged over the last three years) who are disadvantaged and who are accepted into health professions schools.

"Health professions school" means a school of medicine, dentistry, osteopathy, pharmacy, optometry, veterinary medicine, podiatry, public health, or chiropractic or a graduate program in health administration, as defined in section 701(4) of the Public Health Service Act.

"Individual from a disadvantaged background" means an individual who (a) comes from an environment that has inhibited the individual from obtaining the knowledge, skills and abilities required to enroll in and graduate from a health professions school or from a program providing education or training in an allied health profession or (b) comes from a family with an annual income below a level based on low income thresholds according to family size, published by the U.S. Bureau of the Census, adjusted annually for changes in the Consumer Price Index and adjusted by the Secretary for use in all health professions programs, 42 CFR 57.1804(b)(2).

The following income figures determine what constitutes a low income family for purposes of these Health Careers Opportunity Program grants for Fiscal Year 1988:

Size of parents' family[1]	Income level[2]
1	$7,400
2	9,500
3	11,400
4	14,500
5	17,200
6 or more	19,300

[1] Includes only dependents listed on Federal income tax forms.
[2] Adjusted gross income for calendar year 1986, rounded to $100.

"Training center for allied health professions" means a junior college, college, or university, as defined in section 795 of the Public Health Service Act, which:

(a) Provides educational programs leading to an associate, baccalaureate, or higher degree needed to practice as one of the following:

Doctoral Degree:
- Clinical Psychologist

Master's Degree:
- Speech Pathologist/Audiologist

Bachelor's Degree:
- Dental Hygienist
- Dietitian (Coordinated undergraduate program)
- Community Health Educator
- Health Services Administrator
- Medical Records Administrator
- Medical Technologist
- Occupational Therapist
- Physical Therapist
- Primary Care Physician Assistant
- Sanitarian (Environmental Health)

Associate Degree:
- Clinical Dietetic Technician
- Cytotechnologist
- Dental Assistant
- Dental Hygienist
- Dental Laboratory Technician
- Medical Assistant
- Medical Laboratory Technician
- Medical Records Technician
- Occupational Therapy Assistant
- Ophthalmic Medical Assistant
- Optometric Technician
- Physical Therapy Assistant
- Radiologic Technologist
- Respiratory Therapist
- Sanitarian Technician

(b) Provides training for no fewer than 20 persons in the substantive health portion, including clinical experience as required for employment, in three or more of the disciplines listed in paragraph (a) of this definition and has a minimum of six full-time students in that portion of each curriculum by October 15 of the fiscal year of application.

(c) Has a teaching hospital as part of the grantee institution or is affiliated with a teaching hospital by means of a formal written agreement. The term "teaching hospital" includes other settings which provide clinical or other health services if they fulfill the requirement for clinical experience specified in an allied health curriculum.

Grant Orientation Conferences

Grant applications and program information for the Health Careers Opportunity Program also will be provided through four program technical assistance conferences. The conferences are for the benefit of potential applicants and current grantees.

The four conferences will be held as follows:

Bethesda, Maryland

August 31–September 1, 1987—Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20814, (301) 652–2000

Minneapolis, Minnesota

September 10–11, 1987—Omni North Star Hotel, 618 2nd Avenue, South Minneapolis, Minnesota 55402 (612) 338–2288

Los Angeles, California

September 14–15, 1987—Pacifica Hotel and Conference Center, 616 Centinela Avenue, Culver City, California 90230 (213) 649–1776

Birmingham, Alabama

September 17–18, 1987—Civic Center Plaza Ramada Hotel, 901 21st Street, North Birmingham, Alabama 35203 (205) 322–1234

Expenses incurred by the attendees will not be supported by the Federal Government.

Agenda items will include: Status of the legislation; application requirements; and grants management information. There will be small work groups to critique specific points in development of applications including evaluation considerations which arise in the review process. Significant focus of the conferences will be directed toward: Program activities and reporting requirements of current grantees; the relative merit of strategies employed to facilitate entry of disadvantaged students into health professions schools; and both current and projected academic issues affecting disadvantaged students in health professions schools.

Participation in the technical assistance meetings does not insure approval and funding of prospective applications.

To obtain specific information regarding the conferences and programmatic aspects of this grant program, direct inquiries to: Mr. William J. Holland, Chief, Program Coordination Branch, Division of Disadvantaged Assistance, Bureau of Health Professions, HRSA, Parklawn Building, Room 8–20, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–4493.

Dated: August 2, 1987.

David N. Sundwall,

Administrator, Assistant Surgeon General.

[FR Doc. 87–19399 Filed 8–24–87; 8:45 am]

BILLING CODE 4160–15–M

Public Health Service

Public Health Emergencies; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of authority of July 23, 1987 (52 FR 23608), by the Assistant Secretary for Health, the Director, Centers for Disease Control, has delegated to the Administrator, Health Resources and Services Administration, with authority to redelegate within the Health Resources and Services Administration, all the authorities delegated to the Director, Centers for Disease Control, under section 319, Title III, of the Public Health Service Act, as amended, concerning Public Health Emergencies, insofar as they pertain to the award to States of the $30 million supplemental appropriation for covering the cost of Azidothymidine and other drugs approved by the Food and Drug Administration for the treatment of patients with aquired immune deficiency syndrome (AIDS).

The delegation to the Administrator, Health Resources and Services Administration, became effective on August 6, 1987.

Dated: August 11, 1987.

Glenda S. Cowart,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 87–19379 Filed 8–24–87; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–07–4410–10]

Management Framework Plan; Schell Resource Area, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent (NOI) to terminate the proposal to amend the Schell Management Framework Plan (MFP). The original NOI to amend the plan was published in the February 11, 1987, Federal Register.

SUMMARY: This notice contains the rationale for terminating the amendment to the Schell MFP. Several comments were received as a result of the notice of intent which invited participation from the public in identification of issues and review of the preliminary planning criteria.

As a result of comments contained in these letters and additional analysis by the Bureau of Land Management, it is concluded that the amendment is inappropriate at this time, analysis has been suspended and the proposed amendment is terminated. The Schell Resource Area (RA) will continue to operate within the scope of the present MFP. If, in the future, further planning actions are deemed appropriate in the Schell RA, a new NOI will be published.

FOR FURTHER INFORMATION CONTACT: Gerald M. Smith, Schell Area Manager, Star Route 5, Box 1, Ely, Nevada 89301, telephone (702) 289–4865.

Dated: August 17, 1987.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 87–19468 Filed 8–24–87; 8:45 am]

BILLING CODE 4310–HC–M

[CA–940–07–5410–10–ZBJE; CA 20605]

Conveyance of Mineral Interests in California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; conveyance of the reserved mineral interests.

SUMMARY: @The private lands described in this notice will be examined for suitability for conveyance of the reserved mineral interests pursuant to section 209 of the Federal Land Policy and Management Act of October 2, 1986.

The mineral interests will be conveyed in whole or in part upon favorable mineral examination.

FOR FURTHER INFORMATION CONTACT: Joan Mangold, BLM California State Office, 2800 Cottage Way, Room E–2841, Federal Office Building, Sacramento, California 95825, (916) 978–4815 .

The purpose is to allow consolidation of surface and subsurface ownership, for the lands described below, where there are no known mineral values or in those instances where the reservation of ownership of the mineral interests in the United States interferes with or precludes appropriate non-mineral development of the lands and such development would be a more beneficial use of the lands than its mineral development.

San Bernardino Meridian, CA 20605

T. 17 S., R. 2 E.,
Sec. 36, E½SW¼, SW¼SW¼, W½SE¼.
T. 18 S., R. 2 E.,
Sec. 1, Lots 3 and 4, N½SW¼NE¼, N½S½NW¼.

The area described contains 341.23 acres in San Diego County. Currently 100 percent of the mineral interest in these lands is owned by the United States.

Upon publication of this Notice of Realty Action in the **Federal Register** as provided in 43 CFR 2720.1–1(b), the mineral interests owned by the United States in the private lands covered by the application shall be segregated to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate by publication of an opening order in the **Federal Register** specifying the date and time of opening; or upon issuance of a patent or other document of conveyance to such mineral interests, or two years from the date of filing of the application, whichever occurs first.

Dated: August 19, 1987.

Nancy J. Alex,

Chief, Lands Section, Branch of Adjudication and Records.

[FR Doc. 87–19469 Filed 8–24–87; 8:45 am]

BILLING CODE 4310–40–M

[WY-920-07-4111-15; W-89681]

Proposed Reinstatement of Terminated Oil and Gas Lease; Crook County, WY

Pursuant to the provisions of Pub.L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease W-89681 for lands in Crook County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $7 per acre, or fraction thereof, per year and 16-⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-89681 effective March 1, 1987, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Fred O'Ferrall,

Acting Chief, Leasing Section.

[FR Doc. 87-19483 Filed 8-24-87; 8:45 am]

BILLING CODE 4310-22-M

[WY-920-07-4111-15; W-82316]

Proposed Reinstatement of Terminated Oil and Gas Lease; Lincoln County, WY

August 18, 1987.

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease W-82316 for lands in Lincoln County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $7 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-82316 effective February 1, 1987, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Fred O'Ferrall,

Acting Chief, Leasing Section.

[FR Doc. 87-19482 Filed 8-24-87; 8:45 am]

BILLING CODE 4310-22-M

[AZ-020-07-4212-12; A 20346-H]

Realty Action; Exchange of Public Land; Navajo and Apache Counties; AZ

The Phoenix District proposes to exchange public land in Navajo and Apache Counties, south of Interstate 40, to the state of Arizona under the federal/state exchange program.

In exchange, BLM will acquire lands in the Arizona Strip district in northern Coconino and Mohave Counties.

Portions of all public lands within the following townships, ranges and sections are being considered for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

(a) Navajo County

T. 15N., R. 16 E.,
Secs. 20, 22, 24.
T. 15N., R. 17 E.,
Secs. 20, 22, 24.
T. 16N., R. 17 E.,
Sec. 6.
T. 17 N., R. 17 E.,
Sec. 28.
T. 15 N., R. 18 E.,
Secs. 20, 22, 24, 26.
T. 16 N., R. 18 E.,
Secs. 8, 20, 28, 30, 32.
T. 15 N., R. 19 E.,
Secs. 4, 8, 18, 20, 22, 24, 26, 28, 30.
T. 16 N., R. 19 E.,
Secs. 24, 26, 34.
T. 15 N., R. 20 E.,
Secs. 12, 20, 24, 26, 28, 30.
T. 16 N., R. 20 E.,
Secs. 4, 8, 12, 18, 24.
T. 17 N., R. 20 E.,
Secs. 8, 22, 24, 26, 28, 34.
T. 13 N., R. 21 E.,
Secs. 4, 10.
T. 14 N., R. 21 E.,
Secs. 4, 8, 10, 14, 20, 22, 26, 28, 34.
T. 15 N., R. 21 E.,
Secs. 4, 6, 10, 18, 20, 22, 28, 30, 34.
T. 16 N., R. 21 E.,
Secs. 6, 8, 18, 20, 28, 30.
T. 17 N., R. 21 E.,
Secs. 4, 18, 20, 22, 26, 28, 30, 34.
T. 18 N., R. 21 E.,
Secs. 22, 28.
T. 11 N., R. 22 E.,
Secs. 6, 12.
T. 12 N., R. 22 E.,
Sec. 10.
T. 13 N., R. 22 E.,
Secs. 18, 20, 28, 34.
T. 15 N., R. 22 E.,
Secs. 2, 4, 8, 12.
T. 16 N., R. 22 E.,
Secs. 6, 8, 18, 20, 26, 28, 30, 32, 34, 36.
T. 18 N., R. 22 E.,
Secs. 12, 14, 20, 22.
T. 12N., R. 23E.,
Sec. 20.
T. 14 N., R. 23 E.,
Secs. 14.
T. 15 N., R. 23 E.,
Secs. 6, 8.
T. 17 N., R. 23 E.,
Secs. 4, 6, 12.
T. 18 N., R. 23 E.,
Secs. 8, 10, 12, 14, 22, 26, 34.

Containing 61,453.77 acres, more or less.

(b) Apache County

T. 11 N., R. 24 E.,
Sec. 28.
T. 12 N., R. 24 e.,
Secs. 24, 28.
T. 13 N., R. 24 E.,
Sec. 26.
T. 18 N., R. 24 E.,
Secs. 10, 12.
T. 19 N., R. 24 E.,
Secs. 22, 24, 26.
T. 10 N., R. 25 E.,
Sec. 18.
T. 13 N., R. 25 E.,
Secs. 4, 6, 18.
T. 15 N., R. 25 E.,
Sec. 32.
T. 18 N., R. 25 E.,
Secs. 6, 18, 30.
T. 19 N., R. 25 E.,
Secs. 6, 7, 8, 9, 10, 11, 15, 16, 17, 18, 19, 20, 21, 29.
T. 14 N., R. 26 E.,
Secs. 6, 12, 22, 24.
T. 15 N., R. 26 E.,
Secs. 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 30.
T. 16 N., R. 26 E.,
Secs. 4, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, 34.
T. 14 N., R. 27 E.,
Secs. 4, 6, 8, 10, 18, 20, 22.
T. 15 N., R. 27 E.,
Secs. 4, 6, 8, 10, 12, 14, 16, 20, 22, 24, 26, 28, 30, 34.
T. 16 N., R. 27 E.,
Sec. 20.
T. 17 N., R. 27 E.,
Sec. 6.
T. 18 N., R. 27 E.,
Secs. 22, 24, 26, 28.
T. 13 N., R. 28 E.,
Secs. 10, 12, 14, 24, 30.
T. 14 N., R. 28 E.,
Sec. 4.
T. 15 N., R. 28 E.,
Secs. 4, 6, 8, 10, 12, 14, 16, 20, 22, 24, 28, 30.
T. 16 N., R. 28 E.,
Secs. 4, 6, 8, 10, 14, 16, 20, 22, 24, 26, 28, 30, 34.
T. 17 N., R. 28 E.,
Secs. 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, 34.
T. 13 N., R. 29 E.,
Secs. 6, 18, 28.
T. 14 N., R. 29 E.,
Secs. 4, 8, 10, 12, 20, 24, 28, 30.
T. 15 N., R. 29 E.,
Secs. 12, 14, 26.
T. 16 N., R. 29 E.,

Secs. 28, 34.
T. 13 N., R. 30 E.,
Sec. 6.
T. 15 N., R. 31 E.,
Sec. 18.

Containing 77,212.90 acres, more or less.

Realty actions published in the **Federal Register** for exchange of land in these counties are:

A 20346–0 published October 23, 1986 affecting 6,358.11 acres in Navajo County.

A 20346–D published April 16, 1987 affecting 48,459 acres in Apache county.

Excluded from exchange will be lands to transfer to Apache County under Pub. L. 98–408 (published August 20, 1986 in the **Federal Register**) and land in proximity to the Petrified National Park proposed for inclusion in the park.

Final determination on disposal will await completion of an environmental analysis.

Individual exchanges will be completed on an equal value basis as determined by appraisal.

All grazing lessees and other affected parties will be notified of pending exchanges.

Copies of the complete legal descriptions may be obtained from the Phoenix District Office, address shown below.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this Notice will segregate the land in (a) and (b) above from appropriation under the public land laws, including the mining laws, but not the mineral leasing laws or Geothermal Steam Act.

The segregation of the above-mentioned land shall terminate upon issuance of a document conveying such land or upon publication in the **Federal Register** of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

For a period of forty-five (45) days, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Henri R. Bisson,

District Manager.

August 14, 1987.

[FR Doc. 87–19479 Filed 8–21–87; 8:45 am]

BILLING CODE 4310-32-M

[U–58178; UT–040–7–4212–13]

Realty Action; Exchange of the Surface Estate of Public and Private Land; Washington County, UT

AGENCY: Department of the Interior, Bureau of Land Management.

ACTION: The surface estate of the following described lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, (43 U.S.C. 1716): NE¼NE¼, SW¼NE¼, Sec. 25, and the SE¼NW¼, E½SW¼, S½SE¼, Sec. 24, T. 38 S., R. 10 W., SLM, containing 280 acres more or less.

In exchange for the surface estate of these lands, the United States will acquire the surface estate of the following described lands from the Jones Land and Livestock Company, a Utah Corporation: Beginning at the North Quarter Corner of Section 1, T. 39 S., R. 10 W.; thence West 5 rods; thence southwesterly 257 rods, more or less, to a point 18 rods West of the Northeast Corner of the SW¼SW¼ of Section 1; thence East 18 rods to the Northeast Corner of the SW¼SW¼ of Section 1; thence south 80 rods; thence East 80 rods to the South Quarter Corner of Section 1; thence North 320 rods to the point of beginning, containing 117 acres, more or less. Also: E½SE¼, Sec. 11, T. 39 S., R. 10 W., SLM, containing 80 acres more or less. Also: NE¼NW¼ Sec. 12, T. 39 S., R. 10 W., SLM. Also: Beginning at the Northeast Corner of the Northwest Quarter of the Northwest Quarter of Section 12, T. 39 S., R. 10 W., SLM, and running thence South 80 rods; thence West 80 rods, thence northeasterly 92 rods, more or less, to a point 40 rods East of the Northwest Corner of Section 12; thence East 40 rods to the point of beginning, containing 70 acres more or less. Also: Beginning at the Northeast corner of NW¼NE¼, Sec. 14, T. 39 S., R. 10 W.; thence running South 80 rods; thence West 80 rods; thence northeasterly to a point 40 rods West of the point of beginning, thence East 40 rods to the point of beginning, containing 30 acres more or less.

The purpose of this exchange is to acquire administrative control of strategic surface resource values in the Deep Creek drainage. The need for this action derives from increasing use of the Deep Creek area by members of the public and the Bureau's desire to avoid conflicts between such use and adjoining private land owners. The public interest will be served by completing the exchange. The public lands described are hereby segregated from the operation of the Federal mining laws pending disposition of this action.

ADDRESS: Detailed information concerning this exchange is available at the following address: Bureau of Land Management, Beaver River Resource Area Office, 444 South Main, Suite C–3, Cedar City, Utah 84720, Telephone: (801) 586–2458.

Comments should be sent to the same address.

SUPPLEMENTARY INFORMATION: The terms and conditions applicable to the exchange are:

1. There is reserved to the United States a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, (43 U.S.C. 945).

2. The exchange will be of the surface estate only with all mineral rights being retained by the United States.

3. Title transfer will be subject to valid existing rights.

DATES: Interested parties may submit comments for a period of 45 days from the date of publication in the **Federal Register**. Any objections received during the comment period will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this Realty Action Notice will become the final determination of the Department of the Interior.

Dated: August 14, 1987.

Morgan S. Jensen,

District Manager.

[FR Doc. 87–19405 Filed 8–24–87; 8:45 am]

BILLING CODE 4310-DQ-M

[WY–060–07–4212–14]

Realty Action; Land Sale Appraisal Update for Lands in Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Land Sale Appraisal Update for Lands in Platte, Goshen, Crook, and Weston Counties, Wyoming, and Blaine, Brown, Cherry, Holt, and Sheridan Counties, Nebraska.

SUMMARY: The Bureau of Land Management (BLM) has determined that the land described below is suitable for public sale and will accept bids on these lands. Section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976 (90 Stat. 2750; 43 U.S.C. 1713) requires the BLM to receive fair market value for the land sold and any bid for less than fair market value will be rejected. The BLM may accept or reject any and all offers, or withdraw any land or interest on the land for sale if the sale would not be consistent with FLPMA or other applicable laws.

These parcels are continuing to be reoffered for sale under competitive procedures as per **Federal Register** notices which appeared as follows:

Wyoming

Platte County: 51 *FR* 27090 and 27091 (July 29, 1986)
Goshen County: 51 *FR* 27090 and 27091 (July 29, 1986)
Crook County: 49 *FR* 43803 and 43804 (Octoer 31, 1984); 49 *FR* 11583 and 11584 (March 22, 1985)
Weston County: 50 *FR* 11583 (March 22, 1985)

Nebraska

Blaine County: 49 *FR* 2541–2546 incl. (January 20, 1984); 49 *FR* 4043 (February 1, 1984; 49 *FR* 7156 (February 27, 1984); 51 *FR* 35307 and 35308 (October 2, 1986)
Brown County: 49 *FR* 2538–2550 incl. (January 20, 1984; 49 *FR* 4043 (February 1, 1984); 49 *FR* 14447 and 14448 (April 11, 1984)
Cherry County: 49 *FR* 42799–42802 incl. (October 24, 1984); 49 *FR* 44814 (November 9, 1984)
Holt County: 49 *FR* 2543, 2544, 2547, and 2548 (January 20, 1984); 49 *FR* 4043 (February 1, 1984); 49 *FR* 14448 and 14449 (April 11, 1984)
Sheridan County: 50 *FR* 36497 and 36498 (September 6, 1985)

The planning document, environmental assessment/land report, and memoranda and letters of Federal, state, and local contacts concerning the sale are available for review for Platte and Goshen counties at the BLM, Platte River Resource Area Office, and for Crook and Weston and the counties in Nebraska at the BLM, Newcastle Resource Area Office. All bids and requests for information for Platte and Goshen countries should be sent to BLM, Platte River Resource Area Office, P.O. Box 2420, Mills, WY 82644, street address at 815 Connie, Mills, WY (phone: (307) 261–5008), and for Crook and Weston, and the counties in Nebraska should be sent to BLM, Newcastle Resource Area Office, 1501 Highway 16 Bypass, Newcastle, WY 82701 (phone: (307) 746–4453).

Wyoming Land Sale List

Serial No.	Legal description	Acreage	Appraised value
Platte County:			
W-88721	T. 23 N., R. 65 W., 6th P.M., Sec. 8, NE¼NE¼	40.00	$2,885.60
Goshen County:			
W-88724	T. 23 N., R. 64 W., 6th P.M., Sec. 29, SW¼NW¼	40.00	2,200.00
W-88725	T. 23 N., R. 64 W., 6th P.M., Sec. 30, Lot 2	40.91	1,300.00
W-88726	T. 23 N., R. 64 W., 6th P.M., Sec. 31, SE¼SE¼	40.00	1,300.00
W-88730	T. 23 N., R. 65 W., 6th P.M., Sec. 27, NE¼SE¼	40.00	1,360.00
W-88731	T. 22 N., R. 61 W., 6th P.M., Sec. 7, SE¼SE¼	80.00	3,250.00
Crook County			
W-86202	T. 54 N., R. 62 W., 6th P.M., Sec. 28, SW¼NE¼	80.00	2,600.00
W-86211	T. 55 N., R. 64 W., 6th P.M., Sec. 6, Lot 16	42.49	4,000.00
Weston County:			
W-88630	T. 47 N., R. 61 W., 6th P.M., Sec. 28, SW¼NW¼	40.00	2,400.00

Nebraska Land Sale List

Serial No.	Legal description	Acreage	Appraised value
Blaine County:			
W-86114	T. 22 N., R. 21 W., 6th P.M., Sec. 2: Lot 3	40.16	$1,850.00
W-86115	T. 21 N., R. 22 W., 6th P.M., Sec. 13: NE¼SE¼	40.00	1,250.00
W-86116	T. 23 N., R. 22 W., 6th P.M., Sec. 19: S½SE¼	80.00	3,600.00
W-86117	T. 23 N., R. 22 W., 6th P.M., Sec. 30: Lot 2, SE¼NW¼	78.40	2,700.00
W-86118	T. 23 N., R. 22 W., 6th P.M., Sec. 34: SE¼NW¼	40.00	1,200.00
W-86119	T. 24 N., R. 22 W., 6th P.M., Sec. 26: SE¼SE¼	40.00	1,600.00
W-86120	T. 24 N., R. 22 W., 6th P.M., Sec. 29: NW¼SW¼	40.00	1,400.00
W-86121	T. 21 N., R. 23 W., 6th P.M., Sec. 6: Lot 5, SE¼NW¼	78.57	3,900.00
W-86122	T. 23 N., R. 23 W., 6th P.M., Sec. 23: S½SW¼	80.00	2,800.00
W-86124	T. 24 N., R. 23 W., 6th P.M., Sec. 27: SE¼NE¼	40.00	1,250.00
Brown County:			
W-86129	T. 25 N., R. 21 W., 6th P.M., Sec. 1: S½SE¼; Sec. 3: S½SE¼	160.00	5,600.00
W-86130	T. 25 N., R. 21 W., 6th P.M., Sec. 9: W½NW¼	80.00	2,400.00
W-86131	T. 27 N., R. 21 W., 6th P.M., Sec. 22: NW¼SE¼	40.00	1,400.00
W-86133	T. 25 N., R. 22 W., 6th P.M., Sec. 1: SW¼SW¼	80.00	2,600.00
W-86134	T. 25 N., R. 22 W., 6th P.M., Sec. 30: NE¼SW¼	80.00	1,360.00
W-86135	T. 26 N., R. 22 W., 6th P.M., Sec. 5: NW¼SE¼	40.00	1,400.00
W-86136	T. 25 N., R. 23 W., 6th P.M., Sec. 21: E½SE¼; Sec. 22: S½SW¼	160.00	5,600.00
W-86138	T. 31 N., R. 24 W., 6th P.M., Sec. 4: SW¼SE¼	40.00	1,800.00
W-86139	T. 31 N., R. 24 W., 6th P.M., Sec. 14: SW¼SW¼	40.00	1,480.00
Cherry County:			
W-86165-A	T. 38 N., R. 29 W., 6th P.M., Sec. 3: NE¼SW¼	40.00	1,560.00
W-86163	T. 25 N., R. 30 W., 6th P.M., Sec. 11: N½NE¼; Sec. 12: W½NW¼	160.00	5,600.00
W-86167	T. 29 N., R. 34 W., 6th P.M., Sec. 22: SE¼NW¼, NE¼SW¼	80.00	2,400.00
W-86169	T. 33 N., R. 37 W., 6th P.M., Sec. 13: SE¼NW¼	40.00	1,400.00
W-86171	T. 26 N., R. 29 W., 6th P.M., Sec. 6: Lot 7	39.24	1,550.00
Holt County:			
W-86107	T. 29 N., R. 14 W., 6th P.M., Sec. 24: SE¼SE¼	40.00	1,880.00
W-86108	T. 33 N., R. 14 W., 6th P.M., Sec. 22: NE¼NE¼	40.00	1,800.00
W-86109	T. 28 N., R. 16 W., 6th P.M., Sec. 19: Lot 3	22.50	900.00
Sheridan County:			
W-86236	T. 28 N., R. 44 W., 6th P.M., Sec. 11: NE¼SW¼	40.00	1,480.00
W-86237	T. 35 N., R. 44 W., 6th P.M., Sec. 24: SW¼SE¼	40.00	1,800.00
W-86238	T. 33 N., R. 46 W., 6th P.M., Sec. 20: SE¼SW¼	40.00	5,400.00

Date: August 18, 1987.

James W. Monroe,

District Manager.

[FR Doc. 87-19407 Filed 8-24-87; 8:45 am]

BILLING CODE 4310-32-M

Minerals Management Service

Development Operations Coordination Document; Exxon Co. U.S.A.

AGENCY: Minerals Management Service, Department of the Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Exxon Company, U.S.A. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 1082, Block 72, West Delta Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Grand Isle, Louisiana.

DATE: The subject DOCD was deemed submitted on August 17, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: August 17, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-19406 Filed 8-24-87; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Texaco USA

AGENCY: Minerals Management Service, Department of the Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Texaco USA has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 3147, Block 26, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from onshore bases located at Louisa and Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted On August 17, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 746-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other intrerested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: August 17, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-19407 Filed 8-24-87; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Intention to Negotiate Concession Contract; Shields and Dean Concessions, Inc.

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with Shields and Dean Concessions, Inc., authorizing it to continue to provide tennis, golf and other recreational facilities and services for the public at Gateway National Recreation Area for a period of ten (10) years from January 1, 1988, through December 31, 1997.

An assessment of the environmental impact of this proposed action has been made and it has been determined that it will not significantly affect the quality of the environment, and that it is not a major federal action having significant impact on the environment under the National Environmental Policy Act of 1969. The environmental assessment and finding of no significant impact may be reviewed in the Office of the Superintendent, Gateway National Recreation Area.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expired by limitation of time on December 31, 1984, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and the negotiation of a new contract.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, North Atlantic Region, 15 State Street, Boston, Massachusetts 02109, for information as to the requirements of the proposed contract.

Date: July 29, 1987.

Herbert S. Cables, Jr.,

Regional Director, North Atlantic Region.

[FR Doc. 87-19471 Filed 8-24-87; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations; Alabama, et al.

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 15, 1987. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Reigster, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by September 9, 1987.

Carol D. Shull,

Chief of Registration National Register

ALABAMA

Bibb County

Centreville, *Davidson-Smitherman House*, 167 Third Ave., S.

ALASKA

Nome District

Fairbaven Ditch

COLORADO

Boulder County

Lyons, Vicinty, *Longmont Power Plant*, Old Apple Valley Rd.

Denver County

Denver, *Temple Emanuel*, 1595 Pearl St.

El Paso County

Colorado Springs, *Boulder Crescent Place Historic District*, 9 & 11 W. Boulder St., 312, 318, & 320 N. Cascade

FLORIDA

Volusia County

New Smyrna Beach, *El Real Retiro*, 636 N. Riverside Dr. & 647 Faulkner St.

IDAHO

Benewah County

St. Maries, *Benewah County Courthouse (County Courthouses In Idaho MPS)*, College Ave. & Seventh St.

Boundary County

Bonners Ferry, *Boundary County Courthouse (County Courthouses In Idaho MPS)*, Kootenai St.

Caribou County

Soda Springs, *Caribou County Courthouse (County Courthouses In Idaho MPS)*, 159 S. Main

Cassia County

Burley, *Cassia County Courthouse (County Courthouses In Idhoo MPS)*, Fifteenth St. & Overland Ave.

Elmore County

Mountain Home, *Elmore County Courthouse (County Courthouses In Idaho MPS)*, *150 S. Fourth E.*

Franklin County

Preston, *Franklin County Courthouse (County Courthouses In Idaho MPS)*, 39 E. Oneida

Idaho County

Elk City vicinity, *Meinert Ranch Cabin*, 1.8 mi. SW of Red River Hot Springs on Red River-Beargrass Rd. No. 234

Jefferson County

Rigby, *Jefferson County Courthouse (County Courthouses In Idaho MPS)*, 134 N. Clark

Kootenai County

Hayden Lake, *Finch, John A., Cartaker's House*, 2160 Finch Rd.

Madison County

Rexburg, *Madison County Courthouse (County Courthouses In Idaho MPS)*, E. Main St.

Oneida County

Malad, *Oneida County Courthouse (County Courthouses In Idaho MPS)*, Court St.

Teton County

Driggs, *Teton County Courthouse (County Courthouses In Idaho MPS)*, Main St.

LOUISIANA

Caddo Parish

Shreveport, *Thrasher House*, 8515 Youree Dr. Pioneer Heritage Center , LA State University

MARYLAND

Anne Arundel County

Bristol vicinity, *Owens, James, Farm, 5682 Greenock Rd.*

Baltimore County

Catonsville, *Old Catonsville High School*, 20 Winters Lane

Carroll County

Union Mills vicinity, *Arter, Solomon, House*, 4029 Geeting Rd.

Frederick County

Frederick, *Linden Grove*, Solarex Court

Harford County

Darlington, *Darlington Historic District*, Main St., Shuresville Rd., Quaker Lane, Richmond Ave., & Trappe Church Rd.

Prince George's County

Aquasco, *St. Mary's Rectory*, 16305 St. Mary's Church Rd.

Upper Marlboro vicinity, *Woodstock*, 87SE Crain Hwy.

Washington County

Hagerstown, *Oak Hill Historic District*, Roughly bounded by W. Irvin, Potomac & Prospect Aves., & Forest Dr.

MICHIGAN

Eaton County

Grand Ledge, *River Ledge Historic District*, Jefferson, Scott, & Lincoln Sts. between Franklin & Maple Sts.

MISSISSIPPI

Alcorn County

Corinth vicinity, *Union Battery F. Battle of Corinth*, Rabbit Ranch Rd.

MISSOURI

Atchison County

Rock Port, *Atchison County Memorial Building*, 417 S. Main St.

Cape Girardeau County

Cape Girardeau, *Hanover Lutheran Church*, 2949 Perryville Rd.

Clay County

Liberty, *Odd Fellows Home District*, Rt. 6, Box 194; MO 291

NEW JERSEY

Camden County

Collingswood, *Collings-Knight Homestead*, 500 Collings Ave.

Collingswood, *Stokes-Lee House*, 615–617 Lees Ave.

West Collingswood, *Thackara House*, 912 Eldridge Ave.

Cumberland County

Mauricetown, *Hoskins, Caesar, Log Cabin*, Jct. of South & Second Sts.

NEW MEXICO

Catron County

Mogollon, *Mogollon Historic District*, NM 78 (Bursum Rd.)

Mogollon vicinity, *Socorro Mines Mining Company Mill, Fanny Hill*, Fannie Hill & W to Fannie Hill Mill

NORTH CAROLINA

Rowan County

Woodleaf, *Mingus, Joseph H., Farm*, S side SR 1947, NE of jct. with SR 1702

OHIO

Cuyahoga County

Beachwood, *Blossom, Elizobeth B., Subdivision Historic Division*, Jct. of Richmond & Cedar Rds.

Fairfield County

Lancaster, *Lancaster Methodist Episcopal Camp Ground Historic District*, Roughly bounded by Hocking River, W. Fair Ave., & Ety Rd.

Montgomery County

Oakwood, *Long-Romspert House*, 1947 Far Hills Ave.

OREGON

Benton County

Corvallis, *Corvallis Hotel*, 201–211 SW Second St.

BEST COPY AVAILABLE

Clackamas County

Oregon, *Ermatinger, Francis, House*, 619 Sixth St.
Portland, *Bell Station Store*, 9300 SE Bell Ave.

Crook County

Prineville, *Baldwin, Thomas M., House*, 126 W. First St.

Douglas County

Riddle, *Brown, Will Q., House and Wash House*, 274 S. Main St.
Winston, *Winston, William C. and Agnes, House*, Winston Section Rd.

Jackson County

Ashland, *Ashland Municipal Powerhouse*, Ashland Creek Canyon
Ashland, *Ashland Oregon National Guard Armory*, 208 Oak St.
Medford, *Reddy, Dr. John F., and Mary, House*, 122 Oregon Terrace

Klamath County

Klamath Falls, *Oregon Bank Building*, 905 Main St.

Lane County

Eugene, *Chambers, Frank L. and Ida H., House*, 1006 Taylor St.

Multnomah County

Gresham, *Louis Home Hospital and Residence Hall*, 722 NE One Hundred & Sixty-second Ave.
Portland, *Jeppesen, Peter, House*, 4107 N. Albina Ave.

Polk County

Monmouth, *Howell, John W., House*, 212 N. Knox St.

PENNSYLVANIA

Erie County

Erie, *SS NIAGARA (Freighter) (Proposed Moved)*, Eric Sand & Gravel Co., Foot of Sassafras St.

VIRGINIA

Rockbridge County

Natural Bridge vicinity, *Virginia Manor*, VA 130

Tazewell County

Bull Thistle Cave Archaeological Site (44TZ92)

Winchester (Independent City)

Hexagon House, 530 Amherst St.

WASHINGTON

King County

Lester, *Lester Depot*, US Forest Service Rd. 212, Green River Watershed
Seattle, *US Immigration Building*, 84 Union St.

Pierce County

DuPont, *Dupont Village Historic District*, Roughly bounded by Santa Cruz, Brandywine, DuPont, & Penniman

WISCONSIN

Forest County

Butternut Lake Site (47–Fr–122)

WYOMING

Park County

Meeteetse, *Anderson Lodge*, Greybull Ranger District, Shoshone National Forest

[FR Doc. 87–19138 Filed 8–24–87; 8:45 am]
BILLING CODE 4310–70–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Public Information Collection Requirements Submitted to OMB for Review

The Agency for International Development (A.I.D.) submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry. Comments may also be addressed to, and copies of the submissions obtained from the Reports Management Officer, Fred D. Allen, (703) 875–1573, IRM/PE, Room 1109, SA–14, Washington, DC 20523.

Date Submitted: August 13, 1987
Submitting Agency: Agency for International Development
OMB Number: None
Form Number: None
Type of Submission: New
Title: Student Medical Coverage

Purpose: Under the Participant Training Program, A.I.D. funds the training of foreign nationals in the United States as a major part of the foreign economic assistance program. To provide for necessary medical and dental expenses, the Agency maintains the Health and Accident Coverage (HAC) Program. Summary information is required on mandatory medical insurance and student health service facilities at universities which are imposed on enrolled A.I.D. participants, resulting in double coverage with A.I.D.'s Health & Accident Coverage Program. This information will be used by A.I.D.'s contractor in claims processing.

Respondents will have a submission burden of one biennial response.

Reviewer: Francine Picoult (202) 395–7340, Office of Management and Budget, Room 3201, New Executive Office Building, Washington, DC 20503.

Date: August 13, 1987.

Fred D. Allen

Planning and Evaluation Division.

[FR Doc. 87–19404 Filed 8–24–87; 8:45 am]
BILLING CODE 6116–01–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–55 (Sub-No. 199)]

CSX Transportation, Inc.; Abandonment in Marlboro County, SC; Findings

The Commission has found that the present and future public convenience and necessity permit CSX Transportation, Inc. to abandon its 18.86 mile rail line between McColl (milepost AG–259.40) and Marlboro, SC (milepost AG–276.19), including the Breeden spur between milepost AGA–269.23 and milepost AGA–272.38. The abandonment certificate will be issued 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelop containing the offer: Rail Section, AB–OFA. Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Noreta R. McGee,

Secretary.

[FR Doc. 87–19474 Filed 8–24–87; 8:45 am]
BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 86–42]

Fourth Street Pharmacy; Revocation of Registration

On April 28, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) directed an Order to Show Cause to Fourth Street Pharmacy, Derald R. Hughes (Respondent) of 600 4th Street North East, Watertown, South Dakota 57201 seeking to revoke its DEA Certificate of Registration AH4074162, and deny the pending application for renewal of that registration dated September 26, 1985. The statutory basis for the Order to

Show Cause was the conviction of Fourth Street Pharmacy, Inc, in the Circuit Court, Third Judicial Circuit, State of South Dakota, on June 27, 1985, of dispensing a Schedule IV controlled substance without a prescription, a felony relating to controlled substances.

Respondent, through counsel, requested a hearing by letter dated May 22, 1986. The hearing in this matter was held on January 14, 1987, in Minneapolis, Minnesota, before Administrative Law Judge Francis L. Young. On April 30, 1987, Judge Young issued his opinion and recommended ruling, findings of fact, conclusions of law and decision. Exceptions were filed by Respondent's counsel on June 15, 1987. Respondent also filed a request for appearance before the Administrator on that date, Government counsel filed a response to Respondent's exceptions on June 25, 1987. Judge Young transmitted the record to the Administrator on June 29, 1987. On July 16, 1987, the Administrator denied Respondent's request to appear before him. The Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon the findings of fact and conclusions of law as hereinafter set forth.

The Administrative Law Judge found that in November 1982, a South Dakota investigator conducted a routine inspection of Respondent pharmacy. The investigator found numerous Schedule III and IV prescriptions in the files showing refills without the physician's indication of approval for refill, and refills in excess of the physician's authorization. The investigator brought these violations to the attention of Derald Hughes, a pharmacist and owner, and explained the applicable regulations. The investigator returned to the pharmacy on October 16, 1984, and again noted that the controlled substance prescriptions were being unlawfully refilled.

An investigation of the pharmacy was initiated, and in April 1985, investigators went to the pharmacy with a subpoena for prescriptions. The investigation revealed that prescriptions which indicated that they were issued by a specific physician were not, in fact, issued by the physicians whose names appeared on them. These were prescriptions for Schedule III and IV controlled substances allegedly telephoned or orally authorized by the physician. The refills noted on these prescriptions showed repeated violations of the requirement that a prescription for a Schedule III or IV controlled substance may not be refilled more than five times within a six-month period.

Three prescriptions were found in the files for one individual bearing the dates July 30, 1983, June 14, 1984, and December 3, 1984. All the prescriptions were written for Darvocet N 100, a Schedule IV controlled substance. The July 20, 1983, prescription listed 22 refills over a ten-month period. The physician whose name was on the prescription told the investigator he had seen the patient on July 15, 1983, and authorized a prescription for Darvocet N 100. This prescription was located at another local pharmacy. The doctor did not have a record of authorizing a prescription for the patient on July 20, 1983. On the reverse side of the prescription where refills are listed, were notations such as "Ok called Dr.," and "OK Dr." When this prescription was first observed by the investigator on October 16, 1984, the notations were not on the prescription. They were on the prescription when it was subpoenaed in April 1985. The reverse side of the June 14, 1984, prescription for Darvocet N 100 indicated that it has been refilled ten times in 34 days. The December 3, 1984, prescription indicated seven refills over a two-month period.

The Administrative Law Judge noted that the Respondent pharmacy presented an affidavit from the physician whose name was on the previously mentioned prescriptions. In the affidavit, the doctor does not say that he authorized all the refills in question, he merely indicates that he doesn't always record refills and there may have been some he didn't note in the patient's medical chart. The specific prescriptions the doctor mentions in the affidavit were not the ones at issue. The Administrative Law Judge gave no weight to this affidavit and chose instead to consider the statements the doctor made to investigators closer in time to the incidents in question.

The Administrative Law Judge also found that the pharmacy billed the state medicaid program for one drug and actually dispensed another. He also found that Derald Hughes prepared three prescriptions for a patient who had died two weeks before. The physician named on these prescriptions said he never authorized them, and in fact was present when the patient died. Mr. Hughes then caused the state medicaid program to be billed for the prescriptions. They were found by another pharmacist in a crumpled-up condition. Mr. Hughes indicated it was a clerical error and attempted to return the money to the state after investigation had begun. The Administrative Law Judge found that Mr. Hughes knowingly prepared three false prescriptions and billed the state medicaid program.

Fourth Street Pharmacy, a South Dakota Corporation, was convicted after a plea of guilty to one count of dispensing a Schedule IV controlled substance without prescription. This is a felony relating to controlled substances. Mr. Hughes is the principal pharmacist and co-owner, with his wife, of all shares of corporate stock. Respondent argued at the hearing and in post hearing filings, that it was his understanding that the plea agreement that resulted in the guilty plea and convention, was the final resolution of the matter and that the pharmacy would be permitted to continue in business. The Assistant Attorney General of South Dakota, who filed an affidavit in this matter, appeared to agree with Respondent. The Administrative Law Judge concluded that DEA cannot forbear taking action because the parties to a plea agreement on a criminal matter failed to consider that the resulting conviction could be grounds for revocation of the pharmacy's registration.

The Administrative Law Judge recommended the revocation of Respondent pharmacy's DEA Certificate of Registration. He also recommended that the effective date be 90 days from publication of the order to allow the pharmacy to be sold. The Administrator adopts the proposed findings of fact, conclusions of law and decision of the Administrative Law Judge in its entirety. The Administrator finds that Respondent pharmacy's and Mr. Hughes' continued failure to comply with the law regarding prescriptions for controlled substances; the unprofessional conduct in handling the business of the pharmacy, including billing the State of South Dakota for unauthorized prescriptions for a dead person; and the fraudulent billing to medicaid, shows that the pharmacy and Mr. Hughes are not to be trusted with a DEA Registration.

Accordingly, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), the Administrator hereby orders that Respondent's DEA Certificate of Registration AH4074162, be, and it hereby is, revoked effective November 23, 1987. Any outstanding applications for registration are denied.

Dated: August 19, 1987.

John C. Lawn,

Administrator.

[FR Doc. 87-19394 Filed 8-24-87; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 86-82]

Revocation of Registration; Harlem Drug Co., DBA Harlem Cut Rate Drugs

On October 16, 1986, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Harlem Drug Company, dba Harlem Cut Rate Drugs (Respondent), 309 South Jackson, Albany, Georgia 31701, proposing to revoke its DEA Certificate of Registration AH3193935 as a retail pharmacy. The statutory predicate for the Order to Show Cause was the conviction of owner and pharmacist Kenneth Miller, on June 27, 1986, in the United States District Court for the Middle District of Georgia, of illegal possession and distribution of controlled substances, a felony relating to controlled substances.

Respondent, through counsel, requested a hearing by letter dated November 14, 1986. Counsel indicated he had no authority to represent Mr. Miller and that Mr. Miller should be contacted at his place of incarceration. A copy of the Order to Show Cause was forwarded to Mr. Miller at the Federal Correctional Institution, Tallahassee, Florida. Mr. Miller responded by letter dated December 12, 1986, requesting that a hearing be postponed until he was paroled.

At this time it was learned that Respondent pharmacy was no longer in business and that its Georgia pharmacy license had been suspended. Counsel for the agency filed a motion for summary disposition on February 6, 1987, and Mr. Miller, on behalf of Respondent pharmacy, replied by letter dated March 3, 1987. On June 11, 1987, Administrative Law Judge Francis L. Young issued his opinion and recommended decision.

The Administrative Law Judge found that on August 9, 1985, the Georgia State Board of Pharmacy ordered the suspension of the pharmacy license of Respondent pharmacy. By letter dated February 3, 1987, the Georgia Board of Pharmacy indicated that the suspension remained in effect and that Harlem Drug Co. was not authorized to handle controlled substances or operate in any manner. Respondent did not contradict or contest this conclusion in its reply to the agency's motion for summary disposition.

The Administrative Law Judge concluded that DEA does not have the authority to maintain the registration of a pharmacy unless the pharmacy is authorized by the state to dispense controlled substances. The Administrator of DEA has consistently maintained this position. *Tony's Discount Drug Store*, Docket No. 85-60, 51 FR 70 (1986); *Emerson Emory, M.D.*, Docket No. 85-46, 51 FR 9543 (1986); *Avner Kauffman, M.D.*, Docket No. 85-8, 50 FR 34208 (1985); and *Agostino Carlucci, M.D.*, Docket No. 85-20, 49 FR 33184 (1984). Since Respondent pharmacy does not have state authorization, it cannot continue to be registered with DEA.

The Administrative Law Judge further concluded that in a case such as this, a motion for summary disposition is properly entertained and must be granted. It is settled that when no fact question is involved, or when the facts are agreed, a plenary adversary administrative proceeding is not required even though the statute may require a hearing. In such situations it can be concluded that Congress did not intend administrative agencies to perform meaningless tasks. *U.S.* v. *Consolidated Mines and Smelting Co. Ltd.*, 445 F.2d 432, 453 (9th Cir. 1971). The Administrative Law Judge recommended that the Administrator revoke the DEA registration of Respondent pharmacy.

The Administrator adopts the opinion and recommended decision of the Administrative Law Judge in its entirety. The Administrator concludes that there is a lawful basis for the revocation of Respondent pharmacy's DEA Registration and that it must be revoked.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AH3193935 be, and it hereby is, revoked. The Administrator further orders that any pending applications for registration be, and they hereby are, denied. This order is effective September 24, 1987.

Dated: August 19, 1987.

John C. Lawn,

Administrator.

[FR Doc. 87-19433 Filed 8-24-87; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance; AT&T Technologies, Inc., et al.

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment asistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 4, 1987.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 4, 1987.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC this 17th day of August 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
AT&T Technologies, Inc. (IBEW)	Oklahoma City, OK	8/17/87	8/11/87	20,002	Computers.
C.P.T. Corporation (Workers)	Chanhassen, MN	8/17/87	8/5/87	20,003	Equipment.
Dee Jay (IUGWU)	Paterson, NJ	8/17/87	8/4/87	20,004	Coats.
Double E. Well Service (Workers)	St. Louis, OK	8/17/87	8/7/87	20,005	Oil.
Dreico Co. Incorp. (Workers)	Iraan, TX	8/17/87	8/5/87	20,006	Oil.
Erie Casting Co. (USWA)	Erie, PA	8/17/87	7/24/87	20,007	Iron.
General Electric Co. (IUE)	Lynn, MA	8/17/87	7/28/87	20,008	Engines.
General Automotive Specialty Co. (Company)	N. Brunswick, NJ	8/17/87	8/5/87	20,009	Auto. Parts.
General Automotive Specialty Co. (Company)	Carlstadt, NJ	8/17/87	8/5/87	20,010	Auto. Parts.
Goodyear Tire & Rubber Co. (URW)	Akron, OH	8/17/87	8/5/87	20,011	Tires.
Hydro-Test, Inc. (Workers)	Longbeach, CA	8/17/87	8/6/87	20,012	Oil & Gas.
Integrated Electronics (Workers)	Wharton, NJ	8/17/87	7/27/87	20,013	Auto. Parts.
J.B. Coggins Co., Inc. (Company)	Meriden, CT	8/17/87	8/4/87	20,014	Castings.
J.D. Phillips Corp. (Company)	Alpena, MI	8/17/87	8/4/87	20,015	Machinery.
Lordstown Rubber (IBICWHA)	Warren, OH	8/17/87	8/10/87	20,016	Rubber.
Mesabi Tire (Workers)	Virginia, MN	8/17/87	7/21/87	20,017	Steel.
Moseley Petroleum (Company)	Dallas, TX	8/17/87	8/6/87	20,018	Oil & Gas.
National Standard, Co. (Workers)	St. Niles, MI	8/17/87	8/7/87	20,019	Wire.
Placid Oil Co. (Workers)	Denver, CO	8/17/87	8/4/87	20,020	Crude Oil.
Placid Oil Co. (Workers)	Dallas, TX	8/17/87	8/4/87	20,021	Crude Oil.
FSI Fabtec (HCE)	Zeeland, MI	8/17/87	8/7/87	20,022	Computers.
Story Mfg., Co. (Workers)	Ennis, TX	8/17/87	7/15/87	20,023	Dresses.
San Antonio Data Processing, Inc. (Company)	San Antonio, TX	8/17/87	8/3/87	20,024	Processors.
Vendrill, Inc. (Company)	Edmond, OK	8/17/87	8/7/87	20,025	Oil & Gas.

[FR Doc. 87-19448 Filed 8-24-87; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance; Canadian Chains, Inc., et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period August 3, 1987–August 7, 1987 and August 10, 1987–August 14, 1987.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–19,844; Canadian Chains, Inc., Skowhegan, ME

TA–W–19,755; The Jade Corp., Huntington Valley, PA

TA–W–19,778; Cincinnati Mirror Corp., Cincinnati, OH

TA–W–19,857; MWJ Producing Co., Midland, TX

TA–W–19,807; Forest Oil Corp., Corporate Headquarters, Denver, CO, Rocky Mountain Div., Denver, CO, Louisiana Div., Lafayette, LA

TA–W–19,843; C & F Glenn Gas, Wilbarton, OK

TA–W–19,784; Litton Industrial Automation System, South Beloit, IL

TA–W–19,806; Edison Battery Products, Belleville, NJ

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA–W–19,706; Hoke, Inc., Cresskill, NJ

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–19,786; Michigan Milk Producers Association, Sebewaing, MI

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–19,793; Sheffield Industries, Inc., Miami, FL

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certifications.

TA–W–19,764; Inexco Oil Co., Houston, TX

U.S. imports of dry natural gas declined absolutely and relative to domestic shipment in 1986 compared with 1985.

TA–W–19,865; Technicolor, North Hollywood, CA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–19,908; United Pipe and Supply, Inc., Midland, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–19,845; Chemical Express, Mary Neal, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–19,868; United Engineers and Constructors, Stearns-Rogers Div., Denver, CO

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–19,854; Houston Engineers, Inc., Houston, TX

U.S. imports of oil field machinery are negligible.

TA–W–19,804; Klockner Ferromatik Desma, Inc., D/B/A/ Desma, Sudburg, MA

U.S. imports of shoe machinery and parts decreased in the January through March 1987 period compared to the same period in 1986.

TA–W–19,762; Geometric Tool, New Haven, CT

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–19,821; Unisys, Eau Claire, WI

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–19,964; Safeway Stores, Inc., Safeway Store 453, Snyder, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–19,973; Big Chief Drilling Co., Oklahoma City, OK

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–19,783; LTV Steel Co., Albert Street Office, Youngstown, OH

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–19,631; Alcan Aluminum Corp., Metal Goods Div., Edison, NJ

U.S. imports of stainless hot and cold rolled sheet decreased absolutely and relative to domestic shipment in the January through March 1987 period compared to the same period in 1986.

TA–W–19,836; American Penn Energy, Inc., Fairfield, TX

U.S. imports of natural gas declined absolutely and relative to domestic shipment in 1986 compared to 1985.

TA–W–19,837; American Penn Energy, Inc., Padres Island, TX

U.S. imports of natural gas declined absolutely and relative to domestic shipments in 1986 compared to 1985.

TA–W–19,810; Intex Plastics Corp., Corinth, MS

The investigation revealed that criterion (1) and (2) have not been met. Employment did not decline during the relevant period as required for certification. Sales or production did not decline during the relevant period as required for certification.

TA–W–19,814; Magnetic Peripherals, Inc., Thin Film Head Department, Edina, MN

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–19,825; Caterpillar, Inc., Bettendorf, IA

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–19,805; EIS Brake Parts, Berlin, CT

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–19,687; RPI Texas, Inc., Austin, TX

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–19,634; Randall Co., South Haven, MI

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–19,624; Caterpillar, Inc., Davenport, IA

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–19,618; Quality Electric Steel Castings, Inc., Houston, TX

U.S. imports of steel castings declined absolutely and relative to U.S. shipments in 1986 compared to 1985.

TA–W–19,626; Cooper Industries, Inc., Lighting Products Div., Racine, WI

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–19,699; North Pacific Plywood, Inc., Graham Plant, Spanaway, WA, Dock Street Reload, Tacoma, WA

U.S. imports of softwood plywood are negligible.

TA–W–19,682; Vickers, Inc., Tulsa, OK

U.S. imports of oil field equipment were negligible.

TA–W–19,791; RCA Cathode Ray Tube Mfg., Operation, Lancaster, PA

Increased imports did not contribute importantly to workers separations at the firm.

Affirmative Determinations

TA–W–19,664; Tamaqua Frocks, Tamaqua, PA

A certification was issued covering all workers of the firm separated on or after June 18, 1986.

TA–W–19,612; Levelor South Venetian Blinds, Hialeah, FL

A certification was issued covering all workers of the firm separated on or after May 28, 1986 and before March 31, 1987.

TA–W–19,650; Fairbanks Morse Pump Corp., Kansas City, KS

A certification was issued covering all workers of the firm separated on or after June 19, 1986.

TA–W–19,616; Memphis Dinettes, Inc., Memphis, TN

A certification was issued covering all workers of the firm separated on or after June 5, 1986.

TA–W–19,772; Union Carbide Corp., Carbide Products Div., Republic and National Plants, Niagara Falls, NY

A certification was issued covering all workers of the firm separated on or after May 14, 1986.

TA–W–19,856; Link Corp., Troy, OH

A certification was issued covering all workers of the firm separated on or after June 19, 1986.

TA–W–19,767; Neenah Foundry Co., Neenah, WI

A certification was issued covering all workers of the firm separated on or after May 20, 1986.

TA–W–19,775; Burkhart Petroleum Corp., Tulsa, OK

A certification was issued covering all workers of the firm separated on or after June 19, 1986.

TA–W–19,878; Kennedy Van Saun Corp., Danville, PA

A certification was issued covering all workers of the firm separated on or after July 2, 1986.

TA–W–19,829; International Components Corp., (INTO), Lakewood, NJ

A certification was issued covering all workers of the firm separated on or after June 10, 1986.

TA–W–19,803; Chieftain International, Inc., Denver Exploration Office, Denver, CO

A certification was issued covering all workers of the firm separated on or after May 29, 1986.

TA–W–19,779; First Energy Corp., Houston, TX

A certification was issued covering all workers of the firm separated on or after May 26, 1986.

TA–W–19,715; Regal Fashions Co., Paterson, NJ

A certification was issued covering all workers of the firm separated on or after April 22, 1986.

TA–W–19,799; Willman Thermal System Corp., Shelbyville, IN

A certification was issued covering all workers of the firm separated on or after June 1, 1986.

TA–W–19,765; Koehring Cranes & Excavators, Waverly, IA

A certification was issued covering all workers of the firm separated on or after April 1, 1986.

TA–W–19,820; Thomas Nelson, Inc., Camden, NJ

A certification was issued covering all workers of the firm separated on or after May 29, 1986.

TA–W–19,798; The United States Playing Cards Co., Norwood, OH

A certification was issued covering all workers of the firm separated on or after May 20, 1986 and before November 30, 1989.

I hereby certify that the aforementioned determinations were issued during the period August 3–7, 1987 and August 10–14, 1987. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Dated: July 28, 1987.

[FR Doc. 87–19452 Filed 8–24–87; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–19,618]

Negative Determination Regarding Application for Reconsideration; Champion International Corp.

By an application dated July 15, 1987, counsel for the workers requested administrative reconsideration of the Department's negative determination on the subject petition for trade adjustment assistance for former workers of Champion International Corporation's Silver City sawmill at Helena, Montana. The denial notice as signed on July 1, 1987 and published in the **Federal Register** on July 14, 1987 (52 FR 26376).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

Workers at Champion's Silver City sawmill produced softwood lumber. The sawmill closed in December, 1986. The Department's negative determination is based on investigation findings which show that the increased import criterion of section 222 of the Trade Act was not met. U.S. imports of softwood lumber declined absolutely and relative to domestic production in 1986 compared with 1985, and declined relative to domestic production in the first quarter of 1987 compared with the first quarter of 1986. Further, the Department's survey of company customers revealed that those customers accounting for the predominant portion of the decline in sales at the Silver City facility did not increase purchases of imported softwood lumber in 1986 compared with 1985.

Investigation findings also show that the Silver City sawmill closed because of a lack of raw material in the area and for other non-trade reasons. Official Federal government data show that U.S. mports of softwood lumber from Canada decreased in 1986 compared to 1985.

Counsel states that the Department's determination in the subject case is in error as to facts not considered and as to the interpretation of the facts. To support this position, counsel provided an affidavit from a former worker and newspaper clippings.

The affiant states that the Department's determinations are not consistent with determinations on other petitions from workers of Champion International Corporation. Also, the affiant has concerns about the Department's survey and requests an opportunity to review it. Further, affiant avers that company officials informed him of stiff competition from Canadian lumber and that a public hearing was not afforded him. Lastly, affiant claims that a tariff on Canadian lumber is inconsistent with the Department's negative determination.

In certifying workers for trade adjustment assistance, each petition is judged on its own merits, the products produced and in the time frame for which it was filed. Workers at Champion's Bonner Sawmill in Bonner, Montana (TA–W–16,083) were certified for trade adjustment assistance on November 7, 1985; Workers at Champion's Libby and Bonner logging camps in Libby, and Bonner, Montana (TA–W–17,990–1) were certified for trade adjustment assistance on November 7, 1986 and workers at the subject location (TA–W–19,618) were denied for trade adjustment assistance on July 1, 1987. The investigation on petition TA–W–19,618 for workers at the Silver City sawmill, Helena, Montana was initiated on May 4, 1987 in a different time period when imports of softwood were not increasing.

It was not necessary that the Department survey the customers of softwood from Silver City since the increased import criterion was not met. Nonetheless, a survey was conducted. Investigation findings show that all of Silver City sales went through the Tacoma sales office and Silver City's portion of sales at the Tacoma sales office were insignificant. Findings further show that there were no company imports in 1986 at the Tacoma sales office. Lastly, the request for an opportunity to review the customer survey cannot be granted since firms are assured that any sensitive commercial and financial data furnished in confidence to the Department will be accepted by the Department in accordance with 29 CFR 90.33 and will not be disclosed except to the extent required by applicable law or court order, unless the company gives its written consent to disclosure.

Concerning the affiant's claim about not being afforded the opportunity for a public hearing, the Department notes that an invitation for a public hearing was extended in the **Federal Register** on May 15, 1987 (52 FR 18464), when the Notice of Investigation was published. A public hearing is not mandatory in order for the Secretary to make a determination.

The remaining points raised by the affiant concerning stiff foreign competition and that a tariff on Canadian lumber is inconsistent with the Department of Labor's determination would not in themselves provide a basis for certification. Preliminary findings by the Department of Commerce under the countervailing duty provisions of the Trade Act would not form a basis for certification. The Department's investigation dealt with the Silver City sawmill. The Group Eligibility Requirements set at section 222 of the Trade Act of 1974 provides certification criteria for individual firms or subdivisions of firms while findings by the Commerce Department under the countervailing duty provisions are not controlling for workers at the Silver City sawmill.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 13th day of August 1987.

Robert O. Deslongchamps,

Director, Office of Legislation and Acturial Services, UIS.

[FR Doc. 87–19453 Filed 8–24–87; 8:45 am]

BILLING CODE 4510–30–M

Revised Determination on Reconsideration; De Novo Oil and Gas, Inc.

[TA-W-19, 757 et al.]

In the matter of TA-W-19, 757 Houston, Texas, TA-W-19, 757A El Campo, Texas, TA-W-19, 757B Richmond, Texas, TA-W-19, 757C Lafayette, Louisiana.

On July 31, 1987, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of De Novo Oil and Gas, Inc., Houston, Texas.

The petitioner's application for reconsideration states that the subject firm produced and marketed crude oil which was directly affected by increased imports of crude oil.

Findings on reconsideration confirmed that De Novo Oil and Gas produced crude oil and sold these products on the spot market and to other domestic oil companies who had increased import purchases of crude oil in 1986 compared to 1985. De Novo Oil and Gas experienced reduced sales, production and employment in 1986 compared to 1985.

U.S. imports of crude oil increased absolutely and relative to domestic shipments in 1986 compared to 1985. A Department of Labor survey revealed that the major customers of De Novo Oil and Gas increased their purchases of imported crude oil in 1986 compared to 1985 while reducing purchases from De Novo Oil and Gas.

Conclusion

After careful review of the additional facts obtained on reconsideration, it is concluded that increased imports of crude oil produced at De Novo Oil and Gas, Inc., Houston, Texas contributed importantly to the decline in production and sales and to the total or partial separation of workers at De Novo Oil and Gas, Inc., Houston, Texas. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers of De Novo Oil and Gas, Inc., Houston, Texas; El Campo, Texas, Richard, Texas and Lafayette, Louisiana who became totally or partially separated from employment on or after May 11, 1986 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC. this 13th day of August 1987.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 87-19451 Filed 8-24-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-19,559]

Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance; Santa Fe Minerals, Inc.

In the matter of Santa Fe Minerals, Incorporated, Southwest Exploration District, Midland, Texas, and all other locations of the Southwest Exploration District in the following states: Texas TA-W-19,559A, Louisiana TA-W-19,559B, Oklahoma TA-W-19,559C, California TA-W-19,559D.

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 20, 1987 applicable to all workers of the Midland, Texas facility of Santa Fe Minerals, Inc. The certification was published in the Federal Register on July 9, 1987 (52 FR 25930). The certification was amended on July 27, 1987 to reflect the correct worker group. The amended certification was published in the Federal Register on August 4, 1987 (52 FR 28876).

The company furnished new information to the Department which showed an additional State where worker separations occurred in 1986 that was not included in the amended certification. Accordingly, the amended certification is changed to include the State of California where additional worker separations occurred.

The intent of the certification is to cover all workers of Santa Fe Minerals, Incorporated, Southwest Exploration District in all locations. The amended notice applicable to TA-W-19,559 is hereby issued as follows:

All workers of Santa Fe Minerals, Incorporated, Southwest Exploration District, Midland, Texas and all other workers of the Southwest Exploration District operating in the states of Texas, Louisiana, Oklahoma and California who became totally or partially separated from employment on or after April 13, 1986 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC. this 13th day of August 1987.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 87-19450 Filed 8-24-87; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-87-164-C]

Petition for Modification of Application of Mandatory Safety Standard; Barbara Kay Coal Corp.

Barbara Kay Coal Corporation, HC 61, Box 1295, Hatfield, Kentucky 41514 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 5 Mine (I.D. No. 15-05324) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The No. 5 Mine is in the Thacker Seam ranging from 40 to 47 inches in height, with consistent ascending and descending grades creating dips in the coal bed.

3. Petitioner states that the use of a cab or canopy on the mine's equipment would result in a diminution of safety for the miners affected because it could strike and destroy roof support and limit the equipment operator's visibility, increasing the chances of an accident.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 24, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

Date: August 13, 1987.

[FR Doc. 87-19444 Filed 8-24-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-26-M]

Petition for Modification of Application of Mandatory Safety Standard; Gilpatrick Construction Co., Inc.

Gilpatrick Construction Company, Inc., 714 West Monroe, Riverton, Wyoming 82501 has filed a petition to modify the application of 30 CFR 56.12028 (testing grounding systems) to

its Crusher No. 1–35 Mine (I.D. No. 48–01297), and its Crusher No. 2–35 Mine (I.D. No. 48–01290), both located in Fremont County, Wyoming. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that continuity and resistance grounding systems be tested immediately after installation, repair, and modification, and annually thereafter.

2. Petitioner requests a modification of the standard as it pertains to the testing of the resistance of the grounding electrodes where the portable plants relocate.

3. In support of this request, petitioner states that—

(a) When a grounding electrode system is made, one or more of the electrodes specified below will be used. Made electrodes will be imbedded below the permanent moisture level;

(b) Made electrodes will be free from nonconductive coatings such as paint or enamel;

(c) Where more than one electrode system is used (including those used for lightning rods), each electrode of one system will not be less than 6 feet from the other electrode of another system;

(d) Rod and pipe electrodes will not be less than 8 feet in length;

(e) Electrodes of pipe or conduit will not be smaller than ¾ inch trade size and, where of iron or steel, shall have the outer surface galvanized or otherwise metal-coated for corrosion protection;

(f) Electrodes of rods of steel or iron shall be at least ⅝ inch diameter. Nonferrous rods or their equivalent will not be less than ½ inch in diameter;

(g) Where rock bottom is not encountered, the electrodes will be driven to a depth of less than 4 feet. Where rock bottom is encountered at a depth of less than 4 feet, electrodes not less than 8 feet long will be buried in a trench;

(h) The ground rods and associated bonds will be visually inspected for physical deterioration and mechanical bonding each time a portable operation is relocated;

(i) Annual ground bed measurements shall be performed at the site where any portable plant remains in the same location for more than one calendar year; and

(j) The grounding conductor is not susceptible to breaking due to flexing and disconnecting/reconnecting during these moves. Therefore, equipment grounding conductor continuity measurements will be performed after each relocation of a portable plant.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 24, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

Date: August 13, 1987.

[FR Doc. 87–19445 Filed 8–24–87; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–87–141–C]

Petition for Modification of Application of Mandatory Safety Standard; Lester Coal Co.

Lester Coal Company, Box 76, Ironton, Ohio 45638 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Mine No. 5 (I.D. No. 15–15522) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The No. 5 mine is in the Thacker Seam ranging from 29 to 52 inches in height, with consistent ascending and descending grades creating dips in the coal bed.

3. Petitioner states that the use of a cab or canopy on the mine's equipment would result in a diminution of safety for the miners affected because it could strike and destroy roof support and limit the equipment operator's visibility, increasing the chances of an accident.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 24, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

Date: August 13, 1987.

[FR Doc. 87–19446 Filed 8–24–87; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–87–183–C]

Petition for Modification of Application of Mandatory Safety Standard; Turris Coal Co.

Turris Coal Company, P.O. Box 21, Elkhart, Illinois 62634 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Elkhart Mine (I.D. No. 11–02664) located in Logan County, Illinois. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that short circuit protection for trailing cables be set so as not to exceed the maximum allowable instantaneous settings as specified.

As an alternate method, petitioner proposes to set the instantaneous trip units feeding the #2 AWG cable in the power distribution system at 1000 AMPS.

3. Petitioner states that the adjustable trip units have shown to be in error +/− 25% on the low and high settings and as much as 50% mid-range. Therefore, with calibrated breakers there will be a guarantee of accuracy.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 24, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

Date: August 17, 1987.

[FR Doc. 87–19447 Filed 8–24–87; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M-87-185-C]

Petition for Modification of Application of Mandatory Safety Standard; Virginia Crews Coal Co.

Virginia Crews Coal Company, P.O. Box 727, Iaeger, West Virginia 24844-0727 has filed a petition to modify the application of 30 CFR 75.316 (ventilation system and methane and dust control plan) to its No. 14 Mine (I.D. No. 46-04702) located in Wyoming County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a ventilation system and methane and dust control plan and revisions thereof suitable to the conditions and the mining system of the coal mine be provided.

2. Petitioner seeks a modification of the application of that portion of the standard which requires a ventilation plan with bleeder entries in areas where pillars have been wholly or partially extracted.

3. As an alternate method, petitioner proposes to establish a mining system so that as each working section of the mine is abandoned it can be isolated from the active workings of the mine with explosion proof seals or bulkheads. In support of this request, petitioner states—

(a) Adequate face and escapeway ventilation will be maintained at all times to meet or exceed the minimum requirements;

(b) A minimum volume of 12,000 cubic feet per minute (C.F.M.) of air will be delivered to the intake end of the pillar line;

(c) Safe examination of the entire length of a bleeder system would expose the examiner to prolonged periods of duress while crawling;

(d) Maintaining the bleeder entries free of water, roof falls or other obstruction would subject miners to unwarranted hazards; and

(e) The establishment of a bleeder system would create an unnecessary loss of coal reserves at the mine.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 24, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

Date: August 17, 1987.

[FR Doc. 87-19148 Filed 8-24-87; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

Alaska State Standards; Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On August 10, 1973, notice was published in the **Federal Register** (38 FR 21628) of the approval of the Alaska plan and the adoption of Subpart R to Part 1952 containing the decision.

The Alaska plan provides for the adoption of the State standards which are at least as effective as comparable Federal standards promulgated under Section 6 of the Act. Section 1953.20 provides that where any alternation in the Federal program could have an adverse impact on the at least as effective status of the State program, a program change supplement to a State plan shall be required.

In response to Federal standards changes, the State has submitted by letter dated November 28, 1984 from Jim Robison, Commissioner, to James W. Lake, Regional Administrator, and incorporated as part of the plan, State standards revocations amendments comparable to 29 CFR Part 1910 Revocations of Advisory and Repetitive Standards, as published in the **Federal Register** (49 FR 5318) on February 10, 1984.

Regional and State review revealed discrepancies in the State's responses. On March 20, 1985, the submission was forwarded to the OSHA National Office for review. While undergoing National Office review, a corrective amendment dated August 16, 1985 was received by OSHA, Region X on August 22, 1985. The corrective amendment did not resolve all of the previously identified deficiencies. On August 27, 1986, by direction of the National Office, the State's submission was returned for corrective action.

On October 21, 1986, the State resubmitted its revocations with a second corrective amendment. The second amendment was accomplished administratively by permission of the Alaska Office of the Attorney General as the required corrections were deemed to be of a minor nature.

These State standards which were originally contained in Alaska Administrative Code AAC 01., received OSHA approval during the State's developmental period commencing on April 25, 1973 through certification on September 14, 1977.

The State's revocations were adopted on July 24, 1984 with an effective date of September 12, 1984, after public notification of the comment period was published in the Statewide media on June 15, 18, 21, and 22, 1984. The public comment period was open for thirty days by Jim Robison, Commissioner, under authority vested by AS 19.60.020. No requests for a hearing were received. Subsequently, the State's Corrective amendment was adopted on May 10, 1985 with an effective date of June 9, 1985, after public notification of the comment period was published in the Statewide media on March 6, and 13, 1985. The public comment period was open for thirty days by Jim Robison, Commissioner, under authority vested by AS 19.60.020. No requests for a hearing were received.

On October 21, 1986, a second Corrective Administrative Amendment was forwarded to Region X for inclusion in the State's submittal for revocations. The State has retained several of the OSHA revoked standards. They are: 1910.28(a)(3)/AAC 01.1108(b)(3) Guardrails; 1910.28(p)(1)/AAC 01.1108(Q)(1) Interior Hung Scaffolds; 1910 Subpart M/AAC 01.0601, AAC 01.0602, AAC 01.0603 in its entirety; 1910.261/AAC 07.335 through 07.370(2)—Pulp, Paper and Paperbord Mills, all standards in this paragraph retained with previously approved mandatory language; 1910.262(cc)(1)/AAC 13.110(dd) Laundry Washer Tumbler or Shaker-Interlocking Device.

2. *Decision.* Having reviewed the State submissions in comparison with the relevant Federal standards revocations, OSHA has determined that the State standards revocations are at

least as effective as the comparable Federal standards revocations. The State has elected to remain more stringent by retaining serveral of the previously approved standards. OSHA therefore approves these State standards amendments.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 98174; State of Alaska, Department of Labor, Office of the Commissioner, Juneau, Alaska 99802; and the Office of State Programs, Room N–3476, 200 Constitution Avenue, NW., Washington, DC 20210.

4. *Public participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Alaska State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reason:

The standards were adpoted in accordance with the procedural rquirements of State law which included public comments and further public participation would be repetitous.

This decision is effective August 25, 1987.

(Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Seattle, Washington this 15th day of June 1987.

Carl A. Halgren,

Acting Regional Administrator.

[FR Doc. 87–19454 Filed 8–24–87; 8:45 am]

BILLING CODE 4510-26-M

Nevada State Standards; Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator), under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(e) of the Act and 29 CFR Part 1902. On January 4, 1974, notice was published in the **Federal Register** (39 FR 1008) of the approval of the Nevada plan and the adoption of Subpart W to Part 1952 of Title 29 containing the decision. The Nevada plan provides for the adoption of Federal standards as State standards by reference.

By letter dated June 5, 1987, from Nancy C. Barnhart to Raymond J. Owen and incorporated as part of the plan, the State submitted State standard revisions identical to 29 CFR 1910.120, Hazardous Waste Operations and Emergency Response; Interim Final Rule and Correction (December 19, 1986, 51 FR 45654 and May 4, 1987, 52 FR 16241). This standard is contained in the Division of Occupational Safety and Health Standards for General Industry. The subject standard, 29 CFR 1910.120, Hazardous Waste Operations and Emergency Response, was adopted by reference on March 16, 1987 and May 4, 1987 pursuant to Nevada State law, section 618.295.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standard, it has been determined that the standard is identical to the Federal standard and accordingly is approved.

3. *Location of Supplement for Inspection and Copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, 450 Golden Gate Avenue, Room 11349, San Francisco, CA 94102; and Director, Division of Occupational Safety and Health, 1370 South Curry Street, Carson City, Nevada 89710; and Directorate of Federal/State Operations, Room N3700, 200 Constitution Avenue NW., Washington, DC 20210.

4. *Public Participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Nevada State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standard is identical to the Federal Standard which was promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standard was adopted in accordance with procedural requirements of State law and further participation would be unnecessary.

This decision is effective August 25, 1987.

(Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at San Francisco, California, this 6th day of July 1987.

James W. Lake,

Acting Regional Administrotor.

[FR Doc. 87–19455 Filed 8–24–87; 8:45 am]

BILLING CODE 4510-26-M

Puerto Rico State Standards; Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State Plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On August 30, 1977, notice was published in the **Federal Register** (42 FR 43628) of the approval of the Puerto Rico plan and the adoption of Subpart FF to Part 1952 containing the decision.

The Puerto Rico plan for the adoption of Federal standards as State standards by reference. Section 1953.20 of Title 29 CFR provides that "where any alteration in the Federal program could have an adverse impact on the 'at least as effective as' status of the State program, a program change supplement to a State plan shall be required."

In response to Federal standards changes, the State has submitted by letter dated June 15, 1987 from Filiberto Cruz Aguila, Assistant Secretary for OSHO to Acting Regional Administrator James W. Stanley, and incorporated as part of the plan, State standards comparable to the Occupational Safety and Health Administration standards for Asbestos, tremolite, anthophyllite, and actinolite, 29 CFR 1910.1001, as published in the **Federal Register** (51 FR 22733) dated June 20, 1986; Occupational Exposure to Cotton Dust—Correction and Information Collection, 29 CFR 1910.1043, as published in the **Federal Register** (51 FR 24324) dated July 3, 1986; and Occupational Exposure to Ethylene Oxide—Final Rule, 29 CFR 1910.1047, technical amendments and corrections as published in the **Federal Register** (51

FR 25053). These standards which are contained in the Puerto Rico Regulations, Number Four (equivalent to 29 CFR Part 1910) were promulgated by resolutions adopted by the Puerto Rico Department of Labor and Human Resources on September 18, 1986, pursuant to the Puerto Rico Act Number 16 and Chapter 52 of the Puerto Rico Rules and Regulations Act of 1958.

The State has also submitted a letter dated June 29, 1987 from Filiberto Cruz Aguila, Assistant Secretary for OSHO, to Acting Regional Administrator James W. Stanley, and incorporated as part of the plan, State standards comparable to the Occupational Safety and Health Administration standards for Electrical Standards for Construction—Final Rule, 29 CFR Part 1926, as published in the **Federal Register** (51 FR 25294) dated July 11, 1986; and Asbestos, tremolite, anthophyllite, and actinolite, 29 CFR 1926.55 and 1926.58, as published in the **Federal Register** (51 FR 22756) dated June 20, 1986. These standards which are contained in the Puerto Rico Rules and Regulations, Number Ten (equivalent to 29 CFR Part 1926) were promulgated by resolution adopted by the Puerto Rico Department of Labor and Human Resources on September 18, 1986, pursuant to the Puerto Rico Act Number 16 and Chapter 52 of the Puerto Rico Rules and Regulations Act of 1958.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standards it has been determined that the State standards are identical to the Federal standards and accordingly are hereby approved.

3. *Location of supplement for inspection and copying.* A copy of the standard supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 3445, 1515 Broadway, New York, New York 10036; Puerto Rico Department of Labor and Human Resources, Prudencio Rivera Martinez Bldg., Munoz Rivera Avenue 505, Hato Rey, Puerto Rico 00917; and the Directorate of Federal—State operations, Room N3700, 200 Constitution Avenue NW., Washington, DC 20210.

4. *Public Participation.* Under 29 CFR 1953.2 (c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Puerto Rico State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards which were promulgated in accordance with Federal law meeting requirements for public participation.

2. The standards were adopted in accordance with the procedural requirement of State Law and further participation would be unnecessary.

The decision is effective August 25, 1987.

(Sec. 18 Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at New York City, New York, this tenth day of July 1986.

James W. Stanley,

Acting Regional Administrator.

[FR Doc. 87–19456 Filed 8–24–87; 8:45 am]

BILLING CODE 4510–26–M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 87–80; Exemption Application No. D–5512 et al.]

Grant of Individual Exemptions: Bill Kelley Chevrolet, Inc., et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 1847, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Bill Kelley Chevrolet, Inc. Employees Retirement Plan (the Plan) Located in Hallandale, Florida

[Prohibited Transaction Exemption 87–80; Exemption Applicaiton No. D–5512]

Exemption

The restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale of certain property by the Plan to Mr. Stephen A. Kelley and Mr. William J. Kelley, parties in interest with respect to the Plan, provided the sales price is not less than the fair market value of the property on the date of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 8, 1986 at 51 FR 11995.

The notice of proposed exemption published in the **Federal Register** on April 8, 1986 (51 FR 45962) stated that an appraisal of the real property located at NE. 7th Street and 1st Avenue, Hallandale, Florida (the Property) was performed on March 9, 1984 by Fred E. Welker, S.R.E.A. and Florence Wipplinger of Fort Lauderdale, Florida (the Welker Appraisal). The Welker Appraisal established the fair market value of the Property at $275,000.

A comment was received by the Department questioning the valuation of

the Property as determined by the Welker Appraisal. The commentor is a Plan participant who wrote to the Department on behalf of himself and four other participants. These individuals have substantial account balances in the Plan and obtained another appraisal of the Property which was performed by L.B. Slater, N.A.I.F.A. of Hollywood, Florida (the Slater Appraisal). The Slater Appraisal established the value of the Property at $387,310 as of May 12, 1986.

As a result of the different valuations of the Property set forth in the Welker Appraisal and the Slater Appraisal, it was determined that a third appraisal should be obtained from an independent, qualified appraiser to be selected by Fred Welker, Florence Wipplinger and L.B. Slater. A third appraisal, was, in fact, performed by Earl R. Chesler, S.R.E.A., C.R.E.. Mr. Chesler's appraisal (The Chesler Appraisal) established the fair market value of the Property at $319,000 as of October 29, 1986. The Employer has agreed to pay in cash to the Plan the higher of $319,000 or the fair market value of the Property on the date of sale. After consideration of the entire record, the Department has determined to grant the proposed transaction based on the price established by the Chesler Appraisal provided that that price is not less than the fair market value of the Property on the date of sale.

FOR FURTHER INFORMATION CONTRACT: Linda Hamilton of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

SEI Property Fund (the Fund) Located in Chicago, IL

[Prohibited Transaction Exemption 87–81; Application No. D–6915]

Exemption

Section I. Exemption for Certain Transactions Involving the Fund

(a) The restrictions of sections 406(a), 406(b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the transactions described below if the applicable conditions set forth in Section III are met.

(1) *Transactions Between Parties-In-Interest and the Fund: General.* Any transaction between a party in interest with respect to a plan which has an interest in the Fund (a Participating Plan) and the Fund, or any acquisition or holding by the Fund of employer securities or employer real property, if the party in interest is not SEI Corporation (SEI), the investment manager for the Fund (the Investment Manager), or one of the affiliates of SEI or the Investment Manager, or any other Fund maintained by SEI, the Investment Manager, or one of their affiliates, and if, at the time of the transaction, acquisition or holding, the interest of the Participating Plan, together with the interests of all other Participating Plans maintained by the same employer or employee organization on the Fund, does not exceed 10 percent of the total of all assets in the Fund.

(2) *Special Transactions Not Meeting the Criteria of Section I(a)(1) Between Employers of Employees Covered by a Multiemployer Plan and the Fund.* Any transaction between an employer (or an affiliate of an employer) of employees covered by a multiemployer plan (as defined in section 3 37(A) of the Act and section 414(f)(1) of the Code) that is a Participating Plan, and the Fund, or any acquisition or holding by the Fund of employer securities or employer real property, if at the time of the transaction, acquisition or holding—

The interest of the multiemployer plan in the Fund exceeds 10 percent of the total assets in the Fund, but the employer is not a "substantial employer" with respect to the plan and would not be a "substantial employer" if "5 percent" were substituted for "10 percent" in the definition of "substantial employer."

(b) The restrictions of section 406(a)(1)(A) through (D) and section 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the transactions described below, if the conditions of Section III are met.

(1) *Certain Leases and Goods.* The furnishing of goods to the Fund by a party in interest with respect to a Participating Plan or the leasing of real property owned by the Fund to such party in interest and the incidental furnishing of goods to such party in interest by the Fund, if—

(A) In the case of goods, they are furnished to or by the Fund in connection with real property owned by the Fund;

(B) The party in interest is not SEI, the Investment Manager, or any affiliate of SEI or the Investment Manager, or one of the other Funds; and

(C) The amount involved in the furnishing of goods or leasing of real property in any calendar year (including the amount under any other lease or arrangement for the furnishing of goods in connection with the real property investments of the Fund with the same party in interest, or any affiliate thereof) does not exceed the greater of $25,000 or 0.5 percent of the fair market value of the assets of the Fund on the most recent valuation date of the Fund prior to the transaction.

(2) *Transactions Involving Places of Public Accommodation.*

The furnishing of services, facilities and any goods incidental to such services and facilities by a place of public accommodation owned by the Fund to a party in interest with respect to a Participating Plan, if the services, facilities and incidental goods are furnished on a comparable basis to the general public.

(c) The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the following transaction if the conditions of Section III are met:

Any transaction between the Fund and a person who is a party in interest with respect to a Participating Plan, if—

(1) The person is a party in interest (including a fiduciary) solely by reason of providing services to the Participating Plan, or solely by reason of a relationship to a service provider described in section 3(14)(F), (G), (H) or (I) of the Act, or both, and the person neither exercised nor has any discretionary authority, control, responsibility or influence with respect to the investment of the Participating Plan's assets in, or held by, the Fund;

(2) At the time of the transaction, the interest of the Participating Plan, together with the interests of any other Participating Plan maintained by the same employer or employee organization in the Fund, does not exceed 20 percent of the total of all assets in the Fund; and

(3) The person is not SEI, the Investment Manager, or an affiliate of SEI or the Investment Manager.

(d) The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply

to the purchase and sale of units of beneficial interest in the Fund if no more than reasonable compensation is paid therefor, each purchase and sale is authorized in writing by a fiduciary of the Participating Plan who is independent of SEI, the Investment Manager, or any of the affiliates of SEI or the Investment Manager, and the applicable conditions of Section III are met.

Section II. Excess Holdings Exemption for Employee Benefit Plans

(a) The restrictions of section 406(a) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to any acquisition or holding of qualifying employer securities or qualifying employer real property (other than through the Fund) by a Participating Plan if (1) the acquisition or holding constitutes a prohibited transaction solely by reason of being aggregated with employer securities or employer real property held by the Fund; (2) the requirements of either paragraph (a)(1) or paragraph (a)(2) of Section I of this exemption are met; and (3) the applicable conditions set forth in Section III of this exemption are met.

Section III. General Conditions

(a) At the time the transaction is entered into, and at the time of any subsequent renewal thereof that requires the consent of SEI, the Investment Manager or an affiliate of SEI or the Investment Manager, the terms of the transaction are not less favorable to the Fund than the terms generally available in arm's-length transactions between unrelated parties.

(b) SEI, the Investment Manager, or the affiliates of SEI or the Investment Manager, maintain for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (c) of this Section III to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to the circumstances beyond the control of SEI, the Investment Manager, or an affiliate of SEI or the Investment Manager, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (c) below.

(c)(1) Except as provided in section 2 of this paragraph (c) and notwithstanding any provision of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (b) of this Section III are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department of the Internal Revenue Service,

(B) Any fiduciary of a Participating Plan who has authority to acquire or dispose of the interests in the Fund of the Participating Plan or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any Participating Plan or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any Participating Plan, or any duly authorized employee of representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this paragraph (c) shall be authorized to examine trade secrets of SEI, the Investment Manager, or any affiliate of SEI or the Investment Manager, or commercial or financial information which is privileged or confidential.

Section IV. Definitions and General Rules

For the purposes of this exemption,

(a) The term "the Fund" shall include any collective investment fund that may thereafter be established by SEI or any affiliate of SEI, and which will be operated and managed by the Investment Manager or any affiliate of the Investment Manager in essentially the same manner as the SEI Property Fund.

(b) An "affiliate" of a person includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, under common control with the person,

(2) Any officer, director, employee, relative of, or partner in any such person, and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(c) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term "relative" means a "relative" (as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or sister.

(e) The term "substanial employer" means for any plan year an employer (treating employers who are members of the same affiliated group, within the meaning of section 1563(a)(4) and (e)(3)(c) of the Code, as one employer) who has made contributions to or under a multiemployer plan for each of—

(1) The two immediately preceding plan years, or

(2) The second and third preceding plan years, equaling or exceeding 10 percent of all employer contribution paid to or under that plan for each year.

(f) The term as of which any transaction, acquisition or holding occurs is the date upon which the transaction is entered into, the acquisition is made or the holding commences. In addition, in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into, or an acquisition is made, on or after the effective date of this exemption, or a renewal that requires the consent of the Fund occurs on or after the effective date of this exemption, and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, or at the time the acquisition is made, the requirements will continue to be satisfied thereafter with respect to the transaction or acquisition and the exemption shall apply thereafter to the continued holding of the property so acquired. Notwithstanding the foregoing, this exemption shall cease to apply to transactions exempt by virtue of subsections I(a)(1) and (I)(c) at such time as the interest of the Participating Plan exceeds the precentage interest limitations set forth in those subsections, unless no portion of such excess results for an increase in the assets allocated to the Fund by the Participating Plan. For this purpose, assets allocated do not include the investment of Fund earnings. Nothing in this paragraph (f) shall be construed as exempting a transaction entered into by the Fund which becomes a transaction described in section 406 of the Act or section 4975 of the Code while the transaction is continuing, unless the conditions of the exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption.

(g) Each Participating Plan shall be considered to own the same proportionate undivided interest in each asset of the Fund as its proportionate

interest in the total assets of the Fund as calculated on the most recent preceding valuation date of the Fund.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 16, 1987 at 52 FR 19806. Written Comments: The applicant submitted a comment with respect to the Notice of Proposed Exemption (the Notice).

Paragraph 4 of the Summary of Facts and Representations in the Notice states that none of the individual Trustees of the Fund, nor any of the employees officers, directors, or shareholders of SEI, the Investment Manager, or the affiliates of SEI or the Investment Manager, will exercise any discretionary authority over or otherwise participate in the decision of any plan to invest in the Fund. Paragraph 4 states further that none of the individual Trustees of the Fund, nor any of the employees, officers, directors, or shareholders of SEI, the Investment Manager, or the affiliates of SEI or the Investment Manager, will serve as a director of officer of any sponsor of any Participating Plan.

The applicant states that SEI is a publicly-held corporation whose stock is traded on the NASDAQ Over-the-Counter Markets. The applicant states further that the sponsors of the Participating Plans are likely to be large corporations which may have hundreds of officers, together with a large board of directors. Therefore, the applicant represents that it would be impossible to ensure that no officers or directors of a sponsor of a Participating Plan own any stock of either SEI or the Investment Manager. However, the Securities and Exchange Commission requires a filing of Form 13–D when a person owns five percent or more of a company's stock. SEI states that it can monitor compliance at this level. Accordingly, the applicant wishes to restrict the representations made in Paragraph 4 of the Notice to shareholders owning a five percent or more interest in SEI or the Investment Manager or an affiliate of SEI or the Investment Manager.

After consideration of the entire record, the Department has determined to grant the exemption.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 20th day of August, 1987.

Elliot I. Daniel,

Associate Director for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 87–19488 Filed 8–24–87; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D–6605] et al.

Proposed Exemptions; Classic Autos; Ltd., et al.

AGENCY: Pension and Welfware Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions for the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N–5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, NW, Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete

statement of the facts and representations.

Classic Autos, Ltd. Pension Plan and Trust (the Plan) Located in Milford, MI

[Application No. D-6885]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in Rev. Proc. 75-26 (1975 C.B. 772). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply, effective May 18, 1982, to the past contribution to the Plan, on May 18, 1982, of the vendor's interests (the Interests) in two land contracts by Classic Autos, Ltd. (the Employer).[1]

Summary of the Facts and Representations

1. The Plan is a defined benefit pension plan with one participant, Mr. Saunders. As of December 31, 1982, the Plan had assets of approximately $90,600. Mr. Saunders and his wife (the Saunders) are the Plan's trustees.

2. The Interests represent the seller's interests in two land contracts (the Contracts) which involved sales of real property from the Saunders to unrelated third parties. One Contract, dated March 14, 1978, had a remaining principal balance of $14,107.58 as of the date of the transaction, bore an interest rate of 8½%, requires payments of $170.00 per month, has no due date and is secured by real property which was sold for $22,000. The other Contract, dated November 19, 1978, had a remaining principal balance of $11,116.04, bore interest at a rate of 9%, requires payments of $125.00 per month, is due November 19, 1987 and is secured by real property which was sold for $13,000.

3. The applicant represents that in 1982, the Employer was experiencing financial difficulties as a result of the overall depressed economy of the Detroit metropolitan areas. As a result, the Employer was not able to make the necessary cash contribution to the Plan. Mr. Saunders contributed the Interests to the Employer to provide the Employer with sufficient cash equivalents to be able to fund the Plan. The Employer then contributed the Interests to the Plan.

4. The applicant represents that the Saunders consulted with their attorney with respect to the contribution. The Saunders then contacted the Plan's contract administrator, Retirement Planning & Servicing, Inc. (RPS) to determine the proper interest rate to utilize in discounting the Interests. RPS estimated that based on the payment history of and the security underlying the Interests, that an interest rate between the short-time Treasury Bill rates and Government National Mortgage Association (GNMA) yield rates was appropriate. At the time of the contribution, short-term Treasury Bill rates were approximately 12.8%, and GNMA yield rates were approximately 13.7%. RPS decided that, since GNMA rates were for longer term obligations, an interest rate between Treasury Bill and GNMA rates were appropriate and discounted the Interests to yield 13%, which RPS believed represented a fair market rate of return for the Interests. Thus, the Interests, with a combined outstanding principal of $25,224.62, were valued at $21,451.28 for the purposes of the contribution.

5. The applicant represents that the Saunders relied on prior counsel's determination that the transaction was proper, upon RPS's determination as to the proper value of the Interests, and were not aware that the transaction was prohibited until it was discovered during an audit of the Plan by the Internal Revenue Service, after which this exemption application was filed.

6. In summary, the applicant represents that the transaction satisfies the criteria of section 4975(c)(2) of the Code because: (a) Mr. Saunders is the Plan's sole participant, consulted prior legal counsel and relied on RPS in determining the fair market value of the Interests; (b) the Interests were the only contribution the Employer could afford to make for the Plan year; and (c) the Interests represented less than 25% of the Plan's assets.

FOR FURTHER INFORMATION CONTACT: David Lurie of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Medical Tree Pharmacy, Inc. Pension Plan (the Plan) Located in Santa Cruz, California

[Application No. D-6904]

Proposed Exemption

The Department is considering granting an exemption under the authority section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the sale of a certain parcel of real property located in Kailua-Kona, Hawaii by the Plan to Medical Tree Pharmacy, Inc. (the Employer), provided that the terms and conditions of the sale are at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party on the date the transactions is consummated.

Summary of Facts and Representations

1. The Plan is a defined contribution pension plan with two plan participants. The two Plan participants are Thomas and Helene Dembski, the co-owners of the Employer.[2] As of the Plan year ending September 30, 1986 (FY 85) the Plan had total net assets of $74,351. The trustee of the Plan is Thomas Dembski (the Trustee).

2. On February 2, 1982, the Plan purchased an unimproved residential lot located in Kailua-Kona, Hawaii (the Property). The Property was purchased from an unrelated party at a purchase price of $35,000. The Property represents 40% of Plan assets. The Trustee believed that the Property would appreciate in value, and thus be a good investment for the Plan. However, the Property has not appreciated in value.

3. An exemption is requested to permit the sale of the Property by the Plan to the Employer. The proposed purchase price is $37,397. The Plan has paid another $2,397 in property taxes and association dues in connection with the Property. The amount of $37,397 is based upon an independent appraisal of the Property performed by Bill M. Brodbeck, M.A.I. (the Appraiser). The Appraiser established the fair market value of the Property at $35,000 as of November 12, 1985. The Appraiser has updated his original appraisal and determined the fair market of the Property remained at $35,000 as of November 6, 1986.

4. The applicant represents that the sale of the Property would be in the best interests of the Plan because the Property has not appreciated in value and the proceeds from the sale would be better invested in money market certificates or bonds.

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[1] Since William Saunders is the sole shareholder of the Employer and is the sole plan participant, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

[2] Since Thomas and Helen Dembski are co-owners of the Employer, the only participants in the Plan, and are spouses, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

5. In summary, the applicant represents that the proposed transaction meets the statutory criteria of section 408(a) because:

(1) The Trustee has determined that the proposed transaction is in the interests of and protective of the Plan and its participants and beneficiaries;

(2) The Plan will be able to dispose of a non-appreciating asset which represents approximately 40% of Plan assets; and

(3) The Plan will receive not less than the fair market value of the Property.

FOR FURTHER INFORMATION CONTACT: Linda Hamilton of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Masonry Vacation Trust Fund (the Vacation Plan) and Masonry Industry Apprenticeship and Journeyman Training Fund (the Training Plan; collectively, the Plans) Located in Portland, Oregon

[Application Nos. D–7016 and D–7023, respectively]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(b)(2) of the Act shall not apply to the proposed transfer by the Vacation Plan to the Training Plan of $10,000 from certain residual assets (the Reserves) that are held by the Vacation Plan.

Summary of Facts and Representations

1. The Vacation Plan is a multiemployer welfare plan established in accordance with section 302 of the Labor Management Relations Act of 1947, as amended. The Vacation Plan was established on January 1, 1976 pursuant to the terms and conditions of a trust agreement (the Vacation Plan Trust Agreement) between the Bricklayers International Union and Allied Crafts, Local No. 1 of Oregon (the Union) and two employer associations, the Mason Contractors Association of Oregon (the Mason Contractors Association) and the Tile Contractors Association of Oregon. The Vacation Plan maintains its principal place of business in Portland, Oregon. It holds and administers payments received by contributing employers who are signatory to certain collective bargaining agreements in order to provide vacation benefits to participants in the Vacation Plan. As of December 31, 1986, the Vacation Plan had 603 participants and net assets of $62,255.

2. The Training Plan is a multiemployer welfare plan that was established on January 1, 1965 also in accordance with the Labor Management Relations Act of 1947, as amended. Under the terms of a trust agreement (the Training Plan Trust Agreement) between the Union and the Mason Contractors Association, the Training Plan instructs apprentices and it trains and retrains journeymen and mechanics in the performance of all work within the authority of the Union. As of October 31, 1986, the Training Plan had 300 participants and net assets of $19,544.

3. The geographic jurisdictions covered by the collective bargaining agreements under which the Plans have been established include various countries in the States of Oregon and Washington. Both Plans have three employer and three Union trustees (the Trustees). Two of the Trustees are common to each Plan. In addition, the applicants represent that the Plans share similar participants but they are not parties in interest with respect to each other within the meaning of section 3(14) of the Act.

4. The Vacation Plan pays out vacation benefits to participants based upon employer contributions. Vacation benefits are paid at the rate of $1 per hour for journeymen and apprentices and at the rate of $.50 per hour for helpers. On a monthly basis, vacation benefits and remittance reports are submitted by each contributing employer to Kipp and Company Administration, Inc. of Portland, Oregon, which serves as the Vacation Plan Administrator (the Vacation Plan Administrator). The funds are then deposited into individual savings accounts established on behalf of the participants with First Interstate Bank of Oregon (the Bank), located in Portland, Oregon. Vacation funds become immediately available to a participant provided the participant has completed a W–9 Form that will permit the Bank to report any interest earned on the participant's account to the Internal Revenue Service. If the participant has not completed such form, his/her vacation benefits will be deposited on behalf of the participant in the general account of the Vacation Plan.

5. Article X, Section 10.2 and Article XI, Section 11.1 of the Vacation Plan Trust Agreement provides that the amount credited to a participant's account in the Vacation Plan may accumulate from year to year. However, if the participant's vacation account becomes inactive (i.e., no deposits or withdrawals are made) for a period of 36 consecutive calendar months, all monies revert to the Vacation Plan and are considered a payment by the employee to the Vacation Plan. Section 11.2 of Article XI states that the Vacation Plan Trustees may, at their discretion, transfer unclaimed payments to any other tax exempt employee benefit plan the Vacation Plan Trustees deem appropriate, including, but not limited to, the Training Plan, provided such contributions are consistent with the federal law and with the laws of the State of Oregon.

6. As of December 31, 1986, the Vacation Plan had on deposit in the Reserves $30,521 in vacation funds that had gone unclaimed for a period of more than three years. The Reserves have been accruing interest since the time of their initial deposit. The Vacation Plan Trustees attribute the Reserves to the failure by Vacation Plan participants to withdraw the funds in a timely manner despite diligent efforts by the Vacation Plan Administrator to locate these individuals. These efforts have included sending letters to participants at their last known address in order to inform participants to withdraw their unclaimed vacation funds from the Bank. In addition, the Vacation Plan Administrator has sent letters to other bricklayer locals located west of the Mississippi River, and, in particular, to those locals having reciprocity agreements with the Vacation Plan. The locals and trust administrators have been asked to review their records and attempt to locate missing participants. Although such efforts have resulted in the location of not more than two participants, the Vacation Plan Administrator has advised that the procedure will continue in the future.

7. Accordingly, the Vacation Plan Trustees request an administrative exemption in order to transfer $10,000 of the cumulative Reserve total to the Training Plan. The transferred Reserves will be used to upgrade training for participants and increase the number of participants in the apprenticeship program. The retained Reserves, in the amount of $20,521, will be used to cover the administrative expenses of the Vacation Plan. In 1985 and 1986, the administrative expenses of the Vacation Plan were $9,607 and $11,079, respectively. The Reserves transferred to the Training Plan as well as those retained by the Vacation Plan will not be used to offset any employer contributions or inure to the benefit of any contributing employer. In addition, in accordance with Article IX, Section 10 of the Training Plan Trust Agreement, the Training Plan will indemnify the Vacation Plan for any and all claims

that may be made upon the Vacation Plan by a participant in connection with the transferred reserves.

9. In summary, it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) the transfer will represent a one-time shifting of assets between the Vacation Plan and the Training Plan; (b) the rights of Vacation Plan participants will be protected by means of the indemnification procedure whereby the Training Plan will indemnify the Vacation Plan for any and all claims, rights and interests a Vacation Plan participant can enforce against the Vacation Plan due to the transfer of $10,000 from the Reserve total; and (c) the Trustees of the Plans have determined that the proposed transfer of the Reserves is in the best interests of the participants and beneficiaries of the Plans.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

Earl R. Waddell & Sons, Inc., Profit Sharing Plan and Trust (the Plan) Located in Fort Worth, TX

[Application No. D-7058]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply, effective January 17, 1986, to the past cash sale, on January 17, 1986, of a $100,000 par value Federal National Mortgage Association (FNMA) mortgage backed trust certificate (the Bond) by Earl R. Waddell & Sons, Inc. (the Employer) to the Plan, provided that the Plan paid no more than the Bond's fair market value as of the date of the transaction.

Summary of Facts and Representations

1. The Plan is a defined contribution profit sharing plan. It has 32 participants and, as of June 30, 1986, assets of $2,885,925. The trustees (the Trustees) of the Plan are Allen R. Waddell, Mark S. Waddell and Marsha W. Moller, who are also shareholders and employees of the Employer and participants of the Plan.

2. The Bond is a security issued by FNMA and backed by home mortgages. The Bond has a par value of $100,000, earns interest at an annual rate of 10.9% and matures in December, 1987. On January 17, 1986, the Bond had a market value of $104,187.50, according to quotations in the Wall Street Journal, which produced a yield of 8.33%. In addition, there was accrued and unpaid interest of $908.33 owed to the Employer on the Bond.

3. The Employer sold the Bond to the Plan for its par value of $100,000. The $4,187.50 difference in the market value and the sale price, and the $908.33 in accrued and unpaid interest was treated as a contribution to the Plan for the Plan year ending June 30, 1986, for which the Employer took an income tax deduction.

4. The applicant represents that neither the Employer nor the Trustees knew that the sale of the Bond to the Plan was a prohibited transaction. They believed that the transaction was in the interests of the Plan and its participants and beneficiaries in that the Plan obtained the Bond at a price more favorable than the Plan would have paid for a similar bond on the market. The applicant also represents that the Plan bore no expenses with respect to the transaction.

5. In summary, the applicant represents that the transaction satisfied the criteria of section 408(a) of the Act because:

(a) The Plan benefited from the transaction because the Plan was able to purchase the Bond at a substantial discount from its fair market price; (b) the Plan bore no expenses with respect to the sale; and (c) the price of the Bond was determined by reference to the quotation listed in the Wall Street Journal.

FOR FURTHER INFORMATION CONTACT: David Lurie of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Victor J. Tofany, M.D., P.C. Employee Retirement Plan and Trust (the Plan) Located in Rochester, New York

[Application No. D-7174]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale (the Sale) by the Plan of a certain parcel of unimproved real property (the Property) to Victor J. Tofany, M.D. (Dr. Tofany), a disqualified person with respect to the Plan; provided that the terms and conditions of the Sale are not less favorable to the Plan than those obtainable in an arm's length transaction with an unrelated party.

Summary of Facts and Representations

1. The Plan is a money purchase pension plan with total assets of $260,175.69 as of May 31, 1986. Dr. Tofany is the sole participant and he and Marion D. Tofany are the trustees of the Plan.[3]

2. The Property is located at 2000 Townline Road, in the town of Springwater, Livingston County, New York. The Plan purchased the Property, constituting 86.1971 acres, from an unrelated party on June 18, 1981 for $35,000. Since the acquisition of the Property, the Plan has expended $4,195.86 in real estate taxes. The applicant represents that the Property has not been improved and that he has not used the Property during the holding period.

3. The applicant requests an exemption that will permit the Plan to sell the Property to Dr. Tofany for cash in order to improve the Plan's liquidity affording the trustees the opportunity to seek investment alternatives offering greater diversification of assets.

4. The Property was appraised by William Hugh Turner, a qualified independent real estate appraiser with RI-CO Realty, Inc. in Fishers, New York, as of May 5, 1987 and updated as of June 16 and July 7, 1987. The applicant represents that he and Mr. Turner are unrelated and are not engaged in any business dealings. Mr. Turner appraised the fair market value of the Property as $48,216. The applicant proposes to purchase the Property from the Plan for cash in amount of its fair market value on the date of the Sale. The fair market value of the Property is greater than the Plan's costs and expenses for the acquisition and holding of the Property. The applicant represents that the Plan will incur no expenses or fees in connection with the Sale.

5. In summary, the applicant represents that the proposed transaction meets the statutory criteria of section 408(a) because:

(1) The Sale will be a one-time transaction for cash;

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[3] Since Dr. Tofany is the sole Plan participant, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II pursuant to section 4975 of the Code.

(2) The Sale will improve the Plan's liquidity;

(3) The Plan will receive the fair market value of the Property as determined by a qualified independent real estate appraiser; and

(4) The Plan will pay no expenses or fees in connection with the Sale.

Notice to Interested Persons: Because Dr. Tofany is sole Plan participant, the Department has determined that there is no need to distribute the notice of pendency of the proposed exemption to interested persons. Comments and requests for hearing must be received within 30 days of the date of publication of this notice of proposed exemption.

FOR FURTHER INFORMATION CONTACT: Mrs. Betsy Scott of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 20th day of August, 1987.

Elliot I. Daniel,

Associate Director for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 87-19489 Filed 8-24-87; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities; Meetings

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506:

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786-0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the dislosure of which would constitute a clearly unwarranted invasion of personal privacy; or (3) information the disclosure of which would significantly frustrate implementation of proposed agency action, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

1. DATE: September 10-11, 1987
   TIME: 9:00 a.m. to 5:00 p.m.
   ROOM: 430
   PROGRAM: This meeting will review applications for Preservation Projects, submitted to the Office of Preservation, for projects beginning after January 1, 1988.
2. DATE: September 4, 1987
   TIME: 9:00 a.m. to 3:00 p.m.
   ROOM: 730
   PROGRAM: This meeting will review applications for United States Newspaper Programs, submitted to the Office of Preservation, for projects beginning after January 1, 1988.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 87-19430 Filed 8-24-87; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

Task Force on Women, Minorities and the Handicapped in Science and Technology; Meeting and Public Hearing

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the task force followed by a public hearing on September 22, 1987.

Meeting:

Name: Task Force on Women, Minorities, and the Handicapped in Science and Technology.

Date and Time: September 22, 1987, 7:30 a.m. to 9:15 a.m.

Place: Conference Rooms G&H, Conference Center, University of New Mexico, 1634 University Blvd., NE, Albuquerque, New Mexico.

Purpose: The purpose of the task force on Women, Minorities and the Handicapped is to: Examine the current status of women, minorities and the disabled in science and engineering positions in the federal government and in federally assisted research programs; coordinate existing Federal programs designed to promote the employment of women, minorities and physically disabled scientists and engineers; suggest cooperative interagency programs for promoting such employment; identify exemplary programs in the state, local or private sectors; and develop a long-range plan to advance opportunities for women, minorities, and disabled persons in science and technology.

Agenda: Reports will be heard on progress of the subcommittees on Employment, Research, Higher Education, Precollege Education, and

Social Aspects, as well as other business of the task force.

Public Hearing

Name: Task Force on Women, Minorities, and the Handicapped in Science and Technology.

Date and Time: September 22, 1987, 9:30 a.m. to 4:45 p.m.

Place: Conference Center, University of New Mexico, 634 University Boulevard, NE, Albuquerque, New Mexico.

Purpose: The task force will seek testimony from interested parties on innovative ways to increase opportunities for women, minorities and the handicapped in science and technology in the areas of employment, research, higher education, precollege education, and social aspects.

Testimony will be heard in three ways: Scheduled testimony of ten-minute summary presentations accompanied by longer written statements and supporting documents for the record; summary statements from the floor of 3-minute duration accompanied by any longer written statements or materials for the record; and written testimony submitted to the task force offices from those who cannot be heard because of time constraints or those who cannot attend.

Anyone wishing to testify or submit a statement for the record should write Sue Kemnitzer, Executive Director, Task Force on Women, Minorities, and the Handicapped in Science and Technology; 330 C Street, SW; Washington, DC 20201.

All meetings and public hearings of the task force are open to the public and all proceedings will be recorded and will be available at the task force offices.

Sue Kemnitzer,

Executive Director.

August 17, 1987.

[FR Doc. 87-19371 Filed 8-24-87; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Low-Level Radioactive Waste Disposal Facility; Availability of Publication Concerning Review of a License Application

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the availability of a publication which describes the NRC's process for licensing a low-level radioactive waste disposal facility within the time required by the Low-Level Radioactive Waste Policy Amendments Act of 1985. This document also estimates the level of effort and expertise that is needed to review a license application within the required time. It is intended to be used by the NRC staff as well as States and interested parties to provide a better understanding of what the NRC envisions will be involved in licensing a low-level radioactive waste disposal facility.

ADDRESS: Copies of NUREG-1274 may be purchased by calling the U.S. Government Printing Ofice on (202) 275-2060 or 2171 or by writing to the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37081, Washington, DC 20013-7082.

FOR FURTHER INFORMATION CONTACT: Clayton L. Pittiglio, Jr., Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 427-4529.

SUPPLEMENTARY INFORMATION: The NRC is the Federal agency that has the responsibility for licensing commercial low-level radioactive waste disposal facilities for Non-Agreement States. The Low-Level Radioactive Waste Policy Amendments Act of 1985 (LLRWPAA) requires that the NRC establish procedures and develop the technical capability to process the license application for a low-level radioactive waste disposal facility and to complete the review (except licensing hearing) of the application, to the extent practicable, within 15 months of its receipt. The NRC staff's review includes (1) the evaluation of an applicant's Safety Analysis Report (SAR) and the issuance of a draft and final Safety Evaluation Report (SER) and (2) the evaluation of an applicant's Environmental Report (ER) and the issuance of a draft and final Environmental Impact Statement (EIS). The preparation of the SER and EIS will take place concurrently.

This document also (1) identifies the resources, personnel, and disciplines that the staff believes are needed to evaluate both the SAR and the ER, (2) defines the steps necessary to complete the review within the required 15 months, and (3) provides the rationale and regulatory basis for the various license review steps.

Dated at Silver Spring, Maryland, this 19th day of August 1987.

For the Nuclear Regulatory Commission.

Michael S. Kearney,

Acting Chief, Regulatory Branch, Division of Low-Level Waste Management and Decommissioning, NMSS.

[FR Doc. 87-19498 Filed 8-24-87; 8:45 am]

BILLING CODE 7590-01-M

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a revision to a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Revision 2 to Regulatory Guide 10.8, "Guide for the Preparation of Applications for Medical Use Programs," describes the type and extent of information needed by the NRC to evaluate an application for a medical use license. This revised guide reflects the recent revision to 10 CFR Part 35, "Medical Use of Byproduct Material" (51 FR 36932).

Comments and suggestions in connections with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082, telephone (202) 275-2060 or (202) 275-2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland this 17th day of August 1987. For the Nuclear Regulatory Commission.

Eric S. Beckjord,

Director, Officer of Nuclear Regulatory Research.

[FR Doc. 87-19439 Filed 8-24-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-335]

Exemption; Florida Power and Light Co. (St. Lucie Plant, Unit No. 1)

I

Florida Power and Light Company (the licensee) is the holder of Facility Operating License No. DPR-67 that authorizes the operation of the St. Lucie Plant, Unit No. 1 (the facility) at a steady-state power level not in excess of 2700 megawatts thermal. The facility is a pressurized water reactor (PWR) located at the licensee's site in St. Lucie County, Florida. The license provides, among other things, that the facility is subject to all rules, regulations and orders of the Commission now or hereafter in effect.

II

10 CFR 50.54(o) states that primary reactor containments shall be subject to the requirements set forth in Appendix J to this part. Appendix J to 10 CFR Part 50, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors," sets forth the detailed requirements for containment leakage testing. These test requirements provide for preoperational and periodic verification by tests of the leak-tight integrity of the primary reactor containment and systems and components which penetrate containment of water-cooled power reactors, and establish the acceptance criteria for such tests.

Section III of Appendix J addresses the specific leakage testing requirements.

III

An exemption request was submitted by the licensee by letter dated January 9, 1987.

IV

The licensee's proposed leak testing of containment air locks is in compliance with the requirements of Appendix J to 10 CFR Part 50, with one exception. The licensee has requested an exemption from paragraph III.D.2(b)(ii) of Appendix J, which states:

> Air locks opened during periods when containment integrity is not required by the plant's Technical Specifications shall be tested at the end of such periods at not less than P_a.

Whenever the plant is in cold shutdown, containment integrity is not required. However, if an air lock is opened during cold shutdown, paragraph III.D.2(b)(ii) requires that an overall air lock leakage test at not less than P_a be conducted after it is closed. The existing air lock doors are so designed that a full pressure, i.e., P_a (39.6 psig), test can only be performed after strong backs (structural bracing) have been installed on the inner door. Strong backs are needed since the pressure exerted on the inner door during the test is in a direction opposite to that of the accident pressure direction. The strong backs are extremely difficult to install and the outer door must be opened to remove the strong backs. Installing strong backs, performing the test, and removing the strong backs, is a cumbersome process requiring at least 14 hours during which access through the air lock is prohibited.

Alternatively, the licensee proposes to test the seals of the inner and outer doors by pressurizing the area between the seals and verifying an acceptable leakage rate prior to returing to a plant operating condition requiring containment integrity. The licensee contends this proposal will provide adequate assurance of air lock integrity without imposing undue delays on return to power operation.

If the periodic 6-month test of paragraph III.D.2(b)(i) and the test required by paragraph III.D.2(b)(iii) are current, there should be no reason to expect an air lock to leak excessively just because it has been opened during cold shutdown or refueling.

Moreover, if maintenance has been performed on the air lock since the last successful test pursuant to paragraph III.D.2(b)(i), an overall air lock test will be performed by the licensee instead of the seal test described above.

Accordingly, the staff concludes that the licensee's proposed approach, consisting of testing the seals of the inner and outer doors by pressurizing the area between the seals and verifying an acceptable leakage rate prior to returning to a plant operating condition requiring containment integrity, is acceptable. Based upon this alternative testing, an exemption from the requirements paragraph III.D.2(b)(ii) of Appendix J to 10 CFR Part 50 is proper.

V

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a); this exemption as described in Section IV is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances as provided in 10 CFR 50.12(a)(2) are present justifying the exemption.

In a letter dated January 9, 1987, the licensee provided information to the "special circumstances" finding required by revised 10 CFR 50.12(a) (See 50 FR 50764).

The licensee stated that the application of the requirements of 10 CFR Part 50, Appendix J, Paragraph III.D.2(b)(ii) is not necessary to serve the underlying purpose of these regulations. The basis for this statement is the fact that the alternatives presented limit the postulated accident doses to within the 10 CFR Part 100 guidelines. Therefore, the special circumstances of § 50.12(a)(2)(ii) apply to these specific exemption requests.

Therefore, the Commission hereby grants the exemption request identified in Section IV above.

Pursuant to 10 CFR 51.32 the Commission had determined that the granting of the Exemption will not result in any significant impact on the environment (52 FR 10273).

This exemption is effective upon issuance.

Dated at Bethesda, Maryland, this 19th day of August, 1987.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 87-19440 Filed 8-24-87; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A, B, and C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Leesa Martin, (202) 632-6817.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on July 30, 1987 (52 FR 28497). Individual authorities established or revoked under Schedules A, B, or C between July 1, 1987, and July 31, 1987.

BEST COPY AVAILABLE

appear in a listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

Schedule A

The following exception was established:

Department of the Air Force

One position of Supervisory Logistics Management Specialist, GM–340–14, in Detachment 2, 2762 Logistics Management Squadron (Special), Air Force Logistics Command, Greenville, Texas. Effective July 13, 1987.

Schedule B

No Schedule B exceptions were established or revoked during July.

Schedule C

The following exceptions were established:

Department of Commerce

One Confidential Assistant to the Under Secretary for International Trade. Effective July 2, 1987.

One Congressional Liaison Assistant to the Director, Congressional Relations Staff for Economic Development Administration. Effective July 24, 1987.

Department of Defense

One Special Assistant for External Affairs and Communications to the Deputy Director, Operational Test and Evaluation. Effective July 8, 1987.

One Personal and Confidential Assistant to the Assistant Secretary of Defense. Effective July 13, 1987.

One Special Assistant to the Director for Strategic Defense Initiative Organization. Effective July 15, 1987.

One Attorney-Advisor (Military) to a Judge, United States Court of Military Appeals. Effective July 16, 1987.

Department of Education

One Staff Assistant to the Deputy Under Secretary for Management. Effective July 9, 1987.

One Confidential Assistant to the Deputy Under Secretary for Management. Effective July 9, 1987.

One Director, Recognition Division, to the Director, Programs for the Improvement of Practice. Effective July 15, 1987.

One Special Assistant to the Deputy Assistant Secretary for Higher Education Programs. Effective July 15, 1987.

One Confidential Assistant to the Executive Director, Intergovernmental Advisory Council on Education. Effective July 15, 1987.

One Confidential Assistant to the Deputy Assistant Secretary for Legislation. Effective July 16, 1987.

One Staff Assistant to the Assistant Secretary for Vocational and Adult Education. Effective July 22, 1987.

One Special Assistant to the Assistant Secretary for Civil Rights. Effective July 24, 1987.

Department of Health and Human Services

One Special Assistant to the Associate Commissioner, Children's Bureau, Administration for Children, Youth and Families. Effective July 13, 1987.

One Director, Office of Public Affairs to the Assistant Secretary for Human Development Services. Effective July 21, 1987.

One Special Assistant to the Director, Office of Intergovernmental Affairs. Effective July 30, 1987.

Department of Housing and Urban Development

One Special Assistant to the Under Secretary. Effective July 2, 1987.

One Special Assistant to the Assistant Secretary for Housing. Effective July 9, 1987.

One Executive Assistant to the Under Secretary. Effective July 13, 1987.

One Special Assistant to the Secretary. Effective July 17, 1987.

One Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations. Effective July 21, 1987.

Two Special Assistants to the General Counsel. Effective July 31, 1987.

Department of Justice

One Confidential Assistant to the Assistant Attorney General, Office of Legislative Affairs. Effective July 1, 1987.

One Confidential Assistant to an Associate Deputy Attorney General. Effective July 7, 1987.

One Special Assistant to the Assistant Attorney General, Office of Legislative Affairs. Effective July 7, 1987.

One Confidential Assistant to the Deputy Assistant Attorney General, Office of Legislative Affairs. Effective July 13, 1987.

One Legislative Aide to the Deputy Assistant Attorney General, Civil Division. Effective July 13, 1987.

Department of State

One Staff Assistant to the Deputy Secretary. Effective July 8, 1987.

One Staff Assistant to the Secretary. Effective July 8, 1987.

One Protocol Specialist (Ceremonials) to the Chief of Protocol. Effective July 16, 1987.

One Foreign Affairs Officer to the Coordinator for Public Diplomacy. Effective July 27, 1987.

One Legislative Officer to the Assistant Secretary for Legislative and Intergovernmental Affairs. Effective July 27, 1987.

Department of Transportation

One Special Assistant, Office of Public Affairs, to the Deputy Administrator, Urban Mass Transit Administration. Effective July 1, 1987.

One Executive Assistant to the Director, Office of Small and Disadvantaged Business Utilization. Effective July 31, 1987.

One Special Assistant to the Secretary. Effective July 24, 1987.

One Research Assistant to the Administrator, National Highway Traffic Safety Administration. Effective July 31, 1987.

Agency for International Development

One Confidential Assistant to the Deputy Administrator. Effective July 7, 1987.

Consumer Product Safety Commission

One Special Assistant to a Commissioner. Effective July 2, 1987.

Council on Environmental Quality

One Confidential Assistant to the Chairman. Effective July 21, 1987.

Federal Home Loan Bank Board

One Assistant to a Board Member. Effective July 29, 1987.

One Staff Assistant to the Chairman. Effective July 30, 1987.

One Special Assistant to the Chairman. Effective July 30, 1987.

Federal Mine Safety and Health Review Commission

One Confidential Secretary to the Chairman. Effective July 13, 1987.

U.S. International Trade Commission

One Staff Assistant to a Commissioner. Effective July 31, 1987.

Interstate Commerce Commission

One Staff Adviser (Management) to a Commissioner. Effective July 9, 1987.

National Transportation Safety Board

One Confidential Assistant to a Member. Effective July 13, 1987.

Securities and Exchange Commission

One Secretary to the Director, Directorate of Economic and Policy Analysis. Effective July 29, 1987.

Small Business Administration

One Special Assistant to the Associate Administrator for Business Development. Effective July 27, 1987.

One Special Assistant to the Director of Veterans Affairs. Effective July 29, 1987.

Authority: 5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P. 218.

U.S. Office of Personnel Management.

[redacted],

Deputy Director.

[FR Doc. 87–19428 Filed 8–24–87; 8:45 am]

BILLING CODE 6325–01–M

SMALL BUSINESS ADMINISTRATION

[Application No. 03/03–0183]

Application For a License to Operate as a Small Business Investment Company; Liberty Partners, L.P

Notice is hereby given of the filing of an application with the Small Business Administration (SBA), pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1987)), by Liberty Partners L.P (the Applicant), One Aldwyn Center, P.O. Box 40A, Villanova, Pennsylvania 19085, for a license to operate as a limited partnership small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (the Act), (15 U.S.C. 661 *et seq.*), and the Rules and Regulations promulgated thereunder.

The general partners, limited partners, and management company of the Applicant are as follows:

Name	Title or relationship
Edward F. Sager, 570 Nottingham Dr., Yardley, PA 19301.	General Partner [1].
Andrew M. Russin, 3404 Queen Lane, Philadelphia, PA 19129.	General Partner [1].
PIBC Management Co., One Aldwyn Center, P.O. Box 209, Villanova, PA 19085.	Corporate General Partner.
Liberty Management Co., One Aldwyn Center, P.O. Box 40–A, Villanova, PA 19085.	Investment advisor/ Manager.

[1] The General Partners collectively will contribute 1% of the partnership capital. They will own 75% of the management company.

The Applicant, a limited partnership organized under the provisions of the State of Delaware Limited Partnership Act and duly qualified to do business in the Commonwealth of Pennsylvania, will begin operations with approximately $2,000,000 of paid-in capital and paid-in surplus to be obtained through a private placement. At this time, it is not known whether any person or entity will own ten percent or more of the capital of the applicant. The applicant will conduct its activities in the Commonwealth of Pennsylvania and the States of New Jersey, Maryland and Delaware, the District of Columbia and Northern Virginia and will consider investments in businesses in other areas of the United States.

Matters involved in SBA's consideration of the application include the general business reputation and character of the general partners and the probability of successful operations of the Applicant under their management including adequate profitability and financial soundness in accordance with the Act and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in the Philadelphia, Pennsylvania area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: August 17, 1987.

[FR Doc. 87–19376 Filed 8–24–87; 8:45 am]

BILLING CODE 8025–01–M

Region VI Advisory Council Executive Board; Public Meeting

The U.S. Small Business Administration Region VI Advisory Council Executive Board will hold a public meeting from 5:00 p.m. Sunday, August 30 to 1:00 p.m. Monday, August 31, 1987 at the Sheraton Old Town Hotel in Albuquerque, New Mexico to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Joseph Pena, Regional Administrator, U.S. Small Business Administration, 8625 King George Drive, Bldg. "C", Dallas, Texas 75235–3391, (214) 767–7643.

Jean M. Nowak,

Director, Office of Advisory Councils.

August 17, 1987.

[FR Doc. 87–19375 Filed 8–24–87; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–87–21]

Petition For Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: September 14, 1987.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–204), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–204), Romm 915G,

FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

This notice is published pusuant to paragraphs (c), (e) and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on August 19, 1987.

Denise D. Hall,

Acting Manager, Program Management Staff.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
25324	Tropical Airways, Inc.	14 CFR 121.380	To allow petitioner to extend 90 days the time which petitioner must document all maintenance records of life-limited parts for the engines of its DC–8 aircraft and to conduct its proving run and conduct regular scheduled operations during this interim period.
25318	Continental Airlines	14 CFR 121.377(a)	To allow petitioner to contract for the repair and overhaul of selected jet engine parts necessary to support DC–10, B737 and A300 series aircraft with the General Electric Aviation Service Operation, Singapore.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
24808	Pan American World Airways	14 CFR 121.433(c)(1)(iii), 121.441(a)(1), and 121.441(b)(1) and Appendix F of Part 121.	To allow petitioner to combine recurrent training and proficiency checks for pilots in command into one annual training and proficiency check session. In addition, the line check required by § 121.440 would be administered 6 months subsequent to the annual training and proficiency check session in lieu of the recurrent training presently required. *Granted, August 10, 1987.*
24085	Air Transport Association	14 CFR Part 121, Appendix H	To allow petitioner to accomplish total initial and upgrade pilot training and checking in a Phase II simulator, in lieu of a Phase III simulator. *Denied, August 10, 1987.*
24915	Alaska Air Carriers Association	14 CFR 121.118, 121.651, 135.213, and 135.225.	To allow petitioner member airlines to use weather observations provided by A-Paid Aviation Weather Reporting Stations observers to meet the requirement of providing the latest weather observations for the purposes of conducting instrument approaches and departures. *Denied, August 10, 1987.*
24779	Flight Safety International	14 CFR 135.293(c) and 135.297	To allow pilots who in the preceding 90 days have successfully completed at least three takeoffs and three landings to a full stop in an airplane to conduct the required 12-month competency checks and the 6-month proficiency checks in petitioner's approved visual simulator. *Denied, June 29, 1987.* Note.—This is a correction to the disposition published on July 15, 1987 (52 FR 26200).

[FR Doc. 87–19386 Filed 8–24–87; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statements; Hays, Travis, and Williamson Counties, TX

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that environmental impact statements will be prepared for each of four segments of a proposed highway project in Hays, Travis, and Williamson Counties, Texas.

FOR FURTHER INFORMATION CONTACT: Gamaliel E. Olvera, District Engineer, Federal Highway Administration, 826 Federal Office Building, Austin, Texas 78701, Telephone: (512) 482–5988.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Texas State Department of Highways and Public Transportation (TSDHPT), intends to prepare an environmental impact statement (EIS) for each of four segments of a proposed highway that will loop around the city of Austin, Texas. In an overview environmental assessment, which covered the entire project, it was stated that separate EIS documents would be prepared for each of the four project segments. This highway is being designated as State Highway 45 (SH 45) and is commonly referred to as the Austin Outer Loop.

Segment 1 will extend from the interchange of I.H. 35 and F.M. 1325 southeast to the intersection of S.H. 71 and F.M. 973. This is a distance of approximately 27 miles. Segment 1 will run through Williamson and Travis Counties. Segment 2 will run from the intersection of S.H. 71 and F.M. 973 southwest to I.H. 35 south of the city of Austin. The approximate distance of this segment is 12 miles. This segment will stay within Travis County. Segment 3 will run from I.H. 35 south of the city of Austin northwest to the intersection of R.M. 620 and Quinlan Park Road, a distance of 27 miles. This segment will involve Travis and Hays Counties. Segment 4 will extend from the intersection of R.M. 620 and Quinlan Park Road northeast to the interchange of I.H. 35 and F.M. 1325. This is an approximate distance of 17 miles, and will run through Travis and Williamson Counties.

Each proposed project will be constructed as multiple lane, controlled access facilities. Each project is needed to relieve the present and projected traffic demands on the exiting roadway network in and around the city of Austin. Many of the existing highways and major arterials are operating near or at design capacity. Projected development in the outlying areas around Austin is expected to aggrevate the present traffic demand problems. Federal funds will be used to finance project construction in each of the segments.

Each segment will consider several build alternatives along with a no-build alternative. The build alternatives will study the possibilities of aligning the highway on existing roadways or on new alignments.

There are currently no plans to hold a formal scoping meeting for the proposed project. A public meeting has been held for each of the four project segments. The Segment 1 public meeting was held on March 3, 1987. The Segment 2 public meeting was held on March 24, 1987. The Segment 3 public meeting was held on March 26, 1987. The Segment 4 public meeting was held on March 5, 1987. Public notices will be given of the time and place of each public hearing. The overview environmental assessment is available for review by the public or any

interested party. The draft EIS for each segment will be available for public and agency review and comment.

To ensure that the full range of issues related to each proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning these proposed actions and the EIS documents should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Gamaliel E. Olvera,

District Engineer, Austin, TX.

[FR Doc. 87-19406 Filed 8-24-87; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: August 19, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: 1041-T
Type of Review: New Collection
Title: Transmittal of Estimated Taxes Credited to Beneficiaries
Description: This form was developed to implement the provisions of Internal Revenue Code section 643(g) which allows a trustee of a trust to elect to assign any overpayment of estimated tax to a beneficiary (ies). This form serves as a transmittal so that Service Center personnel can determine the correct amounts that are to be credited to the beneficiaries.
Respondents: Businesses or other for-profit
Estimated Burden: 375 hours
OMB Number: 1545-0008
Form Number: W-2, W-2c, W-2P, W-2AS, W-2GU, W-2NMI, W-2VI, W-3, W-3c, W-3PR, W-3SS, W-3cPR
Type of Review: Revision
Title: Wage and Tax Statement
Description: Employers report income and withholding information on Form W-2. Payers report payments of pensions, annuities, retirement payments, or distributions from an IRA on Form W-2P. The Forms W-2AS, W-2GU, W-2NMI, and W-2VI are variations of the W-2 for use in U.S. possessions. The W-2 is used by the recipient to prepare his income tax return and by IRS to reconcile employment tax returns. W-3 series forms transmit W-2 series forms to SSA for processing.
Respondents: Individuals or households, State or local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations
Estimated Burden: 54,844,486 hours
OMB Number: 1545-0067
Form Number: 2555
Type of Review: Extension
Title: Foreign Earned Income
Description: This form is used by U.S. citizens and resident aliens who qualify for the foreign earned income exclusion and/or the foreign housing exclusion or deduction. This information is used by the Service to detemine if a taxpayer qualifies for the exclusion(s) or deduction.
Respondents: Individual or households
Estimated Burden: 537,698 hours
OMB Number: 1545-0090
Form Number: 1040SS and 1040PR
Type of Review: Revision
Title: U.S. Self-Employment Tax Return, and Planilla Para La Declaracion De La Contribucion Federal Sobre El Trabajo Por Propia-Puerto Rico
Description: Forms 1040SS (Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands) and 1040PR (Puerto Rico) are used by self-employed individuals to figure and report self-employment tax under Internal Revenue Code chapter 2 of the Subtitle A, and provide credit to taxpayer's social security account.
Respondents: Individuals or households, Farms, Businesses or other for-profit
Estimated Burden: 202,067 hours
OMB Number: 1545-0126
Form Number: 1120F
Type of Review: Revision
Title: U.S. Income Tax Return of a Foreign Corporation
Description: Form 1120F is used by foreign corporations to compute their tax liability. Foreign corporations that do not have a business in the U.S. generally complete Part I. Foreign corporations that have a business in the U.S. generally complete Part II. Foreign corporations that have a branch in the U.S. complete Part III. The IRS uses Form 1120F to determine if the correct amount of income, deductions, and tax have been reported.
Respondents: Businesses or other for-profit
Estimated Burden: 251,877 hours
OMB Number: 1545-0148
Form Number: 2758
Type of Review: Revision
Title: Application for Extension of time to File U.S. Partnership, Fiduciary, and Certain Other Returns
Description: Internal Revenue Code section 6081 permits the Secretary to grant a reasonable extension of time for filing any return, declaration, statement, or other document. This form is used by U.S. partnerships, fiduciary, and certain organizations, to request an extension of time to file their returns. The information is used to determine whether the extension should be granted.
Respondents: Businesses of other for-profit, Non-profit institutions, Small businesses or organizations
Estimated Burden: 13,175 hours
OMB Number: 1545-0181
Form Number: 4768
Type of Review: Revision
Title: Application for Extension of Time to File U.S. Estate (and Generation-Skipping Transfer) Tax Return and/or Pay Estate (and Generation-Skipping Transfer) Tax(es)
Description: Form 4768 is used by estates to request an extension of time to file an estate (and GST) taxes return and/or to pay the estate (and GST) tax and to explain why the extension should be granted. IRS uses the information to decide whether the extension should be granted.
Respondents: Individuals or households, Businesses or other for-profit
Estimated Burden: 14,184 hours
OMB Number: 1545-0539
Form Numbers: RL-177, RC-C-1-583, RL-1-183, RL-1-183A, RC-C
Type of Review: Extension
Title: Supplemental Information for Internal Revenue Agent Applications
Description: Helps agency determine applicant's qualifications and availability for current and future employment opportunities, and advises applicants of their eligibility, rating, or defects in their applications. Form is filed with candidate's application or

personnel action file. Failure to secure information may result in applicant's elimination from consideration for current vacancies, for similar future vacancies, or both.

Respondents: Individuals or households
Estimated Burden: 163 hours

OMB Number: 1545–0619
Form Numbers: 6765
Type of Review: Revision
Title: Credit for Increasing Research Activities (or for Claiming the Orphan Drug Credit)

Description: Internal Revenue Code section 38 allows a credit against income tax for an increase in research activities of a trade or business. Section 28 allows a credit for clinical testing expenses in connection with drugs for certain rare diseases. Form 6765 is used by businesses and individuals engaged in a trade or business to figure and report and credit. The data is used to verify that the credit claimed is correct.

Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Burden: 19,099 hours

OMB Number: 1545–0877
Form Numbers: 1099–A
Type of Review: Extension
Title: Information Return for Acquisition or Abandonment of Secured Property

Description: Form 1099–A is used by lenders to report foreclosures and abandonments of property that is security for a loan.

Respondents: Businesses or other for-profit, Federal agencies or employees
Estimated Burden: 65,000 hours

OMB Number: 1545–0885
Form Numbers: None
Type of Review: Extension
Title: Losses, Expenses, and Interest in Transactions Between Related Taxpayers

Description: Coverage of this regulation includes the deferral and restoration of loss on the sale or exchange of property from one member of a controlled group to another member under section 267(f)(2) Internal Revenue Code as added by section 174(b)(2) of the Tax Reform Act of 1984.

Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Burden: 6,001 hours

Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

U.S. Customs Service

OMB Number: 1515–0037
Form Number: 5931
Type of Review: Reinstatement
Title: Discrepancy Report and Declaration

Description: 19 CFR Part 158 requires the use of Customs Form 5931 by vessel masters or their agents, aircraft commanders, operators of other commercial carriers, Customshouse brokers, importers and other parties to correct the manifest and explain manifest discrepancies. The amendment helped to reduce the burden on the importer by not having the declaration portion of the forms signed by the carriers or their agents.

Respondents: Businesses or other for-profit
Estimated Burden: 34,653 hours

Clearance Officer: B. J. Simpson (202) 566–7529, U.S. Customs Service, Room 6426, 1301 Constitution Avenue, NW., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,
Departmental Reports Management Officer.
[FR Doc. 87–19400 Filed 8–24–87; 8:45 am]
BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: August 19, 1987.

The Department of Treasury has made revisions and resubmitted the following public information collection requirements(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 2224, Main Treasury Building, 15th and Pennsylvania Avenue, NW. Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0052
Form Numbers: 990–PF and 4720
Type of Review: Resubmission
Title: Form 990–PF, Return of Private Foundation or Section 4947(a)(1) Trust Treated as a Private Foundation. Form 4720, Return of Certain Excise Taxes on Charities and Other Persons Under Chapters 41 and 42 of the Internal Revenue Code.

Description: Internal Revenue Code section 6033 requires all private foundations including section 4947(a)(1) trusts treated as private foundations to file an annual information return. Section 53.4940–1(a) of the Income Tax Regulations requires that the tax on net investment income be reported on the return filed under section 6033. Section 6011 requires a report of taxes under Chapter 42 of the Code for prohibited acts by private foundations and certain related parties. Section 4947(a)(1) trusts may file Form 990–PF in lieu of Form 1041 under the provisions of sections 6033 and 6012.

Respondents: Individuals or households, Businesses or other for-profit, Non-profit institutions
Estimated Burden: 856,483 hours

Clearance Officer: Garrick Shear, (202) 535–4297, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,
Departmental Reports Management Officer.
[FR Doc. 87–19401 Filed 8–24–87; 8:45 am]
BILLING CODE 4810-25-M

Customs Service

Harmonized System of Tariff Classification Rulings

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of issuance of tariff classification rulings.

SUMMARY: Classification of imported merchandise for rate of duty and statistical purposes is determined presently in the U.S. by reference to the Tariff Schedules of the United States (TSUS). The U.S. intends to replace the TSUS on January 1, 1988, by acceding to the International Convention on the Harmonized Commodity Description and Coding System (HS). The HS is a multipurpose nomenclature, intended to be used to describe and classify goods in international trade for customs purposes, for reporting all import and export trade statistics, and eventually for freight and transport documentation. To provide the public as much notice as possible of the intended change to the U.S. version of the HS and to provide samples of the nomenclature and numerical coding employed under the HS, for several months Customs has been providing advisory classifications under the HS in certain of the ruling

letters it has issued setting forth binding tariff classifications under the TSUS. Customs now intends to include binding classifications under both the TSUS and the HS in tariff classification rulings issued to the public.

DATE: August 25, 1987.

FOR FURTHER INFORMATION CONTACT: John Durant, Acting Director, Classification & Value Division, (202–566–5865).

SUPPLEMENTARY INFORMATION:

Background

The Harmonized System (HS) is the culmination of a 10 year effort by the member states of the Customs Cooperation Council (CCC), particularly the U.S. and its major trading partners, to develop a single modern structure for product classification which can be used for customs, tariff, trade statistics, and transport documentation purposes. Based on the present Customs Cooperation Council Nonmenclature (CCCN), the HS is a more detailed classification scheme reflecting changes in technology, trade patterns and user requirements.

In August 1981, the President requested the U.S. International Trade Commission to initiate an investigation for the purpose of preparing a conversion of the Tariff Schedules of the U.S. (TSUS; 19 U.S.C. 1202), the current reference source for determining the classification of imported merchandise, into the structure of the HS. The U.S. conversion provides numerical coding beyond the 6-digit categories of the international system, taking into account U.S. tariff and statistical requirements. Thus, each tariff provision is coded in 8-digits and the tariff reporting number in 10-digits.

This conversion, submitted to the President on June 30, 1983, was reviewed and revised by the Trade Policy Staff Committee, Office of U.S. Trade Representative, and republished as TPSC 84–76 on September 30, 1984. A more comprehensive revision was made in October 1986, and this is the basic working document aimed at U.S. adoption of the HS. In July 1987, the office of the U.S. Trade Representative issued a "Proposed United States Tariff Schedule Annotated In The Harmonized System Nomenclature".

The HS Convention was opened for signature on July 1, 1983, and thus far has been signed by 50 countries and customs unions, including nine who have signed without reservation of ratification or have withdrawn their reservation. The U.S. is expected to sign, subject to ratification by the Congress, in the Fall of 1987.

In February 1986, the meeting of the General Agreement on Tariffs and Trade (GATT) Tariff Concessions Committee in Geneva resulted in the firm political commitments of the U.S., Canada, Japan, the European Community, the Nordic countries and Switzerland, to a January 1, 1988, date for entry into force of the International Convention on the HS.

Purpose of Harmonized System

The HS is a multipurpose nomenclature, intended to be used to describe and classify goods in international trade statistics, and eventually for freight and transport documentation. Its use is expected to increase uniformity and predictability of trade data, and promote standardization of trade and transport documentation. Implementation of the HS will have an impact not only upon all areas of trade, *i.e.*, imports, exports, transportation of goods, and trade statistics, but upon all aspects of customs operations, including classification and appraisement of merchandise, selection for and examination of merchandise data entry into the Automated Commercial System (ACS), and the pre-release and release of goods. Brokers and importers will experience significant changes to their entry procedures.

Tariff Classification Rulings

In order to provide the public as much notice as possible of the change to the HS and to provide examples of the nomenclature and numerical coding employed under the HS, for several months the U.S. Customs Service (Customs) has been providing advisory classifications under the proposed U.S. version HS in certain of the ruling letters it has issued setting forth binding tariff classifications under the TSUS. The HS classifications provided in these letters have been accompanied by a caveat stressing that they constitute information of an advisory, nonbinding character and are not challengeable at the present time.

Beginning immediately, the tariff classification rulings issued to the public by Customs upon request under the provisions of Part 177, Customs Regulations (19 CFR Part 177), will contain binding classifications under both the current TSUS and the HS. Rulings setting forth the applicable provisions under both tariff codes will continue to be issued until the HS becomes effective, when rulings under the TSUS will be discontinued.

Rulings issued under the HS can be applied only with respect to merchandise entered, or withdrawn from warehouse, on or after the effective date of the HS, which will be formally announced in a later notice. Until that time, all entries or withdrawals of merchandise will be governed by the TSUS.

Customs will continue to make printed packages of these rulings available to the public as announced in the notice published in the **Federal Register** on August 4, 1987 (52 FR 28928).

R. Rosettis,

Acting Assistant Commissioner, Office of Commercial Operations.

Dated: August 19, 1987.

[FR Doc. 87–19473 Filed 8–24–87; 8:45 am]

BILLING CODE 4820–02–M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 164
Tuesday, August 25, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, August 31, 1987.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed purchase of computers within the Federal Reserve System.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: August 21, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-19587 Filed 8-21-87; 3:31 pm]

BILLING CODE 6210-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

(Northwest Power Planning Council).

ACTION: Notice of closed meeting.

DATE: August 25-26, 1987.

PLACE: Yachats, Oregon.

SUMMARY: The Northwest Power Planning Council will hold a closed meeting on January 27-28, 1987, to discuss internal personnel matters.

FOR FURTHER INFORMATION CONTACT: Ms. Bess Atkins, (503) 222-5161.

Bobbe Fendall,

Federal Register Liaison.

[FR Doc. 87-19521 Filed 8-21-87; 12:52 pm]

BILLING CODE 0000-00-M

POSTAL SERVICE BOARD OF GOVERNORS

Notice of a Meeting

The Board of Governors of the United States Postal Service, pursuant to its bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold a meeting at 1:00 p.m. on Monday, August 31, 1987, in Washington, DC, and at 8:30 a.m. on Tuesday, September 1, 1987, in the Benjamin Franklin Room, U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., Washington, DC. As indicated in the following paragraph, the August 31 meeting is closed to the public. The September 1 meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268-4800.

The Board voted in accordance with the provisions of the Government in the Sunshine Act to close to public observation its meeting scheduled for August 31, 1987, to consider a contract for systems engineering and technical assistance support. (52 FR 29750, August 11, 1987.)

Agenda

Monday Session

August 31, 1987—1:00 p.m. (Closed)

1. Consideration of contract for Systems Engineering and Technical Assistance Support.

Tuesday session

September 1, 1987—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, August 3-4, 1987.
2. Remarks of the Postmaster General.
3. Postal Rate Commission FY 88 Budget Request.
4. Status of CSRS/FERS Retirement Programs.
5. Tentative FY 89 Appropriations Request.
6. Briefing on Origin-Destination-Information-System (ODIS).
7. Briefing on Capital Investment Review Process.
8. Report on Management Information and Research Technology Group Programs.
9. Capital Investments:
   a. Lehigh Valley, PA, GMF & VMF.
   b. Athens, GA, GMF & VMF.
   c. Retail Vending.
   d. Intermediate Delivery Vans.
10. Tentative Agenda for October 5-6, 1987, Meeting in New York City.

David F. Harris,

Secretary.

[FR Doc. 87-19510 Filed 8-21-87; 11:11 am]

BILLING CODE 7710-12-M

Corrections

Federal Register
Vol. 52, No. 164
Tuesday, August 25, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51680; FRL-3221-6]

Certain Chemicals Premanufacture Notices

Correction

In notice document 87-14230 beginning on page 23596 in the issue of Tuesday, June 23, 1987, make the following corrections:

1. On page 23597, in the third column, under P 87-1226, *Toxicity Data*, the second and third lines should read: "kg; Irritation: Skin—Mild, Eye—Irritant."

2. On page 23598, in the third column, under P 87-1248, *Chemical*, in the third line "aromatic" should read "and heterocyclic".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[PF-463; FRL-3219-3]

Pesticide Tolerance Petitions

Correction

In notice document 87-13860 beginning on page 23077 in the issue of Wednesday, June 17, 1987, make the following correction:

On page 23078, in the first column, in paragraph 2., the eighth line should read: "(dimethyl N, N' (thiobis[(methylimino)".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-940-07-4220-10; A-22695]

Proposed Withdrawal and Reservation of Lands; Opportunity for Public Meeting; Arizona

Correction

In notice document 87-14473 beginning on page 23696 in the issue of Thursday, June 25, 1987, make the following land description corrections:

1. On page 23696, in the third column—

Under "T. 10 N., R. 10E.," in Sec. 5, in the first line, "NE½" should read "N½".

2. Under "T. 10 N., R. 10E.," in Sec. 6, in the second line, "MW" should read "NW".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-940-07-4212-12; A-22446]

Realty Action; Arizona

Correction

In notice document 87-17037 beginning on page 26196 in the issue of Tuesday, July 28, 1987, make the following correction in the land description on page 26196:

In the third column, under "T. 15 N., R. 13 W.," in Sec. 16, "all" should read "S½N½;".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-940-07-4212-14; A-20295 thru A-20300]

Sale of Public Land; Arizona

Correction

In notice document 87-11634 appearing on page 19206 in the issue of Thursday, May 21, 1987, make the following correction in the land description:

In the third column, under, "T. 19 N., R. 20 W.," under "Sec. 23.", in the third line, "Lot 1" should read "Lot 11".

BILLING CODE 1505-01-D

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Parts 41 and 42

[SD-210]

Visas; Documentation of Immigrants and Nonimmigrants, Under the Immigration and Nationality Act, as Amended

Correction

In proposed rule document 87-17947 beginning on page 29542 in the issue of Monday, August 10, 1987, make the following corrections:

1. On page 29543, in the third column, in the third complete paragraph, in the second line, remove "of".

§ 41.12 [Corrected]

2. On page 29544, in § 41.12, in the table, under the heading "Class", in the fourth entry, "of of aliens" should read "or of aliens".

Note: For a State Department correction to this document, see the Proposed Rules Section of this issue.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HSQ-148-GNC]

Medicare Program; Selected Performance Information on Hospitals Providing Care to Medicare Beneficiaries

Correction

In notice document 87-18613 beginning on page 30741 in the issue of Monday, August 17, 1987, make the following correction:

On page 30744, the six formulas that appeared on that page are corrected to read as follows:

BILLING CODE 1505-01-D

$$\ln\left(\frac{p}{1-p}\right) = b'x + e$$

$$\Sigma \left\{ d \log p + (1-d) \log (1-p) \right\},$$

$$\ln\left(\frac{p_i}{1-p_i}\right) = b_i'x$$

$$Dj = \Sigma\Sigma \frac{\exp(b'_i x_{i\ j\ k})}{1+\exp(b'_i x_{i\ j\ k})}$$

$$\text{var}(D_j) = \Sigma \left\{ \Sigma\Sigma\, p_{i\ j\ k}(1-p_{i\ j\ k}) p_{i\ j\ k}'(1-p_{i\ j\ k}')\, x'_{i\ j\ k} C(b_i) x_{i\ j\ k}' \right\}$$

$$\text{var}(dj) = \Sigma\, n_{i\ j}\, \delta_{i\ j}(1-\delta_{i\ j})$$

BILLING CODE 1505-01-C

federal register

Tuesday
August 25, 1987

Part II

Environmental Protection Agency

40 CFR Part 13

Claims Collections Standards; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 13

[FRL-3214-9]

Claims Collections Standards

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The U. S. Environmental Protection Agency (EPA) proposes to revise its regulation at 40 Code of Federal Regulations, Chapter I by adding a new Part 13. This revision is necessary to implement the Debt Collection Act of 1982 (Pub. L. 97–365), the Federal guidelines for Agency debt collection issued by the Department of Justice and the General Accounting Office (4 CFR Part 101 *et seq.*) and the guidelines of the Office of Personnel Management (5 CFR Part 550 *et seq.*) on offsets against employee salaries.

This regulation will enhance EPA's ability to collect its debts and reduce delinquencies by providing guidance to its officers and employees on the procedures authorized by the Debt Collection Act of 1982.

DATE: Comments must be received by September 24, 1987.

ADDRESS: Environmental Protection Agency, Office of General Counsel, (LE–132G), 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Ray E. Spears, (202–382–4548) or Thressa M. Pearson, (202–475–8887).

SUPPLEMENTARY INFORMATION:

Background

The Debt Collection Act of 1982 (the Act) amended the Federal Claims Collection Act of 1966, 31 U.S.C. 3711 *et seq.*, the employee offset authority, 5 U.S.C. 5514, the Privacy Act, 5 U.S.C. 552a, and other related statutes.

The following actions have been taken to assist Federal agencies in their implementation of the Act: (1) The General Accounting Office and the Department of Justice issued regulations (49 FR 8889, March 9, 1984) amending the Federal Claims Collection Standards, 4 CFR Parts 101 through 105; (2) the Office of Personnel Management issued regulations (49 FR 27470, July 3, 1984) providing guidance to agencies on the collection of employee debts by offset from pay under 5 U.S.C. 5514; and (3) the Office of Management and Budget issued guidelines (48 FR 15556, April 11, 1983) instructing agencies on changes made to the Privacy Act of 1974.

This regulation is consistent with these standards, guidelines and the common law, and it supplements existing standards under other statutes and regulations.

Section 11 of the Act addresses the question of interest and penalty charges to State and local governments. This section requires agencies to charge interest and administrative costs associated with handling delinquent debts and late penalty charges on outstanding debts on claims owed by "persons." This section also permits waiver of these charges, provided it is done pursuant to government-wide standards and agency regulations. The Act defines "person" to exclude agencies of the United States and State and local governments. EPA, therefore, will not assess nor collect administrative costs and penalty charges associated with its handling of delinquent debts from State and local governments. Additionally, Indian tribes and components of tribal governments are considered local governments for purposes of section 11 of the Act and are not subject to administrative costs and penalty charges. However, EPA will continue to assess and collect interest on delinquent debts owed by State and local governments and by Indian tribes and components of tribal governments pursuant to its common law authority.

Executive Order 12291

Under Executive Order 12291, EPA is required to judge whether a regulation is "major" and, therefore, subject to the regulatory impact analysis requirements of the Order. We have determined that this regulation is not "major" as it will not have a substantial impact on the economy or a large number of individuals or businesses. Consequently, the regulation is not subject to the impact analysis requirements of Executive Order 12291.

List of Subjects in 40 CFR Part 13

Claims collections.

Dated: August 14, 1987.

Lee M. Thomas,

Administrator.

For the reasons set forth in the preamble, EPA proposes to revise 40 CFR Chapter I by adding a new Part 13 to read as follows:

PART 13—CLAIMS COLLECTION STANDARDS

Subpart A—General

Sec.
13.1 Purpose and scope.
13.2 Definitions.
13.3 Interagency claims.
13.4 Other remedies.
13.5 Claims involving criminal activities or misconduct.
13.6 Subdivision of claims not authorized.
13.7 Omission not a defense.

Subpart B—Collection

13.8 Collection rule.
13.9 Initial notice.
13.10 Aggressive collection actions; documentation.
13.11 Interest, penalty and administrative costs.
13.12 Interest and charges pending waiver or review.
13.13 Contracting for collection services.
13.14 Use of credit reporting agencies.
13.15 Taxpayer information.
13.16 Liquidation of collateral.
13.17 Suspension or revocation of license or eligibility.
13.18 Installment payments.
13.19 Analysis of costs; automation; prevention of overpayments, delinquencies or defaults.

Subpart C—Administrative Offset

13.20 Administrative offset of general debts.
13.21 Employee salary offset—general.
13.22 Salary offset when EPA is the creditor agency.
13.23 Salary offset when EPA is not the creditor agency.

Subpart D—Compromise of Debts

13.24 General.
13.25 Standards for compromise.
13.26 Payment of compromised claims.
13.27 Joint and several liability.
13.28 Execution of releases.

Subpart E—Suspension of Collection Action

13.29 Suspension—general.
13.30 Standards for suspension.

Subpart F—Termination of Debts

13.31 Termination—general.
13.32 Standards for termination.

Subpart G—Referrals

13.33 Referrals to the Department of Justice.

Authority: 31 U.S.C. 3711 *et seq.*, and 5 U.S.C. 552a, 5512, and 5514.

Subpart A—General

§ 13.1 Purpose and scope.

This regulation prescribes standards and procedures for the Environmental Protection Agency's (EPA's) collection and disposal of debts. These standards and procedures are applicable to all debts for which a statute, regulation or contract does not prescribe different standards or procedures. This regulation covers EPA's collection, compromise, suspension, termination and referral of debts.

§ 13.2 Definitions.

(a) "Debt" means an amount owed to the United States from sources which

include loans insured or guaranteed by the United States and all other amounts due the United States from fees, grants, contracts, leases, rents, royalties, services, sales of real or personal property, overpayments, fines, penalties, damages, interest, forfeitures (except those arising under the Uniform Code of Military Justice), and all other similar sources. As used in this regulation, the terms "debt" and "claim" are synonymous.

(b) "Delinquent debt" means any debt which has not been paid by the date specified by the Government for payment or which has not been satisfied in accordance with a repayment agreement.

(c) "Debtor" means an individual, organization, association, corporation, or a State or local government indebted to the United States or a person or entity with legal responsibility for assuming the debtor's obligation.

(d) "Agency" means the United States Environmental Protection Agency.

(e) "Administrator" means the Administrator of EPA or an EPA employee or official designated to act on the Administrator's behalf.

(f) "Administrative offset" means the withholding of money payable by the United States to, or held by the United States for, a person to satisfy a debt the person owes the Government.

(g) "Creditor agency" means the Federal agency to which the debt is owed.

(h) "Disposable pay" means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount described in 5 CFR 581.105 (b) through (f). These deductions include, but are not limited to: Social security withholdings; Federal, State and local tax withholdings; health insurance premiums; retirement contributions; and life insurance premiums.

(i) "Employee" means a current employee of the Federal Government including a current member of the Armed Forces.

(j) "Person" means an individual, firm, partnership, corporation, association and includes State and local governments and Indian tribes and components of tribal governments except for purposes of administrative offsets under Subpart C and interest, penalty and administrative costs under Subpart B of this regulation.

(k) "Employee salary offset" means the administrative collection of a debt by deductions at one or more officially established pay intervals from the current pay account of an employee without the employee's consent.

(l) "Waiver" means the cancellation, remission, forgiveness or non-recovery of a debt or debt-related charge as permitted or required by law.

§ 13.3 Interagency claims.

This regulation does not apply to debts owed EPA by other Federal agencies. Such debts will be resolved by negotiation between the agencies or by referral to the General Accounting Office (GAO).

§ 13.4 Other remedies.

(a) This regulation does not supersede or require omission or duplication of administrative proceedings required by contract, statute, regulation or other Agency procedures, *e.g.*, resolution of audit findings under grants or contracts, informal grant appeals, formal appeals, or review under a procurement contract.

(b) The remedies and sanctions available to the Agency under this regulation for collecting debts are not intended to be exclusive. The Agency may impose, where authorized, other appropriate sanctions upon a debtor for inexcusable, prolonged or repeated failure to pay a debt. For example, the Agency may stop doing business with a grantee, contractor, borrower or lender; convert the method of payment under a grant or contract from an advance payment to a reimbursement method; or revoke a grantee's or contractor's letter-of-credit.

§ 13.5 Claims involving criminal activities or misconduct.

(a) The Administrator will refer cases of suspected criminal activity or misconduct to the EPA Office of Inspector General. That office has the responsibility for investigating or referring the matter, where appropriate, to the Department of Justice (DOJ), and/or returning it to the Administrator for further actions. Examples of activities which should be referred are matters involving fraud, anti-trust violations, embezzlement, theft, false claims or misuse of Government money or property.

(b) The Administrator will not administratively compromise, terminate, suspend or otherwise dispose of debts involving criminal activity or misconduct without the approval of DOJ.

§ 13.6 Subdivision of claims not authorized.

A claim will not be subdivided to avoid the $20,000 limit on the Agency's authority to compromise, suspend, or terminate a debt. A debtor's liability arising from a particular transaction or contract is a single claim.

§ 13.7 Omission not a defense.

Failure by the Administrator to comply with any provision of this regulation is not available to a debtor as a defense against payment of a debt.

Subpart B—Collection

§ 13.8 Collection rule.

(a) The Administrator takes actions to collect all debts owed the United States and to reduce debt delinquencies. Collection actions may include sending written demands to the debtor's last known address. Written demand may be preceded by other appropriate action, including immediate referral to DOJ for litigation, when such action is necessary to protect the Government's interest. The Administrator may contact the debtor by telephone, in person and/or in writing to demand prompt payment, to discuss the debtor's position regarding the existence, amount or repayment of the debt, to inform the debtor of its rights (*e.g.*, to apply for waiver of the indebtedness or to have an administrative review) and of the basis for the debt and the consequences of nonpayment or delay in payment.

(b) The Administrator maintains an administrative file for each debt and/or debtor which documents the basis for the debt, all administrative collection actions regarding the debt (including communications to and from the debtor), and its final disposition. Information from a debt file relating to an individual may be disclosed only for purposes which are consistent with this regulation, the Privacy Act of 1974 and other applicable law.

§ 13.9 Initial notice.

(a) When the Administrator determines that a debt is owed EPA, he provides a written initial notice to the debtor. Unless otherwise provided by agreement, contract or order, the initial notice informs the debtor:

(1) Of the amount, nature and basis of the debt;

(2) That payment is due immediately upon receipt of the notice;

(3) That the debt is considered delinquent if it is not paid within 30 days of the date mailed or hand-delivered;

(4) That interest charges and, except for State and local governments and Indian tribes, penalty charges and administrative costs may be assessed against a delinquent debt;

(5) Of any rights available to the debtor to dispute the validity of the debt or to have recovery of the debt waived

(citing the available review or waiver authority, the conditions for review or waiver, and the effects of the review or waiver request on the collection of the debt), and of the possibility of assessment of interest, penalty and administrative costs; and

(6) The address, telephone number and name of the person available to discuss the debt.

(b) EPA will respond promptly to communications from the debtor. Response generally will be within 20 days of receipt of communication from the debtor.

(c) Subsequent demand letters also will advise the debtor of any interest, penalty or administrative costs which have been assessed and will advise the debtor that the debt may be referred to a credit reporting agency (see § 13.14), a collection agency (see § 13.13) or to DOJ (see § 13.33) if it is not paid.

13.10 Aggressive collection actions; documentation.

(a) EPA takes actions and effective follow-up on a timely basis to collect all claims of the United States for money and property arising out of EPA's activities. EPA cooperates with other Federal agencies in their debt collection activities.

(b) All administrative collection actions are documented, in the claim file and the bases for any compromise, termination or suspension of collection actions is set out in detail. This documentation, including the Claims Collection Litigation Report required by § 13.33, is retained in the appropriate debt file.

§ 13.11 Interest, penalty and administrative costs.

(a) *Interest.* EPA will assess interest on all delinquent debts unless prohibited by statute, regulation or contract.

(1) Interest begins to accrue on all debts from the date of the initial notice to the debtor. EPA will not recover interest where the debt is paid within 30 days of the date of the notice. EPA will assess an annual rate of interest that is equal to the rate of the current value of funds to the United States Treasury (*i.e.*, the Treasury tax and loan account rate) as prescribed and published by the Secretary of the Treasury in the **Federal Register** and the Treasury Fiscal Requirements Manual Bulletins, unless a different rate is necessary to protect the interest of the Government. EPA will notify the debtor of the basis for its finding that a different rate is necessary to protect the interest of the Government.

(2) The Administrator may extend the 30-day period for payment where he determines that such action is in the best interest of the Government. A decision to extend or not to extend the payment period is final and is not subject to further review.

(3) The rate of interest, as initially assessed, remains fixed for the duration of the indebtedness. If a debtor defaults on a repayment agreement, interest may be set at the Treasury rate in effect on the date a new agreement is executed.

(4) Interest will not be assessed on interest charges, administrative costs or late payment penalties. However, where a debtor defaults on a previous repayment agreement and interest, administrative costs and penalties charges have been waived under the defaulted agreement, these charges can be reinstated and added to the debt principal under any new agreement and interest charged on the entire amount of the debt.

(b) *Administrative costs of collecting overdue debts.* The costs of the Agency's administrative handling of overdue debts, based on either actual or average cost incurred, will be charged on all debts except those owed by State and local governments. These costs include both direct and indirect costs. Administrative costs will be assessed monthly throughout the period the debt is overdue except as provided by § 13.12.

(c) *Penalties.* As provided by 31 U.S.C. 3717(e)(2), a penalty charge will be assessed on all debts, except those owed by State and local governments, more than 90 days delinquent. The penalty charge will be at a rate not to exceed 6% per annum and will be assessed monthly.

(d) *Allocation of payments.* A partial payment by a debtor will be applied first to outstanding administrative costs, second to penalty assessments, third to accrued interest and then to the outstanding debt principal.

(e) *Waiver.* The Administrator may (without regard to the amount of the debt) waive collection of all or part of accrued interest, penalty or administrative costs, where he determines that—

(1) Waiver is justified under the criteria of § 13.25;

(i) The debt or the charges resulted from the Agency's error, action or inaction, and without fault by the debtor; or

(ii) Collection of these charges would be against equity and good conscience or not in the best interest of the United States.

(2) A decision to waive interest, penalty charges or administrative costs may be made at any time prior to payment of a debt. However, where these charges have been collected prior to the waiver decision, they will not be refunded. The Administrator's decision to waive or not waive collection of these charges is a final agency action.

§ 13.12 Interest and charges pending waiver or review.

Interest, penalty charges and administrative costs will continue to accrue on a debt during administrative appeal, either formal or informal, and during waiver consideration by the Agency; *except* that interest, penalty charges and administrative costs will not be assessed where a statute or a regulation specifically prohibits collection of the debt during the period of the administrative appeal or the Agency review.

§ 13.13 Contracting for collection services.

EPA will use private collection services where it determines that their use is in the best interest of the Government. Where EPA determines that there is a need to contract for collection services it will—

(a) Retain sole authority to resolve any dispute by the debtor of the validity of the debt, to compromise the debt, to suspend or terminate collection action, to refer the debt to DOJ for litigation, and to take any other action under this part which does not result in full collection of the debt;

(b) Require the contractor to comply with the Privacy Act of 1974, as amended, to the extent specified in 5 U.S.C. 552a(m), with applicable Federal and State laws pertaining to debt collection practices (*e.g.*, the Fair Debt Collection Practices Act (15 U.S.C. 1692 *et seq.*)), and with applicable regulations of the Internal Revenue Service;

(c) Require the contractor to account accurately and fully for all amounts collected; and

(d) Require the contractor to provide to EPA, upon request, all data and reports contained in its files relating to its collection actions on a debt.

§ 13.14 Use of credit reporting agencies.

EPA reports delinquent debts to appropriate credit reporting agencies.

(a) EPA provides the following information to the reporting agencies:

(1) A statement that the claim is valid and is overdue;

(2) The name, address, taxpayer identification number and any other information necessary to establish the identity of the debtor;

(3) The amount, status and history of the debt; and

(4) The program or pertinent activity under which the debt arose.

(b) Before disclosing debt information, EPA will:

(1) Take reasonable action to locate the debtor if a current address is not available; and

(2) If a current address is available, notify the debtor by certified mail, return receipt requested, that:

(i) The designated EPA official has reviewed the claim and has determined that it is valid and overdue;

(ii) That within 60 days EPA intends to disclose to a credit reporting agency the informarion authorized for disclosure by this subsection; and

(iii) The debtor can request a complete explanation of the claim, can dispute the information in EPA's records concerning the claim, and can file for an administrative review, waiver or reconsideration of the claim, where applicable.

(c) Before information is submitted to a credit reporting agency, EPA will provide a written statement to the reporting agency that all required actions have been taken. Additionally, EPA will, thereafter, ensure that the credit reporting agency is promptly informed of any substantive change in the conditions or amounts of the debt, and promptly verify or correct information relevant to the claim.

(d) If a debtor disputes the validity of the debt, the credit reporting agency will refer the matter to the appropriate EPA official. The credit reporting agency will exclude the debt from its reports until EPA certifies in writing that the debt is valid.

§ 13.15 Taxpayer information.

(a) The Administrator may obtain a debtor's current mailing address from the Internal Revenue Service.

(b) Addresses obtained from the Internal Revenue Service will be used by the Agency, its officers, employees, agents or contractors and other Federal agencies only to collect or dispose of debts, and may be disclosed to credit reporting agencies only for the purpose of their use in preparing a commercial credit report on the taxpayer for use by EPA.

§ 13.16 Liquidation of collateral.

Where the Administrator holds a security instrument with a power of sale or has physical possession of collateral, he may liquidate the security or collateral and apply the proceeds to the overdue debt. EPA will exercise this right where the debtor fails to pay within a reasonable time after demand, unless the cost of disposing of the collateral is disproportionate to its value or special circumstances require judicial foreclosure. However, collection from other businesses, including liquidation of security or collateral, is not a prerequisite to requiring payment by a surety or insurance company unless expressly required by contract or statute. The Administrator will give the debtor reasonable notice of the sale and an accounting of any surplus proceeds and will comply with any other requirements of law or contract.

§ 13.17 Suspension or revocation of license or eligibility.

When collecting statutory penalties, forfeitures, or debts for purposes of enforcement or compelling compliance, the Administrator may suspend or revoke licenses or other privileges for any inexcusable, prolonged or repeated failure of a debtor to pay a claim. Additionally, the Administrator may suspend or disqualify any contractor, lender, broker, borrower, grantee or other debtor from doing business with EPA or engaging in programs EPA sponsors or funds if a debtor fails to pay its debts to the Government within a reasonable time. Debtors will be notified before such action is taken and applicable suspension or debarment procedures will be used. The Administrator will report the failure of any surety to honor its obligations to the Treasury Department for action under 6 U.S.C. 11.

§ 13.18 Installment payments.

(a) Whenever feasible, and except as otherwise provided by law, debts owed to the United States, together with interest, penalty and administrative costs, as required by § 13.11, will be collected in a single payment. However, where the Administrator determines that a debtor is financially unable to pay the indebtedness in a single payment or that an alternative payment mechanism is in the best interest of the United States, the Administrator may approve repayment of the debt in installments. The debtor has the burden of establishing that it is financially unable to pay the debt in a single payment or that an alternative payment mechanism is warranted. If the Administrator agrees to accept payment by installments, the Administrator may require a debtor to execute a written agreement which specifies all the terms of the repayment arrangement and which contains a provision accelerating the debt in the event of default. The size and frequency of installment payments will bear a reasonable relation to the size of the debt and the debtor's ability to pay. The installment payments will be sufficient in size and frequency to liquidate the debt in not more than 3 years, unless the Administrator determines that a longer period is required. Installment payments of less than $50 per month generally will not be accepted, but may be accepted where the debtor's financial or other circumstances justify. If the debt is unsecured, the Administrator may require the debtor to execute a confess-judgment note with a tax carry-forward and a tax carry-back provision. Where the Administrator secures a confess-judgment note, the Administrator will provide the debtor a written explanation of the consequences of the debtor's signing the note.

(b) If a debtor owes more than one debt and designates how a voluntary installment payment is to be applied among the debts, that designation will be approved if the Administrator determines that the designation is in the best interest of the United States. If the debtor does not designate how the payment is to be applied, the Administrator will apply the payment to the various debts in accordance with the best interest of the United States, paying special attention to applicable statutes of limitations.

§ 13.19 Analysis of costs; automation; prevention of overpayments, delinquencies or defaults.

(a) The Administrator may periodically compare EPA's costs in handling debts with the amounts it collects.

(b) The Administrator may periodically consider the need, feasibility, and cost effectiveness of automated debt collection operations.

(c) The Administrator may establish internal controls to identify the causes of overpayments and delinquencies and may issue procedures to prevent future occurrences of the identified problems.

Subpart C—Administrative Offset

§13.20 Administrative offset of general debts.

This subpart provides for EPA's collection of debts by administrative offset under section 5 of the Debt Collection Act of 1982 (31 U.S.C. 3716), other statutory authorities and the common law. It does not apply to offsets against employee salaries covered by §§ 13.21, 13.22 and 13.23 of this subpart. EPA will collect debts by administrative offsets where it determines that such collections are feasible and are not otherwise prohibited by statute or contract. EPA will decide, on a case-by-case basis, whether collection by administrative offset is feasible and that its use furthers and protects the interest of the United States.

(a) *Standards.* (1) The Administrator collects debts by administrative offset if—

(i) The debt is certain in amount;

(ii) Efforts to obtain direct payment from the debtor have been, or would most likely be, unsuccessful or the Administrator and the debtor agree to the offset;

(iii) Offset is not expressly or implicitly prohibited by statute, regulation or contract;

(iv) Offset is cost-effective or has significant deterrent value;

(v) Offset does not substantially impair or defeat program objectives; and

(vi) Offset is best suited to further and protect the Government's interest.

(2) The Administrator may, in determining the method and amount of the offset, consider the financial impact on the debtor.

(b) *Interagency offset.* The Administrator may offset a debt owed to another Federal agency from amounts due or payable by EPA to the debtor, or may request another Federal agency to offset a debt owed to EPA. The Administrator may request the Internal Revenue Service to offset an overdue debt from a Federal income tax refund due a debtor where reasonable attempts to obtain payment have failed. Interagency offsets from employee salaries will be made in accordance with the procedures contained in §§ 13.22 and 13.23.

(c) *Multiple debts.* Where moneys are available for offset against multiple debts of a debtor, it will be applied in accordance with the best interest of the Government as determined by the Administrator on a case-by-case basis.

(d) *Statutory bar to offset.* Administrative offset will not be made more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not have been known through the exercise of reasonable care by the officer responsible for discovering or collecting the debt. For purposes of offset, the right to collect a debt accrues when the appropriate EPA official determines that a debt exists (e.g., contracting officer, grant award official etc.), when it is affirmed by an administrative appeal or a court having jurisdiction, or when a debtor defaults on a repayment agreement, whichever is latest. An offset occurs when money payable to the debtor is first withheld or when EPA requests offset from money held by another agency.

(e) *Pre-offset notice.* Before initiating offset, the Administrator sends the debtor written notice of:

(1) The basis for and the amount of the debt as well as the Agency's intention to collect the debt by offset if payment or satisfactory response has not been received within 30 days of the notice;

(2) The debtor's right to submit an alternative repayment schedule, to inspect and copy agency records pertaining to the debt, to request review of the determination of indebtedness or to apply for waiver under any available statute or regulation; and

(3) Applicable interest, penalty charges and administrative costs.

(f) *Alternative repayment.* The Administrator may, at the Administrator's discretion, enter into a repayment agreement with the debtor in lieu of offset. In deciding whether to accept payment of the debt by an alternative repayment agreement, the Administrator may consider such factors as the amount of the debt, the length of the proposed repayment period, whether the debtor is willing to sign a confess-judgment note, past Agency dealings with the debtor, documentation submitted by the debtor indicating that an offset will cause undue financial hardship, and the debtor's financial ability to adhere to the terms of a repayment agreement. The Administrator may require financial documentation from the debtor before considering the repayment arrangement.

(g) *Review of administrative determination.* (1) A debt will not be offset while a debtor is seeking either formal or informal review of the validity of the debt under this section or under another statute, regulation or contract. However, interest, penalty and administrative costs will continue to accrue during this period, unless otherwise waived by the Administrator. The Administrator may initiate offset as soon as practical after completion of review or after a debtor waives the opportunity to request review.

(2) The Administrator may administratively offset a debt prior to the completion of a formal or informal review where he determines that:

(i) Failure to take the offset would substantially prejudice EPA's ability to collect the debt; and

(ii) The time before the first offset is to be made does not reasonably permit the completion of the review procedures. (Offsets taken prior to completion of the review process will be followed promptly by the completion of the process. Amounts recovered by offset but later found not to be owed will be refunded promptly.)

(3) The debtor must provide a written request for review of the decision to offset the debt no later than 15 days after the date of the notice of the offset unless a different time is specifically prescribed. The debtor's request must state the basis for the request for review.

(4) The Administrator may grant an extension of time for filing a request for review if the debtor shows good cause for the late filing. A debtor who fails timely to file or to request an extension waives the right to review.

(5) The Administrator will issue, no later than 60 days after the filing of the request, a written final decision based on the evidence, record and applicable law.

§ 13.21 Employee salary offset—general.

(a) *Purpose.* This section establishes EPA's policies and procedures for recovery of debts owed to the United States by installment collection from the current pay account of an employee.

(b) *Scope.* The provisions of this section apply to collection by salary offset under 5 U.S.C. 5514 of debts owed EPA and debts owed to other Federal agencies by EPA employees. This section does not apply to debts owed EPA arising from travel advances under 5 U.S.C. 5705, employee training expenses under 5 U.S.C. 4108 and to other debts where collection by salary offset is explicitly provided for or prohibited by another statute.

(c) *References.* The following statutes and regulations apply to EPA's recovery of debts due the United States by salary offset:

(1) 5 U.S.C. 5514, as amended, governing the installment collection of debts;

(2) 31 U.S.C. 3716, governing the liquidation of debts by administrative offset;

(3) 5 CFR Part 550, Subpart K, setting forth the minimum requirements for executive agency regulations on salary offset; and

(4) 4 CFR Parts 101 through 105, the Federal Claims Collection Standards.

§ 13.22 Salary offset when EPA is the creditor agency.

(a) *Entitlement to notice, hearing, written response and decision.* (1) Prior to initiating collection action through salary offset, EPA will first provide the employee with the opportunity to pay in full the amount owed, unless such notification will compromise the Government's ultimate ability to collect the debt.

(2) Except as provided in paragraph (b) of this section, each employee from whom the Agency proposes to collect a debt by salary offset under this section is entitled to receive a written notice as

described in paragraph (c) of this section.

(3) Each employee owing a debt to the United States which will be collected by salary offset is entitled to request a hearing on the debt. This request must be filed as prescribed in paragraph (d) of this section. The Agency will make appropriate hearing arrangements which are consistent with law and regulations. Where a hearing is held, the employee is entitled to a written decision on the following issues:

(i) The determination of the Agency concerning the existence or amount of the debt; and

(ii) The repayment schedule, if it was not established by written agreement between the employee and the Agency.

(b) *Exceptions to entitlement to notice, hearing, written response and final decision.* The procedural requirements of paragraph (a) of this section are not applicable to any adjustment of pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program (such as health insurance) requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less. However, if the amount to be recovered was accumulated over more than four pay periods the full procedures prescribed under paragraph (d) of this section will be extended to the employee.

(c) *Notification before deductions begin.* Except as provided in paragraph (b) of this section, deductions will not be made unless the employee is first provided with a minimum of 30 calendar days written notice. Notice will be sent by certified mail (return receipt requested), and must include the following:

(1) The Agency's determination that a debt is owed, including the origin, nature, and amount of the debt;

(2) The Agency's intention to collect the debt by means of deductions from the employee's current disposable pay account;

(3) The amount, frequency, proposed beginning date and duration of the intended deductions. (The proposed beginning date for salary offset cannot be earlier than 30 days after the date of notice, unless this would compromise the Government's ultimate ability to resolve the debt);

(4) An explanation of the requirements concerning interest, penalty and administrative costs;

(5) The employee's right to inspect and copy all records relating to the debt or to request and receive a copy of such records;

(6) If not previously provided, the employee's right to enter into a written agreement for a repayment schedule differing from that proposed by the Agency where the terms of the proposed repayment schedule are acceptable to the Agency. (Such an agreement must be in writing and signed by both the employee and the appropriate EPA official and will be included in the employee's personnel file and documented in the EPA payroll system);

(7) The right to a hearing conducted by a hearing official not under the control of the Administrator, if a request is filed;

(8) The method and time for requesting a hearing;

(9) That the filing of a request for hearing within 15 days of receipt of the original notification will stay the commencement of collection proceedings;

(10) That a final decision on the hearing (if requested) will be issued at the earliest practical date, but no later than 60 days after the filing of the request, unless the employee requests and the hearing official grants a delay in the proceedings;

(11) That knowingly false or frivolous statements, representations or evidence may subject the employee to—

(i) Disciplinary procedures under 5 U.S.C. Chapter 75 or any other applicable statutes or regulations;

(ii) Criminal penalties under 18 U.S.C. 286, 287, 1001 and 1002 or other applicable statutory authority; or

(iii) Penalties under the False Claims Act, 31 U.S.C. 3729–3731, or any other applicable statutory authority;

(12) Any other rights and remedies available under statutes or regulations governing the program for which the collection is being made; and

(13) That amounts paid or deducted for the debt, except administrative costs and penalty charges where the entire debt is not waived or terminated, which are later waived or found not owed to the United States will be promptly refunded to the employee.

(d) *Request for hearing.* An employee may request a hearing by filing a written request directly with the Chief, Fiscal Policies and Procedures Branch (PM–226), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The request must state the bases upon which the employee disputes the proposed collection of the debt. The request must be signed by the employee and be received by EPA within 15 days of the employee's receipt of the notification of proposed deductions. The employee should submit in writing all facts, evidence and witnesses which support his/her position to the Chief, Fiscal Policies and Procedures Branch, within 15 days of the date of the request for a hearing. The Chief, Fiscal Policies and Procedures Branch, will arrange for the services of a hearing official not under the control of the Administrator and will provide the hearing official with all documents relating to the claim.

(e) *Requests for hearing made after time expires.* Late requests for a hearing may be accepted if the employee can show that the delay in filing the request for a hearing was due to circumstances beyond the employee's control.

(f) *Form of hearing, written response and final decision.* (1) Normally, a hearing will consist of the hearing official making a decision based upon a review of the claims file and any materials submitted by the debtor. However, in instances where the hearing official determines that the validity of the debt turns on an issue of veracity or credibility which cannot be resolved through review of documentary evidence, the hearing official at his discretion may afford the debtor an opportunity for an oral hearing. Such oral hearings will consist of an informal conference before a hearing official in which the employee and the Agency will be given the opportunity to present evidence, witnesses and argument. If desired, the employee may be represented by an individual of his/her choice. The Agency shall maintain a summary record of oral hearings provided under these procedures.

(2) Written decisions provided after a request for hearing will, at a minimum, state the facts evidencing the nature and origin of the alleged debt; and the hearing official's analysis, findings and conclusions.

(3) The decision of the hearing official is final and binding on the parties.

(g) *Request for waiver.* In certain instances, an employee may have a statutory right to request a waiver of overpayment of pay or allowances, e.g., 5 U.S.C. 5584 or 5 U.S.C. 5724(i). When an employee requests waiver consideration under a right authorized by statute, further collection on the debt will be suspended until a final administrative decision is made on the waiver request. However, where it appears that the Government's ability to recover the debt may be adversely affected because of the employee's resignation, termination or other action, suspension of recovery is not required. During the period of the suspension, interest, penalty charges and administrative costs will not be assessed against the debt. The Agency will not duplicate, for purposes of salary offset, any of the procedures already

provided the debtor under a request for waiver.

(h) *Method and source of collection.* A debt will be collected in a lump-sum or by installment deductions at established pay intervals from an employee's current pay account, unless the employee and the Agency agree to alternative arrangements for payment. The alternative payment schedule must be in writing, signed by both the employee and the Administrator and will be documented in the Agency's files.

(i) *Limitation on amount of deduction.* The size and frequency of installment deductions generally will bear a reasonable relation to the size of the debt and the employee's ability to pay. However, the amount deducted for any period may not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount. If possible, the installment payments will be in amounts sufficient to liquidate the debt in three years or less. Installment payments of less than $25 normally will be accepted only in the most unusual circumstances.

(j) *Duration of deduction.* If the employee is financially unable to pay a debt in a lump-sum or the amount of the debt exceeds 15 percent of disposable pay, collection will be made in installments. Installment deductions will be made over the period of active duty or employment except as provided in paragraph (a)(1) of this section.

(k) *When deductions may begin.* (1) Deductions to liquidate an employee's debt will begin on the date stated in the Agency's notice of intention to collect from the employee's current pay unless the debt has been repaid or the employee has filed a timely request for hearing on issues for which a hearing is appropriate.

(2) If the employee has filed a timely request for hearing with the Agency, deductions will begin after the hearing official has provided the employee with a final written decision indicating the amount owed the Government. Following the decision by the hearing official, the employee will be given 30 days to repay the amount owed prior to collection through salary offset, unless otherwise provided by the hearing official.

(l) *Liquidation from final check.* If the employee retires, resigns, or the period of employment ends before collection of the debt is completed, the remainder of the debt will be offset from subsequent payments of any nature due the employee (e.g., final salary payment, lump-sum leave, etc.).

(m) *Recovery from other payments due a separated employee.* If the debt cannot be liquidated by offset from any final payment due the employee on the date of separation, EPA will liquidate the debt, where appropriate, by administrative offset from later payments of any kind due the former employee (e.g., retirement pay). Such administrative offset will be taken in accordance with the procedures set forth in § 13.20.

(n) *Employees who transfer to another Federal agency.* If an EPA employee transfers to another Federal agency prior to repaying a debt owed to EPA, the following action will be taken:

(1) The appropriate debt-claim form specified by the Office of Personnel Management (OPM) will be completed and certified to the new paying office by EPA. EPA will certify: That the employee owes a debt; the amount and the basis for the debt; the date on which payment is due; the date the Government's rights to collect the debt first accrued; and that EPA's regulations implementing 5 U.S.C. 5514 have been approved by OPM.

(2) The new paying agency will be advised of the amount which has already been collected, the number of installments and the commencement date for the first installment, if other than the next officially established pay period. EPA will also identify to the new paying agency the actions it has taken and the dates of such actions.

(3) EPA will place or will arrange to have placed in the employee's official personnel file the information required by paragraphs (n) (1) and (2) of this section.

(4) Upon receipt of the official personnel file from EPA, the new paying agency will resume collection from the employee's current pay account and will notify both the employee and EPA of the resumption.

(o) *Interest, penalty and administrative cost.* EPA will assess interest and administrative costs on debts collected under these procedures. The following guidelines apply to the assessment of these costs on debts collected by salary offset:

(1) A processing and handling charge will be assessed on debts collected through salary offset under this section. Where offset is begun prior to the employee's receipt of the 30-day written notice of the proposed offset, processing and handling costs will only be assessed after the expiration of the 30-day notice period and after the completion of any hearing requested under paragraph (d) of this section or waiver consideration under paragraph (g) of this section.

(2) Interest will be assessed on all debts not collected within 30 days of the date of the expiration of the time for the employee to request a hearing, completion of a hearing pursuant to paragraph (d) of this section, or waiver consideration under paragraph (g) of this section, whichever is later. Interest will continue to accrue during the period of the recovery.

(3) Deductions by salary offset normally begin prior to the time for assessment of a penalty. Therefore, a penalty charge will not be assessed unless deductions occur more than 120 days from the date of notice to the debtor and penalty assessments have not been suspended because of waiver consideration by EPA.

(p) *Non-waiver of right by payment.* An employee's payment under protest of all or any portion of a debt does not waive any rights which the employee may have under either these procedures or any other provision of law.

(q) *Refunds.* EPA will promptly refund to the employee amounts paid or deducted pursuant to this section, the recovery of which is subsequently waived or otherwise found not owing to the United States. Refunds do not bear interest unless specifically authorized by law.

(r) *Time limit for commencing recovery by salary setoff.* EPA will not initiate salary offset to collect a debt more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the right to collect the debt were not known and could not have been known through the exercise of reasonable care by the Government official responsible for discovering and collecting such debts.

§ 13.23 Salary offset when EPA is not the creditor agency.

The requirements below apply when EPA has been requested to collect a debt owed by an EPA employee to another Federal agency.

(a) *Format for the request for recovery.* (1) The creditor agency must complete fully the appropriate claim form specified by OPM.

(2) The creditor agency must certify to EPA on the debt claim form: The fact that the employee owes a debt; the amount and the basis of the right to collect the debt; the date that the debt first accrued; and that the creditor agency's regulations implementing 5 U.S.C. 5514 have been approved by OPM and send it to the Chief, Fiscal Policies and Procedures Branch (PM-226), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

(3) If the collection is to be made in installments, the creditor agency must also advise EPA of the number of installments to be collected, the amount of each installment, and the commencement date of the first installment, if a date other than the next established pay period.

(4) Unless the employee has consented in writing to the salary deductions or signed a statement acknowledging receipt of the required procedures and this information is attached to the claim form, the creditor agency must indicate the actions it took under its procedures for salary offset and the dates of such actions.

(b) *Processing of the claim by EPA*—(1) *Incomplete claims.* If EPA receives an improperly completed claim form, the claim form and all accompanying material will be returned to the requesting (creditor) agency with notice that OPM procedures must be followed and a properly completed claim form must be received before any salary offset can be taken. The notice should identify specifically what is needed, from the requesting agency for the claim to be processed.

(2) *Complete claims.* If the claim procedures in paragraph (a) of this section have been properly completed, deduction will begin on the next established pay period. EPA will not review the merits of the creditor agency's determinations with respect to the amount or validity of the debt as stated in the debt claim form. EPA will not assess a handling or any other related charge to cover the cost of its processing the claim.

(c) *Employees separating from EPA before a debt to another agency is collected*—(1) *Employees separating from Government service.* If an employee begins separation action before EPA collects the total debt due the creditor agency, the following actions will be taken:

(i) To the extent possible, the balance owed the creditor agency will be liquidated from subsequent payments of any nature due the employee from EPA in accordance with § 13.22(l);

(ii) If the total amount of the debt cannot be recovered, EPA will certify to the creditor agency and the employee the total amount of EPA's collection; and

(iii) If EPA is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund or other similar payments, it will forward a copy of the claim form to the agency responsible for making such payments as notice that a debt is outstanding. EPA will also send a copy of the claim form to the creditor agency so that it can file a certified claim against the payments.

(2) *Employees who transfer to another Federal agency.* If an EPA employee transfers to another Federal agency before EPA collects the total amount due the creditor agency, the following actions will be taken:

(i) EPA will certify the total amount of the collection made on the debt; and

(ii) The employee's official personnel folder will be sent to the new paying agency. (It is the responsibility of the creditor agency to ensure that the collection is resumed by the new paying agency.)

Subpart D—Compromise of Debts

§ 13.24 General.

EPA may compromise claims for money or property where the claim, exclusive of interest, penalty and administrative costs, does not exceed $20,000. Where the claim exceeds $20,000, the authority to accept the compromise rests solely with DOJ. The Administrator may reject an offer of compromise in any amount. Where the claim exceeds $20,000 and EPA recommends acceptance of a compromise offer, it will refer the claim with its recommendation to DOJ for approval. The referral will be in the form of the Claims Collection Litigation Report (CCLR) and will outline the basis for EPA's recommendation. EPA refers compromise offers for claims in excess of $100,000 to the Commercial Litigation Branch, Civil Division, Department of Justice, Washington, DC 20530, unless otherwise provided by Department of Justice delegations or procedures. EPA refers offers of compromise for claims of $20,000 to $100,000 to the United States Attorney in whose judicial district the debtor can be found. If the Administrator has a debtor's firm written offer for compromise which is substantial in amount but the Administrator is uncertain as to whether the offer should be accepted, he may refer the offer and the supporting data to DOJ or GAO for action.

§ 13.25 Standards for compromise.

(a) EPA may compromise a claim pursuant to this section if EPA cannot collect the full amount because the debtor does not have the financial ability to pay the full amount of the debt within a reasonable time, or the debtor refuses to pay the claim in full and the Government does not have the ability to enforce collection in full within a reasonable time by enforced collection proceedings. In evaluating the acceptability of the offer, the Administrator may consider, among other factors, the following:

(1) *Individual debtors.* (i) Age and health of the debtor;

(ii) Present and potential income;

(iii) Inheritance prospects;

(iv) The possibility that assets have been concealed or improperly transferred by the debtor;

(v) The availability of assets or income which may be realized by enforced collection proceedings; or

(vi) The applicable exemptions available to the debtor under State and Federal law in determining the Government's ability to enforce collection.

(2) *Municipal and quasi-municipal debtors.* (i) The size of the municipality or quasi-municipal entity;

(ii) The availability of current and future resources sufficient to pay the debt (*e.g.*, bonding authority, rate adjustment authority, or taxing authority); or

(iii) The ratio of liabilities (both short and long term) to assets.

(3) *Commercial debtors.* (i) Ratio of assets to liabilities;

(ii) Prospects of future income or losses; or

(iii) The availability of assets or income which may be realized by enforced collection proceedings.

(b) EPA may compromise a claim, or recommend acceptance of a compromise to DOJ, where there is substantial doubt concerning the Government's ability to prove its case in court for the full amount of the claim, either because of the legal issues involved or a bona fide dispute as to the facts. The amount accepted in compromise in such cases will fairly reflect the probability of prevailing on the legal issues involved, considering fully the availability of witnesses and other evidentiary data required to support the Govenment's claim. In determining the litigative risks involved, EPA will give proportionate weight to the likely amount of court costs and attorney fees the Government may incur if it is unsuccessful in litigation.

(c) EPA may compromise a claim, or recommend acceptance of a compromise to DOJ, if the cost of collection does not justify the enforced collection of the full amount of the debt. The amount accepted in compromise in such cases may reflect an appropriate discount for the administrative and litigative costs of collection, taking into consideration the time it will take to effect collection. Costs of collection may be a substantial factor in the settlement of small claims, but normally will not carry great weight in the settlement of large claims. In

determining whether the cost of collection justifies enforced collection of the full amount, EPA may consider the positive effect that enforced collection of the claim may have on the collection of other similar claims.

(d) Statutory penalties, forfeitures or debts established as an aid to enforcement and to compel compliance may be compromised where the Administrator determines that the Agency's enforcement policy, in terms of deterrence and securing compliance (both present and future), will be adequately served by accepting the offer.

§ 13.26 Payment of compromised claims.

The Administrator normally will not approve a debtor's request to pay a compromised claim in installments. However, where the Administrator determines that payment of a compromise by installments is necessary to effect collection, a debtor's request to pay in installments may be approved. Normally, where installment repayment is approved, the debtor will be required to execute a confess-judgment agreement which accelerates payment of the balance due upon default.

§ 13.27 Joint and several liability.

When two or more debtors are jointly and severally liable, collection action will not be withheld against one debtor until the other or others pay their proportionate share. The amount of a compromise with one debtor is not precedent in determining compromises from other debtors who have been determined to be jointly and severally liable on the claim.

§ 13.28 Execution of releases.

Upon receipt of full payment of a claim or the amount compromised, EPA will prepare and execute a release on behalf of the United States. The release will include a provision which voids the release if it was procured by fraud, misrepresentation, a false claim or by mutual mistake of fact.

Subpart E—Suspension of Collection Action

§ 13.29 Suspension—general.

The Administrator may suspend the Agency's collection actions on a debt where the outstanding debt principal does not exceed $20,000, the Government cannot presently collect or enforce collection of any significant sum from the debtor, the prospects of future collection justify retention of the debt for periodic review and there is no risk of expiration of the statute of limitations during the period of suspension. Additionally, the Administrator may waive the assessment of interest, penalty charges and administrative costs during the period of the suspension. Suspension will be for an established time period and generally will be reviewed at least every six months to ensure the continued propriety of the suspension. DOJ approval is required to suspend debts exceeding $20,000. Unless otherwise provided by DOJ delegations or procedures, the Administrator refers requests for suspension of debts of $20,000 to $100,000 to the United States Attorney in whose district the debtor resides. Debts exceeding $100,000 are referred to the Commercial Litigation Branch, Civil Division, Department of Justice, for approval.

§ 13.30 Standards for suspension.

(a) *Inability to locate debtor.* The Administrator may suspend collection on a debt where he determines that the debtor cannot be located presently but that there is a reasonable belief that the debtor can be located in the future.

(b) *Financial condition of debtor.* The Administrator may suspend collection action on a claim when the debtor owns no substantial equity in real or personal property and is unable to make payment on the claim or effect a compromise but the debtor's future financial prospects justify retention of the claim for periodic review, provided that:

(1) The applicable statute of limitations will not expire during the period of the suspension, can be tolled or has started running anew;

(2) Future collection can be effected by offset, notwithstanding the 10-year statute of limitations for administrative offsets; or

(3) The debtor agrees to pay interest on the debt and suspension is likely to enhance the debtor's ability to fully pay the principal amount of the debt with interest at a later date.

(c) *Request for waiver or administrative review—mandatory.* The Administrator will suspend collection activity where a statute provides for mandatory waiver consideration or administrative review prior to agency collection of a debt. The Administrator will suspend EPA's collection actions during the period provided for the debtor to request review or waiver and during the period of the Agency's evaluation of the request.

(d) *Request for waiver or administrative review—permissive.* The Administrator may suspend collection activities on debts of $20,000 or less during the pendency of a permissive waiver or administrative review where he determines that:

(1) There is a reasonable possibility that waiver will be granted and the debtor may be found not owing the debt (in whole or in part);

(2) The Government's interest is protected, if suspension is granted, by the reasonable assurance that the debt can be recovered if the debtor does not prevail; or

(3) Collection of the debt will cause undue hardship to the debtor.

(e) *Refund barred by statute or regulation.* The Administrator will ordinarily suspend collection action during the pendency of his consideration of a waiver request or administrative review where statute and regulation preclude refund of amounts collected by the Agency should the debtor prevail. The Administrator may decline to suspend collection where he determines that the request for waiver or administrative review is frivolous or was made primarily to delay collection.

Subpart F—Termination of Debts

§ 13.31 Termination—general.

The Administrator may terminate collection actions and write-off debts, including accrued interest, penalty and administrative costs, where the debt principal does not exceed $20,000. If the debt exceeds $20,000, EPA obtains the approval of DOJ in order to terminate further collection actions. Unless otherwise provided for by DOJ regulations or procedures, requests to terminate collection on debts in excess of $100,000 are referred to the Commercial Litigation Branch, Civil Division, Department of Justice, for approval. Debts in excess of $20,000 but $100,000 or less are referred to the United States Attorney in whose judicial district the debtor can be found.

§ 13.32 Standards for termination.

A debt may be terminated where the Administrator determines that:

(a) The Government cannot collect or enforce collection of any significant sum from the debtor, having due regard for available judicial remedies, the debtor's ability to pay, and the exemptions available to the debtor under State and Federal law;

(b) The debtor cannot be located, there is no security remaining to be liquidated, the applicable statute of limitations has expired, and the prospects of collecting by offset are too remote to justify retention of the claim;

(c) The cost of further collection action is likely to exceed the amount recoverable;

(d) The claim is determined to be legally without merit; or

(e) The evidence necessary to prove the claim cannot be produced or the necessary witnesses are unavailable and efforts to induce voluntary payment have failed.

Subpart G—Referrals

§ 13.33 Referrals to the Department of Justice.

(a) *Prompt referral.* The Administrator refers to DOJ for litigation all claims on which aggressive collection actions have been taken but which could not be collected, compromised, suspended or terminated. Referrals are made as early as possible, consistent with aggressive agency collection action, and within the period for bringing a timely suit against the debtor.

(1) Unless otherwise provided by DOJ regulations or procedures, EPA refers for litigation debts of more than $100,000 to the Commercial Litigation Branch, Civil Division, Department of Justice, Washington, DC 20530.

(2) Unless otherwise provided by DOJ regulations or procedures, EPA refers for litigation debts of $100,000 or less to the United States Attorney in whose judicial district the debtor can be found.

(b) *Claims Collection Litigation Report (CCLR).* Unless an exception has been granted by DOJ, the CCLR is used for referrals of all administratively uncollectible claims to DOJ and is used to refer all offers of compromise.

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Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 874

Ear, Nose, and Throat Devices; Exemptions From Premarket Notification; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 874

[Docket No. 86N-0010]

Ear, Nose, and Throat Devices; Exemptions From Premarket Notification

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is exempting from the requirement of premarket notification, with limitations, certain ear, nose, and throat devices. These actions are being taken under the Medical Device Amendments of 1976 and are a step in implementing one of the goals in FDA's plan for action.

EFFECTIVE DATE: September 24, 1987.

FOR FURTHER INFORMATION CONTACT: David A. Segerson, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–8185.

SUPPLEMENTARY INFORMATION: The Medical Device Amendments of 1976 (the amendments) (Pub. L. 94–295) establish a comprehensive system for the regulation of medical devices intended for human use. One provision of the amendments, section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c), establishes three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness: Class I, general controls; class II, performance standards; and class III, premarket approval.

Section 513(d)(2)(A) of the act (21 U.S.C. 360c(d)(2)(A)) authorizes FDA to exempt, by regulation, a generic type of class I device from the requirement of, among other things, premarket notification in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR Part 807, Subpart E. Such an exemption allows manufacturers to introduce into commercial distribution devices of the generic type exempted without first submitting to FDA a premarket notification. When FDA was publishing its proposed classification regulations for preamendments devices, the agency did not routinely evaluate whether it should grant to manufacturers of such devices placed in class I an exemption from the requirement of premarket notification in section 510(k) of the act and 21 CFR Part 807, Subpart E. Generally, FDA considered such exemptions only when the advisory panels recommended the exemptions.

Recently, FDA developed criteria for exempting certain class I devices from the requirement of premarket notification, to reduce the number of premarket notifications on relatively innocuous devices and free agency resources for the review of more complex notifications.

The development of these criteria and the issuance of proposed and final rules exempting appropriate devices from the requirement of premarket notification in section 510(k) of the act will help implement a goal in FDA's May 1987 "A Plan for Action Phase II" (Ref. 1).

On November 6, 1986 (51 FR 40394), FDA proposed to exempt from premarket notification requirements four ear, nose, and throat devices. Interested persons were given until January 5, 1987, to comment. No comments were received. Therefore, FDA is adopting the regulation as proposed.

Criteria for 510(k) Exemptions

FDA is exempting generic types of class I devices from the requirement of premarket notification with the limitations described below, if FDA determines that premarket notification is not necessary for the protection of the public health. FDA may grant an exemption if both of the following criteria are met:

1. FDA has determined that the device does not have a significant history of false or misleading claims or of risks associated with inherent characteristics of the device such as device design or materials. When making these determinations, FDA may consider the frequency, persistence, cause, or seriousness of such claims or risks, or other factors.

2. FDA has determined that: (a) Characteristics of the device necessary for its safe and effective performance are well established; (b) anticipated changes in the device that are of the type that could affect safety and effectiveness will (1) be readily detectable by users by visual examination or other means, such as routine testing, e.g., testing of a clinical laboratory reagent with positive and negative controls, before causing harm, or (2) not materially increase the risk of injury, incorrect diagnosis, or ineffective treatment; and (c) any changes in the device will not be likely to result in a change in the device's classification.

FDA will make the determination above based on its knowledge of the device, including past experience with premarket notification and publicly available reports or studies on device performance. Based on the above criteria, FDA will place the exempted device into the same class as the class I device to which it would be substantially equivalent.

FDA may, if it has concerns only about certain types of changes in a class I device, grant a limited exemption from premarket notification for the generic type of device. A limited exemption will specify what types of changes manufacturers must continue to report to FDA. For example, FDA may exempt a device except when a manufacturer intends to use a different material.

FDA's decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type. Because FDA cannot anticipate every change in intended use or characteristic of a device that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of a preamendments device to which it had been determined to be substantially equivalent; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(b) The modified device operates using a different fundamental scientific technology than that in use in the device before May 28, 1976; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology.

Reference

The following information has been placed in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. "Food and Drug Administration—A Plan for Action Phase 11." Public Health Service, Department of Health and Human Services, May 1987, p. 9.

Environmental Impact

The agency has determined under 21 CFR 25.24(e)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Economic Impact

FDA has carefully analyzed the economic effects of this final rule and has determined that the final rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act. In accordance with section 3(g)(1) of Executive Order 12291, the impact of this final rule has been carefully analyzed and it has been determined that the final rule does not constitute a major rule as defined in section 1(b) of the Executive Order.

The devices subject to this final rule are now subject only to the general controls provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 360, 360f, 360h, 360i, and 360j), with certain exemptions.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 874 is amended as follows:

PART 874—EAR, NOSE, AND THROAT DEVICES

1. The authority citation for 21 CFR Part 874 continues to read as follows:

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794–795 as amended, 90 Stat. 540–546, 552–559, 565–574, 576–577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

2. Part 874 is amended by adding new § 874.9 to read as follows:

§ 874.9 Limitations of exemptions from section 510(k) of the act.

FDA's decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of a preamendments device to which it had been determined to be substantially equivalent; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(b) The modified device operates using a different fundamental scientific technology than that in use in the device before May 28, 1976; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology.

3. In § 874.1100 by revising paragraph (b) to read as follows:

§ 874.1100 Earphone cushion for audiometric testing.

* * * * *

(b) *Classification.* Class I. If the device is made of the same materials that were used in the device before May 28, 1976, it is exempt from the premarket notification procedures in Subpart E of Part 807.

4. In § 874.3540 by revising paragraph (b) to read as follows:

§ 874.3540 Prosthesis modification instrument for ossicular replacement surgery.

* * * * *

(b) *Classification.* Class I. If the device is made of the same materials that were used in the device before May 28, 1976, it is exempt from the premarket notification procedures in Subpart E of Part 807. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

5. In § 874.4420 by revising paragraph (b) to read as follows:

§ 874.4420 Ear, nose, and throat manual surgical instrument.

* * * * *

(b) *Classification.* Class I. If the device is made of the same materials that were used in the device before May 28, 1976, it is exempt from the premarket notification procedures in Subpart E of Part 807.

6. In § 874.5800 by revising paragraph (b) to read as follows:

§ 874.5800 External nasal splint.

* * * * *

(b) *Classification.* Class I. If the device is made of the same materials that were used in the device before May 28, 1976, it is exempt from the premarket notification procedures in Subpart E of Part 807.

Dated: July 1, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

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Part IV

Office of Management and Budget

Review of the "Dress Rehearsal" for the 1990 Census of Population and Housing; Notice

OFFICE OF MANAGEMENT AND BUDGET

Review of the "Dress Rehearsal" for the 1990 Census of Population and Housing

AGENCY: Office of Management and Budget.

ACTION: Notice containing information on the status of the review under the Paperwork Reduction Act of the 1990 Census Dress Rehearsal.

SUMMARY: The Office of Management and Budget (OMB) is currently reviewing, under the Paperwork Reduction Act, the "Dress Rehearsal" for the 1990 Census of Population and Housing. Since the review period began on June 17, 1987, OMB has received several hundred letters from members of the public concerning the review and the content of the 1990 Census. Both in response to the large number of people who have submitted comments already and to assist others who may wish to do so before the end of the review period, OMB is publishing the following information about the review process and the current status of the Dress Rehearsal review.

DATES: The review period for the 1990 Census Dress Rehearsal will end September 15, 1987. Public comments on the Dress Rehearsal will be welcomed up to that date.

ADDRESS: Comments on the 1990 Census Dress Rehearsal should be made in writing and sent to: Donald R. Arbuckle, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Donald R. Arbuckle or Francine Picoult, Office of Information and Regulatory Affairs, Office of Management and Budget. Telephone number: (202) 395–3740.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) is currently reviewing, under the Paperwork Reduction Act of 1980, the "Dress Rehearsal" for the 1990 Census of Population and Housing, a prototype of the questionnaires and design to be used in the 1990 Census. In recent weeks, OMB has received several hundred letters concerning the census. All the letters have been read and will become part of the public record of the Dress Rehearsal review.

Under the Paperwork Reduction Act of 1980, all collections of information from 10 or more people must be reviewed by OMB to assure that the information to be collected and published will be as useful as possible to the government and the public and that the burden of respondents is held to the minimum practical level. OMB is also responsible under the Paperwork Reduction Act for overseeing and establishing standards for Federal statistical programs, to maintain and improve the quality of government statistics. OMB's information collection reviews for statistical surveys such as the decennial census focus not only on burden but also on quality issues.

OMB may take up to 90 days for its reviews, and during the review period the public is invited to comment on any aspect of the information collection under review. In the case of the Dress Rehearsal for the 1990 Census, the OMB review period began on June 17th and will end on September 15th. OMB will welcome public comments until the end of the review period. *OMB has as yet made no decisions or recommendations concerning the Dress Rehearsal, nor will any final decisions be made until mid-September.*

In reviewing all proposed information collections, OMB is responsible for assuring that the agency sponsoring the collection has provided adequate demonstration that the data to be collected have substantial, practical uses and that no more burden than necessary is placed on those who must provide the data, be they individuals, businesses, or State and local governments. For statistical data collections, OMB is further responsible for assuring that the data collected and published are sufficiently reliable to meet the major requirements of government and public users. To fulfill these responsibilities, OMB frequently must ask sponsor agencies—such as the Bureau of the Census, in the case of the 1990 Census Dress Rehearsal—for additional justification of their data collection plans. In the role of reviewer, it is OMB's responsibility to ask questions and make sure that there are adequate answers for the public record.

Some Questions OMB is Raising in its Review of the 1990 Census Dress Rehearsal

The 1990 Census Dress Rehearsal, which OMB is currently reviewing, is a prototype of the forms and design to be used in the 1990 Census. The Bureau of the Census is proposing to administer a "short form" questionnaire containing 17 questions to every household in the country (about 96 million households) and to ask an additional 44 questions, on a "long form," of a nationwide sample of 1 in 6 (about 16 million) households.

Having reviewed the materials submitted by the Bureau of the Census to justify the proposal, OMB has raised a number of questions about the content and design, to determine that the data to be collected in the census will be reliable and of the greatest possible use and that respondent burden has been reduced to the minimum level practicable and appropriate. OMB would particularly welcome public comments directed to these questions.

1. *Are there substantial uses for all the data to be collected?*

There are some items on the questionnaire for which OMB has asked for more information concerning substantial use. For example,

- Question H20—How many bedrooms do you have?

The justification states that this information, to be collected on the long form, "provides an important assessment of the amount of available living and sleeping space" and that it is used in calculations of "fair market rentals." However, question H3 asks total number of rooms. OMB is inquiring whether both items are needed in the census.

- Question H7—Do you have a telephone in this house or apartment? (If yes,) enter phone number.

This question is being proposed for the short form. OMB has questioned the need to ask every household whether it has a telephone, but has particularly questioned the need for, and propriety of, requiring people, under penalty of law, to give their home telephone number. If the Bureau of the Census wishes to use telephone numbers for follow-up, could respondents be asked to provide that information on the back of the forms (where they are asked to give the name and address of the person who filled out the form)?

2. *Is the decennial census the best source of certain data?*

In certain cases, OMB has asked for a stronger demonstration that the decennial census is an appropriate vehicle for collecting reliable, analytically-useful information. For example,

- The long form proposed for the census contains seven questions concerning energy use and costs:

H15—Which fuel is used most for heating this house or apartment?

H16—What kind of heating equipment is used most to heat this house or apartment?

H17—What fuel is used most for heating the water in this house or apartment?

H18a–d—What are the yearly costs of utilities and fuels for this house or apartment? If you have been here less than 1 year, estimate the yearly cost.

(Four-part question, asked separately for electricity, gas, water, and "oil, coal, kerosene, wood, etc.")

The Energy Information Administration (EIA) has a statistical program dealing with residential energy use and costs. When the EIA program began in the late 1970s, cost questions such as those proposed for the 1990 Census were rejected as unreliable. This judgment was based in part on the experience in an earlier census where such questions produced results that were 25 to 50 percent higher than actual energy costs. This kind of reporting bias cannot be reduced by increasing sample size—the error persists in a complete census or a sample of any size and is so large that it dwarfs the effect of sampling error, even in a sample covering only a fraction of 1 percent of all households.

EIA dealt with this problem by getting the permission of randomly selected households to go directly to their energy suppliers for accurate records of energy use and costs. EIA also found that more specific questions were needed to describe energy consumption—to identify electric heaters used to supplement an oil furnace, for example. Based on its experience, EIA reported that the only 1990 Census question necessary for this use was question H15 ("Which fuel is used most for heating this house or apartment?"), to be used for benchmarking the more complete and accurate sample surveys conducted by EIA to measure energy consumption and costs. In the past, for a modest charge, EIA has augmented its surveys to meet the needs of other agencies for accurate energy information.

• The proposed 1990 Census long form contains two questions on water source and sewage disposal:

H12—Do you get your water from—

A public system such as a city water department or private company?

An individual drilled well?

An individual dug well?

Some other source such as a spring, creek, river, cistern, etc.?

H13—Is this building connected with a public sewer?

The Census Bureau's supporting statement indicates that the principal uses of this information are in planning various rural development and assistance programs. Inasmuch as the coverage of public water and sewer systems is known from other sources than the census (local government and utility company records, which might be able to serve local planning needs), and the principal use of census data is to determine the circumstances of households that are *not* served by public systems, OMB is asking whether a survey targeted at rural areas might be a better vehicle for collecting these data.

3. *Is it necessary to ask some of the questions of such large numbers of households (86 million for the short-form questions, 16 million for the long form)?*

In 1975, Congress inserted into Title 13 (the Census Code) a new section (Section 195) specifically authorizing the Census Bureau to use statistical sampling whenever *feasible* in all areas of the census except the actual count of the population. OMB would like to make sure that optimum use is made of sampling, both so that respondent burden is minimized and so that, for any given burden, a greater amount of useful information can be gathered in the census.

• *Short-form housing questions.* The proposed short form includes 10 housing questions. In 1986, GAO studied the uses of these 100-percent data, questioned the need for collecting them from all households (rather than a sample), and recommended that the Census Bureau test a short form that included only four housing questions.

OMB too is questioning the need for asking the following housing questions on the 100-percent (short) form:

H3—How many rooms do you have in this house or apartment?

H4—Do you have complete plumbing facilities in this house or apartment?

H5—Is this house or apartment part of a condominium?

H6—Is this house on ten or more acres? Is there a business or a medical office on this property?

H7—Do you have a telephone in this house or apartment?

H8—Is this house or apartment—

Owned with a mortgage or loan?

Owned free and clear?

Rented for cash rent?

Occupied without payment of cash rent?

H9—(For owners) What is the value of this property; that is, how much do you think this house and lot or condominium unit would sell for if it were for sale?

H10—(For renters) What is the monthly rent? Does the monthly rent include any meals?

In the case of the last two questions (H9 and H10), which are to be answered by checking ranges representing approximate dollar values, a 100-percent count has no advantage in accuracy over a much smaller sample.

• *Sample size for the long form.* OMB is concerned that the proposed 16 million-household sample may be larger than necessary for collecting much of the long-form data.

Some of the questions to be used in the 1990 Census are known to produce large errors because households cannot accurately estimate, or do not wish to report, the answer. In these cases, the bias dwarfs any error introduced by sampling, even at very modest sample sizes. The error is inherent in the question and is not reduced by asking the question of millions of additional households. Questions calling for estimates of dollar values or specific costs are likely to provide no more accuracy averaged across 16 million households than over a sample of 100,000 or less.

The principal justification given for many of the 1 in 6 sample questions is that data are needed for very small areas for planning purposes. However, there are some cases where similar data are available locally. OMB is questioning whether these data could not adequately serve planning purposes. For example, information on real estate transactions, including the price for which houses have recently sold, is available from locally-available records, as is information on real estate tax assessments (question H23 on the proposed long form).

For some other long-form questions, OMB is asking for more information indicating that data for small areas are actually needed and used. Examples of such questions are:

H24—What was the annual payment for fire, hazard, and flood insurance on this property?

H25a—Do you have a mortgage, deed of trust, contract to purchase, or similar debt on this property?

H25b—How much is your regular monthly mortgage payment on this property?

H25c—Does your regular monthly mortgage payment include payments for real estate taxes on this property?

H25d—Does your regular monthly mortgage payment include payments for fire, hazard, or flood insurance on this property?

H26a—Do you have a second or junior mortgage or a home equity loan on this property?

H26b—How much is your regular monthly payment on all second or junior mortgages and all home equity loans?

H27—(For condominium owners) What is the monthly condominium fee?

H28—(For mobile home owners) What was the total cost for personal property taxes, site rent, registration fees, and license fees on this mobile home and its site last year? Exclude real estate taxes.

4. *Is the response burden of the census fairly distributed?*

The proposed long form with 61 questions (as compared with the short form's 17) imposes a lopsided burden on

those households that receive the long form. OMB has asked the Census Bureau to consider the possibility of dividing the long-form questions into two or more questionnaires, so as to distribute the burden more equitably.

5. *Is the length of the proposed questionnaires, particularly the long form, likely to have any adverse effect on the quality of response?*

OMB's concern about questionnaire length and content relates not just to burden but, even more important, to the accuracy of the census count and the reliability of the demographic data that are collected in the census. The high rates of "failed edits" in the 1970 and 1980 censuses (the percentage of returned forms that did not meet the Census Bureau's edit criteria and therefore had to be followed up) suggest that in the recent past respondents have experienced substantial problems filling out forms completely and accurately. For example, in 1980 45 percent of the long forms that were mailed back were so incomplete or otherwise deficient that a follow-up was required. Before approving plans for the 1990 census, OMB would like to be sure that careful attention has been paid to all aspects of data collection that could affect the quality of response.

Authority: 44 U.S.C. 3504.

Wendy L. Gramm,

Administrator for Information and Regulatory Affairs.

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